Lex Scientia Law Review
Vol. 8 Issue 1 (2024) 29–64
DOI: https://doi.org/10.15294/lslr.v8i1.14058
Online since: September 22, 2024

LEX SCIENTIA LAW REVIEW
https://journal.unnes.ac.id/journals/lslr/index

Choice of Islamic Law in Settlement of International Economic Disputes

Helza Nova Lita [a]✉, Norazlina Abdul Azis [b], Adnan Mahmutovic [c], Nun Harrieti [a], Romidon Hidayat [d]

[a] Faculty of Law, Universitas Padjadjaran, Indonesia,
[b] Faculty of Law, Universiti Teknologi MARA, Selangor, Malaysia
[c] Faculty of Law, Al-Yamamah University, Riyadh, Saudi Arabia
[d] Faculty of Economic, Bina Dharma University, Palembang, Indonesia

✉ Corresponding email: helza.nova@unpad.ac.id

Abstract

The freedom to choose forum institutions and legal options in resolving business disputes is a "freedom to contract" exercised by national and international business actors, likewise in settling Islamic economic business disputes. This freedom of contract is recognized both in the principles of international trade law and Islamic law. The present development of sharia business transactions at the national and international levels does not rule out the possibility of disputes in its implementation. The consistency of implementing Islamic economics also concerns the choice of Islamic law, which is used as a choice of law for international business actors in case of a dispute between them. Studying how specific Islamic law can be applied to each country's national law is interesting. This article will discuss how Islamic law can be chosen to settle international business disputes using a normative juridical approach. Choice of law is the law the parties choose to resolve disputes between them, which can be expressed in their business contracts. The choice of law chosen by these parties in the settlement of international business disputes will also be closely related to the principles of Private International Law in harmonizing with the provisions of the National Law of each country. There

© 2024 Authors. This work is licensed under a Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0). All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

needs to be mutual agreement from both countries, as well as international forums or institutions, especially international trade institutions, to support the recognition of the application of Islamic legal principles in resolving international business disputes through international agreements both bilaterally and multilaterally.

KEYWORDS: *Choice of Law, Economic Disputes, Islamic legal principles*

Introduction

Islamic economics and finance have experienced rapid development in the last two decades, both globally and nationally. The State of the Global Islamic Economy Report 2018/2019 reported that the total amount of Islamic food and halal lifestyle expenditures globally reached USD 2.1 trillion in 2017 and is expected to grow to USD 3 trillion by 2023. The increasing number of Muslim populations worldwide is expected to affect this development. In 2017, the world's Muslim population reached 1.84 billion people, which is expected to increase, reaching 27.5% of the world population by 2030. The increase in population will undoubtedly increase the demand for halal products and services significantly.[1]

The rise in sharia economic transaction activities, both nationally and internationally, does not exclude the possibility of disputes in its implementation. International Sharia economic dispute resolution provisions have several characteristics that differ from national provisions. Similar to the steps that can be taken in resolving conventional international business disputes, they can also be taken in resolving Sharia-based international economic disputes. Just as in a contract, the parties can determine the choice of law in resolving their dispute, so too can Islamic law be the legal choice for the parties in resolving Sharia-based business disputes. Also, the court needs more authority to adjudicate a Sharia economic dispute delegated to an arbitration organization by a mutually agreed upon agreement, as it is the prerogative of the involved parties to settle disputes in this manner. It is interesting to study the choice of Islamic law because, in practice, not all state regulations apply the

[1] KNEKS, *Indonesia Islamic Economic Masterplan 2019-2024, Indonesian Ministry of National Development Planning the Indonesia Masterplan of Sharia Economy 2019-2024* (Jakarta: PT Zahir Syariah Indonesia, 2018), https://kneks.go.id/storage/upload/1560308022-Indonesia Islamic Economic Masterplan 2019-2024.pdf.

principles of Islamic law, including in the field of trade. This article will discuss the extent to which Islamic law can be used in resolving international business disputes and how legal problems can arise in its implementation.

Sharia-based international business dispute resolution can be done through both litigation and non-litigation. In Indonesia, the resolution of sharia economic disputes, which are resolved through litigation, is based on Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts and Constitutional Court Decision Number 93/PUU-X/2012. Settlement of Sharia economic disputes through non-litigation is based on a written agreement between the parties.

In Islamic law, a written agreement between the parties implements the *al-hurriyah* (freedom) principle, a basic principle in Islamic contract law, where the parties are free to make an agreement or contract (freedom of making contracts). Likewise, the use of arbitration in dispute resolution can be made either with a *pactum de compromittendo* agreement (which is a clause in the arbitration agreement that contains the authority of the arbitration institution to resolve the dispute before the dispute occurs), or an Acta compromise (an agreement made after the dispute arises).[2]

In international trade contracts, the parties can make legal choices that will be used if a dispute occurs in implementing the contract. The choice of law is part of implementing the principle of freedom of contract in contract law. Likewise, in current Sharia economic business practices, to be consistent in implementing Sharia principles, the parties also choose Islamic law, which is used if there is a dispute in implementing their business contract.

In practice, the legal options the parties choose in resolving business disputes, including the choice of Islamic law, only work somewhat efficiently. This condition is partly due to the existence of limits on the sovereignty of a country that prioritizes the supremacy of the national law of their respective countries, including the existence of limits on public order in each country to limit the application of legal choices or foreign laws in their country. Previous studies, such as that conducted by Nita Triana, discovered that when Islamic economics is practiced across national borders, there will be issues when trials occur due to variances in the character and system of justice in each country.[3] Kareem dan Abubakri found that the legitimacy of using Islamic law as the law

---

[2] Amran Suadi, "Resolusi Penguatan Ekosistem Hukum Ekonomi Dan Keuangan Syariah Di Indonesia Pada Sektor Jasa Keuangan Syariah, IKNB Syariah, Pasar Modal Syariah" (Jakarta, 2021).

[3] Nita Triana, "Urgency of Arbitration Clause in Determining the Resolution of Sharia Economic Disputes," *AHKAM : Jurnal Ilmu Syariah* 18, no. 1 (2018): 65–88, https://doi.org/10.15408/ajis.v18i1.8872.

governing Islamic financial contracts arises frequently in European and American courts and arbitration.[4] Furthermore, according to Illias Banteka's research, British court practices regard Islamic and secular law as generally consistent and complementary (with few exceptions) in understanding transnational Islamic finance.[5]

One such case, Shamil Bank of Bahrain v Beximco Pharmaceuticals, illustrates this point well. The case was significant because, for the first time, the questions of the validity, interpretation, and scope of the English law vis-à-vis Islamic principles were considered by a secular court. In that case, Shamil Bank of Bahrain (Shamil Bank) claimed that certain monies were outstanding from Beximco Pharmaceuticals (Beximco) under a *Murabahah* agreement. The governing clause in the *Murabahah* agreement stated that "subject to the principles of the glorious Shariah," the agreement would be governed by and construed by the laws of England. Beximco argued that the agreement was contrary to Shariah law and, therefore, not enforceable. In the first instance, the judge held that English law was the governing law, and there was no scope for the Shariah law to apply as there could not be two separate law systems governing a transaction.

Further, it would only be possible for an English secular court to apply religious principles in determining a dispute. The appeal by Beximco against the decision of the first instance judge was dismissed along the same arguments. The judge in the English Court of Appeal case further argued that the general reference of the Shariah law in the agreement did not identify any specific Shariah principles to be applied and further ruled that the reference to Shariah law is repugnant to English law.[6]

The English Court of Appeal in Beximco v. Shamil Bank chose to apply only English law in a breach of contract case, even though the choice of law clause in the contract at issue also selected Islamic law. The court cited three main reasons for this decision. First, Article 3(1) of the Rome I Convention "contemplates" that a contract can be governed only by the "law of a country,"

---

[4] Kareem Adebayo Olatoye and Abubakri Yekini, "Choice of Islamic Law as the Governing Law in Islamic Finance Contracts: The United Kingdom and Nigerian Perspectives," *IIUM Law Journal* 25, no. 1 (2017): 137–59, https://doi.org/10.31436/iiumlj.v25i1.314.

[5] Ilias Bantekas, "Transnational Islamic Finance Disputes: Towards a Convergence with English Contract Law and International Arbitration," *Journal of International Dispute Settlement* 12, no. 3 (2021): 505–23, https://doi.org/10.1093/jnlids/idab008.

[6] "The Choice of Law and Dispute Settlement Resolution in Islamic Cross Border Finance Transactions," accessed September 6, 2023, https://www.tamimi.com/law-update-articles/the-choice-of-law-and-dispute-settlement-resolution-in-islamic-cross-border-finance-transactions/.

and there is no mention of the application of a "non-national system of law such as Sharia law." Second, Islamic law does not consist of "principles of law" but instead a system of principles that "apply to other aspects of life and behavior." Third, even if Islamic law was interpreted to include principles of law, there is no consensus among the Islamic legal community regarding what they would be when applied to a financial transaction.[7]

Based on the practice of choosing Islamic law in resolving Sharia economic disputes across national borders, it is interesting to study further what legal steps need to be taken by the parties so that the choice of Islamic law in resolving Sharia economic disputes across national borders can apply effectively, and how it should be done. Regulation of international business contract law in the future so that this choice of Islamic law can be recognized as one of the universally recognized legal choices.

The research method used in writing this article is normative legal research. According to Bernard Arief Sidharta, normative legal research is a type of research commonly carried out in the development of legal science, which in the West is usually called legal dogmatics.[8] Legal Research is carried out using a statutory approach. This descriptive-analytical research provides a comprehensive, in-depth picture of a situation or symptom being studied. Thus, this research is expected to provide a detailed, systematic, and comprehensive picture based on facts in the form of primary data obtained from interviews with experts in the field related to the writing of this article.

Library Research at the beginning of writing this article includes secondary data related to the problem being studied, which provides for Primary Legal Materials, such as laws and regulations, both national and international,[9] including international law, such as UNCITRAL model law, as well as secondary legal materials, namely materials that are closely related to primary legal materials[10] To analyze primary legal materials, including books, the results of scientific work and research by scholars, and other literature on the research topic. Tertiary Legal Materials, namely materials that provide information

---

[7] Grace Brody, "Implications of the Selection of Islamic Law in European Private International Law," *Michigan Journal of International Law* 43, no. 3 (2022): 803–191, https://doi.org/10.36642/mjil.43.3.implications.

[8] Bernard Arief Sidharta, *Penelitian Hukum Normatif, Analisis Penelitian Filosofikal Dan Dogmatikal, Metode Penelitian Hukum Konstelasi Dan Refleksi* (Jakarta: Yayasan Pustaka Obor Indonesia, 2011).

[9] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, 1st ed. (Jakarta: Rajawali Pers, 2015).

[10] Soekanto and Mamudji.

about primary legal and secondary materials, including bibliographies, magazines, journals, dictionaries, and encyclopedias.

Field Research activities are also carried out, among other things, by conducting dialogue/interviews with relevant experts. The primary and secondary data analysis used in this research is qualitative juridical data analysis using legal interpretation and construction, which is then expressed descriptively in the form of descriptions.

International Business Contract and Dispute Resolution

The role of contracts is increasingly important, especially in business transactions with foreign parties. The process of making an international contract is more complicated than making a contract between parties within the same country. In cross-border business transactions, the parties involved usually do not meet face to face, and they also have different social values and practices and legal systems. These differences can cause misunderstandings. Therefore, parties carrying out business transactions across national borders must define their mutual understanding in contracts with written and firm terms.

An International Contract is a legally binding agreement between parties originating from different countries.[11] International Contracts are made to make the agreements clear. There are many types of International Contracts: International sales contracts, International distribution contracts, International agency Contracts, International sales representative contracts, International supply contracts, International manufacturing contracts, International services contracts, International strategic alliance contracts, International joint contracts, and International franchises.

[11] Bing Yusuf and Liliana Tedjosaputro, "Dispute Resolution dor International Contract to Achieve Legal Certainty," *International Journal of Business, Economics, and Law* 14, no. 5 (2017): 169–75. *See also* Zalna Tiara, and Kukuh Tejomurti. "Efficiency of implementation of alternative dispute settlement for fintech lending users." *Jurnal Scientia Indonesia* 8, no. 1 (2022): 37-52; Al Hakim, Ikhsan. "Penyelesaian Sengketa Ekonomi Syariah di Pengadilan Agama." *Pandecta Research Law Journal* 9, no. 2 (2014): 273-291; Yuniyanti, Salma Suroyya, and Frency Siska. "Enhancing Legal Certainty for Consumers in Apartment Unit Trade: A Comparative Analysis of Dispute Settlement Agreements in Indonesia and the Netherlands." *Journal of Law and Legal Reform* 5, no. 1 (2024): 333-360.

A. International Business Dispute Resolution

Disputes A contract may be defined as an agreement, enforceable at law, between two or more persons to do or refrain from doing some act or acts; the parties must intend to create legal relations and must have given something or promised to give something of value as consideration in return for any benefit derived from the agreement.[12]

The definition of dispute in the Indonesian dictionary means disagreement or conflict. Conflict means the existence of opposition or conflict between people, groups, or organizations regarding a problem object. In line with that, Winardi stated that conflict that occurs between individuals or groups who have the same relationship or interest in an object of ownership, which gives rise to legal consequences between one another. Meanwhile, according to Ali Achmad, he believes that a dispute is a conflict between two or more parties that originates from different perceptions about an interest or property right, which can give rise to legal consequences for both of them.

To resolve disputes effectively, there needs to be proper conflict management. Conflict management is a process used to resolve conflicts that occur between two or more parties. In Rahim's view, conflict management includes three stages, namely recognition, analysis and resolution.[13]

Carrying out various economic transactions, both national and international, only sometimes takes place as expected. In its implementation, conflicts or disputes may occur. For this reason, efforts to resolve disputes need to be anticipated either through deliberation between the parties or through litigation. Below are the methods for resolving international economic disputes. Referring to the provisions for resolving international disputes based on the provisions of Article 33 paragraph (1) of the UN Charter, among others:

1) Negotiation is a dispute resolution carried out directly by the parties without involving a third party. These negotiations will run well if the parties' positions are balanced and no party is under pressure. The implementation of negotiations depends entirely on the wishes of the parties. Therefore, there is no specific procedure for how a negotiation is to be carried out. This characteristic does not mean that the freedom of the parties is unlimited. The parties are still bound by the fundamental

---

[12] Atharyanshah Puneri, "Comparison of The Law of Contract Between Islamic Law and Indonesian Law," *Journal of Law and Legal Reform* 2, no. 1 (2021): 65–82, https://doi.org/10.15294/jllr.v2i1.39036.

[13] M. Afzalur Rahim, "Referent Role and Styles of Handling Interpersonal Conflict," *The Journal of Social Psychology* 126, no. 1 (1986): 79–86, https://doi.org/10.1080/00224545.1986.9713573.

principles of International Law, in particular prioritizing peace in resolving disputes; each country is also required to respect the principle of sovereign equality of countries and respect the prohibition on intervention in the domestic economic conditions of another country, and the principle of Good Faith, namely the intention to initiating negotiations and implementing the results of negotiations.

2) Investigation: The parties can minimize a dispute by resolving through an investigation the facts that give rise to the dispute. Because the parties are essentially disputing differences regarding facts, to straighten out these differences, the intervention of another party is necessary to investigate the actual position of the facts. Usually, the parties use third parties who are informal. This method is called investigation (inquiry or fact-finding). Various countries have established investigative bodies, both ad hoc and institutional. ICSID has confirmed an additional facility, namely a fact-finding procedure (The ICSID Fact Finding Additional Facilities Rules of 1978). The ICC International Chamber of Commerce has also established an "International Center for Technical Expertise
3) Good Service is a way of resolving a dispute using a third party. This third party attempts to get the disputing parties to resolve their disputes through negotiations. So, the primary function of this exemplary service is to bring together the parties so that they are willing to meet, sit together, and negotiate.
4) Mediation and Conciliation are methods of resolution where the parties consider the active assistance of a third party to be very helpful in resolving disputes peacefully. However, here, the parties can fully supervise the settlement procedure. According to Behrens, the difference between conciliation and mediation is that conciliation is more formal than settlement through mediation.
5) Mediation is a settlement with a third party (mediator). The mediator can be (a head of) state, an international organization (e.g., UN), etc. The mediator actively participates in negotiations. The mediator has the capacity as a neutral party trying to reconcile the parties by providing a means of resolving the dispute.
6) Conciliation is a more formal way of resolving disputes. Conciliation is carried out by a third party, a conciliation commission formed by the parties. Commissions can be institutionalized or ad hoc. This commission functions to determine the settlement terms accepted by the parties. The hearing of a conciliation commission consists of two stages: the written stage and the oral stage. First, the dispute described in writing is submitted to the conciliation body. Then, this body will listen to oral statements by the

parties. Based on the facts obtained, the conciliator will provide a report to the parties and proposals for resolving the dispute. However, the conciliator's proposal is non-binding.

7) Arbitration is the voluntary submission of a dispute to a neutral third party, and the decision issued is final and binding. Arbitration bodies have become increasingly popular and are increasingly used in resolving international disputes. Submission of a dispute to arbitration can be made by making a compromise, namely submitting to arbitration a dispute that has arisen or by creating an arbitration clause in an agreement before the dispute arises (*clause compromissoire*). The arbitrator's selection is entirely up to the parties' agreement. Usually, the arbitrators chosen are experts on the dispute and must be neutral. He does not always have to be a legal expert. He could have mastered other fields. He can be an engineer, company leader (manager), insurance expert, banking expert, etc. After the arbitrator is appointed, the arbitrator determines the terms of reference or 'rules of the game,' which become the benchmark for their work. Usually, this document contains the main issues to be resolved, the arbitrator's authority (jurisdiction), and the rules (procedure). Of course, the contents of the terms of reference must be agreed upon by the parties. Arbitration decisions are binding and final. This means that an appeal by a party is not possible. However, several arbitration rules still allow the cancellation of arbitration awards. A famous example is the Amco Asia Corporation v. Indonesia before the ICSID Arbitration Council. This case relates to the revocation of investment licenses for investors in the Kartika Plaza Hotel. The investor considered the revocation of this license to be invalid and then brought the case to the ICSID arbitration body in Washington. Historically, settlement by arbitration has existed since Ancient Greece. However, its use in the modern sense became known when the Hague Convention for the Pacific Settlement of International Disputes was issued in 1989 and 1907. This convention gave birth to an international arbitration body, the Permanent Court of Arbitrations. Since then, the international community has attempted to establish international arbitration bodies, both regional and global. A well-known body is the International Center for the Settlement of Investment Disputes (ICSID), an arbitration body that handles foreign investment disputes between countries and foreign investors.

8) International Court**:** This method is usually used if other existing resolution methods do not *work*. Courts can be divided into two categories, namely permanent courts and ad hoc courts. According to the observations of several scholars, countries are less interested in submitting international economic disputes to permanent international tribunals. This is because the

jurisdiction of permanent international courts is sometimes limited to countries only, for example, the International Court of Justice. The second form is ad hoc (temporary) courts. This court body has quite an important function in resolving disputes arising from the international economy. Several factors make this judiciary more attractive to countries. First, the judges do not have to be legal experts; they are usually experts on the subject matter or dispute. Second, there is a feeling from most countries that they need more confidence in permanent international judicial bodies, which are considered inappropriate for resolving disputes in the field of international economics.

B. Principles of International Trade Dispute Resolution

In international trade law, the principles regarding the resolution of international trade disputes can be stated below:[14]

1) Principle of Agreement between the Parties (Consensus) The principle of agreement between the parties is fundamental in resolving international trade disputes. This principle is the basis for whether or not a dispute resolution process is implemented. This principle can also be the basis for ending an ongoing dispute resolution process. So, this principle is very essential. Judicial bodies (including arbitration) must respect what the parties agree. Included in the scope of the understanding of this agreement are, first; that one party or both parties do not attempt to deceive, pressure, or mislead the other party, second; that changes to the agreement must come from the agreement of both parties. This means that termination of the agreement or revision of the agreement's contents must also be based on the agreement of both parties.
2) Principle of Freedom to Choose Dispute Resolution Methods: The second important principle is that the parties have complete freedom to determine and choose the method or mechanism by which the dispute is resolved (principle of free choice of means). This principle is contained, among other things, in Article 7 of the UNCITRAL Model Law on International Commercial Arbitration. This article defines an arbitration agreement to submit a dispute to an arbitration body. According to this article, presenting a dispute to arbitration is an agreement or agreement between the parties.

[14] Benny Asrianto and Oksep Adhyanto, "Penyelesaian Sengketa Dagang Dalam Hukum Internasional (Suatu Tinjauan Terhadap Forum Penyelesaian Sengketa Internasional Non Litigasi," *Jurnal Selat* 1, no. 2 (2014): 66–68.

This means that submitting a dispute to an arbitration body must be based on the freedom of the parties to choose.

3) Principle of Freedom to Choose Law: Another essential principle is the principle of the parties' freedom to determine for themselves what law will be applied (when the dispute is resolved) by a judicial body (arbitration) to the subject of the dispute. The freedom of parties to determine this law includes the freedom to choose appropriateness and appropriateness (*ex aequo et bono*). This last principle is the source where the court will decide disputes based on the principles of justice, propriety, or appropriateness of a dispute resolution. An example of this freedom of choice which the judiciary must respect is Article 28 paragraph (1) of the UNCITRAL Model Law on International Commercial Arbitration, which is as follows: 'The arbitral tribunal shall decide the dispute by such rules of law as are chosen by the parties as applicable to the substance of the dispute, any designation of the law or legal system of a given state shall be constructed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules"
4) The principle of Good Faith is the most central dispute resolution principle. This principle requires good faith from the parties in resolving the dispute. In dispute resolution, this principle is reflected in two stages. First, the principle of good faith is required to prevent the emergence of disputes that could affect good relations between countries. Second, this principle is necessary when the parties resolve their disputes through dispute resolution methods known in international (trade) law: negotiation, mediation, conciliation, arbitration, court, or other methods of the parties' choice.
5) Principle of Exhaustion of Local Remedies: In fact, it was initially born from the principles of customary international law. In formulating regulations regarding this principle, the UN International Law Commission (International Law Commission) contains special regulations in Article 22 of the ILC Draft Articles on State Responsibility. Article 22 states the following: when the conduct of a state has created a situation not in conformity with the result of it by an international obligation concerning the treatment to be accorded to aliens, whether natural or juridical persons, but the obligation allows that the subsequent conduct of the state may nevertheless achieve this or an equivalent result. There is a breach of the obligation only if the aliens concerned have exhausted the effective local remedies available to them without obtaining the treatment called for by the obligation or, where that is not possible, an equivalent treatment.

According to this principle, customary international law stipulates that before the parties submit their dispute to an international court, dispute

resolution steps available or provided by the national law of a country must first be exhausted (exhausted). In the Interhandel Case dispute (1959), the International Court emphasized: *Before resort may be had to an international court... the state where the violation occurred should have an opportunity to redress it by its means, within the framework of its domestic legal system.*[15]

The failure of the New York Convention to define the term "public policy" has caused many controversies in implementing foreign arbitral awards in the Muslim world. This has resulted in many Shariah-practicing nations being side-lined internationally. This has created a gap and **misconception** in understanding and differentiating between the system based on Shariah and the International system. The aperture between the two systems has gone beyond the public policy issues but reached the issue of avoiding the Shariah law in totality and adopting Western laws instead. Most cases involving the Shariah countries in the middle of the twentieth century have avoided the application of Shariah law in the dispute. Three prominent cases are famous in the Muslim world. First, the case of Petroleum Development Trucial Coasts Ltd. V. Sheikh of Abu Dhabi; in this case, the arbitrator accepted the applicability of the Shariah domestic law of Abu Dhabi in resolving the dispute. However, the arbitrator undermined its validity because it would become laughable to advocate that this primitive region has any recognized law appropriate to modern commercial dispute resolution.[16]

C. Choice of Law in International Economic Dispute Resolution

In general, international contracts can be classified into two parts of regulatory principles, namely:[17]

1) Fundamental principles of international contract law; and
2) Principles of international contract law Fundamental principles of international contract law consist of:
    a. Basic principles of national legal supremacy/sovereignty: This principle requires that the application of national law cannot be contested. In other words, every object, subject, legal action, or event included in a

[15] Auwal Adam Sa'ad, "Shariah and The International Treaties on Commercial Dispute Settlement: An Appraisal," *Journal of Shariah Law Research* 7, no. 1 (2022): 1–20, https://ejournal.um.edu.my/index.php/JSLR/article/view/37274/14566.

[16] Sa'ad.

[17] Moh Ali, "Urgensi Pilihan Hukum Dalam Kontrak Bisnis Internasional," *Syntax Literate Yntax Literate: Jurnal Ilmiah Indonesia* 7, no. 12 (2022): 20013–24, https://doi.org/10.36418/syntax-literate.v7i12.11619.

commercial transaction outlined in a contract in a country's territory is subject to the national law of that country.

b. The basic principle of freedom of contract (the party's autonomy). This principle emphasizes the freedom of the parties to determine the form and content of the contract based on agreement. According to Atiyah (Adolf, 2008), freedom of contract is '...It is one of the most fundamental features of the law contract....' Meanwhile, Clive M. Schmitthoff states that the autonomy (freedom) of the parties is the basis for the formation of trade law international: "The autonomy of the party's will in the law of contract is the foundation on which an autonomous law of international trade can be built. As we have seen, national sovereignty has no objection to parties developing an independent international trade law in the area. (Adolf, 2008)

According to Sudargo Gautama, choice of law is the freedom given to the parties in the agreement field to choose the law they wish to use for themselves.[18] The parties can choose the law under which their agreement is treated. The provision of a choice of law in international contracts originates from recognizing the concept of freedom of contract in civil law. The law that can be chosen by the parties in an international contract, according to Huala Adolf, is the national law of a country, especially the national law of one of the parties, customary law, international agreements, and international law. Experts view that choice of law is essential in an international contract. Schmitthoff views that an international contract that does not contain a choice of law clause or a legal vacuum needs to be revised. In addition, UNCITRAL recommends that international business actors make international contracts include a choice of law clause as an anticipatory step to prevent legal uncertainty when resolving disputes.

Another peculiarity of the contract, if it is related to the inclusion of foreign elements in the contract (transnational), is the emergence of another main element which is no less important, namely the element of freedom of the parties in making choices of law (freedom to choose the applicable law). The freedom of the parties to an international contract to subject the contract to a particular national legal system is a universally recognized principle. Even a contract that does not contain a choice of law clause (and a choice of forum) is considered incomplete.[19]

---

[18] Risa Restiyanda, "Penyelesaian Sengketa Dagang Internasional Melalui Mediasi Sebagai Alternatif Penyelesaian Sengketa Pada Pemilihan Hukum Dan Forum Kontrak Dagang Internasional," *Aktualita (Jurnal Hukum)* 3, no. 1 (2020): 130–46, https://doi.org/10.29313/aktualita.v0i0.5689.

[19] Ali, "Urgensi Pilihan Hukum Dalam Kontrak Bisnis Internasional."

Sharia Economic Dispute Resolution and Renewal of Cross-Border Sharia Economic Dispute Settlement in Indonesia

Freedom to choose a dispute resolution forum institution in trading activities, including "freedom to contract" for each individual, apart from being natural and human rights, is also part of the broader meaning of "*mu'amalah* worship." Therefore, concerning the state based on Indonesian Constitution, this is guaranteed in Article 29 of the 1945 Constitution (UUD 1945): "The state guarantees the freedom of each resident to embrace their religion and to worship according to their religion and beliefs. That". Thus, the guarantee of the 1945 Constitution must be seen as providing freedom for Muslims to carry out civil activities following the concept of Islamic Sharia as the belief they adhere to.

Based on the provisions of Article 1 point 4 of Perma 14/2016, what is meant by Sharia economic cases are cases in the field of Sharia economics, including Sharia banks, Sharia microfinance institutions, Sharia insurance, Sharia reinsurance, Sharia mutual funds, sharia bonds, sharia futures securities, sharia securities, sharia financing, sharia pawning, pension funds, sharia financial institutions, sharia business, including waqf, zakat, *infaq* and *shadaqah* of a commercial nature, both content and voluntary.

Based on the provisions of Indonesian positive law, sharia economic dispute resolution can be through litigation and non-litigation channels. Settlement of sharia economic disputes through litigation is based on Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts and Constitutional Court Decision Number 93/PUU-X/2012. Settlement of sharia economic disputes through non-litigation channels is based on a written agreement between the parties.

The legal basis for resolving sharia economic disputes in Indonesia is as follows:

1) Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UU 30/1999);
2) Article 49 letter i Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts;
3) Supreme Court Regulation Number 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES);
4) Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Claims, which has been amended by Supreme Court Regulation Number 4 of 2019 (Perma 2/2015);

5) Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court (Perma 1/2016).
6) Supreme Court Regulation Number 5 of 2016 concerning Certification of Sharia Economic Judges;
7) Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases (Perma 14/2016);
8) Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Court Hearings;
9) Supreme Court Circular Letter (SEMA) Concerning the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber (from 2016-present); And
10) 2020 Supreme Court Jurisprudence and KMA Decree Number 185/KMA/SK/VII/2020.

Sharia economic dispute resolution through litigation (court) is carried out through the Religious Courts based on the provisions of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. The Religious Courts have the authority to accept, examine, adjudicate, and resolve civil cases in the form of Sharia economics, which include disputes over Sharia banks, Sharia microfinance institutions, Sharia insurance, Sharia reinsurance, Sharia mutual funds, Sharia bonds, Sharia financing, sharia pawnshops, financial institution pension funds. Sharia and Sharia business. Constitutional Court Decision Number 93/PUU-XI/2012, dated 29 August 2013, strengthens the authority of the Religious Courts in resolving sharia economic disputes.

Based on the provisions of Article 55 paragraph (1) of Law Number 21 of 2008 concerning Sharia Banking, the resolution of Sharia banking disputes through litigation is carried out by courts within the Religious Courts. Sharia principles are fundamental in resolving sharia economic disputes in the Religious Courts. This is also reinforced in Article 5 of Perma 14/2016, which states that all decisions and court decisions in the field of Sharia economics, apart from having to contain the reasons and basis for the decision, must also include Sharia principles, which are used as the basis for judging.

Examination of Sharia economic cases based on Article 7 of Perma 14/2016 is carried out based on applicable procedural law except for those regulated explicitly in this supreme court regulation. Based on Article 10 of Perma 14/2016, before a case examination begins, the Judge is obliged to strive for peace earnestly, and these peace efforts refer to the provisions of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court (Perma 1/2016).

Apart from going through religious courts, sharia economic dispute resolution can also be done outside the court. Settlement of Sharia economic disputes outside of court is intended to achieve resolution by deliberation and consensus based on a win-win solution. In 30/1999, 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 employing consultation, negotiation, mediation, conciliation, or expert assessment. Settlement of sharia economic disputes through APS or alternative dispute resolution (ADR) can also be resolved through negotiation, mediation, or conciliation.

In the Islamic concept, the settlement of Sharia economic disputes through arbitration institutions is called *tahkim*, which can mean the power to resolve a problem or dispute with wisdom or peacefully by an arbitrator or referee. In general, this is regulated in Law 30/1999. Thus, since the enactment of this law, the model for resolving disputes outside the court has been institutionalized in the Indonesian legal system.

In Islamic law, the term arbitration can be compared with *tahkim*, which comes from the verb *hakkama*, meaning making someone a mediator in a dispute. This understanding is closely related to the meaning of the term. Various editors in *fiqh* books define *tahkim*. For example, Abu al Ainain Abdul Fattah Muhammad, in his book entitled al-Qadla wa al itsbat fi al-fiqh-Islami, defines *tahkim* as the reliance of two conflicting people on someone whose decision they approve of to resolve their dispute. This definition can also mean that the parties to the dispute submit the settlement to the party with whom they have agreed and are ready to accept all decisions.

The concept of *Tahkim* in Indonesia is applied to Islamic business dispute settlement, for example, Islamic Banking. Indonesia uses the *Tahkim* concept called BASYARNAS (Arbitration Institutions). BASYARNAS is an institution that resolves disputes based on Islamic principles and runs the settlement of disputes in the Islamic business sector.[20]

Regulations regarding *tahkim* are written clearly in the Koran and Hadith. There are several verses in the Al-Quran Surah An-Nisa [4]:35 which regulate the implementation of dispute resolution through arbitration, including: "*And if you are worried that there will be a dispute between the Two, then send a hakam from the man's family and a hakam from the woman's family. If both of them intend to do good, Allah will surely give taufik to the husband and wife. Indeed, Allah is All-Knowing, All-Knowing.*" Furthermore, in the Al-Qur'an Surah An-Nisa [4]:

[20] Daryanto Daryanto, "Concept of The Tahkim in Indonesia For Islamic Business Dispute Settlement," *Journal of Islamic Law Studies (JILS)* 2, no. 3 (2019): 1–18.

65, "*So, by your Lord, they (in essence) do not believe until they make you the judge in the matter over which they are disputing, then they feel no objection in their hearts to the decision you give, and they accept it completely.*"

The verses above clearly show that Allah SWT supports dispute resolution through *tahkim* (arbitration) and recommends that Muslims elect someone as a judge to resolve their disputes. Even though the first paragraph above is textually related to family matters, it is essential to note that *tahkim* is used to resolve family matters and commercial, financial, banking, and other civil disputes. The Prophet Muhammad SAW also acknowledged the practice of *tahkim*. During his lifetime, the Prophet practiced *tahkim* and often acted as a hakam (arbitrator) between Arab individuals and tribes in resolving their disputes.[21]

Arbitration is a non-litigation institution that can be used to resolve sharia economic disputes. Referring to the provisions of Law 30/1999, an arbitration institution is a body chosen by the parties to a dispute to provide decisions regarding certain disputes. This institution can also offer a binding opinion regarding a particular legal relationship if a dispute has not arisen. Based on the provisions of Article 60 of Law 30/1999, arbitration awards are final, have permanent legal force, and are binding on the parties.

The use of arbitration is only related to the field of commercial law. Based on Article 5 of Law 30/1999, it is stated that disputes that can be resolved through arbitration are only disputes in the field of trade and regarding rights which, according to law and statutory regulations, are fully controlled by the parties to the dispute. Disputes that cannot be resolved through arbitration are disputes that, according to statutory regulations, cannot be reconciled.

Based on several DSN-MUI fatwa, the Sharia economic dispute resolution chosen in the DSN-MUI fatwa is through a deliberative dispute resolution mechanism and an arbitration body. The two alternative ways of resolving disputes are ways of resolving disputes through non-litigation channels. As for the arbitration body chosen, there is a confirmation that the arbitration body in question is the National Sharia Arbitration Board-Indonesian Ulema Council (Basyarnas-MUI). Hence, Indonesia's National Sharia Arbitration Board is a non-litigious body responsible for investigating and resolving Sharia-based economic disputes. The establishment of this committee coincided with the emergence and growth of Sharia-compliant financial institutions in Indonesia.

The MUI founded Basyarnas-MUI on 21 October 1993 to coincide with 5 Jumadil Awwal 1414 H. At its inception, this institution was called the Indonesian Muamalat Arbitration Board (BAMUI). Along with the

[21] Triana, "Urgency of Arbitration Clause in Determining the Resolution of Sharia Economic Disputes."

development of sharia financial institutions, 2003 BAMUI was renamed Basyarnas-MUI based on MUI Decree Number Kep-09/MUI/XII/2003 dated 24 December 2003.[22] Since its inception, the institution has examined and decided on 24 Sharia economic disputes.

Settlement of sharia economic disputes in a non-litigation manner benefits the judiciary to prevent a buildup of cases. The development of Indonesian Sharia economics and finance, which is currently running rapidly in Indonesia, also increases the potential for sharia economic disputes. Based on data on Sharia economic cases from 2018 to September 2020 issued by the Religious Chamber, the Supreme Court in 2020, there were 676 cases related to Sharia economics, with 162 cases revoked, 446 cases decided, and the remaining 68 cases still ongoing.[23]

Sharia economic transactions have characteristics that make these transactions different from conventional economic transactions. One of the most fundamental characteristics is the prohibition of usury in every economic transaction. The provisions on whether or not a sharia economic transaction can be carried out depend on the MUI DSN Fatwa. Then, deciding on a dispute related to Sharia economics requires a judge or referee (arbitrator) who understands not only national law but also Sharia law and economics so that the resolution of Sharia economic disputes is through the ODR mechanism in addition to referring to the MUI DSN Fatwa.

Religious justice institutions are considered relevant institutions for resolving sharia economic disputes rather than general courts (district courts). This might be why handling Sharia economic disputes is separated from general judicial institutions and dispute resolution through arbitration. This is because human resources, especially judges and arbitrators, must have competency in mastering Sharia economic law so that decisions are given following the provisions of Sharia principles and national law.

The absolute competence of religious courts must also be accompanied by the authority to implement sharia arbitration decisions nationally and internationally. The implementation of sharia arbitration decisions is still in the hands of the general court (district court). Law 30/1999 indeed stipulates that district courts are not competent to examine the substance of arbitration awards, except those related to public order. In this case, the matters examined by the

---

[22] "Badan Arbitrase Syariah Nasional- Majelis Ulama Indonesia (BASYARNAS-MUI)," accessed October 10, 2022, https://basyarnas-mui.org/.

[23] Mukharom Mukharom, Dharu Triasih, and Dian Septiandani, "Peran Lembaga Alternatif Penyelesaian Sengketa Dalam Menyelesaikan Sengketa Ekonomi Syariah," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 7, no. 2 (2020): 183–96, https://doi.org/10.15408/sjsbs.v7i2.14894.

district court are only related to non-substantial aspects. However, it is not complete if absolute competence is still in the hands of the general judiciary. Law 30/1999 needs to be revised to include provisions for implementing sharia arbitration awards in religious court institutions. Apart from that, the most important thing is the commitment of the leadership of the Supreme Court and judicial institutions, along with strong encouragement from Sharia economic actors in this country, including preparing the capacity of religious judges and religious justice apparatus to implement the registration and implementation of sharia arbitration decisions both offline and online.

Based on the description above, Law 30/1999 must be revised to include provisions for implementing Sharia economic dispute resolution decisions through national and international Sharia arbitration institutions in religious justice institutions. Likewise, it is necessary to strengthen the regulations of the Supreme Court and judicial institutions along with strong encouragement from sharia economic actors in this country. Apart from that, for the implementation of Sharia economic dispute resolution to be realized, it is also necessary to prepare the capacity of religious judges and religious justice apparatus to register and implement Sharia arbitration decisions nationally and internationally. Material legal provisions, especially in resolving disputes over national and international Sharia economic transactions, have unique characteristics that are different from conventional economic transactions, namely that apart from not conflict with the provisions of applicable law, they also do not conflict with Sharia principles, which are stated in the Fatwa. DSN MUI, including understanding the implementation of international trade law principles related to resolving Sharia economic disputes across national borders.

The Application of Islamic Commercial Principles in The International Contract from a Malaysian Legal Perspective

Malaysia's International contract dispute resolution follows a legal framework similar to domestic contract disputes. However, some specific considerations and mechanisms apply when the dispute involves parties from different countries, or the contract has an international element. In international contracts, parties often include a choice of law clause specifying which country's laws will govern the contract.[24] The Malaysian courts generally

[24] Farihana Abdul Razak and Zuhairah Ariff Abd Ghadas, "From Barter System to E-Contract: Development on Trade in Malaysia," *International Journal of Academic Research*

respect the choice of law clause unless it is against public policy or other exceptional circumstances. Parties can also include a jurisdiction or venue clause in their contracts, designating where any disputes will be resolved. This clause is generally enforceable in Malaysia, provided it complies with Malaysian law and is not contrary to public policy.

Malaysia is a member of the United Nations Commission on International Trade Law (UNCITRAL), and the principles and standards set forth by UNCITRAL often influence the resolution of international contract disputes in Malaysia. International arbitration is a standard method for resolving cross-border contract disputes in Malaysia. The Arbitration Act 2005 incorporates international arbitration standards, including the UNCITRAL Model Law, making it conducive to international arbitration proceedings. Malaysia is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which simplifies the recognition and enforcement of foreign arbitral awards in Malaysia. Malaysian courts generally support the enforcement of foreign arbitral awards under the New York Convention, to which Malaysia is a signatory. Parties seeking to enforce a foreign arbitral award in Malaysia can do so through the Malaysian courts.

Mediation is often encouraged for international contract disputes to amicably resolve issues before resorting to arbitration or litigation. The Malaysian Mediation Centre (MMC) provides mediation services for both domestic and international disputes. If a party obtains a judgment from a foreign court in an international contract dispute, they may seek to enforce that judgment in Malaysia. The enforcement process depends on the existence of reciprocal agreements or conventions with the relevant foreign country.

Generally, Malaysia has a dual legal system, with Islamic law (Sharia law) applied to Muslims in personal and family matters. State-level Sharia courts administer Sharia law and are relevant to contracts involving family, inheritance, and other personal matters. In commercial transactions involving Muslims, parties may opt for contracts compliant with Islamic principles, even in non-financial sectors. Such contracts must adhere to Sharia principles, including prohibiting *riba* (interest) and excessive uncertainty (*gharar*). As a hub for Islamic finance and commerce, Malaysia often engages in international trade and transactions involving Islamic contracts.[25] These contracts may include

in Business and Social Sciences 10, no. 12 (2020): 390–399, https://doi.org/10.6007/IJARBSS/v10-i12/8018.

[25] Hakimah Yaacob and Apnizan Abdullah, "Standards Issuance for Islamic Finance in International Trade: Current Issues and Challenges Ahead," *Procedia - Social and Behavioral Sciences* 65 (2012): 492–97, https://doi.org/10.1016/j.sbspro.2012.11.154.

international Islamic financing arrangements, trade contracts, and partnerships governed by Sharia principles.

For Islamic finance and commercial transactions, Malaysia has specific legislation to govern Islamic contracts. The Islamic Financial Services Act 2013 regulates Islamic financial institutions and transactions, including various types of Islamic contracts. The regulatory framework for Islamic banking and financial institutions in Malaysia is designed to ensure that contracts and transactions comply with Islamic principles.[26] The central bank, Bank Negara Malaysia (BNM), oversees and regulates Islamic financial institutions and products to ensure they adhere to Sharia principles. For example, Islamic banking institutions operate under the principles of Sharia, which prohibit the charging or payment of interest (*riba*). Standard Islamic financial contracts used in Malaysia include Mudarabah (profit-sharing), *Musharakah* (joint venture), and *Ijarah* (leasing), among others.[27] Malaysia is also known for its extensive use of *Sukuk*, which are Islamic bonds. *Sukuk* issuances are structured in compliance with Sharia principles, and their terms are governed by Islamic contract law.[28]

Malaysia also applies Islamic contract principles in certifying and regulating Halal products and services. Halal certification involves adherence to specific contractual obligations and requirements to ensure that products and services comply with Islamic dietary laws. In international trade, particularly in the food and beverage industry, Halal certification is essential. Malaysia is known for its stringent Halal certification requirements, which are based on Islamic law. Compliance with these requirements is necessary for businesses exporting and importing Halal products,[29] such as:

---

[26] Abdul Rahim Abdul Rahman, "Islamic Banking and Finance: Between Ideals and Realities," *IIUM Journal of Economics and Management* 15, no. 2 (2007): 123–41, https://journals.iium.edu.my/enmjournal/index.php/enmj/article/view/132/107; Salleh Maisyarah Stapah and Nizam Possumah, Bayu Taufiq Ahmat, "The Impact of Financing Contracts on the Profitability of Islamic Banks," *Jurnal Ekonomi Malaysia* 55, no. 3 (2021): 149–64, https://doi.org/10.17576/JEM-2021-5503-11.

[27] Mumtaz Hussain, Asghar Shahmoradi, and Rima Turk, "An Overview on Islamic Finance," 2015, https://www.imf.org/external/pubs/ft/wp/2015/wp15120.pdf.

[28] Normarianie Razali et al., "SRI-Linked Sukuk: An Enabler for the Transition to Low-Carbon Activities," *Journal of Islamic Finance* 12, no. 1 (2023): 17–31; Muhammad Issyam Itam Ismail, Kamaruzaman Noordin, and Fadillah Mansor, "Challenges for the Issuers to Issue Global Hybrid Sukuk That Complies with AAOIFI Shari'ah Standard No. 59," *Journal of Islamic Finance* 12, no. 1 (2023): 59–72, https://journals.iium.edu.my/iiibf-journal/index.php/jif/article/view/747/313.

[29] Eva Johan and Hanna Schebesta, "Religious Regulation Meets International Trade Law: Halal Measures, a Trade Obstacle? Evidence from the SPS and TBT Committees," *Journal of International Economic Law* 25, no. 1 (2022): 61–73,

(1) its law that requires all meats (except pork), whether imported or locally sourced, to be halal (Manual Procedure for Malaysia Halal Certification 2020). This manual applies to all establishments that produce halal meat, poultry, and their products, including those intending to export to Malaysia under the Animals Act 1953. It shall be used with the MS 1500:2009, the Malaysian Standard for food products.
(2) the MS 1500:2009, which is the Malaysian Standard for food products, is stricter than the Codex Alimentarius (MS 1500:2009 requires unique and separate facilities for halal and non-halal products at the slaughtering place as well as separate storage and transportation, which are also necessary but under Codex Alimentarius, the same facilities can be used for halal purposes provided that Islamic cleansing rites are done)
(3) the Draft Protocol for Halal Meat and Poultry Productions 2011, which imposes mandatory halal audit on meat and poultry exporters to Malaysia (the US claimed that up till 2013, only 1 US exporter managed to get through the audit), and
(4) a 2012 rule bans imports of cat food containing porcine.

Sharia Economic Dispute Settlement Practices Across National Borders and the Importance of Recognizing the Choice of Islamic Law in their resolution

Based on the practice of several cases, the choice of Islamic law in settling international business contracts can only be implemented after a while; moreover, if this is deemed not in line with the policies or regulations set out in a country where these provisions will be implemented. The choice of Islamic law in resolving business contract disputes based on Islamic principles, both nationally and internationally, is logical, considering that the implementation of Sharia economic activities is a Sharia-based economic activity from the process of making contracts implementation to resolving disputes if this occurs in the implementation of the contract. In principle, *muamalah* in Islamic law implements the principle of *al-hurriyah* (the freedom of contract). Even in the provisions of International Trade Law, the freedom to choose the law and choice of forum is also recognized, especially in Article 28 paragraph (1) of the

https://doi.org/10.1093/jiel/jgac003; Z. Zakaria and M.A. Abdullah, "The Enforcement Activities Under Post-Market Control of Halal Certification in Malaysia," *Halal Journal* 3 (2019): 72–79.

UNCITRAL Model Law on International Commercial Arbitration, which is as follows:

> The arbitral tribunal shall decide the dispute following such rules of law as are chosen by the parties as applicable to the substance of the dispute, any designation of the law or legal system of a given state shall be constructed, unless otherwise stated, as directly referring to the substantive law of that state and not to its conflict of laws rules.

Below are several examples of cases of resolving sharia economic disputes across national borders as follows:

1. Shamil Bank of Bahrain EC *v* Beximco Pharmaceuticals Ltd and Others (English)[30]

Bahrain Bank is an Islamic Bank and operates based on sharia principles. Bank Bahrain entered into a Murabahah financing agreement with the first and second defendants, while the third to fifth defendants acted as guarantors. It is stipulated in the murabahah agreement that 'Subject to the principles of the Glorious Shari'a, this agreement shall be governed by and constructed in accordance with the laws of England'. The defendants had defaulted and were sued in court, but the defendants filed an appeal on the grounds that the contract could not be implemented because it was contrary to sharia principles because the transaction was a disguised loan with interest. Beximco Pharmaceuticals Ltd does not use the money to purchase certain goods or equipment but instead uses it as working capital. Experts were presented in court to confirm the sharia provisions in the transaction. The court is of the view of applying English law, because based on the court's interpretation of The Contract (Applicable Law) Act which incorporates the Roman convention, it only refers to the law of a country and the court places Islamic law as non-state law.

---

[30] Olatoye and Yekini, "Choice of Islamic Law as the Governing Law in Islamic Finance Contracts: The United Kingdom and Nigerian Perspectives"; Jason C. T. Chuah, "Islamic Principles Governing International Trade Financing Instruments: A Study of the Morabaha in English Law," *Northwestern Journal of International Law & Business* 27, no. 1 (2006): 137-170. This case is the most actual example used regarding the conflict between national law and Islamic law in the choice of law for resolving economic disputes across national borders.

2. Case of Dr. Surbahmaniam Swamy *v* State of Kerala WP (C) No. 35180 of 2009 (S), 12 (India)[31]

The petitioner, Surbahmaniam Swamy, challenged the legality of the implementation of Islamic finance in the state of Kerala. Being pro-Hindu, the petitioner raised the constitutional issue in the court of whether Kerala State Industrial Development Corporation's (KSIDC) 11% equity in Al Barakh Financial Services Ltd., committed to offering SharÊÑah-compliant financial services, constituted "undue association with a religious activity amounting to State favoring or promoting a religion" which is against Article 27 of the Indian Constitution. The central issue involved in this case therefore was whether the decision of the State of Kerala and the KSIDC to associate themselves with Islamic finance.

3. Case Abdel Hadi Abdallah Al Qahtani & Sons Benerage Industry Company *v* Andrew Antliff [32]

The defendant is a British citizen who works for the plaintiff in Saudi Arabia. There was a barrier between the plaintiff and the defendant during the employment relationship, so the plaintiff sued the defendant in the English Court. The court agreed that Islamic law applies as well as the law applied in Saudi Arabia. In contrast to other Muslim countries, Saudi does not have a separate code or law regarding civil procedural law and commercial law, but Saudi has a form of codification of sharia rules as implemented in Saudi Arabia in the *Majallah* which consists of several volumes. However, the basic teaching is that the decision is purely based on the provisions of sharia which filter several Islamic books by experts, not referring to the *Majallah*.

In Islamic law, the parties must obey every form of the agreement as long as it does not conflict with Sharia principles, including the agreement that if a dispute arises in implementing the agreement, they use Islamic law as the legal option to resolve it. An agreement between the parties can be made with the possibility of being included in the arbitration agreement clause.The centrality of Shari'ah compliance and the relevance of private international law categories are critical considerations in Islamic economic arbitration. In private international law, matters about applicable law, public order, and enforcing foreign arbitral awards are commonly discussed. However, there is still uncertainty regarding the ability of private international law to effectively

---

[31] Zulkifli Hasan and Mehmet Asutay, "An Analysis Of The Court's Decisions On Islamic Finance Disputes," *Isra International Journal of Islamic Finance* 3, no. 2 (2011): 41–71, https://doi.org/https://www.zulkiflihasan.com/wp-content/uploads/2012/01/an-analysis-of-the-courts-decisions-on-islamic-finance-disputes.pdf.

[32] Olatoye and Yekini, "Choice of Islamic Law as the Governing Law in Islamic Finance Contracts: The United Kingdom and Nigerian Perspectives."

address supplementary considerations pertinent to ensuring the Shari'ah compatibility of an Islamic commercial arbitral award.[33]

Despite the massive signatories of Muslim nations to the New York Convention for the enforcement of arbitral awards, the enforcement of the The arbitral award is still very challenging due to the indemnity related to the public policy: this exemption might become a huddle for enforcing arbitration awards in the Muslim member countries.[34] The convention's exemption made it possible for the signatories to reject enforcement of the award if it violated their public interest. Moreover, every decision that might have conflicted with Shariah law is regarded as public interest and policy violation and, therefore, might not be enforced in such countries. Geoge Khookaz said that One example of public policy reservation that two countries use most often, the Kingdom of Saudi Arabia and Iran, is constantly raising the issue of which these countries refuse to recognize various awards based on this reservation.

The Western world's lack of understanding of Shariah principles has caused a much different interpretation of what the Muslim nations' public policy means. Therefore, it is evident that the arbitral award made in the United Kingdom, for instance, might not be considering any public interest regarded by Shariah to be implemented in Saudi Arabia or any other Middle Eastern state or any other Muslim nation; this is because the arbitrator does not have any exposure to the Shariah law and has no any experience what so ever in dealing with the Shariah principles. Likewise, the same arbitral award sent to the Western countries by a Middle Eastern state might not be understood or recognized as a valid arbitral award based on Western tradition and practices.[35] Therefore, the challenges are still there, but the massive acceptance of the New York convention has facilitated a lot in avoiding many challenges related to this particular convention. However, the challenges are still there to stay.

The choice of Islamic law in resolving international business disputes chosen by the parties and stated in the contract is an implementation of the freedom given to the parties in the field of agreement to determine the law they want to use for themselves. This is recognized in the provisions of national and international Civil Law, including Islamic law, known as the principle of *al-hurriyah* (freedom), where parties are given freedom in making a contract or

---

[33] Mohammed El Hadi El Maknouzi et al., "Islamic Commercial Arbitration and Private International Law: Mapping Controversies and Exploring Pathways towards Greater Coordination," *Humanities and Social Sciences Communications* 10, no. 1 (2023): 523, https://doi.org/10.1057/s41599-023-02031-z.

[34] Sa'ad, "Shariah and The International Treaties on Commercial Dispute Settlement: An Appraisal."

[35] Sa'ad.

agreement. One Schmitthoff[36]expert stated that if a contract does not contain a choice of law clause, this is flawed. UNCITRAL also recommends that to achieve legal certainty, business people must include a choice of law clause in their contracts. However, we need to analyze how this choice of law, including Islamic law, can be practical and recognized in its implementation.

Usually, parties to Islamic finance contracts select Islamic law as the contract's governing law. No rule stipulates that this must be the case, though that is the practice. It means that, in some other instances, it is possible to have an Islamic finance contract where parties, for whatever reason, may fail to stipulate the governing law of that transaction.[37]

Based on the practice of several cases, the choice of Islamic law in settling international business contracts can only be implemented after a while; moreover, if this is deemed not in line with the policies or regulations set out in a country where these provisions will be implemented. The choice of Islamic law in resolving business contract disputes based on Islamic principles, both nationally and internationally, is logical, considering that the implementation of Sharia economic activities is a Sharia-based economic activity from the process of making contracts implementation to resolving disputes if this occurs in the implementation of the contract. In principle, *muamalah* in Islamic law implements the principle of *al-hurriyah* (the freedom of contract). Even in the provisions of International Trade Law, the freedom to choose the law and choice of forum is also recognized, especially in Article 28 paragraph (1) of the UNCITRAL Model Law on International Commercial Arbitration, which is as follows:

> "The arbitral tribunal shall decide the dispute following such rules of law as are chosen by the parties as applicable to the substance of the dispute, any designation of the law or legal system of a given state shall be constructed, unless otherwise stated, as directly referring to the substantive law of that state and not to its conflict of laws rules."

The choice of Islamic law in resolving international business contracts is in line with the use of arbitration forums as dispute resolution forums. Of course, it will be more effective if the parties use sharia arbitration as their

---

[36] Restiyanda, "Penyelesaian Sengketa Dagang Internasional Melalui Mediasi Sebagai Alternatif Penyelesaian Sengketa Pada Pemilihan Hukum Dan Forum Kontrak Dagang Internasional."

[37] Olatoye and Yekini, "Choice of Islamic Law as the Governing Law in Islamic Finance Contracts: The United Kingdom and Nigerian Perspectives."

dispute resolution institution.[38] From the results of research as well as in practice, recent studies show that countries with Islamic legal traditions (ILT) prefer informal forums to resolve international disputes, compared to countries with other legal traditions that international investment agreements (IIA) agreed to by countries -Islamic countries are less likely to refer disputes to the Investment Dispute Resolution Center (ICSID), which is very legal and formal and are more likely to refer disputes to Islamic forums, which tend to be less formal.[39] Substantial empirical support for theoretical expectations is found using new data on forum choice in investor-state dispute settlement (ISDS) provisions in more than 2,600 IIAs and controlling for various alternative explanations.[40] These findings underscore the importance of domestic legal traditions in resolving international disputes in the Islamic world and beyond.[41]

From the results of research on the tendency of resolving state investor disputes in countries based on Islamic legal traditions, which are more likely to choose resolution through Islamic forums, this is understandable and logical so that the resolution of these disputes can be harmonious with Islamic principles and can be adapted to their legal traditions, compared to being resolved through formal institutions such as the ICSID forum, and so on. This is also to avoid being out of sync with Sharia business rules if it is resolved through official formal channels and is bound by state regulations that are not in line with the concept of Islamic law, as happened in the case of the settlement of *Shamil Bank of Bahrain v Beximco Pharmaceuticals*. This case is an exciting and vital example where the agreement states that there is a *Murabahah* agreement following Sharia principles. However, the English courts regulate and interpret English law; the Judge believes that English law governs, and there is no room for Sharia law to be applied because there cannot be two separate legal systems managing a transaction. Moreover, English secular courts cannot apply religious principles in determining a dispute.

To overcome the problem of cases of rejecting the choice of Islamic law in resolving Islamic economic disputes that have been chosen by the parties by the Court, such as the example of the British court's refusal to use Islamic law in the business dispute between Bank of Bahrain v Beximco Pharmaceuticals, it would be best for future solutions to be given an understanding of Many

---

[38] Ahmad Ramli, *Interview in Forum Group Discussion on Introduction Digital Law in Islamic Business Transaction* (Bandung: FH UNPAD – Indonesian Bank, 2022).

[39] Morr Link and Yoram Haftel, "Islamic Legal Tradition and the Choice of Investment Arbitration Forums," The Review of International Political Economy, Forthcoming, n.d., https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3453774.

[40] Link and Haftel.

[41] Link and Haftel.

countries, especially secular countries, can recognize and accept Islamic law if it has been agreed by the parties. This can, among other things, be done through agreements both bilaterally and multilaterally from various countries to recognize the legal choices of the parties in resolving their business disputes, including the choice of Islamic law. This is also done as part of recognition of the development of international trade which has made Islamic law the basis for regulating their transactions and has become part of the development of customary law in international trade.

The increasing number of adherents of Islam in Europe has increased recognition of the importance of Islamic law. This recognition is evidenced through various legal mechanisms, such as the establishment of Islamic courts in European countries designed to oversee personal status issues such as marriage, divorce, inheritance, and guardianship. Private International Law and Cross-border Dispute Settlement: Challenges arise in the field of private international law and cross-border dispute resolution. The increasing relevance of Islamic law offers opportunities to improve coordination and understanding between Sharia arbitration and the rules of private international law established by states.[42]

International trade contracts are contracts that contain foreign elements in them.[43] Business transactions that develop across countries will cause international contract law to also experience development. Including the increasing number of sharia economic transactions that have been accepted by the international community at this time. The legal provisions governing transactions that cross national borders can no longer be determined by the legal rules of a country/national legal rules alone, but rather lead to rules of an international nature as a manifestation of the results of unification, uniformity or harmonization efforts. Foreign elements in a contract result in the contract not only referring to national legal rules but also having to pay attention to international aspects. Including developments and customary practices that develop in international trade, where sharia economic transactions have been widely implemented in cross-border business practices.

---

[42] Amran Suadi and Muchammad Taufiq Affandi, "Best Practices in Interconnecting Sharia Arbitration Norms: A Comparative Analysis of Indonesia and Europe," *Indonesian Journal of Islamic Economic Law* 1, no. 1 (2023): 23–38, https://doi.org/10.23917/ijoel.v1i1.3435.

[43] Rizky Amalia and Fairuz Zahirah Zihni Hamdan, "The Limitation in Choice of Law and Choice of Forum Within International Business Contract," *International Journal of Social Science Research and Review* 6, no. 3 (2023): 149, https://doi.org/10.47814/ijssrr.v6i3.908.

Sharia economic activities are currently developing rapidly not only in countries where the majority are Muslim, but also in Muslim minority countries. As an example of the development of globalization, Islamic financial practices have received a good reception in various continents and regions, both in Asia, Africa, Australia, Europe, America and Canada, the Middle East, and others.[44] Sharia banking is one of the most popular Islamic economic systems in the world, reaching US$882 billion (equivalent to 11,466 trillion). In the 2015 Global Islamic Finance Report, 5 criteria were determined, namely Advocacy, Infrastructure, Human Resources, Linkages and Regulation.[45] Starting in the 2000s, European countries began to open up to the sharia economy and adopted the concept of sharia economics.[46] The rapid development of Islamic banks began to be felt after in 2004, The Islamic Bank of Britain (IBB) was officially established and became the first Islamic bank in Europe, followed by brilliant achievements.

Apart from the development of globalization in the field of sharia finance, sharia economic practices in the halal sector are also very popular in the world today. Consumers of halal industry products/services are now varied. The halal industry has consumers globally, not only in Asia and the Middle East, but also in Europe. For example, Russia, whose population is not predominantly Muslim, even occupies the 9th position in the world for halal food with $37 billion in 2015.[47] In Norway, Halal Tours are in great demand, halal tours include halal hotels and halal food during the trip. The reason many countries are starting to use halal products/services is because safety, cleanliness and quality are guaranteed in the entire production chain or service fulfillment process.[48] Halal tourism is an industry that is increasingly important on a global scale.[49] Halal tourism is a rapidly growing market segment not only in Muslim countries but globally. In addition, countries such as Japan, Australia, Thailand,

---

[44] Aisyah Ayu Musyafah, "Perkembangan Perekonomian Islam Di Beberapa Negara Di Dunia," *Diponegoro Law Review* 4, no. 1 (2019): 420, https://ejournal2.undip.ac.id/index.php/dplr/article/view/5103.

[45] Musyafah.

[46] Ahmad Baihaki, "Bank Syariah Di Inggris," *JYRS* 3, no. 2 (2022): 92, https://doi.org/10.32923/jyrs.v3i2.2909.

[47] "Makanan Halal RI Masuk Peringkat 2 Dunia Versi SGIE Report 2022," 2023, https://www.cnnindonesia.com/ekonomi/20220414155219-92-784940/makanan-halal-ri-masuk-peringkat-2-dunia-versi-sgie-report-2022.

[48] "Makanan Halal RI Masuk Peringkat 2 Dunia Versi SGIE Report 2022," n.d.

[49] Ashfaq Muhammad, "Global Halal Industry: An Overview of Current Developments and Future Perspectives," 2018.

New Zealand, and so on indeed non-Muslim majority countries also make halal tourism products.[50]

The increasing development of sharia economic practices globally means that the principles of sharia economic law should also be adopted in international trade law. The customary practices of traders are part of the source of international trade law, recognized in the UNIDROIT Principles of International Commercial Contract 2010. This can be understood considering that international trade rules are the law of traders or law among merchants or *lex mercatoria*, so that customs and practices which are valid and recognized in international trade activities are also recognized in contracts. This should also apply to current Islamic law-based international trade practices, which are the customary practices of international traders. So that the choice of Islamic law in resolving international disputes that has been agreed upon by the parties must be recognized and accepted as part of customary practice and current developments in international trade.

The existence of a conflict in the implementation of Sharia principles and the law of a country in resolving international economic disputes should be a note for the development of international trade law in the future, especially related to international contract law, to also understand legal options that use sharia principles and can be recognized in their legal system, if the parties have agreed upon this. Because in the future development of international business, this can be accepted as part of global economic development and not only isolated to specific legal systems.

Conclusion

The increasingly rapid development of Sharia economic transactions requires law for resolving disputes arising from Sharia economic transactions, especially resolving Sharia economic disputes across national borders. Thus, it is necessary to strengthen national and international legal instruments in the legal regulation of international dispute resolution, especially regarding the choice of Islamic law in dispute resolution, which is agreed upon by international business actors. Fundamentally, this choice of law is recognized in the principles of international business contracts, including Islamic law principles. For this reason, it is necessary to strengthen further regulations regarding the recognition of the choice of Islamic law in resolving international business disputes that is comprehensive, not only in countries with Islamic legal

[50] Fadly Andrianto, "Kepastian Hukum Dalam Politik Hukum di Indonesia," *Administrative Law and Governance Journal* 3, no. 1 (2020), https://doi.org/10.14710/alj.v3i1.114-123.

traditions, but can also be recognized in the legal systems of other countries. This cannot be separated from the development of globalization, especially in international trade, which must provide space for implementing laws that can accommodate the interests of all parties.

References

Abdul Razak, Farihana, and Zuhairah Ariff Abd Ghadas. "From Barter System to E-Contract: Development on Trade in Malaysia." *International Journal of Academic Research in Business and Social Sciences* 10, no. 12 (2020): 390–399. https://doi.org/10.6007/IJARBSS/v10-i12/8018.

Ali, Moh. "Urgensi Pilihan Hukum Dalam Kontrak Bisnis Internasional." *Syntax Literate Yntax Literate: Jurnal Ilmiah Indonesia* 7, no. 12 (2022): 20013–24. https://doi.org/10.36418/syntax-literate.v7i12.11619.

Al Hakim, Ikhsan. "Penyelesaian Sengketa Ekonomi Syariah di Pengadilan Agama." *Pandecta Research Law Journal* 9, no. 2 (2014): 273-291.

Amalia, Rizky, and Fairuz Zahirah Zihni Hamdan. "The Limitation in Choice of Law and Choice of Forum Within International Business Contract." *International Journal of Social Science Research and Review* 6, no. 3 (2023): 147-157. https://doi.org/10.47814/ijssrr.v6i3.908.

Andrianto, Fadly. "Kepastian Hukum Dalam Politik Hukum Di Indonesia." *Administrative Law and Governance Journal* 3, no. 1 (2020): 114-123. https://doi.org/10.14710/alj.v3i1.114-123.

Asrianto, Benny, and Oksep Adhyanto. "Penyelesaian Sengketa Dagang Dalam Hukum Internasional (Suatu Tinjauan Terhadap Forum Penyelesaian Sengketa Internasional Non Litigasi." *Jurnal Selat* 1, no. 2 (2014): 66–68.

"Badan Arbitrase Syariah Nasional- Majelis Ulama Indonesia (BASYARNAS-MUI)." Accessed October 10, 2022. https://basyarnas-mui.org/.

Baihaki, Ahmad. "Bank Syariah di Inggris." *JYRS: Journal of Youth Research and Studies* 3, no. 2 (2022): 86-98. https://doi.org/10.32923/jyrs.v3i2.2909.

Bantekas, Ilias. "Transnational Islamic Finance Disputes: Towards a Convergence with English Contract Law and International Arbitration." *Journal of International Dispute Settlement* 12, no. 3 (2021): 505–523. https://doi.org/10.1093/jnlids/idab008.

Brody, Grace. "Implications of the Selection of Islamic Law in European Private International Law." *Michigan Journal of International Law* 43, no. 3 (2022): 803–191. https://doi.org/10.36642/mjil.43.3.implications.

Chuah, Jason C. T. "Islamic Principles Governing International Trade Financing Instruments: A Study of the Morabaha in English Law."

Northwestern Journal of International Law & Business 27, no. 1 (2006): 137-170.

Daryanto, Daryanto. "Concept of The Tahkim in Indonesia For Islamic Business Dispute Settlement." *Journal of Islamic Law Studies (JILS)* 2, no. 3 (2019): 1-18.

Hasan, Zulkifli, and Mehmet Asutay. "An Analysis Of The Court's Decisions On Islamic Finance Disputes." *Isra International Journal of Islamic Finance* 3, no. 2 (2011): 41–71.

Hussain, Mumtaz, Asghar Shahmoradi, and Rima Turk. "An Overview on Islamic Finance," 2015. https://www.imf.org/external/pubs/ft/wp/2015/wp15120.pdf.

Ismail, Muhammad Issyam Itam, Kamaruzaman Noordin, and Fadillah Mansor. "Challenges for the Issuers to Issue Global Hybrid Sukuk That Complies with AAOIFI Shari'ah Standard No. 59." *Journal of Islamic Finance* 12, no. 1 (2023): 59–72. https://journals.iium.edu.my/iiibf-journal/index.php/jif/article/view/747/313.

Johan, Eva, and Hanna Schebesta. "Religious Regulation Meets International Trade Law: Halal Measures, a Trade Obstacle? Evidence from the SPS and TBT Committees." *Journal of International Economic Law* 25, no. 1 (2022): 61–73. https://doi.org/10.1093/jiel/jgac003.

KNEKS. *Indonesia Islamic Economic Masterplan 2019-2024, Indonesian Ministry of National Development Planning the Indonesia Masterplan of Sharia Economy 2019-2024*. (Jakarta: PT Zahir Syariah Indonesia, 2018).

Link, Morr, and Yoram Z. Haftel. "Islamic legal tradition and the choice of investment arbitration forums." *Review of International Political Economy* 28, no. 3 (2021): 559-583.

"Makanan Halal RI Masuk Peringkat 2 Dunia Versi SGIE Report 2022," n.d.

"Makanan Halal RI Masuk Peringkat 2 Dunia Versi SGIE Report 2022," 2023. https://www.cnnindonesia.com/ekonomi/20220414155219-92-784940/makanan-halal-ri-masuk-peringkat-2-dunia-versi-sgie-report-2022.

Maknouzi, Mohammed El Hadi El, Iyad Mohammad Jadalhaq, Imad Eldin Abdulhay, and Enas Mohammed Alqodsi. "Islamic Commercial Arbitration and Private International Law: Mapping Controversies and Exploring Pathways towards Greater Coordination." *Humanities and Social Sciences Communications* 10, no. 1 (2023): 1-8. https://doi.org/10.1057/s41599-023-02031-z.

Muhammad, Ashfaq. "Global Halal Industry: An Overview of Current Developments and Future Perspectives," *Islamic Finance News* (2018).

Mukharom, Mukharom, Dharu Triasih, and Dian Septiandani. "Peran

Lembaga Alternatif Penyelesaian Sengketa Dalam Menyelesaikan Sengketa Ekonomi Syariah." *SALAM: Jurnal Sosial Dan Budaya Syar-i* 7, no. 2 (2020): 183–196. https://doi.org/10.15408/sjsbs.v7i2.14894.

Musyafah, Aisyah Ayu. "Perkembangan Perekonomian Islam di Beberapa Negara di Dunia." *Diponegoro Law Review* 4, no. 1 (2019): 419-427. https://ejournal2.undip.ac.id/index.php/dplr/article/view/5103.

Olatoye, Kareem Adebayo, and Abubakri Yekini. "Choice of Islamic Law as the Governing Law in Islamic Finance Contracts: The United Kingdom and Nigerian Perspectives." *IIUM Law Journal* 25, no. 1 (2017): 137–159. https://doi.org/10.31436/iiumlj.v25i1.314.

Puneri, Atharyanshah. "Comparison of The Law of Contract Between Islamic Law and Indonesian Law." *Journal of Law and Legal Reform* 2, no. 1 (2021): 65–82. https://doi.org/10.15294/jllr.v2i1.39036.

Rahim, M. Afzalur. "Referent Role and Styles of Handling Interpersonal Conflict." *The Journal of Social Psychology* 126, no. 1 (1986): 79–86. https://doi.org/10.1080/00224545.1986.9713573.

Rahman, Abdul Rahim Abdul. "Islamic Banking and Finance: Between Ideals and Realities." *IIUM Journal of Economics and Management* 15, no. 2 (2007): 123–41.

Ramli, Ahmad. *Interview in Forum Group Discussion on Introduction Digital Law in Islamic Business Transaction*. (Bandung: FH UNPAD – Indonesian Bank, 2022).

Razali, Normarianie, Rusni Hassan, Nor Razinah Mohd Zain, and Mohd Rizal Suratman. "SRI-Linked Sukuk: An Enabler for the Transition to Low-Carbon Activities." *Journal of Islamic Finance* 12, no. 1 (2023): 17–31.

Restiyanda, Risa. "Penyelesaian Sengketa Dagang Internasional Melalui Mediasi Sebagai Alternatif Penyelesaian Sengketa Pada Pemilihan Hukum Dan Forum Kontrak Dagang Internasional." *Aktualita (Jurnal Hukum)* 3, no. 1 (2020): 130–46. https://doi.org/10.29313/aktualita.v0i0.5689.

Sa'ad, Auwal Adam. "Shariah and The International Treaties on Commercial Dispute Settlement: An Appraisal." *Journal of Shariah Law Research* 7, no. 1 (2022): 1–20.

Sidharta, Bernard Arief. *Penelitian Hukum Normatif, Analisis Penelitian Filosofikal Dan Dogmatikal, Metode Penelitian Hukum Konstelasi Dan Refleksi*. (Jakarta: Yayasan Pustaka Obor Indonesia, 2011).

Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. 1st ed. (Jakarta: Rajawali Pers, 2015).

Stapah, SallehMaisyarah, and Nizam Possumah, Bayu Taufiq Ahmat. "The Impact of Financing Contracts on the Profitability of Islamic Banks." *Jurnal Ekonomi Malaysia* 55, no. 3 (2021): 149–64.

https://doi.org/10.17576/JEM-2021-5503-11.

Suadi, Amran. *Resolusi Penguatan Ekosistem Hukum Ekonomi dan Keuangan Syariah di Indonesia Pada Sektor Jasa Keuangan Syariah*. (Jakarta: IKNB Syariah, Pasar Modal Syariah, 2021).

Suadi, Amran, and Muchammad Taufiq Affandi. "Best Practices in Interconnecting Sharia Arbitration Norms: A Comparative Analysis of Indonesia and Europe." *Indonesian Journal of Islamic Economic Law* 1, no. 1 (2023): 23–38. https://doi.org/10.23917/ijoel.v1i1.3435.

"The Choice of Law and Dispute Settlement Resolution in Islamic Cross Border Finance Transactions." Accessed September 6, 2023. https://www.tamimi.com/law-update-articles/the-choice-of-law-and-dispute-settlement-resolution-in-islamic-cross-border-finance-transactions/.

Tiara, Zalna, and Kukuh Tejomurti. "Efficiency of implementation of alternative dispute settlement for fintech lending users." *Jurnal Scientia Indonesia* 8, no. 1 (2022): 37-52.

Triana, Nita. "Urgency of Arbitration Clause in Determining the Resolution of Sharia Economic Disputes." *AHKAM : Jurnal Ilmu Syariah* 18, no. 1 (2018): 65–88. https://doi.org/10.15408/ajis.v18i1.8872.

Yaacob, Hakimah, and Apnizan Abdullah. "Standards Issuance for Islamic Finance in International Trade: Current Issues and Challenges Ahead." *Procedia - Social and Behavioral Sciences* 65 (2012): 492–497. https://doi.org/10.1016/j.sbspro.2012.11.154.

Yuniyanti, Salma Suroyya, and Frency Siska. "Enhancing Legal Certainty for Consumers in Apartment Unit Trade: A Comparative Analysis of Dispute Settlement Agreements in Indonesia and the Netherlands." *Journal of Law and Legal Reform* 5, no. 1 (2024): 333-360.

Yusuf, Bing, and Liliana Tedjosaputro. "Dispute Resolution For International Contract to Achieve Legal Certainty." *International Journal of Business, Economics, and Law* 14, no. 5 (2017): 169–175.

Zakaria, Z., and M.A. Abdullah. "The Enforcement Activities Under Post-Market Control of Halal Certification in Malaysia." *Halal Journal* 3 (2019): 72–79.

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser — in fees, and expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough."

Abraham Lincoln

Acknowledgment
We extend our thankfulness to the Directorate of Research and Community Service (DRPM) at Universitas Padjadjaran for funding this article's preparation and for the support from all my co-authors.

Funding Information
This writing was supported by funding from the Directorate of Research and Community Service (DRPM) at Universitas Padjadjaran.

Conflicting Interest Statement
The authors state that there is no conflict of interest in the publication of this article.

History of Article
Submitted : October 17, 2023
Revised : April 26, 2024; May 31, 2024
Accepted : September 7, 2024
Published : September 22, 2024