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LIST OF ACRONYMS

ABAC	APEC Business Advisory Council
ADR	Alternative Dispute Resolution
APEC	Asia-Pacific Economic Cooperation
AI	Artificial Intelligence
APINDO	Indonesia Employers Association
B2B	Business-to-Business
B2C	Business-to-Consumer
BAKTI	The Commodity Futures Trading Arbitration Board
BANI	The Indonesia National Arbitration Board
BADAPSKI	The Indonesian Construction Arbitration and Alternative Dispute Resolution Agency
CIETAC	China International Economic and Trade Arbitration Commission
COVID-19	Coronavirus Disease
GR	Government Regulation
GZAC	Guangzhou Arbitration Commission
iDEA	Indonesia E-Commerce Association
MSEs	Micro and Small Enterprises
MSMEs	Micro, Small and Medium Enterprises
ODR	Online Dispute Resolution
PAMI	The Indonesia Arbitration and Mediation Center
SMEs	Small and Medium Enterprises
UNCITRAL	The United Nations Commission on International Trade Law

EXECUTIVE SUMMARY

In 2022, Asia-Pacific Economic Cooperation (APEC) launched a collaborative framework for Online Dispute Resolution (ODR) for cross-border Business-to-Business (B2B) transactions. This cooperation forum aims to strengthen its support for small businesses as well as the region's economic and legal infrastructure in terms of dispute resolution. It is expected that this will indirectly encourage an increase in regional trade transactions that are backed by a quick, fair and cost-effective dispute resolution mechanism.

At this launching, Dr. James Ding (the Chair of APEC Economic Committee) mentioned that small and medium enterprises, despite being important economic players in their respective economies and accounting for approximately 97% of total businesses in the APEC region, avoid international trade due to lack of access to fast, fair and affordable justice.

The issuance of this framework is inextricably linked to a study conducted by the APEC Business Advisory Council (ABAC) few years ago. The study result is still relevant, including in the context of Indonesia. The study's findings indicate that differences in domestic legal and regulatory systems in each member economies add to the complexity of international trade, particularly in the region. According to the study, more than half of MSMEs in the region engage in cross-border trade, with almost three-quarters located in emerging economies. When trade disputes arise, they were lacking access to redress or justice.

This framework is a guide and not a treaty that applies mandatory to its members. However, for economies wishing to implement it, they may declare opt-in. Until this report was written, member economies such as People's Republic of China; Hong Kong, China; Japan; Singapore; and the United States have already declared their opt-in for the framework. For Indonesia, the existence of the APEC collaborative framework for ODR for cross-border B2B transactions has been a concern in recent years. This relates to the objectives and benefits of the framework, especially for MSMEs. It is important to review the legal and institutional frameworks and its implementation in Indonesia to take this into account.

Indonesian MSMEs have played an important role in the economy's economic stability. With a very large number (99.99% of total businesses) and a significant

contribution (60.51% of the total Gross Domestic Product), the number and contribution cannot be underestimated.

According to the Indonesia Statistic Agency, there has been an increase in international trade by Indonesian exporters, from USD6.4 billion (2019) to USD268.1 billion (2022). Furthermore, there was an increase in e-commerce transactions in Indonesia, from USD107 million (2019) to USD55.97 billion (2023), based on the data in Data Reportal. It is believed that there is a portion of cross-border transactions there, regardless of B2B or Business-to-Consumer (B2C).

Behind these numbers, disputes surely occur amongst businesses. Even though MSMEs exports account only for 15% of total exports on average, the disputes faced by them are major issues for them. Affordable, efficient and quick access to redress is only the option. It should be accompanied by adequate legal assistance by the economy and other stakeholders.

Following on from this situation, this study was conducted to look into the legal and institutional frameworks, as well as the implementation of ODR in Indonesia. This study also looked at the similar frameworks in different economies, focusing on those that have declared opt-in. The legal and policy aspects of Indonesian MSMEs are also examined. Its objective is to provide recommendations to Indonesia on how to implement the APEC collaborative framework for ODR.

A qualitative approach was used to conduct this study. The methods are desk research, in-depth interviews and workshops. In-depth interviews were conducted with the following stakeholders: (1) the Supreme Court; (2) the Ministry of Trade; (3) the Ministry of Cooperatives and Small and Medium Enterprises (SMEs); (4) the Indonesian National Arbitration Board (BANI); (5) the Indonesia Employers Association (APINDO); (6) the Indonesia Arbitration and Mediation Center (PAMI); (7) the Indonesia E-Commerce Association (iDEA); and (8) Arbitrators.

Based on the study findings on the legal and institutional frameworks of ODR in Indonesia, E-commerce Regulation 2019 have already mentioned ODR. However, the provisions within this regulation remain limited. ODR refers to both in-court and out-of-court dispute resolution. The regulation mentions negotiation, consultation, mediation and arbitration mechanisms, but it still refers to other laws and regulations. They are, at least, the Arbitration and Alternative Dispute Resolution (ADR) Law 1999 (Law No. 30/1999), the Electronic Transactions and Information Law 2008 (Law No.

11/2008 as amended by Law No. 19/2016) and the Personal Data Protection 2022 (Law No. 27/2022).

ODR is still scattered in various regulations. However, these scattered arrangements do not necessarily prohibit and limit the presence of ODR. The Arbitration and ADR Law 1999 makes it possible for ADR agencies to establish new and special procedures on ODR for the parties including for cross-border disputes. This is also supported by the Electronic Transactions and Information Law 2008 related to cross-border disputes and electronic evidence as well as the Personal Data Protection 2022 related to the governance of personal data from disputes.

Some ADR agencies have introduced procedural rule that allow them to conduct online hearings. In fact, BANI has already passed specialized procedural rule on ODR in 2022. This shows that ODR can be implemented although no specific regulation of ODR has been promulgated.

Similar to Indonesia, other member economies that were studied have not also passed yet their legislation on ODR. People's Republic of China; Hong Kong, China; Japan; Singapore; and The United States use current legal frameworks on arbitration and mediation to operate ODR. Hong Kong, China and Singapore mention also in each legal framework the applicability of UNCITRAL Model Law on International Commercial Arbitration as legal basis for resolving disputes using electronic means.

Agencies such as eBRAM, China International Economic and Trade Arbitration Commission (CIETAC), China's Guangzhou Arbitration Commission (GZAC), and U&I Advisory Service Japan are listed as ODR providers on the APEC website. They already issued procedural rules for implementing the APEC collaborative framework for ODR. This shows that, in the absence of a specific regulatory framework, these agencies are enabled by their authorities to implement ODR. The same should also apply in Indonesia.

Such implementation must take into account the situation of Indonesian MSMEs. Indonesian MSMEs, like those in other member economies, lack access to quick, fair and affordable justice. They are located not only in cities, but also in rural and remote areas near the border. Because of Indonesia's vast geography, their knowledge of international trade, e-commerce, the internet and disputes are varied and uneven. Until 2021, there is not a single major regulation that provides legal assistance for MSMEs.

The existence of the Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021 (Government Regulation No. 7/2021) provides “fresh air” for them. The central and regional authorities are required to provide legal aid and assistance. Advocates, legal aid organizations and universities are also encouraged to participate. However, this provision only applies to micro and small-scale businesses and does not apply for medium-scale businesses. In fact, the risks and legal consequences of disputes that will be faced are the same. Because this rule is still in its early stages, progress is yet to be seen. However, its presence can become a legal basis for empowering and protecting MSMEs in the context of ODR.

By taking into account the legal framework for ODR, the situation of Indonesian MSMEs, comparison with frameworks in other member economies and input from stakeholders, it is possible to apply the APEC collaborative framework for ODR on cross-border B2B transaction disputes. Indonesia is possible to declare its willingness to implement the framework. To materialize this, a number of tasks must be completed in order to prepare ADR agencies/ODR providers, MSMEs and the economy.

This study provides recommendations and activities that can be carried out to prepare for this in stages. The recommendations include (1) recommendations on ODR policies, (2) recommendations on MSMEs policies, (3) recommendations on personal data confidentiality and protection, (4) recommendations on infrastructure, and (5) recommendations on human resource capacity. This report also includes an implementation toolkit as material for consideration for action recommendations.

1 – INTRODUCTION

1.1. Background

Coronavirus Disease (COVID-19) has accelerated digital transformation, including in commercial transactions. Online platforms are increasingly being used for trading. Physical presence is only one option after the spread of COVID-19 has decreased and travel is given permission. Commercial transactions become increasingly convenient to be conducted online and even cross-border.

In recent years, Indonesia has been one of the economies where people frequently conduct transactions electronically. As of January 2023, Indonesia's total population reached around 276.4 million people.¹ Indonesia is an economy with the fourth largest population in the world. The population affects the value of e-commerce transactions. Indonesia's total e-commerce transactions were worth USD55.97 billion at the start of 2023.² It is believed that a portion of these transactions are cross-border transactions. This figure is up by more than USD2 billion over the same period last year (USD53.81 billion) and significantly higher than the total transactions of USD107 million in 2019.³ Indonesia's improved infrastructure, particularly in the internet sector, contributes to the high volume and value of transactions.

This significant growth in e-commerce is also assisted by Indonesia's improving internet infrastructure within the period of President Joko Widodo's administration. At the beginning of 2023, there are 212.9 million Indonesians who use the Internet, an increase of around 10 million people from the previous year.⁴ Furthermore, there were 353.8 million mobile connections in Indonesia as of January 2023 accounting around

¹ Simon Kemp (1), *Digital 2023: Indonesia* (Data Reportal, 9 February 2023) <https://datareportal.com/reports/digital-2023-indonesia> (9 February 2023), p. 17.

² *Ibid.*, p. 86.

³ Simon Kemp (2), *Digital 2022: Indonesia* (Data Reportal, 15 February 2022) <https://datareportal.com/reports/digital-2022-indonesia> (accessed on 13 January 2023), p. 86. See also Simon Kemp (3), *Digital Reportal 2019: Indonesia* (Data Reportal, 31 January 2019) <https://datareportal.com/reports/digital-2019-indonesia> (9 February 2023), p. 59.

⁴ Simon Kemp (1), *loc.cit.*, p. 28.

128% of the total population.⁵ This reveals that some Indonesians use multiple devices to communicate and/or conduct transactions.

Nevertheless, the transaction figures do not yet indicate whether the transaction is between businesses and consumers or between businesses and businesses. It is difficult to distinguish between buyers as consumers and buyers as micro or small-scale businesses in e-commerce transactions. The volume and quantity of products purchased are the distinguishing factors. If no special conditions exist for the distinction, it will be difficult for the marketplace company to have more specific data on this subject.

In terms of conventional international trading, Indonesian exports have increased in the last three years during the COVID-19 pandemic. In November 2022, Indonesia's export value reached USD268.1 billion. This was an increase of USD58.9 billion over the same period in 2021 (USD209.1 billion).⁶ In November 2020, the export value reached USD146.7 billion. This was the first year since COVID-19 has spread globally.⁷ This value, however, decreased by USD6.4 billion when it is compared to the same period in 2019 prior to the COVID-19 outbreak.⁸ Commercial disputes have the potential to emerge behind the transaction figures. Moreover, these transactions are conducted without a face-to-face meeting and are cross-border in nature.

Differences in legal, regulatory and dispute resolution systems are perplexing. The main option is to have affordable, efficient and quick access to redress. One of the important options is Online Dispute Resolution (ODR). Court is not the best option. Enforcement of foreign court decisions is an issue, in addition to traditional court proceeding being time-consuming and costly. Traditional dispute resolution is also not an option due to cost considerations.

⁵ *Ibid.*, p. 75.

⁶ Badan Pusat Statistik (1), *Ekspor Menurut Kelompok Komoditi dan Negara*, Buletin Statistik Perdagangan Luar Negeri, November 2022, Badan Pusat Statistik, Jakarta, 2022, p. 4. The material is available at <https://www.bps.go.id/publication/2023/01/30/ffca9f1fec62b872cc0917f/foreign-trade-statistical-bulletin-exports-by-state-commodity-groups-november-2022.html>. However, only the PDF version of Indonesian language is available.

⁷ Badan Pusat Statistik (2), *Ekspor Menurut Kelompok Komoditi dan Negara, November 2020*, Buletin Statistik Perdagangan Luar Negeri, Badan Pusat Statistik, Jakarta, 2020, p. 4. The material is available at <https://www.bps.go.id/publication/2021/01/29/88ac33ecd4b51ddb9e68a9ee/-buletin-statistik-perdagangan-luar-negeri-ekspor-menurut-kelompok-komoditi-dan-negara-november-2020.html>. Nevertheless, only the PDF version of Indonesian language is available.

⁸ *Ibid.*

In response to the need for Micro Small Medium Enterprises (MSMEs) to resolve disputes in a timely, efficient and cost-effective manner, APEC has launched an APEC Collaborative Framework for ODR for cross-border B2B transactions.⁹ This collaborative framework provides guidance for MSMEs engaged in cross-border B2B transactions involving small-claim amounts.¹⁰ Through this framework, businesses can file cross-border and online claims against businesses in other member economies as long as both parties agree to resolve disputes using the provisions of the APEC Collaborative Framework for ODR and ODR providers listed on the APEC website.¹¹

In the context of Indonesia, there are several laws and regulations in Indonesia that support the implementation of ODR even though they are scattered. The E-Commerce Regulation 2019,¹² the Arbitration and Alternative Dispute Resolution (ADR) Law 1999,¹³ and the Information and Electronic Transaction Law 2008¹⁴ are among these regulations. In addition to the aforementioned laws and regulations that directly support ODR implementation, there are other relevant ones, such as the Electronic System and Transaction Implementing Regulation 2019¹⁵ and the Personal Data Protection Law 2022¹⁶

ODR-like mechanisms have also begun to be regulated and implemented by the judiciary. The benchmark is the presence of e-court regulation in 2019 and small-claim court regulation in 2015. Cases filed have also increased since their commencement, particularly during the COVID-19 pandemic. Nonetheless, the Indonesian judiciary has limited territorial jurisdiction over cross-border transaction disputes, particularly when it comes to enforcing the decision overseas.

⁹ APEC Economic Committee, *APEC Launches Collaborative Framework on Online Dispute Resolution to Help Small Businesses*, Asia-Pacific Economic Cooperation, Singapore, 20 June 2022, <https://www.apec.org/press/news-releases/2022/apec-launches-collaborative-framework-on-online-dispute-resolution-to-help-small-businesses> (17 February 2023).

¹⁰ *Ibid.*

¹¹ List of ODR providers is available at <https://www.apec.org/SELI/ODR-Providers>.

¹² Government Regulation (GR) No. 80/2019 on E-Commerce.

¹³ Law No. 30/1999 on Arbitration and Alternative Dispute Resolution.

¹⁴ Law No. 11/2008 on Information and Electronic Transaction, as revised with Law No. 19/2016.

¹⁵ GR No. 71/2019 on Implementation of Electronic Systems and Transactions.

¹⁶ Law No. 27/2022 on Personal Data Protection.

Moving forward, a general question that arises is to what extent Indonesia is ready in terms of regulations and policies, as well as implementation, to take advantage of the APEC Collaborative Framework for ODR mechanism. This study was carried out to identify and analyze Indonesia's possibility for opt-in, including potential benefits as well as plans and strategies if Indonesia decides to opt-in from a regulatory or policy standpoint.

1.2. Report Objectives

As mentioned in the previous section, this study has a general objective to analyze Indonesia's possibility to opt-in to the APEC collaborative framework for ODR. Specifically, some of the objectives of this study are as follows:

- a. identify and analyze the legal and institutional frameworks as well as the implementation of ODR in Indonesia;
- b. compare the policies and implementation of other APEC economies in the implementation of ODR;
- c. analyze the legal framework on Indonesian MSMEs related to the readiness to implement APEC Collaborative Framework for ODR;
- d. identify and analyze the potential and challenges of implementing the APEC Collaborative Framework for ODR in the Indonesia context; and
- e. recommend policies on ODR, MSMEs, as well as the development of supporting infrastructure and human resources.

1.3. Strategies to Implement the Study

a. Methodologies

To achieve the study objectives, this study employs qualitative approaches. Desk research, in-depth interviews with relevant stakeholders and workshops are used as the methods. The desk research was conducted on as follows:

1. primary sources, which include Indonesian laws and regulations related to Alternative Dispute Resolution (ADR) and ODR, law and statutes of other member economies and international legal instruments relevant to ODR;
2. secondary sources, which include books, chapters, journals, working papers, opinions, relevant news, official reports and other secondary sources. Certain literature sources are drawn from older works, but their

importance lies in their relevance to the conceptual framework, which is challenging to find in more recent literature; and

3. tertiary sources, such as dictionaries and encyclopedias, that are relevant to this research and complement as well as support this report.

In-depth interviews were conducted with relevant stakeholders in Indonesia.

The stakeholders interviewed consisted of the following:

1. The Supreme Court. This separate and independent judicial institution is the highest level of all Indonesian courts and is also the “policy maker” for judges and certain civil court procedures. All cases decision, including ADR and ODR awards, must be performed and enforced through the courts;
2. Ministry of Trade. This ministry has the policy on ODR, especially in Business-to-Consumer (B2C) transactions which can be a lesson for the potential implementation of the APEC Collaborative Framework for ODR for Business-to-Business (B2B) transactions;
3. Ministry of Cooperatives and Small and Medium Enterprises. This ministry is relevant because of the competency of this APEC collaborative framework, which is specifically designed to benefit MSMEs;
4. The Indonesia National Arbitration Board (BANI). This is a well-known Indonesian arbitration and ADR agency. BANI has its own procedures to administer and to hold mediation and/or arbitration online;
5. Indonesia Employers’ Association (APINDO). This organization includes the majority of business owners in Indonesia and its members consist of MSMEs spread throughout Indonesia;
6. The Indonesia Arbitration and Mediation Center (PAMI). One of the arbitration and ADR agencies that has the same role as BANI. In terms of its position, PAMI falls under APINDO;
7. Indonesia E-commerce Association (iDEA). The interview was conducted because iDEA is the umbrella organization for all marketplaces in Indonesia. Cross-border B2B e-commerce transactions involving MSMEs are the target of this collaborative framework; and
8. Arbitrators. This neutral party is a practitioner who has knowledge and experience in resolving investment disputes and is cross-border in nature.

This is a qualitative research analysis. The literature study analysis technique is carried out by analyzing the sources, which include concepts, contexts, methodologies, sentences and results. The analysis technique of the interview results is performed based on the perspective of the interviewees. The findings of the interviews were compared to the findings based on desk research. The data used is the most reliable data.

This report is a final report. Therefore, this report is produced based on methods including literature study, in-depth interviews and workshop. The final research report is complemented by stakeholder input based on the workshop held in Bali, Indonesia.

b. Stages and Timeline of Research

This report was prepared based on a study carried out for eight months. In achieving the study objectives, the whole activities of research carried out include:

1. literature study on primary, secondary and tertiary sources. This desk research was carried out from the end of December 2022 to the end of February 2023;
2. in-depth interviews with nine parties from eight stakeholder's elements, as mentioned in previous section, with open-ended semi-structured questions. Interviews were conducted with all stakeholders within the same period as the literature study;
3. workshops. This activity involved domestic and international stakeholders. The workshop was held for two days in June 2023, but the preparation took about four months; and
4. report finalization. Finalization is carried out no later than two months after the end of the workshop, which is in July 2023.

1.4. Conceptual Framework

Dispute Resolution is the process of resolving disagreements or conflicts between two or more parties. There are various methods for resolving disputes. The legal system in The United States divides dispute resolution into two types. There are court-based and ADR-based disputes resolution. ADR is further subdivided into several methods, including negotiation, mediation, conciliation and arbitration. Different jurisdictions have different definitions of ODR. To improve one's comprehension of the development of ODR in specific economies, a study must first

examine how key concept related to ODR is defined by regulations in each jurisdiction. This section explains several key concepts related to ODR in the legal context of Indonesia. In this study, there are three key concepts related to ODR. These are ODR itself; Business to Business (B2B); and Micro, Small and Medium sized Enterprises (MSMEs).

a. Online Dispute Resolution

ODR and ADR are sometimes two terms that cannot be separated. ADR, which emerged as an alternative to court, began as an out-of-court procedure created in response to barriers to access to justice in court. In terms of implementation, ADR is no longer an option but a must-have, particularly for global commercial transaction disputes. ADR awards can be enforced in the destination economy in conjunction with the application of the New York Convention 1958.¹⁷

The growth of the internet encourages the growth of online transactions, which leads to the establishment of ODR. The need for remote dispute resolution led to the development of this dispute resolution mechanism. The mechanism employed is ADR, but with the assistance of electronic means using electronic communication, video conference and other electronic means. Therefore, ODR is frequently referred to as e-ADR.

In its development, this technology is not only used for disputes outside the court but also is used to resolve commercial cases brought before the court. This is able to help to resolve cases in court. Further, a new international instrument was created. The United Nations Commission on International Trade Law (UNCITRAL) issued Technical Notes on Online Dispute Resolution based on a Resolution adopted by the General Assembly on 13 December 2016 (71/138).

There are various definition of ODR both in works of literature of the experts and defined by regulation. From these various meanings, there are, at least, two major points of view on ODR: (1) ODR is synonymous with online ADR;¹⁸ and (2) ODR is

¹⁷ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).

¹⁸ Please see Pablo Cortes, *Online Dispute Resolution for Consumers in the European Union*, Abingdon: Routledge, 2011, p. 2. See also Feliksas Petrauskas and Egle Kybartiene, Online Dispute Resolution in Consumer Disputes, 2011, *Jurisprudence*, Vol. 18(3), pp. 921-941: p. 922. See also Graf-Peter Calliess and Simon Johannes Heetkamp, *Online Dispute Resolution: Conceptual and Regulatory*

more than just an electronic tool for dispute resolution.¹⁹ It can also function as a dispute resolution automation mechanism with or without human assistance or intervention. For the purpose of this study, the definition of ODR used is as mentioned in the APEC Collaborative Framework for ODR. Article 2 paragraph 1 APEC Collaborative Framework for ODR defines ODR as below:

“a mechanism for resolving dispute through the use of electronic communications and other information and communication technology”.²⁰

In 2019, Indonesia passed the E-Commerce Regulation that governs electronic commerce. The regulation allows dispute to be settled using ODR both in court-based ODR and ADR-based ODR. The resolution can take the form of consultation, negotiation, conciliation, mediation or arbitration.²¹ The mechanism is more identical to ADR than judiciary or court. When the dispute is settled by the judiciary, the provision of ODR in E-Commerce Regulation 2019 becomes inconsistent with the civil procedure law. Except for mediation, the judiciary is unfamiliar with the other methods of negotiation, conciliation and arbitration. Nevertheless, there is no current formal definition of ODR in Indonesia. However, a number of scattered regulations indirectly support the implementation of ODR.

Framework, 2019, *TLI Think! Paper* 22/2019, <https://ssrn.com/abstract=3505635> or <http://dx.doi.org/10.2139/ssrn.3505635> (7 February 2023), pp. 1-22:, p. 2.

¹⁹ Please see Ethan Katsh and Colin Rule, *What We Know and Need to Know About Online Dispute Resolution*, 67 S.C. L. REV. 329, 330 (2016). See also Amy J. Schmitz, Expanding Access to Remedies through E-Court Initiatives, *Buffalo Law Review*, Vol 67(1), January 2019, pp. 89-163: p. 91. See also Jeremy Barnett and Philip Treleaven, Algorithmic Dispute Resolution – The Automation of Professional Dispute Resolution Using AI and Blockchain Technologies, 2018, *The Computer Journal*, Vol. 61(3), pp. 399-408: p. 400.

²⁰ Please see Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes. This document is available at http://mddb.apec.org/Documents/2019/EC/EC2/19_ec2_022.pdf. This definition is also the same as Section 5 of the UNCITRAL Technical Notes on Online Dispute Resolution (Resolution No. 71/138, adopted by the General Assembly on 13 December 2016).

²¹ Elucidation of Article 72 paragraph 1 of E-Commerce Regulation 2019. See also Article 1 sections 1 and 10 of Arbitration and ADR Law 2009.

b. Business-to-Business (B2B)

Business-to-business (B2B) is a transactional relationship between businesses irrespective of their size. B2B does not arise from legal relations between businesses and consumers, but rather from legal relations amongst the businesses themselves. Although the term B2B is associated and popular with the world of e-commerce, it can also be applied to traditional way of businesses.

Lucking-Reiley, Spulber and Nemat provide similar concept on B2B. According to them, B2B is a business-to-business transaction that includes trade in goods/wholesale and purchases of other company's products and services, resources, technology, spare parts, manufacturing components and capital equipment by trading partners such as wholesalers and retailers.²² Meanwhile, Hodge and Cagle concentrate on businesses, primarily larger businesses in B2B transactions.²³ Nevertheless, B2B transactions can be carried out by MSMEs as well.

Distinguishing between B2B and B2C transactions can be challenging. Identifying businesses that function both as end consumers and intermediate customers is not straightforward, except in cases where specific characteristics are evident. Kolis and Jirinova, Jewels and Timbrell, and Sung-Mihn An and Chan-Wook Park provide distinctions between B2B and B2C transactions.²⁴ Although the distinguishing characteristics for these two transactions are different from one another, they can still be combined. The following list combines characteristics for identifying B2B and B2C transactions. A detailed explanation of the characteristics below is partly from the author's view. However, the expert's views are still quoted when referring to

²² David Lucking-Reiley and Daniel F. Spulber, Business-to-Business Electronic Commerce, *Journal of Economic Perspectives*, Vol. 15(1), 2001, pp. 55-68: p. 55. See also Rania Nemat, Taking a look at different types of e-commerce, *World Applied Programming*, Vol. 1(2), 2011, pp. 100-104: p. 100.

²³ George Hodge and Christine Cagle, Business-to-Business Models: Classification and Textile Industry Implications, *AUTEX Research Journal*, Vol. 4(4), 2004, pp. 211—227: p. 212.

²⁴ Karel Kolis and Katerina Jirinova, Differences between B2B and B2C Customer Relationship Management: Findings from the Czech Republic, (2013) in European Scientific Institute, *Proceeding: 1st Global Multidisciplinary eConference*, Kocani, Macedonia, 10-12 November 2013 (UNESCO World Science Day Celebration), p. 22. See also Tony J. Jewels and Greg T. Timbrell, Towards a definition of B2C and B2B (2001) ACIS 2001 Proceedings, Paper S6, <http://aisel.aisnet.org/acis2001/56> (5 February 2023). See also Sung-Min Ahn and Chan-Wook Park, "An Empirical Study on Eliciting a Competency Required by Salespeople: Differentiating B2B Salespeople and B2C Salespeople" (2016) Vol. 14 (11) *Journal of Distribution Science*, p. 105.

their works. The combined characteristics in differentiating B2B and B2C in Indonesia are as follows:

1. transaction's volume. B2B transaction value and volume is often higher than B2C. B2B transaction is also often more complex than B2C because it involves a number of people and steps in this transaction;²⁵
2. topology. In terms of topology, Jewell and Timbrell provide an example from IBM regarding transaction of internet or private network with credible business partners. A private network could be a virtual private network (VPN) that makes use of the Internet infrastructure;²⁶
3. order's characteristic, payment methods, terms and conditions. The order's characteristic of B2B is usually in a scheduled manner and the buyer mostly repeats same products to be ordered.²⁷ Payment methods of B2B include account transfer, cheque, credit card and installment. This is also similar to B2C. The difference between the two is that B2B is often preceded by purchase order and contract that are usually agreed upon before the purchase occurs and payment is made. Meanwhile, terms and conditions of purchase or transaction can often be negotiated in B2B transaction, while this is often not the case in B2C transaction;²⁸
4. catalog. In B2B transaction, catalog is not always required for the transaction, while it is often required for B2C;²⁹
5. supply chain role. In B2B transaction, buyers usually resell the goods they have purchased to other businesses or consumers rather than using them for their own purposes;
6. product concept. Typically, B2B products are used in production or business operations. This is clearly different from the B2C product that is used for end-user consumption;

²⁵ Karel Kolis and Katerina Jirinova, *loc.cit.*

²⁶ Tony J. Jewels and Greg T. Timbrell, *loc.cit.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

7. footfall. This is related to the number of buyers in both traditional and online transactions. The frequency of B2B transactions is usually less frequent with a small number of buyers, but with a large volume and value in one transaction. This is different from the B2C that the transaction frequency is more frequent with a large number of buyers, but with a relatively small value in each transaction;
8. procurement behavior;
9. customer relations;
10. demand variations; and
11. pricing and promotion. B2B emphasizes more personal transactions.³⁰ Therefore, the pricing is usually lower and is open to negotiation. B2C, on the other hand, places a greater emphasis on promotion and advertising.³¹ Prices are usually fixed and unlikely to be negotiated.

These distinguishing characteristics can be used by policymakers (including Indonesia and other member economies) or ODR providers to differentiate B2C and B2B transactions. The Model Procedural Rules for the APEC Collaborative Framework for ODR has defined “consumer transaction” as a contract concluded for personal, family or household purposes (Article 2(6)). The definition is based on private international instruments such as the United Nations Convention on Contracts for the International Sale of Goods (Article 2(a)). The distinguishing characteristics and the definition derived from the Model Procedural Rules will help APEC member economies to govern disputes resolution. As a guide for its personnel and neutral parties, the ODR provider may arrange the detail the differences.

c. Micro, Small and Medium Enterprises (MSMEs)

Similar to ODR and B2B definitions, MSMEs definition varies among academics and policy makers. The term used is not always the same in other economies.³² The

³⁰ Sung-Min Ahn and Chan-Wook Park, *loc.cit.*

³¹ *Ibid.*

³² According to a WTO report:

“The acronym SME – “small and medium-sized enterprise” – is used in most contexts as the generic term to qualify all enterprises that are not large. In most instances, the term is not defined precisely in the sense that no upper or lower size thresholds are indicated. In addition, the acronym MSME – “micro, small and medium enterprise” – is used to emphasize the inclusion of the smallest

economies in Southeast Asia are the examples.³³ Nevertheless, the two terms are frequently used interchangeably in various contexts.

Although the terms and definitions differ, there are some similarities that serve as a measure for SMEs or MSMEs, namely business scale. This business's scale is determined by a variety of factors. Holmes and Nicolls define the number of employees and the income earned in one accounting period to measure the business scale.³⁴ Using this approach, the scale of MSMEs is determined by the type of business, the amount of capital and the annual revenue. In Southeast Asia, MSMEs are categorized into, at least, four criteria including number of employees, net assets, annual sales turnover and invested capital.³⁵

In terms of Indonesia, the term used is MSMEs rather than SMEs. The MSMEs are defined through the MSMEs Law 2008.³⁶ The size limit of this business is also regulated by the same law, which is then amended and further regulated in the Cooperatives and MSMEs Easiness, Protection and Empowerment Regulation 2021.³⁷ The law and regulation mainly set the business capital and annual revenue as the main category. Their details are provided in Chapter 4. The Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021 governs the flexibility of this scale, allowing the nominal value of the criteria to be changed. Further, with the approval of the Ministry of Cooperatives and MSMEs, ministries/other agencies may use the criteria of turnover, net worth, investment value, number of

firms. This report follows the customary approach of using the acronym "SME" as the generic term. A distinction between SMEs and MSMEs, where the former concept excludes micro firms and the latter includes them, will only be made where precise definitions are necessary, that is when statistics are used or when the distinction is explicitly made by the source."

Please see World Trade Organization, World Trade Report 2016: Levelling the Trading for SMEs, World Trade Organization, Geneva, 2016, p. 15. The material is available at https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf.

³³ See Asian Development Bank, "Asia Small and Medium-Sized Enterprise Monitor 2020," (2020) Vol. 1 *Country and Regional Reviews*, p. 12. The material can be accessed through <https://www.adb.org/sites/default/files/publication/646146/asia-sme-monitor-2020-volume-1.pdf>.

³⁴ Irvan Arie Hananto, Bambang Agus Pramuka and Icuk Rangga Bawono, "The Influence of Owner Education Levels, Owner Accounting Knowledge, Business Scale and Business Age on the Use of Accounting Informasi in MSMEs in Wonogiri" (2020) Vol. 4 (2) *Journal of Applied Managerial Accounting*, p. 231

³⁵ Asian Development Bank, *loc.cit.*, p. 11.

³⁶ Law No. 20/2008 on Micro, Small and Medium Enterprises.

³⁷ GR No. 7/2021 on Cooperatives and MSMEs Easiness, Empowerment and Protection.

employees, incentives and disincentives, local content and/or application of environmentally friendly technology to determine the MSMEs scale in accordance with the criteria of each business sector.³⁸

1.5. Chapterization

This report is presented in a systematic manner. It is divided into seven chapters. Chapter 2 to chapter 4 present the analysis for each chapter in addition to description of each chapter issues, while chapter 5 summarizes the analysis in previous chapters. Chapter 6 provide recommendations and lessons for Indonesia and other member economies from Indonesia situation. Meanwhile, chapter 7 offers the toolkit for the implementation of APEC ODR Framework.

The following provides overview of the report's systematics per chapter for more details:

1. Introduction. This chapter covers the study background, the progress of e-commerce transactions in Indonesia, potential disputes, a glimpse of Indonesia's legal framework for disputes, the presence of the APEC collaborative framework for ODR and the need for this study to further examine options for opt-in. This chapter also includes objectives, study implementation strategies and conceptual framework of the study.
2. The legal and institutional frameworks for ODR in Indonesia. This covers legal and policy frameworks, institutional frameworks, implementation of ODR in Indonesia and analysis of the frameworks as well as the implementation.
3. Legal framework in other member economies. The economies studied are those that are already declare opt-in to implement APEC Collaborative Framework for ODR. People's Republic of China; Hong Kong, China; Japan; Singapore; and The United States become the comparative objects. The study identifies and analyzes the legal framework of ODR in each economies.

³⁸ Article 36 of Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021.

4. Indonesia MSMEs condition. This covers legal framework for MSMEs, business scale, number of MSMEs, literacy on digital, cross-border B2B transactions, the issues on MSMEs and legal assistance.
5. Analysis of the potential implementation of APEC Collaborative Framework for ODR in Indonesia. This chapter specifically analyzes what has been described previously. This is to examine the possibility of Indonesia to opt-in.
6. The way forward and broader lessons. This is recommendations chapter that outline the details of components of actions and strategies to implement the APEC ODR services. The chapter includes recommendation related to ODR policies, MSMEs, confidentiality and personal data protection, infrastructure and human resources. The chapter additionally includes important lessons for Indonesia and other APEC economies that can be used to plan and develop future actions on ODR.
7. Toolkit for the implementation. This chapter suggests the dispute resolution procedural provisions for Indonesian arbitration and ADR agencies based on the APEC collaborative framework. The arbitration and ADR agencies may outline specific rules and arrangements that are relevant and important in establishing and developing ODR such as clause for contracts or agreements, statement of independence of the neutral, and procedural rules of ODR.

2 - THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR ODR IN INDONESIA

When searching for the Indonesian regulations with the term Online Dispute Resolution, government regulation on e-commerce will appear. This term is relatively new in Indonesia. This regulation is the E-Commerce Regulation 2019 (Government Regulation (GR) No. 80/2019).³⁹ The E-Commerce Regulation 2019 does not distinguish ODR held by non-judicial agencies and ODR held by the judiciary itself (court online resolution). Legal arrangements of the two types of ODR are not specifically regulated in E-Commerce Regulation 2019. However, they are mentioned in other laws and regulations such as Arbitration and ADR Law 1999 and the E-Court Regulation 2019.⁴⁰ This chapter outlines Indonesia's legal and institutional frameworks related to ODR to further examine whether or not the instruments are ready for the implementation of the APEC Collaborative Framework for ODR.

2.1. Legal and Policy Frameworks

Since its ODR founding more than two decades ago, the definition of ODR has evolved from e-ADR to ODR with characteristics distinct from e-ADR. This evolution has been accommodated by the APEC collaborative framework. However, in terms of regulatory conception, this is not the case in Indonesia. In this economy, the concept of ODR as e-ADR is more prevalent in some regulations.

Conventional or traditional ADR is still part of the Indonesian justice system in general. Because ODR is still considered part of ADR, ODR is also an integral part of the Indonesian justice system. To better understand the relationship between ODR and ADR and the judiciary, the provisions governing arbitration and ADR as well as judicial power and electronic court are described below.

a. Related Regulations

a.1. Arbitration and Alternative Dispute Resolution

³⁹ Article 72 paragraph 2 of E-commerce Regulation 2019.

⁴⁰ The Supreme Court Regulation No. 1/2019 as amended by the Supreme Court Regulation No. 7/2022.

Indonesia has enacted Arbitration and ADR Law 1999 (Law No. 30/1999). This law stipulates mechanisms for resolving disputes, including through the mechanisms of consultation, negotiation, mediation, conciliation, expert opinion and arbitration.⁴¹ It was promulgated in the last year before the end of the twentieth century.

This Arbitration and ADR Law 1999 has the scope of dispute settlement regulated as follows:

1. commerce;
2. banking;
3. finance;
4. investment;
5. industry; and
6. intellectual property rights.⁴²

The Law has not addressed the use of communication and technologies for resolving disputes. Nonetheless, arbitration and ADR agencies may establish their respective rules and procedures as mechanisms for resolving disputes including for specific purposes.⁴³ This is where institutional autonomy comes into play in organizing and managing arbitration and ADR in electronic way, let alone becoming ODR in the future.

Moreover, the disputing parties may choose and suggest rules and procedures other than those provided by arbitration and ADR agencies.⁴⁴ The parties may also suggest the use of technology, for example, due to geographical factors, if the designated agency has not developed rules that support this.

According to Article 34 of Arbitration and ADR Law 1999, settlement of disputes through arbitration can be carried out using domestic or international arbitration agencies based on the agreement of the parties. Such settlement shall be carried out according to the rules and procedures of the chosen agency, unless otherwise stipulated by disputing parties.⁴⁵ Further, the Elucidation of Article 34 mentions that

⁴¹ Article 1 sections 1 and 10 of Arbitration and ADR Law 2009.

⁴² Elucidation of Article 66 letter b of Arbitration and ADR Law 1999.

⁴³ Article 34 paragraph 2 of Arbitration and ADR Law 2009 and its elucidation.

⁴⁴ Article 34 paragraph 2 of Arbitration and ADR Law 1999 and its elucidation.

⁴⁵ Article 34 of Arbitration and ADR Law 1999.

disputing parties have freedom to choose the rules and procedures to be used in resolving disputes between them, without having to use the rules and procedures of the chosen arbitration agency.⁴⁶

The flexibility provided by the Arbitration and ADR Law 1999 indirectly allows arbitration and ADR agencies to establish rules and procedures to settle dispute including by using electronic means. BANI and PAMI have implemented this, even though it is only limited to online hearings or can be equated to e-ADR.⁴⁷ In fact, BANI has already passed its own ODR rules in 2022.

Infrastructure is currently being developed to support ODR. As BANI progresses, it identifies areas for future improvement. There is a strong legal foundation to support ODR, including legislation, the BANI procedural rules, and insights from mediators, arbitrators and experts. The implementation of e-arbitration requires the agreement of the parties involved, but in practice, it provides an efficient process.⁴⁸

a.2. Judicial Power, e-Court and online court-annexed mediation

ODR, which is recognized to be component of ADR, is under the jurisdiction of the judiciary even though its implementation is not carried out directly by the judiciary. The Judicial Power 2009 (Law No. 48/2009) recognizes out-of-court dispute resolution forum as one of the civil dispute resolution mechanisms.⁴⁹ This means that the ODR decision from arbitration mechanism can be recognized and enforced through the court.

According to Article 59 of the Judicial Power Law 2009, arbitration is a method of resolving commercial disputes outside of court based on written arbitration agreement signed by the parties to the dispute. The arbitration award is final, binding on the parties and has permanent legal force. If the parties do not voluntarily

⁴⁶ Elucidation of Article 34 of Arbitration and ADR Law 1999.

⁴⁷ Based on in-depth interview with Professor Huala Adolf (BANI) on 20 January 2023 and Mr. Indra Safitri (PAMI) on 18 January 2023.

⁴⁸ Huala Adolf, *BANI's Experience as ODR Provider in B2B Cross Border Dispute*, presented in the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade" on 14-15 June 2023 in Bali, Indonesia, p. 6 & 8.

⁴⁹ Chapter XII (Article 58-61) of the Judicial Power Law 2009.

implement the arbitral award, the award is carried out on the basis of an order from the chief judge of the district court at the request of one of the disputing parties.⁵⁰

Such recognition includes the recognition of international arbitral awards.⁵¹ This means awards on cross-border transaction disputes using foreign forums can be enforced in Indonesia. The economy has adopted this provision in Arbitration and ADR Law because it has ratified the New York Convention 1958.

The winning party must register the arbitral award in the Central Jakarta District Court.⁵² Only after getting execution decision from the court, the arbitral award can be enforced against the losing party.⁵³ When the losing party recognizes and implements the International Arbitration Award, no appeal or cassation can be made.⁵⁴ If the losing party refuses to acknowledge and enforce the arbitration award, the party may file a cassation petition before the Supreme Court. The decision of the Supreme Court will be final and binding.⁵⁵

ODR is not only provided by arbitration and ADR agencies or private entities, but also provided by public agencies such as judiciary (court online resolution). Since 2015 and continued until present, the Supreme Court has regulated and equipped Indonesian courts with a small-claim court mechanism and facilities for parties to file claims and evidence electronically. This mechanism can adjudicate civil cases of default, tort and unlawful acts. This scope also includes B2B disputes as long as the maximum value of the dispute is IDR500,000,000.00 (five hundred million rupiah).⁵⁶ The small-claim mechanism is settled by a single judge within 25 days since the first hearing is held.⁵⁷

In the context of e-court, the registration process, examination of the completeness of the lawsuit documents, the appointment of judges and clerks, preliminary examination, determination of the day of hearing and summons of the

⁵⁰ Article 59 of the Judicial Power Law 2009.

⁵¹ Article 66 of the E-commerce Regulation 2019.

⁵² Articles 65 and 67 of the E-commerce Regulation 2019.

⁵³ Articles 67 and 69 of the E-commerce Regulation 2019.

⁵⁴ Article 68 paragraph 1 of the E-commerce Regulation 2019.

⁵⁵ Article 68 paragraphs 2 and 4 of the E-commerce Regulation 2019.

⁵⁶ Article 3 of Small-claim Court Regulation 2015 (as revised in 2019).

⁵⁷ Article 5 paragraph 3 of Small-claim Court Regulation 2015 (as revised in 2019).

parties, hearing, evidence and decision by the judge can all be carried out electronically.⁵⁸ This is undoubtedly similar to what have been developed by other ODR platforms abroad. During COVID-19 pandemic, the use of these technological facilities is increasingly needed. The ideal ODR mechanism can be achieved through a combination of small-claim mechanism and e-court.

Most recently, the Indonesia Supreme Court passed the Court-annexed Online Mediation Regulation 2022 (Supreme Court Regulation No. 3/2022) to adapt to the advancements in communication and information technology in mediation. Recognizing the potential challenges in implementing mediation within the court system, this Supreme Court sees the necessity to promote electronic mediation through the issuance of this regulation. The Court-annexed Online Mediation Regulation 2022 is an extension of the Court-annexed Mediation Regulation 2016 (Supreme Court Regulation No. 1/2016).⁵⁹

Nevertheless, unlike its extension regulation, the 2016 regulation does not provide detailed guidelines on the implementation of online mediation. The new 2022 regulation seeks to address this gap and establish a framework for conducting mediation online. This regulation establishes the principles of online mediation; the implementation of online mediation; the agreement of the parties to choose online mediation; registration; appointment of mediators; identity verification; determination of applications for online mediation; virtual room; hearings; exchange of mediation methods; and agreement on mediation results.

b. Supporting Regulations

b.1. E-Commerce

As stated at the beginning of this chapter, the term Online Dispute Resolution (ODR) is only found in the E-Commerce Regulation 2019 thus far. ODR can be applied both within and outside of the judiciary. This method may take the form of consultation, negotiation, conciliation, mediation or arbitration.⁶⁰ The dispute characteristics are closer to ADR than to the judiciary. The provision of ODR in that regulation becomes

⁵⁸ It is regulated at the E-Court regulation 2019 (as revised in 2022).

⁵⁹ Preamble of Court-annexed Online Mediation Regulation 2022.

⁶⁰ Elucidation of Article 72 paragraph 1 of the E-Commerce Regulation 2019.

inconsistent when the dispute is said to be resolved by the court. In fact, the judiciary is unfamiliar with this method, except for mediation.

Legal arrangement of ODR in the E-Commerce Regulation 2019 remains in its most basic form. The arrangement is still not clear and its scope is only limited to e-commerce transaction whether in the form of B2C or B2B. However, the regulation covers also cross-border transaction. For cross-border B2B transaction, this can also include traditional export-import transaction in addition to e-commerce ones. APEC's collaborative framework, in fact, does not limit the breadth of such transactions.

This regulation also mentions dispute resolution through the use of ODR by an accredited arbitration or ADR agency.⁶¹ The accreditation can be obtained through a relevant authority that is authorized to do so. However, there are still no current specific provisions regarding the accreditation for arbitration and ADR agencies, including which agency to conduct such authority, accreditation process and requirements for obtaining it.

b.2. Electronic Information and Transactions

The Electronic Information and Transaction Law 2008 (Law No. 11/2008 as revised by Law No. 19/2016) provides the legal basis for regulating all aspects of information and electronic transactions. The law does not explicitly govern and mention ODR, but it encourages disputing parties to use electronic means to resolve their disputes. The parties have independence under this law to decide the forums to settle the dispute using the court procedure, using arbitration procedure or other mechanisms that may arise as a result of cross-border transactions.⁶² Interestingly, the community can play a role in establishing institutions that provide consultation and mediation services.⁶³ The community here might also refer to private entities.

In terms of legal evidences, the Electronic Information and Transaction Law 2008 regulated electronic documents as well as electronic systems. This is the first Indonesian law that provides the possibility to use electronic evidences to support in

⁶¹ Elucidation of Article 72 paragraph 2 of the E-Commerce Regulation 2019.

⁶² Articles 18 paragraphs 4 and 5 as well as Article 39 paragraph 2 of the Electronic Information and Transaction Law 2008.

⁶³ Article 41 of the Electronic Information and Transaction Law 2008.

resolving cases in the court and dispute settlement outside the judiciary.⁶⁴ The law has broadened the scope of evidences beyond the Indonesian civil procedural code, which relies solely on the paper document that is inherited from the Dutch colonial law. Meanwhile, the electronic system is required to be reliable and secure. The electronic system operator must be responsible for the reliability and security.⁶⁵ This is important basis in creating and developing ODR platform with a good and certified secure system.

b.3. Personal Data Protection

In 2022, Indonesia passed the Personal Data Protection Law (Law No. 27/2022). The previous regulation governing personal data protection was established by Regulation of the Minister of Communication and Information No. 20/2016. However, the scope of this regulation is limited because it was legal instrument issued by the economy rather than legal instrument resulting from the consensus between the economy and its parliament in the form of a law. In the Indonesian legal system, the legal form of law has a higher hierarchy than the ministerial regulation. This means that laws are superior to ministerial regulations, and that ministerial regulations must comply with the provisions of laws.

According to the Personal Data Protection Law 2022, personal data is the data on individual who is identified or can be identified separately or combined with other information either directly or indirectly through electronic or non-electronic systems.⁶⁶ There are eight principles of personal data protection which form the arrangement basis for Personal Data Protection Law 2022. These include protection, legal certainty, public interest, benefit, prudence, equality, responsibility and confidentiality.⁶⁷

Two of those eight principles are related to ODR governance, namely protection and confidentiality. The principle of protection means that any personal data processing is carried out by providing protection to the subject who owns the personal

⁶⁴ Article 5 of the Electronic Information and Transaction Law 2008

⁶⁵ Article 15 of the Electronic Information and Transaction Law 2008.

⁶⁶ Article 1 section 1 of the Personal Data Protection Law 2022.

⁶⁷ Article 3 of the Personal Data Protection Law 2022.

data and the personal data itself from misuse.⁶⁸ The principle of confidentiality means that personal data is protected from unauthorized parties and/or from unauthorized personal data processing activities.⁶⁹ Both principles of protection and confidentiality are relevant to protect disputing parties in resolving their disputes considering the basic characteristic of ODR that is closed and confidential.

This law provides protection of two types of personal data including personal data that is specific in nature and personal data containing general information.⁷⁰ Personal data that is specific in nature is personal data that, when processed, can have a potential impact on the subject of personal data such as discrimination from others and greater loss in terms of financial.⁷¹ This type of data includes: (a) data and information of health; (b) biometrics; (c) genetics; (d) crime records; (e) child data; (f) personal financial data; and/or (g) other data in accordance with the provisions of laws and regulations.⁷²

Meanwhile, personal data containing general information includes the data as follows: (a) full name; (b) gender; (c) citizenship; (d) religion; (e) marital status; and/or (f) personal data that can be combined to identify a person, for example, cellular phone number and internet protocol (IP) address.⁷³

Data related to ODR disputes to be governed includes the data of the parties; information related to disputes occur, trials and awards; and ODR data management. Both types of data mentioned in previous paragraphs are relevant for ODR, particularly with regard to the principles of protection and confidentiality.

Who is in charge of protecting personal data? It is personal data controller. According to Personal Data Protection Law 2022, personal data controller is any person, public agency and international organization acting individually or jointly in determining the purposes and exercising control of the processing of personal data.⁷⁴ The personal data controller must be responsible for the processing of Personal Data

⁶⁸ Elucidation of Article 3 letter a of the Personal Data Protection Law 2022.

⁶⁹ Elucidation of Article 3 letter h of the Personal Data Protection Law 2022.

⁷⁰ Article 4 paragraph 1a and 1b of the Personal Data Protection Law 2022.

⁷¹ Elucidation of Article 4 paragraph 1a of the Personal Data Protection Law 2022.

⁷² Article 4 paragraph 2 of the Personal Data Protection Law 2022.

⁷³ Article 4 paragraph 3 of the Personal Data Protection Law 2022.

⁷⁴ Article 1 section 4 of the Personal Data Protection Law 2022.

and demonstrate accountability in the obligation to implement the principles of personal data protection.

Personal Data Protection Law 2022 regulates that the protection includes of the stages as follows: (1) acquisition and collection; (2) processing and analysis; (3) storage; (4) maintenance and updates; (5) recall, announcement, transfer, distribution, or disclosure; and/or termination.⁷⁵ The data controller is also required to keep the information confidential and not share it with third parties in any kind of ways.⁷⁶

ODR basically uses electronic system that stores personal data of its users including disputing parties, lawyers and neutral parties. Arbitration and ADR agencies as well as other ODR providers are considered as personal data controllers. Therefore, they must comply to Personal Data Protection Law 2022 and they are also required to protect the confidentiality of the data.

2.2. Institutional Framework

Given that there is no specific regulation regarding ODR and it is scattered in various regulations, there is no main authority for ODR. Although the most related legal arrangement is at the Arbitration and ADR Law 1999, there is no primary authority supervising arbitration and ADR agencies. These agencies stand as independent entities and may regulate themselves in accordance to the above-mentioned law.

In terms of legal form of arbitration and ADR agencies, no current specific regulation provides legal arrangement for this. Most of legal form used by arbitration and ADR agencies are *perkumpulan*, which translates to “association” in English, or similar type of *perkumpulan*. The Ministry of Law and Human Rights is the authority in charge for establishment of organization, firm and company, including *perkumpulan*.

Further challenge arises when the ODR provider is in the form of private limited company or corporation doing start-up business in legal sector. This provider form is common to use in other member economies such as Canada and The United States, for example smartsettle⁷⁷ (Canada) and cybersettle (The United States)⁷⁸.

⁷⁵ Articles 16 paragraph 1 of the Personal Data Protection Law 2022.

⁷⁶ Article 36 of the Personal Data Protection Law 2022.

⁷⁷ Smartsettle is made by iCan System Inc. Its website is <https://www.smartsettle.com/>.

⁷⁸ Cybersettle is made by Cybersettle, Inc. Its website is <http://www.cybersettle.com/>.

Given that the legal profession is regarded as noble one in Indonesia, taking a limited company form is possible to be a debatable issue. The private limited company, which is perceived to have its own commercial interests and does not deserve to be an impartial party, will serve access to justice. The future existence of ODR providers in the private limited company form should not be an issue, particularly in light of the fact that, in the health sector, Indonesia hospital law has permitted the establishment of private hospital in the form of limited liability company.⁷⁹ Profession in the health sector is also regarded as noble as the profession in the legal ones.

Thus far, there have been no concerns with the implementation of private limited company on hospital, except there was a judicial review of this hospital legal form before the Constitutional Court in 2013 which resulted in decision to reject such petition. In hospital, there are doctors who are as honorable in their profession as attorneys, mediators and arbitrators. Fair competition of private hospital has improved the services in the health sector for the best interest of patients as hospital consumers. Strict governance policy for private hospitals have also contributed to the improvement of private hospital services for their patients. This demonstrates that the same principle can be used to apply to an ODR provider who may choose to form a limited liability company.

When examining the existence of arbitration and ADR agencies in Indonesia and across the globe, it can be seen that they all emerge from the private organization. However, the legal form is non-profit one. The presence of ODR, followed by technological developments, undoubtedly necessitates significant funding and investment in technology. The use of a not-for-profit entity form is not appropriate for long-term financing and investment needs, but the use of a commercial company form is likely to be debatable. There are no current Indonesian laws and regulations that govern this matter. This is important for further discussion and analysis.

In terms of mediator, certification of this profession is necessary. The Supreme Court is the authority for this certification. The Supreme Court Regulation No. 1/2016 on Mediation Procedures in Courts serves as the foundation for this. The Supreme Court is the final arbiter of mediator certification. The Supreme Court Regulation No.

⁷⁹ Article 21 of the Hospital Law 2009 (Law No. 44/2009) regulated that private hospital is managed by legal entity in the form of a private limited company or state-owned limited company with the aim of profit.

1/2016 regarding Mediation Procedures in the Judiciary serves as the foundation for this. Every mediator must possess a mediator certificate, which it can only be obtained by attending and successfully completing the Supreme Court's or a third-party institution's accredited mediator certification training.⁸⁰

Different from mediators that are certified through the Supreme Court, arbitrators are not required to obtain certification at the same agency. The Arbitration and ADR Law 1999 does not regulate which agency has the authority to administer the certification. In reality, training and certification for arbitrators are held independently by the arbitration agency itself.

In addition of certification, mediators and arbitrators are regulated by the agency and are bound by code of ethics imposed by it. Since these two professions are mostly lawyers and academics, they are also bound by the rules and codes of ethics of respective profession.

For the implementation of ODR as an electronic system, the Ministry of Communication and Informatics is the authority in charge for this. The creator or operator of ODR as the electronic system operator has obligation to comply to the aspect the reliability and security.⁸¹ The ODR provider must obtain certification of reliability.⁸² In terms of security, the provider must guarantee that the software used does not contain instructions other than proper or hidden instructions that are against the law.⁸³ Those all are critical foundations for arbitration and ADR agencies as well as ODR provider in creating and developing ODR platform with a good and secured system.

2.3. ODR Implementation in Indonesia

In Indonesia, there are numerous arbitration and ADR agencies. These include general commercial dispute resolution agencies such as BANI and PAMI, as well as sector-specific dispute resolution ones such as the ADR Institutions for the Financial

⁸⁰ Article 12 paragraph 1 of the Supreme Court Regulation No. 1/2016 on Mediation Procedures in the Judiciary.

⁸¹ Article 15 of the Electronic Information and Transaction Law 2008.

⁸² Article 42 paragraph 3 of the Electronic System and Transaction Implementing Regulation 2019.

⁸³ Elucidation of Article 8 letter a of the Electronic System and Transaction Implementing Regulation 2019.

Services Sector (LAPS SJK), the Commodity Futures Trading Arbitration Board (BAKTI) and the Indonesian Construction Arbitration and Alternative Dispute Resolution Agency (BADAPSKI).

In terms of ODR, all of the institutions have already issued procedural rules that make possible for them, at least, to receive the cases online; to correspond online; and/or to conduct online hearing through electronic communication, video conferencing and other electronic means.⁸⁴ BANI is an agency that has already introduced specific rule regarding the Electronic Arbitration Rules and Procedures. The rules cover: (1) recognition of electronic documents and information as valid legal evidence; (2) The ability of the parties to agree electronically, including online arbitration requests; (3) online hearings, including mediation and arbitration, with possible applications along with technical preparations for hearings; and (4) examination of evidence.⁸⁵

When COVID-19 broke out, massive online hearings were implemented. Email is commonly used to send communication or correspondence. This includes appointing a mediator and/or an arbitrator. The hearing is carried out using a video conferencing application. During online hearings, the proof of is provided through delivery of the evidences to the arbitration agency office and/or just show them through the video camera. In 2020, BANI handled around 79 disputes and most of them are conducted through online mechanism.⁸⁶ However, there have been no disputes involving MSMEs. However, the maximum dispute threshold set for them is IDR500 million.⁸⁷

⁸⁴ Further, based on the interview result with the Chairman of PAMI Mr. Indra Safitri on 18 January 2023, the agency seeks to develop new application to accommodate ODR from the filing stage to the issuing arbitral awards stage.

⁸⁵ BANI Arbitration Center, *Arbitration Rules*, Jakarta: BANI Arbitration Center, 2022. The rule can be downloaded at <https://baniarbitration.org/arbitration-rules>. Inside this document, there is special mechanism of “Rules and Procedures on Electronic Arbitration” issued by BANI Arbitration Center.

⁸⁶ Huala Adolf, *Pengembangan Mekanisme Penyelesaian B2B di BANI dan Praktiknya*, presented in *Focus Group Discussion (FGD)* discussing the Interim Report of the Study of APEC Collaborative Framework on Online Dispute Resolution (ODR) in Indonesia, Bogor 29 November 2021.

⁸⁷ It was stated by Professor Huala Adolf in session 4 of the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade” on 14-15 June 2023 in Bali, Indonesia.

The utilization of online platforms declined in 2021 and 2022 as the number of daily cases of COVID-19 decreased.⁸⁸ In contrast, as the number of daily cases increased, so did the use of ODR. The parties would prefer to have a face-to-face meeting. This type of meeting is considered a better way out that can resolve dispute more quickly. Face-to-face hearings are thought to be effective at breaking the ice and determining the inner mood of the parties present. In general, disputes occurred are local in nature and do not cross border ones, so that it makes the parties easier to have face-to-face hearing.⁸⁹

This situation shows that the use of electronic dispute resolution mechanisms has been regulated in each agency. From that point, arbitration and ADR agencies are deemed ready to implement ODR. However, it is yet to be seen whether there are applications created and developed specifically for ODR. In addition, the preferences of the parties still imply that they prefer to meet in person rather than online. The agency itself allows such conditions and even uses a hybrid procedure.

As stated previously in this chapter, ODR includes also court online resolution in addition to out-of-court dispute settlement. The judiciary has small-claim mechanism for low-value disputes settlement and e-court platform for resolving cases online. ODR in court has made significant progress in implementation although the cases handled is not cross-border in nature.

In 2020, the number of civil cases handled in courts through e-court platform increased dramatically to 186,987 from 42,744 cases in the previous year. This was the year when COVID-19 spread globally including in Indonesia and e-court regulation was just passed in 2019. In 2022, the number of these cases increased significantly to 283,183 cases. The increase in the number of cases handled through the e-court platform is likely due to the ease and efficiency of the platform, as well as the need for social distancing during the COVID-19 pandemic.

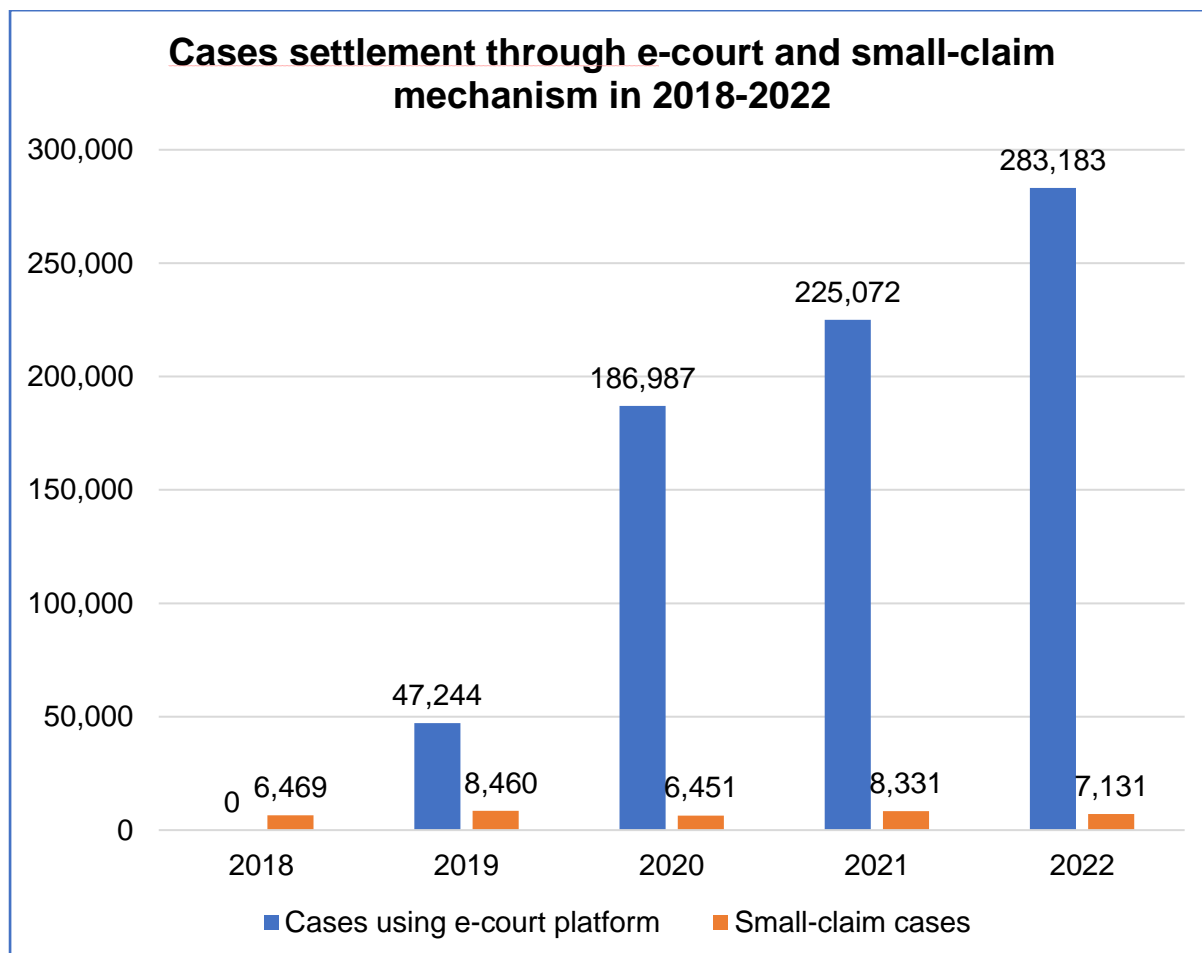
The progress of court cases using e-court platform and small-claims mechanism in 2018-2022 is shown below in Figure 2.1. Regretfully, the Supreme Court's Annual Report does not provide data link between cases handled through e-court platform and the small-claim mechanism. The report did not provide number of

⁸⁸ Based on in-depth interview with the Chairman of PAMI, Mr. Inda Safitri on 18 January 2023.

⁸⁹ *Ibid.*

small-claim cases handled through e-court platform. However, it is believed that small-claim cases are also settled through the e-court platform.

Figure 2.1 Cases settlement through e-court and small-claim mechanism in 2018-2022



Source: The Supreme Court annual reports of 2018-2022.

The use of online platforms provided by arbitration agencies and courts for dispute resolution demonstrates Indonesia's readiness to implement ODR, even with existing regulations. The increased handling of the number of disputes and cases proves higher public attention and participation in the use of online platforms in resolving disputes or cases. Despite the potential challenges posed by regulatory constraints, this is an opportunity for Indonesia to improve access to justice in the future.

2.4. Analysis of the Framework

a. Regulation and Policy

Although there is no explicit ODR legal arrangement in Indonesia, existing laws and regulations can accommodate future ODR development, for the time being. These existing laws and regulations can also be utilized to implement APEC Collaborative Framework for ODR. The utilization can be made based on the current regulatory arrangement as follows:

1. autonomy or independence granted to arbitration and ADR agencies by Arbitration and ADR Laws 1999;
2. freedom granted to the disputing parties by the Arbitration and ADR Law 1999 to choose their own procedures;
3. regulatory support from the Information and Electronic Transaction Law 2008 and the E-Commerce Regulation 2019 which encourages the permissibility to resolve dispute resolution using online platforms;
4. regulatory support from the Information and Electronic Transaction Law 2008 for the community to create a dispute resolution institution. The community may develop consultation and mediation mechanisms;
5. acknowledgment of electronic documents and transactions as legal evidence based on the Information and Electronic Transaction Law 2008; and
6. mandatory certification of reliability for electronic system operator including arbitration and ADR agencies as ODR provider based on Electronic System and Transaction Implementing Regulation 2019.

When combined with the provision that arbitration and ADR are part of the judicial power and the arbitration award, including international arbitration award, can be enforced by a request to court, ODR acquires indirect recognition as part of the Indonesian judicial power. As a result, the provisions on ODR mechanisms or procedures in the APEC Collaborative Framework for ODR can be implemented in Indonesia. However, it is important to note that this only applies to arbitration awards. While the application of foreign arbitration awards has been recognized in the legal settings of Indonesia, the recognition of mediation awards, on the other hand, has not been established formally.

During the workshop held in Bali, Dr. Aria Suyudi of the Supreme Court of Indonesia suggested a potential solution to overcome this problem. He proposed that Indonesia should first accede to the Singapore Mediation Convention 2019. Following this, the relevant institutions in Indonesia should take the necessary steps to amend their regulations, particularly the Court-annexed Mediation Regulation 2016.⁹⁰

An alternative perspective is offered by Mike Dennis, who illustrates how various ODR providers can address the issue by modifying the formality of the award, shifting it from mediation to arbitration. While this approach may seem plausible, it is crucial to consider the legal context in Indonesia. In this particular context, altering the formality of the award in such a manner could potentially be viewed as a form of legal misrepresentation, which might consequently result in the rejection of the award application. Therefore, careful examination of the applicable legal provisions and consultation with legal experts familiar with Indonesian law is recommended prior to implementing such a solution.⁹¹

Furthermore, although the APEC Collaborative Framework has garnered positive acceptance among numerous Indonesian practitioners and academics, particularly those who actively participated in the Bali workshop, they approach the proposal with a sense of caution. This cautious stance arises from concerns surrounding the unresolved status of Indonesian law concerning the enforcement of foreign awards. Consequently, they propose the need for augmenting the existing Arbitration and ADR Law 1999 to establish a study framework that can effectively facilitate the implementation of ODR.

b. Protection of confidentiality and personal data

The promulgation of the Personal Data Protection Law 2022 complements Indonesia's policy support regarding the importance of personal data and its protection. Arbitration and ADR agencies as well as ODR providers, certainly, must comply with this new law. As controllers of personal data, they are required to carry

⁹⁰ The opinion was delivered by Dr. Aria Suyudi of the Supreme Court of Indonesia in session 1 of the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade" on 14-15 June 2023 in Bali, Indonesia.

⁹¹ The opinion was delivered by Mike Dennis in session 1 of the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade" on 14-15 June 2023 in Bali, Indonesia.

out their obligations in processing of personal data in a limited and specific manner, lawfully and transparently and in accordance with the processing purpose. They are also subject to obligations in data confidentiality. These obligations are in line with the characteristics of arbitration, ADR and ODR that are generally confidential.

The ODR and Personal Data Protection law 2022 creates a new challenge for arbitration and ADR agencies to establish secure, reliable and accountable electronic systems. Aside from that, they must have personnel that are qualified to manage it all and can ensure the confidentiality and protection of personal data. The institutions are expected to have internal rule or code of ethics for those personnels, who may be considered as the fourth party.

c. Infrastructure

Implementing ODR undoubtedly necessitates infrastructure upgrades, which must be carried out by arbitration and ADR agencies. As stated earlier in this chapter, these agencies must have secure, reliable and accountable electronic systems as ODR providers. The mechanism and type of infrastructure technology to be used are determined by the needs of the provider. Moreover, it depends on the arbitration and ADR agencies to decide whether they will build, develop and manage ODR themselves or subcontract the platform to other qualified parties. Their decision will certainly affect the service quality in providing ODR.

Arbitration and ADR Agencies should emphasize the features that must be provided according to the needs of the organization and users. Ideally, these features should be available based on the dispute resolution procedures established by arbitration and ADR agencies. This starts from, for example, the administration of receiving disputes, examining dispute application documents, sending dispute requests to other parties, determining the neutral party, determining hearing schedules, the hearing itself, presenting evidence, to making a decision or award.

Currently, the use of electronic features is limited to receiving dispute requests through email and holding hearings utilizing the video conferencing platform. In Indonesia, the judiciary with its e-court platform is more developed than ADR/ODR. The e-court platform already has full functionality. Such developments are supported by state financial backing and also international assistance. It is time to concentrate this assistance and support to arbitration and ADR agencies as well as ODR providers

in order to achieve the objective of improving MSMEs' access to justice for cross-border transactions that cannot be handled by judicial institutions.

d. Human Resources Capacity Building

Capacity building is a necessary requirement for ODR implementation including in adoption of the APEC Collaborative Framework for ODR. This activity should be carried out on certain targeted groups. These include as follows:

1. Arbitration and ADR agencies as well ODR providers including their leaders and staff;
2. Neutral parties, such as mediators and arbitrators; and
3. The user or disputing parties.

For arbitration and ADR agencies as well as ODR providers, they need capacity building in order to make and develop internal rules for ODR procedures with the adoption from APEC collaborative framework along with a complete protocol for using ODR features. In addition, it is also necessary to provide a code of conduct for neutral parties and staff working under the agencies or providers.

It is critical for neutral parties to build their capacity through socialization and training on the use of the ODR feature, with training materials tailored to the roles and responsibilities of neutral parties. The same principle should apply to staff from arbitration and ADR agencies as well as ODR providers. They must increase their capacity by participating in socialization and training on the use of ODR features with training materials are tailored to their roles and responsibilities.

It is important that users or disputing parties are provided with guidelines for easier access and utilization of electronic features in ODR. Users, unlike staff and neutral parties, do not require any special socialization or training. Arbitration and ADR agencies as well as ODR providers may provide access guidance information in written or audio-visual form, which is then posted on social media, web pages and other user-accessible platforms.

Capacity building must be carried out on regular and ad hoc basis. The timing of capacity building activities should be tailored to the specific needs of the organization. In order to implement the activities, assistance and support from each member economy and APEC are essential.

3 – FRAMEWORKS IN OTHER ECONOMIES

This chapter describes legal and institutional frameworks that exist in other APEC member economies, specifically those that have expressed their opt-in into the APEC Collaborative Framework for ODR. The economies that have opted-in are the People's Republic of China; Hong Kong, China; Japan; Singapore; and The United States. They are already listed and published on the APEC website. Three of these five economies already have ADR agencies or ODR providers listed on the APEC website. The agencies or providers are from People's Republic of China; Hong Kong, China; and Japan.

3.1. People's Republic of China

Similar to Indonesia, China also does not have specific arrangements regarding ODR. The arrangements are scattered but serve as the legal basis. In addition, ODR implementation follows the existing traditional dispute resolution legal framework.⁹² These different legal arrangements include: (1) Arbitration Law; (2) People's Mediation Law; (3) Civil Procedure Law; (4) E-commerce law; and (5) Electronic Signature Law.

In addition to those regulations, there are also supporting rules such as E-Commerce Model Specifications, Online Shopping Service Specifications and Opinions on Promoting the Regulated Development of E-Commerce. These rules are issued by the Ministry of Commerce. Meanwhile, the Supreme People's Court also passed the rule on Several Issues concerning the Trial of Cases by Internet Courts.⁹³ The rules are considered to have been able to accommodate the interests of implementing the APEC collaborative framework on the ODR.

In terms of the APEC ODR framework, China Arbitration Law governs the general arrangements for implementing arbitration.⁹⁴ This statute also serves as the foundation for the establishment of arbitration commission for implementing the

⁹² APEC Economic Committee, *Stocktake of APEC: Online Dispute Resolution Technologies*, April 2022, APEC Project: EC 02 2020S, produced by the Ministry of Economic Development of Russia, p. 10.

⁹³ *Ibid.*

⁹⁴ Articles 2 China Arbitration Law. The English translation of Arbitration Law is obtained from <http://english.mofcom.gov.cn/aarticle/policyrelease/internationalpolicy/200705/20070504715852.html>.

arbitration. The arbitration commission refers to arbitration agency or institution. Interestingly, this commission can be formed at the provincial and municipal levels. The China Arbitration Association, whose members are all arbitration commissions, sits above them.⁹⁵

Arbitration arrangements are also in place for disputes arising from foreign-related economic relations such as trade, transportation and maritime affairs. This arbitration law applies to the disputes.⁹⁶ Arbitration must take place orally. The use of cameras is permitted and the proceeding may be open to the public unless confidentiality is required.⁹⁷ Arbitration awards, including foreign arbitration awards, are enforced through civil procedural legal mechanisms in court.⁹⁸

The People's Mediation Law was enacted long after the promulgation of the China Arbitration Law. In connection with the implementation of the APEC framework, the implementation of mediation can be carried out in various means.⁹⁹ This includes using electronic means. Types of mediation disputes are not limited in scope.

If the mediation reaches an agreement, the parties must enter into a mediation agreement. The conclusion of mediation is legally binding on the parties.¹⁰⁰ However, if an agreement is made and one or both parties are dissatisfied with the outcome, they may file a lawsuit before court.¹⁰¹ If the mediation fails totally and no deal can be made, the mediator must advise whether to proceed through arbitration, administrative means or court. There are no fees incurred by disputing parties for using mediation procedure.¹⁰²

Similar to arbitration commissions which can be formed based on the level of jurisdiction, people's mediation commissions can be formed down to the grassroots

⁹⁵ Articles 10 and 15 of China Arbitration Law.

⁹⁶ Articles 65 of China Arbitration Law.

⁹⁷ Article 40 of China Arbitration Law.

⁹⁸ Articles 70 and 72 of China Arbitration Law. Please see also Article 260 of China Civil Procedure Law.

⁹⁹ Article 22 of the People's Mediation Law. The English translation of the China People's Mediation Law is derived from the link as follows: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85806&p_country=CHN&p_count=1105&p_classification=01&p_classcount=225.

¹⁰⁰ Article 31 of the People's Mediation Law.

¹⁰¹ Article 32 of the People's Mediation Law.

¹⁰² Articles 26 and 4 of the People's Mediation Law.

level. The difference is that the people's mediation commission is in the form of a mass organization. The mediation commission can be established at both the village and neighboring levels.¹⁰³

China Civil Procedure Law provides legal arrangements regarding arbitration and there is even a special chapter for it. Disputes that are agreed to go to arbitration cannot be resolved in court, including disputes arising from foreign-related transactions.¹⁰⁴ In terms of award execution or enforcement, it is possible to execute the arbitral award through the court and the court will uphold the execution, including awards originating from foreign arbitration agencies. The winning party must submit the execution application.¹⁰⁵

Civil Procedure Law has not yet regulated the use of technology in dispute resolution. The latest arrangement to adopt technology in dispute resolution was made in 2018 through a policy of the Supreme People's Court of China which resulted in the Provisions of the Supreme People's Court on Several Issues concerning the Trial of Cases by Internet Courts.¹⁰⁶ The member economy develops online platform in order to resolve civil cases, especially those of low value.

In terms of e-commerce law, the provisions in this law related to the implementation of the APEC framework allow e-commerce companies to create, regulate and publish ODR mechanisms. A complaint and reporting mechanism may also be developed by the company. The economy may also encourage cross-border and multinational dispute settlement procedures under this statute.¹⁰⁷

¹⁰³ Articles 7 and 8 of the People's Mediation Law.

¹⁰⁴ Article 257 China Civil Procedure Law. The English translation is derived from http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383880.htm.

¹⁰⁵ Article 269 of China Civil Procedure Law.

¹⁰⁶ Article 1 Internet Court Provision mentions as follows: "The Internet Courts employ online methods for trying cases; and procedural steps such as case acceptance, service, mediation, exchange of evidence, pretrial preparations, hearings and announcement of verdicts shall usually be completed online. Based on applications by the parties, or as necessary for trial, the Internet Courts may decide to complete some procedural steps offline." The English translation is derived from <https://www.chinalawtranslate.com/en/the-supreme-peoples-courts-provisions-on-several-issues-related-to-trial-of-cases-by-the-internet-courts/>.

¹⁰⁷ Articles 59, 60, 63 and 73 of China E-commerce Law. The English translation is derived from <http://mg.mofcom.gov.cn/article/policy/201912/20191202923971.shtml#:~:text=Article%205%20An%20e%2Dcommerce,consumer%20rights%20and%20interests%2C%20environment%2C>.

The E-Signature Law 2005 is not directly related to ODR. However, this law is essential for the ODR implementation. This legislation governs the standardization of valid and reliable electronic signatures, the legal effect of electronic signatures and the protection of the legal rights of the signatory. In addition, the legitimacy of documents and the parties legitimate signatures contribute to their admissibility as evidence, provided they meet requirements listed below:

1. the reliability of the methods used for generating, storing or transmitting the data messages;
2. the reliability of the methods used for keeping the completeness of the contents;
3. the reliability of the methods for distinguishing the addressers; and
4. other relevant factors.¹⁰⁸

In addition to the regulations mentioned earlier, there are other regulations that support the implementation of ODR, although they focus on e-commerce and the digital economy. These regulations include the 2016 Cybersecurity Law, the 2021 Data Security Law and the 2021 Personal Information Protection Law.¹⁰⁹

The Cybersecurity Law 2016 includes provisions on cybersecurity systems, network operation security, network information security, monitoring, early warning, and emergency responses. The Data Security Law 2021 covers data security and development, data security systems, data security protection, and the security and openness of economy's data obligations. The Personal Information Protection Law 2021 covers the rules of processing and cross-border provision of personal information, the rights of individuals in activities of processing of personal information, and the obligations of personal information processors.¹¹⁰

Given that the legal framework for ODR is spread across various regulations, the authority for enforcing these requirements varies. For arbitration, the formation of an arbitration commission is carried out in accordance with the provisions of the

¹⁰⁸ Article 8 of E-Signature Law. The English translation can be found at http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/05/content_1381960.htm.

¹⁰⁹ Yun Zhao, *Domestic Legal Framework on ODR: China and Hong Kong, China as examples*, presented in the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade" on 14-15 June 2023 in Bali, Indonesia, p. 11.

¹¹⁰ *Ibid.*

registration procedure at the judicial administration if it is formed at the provincial level and at the central level if it is formed at the autonomous region and municipality level.¹¹¹

For mediation, the formation of the people's mediation commission follows the provisions of administrative procedures in the Department of Justice.¹¹² Competent department of the State Council is the authority in charge of the development and promotion, supervision and administration of e-commerce.¹¹³ In this context, the Ministry of Commerce is the authority of e-commerce based on its mission as mentioned in its official website.¹¹⁴ Interestingly, this authority is also run by the authority above county level based on the division of duties among departments over the e-commerce within their respective administrative regions.¹¹⁵

China is very ambitious in developing ODR. The COVID-19 pandemic has accelerated the growth of online arbitration, and several agencies have issued procedural regulations to accommodate this growth. These agencies include the Shenzhen Court of International Arbitration (SCCIETAC), the China International Economic and Trade Arbitration Commission (CIETAC), the Beijing Arbitration Commission/Beijing International Arbitration (BAC/BIAC), and the China Maritime Arbitration Commission (CMAC).¹¹⁶

Since the rise of e-commerce, ODR has appeared in China. Businesses like Alibaba create internal dispute resolution procedures as well as ODR,¹¹⁷ although mostly in the context of business-to-consumer (B2C) transactions. China has indicated its willingness to participate in the APEC collaborative framework for ODR on B2B

¹¹¹ Article 10 of China Arbitration Law.

¹¹² Article 5 of The People's Mediation Law.

¹¹³ Article 6 of E-Commerce Law.

¹¹⁴ Ministry of Commerce of the People's Republic of China, *Mission*, <http://english.mofcom.gov.cn/column/mission.shtml> (15 February 2023).

¹¹⁵ Article 6 of E-Commerce Law.

¹¹⁶ Yun Zhao, *loc.cit.*, p. 9-10.

¹¹⁷ Zhang Juanjuan, On China Online Dispute Resolution Mechanism: Following UNCITRAL TNODR and Alibaba Experience (2017) Vol. 4 (1) *International Journal of Online Dispute Resolution*, p. 17 and 26.

transactions. Two ADR agencies have been listed on the APEC website, namely the Guangzhou Arbitration Commission (GZAC) and CIETAC.¹¹⁸

GZAC and CIETAC were both established under China Arbitration Law. Each of them already has a website as a facility for individuals who wish to use ODR in order to implement the APEC collaborative framework for ODR.¹¹⁹ The two websites already provide information on profiles, procedures, model clauses and fees.

GZAC is one of the first arbitration organizations to be established following the promulgation of the China Arbitration Law in 1995. In 2012, GZAC established the China Nansha International Arbitration Center, also known as the Nansha Center. The center was co-founded with Hong Kong, China and Macau, China arbitral communities to promote an international commercial arbitration system. This center became the forerunner to the birth of an online platform for ODR.

A new generation of technology was developed to assist this ODR by developing a remote audio and video arbitration system based on an encrypted cloud platform method. By using such technology, applications for dispute resolution can be made online and dispute hearings can be held remotely via the internet.¹²⁰ In addition, to help in handling disputes, an Artificial Intelligence (AI) assistant is assigned, and a dedicated case secretary is appointed. The case secretary handles procedural matters throughout the ODR process and assists the parties involved. They maintain a neutral stance during the dispute resolution proceedings.¹²¹

The ODR platform is designed to ensure the security of all data shared on the platform. It uses a comprehensive three-dimensional security system that includes a secure communication network, secure network parameters, and a safe computing

¹¹⁸ The two commissions are already listed in the APEC website as ODR providers. See Asia-Pacific Economic Cooperation, ODR Providers, The APEC Collaborative Framework for ODR of Cross-Border Disputes <https://www.apec.org/seli/odr-providers> (20 February 2023).

¹¹⁹ It is <https://casettle.odrcloud.cn/CIETAC.html> for CIETAC, while it is <https://newodr.gzac.org/en/> for GZAC.

¹²⁰ Guangzhou Arbitration Commission, *About Us*, Online Dispute Resolution of Cross-Border B2b Dispute, <https://newodr.gzac.org/en/introduce/aboutus/> (13 February 2023).

¹²¹ Yongmin Bian, *Experience of Guangzhou Arbitration Commission on ODR*, presented in the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade,” took place on 14-15 June 2023 in Bali, Indonesia, p. 10.

environment. All information shared on the platform is confidential and will not be shared with unauthorized third parties.¹²²

As of November 2022, GZAC has 32 neutrals to support ODR.¹²³ It has also adopted modified versions of the Model Clauses for APEC-ODR Procedures. GZAC provided Guideline of Guangzhou Arbitration Commission on Application of Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes to apply the APEC framework.¹²⁴ Its content is significantly influenced by APEC Collaborative Framework for ODR. However, GZAC added content that was customized to the commission's arbitration rules and China's law, such as: (1) free language translation services, despite ODR absence of responsibility to ensure the accuracy of the translation; and (2) no fees are charged to the parties during the mediation stage.¹²⁵

Similar to the guideline mentioned earlier, model clauses for ODR dispute resolution adopts fully from APEC Collaborative Framework for ODR. However, there are additional sentences which confirm that the ODR provider is GZAC:

"The ODR provider is Guangzhou Arbitration Commission. The Guidance of Guangzhou Arbitration Commission on Application of Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes shall also apply to dispute resolution."¹²⁶

There is no amount of claim limit set by GZAC. Parties can submit claims under RMB1,000 or above RMB1 million. The percentage of arbitration fees decreases as the amount of the claims increased. The lowest fee is between RMB40-100 for claims under RMB1,000, while the highest fee is 0.5% of claims over RMB1 million. When

¹²² *Ibid.*, p. 12.

¹²³ *Ibid.*, p. 2.

¹²⁴ Guangzhou Arbitration Commission, *Guidance of Guangzhou Arbitration Commission on Application of Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes*, <https://newodr.gzac.org/en/introduce/applicable/> (13 February 2023).

¹²⁵ *Ibid.* For more details, see Article 19 paragraph 3 and Article 22 of the Guidance of GZAC on Application of Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes.

¹²⁶ Guangzhou Arbitration Commission, *Model Clauses for APEC-ODR Procedures*, <https://newodr.gzac.org/en/introduce/clause/> (13 February 2023).

simulated, the arbitration fee for the amount of claim for over RMB1 million is approximately RMB5,000. The table below lists the arbitration fee according to the amount of the claim in RMB currency.

Table 3.1 Arbitration Fees for APEC Cross-border B2B Disputes under case procedures of GZAC¹²⁷

Amount of Claim (RMB)	Arbitration Fees (RMB)
Below RMB1,000	RMB40-100
RMB1,001 – RMB50,000	5%
RMB50,001 – RMB100,000	4%
RMB100,001 – RMB200,000	3%
RMB200,001 – RMB500,000	2%
RMB500,001 – RMB1,000,000	1%
Above RMB1,000,000	0.5%

Source: GZAC website.

As of April 2023, GZAC has handled up to 500 disputes, with 75% of them being successfully resolved through mediation. The average resolution time for these disputes is 33 days. The total value of the disputes amounted to USD786 million.¹²⁸

The China International Trade and Economic Arbitration Commission (CIETAC), founded in 1956, is the Chinese arbitration agency that pioneered and developed ODR. CIETAC established an ODR Center in December 2000 to resolve domain disputes online. The Commission published the China International Economic and Trade Arbitration Online Arbitration Rules in 2009, which were the first formal online arbitration rules in mainland China.¹²⁹

In order to quickly, economically and efficiently resolve high-volume and low-value e-commerce disputes, it establishes a final procedure and an expedited

¹²⁷ Guangzhou Arbitration Commission, *Charging Method and Quick Calculation*, <https://newodr.gzac.org/en/introduce/fee/> (13 February 2023).

¹²⁸ Yongmin Bian, *loc.cit.*, p. 7.

¹²⁹ Zhang Juanjuan, *loc.cit.*, p. 21.

procedure based on transaction value in addition to the general procedure. This is regarded as a significant advancement in China's ODR.¹³⁰

In the context of implementing the APEC Collaborative Framework for ODR, CIETAC fully adopted the framework without making specific institutional regulations. This is different from GZAC. In the case of the CIETAC Model Clauses, similar to GZAC, the forum determination clauses were adopted from APEC. However, there are additional phrases that emphasize CIETAC position as a venue for dispute resolution. These phrases are as follows:

“Any dispute, controversy, or claim arising hereunder and within the scope of the Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes (“the Procedural Rules”) providing for an online resolution process through negotiation, mediation and binding arbitration, **shall be submitted to CIETAC for resolution via its APEC ODR service platform** in accordance with the Procedural Rules presently in force.”¹³¹

The CIETAC ODR platform is designed to be user-friendly and accessible for businesses involved in cross-border transactions. The platform supports multiple languages, making it easier for parties from different economies to use the platform and resolve disputes. The CIETAC website also serves as a comprehensive resource for ODR. It includes a list of neutrals (mediators and arbitrators) who have been rigorously selected to ensure the quality and integrity of the dispute resolution process.¹³²

Similar to GZAC, the CIETAC ODR platform uses AI to help users throughout the dispute resolution process. AI assistance can provide support and guidance to users, and it can also streamline the documentation process. This means that all

¹³⁰ *Ibid.*

¹³¹ China International Economic and Trade Arbitration Commission, *Model ODR Clause for Contracts*, <https://casettle.odrcloud.cn/CIETAC.html> (14 February 2023).

¹³² It was stated by Fan Yang in session 4 of the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade,” took place on 14-15 June 2023 in Bali, Indonesia.

relevant documents are automatically transferred to the next stage if the dispute is not resolved at a previous stage.¹³³

The maximum amount of claim allowed by CIETAC is RMB5 million. This means that any amount in excess of this limit cannot be addressed through the APEC ODR service. There are two types of fees that are determined, namely registration fee and proceeding fee. The registration fee is RMB1,000 and must be paid together with the proceeding fee according to the amount of claim submitted.¹³⁴

The proceeding fee is determined by the amount of the claim submitted. The higher the claim, the lower the fee percentage. Another component of the proceeding fee, however, is charged, namely a fixed amount in addition to percentage fee based on the amount of claim. The table below shows the amount of claim and fees charged when using the APEC ODR service to dispute at CIETAC.

Table 3.2 Arbitration Fees for APEC Cross-border B2B Disputes under case procedures of CIETAC¹³⁵

Amount of Claim (RMB)	Fee (RMB)
Up to 100,000	5% of the amount, minimum RMB4,000
From 100,001 to 200,000	RMB5,000 + 4% of the amount
From 200,001 to 500,000	RMB9,000 + 3%
From 500,001 to 1,000,000	RMB18,000 + 2%
From 1,000,001 to 5,000,000	RMB28,000 + 0.6%

Source: CIETAC website.

Almost the same as other member economies, there is no specific regulatory framework for ODR including for implementing APEC ODR services. ODR development, therefore, is still based on arbitration and ADR mechanisms. However, ODR has made significant progress and the commission has received disputes

¹³³ *Ibid.*

¹³⁴ China International Economic and Trade Arbitration Commission, *Provisions of Fees*, <https://casettle.odrcloud.cn/CIETAC.html> (14 February 2023).

¹³⁵ *Ibid.*

application. In her article, Zhang Juanjuan argues that specific ODR legal arrangements are required. This has the potential to spur ODR into more progress.¹³⁶

Mediation and arbitration which are part of the ODR mechanism are less well known than the courts.¹³⁷ After the launch of internet courts, the popularity of these courts has increased and there has been a significant increase in cases being settled in internet courts.¹³⁸ However, internet courts cannot force their decisions to be executed abroad. Meanwhile, mediation and arbitration within the APEC ODR framework can be executed when the dispute is cross-border in nature.

3.2. Hong Kong, China

Hong Kong, China does not also have specific regulatory framework for ODR. However, the Hong Kong Arbitration Ordinance (Cap. 609) (“Arbitration Ordinance”) and the Mediation Ordinance (Cap. 620) (“Mediation Ordinance”) support the implementation of ODR. These two Ordinances provide legal foundations to cater for implementing electronic dispute resolution outside the courtroom.

The Arbitration Ordinance was promulgated with the objective of promoting the fair and speedy resolution of disputes through arbitration while avoiding unnecessary costs. Arbitration is carried out in accordance with the following principles:

- a. subject to the observance of safeguards that are necessary in public interest, the disputing parties should be free to agree on how the dispute should be resolved; and
- b. the court should only intervene in the arbitration of a dispute as expressly provided for under the Arbitration Ordinance. One type of court intervention is the enforcement of an arbitration award, which requires the leave of court.¹³⁹

The Arbitration Ordinance generally applies to arbitration under an arbitration agreement as long as the agreed-upon forum is in Hong Kong, China, regardless of

¹³⁶ Zhang Juanjuan, *loc.cit.*, p. 25 and 30.

¹³⁷ *Ibid.*, p. 25 and 26.

¹³⁸ Carrie Shu Shang and Wenli Guo, “The Rise of Online Dispute Resolution-Led Justice in China: An Initial Look” (September 2020) *Australian National University Journal of Law and Technology*, p. 25 and 42.

¹³⁹ Sections 3 and 84 of Arbitration Ordinance.

whether the agreement was made in Hong Kong, China. The Arbitration Ordinance also provides for the use of mediation in the context of arbitration proceedings.¹⁴⁰

The Arbitration Ordinance is based on the UNCITRAL Model Law. The provisions of the UNCITRAL Model Law apply to the extent expressly stated and are subject to the modifications and supplements as expressly provided for in the Arbitration Ordinance.¹⁴¹ Although ODR is not specifically addressed in the Arbitration Ordinance, the presence of provisions based on the UNCITRAL Model Law (which supports the conduct of arbitration proceedings by any means as agreed by the disputing parties) provides a foundation for the development of ODR in Hong Kong, China.

When conducting arbitration proceedings or exercising any of the powers conferred on an arbitral tribunal by the Arbitration Ordinance or by the parties to those arbitration proceedings, the arbitral tribunal is required to use procedures appropriate to the particular case. The purpose is to avoid unnecessary delay or expense in order to provide a fair means of resolving the dispute to which the arbitration proceedings related.¹⁴² ODR can be used in arbitration proceedings and can thrive when combined with provisions that promote fair and timely arbitration while avoiding unnecessary costs. One of the examples is the presence of eBRAM, one of the pioneers of APEC ODR services.

In respect of mediation, the Mediation Ordinance was enacted in 2012 with the following objectives:

- “(a) to promote, encourage and facilitate the resolution of disputes by mediation;
- and
- (b) to protect the confidential nature of mediation communications.”¹⁴³

For the purpose of the Mediation Ordinance, “mediation” means a structured process consisting of one or more sessions in which one or more impartial individuals,

¹⁴⁰ Sections 32 and 33 of Hong Kong Arbitration Ordinance.

¹⁴¹ Section 4 of Arbitration Ordinance.

¹⁴² Section 46(3)(c) of Arbitration Ordinance.

¹⁴³ Section 3 of Mediation Ordinance.

without adjudicating a dispute or any aspect of it, assist the disputing parties to do any or all of the following:

- (a) identify the issues in dispute;
- (b) explore and generate options;
- (c) communicate with one another; and
- (d) reach an agreement regarding the resolution of the whole or part of the dispute.¹⁴⁴

The Mediation Ordinance applies to any mediation conducted under an agreement to mediate in the following circumstances: (1) the mediation is wholly or partly conducted in Hong Kong, China; or (2) the agreement provides that the Mediation Ordinance or the law of Hong Kong, China is to apply to the mediation. The Mediation Ordinance applies to the authorities of Hong Kong, China.¹⁴⁵

The Mediation Ordinance expressly covers mediation by electronic means. Pursuant to the Mediation Ordinance, mediation meetings may be conducted by telephone, video conferencing and other electronic means.¹⁴⁶ The Mediation Ordinance, with the express inclusion of mediation meetings by electronic means, caters for the implementation of ODR.

Hong Kong, China, is an economy that has already opted into the APEC Collaborative Framework for ODR. The economy believes ODR provides a cost-effective option for MSMEs, and is particularly beneficial for MSMEs located in different areas within an economy or located in different economies, thereby providing an accessible, expeditious way to enhance MSMEs' access to justice.¹⁴⁷

The first ODR provider listed on the APEC website is eBRAM International Online Dispute Resolution Centre Limited (eBRAM). It is a Hong Kong, China-based non-profit company limited by guarantee that was established in 2018 with the support of the Asian Academy of International Law Limited, the Hong Kong Bar Association and The Law Society of Hong Kong. The eBRAM's board is primarily made up of

¹⁴⁴ Section 4(1) of Mediation Ordinance.

¹⁴⁵ Section 5(1) and Section 6 of Mediation Ordinance.

¹⁴⁶ Section 4(3) of Mediation Ordinance.

¹⁴⁷ Michelle Fung, *Empowering MSMEs through ODR: The Hong Kong, China Perspective*, presented in the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade," on 14-15 June 2023 in Bali, Indonesia, p. 9-14.

distinguished legal and arbitration practitioners, as well as IT and accounting experts, who are particularly knowledgeable about the operation and development of eBRAM operations and their compliance with applicable laws.¹⁴⁸

To implement the APEC Collaborative Framework, eBRAM published the eBRAM APEC Rules in 2021 and revised it in 2022. According to its rules and in compliance with the APEC Collaborative Framework, eBRAM provides case administration services for disputes that are related to cross-border B2B disputes.¹⁴⁹ However, to the extent that the disputing parties agree to also resolve general B2B disputes under the eBRAM APEC Rules, eBRAM also aims to provide case administration services for such disputes. There is no maximum value limit of disputes set in the eBRAM APEC Rules Appendix. However, eBRAM divides its fee calculation by a threshold of HKD775,000, namely disputes over HKD775,000 and disputes at or under HKD775,000.¹⁵⁰ This arrangement affects the amount of fees that need to be paid by disputing parties.

The parties are required to pay administrative, filing and neutral fees for claims with a value greater than HKD775,000, while the parties are only required to pay administrative and neutral fees for claims equal to or less than HKD775,000. The filing fee, when applicable, is HKD5,000.¹⁵¹

Affordability is eBRAM's main concern.¹⁵² Compared to other ODR providers, eBRAM is more advanced in terms of ODR governance and transparency regarding fees details. The details regarding fees for claims equal to or less than HKD775,000 are as shown in the table below, except the filing fee.¹⁵³

Table 3.3 specifically describes eBRAM APEC Administrative Fee for disputes valued at **no more** than HKD775,000.

¹⁴⁸ eBRAM, Our Profile, <https://www.ebram.org/overview.html>, (21 February 2023).

¹⁴⁹ Article 1 section 1 eBRAM APEC Rules. The rules are available at https://www.ebram.org/uploads/rules/eBRAM_APEC_Rules_Booklet_23_June_2022.pdf.

¹⁵⁰ Appendix of eBRAM APEC Rules, Part A Required Fee.

¹⁵¹ eBRAM APEC Rules, Schedule of Fees Part 2 – Filing Fee.

¹⁵² Pui Ki Emmanuelle Ta, Implementing the APEC Collaborative Framework, presented in the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade,” took place on 14-15 June 2023 in Bali, Indonesia, p. 7.

¹⁵³ eBRAM APEC Rules, Schedule of Fees Part 1 and Part 2.

Table 3.3 eBRAM APEC Administrative Fee for Disputes Valued at no more than HKD775,000

Amount in dispute (HKD)	Administrative Fee (HKD)
Up to HKD20,000	HKD1,000
From HKD20,001 to HKD50,000	HKD1,500
From HKD50,001 to HKD70,000	HKD2,000
From HKD70,001 to HKD100,000	HKD3,000
From HKD100,001 to HKD200,000	HKD4,000
From HKD200,001 to HKD300,000	HKD4,500
From HKD300,001 to HKD400,000	HKD5,000
From HKD400,001 to HKD500,000	HKD5,500
From HKD500,001 to HKD600,000	HKD6,000
From HKD600,001 to HKD700,000	HKD6,500
From HKD700,001 to HKD775,000	HKD7,000

Source: eBRAM APEC Rules (May 2022), for latest information please visit https://www.ebram.org/apec_odr.html.

Table 3.4. provides the details of eBRAM APEC Neutral's Fees for disputes valued at **no more** than HKD775,000.

Table 3.4 eBRAM APEC Neutral's Fees for Disputes Valued at no more than HKD775,000

Amount in dispute (HKD)	Neutral's Fees (HKD) (Mediation Stage)	Neutral's Fees (HKD) (Arbitration Stage-for cases resolved with an award)
Up to HKD200,000	Fixed fee of HKD2,000 (inclusive of preparation and up to four hours of mediation), then HKD500/hour for additional mediation.	Fixed fee of HKD5,000 (inclusive of all reading time, all communications and drafting including of the award), plus HKD750/hour for hearing.
From HKD200,001 to HKD775,000	Fixed fee of HKD4,000 (inclusive of preparation and up to 4 hours of mediation),	Fixed fee of HKD10,000 (inclusive of all reading time, all communications and

Amount in dispute (HKD)	Neutral's Fees (HKD) (Mediation Stage)	Neutral's Fees (HKD) (Arbitration Stage-for cases resolved with an award)
	then HKD750/hour for additional mediation.	drafting including of the award), plus HKD1,000/hour for hearing.

Source: eBRAM APEC Rules 2022, for latest information please visit https://www.ebram.org/apec_odr.html.

Table 3.5. provides the details of eBRAM APEC Administrative Fee for disputes valued at **more than** HKD775,000.

Table 3.5 eBRAM APEC Administrative Fee for Disputes Valued at no more than HKD775,000

Amount in dispute (HKD)	Administrative Fee (HKD)
From HKD775,001 to HKD3,000,000	HKD7,000 + 0.719% of amount over HKD775,000
From HKD3,000,001 to HKD5,000,000	HKD23,000 + 0.6% of amount over HKD3,000,000
From HKD5,000,001 to HKD15,000,000	HKD35,000 + 0.35% of amount over HKD5,000,000
From HKD15,000,001 to HKD50,000,000	HKD70,000 + 0.228% of amount over HKD15,000,000
From HKD50,000,001 to HKD100,000,000	HKD150,000 + 0.1% of amount over HKD50,000,000
From HKD100,000,001 to HKD250,000,000	HKD200,000 + 0.055% of amount over HKD100,000,000
From HKD250,000,001 to HKD500,000,000	HKD282,500 + 0.047% of amount over HKD250,000,000
Over HKD500,000,000	HKD400,000

Source: eBRAM APEC Rules 2022 (Last revised fee schedule on 3 May 2023), for latest information please visit https://www.ebram.org/apec_odr.html.

Meanwhile, Table 3.6. describes eBRAM APEC Neutral's fee for disputes valued at **more than** HKD775,000.

Table 3.6 eBRAM APEC Neutral’s fee for Disputes Value More than HKD775,000

Amount in dispute (HKD)	Neutral’s Fee (HKD)
From HKD775,001 to HKD50,000,000	Based on an hourly rate commensurate with the experience of the appointed neutral which shall not exceed HKD3,100 per hour save in exceptional circumstances.
From HKD50,000,001 and above	Based on an hourly rate commensurate with the experience of the appointed neutral which shall not exceed HKD5,500 per hour save in exceptional circumstances.

Source: eBRAM APEC Rules 2022, for latest information please visit https://www.ebram.org/apec_odr.html.

3.3. Japan

Similar to People’s Republic of China and Hong Kong, China, there is no specific legal framework in Japan that governs ODR. However, two related laws may serve as the foundation for implementing ODR in Japan. The first is the Arbitration Law of Japan (Law No. 138 of 2003). This law governs arbitration in which the place of arbitration and court proceedings in connection with arbitration take place on Japanese territory.¹⁵⁴ The arbitration law contains no provisions for mediation.

The second law is the Act to Promote the Use of Alternative Dispute Resolution. The act was passed to govern ADR and the responsibilities of respective authority and other entities to create a certification system and to establish special rules for the cancellation of mediation agreement and other arrangements. The objective is to make ADR procedures more accessible and usable. From this point, disputing parties are expected to choose the most appropriate method of dispute resolution.¹⁵⁵

In the context of arbitration and ODR, the Japanese Arbitration Law does not yet regulate the use of electronics arbitration procedures. However, this law recognizes arbitration agreements made electronically. Furthermore, this law allows

¹⁵⁴ Article 1 of Japan Arbitration Law.

¹⁵⁵ Article 1 of the Act on Promotion of Use of Alternative Dispute Resolution.

the parties to agree on the procedure than the one provided for by the arbitration agency. This can be carried out as long as it does not contradict the arbitration law. Even though the arrangement of ODR in the arbitration law is not yet specific, there are almost no restrictions for the implementation of ODR with an arbitration mechanism in most cases.

In terms of mediation and ODR, the Act on the Promotion of Use of Alternative Dispute Resolution governs the operationalization of private-sector dispute resolution, including certification. This Act makes no additional provisions for regulating how mediation is carried out, including through electronic devices. It does, however, govern the requirements for certification. Nonetheless, it allows ADR providers to develop their own procedures for conducting mediation, including in using electronic means.¹⁵⁶

Due to the flexibility of arbitration and ADR rules in Japan, ODR can be implemented. Japan has declared opt-in and there is one ODR provider listed on the APEC website, namely Uryu and Itoga (U&I) Advisory Service.¹⁵⁷ It is an ADR agency that has obtained certification from the Japanese Ministry of Justice.¹⁵⁸ The U&I Advisory Service is a company that offers comprehensive legal advisory services such as mergers and acquisitions, corporate restructuring, bankruptcy, business revitalization, fraud investigations and digital forensics. In many cases, legal, accounting and tax matters are inextricably linked, and the need to process them organically and quickly has recently increased.¹⁵⁹

U&I Advisory Service is the only certified business operator for ODR in Japan. It allows non-lawyers to serve as mediators and can handle various types of disputes, including e-commerce disputes with a value of up to JPY1 million. This makes it well-suited for swift and efficient resolutions. U&I Advisory Service also collaborates with

¹⁵⁶ See Articles 1-6 of the Act on Promotion of Use of Alternative Dispute Resolution.

¹⁵⁷ See Asia-Pacific Economic Cooperation, *ODR Providers*, The APEC Collaborative Framework for ODR of Cross-Border Disputes <https://www.apec.org/seli/odr-providers> (20 February 2023).

¹⁵⁸ U&I Advisory Service, *U&I Advisory Service has obtained certification by the Minister of Justice of Japan for its ADR service*, 1 July 2022, <https://ui-advisory.com/etcnews/%E8%A3%81%E5%88%A4%E5%A4%96%E7%B4%9B%E4%BA%89%E8%A7%A3%E6%B1%BA%E6%89%8B%E7%B6%9A%EF%BC%88%EF%BD%81%EF%BD%84%EF%BD%92%EF%BC%89%E3%81%AE%E8%AA%8D%E8%A8%BC%E3%82%92%E5%8F%96%E5%B E%97%E3%81%97%E3%81%BE> (23 February 2023).

¹⁵⁹ U&I Advisory Service, *Company Information*, <https://ui-advisory.com/overview> (23 February 2023).

Deloitte, which has been offering chat-based ODR services through "Smart Judgement" since 2020.¹⁶⁰ The ODR service follows the APEC Collaborative Framework for ODR, which includes the resolution of e-commerce disputes. It provides a speedy resolution process, typically concluding within two weeks.¹⁶¹

MSMEs in Japan have already experienced the positive outcomes of adopting ODR. This suggests that implementing ODR mechanisms has brought notable advantages to these businesses, leading to enhanced dispute resolution efficiency and facilitating smoother cross-border transactions for MSMEs in Japan.¹⁶²

3.4. Singapore

With regard to ODR, Singapore does not have specific rules concerning it. As one of the global arbitration centers, this economy has passed legal frameworks related to ODR, including the International Arbitration Act 1994, the Arbitration Act 2001 and the Mediation Act 2017. The three acts serve as a solid foundation for Singapore in organizing dispute resolution outside the courtroom and meeting global demands for cross-border commercial transaction dispute resolution. These out-of-court dispute resolutions are being the mechanisms mostly used.¹⁶³

International Arbitration Act 1994 regulates the conduct of international commercial arbitration proceedings based on the Model Law on International Commercial Arbitration adopted by the UNCITRAL. However, the application of UNCITRAL Model Law blended into this act is subject to provisions explicitly mention the applicability of the Model Law.¹⁶⁴ In addition, the act also gives effect to the New York Convention 1958 on the Recognition and Enforcement of Foreign Arbitral Awards and related matters.¹⁶⁵

¹⁶⁰ U&I Advisory Services, *ODR Services*, presented by Professor Yoshi Hayakawa in the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade" on 14-15 June 2023 in Bali, Indonesia, p. 10.

¹⁶¹ *Ibid.*, p. 20.

¹⁶² Described by Professor Yoshi Hayakawa in session 1 of the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade" on 14-15 June 2023 in Bali, Indonesia.

¹⁶³ Tulika Kaul and Jui Uday Dongare, "A Guide on Dispute Resolution in Singapore," (2019) Volume No. 6 (8) *Court Uncourt*, p. 18, 20 and 22.

¹⁶⁴ Article 3 paragraph 1 of International Arbitration Act 1994.

¹⁶⁵ Preamble of International Arbitration Act 1994.

The Singapore Arbitration Act 2001 is a law that governs arbitration in Singapore. This Act applies to any arbitration in which the place of arbitration is Singapore and Part 2 of the International Arbitration Act of 1994 does not apply.¹⁶⁶ Meanwhile, the Mediation Act 2017 is a law that promotes, encourages and facilitates the resolution of disputes through mediation, among other things. This Act applies to or in relation to any mediation held under a mediation agreement where the mediation is conducted entirely or partially in Singapore or the agreement states that this Act or Singapore law will apply to the mediation.¹⁶⁷ These three acts bind the economy.¹⁶⁸

Autonomy in regulating dispute resolution procedures or mechanisms for arbitration and mediation agencies encourages the use of electronic devices in resolving disputes in the context of ODR.¹⁶⁹ The UNCITRAL Model Law's applicability allows for such implementation. Furthermore, the Mediation Act of 2017 makes it clear that mediation can take place through electronic communications, video conference and other electronic or online means.¹⁷⁰ When combined with the Evidence Act's recognition of electronic evidence, this completes the regulation of ODR permissibility, despite the fact that ODR has not been specifically regulated.¹⁷¹

In the context of implementing the APEC collaborative framework for ODR, Singapore is one of the member economies that has stated its opt-in to utilize this collaborative framework.¹⁷² However, no ODR provider has been listed on the APEC website at the time of writing this report.

¹⁶⁶ Preamble and Section 3 of Arbitration Act 2001. Part 2 of the International Arbitration Act of 1994 regulates the implementation of international commercial arbitration referring to the UNCITRAL Model Law and the New York Convention.

¹⁶⁷ Preamble and Section 6 Mediation Act 2017

¹⁶⁸ See Article 34 of International Arbitration Act 1994; Article 64 of Arbitration Act 2001; and Article 5 of Mediation Act 2017.

¹⁶⁹ Article 23 of Arbitration Act 2001; and Article 2 (interpretation of mediation service provider) and Article 3 paragraph 3 of Mediation Act 2017.

¹⁷⁰ Article 3 paragraph 3 of Mediation Act 2017.

¹⁷¹ Article 35 of Evidence Act.

¹⁷² Asia-Pacific Economic Cooperation, *Economies-Opting-In*, <https://www.apec.org/SELI/Economies> (25 February 2023).

3.5. The United States

The United States has experiences in managing technology, justice and ODR by utilizing various international instruments as well as the domestic ones. This includes the Model Law on International Commercial Arbitration, the United Nations (UN) Convention on the Use of Electronic Communications in International Transactions, and the UN Convention on International Settlement Agreements Resulting from Mediation (Singapore Mediation Convention 2019).¹⁷³

In terms of domestic instruments on ODR in The United States, the regulatory and institutional framework for ODR varies. The difference is determined by the type of dispute and the industry involved. Each industry has its own regulatory and institutional procedures. Moreover, each state jurisdiction has its own ODR regulatory framework. As a result, The United States regulatory framework is being developed as a combination of federal and state laws and regulations, as well as industry-specific initiatives.

As the economy where ODR is created and begun popular to utilize in the late of 1990s, the use of ODR in The United States is closely linked to the regulation of ADR. The Alternative Dispute Resolution Act of 1998 requires all federal courts to participate in an alternative dispute resolution program. Additionally, the Federal Arbitration Act also provides the basis for judicial facilitation of private dispute resolution through arbitration including for ODR.

Like any other jurisdictions, the aim at the development of ODR in The United States is to minimize time and costs in dispute resolution. Schmitz and Martinez describe that there are three areas of laws that leading the way in terms of ODR types, namely, commercial, small claims and family disputes. The development of ODR takes place in private providers and court. Currently, there are at least seventy organizations and firms that offer services in The United States and listed in The National Center for Technology Dispute Resolution (NCTDR).¹⁷⁴ Similarly, The United States judiciary

¹⁷³ Angie Raymond, Stakeholder Engagement and Capacity Building on the APEC ODR Collaborative Framework to Improve Cross-Border Trade in Indonesia, presented in the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade” on 14-15 June 2023 in Bali, Indonesia, p. 3.

¹⁷⁴ The National Center for Technology and Dispute Resolution, Provider list, <https://odr.info/provider-list/> (20 July 2023).

court also have joined the bandwagon by developing e-courts, with more than fifty courts offering online process for case types, notably, small-claims court.

The growing popularity of ODR adoption raises questions on the rules and standard of ADR. In The United States, the initiative to develop rules and standards are currently spearhead by private institutions, such as American Bar Association (ABA) and the International Council for Online Dispute Resolution (ICODR) as well as the NCTDR.¹⁷⁵ Much of the rules and standards focus on ethical principles and audit system in order to promote transparency.

In terms of cross-border transaction, The United States is a signatory to the UN Convention on International Settlement Agreement Resulting from Mediation (The Singapore Mediation Convention 2019). However, The United States yet to implement the convention. The implementation of the Singapore Convention would establish the foundation for the swift enforcement of cross-border mediation agreements including those concluded through online mediation.

All of these rules and standard are developed to address three issues of ODR, namely, trust, privacy and compliance.¹⁷⁶ Additionally, the focus in developing ODR needs also focus on the dispute system design, in which ODR system design technology need to be focused on one or more process that prevent, manage and resolve a stream of disputes.¹⁷⁷

In summary, The United States experience shows that the application of ODR is promising in areas of low-value and high-volume dispute, in which the system can help facilitate to resolve dispute in high-volume transaction like e-commerce. Furthermore, in the area of court based ODR, it has been most effective in settling small claims court and family matter. Finally, the current trend of ODR regulation in The United States focuses on how the rules and standard of ODR practice can address issues, such as, trust, privacy and compliance. Apart from the frameworks,

¹⁷⁵ Amy J. Schmitz and Janet Martinez, *ODR and Innovation in the United States*, University of Missouri School of Law Legal Studies Research Paper, No. 2021-22 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3916974 (17 February 2023), p. 1

¹⁷⁶ Esther van den Heuvel, *Online Dispute Resolution as A Solution to Cross-Border Disputes: An Introduction to ODR*, <https://www.oecd.org/digital/consumer/1878940.pdf>, (16 February 2023), p. 13-18.

¹⁷⁷ Amy J Schmitz and Janet Martinez, *loc.cit.*, p. 19.

experiences and its expression to opt-in, no ODR provider has been listed on the APEC website at the time of writing this report from The United States providers.

3.6. Analysis of the Framework of Other Member Economies

In general, APEC member economies that have declared opt-in do not yet have specific regulation for out-of-court ODR. They continue to use the current law regulating arbitration and ADR procedures, such as mediation. If there is specific one, the relevant ODR is carried out in a courtroom, such as the internet court in China. However, this ODR is not related to the implementation of APEC ODR services.

In addition to the local arbitration and ADR laws or regulations, two member economies, namely Hong Kong, China and Singapore also give effect to the application of UNCITRAL Model Law. In fact, the economies merge certain provisions of the UNCITRAL Model Law into their arbitration laws with modifications and supplements.

Most economies that declare opt-in for the implementation of APEC ODR services regulate arbitration and mediation through distinct laws. In term of mediation, Hong Kong, China; Japan; and Singapore permit the use of online mediation while their respective arbitration laws have not specifically regulated online hearings. However, mediation and arbitration institutions in each member economy are allowed to develop and adopt their own procedural rules and arrangements. This gives them flexibility to establish an ODR mechanism. Singapore even has a law governing evidences derived from computer output. This law provides support to the implementation of ODR in terms of evidences.

Almost all ODR providers have websites and rules in place that allow parties to access dispute resolution mechanisms in terms of implementation. Information on procedures and fees has been provided by eBRAM, GZAC and CIETAC. Each service provider has its own policy regarding the threshold value of the dispute, the types of fees and the specific fees associated to resolve disputes. These transparencies are necessary so that the parties can choose the best ODR stance to take.

The situation in the five-member economies described in this chapter is believed to provide lessons for other member economies in general and Indonesia in particular with regard to the legal and institutional frameworks as well as the implementation of ODR. The absence of specific ODR regulations should not be an

obstacle to the realization of ODR, including in implementing APEC ODR services. The UNCITRAL Model Law and the New York Convention 1958, at the very least, can serve as foundations for other member economies to initiate regulatory reforms in their own economies. Even if the enabling regulatory framework cannot be realized in the short term, support from each member economy's authorities will greatly assist in the implementation of ODR.

In practice, ODR providers do not always develop their own technology, but can instead cooperate with third parties which provide the technology. In fact, it is possible through the cooperation between ODR providers, prospective ODR providers will be able to join the APEC ODR provider list. If this happens, it will be very beneficial for the ODR provider network without losing their own unique approach to resolving disputes. Additionally, the number of ODR providers on the APEC ODR provider list will also increase.

4 – INDONESIA MSMEs LEGAL FRAMEWORKS

This chapter provides an overview of MSMEs legal framework in Indonesia. This includes the regulatory arrangements, business scale, MSMEs number, internet or digital literacy, cross-border B2B transactions, issues that are always associated with MSMEs, legal assistance and the analysis of the framework. This discussion is required to identify and analyze policy requirements for MSMEs in accessing APEC ODR services.

4.1. Regulatory Arrangement for Indonesia MSMEs

Indonesia has passed specific legal framework in regulating MSMEs. It is the Micro, Small and Medium Enterprises Law 2008 (Law No. 20/2008). The promulgation of this law was driven by the need to organize the empowerment of micro, small and medium enterprises in a comprehensive, optimal and sustainable manners. This can be done through conducive business climate, providing business opportunities, support, protection and development of the widest possible business. MSMEs Law, in general, covers the following subjects: business scale, expanding business climate, business development, financing and guarantees and partnership.

This law was then revised through the enactment of the Jobs Creation Law, with its controversy.¹⁷⁸ Due to this revision, new implementing regulation was created to regulate easiness, protection and empowerment of MSMEs and Cooperatives. It is Cooperatives and MSMEs Easiness, Protection and Empowerment Regulation 2021 (GR No. 7/2021).

For commercial B2B transaction, Indonesian MSMEs are regulated by the Trade Law 2014 (Law No. 7/2014). One of the objectives of this law is to improve partnership between large businesses and MSMEs, as well as the economy and

¹⁷⁸ The general public believes that the Jobs Creation Law is a less participatory law that violates the legislative process. Based on the result of the formal review, the Constitutional Court invalidated the Jobs Creation Law 2020. However, at the end of 2022, the economy issued an emergency regulation with the same title, replacing the Jobs Creation Law 2020, but with nearly identical content. This emergency regulation was approved in March 2023 to become a Law by the Indonesia Parliament.

private sector.¹⁷⁹ In fact, there is a special chapter in Trade Law that regulates MSMEs empowerment. This role is carried out not only in the central level of authority but also in regional ones (provincials and municipalities).¹⁸⁰ This empowerment includes the provision of facilities, incentives, technical assistance, access to and/or capital assistance, promotional assistance and marketing.¹⁸¹ In terms of foreign trade, the economy specifically includes MSMEs in trade promotion activities, for example through trade exhibition and trade missions.¹⁸²

The existence of the Jobs Creation Law provides easiness, increase empowerment and protection for MSMEs. The easiness here, for example, is in the form of establishing business entity and obtain business licenses and permits.¹⁸³ Empowerment here, for example through the facilitation of trade promotion and business development, integrated management, facilitation to obtain intellectual property rights, financing, procurement of goods/services and special allocation of business sector for MSMEs.¹⁸⁴ Meanwhile, the example of protection here is the provision of legal aid and assistance services and MSMEs economic recovery due to the emergency situation.¹⁸⁵

These regulatory frameworks are deemed adequate, for this time, to support the implementation of MSMEs in international trade. MSMEs have been provided with a number of protective legal instruments as well as other various laws and regulations, such as Trade Law 2014, MSMEs Easiness, Protection and Empowerment Regulation 2021, Company Law 2007, Special Economic Zone Law 2009 and so on.

¹⁷⁹ Article 3 letter f of Trade Law 2014.

¹⁸⁰ Chapter X particularly Article 73 of Trade Law 2014.

¹⁸¹ Article 73 paragraph 2 of Trade Law 2014.

¹⁸² Article 75 paragraph 2 of Trade Law 2014.

¹⁸³ In establishing a business entity, there is a new regulation (GR 8/2021) to ease the businesses to form a limited liability company with one person. In terms of licensing and permit, MSMEs is provided with the easiness to obtain Business Identification Number (NIB) that is treated the same as a single license (GR 5/2021).

¹⁸⁴ Article 60-92 of Cooperatives and MSMEs Easiness, Protection and Empowerment Regulation 2021.

¹⁸⁵ Article 48-54 of Cooperatives and MSMEs Easiness, Protection and Empowerment Regulation 2021.

4.2. Business Scale

According to Holmes and Nicolls, business scale refers to a company's ability to manage its business by taking into account the number of employees and the income earned in one accounting period.¹⁸⁶ Using this approach, the size of MSMEs can be determined by the type of business, the amount of capital and the annual income. The scale threshold of this business in Indonesia is regulated by the MSMEs Law 2008, which is then amended and further regulated in the Cooperatives and MSMEs Easiness, Protection and Empowerment Regulation 2021.

The regulation divides MSMEs into micro, small and medium enterprises. Each business scale has its own definition. Micro enterprise is defined as productive business owned by individual and/or business entity that meet the criteria for micro enterprises.¹⁸⁷ Small enterprise is defined as a productive economic business that operates independently and is carried out by individual or business entity that is not subsidiary or branch of company owned, controlled or become a part of, either directly or indirectly, medium or large businesses.¹⁸⁸ Meanwhile, medium enterprise is a stand-alone productive economic business carried out by individual or business entity that is not subsidiary or branch of company owned, controlled or become part of either directly or indirectly with small or large enterprise.¹⁸⁹

Those definitions affect the MSMEs business scale. Indonesia has already set up the scale for each micro, small and medium enterprises as mentioned in Table 4.1 below.

¹⁸⁶ Irvan Arie Hananto, Bambang Agus Pramuka and Icku Rangga Bawono, "The Influence of Owner Education Levels, Owner Accounting Knowledge, Business Scale and Business Age on the Use of Accounting Informasi in MSME's in Wonogiri" (2020) Vol. 4 (2) *Journal of Applied Managerial Accounting*, p. 231

¹⁸⁷ Article 1 section 1 of MSMEs Law 2008.

¹⁸⁸ Article 1 section 2 of MSMEs Law 2008.

¹⁸⁹ Article 1 section 3 of MSMEs Law 2008.

Table 4.1 Indonesia MSMEs Business Scale¹⁹⁰

Enterprises	Business Capital	Gross Annual Revenue
Micro	Maximum of IDR1 billion, excluding land and building for business premises.	Maximum of IDR2 billion.
Small	From more than IDR1 billion up to IDR5 billion, excluding land and building for business premises.	More than IDR2 billion up to IDR15 billion.
Medium	From more than IDR5 billion up to IDR10 billion, excluding land and building for business premises.	More than IDR15 billion up to IDR50 billion.

Source: Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021.

The Cooperatives and MSMEs Easiness, Empowerment and Protection 2021 regulates the flexibility of this scale, which opens the possibility of changing the criteria. Furthermore, with the endorsement of the Ministry of Cooperatives and MSMEs, ministries/other agencies may use the other criteria to define MSMEs such as follows:

1. annual turnover;
2. net worth;
3. investment value;
4. number of employees;
5. incentives and disincentives;
6. local-content rate of the MSMEs product; and/or
7. application of environmentally friendly technology to determine the MSMEs scale in accordance with the criteria of each business sector.¹⁹¹

4.3. Number of MSMEs

Indonesia has a large number of MSMEs. There are over 65.4 million units as of 2019.¹⁹² This represents 99.99% of the total business unit. In the same year, the

¹⁹⁰ This table is derived from Article 35 paragraphs 3 and 5 of Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021.

¹⁹¹ Article 36 of Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021.

¹⁹² Kementerian Koperasi dan Usaha Kecil Menengah, *Perkembangan Data Usaha Mikro, Kecil, Menengah (UMKM) dan Usaha Besar (UB) tahun 2018-2019, (2020)*

number of large businesses was only 5,637.¹⁹³ Unfortunately, the most recent data is still in the development stage as the Ministry of Cooperatives and SMEs creates an integrated portal containing MSMEs data.¹⁹⁴ It is believed that the number of MSMEs is continuously increasing. Table 4.2 shows the number of micro, small and medium enterprises as well as large enterprises as of 2019.¹⁹⁵

Table 4.2 Number of Businesses in Indonesia including MSMEs

No.	Enterprises	Number	Percentage (%)
1.	Micro	64,601,497	98.67
2.	Small	798,679	1.22
3.	Medium	65,465	0.10
4.	Large	5,637	0.01

Source: Ministry of Cooperatives and Small-Medium Enterprises (2020).

MSMEs make a significant contribution to the economy, employing 119,562,843 people (96.92%) and accounting for approximately 60.51% of the Gross Domestic Product (GDP), or IDR9,580.7 trillion in 2019.¹⁹⁶ MSMEs' contributions cannot be underestimated, and MSMEs have historically been able to support the economy.

4.4. Literacy on Digital

Despite the growth of e-commerce transactions, Indonesia's digital literacy and competitiveness stayed ranked 51st by 2022 according to the International Institute of Management Development's IMD World Digital Competitiveness Ranking. This ranking is higher than the one in 2021. Nevertheless, Indonesia has some distance to

https://kemenkopukm.go.id/uploads/laporan/1650868533_SANDINGAN_DATA_UMKM_2018-2019%20=.pdf (1 February 2023).

¹⁹³ *Ibid.*

¹⁹⁴ The portal is <https://satudata.kemenkopukm.go.id/>. This, at the moment, is only available in Indonesian language (*Bahasa Indonesia*) and the data is still under development.

¹⁹⁵ Kementerian Koperasi dan Usaha Kecil Menengah, *loc.cit.*

¹⁹⁶ *Ibid.*

cover, especially when compared to its fellow Southeast Asian economies like Malaysia; Singapore; and Thailand.¹⁹⁷

There is no MSMEs digital literacy index or survey. However, Muhrad's viewpoint on the characteristics of MSMEs in relation to digitalization can be considered. He asserts that MSMEs continue to face technological challenges such as: (1) the mindset of MSMEs with traditional business systems; (2) low financial literacy, including the ability to record business expenses and income; (3) limited internet infrastructure; and (4) capacity building programs that are unable to reach marginal areas.¹⁹⁸ According to a survey conducted by the UKM Center at the University of Indonesia, many MSMEs are still not receiving information on the development of digital-based micro-enterprises.¹⁹⁹

Continual efforts should be made to establish equality in digital literacy. Disparities in literacy levels can pose challenges in implementing ODR, leading to ineffective negotiations, mediation and arbitration. Certainly, such outcomes are not anticipated in an ODR implementation.

4.5. Cross-Border B2B transaction

Technological developments and the ease of digital access for the public have encouraged an increase in digital transactions, particularly e-commerce. For Indonesian businesses, this increase in transactions occurred not only within domestic transaction in nature, but also in cross-border one. The COVID-19 pandemic, which forced people to stay at home in 2020-2021, has aided in the rise in digital transactions.

MSMEs transactions in marketplace are believed to be very high in the context of e-commerce. These transactions also include B2C and B2B transactions. The impact of COVID-19 on trade digitalization has been significant. However, it is

¹⁹⁷ International Institute of Management Development, *IMD World Digital Competitiveness Ranking 2022*, IMD, Lausanne, 2022, p. 29. See also International Institute of Management Development, *IMD World Digital Competitiveness Ranking 2021*, IMD, Lausanne, 2021, p. 24.

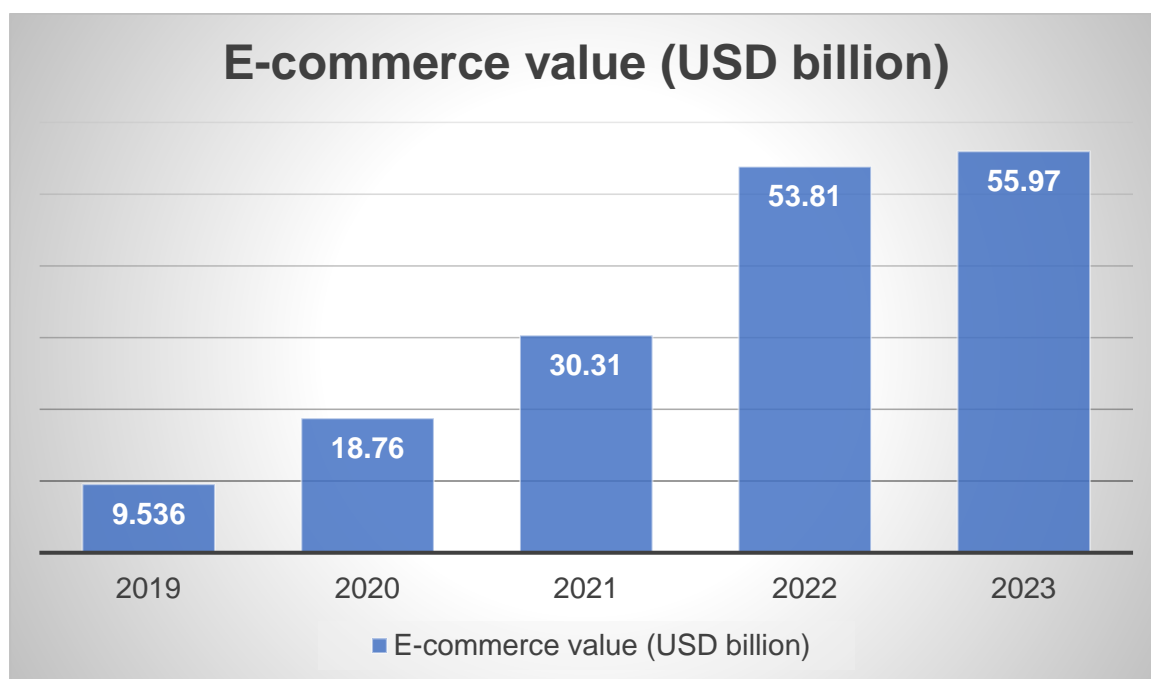
¹⁹⁸ Muhrad's opinion was conveyed by Riani Sanusi Putri in a public discussion held by INDEF on 10 November 2022. Riani Sanusi Putri, "UKM Center FEB UI Beberkan Hambatan UMKM dalam Mengadopsi Teknologi", *Tempo.co*, 11 November 2022 <https://bisnis.tempo.co/read/1655826/ukm-center-feb-ui-beberkan-hambatan-umkm-dalam-mengadopsi-teknologi> (12 February 2022).

¹⁹⁹ *Ibid.*

currently unclear which e-commerce transactions are B2C or B2B, which are performed by MSMEs and which are cross-border in nature.²⁰⁰

As stated in Chapter 1, Indonesia's total e-commerce transactions were worth USD55.97 billion as of January 2023.²⁰¹ Cross-border transactions are estimated to account for a portion of these transactions. This figure is more than USD2 billion higher than the same period last year (USD53.81 billion) and far exceeds the total transactions of USD107 million in 2019.²⁰² The improved infrastructure in Indonesia, particularly on the internet sector, contributes to the high volume and value of transactions. The figure below depicts the growth of e-commerce transactions in Indonesia from 2019 to 2023.

Figure 4.1. Indonesia E-Commerce Value (2019-2023)



Source: Simon Kemp (2019, 2020, 2021, 2022, 2023).

²⁰⁰ Based on in-depth interview with Mr. Rofi Udarojat (Indonesia E-commerce Association) on 1 February 2023.

²⁰¹ Simon Kemp (1), *loc.cit.*, p. 86.

²⁰² Simon Kemp (2), *loc.cit.*, p. 86. See also Simon Kemp (3), *loc.cit.*, p. 59. See also Simon Kemp (4), *Digital 2020: Indonesia*, Data Reportal, 18 February 2020, <https://datareportal.com/reports/digital-2020-indonesia> (26 February 2023), p. 68. See also Simon Kemp (5), *Digital 2021: Indonesia*, Data Reportal, 11 February 2021, <https://datareportal.com/reports/digital-2021-indonesia> (26 February 2023), p. 77.

In terms of traditional international trading, Indonesia's exports have grown in the last three years, particularly during the pandemic of COVID-19. Indonesia's export value reached USD268.1 billion in November 2022, an increase of USD58.9 billion over the same period in 2021 (USD 209.1 billion).²⁰³ Meanwhile, the export value reached USD146.7 billion in November 2020.²⁰⁴ This is the first year following the global spread of COVID-19. However, when compared to the same period in 2019 (before the COVID-19 spread), this value decreased by USD6.4 billion.²⁰⁵

This value is general and does not yet reflect the extent to which MSMEs contribute to Indonesia's exports. MSMEs exports, on the other hand, accounted only for 15% of total export value. This is according to the statement of the Minister of Cooperatives and Small-Medium Enterprises.²⁰⁶

The figure below portrays the value of export transactions from 2019 to 2022 (as of November every year).

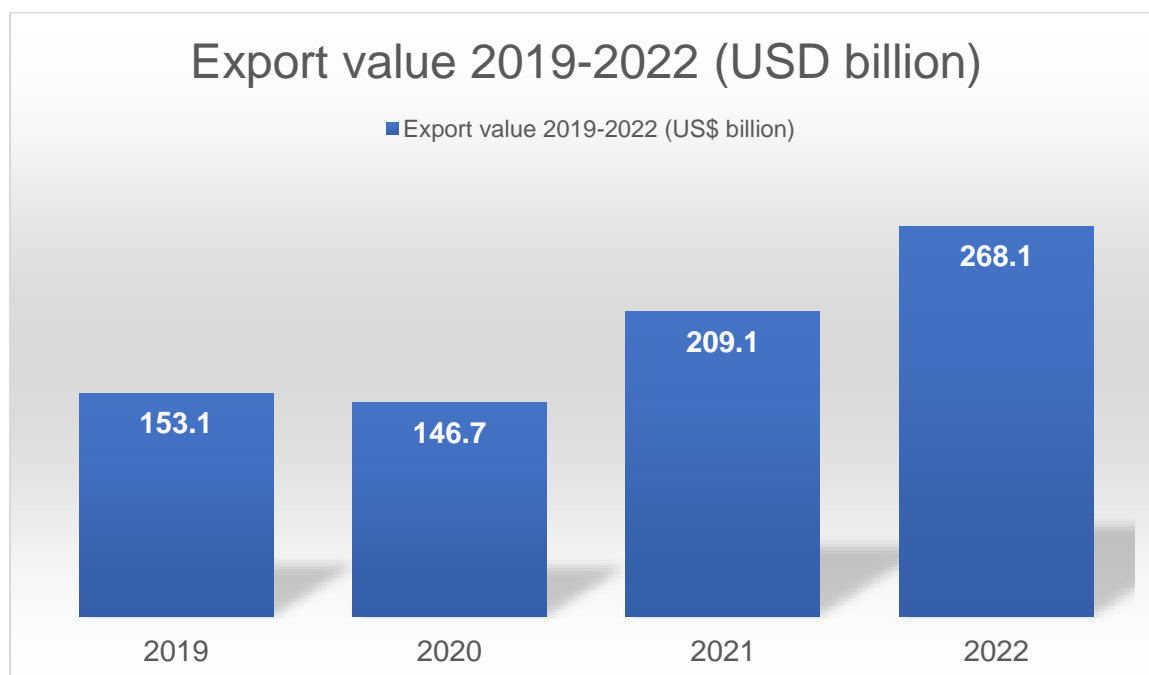
²⁰³ Badan Pusat Statistik, *Ekspor Menurut Kelompok Komoditi dan Negara*, Buletin Statistik Perdagangan Luar Negeri, November 2022, Badan Pusat Statistik, Jakarta, 2022, p. 4. The material is available at <https://www.bps.go.id/publication/2023/01/30/ffca9f1fec62b872cc0917f/foreign-trade-statistical-bulletin-exports-by-state-commodity-groups-november-2022.html>. However, only the PDF version of Indonesian language is available.

²⁰⁴ Badan Pusat Statistik, *Ekspor Menurut Kelompok Komoditi dan Negara, November 2020*, Buletin Statistik Perdagangan Luar Negeri, Badan Pusat Statistik, Jakarta, 2020, p. 4. The material is available at <https://www.bps.go.id/publication/2021/01/29/88ac33ecd4b51ddb9e68a9ee/-buletin-statistik-perdagangan-luar-negeri-ekspor-menurut-kelompok-komoditi-dan-negara-november-2020.html>. However, only the PDF version of Indonesian language is available.

²⁰⁵ *Ibid.*

²⁰⁶ Sinta Ambarwati and Mecca Yumna, *MSME Exports targeted to reach 17 percent by 2024: Minister*, 16 December 2022, Antaranews, <https://en.antaranews.com/news/265916/msme-exports-targeted-to-reach-17-percent-by-2024-minister> (20 February 2023).

Figure 4.2. Export Value (2019-2022)



Source: Statistics Indonesia.

4.6. Issues on MSMEs in terms of cross-border transactions

Every economy has issues for its MSMEs in terms of cross-border transactions. The same holds true for Indonesia. Such obstacles are as follows:

1. limited access to knowledge regarding the implementation of cross-border transactions, including the complexity of the cross-border export-import process;
2. due to this limited access, MSMEs are concerned about a dispute, which they try to avoid, that could have legal and financial ramifications for them;
3. the dominance of the export-import sector from large exporters and importers; and²⁰⁷

²⁰⁷ The statement comes from Ilyas Bhat, founder of Madeinindonesia (MIND), an online platform that facilitates cross-border B2B transactions. TechnoBusiness Media, Madeinindonesia.com: Kami Pionir Perdagangan B2B Lintas Batas, 15 March 2021, <https://technobusiness.id/talks/2021/03/15/madeinindonesia-com-kami-pionir-perdagangan-b2b-lintas-batas/> (14 February 2023).

4. gap or inequality of internet access, including in transactions using electronic means.²⁰⁸

This impediment has an impact on MSMEs' export-import value as well as on e-commerce transactions.

This limited access of knowledge in terms of cross-border transactions has been identified more than a decade ago by Bhasin and Venkataramy (2010) as well as Siringoringo et al. (2009). According to them, MSMEs have limited information and knowledge about international trade. They tend to conduct transaction locally rather than international or cross-border manner when they know that there is a complex bureaucracy for conducting international trading.²⁰⁹ Currently, the issue is still there. MSMEs still face the similar issues of access and complexities of bureaucracy.²¹⁰

In terms of dispute, it is avoided at all costs because it disrupts operations, employees and, most importantly, revenue. The options are to accept what is actually occurring or to continue resolving disputes with the consequences of their respective decisions. Using mechanisms in court and out of court is the same for them, unless there is a mechanism that is inexpensive, efficient and just.²¹¹ ODR may be the answered or solution.

However, ODR will not be properly implemented unless it is accompanied by a number of actions. This includes: (a) increasing digital literacy; (b) expanding the internet network and its speed to remote areas; (c) educating the public about ODR and providing information to help them resolve disputes; and (d) developing MSMEs capacity to access ODR.

²⁰⁸ Tech for Good Institute and Bain and Company, *The Platform Economy: Southeast Asia's Digital Growth Catalyst*, 2021 Report, https://techforgoodinstitute.org/wp-content/uploads/2021/10/UPDATED_TFGI-Bain_Full-Report.pdf (14 February 2023), p. 121.

²⁰⁹ Balbir B. Bhasin and Sivakumar Venkataramany, "Globalization of Entrepreneurship: Policy Considerations for SME Development" (2010) Vol. 9 (4) *International Business and Economics Research Journal*, p. 97. See also Hotniar Siringoringo, "Problems Faced By Small and Medium Business in Exporting Products" (2009) Vol. 10 (2) *Delhi Business Review*, p. 55.

²¹⁰ Techno Business Media, *loc.cit.*

²¹¹ Jean-Francois Roberge and Veronique Fraser, "Access to Commercial Justice: A Roadmap for Online Dispute Resolution (ODR) Design for Small and Medium-Sized Business (SMEs) Disputes" (2019) Vol. 35 (1) *Ohio State Journal on Dispute Resolution*, p. 11, 12, 13, 37 and p. 38.

4.7. Legal Aid and Assistance

Specifically on legal aid and assistance, Indonesia has passed regulation on legal facilitation and assistance in the Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021. However, it is limited only to Micro and Small Enterprises (MSEs). Medium enterprise is not included in the type of business that can obtain legal aid and assistance. The authority, both in central level and local level, are required to provide legal aid and assistance services to MSEs. Although the origin of this regulation is not specifically related to cross-border disputes, it may apply for that purpose.

Legal aid and assistance to MSEs are free of charge. This assistance includes consultation, mediation, legal document preparation for assistance outside of court and/or assistance in court.²¹² MSEs must, however, submit a written request to the authority, have a Business Identification Number and submit documents relating to the dispute in order to obtain legal aid and assistance services.²¹³

In the event that MSEs seek legal assistance from third parties, the economy may provide funding for that purpose. Individual lawyers, legal aid organizations and universities are among these third parties. The type of legal aid and assistance services that will be funded is the same as provided by the economy.²¹⁴ The following cases or disputes will be assisted for MSEs: (1) contracts; (2) credit; (3) financing; (4) employment; (5) intellectual property rights; and (6) taxation.²¹⁵

Aside from legal aid and assistance, the economy has additional obligations to MSEs. These obligations include: (1) identifying legal problems faced by MSEs; (2) disclosing information to MSEs about forms and methods of accessing legal aid and assistance services; (3) increasing legal literacy; (4) allocating funds for the legal aid

²¹² Article 48 of Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021.

²¹³ Article 49 of Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021.

²¹⁴ Article 50 of Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021.

²¹⁵ Article 8 of Ministerial Regulation to Implement Cooperatives and MSMEs Easiness, Empowerment and Protection 2021 (Ministerial Regulation of Cooperatives and SMEs No. 3/2021).

program's implementation; and (5) cooperating with related agencies, universities and/or legal professional organizations.²¹⁶

The existence of the Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021 provides convenience for them. Moreover, Indonesia still has an unpleasant record related to the access to justice and also the legal aid index. The economy still has low-level access to justice. According to a survey conducted by the Civil Society Consortium for the Index of Access to Justice in 2019, the overall index score in 2019 is 69.2 from the scale of 0-100.²¹⁷ The legal framework index score for this access is also very low, at 57.7. The dispute resolution mechanism index score is 66, where informal settlement takes precedence over formal litigation in court. Meanwhile, the legal aid score index is also similar at 61.2.²¹⁸ All are rated on the same scale of 0-100.

In terms of APEC's ODR services, this could be a significant support for Indonesia in order to increase the capacity of MSEs. However, the economy must continue to take a number of steps to ensure that the goal of legal aid and assistance for MSMEs is met. These actions, at the very least, include as follows:

1. disseminating current GR on MSMEs to relevant stakeholders such as MSMEs and their business associations, lawyers, legal aid institutions and universities;
2. organizing a workshop on access to legal aid and assistance;
3. inviting lawyers, legal aid institutions and universities to provide legal aid;
4. developing systems and infrastructure for the provision of facilitation and legal assistance to MSMEs; and
5. monitoring and evaluating implementation and developing input for regulation and system revision.

²¹⁶ Article 51 of Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021.

²¹⁷ Civil Society Consortium for the Index of Access to Justice, *Index of Access to Justice in Indonesia 2019*, (Jakarta: Civil Society Consortium for the Index of Access to Justice, 2019), p. 3. The e-book can be downloaded through this link <http://ijrs.or.id/wp-content/uploads/2020/04/A2J-2019-Book-English.pdf>. Civil Society Consortium for the Index of Access to Justice consists of Indonesia Judicial Research Society (IJRS), Indonesian Legal Roundtable (ILR) and Indonesia Legal Aid Foundation (YLBHI) together with the Ministry of National Development Planning/National Development Planning Agency (BAPPENAS RI), supported by International Development Law Organization (IDLO) and Embassy of the Kingdom of the Netherlands.

²¹⁸ *Ibid.*, p. 3-4.

4.8. Analysis on the MSMEs Framework and Condition in Indonesia

Despite the fact that Indonesia already has the MSMEs Law 2008, regulation containing legal aid and assistance for MSMEs were not put in place until 2021. The new current regulation enacted in 2021 is subsidiary regulation from the Jobs Creation Law. This law amends the MSMEs Law 2008. Nevertheless, the legal aid and assistance services only apply to MSEs. Medium enterprises are excluded from such aid and assistance services.

In order to support MSEs with legal aid and assistance, it is necessary to encourage the involvement of third parties such as lawyers, universities and legal aid institutions. In general, businesses avoid using legal proceedings as the solution to their problems, particularly if legal aid and assistance are unavailable. Access to justice is regarded as both costly and time-consuming. Arbitration is not widely used to settle disputes outside court for them. Even though the disputes are civil and commercial in nature, the most common way to be done is usually through criminal reporting to the police.

When dealing with cross-border disputes, this legal stuttering will become exaggerated. Even though they have a written contract, their business is generally based on trust. When legal issues arise, acquiring justice through local agencies alone can be stressful. When dealing with international disputes, they will be even more stressed. This does not include other factors that create their worries and stress in the form of language, geographical aspect and telecommunication access.

In the context of the APEC Collaborative Framework for ODR, whether such implementation can benefit MSMEs can only be proven once it is implemented. In terms of the legal and institutional frameworks as well as the nature of MSMEs and existing issues, Indonesian MSMEs still need to build their capacity in terms of legal and digital literates. The capacity building must be facilitated by the economy including in creating and developing the curriculum as well as providing qualified trainers for that purpose.

Nevertheless, cross-border transactions are sometimes essential for MSMEs in this globalization century and some of them conduct international business transactions. Certainly, MSMEs should be aware of the potential risks and challenges.

The APEC Collaborative Framework for ODR is passed to help to offer dispute resolution option for disputing parties.

5 - ANALYSIS OF THE POTENTIAL IMPLEMENTATION OF THE APEC COLLABORATIVE FRAMEWORK FOR ODR IN INDONESIA

This chapter discusses potential implementation of APEC Collaborative Framework for ODR in Indonesia settings. As mentioned in APEC Economic Committee's Report on Stocktake of APEC Online Dispute Resolution Technologies, the ultimate goal of APEC Collaborative Framework for ODR is to raise businesses awareness of platforms offering online negotiation, mediation and arbitration in the APEC region and give ideas, for APEC member economies, of how they ensure smooth online resolution B2B claims.²¹⁹ This chapter examines frameworks of Indonesia and other member economies discussed in previous chapters to determine whether there are favorable legal frameworks for the operation of the APEC ODR framework and to identify obstacles to their further development and application.

To evaluate the favorable legal framework, this chapter employs three elements of legal system, namely: legal structure, legal substance and legal culture as tools to analyzes Indonesia favorability in the operation of the APEC Collaborative Framework for ODR.²²⁰ Legal structure discusses the existence of institution where the legal substance operates within a particular jurisdiction. Legal substance discusses the existence of particular legal norms that regulates human behavior. Finally, legal culture discusses on how the people response to the law or act according to the law, based on their values, understanding and social situation.²²¹

In terms of legal structure, the APEC Collaborative Framework for ODR is an international legal instrument that provides guidance for the implementation of ODR. It is not a binding international agreement, such as a treaty or convention. Therefore, it does not need to be ratified or acceded through a Law or Presidential Regulation in Indonesia. Instead, it can simply be adopted and implemented as long as it does not conflict with existing Indonesian laws and regulations.

In order to strengthen the implementation of the APEC framework and to provide a legal basis for the enforcement of mediation agreement, Indonesia needs to

²¹⁹ APEC Economic Committee, *Stocktake of APEC Online Dispute Resolution Technologies*, April 2022.

²²⁰ See Lawrence M Friedman, *American Law: An Introduction*, New York, W.W. Norton, 1998.

²²¹ *Ibid.*

accede and ratify the Singapore Mediation Convention 2019. Currently, there is no law in Indonesia that specifically addresses the enforcement of mediation agreements. The Supreme Court has issued an internal circular on the matter. However, this lacks a definite and strong binding force. Therefore, accession to the Singapore Mediation Convention 2019 is a necessity although challenges in adopting this will be there.²²²

In a similar context and combined with legal substance, one of the main issues in the operation of ODR is that there is no legislation regulating ODR specifically in any member economies including economies that already declare opt-in.²²³ This is also true for Indonesia situation, as discussed previously, the existence of regulation on ODR are scattered across various regulations passed by multiple agencies.

Indonesia has regulations that recognize ODR, which are provided in E-Commerce Regulation 2019 as well as the Arbitration and ADR Law 1999. Article 72 (2) of this regulation sets that dispute resolution for e-commerce can utilize electronic dispute settlement (ODR) in accordance to applicable laws and regulations. Furthermore, the elucidation of the article explains that electronic dispute settlement (ODR) is based on parties' agreement in principles. These can take forms in electronic mediation supported by professional in the field of dispute resolution, such as lawyer and mediator through accredited online dispute settlement organization or through specific agencies within its jurisdiction.²²⁴

This legal arrangement is too broad and general. It does not specify operational regulations on what constitutes an accredited ODR providers, how it can be accredited and what the rules and standards to be applied in the resolution of online disputes are. Despite the fact that there is currently no ODR regulation, Indonesia has passed

²²² The opinion was delivered by Dr. Aria Suyudi of the Supreme Court of Indonesia in session 1 of the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade" on 14-15 June 2023 in Bali, Indonesia. Further, Ryan C. Thomas of the Department of Justice of the Republic of Philippines – in session 3- mentions that challenges in adopting international legal framework, specifically the binding ones, include navigating through complex legislative processes, adapting to political transitions and aligning policy and legislative priorities. See Ryan C. Thomas, Use of International Legal Instruments in Domestic Legislation Relative to Dispute Resolution, presented in the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade," on 14-15 June 2023 in Bali, Indonesia, p. 6.

²²³ APEC Economic Committee, *op cit*.

²²⁴ Elucidation of Article 72 paragraph 2 of E-Commerce Regulation 2019

several laws that are required for ODR to function within the framework of the APEC Collaborative Framework.

In addition to previous mentioned law and regulation, Indonesia has also passed the Electronic Information and Transaction Law 2008. As previously stated in the Chapter 2, the law establishes the legal framework for governing all aspects of information and electronic transactions. The law does not specifically address ODR, but it provides parties to have the freedom to choose whether to settle their disputes in court, through arbitration or through other mechanisms that may arise as a result of cross-border transactions. Surprisingly, the community can help to establish institutions that offer consultation and mediation services.

The Model Procedural Rules of the APEC Collaborative Framework for ODR defines “communication” as any communication (including a statement, declaration, demand, notice, response, submission, notification or request) made by means of information generated, sent, received or stored by electronic, magnetic, optical or similar means. In short, it can be inferred that any types of communication should be recognized as a valid form of communication. Thus, it is admissible as evidence during the dispute resolution process. This is based on Electronic Information and Transaction Law 2008. Thus, the “Communication” stipulated in the APEC ODR Procedural Rules is considered similar to definition of electronic information stipulated in such Law.²²⁵

One of the crucial elements in electronic transaction/digital is the security, reliability and integrity of information stored in the electronic media. This also includes confidentiality of the data submitted to ODR provider. In Paragraph 5 of the APEC Collaborative Framework for ODR, it emphasizes the responsibility of ODR provider to treat all information submitted by businesses as confidential and maintain secure websites and databases for storing information related to the resolution claim. In this context, Indonesia has passed Personal Data Protection Law 2022. The data protection law gives comprehensive and detail arrangements on how electronic transaction providers, including ODR providers, to treat and process any data stored and process in their system including the confidentiality aspect.

²²⁵ See Article 5 of Electronic Information and Transaction Law 2008.

Further, the acceptance of foreign ODR jurisdiction is also necessary. This aspect is an important element in the APEC Collaborative Framework for ODR. The framework, as indicated by its title, is designed to resolve cross-borders B2B disputes. Traditionally, Indonesia laws limit the application of foreign jurisdiction within Indonesia territory. Nonetheless, Article 73 of E-Commerce Regulation 2019 allows for parties involve in e-commerce to choose its dispute settlement forum. Thus, it allows application of foreign ODR into Indonesia legal settings.

In terms of legal culture, a short evaluation based on interviews with various traditional dispute practitioners based on their experience using ODR provided by traditional dispute resolution agencies during COVID-19 Pandemic shows the deficiency in managing cases online by the traditional dispute resolution agencies, notably, the cases management system in handling electronic files. Moreover, the practitioners also highlight on the deficiency in ODR skills and reliability of internet network issues, notably, in building digital empathy²²⁶ during the mediation and negotiation phases that resulted in unsatisfactory communications among parties.²²⁷

As previously stated in Chapter 2, when COVID-19 broke out, massive online hearings were implemented. ODR was implemented, although no legislation revision has been done. The hearing is carried out using a video-conferencing application. During online hearings, the legal evidence was provided through its delivery to the arbitration agency office and/or just showing it through the video camera.

However, this utilization declined when daily cases of COVID-19 decreased.²²⁸ The parties and, in fact, the neutral parties would like to have a face-to-face meeting and hearing. Face-to-face mechanism is considered a better option that can resolve disputes. Nevertheless, the disputes, in average, are local in nature. They are not cross-border ones. The preference would be different if the disputes are cross-border in nature and geographically distant.²²⁹

²²⁶ Digital empathy is the application of the core principles of empathy, compassion, cognition and emotion into technical designs to enhance user experience. See Yonthy Friesem in S. Tettegah and D. Espelage (Eds.), *Emotions, technology and behaviors*, Elsevier, 2015.

²²⁷ Interviewed with Mr. Toni Budidjaja on 20 January 2023.

²²⁸ Based on in-depth interview with the Chairman of PAMI, Mr. Indra Safitri on 18 January 2023.

²²⁹ *Ibid.*

Indonesian MSMEs have the culture in avoiding future legal problem. If this occurs, negotiation and deliberation should be pursued rather than legal action. Their business is not large, but the legal issue they potentially face can have a significant impact on the company, employees, personal and family. When dealing with cross-border disputes, their anxiety grows even stronger. They will choose whether to continue the dispute or not, even if they are harmed by default or do not receive payment. Language, culture, geography and legal literacy are some of the factors.

Dispute resolution is not only a significant concern for Indonesian MSMEs but also for businesses in other APEC member economies engaged in e-commerce and international trade.²³⁰ These concerns encompass issues related to costs and time involved. ODR is intended to offer time and cost savings in comparison to conventional methods. Although the exact magnitude of these savings remains uncertain, it becomes imperative to address some of the risks and costs through ODR, as it has the potential to play a crucial role in enhancing MSMEs participation in trade by minimizing barriers and costs.²³¹

Legal aid and assistance are essential for MSMEs. The economy has indeed arranged legal aid and assistance services for this business. The involvement of the authorities in central and local levels is mandatory. Lawyers, legal aid agencies and universities are encouraged to participate too. However, these legal aid and assistance services are limited only to MSEs. Medium-scale businesses is not included. Progress is yet to be seen because the regulation is still new. Surely, Indonesia's participation in the APEC collaborative framework can serve as a key test for the implementation of regulations supporting legal aid and assistance for MSEs.

Taking into account the current Indonesian legal and institutional frameworks, other member economies legal frameworks, the character of Indonesian MSMEs and the potential benefits and challenges of implementing APEC ODR services, implementing ODR in Indonesia for cross-border B2B transactions is possible. The

²³⁰ APEC Business Advisory Council (ABAC) & University of Southern California, *Driving Economic Growth Through Cross-Border E-Commerce: Empowering MSMEs and Eliminating Barriers*, Research Report, November 2015, p. 69

²³¹ Alan Sydor, *ODR as a facilitator of MSMEs Participation in International Trade*, presented in the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade," on 14-15 June 2023 in Bali, Indonesia, p. 7.

lack of ODR regulation is not primary impediment, even though this should be regulated in the future.

Arbitration and mediation agencies are allowed to create ODR mechanisms even though there are no specific rules for ODR. Because there is no such specific regulation, there is autonomy and flexibility for arbitration/ADR agencies or ODR providers to develop procedural and fees rules. Nonetheless, the rules must refer to applicable Indonesian laws and regulations and other international instruments on dispute resolution.

Considering the information provided earlier, there is a need for implementation preparations regarding the adoption of the APEC Collaborative Framework for ODR in Indonesia. These recommendations will be elaborated upon in the subsequent chapter.

6 - THE WAY FORWARD AND BROADER LESSONS

This chapter discusses recommendations based on the results of the previous chapters description and analysis. In addition to recommendations, a toolkit has been developed as a proposal for the implementation of the APEC Collaborative Framework for ODR in Indonesia in the next chapter. There are five action recommendations proposed based on the results of this study. These recommendations include: (1) recommendations related to the policy on ODR; (2) recommendations related to MSMEs policies; (3) recommendations related on the implementation of confidentiality and protection of personal data; (4) recommendations related to infrastructure; and (5) recommendations related to human resource in ODR.

Indonesia must consider aspects of private international law relevant to ODR when revising laws and regulations to accommodate ODR. Indonesia has currently ratified the New York Convention 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, which is already regulated in Arbitration and ADR Law 1999, and is currently discussing the Private International Law Bill. In the future, this economy should consider adopting the UNCITRAL Model Law on International Commercial Arbitration 2006 and should also consider entering into a bilateral agreement for the enforcement of arbitration awards in accordance with the APEC ODR framework.

6.1. Recommendations for Indonesia to Implement APEC ODR services

6.1.1 Recommendations related to ODR Policies

The recommendations that are put forward include long-term and short-term ones. The long-term recommendation is mentioned first because this should be initiated by Indonesia. Meanwhile, a short-term one is urgently needed. It aims to facilitate implementation as soon as possible with the current legal and institutional frameworks.

The long-term recommendation for ODR policy in Indonesia is the revision of the Arbitration and ADR Law 1999 to accommodate the need for dispute resolution through electronic means, including in terms of APEC ODR services. It is important to incorporate ODR arrangement into these revisions. On this basis, the regulatory components that must be put in are as follows:

1. Definition. This is to explain certain terms that must be further defined, at least including:
 - a. ODR, which follows the breadth of ODR developments;
 - b. businesses;
 - c. MSMEs;
 - d. neutral party;
 - e. ODR Provider;
 - f. certification and standard
 - g. ethics; and
 - h. accreditation.
2. Principles of ODR, which at least consists of accessibility, accountability, competence, confidentiality, empowerment, equality, fairness, honesty, impartiality, informed participants, innovation, integration, legal obligation, neutrality, protection from harm, security and transparency;²³²
3. ODR spectrum. This refers to the type of dispute resolution that will be utilized. This arrangement is meant to supplement existing mechanisms such as negotiation, mediation, conciliation, expert opinion and arbitration. An arrangement that allows for the sequential continuation of dispute resolution from negotiation, mediation to arbitration is needed.
4. ODR procedures. This provision relates to procedures for submitting claims and managing disputes starting from registration, sending disputed claims to the respondent by the ODR provider, determining and assigning neutral parties, hearings (including for evidentiary) and awards as well as the enforcement of awards. In this provision, the arbitration and ADR agencies as well as ODR providers should develop its own internal rules for the technical implementation of ODR. In addition, it is also possible for them to adopt special arrangements that adopt the determination of other ODR procedures for the agency/provider, for example, the APEC Collaborative Framework for ODR.

²³² Inspired from Leah Wing's work. See Leah Wing, "Ethical Principles for Online Dispute Resolution: A GPS for the Field" (2016) Volume 3 *International Journal on Online Dispute Resolution*, p. 25-27.

5. Neutral party. This includes at a minimum the requirements for becoming a neutral party, the form of dispute resolution that can be resolved, certification and code of conduct.
6. Arbitration and ADR agencies/ODR provider. The minimum arrangement for this includes the legal form of the agency/provider, duties and responsibilities, independence, license and permit, technical requirements, independence, commitment to adhere to ODR principles, ethics and human resources. This includes the obligation to create and develop internal rules and code of conduct for its staff to implement ODR principles in a responsible manner. Licensing and/or permits for Arbitration and ADR agencies/ODR provider should be limited to domestic agencies/providers.
7. ODR connectivity with ADR and courts. Connectivity to arbitration and ADR is needed when a dispute cannot be resolved through ODR, while ODR connectivity with the court is related to the enforcement of ODR awards, both from local and foreign agency/provider.
8. Certification, standard and accreditation. This includes at least certification obligation for neutral party as well as standard compliance and accreditation obligation for ADR agency/ODR provider; certification and accreditation mechanisms; and the authority for certification, standard inspection and accreditation.

Furthermore, due to the issue of mediation implementation award, several measures are needed. Indonesia should accede the Singapore Mediation Convention 2019. In addition, the Supreme Court should also amend the Court-annexed Mediation Regulation 2016 and Court-annexed Online Mediation Regulation 2022.

The short-term recommendation for implementing ODR in Indonesia, particularly with regard to APEC ODR services is to encourage arbitration and ADR agencies to optimize their independence and autonomy to make internal rules for ODR development. In addition, legal start-up company is encouraged to provide services in ODR and develop internal rules for ODR procedures. The rule should be created specifically to accommodate the implementation of the APEC Collaborative Framework for ODR. The provision elements can be adopted from the APEC framework, which at least includes:

1. definition;

2. the scope of the arrangement;
3. communication;
4. ODR procedures and stages;
5. awards;
6. neutral party;
7. implementation of ODR;
8. language of proceedings;
9. representation;
10. personal data protection;
11. fees;
12. ODR model clauses for Contracts; and
13. monitoring and evaluation.

Arbitration and ADR agencies/ODR providers can add arrangements that can be adapted to the needs and context of the institution.

Another possible short-term recommendation is the formulation of principles, ethics and standards for ODR. These could be done by arbitration and ADR agency as well as ODR providers. It would be better if the agency and the ODR provider discussed together to formulate these documents. The consensus between them, although not legally binding, would serve as a guide for ODR providers.

6.1.2. Recommendation related to MSMEs policies

As mentioned in the previous chapter, there are legal and institutional frameworks in place to assist MSMEs in participating in cross-border transactions, including the possibility of legal aid and assistance services. However, in terms of dispute resolution and the use of ODR, the following regulatory recommendations must be issued for the interests of MSMEs:

1. Regulatory elements that can be issued by economy include:
 - a. Raising awareness about the use of ODR;
 - b. To include medium-scale businesses into the list of eligible businesses for legal aid and assistance services. Not only MSEs can benefit from the facilities, but medium-scale businesses should also have access to the services. Revision of Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation 2021 is necessity;

- c. Formulation of provision of legal aid and assistance related information. This information must be presented in any types of information platform (website, video, social media and so forth), be available at all times and be simple to access;
 - d. Establishment of an integrated legal aid information system involving ADR/ODR, courts and executive authority. This is important to see the history of MSMEs in disputes and legal aid and assistance services. This system can prevent disputing parties from doing forum shopping;
 - e. MSMEs capacity building in cross-border transactions, B2B and dispute resolution as well as their opportunities and challenges. In order to carry out this capacity building, the authority, as well as third parties from the community and universities, must work together collaboratively. The role of the profession and society in this activity is critical; and
 - f. Monitoring and evaluation. The authority, professionals, academics and the community must all collaborate to create performance indicators for policy implementation and outcomes. This will be used as evaluation material for future policy development.
2. Legal arrangement that can be issued by arbitration and ADR agencies or ODR provider:
- a. Formulation of awareness regarding dispute resolution provision. This provision is necessary to encourage the continuous provision of information through the information platform owned by arbitration and ADR agencies as well as ODR provider;
 - b. Capacity building in dispute resolution. This is necessary as basis for upgrading the capacity of staff and neutrals;
 - c. Providing information on dispute resolution. The similar methods as previously mentioned -in regulatory elements that can be issued by authority- may apply to this. However, it should be provided with the different substance of information; and
 - d. ODR services for dispute resolution. This covers rules and procedures in implementing ODR.

6.1.3. Recommendations related to the implementation of confidentiality and personal data protection

Taking into account the principles mentioned in the Personal Data Protection Law 2022 and the responsibilities of arbitration and ADR agencies as well as ODR provider in controlling personal data, it is necessary to establish and develop internal rules and/or protocols that provide protection and guarantee on confidentiality.

These rules and/or protocols can be developed that include at least the following components:

- a. the technical process of data management from data acquisition to the deletion process;
- b. confidentiality of data related to the parties and ODR. It is necessary to regulate which data are confidential and which data may be disclosed to the public;
- c. hearing process. This is to ensure the confidentiality and readiness of the parties and neutral parties in the ODR hearing;
- d. location of storage of personal data, for example cloud computing within the economy or abroad. This arrangement is important to ensure this data protection guarantee scheme for cloud computing service providers as well as its risk mitigation;
- e. persons in charge of managing personal data. It is needed to regulate the number of people to fill the position, their qualifications and their capacity building;
- f. code of conduct for personal data management, which applies to all staff of agencies/providers and neutral parties; and
- g. internal sanctions for negligence and intentional violations of rules and/or protocols.

6.1.4. Recommendation related to Infrastructure

ODR will always be related to technology infrastructure. Video-conferencing applications are the most commonly used form of infrastructure. However, ODR will also be related to data and evidences. Therefore, it is important for arbitration and ADR agencies or ODR providers to create and develop a system that allows for

secure, fast, fair and affordable dispute resolution. Moreover, the context of the dispute to be resolved is cross-border in nature for the justice needs of MSMEs.

Therefore, recommendations that can be made, although this list is not complete, are as follows:

1. development of technology application planned and designed by arbitration and ADR agencies/ODR provider in implementing the APEC Collaborative Framework for ODR mechanism;
2. development of ODR technology system and application, beginning with the most basic, inexpensive and widely used, such as the use of video-conferencing application with their features for virtual hearings;
3. continuous development of ODR technology system and application, such as the development of dispute administration system governance centralized on arbitration and ADR agencies/ODR provider starting from filing to awards;
4. development of more advanced technology system and design in the form of the use and utilization of AI, blockchain and algorithm in supporting ODR system. This progress is required for medium-term and long-term periods.
5. preparation and development of technical protocols and guidelines for the use of the ODR system applicable to arbitration and ADR agencies/ODR provider, neutral parties and disputing parties. When implemented, these protocols and guidelines must be as complete and detailed as possible in mitigating issues, risks, obstacles and problems that can disrupt and interrupt ODR implementation in terms of security and convenience. This protocol and guidelines can regulate the following: (a) the type of software that can be used and its version, including application system, audio, video, multi-language services, sign languages and so on; (b) the type of hardware that can access; (c) the standard place for each user in organizing online meetings (venue standard); (d) network requirements and network tests in accessing online sessions; and (e) personal data security and protection.

Still in the context of infrastructure, another important thing that needs to be followed up is the development and improvement of internet networks, particularly in remote and/or border areas where MSMEs can interact with MSMEs from neighboring economies and potentially encounter disputes. The APEC Collaborative Framework

for ODR implementation should also be able to address issues and problems that exist in remote areas and borders, allowing for the inclusion of all.

6.1.5. Recommendation related to human resources in ODR

Human resources are an important factor in operationalizing ODR. Their role is being the user. Even though ODR is starting to develop towards automation, human intervention will always be there. Human resources as the user can expect ongoing and periodic outreach, dissemination of information and knowledge, education and training in the development of this APEC collaborative framework. Through the previously mentioned activities, all users must have the same technological skills. This is important to have every person understand, complement and support the implementation of electronic dispute resolution, including issues and problems that may arise from the activities carried out.

The follow-up that can be done is to analyze and determine the number of human resources needed in supporting APEC ODR services. The number of human resources can depend on the technology and what functions are to be carried out. The agencies/providers must also anticipate increases and decreases in the number of disputes that affect the number and quality of human resources to be recruited and developed. Human resources needed may consist of human resources in the field of information technology, dispute services, language services, neutrals and others related to ODR.

For arbitration and ADR agencies/ODR providers, the role of human resources is needed at least to support the followings specifically: (a) ODR creation, development and maintenance; (b) registration, data collection and supervision of neutral parties and ODR personnel; (c) preparation of ODR mechanism and procedural rules; (d) development of ODR security protocols; (e) complaint or dispute administration system; and (f) monitoring and evaluation of ODR implementation.

Each function corresponds to a type of position. Each position must have a lead or coordinator and supporting staff. The amount, of course, is up to the ODR provider according to the needs. Given the complexity of ODR creation, development and maintenance, there are at least three functions that must be established which include: (1) ODR information technology function which includes the task of creating, developing and maintaining ODR; (2) ODR regulation and implementation function

which includes the task of compiling ODR mechanism and procedural rules, developing security protocols, protecting personal data and administering complaints or dispute administration systems; and (3) data collection and supervision function, which includes registration, data collection and supervision of neutral parties and ODR provider personnel.

For users who are disputing parties, specifically MSMEs, the first thing that needs to be conducted is continuous and sustainable outreach and awareness regarding the potential and challenges of electronic dispute resolution. Further, the next thing to conduct is to prepare the implementation of services and provide legal aid and assistance services (consultation, mediation and/or preparation of legal documents) including capacity building for MSMEs to have them utilize ODR. This capacity building can include upgrading the knowledge of ODR processes and access, languages, negotiations with opposing parties and so on.

6.2. Strategies to Implement Recommendations

To implement the recommendations mentioned in this chapter, strategies for implementing the APEC collaborative framework for ODR are needed in stages. The table below outlines the strategies and actions that need to be implemented regarding this implementation. The details include components, stages, proposed activities, stakeholder(s) and output.

Table 6.1. Strategies to implement recommendations

No.	Components	Stages	Proposed Activities	Stakeholder(s)	Output
1.	Promoting the necessity of the ODR Framework.	Encouraging arbitration and ADR agencies to establish ODR mechanism rules.	<ul style="list-style-type: none"> • Workshop on Model Procedural Rules; • Workshop on ODR development; • Consultancy and assistance 	Arbitration and ADR agencies/ODR providers and APEC.	ODR procedural rule based on current Indonesian laws and regulations as well as APEC Collaborative

No.	Components	Stages	Proposed Activities	Stakeholder(s)	Output
			for establishing ODR rules; <ul style="list-style-type: none"> • Rules-making process; • Implementation; • Monitoring and evaluation; • Revision, if necessary. 		Framework for ODR.
		Advocating the revision of Arbitration and ADR Law 1999	<ul style="list-style-type: none"> • Domestic dialogue of revision of Arbitration and ADR Law 1999; • Advocating the composing of official academic paper accompanied by the bill of revision of Arbitration and ADR Law 1999; • Rule-making process. 	Relevant authorities, arbitration and ADR agencies, MSMEs and public.	Revision of Arbitration and ADR Law 1999.
2.	Strengthening MSMEs	Raising awareness	<ul style="list-style-type: none"> • Continuous workshop on APEC Collaborative Framework for ODR and Model Procedural Law; 	The economy, APEC, arbitration and ADR agencies/ODR providers, MSMEs.	Online materials, information on website and social media, key performance indicators.

No.	Components	Stages	Proposed Activities	Stakeholder(s)	Output
			<ul style="list-style-type: none"> • Continuous workshop on legal aid and assistance services. • Continuous workshop on cross-border transactions, B2B and dispute resolution; • Performing monitoring and evaluation regularly. 		
		Information dissemination	<ul style="list-style-type: none"> • Provision of legal assistance-related information; • Establishment of an integrated legal aid information system involving ADR/ODR, courts and the authority; • Monitoring and evaluation. 	Relevant authorities, arbitration and ADR agencies/ ODR providers, Lawyer’s association, universities, MSMEs, the Supreme Court.	Information on website and social media, information and technology system to build integrated legal aid information system and performance indicators.
3.	Confidentiality and Protection	Raising awareness	<ul style="list-style-type: none"> • Regular workshop on personal data 	Relevant authorities, MSMEs,	Online materials, information on

No.	Components	Stages	Proposed Activities	Stakeholder(s)	Output
	of Personal Data		protection and confidentiality.	arbitration and ADR agencies/ ODR providers.	website and social media.
		Creating data protection protocol	<ul style="list-style-type: none"> • Consultancy and assistance in establishing protocol; • Protocol-making process; • Implementation; • Monitoring and evaluation. 	Arbitration and ADR agencies/ ODR providers, data protection experts.	Protocol for data protection.
4.	Infrastructure Improvement	Establishment and maintenance	<ul style="list-style-type: none"> • Workshop on infrastructure improvement such as planning and designing; • Developing initial ODR system and application; • Developing ODR governance on technology systems and applications; • Developing more advanced technology on ODR; 	Arbitration and ADR agencies/ ODR providers.	Framework design.

No.	Components	Stages	Proposed Activities	Stakeholder(s)	Output
		Supporting	<ul style="list-style-type: none"> • Preparation and development of detail and technical protocols and guidelines for the use of the ODR system applicable to ODR providers, neutral parties and disputing parties. 	Arbitration and ADR agencies/ ODR providers and others.	Protocol for the use of ODR.
5.	Enhancing Human Resources Capacity	Needs analysis	<ul style="list-style-type: none"> • Research on needs analysis • Establishment of personnel division based on functions needed. 	Arbitration and ADR agencies/ ODR providers.	Study/research report, organizational structure along with personnel and task division.
		Implement Capacity Building	<ul style="list-style-type: none"> • Thematic workshop; • Monitoring evaluation. 	Arbitration and ADR agencies/ ODR providers.	Online materials.
		Develop Performance Indicators	<ul style="list-style-type: none"> • Develop performance indicator for personnel and its output for services; • Implementation; • Monitoring and evaluation. 	Arbitration and ADR agencies/ ODR providers.	Performance checklist and appraisal.

No.	Components	Stages	Proposed Activities	Stakeholder(s)	Output
		Capacity Building for MSMEs	<ul style="list-style-type: none"> See Strengthening MSMEs row above. 	See Strengthening MSMEs row above.	See Strengthening MSMEs row above.

6.3. Lessons for Indonesia and Other APEC Member Economies

This study provides important lessons for Indonesia as well as other APEC member economies. At least, there are three lessons that can be considered for planning and developing future actions. These lessons are as follows:

1. the absence of specific regulation is not a stumbling block;
2. maintain positive momentum by developing and improving; and
3. develop future plan, design and arrangement.

6.3.1. The absence of specific regulation is not a stumbling block

Implementation of the APEC Collaborative Framework for ODR is unquestionably possible. The lack of a specific legal framework governing ODR is not an impediment to member economies implementing ODR, including in operationalizing the APEC Collaborative Framework for ODR. In fact, paragraph 2.2 of the APEC Collaborative Framework for ODR specifically states that “the ODR Framework is not intended to interfere with the operation by participating economies of their own arbitration and alternative dispute resolution systems.” This is also shown from the APEC member economies that have declared their opt-in for this APEC ODR service such as People's Republic of China; Hong Kong, China; Japan; Singapore; and United States.

These opt-in member economies optimize existing arbitration and ADR legal arrangements as well as other related regulations to cater for the use of ODR. They have already passed their arbitration law and also mediation law. These two laws are passed and promulgated separately. In addition to arbitration law and mediation law, some economies also passed laws and regulations to support ODR implementation such as Singapore Evidence Act and China’s Electronic Signature Law.

Interestingly, the arbitration law of each member economy has not yet regulated the use of electronic platforms to resolve disputes through arbitration. In terms of electronic means, the law only explicitly mentions that an arbitration agreement made via electronic communications is valid. However, online mediation is explicitly mentioned in these member economies' mediation law. People's Republic of China; Hong Kong, China; Japan; Singapore; and United States are member economies that have already regulated online mediation.

Furthermore, member economies such as Hong Kong, China and Singapore have adopted the UNCITRAL Model Law as part of their arbitration laws. The applicability of the UNCITRAL Model Law is contingent on the local arbitration framework. Provisions of the model law would apply if explicitly mentioned in these economies' arbitration law. The UNCITRAL Model Law also supports the conduct of arbitration proceedings by any means as long as disputing parties agree.

Turning to Indonesia, this economy also does not yet have specific ODR arrangements. However, there is one regulation that mentions the term ODR but it is limited and ultimately refers to the applicable laws and regulations. Arbitration and ADR Law 1999, the Information and Electronic Transaction Law 2008, the Electronic System and Transaction Implementing Regulation 2019 and the Personal Data Protection Law 2022 are among the applicable laws and regulations.

The similarity of legal arrangements between member economies that have declared opt-in and Indonesia is that online arbitration proceedings can be arranged by virtue of the freedom of the disputing parties to choose the dispute resolution procedure. In line with the autonomy enjoyed by arbitration and other ADR agencies, internal rule-making for online mediation and arbitration procedures is possible. On this basis, the APEC Collaborative Framework for ODR can be implemented in Indonesia and other APEC member economies with similar regulatory frameworks in place that have yet not declared to opt-in.

6.3.2. Maintain positive momentum by developing and improving

The COVID-19 Pandemic situation became a momentum that ODR was possible to implement in simple and common technologies or platform. The dispute resolution process can continue even with a simple synchronous design system, such as email and video conferencing applications. Email is used at the very least for filing

claims, correspondence and sending evidence, while video conferencing application is used for online hearing.

In Indonesia, BANI and PAMI experienced the implementation of electronic dispute resolution in Indonesia. As mentioned in Chapter 2, there has been a significant increase in the use of video-conference platforms in arbitration hearings. This is due to restrictions by the economy that limited the movement of people to minimize the spread of COVID-19. In the judiciary, the Indonesian Supreme Court instructed its lower courts to use the e-court application to receive case filings and to use the video-conferencing application to conduct hearings.

However, maintaining momentum is difficult. Because of the decrease in the spread of COVID-19, the economy has relaxed restrictions on people's movement. Indonesia lifted these restrictions at the end of 2022, allowing people to move and travel freely once more. This has an impact on the hearing's preference for face-to-face hearings over virtual ones. The reason for this is that face-to-face meetings are thought to result in faster and more equitable resolutions. Nonetheless, this situation particularly applies in local disputes.

The removal of restrictions on people's movement does not completely eliminate the use of online dispute resolution platforms. People now have the option of resolving their disputes through an online platform or a physical meeting. This is entirely up to the disputants and neutral parties. The ability of disputing parties to choose their own procedures and the autonomy of arbitration and ADR agencies remain important foundation for accommodating the potential for ODR development, particularly in Indonesia.

Arbitration and ADR agencies must continue to use electronic systems for dispute resolution, further develop internal rules on procedures, codes of ethics, technical protocols for hearings and improve technological developments to accommodate ODR. This is not only to keep up with the times, but also to consistently facilitate easier, more affordable and fair access to justice, particularly for MSMEs. On this basis, it is hoped that APEC member economies will focus more on the ultimate goal of ODR, namely access to justice for all, including MSMEs, in cross-border transactions.

6.3.3. Develop future plan, design and arrangement

The implementation of the APEC Collaborative Framework for ODR is inextricably linked to the issue of MSMEs' access to justice. This framework was established to address various barriers in dispute resolution for MSMEs, which are the economic backbone of each member economy, including Indonesia. MSMEs not only conduct business in their homeland, but have also expanded into the international market. Transactions are conducted not only through traditional trading forms, but also through online platforms.

To achieve the ultimate objective of facilitating access to justice for MSMEs, planning, design and regulation are definitely needed in the future. The current legal redress mechanism may be considered sufficient even though the ODR arrangement is not yet detailed and specific. However, the dispute's complexity will grow over time. Current arrangements may not necessarily be suitable and accommodating to future situation. Therefore, each member economy, including Indonesia, should meet internally to further discuss the planning, design and regulation of ODR.

As mentioned earlier in this chapter, there are five recommendations that can be put forward. These five recommendations need to be combined with the three components covering planning, design and legal arrangements. Recommendations become the substance of future ODR directions, while the three components serve as the pillars of the substance.

The recommendations in this study may be more appropriate for Indonesia's context but they may also provide useful guidance to other APEC member economies with similar regulatory framework which are in the process of developing ODR and/or considering to opt-in to the APEC Collaborative Framework for ODR.

Looking ahead, it is important to urge all APEC member economies to adopt the APEC Collaborative Framework for ODR. Moreover, it is of utmost importance to encourage MSMEs to embrace ODR as a preferred method of dispute resolution and consistently work towards promoting and strengthening capacity-building efforts for all stakeholders involved.²³³ Some possible ways to encourage the adoption of APEC Collaborative Framework for ODR for APEC member economies include: (1) an inter-jurisdictional plan at the APEC and economies level; (2) raising awareness of

²³³ Michelle Fung, *loc.cit.*, p. 17.

Alternative Dispute Resolution (ADR) compared to litigation; and (3) education on the proper utilization of ADR then ODR, and then on the promotion of the APEC Rules to the MSMEs.²³⁴ Some possible ways to encourage the adoption of APEC Collaborative Framework for ODR for APEC member economies include: (1) an inter-jurisdictional plan at the APEC and economies level; (2) raising awareness of Alternative Dispute Resolution (ADR) compared to litigation; and (3) education on the proper utilization of ADR then ODR, and then on the promotion of the APEC Rules to the MSMEs.²³⁵

²³⁴ Michelle Fung, *loc.cit.*, p. 17.

²³⁵ Pui Ki Emmanuelle Ta, *loc.cit.*, p. 9.

7 - TOOLKIT FOR THE IMPLEMENTATION

The possibility of implementing the APEC Collaborative Framework for ODR without specific regulations increases the likelihood of the framework being enforced in member economies laws. This framework, however, can only be implemented if it does not conflict with applicable laws and regulations. Given the soft law nature of this collaborative framework, attention to Indonesian laws and regulations that are more hard law in nature is required.

Based on a comparison of Arbitration and ADR Law 1999 against the APEC Collaborative Framework for ODR, in general, the two are procedurally similar. The difference between the two is more to the timeframe in dispute resolution. The Arbitration and ADR Law 1999 provides a longer settlement period than the APEC Collaborative Framework for ODR.

The existence of this difference in timeframe raises the question of whether this collaborative framework can be applied by Indonesian arbitration and ADR agencies. The answer to this issue appears in Article 34 paragraph (2) of the Arbitration and ADR Law 1999. This article states that the settlement of disputes through an arbitration agency is carried out according to the rules and procedures of the chosen agency, unless otherwise stipulated by the disputing parties. This article gives freedom to disputing parties to choose the rules and procedures to be used in resolving disputes between them without having to use the rules and procedures of the chosen arbitration agency. This indirectly opens the possibility of applying the APEC ODR procedure.

Therefore, it is possible for every Indonesian arbitration and ADR agency to adopt and implement the Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes. The agencies may adopt the framework with or without further modification. This is as long as it does not contravene Arbitration and ADR Law 1999 and the APEC Collaborative Framework for ODR.

This chapter describes the suggested dispute resolution procedural provisions for Indonesian arbitration and ADR agencies based on the APEC collaborative framework. The arbitration and ADR agencies may outline the arrangement, at least, as follows:

1. ODR clause for contracts or agreements;
2. Statement of independence of neutral parties; and

3. Procedural rules of ODR.

7.1. ODR clause for contracts or agreements

The clause requiring commercial contracts or agreements to use APEC ODR service as the dispute resolution forum is deliberately placed first. This clause serves as the foundation for determining the dispute resolution fora via the APEC ODR service for contracting parties. The placement of clauses in the internal rules of arbitration and ADR agencies, on the other hand, is at the discretion of the agency when the rule is drafted.

APEC Collaborative Framework for ODR suggests the Model ODR clause for contracts as follows:

“Any dispute, controversy or claim arising hereunder and within the scope of the APEC ODR Rules providing for an online dispute resolution process through negotiation, mediation and binding arbitration, shall be settled in accordance with the Model Procedural Rules for the APEC Collaborative Framework for ODR for Cross-Border B2B Disputes (“the Procedural Rules”) presently in force.

Note. Parties should consider adding:

(a) The ODR provider shall be ... [Name of Institution]

(b) The number of neutrals shall be one.

(c) The place of arbitration shall be ... [Town and Economy]

(d) The language used in the arbitration proceeding shall be ...”

Arbitration and ADR agencies may adopt this model clause with or without modification at their discretion. GZAC, CIETAC, and eBRAM adopt the model clause with some modifications. The examples of model clause provided from these three ODR providers, as derived from their websites, are as follows.

a. GZAC

“Any dispute, controversy or claim arising hereunder and within the scope of the APEC ODR Rules providing for an online dispute resolution process through negotiation, mediation and binding arbitration, shall be settled in accordance with

the Model Procedural Rules for the APEC Collaborative Framework for ODR for Cross-Border B2B Disputes presently in force. The ODR provider is Guangzhou Arbitration Commission. The Guidance of Guangzhou Arbitration Commission on Application of Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes shall also apply to dispute resolution.

Parties should consider adding:

- (a) The number of neutrals shall be one;*
- (b) The place of arbitration shall be ...;*
- (c) The language used in the arbitration proceeding shall be ...”*

b. CIETAC

“Any dispute, controversy, or claim arising hereunder and within the scope of the Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes (“the Procedural Rules”) providing for an online resolution process through negotiation, mediation and binding arbitration, shall be submitted to CIETAC for resolution via its APEC ODR service platform in accordance with the Procedural Rules presently in force.

Parties hereby confirm their electronic addresses designated for the purpose of the ODR proceedings as follows:

Party A: _____

Party B: _____

Note: Parties should consider adding:

- (a) The number of neutrals shall be one.*
- (b) The place/seat of arbitration shall be _____*
- (c) The language used in the ODR proceedings shall be _____
[Chinese/English].*

c. eBRAM

“Any dispute, controversy or claim arising hereunder (the “Dispute”) and within the scope of the APEC Collaborative Framework for Online Dispute Resolution of

Cross-Border Business-to-Business Disputes, shall be settled in accordance with the APEC Rules of eBRAM in force when the Notice of Claim is submitted to eBRAM (the “eBRAM APEC Rules”).

Note: The parties should consider adding:

- a. The number of Neutrals shall be one.*
- b. The place of arbitration shall be Hong Kong SAR.*
- c. The applicable law of this arbitration agreement and of the procedure for the proceedings by ODR under the eBRAM APEC Rules shall be the laws of the Hong Kong SAR.*
- d. The language used in the ODR under the eBRAM APEC Rules shall be [English/such language as the parties agree].”*

7.2. Statement of independence

Statement of independence is a declaration of neutrality by a mediator or arbitrator as a neutral assisting the dispute resolution process. A neutral party must be impartial and declare any conflict of interest at any given time during the ODR proceedings. APEC has provided this statement model for arbitration and ADR agencies.

This can be adopted by the agencies with or without modification. This statement is adopted by CIETAC and GZAC without any modification. Meanwhile, eBRAM made a very minor change to this statement model. The Model Statement of independence provided in the APEC Collaborative Framework is as follows:

“I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and any other neutrals, any such circumstances that may subsequently come to my attention during this ODR proceeding.”

7.3. Procedural rules of ODR

The Model Procedural Rules govern the conduct of the ODR proceedings under the APEC Collaborative Framework for ODR. Similar to model clauses for contracts

and statements of independence of neutral parties, arbitration and ADR agencies may apply this framework [with or without modification]. If there is one, the agency may not modify it in a major way that is different from the original model procedural rule. This modification is only for the purpose of adjusting the specific characteristic of the agency's dispute resolution procedure arrangements.

Before adopting the Model Procedural Rules, the agency should recognize and identify its regulatory framework. The purpose is to have a broad view of the dispute resolution mechanism through ODR and then to continue to detail the procedural arrangement in its organization. In this connection, it should be emphasized that the APEC Collaborative Framework for ODR and its Model Procedural Rules are not intended to interfere with economies' domestic arbitration or ADR systems. The general arrangement elements to be regulated, as adopted from the Model Procedural Rules of the APEC Collaborative Framework for ODR, are as follows:

1. introductory rules;
2. commencement of ODR proceedings;
3. stages of ODR proceedings;
4. appointment, powers and function of the neutral parties; and
5. general provisions.

7.3.1. Introductory rules

Introductory rules shall consist of the scope of application, definition or interpretation of important terms and the way of communication. The details of arrangement must include as follows:

- a. the scope of application. The sub-element of this shall consist of the arrangement as follows:
 - the scope of application is to resolve cross-border B2B disputes from commercial transaction regardless of the form of traditional trading or e-commerce;
 - the disputing parties agree to be bound by the Model Procedural Rules of the APEC Collaborative Framework for ODR based on agreement or contract clauses they made;
 - Disputes arising from consumer transactions cannot be resolved through this rule; and

- ODR provider may define B2B transaction to distinguish from B2C transaction.
- b. definitions or interpretations. The following are the arrangements that must be considered:
- define or interpret important terms and/or terms that are frequently mentioned when drafting the procedural rules of this framework;
 - definition or interpretation must include, at the very least, terms mentioned in the Model Procedural Rules of the APEC Collaborative Framework for ODR; and
 - ODR provider may add other terms according to provider's needs.
- c. communication. In terms of communication, ODR provider shall create and develop ODR platform for facilitating the communication. Meanwhile, the proposed communication arrangements are as follows:
- all communication must be carried out through ODR platform;
 - each communication must be accompanied by proof of receipt from the ODR platform;
 - this proof of receipt must be immediately communicated to the party sending via the ODR platform; and
 - communication facilities via ODR platform shall be provided from the commencement of ODR proceedings to stages of ODR proceeding, including the appointment, resignation and replacement of the neutral.

7.3.2. Commencement of ODR proceedings

This is the arrangement where ODR proceedings begin. The necessary arrangement elements are as follows:

- a. stipulating the time when the ODR proceedings will begin. The proceeding starts when the ODR provider informs the parties of the commencement of ODR proceedings;
- b. this notification of stipulation of the commencement of ODR proceedings must be preceded by a claim filed by a party as a claimant through the ODR platform and the ODR provider forwards the claim to another party as a respondent;

- c. the claim filed by the claimant must contain at least the following information:
- name and electronic address of the claimant and the representative (if any) authorized to represent the claimant in the ODR proceedings;
 - name and electronic address of the respondent and the representative (if any) known to the claimant;
 - the basis used to submit claim;
 - proposed solutions in resolving disputes;
 - language preference to be used in proceedings; and
 - signature or other means that identifies and authenticates the claimant and/or the representative;
- d. communication from the respondent to the ODR provider in response to the notice or claim filed within seven (7) calendar days of being notified of the availability of the notice on the ODR platform;
- e. the response should be accompanied by all documents and other evidence related to or containing references to them;
- f. the response shall include:
- the name and designated electronic address of the respondent and the respondent's representative (if any) authorized to act in the ODR proceedings;
 - a response to the grounds on which the claim is made;
 - any solutions proposed to resolve the dispute;
 - the signature or other means that identifies and authenticates the respondent's and/or the respondent's representative; and
 - notice of any counterclaim, including the grounds for the counterclaim;
- g. permission for the respondent to submit any other relevant information, including information in support of its response and also information in relation to the pursuit of other legal remedies.

7.3.3. Stages of ODR Proceedings

Stages of ODR Proceedings based on the Model Procedural Rules of APEC Collaborative Framework for ODR consist of:

- a. negotiation stage;
- b. mediation stage;
- c. arbitration stage;
- d. correction of award; and
- e. settlement.

a. Negotiation stage

The negotiation stages can be arranged by the ODR provider at least as follows:

- all negotiations are conducted through the ODR platform;
- the ODR provider, in this stage, acts as a communication intermediary;
- the ODR provider, at its discretion, may provide various communication forms to support the negotiation stage such as audio teleconference, video conference and chat features. There should be detail and technical protocol to use and secure the platform in conducting negotiation stage;
- the determination of the commencement of negotiations depends on the presence or absence of counterclaims from the respondent;
- in the event that the response does not include a counterclaim, the negotiation stage starts from the time the response is communicated by the respondent to the ODR provider and notified to the applicant;
- in the event that the response from the respondent includes a counterclaim, the negotiation stage starts from the time the reply to the respondent is submitted by the claimant;
- the duration of the negotiation process is ten (10) calendar days;
- if the disputing parties fail to reach an agreement within the specified time of ten (10) calendar days, the negotiation stage automatically moves into the mediation stage; and
- there should be exception provisions in the event that the disputing parties feel the need to agree on an extension of the negotiation process for one round with an additional period of a maximum of ten (10) calendar days.

b. Mediation stage

The following arrangements can be made in the mediation stages to resolve disputes using ODR:

- immediately after the mediation stage begins, the ODR provider must appoint a neutral party to facilitate the mediation process and to also notify the period of time for the mediation process to disputing parties;
- a neutral party must be an independent person and free from the interests of the parties to the dispute;
- a neutral party has the duty and responsibility as a mediator who help to resolve dispute among disputing parties;
- one disputing party or both disputing parties may object to the appointment of a neutral party as a mediator. These should be addressed by the ODR provider as soon as possible by appointing another neutral as replacement;
- the ODR provider may provide various communication forms to support the mediation stage such as audio teleconference, video conference and chat features. There should be detail and technical protocol to use and secure the platform in conducting mediation stage;
- the mediation period is ten (10) calendar days; and
- If no agreement is reached within ten (10) calendar days of the appointment of a neutral party or of the substitute of a neutral party, the ODR will proceed to the arbitration stage.

c. Arbitration stage

The following provisions must be regulated by the ODR provider during the arbitration stages:

- if the mediation fails to reach an agreement, the neutral party must communicate the start of the arbitration stage including the settlement period no later than ten (10) calendar days from the end of the mediation;
- because of the different provisions in the Arbitration and ADR Laws 1999 and the APEC Collaborative Framework for ODR, the provisions in this law apply;
- the parties can agree on a mediator who will act as an arbitrator, submit a request to the ODR provider or the arbitrator is appointed directly by the ODR

provider in accordance with the applicable laws and regulations as well as the ODR provider's internal regulations;

- after the arbitrator is agreed upon or determined, the arbitrator as the neutral shall proceed to communicate a date to the parties for any final communications to be made. Such date shall be no later than ten calendar days from the expiry of the mediation stage;
- the parties to the dispute must prove their claims and the neutral party is tasked with conducting examinations and producing an award as outlined in the ODR platform;
- the award must be made in writing and signed by the neutral party;
- the award includes the date and place where the award is issued;
- the arbitration award must include brief reasons for its decision and should be delivered to disputing parties within ten (10) calendar days of the time specified by the ODR Provider;
- this arbitration award is final and binding and the parties are obliged to carry out without unnecessary delay; and
- the ODR provider may provide various communication forms to support the arbitration stage such as audio teleconference, video conference and chat features. There should be detailed and technical protocol to use and secure the platform during the arbitration stage.

7.3.4. Correction of award

In terms there is correction of arbitration award, the arrangement that can be made is as follows:

- a. if typographical, computational and similar errors are found in the arbitration award based on model procedural rules, a correction to the award can be requested by one of the parties by notification to the other party, within a maximum period of five (5) calendar days from the date the award is received;
- b. if the neutral party considers that the request is justifiable, corrections can be made by including the correction statement which is then considered as an integral part of the arbitral award and recorded in the ODR platform; and
- c. correction can also be based on the initiative of the neutral party within five (5) calendar days from the delivery of the decision.

7.4. Appointment, powers and function of the neutral

In terms of neutral party, ODR provider may adopt at least three arrangements related to appointment, powers and the function of the neutral as follows:

- a. appointment of neutral;
- b. resignation or replacement of neutral; and
- c. power of the neutral.

7.4.1. Appointment of neutral

Below are the arrangements of the appointment of neutral that can be adopted by ODR provider:

- the neutral shall be appointed by the ODR provider as soon as the mediation stage of proceedings begins;
- when the neutral is appointed, the ODR provider must promptly notify the parties of the neutral's name and any other relevant or identifying information about that neutral;
- by accepting appointment, the neutral confirms that he or she can devote the time required to conduct the ODR proceedings diligently, efficiently and within the time limits specified in the rules passed by the ODR provider;
- the neutral shall, at the time of accepting his or her appointment, declare his or her impartiality and independence;
- the neutral, from the time of his or her appointment and throughout the ODR proceedings, shall without delay, disclose to the ODR provider, any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence;
- the ODR provider shall promptly communicate such information to the parties;
- if a party objects to the appointment of a neutral, that neutral is automatically disqualified and the ODR provider appoints another in his or her place;
- Each party may object to the neutral's appointment within two (2) calendar days of the notification of appointment without giving reasons therefor. Following each notice of appointment, each party has a maximum of three challenges to the appointment of a neutral, after which the appointment of a neutral by the ODR provider is final;

- alternatively, if no challenges are filed within two days of any appointment notice, the appointment will become final;
- Each party may object to the neutral's appointment within two (2) calendar days of a fact or matter coming to its attention that is likely to give rise to justifiable doubts as to the impartiality or independence of the neutral, setting out the fact or matter giving rise to such doubts, at any time during the ODR proceedings. If a party objects to the appointment of a neutral on this basis, the ODR provider must decide whether the neutral should be replaced within three calendar days;
- Within three (3) calendar days of the neutral's final appointment, either party may object to the ODR provider providing information generated during the negotiation stage to the neutral;
- following the expiration of this three-day period and in the absence of any objections, the ODR provider shall communicate to the neutral the entire set of existing information on the ODR platform; and
- the number of neutrals is limited to one.

7.4.2. Resignation or replacement of neutral

In terms of resignation or replacement of neutral, the arrangements are as follows:

- if the neutral resigns or is otherwise replaced during the ODR proceedings, the ODR provider must appoint a new neutral to take his or her place; and
- the ODR proceedings will resume at the point where the neutral who was replaced stopped performing his or her duties.

7.4.3. Power of the neutral

The power of the neutral party to the disputes is as follows:

- the neutral is allowed to manage the ODR proceedings in any way he or she considers appropriate;
- the neutral shall conduct the ODR proceedings in such a way as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the dispute;
- the neutral must maintain complete independence and impartiality at all times and must treat both parties equally;

- the neutral shall conduct the ODR proceedings on the basis of all communications made during the ODR proceedings, the relevance of which shall be determined by the neutral;
- the neutral may, at any time during the proceedings, request or allow the parties (on such terms as to costs and otherwise as the neutral shall determine) to provide additional information, produce documents, exhibits, or other evidence within such time as the neutral shall determine;
- the neutral has the power to make decisions on his or her own jurisdiction, including any objections to the existence or validity of any agreement to refer the dispute to ODR;
- a neutral's determination that the contract is null and void does not automatically render the dispute resolution clause null and void; and
- after conducting any necessary inquiries, the neutral may, at his or her discretion, extend any deadlines under these model procedural rules.

7.5. General provisions

General provisions are provisions that include other provisions that are not specific about the ODR procedures, however these provisions serve as supporting ones for operationalization of such procedures. These general provisions include, at least, as follows:

- a. deadlines:
 - during the course of the proceedings, the ODR provider or, if applicable, the neutral shall notify parties of all relevant deadlines; and
 - notification of this deadline should be informed in advance to the disputing parties at every opportunity and in various ways.
- b. dispute resolution clause:
 - the ODR platform and ODR provider must be specified in the dispute resolution clause or agreed upon by the parties; and
 - this clause may adopt from model clause for contract or agreement that is already mentioned in section 7.1 of this chapter.
- c. place of arbitration:

- if the parties have not determined the place of arbitration, the ODR provider shall select the place of arbitration based on the circumstances surrounding the dispute;
 - another method of determining this place is to provide options for the place which can be chosen by the parties to the dispute; and
 - the place option should already be available on the ODR platform so that the disputing parties can determine which place of arbitration that is more appropriate for them.
- d. language of proceedings:
- the ODR proceedings must be conducted in the language specified in the agreement to submit disputes to ODR;
 - in the absence of such an agreement, the language or languages to be used in the proceedings shall be determined by the ODR provider;
 - if a party indicates in a notice or response that it wishes to proceed in another language, the ODR provider shall identify available languages from which the parties may choose and the ODR proceedings shall be conducted in the language or languages chosen by the parties;
 - the ODR provider may provide translators for ODR proceedings to facilitate the implementation of dispute resolution; and
 - at ODR provider's discretion, this translator can be a professional translator or translator application that can directly interpret the words spoken of the disputing parties.
- e. representation:
- a person or persons chosen by a party may represent or assist that party; and
 - the ODR provider must communicate to the other party the names and designated electronic addresses of such persons, as well as their authority to act.
- f. exclusion of liability:
- Disputing parties waive any claim against the ODR provider and neutral based on any act or omission in connection with the ODR proceedings to the fullest extent permitted by applicable law, except for intentional wrongdoing.

- g. allocation of costs at the arbitration stage:
- the costs of arbitration will be borne by the unsuccessful party or parties; and
 - if the ODR Provider/arbitrator determines that apportionment is reasonable, taking into account the circumstances of the case, the ODR Provider/arbitrator may apportion each of such costs between the parties in the award.

- h. definition of costs.

The term "costs" refers only to:

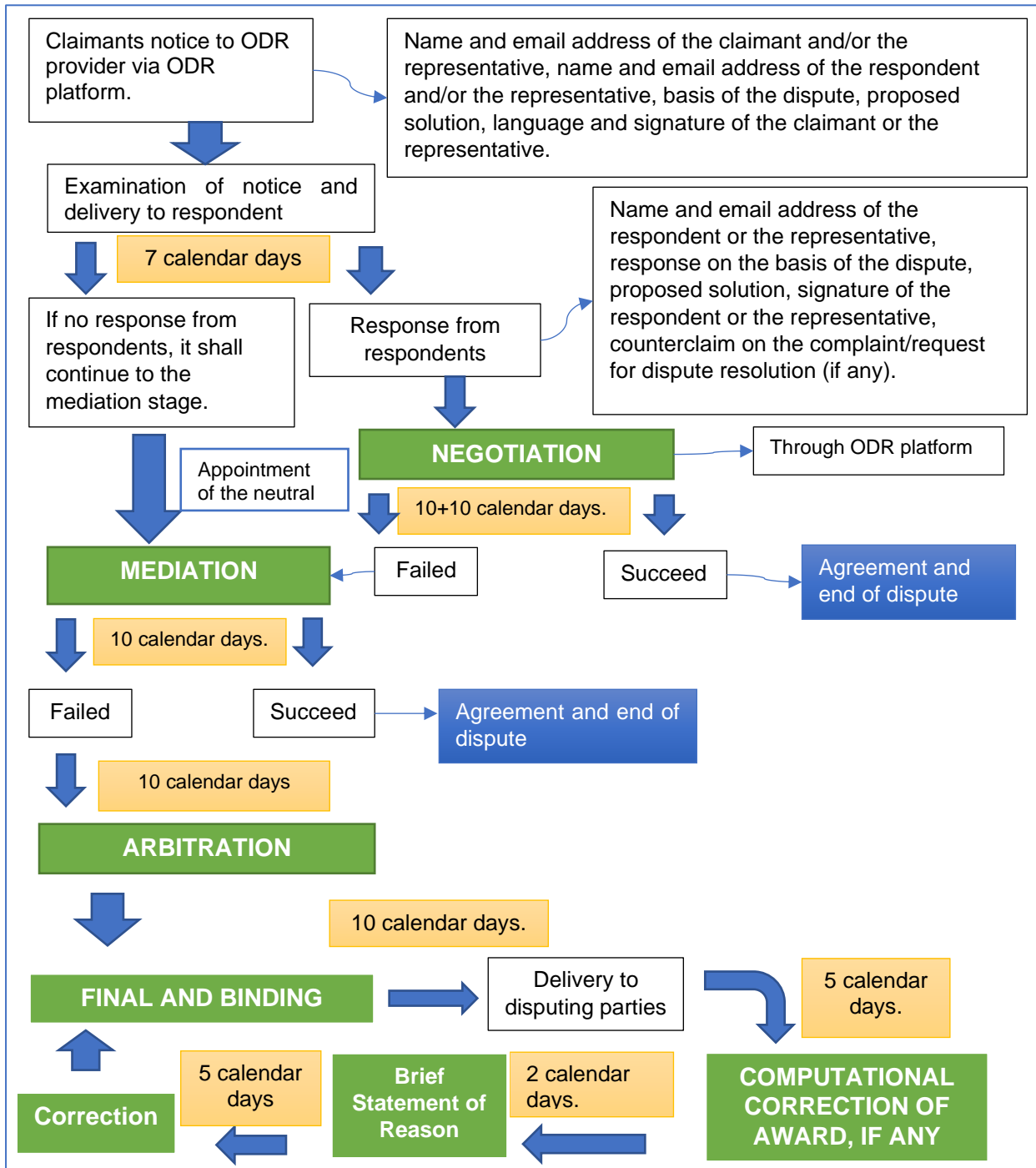
- the fees fixed by the ODR provider for the neutral;
- the reasonable costs of expert advice and other assistance required by the neutral during the Arbitration Stage;
- legal and other costs incurred by the parties during the Arbitration Stage; and
- any fees and expenses incurred by the ODR provider.

The ODR provider may add arrangements at their discretion as long as they are in accordance with the APEC Collaborative Framework for ODR and applicable laws and regulations for the benefit of the disputing parties. Additional arrangements may include, for example, the following:

- a. the provision of sign language interpreters. This is important for parties to a dispute who have a deaf disability; and
- b. establishing stringent rules, particularly regarding confidentiality and personal data protection, for any persons involved in dispute resolution other than the disputing parties and their representatives. The personnel here include the ODR platform operators and the assistant for disputing parties that have disabilities.

In addition to ODR procedure arrangements, ODR providers should create a flowchart for dispute resolution based on the Model Procedural Rules of the APEC Collaborative Framework for ODR. The figure below can serve as an example. However, ODR providers can design their own flow based on their organization's characteristics and regulations as long as it adheres to the APEC framework.

Figure 7.1 Dispute Resolution Procedure Flow Based on the APEC Collaborative Framework for ODR



REFERENCES

- Adolf, Huala. *BANI's Experience as ODR Provider in B2B Cross Border Dispute*. Presented in the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade" on 14-15 June 2023 in Bali, Indonesia.
- Adolf, Huala. 2021. *Pengembangan Mekanisme Penyelesaian B2B di BANI dan Praktiknya*. Presented in *Focus Group Discussion* (FGD) discussing the Interim Report of the Study of APEC Collaborative Framework on Online Dispute Resolution (ODR) in Indonesia, Bogor 29 November 2021.
- Ahn, Sung-Min and Chan-Wook Park. 2016. An Empirical Study on Eliciting a Competency Required by Salespeople: Differentiating B2B Salespeople and B2C Salespeople. *Journal of Distribution Science* 14 (11): 103-115.
- APEC Business Advisory Council (ABAC) & University of Southern California. 2015. *Driving Economic Growth Through Cross-Border E-Commerce: Empowering MSMEs and Eliminating Barriers*. Research Report, November 2015.
- APEC Economic Committee. 2022. *APEC Launches Collaborative Framework on Online Dispute Resolution to Help Small Businesses*. Asia-Pacific Economic Cooperation, Singapore, 20 June. <https://www.apec.org/press/news-releases/2022/apec-launches-collaborative-framework-on-online-dispute-resolution-to-help-small-businesses> [17 February 2023].
- APEC Economic Committee. 2022. *Stocktake of APEC: Online Dispute Resolution Technologies*. APEC Project: EC 02 2020S. Produced by the Ministry of Economic Development of Russia, April 2022. Singapore: APEC Economic Committee.
- Asia-Pacific Economic Cooperation. 2019. *APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes-Endorsed*. Second Economic Committee Meeting: Puerto Varas, Chile, 26-27 August. 2019/SOM3/EC022.
- Asia-Pacific Economic Cooperation. *Economies-Opting-In*. <https://www.apec.org/SELI/Economies> [25 February 2023].

- Asia-Pacific Economic Cooperation. 2022. *ODR Providers*. The APEC Collaborative Framework for ODR of Cross-Border Disputes. <https://www.apec.org/seli/odr-providers> [20 February 2023].
- Asian Development Bank. 2020. *Asia Small and Medium-Sized Enterprise Monitor 2020*. Vol. 1 Country and Regional Reviews. Manila: Asian Development Bank.
- Badan Pusat Statistik. 2020. *Ekspor Menurut Kelompok Komoditi dan Negara*. Buletin Statistik Perdagangan Luar Negeri, November. Jakarta: Badan Pusat Statistik.
- Badan Pusat Statistik. 2022. *Ekspor Menurut Kelompok Komoditi dan Negara*. Buletin Statistik Perdagangan Luar Negeri, November. Jakarta, Badan Pusat Statistik.
- BANI Arbitration Center. 2022. *Arbitration Rules*. Jakarta: BANI Arbitration Center. <https://baniarbitration.org/arbitration-rules>.
- Bartnett, Jeremy; and Philip Treleaven. 2018. Algorithmic Dispute Resolution – The Automation of Professional Dispute Resolution Using AI and Blockchain Technologies. *The Computer Journal* 61(3): 399-408.
- Bhasin, Balbir B.; and Sivakumar Venkataramany. 2010. Globalization of Entrepreneurship: Policy Considerations for SME Development. *International Business & Economics Research Journal* 9 (4): 95-104.
- Bian, Yongmin. 2023. *Experience of Guangzhou Arbitration Commission on ODR*. Presented in the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade,” took place on 14-15 June 2023 in Bali, Indonesia
- Calliess, Graf-Peter; and Simon Johannes Heetkamp. 2019. Online Dispute Resolution: Conceptual and Regulatory Framework. *TLI Think! Paper* 22/2019. <https://ssrn.com/abstract=3505635> or <http://dx.doi.org/10.2139/ssrn.3505635> [7 February 2023]: 1-22.
- China International Economic and Trade Arbitration Commission. *Model ODR Clause for Contracts*. <https://casettle.odrcloud.cn/CIETAC.html> [14 February 2023].
- China International Economic and Trade Arbitration Commission. *Provisions of Fees*. <https://casettle.odrcloud.cn/CIETAC.html> [14 February 2023].
- Civil Society Consortium for the Index of Access to Justice. 2019. *Index of Access to Justice in Indonesia 2019*. Jakarta: Civil Society Consortium for the Index of Access to Justice.

- Cortes, Pablo. 2011. *Online Dispute Resolution for Consumers in the European Union*. Abingdon: Routledge.
- eBRAM. *Our Profile*. <https://www.ebram.org/overview.html> [21 February 2023].
- eBRAM. *eBRAM APEC Rules*. https://www.ebram.org/uploads/rules/eBRAM_APEC_Rules_Booklet_23_June_2022.pdf [21 February 2023].
- Friedman, Lawrence M. 1998. *American Law: An Introduction*. New York: W.W. Norton.
- Fung, Michelle. 2023. *Empowering MSMEs through ODR: The Hong Kong, China Perspective*. Presented in the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade,” on 14-15 June 2023 in Bali, Indonesia.
- Guangzhou Arbitration Commission. *About Us*. Online Dispute Resolution of Cross-Border B2b Dispute, <https://newodr.gzac.org/en/introduce/aboutus/> [13 February 2023].
- Guangzhou Arbitration Commission. *Charging Method and Quick Calculation*. <https://newodr.gzac.org/en/introduce/fee/> [13 February 2023].
- Guangzhou Arbitration Commission. *Model Clauses for APEC-ODR Procedures*. <https://newodr.gzac.org/en/introduce/clause/> [13 February 2023].
- Hananto, Irvan Arie; Bambang Agus Pramuka; and Ick Rangga Bawono. 2020. “The Influence of Owner Education Levels, Owner Accounting Knowledge, Business Scale and Business Age on the Use of Accounting Information in MSMEs in Wonogiri.” *Journal of Applied Managerial Accounting* 4 (2): 228-236.
- Hodge, George; and Christine Cagle. 2004. Business-to-Business Models: Classification and Textile Industry Implications. *AUTEX Research Journal* 4(4): 211—227.
- Hong Kong, China. 2011. *The Arbitration Ordinance*. Cap 609. L.N. 38 of 2011.
- Hong Kong, China. 2012. *The Mediation Ordinance*. Cap 620. L.N. 67 of 2012.
- Hotniar Siringoringo. 2009. Problems Faced By Small and Medium Business in Exporting Products. *Delhi Business Review* 10 (2): 49-56.
- Indonesia. 1999. *Arbitration and Alternative Dispute Resolution Law*. Law No.30/1999.
- Indonesia. 2008. *Information and Electronic Transaction Law*. Law No. 11/2008 (amended with Law No. 19/2016).

- Indonesia. 2008. *Micro Small and Medium Enterprises Law*. Law No. 20/2008 (amended with Government Regulation in Lieu of Law No. 2/2022 on Jobs Creation Law).
- Indonesia. 2009. *Judicial Power Law*. Law No. 48/2009.
- Indonesia. 2014. *Trade Law*. Law No. 7/2014 (amended with Government Regulation in Lieu of Law No. 2/2022 on Jobs Creation Law).
- Indonesia. 2019. *E-Commerce Regulation*. Government Regulation No. 80/2019.
- Indonesia. 2021. *Cooperatives and MSMEs Easiness, Empowerment and Protection Regulation*. Government Regulation No. 7/2021.
- Indonesia. 2019. *Implementation of Electronic Systems and Transactions Regulation*. Government Regulation No. 71/2019.
- Indonesia. 2022. *Jobs Creation Law*. Government Regulation in Lieu of Law No. 2/2022.
- Indonesia. 2022. *Personal Data Protection Law*. Law No. 27/2022.
- International Institute of Management Development. 2022. *IMD World Digital Competitiveness Ranking 2022*. Lausanne: International Institute of Management Development.
- International Institute of Management Development. 2021. *IMD World Digital Competitiveness Ranking 2021*, Lausanne: International Institute of Management Development.
- Japan. 2003. *Arbitration Law*. Act No. 138 of 2003.
- Japan. 2004. *The Act on Promotion of Use of Alternative Dispute Resolution*. Act No. 151 of 2004.
- Jewels, Tony J.; and Greg T. Timbrell. 2001. Towards a definition of B2C and B2B e-commerce. *ACIS 2001 Proceedings S6*, <http://aisel.aisnet.org/acis2001/56> [5 February 2023].
- Juanjuan, Zhang. 2017. On China Online Dispute Resolution Mechanism: Following UNCITRAL TNODR and Alibaba Experience. *International Journal of Online Dispute Resolution* 4 (1): 14-31.
- Katsh, Ethan; and Colin Rule. 2016. *What We Know and Need to Know About Online Dispute Resolution*. 67 S.C. L. REV. 329, 330.
- Kementerian Koperasi dan Usaha Kecil Menengah. 2020. *Perkembangan Data Usaha Mikro, Kecil, Menengah (UMKM) dan Usaha Besar (UB) tahun 2018-2019*.

- https://kemenkopukm.go.id/uploads/laporan/1650868533_SANDINGAN_DATA_UMKM_2018-2019%20=.pdf [1 February 2023].
- Kemp, Simon Kemp. 2019. *Digital 2019: Indonesia*. Data Reportal, 31 January 2019. <https://datareportal.com/reports/digital-2019-indonesia> [9 February 2023].
- Kemp, Simon. 2020. *Digital 2020: Indonesia*. Data Reportal, 18 February. <https://datareportal.com/reports/digital-2020-indonesia> [26 February 2023].
- Kemp, Simon. 2021. *Digital 2021: Indonesia*. Data Reportal, 11 February. <https://datareportal.com/reports/digital-2021-indonesia> [26 February 2023].
- Kemp, Simon. 2022. *Digital 2022: Indonesia*. Data Reportal, 15 February. <https://datareportal.com/reports/digital-2022-indonesia> [13 January 2023].
- Kemp, Simon. 2023. *Digital 2023: Indonesia*. Data Reportal, 9 February. <https://datareportal.com/reports/digital-2023-indonesia> [9 February 2023].
- Kolis, Karel; and Katerina Jirinova. 2013. Differences between B2B and B2C Customer Relationship Management: Findings from the Czech Republic. UNESCO World Science Day Celebration. *Proceeding: 1st Global Multidisciplinary eConference*, pp. 22-27.
- Lucking-Reiley, David; and Daniel F. Spulber. 2001. Business-to-Business Electronic Commerce. *Journal of Economic Perspectives* 15(1): 55-68.
- Mahkamah Agung. 2019. *Laporan Tahunan 2018: Era Baru Peradilan Modern Berbasis Teknologi Informasi*. Jakarta, Mahkamah Agung.
- Mahkamah Agung. 2020. *Laporan Tahunan 2019: Keberlanjutan Modernisasi Peradilan*. Jakarta, Mahkamah Agung.
- Mahkamah Agung. 2021. *Laporan Tahunan 2020: Optimalisasi Peradilan Modern Berkelanjutan*. Jakarta, Mahkamah Agung.
- Mahkamah Agung. 2022. *Laporan Tahunan 2021: Akselerasi Perwujudan Peradilan Modern*.
- Nemat, Rania. 2011. Taking a look at different types of e-commerce. *World Applied Programming* Vol. 1(2): 100-104.
- People's Republic of China. 1991. *Civil Procedure Law of the People's Republic of China*. Order No. 44 of the President of the People's Republic of China on 9 April 1991.

- People's Republic of China. 1995. *Arbitration Law of the People's Republic of China*. Order No. 31 of the President of the People's Republic of China on 31 August 1994 and effective as of 1 September 1995.
- People's Republic of China. 2004. *Electronic Signature Law of the People's Republic of China*. Order No.18 of the President of the People's Republic of China on 28 August 2004.
- People's Republic of China. 2010. *Law of the People's Republic of China on Mediation and Arbitration of Disputes over Rural Land Contract and Management*. Order No. 14 of the President of the People's Republic of China on 27 June 2009, and effective as of 1 January 2010.
- People's Republic of China. 2018. *E-Commerce Law of the People's Republic of China*. Adopted at the Fifth Session of the Standing Committee of the 13th National People's Congress on 31 August 2018.
- Petrauskas, Feliksas; and Egle Kybartiene. 2011. Online Dispute Resolution in Consumer Disputes. *Jurisprudence*, 18(3): 921-941.
- Raymond, Angie. 2023. Stakeholder Engagement and Capacity Building on the APEC ODR Collaborative Framework to Improve Cross-Border Trade in Indonesia, Presented in the Workshop on "Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade" on 14-15 June 2023 in Bali, Indonesia.
- Riani Sanusi Putri. 2022. *UKM Center FEB UI Beberkan Hambatan UMKM dalam Mengadopsi Teknologi*. Tempo.co, 11 November. <https://bisnis.tempo.co/read/1655826/ukm-center-feb-ui-beberkan-hambatan-umkm-dalam-mengadopsi-teknologi> [12 February 2023].
- Roberge, Jean-Francois; and Veronique Fraser. 2019. Access to Commercial Justice: A Roadmap for Online Dispute Resolution (ODR) Design for Small and Medium-Sized Business (SMEs) Disputes. *Ohio State Journal on Dispute Resolution* 35 (1): 1-62.
- Schmitz, Amy J. 2019. Expanding Access to Remedies through E-Court Initiatives. *Buffalo Law Review* 67(1): 89-163.
- Schmitz, Amy J.; and Janet Martinez. 2021. *ODR and Innovation in the United States*. University of Missouri School of Law Legal Studies Research Paper, No. 2021-

22 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3916974 (17 February 2023): 1-26.

Shang, Carrie Shu; and Wenli Guo. 2020. The Rise of Online Dispute Resolution-Led Justice in China: An Initial Look. *Australian National University Journal of Law and Technology* September: 25-42.

Singapore. 2020. *Arbitration Act 2001* (Revised 2020).

Singapore. 2020. *Evidence Act 1893* (Revised 2020).

Singapore. 2021. *International Arbitration Act 1994* (Revised 2021).

Singapore. 2021. *Mediation Act 2017* (Revised 2021).

Sinta Ambarwati and Mecca Yumna. 2022. *MSME Exports targeted to reach 17 percent by 2024: Minister*. Antaranews, 16 December. <https://en.antaranews.com/news/265916/msme-exports-targeted-to-reach-17-percent-by-2024-minister> [20 February 2023].

Sydor, Alan. *ODR as a facilitator of MSMEs Participation in International Trade*. Presented in the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade,” on 14-15 June 2023 in Bali, Indonesia,

Ta, Pui Ki Emmanuelle. *Implementing the APEC Collaborative Framework*. Presented in the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade,” took place on 14-15 June 2023 in Bali, Indonesia.

Tech for Good Institute and Bain & Company. 2021. *The Platform Economy: Southeast Asia’s Digital Growth Catalyst*. 2021 Report. https://techforgoodinstitute.org/wp-content/uploads/2021/10/UPDATED_TFGI-Bain_Full-Report.pdf [14 February 2023].

The Supreme Court of Indonesia. 2015. *Small-Claim Court Regulation*. The Supreme Court Regulation No. 2/2015 (amended with the Supreme Court Regulation No. 4/2019).

The Supreme Court of Indonesia. 2019. *E-court Regulation*. The Supreme Court Regulation No. 1/2019 (amended with the Supreme Court Regulation No. 7/2022).

The Supreme Court of Indonesia. 2022. *Court-annexed Online Mediation*. The Supreme Court Regulation No. 3/2022.

- The Supreme People Court. 2018. *Provisions on Several Issues Related to Trial of Cases by the Internet Courts*. Provision No. 16 of 2018.
- U&I Advisory Service. 2022. *U&I Advisory Service has obtained certification by the Minister of Justice of Japan for its ADR services*. 1 July. <https://ui-advisory.com/etcnews/%E8%A3%81%E5%88%A4%E5%A4%96%E7%B4%9B%E4%BA%89%E8%A7%A3%E6%B1%BA%E6%89%8B%E7%B6%9A%EF%BC%88%EF%BD%81%EF%BD%84%EF%BD%92%EF%BC%89%E3%81%AE%E8%AA%8D%E8%A8%BC%E3%82%92%E5%8F%96%E5%BE%97%E3%81%97%E3%81%BE> [23 February 2023].
- U&I Advisory Service. 2023. *Company Information*. <https://ui-advisory.com/overview> [23 February 2023].
- U&I Advisory Services. 2023. *ODR Services*. Presented by Professor Yoshi Hayakawa in the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade” on 14-15 June 2023 in Bali, Indonesia.
- United Nations. 1958. *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. New York, 10 June 1958. Resolution 604 (XXI). New York: United Nations.
- United Nations Commission on International Trade Law. 2017. *Technical Notes on Online Dispute Resolution*. Resolution No. 71/138, adopted by the General Assembly on 13 December 2016. New York: United Nations.
- Van den Heuvel, Esther. 2000. *Online Dispute Resolution as A Solution to Cross-Border Disputes: An Introduction to ODR*. <https://www.oecd.org/digital/consumer/1878940.pdf> [16 February 2023].
- Wing, Leah. 2016. Ethical Principles for Online Dispute Resolution: A GPS for the Field. *International Journal on Online Dispute Resolution* 3: 12-29.
- World Trade Organization. 2016. *World Trade Report 2016: Levelling the Trading for SMEs*. Geneva: World Trade Organization.
- Zhao, Yun. 2023. Domestic Legal Framework on ODR: China and Hong Kong, China as examples, presented in the Workshop on “Stakeholder Engagement and Capacity Building for the APEC Collaborative Framework on ODR to Enhance Cross-Border Trade” on 14-15 June 2023 in Bali, Indonesia.