



The Important Role of the Organization of Islamic Cooperation in Resolving Investor-State Dispute Settlements through the Perspective of International Law

Adeline Anindya Rusdianto

Universitas Padjadjaran, Indonesia

Alamat: Jl. Raya Bandung-Sumedang KM.21, Jatinangor, Sumedang, Jawa Barat 45363

Korespondensi penulis: adeline21001@mail.unpad.ac.id

Abstract. *The Organization of Islamic Cooperation (“OIC”) seeks to enhance economic collaboration between its member states, as outlined in the OIC Charter. Its key efforts is the Agreement for Promotion, Protection and Guarantee of Investments among OIC Member States (“OIC Investment Agreement”), which provides safeguards for cross-border investments and outlines procedures for resolving disputes between investor-states. Article 17 of the Agreement allows for dispute resolution through conciliation or arbitration. However, the lack of a dedicated dispute resolution body and clear procedural mechanisms has led to uncertainty and differing interpretations, weakening its effectiveness. This article explores the OIC’s role in investor-state dispute settlement (ISDS) under the Investment Agreement. It highlights the need for a more structured and permanent mechanism to ensure fair and consistent resolution of ISDS cases, in alignment with the objectives of the OIC Charter.*

Keywords: *Dispute Resolution, OIC Charter, OIC Investment Agreement*

1. BACKGROUND

The Organization of Islamic Cooperation (“OIC”) is an international organization founded in 1969, headquartered in Jeddah, Saudi Arabia. It emerged in response to the burning issues facing the Muslim world, particularly the arson attack on Al-Aqsa Mosque in Jerusalem. It was established with the aim of promoting solidarity among Member States, fostering economic and social development, and addressing common challenges faced by the Islamic world. OIC is considered to be one of the largest intergovernmental organizations between countries. With 57 member states, the organization ranks as the second largest intergovernmental organization after the United Nations (Supriani & Fianto, 2020). It acts as a collaborative platform for Member States to address issues related to politics, economics, culture, and humanitarian aid. The organization operates on the principle of consensus, with a focus on fostering cooperation and understanding among its diverse member nations.

Over the years, the OIC has addressed various global and regional challenges, including conflicts in the Middle East, poverty alleviation, and the promotion of education and science. On the international stage, OIC has actively advocated for the Muslim world’s interests and right, while also promoting interfaith dialogue and understanding. Despite facing criticism for its effectiveness and internal divisions, the OIC remains an important organization in the global

political landscape, dedicated to promoting progress among its member states and the Muslim community at large.

Not only that OIC is working on the matters of politics, social, and culture, OIC has also worked to enhance economic cooperation among Member States through some initiatives. The OIC's Member States account for one-sixth of the world's land area and more than one-fifth of the whole global population. Collectively, OIC member states contributed a modest \$5.7 trillion to the global GDP in 2012, amounting to just 8.3% of the world's total (Eldeeb, 2023). Due to the OIC's limited economic impact, therefore, the commercial interactions among its Member States is the most important in generating the growth of world's economy and improving the living standards of the Member States (Eldeeb, 2023).

One of the initiatives that was agreed to be made by the OIC's State Members is regarding The Agreement for Promotion, Protection and Guarantee of Investments ("**OIC Investment Agreement**" or "**Agreement**"). The significance of the Agreement lies in its role in safeguarding cross-border investments between OIC Member States without the framework of a Bilateral Investment Treaty ("**BIT**"). It provides protection towards investments in situations of BITs termination such as Egypt-Indonesia, some have been signed but are not yet effective (e.g., Iraq-Iran), while others were never signed at all (e.g., Saudi Arabia-Qatar) (Gaver, 2023). In November 2021, a report from the OIC Secretary-General stipulates that there are 29 parties and an additional 15 OIC Member States that have signed the agreement but have not ratified it. Through the OIC Investment Agreement, they reaffirm its commitment to enhancing economic cooperation between Member States. The preamble of the Agreement asserts the conviction of OIC Member States that fostering investment ties among Islamic countries is central to achieving economic development on a foundation of mutual benefit and shared goals (Haridi & Khan, 2014).

The OIC Investment Agreement remained relatively obscure until 2012, regardless being being established in 1981 and was enforced in 1988. However, this does not negate the potential for disputes to arise even with the Agreement in existence. A pivotal moment for the Agreement occurred when a Saudi investor brought it to prominence by successfully invoking it in the landmark case *Al Warraq v. Indonesia* (Gaver, 2023). Subsequently, investor-state cases related to the Agreement, such as *Al Rajhi v. Oman* and *Gargour v. Libya* have continued to rise.

The critical issue lies in the Agreement's provisions on Investor-State Dispute Settlement ("**ISDS**") under the Agreement. Disputes under the OIC Investment Agreement are resolved through the procedures outlined in Article 17, which provides for both conciliation and

arbitration. However, despite various investors attempting to utilize its dispute resolution mechanism since its enactment, limited information is available regarding the outcomes of these cases. The mentioned provisions under the Agreement are considered only meant to be a temporary measure (Gaver, 2023). It is observed that the dispute settlement provisions of the Agreement are not entirely clear and may contain ambiguities (Konstantinidis, 2022).

With its goal of fostering cooperation and maintaining amicable relations, the OIC plays a key role in settling ISDS-related disputes among its members, noting that the Agreement was established at the first place to create and enhance a conducive environment for investments, aiming to facilitate the circulation of economic resources among Islamic countries, its own members. This writing was written to determine the extent to which the OIC involve in ISDS, considering the formation of the OIC Investment Agreement itself. Accordingly, this paper will demonstrate how the OIC plays a key role in managing ISDS disputes among Member States, consistent with the spirit of its Charter, through the perspective of international law.

2. THEORETICAL REVIEW

Facilitating dispute settlement between states and investors is rooted by the role of international organizations in the broader theoretical frameworks of international institutionalism, economic cooperation theory, and the legal framework of international organizations.

First, international institutionalism posits that international organizations involvement are crucial in reducing transaction costs, enhancing legal predictability, and providing neutral forums for dispute resolution. International institutions can facilitate cooperation among states by establishing shared norms and mechanisms, especially in contexts lacking strong bilateral ties (Keohane, 1984). In the context of the OIC, this theory supports the notion that the organization has a structural role to play in mediating disputes among its members.

Second, the economic cooperation theory highlights how economic integration among states—particularly in regions or groups with shared cultural or religious identities—can be strengthened through common legal frameworks and dispute resolution mechanisms. Harmonization of legal and institutional systems plays a vital role in enhancing Foreign Direct Investment (FDI) among OIC members, highlighting the significance of an effective ISDS framework (Supriani & Fianto, 2020).

Third, from the legal standpoint, the law of international organizations underlines the importance of constituent instruments, such as charters and founding agreements, in defining the mandate, functions, and dispute resolution roles of an organization. Constituent instruments

not only establish the legal personality of organizations like the OIC but also assign binding responsibilities to create functional organs, including those necessary for dispute resolution (Shpakovych & Vladyka, 2018). The effectiveness of institutional frameworks is strongly linked to the presence of delegation and dispute resolution bodies—arguing that without enforcement mechanisms, commitments under international law may become symbolic rather than operational (Abbott & Snidal, 1998). Modern international organizations must not only serve as platforms for cooperation but also evolve into legal actors capable of interpreting and enforcing obligations between states and other stakeholders (Pauwelyn & Wouters, 2010).

This research builds upon these theories to analyze the OIC Investment Agreement and its Article 17 on dispute settlement. While the agreement provides a legal basis for arbitration and conciliation, the absence of a dedicated dispute resolution body creates uncertainty and undermines legal effectiveness. As such, this study critically evaluates whether the OIC, through its Charter and Investment Agreement, fulfills its intended function in investor-state dispute resolution, and whether the formation of a permanent ISDS organ could enhance economic cooperation among Member States.

3. RESEARCH METHODS

This research employs a normative juridical approach with a qualitative method. The approach aims to examine legal norms contained in international legal instruments, particularly the OIC Investment Agreement, as well as the founding charter of the OIC Charter.

This study relies on secondary data, which include both primary and secondary legal sources. The former include international treaties, the OIC Charter, and relevant international arbitration decisions, such as *Al-Warraq v. Indonesia* and *D.S. Construction FZCO v. Libya*, and the latter include academic literature, scholarly journal articles, documents from international organizations, and reports or commentary from official websites of the OIC and arbitration institutions.

4. DISCUSSION

Obligations of OIC in relation with Economic Cooperation under the OIC Charter

The constituent instrument, commonly referred to as the 'charter,' serves as the legal foundation for the formation and functioning of an international organization. It outlines the purpose of sovereign states in creating an organization and conferring specific rights and obligations (Shpakovych & Vladyka, 2018). The relationships between member states and the organizational organs are clearly articulated in the charters (Shpakovych & Vladyka, 2018).

With respect to the OIC, the organization itself was established by the OIC Charter. Through this specific Charter, the OIC has been given the rights and responsibilities in exercising its power as an intergovernmental organization. As any other constituent instrument, the Charter outlines the goals and principles of the organization and establishes regulations regarding membership, observer status, dispute settlements through amicable means, budget, finance, and operational procedures (OIC, 2023).

Economically, the OIC Charter, particularly Article 1 on its goals and principles, commits the organization to enhancing economic and trade ties among Member States, aiming toward the creation of an Islamic Common Market. This provision reflects the spirit of the Charter's preamble, which underscores the OIC's foundation on Islamic values of unity and fraternity, the importance of strengthening solidarity among Member States to protect their shared interests globally, and the commitment to fostering cooperation for sustained socioeconomic development and equitable integration into the global economy. This implies that the OIC shares an interest in enhancing economic cooperation through Islamic economics which means that it should provide direction for economic activities based on Islamic principles, with the overarching goal of achieving justice for the entire human population (Supriani & Fianto, 2020).

In accordance with the said objectives provided by the Charter as mentioned above, the OIC initiates General Agreement for Economic, Technical and Commercial Cooperation among Member States of the Islamic Conference. The agreement aims to promote economic, technical, and trade cooperation among OIC Member States. Specifically, it is anticipated that Member States shall establish the requisite frameworks, assurances, and inducements to facilitate the unimpeded circulation of capital and investment amongst their jurisdictions. Such shall be executed by complying with the prevailing laws and regulations of each Member States, ultimately aiming to enhance the socio-economic development of them. The agreement purposefully aiming to open new measures for the optimal utilization of economic resources within the Muslim world (Conventions, 2023). To further facilitate collaboration among its members, OIC countries strive to collectively attract Foreign Direct Investment ("**FDI**"). Recognizing FDI as a benefit stemming from globalization, this concerted effort is seen as advantageous for both developing and emerging countries (Supriani & Fianto, 2020). Thus, in 1981, OIC members concluded the OIC Investment Agreement to support its objectives to enhance Islamic economic cooperation.

The Issue of Dispute Settlement for OIC Member States under the OIC Investment Agreement

Disputes under the Agreement are to be resolved through conciliation or arbitration, as outlined in Article 17, pending the establishment of a formal dispute settlement body. This means that the dispute will be settled through an operation of ad-hoc arbitration (Kumtepe, 2020). This is in line as concluded by the tribunal in *Al-Warraq v. Indonesia* case, that there is no justification to assume that the International Islamic Court of Justice, as established by the OIC Charter, is the appropriate body under Article 17 for resolution of ISDS (*Al-Warraq v. Indonesia*, 2014). The statement further emphasizes that currently, no dispute settlement body within the OIC Investment Agreement is operational and ready to handle claims from investors against states (Kumtepe, 2020).

Since the 2012 *Al-Warraq v. Indonesia* case, approximately ten investors have filed arbitration claims based on the OIC Investment Agreement. Within one of these instances, arbitrators appointment were declined by respondent States. Additionally, the OIC Secretary-General, who serves as the appointing authority under the OIC Investment Agreement, declined to proceed with constituting the tribunal—reportedly due to the lack of specified time limits for appointments and political pressure from certain Member States (Kumtepe, 2020). Claims by the states in question denying treaty-based arbitral consent led, in various proceedings, to the Permanent Court of Arbitration ("PCA") assuming the role of appointing authority following claimant's claim (Kumtepe, 2020).

The disputes concerning investor-state between OIC's members creates an issue as the provision on dispute settlement under the OIC Investment Agreement raises questions as to whether the provision itself could resolve the problems of ISDS. This statement is proved as some cases led to different interpretations of Article 17. The difference of interpretation occurred due to the fact that the OIC has not created a dedicated body in managing disputes based on the OIC Investment Agreement, and a majority of its Member States are participants in alternative investment protection mechanisms where these cases of ISDS under the OIC Investment Agreement were tried by different institutions (e.g., PCA, International Centre for Settlement of Investment Disputes ("ICSID"), etc.) (Ziade & Plump, 2021). This matter creates an uncertainty to how OIC Member States could settle their disputes concerning investments. To illustrate the challenges surrounding dispute resolution under the OIC Investment Agreement, the following are several case examples that have arisen in connection with its dispute settlement provisions:

- **D.S. Construction FZCO v. Libya**

This case concerns D.S Construction FZCO as the claimant from Dubai and Libya as the respondent. The claimant here, was making the claim selected an arbitrator, but Libya did not appoint one in the OIC arbitration. Subsequently, the claimant sought Secretary General's intervention, who serves as the appointing authority under the OIC Investment Agreement, to designate an arbitrator for Libya. Despite this request, the Secretary General of the OIC did not provide a response. Responding the D.S. Construction's application, the PCA accepted the request and, pursuant to the 1976 UNCITRAL Arbitration Rules, appointed an authority to designate an arbitrator for Libya. The two co-arbitrators subsequently selected the President of the Tribunal. Paris was eventually chosen as the arbitration seat, and the UNCITRAL Arbitration Rules were applied with mutual written consent of the parties, notwithstanding Libya's objection to the tribunal's constitution. The procedure was divided to address Libya's objection, and in its partial award on February 15, 2018, the tribunal determined that it had been properly constituted. Libya initiated annulment proceedings against the tribunal's partial award, emphasizing that the tribunal lacked proper constitution because the PCA acted as the appointing authority under the UNCITRAL Rules, which do not apply within the framework of the OIC Investment Agreement (Ziade & Plump, 2021).

- **Al Rajhi v. Oman and Gargour v. Libya**

The ruling of D.S Construction FZCO v. Libya brings unfavorable developments for other investors dealing with uncooperative states. In relation with the cases of Al Rajhi v. Oman and Gargour v. Libya, appointments were also facilitated by the PCA. A similar issue could arise in these two cases, as seen in D.S. Construction FZCO v. Libya; however, since the proceedings are taking place in the UK and Switzerland, the impact of the French court's reasoning may be limited (Gaver, 2023).

- **Itisaluna v. Iraq**

Through this case, the decision of the tribunal determined that the parties to the OIC Investment Agreement had expressed initial consent to arbitration in a general manner, in accordance with Article 17, but not specifically to arbitration under ICSID. Consequently, the dispute did not fall within the scope of Article

25(1) of the ICSID Convention, which mandates that disputes be brought "to the Centre." While subsequent tribunals may reach different conclusions, the *Itisaluna v. Iraq* award appears to preclude the possibility of future OIC disputes being heard at ICSID (Gaver, 2023).

These cases show that as there was no one specific organ or body that is governed under Article 17 of the OIC Investment Agreement, which resulted in an uncertainty on settling disputes between investors and states of the OIC members. Moreover, the obligations of the Secretary General in appointing arbitrator during situation where respondent does not appoint arbitrator under Article 17, is not being implemented correctly as can be seen from the case of *D.S. Construction FZCO v. Libya*. These facts could be concluded that the OIC itself has not yet fully carried out its duties to resolve disputes among its members as governed by the OIC Charter in light of the OIC Investment Agreement.

The Issue of Dispute Settlement for OIC Member States under the OIC Investment Agreement

In line with what is stipulated in the Charter, OIC bears the burden to strengthen economic cooperation in accordance with Islamic principles. This is also remembering that the primary objective of this organization is to safeguard the interests of the Muslim world by fostering cooperation among nations and actively contributing to the promotion of international peace and harmony among diverse global populations (Supriani & Fianto, 2020). Thus, it is critical to decide the importance of dispute settlement regarding investment by OIC itself among its members.

At this time around, to answer the questions regarding ISDS among its members, OIC initiated on establishing an organ or body to specifically settle disputes on investments matters between investors and States. The OIC has initiated efforts to revise the Agreement. In 2019, through Resolution No. 2/46-E, the OIC Council of Foreign Ministers instructed the Secretary-General to submit a Concept Note to an open-ended Intergovernmental Experts Group Meeting, with the resulting proposals to be referred to the Standing Committee for Economic and Commercial Cooperation (Gaver, 2023). One of the matters that became the topic of discussion in October 2022 in Casablanca was regarding the Establishment of a Permanent Organ & Mechanism for Settlement of Investment Disputes (Gaver, 2023).

The one option currently under consideration by the OIC involves affiliating the organ with the Islamic Development Bank with its seat in Jeddah, Saudi Arabia. This arrangement can be compared to the association between the World Bank and ICSID (Kumtepe, 2020). The

suggested organ of dispute settlement is just one example of the OIC's ongoing initiatives to revamp the mechanism of international dispute resolution between its member states. Concurrently, the OIC is also actively working towards the establishment of the OIC Arbitration Center in Istanbul. This center will be responsible for managing commercial arbitration disputes involving businesses from OIC Member States. Additionally, the OIC Arbitration Center is expected to handle investment arbitration cases that arise not only under the OIC Investment Agreement. This includes cases arising from bilateral investment treaties between OIC Member States that may designate the OIC Arbitration Center as a potential forum for dispute resolution (Kumtepe, 2020).

5. CONCLUSION

In summary, OIC serves as a significant international organization in response to critical issues facing the Muslim world, the OIC strives to promote solidarity, economic and social development, and address the 57 member states' common challenges. As the second-largest intergovernmental organization globally, the OIC operates on the principle of consensus to foster collaboration across political, economic, cultural, and humanitarian domains. In the economic sphere, the OIC encourages cooperation and aims to enhance economic ties among its member states. One notable initiative is the OIC Investment Agreement, established in 1981, which safeguards foreign investments among member states. However, the absence of a dedicated dispute settlement body and the limited economic impact of the OIC underscore challenges. Disputes arising from the OIC Investment Agreement have seen varied interpretations, leading to uncertainties in resolving disputes between investor-states.

Recent efforts by the OIC, such as the establishment of a Dispute Settlement Organ and the OIC Arbitration Center in Istanbul, reflect ongoing attempts to address these challenges. In the broader context, the OIC faces the responsibility of effectively resolving investor-state disputes in line with its Charter, which emphasizes economic cooperation and unity among member states. As a permanent organ is established for settling disputes on specific matters, such as investments, this signals a commitment to enhancing the organization's role in fostering economic collaboration. The outcome of these initiatives will determine the OIC's effectiveness in addressing economic challenges, fulfilling its objectives, and contributing to the resolution of investor-state disputes lining with the spirit of the OIC Charter.

REFERENCES

- Abbott, K. W., & Snidal, D. (1998). Why States Act through Formal International Organizations. *Journal of Conflict Resolution*, 42(1).
- Agreement for Promotion, Protection and Guarantee of Investments among the OIC Member States, 1981 (entered into force 1982)
- Al-Warraq v. Indonesia. (2014). Award.
- Conventions*, www.oic-oci.org/page/?p_id=40&p_ref=16&lan=en.
- Eldeeb, Ibrahim Mohamed. et al. (2023). The conceptual framework of International Trade Between Organisation of Islamic Cooperation (OIC) countries. *Law, Policy, and Social Science*, 2(1). <https://doi.org/10.55265/lpssjournal.v2i1.25>.
- Gaver, Craig D., et al. (2023). Checking in on the OIC Investment Agreement: New Arbitrations, but Slow Progress on Creating a Permanent Dispute Settlement Mechanism. *Kluwer Arbitration Blog*. <https://arbitrationblog.kluwerarbitration.com/2023/03/17/checking-in-on-the-oic-investment-agreement-new-arbitrations-but-slow-progress-on-creating-a-permanent-dispute-settlement-mechanism/>.
- Haridi, Samaa, and M. Imad Khan. (2014). Agreement On Promotion, Protection And Guarantee Of Investments Among Member States Of The Organization Of The Islamic Conference (Oic)-World Arbitration Reporter, Second Edition.
- Keohane, R. O. (1984). *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton University Press.
- Konstantinidis, Ioannis. (2022). Deciphering the OIC investment agreement in light of the ITISALUNA V. Republic of Iraq Award. *International Review of Law*, 11(1). <https://doi.org/10.29117/irl.2022.0212>
- Kumtepe, Yusuf, et al. (2020). Investment Dispute Settlement Body of the Organisation of Islamic Cooperation: A Dead End for Claims under the OIC Investment Agreement?. *Kluwer Arbitration Blog*, <https://arbitrationblog.kluwerarbitration.com/2019/12/29/investment-dispute-settlement-body-of-the-organisation-of-islamic-cooperation-a-dead-end-for-claims-under-the-oic-investment-agreement/>.
- Organization of the Islamic Cooperation (OIC). *Republic of Türkiye Ministry of Foreign Affairs*, www.mfa.gov.tr/OIC.en.mfa.
- Pauwelyn, J., Wessel, R. A., & Wouters, J. (2012). *Informal International Lawmaking*. Oxford University Press.
- Shpakovych, O. M., & Vladyka, S. A. (2018). Constituent instruments of international organizations as a special source of the Law of International Organizations. *Statute Law Review*, 40(3). <https://doi.org/10.1093/slr/hmy006>

- Shpakovych, Olha M, & Svitlana A Vladyka. (2018). Constituent instruments of international organizations as a special source of the Law of International Organizations. *Statute Law Review*, 40(3). <https://doi.org/10.1093/slr/hmy006>.
- Supriani, I., & Fianto, B. A. (2020). What drives the inflow of FDI in OIC countries? Evidence from top 10 hosts of inward FDI flows. *Jurnal Ekonomi & Keuangan Islam*, 6(2). <https://doi.org/10.20885/jeki.vol6.iss2.art2>
- Ziade, Roland & Plump Andrew. (2021). Paris Court Sets aside Partial Award on Tribunal Constitution in OIC Investment Arbitration against Libya. *Linklaters*. <https://www.linklaters.com/insights/blogs/arbitrationlinks/2021/april/paris-court-sets-aside-partial-award-on-tribunal-constitution-in-oic-investment-arbitration>.