

Dispute Resolution And Dynamics Of Legal Aspects In Sharia Banking Practices In Indonesia

Muhammad Zuhdi Asyrofi¹, Muhammad Albahi², Raja Sakti Putra Harahap³

¹²³Universitas Islam Negeri Sultan Syarif Kasim Riau, Pekanbaru, Indonesia

Email: ¹zubdiasyrofi1201@gmail.com, ²muhhammad.albahi@uin-suska.ac.id, ³raja.sakti.putra.harahap@uin-suska.ac.id

Abstract

Keywords:

Islamic Banking, Dispute Resolution, Non-Litigation and Litigation.

This study aims to analyze the dispute resolution mechanisms and the dynamics of legal aspects in Islamic banking practices in Indonesia. The background of this research is based on the rapid development of the Islamic banking industry accompanied by an increasing potential for disputes due to default, differences in contract interpretation, and violations of Islamic principles. This study uses a qualitative approach with a normative (doctrinal) research type through a library study of laws and regulations, legal literature, and court decisions. The results show that Islamic banking disputes have unique characteristics that are not only contractual, but also contain normative-religious dimensions because they must meet the principles of Islamic compliance. Dispute resolution can be achieved through two channels: non-litigation (negotiation, mediation, and Islamic arbitration) which emphasizes the principles of deliberation and substantive justice, and litigation through the Religious Courts which provides legal certainty. In addition, the dynamics of legal aspects in Islamic banking practices indicate challenges in the form of legal pluralism, regulatory disharmony, and the development of Islamic financial technology that requires legal adaptation. Thus, it is necessary to harmonize positive law and sharia principles as well as increase the capacity of law enforcement agencies in order to create a dispute resolution system that is effective, fair and provides legal certainty for the parties.

INTRODUCTION

Islamic banking in Indonesia is a financial instrument that plays a strategic role in supporting economic development based on Islamic values (Wulandari & Firdaus, 2023). As financial literacy among the Muslim community increases, the development of Islamic banking has grown significantly year after year (Ramadhani & Kafabilla, 2025). According to data from the Financial Services Authority (OJK), the market share of Islamic banking continues to increase, although overall it remains smaller than that of conventional banking (Abdullah, 2021). However, the complexity of products, the variety of contracts, and the dynamics of relationships between Islamic banks and customers increasingly create the potential for significant disputes.

The development of Islamic banking in Indonesia is inextricably linked to the public's need for a financial system that aligns with Islamic principles. Since the enactment of Law No. 21 of 2008 concerning Islamic Banking, this sector has experienced rapid growth in both the number of institutions and transaction volume. However, like other financial institutions, Islamic banking activities are not free from the potential for disputes arising from default, differing interpretations of contracts, and violations of Islamic principles.

Disputes in Islamic banking typically stem from misinterpretations of contract clauses, breaches of contractual obligations, violations of Sharia principles, or even moral hazard practices by one of the parties (Rum, 2025). Disputes in Islamic banking often arise from inconsistencies

between practices and Sharia principles or from a lack of understanding of the contracts used by the parties. These disputes can occur between banks and customers, between financial institutions, or with third parties. In practice, resolving these disputes is crucial to maintaining financial system stability and public trust in Islamic banking. According to several studies, disputes in Islamic banking are generally caused by breaches of contract implementation, discrepancies in agreements, and conflicts in the interpretation of Sharia law. Furthermore, the increasing complexity of Islamic financial transactions also increases the potential for disputes.

Indonesia, as a country with a dual banking system (conventional and sharia), faces unique challenges in terms of legal certainty. This primarily relates to the authority of dispute resolution institutions and the harmonization of positive law and sharia principles. Therefore, this research is crucial for in-depth examination of the dispute resolution mechanisms and the dynamics of legal aspects within sharia banking practices in Indonesia.

RESEARCH METHODS

This research uses a qualitative approach with a normative approach. This approach was conducted by reviewing various laws and regulations, legal literature, scientific journals, and court decisions related to the resolution of Islamic banking disputes. Data collection was conducted through a literature review, compiling primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 21 of 2008 concerning Islamic Banking, Constitutional Court decisions, and other related regulations. Secondary legal materials include books, journals, and scientific articles relevant to the research topic. Tertiary legal materials include legal dictionaries and encyclopedias. Data analysis was conducted using a descriptive qualitative approach by interpreting and in-depth reviewing the various sources collected. This approach aims to gain a comprehensive understanding of the legal dynamics in Islamic banking dispute resolution in Indonesia.

RESULTS AND DISCUSSION

Characteristics of Disputes in Islamic Banking

Disputes in the context of Islamic banking refer to conflicts or disagreements that arise between parties involved in transactions or banking relationships based on Islamic principles. These disputes can arise in various forms, such as Islamic financing, fund management, and the implementation of other Islamic contracts (Ulfa et al, 2024). Generally, disputes arise due to disagreements or violations of Islamic provisions, written agreements, or regulations governing interactions between Islamic banks and customers or other parties. To resolve these disputes, legal or alternative channels such as mediation, arbitration, or out-of-court settlement can be pursued, aimed at creating justice, upholding Islamic principles, and maintaining public trust in the Islamic financial system. Issues that frequently arise in these disputes include differences in interpretation of Islamic law (*fiqh*), violations of Islamic business ethics, and disputes related to the implementation of rights and obligations under contracts (Ulfa et al, 2024).

The characteristics of disputes in Islamic banking demonstrate fundamental differences compared to conventional banking systems, as they are rooted in Islamic legal principles that prioritize justice, balance, and the welfare of the people. Disputes in this context are understood not only as legal conflicts but also as violations of sharia principles (sharia compliance). Therefore, dispute resolution cannot simply refer to positive legal provisions such as national banking regulations; it must also consider fatwas issued by the National Sharia Council of the Indonesian Ulema Council (MUI), the authority that sets sharia compliance standards. In practice, differing interpretations of contracts such as *murabahah*, *mudharabah*, and *musyarakah* are often the primary triggers for disputes (Lutfi, 2020). This demonstrates that disputes in Islamic banking have a complex normative-religious and contractual nature.

Furthermore, the characteristics of disputes in Islamic banking are strongly influenced by the nature of legal relationships based on contracts, which are not only formal legal but also contain Islamic moral and ethical dimensions. In Sharia contracts, the principles of transparency, justice, and equity must be met by all parties. Disputes often arise when there is a discrepancy between the implementation of the contract and these principles, for example, in murabahah financing where profit margins are not transparent or where the object of the transaction is not consistent. Therefore, disputes stem not only from default, as recognized in conventional civil law, but also from substantial violations of Sharia principles (Fauzi et al, 2025). This demonstrates that disputes in Sharia banking have two dimensions: legal and ethical.

Under applicable law, dispute resolution can be conducted through religious courts or through sharia arbitration institutions such as the National Sharia Arbitration Board. These two channels provide flexibility for parties to choose the resolution mechanism that best suits their needs. However, this situation also has the potential to give rise to jurisdictional conflicts if not clearly stipulated in the contractual clauses. In practice, cases of sharia banking disputes are still found in general courts, indicating a discrepancy between legal norms and their implementation on the ground. This confirms that the characteristics of sharia disputes are also influenced by the dynamics of the national legal system, which is not yet fully integrated.

From an Islamic legal perspective, dispute resolution through non-litigation channels such as mediation and arbitration is preferred over litigation in court. The concept of *islah* (peace) is the primary foundation for resolving conflicts, with the goal of achieving a just solution and avoiding substantial, prolonged hostilities (Syofyan & Nurfani, 2024). Therefore, in Islamic banking practices, financial institutions often prioritize a persuasive approach before bringing disputes to the formal legal realm. This characteristic reflects that Islamic dispute resolution is not solely oriented toward the final outcome, but also a process that upholds ethical and humanitarian values.

The increasingly rapid development of the Islamic financial industry has also influenced the characteristics of the disputes that arise. Product innovations such as technology-based financing and the use of hybrid contracts have created new complexities in legal relationships between parties. Disputes are no longer limited to the relationship between banks and customers, but also involve various other parties such as investors, digital platform providers, and guarantee institutions. This complexity requires a deeper understanding of the contract structure and the legal risks that may arise. Furthermore, regulations that have not fully accommodated these developments also contribute to the potential for disputes. Thus, the characteristics of disputes in Islamic banking are dynamic and continue to evolve in line with industry innovations.

In practice, disharmony often occurs between banking regulations, DSN-MUI fatwas, and court decisions. For example, differing interpretations between judges and applicable Sharia principles can create legal uncertainty for the parties. Therefore, a more systematic integration of these various legal sources is needed to create legal certainty and justice in line with Sharia principles. This harmonization is also crucial for increasing public trust in the Islamic banking system as a whole.

Dispute Resolution Mechanism in Islamic Banking

Settlement of Islamic banking disputes in Indonesia can be done through two main channels, namely litigation and non-litigation.

Non-Litigation Dispute Resolution in Islamic Banking

Non-litigation dispute resolution is an out-of-court conflict resolution mechanism that emphasizes the principles of deliberation, efficiency, and flexibility. In the Indonesian legal context, this method includes negotiation, mediation, conciliation, and arbitration. The main advantages of non-litigation resolution are its relatively fast process, lower costs, and the maintenance of good relations between the disputing parties. In practice, this approach is often used in business disputes, including Islamic banking, because it can provide more adaptive

solutions to the parties' needs without having to go through a formal and rigid judicial process (Putra et al, 2024).

Mediation, as a form of non-litigation resolution, plays a crucial role in peacefully resolving disputes with the assistance of a neutral third party (mediator). The mediator does not have decision-making authority but merely facilitates communication so that the parties reach a mutual agreement. In the context of Islamic banking, mediation is often facilitated by institutions such as the Financial Services Authority (OJK) or alternative dispute resolution institutions. The effectiveness of mediation lies in its win-win approach, which prioritizes substantive justice over formal justice (Musjtari et al, 2020).

Non-litigation settlements also include deliberation or arbitration. This approach is considered more in line with sharia principles because it prioritizes peace (ishlah). Before taking a case to court, parties are generally encouraged to resolve disputes through deliberation or peace. Sharia arbitration, such as through BASYARNAS, is an effective alternative because it provides decisions based on sharia principles. Furthermore, the process is relatively faster and more flexible than courts (Rambey, 2023). The definition of dispute resolution through sharia arbitration or arbitration is further explained in Article 6 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The definition of arbitration from an Islamic perspective can be equated with the term tahkim. Tahkim comes from the word hakkama, etymologically meaning to make someone a preventer of a dispute. This definition is closely related to the terminological definition (Hasan, 2025). According to Asyhadie (2015) arbitration is the resolution or decision of a dispute by a judge or judges based on an agreement that the parties will submit to and abide by the decision rendered by the judge they choose.

The idea for establishing an Islamic Arbitration Institution in Indonesia began with a meeting of experts, Muslim scholars, legal practitioners, kyai (Islamic scholars), and ulama (Islamic scholars) to exchange ideas on the need for an Islamic Arbitration Institution in Indonesia. This meeting was initiated by the Indonesian Ulema Council (MUI) Leadership Council on April 22, 1992. After holding several meetings and refining the draft organizational structure and procedural procedures, the Indonesian Muamalat Arbitration Board (BAMUI) was officially established on October 23, 1993. It has now changed its name to the National Sharia Arbitration Board (Basyarnas), as decided in the 2002 MUI National Working Meeting.

In Law No. 14 of 1970 concerning the main provisions of judicial power, Article 3 paragraph (1) explains the position of Basyarnas that "Resolving cases outside the court on the basis of peace or through arbitration is still permitted, however the arbitrator's decision only has executive power after obtaining permission or an order for execution from the court." From this explanation, the position of Basyarnas or the national arbitration body is under the religious courts, without permission to validate the decision from Basyarnas, the dispute resolution is not considered complete. (Sumitro, 2023).

In addition to its position, Basyarnas also holds the authority as a permanent institution established by the Indonesian Ulema Council (MUI), specifically to resolve potential muamalat disputes arising in trade, industry, finance, and services. Furthermore, this body can provide recommendations or legal opinions, namely, opinions that are binding without any specific issues related to the implementation of the agreement. Besides arbitration, there is another alternative recognized in regulations, namely mediation. Mediation has the advantage of being an informal, flexible, and inexpensive process, and has the potential to produce a peaceful agreement in accordance with the values of ishlah and sulh in Islam (Marlina & Maknun, 2022).

However, the application of mediation in resolving Islamic banking disputes in Indonesia is still suboptimal. One obstacle is the lack of a dedicated mediation institution that explicitly applies a sharia-compliant approach, as well as the limited number of mediators competent in Islamic economic law (Rahman et al, 2026). Although the Supreme Court has issued Supreme Court Regulation (Perma) No. 1 of 2016 concerning Mediation Procedures in Court, the approach used

does not explicitly prioritize sharia principles (Amalia & Hidayah, 2024). In practice, the mediation process is often a formality before a case proceeds to the main court.

On the other hand, some Islamic banks have attempted to resolve disputes through internal deliberation as a form of informal mediation, but the effectiveness of this method depends heavily on the good faith of the disputing parties (Laela, 2021). Meanwhile, the Financial Services Authority (OJK) has established the Alternative Dispute Resolution Agency for the Financial Services Sector (LAPS-SJK), which provides mediation, adjudication, and arbitration services for disputes in the financial sector, including Sharia (Kelibia & Utama, 2025).

Research by Apriyanti shows that out-of-court dispute resolution is considered to better reflect substantive justice and maintain good relations between parties. Out-of-court settlement is more efficient, expeditious, and in accordance with Sharia values, although it requires stronger regulatory support (Apriyanti et al, 2025). Non-litigation resolution also has strong relevance to the principles of Islamic law, particularly the concept of *sulh* (peace), which emphasizes dispute resolution through amicable agreements. This approach aligns with the values of justice, benefit, and avoiding greater harm. Therefore, in Sharia banking disputes, non-litigation methods are often the primary choice because they are not only procedurally efficient but also compliant with Sharia principles.

Overall, non-litigation settlements provide an effective and efficient alternative for resolving disputes, particularly in the Islamic economic and financial sectors. With regulatory support and specialized institutions that handle disputes outside the courts, this mechanism is increasingly developing and becoming a strategic option for achieving faster justice that is oriented toward the interests of the parties.

Settlement of litigation disputes in Islamic banking

Litigation dispute resolution in Islamic banking is a dispute resolution mechanism through the courts, which have absolute authority to decide cases based on positive law and Sharia principles. In Indonesia, this authority is expressly vested in the Religious Courts, as stipulated in Law Number 3 of 2006 concerning Religious Courts, which legitimizes judicial institutions to handle Sharia economic disputes, including those in Islamic banking. In practice, the litigation process involves formal stages such as case registration, mandatory court mediation, examination, evidence gathering, and a binding judge's decision. This litigation pathway provides legal certainty and protects the rights of the disputing parties.

In the context of Islamic banking, litigation serves not only as a means of conflict resolution but also as an instrument for enforcing Sharia principles in economic practice (Rahman et al, 2025). Following Constitutional Court Decision No. 93/PUU-X/2012, the dual authority between District Courts and Religious Courts in handling Sharia economic disputes has been eliminated, bringing all Sharia banking disputes under the jurisdiction of the Religious Courts. This strengthens the position of Sharia economic law within the national judicial system and ensures that every decision is based on the principles of justice (*'adl*) and Sharia compliance.

With the amendment of Law No. 7 of 1989 concerning Religious Courts by Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts, the debate over who has the authority to resolve Islamic banking disputes has been resolved.

The Islamic economic disputes that fall under the jurisdiction of the Religious Courts are:

- a. Islamic economic disputes between Islamic financial institutions and financing institutions and their customers.
- b. Islamic economic disputes between Islamic financial institutions and financing institutions.
- c. Islamic economic disputes between Muslims where the agreement clearly stipulates that the business activities are based on Islamic principles.

In addition to the above, Article 49 of Law No. 3 of 2006 also regulates the absolute competence (absolute authority) of the religious courts. Therefore, parties entering into an agreement based on Sharia principles cannot choose to have it tried in another court. The article states:

“Religious courts have the duty and authority to examine, decide, and resolve cases at first instance between Muslims in the following areas:

- a. Marriage
- b. Inheritance
- c. Wills
- d. Grants
- e. Waqf
- f. Zakat
- g. Infaq
- h. Alms and
- i. Sharia economics”

Article 49 letter i explains that "Sharia economics" refers to business actions or activities carried out according to Sharia principles, including: a. Sharia banks; b. Sharia microfinance institutions; c. Sharia insurance; d. Sharia reinsurance; e. Sharia mutual funds; f. Sharia bonds; g. Sharia securities; h. Sharia financing; i. Sharia pawnshops; j. Sharia financial institution pension funds; k. Sharia businesses (Uliya et al, 2023).

Although litigation provides legal certainty, this mechanism is often viewed as having weaknesses, such as a relatively lengthy process, high costs, and the adversarial nature of decisions (win-lose), potentially damaging business relationships between banks and customers. Courts, as a forum for dispute resolution, also tend to emphasize formal legal aspects rather than the deliberative approach that is a core value in Islamic economics. Therefore, litigation is often considered a last resort after non-litigation efforts such as mediation or arbitration fail to reach an agreement.

Furthermore, in practice, Islamic banking litigation dispute resolution still incorporates the principles of alternative dispute resolution through mandatory mediation, which must be completed in court before the main case proceeds. This demonstrates that the Indonesian litigation system has integrated the values of deliberation as part of the judicial process. However, if mediation fails, the judge will continue the examination until a final and enforceable decision is rendered. Thus, litigation remains a crucial instrument in ensuring legal certainty and the final resolution of Islamic banking disputes.

Dynamics of Legal Aspects in Islamic Banking Practices

The legal dynamics of Islamic banking practices in Indonesia have shown significant developments in line with the growth of the Islamic financial industry. Law Number 21 of 2008 concerning Islamic Banking serves as the primary foundation for regulating Islamic banking operations, including contract principles, supervision, and dispute resolution mechanisms. However, in practice, this regulation continues to face challenges as it must adapt to the increasingly complex developments of modern financial products. This necessitates harmonization between positive law, Islamic fatwas (religious edicts), and technical regulations from relevant authorities.

One prominent dynamic is the existence of legal pluralism in Islamic banking, a combination of Islamic law, national civil law, and state administrative regulations. Fatwas issued by the National Sharia Council of the Indonesian Ulema Council (MUI) serve as guidelines for determining the validity of Islamic banking products, but formally, these fatwas must first be adopted into regulations by the Financial Services Authority (OJK) to be legally binding. This often gives rise to dynamic legal interpretations, particularly when there are differences between Islamic norms and modern business practices (Yunari et al, 2025).

Another equally important dynamic relates to dispute resolution in Islamic banking practices. Following Constitutional Court Decision No. 93/PUU-X/2012, the authority to resolve Islamic economic disputes through litigation was centralized in the Religious Courts. However, in practice, obstacles remain, such as limited human resources with an understanding of Islamic economics and differing judges' understanding of Islamic contracts (Rahman et al, 2025). This demonstrates

that legal dynamics are not solely related to regulations, but also to the capacity of law enforcement institutions.

Furthermore, the development of Islamic financial technology has also given rise to new legal challenges that have not yet been comprehensively regulated. Product innovations such as Islamic peer-to-peer lending, digital banking, and integration with the digital economy require adaptive regulations while still upholding Islamic principles (Rosana & Yuniartik, 2025). In this regard, the role of Bank Indonesia and the Financial Services Authority (OJK) is crucial in formulating policies that bridge the gap between innovation and legal compliance. This dynamic demonstrates that Islamic banking law is evolutionary and must be responsive to changing times. Thus, the dynamics of legal aspects in Islamic banking practices reflect the ongoing adaptation process between Islamic principles and the needs of the modern financial system. Challenges such as regulatory harmonization, capacity building of law enforcement officials, and regulation of technological innovation are key factors in maintaining the stability and sustainability of the Islamic banking industry. Therefore, synergy between regulators, financial institutions, academics, and legal practitioners is necessary to ensure the optimal development of the Islamic banking legal system and provide equitable legal certainty.

CONCLUSION

Based on the research findings, it can be concluded that disputes in Islamic banking are complex because they relate not only to contractual legal aspects but also to normative and ethical Sharia principles. Disputes generally stem from breach of contract, non-compliance with contracts, and differing interpretations of Sharia principles in transaction practices. Dispute resolution mechanisms in Islamic banking in Indonesia can be pursued through both non-litigation and litigation channels. Non-litigation resolution, such as Sharia mediation and arbitration, is preferred because it aligns with the principle of *islah* (peace) and can provide fast, efficient solutions while maintaining good relations between the parties. Meanwhile, litigation resolution through the Religious Courts provides binding legal certainty, although it tends to be more time-consuming and costly. The dynamics of legal aspects in Islamic banking practices demonstrate challenges in the form of legal pluralism, disharmony between Sharia regulations and fatwas, and developments in financial technology that have not been fully accommodated in regulations. Therefore, efforts are needed to harmonize regulations, improve the competence of law enforcement officers, and synergize between regulators and industry players so that the Islamic banking legal system can develop adaptively, provide legal certainty, and remain based on Islamic principles

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