



Dynamics Settlement Dispute Ijarah Muntahiyah BIT Tamlik (IMBT) Agreement in Perspective Sharia Arbitration

Fitria Rahma Nasir¹, Sultan Nanta Setia Dien Labolo²

Universitas Darussalam Gontor, Indonesia¹

Universitas Brawijaya, Indonesia²

Email: fitriarahma1130@gmail.com^{1*}, sultannanta@student.ub.ac.id²

ABSTRACT

Ijarah Muntahiyah Bit Tamlik (IMBT) is a hybrid financing contract in Indonesian Islamic banking that combines an ijarah lease with a promise (wa'd) to transfer asset ownership at the end of the lease term. Its legal complexity often creates gaps between the normative framework and contractual practice, which may develop into sharia economic disputes. This study aims to identify the forms of potential sharia non-compliance in IMBT contracts, explain how contractual inconsistencies generate disputes, and evaluate the position and corrective role of the National Sharia Arbitration Board (BASYARNAS) in resolving them. Using normative juridical research with statute, conceptual, and case approaches, the study analyzes legislation, DSN-MUI fatwas, BASYARNAS rules, judicial decisions, fiqh muamalah doctrines, and recent literature through systematic legal interpretation and content analysis. The findings reveal four areas of potential non-compliance: ambiguous asset ownership, disproportionate allocation of risks and costs, premature binding of wa'd, and penalty mechanisms resembling interest. These inconsistencies tend to generate three types of disputes, namely failure of ownership transfer, default followed by asset withdrawal, and disputes over ujah review clauses. BASYARNAS holds a strategic position because it can resolve such disputes while correcting non-compliant clauses through the dual expertise of its arbitrators, procedural efficiency, confidentiality, and final and binding awards, although its effectiveness is constrained by its dependence on the Religious Courts for execution, cost barriers, and limited coordination. The study concludes that the sharia compliance of IMBT is best secured when standardized contract clauses and the corrective review of BASYARNAS operate together.

Keywords: BASYARNAS; ijarah muntahiyah bit tamlik; islamic economic disputes; sharia arbitration; sharia compliance

INTRODUCTION

At the global level, the expansion of Islamic finance has been accompanied by growing attention to Shariah non-compliance risk, namely the risk that a transaction loses its legitimacy because its structure or execution departs from Shariah rules. This risk is no longer regarded merely as a religious concern but as an operational and legal risk that affects contract enforceability, institutional reputation, and customer confidence, so that credible Islamic dispute resolution mechanisms have become an integral part of sound Shariah governance (Bhatti, 2020). Lease based instruments with an ownership transfer feature, such as ijarah muntahia bittamleek, are particularly exposed to this risk because they combine several contractual elements within one financing relationship (Busni et al., 2022).

The journey of the Islamic banking industry in Indonesia has entered a very dynamic transformation phase, where product innovation is no longer merely an instrument for collecting and distributing funds, but has become a representation of Islamic ethical values and justice in the realities of the modern economy. One product that reflects the sophistication and

flexibility of Islamic financial schemes is *Ijarah Muntahiyah Bit Tamlik* (IMBT). Ontologically, IMBT is seen as a crucial breakthrough that bridges the needs of customers for access to productive assets and the desire to own these assets in the future without having to fall into usury schemes (Antonio, 2001). In its operational structure, IMBT is classified as a hybrid contract *or al -uqud al-murakkabah*, a concept that combines elements of leasing (*ijarah*) with the promise of transfer of ownership (*wa'd al-tamlik*) at the end of the contract period (National Sharia Council of the Indonesian Ulema Council (N. S. C. of the I. Ulema, 2002).

The urgency of IMBT in the Islamic banking portfolio is very significant, especially in financing real sectors such as property, motor vehicles, and heavy equipment (Karim, 2017). Data from the Financial Services Authority (OJK) shows that lease-based contracts, including IMBT, are a significant part of the growth of Islamic banking assets, which is estimated to grow between 9% and 11% by 2025 (OJK, 2021). However, behind this growth potential, the IMBT structure carries very high legal and fiqh complexity. The blending of two different contract characters: *ijarah*, which focuses on the transfer of use rights (*usufruct*), and sale and purchase or grant, which focuses on the transfer of ownership rights, requires extraordinary precision in drafting contract clauses (Al-Zuhaili, 2006).

This lack of precision often leads to ambiguity regarding the legal status of the asset during the lease term, which in turn triggers potential Sharia non -*compliance* (Nurhisam, 2016). Disputes arising in the implementation of IMBT often reflect rifts in the consistency of Sharia principles in practice. Fundamental issues such as unclear risk allocation between *the mu'jir* (bank) and *musta'jir* (customer), the practice of placing taxes and insurance costs entirely on the customer, and promises of forced or premature transfer of ownership are key triggers for disputes (Ascarya, 2015). This phenomenon demonstrates a gap between the ideal normative construct as stipulated in the DSN-MUI Fatwa and the implementation practices, which tend to be pragmatic and administrative (OJK, 2024). In facing these conflict dynamics, the existence of sharia arbitration as an out-of-court (*non-litigation*) dispute resolution institution is a necessity.

The National Sharia Arbitration Board (BASYARNAS) occupies a strategic position not only as a case decider, but also as a protective instrument that maintains the integrity of sharia contracts (Ulema, 2021). Unlike general courts that may have limited understanding of the nuances of muamalah fiqh, BASYARNAS is supported by arbitrators who have dual competence in positive law and Islamic law, thus being able to provide solutions that are fair, efficient, and in line with *the maqashid sharia* (Constitutional Court Decision Number 93/PUU-X/2012, 2013). Therefore, a study of BASYARNAS's role in identifying and correcting irregularities in IMBT contracts is highly relevant to strengthen public trust and ensure legal certainty in the sharia economic ecosystem in Indonesia (Triana, 2018).

This research is urgent for three reasons. First, IMBT is widely used for property, vehicle, and equipment financing, so a defective clause is replicated across a large number of standard form contracts. Second, the different readings of *wa'd* in DSN-MUI Fatwa No. 27/DSN-MUI/III/2002 and the Compilation of Sharia Economic Law create legal uncertainty that tends to surface in disputes. Third, after Constitutional Court Decision No. 93/PUU-X/2012 and

PERMA No. 14 of 2016, the relationship between BASYARNAS and the Religious Courts in executing and annulling awards still requires clarification (Faizal, 2021).

Previous studies have examined these issues from separate angles, Kusumorini & Irkhami, (2025) analyzed the sharia risks of IMBT from the perspective of DSN-MUI fatwas, PSAK 107, and OJK regulations, and found that the main risk lies in the promise of ownership transfer, which may produce *gharar* and legal risk when it is not executed separately from the lease. Madani et al., (2025) examined the early registration of the ijarah object in the customer's name and argued that this practice introduces *gharar* and *tadlis*, proposing a *wakalah* scheme so that the change of name is processed only after the lease obligations are fulfilled.

Busni et al., (2022); Syawie, (2022) described IMBT and similar products as hybrid contracts that bundle ijarah, sale, *wakalah*, and *hibah*, while Azizah et al., (2025) identified regulatory gaps and weak contract standardization in IMBT implementation. Ingka et al., (2020) further showed that fines and compensation under the DSN-MUI fatwa are still applied without clear criteria. On the dispute resolution side, Annisa & Mujib, (2024); Faizal, (2021) discussed the execution and annulment of BASYARNAS awards by the Religious Courts, whereas Widjaja, (2025) examined sharia arbitration as a faster and value based alternative to litigation in Islamic economic disputes. Table 1 maps these studies.

Table 1. Mapping of Previous Studies and the Research Gap

No	Author (Year)	Focus	Main Finding	Remaining Gap
1	Kusumorini & Irkhami, (2025)	Sharia risk of IMBT (DSN-MUI, PSAK 107, OJK)	Main risk lies in the wa'd; fatwa and PSAK 107 need harmonization	No analysis of the dispute resolution forum
2	Madani et al., (2025)	Early name change of the ijarah object	Early registration causes <i>gharar</i> and <i>tadlis</i> ; <i>wakalah</i> scheme proposed	Defect not linked to arbitral correction
3	Busni et al., (2022); Syawie, (2022)	Hybrid contracts in IMBT and Islamic banks	IMBT bundles ijarah, sale, <i>wakalah</i> , and <i>hibah</i>	Descriptive; no compliance dispute analysis
4	Annisa & Mujib, (2024); Faizal, (2021)	Execution and annulment of BASYARNAS awards	Religious Courts hold authority over execution and annulment	Not specific to IMBT contract defects
5	Bhatti, (2020); Widjaja, (2025)	Islamic arbitration and Shariah non-compliance risk	Arbitration helps manage non-compliance risk and resolve disputes efficiently	General; not focused on Indonesian IMBT

The literature therefore treats the contractual dimension of IMBT and the institutional dimension of sharia arbitration as two separate fields. Studies on IMBT stop at identifying

sharia risks in the contract, while studies on BASYARNAS focus on jurisdiction, execution, and annulment without examining how arbitrators can correct specific IMBT clauses. This is the research gap addressed in this article. The novelty of this study lies in integrating the analysis of IMBT contractual non-compliance with the corrective and dispute resolution role of BASYARNAS within Indonesia's sharia arbitration framework, by tracing each form of potential non-compliance to the type of dispute it generates and to the corrective instrument available in arbitration.

Starting from the complexity that has been described, this research will focus the analysis on several basic questions as follows: what are the potential forms of sharia non-compliance in the implementation of the Ijarah Muntahiyah Bit Tamlik (IMBT) contract in Indonesian sharia banking (RQ1); how do inconsistencies in contract structures and differences in perception between regulations and implementation trigger the emergence of Islamic economic disputes (RQ2); and what is the position and strategic role of sharia arbitration in carrying out a corrective function against IMBT contract clauses that deviate from sharia principles (RQ3).

In line with these questions, this study systematically aims to identify comprehensively the forms of deviation or sharia non-compliance in the operationalization of IMBT contracts (RQ1), analyze the mechanism through which contractual inconsistencies develop into legal disputes between banks and customers (RQ2), and evaluate the position, authority, and effectiveness of BASYARNAS as the chosen forum for resolving IMBT disputes while upholding the dignity of Islamic law (RQ3). Theoretically, this study contributes to Islamic economic law by offering an integrated framework that connects contractual sharia compliance with arbitral correction. Practically, the findings can serve as a reference for Islamic banks in drafting IMBT clauses, for Sharia Supervisory Boards in conducting compliance reviews, for BASYARNAS arbitrators in examining IMBT disputes, and for customers in understanding their rights.

METHOD

Research Type and Approach

This study is designed as normative-juridical (doctrinal) legal research with a qualitative descriptive-analytical character, intended to examine the extent to which the operational practice of the Ijarah Muntahiyah Bit Tamlik (IMBT) contract is congruent with the normative construction stipulated in statutory regulations, DSN-MUI fatwas, and the principles of Islamic transactional jurisprudence (*fiqh muamalah*) (Marzuki, 2021). Three complementary approaches are employed. The statute approach is used to examine the hierarchy of positive legal instruments governing IMBT and sharia arbitration, including Law Number 21 of 2008 concerning Islamic Banking, Law Number 30 of 1999 concerning Arbitration, Law Number 48 of 2009 concerning Judicial Power, and Supreme Court Regulation (PERMA) Number 14 of 2016 (Banking, 2008).

The conceptual approach is applied to elaborate doctrinal concepts of Islamic jurisprudence relevant to the research problem, such as *al-uqud al-murakkabah* (hybrid contract), *wa'd* (promise), *ta'alluq*, *gharar*, and *maqashid al-shari'ah*, which serve as the normative benchmarks for assessing sharia compliance. Finally, the case approach is applied

to publicly accessible judicial materials, namely Constitutional Court Decision Number 93/PUU-X/2012 and published Religious Court decisions on the execution and annulment of BASYARNAS awards as analyzed in recent literature, in order to identify recurring legal issues in IMBT disputes such as default, forced withdrawal of assets, and ujah adjustment clauses.

Types and Sources of Legal Materials

In accordance with the conventions of normative legal research (Soekanto & Mamudji, 2019), the data used in this study are classified into three categories of legal materials. Primary legal materials consist of binding legal instruments directly relevant to IMBT and sharia arbitration, namely the Qur'an and Hadith, Law Number 21 of 2008 concerning Islamic Banking, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 48 of 2009 concerning Judicial Power, Constitutional Court Decision Number 93/PUU-X/2012, Supreme Court Regulation Number 14 of 2016, DSN-MUI Fatwa Number 27/2002 and Number 17/2000, the Compilation of Sharia Economic Law (KHES), and BASYARNAS-MUI Regulation Number PER-01/BASYARNAS-MUI/XI/2021. Secondary legal materials comprise sources that explain and support the primary legal materials, including classical and contemporary fiqh muamalah literature, textbooks and scholarly works on Islamic banking and finance, and articles published in scientific journals concerning sharia compliance and Islamic economic dispute resolution. Tertiary legal materials consist of supporting official sources, such as statistical reports and roadmaps published by the Financial Services Authority (OJK) and accounting standards issued by the Indonesian Institute of Accountants (PSAK 107), which provide contextual and empirical support for the normative analysis.

Data Collection Technique

Data were collected through library research and documentary study, encompassing the tracing, collection, and cataloguing of statutory regulations, fatwas, arbitration rules, court decisions, fiqh literature, and scientific publications relevant to IMBT and sharia arbitration. The collected legal materials were subsequently organized according to their hierarchical position and thematic relevance, as reflected in the classification presented in the References section of this article, to ensure that the analysis is grounded in a traceable and verifiable body of legal sources.

Data Analysis Technique

The collected legal materials were analyzed qualitatively using a descriptive-analytical method. Legal interpretation techniques grammatical, systematic, and teleological interpretation were applied to identify points of divergence between the normative provisions governing IMBT and their operational practice, particularly with regard to asset ownership status, risk and cost allocation, the binding nature of wa'd, and penalty mechanisms. Content analysis was subsequently used to classify the identified irregularities into a typology of disputes, in order to trace the causal relationship between contractual inconsistency and the emergence of Islamic economic disputes. Finally, an evaluative-normative analysis was conducted to assess the legal basis, corrective functions, and institutional strengths and

limitations of BASYARNAS in resolving IMBT disputes, using the principles of sharia compliance and *maqashid al-shari'ah* as the primary normative benchmark.

Selection Criteria for Legal Materials and Cases

Legal materials were selected using three criteria: (1) relevance, meaning that the material directly regulates or discusses IMBT, sharia compliance, or sharia arbitration; (2) authority, meaning that primary legal materials were taken from official sources and secondary materials were limited to peer reviewed journals and recognized textbooks; and (3) currency, meaning that scholarly literature from the last ten years was prioritized, while classical fiqh works were used as doctrinal references. Cases were selected when they (a) concern a sharia economic dispute involving a lease based or hybrid contract, or the execution and annulment of a BASYARNAS award, (b) are publicly accessible through the Constitutional Court or Supreme Court decision directories or through published academic analyses, and (c) contain legal reasoning relevant to the three research questions.

Analytical Stages and Interpretation Procedure

The analysis followed six stages, as shown in Figure 1. After the legal materials were inventoried and classified, each provision relevant to IMBT was interpreted grammatically (based on the wording of the norm), systematically (based on its relationship with other norms in the hierarchy of legislation, fatwas, and the KHES), and teleologically (based on its purpose in light of *maqashid al-shari'ah*). The results were then coded into areas of non-compliance and types of disputes (RQ1 and RQ2) and evaluated against the legal basis and functions of BASYARNAS (RQ3).

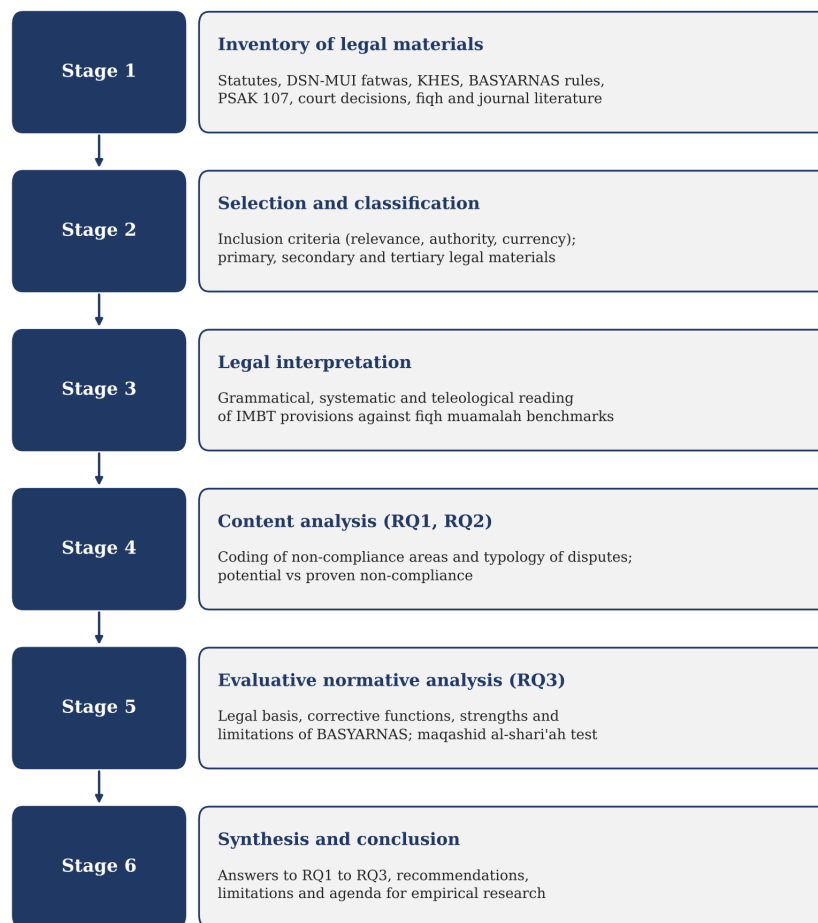


Figure 1. Analytical Stages of the Research

Research Instrument, Location, and Subjects

As library based doctrinal research, this study has no physical research location and involves no human subjects or respondents. The research instrument is the researcher's own legal analytical framework, operationalized as a document coding sheet that records, for each legal material, the provision concerned, its hierarchical position, the relevant fiqh benchmark, and the identified point of divergence.

Limitations and Nature of the Findings

Because this study relies on normative analysis of legal materials and literature, its findings are normative rather than empirical. Statements about banking practice are treated as reported practices drawn from previous studies and are classified as *potential* non-compliance, whereas *proven* non-compliance is attributed only where an arbitral award, a court decision, or a supervisory finding is cited. The study does not measure the frequency of non-compliance or disputes, which requires empirical research.

RESULTS AND DISCUSSION

RQ1: Forms of Potential Sharia Non-Compliance in IMBT Contracts

Identifying potential sharia non-compliance is a crucial step in conducting a substantive compliance audit of Islamic banking operations. Based on an analysis of the relevant legal sources and literature, the forms of potential non-compliance in IMBT can be described as follows. In this section, *potential non-compliance* refers to a contractual design or practice that is normatively inconsistent with the DSN-MUI fatwa or fiqh muamalah, whereas *proven non-compliance* refers to a deviation that has been established by an arbitral award, a court decision, or a supervisory finding. Unless a specific decision is cited, the findings below are classified as potential non-compliance, and each is discussed following the sequence of legal provision, evidence, analysis, contradiction, and implication.

Ambiguity of Asset Ownership

Legal provision. Under DSN-MUI Fatwa No. 27/DSN-MUI/III/2002, ownership of an IMBT asset may only be transferred after the ijarah period ends, which means that the bank as lessor (*mu'jir*) must remain the legitimate owner of the leased object throughout the lease term (Sjahdeini, 2014). In classical fiqh, ijarah is the sale of usufruct by its owner, so that only the owner of the object or its usufruct can validly lease it (Al-Kāsānī, 1986; Suhendi, 2018). *Evidence.* The literature reports that in many IMBT vehicle financing contracts the Motor Vehicle Ownership Book (BPKB) is issued in the customer's name from the beginning of the transaction for administrative convenience (Madani et al., 2025).

Analysis and contradiction. If the asset is legally registered in the customer's name, the customer is in effect leasing an object that he already owns, a logical contradiction that may undermine the validity of the ijarah. In addition, banks are often negligent in supervising the physical existence of the asset, so that it may be transferred or pledged by the customer without the bank's knowledge (Huda & Nasution, 2008). *Implication (RQ1).* This practice constitutes potential non-compliance concerning the ownership of the leased object and weakens the bank's legal position when a dispute arises.

Disproportionate Allocation of Risks and Costs

Legal provision. In an ijarah contract, the owner of the asset (the bank) bears the risk of damage that is not caused by the customer's negligence, while the lessee is responsible only for ordinary maintenance (Usmani, 2002). *Evidence.* Previous studies indicate a tendency among banks to insert clauses that transfer the full risk to customers, including the obligation to pay annual insurance premiums and taxes (Kusumorini & Irkhani, 2025). *Analysis and contradiction.* This tendency is partly driven by PSAK 107, which requires banks to depreciate IMBT assets recorded on their balance sheets, a cost that is perceived to reduce profitability (Accountants, 2021).

To compensate, banks charge all operating costs of the asset to the customer, a practice that resembles conventional financial leasing more than a sharia compliant IMBT. *Implication (RQ1).* The disproportionate allocation of risks and costs is a potential non-compliance with the principle of *al-ghunm bi al-ghurm* (entitlement to gain is accompanied by liability for loss) and the related maxim *al-kharāj bi al-damān* Al-Suyūṭī, (1998) and becomes a source of disputes when the asset is damaged or lost.

Premature and Binding Promise (*Wa'd*)

Legal provision. There are two views on the nature of the promise to transfer ownership. DSN-MUI Fatwa No. 27/DSN-MUI/III/2002 states that the promise is not legally binding (*wa'd ghairu mulzim*), whereas the Compilation of Sharia Economic Law (KHES) tends to treat it as binding (*wa'd mulzim*) to provide certainty for customers. Fiqh scholarship accepts a binding unilateral promise only as long as it does not turn into a bilateral contract concluded in advance (Md. Sawari et al., 2018; Usmani, 2002).

Evidence and analysis. Potential non-compliance arises when the bank requires the customer to sign a Deed of Sale and Purchase (AJB) at the beginning of the lease period with the date left blank. *Contradiction.* This practice may be regarded as combining two contracts in one transaction (*shafqatain fi shafqah*), because the customer is de facto treated as a buyer before the lease period ends (Ibn Qudāmah, 1997; Sjahdeini, 2014). *Implication (RQ1).* The premature binding of the *wa'd* is therefore the point at which the hybrid character of IMBT is most vulnerable to sharia defects.

Penalty and Compensation Mechanisms Resembling Riba

Legal provision. DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000 permits sanctions only against capable customers who deliberately delay payment, in line with the Prophetic tradition that procrastination by a capable debtor is an injustice, and the funds collected from such sanctions must be allocated to social funds, while compensation (*ta'widh*) is in principle limited to real losses (Council, 2000). *Evidence.* Studies on sharia home financing show that fines and compensation are still applied without clear criteria (Ingka et al., 2020), and a study in Malaysia found that banks tend to charge *ta'widh* at fixed rates rather than on the basis of actual loss (Ishak, 2019).

Analysis and contradiction. Non-compliance occurs when the bank imposes accumulative late payment fines that exceed the actual collection costs and records them as operating income. In addition, when the customer defaults, banks often demand immediate payment of all remaining rent until the end of the lease period without any reduction, even though the customer has not yet enjoyed the benefit of the asset for that period. *Implication (RQ1).* Such mechanisms resemble interest (*riba*) and constitute potential non-compliance with the fatwa and with the principle of justice in ijarah.

Table 2. Analytical Matrix of Potential Sharia Non-Compliance in IMBT (RQ1)

Area	Legal Provision	Source of Evidence	Contradiction	Implication	Status
Asset ownership	Fatwa No. 27/DSN-MUI/III/2002: ownership transfers only after the ijarah ends	Early BPKB registration reported by Madani et al., (2025)	Customer leases an asset registered in the customer's own name	Defective ijarah object; weak position of the bank	Potential

Risks and costs	Ijarah principle: owner bears non negligent damage; PSAK 107	Full risk clauses reported by Kusumorini & Irkhami, (2025)	Risk shifted to the lessee while ujarah is collected	Resembles conventional leasing; loss disputes	Potential
Wa'd	Fatwa No. 27/2002 (non binding) versus KHES (binding)	Blank dated AJB signed at contract start	Two contracts in one transaction	Hybrid contract defect; ownership transfer disputes	Potential
Penalties	Fatwa No. 17/DSN-MUI/IX/2000	Fines and ta'widh without clear criteria Ingka et al., (2020); Ishak, (2019)	Penalty recognized as bank income	Resembles riba; default disputes	Potential; proven only if an award or decision so finds

RQ2: Contractual Inconsistencies as Triggers of Disputes

The inconsistency between the theoretical structure of IMBT and its practical reality is the main catalyst for Islamic economic disputes. The causal chain can be described as follows: a contractual inconsistency identified under RQ1 creates uncertainty over rights and obligations; this uncertainty is activated by a triggering event such as default, completion of payment, or a change in market benchmarks; and the event then develops into a dispute. The following typology summarizes the most common disputes:

Disputes over failure of ownership transfer

These occur when the customer has completed all payments, but the bank refuses to deliver the ownership documents or to execute the grant (*hibah*) or sale because of an external dispute or administrative negligence. The customer feels harmed because the promise (*wa'd*) that was expected to become a right is not fulfilled. This dispute originates from the *wa'd* problem identified under RQ1.

Disputes over default and forced withdrawal of assets

When customers experience financial difficulties, banks sometimes withdraw the asset by force through third party debt collectors without a court process. Customers often challenge this action because they feel that they have paid part of the price of the goods through the monthly rent, so that the withdrawal is perceived as an unfair deprivation of their rights (Indonesia, 2016). This dispute is rooted in the ambiguity of asset ownership and risk allocation.

Disputes over the interpretation of ujarah review clauses

Some IMBT contracts include clauses that periodically adjust the ujarah according to market indicators (such as conventional interest benchmarks or the BI Rate). Disputes arise

when the bank raises the rent when the indicator increases but does not lower it when the indicator decreases, which violates the principles of justice (*'adl*) and balance (*tawazun*).

Table 3. Typology of IMBT Disputes and Their Compliance Implications (RQ2)

Types of Disputes	Main Trigger	Compliance Implications
Payment Default	The customer fails to pay the ujarah.	Execution of collateral must follow KHES procedures.
Asset Status	Assets were confiscated by another party because they were in the customer's name.	Risk of collateral loss for the bank.
Unilateral Cancellation	The bank cancels the promised grant at the end of the lease period.	Violation of the principle of <i>pacta sunt servanda</i> syar'i.
Ujarah Review	The rent increase is considered unfair.	Violates the principles of transparency and fairness.

Legal and Sharia Implications

Sharia non-compliance in the implementation of IMBT has broad and multilayered implications:

From a legal perspective, determining the status of the contract becomes the central issue in adjudication. If an IMBT contract is proven to contain a fundamental defect, the adjudicator may declare it defective (*fasid*), which obliges the parties to renegotiate the problematic clauses. In more extreme cases, such as a combination of contracts that gives rise to *riba*, the contract may be annulled entirely, so that the customer only pays rent at market value (*ujrah al-mithl*) and the bank is not entitled to the agreed profit margin. These consequences apply only to non-compliance that has been proven before an arbitral tribunal or a court; potential non-compliance identified through normative analysis does not by itself render a contract invalid.

Institutionally, reputational risk poses a real threat to Islamic banks. Proven Sharia non-compliance in arbitration or court proceedings could undermine the bank's legitimacy as a trustworthy institution. Furthermore, banks could face sanctions from regulators, including suspension of IMBT products or written warnings, which could impact the bank's health rating. Economically, this non-compliance results in market inefficiencies. Customers who feel disadvantaged by the IMBT scheme will tend to return to conventional financing, which may be more transparent despite the interest rate, or seek other, fairer financing alternatives. This ultimately hinders the national vision of making Indonesia a global center of the Islamic economy.

RQ3: Position and Role of Sharia Arbitration in IMBT Disputes

Legal Basis for Sharia Arbitration

The position of sharia arbitration in the Indonesian legal system rests on a solid foundation that gives this forum full legitimacy as an authority for resolving Islamic economic disputes. The main legal basis is Law Number 30 of 1999 concerning Arbitration and Alternative

Dispute Resolution, which defines arbitration as a method of settling civil disputes outside the general courts based on a written arbitration agreement. Specifically for the Islamic banking industry, Article 55 of Law Number 21 of 2008 stipulates that, although absolute competence over disputes lies with the Religious Courts, the parties remain free to agree on other forums, including arbitration, provided that the settlement does not contradict sharia principles (Banking, 2008).

Constitutional Court Decision Number 93/PUU-X/2012 subsequently declared the Elucidation of Article 55 paragraph (2) to have no binding legal force, thereby affirming the absolute competence of the Religious Courts while preserving the parties' freedom to choose non-litigation forums such as BASYARNAS. Supreme Court Regulation Number 14 of 2016 further places the execution and annulment of sharia arbitration awards within the jurisdiction of the Religious Courts (Faizal, 2021). In addition, BASYARNAS has internal regulations aligned with modern standards, such as BASYARNAS-MUI Regulation Number PER-01/BASYARNAS-MUI/XI/2021 concerning Procedures for Resolving Sharia Economic Disputes. The following matrix summarizes the regulations that strengthen the position of sharia arbitration:

Table 4. Regulatory Matrix Supporting Sharia Arbitration in IMBT Disputes (RQ3)

Legal Instruments	Main Function	Relevance for IMBT Dispute
Law No. 30 of 1999	General legal framework for arbitration in Indonesia.	Ensures the validity of arbitration clauses in IMBT contracts.
Law No. 21 of 2008	Sectoral regulation of Islamic banking.	Mandates dispute resolution in accordance with sharia principles.
DSN Fatwa No. 27/2002	Substantive guidelines.	Designates BASYARNAS as the forum when deliberation fails.
PERMA No. 14 of 2016	Procedures for adjudicating sharia economic cases.	Regulates execution and annulment of BASYARNAS awards by the Religious Courts (PA).
Law No. 48 of 2009	Judicial power.	Recognizes arbitration as a legitimate form of dispute resolution.

Functions of Sharia Arbitration in Evaluating the Compliance of IMBT Contracts

BASYARNAS does not merely act as a mediator seeking a middle ground between interests; it acts as a *hakam* (arbiter) with an auditing function over the sharia compliance of a contract. Its strategic functions include the following:

Structural Audit of the Contract

In an IMBT dispute, the BASYARNAS arbitral panel can examine the structure of the contract in depth to ensure that the bank has not combined contracts in a prohibited manner (*al-jam'u baina al-'uqud*). The arbitrators assess whether the promise (*wa'd*) of ownership

transfer is genuinely separate from the ijarah contract or whether it has de facto merged into an installment sale disguised as ijarah (Al-Zarqā', 2004). Their ability to examine both the technical aspects of banking and the classical fiqh aspects provides assurance that the resulting award will not violate sharia rules.

Detection and Elimination of Ta'alluq Elements

One of the greatest challenges in IMBT is avoiding *ta'alluq*, namely the dependence of the validity of one contract on another contract within a single transaction package. BASYARNAS has the authority to set aside clauses that create such binding dependence. For example, if the contract states that the customer is *obliged* to buy the goods at the end of the period, the character of ijarah (which should give the lessee the freedom to return the goods) is lost, and the contract risks becoming a usurious (*ribawi*) transaction. The arbitrator must therefore identify the legal intention (*qasd*) behind the clause and ensure that mutual consent (*'an taradhin*) is preserved (Al-Nisā' 4:29).

Correction of Unjust Contractual Clauses

Based on the principle of public interest (*maslahah mursalah*), sharia arbitration can correct clauses that place an unreasonable burden on customers, such as penalty fines that exceed the reasonable limits set by OJK standards and DSN-MUI fatwas. Normatively, an arbitral panel applying Fatwa No. 17/DSN-MUI/IX/2000 may determine that the customer is only required to pay the real loss (*ta'widh*) and may cancel speculative (*gharar*) or excessive fines. This corrective function is crucial for keeping Islamic banking on the ethical track of an Islamic economy that upholds justice for the weaker party.

Strengths and Limitations of Sharia Arbitration

Although it has strong substantive advantages, sharia arbitration in Indonesia still operates within a framework that requires synergy with the state judicial system.

Competitive Advantages:

Specific expertise

BASYARNAS arbitrators generally consist of legal practitioners, academics, and scholars who master Islamic banking operations and the methodology of Islamic legal reasoning (*istinbath*). This reduces the risk of errors that may occur in general courts because of limited understanding of sophisticated sharia products.

Speed and confidentiality

In business, time is a valuable asset. Under Article 48 of Law Number 30 of 1999, the examination of a dispute must be completed within 180 days after the arbitral tribunal is formed. In addition, the closed nature of the proceedings protects the confidentiality of customer data and shields the bank's reputation from adverse publicity.

Final and binding awards

Arbitral awards are final and binding, meaning that no appeal or cassation is available on the merits, which provides immediate legal certainty for the parties.

Challenges and Limitations:

Execution of awards

The main weakness of arbitration is its inability to enforce awards independently. A BASYARNAS award must be registered with the Religious Court in order to obtain an order of execution (*fiat eksekusi*) (Resolution, 1999). If the court considers that the award contradicts sharia principles or public order, the execution order may be refused (Judicial, 2009). An award may also be annulled on limited grounds, as illustrated by a Religious Court decision annulling a BASYARNAS award in a sharia economic dispute (Annisa & Mujib, 2024).

Operational costs

The cost structure of institutional arbitration is often perceived as higher for retail customers or MSME actors than the cost of registering a case at a first instance Religious Court. This sometimes becomes a barrier for injured parties seeking justice through BASYARNAS.

Functional Relationship with the Religious Courts

Synergy between BASYARNAS and the Religious Courts is crucial for effective dispute resolution. There is an urgent need to align legal perceptions between sharia arbitrators and religious judges to prevent the annulment of arbitration decisions by the courts for purely administrative reasons.

Synthesis of Findings Across the Research Questions

Taken together, the findings form a connected chain. The four areas of potential non-compliance identified under RQ1 do not remain abstract defects; under RQ2 they materialize as disputes over ownership transfer, default and asset withdrawal, and *ujrah* review once a triggering event occurs. Under RQ3, BASYARNAS is positioned at the end of this chain as a forum that can both resolve the dispute and correct the clause that caused it, provided that its awards are supported by effective execution through the Religious Courts. This integrated reading distinguishes the present study from earlier works that examined IMBT contracts and sharia arbitration separately.

The anticipated implications operate at three levels. At the regulatory level, the findings support the harmonization of the DSN-MUI fatwa, the KHES, and PSAK 107 regarding the status of *wa'd* and asset ownership. At the institutional level, they support standardized IMBT contracts and closer coordination between BASYARNAS and the Religious Courts. At the level of dispute resolution, they encourage arbitral awards that not only settle disputes but also restore the sharia validity of the contract.

CONCLUSION

Based on the normative analysis, potential sharia non-compliance in IMBT concerns four areas: registration of the asset in the customer's name before the *ijarah* period ends, transfer of asset related risks and costs entirely to the lessee, premature binding of the *wa'd*, and penalty mechanisms resembling interest. These inconsistencies generate disputes over ownership transfer, forced asset withdrawal, and *ujrah* review. BASYARNAS holds a strategic position because it can resolve these disputes while correcting unfair clauses and hidden elements of

ta'alluq through a relatively efficient and confidential process, although its effectiveness depends on execution by the Religious Courts. DSN-MUI and the Supreme Court should harmonize the status of wa'd, while Islamic banks and their Sharia Supervisory Boards should periodically review penalty and ujarah review clauses. Future research should conduct empirical studies of actual BASYARNAS awards and Religious Court decisions.

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