



Sharia Insurance Disputes Through Sharia Arbitration: A Legal Discourse

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Abstract - Sharia insurance in Indonesia has experienced significant growth, accompanied by increasingly complex disputes between Islamic insurance companies and policyholders. The primary issue lies in the fragmented legal framework for resolving sharia insurance disputes, with relevant provisions spread across multiple laws and regulations. This has become a discourse and issue of legal norms for sharia arbitration as an option for Islamic arbitration is currently governed by Supreme Court Regulation Number 14 of 2016 and governs the settlement of sharia insurance claims. The research method used is descriptive normative by analyzing regulations laws governing sharia dispute resolution. The results of this study explain that state policy in managing sharia Article 58 of Law No. 48 of 2009 concerning Judicial Power is still used by constitutional authority because insurance issues are still being discussed. Law No. 30 of 1999 must therefore be amended, particularly the section pertaining to the District Court, which needs to be enhanced by the Religious Courts and the processes for settling conflicts through sharia arbitration.

Keywords: Dispute Settlement; Sharia Insurance; Sharia Arbitration

I. INTRODUCTION

The emergence of sharia insurance has brought forth unique legal challenges, particularly in resolving disputes in a manner that aligns with Islamic principles. One such method is through sharia arbitration, a non-litigation dispute resolution mechanism. The presence of Islamic Banks as financial institutions was welcomed positively by the public (Mardani, 2015), so that many other Islamic financial institutions were born, and one of them Islamic insurance is something that the public is really interested in. Sharia insurance is a substitute for takaful insurance, it is hoped that the insurance needs will be clearer, free from maysir, gharar and usury, A. (Hussen, 1995). This is because Conventional insurance is incompatible with Islam for Muslims since the agreement between the insured and the insurer (such as an insurance firm) includes some unnecessary ambiguity (gharar) (Warsani Purnama Sari, 2020). This is in accordance with the meaning of Article 29 paragraph (1) of the 1945 Constitution which reflects that Islamic law is the source of the formation of national law in Indonesia, (Sularno, 2006).

Mochtar Kusumatmadja emphasized, national legal products are prohibited from colliding with sharia or are Islamic law (Hidayatullah, 2020). The 1945 Constitution provides freedom to practice beliefs and implement applicable regulations so that its existence becomes a solid foundation for its adherents, (Febriansah, 2010). Formation of law in order to meet the needs of society in accordance with the benefit of Muslims as the ideals of the 1945 Constitution. Meanwhile, the implementation of the sharia economic system in Indonesia is a consequence of the large number of Indonesian people who are predominantly Muslim and

want an economy based on the Al-Qur'an & As-Sunnah. Therefore, the appointment of a dispute settlement institution that occurs in sharia economic transactions is contained in the law on religious courts, which has the duty and authority to examine, decide and resolve sharia economic disputes as explained in Law Number 50 of 2009 concerning amendments to Religious Courts Act. Law Number 3 of 2006 concerning Religious Courts. Law No. 50 of 2009 gives the meaning that the resolution of sharia economic disputes within the scope of litigation is absolutely owned by the religious courts.

This is considered appropriate, because there will be harmony between the implementation of material law founded on the principles of sharia and the religious court that is a forum for justice seekers who are Muslims or those who are subject to Islamic law, can be carried out properly, (Rahmi, 2014). Implementation and handling Sharia economic issues are settled in a number of cases at the District Court in addition to the Religious Courts (litigation). Nonetheless, it is explicitly stated in the Law on Religious Courts that the Religious Courts are empowered to decide sharia-compliant commercial conflicts. Next, arbitration is given authority as a non-litigation institution. According to Article 58 of Law No. 48 of 2009, the law on judicial power states that civil cases can be settled outside of court (non-litigation) through arbitration, mediation, conciliation, negotiation, and expert opinion. This article does not explicitly regulate sharia economic disputes, but sharia disputes are included in civil disputes, which can be resolved in arbitration institutions.

These provisions strengthen the position and authority of the Arbitration and Article 3 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which governs the Alternative Dispute Resolution (AAPS) institution, affirms arbitration's power to settle disputes and declares that district courts lack the jurisdiction to decide sharia economic cases. However, according to Article 56 of Law No. 30 of 1999 about Arbitration and Alternative Dispute Resolution, the parties are free to select the appropriate law for arbitration, not based on strict or inflexible legislative rules. The country's first insurance provider, PT. Syariah Takaful Indonesia (STI), was founded on February 24, 1994. Bank Muamalat Indonesia (BMI), PT. Tugu Mandiri Life Insurance (AJTM), the Indonesian Ministry of Finance (Kemenkeu), and the Indonesian Muslim Intellectuals Association (ICMI)—through the Abdi Bangsa Foundation and a number of Muslim businesspeople in Indonesia—were the main forces behind the establishment of STI. August 4, 1994, saw the establishment of PT. STI's sharia life insurance firm, PT. Asuransi Takaful Keluarga (Antonio, 1994), and on June 2, 1995, PT. General Takaful Insurance (ATU) became a sharia loss insurance company. Then ATK was inaugurated by the Ministry of Finance and started to run on August 25, 1994, while ATU was legalized by the Head of BPPT Ministry of Research and Technology on June 2, 1995.

A national conventional insurance firm entered the sharia insurance market as a result of the rise of two sharia insurance businesses as non-bank entities. Subsequently, the government issued a letter from the Ministry of Finance on November 7, 2002. 268/KMK.06/2002, and provides 3 (three) opportunities to establish sharia-based insurance, run by established insurance companies, (Ichsan, 2013). Sharia insurance has a particular feature, specifically the use of reciprocal risk or risk-sharing. Any surplus that the business receives is fully owned by the participant, and in reality, the sharia insurance company shares this surplus. Additionally, by establishing Law Number 40 of 2014 concerning Insurance, which makes a clear distinction between conventional insurance and the use of the concept of risk transfer, and sharia insurance, which uses the concept of risk-sharing, the government aims to strengthen the legal foundation for operating a sharia insurance business. The term sharia insurance refers to a group of contracts that are made between policyholders and sharia insurance businesses through contribution management.

Although Although some disagreements are settled in court, disagreements between the two parties still arise since the contract between the policyholder and the sharia insurance firm is founded on sharia principles: please assist and protect others. However, sharia arbitration is also used to settle some conflicts. The policyholder typically files a breach of contract action against the sharia insurance provider. In addition, there are varying interpretations of the policy's provisions, which are frequently brought on by disparities in

comprehension of those provisions, such as when calculating the quantity of claims made by various businesses. (Subagyo, 2011)

Uncertain product information exposure may also be to blame. Prospective policyholders are occasionally not given thorough explanations or information by Sharia Insurance Company agents regarding the products supplied and the clauses included in the insurance, (Desmadi, 2014). participants do not understand it perfectly. Usually, Participants can only agree to the insurance with mutual trust since the agent and potential policyholders have familial or kinship ties, which results in this lack of information provision, (Masykuroh, 2006). But when it comes to claims, policyholders and sharia insurance firms disagree. Generally speaking, the insurance provider can handle this. However, sharia principles, disagreements should be settled in accordance with sharia principles by an organization that is authorized to handle sharia economic problems, particularly by the customer complaints department. Sharia insurance disputes can be settled out of court or non-litigation through arbitration (sharia arbitration) and APS in addition to going through the court. Chapter XII of Articles 58 to 61 of Law No. 48 of 2009 concerning Judicial Power contains separate regulations for handling cases outside of the court. So, how may sharia arbitration be used to settle a discourse and norm issue in sharia insurance disputes?

II. METHOD

This research adopts a descriptive normative approach, focusing on the examination and analysis of legal frameworks governing sharia insurance disputes in Indonesia, In criminal law, the normative approach provides a framework for interpreting criminal norms, ensuring they are coherent and directive (Zajac, 2023). The study is primarily doctrinal in nature, employing a normative legal research method. This involves examining and interpreting existing legal materials related to sharia insurance and arbitration, such as statutes, court rulings, and relevant regulations. Primary Legal Sources: The research will analyze legislative texts, such as: Law No. 40 of 2014 about Insurance, Law No. 48 of 2009 concerned Judicial Power, Supreme Court Regulation No. 14 of 2016 on Sharia Arbitration, and Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. This will feature academic papers, legal opinions, and legal commentary from pertinent experts in the fields of insurance and sharia arbitration. Dictionaries and legal encyclopedias will be referenced for clarification of technical terms.

III. RESULT AND DISCUSSION

1. The Sharia Arbitration

The method for According to Law Number 30 of 1999, Article 1 Point 1, the basis for settling civil disputes outside of the general court is a written arbitration agreement signed by the parties. Alternative conflict resolution, on the other hand, refers to any disagreement or dispute resolution organization. A written arbitration agreement between the parties may serve as the basis for the settlement process, which may involve an out-of-court solution reached through expert judgment, mediation, conciliation, discussion, or deliberation. In addition, Article 54 of Sharia insurance is governed under Law Number 40 of 2014 regulating Insurance. dispute resolution. In order to resolve disputes between sharia insurance companies or sharia reinsurance companies and policyholders, insured, participants, or other parties entitled to insurance benefits, sharia insurance companies and reinsurance companies must join a mediation institution.

Although The resolution of sharia insurance claims refers to mediation groups rather than the Insurance statute, which was drafted many years after the Religious Courts statute. An organization called the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) works to support the implementation of Islamic sharia rules in conducting Islamic buying and selling transactions. Oversees and centralizes sharia economic instruments. If agreements and talks are not met, this organization mandates that Basyarnas be subject to a fatwa for sharia insurance dispute settlement. Basyarnas aims to resolve civil disputes/disputes with the principle of prioritizing peace efforts (islah), and business disputes whose operations use Islamic law can be resolved using Islamic law (Siswanto, 2018).

There are settlements a Law on Judicial Power, Basic Agrarian Law (UUPA), Insurance Act, Law on Among the laws and regulations are the Financial Services Authority (OJK) Regulations and the Arbitration and Alternative Dispute Resolution (UUAAPS) Regulations. that address sharia insurance issues. Sharia arbitration, mediation organizations, courts under the purview of religious courts, and SJK LAPS from the Financial Services Authority are just a few of the many different types of organizations that can settle or assist in resolving disputes. The contesting parties are given a number of choices by a number of provisions that govern the settlement of disagreements over sharia insurance. described how most insurance firms prefer to settle their issues through an exgratia, or peace agreement. The research The majority of cases are settled: Stacy Lee Burns, judicial promotion and regulation of settlements, and issues pertaining to insurance in judicial settlement workby Marc Galanter and Mia Cahill also mentions this.

So people tend to draw the conclusion that businesses frequently deny restitution claims submitted by clients and that the parties to a lawsuit that makes reference to the Law on Arbitration and Alternative Dispute Resolution decide whether to settle their differences out of court (non-litigation) (UUAAPS) (Susilawetty, 2013). Likewise, it can be said that the act of settling disagreements outside of court using procedures decided upon by the parties, such as consultation, discussion, mediation, conciliation, or expert judgment, is known as alternative dispute resolution (Gayo, 2024). The existence of Islamic arbitration has significant opportunities in the future by looking at the rapid progress of Islamic financial institutions by tracking the growth of the community's economic activities. Then the application of sharia arbitration embodies some of the business principles in Islam. Islam recommends handling disputes in the form of arbitration using an independent and trusted arbitrator (in case of dispute, Islam stimulates agreement through an independent and trusty arbitration), (Yusoff, 2002).

The history of Islamic courts aims to resolve cases using sharia arbitration to create peace (such as ishlah) and strengthen the relationship between the litigants. Law forum selection (choice of forum) in the field of civil dispute resolution has a very significant contribution to reducing the level of cases in litigation institutions. Independent and confidential nature are making it an alternative dispute resolution institutions in the field of business, (Masse & Rusli, 2018). The interpretation of the existence of sharia arbitration has the principle of justice applied to the Fatwa of the MUI DSN. Moreover, the policies contained laws for insurance companies, and the ideal concept for sharia insurance is to use the takaful ijtima'i concept carried out during the khulafa ar Rashidin period. Therefore, MUI is expected to be brave in issuing rules that not only regulate economic interests but also must maintain sharia principles, (A. Rahman, 1995). A dispute refers to a conflict between a party and another that has something to do with a valuable right, such as money or venture, (Puneri, 2021). According to him, alternative case handling should not violate existing provisions on sharia principles. Meanwhile, the provisions that apply in Indonesia only pay attention to the laws and regulations in alternative dispute resolution. If the parties experience a dispute, Islamic law provides guidance to forgive each other and negotiate to agree for the litigants.

If an agreement has not been reached, the litigating group can choose a judge as the referee for them or the disputing parties. Islam teaches them or takes cases to court if there is no way out, Islah in Islam is a model for handling cases to be implemented as a dispute resolution. Islah can also be handling cases through deliberation and providing various models of handling cases, for example, by agreement. If an agreement has not been reached, the litigating group can choose a judge as the referee for them or the disputing parties. Islam teaches takhim, or taking cases to court if there is no way out, Islah in Islam is a model for handling cases to be implemented as a dispute resolution. Islah can also be handling cases through deliberation and provides various models of handling cases, for example, by agreement/deliberation and through intermediaries. The theory of islah from the Qur'an, and this theory is able to resolve organizational conflicts, and turn them into their greater positive modality to survive and develop, and vice versa, (Syamsiyatun, 2020).

So the Islah Scheme is an alternative for handling disputes in the drafting of Islamic law and is often carried out, for example, such as tahkim, alhisbah, wilayat almazalim, which

are very diverse. At the same time, arbitration, mediation, negotiation of expert judgment and conciliation are schemes for handling disputes in the laws and regulations in Indonesia. In the Indonesian legal norms, the Supreme Court regulations through Perma Number 1 of 2016 also regulate Mediation which is one of the options for handling disputes that are carried out non-litigation or outside the court and cases that have entered the realm of court. The parties to the dispute can choose the case to be resolved through court-annexed mediation. The goal of each party is to get the best agreement that respects each other and trusts each other.

2. Sharia Insurance Disputes

Verily, Allah (SWT) commands and gives a mandate to the believers that if you decide a word between you, you should be able to determine it honestly/balanced. Allah SWT. The One who gives you knowledge. Allah is All-Aware, and All-Seeing. (Qur'an Surah An-Nisa' (female): verse 58). Allah SWT has freed humans to use the earth because humans are mandated to be caliphs on earth. In meeting their needs, humans are not excessive when using natural resources, not used for personal gain. Basically, the principles of Islamic economics aim to maintain and improve the welfare of society through the concept of sharia, including the attainment and objectives of maqashid sharia, namely upholding justice and increasing welfare, (Try Astuti et al., 2022). According to Al-Ghazali, the principles of social justice include the behaviour a ruler must behave like a people so that he can act fairly, there is no bias, equality, and others. Meanwhile, vertically or theologically, as caliphs, humans must embody the divine nature of God's justice. Universally, the principle of justice is one of the greatest contributions of Islamic thought to human civilization in the implementation of daily life. Islam, aims to build a society based on religion, morality, and social justice, and seeks to solve economic problems on the basis of its moral teachings rather than laws (Hasan, 1971).

This rule of justice has been able to replace the old rules that have been a tradition but destroyed human civilization itself. The principle of justice states that every individual has the same opportunity to change their life for the better. Fairness can eliminate individual traits and attitudes to become providers and distributors of solutions without coercion and pressure, (F. Rahman, 1982). Attitudes that appear in the behaviour of the people, such as being helpful, egalitarian, and caring for others, are Al-Ghazali's principles of social justice between humanity or horizontally. But vertically (concerning God), a person who pays tithe, in essence, manifests a form of justice as his duty as a caliph of God on this earth to realize justice. Fardhu al-kifayah [Muslim communal obligations] is the most significant example that can be provided in this context. This idea typically refers to religious practices in a conventional way. According to al-Ghazali's classification, the idea of social responsibility and all of its connotations are related to the meaning of life and people's means of subsistence, (Özbay & Syed, 2022).

Based on Al-Ghazali's thoughts on the principle of social justice, it is emphasized that, (Abu-Sway Mustafa, 1996):

- a. Justice must be upheld even with those whose status is as a convict. A imprisoned person is allowed to have marital relations and talk with his friends, but it depends on the judge's consideration according to need. As in the implementation of Friday prayers, it is permitted outside the prison area unless there are specific considerations for the greater benefit.
- b. Justice is identical to the provision of forgiveness and fair treatment (not inclined) before the law. According to him, fair means to act according to your words, and the recompense on the next day is for you to be fair, then the punishment for you has not been fair during your life in the world on the day of vengeance, (Abu Hamid Muhammad bin Al-Ghazali, 1998).
- c. A ruler must behave like a people to be fair.
- d. Simply, not by force, not by violence, to make the country stable and the people peaceful .
- e. There is no bias as is the case in the field of law, that all individuals are not different from one another, both towards themselves, their children, family members, and those around them.
- f. A just leader is more important than a brave leader.

- g. Know the resistance of power because a ruler in principle, must be fair, so that if a leader is not able to act fairly, he will get a reply from God on the day of vengeance.

The Qur'anic manuscripts describe at least 2 problems regarding honesty/balance/fairness, namely al-adl and al-qist (Engineer, 1999) and sentences similar to al-adl, namely al-awazn then al-wast and listed the manuscripts of the Qur'anic manuscripts. Al-Adl pronunciation in Arabic means generalizing (equalizing) and leveling, meaning that justice can be enjoyed and interpreted the same for both parties. The word al-adl in the Qur'an and its various derivatives has a total of 30 (thirty) durations. The pronunciation of al-qist is 23 words, which contains and contains dissemination, gradual, tiered evenly and balanced, reliable and relevant. Al-Adl and al-muqsith are one of Asmaul Husna which means Allah SWT. the just one. The word Al-wast is al-adl and then al-nisf (central) is found in the Al-Qur'an Mushaf of 5 words (Baqi, 1981). Then the pronunciation of al-wazn means ta'dil and istiqomah (balanced and upright), through various descendants repeated several 23 (twenty-three) words. Allah SWT is Most Just and indeed al-Adlu himself is one of His Asmā' al-Husna.

Besides al-'Adlu, Allah SWT also has Asmā al-Husna which is called al-Qisth which also means Most Just. Therefore, the principles of justice in essence come from Him. This means implementing the principles of justice is the responsibility of His people. Removing the nature and attitude of justice in a people means he revokes the mandate of Allah, (Muhyidin, 2019). The word Al-adl in the Qur'an is always accompanied by the pronunciation of al-zulm which is different from the accent. Al zulm means placing objects not according to their purpose, taking a little or covering up for the past, (Nasution, 1994). Therefore, it becomes very significant the pronunciation of justice and injustice because both have the same meaning of explaining Amiur (2008). Then Az-zulm's pronunciation in Al-jaur terminology means to defend one-sidedly or one-side only. Therefore, the description can be interpreted that there is no honesty or balance and does not run according to a sense of justice and always defends one side. (Shihab, 1998) stated that the term al-qisth holds the fundamental meaning of part, which does not necessarily indicate equality. As a result, the term qisth is more widely used than adl. Along with the terms al-'adl and al-qisth, the Qur'an also uses the term al-mizān to explain what justice means. Al-mizān is derived from the root word wazn, meaning scales.

Therefore, mizān is a tool for weighing. But it can also mean justice, because language often calls a tool to mean the result of using that tool. The background of sharia insurance will be a model of muamalah because it is characterized by the principle of mutual/mutual help, which is close to fair and is fulfilled by sharia provisions as the primary and basic principle. Conceptually, sharia insurance is designed to have a sense of justice for policyholders and insurance companies, with a transparent contract and not leaning towards either party who benefits or is harmed by one party. Sharia insurance will provide benefits for participants who pay contributions as their security deposit. Islamic insurance will provide returns in paid claims insurance which is more profitable. In addition, sharia insurance is able to run its operations efficiently, it will further increase the added value of insurance and will increase public trust, (Ulansari & Septiarini, 2020)

3. Arbitration and Sharia Insurance

Arbitration or arbitrate is the power to settle something based on policy; arbitration literally and terminology essentially have the same meaning, namely the handling or determination of cases from an arbitrator or arbitrators based on the agreement of the parties who are subject to the arbitrator's decision of their choice, (Subekti, 1992). Arbitration can also be interpreted as a court that seeks peace and can be termed arbitration, namely, the parties can appoint a judge based on the agreement of both parties to be tried in full fairly and impartially or in favour of one party whose decision is the law for both parties. parties and bind the parties, (Poerwosutjipto, 1992). Thus, arbitration is a way of settling a civil dispute outside a general court based on an arbitration agreement made in writing by the parties to the dispute. Furthermore, the disputing parties from the beginning have chosen arbitration or resolved the case, not through a general court and agreed to the decision given and determined by the arbitrator with final and binding. Mediation is a kind of conflict resolution that involves one or more impartial third parties, usually chosen by the disputing parties, and whose ruling is legally

enforceable, according to Black's Law Dictionary. According to the provisions of Article 1 paragraph (1) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, arbitration is a process for resolving civil matters outside of the general court that is based on a written arbitration agreement between the parties.

The Arbitration institution's existence has been legitimized by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which not only incorporates formal legal regulations at the national level but also integrates international arbitration duties. However, it specifically excludes sharia arbitration as a choice of the parties. Only disputes pertaining to rights that are legally fully within the disputing parties' control can be settled through arbitration, which is governed by Law No. 30 of 1999. Arbitration is a method of resolving disputes outside of the general court that is founded on a written agreement between the disputing parties. Furthermore, Tahkim/hakam, according to Abdul Karim Zaidan, is the voluntary appointment of two individuals or parties that are at odds over someone. As arbitrators, we are now trusted by them to settle their disagreements (Satria Effendi, 1994). According to Sayid Sabiq and other authorities, shari'ah arbitration, also known as tahkim in Islamic law, is a contract or agreement to put an end to disagreements or resistance between two disputing persons, (Nufus, 2020).

Then Abu al-'Ainain Abdul Fattah M., argues that tahkim supports parties in conflict/conflict on an intermediary they fully trust to resolve their disputes. Effendi M Zein, namely tahkim, states that the handling of litigation is appointed by the disputing parties freely in order to resolve their case by fully complying with the results of the arbitrator's decision they choose (Satria Effendi, 1994). Lafaz al-qadla is a term for good rules. Guided by decisions that cover all aspects of the law, whether verbal or in full compliance with Islamic law, (Khold, 2011), and the word al-qadla there is a large number in the holy book the Qur'an. Aqil Husin Almunawar, shared the notion of arbitration in the Hanafi, Shafi'i, servant and Maliki schools for the thoughts of fiqh experts and fiqh proposals. One of the matters that often appears in a dispute for an agreement (contract): first mashalih, an agreement clause that is selected and made before and after the dispute between the parties. Second, mashalih'anhu, problem of the content of the contract or agreement made by the parties as the cause of the dispute/conflict issue.

And third; *masshalih'alaihi* or *badalush shulh*, arbitrators/judges/clearers. To be precise, Hakam, which is a concrete model in the form of *qadhi* (hakam) and courts (*qaddha/Hukumah*), will resolve cases based on Islamic norms (Raharjo, 1993). Furthermore, *islah* is an arbitration body that resolves disputes, with arbitrators appointed or not (Said Agil Husin, 2004). However, some differences emerge that, in principle the handling of conflicts can be pursued through 3 options: through peace (*shulh*), arbitration outside the general court (*tahkim*) and, if it cannot be resolved then, through court (*al-qadha'*),(Dewi, 2005). The different opinions are in the thoughts of hakam, tahkim and al-qadha'. Because of the characteristics of hakam and tahkim sometimes it is considered that a third party acts as a mediator or arbitrator/mediator in resolving disputes and this is the same as the meaning of *shulhu*, and the presence of a third party as a distinguishing element.

However, if viewed from the origin of the words hakam and tahkim, it can be seen as a place to handle dispute cases according to the character of Islamic law with al-qadha. In addition, Arab countries (modern-pen) argue that the handling of civil cases outside the court or non-litigation can be done with various solutions. The term mediation or *al-wasathah* has been known since the era of the great Prophet Muhammad SAW also during the time of the companions of Khulafa Rasyiddin and *sulh/consolidation* and arbitration/*tahkim*. The term or terminology of the word, al-qadha (judicial) is defined to be able to determine, reconcile, examine, decide and so on (Ministry of Religion, 1994).

Exposure from *Radd al-qadha' baina dzawi al-arham* has *yashthalihu fa inna fashla al-qadha' yuritsu al-dhagain*, which means that matters are handled in a family setting so that the parties can take a peaceful path because handling disputes through the courts will cause discomfort). Dispute resolution is carried out professionally. The decision is recognized, non-formal, comfortable, safe, has enduring power and binding, and is closed/confidential at the trial of the case. Characteristic arbitration as an institution for dispute resolution outside the

court has cooperative and non-confrontational prevention of violence because it can damage the friendship that the disputing parties have carried out through deliberation. A written agreement that the parties wish to resolve the dispute without trial. Each party is committed to resolving the dispute to achieve peace by complying with his sincere arbitration award, (Arifin, 2016).

Assurance, according to Westbrook rules, is *Wrzekering*, namely guarantee/insurance, then the meaning of *assurader* for managers and *geassureerde* for policyholders appears. Robert L. Mehr argues that the guarantee/By aggregating enough exposure units to make their individual losses collectively predictable, insurance serves as a tool for risk reduction. This is a risk reduction mechanism that combines as many predictable and hazardous units as feasible to make individual wishes collectively. The predictable loss is then shared by or distributed proportionately among all units in the combination. the potential for loss, which is then divided equally or proportionately by each unit in the mixture order, (Anshori, 2008). By default, the definition of insurance is an insurance based on a contract between the parties where the insurance manager is bound to the policyholder or insurance participant through payment of insurance premiums in the hope of receiving reimbursement from the insurance manager for loss of profit, loss, damage to an object, as described in Law No. 40 of 2014 of the Republic of Indonesia pertaining to the Insurance Industry.

In the context of managing contributions based on sharia principles to help and protect each other by: a) providing reimbursement to participants or policyholder due to loss, damage, expense incurred, loss of profit, or liability legal liability to possible third parties suffered by participants or policyholders because of the occurrence an uncertain event; or b) provide payments based on the death of the participant or other payments based on the participant's life with benefits whose amount has been determined and/or based on the results of fund management (Article 1 point 2 of Law Number 40 of 2014 concerning Insurance). Insurance Based on Sharia is a collection of agreements, consisting of: on the agreement between the sharia insurance company and policyholders and agreements between the holders policy.

Takaful or *at-ta'min* is a contract of the parties; one of the participants is required to issue a policy premium payment then the other party is required to submit a full collateral/guarantee to the policyholder/premium payer if the risk received by the insured is in sync with the contract stated in writing. The Islamic Economic Law Compilation, *takaful* is defined as a contract between 2 people, there can be many, where the insurance manager is interconnected and bound to the policyholder through the payment of insurance premiums in order to obtain compensation for the policyholder due to a loss received, damage, or loss of hope of getting a profit. or normatively the responsibility of the insurance company to compensate third parties for the risk suffered by the policyholder arises when there is no certainty (KHES, 2008).

The Arabic equivalents of *lafaz* are *takaful*, The terms *ta'min* and *adh-dhaman* (*tadhamun*) are used in normal speech, but *takaful* is the most commonly used word for sharia insurance in many countries, including Indonesia, because *takaful* is Arabic. Terms is originally *kafalah*, *yakfulu*, *takafala*, *yatakafalu*, *takaful*, namely helping each other to share or protect each other (Dewi, 2005). *Takaful* in terms of *fiqh bermu'amalah* is related to having risks between Muslims so that the parties w The National Sharia Council defines sharia insurance (also known as *ta'min*, *takaful*, or *tadhamun*) as an endeavor to safeguard and assist various individuals or parties through investments in assets and/or *tabarru'* that offer a pattern of returns to address specific risks in the contract. According to sharia, (engagement).

The Protect each other become insurers of risks for others. According to the National Sharia Council, sharia insurance (*ta'min*, *takaful*, or *tadhamun*) is an effort to protect and help each other among a number of people/parties through investment in the form of assets and/or *tabarru'* which provides a pattern of returns to deal with certain risks in the contract. (engagement) in accordance with sharia.

In connection with this, it appears that sharia insurance is characterized by mutual assistance and protection known as *ta'awun*, which is the attitude of the soul to take turns in terms of protection and assistance on the basis of Islamic brotherhood between fellow sharia insurance policyholders when dealing with risks (Yanggo, 2003). Modern *fiqh* experts, such

as Wahbah Az-zuhaili, define takaful according to its portion. According to him, takaful consists of 2 types, namely at-ta'min at-ta'awuni (Insurance to help) and at-ta'min bi qist sickle (Insurance with a fixed distribution). Ta'min ta'awuni is an agreement by several parties to pay dues to compensate for losses when both parties and one of them suffer losses. While at-ta'min bi qist sickle is an agreement in which one party is required to pay contributions in the form of money to the takaful manager consisting of a number of shareholders through a contract if the policyholder is damaged/lost/accident, then he will be given compensation. Furthermore, Al-Fanjari interprets that tadhammun, takaful, ta'min or sharia insurance are characterized by an attitude of helping and protecting each other from the muamalah aspect as a social obligation, then takaful is divided into 3 parts namely ta'min Hukumiyy, ta'min taawuniyy, ta'min tijari.

Mustafa A. Zarqa, has a concept regarding insurance which is stated by an event. Furthermore, the methodologies and schemes that are made are many different wherein insurance has a way to manage threats or risks that can be avoided by the insured that caused by dangerous conditions and various lifestyles of a person. Both from human relations with God and humans in the surrounding environment with their economic activities. Disputes are conflicts and disputes, which are a form of litigation or disagreement about an interesting fact between two people, meaning that no agreement is found on legal facts that are of interest to both parties. In the insurance industry, disputes are generally related to two (2) things, namely related to policy responsibility (liability) and the value of compensation (quantum of claim). Every engagement has a risk of a dispute arising, the risk of a dispute will increase if the agreement is not made completely and the terms used in the contract are not given a clear definition that can be agreed upon by the parties.

Not all engagements/agreements run smoothly in accordance with the expectations of the contracting parties, at one point, something unexpected happened, which was initially just an ordinary misunderstanding and then ended in a dispute. The causes of disputes vary widely, including default, misinterpreting the contents of the agreement and others. Essence of the dispute is that one of the parties to the contract feels that their rights are not being fulfilled properly. In principle, economic activity is an activity related to the issue of property and goods, so that it can be intertwined if there is a transaction between one economic actor and another economic actor. However, in its implementation, economic activity does not always run smoothly, disputes sometimes arise resulting in disputes. Therefore, to solve it, legal instruments are needed which are expected to provide justice.

IV. CONCLUSION

Islamic law insurance dispute resolution regulations in In order to get an implication of law enforcement in sharia insurance dispute resolution, which ensures legal certainty based on Islamic principles, the parties agree to alter it in the form of a contract or a corporate company that conducts sharia insurance under sharia principles. Both normative and practical concerns remain in Indonesia, which is still a discursive and normative problem. The future of Indonesian extremely encouraging. Nonetheless, the Indonesian Muslim community still supports it through socialization and education, and it needs to be backed by laws that uphold Islamic economic values and offer legal stability. An alternative for the opposing parties to voluntarily settle peacefully out of court is the existence of an arbitration institution. Islamic principles must guide the settlement of sharia issues, including sharia insurance. A win-win solution is one in which two disputing parties agree to settle their differences amicably and without causing harm to either party. With the exception of arbitration organizations governed by Islamic law, not all mediation and arbitration organizations are permitted to settle disputes pertaining to sharia insurance.

REFERENCES

- Abu-Sway Mustafa. (1996). *Al- Ghazzaliyy Astudy In Islamic Epistemology*. Dewan Bahasa Dan Pustaka.
- Anshori, A. G. (2008). *Penerapan Prinsip Syariah : Dalam Lembaga Keuangan, Lembaga Pembiayaan Dan Perusahaan Pembiayaan*. Pustaka Pelajar.

- Antonio, M. S. (1994). Prinsip Dasar Operasional Asuransi Takaful Dalam Arbitrase Islam Di Indonesia. Bamui.
- Arifin, M. (2016). Pilihan Forum Penyelesaian Sengketa Perbankan Syariah. Pustaka Pelajar.
- Baqi, M. F. Abdul. (1981). Al-Mu'jam Al Mufahras Li-Alfadz Al-Qur'an Al-Karim. . Dar Al-Fikr.
- Desmadi, S. (2014). Asuransi Syariah Dalam Praktik (Studi Analisis Terhadap Shariah Compliance). Jurnal Bisnis Dan Manajemen, 4(3).
- Dewi, G. (2005). Hukum Perikatan Dalam Islam Di Indonesia. Pustaka Pelajar.
- Engineer, A. A. (1999). Islam Dan Teologi Pembebasan. Pustaka Pelajar.
- Febriansah, R. F. (2010). Eksistensi Hukum Islam Dalam Struktur Hukum Nasional Indonesia.
- Gayo, S. (2024). The Use Of Mediation As An Alternative Dispute Resolution In The Settlement Of Investment Disputes. International Asia Of Law And Money Laundering (Iaml), 3(1), 1–9. <https://doi.org/10.59712/Iaml.V3i1.76>
- Hasan, A. (1971). Social Justice In Islam. Islamic Studies, 10(3).
- Hidayatullah, S. (2020). Transformasi Dan Kontribusi Hukum Islam Sebagai Sumber Hukum Di Indonesia. Jurnal Pro Justice: Kajian Hukum Dan Sosial, 1(2).
- Hussen, A. S. K. M. (1995). Kertas Kerja Hukum Ekonomi, Hukum Dan Lembaga Arbitrase Di Indonesia.
- Ichsan, N. (2013). Peraturan Perasuransian Konvensional Dan Syariah Di Indonesia. Jurnal Hukum Islam, 3(2).
- Kholid, M. A. & M. (2011). Fiqih Perbankan. Pustaka Setia.
- Mardani. (2015). Aspek Hukum Lembaga Keuangan Syariah Di Indonesia. Prenada Media Group.
- Masse, R. A., & Rusli, M. (2018). Islamic Banking Dispute Resolution In National Sharia Arbitration Board. Iop Conference Series: Earth And Environmental Science, 175, 012169. <https://doi.org/10.1088/1755-1315/175/1/012169>
- Masykuroh, N. (2006). Sistem Ekonomi Kapitalis, Sosial Dan Islam: Kajian Perbandingan. Al-Qalam, 22(1).
- Muhyidin, S. (2019). Konsep Keadilan Dalam Alquran. Al-Riwayah Jurnal Pendidikan, 11(1).
- Nasution, H. (1994). Islam Rasional. Mizan.
- Nufus, Z. (2020). Syirkah Dalam Pemahaman Ekonomi Islam Sebuah Solusi Permasalahan Permodalan. At Taajir . Jurnal Ekonomi Dan Keuangan Syariah, 1(1).
- Özbay, R., & Syed, H. (2022). Sabri Orman's Inquiry Into Social Justice Regarding Al Ghazali's Adalet- I Ijtimâ'iyeh Doctrine. İstanbul Üniversitesi Sosyoloji Dergisi / İstanbul University Journal Of Sociology, 42(2), 355–364. <https://doi.org/10.26650/Sj.2022.42.2.0056>
- Poerwosutjipto, H. M. N. (1992). Pokok-Pokok Hukum Dagang, Perwasitan, Kepailitan Dan Penundaan Pembayaran. Djambatan.
- Puneri, A. (2021). Dispute Resolution For Islamic Banks In Indonesia. International Journal Of Islamic Economics And Finance (Ijief), 4(Si). <https://doi.org/10.18196/Ijief.V4i0.10084>
- Raharjo, M. D. (1993). Ensiklopedi Al-Qur'an Tafsir Sosial Berdasarkan Konsep-Konsep Kunci. Paramida.
- Rahman, A. (1995). Doktrin Ekonomi Islam I. Pt Dana Bhakti Wakaf.
- Rahman, F. (1982). Islam And Modernity, Transformation Of Intellectual Tradition. The University Chicago Press.
- Rahmi, D. (2014). Ruang Lingkup Kewenangan Peradilan Agama Dalam Mengadili Sengketa Ekonomi Syariah. Syariah Jurnal Hukum Dan Pemikiran, 13(2). <https://doi.org/10.18592/Syariah.V13i2.174>
- Shihab, M. Q. (1998). Haji Bersama M. Quraish Shihab : Panduan Praktis Menuju Haji Mabruur. Mizam.
- Siswanto, E. (2018). Peranan Arbitrase (Basyarnas) Dalam Penyelesaian Sengketa Bisnis Syari'ah. Al-Amwal: Journal Of Islamic Economic Law, 3(2), 165–185. <https://doi.org/10.24256/Alw.V3i2.525>
- Subagyo, A. (2011). Keuangan Mikro Islam Suatu Kajian Model Pembiayaan Dalam Praktek Keuangan Mikro Islam Di Indonesia. Pinbuk Press.
- Subekti, R. (1992). Arbitrase Perdagangan. Bina Cipta.
- Sularno, M. (2006). Upaya Pembentukan Hukum Positif Di Indoneisa. Al-Mawarid.
- Syamsiyatun, S. (2020). Conflicts And Islah Strategy Of Muslim Women Organization: Case Study Of 'Aisyiyah In Intra And Inter-Organizational Divergence. Al-Jami'ah: Journal Of Islamic Studies, 58(2), 355–390. <https://doi.org/10.14421/Ajis.2020.582.355-390>
- Try Astuti, A. R., Hamid Habbe, A., & Wahab, A. (2022). Islamic Economic Principles And Production Activities Thought Of Imam Al-Ghazali From His Book "Ihya' Ulum Al-Din". Dinasti International Journal Of Management Science, 3(3), 438–462. <https://doi.org/10.31933/Dijms.V3i3.1091>

- Ulansari, D. R., & Septiarini, D. F. (2020). A Comparative Study Of The Efficiency Of Conventional And Sharia Insurance In Indonesia. *Jurnal Keuangan Dan Perbankan*, 24(2). <https://doi.org/10.26905/jkdp.v24i2.3165>
- Warsani Purnama Sari. (2020). Asset Growth On Sharia Insurance. *Britain International Of Humanities And Social Sciences (Biohs) Journal*, 2(1), 172–178. <https://doi.org/10.33258/biohs.v2i1.167>
- Yusoff, N. M. A. B. N. (2002). *Islam Dan Business*. Pelanduk Publication.