

JPH: Jurnal Pembaharuan Hukum
Volume 8, Number 2, August 2021

THE ONLINE DISPUTE RESOLUTION IN *PANCASILA'S* FRAME

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Abstract

Online Dispute Resolution is a solution in resolving problems outside the court where online dispute resolution is an appropriate solution to resolve online trade disputes, the settlement must apply Pancasila values. Method The approach used in this research is normative juridical. The results of the research show that the application of Online Dispute resolution in addition to legal reform in the field of electronic transactions is also related to efforts to create legal certainty in online dispute resolution in Indonesia. The basic principles of online dispute resolution in Pancasila values are reflected in the spirit of kinship and mutual cooperation, these principles is a reflection of Pancasila values leading to basic values which are the elaboration of the same spirit and within the limits allowed by these basic values. Agreed values in realizing the law as the goal of justice and creating justice.

Keywords : *Frame; Online Dispute Resolution; Pancasila.*

A. INTRODUCTION

In the era of globalization, it is demanded to harmonize the structure of legal relations, new substances of legal regulation, and a new legal culture. Without harmonization of the legal system, there will be a situation that cannot guarantee legal certainty which can cause disturbances in social life, disorder and a sense of being unprotected.¹ The impact of globalization is very complex including liberalization in the world trade system increased labor mobility and capital.² Increasingly fierce competition brings demands on product quality and higher levels of efficiency.³

The ongoing development of globalization can be clearly seen in the international trade sector, this can be seen in the international trade activity itself. International trade activities also develop along with the development of globalization, especially trade activities are influenced by advances in information technology as one of the pillars of globalization.⁴

1 Aditya Yuli Sulistyawan, Urgensi Harmonisasi Hukum Nasional Terhadap Perkembangan Hukum Global Akibat Globalisasi, *Jurnal Hukum Progresif*, Vol. 7, No. 2, October 2019, page.171-181

2 Anis Mashdurohatun, Bambang Suprabowo, Eman Suparman, Legal Protection for Creditors in providing business credit with object of inventory warranties based on justice values, *Journal of Engineering and Applied Sciences*, 14 (12) 2019, page. 4176-4182

3 M. Ali Mansyur, *Peran Hukum Dalam Menjawab Perkembangan Ekonomi*, Badan Penerbit Universitas Diponegoro, Semarang, 2012, page. 40.

4 Shinta Dewi, *Cyber Law Perlindungan Privasi atas Informasi Pribadi Dalam E-Commerce menurut Hukum Internasional*, Widya Padjajaran, Bandung, 2009, page.2

The free market system and free competition between countries in online trade have resulted in fast growing business transaction activities. With hundreds of thousands of business transactions every day, the intensity of business transactions both domestically and internationally is expected to increase every day, which will trigger an increase in the frequency of disputes. Various disputes arising from business activities and commercial activation are generally called business disputes or commercial disputes.⁵

In business models that pass through state jurisdiction, usually the alternative dispute resolution taken is the arbitration method which bridges legal interests with different legal systems. The problem is that the existing arbitration method still uses the conventional model which requires the disputing parties to meet in person, whereas in e-business the parties to legal relations come from various parts of the world. Therefore, the modern business world turns to alternative dispute resolution, as an alternative dispute resolution because modern business needs require fast dispute resolution and do not hinder the business climate.

The term Alternative Dispute Resolution is a relatively new term in Indonesia. The term ADR first appeared in the United States. This concept is an answer to the dissatisfaction (dissatisfaction) that arises in society in the United States towards the dispute resolution system through the courts. This dissatisfaction stems from a long time in resolving cases, in addition to the high costs.⁶

Alternative dispute resolution is dispute resolution out of court. The word alternative indicates that the disputing parties are free through mutual agreement to choose the forms and procedures contained in the alternative dispute resolution and will be applied in dispute resolution. In fact, by choosing Alternative Dispute Resolution, the disputing party should refer to his own contract (if any) namely the contract clause that indicates to a third party to assist if the negotiation is not successful, namely good offices, mediation, and conciliation on the one hand and arbitration on the other hand another place.⁷

This is where an arbitration method is needed that can bridge various legal interests with a different system, low cost, efficient and effective. One of the breakthroughs is by using an online arbitration model, known as Online Dispute Resolution (ODR), so that the disputing parties can settle wherever they are. Online Dispute Resolution is a method of resolving disputes through internet media, in the sense that the settlement process is carried out by parties who are in cross-border areas without having to meet face to face.⁸

5 Eman Suparman, *Pilihan Forum Arbitrase Dalam Sengketa Komersil Untuk Penegakan Keadilan*, Tata Nusa, Jakarta, 2004, page 5

6 Muhammad Saifullah, *Mediasi dalam Tinjauan Hukum Islam dan Hukum Positif di Indonesia*, Walisongo Press, Semarang, 2009, page. 64.

7 Moch. Basarah, *Prosedur Penyelesaian Sengketa Arbitrase Tradisional Dan Modern (Online)*, Genta Publishing, Yogyakarta, 2011, page.2.

8 Suprihantosa Sugiarto, Online Dispute Resolution (ODR) Sebagai Alternatif Penyelesaian Sengketa di Era Modernisasi, *Jurnal Qawanin* Vol. 3 No. 1 January-June 2019, page.50-65

In general, the parties prefer to resolve ODR disputes through online arbitration due to the final and binding nature of the decision. However, in ODR there is a new phenomenon where online arbitration decisions are non-binding. The online communication methods that can be used include: e-mail, instant messaging, online chat, threaded discussion, video/audio stream, teleconference, and video conferencing.⁹

The application of online arbitration does offer a lot of effectiveness and efficiency compared to conventional arbitration, especially costs that are sometimes even more expensive than the litigation process can be minimized.¹⁰ In certain circumstances, ODR is expected to be the only dispute resolution method to obtain justice, because other dispute resolution methods require significant costs. With the necessity to meet face to face, between the parties and the judge, arbitrator, or mediator, it will require travel, lodging, administration and consultation costs. While in ODR these costs are not needed, in other words, there is a difference in the advantages of resolving disputes through ODR, namely the costs incurred are very small.¹¹

Online Dispute Resolution is actually not a very new concept, because the procedures between Alternative Dispute Resolution (ADS) and Alternative Dispute Resolution online are not much different. The very basic difference between Alternative Dispute Resolution and Online Dispute Resolution is if in the Online Dispute Resolution the dispute resolution between the parties can be done without their physical presence. In fact, currently, in some cases, dispute resolution through Online Dispute Resolution continues to increase. Because the Online Dispute Resolution will adhere to certain minimum standards in maintaining quality and impartiality (fairness).¹²

The effectiveness of online arbitration in dispute resolution in Indonesia still poses problems. The court has not given a proper award to arbitration, so the provisions in Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the Indonesian National Arbitration Board has conducted arbitrations using email, and the trial process has often been carried out using email. However, the use of the website for organizing arbitration has not been carried out.

Indonesia, like most other countries, has no rules regarding international jurisdiction that apply specifically to the internet. Until now there has not been an international convention that regulates similar issues. Therefore, in the various cases that arise, the analysis of the choice of law depends on where the lawsuit against a case is registered. The number of problems regarding the law, especially by prioritizing justice which is the

9 Moch Basarah, *Op.Cit.*, page. 100

10 Bambang Sutioso, *Hukum Arbitrase dan Alternatif Penyelesaian Sengketa*, Gama Media, Yogyakarta, 2008, page 184.

11 Moch. Basarah, *op. cit.*, page. 101

12 Hutrin Kamil, M.Ali Mansyur, *Kajian Hukum Online Dispute Resolution (ODR) di Indonesia Berdasarkan Undang-Undang Nomor 30 Tahun 1999*, *Jurnal Pembaharuan Hukum*, Volume I No. 2 May-August 2014, page.111-120

main goal in addition to legal certainty, also requires a basic foundation in implementing Online Dispute Resolution.

By using the fundamental norm, namely *Pancasila*, in the formation of good laws, *Pancasila* has always been and must be the main milestone in forming laws and regulations that are in accordance with the spirit of the Indonesian nation that humanizes just and civilized human beings as well as social justice for all Indonesian people. Therefore, there is a need for an understanding of *Pancasila* justice in order to provide a common perception of justice which will be the basis for the formation of good law.¹³

The purpose of this paper is to find out and analyze the views of online dispute resolution based on *Pancasila* values which is a solution in resolving problems outside the court where online dispute resolution is an appropriate solution to resolve online trade disputes. Settlement with the principle of win-win solution in Online Dispute Resolution offers a fast, practical and low-cost dispute resolution, especially during the global pandemic situation due to the Covid-19.

B. RESEARCH METHODS

The approach method used in this legal research is normative juridical. Normative research is a process of finding laws, legal principles, and legal doctrines, in order to answer the legal issues faced. This normative legal research is carried out to produce new arguments, theories or concepts as prescriptions in solving problems faced.¹⁴ Normative research is also called doctrinal research and dogmatic research, namely research on laws that are conceptualized and developed on the doctrines held by the conceptor or developer.¹⁵

C. RESULT AND DISCUSSION

1. The introduction of Online Dispute Resolution

Online Dispute Resolution (ODR) is a dispute resolution branch that uses technology facilities to provide resolution to disputes between parties. ODR in this case uses negotiation, mediation or arbitration or a combination of the three. In this case, ODR is categorized as part of the Alternative Dispute Resolution (ADR). The difference lies in that ODR changes the traditional view to the use of innovative techniques and online technologies in the process.¹⁶

Historically, the first ODR appeared in 1995. The National Center for Automated Information research (Philadelphia, United States) created an ODR under the name Virtual Magistrate (VM) which has the competence to resolve disputes between internet service providers and

13 Ferry Irawan Febriansyah, Keadilan Berdasarkan *Pancasila* Sebagai Dasar Filosofis Dan Ideologis Bangsa, *DiH Jurnal Ilmu Hukum*, Volume 13 Nomor 25 2017, page.1-27

14 Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi I, Cetakan 7, Kencana, Jakarta, 2011, page.35

15 Irwansyah, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, Mira Buana Media, Yogyakarta, 2020, page.95

16 Gagah Satria Utama, Online Dispute Resolution: A Revolution In Modern Law Practice, *Business Law Review*, Vol. 3, No. 1 (2017), page.2.

users.¹⁷ The National Center for Automated Information Research (NCAIR) held a conference on Online Dispute Resolution in 1996. This year is considered a significant period in achieving ODR. The first project sponsored by NCAIR in 1996 was the Virtual Magistrate Project located at Villanova University. The decision resulting from the ODR at that time was stating that advertisements placed on American On Line (AOL) in the form of emails sent to millions of email addresses were considered a violation of the service agreement provided so that the advertisements should be removed from AOL.¹⁸

In ODR there are indeed several dispute resolution mechanisms such as alternative dispute resolution which consist of negotiation, consolidation, mediation, arbitration, and other procedures, but this discussion will focus on discussing ODR in online arbitration procedures.¹⁹ Furthermore, the idea was developed into an online arbitration mechanism that is used to resolve disputes due to legal actions electronically in particular and other disputes in general. Limited to disputes based on law that can indeed be resolved through alternative dispute resolution processes.

The online arbitration mechanism frees the determination and use of choice of law, but most arbitration agreements are made in the form of a standard clause, so that the appointment of relative competence and choice of law in an arbitration agreement is only determined by one party.

The purpose of this online dispute resolution model is in an effort to provide alternative dispute resolution services for industry and consumers both in terms of marketing electronic commerce from business to business, business to consumer and business to government. Another thing that can be identified is the reason for the emergence of this online dispute resolution model due to the limitations of the dispute resolution system currently applied in conventional law. The characteristics of conventional disputes are different from disputes that arise due to activities in cyberspace or on the internet, which tend to overlap with jurisdictions and the number of laws being enforced. So this requires a new model in dispute resolution in internet activities.²⁰

Online arbitration is indeed an option in resolving disputes that occur as a result of the use of electronic communications and the circulation of information and goods. Dispute resolution through arbitration, both online and traditional, can be carried out if there is an agreement between the disputing parties. In its implementation, ODR is

17 Pablo Cortes, *Online Dispute Resolution for consumers in the European union*, Routledge, Abingdon, 2011, page.54

18 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*, Volume 10 No 2, September 2014, page.80-89

19 Wahyu Beny Mukti Setiyawan, Erifendi Churniawan, Rudatyo, *Online Dispute Resolution Sebagai Model Perlindungan Hukum Pelaku Bisnis*, *RechtIdee*, Vol. 15, No. 1, June 2020, page.114-132

20 Budi Agus Riswandi, 2006, *Hukum Cyberspace, Gitanagari*, Yogyakarta, 2006, page.177

the answer in facilitating the resolution of cross-border business problems by establishing a system, among others:

a. Online Negotiation

Negotiation is one form of alternative dispute resolution, where the dispute resolution is carried out peacefully by the parties which is carried out face-to-face without any third party intervention.²¹ Negotiation is the first step in problem solving. Negotiations are used to bridge two different interests, for example between producers and consumers. Therefore, in order to reach an agreement between the two parties, negotiations are needed. Meanwhile, the person who negotiates is often referred to as a negotiator.²² The essence of negotiation is the process of meeting two or more parties with conflicting interests to obtain an agreement that is acceptable to the parties involved.²³

The success of a negotiator is largely determined by the ability of a negotiator to carry out persuasion in communication. In negotiating communication consists of two classifications namely verbal communication and non-verbal communication. The definition of verbal communication is direct communication between negotiators directly, Nonverbal communication has certain advantages. It is often better able to capture the attention and interest of various audiences than is verbal communication.²⁴

In online negotiations have the same technical as other ODR. Where technical dispute resolution is carried out online through e-mail media, video conferencing, radio button electronic funds transfer, web conference, and online chat.²⁵ Online negotiation has two main forms of dispute resolution via the internet, namely:²⁶

- 1) Automated negotiation, namely a process of blind bidding or hidden (blind bidding). Where the parties contribute to determine the level and limits in agreeing on dispute resolution.
- 2) Assisted negotiation, namely negotiations between two parties using a computer device as an assistant.

21 Urip Santoso, *Penyelesaian Sengketa dalam Pengadaan Tanah Untuk Kepentingan Umum, Perspektif*, Vol. 21, No. 3 (2016), page.194.

22 Faiqotul Isma Dwi Utami, *Efektivitas Komunikasi Negosiasi Dalam Bisnis, Komunike*, Volume IX, No. 2, December 2017, page.105-122

23 Al-Lourna Dunn, Suharyono, Wilopo, *Analisis Strategi Negosiasi Dalam Memasuki Pasar Luar Negeri (studi Kasus Pada PT. Dan liris sukoharjo)*, *Jurnal Administrasi Bisnis (JAB)*, Vol. 23 No. 2 June 2015, page.1-9

24 Christer Jönsson & Martin Hall, *Communication: An Essential Aspect of Diplomacy, Prepared for 43rd Annual ISA Convention*, New Orleans, LA, March 23-27, 2002; panel WA23: Diplomatic Theory and Practice, page.2

25 Rochani Urip Salami and Rahadi Wasi Bintoro, *Alternatif Penyelesaian Sengketa Transaksi Elektronik (e-Commerce)*, *Jurnal Dinamika Hukum*. Vol. 13 No. 1, 2013, page.134

26 Ikhwan Fuad Ahsan, Lukman Santoso, *Transformasi Negosiasi Dalam Penyelesaian Sengketa E-Commerce Di Era Digital, Istimbath Journal of Law*, Volume 16 Number 02 November 2019, Page 174-188,

This form of ODR is suitable in situations where the liability of the party is not in dispute, but the parties cannot agree on the amount of compensation.²⁷

b. Online mediation

This type of Online Dispute Resolution resolves disputes of small value. In accordance with the term, online mediation is not done face-to-face, but the dispute resolution is done online. This means that international business actors who are each located in different countries can use this online mediation tool to resolve their disputes.²⁸

The implementation of offline and online mediation actually does not have a specific difference, it's just that the means of communication used in online mediation use electronic means using providers while offline mediation does not use these facilities. In online mediation, the provider provides communication tools that can integrate e-mail with other communication tools, such as electronic conferencing, online chat, video conferencing, facsimile, and telephone. Even some providers can arrange a meeting of the parties directly if necessary and conditions that allow. In addition, the main difference between traditional and online mediation dispute resolution is that in traditional mediation dispute resolution the parties have an ongoing relationship. This relationship is the hope of the parties, therefore they maintain this ongoing relationship well by choosing a method of dispute resolution through mediation.²⁹

There are 3 (three) types of online mediation, namely:³⁰

- 1) Facilitative mediation in which the mediator functions as a facilitator and cannot provide opinions or recommend solutions. In this case, the mediator provides a way for the parties to find a solution for the dispute they face. Settlement of this type of dispute is carried out by online resolution;
- 2) Evaluative mediation, namely mediation through a mediator who provides views in terms of law, facts and evidence. This mediation strategy is to make an agreement through the mediator by providing a solution that is acceptable to both parties, and trying to persuade the parties to accept it;
- 3) Approach that mediates the situation. The mediator tries to interfere in the matter as far as the parties agree. The mediator only enters if the parties fail to negotiate among themselves, the mediator can intervene only to the extent of proposing a solution, if the parties request it. The initial purpose of this procedure is to

27 Nwandem, Osinachi, Online Dispute Resolution: Scope and Matters Arising (December 24, 2014). Available at SSRN: <https://ssrn.com/abstract=2592926> or <http://dx.doi.org/10.2139/ssrn.2592926>

28 Suprihantosa Sugiarto, *Op.Cit*, page.50-65

29 Daniel Simamora, Tinjauan Normatif Terhadap Online Dispute Resolution Sebagai Metode Penyelesaian Sengketa E-Commerce, *Eksekusi*, Vol. 2 No. 2 December 2020, page.185-208

30 Widaningsih, Penyelesaian Sengketa E-Commerce Melalui ODR (Online Dispute Resolution), *Jurnal Panorama Hukum*, Vol. 2 No. 2 December 2017, page.243-252

help facilitate communication between the parties and the mediator and between the parties themselves.

c. Online arbitration

In addition to online negotiation and mediation, in ODR, dispute resolution through arbitration can be used. The dispute resolution process through arbitration is more formal than other dispute resolution methods that are extra judicial. The arbitrator can issue a binding decision based on the considerations and evidence submitted by the parties. In online arbitration, the hearing process, submission of evidence, and so on is based on written documents, if a face-to-face meeting is required, video conferencing facilities can be used. In general, dispute resolution through online arbitration is more complicated than other dispute resolution processes, such as online negotiation and mediation.

Online Arbitration as a way of resolving disputes using Online Dispute Resolution, which is a development of non-litigation dispute resolution methods that exist in the real world.³¹ Arbitration and other online dispute resolution alternatives are not much different from conventional arbitration and alternative dispute resolution. The difference is only in the method used, namely the use of electronic means in its implementation. In online arbitration, case registration, selection of arbitrators, submission of documents, deliberation of arbitrators in the case of an arbitration tribunal with more than one arbitrator, making decisions, and notification of decisions will be made online.³²

The online arbitration process takes place through different stages, including: approval/agreement, process selection, problem presentation, denial, consideration, and decision. Similarly, online arbitration also uses the services of a neutral third party as a decision maker. However, in online arbitration there is a fourth party, namely technology that assists the arbitrator in carrying out his duties.

Issues that need to be considered in the implementation of online arbitration include:

1. Contract to conduct arbitration;

Online arbitration contracts in e-commerce transactions is that the written requirements as stated in Articles II and IV of the New York Convention must be interpreted in accordance with the UNCITRAL Model Law on Electronic Commerce so that the online arbitration contracts can be legally recognized as valid.

2. Arbitrator Selection;

In selecting an arbitrator, the parties are expected to reach an agreement in the selection of arbitrators and in carrying out their

31 Abdul Halim Barkatullah, Penerapan Arbitrase Online dalam Penyelesaian Sengketa Transaksi E-Commerce, *Jurnal Hukum Ius Quia Iustum*, No. 3 Vol. 17 July 2010, page.363-382

32 Paustinus Siburian, Arbitrase Online: Alternatif Penyelesaian Sengketa Secara Elektronik, Djambatan, Jakarta, 2009, page 37

duties the appointed arbitrator must be independent and neutral in carrying out their duties to resolve the disputing parties.

3. Compliance with basic procedural principles;
Dispute resolution through arbitration has become increasingly popular among entrepreneurs. Commercial contracts have quite a lot of arbitration clauses in their contracts.³³ The arbitration clause is a *Pacta Sunt Servanda*, which contains the meaning of every valid agreement, binding on the parties, valid as law for the parties who made it, therefore it must be implemented in good faith.³⁴
4. Nature and enforcement of binding decisions of Online arbitration
Arbitration is a method of resolving disputes outside the court which is quite effective to speed up problem solving and save costs. The success of online arbitration varies widely between binding arbitrations to the disputing parties and non-binding arbitrations to the disputing parties. Non-binding decisions are more frequent than binding ones.³⁵

The form of online arbitration awards is different from the conventional forms of arbitration awards, where online arbitrations are made through electronic media in digital form. In national arbitration, Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stipulates that an award must be made in writing and signed by the arbitrator or arbitral tribunal. This is as stated in Article 54 paragraph (2) and paragraph (3). The provisions in Article 54 paragraph (2) and paragraph (3) of Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stipulates that an arbitrator's signature is required in the arbitration award. To clarify the arbitration award must be made in writing, see Article 59 paragraph (2) of Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Thus, for national arbitration awards, the arbitral award must be in writing, original and signed by the arbitrator or arbitral tribunal.³⁶

The success of online arbitration varies widely between binding arbitrations to the disputing parties and non-binding arbitrations to the disputing parties. Non-binding decisions are more frequent than binding ones. The success of online arbitration that is not binding because it is not burdened with strict procedural terms that apply.³⁷

33 Yolanda Rahma Alviotika, Ajeng Astrina Mulia, Rahmi Hamidah, Karakteristik Dan Prinsip-Prinsip Dasar Badan Arbitrase Internasional Dalam Menyelesaikan Kasus Perdata Lintas Negara, *Jurnal Rechstat*, November 2013, page.1-6

34 Yahya Harahap, *Arbitrase Ditinjau Dari: Reglemen Acara Perdata (RV), Peraturan Prosedur BANI, International Center for the Settlement of Investment Disputes (ICSID), UNICTRAL Arbitration Rules, Convention on the Recognition and Enforcement of Foreign Arbitral Award*, PERMA No. 1 Tahun 1990 Cet ke-2. Sinar Grafika, Jakarta, page.42

35 Abdul Halim Barkatullah, *Op.Cit.* page.363-382

36 Susanti Adi Nugroho, *Mediasi Sebagai Alternatif Penyelesaian Sengketa*, Telaga Ilmu Indonesia, Jakarta, 2009, page.502

37 *Ibid.*

Online Dispute Resolution is a solution in resolving problems outside the court where online dispute resolution is an appropriate solution to resolve online trade disputes. Settlement with the principle of win-win solution in Online Dispute Resolution offers a fast, practical and low-cost dispute resolution, especially during the global pandemic situation due to the Covid-19.

The implementation of the Online Dispute Resolution will be better if the legal certainty that regulates the Online Dispute Resolution is made by stipulating a law specifically regarding the Online Dispute Resolution. So that the position of ODR in law in Indonesia becomes clear and provides certainty to the public about the use of ODR in Indonesia. By implementing the basic values of the Indonesian Nation's Way of Life, namely *Pancasila*.

2. The Online Dispute Resolution In *Pancasila's* Frame

One of the goals of National Development is to promote public welfare based on *Pancasila* and the 1945 Constitution as stated in Paragraph IV of the Preamble to the 1945 Constitution of the Republic of Indonesia.³⁸ The context of the edict in the national development goals is oriented to the values of *Pancasila* as the grundnorm of the Indonesian nation.

Pancasila has a series of values, namely divinity, humanity, unity, democracy, and justice. The basic values of *Pancasila* such as divinity, humanity, unity, democracy, and justice are universal, objective, meaning that these values can be used and recognized by other countries. *Pancasila* is subjective, meaning that the values of *Pancasila* are attached to the bearers and supporters of the values of *Pancasila* itself, namely the people, nation and state of Indonesia.³⁹

Pancasila values lead to basic values which are the elaboration of the same spirit and within the limits allowed by these basic values. The agreed value in realizing the law as the goal of justice and creating justice. Justice in law is justice that is coveted for all people who live within the framework of the law itself.

The process of obtaining justice cannot be separated from dispute resolution, where between parties try to obtain it using the Online Dispute Resolution system. The dispute resolution process is used to find a way out of the dispute according to the agreement of the parties so that the parties can accept it well. By using the fundamental norm, namely *Pancasila*, in implementing the Online Dispute Resolution, *Pancasila* has always been and must be the main milestone in dispute resolution in accordance with the spirit of the Indonesian nation which

38 Sudjana Efektivitas dan Efisiensi Penyelesaian Sengketa Kekayaan Intelektual Melalui Arbitrase dan Mediasi Berdasarkan Undang-Undang Nomor 30 Tahun 1999, *Ajudikasi : Jurnal Ilmu Hukum*, Vol. 2 No. 1, June 2018, pages.81-96

39 Ambiro Puji Asmaroini, Implementasi Nilai-Nilai *Pancasila* Bagi Siswa di Era Globalisasi, *Citizenship: Jurnal Pancasila dan Kewarganegaraan*, Vol. 4, No. 2, April 2016, page.440-450

humanizes just and civilized human beings as well as social justice for all Indonesian people.

In online dispute resolution, there are indeed several dispute resolution mechanisms such as alternative dispute resolution which consists of negotiation, consolidation, mediation, arbitration, and other procedures, but the implementation of online dispute resolution itself cannot be applied as long as it is applied in Indonesia considering the legal system in Indonesia. Indonesia which has norms and principles that cannot be deviated. Therefore, a special legislation is needed that regulates the implementation of online dispute resolution to ensure that later online dispute resolution is carried out in accordance with the direction of national law development as well as applicable legal norms and principles.

Indonesia, which adheres to Continental Europe (civil law) with the characteristic that written law (statutory regulations) is the main guide or source of law so that every action must be based on guidelines or legal sources in the form of these laws and regulations. In this case, if the Online Dispute Resolution system which has been applied in other countries is to be adopted to be applied in Indonesia, then a legal transplant must be carried out first, which means adjusting to the legal trend from the common law legal system to the Indonesian legal system and paying attention to the values of the law. *Pancasila* values.⁴⁰

The application of ODR in addition to legal reform in the field of electronic transactions is also related to efforts to create legal certainty in online dispute resolution in Indonesia. ODR, which relies on trust between the parties, can be found in a democratic society that adheres to the law. In Indonesia, what can be a non-legal factor is the culture of the people. The basic principle is kinship and mutual cooperation. ODR relies on togetherness and mutual trust between the parties. Therefore, it is in accordance with Indonesian tradition, so it is possible to apply it. This shows that ODR has the opportunity to be implemented in Indonesia. Meanwhile, the obstacles to ODR when implemented in Indonesia are the absence of a complete set of regulations/regulations, procedural support, infrastructure, and institutions.⁴¹

As stated by Mackenzie, there are several theories that can be used to consider decisions and can be used in the settlement of Online Dispute Resolutions, including:⁴²

- a. Balance theory is a balance between the conditions determined by law and the interests of the parties related to the case, such as the

40 Hari Purwadi and Adriana Grahani Firdausy, "Konsekuensi Transplantasi Hukum terhadap *Pancasila* sebagai Norma Dasar dan Hukum Lokal," *Jurnal Yustisia*, Vol. 4, No. 1, January-April 2015, page.73-88

41 Meline Gerarita Sitompul, M. Syaifuddin, Annalisa Yahanan, "Online Dispute Resolution (ODR): Prospek Penyelesaian sengketa e-commerce di Indonesia," *Jurnal Renaissance*, Volume 1 No. 02 August 2016, page.75-93

42 Bagir Manan, Hakim dan Pemidanaan, *Majalah Hukum Varia Peradilan*, Edisi No. 249 Bulan August 2006, page. 7.

- balance relating to the interests of the community, the interests of the disputing parties.
- b. Art Approach Theory or Intuition. The art approach is used by mediators in managing issues of interest between parties so as to facilitate communication between parties.
 - c. Scientific Approach Theory. The starting point of this theory is the idea that Online Dispute Resolution must be carried out systematically and carefully. This scientific approach is a kind of warning that in handling a dispute, the arbitrator should not solely be based on intuition or instinct alone, but must be equipped with legal knowledge and also scientific insight in handling a case in Online Dispute resolution.
 - d. Experience approach. The experience of an arbitrator is something that can help him in dealing with cases he faces on a daily basis, because with his experience an arbitrator can find out how the impact of the dispute between the parties being handled and the psychological state of the disputing parties.
 - e. Ratio Decidend Theory. This theory is based on a basic philosophical foundation that considers all aspects related to the subject matter in dispute, then looks for laws and regulations that are relevant to the subject matter of the dispute as a legal basis in the implementation of Online Dispute Resolution must be based on a clear motivation to enforce the law and provide justice for the disputing parties.
 - f. Theory of Wisdom. This theory can be used so that the decisions handed down in the Online Dispute resolution can fulfill the dimensions of justice, namely formal justice and substantive justice at the same time.

The peace agreement will be a complete settlement because the end result does not use the win or lose principle. The agreement that has been strengthened into a peace deed is a binding and final dispute resolution. Binding because every item agreed in the peace deed can be implemented through deliberation in the Online Dispute Resolution, Deliberation for consensus is a characteristic of the Indonesian state, it is in accordance with the diverse forms of Indonesian society, and in line with the ideals of the founders nation. Deliberation is not only the ideals of the founding fathers of the nation, but is also contained in the basis of the Republic of Indonesia, especially in the fourth precept which upholds deliberation in solving a problem.⁴³

D. CONCLUSION

The application of Online Dispute resolution in addition to legal reform in the field of electronic transactions is also related to efforts to create legal certainty in online dispute resolution in Indonesia. The basic principles of online dispute resolution in *Pancasila* values are reflected in the spirit of

43 Suhartono, Implementasi Nilai Musyawarah Pada *Pancasila* Melalui Metode Diskusi Kelas Dalam Pembelajaran PPKN kelas IX Di SMP Negeri 3 Krian Sidoarjo, *Didaktis: Jurnal Pendidikan dan Ilmu Pengetahuan*, Vol.19 No.3, 2019, page.268-269

kinship and mutual cooperation, these principles is a reflection of *Pancasila* values leading to basic values which are the elaboration of the same spirit and within the limits allowed by these basic values. Agreed values in realizing the law as the goal of justice and creating justice

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