

# An Alternative to Sharia Insurance Dispute Resolution through the National Sharia Arbitration Agency (Basyarnas) in Indonesia

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The insurance business is very fast at the moment because it provides benefits to the community, both insurance with conventional and sharia concepts. Islamic insurance is growing at this time. The parties in this agreement both the policy holder and the insurance company as insurers have not resolved the occurrence of the dispute, the conflict that occurred could have been caused by a party that broke the promise of the agreement that was mutually agreed in the contract. Dispute resolution in Islamic insurance basically can be resolved through an alternative out of court, one of which is with the National Sharia Arbitration Board (BASYARNAS). BASYARNAS is very useful in solving Sharia Insurance disputes. Sharia insurance settlements are appointed by individuals who are experts in their fields so that the settlement is more optimal and handled by competent individuals. It should be emphasised in the clause of the sharia insurance agreement (policy) regarding the choice of the dispute resolution agency through this sharia arbitration institution.

**Key words:** Insurance, Basyarnas, Sharia Arbitration.

## Introduction

Insurance or coverage arises because of human needs. In living life, human life is always faced with something that is uncertain; which may be beneficial, or not. Humans expect security for their property and expect their health and well-being is not lacking in any one thing. However, humans can only try as the almighty God determines everything. Therefore, every human being without exception in this mortal nature always faces a variety of risks that are an essential human nature which shows his powerlessness compared to the Creator

(Ganie, 2010: 1). Article 1 number 1 of Law Number 40 of 2014 concerning insurance states that that insurance is an agreement between two parties, namely the insurance company and the policy holder, which is the basis for receiving premiums by the insurance company in return for:

- a. Providing compensation to the insured or policy holder due to loss, damage, costs incurred, loss of profits or legal liability to the third party that may be suffered by the insured or policy holder due to an uncertain event; or
- b. Providing 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.

In Law No. 14 of 2014 concerning insurance, the term insured is also referred to as the policy holder who was previously only referred to the insured. Whereas the KUHD and Law No. 2 of 1992 do not use the name of the policyholder. Number 22 CHAPTER 1 General Provisions of Law No. 14 of 2014 concerning Insurance states that policyholders are defined as: Policyholders are parties who bind themselves based on agreements with insurance companies, sharia insurance companies, reinsurance companies or sharia reinsurance companies to obtain protection or risk management. for him, the insured or other participants. Insurance laws in Indonesia have recognised the existence of Islamic insurance. Although long before the existence of this law, Islamic insurance has developed in Indonesia. The nature of Islamic insurance is mutual responsibility, mutual cooperation or to help and protect one another (Dewi, 2007: 19).

Law No. 40 of 2014 has recognised the existence of Islamic insurance. The arrangement is still integrated with general insurance. The implementation of insurance often causes problems. If such a problem arises, there will no doubt be disputes regarding the implementation of the agreement. The agreement belongs to the scope of private law, which regulates interpersonal relations. One thing that is often faced in such situations is the emergence of disputes. Dispute is something that has become part of human life. It can be said that the dispute began to be recognised since there was a human, where there is human life there is a dispute (Hakim, 2015: 163). Thus, the parties or individuals involved in an agreement can arrange themselves about how to settle disputes that occur in the agreement, as long as it does not conflict with the law, public order and morality. Insurance disputes occur in conventional insurance and sharia insurance. Islamic insurance that is developing at this time is accompanied by a dispute that occurs related to the contract on the Islamic insurance. The insurance business is very fast at the moment because it provides benefits to the community, both insurance with conventional and sharia concepts. The parties in this agreement both the policy holder and the insurance company as insurers are not closed. The occurrence of the dispute, the conflict that occurred could have been caused by a party that broke the promise of the agreement that was mutually agreed in the contract. Dispute

resolution in sharia insurance basically can be resolved alternatively outside the court, one of which is by Islamic arbitration (tahkim). Based on the insurance industry bringing disputes or disagreements that arise in general related to two things, namely related: liability policies and compensation value (quantum of claim) (Maulana Reza, 2008: 180). Therefore, the problem in this study is how to resolve disputes of sharia insurance at sharia arbitration bodies in Indonesia.

## **Research Methods**

The research method uses a normative juridical approach or doctrinal law research, also called library research or document study. Called doctrinal legal research, because this research was conducted or aimed only at written regulations or other legal materials. It is said as library research or document study because this research is mostly conducted on secondary data in the library (Suratman, 2012: 51).

## **Discussion**

Sharia Insurance Dispute Settlement with the National Sharia Arbitration Board (Basyarnas) in Indonesia Courts as institutions for seeking justice need more time to resolve disputes. Society considers resolving cases in court as complicated. Because of this, there is a need for alternative institutions to settle insurance disputes outside the court. Article 45 paragraph (2) of the Consumer Protection Law Number 8 Year 1998 states that the settlement of consumer disputes can be taken either through the court or outside the court based on the voluntary choice of the parties to the dispute (Fauzi, 2019: 194). One solution is to litigate through arbitration. Arbitration is regulated in Law Number 30 Year 1999 concerning Arbitration.

The National Sharia Arbitration Board [Basyarnas] is the only Islamic arbitration institution in Indonesia. Formally the existence of this institution has a strong legal basis in Indonesia's legal structure. Indonesian law provides an opportunity for parties to dispute or to settle the dispute with an independent institution outside the court. This is expressly regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Law No. 48 of 2009 concerning Judicial Power. Article 58 of the Judicial Power Law states that efforts to resolve civil disputes can be carried out outside the state court through arbitration or alternative dispute resolution. Basyarnas is a suitable institution in resolving Islamic banking and financial disputes, because the main objective of the establishment of this institution is to resolve muamalat disputes in the fields of trade, finance, service banking, etc., quickly and fairly based on sharia principles (Rasyid:2019).

Arbitration is etymologically derived from the word arbitrare (latin) or arbitrage which means a power to get things done according to wisdom. In terms of Arbitration, it is the settlement

of disputes carried out by one or several arbitrators at the discretion and the parties will be subject to the decisions given by the arbitrators they appoint (Djauhari, 2006: 22).

Based on Article 5 of Law No. 30 of 1999 there are requirements for disputes resolved through an arbitration mechanism, which reads: 1) disputes that can be resolved through arbitration are only disputes in the field of trade and concerning rights which according to law and legislation are fully controlled by the disputing parties; 2) disputes that cannot be resolved through arbitration are disputes which, according to the laws and regulations, cannot be held peacefully.

In practice, there are arbitral bodies specifically aimed at resolving certain disputes by certain parties. One of them is Basyarnas which specifically has the authority to settle disputes over muamalah which is faced by Muslims. Arbitration Institutions in Indonesia are the Indonesian National Arbitration Board (BANI) and the National Sharia Arbitration Board (BASYARNAS).

The equivalent of this arbitration in Islamic jurisprudence is tahkim and the verb hakam which literally means making a person the mediator / hakam for a dispute. Another term is ash-shulhu which means to break a fight or dispute. What he meant was a contract / agreement to end the fight / quarrel between two people in dispute (Djauhari, 2006: 26). So, in the Islamic tradition there are known hakam which means the same as arbitration, it's just that the hakam institution is ad hoc (Sinaga, 2007: 172). Basyarnas is the only dispute resolution agency outside the Court that resolve Islamic economic disputes. This is reinforced by the MUI Decree No. 09 / MUI / XII / 2003 dated 24 December 2003 concerning Basyarnas. The National Syari'ah Arbitration Board (BASYARNAS) is a permanent arbitration institution established by MUI that functions to resolve the possibility of muamalah disputes arising in trade, industry, financial, and service relations. Settlement through Basyarnas can be done if an agreement is made and stated in the deed or contract from the beginning before the dispute is called "pactum compromittendo". Or made when a dispute occurs in a compromise deed. In the explanation of Article I number 37 regarding Sound Change Article 49 of Law No. 7 of 1989, in point (i) it is stated that what is meant by sharia economy is an act or business activity carried out according to sharia principles including: one of them is sharia insurance. Article 5 of Law No. 30 of 1999 regulates the absolute competence or object of disputes that can be resolved through arbitration only disputes in the field of trade and concerning rights which according to laws and regulations are fully controlled by the disputing parties (Sinaga, 2007: 172).

Regarding litigation procedures in BASYARNAS, this has been systematically arranged since BAMUI was established. Broadly speaking, these rules are outlined in the procedural rules of the Indonesian Muamalat Arbitration Board (BAMUI), which took effect since



October 21, 1993. Some of the additions that occurred after were only technical in nature to perfect the rules that had been previously set. As long as the regulation does not contradict Law No. 30 of 1999.

In article 11 of Law No. 30 of 1999 concerning arbitration and alternative dispute resolution states that the existence of a written arbitration agreement negates the right of the parties to submit a dispute resolution or disagreement contained in the State court agreement. Therefore, based on the rule of law that applies the absolute authority of all state judicial bodies, including in this case the religious justice environment cannot reach disputes or cases arising from agreements which includes an arbitration clause (basir, 2009: 109). According to BASYARNAS the steps that must be taken in litigation are general similarities within BANI, but specifically there are separate steps. As in the following (Mujahidin, 2010):

The arbitration agreement must be in writing and signed by both parties. The number of referees must be odd. Arbitrators who accept the appointment may not resign. Submission of an arbitration application must be in writing. If the petitioner is absent from the first session while he has been properly called, then the petitioner's request is aborted. If the first hearing of the respondent is absent while he has been properly summoned, the arbitrator / panel of arbitrators will order the respondent to be summoned once again to appear before the hearing at the latest within 14 (fourteen) days. If the respondent still does not attend, then the examination will be carried out and the request granted. Decisions must include reasons unless agreed.

Decisions must be made based on propriety and fairness in accordance with the provisions of the law in force for agreements that give rise to disputes agreed by the parties. Decisions are final and binding. In the event that a decision is not complied with voluntarily, the decision is submitted according to the provisions in the RV.

The procedural regulations drawn up by BASYARNAS regarding registration, examination up to the decision and fixed fee system refer to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. (Mujahidin, 2010); BASYARNAS decisions are independent, final and binding as are court decisions that are have permanent legal force, if the decision is accepted and carried out voluntarily by the party losing in the trial, however, if the party that loses the case does not carry out the BASYARNAS decision voluntarily, then the role of the court institution as the authority to execute the decision is executed is required issued by BASYARNAS, while the court institution authorised to carry out the execution of BASYARNAS decisions is currently the Religious Court (2016).



### **Conclusion and suggestions**

The national syariah arbitration body (BASYARNAS) is an alternative to settling sharia insurance disputes in accordance with the arbitration law and alternative dispute resolution. Strict arrangement in the policy contract related to the settlement of Islamic insurance disputes as the choice of forum chosen by the parties in the Sharia insurance contract. Basyarnas is the right institution in substance because the arbitrators are very knowledgeable about Islamic law let alone Islamic insurance and apply the principles of Islamic law.

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