

# VIRTUAL TO FACTUAL: ONLINE ARBITRAL AWARDS ANNULLED BY THE COURT

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## ABSTRAK

Penelitian ini bertujuan untuk menganalisis kekosongan regulasi dan tantangan pembuktian dalam pembatalan putusan arbitrase melalui arbitrase daring serta dampaknya terhadap kepastian hukum di Indonesia. Penelitian ini menggunakan pendekatan yuridis normatif dan menelaah Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa (UU Arbitrase). Pendekatan komparatif juga digunakan untuk membandingkan standar dan praktik internasional yang relevan. Hasil penelitian ini menunjukkan bahwa regulasi yang ada belum mengatur keabsahan persidangan daring, standar otentikasi dokumen digital, dan mekanisme pembatalan putusan yang spesifik untuk Online Dispute Resolution (ODR). Temuan utama menunjukkan kompleksitas pembuktian pelanggaran prosedural dalam lingkungan virtual semakin diperparah oleh adopsi kecerdasan artifisial dan kurangnya standar autentikasi bukti digital. Artikel ini merekomendasikan solusi berupa amendemen undang-undang, adopsi standar internasional, dan pemanfaatan teknologi untuk menciptakan kepastian hukum serta memperkuat legitimasi putusan arbitrase daring.

**Kata Kunci:** Arbitrase Daring, Pembatalan Putusan Arbitrase, Undang-Undang Arbitrase

## ABSTRACT

*This study aims to analyze regulatory gaps and evidentiary challenges in the annulment of arbitration awards through online arbitration and its impact on legal certainty in Indonesia. This study uses a normative legal approach and examines Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law). A comparative approach is also used to compare relevant international standards and practices. The results of this study indicate that existing regulations do not yet regulate the validity of online trials, digital document authentication standards, or specific mechanisms for overturning ODR decisions. The main findings show that the complexity of proving procedural violations in a virtual environment is exacerbated by the adoption of artificial intelligence and the lack of harmonized digital evidence authentication standards. This article recommends solutions in the form of amendments to the law, the adoption of international standards, and the use of technology to create legal certainty and strengthen the legitimacy of online arbitration decisions.*

**Key Words:** Online Arbitration, Arbitral Annulment, Arbitration Law

## I. INTRODUCTION

### 1.1. Background

Alternative Dispute Resolution (ADR) has taken a structured position in the legal system. One of the factors supporting the success of ADR is that even if it does not result in an agreement, the disputing parties still appreciate the value of the ADR process that has been undertaken. ADR is a general term that can cover various dispute resolution

methods.<sup>1</sup> The most prominent forms are binding arbitration and non-binding mediation. However, even in each form, the third party conducting the ADR can manage the case flexibly.<sup>2</sup>

Arbitration is often the preferred choice for businesspeople, traders, and investors because it offers significant flexibility and independence in the dispute resolution process. Another reason behind the popularity of arbitration is its efficiency, which is considered superior to traditional court litigation in terms of speed, cost, and procedural complexity. This mechanism is seen as an ideal solution for handling various types of conflicts while simplifying and streamlining the entire dispute resolution process.<sup>3</sup>

There are several paths that can lead parties to use ADR. One is when individuals or legal entities are in dispute and decide to use ADR as a means of resolution. On the other hand, the parties may have entered into an agreement stating that they are required to use this method if they are ever involved in a dispute with each other. If they do face a dispute, they will use the agreement that has been made by contacting an ADR practitioner.<sup>4</sup> Parties who have filed a lawsuit in court may be directed to follow affiliated ADR such as mediation as regulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court.<sup>5</sup>

The need for dispute resolution is becoming increasingly urgent in line with digital transformation in various aspects of life, including the legal field, which prioritizes effectiveness and efficiency. The response to this demand has led to the development of the ODR system as an alternative means for parties to resolve conflicts in the digital age.<sup>6</sup> ODR not only offers efficiency in terms of cost and time by eliminating the need for physical meetings, but also has the potential to overcome limitations in access to conventional court systems or ADR centers, including challenges faced by people with disabilities. Thus, the presence of ODR contributes significantly to expanding access to justice and making dispute resolution more inclusive and efficient.<sup>7</sup>

The push towards digitization of the legal system is growing stronger due to various challenges, one of which is the surge in the number of people handling their own cases without lawyers (self-represented litigants/SRLs).<sup>8</sup> This is mainly due to the financial limitations of the public to pay for the services of competent lawyers. However, this situation places a significant procedural and financial burden on the judicial system.

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<sup>1</sup> *Alternative Dispute Resolution Act of 1998*, Section 3, Title 28 U.S.C. (2006)

<sup>2</sup> Benjamin Balzer and Johannes Schneider, "Managing a conflict: optimal alternative dispute resolution." *The RAND Journal of Economics* 52 No.2 (2021): 415-445.

<sup>3</sup> Nurlani, Meirina. "Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia." *Jurnal Kepastian Hukum Dan Keadilan* 3, No. 1 (2022): 27-32.

<sup>4</sup> Donna Shestowsky, "Procedural Preferences in Alternative Dispute Resolution: A Closer, Modern Look at an Old Idea." *Psychology, Public Policy, and Law* 10, No. 3 (2004): 211.

<sup>5</sup> Supreme Court Regulation (PERMA) Number 1 of 2016

<sup>6</sup> Solikhin, R. "Perkembangan dan Urgensi Penerapan Online Dispute Resolution (ODR) dalam Penyelesaian Sengketa Perdagangan Elektronik di Indonesia." *Padjadjaran Law Review* 11, No. 1 (2023)

<sup>7</sup> Fahimeh Abedi, Abbas Rajabifard, and Davood Shojaei. "Enhancing access to justice for land and property disputes through online dispute resolution and artificial intelligence." *Computer Law & Security Review* 59 (2025): 106.

<sup>8</sup> Muhammad Iqbal Suma. *Penyelesaian Sengketa e-Commerce Melalui Online Dispute Resolution* (Jakarta: Pusat Penelitian dan Pengembangan Sistem Hukum Nasional Badan Pembinaan Hukum Nasional, (2023), 90.

<sup>9</sup> ODR is the answer to the crisis of access to justice experienced by SRLs who cannot afford the costs and complexity of litigation. ODR promises to expand access to justice through low costs, easy access from anywhere, and features that empower parties without the assistance of a lawyer. However, digitization must not overlook challenges such as the technological divide among the elderly and less educated, as well as the importance of ensuring fair and transparent processes so that ODR does not simply sacrifice procedural justice.<sup>10</sup>

The Indonesian government's policy on accelerating digital transformation further reinforces the urgency of ODR regulation. Initiatives such as the 2021-2024 Indonesian Digital Roadmap launched by the Ministry of Communication and Information Technology have made digital infrastructure development, digital human resource preparation, regulatory harmonization, and cybersecurity strengthening the main pillars for driving technology-based economic transformation.<sup>11</sup>

The principles of efficiency and accessibility that form the foundation of conventional arbitration are now finding a more modern form through ODR. Developments in the digital environment in recent years have created transformative opportunities as well as challenges for conventional arbitration practices. Easy access to new technologies has given rise to innovations such as online arbitration, which has become an attractive option as a method of ADR.<sup>12</sup>

Arbitration is not a new concept, but rather a dispute resolution mechanism that has developed through a long and complex historical journey. The use of arbitration to resolve disputes has now become widespread and is a standard clause that is almost always included in various types of agreements, ranging from business contracts and consumer transactions to employment relationships. Business actors, both in the international and national spheres, view arbitration as an important tool for optimizing dispute resolution costs, while maintaining the continuity of existing business relationships and those to be developed in the future.<sup>13</sup>

The existence of arbitration mechanisms through ODR platforms is a significant recent development in the non-litigation sphere, which has been widely implemented by various leading arbitration institutions at the global level. This digital transformation not only affects the way arbitration is carried out, but also opens up new possibilities for improving the efficiency and accessibility of the dispute resolution process.<sup>14</sup>

Online arbitration awards are considered more vulnerable to annulment or refusal of recognition and enforcement than conventional awards, mainly due to legal uncertainty in meeting the formal requirements of arbitration in a digital environment. This uncertainty is exacerbated by the lack of judicial precedents testing the validity of

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<sup>9</sup> John Zeleznikow. "Can artificial intelligence and online dispute resolution enhance efficiency and effectiveness in courts." *IJCA* 8 (2016): 30.

<sup>10</sup> Amy J. Schmitz "Measuring 'access to justice' in the rush to digitize." *Fordham L. Rev.* 88 (2019): 2381.

<sup>11</sup> Widayarsi, Rahma, And Angga Hermawan. "Ekonomi Digital: Peluang Dan Tantangan Dalam Transformasi Ekonomi Nasional." *Journal Central Publisher* 2, No. 11 (2024): 2758-2763.

<sup>12</sup> Magdalena Łagiewska and Vijay K. Bhatia. "International Arbitration in the Digital World." *International Journal for the Semiotics of Law* 37, No. 3 (2024): 821-827.

<sup>13</sup> Joseph L. Daly. "Arbitration: The Basics." *Journal of American Arbitration* 5 (2006): 1.

<sup>14</sup> Magdalena Łagiewska. "New technologies in international arbitration: a game-changer in dispute resolution?" *International Journal for the Semiotics of Law* 37, No. 3 (2024): 851-864.

e-awards, creating a legal environment that is not yet ready to accept digital arbitration awards.<sup>15</sup>

In arbitration practice, ODR utilizes digital technology to manage the entire process, from case registration, document exchange, virtual hearings, to the issuance of final decisions, all of which are carried out through an online platform. The presence of arbitration through the ODR mechanism is an innovative breakthrough in the legal world that has been eagerly awaited. This method facilitates parties from different jurisdictions to resolve their disputes more efficiently, quickly, and cost-effectively.<sup>16</sup> However, the shift from physical courtrooms to virtual ones also raises new legal challenges, particularly regarding the grounds for setting aside arbitral awards, which need to be adapted to the unique characteristics of the digital process.

Arbitration in Indonesia has a strong legal basis. Indonesia ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention) on the recognition and enforcement of foreign arbitral awards on August 5, 1981, through Presidential Decree No. 34 of 1981. With the ratification of the 1958 New York Convention, international arbitration awards can be enforced in Indonesian jurisdiction. To implement the convention, the Supreme Court issued Supreme Court Regulation Number 1 of 1990, which regulates the technical implementation of foreign arbitration awards, as well as Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (Arbitration Law).<sup>17</sup>

The Arbitration Law was essentially formulated to regulate conventional face-to-face arbitration. However, with the development of technology, there is a need to regulate specific aspects governing the annulment of arbitration awards through ODR, such as the validity of virtual hearings, the validity of electronic signatures, and legal liability for the use of artificial intelligence (AI) in the decision-making process. The absence of specific regulations has created a legal vacuum and has the potential to create uncertainty in the enforcement of arbitration awards through ODR. This situation could have a broader impact, namely hindering the investment climate and international digital trade involving Indonesian businesses.<sup>18</sup>

The above explanation leads to an issue that will be discussed in this journal, namely the absence of ODR regulations in the Arbitration Law regarding the annulment of arbitration awards and the complexity of proving procedural violations in online arbitration. This situation raises questions about the application of conventional arbitration award annulment mechanisms to awards rendered through ODR, which have unique procedural characteristics such as the virtual nature of the process, dependence on technology, and vulnerability to violations such as digital access failures. The fundamental problem that then arises lies in how to prove these virtual procedural violations within the factual standards of evidence in court, given that to date there is no adequate legal framework to accommodate digital evidence and ODR mechanisms.

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<sup>15</sup> Kevin Ongeneae. "Electronic arbitral awards: yea or nay? A glimpse inside the minds of arbitral institutions," *Journal of International Arbitration* 40, No. 3 (2023): 263-300.

<sup>16</sup> Ludy Himawan, Retno Saraswati, and Eko Sponyono. "The Urgency Of E-Arbitration In Dispute Resolution In The Era Of The Industrial Revolution 4.0 Is Reviewed From Law Number 30 Of 1999 Concerning Arbitration And Alternative Dispute Resolution." *Russian Law Journal* 12, No. 2 (2024): 365-388.

<sup>17</sup> Syaiful Khoiri Harahap. "Penerapan Nilai-Nilai Pancasila Dalam Penolakan Putusan Arbitrase Internasional." *Jurnal Bina Mulia Hukum* 7, No. 1 (2022): 63-80.

<sup>18</sup> *Ibid.*

ODR enhanced by artificial intelligence (AI) offers efficiency solutions through systems such as *Split-Up* (predicting the outcome of divorce disputes) and *AssetDivider* (division of business or property assets) that are capable of predicting the outcome of disputes and facilitating compromise. However, the integration of AI in ODR also raises new complexities, particularly in terms of process accountability and proving procedural violations that are digital in nature. Therefore, an adaptive regulatory framework must not only recognize the validity of the ODR process, but also provide proof mechanisms capable of addressing the unique characteristics of virtual and algorithmic environments.<sup>19</sup>

The implementation of ODR in Indonesia faces serious challenges, as evidenced by the case of cosmetic fraud through e-commerce researched by Widiantari. Based on the analysis of this case, several fundamental problems were revealed, such as the difficulty of proving product authenticity in digital transactions, limited consumer access to technology, and the absence of clear ODR standard procedures for disputes of low economic value. In addition, the absence of a specific legal framework governing ODR has the potential to create legal uncertainty for the parties involved. These findings reinforce the need to develop ODR mechanisms that are not only responsive to the characteristics of digital disputes, but also easily accessible to consumers from various social and economic backgrounds.<sup>20</sup>

Ariendy Marchviantyo has also conducted research discussing the evidentiary value of electronic evidence in online arbitration based on the Arbitration Law and Electronic Information and Transactions Law. The results of the research show that although online arbitration is legally possible and electronic evidence is recognized as valid, its implementation is still hampered by the absence of detailed technical regulations and the fact that this mechanism has not yet been implemented in practice by BANI. However, this research is limited to basic legal aspects and does not cover more crucial technical and procedural complexities such as online decision cancellation mechanisms, challenges in proving digital procedural violations, artificial intelligence integration, and technological solutions.<sup>21</sup>

This study aims to identify regulatory gADR in the mechanism for setting aside online arbitration awards and to develop evidentiary standards for procedural violations that are consistent with the characteristics of virtual proceedings. By applying a normative legal approach and comparative study of ODR regulatory developments in various jurisdictions, this study is expected to produce practical guidelines for arbitrators and parties in online arbitration proceedings. In addition, the findings of this study are also intended to provide recommendations for amendments to the UUAADR that are responsive to technological developments and the needs of modern arbitration practices.

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<sup>19</sup> John Zeleznikow. *Op.cit.*, hlm. 30.

<sup>20</sup> Widiantari, Komang Salsa Dila. "Upaya Penyelesaian Sistem Online Dispute Resolution (ODR) dalam Kasus Penipuan Penjualan Kosmetik melalui Media E-Commerce di Indonesia." *Politika Progresif: Jurnal Hukum, Politik dan Humaniora* 2, No. 2 (2025): 78-89.

<sup>21</sup> Marchviantyo, Ariendy. "Kekuatan Pembuktian Dari Alat Bukti Elektronik Dalam Penyelesaian Sengketa Melalui Arbitrase Online." *Phd Diss., Uajy*, 2018.

### **1.2. Research Problems**

Based on the background description above, there are two problem formulations that are the focus of this study:

1. How does the absence of online arbitration regulations affect the annulment of arbitration awards?
2. How does the mechanism for proving procedural violations in online arbitration work?

### **1.3. Purpose of Writing**

Based on the research questions, the objectives of this study are:

1. To analyze the regulatory vacuum in online arbitration regarding the annulment of arbitration awards.
2. To examine the application of the mechanism for proving procedural violations in online arbitration.

## **2. RESEARCH METHOD**

This study uses a normative legal research method, with a conceptual, legislative, and comparative approach. This study focuses on analyzing legal principles and positive legal norms related to the annulment of arbitration awards in the field of online dispute resolution, specifically examining regulatory gADR and evidentiary challenges based on applicable legal principles.

A conceptual approach was used to analyze key concepts such as ODR, arbitration award annulment, electronic evidence, and non-retroactive audit trails. The legal framework was examined through a review of the Arbitration Law, Law Number 11 of 2008 on electronic information and transactions and its amendments, and relevant Supreme Court regulations, such as Supreme Court regulations Number 7 of 2022. A comparative approach is applied by comparing ODR innovations in other countries, such as Singapore and Hong Kong, as well as international standards in the UNCITRAL Model Law.

## **3. RESULT AND DISCUSSION**

### **3.1 The regulatory gap in online arbitration regarding annulment of arbitral awards.**

The conventional court system, which requires physical presence, has begun to show various weaknesses, particularly in terms of ease of access, time efficiency, and cost efficiency. In response to this issue, the Supreme Court of the Republic of Indonesia has implemented an e-litigation system based on Supreme Court Regulation Number 7 of 2022 as an improvement on previous regulations. This digital innovation not only aims to speed up the judicial process, but also to mitigate the risk of bribery and gratification by limiting face-to-face interactions.<sup>22</sup>

Supreme Court Regulation Number 7 of 2022 concerning Procedures for Settling Lawsuits Electronically marks the era of digital transformation in the Indonesian judicial system by adopting a comprehensive e-litigation system. This regulation serves as a legal framework for conducting online judicial processes, from filing lawsuits, paying court fees, exchanging documents, to conducting online trials. The aim is to improve

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<sup>22</sup> Muarif, Saiful. "Transformasi Penyelesaian Sengketa Perdata Melalui Online Dispute Resolution (Odr): Tinjauan Efektivitas Pengadilan Virtual Di Indonesia Tahun 2025." *Law, Development and Justice Review* 8, No. 1 (2025): 69-84.

efficiency, expand access to justice, and minimize the potential for malpractice through reduced physical interaction. However, the scope of this Supreme Court Regulation is limited to litigation processes within the court system and does not yet cover non-litigation dispute resolution mechanisms based on digital platforms. Therefore, while it represents a strategic step toward modern justice, its implementation still needs to be expanded to address the complexity of disputes in the digital age.<sup>23</sup>

The digital transformation in the judicial system has also influenced the perception of the finality of arbitration awards. In practice, there are several conditions that can erode this principle. This situation mainly occurs when one of the dissatisfied parties believes that the award was issued through unlawful means or contained procedural flaws. Article 70 of the Arbitration Law stipulates three grounds for annulment of an arbitration award, namely: (1) documents used in the arbitration process are found to be false after the award is rendered; (2) the discovery of decisive documents that were concealed by the opposing party; or (3) the award was rendered as a result of fraud by one of the parties. However, the phrase "among others" in the General Explanation of the Arbitration Law opens up room for interpretation for the court to accept grounds for annulment beyond the provisions of Article 70.<sup>24</sup>

The Constitutional Court (MK), through Decision Number 15/PUU-XII/2014, granted the request for a judicial review of the Explanation of Article 70 of the Arbitration Law. The MK stated that the explanation did not have binding legal force because it was deemed to contain new norms, was not operational, and caused confusion and legal uncertainty. The impact of this decision is that the grounds for annulment of an arbitration award no longer have to refer to a court decision that has permanent legal force. However, the MK's decision, which aimed to create legal certainty, was followed by an increase in the number of requests for annulment of arbitration awards in court. This situation further increases the vulnerability of online arbitration awards, which already face challenges due to a regulatory vacuum. The increase in annulment petitions after Constitutional Court Decision Number 15/PUU-XII/2014 shows that the absence of clear indications in the Explanation of Article 70 has created opportunities for parties to more freely file for annulment. In the context of online arbitration, this condition becomes even more complex due to the absence of specific regulations regarding grounds for annulment that are in line with the characteristics of the virtual process.<sup>25</sup>

The Arbitration Law serves as the legal basis for the implementation of ADR and already contains provisions regarding the annulment of arbitration awards. However, this regulation does not comprehensively regulate the implementation of online arbitration. Based on Article 4 Section 3 of the Arbitration Law, "in the event that it is agreed that the dispute resolution through arbitration will take the form of an exchange of letters, then the sending of telexes, telegrams, facsimiles, e-mails or other means of communication must be accompanied by a note of receipt by the parties." this provision does not regulate in detail the implementation of arbitration through ODR dispute resolution mechanisms. The Arbitration Law only recognizes the validity of electronic

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<sup>23</sup> Supreme Court Regulation (PERMA) Number 7 of 2022

<sup>24</sup> Fitrianggraeni, Setyawati, Eva Fatimah Fauziah, and Sri Purnama. "Dealing with Unsatisfactory Arbitral Awards: Observing the Grounds of Annulment of Arbitral Awards in Indonesia." *Journal of International Arbitration* 40, No. 6 (2023).

<sup>25</sup> Adhitya Yulwansyah & Aria Adipura Nataatmadja. "Urgensi Amandemen Terhadap Pasal 70 Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Sebagai Salah Satu Variabel Penting dalam Pembangunan Ekonomi Indonesia." *BANI Arbitration and Law Journal* 1, No. (2024): 46.

arbitration clauses, but does not regulate procedural aspects of ODR, such as the validity of virtual hearings, digital document licensing standards, or mechanisms for canceling arbitration agreements that are entirely made in a digital environment. Although the Arbitration Law has incorporated electronic communication at the initial stage of the agreement, its legal framework does not yet provide a comprehensive basis for regulating online arbitration as a whole.<sup>26</sup>

In conventional arbitration, the seat of arbitration determines the procedural law and the court with jurisdiction to set aside the award. However, in cross-border and virtual ODR, the absence of clear provisions on how to determine the seat of arbitration may give rise to jurisdictional uncertainty for filing an application to set aside an award.<sup>27</sup>

Article 70 of the Arbitration Law, which contains the grounds for arbitral annulment, is still oriented towards the conventional model of arbitration without considering the specific characteristics of online arbitration. As a result, legal recognition of ODR currently relies more on the interpretation of existing provisions and refers to regulations outside the Arbitration Law, such as Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions.<sup>28</sup>

Article 5 Section (1) of the Electronic Information and Transactions Law stipulates that "Electronic Information and/or Electronic Documents and/or their printed copies are valid legal evidence." This provision provides general recognition of the validity of digital documents in the Indonesian legal system. However, the Electronic Information and Transactions Law does not specifically regulate the application of electronic documents in the context of online arbitration. This regulation only establishes general principles regarding electronic evidence without providing technical guidelines on authentication standards, document integrity, or specific verification mechanisms required in online arbitration proceedings. As a result, despite having a basis for general recognition, the implementation of electronic documents in online arbitration still faces legal uncertainty regarding procedural validity and evidentiary strength.<sup>29</sup>

Badan Arbitrase Nasional Indonesia (BANI) initially implemented a conventional arbitration mechanism that required the physical presence of the parties before the arbitral tribunal. With the development of technology, BANI then integrated digital tools into the dispute resolution process. This transformation gradually led to the implementation of a collaborative hybrid arbitration model. In the context of non-litigation dispute resolution at BANI, the hybrid arbitration model is implemented by combining two dispute resolution methods, namely through mediation and arbitration stages, which can be applied in the form of arbitration-mediation or mediation-arbitration depending on the conditions of the particular case.<sup>30</sup>

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<sup>26</sup> Article 4 Section (3) of Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

<sup>27</sup> Gabrielle Kaufmann-Kohler. *Online dispute resolution and its significance for international commercial arbitration*. Global Reflections on International Law, Commerce and Dispute Resolution (Paris: ICC Publishing, 2005).

<sup>28</sup> D. Sulistianingsih, A. A. Rante Lembang, Y. P. Adhi, and M. S. Prabowo. "Online dispute resolution: Does the system actually enhance the mediation framework?" *Cogent Social Sciences* 9, No. 1 (2023).

<sup>29</sup> Article 5 Section (1) of Law of the Republic of Indonesia Number 19 of 2016 concerning Electronic Information and Transactions.

<sup>30</sup> Pratama, Kristianus Jimy. "Urgensi Penerapan Online Hybrid Arbitration Pada Badan Arbitrase Nasional Indonesia (BANI) Sebagai Model Alternatif Penyelesaian Sengketa Bisnis



In response to the absence of online arbitration regulations, BANI has issued specific provisions on online arbitration procedures through BANI Chairman's Decree Number 20.015/SK-BANI/HU/2020. However, this initiative has significant limitations because it only applies to parties who choose arbitration at BANI and does not have the same binding force as law. Most crucially, these provisions are unable to cover the legal loopholes in the Arbitration Law, which still does not regulate critical aspects of online arbitration. As a result, online arbitration awards remain vulnerable to annulment lawsuits due to the absence of an adequate legal basis.<sup>31</sup>

Supreme Court Regulation Number 7 of 2022 regulates the electronic mechanism for the process of canceling arbitration awards at the court level through e- Court and simplifies the cancellation procedure by removing the obligation to provide evidence through a court decision in advance. However, this Supreme Court Regulation does not address the specific regulatory gap related to ODR. The Supreme Court Regulation does not regulate the legal validity of arbitration awards generated entirely virtually (e-awards), does not include unique grounds for annulment in the digital environment such as technical disruptions or digital confidentiality breaches, and does not provide standards of proof for the authentication of digital evidence in online proceedings. Thus, the fundamental regulatory gap regarding the annulment of online arbitration awards in the Arbitration Law remains unaddressed by the Supreme Court Regulation.<sup>32</sup>

A comparative study of various jurisdictions shows that a number of countries have implemented specific provisions regarding the annulment of online arbitration awards. UNCITRAL (United Nations Commission on International Trade Law) is a UN legal body that develops international standards for global trade, including through the UNCITRAL Model Law on International Commercial Arbitration (1985). This Model Law serves as a model legal framework that countries can adopt to harmonize their national arbitration regulations. In the context of the annulment of online arbitration awards, the Model Law regulates this through Article 34, which sets out limited grounds for annulment, such as fundamental procedural violations, the inability of the parties to enter into a valid agreement, or conflict with public policy. The provisions of Article 34 apply equally to conventional and online arbitration, where due process violations in virtual proceedings (such as technical disruptions that impede the right to be heard) may constitute grounds for setting aside an award.<sup>33</sup>

The Singapore International Arbitration Act 1994 regulates the setting aside of online arbitral awards in Singapore under the same legal framework as conventional arbitration, namely primarily under Section 24, which grants the General Division of the High Court the power to set aside arbitral awards on the grounds listed in Article 34 of the UNCITRAL Model Law (adopted through the First Schedule to this Act), with the addition of two specific grounds, namely if the award was obtained through fraud/corruption or if there was a violation of the principles of procedural fairness. The validity of the online arbitration process itself has been explicitly recognized in Article 2A, which states the validity of arbitration agreements in electronic form, thereby

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Internasional Di Indonesia Pada Masa Pandemi COVID-19." *Mimbar Hukum* 34, No. 2 (2022): 452-475.

<sup>31</sup> Decision Letter of the Chairman of BANI Number 20.015/V/SK-BANI/HU/2020 concerning Regulations and Procedures for Conducting Electronic Arbitration.

<sup>32</sup> Supreme Court Regulation Number 7 of 2022.

<sup>33</sup> *United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration* (1985).

making the annulment provisions in Article 24 fully applicable to decisions resulting from the online arbitration process.<sup>34</sup>

In addition to Singapore, other jurisdictions such as Hong Kong have also adopted an approach that is in line with international standards. The Hong Kong Arbitration Ordinance (Cap. 609) has also regulated the annulment of online arbitration awards through an approach that is fully based on the UNCITRAL Model Law adopted in Appendix 5 of the Ordinance, where specific provisions for online arbitration are mainly reflected in Article 26, which recognizes the validity of arbitration agreements made through electronic communications. Unlike Singapore, which in Section 24 of its International Arbitration Act adds two specific grounds for setting aside awards, namely fraud and procedural unfairness, Hong Kong maintains equal treatment between conventional and online arbitration by only applying the grounds for setting aside awards listed in Article 34 of the Model Law without modification, such as the inability of the parties, violation of arbitration procedures, and conflict with Hong Kong public policy, thus reflecting the jurisdiction's commitment to harmonizing international standards while providing consistent legal certainty for the parties in the conduct of online arbitration.<sup>35</sup> The findings of this comparative study can be taken into consideration by Indonesia in drafting comprehensive regulations.

Based on this, policy recommendations have been formulated to fill the regulatory void. First, the Arbitration Law needs to be amended by adding specific provisions regarding the annulment of online arbitration awards. Second, the adoption of international standards can be used as a reference in drafting regulations. Third, technical guidelines on the annulment of online arbitration awards need to be formulated, covering clear mechanisms of proof and standards of proof. Fourth, training for judges and arbitrators on the specific characteristics of online arbitration needs to be conducted regularly. The implementation of these recommendations is expected to create legal certainty and enhance Indonesia's competitiveness as a venue for international dispute resolution.

### **3.2 Mechanism for Proving Procedural Violations in Online Arbitration.**

Technology has changed human interactions and created a need for dispute resolution systems that are suited to the characteristics of the internet, namely fast, geographically unlimited, and accessible at any time. ODR evolved from the need to build trust by efficiently resolving millions of cross-border disputes, before eventually being adopted by courts in various countries to address the crisis of access to justice, high levels of unrepresented litigation, and budget constraints. ODR works based on the role of technology as a "fourth party" with human intervention, increasing efficiency through algorithm-based negotiation and asynchronous communication. The success of global systems demonstrates a transparent and enforceable ODR template.<sup>36</sup>

Essentially, ODR is nothing more than ADR moved to the online realm. However, over time, the complexity and unique potential of ODR began to take shape in innovative forms of dispute resolution. The adoption of technology empowered disputing parties and neutral parties with new capabilities, while limited face-to-face

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<sup>34</sup> *International Arbitration Act 1994* (Singapore).

<sup>35</sup> *Arbitration Ordinance* (Cap. 609) (Hong Kong).

<sup>36</sup> Colin Rule. "Online dispute resolution and the future of justice." *Annual Review of Law and Social Science* 16, No. 1 (2020): 277-292.

interaction created a different process dynamic.<sup>37</sup> However, the expansion of ODR faces complex ethical and legal challenges, questions about procedural fairness, the durability of outcomes, and the need for ethical standards and ongoing audits to prevent abuse and ensure a quality of fairness equivalent to face-to-face processes, which ultimately has the potential to affect the validity and annulment efforts of a decision.<sup>38</sup>

The mechanism for setting aside awards, as regulated in instruments such as Article 34 of the 1985 UNCITRAL Model Law, which has been adopted by many jurisdictions, is essentially designed for the conventional arbitration environment. When applied to awards resulting from ODR proceedings, unique evidentiary problems arise. These problems center on the difficulty of meeting the standard of proof for procedural defects required by law, using evidence that originates in a digital environment.

The process of proving ODR procedure violations in court is essentially a transformation of virtual data into legally accountable facts. This transformation begins with the conversion of digital evidence such as system logs, online trial recordings, electronic communication records, and transaction metadata into valid electronic evidence in accordance with Article 5 of the Electronic Information and Transactions Law.<sup>39</sup> Next, the court will verify the authenticity of the evidence, considering data integrity, the validity of electronic signatures, and statements from information technology experts if necessary. The next crucial stage is the assessment of causality, in which the court must prove a causal relationship between procedural violations that occurred in the virtual world and the substantive impact on the arbitration process. For example, a technical failure that prevented one party from presenting their defense must be proven to have materially affected the arbitration decision. This process of transformation from virtual to factual requires clear standards of proof and involves synergy between legal and technology experts, thereby ensuring that the efficiency of ODR does not sacrifice legal accountability before the court.

The gap between existing regulations and ODR technical standards is indeed an important issue. Although regulations require access and transparency, there are no clear provisions regarding technical standards for identity authentication, data encryption, or privacy protection that must be implemented by ODR providers. The absence of a supervisory body or uniform technical standards has resulted in many ODR providers operating without clear guidelines on implementing security measures. Technical challenges such as identity verification in the digital space, communication confidentiality, and data integrity, which should be the foundation of ODR, are often not regulated in detail in existing regulations. As a result, there is a disconnect between what is expected legally and what can be technically guaranteed by ODR platforms.<sup>40</sup>

Universally, attempts to set aside arbitral awards are extraordinary legal measures with a very limited scope. This principle is in line with Article 70 of the Arbitration Law, which only recognizes certain grounds for setting aside arbitral awards.<sup>41</sup> Some of these grounds, as also listed in international standards such as Article

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<sup>37</sup> Sulistianingsih, Dewi. "Penggunaan Online Dispute Resolution (Odr) Pada Penyelesaian Sengketa Melalui Arbitrase Di Indonesia." *Hukum Dan Politik Dalam Berbagai Perspektif* 1 (2023): 46-68.

<sup>38</sup> Colin Rule, *Op. cit.*

<sup>39</sup> Article 5 of the Electronic Information and Transactions Law.

<sup>40</sup> Fahimeh Abedi, John Zeleznikow, and Chris Brien. "Developing regulatory standards for the concept of security in online dispute resolution systems." *Computer Law & Security Review* 35, No. 5 (2019).

<sup>41</sup> Article 70 Arbitration Law.

34 of the UNCITRAL Model Law, include the absence of a valid arbitration agreement or a violation of the parties' right to be heard (due process). The main principle that applies is that the burden of proof lies entirely with the parties, who must convince the court that there has been a fundamental defect in the arbitration process. This presents a new dimension, given that the ODR process inherently generates and relies on electronic evidence in the form of electronic information and/or documents.<sup>42</sup>

Electronic evidence includes electronic information and documents. Electronic information is digital data, which can be in the form of text, audio, images, email, etc., and has meaning for those who understand it. Electronic documents are information in digital or analog form that is created, sent, or stored electronically and can be viewed on a computer. Printouts of electronic information and documents are considered documentary evidence.<sup>43</sup>

The paradox that has been revealed is that although this digital evidence is vulnerable to authentication and integrity issues in practice, its authenticity is almost never questioned by the parties or the arbitration tribunal. As a result, when an applicant seeks to prove a procedural violation of ODR, such as the inability to present a defense due to severe technical disruptions, he faces two challenges: first, the difficulty of accessing digital evidence, which is often entirely controlled by the ODR platform provider; and second, the necessity to prove the authenticity and causal connection of such evidence before the court, a complex task given the discretion of arbitrators in assessing evidence, as stipulated in the arbitration rules of major institutions, and the absence of harmonized authentication standards. Thus, although the grounds for legal annulment remain limited, the ODR digital evidence environment creates a significantly heavier factual burden of proof for the claimant.<sup>44</sup>

The complexity of evidence arising from this regulatory gap is increasing and entering a new dimension with the adoption of artificial intelligence or AI and autonomous algorithms as a fourth party in the ODR process. The role of technology has evolved from merely facilitating communication to becoming an entity capable of diagnosing disputes, evaluating them, and even generating algorithmic decisions, particularly in high-volume, low-value disputes.<sup>45</sup>

AI is a form of artificial intelligence created by humans that is designed to mimic our thought patterns. AI processes data and makes the decisions necessary to complete various tasks, making it a highly efficient tool. Its main advantages lie in its speed and accuracy, which exceed human capabilities. Given these human-like capabilities, establishing specific regulations for AI is very important for every country.<sup>46</sup> However, the integration of artificial intelligence poses entirely new challenges of proof. When one party suspects that an ODR decision or process has been tainted by algorithmic bias or systemic technical errors, it faces additional fundamental difficulties in proving

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<sup>42</sup> Daniel B. Ferreira and Elizaveta A. Gromova. "Electronic evidence in arbitration proceedings: empirical analysis and recommendations." *Digital Evidence & Elec. Signature L. Rev.* 20 (2023): 30.

<sup>43</sup> Dewantoro, Dewantoro. "Autentikasi Alat Bukti Elektronik Dalam Memperlancar Pembuktian Di Persidangan Pada Era Disrupsi." *Jurnal Hukum Progresif* 12, No. 2: 135-151.

<sup>44</sup> Daniel B. Ferreira and Elizaveta A. Gromova. *Op. cit.*

<sup>45</sup> Leah Wing, Janet Martinez, Ethan Katsh, and Colin Rule. "Designing ethical online dispute resolution systems: the rise of the fourth party." *Negotiation Journal* 37, No. 1 (2021): 49-64.

<sup>46</sup> Kamila, Zahra. "Pengaturan Hukum Dan Prospek Penggunaan Artificial Intelligence Dalam Era Digitalisasi Sistem Peradilan di Indonesia." *Jurnal Riset Multidisiplin Edukasi* 2, No. 3 (2025): 16-36.

procedural violations originating from an algorithm. The lack of transparency in the use of artificial intelligence has the potential to erode trust and complicate assessments of procedural fairness. In the context of decision reversal, this means that parties must not only prove the existence of technical glitches, but also uncover the inherent opacity or unfairness of an algorithmic system a near-impossible task without access to source code, training data, or algorithmic decision-making logic, which are often kept secret by platform providers. Thus, although ODR ethical principles emphasize accountability and transparency, the absence of binding and structured algorithmic audit standards in current ODR practices further burdens the factual burden of proof on the parties and widens the gap between formal procedural guarantees and digital reality.<sup>47</sup>

In facing these increasingly difficult factual verification challenges, blockchain technology, particularly in the private permissioned model, offers a potential solution for creating a more reliable and verifiable verification environment. Private permissioned blockchain is a type of blockchain whose access is restricted and controlled by a specific organization. Essentially, a private permissioned blockchain functions like a highly secure organizational intranet, where access to read and write data is restricted to authorized participants, such as arbitrators, parties, and arbitration institutions. Its application in the ODR process can generate an audit trail for each stage of the procedure. Every notification, document submission, attendance record in online hearings, and even court recordings can be digitally signed and cryptographically recorded on the blockchain. This technique guarantees the integrity and authenticity of digital evidence, as any changes will alter the results and be immediately detected. Thus, if an applicant needs to prove that they did not receive a schedule notification or experienced severe technical difficulties, they can submit the hash of the digital record stored on the blockchain as objective evidence that is nearly impossible to falsify. This mechanism not only makes it easier for parties to meet the burden of proof regarding procedural defects, but also provides courts with a powerful tool to assess cause and effect more definitively, thereby reducing the speculative nature that has long been inherent in proving violations in the digital environment. Ultimately, blockchain integration has the potential to level the uneven burden of factual proof, while strengthening the legitimacy and finality of online arbitration decisions.<sup>48</sup>

The issue of evidence in the annulment of online arbitration awards has major implications for access to justice and the legitimacy of the ODR system itself. If the standard of proof is too high and rigid, parties who are genuinely aggrieved by procedural flaws in ODR will find it difficult to obtain redress, which could undermine public confidence in digital dispute resolution methods. Conversely, if the standards are too lax, this could open the door for losing parties to file unfounded annulment requests, thereby eroding the finality of arbitration awards, which is one of their key advantages. Therefore, it is necessary to develop more adaptive standards of proof and practice guidelines.

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<sup>47</sup> Leah Wing, Janet Martinez, Ethan Katsh, and Colin Rule. "Designing ethical online dispute resolution systems: the rise of the fourth party." *Negotiation Journal* 37, No. 1 (2021): 49-64.

<sup>48</sup> Ibrahim Shehata. "Three potential imminent benefits of blockchain for international arbitration: Cybersecurity, confidentiality & efficiency." *Young Arbitration Review* (2018).

#### **4. CONCLUSION**

Based on the results of the discussion, this study concludes the following The regulatory framework for arbitration in Indonesia, particularly the Arbitration Law, is essentially still designed to accommodate the conventional arbitration paradigm that is oriented towards physical processes and direct interaction, and is therefore not yet fully prepared to accommodate the dynamics and complexity of ODR. Although the Arbitration Law has limited recognition of the validity of electronic communications in the formation of arbitration agreements, this recognition is not accompanied by explicit and comprehensive provisions regarding standards for digital document evidence, the validity of online hearings, or specific grounds for cancellation that are sensitive to the unique characteristics of ODR, thus creating significant legal uncertainty. This legal situation is exacerbated by the lack of regulated technical operational standards that underpin the ODR process. Aspects such as digital identity authentication protocols and the integrity of the electronic evidence process. In this regulatory vacuum, although arbitration institutions such as BANI have shown progressive initiatives by introducing online arbitration procedures, legally, these guidelines are limited and do not have the same binding force as legislation. Comparative studies of jurisdictions such as Singapore and Hong Kong show the importance of adopting a clear legal framework, detailed, and specifically designed to anticipate the complexities of ODR, in line with international standards as reflected in the UNCITRAL Model Law, as a strategic step to minimize the risk of online arbitration award annulment due to procedural flaws while building a legal ecosystem conducive to digital economic growth and Indonesia's integration with the global market.

The process of proving procedural violations in ODR faces unique challenges due to its reliance on digital evidence and the lack of globally harmonized authentication standards. Although the legal basis for grounds for setting aside arbitral awards remains limited as stipulated in Article 34 of the UNCITRAL Model Law, which emphasizes the finality of awards, in ODR practice the burden of factual proof that must be borne by the claimant has become increasingly complex and substantive. This is because the burden of proof for the claimant becomes more complex as it must rely on platform logs, virtual recordings, and various other forms of digital data that are prone to integrity and access issues. This complexity has entered a new dimension with the adoption of artificial intelligence in ODR, further complicating the burden of proof, as the opacity of algorithms makes it difficult for claimants to uncover biases or procedural errors originating from AI systems. In the face of increasingly complex evidentiary challenges, transformative technologies such as blockchain have the potential to overcome these challenges by providing encrypted and immutable audit trails, thereby facilitating the verification of digital evidence authenticity. However, without adaptive technical guidelines and standards of proof, ODR risks facing a gap between formal procedural guarantees and digital reality, which could erode the legitimacy and finality of online arbitration decisions.

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