



## Sharia Insurance Dispute Resolution in Indonesia

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### ABSTRACT

Islamic insurance, like conventional insurance, can lead to disputes between policyholders and insurance companies. These disputes can include claim denials, policy ambiguities, and questions about coverage. The resolution of these disputes can be complex due to the sharia aspects that need to be considered. In this study, qualitative research methods are used to understand the rules related to the settlement of sharia insurance disputes in Indonesia. Litigation is usually the last resort in dispute resolution, as it is costly and time-consuming. However, if non-litigation means do not yield satisfactory results, litigation may be necessary to determine the rights and obligations of each party. In the context of Islamic law, the litigation process must comply with sharia principles. Disputes in sharia insurance can be resolved through the Religious Court, but other methods such as deliberation, mediation or arbitration can also be used if agreed in the contract. If the dispute is resolved through negotiation, then no other dispute resolution method is required. However, if there is no agreement, then other sharia insurance dispute resolution mechanisms listed in the policy can be pursued.

**Keywords :** Sharia, insurance, resolution, Indonesia

### ABSTRAK

Asuransi syariah, seperti halnya asuransi konvensional, dapat menimbulkan perselisihan antara pemegang polis dan perusahaan asuransi. Sengketa ini dapat berupa penolakan klaim, ketidakjelasan polis, dan pertanyaan tentang pertanggungan. Penyelesaian sengketa ini dapat menjadi kompleks karena adanya aspek syariah yang perlu dipertimbangkan. Dalam penelitian ini, metode penelitian kualitatif digunakan untuk memahami aturan-aturan yang terkait dengan penyelesaian sengketa asuransi syariah di Indonesia. Litigasi biasanya menjadi pilihan terakhir dalam penyelesaian sengketa, karena membutuhkan biaya dan waktu yang lama. Namun, jika cara-cara non-litigasi tidak membuahkan hasil yang memuaskan, litigasi mungkin diperlukan untuk menentukan hak dan kewajiban masing-masing pihak. Dalam konteks hukum Islam, proses litigasi harus sesuai dengan prinsip-prinsip syariah. Perselisihan dalam asuransi syariah dapat diselesaikan melalui Pengadilan Agama, tetapi metode lain seperti musyawarah, mediasi, atau arbitrase juga dapat digunakan jika disepakati dalam kontrak. Jika sengketa diselesaikan melalui negosiasi, maka tidak diperlukan metode penyelesaian sengketa lainnya. Namun, jika tidak ada kesepakatan, maka mekanisme penyelesaian sengketa asuransi syariah lainnya yang tercantum dalam polis dapat ditempuh.

**Kata kunci :** Syariah, asuransi, resolusi, Indonesia

## INTRODUCTION

Islamic economics offers many benefits, such as increased social justice and ethics in business, but as in any economic system, disputes are inevitable. Islamic economic disputes are disputes or conflicts that arise in the context of Islamic economics, whether between individuals, businesses or financial institutions. These disputes can cover various aspects of the economy, such as financial agreements, sale and purchase transactions, inheritance, or investment. Islamic economic disputes have their own characteristics because they must be resolved by considering the principles of Islamic law. The resolution of Islamic economic disputes requires an in-depth understanding of Islamic law, as well as an awareness of the underlying principles of justice.

Sharia Insurance is one of the economic activities that has an insurance concept based on sharia principles, which prohibits usury (interest), *maisir* (gambling) and *gharar* (excessive uncertainty). Sharia insurance has grown rapidly in recent decades so that it has become an increasingly popular alternative for those who want to get financial protection without violating the principles of Islam.

Just like conventional insurance, sharia insurance can also involve disputes between policyholders and insurance companies. Islamic insurance disputes can cover a wide range of issues, from claim denials, to ambiguities in insurance policies, to questions about whether a particular loss is actually covered under the policy. The resolution of these disputes can be complex, given the sharia aspects that need to be considered in the process.

This paper will discuss several regulations related to Islamic insurance and dispute resolution in Islamic insurance in Indonesia. With an understanding of what rules are related to dispute resolution in Islamic insurance, it is hoped that this paper can provide useful insights for insurance practitioners, academics, and anyone interested in the legal and financial aspects of Islamic insurance.

## METHODS

The method used in this research is qualitative research method. Qualitative research methods with an approach used to understand the rules related to the settlement of sharia insurance disputes through data collection and analysis in the form of text. The data collected is then analyzed in depth to identify the legal rules related to the settlement of sharia insurance disputes in Indonesia.

## RESULTS AND DISCUSSIONS

Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance has the aim of ensuring the development of a healthy, transparent, and integrity insurance industry and providing protection to insurance policyholders. The Law explains that insurance is an agreement between two parties, namely the insurance company and the policyholder, which is the basis for the receipt of premiums by the insurance company in return for:

1. provide compensation to the insured or policyholder for loss, damage, costs incurred, loss of profit, or legal liability to third parties that the insured or policyholder may suffer due to the occurrence of an uncertain event; or
2. provide payments based on the death of the insured or payments based on the life of the insured with benefits that have been determined and / or based on the results of fund management.
3. The law also explains sharia insurance, which is a collection of agreements, consisting of agreements between sharia insurance companies and policyholders and agreements between policyholders, in the context of managing contributions based on sharia principles in order to help and protect each other in a way:
4. provide compensation to participants or policyholders for losses, damages, costs incurred, lost profits, or legal liability to third parties that participants or policyholders may suffer due to the occurrence of an uncertain event; or
5. provide payments based on the death of participants or payments based on the life of participants with benefits that have been determined and / or based on the results of fund management.

From the two explanations of insurance and sharia insurance according to the Law above, it is known that sharia insurance applies sharia principles so it is necessary to know what is meant by sharia principles in these rules. Sharia principles are the principles of Islamic law in insurance activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia.<sup>1</sup> In Indonesia, the institution that has the authority to determine fatwas in the field of sharia is the Indonesian Ulema Council (MUI). MUI is an institution that is officially recognized and plays an important role in compiling and issuing fatwas and guidelines relating to Islamic law in Indonesia.

Meanwhile, it is also mentioned in other regulations explaining dispute resolution, Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector states that the Financial Sector Alternative Dispute Resolution Institution, hereinafter

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<sup>1</sup> Indonesia, "Undang - Undang Republik Indonesia Nomor 40 Tahun 2014 Tentang Perasuransian" (2014).

abbreviated as LAPS-SK, is an institution that resolves disputes between Consumers and Custodians outside the court. The scope includes financial sector dispute resolution. However, this regulation is limited to regulating the conventional financial sector so that it does not accommodate the settlement of sharia economic disputes which are then regulated in special rules for resolving sharia economic disputes.<sup>2</sup>

Furthermore, it will be briefly explained about dispute resolution in Islamic banking before entering the discussion about the settlement of Islamic insurance disputes. In the Law of the Republic of Indonesia Number 21 of 2008 concerning Islamic Banking, it is stated that the settlement of Islamic Banking disputes is carried out by a court within the Religious Courts. However, if the disputing parties have agreed to settle the dispute other than through the court, then the dispute settlement must be carried out in accordance with what has been agreed as long as it is not contrary to sharia principles.

From the above explanation, we can conclude that the settlement of disputes that may arise in Islamic banking will be carried out through the courts within the Religious Courts. However, other than through the court, the possibility of dispute resolution through deliberation, mediation or arbitration institutions is also opened as long as it is agreed in the contract by the parties. The specificity of services in religious courts is stated in the Law of the Republic of Indonesia Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts, namely Religious Courts are courts for people who are Muslims.

As for what is meant by people who are Muslims, it includes people or legal entities who automatically submit themselves voluntarily to Islamic law regarding matters that fall under the authority of the Religious Courts. Cases that are the duty and authority for the Religious Courts in examining, deciding and resolving cases at the first level between people of the Muslim religion in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah and sharia economics. Religious courts have a key role in the resolution of sharia economic disputes where the process often involves the interpretation of Islamic law and ethical values in resolving conflicts arising in financial transactions based on Islamic law.

So since the reform of Law No. 7 of 1989 concerning Religious Courts, the role of religious courts in resolving sharia cases has become increasingly complex. Not only taking care of social cases, but also penetrating into sharia economic cases which include financial

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<sup>2</sup> Indonesia, “Undang - Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan” (2023).

institutions and sharia industries. One of the sharia financial institutions that is the authority of dispute resolution in religious courts is sharia insurance.<sup>3</sup>

Islamic insurance is one of the Islamic financial institutions that are developing today. As an Islamic financial institution engaged in risk management to help and protect each other in the form of protection of life and property, Islamic insurance is also required to resolve every litigation case in the Religious Courts. In sharia insurance, there is a policy as authentic evidence containing the rights and obligations of the company and sharia insurance participants.<sup>4</sup>

As a contract, the sharia insurance policy becomes a source of law for the parties bound by the agreement. The parties are obliged to fulfill the provisions in the policy, including the method of dispute resolution. The sharia insurance policy becomes the legal basis for the parties to act in relation to the contents of their engagement. The parties are subject to and obedient to the insurance policy, as well as in resolving disputes, the parties must also adjust it to the provisions contained in the policy.

In the implementation of Islamic economic activities, it certainly does not rule out the possibility of disputes between several parties. The main source of sharia insurance disputes usually involves claims rejected by insurance companies or disputes related to the interpretation of insurance contracts. Claims may be rejected for various reasons, such as non-conformity with the terms of the contract, lack of sufficient evidence, or legal issues that may arise in the claims process. In addition, disputes can also arise in terms of the amount of compensation proposed by the policyholder, where the Islamic insurance company and the policyholder may have different views on the amount of compensation that should be paid.

Islamic insurance dispute resolution often involves mediation, arbitration or judicial processes. In the sharia context, sharia courts can also be used as a dispute resolution mechanism. Islamic insurance companies and policyholders will usually try to reach an out-of-court settlement to avoid the costs and time associated with the judicial process. However, if mediation and arbitration are unsuccessful, then judicial settlement may be the last resort.

In Islamic insurance disputes, the principles of Islamic law and fatwas (Islamic legal opinions) play an important role in determining the outcome of the dispute. Islamic insurance contracts must comply with sharia principles, such as the prohibition of *riba*

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<sup>3</sup> Indonesia, “Undang - Undang Republik Indonesia Nomor 21 Tahun 2008 Tentang Perbankan Syariah” (2008).

<sup>4</sup> Azharuddin Lathif, “Disparitas Penyelesaian Sengketa Jalur Litigasi Pada Polis Asuransi Syariah Dan Putusan Pengadilan,” *Jurnal Legislasi Indonesia* 16 (Maret 2019): 76–88.

(interest), excessive speculation, and elements of gambling. Therefore, the sharia court or arbitrator reviewing the dispute must understand these principles in order to make a fair decision based on Islamic law.

Dispute resolution can be simplified to two parts, namely:

- (1) Non-litigation, namely Alternative Dispute Resolution, and
- (2) Litigation, i.e. the Court.

### **Nonlitigation**

Alternative Dispute Resolution (ADR) or also known as Alternative Dispute Resolution (APS) is a method that can be used in resolving non-litigation disputes. The settlement of sharia insurance disputes through nonlitigation is an approach that tries to resolve conflicts or differences of opinion between policyholders and sharia insurance companies without involving the judicial process. The nonlitigation approach has several advantages, including lower costs, more efficient time, and allowing policyholders and insurance companies to reach a faster and more flexible solution. APS mechanisms typically involve a fair (impartial) arbiter who acts as a third party or neutral party to the two camps in dispute. The settlement of nonlitigation sharia insurance disputes can be briefly explained as follows:

Consultation is a "personal" action between a certain party (client) and another party who is a consultant, where the consultant provides his opinion to the client according to the needs and needs of his client.

Negotiation is an effort to resolve the parties' dispute without going through litigation with the aim of reaching a mutual agreement on the basis of more harmonious and creative cooperation.

Mediation is a way of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator. A mediator brings together policyholders and insurance companies to help them reach an agreement. They help facilitate communication between the disputing parties, investigate the issues that arise, and help reach an agreement that is acceptable to both parties. Mediation is often an effective way to resolve disputes in a more collaborative manner.

Conciliation is a mediator who acts as a conciliator with the agreement of the parties by seeking an acceptable solution. Where a conciliator, who may also be a legal expert, works with policyholders and insurance companies to help them reach mutual



understanding and solutions. Conciliation usually tries to identify key issues and reach a deeper understanding between the two parties.

Expert judgment is the opinion of experts for a matter that is technical in nature and in accordance with their field of expertise. In some cases, Islamic insurance disputes can be resolved through the opinion of an independent expert appraiser. The expert appraiser will examine the claim or disagreement and provide an opinion or judgment on what should be a fair solution.

Arbitration is an agreement in the form of an arbitration clause contained in a written agreement made by the parties before a dispute arises, or a separate arbitration agreement made by the parties after a dispute arises.

Article 1 of Law No.30 of 1990 concerning Arbitration and Alternative Dispute Resolution states that Arbitration is a method of resolving a civil dispute outside the public courts based on an arbitration agreement made in writing by the parties to the dispute. Thus arbitration is a way of resolving disputes by one or several judges (referees / arbitrators) based on an agreement made by the parties stating that they will submit to and obey the decisions given by the judge / judges (referee / arbitrator) they choose.

The Law also explains that the Arbitration Institution is a body chosen by the parties to a dispute to provide a decision on a particular dispute, the institution can also provide a binding opinion on a particular legal relationship in the event that no dispute has arisen. But not all disputes can be resolved through arbitration, but only disputes regarding rights that according to the law are fully controlled by the parties to the dispute on the basis of their agreement.

There are several arbitration institutions that provide dispute resolution services through arbitration, as follows:

1. Indonesian National Arbitration Board (BANI): BANI is one of the most well-known and largest arbitration institutions in Indonesia. They offer commercial dispute resolution services, both national and international. BANI has various arbitration rules and procedures that can be applied according to the type of dispute being processed.
2. Indonesian Sharia Arbitration and Mediation Institute (LAAMSI): LAAMSI is an arbitration institution that specializes in dispute resolution based on sharia law. They provide arbitration and mediation services for disputes that comply with sharia principles.
3. Indonesian National Construction Arbitration Institute (LAKNIs): LAKNIs is an institution that focuses on dispute resolution in the construction industry. They offer arbitration services for disputes related to construction projects.

4. Indonesian Mediation and Arbitration Institute (LMAI): LMAI is an institution that provides mediation and arbitration services for commercial dispute resolution. They have rules and procedures used in the dispute resolution process.
5. Indonesian Consumer Arbitration Institute (LAKI): LAKI is an organization that focuses on consumer dispute resolution. They provide arbitration services for disputes between consumers and service providers or manufacturers.

## Litigation

The dispute resolution process carried out through the court or what is often referred to as "litigation", which is a dispute resolution carried out by a court process where the authority to regulate and decide is exercised by the judge. This dispute resolution process results in all parties to the dispute facing each other to defend their rights before the court. The end result of a dispute resolution through litigation is a decision that states a win-lose solution. . This means that after an amicable settlement is unsuccessful, the judge continues the process of examining the case in court in accordance with the provisions of the civil procedural law in question.

The settlement of sharia economic cases in the religious court environment will be carried out in accordance with the provisions of civil procedural law as applicable in the general court environment. Settlement of Sharia Banking disputes is carried out by a court within the Religious Courts. In the event that the parties have agreed on dispute resolution, dispute resolution shall be carried out in accordance with the contents of the Agreement. Dispute settlement as referred to in the contents of the contract, must not conflict with Sharia Principles. The contract or agreement is binding law for the parties to the contract or agreement.

Just like Islamic banking, Islamic insurance is part of Islamic economics. So when viewed from the Constitutional Court Decision No. 90/PUU-X/2012 on the case of Testing Law No. 21 of 2008, it can also be relied upon that all sharia economic cases, which include sharia insurance, are resolved in the Religious Courts. Thus the authority to examine, decide and resolve sharia banking disputes is the absolute authority of the courts within the Religious Courts that cannot be resolved by other courts because it will violate the principle of absolute jurisdiction. So that if there is a sharia economic case which includes sharia insurance, the parties can do it by court (litigation), in which case the Religious



Courts are given absolute authority to resolve sharia economic cases including insurance disputes.<sup>5</sup>

In sharia insurance, the authentic evidence as the basis for the contract agreement between insurance participants and insurance companies is the policy. Based on Article 19 paragraph (1) of Government Regulation No. 73 of 1992 concerning the Implementation of Insurance Business, it is said that the policy or form of insurance agreement by any name, along with attachments that constitute a unit with it, must not contain words or sentences that can lead to different interpretations regarding the risks covered by insurance, the obligations of the insurer (insurance company / manager) and the obligations of the insured (insurance participant), or make it difficult for the insured (insurance participant) to manage their rights.

Sharia Economic Disputes are the Absolute Authority of the Religious Courts. The Religious Court is the only litigation institution authorized to resolve sharia economic disputes, including in the field of sharia insurance. Disputes can arise due to differences of opinion or a loss felt by one of the parties, causing a dispute between the two parties. This dispute can then become a dispute. This difference of opinion can trigger disputes in the insurance business.<sup>6</sup>

In any Islamic insurance journey, policyholders have the expectation of gaining financial protection in the event of unwanted circumstances, such as natural disasters, accidents, or business losses. However, sometimes disputes can arise, when their claims are denied or there are disagreements over the interpretation of the insurance contract. Policyholders may feel that their claim was not handled fairly or that the proposed compensation was too low. This is where Islamic insurance dispute resolution becomes very important.

When an Islamic insurance dispute reaches a level that cannot be resolved through negotiation, mediation, or other alternative dispute resolution methods, policyholders and Islamic insurance companies may choose to take their dispute to court. This is the last step in dispute resolution efforts and involves a litigation process involving the parties, lawyers, and the court.

The litigation process begins with the filing of a lawsuit by one of the parties, usually the policyholder, in an authorized court. The lawsuit will contain claims or demands based on differences of opinion between the policyholder and the Islamic insurance company.

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<sup>5</sup> Winda Fitri, "Efektifitas Basyarnas Dan Pengadilan Agama Sebagai Lembaga Penyelesaian Sengketa Asuransi Syariah Di Indonesia," 2019.

<sup>6</sup> Indra Maya Syara, "METODE PENYELESAIAN SENGKETA DALAM KONTRAK ASURANSI SYARIAH" 9, no. 1 (2017).

Furthermore, the Islamic insurance company will provide a response or defense to the lawsuit.

When an Islamic insurance dispute is submitted to the court, the court will manage the judicial process by considering the evidence submitted by both parties. Usually, witnesses and experts may be called in to help the court understand the case better. The court will make a decision based on the available law and evidence, as well as considering the principles of Islamic law that underlie sharia insurance.

The court's decision in resolving sharia insurance disputes through litigation is binding and must be obeyed by both parties. The losing party in the dispute may have to pay damages to the winning party in accordance with the court's decision. This litigation process can be expensive and time-consuming, as well as risky, as the final decision rests with the court.

Settlement of Islamic insurance disputes through litigation is usually the last resort as it involves high costs and the time required. However, when dispute resolution through nonlitigation methods does not yield satisfactory results, litigation may be necessary as a last resort to determine the rights and obligations of each party. In the context of Islamic law, it is important to ensure that the litigation process remains in accordance with the principles of sharia and underlying Islamic ethical values.

## CONCLUSION

One of the Sharia Financial Institutions, namely Islamic insurance, can occur disputes between policyholders and insurance companies. Dispute settlement that may arise in sharia insurance will be carried out through the court within the Religious Courts. However, apart from the court, the possibility of dispute resolution through deliberation, mediation or arbitration institutions is also opened as long as it is agreed in the contract by the parties.

If the dispute can be resolved through negotiation and there is an agreement between the two parties, then the dispute is considered resolved and the parties can carry out their rights and obligations based on a joint decision. Because the dispute has been deemed resolved through negotiation, there is no need for the dispute to be resolved through other institutions, either litigation or non-litigation.

But if this type of peaceful effort does not get an agreement that is acceptable to the parties, then the aggrieved party can continue to resolve the sharia insurance dispute

through other sharia insurance dispute resolution media that have been selected and listed on the policy.

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