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Formulation of Online Dispute Resolution in Realizing Fair Industrial Relations Dispute Settlement: A Comparative Study

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Abstract

Although alternative method exists as stipulated in Article 3 paragraph (1) and Article 4 paragraph (3) of the Industrial Relations Dispute Settlement Law, in fact, the dispute resolution in Indonesia's industrial relation has been focusing on litigation mechanisms. However, litigation is not the best way to fulfill both disputing parties' desire for justice as the output is win-lose. As such, alternative method exists, puts forward the 'win-win' solution. Nonetheless, the current legal framework only sets the clear rule of the aforementioned alternative method to be conducted in person, despite the global pandemic Covid-19. Accordingly, ODR is established to enable virtual procurement. This article will analyze the conception and benefits of online dispute resolution, its implementation gaps in the context of industrial relations dispute resolution, and its regulatory formulation to gain legitimacy in Indonesian law. Applying normative legal research, this article uses statutory, conceptual and comparative approaches. From the research conducted, it is indicated that online dispute resolution is technically superior as it is simple, fast, and low in cost. Even under the Industrial Relations Dispute Settlement Law, its application is feasible, specifically through mediation and conciliation. In Indonesia, implementation of online dispute resolution is possible by amending the Industrial Relations Dispute Settlement Law, considering the prioritization of alternative dispute resolution based on practices in Cambodia, Spain, and ILO Guidelines, as well as the superiority of online dispute resolution based on practices in the United States and UNCITRAL Technical Notes.

Keywords: Comparative; Dispute Settlement; Industrial Relations

1. INTRODUCTION

Disputes between workers and employers will perpetually affect the industrial relations industry, as they are prone to differences of opinions and interests.[1] Such disputes should ideally be resolved peacefully, considering that both workers and employers are important actors[2] that contributes to the stability of

1 Udina Afriani, Muhamad Rizal, and Sari Usih Natari, "Penyelesaian Perselisihan Hubungan Industrial Yang Disebabkan Oleh Hak Atas Upah Lembur Di PT Tirta Investama Kabupaten Langkat Dihubungkan Dengan UU No 2 Tahun 2004," *VISA: Journal of Visions and Ideas* 3, no. 3 (2023): 536–44.
2 Hazar Kusmayanti et al., "The Justice for Illegitimate Children of Indonesian Women Workers through Constitutional Court Decision No. 46/PUU-VIII/2010," *Jurnal IUS: Kajian Hukum Dan Keadilan*

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a country's economy.[3] This explains why the settlement of industrial relations disputes begins with a deliberation mechanism (bipartite), mediation, if conciliation or arbitration is not an option for the parties (tripartite), and will only proceed to litigation if the preceding settlement methods are failed.

As a last resort, litigation mechanism should ideally be able to resolve disputes between parties while fulfilling their justice desires-preventing dispute resolution from being protracted. However, the disparity between the number of registered disputes and the courts, resulting in a poor quality of litigation mechanism services. In addition, the lack of flexibility and executorial force of court verdicts also affects public satisfaction with court verdicts. Based on previous research, three factors can be identified as reasons on why litigation is not considered as the best way to resolve industrial relations disputes.

First, the inequitable distribution of industrial relations courts in every district/city in Indonesia. As mandated in Article 59 paragraph (1) Law of the Republic of Indonesia Number 2 of 2004 concerning Industrial Relations Dispute Settlement *("**IRDS Law**"),* industrial relations courts should ideally be built in every District/City District Court, starting from the Provincial Capital-thus, at that time, 33 (thirty-three) industrial relations courts were built,[4] especially in industrially concentrated areas *(Article 59 paragraph (2) of the IRDS Law)*. However, as Indonesia's provincial territory expanded to 38 provinces, aligned with the massive industrial development, the number of industrial relations court did not increase.[5] Although case fees are not charged for lawsuits below IDR 150.000.000.000,00 (one hundred and fifty billion rupiah), the parties, especially those domiciled outside the industrial relations court area, spend a great amount of money on transportation, consumption, and accommodation.[6] It is even common for the expenses spent to settle a dispute to be disproportionate or even greater than the value of the dispute.

Second, the rigid procedures of the industrial relations court. The dispute resolution process in industrial courts, which lies within the corridors of the Civil Procedural Law,[7] certainly affects the flexibility of dispute resolution. The formal and material requirements are absolute to fulfill in order for a lawsuit to be adjudicated by the court. In parallel, unequal economic capabilities of the parties,[8] especially to hire a lawyer, can affect the fulfillment of formal and material requirements in a submitted lawsuit. Even if the formal requirements are fulfilled, the preparation of evidence, witnesses, and other rebuttal documents will be an ongoing issue.[9] In this case, workers as the party with

11, no. 2 (2023): 257, http://dx.doi.org/10.29303/ius.v11i2.1228.

3 Ahmad Zairudin, "Rekontruksi Penyelesaian Sengketa Hubungan Industrial Dalam Hukum Ketenagakerjaan," *Legal Studies Journal* 2, no. 1 (2022): 48–61.

4 Biro Hukum dan Humas Badan Urusan Administrasi Mahkamah Agung RI, "Mahkamah Agung: Media Komunikasi Mahkamah Agung Republik Indonesia," *Perpustakaan Mahkamah Agung RI*, 2014.

5 Christina NM Tobing, "Menggagas Pengadilan Hubungan Industrial Dalam Bingkai Ius Constituendum Sebagai Upaya Perwujudan Kepastian Hukum Dan Keadilan," *Jurnal Hukum Dan Peradilan* 7, no. 2 (2018): 297–326.

6 Sherly Ayuna Putri, Agus Mulya Karsona, and Revi Inayatillah, "Pembaharuan Penyelesaian Perselisihan Ketenagakerjaan Di Pengadilan Hubungan Industrial Berdasarkan Asas Sederhana, Cepat Dan Biaya Murah Sebagai Upaya Perwujudan Kepastian Hukum," *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 310–27.

7 Haikal Arsalan and Dinda Silviana Putri, "Reformasi Hukum Dan Hak Asasi Manusia Dalam Penyelesaian Perselisihan Hubungan Industrial," *Jurnal HAM* 11, no. 1 (2020): 39–49.

8 Any Suryani, "Strengthening the Relationality of Heteronomous and Autonomous Legal Rules in Workers' Decent Wage Law Policies (an Attempt to Create a Dignified Tripatrid Ecosystem)," *Jurnal IUS: Kajian Hukum Dan Keadilan* 11, no. 2 (2023): 305, http://dx.doi.org/10.29303/ius.v11i2.1241.

9 Putri, Karsona, and Inayatillah, "Pembaharuan Penyelesaian Perselisihan Ketenagakerjaan Di Pengadilan Hubungan Industrial Berdasarkan Asas Sederhana, Cepat Dan Biaya Murah Sebagai Upaya Perwujudan Kepastian Hukum."

less economic capability will be disadvantaged. The court often rejects the lawsuit for formatting errors, drafting systematics, and so forth.[10] As reported in the Supreme Court website, from 2019 to 2023, there were at least 25 first lawsuits in industrial relations court that were declared null and void due to not fulfilling those formal elements.

Third, the lack of executorial force of industrial relations court verdicts. Court verdicts made by judges can hardly fulfill the desire for justice between the two disputing parties. Court verdicts that are not sociologically binding on the parties,[11] along with the characteristics of a win-lose situation[12] can trigger the losing party of the party who feels disadvantaged to take further legal action. For industrial relations disputes, from 2019 to 2023, there were 3,624 cassation cases decided by the courts. This number justifies that litigation mechanism, which is envisioned as a last resort,[13] does not guarantee the settlement of industrial relations disputes.

The current situation of industrial relations dispute settlement through litigation certainly cannot maintain the increasing and complex problems of industrial relations disputes in the midst of the industrialization era.[14] In spite of the necessity to fulfill a sense of justice for the unequal parties due to the different position between parties[15] created in industrial relations courts, technical elements such as high costs, long periods of time,[16] and long distances[17] are also considered inhibiting societies from resolving their disputes in litigation.

It is undeniable that the company or employer is part of the ring of the country's economy.[18] Thus, the mechanism for resolving industrial relations disputes needs to be comprehensively studied in order to maintain harmonious relations between workers/laborers and employers.[19] Along with that, by looking at the facts that litigation mechanism does not offer time and cost efficiency and effectiveness, no wonder the response that emerges is a suggestion to optimize alternative dispute resolution ***("ADR")***,[20] which has actually been accommodated in the IRDS Law at the stage of tripartite dispute resolution.[21]

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10 Arsalan and Putri, "Reformasi Hukum Dan Hak Asasi Manusia Dalam Penyelesaian Perselisihan Hubungan Industrial."

11 Agus Mulya Karsona, Sherly Ayuna Putri, and Etty Mulyati, "Perspektif Penyelesaian Sengketa Ketenagakerjaan Melalui Pengadilan Hubungan Industrial Dalam Menghadapi Masyarakat Ekonomi ASEAN," *Jurnal Poros Hukum Padjajaran* 1, no. 2 (2020): 158–71.

12 Priyatna Abdurrasyid and Bintan R. Saragih, *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia Dan Internasional*, 2 (Jakarta: Sinar Grafika, 2012).

13 Tobing, "Menggagas Pengadilan Hubungan Industrial Dalam Bingkai Ius Constituendum Sebagai Upaya Perwujudan Kepastian Hukum Dan Keadilan."

14 Rai Mantili, "Konsep Penyelesaian Perselisihan Hubungan Industrial Antara Serikat Pekerja Dengan Perusahaan Melalui Combined Process (Med-Arbitrase)," *Jurnal Bina Mulia Hukum* 6, no. 1 (2021): 47–65.

15 Kadek Agus Sudiarawan and Nyoman Satyayudha Dananjaya, "Konsep Penyelesaian Perselisihan Hubungan Industrial Berbasis Pemberdayaan Sebagai Upaya Peningkatan Perlindungan Hukum Terhadap Buruh Dalam Mencari Keadilan," *Jurnal Hukum Acara Perdata* 3, no. 1 (2017): 17–37.

16 Andari Yurikosari and Sugeng Santoso PN, "Collective Agreement as Evidence with Binding Legal Force in Decision of Industrial Relations Court," *JALREV: Jambura Law Review* 6, no. 1 (2024): 68.

17 Putri, Karsona, and Inayatillah, "Pembaharuan Penyelesaian Perselisihan Ketenagakerjaan Di Pengadilan Hubungan Industrial Berdasarkan Asas Sederhana, Cepat Dan Biaya Murah Sebagai Upaya Perwujudan Kepastian Hukum."

18 Mantili, "Konsep Penyelesaian Perselisihan Hubungan Industrial Antara Serikat Pekerja Dengan Perusahaan Melalui Combined Process (Med-Arbitrase)."

19 Maswandi Maswandi, "PENYELESAIAN PERSELISIHAN HUBUNGAN KERJA DI PENGADILAN HUBUNGAN INDUSTRIAL," *Publikauma : Jurnal Administrasi Publik Universitas Medan Area* 5, no. 1 (December 4, 2017): 36–42, https://doi.org/10.31289/publika.v5i1.1203.

20 Arsalan and Putri, "Reformasi Hukum Dan Hak Asasi Manusia Dalam Penyelesaian Perselisihan Hubungan Industrial."

21 Imam Budi Santoso, "Alternatif Penyelesaian Sengketa Wajib Dalam Penyelesaian Perselisihan Hubungan Industrial," *Jurnal Hukum Dan Bisnis (Selisik)* 3, no. 1 (2017): 116–26, https://doi.org/10.35814/selisik.v3i1.660.

However, bipartite and tripartite dispute settlements are conducted through physical meetings.[22] The disadvantages of this are the technical obstacles which are similar to litigation dispute resolution. Besides, the emergence of the COVID-19 outbreaks, which requires physical contact to be avoided as much as possible,[23] is a challenge to such practices.[24] Even if COVID-19 is gradually being controlled, it is very risky not to amend the law in accordance with remote conditions in anticipation of new variants that are frequently reported to have appeared in other parts of the world.[25]

Due to above reasons, in order to provide the best service for justice seekers (*justiciable*),[26] the Online Dispute Resolution ***("ODR")*** mechanism by utilizing technological advances may become a worth considered solution. The entire ODR process, starting from the administrative stage, the negotiation stage, and drafting an agreement on the dispute is carried out online, thus eliminating technical barriers while ensuring effectiveness and efficiency[27] in the process of resolving disputes between parties with minimum physical contact.

In Indonesia, the application of ODR has not been massively applied and does not yet have a clear legal framework to ensure legal certainty in its implementation. Therefore, there is a legal vacuum for regulations that specifically regulate the implementation of ODR in Indonesia. This paper will analyze the conception and benefits of ODR, its implementation gaps in the context of industrial relations dispute resolution, and its regulatory formulation to gain legitimacy in Indonesian law.

This research uses normative legal research methods as it examines legal issues in the realm of norms.[28] To conduct such research, several types of approaches are applied, namely statutory approaches, conceptual approaches, and comparative approaches. Furthermore, the legal materials analyzed include primary legal materials that are binding such as laws and regulations and secondary legal materials that include scientific papers related to the issues addressed.

2. ANALYSIS AND DISCUSSION

2.1. The Status of ODR in Industrial Relations Dispute Settlement in Indonesian Positive Law

2.1.1. Gap Analysis of ODR Implementation in Industrial Relations Dispute Settlement

a) ODR in Various Dispute Settlement Regimes

Particularly, for disputes resulting out of an agreement, any form of settlement agreed by the parties can be justified by examining the applicability of the freedom

22 Kasmudin Harahap, "The Online Dispute Resolution in Pancasila's Frame," *Jurnal Pembaharuan Hukum* 8, no. 2 (2021): 157–71.

23 Naurah Humam Alkatiri, Mohamad Fajri Mekka Putra, and Kyle Ogko, "A Legal Perspective: Implementing an Electronic Notarization System in Indonesia in the Post-Pandemic Era," *JALREV: Jambura Law Review* 5, no. 2 (2023): 333.

24 Dewa Putu Ade Wicaksana, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani, "Mediasi Online sebagai Alternatif Penyelesaian Sengketa Hubungan Industrial pada Masa Pandemi Covid-19 di Indonesia," *Jurnal Analogi Hukum* 3, no. 2 (September 30, 2021): 177–82, https://doi.org/10.22225/ah.3.2.2021.177-182.

25 "New Covid Variants: What to Know About BA.2.86 and EG.5 - The New York Times," accessed September 29, 2023, https://www.nytimes.com/article/covid-variant.html.

26 Bambang Sutiyoso, "Penyelesaian Sengketa Bisnis Melalui Online Dispute Resolution Dan Pemberlakuannya Di Indonesia," *Mimbar Hukum* 20, no. 2 (2008): 229–49.

27 Mokhinur Bakhramova, "ODR (Online Dispute Resolution) System as a Modern Conflict Resolution: Necessity and Significance," *European Multidisciplinary Journal of Modern Science* 4 (n.d.): 443–52.

28 Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram Univeristy Press, 2020).

of contract principle, not to mention the ODR mechanism. In civil practices, dispute resolution mechanisms through ODR are familiar. Some of these sectors are elaborated as follows.

i. E-commerce

ODR as one of the strategic actions expected by ASEAN to realize goal 3-"High Consumer Confidence in the AEC and Cross-border Commercial Transactions is Instituted" of the ASEAN Strategic Action Plan for Consumer Protection 2016-2025 *(**"The ASAPCP"**)*[29] to provide the best service for public as consumers. ASEAN member countries are eager to develop the implementation of ODR mechanism, no exception to the e-commerce sector in Indonesia.

E-commerce as a modern form of business eliminates the attendance obligations of the parties, complementary printed documents, and other elements attached to conventional commerce.[30] The necessity of e-commerce that eliminates the difficulties of conventional commerce, demands a form of dispute resolution that saves time, cost, and energy as well.[31] Therefore, ODR is considered as a form of dispute resolution that suits e-commerce due to its ability to settle disputes expeditiously with legal certainty across geographies.[32]

The guarantee of legal certainty is obtained by enacting Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions *(**"Government Regulation 71/2019"**)*. The enforceability of ODR as an option for e-commerce dispute resolution is not explicitly regulated, except that the freedom of contract principle applies for the parties to choose the mechanism and law used in resolving disputes, which must be stated in electronic contracts as stipulated in Article 47 paragraph (3) letter g of Government Regulation 71/2019.

ii. Financial Services

Besides e-commerce, Indonesia's financial services sector also strives to provide the best service for their customers.[33] Non-litigation dispute resolution mechanisms have always been a favorite. The financial services sector in Indonesia has an alternative dispute resolution institution established by Indonesia Financial Services Authority *(**"FSA"**)* that offers mediation, adjudication, and arbitration as options for dispute resolution mechanisms. Further detailed provisions on dispute resolution mechanisms and their institutions are regulated in the Regulation of the Financial Services Authority of the Republic of Indonesia Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector *(**"FSA Regulation 1/POKL.07/2014"**)*.

29 ASEAN, "The ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2016-2025: Meeting The Challenges of A People-Centered ASEAN Beyond 2015" (asean.org, 2021), https://asean.org/wp-content/uploads/2021/01/ASEAN-Strategic-Action-Plan-for-Consumer-Protection-2016-2025-ASAPCP-2025.pdf.

30 Muhammad Azwar, "Prospek Penerapan Online Dispute Resolution Dalam Upaya Penyelesaian Sengketa Bisnis Di Indonesia," *Media Iuris* 2, no. 2 (2019): 179–96.

31 Rofi Aulia Rahman, József Hajdú, and Valentino Nathanael Prabowo, "Digital Labour Platformer's Legal Status and Decent Working Conditions: European Union and Indonesian Perspective," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 1 (June 25, 2024): 164, https://doi.org/10.24090/volksgeist.v7i1.10366.as well as court decision are considered as the main basis to protect gig workers. The result shows that the drafts Directive to ensure Europe's gig workers is relied on Articles 16 and 153 (1

32 Adel Chandra, "Penyelesaian Sengketa Transaksi Elektronik Melalui Online Dispute Resolution (ODR) Kaitan Dengan UU Informasi Dan Transaksi Elektronik No. 11 Tahun 2008," *Jurnal Ilmu Komputer* 10, no. 2 (2014).

33 Suwinto Johan and Luo Yuan Yuan, "What Does Financial Institution Termination of Employment Mean in Terms of Labor Law?," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 28, 2023, 50, https://doi.org/10.24090/volksgeist.v6i1.6372.

Financial services sector's advancement as a result of technological advances—financial technology *("Fintech")* disputes prompted amendments to FSA Regulation 1/POJK.07/2014 through Regulation of the Financial Services Authority of the Republic of Indonesia Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector ***("FSA Regulation 61/ POJK.07/2020")***. The amendments include adopting ODR practices as an alternative dispute resolution mechanism in the financial services sector as stipulated in Article 33 paragraph (1) letter b of FSA Regulation 61/POJK.07/2020.

b) Analysis of Provisions of IRDS Law related to ODR

The description of letter (a), proves that ODR can be a method of dispute resolution, as applied in other sectors. This indicates that the utilization of a similar mechanism in industrial relations settlements is feasible. In order to obtain a better picturization of the probability, this section will analyze the provisions in the IRDS Law related to ODR.

i. Mediation

The provisions of mediation in IRDS Law are regulated from Article 8 to Article 16. The provisions are outlined as follows.

1) Third-party Element

Third parties in mediation consist of mediators and witnesses and/or expert witnesses. Mediators in the industrial relations dispute mediation are located in each institution and responsible for regency/city manpower sector (Article 8). Witnesses and/or expert witnesses are summoned to be asked and heard (Article 11 paragraph (1)), as well as to open books and show necessary documents (Article 12).

2) Dispute Resolution Process Element

The mediation process is conducted by examining the testimony of witnesses or expert witnesses as well as conducting a cross-examination process between the parties. If the mediation process does not result in agreement, the mediator first makes a written recommendation (Article 13 paragraph (2) letter a of IRDS Law) to be accepted/rejected by the parties (Article 13 paragraph (2) letter c of IRDS Law). If the recommendation is accepted, then the mediation is considered successful—if otherwise, the mediation process is considered failed.

3) Dispute Resolution Mechanism's Outcome Element

The mediation process that reaches an understanding will form a collective agreement signed by the parties and witnessed by the mediator. The collective agreement can also be registered at the industrial relations court to obtain a proof of registration certificate (Article 13 paragraph (1) paragraph (2) letter e) as a form of legal certainty. If the mediation process is failed, the parties or one of the parties may continue the dispute settlement to the Industrial Relations Court at the local District Court (Article 14 paragraph (1) and (2)).

ii. Conciliation

The provisions of conciliation in IRDS Law are regulated from Article 17 to Article 28. The provisions are outlined as follows.

1) Third-party Element

Third parties in conciliation consist of conciliators and witnesses and/or expert witnesses. Conciliators in the industrial relations dispute conciliation are located in each institution and responsible for regency/city manpower sector (Article 17).

Witnesses and/or expert witnesses are summoned to be asked and heard (Article 21 paragraph (1)), as well as to open books and show necessary documents (Article 22).

2) Dispute Resolution Process Element

The conciliation process is conducted by examining the testimony of witnesses or expert witnesses as well as conducting a cross examination process between the parties. If the conciliation process does not result in agreement, the mediator first makes a written recommendation (Article 23 paragraph (2) letter a of IRDS Law) to be accepted/rejected by the parties (Article 23 paragraph (2) letter c of IRDS Law). If the recommendation is accepted, then the conciliation is considered successful—if otherwise, the conciliation process is considered failed.

3) Dispute Resolution Mechanism's Outcome Element

The conciliation process that reaches an understanding will form a collective agreement signed by the parties and witnessed by the conciliator. The collective agreement can also be registered at the industrial relations court to obtain a proof of registration certificate (Article 23 paragraph (1) and Article 23 paragraph (2) letter e) as a form of legal certainty. If the conciliation process is failed, the parties or one of the parties may continue the dispute settlement to the Industrial Relations Court at the local District Court (Article 24 paragraph (1) and (2)).

iii. Arbitration

The provisions of arbitration in IRDS Law are regulated from Article 17 to Article 28. The provisions are outlined as follows.

1) Third-party Element

Third parties in arbitration consist of arbitrators and witnesses and/or expert witnesses. Arbitrators in the industrial relations dispute conciliation are those who are appointed by the Minister (Article 30 paragraph (1)) and who are qualified as stipulated in Article 31. Meanwhile, witnesses and/or expert witnesses are summoned to be asked and heard (Article 46 paragraph (1)), as well as to open books and show necessary documents (Article 47)—yet prior to testifying, witnesses and/or expert witnesses must be oath-taken pursuant to their respective religions and beliefs (Article 46 paragraph (2)).

2) Dispute Resolution Process Element

The arbitration process begins with drafting an arbitration agreement stating the parties' intent to settle the dispute through arbitration (Article 32 paragraph (1) and (2)). Once the arbitration agreement is formed, the parties may appoint arbitrators totaling one person (single) or several in odd numbers which are re-stated in the arbitrator appointment agreement (Article 34 paragraph (1)). The arbitration process is preceded by reconciling the disputing parties (Article 44 paragraph (1)). If this succeeds, a certificate of settlement is made, signed by the parties and the arbitrator or panel of arbitrators (Article 44 paragraph (2)), which later is registered at the Industrial Relations Court (Article 44 paragraph (3)). If the settlement fails, the arbitration trial is preceded by examining the testimony of witnesses or expert witnesses as well as conducting a cross examination process between the parties. The trial is conducted in private, unless the parties require otherwise (Article 41).

3) Dispute Resolution Mechanism's Outcome Element

The arbitration trial no longer results in a collective agreement, but a final and permanent verdict instead (Article 51 paragraph (1)). Either party may file a petition for annulment to the Supreme Court if the verdict allegedly contains elements as referred to in Article 52 paragraph (1).

Based on the analysis of each tripartite mechanism, the three elements can be distinguished. In terms of the third-party element, mediators and conciliators are *inter-partes*, while in contrast to arbitrators who judge-like, are *supra-partes.*[34] In regard to ODR, the feasibility of implementing a dispute resolution mechanism through mediation is more likely, given that the selection of a third party (in this case, a mediator or a conciliator) is more flexible, as well as the resulting agreement and the procedural procedures used. In the case of witnesses or experts who testify, generally, an oath is required to be taken before the testify. If conducted online, the validity of the oath taken could potentially be legally invalid since it is not taken before the court. However, mediation and conciliation in the IRDS Law do not require an oath to be taken before the witness or expert witness testifies. Therefore, despite being conducted online through ODR, the validity of the witness/expert witness oath will not be an issue.

In terms of the dispute resolution process element, particularly regarding the confidentiality principle, arbitration requires to be conducted conventionally in order to ensure the confidentiality principle. Thus, if conducted online, it will not be compatible due to the involvement of vendors and other related institutions in providing facilities. Mediation and conciliation, on the other hand, do not require the dispute resolution process to be conducted conventionally, nor do confidentiality. Thus, the involvement of vendors and other facilitators in ODR may be pursued through mediation and conciliation. At the same time, the confidentiality principle will remain intact given that the involvement of these parties is merely technical and not substantial.

For the dispute resolution mechanism's outcome element, arbitration results in a final and binding verdict, which makes it difficult for the parties to pursue other legal remedies. Whereas the possibility of dissatisfaction of the parties is higher since the decision is determined by the arbitrator. Meanwhile, mediation and conciliation result in a collective agreement. Although the possibility of dissatisfaction is low, the parties are not limited to taking other legal remedies. The flexibility of the mediation and conciliation outcome is in accordance with ODR, which generally pursues simple, fast, and low-cost elements, yet does not disregard the win-win solution for both parties.

Based on the analysis, it can be concluded that ODR has an opportunity regarding the validity of its application in mediation and conciliation mechanisms-since its application will not harm the basic principles of those two mechanisms, namely the qualification of the third parties, the dispute resolution processes, and the dispute resolution outcome element.

2.2. Ideal Model of ODR that Can be Adopted in Industrial Relations Dispute Settlement for Future Indonesian Law (*Ius Constituendum*)

1. Benefits of Adopting ODR in Industrial Relations Dispute Settlement

34 Sara Pose Vidal, "Mediation by Labour Courts in Spain," *Best Practice in Resolving Employment Disputes in International Organizations by ILO*, 2014, 19–22.

The IRDS Law categorizes three forms of industrial relations dispute settlement in stages and successively, namely: bipartite, tripartite, and litigation. In case of an employment dispute, Article 3 of the IRDS Law stipulates that the parties involved are required to settle the dispute through bipartite that emphasizes negotiation, deliberation and consensus. It should be noted that the designation of bipartite is not to be protracted. Therefore, there is a 30-day deadline.

If bipartite fails within the stipulated time, the dispute must be settled through tripartite. Three ways of implementing tripartite include mediation, conciliation, and arbitration. Failure to resolve disputes through mediation and conciliation results in proceedings of disputes to the industrial relations court.

The mechanisms for resolving industrial relations disputes have their own designations, which are summarized in the following table:

Table 1. Mechanism of Industrial Relations Dispute Settlement Based on the IRDS Law

Forms of Industrial Relations Dispute Settlement	**Type of Disputes**			
	Disputes over Rights	**Disputes over Interest**	**Disputes over Layoffs**	**Dispute between Trade Unions in a Company**
Negotiation	Possible	Possible	Possible	Possible
Mediation	Possible	Possible	Possible	Possible
Conciliation	-	Possible	Possible	Possible
Arbitration	-	Possible	-	Possible
Industrial Relations Court	Possible	Possible	Possible	Possible

Examining the table above, it can be understood that negotiation, mediation, and litigation are mechanisms that can be used to resolve any industrial relations dispute, though in principle, the settlement is based on the stages previously described.

The table above shows that mediation is the only method under ADR that can be chosen to resolve multiple industrial relations disputes. Linking to the previous description, mediation can also be implemented online. This implies that mediation can be an "all-fit" and flexible mechanism by optimizing its implementation.

In essence, conciliation is also carried out through deliberation, similar to mediation, except that conciliation is brokered by one or more neutral conciliators (Article 1 point 13 of the IRDS Law). Conciliators who carry out the conciliation are those who are registered at the institution office responsible for the Regency/City manpower sector. This allows conciliation to be conducted with conciliators whose working areas encompass the workers' (Article 18 of the IRDS Law).

The only significant difference between mediation and conciliation is the active-passive nature of the third party in both mechanisms. In conciliation, the conciliator

is active and has the authority to propose opinions as well as drafting requirements for an agreement between the parties,[35] while mediator is passive and acts as a facilitator, as well as intermediary for the disputing parties.[36] This indicates that the advantages of online conciliation are similar to online mediation as described above.

Concerning the implementation of mediation and conciliation in industrial relations, its online implementation through the ODR mechanism is worth considering, given the technical benefits it provides.

a. Simple

Mediation or ADR in general, often hampers the parties in terms of technical procedural requirements[37] that must be met conventionally, ranging from the physical presence of the parties, physical submission of the documents, to the use of national languages of certain countries. In contrast, the ODR mechanism, from the registration stage to the dispute resolution process, always offers convenience for the disputing parties. The entire process is held online and designed to be as simple as possible,[38] even the parties independently have the right to determine the method, procedure, and language used in the dispute resolution according to their preferences. Thus, the time and cost of dispute resolution that is spent under conventional mechanisms can be minimized through ODR.

b. Fast

With the procedural requirements that must be met through conventional mechanisms, even the resolution of a dispute through ADR can take years. This is due to the delivery and reception of documents that sometimes do not match the address of the parties, the physical absence of the parties that triggers delays in the dispute resolution process, and other obstacles. The ODR mechanism in this case utilized technology to prevent such concerns from occurring, i.e. striving for a long-winded dispute resolution. For example, delivery of notices and documents that are conventionally sent by post can be sent by email.[39] The process of evidencing and resolving disputes that require physical presence of the parties at a certain place and time, is carried out through teleconference media,[40] such as zoom meetings, google meet, and other such media that can be done anytime and anywhere. Moreover, the process of signing a collective agreement electronically is also possible by using an electronic signature.[41]

c. Low in Cost

The process of resolving industrial relations disputes, particularly the small ones, is funded by the government. However, what burdens the parties are the accommodation cost that must be met when pursuing ADR. The design of the ODR mechanism that is simple and fast anticipates the increasing costs that will

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35 Sastiono Kesek, "STUDI KOMPARASI PENYELESAIAN PERSELISIHAN HUBUNGAN INDUSTRIAL MELALUI MEDIASI DAN KONSILIASI," *DEDIKASI : Jurnal Ilmiah Sosial, Hukum, Budaya* 31, no. 2 (December 11, 2015): 129–39, https://doi.org/10.31293/ddk.v31i2.1466.

36 Kesek.

37 Michael Legg, "The Future of Dispute Resolution: Online ADR and Online Courts," *University of New South Wales Law Research Series*, 2016, 9.

38 Bakhramova, "ODR (Online Dispute Resolution) System as a Modern Conflict Resolution: Necessity and Significance," 446.

39 Karolina Mania, "Online Dispute Resolution: The Future of Justice," *International Comparative Jurisprudence* 1 (2015): 79.

40 Orna Rabinovich-Einy and Ethan Katsh, "Lessons from Online Dispute Resolution for Dispute System Design," *SSRN Electronic Journal*, 2021, 7, https://doi.org/10.2139/ssrn.3830035.

41 Bakhramova, "ODR (Online Dispute Resolution) System as a Modern Conflict Resolution: Necessity and Significance," 444.

be incurred by the parties. The process is carried out predominantly online,[42] thus cutting expenses for housing costs, mobility, and other expenses that usually burden the parties in ADR. Even the cost of dispute resolution covered by the government makes the cost incurred by the disputing parties nearly zero.[43]

In general, ODR achieves the principles upheld in industrial relations dispute settlement, such as the principles of fast, simple, and low cost.[44] As its implementation does not require commuting expenses and is very practical to implement. With such benefits, ODR is certainly effective in reducing existing industrial disputes. This has been proven by a pilot test, comparing the online mediation process with in-person mediation conducted by E. Patrick McDermott and Ruth Obar in the United States of America, around August-November 2021.[45] In sum, the survey shows that the parties involved in the dispute are satisfied with ODR's performance and would prefer to use ODR in the future as opposed to ADR.[46]

With the settlement of disputes through ODR, meaning that settlement through litigation is no longer necessary. The parties no longer need to pursue litigation mechanisms that are time-consuming, expensive, and trigger tension over the stability of employee and company relations.

2. International Practices related to PHI and ODR

Since the application of ODR has not been extensively applied in industrial relations disputes, it is necessary to observe best practices of countries and international regulations on industrial relations dispute settlement through ODR as benchmarks in formulating future amendments to the IRDS Law, as follows.

a. International Practices related to Industrial Relations Disputes

i. Cambodia

The International Labor Organization *("ILO")* acclaimed Cambodia as the best country in resolving industrial relations disputes.[47] In fulfilling a sense of fairness for workers and employers, Cambodia also strives for an effective and efficient industrial relations dispute settlement. Several points in conducting industrial relations dispute settlement by Cambodia are as follows:[48]

1) Providing a Flexible Legal System

Cambodia always adapts to the latest industrial relations dispute settlement models and strives to be flexible in order to ensure best service. Learning by doing is the guiding principle of law enforcement in Cambodia—receiving feedback from society in order to align rules and procedures with the latest developments in society.

2) Well-Managed Tripartite Mechanisms

42 Colin Rule, "Online Dispute Resolution and the Future of Justice," *Annual Review of Law and Social Science* 16, no. 1 (October 13, 2020): 283, https://doi.org/10.1146/annurev-lawsocsci-101518-043049.

43 Mania, "Online Dispute Resolution: The Future of Justice," 14.

44 Mustakim, *Mekanisme Penyelesaian Perselisihan Hubungan Industrial Menurut Undang-Undang No. 2 Tahun 2004 (Birparti, Tripartit, Gugatan Ke PHI)* (Jakarta: Fakultas Hukum Universitas Nasional, n.d.).

45 E. Patrick McDermott and Ruth Obar, "The Equal Employment Opportunity Commission Mediation Participants Experience in Online Mediation and Comparison to In-Person Mediation," 2022, 10.

46 McDermott and Obar, 13–15.

47 Corinne Vargha, "Reflections on ILO Experience: How Can The Effectiveness of Dispute Resolution System Be Assessed?," *Best Practice in Resolving Employment Disputes in International Organizations by ILO*, 2014, 3–10.

48 Vargha.

Tripartite has always been the parties' favorite in resolving their disputes, therefore the legal authorities in Cambodia always strive to provide well-tailored information and advice through tripartite dialogue and collective negotiation.

3) Conducting Continuous Training and Intensive Mentoring

In order to ensure best services provided by Cambodia's law enforcement authorities, comprehensive, long-term training of the third parties (mediators, conciliators, arbitrators, and other parties involved in the process)—in order to establish the characteristics of independent, transparent, accountable, credible, and effective authorities.

4) Cutting Case Costs

The economic disparity between workers and employers is something that Cambodia takes seriously—hence, the implementation of dispute resolution is far from a taken for granted principle. All forms of agendas that are redundant and lack of urgency are eliminated in order to save cost.

ii. Spain

Spain seeks to provide a mechanism that keeps disputants away from time-cost-consuming litigation procedures. Likewise, by utilizing ADR, Spain focuses on mediation instead of arbitration or conciliation as industrial relations dispute settlement. This based on the no remedy can be pursued by the parties due to the final and binding nature of the arbitral verdict—the lengthy and delayed administrative process of conciliation. In resolving industrial relations dispute through mediation, following key points are implemented by Spain:[49]

1) Providing Trained, Experienced, and Professional Mediators

Mediators in Spain are regularly trained to ensure independence, professionalism, and confidentiality to the disputants. Mediators are endured to be affiliated with public institutions in order to make the handling fees free.

2) Expanding and Deepening Types of Disputes Commonly Settled by Mediation

Spain continues to explore types of disputes that are commonly settled through mediation. Presently, these types of disputes are: right to leave; geographical mobility; substantial changes in employment contract; right to reconciliation of personal; work and family life; recognition of rights; and disciplinary sanctions.

iii. International Guidelines (Labour Dispute Systems: Guidelines for Performance Improvement) by International Labour Organization

Labour Dispute Systems: Guidelines for Performance Improvement *("ILO Guideline")* established and published by ILO is a guide in settling labor disputes.[50] The guide consists of 10 parts, which can be outlined into four main pillars:

1) Industrial Relations Dispute Settlement and its Regulation

The industrial relations dispute settlement and regulation encompasses section 1 and 2 of the ILO Guidelines. Section 1 emphasizes on identifying the disputants, their sectors, as well as effective and ineffective dispute resolution systems. Basically, there are four approaches in settling disputes, including:[51]

49 Vidal, "Mediation by Labour Courts in Spain."

50 Beny Saputra and Olivér Bene, "Protection Standardization Towards Unemployment in Indonesia," *Jambe Law Journal* 5, no. 1 (2022): 128, https://doi.org/10.22437/jlj.5.1.123-146.

51 International Labour Organization, "Labour Dispute Systems: Guidelines for Improved Performances" (International Training Centre of the ILO, 2013), https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_211468.pdf.

- Avoidance—one party fails to handle the dispute;
- Power—one party uses coercion to force the other party to comply with its wishes;
- Rights—one party uses and independent standard of rights or justice to settle the dispute;
- Consensus—one party attempts to reconcile, compromise, or accommodate the underlying positions or needs.

Dispute resolution is not ideal when it starts with avoidance without trying to solve the problem first. Whereas, ideal dispute resolution begins with a consensus that compromises the respective interest of the disputants, states their respective rights, then uses power.

The second part emphasizes the parties' position in the settlement, the range of service provided, and the application of good governance principles in its regulation.

2) Revitalizing the Industrial Relations Dispute System and Establishing an Independent Authority

Revitalizing the industrial relations dispute system and establishing an independent authority encompasses section 3 and 4 of the ILO Guidelines. Third section emphasized revitalization efforts and planning changes to the industrial relations dispute settlement—which is further discussed in section 4. Revitalization and changes as referred to in section 3 are carried out by establishing statutory provisions by the legislative, as well as establishing independent institutions in handling industrial relations dispute settlement.

Law will be the basis for the industrial relations dispute institution's independency to uphold justice, thus it must contain: preventive attempts to resolve industrial relations dispute; dispute resolution mechanisms by conciliation, mediation, and arbitration; public and private sector mapping; negotiating council authority; private sector involvement; uncommon work arrangements; countrywide services; gender issues; governing board; board of directors; reporting and transparency; labor administration; as well as structure and organization.

3) Conducting Performance Improvement and Performance Monitoring

Conducting performance improvement and performance monitoring encompasses section 5, 6 and 7 of the ILO Guidelines. The fifth section emphasizes on improving the parties' knowledge of their rights and obligations in an employment relationship. These are required to be contained and implemented in the stages of: regulation development; law enforcement; and during the employment relationship. The rights and obligations may be contained and informed in general, but the way in which the parties wish to explore the specifications of their rights and obligations should also be regulated.

The sixth section focuses on improving dispute settlement services, by prioritizing preventive efforts first, then prioritizing alternative dispute resolution, namely mediation, conciliation, and arbitration as its repressive efforts. Monitoring and evaluating dispute resolution practices is also an important focus in the seventh section.

4) Managing Manpower Conflicts and Mapping the Challenges Therein

Managing manpower conflicts and mapping the challenges therein encompasses section 8 and 9 of the ILO Guidelines. Section 8 emphasizes the

stages of conflict management, namely by creating an enabling environment for disputes, seeking preventive action against disputes, then making efforts to settle the disputes. These dispute resolution efforts can be divided into two mechanisms, namely collective negotiation with third-party involvement through conciliation, mediation, arbitration, and adjudication.

Based on the international practices by Cambodia, Spain, and ILO regarding industrial relations disputes, the prioritization of effective and efficient mechanisms through ADR is constantly applied. Therefore, ODR as a technically 'superior' form of ADR, should be considered by first analyzing the relevant international practices.

b. International Practices related to ODR

i. The United States of America

The implementation of ODR in the United States was triggered by the realization of the American Judiciary that the judicial system could not fully rehabilitate people's rights due to its limitations.[52] The practice of ODR in the US was initially aimed at resolving low-value high-amount-disputes-even for those involving people who could not afford the costs of litigation.[53] However, due to its overwhelming success, the scope of dispute resolution through ODR was widened to include family disputes, employment disputes, debt disputes, and lease disputes with a time of 4-5 days.[54]

The dispute resolution mechanism through ODR in the US begins with informing the rights and obligations of the disputants, proceeds to the negotiation stage between the parties, then to a non-litigation mechanism involving a third party if the parties are unable to resolve their respective disputes. Document uploading and communication with the disputing parties and the mediator can be done through chat or email. The time and place of the dispute settlement process is also flexible to be determined by the parties.

The US continues to develop the application of ODR as a form of dispute resolution mechanism—currently, 70 organizations listed in the National Center for Technology and Dispute Resolution (NCTDR) provide ODR services.[55] In fact, some American Law Schools have established ODR in form of modules to full courses.[56]

ii. United Nations Commission on International Trade Law **("UNCITRAL")**

UNCITRAL Technical Notes on Online Dispute Resolution (**"UNCITRAL Technical Notes"**) is a guide in applying ODR as a form of dispute resolution mechanism. The issuance of this guide is not intended as a rule for the application of ODR, thus its existence is not binding on the parties or persons and/or entities that organize ODR—only as guidance. There are at least 3 pillars contained in the guidelines as follows.

1) Principles in Implementing ODR Mechanism

ODR seeks to realize the principles of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability, and transparency (point 4)—thus, the process should be simple, fast, efficient, and not impose disproportionate

52 Amy J. Schmitz and Martinez Janet, "ODR and Innovation in the United States," *University of Missouri School of Law Legal Studies Research Paper*, 2021, 1–26.

53 Calliess, Gralf-Peter, and Simon Johannes Heetkamp. "Online Dispute Resolution: Conceptual and Regulatory Framework." *TLI Think* (2019).

54 APEC Economic Committee, "APEC Workshop on Enhancing Implementation of Online Dispute Resolution (ODR) through The APEC ODR Collaborative Framework and Other Fora Including Courts," 2023, 1–51.

55 Schmitz and Martinez Janet, "ODR and Innovation in the United States."

56 Schmitz and Martinez Janet.

costs, delays, and burdens (point 9). However, the principles that absolutely underpin the ODR process include fairness, transparency, due process, and accountability (point 7)—which is done by mapping the relationship between vendors and administrators to the parties (point 10) and enabling vendors to upload the ODR process anonymously to maintain the confidentiality principle (point 11), establishing a code of ethics for administrators (point 13) as an implementation of the independence principle, conducting training for third parties (point 15) as an implementation of the expertise principle, and ensuring consent between the two parties in the ODR process (point 17) as part of the consent principle.

2) Parties to ODR Mechanism

Since the implementation of ODR requires a technology-based intermediary, the ODR process cannot be conducted only by involving the disputants and a neutral party—another party is required, namely the ODR vendor or administrator (point 27). Thus, there are at least 4 stakeholders involved in the ODR process: the disputants, the third party, the ODR administrator, and the government. The UNCITRAL Guidelines outlines specific provisions for third parties, ODR administrators, and government as follows.

- Third Parties

  The third party referred in the ODR process is a neutral party that mediates the dispute settlement between the parties—professional and experienced in resolving a related dispute, and not required to be a lawyer (point 47).

- ODR Administrators

  ODR Administrators are those who take care of administration and coordination during the ODR process (point 27). To ensure efficiency, the ODR Administrators are required to notify the intake of any communication on the ODR platform, notify the parties of any communication received on the ODR platform, and notify the parties of the timeline for the initiation and termination of each stage of the ODR process (point 31).

- Government

  The government is required to establish guidelines regarding the rights and obligations of ODR platforms and administrators (point 52), and to comply with the principles of independence, neutrality, and partiality as applicable in in-person dispute settlement (point 53).

3) Stages in ODR Mechanism

Stages in ODR consist of negotiation, facilitated settlement, and final stage (point 18) which can be detailed as follows.

- Negotiation Stage

  The negotiation stage begins after the respondent's response has been communicated to the ODR platform and the requesting party has been notified, or there is no response from the respondent after the notification has been communicated within the prescribed timeframe (point 38). Negotiation is considered failed if it does not result in an agreement within the prescribed time period (point 39).

- Facilitated Settlement Stage

  The facilitated settlement stage begins when negotiation does not reach an agreement or when one or both parties request to proceed to this stage (point 41). This stage involves a neutral third party (point 40)—whose task

is to help the parties reach an agreement (point 43). The facilitated settlement stage is considered failed when no agreement is reached within the prescribed timeframe (point 44).

- Final Stage

  The neutral party at an earlier stage is obliged to inform the disputants of the nature and form that the final settlement may take (point 45)—whether litigation or other forms of settlement.

3. Proposed Rule Formulation related to ODR in Industrial Relations Disputes in the Future

It can be comprehended that ODR has a number of advantages, as evidenced by the survey and best practice analysis described above. In order to create fair industrial relations conditions and ensure that the parties are not protracted in disputes, ODR should be accommodated in settling industrial relations disputes in Indonesia.

To achieve that, the author has tried to formulate an initial offer to accommodate ODR. However, it should be noted that this offer does not impose that every dispute be conducted online. Instead, this offer is open-ended. In a sense, if the parties want to settle their disputes by ODR, the state through its laws and regulations is able to realize that intention. For example, as a concern at the beginning of this paper, during times of disease outbreaks, which significantly hinder the parties from resolving their issues fairly, ODR is the right option.

The initial step is to examine the choice of regulatory instruments. Presently, mediation procedures are governed by the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 17 of 2014 concerning the Appointment and Dismissal of Industrial Relations Mediators and Mediation Work Procedures *(**"Ministerial Regulation 17/2014"**)*. Meanwhile, conciliation is governed by the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: PER.10/MEN/V/2005 on the Appointment and Dismissal of Conciliators and Conciliation Work Procedures *(**"Ministerial Decree PER.10/MEN/V/2005"**)*.

Ministerial Regulation 17/2014 regulates several provisions regarding the presence of the parties. In Article 13 paragraph (2), it is emphasized that:

*"Dalam hal salah satu pihak atau para pihak menggunakan kuasa hukum dalam sidang Mediasi, mediator dapat meminta kuasa hukum **menghadirkan** pemberi kuasa". (Translated version: "In case one of the parties or the parties use an attorney in mediation trial, the mediator may request the attorney to* **present** *the power of attorney").*

Further, Article 13 paragraph (3) stipulates that:

"Dalam hal para pihak telah dipanggil secara patut dan layak sebanyak 3 (tiga) kali ternyata pihak pemohon yang mencatatkan perselisihan tidak hadir, maka pencatatan perselisihan hubungan industrial dihapus dari buku registrasi perselisihan." (Translated version: "In case the parties have been properly and appropriately summoned 3 (three) times and the applicant who has registered the dispute **is not present***, the industrial relations dispute record shall be removed from the dispute registration book").*

In paragraph (4) of the same article, it is stipulated that:

"Dalam hal para pihak telah dipanggil secara patut dan layak sebanyak 3 (tiga) kali

> *ternyata pihak termohon* ***tidak hadir****, maka Mediator mengeluarkan anjuran tertulis berdasarkan data yang ada." (Translated version: "In case the parties have been properly and appropriately summoned 3 (three) times and the respondent* **is not present***, the mediator shall issue a written recommendation based on the available data.")*

The provisions outlined above do not provide further explanation as to under what conditions a party is said to be present/absent. However, it can be simply understood that this ministerial regulation is still within the paradigm of implementing in-person mediation. With that framework in mind, online mediation that does not involve in-person meetings can be considered "absent" in the above provisions' context.

In fact, online mediation has been carried out by several Manpower Offices in several regions, such as in Yogyakarta when the Covid-19 pandemic was still uncontrollable.[57] However, there is no rule of law that legitimizes or accommodates the needs of related agencies and disputing parties to resolve their problems through online mediation. This will lead to hesitation and ultimately foreclose the opportunity to optimize non-litigation efforts in dispute settlement.

Regarding the above, a step that can be taken is to add details to the provisions regarding the allowance of online mediation. Amendments to the provisions in Ministerial Regulation 17/2014 can objectively be considered not ideal for formulating ODR accommodations, since there is a possibility that the paradigm is not aligned with the current IRDS Law, which only implicitly allows the implementation of ODR. Therefore, the best thing to do is to insert a new article with the aforementioned purpose. By the existence of the new article, the paradigm in Ministerial Regulation 17/2014 as the implementing regulation of IRDS Law will automatically comply. The article referred to can be inserted between Article 8 and Article 9 of the existing IRDS Law, verbatim:

> *"Penyelesaian perselisihan melalui Mediasi dapat dilakukan secara tatap muka maupun dalam jaringan atau kombinasi antara keduanya sesuai kesepakatan para pihak yang berselisih." (Translated version: "Dispute resolution through Mediation may be conducted in-person or online or a combination of both as agreed by the disputants.")*

Thus, the meaning of "present/absent/presenting" in the provisions of Ministerial Regulation 17/2014 as mentioned earlier can directly refer to either in-person (face-to-face) or online through technology that facilitates the process.

Similarly, the provisions regarding conciliation, which are in Ministerial Decree PER.10/MEN/V/2005. Provisions with such nuances in Ministerial Regulation 17/2014 can also be found mainly in Article 10 paragraph (1) letter d, paragraph (2)-(4) with certain adjustments to comply with the conciliation mechanism. With similar reasons as proposed in mediation above, to accommodate ODR in conciliation, it is necessary to insert between Article 17 and Article 18 with verbatim identical to the one above:

> *"Penyelesaian perselisihan melalui Konsiliasi dapat dilakukan secara tatap muka maupun dalam jaringan atau kombinasi antara keduanya sesuai kesepakatan para pihak yang berselisih." (Translated version: "Dispute resolution through Conciliation may be*

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57 Wiwin Budi Pratiwi and Lia Lestiani, "PENYELESAIAN PERSELISIHAN HUBUNGAN INDUSTRIAL SELAMA MASA PANDEMI COVID DI KOTA YOGYAKARTA," *Book Chapter 2023*, no. 0 (February 23, 2023), http://www.e-journal.janabadra.ac.id/index.php/bookchapter-2023/article/view/2562.

conducted in-person or online or a combination of both as agreed by the disputants.")

The proposal above is only a starting point. This means that further matters relating to the standard operating procedures for the implementation of ODR must be further researched regarding the obstacles and challenges during its implementation. This can be done by examining the implementation of ODR in other sectors as mentioned above, which the author concludes is important to highlight the following three points:

1) Providing Flexible, Effective, and Efficient Mechanism

   As in Cambodia, the parties involved in industrial relations disputes are of two different economic capacities—the cost-cutting of meetings, accommodation, and administration as part of the conventional mechanism can be eliminated by ODR. Additionally, the busy schedules that frequently cause delays in the conventional mechanism can be overcome by the time and place flexibility of the ODR.

2) Ensuring Good Management of Tripartite Mechanism

   Tripartite mechanism in Cambodia is actually a favored mechanism in industrial relations dispute settlement, hence a high implementation quality—in terms of providing fairness, neutrality, and accountability is expected. Although ODR involves other parties such as vendors and administrators, it does not compromise the principle of confidentiality as applied in conventional practices. In fact, the level of satisfaction with fairness, neutrality, and accountability is very high in America.

3) Conducting Training and Assistance During the Dispute Resolution Process

   Training and mentoring to ensure the quality of third parties involved is also an important point in industrial relations dispute settlement practices in Cambodia, Spain, as well as the ILO Guidelines. ODR always guarantees the quality of its third parties by setting certain conditions and ensuring supervision not only by the administrator, but also involving other supervisory parties, if necessary, in accordance to the UNCITRAL Guidelines.

However, it should be noted that the author's initial offer above depends on the collective will of legislators as amendments are in the realm of laws, and not regulations issued by sectoral institutions alone. Therefore, there is a possibility that the above offer will be carried out in a relatively short period of time depending on the priorities of law formation in the legislature. However, the positive side is the involvement of the broader community to be heard and their opinions considered thus the changes will be much more thorough.

To conclude, the above offer actually requires simultaneous improvement of human resources. This closely relates to the practice of ODR and the settlement of industrial relations disputes that the author mentioned above, especially with regard to the provision of competent third parties (mediators/conciliators), easy access for justice seekers,[58] and good management mechanisms, solely to realize equitable settlement of industrial relations disputes.

3. CONCLUSION

58 Asmah et al., "Pancasila's Economic Existence in Business Development: The Efforts to Realize Justice in Business Law," *Jurnal IUS: Kajian Hukum Dan Keadilan* 11, no. 2 (2023): 269, http://dx.doi.org/10.29303/ius.v11i2.1224.

Industrial disputes are inevitable between workers and employers. The dynamic nature of the employment relationship makes it difficult to eliminate differences in the way the parties understand their respective ways of working, rights, and interests. To ensure that the parties do not engage in protracted disputes that harm economic productivity, a good dispute settlement is the key. The current mechanism focuses on the lack of efficiency and effectiveness of dispute resolution through the Industrial Relations Court, thus alternative mechanisms need to be optimized. ODR in this case is established to ensure the simplicity, fastness, and low cost of dispute resolution procedures. Based on the analysis of the IRDS Law, the application of ODR is possible through mediation which is considered as an "all-fit" mechanism, as well as conciliation which is essentially not much different in application from mediation. Based on a comparison of international practices related to industrial relations dispute resolution in Cambodia, Spain, and the ILO Guideline, dispute resolution through ADR is favored as it is considered effective and efficient. Furthermore, international practices related to ODR in the United States have proven that ODR is technically superior to ADR. Thus, the use of ODR in Indonesia can be considered by first amending regulations related to industrial relations dispute resolution by referring to UNCITRAL Technical Notes and relevant practices carried out by the United States.

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