



## **Hybrid Online Dispute Resolution for Small-Value E-Commerce Consumer Disputes: Integrating Inclusive Legal Thought and *Maqāṣid al-Sharīa***

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**Abstract:** The growth of e-commerce has increased transaction volumes while also giving rise to small-value consumer disputes that cannot yet be effectively resolved through conventional mechanisms. This study aims to analyze the need to implement Hybrid Online Dispute Resolution (ODR) to resolve small-scale e-commerce consumer disputes and to examine its normative foundations from the perspective of Indonesia's inclusive legal thought and *maqāṣid al-sharīa*. The study employs a doctrinal legal method, drawing on legislative and conceptual approaches. Primary, secondary, and tertiary legal materials were collected through a literature review and then qualitatively analyzed using prescriptive analysis techniques through systematic interpretation and legal construction. The results indicate that Hybrid ODR holds philosophical urgency as an instrument that broadens access to justice, accelerates dispute resolution, and reduces the costs of case resolution. From a sociological perspective, this model addresses the rising number of consumer disputes in e-commerce and the limited capacity of the Consumer Dispute Resolution Agency (BPSK). From a legal perspective, Hybrid ODR has the potential to strengthen legal certainty and enhance the effectiveness of consumer protection by integrating online and offline mechanisms. From the perspective of inclusive law, this model derives its legitimacy from nonlinear postulates, the religious character of law that aligns with *maqāṣid al-sharīa*, particularly *ḥifẓ al-māl*, and the affirmative action postulate, which provides greater protection for consumers as a vulnerable group. This study contributes by proposing Hybrid ODR as an adaptive, inclusive, and context-sensitive dispute-resolution model to strengthen Indonesia's consumer protection system within its e-commerce ecosystem.

**Keywords:** Hybrid online dispute resolution; small-value consumer disputes; inclusive legal thought.

**Abstrak:** Perkembangan *e-commerce* telah meningkatkan volume transaksi sekaligus memunculkan sengketa konsumen bernilai kecil (*small-value consumer disputes*) yang belum dapat diselesaikan secara efektif melalui mekanisme konvensional. Penelitian ini bertujuan menganalisis kebutuhan penerapan *Hybrid Online Dispute Resolution* (ODR Hibrida) dalam penyelesaian sengketa konsumen *e-commerce* skala kecil serta mengkaji landasan normatifnya berdasarkan perspektif pemikiran hukum inklusif Indonesia dan *maqāṣid al-sharīa*. Penelitian menggunakan metode hukum doktrinal dengan pendekatan perundang-undangan dan konseptual. Bahan hukum primer, sekunder, dan tersier dikumpulkan melalui studi kepustakaan, kemudian dianalisis secara kualitatif menggunakan teknik analisis preskriptif melalui interpretasi sistematis dan konstruksi hukum. Hasil penelitian menunjukkan bahwa ODR Hibrida memiliki urgensi filosofis sebagai instrumen yang memperluas akses terhadap keadilan, mempercepat penyelesaian sengketa, dan menekan biaya penyelesaian perkara. Secara sosiologis, model ini menjawab meningkatnya sengketa konsumen *e-commerce* serta keterbatasan kapasitas Badan Penyelesaian Sengketa Konsumen (BPSK). Secara yuridis, ODR Hibrida berpotensi memperkuat kepastian hukum dan efektivitas perlindungan konsumen melalui integrasi mekanisme daring dan luring. Dalam perspektif hukum inklusif, model ini memperoleh legitimasi melalui postulat nonlinier, karakter hukum religius yang sejalan dengan *maqāṣid al-sharīa*, khususnya *ḥifz al-māl*, serta postulat *affirmative action* yang memberikan perlindungan lebih bagi konsumen sebagai pihak rentan. Penelitian ini berkontribusi menawarkan ODR Hibrida sebagai model penyelesaian sengketa yang adaptif, inklusif, dan kontekstual bagi penguatan sistem perlindungan konsumen di ekosistem *e-commerce* Indonesia.

**Kata Kunci:** Penyelesaian sengketa daring hibrida; sengketa konsumen bernilai kecil; pemikiran hukum inklusif.



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## Introduction

Consumer disputes involve very small amounts, but they occur in large numbers. This characteristic is what distinguishes consumer protection law from competition law, which involves large amounts but occurs infrequently.<sup>1</sup> The risk of consumer disputes is now even greater amid the rapid development

<sup>1</sup> ASEAN Secretariat, *Handbook on ASEAN Consumer Protection Laws and Regulations* (Jakarta: ASEAN Secretariat, 2021); Rohmah Maulidia, Khusniati Rofi'ah, and Lukman Santoso, "Halal Regulation and Certification in The Catering Business: A Critical Review of Consumer Protection," *Jurisdictie: Jurnal Hukum Dan Syariah* 15, no. 1 (July 2024): 1, <https://doi.org/10.18860/j.v15i1.26988>.

of Indonesia's digital economy.<sup>2</sup> There is significant potential for disputes in online transactions, as consumers have less bargaining power.<sup>3</sup> This is a paradox in the very purpose of consumer protection law. From an Islamic legal perspective, this issue conflicts with the principles of justice, prohibition of exploitation, and honesty.<sup>4</sup> Therefore, to provide repressive protection, it is necessary to strengthen more effective dispute resolution to achieve substantive justice in line with the development of e-commerce.

Electronic Trading Systems (PMSE), or e-commerce, according to a report released by the Indonesian Consumers Foundation (YLKI), are the most common source of consumer complaints. This is also reflected in the 2021 report from the Ministry of Trade, which recorded 9,393 consumer complaints, 93.5 percent of which (8,849) occurred in the electronic commerce sector.<sup>5</sup> This also occurred in the first half of 2022, when the Directorate General of Consumer Protection and Trade Compliance (Ditjen PKTN) of the Ministry of Trade recorded 3,693 consumer complaints, with 86.1 percent, or 3,181 complaints, originating from the electronic commerce sector.<sup>6</sup>

In 2023, the Directorate General of PKTN also recorded 7,707 consumer complaints. The percentage of consumer complaints related to transactions through electronic trading systems/e-commerce was the highest, namely

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<sup>2</sup> Ministry of Trade of the Republic of Indonesia, "Kemendag Ramal Transaksi E-Commerce di RI Tembus Rp533 Triliun," accessed on September 10, 2024, <https://www.kemendag.go.id/berita/pojok-media/kemendag-ramal-transaksi-e-commerce-di-ri-tembus-rp533-triliun>.

<sup>3</sup> Abdul Halim Barkatullah, *Perlindungan Hukum Bagi Konsumen Dalam Transaksi E-Commerce Lintas Negara Indonesia* (Yogyakarta: FH UII Press, 2009), 36; Yuru Liu and Yan Wan, "Consumer Satisfaction with the Online Dispute Resolution on a Second-Hand Goods-Trading Platform," *Sustainability* 15, no. 4 (January 2023): 3182, <https://doi.org/10.3390/su15043182>.

<sup>4</sup> Mansoureh and Kamaruzaman Yusoff Ebrahimi, "Islamic Identity, Ethical Principles and Human Values," *European Journal of Multidisciplinary Studies* September-December 8385, no. December (2017): 326-37.

<sup>5</sup> Rifah Roihanah, "Perlindungan Hak Konsumen Dalam Transaksi Elektronik (E-Commerce)," *Justicia Islamica* 8, no. 2 (2011), <https://doi.org/10.21154/justicia.v8i2.535>; Ferry Sandi, "Konsumen Komplain Makin Banyak, E-Commerce Biar Keroknya!," accessed on September 10, 2025, <https://www.cnbcindonesia.com/news/20220110120906-4-305975/konsumen-komplain-makin-banyak-e-commerce-biang-keroknya>.

<sup>6</sup> Amaresh Patel et al., "Online Dispute Resolution Mechanism as an Effective Tool for Resolving Cross-Border Consumer Disputes in the Era of E-Commerce," *International Journal of Law and Management*, ahead of print, May 1, 2025, <https://doi.org/10.1108/IJLMA-07-2024-0245>; 2023 Report of the Directorate General of Consumer Protection and Trade Order (Ditjen PKTN) of the Ministry of Trade; Viska, "Semester Pertama 2022, Aduan Konsumen Didominasi Sektor Niaga-El," accessed on September 10, 2024, <https://www.kominfo.go.id/content/detail/43005/semester-pertama-2022-aduan-konsumen-didominasi-sektor-niaga-el/0/berita>

7,019, or 91 percent of the total complaints received by the Directorate General of PKTN.<sup>7</sup> During the January-June 2024 period, the Directorate General of PKTN handled 1,935 consumer complaints, with the highest percentage, namely 1,725 (89 percent), occurring during the first semester of 2024.<sup>8</sup>

Data from 2021 to 2024 shows that more than 85% of consumer complaints at the national level originate from the electronic trading sector (PMSE). This condition indicates a fundamental problem in protecting consumers and resolving their disputes in the digital realm, resulting in a large number of small-value disputes that are not suitable for resolution through traditional legal channels. The difference between the nature of digital disputes and the applicable legal system has led to consumers' rights not being fully enforced, as although these rights are recognized in regulations, their implementation is hampered. Therefore, there is an urgent need to implement HODR. This dispute resolution method combines two or more mechanisms, accessible online and offline, to provide a more efficient solution for small-value digital consumer disputes.

Consumer complaints or disputes arising from online transactions should also be resolved online.<sup>9</sup> However, the Consumer Disputes Settlement Agency (BPSK) is the guardian of consumers, authorized to resolve consumer disputes; to date, it remains conventional. In addition, the BPSK is not evenly distributed across districts and/or cities in Indonesia, and disputes resolved at the BPSK are not guaranteed to be resolved, as the parties can declare the failure of the ongoing resolution process.

Data shows that between 2015 and 2019, 578 consumer disputes were unresolved, and 151 BPSK decisions were appealed.<sup>10</sup> In 2021-2022, almost all consumer disputes submitted to the BPSK in Yogyakarta were unresolved.<sup>11</sup>

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<sup>7</sup> 2023 Report of the Directorate General of Consumer Protection and Trade Order (Ditjen PKTN) of the Ministry of Trade.

<sup>8</sup> Ministry of Trade, "Kemendag Terima 1.935 Aduan Konsumen di Semester I 2024, Terbanyak soal Ini," accessed on September 11, 2024, [https://www.kemendag.go.id/berita/pojok\\_media/kemendag-terima-1935-aduan-konsumen-di-semester-i-2024-terbanyak-soal-ini](https://www.kemendag.go.id/berita/pojok_media/kemendag-terima-1935-aduan-konsumen-di-semester-i-2024-terbanyak-soal-ini).

<sup>9</sup> Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (San Francisco: Jossey Bass, 2001), 9; Kay Elkins Elliott and Frank W. Elliott, *Alternative Dispute Resolution Handbook* (Alternative Dispute Resolution Section, State Bar of Texas, 2003).

<sup>10</sup> Decision of the Director General of Consumer Protection and Fair Trade Practices of the Ministry of Trade No. 162 of 2020 Concerning the 2020-2024 Strategic Plan of the Directorate of Consumer Protection and Fair Trade Practices (2020). 14.

<sup>11</sup> Yudit, Secretariat of the Consumer Dispute Resolution Board of Yogyakarta, *Interview*, October 1, 2023.

The failure to resolve consumer disputes at the Malang City BPSK also occurred between 2017 and 2021 (January–May).<sup>12</sup> The data above shows fundamental weaknesses in the consumer dispute resolution system, including the absence of agreement between the parties and the high number of appeals. This results in legal uncertainty, where the dispute-resolution process, which should be quick and inexpensive, becomes lengthy and unclear. From a justice perspective, this situation shows that the law does not provide real justice but only fulfills a legal process that appears fair. In the context of Islamic law, the uncertainty and ineffectiveness of dispute resolution contradict the principle of al-‘adl (justice), the prohibition of delaying the rights of others (ta’ṭīl al-ḥuqūq), and maqāṣid al-sharīa, which aims to protect property (hifz al-māl). Therefore, it is important to find a method of dispute resolution that is more flexible and fair and can provide legal certainty for consumers in the digital age. For this reason, this research is important to carry out.

This study proposes a hybrid Online Dispute Resolution (ODR) model that integrates the principles of inclusive law and maqāṣid al-sharīa into the BPSK process. This model aims to address the high failure rate in dispute resolution and create swift, affordable, and fair legal certainty for small-scale e-commerce consumers in Indonesia.” Thus, this study not only critiques the weaknesses of the existing system but also provides concrete, digitally adaptive solutions grounded in Islamic principles of justice that are relevant to Indonesian society.

According to earlier studies, Online Dispute Resolution (ODR) has been recognized as a successful method for resolving e-commerce disputes due to its flexibility, affordability, and speed.<sup>13</sup> Recent research, however, demonstrates that Indonesia still lacks an integrated ODR institutional design and regulatory gaps, especially in small-scale consumer protection.<sup>14</sup>

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<sup>12</sup> Levi, Secretariat of the Consumer Dispute Resolution Board of Malang City, *Interview*, September 28 2023.

<sup>13</sup> Ephraim Isaac, “Effectiveness of Online Dispute Resolution Platforms in Managing E-Commerce Disputes,” *European Journal of Conflict Management* 4, no. 1 (Subtitle 2024): 1–11; Toshiyuki Kono, *Selected Legal Issues of E-Commerce* (Springer Netherlands, 2002).

<sup>14</sup> Zahwa Maulidina Afwija, “Online Dispute Resolution Scheme over Consumer’s Loss as Consumer Protection in Cross-Border E-Commerce Transaction,” *Policy Law Notary and Regulatory Issues (Polri)* 4, no. 3 (2025): 503–15, <https://doi.org/10.55047/polri.v4i3.1906>; Deviana Yuanitasari Nabiela Ramadhani, Anita Afriani, “Online Dispute Resolution As A Mechanism for Resolving Consumer

Additionally, current research is normative-positivist and has not yet incorporated the principles of *maqāṣid al-sharīa* or an inclusive justice approach into dispute-resolution designs.<sup>15</sup> To address the need for digital efficiency and integrate the concept of substantive justice into Indonesia's consumer dispute resolution system, this article suggests a hybrid ODR model based on BPSK.

This study employs a doctrinal legal method, viewing law as a system of norms and principles. The main focus of this study is to formulate and justify the need for Hybrid ODR in handling small-scale e-commerce consumer disputes. This legal method was chosen to examine how the law should function in the future in resolving these disputes. In this study, a conceptual approach is used to examine Hybrid ODR in the context of consumer dispute resolution. In addition, a legislative approach helps identify and examine the limitations of existing regulations on consumer dispute resolution, tailored to the characteristics of e-commerce. The *maqāṣid al-sharīa* approach from Islamic law is also integrated, serving as a normative standard in assessing the suitability and validity of Hybrid ODR for e-commerce consumer disputes. In terms of legal materials, primary, secondary, and tertiary legal materials relevant to the legal issues raised are used. All of these legal materials are analyzed prescriptively and analytically to produce philosophical, juridical, and sociological justifications for Hybrid ODR as an inclusive, adaptive, and fair dispute-resolution model, as well as facilitating a more efficient dispute-resolution process in the world of e-commerce.

### **The Urgency of Using Hybrid Online Dispute Resolution in Resolving Small-Scale E-Commerce Consumer Disputes at BPSK**

Two indicators determine small-scale e-commerce consumer disputes referred to in this article. The first indicator is the amount of loss. In this indicator, the author relies on losses below Rp. 500,000,000 (five hundred

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Dispute in The Marketplace in Seeking Justice,” *Eduvest-Jurnal of Universal* 5, no. 5 (2025): 4984–99, <https://doi.org/10.1108/IJLMA-07-2024-0245>.

<sup>15</sup> Rohaini Rohaini et al., “Reforming Online Dispute Resolution (ODR) Regulations in Growing E-Commerce for Legal Certainty and Protection,” *Cepalo* 9, no. 1 (2025): 69–80, <https://doi.org/10.25041/cepalo.v9no1.3335>; Widyarini Indriasti Wardani and Muhamad Helmi Md Said, “Dwangsom and Judgment Enforcement in Land Disputes from an Islamic and Indonesian Law Perspective,” *Al-Ahkam* 36, no. 1 (April 2026): 1–20, <https://doi.org/10.21580/ahkam.2026.36.1.31164>.

million rupiah), which falls under simple cases that a single judge can hear. Second, it is determined by the diverse but recurring nature of disputes, such as goods that do not match the description or are damaged, late delivery or loss of goods, inconsistent refund/return policies, and product information that does not match reality. These cases are often of small value but occur very frequently, so they are considered small-scale but have a broad impact overall due to their large number.

Hybrid Online Dispute Resolution (Hybrid ODR) is an alternative dispute resolution process that combines two distinct dispute resolution mechanisms—for example, Arbitration and Mediation (Arb-Med) or Mediation and Arbitration (Med-Arb) —and is carried out online. So, if the combined dispute resolution is carried out online, then it is called hybrid ODR.

Consumer disputes, according to Article 1 Point 8 of the Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 350/MPP/Kep/12/20 concerning the Implementation of the Duties and Authorities of the Consumer Dispute Settlement Agency (BPSK), are disputes between business actors and consumers who demand compensation for damage, pollution, and/or suffering losses as a result of consuming goods and/or services.<sup>16</sup> Article 1, Point 11, in conjunction with Chapter XII of Law No. 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK), states that consumer disputes are disputes between business actors and consumers.

The Consumer Disputes Settlement Agency (BPSK) is an institution authorized to settle consumer disputes outside the court, at the choice of consumers and business actors. As the aggrieved party, consumers should have the freedom to choose a dispute-resolution agency without the business actor's prior consent. This is especially true in virtual (online) transactions, where reaching such an agreement is itself a problem. Furthermore, businesses have unilaterally chosen dispute-resolution institutions for their online marketplaces.<sup>17</sup>

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<sup>16</sup> Article 1, Point 11, states that consumer disputes are those between business actors and consumers.

<sup>17</sup> Moh. Ali and Agus Yudha Hernoko, "Characteristics of Party Autonomy in a Transnational Electronic Consumer Contract," *Yuridika* 35, no. 1 (2019): 55, <https://doi.org/10.20473/ydk.v35i1.15105>; María Concepción Rayón Ballesteros and José Luis González Ávila, "Online Dispute Resolution Platforms (ODR): A Legal and Technical Perspective," *Law and Business* 4, no. 1 (December 2024): 28–38, <https://doi.org/10.2478/law-2024-0006>.

When consumers choose BPSK, it does not automatically mean that disputes can be resolved through BPSK, because mediation and conciliation can fail. The parties can also declare arbitration a failure. For this reason, BPSK needs a standard resolution mechanism that is accessible online and offline, and once consumers have submitted their disputes to BPSK, this mechanism must be used automatically. This standard mechanism is Hybrid ODR.<sup>18</sup>

There are three arguments for the urgency of hybrid ODR in BPSK, namely, *first*, philosophically, the urgency of implementing Hybrid Online Dispute Resolution (ODR) in resolving small-scale e-commerce consumer disputes stems from the need to realize accessible, proportional, and efficient justice. E-commerce consumer disputes are generally of low economic value, mass in nature, and repetitive, giving rise to a paradox of justice: normatively, consumer rights are recognized, but in practice, they are not effectively enforced because available dispute-resolution mechanisms are not commensurate with the value of the dispute. In this situation, justice is no longer hampered by the absence of norms but by procedural designs that are not consumer-friendly.<sup>19</sup>

The existence of BPSK is philosophically intended to provide access to justice that is fast, simple, and inexpensive. However, dispute resolution practices that still rely on face-to-face mechanisms and conventional procedures create new barriers for e-commerce consumers, including geographical limitations, indirect costs, and imbalances in bargaining power. As a result, in small-claims cases, consumers often choose not to pursue dispute resolution, leading to structural denial of justice.

In this context, hybrid ODR is important because, philosophically, it can correct the imbalance between the value of the dispute and the procedural burden. Hybrid ODR allows disputes to be resolved online while still involving the BPSK authority as a guarantor of legitimacy and procedural justice. Thus, efficiency is not positioned as a purely technocratic goal but as a prerequisite for justice in small-scale consumer disputes. Hybrid ODR ultimately represents a paradigm shift from formal to substantive justice, where the law is not only a

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<sup>18</sup> Luh Putu Eka Wilantari, Consumer Dispute Resolution Agency of Malang, *Interview*, September 29 2023.

<sup>19</sup> Taryono, Head of the Consumer and Business Empowerment Section, Consumer Protection Technical Implementation Unit (UPT) of Malang, *Interview*, September 29, 2023

norm but also a real means of protecting consumers in the e-commerce ecosystem.

With the presence of hybrid ODR, consumers can easily access justice, which, in a broad sense, is interpreted not only as the fulfillment of access to legal representation but also as a guarantee that the law and the final result are appropriate and fair. Access to justice is one of the core pillars of consumer protection, both in terms of procedural access (related to access to the venue, which can be solved through the application of technology) and substantive access (related to a guaranteed resolution process, which can be solved through a combination of dispute resolution methods).

Access to justice is thus the ability to reach the location where justice is upheld. Physical barriers such as distance can have a severe impact on consumers with disabilities and people with low incomes. For poor people, the cost of transportation to the justice system can be very high. Even when transportation costs are affordable, long journeys to physical locations often sacrifice valuable time at work or at home.<sup>20</sup> One dimension of justice, in addition to truth and time, is also cost.<sup>21</sup>

Hybrid ODR can be a means of realizing the natural law principle that “all humans love truth and justice,” which is one of the self-evident premises. Truth and justice are the deepest human desires that have been sought throughout the ages. This means that human law, without exception, must be interpreted as the embodiment of the above self-evident premise. This demand is so strong that, in a meaningful way, human law is given the ideal limitation of the principles of truth and justice.<sup>22</sup>

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<sup>20</sup> Alain Marciano and Giovanni Battista Ramello, eds., *Encyclopedia of Law and Economics*, in *Encyclopedia of Law and Economics* (New York: Springer US, 2019), 11–17, [https://doi.org/10.1007/978-1-4614-7753-2\\_370](https://doi.org/10.1007/978-1-4614-7753-2_370); Soleh Hasan Wahid, “Formulation of a Risk-Based Online Dispute Resolution Model for E-Commerce in Indonesia: Legal Framework and Its Application,” *International Journal of Arts and Humanities Studies* 3, no. 2 (April 2023): 09–23, <https://doi.org/10.32996/ijahs.2023.3.2.2>.

<sup>21</sup> A. A. S. Zuckerman, “Justice in Crisis: Comparative Dimensions of Civil Procedure,” in *Civil Justice in Crisis, Comparative Perspectives of Civil Procedure*, ed. A. A. S. Zuckerman (United Kingdom: Oxford University Press, 1999), 47; Amy Schmitz, “A Blueprint for Online Dispute Resolution System Design,” *Journal of Internet Law* 21, no. 7 (January 2018): 3–21.

<sup>22</sup> Shidarta, *Hukum Penalaran dan Penalaran Hukum* (Yogyakarta: Genta Publishing, 2013), 188; Eda Sahin-Sengül and Serkan Kaya, *Consumer Alternative Dispute Resolution in Emerging Economies* (Taylor & Francis, 2025).

Based on the above description, the philosophy of justice emphasizes accessibility for all parties in resolving disputes. Hybrid ODR opens the widest possible opportunities for consumers, especially those in remote, outlying, and isolated areas, to gain easier access to dispute resolution without having to go to the BPSK or leave their economic activities.

In addition, hybrid ODR enhances the efficiency of dispute resolution, reducing the time and costs typically required. As mentioned above, one dimension of justice is cost as a manifestation of equitable efficiency. This is an economic principle enshrined in Article 33, paragraph (4) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that the national economy shall be organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental awareness, independence, and maintaining the balance of national economic progress and unity.

Efficiency with equity mandates that the national economy be organized with minimal resources to achieve maximum prosperity, equally enjoyed by all people.<sup>23</sup> This also provides the philosophical foundation for the need for hybrid ODR, as it can reduce the resource costs for consumers to access it. Yet, its presence can be utilized by most consumers as economic actors and subjects of development to realize a just and prosperous society that is equitable, both materially and spiritually, based on Pancasila and the 1945 Constitution.

The efficiency of Hybrid ODR above is also legitimized by the advantages of ODR,<sup>24</sup> namely: (1) cost savings, (2) time and energy savings, speed and practicality, (3) well-recorded settlement processes, and (4) confidentiality of

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<sup>23</sup> Adhi Anugroho, Ratih Lestarini, and Tri Hayati, "Analisis Yuridis Terhadap Asas Efisiensi Berkeadilan Berdasarkan Pasal 33 Ayat (4) UUD 1945 Dalam Peraturan Perundang-Undangan Di Bidang Ketenagalistrikan," *Jurnal Hukum & Pembangunan* 47, no. 2 (2017): 183, <https://doi.org/10.21143/jhp.vol47.no2.1451>.

<sup>24</sup> Urša Jeretina, "Consumer online dispute resolution (ODR) – as a key cultural change – mechanism for innovative public administration in EU," *Central European Public Administration Review (CEPAR)*, no. May (2018): 3, <https://doi.org/10.13140/RG.2.2.33318.42561>; Mochammad Lukman Hakim and I. Gede Agus Kurniawan, "Online Dispute Resolution as a Progressive Paradigm for Consumer Dispute Resolution in E-Commerce Transactions," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (June 2025): 4253–64, <https://doi.org/10.31941/pj.v24i2.7095>. 3.

information.<sup>25</sup> According to Urša Jeretina, the advantages of ODR are:<sup>26</sup> (1) affordable for all parties, (2) accessible online by people with disabilities, (3) in line with the development of a society that is already digitally active, (4) consistent, (5) reliable, and (6) proportional between costs and value demanded (at BPSK, there are no settlement fees, so it is more than proportional).

*Second*, sociologically, the implementation of Hybrid ODR in Indonesia is urgently needed, driven by the rapid growth of e-commerce transactions, which are directly correlated with an increase in consumer disputes. The efficient use of the internet in business<sup>27</sup> has contributed to the high frequency of disputes.<sup>28</sup> And logically, as online business transactions increase, so does the likelihood of disputes.<sup>29</sup> Data for the first semester of 2022 shows that the total value of e-commerce transactions reached IDR 227.8 trillion with a total of 1.74 million transactions.<sup>30</sup> Given the value of these transactions, e-commerce has received numerous complaints, as described in the problem background. This shows the legal vulnerability of consumers due to their weak bargaining<sup>31</sup> position and high information asymmetry.

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<sup>25</sup> Pablo Cortes, "The Potential of Online Dispute Resolution as a Consumer Redress Mechanism," *SSRN Electronic Journal*, ahead of print, 2011, 4–5, <https://doi.org/10.2139/ssrn.998865>; Khusniati Rofiah et al., *Penyelesaian Sengketa Ekonomi Syariah* (Yogyakarta: Q Media, 2025).

<sup>26</sup> Jeretina, "Consumer online dispute resolution (ODR) – As a Key Cultural Change – Mechanism for innovative public administration in EU," 5.

<sup>27</sup> Neelam Chawla and Basanta Kumar, "E-Commerce and Consumer Protection in India: The Emerging Trend," *Journal of Business Ethics* 180, no. 2 (2022): 583, <https://doi.org/10.1007/s10551-021-04884-3>; Virya Suprayogi Yusuf et al., "Does Escrow Really Protect Consumers? : An Islamic Law Critique of Marketplace Transactions in Indonesia," *Justicia Islamica* 23, no. 1 (January 2026): 29–60, <https://doi.org/10.21154/justicia.v23i1.12302>.

<sup>28</sup> Rochani Urip Salami and Rahadi Wasi Bintoro, "Aletnratif Penyelesaian Sengketa Dalam Sengketa Transaksi Elektronik (E-Commerce)," *Jurnal Dinamika Hukum* 2, no. 4 (2008): 124–35, <https://doi.org/http://dx.doi.org/10.20884/1.jdh.2013.13.1.161>.

<sup>29</sup> Adel Chandra, "Penyelesaian Sengketa Transaksi Elektronik Melalui Online Dispute Resolution (ODR) Kaitan Dengan UU Informasi Dan Transaksi Elektronik No . 11 Tahun 2008," *Jurnal Ilmu Komputer* 10, no. 2 (2014): 80–89.

<sup>30</sup> Dóra Pálfi, "Internal Dispute Resolution Systems: Do High Promises Come with Higher Expectations?," *Hungarian Journal of Legal Studies*, *Hungarian Journal of Legal Studies* 64, no. 3 (April 2024): 391–412, <https://doi.org/10.1556/2052.2023.00469>; Anna Suci Perwitasari, "Transaksi E-Commerce Melonjak 22,1% di Semester I-2022," accessed on 21 November 2022, <https://nasional.kontan.co.id/news/transaksi-e-commerce-melonjak-221-di-semester-i-2022>.

<sup>31</sup> Tetanoe Bernada, "Dalam Transaksi E-Commerce Untuk Mendukung Pertumbuhan Ekonomi Digital Di Indonesia E- Commerce Transaction' S Consumers To Support the Digital Economy Growth in Indonesia," *Jurnal Hukum dan Peradilan* 6, no. 1 (2017): 1–24, <https://doi.org/https://doi.org/10.25216/jhp.6.1.2017.1-24>.

Based on the above, the need for simple, fast, efficient, and effective consumer dispute resolution is becoming increasingly urgent. The Consumer Disputes Resolution Agency (BPSK), which has been given the authority to resolve these disputes, has not fully met this need, as available data indicate that not all BPSKs in Indonesia are functioning properly. In 2018, 171 BPSKs were not operational. The 2021 report shows that only 56.75% of the 42 BPSKs reported being truly active. In 2023, the number of BPSKs reached 187, but only 70 received funding, and of those, only 57.14% (40 BPSKs) were actively operating. This has led to a contradiction in the goal of bringing consumers closer to justice: rather than making it easier, procedural access has become increasingly difficult.<sup>32</sup>

The above findings lead to the conceptual understanding that the main problem in resolving e-commerce consumer disputes in Indonesia lies in the incompatibility between the BPSK institutional design and the current digital socioeconomic reality. Hybrid ODR needs to be seen not only as a technological tool but also as a structural necessity for reforming the BPSK's function so that it remains relevant, inclusive, and effective. Without a transformation towards a hybrid ODR model, the BPSK may experience institutional marginalization. At the same time, consumers, especially in small-value disputes, will continue to be trapped in limited access to justice. In other words, hybrid ODR is a sociological prerequisite for maintaining the BPSK's role in Indonesia's current e-commerce ecosystem.

*Third*, legally, Law Number 8 of 1999 concerning Consumer Protection (UUPK) explicitly mandates legal certainty. This is stated in Article 1, paragraph 1 of the UUPK, which stipulates that consumer protection is any effort that guarantees certainty in protecting consumers. Furthermore, Article 2, which sets out the principles of consumer protection, states that legal certainty is one of these principles, while Article 3, which sets out the objectives of consumer protection, also includes legal certainty as an element in the creation of a consumer protection system.

Based on the above, normatively, the BPSK is not only an instrument for resolving consumer disputes, but also part of the architecture of legal certainty in the country. Indeed, in the Indonesian context, it is a constitutional right.

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<sup>32</sup> Surathin, Consumer Protection Agency of Malang, *Interview*, September 29, 2023.

This is because Article 28 D of the 1945 Constitution stipulates that every person has the right to recognition, to guarantee, to protection, and to legal certainty, as well as to equal treatment before the law.<sup>33</sup> However, the mandate of legal certainty is internally contradictory to the design of consumer dispute resolution as regulated in the UUPK.

Article 49, paragraph (1) of the UUPK requires the establishment of a BPSK Settlement Agency in each level II region as a forum for resolving disputes quickly, easily, and at an affordable cost. However, the implementation of separate mediation, arbitration, and conciliation mechanisms does not necessarily result in a definitive settlement or final decision, which could leave one of the parties dissatisfied and lead them to consider the dispute unresolved, as stipulated in Article 45, paragraph (4), of the UUPK. This condition undermines the principle of legal certainty because the applicable laws and regulations prioritize certainty, while voluntary alternative dispute resolution procedures create the possibility of uncertain outcomes.

According to classical legal theory, legal certainty is crucial, as Gustav Radbruch emphasized, making it one of the main pillars of law alongside justice and utility. Radbruch emphasized that the law must consist of clear rules that allow society to make predictions; without legal certainty, the law loses its function as a guideline that can be understood and anticipated by every individual.<sup>34</sup>

On the other hand, Lon L. Fuller expanded on this idea by proposing eight ways in which laws must be regulated to be reliable: for example, laws must be available in written form, cannot be applied retroactively, must not contradict each other, must be applied consistently, and must be easily understood by the

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<sup>33</sup> Nur Rochaeti and Nurul Muthia, "Socio-Legal Study of Community Participation in Restorative Justice of Children in Conflict with the Law in Indonesia," *International Journal of Criminology and Sociology* 10 (2020): 293-98; Nabelia Ramadhani, Anita Afriana, and Deviana Yuanitasari, "Online Dispute Resolution as A Mechanism for Resolving Consumer Disputes in The Marketplace in Seeking Justice," *Eduvest - Journal of Universal Studies* 5, no. 5 (May 2025): 4984-99, <https://doi.org/10.59188/eduvest.v5i5.51166>.

<sup>34</sup> Itok Dwi Kurniawan and Souad Ezzerouali, "Revisiting the Principle of Legal Certainty: A Contemporary Analysis through the Lens of Legal Positivism," *Nusantara: Journal of Law Studies* 3, no. 2 (2024): 137-46, <https://doi.org/10.5281/zenodo.17385496>.

public. If these rules are not met, the dispute resolution process may lead to inconsistencies, varied interpretations, and uncertain outcomes.<sup>35</sup>

Based on the above, legal certainty is an important foundation for public trust in the law as a tool for protecting their rights. In the context of BPSK, the contradiction between legal certainty and the possibility of failure to resolve consumer disputes through the current mechanism indicates that formal legal processes cannot always guarantee legal certainty in resolving consumer disputes. This indicates that BPSK cannot yet guarantee legal certainty in resolving e-commerce consumer disputes.

Based on this, Hybrid ODR is expected to overcome the shortcomings of the dispute resolution currently implemented in BPSK. However, Hybrid ODR must also be in line with the principle of legal certainty. If it only speeds up the process without resolving the dispute, then this “digital solution” could increase legal uncertainty. For Hybrid ODR to comply with Indonesian law, a clear legal basis must be provided in the UUPK. Only then can Hybrid ODR become more than just a technological innovation, but rather an instrument that supports legal certainty for the resolution of e-commerce consumer disputes. Because legal certainty is the spirit of written law.<sup>36</sup>

### **The Inclusive Hybrid Online Dispute Resolution Ecosystem (IHODE) Model: Reconstructing E-Commerce Consumer Dispute Resolution Based on Inclusive Law**

Inclusive legal thinking, while not yet considered a legal theory, is a comprehensive, critical, innovative, and objective approach to law.<sup>37</sup> In terms of education, inclusivity refers to an “open” alternative education model that allows all children with special needs to access education.<sup>38</sup>

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<sup>35</sup> Lon L. Fuller, *The Morality of Law.*, Revised Ed (London: Yale University Press, 1966), <https://doi.org/10.2307/2217903>.

<sup>36</sup> Humberto Ávila, *Certainty in Law*, ed. Frederick Schauer and Torben Spaak Laporta, Francisco J. (Switzerland: Springer International Publishing, 2016).

<sup>37</sup> Mardona Siregar dan Mustafid, “Analisis Implementasi Teori Hukum Inklusif Dalam Pembentukan Undang-Undang Yang Pancasila Di Indonesia,” *Indonesian Journal of Humanities and Social Sciences* 5, no. 3 (2024): 1299–314, <https://doi.org/https://doi.org/10.33367/ijhass.v5i3.5951>.

<sup>38</sup> Mireille Krischler, Justin J. W. Powell, and Ineke M. Pit-Ten Cate, “What Is Meant by Inclusion? On the Effects of Different Definitions on Attitudes toward Inclusive Education,” *European Journal of Special Needs Education* 34, no. 5 (2019): 632–48, <https://doi.org/10.1080/08856257.2019.1580837>.

According to Tamsis, inclusive legal thinking is a way to integrate various traditions, institutions, cultures, and religious beliefs, and it serves as a guideline for humans in social and state life to achieve social order and peace. This method also helps maintain the honor and dignity of individuals, families, ethnic groups, and religions, and supports legal authorities so that justice can be applied.<sup>39</sup>

Indonesian inclusive legal thinking, as a concept, is not yet on par with leading legal theories such as legal positivism. However, because it is a critique of legal positivism, it has its own advantages that can be claimed, even though these are debatable. These advantages are its orientation towards justice, which favors all parties (including vulnerable groups), and its ability to connect applicable legal rules with society's values, including those that are constantly evolving on e-commerce platforms.

Inclusive Legal Thought aims to return the law to the original idealism of justice. This thinking is based on four postulates, namely:<sup>40</sup> (a) non-autonomous law, meaning that a country cannot stand alone because it is constantly influenced by the values that exist in society, such as social norms, culture, religious beliefs, and international law, (b) With a long tradition of freedom, according to this postulate, law is considered the result of culture and social dynamics that grow through social interaction, and not merely commands that come from the state. (c) The religious character of law: for inclusive law, religious and moral norms that apply in society must be considered sources of value for law's formation, not only secular positivism. (d) Affirmative action, this postulate requires inclusive law to prioritize the defense of marginalized or vulnerable groups in unequal legal relationships.<sup>41</sup>

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<sup>39</sup> Asriadi Zainuddin, "Eksistensi Teori Hukum Inklusif Dalam Sistem Hukum Nasional," *Jurnal Al-Himayah* 2, no. 1 (2018): 17-30; Shatha Ismaeel, Khalid Alammari, and Zinah Ghanim Younus, "Evidentiary Challenges in AI-Mediated E-Commerce Disputes: Comparative Perspectives from the EU, US, GCC, and Islamic Law," *Justicia Islamica* 23, no. 1 (January 2026): 85-118, <https://doi.org/10.21154/justicia.v23i1.11809>.

<sup>40</sup> Muhammad Darwis, "Review Of Indonesian Constitutional Court Decision Number 21-22/PUU-V/2007 Based on The Inclusive Legal Theory," *Prophetic Law Review* 1, no. 1 (2019), <https://doi.org/10.20885/plr.vol1.iss1.art2>.

<sup>41</sup> Absori et al., "The Integration of Positive and Islamic Law in Contemporary Forest Conservation Policies Based on Sustainable Development: A Comparative Study of Indonesia and Malaysia," *MILRev: Metro Islamic Law Review* 5, no. 1 (April 2026): 458-91, <https://doi.org/10.32332/milrev.v5i1.13038>.

Inclusive legal thinking aims to harmonize legislation with the social, cultural, and moral values that shape society, making the law more relevant to its needs and social realities. Therefore, the need for Hybrid ODR in consumer dispute resolution, as a current consumer reality, is relevant to inclusive legal thinking. This can be seen from the postulates that form the foundation of inclusive legal thinking, namely as follows:

First, the postulate of Nonlinear Approach Through Creative and Innovative Freedom of Thought in Law, this assumption in inclusive legal thinking is a tradition of creative freedom of thought, particularly in legal creativity and innovation.<sup>42</sup> Hybrid ODR is an empirical reflection of legal creativity and innovation that does not stand alone because law is not for itself, but for humans.<sup>43</sup> Creative legal thinking in this digital age has become a necessity, requiring not only the use of empirical sciences of law and their application in socio-legal contexts,<sup>44</sup> but also the application of exact sciences to law, such as information technology.

Hybrid ODR is an evolution of ODR, which is ADR in electronic form that offers efficiency and accessibility. ADR in Indonesia is known as Alternative Dispute Resolution (APS). APS, according to Article 1, point 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (APS), is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely, settlement outside of court through consultation, negotiation, mediation, conciliation, or expert assessment. If ADR is implemented using electronic devices connected to the internet, it is referred to as ODR. However, despite offering efficiency and accessibility, Hybrid ODR still carries the risk of causing new forms of exclusion for vulnerable consumers if it is not accompanied by guarantees of digital

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<sup>42</sup> Jawahir Thontowi, *Hukum Inklusif Perspektif Indonesia* (Yogyakarta: Total Media, 2019), 111; Meera Joshi and Arpine Sargsyan, "Reimagining Legal Subjectivity: The Politics of Disability Rights and Inclusive Law," *Interdisciplinary Studies in Society, Law, and Politics* 4, no. 2 (April 2025): 234-47, <https://doi.org/10.61838/kman.isslp.4.2.21>.

<sup>43</sup> Satjipto Rahardjo, *Hukum Progresif Sebuah: Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009); Lukman Santoso, "Towards Religiosity-Based Legal Science: Critical-Constructive Prophetic Law on Positivism Paradigm," *Prophetic Law Review* 2, no. 2 (December 2020): 2, <https://doi.org/10.20885/PLR.vol2.iss2.art6>.

<sup>44</sup> Shidarta, *Ilmu-Ilmu Empiris Tentang Hukum: Penerapannya Pada Kajian Sosio-Legal* (Jakarta: Kencana, 2024).

literacy, clear procedures, and institutional supervision, thereby contradicting the very principles of inclusivity and fairness.

Based on the above description, the relevance of the first postulate of inclusive legal thinking to the needs of Hybrid ODR in resolving small-value e-commerce consumer disputes is that law does not exist in a vacuum, but is integrated with social and technological realities, *ubi soceitas ibi ius*,<sup>45</sup> where there is society, there is law. The BPSK does not fully facilitate E-commerce consumer disputes arising from digital transactions between consumers and businesses at present. Therefore, Hybrid ODR is a necessity because, in reality, it is an appropriate dispute-resolution mechanism for the nature of e-commerce consumer disputes.

The BPSK's failure to resolve small-scale consumer disputes in e-commerce, as this postulate views it, is a paradigmatic failure rather than just an institutional one. The BPSK currently operates within an autonomous, territorial legal framework, whereas e-commerce disputes arise from a digital reality that is cross-spatial and low-value. This is where inclusive legal thinking finds its momentum.

The *second* postulate of inclusive legal thinking is a long tradition of freedom. This postulate emphasizes society's freedom to seek justice through mechanisms that are adaptive to current needs and conditions in the business world. In response to this condition, the current BPSK actually replicates the relative power of the judiciary based on administrative jurisdiction. In fact, the judicial world is now technology-based with the existence of e-court applications.<sup>46</sup> As a result, e-commerce consumers lose access to fast, inexpensive, and flexible justice, especially in minor claims disputes.

Based on the above, law is essentially rooted in human freedom because it protects it, including the freedom to seek justice by the most rational means. In the context of small-value e-commerce disputes, the BPSK is currently unable to realize this. Hybrid ODR exists to revive this freedom through a more flexible, faster, and more easily accessible mechanism. Justice will lose its significance if it is not easily accessible and proportional.

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<sup>45</sup> H. B. Syafuri and Muhamad Wahyudin, "The Purpose of Law in the Study of Legal Philosophy," *Formosa Journal of Sustainable Research* 1, no. 6 (2022): 941-54.

<sup>46</sup> Supreme Court, *Buku Panduan E-Court* (Jakarta: Mahkamah Agung, 2019).

The *third* postulate of inclusive legal thinking is the character of religious law. There is no explicit argument in authoritative sources of Islamic law, such as the Qur'an, Hadith, and Ijma',<sup>47</sup> regarding the need to use Hybrid Dispute Resolution (HODR). However, this can be seen from *Maqāṣid al-sharī'a* (the objectives of Sharia). Al-Juwainī sometimes refers to *maqāṣid al-sharī'a Maslahah 'Ammah* (public interest). Meanwhile, al-Ghazālī views *maqāṣid al-sharī'a* as *al-māsalih al-mursalah* (unrestricted public interests), with three levels: primary/necessities (*darūriyyah*), secondary/needs (*hajjiyyah*), and tertiary/luxuries (*tahsiniyyah*).<sup>48</sup> At the primary/necessities (*darūriyyah*) level, there are five main elements, namely: protection of religion (*hifz al-din*), protection of life (*hifz al-nafs*), protection of property (*hifz al-mal*), protection of reason (*hifz-aql*), and protection of offspring (*hifz al-nasl*).<sup>49</sup>

Philosophically, the application of hybrid ODR in BPSK actualizes the *maqāṣid al-sharī'a* in responding to the transformation of digital *muamalah*. The protection of *hifz al-dīn* is reflected in affirming the values of honesty, justice, and trust through ethical, accountable dispute-resolution procedures. A hybrid ODR mechanism that is quick, inexpensive, and efficient in defending consumers' economic rights against losses from electronic transactions is used to achieve *hifz al-māl*. Easy and humane access to dispute resolution, as *hifz al-nafs* suggests, provides a sense of security for the parties involved and lessens psychological burdens. *Hifz al-'aql* is realized through a rational, transparent, and inclusive process. Meanwhile, *hifz al-nasl* is reflected in protecting the economic sustainability of consumer families through fair and sustainable dispute resolution. Thus, hybrid ODR at BPSK is not merely a

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<sup>47</sup> Amir Syarifudin, *Pengertian Dan Sumber Hukum Islam* (Jakarta: Bumi Aksara, 2008), 16; Norashikin Ahmad, Mohd Shukri Hanapi, and Yusma Fariza Yasin, "Maqasid Shariah and Islamic Fintech Research: Trends, Topics and Collaborations," *Jurnal Ilmiah Peuradeun* 13, no. 3 (September 2025): 2271–310, <https://doi.org/10.26811/peuradeun.v13i3.1829>.

<sup>48</sup> Muhammad Syukri Albani Nasution and Rahmat Hidayat Nasution, *Filsafat Hukum Islam & Maqashid Syariah* (Jakarta: Kencana, 2020); Necmeddin Güney, "Maqāṣid Al-Sharī'a in Islamic Finance: A Critical Analysis of Modern Discourses," *Religions* 15, no. 1 (January 2024): 114, <https://doi.org/10.3390/rel15010114>.

<sup>49</sup> Jasser Audah, *Maqashid Al-Shariah A Beginners Guide* (London Washington: the INTERNATIONAL INSTITUTE of ISLAMIC THOUGHT, 2014); Teguh Anshori, "Menuju fiqh progresif (Fiqh Modern Berdasarkan Maqashid Al Syariah Perspektif Jaser Auda)," *Al-Syakhsyiyah: Journal of Law and Family Studies* 2, no. 1 (June 2020): 168–81, <https://doi.org/10.21154/syakhsyiyah.v2i1.2166>.

technical instrument, but a manifestation of substantive justice and the benefits of *maqāṣid al-sharīa* in the digital economic ecosystem.

In light of the above description, it is difficult to argue that *maqāṣid al-sharīa* effectively guarantee the protection and promotion of consumer rights. Therefore, in the context of e-commerce consumer disputes, *maqāṣid al-sharīa* is realized using Hybrid ODR, which enables fast, low-cost, and inclusive dispute resolution. Thus, the need for Hybrid ODR in resolving e-commerce consumer disputes at the BPSK is legitimized by public-interest values, the main objectives of Islamic law, or *maqāṣid al-sharīa*.

If *maqāṣid al-sharīa* is used to examine the BPSK's failure to resolve e-commerce consumer disputes, this reflects a failure to fulfill the principles of *maqāṣid al-sharīa*, thereby reducing the ethical value of sharia regarding honesty in digital transaction responsibilities. In terms of *hifz al-mal*, the current dispute-resolution mechanism at BPSK is slow and poorly suited to e-commerce, and has failed to protect consumers' economic rights. As for *hifz an-nafs*, the psychological pressure caused by the uncertainty of dispute resolution undermines consumers' sense of security. Due to limited digital access and the lack of a rational dispute resolution mechanism, the aspect of *hifz al-aql* has been disrupted. This is undoubtedly related to the economic resilience of families, which is automatically incompatible with *hifz al-nasl*. Overall, the BPSK's failure to resolve e-commerce consumer disputes confirms the existence of systemic *mafsadah* (harm or legal detriment), which demands reform of the BPSK's e-commerce consumer dispute resolution system, namely by adopting a Hybrid ODR that is more in line with *maqāṣid al-sharīa*.

The *fourth* postulate of inclusive legal thinking is the Affirmative Action Approach. This postulate is used to break through the rigidity of legal unification.<sup>50</sup> Affirmative action is a principle in this inclusive legal theory, departing from the principle of equality before the law and recognizing the failure of legal unification to provide fair and equitable public services (BPSK services). The postulate of affirmative action law should be accepted as a solution.

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<sup>50</sup> Mirjam Künkler and Yüksel Sezgin, "The Unification of Law and the Postcolonial State: The Limits of State Monism in India and Indonesia," *American Behavioral Scientist* 60, no. 8 (2016): 987–1012, <https://doi.org/10.1177/0002764216643808>.

This postulate is intended to protect vulnerable and marginalized individuals. In Islamic law, protecting the weak and ensuring that their fundamental rights are fulfilled, such as prohibiting exploitation, is an obligation that must be carried out. Islam is the central beacon in defending the weak and oppressed, or what is known as the *mustadh'afin* (the oppressed and marginalized). Many verses of the Quran speak of the weak as well as speaking of *'ibādah maḥḍah* (pure acts of worship), such as prayer, zakat, and fasting. This shows that in Islam, caring for the weak is as important as performing *'ibādah maḥḍah* (pure acts of worship).<sup>51</sup> In Islam, there is the principle of *lā ḍarar wa lā ḍirār* (there should be neither harm nor reciprocating harm),<sup>52</sup> which means that one must not cause harm or harm others. This principle is the foundation that prohibits all forms of harm, fraud, exploitation, and injustice in transactions, as well as protects the weak from excessive burdens.

Consumers are vulnerable parties in business activities. In 2021, the Australian Competition & Consumer Commission (ACCC) released *Consumer Vulnerability: A Business Guide to the Australian Consumer Law*.<sup>53</sup> According to this guide, all consumers may be vulnerable at some point. However, socio-demographic and personal circumstances can increase vulnerability in some situations.

This is in line with the view of the International Organization for Standardization (ISO), which states that vulnerability can be a temporary condition. A consumer may be vulnerable when dealing with an organization due to personal, situational, or even external conditions. These conditions can include organizational behavior, the market environment, or crises such as the COVID-19 pandemic or extreme weather conditions.

Several studies focus on the direct relationships among demographic indicators, such as age, income, race, literacy level, and consumer

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<sup>51</sup> Iffatus Sholehah, "Keberpihakan Al-Qur'an Terhadap Mustadh'afin," *Liivng Islam: Journal of Islamic Discourses* 1, no. 1 (2018): 51–67; Umi Khusnul Khotimah, "Online buying and selling from the perspective of maqasid shariah," *Journal of sharia economics* 5, no. 2 (December 2023): 218–36, <https://doi.org/10.35896/jse.v5i2.595>.

<sup>52</sup> Saheed Abdullahi Busari et al., "Strategic roles of maqasid shariah in digital adoption by B40 muslim entrepreneurs: A qualitative inquiry," *Malaysian Journal of Syariah and Law* 14, no. 1 (April 2026): 170–90, -, <https://doi.org/10.33102/mjsl.vol14no1.1091>.

<sup>53</sup> Australian Competition & Consumer Commission (ACCC), *Consumer Vulnerability A Business Guide to the Australian Consumer Law*, no. November (2021).

vulnerability.<sup>54</sup> Some consumers are considered more vulnerable to exploitation during purchasing activities because their characteristics make them less able to afford packages of goods and services.<sup>55</sup>

The above vulnerabilities can reduce consumers' ability to engage with businesses, access products and services, make informed decisions, consider options, and evaluate the information they receive. Vulnerable consumers may be disproportionately affected by unfair business practices, including illegal business practices. This is especially true in markets for essential goods or services. They may not be in a position to bear the losses resulting from poor business behavior.

If a consumer appears to have a lower capacity to make decisions based on sufficient information about a purchase or contract, then consumers should be more cautious in interacting with them to ensure that businesses do not take unfair advantage of the consumer's vulnerability. If businesses treat consumers, especially vulnerable consumers, poorly, they are more likely to violate certain provisions of the UUPK.

The above certainly has an impact on preventive consumer protection, namely the avoidance of consumer disputes. When this fails, repressive consumer protection must be enforced through the provision of consumer-oriented dispute-resolution mechanisms as an affirmative measure to protect consumers themselves as vulnerable parties.

The above description clearly and thoroughly shows that consumers are vulnerable parties; therefore, affirmative action is relevant as a means of providing protection. One of these affirmative actions can be pursued by providing a hybrid ODR that enables the outermost, isolated, and remote consumers to file complaints with the BPSK when business actors exploit their vulnerability to take unfair advantage.

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<sup>54</sup> Paulo Duarte et al., "Consumer Vulnerability and Well-Being across Contexts: Implications for International Businesses," *Heliyon* 9, no. 3 (2023): e14612, <https://doi.org/10.1016/j.heliyon.2023.e14612>; Elman Azizov et al., "A Maqasid Al-Shariah Framework for Fintech and Digital Asset Regulation in Muslim Jurisdictions," *Journal of Islamic Law and Legal Studies* 2, no. 2 (December 2025): 96–113, <https://doi.org/10.70063/jills.v2i2.119>.

<sup>55</sup> N. Craig Smith and Elizabeth Cooper-Martin, "Ethics and Target Marketing: The Role of Product Harm and Consumer Vulnerability," *Journal of Marketing* 61, no. 3 (1997): 1–20, <https://doi.org/10.1177/002224299706100301>; Meera Joshi and Arpine Sargsyan, "Reimagining Legal Subjectivity: The Politics of Disability Rights and Inclusive Law," *Interdisciplinary Studies in Society, Law, and Politics* 4, no. 2 (April 2025): 234–47, <https://doi.org/10.61838/kman.isslp.4.2.21>.

With Hybrid ODR, complaints can be resolved online and guaranteed to be resolved because there is no longer any opportunity for the parties to declare the failure of the resolution process, as mediation and arbitration have been integrated into a single (hybrid) resolution mechanism. This certainly makes it easier for consumers to access justice quickly, easily, cheaply, and efficiently when business actors violate consumer rights. Therefore, the postulate of affirmative action demands partiality towards the weaker party, in this case, the consumer. The failure of BPSK to resolve e-commerce consumer disputes stems from treating consumers and business actors structurally as equals, resulting in the maxim *summa iustitia, summa injuria* (the highest justice is injustice itself). This is because true justice is born from the courage to side with the weak. Hybrid ODR provides space for substantive justice through simple procedures oriented towards absolute protection for small consumers.

The BPSK's failure to resolve consumer disputes is no longer merely a technical issue or an administrative shortcoming. It indicates a fundamental crisis within the legal paradigm itself. The positive law that underpins the BPSK still adheres to a territorial, formal, and procedural way of thinking. In contrast, e-commerce disputes arise from the digital world, which transcends borders, involves small-scale transactions, and is highly intense. This mismatch creates a systemic gap in access to justice, particularly for small consumers who are structurally vulnerable.

From an inclusive law perspective, this situation indicates that Indonesian law remains trapped in legalistic positivism, isolated from social dynamics and technological advancements. The BPSK is not only institutionally stagnant but also replicates the logic of traditional adjudication into a digital space that is ontologically distinct. Consequently, the law, which should serve as an instrument of justice, has instead transformed into an obstacle to the realization of justice itself. Therefore, the implementation of Hybrid ODR can no longer be viewed merely as a policy option but has become an epistemological and normative imperative to respond to changing dispute patterns in the digital era.

However, the development of hybrid ODR is insufficient if it is viewed merely as the digitization of dispute-resolution procedures. A more fundamental reconstruction is required: the creation of a dispute resolution

ecosystem grounded in the principles of inclusive law and the values of *maqāṣid al-sharīa*. In this context, an innovative model, the Inclusive Hybrid ODR Ecosystem (IHODE), can be proposed.

The IHODE model prioritizes access to justice through a multi-channel approach that combines online and offline mechanisms, as well as support for vulnerable groups. In this way, digitalization does not create new forms of exclusion but rather expands the reach of justice to previously marginalized segments of society. Furthermore, IHODE integrates all stages of dispute resolution from mediation to arbitration into a single, fully automated system, thereby eliminating the potential deadlocks that have historically been the primary cause of BPSK’s failures.

As a manifestation of the principle of affirmative action within inclusive legal thought, this model also adopts special procedures that favor consumers as vulnerable parties, such as simplifying claim mechanisms, limiting the burden of proof, and setting strict deadlines for resolution. Thus, justice is no longer understood formally as procedural equality, but rather as substantive support for the weaker party.<sup>56</sup>

Normatively, IHODE operates within the framework of *maqāṣid al-sharīa*. Every dispute resolution process is evaluated not only in terms of efficiency but also in terms of its ability to protect property (*hifz al-māl*), ensure safety (*hifz al-nafs*), uphold rationality and transparency (*hifz al-‘aql*), and support the economic sustainability of the family (*hifz al-nasl*). Therefore, hybrid ODR is no longer merely a technical tool but a mechanism of justice rich in ethical and philosophical dimensions.

**Table 1.** Inclusive Hybrid Online Dispute Resolution Models

	<b>Current Challenges Facing the BPSK</b>	<b>Inclusive Hybrid Online Dispute Resolution Ecosystem</b>
<b>Legal Paradigm</b>	Positivist, procedural, and territorial	Inclusive law that adapts to technological developments, social values, and moral principles
<b>Resolution Mechanisms</b>	Separate mediation and arbitration, with the potential for deadlock	Hybrid ODR integrates mediation and arbitration into a single, unified digital system

<sup>56</sup> Abdi Wijaya et al., “The Implementation of E-Commerce Consumer Option Rights (Khiyar) in Realizing Transaction Justice: A Study of Maqasid Al-Shariah,” *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (May 2023): 69–82, <https://doi.org/10.24090/mnh.v17i1.7673>.

<b>Access to Justice</b>	Limited by location, time, and cost	Multi-channel (online–offline), fast, affordable, easily accessible, and inclusive
<b>Consumer Protection</b>	Formal equal treatment between businesses and consumers	Affirmative action through simple procedures, swift resolution, and prioritization of vulnerable consumers
<b>Ethical Foundation</b>	Does not yet accommodate social and religious values	Based on inclusive law and <i>maqāṣid al-sharīa</i> ( <i>ḥifẓ al-māl</i> , <i>ḥifẓ al-nafs</i> , <i>ḥifẓ al-‘aql</i> , <i>ḥifẓ al-nasl</i> , and <i>ḥifẓ al-dīn</i> )
<b>Expected Outcomes</b>	The effectiveness of dispute resolution remains low	Faster, more certain, fair, efficient, and substantively just resolution of e-commerce disputes

Source: Authors, 2026.

Based on Table 1, the Inclusive Hybrid Online Dispute Resolution Ecosystem (IHODE) does not merely represent the digitization of dispute-resolution mechanisms. Still, it constitutes an epistemological reconstruction of consumer dispute-resolution law in Indonesia. This model positions the law as an open, dynamic system that is responsive to technological developments, social realities, and the moral values prevalent in society. Thus, consumer dispute resolution in the digital age is no longer oriented solely toward procedural compliance but is directed toward realizing justice that is accessible, adaptive, affirmative, and ethically grounded.

As a new conceptual framework, IHODE integrates the principles of inclusive legal thought, Hybrid Online Dispute Resolution, consumer protection based on affirmative action, and the values of *maqāṣid al-sharīa* into a single, integrated digital justice ecosystem. Unlike the Consumer Disputes Resolution Agency (BPSK) mechanism, which remains territorial and fragmented, IHODE offers a dispute-resolution model that optimally leverages technology, is consumer-oriented, and ensures access to substantive justice for small-value e-commerce consumer disputes. Therefore, this model has the potential to serve as a conceptual foundation for reforming consumer dispute resolution laws in Indonesia while also enriching the development of a fair theory of digital dispute resolution designed to protect vulnerable groups.

## **Conclusion**

The need for Hybrid ODR in consumer dispute resolution can, in principle, achieve justice, accessibility, and equitable efficiency. Sociologically, because BPSK has been streamlined, it is difficult for consumers to access, and there is also a need for online dispute resolution to keep pace with e-commerce development. Legally, consumer dispute resolution mechanisms do not provide legal certainty that consumer disputes will be resolved because each mechanism can fail, and the parties are allowed to declare such failure.

Conceptually, this paper contributes to the formulation of Hybrid Online Dispute Resolution (Hybrid ODR) as a model for resolving small-scale e-commerce consumer disputes, grounded in inclusive legal thinking in accordance with *maqāṣid al-sharīa*. The novelty of this paper lies in positioning Hybrid ODR not merely as a technology-based procedural innovation, but as a solution framework for addressing the failure of the current BPSK dispute-resolution mechanism, which does not guarantee legal certainty or access to justice.

In terms of policy, Hybrid ODR is recommended as a hybrid-institutional design: an online mechanism that remains under the authority of the BPSK but is flexible, proportional, and responsive to the nature of small-value e-commerce disputes. This policy is legitimized by inclusive legal thinking through a non-linear approach, affirmative policies for consumers as a vulnerable group, and religious legal characteristics. From a contemporary Islamic legal perspective, Hybrid ODR represents the concrete application of *maqāṣid al-sharia*, particularly *hifz al-mal*, thereby enriching the discourse on fair and inclusive digital dispute resolution.

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The authors declare that there are no competing financial, professional, or personal interests that could have influenced the research reported in this article. All five authors made substantial contributions to the study in accordance with internationally recognized authorship criteria. Musataklima led the conceptualization of the research, coordinated the study, and prepared the original manuscript draft. Khairul Umam contributed to the theoretical framework, research design, and critical revision of the manuscript. Mahbub Ainur Rofiq participated in data collection, analysis, and interpretation of the findings. Abdul Kadir contributed to the legal analysis, validation of the research results, and manuscript review. Dwi Fidhayanti was responsible for methodological refinement, supervision of the research process, and final editing of the manuscript. All authors reviewed and approved the final version of the manuscript and accept full responsibility for its accuracy, integrity, and scholarly quality.

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