



BUSINESS MEDIATION IN THE ERA OF INDUSTRIAL REVOLUTION 4.0: URGENCY AND ORIENTATION OF ONLINE DISPUTE RESOLUTION-BASED BUSINESS MEDIATION

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Abstract

Online mediation has emerged as a prevalent practice among individuals seeking to resolve business disputes through non-litigation means. It is inherently more effective, efficient, and suitable for addressing business conflicts compared to traditional methods. However, current Indonesian legislation does not accommodate online mediation practices, as Article 6, paragraph (2) of the Arbitration and Alternative Dispute Resolution Law (UU APS) mandates that dispute resolution through alternative dispute resolution (ADR) must involve direct interaction between the parties, leading to legal ambiguities. This study aims to analyze the implications of these legal ambiguities regarding online mediation and to propose future regulations concerning online mediation based on online dispute resolution (ODR) within the context of the Industrial Revolution 4.0. This research adopts a normative legal approach with an emphasis on conceptual analysis and legislative review. The findings indicate that the legal uncertainty stemming from the ambiguous regulation of online mediation in the UU APS could result in legal instability for the public, particularly concerning the implementation of legal innovations like online mediation in business disputes. Future regulations should amend Article 6, paragraph (2) of the UU APS to explicitly state that alternative dispute resolution can be conducted online or virtually, as agreed upon by the parties involved.

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Introduction

The development of technology in the form of digitalization actually has an impact on various aspects of human life, including the business aspect (Putra et al., 2023). In the business aspect, digitalization has penetrated various activities in business such as business practices that can be carried out digitally, non-cash payments, and business dispute resolution efforts that are oriented to be carried out digitally (Kurniawan, 2022). The orientation of business practices based on digitalization is actually part of the development of the idea of the industrial revolution 4.0. In the industrial revolution 4.0, digitalization is a key factor that is known as

the idea that, "digitalization for everywhere and time"(Asri, 2022). It is understood that the main characteristic of the industrial revolution 4.0 is the existence of all-digital human activities and this must be facilitated and accommodated as part of the development of the times.

Business practices in the era of the industrial revolution 4.0 also find relevance with various digitalization-based activities. This can be seen from the existence of online buying and selling, online signatures (digital-based), even to digital dispute resolution. Digital-based dispute resolution has become an interesting thing in business practice(Amelia et al., 2023)(Chawla & Kumar, 2021). This is because ideally dispute resolution efforts must bring together the parties to the dispute manually. In the era of the industrial revolution 4.0, efforts to resolve business disputes that must bring together the disputing parties manually are oriented to make digital efforts which are expected to not only facilitate dispute resolution efforts, but are also expected to streamline business dispute resolution efforts so that business dispute resolution can take place quickly and accurately(Azizah et al., 2023). One important aspect of digital business dispute resolution is through online mediation based on online dispute resolution.

Online mediation based on online dispute resolution is generally a mediation practice in which the parties to a business dispute are brought together with an intermediary called a moderator(Noerhadi, 2022). In principle, online mediation based on online dispute resolution is the same as mediation in general, the only difference is that the practice is carried out digitally or online(Trinkūnienė & Trinkūnas, 2022). Despite having an orientation in the form of greater benefit value and in accordance with the era of the industrial revolution 4.0, online mediation based on online dispute resolution encounters problems related to aspects of legal certainty related to the practice of online mediation based on online dispute resolution in business dispute resolution. The online mediation based on online dispute resolution referred to in this research is business mediation as part of alternative dispute resolution as regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (APS Law). This is to differentiate from mediation practices run by court institutions as part of the litigation-based dispute resolution process(Sinaga et al., 2022).

Online mediation based on online dispute resolution as a business dispute resolution has not yet received comprehensive arrangements in various laws and regulations. Article 6

paragraph (2) of the APS Law explains that dispute resolution through alternative dispute resolution is carried out by bringing the parties together directly within a maximum period of fourteen days and the results are formulated in a written agreement. The provisions of Article 6 paragraph (2) of the APS Law emphasize that dispute resolution through alternative dispute resolution is carried out by bringing the parties together "directly". The word "directly" can cause legal ambiguity, namely whether the meaning of "directly" must meet physically or can meet virtually or online based on digitalization. This legal vagueness raises that even though online mediation based on online dispute resolution as a business dispute resolution is a relevant and effective thing to do, it also needs to be supported by legal instruments to ensure legal certainty. From this description, this research aims to analyze the aspects of the legal implications of online mediation arrangements in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (APS Law) and how future arrangements related to online mediation based on online dispute resolution as part of the development of the industrial revolution 4.0 era.

Research that discusses digital mediation as an effort to resolve disputes has actually been carried out by three previous researchers, namely Waruwu and Nadirah (2023) who discussed aspects of mediation as a dispute resolution related to copyright in electronic books (Waruwu & Nadirah, 2023). The novelty of Waruwu and Nadirah's research (2023) is that mediation as a dispute resolution related to copyright in electronic books can also be done digitally to facilitate and streamline the mediation process. Other research was conducted by Sari, et al. (2024) which discussed mediation in the aspect of business dispute resolution in Indonesia (Elsa Puspita Bunga Sari, Agnesia Kurmaliasari, 2024). The novelty of the research by Sari, et al. (2024) is that mediation in the aspect of business dispute resolution in Indonesia can be oriented towards a win-win solution so that the parties potentially do not experience large losses when resolving business disputes through mediation. Further research was conducted by Wibawa, et al. (2024) who discussed mediation-based international business dispute resolution (Nadias Prasetya Aji Wibawa, Hera Ananda Putri, 2024). The novelty of the Wibawa, et al. (2024) research is that digital or online mediation can be an alternative in international business dispute resolution to streamline time and save meeting costs if international business dispute resolution based on mediation requires the parties to meet face-to-face.

Of the three studies above, this research which analyzes aspects of the implications of the legal vagueness of online mediation arrangements in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (APS Law) and how future arrangements related to online mediation based on online dispute resolution as part of the development of the industrial revolution 4.0 era is actually original research because the substance of this research has not been comprehensively discussed by the three previous researchers.

Research Method

This research with a focus on the regulatory aspects of online mediation based on online dispute resolution as part of the development of the industrial revolution 4.0 era is normative legal research with a focus on authoritative legal products, especially laws and regulations (Jonaedi Efendi, 2022) (Hari Sutra Disemadi, 2022). Primary legal materials in this research, namely: Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (APS Law), Perma No. 3 of 2022 concerning Electronic Court Mediation (Perma Electronic Mediation), and Financial Services Authority Regulation Number 61/POJK.07/2020 of 2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector (POJK Alternative Financial Dispute Resolution). Secondary legal materials include: books, journal articles, and research results that discuss alternative dispute resolution, mediation, industrial revolution 4.0, and business law. Non-legal materials are language dictionaries. Analysis of legal materials is carried out qualitatively-prescriptively by prioritizing legal prescriptions from the results of legal analysis of existing legal issues (Diantha, 2017). The approach used is a conceptual and statutory approach.

Discussion

Implications of Legal Vagueness of Online Mediation Arrangements in Law No. 30/1999 on Arbitration and Alternative Dispute Resolution

Business, which is a profit-oriented and economic activity, cannot be separated from disputes (Ogwora, 2023). Referring to the Indonesian Dictionary, a dispute is understood as anything that causes differences in views, opinions, and creates debate related to a legal claim on a particular matter (Pusat Bahasa Departemen Pendidikan Nasional, 2008). From the understanding of disputes as emphasized in the Indonesian Dictionary above, it can be concluded that business practices certainly cannot be avoided from the existence of differences

in views, opinions, and causing debates related to a legal claim on certain matters so that in business practices, apart from being oriented to get the maximum profit, it must also accommodate aspects of dispute resolution in business.

Dispute resolution in business is usually done through two channels, namely litigation and non-litigation(Faizan & Jummani, 2024). Litigation business dispute resolution is a dispute resolution carried out in a court institution with mechanisms, procedures, and conditions that have been determined by the court institution(McQuoid-Mason, 2021). The advantage of dispute resolution in court is that the decision is certain and can be executed as quickly as possible. This guarantee of legal certainty is one of the main characteristics of litigation dispute resolution(Ross, 2021). However, litigation dispute resolution also has disadvantages, such as the process of resolving disputes in litigation generally takes a long time, is procedurally based and complicated, and often the parties to the dispute are confronted "like enemies" in court(Satory, 2022). Litigation-based dispute resolution does not emphasize compromise between the disputing parties but emphasizes the procedural aspects and validity of proof in court(Cortés, 2023). Another weakness of litigation dispute resolution is that dispute resolution in court takes a relatively long time, which is expensive and disrupts business processes so that litigation dispute resolution tends to disrupt the business climate that prioritizes effectiveness and efficiency(Gavrilă, 2022).

Settlement of business disputes other than based on litigation efforts in the courts above can also be pursued non-litigation. Non-litigation dispute resolution efforts mean that dispute resolution is carried out through various efforts outside the court process(Dewi, 2021). In Indonesia, arrangements related to non-litigation dispute resolution are regulated in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (APS Law). The APS Law categorizes various non-litigation or out-of-court dispute resolution efforts such as through arbitration, mediation, conciliation, and various other forms of non-litigation dispute resolution efforts(Sulistianingsih & Prabowo, 2019). One of the ratio legis of the formulation of the APS Law is intended to accommodate the substance of justice in society so that justice is not only obtained through a process that can only be done in court (one room justice)(Matnuh, 2021)(Widjaja, 2024). This is because in essence justice can be obtained through various channels and efforts as emphasized by Satjipto Rahardjo that justice can actually be manifested in various efforts and spaces (justice in many rooms)(Rahardjo, 2008)(Dicky Eko Prasetyo Adam Ilyas Felix Ferdin Bakker, 2021). With this orientation, the presence of the APS Law

has actually accommodated and facilitated community efforts to fight for justice through alternative dispute resolution.

Non-litigation dispute resolution has several advantages, such as: the process is faster and more effective, the implementation of dispute resolution is based on the compromise relationship of the parties to the dispute so that the orientation is to realize a maximum win-win solution so that the results are expected to minimize the losses of the parties, and non-litigation dispute resolution in business practice is actually more optimal because in addition to being effective and efficient, non-litigation dispute resolution does not have the potential to disrupt the dynamics and ongoing business processes(Dahlan, 2022)(Ogworoka, 2022). Although it has various advantages, non-litigation dispute resolution also has several disadvantages such as non-litigation dispute resolution decisions are determined by non-authoritative institutions so that the execution and implementation of dispute results sometimes cause legal uncertainty(Odilbek, 2022). Even so, this weakness has actually been accommodated by allowing the registration of non-litigation dispute resolution in the courts to ensure legal certainty related to non-litigation dispute resolution. A further weakness related to non-litigation dispute resolution is that sometimes non-litigation dispute resolution decisions are not as in-depth or through in-depth legal reasoning as litigation dispute resolution decisions(Nadja Alexander, 2020). This is because non-litigation dispute resolution does not aim to explore substantive justice, but explores the dimensions of expediency in certain fields so that what is oriented is that disputes can be resolved effectively and efficiently by paying attention to the compromise of the parties(Ishaan Sharma, 2022).

Referring to the weaknesses and advantages of litigation and non-litigation dispute resolution above, in business practice, non-litigation-based dispute resolution is actually more relevant to be applied. This is based on three arguments: first, the orientation of business practices that emphasize effectiveness and efficiency is certainly relevant to the characteristics of non-litigation-based dispute resolution. This is also to ensure that the business dispute process can take place quickly and straightforwardly(Anna Maria Tri Anggraini et al., 2022). Secondly, in business practice, it is emphasized that business activities are the main activities of various other activities that have to do with business(Carneiro et al., 2022). This means that even if there is a business dispute, the business dispute must not interfere with the implementation of business practices, let alone have an impact on a decrease in business profits due to a business dispute. In this context, non-litigation business dispute resolution is

appropriate in business disputes because the fast process will certainly not have an impact on the implementation of business practices, let alone a decrease in business profits due to business disputes. Third, non-litigation-based business dispute resolution actually prioritizes compromise and efforts to benefit the parties to the dispute as much as possible and minimize the losses experienced by the parties to the business dispute(Siregar et al., 2023). This non-litigation-based business dispute resolution effort that emphasizes compromise is actually relevant to the orientation of business where in business all parties are actually seen as "equal partners" so that efforts to resolve disputes in court with the logic that the parties face each other are not in accordance with the orientation in business practice(Fatima, 2022). Therefore, non-litigation-based business dispute resolution is actually more appropriate because it is substantively able to accommodate the interests of the parties in a business dispute.

From the three arguments related to non-litigation-based business dispute resolution above, it can be concluded that in business disputes, non-litigation-based dispute resolution is more appropriate to apply than litigation-based dispute resolution. In relation to non-litigation-based business dispute resolution, this has actually been facilitated and regulated in the APS Law. Even so, there are problems where the APS Law does not yet regulate business dispute resolution, especially based on mediation conducted digitally or online. Of the various types of non-litigation dispute resolution, mediation in business practice can be said to be an appropriate and relevant step because through mediation the parties can meet directly so that differences of opinion and disputes can be resolved optimally and effectively. The legal problem that occurs is that the settlement of business disputes through mediation and including other non-litigation dispute resolution as stipulated in Article 6 paragraph (2) of the APS Law emphasizes that the parties must "meet in person". The elucidation of Article 6 paragraph (2) of the APS Law also does not specify the meaning of "meet in person" so that the provisions of Article 6 paragraph (2) of the APS Law cause legal uncertainty because "meet in person" can be interpreted as meeting face-to-face or meeting virtually.

Virtual meetings are actually one part of technological development, especially since 2020 where the COVID-19 pandemic has increasingly made people's digital activities massive so that various activities or activities are carried out virtually(Anggariani et al., 2021). This also applies in the field of business where there are various business activities that are then carried out digitally or online. One aspect of business that is carried out digitally or online is digital or online mediation-based dispute resolution efforts. Practices related to digital or online

mediation-based dispute resolution have actually been carried out by various agencies or corporations, for example the Supreme Court (MA) through Perma Electronic Mediation which regulates that mediation within the scope of the court can take place electronically. Another practice is also carried out by the Financial Services Authority (OJK) through the Financial Services Authority Regulation Number 61 / POJK.07 / 2020 which provides regulations regarding the implementation of financial disputes that can be carried out virtually or virtually. One of the arguments from the regulation is that the implementation of virtual or face-to-face dispute resolution is actually substantially the same as dispute resolution in general because the parties have also met directly, where the difference is that in the implementation of virtual or face-to-face dispute resolution, the parties meet via video based on a device connected to the network (online).

Referring to the practice of non-litigation dispute resolution, especially mediation above, which has been regulated by several agencies and can be conducted online or virtually, the implementation of business mediation should also be conducted online or virtually. Although there is legal vagueness as stipulated in Article 6 paragraph (2) of the APS Law regarding the parties must "meet in person", the provisions contained in Article 6 paragraph (2) of the APS Law must be interpreted extensively that what is meant by meeting in person also includes meeting online as long as it is carried out directly and the parties can interact online. The importance of interpretation of the provisions of the law due to the development of the times is actually emphasized by Sudikno Mertokusumo that interpretation aims to make a rule alive and in accordance with the context that develops in society (Pitlo, 2013). Rules that have been interpreted will be easy to apply according to the times that are evolving all the time.

The attempt to make an extensive interpretation of Article 6 paragraph (2) of the APS Law regarding the parties must "meet in person" is actually based on the existence of legal issues in the form of legal vagueness regarding the meaning of "meet in person". This vagueness can actually have legal implications for parties who will conduct online mediation related to business dispute resolution. The term legal implication as quoted from Jazim Hamidi's view that legal implication is actually an indirect legal effect of a certain legal product or legal provision for the community. This confirms that the legal implications of the legal vagueness of the provisions of Article 6 paragraph (2) of the APS Law regarding the parties must "meet in person" have direct legal consequences for the parties in the form of whether business dispute resolution through alternative dispute resolution based on online mediation

can be implemented. By making an extensive interpretation and referring to existing practices, the provisions contained in Article 6 paragraph (2) of the APS Law must be interpreted extensively that what is meant by meeting in person also includes meeting online as long as it is carried out directly and the parties can interact online.

From the description above, it can be concluded that the legal implications of the vagueness of online mediation arrangements in the APS Law can actually cause legal uncertainty for the community, especially with regard to the implementation of legal innovation in the form of online mediation in the practice of business disputes. This can actually be resolved by legal interpretation in the form of extensive interpretation that what is meant by meeting in person also includes meeting online as long as it is carried out directly and the parties can interact online.

Future Regulation of Online Mediation Based on Online Dispute Resolution as Part of the Development of the Industrial Revolution 4.0 Era

Developments related to online mediation as one of the efforts of the alternative dispute resolution process are actually based on the reality of technological developments as well as developments where in the 21st century has entered the era of the 4.0 industrial revolution (Azzery, 2022). Referring to Rhenald Kasali's view, the era of the industrial revolution 4.0. is characterized by two main phenomena, namely digitalization and disruption (Kasali, 2019). Digitalization is a phenomenon in which there is an "alternative world" for humans besides the factual or real world (Osinovskaia, 2021). The alternative world is a virtual world or digital world where every human being can carry out activities as in the factual world such as meetings, meetings, and various work-related activities. Disruption as the identity of the industrial revolution era 4.0. also relates to changes that are so fast that efforts to ignore a change are actually impossible (Caserta & Madsen, 2019). This emphasizes that the virtual world or virtual world can actually be called a representation of the real world so that various aspects that can be carried out in the real world can actually also be done in cyberspace or virtual world.

The practice of online mediation based on online dispute resolution as a business dispute resolution is actually part of the times. In this context, the law should play a role in regulating and accommodating the development of online mediation based on online dispute resolution as a business dispute resolution (Laksmana & Permana, 2023). Even so, the laws and

regulations governing mediation as an alternative to business dispute resolution have not accommodated the development of online mediation. This can be seen in the provisions of Article 6 paragraph (2) of the APS Law, which emphasizes that the parties must "meet in person". The elucidation of Article 6 paragraph (2) of the APS Law also does not specify the meaning of "meet in person" so that the provisions of Article 6 paragraph (2) of the APS Law create legal uncertainty because "meet in person" can be interpreted as meeting face-to-face or meeting virtually.

If Article 6 paragraph (2) of the APS Law is interpreted textually then "meet in person" must be interpreted as a physical or direct meeting. However, if the provisions of Article 6 paragraph (2) of the APS Law are interpreted extensively and futuristically then this becomes a different thing. Based on an extensive interpretation, the provisions of Article 6 paragraph (2) of the APS Law related to "meeting in person" must be interpreted as meeting face-to-face or meeting virtually. In a futuristic interpretation, it can also be seen that Article 6 paragraph (2) of the APS Law must be interpreted in the context of massive developments in technology and information, especially in the era of the industrial revolution 4.0 where the development of digitalization is an important part of the phenomena that occur in society. In connection with the extensive and futuristic interpretation above, it can be emphasized that Article 6 paragraph (2) of the APS Law must be interpreted comprehensively and holistically that what is meant by meeting in person is a meeting that takes place factually or virtually where the parties can interact as well as formulate decisions related to the mediation carried out as a means of resolving business disputes.

Referring to the extensive and futuristic interpretation of Article 6 paragraph (2) of the APS Law above, to accommodate and facilitate the practice of online mediation as a mechanism for resolving business disputes, it is necessary to revise the provisions of Article 6 paragraph (2) of the APS Law by emphasizing that the practice of alternative dispute resolution can actually be carried out online or virtually according to the agreement of the parties. The revision of the provisions of Article 6 paragraph (2) of the APS Law also includes several principles for the implementation of mediation and alternative dispute resolution carried out online or virtually such as: the principle of balance, the principle of accessibility, the principle of security, and the principle of effectiveness and efficiency. With the efforts to revise the provisions of Article 6 paragraph (2) of the APS Law above, it is hoped that it can facilitate the practice of online mediation as an alternative dispute resolution in business practices.

Penutup

The legal implications of the vagueness of online mediation arrangements in the APS Law can actually cause legal uncertainty for the community, especially with regard to the implementation of legal innovation in the form of online mediation in the practice of business disputes. This can actually be resolved by legal interpretation in the form of an extensive interpretation that what is meant by meeting in person also includes meeting online as long as it is carried out directly and the parties can interact online.

Future arrangements related to online mediation based on online dispute resolution as part of the development of the industrial revolution 4.0 era are by revising the provisions of Article 6 paragraph (2) of the APS Law by emphasizing that the practice of alternative dispute resolution can actually be carried out online or virtually according to the agreement of the parties. The revision of the provisions of Article 6 paragraph (2) of the APS Law also includes several principles for the implementation of mediation and alternative disputes carried out online or virtually such as: the principle of balance, the principle of accessibility, the principle of security, and the principle of effectiveness and efficiency. With the efforts to revise the provisions of Article 6 paragraph (2) of the APS Law above, it is hoped that it can facilitate the practice of online mediation as an alternative dispute resolution in business practices.

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