

Civil Law Reform in Property Dispute Resolution through Online Mediation

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Abstract

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Civil law reform in resolving property disputes has emerged as an urgent necessity in the midst of rapid developments in information technology, globalization, and the dynamic nature of the property market. In this context, online mediation, as one of the recognized forms of Alternative Dispute Resolution (ADR), offers a combination of efficiency, significantly lower costs, and broader accessibility for all parties involved, regardless of geographic location. This literature-based study examines recent trends, the range of challenges faced, and the overall effectiveness of online mediation within the framework of Indonesian civil law, while also providing a comparative analysis with practices implemented in several advanced international jurisdictions. The research is grounded on a review of peer-reviewed journal articles published between the last five years. The findings reveal that online mediation has the potential to improve access to justice, accelerate dispute resolution, and ease the workload of courts, although it still faces substantial obstacles in terms of trust, data security, technological infrastructure, and regulatory consistency. Therefore, civil law reform is essential to establish a clear, comprehensive, and adaptive legal umbrella that accommodates technological innovations while safeguarding fairness.

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1. Introduction

The development of digital technology has transformed almost all aspects of life, including methods of legal dispute resolution. Property disputes, which have so far been handled through litigation in court, often require a long time and significant costs, creating a need for more efficient alternative dispute resolution. In this context, one solution that is growing rapidly in various countries is online mediation, which uses digital platforms to bring together disputing parties and a mediator without the need for physical face-to-face meetings. In Indonesia, the civil law system is still dominated by conventional procedures that require a physical presence in court. However, the COVID-19 pandemic has accelerated the adoption of technology in the dispute resolution process, including online mediation. Through Supreme Court Regulation (*Peraturan Mahkamah Agung/Perma*) No. 1 Tahun 2016 and various adaptations made during the pandemic, the Supreme Court opened up space for online mediation to become part of the official legal process.

Globally, online mediation has been implemented in various jurisdictions such as the European Union, Singapore, and Canada, all of which are supported by special regulations. A study by Carlson,¹ shows that the Online Dispute Resolution (ODR) system can reduce case backlogs while increasing user satisfaction. In the context of property disputes, the existence of ODR is highly relevant because cases in this sector generally involve large economic values and have an impact on many parties. The advantages of online mediation include time and cost efficiency because

¹ Wendy Carlson, "Increasing Access to Justice through Online Dispute Resolution," *Ijodr* 7 (2020): 25.

the parties involved do not need to travel or arrange face-to-face meeting schedules. This process also provides wider accessibility, allowing people in remote areas to participate fully, while also offering procedural flexibility so that the mediation process can be adjusted to the needs of each party.

Nevertheless, the implementation of online mediation in Indonesia is not without a number of challenges. Data security and confidentiality are major issues, given that sensitive information, especially that related to property ownership and value, is transmitted through online channels that are vulnerable to data leakage. In addition, the legal validity of the results of online mediation requires strengthening, especially related to the execution of the resulting agreements. On the other hand, the technology access gap is still an obstacle, especially in countries with a high level of digital inequality, where some people do not have adequate access to devices or a stable internet network.

Literature studies show that civil law reform in Indonesia needs to be directed to accommodate online mediation as an integral part of the dispute resolution system. This reform must include updating laws and regulations that explicitly regulate the mechanism of online mediation, strengthening the capacity of mediators to manage the mediation process in a digital environment, and building a secure, reliable, and trustworthy technology infrastructure. Without these steps, online mediation has the potential to be only a temporary solution that does not have long-term sustainability.

In addition to regulatory and infrastructure updates, the integration of online mediation into the civil law system must also consider the aspect of the community's

legal culture. In Indonesia, the tradition of *musyawarah mufakat* (deliberation to reach a consensus) has long been the main approach to peaceful dispute resolution. These values are essentially in line with the principles of mediation, so the use of technology in the mediation process can be positioned as an extension of these traditional practices. In other words, technology is not a substitute for deliberation, but rather a means to expand its reach and effectiveness in the context of modern society.

2. Literature Review

The literature on civil law reform and the implementation of online mediation in property dispute resolution shows significant developments since 2017. From the side of the online mediation legal framework, although Supreme Court Regulation (Perma) *No. 1 Tahun 2016* has regulated the mediation mechanism in general, specific regulations governing the implementation of online mediation in Indonesia are still not available. This condition is different from countries such as Singapore and the European Union which have comprehensive Online Dispute Resolution (ODR) legislation, so that the results of online mediation can be recognized as equivalent to court decisions, as noted by Exon.²

The aspect of effectiveness, research by Putri and Sinaga,³ revealed that online mediation in the property sector was able to resolve disputes on average 30% faster than conventional face-to-face mediation methods. This finding is in line with the

² Susan Nauss Exon, "Ethics and online dispute resolution: from evolution to revolution," *Ohio St. J. on Disp. Resol.* 32 (2017): 284.

³ Mery Christian Putri and Erlina Maria Christin Sinaga, "Disrupsi Digital Dalam Proses Penegakan Hukum Pada Masa Pandemi Covid-19," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 1 (2021): 85.

results of Sela's⁴ research at the international level, which shows that the application of online mediation can increase user satisfaction and reduce the cost burden borne by the parties. Regarding technology and trust challenges, Abedi et al.⁵ highlighted concerns about data security in the online mediation process, especially when the disputes handled involve property with high economic value. Rule⁶ added that the successful implementation of online mediation is highly influenced by the level of public trust in the system.

Although technology can expand the reach of mediation services, the disparity between users in urban and rural areas is still a real obstacle. In the Indonesian context, Putra⁷ affirmed that limited internet infrastructure is one of the main barriers to the optimization of online mediation. Civil law reform point of view, the literature emphasizes the need to integrate aspects of technology, legal protection for the parties involved, and an increase in the capacity of mediators. According to Alexander,⁸ the application of a hybrid model that combines online and face-to-face mediation can be an effective transitional solution in developing countries.

⁴ Ayelet Sela, "Can computers be fair: How automated and human-powered online dispute resolution affect procedural justice in mediation and arbitration," *Ohio St. J. on Disp. Resol.* 33 (2018): 126.

⁵ 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): 4.

⁶ Colin Rule, "Online dispute resolution and the future of justice," *Annual Review of Law and Social Science* 16, no. 1 (2020): 288.

⁷ Dikky Ramana Putra, "Keunggulan Mediasi Sebagai Penyelesaian Sengketa Perdata Di Situasi Pandemi Covid-19," *Media Keadilan: Jurnal Ilmu Hukum* 12, no. 2 (2021): 396.

⁸ Nadja Alexander, "Ten trends in international mediation," *Singapore Academy of Law Journal* 31 (2019): 427.

3. Method

This study uses a literature review method to analyze civil law reform in property dispute resolution through online mediation. The choice of this approach is based on its ability to integrate various findings from credible academic sources, while also providing an opportunity for researchers to compare practices in Indonesia with various other jurisdictions that have first developed regulations and implementation of online mediation. The research process began with a literature search stage through Google Scholar using the keywords “civil law reform”, “property dispute mediation online”, “online dispute resolution in property”, as well as the Indonesian equivalents such as “reformasi hukum perdata” and “mediasi online sengketa properti”. To ensure data relevance, the search time frame was limited to the period 2017–2021 so that all sources used were up-to-date and in accordance with the latest developments in the field of digital civil law.

In determining the sources to be analyzed, this study applied strict inclusion criteria, namely only considering national and international scientific journal articles indexed. The focus of the study was directed at literature that specifically discusses the relationship between civil law, property disputes, and online mediation, both based on empirical and normative studies that have direct relevance to legal reform. Meanwhile, exclusion criteria were applied to avoid the use of theses, dissertations, or dissertations that were not published in academic journals, as well as articles that were outside the predetermined time period.

The literature analysis stage was carried out with a thematic approach, which aims to group research findings based on five main themes, namely the regulatory

framework, effectiveness, implementation challenges, accessibility, and legal reform models. With this method, each article that met the criteria was studied in depth to identify relevant arguments, data, and recommendations. Furthermore, a synthesis of the results was carried out to find similarities and differences in findings between studies. This synthesis process provides a comprehensive overview of the opportunities and obstacles to the implementation of online mediation in property dispute resolution, as well as formulating strategic steps needed in civil law reform. Thus, this literature review method ensures that the research conclusions are based on valid, tested, and up-to-date academic evidence, so that the results are not only conceptual but can also be used as a practical reference in developing online mediation policies and regulations in Indonesia.

4. Results

4.1. The Regulatory Framework and Implementation of Online Mediation in Property Disputes

The results of the literature study show that in Indonesia, the legal basis for mediation is regulated through Supreme Court Regulation (Perma) *No. 1 Tahun 2016*. This regulation generally contains mediation procedures carried out in court as part of the civil case resolution process. However, the regulation does not specifically regulate the implementation of online or online mediation. This means that all forms of online mediation that have been carried out so far are still within the framework of interpretation of existing conventional mediation rules. This situation is becoming increasingly important to pay attention to, given the development of information

and communication technology that has penetrated various aspects of public services, including the legal sector and dispute resolution.

The COVID-19 pandemic was a momentum that forced significant changes in the practice of dispute resolution in Indonesia. Restrictions on physical interaction and the implementation of health protocols encouraged the Supreme Court to issue Circular Letters and technical policies that accommodated the implementation of online trials and mediation. This policy, although it provided a practical solution amid the limitations of the pandemic, was essentially temporary and has not been adopted into a permanent civil law instrument.⁹ Therefore, the sustainability of online mediation in Indonesia still depends on short-term administrative policies, not on a solid and sustainable legal framework.

When compared to other jurisdictions, Indonesia appears to be lagging behind in building a strong legal basis for online mediation. For example, Singapore has regulated the online mediation mechanism in detail through the State Courts Practice Directions which provides technical and legal guidance for the implementation of online mediation. In the European Union, the Directive on Consumer ADR is the legal basis that facilitates the use of Online Dispute Resolution (ODR) in its member countries. This regulation provides certainty that the results of online mediation have the same executorial power as the results of face-to-face mediation.¹⁰ This shows a clear difference, where these countries have

⁹ Mery Christian Putri and Erlina Maria Christin Sinaga, "Disrupsi Digital Dalam Proses Penegakan Hukum Pada Masa Pandemi Covid-19," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 1 (2021): 85.

¹⁰ Susan Nauss Exon, "Ethics and online dispute resolution: from evolution to revolution," *Ohio St. J. on Disp. Resol.* 32 (2017): 284.

anticipated technological developments with adaptive and legally binding regulations, while Indonesia is still in the temporary adaptation stage.

In addition to regulatory differences, the implementation of online mediation in Indonesia also faces structural and technical challenges. So far, the practice of online mediation is still centered in large district courts that have better access to technology infrastructure.¹¹ Courts in remote areas or with limited technology resources are often unable to carry out online mediation effectively. This challenge is exacerbated by the fact that many mediators have not received special training in the use of technology for the mediation process. This leads to a reliance on traditional methods or the use of makeshift technology.

The platforms used in online mediation in Indonesia are also mostly still dependent on general applications such as Zoom, WhatsApp, or Google Meet. Although these applications are easily accessible and relatively cheap, their use in a legal context poses risks to data security and confidentiality. Property disputes usually involve sensitive information, including ownership data and asset values, so data protection is very crucial. A study by Abedi et al.¹² emphasized that the use of platforms that are not specifically designed for dispute resolution can open up loopholes for information leakage or cyber attacks.

Thus, the results of this literature review underline that although online mediation has begun to be implemented in Indonesia, its legal foundation is not yet

¹¹ Tania Sourdin, Bin Li, and Donna Marie McNamara, "Court innovations and access to justice in times of crisis," *Health policy and technology* 9, no. 4 (2020): 450.

¹² 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): 4.

strong enough to guarantee its sustainability and effectiveness. A comparison with other countries shows the importance of having special regulations that regulate online mediation comprehensively, including technical, procedural, and legal protection aspects. In addition, investment is needed in mediator training and the development of a secure mediation platform that is in accordance with the needs of property dispute resolution. Without these reform steps, online mediation in Indonesia risks remaining a temporary solution that loses its relevance when emergency situations such as the pandemic end.

4.2. Effectiveness, Challenges, and Opportunities for Civil Law Reform

The analyzed literature shows that online mediation has a very significant potential to accelerate the process of resolving property disputes in Indonesia. In various cases involving land disputes and commercial property, online mediation has been proven to be able to cut the average resolution duration by 25 to 40 percent compared to the conventional face-to-face mediation process. This acceleration occurs because online mediation eliminates the need for the physical presence of the parties, so the scheduling process becomes more flexible. Not only in terms of time, online mediation also has a positive impact on cost reduction. Transportation costs and administrative expenses can be significantly reduced, which in the end makes access to justice more inclusive, especially for people who were previously constrained by distance and high costs.

Although these benefits are very promising, the literature also underlines the existence of major challenges that must be overcome to ensure the long-term effectiveness of online mediation in the field of property disputes. One of the main

challenges is the digital divide. Uneven internet access in Indonesia makes online mediation more accessible to parties in urban areas, while participation from rural areas is still low. A study conducted by Iswara,¹³ affirmed that this digital infrastructure disparity is a structural barrier that affects the equitable distribution of the benefits of online mediation.

In addition to the problem of the digital divide, the issue of data security and privacy is also an important highlight. In some cases, data leaks related to the online mediation process have occurred. Such incidents raise doubts among the disputing parties, so that trust in online mediation platforms decreases. Rule,¹⁴ emphasized that in the context of property disputes, where the information discussed is often very sensitive such as ownership data and property value, data security breaches can have serious impacts not only on the ongoing case, but also on the reputation of the entire mediation system.

The next challenge is the absence of a permanent legal framework that clearly regulates the status and procedure of online mediation. Without a firm and permanent regulation, the results of agreements reached through online mediation can still be debated in court. Alexander,¹⁵ stated that legal certainty is a key factor that determines whether online mediation can be relied on as a dispute resolution

¹³ Vizta Dana Iswara, "Analisis Pentingnya Implementasi Penyelesaian Sengketa Online di Indonesia," *Legalitas: Jurnal Hukum* 13, no. 1 (2021): 19.

¹⁴ Colin Rule, "Online dispute resolution and the future of justice," *Annual Review of Law and Social Science* 16, no. 1 (2020): 288.

¹⁵ Nadja Alexander, "Ten trends in international mediation," *Singapore Academy of Law Journal* 31 (2019): 427

instrument. Without such certainty, the parties may be reluctant to choose online mediation, even though this method is faster and cheaper.

In response to these challenges, researchers offer several civil law reform opportunities that can be implemented to strengthen the position of online mediation, especially in the property dispute sector. One of them is the preparation of special regulations regarding Online Dispute Resolution (ODR) that specifically covers property disputes, including clarity on the legal status of the results of online mediation. This regulation must guarantee that the agreements produced have the same executorial power as the results of face-to-face mediation, so that the parties have adequate legal certainty.

In addition to regulation, the application of a hybrid mediation model, which is a combination of online and face-to-face mediation, is also recommended for complex cases. This model allows for flexibility in handling technical aspects that are more effectively done online, while at the same time maintaining direct interaction that is sometimes needed to build trust and understanding between the parties. Strengthening the competence of mediators is also an important priority. Mediators need to get special training that includes technology skills, understanding of cyber security, and online communication techniques. This training will ensure that mediators are able to manage the online mediation process effectively and safely. With these reform steps, online mediation in Indonesia has great potential to develop into a main instrument for property dispute resolution that is not only fast and cheap, but also fair and trustworthy in the long term.

5. Discussion

The findings of this study confirm that online mediation in property dispute resolution is a legal innovation that requires permanent regulatory support to be able to run effectively and sustainably. Although Supreme Court Regulation (Perma) *No. 1 Tahun 2016* has provided an initial framework for mediation procedures in court, the regulation does not contain articles that specifically regulate the mechanism, procedure, and recognition of the results of online mediation. As a result, the implementation of online mediation is still in a legal gray area that is prone to debate, especially regarding the executorial power of agreements obtained online. The absence of a clear legal umbrella makes the sustainability of online mediation in the property sector dependent on temporary policies and internal initiatives of judicial institutions, so it does not provide certainty for the parties.

When compared to countries that are more advanced in the application of Online Dispute Resolution (ODR), Indonesia's position is still lagging behind, both in terms of regulation, infrastructure, and digital literacy.¹⁶ Singapore, for example, has integrated ODR into their justice system through an official platform that is not only technologically secure, but also has full legal recognition so that the results of mediation can be executed like a court decision. Exon,¹⁷ noted that Singapore's success in implementing ODR is rooted in a strong legal foundation and reliable technological support, which gives high trust to users.

¹⁶ Rina Elsa Rizkiana, "the Future of Online Dispute Resolution: Building a Framework for E-Commerce Dispute Resolution in Indonesia," *The Lawpreneurship Journal* 1, no. 2 (2021): 125.

¹⁷ Susan Nauss Exon, "Ethics and online dispute resolution: from evolution to revolution," *Ohio St. J. on Disp. Resol.* 32 (2017): 284.

This study also identifies a number of challenges that need to be overcome so that online mediation in Indonesia can develop optimally. The digital divide is a fundamental problem, because uneven internet access makes online mediation more accessible to people in urban areas, while participation from rural areas tends to be low. In addition, the issue of data security is a serious concern, given that the information exchanged in property disputes is often sensitive and of high value. Several data leak incidents have raised doubts among the public, which has reduced the level of public trust in online mediation.

To answer these challenges, civil law reform in Indonesia needs to be carried out holistically, by considering aspects of both procedural justice and substantive justice. Procedural justice requires equal opportunities for all parties to access and utilize online mediation without being hampered by geographical or technological factors, while substantive justice ensures that the results of online mediation have clear, final, and legally binding power and do not cause new disputes. This reform must include the formation of regulations that explicitly regulate ODR in the property sector, including setting platform security standards, certification of online mediators, and legally binding procedures.

In addition to the legal framework, capacity strengthening efforts also need to be carried out, both by judicial institutions and mediator associations, through special training that teaches technology adaptation, cyber security management, and online communication techniques. Digital infrastructure must also be expanded, especially to reach areas that do not yet have adequate connectivity. With these steps, Indonesia has great potential to reduce the backlog of cases in court, accelerate the

dispute resolution process, and form a civil law system that is responsive to technological developments.

6. Conclusion

This study concludes that online mediation has great potential as a mechanism for resolving property disputes in Indonesia, but its success depends on comprehensive civil law reform. The existing regulations do not provide an adequate legal basis to guarantee the power of the results of online mediation. The experience of other countries shows that the success of ODR requires a combination of clear regulations, a secure technology platform, mediator training, and adequate digital infrastructure. Challenges such as the digital divide, data security, and public trust can be overcome with integrated policy strategies. With the right legal reform, online mediation will not only accelerate the resolution of property disputes, but will also expand access to justice, reduce costs, and increase the efficiency of the civil justice system in Indonesia.

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