

Finality of Arbitration in Islamic and Positive Law: Analysis of Court Intervention in Non-Litigious Dispute Resolution

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ABSTRACT

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This study aims to analyze the extent to which judicial intervention in arbitration awards can be justified from the perspective of Islamic law and Indonesian positive law, as well as to assess the validity of such intervention based on the principle of finality of arbitration. Using a normative legal approach, this study compares Islamic legal norms regarding *tabkīm* with arbitration provisions in national regulations, particularly those governing dispute resolution through non-litigation channels. The analysis was conducted through document review, legal interpretation, and comparison of norms to find points of convergence and divergence between the two legal systems. The results of the study show that both place arbitration awards as final decisions that must be respected in order to ensure legal certainty, efficiency in dispute resolution, and respect for the agreement of the parties. However, judicial intervention in positive law is possible to a limited extent under certain conditions, whereas in Islamic law, the decision of the hakam is final as long as the principles of justice and the willingness of the disputing parties are fulfilled. The conclusion of the study emphasizes that judicial intervention can only be justified as long as it does not eliminate the essence of the finality of arbitration and remains in line with the normative limitations of each legal system.

1. Introduction

Arbitration as an alternative dispute resolution mechanism in modern legal systems is gaining legitimacy and attention, including in Indonesia (Saputra, 2024). Time efficiency, measurable costs, and the private and final nature of decisions are the main reasons why arbitration is chosen as a dispute resolution channel other than state courts. Settlement through arbitration allows the parties to obtain a final and binding decision without appeal, thus providing legal certainty (Jayadi, 2020). In the context of national law, the position of arbitration is strengthened by Law Number 30 of 1999, which affirms the finality of arbitration decisions as part of the principle of party autonomy in dispute resolution. However, this regulation still allows for court intervention through the mechanism of annulment of arbitration awards under certain conditions, such as violations of public order or abuse of authority by arbitrators (Margono, 2004).

On the other hand, Islamic law has long recognized a dispute resolution institution called *tabkīm*, which is a mechanism for appointing one or more trusted judges to decide cases based on the agreement of the parties (Pratama et al., 2025). The finality of the judge's decision stems from the contract and the principle of voluntariness, making it binding as long as it does not conflict with the

principles of sharia and does not contain elements of injustice (Warman & Hayati, 2022). However, intervention by judicial authorities is still possible if the *tabkim* decision contradicts the text or unfairly deprives one of the parties of their rights (Munawar, 2022). This means that both Indonesian positive law and Islamic law recognize the finality of arbitration, but still allow for correction within strict limits.

A fundamental difference arises in the system of control over arbitration awards. Positive law regulates the annulment of awards through formal legal procedures in the district court, while Islamic law provides room for correction through Sharia authorities in the form of annulment of unjust awards. This normative tension raises important questions about the legitimacy of judicial intervention in maintaining the finality of arbitration. The phenomenon of arbitration annulment by courts in Indonesia even shows a shift that sometimes exceeds the limits of the law, giving rise to legal problems regarding consistency with the principle of finality of arbitration (Defriza, 2025). Therefore, this study aims to analyze the position of the finality of arbitration in Indonesian positive law and Islamic law and assess the extent to which judicial intervention can be justified without eliminating the essence of the finality of arbitration awards.

A number of studies show that the finality of arbitration in Indonesian legal practice is not entirely absolute. The existence of a mechanism for annulling arbitration awards through the district court, as stipulated in Article 70 of Law No. 30 of 1999, is often seen as a form of restriction on the principle of finality. Some academics argue that the authority of the court to annul arbitration awards has the potential to create legal uncertainty, especially if judges expand the interpretation of the grounds for annulment beyond the restrictive limits set by law (Harjono, 2022). In this context, the issue of arbitration finality is not only normative in nature, but also touches on the implementative and practical dimensions of the judiciary.

On the other hand, Islamic legal studies on dispute resolution through the *tabkim* mechanism have developed for quite some time, especially in classical and contemporary fiqh literature. *Tabkim* is understood as a form of submitting disputes to a third party (*hakam*) agreed upon by the parties, with the aim of achieving justice based on the principles of deliberation and consent (*taradi*) (Ansori, 2021). In the perspective of Islamic law, the finality of the *hakam's* decision is highly dependent on the existence of a valid contract and the agreement of the parties to accept and implement the decision. If the *tabkim* decision is born from a process that is in accordance with the principles of sharia and does not contradict the *qath'i* text, then the decision is basically binding morally and legally (Munawar, 2022).

However, most studies on *tabkim* still focus on normative-theological aspects, such as the requirements for *hakam*, the objects of dispute that can be subject to *tabkim*, and the basis for the legitimacy of *tabkim* in the Qur'an and Hadith (Ansori, 2021). The relationship between the concept of *tabkim* and modern arbitration practices, particularly in the national legal system, is still relatively limited. In fact, the dynamics of contemporary arbitration reveal complexities that are not only related to civil aspects, but also to state authority through judicial institutions (Hidayat, 2020). This limitation shows that *tabkim* studies have not been fully integrated into the discourse of modern arbitration in a comprehensive manner.

Furthermore, comparative studies on judicial intervention in arbitration awards in positive law and Islamic law are still minimal. Existing comparative studies generally stop at comparing institutional structures and sources of law, without conducting an in-depth normative evaluation of the limits of the legitimacy of judicial intervention in awards that are in principle declared final (Sugiyono et al., 2020). In Indonesian positive law, judicial intervention is legitimized in a limited manner to maintain the integrity of the arbitration process, while in Islamic law, corrections to *tabkim* decisions are emphasized more on aspects of deviation from the principles of justice and sharia, rather than on repeating the examination of the substance of the case (Munawar, 2022).

Based on the above description, there appears to be a significant academic gap in the literature, particularly regarding the integration of Islamic law and Indonesian positive law perspectives in interpreting the finality of arbitration and the limits of judicial intervention. Most studies still take a partial approach, either in terms of positive law or Islamic jurisprudence, without placing finality as the point of analysis. Therefore, this study seeks to fill this gap by examining the finality of arbitration in a comparative and integrative manner, as well as examining the extent to which judicial intervention can be justified and limited in both legal systems in order to ensure legal certainty and substantive justice.

2. Methods

This study uses a normative legal research design, which focuses on the study of written legal norms, doctrines, and relevant academic literature. This approach was chosen because the objects of the study are the finality of arbitration awards, the scope of judicial intervention, and the concept of *tabkīm* in Islamic law, which is fundamentally a normative construct in the legal system (Soekanto & Mamudji, 2009). Normative legal research allows for an in-depth analysis of applicable legal rules and normative comparisons between legal systems, which is in line with the research objective of examining the limits of judicial intervention from the perspective of positive law and Islamic law (Fahmi, Fakhyadi, et al., 2025).

This research method uses three approaches. *First*, the statute approach by examining Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and other supporting regulations. *Second*, a conceptual approach to examine the theory of arbitration finality and the concept of *tabkīm* in fiqh through academic works and expert doctrines (Marzuki, 2021). *Third*, a comparative approach to compare the norms of finality and the limits of judicial review in both legal systems (Fahmi, Hasibuan, et al., 2025).

The research data sources consist of primary legal materials in the form of legislation, court decisions, and classical and contemporary fiqh literature; and secondary legal materials in the form of scientific books, national and international journals, and previous research works. The data was collected through library research because the research did not require empirical field data. All data were analyzed using descriptive-comparative qualitative analysis, namely compiling, interpreting, and constructing legal norms to identify similarities and differences in the principle of finality of arbitration in positive law and Islamic law and drawing logical and accountable conclusions (Aulia et al., 2025). This methodology ensures that the research is systematic, replicable, and maintains scientific integrity in drawing legal arguments (Benuf & Azhar, 2020).

3. Results and Discussion

3.1. Finality of Arbitration within the Framework of Positive Law

The finality of arbitration in Indonesia's positive legal system is not interpreted as absolute finality without control, but rather as finality accompanied by limited judicial oversight mechanisms (minimal judicial intervention) (Defriza, 2025). This principle is in line with the basic characteristics of arbitration as an alternative dispute resolution method based on the agreement of the parties, procedural efficiency and legal certainty. Law No. 30 of 1999 explicitly states that arbitration awards are final and binding and cannot be appealed, cassated, or reviewed (Margono, 2004). However, the same law also allows for correction through a mechanism for annulment of arbitration awards under certain limited conditions.

In international arbitration doctrine, the principle of finality is reinforced by the doctrines of competence-competence and separability. The doctrine of competence-competence gives the arbitral tribunal the authority to determine for itself whether or not it has jurisdiction to hear a dispute, including assessing the validity of the arbitration agreement that forms the basis of its jurisdiction. Meanwhile, the doctrine of separability affirms that arbitration clauses are autonomous and do not lapse even if the main agreement is declared null and void or terminated (Naón & Mason, 2020). These two doctrines serve to maintain the effectiveness of arbitration and prevent early intervention by the courts, which could hinder the dispute resolution process.

In the context of Indonesian law, recognition of both doctrines is reflected in judicial practice and interpretation of Law No. 30 of 1999. District courts are in principle obliged to reject and not interfere in disputes that are subject to arbitration agreements, as stipulated in Articles 3 and 11 of the law. Court intervention is only possible at the post-award review stage, i.e., after the arbitration award has been rendered, and even then it is limited to the grounds for annulment expressly specified by law, such as the existence of alleged forged documents, fraud, or an award that exceeds the arbitrator's authority (Kuswijanarko et al., 2025).

A number of empirical studies show that limiting the scope of court intervention is an important element in maintaining the credibility of arbitration as an efficient forum for dispute resolution. Excessive intervention has the potential to shift arbitration into quasi-litigation, thereby eliminating its main advantage over general court proceedings (Harjono, 2022). Therefore, judicial oversight in

arbitration is more directed at examining procedural aspects and the integrity of the process, rather than re-examining the substance of cases that have been decided by arbitrators.

From a legal protection perspective, the mechanism for setting aside arbitration awards is understood as a corrective instrument to prevent fundamental injustice. In other words, the finality of arbitration in Indonesian positive law is relative, i.e., final as long as the award is rendered through a lawful, fair process that does not violate public policy. This approach reflects efforts to harmonize the principle of party autonomy and the state's obligation to guarantee justice and legal certainty for those seeking justice (Sugiyono et al., 2020).

Thus, the finality of arbitration within the framework of Indonesian positive law can be understood as functional finality, not absolute finality. The state, through its judicial institutions, remains present to a minimal extent to maintain the legitimacy and integrity of arbitration, without negating the final and binding nature of the arbitration award itself. This model demonstrates a balance between the efficiency of ADR and the principle of the rule of law, which places judicial oversight as a last resort, rather than as a dominant control mechanism.

3.2. Finality of Arbitration in the Perspective of Islamic Law

The concept of finality in the *tabkim* mechanism in Islamic law has a strong theological and normative foundation, based primarily on the principles of *taradi* (consent of the parties), *ar-rida* (satisfaction), and respect for the contract (*al-'aqd syari'ah*). From a fiqh perspective, *abkim* is understood as the transfer of authority to resolve disputes to a third party (*hakam*) based on the voluntary agreement of the disputing parties. This agreement gives rise to the legal consequence that the *hakam's* decision is binding and must be implemented as long as it does not conflict with the principles of sharia (Al-Zuhaili, 1984).

Unlike state litigation systems, which recognize a hierarchy of courts and multiple levels of appeal, classical Islamic law does not recognize formal legal remedies against *tabkim* decisions. The *fugaha'* agree that if the parties have agreed on the *hakam* and given him the mandate to settle the dispute, then his decision is final and binding (*la yajuzu al-naqd*) as a consequence of a valid contract (Ibn Qudamah, 2004). This finality is intended to maintain legal certainty, prevent protracted disputes and uphold the principles of honesty and trustworthiness in transactions.

However, finality in *tabkim* is not absolute, unlike the concept of administrative finality in modern positive law. In Islamic law, the finality of a ruling is always subject to the principle of *maqasid al-syari'ah*, namely the protection of religion, life, reason, lineage and property. If a *hakam's* decision is proven to contain elements of injustice (*zulm*), contradicts *qath'i* texts, or violates the principle of substantive justice, then religious authorities or rulers (*ulu'l-amm*) have the legitimacy to overturn or correct the decision (Ibn Qudamah, 2004). This correction is not intended as an appeal in the procedural sense, but rather as a mechanism for safeguarding the values of justice and the purity of Allah's law (Ansori, 2021).

Contemporary studies show that the finality of *tabkim* emphasizes moral-ethical dimensions rather than administrative or procedural aspects (Munawar, 2022). Finality is understood as the moral commitment and religious responsibility of the parties to voluntarily implement the decision as part of their obedience to the contract and Islamic values of justice (Hidayat, 2020). Therefore, violations of *tabkim* decisions are not only legal in nature, but also moral and spiritual.

In the modern context, a number of academics consider that the concept of finality of *tabkim* has significant relevance to contemporary arbitration practices, particularly in terms of treating arbitration awards as private agreements that must be respected. However, the fundamental difference lies in the basis for the legitimacy of award corrections. While in positive law corrections are made on the basis of procedural violations or public order, in Islamic law corrections are based on violations of substantive justice and Sharia values (Munawar, 2022). Thus, finality in Islam is normative-ethical in nature, not administrative-judicial.

Based on the above description, it can be concluded that the finality of *tabkim* in Islamic law is a conditional finality based on substantive justice and the objectives of sharia. Finality is not interpreted as immunity from any form of correction, but rather as a moral and legal obligation to submit to decisions that are fair, valid, and in line with the will of Sharia. This model shows that Islamic law integrates legal

certainty and justice in a balanced manner, placing ethical values at the core of the concept of finality itself.

The following table summarizes the categories of grounds for annulment in positive law and Islamic law:

Table 1. Comparison of Grounds for Arbitration Award Cancellation

Legal System	Grounds for Cancellation
Indonesia	Fraud, ultra petita, no valid arbitration clause, procedural violations, public order.
Islam (Arbitration)	Contrary to Islamic law, the judge exceeded his mandate, committing fraud and manifest injustice.

The table shows that both legal systems place the principle of finality of judgments as an important principle for providing legal certainty and stability in relations between parties. However, there are differences in emphasis: Indonesian positive law focuses more on procedural defects and technical criteria such as the absence of a valid arbitration clause or procedural violations, while the Islamic perspective adds a substantive dimension, the conformity of the content of the decision with Sharia principles and the elimination of manifest injustice, as grounds for annulment. The balance between legal certainty and protection against injustice requires limited but effective corrective mechanisms, so that arbitration remains credible without sacrificing substantive justice.

3.3. State Intervention Space: Minimal But Necessary Corrections

A comparative study between positive law and Islamic law shows conceptual common ground regarding the scope of state intervention in non-litigious dispute resolution decisions. Both recognize the principle of finality as a fundamental element, but do not treat it as an absolute principle that is immune to correction. Finality is strongly recognized as long as the decision is born from a process that is legitimate, fair, and does not violate the public interest or fundamental values of justice. Thus, state intervention is positioned as an exceptional corrective mechanism, not as an instrument of routine control.

In the context of modern arbitration law, recent literature emphasizes that excessive judicial intervention has the potential to undermine the essence of arbitration as a fast, efficient, and final dispute resolution mechanism. Extensive intervention, particularly through the expansion of grounds for setting aside arbitral awards, can open the door to the judicialization of arbitration, namely the shift of arbitration into a process resembling litigation with protracted disputes (Abdurrasyid, 2002). This condition not only reduces the appeal of arbitration for business actors, but also creates legal uncertainty that is contrary to the original purpose of establishing the arbitration regime.

The principle of minimal judicial intervention has since developed into a normative standard in contemporary arbitration law. This principle positions the court as the guardian of due process, rather than as a covert forum for appealing arbitration awards. State intervention is justified only in exceptional circumstances, such as indications of fraud, violations of fundamental procedural rights, or decisions that are clearly contrary to public policy (Kuswijanarko et al., 2025). With this approach, the state continues to perform its legal protection function without eroding the autonomy of the parties and the authority of the arbitrators.

The Islamic legal perspective shows a similar pattern, albeit with a different basis of legitimacy. In *tabkim*, intervention by state or religious authorities is not intended to reassess the substance of the dispute, but rather to ensure that the *hakam's* decision does not contain elements of injustice, fraud, or violations of the basic principles of sharia. Excessive intervention has the potential to negate the meaning of *ar-rida* and *taradi* as the ethical foundation of *tabkim*, because the decision is no longer seen as the result of a voluntary agreement between the parties (Munawar, 2022).

In the context of *maqasid al-syari'ah* or the objectives of Islamic law, which include protection of religion (*hifz ad-din*), protection of life (*hifz an-nafs*), protection of reason (*hifz al-aql*), protection of lineage (*hifz an-nasl*), and protection of property (*hifz al-mal*) (Zulfahmi et al., 2024), corrections to *tabkim* decisions can only be justified if the decision clearly threatens the protection of property, life, or substantive justice for the parties involved. Thus, intervention in Islamic law is value-centric, not

procedure-centric. The state or religious authorities act as guardians of legal morality, not as substitutes for the authority of the hakam (Hidayat, 2020).

Based on this comparison, it can be concluded that the ideal intervention in both legal systems is one that is proportional and restrictive. Intervention should only be carried out in extraordinary circumstances, such as fraud, manifest injustice, violation of fundamental principles of Sharia, or serious conflict with public order. This type of intervention model not only maintains a balance between finality and justice, but also ensures that non-litigious dispute resolution remains credible, effective and in line with the legal values that exist in society.

3.4. Theoretical and Practical Implications

Theoretically, the results of this study confirm the need to clarify and reaffirm the grounds for setting aside arbitral awards in national regulations so that they are in line with international standards that prioritize the principles of finality and binding force and minimal judicial intervention. International standards as reflected in the UNCITRAL Model Law limit setting aside to fundamental procedural violations and issues of public policy, not to re-examination of the merits of the case (Defriza, 2025). This normative harmonization is important to avoid expansive judicial interpretations that could potentially erode finality and create legal uncertainty (Born, 2021; Kuswijanarko et al., 2025). Within the framework of the rule of law theory, limiting the grounds for annulment also clarifies the position of the court as the guardian of due process, rather than a covert forum for appealing arbitration.

From an Islamic legal perspective, the theoretical implication lies in strengthening the concept of conditional finality based on *maqasid al-syari'ah*. The finality of *tabkīm* decisions is upheld as long as they fulfill substantive justice and do not conflict with fundamental sharia principles. The integration of this value into national law does not add excessive room for intervention, but rather provides moral guardrails that are compatible with the doctrine of public policy in positive law (Munawar, 2022). Thus, there is theoretical coherence between functional finality (positive law) and ethical finality (Islamic law).

In practical terms, the findings of the study imply the need to reformulate national regulations to clarify and narrow the grounds for annulment so that they are more consistent with international best practices, while remaining adaptive to the pluralistic national legal context. This affirmation of norms can be incorporated through judicial guidelines or limited revisions to the law, so that judges have consistent and predictable interpretative guidelines (Abdurrasyid, 2002). Such consistency is crucial to maintaining the attractiveness of arbitration for business actors and preventing protracted disputes.

Strengthening ethical regulations for arbitrators and procedural transparency is also an urgent practical agenda. Recent literature shows that confidence in the finality of decisions is greatly influenced by the integrity of arbitrators, disclosure of conflicts of interest, and proportional procedural openness without compromising the confidentiality of arbitration (Moses, 2017). Strict ethical standards including effective arbitrator challenge mechanisms will reduce the risk of fraud and manifest injustice, thereby reducing the need for court intervention in the post-decision stage.

Furthermore, in the context of Sharia arbitration, it is necessary to develop a model for operational harmonization between Islamic law and positive law. This model includes: (1) the formulation of Sharia public policy that is measurable and compatible with national public order; (2) competency standards for Sharia arbitrators who are proficient in *mu'amalah* jurisprudence and modern arbitration law; and (3) the design of procedures that affirm the principles of *taradi* and *ar-rida* while fulfilling due process of law (Hidayat, 2020). This harmonization is important to support the resolution of growing Islamic economic disputes, including Islamic banking and finance, without sacrificing certainty and finality.

Thus, the theoretical and practical implications of this study lead to the strengthening of accountable finality: finality that is protected by clear intervention limits, supported by ethics and transparency, and integrated with Islamic legal values that are alive in the national legal system. This approach not only improves the quality of the arbitration regime, but also strengthens the social and economic legitimacy of non-litigious dispute resolution in Indonesia.

4. Conclusion

This study confirms that the principle of finality is a fundamental element in arbitration mechanisms both in Indonesian positive law and in Islamic law through the concept of *tabkīm*. Finality is understood as a guarantee of legal certainty and respect for the agreement of the parties so that arbitration decisions are binding and cannot be appealed. However, this finality is not absolute. Both legal systems still provide limited space for judicial intervention with the aim of maintaining substantive justice and preventing abuse of authority. In positive law, the intervention mechanism is carried out through the annulment of arbitration decisions under certain extraordinary conditions. Meanwhile, in Islamic law, the *qadhi* authority can make corrections if the *hakam's* decision is proven to be contrary to sharia principles, exceeds its mandate, or causes injustice that is detrimental to certain parties.

The findings show that both legal systems are essentially aligned in placing finality at the core of arbitration while still recognizing the need for proportional legal correction. The theoretical implications of this study contribute to strengthening comparative studies between modern arbitration and *tabkīm* as a basis for constructing national law based on legal pluralism. In practical terms, the results of this study serve as a reference in formulating policies to limit judicial intervention, improve the professionalism of arbitrators, and draft clearer arbitration clauses. Scientifically, this research opens up further research on the harmonization of arbitration and *tabkīm* principles in the development of Islamic economic law. Thus, this research has strategic value both in the development of legal theory and in the formulation of dispute resolution policies in Indonesia.

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