

Enforcing Arbitration Awards: Ensuring Sharia Compliance in Islamic & Secular Jurisdictions

 [10.15408/ajis.v25i2.42795](https://doi.org/10.15408/ajis.v25i2.42795)

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Abstract

This study examines the challenges and solutions for enforcing arbitration awards in jurisdictions governed by both sharia (Islamic) law and secular (national) law. It focuses on structuring arbitration agreements and awards to comply with Sharia principles while ensuring enforceability in both legal systems. The research highlights potential conflicts between these frameworks and proposes strategies to harmonize them, ensuring recognition and enforcement across diverse legal contexts. A key focus is the difficulty of enforcing awards that include elements prohibited by sharia, such as *ribā* (interest), *gharar* (uncertainty), and *maysir* (gambling). The study provides practical guidance for legal professionals, arbitrators, and businesses, offering insights into ensuring enforceability while avoiding legal conflicts in cross-border disputes. This study employs a juridical normative approach, focusing on the analysis of laws, legal principles, and relevant case decisions. The data is analyzed using a qualitative method, emphasizing legal interpretation and conceptual analysis. A significant finding is that awards containing elements forbidden under sharia face enforcement challenges, potentially leading to non-recognition in sharia-compliant jurisdictions. To ensure enforceability, awards must adhere to sharia principles and international legal conventions, emphasizing fairness, transparency, and avoiding interest-based mechanisms. Non-compliance risks invalidation or rejection of the award.

Abstrak

Penelitian ini membahas tantangan dan solusi pelaksanaan putusan arbitrase di yurisdiksi yang menerapkan hukum syariah dan hukum sekuler. Fokus utamanya adalah bagaimana menyusun perjanjian dan putusan arbitrase agar sesuai dengan prinsip syariah sekaligus dapat diberlakukan dalam kedua sistem hukum. Penelitian ini mengeksplorasi potensi konflik antara kedua sistem tersebut dan mengidentifikasi cara untuk menyelaraskannya guna memastikan keberlakuan putusan arbitrase. Penelitian ini menyoroti kesulitan dalam menegakkan putusan yang mengandung elemen-elemen yang dilarang oleh syariah, seperti *ribā* (bunga), *gharar* (ketidakpastian), dan *maysir* (perjudian). Untuk itu, diperlukan rancangan perjanjian arbitrase yang selaras dengan prinsip syariah dan hukum sekuler, terutama dalam konteks perdagangan internasional yang melibatkan berbagai latar belakang hukum. Temuan utama menunjukkan bahwa putusan arbitrase dengan elemen-elemen yang dilarang oleh syariah sering kali tidak dapat diberlakukan di yurisdiksi syariah. Agar putusan arbitrase dapat diakui, diperlukan kesesuaian dengan prinsip keadilan, transparansi, serta penghindaran mekanisme berbasis bunga. Kegagalan mematuhi ketentuan ini dapat mengakibatkan pembatalan putusan arbitrase.

Keywords:

Arbitration agreement; Arbitration award; Sharia principles; Uncertainty; Interest

How to Cite:

Herliana., (2025). *Enforcing Arbitral Awards: Ensuring Sharia Compliance in Islamic & Secular Jurisdictions*, AHKAM: Jurnal Ilmu Syariah, 25(2). <https://doi.org/10.15408/ajis.v25i2.42795>

Introduction

Commercial arbitration originated from the desire of traders to enhance efficiency while minimizing risks and costs. Disputes are an inevitable part of any human society and resolving them is a natural function of that society. Throughout history, societies worldwide have developed various methods to handle disputes. Modern practices of litigation and conciliation are the result of this ongoing human effort. Numerous factors, both tangible and intangible—such as historical, social, economic, political, and religious influences—have shaped the development of specific dispute resolution mechanisms. International commercial arbitration is similarly influenced by all of these factors (Casella, 1996).

In Islam, the core principles of any dispute resolution system are the collective interests and the pursuit of amicable settlements, aiming to preserve the bonds of family, brotherhood, and community (Al-Ramahi, 2008). Islam and its teachings advocate for arbitration as an accepted method of resolving disputes, where a third party is chosen by the parties involved to mediate or adjudicate the matter. Preserving relationships and restoring harmony is a responsibility shared by all members of the group, as well as the third-party intervener, whether that be a judge (*qāḍī*), an arbitrator (*ḥakam*), or a conciliator (Al-Ramahi, 2008). The Quran and the Sunnah have approved arbitration in the form of a third person chosen by the parties to resolve their disputes either through conciliation or adjudication. Arbitration as a legitimate method of dispute resolution is highlighted in Verse 35 and Verse 58 of QS al-Nisā' (Women). Verse 35 advises that if there is a fear of discord between a husband and wife, they should appoint one arbitrator from each party's family. If both parties desire reconciliation, Allah will guide them to a mutual understanding, as He is All-Knowing and Aware. Verse 58 emphasizes that Allah commands people to return trusts to their rightful owners and to judge with fairness when resolving disputes between individuals. Allah urges justice and excellence in judgment, as He is All-Seeing and All-Hearing (Al-Ramahi, 2008).

Prophet Muhammad served both as an arbitrator and as a party who accepted the rulings of an arbitrator. An instance of arbitration during his time is found in the Treaty of Medina, the first agreement made by the Muslim community in 622 A.D. This treaty, signed by Muslims, non-Muslims, Arabs, and Jews, included a provision that required disputes to be resolved through arbitration (Cunningham & Sarayrah, 1993). Another notable example of arbitration during the time of Prophet Muhammad involves the dispute between two tribes, the Aws and Khazraj, in Medina (Elamin, 2024). Aws and Khazraj were two Arab tribes in Medina (formerly Yathrib) during the time of Prophet Muhammad, believed to have migrated from Yemen to settle there. Their relationship was tense, marked by frequent conflicts. When the Prophet Muhammad and some of his followers migrated from Mecca to Medina in 622 CE, an event known as the "Hijrah," he was invited to mediate and resolve the feud between these two tribes. Over time, the discord between the Banu Aws and Banu Khazraj tribes was resolved, and they united under the title "Ansar," meaning "helpers," as they supported the Prophet and the early Muslim community (Elamin, 2024).

In today's increasingly interconnected global marketplace, the demand for effective dispute resolution mechanisms has never been more pronounced, particularly for contracts governed by sharia (Kutty, 2006). Muslims regard sharia as the "will of God and a framework for living," which governs "all aspects of a Muslim's private life, social interactions, religious practices, and rituals" ("Religion A to Z," 1999). Today, sharia plays a significant role in

shaping legal systems worldwide (UmHani, 2024). It is the Islamic legal code derived from the Qur'an, the Sunnah of the Prophet, qiyas (analytical reasoning), and ijma (consensus), each of which is distinct but ranked in terms of authority.

A significant body of academic literature has explored the inherent tensions between international arbitration norms and Islamic legal traditions. El-Ahdab (2011) and Brower, C. N., & Sharpe, J. K. (2003), among others, have critically examined the challenges associated with reconciling conventional arbitration frameworks with sharia principles, particularly regarding the enforceability of arbitral awards within Islamic legal systems. From the perspective of secular legal systems, enforcement is generally governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which prioritizes key principles, including party autonomy, procedural fairness, and the finality of arbitral decisions. Influential scholars, such as Born (2001), have contributed substantially to the development of contemporary arbitration theory within this context, particularly regarding the limited scope of judicial review and the narrowly defined public policy exceptions permitted under the Convention.

Arbitration is a key method for resolving disputes in international business, where parties from diverse legal and cultural backgrounds interact. These interactions necessitate a deep understanding of the varying legal frameworks, practices, and cultural norms that influence how business relationships are conducted and how disputes are resolved (Tubishat, 2024). Western traders typically rely on formal legal systems emphasizing contractual freedom and individual rights, often using litigation or arbitration. In contrast, traders from Eastern countries, influenced by religious or traditional legal systems like sharia, prioritize ethical values such as fairness, communal bonds, and social harmony in resolving disputes (Sidani, 2018). These differences in legal and cultural perspectives significantly impact how business transactions are structured and how conflicts are resolved. For example, Western business practices may emphasize speed and efficiency, leading to more transactional relationships, whereas Eastern cultures may prioritize long-term relationships, trust, and understanding the broader social context of business dealings. These variations in cultural and legal approaches can influence how negotiations are conducted, how obligations are perceived, and how conflicts are resolved (Brewster, 2023). Understanding and respecting these differences is crucial for fostering fair and sustainable commercial relationships. Awareness can prevent misunderstandings, reduce disputes, and facilitate the development of acceptable dispute resolution mechanisms. By recognizing diverse legal systems and cultural traditions, businesses can effectively navigate international trade challenges, upholding both legal and ethical standards while fostering cooperation. (Brewster, 2023).

In international business, interactions between Western and Eastern traders frequently occur in a global marketplace where sharia significantly influences transactions in Muslim-majority countries. Sharia regulates various aspects of life, including business practices, and many Eastern traders base their contracts and commercial operations on Islamic principles (Foster, 2007). For Western traders who may be unfamiliar with these frameworks, operating within a sharia-compliant system can present distinct challenges, especially in terms of dispute resolution (Foster, 2007). Although business contracts between Western and Eastern traders can be governed by Islamic law, applying sharia-based agreements in international arbitration demands careful attention to the legal and ethical issues involved.

One of the primary challenges is ensuring that conventional arbitration processes align with sharia principles, especially regarding the prohibitions on *ribā* (interest) and *gharar* (uncertainty). These fundamental concepts in Islamic finance emphasize fairness, transparency, and ethical conduct in transactions. *Ribā* prohibits interest or usury, while *gharar* addresses excessive uncertainty or ambiguity in deals—both considered exploitative practices (Hussain et al., 2015). Incorporating elements that conflict with these core principles into arbitration can create substantial legal difficulties, particularly when attempting to enforce such rulings in jurisdictions that require adherence to sharia. As such, when Western and Eastern businesses engage in sharia-based contracts, understanding and navigating these challenges is crucial for effectively managing international trade and resolving disputes (Kutty, 2006).

The dispute resolution landscapes in the East and West are distinct, with the Eastern communal approach contrasting with the Western individualistic focus, rooted in Middle Eastern tribal and Islamic traditions. (Kutty, 2006). Western dispute resolution relies on secular guidelines and personal experience, focusing on formal, written agreements to meet people's needs and interests. In contrast, the Arab-Islamic approach emphasizes religious ideals, local customs, and relational issues, aiming to restore unity and honor. It involves influential figures and culminates in a ritual, such as handshakes and shared meals, symbolizing reconciliation (Al-Ramahi, 2008).

This study critically assesses the viability of conventional arbitration versus Islamic arbitration in resolving contract disputes under sharia by focusing two key questions: What difficulties may arise when enforcing arbitral awards that contain elements prohibited by sharia? Furthermore, how can arbitration awards be structured to ensure compliance with sharia while still being enforceable in both Islamic and secular jurisdictions? This study highlights the challenges of enforcing arbitral awards in cross-border transactions involving both sharia-compliant and secular legal systems. It aims to offer practical guidance for businesses, arbitrators, and legal practitioners on structuring awards that respect sharia principles while ensuring global enforceability. Despite substantial contributions to this field, the current state of the art reveals a notable gap. There remains limited legal scholarship addressing the development of harmonized enforcement frameworks that uphold sharia compliance while maintaining recognition under international standards.

Method

This study aims to advance the state of the art by providing a juridical and normative analysis of enforcement practices across selected jurisdictions. Employing qualitative legal interpretation and conceptual analysis, this study examines key sharia principles governing arbitration, drawing on classical and contemporary Islamic legal sources, including fiqh (Islamic jurisprudence), the Quran, Hadith, and the opinions of Islamic scholars. This research provides an original contribution to the discourse on transnational arbitration and Islamic legal harmonization.

Arbitration in Commercial & Islamic Contract Disputes

Arbitration has long been a preferred method for resolving disputes arising from commercial contracts, particularly in international contexts. Compared to litigation, arbitration offers several advantages when addressing disputes related to Islamic contracts. These benefits include confidentiality, the expertise of arbitrators, flexibility in procedures and applicable laws, as well as the final and binding nature of the arbitral award (Rajoo, 2016). These features make arbitration an attractive option for resolving disputes stemming from commercial transactions. However, arbitration also has some drawbacks, such as the lack of adherence to business ethics among parties involved. As an extra-judicial mechanism, arbitration relies heavily on principles like honesty and fairness, which are essential for its success (Rajoo, 2016). A deficiency in business ethics can lead to lower compliance with arbitral awards. In some cases, losing parties may seek to avoid enforcement by filing for annulment of the award in the District Court.

Arbitration is widely used for its flexibility, confidentiality, and ability to provide specialized decision-making (Holmes & Panarella, 2018). The parties involved in arbitration can customize the process to meet their specific needs, including choosing the governing rules, the location of the proceedings, and the language used. For those prioritizing discretion, arbitration offers a private setting where issues can be resolved without public exposure. Additionally, arbitration enables the selection of arbitrators with specialized expertise relevant to the dispute, which is particularly beneficial in complex or technical cases requiring in-depth knowledge. These attributes make arbitration a highly effective and appealing option for dispute resolution (Rajoo, 2016).

In the business relation between Easterners applying sharia and Westerners applying secular law, the parties will benefit from the use of international arbitration. The importance of international arbitration lies in its ability to offer a fair and balanced approach that accommodates both legal frameworks. Arbitration allows parties to choose their arbitrators, who can be experts in both sharia and secular law, ensuring that the ruling is informed by the relevant legal principles of both systems. This flexibility is crucial when disputes arise from contracts that are governed by sharia but involve international parties who are more familiar with Western legal practices. Additionally, international arbitration provides the benefit of enforceability across borders, especially under international conventions like the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958), which ensures that arbitral awards are recognized and can be enforced in countries that have ratified the convention. This is particularly important in cases where one party seeks to avoid enforcement under a domestic legal system that might not be favorable to the arbitration award. Ultimately, international arbitration offers a structured yet adaptable process that helps reconcile the differences between sharia and secular law, facilitating the resolution of business conflicts in a manner that respects both legal and cultural principles (Bantekas, 2021).

Key Sharia Principles

Islamic principles are grounded in the Quran and Hadith (the sayings and actions of Prophet Muhammad) and include several fundamental concepts. These include the prohibition of interest, the emphasis on risk-sharing, the requirement for asset-backed financing, and the

bans on uncertainty and gambling (Hussain et al., 2015). The principle of participation in Islamic finance is closely linked to the prohibition of interest (interest-free funding). A core tenet of sharia is that profits should be earned through taking on risk, rather than simply accumulating over time. The rationale for prohibiting interest is that returns on investment should be tied to actual risk-taking and productive activity, rather than being generated passively. Islamic finance emphasizes that wealth should be gained through productive efforts, ensuring that profits come from activities that contribute to economic value (Hussain et al., 2015).

Sharia prohibits uncertainty in contracts because only God has the power to foresee future events. The court referenced various sayings of Prophet Muhammad to support the prohibition of *gharar* (Trumbull, 2006). Trumbull presented a scenario where two parties enter into a Sharia-compliant agreement for the future sale of wheat, with the buyer agreeing to pay the market price at the time of delivery. However, as the harvest nears and wheat prices increase, the buyer seeks to cancel the contract, arguing that it violates sharia's prohibition on *gharar* due to the lack of a pre-agreed price. The seller rejects this argument and files a lawsuit for breach of contract (Trumbull, 2006).

Sharia principles, especially those concerning the prohibition of *ribā* and *gharar*, are fundamental in ensuring that arbitration agreements and awards comply with Islamic law. For arbitration to be considered sharia-compliant, both the arbitration process and the substance of the award must adhere to these principles (Aleisa, 2016). To ensure that arbitration agreements and awards comply with sharia, both the arbitration process and the content of the decisions must be designed with the prohibition of *ribā* and *gharar* in consideration (Aleisa, 2016). This means that contracts should be carefully drafted to be clear, transparent, and unambiguous, with all terms clearly understood and mutually agreed upon by both parties. This clarity helps prevent any uncertainty and ensures that both parties have a clear understanding of their rights and responsibilities. In the context of risk-sharing and profit-sharing arrangements, sharia-compliant contracts typically avoid interest-based agreements by incorporating mechanisms where both parties share in the potential profits and losses of the transaction (Maghrebi, 2015). This approach not only adheres to the principles of Islamic finance but also ensures that the arbitration outcome is fair, without unfairly benefiting one party over the other.

For an arbitral award to be enforced in sharia-compliant jurisdictions, it must adhere to the principles of fairness and equity outlined in sharia. Awards that incorporate elements of *ribā* or *gharar* are prone to challenge and may not be enforceable in these jurisdictions. As a result, arbitrators must be mindful of these considerations when drafting their decisions and ensure that their rulings do not breach sharia principles (The Implementing Regulations of the Enforcement Law, 2012). If these essential sharia principles are not adhered to, arbitral awards may be deemed unenforceable in Islamic jurisdictions and could encounter legal obstacles in cross-border disputes involving parties from both secular and sharia-compliant legal systems. Therefore, it is crucial for legal practitioners, arbitrators, and businesses engaged in international trade to thoughtfully draft arbitration agreements and awards that align with sharia while also taking into account the challenges of enforcing such decisions in a globalized context.

Arbitration Agreement & Arbitration Award: Differences between Conventional Arbitration and Islamic Arbitration

Islamic arbitration is deeply rooted in the concept of *ṣulḥ* (amicable settlement) and guided by sharia (Al-Ramahi, 2008). It emphasizes reconciliation and the preservation of relationships over formal legal adjudication. The primary goal is to resolve disputes in a way that restores social harmony and seeks fairness rather than focusing on legal victory. Islamic arbitration prioritizes collective interests, ensuring that family, tribe, and community bonds are maintained, contrasting with Western individualistic approaches to conflict resolution (Al-Ramahi, 2008).

Rooted in religious texts like the Quran and the Sunnah, Islamic arbitration provides flexibility to address both present and future disputes, viewing justice as divinely guided and centered on fairness (Al-Ramahi, 2008). The arbitrator (*hakam*) often takes on a conciliatory role, helping parties reach a compromise rather than imposing rigid legal solutions (Al-Ramahi, 2008). This process reflects the broader Islamic principles of maintaining social peace and reconciliation while fulfilling the ethical and religious duty to promote fairness in all aspects of life.

In the realm of Islam, two principal mechanisms for resolving disputes are acknowledged: *ṣulḥ* and *tahkīm*. *Ṣulḥ* is similar to the Western concept of negotiation and mediation, wherein parties achieve a negotiated resolution either independently or with the aid of a third party (Al-Ramahi, 2008). While *tahkīm* represents another well-established method of dispute resolution that is less similar to arbitration in its Western concept compared to *ṣulḥ* (Kutty, 2006).

The arbitration process for a particular dispute begins when the respondent accepts the request to submit the dispute for arbitration. Generally, arbitration is a method of resolving disputes between two parties through a decision made by a neutral third party, which can involve natural or legal persons. Arbitration is primarily based on the mutual agreement of the parties, as it cannot proceed without the consent of both parties. Throughout the proceedings, the arbitral tribunal may conduct hearings, including witness testimonies and expert opinions, allowing the parties to present their views on the evidence (Zeller & Trakman, 2019). Arbitration procedures are notably different from judicial processes, particularly in their relationship with procedural rules. In court proceedings, most rules are mandatory (*ius cogens*), meaning that parties cannot decide by agreement which rules the court must follow (following principles of constitutionality and legality) (Zeller & Trakman, 2019).

The arbitration process shares similarities with court litigation. If an oral hearing is scheduled, the arbitral tribunal must inform the parties in advance. The tribunal will request all relevant evidence from the parties to support the claims in the lawsuit or counterclaim. In order to resolve the dispute, the tribunal carefully decides which evidence will be considered in the proceedings. It is essential to maintain the principle of equality of arms in arbitration, ensuring both parties have an equal opportunity to present their evidence. To obtain the required evidence, the tribunal may seek assistance from state courts to acquire necessary rulings or aid in gathering evidence when the tribunal is unable to do so itself (Zeller & Trakman, 2019).

A business relationship is built on a contract, which typically includes provisions for choice of law and choice of forum. The choice of law refers to the parties' decision regarding which legal system or set of laws will govern the interpretation and enforcement of their

agreement. This decision outlines which jurisdiction's laws will apply in case of a dispute and how any legal matters related to the contract will be resolved (Zeller & Trakman, 2019). The choice of law allows the parties to select a legal framework that best suits their business needs or preferences, providing them with flexibility and certainty (Zeller & Trakman, 2019). For instance, if a contract is between a U.S.-based company and a Saudi Arabian company, the parties may opt to apply U.S. law, sharia, or even the law of a neutral third jurisdiction, such as international commercial law or the laws of a mutually agreed country.

The principle of freedom of contract forms the foundation of choice of law. It allows the parties to a contract the freedom to determine the terms and conditions that will govern their agreement, including the applicable law (Stone, 2024). Provided that the selected law does not contravene public policy or mandatory legal rules of a jurisdiction, the parties have the autonomy to choose the legal system that best aligns with their transaction and business interests. This means that, for instance, in an international business agreement, the parties have the option to select not only the law of a particular country but also the legal framework of religious or alternative legal systems, as long as both parties agree. In the case of Muslim-majority countries or businesses with connections to Islamic traditions, the parties may choose sharia as the governing legal framework for their contract. Sharia, which is rooted in Islamic principles from the Quran, Hadith, and other sources, can be applied to business transactions if both parties consent.

This illustrates how the principle of freedom of contract goes beyond national legal systems, enabling the inclusion of sharia or other non-secular legal frameworks in business agreements. This flexibility in selecting the governing law allows contracts to align with the cultural, ethical, and legal preferences of the parties. In practice, this means that contractual relationships in regions such as the Middle East, Southeast Asia, or other areas where sharia is prominent may be governed by sharia principles, particularly in matters like interest (*ribā*), uncertainty (*gharar*), and fairness, which are essential to Islamic finance (Hussain et al., 2015). Thus, under the freedom of contract, parties can not only determine national laws to govern their contracts but also select sharia or any other legal system that is mutually agreed upon. This ability provides flexibility, fosters international trade, and accommodates the diverse legal traditions that exist in the global marketplace.

From the moment the primary contract is established, the parties must clearly agree that, should a dispute arise regarding the contract's subject matter, they will enter into a secondary agreement that includes an arbitration clause. This secondary agreement, specifically focused on resolving disputes, sets up a prearranged mechanism for addressing conflicts between the parties, rather than going through traditional court litigation. By including an arbitration clause, both parties consent in advance to resolve any disputes through an impartial third-party arbitrator or arbitral tribunal, which will make a binding decision based on the facts and evidence presented, outside of the judicial court system (Alqudah, 2016). By establishing the arbitration arrangement upfront, the parties not only define their approach to dispute resolution but also secure a faster, more efficient, and often more cost-effective alternative to the potentially drawn-out and complicated litigation process. The arbitration agreement should be thorough, specifying the procedures, rules, and jurisdiction governing the arbitration, as well as other key details such as how arbitrators will be selected and the location of the arbitration (Moore, 1986).

Furthermore, for the arbitration agreement to be valid, it must be mutually accepted by both parties when the main contract is finalized. This mutual consent is essential because the enforceability of arbitration clauses relies on both parties agreeing to resolve any potential disputes through arbitration. As a result, the arbitration agreement must be clear and transparent, ensuring that both parties fully comprehend their rights, responsibilities, and the extent of the arbitration process (Moore, 1986). By doing so, the parties take a proactive approach to managing potential conflicts, minimizing uncertainty, and ensuring that a clear and efficient dispute resolution method is in place, avoiding the need for litigation. However, it is crucial to ensure that the arbitration agreement is valid and legally binding, as any issues with the agreement could result in the arbitral award being unenforceable. Therefore, great care must be taken when drafting the arbitration clause and incorporating it into the main contract (Moore, 1986).

The arbitration agreement outlines that any disputes arising from the main contract will be resolved through arbitration. However, the validity of the agreement must be continually evaluated throughout the arbitration process. If the agreement is deemed invalid, the resulting arbitral award will also be invalid (Norton Rose Fulbright, 2019). This paper will explore the conditions under which an agreement may be considered invalid and the consequences for the arbitration process. The arbitration agreement not only forms the basis for the arbitration process and grants authority to the arbitral tribunal but also establishes clear limits on the tribunal's decision-making power. By entering into this agreement, the parties give the tribunal the authority to resolve specific disputes defined within the contract, but this authority is confined to the scope of those disputes as specified in the agreement.

In addition, the arbitration agreement establishes the scope of authority and powers granted to the arbitrators. It outlines the procedural framework for how the arbitration will be conducted and specifies the substantive issues the tribunal is permitted to address. However, it also sets boundaries on the arbitrators' decision-making authority, limiting them from ruling on matters outside the agreed-upon scope. For instance, the agreement may specify restrictions on the types of remedies the arbitrators can award or the particular legal issues they are authorized to resolve.

Thus, one of the first steps toward integrating sharia and secular arbitration systems is to establish common standards for arbitration agreements. These standards should ensure that both legal systems can recognize and enforce the arbitration agreements. The parties involved in the dispute would need to explicitly agree on a framework that is compatible with both sharia and secular law principles. The agreement should specify whether sharia, secular law, or a hybrid approach governs the arbitration process. Clauses should be included that adhere to sharia principles, such as prohibiting *ribā* (interest) and *gharar* (uncertainty) (Aleisa, 2016), while also accommodating secular arbitration practices like fairness, transparency, and enforceability.

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the types of remedies the arbitrators can award or the particular legal issues they are authorized to resolve (Norton Rose Fulbright, 2019).

While there is consensus regarding the acceptability of *tahkīm* as a form of dispute resolution (Brower & Sharpe, 2003), there are significant distinctions when compared to the Western concept of arbitration. Firstly, one of the characteristics of arbitration in the West concept is its binding nature (Born, 2001). It is indeed the primary aim underlying the intricacy of international laws, treaties, national legislation, and arbitration rules in the sector of international commercial arbitration is to guarantee the binding nature of arbitral awards (Born, 2001). In contrast to that, *tahkīm* places full reliance on the voluntary consent of the parties for the execution of an award (Kutty, 2006). Although there is much discourse in regard to this (El-Ahdab, 2011), the majority perspective on the Quran verse addressing matrimonial dispute resolution is that any decision rendered by the representatives of the spouses is not considered final or binding unless there is mutual agreement from both parties to accept it (El-Ahdab, 2011).

The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the "New York Convention," is a key international treaty that facilitates the global enforcement of arbitral awards. It ensures that awards made in one country are recognized and enforced in other member states, offering a crucial mechanism for resolving international disputes. The Convention's broad adoption has strengthened international trade, increased the appeal of arbitration as a dispute resolution method, and enhanced legal predictability in cross-border disputes (Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958). Despite the Convention's international standing and effectiveness, some of its notions conflict with sharia-based legal system (Khoukaz, 2017).

Secondly, there are differences in regard to subject of arbitration. Quran stipulated that arbitration is used for the resolution of family disputes, and the Companions of the Prophet utilized this method to adjudicate disputes concerning goods and chattels (*al-Quran Surah 4 Verse 35, n.d.*). On that account, the Saudi Arabian Arbitration Regulation states that arbitration shall not be accepted to resolve in matters where conciliation is not allowed, namely *hudūd* offenses, *li'ān* disputes between spouse, and all matters relating to the public order (The Implementing Regulations of the Enforcement Law, 2012). Such similar provision also exists in the Arbitration Rules of the UAE (The UAE Civil Procedure Code, 1992), even there are conflicting court decisions on the applicability of commercial agency contract as the subject of arbitration (El-Ahdab, 2011). The issue of determining which matters are arbitrable becomes challenging when one takes into account the implications for public policy as it is regulated in the West concept of arbitration. For example, the UNCITRAL Model Law regulated that recognition and enforcement of an arbitral award may be refused if "the subject matter of the dispute is not capable of settlement by arbitration under the law of this State; or the recognition or enforcement of the award would be contrary to the public policy of this State" (United Nations Commission on International Trade Law, n.d.).

Thirdly, the flexibility in choice of law. International commercial arbitration provides freedom for the parties to select their choice of law (United Nations Commission on International Trade Law, n.d.). In the absence of a specific agreement by the parties, the tribunal will apply the law determined by the conflict of laws rules it considers appropriate (United Nations Commission on International Trade Law, n.d.). While such option does not exist in

Islamic arbitration according to fiqh rules (Sloane, 1988). This explains why Saudi courts and regulations do not recognize Western conflict of laws principles, resulting in the automatic application of Saudi laws (Karl, 1991). As UAE has stated that its main source of law is the sharia (Ballantyne, 1988), this condition similar to what happens in UAE where the arbitral award must be in conformity with the provisions of law (The UAE Civil Procedure Code, 1992). And lastly, the capacity of arbitrator. The regulations under sharia impose significant limitations on the appointment of arbitrators, mandating that candidates possess qualifications equivalent to those of a judge, including being of male gender and is a Muslim (El-Ahdab, 2011). However, as mentioned above that the UAE arbitration laws sourced in sharia, there are no requirements for such arbitrator to be male or Muslim (The UAE Civil Procedure Code, 1992).

The variation in how different jurisdictions categorize arbitrable matters will have a significant impact on international commercial arbitration, especially regarding enforcement. Differences between countries will occur not only in determining which areas are excluded from arbitration but also in identifying which agreements might be considered void. A major challenge lies in the influence of sharia on the recognition and enforcement of awards. Under sharia, certain aspects of international arbitration, such as interest (*ribā*), excessive uncertainty (*gharar*), and gambling (*maysir*), are strictly prohibited (Aleisa, 2016). Therefore, any arbitral award that contains provisions violating these principles is likely to be denied enforcement by the courts. For instance, awards that require the payment of interest on delayed payments are routinely refused.

A notable example of this challenge is found in Saudi Arabia. While Saudi Arabia is a signatory to the New York Convention, which requires the recognition and enforcement of foreign arbitral awards, such enforcement is still contingent upon adherence to sharia principles (The Implementing Regulations of the Enforcement Law, 2012). Foreign parties, therefore, may face difficulties if their awards include provisions that contradict Islamic law, even if such provisions are commonplace in international arbitration setting.

In Islamic arbitration, the arbitral tribunal is required to follow both the terms of the contract and Sharia in all its decision-making. The tribunal's authority is constrained by these religious and legal guidelines. For instance, even if both parties agree to certain contract terms, if those terms conflict with sharia principles, the arbitrator must either adjust or reject them to ensure the decision aligns with Islamic law. The scope of authority in Islamic arbitration is limited to what is allowed under sharia, meaning that penalties or remedies violating Islamic principles cannot be awarded, even if they are permissible under the national law selected by the parties (Al-Ramahi, 2008). In contrast, conventional arbitration primarily operates within the framework of the contractual agreement between the parties and the relevant national or international arbitration laws. Conventional arbitration offers more flexibility, as long as the award adheres to the laws of the chosen jurisdiction or arbitration rules (Vannieuwenhuysse, 2018). This flexibility allows for remedies such as interest-based compensation or punitive damages, which would not be allowed under sharia.

The enforceability of an Islamic arbitral award depends on its adherence to sharia. If the award conflicts with any principle of Islamic finance or justice, it may be contested in courts or deemed unenforceable in jurisdictions that follow sharia. This could occur in cases where the award includes interest or speculative elements, which are prohibited under sharia (The

UAE Civil Procedure Code, 1992). In conventional arbitration, enforceability is typically governed by the New York Convention (for international arbitration) or other national laws that recognize and enforce arbitral awards. These awards can be enforced in any jurisdiction that is a signatory to the convention, as long as they do not breach public policy. Unlike Islamic arbitration, conventional arbitration lacks religious or ethical limitations, offering greater flexibility regarding remedies and enforcement ([Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958](#)).

Islamic arbitration prioritizes ethical conduct and social justice, ensuring that arbitral decisions are not only legally valid but also adhere to the moral principles outlined in Islamic teachings. An award that is deemed unjust, unfair, or exploitative, even if legally sound, could be invalidated in Islamic arbitration. This ethical consideration often extends beyond the purely legal criteria that are typically applied in conventional arbitration ([El Maknouzi et al., 2023](#)). In contrast, conventional arbitration systems typically prioritize the legal and commercial aspects of a dispute, with less focus on ethical considerations unless they directly involve a breach of law or contract. While fairness and justice are considered, the emphasis is mainly on legal compliance. For instance, in conventional arbitration, penalties may be imposed, even if deemed harsh, as long as they align with the relevant laws or the terms of the contract ([El Maknouzi et al., 2023](#)).

What difficulties may arise when enforcing arbitral awards that contain elements prohibited by sharia?

Sharia imposes clear prohibitions, especially regarding financial transactions and business practices. Any arbitral award that involves interest payments or interest-based transactions is considered non-compliant with sharia. Since sharia prohibits both earning and paying interest on loans, an arbitral award that mandates interest payments (such as for delayed payments) would be regarded as invalid in Islamic legal systems ([Hussain et al., 2015](#)).

Prohibition of *gharar* (uncertainty): If an arbitral award arises from a contract with excessive ambiguity or uncertainty, it may be deemed unenforceable in sharia-compliant jurisdictions. For instance, an award based on a contract with unclear terms regarding pricing, delivery, or performance, which violates sharia's prohibition on uncertainty (*gharar*), could be rejected by a sharia court or tribunal. Prohibition of *maysir* (gambling): If an arbitral award involves speculative or gambling-like transactions (such as financial instruments based on chance or risk without tangible assets), it will conflict with sharia's prohibition on gambling. Awards stemming from such contracts may not be recognized as valid under Islamic law. These fundamental principles in sharia dictate that any arbitral award violating them could be refused enforcement in sharia-based jurisdiction ([El Maknouzi et al., 2023](#)).

While secular arbitration systems, governed by international treaties such as the New York Convention (1958) on the Recognition and Enforcement of Foreign Arbitral Awards, generally support the enforcement of arbitral awards in member states, sharia-compliant jurisdictions may not accept awards that violate their legal and ethical standards. Non-recognition of Invalid Awards: Even if an arbitral award is enforceable under international conventions, courts in sharia-compliant countries may reject or refuse to enforce it if it includes elements that conflict with sharia ([El Maknouzi et al., 2023](#)). For example, if the award

mandates interest payments (*ribā*) or is based on speculative contracts (*gharar* or *maysir*), it could be deemed contrary to public policy or unlawful under sharia principles. Conflicting Legal Systems and Dual Jurisdictions: When a dispute involves parties from both secular and sharia-compliant jurisdictions (such as cross-border contracts), a conflict of laws may arise. The secular jurisdiction may attempt to enforce the award under international arbitration frameworks, while the sharia-compliant jurisdiction may refuse enforcement due to the inclusion of elements prohibited by sharia.

This creates significant challenges in international commerce and dispute resolution. Arbitrators and courts in sharia-compliant jurisdictions are guided by ethical and cultural values rooted in Islamic principles. As a result, awards that contradict these principles may face not only legal challenges but also be viewed as ethically and culturally unacceptable. Public policy concerns play a key role, as Islamic legal systems emphasize social justice, fairness, and ethical conduct in contractual relationships. If an arbitral award is perceived as unjust or exploitative, such as involving interest-bearing terms or taking advantage of a vulnerable party, its enforcement may be hindered, as it could conflict with Islamic moral teachings (El Maknouzi et al., 2023).

Enforcing foreign arbitral awards in sharia-compliant jurisdictions can present significant challenges. Islamic countries that have not signed international agreements like the New York Convention, or those with reservations about secular arbitration, may be more likely to refuse enforcement of awards that conflict with sharia principles. In countries where both secular and sharia courts operate, there can be uncertainty about which legal system has jurisdiction over the enforcement of arbitral awards. This may result in inconsistent rulings, with Sharia courts potentially rejecting awards that secular courts would accept. If an arbitral award contains provisions that violate sharia, such as interest-based transactions (*ribā*), it may be deemed invalid in sharia-compliant jurisdictions (Hussain et al., 2015).

This means that the award may not be recognized as legally binding in any Islamic legal system or jurisdiction that follows sharia principles. Courts in these jurisdictions are likely to refuse enforcement if the award contradicts sharia. For instance, if a tribunal mandates interest payments as part of the remedy, the award may not be enforceable in countries like Saudi Arabia (The Implementing Regulations of the Enforcement Law, 2012), Iran, or Pakistan, where sharia plays a significant role in the legal system. Legal action may be necessary to challenge or annul the arbitral award in Islamic courts, especially if the winning party attempts to enforce it within a sharia-compliant jurisdiction. If the terms of the award violate sharia, the decision could be dismissed, invalidated, or face legal challenges. The enforceability of an arbitral award is contingent upon the jurisdiction where enforcement is pursued.

If an award includes *ribā* or other elements that violate sharia, its enforceability will be compromised, particularly in jurisdictions that prioritize sharia principles. In non-Sharia jurisdictions: If the award is issued in a secular country (like those in the West), it may still be enforceable under international agreements such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, provided it does not conflict with the public policy of the enforcing nation. However, if the award violates sharia, there is a risk it could be challenged under the public policy exception, especially when enforcement is sought in an Islamic country (Rabah, 2018).

In sharia-compliant jurisdictions: If the arbitral award includes provisions like interest (*ribā*), which contravene sharia principles, it will likely be rejected or blocked from enforcement. The court may refuse to enforce the award on the grounds that it conflicts with Islamic teachings, particularly those that prohibit financial exploitation. If an arbitral award is invalidated due to non-sharia-compliant terms such as interest, the winning party faces several risks. The most immediate threat is that they may not receive the financial compensation awarded, particularly if the award is unenforceable in sharia-compliant jurisdictions. Despite following proper arbitration procedures, the substance of the award could still lead to its invalidation in certain regions (El Maknouzi et al., 2023). Moreover, attempting to enforce the award in sharia-compliant jurisdictions may result in prolonged legal challenges. The winning party would likely need to initiate new legal proceedings, possibly wasting time and resources to either enforce the award or renegotiate its terms to comply with sharia. In addition to legal delays and increased litigation costs, the party may face financial losses and reputational damage if seen as attempting to enforce an award that goes against sharia principles, especially in countries where Islamic values are deeply embedded in the legal and social systems (El Maknouzi et al., 2023).

How can arbitration awards be structured to ensure compliance with sharia while still being enforceable in both Islamic and secular jurisdictions?

To ensure that arbitration awards comply with sharia and are enforceable in both Islamic and secular jurisdictions, it is crucial to carefully consider the design of the arbitration agreement, the procedural processes, and the substance of the award. The objective is to establish an arbitration framework that upholds the fundamental principles of sharia while also meeting the standards of international enforcement mechanisms, such as the New York Convention (1958), which supports the global recognition and enforcement of foreign arbitral awards.

Arbitrators must possess a thorough understanding of Islamic legal principles, especially in areas such as contract law, finance, and dispute resolution under sharia. This expertise ensures that their rulings are grounded in sharia while also addressing the commercial aspects of the dispute (Althabity, 2016). Alongside their knowledge of sharia, arbitrators should be well-versed in international arbitration conventions (like the New York Convention) and the secular laws of the jurisdictions where enforcement may be pursued. This combination of expertise ensures that their decisions are both sharia-compliant and aligned with secular legal requirements.

The arbitration process should be designed to align with both sharia and international arbitration standards. It should occur in a neutral jurisdiction or within a framework that respects both sharia and secular legal principles. Some Islamic countries have established Islamic Arbitration Centers, like the Islamic Chamber of Commerce Arbitration Center, which provide a neutral venue for sharia-compliant arbitration (*Islamic Chamber of Commerce Arbitration Center, n.d.*). The procedural rules should guarantee transparency and fairness, values that are central to both sharia and secular systems. Arbitrators must ensure fair hearing procedures, allowing both parties to present their case impartially. The arbitration agreement should include a clear enforcement clause to ensure the arbitral award is enforceable in both

sharia-compliant and secular legal systems. This may involve specifying which international conventions or treaties, such as the New York Convention, will govern enforcement in non-Islamic jurisdictions

The structure of the arbitral award is crucial for ensuring sharia compliance while preserving enforceability. The award should avoid any form of interest, whether as part of the principal or as a penalty for non-performance (Althabity, 2016). Instead, the award may include fixed compensation or damages that correspond to actual losses incurred, in line with the principles of equity and justice under sharia. Any monetary compensation or damages should be linked to real assets or services, ensuring the award reflects tangible value and adheres to the principle that money must be backed by genuine economic activity, not speculation. For instance, the arbitrator could order compensation in the form of assets or the return of property, rather than cash settlements unsupported by real assets.

From the substance, the award should eliminate any uncertainty (*gharar*). For example, if a party is required to pay a sum of money or deliver goods, the amount and timing should be clearly specified to prevent ambiguity. This is in line with sharia's prohibition on contracts that are excessively speculative or vague. The award should avoid elements akin to gambling, such as speculative derivatives or unbacked financial instruments. Instead, arbitrators should design the award to reflect genuine economic activity and productive investment. The arbitral decision must adhere to sharia principles of justice and fairness, ensuring that it serves the best interests of both parties, avoids exploitation, and upholds Islamic ethics and morality. Any compensation granted must be tied to real, physical assets or services, in accordance with the principle that economic transactions should be based on real value, and to avoid scenarios where the award represents speculative or abstract value disconnected from tangible asset (Trumbull, 2006).

Rather than ordering a purely monetary settlement, an arbitrator may opt to award compensation in the form of real, physical assets. This could involve the transfer of property, land, or goods that have inherent value. For example, in a dispute over the non-performance of a contract for the supply of goods, the arbitrator might instruct the losing party to deliver the goods or provide equivalent assets as compensation. This ensures that the award is tied to something of tangible value, minimizing the risk of speculative or uncertain monetary outcomes. In property disputes, the arbitrator might determine that the most appropriate remedy is the return of the actual property, especially when it is a tangible, measurable asset like real estate, machinery, or inventory. Instead of awarding a cash sum equivalent to the property's value, the tribunal could order the return of the physical property itself.

This ensures that the compensation is based on real, observable value, in line with Islamic finance and arbitration principles (Hussain et al., 2015). Another approach under sharia principles could involve awarding services instead of monetary compensation. For instance, the arbitrator may require the provision of specific services if the original transaction involved services or expertise. This could include professional services or labor as a substitute for cash, ensuring that the compensation is rooted in something concrete and real, rather than speculative or abstract financial instruments.

In Islamic law, speculation (trading assets for financial gain without a real underlying transaction) is prohibited (Hussain et al., 2015). This includes financial products such as derivatives, futures, or other instruments that enable profit without any corresponding real asset

or service. As such, an arbitral award must reflect transactions that are directly linked to tangible goods, services, or assets, rather than speculative financial instruments (Trumbull, 2006). This approach reduces the risk of engaging in speculative financial activities that could contravene the principles of fairness and equity in Islamic law. A key principle is that money used in transactions should represent actual economic activity. Therefore, cash payments or monetary compensation must be tied to real work, tangible goods, or services that have been produced or delivered (Trumbull, 2006). Money should not merely serve as an abstract value or a vehicle for speculation. This can be ensured by linking the award's value to physical assets or services that generate real economic value within society.

Awards based on speculative financial transactions or solely monetary compensation, without any link to tangible assets or services, would not align with sharia principles. Such an award could be unenforceable in jurisdictions that follow Islamic law, as it would be considered in conflict with the fundamental principles of fairness and the prohibitions of *ribā* (interest) and *gharar* (uncertainty) (Hussain et al., 2015). In Islamic jurisdictions, an arbitral award that does not connect monetary compensation to real assets may face enforcement challenges. Courts or regulatory bodies might view these awards as contrary to Islamic principles, potentially leading to their refusal, annulment, or legal disputes. To ensure enforceability, an arbitral award must adhere to the principle of asset-backed compensation. By grounding awards in tangible assets or services, arbitral tribunals support fairness and equity, helping to prevent situations where one party is unfairly advantaged or disadvantaged by an award lacking a tangible, real-world foundation (El Maknoui et al., 2023).

While ensuring sharia compliance is crucial, it is also vital to structure the arbitral award in a manner that is enforceable in secular jurisdictions. The arbitration agreement should refer to international treaties, such as the New York Convention, which facilitate the cross-border enforcement of arbitral awards. This ensures that the award will be recognized and enforceable in jurisdictions beyond the Islamic world. Although the award must adhere to sharia, it should also avoid conflicts with secular public policy. For instance, an award that requires the payment of *ribā* or violates principles of contract law under secular law may encounter enforcement challenges in non-Islamic jurisdictions (Ahmad, 2020).

In certain situations, it may be advantageous to design the arbitration process to include mutual recognition agreements between sharia and secular arbitration bodies. This can simplify the enforcement of awards in jurisdictions that apply either sharia or secular law. Such agreements can help bridge the divide between the two legal systems, ensuring that arbitration awards are enforceable across various jurisdictions. To accomplish this, several strategic steps can be taken to structure the arbitration process in a way that honors both sharia and secular legal principles, while ensuring smooth enforcement of awards

Conclusion

The intersection of international arbitration and sharia presents complex challenges, particularly when arbitral awards contain elements prohibited by Islamic legal principles such as *ribā* (interest), *gharar* (excessive uncertainty), and *maysir* (gambling). While secular jurisdictions generally adhere to the New York Convention and prioritize the enforceability of awards based on party autonomy and procedural fairness, sharia-compliant jurisdictions

introduce additional layers of scrutiny grounded in religious and ethical norms. This duality creates tension in cross-border dispute resolution, especially where awards are perceived to violate public policy defined through a sharia-based lens.

As cross-border commercial transactions increasingly involve parties from both secular and Islamic legal traditions, the need for arbitration mechanisms that are both legally enforceable and religiously acceptable becomes critical. Failure to accommodate sharia principles may lead to the non-enforcement or invalidation of arbitral awards in jurisdictions such as Saudi Arabia, the UAE, or Pakistan, undermining the predictability and reliability of arbitration as a dispute resolution method.

To address this, this paper suggests that arbitration agreements and awards must be carefully structured to reflect the ethical and legal standards of both legal systems. This requires not only an understanding of classical Islamic jurisprudence (fiqh), but also a nuanced approach to integrating it with international arbitration practices. Emphasis should be placed on designing dispute resolution procedures that respect sharia values such as fairness, transparency, equity, and social harmony while ensuring they are consistent with international standards for recognition and enforcement. Given the complexities of Islamic finance and jurisprudence, it is crucial for legal practitioners involved in drafting, arbitrating, or enforcing such contracts to engage qualified sharia scholars or certified Islamic law advisors. Lastly, To foster greater compatibility between international arbitration standards and Islamic legal systems, institutional cooperation and dialogue must be enhanced. Collaborative efforts between global arbitration forums and Islamic legal institutions can help develop shared model clauses, harmonized best practices, and joint training programs, which in turn can bridge normative gaps and cultivate mutual understanding.

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