

THE EFFECTIVENESS OF SHARIA INSURANCE DISPUTE RESOLUTION MECHANISMS IN PROMOTING SUSTAINABLE DEVELOPMENT GOALS

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Abstract: *The growth of the sharia insurance industry in Indonesia has given rise to new legal challenges, particularly in the development of dispute resolution mechanisms that are consistent with both sharia principles and national legislation. Alternative Dispute Resolution methods, such as mediation and arbitration, are considered more appropriate than litigation due to the unique nature of contracts and legal relationships in Sharia insurance. This study aims to evaluate the effectiveness of dispute resolution in the practice of sharia insurance in Indonesia and to assess the extent to which the existing legal framework ensures justice, legal certainty, and compliance with Islamic legal principles. This research employs a normative juridical method, using both the statute approach and the conceptual approach, to examine the relevant positive laws and Islamic legal doctrines governing dispute resolution in Sharia-based financial transactions. The findings reveal that strengthening the Alternative Dispute Resolution mechanism in sharia insurance disputes not only enhances access to justice and legal certainty but also directly contributes to the achievement of Sustainable Development Goal 16, which promotes peace, justice, and strong institutions. This study underscores the importance of harmonizing national law and Sharia norms in building a dispute resolution system that is fair, effective, and sustainable.*

Keywords: *Sharia insurance; dispute settlement; Sharia arbitration; legal harmonization; SDG 16.*

1. INTRODUCTION

In Sharia insurance, all aspects are important concerns in making decisions. Aspects of Islamic law are important in making Sharia insurance decisions (Cahyandari et al., 2023). Sharia insurance businesses are built to help and protect policyholders or participants (Khan et al., 2020). The rapid growth of the sharia insurance (takaful) industry in Indonesia reflects the increasing public awareness of financial products that comply with Islamic principles. As part of an inclusive and ethical Islamic financial system, sharia insurance requires a legal governance framework that ensures not only legal certainty but also embodies the values of justice, consultation (shura), and sustainability. However, in practice, dispute

resolution arising from legal relationships in Sharia insurance (Hartati, Azhim, et al., 2024) frequently encounters challenges. These challenges stem from the limitations of litigation mechanisms in understanding the substance of Sharia principles, as well as the suboptimal utilization of Alternative Dispute Resolution methods such as sharia-based mediation and arbitration (Hartati, Windiani, et al., 2024).

Alternative Dispute Resolution represents a strategic option for resolving sharia insurance disputes due to its non-confrontational, efficient, cost-effective nature and its compatibility with Islamic values. In Indonesia, institutions such as the National Sharia Arbitration Board have provided an institutional foundation for Alternative Dispute Resolution in Islamic economic disputes. Nevertheless, its effectiveness remains constrained by several issues, including weak enforcement of sharia arbitration awards, limited understanding among disputing parties regarding Alternative Dispute Resolution procedures, and the lack of detailed technical regulations specifically governing dispute resolution mechanisms in the context of sharia insurance.

The urgency of this research lies in the need to evaluate the extent to which the current Alternative Dispute Resolution (E. Hidayati & Dr. Mariani, 2023) system can respond to the evolving legal needs of the Sharia insurance sector. Moreover, this study aligns with the Sustainable Development Goals, particularly Sustainable Development Goal 16, which emphasizes the importance of peaceful and inclusive societies, access to justice for all, and effective, accountable, and inclusive institutions. By developing a fair, participatory, and sharia-compliant dispute resolution mechanism, Indonesia not only strengthens its national legal system but also contributes directly to the global objectives of sustainable and just legal development.

Accordingly, an in-depth assessment of the effectiveness of Alternative Dispute (Puneri, 2021) Resolution in the practice of sharia insurance offers both theoretical value in advancing Islamic legal and economic jurisprudence, and practical implications for enhancing access to justice, public trust in legal institutions, and the strengthening of sustainable development pillars in the Islamic financial sector.

the existing legal framework regulating Alternative Dispute Resolution in the sharia insurance sector remains fragmented and underdeveloped. This raises the need to examine how Alternative Dispute Resolution mechanisms, such as sharia-based mediation and arbitration are currently regulated and implemented. Furthermore, it is important to evaluate whether these mechanisms effectively support the realization of inclusive and sustainable access to justice, in accordance with the objectives of Sustainable Development Goal 16. Based on these concerns, this study addresses two central problems: (1) the extent to which Alternative Dispute Resolution is regulated in the practice of sharia insurance in Indonesia, and (2) how such mechanisms contribute to building a just and accessible legal system for all stakeholders in the sharia financial sector.

2. METHODS

This research employs a normative juridical method, which is appropriate for analysing the legal norms, structures and doctrines that govern dispute resolution practices in Islamic insurance. The normative (Yanova et al., 2023) approach focuses on the interpretation and evaluation of legal texts, supported by a conceptual framework rooted in Islamic law and legal theory. Two main legal approaches were utilised in this research. Firstly, the statutory approach involves a systematic examination of the laws and regulations. This approach enables the identification of regulatory gaps and inconsistencies in the existing legal framework governing alternative dispute resolution in the Islamic insurance sector. Second, a conceptual approach was used to analyse the fundamental principles of Islamic law relevant to dispute resolution, such as *maslahah* (public interest), *'adl* (justice), and *shura* (consultation), which underpin the legitimacy and effectiveness of dispute resolution mechanisms that comply with sharia principles, including mediation and arbitration. The analytical method used is qualitative, which emphasises the interpretation of legal norms, construction of legal arguments, and critical evaluation of how effectively the current legal framework accommodates the principles of justice, legal certainty, and sustainability in dispute resolution.

3. RESULTS AND DISCUSSION

3.1. Indonesia's Legal Framework on Alternative Dispute Resolution in Sharia Insurance Practice

Alternative Dispute Resolution mechanisms represent an evolving approach within modern legal systems, offering a response to the limitations of formal litigation (Triana, 2019) particularly in the resolution of economic disputes where efficiency, confidentiality, and flexibility are essential. In the context of sharia insurance, Alternative Dispute Resolution offers distinct added value, as it aligns with core Islamic legal principles such as *shura* (consultation), *'adl* (justice), and *maslahah* (public interest).

Normatively, Alternative Dispute Resolution in Indonesia has obtained legal legitimacy through various statutory instruments. Article 55 of Law No. 21 of 2008 on Sharia Banking, as amended by Law No. 6 of 2023 (which ratifies Government Regulation in place of Law No. 2 of 2022 on Job Creation), explicitly provides that dispute resolution in sharia economic activities may be carried out through religious court proceedings, arbitration, or other forums. In the case of sharia insurance, Law No. 40 of 2014 on Insurance, as amended by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector, does not specifically regulate Alternative Dispute Resolution but refers to dispute resolution mechanisms under the supervision of the Financial Services Authority.

The Financial Services Authority, through Regulation No. 61/POJK.07/2020 on the Financial Services Sector Alternative Dispute Resolution Institution, has established the Financial Services Sector Alternative Dispute Resolution Institutions

as the official body responsible for handling financial sector disputes, including those related to sharia insurance (Oktaviany et al., 2024). However, in practice, there exists a dualism in authority between Financial Services Sector Alternative Dispute Resolution Institutions and the National Sharia Arbitration Board, which operates under the auspices of the Indonesian Ulema Council. Although the National Sharia Arbitration Board is more closely aligned with Islamic legal principles in substance, issues of accessibility, public trust, and its formal legal status within Indonesia's judicial hierarchy continue to hinder its effectiveness.

Additional relevant provisions include fatwas issued by the National Sharia Council, such as Fatwa No. 21/DSN-MUI/X/2001 on General Guidelines for Sharia Insurance, which emphasizes dispute resolution through consultation and arbitration. The substantive content of Fatwa No. 21/DSN-MUI/X/2001 on General Guidelines for Sharia Insurance includes the following provisions:

1. *Sharia Insurance (Tamin, Takaful, or Tadhamun) is a mutual protection and cooperation arrangement among a group of individuals or parties through investment in the form of assets and/or tabarru' funds, which provides a risk management scheme based on the principle of returning contributions, carried out through contracts (akad) that comply with sharia principles.*
2. *The sharia-compliant contract referred to in point (1) is one that excludes elements of gharar (uncertainty or deception), maysir (gambling), riba (usury), zhulm (injustice), risywah (bribery), and transactions involving prohibited (haram) or immoral (maksiat) goods or activities.*

However, these fatwas do not carry direct binding legal force unless reinforced through formal regulatory instruments (N. K. Hidayati et al., 2021). Consequently, the positive legal framework governing Alternative Dispute Resolution in Sharia insurance in Indonesia remains sectoral and fragmented, lacking full integration (Ahyani et al., 2024) into the national dispute resolution system. This highlights an urgent need for regulatory harmonization and the development of a nationally standardized and comprehensive sharia dispute resolution system.

3.2. The Role of Sharia Insurance Dispute Resolution Mechanisms in Promoting Inclusive and Sustainable Access to Justice

One of the primary objectives of implementing Alternative Dispute Resolution mechanisms in the sharia insurance sector is to enhance access to justice for users of Islamic financial services, who frequently lack the legal literacy and financial capacity to engage in formal litigation processes. In this regard, Alternative Dispute Resolution plays a strategic role in supporting the realization of Sustainable Development Goal 16, particularly Target 16.3, which advocates for "ensuring equal access to justice for all," and Target 16.6, which emphasizes the establishment of effective, accountable, and inclusive institutions.

No	Case
1	Bankruptcy of Mubarakah Sharia Insurance (Supreme Court Decision No. 1016 K/Pdt.Sus-Pailit/2016)
2	Sharia Motor Vehicle Insurance Policy with Improper Dispute Resolution Clause
3	Sameh Harefa v. Prudential Sharia at the South Jakarta Religious Court
4	Dispute Over Sharia Unit-Linked Life Insurance and Taxation Issues (Supreme Court Decisions No. 1249/B/PK/PJK/2016 and 1251/B/PK/PJK/2016, dated 23 November 2016)

Table. 1. Sharia Insurance Case

In practice (Hayati & Mujib, 2022), Alternative Dispute Resolution mechanisms in Sharia insurance offer several significant advantages. First, dispute resolution through mediation or arbitration allows for amicable settlement in alignment with Sharia principles. Second, the procedural simplicity and lower costs associated with Alternative Dispute Resolution create better access to legal remedies for lower-income communities. Third, the existence of institutions such as the National Sharia Arbitration Board helps ensure that the dispute resolution process adheres to Islamic legal norms an essential factor for stakeholders who regard sharia compliance as a core value.

Nonetheless, the effectiveness of these mechanisms continues to face several critical challenges. First, public awareness and legal understanding of sharia-based Alternative Dispute Resolution institutions remain limited. Second, there is insufficient clarity in the national judicial framework concerning the enforceability of sharia arbitration decisions, especially when such rulings diverge from conventional civil law norms. Third, the availability of trained professionals and institutional resources in the field of Islamic arbitration is still inadequate.

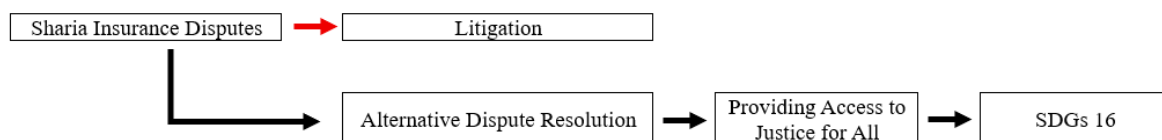


Figure. 1. The Role of Sharia Insurance Dispute Resolution

To address these challenges, there is an urgent need to strengthen inclusive and standardized Alternative Dispute Resolution institutions at the national level. Key recommendations include enhancing the institutional capacity of National Sharia Arbitration Board and Financial Services Sector Alternative Dispute Resolution Institutions, harmonizing inter-agency regulatory policies, expanding public legal

education initiatives, and ensuring state support through the issuance of clear implementing regulations. In the context of Sustainable Development Goal 16, these measures not only aim to reform dispute resolution in the Islamic finance sector but also serve to build transparent, accountable, and resilient institutions that uphold citizens' legal rights sustainably.

4. CONCLUSION

This study contributes significantly to the field of dispute resolution in the Sharia insurance (takaful) sector in Indonesia. Its novelty lies in an integrated normative legal analysis of multiple regulatory instruments governing Alternative Dispute Resolution mechanisms, including the Sharia Banking Law, the Insurance Law, regulations issued by the Financial Services Authority, and fatwas of the National Sharia Council of the Indonesian Ulema Council. The study critically addresses the institutional dualism between the National Sharia Arbitration Board and the Financial Services Sector Alternative Dispute Resolution Institutions, which, to date, has not been systematically harmonized within the national legal system.

Moreover, the research introduces a new conceptual approach by linking foundational principles of Islamic law such as *maslahah* (public interest), *'adl* (justice), and *shura* (consultation) with the global values embedded in Sustainable Development Goal 16, particularly the development of inclusive, effective, and accountable legal institutions, and the promotion of broader access to justice. This approach positions dispute resolution in Sharia insurance not merely as a financial legal practice, but as an integral component of equitable and sustainable legal development.

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