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CONSTRUCTION DISPUTES: TECHNICAL & LEGAL COMPLEXITIES

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BADAN ARBITRASE NASIONAL INDONESIA

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From The Editor

Assalamu'alaikum warohmatullahi wabarokatuh.

Shalom. Om swastiastu. Namo buddhaya.

Salam kebajikan. Warm regards to all respected readers of the BANI Newsletter.

We would like to extend our sincere appreciation to our valued readers who have consistently supported and engaged with the BANI Newsletter as a platform for the exchange of ideas and developments in arbitration. We hope that this publication will continue to serve as a relevant and reliable reference for practitioners, academics, and business actors, and remain a meaningful contribution to the advancement of a credible dispute resolution ecosystem in Indonesia and beyond.

In this edition, which carries the theme "Construction Disputes: Technical and Legal Complexities," we present three articles that, taken together, illustrate how arbitration and dispute resolution must continually adapt to the technical, procedural, and technological complexities of contemporary commercial life. These contributions move from the mechanics of resolving complex construction claims, to the procedural logic that shapes party behaviour, and finally to the digital frontier of dispute resolution and its consequences for consumers.

The first article, by **Rangin Prabowo**, examines the technical and legal complexities inherent in construction arbitration. Construction disputes typically arise from the scale and intricacy of projects that involve substantial investment, lengthy timelines, and multiple stakeholders with differing interests. Because such disputes are rarely purely legal in nature, the author emphasises that their resolution demands a combination of legal analysis and technical expertise. The article highlights the procedural flexibility afforded under the BANI Arbitration Rules 2025—including the appointment of arbitrators with technical backgrounds, clarification hearings, site visits, and the summoning of expert witnesses—and underscores the pivotal role of technical, delay, and quantum experts in bridging engineering practice and legal reasoning so that tribunals may reach well-founded and objective decisions.

The second article, by **Michael H. Hadylaya**, revisits the phenomenon commonly described as "guerrilla tactics" in arbitration and challenges its prevailing moral characterization. Through a doctrinal comparison between Indonesian civil procedure under the Herziene Indonesisch Reglement and arbitration under Law No. 30 of 1999, supplemented by the BANI Rules, the author contrasts two procedural logics: hierarchical adjudication, which constrains strategy through centralized control and immediate enforcement, and arbitration, which disperses control, relaxes constraints, and operates under conditions of normative indeterminacy. Within this framework, procedural manoeuvring emerges not as deviation but as conduct that is rational within the system's own design. The article cautions that meaningful moral evaluation presupposes a clear normative baseline, and that where such a baseline is uncertain, claims of abuse risk substituting for legal analysis.

The third article, by **Bryan Fernando** and **Jerry Shalmont**, turns to the digital frontier of dispute resolution, examining chatbot-based Online Dispute Resolution (ODR) in e-commerce and its implications for consumer protection. Against the backdrop of the rapid growth of digital transactions in Indonesia, the authors observe that the relevant legal framework—including the Electronic Information and Transactions Law, the Trade Law, Government Regulation No. 80 of 2019, Government Regulation No. 71 of 2019, and the Consumer Protection Law—requires electronic commerce operators to provide effective complaint-handling and dispute resolution mechanisms. The article cautions, however, that an over-reliance on chatbots—whose responses are often generic, repetitive, and lacking in empathy and contextual understanding—may impede access to substantive justice. It therefore argues that a mechanism for escalation to human agents is essential to ensure that digital dispute resolution remains fair, transparent, and responsive to consumers.

Taken together, these articles reveal a common thread: the resolution of disputes today operates at the intersection of complexity and adaptation. Whether the complexity is technical, as in construction; procedural and strategic, as in the conduct of arbitral proceedings; or technological, as in the digitalization of dispute resolution, each contribution affirms the enduring need to balance flexibility and efficiency with fairness, expertise, and genuine access to justice. BANI remains committed to advancing dispute resolution practices that are credible, adaptive, and internationally competitive.

We trust that this edition will provide meaningful insights and contribute to constructive discourse among all stakeholders.

Editors
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Navigating Technical and Legal Complexities in Construction Arbitration

Rangin Prabowo

Abstract

Sengketa konstruksi umumnya timbul dari kompleksitas proyek konstruksi yang melibatkan investasi besar, jangka waktu pelaksanaan yang panjang, serta keterlibatan berbagai pemangku kepentingan. Sengketa konstruksi seringkali melibatkan persoalan hukum dan aspek teknis. Oleh karena itu, penyelesaiannya memerlukan kombinasi analisis hukum dan keahlian teknis. Artikel ini membahas karakteristik sengketa konstruksi serta mekanisme penyelesaiannya melalui arbitrase di Badan Arbitrase Nasional Indonesia (BANI). Dengan fleksibilitas dalam mengelola proses pemeriksaan perkara, arbiter dapat menentukan prosedur yang paling tepat untuk menyelesaikan sengketa konstruksi yang kompleks. Selain itu, artikel ini juga membahas peran saksi ahli dalam arbitrase konstruksi. Dalam praktik, penyelesaian sengketa konstruksi melalui arbitrase sering melibatkan saksi ahli, termasuk ahli teknis, ahli delay, dan ahli kuantum, yang memberikan pendapat dan analisis terhadap berbagai aspek teknis dalam sengketa konstruksi. Pendapat para ahli tersebut membantu menjembatani aspek teknis proyek konstruksi dengan analisis hukum dalam proses arbitrase, sehingga majelis arbitrase dapat memahami isu teknis yang kompleks dan mengambil keputusan yang berdasar dan objektif.

Kata kunci: Sengketa Konstruksi, Arbitrase Konstruksi, Saksi Ahli, Peraturan dan Prosedur Arbitrase BANI 2025

I. Overview and nature of construction disputes

I.A. General overview

Large-scale construction projects are widely recognised as complex undertakings involving significant financial investments, lengthy project timelines, and the participation of multiple stakeholders, including employers, contractors, subcontractors, engineers. Due to the scale and inherent complexity of these projects, disputes frequently arise during the course of a given construction project. Even where parties attempt to mitigate risks through detailed contractual arrangements, disagreements may arise due to differences in interpretation, performance issues, or unforeseen circumstances.

In practice, construction disputes may arise at any stage of a project and involve various issues. Common disputes include disagreements relating to payment, delays, cost overruns, variations or changes in scope of work, and defective work.[1] Disputes may also arise from differing interpretations of contractual provisions.

Among these issues, project delays are a frequent source of disputes in construction projects. Delays may occur due to various factors, such as design changes, late delivery of materials, regulatory changes, unexpected site conditions, or inadequate project planning. When delays occur, the parties involved often disagree about who is responsible and whether the contract allows for additional time or compensation. Disputes may also arise during later stages of the project, such as during commissioning or taking-over of the works.

In practice, many construction projects adopt standard form contracts developed by the International Federation of Consulting Engineers (FIDIC). The FIDIC standard form contracts provide a widely used framework for risk allocation, project administration, and dispute resolution. These contracts are commonly used in projects involving international participants and have become one of the most recognised standard forms in the construction industry.

In Indonesia, FIDIC-based contracts are also frequently used, particularly in large infrastructure projects or projects involving foreign contractors.[2] In light of this, this article will refer to the FIDIC standard

1 Ellis Baker, *et. al.*, *FIDIC Contracts: Law and Practice* (5th Edn, Routledge 2009), p. 117, para. 3.289 and p. 217, paras. 4.2-5.3.

2 Sarwono Hardjomuljadi, *Buku Ketiga: Alternatif Penyelesaian Sengketa Konstruksi di Indonesia* (1st edn, Logoz Publishing 2016), p. 2.

form contracts in examining the nature of construction disputes. However, in practice, construction contracts are rarely used in their pure standard form. The FIDIC standard clauses are usually supplemented or modified through Particular Conditions that tailor the contract to suit the needs of a given project.[3]

I.B. Nature of construction contracts and hierarchy of documents

Resolving construction disputes is often challenging due to several characteristics inherent in construction projects. **Construction contracts generally consist of multiple documents that collectively establish the project's legal framework**. These may include the contract agreement, general conditions, particular conditions, technical specifications, drawings, schedules, and other project documentation. In most construction contracts, these documents are arranged in a hierarchy that determines which document prevails in the event of any discrepancy or inconsistency.[4] For example, in the FIDIC Silver Book, the hierarchy of documents comprise: (*i*) the Contract Agreement; (*ii*) Particular Conditions; (*iii*) General Conditions; (*iv*) Employer's Requirements; and (*v*) Tender (or any other document forming part of the Contract).[5]

This hierarchy of documents reflects the dual nature of construction contracts, which are both legal and technical in nature. It is important that the legal provisions are compatible with the technical aspects of the project. Therefore, the implementation and interpretation of these documents often play a pivotal role in resolving construction disputes.

I.C. Multiple stakeholders with differing interests

Another factor contributing to the complexity of construction disputes is **the involvement of multiple stakeholders with differing roles and interests**.[6] Construction projects require continuous coordination between these stakeholders. When issues arise, such as those relating to delays, design, or payment, one stakeholder may attempt to attribute liability to another. This situation usually leads to strains in the working relationship between them and eventually results in disputes.

In certain contractual frameworks, such as the FIDIC Red and Yellow Books, the Engineer plays an important role in administering the contract.[7] The Engineer is authorised to issue instructions, certify payments, and assess claims made by the parties.[8] Although the Engineer is not a signatory to the construction contract, the Engineer's determinations can have a significant impact on the rights and obligations of the contracting parties.[9]

This complexity may increase in cases where construction work is carried out through joint venture or consortium arrangements, which is common in large infrastructure projects. Even among consortium members, there may be differences in commercial interests or risk allocation. These dynamics can also influence how claims are pursued and defended in construction disputes, thus complicating the resolution of such disputes.

I.D. Technical aspects of construction disputes

Construction disputes involve technical aspects such as those relating to design, construction methods, project scheduling, and cost assessment. For instance, determining the cause of a project delay may require detailed analysis of project schedules and records. Similarly, disputes concerning defective works may require expert assessment regarding whether the works comply with the technical specifications or engineering standards required under the contract. As a result, construction disputes are rarely purely legal disputes. Instead, they often involve a combination of legal and technical issues.

Due to these characteristics, resolving construction disputes typically requires a combination of legal and technical expertise. Legal analysis is necessary to interpret the contractual framework and determine the parties' rights and obligations. At the same time, technical expertise is often required to assess issues such as causes of delays, quantifying costs, engineering issues, or defective works.

The dual nature of construction disputes has practical implications for arbitration proceedings. It affects, among others, the selection of arbitrators, who are

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3 Ellis Baker (n 1), p. 35, para. 2.83.

4 *Ibid*, pp. 36-38, paras. 2.87-2.92.

5 *Ibid*, p. 37, para. 2.88.

6 Renato Nazzini, *Transnational Construction Arbitration: Key Themes in the Resolution of Construction Disputes* (1st Edn, Routledge 2018), p. 79, para. 7.8.

7 Ellis Baker (n 1), p. 267, para. 6.2.

8 *Ibid*, p. 280, paras. 6.56, 6.59.

9 *Ibid*, p. 269, para. 6.10.

often chosen for their expertise in construction projects, and the use of expert witnesses, who provide an independent professional opinion based on their analysis of the available evidence. These experts assist the arbitral tribunal in understanding complex technical matters in order to reach well-informed decisions.[10]

II. Overview of construction dispute resolution at BANI

The Indonesian National Board of Arbitration ("**BANI**") was established in 1977, making it the oldest arbitration institution in Indonesia. Since its establishment, BANI has developed into Indonesia's leading arbitral institution and administers arbitration proceedings across a wide range of sectors, including construction and infrastructure projects. Arbitration is generally favoured in construction disputes due to its confidentiality,[11] procedural flexibility, and the ability to appoint decision-makers with technical expertise relevant to complex engineering and contractual issues.[12]

Throughout its more than four decades of operation, construction disputes have constituted a significant portion of BANI's cases. In recent years, the number of construction-related arbitrations administered by BANI has increased alongside the rapid development of infrastructure and construction projects in Indonesia. From 2019 until 2023, construction disputes comprised 24.3% of the total claims filed at BANI.[13]

Disputes submitted to BANI are administered under the BANI Arbitration Rules, which provide the procedural framework governing the conduct of arbitration proceedings. The rules grant the arbitral tribunal considerable discretion in managing the proceedings, including determining the most appropriate procedural steps where the rules do not specifically regulate a particular matter. This procedural flexibility is particularly relevant in construction disputes, which often involve complex factual and technical issues.

First, BANI's listed arbitrators come from different professional backgrounds. Unlike conventional court litigation, BANI allows non-legal professionals, such as engineers and architects, to serve as arbitrators as outlined in Article 10(1) of the BANI Arbitration Rules 2025. This approach ensures that the arbitral tribunal possesses the necessary technical expertise to understand complex issues in construction disputes.

Second, Article 18 of the BANI Arbitration Rules 2025 provides the tribunal with broad authority to determine the most appropriate procedure for each case. In practice, the arbitral tribunal may hold a clarification hearing (*sidang klarifikasi*), where the parties are given the opportunity to present their cases orally and the arbitrators may ask questions to clarify the issues in dispute. This process is particularly useful in construction disputes because it allows the tribunal to explore and understand complex factual and technical matters that may not be fully explained in the written submissions.

Third, Article 14(4) of the BANI Arbitration Rules 2025 grants the tribunal the authority to hold meetings at any required location, such as a site visit, to examine assets, goods, or documents directly. This may include site visits to the construction project. Through a site visit, the tribunal can directly observe the physical condition of the works, verify construction progress, or examine alleged defects. Such observations may assist the arbitral tribunal in better understanding the context of the dispute.

Fourth, Article 22(4)(a) of the BANI Arbitration Rules 2025 explicitly empower the tribunal to summon expert witnesses. The arbitral tribunal may also summon expert witnesses to provide testimony either on its own discretion or at the request of a party. In many cases, the tribunal may first require experts to submit written statements and later decide whether oral testimony is necessary.

If either party requests an expert witness to be summoned, Article 22(4)(a) of the BANI Arbitration Rules 2025 requires that party to provide advance notice of the expert's identity and the relevant of their intended testimony to the disputed issues. The arbitral tribunal is empowered to determine the weight and materiality of these expert witnesses' testimonies pursuant to Article 22(4)(b) of the BANI Arbitration Rules 2025.

Given the technical nature of many construction disputes, expert witnesses often play an important role in assisting the tribunal to understand specialized technical matters. The role of expert witnesses in

10 Renato Nazzini (n 6), p. 78, paras. 7.1-7.3.

11 Gary B. Born, *International Arbitration: Cases and Materials* (2nd edn, Wolters Kluwer 2015), p. 93.

12 Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration* (2nd edn, Cambridge University Press 2012), p. 1.

13 BANI, 'Arbitration: A Preferred Mechanism for Business Disputes' (BANI 2023), p. 2.

construction arbitration will be discussed further in the following section.

III. Expert witnesses in construction arbitration

The inherent complexity of construction projects frequently give rise to disputes that cannot be resolved through legal interpretation alone. Expert witnesses are therefore indispensable in arbitration, providing independent opinions based on their experiences, technical analysis, and a review of the available factual evidence to assist the tribunal in reaching a sound and just decision.[14] A fundamental principle across international and domestic arbitration is that an expert's primary obligation is to the arbitral tribunal rather than the party that appointed them, ensuring that their testimony remains impartial, objective, and reasonable.[15]

The necessity for specialized expertise is generally categorized into three primary disciplines, as follows:

a. Technical experts investigate the causes of failures or defects in a given project, applying experience, knowledge and prevailing practices to determine why specific technical requirements or standards were not met (see Section III.A. below);[16]

b. Delay experts focus on the sequence and timing of activities, analysing project schedules and contemporaneous records to identify the causes and impacts of delay events on project milestones (see Section III.B. below);[17] and

c. Quantum experts provide opinions on financial losses and expenses due to delays, disruptions, and variations, among others, as well as the valuation of damages (see Section III.C. below).[18]

Together, these experts provide the multidisciplinary support required for a robust and objective investigation of the facts in a given construction dispute.

III.A. Technical experts

Technical experts frequently play a central role in construction arbitration. Construction disputes often involve complex engineering, design, and construction processes that require specialized technical knowledge beyond the legal expertise of the arbitral tribunal. In such circumstances, technical experts assist the tribunal in resolving issues within those technical areas.

Technical experts in construction arbitration are tasked with investigating the causes of physical failures, defects, or performance shortcomings that occur during a project's lifecycle.[19] The scope of a technical expert's work typically involves conducting a detailed review of project documents, such as design drawings, specifications, construction records, inspection reports, and site conditions. Based on this review, the experts assist the tribunal to elaborate the causes of failures, defects, or other technical problems that arise in a construction project. The expert then provides an independent opinion on whether the works were carried out in accordance with contractual requirements, applicable engineering standards, and accepted construction practices.

In practice, technical experts may be asked to perform a range of technical analyses. For example, in a dispute involving the construction of a large-scale factory, technical experts were asked to give evidence whether different components of the factory had been constructed in accordance with the technical specifications outlined in the contract and in prevailing standards. In disputes involving defective works, technical experts may conduct site inspections, review testing data, and evaluate the extent of the defect as well as the appropriate remedial measures.

Through these analyses, technical experts assist the tribunal in translating complex engineering issues into clear and structured evidence. Their opinions provide an evidentiary basis for determining technical liability and help ensure that disputes involving complex construction projects are resolved on the basis of sound technical reasoning.

III.B. Delay experts

In construction arbitration, determining project delay is not as straightforward as simply referring to the scheduled completion date of the works. Delay experts therefore play a pivotal role in construction arbitration by investigating the root causes of time-related events and assessing their impact on project

14 Renato Nazzini (n 6), p. 79.

15 *Ibid*.

16 *Ibid*, p. 82.

17 *Ibid*.

18 *Ibid*.

19 *Ibid*.

milestones and completion.[20] Their general scope of work usually involves analysing project schedules and contemporaneous records to determine whether delays occurred, identify the specific causes of those delays, and assess which party bears responsibility. In doing so, delay experts aim to establish a clear causal link between particular delay events and their effect on the progress or completion of the works.

A key aspect of their analysis is determining whether a delay was critical in nature.[21] This requires delay experts to assess and identify whether a certain delay event affected activities on the project's critical path, which is the sequence of activities that determines the overall duration of the project. Delay events on this path are thus deemed critical delays because they directly affect project completion.[22]

The value of a delay expert is particularly important to substantiate or defend extension of time claims. In their analyses, delay experts provide objective evidence that assists the tribunal in identifying the causes and effects of delay events and in distinguishing contractor-caused delays from those attributable to the employer.

These experts are also vital in addressing allegations of wrongful delay by analysing the relative significance of different delay events and examining project schedules alongside contemporaneous records. For example, in a dispute involving the construction of a power plant, delay experts were asked to give evidence concerning delay events that affected the factory's failure to reach First Blow In and Provisional Acceptance occurring in several windows of time within the critical path. Through their analyses, delay experts assist the tribunal in understanding how delay events affected project milestones and the contractual completion date.

III.C. Quantum experts

Lastly, quantum experts specialise in financial valuation of claims, providing independent opinions on loss, expense, and the quantification of damages. In construction arbitration, their general scope includes calculating the financial impact of project disruptions, evaluating variations, and determining the consequences of contract termination. They are particularly important in navigating gaps where general legal principles do not provide the necessary practical guidance, such as in loss of profit claims.

In these cases, the quantum expert must bridge the gap between financial theory and project-specific cost data to determine the precise monetary value of a claim. Quantum experts may use various techniques to calculate these figures, such as determining net profit a builder could have made on the whole contract, taking into account expenditures in part performance, or calculating the proportion of the contract value relative to work actually performed.[23] To reach their conclusion, quantum experts are often required to build up theoretical construction costs using market data or factual project information, such as payroll records, supplier invoices, and site administration expenses.[24]

For example, in a dispute concerning the termination of a construction contract where the works were had only been partially completed, quantum experts were required to provide evidence on cost estimates for materials that had not yet been ordered as part of the claimant's claim.[25] In another dispute concerning the construction of a large-scale factory, the claimant engaged a quantum expert to substantiate its claims. In particular, the experts provided analysis quantifying costs allegedly incurred by the claimant, liquidated damages, and value of the remaining project milestones. The respondent, in turn, appointed its own quantum expert to challenge and disprove the claimant's assessments. The arbitral tribunal then considered the opinions of both parties' experts in evaluating the evidence and determining the most reasonable outcome.

IV. Conclusion

Based on the above, the technical complexity of modern construction disputes makes the composition of the arbitral tribunal an important aspect of the arbitration process. In BANI particularly, this is accommodated by its panel of arbitrators which includes professionals from diverse backgrounds. This helps ensure that construction disputes are resolved effectively.

20 *Ibid*, p. 82, para. 7.21.

21 *Ibid*, p. 87, para. 7.37.

22 Ellis Baker (n 1), p. 466, para. 8.257.

23 Lam Lok Fu (Solomon), 'Ascertaining loss of profit claims under different standard forms of construction contracts in Hong Kong' (PhD thesis, University of Exeter 2025), pp. 17-18.

24 *Ibid*, p. 156.

25 *Ibid*, pp. 158, 160.

In addition, expert witnesses also play a crucial role. Technical, delay, and quantum experts provide an essential bridge between construction practice and legal principles by translating complex issues into structured evidence that can be evaluated by the arbitral tribunal. These experts' contribution is grounded in their duty to assist the arbitral tribunal by providing professional opinions that are objective and reasonable, regardless of the party that appointed them.

To maximise the usefulness of expert evidence while managing time and costs, arbitral tribunals may adopt proactive case management strategies. These may include requiring joint expert reports and shared document databases. Techniques such as witness conferencing during hearings further assist the tribunal by enabling the experts to address differing opinions or analyses directly and respond to the tribunal's questions in a structured and interactive manner. Ultimately, the effective use of expert evidence enhances the arbitral tribunal's ability to evaluate complex issues and contributes to a fair, efficient, and well-reasoned resolution of construction disputes.

AUTHOR'S BIOGRAPHY

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He has been involved in numerous construction disputes, including those arising from issues related to soil conditions, performance test results, handover processes, defect liability periods, and disputes among consortium members. He has also been involved in multiple arbitration proceedings administered under the BANI, ICC, SIAC, and UNCITRAL Arbitration Rules. Mr. Prabowo is also well-versed in the FIDIC Conditions of Contract for Construction, particularly the Red and Silver Books.

In addition to his legal practice, Mr. Prabowo is the author of Pengantar Hukum Arbitrase Indonesia, a book that serves as a practical guide for practitioners seeking to understand arbitration in Indonesia.

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Guerrilla Tactics in Arbitration and the Limits of Moral Explanation

Michael H. Hadylaya

Abstract

This article examines the phenomenon commonly described as arbitration guerrilla tactics and challenges its prevailing moral characterization. Rather than treating such conduct as opportunistic or abusive behaviour, it argues that these practices are better understood as rational responses to the procedural structure of arbitration. Through a doctrinal comparison between Indonesian civil procedure under the Herziene Indonesisch Reglement and arbitration under Law No. 30 of 1999, supplemented by BANI rules, the article contrasts two procedural logics. Hierarchical adjudication constrains strategy through centralized control and immediate enforcement, while arbitration disperses control, relaxes constraints, and operates under conditions of normative indeterminacy. Within this framework, procedural manoeuvring emerges not as deviation but as system-consistent behaviour. The article concludes that moral evaluations require a clear normative baseline. Where such standards are indeterminate, claims of abuse risk substituting for legal analysis.

Keywords: Arbitration Guerrilla, Procedural Strategy, Normative Indeterminacy

I. Introduction

Arbitration is often chosen because it promises a departure from the constraints of state adjudication. For long, it has been understood as an informal and flexible process designed to avoid the cost and delay of court proceedings (Cole, 2017). This promise is frequently translated, at least in professional discourse, into a broader idea of freedom from procedural formality, judicial hierarchy, and institutional delay compared to litigation (Bookman, 2019).

This promise, however, contains an internal tension. The very features that make arbitration attractive, flexibility, party autonomy, and limited external control, also weaken the mechanisms that would otherwise constrain procedural behaviour. A system designed to reduce formal constraint inevitably redistributes control to the parties themselves. In doing so, it creates a procedural environment in which the boundary between legitimate advocacy and strategic manipulation becomes less clearly defined.

Practices labelled as arbitration guerrilla tactics are seen as disruptive, obstructive, even improper. As Michael Hwang (2013) observes, such actors do not simply disregard the rules. On the contrary, they actively exploit procedural guarantees such as jurisdictional objections, due process rights, and opportunities for adjournment in order to delay or derail proceedings. Their objective is not necessarily to prevail on the merits, but to render arbitration ineffective as a dispute resolution mechanism (Hwang, 2013).

At the same time, a different strand of critique focuses not on the conduct of parties, but on the design of arbitration itself. As Imre S. Szalai (2018) argues, arbitration procedures can be structured in ways that advantage one party and restrict meaningful access to adjudication, often under conditions of limited judicial oversight. This structural asymmetry is particularly visible in the use of one-sided procedural terms that discourage or suppress claims rather than facilitate their resolution (Szalai, 2018).

These perspectives are usually treated separately, one emphasizing opportunistic behaviour and the other institutional imbalance. Read together, however, they point to a more fundamental tension. If procedural guarantees can be strategically exploited, and if those same procedures may be structured in ways that already shape the distribution of advantage, then what is described as abuse may not be external to arbitration. It may instead reflect conduct that is rational within a system characterized by party autonomy, limited coercive control, and constrained judicial review.

This observation complicates the dominant moral framing. If such conduct operates through the very guarantees that arbitration seeks to preserve, then the issue cannot be reduced to individual bad faith alone. The more difficult question is whether the structure of arbitration itself enables such strategies.

This article proceeds from that question. It argues that guerrilla tactics are better understood not merely as moral deviations, but as responses to a procedural structure that departs from hierarchical control. Strategic behaviour arises not in spite of arbitration's design, but through it. To that extent, what is often described as abuse may reflect not a breakdown of the system, but a consequence of how the system is structured to operate. More fundamentally, what appears as aggressive or excessive strategy may instead reflect rational responses to incentive structures, where higher stakes reduce errors and induce more intensive reasoning, resulting in increasingly sophisticated strategic conduct (Esteban-Casanelles & Gonçalves, 2023).

II. Discussion

II.1. From Practitioner Metaphor to Normative Label

The term arbitration guerrilla did not originate as a legal doctrine. It emerged from the experiential vocabulary of arbitrators confronted with increasingly aggressive procedural strategies. Hwang describes such tactics as efforts to "take every point" and "leave no stone unturned," often aimed at delaying or derailing proceedings (Hwang, 2013). Such conduct may also be understood as reflecting the incentives faced by counsel to pursue all available procedural avenues in high-stakes disputes.

Hwang presents these behaviours in strongly critical terms, describing them as deliberate attempts to delay or derail arbitral proceedings, often by exploiting procedural guarantees (Hwang, 2013). While his account emphasizes their disruptive effects, it also implicitly reveals how such conduct operates through the procedural framework of arbitration itself. This observation already unsettles the tendency to frame guerrilla tactics in purely moral terms. What appears as excessive or abusive conduct may instead be consistent with the incentives and expectations that structure legal representation in arbitration.

This ambiguity becomes more pronounced when viewed across jurisdictions. Counsel in international arbitration may be subject to different national ethical rules, which can generate conflicts within the same proceeding (Rogers, 2013). These conflicts do not necessarily arise from bad faith, but from the coexistence of professional standards that each claim legitimacy within their own legal system. Conduct that is criticized as procedural abuse in one framework may therefore be understood, in another, as compliance with a different conception of professional duty.

Existing explanations have often sought to account for these tensions by pointing to external conditions rather than internal structure. As Carvajal notes, arbitration guerrilla tactics are frequently attributed to broader sociological and economic developments, including the growth and globalization of arbitration, the expansion of its scope across different types of disputes, and the resulting increase in actors and institutional complexity (Carvajal, 2025). These developments are said to produce a clash of legal cultures and strategic expectations within arbitral proceedings.

Yet, taken together, these accounts reveal a deeper problem. If the term originates as a practitioner metaphor, if the conduct it describes can reflect rational professional behavior, and if its evaluation varies across normative frameworks, then "arbitration guerrilla" cannot be treated as a stable legal category. It is better understood as a contested label that reflects underlying tensions between professional expectations, institutional context, and procedural design.

In this sense, the term functions as a discursive shortcut. It allows practitioners to express dissatisfaction without specifying whether the source of the problem lies in the rules, the incentives, or the behaviour itself. What begins as metaphor gradually hardens into moral judgment. In the process, analytically distinct questions are collapsed into a single evaluative label. Structural features of the system, such as procedural flexibility or limited enforcement, are recast as defects in individual conduct, while incentive-driven behaviour is interpreted as ethical failure. The effect is not merely linguistic. It reshapes the way the problem is understood, directing attention toward the character of actors rather than the conditions under which their behaviour becomes rational and effective.

The difficulty is that this transformation obscures the institutional context in which such behaviour arises. By focusing on the character of actors, it diverts attention from the procedural structures that make such strategies possible, and often rational. The effect is not merely rhetorical. It produces a form of analytical displacement, in which structural features are reinterpreted as individual failings and systemic constraints are recast as ethical violations. As a result, the inquiry shifts away from the design of the system toward the conduct of its participants, leaving the underlying conditions that generate such behaviour largely unexamined.

If the characterization of guerrilla tactics reflects a displacement of structural effects into moral judgment, then the analysis must turn to the institutional conditions under which such behaviour becomes possible and effective. This requires a focus on procedural design. Rather than treating arbitration in isolation, it becomes necessary to situate it against an alternative model of adjudication in which similar strategies are either constrained or rendered ineffective.

The Indonesian context provides a particularly useful contrast. The coexistence of state civil procedure, as embodied in the *Herziene Indonesisch Reglement* (HIR), and arbitration under Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution (the "Arbitration Law"), together with the procedural rules of BANI, allows for a comparison between distinct procedural logics. HIR reflects a model grounded in hierarchical control, while arbitration, as structured by statute and operationalized through institutional rules, rests on party autonomy and procedural flexibility. It is within this contrast that the structural conditions of strategic behavior become visible.

II.2. HIR and the Internalization of Procedural Strategy

Indonesian civil procedure, as embodied in the *Herziene Indonesisch Reglement*, rests on a fundamentally different set of assumptions from arbitration. It treats adjudication as a public function conducted under hierarchical control. The court is not merely a forum, but an authority that actively manages the process from initiation to enforcement. This centralized control reduces the space in which parties can shape proceedings to their advantage.

This structure is reflected in provisions governing jurisdiction and procedure. The court determines the admissibility of claims (Article 118 HIR) and controls party participation through formal summons procedures (Article 121–127 HIR). Non-compliance is not treated as a strategic option, but as a procedural failure that triggers predefined consequences. The mechanism of *verstek* allows the court to proceed in the absence of a party (Article 125 HIR), thereby eliminating the strategic value of non-participation as a delay tactic.

Procedural behaviour can be understood in terms of expected payoffs. Individuals are modelled as forward-looking and as responding to the expected consequences of legal rules (Shavell, 2004). In the context of enforcement, behaviour is shaped by the expected magnitude and likelihood of sanctions, and, given the forward-looking nature of actors, by when those sanctions are imposed. As the expected cost of non-compliance rises, the attractiveness of delay or obstruction correspondingly diminishes. Strategy is not eliminated, but its returns are compressed.

It would be inaccurate to suggest that HIR is free from strategic behaviour. Parties may still raise preliminary objections, challenge jurisdiction, or exploit procedural timing. However, the critical difference lies in the system's response. Judicial authority enables such strategies to be contained, redirected, or dismissed within the same procedural framework, often without significant disruption to the progression of the case.

In this sense, HIR internalizes procedural strategy. Strategic conduct is anticipated and absorbed within a structure that limits its duration and impact. The combination of judicial control and coercive enforcement ensures that such behaviour remains bounded, with relatively low returns over time.

This has an important implication for how procedural behaviour appears within the system. Where the expected costs of delay or non-compliance are immediate and predictable, strategic conduct does not disappear but loses much of its practical value. Under such conditions, strategy tends to shift away from overt procedural manoeuvring toward more subtle forms of argumentation within the bounds of the process. The system does not eliminate strategy. It renders it less visible and less disruptive by compressing its temporal and practical effects.

This baseline is critical because it shapes professional expectations about procedural order. When those expectations are carried into arbitration, where comparable mechanisms of control are absent, the same strategies produce different effects. What appears as abnormal or disruptive in arbitration may not reflect a greater prevalence of strategic behaviour, but a difference in how such behaviour is structured, contained, and made visible across procedural regimes.

II.3. Arbitration Law and the Externalization of Risk

Arbitration Law represents a deliberate departure from this model. It removes disputes subject to arbitration from the jurisdiction of the courts (Article 3 Arbitration Law) and limits judicial intervention to narrowly defined circumstances (Article 11 Arbitration Law). Authority shifts from the state to the parties and the arbitral tribunal. This shift reduces the availability of immediate coercive control, allowing parties greater influence over the pace and direction of proceedings.

Procedural design follows this logic. Parties are free to determine the rules of arbitration (Article 31 Arbitration Law), and tribunals are granted broad discretion over proceedings. Time limits are flexible and may be extended (Article 48 Arbitration Law), which weakens the predictability of procedural consequences. Unlike HIR, where delay triggers immediate sanctions, arbitration allows delay to function as a viable strategy when it imposes costs on the opposing party or alters bargaining dynamics.

At the same time, the law emphasizes finality. Arbitral awards are binding and not subject to appeal (Article 60 Arbitration Law), although limited grounds for annulment remain (Article 70 Arbitration Law). This combination of finality and limited review concentrates strategic behaviour in the early and post-award stages, where procedural manoeuvring may influence either the outcome or its enforceability.

Unlike HIR, Arbitration Law does not provide a centralized mechanism to discipline procedural conduct. Enforcement depends on subsequent judicial involvement, and corrective intervention is neither immediate nor guaranteed. From a game-theoretic perspective, this creates a sequential strategic environment in which parties may exploit procedural opportunities over time (Cirace, 2018)2018.

This structural configuration also alters how procedural conduct is perceived. In a system where control is immediate and centralized, strategic behaviour is quickly absorbed and rendered inconsequential. In arbitration, where control is dispersed and enforcement deferred, the same conduct remains visible and prolonged. What appears as obstruction or excess is therefore not necessarily greater in substance, but more exposed in form.

In such settings, delayed or uncertain enforcement may increase the relative attractiveness of strategic delay or obstruction by extending the horizon over which such behaviour may yield benefits. In this sense, arbitration externalizes procedural risk. Rather than suppressing strategic conduct through hierarchical control, it redistributes the consequences of such conduct across different stages of the process. The persistence of strategic behaviour is therefore better understood not as incidental, but as a predictable consequence of this institutional design.

This framework is further operationalized in institutional rules, particularly those of BANI. The BANI Rules grant tribunals broad authority to conduct proceedings and determine procedural matters, including discretion over the conduct of hearings and evidentiary processes (Article 18; Article 14(3) BANI Rules). At the same time, they preserve extensive procedural rights for the parties, including the ability to challenge arbitrators on grounds of impartiality and independence (Article 12 BANI Rules). These features are designed to ensure due process, but they also create a procedural environment in which strategic behaviour may remain feasible.

The BANI Rules themselves reflect an awareness of the risks of procedural delay and obstruction. They expressly require parties to act in good faith and to refrain from unnecessary delaying actions, while also setting indicative time limits for the completion of proceedings (Article 4(5)–(6) BANI Rules). At the same time, tribunals are empowered to impose sanctions on parties whose conduct impedes the arbitral process (Article 18(6) BANI Rules). These provisions demonstrate that arbitration is not indifferent to strategic behaviour. On the contrary, it seeks to regulate it through normative expectations and procedural discipline.

Yet the manner in which these controls are structured differs fundamentally from the model of hierarchical adjudication. The enforcement of such standards depends largely on the discretion of the arbitral tribunal, rather than on automatic or centrally imposed consequences. Whether conduct is considered dilatory, and whether sanctions are imposed, remains contingent on case-specific judgment. This discretionary architecture does not eliminate strategic behaviour but reshapes its conditions. It introduces uncertainty not only for the party engaging in such conduct, but also for its opponent, who must anticipate how the tribunal will respond.

This dynamic reinforces the broader structural account advanced in this article. The BANI Rules do not simply permit procedural flexibility; they attempt to balance flexibility with discipline. However, because this balance is maintained through open-textured standards and tribunal discretion, it does not fully resolve the incentives for strategic manoeuvring. Instead, it sustains a procedural environment in which such behaviour remains both possible and, in certain circumstances, rational. What appears as procedural excess is therefore not merely a failure of regulation, but a reflection of how regulatory control is designed within arbitration itself.

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This pattern is not confined to any single institutional framework but reflects a more general feature of contemporary arbitration practice. Strong procedural guarantees can function both as safeguards and as sources of strategic tension (Rogers, 2013). Meanwhile, the regulation of improper conduct in arbitration remains fragmented and indeterminate, with no uniform standards and a plurality of potentially applicable rules, creating a "no man's land" in which the boundaries of acceptable conduct are unclear (Carvajal, 2025).

In such conditions, the distinction between legitimate procedural conduct and abuse becomes unstable. Where the limits of acceptable conduct are unclear and enforcement remains discretionary, strategy does not disappear but is reconfigured. Its risk profile shifts. Conduct that might otherwise be constrained becomes more difficult to sanction and, in certain circumstances, more attractive to pursue.

Seen in this light, the function of institutional rules such as those of BANI is not to eliminate strategic behaviour, but to manage it within a flexible procedural framework. This flexibility preserves space for procedural manoeuvring, particularly where tribunals must balance efficiency against due process concerns. As a result, strategic conduct is neither excluded nor quickly neutralized but remains operative throughout the proceedings. The relevant question is therefore not whether such behaviour occurs, but how the institutional structure shapes its persistence, timing, and intensity.

What emerges from this comparison is not merely a difference in procedural form, but a difference in how consequences are distributed across the process. In hierarchical adjudication, the costs of delay and non-compliance are imposed in a relatively immediate and predictable manner. In arbitration, by contrast, those costs are often deferred, uncertain, or contingent on subsequent decisions by the tribunal or enforcement stage. This temporal and institutional dispersion alters how parties evaluate procedural choices. Actions that would carry little or negative value under conditions of immediate control may acquire strategic significance when their consequences are delayed or uncertain. The effect is not to increase the prevalence of strategic behaviour in any absolute sense, but to expand the range of situations in which such behaviour becomes a viable and rational option.

II.4. Guerrilla Tactics as Procedural Rationality

Under these conditions, the emergence of guerrilla tactics is not anomalous, but responsive to differences in procedural structure. When viewed through the lens of law and economics, this pattern becomes less surprising. Legal rules affect behaviour by altering the costs and constraints faced by actors, who adjust their decisions accordingly (Spurr, 2019). Where delay or procedural manoeuvring reduces expected costs or relaxes procedural constraints, such strategies become rational courses of action.

In HIR, the combination of hierarchical control and immediate procedural consequences reduces the expected payoff of such conduct. In arbitration, by contrast, the absence of centralized enforcement, the flexibility of procedural timelines, and the indeterminacy of normative boundaries extend the horizon over which strategic behaviour may generate benefits. Under these conditions, delay, objection, and procedural manoeuvring retain strategic value.

Individuals evaluate outcomes relative to a reference point and exhibit loss aversion, such that losses loom larger than equivalent gains and may induce risk-seeking behaviour in the domain of losses (Zamir & Teichman, 2018). In arbitration, where outcomes are often final and avenues for review are limited, parties facing an adverse position are more likely to perceive themselves in a domain of loss. Under such conditions, engaging in procedural manoeuvring, even with uncertain prospects of success, may represent a rational response to the asymmetry between potential losses and gains.

This reframing carries an important implication. If strategic conduct arises from the structure of the system, then its characterization as abuse becomes difficult to justify analytically. What is being criticized is not behaviour that violates procedural rules, but behaviour that makes full use of them. The language of impropriety, in this sense, reflects a tension between expectations of restraint and a procedural design that does not fully impose it.

Hwang's detailed account of so-called "arbitration guerrillas" reinforces this structural reading. The strategies he describes, ranging from jurisdictional objections and recourse to local courts to repeated procedural applications and challenges to arbitrators, do not operate outside the framework of arbitration, but through it (Hwang, 2013). They rely on core procedural guarantees such as the right to be heard, the opportunity to present one's case, and the availability of post-award review. What appears, in his account, as an effort to derail the process may therefore also be understood as an attempt to maximize the strategic value of those guarantees within a system that does not tightly constrain their use.

Guerrilla tactics, in this sense, represent equilibrium behaviour within a given institutional structure. They arise not from defective actors, but from the interaction of incentives, constraints, and expectations embedded in the procedural framework. What is often described as abuse is therefore better understood as a predictable response to a system that permits, and in some respects sustains, strategic conduct over time.

This reframing carries an important implication for how such conduct is evaluated. If these practices are structurally intelligible, then their characterization as improper cannot rest on intuition alone. To describe them as abusive presupposes the existence of a clear procedural boundary that has been crossed. Yet where conduct operates through recognized procedural rights and within a framework of indeterminate and overlapping norms, that boundary becomes difficult to specify. In such circumstances, moral judgment risks substituting for legal analysis, attributing fault to actors without first establishing the normative standard against which their conduct is to be assessed.

II.5. The Limits of Structural Explanation

The structural account developed in this article clarifies why guerrilla tactics persist and why they cannot be dismissed as mere deviations. Yet this explanation also raises a more difficult problem, because to describe such conduct as rational within a given institutional design is not the same as showing that the design itself can sustain its normative claims. Structural intelligibility, in other words, does not by itself confer legitimacy.

There is a risk at this point of moving too far in the opposite direction. If moral condemnation is rejected as analytically imprecise, it may appear that evaluation is no longer necessary. That conclusion would be mistaken. The absence of a clear normative baseline in arbitration does not eliminate the need for one. It instead reveals that arbitration continues to rely on standards that it does not fully define or consistently enforce.

This tension becomes more visible when one considers the relationship between arbitration's objectives and its institutional design. Arbitration promises efficiency and procedural fairness, yet it is built on party autonomy and limited coercive control. These features do not simply allow strategic behaviour to occur. They also shape the conditions under which it becomes attractive. A system that rewards procedural maximization while expecting procedural restraint ultimately depends on an assumption about behaviour that it has no reliable means of securing.

Seen from this perspective, the persistence of guerrilla tactics is not incidental. It reflects a misalignment between arbitration's normative aspirations and the structure through which those aspirations are pursued. What is described as abuse often marks the point at which this misalignment becomes visible. Parties act in accordance with the incentives the system creates, while the system continues to invoke standards that presuppose a different mode of conduct. This should not be understood as a defect of any institution, but as a broader feature of arbitration's procedural design.

The difficulty is reinforced by the coexistence of two competing conceptions of arbitration. If arbitration is treated as a form of private ordering, then strategic behaviour, including aggressive procedural manoeuvring, appears as a predictable and legitimate expression of adversarial rationality. If, however, it is treated as a substitute for adjudication, the same behaviour is more likely to be seen as distortion, undermining fairness and efficiency. The problem is not that one of these conceptions is incorrect, but that arbitration attempts to rely on both at the same time.

In preserving procedural guarantees associated with adjudication while abandoning the hierarchical controls that sustain them, arbitration produces a form of institutional tension that is difficult to resolve. It invites parties to behave as strategic maximisers yet continues to evaluate that behaviour against standards derived from a different procedural logic. The language of abuse emerges at precisely this point, functioning less as a stable legal category than as a response to the system's inability to reconcile its own premises.

Guerrilla tactics, in this sense, are not simply byproducts of arbitration's design but indicators of its internal limits. They mark the point at which the alignment between incentives, rules, and expectations begins to break down. The question they raise is therefore not whether such conduct should be condemned, but whether a procedural system can coherently demand restraint while structurally rewarding its opposite.

This does not lead to a simple resolution. Strengthening control mechanisms would move arbitration closer to litigation, potentially undermining the very features that make it attractive. Preserving flexibility, on the other hand, requires accepting a degree of strategic conduct that will continue to challenge its normative claims. The issue is not one of eliminating guerrilla tactics, but of confronting the trade-offs embedded in arbitration's design.

A more defensible response, therefore, lies not in attempting to suppress such conduct, but in clarifying the normative commitments that arbitration is prepared to uphold. If arbitration is to function primarily as a form of private ordering, then strategic procedural behaviour must be recognized as an inherent feature rather than treated as aberrational. If it is to approximate adjudication, greater institutional discipline and more explicit constraints become necessary. Without such clarification, arbitration will continue to oscillate between tolerance and condemnation, reproducing the very tensions that give rise to the label of guerrilla tactics in the first place.

III. Conclusion

The discussion over arbitration guerrilla tactics reveals less about the conduct it seeks to condemn than about the assumptions through which that conduct is interpreted. What is commonly described as abuse is not necessarily behaviour that departs from the procedural order of arbitration, but behaviour that operates within it.

This article has argued that the persistence of such conduct cannot be understood in isolation from the structure of the arbitral process itself. A system that disperses control, permits procedural flexibility, and operates under conditions of normative indeterminacy does not eliminate strategic behaviour. It gives it space to develop, persist, and remain visible. What appears as procedural excess is therefore not simply a matter of individual conduct, but a function of how the system is organized.

The analysis shifts attention from the evaluation of conduct to the conditions that render it intelligible, highlighting the limits of moral condemnation as an explanatory framework without resolving its normative significance. This reframing place pressure on how such conduct is evaluated. To characterize guerrilla tactics as improper presupposes the existence of a clear normative standard. Where such a standard is uncertain or contested, moral language risks filling the gap left by the absence of a stable baseline, redirecting attention from the structure of the system to the character of its participants.

Therefore, the problem is not simply one of regulation or interpretation, but of institutional design. The question is not whether strategic behaviour should exist, but what its persistence reveals about arbitration as a procedural form. What appears as abuse may, in fact, be the expression of a system functioning according to its own logic. Ethical evaluation, to the extent it is invoked, must therefore be grounded in clearly identifiable normative standards. Absent such grounding, claims of impropriety risk substituting for analysis rather than clarifying it.

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ODR Berbasis *Chatbot* dalam Penyelesaian Sengketa *E-Commerce:* Implikasi bagi Perlindungan Konsumen

Bryan Fernando, Jerry Shalmont

Abstrak

*Pertumbuhan pesat transaksi **e-commerce** di Indonesia telah mendorong peningkatan potensi sengketa antara konsumen dan pelaku usaha. Sebagai respons terhadap kebutuhan akan mekanisme penyelesaian sengketa yang cepat dan efisien, PPMSE mengadopsi ODR melalui fitur seperti "Pusat Resolusi" agar sengketa dapat diselesaikan melalui jalur digital. Secara normatif, keberadaan ODR telah diakomodasi dalam berbagai peraturan perundang-undangan, termasuk UU 7/2014, PP 80/2019, serta PP 71/2019, yang mewajibkan penyediaan mekanisme pengaduan dan penyelesaian sengketa yang efektif. Namun demikian, dalam praktiknya, implementasi ODR masih menghadapi berbagai kendala, terutama akibat dominannya penggunaan **chatbot** sebagai layanan pengaduan. Hasil analisis menunjukkan bahwa keterbatasan **chatbot** dalam memahami konteks permasalahan, memberikan respons yang cenderung repetitif, serta kurangnya empati berpotensi menghambat akses terhadap keadilan. Kondisi ini tidak hanya bertentangan dengan hak-hak konsumen sebagaimana diatur dalam UUPK tetapi juga mencerminkan belum optimalnya pemenuhan kewajiban hukum oleh PPMSE secara substantif. Oleh karena itu, diperlukan opsi mekanisme pengalihan kepada agen manusia sebagai bentuk intervensi yang krusial guna menjamin penyelesaian sengketa yang adil, transparan, dan responsif dalam ekosistem perdagangan digital.*

Kata Kunci : chatbot, e-commerce, PPMSE, ODR

I. Latar belakang

Intensitas masyarakat Indonesia dalam bertransaksi secara *online* terus mengalami pertumbuhan. Hal ini menunjukkan bahwa ekosistem digital bukan hanya sekadar tren, melainkan menjadi salah satu pendorong ekonomi nasional. Berdasarkan data dari Bank Indonesia, nilai transaksi *e-commerce* pada tahun 2019 baru menyentuh angka Rp 205,5 triliun. Namun, pada tahun 2024 nilai transaksi *e-commerce* menunjukkan pertumbuhan signifikan sebesar 136,99% hingga mencapai Rp 487,01 triliun.[1] Pertumbuhan nilai transaksi ini berjalan lurus dengan masifnya adopsi masyarakat terhadap ekosistem digital sejak pandemi Covid-19. Pada tahun 2024, jumlah pengguna aktif *e-commerce* mencapai 65 juta dan terus merangkak naik hingga menyentuh lebih dari 73 juta pengguna pada 2025.[2] Besarnya perputaran uang dan jumlah pengguna yang berinteraksi setiap harinya membuktikan tingginya ketergantungan masyarakat pada sistem *e-commerce*. Pada saat bersamaan, tingginya angka ini berpotensi memicu peningkatan tajam terjadinya sengketa hukum antara pelaku usaha dan konsumen.

Sengketa-sengketa pelaku usaha dan konsumen umumnya mencakup berbagai persoalan, antara lain barang yang tidak dikirimkan sama sekali atau penerimaan barang yang tidak sesuai dengan spesifikasi dari deskripsi produk. Kejadian ini menggambarkan terjadinya wanprestasi. Lebih lanjut, permasalahan antara konsumen dan pelaku usaha tidak berhenti di sana, dalam beberapa keadaan konsumen juga mengalami kesulitan saat ingin mengajukan pengembalian dana (*refund*) maupun klaim garansi karena proses berbelit-belit. Kendala dalam proses *refund* menjadi pemicu utama sengketa sehingga memerlukan adanya

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2 Pusat Kebijakan Perdagangan Domestik. (2025). *Kinerja perdagangan melalui sistem elektronik (PMSE) Indonesia tahun 2025* [PDF]. Badan Kebijakan Perdagangan, Kementerian Perdagangan Republik Indonesia. https://bkperdag.kemendag.go.id/unduhan-file/a11ba920-123c-4a4f-856b-cdbb1f0f64c4

solusi penyelesaian secara efektif dan efisien dalam sengketa *e-commerce*.[3]

Menyikapi eskalasi hambatan transaksi *e-commerce* tersebut, penerapan metode *Online Dispute Resolution* **("ODR")** kini menjadi sarana penting yang telah diakui keberadaannya sebagai wadah untuk mencari keadilan di era digital.[4] Dorongan utama dari munculnya mekanisme ODR ini adalah adanya kebutuhan mendesak akan akses keadilan yang lebih terjangkau, mengingat banyak sengketa transaksi *e-commerce* memiliki nilai objek yang jauh lebih rendah dibanding biaya untuk memulai proses hukum formal di pengadilan.[5] Sebagai bentuk transformasi dari mekanisme *Alternatif Penyelesaian Sengketa* **("APS")**, ODR menawarkan prosedur negosiasi, mediasi hingga arbitrase secara daring, yang menjadikannya jauh lebih efektif dan efisien.[6]

ODR mulai diimplementasikan secara sistematis oleh platform *e-commerce* besar seperti Tokopedia - Tiktok Shop dan Shopee.[7] Pada Tokopedia, transformasi layanan pengguna berbasis digital secara penuh dimulai sejak tahun 2017 melalui Tokopedia Care, yang menyediakan sarana "Pusat Resolusi" sebagai mediator utama bagi pelaku usaha dan konsumen.[8] Guna mengimbangi tantangan volume transaksi yang terus bertumbuh tiap tahunnya, platform ini mulai mengintegrasikan teknologi *chatbot* berbasis *AI* pada tahun 2018 untuk menyediakan layanan 24 jam yang responsif, agar konsumen bisa mendapatkan jawaban cepat dan tepat dalam hitungan detik, serta agar sengketa dapat diselesaikan melalui jalur digital.[9] Inovasi ini terus dikembangkan hingga peluncuran *virtual assistant* «Tanya» pada 4 September 2020, yang dirancang oleh tim *Customer Excellence* untuk memberikan solusi yang prediktif dan respons instan melalui percakapan digital yang telah dipelajari oleh sistem.[10]

Selain itu, integrasi *chatbot* juga diimplementasi pada platform Shopee untuk mengatasi berbagai kendala dalam layanan konsumen, khususnya terkait lamanya waktu tunggu dan keterbatasan respons.[11] Kehadiran *chatbot* memungkinkan Penyelenggara Perdagangan Melalui Sistem Elektronik **("PPMSE")** memberikan bantuan secara langsung kepada konsumen, sehingga berkontribusi terhadap peningkatan efisiensi layanan. *Chatbot* memiliki beragam fungsi, mulai dari menjawab pertanyaan umum hingga memberikan rekomendasi produk yang disesuaikan dengan preferensi konsumen. Selain meningkatkan kecepatan dan responsivitas layanan, penggunaan *chatbot* juga membantu mengurangi beban kerja tim layanan pelanggan, sehingga mereka dapat lebih menaruh perhatian pada permasalahan yang lebih kompleks dan memerlukan interaksi manusia.[12]

Mekanisme ODR mengintegrasikan bukti-bukti dalam transaksi elektronik seperti bukti transaksi atau bukti penerimaan barang sebagai referensi proses

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10 Rizqyta. *Loc. Cit.*

11 Abdilah, Muhammad & Alifah, Nabilla & Pratama, Versiandika. (2026). Analisis Teknologi Chatbot Shopee dalam Meningkatkan Kepuasan Pengguna di Kota Pekalongan. Jurnal Bersama Ilmu Ekonomi (EKONOM). 2. 15-27. 10.55123/ekonom.v2i1.400.

12 Pangestu, A. G., Caraka, D. P., & Nazofatullidya. (2025). Pengaruh chatbot terhadap kepuasan pelanggan di aplikasi e-commerce: Studi pada aplikasi belanja online Shopee di Jurusan Administrasi Niaga Politeknik Negeri Bandung. *Jurnal Ilmiah Wahana Pendidikan*, *11*(7.A), 1–9. https://jurnal.peneliti.net/index.php/JIWP/article/view/10791

mediasi antara pelaku usaha dan konsumen. Hal ini sejalan dengan Pasal 5 UU ITE Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas UU ITE **("UU ITE")** menyatakan bahwa informasi/dokumen elektronik beserta hasil cetaknya merupakan alat bukti hukum yang sah serta merupakan perluasan dari bukti yang diakui dalam hukum acara yang berlaku di Indonesia. Artinya, bukti dari transaksi elektronik ini secara hukum diakui dalam mekanisme ODR.[13] Hanya saja, meskipun tim *Customer Excellence* telah merancang sistem yang canggih, efektivitas ODR tetap membutuhkan manusia sebagai fasilitator daripada sekadar bergantung pada sistem otomatis. Pernyataan ini didasarkan pada fakta bahwa ketergantungan pada *chatbot* sebagai layanan konsumen seringkali menghambat penyelesaian sengketa akibat ketidakmampuan algoritma untuk memahami apa yang diutarakan oleh para pihak.

Ketidakefektifan atas penggunaan *chatbot* dalam menangani keluhan konsumen seringkali memicu persepsi negatif pengguna akibat kegagalan sistem dalam memahami konteks permasalahan secara utuh. Seringkali *chatbot* memberikan respon yang cenderung generik dan bersifat repetitif, sehingga tidak mampu untuk memberikan solusi yang efektif serta kurang memiliki aspek empati yang krusial dalam proses mediasi sengketa keperdataan.[14] Tanpa adanya intervensi manusia sebagai fasilitator yang mampu memahami fakta secara lebih kompeten, mekanisme penyelesaian sengketa dalam *e-commerce* ini dikhawatirkan hanya akan menjadi hambatan prosedural yang gagal menjamin keadilan substantif bagi pelaku pencari keadilan di ekosistem digital.

II. Analisis

1. Kerangka Hukum Penggunaan Chatbot dalam Penyelesaian Aduan Konsumen E-commerce

Struktur *e-commerce* di Indonesia saat ini didominasi oleh dua pemain utama yang menguasai sebagian besar ekosistem digital nasional. Berdasarkan data survei Asosiasi Penyelenggara Jasa Internet Indonesia tahun 2025, Shopee masih menempati posisi pertama dengan tingkat dominasi pasar sebesar 53,22%. Sementara itu, hasil merger Tokopedia dan Tiktok Shop secara kolektif menguasai 36,94% pangsa pasar.[15] Kekuatan besar yang dimiliki kedua entitas ini menjadikan mereka sebagai subjek hukum utama yang mempunyai tanggung jawab besar dalam menjaga stabilitas ekosistem perdagangan elektronik. Tanggung jawab tersebut juga mencakup kewajiban untuk memastikan bahwa sistem elektronik yang mereka kelola beroperasi secara andal, aman, dan bertanggung jawab, sebagaimana tercantum dalam Pasal 15 UU ITE *jo*. Pasal 3 Peraturan Pemerintah Nomor 71 Tahun 2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik **("PP 71/2019").** Dengan demikian, dominasi yang dimiliki tidak hanya berimplikasi pada kekuatan pasar, tetapi juga pada meningkatnya standar kehati-hatian dalam mengelola sistem dan untuk melindungi kepentingan pengguna secara menyeluruh.

Dalam konteks ini, penting untuk dipahami bahwa kerangka hukum untuk PPMSE di Indonesia tidak hanya diatur dalam satu regulasi, melainkan merupakan kombinasi dari rezim perdagangan dan juga rezim sistem elektronik. Peraturan Pemerintah Nomor 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik **("PP 80/2019")** berperan sebagai dasar hukum yang mengatur hubungan hukum dalam aktivitas perdagangan, termasuk hak dan kewajiban para pihak serta mekanisme transaksi dalam PMSE. Sementara itu, PP 71/2019 mengatur aspek teknis penyelenggaraan sistem elektronik sebagai infrastruktur utama, seperti keandalan sistem, keamanan, serta mekanisme layanan dan pengaduan. Oleh karena itu, kedua regulasi ini digunakan secara bersamaan dalam analisis, mengingat Perdagangan Melalui Sistem Elektronik **("PMSE")** pada dasarnya merupakan pertemuan antara aktivitas perdagangan dan sistem teknologi informasi.

Untuk memahami ruang lingkup perlindungan dan tanggung jawab dalam *e-commerce,* penting untuk mengidentifikasi kedudukan hukum para pihak yang terlibat. Berdasarkan PP 80/2019, subjek atau pihak-pihak yang terlibat dalam *e-commerce* terdiri dari:

1. PPMSE: Pelaku usaha yang menyediakan fasilitas komunikasi elektronik yang digunakan

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13 Fakultas Hukum Universitas Tarumanagara. (2025). *Ketika chat diakui sebagai alat bukti digital dalam perjanjian utang piutang*. https://fh.untar.ac.id/2025/05/28/ketika-chat-diakui-sebagai-alat-bukti-digital-dalam-perjanjian-utang-piutang/#:~:text=Selaras%20dengan%20hal%20tersebut%2C%20Undang,berita%20acara%20oleh%20pejabat%20berwenang.

14 Andini, W. (2026). Persepsi pengguna terhadap chatbot sebagai layanan customer service. *CONTEMPORER: Jurnal Komunikasi Kontemporer*, *2*(2). https://doi.org/10.36782/cjik.v2i2.537

15 Lestari, I. W. (2025). Daftar e-commerce paling sering diakses 2025, Shopee masih juara. *GoodStats*. https://goodstats.id/article/e-commerce-paling-sering-diakses-2025-shopee-masih-juara-wyZqk

untuk transaksi perdagangan.[16] Dalam hal ini, Shopee dan Tokopedia - Tiktok Shop masuk dalam ruang lingkup sebagai PPMSE.

2. Pedagang/Pelaku Usaha (*merchant*): Orang perseorangan atau badan usaha yang melakukan kegiatan usaha di bidang PMSE, baik sebagai *merchant* dalam negeri maupun luar negeri.[17]

3. Konsumen: Setiap orang pemakai Barang dan/atau Jasa yang tersedia dalam masyarakat, baik bagi kepentingan diri sendiri, keluarga, orang lain, maupun makhluk hidup lain dan tidak untuk diperdagangkan.[18]

Interaksi antara pelaku usaha dan konsumen tidak akan terjadi tanpa adanya sistem yang difasilitasi oleh PPMSE seperti Tokopedia - Tiktok Shop atau Shopee.

Dalam kerangka hukum yang lebih spesifik, kedudukan mereka sebagai PPMSE juga menimbulkan kewajiban untuk mematuhi Pasal 65 Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan **("UU Perdagangan")**, yang tidak hanya mengatur keharusan penyediaan informasi yang lengkap dan benar, tetapi juga menyediakan sarana bagi setiap orang atau badan usaha yang mengalami sengketa untuk menyelesaikan sengketa tersebut baik melalui pengadilan maupun melalui mekanisme APS. Lebih lanjut, Pasal 66 UU Perdagangan memberikan dasar bahwa ketentuan mengenai transaksi perdagangan melalui sistem elektronik akan diatur lebih lanjut dalam Peraturan Pemerintah.

Ketentuan tersebut kemudian diimplementasikan melalui Pasal 72 PP 80/2019, yang menegaskan bahwa penyelesaian sengketa dalam PMSE dapat diselesaikan melalui pengadilan atau secara sistem elektronik dalam bentuk ODR sesuai dengan peraturan perundang-undangan. Selain itu, terdapat kewajiban penyediaan layanan pengaduan yang diatur dalam Pasal 50 PP 71/2019 *jo*. Pasal 65 UU Perdagangan, yang mewajibkan PPMSE menjamin ketersediaan sarana layanan serta penyelesaian pengaduan. Hal ini diperkuat oleh Pasal 38 PP 71/2019 yang mensyaratkan adanya mekanisme pengaduan dalam penyelesaian sengketa dalam penyelenggaraan agen elektronik. Dengan demikian, fitur pengaduan seperti "Pusat Resolusi" yang menggunakan *chatbot* untuk melayani keluhan konsumen, bukan sekadar fasilitas teknis bagi pengguna untuk mendapatkan keadilan, melainkan sebagai bentuk pemenuhan kewajiban hukum dalam menyediakan akses keadilan bagi konsumen. Namun, efektivitas mekanisme tersebut dalam praktik masih menimbulkan banyak pertanyaan, khususnya apabila dikaitkan dengan kualitas layanan yang diberikan oleh PPMSE dalam menangani pengaduan konsumen melalui penggunaan *chatbot*. Secara singkat, PPMSE terlihat mematuhi regulasi tersebut dengan menyediakan layanan "Pusat Resolusi" tetapi secara praktik menghambat hak konsumen untuk mendapatkan keadilan.

2. Tantangan Penggunaan Chatbot dalam Penyelesaian Aduan Konsumen E-commerce

Meskipun secara praktik mekanisme ODR telah tersedia dalam platform-platform *e-commerce*, efektivitasnya dalam menghadirkan keadilan masih kerap terhambat oleh keterbatasan teknis dari sistem otomatis. Berdasarkan data, Shopee menjadi platform yang paling banyak digunakan, Shopee juga menggunakan *chatbot* pada fitur "Pusat Resolusi" untuk membantu pelanggan menyelesaikan berbagai masalah secara cepat dan efisien tanpa interaksi manusia, diikuti Tokopedia-Tiktok Shop.[19] Namun, tingginya tingkat penggunaan tersebut tidak diiringi dengan kualitas penyelesaian sengketa yang memadai. Banyak pengguna justru mengungkapkan rasa frustasi akibat respons *chatbot* yang cenderung sangat kaku, repetitif, serta ketidakmampuan sistem dalam memahami pertanyaan yang bersifat kompleks atau kontekstual.[20]

Ketiadaan empati dan diskresi manusiawi ini terlihat jelas dalam berbagai pengaduan publik yang dapat dilihat melalui beberapa kasus berikut:

a. Kasus yang dialami oleh Alvin Mufti pada Mei 2023 pada platform Shopee, menunjukkan laporan terkait keterlambatan pengiriman yang tidak memperoleh kejelasan meskipun telah melewati batas waktu penyelesaian yang dijanjikan.[21]

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16 PP 80/2019, Pasal 1 ayat (11).

17 PP 80/2019, Pasal 1 ayat (6) & (10).

18 PP 80/2019, Pasal 1 ayat (17).

19 Al Jupri, M. F. U., & Fasa, M. I. (2025). Pengaruh penggunaan teknologi chatbot dalam meningkatkan layanan pelanggan pada platform e-commerce: Studi kasus pada Shopee Indonesia. *Jurnal Media Akademik (JMA)*, *3*(3).https://doi.org/10.62281

20 Yusnaeni. (2025). Etika komunikasi chatbot AI dalam layanan konsumen *e-commerce* di Indonesia. *J-CEKI: Jurnal Cendekia Ilmiah*, *3*(5), 3066–3076

21 Yohanes, C. (2023). *Ini dia 5 keluhan pelanggan Shopee yang terbaru*. Jakarta Daily Indonesia. https://indonesia.jakartadaily.id/teknologi/6939209291/ini-dia-5-keluhan-pelanggan-shopee-yang-terbaru

b. Kasus yang dialami oleh Dhiny pada platform Shopee, menunjukkan bahwa pengguna menghadapi pembatalan pesanan secara sepihak dengan alasan "aktivitas tidak wajar". Meskipun pengguna telah berulang kali meminta klarifikasi, pada layanan pelanggan, respons yang diberikan merupakan jawaban template tanpa adanya solusi konkret.[22]

c. Kondisi serupa juga tercermin pada platform Tokopedia. Berdasarkan informasi pada website Tokopedia Care, disebutkan bahwa apabila tidak tercapai kesepakatan antara pembeli dan penjual, maka customer care akan berperan sebagai mediator yang membantu memberikan solusi atas kendala yang dihadapi para pihak.[23] Selain itu, melalui kanal media sosial Tokopedia Care, dinyatakan bahwa layanan pelanggan tersedia selama 24 jam sebagai bentuk implementasi penggunaan chatbot untuk menunjang respons yang cepat dan efisien.[24] Namun kenyataannya, ditemukan berbagai keluhan konsumen yang menunjukkan ketidaksesuaian antara fungsi tersebut dengan realitas layanan, banyak pengguna mengeluhkan tidak adanya respons yang memadai, interaksi yang terbatas karena hanya berkomunikasi dengan chatbot serta jawaban yang template dan repetitif, hingga kerugian yang timbul akibat tidak terselesaikannya pengaduan secara efektif melalui pusat pengaduan tersebut.[25]

Ketidakmampuan sistem dalam memberikan jawaban secara rasional atas keputusan dari *chatbot* tersebut pada akhirnya merugikan konsumen karena tidak dapat mendapatkan informasi yang solutif. Situasi ini bahkan mendorong munculnya kekecewaan dari pengguna yang mempertanyakan "Apakah tidak ada *customer service* manusia yang bisa membantu pelanggan yang mengalami kesulitan dalam memesan barang ini? Sungguh sangat mengecewakan!".[26] Sebuah gambaran nyata atas terbatasnya akses konsumen terhadap layanan bantuan dan sifat manusiawi dalam layanan pengaduan digital pada platform *e-commerce*.

Dari perspektif hukum, praktik tersebut bertentangan dengan beberapa ketentuan:

1. Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen **("UUPK").** Berdasarkan Pasal 1 ayat (3) UUPK, pelaku usaha didefinisikan secara luas sebagai setiap orang atau badan usaha, baik berbentuk badan hukum maupun bukan, yang melakukan kegiatan usaha dalam berbagai bidang ekonomi. Untuk itu, Shopee jelas termasuk pelaku usaha karena menyediakan layanan digital kepada konsumen dan *merchant*. Pasal 4 UUPK menjamin hak konsumen atas informasi yang benar, hak untuk didengar pendapat dan keluhannya, dan hak untuk mendapatkan advokasi, perlindungan, dan upaya penyelesaiaan sengketa perlindungan konsumen secara patut. Respons *chatbot* yang bersifat generik tanpa menyentuh aspek substansi permasalahan dapat dipandang sebagai bentuk pengabaian terhadap hak konsumen maupun kewajiban PPMSE sebagai pelaku usaha. Selain itu, kurangnya transparansi dalam menjelaskan alasan penyelesaian keluhan terkait

22 Dhiny. (2025). *Pelayanan buruk CS Shopee*. Media Konsumen. https://mediakonsumen.com/2025/08/18/surat-pembaca/pelayanan-buruk-cs-shopee

23 Tokopedia. *Loc. Cit.*

24 Syarizka. *Loc. Cit.*

25 Tokopedia Care. [@tokopediacare]. (2021).*Dia gak punya waktu buat kamu? CFS Tokopedia punya 24 jam waktu untuk bantu kendala kamu*. Instagram. https://www.instagram.com/p/CXOQbTChW7V/.

26 *Ibid*.

pesanan dan kecenderungan menyelesaikan "Pusat Resolusi" dengan cepat mencerminkan tidak terpenuhinya kewajiban PPMSE untuk beritikad baik sebagaimana diatur dalam Pasal 7 UUPK.

2. Selain UUPK, berdasarkan Pasal 1 ayat (6) PP 80/2019 *jo*. Pasal 2 ayat (1) Permendag Nomor 31 tahun 2023, PPMSE dapat diklasifikasikan sebagai pelaku usaha.[27] Sebagai pelaku usaha, PPMSE berkewajiban untuk memberikan informasi yang benar, jelas dan akurat serta menyediakan sarana penyelesaian pengaduan, sebagaimana telah dijelaskan sebelumnya. Namun dalam praktiknya, kegagalan sistem otomatis dan penggunaan respons berbentuk generik tersebut menunjukkan tidak terpenuhinya kewajiban tersebut. Ketidakjelasan alasan penyelesaian keluhan konsumen menunjukkan kegagalan dalam memenuhi aspek transparansi informasi, sementara mekanisme respons yang tidak solutif menunjukkan bahwa fungsi penyelesaian pengaduan tidak berjalan secara efektif. Penting untuk diperhatikan mengingat *chatbot* merupakan bagian dari Agen Elektronik, maka sesuai Pasal 21 UU ITE *jo*. Pasal 37 PP 71/2019, segala kerugian yang timbul akibat kesalahan sistem menjadi tanggung jawab PPMSE. Agen elektronik dalam hal ini diartikan sebagai perangkat dalam suatu sistem elektronik yang dibuat secara otomatis untuk melakukan suatu tindakan terhadap suatu informasi elektronik tertentu secara otomatis yang diselenggarakan oleh orang.[28] Dengan demikian, dalih efisiensi melalui penggunaan sistem otomatis tidak dapat dijadikan alasan untuk menghindari tanggung jawab hukum terhadap konsumen.

3. Oleh karena itu, aspek etika dalam transaksi digital yang mencakup transparansi dan keadilan harus diwujudkan melalui penyediaan opsi mekanisme pengalihan kepada agen manusia. Kewajiban ini tidak hanya bersifat teknis, tetapi juga merupakan penerapan dari Pasal 50 ayat (2) PP 71/2019 yang menuntut keseimbangan dalam hubungan para pihak. Dalam konteks ini, meskipun *chatbot* dirancang untuk meningkatkan efisiensi layanan, sistem tersebut tetap memiliki keterbatasan, sehingga perlu mampu mengenali situasi ketika tidak dapat memahami permintaan pengguna atau ketika permasalahan yang diajukan memerlukan penilaian dan tindakan manusia. Oleh karena itu, PPMSE wajib memastikan adanya mekanisme eskalasi yang memungkinkan pengalihan percakapan secara tepat waktu kepada agen manusia, disertai dengan transisi yang jelas dan tidak membingungkan bagi pengguna.[29] Tanpa adanya transparansi mengenai keterbatasan sistem AI serta akses langsung kepada agen manusia yang berwenang mengambil keputusan, mekanisme ODR berpotensi berubah menjadi prosedur yang berbelit dan menjauhkan konsumen dari keadilan. Dengan demikian, intervensi manusia menjadi elemen yang sangat penting agar penyelesaian sengketa digital berjalan secara adil, responsif, dan sesuai dengan prinsip perlindungan konsumen.

III. KESIMPULAN

Penggunaan *chatbot* dalam mekanisme penyelesaian pengaduan konsumen pada platform *e-commerce* di Indonesia pada dasarnya telah memiliki landasan hukum yang jelas dalam berbagai peraturan perundang-undangan, antara lain UU ITE, UU Perdagangan, PP 80/2019, PP 71/2019, serta UUPK. Kedudukan PPMSE sebagai pelaku usaha menimbulkan kewajiban untuk menjamin keakuratan informasi, menyediakan layanan pengaduan yang efektif, serta memastikan tersedianya mekanisme penyelesaian sengketa, baik melalui pengadilan maupun melalui ODR. Dalam hal ini, fitur "Pusat Resolusi" yang terintegrasi dengan *chatbot* merupakan bentuk pemenuhan kewajiban hukum tersebut.

Namun, dalam praktiknya, penggunaan *chatbot* masih menunjukkan berbagai keterbatasan yang berdampak pada tidak optimalnya pemenuhan hak-hak konsumen. Respons yang bersifat generik, repetitif, serta ketidakmampuan sistem dalam memahami konteks

27 Rahayu, A. P., & Nurhayati, N. (2025) Analisis yuridis perizinan berusaha bagi pelaku usaha e-commerce terhadap perlindungan hukum bagi konsumen ditinjau dari Permendag No. 31 Tahun 2023 [Naskah publikasi]. Repositori Universitas Muhammadiyah Surakarta. https://eprints.ums.ac.id/133194/1/NASKAH%20PUBLIKASI.pdf

28 Pasal 1 ayat (8) UU ITE *jo*. Pasal 1 ayat (3) PP 71/2019 ; Arti Hukum. (2026). *Agen elektronik*. https://www.artihukum.com/agen-elektronik

29 Microsoft. (2026). *Alihkan percakapan dari bot ke manusia*. Microsoft Learn. https://learn.microsoft.com/id-id/azure/bot-service/bot-service-design-pattern-handoff-human?view=azure-bot-service-4.0

permasalahan secara komprehensif menunjukkan bahwa mekanisme tersebut belum mampu memberikan keadilan substantif. Kondisi ini berpotensi melanggar hak konsumen atas informasi yang benar, hak untuk didengar, serta hak untuk memperoleh penyelesaian sengketa yang patut sebagaimana diatur dalam UUPK. Selain itu, kegagalan *chatbot* dalam memberikan layanan yang efektif tidak menghapus tanggung jawab hukum PPMSE, mengingat *chatbot* merupakan bagian dari agen elektronik yang konsekuensi hukumnya tetap berada pada PPMSE.

Untuk itu, diperlukan penguatan mekanisme ODR melalui penyediaan mekanisme eskalasi kepada agen manusia. Sistem harus mampu mengenali batasannya dan secara tepat waktu mengalihkan penanganan kepada agen manusia ketika permasalahan tidak dapat diselesaikan secara otomatis. Pemanfaatan teknologi tidak boleh mengurangi akses konsumen terhadap keadilan, melainkan harus memperluas dan mempermudahnya. Oleh karena itu, intervensi manusia tetap menjadi elemen yang esensial untuk menjamin keadilan, transparansi, dan akuntabilitas, sehingga mekanisme penyelesaian sengketa digital tidak hanya memenuhi kewajiban formal, tetapi juga mampu mewujudkan keadilan substantif bagi konsumen.

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AUTHOR'S BIOGRAPHY

Bryan Fernando *< bryanfernando0207@gmail.com> adalah mahasiswa hukum di Universitas Pelita Harapan dengan minat yang kuat dalam hukum bisnis, perdagangan, pasar modal, serta perlindungan konsumen. Ia secara khusus berfokus pada isu-isu hukum terkini terkait teknologi, termasuk transaksi digital dan dinamika regulasi yang terus berubah. Ia aktif terlibat dalam kompetisi akademik dan penelitian hukum, yang mencerminkan komitmennya terhadap pemikiran analitis serta penerapan praktis prinsip-prinsip hukum. Di samping studinya, ia juga mendalami pasar keuangan, dengan fokus pada investasi, guna mempertajam wawasan komersial dan perspektif strateginya. Ia bercita-cita untuk membangun karier yang menggabungkan keahlian hukum dengan pemahaman mendalam terhadap perkembangan bisnis dan ekonomi.*

Jerry Shalmont *<jerry.shalmont@uph.edu> saat ini menjabat sebagai Wakil Ketua Program Studi Hukum Lippo Village pada Fakultas Hukum Universitas Pelita Harapan. Ia menyelesaikan pendidikan Sarjana Hukum (S1) dan Magister Hukum (S2) di Fakultas Hukum UPH dengan konsentrasi pada bidang perdagangan internasional. Dalam kegiatan akademik, Jerry mengampu berbagai mata kuliah di bidang hukum bisnis, antara lain Hukum Perusahaan, Legal Skills 1 dengan fokus pada praktik korporasi, Hukum Kontrak, serta Hukum Perlindungan Konsumen. Di bidang penelitian, selain menaruh perhatian pada isu-isu perdagangan internasional, Jerry juga memiliki minat pada kajian hukum yang berkaitan dengan lingkungan dan ekonomi sirkular, perlindungan konsumen, serta perkembangan financial technology.*

NEWS & EVENTS

11 DECEMBER 2025

SE Asia 11th International Legal Summit

BANI Arbitration Center turut sebagai Suporting Organization dalam acara Indonesia and SE Asia 11th International Legal Summit yang diselenggarakan oleh Legal Plus di Jakarta, 11 Desember 2025. Dalam acara ini Ketua BANI, Anangga W. Roosdiono memberikan Welcome Message.

BANI Arbitration Center served as a supporting organization for the 11th Indonesia and Southeast Asia International Legal Summit, organized by Legal Plus in Jakarta on December 11, 2025. At the event, BANI Chairman Anangga W. Roosdiono delivered a Welcome Message.

24 FEBRUARY 2026

Kunjungan Direktorat Jenderal Kekayaan Intelektual

Direktorat Jenderal Kekayaan Intelektual, Direktorat Penegakan Hukum berkunjung ke BANI Arbitration Center dalam rangka audiensi pembahasan kerja sama,. Tim Kerja sama terdiri dari Fitma Andriyanto (Ketua Tim Kerja Mediasi), Yobie Herbuwono (Ketua Tim Kerja Sama), Prasetyo (Staf Direktorat Penegakan Hukum), dan Vicki Rio (Staf Kerja Sama). Tim tersebut diterima oleh Pengurus BANI yaitu N. Krisnawenda dan Eko D. Prasetiyo.

Visit by the Directorate General of Intellectual Property

The Directorate General of Intellectual Property, Directorate of Law Enforcement, visited the BANI Arbitration Center for a meeting to discuss the near future cooperation. The cooperation working group consisted of Fitma Andriyanto (Head of the Mediation Working Group), Yobie Herbuwono (Head of the Cooperation Working Group), Prasetyo (Staff of the Directorate of Law Enforcement), and Vicki Rio (Cooperation Staff). The team was cordially received by BANI officials N. Krisnawenda and Eko D. Prasetiyo.

UPCOMING EVENTS

BANI Arbitration Moot Competition 2026

BANI Arbitration Center berperan nyata dalam membina generasi muda dalam pengetahuan dan keterampilan dalam arbitrase melalui kompetisi arbitrase antar universitas se-Indonesia. Kompetisi tahunan ini akan diadakan untuk yang ke-5 kalinya pada tahun ini. Penyelenggaraan kompetisi Arbitration Moot BANI 2026 akan diselaraskan dengan peringatan ulang tahun BANI ke 49 pada akhir tahun 2026.

The BANI Arbitration Center plays a significant role in developing the knowledge and skills of the youths in arbitration through an inter-university arbitration competition across Indonesia. This periodic competition will be held for the fifth time this year. The 2026 BANI Arbitration Moot competition will be held in conjunction with BANI's 49th anniversary celebrations at the end of 2026.

BANI ARBITRATION CENTER

INTERNATIONAL ARBITRATION SEMINAR

Commercial Arbitration in the Ever-Changing and Interconnected Geopolitics

Pullman Thamrin
Jakarta

22 July 2026

Session 1: Recent Geopolitical Condition Affecting Business

Session 2: Recent Geopolitical Condition Affecting Natural Resources

Session 3: Arbitration in the Recent Geopolitical Conditions

BANI ARBITRATION CENTER

INTERNATIONAL ARBITRATION SEMINAR

COMMERCIAL ARBITRATION IN THE EVER-CHANGING AND INTERCONNECTED GEOPOLITICS

Commercial arbitration continues to play an important role in resolving disputes arising from international trade and investment in an increasingly interconnected world. Recent geopolitical developments, including political tensions, economic sanctions, and shifting international policies, have significantly affected global business activities, natural resources governance, and cross-border commercial relations.

The issues surrounding recent geopolitical conditions may be viewed from three perspectives. First is their impact on business and international commerce. Second is their influence on the governance and utilization of natural resources. Third is the role of arbitration in maintaining legal certainty and effective dispute resolution amidst rapidly changing geopolitical conditions.

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OFFLINE REGISTRATION FORM

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- For registration, please fill the form on bit.ly/BANISeminar2026 or scan the QR code or fill out the offline form above and send it by fax or other means of transmittal or deliveries.
- Registration fee: IDR 3,500,000 (or USD 300 for foreign participants) which include full day Seminar and materials kit as well as lunch and coffee breaks.
- Group of 3 persons or above from the same organization/company, BANI Listed Arbitrators, Members of IArbI, Alumni of IArbI training, IMAC's Mediators and Alumni of IMAC Training, students and academics are entitled to special rate of IDR 2,500,000.
- Latest date for participants registration and its corresponding payment is 15 July 2026

PAYMENT SHALL BE TRANSFERRED TO

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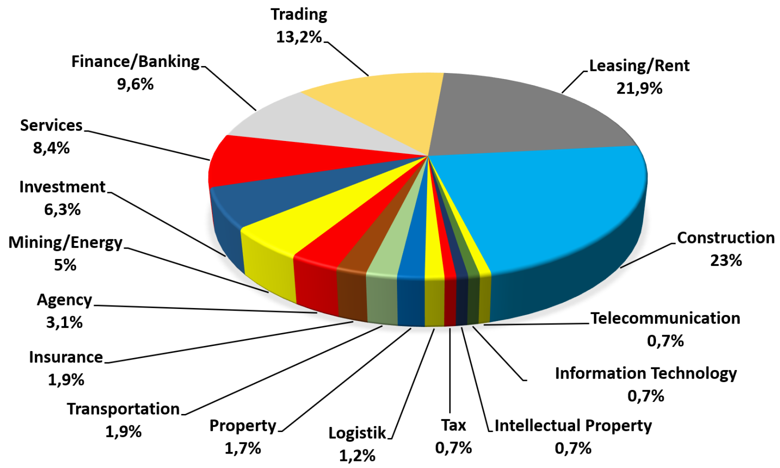
Statistics of BANI

In the period 2019-2023, the construction business was the most in cases registered at BANI. Then followed by the Leasing/rent sector, where year after year they alternate as the most resolved sector at the BANI Arbitration Center. The rest can be seen in the following graph.



BANI Standard Arbitration Clause

BANI recommends all parties wishing to make reference to BANI Arbitration, to use the following standard clause in their contracts:

> *"All disputes, both national or international disputes, arising out of the contract shall be settled by Badan Arbitrase Nasional Indonesia (BANI) under BANI Arbitration Rules whose awards shall be final and binding upon the parties."*

Klausul Standar Arbitrase BANI

BANI menyarankan kepada para pihak yang ingin menggunakan arbitrase BANI, untuk mencantumkan dalam perjanjian-perjanjian mereka klausula standar sebagai berikut :

> *"Semua sengketa, baik yang bersifat nasional maupun internasional, yang timbul dari perjanjian ini akan diselesaikan dan diputus oleh Badan Arbitrase Nasional Indonesia (BANI) menurut peraturan dan prosedur BANI, yang putusannya mengikat kedua belah pihak sebagai putusan tingkat pertama dan terakhir".*

Notes to contributors

If you are interested in contributing an article about Arbitration & Alternative Dispute Resolution, please sent by email to bani-arb@indo.net.id. The writer's guidlines are as below:

1. *Article can be written in Bahasa Indonesia or English, 12 pages maximum.*
2. *Provided by an abstract in one paragraph with Keywords (Bahasa Indonesia for English article & English for Bahasa Indonesia article)*
3. *The pages of article should be in A4 size with 25 mm/2.5 cm margin on all sides.*
4. *The article should be in Ms Word format, Times New Roman font 12 pt.*
5. *Reference / Footnote*
6. *Author Biography (100 words)*
7. *Recent Photograph.*

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