



THE RELEVANCE OF ONLINE DISPUTE
RESOLUTION IN THE ISLAMIC FINANCE
INDUSTRY IN MALAYSIA: AN EXPLORATORY
STUDY

BY

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ABSTRACT

This research aims to explore the relevance of Online Dispute Resolution (ODR) in the resolution of Islamic finance disputes in Malaysia. Stemming from the legal uncertainties in the resolution of Islamic finance disputes in the Malaysian civil courts and existing Alternative Dispute Resolution (ADR) institutions, access to justice for offline and online financial consumers in Malaysia has been curtailed. This study examines the existing dispute resolution mechanisms available to Islamic finance consumers and the feasibility of adopting ODR mechanism for the industry. The research adopts doctrinal method to expound the convergence of key concepts such as ADR, internet and e-commerce in the 21st Century. In addition, relevant legislations and Islamic legal concepts in contemporary dispute resolution practices and theories are discussed in relation to ODR in the industry. Analysis of existing ODR best practices in other jurisdictions has been done to explore the economic and judicial benefits of ODR in the Industry. Court decongestion, resolution of small claims, fast and cheap mechanisms are few of the benefits of ODR which is capable of ensuring consumer confidence, trust and sustainable growth for the Islamic finance industry in Malaysia. This research finds that ODR is relevant to the *Sharī'ah* underpinnings and Islamic legal maxims which are the basis of Islamic finance transaction and dispute resolution. Therefore, borrowing a leaf from existing ODR best practices such as Equifax and Cybersettle, this will be a huge step in creating access to justice for online and offline financial consumers in the Islamic finance industry in Malaysia. This innovation however requires regulatory and institutional readjustment towards operationalizing ODR under the Financial Ombudsman Scheme (FOS) provided under Islamic Financial Services Act (IFSA2013) . This is in addition to efforts towards inter-disciplinary collaboration in creating a web-enabled portal for submission and resolution of finance disputes in Malaysia.

ملخص البحث

يهدف هذا البحث إلى استكشاف مدى ملاءمة الصلح عبر الإنترنت (ODR) في حل النزاعات في صناعة التمويل الإسلامي بماليزيا. نظرا إلى الثغرات القانونية في المحاكم الماليزية والوسائل البديلة لحل النزاعات (ADR) في صناعة التمويل الإسلامي، فإنه يوجد بعض القصور في فرص الحصول على العدالة لبعض الزبائن هذه المؤسسات في ماليزيا وخصوصا الذين يتعاملون معها عبر الإنترنت. لذا، فإن هذا البحث يدرس الوسائل المتوفرة لحل نزاعات مستهلكي خدمات مؤسسات التمويل الإسلامي في ماليزيا ومدى قابلية آليات الصلح عبر الإنترنت ODR لحل هذه النزاعات. ويتبع هذا البحث أسلوب استسقاء المعلومات من مختلف المصادر لتسليط الأضواء على بعض المفاهيم الأساسية في القرن الحادي والعشرين مثل الوسائل البديلة لحل النزاعات ADR والإنترنت والتجارة الإلكترونية. وعلاوة على ذلك، فقد تم مناقشة القوانين ذات الصلة بالموضوع ومفاهيم الشريعة الإسلامية والنظريات الأخرى المتعلقة بعمليات حل النزاعات في هذا العصر وعلاقتها بعملية الصلح عبر الإنترنت ODR في مؤسسات التمويل الإسلامي. كما قامت الدراسة بتحليل أفضل الممارسات في عملية الصلح عبر الإنترنت ODR في الهيئات الأخرى، لاستكشاف الفوائد الإقتصادية والقضائية لعملية تطبيق الصلح عبر الإنترنت ODR في مؤسسات التمويل الإسلامي في ماليزيا. وتشمل هذه الفوائد، على سبيل المثال لا الحصر، عملية تخفيف ازدحام المحاكم وحل النزاعات الخفيفة وسرعة حل النزاعات بأقل التكلفة وغير ذلك من الخطوات القادرة على ضمان ثقة المتعاملين معها وتحقيق النمو المستدام لمؤسسات التمويل الإسلامي في ماليزيا. ويبرز نتائج هذا البحث ملائمة عملية الصلح عبر الإنترنت ODR بأسس الشريعة الإسلامية وقواعدها والتي تعتبر عنصرا أساسيا في المعاملات المالية الإسلامية وعمليات حل النزاعات الناشئة منها. وبناء على هذا، فإن الاقتباس من أفضل الممارسات المتوفرة للصلح عبر الإنترنت ODR أمثال (شركة Equifax و Cybersettle) ستكون خطوة كبيرة إلى الأمام في تحقيق فرص الحصول على العدالة للمتعاملين عبر الإنترنت وغيرهم من زبائن مؤسسات التمويل الإسلامي في ماليزيا. ومن هذا المنطلق، فإن هذا الإبداع يتطلب التغيير القانوني والمؤسسي لتحقيق اندماج عملية الإصلاح عبر الإنترنت ODR في ظل مشروع أمن المظالم (FOS) تحت مادة خدمات التمويل الإسلامي سنة 2013 IFSA. وهذا بالإضافة إلى الجهودات اللازمة لتحقيق التعاون بين الهيئات في فتح البوابة على شبكة الإنترنت لتمكين الزبائن من تقديم الشكوى و تسهيل عملية الصلح في مؤسسات التمويل الإسلامي بماليزيا

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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TABLE OF CONTENTS

Abstract	ii
Abstract in Arabic	iii
Approval page	iv
Declaration	v
Copyright Page.....	vi
Acknowledgements	vii
List of Figures	ix
List of Cases.....	xii
List of Statutes	xiii
List of Abbreviations	xiv

CHAPTER 1: INTRODUCTION.....	1
1.1 Background.....	1
1.2 Statement of Problem	4
1.3 Objectives of the Study.....	5
1.4 Hypothesis	5
1.5 Literature Review	6
1.6 Scope and Limitation of the study	12
1.7 Methodology.....	12
1.8 Structure of the Dissertation	13

CHAPTER 2: ISLAMIC FINANCE DISPUTE RESOLUTION IN MALAYSIA....	16
2.1 Introduction.....	16
2.2 Meaning of Islamic Finance Dispute	17
2.3 The Legal Framework for Islamic Finance Dispute Resolution in Malaysia.....	23
2.4 Viability of Existing Dispute Resolution Mechanisms in the Malaysian Islamic Finance Industry.....	25
2.4.1 Islamic finance disputes in Malaysia courts.....	26
2.4.2 Islamic finance Dispute Resolution at the Kuala Lumpur Regional Centre for Arbitration (KLRCA).....	31
2.4.3 Islamic finance Dispute Resolution at the Financial Mediation Bureau- (FMB)	34
2.4.4 Securities Industry Dispute Resolution Centre – (SIDREC).....	36
2.5 Dispute Resolution under the Islamic Financial Services Act 2013	38
2.6 Conclusion	39

CHAPTER 3: DISPUTE RESOLUTION, THE INTERNET AND E-COMMERCE IN THE 21ST CENTURY	41
3.1 Introduction.....	41
3.2 Alternative Dispute Resolution and ICT Convergence in the 21 st Century.....	41

3.3 Brief History of ADR	42
3.4 Development of the Internet and the World Wide Web	45
3.5 E-commerce: An Overview	47
3.5.1 The Distinction between E-Commerce and E-Business	50
3.5.2 Nature of parties in E-commerce transactions	51
3.6 Customer Relationship Management (CRM), Consumer Protection and Feedback Mechanisms in E-commerce Transactions	57
3.7 Conclusion: The Need for an Online Legal Mechanism for E-disputes.....	58

**CHAPTER 4: ONLINE DISPUTE RESOLUTION AND ITS APPLICATION IN
FINANCIAL DISPUTES.....60**

4.1 Introduction.....	60
4.2 The Concept of ODR.....	60
4.3 Permutations of ODR	64
4.3.1 Online Ombudsman.....	65
4.3.2 Online Negotiation	66
4.3.3 Online Mediation.....	66
4.3.4 Online Arbitration.....	67
4.3.5 Online Hybrid processes.....	67
4.4 Some Best Practices in the use of ODR in Financial Dispute Resolution.....	68
4.4.1 The eBay/Square trade experiment.....	69
4.4.2 Cybersettle.com, SettlementOnline and clickNsettle	70
4.4.3 The use of ODR in Credit Reporting Disputes.....	72
4.5 Conclusion	74

**CHAPTER 5: TOWARDS AN ODR FRAMEWORK FOR THE ISLAMIC
FINANCE INDUSTRY IN MALAYSIA**

5.1 Introduction.....	76
5.2 Feasibility of ODR in the Malaysian Islamic Finance Legal Framework	76
5.3 Relevance of Major Sharī'ah Principles to ODR	78
5.3.1 <i>Ṣulh</i>	79
5.3.2 <i>Maṣlahah</i>	80
5.3.3 <i>Ṣadd-ul dhari'ah</i>	80
5.3.4 <i>Maqāṣid Sharī'ah – Hifz al-Māl</i> (Property).....	81
5.3.5 <i>Darar Yuzal</i> – Removal of harm.....	82
5.3.6 <i>Sharī'ah</i> risk, Legal Risk and Reputational risk	83
5.3.7 <i>Amānah</i> (Trust)	84
5.4 Economic and Judicial Benefits of ODR in Malaysia.....	85
5.4.1 Immediate access to justice for small claims	85
5.4.2 Court decongestion and small claims.....	86
5.4.3 Consumer trust and Confidence	88
5.4.4 Party autonomy and privacy.....	89
5.4.5 Cross-border transactions.....	90
5.4.6 Environmental Sustainability	91
5.5 Case Studies of ODR for the Islamic Finance Industry.....	92
5.5.1 Case Study 1: Banking Dispute	92
5.5.2 Case study 2: Insurance (<i>takāful</i>) dispute	94

5.6 Flowchart and Procedural Steps for Islamic Finance ODR Mechanism	96
5.7 Conclusion	101
CHAPTER 6: CONCLUSION	102
6.1 Introduction.....	102
6.2 Findings	104
6.3 Recommendations.....	106
6.4 Implications for Further Research	108
6.5 Conclusion	109
BIBLIOGRAPHY	111

LIST OF FIGURES

<u>Figure No.</u>		<u>Page No.</u>
4.1	Possible Permutations of ODR	65
4.2	Equifax Online Dispute Interface	73
5.1	Methods of submitting complaints and enquiries at FMB	87
5.2	Proposed Islamic finance ODR flowchart	98

LIST OF CASES

Mohd Alias Ibrahim v. RHB Bank Bhd & Anor [2011] 4 CLJ 654

Shamil Bank of Bahrain EC v. Beximco Pharmaceuticals Ltd & Ors. [2004] 4 All ER 1072

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Payment Systems Act 2003 [Act 627] Laws of Malaysia (*repealed*)
Takaful Act 1984 [Act 312] Laws of Malaysia (*repealed*)

LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
ARPA	Advanced Research Projects Agency
ARPANET	Advanced Research Projects Agency Network
ATM	Automated Teller Machine
B2B	Business-to-Business
B2C	Business-to-Consumer
B2G	Business-to-Government
BBA	<i>Bai' Bithāman Ajil</i>
BMB	Banking Mediation Bureau
C2C	Consumer-to-Consumer
CRM	Customer Relation Management
EDR	Electronic Dispute Resolution
FMB	Financial Mediation Bureau
FOS	Financial Ombudsman Scheme
FSA	Financial Services Act
FSPs	Financial Services Providers
ICANN	Internet Corporation for Assigned Names and Numbers
ICM	Islamic Capital Market
ICT	Information and Communications Technology
IDR	Internet Dispute Resolution
IFI	Islamic Financial Institutions
IFSB	Islamic Financial Services Board
IMB	Insurance Mediation Bureau
KLRC	Kuala Lumpur Regional Centre for Arbitration
M2B	Mobile-to-Business
MDCH	Multi-Door Court House
NSF	National Science Foundation
ODR	Online Alternative Dispute Resolution
OAS	Organisation Of American States
ODR	Online Dispute Resolution
OECD	Organization for Economic Cooperation and Development
OOO	Online Ombuds Office
PLS	Profit and Loss Sharing
POS	Point-of-Sale
SAC	Sharī'ah Advisory Council
SCRMD	Special Committee on the Resolution of Minor Disputes
SIDREC	Securities Industry Dispute Resolution Centre
TCP/IP	Transmission Control Protocol/Internet Protocol
TMDR	Technology Mediated Dispute Resolution
UNCITRAL	United Nations Commission for International Trade Law
WIPO	World Intellectual Property Organisation

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The flood of financial transactions between individuals and domestic and international corporate entities is a necessity for social interaction. In the middle of commercial transactions are individuals, banks and other financial institutions to facilitate credit and payment systems, thereby creating one or more financial relationship known as ‘banker–customer’ relationships. Financial regulators enact rules and guidelines for interaction between financial institutions and customers to facilitate the flow of trade and consequential issues such as dispute resolution.

In recent times, Information and Communication Technology (ICT) has permeated all spheres of human life and changed the way we transact. Though at inception, technology was adopted primarily for data processing, it has grown to become a veritable commercial tool, delivering real-time information and services to customers known as E-commerce. It has since become entrenched in business activities and seen as a basic tool for organisations and multinationals.¹

Islamic financial institutions in Malaysia have developed and taken shape in the last few decades with an annual growth rate of 10% - 15% with indicators of consistent future growth.² Though amicable resolution of dispute (*Sulh*) is at the core Islamic Law,³

Alternative Dispute Resolution (ADR) mechanisms in the Islamic finance industry is

¹ Thomas Schultz, *Information Technology and Arbitration: a Practitioner’s Guide* (The Netherlands: Kluwer Law International, 2006) at 7.

² Cihak Martin, and Heiko Hesse. “Islamic Banks and Financial stability: an Empirical Analysis.” *International Monetary Fund Working Paper*; WP/08/16,2008.5<<http://www.imf.org/external/pubs/ft/20008/wp0816.pdf>. (viewed 30 October 2014).

³ Othman Aida, “And Amicable Settlement Is Best”: Sulh and Dispute Resolution in Islamic Law”. *Arab Law Quarterly*, vol. 21,no.1(2007) at 64–90.

constrained⁴ as banker-customer disputes in the industry are being referred to litigation without consideration for ADR processes.

Incidence of dispute is inevitable in financial dealings. However, regulatory bodies have risen to the challenge by embracing ADR with its flexible mechanisms such as negotiation, mediation, arbitration and hybrid processes. These flexible processes have come to the fore of formal methods of settling commercial disputes with its wide adoption both in international and national legal instruments.⁵ Court systems globally have incorporated the system in their dispute resolution processes. ADR has proven to be the most suitable and cost-effective method for disputes arising from commercial and financial transactions in recent years. However, ADR has not achieved its desired result where dispute arose from transactions which were conducted partly or wholly in the cyberspace. The growth of commercial activities in the cyberspace is very tremendous as web users can make payment for their desired merchandise online, otherwise referred to as E-commerce.⁶ Indeed modern day commerce thrives on technology, and technology fundamentally shapes international commerce; hence the new challenges of ICT based dispute resolution.⁷

In financial transactions involving banker-customer relationship, one of the utmost concerns of regulatory agencies is protection of consumer and access to justice through fast and cheap resolution of complaints. The traditional dispute resolution systems are most often ill-equipped to provide effective redress as dispute resolution

⁴ Ruzian Markom, Sharina Ali Pitchay, Zinatul Ashiqin Zainol, Anita Abdul Rahim & Rooshida Merican Abdul Rahim Merican, "Adjudication of Islamic Banking and Finance cases in the Civil Courts of Malaysia" *Eur J Law Econ*, vol.36, no.1 (2013)

⁵ Works of the United Nations Commission on International Trade UNCITRAL Working Group III from December 2010 till present available at <http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html> (viewed 24 September 2014).

⁶ Ethan Katsh, M Ethan Katsh, and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (New York: John Wiley & Sons, Inc. 2001) at 10.

⁷ Gabrielle Kaufmann-Kohler and Thomas Schultz, *Online Dispute resolution: Challenges for Contemporary Justice* (The Netherlands: Kluwer Law International 2004) at 7.

venues may be located too far away, or too expensive for smaller disputes or too slow for business needs.⁸

Online Dispute Resolution (ODR) can be viewed from the use of traditional web based complaint/feedback option adopted by banks to receive complaints, comments and feedback from its customers.⁹ This tool, originally intended to hear customers' views with respect to service delivery, has been further harnessed to enhance mandatory ODR¹⁰ for financial institutions around the world. This is yet to be seen in the Malaysian Islamic finance industry. The use of technology in financial dispute resolution mechanism has been encouraged in international trade instruments¹¹ but much is yet to be seen in the convergence between ICT and legal procedures in financial dispute resolution. Such convergence will guarantee cost-effective and timely access to justice for disputants with the use of flexible, party-driven ICT platform.

The need for an ODR framework seems justifiable where disputants concluded their contract online, they can agree to resolve the issues online following the conceptual proximity view. Where a dispute involves combination of offline and online presence, the mainstream offline ADR may prevail. However, the need for speedy access to justice will lend sufficient justification for a wholly¹² ODR mechanism irrespective of the nature of the commercial dispute and the amount of claim involved.¹³

This research examines the relevance of ODR mechanism in the Islamic finance industry in Malaysia. In-depth analysis of existing best practices and pilot projects in selected sectors are carried out critically to create financial harmony in the industry.

⁸ Thomas, n.1 at 12.

⁹ Jason Krause, "Settling it on the Web," *A.B.A Journal*, 93 (2007) at 42.

¹⁰ Thomas Schultz, "An Essay on the Role of Government for ODR: Theoretical Considerations about the Future of ODR," *ADR Online Monthly UMASS* 7 (2003) at 1.

¹¹ UNCITRAL, CISG, and COGSA all contained provisions encouraging the adoption of ICT in Arbitration processes.

¹² Jason, n.9 at 43.

¹³ Thomas, n.1 at 7.

1.2 STATEMENT OF PROBLEM

The legal maxim *judex non calculat* which means ‘the judge does not calculate’ postulates the non-conversance and difficulty embedded in scientific calculations and technological advancement in relation to legal practitioners, proceedings and procedures. This explains the delay in finding a synergy between the use of technology in justice delivery, including ADR practitioners and adoption of digital evidence in courts proceedings.¹⁴

ICT has grown to become a necessary tool for quicker justice delivery in the last two decades with its deployment in aspects of law research, case management, law reporting, among others. Recent legal developments have witnessed the use of video-conferencing in justice delivery. Therefore the ICT and legal convergence can be taken to the next level, where technology can take a centre stage in dispute resolution through the use of ODR.

This research therefore seeks to answer the following pertinent questions: What remedies exist for enhancing the resolution of Islamic finance disputes in Malaysia? What is the role of technology in Islamic finance dispute resolution processes? Will the application of ODR jeopardise or enhance access to justice in financial institutions considering transactions which are partly or entirely performed offline? Can ODR help to facilitate the core principles of amicable resolution of Islamic finance disputes in Malaysia?

Addressing the above mentioned problems require proper examination of existing Islamic finance legislations, dispute resolution institutions and efficiency of remedies to financial consumers. Several other concerns of the research shall address issues towards

¹⁴ Cortes Pablo, The Potential of Online Dispute Resolution as a Consumer Redress Mechanism (2007), <<http://ssrn.com/abstract=998865>> (viewed 28 August 2014).

capturing the relevance of ODR in the Sharī'ah complaint finance industry in Malaysia while taking a clue from existing ODR mechanism in other jurisdictions.

1.3 OBJECTIVES OF THE STUDY

The main objective of this research is to examine how ICT initiatives can be deployed in dispute resolution to enhance access to justice in the Islamic finance industry in Malaysia.

The specific objectives are:

- i. To examine the legal and institutional framework for dispute resolution in the Islamic finance industry in Malaysia;
- ii. To examine the models of online dispute resolution for commercial transactions in the modern world;
- iii. To identify and investigate the relationship between online dispute resolution and access to justice with particular reference to the Islamic finance industry in Malaysia; and;
- iv. To propose the most appropriate online dispute resolution platform for resolving banker-customer disputes in the Islamic finance industry in Malaysia.

1.4 HYPOTHESIS

Apart from the feedback and complaints mechanism in Islamic banks and other financial institutions, there is no structured platform for online dispute resolution in the Islamic finance industry in Malaysia. Existing dispute resolution framework in the industry can be well suited to include Online Dispute Resolution. A move towards creating an independent platform will go a long way in enhancing access to justice which is paramount in dispute resolution in the modern world.

1.5 LITERATURE REVIEW

A critical examination of the existing literature on the subject reveals that the application of online medium in dispute resolution is rapidly growing globally. Literature on the subject shows evidence of the use of technology and ICT medium either partially or wholly in various forms of disputes including: family dispute,¹⁵ insurance,¹⁶ domain name dispute,¹⁷ defamation, armed conflict among others.¹⁸ However, commercial disputes management have been highly restrictive and regulated, given the volume of transactions between persons and across borders. Therefore financial dispute resolution has become so dynamic due to the vantage position it takes in both domestic and international business environment.

The nature of dispute resolution in Islamic law (i.e., *Ṣulḥ*) is unique in its aims of encouraging amicable settlement of dispute, using the most appropriate method for achieving the ultimate goal of settlement between the parties. The role of ICT in facilitating amicable settlement of dispute cannot be overemphasised, as parties are encouraged to choose between varieties of flexible options. Such options include: *Ṣulḥ* (negotiation, mediation) *taḥkīm* (arbitration), *muḥtasib* (Ombudsman), compromise of action, etc. to reach a settlement.¹⁹ Existing literature on dispute resolution in Islamic law context have shown that the ultimate goal is settlement, irrespective of the method of

¹⁵ Elisabeth Wilson-Evered, Deborah Macfarlane, John Zeleznikow, and Mark Thomson, "Towards an Online Family Dispute Resolution Service in Australia" in *Mobile technologies for conflict management*, edited by Poblet, Marta. (Netherlands:Springer, 2011) at 125-138.

¹⁶ Colin Rule, *Online Dispute Resolution for Business: B2B, ecommerce, consumer, employment, insurance, and other commercial conflicts*, (San Francisco: John Wiley 2003) at 216.

¹⁷ Jeanette Hofmann, "Internet Corporation for Assigned Names and Numbers (ICANN)", *Global Information Society Watch Report*, (2007) at 39-47 <http://www.giswatch.org/sites/default/files/gisw_icann_0.pdf> (viewed on 30 September 2014); see also Dan Hunter, "ICANN and the Concept of Democratic Deficit" *Loyola of Los Angeles Law Review*, 36 (2002) at 1149.

¹⁸ Ethan Katsh and Leah Wing, "Ten years of online dispute resolution (ODR): Looking at the past and constructing the future", *University of Toledo Law Review*, vol. 38, no.1 (2006) at 101-126.

¹⁹ Syed Khalid Rashid. "Alternative Dispute Resolution in the Context of Islamic Law." *The Vindobona Journal of International Commercial Law and Arbitration*, vol. 8, no. 1 (2004) at 95-118.

resolution.²⁰ This further strengthens the flexibility and dynamism of Islamic jurisprudence, which guarantees the freedom of consumers to access justice and establish their claims against Sharī‘ah compliant businesses.

In the Malaysian Islamic finance industry, the Islamic Financial Services Act 2013 (IFSA) provides for a Financial Ombudsman Scheme (FOS) ‘for the resolution of disputes between an eligible complainant and a financial service provider’.²¹ This legislation prescribes the present position in the protection of the Islamic financial consumers in Malaysia. Segara²² examined the existing dispute resolution framework in Malaysia under the Financial Mediation Bureau (FMB), which includes Online Fast track mediation of disputes between financial institutions and customers at no cost to the customer. The ADR processes at the FMB includes: negotiation, mediation, arbitration in relation to the Islamic capital market, consumer protection and corporate governance in Islamic financial institutions. Notwithstanding the online fast track mediation by FMB, a real-time and wholesome shift from ADR to ODR is yet to take its place in Islamic finance, hence the need for this research.

The governing law on the Islamic capital market and its potential for development was the subject of research by Oseni²³; his further writings examined resolution of dispute in Islamic finance industry with special reference to Nigeria.²⁴ The constraints of applicable laws and conflicts of jurisdiction was discussed by Engku Ali²⁵ and Hasan,

²⁰ Ibid.

²¹ Section 133(c) (ii) Islamic Financial Services Act 2013.

²² Datin N. Segara, “Mediation at the Financial Mediation Bureau (FMB)” in *Mediation and Arbitration in Asia-Pacific*, edited by Syed Ahmad Idid and Rashid Khalid, (Kuala Lumpur: IIUM Press, 2009) at 151.

²³ Umar Oseni "The Regulation of Islamic Capital Markets: Revisiting the Governing Law Clause in Sukūk Transactions.".(June 2012), *IRTI-IDB & Ministry of Finance, Jakarta: Indonesia* at 190–217.

²⁴ Umar Oseni, “Dispute Resolution in the Islamic Finance Industry in Nigeria”, (2012) *European Journal of Law and Economics* DOI: 10.1007/s10657-012-9371-y, at 1-20.

²⁵ Engku Rabiah Adawiah Engku Ali, “Constraints and Opportunities in Harmonisation of Civil Law and Sharī‘ah in the Islamic Finance Services Industry”, *MLJ*, vol. 4, (2008) at i-xxxvii.

Z. et al²⁶ with the aim of lending a legal discourse towards settling the conflict between Civil courts and Sharī'ah courts jurisdictions with respect to the Islamic financial contracts in Malaysia. Markom, and Yaakub,²⁷ analysed the defects of Litigation as dispute resolution mechanism in the Malaysian Islamic finance industry. This he observed has led to a decline in customer confidence and trust as the court have proven to be unsuitable for Islamic finance disputes and this is viewed as against the spirit of reconciliation which is held as solemn in Islamic law.²⁸ Suggestions for a review of dispute resolution mechanisms available for disputants in Islamic finance and provision of a multi-tiered dispute resolution clause which include wide range of ADR and ODR mechanism were aptly examined with recommendations for the review of dispute resolution framework in the Islamic finance industry in Malaysia. Various options were suggested for improvement and removal of legal obstacles, undermining the dispute resolution framework in Islamic finance, an ODR mechanism was however not suggested as part of the multitier processes.

The nature and origin of the Internet being the backbone of ODR needs to be appraised to create a viable link to developments in the ODR movement. According to Katsh²⁹, the era of user generated values was characterised by series of disputes in the cyberspace which necessitated the Phenomenon of ODR. The growth in internet services and components, which makes ICT a central part of our daily usage, has been categorised into two mainly; Web 1.0 and Web 2.0.³⁰ Web 1.0 was used by experts to describe internet contents and values supplied by the owner/builder of a website, in this arena

²⁶ Zulkifli Hasan and Mehmet Asutay, "An analysis of the Courts' Decisions on Islamic finance disputes.", vol.3 (2011), *ISRA International Journal of Islamic Finance*, at 44.

²⁷ Markom Ruzian, and Noor Inayah Yaakub, "Litigation as dispute resolution mechanism in Islamic finance: Malaysian experience"., (2012), *European Journal of Law and Economics*, DOI: 10.1007/s10657-012-9356-x, at 1-20.

²⁸ Syed Khalid, n.19 at 99.

²⁹ Katsh Ethan & Wing Leah, n. 18 at 19.

³⁰ O'Reilly Tim, "What Is Web 2.0: Design Patterns and Business Models for the Next Generation of Software," *Communications & Strategies*, vol.65 (2007) at 17–37.

incidence of dispute is lower, as there is little interaction and low adaptability and features for end-users. On the other hand, Web 2.0 represents modern websites which is largely user-generated contents and values; hence the number of users is synonymous with the amount of dispute generated as a result. Katsh retraced the origin of the Internet as a tool for military and research venture. He further examined the quest for harmonious relationship among cyber-stakeholders to lend a voice for an online platform, where disputes arising from the use of the Internet for various purposes, such as domain name disputes can be resolved.³¹ He explained further application of how ODR was deployed to resolve disputes arising from offline causes which was part of a pilot project aimed at decongesting the courts by engaging disputants through email and other conventional communication systems. Notable among these ODR pilot projects are: the Virtual Magistrate, the Online Ombuds Office (OOO) at the University of Massachusetts and a family dispute ODR project at the University of Maryland. The development of e-commerce start-ups such as eBay and the resolution of online dispute from cross border trade was the focus of Steve.³² He further analysed the successes recorded in the ODR projects deployed by eBay, which he said has resolved over 30 million disputes within a short period. The research shows that e-commerce disputes can be easily dispensed with quickly and without adding extra cost to any of the parties. Other successful ODR start-ups include: cybersettle and Smartsettle. However, Albornoz and González³³ pointed out the gap between ODR access in the developed countries and the least developed countries. While highlighting the feasibility and the constraints resulting from the

³¹ Katsh Ethan, "ODR: A Look at History – A Few Thoughts About the Present and Some Speculation About the Future" in *Online Dispute Resolution: Theory and Practice A Treatise on Technology and Dispute Resolution*, edited by Mohamed S Abdel Wahab, Katsh Ethan and Rainey Daniel, The Netherlands: Eleven International Publishing, 2012 at 21.

³² Steve Abernethy. "Building large-scale online dispute resolution & trustmark systems", *UNECE Forum on ODR*, (2003). <<http://www.mediate.com/Integrating/docs/Abernethy.pdf>> viewed on 30 August 2014.

³³ María Albornoz and Nuria González Martín, "Feasibility Analysis of Online Dispute Resolution in Developing Countries", vol. 44, no.2 (2013) *University of Miami Inter-American Law Review*, at 1-27.

collapse or absence of basic ICT infrastructures in Latin American countries, he explained how futile it may be to pursue online mediation in e-commerce disputes in developing countries. The writer's focus is similar to the existing problems in Muslim countries which are embracing Islamic finance; emphasis must be placed in resolving the infrastructural deficit in least developed countries in order to earn Trustmark and confidence of consumers in the use of ODR.³⁴ In addition, the Legal obstacles related to cross-border online transaction and the intricacies of Internet jurisdiction as it affects principles of party autonomy and access to justice was discussed in the light of the works of UNCITRAL-Working Group III on Online Dispute Resolution. Undoubtedly, the need for an online redress in cross-border transactions is growing with the increase in electronic transactions globally. Louis et al³⁵ observed the need for a Global Online Dispute resolution systems based on the legal framework and works of the United Nations Commission on International Trade Law (UNCITRAL). He concluded that this would avail stakeholders and parties the 'option to choose a fast track, simplified, inexpensive process for low value/high volume claims or a slower, sophisticated, costly but more detailed process for high-value/low-volume claims'.³⁶

Analysis of the online factor in dispute resolution when distinguished from face-to-face interaction in traditional ADR practice was the focus of an empirical research by Thompson.³⁷ He observed the differential outcome in e-negotiation and face-to-face physical negotiation and concluded that the later gives accurate resolution of dispute as emotion of the other party can be expressed in the oral correspondence rather than the

³⁴ Ibid.

³⁵ Louis Del Duca, Colin Rule, and Zbynek Loebel, "Facilitating Expansion of Cross-Border E-Commerce-Developing a Global Online Dispute Resolution System (Lessons Derived from Existing ODR Systems-Work of the United Nations Commission on International Trade Law)", vol.1,no.1 (2012) *Penn State Journal of Law and International Affairs* at 59-85.

³⁶ Ibid.

³⁷ Leigh Thompson and Janice Nadler, "Negotiating via Information Technology: Theory and Application" vol.58, no.1 (2002) *Journal of Social Issues* at 109-124.