



Sharia Insurance Disputes Through Sharia Arbitration: A Legal Discourse

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Abstrak

Sharia insurance in Indonesia is growing, because along with the increasingly complex disputes between parties, which cannot be avoided between Islamic insurance companies and policyholders, this is even though both of them help and protect each other. The problem is regarding the legal basis for sharia insurance dispute resolution which is still scattered in several laws and regulations. This has become a discourse and issue of legal norms for sharia arbitration as an option for sharia insurance dispute resolution, and so far the resolution of sharia insurance disputes through sharia arbitration is regulated by Supreme Court Regulation Number 14 of 2016. The research method used is descriptive normative. 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 insurance disputes is still a discourse, so that constitutional authority still uses Article 58 of Law no. 48 of 2009 concerning Judicial Power. Therefore, it is necessary to amend Law No. 30 of 1999, specifically regarding the article regarding the District Court, which must be supplemented by the Religious Courts and procedures for resolving disputes through sharia arbitration.

Kata Kunci: Dispute Settlement, Sharia Insurance, Sharia Arbitration.

INTRODUCTION

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 that is of great interest to the public is Islamic insurance. Sharia insurance is an alternative to *takaful* insurance, it is hoped that the insurance needs will be clearer, free from *maysir*, *gharar* and *usury* (Hussen, 1995). According to Islamic teachings, conventional insurance is not in line with Islamic teachings, this is because in the contract between the insurer and the insured there is an element of uncertainty (*gharar*), so it must be avoided (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, 2019). 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). So, the formation of laws to fulfill the needs of society in accordance with the interests of the Muslim community as stated in 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 based on sharia principles and the religious court which is a forum for justice seekers who are Muslims or those who are subject to Islamic law, can be carried out properly (Rahmi, 2013).

Implementation and handling of sharia economic disputes are not only through the Religious Courts (litigation) but several cases are also resolved in the District Court. However, the Law on Religious Courts clearly states that the Religious Courts have the authority to adjudicate sharia economic disputes. Then arbitration as a non-litigation institution is also given command, as the law on judicial power asserts that "settlement of civil cases can be carried out outside the court (non-litigation) namely through arbitration and mediation, conciliation, negotiation, and expert opinion" as stated in Article 58 of the Law No. 48 of 2009. This article does not explicitly regulate sharia economic disputes, but rather sharia civil disputes which can be resolved in an arbitration institution (Muhammad, 2021). These provisions strengthen the position and authority of the Arbitration and Alternative Dispute Resolution (AAPS) institution as regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and Article 3 strengthens the authority of

arbitration to resolve disputes and states that district courts are not authorized to adjudicate sharia economic cases. However, the choice of law in arbitration is left to the parties to choose the appropriate law and is not based on rigid legal provisions.

PT. Syarikat Takaful Indonesia (STI) is the first insurance company in Indonesia which was established on February 24, 1994. The establishment of PT. STI was driven by Bank Muamalat Indonesia (BMI), PT. Asuransi Jiwa Tugu Mandiri (AJTM), the Ministry of Finance (Kemenkeu) of the Republic of Indonesia, and the Association of Indonesian Muslim Intellectuals (ICMI). Furthermore, on August 4, 1994, PT. STI established PT Asuransi Takaful Keluarga (PT. ATK) (Antonio, 1994), as a sharia life insurance company and PT. Asuransi Takaful Umum (ATU) as a sharia general insurance company on June 2, 1995. 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 (Insurance, 2018).

The existence of these two sharia insurance companies as non-bank institutions then gave birth to conventional insurance companies that entered the sharia insurance business (Mardani, 2015). 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 applies the principle of risk sharing (sharing risks together). The participant wholly owns any surplus received by the company, and in practice, this surplus is shared with the sharia insurance company (Nurwidiatmo, 2008). So, sharia insurance is an alternative business for Indonesian Muslims today.

Table:
Insurance Type

No.	Insurance Type	2015		2016		2017		2018		2019		2020	
		FULL	UUS										
1	Life insurance	5	21	5	20	7	23	7	23	7	23	7	23
2	General insurance	3	23	4	24	5	25	5	25	5	24	5	24
3	Reinsurance			1	2	1	2	1	2	1	2	1	3
Total		8	44	10	46	13	50	13	50	13	49	13	50

Source: processed from Statistical data of Sharia IKNB, Financial Services Authority from 2012 to 2020. Description: FULL is a sharia insurance institution and UUS: Sharia Business Unit

Furthermore, the government seeks to strengthen the legal basis for running a sharia insurance business by stipulating Law Number 40 of 2014 concerning Insurance, which clearly distinguishes conventional insurance from applying the concept of risk transfer while the sharia insurance business uses the idea of risk-sharing. Sharia insurance is a business with the concept of an agreement between the sharia insurance company and the policy holder, where the policy holder pays contributions.

Although the contract between the sharia insurance company and the policyholder is based on sharia principles, please help and protect others, disputes between the two parties still occur, even though some disputes are resolved through the courts. However, there are also disputes which are resolved through sharia arbitration. The lawsuit filed by the policyholder to the sharia insurance company is generally in the form of a breach of contract. In addition, there are different interpretations of policy contents and are often caused by differences in understanding of the contents of the policy, such as in determining the number of claims given by different companies (Subagyo, 2011).

This can also be due to unclear product information exposure. Sometimes Sharia Insurance Company Agents do not provide information or provide detailed explanations about the products offered and also the provisions contained in the policy to prospective policyholders (Desmadi, 2014). participants do not understand it perfectly. Usually, this lack of information provision occurs because the agent and prospective policyholder participants have family or kinship relationships, so only with mutual trust can participants agree to the policy (Masykuroh, 2006). However, there are disputes regarding claims between policyholders and sharia insurance companies, and in general they can be resolved by the insurance company. However, this resolution is specifically carried out by the customer complaints department. Considering that sharia insurance operates based on sharia principles, disputes that arise are resolved according to sharia principles by institutions that have the authority to handle sharia economic cases.

Therefore, sharia insurance dispute resolution, apart from being resolved through court, can also be resolved outside of court or non-litigation through arbitration. Regulations for settling cases outside of court are contained in Chapter XII Articles 58 to 61 of Law No. 48 of 2009 concerning Judicial Power. The problem in this study is regarding how discourse and norms in sharia insurance disputes can be resolved through sharia arbitration.

METHODS

The approach method that will be used in this study is the descriptive-normative. This approach was chosen because in order to achieve the objectives/targets of the study, the researcher refers to the legal norms contained in the laws and regulations, court decisions, legal norms that exist in society, and legal instruments of sharia arbitration. Therefore, the

data used through the approach of related laws and regulations and court decisions with the legal problems to be studied and called a normative study of the regulation of sharia arbitration activities regarding the settlement of sharia disputes.

RESULTS AND DISCUSSION

The Sharia Arbitration

Law No. 30 of 1999 which regulates how to resolve civil disputes outside the general court is based on an arbitration agreement made in writing by the parties to the dispute. Meanwhile, alternative dispute resolution is a dispute resolution institution through procedures agreed by the parties based on an arbitration agreement agreed by the parties in writing. Settlement outside of court through deliberation, negotiation, mediation, conciliation, or expert assessment. Furthermore, according to Article 54 of Law Number 40 of 2014 concerning Insurance, which regulates the resolution of sharia insurance disputes. Sharia insurance companies and sharia reinsurance companies are required to become members of mediation institutions whose function is to resolve disputes between sharia insurance companies, or sharia reinsurance, and also companies and policy holders, insureds, participants, or other parties who are entitled to insurance benefits.

Although the Insurance Law was drafted long after the law on the Religious Courts, the settlement of sharia insurance disputes does not refer to the Act but instead directs dispute resolution to mediation institutions. Meanwhile, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) is an institution that monitors the development of sharia economics by applying Islamic sharia principles in the implementation of sharia trade transactions. This institution issued a fatwa regarding the resolution of sharia insurance disputes that can be carried out through the Basyarnas institution, if agreement and negotiations are not reached (Hussen, 1995). *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 several laws and regulations that regulate sharia insurance dispute resolution, namely the Law on Judicial Power, the Basic Agrarian Law (UUPA), the Insurance Law, the Arbitration and Alternative Dispute Resolution Law, and the Financial Services Authority Regulations (OJK). Some of these laws and regulations provide options for the parties to the dispute to choose a resolution route. Likewise, the institutions that can resolve disputes are very diverse, namely courts within the scope of religious courts, mediation institutions, sharia arbitration, and SJK LAPS from the Financial Services Authority. Saharudin (2014) explains that most insurance companies prefer to resolve their cases through a peace agreement (*ex-gratia*). The same thing was stated by Marc Galanter and Mia Cahill, that issues related to insurance were subject to judicial resolution. The public tends to conclude that companies often reject compensation claims offered by their customers, and dispute resolution outside of court (*non-litigation*) is chosen by the parties involved in the lawsuit (Susilawetty, 2013). Likewise, it can be said that alternative dispute resolution is an action to resolve a dispute. Settlement of disputes due to differences of opinion is agreed upon by the parties outside of court by means of consultation, negotiation, mediation, conciliation, or expert assessment (Gayo & Sitompul, 2022).

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. The choice of law in resolving civil disputes outside of court contributes very significantly to reducing the level of cases in court institutions. Alternative dispute resolution institutions that are independent and confidential are very possible for resolving disputes in the business sector (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 (Hasibuan, 2020) 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 (Hasibuan, 2020).

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 created humans as caliphs to manage the earth (natural resources) with trust. In fulfilling their needs, humans do not use natural resources excessively, and do not use them for their own benefit. Therefore, Islamic economic principles aim to maintain and improve the welfare of society. The achievement and goal of achieving prosperity is by *maqashid sharia* (upholding justice and improving welfare) (Astuti, Habbe & Wahab, 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 (Subagyo, 2011). Islamic teachings have the aim of building a society based on religion with morality and social justice, this includes efforts to solve economic problems based on moral teachings in addition to the law (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 (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. An example is regarding *farḍhu al-kifayah* [obligations of some Muslims]. This concept usually means religious activities. Following al-Ghazali's opinion, the meaning of life and people's livelihoods refers to the concept of social responsibility with all its meanings (Özbay & Syed, 2022).

Based on Al-Ghazali's thoughts on the principle of social justice, it is emphasized that (Abu-Sway, 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 (Abu-Sway, 1996).
- 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 (Al-Ghazali, 1998).
- c. A ruler must behave like a people to be fair (Al-Ghazali, 1998).
- d. Simply, not by force, not by violence, to make the country stable and the people peaceful (Abu-Sway, 1996).
- 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 (Abu-Sway, 1996).
- 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 (Abu-Sway, 1996).

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 (Rahman, 1995). *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-muqsiḥ* 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 *istiḡomah* (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 (Nasution, 1994). *Al zulm* means placing objects not according to their purpose, taking a little or covering up for the past (Raharjo, 1993). 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. According to Quraish Shihab (1996) using the term *al-qisth* contains the basic meaning of "part", but does not necessarily mean "equality". Therefore, the word *qisth* is more commonly used than the word 'adl. Apart from the terms *al-'adl* and *al qisth*, the Qur'an also reveals the meaning of "justice" with the term *al-mizān*. The term *al-mizān* comes from the root word *wazn* which means "scale", because *mizān* is a tool for weighing. However, it can also be interpreted as "justice".

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).

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 method of resolving a civil dispute outside the 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 (Hussen, 1995). Black's Law Dictionary (Bryan A. Garner, 2004), arbitration is a method of dispute resolution involving a neutral third party that is agreed upon by the parties to the dispute and whose decision is binding. It is also said that arbitration is a way of handling civil cases outside of court based on an arbitration agreement made in writing by the parties to the lawsuit. The legal basis for this arbitration is Law Number 30 of 1999 as the legitimization of the existence of arbitration institutions, which not only contains formal legal regulations nationally, but is also integrated with international arbitration duties, but does explicitly not include sharia arbitration as the choice of the parties. Therefore, arbitration as regulated in Law no. 30 of 1999 is a method of resolving a dispute outside of court based on a written agreement from the parties to the dispute. However, not all disputes can be resolved through arbitration, only disputes regarding rights that are legally agreed upon by the disputing parties based on their agreement.

Furthermore, Abdul Karim Zaidan (Sofyan, 2018) stated that *tahkim/hakam* is the voluntary appointment or appointment of two people or parties in dispute over someone. We now know as arbitrators and whom they trust to resolve their disputes/disputes (Satria Effendi, 1994). Syari'ah arbitration or known as *tahkim*, in Islamic law, was put forward by several experts, including Sayid Sabiq, who said that taking is a contract/agreement to end resistance/squabbles 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 (Baqi, 1981). 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 (Kholid, 2011), and the word *al-qadla* there is a large number in the holy book the Qur'an. Aqil Husin Almunawar (1994) 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 (Madkur, 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 Umar bin Khaab; "*radd al-qadha' baina dzawi al-arham has yashthalihu fa inna fashla al-qadha' yuritsu al-dhagain*" (convey the handling of cases to the family environment 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/insurance is a tool to reduce the risk of loss by combining a sufficient number of risk units that can be collectively predicted. The predicted loss is then divided proportionally among all these units, which is a tool for risk reduction by combining as many risky and predictable units as possible to make individual wishes collectively. Possibility of loss which is then shared by/or distributed proportionally among all units in a combination order (Anshari, 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 the Law no. 40 of 2014 concerning Insurance Business. Sharia Insurance is a collection of agreements, consisting of: on the agreement between the sharia insurance company and policyholders and agreements between the holders policy, 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.

Sharia insurance, *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. According to the Sharia Economic Law Compilation, *takaful* is an agreement 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*, *ta'min*, and *adh-dhaman* (*tadhamun*), but in everyday life, the most popular term used for the word sharia insurance in various countries, including Indonesia, is *takaful*, because *takaful* in Arabic terms is originally *kafalah*, *yakfulu*, *takafala*, *yatakafulu*, *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 who 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 assist a number of people/parties who make investments in the form of assets or *tabarru'* and provide a return pattern in facing certain risks through contracts (agreements) 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 (Ichsan, 2013). 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 Hukumiy*, *ta'min taawuniy*, *ta'min tijari* (Al-Ghazali, 1998).

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 (Abu-Sway, 1996). 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 (Lathif & Habibaty, 2019).

CONCLUSION

The regulation of dispute resolution of sharia insurance in Indonesia is still a debate in normative discourse including practical issues. Law enforcement in the settlement of sharia insurance disputes that guarantee legal certainty based on Islamic principles. This dispute resolution is a form of the parties binding themselves to change it in the form of an agreement. Business entities can organize insurance based on sharia principles, this is considering the prospects for sharia insurance in Indonesia are very promising. However, this still needs to be supported by socialization for the Indonesian Muslim community and must be supported by regulations that can provide legal certainty to fulfill the principles of Islamic economics.

The existence of an arbitration institution is an alternative for the disputing parties to resolve disputes outside the court which is done voluntarily through deliberation. The resolution of sharia disputes (including sharia insurance) must be based on Islamic values, because the resolution of this dispute is based on an agreement to end between two people in dispute peacefully and not harm either party (win-win solution). In addition, not all mediation and arbitration institutions can be given the authority to resolve sharia insurance disputes, except for arbitration institutions that apply Islamic law rules.

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