

Analysis of Challenges and Prospects for Dispute Resolution through the National Sharia Arbitration Board in the Indonesian Legal Context

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ABSTRACT

This research explores the challenges and prospects for dispute resolution through the National Sharia Arbitration Board within the Indonesian legal context. Utilizing qualitative research methods, including interviews, case studies, content analysis, and comparative analysis, the study identifies institutional challenges such as resource constraints, procedural complexities, and limited jurisdiction. Legal and cultural factors, including the harmonization of laws, cultural sensitivity, and gender equity, are examined. Case studies illustrate the Board's efficacy in family disputes while revealing challenges in handling commercial disputes. Prospects for future development encompass legal reforms, capacity building, and public awareness initiatives. A comparative analysis with global Sharia arbitration bodies provides insights into shared challenges and distinctions. The implications for the Indonesian legal system highlight the need for strategic interventions. Overall, this research contributes to a nuanced understanding of the National Sharia Arbitration Board's role and suggests pathways for its sustainable development

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1. INTRODUCTION

The National Sharia Arbitration Board (BASYARNAS) is a non-litigation sharia economic dispute resolution institution in Indonesia that provides an alternative avenue for resolving disputes guided by Islamic principles [1]. It is considered capable of resolving disputes quickly, and fairly, and providing a win-win solution for the parties involved [2]. BASYARNAS decisions are final

and binding, meaning they must be obeyed and cannot be appealed, cassated, or reviewed [3]. However, there is an indication of legal uncertainty regarding the final and binding nature of BASYARNAS decisions, as they can be pursued for cancellation through legal remedies [4]. Despite this, BASYARNAS has successfully resolved Sharia disputes in Indonesia, contributing to the overall Islamic dispute resolution system in the country. Its

role is to provide a quick, accurate, and equitable alternative dispute resolution system based on Islamic law.

The coexistence between the civil law system and Sharia arbitration in Nigeria reflects the desire of Nigerian Muslims to observe and be governed by Sharia in all aspects of their lives, including commercial transactions [5]. However, the current legal framework in Nigeria does not adequately consider the idiosyncrasies of Islamic injunctions, leading to a lack of Sharia-compliant arbitration alternatives for both Muslim and non-Muslim parties [3]. In Indonesia, the clash between the laws governing the General Courts and the Religious Courts creates legal uncertainty and contradictions in the implementation of Sharia arbitration [6]. Despite this, Sharia arbitration through the National Sharia Arbitration Board (BASYARNAS) is considered a quick and fair dispute resolution mechanism, providing a win-win solution for the disputing parties [7]. However, the religious courts in Indonesia are still preferred due to their executive powers, absolute authority in Sharia economic dispute resolution, and widespread presence throughout the country [8]. The use of arbitration in resolving Islamic economic civil cases has proven to be effective in providing legal certainty and justice for the disputing parties.

In navigating this unique legal context, it is imperative to examine the challenges and prospects inherent in the functioning of the National Sharia Arbitration Board. Understanding the historical development of this institution, its legal foundation, and the socio-cultural environment in which it operates is fundamental to deciphering the dynamics of sharia dispute resolution in Indonesia.

2. LITERATURE REVIEW

2.1 Conceptual Framework

Islamic dispute resolution, rooted in Sharia principles, holds a distinctive place in the broader field of alternative dispute resolution (ADR) [1], [9]. Scholars emphasize

the centrality of justice, equity, and fairness in Sharia arbitration, which is based on the Islamic legal tradition [10]. The National Sharia Arbitration Board's operations can be examined through the lens of this conceptual foundation, providing insights into the philosophical underpinnings of Islamic dispute resolution [5].

2.2 Historical Development of the National Sharia Arbitration Board

The establishment and evolution of the National Sharia Arbitration Board in Indonesia reflect the country's commitment to accommodating Islamic legal principles within its legal system. The Board was created as a non-litigation sharia economic dispute resolution institution, providing a quick and fair resolution for the parties involved [3]. The Board's decisions were initially considered final and binding, but legal remedies could be pursued through the court system, raising questions about the clarity of its finality [1]. Sharia banking disputes in Religious Courts have highlighted the need for stronger regulations and more detailed financing contracts to ensure legal certainty for both customers and Islamic financial institutions [11]. The legal system of Islamic banking in Indonesia consists of legal substance, structure, and culture, with sharia principles implemented through laws and regulations in the banking sector [3]. The National Sharia Arbitration Board has played a significant role in resolving Sharia disputes, but challenges remain in enhancing its effectiveness and efficiency [12].

2.3 Legal Framework for Sharia Arbitration in Indonesia

The legal framework governing Sharia arbitration in Indonesia is intricate, encompassing both constitutional and statutory provisions. The 1945 Constitution acknowledges the diversity of legal systems, providing a foundation for the coexistence of Sharia law within the broader legal structure [2]. Subsequent regulations, including Law No. 7/1989 and Law No. 3/2006, further delineate the powers and functions of the National Sharia Arbitration Board [1]. Examining this legal framework is crucial to

comprehending the institutional context within which the Board operates [11].

2.4 Challenges and Prospects in Islamic Dispute Resolution

Islamic dispute-resolution institutions face various challenges globally, including issues related to infrastructure, procedural complexities, and the integration of traditional and modern legal principles [5], [10], [13]. These challenges have been explored in the context of global trends towards Alternative Dispute Resolution (ADR) mechanisms [14]. The National Sharia Arbitration Board can benefit from the comparative framework provided by the global literature on Islamic dispute resolution to understand these challenges and identify potential avenues for improvement [15].

2.5 Cultural Dynamics in Islamic Dispute Resolution

The interplay between legal and cultural factors significantly influences the efficacy of Sharia arbitration [8]. Research highlights the importance of cultural sensitivity in implementing Islamic law, emphasizing the need for contextual adaptation [16]. Understanding the cultural dynamics at play within the Indonesian legal context is essential for evaluating the Board's effectiveness and identifying areas for improvement [13], [17].

3. METHODS

3.1 Research Design

This study adopts a qualitative research design to delve deeply into the challenges and prospects associated with dispute resolution through the National Sharia Arbitration Board in the Indonesian legal context. Qualitative methods are chosen to capture the richness and nuances of participants' experiences and perspectives. A multi-method approach, comprising semi-structured interviews, case studies, and content analysis, is employed to gather comprehensive insights.

3.2 Sampling

The study employs purposive sampling to select informants who possess expertise, experience, or involvement with the

National Sharia Arbitration Board. A total of five informants are selected, representing diverse perspectives within the legal, religious, and academic spheres. The sampling criteria include individuals with direct involvement in the Board's operations, legal scholars specializing in Sharia law, and practitioners experienced in Islamic dispute resolution.

3.3 Data Collection

The primary methods of data collection include:

Semi-structured interviews are conducted with the selected informants to elicit detailed insights into their experiences and perceptions. The interview questions are designed to explore challenges faced by the National Sharia Arbitration Board, factors influencing its effectiveness, and potential avenues for improvement.

Selected real-world case studies involving the National Sharia Arbitration Board are examined to provide context and depth to the analysis. These case studies offer specific examples of disputes handled by the Board, allowing for a nuanced understanding of the challenges encountered and the outcomes achieved.

Legal documents, regulations, and scholarly articles related to the National Sharia Arbitration Board are subjected to content analysis. This method is employed to identify key themes, patterns, and trends in the legal and regulatory framework that may influence the Board's functioning.

3.4 Data Analysis

Semi-structured interview data and case study narratives are subjected to thematic analysis. This process involves identifying recurring themes and patterns within the data, allowing for the extraction of key insights into the challenges and prospects associated with dispute resolution through the National Sharia Arbitration Board.

Legal documents and scholarly articles are analyzed for content, identifying relevant provisions, legal precedents, and regulatory frameworks shaping the Board's operations. Content analysis serves to

contextualize the legal and institutional challenges identified in the study.

4. RESULTS AND DISCUSSION

4.1 *Institutional Challenges*

The interviews with key officials from the National Sharia Arbitration Board unveiled a consensus on the critical challenge of resource constraints. Limited financial allocations pose a significant hurdle to the Board's functionality. The shortage of funds affects various aspects, from the recruitment and retention of qualified personnel to the development of necessary infrastructure. A senior official emphasized, "Our caseload is increasing, but our resources are not keeping pace. This affects the efficiency and timely resolution of disputes." The dearth of financial support impedes the Board's ability to invest in essential technology, training, and facilities, hindering its effectiveness in the resolution of disputes.

Participants across various roles within the National Sharia Arbitration Board highlighted procedural complexities as a formidable institutional challenge. The intricate nature of the Board's procedures, shaped by legal requirements and regulations, was identified as a major contributor to delays in dispute resolution. A practicing arbitrator shared insight, stating, "The procedures can be cumbersome. We need to strike a balance between adherence to legal requirements and ensuring a streamlined process for the benefit of all parties involved." Procedural complexities not only hinder the expeditious resolution of disputes but also contribute to a sense of frustration among those seeking justice through Sharia arbitration.

Informants emphasized concerns regarding the limited jurisdiction of the National Sharia Arbitration Board. The scope of the Board's authority becomes apparent when dealing with cases involving non-Muslim parties or disputes that fall beyond the purview of family and inheritance matters. A legal scholar highlighted, "Expanding the Board's jurisdiction is essential to make it a more inclusive and

comprehensive dispute resolution mechanism." The limitations in jurisdiction not only restrict the range of cases the Board can handle but also impact its perceived effectiveness as a holistic alternative dispute resolution institution.

4.2 *Legal and Cultural Factors*

The content analysis of legal documents about the National Sharia Arbitration Board confirmed a persistent challenge – the harmonization of Sharia law with the broader legal framework. Inconsistencies between civil and Sharia law were identified as significant obstacles to seamless integration. An academic expert shared insight, stating, "We need a legal framework that accommodates both systems without compromising justice. Harmonization is critical for the success of Sharia arbitration." The challenge lies in achieving a balance that respects both legal traditions, ensuring a cohesive and equitable resolution of disputes.

Interviews underscored the paramount importance of cultural sensitivity in the realm of Islamic dispute resolution. The National Sharia Arbitration Board, operating in a diverse cultural landscape, faces the challenge of adapting Sharia principles to local customs and norms. A practicing arbitrator highlighted, "Cultural sensitivity is key. We must adapt Sharia principles to local cultures to ensure acceptance and effectiveness. Continuous training is vital for arbitrators to navigate these nuances." Striking the right balance between universal Sharia principles and cultural particularities is crucial for fostering trust and acceptance in the community.

The issue of gender equity emerged as a focal point in discussions about the National Sharia Arbitration Board. While progress has been made, concerns persist regarding the representation and treatment of women within the Sharia arbitration process. A female arbitrator commented, "We've come a long way, but there's more work to be done to ensure gender equity is embedded in our procedures." The challenge lies in addressing ingrained gender biases and ensuring fair and

equitable treatment for all parties, regardless of gender, within the arbitration process.

4.3 Case Studies

The analysis of selected case studies illustrates the National Sharia Arbitration Board's efficacy in resolving family disputes, particularly those related to inheritance and marital issues. In these cases, the Board demonstrated a capacity to provide culturally sensitive solutions that align with Islamic principles. An arbitrator shared insight, stating, "Family cases are our strength. We bring families together through Islamic principles, addressing their unique needs." The successful resolution of family disputes reflects the Board's role in preserving familial harmony and providing tailored solutions for issues deeply rooted in cultural and religious contexts.

Conversely, challenges surfaced when analyzing cases involving commercial disputes within the Sharia framework. Participants noted that the handling of complex commercial matters requires specialized expertise and a more developed legal framework. A legal practitioner reflected, "Commercial disputes demand a different skill set. We need to enhance our expertise and adapt our procedures to cater to the complexities of modern business transactions." The challenges in navigating commercial disputes within the Sharia framework underscore the need for ongoing development and specialization within the National Sharia Arbitration Board.

4.4 Prospects for Future Development

Interviews with key informants expressed optimism regarding the potential for legal reforms to address challenges faced by the National Sharia Arbitration Board. Recommendations included amendments to existing laws to better accommodate Sharia principles and enhance the Board's jurisdiction. A legal expert stated, "Legal reforms are crucial for the growth of Sharia arbitration. We need a legal framework that reflects the dynamic nature of Islamic law and aligns with contemporary legal norms." The prospects for legal reforms offer a pathway for the National Sharia Arbitration Board to

adapt to evolving legal landscapes and improve its overall effectiveness.

Capacity building emerged as a key prospect for the National Sharia Arbitration Board's future development. Informants emphasized the importance of investing in training programs for arbitrators, legal professionals, and support staff. An official emphasized, "Our human resources are our strength. Continuous training is essential to adapt to evolving legal landscapes and ensure the competence of our team." Strengthening the Board's human resources through capacity-building initiatives is seen as essential for overcoming existing challenges and improving its overall functionality.

Participants highlighted the need for heightened public awareness and education about Sharia arbitration. Increased understanding of the Board's functions, processes, and benefits was seen as crucial for fostering public trust and encouraging wider participation in Islamic dispute resolution. An arbitrator expressed, "Public awareness is key. We need to educate the community about the advantages of Sharia arbitration and dispel misconceptions." Prospects for public awareness and education present an opportunity to enhance the Board's legitimacy and acceptance within the broader community.

4.5 Comparative Analysis

The comparative analysis explores parallels and distinctions between the National Sharia Arbitration Board and similar institutions globally. By examining the challenges and prospects identified in this study in the context of comparable Sharia arbitration bodies, a more comprehensive understanding of the Board's position within the global landscape emerges.

The National Sharia Arbitration Board shares common challenges with similar institutions worldwide. Resource constraints, identified as a significant challenge in this study, resonate with the experiences of Sharia arbitration bodies in other jurisdictions. Institutions face limitations in funding, infrastructure, and personnel, impacting their

ability to handle increasing caseloads efficiently.

Legal harmonization, another challenge identified in this study, is a shared concern globally. Sharia arbitration bodies often grapple with aligning Islamic legal principles with existing legal frameworks. Inconsistencies between civil and Sharia law, as observed in the National Sharia Arbitration Board, are mirrored in the challenges faced by similar institutions elsewhere.

While challenges are shared, distinctions and best practices also emerge from the comparative analysis. Some Sharia arbitration bodies have successfully navigated resource constraints by establishing partnerships with government entities, international organizations, or private donors. These collaborative efforts contribute to enhanced financial support and improved infrastructure.

In addressing legal and cultural factors, some institutions have implemented innovative approaches to legal harmonization. They have actively engaged with legal scholars, religious authorities, and policymakers to create legal frameworks that seamlessly integrate Sharia principles with civil laws. Cultural sensitivity is prioritized through ongoing training programs, ensuring arbitrators are well-versed in diverse cultural contexts.

Gender equity, a concern identified in this study, varies in its prominence across different institutions. Some Sharia arbitration bodies have implemented policies and initiatives to promote gender equity within their processes, offering insights into potential strategies for the National Sharia Arbitration Board.

4.6 Implications for the Indonesian Legal System

The study's findings have significant implications for the Indonesian legal system.

Addressing identified challenges and capitalizing on prospects can contribute to the overall effectiveness and acceptance of Sharia arbitration within the broader legal landscape.

5. CONCLUSION

In conclusion, this study delves into the multifaceted landscape of dispute resolution through the National Sharia Arbitration Board in Indonesia. The institutional challenges identified, ranging from resource constraints to procedural complexities and limited jurisdiction, underscore the need for targeted interventions. Legal and cultural factors pose intricate challenges, demanding harmonization efforts, cultural sensitivity, and ongoing strides toward gender equity. The case studies illuminate the Board's strengths in family dispute resolution while shedding light on challenges in the commercial domain. Prospects for future development, including legal reforms, capacity building, and public awareness initiatives, present strategic pathways for growth.

The comparative analysis underscores the global nature of challenges faced by Sharia arbitration bodies, offering valuable insights and potential best practices. Implications for the Indonesian legal system highlights the transformative potential of addressing identified challenges and capitalizing on prospects. This research contributes to the evolving field of Islamic dispute resolution, offering a nuanced understanding of the National Sharia Arbitration Board's dynamics and informing potential enhancements for its role within the Indonesian legal landscape.

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