

Implementation of Sharia Arbitration Law in the Settlement of Sharia Property Business Disputes

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Abstract: The growth of sharia-based property business in Indonesia increases the need for dispute resolution mechanisms that comply with Islamic legal principles. Sharia arbitration functions as an alternative dispute resolution forum recognized within the national legal system through Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and Law No. 3 of 2006 on Religious Courts, and is institutionally implemented by the National Sharia Arbitration Board (BASYARNAS). This study aims to analyze the legal basis, examine practical implementation, and identify challenges in applying sharia arbitration to sharia property disputes in Indonesia. This research adopts a qualitative normative juridical approach based on literature review of legislation, court decisions, academic publications, and institutional documents, analyzed using thematic content analysis. The findings indicate that although sharia arbitration has strong normative legitimacy and offers procedural advantages such as confidentiality, flexibility, and value-based justice, its application in property disputes remains limited. Key challenges include the absence of sector-specific technical regulations, limited availability of arbitrators with multidisciplinary competence in Islamic and land law, low legal literacy among business actors, and difficulties in enforcing arbitral awards. Therefore, strengthening sharia arbitration in property disputes requires regulatory refinement, institutional capacity building, and systematic inclusion of sharia arbitration clauses in property contracts to ensure legal certainty and effective dispute resolution.

Keywords: Sharia Arbitration; Property Disputes; Islamic Business Law; Alternative Dispute Resolution.

Introduction

The resolution of disputes in Islamic business is becoming increasingly important with the rapid growth of the Islamic economy, including in the property sector, which applies Islamic principles. In this context, Islamic arbitration has emerged as an alternative dispute resolution (ADR) mechanism that upholds justice and Islamic values outside the formal litigation system of general or religious courts (Nurul Fitriyah & Soviana, 2024). This mechanism has a strong legal framework in Indonesia, where arbitration is regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which provides space for dispute resolution based on agreement between the parties, including those based on sharia law (Anwar, 2023).

The role of sharia arbitration institutions such as the National Sharia Arbitration Board (BASYARNAS) is considered strategic because it provides a non-litigious forum that is in accordance with sharia principles for resolving economic and business disputes, which also has the potential to be adapted to sharia property disputes (Nurhabni, 2024). However, the implementation of Sharia arbitration also faces various substantive challenges, such as limited understanding of the procedures among the public and business actors, as well as a lack of competent arbitrators in the field of Sharia, which can hinder the effectiveness of dispute resolution (Limbong et al., 2024). These challenges become even more complex when sharia arbitration is used as the primary option in property business disputes due to the specific contractual and property rights aspects of property transactions (Nazib, 2025).

In addition, harmonisation between the sharia principles used as the basis for arbitration decisions and the national legal framework is an important aspect in strengthening the legitimacy and acceptability of sharia arbitration decisions, which in turn will strengthen the position of arbitration as a fair, fast, and efficient mechanism compared to conventional litigation (Nazib, 2025). Thus, an in-depth study of the implementation of Sharia arbitration law in the settlement of Sharia property business disputes is highly relevant to provide recommendations for policy development, institutional strengthening, and improving the competence of Sharia arbitrators so that the Sharia arbitration mechanism can become the optimal legal solution in the future.

The purpose of this study is to comprehensively examine the legal basis governing the application of sharia arbitration in the settlement of sharia property disputes in Indonesia, whether derived from legislation, fatwas, or relevant institutional provisions, while also analysing its implementation in resolving disputes arising from sharia property business transactions. In addition, this study also aims to identify and analyse the various challenges faced in the implementation of sharia arbitration, both from the aspects of regulation, institutions, arbitrator resources, and the level of understanding and acceptance of the parties, so that recommendations can be formulated to strengthen the effectiveness of sharia arbitration as a mechanism for resolving sharia property disputes in Indonesia.

Methods

This study employs a qualitative approach with a descriptive-analytical method through a normative juridical approach based on literature review (Novianti, 2024). The data sources were obtained through library research by systematically and critically examining various primary and secondary legal materials, including legislation, court decisions, academic literature such as scientific journals, books, theses, dissertations, and research reports relevant to sharia arbitration and sharia property business in Indonesia (Novianti, 2023). This approach was chosen because the research focused on the analysis of legal norms, sharia principles, and institutional practices in dispute resolution, so that documents became the main source of data representing legal constructs and implementative practices. The collected data were analysed inductively to produce systematic, factual, and in-depth findings in accordance with the research objectives (Novianti, 2020). The analysis was conducted using qualitative documentary analysis techniques combined with thematic content analysis, namely by identifying, coding, and organising the main themes to reveal patterns, trends, and normative implications of Sharia arbitration regulations and practices in the context of Islamic property. This approach is in line with the characteristics of legal and social-humanities research, which emphasises understanding meaning and harmonising legal norms with social dynamics. This approach is in line with the characteristics of legal and social-humanities research, which emphasises understanding meaning and harmonising legal norms with social dynamics (Zulbaidah et al., 2025a), while also reflecting the Indonesian legal system's commitment to responding to the needs of society through the formulation and implementation of regulations that are adaptive to the times (Zulbaidah et al., 2025b).

Results and Discussion

Legal Basis for Sharia Arbitration in Sharia Property Disputes in Indonesia

Sharia arbitration in Indonesia derives its legal legitimacy from the national legal system, which recognises arbitration as a mechanism for dispute resolution outside the courts based on the agreement of the parties. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution serves as the principal legal basis allowing the parties to agree on an arbitration forum, including arbitration based on Sharia principles, provided that this is stipulated in the contractual clause. In the context of national business disputes, arbitration plays an important role in providing legal certainty, justice, and efficiency in terms of time and cost, as the process enables the parties from the outset to select arbitrators with expertise relevant to the subject matter of the dispute, while also requiring the application of ethical standards to ensure fairness and transparency throughout the proceedings (Novianti, 2025). Accordingly, the normative validity of Sharia arbitration falls within the same positive legal framework as conventional arbitration, although it differs in the values and rules applied by arbitrators in adjudicating cases (Zamaludin & Nuroni, 2025). The legal basis for Sharia arbitration is further strengthened by Law No. 3 of 2006 on Religious Courts, which grants exclusive jurisdiction to the Religious Courts over Sharia economic cases, including the authority to ratify and enforce Sharia arbitration awards. This demonstrates the integration of non-litigation mechanisms with the formal court system within the national legal framework. Thus, Sharia arbitration does not stand outside the state legal system, but forms part of an institutionally recognised dispute resolution system.

In addition to positive law, Sharia arbitration also has strong legitimacy in Islamic law through the concept of *tahkīm*, which has been recognised as a dispute resolution mechanism since the early days of Islam. The principles of justice (*'adl*), truth (*ḥaqq*), and benefit (*maṣlaḥah*) form the normative foundation for the resolution of Sharia economic disputes, including property disputes based on *muamalah* contracts (Widjaja, 2025). In this context, Sharia arbitration is not only understood as a legal procedure, but also as an ethical-religious mechanism to maintain transaction justice and social harmony. The existence of the National Sharia Arbitration Agency (BASYARNAS) as a special Sharia arbitration institution further strengthens the position of Sharia arbitration in the Islamic economic legal system in Indonesia. BASYARNAS performs dispute resolution functions based on sharia principles while following national arbitration procedural provisions. This shows that sharia arbitration not only has a religious normative basis but also a legally recognised institutional structure (Nurhabni, 2024). Meanwhile, there are no specific regulations governing sharia arbitration in the property sector. Sharia property disputes are still positioned as part of general sharia economic disputes, so that the specific characteristics of the property sector, such as land, licensing and property rights, are not fully accommodated in existing sharia arbitration regulations. This normative vacuum has the potential to create legal uncertainty in the practice of sharia-based property dispute resolution.

The Practice of Sharia Arbitration in Sharia Property Dispute Resolution

In practice, the resolution of sharia property disputes through arbitration is still relatively limited compared to the sharia banking and finance sectors. This is due to the tendency of property businesses to choose litigation or informal mediation over arbitration mechanisms, which require an arbitration clause in the contract from the outset of the transaction. As a result, many Sharia property disputes are ultimately resolved through the courts even though the underlying contract uses Sharia principles. When Sharia arbitration is used, the mechanism generally involves examining the contract, the conformity of the property with Sharia principles, and the performance of the parties' obligations based on the *murabahah*, *musyarakah*, or *istishna'* contracts. The arbitrator not only assesses aspects of civil default but also ensures that there are no elements of *gharar*, *riba*, and *zalim* in the transaction structure. This is what distinguishes sharia arbitration from conventional arbitration, which is solely based on formal contracts (Widjaja, 2025).

BASYARNAS, as a sharia arbitration institution, has handled various types of sharia business disputes, but its contribution to property disputes is still not optimal because the number of cases filed is relatively small. The main factors influencing this condition are the low inclusion of sharia arbitration clauses in property contracts and the lack of knowledge among business actors about the existence and procedures of sharia arbitration (Nurhabni, 2024). Nevertheless, in terms of effectiveness, sharia arbitration is considered capable of providing faster, more confidential resolutions that are in line with the substantive values of Islamic justice. Arbitration awards are also binding and can be enforced through the courts if they are not voluntarily complied with. This makes Sharia arbitration a potential instrument for creating legal certainty in the Sharia property sector, which requires long-term investment stability (Fitriyah & Soviana, 2024). However, this effectiveness has not been achieved systematically due to the lack of an integrated sharia property dispute resolution ecosystem between notaries, developers, sharia banks, and arbitration institutions. Without this integration, sharia arbitration tends to be a sporadic alternative mechanism and has not become the primary choice in sharia property business practices.

Challenges in Implementing Sharia Arbitration in Sharia Property Disputes

The main challenge in implementing sharia arbitration lies in socio-legal aspects, namely the low level of legal literacy among business actors regarding sharia-based non-litigation dispute resolution mechanisms. Many Sharia property contracts substantively follow Sharia principles but do not include arbitration clauses, so that when disputes arise, the parties cannot immediately use the Sharia arbitration forum (Limbong et al., 2024). In addition, the limited number of

arbitrators with combined expertise in Islamic law, land law, and business law is a serious obstacle. Property disputes are highly complex because they involve aspects of land certification, building permits, financing, and multi-party contractual relationships. Without multidisciplinary competence, the quality of arbitration decisions has the potential to be suboptimal and difficult for the parties to accept (Limbong et al., 2024).

The next challenge is the problem of executing Sharia arbitration decisions. Although normatively arbitration decisions are final and binding, in practice there is often resistance to enforcement through new lawsuits in court, which actually prolongs the resolution of disputes. This condition reduces the advantage of arbitration as a fast and efficient mechanism, while also creating legal uncertainty for Sharia property business actors. From a regulatory perspective, the absence of technical regulations specifically governing the settlement of sharia property disputes through arbitration means that the mechanisms applied still refer to the general framework for settling sharia business disputes. However, the property sector has unique legal characteristics, particularly as it relates to property law, land rights status, building permits, and its connection to the national land administration system, which requires more specific procedural and substantive regulations. The absence of sectoral regulations that integrate sharia principles with the land law regime has the potential to cause inconsistencies in dispute resolution practices and hinder the consistent application of sharia values in arbitration decisions.

Therefore, strengthening the role of Sharia arbitration in property dispute resolution cannot be achieved solely through regulatory reform, but must be done comprehensively by improving the legal literacy of business actors and the community, strengthening institutional capacity and the professionalism of arbitrators within BASYARNAS, and the systematic integration of sharia arbitration clauses in the drafting of property business contracts from the initial stages of transactions. This integrated approach is necessary to ensure that sharia arbitration functions not only as a procedural alternative, but also as an effective instrument in guaranteeing legal certainty, substantive justice, and compliance with sharia principles in property business practices in Indonesia.

Conclusion

Sharia arbitration in the settlement of sharia property disputes in Indonesia has a strong legal basis in terms of both legislation and Islamic legal principles, and is supported by the existence of BASYARNAS and DSN-MUI fatwas as substantive references. In practice, this mechanism offers advantages in terms of procedural flexibility, confidentiality, and an orientation towards justice in accordance with Sharia principles. However, its implementation still faces obstacles in the form of the absence of specific technical regulations for the property sector, the limited competence of arbitrators in land law and Sharia economics, low legal literacy among business actors, and issues with the enforcement of decisions. Therefore, strengthening sectoral regulations, increasing institutional and human resource capacity, and including sharia arbitration clauses in property business contracts are important steps to improve legal certainty and the effectiveness of dispute resolution.

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