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Sharia Economic Dispute Resolution in Indonesia and Malaysia: A Comparative Legal Study

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Abstract

Despite a growing body of comparative scholarship on Islamic finance in Indonesia and Malaysia, the institutional divergence between the two jurisdictions in dispute resolution and the normative basis for that divergence remains under-theorized. This article addresses that gap by reassessing the two frameworks through a Maqasid al-Shariah lens and by proposing an operational, rather than purely aspirational, harmonization framework for ASEAN. Employing a normative-juridical method complemented by functional comparative analysis, the study examines primary legal materials (constitutional provisions, statutes, leading Constitutional Court and superior court decisions, and regulatory instruments) from both jurisdictions for the period 2006–2024. The findings show that Indonesia channels Sharia economic disputes primarily through the Religious Courts (Pengadilan Agama) under the conditionally unconstitutional doctrine established in Constitutional Court Decision No. 93/PUU-X/2012, while Malaysia routes such disputes through its civil courts subject to the binding Sharia advisory authority of the Shariah Advisory Council (SAC) of Bank Negara Malaysia under section 56 of the Central Bank of Malaysia Act 2009. Concretely, the Indonesian model maximizes hifz al-din (preservation of religion) and substantive justice through specialized adjudication, while the Malaysian model maximizes hifz al-mal (preservation of wealth) and legal certainty through doctrinal centralization. Building on these findings, the article proposes a four-pillar harmonization framework anchored in mutual recognition, common procedural standards, an ASEAN-level Sharia advisory reference mechanism, and joint capacity-building.

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1. Introduction

The sustained expansion of the global Islamic finance industry has generated an unprecedented demand for robust, Sharia-compliant dispute resolution mechanisms. According to the Islamic Financial Services Board (IFSB), total assets of the global Islamic financial services industry reached approximately USD 3.25 trillion by the end of 2023 (IFSB, 2024, pp. 8–10). As transactional complexity increases across the spectrum of Islamic financial products encompassing *murabahah, musharakah, mudarabah, ijarah, sukuk*, and *takaful* instruments the incidence of commercial disputes has

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correspondingly escalated (Hassan & Aliyu, 2018). The efficacy and legitimacy of dispute resolution frameworks thus constitute a critical determinant of market confidence, institutional credibility, and sustainable sectoral growth in the Islamic economic ecosystem (Oseni et al., 2022).

Indonesia and Malaysia represent two of the most significant jurisdictions in global Islamic finance. Indonesia, with a Muslim population of approximately 240 million based on post-2020 Census projections (Otoritas Jasa Keuangan, 2024), has witnessed substantial growth in its Sharia banking sector, which commanded approximately 7.38% of total national banking assets at the end of 2023 (Otoritas Jasa Keuangan, 2024). Malaysia, widely recognized as a global hub for Islamic finance, has developed a comprehensive regulatory architecture that positions Kuala Lumpur as a preeminent center for Sharia-compliant financial services, with Islamic banking assets constituting over 40% of total banking assets in the national financial system (Bank Negara Malaysia, 2024).

Despite a shared commitment to Islamic economic principles rooted in *Maqasid al-Shariah* (the objectives of Islamic law), Indonesia and Malaysia have developed markedly divergent institutional and procedural frameworks for resolving Sharia economic disputes. These differences are attributable to distinct historical trajectories, constitutional arrangements, colonial legacies, and legal-institutional traditions (Nurrachmi, 2020). Indonesia's approach reflects the post-independence evolution of its religious judiciary within a Pancasila-based constitutional framework, while Malaysia's model is embedded within a federal constitutional structure that allocates Islamic law jurisdiction to individual states while maintaining federal supremacy over commercial and financial regulation (Oseni et al., 2022).

Although comparative scholarship on Indonesia–Malaysia Islamic finance has grown substantially in the last decade (Nurrachmi, 2020; Oseni et al., 2022; Mohamad & Syed Abdul Kader, 2019), two gaps persist. First, much of the existing literature describes institutional divergence without offering a normative yardstick against which the two models can be assessed. Second, proposals for ASEAN-level harmonization tend to be programmatic rather than operational, lacking elaboration of implementation mechanics or attention to comparable regional precedents. This article seeks to contribute on both fronts by deploying *Maqasid al-Shariah* as an evaluative framework and by translating the harmonization agenda into four concrete operational pillars informed by comparable regional integration regimes.

Accordingly, this article is guided by four research questions. First, what are the legislative and institutional foundations governing Sharia economic dispute resolution in each jurisdiction? Second, what are the substantive procedural and jurisdictional differences between the Indonesian and Malaysian approaches? Third, why have the two jurisdictions diverged institutionally despite their shared Islamic legal foundations, and to what extent does each model satisfy *Maqasid al-Shariah* objectives? Fourth, what lessons can be derived from this comparative exercise to enhance the effectiveness of Islamic economic dispute resolution in the broader ASEAN context? The significance of this inquiry extends beyond academic interest; it speaks directly to the practical imperatives of legal certainty, investor protection, and cross-border harmonization in an increasingly interconnected regional Islamic financial market (Billah, 2021).

2. Methods

2.1. Research Design and Comparative Approach

This study employs a qualitative, normative-juridical research design complemented by a functional comparative legal methodology. The normative-juridical approach involves a systematic analysis of primary legal sources, including constitutional provisions, statutory legislation, subsidiary regulations, judicial decisions, and *fatwa* (religious rulings) pertinent to Sharia economic dispute resolution in both jurisdictions. The comparative methodology, drawing upon the functional approach advocated by Siems (2022), examines how each jurisdiction addresses the common functional problem of Sharia-compliant dispute resolution, notwithstanding differences in institutional form and procedural detail.

2.2. Theoretical Framework: Maqasid al-Shariah as Evaluative Yardstick

The normative evaluation in this article is anchored in the *Maqasid al-Shariah* framework as systematized by Auda (2021). Five higher objectives are conventionally recognized: *hifẓ al-din* (preservation of religion), *hifẓ al-nafs* (preservation of life), *hifẓ al-'aql* (preservation of intellect), *hifẓ al-nasl* (preservation of progeny), and *hifẓ al-mal* (preservation of wealth). Of these, the most directly implicated by Islamic finance dispute resolution are *hifẓ al-din* (captured here by the institutional capacity to preserve the Sharia identity and substantive integrity of adjudication) and *hifẓ al-mal* (captured by legal certainty, enforceability, and the protection of property and contractual expectations). Building on AAOIFI's *Shari'ah Standards* (2023) on dispute resolution, this article treats a dispute resolution model as satisfying *Maqasid* when it simultaneously secures (i) substantive fidelity to Sharia principles, (ii) procedural fairness and accessibility, and (iii) reliable enforcement of awards or judgments. These three criteria operationalize the evaluative framework applied in the comparative section.

2.3. Sources, Period of Study, and Inclusion Criteria

Primary data sources include: (a) constitutional provisions the 1945 Constitution of the Republic of Indonesia (UUD 1945) and the Federal Constitution of Malaysia; (b) principal legislation, including Indonesian Law No. 3 of 2006 on Religious Courts, Law No. 21 of 2008 on Sharia Banking, Law No. 30 of 1999 on Arbitration, and the Malaysian Central Bank of Malaysia Act 2009, Islamic Financial Services Act 2013, and respective State Shariah Judiciary enactments; (c) leading judicial decisions of the Indonesian Constitutional Court, the Indonesian Supreme Court (Mahkamah Agung), and Malaysian superior courts; and (d) regulatory guidelines issued by Bank Indonesia, the Financial Services Authority (OJK), Bank Negara Malaysia, and the Securities Commission Malaysia (Mardani, 2020).

Secondary data sources encompass peer-reviewed academic literature and institutional reports from organizations including the Islamic Financial Services Board (IFSB, 2024), the Accounting and

Auditing Organization for Islamic Financial Institutions (AAOIFI, 2023), and the Asian International Arbitration Centre (AIAC, 2023). The period of study extends from 2006 the year of Law No. 3 of 2006 amending the Indonesian Religious Courts statute, which serves as a natural starting point for the modern phase of Sharia economic adjudication—to 2024. Sources were selected on the basis of three inclusion criteria: (i) direct doctrinal or institutional relevance to Sharia economic dispute resolution in Indonesia or Malaysia; (ii) primacy in the source hierarchy (constitutional, statutory, and judicial materials are prioritized over commentary); and (iii) recency, with preference for sources published or updated within the past ten years unless cited as historical or seminal authority.

The analytical process proceeds in three stages: descriptive mapping of each jurisdiction's institutional landscape; systematic identification of points of convergence and divergence; and normative evaluation against the three *Maqasid* criteria identified above.

2.4. Methodological Limitations

Three limitations should be acknowledged. First, the study is doctrinal and document-based; it does not incorporate primary empirical data such as practitioner interviews or large-N case-file analysis, although it draws upon official caseload statistics where available. Second, the comparative exercise focuses on Indonesia and Malaysia and does not systematically extend to other ASEAN jurisdictions such as Brunei or the Sharia courts of southern Thailand and the Philippines, which would require a separate inquiry. Third, the *Maqasid* criteria operationalized here represent one defensible reading among several possible articulations; the framework is offered as analytically useful rather than uniquely correct.

3. Findings and Discussion

3.1. Sharia Economic Dispute Resolution in Indonesia

3.1.1. Legislative and Constitutional Framework

The constitutional foundation for Sharia economic dispute resolution in Indonesia is derived from Article 24 of the 1945 Constitution (UUD 1945), which establishes the judiciary as an independent branch of government, and Article 29, which guarantees the freedom of religious observance (Mardani, 2020). The religious judiciary in Indonesia traces its institutional origins to the colonial-era *Priesterraden* (Priestly Councils) established under Dutch colonial administration, which were subsequently formalized through Law No. 7 of 1989 on Religious Courts (*Undang-Undang Peradilan Agama*).

The watershed moment in the expansion of Religious Court jurisdiction to encompass Sharia economic matters occurred with the enactment of Law No. 3 of 2006, amending Law No. 7 of 1989. Article 49 of the amended statute grants Religious Courts absolute competence (*kompetensi absolut*) over disputes arising from Sharia economic activities, explicitly enumerated to include Sharia banking, Sharia insurance (*takaful*), Sharia reinsurance, Sharia mutual funds, Sharia bonds and medium-term securities (*sukuk*), Sharia securities, Sharia financing, Sharia pawnbroking (*rahn*), Sharia pension funds, and Sharia microfinance (*baitul mal wat tamwil*) (Rasyid, 2019).

This jurisdictional allocation was further refined by Law No. 21 of 2008 on Sharia Banking. Article 55(2) and its Elucidation, in their original formulation, permitted dispute resolution through fora other than the Religious Courts where so agreed by the contracting parties. In Decision No. 93/PUU-X/2012, the Constitutional Court declared the Elucidation of Article 55(2) *conditionally unconstitutional* (*inkonstitusional bersyarat*). Rather than abolishing party autonomy outright, the Court held that the choice of forum stipulated in the parties' contract is to be respected, but only insofar as such choice does not derogate from the absolute competence of the Religious Courts over Sharia economic matters; in effect, parties remain free to designate dispute resolution mechanisms within the perimeter set by Article 49 of Law No. 3 of 2006 (Abdurrahman, 2020). The decision therefore did not produce a wholly exclusive jurisdictional regime, but rather affirmed the competence of the Religious Courts while preserving consensually chosen alternatives consistent with that competence.

3.1.2. Institutional Architecture

The institutional landscape for Sharia economic dispute resolution in Indonesia comprises two principal pillars: the formal judiciary (Religious Courts) and alternative dispute resolution mechanisms, principally the National Sharia Arbitration Board (*Badan Arbitrase Syariah Nasional*, Basyarnas) (Rasyid, 2019).

The Religious Court system operates within the judicial hierarchy under the Supreme Court: first-instance Religious Courts (*Pengadilan Agama*), appellate Religious High Courts (*Pengadilan Tinggi Agama*), and the Supreme Court as the court of final appeal. According to data published by the Directorate General of the Religious Judiciary, the network comprises approximately 412 first-instance courts, inclusive of the *Mahkamah Syar'iyah* operating in Aceh under that province's special autonomy regime (Ditjen Badilag, 2024). To address the specialized demands of Sharia economic adjudication, the Supreme Court issued Regulation (PERMA) No. 14 of 2016 on Procedures for Resolving Sharia Economic Disputes, which establishes procedural guidelines specifically tailored to the distinctive characteristics of Islamic commercial transactions (Mahkamah Agung, 2023).

Basyarnas, established by the Indonesian Ulema Council (*Majelis Ulama Indonesia*, MUI), provides arbitral services for Sharia economic disputes. Operating under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Basyarnas functions as the primary non-judicial mechanism for resolving Islamic commercial disputes. Its jurisdiction is consent-based, requiring a pre-existing arbitration clause (*pactum de compromittendo*) or a post-dispute submission agreement (*acta compromis*). Basyarnas arbitral awards are final and binding, subject to limited judicial review on procedural grounds by the Religious Courts (Abdurrahman, 2020).

3.1.3. Procedural Modalities and Challenges

The procedural framework for Sharia economic cases in Indonesian Religious Courts follows the general civil procedure rules (*Herziene Inlandsch Reglement/Rechtsreglement Buitengewesten*) as adapted by PERMA No. 14 of 2016. Key procedural features include mandatory mediation (pursuant to Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts), the appointment of expert witnesses in Sharia economic matters, and the authority of judges to seek guidance from the

National Sharia Board (*Dewan Syariah Nasional*, DSN) on complex doctrinal questions (Mahkamah Agung, 2023).

Notwithstanding these institutional developments, several challenges persist (Mardani, 2020; Rasyid, 2019). First, judicial capacity gaps remain significant: many Religious Court judges lack specialized training in Islamic finance and commercial law, creating a competence deficit that may compromise adjudicatory quality. Second, the geographical distribution of specialized expertise is uneven, concentrated in major commercial centers such as Jakarta, Surabaya, and Medan, while courts in remote provinces face acute resource constraints. Third, the enforcement of Basyarnas arbitral awards has occasionally encountered procedural complications, particularly regarding the interface between Religious Courts and general courts in execution proceedings (Abdurrahman, 2020).

3.2. Sharia Economic Dispute Resolution in Malaysia

3.2.1. Legislative and Constitutional Framework

Malaysia's constitutional framework for Islamic finance regulation is characterized by a complex division of powers between federal and state jurisdictions. Under the Ninth Schedule of the Federal Constitution, Islamic law (including Islamic personal law and Sharia court jurisdiction) falls within the State List (List II), while commercial law, banking, and finance are allocated to the Federal List (List I). This constitutional arrangement has necessitated creative institutional solutions to bridge the federal-state jurisdictional divide in the regulation of Islamic finance (Mohamad & Syed Abdul Kader, 2019).

The principal legislative instruments governing Islamic finance dispute resolution at the federal level include the Central Bank of Malaysia Act 2009 (CBMA 2009), the Islamic Financial Services Act 2013 (IFSA 2013), and the Securities Commission Malaysia Act 1993 (as amended). Section 56 of the CBMA 2009 establishes the Shariah Advisory Council (SAC) of Bank Negara Malaysia as the highest authority for the ascertainment of Islamic law for the purposes of Islamic financial business. Section 56(1) mandates that all courts and arbitral tribunals must refer to the SAC any question concerning Sharia matters arising in Islamic financial proceedings, and Section 57 provides that the SAC's ruling on such questions is binding (Hassan & Khairuldin, 2020).

The binding authority of the SAC was tested in the seminal decision in *Tan Sri Abdul Khalid Ibrahim v Bank Islam Malaysia Bhd* [2013] 3 MLJ 269, in which the Federal Court accepted the constitutionality of the statutory reference mechanism and confirmed that SAC determinations on Sharia compliance are conclusive for the purposes of Islamic financial transactions (Lahsasna et al., 2018). The decision has, however, attracted significant critical commentary. Trakic (2013) argues that the binding nature of SAC rulings raises tensions with the doctrine of separation of powers and with the courts' inherent judicial function, while Markom et al. (2014) note that the adjudication of Islamic banking and finance cases in the civil courts of Malaysia continues to reveal interpretive friction between statutory Sharia advisory authority and ordinary judicial review. A more nuanced framing of the case is therefore that it constitutionally validated the statutory mechanism, but did not foreclose ongoing debate about its institutional implications.

3.2.2. Institutional Architecture

Unlike Indonesia's approach of vesting primary jurisdiction in a specialized religious judiciary, Malaysia routes Islamic finance disputes through its civil court system, supplemented by the binding advisory mechanism of the SAC. The civil courts—comprising the Magistrates' Courts, Sessions Courts, High Courts, Court of Appeal, and Federal Court—exercise jurisdiction over all commercial disputes, including those arising from Islamic financial transactions. This allocation reflects the constitutional reality that commercial law falls within federal legislative competence, and the civil courts are federal institutions (Mohamad & Syed Abdul Kader, 2019).

The Shariah Advisory Council of Bank Negara Malaysia comprises distinguished scholars of Islamic jurisprudence, Islamic finance, law, and economics, appointed by the Yang di-Pertuan Agong on the advice of the Minister of Finance. The SAC performs a dual function: it provides ex ante regulatory guidance on the Sharia compliance of financial products and instruments, and it serves as the authoritative reference for ex post judicial determination of Sharia issues arising in litigation and arbitration. Additionally, each Islamic financial institution maintains its own internal Shariah Committee, which provides institution-level Sharia governance and compliance oversight (Lahsasna et al., 2018).

Malaysia has also developed a sophisticated alternative dispute resolution ecosystem for Islamic finance. The Asian International Arbitration Centre (AIAC) has established specialized rules and procedures for Islamic finance arbitration (the AIAC i-Arbitration Rules) (AIAC, 2023). The Ombudsman for Financial Services (OFS) provides mediation services for consumer-level Islamic financial disputes, while the Securities Industry Dispute Resolution Center (SIDREC) handles disputes related to Islamic capital market products (Bank Negara Malaysia, 2024).

3.2.3. Procedural Modalities and Innovations

Malaysia's procedural framework for Islamic finance disputes reflects an emphasis on doctrinal consistency, regulatory certainty, and international accessibility (Oseni et al., 2022). The SAC reference mechanism ensures uniform Sharia interpretation across all disputes, thereby mitigating the risk of doctrinal inconsistency that could arise from divergent judicial interpretations. The AIAC i-Arbitration Rules incorporate specific provisions for the appointment of arbitrators with expertise in Islamic commercial law and the application of Sharia principles in arbitral proceedings (AIAC, 2023).

A notable innovation in the Malaysian framework is the development of the Muamalat Division within the High Court of Kuala Lumpur, which specializes in Islamic finance litigation. While not a separate court, this specialized division ensures that complex Islamic financial disputes are heard by judges with relevant expertise and familiarity with Islamic commercial instruments (Hassan & Khairuldin, 2020). Furthermore, Malaysia's proactive engagement with international arbitral institutions, including the International Islamic Centre for Reconciliation and Arbitration (IICRA) based in Dubai, reflects a strategic orientation toward cross-border dispute resolution capacity (Billah, 2021).

3.3. Comparative Analysis

3.3.1. Jurisdictional Allocation

The most fundamental structural difference between the Indonesian and Malaysian approaches lies in the allocation of adjudicatory jurisdiction (Oseni et al., 2022). Indonesia has vested primary jurisdiction in the Religious Courts, a specialized judicial institution with deep roots in Islamic jurisprudential tradition, thereby establishing a dedicated forum for Sharia economic disputes distinct from the general civil courts. Malaysia, conversely, retains jurisdiction within the civil court system, supplementing judicial adjudication with the binding Sharia advisory mechanism of the SAC.

Each approach presents distinct advantages and limitations. The Indonesian model offers institutional specialization and an organizational culture oriented toward Islamic legal reasoning, but faces challenges related to judicial capacity, commercial law expertise, and the perception of Religious Courts among sophisticated commercial actors (Rasyid, 2019). The Malaysian model leverages the established procedural efficiency and commercial law expertise of the civil judiciary, while the SAC mechanism ensures Sharia compliance. Critics, however, argue that this approach may subordinate Sharia principles to conventional commercial law reasoning, with the SAC's advisory function constituting a formal rather than substantive integration of Islamic jurisprudence into dispute resolution (Mohamad & Syed Abdul Kader, 2019; Trakic, 2013).

3.3.2. Empirical Indicators and Illustrative Cases

A purely doctrinal comparison risks obscuring how the two systems operate in practice. Table 2 collates the principal empirical indicators reported by the supervisory and judicial authorities of both jurisdictions, illustrating the relative scale and concentration of Sharia economic adjudication.

Table 2. Selected Empirical Indicators of Sharia Economic Dispute Resolution

Indicator (most recent reported year)	Indonesia	Malaysia
Sharia banking share of national banking assets	7.38% (OJK, 2024)	>40% (Bank Negara Malaysia, 2024)
Specialized adjudicatory units	412 first-instance Religious Courts and Mahkamah Syar'iyah (Ditjen Badilag, 2024)	Muamalat Division at Kuala Lumpur High Court; one designated docket
Sharia economic cases registered	Several hundred cases per year, predominantly murabahah and musharakah defaults (Mahkamah Agung, 2023)	Concentrated docket in the Muamalat Division; ad hoc reporting (Hassan & Khairuldin, 2020)
Primary Sharia reference body	DSN-MUI (advisory; non-binding on courts)	SAC of Bank Negara Malaysia (binding on courts and tribunals)
Reported average time to first-instance disposition	Approximately 5–7 months in major Religious Courts (Mahkamah Agung, 2023)	Comparable horizons in the Muamalat Division; figures vary by complexity

Two illustrative cases serve to ground the doctrinal comparison. On the Indonesian side, the line of cases applying Constitutional Court Decision No. 93/PUU-X/2012 in Religious Court adjudication of *murabahah* default disputes typically involving disputes over outstanding installments and the calculation of *ta'widh* (compensation) and *ta'zir* (penalty) demonstrates how Religious Courts reconcile contractual choice-of-forum clauses with the affirmed competence under Article 49 of Law No. 3 of 2006 (Abdurrahman, 2020; Rasyid, 2019). On the Malaysian side, the *Tan Sri Abdul Khalid Ibrahim* litigation together with the post-decision practice of routine references under section 56 of the CBMA 2009 demonstrates the operational consequences of binding SAC authority: civil court judges receive an authoritative SAC ruling on the Sharia question and confine themselves to applying that ruling to the facts (Markom et al., 2014; Trakic, 2013). The two patterns illustrate the same functional task being discharged through structurally different institutional pathways.

Table 1. Comparative Framework of Sharia Economic Dispute Resolution in Indonesia and Malaysia

Dimension	Indonesia	Malaysia
Primary Adjudicatory Forum	Religious Courts (Pengadilan Agama) with affirmed competence following Constitutional Court Decision No. 93/PUU-X/2012 (inkonstitusional bersyarat)	Civil Courts (with the Muamalat Division at the Kuala Lumpur High Court) operating subject to SAC binding advisory authority
Alternative Dispute Resolution	Basyarnas (National Sharia Arbitration Board) under MUI; mandatory court-annexed mediation under PERMA No. 1/2016	AIAC i-Arbitration Rules; Ombudsman for Financial Services (OFS) for consumer disputes; SIDREC for capital-market disputes
Sharia Compliance Assurance	DSN-MUI fatwa as authoritative reference; judicial discretion in Sharia interpretation; recourse to expert witnesses	SAC rulings binding on all courts and tribunals (CBMA 2009, s. 56); independent judicial Sharia assessment is precluded
Governing Legislation	Law No. 3/2006; Law No. 21/2008; Law No. 30/1999; PERMA No. 14/2016	CBMA 2009; IFSA 2013; Securities Commission Act 1993; respective State Enactments
Judicial Specialization	Dedicated Religious Court judges with Islamic legal training; commercial-law capacity gaps remain	Muamalat Division judges with commercial-law expertise; the SAC supplies authoritative Sharia knowledge
International ADR Integration	Limited engagement with international arbitration; predominantly domestic orientation	Extensive engagement: AIAC, IICRA cooperation; framework favorable to international arbitration
Enforcement Mechanism	Execution through Religious Courts; occasional interface complications with general courts for Basyarnas awards	Civil-court execution; New York Convention applicable for international arbitral awards

3.3.3. Sharia Compliance Assurance Mechanisms

The mechanisms for ensuring Sharia compliance in dispute resolution constitute a critical point of divergence (Lahsasna et al., 2018). Malaysia's centralized SAC model provides a high degree

of doctrinal uniformity: all courts and arbitral tribunals are bound by SAC rulings on Sharia matters, effectively creating a single authoritative source of Islamic legal interpretation in the financial context. This approach promotes legal certainty and predictability, qualities highly valued by market participants and institutional investors (Hassan & Khairuldin, 2020).

Indonesia's approach is more decentralized and pluralistic. While DSN-MUI *fatwa* serve as authoritative references, they do not possess the same binding legal force over judicial proceedings as the Malaysian SAC's rulings. Indonesian Religious Court judges retain discretion in their interpretation and application of Sharia principles, informed by the rich diversity of Islamic jurisprudential schools (*madhahib*) recognized in Indonesian legal tradition (Mardani, 2020). This pluralistic approach may enhance substantive justice in individual cases by allowing contextual adaptation, but it introduces a degree of doctrinal variability that may be perceived as a risk factor by commercial actors seeking predictability (Nurrachmi, 2020).

3.3.4. Alternative Dispute Resolution Development

Malaysia's ADR framework for Islamic finance is demonstrably more developed and internationally oriented than Indonesia's (Billah, 2021). The AIAC i-Arbitration Rules, specifically designed for Islamic finance disputes, the tiered dispute resolution structure (OFS for consumer disputes, SIDREC for capital markets, AIAC for commercial arbitration), and proactive engagement with international arbitral bodies collectively position Malaysia as a more accessible and sophisticated venue for cross-border Islamic finance dispute resolution (AIAC, 2023).

Indonesia's ADR landscape, while anchored by the established Basyarnas institution, remains comparatively underdeveloped. Basyarnas faces challenges related to institutional capacity, caseload management, and international recognition (Abdurrahman, 2020). The recent development of the Indonesian National Board of Arbitration (BANI) Sharia division represents a positive development, but the overall ADR ecosystem for Islamic finance in Indonesia has not yet achieved the breadth and depth of Malaysia's multi-layered framework (Rasyid, 2019).

3.3.5. Legal Certainty and Enforcement

Legal certainty in Sharia economic dispute resolution is contingent upon clear jurisdictional allocation, consistent doctrinal application, and effective enforcement mechanisms (Oseni et al., 2022). Malaysia's framework generally scores higher on formal legal certainty metrics: the binding nature of SAC rulings eliminates doctrinal uncertainty in judicial proceedings; the civil court's established enforcement mechanisms apply seamlessly to Islamic financial judgments; and Malaysia's status as a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards facilitates international enforcement of Islamic finance arbitral awards (Mohamad & Syed Abdul Kader, 2019).

Indonesia's legal certainty profile has improved significantly following the Constitutional Court's Decision No. 93/PUU-X/2012, which clarified the previously ambiguous jurisdictional allocation (Abdurrahman, 2020). Challenges persist, however, in the enforcement dimension, particularly regarding the execution of Basyarnas arbitral awards, which occasionally involves procedural friction between Religious Courts and general courts. In addition, the practical

interoperability of Religious Court judgments with foreign enforcement regimes for Islamic finance disputes remains comparatively limited (Rasyid, 2019).

3.3.6. Maqasid al-Shariah Assessment of the Two Models

Applying the three operational *Maqasid* criteria identified in Section 2.2 yields a more textured comparison. On substantive Sharia fidelity (*hifz al-din*), the Indonesian model fares strongly: specialized Religious Court judges, the broad doctrinal pluralism of recognized *madhahib*, and the role of DSN-MUI fatwa together create an environment in which Sharia reasoning is intrinsic to adjudication rather than externally supplied. On legal certainty and protection of property and contractual expectations (*hifz al-mal*), the Malaysian model fares strongly: binding SAC rulings, the commercial-law expertise of the civil judiciary, New York Convention adherence, and the AIAC infrastructure together generate an enforceability profile attractive to investors. On procedural fairness and accessibility, both models perform adequately but with different profiles: Indonesia's extensive first-instance network supports geographic accessibility, while Malaysia's specialized Muamalat Division and ADR institutions support technical sophistication. The implication is that neither system uniformly dominates the other; each maximizes a different subset of the *Maqasid* criteria.

3.4. Toward a Harmonization Framework for ASEAN Islamic Finance Dispute Resolution

The comparative analysis reveals that neither the Indonesian nor the Malaysian model represents a universally optimal approach to Sharia economic dispute resolution; rather, each reflects contextually appropriate institutional responses shaped by distinct legal traditions, constitutional structures, and developmental trajectories (Nurrachmi, 2020). Nevertheless, the imperative of regional integration in Islamic finance driven by the ASEAN Economic Community, cross-border Islamic capital market development, and the ASEAN Banking Integration Framework necessitates a degree of harmonization in dispute resolution standards and procedures (Billah, 2021).

This article proposes a harmonization framework structured around four pillars. The pillars are presented below not as a normative wish-list but as an operational agenda, each elaborated by reference to (a) a concrete implementation mechanism, (b) the principal politico-legal obstacles, and (c) at least one comparable regional precedent.

3.4.1. Pillar I: Mutual Recognition of Dispute Resolution Outcomes

The first pillar contemplates mutual recognition of Sharia economic dispute resolution outcomes through bilateral or multilateral agreements between ASEAN member states. Implementation would proceed through a recognition-and-enforcement protocol modelled on the ASEAN Comprehensive Investment Agreement framework (Salim, 2023), specifying threshold conditions (Sharia-compliance certification by an authorized body, observance of procedural fairness, absence of public-policy exceptions narrowly defined). The principal politico-legal obstacle is the asymmetry between Indonesia's Religious Court judgments and Malaysian civil court judgments, which currently operate under different enforcement regimes; this asymmetry can be addressed by designating a functional equivalence test rather than insisting on institutional identity. A useful precedent beyond ASEAN is the harmonized business-law regime of the Organisation for the

Harmonization of Business Law in Africa (OHADA), which has demonstrated that mutual recognition is feasible across jurisdictions with materially different judicial traditions.

3.4.2. Pillar II: Common Procedural Standards for Islamic Finance Arbitration

The second pillar envisages the development of common procedural standards for Islamic finance arbitration, drawing upon the best practices of both the AIAC i-Arbitration Rules and the evolving Basyarnas procedural framework (AIAC, 2023). Implementation would take the form of a model rule-set covering arbitrator qualifications, Sharia issue referral, language and interim measures adoptable on an opt-in basis by national arbitration centers across ASEAN. The principal politico-legal obstacle is the predominance of the *madhhab Shafi'i* in much of the region alongside doctrinal pluralism in Indonesian practice, which generates the risk that any common rule on Sharia interpretation will be seen as favoring one tradition. A staged solution is to combine a substantive Sharia choice-of-source clause with a procedurally neutral referral mechanism. A precedent of note is the AAOIFI *Shari'ah Standards* (2023), which has achieved cross-jurisdictional uptake notwithstanding doctrinal diversity.

3.4.3. Pillar III: ASEAN-level Sharia Advisory Reference Mechanism

The third pillar proposes the establishment of an ASEAN-level Sharia advisory reference mechanism, which could serve as a consultative body for cross-border Islamic financial disputes involving multiple jurisdictions (Oseni et al., 2022). Implementation would entail an inter-governmental council composed of nominees from existing national Sharia advisory bodies (the SAC in Malaysia, DSN-MUI in Indonesia, and analogous councils in other member states), operating under a referral protocol triggered only where the dispute genuinely engages a transnational Sharia question. The principal politico-legal obstacle is national sovereignty over religious law, particularly in jurisdictions where Islamic law jurisdiction is constitutionally allocated to subnational units (as in Malaysia). The obstacle is mitigated by confining the council's mandate to opinions on cross-border matters and by preserving the binding character of national advisory bodies within their respective domains.

3.4.4. Pillar IV: Capacity-Building for Judges, Arbitrators, and Practitioners

The fourth pillar comprises capacity-building programs for judicial officers and arbitrators specializing in Islamic finance, potentially coordinated through existing regional institutions such as the Islamic Financial Services Board or a purpose-built ASEAN Islamic Finance Dispute Resolution Centre (IFSB, 2024). Implementation would proceed through joint training curricula, judicial exchange programs, and certification standards. The politico-legal obstacle here is comparatively modest capacity-building is non-contentious by design but resource sustainability is a real concern. The most relevant precedent is the existing pattern of joint judicial training already conducted under the auspices of the Council of ASEAN Chief Justices, which can be expanded with a dedicated Islamic finance track.

For Indonesia specifically, the analysis suggests several priority reforms: enhanced judicial training programs integrating Islamic finance and commercial law competencies (Mahkamah Agung, 2023); institutional strengthening of Basyarnas through governance reform and resource mobilization;

development of specialized Islamic finance mediation services; and strategic engagement with international arbitral institutions (Abdurrahman, 2020). For Malaysia, opportunities exist to further strengthen the substantive integration of Sharia reasoning within civil court adjudication, to enhance transparency in SAC deliberative processes, and to expand the accessibility of ADR mechanisms for micro and small enterprise disputes in the Islamic finance sector (Hassan & Khairuldin, 2020).

4. Conclusion

This comparative study has demonstrated that Indonesia and Malaysia have developed distinct yet functionally complementary approaches to Sharia economic dispute resolution, each shaped by the particular contours of their respective constitutional, institutional, and cultural landscapes (Oseni et al., 2022). Indonesia's specialized Religious Court model offers the advantage of institutional identity and jurisprudential depth rooted in Islamic legal tradition, while Malaysia's integrated civil court model supplemented by the binding SAC mechanism provides doctrinal uniformity, procedural efficiency, and international accessibility (Billah, 2021). Read through the *Maqasid* lens developed in Section 2.2, the two models distribute the burden of safeguarding Islamic legal objectives differently: Indonesia foregrounds *hifẓ al-din* through institutional specialization, while Malaysia foregrounds *hifẓ al-mal* through doctrinal centralization and enforcement infrastructure.

Three implications follow from these findings. First, for the theory of comparative Islamic law, the Indonesia–Malaysia comparison shows that institutional divergence among jurisdictions sharing a Sharia commitment is not pathological but reflects defensible trade-offs among *Maqasid* objectives; comparative scholarship should accordingly move beyond ranking exercises and toward typological analysis of the trade-offs each model encodes. Second, for practitioners and regulators, the analysis suggests that contracting parties and supervisors should approach cross-border Islamic finance transactions with explicit ex ante attention to forum selection and Sharia reference clauses, mindful of the structural differences identified in this study. Third, for legislators and regional bodies, the four-pillar harmonization framework proposed in Section 3.4 offers a concrete agenda whose elements can be sequenced according to political feasibility, beginning with capacity-building and procedural standards before moving to mutual recognition and an ASEAN-level advisory reference.

Future research should examine, on an empirical basis, three specific questions opened by this study: a case-file analysis of Sharia economic dockets in the Indonesian Religious Courts to test whether *madhhab* pluralism produces measurable doctrinal variance across regions; a stakeholder survey of Islamic financial institutions, arbitrators, and counsel in both jurisdictions to elicit perceived strengths and weaknesses of the two models; and a quantitative assessment of enforcement outcomes for cross-border Islamic finance awards to test the operational claims of the harmonization framework proposed here.

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