



NATIONAL FRAMEWORK FOR CONSUMER COMPLAINTS HANDLING AND DISPUTE RESOLUTION IN INDONESIA¹

(Advanced copy)

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Abbreviation and acronyms

AADR Law	Law on Arbitration and Alternative Dispute Resolution of 1999
ADR	Alternative Dispute Resolution
APEC	Asia-Pacific Economic Cooperation
ASEAN	The Association of Southeast Asian Nations
BI	<i>Bank Indonesia</i> Central Bank of Indonesia
BPKN	<i>Badan Perlindungan Konsumen Nasional</i> National Consumer Protection Agency
BPSK	<i>Badan Penyelesaian Sengketa Nasional</i> Consumer Dispute Settlement Body
DGPTC	<i>Direktorat Jenderal Perlindungan Konsumen dan Tertib Niaga</i> Directorate-General for Consumer Protection and Trade Compliance
FSA Law	Law on Financial Service Authority of 2011
GCPL	Law on Consumer Protection of 1999
GR E-Commerce	Government Regulation on Trade Through Electronic Transaction of 2019
idEA	<i>Asosiasi E-Commerce Indonesia</i> Indonesia E-Commerce Association
IDR	Indonesian Rupiah
IET Law	Law on Information and Electronic Transaction
KUHAP	<i>Kitab Undang-undang Hukum Acara Pidana</i> Indonesia Code of Criminal Procedure
LAPS SJK	<i>Lembaga Alternatif Penyelesaian - Sengketa Sektor Jasa Keuangan</i> Alternative Dispute Resolution Institutions – Financial Services Sector

LPKSM	<i>Lembaga Perlindungan Konsumen Swadaya Masyarakat</i> Non-Governmental Consumer Protection Institutions
MA RI	<i>Mahkamah Agung Republik Indonesia</i> Supreme Court of the Republic of Indonesia
MD 350	Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 of 2001 concerning the Implementation of Duties and Obligations of the Consumer Dispute Settlement Body
ODR	Online Dispute Resolution
OJK	<i>Otoritas Jasa Keuangan</i> Financial Service Authority
Perma	<i>Peraturan Mahkamah Agung</i> Supreme Court Regulation
PN	<i>Pengadilan Negeri, Pengadilan Tingkat Pertama</i> District Court, First Level Court
Prolegnas	<i>Program Legislasi Nasional</i> National Legislation Programme
PT	<i>Pengadilan Tinggi, Pengadilan Tingkat Banding</i> High Court, Court of Appeal
PUJK	<i>Pelaku Usaha Jasa Keuangan</i> Financial Services Business Actors
Trade Law	Law on Trade of 2014
UNCTAD	United Nations Conference on Trade and Development
UNGCP	United Nations Guidelines for Consumer Protection
UNCITRAL	United Nations Commission on International Trade Law
USD	United States Dollar

1. Introduction

1.1 Background

In 2019, UNCTAD conducted the ‘Voluntary Peer Review of Consumer Protection Law and Policy in Indonesia.’ Conducted with the support of Indonesia, the peer review report provided an external and independent assessment of the effectiveness of consumer protection law and policy in Indonesia.²

The report (2019: 25) concluded that while Indonesia’s decentralized model of implementing consumer protection rules affords “greater accessibility and multiple avenues for consumers to lodge their complaints,” it is not without downsides. The report noted that there are overlaps, inconsistencies and/or divergence in the consumer protection policies, laws and regulations developed and implemented by sectoral ministries and regulators at the central and local levels. Consequently, consumers find it challenging to navigate the complex landscape when trying to seek redress, as do public and private actors who face confusion when dealing with a multitude of legal provisions on consumer protection.

In addition to recommending increasing overall policy coherence, the report (2019: 27) also highlighted the need for reform measures. Such measures should focus on restructuring institutional remits and increasing institutional capacity of selected bodies that deal with consumer complaints and disputes. In particular, the report calls for an integrated system to consolidate complaints data collected through the National Consumer Protection Agency (BPKN) and the Consumer Dispute Settlement Body (BPSK), and to better coordinate the work between the two agencies in resolving complaints and disputes. In addition, the National Strategy of Consumer Protection in Indonesia of 2017 (Stranas PK), which was mentioned in the report (2019: 19), also notes the challenges of low degrees of consumer complaints and business compliance (as well as consumer empowerment), due to underutilization and/or a lack of public awareness of consumer protection agencies.³

1.2 Aim and objectives

Against this backdrop, this report maps out the current national legal, policy and institutional frameworks for consumer dispute resolution (CDR) in Indonesia. By providing an updated picture on how effective CDR is in Indonesia and how the national landscape has developed since the peer review was conducted three years ago, this report sheds light on the remaining challenges

² As the Report (2019: 1) states, the peer review was conducted “against the backdrop of Indonesia’s ongoing efforts to strengthen its national consumer protection system, and the recommendations derived from the peer review are expected to substantiate critical reform initiatives, including a revision of the existing general consumer protection law.”

³ The report (2019) also recommends that BPKN take the lead responsibility as the overarching national agency and widen its remit over consumer protection policies and issues. This would help to increase BPKN’s standing and the uptake of its policy recommendations by sectoral ministries and sectoral regulators. One way to achieve this is by repositioning the BPKN within the government structure, so that it is placed directly under the authority of the Office of the President or Vice-President.

that need to be overcome in order to fully implement the previous recommendations. Based on the findings of this report, policy options are provided here for further improving CDR in Indonesia, according to established practices, so that the reader can better grasp the policy implications.

Before going further, a brief note is provided on how this report defines the concept of CDR: CDR is used as a collective term that refers to litigation and non-litigation approaches to resolving consumer complaints or disputes, including both offline forms of judicial redress and alternative dispute resolution (ADR) as well as online dispute resolution (ODR) mechanisms. Traditionally, ODR refers to online ADR or online out-of-court dispute resolution, including business in-house consumer complaints systems and third-party ODR providers and schemes, but excludes authority-operated consumer complaints reporting services that do not help to resolve complaints or disputes. In recent years, this concept has evolved to include online judicial redress including e-litigation and e-court processes. Therefore, CDR encapsulates “the use of mechanisms designed to provide consumers who have suffered economic harm resulting from transactions involving goods or services, including transactions across borders, the opportunity to resolve their complaints against businesses and to obtain redress.”⁴

Apart from solving consumer complaints and resolving consumer disputes, consumer online dispute resolution can also be a tool to classify complaints and disputes, creating a solid database for developing specific consumer protection policies.

This report was undertaken within the ambit of the UNCTAD technical cooperation project titled, "Delivering digital trading infrastructure and online dispute resolution (DODR) for consumers as means to improve international trade and electronic commerce.”⁵⁶

1.3 Research methodology

To produce an evidence-based report, the research process involved a mixed methods approach to data collection and data analysis. This includes desk-based research to obtain secondary data from legal and social sciences literature sources, as well as reports from the public sector, private sector, think tanks and online publications.

⁴ See OECD (2007). Available at: <https://www.oecd.org/sti/ieconomy/38960101.pdf>

⁵ The DODR project aims to be the first step towards the implementation of cross-border ODR in Indonesia and Thailand by assessing beneficiaries' needs, benchmark international best practices, strengthen local capacities and use emerging technologies like block chain and artificial intelligence to leapfrog development stages and deliver ODR for consumers. See: <https://unctad.org/meeting/delivering-digital-trading-infrastructure-and-online-dispute-resolution-consumers-mean>

⁶ BPKN (2021: Interview) has previously expressed the need for a full-fledged online dispute resolution (ODR) platform. This view is also stated in Government Regulation on E-Commerce - GR 80, 2019. See: <https://www.kemendag.go.id/id/newsroom/press-release/pp-nomor-80-tahun-2019-pemerintah-lahirkan-peraturan-pemerintah-tentang-perdagangan-melalui-sistem-elektronik-1#:~:text=Kementerian%20Perdagangan%20Republik%20Indonesia%20%7C%20PP,tentang%20Perdagangan%20Melalui%20Sistem%20Elektronik>

Empirical research was also conducted to gather first-hand data through online in-depth interviews and an online survey. Overall, 175 interviews were conducted with members of the public, private and not-for-profit sectors. The online survey had the participation of Java and Sumatra Island community members, with the educational background of the majority being bachelor's (56 per cent) and master's (30.3 per cent). However, this condition does not illustrate that the members of the Indonesian community have a high level of education, one of the reasons that explain the survey's limitations. The survey shows that most respondents are professionals (lawyers, teachers, lecturers, doctors) (27 per cent) and private employees (27 per cent).

2. Basic legal framework for CDR and e-commerce

2.1 National laws and regulations in Indonesia

This chapter examines the national laws and regulations that provide the legal basis for the implementation of CDR services in Indonesia, including designated authorities and institutions that are responsible for carrying out CDR services and related policy and operational functions with regards to consumer protection. Sections 2.1 to 2.3 mainly discuss general laws and regulations relevant to consumer protection matters, while Sections 2.4 to 2.7 mainly focus on laws and regulations relevant to e-commerce and e-transactions as well as ODR. However, when applied to CDR in practice, the laws from both areas intersect and complement each other.

2.2 Law Number 8 of 1999 on Consumer Protection⁷ (GCPL)

Law Number 8 of 1999 on Consumer Protection, known as the General Consumer Protection Law (GCPL), is the legal basis and umbrella legislation for regulating consumer protection, including in the e-commerce. This includes the rights and obligations of consumers (Article 4 and Article 5) and business actors (Article 6 and Article 7).

The GCPL states that when a consumer makes a complaint to business for compensation or redress, the business can respond by exchanging the defective product or providing compensation or redress equivalent to the purchased product.⁸ The business is responsible for legitimate claims for compensation if damage, pollution, and/or other consumer losses have been incurred as a result of the transaction. They have seven days to do so, as a grace period, following the transaction date.⁹

If the business refuses to or does not respond to the complaint, the consumer can file a claim for compensation or redress to the Consumer Dispute Settlement Agency (BPSK) or pursue litigation at the court based on the consumer's domicile.¹⁰ These institutional and legal mechanisms for

⁷ Law Number 8 of 1999 concerning Consumer Protection. Promulgated on April 20, 1999. Published in the State Gazette of the Republic of Indonesia Year 1999 Number 22 and Supplement to the State Gazette of the Republic of Indonesia Number 3821.

⁸ Chapter VI (Entrepreneurs Obligations), Article 19, paragraphs (1) and (2) of the GCPL : (1) Entrepreneurs are obligated to give compensation for the damage, taint and/or losses the consumers suffer as a result of using or consuming the goods and/or services produced or traded by the entrepreneurs; and (2) Compensation as intended by Section 1 above can be in the form of refund or goods and/or services of the same type or has equal value, or in the form of health care and/or insurance coverage in accord with the prevailing law.

⁹ Article 19, paragraphs (1), (2), and (3) of the GCPL. In addition, business may also be subject to administrative sanctions in compensation for a maximum of IDR 200,000,000.00, equivalent to USD 13,888 (based on exchange rate in December 2021), if they violate: 1) the obligation to provide compensation; 2) the time limit for granting compensation as determined by law; 3) responsibility for the advertisements produced and all the consequences caused by the advertisements; 4) the obligation to provide spare parts and or after-sales facilities; and 5) the obligation to fulfil the guarantee following the agreement.

¹⁰ Article 23 and Article 45, paragraphs 1 to 4 of the GCPL.

‘dispute resolution’, based on the voluntary choice of the parties, are regulated by the GCPL.¹¹¹² These legal and out-of-court CDR mechanisms are briefly outlined below in reference to GCPL.

2.2.1 Legal mechanisms for CDR

The GCPL states the conditions under which consumer can settle dispute through the general court:¹³

- (1) Every consumer who has suffered damages may file charges against the entrepreneurs through the foundation, which is responsible for settling the disputes between consumers and businesses, or through a court under the jurisdiction of the general court
- (2) Based on the voluntary choice of the disputed parties, consumers’ disputes take place in court or outside the court
- (3) Settlement of the disputes outside the court as intended by Section 2 above shall not forfeit the penal responsibility, as regulated in the law.
- (4) If efforts to settle the consumers’ disputes outside the court have been made, charges can only be filed in the court if the said efforts are declared unsuccessful by one of the parties or by both parties in dispute.

The situations in which consumers can file different types of lawsuits for various violations committed by business, based on *persona standi in judicio*, are also specified in the GCPL:¹⁴

- (1) an aggrieved consumer or heir concerned;
- (2) a group of consumers who have the same interests;
- (3) Non-Governmental Consumer Protection Institutions (LPKSM¹⁵)¹⁶ meeting the requirements;
- (4) government and or related agencies if the goods and services consumed or utilized result in significant material losses and or no small number of victims.

In addition, lawsuits filed by LPKSM or government/agencies can only be solved in court.¹⁷

¹¹ Article 45 paragraph (2).

¹² Chapter X, Articles 45-48.

¹³ Article 45.

¹⁴ Article 46.

¹⁵ See 2.2 *Complaints Handling and Dispute Resolution: mandated* authorities above for LPKSM attributions.

¹⁶ The Non-Governmental Consumer Protection Institutions (LPKSM) is a non-governmental organization registered and recognized by the government that has activities to deal with consumer protection. Chapter IX Article 44 of the GCPL regulates the LPKSM.

¹⁷ Articles 45 to 46 GCPL.

2.2.2 Out-of-court mechanisms for CDR

The BPSK¹⁸ is mandated with receiving and resolving consumer disputes through ADR services such as mediation, arbitration, or conciliation.^{19,20} The term "consumer dispute" is defined in the Regulation of the Minister of Trade Number 72 of 2020 concerning BPSK²¹ (MR BPSK), one of the implementing regulations of the GCPL: "Consumer disputes are disputes between businesses and consumers who demand redress or compensation for damage, pollution, and or suffer losses due to consumer goods and or the use of services produced or traded."²²

In addition to BPSK, the GCPL specifies two other institutions that are mandated with the authority to protect consumers, and to receive and handle consumer complaints to provide advice to help them with complaints handling.²³ These institutions are the National Consumer Protection Agency (BPKN) and the Non-Governmental Consumer Protection Institutions (LPKSM).²⁴

In practice, although not explicitly specified, the consumer complaints received by BPKN which are not solved are forwarded to BPSK or to the courts for litigation. The specific mandates and statistics of BPSK, BPKN, LPKSM and other institutions are elaborated in Chapter 3.

In addition to the three bodies discussed above, several sectoral authorities provide services for handling *complaint, receiving and reporting only*.²⁵ Based on provisional information provided by BPKN, these services do not appear to support consumers in resolving their complaints or

¹⁸ Chapter XI Article 49 to Article 58.

¹⁹ Article 52 paragraph (1).

²⁰ BPSK does not meet the requirements of a special court as regulated in Indonesia's law on judicial powers. The GCPL basis for establishing BPSK does not refer to Law Number 14 of 1970 concerning Basic Provisions of Judicial Power²⁰ ("Law 14/1970"), which was in effect. In addition, BPSK was not established by law as it is required by Law Number 48 of 2009 concerning Judicial Powers. As a result, BPSK is not under the guidance of the Supreme Court as the highest judicial institution in Indonesia.

²¹ Regulation of the Minister of Trade Number 72 of 2020 on Consumer Dispute Settlement Body. Promulgated on 17 September 2020.

²² Article 1, point 4, MR BPSK.

²³ The settlement of disputes outside the court does not eliminate criminal responsibility as stipulated in the GCPL. For example, the settlement of disputes over the purchase of counterfeit products consumers do not know as buyers do not invalidate the obligation of law enforcement to bring businesses to criminal courts on charges of counterfeiting and fraud.

²⁴ In the GCPL, articles 31 to 43 specifies the establishment and mandate of the BPKN; articles 44 to 46 specifies the establishment and appointment of the LPKSM; and Articles 49 to 58 specifies the establishment and mandate of the BPSK.

²⁵ They include the Financial Services Authority (KONTAK OJK 157, <https://www.ojk.go.id/en/informasi-publik/Pages/Tentang-Informasi-Publik.aspx>); the Ministry of State Apparatus Utilization and Bureaucratic Reformation, State Secretary, Ombudsman RI (LAPOR!, www.lapor.go.id); the Food and Drug Monitoring Agency (HALO BPOM, <https://www.pom.go.id/new/>); the Ministry of Communication and Information (CEKREKENING.ID, <https://www.kominfo.go.id/>); the Ministry of Transportation (SIMADU, <http://www.simadu.dephub.go.id/>); the Health Social Security Implementing Agency (BPJS KESEHATAN CARE CENTER, <https://www.bpjs-kesehatan.go.id/bpjs/home>); and the Ombudsman RI (LAYANAN 137, <https://ombudsman.go.id/>)

disputes, either through common ADR approaches²⁶ or through non-binding advice or binding decision. Therefore, they should not qualify as ADR or ODR. However, they may warrant further in-depth investigation to confirm if this is indeed the case or whether there have been new developments in these services.

2.2.3 CDR covers both complaints and disputes in Indonesia

Therefore, although the GCPL does not explicitly define ‘consumer complaint’ or ‘consumer dispute’²⁷ (except MR BPSK Regulation which does define the latter, as noted previously), the above discussion shows that CDR in the Indonesian context can be understood to include both terms, based on the institutional remits of the legal and ADR mechanisms. In other words, CDR covers not only consumer disputes dealt with by the court and by ADR bodies such as BPSK, but also complaints dealt with by administrative bodies such as BPKN and ADR entities like LPKSM.

This matches the general interpretation of CDR as noted in Chapter 1, which refers to CDR as a collective term that cover both litigation and non-litigation approaches to resolving consumer complaints or disputes, including both offline forms of judicial redress and ADR as well as ODR mechanisms (but excludes *complaints receiving/reporting only services* provided by authorities).

While BPSK is meant to be the authority responsible for ADR, because the terms complaint (resolution) and dispute (resolution) are used interchangeably in the law and regulations to describe the institutional mandates of the authorities with respect to their ADR services, they are not differentiated in practice. For example, Article 52, letter (e) of GCPL lists “receive written or unwritten complaints from consumers” as one of BPSK’s duties and responsibilities, while Article 3, paragraph 1, verse 2, letter (f) of Government Regulation Number 4/2019 (BPKN Regulation)²⁸ lists “Receive complaints and resolve complaints by providing advice for dispute resolution” as one of BPKN’s duties and responsibilities. However, the Indonesian authorities have different interpretations of what entails complaints handling and dispute resolution, thus impacting the roles of consumer-related authorities.

The Ministry of Trade (MoT) based on the General Consumer Protection Law, understands that article 23 brings the basis for the separation of “complaints” and “disputes”:

Article 23

Entrepreneurs who refuse and/or do not respond and/or do not provide compensation to the consumers’ claim as intended by Article 19 Section 1, Section 2 Section 3, and Section 4 above, can be sued through the Consumer Disputes Settlement Agency or brought to court at the domicile of the consumers.

²⁶ For example, negotiation, conciliation, mediation, adjudication, and arbitration.

²⁷ ‘Consumer dispute’ is defined in Article 1, paragraph 10 of the Decree of the Minister of Industry and Trade No. 350/2001 as “disputes between business actors and consumers who demand compensation for damage, pollution and/or who suffer losses due to consumption of goods and/or service utilization.” Also, there is a restrictive understanding at the Supreme Court limiting consumer disputes to those disputes resulting in harm to consumers regardless of the cause or source of the dispute (like non-performance by the business or illegal actions).

Claims are “complaints” when consumers are harmed and seek redress from the entrepreneur, and “disputes” happen when the business refuses the complaint. Therefore, once a dispute, the business can be sued before the Consumer Disputes Settlement Agency” (BPSK).

Indeed, the English version of the GCPL may also limit the understanding of such differentiation. However, consumers can complain, as well as suing a business and make a claim (for damages, compensation, etc). Following this interpretation, the MoT considers that BPKN has the sole “function of providing advice and consideration to the government in an effort to develop Consumer Protection in Indonesia”. Therefore, as for Regulation No. 4 /2019 concerning BPKN, the MoT maintains its interpretation that BPKN is only entitled to receive and handle complaints to “provide advice and consideration to the government (Ministries and Institutions) to develop consumer protection in Indonesia”.

Regulation Number 4/2019²⁹

Article 3

- (1) BPKN has the function of providing advice and consideration to the government in an effort to develop consumer protection in Indonesia.
- (2) To carry out the function as referred to in paragraph (1), BPKN is in charge:
 - a. provide advice and recommendations to the government in the framework of the establishment of discretion in the field of Consumer Protection;
 - b. conduct research and assessment of applicable laws and regulations in the field of Consumer Protection;
 - c. conduct research on goods and/or services related to consumer safety;
 - d. encourage the development of LPKSM;
 - e. disseminate information through the media regarding Consumer Protection and promote partnership to consumers;
 - f. receive complaints about consumer protection from the public, LPKSM, or Business Actors; and
 - g. conduct services that concern consumer needs.
- (3) In carrying out the duties referred to in paragraph (2) BPKN may cooperate with international consumer organizations.
- (4) Further provisions regarding the implementation of BPKN duties as referred to in paragraph (2) and paragraph (3) are regulated by the decision of the Chairman of BPKN.

BPKN also bases its interpretation on GCPL (article 49, letter e) and Article 3, paragraph 1, verse 2, letter (f) of Government Regulation Number 40/2019 (BPKN Regulation). BPKN, based on Article 3 paragraph 2 letter (f) PP No. 4 of 2019, receives consumer complaints from the public, LPKSM or businesses. The understanding is that by receiving such complaints, BPKN is carrying out its task of providing advice and consideration to the government. According to BPKN, “by

²⁹ Government Regulation No. 4 on the National Consumer Protection Agency (BPKN) 2019

receiving consumer complaints, the Consumer Agency seeks to restore consumer rights through a clarification and mediation process”.

2.3 Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (AADR Law)

Arbitration and Alternative Dispute Resolution (ADR) are defined separately in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (AADR Law).³⁰ Arbitration is defined as an out-of-court approach to settling civil disputes based on a written agreement previously agreed upon by the parties³¹, while ADR is an institution that resolves disputes or differences of opinion through out-of-court procedures agreed upon by the parties, namely consultation, negotiation, conciliation, or expert judgment.³² However, the AADR Law does not regulate online dispute resolution (ODR). Therefore, not all ADR practices in Indonesia are based upon the AADR Law but are largely dependent on the prevailing sectoral laws and regulations.

The AADR Law specifies the sequential stages through which ADR and arbitration procedures should be carried out. The AADR Law stipulates a 14-day limit for the processes that involve direct meeting, including the involvement of expert advisors who may assist the parties to reach an agreement, at the end of which a written agreement must be produced.³³ If the parties fail to reach an agreement within 14 days, the parties may appoint a mediator within seven days to help resolve the case. The parties then need to agree on how to resolve the case, with the help of the mediator, within 30 days. If an agreement still cannot be reached, the parties may propose to bring the case to arbitration based on the agreement.

The AADR Law states that the agreement reached through ADR or arbitration are final and binding and must be brought to the District Court to be registered within 30 days from its signing. Furthermore, the object of the agreement must be completed within 30 days after its registration.

2.4 Law Number 7 of 2014 (Trade Law)

Law Number 7 of 2014 on Trade ("Trade Law") foresees the legal framework for e-commerce and cross-border e-commerce in Indonesia³⁴. The Trade Law uses the term "trading through electronic systems", not "e-commerce". The term means "trade in which transactions occur through a series of electronic devices and procedures".³⁵ This definition is similar to the one used by the United Nations Commission on International Trade Law (UNCITRAL).

³⁰ Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Promulgated on August 12, 1999. Published in the State Gazette of the Republic of Indonesia of 1999 Number 138, and Supplement to the State Gazette of the Republic of Indonesia Number 3872.

³¹ Article 1, Point 1; Article 2.

³² Article 1 point 10.

³³ Article 6 paragraph (2).

³⁴ Law Number 7 of 2014 concerning Trade. Promulgated on March 11, 2014. Published in the State Gazette of the Republic of Indonesia of 2014 number 45 and the Supplement to the State Gazette of the Republic of Indonesia number 5512

³⁵ See Chapter I Article 1, number 24.

As a reference, Article 1 and Article 2 of the UNCITRAL Model Law on Electronic Commerce³⁶ define e-commerce as "any trading activity carried out by exchanging information provided, received, or stored through electronic, optical or other similar tools including, but not limited to Electronic Data Interchange (EDI), e-mail, telegram, telex, or telecopy."

The definitions of these two terms are broad, general in nature, and do not relate to any business model. This definition includes all e-commerce business models known in Indonesia according to the Indonesian E-Commerce Association (idEA), namely consumer-to-consumer marketplace (C2C), business-to-consumer (B2C) online retail, business-to-business (B2B) online, business-to-government (B2G), classified, aggregator, and daily deals.³⁷

The general provisions in the Trade Law regulates e-commerce.³⁸ Article 65 stipulates that:

- (1) Businesses who trade goods and or services using an electronic system are obliged to provide complete and correct data and or information regarding the goods or services.
- (2) The use of the electronic system must comply with the provisions stipulated in the law concerning Electronic Information and Transactions.³⁹
- (3) Disputes related to e-commerce are resolved through courts or other dispute resolution mechanisms.

Businesses that fail to provide complete and correct data and/or information are subject to administrative sanctions such as license revocation.⁴⁰ Other e-commerce provisions, such as Trading Through Electronic Systems (GR E-Commerce)⁴¹ are under Government Regulation Number 80 of 2019.⁴²

2.5 Government Regulation on E-Commerce - GR 80, 2019 (GR E-Commerce)⁴³

2.5.1 General provisions

The GR E-Commerce is the implementing regulation of the Trade Law.⁴⁴ Its scope includes regulations with regards to:

³⁶ UNCITRAL, UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998

³⁷ idEA, E-Commerce Di Indonesia, 2018.

³⁸ Chapter VIII, Article 65 and Article 66.

³⁹ The law in question is Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 regarding Amendments to Law Number 11 of 2008 on Electronic Information and Transactions (EIT Law)).

⁴⁰ Article 65.

⁴¹ [Government Regulation on E-Commerce - GR 80, 2019](#)

⁴² Noted in Article 66.

⁴³ [Government Regulation GR 80, November 2019](#)

⁴⁴ GR E-Commerce contains provisions that refer to other laws and regulations for matters not sourced from the Trade Law, such as taxation, consumer protection, and unfair business competition. Regarding taxation, GR E-

- a. parties who trade through electronic systems;
- b. requirements in trading through electronic systems;
- c. administering trade through electronic systems;
- d. obligations of business actors;
- e. proof of trading transactions through electronic systems;
- f. electronic advertisement;
- g. electronic offer, electronic acceptance, and electronic confirmation;
- h. electronic contracts;
- i. protection of personal data;
- j. payments in trade through electronic systems;
- k. delivery of goods and services in trade through electronic systems; exchange of goods or services and cancellation of purchases in trade through electronic systems;
- l. settlement of disputes in trade through electronic systems; and
- m. guidance and supervision.

According to GR E-Commerce, businesses, consumers, individuals, and state administrative agencies can conduct or be involved in trading through electronic systems (e-commerce). The GR E-Commerce classifies e-commerce businesses, local and foreign, into three groups, namely:

1. Merchant

Merchants are businesses that offer goods and/or services electronically, either through their electronic systems or through the electronic systems of e-commerce providers. In addition, GR E-Commerce mentions that sellers who only sell goods and/or services on a one-time basis and not for commercial purposes are not considered traders. GR E-Commerce refers to this type of seller as “private.”

2. E-commerce operators

E-commerce operators are businesses that provide electronic systems to enable e-commerce transactions with business models that include marketplaces, online retail, online classified ads, price comparison platforms, and daily deals.

3. Intermediary service operators

Intermediary service operators include businesses that provide indirect services to e-commerce practices, such as search engine companies, social media companies, hosting companies, and caching companies.

Furthermore, GR E-Commerce states that the provisions applicable to local businesses also apply to foreign businesses, namely individuals or foreign business entities established and located outside Indonesia conducting e-commerce business activities in Indonesia. The GR E-Commerce also considers foreign business actors that conduct e-commerce activities with consumers in

Commerce only states that the provisions and taxation mechanisms based on the prevailing laws and regulations apply to e-commerce business activities, subject to Value Added Tax and withholding taxes as applicable.

Indonesia as being physically located in Indonesia. The definition of “active” implies the following:

- (1) the number of transactions,
- (2) the value of the transaction,
- (3) the number of packets sent and or
- (4) the volume of traffic or the number of users.

Foreign business actors who meet these thresholds must appoint an Indonesian representative who can act on their behalf.

Regarding business license, the GR E-Commerce stipulates that the domestic and foreign e-commerce businesses must have a business license to carry out e-commerce business activities. Businesses can apply for a license through an “Electronically Integrated Business Licensing” following the applicable laws and regulations.

Intermediary service providers are exempted from business license requirements if:

- (1) they are not direct beneficiaries of e-commerce transactions, or
- (2) they are not directly involved in the e-commerce contractual relationship with the parties involved.

Local and foreign e-commerce operators must⁴⁵:

- (1) prioritize the use of Indonesian domain names (e.g., dot id);
- (2) use server equipment placed in the data centre;

⁴⁵ Article 21 (1) of the GR E-Commerce states that domestic BPPEC (PPMSE) and/or Foreign BPPEC (PPMSE) shall be obliged to:

- a. prioritize in employing Indonesia top level domain name (dot id) for Electronic System that takes form in internet site;
- b. prioritize in employing IP Address in accordance with stipulations found in rules and regulations;
- c. utilize server equipment placed in data center in accordance with stipulations found in rules and regulations;
- d. submit application of Electronic System in accordance with stipulations found in rules and regulations;
- e. comply to technical requirement stipulations regulated by related institutions and obtain Trustworthy Certificate in accordance with stipulations found in rules and regulations;
- f. submit data and/or information in regular manner to government institution that is authorized to administer governance affairs in statistic sector;
- g. comply with stipulations found in rules and regulations of other sectors that are related with business license of TTES (PMSE).

- (3) register as an electronic system operator at the Ministry of Communication and Information;
- (4) periodically submit data and/or information to the statistics bureau.

GR E-Commerce regulates three steps of interaction in e-commerce transactions between businesses and consumers, as follows:

- (1) Electronic offerings -businesses offer consumers goods and services.
- (2) Electronic acceptance -consumers give explicit approval of electronic offers to businesses.
- (3) Electronic confirmation -business actors provide an opportunity for consumers to confirm their acceptance.

2.5.2 E-transaction and e-contract

An electronic contract is valid and binding if:

- it reflects the terms and conditions of the relevant electronic offer;
- the information is the same as the information in the relevant electronic offer; and
- general requirements for the validity of a contract is based on the Civil Code and do not contradicting the applicable laws and regulations and the principles of public order and decency. For example, approval, authorized legal subjects, particular objects, and permissible causes.

GR E-Commerce stipulates that e-commerce transactions can use electronic contracts. Electronic contracts are “agreements made through an electronic system”, which can be in the form of a sale and purchase agreement or a license agreement. An electronic contract must contain information according to the offer and at least include:

- (1) the identity of the parties;
- (2) agreed on specifications of goods and or services;
- (3) the legality of goods and or services;
- (4) value of trade transactions;
- (5) terms and terms of payment;
- (6) operational procedures for delivery of goods and or services;
- (7) procedures for returning goods and/or services due to discrepancies between those received and these agreed upon;
- (8) procedures in the event of cancellation by the parties; and
- (9) choice of law for e-commerce dispute resolution

Under these rules, an electronic transaction receipt is the same as an electronic contract, both of which are considered electronic proof of receipt. E-commerce operators are required to provide and keep valid copy of such electronic evidence of the electronic transaction.

According to Article 54 of GR E-Commerce, electronic contracts can be signed using electronic signatures following the provisions regarding electronic signatures regulated in Government

Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions ("GR EST")⁴⁶. Electronic contracts must be written in the Indonesian language. Businesses must ensure that electronic contracts are available for consumers to download from their e-commerce platform or application.

By law, proof of e-commerce transactions must be in hard copy documents. Also, evidence of e-commerce transactions must be in the form of a notarial deed by law. The GR E-Commerce acknowledges that proof of e-commerce transactions is valid evidence and is binding on the parties unless:

- E-commerce transactions can be presented in court and cannot be rejected just because of their electronic form. In addition, proof of e-commerce transactions can also be given as authentic written evidence (which has higher evidentiary power) if using a certified electronic signature.

2.5.3 Payment and delivery

GR E-Commerce states that payments in electronic transaction can be made electronically through the banking system or other electronic payment systems. Further, e-commerce operators can operate payment system services based on an agreement⁴⁷, but they must report the agreement to the Ministry of Trade.⁴⁸

In addition to the general obligation for merchants to deliver goods and services to their buyers, the GR E-Commerce stipulates that if an e-commerce transaction is conducted through an e-commerce operator, the operator also bears the same responsibility for the delivery of goods and/or services. In this regard, e-commerce operator can work with logistics service providers based on an agreement but must report the agreement to the Ministry of Trade.

Once the consumer has received the digital goods and services and has installed the goods and/or services and the goods and/or services are operational, the delivery is considered complete.

2.5.4 Dispute resolution for domestic and cross-border e-commerce disputes

GR E-Commerce states that parties can resolve dispute through court or out-of-court mechanisms.⁴⁹ Other specific mechanisms include consultation, negotiation, conciliation, mediation, or arbitration. These processes can be undertaken online in the form of online dispute resolution (ODR), based on the agreement. They include electronic mediation organized by

⁴⁶ Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. Promulgated on October 10, 2019. Published in the State Gazette of the Republic of Indonesia Year 2019 Number 185 and in the Supplement to the State Gazette of the Republic of Indonesia Number 6400.

⁴⁷ Article 60 paragraphs (5) and (6) of GR E-Commerce.

⁴⁸ GR E-Commerce does not explain whether the reporting applies to all payment systems based on electronic contracts or only those that provide proof of payment through electronic receipts.

⁴⁹ Article 72 paragraph (1), GR E-Commerce.

supporting professionals such as lawyers or mediators, an accredited online arbitration institution, or an authorized government agency.^{50 51}

In a dispute between domestic business and consumer, the consumer can file a dispute to BPSK or to a judicial institution at the consumer's residence. They may form court forums at the court (Central Jakarta District Court), arbitration institution, or other ADR institutions authorized to handle e-commerce disputes.⁵²

In cross-border disputes involving Indonesian business and foreign consumer (and foreign business), the authorities get to choose the law that applies to them. If the parties do not choose the applicable law, principles of private international law apply.⁵³ In cross-border disputes involving foreign business and Indonesian consumer, if there is no choice of law or dispute resolution forum, the case may take place before institutions with the mandate to solve B2C disputes; or before courts following laws and regulations in the GCPL.⁵⁴

2.5.5 Data retention and data protection

In terms of data retention, the GR E-Commerce requires e-commerce operators to store data for specified limited periods. For example, financial transactions data need to be stored for 10 years, while “other data” need to be retained for 5 years. The scope of other data includes data and information about:

- (1) Customers.
- (2) Offers and electronic receipts.
- (3) Electronic confirmations.
- (4) Payment confirmations.
- (5) Delivery status of goods.
- (6) Trade claims and disputes.
- (7) Electronic contracts.
- (8) Types of goods and or services traded.

In terms of personal data protection, the GR E-Commerce considers businesses that obtain personal data from individuals as the party responsible for using and storing such data. It also provides references to standards under the European Union General Data Protection

⁵⁰ Paragraph (2), GR E-Commerce.

⁵¹ According to BPKN Commissioners, GR E-Commerce allows the creation of an institution in charge of ODR under the Ministry of Trade.

⁵² Chapter XV, Article 74, paragraph (3) of GR E-Commerce.

⁵³ For example: 1. The principle of *lex rei sitae* or *lex situs* regulates immovable objects where the objects are located; 2. the principle of *lex domicilii* regulates the rights and obligations of legal subjects based on their place of residence; 3. the principle of *lex loci contractus* regulates agreements according to the law where they are made, or 4. the principle *lex fori* which regulates the law where the court is located.

⁵⁴ Article 75, GR E-Commerce.

Regulation⁵⁵ and the APEC Privacy Framework⁵⁶ regarding personal data protection standards. Moreover, the GR E-Commerce stipulates that personal data cannot be transferred overseas unless the Ministry of Trade deems the recipient country to have the same personal data standards and protection as Indonesia.

2.5.6 Business compliance and sanctions for non-compliance

GR E-Commerce requires business actors to comply with applicable laws and regulations regarding consumer protection, including providing complaint services, as well as broadcasting, personal data protection, and competition.⁵⁷ With respect to consumer complaint service, businesses are required to provide this feature in their application or e-commerce platform.

The GR E-Commerce provisions states that e-commerce operators and intermediary service operators are responsible for the impacts or legal consequences arising from illegal content on their platforms. However, if e-commerce operator quickly removes illegal content through monitoring or reports from other parties such as buyers, consumers and the Ministry of Communication and Information Technology, they will not be held accountable.

GR E-Commerce regulates administrative sanctions, and can apply the following to rule violators:

- (1) warning letter
- (2) included in the monitoring priority list
- (3) block listing
- (4) temporary suspension of e-commerce operator services
- (5) revocation of business license

2.5.7 Other Relevant Regulations

While GR E-Commerce is a regulation that contains explicit rules for e-commerce and cross-border e-commerce in Indonesia, there are several complementary regulations that are relevant:

⁵⁵ Personal data protection standards that refer to the General Data Protection Regulation of the European Union (EU GDPR) are in the explanation of Article 59 paragraph (2) of GR E-Commerce. The EU GDPR, which came into force on 25 May 2015, replaces the Data Protection Directive 95/46/EC, designed to improve personal data protection for EU citizens. Regarding the EU GDPR, accessible at <<https://gdpr.eu>>.

⁵⁶ Personal data protection standards which also refer to the Asia Pacific Economic Cooperation Privacy Framework (APEC Privacy Framework) are in the explanation of Article 59 paragraph (2) of GR E-Commerce. The APEC Privacy Framework, which came into effect in 2015, aims to provide clear guidance and direction to businesses and government entities in the APEC economy on general privacy issues and the impact of privacy concerns on business practices and government functions. It does so by highlighting the reasonable privacy expectations of modern consumers. To find out more about the APEC Privacy Framework, see <[https://www.apec.org/Publications/2017/08/APEC-Privacy-Framework-\(2015\)](https://www.apec.org/Publications/2017/08/APEC-Privacy-Framework-(2015))>.

⁵⁷ With regards to competition, GR E-Commerce states that businesses must refrain from unfair and anti-competition practices such as price-fixing with other e-commerce platforms and publishing electronic advertisements on their platform.

- Regulation of the Minister of Communication and Information Technology Number 23 of 2013 concerning Domain Name Management.⁵⁸
- Regulation of the Minister of Trade Number 50 of 2020 concerning the Granting of Business Permits, Advertising, guidance, and Supervision of Business Actors in the Field of Trading through Electronic Systems.⁵⁹
- Bank of Indonesia Regulation No. 20/6/PBI/2018 concerning Electronic Money.⁶⁰
- Circular of the Minister of Communication and Information Technology Number 5 of 2016 concerning Limitations and Responsibilities of Platform Providers and Merchants in e-Commerce by Using User-Generated Content Platforms. This circular establishes safe harbour protections and obligations for E-commerce platforms for user-generated content and product offerings.
- Circular of the Minister of Communication and Information Technology Number 3 of 2021 concerning Guidelines for the Use of Third-Party Cloud Computing Services for Ministries or Institutions.

All the regulations mentioned above complement the legal e-commerce and cross-border framework. However, as e-commerce evolves, GR E-Commerce and these complementary e-commerce regulations should be expanded and revised to remain relevant.^{61,62}

According to the Ministry of Trade, the draft of the revised GCPL includes references that accommodate the evolution of the digital economy.

2.6 Electronic Information and Transactions (EIT Law)

Law No. 11 of 2008 on Electronic Information and Transactions (EIT Law)⁶³ is one of the pillars of Indonesia's legal framework for e-commerce that regulates information technology and

⁵⁸ Regulation of the Minister of Communication and Information Technology Number 23 of 2013 concerning Domain Name Management. Promulgated on 18 October 2013.

⁵⁹ Regulation of the Minister of Trade Number 50 of 2020 concerning the Granting of Business Permits, Advertising, Guidance, and Supervision of Business Actors in the Field of Trading through Electronic Systems. Promulgated on 19 May 2020.

⁶⁰ Bank Indonesia Regulation Number 20/6/PBI/2018 concerning Electronic Money. Promulgated on May 4, 2018. Published in the State Gazette of the Republic of Indonesia Number 70 of 2018 and Supplement to the State Gazette of the Republic of Indonesia Number 6203.

⁶¹ Chairman of the Indonesian MSME Association (“Akumindo”), Ikhsan Ingratubun, said that in cross-border trade (e-commerce) there is a breakup in transactions due to imported goods, free of import duties, making local SMEs less competitive. Thus, the need to regulate cross-border e-commerce as soon as possible. Entrepreneurs will suffer losses because their products cannot compete with illegal cross-border products, which are much cheaper. Minister of Trade, Regulation Number 50 of 2020 requires revision. < <https://finance.detik.com/berita-ekonomi-bisnis/d-5759601/praktik-cross-border-rugikan-umkm-lokal-ini-kata-asosiasi-umkm> >, accessed 19 November 2021.

⁶² For example, apart from Law No. 19 on Electronic Information and Transactions (2016), laws on consumer protection and e-commerce-related issues such as data protection and data sovereignty are yet to be formulated. This point reinforces UNCTAD’s Peer Review (2019), which made recommendations to formulate laws around emerging issues such as e-commerce, data protection and privacy.

⁶³ Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 on Amendments to Law Number 11 of 2008: Electronic Information and Transactions (“EIT Law”).

electronic transactions.⁶⁴ As EIT Law was enacted before Trade Law, Trade Law uses the EIT Law provisions to regulate e-commerce. For example, Trade Law states that every business actor who trades goods and/or services using an electronic system must provide complete and correct data.⁶⁵ This provision aligns with EIT Law.⁶⁶ These provisions show how consumer protection is the pillar of the e-commerce legal framework in Indonesia, which aim to protect consumers from being wronged or harmed when buying or using products purchased online.

EIT Law applies to everyone who carries out legal actions which have legal consequences and or cause losses, including electronic transactions and e-commerce operations, within and outside Indonesia.⁶⁷ It covers several areas with regard to e-commerce businesses.⁶⁸ For example, they must provide complete and correct information on contract terms, manufacturers, and products offered; rules around information, documents, and electronic signatures;⁶⁹ rules concerning the implementation of Electronic System Certification;⁷⁰ rules concerning Electronic Transactions.⁷¹

EIT Law is implemented through Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions ("GR IEST").⁷² GR IEST contains more details on the provisions of the EIT Law and regulates Electronic System Operation⁷³ and Electronic Agent Operators.

2.7 International sphere: ASEAN Agreement on Electronic Commerce

Recognizing the role of e-commerce in economic growth and social development in the Association of Southeast Asian Nations (ASEAN) Region, ASEAN member countries in January 2019 signed the ASEAN Agreement on Electronic Commerce.⁷⁴ The Agreement includes measures adopted or maintained by ASEAN countries that affect e-commerce,⁷⁵ but provides flexibility for ASEAN member countries to act without reducing the existing rights and obligations based on

⁶⁴ Article 4, letter b: "To develop trade and the national economy to improve the welfare of the people."

⁶⁵ Chapter VIII, Article 56, paragraph (1), which regulates Trading Through the Electronic System.

⁶⁶ Article 9, EIT Law: "*businesses who offer products through electronic systems must provide complete and correct information regarding contract terms, manufacturers, and products offered.*"

⁶⁷ Article 2, EIT Law.

⁶⁸ Article 9, EIT Law.

⁶⁹ Chapter III, Articles 5-12.

⁷⁰ Chapter IV, Article 13-16.

⁷¹ Chapter V, Article 17-22.

⁷² Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. Promulgated on October 10, 2019. Published in the State Gazette of the Republic of Indonesia Year 2019 Number 185 and Supplement to the State Gazette of the Republic of Indonesia Number 6400.

⁷³ From system registration to hardware, software, experts, governance, security, feasibility test, and supervision.

⁷⁴ ASEAN Agreement on Electronic Commerce, signed in Hanoi, Vietnam, on January 22, 2019.

⁷⁵ The scope excludes government procurement.

other ASEAN agreements.⁷⁶ As an ASEAN member country, Indonesia has ratified the Agreement through Law Number 4, which came into force as an international agreement in 2021.⁷⁷

The objectives of the Agreement are:

- (a) facilitate cross-border e-commerce transactions in the ASEAN region;
- (b) contribute to creating an environment of trust and confidence in the use of e-commerce in the ASEAN region; and
- (c) deepen cooperation among the Member States to further and intensify e-commerce to drive inclusive growth and narrow development gaps in the ASEAN region.

The Agreement includes four principles:

1. In developing and introducing e-commerce, the role of each Member State will focus on creating an enabling environment for the application of laws and regulations, creating a conducive and competitive business environment and protecting the public interest.
2. Each Member State's legal and regulatory framework that supports e-commerce will consider internationally applicable legal models, conventions, principles, or guidelines.
3. Each Member State will encourage the implementation of Alternative Dispute Resolution to facilitate the settlement of claims on e-commerce transactions.
4. the Member States will endeavour to understand the importance of technology neutrality and the need to align policies, laws, and regulations between the Member States to facilitate cross-border e-commerce.

Furthermore, the ASEAN Agreement on Electronic Commerce established an implementation "Work Plan".⁷⁸ The Work Plan contains workstreams and programs to be implemented between 2021 and 2025. It outlines a set of measures and desired outcomes across ASEAN to ensure the continued expansion of regional digital resilience and support future growth opportunities. These proposals and activities are non-binding. They may be updated to reflect the rapid and dynamic e-commerce and digital innovation activities in ASEAN.

One of the workstreams in the Work Plan is Alternative Dispute Resolution for E-Commerce. The desired outcome is that by 2025, ASEAN will be able to harmonize member states' ADR and ODR mechanisms. In this context, having a full-fledged national ODR platform will prepare Indonesia for this harmonization phase and efforts. Relatedly, the workstreams also include coordination to establish ASEAN Online Dispute Resolution (ODR) Guidelines and ASEAN Mechanism for Cross Border Complaint and Investigation.⁷⁹

⁷⁶ If there is any inconsistency between the Agreement and other applicable ASEAN agreements, the one on Electronic Commerce shall prevail.

⁷⁷ Law Number 4 of 2021 concerning Ratification of the ASEAN Agreement on Electronic Commerce. Promulgated on October 6, 2021. Published in the State Gazette of the Republic of Indonesia of 2021 Number 234, and Supplement to the State Gazette of the Republic of Indonesia Number 6728.

⁷⁸ See, Work Plan on the Implementation of ASEAN Agreement on Electronic Commerce, 2020.

⁷⁹ These workstreams reinforce the relevance and timeliness of the activities undertaken as part of the DODR project.

3. Institutional and policy framework for CDR

3.1 Authorities and institutions with hybrid CDR services

Considering that consumer dispute resolution encapsulates consumer complaints and resolving consumer disputes, in the ambit of consumer platforms or consumer online dispute resolution (CODR), there are different models and approaches.

The European Online Dispute Resolution platform allows consumers to file their complaints and then be guided to competent channels and authorities. In addition, there is the Brazilian online dispute resolution platform “Consumidor.gov.br”, where consumers file a complaint and interact directly with businesses under the monitoring of several consumer protection authorities. The Mexican CONCILIANET has a twostep procedure entirely carried out online.

In this case, if considering the existing channels in Indonesia for consumers to complain (here including websites, applications, Facebook pages and WhatsApp), and as discussed in Chapter 2, BPSK, BPKN and LPKSM derive the legal basis from implementing ADR and/or ODR functions from the GCPL. The detailed legal basis, procedures, and functioning of this institutional framework of hybrid ADR and ODR service providers are discussed below.

Although most of these institutions embody hybrid functions that includes both ADR and ODR mechanisms, a closer look at selected ODR-specific features and their currently developments is reserved in Chapter 4.

Legal mechanisms for CDR are excluded here since litigation for consumers is not considered effective or efficient in Indonesia (though should be the main purpose of any good judicial options for CDR).

3.2 Consumer Dispute Settlement Agency (BPSK)

BPSK is an independent agency established by local governments. Today, there are 185 BPSK offices located in various Indonesian districts and cities, of which 76 are actively operating.⁸⁰ As an archipelagic country with many populated islands, Indonesia needs BPSK offices to be based close to where consumers reside, yet several of the 34 provinces do not have BPSK office. By comparison, there are general courts in every province and even districts and municipalities.

The duties and responsibilities of BPSK include the following:⁸¹

⁸⁰ Gusmalinda Sari, Directorate General of Consumer Protection and Order of Commerce, Ministry of Trade of the Republic of Indonesia, "Strategic plan for the development of consumer redress in Indonesia." Presentation delivered in the webinar "Ensuring access to consumer redress: a prerequisite for business going ahead," on November 25, 2021.

⁸¹ Article 49, GCPL. Regulated by the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 (MD 350/2001).

- a. Handle and settle consumer disputes through mediation or arbitration, or conciliation;
- b. provide consumer protection consulting;
- c. supervise the inclusion of standard clauses;
- d. report to the general investigator if there is a violation of the provisions of the GCPL;
- e. receive written or unwritten complaints from consumers regarding violations of consumer protection;
- f. conduct research and examination of consumer protection disputes;
- g. summon business actors suspected of violating consumer protection;
- h. summon and present witnesses, expert witnesses, and or any person deemed to know the violation of the GCPL;
- i. request assistance from investigators to present business actors, witnesses, expert witnesses, or any person as referred to in letter g. and letter h., which is not willing to comply with the summons of the consumer dispute settlement agency;
- j. obtain, examine and or evaluate letters, documents, or other evidence for investigation and or examination;
- k. decide and determine whether or not there is a loss on the part of the consumer;
- l. notify the decision to business actors who violate consumer protection;
- m. impose administrative sanctions on business actors who violate the provisions of the GCPL.

The ADR approaches used by BPSK include conciliation,⁸² mediation,⁸³ and arbitration.^{84,85} The consumer can choose any one of these three methods as there is no hierarchical or tiered sequence to them. Once the parties have chosen and agreed on the ADR approach, the relevant rules are applied to the case handling procedure.

Before conciliation, mediation or arbitration takes place, early procedures involve registration by the consumer (or heir) and case analysis (if the complaint is suitable for procedure) to be conducted within 21 working days.⁸⁶ These two steps can be carried out in-person or online.

Once the case is analysed, conciliation, mediation or arbitration can begin. BPSK forms an assembly with an odd number of members to process and resolve consumer disputes. The appointment and dismissal of BPSK members are determined by the Minister of Trade. The assembly consists of at least three people representing the government (Level II Regions),⁸⁷ consumer or community representatives (such as YLKI), and business.⁸⁸

BPSK has an obligation to decide consumer disputes within 21 working days from the date of the complaint. BPSK can impose compensation on the business in the case of arbitration but not for

⁸² BPSK assumes a passive role by only bringing together the parties but leaves the negotiation to the parties.

⁸³ BPSK acts as a mediator to facilitate the process in a more involved way.

⁸⁴ BPSK not only mediates the case but also decides the case outcome as an arbitrator.

⁸⁵ Article 5, MD 350/2001.

⁸⁶ However, no rule specifies what might happen if the 21-day limit is exceeded.

⁸⁷ Except in some provinces such as the Special Capital Region Province (DKI) Jakarta.

⁸⁸ Article 54 to Article 58 of the GCPL.

conciliation, where in the latter, an agreement needs to be signed by both parties following BPSK's decision.⁸⁹

After receiving notification of the outcome, the parties must declare whether they accept or reject the decision within seven working days. If both parties accept the decision, they must register the decision at the local district court, after which the business must execute the decision within seven working days of the decision.

If one or both parties reject the decision, they can submit an objection to the District Court at the place of the consumer's domicile within 14 working days. If the District Court objects the appeal, the parties have 14 days to appeal before the Supreme Court of the Republic of Indonesia.

BPSK and other ADR authorities' decisions are final and binding. Article 54 paragraph (3) of the GCPL states that there is no appeal against the assembly's decision formed by BPSK. However, if the parties or one of the disputing parties do not accept the BPSK decision, the person concerned may file an objection. The objection possibility is regulated in the Supreme Court Regulation Number 1 of 2006 regarding Procedures for Filing an Objection to the Decision of the Consumer Dispute Settlement Body⁹⁰ ("Perma 1/2006").

According to Article 1 point 3 of Perma 1/2006, the objection is "an effort for business actors and consumers who do not accept the BPSK decision". However, Article 2 of Perma 1/2006 states that "objections can only be filed against the arbitration award issued by BPSK." Furthermore, the objection must be submitted to the District Court at the consumer's legal domicile. Therefore, consumers who do not have a legal domicile in Indonesia must file an objection at the District Court within the jurisdiction of the BPSK that issued the decision. BPSK cannot be a party of an objection procedure.

The District Court is obliged to rule on the objection (Article 56 paragraph (2) of the GCPL) within no later than 21 days from the receipt of the objection. Against the decision of the District Court, the parties, within a period of no later than 14 (fourteen) days, may file an appeal to the Supreme Court of the Republic of Indonesia (Article 58 paragraph (2) of the GCPL).

In addition, the executive order at the consumer's District Court domicile must accompany BPSK's decision (57 of the GCPL). Execution orders are also applicable to BPSK's rulings on objections. Perma 1/2006 in Article 7 paragraph (2) states that the District Court also decides on the objection procedures conducted by BPSK.

In 2020 there were 64 cases of objection to BPSK's decisions submitted to the District Court; 22 cases were filed for nullification, and two cases requested a judicial review. This number shows

⁸⁹ Article 5, MD 350/2001. Syamsudin, M. The Failure of the Court to Protect Consumers: A Review of Consumer Dispute Resolution in Indonesia. *J Consum Policy* 44, 117–130 (2021). <https://doi.org/10.1007/s10603-020-09470-0>

⁹⁰ Regulation of the Supreme Court Number 1 of 2006 concerning Procedures for Filing an Objection to the Decision of the Consumer Dispute Settlement Body. Stipulated on March 13, 2006.

a decrease compared to 2019, which reached 72 cases.⁹¹ Most of the objection cases were submitted by businesses rather than consumers. Therefore, it is necessary to conduct further studies to find out the cause of the filing of objections to the BPSK decision. In addition, it is also essential to examine the decision of the Supreme Court, which annuls several BPSK decisions with the consideration that BPSK does not have the authority to resolve certain consumer dispute cases.⁹²

Based on the Consumer Protection Law, BPSK's authority is limited and only adjudicates consumer-producer cases related to unlawful acts, not defaults. As:

1. There is damage, pollution and loss due to consuming goods/services.
2. Advertisements that do not match the goods.
3. The label of the goods does not match the goods.
4. Expiration of goods.

The Supreme Court also gave strict guidelines regarding the material of the lawsuit. The following is what the Supreme Court prohibits in consumer dispute cases:

1. It is forbidden to claim immaterial damages.
2. Do not demand *dwangsom*/forced money.
3. It is forbidden to demand confiscation of collateral.

In general, this situation indicates the need to improve or revise ADR provisions in Indonesia, particularly those related to consumer disputes.

The “Voluntary Peer Review of Consumer Protection Law and Policy: Indonesia” (2019) exercise also recognizes the challenges related to the legal framework due to the decentralized model. If, on the one hand, a variety of consumer authorities allows access to justice, on the other and it negatively impacts legal certainty.

The Peer Review report notes that “substantive and procedural provisions and institutional practice appear to focus much more on disciplining businesses rather than facilitating consumer dispute resolution and redress” confirming that the revision of BPSK’s decisions harms consumer protection.

3.3 National Consumer Protection Agency (BPKN)

BPKN is primarily located in the capital city of Indonesia, with 20 commissioners and 60 staff employees.⁹³ Although BPKN may establish representatives in the provincial capital if necessary

⁹¹ Performance Reports for the Year 2019 and 2020 of the Supreme Court of the Republic of Indonesia.

⁹² “The Supreme Court (MA) has annulled hundreds of decisions by the Consumer Dispute Settlement Agency (BPSK) related to consumer disputes under the allegation that BPSK is adjudicating outside its authority, which is often confirmed by district courts”. ‘Knock! 127 Consumer Dispute Decision Annulled Supreme Court,’ [Tok! 127 Keputusan Sengketa Konsumen Dianulir MA], available at: <https://news.detik.com/berita/d-3669668/tok-127-keputusan-sengketa-konsumen-dianulir-ma> >

⁹³ Explanation from Lasminingsih, Commissioner of BPKN, via video conference on October 20, 2021.

to improve its performance,⁹⁴ given its limited human resources, it is challenging for BPKN to remain effective in carrying out its strategic functions and roles.

Based on the GCPL, BPKN's mandate is to provide suggestions and considerations to the government in developing consumer protection (policy, regulation, awareness and other aspects) in Indonesia. Within its remit, BPKN's has the following duties:⁹⁵

- a. Provide advice and recommendations to the government in the framework of formulating policies in the field of consumer protection;
- b. conduct research and study on the applicable laws and regulations in consumer protection.
- c. research goods and or services concerning consumer safety;
- d. encourage the development of non-governmental consumer protection institutions (LPKSM);
- e. disseminate information through the media regarding consumer protection, promoting the culture of consumer protection;
- f. receive complaints about consumer protection from the public, non-governmental consumer protection institutions (LPKSM), or business actors;
- g. conduct surveys concerning consumer needs.

With regards to point (f) above, the BPKN has the specific mandate to receive complaints.⁹⁶

In addition to the GCPL, BPKN's mandates with regards to ADR are further reinforced and defined in other regulations.⁹⁷ This includes receiving and handling complaints, advocacy and preparing recommendations for dispute settlement,⁹⁸ to restore consumers' and/or business' rights, based on accessibility, justice, efficiency and effectiveness.⁹⁹

BPKN carries out these tasks in collaboration with other dispute resolution bodies (including BPSK), consumer agencies and law enforcers, including "arranging standard operating procedures for receiving and handling complaints" including through electronic means, "trading complaint information" with other institutions, "advising and recommending complaints" to be settled by other institutions, and "following complaints until settlement that protect consumers."¹⁰⁰

⁹⁴ Regulation No. 4 /2019 on BPKN

⁹⁵ Articles 33 and 34, GCPL.

⁹⁶ Article 3, paragraph 1, verse 2, letter (f) of the BPKN Regulation.

⁹⁷ Article 13 section (1) of BPKN Chairman's Decision Number 9/BPKN/KEP/9/2020 also specifies the duties of Commission III, Advocacy, of the BPKN: "to receive and handle complaints about consumer protection from society, consumer protection NGO's and business doers, conducting research on regulations/policies and implementation by institutions that resolve consumer disputes and managing complaint handling on consumer protection in Indonesia."

⁹⁸ Article 38, BPKN Chairman's Decision Number 23/BPKN/Kep/12/2020.

⁹⁹ Article 2, BPKN Chairman's Decision Number 14/BPKN/Kep/3/2018.

¹⁰⁰ Article 16, BPKN Chairman's Decision Number 14/BPKN/Kep/3/2018, with reference to BPKN's Commission's III assignments.

Despite the BPKN's mandate being found across a patchwork of laws and regulations, as shown above, they together form the legal basis for BPKN to maintain a platform to receive complaints.

According to BPKN Commissioners, the Agency "can provide advice and recommendations to the Government regarding the ideal consumer dispute resolution system as an effort to develop consumer protection in Indonesia, including offering the ODR system to stakeholders".

On this specific point, the MoT states that based on the GCLP and GR No. 4 ,year 2019 concerning BPKN, "there is no legal basis for BPKN to perform ADR or ODR functions".

In terms of BPKN's ADR procedure,¹⁰¹ consumer or business is required to fill out the complaint form provided and submit a copy of valid proof of identity and supporting evidence documents. BPKN can receive consumer complaints in person at a BPKN Office; online via e-mail at sekretariat@bpkn.net; or through their website www.bpkn.go.id, social media (BPKN's Instagram, Twitter and Facebook) and BPKN's application known as 153 (downloadable on iOS and Android). This electronic means of receiving and processing complaints, as a form of partial ODR service, are elaborated in the next chapter.

Based on the submission, the Secretariat of the Advocacy Commission proceeds to further collect data and information from the complainant,¹⁰² including an official written statement or clarification. The Advocacy Commission Secretariat the proceeds to investigate the facts based on the statement received.

Following this, a member of the Advocacy Commission will provide directions and set the category for processing the case based on the following classification system:

Based on the results of the complaint handling as stated in article 5, a member of the Advocacy Commission will then provide directions and set the category of handling as follows:

Category-1 complaints are adequately handled by BPKN so that they are answered in writing by issuing a notification on the development of the consumer complaint handling (Surat Perkembangan Penanganan Pengaduan Konsumen/SP3K).

Category-2 complaints which handling process remains at BPKN for a more in-depth and strategic study and possible recommendations to the government.

Category-3 complaints which handling process will need to be resolved through a relevant institution under the applicable laws and regulations, including:

When there is indication of a criminal offense, the complaint will be forwarded to the police investigators and/or the prosecutor's office. When it refers to a civil issue not

¹⁰¹ Article 5, BPKN Chairman's Decision Number 14/BPKN/Kep/3/2018.

¹⁰² Minutes of Consumer Complaints (Berita Acara Pengaduan Konsumen/BAPK).

regulated by the consumer protection law or a dispute has occurred, it will be conferred to the relevant institution according to the laws and regulations.

There are further procedural steps that involve ‘clarification’ sessions where BPKN invites the consumer and business to a meeting either through Zoom or in-person to resolve the dispute by providing advice to them. This is elaborated in Chapter 4.

From 2017 to 2021, BPKN received more than 7000 consumer complaints. The number of complaints received have been significantly increasing year over year: 293 in 2017; 640 in 2018; 1,158 in 2019, 1372 in 2020; and 3,256 in 2021.¹⁰³ Of the 3256 complaints received in 2021,¹⁰⁴ 2,590 reached a resolution with the consumers' rights restored; 236 were unresolved but referred to other ADR or court systems, and 430 are pending a solution. Table 1 shows the complaints statistics from 2021, broken down by sectors.¹⁰⁵

Table 1. Complaints received by BPKN in 2021 by sector

NO.	SECTORS	NUMBER OF COMPLAINTS
1.	Property/Housing	254
2.	E-Commerce	508
3.	Financial services	2.158
4.	Telecommunication services	77
5.	Transportation Services	30
6.	Electronic goods, telematics, and motor vehicles	46
7.	Household electricity and gas	25
8.	Medicine and food	11
9.	Health services	10
10.	Others	137
	TOTAL	3.256

Source: Advocacy Commission, BPKN

The table shows the sectoral diversity of the complaints, with the financial services and e-commerce sectors topping the list in 2021. Between 2017 and 2020, the highest number of complaints were related to the property and housing sector.¹⁰⁶ This shift shows that future efforts should prioritize safeguarding consumers in the financial services (including digital) and e-commerce sectors.

¹⁰³ Data obtained and processed from <https://m.merdeka.com/uang/bpkn-terima-3555-aduan-konsumen-70-persen-dari-sektor-bisnis-perumahan.html>; <https://m.cyberthreat.id/read/7931/BPKN-Penyelesaian-Pengaduan-Konsumen-E-commerce-Masih-Sulit>; <https://investor.id/business/bpkn-pengaduan-konsumen-selama-pandemi-covid19-meningkat>; dan <https://ekonomi.bisnis.com/read/20211220/12/1479651/pengaduan-konsumen-ke-bpkn-naik-pada-2021-jasa-keuangan-mendominasi>.

¹⁰⁴ Based on data from the Advocacy Commission, BPKN, dated February 17, 2022.

¹⁰⁵ Data from Stranas PK.

¹⁰⁶ BPKN works in close collaboration with institutions in handling complaints, including the Ministry of Public Works and Housing and the Financial Services Authority.

Although BPKN does not receive or deal with cross-border disputes or complaints, they have engaged in dialogue with the Korea Consumer Agency (KCA) on potential future cooperation.

3.4 Non-Governmental Consumer Protection Institutions (LPKSM)

According to the Ministry of Trade (2020), there are 579 consumer protection NGOs, of which only 158 are active.

LPKSM (article 44 of the GCPL) has the following duties and activities:

- a. disseminate information to increase awareness of consumers' rights and obligations and caution in consuming goods and or services.
- b. provide advice to consumers who need it;
- c. cooperate with relevant agencies to provide consumer protection;
- d. assist consumers in fighting for their rights, including receiving consumer complaints;
- e. carry out joint supervision with the government and the community on implementing consumer protection.

3.5 The Ministry of Trade

The Ministry of Trade provides several functions with regards to consumer protection:¹⁰⁷

- a. preparation of policy formulation in consumer protection analysis, consumer complaint services, guidance for consumers and business actors, institutional facilitation, and development of consumer protection networks.
- b. implementation of policies in consumer protection analysis, consumer complaint services, guidance for consumers and business actors, institutional facilitation, and fostering consumer protection networks.
- c. composition of guidelines, norms, standards, procedures, and criteria in the field of consumer protection analysis, consumer complaint services, guidance for consumers and business actors, institutional facilitation, and development of consumer protection networks;
- d. preparation of technical guidance and evaluation provision of the implementation of policies in the field of consumer protection analysis, consumer complaint services, guidance for consumers and business actors, institutional facilitation, and development of consumer protection networks
- e. implementation of the administrative affairs of the Directorate's personnel, finance, and household affairs; and
- f. implementation of other functions assigned by the Director-General.

¹⁰⁷ Regulation of the Minister of Trade Number 80 of 2020 on Organization and Work Procedure of the Ministry of Trade (MR 80/2020). Promulgated on October 14, 2020. Published in the State Gazette of the Republic of Indonesia of 2020 Number 1190. The MR 80/2020 regulates the functions of the Directorate of Consumer Empowerment, the Directorate General of Consumer Protection and Trade Compliance of the Ministry of Trade.

The hybrid ADR and ODR services provided by the Ministry of Trade is known as a “Consumer Complaint Service”. It is managed by the Directorate General of Consumer Protection and Trade Compliance at the Ministry of Trade. The existing service is accessible in person, hotline, via mail, e-mail, phone, WhatsApp and through its SIMPKTN website¹⁰⁸. The Ministry of Trade informed of a new system under development that will directly connect consumers to businesses registered on the Online Single Submission (OSS) platform. Consumers will communicate directly with businesses on the platform. If there is no agreement, the system will recommend the parties to forward the dispute to the available dispute resolution agency. The new service will be accessible online and in person.¹⁰⁹

The consumer complaints accompanied by complete and correct documents are analysed, and provided that the complaint falls into the Ministry of Trade’s mandate, it will be followed up, clarified and facilitated following invitations to businesses and / or consumers. If the complaint does not fall into the Ministry of Trade’s mandate, the consumer is guided to the competent Unit / Agency.

The complaints are divided by sector and consumers can ask for mediation. Mediation services may result in agreement reached through “non-binding advice” and “not legally binding decisions”. Where applicable, some complaints are forwarded to the relevant competent authorities for further investigation. If the parties do not reach an agreement through mediation, the consumer may be referred to BPSK or to court.

In 2021, the Ministry of Trade received 9,393 complaints. Of these, 9,318 have been resolved, 68 were rejected for being invalid and seven are pending outcome.

The Ministry of Trade started to receive complaints regarding cross-border transactions via email since 2020, following the launch of the “ASEAN Guidelines on Cross-Border B2C Dispute Resolution” initiative. The complaints received so far were resolved.

3.6 Financial Services Sector (LAPS SJK)

The Financial Services Authority (FSA) Law stipulates the need to provide consumer complaint services,¹¹⁰ including:

- a. Prepare adequate equipment for customer complaint services;
- b. create a consumer complaint mechanism; and
- c. facilitate the settlement of consumer complaints by the laws and regulations in financial services.

¹⁰⁸ Sistem Pengaduan Konsumen: simpktn.kemendag.go.id and <https://www.kemendag.go.id/en>

¹⁰⁹ Information received from the Directorate of Consumer Empowerment, Ministry of Trade.

¹¹⁰ Article 29.

The FSA Regulation obliges Financial Service Business Actors (PUJK), such as Commercial Banks, Rural Banks, Securities Companies, Investment Advisors, Custodian Banks, Pension Funds, Insurance Companies, Reinsurance Companies, Financing Institutions, Pawn Companies, and Guarantee companies, including those performing their business activities conventionally and shariah, to have a unit or function that implements and executes consumer service mechanisms and consumer complaints handling services.¹¹¹ The definition of consumers in the financial services sector includes parties who place their funds and or use the services available at Financial Services Institutions (LJK), including customers in banking, investors in the Capital Market, insurance policyholders, and Pension Fund participants.

Further, the 2018 Regulation states that “Complaints are expressions of consumer dissatisfaction, either verbally or in writing, caused by losses and or potential material, reasonable and direct losses, to the consumers due to non-fulfilment of the agreed financial transaction agreements and or documents.”¹¹² Before e-commerce and online cross-border transactions developed rapidly, these mechanisms were implemented and operated offline or combined with communications via telephone, facsimile, or e-mail. Therefore, business entities or marketplaces and FSBs, in general, have implemented internal ODR mechanisms. However, most are still limited to communicating and handling and resolving consumer complaints rather than as a privately operated third-party ADR or ODR body. The LAPS SJK is one such example, where it offers hybrid ADR services for the financial services sector but with limited ODR functions such as an online portal for complaints submission – in addition to in-house complaints and disputes resolution services provided by individual financial institutions.¹¹³

Established in September 2020 and operational in January 2021,¹¹⁴ LAPS SJK became the first and only operating ADR licensed by the Financial Services Authority (OJK). LAPS SJK replaced the roles and functions of the six ADR institutions¹¹⁵ that formerly operated in the financial services sector, now expanding its coverage scope to include the fintech sector as well. LAPS SJK uses three ADR approaches:¹¹⁶ mediation,¹¹⁷ adjudication,¹¹⁸ and arbitration.¹¹⁹

¹¹¹ The provisions in the financial sector are further elaborated in the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector¹¹¹ (“POJK 1/2013”). Article 32 of POJK 1/2013.

¹¹² Financial Services Authority Regulation Number 18/POJK.7/2018 on Consumer Complaint Services in the Financial Services Sector. Promulgated on 10 September 2018.

¹¹³ Unlike BPSK and BPKN, LAPS SJK does not derive its mandate from the GCPL but was established based on the Financial Services Authority Regulation, Law Number 21 of 2011 on the Financial Services Authority (FSA Law).¹¹³

¹¹⁴ Established by Self-Regulatory Organizations (SROs) and associations in the financial services sector. See: <https://lapssjk.id/>.

¹¹⁵ BAPMI, BMAI, BMDP, LAPSPI, BAMPPPI, and BMPPVI.

¹¹⁶ <https://www.ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/Pages/Lembaga-Alternatif-Penyelesaian-Sengketa.aspx>, accessed 20 November 2021.

¹¹⁷ Involves the use of third parties (mediators) to help disputants reach an agreement.

¹¹⁸ Involves the use of third parties (adjudicators) who make decision regarding dispute outcome. The decision is binding if the consumer accepts it. If the consumer rejects the decision, they can seek other remedies.

¹¹⁹ Involves the settlement of civil dispute through arbitration decision based on a written agreement. The arbitration award is final and binding on the parties.

The procedure involves seven steps:¹²⁰

- (1) The consumer submits a dispute settlement application to SJK LAPS.
- (2) LAPS SJK verifies application documents submitted.
- (3) LAPS SJK confirms the receipt application to the consumer.
- (4) LAPS SJK, with the consumer's approval, appoints a mediator, adjudicator, or arbitrator.
- (5) The mediation, adjudication, or arbitration takes place.
- (6) An agreement is either reached or not reached.
- (7) If an agreement is reached, LAPS SJK monitors the implementation of the agreement.

Table 2 shows the statistics of the disputes received and processed by LAPS SJK categorized by case status, as of June 25, 2021:¹²¹

Table 2. LAPS SJK cases received and processed by status

STATUS	NUMBER OF DISPUTE
Dispute Verified	261
Dispute Rejected	185
Dispute Completed	44
Total Incoming Dispute	480

Table 3 shows the statistics of the disputes received and processed by LAPS SJK categorized by financial services sub-sectors, as of June 25, 2021:¹²²

Table 3. LAPS SJK cases received and processed by financial services sub-sectors

SECTOR	NUMBER OF DISPUTE
Banking	238
Fintech	19
Financing	92
Insurance	60
Capital Market	6
Guarantee	0
Pension Fund	0

Generally, FSA does encourage consumers to resolve complaints and disputes through LAPS SJK if an agreement cannot be reached through business in-house CDR mechanism. However, as LAPS SJK's mechanism is implemented on a hybrid basis and not entirely online, its portal or platform cannot be regarded as a full-fledged ODR. Nonetheless, ODR is a possible option in the financial services sector as FSA regulations state that LAPS SJK can conduct dispute resolution via video

¹²⁰ <https://www.ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/Pages/Lembaga-Alternatif-Penyelesaian-Sengketa.aspx>, accessed 20 November 2021.

¹²¹ <https://lapssjk.id/laps-dalam-grafik/>, accessed 20 November 2021.

¹²² Idem.

conference. However, until now, regulations for implementation of ODR (and for compensation amounts related to ODR) have not been developed.

4. E-commerce and ODR in Indonesia and related challenges

4.1 The importance of effective ODR in a thriving global e-commerce

The rapidly growing global B2C e-commerce, including the volume of cross-border transactions, is leading to a parallel growth in consumer disputes. As UNCTAD's research paper Number 72 titled "Consumer trust in the digital economy: The case for online dispute resolution" shows, despite the continued growth of e-commerce, consumer trust is not necessarily growing. Consumer dissatisfaction across different sectors and industries is as a crucial challenge for government officials¹²³. Similarly, the UNCTAD/CIGI-Ipsos Global Survey 2017 on Internet Security and Trust¹²⁴ revealed the reason why 49 per cent of consumers who did not shop online was due to a lack of trust.

As e-transactions and consumer disputes increase in tandem, demand also heightens for not just tradition offline ADR but also ODR options. ODR is generally considered a subset of ADR that uses applications or digital platforms to resolve B2C complaints and disputes out-of-court. According to the Technical Notes on ODR by United Nations Commission on International Trade Law (UNCITRAL)¹²⁵, ODR is defined as a "mechanism for resolving disputes through the use of electronic communications and other information and communication technology" and covers a variety of approaches and forms.¹²⁶

In the B2C sphere, the effectiveness of ODR is particularly vital to access to redress and substantive justice for consumers. There are several challenges to effective ODR, including financial costs of using ODR for low value disputes, lengthy and complex procedures, consumer and business awareness, legal certainty of outcome, and enforceability of decisions, among others. In the cross-border sphere, ODR schemes face a particular set of challenges posed by geographical boundaries between disputing parties. In addition to barriers to different language and culture, cross-border ODR faces added layers of complexity when determining the applicable law, identifying competent jurisdiction, and enforcing ODR outcomes, to name but a few.

These are some of the reasons why ODR for consumers in Indonesia deserves a closer look as a separate topic and chapter from conventional ADR and hybrid approaches. Although the previous chapter have included hybrid forms of ADR such as email and submission of complaints via social media, this chapter examines in more depth some of the existing ODR apps and websites, despite not being full-fledged, to see how they can further improve. Ideally, a full-fledged ODR platform should be able to conduct all communications and dispute handling processes online securely and both synchronously and asynchronously, including negotiation, conciliation, mediation, adjudication and/or arbitration. It should also address the challenges stated above through good

¹²³ UNCTAD Research Paper N. 72 available at <https://unctad.org/webflyer/consumer-trust-digital-economy-case-online-dispute-resolution>

¹²⁴ CIGI-IPSOS, Global Survey on Internet Security and Trust, 2017.

¹²⁵ UNCITRAL Technical Notes on Online Dispute Resolution, 2017.

¹²⁶ Including but not limited to ombudsman, complaint counsel, negotiation, conciliation, mediation, facilitated settlement, arbitration, and others.

practices and policies as well as flexible design principles based on fairness, transparency, due process, and accountability.¹²⁷

4.2 E-commerce in Indonesia

Before examining some of the existing ODR services in Indonesia, this section briefly discusses the rapidly expanding e-commerce in Indonesia to put into context why it is important for Indonesia to have well-functioning ODR services. This is not least because Indonesia's consumer protection policies with regards to its e-commerce adheres to the General Principles of the United Nations Guidelines for Consumer Protection (UNGCP), which states that "*the level of protection for consumers who use electronic commerce is not less than that provided in other forms of commerce*".¹²⁸

The 2020 UNCTAD B2C E-Commerce Index¹²⁹ puts Indonesia at 83rd position out of 152 countries, moving up one place from 84th compared to 2019.¹³⁰ Statistics from recent years also show an upward trend in Indonesia's e-commerce. In 2018, Indonesians spent USD 20.3 billion online, an increase of USD 3.3 billion – or 20 per cent – compared to 2017 (Table 4). As of January 2021, the increase in the value of e-transactions in Indonesia reached USD 23.3 billion.¹³¹ Moreover, digital cross-border transactions (e-commerce) reached USD 578.5 billion in 2019 and is forecasted to reach USD 2,248.5 billion by 2026.

Table 4. Total annual spending on e-commerce shopping in 2018, Indonesia.

CATEGORY	SPENDING
Travel (including Accommodation)	9.3 billion
Fashion and Beauty	2.3 billion
Electronics, Physical Media	2.6 billion
Furniture and Appliance	1.6 billion
Toys, Hobbies	1.4 billion
Food and Personal Care	1.4 billion
Video Games	861 million
Digital Music	110 million

• Source: Digital 2019 E-Commerce in Indonesia, <https://datareportal.com/reports/digital-2019-ecommerce-in-indonesia>

¹²⁷ UNCITRAL Technical Notes on Online Dispute Resolution, 2017. See UNCTAD's Note on Dispute Resolution and Redress report (2018) for more principles.

¹²⁸ Letter (j). See, "United Nation Guidelines for Consumer Protection." The Guidelines adopted by the General Assembly in resolution 39/248 of 16 April 1985, later expanded by the Economic and Social Council in resolution 1999/7 of 26 July 1999 and revised and adopted by the General Assembly in resolution 70/186 of 22 December 2015.

¹²⁹ UNCTAD, The UNCTAD B2C E-Commerce Index 2020. Spotlight on Latin America and the Caribbean.

¹³⁰ UNCTAD, UNCTAD B2C E-Commerce Index 2019.

¹³¹ *Idem*.

The significant and continued growth in domestic and cross-border e-commerce is greatly facilitated by ever-increasing internet connectivity and adoption of mobile technology. The number of internet users increased by 27 million (+16 per cent) between 2020 and 2021, while the number of cellular connections in Indonesia between January 2020 and January 2021 increased by 4 million (+1.2 per cent). Furthermore, online shopping platforms have reported that around 75 per cent of online consumers shop on their mobile devices rather than desktop computers.¹³²

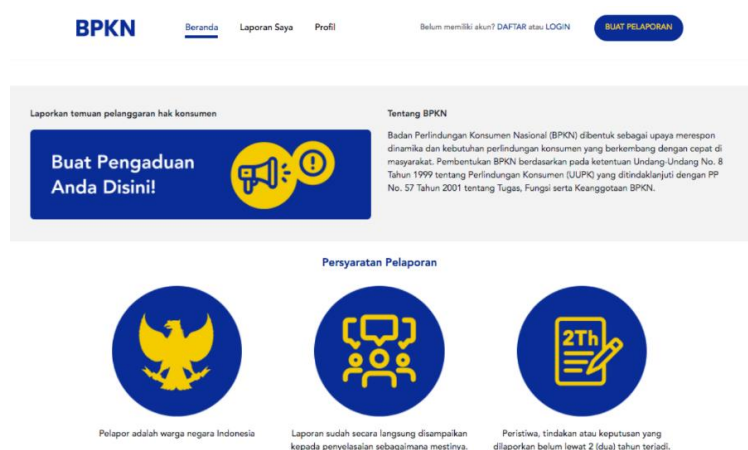
The above indicators of the Indonesia's digital economy show that its e-commerce continues to grow, it is more important than ever to have full-fledged and well-functioning ODR options for consumers. As consumers enjoy easy access to goods and services in modern day e-commerce, they should reasonably expect easy access to effective ODR mechanisms.

4.3 Partial ODR services and ongoing ODR developments

4.3.1 BPKN application 153

As noted previously, BPKN has a website and an application called 153¹³³ that embody ODR processes for receiving and resolving consumer complaints (Figure 1). Despite not being a full-fledged ODR platform and not being able carry out all ODR functions fully online, it nevertheless offers limited support to existing ADR services to help consumers obtain redress.

Figure 1. BPKN website/application 153.



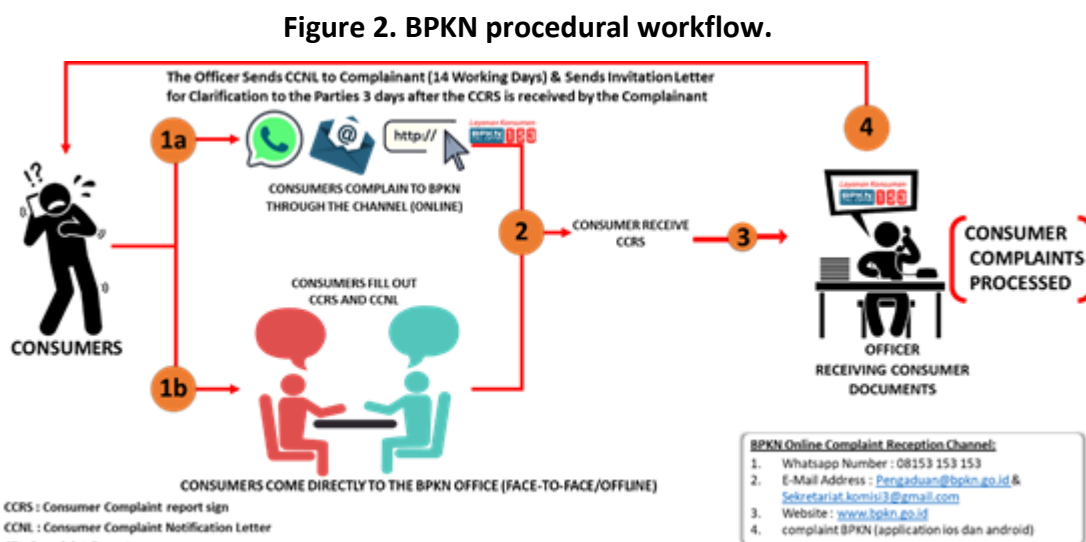
Procedurally, to use the BPKN website or application, consumers are first required to register with BPKN using their name, identification number, place and date of birth, job, e-mail address, phone number, and address to create a password. After receiving an account verification by e-mail or SMS to get the OTP code, the consumer can then submit a complaint by providing their

¹³² Quoted from "Indonesia - Country Commercial Guide" < <https://www.trade.gov/country-commercial-guides/indonesia-e-commerce> >, accessed 19 November 2021.

¹³³ : BPKN 153 app accessible at: <https://play.google.com/store/apps/details?id=id.go.bpkn.pengaduan>

business information, facts of their dispute claim and supporting documents. Upon receiving the complaint report,¹³⁴ the case officer sends a notification letter¹³⁵ to the consumer.

After communications via email (and/or post), the parties are invited to present their testimony (clarification) before a case officer. The parties and the case officer then sign the clarification. Afterward, the case officer prepares a consumer complaint development notification with information about the complaint handling process. If needed (for example, if the business does not attend the first session), the officer will conduct a second follow-up clarification session. Figure 2 shows the procedural workflow.



Source: BPKN, Receiving Consumer Complaint Procedure Flow

According to BPKN, during the clarification or mediation sessions, the Agency invites the parties to a meeting either via Zoom or in-person to assist them in reaching an agreement by providing advice. If an agreement is reached and the consumer's rights are restored at the clarification or mediation phase, BPKN considers the complaint solved.

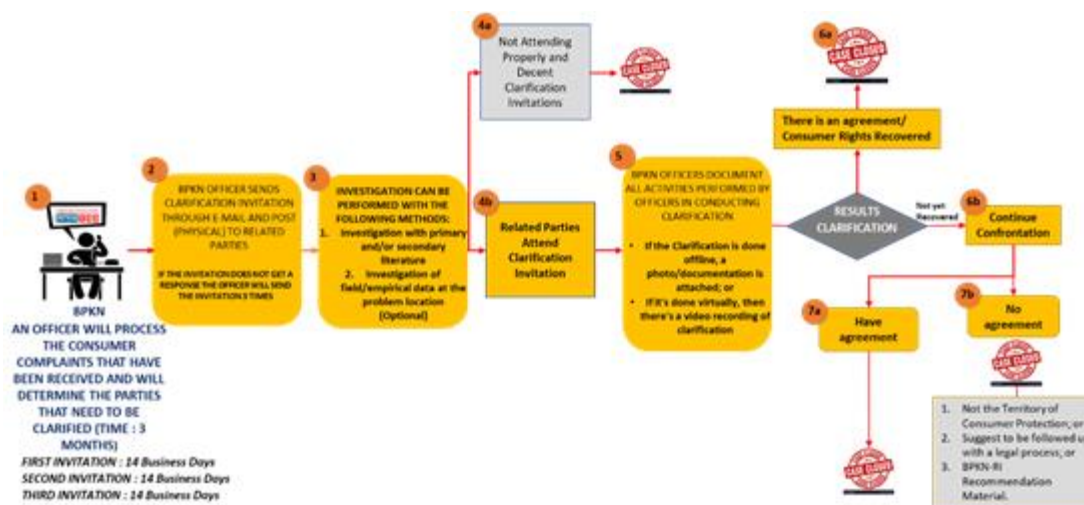
If the parties cannot reach an agreement, and there is no goodwill from the business in attending BPKN's clarification invitation. BPKN will stop the process and advice the consumer to pursue other legal means as stated in the GCPL.¹³⁶

Figure 3. Detailed BPKN complaints handling and resolution processes.

¹³⁴ Tanda Laporan Pengaduan Konsumen/TLPK.

¹³⁵ Surat Pemberitahuan Perkembangan Pengaduan Konsumen/SP3K.

¹³⁶ Article 45.



BPKN: Consumer Complaint Handling Procedure Flow

As the above illustrates, the 153 application is meant to complement the offline ADR system by servicing the complaint, monitoring the process, and collecting reporting data. Therefore, it is not a full-fledged ODR platform, and it does not provide ODR functions such as virtual hearing.

BPKN periodically reviews the ODR procedures to improve its functioning and to develop a full-fledged ODR platform in the future. To that end, BPKN became a beneficiary of UNCTAD's DODR Project.¹³⁷ The project aims to enhance consumer trust and protection in digital markets and serve as a pilot to assist in implementing ODR systems for consumers in Indonesia and Thailand.

4.3.2 ODR development by the Ministry of Trade

The Ministry of Trade has previously operated a now obsolete platform called SIPENA (2020). As an early version of ODR consumer complaint system, SIPENA aimed to help settle consumer complaints that the marketplace could not resolve. However, as the SIPENA prototype did not meet the requirements of the Ministry, it ceased operations while the Ministry started to develop a new National Online Consumer Complaint System.

Subsequently and currently, the Ministry of Trade is developing a new national ODR platform integrated with other Ministries and institutions. It aims to provide an alternative to BPSK by expanding access and making it easier for consumers to submit complaints, especially for those based in remote parts of the country. By automatically notifying businesses to respond and allowing businesses and consumers to interact directly and synchronously, the new ODR platform would function more transparently and efficiently. It is inspired by Brazil's online consumer complaint system but tailored to Indonesia's needs based on the Indonesia's CDR landscape.

¹³⁷ Thailand and Indonesia are the beneficiary countries of UNCTAD's technical cooperation project titled "Delivering digital trading infrastructure and online dispute resolution for consumers to improve international trade and electronic commerce", which aims to deliver ODR for consumers as means to improve international trade and electronic commerce.

Currently being developed based on policies stemming from Stranas PK, the new system will be national in scope by integrating ODR platforms operated by other ministries and institutions, including BPKN. This will allow the system to also become a national data bank so that the data gathered can be used for policymaking purposes with regards to consumer protection.

Institutional collaborations are taking place during the development of this national ODR platform to overcome interoperability hurdles such as harmonizing consumer complaints mechanisms, database structure, and server locations of several institutions like BPKN and the Ministry of Trade. The ministry of Trade also signed a Memorandum of Understanding with IdeA for consumer supervision and education in e-commerce.

The development of a new national ODR platform is a testament to Indonesia's commitment to implementing the the ASEAN Strategic Plan on Consumer Protection (ASAPCP) 2025.¹³⁸

4.4 Challenges in implementing consumer ODR

As the above discussions show, Indonesia lacks full-fledged sectoral ODR platforms or a centrally coordinated national ODR platform, despite having a wide range of hybrid consumer complaints and dispute resolution systems that are scattered across economic sectors. While various initiatives have been undertaken to develop new national and cross border ODR platforms, several hurdles may hinder the successful implementation of these ODR platforms in the future.

Indonesia's consumer legal, policy and institutional frameworks are governed through a decentralized model with different authorities at central and local levels, who have overlapping mandates.¹³⁹ Some of these mandates require authorities or institutions to provide a number of different CDR options to consumers. While the variety of complaints channels to access consumer redress may be beneficial in one respect, the multitude of authorities and procedures can also be confusing for consumers and make it hard for the authorities to monitor markets effectively.

This hurdle can be overcome through closer operational cooperation and collaboration between central consumer authorities to clarify their roles, functions and responsibilities to jointly operate a national ODR platform. For example, the Minister of Trade and/or the Governor evaluate jointly or individually the implementation of BPSK's activities. Meanwhile, the funding for the performance of BPSK derives from the respective provincial, regional revenue, and expenditure budgets. These provisions emphasize the function and role of BPSK in resolving consumer disputes and create complications in the provisions governing the working relationship between

¹³⁸ See, ASEAN, ASEAN Online Dispute Resolution (ODR) Network, 2020.

¹³⁹ As UNCTAD's Peer Review (2019) notes, "The role of BPKN as the national consumer protection authority vis-à-vis the Ministry of Trade and other sectoral ministries and regulators needs to be more clearly defined concerning the provision of policy advice vs policy formulation and implementation. There are some overlaps of tasks that ultimately hamper the existing consumer protection system."

BPSK and the Ministry of Trade on the one hand, and BPSK and the Governor on the other.¹⁴⁰ Therefore, cooperation between BPKN, BPSK, the Ministry of Trade, the Governor and the other institutions that have consumer protection mandate is necessary in the implementation of a national ODR platform to effectively resolve consumer complaints and disputes. For the benefit of consumers, a future national consumer ODR system should be managed by a designated consumer protection authority.

From a legal perspective, the GCPL and regulations on consumer protection (including CDR) should be revised and updated to accommodate current needs, reinforcing similar conclusions and recommendations made in UNCTAD's Peer Review (2019).¹⁴¹ For instance, GR E-Commerce is arguably the first regulation in Indonesia that explicitly mentions ODR. Meanwhile, the Financial Services Authority developed the first regulation¹⁴² outlining ODR for sectoral consumer disputes. This highlights the need for wider development and adoption of full-fledged ODR systems, based on the clear legal framework.

As the Academic Manuscript on the Draft Law on the Consumer Protection Law Amendments has been completed, it will be implemented in 2022 as part of the legislative process.¹⁴³ However, considering its placement in serial numbers and many draft laws pending in the Prolegnas 2020-2024, the Draft Law on Amendments to the Consumer Protection Law has not been prioritized.¹⁴⁴ Thus, instead of relying on future amendments to the GCPL, the implementation of an improved consumer ODR should be based on statutory instruments such as national policies and internal rules by the competent authorities.

¹⁴⁰ The GCPL states that the Government established BPSK in Level II Regions to resolve consumer disputes out of court. In addition, Law Number 23 of 2014 concerning Regional Government has been amended several times, most recently by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government ("Local Government Law"). The latest regulation governing BPSK is by the Minister of Trade, Regulation Number 72 of 2020 on Consumer Dispute Resolution Agency ("MR 72/2020")¹⁴⁰. MR 72/2020 reaffirms that BPSK is the implementing agency for consumer dispute resolution apart from the judiciary, as referred to in the GCPL. However, MR 72/2020 limits BPSK's mandate to report its activities to the Governor and copy the Director-General of Consumer Protection and Order of Commerce of the Ministry of Trade.

¹⁴¹ "Voluntary Peer Review of Consumer Protection Law and Policy: Indonesia" published by UNCTAD in 2019.

¹⁴² Regulation Number 1/POJK.07/2014 concerning Alternative Institutions for Settling Disputes in the Financial Services Sector as amended by Financial Services Authority Regulation Number 61/POJK. 07/2020 concerning Alternative Institutions for Settling Disputes in the Financial Services Sector¹⁴² ("POJK 61/2020").

¹⁴³ Informed through communications with the Ministry of Trade.

¹⁴⁴ According to Decree of the House of Representatives of the Republic of Indonesia, Number 46/DPR RI/I/2019-2020 concerning the National Legislation Program for the 2020-2024 Bill ("Prolegnas 2020-2024"), legislators are discussing the Amendments to the GCPL (Law Number 8 1999).

5. Conclusions and recommendations

5.1 Conclusions

The United Nations Guidelines for Consumer Protection¹⁴⁵ state that each member State should set its priorities for consumer protection according to the country's economic, social, and environmental circumstances, based on the costs and benefits of the proposed measures. In light of Indonesia's growing e-commerce in both domestic and cross-border spheres, accompanied by increasing volume of consumer disputes, the implementation of effective CDR systems, including ODR, should be a national priority for Indonesia.

Well-functioning ODR systems are particularly salient in this respect, not least because ODR can offer many benefits that would help overcome challenges faced by conventional offline ADR systems. Yet, effective ODR systems are not without its own challenges in its design and implementation, some of which are rooted in have a robust and coherent national legal, policy and institutional frameworks catered to consumer ODR.

Indonesia already has a basic legal framework for implementing consumer ODR. This includes: Law Number 7 of 2014 on Trade, Law Number 11 of 2008 on Information and Electronic Transactions as amended by Law Number 19 of 2016, (amendment to Law Number 11 of 2008 on Information and Electronic Transactions, and Law Number 8 of 1999 on Consumer Protection, along with implementing regulations of each of these laws. However, more comprehensive rules for consumer ODR are still needed. For example, the GR E-Commerce¹⁴⁶ does not specify whether ODR should be limited to being only mechanisms for consumers complaint reporting without resolution features, or in the form of full-fledged ODR platform that includes online hearing functions. It also lacks explicit provision governing the procedure of prospective ODR systems.

There is a need for a full-fledged national consumer ODR platform. The full cooperation of various stakeholders, including government ministries and non-government consumer and CDR bodies, is crucial for the success of a consumer ODR platform. A single access channel for consumers to lodge their complaints or disputes is recommended to facilitate consumers' access. There are several examples¹⁴⁷ of consumer systems having one channel for consumers to access where the complaint/dispute is forwarded to and/or monitored by different mandated authorities.

¹⁴⁵ United Nations Guidelines for Consumer Protection, 2016.

¹⁴⁶ In addition to GR E-Commerce, there are regulations governing the operation of electronic systems and transactions closely related to implementing an ODR platform, namely Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. It regulates, among others, the prohibition of storing servers (hosting servers) outside the jurisdiction of Indonesia (Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions. Promulgated on October 10, 2019. Published in the State Gazette of the Republic of Indonesia Year 2019 Number 185, and Supplement to the State Gazette Number 6400.)

¹⁴⁷ Argentina, Brazil, European Union, Mexico, Netherlands, Portugal, Sweden.

Such strategy confers the platform safety – for being monitored by different actors- and thus to the market. In the case of Indonesia, the implementation of a multi-stakeholder approach requires revision of the GCPL provisions with regards to CDR to regulate and clarify the mandates and roles of stakeholders, including BPSK, BPKN and the Ministry of Trade and specifying a lead authority to oversee the operation of such a national consumer ODR platform.

BPKN has a web application called BPKN 153 which can be considered a non-full-fledged ODR, mainly focused on complaints reporting and resolution. The Ministry of Trade also has a web application that facilitates its ADR services for consumer complaints reporting, receiving and resolution.

As stated in the Voluntary Peer Review of Indonesia, the Indonesian government has recognized the importance of “mainstreaming” consumer protection and streamlining inter-agency coordination. Any efforts to deliver consumer access to justice, whether by handling complaints or solving disputes, should consider inter-agency cooperation as a powerful strategy¹⁴⁸. Open ODR platforms are recommended to unify sectoral complaints and disputes to streamline procedures, providing faster and free of charge access to justice and redress to consumers.

ODR platforms also assist authorities in gathering data on complaints and disputes, which can be classified by type, sector, business and resolution index, to name a few examples. In addition, by effectively monitoring markets, consumer authorities can address systemic problems and develop tailored policies.

5.2 Recommendations

Based on the foregoing analysis, findings and the conclusions, the following policy recommendations are provided to help improve the implementation of CDR, including ODR, in Indonesia:

1. Harmonize provisions of Consumer Protection Law and Consumer Dispute Resolution with regards to national legislation and sectoral regulations to clarify institutional mandates, roles and responsibilities¹⁴⁹, as well as define terminology and concepts.¹⁵⁰

¹⁴⁸ Some references of fruitful inter-agency cooperation in the field of consumer complaints handling and dispute resolution are: Brazil, Mexico, the Netherlands and Portugal.

¹⁴⁹ GR 80, 2019 (GR E-Commerce) contains provisions that refer to other laws and regulations for matters not sourced from the Trade Law. To cover sectors beyond electronic commerce, it would be convenient to develop a new regulation or refer to other policies mentioned in section 2.2.2 “Out-of-court mechanisms for CDR” such as the National Public Service Complaint Management System (SP4N) LAPOR!.

¹⁵⁰ For example, define “consumer complaint”, which is absent in the GCPL.

2. Increase cooperation among the authorities in building a full-fledged national consumer ODR platform.

3. Design an ODR platform having two stages and modules tailored according to authorities' mandates: a primary module with B2C direct negotiation feature for complaints handling (overseen by the national consumer protection agency, BPKN)¹⁵¹ and; a second module dedicated to mediation (by BPSK).¹⁵²

4. Create a national policy to support ODR activities, including measures aimed at developing, implementing, and improving the forthcoming national consumer ODR to incorporate into the ASEAN ODR Network.

5. Enable various consumer stakeholders to participate and monitor the national ODR platform. This requires a modular system, which would allow the implementation of various stages through pilot projects.

6. Develop and harmonize policies that encourage business participation in the forthcoming national consumer ODR and healthy competition among businesses to better assist consumers.

7. Use statutory instruments to facilitate the implementation of a national consumer policy for ODR. This includes capacity building and awareness-raising activities such as public education, financial literacy and financial inclusion with regards to using the new national consumer ODR.

8. Conduct research to identify the causes of Supreme Court rulings that have annulled BPSK's decisions,¹⁵³ so that consumer protection law and policy can be better implemented.

The present report will be the object of a dissemination workshop where participants will have the opportunity to learn about the concepts, existing models and policy strategies to implement a consumer ODR platform in Indonesia.

¹⁵¹ This module follows the Brazilian model where the National consumer authority only oversees the platform, not interfering in the dialogue between the consumer and business following a complaint. Mexico (Profeco) also introduced a similar module called "pre-conciliation". There's proof that these strategies solve 70 to 80 per cent of the complaints filed in the platform.

¹⁵² To increase efficiency in case handling when dealing with high volume of cases or remotely based consumers, BPSK should also increase their presence around Indonesia.

¹⁵³ Arguing that BPSK does not have the authority to solve certain consumer dispute cases.

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ANNEX

Stakeholders' perspectives on e-commerce and ADR/ODR: Online survey

This survey shows that most consumers can identify the authorities in charge of consumer protection and policy, despite not having good knowledge of their mandates. Among the authorities, BPKN and the consumer associations are the most popular ones¹⁵⁴.

a. Research objectives

This research measured the extent of knowledge, attitudes and opinions of consumers and business actors and consumer protection legal instruments for alternative dispute resolution. It also accesses online dispute resolution on e-commerce products and transactions in different legal jurisdictions (cross border e-commerce).¹⁵⁵

b. Research approach

This research used a Research and Development approach developed in a mixed method (Quantitative & Qualitative), where the quantitative method will be carried out by online surveys of consumer respondents and business actors. In contrast, the qualitative method is carried out with an in-depth interview to obtain information related to e-commerce, ADR and ODR. The analysis applied is a descriptive analysis approach following the data collection results by outlining the frequency distribution and cross-tabulation for quantitative data. The in-depth interview results are presented in the form of a matrix table.

c. Population and sample

Determination of the consumers' population from this research is the population of productive age in Indonesia. The consideration is that people in productive age are individuals who are mature enough to make decisions on economic transactions. The background age of the respondents is determined based on the level of education, gender, and profession.

For this research, businesses are all business actors who have a marketplace/e-commerce. As for the population and sampling on the regulatory aspect, all legal instruments and stakeholders related to consumer protection in the form of entities or individuals: BPKN, BPSK, LPKSM, BANI, Ministry of Trade, Supreme Court Justices, Director of Customs, LAPS, Indonesian Consumers Foundation, Indonesian e-commerce Association, Data and Information Centre of the Ministry of

¹⁵⁴ "Respondents, in general, are relatively familiar with the institutions/agencies that handle consumer complaints and dispute resolution. However, they do not know the duties, functions, and roles of these institutions/agencies. For example, a total of 94.3 per cent of respondents stated that they knew about the District Court; 88.6 per cent knew about the Indonesian Consumers Foundation; 63.4 per cent knew about the National Consumer Protection Agency (BPKN), and 38.9 per cent knew about the Non-Governmental Consumer Protection Institutions (LPKSM). On the other hand, 71.4 per cent of respondents knew about the Indonesian National Arbitration Board (BANI). Still, only 48 per cent and 32.6 per cent knew about the Consumer Dispute Settlement Body (BPSK) and Alternative Dispute Resolution Agencies (ADR)".

¹⁵⁵ Explanation regarding to cross e-commerce border

Trade, legal observers, consumer observers, lawyers, and others. Indirectly, the determination of the population and the sample in this study is purposive random sampling with the determination of the sample using the Slovin formula. This formula is used to provide limits on the number of samples in a large population. The number of samples in this study amounted to 150 respondents.

6.1 Background

The development of this rapidly advancing technology changes every aspect of human life, one of which is the use of internet communication technology that can make the world as if in its hand. Internet Media serves to reach relationships without space and time limitations. Many companies run their business processes on the internet or on websites. Thus, the term E-Commerce has emerged, namely buying, and selling products, services and information that is carried out electronically using a computer or mobile phone network.

The legal terms of consumer and consumer protection law are often heard. However, it is not clear precisely what is included in the material of those terms. Because the consumers' position is weak, consumers must be protected by law. One of the law's characteristics, and purpose is to protect the community, so consumer law and protection law are two areas of law that are difficult to separate and delineate. Article 1 of the Consumer Protection Law regulates consumer protection. Still, practically, the Consumer Protection Law does not fully regulate electronic transactions. Only a few articles apply to electronic transactions, leading to a lack of protection for consumers who make electronic transactions.

According to the Consumer Protection Law, the final purchaser is considered a consumer, which can be a burden (e.g. when the consumer dies and the heirs are not considered final consumers either, because it is challenging to distinguish "final consumers"). Related to this situation, the Government issued Regulation Number 50 of 2017.¹⁵⁶

Consumers are required to be more careful before purchasing an item so that consumers can also take precautions to protect themselves. Online trading has become a lifestyle for consumers. The fulfilment of daily needs ranging from primary to complementary needs can now be fulfilled thanks to a marketplace that is easily accessible via mobile devices¹⁵⁷. Consumers often experience different prices, but consumers are silent when experiencing these events. In fact, in the Regulation of the Minister of Trade No. 35/M-Dag/Per/7/2013 if there is a price difference, the lowest price of the comparison price is the one that should be used.

¹⁵⁶ In the Preliminary Chapter, the analysis reveals that in the future, the challenges of consumer protection in Indonesia will be more complex, the world economy is increasingly integrated and information technology is increasingly advanced, causing the frequency of cross-border and cross-border goods and services trade transactions (Cross Border) to become higher. Indonesian consumers will find it easier to interact directly with Producers who are outside the Indonesian legal jurisdiction. On the one hand, this will bring benefits to consumers because of the increased choice of products. But on the other hand, the information asymmetry between consumers and producers will be wider, which can have a negative impact on consumers both financially and physically.

¹⁵⁷ Add e-commerce transactions data

Consumer expectations are divided into 3 (three) including the right price, quality, quantity, amount, or size. Consumer literacy is vital for consumers to make informed decisions according to their needs and economic circumstances. The United Nations Guidelines for Consumer Protection (UNGCP) encourages all stakeholders, including businesses, to contribute to consumer literacy:

6.1.1 Pre-transaction literacy

Business actors must provide correct, clear and honest information, and consumers are entitled to get the same information. Consumers are entitled to choose goods and services according to the exchange rate and the promised conditions. This pre-transaction literacy norm is regulated in ¹⁵⁸the Consumer Protection Law. Consumer rights are regulated in Article 4 paragraph (e), (b), (f), Article 5 paragraph (a). Meanwhile, the obligations of business actors are regulated in Article 7 paragraph (a) and (b).

6.1.2 Transaction process literacy

Business actors must treat consumers or serve consumers correctly and honestly and not discriminately, in terms of selling goods or services, business actors must guarantee quality based on the basic provisions on the quality of goods or services. In addition, consumers have the right to comfort, security and safety in consuming these goods or services.

Regarding the norms of the transaction process is regulated in the Consumer Protection Law. Consumer rights are regulated in article 4 paragraphs a, c, g, f and article 5 paragraphs b and c. Meanwhile, the obligations of business actors are regulated in Article 7 paragraphs c and d.

¹⁵⁸ Law No. 8 of 1999 concerning Consumer Protection in Chapter III Rights and Obligations Article 4 consumer rights are: (a). to obtain comfort, security and safety in using or consuming the goods and/or service; (b). to choose the goods and/or services and obtain Point b the said goods and/or services in accordance with the promised conversion value and condition and warranty; (c). to obtain correct, clear end honest information on the condition and warranty of the goods and/or services; (d). to be heard in expressing opinion and complaints on the goods and/or services they use or consume; (e). to obtain proper advocacy, protection and settlement in the consumer's protection dispute; (f). to obtain consumer's training and education; (g). to receive proper and honest and non-discriminatory treatment or service, (h). to obtain compensation, redress and/or substitution, if the goods and/or services received are not in accord with the agreement or not received as requested, (i). to obtain rights as regulated in the other provisions of the law.

Article 7 The obligations of the entrepreneurs: (a). to act in good faith in conducting the business; (b). to provide correct, clear end honest information about the condition and warranty of the goods and/or services and provide explanation on the use, repair and maintenance; (c). to treat and serve the consumers properly and honestly end not discriminatively; (d). to guarantee the goods and/or services produced and/or traded based on the prevailing quality standard provisions of the goods and/or services; (e). to provide the opportunity to the consumers to test and or/try on certain goods and/or services and provide warranty and/or guarantee on the produced and/or traded goods; (f). to provide compensation, redress and/or substitution for the damages caused by the use, consumption and application of the goods and/ or services; (g). to provide compensation, redress and/or substitution if the goods and/or services received or used do not accord with the agreement

6.1.3 Post-transaction or after-sales literacy

Business actors must provide compensation for losses due to the use of goods or services to consumers. Consumers have the right to advocate, protect and resolve consumer protection disputes properly. Regarding the transaction process norms, literacy is regulated in the Consumer Protection Law. Consumer rights are regulated in article 4 paragraph c, h, and i as well as in article 5 paragraph d. Meanwhile, the obligations of business actors are regulated in Article 7 paragraph f and g.

Consumer protection and electronic transactions are regulated in the Consumer Protection Law and the ITE Law, used as the basis for legal protection for consumers and the dispute resolution process in e-commerce transactions. In the PP No. 71/2019 concerning electronic administration, Article 22 paragraph (1) regulates that business organizers are required to provide electronic track records. The track record is carried out to conduct law enforcement, dispute resolution, verification, testing, and other examinations. If the electronic organizer does not provide an electronic track record, it can be subject to sanctions in the form of imprisonment for 5 years.

6.2 Survey results

6.2.1 Overview of online survey's results on ADR/ODR

The stakeholder perspectives on e-commerce and consumer dispute resolution, including ADR/ODR, stem from online survey and in-depth interviews aimed at consumers, business actors, law enforcement, government officials, professionals, academics, and non-governmental organizations. The respondents measured the extent of their knowledge, attitudes, and opinions about consumer dispute resolution and the challenges in implementing ADR/ODR, especially for consumers in the current era of e-commerce and cross-border e-commerce.

The economically active population in Indonesia was the primary reference for the survey. Therefore, the survey considered that people of productive age are mature enough to conduct economic transactions. In addition, age, education level, gender, and occupation were also references.

The business actors considered are all business actors in the marketplace/e-commerce. At the same time, the regulatory elements are all legal instruments and stakeholders related to consumer protection, either in the form of entities or individuals, including the Ministry of Trade, BPKN (National Consumer Protection Agency), BPSK (Consumer Dispute Settlement Body), LPKSM (Non-Governmental Consumer Protection Institutions), BANI (Indonesian National Arbitration Board), Supreme Court Justices (at the Supreme Court of the Republic of Indonesia), Director of Customs at the Ministry of Finance, LAPS (Institution for Alternative Dispute Resolution), the Indonesian Consumers Foundation, the Indonesian e-Commerce Association (idEA), the Data and Information Center of the Ministry of Trade, legal observers, consumer observers, lawyers, arbitrators, and other members of the public as a consumer.

The determination of the population and sample in the online survey was random sampling using the Slovin Formula, which provides firm limits on the number of samples in a large population. The sample number determined was 175 respondents.

The online survey had the participation of the community members in Java and Sumatra Island, with the educational background of the majority being bachelor's (56 per cent) and master's (30.3 per cent). However, this condition does not illustrate that the members of the Indonesian community have a high level of education, one of the reasons that explain the online survey's limitations. The online survey shows that most respondents are professionals (lawyers, teachers, lecturers, doctors) (27 per cent) and private employees (27 per cent).

The average frequency of consumers conducting online transactions through e-commerce is 3 (three) to 5 (five) times in one month. The average transaction is for the expenditure of basic and supporting needs in goods and services. In more detail, the results of the online survey also show that the most purchased products are food and beverages (72 per cent), followed by household appliances/equipment (63.4 per cent) and fashion products (46.3 per cent). The types of products purchased are not much different from the survey mentioned results. The difference is seen in the purchase of service products because the service most widely used in e-commerce is online payment (payment gateway), 93.1 per cent.

The online survey begins with questions aimed at exploring the awareness and experience of respondents when conducting e-commerce transactions. It turned out that 27.4 per cent of respondents thought that the e-commerce platform they used was very unsatisfactory; 54.3 per cent rated it insufficient. Only 13.7 per cent said that the application or platform where they made online transactions was satisfactory. This satisfaction or dissatisfaction relates to the possibility that the consumer will then file a complaint or ask for compensation that can become a dispute. As a result of this dissatisfaction, 46 per cent of respondents chose to file a complaint or request compensation from business actors if they encountered problems related to the goods and/or services they had purchased. However, another 43 per cent of respondents are still hesitant to act, and the remaining 11 per cent of respondents chose not to file a complaint or file a lawsuit.

Respondents, in general, are relatively familiar with the institutions/agencies that handle consumer complaints and dispute resolution. However, they do not know the duties, functions, and roles of these institutions/agencies. For example, a total of 94.3 per cent of respondents stated that they knew about the District Court; 88.6 per cent knew about the Indonesian Consumers Foundation; 63.4 per cent knew about the National Consumer Protection Agency (BPKN), and 38.9 per cent knew about the Non-Governmental Consumer Protection Institutions (LPKSM). On the other hand, 71.4 per cent of respondents knew about the Indonesian National Arbitration Board (BANI). Still, only 48 per cent and 32.6 per cent knew about the Consumer Dispute Settlement Body (BPSK) and Alternative Dispute Resolution Agencies (ADR).

As shown in Figure 4., the most preferred method of resolving consumer complaints or disputes is through mediation (78.9 per cent). The rest choose to settle it through arbitration, general court, BPSK or be settled directly with business actors.

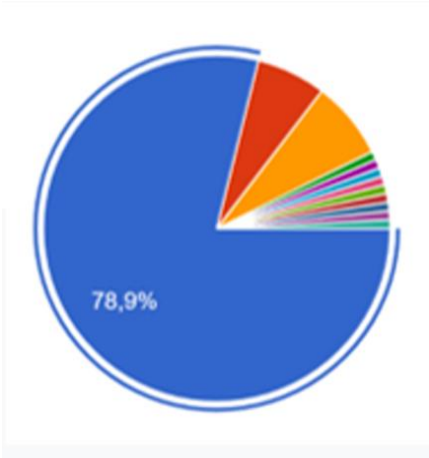


Figure 4.

It is in line with the opinions of several consumers obtained through in-depth interviews. As shown in Figure 5., 47.1 per cent of respondents do not mind solving complaints or disputes online.

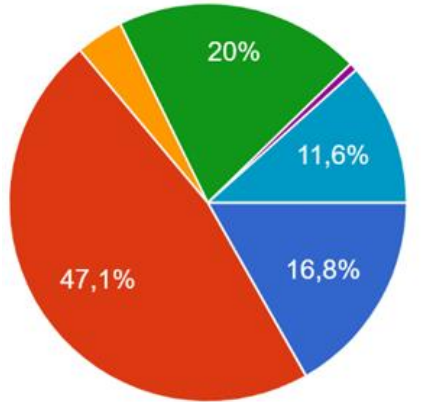


Figure 5.

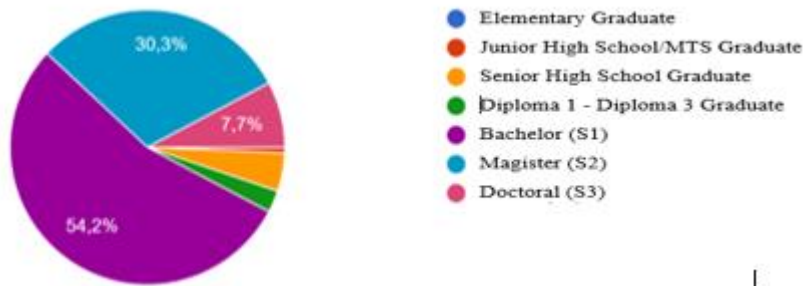
However, in general, respondents do not seem to know enough about regulations regarding e-commerce, consumer protection, consumer dispute resolution, and alternative dispute resolution. Regarding whether the rules on the matter are sufficient, most respondents (69 per cent) stated that they did not know about it. Only 16 per cent said that the regulation was adequate, while the remaining 15 per cent stated that the regulation was not sufficient.

The online survey results align with the opinions of several other stakeholders obtained through in-depth interviews. They said that consumers' expectations in Indonesia for the ease of resolving

e-commerce disputes are high, including through ADR/ODR. However, consumers still need to obtain information about regulations related to e-commerce and how to complain and resolve consumer disputes that apply.¹⁵⁹

6.2.2 Respondents characteristics

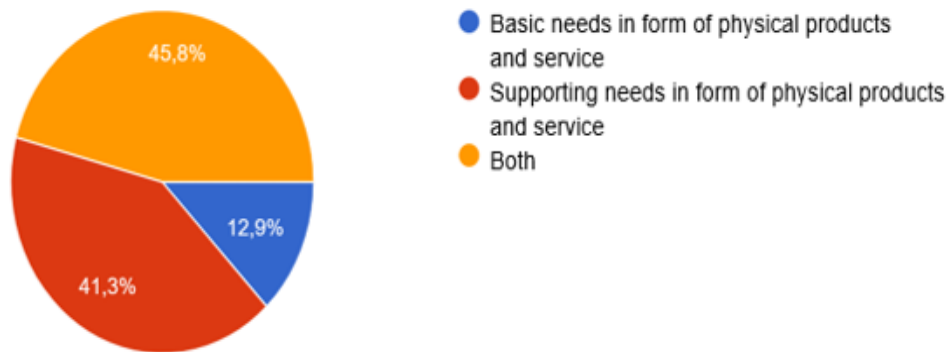
As explained in the previous section, this research took purposive random sampling with 150 respondents from various circles. Consumers from the islands of Java and Sumatra took part in the survey; having different educational backgrounds, the majority of graduates (54.2%) and level master's degrees (30.3%). This fact does not mean that the Indonesian people, in general, have higher education, and this is one of the bases that explain the limitations of the research.



As for occupations and professions, most respondents were professionals (21.9%) and private workers (24.5%).

6.2.3 Consumption patterns in online transactions

Typical online transactions from this study are illustrated in the following findings; the average consumer conducts online transactions through e-commerce 3 (three) to 5 (five) times a month with the type of purchase or transaction in the form of Basic Needs and supporting goods, both goods and services.

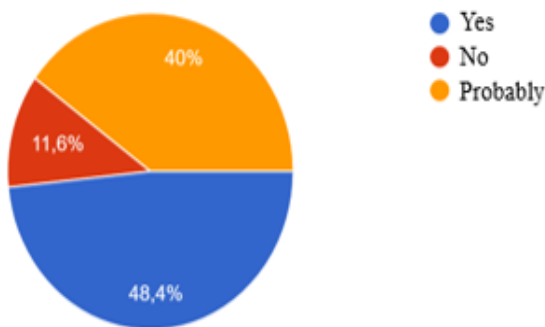


¹⁵⁹ Statement by Tulus Abadi, Chair of the Indonesian Consumers Foundation (YLKI), and Putu Armaya, Chair of the Bali Consumer Protection Foundation (YLPK Bali) in separate interviews.

This data also illustrates that the cluster of respondents in this study has a high purchasing power. On average, the products are the highest in value (food and beverages) according to (109) respondents. In contrast, the second highest is the type of fashion and clothing products, according to 69 respondents. In contrast, the consumption pattern of service products on e-commerce Payment Gateway is the most accessed (146) respondents and (119) respondents access banking from all types of e-commerce.

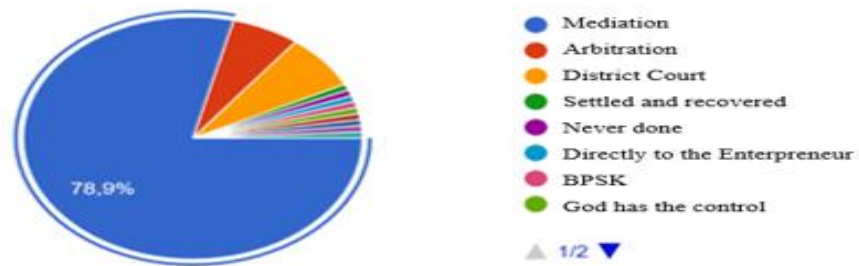
6.2.4 Settlement of trade disputes through electronic systems (PMSE)

This third variable explored information about respondents' experiences in disputes and legal awareness in ¹⁶⁰electronic transactions (e-commerce) protected by law. The initial variable is the consumer experience to complain: 48% of respondents feel obliged to file a lawsuit against business actors when there are problems with their transactions. However, 40% are hesitant and only 11.6% of respondents do not complain online.



There is a gap in consumer awareness regarding complaints in general; besides, in Indonesia, consumers tend not to prolong the problem due to their good faith: 78.9% of respondents hope to have issues resolved at the mediation stage.

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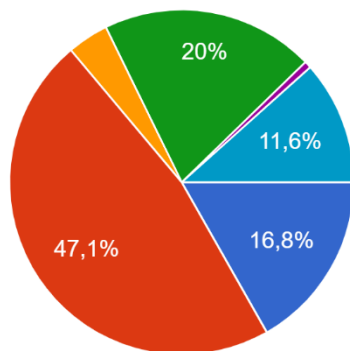
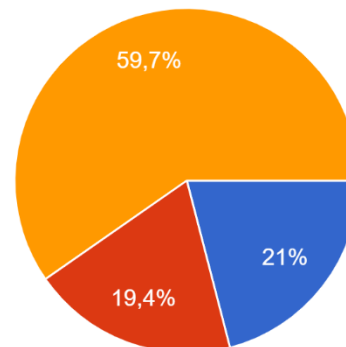


Furthermore, on respondents' knowledge of legal instruments and approaches (81.3%) respondents have heard of the term Arbitration and Alternative Dispute Resolution. Interestingly, when measuring consumer knowledge about consumer protection institutions, most respondents are more familiar with YLKI than institutions formed by the government: 137 respondents replied they know YLKI. A lack of awareness and publication could explain the missing information on access to information.

¹⁶⁰ The ITE Law also regulates provisions regarding dispute resolution if consumers are harmed in the online buying and selling process, that article 38 paragraph (1) of the ITE Law states that; "everyone can file a lawsuit against the party that operates the Electronic System and/or uses Information Technology that causes losses"

6.2.5 Adjustments during the COVID-19 Pandemic

There were several adjustments in various fields during the current pandemic, including the legal field. One is the Application of Online Dispute Resolution (ODR) regulated in PP no. 80 of 2019 regarding trade through electronic systems. Regarding this specific application, 45.8% of 150 people responded that they had received information related to e-commerce & cross border regulations. Still, those who did not know the implications, namely 41.3%, the remaining 12.9% responded hesitantly. Furthermore, those who knew about the regulation have an opinion that still doubts the capability of the regulation and 59.7% of respondents consider it to be inadequate, even 19.4% think it is insufficient. Only 21% feel that the regulation is adequate.



During the Covid-19 Pandemic, consumers in Indonesia wish for online dispute resolution channels: 47.1% of 150 consumers responded they hoped that dispute resolution could be resolved “Online”, while another 20 % expected that at the level of “Online Arbitration” this is in line with subsequent findings which state that it is time for Indonesia to implement online dispute resolution (ODR/Online Dispute Resolution), 69.7% agree, and 21.3% are doubtful. And only 9% disagree, showing that consumer expectations for digitalization to assist and facilitate legal processes is high. However, there are still doubts about setting

regulations and a solid legal basis: 51% of people have doubts. Even 40.6% think that the existing regulations do not provide a solid legal foundation. And when asked what the obstacles to the e-Court mechanism (electronic justice) are, 61.9% felt that technology. However, the main obstacle is high expectations of the electronic judicial process. As many as 54.8% of respondents want e-Court to continue to apply even post Covid-19 pandemic.