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Prospect for Settlement of Sharia Insurance Disputes Through The Indonesian National Sharia Arbitration Board

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Abstract

The contract between sharia insurance companies and policyholders is based on sharia principles, namely helping each other to protect each other. However, if disputes still occur, a resolution can be reached through mediation, sharia arbitration, and the courts. The problem in this research is how practices and obstacles resolve sharia insurance disputes through sharia arbitration institutions and how, ideally, arrangements in sharia insurance cases through sharia arbitration institutions can be resolved. The research methods used an analytical perspective, namely an investigation aiming to provide an overview or formulate a problem according to existing circumstances/facts. So it is necessary to revise the Arbitration and Alternative Dispute Resolution Law (1999), especially Article 61, Article 62, Article 63, Article 64, and Article 65, to regulate the scope, duties, and functions of sharia arbitration by considering the use of virtual arbitration processes in developing sharia arbitration as a special, authoritative, and independent arbitration forum.

Keywords: Dispute Resolution; Sharia Arbitration; Sharia Insurance.

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INTRODUCTION

The development of civil dispute resolution, especially in trade, since the amendment to the Judicial Power Law (2009), particularly the provisions of Article 58, has had an impact on the dispute resolution paradigm, not just in court institutions but also the State provides administration outside of judicial institutions, in addition to the trend of economic development. This impact is due to the sharia economy in Indonesia, which has received a significant response from the public. Therefore, it has an impact on the sharia financial industry, including sharia insurance. So, to anticipate the occurrence of sharia economic disputes, in this case, sharia insurance (Hasreiza, 2016), through the provisions of Article 58, as an alternative, the resolution can be made outside the court.

Apart from that, there is, an authorized non-litigation institution, namely arbitration. According to the authority law, the judiciary states that a solution civil case can be implemented outside of court (non-litigation) through Arbitrage and mediation, conciliation, negotiation, and expert opinion as stated in Article 58 of the Judicial Power Law (2009). It does not specifically regulate sharia economic disputes, but sharia disputes, including civil disputes, can be resolved in arbitration institution (Muhammad, 1990). This provision strengthens the position and authority of Arbitration and Alternative Dispute Resolution institutions, which were previously regulated in the Arbitration and Alternative Dispute Resolution Law (1999) in Article 3 emphasizes the authority of arbitration to resolve cases that are already bound by an arbitration agreement and states that district courts have no authority to hear civil cases. Meanwhile, the choice of law in arbitration is given to all parties to choose what is appropriate and not based on rigid legal provisions as contained in Article 56.

Insurance Company Syarikat Takaful Indonesia Ltd., the earliest company, was founded on 1994 February 24. The emergence of Bank Muamalat Indonesia, Tugu Mandiri Life Insurance Ltd. Ministry of Finance of the Republic of Indonesia and the Association of Indonesian Muslim Scholars through the Abdi Bangsa Foundation, as well as several Indonesian Muslim entrepreneurs, established Asuransi Takaful Keluarga Ltd. as a sharia life insurance company on August 4 of 1994 and Asuransi Takaful Umum Ltd. as a sharia loss insurance company on June 2 of 1995 (Kompas, 2022).

The emergence of two sharia insurance companies as Non-Bank Institutions gave birth to national conventional insurance companies entering the sharia insurance business. Sharia insurance is an alternative for Muslims in Indonesia because it has special features, namely the application of the concept of risk sharing or mutual risk bearing, where the advantages received by the company are owned entirely by the participants and in practice, these advantages are in alliance with the Sharia Insurance Company (Nurwidiatmo, 2008). Hence, there is no risk transfer from the participants to the company as in conventional insurance (Yanggo, 2003).

The development from year to year of sharia insurance companies is so fast and recognized globally, comprehensively and nationally because of the use of insurance services for the benefit of the community and the varying levels of insurance business in accordance with the development and increasing needs and understanding of Muslims to obtain insurance that is free from usury (Nurwidiatmo, 2008). Furthermore, the government is trying to strengthen the legal basis for carrying out sharia insurance businesses by enacting Insurance Law (2014). The Insurance Law clearly differentiates conventional insurance and sharia insurance. Even though the contract between sharia insurance companies and policyholders is based on sharia. To help and protect others, disputes between the two parties still occur, and some disputes are even resolved through court. However, some disputes are resolved through sharia arbitration (Parsaulian, 2018).

Policyholders file lawsuits against sharia insurance companies, generally in the form of claims for breach of contract. To explore disputes between and policyholders and sharia insurance companies, the author examines several cases resolved through religious courts or sharia arbitration. One is a dispute between a policyholders and a sharia insurance company in a case of sharia economic default (Antonio, 1994).

According to the Decision of Tasikmalaya Religious Court No. 1402/Pdt.G/2019/ PA.Tmk, the dispute began with a claim submitted by a sharia insurance policy holders for the loss of a car that the insurance company had insured through a coverage agreement (insurance) with sharia principles. However, the sharia insurance company refused to pay the claim. Then, upon this rejection, the policyholders takes various appropriate legal methods to submit a loss claim and request an agreement to be carried out immediately by sending a letter until it is approved by the insurance company following the agreement that has been made. Nonetheless, the insurance company, for various reasons, never carried out its obligations. Due to the non-payment of the claim, the policyholders filed a lawsuit against the sharia insurance company in the religious court as a case of sharia economic default. Furthermore, the policyholders, as the plaintiff, assumes that the defendant has broken his promise or failed to carry out what the plaintiff was supposed to do.

According to the plaintiff, the breach of contract that the defendant committed was that he did not cover his obligations/default/broken promise because he did not fulfill the requirements of the insurance policy regarding guarantees. The plaintiff was reluctant to replace the claim of responsibility for the disappearance of the insured as the object of the dispute, in this case, the car, due to theft, the Defendant's refusal to pay the plaintiff's claim for the loss of the plaintiff's car was because the defendant considered the loss of the plaintiff's car to be categorized as fraud and/or embezzlement. The Defendant's opinion was based on statements made by witnesses and stated that the keys to the victim's/plaintiff's car, who was about to reverse the car because it was blocking the road, at that time the perpetrator left his bag so the victim would be sure. It turned out that the perpetrator's car keys entrusted to the victim were fake, and when the perpetrator's bag was checked at the police station, there was rubbish. Based on this, this incident can be categorized as fraud and/or embezzlement, where the perpetrator initially obtained the keys and vehicle without breaking the law.

Therefore, the Defendant no longer accepted the plaintiff's claim due to the car's loss in the category of fraud and/or embezzlement. The rejection of the claim is based on the policy provisions, which state that "the manager does not provide compensation for loss, damage, costs to motor vehicles and/or legal liability to third parties, caused by embezzlement, fraud, hypnosis and the like.

This dispute shows differences in interpretation of the policy's provisions regarding things that can or cannot be replaced for the loss of an insured object. Apart from differences in interpretation, sharia insurance disputes often arise due

to differences in understanding of the contents of the policy. Such as, it determines the number of complaints that should be received based on the number of claims submitted by different companies.

This outcome can also be caused by a lack of clarity in presenting product information. Sometimes, sharia insurance company agents do not provide detailed information regarding the products offered also the provisions in the policy to prospective policyholders. In general, this lack of information arises because the company agent and the prospective policyholder participant have a family or kinship relationship, so only with capital of trust can interested parties approve the policy. However, disputes between policyholders and sharia insurance companies regarding claims can generally be resolved by the insurance company, especially by the customer complaints department, considering that sharia insurance operates based on sharia principles. These disputes that should be resolved using methods based on sharia principles by institutions with the authority to handle sharia economic matters.

History of Islamic law Arbitration or dispute handling is carried out by deliberation to find or is synonymous with the term *takhim*. In the pre-Islamic Arab period, it was already known. Its existence in Islam was to be continued, bringing the case to justice if there is no way the literal exit would mean appointing a mediator or peacemaker (Mardani, 2010). This process is also done before an agreement is reached through deliberation resulting from a dispute between the two parties. The resolution is carried out by appointing a judge.

The process of resolving civil disputes outside the general court is based on an arbitration agreement made in writing by the disputing parties, as confirmed in Article 1 Number 1 the Arbitration and Alternative Dispute Resolution Law (1999). Whenever a dispute arises, the resolution is agreed upon. The parties, in accordance with the arbitration agreement, have been agreed upon by the parties in writing, namely resolving outside the court through deliberation, negotiation, meditation, conciliation, or expert assessment. Furthermore, the Insurance Law (2014) states that the resolution of sharia insurance disputes is regulated in Article 54 OJK Regulation No. 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector:

1. Mandatory members of meditation institutions within the company function to resolve disputes between the Company and policyholders, policyholders, and other participants who are entitled to receive insurance benefits;
2. It is independent and impartial;
3. Must obtain written approval from the Financial Services Authority;
4. The mediation agreement is final and binding on the parties, meaning there are no other legal remedies, and the parties follow the arbitrator's decision; and
5. Other rules are regulated in the Financial Services Authority Regulations.

Even though the Insurance Law was drafted long after the Religious Court Law (2006) then, the second amendment was the Religious Court Law (amendment 2009); for resolving Sharia insurance disputes, it does not refer to this law and is not directed to institutions. Sharia arbitration, however, refers more to dispute resolution through mediation institutions.

Meanwhile, National Sharia Council of the Indonesian Ulema Council, as an institution whose function is to monitor and centralize sharia economic instruments to support the implementation of Islamic Sharia principles in the implementation of Islamic buying and selling transactions, stipulates that the fatwa for resolving sharia insurance disputes is carried out by the National Sharia Arbitration Board if agreements and negotiations are not fulfilled, according to the Fatwa No.21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance.

Sharia insurance dispute resolution is regulated in the Judicial Power Law, Religious Courts Law, Insurance Law, Arbitration and Alternative Dispute Resolution Law, and Financial Services Authority Regulations. Likewise, the institutions that can resolve/facilitate dispute resolution are pretty diverse, namely courts within the scope of religious courts, mediation institutions, Sharia Arbitration, and the Financial Services Authority.

Several regulations governing the resolution of Sharia insurance disputes provide several options for disputing parties to choose how to handle them (Saharuddin, 2016). Explains that most insurance companies choose to settle their cases through amicable agreements (exgratia) because resolving disputes through litigation will result in public coverage this is also stated in Marc Galanter and Mia Cahill's research entitled Most cases settled: Judicial promotion and regulation of settlements and Stacy Lee Burns: Insurance-related Issues in Judicial Settlement Work, where there is a tendency to conclude that insurance companies often reject compensation claims made by their customers (Affandi, 2002). Meanwhile, arbitration is the choice of dispute resolution, forum outside the court (nonlitigation) chosen by the parties in the case (Susilawety, 2013).

The novelty in this research is the problem of regulatory norms for Sharia Insurance dispute resolution, which are still spread across several regulations and have not been contained in a law (the Religious Court Law, the Arbitration and

Alternative Dispute Resolution Law, the Insurance Law, the Judicial Power Law, the Fatwa of the Indonesian Ulema Council), while the institution is mandated to resolve insurance disputes. Sharia is still a discourse (Religious Courts, Sharia Arbitration, Mediation Institutions, Alternative Dispute Resolution Institutions, Financial Services Authority).

Articles previously published regarding the Sharia Arbitration Board, among others by Sawitri Yuli, found that the influence of post-pandemic behaviour in the world of justice, which is carried out simply, quickly and easily, requires administrative reform to overcome obstacles and obstacles in the process of administering justice effectively and efficiently that modernly the Supreme Court with its Decree Number 1 of 2019 regulates trials in electronic courts. Supreme Court Decree No. 29/KMA/SK/VIII/2019 concerning E-Court Administration so that Online Dispute Resolution can be applied in sharia economic dispute cases through the National Sharia Arbitration Board (Basyarnas), and its application to muamalah disputes still requires digital forensic testing of evidence electronically submitted and authorized by the court. Then, the examination of witnesses (especially fact witnesses) can be carried out in a hybrid manner, namely partly via video conference and partly by physical presence in court. So, the policy direction for resolving non-litigation muamalah disputes through Basyarnas still requires collaboration with relevant stakeholders through virtual media in practice. Therefore, quality internet and telecommunications network infrastructure are needed, as well as professional human resources in the field of technology, so that Basyarnas Indonesia is able to resolve disputes, especially online muamalah.

Furthermore, Sawitri, in another article, states that the regulation regarding the authority to resolve Sharia insurance disputes in Indonesia is still in the form of a discourse that leaves normative and partial issues to get the implications of law enforcement in resolving Sharia insurance disputes that better guarantee legal certainty based on Islamic principles, the parties are bound to mutually modifying the form of the contract or business entity that provides sharia insurance by sharia principles. Considering that the prospects for Sharia insurance in Indonesia are upand-coming, there is a need for support through outreach and education to the Indonesian Muslim community with regulations that can provide legal certainty by Sharia economic principles. Sharia insurance dispute resolution is based on an

agreement to end the dispute between two disputants, ending peacefully and with a win-win solution. Therefore, not all mediation and arbitration institutions can be given the authority to resolve Sharia insurance disputes, except for Sharia mediation or arbitration institutions, which are subject to Islamic Sharia rules.

Apart from that, Wetria Fauzia and Devianty Fitri stated that the parties, both policyholders and insurance companies as insurers, had not yet resolved the dispute (Fauzi & Fitri, 2019). This conflict occurred because one of the parties reneged on the mutual agreement in their contract. Settlement of Sharia insurance disputes can basically be resolved through alternatives outside of court, one of which is through the National Sharia Arbitration Board (Basyarnas). Sharia insurance settlement is appointed by competent parties in their fields so that the settlement is more optimal. This policy needs to be emphasized in the sharia insurance agreement (policy) clause regarding the choice of dispute resolution institution through a sharia arbitration institution. The Basyarnas decision is voluntary, so the role of the court institution as the party authorized to implement the decision must be issued by Basyarnas. In contrast, the court institution authorized to execute the Basyarnas decision is the Religious Court. So Basyarnas is an alternative resolution of sharia insurance disputes by arbitration law and alternative dispute resolution and strict regulations in the policy contract regarding the resolution of Sharia insurance disputes as the choice of forum chosen by the parties is in the Sharia insurance contract so that Basyarnas is the right institution in substance because The arbitrators really understand Islamic law, especially sharia insurance which applies the principles of Islamic law.

In several articles that have been put forward, this article has special differences, namely regarding the prospects for resolving sharia insurance disputes through Indonesian national sharia arbitration, both the constraints and obstacles and the ideal arrangements. While the contribution to the international community in this article can be conveyed that, in fact, in the regulations regarding alternative dispute resolution or arbitration, most of the principles adopt UNCITRAL, a model which is then adapted to Sharia principles, with the current development of the sharia economy, especially the sharia insurance business, it is appropriate if the settlement institution disputes such as the Sharia Arbitration Agency becomes a supporter in sharia economic dispute resolution activities which coincide with

Sharia principles. The principles of resolving international disputes in a friendly and peaceful manner have now been implemented by Rasulullah SAW based on the holy verses of the Qur'an and Hadith because the source of law for both is the *adalat qat'iyat*, the truth of which is beyond doubt. Other sources in international regulations come from customs, agreements, judicial decisions, expert opinions and general principles contained in the Qur'an and al-Sunnah. They are supported in fiqh books with the themes of *siyar*, safety, *hudnah*, *dhimmah*, and *jihad*. So, the principles of Islamic law which are practised in the international community may have a significant influence at this time.

Sharia arbitration is one of the forums for resolving Sharia insurance disputes outside the general courts. It is essential to study, especially regarding the principles underlying its operational pattern, with a review of input and suggestions on the primary needs for treating litigation mechanisms and procedures through sharia arbitration from various business people or insurance business actors sharia in order to further understand the primary basis as a guideline and the work rhythm of sharia arbitration.

RESEARCH PROBLEM

Departing from this description, problem and obstacles arise in resolving sharia insurance disputes through sharia arbitration institutions, and how ideally can arrangements in sharia insurance cases through sharia arbitration institutions, especially the National Sharia Arbitration Board (Basyarnas)?

RESEARCH METHODS

The research is focused on exploring and obtaining a regulatory norm as the basis for a sharia arbitration procedure mechanism for handling sharia insurance disputes. The study and discovery of sharia arbitration legal norms can be made by examining legal sources in the Al-Qur'an and Hadith, especially those related to the concepts of justice and *tahkim*. Apart from that, legal regulations and expert opinions in related fields are also reviewed. The results of these searches and discoveries are the basis for formulating legal norms as research results so that they have the power to be applied to handling sharia insurance dispute cases in general. Therefore, this research's goals, focus, and results, are included in normative juridical research guided by the applicable normative rules of evaluation (legislation) (Soekanto & Mamudji, 2001). Meanwhile, the final form of the results of this research is an analytical perspective, namely an investigation whose aim is to provide an overview or formulate a problem according to existing circumstances/facts.

DISCUSSION

1. Practice and obstacles to resolving Sharia insurance disputes through the Sharia Arbitration Board in practice

Practice and obstacles to resolving Sharia insurance disputes through the Sharia Arbitration Board in practice (interview with Zainal Arifin Housein, Chairman of Basyarnas Indonesia)

- a. Until this research was compiled, the only sharia arbitration in Indonesia was Basyarnas.
- b. Since it was founded in 1993 (BAMUI) and since 2003 it changed to Basyarnas-MUI, it has resolved various problems by resolving 30 cases, specifically sharia insurance disputes in 2012.
- c. Dispute resolution procedures at Basyarnas are guided by the Basyarnas-MUI Regulations and Procedures.
- d. The case of the Sharia insurance dispute through Basyarnas in 2012 was a dispute between the Bhakti Pos Indonesia Education Foundation and Sharia Mubarakah Insurance Ltd; the dispute occurred because of a cooperation agreement between the plaintiff and the defendant regarding the Closing of Wadi'ah Annama Mubarakah Savings where in the agreement the first party as the applicant placed wadi'ah saving fund with the second party as the respondent. The author's opinion is that the arbitrator's decision not to approve the applicant for additional rewards is correct, considering that the agreement implemented between the applicant and the respondent is a wadi'ah agreement, namely a power of attorney from a certain party, through an institution or individual, maintained and handed over when the depositor needs it at any time.
- e. Regarding confiscation of collateral, initially at Basyarnas, there was an institutional polemic about executing the confiscation decision because the case handled by Basyarnas was an Islamic business dispute based on sharia principles, final and binding because Basyarnas was not the judiciary, then no can apply execution the decision requires a litigation institution, namely PA by Supreme Court Regulation Number 8 of 2008 so that the Tahkim or Sharia Arbitration Institution has the authority to examine and dispute sharia insurance which it has become the forum of choice and there is an interrelation between the Sharia Arbitration Institution and a just Religious Court;
- f. In several policies that include a dispute resolution clause, the Manulife Sharia insurance policy directs dispute resolution outside of court to be carried out through an Alternative Dispute Resolution Institutional registered with the OJK. Meanwhile, the Allisya Protection Plus Insurance Policy directs dispute resolution to an Alternative Dispute Resolution Institution registered with the OJK. At the same time, the PRULink Syariah Life Insurance Policy appoints the Indonesian

Mediation Agency (BMAI) of the four Sharia insurance policies above, only the family takaful insurance policy explicitly designates Sharia arbitration as the forum choice. This action shows that there is no support and trust outside of court. Even though the Family Takaful Insurance Policy only mentions Sharia Arbitration as a forum for resolving disputes outside of court and not Basyarnas, which is currently still the only Sharia arbitration recognized nationally

There are several obstacles to resolving Sharia insurance disputes through Basyarnas, according interview with Ahmad Djauhari (Basyarnas Secretary):

First is the limitation of the existence of Sharia Arbitration in all regions of Indonesia because not all provinces have a Sharia Arbitration Board. As a result, the parties will return to using the District Court as a place to resolve disputes.

Second, the Arbitration Body does not have the tools or legal basis to carry out a confiscation order, hold an auction or vacate a disputed building, for example. The Arbitration Board's decision (whether Sharia or not) must be followed by an application to the District Court (where the application of the law is very conventional) for further legal proceedings (confiscation, auction, vacation). Therefore, the parties to the dispute must go through two different institutions (Sharia Arbitration Board and District Court) to be able to resolve the dispute.

Third is from the execution side of the Bank's guarantee; according to the regulation, land certificates that have been charged with Mortgage do not need to submit a lawsuit process (either through the District Court or the Arbitration Board), which requires a very long stage of proof. However, it is enough to submit a request for auction determination to the Chairman of the District Court. Therefore, the role of the Arbitration Body in implementing the guarantee execution is unnecessary and can be set aside.

Fourth, based on the 'experience' of dispute resolution in general engagement law, arbitration institutions, as a non-litigation resolution route, apparently still require judicial power in terms of execution. Arbitration institutions clearly cannot do it themselves without a decision from the court. Therefore, the duties and authority of religious courts will be more or less the same as general courts in responding to the decisions of these arbitration institutions

Fifth, it turns out that the presence of Sharia arbitration as an alternative forum for resolving Sharia insurance disputes has not been a top priority for Sharia arbitration. In this case, Basyarnas is only the second choice after the Indonesian Insurance Mediation Agency and the Financial Services Sector Dispute Settlement Institution through the Insurance Law Article 54. Meanwhile, from the perspective of Sharia economic actors, the position of Sharia arbitration, in this case, Basyarnas, still has an important position in resolving disputes. Even though Basyarnas is considered important in resolving disputes, several things still need to be considered, namely that the costs set by Basyarnas are more expensive compared to being resolved in religious courts.

2. Ideally the regulation and resolution of Sharia insurance disputes is through a Sharia arbitration body

The arbitrator also determines public trust in choosing Sharia arbitration as a place to resolve Sharia insurance disputes. The role of the arbitrator in resolving disputes through sharia arbitration is very important and determines the resolution of disputes resolved through arbitration. So the parties to the dispute will choose to resolve the dispute through arbitration with an arbitrator who is competent, honest, and has integrity not only personally but also their ability and expertise in the field of Sharia arbitration and then regarding the core dispute they face in sharia insurance in order to provide a win-win solution for the parties who are in dispute.

Normatively, there is a problem with norms because Sharia insurance is actually regulated by the Insurance Law (2014). The continuity and existence of these legal norms do not mention Sharia insurance dispute resolution, likewise with Sharia business and procedures for resolving disputes outside the court only exist in the Law. The Arbitration and Alternative Dispute Resolution Law does not yet regulate the mechanism for handling cases according to Sharia, and the Religious Courts Law (Amendment 2009) resolves Sharia disputes through Religious Courts, so there is a problem with norms so that it is necessary to amend the Article regarding District Courts. Must be added to the Religious Courts. Apart from that, there are only regulations at the level of Supreme Court Regulation Number 14 of 2016 concerning Procedures for Resolving Sharia Economic Disputes to be converted into Laws, and the tendency is to issue a Decree from the Indonesian Ulema Council regarding the formation of Basyarnas into the constitution of policies in enforcement law and the other from community organizations.

Therefore, state policy has yet to be maximized so that the constitutional authority has several inputs for Legislation as a manifestation of Article 58 of the Judicial Power Law (2009). Sharia arbitration, which is a development of tahkim, has strong validity, both in the order of Islamic Law and Indonesian positive law. In the order of Islamic Law, Sharia arbitration is within the scope of Sharia which is related to muamalah, the validity of sharia arbitration (tahkim) is sourced in the Koran and hadith, as well as ijma ulama (Warman & Hayati, 2022). Dispute resolution through Sharia arbitration is part of achieving the realization of the goals of Islamic Law (maqasid al-syariah). Dispute resolution amid community life through Sharia arbitration forums has long been known in the history of Islamic law. Disputes that occur in the community are usually resolved by appointing an arbitrator as a mediator to resolve the dispute. In its development, the practice of tahkim in Islam has preceded the practice of modern arbitration. Tahkim is now increasingly organized administratively, so procedural rules are introduced as permanent institutional arbitration.

So that the state, with its power, also regulates its recognition in order to achieve legal certainty regarding its existence in society, the principle of justice can be used as a concept of peace and is interconnected because advocacy for justice involves advocacy for peace, by the revelation of Allah SWT contained in the Koran

to create order social peace and justice. Peace will be realized if justice is upheld, and without justice, peace will be utopian, or if there is no justice, there is no peace.

The concept of justice, according to al-Ghazali, is a combination of rational and revelational ideas (revelation). Justice is a statement of Allah's will and is manifested in the Shari'a which provides several parameters regarding something that is morally just or unjust. The principle of justice in Islamic economics is the main principle and even becomes a support for the design of Islamic teachings which consist of aqidah, sharia, and morals. This is proven by various ways of emphasis in the Qur'an and also exemplified by Rasulullah SAW when Allah ordered 3 (three) main things to be prioritized. Allah said, "Indeed, Allah commands you to do justice, do good deeds, and give to your relatives." In the context of Sharia insurance, form of muamalah, the principle of justice must be prioritized. The basic concept of Sharia insurance is designed in such a way that the principle of justice can be felt by the insured person, and the contract is transparent so that it does not harm either party and benefits one party whose aim is to approach justice (Al-Ghazzālī, 1987).

The values of justice in the Sharia arbitration process are reflected in the requirement of being an arbitrator (hakam) who does not have a blood family relationship up to the second degree with one of the parties to the dispute, has no financial or other interests in the arbitration award, is not a prosecutor, judge, clerk or official. Other courts. With these requirements, it is hoped that the arbitrator can carry out his duties fairly. Arbitrators are also responsible for upholding concrete justice in resolving submitted disputes.

In the context of insurance, a form of muamalah, the principle of justice is also the main principle that must take priority. The basic concept of Sharia insurance is designed in such a way that the principle of justice can be felt by the insured person, and the contract is transparent so that it does not harm either party and benefits one party whose aim is to approach justice. Apart from that, Sharia insurance also does not recognize forfeited funds, either because there is no claim or the customer cannot continue paying the premium. The values of justice in the Sharia arbitration process are reflected in the requirements to be an arbitrator (hakam) who does not have a blood family relationship up to the second degree with one of the parties to the dispute, does not have financial or other interests in the arbitration award, is not a prosecutor, clerk judge or official. Other courts. With these requirements, it is hoped that the arbitrator can carry out his duties fairly. The arbitrator is also responsible for upholding concrete justice in resolving the dispute submitted.

Settlement of Sharia insurance disputes needs to pay attention to efficiency so that the parties to the dispute do not drag on. The efficient principle in resolving Sharia insurance disputes is in line with the Economic Analysis of Law theory, which is based on rational choice, value, utility, and efficiency, which is based on human rationality (Rafika, 2022). Posner added that the concept of Economic Analysis of Law can be used as an approach to answer legal problems by expressing different

definitions and different legal assumptions to get a picture of satisfaction and increasing happiness (maximization of happiness). This approach is closely related to justice in the law.

In the economic analysis approach to law, the choice of dispute resolution forum is efficient dispute resolution as a manifestation of the rational choice of the parties. Dispute resolution through Sharia-based arbitration forums is indeed more efficient than litigation. In this context, efficiency is not given a quantitative meaning but contains the character quality inherent in sharia arbitration. With the meaning of this character quality, the efficiency of the Sharia arbitration forum is reflected in the process, which is relatively faster, cheaper, and less formal. The decision is final and binding without lengthy procedures due to appeals and cassation.

The efficient principle in resolving Sharia insurance disputes is in line with the Economic Analysis of Law theory, which is based on rational choice, value, utility, and efficiency based on human rationality. The concept of rational choice is based on the assumption that humans are rational beings. Richard Postner put forward a fundamental concept based on economic goals using the principle "man is a rational maximizer of his ends in life, his satisfactions what we shall call his 'self-interest.'" In common sense, humans are given various alternatives to find the best choice in order to provide satisfaction that suits their interests. In the economic analysis approach to law, the choice of dispute resolution forum is efficient dispute resolution as a manifestation of the rational choice of the parties.

Dispute resolution through Sharia-based arbitration forums is more efficient than through the litigation process. The efficiency in question is not only measured quantitatively but contains the quality characteristics inherent in sharia arbitration, namely, a process that is relatively faster and cheaper, less formal, and the decision is final and binding, without lengthy procedures due to appeals and cassation. The arbitration forum will resolve Sharia insurance disputes peacefully so that the meaning of efficiency also includes not breaking off friendly relations and maintaining the continuity of business relations between those in dispute. Furthermore, the principles of confidentiality and mutual trust in the arbitration process are very necessary, and sharia-compliant arbitration places trust in the disputing parties because the differences will be resolved responsibly and honorably.

On the other hand, both parties also place great trust in arbitration institutions, which will resolve disputes and be handled by experts. The principle of confidentiality regarding the arbitration process is still the preferred choice for business people. Confidentiality is a matter of trust for the arbitration institution because every stage is carried out in a closed manner, starting from examining the Statement of claim, Statement of defense, documents, witnesses, and experts, as well as oral hearings with the parties party.

Because it is carried out behind closed doors and in secret, only certain people are allowed to attend, namely the parties, representatives or proxies of the parties, arbitrators, and witnesses. The parties want the resolution of business disputes to be closed and unknown to the public so that the "Corporate Image" is maintained. The existence and operationalization of Sharia arbitration to resolve Sharia economic disputes, including the Sharia insurance sector, has been regulated in several laws and regulations, namely the Arbitration and Alternative Dispute Resolution Law (1999) and the Insurance Law (2014). This regulation is to provide clarity for the public in seeking justice in resolving Sharia insurance disputes, so the provisions regarding resolving insurance disputes between insurance companies and policyholders, insureds, participants, or other parties entitled to obtain insurance benefits must be emphasized, namely with the following options: 1). In litigation, sharia insurance dispute resolution is carried out in religious courts. 2). Meanwhile, non-litigation Sharia insurance dispute resolution is carried out through Sharia arbitration so that Sharia insurance dispute resolution instruments are regulated comprehensively from upstream to downstream, although in the future, Sharia arbitration will also collaborate with the Financial Services Sector in the Financial Services Authority Regulations (Rafika, 2022).

Based on the problem of existing norms for resolving Sharia insurance disputes through Sharia arbitration, it is necessary to change and refine the existing law, and ideal improvements include:

First, the role of the arbitrator in resolving disputes through Sharia arbitrase is very important, and it determines the resolution of disputes that are resolved through arbitration. So, the disputing parties will choose to resolve the dispute through arbitration with competent, honest, and integrity judges not only personally but also with their skills and expertise in the field of the Sharia Arbitration Law and so on regarding the core of the dispute they are facing. In this case, Sharia insurance is used to provide a win-win solution for the disputing parties (interview with Zainal Arifin Housein Chairman of Basyarnas Indonesia).

Second, Normatively, Sharia insurance is regulated by the Insurance Law (2014). The continuity and existence of these legal norms do not mention the resolution of Sharia insurance disputes, as well as Sharia business and procedures for resolving disputes outside the court only in the the Arbitrase and Alternative Dispute Resolution Law (1999), which still needs to regulate the mechanism for handling cases. According to the Religious Court Law (Amaendment 2009) resolving Sharia disputes through PA, then there is a problem with norms, so it is necessary to change the Arbitrase and Alternative Dispute Resolution Law (1999) Article regarding District Courts, which must be supplemented with Religious Courts, apart from that there are only regulations at the level of Supreme Courts Regulation Number 14 of 2009. Two thousand sixteen regarding procedures for resolving Sharia economic disputes to be converted into law, and the tendency to issue a Decree from the Indonesian Ulema Council regarding the formation of Basyarnas into the constitution of policies in law enforcement and another from

community organizations. Therefore, state policy has yet to be maximized, so constitutional authority needs some input for Legislation as a manifestation of Article 58 of the Judicial Power Law (2009).

Third, Sharia Arbitration, which is a development of Tahkim, has legal authority, but under the Islamic legal system and actual Indonesian law, according to Islamic Law, Sharia judgments in Sharia are related to Muamalah, Sharia approval (Tahkim) will come from the Qur'an hadith, and the agreement of the scholars (Shiddieqy, 1997). Sharia dispute resolution and arbitration are part of the principles of Islamic law (maqashid al-syariah) (Mashdurohatun, 2011). In the history of Islamic law, dispute resolution during a person's lifetime has been known through the use of sharia mediation. Disputes that arise between people are resolved by appointing a judge (judge) who resolves the dispute. In its development, the practice of Tahkim in Islam preceded modern arbitration.

Fourth, according to al-Ghazali, justice combines rational ideas and revelation (wahyu). Justice is a statement of God's will and is enshrined in the Shari'a. This Shari'a provides several parameters for something fair or unfair regarding Islamic economic morals. The principle of justice is a general principle and has become the main principle. It even protects the structure of Islamic teachings, including aqidah, Sharia, and ethics. Settlement of Sharia insurance disputes through Sharia arbitration is related to justice in deciding or establishing law. Legal justice is justice that places everyone in the eyes of the law in the same and equal position, in this case, both entrepreneurs and Sharia insurance customers. Legal justice does not differentiate between a person's social status because, in the eyes of the law, everyone is the same. The values of justice in the Sharia justice system are that of an arbitrator (hakam) who has nothing to do with the second level and is one of the parties to the dispute without money or other interests in entering arbitration. With these requirements, it is hoped that the arbitrator can carry out his duties fairly and is also responsible for upholding concrete justice in resolving the dispute submitted.

Fifth, Sharia Insurance does not recognize losses due to the lack of claims or customers' inability to continue paying bills. The principle of justice in the Sharia justice system is an arbitrator (hakam) who does not take sides with the parties to the dispute, who has no financial or other interests in the arbitration case, lawyers, judges, clerks, or other court clerks.

Sixth, efficient principles in resolving Sharia insurance disputes align with the Economic Analysis of Law theory, which is based on rational choice, value, usefulness, and efficiency based on human intelligence. The concept of rational choice is based on the assumption that humans are rational. Richard Postner introduced a basic theory based on economic goals, using the idea that "a person is a rational extension of his life goals, the satisfaction of what we call "self-interest" as an expression of other options' reasonable dispute resolution in the Sharia justice system is more effective than in the courts Important work is not only discussed but also includes the characteristics of the sharia justice system, namely: the fastest and

cheapest process, final decision and permanent judgment without a long appeal and cassation process. The arbitration body will peacefully resolve disputes about Sharia insurance so that friendship and continuity of business relations are contradictory and also taken into account in terms of efficiency.

Seventh, confidentiality and mutual trust in the arbitration process are necessary, and arbitration places trust in the disputing parties because the differences will be resolved responsibly and honorably. Apart from that, the parties to the dispute also place great trust in the existence of arbitration institutions that will resolve disputes and be handled by experts. The principle of confidentiality regarding the arbitration process must be the priority choice for business people because confidentiality is a trust for Sharia arbitration institutions. Each process is carried out in a closed manner, starting from the examination of the statement of claim. Defense statements, documents, witnesses, and experts, as well as oral hearings with the parties. Because it is carried out in a closed and confidential manner and only certain people are allowed to attend, namely the parties, the parties' representatives/proxies, arbitrators, and witnesses, the resolution of business disputes is closed and not known to the public. So that the "Corporate Image" is maintained.

Eighth, the existence and operationalization of Sharia arbitration to resolve Sharia economic disputes, including the Sharia insurance sector, which has been regulated in several statutory regulations, namely in the Arbitration & Alternative Dispute Resolution Law (1999) and the Insurance Law (2014). This regulation provides clarity for the public in seeking justice to resolve Sharia insurance disputes, so it is necessary to create regulations for resolving insurance disputes between insurance companies and insureds, participants, or other people who have the right to pay for insurance, except religious courts. Currently, Sharia insurance dispute resolution in court occurs in Sharia arbitration, carried out using the Sharia Insurance Dispute Resolution Tool. It is regulated comprehensively from upstream to downstream, meaning that upstream here are the provisions regarding Islamic economic settlement instruments, especially Sharia insurance, materially using Sharia principles, so downstream means formally also using Sharia principles.

CONCLUSION

The direction of the non-litigation sharia insurance dispute resolution policy in the field of muamalah is through the National Sharia Arbitration Board (Basyarnas). In its implementation Basyarnas collaborates with related stakeholders (LAPS SJK). Basyarnas is still the second choice after the Indonesian Insurance Mediation Board because of Article 54 of the Insurance Law (2014) It can emphasize the rules for resolving sharia insurance disputes non-litigation through sharia arbitration and litigation through the Religious Courts, and can be done virtually.

In order for the Government's political will to facilitate increasing the role of Basyarnas or sharia arbitration institutions as institutions for resolving sharia economic disputes outside of court, it is necessary to improve the Insurance Law

(2014) by adding the function and role of sharia arbitration as an arbitration institution the alternative non-litigation sharia insurance dispute resolution to ensure legal certainty. There is also the need for revision of the Arbitration and Alternative Dispute Resolution Law (1999), primarily to regulate the scope, duties, and functions of sharia arbitration, especially Article 61, Article 62, Article 63, Article 64 and Article 65 by considering the use of virtual arbitration processes for developing sharia arbitration as an authoritative and independent arbitration forum.

References

- Affandi, M. (2002). *Islam dan Bisnis*. Publikasi Pelanduk.
- Al-Ghazzālī. (1987). *al- Tibr al-masbūk fī naṣīhat al-mulūk*. Maktabat al-Kulliyāt al-Azharīyah, Dār Ibn Zaydūn.
- Antonio, M. S. (1994). *Prinsip Dasar Operational Insurance Takafull in Arbitration Islam in Indonesia*. BAMUI.
- Fauzi, W., & Fitri, D. (2019). An alternative to sharia insurance dispute resolution through the national sharia arbitration agency (Basyarnas) in Indonesia. *International Journal of Innovation, Creativity and Change*.
- Hasreiza. (2016). *Mari Mengenal Asuransi Berbasis Syariah*. <https://id.linkedin.com/pulse/mari-mengenal-asuransi-berbasis-syariahhasreiza->
- Kompas. (2022). *Sejarah Asuransi Syariah di Indonesia*. <https://www.kompas.com/stori/read/2022/10/26/160000179/sejarahasuransi-syariah-di-indonesia>
- Mardani. (2010). *Hukum Acara Perdata Peradilan Agama dan Mahkamah Syar'iyah*,. Sinar Grafika.
- Mashdurohatun, A. (2011). Tantangan Ekonomi Syariah Dalam Menghadapi Masa Depan Indonesia Di Era Globalisasi. *Jurnal Dinamika Hukum*. <https://doi.org/10.20884/1.jdh.2011.11.edsus.264>
- Muhammad, A. (1990). *Hukum Perdata Indonesia*. Citra Aditya Bakti.
- Nurwidiatmo. (2008). *Laporan Akhir Tim Analisis dan Evaluasi Hukum tentang Perasuransian (Asuransi Syariah) Undang-Undang Nomor 2 Tahun 1992*. <https://bphn.go.id/data/documents/asuransi.pdf>
- Parsaulian, B. (2018). Prinsip Dan Sistem Operasional Asuransi Syariah (Ta'min, Takaful Atau Tadhmun) Di Indonesia. *EKONOMIKA SYARIAH : Journal of Economic Studies*. <https://doi.org/10.30983/es.v2i2.727>
- Rafika, R. (2022). Penyelesaian Sengketa Asuransi Melalui Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan. *SALAM: Jurnal Sosial Dan Budaya Syar-I*. <https://doi.org/10.15408/sjsbs.v9i4.26601>
- Saharuddin, D. (2016). Asuransi Syariah Dalam Praktik (Studi Analisis Terhadap Shariah Compliance). *ESENSI*. <https://doi.org/10.15408/ess.v4i3.2438>
- Shiddieqy, M. H. A. (1997). *Peradilan dan Hukum Acara Islam*. PT. Pustaka Rizki Putra.

- Soekanto, S., & Mamudji, S. (2001). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. PT Raja Grafindo Persada.
- Susilawety. (2013). *Arbitrase Dan Alternatif Penyelesaian Sengketa Ditinjau Dalamm Presfektif Perundang-Undang*. Gramata Publishing.
- Warman, A. B., & Hayati, R. F. (2022). Tahkim dalam Standar Syariah dan Urgensinya terhadap Penyelesaian Sengketa Ekonomi Syariah di Indonesia. *Islamika : Jurnal Ilmu-Ilmu Keislaman*.
<https://doi.org/10.32939/islamika.v22i01.1246>
- Yanggo, H. T. (2003). Asuransi, Hukum dan Permasalahannya. *Jurnal Ah-Kam*, 7(12).