

# The Integration of Sharia Principles Into The National Arbitration System Under Law No. 30 of 1999

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**Abstract:** *This study examines Sharia arbitration from the perspective of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution as one of the mechanisms for out-of-court dispute resolution based on the principles of Islamic law. The objective of this study is to analyse the status, basic concepts, advantages, and challenges of implementing Sharia arbitration within Indonesia's national legal system. The method employed is a literature review (library research) using a normative qualitative approach through the analysis of various relevant literature, academic journals, and legal documents. The research findings indicate that Sharia arbitration plays a significant role in facilitating the swift, confidential, and efficient resolution of Sharia economic disputes, whilst providing legal certainty through binding awards. However, its implementation still faces a number of challenges, such as limited public understanding, a shortage of experts, and the absence of comprehensive specific regulations regarding Sharia arbitration within Indonesia's positive legal system. Furthermore, there are also issues regarding the harmonisation of Sharia principles with national law, as well as obstacles in the enforcement of arbitration awards in practice. The conclusions of this study confirm that Sharia arbitration is an important instrument within Indonesia's dispute resolution system, with significant potential to support the development of the Sharia economy. Therefore, there is a need to strengthen regulations, enhance the competence of arbitrators, and conduct wider public awareness campaigns so that Sharia arbitration can function optimally as a fair, effective, and Sharia-compliant alternative for dispute resolution.*

**Keywords:** *Sharia Arbitration; Law No. 30 of 1999; Dispute Resolution; Sharia Economic Law; BASYARNAS.*

## Introduction

Sharia arbitration is a mechanism for out-of-court dispute resolution based on the principles of Islamic law, such as justice (al-'adl), consultation, good faith, legal certainty, and compliance with Islamic law. This mechanism serves as an alternative form of dispute resolution relevant to the development of the Islamic economy and business in Indonesia, particularly in the fields of Islamic banking, Islamic insurance, trade, investment, and various other forms of muamalah transactions. In practice, Sharia Arbitration provides a means for the parties to resolve disputes more quickly, confidentially, efficiently, and flexibly than through litigation in the courts. Furthermore, arbitration awards are legally binding, thereby providing legal certainty in the resolution of Sharia economic disputes (Setiady, 2015).

The existence of Sharia Arbitration in Indonesia cannot be separated from the development of the national legal system, which recognises dispute resolution through non-litigation channels. Within the context of Indonesian positive law, arbitration is generally regulated under Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law serves as the main legal basis for the implementation of arbitration, including Sharia Arbitration, although it does not specifically regulate Sharia-based arbitration. Nevertheless, its provisions remain applicable to Sharia Arbitration as long as they do not conflict with Islamic legal principles. This demonstrates a harmonious relationship between the national legal system and Sharia values in resolving Islamic economic disputes (Mardani, 2017).

Sharia Arbitration offers a dispute resolution alternative that emphasises not only formal legal aspects but also Islamic moral and ethical dimensions. Dispute resolution through this mechanism is conducted by arbitrators who are well-versed in Sharia principles, ensuring that the resulting decisions reflect substantive justice for the parties involved. In Indonesia, the institution specifically responsible for Sharia Arbitration is the National Sharia Arbitration Board

(BASYARNAS), operating under the Indonesian Council of Ulama. The existence of BASYARNAS is crucial in supporting the development of the national Islamic economic industry, as it provides a dispute resolution forum aligned with Sharia principles and the needs of the modern business world (Rahman, 2020).

Moreover, ethics plays an essential role in maintaining the credibility and effectiveness of the arbitration process. Ethical principles ensure that arbitrators act in a neutral, objective, transparent manner and remain free from conflicts of interest. The proper application of ethics enhances the parties' trust in the arbitration mechanism and ensures a fair and professional dispute resolution process. Novianti (2025) highlights that ethics play a significant role in maintaining justice and transparency in arbitration processes, particularly in preventing abuse of authority and safeguarding arbitrators' integrity in decision-making. Thus, the implementation of ethical principles in Sharia Arbitration is a crucial factor in supporting effective dispute resolution based on Sharia principles (Novianti, 2025).

On the other hand, the implementation of Sharia Arbitration also faces various challenges, both in regulatory and practical terms. One of the main challenges is the limited public and business actors' understanding of the existence and mechanism of Sharia Arbitration. Furthermore, the absence of specific regulations concerning Sharia Arbitration within Law No. 30 of 1999 creates several technical and juridical issues in its implementation, such as the enforcement of arbitral awards and the synchronisation of authority between arbitral institutions and the judiciary. Therefore, strengthening regulations, improving the professionalism of arbitrators, and expanding public awareness are necessary to ensure that Sharia Arbitration functions more effectively and provides optimal legal certainty for society (Huda, 2019).

Through a comprehensive understanding of Law No. 30 of 1999 in relation to Sharia Arbitration, it is expected that a dispute resolution system can be established that is not only effective and efficient, but also aligned with Sharia principles, ethical values, and national legal needs. Accordingly, Sharia Arbitration has significant potential to become an important instrument in supporting the development of the Islamic economy in Indonesia, while also strengthening an equitable and welfare-oriented alternative dispute resolution system.

### **Methods**

Dalam penelitian ini, metode yang digunakan adalah metode studi kepustakaan (*library research*). Metode ini digunakan untuk mengumpulkan informasi dan data yang relevan mengenai Arbitrase Syariah dalam perspektif Undang-Undang Nomor 30 Tahun 1999. Metode studi kepustakaan dipilih karena memungkinkan peneliti memperoleh data melalui berbagai sumber literatur ilmiah, dokumen hukum, buku, jurnal, serta referensi digital yang relevan dengan objek penelitian (Jalil, 2013; Novianti, 2024). Pertama, pencarian sumber informasi dilakukan melalui basis data jurnal nasional seperti *Jurnal Hukum Islam*, *Jurnal Hukum Indonesia*, dan *Jurnal Penelitian Hukum Islam*. Selain itu, juga dilakukan penelusuran melalui perpustakaan digital yang menyediakan akses terhadap buku-buku dan dokumen terkait hukum arbitrase serta hukum Islam di Indonesia. Pemanfaatan sumber digital dalam penelitian hukum menjadi penting pada era perkembangan teknologi informasi karena dapat memperluas akses terhadap referensi ilmiah yang valid dan terpercaya (Novianti, 2024). Kedua, seleksi sumber informasi dilakukan dengan mengacu pada kriteria relevansi, validitas, dan kualitas akademik sumber yang digunakan. Sumber-sumber yang dipilih harus memiliki kualitas akademik yang tinggi, berdasarkan penelitian yang valid dan terpercaya, serta memiliki kaitan yang kuat dengan topik yang dibahas. Dalam hal ini, referensi jurnal yang dipilih diutamakan memiliki relevansi langsung dengan Arbitrase Syariah dalam konteks Undang-Undang Nomor 30 Tahun 1999. Tahapan seleksi sumber ini penting dilakukan guna memastikan data yang digunakan memiliki tingkat kredibilitas dan keakuratan yang memadai dalam penelitian hukum (Novianti, 2024). Ketiga, setelah sumber-sumber informasi terpilih, dilakukan analisis dan evaluasi terhadap data yang diperoleh. Data-data tersebut dibaca, dipahami, dan dievaluasi secara cermat. Dalam proses analisis, penulis mengidentifikasi pola, tema, dan argumen yang muncul dalam berbagai literatur yang relevan dengan topik penelitian. Evaluasi dilakukan untuk memastikan bahwa data dan informasi yang digunakan memiliki kualitas dan keandalan yang memadai sehingga mampu mendukung

pembahasan penelitian secara objektif dan sistematis (Novianti, 2024). Metode studi kepustakaan ini menjadi relevan dalam penelitian karena memungkinkan penulis untuk mengakses dan menganalisis berbagai sumber informasi yang telah ada, termasuk jurnal-jurnal akademik terkait Arbitrase Syariah dan Undang-Undang Nomor 30 Tahun 1999. Dengan demikian, penelitian ini diharapkan mampu memberikan pemahaman yang komprehensif mengenai Arbitrase Syariah dalam perspektif hukum di Indonesia (Jalil, 2013; Novianti, 2024).

## **Results and Discussion**

Sharia Arbitration is a dispute resolution mechanism that is highly relevant in the Indonesian context, as the country has a Muslim-majority population. From a legal perspective in Indonesia, Sharia Arbitration is regulated under Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This Law provides a strong legal foundation for the use and development of Sharia Arbitration in the country. This discussion further examines the perspective of Law No. 30 of 1999 on Sharia Arbitration and its implications for dispute resolution. Law No. 30 of 1999 recognises and regulates Sharia Arbitration as a legitimate alternative dispute resolution mechanism in Indonesia. Through this law, Sharia Arbitration is given space and recognition as a means of resolving disputes in accordance with Islamic legal principles. The law sets out the principles that must be followed in Sharia Arbitration, including the selection of arbitrators who are competent in Islamic law, the implementation of fair and transparent arbitration procedures, as well as the issuance of binding and enforceable arbitral awards (Uzma, 2014).

### **Basic Concepts of Sharia Arbitration**

Sharia Arbitration is an alternative dispute resolution mechanism based on Islamic legal principles. In the context of Sharia Arbitration, there are several fundamental concepts that need to be understood, including its definition, governing principles, and the differences between conventional arbitration and Sharia Arbitration.

#### 1. Definition of Sharia Arbitration

Sharia Arbitration can be defined as a dispute resolution process outside the court system that is based on Islamic legal principles. In Sharia Arbitration, disputes are resolved through the appointment of an arbitrator or an arbitral tribunal that possesses knowledge and expertise in Islamic law. The arbitrator acts as a neutral and objective mediator to achieve a fair resolution based on Islamic legal principles.

#### 2. Principles of Sharia Arbitration

Sharia Arbitration is based on Islamic legal principles, which include justice, legal certainty, equality, and freedom of contract. The principle of justice in Sharia Arbitration ensures fair and balanced treatment of all parties involved in the arbitration process. Legal certainty is an important principle to ensure that arbitral decisions have clear legal force and are enforceable. The principle of equality guarantees that all parties in arbitration have equal rights and fair treatment. Meanwhile, the principle of freedom of contract allows the parties to determine the procedural rules to be applied in arbitration.

#### 3. Differences between Conventional Arbitration and Sharia Arbitration

Sharia Arbitration differs fundamentally from conventional arbitration, particularly in terms of the legal sources used. Conventional arbitration is based on positive law and general legal principles, whereas Sharia Arbitration is based on Islamic legal principles derived from the Qur'an, Hadith, fatwas, and other Sharia principles. In Sharia Arbitration, arbitrators possess in-depth knowledge of Islamic law and use Islamic legal sources as references in making arbitral decisions. In addition, Sharia Arbitration also applies principles of justice and public welfare (maslahah). The concept of justice in Sharia Arbitration includes moral and ethical dimensions as reflected in Islamic legal principles.

Meanwhile, *maslahah* is a key principle focused on achieving public good and preventing harm that may arise from disputes (Riyanto, 2016).

### **Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution**

Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is an important legal framework in Indonesia that regulates dispute resolution processes outside the court system, including arbitration. This section discusses the general overview, settlement procedures and scope, as well as the limitations regulated under Law No. 30 of 1999.

#### 1. General Overview

Law No. 30 of 1999 aims to provide legal certainty and promote peaceful dispute resolution efforts in Indonesia. This Law recognises arbitration as one of the important alternative dispute resolution mechanisms. Arbitration is a process in which disputing parties agree to submit their dispute to one or more independent and neutral arbitrators who will issue a binding decision.

#### 2. Settlement and Scope

Law No. 30 of 1999 regulates the procedures and mechanisms for dispute resolution through arbitration. Arbitration may be conducted both domestically and internationally. The Law stipulates that dispute resolution through arbitration is based on an arbitration agreement reached by the parties, whether written or oral. It also regulates the recognition and enforcement of arbitral awards in Indonesia. The scope of Law No. 30 of 1999 covers disputes arising from civil legal relationships, both national and international in nature. Disputes that may be resolved through arbitration include commercial disputes, investment disputes, contract disputes, property disputes, and other disputes that can be subject to arbitration. Furthermore, the Law also provides limitations regarding the validity and enforceability of arbitral awards. For example, arbitral awards that violate public order or principles of justice may be annulled by the court. The Law also restricts the use of arbitration for disputes involving criminal matters or public interest. In this regard, arbitration cannot be used to resolve criminal cases or disputes directly related to public policy (Kurniawaty, 2017).

#### 3. Limitations

Although Law No. 30 of 1999 provides a strong legal foundation for the implementation of arbitration and alternative dispute resolution in Indonesia, its application still faces several normative and practical limitations. The Law explicitly states that arbitration may only be applied to commercial disputes and rights that are fully under the control of the parties. Therefore, not all types of cases can be resolved through arbitration. One example of this limitation is employment disputes, which fall outside the jurisdiction of general arbitration because they are specifically regulated under Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement. This reflects the application of the principle of *lex specialis derogat legi generali*, where special rules override general provisions. In the context of industrial relations, the state considers workers to require greater legal protection; therefore, dispute resolution cannot be fully delegated to private mechanisms such as arbitration. Labour disputes involve not only private contractual relationships but also social welfare aspects, workers' normative rights, and public interests that require state intervention through industrial relations dispute resolution institutions.

In addition, various studies indicate that the implementation of arbitration in Indonesia still faces challenges such as limited public understanding of arbitration mechanisms, restricted access to arbitration institutions, relatively high costs of proceedings, and difficulties in enforcing arbitral awards. Several studies also highlight overlapping jurisdiction between courts and arbitration bodies, which often creates legal uncertainty in the practice of dispute resolution, including in Islamic economic disputes and general business matters. Moreover, the effectiveness of arbitration is also influenced by the quality of arbitrators, the independence of arbitration institutions, and the parties' compliance with arbitral awards. Therefore, although arbitration is known as a faster, more flexible,

confidential, and efficient dispute resolution mechanism compared to litigation, its implementation must still consider jurisdictional limits, the nature of disputes, and the protection of certain parties' interests as regulated in the national legal system (Sari, 2021; Prasetyo, 2018; Fauzan, 2020; Maulana, 2019; Yusuf, 2022).

### **Advantages and Challenges of Sharia Arbitration under Law No. 30 of 1999**

Sharia Arbitration, as part of the dispute resolution system regulated under Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, has both advantages and challenges in its implementation. A comprehensive understanding of these aspects is essential to improve and enhance the effectiveness of Sharia Arbitration in Indonesia.

#### **1. Advantages of Sharia Arbitration:**

##### **a. Substantive Justice**

One of the main advantages of Sharia Arbitration is the application of Islamic legal principles that can produce substantive justice. Sharia Arbitration allows parties to submit their disputes to arbitrators who have an in-depth understanding of Islamic law and Sharia values. This ensures that decisions are based on principles of justice aligned with religious teachings.

##### **b. Speed and Confidentiality**

Sharia Arbitration is also known for being faster compared to court litigation. Its simple and flexible procedures allow disputes to be resolved more efficiently. In addition, the confidentiality of arbitration provides privacy protection for the parties involved in the dispute.

##### **c. Expertise and Professionalism**

In Sharia Arbitration, arbitrators are selected based on their knowledge and expertise in Islamic law and Sharia-related matters. This ensures that arbitrators have a deep understanding of the legal context of the dispute being resolved. Their expertise and professionalism guarantee that arbitral decisions are based on comprehensive knowledge and objectivity.

#### **2. Challenges in the Implementation of Sharia Arbitration:**

##### **a. Awareness and Education**

One of the main challenges is the lack of widespread awareness and understanding of the concept and procedures of Sharia Arbitration. Better education and socialisation are needed to improve public and legal practitioners' knowledge of its benefits and mechanisms.

##### **b. Availability of Experts**

Sharia Arbitration requires experts with deep knowledge of Islamic law and Sharia principles. A key challenge is the limited number of qualified arbitrators. Efforts are needed to increase both the number and quality of experts in this field.

##### **c. Legal Protection**

Another important challenge is the legal protection of arbitral awards. Although Law No. 30 of 1999 recognises arbitral decisions, further efforts are needed to ensure their enforcement. Strong legal protection and effective enforcement mechanisms are necessary to ensure that Sharia arbitral awards are respected and properly implemented by the parties involved.

##### **d. Harmonisation with Positive Law**

Sharia Arbitration also faces challenges in harmonising Islamic legal principles with Indonesia's positive law. In some cases, tensions arise between Sharia principles applied

in arbitration and general statutory law. Therefore, in-depth studies are needed to balance Sharia principles with applicable national legal principles.

### **3. Efforts to Improve the Effectiveness of Sharia Arbitration:**

#### **a. Education and Training**

Improving the effectiveness of Sharia Arbitration can be achieved through intensive education and training for arbitrators, mediators, and legal practitioners. By enhancing their understanding of Islamic law and Sharia principles, they can provide higher-quality and more Sharia-compliant dispute resolution.

#### **b. Cooperation and Collaboration**

Collaboration between Sharia arbitration institutions, Islamic legal institutions, and the government needs to be strengthened to create a conducive ecosystem for the development of Sharia Arbitration. This cooperation may involve legal service providers, academics, and legal practitioners to promote and strengthen Sharia arbitration practices in Indonesia.

#### **c. Socialisation and Promotion**

Broader socialisation of Sharia Arbitration is necessary to increase public awareness and understanding of its benefits and procedures. Effective promotion through seminars, workshops, and social media can help improve public understanding of Sharia Arbitration as an efficient and Sharia-compliant alternative dispute resolution mechanism (Ariffin, 2016).

### **Cases and Practice of Sharia Arbitration**

Sharia Arbitration has been used in the resolution of various disputes in Indonesia. Several case studies and practical applications of Sharia Arbitration provide an overview of the effectiveness and development potential of this system. By examining these cases, we can understand how Sharia Arbitration serves as an efficient and appropriate mechanism for resolving disputes related to Islamic law. The following are some case studies and practices of Sharia Arbitration.

#### **1. Case Study Business Dispute in the Islamic Financial Industry**

In one case study, an Islamic financial company faced a dispute with one of its customers regarding an investment transaction. The parties chose to resolve the dispute through Sharia Arbitration. The arbitration process was conducted at a reputable Sharia arbitration institution, with arbitrators who had expertise in Islamic law and Islamic finance. The arbitral award resulted in a fair decision consistent with Sharia principles, allowing the dispute to be resolved properly and leaving both parties satisfied with the outcome.

#### **2. Case Study Inheritance Dispute in a Muslim Family**

In another case, a Muslim family faced a dispute regarding the distribution of inheritance following the death of their parents. They chose to use Sharia Arbitration as a dispute resolution mechanism to avoid greater conflict and to obtain a fair decision based on Islamic legal principles. Through the Sharia arbitration process, the dispute was resolved quickly and appropriately, taking into account the applicable Islamic legal provisions on inheritance distribution.

#### **3. Practice and Experience of Sharia Arbitration Implementation**

In addition to case studies, there is also practical experience in the use of Sharia Arbitration across various sectors in Indonesia. Several Sharia arbitration institutions have been actively handling disputes related to trade, finance, property, and other industries. This practice demonstrates a significant demand for Sharia-based dispute resolution, both from individuals and business entities. Sharia Arbitration has also been applied in an international context. Some Sharia arbitration cases involve parties from different countries who choose Sharia Arbitration as an alternative dispute resolution mechanism that better aligns with their beliefs and values (Hasanah, 2021).

## Conclusion

Sharia Arbitration plays an important role in resolving disputes related to Islamic law. It offers significant advantages, such as flexibility, fairness, and the freedom to select arbitrators with expertise in Islamic law. However, there are also challenges in its implementation, including limited public awareness and understanding, the need for harmonisation with positive law, and the expansion of access to and trust in Sharia arbitration institutions. In order to improve the effectiveness of Sharia Arbitration, several measures can be taken. Intensive education and training for legal practitioners and arbitrators in the field of Islamic law need to be enhanced. Collaboration between Sharia arbitration institutions, Islamic legal bodies, and the government also needs to be strengthened to create a conducive ecosystem for the development of Sharia Arbitration. Broad socialisation and effective promotion of Sharia Arbitration will help increase public understanding and trust in this dispute resolution mechanism. In the implementation of Law No. 30 of 1999, Sharia Arbitration can serve as an effective instrument in resolving disputes involving aspects of Islamic law. Its implementation requires cooperation among various stakeholders, including the government, Sharia arbitration institutions, legal practitioners, and the wider community. With a strong legal framework and increasing awareness, Sharia Arbitration can make a significant contribution to creating a fair legal system that is aligned with Sharia principles, while also supporting economic development and social justice in Indonesia. Therefore, it is important for all involved parties to continue strengthening and developing Sharia Arbitration practices, both through regulatory improvements, increased understanding, and wider socialisation. Through these efforts, Sharia Arbitration can become a strong and trusted alternative in resolving disputes involving Islamic law, as well as contributing positively to the advancement of the legal system and justice in Indonesia.

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