

Sharia Arbitration and Business Dispute Resolution under Law No. 30 of 1999

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Abstrak

Penelitian ini mengkaji konsistensi norma hukum yang mengatur lembaga arbitrase syariah di Indonesia, dengan fokus pada Badan Arbitrase Syariah Nasional (BASYARNAS) dalam kerangka Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa. Penelitian ini bertujuan untuk mengevaluasi sejauh mana BASYARNAS selaras dengan prinsip hukum nasional dan standar internasional dalam menyelesaikan sengketa bisnis. Penelitian ini menggunakan metode yuridis normatif dan analisis kualitatif terhadap bahan hukum primer dan sekunder. Penelitian ini menemukan adanya kesenjangan yang signifikan antara norma hukum dan implementasi praktik. Ketidakkonsistenan ini melemahkan efektivitas BASYARNAS, khususnya dalam penyelesaian sengketa investasi dari sudut pandang investor asing. Temuan menunjukkan lemahnya integrasi mekanisme arbitrase syariah dalam sistem hukum nasional. Selain itu, pengakuan internasional yang terbatas dan ketidaksesuaian dengan standar prosedural global turut mengurangi tingkat kepercayaan investor. Penelitian ini menyimpulkan bahwa harmonisasi regulasi, reformasi kelembagaan, dan peningkatan pengakuan global diperlukan untuk memperkuat posisi BASYARNAS sebagai forum penyelesaian sengketa yang kredibel dan kompetitif di tingkat internasional.

Keywords :

BASYARNAS, Economic
Law, Foreign Investment,
Law No. 30/1999, Sharia
Arbitration

Abstract

This study examines the consistency of legal norms governing Islamic arbitration institutions in Indonesia, focusing on the National Sharia Arbitration Board (BASYARNAS) within the framework of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. It aims to evaluate the extent to which BASYARNAS aligns with national legal principles and international standards in resolving business disputes. Using a normative juridical method and qualitative analysis of primary and secondary legal materials. The study identifies a significant gap between regulatory norms and practical implementation. This inconsistency undermines BASYARNAS's effectiveness, particularly in resolving investment-related disputes from the perspective of foreign investors. The findings reveal weak integration of Islamic arbitration mechanisms into Indonesia's broader legal system. Moreover, limited international recognition and misalignment with global procedural standards reduce investor confidence. The study concludes that regulatory harmonization,

institutional reform, and enhanced global acknowledgment are necessary to strengthen BASYARNAS as a credible and competitive dispute resolution forum in the international investment arena.



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INTRODUCTION

Arbitration is an important alternative in resolving business disputes because it is considered faster and more efficient than litigation. However, challenges such as lack of public understanding and inconsistent regulations still hamper its effectiveness (Ananta, 2024). Sharia arbitration is one of the dispute resolution instruments based on sharia principles and recognized in the Indonesian national legal system. Sharia arbitration, particularly through BASYARNAS-MUI, offers an efficient, confidential, and fair mechanism for resolving disputes based on Islamic principles such as justice (adl), truth (haqq), and public benefit (maslahat), while aligning with national arbitration laws and serving as a practical alternative to conventional litigation in Indonesia's growing Sharia economic sector (Widjaja, 2025).

Its presence is important in the context of increasing sharia economic activity in Indonesia, which includes the banking, finance and other sharia-based business sectors. One of the institutions that perform the function of sharia arbitration in Indonesia is the National Sharia Arbitration Board (BASYARNAS). This institution has legal legitimacy through Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution as well as the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). However, despite having a strong legal basis, the existence and effectiveness of BASYARNAS in resolving sharia economic disputes still draws various criticisms, especially related to the consistency of the implementation of legal norms and acceptance by the business community and foreign investors (Hasnan, 2019; Irfan et al., 2017; King & Rizqy, 2023).

The main problem in this research is the inconsistency between the legal norms governing sharia arbitration and its implementation practices, which has an impact on the low trust of business actors in BASYARNAS as a dispute resolution forum. This phenomenon shows the gap between *das sollen* (what should be) and *das sein* (the reality that occurs). This discrepancy is a serious challenge in the development of the Islamic economic legal system in Indonesia, especially in attracting foreign investors who demand legal certainty and effective dispute resolution mechanisms (Ananta, 2024; Setiyo & Zakki, 2020).

The urgency lies in the need to strengthen the norms and institutions of sharia arbitration in order to be able to become an alternative dispute resolution that is not only in accordance with sharia principles, but also has global competitiveness. This research will discuss how the consistency of the norms governing BASYARNAS and assess the relevance and actual challenges faced by this institution in the context of sharia investment dispute resolution. Using a normative juridical approach, the author

seeks to identify weaknesses in the regulatory and institutional structures that hinder BASYARNAS' ideal function as an Islamic arbitration institution (Nur & Layyin, 2020; Ulfa, 2021).

The Sharia Arbitration Institution has a central role in creating a safe and stable investment climate in Indonesia through its strong legal basis and effective operation. It not only serves as a forum for dispute resolution based on the principles of Islamic law, but also offers procedural flexibility such as speed of process and the use of sharia mediators, which increases the efficiency of dispute resolution (Dede et al., 2024). The effectiveness of sharia economic dispute resolution at the regional level has also been proven through the performance of the Yogyakarta Special Region National Sharia Arbitration Board (BASYARNAS DIY). The study shows that in the 2016-2021 period, BASYARNAS DIY succeeded in resolving 18 sharia economic dispute cases effectively and efficiently, supported by the existence of a clear legal basis, the role of mediators and arbitrators, and good cooperation with Religious Court judges. This success does not only depend on legal aspects alone, but is also determined by the readiness of facilities and infrastructure, support from law enforcement officials, and a community culture that supports peaceful dispute resolution (Ani, 2021).

In the context of international investment dispute resolution, the International Center for Settlement of Investment Disputes (ICSID) is an arbitration forum widely used by foreign investors because it is autonomous and independent. It is established on the basis of an international treaty that provides the institutional and procedural framework for establishing a conciliation commission as well as an independent arbitral tribunal in each case handled (Budi et al., 2021). Disputes in foreign investment often stem from differing interpretations of agreements, leading parties to prefer non-litigation forums such as the International Center for Settlement of Investment Disputes (ICSID), which is widely used for resolving investor-state conflicts (Asnawi et al., 2024). The implementation of international arbitration awards in Indonesia still faces obstacles, such as the absence of an enforcement time limit and non-uniform interpretation of the principle of public order, which has an impact on legal uncertainty (Setiyo & Zakki, 2020).

METHODS

This research uses a normative legal research method (doctrinal) which relies on literature study and analysis of positive legal norms governing sharia arbitration institutions. The approach used is a statute approach, which examines relevant laws and regulations such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as a conceptual approach to explore legal theories and sharia principles underlying the implementation of arbitration (Negara, 2023).

The data sources in this research consist of primary legal materials such as laws, DSN-MUI fatwas, and arbitration decisions. Secondary legal materials include scientific journals, books, and relevant academic articles. Meanwhile, tertiary legal

materials include legal dictionaries and legal encyclopedias used to support the understanding of legal terms. Data collection techniques are carried out systematically through library research to obtain a comprehensive theoretical basis.

To maintain the validity and legitimacy of the data, a triangulation technique of the legal sources used is used, as well as a critical evaluation of various existing academic perspectives. Data analysis is conducted qualitatively with deductive reasoning method, which draws conclusions from general legal provisions to their application in a specific context, namely the effectiveness and consistency of the implementation of sharia arbitration by BASYARNAS in resolving investment disputes. This method allows the researcher to evaluate not only the normative structure, but also the practical challenges facing the institution.

RESULT AND DISCUSSION

The results show that although sharia arbitration in Indonesia has received legal recognition through Law No. 30 of 1999 and DSN-MUI fatwas, its implementation in the field still faces a number of significant obstacles. One of the main problems is the low number of cases settled through BASYARNAS. Many business actors prefer district courts or conventional arbitration institutions, because they consider that these forums provide higher legal certainty and enforceability than BASYARNAS (Alfauza, 2017; Idandi et al., 2024; Syahfitra et al., 2024).

This is due to various factors. First, the lack of understanding and trust from business actors towards sharia arbitration mechanisms. Second, the weak institutional infrastructure of BASYARNAS, such as the lack of arbitrators who have international qualifications and certifications, the unoptimal publication of arbitration decisions, and the low promotion and socialization of this institution, both at the national and international levels. Third, the limited institutional cooperation between BASYARNAS and the religious courts also worsens the effectiveness of the implementation of arbitral awards (Fitriyah, 2021).

One of the most significant obstacles is the *exequatur* mechanism that must be carried out through the District Court, even though the case handled is sharia. This creates jurisdictional dualism and legal uncertainty, which in turn reduces the effectiveness of sharia arbitration decisions (Najib, 2020). In addition, the absence of international recognition of BASYARNAS through mechanisms such as the New York Convention causes arbitration awards issued by this institution to be difficult to execute abroad. This is certainly a major obstacle for foreign investors who need certainty of cross-border enforcement of the award.

In a global context, investors tend to choose international arbitration institutions such as ICSID, SIAC, or ICC that have standardized procedures, are final and binding, and have a guaranteed cross-border execution system. BASYARNAS has not been able to meet these expectations because there is no international standardization system in its procedures and no involvement in international agreements that support the enforceability of arbitration awards globally (Fayiz, 2023; Judijanto et al., 2024).

Therefore, strengthening the role and capacity of BASYARNAS is a necessity. Steps that can be taken include: updating regulations that strengthen the legal position of sharia arbitration, increasing the competence of arbitrators through international training and certification, digitizing the documentation system and publication of arbitral awards, and strengthening cooperation networks with international arbitration institutions (Abdurrauf et al., 2023; Halim & Rachmawati, 2017). In addition, procedural integration with religious courts should be encouraged so that the dispute resolution process is more in line with the principles of sharia and national law. Thus, BASYARNAS can become a dispute resolution forum that is not only in accordance with Islamic principles, but also able to compete globally and answer the needs of the modern investment world that demands efficiency, certainty, and substantive justice.

These findings reaffirm the original assumption that although Sharia arbitration through BASYARNAS has a strong normative foundation, its practical impact remains limited due to institutional and procedural gaps. The low utilization of BASYARNAS highlighted skepticism among business actors regarding the enforceability and neutrality of Sharia-based dispute resolution mechanisms. Compared to internationally recognized institutions such as ICSID, BASYARNAS lacks both international procedural standardization and recognition under the New York Convention, making it less attractive to foreign investors seeking cross-border certainty. In contrast to its potential role as an Islamic economic dispute resolution forum, BASYARNAS is constrained by its limited public exposure, absence in global networks, and procedural overlap with religious and general courts (Fattamazaya, 2013; Khairani & Arif, 2024; Samsul Bahri, 2024). This disconnect between theory and practice underscores the need for reform not only at the institutional level but also in terms of legal culture and awareness. BASYARNAS must not only improve technical competence and procedural clarity but also reposition itself within both national and international arbitration frameworks.

Future research could examine in more detail the perceptions of stakeholders, especially foreign investors, legal practitioners, and judges, toward the legitimacy of BASYARNAS, as well as assess its potential integration into the global dispute resolution ecosystem through soft diplomacy, mutual recognition, and digital innovation. By doing so, BASYARNAS could move closer to its envisioned role: a credible, Sharia-compliant, and internationally respected arbitration body. Based on the analysis above, it can be concluded that the regulatory norms governing BASYARNAS as contained in Law No. 30 of 1999 are not yet fully consistent with the practical implementation and institutional performance of Sharia arbitration in Indonesia. Although the law provides a legal basis for alternative dispute resolution, including Sharia-based mechanisms, its operationalization within BASYARNAS still faces normative and structural challenges that hinder its effectiveness, credibility, and alignment with both Islamic legal principles and international expectations.

CONCLUSION

This study was conducted to answer the main research question: whether the regulatory norms governing the Sharia Arbitration Institution particularly BASYARNAS are consistent with its implementation practices in resolving Sharia economic and investment disputes. Based on normative legal analysis and comparative review with international arbitration bodies such as ICSID, it is concluded that there remains a significant inconsistency between the legal norms as outlined in Law No. 30 of 1999 and the practical implementation of BASYARNAS. While BASYARNAS is normatively recognized and operates under a clear legal framework, its effectiveness in practice is still limited by institutional constraints, lack of enforcement authority, and low levels of public and investor trust. The minimal use of BASYARNAS, procedural overlaps with religious and general courts, and lack of international recognition highlight the gap between regulatory ideals (*das sollen*) and actual application (*das sein*). Therefore, the regulatory norms are not yet fully consistent with the institutional reality on the ground. To strengthen BASYARNAS as a credible dispute resolution forum aligned with Sharia principles, future legal and institutional reforms are needed, especially in terms of procedural clarity, global engagement, and stakeholder trust-building. These improvements are crucial for enhancing its role within Indonesia's Sharia economic legal framework and ensuring compatibility with international arbitration standards.

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