

# ODR: An Islamic Jurisprudence Perspective

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**Abstract:** Modern Dispute resolution mechanisms have been positively influenced by the advent of the internet. Through Online Dispute Resolution (ODR), several ADR mechanisms have been adapted to for small claims, online and cross-border financial transactions. Existing ODR mechanisms seem to ignore certain underpinnings of Islamic jurisprudence in the development. This has made dispute resolution automation unattractive to shariah complaint sectors. Therefore, this paper seeks to examine the relevance of ODR under Islamic jurisprudence. The paper adopts a doctrinal method to expound principles of Islamic jurisprudence (*usul-ul-fiqh*) which supports new ways of resolving disputes using the internet. The study finds that existing Islamic law ethos such as: *sulh*, *maslahah*, *sad-ul-dhariah* among others are in agreement with the modern realities of online dispute resolution.

**Keywords:** ODR, conflict, resolution, Islamic, jurisprudence, Shari'ah, Sulh, Maslahah, Maqasid

## Introduction

This paper examines the concept of Online Dispute Resolution (ODR) and its justifications in Islamic jurisprudence. Traditional dispute resolution mechanisms have been inefficient in the resolution of a certain form of disputes such as small claims, e-commerce, cross-border and online financial disputes. Although ODR is founded in unfamiliar legal systems, its implementation poses legal, Shari'ah and legislative challenges in Muslim countries. Therefore, this article will consider the conceptual underpinnings of ODR and its potential for access to justice in certain disputes in specialized sectors. The economic and judicial benefits of the concept shall be discussed in the light of Islamic jurisprudence principles such as *Sulh*, *Maslahah*, and *Maqasid* among others. The paper examines the application of ODR

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mechanism in existing dispute resolution processes under the Financial Ombudsman Scheme (FOS) in Malaysia. It is pertinent to note that a Shari'ah complaint ODR must necessarily comply with the underlying principles of Islamic jurisprudence. Therefore, further consideration shall be given to discussions on the relevance of Shari'ah principles. Specific concerns over dispute system design are also identified.

### **Online Dispute Resolution: An Overview**

Online Dispute Resolution emerged in the 21<sup>st</sup> Century from developments in the field of Alternative Dispute Resolution (ADR) and its adaptability to peculiarities of the online environment (Katsh, Katsh, & Rifkin, 2001; Sami, 2008). In addition, it was primarily borne out of the need to deploy cutting-edge information technology innovation to aid access to justice. In the past decades, automation of service delivery was perceived as a threat to labour in the non-legal sectors with job cuts, due to a technological takeover of clerical jobs such as cashier, secretaries and bookkeepers (Howard & Schneider, 1988). In the justice delivery sector, experts predict a paradigm shift in the way lawyers perform their jobs and a potential for automation of the dispute resolution processes. This might be seen as threatening the ODR traditional methods of justice delivery.

ODR can also be understood from the convergence perspective, i.e., dispute resolution converges with information and communications technologies (ICT). Perhaps one of the fulfilments of Pound conference and Lord Woolf Reforms is that court systems globally have incorporated the ADR mechanisms in the administration of justice. Subsequently, amicable dispute settlement paradigms have also been adopted in regional and international legal instruments (Smith, Cingel, Devaux, & Gelberg, 2010). Without a doubt, ADR has proved to be the most suitable and cost-effective method for resolving disputes arising from commercial and financial transactions in recent years. However, new challenges to financial dispute resolution abound in electronic and online disputes. Lack of a regulatory framework for stringent management of complaint is capable of clogging the justice system with high volume small claims (Del Duca, Rule, & Rogers, 2010). Courts are often clogged with expensive, congested, long procedures and formality (Schiavetta, 2005). This results in a long delay as the decision may take even years before a judgement sees the light of the day, and the economic or even emotional costs involved can be devastating for consumers.

In the administration of justice sector, an effective ODR paradigm has the potential of automating the dispute resolution processes which expert predict may soon threaten the legal profession and change the way lawyers do their businesses (Rose, 2009). From the foregoing, the dispute resolution sector of the modern society got its fair share of innovative technology with the emergence of ODR. Richard Susskind was aptly referring to ODR and the changing role of Lawyers when he observed:

The future of lawyers could be prosperous or disastrous...lawyers who are unwilling to change their working practices and extend their range of services

will, in the coming decade, struggle to survive. Meanwhile, those who embrace new technologies and novel ways of sourcing legal work are likely to trade successfully for many years (Susskind, 2010, p. 269).

The incorporation of innovative ICT equipment and technology into dispute resolution mechanisms began with taking evidence via video-conferencing, case-management software and online filing applications and admitting an electronic copy of documents. This was viewed as a mere aid to the judicial process, which was easier and faster as parties can access justice at a cheaper cost; hence, the emergence of courts facilitated by ICT, where the procedural steps mimic the court systems. Cyber courts and cyber tribunals are studied differently from ODR, while the former is the adaptation of technology to court procedures the latter is the use of technology partly or wholly to ADR processes (Albornoz, 2012). However, the distinction could be blurred where courts provide ADR service, i.e., court-annexed mediation. Thomas described the situation as follows:

Cybercourts are simply court proceedings that use exclusively (or almost exclusively) electronic communication means. They should be, and often are, considered to be part of the ODR movement, for two reasons. First, because the ODR movement emerged because of the clash between the ubiquity of the Internet and the territoriality of traditional, offline dispute resolution mechanisms. The term ODR is thus opposed to offline dispute resolution mechanisms, not to courts. Online ADR is only one part of ODR. Second, courts do not only provide litigation. As I said before, there also is court-based mediation and non-binding arbitration (Schultz, 2003, p. 32).

In essence, such feat recorded in the administration of justice system led to the integration of such technological advancement into traditional ADR mechanisms, hence the emergence of terms such as 'Online Mediation', 'Online Arbitration', etc. (Uchenna, 2012, p. 126).

Researchers have been inconsistent with the nomenclature of ODR in its early stage, as it is variously known as Electronic Dispute resolution (EDR) (Baumann, 2002, p. 1227), Internet Dispute Resolution (IDR) (Dusty, 2011, p. 337), Online Alternative Dispute Resolution (OADR) (Haloush & Malkawi, 2008, p. 330) and Technology Mediated Dispute Resolution (TMDR) (Uchenna, 2012, p. 125). However, regardless of the name used, most seem to have agreed that there is an increasing convergence between dispute resolution and ICT, which translates to a new regime for dispute resolution.

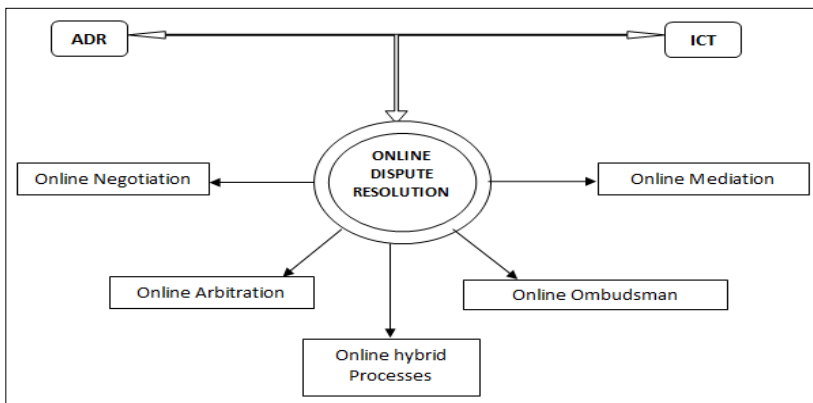
Notwithstanding the significant progress in the integration of ICT and ADR mechanisms, it is believed that ADR has not achieved its desired result where the dispute arose from transactions, which were conducted partly or wholly in the cyberspace. Where the value claim in a dispute is subject to commercial courts, the ability of the court to the hand-down decision in real time at low cost to the parties is put to the test. Traditional courts are grappling with appropriate approaches to resolve e-disputes which are mostly

small-claims but high volume. The cost of obtaining justice may well be higher than the claim (Cortes, 2011, p. 3).

Major breakthroughs in the interaction between dispute resolution and ICT occurred in the mid-1990s when the Villanova University established the Virtual Magistrate and University of Massachusetts' Online Ombuds Office. The Virtual Magistrate Project offered arbitration for rapid, interim resolution of disputes involving: system administrators, parties in an online system and those who were harmed by online postings, including files and documents (Cona, 1997, p. 975). Both the Ombuds and virtual magistrate were University sponsored pilot projects. Identifying an ODR platform depends on the nature of ICT mechanism deployed. Conley Tyler and Summer Raines observed as follows:

Simply providing information about ADR on a website is not ODR: some dispute process must be attempted. A range of communication methods can be used, including: Email - a virtually instantaneous transfer of mainly text messages, Instant Messaging - a variant on email that allows synchronous online chat, Online Chat - a synchronous, text-based exchange of information, Threaded Discussion (also known as bulletin boards) - an asynchronous, textual exchange of information organized into specific topics, Video/Audio Streams - asynchronous transfer of recorded messages, and video-conferencing - synchronous transfer of video information (Raines & Tyler, 2006, p. 3).

ODR can be simply explained as taking dispute resolution to the cyberspace. In other words, ADR mechanisms facilitated through the use of modern ICT equipment. Therefore, multiple ADR mechanisms which have been used in traditional financial dispute resolution can be adapted to establish flexible ODR platforms.



**Figure 1:** Possible permutations of ODR (Oseni & Omoola, 2016)

Figure 1 shows the various possible permutation of ODR, each permutation being a product of the existing ADR mechanism and innovative ICT techniques. This translates

to more ways of seeking redress from financial disputes online, without the need for travelling or being physically present at a dispute resolution institution. Each mechanism can be categorized into two broad groups based on the quantum of online procedures involved in the platform. They are: technology-based and technology-assisted (Devanesan & Aresty, 2012, p. 306).

### **Economic and Judicial Benefits of ODR**

This section discusses the accruable benefits of ODR to the justice delivery system and the economy as observed in other jurisdictions. However, all this benefits need to be placed under the Islamic jurisprudential context.

#### **a. Immediate access to justice for small claims**

Resolution of small claim disputes is not at the core of traditional court system as monetary limits for filing commercial cases are usually provided for by rules of courts. In the same vein, the growing cost of convening arbitration or any ADR process can be daunting, where the claim is less than USD50. This limitation undermines the fundamental principles of access to justice for online consumers, who are mostly involved in small-scale transactions.

Access to justice and timely redress of consumer complaint is one of the peculiar features of an efficient ODR mechanism (Del Duca et al., 2010). The ability to seek redress irrespective of the amount of claim involved in a financial transaction gives an edge to ODR over the traditional means of seeking redress by consumers. Where claims are small and seem to be negligible, ODR helps to protect the right of consumers to seek redress online without the need of spending extra cost and time in filing complaints. Consumers with small claims on items, which cost less compared to the amount to be expended on seeking justice are guaranteed adequate protection by ODR providers who help to mediate between them and the business through an online medium.

ODR encourages fair, accessible and effective resolution of the complaint. It is, therefore, expected that with the resolution of Islamic commercial disputes through online mechanisms access to justice will be enhanced. This is incapable of eliminating the challenges posed by distance and the need to travel, thereby reducing cost and facilitating access to justice.

#### **b. Court decongestion and small claims**

In Malaysia, there have been efforts towards the decongestion the commercial courts through the creation of more divisions of courts, including small claims tribunals to cater for the excess judicial workload (Choong & Balan, 2009). This phenomenon affects both the conventional and Islamic finance industry with procedural, technical delays

and eventual abandonment of cases due to the low monetary value involved (Oseni & Omoola, 2017).

The bulk of potential financial disputes involving financial services providers and consumers are 'volume cookie cutter disputes' (Marquess, 2000). This implies disputes, which have sameness and generic in nature and amenable to similar solutions. Such disputes are small claims causes with high volumes, which are slightly above or below the monetary threshold of the civil court jurisdiction. These can be easily resolved through ODR. If left to the traditional offline dispute resolution mechanisms, they are capable of clogging the cause list and overburden the wheel of justice.

Evidence from the Islamic financial service in Malaysia shows that the electronic mode (email/online) remains the preferred mode for consumers in the financial services industry. This is an overwhelming indication that ICT enabled complaint handling processes might be highly received by financial consumers. In other words, ODR will help to increase the number of consumers who will have access to justice in the Malaysia Islamic finance industry.

However, more volumes of disputes can be resolved through the deployment of ICT backed ADR processes, which also adopt less manpower and reduce the burden on judicial manpower.

### **c. Consumer trust and confidence**

The overall benefit, which an efficient ODR mechanism is capable of offering to the business in a B2C relationship, is trust mark from its customers (Abernethy, 2003; Ebner, 2012). The most often discussed types of trust in ODR are: user's trust in ODR, ODR as trust provider/facilitator and interpersonal trust (Abernethy, 2003; Ebner, 2012). In offline dispute resolution, trust is an essential aspect of the dispute resolution process. The Islamic finance industry is laid on the foundation of ethics, which might be eroded if disputes are not resolved fast and efficiently (Oseni & Hassan, 2011). The collaborative effect of virtual online communication between parties in ODR, which guarantees privacy, is capable of strengthening consumer confidence. This is capable of translating into high demand and confidence in the services of the business entity.

Privacy in the resolution of disputes helps to protect the reputation of the Islamic finance institutions by shutting the public out of disputes, which might have adverse effect and negative publicity on the Shari'ah compliant business. Therefore, the overall benefit of trust mark goes to benefit both the business and electronic consumers: consumers use more e-services, while appreciating the ability to get their complaint resolved fast and painlessly (Van den Heuvel, 2000, p. 7). On the other hand, there are other business benefits, as consumers are willing to pay more when they know a fair and seamless resolution process is available to them, and future relationships are not endangered.

#### **d. Party autonomy and privacy**

ODR is absolutely party-driven, as ODR platforms are built in an environment with varieties of online dispute resolution mechanisms for disputants, beginning with negotiation and mediation, through a technology neutral. Furthermore, privacy of the dispute is enhanced through the password-protected environment provided from the initial opening of the complaint, which is stored for statistical and other purposes. The progress of the complaint can be tracked only by the complainants with assigned registration number and log-in details.

In addition, parties are allowed to suggest solutions or compromise which will be communicated promptly without delay or time-lag. The registration number ceases to be active when the dispute is closed within specific days or resolved by parties themselves. This means that disputes can be resolved by parties themselves, except in few cases where online neutrals try to facilitate the resolution through blind bidding in online mediation or online arbitration.

#### **e. Cross-border transactions**

The Malaysian Islamic finance industry is fast becoming a major hub for cross-border financial transactions (Azhar Rosly & Afandi Abu Bakar, 2003). Financial consumers all over the world seem comfortable to invest in the Islamic bonds (sukūk) in Malaysia compared to other jurisdictions. This is due in part to the enabling environment created by a regulatory body with the presence of formidable Islamic finance institutions. How to resolve disputes, which is a necessary occurrence between a Shari'ah compliant business and its offshore consumer, could pose a serious challenge to the existing dispute resolution institutions (Oseni & Omoola, 2015). One notable advantage ODR can offer for the growing number of mobile bankers is the ability to seek redress without having to travel across borders physically or face-to-face transactions. The uncertainty of dispute resolution options available to cross-border consumers is apposite to the growth of e-commerce. Confidence as to enforcement of awards and decisions in online dispute can be ascertained through international and regional frameworks for ODR.

Although there are no existing empirical data on the viability of ODR in the Islamic finance industry for obvious reasons, the Organisation For Economic Co-Operation And Development (OECD) published in 1999 a '*Guideline for Consumer Protection in the Context of Consumer Protection*'. The guideline placed special attention on cross-border transactions and encouraged businesses, government and consumer representatives to foster access to justice through ODR in the European Union (OECD, 2000). Another regional ODR initiative was proposed by the US Department of Justice to the Organisation of American States (OAS) in 2010 to facilitate cross-border ODR in the American region. Under the OAS-ODR initiative, consumers will be able to file an online cross-border complaint against a vendor in another participating state (Del Duca, Rule, & Loebel, 2012, p. 69).

Following the consumer ODR initiative in the EU, Muslim countries in Malaysia and Gulf Cooperation Countries (GCC) regions may want to consider shariah-complaint ODR platforms. Malaysia, being a foremost tourist destination attracting visitors from around the world, seeks to benefit immensely by providing frequent visitors with ODR platforms for seeking redress in the event a transaction is disputed even after such tourists return to their countries of residence. This can only be achieved through an efficient ODR platform for all forms of commercial disputes, particularly those related to Islamic finance.

#### **f. Environmental Sustainability**

In addition to the cross-border advantage, the preservation of the environmental and economic resources opportune by the ODR mechanism is unprecedented. Capital flights have been expended in accessing justice across borders; this translates to harming the environment in the emission of greenhouse gases (GHGs), which contributes to the Ozone layer depletion and global warming (Ebner & Getz, 2012). Furthermore, the huge paperwork involved in traditional dispute resolution mechanism is against the conservation of forest resources. This is a major environmental advantage which ODR has over other dispute resolution mechanisms including ADR. It is suggested that dispute resolution clauses in green building projects backed by Islamic financing facility should incorporate an appropriate ODR mechanism.

#### **Islamic Jurisprudence and ODR Mechanisms: An Analysis**

This section examines the relevance of ODR in accordance with the principles of Islamic jurisprudence. While the benefits identified in section 3 can be attributed to pure business and legal imperatives, there is the need to consider the desirability of ODR under Islamic law. Thus concepts such as Sulh, Maslahah, *Maqasid*, *Amanah* (trust), among others, will be discussed.

The deployment of ODR for the Islamic dispute resolution must necessarily comply with the fundamental principles of Islamic law. Therefore, some principles of Islamic jurisprudence (*usūl-al fiqh*) shall be analysed in relation to the benefits, purpose and underlying assumptions of businesses and access to justice. This will distinguish a Shari'ah complaint ODR process from the existing conventional framework in other jurisdictions. It will also unravel the basis of ODR in Islamic jurisprudence. Existing studies show that ODR can be made applicable in online payment system and transactions within the Islamic finance industry. The relevance of Islamic legal principles in the discussion lies in the need for *Shari'ah* compliance in dispute resolution procedures. In the light of these, principles such as: *Ṣulḥ*, *maslahah*, *sadd-ul-dharâi*, *Amânah* (trust) among others will be considered.



## **Şulh**

*Şulh*, a term variously translated as negotiation, mediation or conciliation, can be used to describe any process which is aimed at settlement of dispute and suspension of hostilities (Othman, 2007). Other dispute resolution alternatives, which have been acknowledged in Islamic law include: compromise of action and amiable composition (Rasyid, 2013). This position attests to the inexhaustive mechanisms for settlement in Islam, which is only subject to terms that proscribe the lawful (*halāl*) or permits the unlawful (*ḥarām*).

Shariah complaint ODR, as a form of resolution facilitated through modern ICT equipment, will only be subject to disputes, which do not change the lawful to unlawful. It should be viewed as addition to the growing list of settlement options available and allowed in Islamic law. Similar to emerging technologies, which have been adjudged by the Muslim jurists as *halāl*, ODR mechanisms can be easily suited to achieve the overall understanding of *Şulh* in between businesses and consumers. In the context of Islamic finance dispute resolution, there is the need for more options for the resolution of disputes. ODR is capable of adding the required option, which far exceeds the existing mechanisms in the industry.

## **Maşlahah**

In the resolution of financial disputes, the regulators usually take cognisance of the overwhelming welfare and interest of the public in order to enhance financial confidence and trust. This is in accordance with the principles of *maşlahah* - a term which has been technically used to mean 'general good' or 'public interest' (Khadduri, 1979, p. 214). According to Muhammad Rashid Rida, *maşlahah* is the basis of reinterpretation of the *muāmalāt* or civil aspect of the Shari'ah, which also includes commercial dealings between individuals in any given society (Muhammad Hashim Kamali, 2003, p. 285).

In line with the above, the dispute resolution landscape must be in the general good of the public. *Maşlahah* should be given priority in the manner of implementation and enforcement of dispute resolution alternatives (Kamali, 2000). With the immense growth recorded in online commercial services, ODR mechanisms can be used to further enhance the protection of the public from unfair trade. This is consistent with the overreaching principles of *maşlahah* in the Islamic jurisprudence.

## **Şadd-ul dhari'ah**

In its juridical meaning, *şadd-ul dhari'ah* means 'blocking the means to evil' (Saleem, 2010, p. 300). This principle is applicable where an expected evil or harm is likely to occur, such evil must be obstructed before it escalates. Kamali, however, suggested that its meaning and application may be extended to 'opening of beneficence'. ODR serves a

means for opening abundant benefits for Muslim consumers by providing more mechanisms for resolving disputes with corporate entities and individuals.

In addition, the present dispute resolution mechanisms such as litigation and arbitration, although not inherently evil or unlawful, have been proven to possess peculiar weaknesses for business and commercial exigencies (Ghanem, 2014). Where a lawful means is expected to lead to an unlawful result or when a lawful means, which normally leads to a lawful result is used to procure an unlawful end' such means must be blocked' (Ghanem, 2014).

Contemporary litigation and arbitration with its bogus outcomes have been likened to evil and harm due to their loss of earnings, damage to relationship and bankruptcy (Rachlinski, 1996, p. 113). In particular, the ineffectiveness and virile nature of offline dispute resolution mechanisms in dealing with electronic commercial transactions laid credence to the harm, which could be visited on Muslim consumers. In addition, arbitration and other ADR processes seem to be inadequate for the peculiarities and nature of online transactions. Therefore, there is the need to close the avenue for further losses, while actively attempting to provide cost-effective remedy for the online consumers through Shariah-compliant ODR.

### ***Maqāsid-al-Sharī'ah - Hifz al-Māl (Property)***

One of the objectives (*maqasid*) of the Shari'ah is to protect the property of all citizens (Nyazee, 2000, p. 202). According to Al Ghazali, the preservation of *mal* (wealth), '*aql* (intellect), *nasl* (progeny) and *nafs* (life) of the people is a *sine qua non* to the protection of the (din) religion. In the fulfilment of the objectives of the Shari'ah, the purposes can be divided into three, mainly, *daruriyat* (necessities), which is the primary objective. The other two are *hajiyyat* (needs) and *tahsiniyyat* (supplementary), which seek to establish ease and facilitate the primary objectives (Nyazee, 2000, p. 202).

In the context of Islamic finance, loss of lawful earning or usurping the savings of financial consumers is unlawful, irrespective of the amount either low or high. The protection against this loss can be considered as a primary objective of the Shariah law, while the use of easier methods to mitigate or remedy the loss can be said to facilitate the recovery.

The uncertainty created by the existing dispute resolution mechanism in Shari'ah complaint financing has caused untold losses for the consumers. In Malaysia, for instance, the varying decisions of the civil courts on Islamic finance cases attest to this fact (Zakaria, 2013, p. 180). A proper blend of ADR and ICT, which can be found in ODR, is capable of avoiding disputes, which could result in litigation courts and loss of earnings for Shari'ah complaint business and consumers. Other areas of relevance are the preservation funds for Legal practitioners' fee, cost of travelling, accommodation for parties and the wasted time can be avoidable through the adoption of ODR. This is because

parties can negotiate, mediate or arbitrate through Shari'ah technological interface, where sentiments don't come in between the resolution process.

In addition, small claims which might be considered negligible can be filed at no additional cost to the complainant through online medium and addressed accordingly. This will guarantee the protection of the funds and property of the Muslim consumers.

### **Darar Yuzal or Removal of harm**

*Darar Yuzal* is a legal maxim of Islamic jurisprudence (*al-qawaid fiqhiyyah*) extracted from the sayings of the Prophet Muhammad-Peace be upon Him (Ḥadīth) *la dharar wa la dirar fi'l-Islam* which means 'no harm shall be inflicted or reciprocated in Islam' has been the basis of defining beneficial concepts in *muāmalāt*, including *takāful* (Abdullah & Furqani, n.d., p. 17; Zarabozo, 1999). This principle is very supportive of ODR. This is partly due to the ease it facilitates for access to justice for financial consumers, it also ensures confidence and guarantees trust.

The harms, which are visited on the Muslim consumers and businesses both online and offline include fear of loss of lawful earnings, a method of submission of complaints and concerns over how to retrieve or resolve the error as soon as possible and without undue delay. Any dispute resolution mechanism such as ODR, which is capable of accelerating the removal of such harm or facilitate resolution, will be allowed under Islamic Jurisprudence.

Similar manifestation of this legal maxim is explicit in the sub-rule which states that "*ad-dararu la yuzalu bid-darar*" which means 'harm is not eliminated by harm' (Abdallah, 2010). In essence, where a consumer files a complaint against any entity, ODR seems to be the most harmless, other offline dispute process are capable of causing unnecessary difficulty to the consumers.

### **Shari'ah risk, Legal Risk and Reputational risk**

The use of ODR to resolve disputes emanating from Shariah complaint transactions is capable of enhancing risk management practices of Muslim businesses (Ghoul, 2011; Mansoor Khan & Ishaq Bhatti, 2008). With the adoption of ODR, there is a threefold benefit for the IFIs risk management vis-à-vis protection from Shari'ah risk, legal risk and reputational risk. Risk management, being one of the core principles in financing, can be enhanced through a viable ODR mechanism for the industry. In addition, ODR guarantees the reduction of legal risk both for the consumers and the Islamic finance institutions.

The risk of non-compliance with legal procedures for resolving disputes and complaints are resolved in real-time to avoid expensive litigation, which might dent the reputation and public sentiment against parties.

On the part of the Muslim consumers, the availability of ODR mechanisms in the Islamic businesses is a money-back guarantee for online and offline transactions, as any loss incurred is easily appraisable via online medium. This is because complaints can be submitted and dispensed with confidentially, fast and in most cases at no cost to the financial consumers.

### ***Amānah* (Trust)**

In an Islamic finance contract, the contractual nature of the relationship between the consumer and financial institution is based on mutual partnership i.e., profit and loss sharing (PLS) as opposed to conventional financing, which precludes partnership with the consumer (Hassan & Lewis, 2009). In such a commercial relationship, mutual trust exists between the partners; this is in addition to the terms of the agreement. Where *amanah* (trust) ceases to exist, this could strain the financial relationship and might lead to the termination of the partnership.

Protection of the trust element between the partners can be achieved through the availability of an accessible complaint mechanism. The presence of a real-time mechanism for dispute resolution such as ODR promises to deliver fast resolution of the complaint, which can rekindle trust between two contracting parties.

### **Conclusion**

The deployment of ODR for Shari'ah compliant transactions may be admirable, but there are few inherent challenges with regards to the appropriate element of a Shari'ah compliant. The objective of *sulh* goes beyond 'getting to yes' as it includes amicable settlement, maintenance of ties among and between parties and avoiding harm. Therefore, any dispute system design (DSD) must conform to relevant Shari'ah precepts highlighted above in order to be acceptable. Although DSD is primarily within the purview of computer algorithms for dispute resolution, the role of legal experts cannot be over emphasized.

A major challenge in the field of ODR is its design and implementation which requires technical specification to suite specific legal environment. Dispute System Design (DSD) has been developed in other jurisdictions without consideration for Islamic law principles. It must not necessarily mirror the secular dispute landscape but may adapt specific techniques which are not averse to Islamic law principles. A faith-based DSD is expected to seek inspiration in reducing harm, without sacrificing cost and culture (Bloch, 2009). In this context, 'power dynamic may be shaped to allow an interests-based approach' with a combination of culture and organizational efficiency which can form the basis of a Shari'ah based dispute system design (Kinon, 2012).

This study shows that there is a dearth of literature on Shari'ah compliant ODR with few writing on its prospects for the Islamic finance industry for financial consumers

(Oseni & Omoola, 2015). A concerted effort towards DSD for Islamic finance has not surfaced in academic research.

It is recommended that Shariah scholars and dispute resolution experts prescribe the specific requirement of ODR design based on the *Maqāṣid-al-Sharī'ah*. These requirements will serve as a guide to ICT experts and programmers in designing Shari'ah complaint ODR system. Although the expected user of the system is online customer service officials and consumers, the system must be able to preserve the principles of the Muslim faith.

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