INTERNATIONAL JOURNAL OF LAW AND SOCIAIL SCIENCES
Vol. 2, No. 2, June 2026
https://ijlss.net/

The Future of International Commercial Arbitration in Islamic Jurisdictions: Harmonizing Global Standards with Sharia Principles

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ABSTRACT

International commercial arbitration has become one of the most important mechanisms for resolving cross-border business disputes in an increasingly globalized economy. As international trade, foreign investment, and Islamic finance continue to expand across Muslim-majority countries, the role of arbitration in facilitating efficient, neutral, and enforceable dispute resolution has gained significant importance. However, the growing integration of Islamic jurisdictions into the global arbitration system has generated complex legal questions concerning the compatibility of international arbitration standards with Sharia principles. Issues relating to riba (interest), gharar (excessive uncertainty), public policy, and the enforcement of foreign arbitral awards continue to influence arbitration practice and judicial decision-making in many Islamic legal systems. This study examines the future of international commercial arbitration in Islamic jurisdictions, focusing on the challenges and opportunities associated with harmonizing global arbitration standards with Sharia-based legal principles.Employing a qualitative doctrinal and comparative legal methodology, the research analyzes international arbitration frameworks, including the UNCITRAL Model Law, the New York Convention, and major institutional arbitration rules, alongside arbitration legislation and judicial practices in Saudi Arabia, the United Arab Emirates, Malaysia, Pakistan, and Indonesia. The study explores the treatment of Sharia-related issues in arbitral proceedings, the enforcement of foreign arbitral awards, the resolution of Islamic finance disputes, and emerging challenges arising from digital commerce and smart contracts.The findings reveal that contemporary Islamic jurisdictions increasingly support international arbitration as a legitimate and effective dispute resolution mechanism while seeking to preserve compliance with fundamental Sharia principles. Although significant progress has been achieved through legislative reforms, judicial modernization, and the establishment of specialized arbitration institutions, challenges remain regarding legal harmonization, consistency of judicial interpretation, and the application of public policy exceptions. The study argues that a harmonized arbitration framework grounded in both international best practices and the objectives of Islamic law (Maqāṣid al-Sharīʿah) can enhance legal certainty, investor confidence, and commercial efficiency. It concludes by proposing a model for Sharia-compliant international arbitration that promotes global competitiveness while maintaining the normative integrity of Islamic legal systems.

Keywords: International Commercial Arbitration; Sharia Law; Islamic Jurisdictions; UNCITRAL Model Law; Islamic Finance.

Introduction

The increasing globalization of trade, investment, and cross-border commercial transactions has significantly expanded the role of international commercial arbitration as the preferred mechanism for resolving business disputes. In an era characterized by economic interdependence, multinational investment, digital commerce, and complex contractual relationships, businesses increasingly seek dispute resolution mechanisms that are efficient, neutral, confidential, and enforceable across jurisdictions. As a result, international commercial arbitration has emerged as a cornerstone of the global economic order, providing parties with a flexible alternative to national court litigation. The widespread acceptance of arbitration is reflected in the growing influence of international legal instruments such as the New York Convention, the UNCITRAL Model Law, and the procedural rules of major arbitral institutions. These developments have contributed to the establishment of a relatively harmonized framework for international dispute resolution, facilitating legal certainty and promoting international trade.[1]

[1] Meshel, T. (2021). The principle of equality in international commercial arbitration. *Journal of International Dispute Settlement, 12*(1), 1–26. https://doi.org/10.1093/jnlids/idaa024

Within Islamic jurisdictions, arbitration occupies a particularly significant position due to its deep historical and jurisprudential roots. The concept of **Tahkīm** (arbitration) has long been recognized in Islamic law as a legitimate method of dispute resolution grounded in principles of justice, fairness, reconciliation, and party autonomy. Classical Islamic jurisprudence encouraged the settlement of commercial disputes through consensual mechanisms that avoided prolonged litigation and preserved social harmony. Contemporary Muslim-majority countries have largely embraced arbitration as an essential component of commercial governance, particularly in response to increasing foreign investment, international trade, and the expansion of Islamic finance. Countries such as Saudi Arabia, the United Arab Emirates, Malaysia, Pakistan, Indonesia, and Qatar have undertaken substantial legal reforms aimed at strengthening arbitration frameworks and enhancing their attractiveness as regional arbitration hubs.[2]

Despite these developments, significant tensions continue to exist between global arbitration standards and certain principles of Sharia law. International commercial arbitration is largely founded upon concepts such as party autonomy, contractual freedom, neutrality of governing law, and the enforceability of arbitral awards. However, disputes may arise when arbitral awards involve contractual provisions or remedies that conflict with Islamic legal principles. Issues relating to **riba** (interest), **gharar** (excessive uncertainty), speculative transactions, public policy considerations, and the enforcement of foreign arbitral awards frequently generate legal complexities within Islamic jurisdictions. Courts and arbitral tribunals must therefore navigate the delicate balance between complying with internationally recognized arbitration standards and preserving the integrity of Sharia-based legal systems.[3]

The challenge of harmonization has become increasingly important as Islamic jurisdictions seek greater integration into the global economy while maintaining their distinctive legal and religious identities. The rapid growth of Islamic finance, cross-border investment, infrastructure development projects, and international trade agreements has intensified the need for dispute resolution mechanisms capable of accommodating both international commercial expectations and Sharia requirements. Furthermore, emerging developments in digital commerce, fintech, blockchain-based transactions, and smart contracts present new legal questions that require innovative approaches to arbitration governance. Consequently, the future of international commercial arbitration in Islamic jurisdictions depends largely upon the ability of legal systems to reconcile global arbitration norms with foundational Islamic legal principles.

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[2] Maniruzzaman, A. F. M. (2022). Islamic finance and dispute resolution. *Transnational Dispute Management, 19*(5), 1–25.

[3] Trakic, A. (2021). The role of public policy in the enforcement of foreign arbitral awards in Islamic jurisdictions. *Arab Law Quarterly, 35*(4), 385–406. https://doi.org/10.1163/15730255-BJA10079

Against this background, the central research problem addressed in this study concerns the extent to which international commercial arbitration frameworks can be effectively harmonized with Sharia principles without undermining either international enforceability or Islamic legal legitimacy. While many Islamic jurisdictions have adopted modern arbitration legislation modeled on international standards, differences remain regarding judicial interpretation, public policy exceptions, and the treatment of Sharia-sensitive commercial disputes. These inconsistencies may create legal uncertainty for investors, businesses, arbitrators, and courts operating within Islamic legal environments.

Accordingly, the primary objectives of this study are: (1) to examine the theoretical and legal foundations of international commercial arbitration within Islamic legal traditions; (2) to analyze the interaction between global arbitration standards and Sharia principles; (3) to evaluate contemporary challenges affecting arbitration practice in Islamic jurisdictions; (4) to compare judicial and legislative approaches adopted by selected Muslim-majority countries; and (5) to develop recommendations for a harmonized arbitration framework that promotes both international legal certainty and Sharia compliance.

To achieve these objectives, the study addresses the following research questions:

1. How is international commercial arbitration conceptualized within Islamic legal traditions and contemporary arbitration law?
2. What tensions exist between global arbitration standards and Sharia principles in commercial dispute resolution?
3. How do Islamic jurisdictions regulate the recognition, enforcement, and supervision of international arbitral awards?
4. What legal and institutional challenges affect the harmonization of arbitration practices with Islamic law?
5. How can a balanced framework be developed to reconcile international arbitration norms with Sharia-based legal requirements?

The significance of this study lies in its contribution to the growing scholarship on international commercial law, comparative legal studies, Islamic jurisprudence, and dispute resolution. While substantial literature exists on international arbitration and Islamic law independently, relatively limited research has systematically examined the future of harmonization between these two legal traditions in the context of rapidly evolving global commerce. By providing a comparative and forward-looking analysis, this research offers valuable insights for policymakers, legislators, judges, arbitrators, legal practitioners, investors, and scholars seeking to strengthen dispute resolution mechanisms within Islamic jurisdictions.

Furthermore, the study contributes to broader discussions concerning legal pluralism, regulatory harmonization, and the role of Sharia in contemporary international commercial governance. As Muslim-majority countries continue to expand their participation in global trade and investment networks, the development of effective, predictable, and Sharia-compliant arbitration frameworks will become increasingly important. Ultimately, the successful harmonization of global arbitration standards with Islamic legal principles has the potential to enhance investor confidence, promote economic development, strengthen legal certainty, and contribute to the evolution of a more inclusive and culturally responsive international arbitration system.

Methodology

This study adopts a qualitative doctrinal and comparative legal research methodology to examine the future of international commercial arbitration in Islamic jurisdictions and the prospects for harmonizing global arbitration standards with Sharia principles. The research primarily relies on the analysis of primary legal sources, including national arbitration laws, constitutional provisions, commercial legislation, judicial decisions, international treaties, and institutional arbitration rules. Particular attention is given to the legal frameworks governing arbitration in selected Islamic jurisdictions, including Saudi Arabia, the United Arab Emirates, Malaysia, Pakistan, Indonesia, and Qatar.

The study further examines key international instruments that shape contemporary arbitration practice, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the UNCITRAL Model Law on International Commercial Arbitration, and the procedural rules of major arbitral institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the Singapore International Arbitration Centre (SIAC). In addition, classical and contemporary sources of Islamic jurisprudence are analyzed to evaluate the legal foundations of **Tahkīm** (arbitration), contractual freedom, dispute resolution, and commercial justice within Sharia.

A comparative approach is employed to identify similarities and differences between international arbitration standards and Sharia-based legal principles. The study focuses on contemporary issues such as the enforcement of foreign arbitral awards, public policy exceptions, Islamic finance disputes, riba-related claims, digital commerce, fintech transactions, and emerging arbitration challenges associated with technological innovation.

The scope of the research is limited to commercial arbitration and does not extensively address investment arbitration, family arbitration, or non-commercial dispute resolution mechanisms. Moreover, the study concentrates on legal and institutional dimensions rather than economic or technical aspects of arbitration practice. Through this comparative and interdisciplinary analysis, the research seeks to identify regulatory gaps, evaluate current harmonization efforts, and propose a practical framework for integrating international arbitration norms with Sharia principles in a manner that promotes legal certainty, commercial efficiency, and religious legitimacy within Islamic jurisdictions.

THEORETICAL AND LEGAL FOUNDATIONS OF INTERNATIONAL COMMERCIAL ARBITRATION IN ISLAMIC LAW

The growing importance of international commercial arbitration in contemporary global trade has renewed scholarly interest in its compatibility with Islamic legal principles. As Muslim-majority countries increasingly participate in international commerce, foreign investment, Islamic finance, and cross-border business transactions, arbitration has emerged as a preferred mechanism for resolving commercial disputes. Although international arbitration is often perceived as a modern legal institution, the concept of arbitration has deep roots within Islamic jurisprudence, where it is known as **Tahkīm**. The historical acceptance of arbitration within Islamic law provides an important foundation for contemporary efforts to harmonize global arbitration standards with Sharia principles. Understanding this relationship requires an examination of the theoretical and legal foundations of arbitration in Islamic jurisprudence and its interaction with modern international commercial law.[4]

Concept and Evolution of Arbitration (Tahkīm) in Islamic Jurisprudence

Arbitration, or **Tahkīm**, is one of the oldest recognized methods of dispute resolution in Islamic legal tradition. The concept predates Islam but was endorsed and refined by Islamic teachings as a legitimate mechanism for resolving disputes through the appointment of impartial decision-makers. The Qur'an encourages peaceful settlement and reconciliation in disputes, while numerous traditions of the Prophet Muhammad (peace be upon him) demonstrate the use of arbitration in both commercial and social matters.

[4] Rabbani, M. R., Khan, S., & Thalassinos, E. I. (2024). Blockchain technology and Islamic finance: Opportunities and regulatory challenges. *Journal of Risk and Financial Management, 17*(1), 27. https://doi.org/10.3390/jrfm17010027

Classical Islamic jurists generally defined Tahkīm as an agreement between disputing parties to appoint a neutral third party whose decision would be accepted as binding. The four major Sunni schools of jurisprudence—Hanafi, Maliki, Shafi'i, and Hanbali—recognized arbitration as a lawful and desirable alternative to formal judicial proceedings, particularly in commercial disputes. While certain procedural differences existed among these schools, they shared a common objective of promoting justice, efficiency, and social harmony. Historically, arbitration played a significant role in regulating trade relations within Islamic civilization. Merchants conducting transactions across vast commercial networks frequently relied on arbitrators to resolve disputes quickly and efficiently. This tradition contributed to the development of sophisticated commercial practices that facilitated international trade throughout the Islamic world.[5]

Foundations of Dispute Resolution in Sharia

The Islamic approach to dispute resolution is grounded in fundamental principles of justice (ʿ**adl**), fairness (**insāf**), reconciliation (**ṣulḥ**), and public welfare (**maṣlaḥah**). Sharia emphasizes the importance of resolving disputes in a manner that preserves social stability, protects rights, and promotes equitable outcomes. Several Qur'anic verses encourage peaceful dispute resolution and consultation, establishing the normative basis for arbitration and other alternative dispute resolution mechanisms. Islamic jurisprudence generally favors consensual settlement whenever possible, recognizing that voluntary resolution often produces more sustainable and harmonious outcomes than adversarial litigation. Another important principle is the avoidance of unnecessary hardship and conflict. Commercial disputes that remain unresolved can disrupt economic relationships and undermine market stability. Arbitration serves as a practical mechanism for minimizing such disruptions while ensuring that parties receive a fair hearing. Islamic legal theory also emphasizes accountability, impartiality, and procedural fairness. Arbitrators are expected to possess integrity, competence, and independence. Their decisions must be based upon evidence, contractual obligations, and applicable legal principles while remaining consistent with the objectives of Sharia (**Maqāṣid al-Sharīʿah**). These foundations demonstrate that arbitration is not merely tolerated within Islamic law but is deeply connected to broader Islamic conceptions of justice and dispute resolution.[6]

Principles of Party Autonomy and Contractual Freedom

[5] Alshater, M. M., Hassan, M. K., Khan, A., & Saba, I. (2024). Digital transformation in Islamic finance: A systematic review. *International Review of Economics & Finance, 91*, 170–189. https://doi.org/10.1016/j.iref.2023.11.020

[6] Hassan, M. K., Aliyu, S., & Saiti, B. (2023). FinTech and Islamic finance: Literature review and research agenda. *Pacific-Basin Finance Journal, 78*, 101950. https://doi.org/10.1016/j.pacfin.2022.101950

One of the central pillars of modern international arbitration is the principle of party autonomy, which allows parties to determine the procedures, governing law, arbitrators, and institutional rules applicable to their disputes. Interestingly, Islamic commercial jurisprudence contains comparable concepts that support contractual freedom and private ordering. Islamic law generally recognizes the validity of contractual agreements based on mutual consent (**tarāḍī**) and free will, provided that the agreement does not violate explicit Sharia prohibitions. This principle is reflected in the well-established juristic maxim that parties are bound by their contractual conditions unless such conditions render lawful matters unlawful or vice versa. The doctrine of contractual freedom enables commercial parties to structure their relationships according to their business needs. Consequently, many scholars argue that arbitration agreements are fully compatible with Islamic legal principles because they represent voluntary arrangements designed to facilitate dispute resolution. However, party autonomy in Islamic law is not unlimited. Contractual provisions must comply with Sharia requirements concerning riba (interest), gharar (excessive uncertainty), fraud, coercion, and unlawful subject matter. This distinction represents one of the primary areas where tensions may arise between international arbitration practices and Islamic legal principles. Nevertheless, the underlying compatibility between party autonomy and Islamic commercial law provides a strong foundation for harmonization efforts.[7]

Recognition of Arbitration in Contemporary Islamic Legal Systems

Most contemporary Muslim-majority countries formally recognize arbitration as an important component of their legal systems. Significant legislative reforms have been undertaken to align national arbitration frameworks with international standards while preserving compatibility with domestic legal traditions. Countries such as Saudi Arabia, the United Arab Emirates, Malaysia, Qatar, Pakistan, and Indonesia have enacted modern arbitration laws influenced by the UNCITRAL Model Law and other international instruments. These reforms generally recognize the enforceability of arbitration agreements, support judicial non-interference, and facilitate the recognition of arbitral awards. The growth of Islamic finance has further strengthened the importance of arbitration in Muslim-majority jurisdictions. Islamic banking, Sukuk transactions, Takaful operations, and cross-border investment agreements frequently include arbitration clauses to ensure efficient dispute resolution. Specialized institutions have also emerged to address disputes involving Sharia-compliant financial transactions. Despite broad recognition of

[7] Herliana. (2025). Enforcing arbitration awards: Ensuring Sharia compliance in Islamic and secular jurisdictions. *Ahkam: Jurnal Ilmu Syariah, 25*(2), 301–322. https://doi.org/10.15408/ajis.v25i2.42795

arbitration, variations remain regarding the role of Sharia in reviewing arbitral awards, determining public policy exceptions, and resolving conflicts between domestic law and international arbitration obligations. These differences highlight the continuing need for legal harmonization and judicial clarity.[8]

Relationship Between Islamic Law and International Arbitration

The relationship between Islamic law and international arbitration is often characterized as one of conditional compatibility rather than inherent conflict. Both systems share common objectives, including the promotion of justice, efficiency, predictability, and peaceful dispute resolution. International arbitration emphasizes party autonomy, neutrality, flexibility, confidentiality, and enforceability. Similarly, Islamic jurisprudence values consensual dispute resolution, fairness, contractual certainty, and the protection of commercial relationships. These shared objectives create substantial opportunities for integration. However, certain areas continue to generate legal debate. Issues involving interest-based financial claims, speculative transactions, gambling-related contracts, and public policy considerations may lead to tensions between international arbitral awards and domestic Sharia principles. The enforcement of foreign awards containing provisions inconsistent with Islamic law remains particularly sensitive in some jurisdictions. The rapid expansion of Islamic finance has intensified the need for arbitration mechanisms capable of addressing both international commercial expectations and Sharia requirements. As a result, many jurisdictions have adopted pragmatic approaches that seek to accommodate global arbitration standards while preserving essential Islamic legal values.[9]

Theoretical Framework for Harmonization

The future of international commercial arbitration in Islamic jurisdictions depends upon the development of a coherent theoretical framework for harmonization. Such a framework should be based upon the recognition that international arbitration and Islamic law are not mutually exclusive systems but rather complementary legal traditions capable of coexistence. A harmonized approach may be grounded in several principles. First, the doctrine of **Maqāṣid al-Sharīʿah** provides a useful interpretative framework for evaluating arbitration practices according to broader objectives such as justice, legal certainty, economic welfare, and commercial stability. Second, the principle of **maṣlaḥah** (public interest) supports legal reforms that facilitate trade and investment while maintaining Sharia compliance. Third, comparative legal methodologies can

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[8] Kadi, S. (2025). The nexus of accounting and dispute resolution in Islamic banking and finance law. *European Journal of Islamic Finance, 25*, 1–18. https://doi.org/10.13135/2421-2172/8927

[9] Mobaraki, B. (2024). Comparative analysis of international commercial arbitration laws in Iran and the UNCITRAL Model Law. *Interdisciplinary Studies in Society, Law, and Politics, 3*(5), 93–105. https://doi.org/10.61838/kman.isslp.3.5.10

assist in identifying areas of convergence between international arbitration norms and Islamic legal principles. Furthermore, legal harmonization should emphasize procedural compatibility rather than rigid substantive uniformity. International arbitration procedures can generally operate within Islamic legal systems provided that the resulting outcomes do not violate fundamental Sharia prohibitions. This approach enables Islamic jurisdictions to participate fully in the global arbitration system while preserving their legal identity.[10]

INTERNATIONAL ARBITRATION FRAMEWORKS AND THEIR APPLICATION IN ISLAMIC JURISDICTIONS

The increasing globalization of trade and investment has transformed international commercial arbitration into the dominant mechanism for resolving cross-border commercial disputes. The effectiveness of arbitration largely depends upon internationally recognized legal frameworks that ensure procedural fairness, party autonomy, and the enforceability of arbitral awards across jurisdictions. For Islamic jurisdictions, participation in the global arbitration system is essential for attracting foreign investment, facilitating international trade, and supporting the growth of Islamic finance. Consequently, many Muslim-majority countries have undertaken substantial legal reforms to align domestic arbitration laws with international standards while preserving compatibility with Sharia principles. Understanding the interaction between international arbitration frameworks and Islamic legal systems is therefore essential for evaluating the future of arbitration in the Muslim world.

International Arbitration Frameworks and Enforcement in Islamic Jurisdictions

International commercial arbitration in Islamic jurisdictions has increasingly evolved through the adoption of globally recognized legal frameworks while maintaining compatibility with Sharia principles. The most influential instrument is the UNCITRAL Model Law on International Commercial Arbitration (1985, revised 2006), which promotes harmonization through principles such as party autonomy, limited judicial intervention, procedural flexibility, competence-competence, and equal treatment of parties. Many Muslim-majority countries, including Saudi Arabia, Malaysia, Indonesia, and the UAE, have incorporated UNCITRAL-inspired provisions into their domestic laws, enhancing legal certainty and investor confidence. Equally important is the New York Convention 1958, which facilitates the recognition and enforcement of foreign arbitral awards across jurisdictions and is widely adopted by major Islamic states,

[10] Born, G. B. (2021). *International commercial arbitration* (3rd ed.). Kluwer Law International.

including Pakistan, Saudi Arabia, Indonesia, Malaysia, Qatar, Türkiye, and the UAE. Institutional arbitration bodies such as the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Singapore International Arbitration Centre (SIAC), and Dubai International Arbitration Centre (DIAC) further support efficient and neutral dispute resolution. Among selected Islamic jurisdictions, Saudi Arabia's Arbitration Law 2012, the UAE Arbitration Law 2018, Malaysia's Arbitration Act 2005, Indonesia's pro-arbitration legislation, and Pakistan's gradually modernizing framework all demonstrate a growing commitment to international arbitration standards. However, enforcement of foreign arbitral awards may still encounter challenges where awards conflict with domestic public policy rooted in Sharia principles, particularly regarding interest-based transactions or speculative contracts. Despite such concerns, recent judicial trends indicate a narrower interpretation of public policy exceptions, promoting greater enforceability and commercial certainty. Overall, Islamic jurisdictions are moving toward increased harmonization with international arbitration norms through UNCITRAL-based reforms, participation in the New York Convention, and engagement with leading arbitral institutions, while continuing to balance global commercial expectations with the normative requirements of Islamic law.[11]

CONTEMPORARY CHALLENGES IN HARMONIZING ARBITRATION WITH SHARIA PRINCIPLES

The growing integration of Islamic jurisdictions into the global economy has significantly increased the importance of international commercial arbitration as a mechanism for resolving cross-border disputes. At the same time, the expansion of international trade, foreign investment, Islamic finance, and digital commerce has intensified the interaction between global arbitration standards and Sharia principles. Although both systems share common objectives relating to justice, contractual certainty, and dispute resolution, significant legal and practical challenges remain. These challenges arise primarily when internationally accepted commercial practices conflict with substantive principles of Islamic law. Issues relating to riba (interest), gharar (uncertainty), public policy, enforcement of foreign arbitral awards, Islamic finance disputes, and emerging digital technologies continue to shape contemporary debates regarding the harmonization of arbitration and Sharia.

Riba (Interest) in Arbitral Awards

One of the most significant challenges facing arbitration in Islamic jurisdictions concerns the treatment of **riba** (interest). The prohibition of riba constitutes a fundamental principle of Islamic commercial law and is explicitly

[11] Moses, M. L. (2023). The future of international commercial arbitration in a changing world order. *Arbitration International, 39*(2), 145–163. https://doi.org/10.1093/arbint/aiad005

derived from the Qur'an and Sunnah. Classical and contemporary Islamic scholars generally regard predetermined interest on loans and debt obligations as impermissible. In contrast, international commercial arbitration frequently involves disputes arising from conventional financial transactions where interest forms an integral component of contractual arrangements. Arbitral tribunals often award pre-award interest, post-award interest, or damages calculated on the basis of interest-bearing obligations. Such awards are generally accepted within conventional commercial practice and are widely enforceable under international arbitration frameworks. The challenge arises when parties seek enforcement of such awards in jurisdictions where Sharia principles form part of the legal system. Courts in certain Islamic jurisdictions may scrutinize interest-related components of arbitral awards and, in some circumstances, refuse enforcement or require modification of the award. This creates uncertainty for international investors and commercial parties engaged in cross-border transactions involving Islamic jurisdictions. The rapid growth of Islamic finance has intensified this issue. While Sharia-compliant financial structures avoid conventional interest, disputes may still arise when transactions involve international counterparties operating under different legal and financial systems. Consequently, legal scholars increasingly advocate for arbitration models capable of distinguishing between legitimate commercial compensation and prohibited interest-based claims.[12]

Gharar and Contractual Uncertainty

Another major challenge involves the Islamic legal doctrine of **gharar**, which refers to excessive uncertainty, ambiguity, or speculation within contractual relationships. Islamic commercial jurisprudence seeks to prevent transactions that expose parties to unfair risks arising from unclear contractual terms or uncertain subject matter. International commercial contracts often involve complex financial arrangements, derivative instruments, risk-allocation mechanisms, and innovative commercial structures that may raise concerns under traditional interpretations of gharar. While modern commercial law frequently tolerates certain levels of contractual uncertainty, Islamic law requires greater clarity regarding rights, obligations, and contractual outcomes. Arbitral tribunals operating under international standards generally focus on enforcing the parties' contractual intentions regardless of whether specific contractual provisions might raise Sharia concerns. As a result, awards enforcing contracts characterized by substantial uncertainty may face challenges within certain

[12] Hasanah, L. N., Faisal, M. S., Ahmed, Z., & Hasyim, M. Y. A. (2025). Religious diversity and the digital economy: Legal–academic pathways to harmonize Sharia and international law. *International Journal of Law and Social Sciences*, *1*(1). https://doi.org/10.65960/ijlss.1.1.2025.8

Islamic legal environments. The globalization of commerce has further complicated the issue. Transactions involving digital assets, cryptocurrency systems, decentralized finance platforms, and innovative financial products frequently contain elements that are difficult to evaluate using traditional legal categories. Determining whether such arrangements involve impermissible gharar remains a subject of ongoing scholarly debate and judicial interpretation.[13]

Public Policy Exceptions Based on Sharia

Public policy represents one of the most important mechanisms through which Islamic jurisdictions reconcile international arbitration obligations with domestic legal principles. Most arbitration laws and international conventions permit courts to refuse enforcement of arbitral awards that violate the public policy of the enforcing state. In many Muslim-majority countries, Sharia principles constitute an important component of public policy. Courts may therefore review arbitral awards to determine whether their enforcement would conflict with fundamental Islamic legal norms. Such review may involve issues relating to riba, gambling, speculative transactions, unlawful commercial activities, or other matters considered contrary to Islamic law. While public policy exceptions serve a legitimate function in preserving national legal values, they may also create uncertainty regarding the predictability of award enforcement. International businesses often express concern that broad interpretations of public policy could undermine the finality and effectiveness of arbitration. Recent judicial developments indicate a growing trend toward narrow interpretation of public policy exceptions. Many courts increasingly recognize that excessive judicial intervention may discourage foreign investment and reduce confidence in arbitration systems. Consequently, efforts have been made to balance respect for Sharia principles with the international expectation that arbitral awards should generally be enforceable. The challenge remains particularly significant in jurisdictions where courts must determine the extent to which public policy should reflect traditional Islamic jurisprudence, contemporary legal reforms, or international commercial considerations.[14]

Enforcement of Foreign Awards Conflicting with Islamic Principles

The enforcement of foreign arbitral awards remains a central issue in the harmonization of international arbitration and Islamic law. Although many Islamic jurisdictions are parties to the New York Convention, enforcement disputes continue to arise where foreign awards contain provisions perceived to conflict with Sharia principles. Examples include awards involving conventional

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[13] Mujiono, & Ticualu, C. (2025). Emerging trends in law and social sciences: Global perspectives on policy, ethics, justice, and institutional reform. *International Journal of Law and Social Sciences*, *1*(1), 40–60. https://doi.org/10.65960/ijlss.1.1.2025.6

[14] Oseni, U. A., & Ahmad, A. U. F. (2019). *Islamic finance and dispute resolution: New developments and future challenges*. Emerald Publishing.

banking transactions, interest-based compensation, speculative investment arrangements, or contractual obligations associated with activities prohibited under Islamic law. Courts may face difficult questions concerning whether enforcement would violate domestic public policy or fundamental principles of Sharia. Historically, some jurisdictions adopted restrictive approaches toward enforcement when Islamic legal concerns were implicated. However, contemporary trends indicate increasing judicial willingness to accommodate international arbitration obligations while preserving essential religious and legal values. Countries such as Saudi Arabia, the United Arab Emirates, Malaysia, and Qatar have undertaken substantial legal reforms aimed at improving enforcement mechanisms and increasing investor confidence. Nevertheless, differences in judicial interpretation continue to create uncertainty, particularly in cases involving complex financial transactions and cross-border commercial disputes. The challenge for future arbitration practice lies in developing enforcement frameworks that preserve the integrity of Sharia principles without undermining the predictability and effectiveness of international arbitration.[15]

Islamic Finance Disputes and Arbitration

The rapid expansion of Islamic finance has created new opportunities and challenges for international arbitration. Islamic financial institutions increasingly engage in cross-border transactions involving Sukuk, Murabaha, Ijara, Musharaka, Mudaraba, and other Sharia-compliant financial instruments. As these transactions become more sophisticated and internationalized, dispute resolution mechanisms must address both commercial and religious considerations. One of the primary challenges concerns the determination of applicable law. While parties may choose international arbitration rules and governing laws, disputes frequently involve questions regarding Sharia compliance. Arbitrators may therefore be required to evaluate both conventional legal principles and Islamic jurisprudential requirements. Another challenge involves inconsistency in Sharia interpretation. Different schools of Islamic jurisprudence and Sharia supervisory boards may adopt varying views regarding the permissibility of specific financial structures. Such diversity can create uncertainty in arbitration proceedings and complicate the enforcement of awards. To address these issues, specialized Islamic arbitration institutions and Sharia-compliant dispute resolution mechanisms have emerged in several jurisdictions. These initiatives seek to combine international arbitration

[15] Azhari, A. M., Azhari, S., & Yaqooq, M. I. (2025). Global transformations in law, justice, and society: Comparative perspectives on governance, rights, and legal reform. *International Journal of Law and Social Sciences*, *1*(1), 60–90. https://doi.org/10.65960/ijlss.1.1.2025.7

standards with expertise in Islamic finance and jurisprudence, thereby enhancing both legal certainty and religious legitimacy.[16]

Emerging Issues Involving Digital Commerce and Smart Contracts

Technological innovation is creating entirely new challenges for arbitration in Islamic jurisdictions. Digital commerce, blockchain technology, cryptocurrencies, artificial intelligence, and smart contracts are transforming global business practices and generating novel legal questions. Smart contracts, which automatically execute contractual obligations through blockchain-based systems, raise important issues concerning contractual consent, dispute resolution, and legal enforceability. While these technologies offer significant efficiency benefits, their compatibility with traditional concepts of Islamic contract law remains uncertain. Similarly, cryptocurrency transactions present challenges regarding asset classification, ownership rights, speculation, and Sharia compliance. Different Islamic scholars have adopted varying positions concerning the permissibility of digital currencies, creating additional uncertainty for arbitral tribunals addressing related disputes. Artificial intelligence further complicates arbitration processes. AI-assisted contract drafting, automated dispute resolution systems, predictive analytics, and algorithmic decision-making mechanisms increasingly influence commercial transactions. These developments raise questions regarding transparency, accountability, fairness, and procedural justice. As digital commerce expands throughout the Islamic world, arbitration frameworks must evolve to address these emerging technologies. Future harmonization efforts will require innovative legal approaches capable of integrating technological advancement with enduring principles of Islamic jurisprudence.[17]

Comparative Assessment of Judicial and Arbitral Practice

A comparative assessment of judicial and arbitral practice in major Islamic jurisdictions demonstrates significant progress toward harmonizing international commercial arbitration with Islamic legal principles, although important challenges remain. Saudi Arabia has modernized its arbitration system through the Arbitration Law 2012, strengthening party autonomy and reducing judicial intervention while still allowing courts to review awards for compliance with Sharia and public policy. The United Arab Emirates has developed one of the most arbitration-friendly environments in the Middle East through the Federal Arbitration Law 2018 and internationally oriented institutions such as the DIFC and ADGM, where courts generally adopt a pro-enforcement approach and

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[16] Maniruzzaman, A. F. M. (2022). Islamic finance and dispute resolution. *Transnational Dispute Management, 19*(5), 1–25.

[17] Al Azhari, F. U., & Al Azhari, S. I. (2025). Contemporary challenges in harmonizing Sharia, national legal systems, and international law in a rapidly changing world. *International Journal of Law and Social Sciences*, *1*(1), 130–150. https://doi.org/10.65960/ijlss.1.1.2025.4

narrowly interpret public policy exceptions.[18] Malaysia is widely regarded as a leading model due to its Arbitration Act 2005, strong judicial support for arbitration, and specialized expertise in Islamic finance dispute resolution, successfully integrating international arbitration standards with Sharia-compliant commercial practices. Pakistan has gradually improved its arbitration framework through legislative reforms and greater engagement with international arbitration norms, although procedural delays, inconsistent judicial interpretations, and enforcement challenges continue to affect efficiency. Indonesia has also strengthened its arbitration regime and generally supports arbitration agreements and award enforcement, but still faces challenges related to procedural consistency, judicial expertise, and public policy interpretation. Collectively, these jurisdictions share several strengths, including legislative modernization inspired by the UNCITRAL Model Law, increasing judicial support for arbitration, and the development of specialized arbitral institutions. However, weaknesses persist in the form of differing interpretations of Sharia-based public policy, uneven institutional capacity, and varying levels of judicial expertise. Emerging issues such as digital commerce, Islamic fintech, blockchain transactions, artificial intelligence-generated contracts, and cybersecurity disputes further test existing frameworks. Lessons from leading international arbitration centers such as the ICC, LCIA, SIAC, and major institutions in Dubai highlight the importance of minimizing unnecessary judicial intervention, strengthening institutional specialization, ensuring procedural efficiency, and adapting arbitration rules to technological developments. Ultimately, successful harmonization between international arbitration and Islamic law requires not only legislative reform but also strong judicial training, institutional commitment, professional development, and regional cooperation to enhance legal certainty, investor confidence, and the effectiveness of dispute resolution systems.[19]

Towards a Harmonized Arbitration Framework for Islamic Jurisdictions

The future effectiveness of international commercial arbitration in Islamic jurisdictions depends on developing a harmonized framework that reconciles global arbitration standards with the principles of Sharia. As Muslim-majority countries become increasingly integrated into international trade, investment, and financial markets, the need for predictable, efficient, and culturally legitimate

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[18] Alwan, F. Y., & Lilo, I. Y. (2026). Defending religious tradition in modern times: Comparative responses of Muslim and Christian scholars to scriptural criticism. *Global Islamic Research Journal, 2*(1), 18–35. https://doi.org/10.65960/girj.2.1.2026.11

[19] Satyo, B. K., & Prasetyo, B. A. Y. (2026). *Artificial intelligence and the future of human rights: Legal accountability for algorithmic decision-making in democratic societies. International Journal of Law and Social Sciences, 2*(1), 54–74. https://doi.org/10.65960/ijlss.2.1.2026.12

dispute resolution mechanisms has grown significantly. Harmonization is essential because differences in public policy interpretation, enforcement practices, and substantive Sharia requirements—particularly concerning riba (interest), gharar (excessive uncertainty), and speculative transactions—can create legal uncertainty for investors and commercial parties. A future-oriented Sharia-compliant arbitration model should preserve party autonomy, allow optional Sharia-compliance clauses, establish specialized procedures for Islamic finance and halal commerce disputes, involve qualified Islamic legal experts in arbitral proceedings, and incorporate digital dispute resolution technologies for emerging sectors such as fintech, blockchain, smart contracts, and artificial intelligence. Specialized Islamic arbitration centers can further support harmonization by providing expertise in both international arbitration and Islamic jurisprudence, developing standardized rules, publishing best-practice guidelines, and serving as centers for research and professional training. Equally important is capacity-building for arbitrators and judges through specialized education in arbitration law, Islamic finance, comparative commercial law, and emerging technologies.[20] The Organisation of Islamic Cooperation (OIC) can play a leading role by promoting regional cooperation, developing an OIC Model Arbitration Law, strengthening mutual recognition of arbitral awards, facilitating institutional partnerships, and coordinating policy initiatives among member states. Future reforms should focus on aligning national arbitration laws with international standards, clearly defining Sharia-based public policy exceptions, supporting specialized arbitration institutions, integrating technological developments into arbitration frameworks, and expanding research and professional training opportunities. Through legislative modernization, institutional innovation, human-capital development, and regional collaboration, Islamic jurisdictions can establish arbitration systems that combine international credibility with Islamic legal legitimacy, thereby enhancing legal certainty, attracting investment, and advancing the development of Islamic commercial law in the global economy.[21]

CONCLUSION

The expansion of global trade, foreign investment, Islamic finance, and digital commerce has significantly increased the importance of international commercial arbitration as a preferred mechanism for resolving cross-border commercial disputes. This study examined the theoretical foundations, legal frameworks, judicial practices, and contemporary challenges associated with harmonizing international arbitration standards with Sharia principles in selected Islamic jurisdictions. The findings demonstrate that arbitration is not a foreign

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[20] Farah, A. Q. (2020). The application of Sharīʿah finance rules in international commercial arbitration. *Utrecht Law Review, 16*(2), 104–119. https://doi.org/10.36633/ulr.592

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concept within Islamic legal tradition; rather, the institution of **Tahkīm** possesses deep roots in classical Islamic jurisprudence and shares many fundamental objectives with modern international arbitration, including justice, efficiency, contractual certainty, and peaceful dispute resolution.

The comparative analysis reveals that Islamic jurisdictions have made substantial progress in aligning domestic arbitration frameworks with internationally recognized standards. Countries such as Saudi Arabia, the United Arab Emirates, Malaysia, Pakistan, and Indonesia have adopted significant legislative reforms influenced by the UNCITRAL Model Law and the New York Convention. However, important differences remain regarding judicial intervention, public policy exceptions, enforcement practices, and the treatment of Sharia-sensitive issues such as **riba** (interest), **gharar** (excessive uncertainty), and Islamic finance disputes. Among the jurisdictions examined, Malaysia and the UAE demonstrate relatively advanced and arbitration-friendly environments, while Saudi Arabia has achieved notable modernization while maintaining a strong commitment to Sharia principles. Pakistan and Indonesia continue to strengthen their arbitration systems through ongoing legal and institutional reforms.

This study contributes to international commercial arbitration law by providing a comprehensive framework for understanding the interaction between global arbitration norms and Islamic legal principles. It demonstrates that harmonization is both possible and desirable when based upon shared values of fairness, contractual autonomy, legal certainty, and commercial justice. The proposed harmonized model highlights the importance of specialized Islamic arbitration institutions, judicial capacity-building, regional cooperation, and adaptive legal frameworks capable of responding to contemporary commercial realities. Future research should explore emerging issues that are likely to shape the next generation of arbitration practice, including artificial intelligence-assisted dispute resolution, blockchain-based smart contracts, digital assets, fintech transactions, and cross-border data governance. Further comparative studies involving additional OIC member states and leading international arbitration centers would also contribute to the development of globally credible and Sharia-compliant arbitration frameworks. As international commerce continues to evolve, the successful integration of Islamic legal principles with modern arbitration standards will remain essential for promoting investor confidence, strengthening legal certainty, and enhancing the role of Islamic jurisdictions within the global dispute resolution landscape.

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