Settlement of Disputes and the Islamic Financial Institutions (IFIs)

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Abstract:
This paper investigates mechanisms of settlement of disputes at the Islamic Financial Institutions (IFIs) as it is natural to have disagreements between different parties involved in Islamic banking and finance business. The paper adopts a qualitative methodology where the data are taken from journals, books, websites etc. In analyzing the data obtained from the sources, content analysis was used. It is found that dispute settlement at the Islamic Financial Institutions (IFIs) can be both through litigation as well as Alternative Dispute Resolution (ADR). Currently, parties to Islamic banking and finance dispute prefer to settle their dispute amicably through arbitration. Moreover, many arbitration centers on dispute resolution for parties in Islamic banking and finance have been established. However, there are certain challenges in arbitration that need to be overcome for the arbitration to be more effective. The researchers put forward certain recommendations on how to improve arbitration to be more effective in settling dispute between parties in Islamic banking and finance.

Keywords: Islamic finance, dispute resolution, Islamic financial institutions (IFIs), litigation, alternative dispute resolution (ADR).

Introduction
Basically, disputes under Islamic banking and finance are settled through two mechanisms, i.e., litigation as well as alternative dispute resolution (ADR) that consists of arbitration and mediation. There are various cases reported on the settlement of Islamic banking and finance disputes through litigation. However, there have been calls by legal experts on the adoption of ADR as a mechanism for settling disputes between Islamic banking and finance disputant parties. Thus, using arbitration as a means of settlement of dispute is getting popularity, particularly in the Middle East, Southeast Asia, and Africa. Arbitration institutions are being established in those regions for the sake of settlement of disputes that may likely arise from parties of Islamic banking and finance.
Indeed, arbitration is not new to the Muslim society as it has been in practice since over 1400 years ago. Islam always encourages settlement of disputes amicably to avoid hostility and acrimony. Arbitration is known as *tahkim* in Islam and there are various Qur’anic verses and Prophetic traditions in support of it.

This paper will investigate the methods for settlement of disputes in the Islamic banking and finance disputes i.e., litigation and alternative dispute resolution (ADR) and make some recommendations on how to improve the arbitration process of settlement of disputes by the Islamic banking and finance parties so that the parties will have confidence in referring their disputes to arbitration to get amicable settlements.

**Methodology**

This is library-based research that adopts qualitative method of research. Data utilized are secondary that includes books, journals, websites etc. In analyzing the data obtained from the sources, content analysis has been adopted.

**Settlement of Dispute at the Islamic Financial Institutions (IFIs)**

Generally, dispute settlement in Islamic banking and finance is done through two ways; namely litigation where courts are needed in settling the disputes and settlement of dispute out of court known as alternative dispute resolution (ADR) that consists of arbitration and mediation (Labanieh et al., 2019).

**Litigation**

Parties to Islamic banking and finance dispute normally prefer litigation in their settlement of dispute instead of alternative dispute resolutions (arbitration and mediation) as they believe it will provide them with more certain and effective result than ADR. For a long time, it has been a norm in the Middle East for parties involved in an Islamic banking and finance contract to choose English or New York law to govern the contracts. This is because the laws of these two jurisdictions are well respected, and enforcement is more effective (Maita, 2014).

Malaysia is one of the leading countries that are more advanced in Islamic banking and finance, hence there were some cases that occurred in the field of Islamic banking and finance that were referred to litigation. One of these cases was *Bank Islam v Adnan Omar* [1994] 3 CLJ 735, where in this case the defendant argued that as the plaintiff was an Islamic bank, the civil court shall have no jurisdiction to hear the case as Article 121(1A) of the Malaysian Federal Constitution mentions that civil courts shall have no jurisdiction over cases under the jurisdiction of the Shariah court. The plaintiff counters the argument by saying that Bank Islam is a corporate body and has no religion and therefore it is not under the jurisdiction of the Shariah court (Nik Norzrul Thani et al., 2003:93). However, the High Court held that the defendant was bound to pay the whole amount of the selling price based on the grounds that he knew the terms of the contract and knowingly entered into the agreement. In this respect, the court applied the classic common law approach where the parties are bound with the terms and conditions of the contract. The court did not look into the issue further whether BBA facility involves an element not approved by the Shari’ah as stipulated under the IBA and the BAFIA.

In *Dato’ Hj. Nik Mahmud bin Daud v Bank Islam Malaysia Berhad* [1996] 4 MLJ 295, the High court in Malaysia decided that *bay bithaman ajil* does not amount to a complete sale but only a process needed for the bank to facilitate the financing. And in *Arab- Malaysia Finance Bhd v. Taman Ihsan Jaya Sdn Bhd & Ors; Koperasi Seri Kota Kota Bukit Cheraka Bhd (Third Party) And Other Cases* [2009] 1 CLJ 419 (High Court), Abdul Wahab Patail J decided that the *bay bithaman ajil* (BBA) was not a valid facility under the Shari’ah. However, in *Bank Islam Malaysia Berhad v Lim Kok Hoe & Amor And Other Appeals* [2009] 6 CLJ 22, in overruling the decision of the High Court, the Court of Appeal stated that “judges in civil court should not take upon themselves to declare whether a matter is in accordance with the Religion of Islam or otherwise”. The
judgement decided that only principal sum can be covered (Jamal et al., 2011).

In *Mohd Alias bin Ibrahim v. RHB Bank Berhad*, Suit no. D- 22A-74-2010, where in this case the plaintiff asked a fundamental question i.e., the constitutional basis of the validity of section 56 and 57 of the Central Bank of Malaysia Act, 2009 (Act 701). According to the plaintiff, the parliament is not supposed to enact any law awarding the Shariah Advisory Council (SAC) the judicial power of the court where there is no express provision or clause in the Federal Constitution to that effect. However, the court decided that if the court refers any question to the SAC as provided under section 56(1)(b) of Act 701, the duty of the SAC is confined to ascertainment and not determination of the Islamic laws regarding the question and this is in line with section 52(2) of Act 701 (Jamal et al., 2011).

In an attempt to adopt Islamic Law as means of dispute resolution in civil courts, the parties to Islamic banking and finance have resorted to inserting Shariah law as their choice of law while entering into the agreement. In the famous case of *Shamil Bank of Bahrain v. Beximco Pharmaceuticals (the Shamil case)*, in the agreement, which was Islamic Murabaha, the governing law clause clearly mentions that: "Subject to the principles of the Glorious Shariah", this agreement shall be governed by and construed in accordance with the laws of England. However, both the High Court and the Court of Appeal rejected the defendant’s contention that the agreement is unenforceable and invalid for contravening the Shariah principles and held that the principles of Shariah are not applicable to the agreement. By this decision, the English courts’ precedent on Islamic law has been established which was endorsed in subsequent cases. Consequently, various banks stopped inserting Shari'ah reference in their agreement, and that indicates that the parties to the agreements waived their rights for referring to Shariah in case of a dispute (Maita, 2014).

**Alternative Dispute Resolution (ADR)**

Alternative Dispute Resolution (ADR) is out of court mechanism of dispute settlement. The following is detailed description of it:

**Concept of Alternative Dispute Resolution (ADR)**

Alternative Dispute Resolution (ADR) consists of arbitration and mediation (Labanieh et al., 2019). Arbitration is defined as ‘resolution of dispute by a person (other than a judge) whose decision is binding’ (Oran, 2000). It is also referred to as ‘The determination of a dispute by one or more independent third parties (the arbitrators) rather than by a court’ (Martin, 1997). In brief, arbitration refers to settlement of disputes out-of-court with the help of a third party and its decision is binding. Arbitration is the well-known method in alternative dispute resolution (ADR) and it is known as an arbitral method for its resemblance to judgement in litigation related to its decision that is done by a neutral third party and at the same time binding on the parties in the dispute.

**Alternative Dispute Resolution (ADR) in Islam**

Arbitration is not new to Muslim community as it has been practiced for over 1400 years. Islam encourages establishing harmonious relationship between people and strongly discourages hostility and confrontation in any dispute that may arise, so that it can be resolved amicably (Dahlan, 2018). Arbitration in Islamic law is known as *tabkim* which is a dispute resolution mechanism that has been practiced widely in the pre-Islamic period in Arabia. After the coming of Islam, it has been further supported and its procedures have been efficiently improved to help the attainment of fairness and justice (Oseni, 2009). Indeed, there are may Qur’anic verses that support the utilization of *tabkim* in settlement of disputes (Labanieh et al., 2019).

**Alternative Dispute Resolution (ADR) at the Islamic Financial Institutions**

Although, it is good to have various Islamic financial institutions conducting Islamic banking and finance businesses by offering different instruments or transactions, it is also natural that
disputes between parties involved in these businesses will also be increasing (Mohamed et al., 2015). It is obvious that the practice of referring disputes arising between parties in Islamic banking and finance business to litigation is not serving the purpose upon which the industry has been established. There are various challenges in referring to litigation under the foreign law of any jurisdiction between the parties in Islamic finance business, such as lack of enforcement, non-compliance with Shari’ah principles etc. According to Engku Rabiah Adawiah, the suitable way of getting out of this judicial discrepancy is the adoption of ADR, so that parties can appoint persons who are knowledgeable on the relevant laws and principles to settle their dispute. Apparently, there is now a widespread promotion of adoption of ADR as a mechanism for the settlement of dispute between parties in Islamic banking and finance business. For example, in the case of Sanghi Polyesters Ltd. (India) v. The International Investor KCSC (Kuwait) [2001] C.L.C. arbitration was adopted as a mechanism for dispute resolution arising from the Islamic finance agreement and London was selected as the place of the arbitration. It was also stated that dispute shall be governed by the Laws of England except where it is inconsistent with Islamic Shari’ah where the Shari’ah will prevail in this situation. The arbitrator who was an expert in Islamic law awarded the principal and the profit claims but disallowed the additional damages which although compliant with the English law but would conflict with the Shari’ah. The losing party challenged the award in English court and the judges ruled that the award stands. (Maita, 2014). This case was the opposite of Shamil’s case as the English court judges considered the Shariah in their ruling.

Alternative Dispute Resolution (ADR) Centers

As the Islamic finance industry is experiencing a rapid growth, a lot of arbitration centers in different regions are being established to take advantage of settlement of disputes that may likely arise from the Islamic banking and finance transactions. Although, there are various institutes in the Middle East as well as the Southeast Asia region that presented themselves as arbitrators for Islamic banking and finance disputes by utilising conventional rules and procedures, other institutions were established solely for the purpose of offering arbitration based on the principles of the Shariah (Maita, 2014). The following are some of these important centers:

- The Asian International Arbitration Centre (Malaysia) (“AIAC”)

The Asian International Arbitration Centre (Malaysia) (“AIAC”) is situated in Malaysia’s capital Kuala Lumpur. Formerly known as Kuala Lumpur Regional Centre for Arbitration (“KLRCA”). The center is regarded as first of its kind which was established under the Asian African Legal Consultative Organization (“AALCO”), an international organization consisting of 47 states as members from across the region. It was formed pursuant to an agreement between Malaysia and AALCO. It is a non-profit, non-governmental international arbitral institution. This center introduced and adopted a set of arbitration rules (AIAC i-Arbitration Rules 2021) for settlement of Islamic banking and finance disputes. The rules provide parties freedom to choose both the arbitrators and applicable law in case of dispute (https://www.aiac.world/About-AIAC).

Although, the center has specific conventional arbitration laws, it also has Islamic arbitration laws known as ‘AIAC i-Arbitration Rules 2021’. The disputant parties are free to select the law they desire to be the governing law in case of a dispute. The center Model I-Arbitration Clause provides that: “Any dispute, controversy, difference or claim arising out of or relating to this contract, including the breach, termination or invalidity thereof, as well as any non-contractual claims, shall be finally determined by arbitration, administered by the AIAC, in accordance with the AIAC i-Arbitration Rules in force at the time of the commencement of the arbitration” (https://www.aiac.world/About-AIAC).

- The International Islamic Center for Reconciliation and Arbitration (ICRA)
This center was established as a result of the agreement entered between the United Arab Emirates (UAE) and the General Council of Islamic Banks and Financial Institutions, representing the Islamic finance industry in 2004. It started operation in January 2007. The center is prepared to settle any kind of commercial or financial dispute between commercial and financial institutions that express their readiness to comply with Shariah in settling their disputes. The Center model arbitration clause for Islamic arbitration provides that: “If any dispute arising between the parties out of the formation, performance, interpretation, nullification, termination or invalidation of this agreement (contract) or arising therefore or related thereto, the dispute shall be referred to an arbitration panel constituted from uneven [group] of arbitrators for a final and binding decision in accordance with the rules and procedures specified in the statute of the International Islamic Center for Reconciliation and Arbitration in Dubai” (Maita, 2014).

The Center’s procedures provide that the arbitrators must abide by the laws the parties in the dispute decide to choose and, in all cases, the panel must eliminate provisions that are not in line with the rules of the Shari’ah. Moreover, the panel may use in settling the dispute whatever it considers applicable from among the various opinions of schools of Islamic thought, opinions of Shariah supervisory board of the Center, and rulings of Islamic Fiqh academies. However, despite claim by the center to be the only accredited body to obtain Shariah compliant provisions by the Islamic finance industry, but no published case record is traced to the center (Maita, 2014).

- International Islamic Mediation & Arbitration Center (IMAC)

This center was founded as an independent international institution in Hong Kong following a resolution by the Arab Chamber of Commerce & Industry in July 2008. No detailed rules are provided on the website of the center, but it was stated that arbitration administered by the center are governed by arbitration rules, which basically adhere to UNCITRAL rules of arbitration. However, some aspects of these rules have been modified so as to consider the nature and character of arbitrations to be conducted in accordance with the Shari’ah Rules of Arbitration of the center. The arbitrators can be of any sex as well as of any nationality or religion, unless when specified by the parties in the agreement or by provision of law. Additionally, there is a list of arbitrators listed on the website of the center who seem to be knowledgeable on finance as well as Shari’ah law (http://www.arabeci.org/IMAC_aboutus.htm).

However, there is no clarity on how the center ensures Shari’ah compliance in its proceedings. But no many materials are found related to the center’s activities, which seems to suggest that it is dormant except for organizing trainings and seminars in Islamic arbitration and finance (Maita, 2014).

Challenges of Alternative Dispute Resolution (ADR)

The following are certain challenges facing Alternative Dispute Resolution (ADR):

- Becoming More Expensive

The use of arbitration has increased, and lawyers actively engage in arbitral procedures, which made arbitration unattractive, and it became regular just like litigation, and this made it less attractive for settlement of disputes (Syed A. Rahman & Mokhtar, 2017). Basically, parties normally prefer arbitration as it is informal and less costly (Goode, R., 1992), hence parties expect arbitral proceedings to be informal, which will permit them to avoid an oral hearing. But this informality in arbitration is no longer present as it should (Abdul-Qadir Zubair, 2014), as on many occasions arbitrators tend to focus on formal requirements (Welser & Wurzer, 2008). The requirement of formality in the arbitration procedures would be more time consuming and this may affect Islamic finance cases (Friedland & Mistelis, 2015). Thus, disputants in Islamic banking and finance no longer consider it as very efficient. Various elements contribute to creating burden to the dispute parties in arbitration, such as the high cost, as they are expected to pay the arbitrators’ expenses and fees which are extremely high (Abdul-Qadir Zubair, 2014). One more reason
for the high cost of arbitration is that parties and arbitrators may be required to travel to attend the arbitration sessions (Kohler & Schultz, 2015) if they are from different jurisdictions. However, the increase in the usage of technology is likely to lessen the cost of arbitration as travelling may not be necessarily required (Labanieh et al., 2019).

Additionally, parties under the auspices of AIAC may need to pay additional expenses, such as proper accommodation for the arbitrators, interpretation facilities, video or teleconferencing etc. As for Islamic finance cases, the parties are required to bear the expenses for reference to the relevant council or Shari’ah expert who may be appointed by the arbitral tribunal. These huge expenses may discourage the disputants from refusing arbitration in settling their dispute (Labanieh et al., 2019). Thus, it is a fallacy to think that arbitration is cheaper than litigation (Abraham, 2006) and at times it may be even more expensive than litigation (Rashid, 2008).

• Feeling of Weakness and Acrimony

Sometimes, parties who prefer to use arbitration in settling their dispute may assume that choosing this method of settlement may be perceived as weakness. Generally, arbitration helps in achieving a ‘Win-Win’ situation as adversarial feelings between parties is lesser when compared to litigation which normally leads to ‘Win-Lose’ situation (Miskam & Abd Hamid, 2011). However, even in arbitration hatred or deep negative feelings cannot be eliminated completely (Kawamura, 2017) as human beings have emotions and feelings which is difficult to change (Labanieh et al., 2019) and this may discourage the parties from attending the arbitration session in order to reach to a compromising solution (Kawamura, 2017). However, the negative feelings can be eased if the dispute parties are not required to be present during the arbitration session (Olayemi & Al-Zabyani, 2014).

Moreover, using arbitration as a mechanism of dispute settlement in Islamic banking and finance may be a bit difficult, especially where the parties are unable to agree on the arbitral clause before the occurrence of the dispute (Olayemi & Al-Zabyani, 2014). Still, it is not advisable to force the dispute parties to adopt arbitration as they have the right to choose the method they feel is preferable to them other than arbitration. Thus, it is important to explain the advantages of adopting arbitration as a dispute resolution mechanism to the potential dispute parties in Islamic banking and finance and to include the arbitration clause in the contracts as this will increase parties’ confidence in arbitration (Labanieh et al., 2019).

• Bias in Arbitration Processes

Bias may contribute to the decrease of adopting arbitration as a mechanism of dispute resolution if the arbitrators fail to perform their duties fairly. Although, it is very rare for an arbitrator to display antipathy or prejudice against any party in the arbitration (Rashid, 2005), however, racial, or ethnic discrimination and bias from arbitrators against parties from Asia and Africa have been traced in many reported cases (Asouzu, 2001). In a related case that happened in Malaysia, an arbitrator under AIAC, with the name Yusof Holmes Abdullah, a British national, was fined and jailed for being biased in favour of a company (JMR Construction Sdn Bhd) he previously consulted. According to speculation, this act almost ruined AIAC’s reputation. However, on 23 June 2013, AIAC along with 40 other multinational corporations signed Corporate Integrity Pledge (CIP) to emphasize on commitment to impartial tribunal proceedings and to fight corruption in the field of arbitration (Labanieh et al., 2019).

Some other international organizations and arbitration centers have also issued similar rules to combat bias in arbitration. For instance, the International Chamber of Commerce (ICC) Rule 13(5) of Rules of Arbitration 2012 stipulates that: “the sole arbitrator or the president of the arbitral tribunal shall be of a nationality other than those of the parties” (Labanieh et al., 2019).

• Enforcement of Arbitral Awards

The adoption of arbitration in dispute resolution of Islamic banking and finance is gaining momentum because of the many advantages it
has. However, the parties would be reluctant to embrace arbitration if the arbitral awards are not enforced like the decision of courts’ judgement (Nacimiento & Barnashov, 2010). Hence, many international conventions and treaties have been enacted to ensure that arbitral awards are implemented just like decisions in litigation. Example of this is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 that strives to ensure that foreign arbitral awards from participating countries are recognized and enforced by the courts in their respective countries (Labanieh et al., 2019). The binding nature of arbitral awards would make arbitration an important, unique, and perfect mechanism for dispute resolution and an alternative to litigation (Hörnle, 2009).

Arbitration may not always be a suitable method of dispute resolution for parties involved in international Islamic finance dispute because of the different arbitration laws adopted by different countries. For example, in an international Islamic finance dispute involving a company from Malaysia and Saudi Arabia e.g., regarding *Bay’ al-Inah*. If it is agreed that Malaysia is the seat of the arbitration and arbitral award is delivered in favour of the Malaysian company, this company cannot refer to Saudi Arabian courts to enforce the award as *Bay’ al-Inah* is not applicable in Saudi Arabia because it is against the Shariah and public policy of Saudi Arabia, whereas opposite is the case in Malaysia, as Malaysia widely apply *Bay’ al-Inah* for it is acceptable under the Shari’ah according to them and does not violate their public policy. This situation will give rise to a legal conflict between the two parties as a result of refusing to enforce the arbitral award for being against the Shari’ah and the public policy of Saudi Arabia. Therefore, it is suggested that the parties to the international Islamic finance should ensure that the arbitral award can be enforced in the law of the countries selected before entering into the arbitration agreement to ensure that the arbitral award does not violate any public policy of the countries. Furthermore, the main players in Islamic finance industry should try to adopt a uniform arbitration law that is consistent between their countries (Labanieh et al., 2019).

- **Traditional Arbitration Does not suit Small-Claim of Dispute**

Usually, dispute settlement related to small claims are not available in the conventional methods of dispute settlement due to the monetary limit for the registration of commercial cases that are normally mentioned in the statute (Oseni & Omoola, 2015). For example, in Malaysia the courts’ jurisdiction to settle a dispute depends on the monetary jurisdiction, because the court cannot grant damages more than the limit assigned to it (Hasshan, 2016). The Malaysian lower courts adjudicate smaller claims, while the Malaysian high courts adjudicate larger claims (Hasshan, 2016). Hence, the parties to Islamic banking and finance dispute may be hesitant to submit their dispute to arbitration because it may be costly to them, particularly when the amount of the claims is small (Spatt, 1998). Therefore, to assist in settlement of small claim disputes through arbitration, the lawmakers need to step up to regulate the amount to be charged in dispute settlement through arbitration (Labanieh et al., 2019).

- **Judicial Intervention**

Judicial intervention in arbitral proceedings is of two kinds. The first one is beneficial intervention, e.g., to obtain an order from the High Court in relation to the attendance of a witness to provide evidence (Act 646, s.29(2)). The second one is an excessive or malignant intervention which may cause uncertainties and high costs as well as unnecessary delays which can be avoided, with the purpose of converting ‘arbitration into a virtual litigation’ (Rashid, 2005). The excessive intervention, or what is known as localization of arbitral proceedings allows the national courts to intervene in the arbitral proceedings. Conversely, delocalization indicates that the national courts, based on the national laws, do not have authority for intervention in the arbitration proceedings. In Malaysia, Act 646 aims to reduce the intervention by the national courts and to minimize interference of the courts in the arbitral awards and proceedings. However, there are situations where Act 646 allows judicial
intervention to some degree (Act 646, s.8). For example, the Malaysian High Court is said to possess right to grant various types of interim measures in arbitral proceedings (Act 646s.11). Furthermore, the High Court is granted a permission to use its authority in both domestic and international arbitration (Act 646s.11(3)). However, Act 646 has significantly succeeded in reducing the intervention of courts in arbitration compared to the Arbitration Act 1952 (Act 93) (Idid & Oseni, 2014). For instance, in the case of Taman Bandar Baru Masai Sdn Bhd v Dindings Corporations Sdn Bhd [2010] 5 CLJ 83, the court upheld the Arbitration Act 2005 (Act 646) that disallowed courts to interfere with the arbitral awards, and then ordered courts to stop intervening in this case. But, the court is allowed to intervene when there is tampering that may lead to an unjust verdict in the case (Labanieh et al., 2019).

Advantages of Alternative Dispute Resolution (ADR)

Generally, in comparison, arbitration has many advantages over litigation, which makes it preferable. These include, **inter alia**, speedy settlement, autonomy, economical, flexibility, confidentiality, finality, and enforceability of award (Blake, Browne & Sime, 2011). These advantages will likely entice parties to litigation including parties to Islamic banking and finance transactions to choose arbitration over litigation (Mohamed et al., 2015).

According to Maita (2014), move towards arbitration gives the Islamic finance industry parties the following advantages:

1. Parties will be able to appoint the arbitrators knowledgeable in the subject matter, such as the Shari’ah law or finance, as opposed to litigation where disputes are handled by national judges who lack expertise in Shari’ah or finance.
2. Parties are free considerably to select arbitration rules and institutes based on their needs and the facts of the dispute.
3. Parties have freedom to include Shari’ah law into the governing law clause based on their needs and facts of their dispute. Therefore, parties will likely succeed in getting their dispute settled by the Shari’ah principles.

4. Arbitral awards are final and easy to enforce, particularly in some jurisdictions. The New York Convention, which has been adopted by over 144 countries has significantly harmonized mechanism for the enforcement.
5. Arbitration may be conducted in venues not far from home, and at the same time to maintain the seat or governing law of choice abroad. This concern many Islamic finance companies as most of them are in Muslim countries and the seat is London or the law of England is the governing law.

**Recommendations**

The following are some recommendations:

a) Litigation should be avoided as much as possible in Islamic banking and finance disputes due to many disadvantages it has.

b) There is a need to have standard arbitration rules applicable to all Islamic financial institutions worldwide.

c) Arbitrators should be a mixture of experts from both Islamic and conventional laws.

d) The cost of arbitration should be as cheaper as possible to encourage Islamic banking and finance disputant parties to resort to arbitration for their dispute resolution.

e) Despite varying opinions in different jurisdictions, it is highly recommended that the Islamic finance industry should propose a viable way of enforcing the arbitral awards so as not to make the arbitration process ineffective.

f) Judicial intervention in the arbitration process should be avoided as much as possible except when necessary.

**Conclusion**

The study reveals that both litigation and alternative dispute resolution (ADR) are being utilized for the settlement of disputes between parties in Islamic banking and finance. However, due to the various challenges in litigation, there have been calls by experts for the adoption of
Alternative Dispute Resolution (ADR) particularly arbitration for dispute resolution between parties of Islamic banking and finance businesses.

In fact, these calls by experts have been answered through the establishment of some centers that focus more on arbitration for settling disputes between parties in Islamic banking and finance business. Moreover, Islamic banking and finance parties now prefer to settle their disputes through arbitration. However, there are still some challenges that need to be overcome to make the arbitration process more effective. Thus, this research put forward certain recommendations.

References


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