

Analysis of *Maslahah Mursalah* Comparison of the Settlement of Sharia Insurance Contracts at National Sharia Arbitration Board and the Indonesian Insurance Mediation and Arbitration Agency

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Abstract. *This paper aims to share knowledge and provide another point of view regarding the view of Maslahah Mursalah Analysis of Comparative Settlement of Sharia Insurance Contracts at National Sharia Arbitration Board and the Indonesian Insurance Mediation and Arbitration Agency. Insurance is defined as a reasonable (fair) transfer of the risk of loss, from 1 (one) entity to another entity. And to guarantee and resolve insurance disputes, of course, requires an institution that is willing to take over the risks of the community, both individual risks and group risks caused. The two institutions discussed are National Sharia Arbitration Board and Indonesian Insurance Mediation and Arbitration Agency. The problems to be discussed in this research are about how the comparison of the binding force of the decision of the National Sharia Arbitration Board and the Indonesian Insurance Mediation and Arbitration Board (Indonesian Insurance Mediation and Arbitration Agency) in the Settlement of Sharia Insurance Contract Disputes, and how the dispute resolution by Indonesian Insurance Mediation and Arbitration Agency and National Sharia Arbitration Board and the Maslahah Mursalah review of the nonlitigation mediation. In this research the author uses normative legal research. The research uses literature as a reference, namely books or journals and supporting materials that discuss these two institutions. And the results of the research in this paper are the two institutions intended to resolve insurance disputes, namely National Sharia Arbitration Board and Indonesian Insurance Mediation and Arbitration Agency. Disputes are resolved by National Sharia Arbitration Board if the dispute cannot be resolved by internal deliberation by the insurance company. While disputes are resolved by Indonesian Insurance Mediation and Arbitration Agency, namely if the insured has a dispute with the insurance company and cannot reach a settlement of the dispute. The two institutions have permanent legal force.*

Keywords: Agency; Arbitration; Contract; Insurance.

1. INTRODUCTION

The word insurance comes from the word *Verzekering* (Dutch) which means coverage. The term coverage is usually used in legal literature and the curriculum of universities in the field of law in Indonesia, while the term insurance comes from the word

assurantie (Dutch) or assurance (English) and is more widely known and used among business people. In the UK, in addition to the term assurance, there is also another companion term, namely Insurance. If the term assurance tends to be used to identify types of life insurance, then the term insurance is used for types of insurance that identify losses (general).

From a legal and economic point of view, insurance is a major form of risk management that is used to avoid the possibility of uncertain losses. Insurance is defined as a reasonable (fair) transfer of the risk of loss, from 1 (one) entity to another entity. In other words, insurance is a system created to protect people, groups, or business activities against the risk of financial loss by sharing or spreading the risk through the payment of a premium.¹ Insurance is also a method of deciding or transferring losses that may be suffered in general, between members of a group. This is done because:

1. There are a number of risks that are large enough to be separate, but can be combined.
2. An event that occurs evenly and is calculated mathematically, with a relatively small margin of error. This makes it possible to estimate the losses that may arise and also to calculate the annual cost.²

In the social system of society, especially modern society as it is today, it requires an institution or institution that is willing to take over the risks of society, both individual risks and group risks. Modern society today has a relatively higher risk content than in the past due to technological advances in all fields. Technological advances, which have influenced human life in such a way, can lead to a wider range of risks.

The institution or institution that has the ability to take over the risk of others is an insurance institution (insurance company). In modern society as it is today, insurance companies have a very broad role and reach, because these insurance companies have a range that concerns economic interests and social interests. In addition, it can also reach both individual interests and the interests of the wider community, both individual risks and collective risks.

The existing risks can be resolved with solutions provided by Islamic economic dispute resolution institutions such as National Sharia Arbitration Board and Indonesian Insurance Mediation and Arbitration Agency. Islamic economic dispute resolution is prepared to find a solution to resolve an economic problem that occurs between 1 (one) party and another party carrying out economic activities based on the principles and principles of Islamic economics, so as to create a decision that can provide legal justice, legal certainty and legal benefits for both parties to the litigation. In general, dispute resolution can choose to be resolved through 2 (two) channels, namely: nonlitigation effort and litigation effort. The non-litigation path means dispute resolution outside the court, which is generally called Alternative Dispute Resolution (ADR), while what is meant by litigation is dispute resolution through court channels. Which option the parties choose depends on the agreement contained in the previous contract. If the parties choose to settle the dispute by making a clause through an arbitration institution or body, then the dispute settlement will be brought to an

¹ Mulhadi, (2017), *Dasar-Dasar Hukum Asuransi*, Depok: PT. Raja Grafindo Persada, p. 1.

² Winardi, (1984), *Kamus Ekonomi (Inggris-Indonesia)*, Bandung: Penerbit Alumni, p. 264.

arbitration institution or body. The agreement to choose an arbitration institution is made before a dispute arises (*pactum de compromittendo*) or after a dispute arises (*acta compromis*).

Law No. 30/1999 on Arbitration and Alternative Dispute Resolution which regulates out-of-court dispute resolution (ADR) explains that ADR is dispute resolution through consultation, mediation, negotiation, conciliation or expert judgment. The result must be in the form of an agreed writing and its position is final and binding. In the financial services business sector in Indonesia, OJK has issued OJK Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, known as Alternative Dispute Resolution Institutions (LAPS). LAPS is expected to be able to serve consumer dispute resolution, through the provision of mediators, adjudicators, and arbitrators who have the competence to resolve consumer disputes.³

Through alternative dispute resolution institutions, OJK ensures that the financial services sector has an easily accessible, affordable, independent, fair, efficient and effective dispute resolution mechanism. Currently, LAPS has been fully established for 7 (seven) financial sectors,⁴ one of which is in the insurance sector which established the Indonesian Insurance Mediation and Arbitration Agency. On the other hand, disputes regarding sharia insurance can also be resolved by the Sharia Arbitration Board which is an institution that is also authorized and able to resolve sharia economic disputes outside of litigation. National Sharia Arbitration Board is an institution established by the Indonesian Ulema Council (MUI) in 1992 which was originally named the Indonesian *Muamalat* Arbitration Agency (BAMUI) which then changed in 2003 through MUI Decree No. Kep.-09/MUI/XII/2003 to the Indonesian Sharia Arbitration Agency. The position of National Sharia Arbitration Board in Indonesia is also recognized by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Bodies. In addition to judicial institutions, National Sharia Arbitration Board is also authorized to resolve sharia insurance disputes. Even if the agreement contains an arbitration clause as a method of resolving sharia economic disputes, the consequence is that any disputes arising from the agreement or contract must be resolved through National Sharia Arbitration Board. Thus, the litigants are no longer allowed to resolve disputes through state judicial bodies, namely the Religious Courts. Moving on from this, the author is interested in further discussing the comparison of the settlement of Islamic insurance contracts at National Sharia

³ *Ibid*, p. 260.

⁴ *Ibid*, p. 262, There are several financial sectors that have established alternative dispute resolution institutions, including: (1) The Indonesian Banking Alternative Dispute Resolution Institute (LAPSPI), which was established by 6 (six) banking associations, namely: Perbanas, Asbanda, Himbara, Perbarindo, Asbisindo, and Perbina; (2) Indonesian Guarantee Arbitration and Mediation Board (BAMPI); (3) Capital Market sector which has established the Indonesian Capital Market Arbitration Board (BAPMI); (4) Insurance sector which established the Indonesian Insurance Mediation and Arbitration Board (BMAI); (5) The pension fund sector which has established the Pension Fund Mediation Board (BMDP); (6) the Indonesian Financing, Pawnshop and Venture Capital Mediation Board (BMPPVI); (7) On October 2, 2014, the venture capital sector established the Indonesian Venture Arbitration Board (BAVI), which was established by 4 (four) venture capital companies, among others: PT Bahana Artha Ventura, PT Sarana Jatim Ventura, PT Astra Mitra Ventura and PT Pertamina Dana Ventura, then on April 10, 2015, the financing sector together with PT Pegadaian (Persero) established the Indonesian Financing and Pegadaian Mediation Board (BM PPI).

Arbitration Board and the Indonesian insurance mediation and arbitration agency. Problem formulation in this research are:

1. How is the comparison of the binding force of the decision of the National Sharia Arbitration Board and the Indonesian Insurance Mediation and Arbitration Board in the Settlement of Sharia Insurance Contract Disputes?
2. How is the dispute resolution of the National Sharia Arbitration Board and the Indonesian Insurance Mediation and Arbitration Board in the settlement of Islamic insurance contract disputes?
3. How is the concept of al- *mashlahah* in the settlement of Islamic insurance disputes?

2. RESEARCH METHODS

In this research, the type of research conducted is classified as normative legal research. This research uses research methods that include normative juridical research, namely the type of research that uses the approach of statutory provisions in force in a country or doctrinal legal approach methods, namely legal theories and opinions of legal scientists, especially those related to the issues being discussed.⁵ Namely regarding "Comparison of Sharia Insurance Contract Settlement at National Sharia Arbitration Board and the Indonesian Insurance Mediation and Arbitration Agency" as well as other supporting materials related to the issues discussed.

3. RESULT AND DISCUSSION

3.1 Comparison of the binding force of the decisions of the National Sharia Arbitration Board and the Indonesian Insurance Mediation and Arbitration Board in the Settlement of Sharia Insurance Contract Disputes

The binding force of the decision of the National Sharia Arbitration Board

The notions of final and binding in laws and regulations are inseparably linked. According to the Big Indonesian Dictionary, the phrase "final" means the last stage (round) of a series of examinations.⁶ Whereas the phrase "to bind" means to strengthen or grip, something that must be kept or an agreement that requires both parties to keep it seriously.⁷ Ahsan Yunus defines final and binding as having interrelated meanings, which means the end of an examination process, then it has the power to tighten or unite all wills and cannot be denied anymore.⁸

From these several definitions, it can be concluded that what is meant by final and binding is a final decision or the final process of all series, processes or stages of examination in an act or event that has binding force on the will of the parties and cannot be disputed. The application of the final and binding nature applies in the decision of the deed of peace (*dading*), arbitration (National Sharia Arbitration Board),

⁵ Soemitro, (1998), *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta: Ghalia Indonesia, p.24

⁶ Dendy Sugono, dkk, (2008), *Kamus Bahasa Indonesia*. Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, p. 414-415

⁷ *Ibid.*, p. 571

⁸ Ahsan Yunus, (2011), Analisis Yuridis Sifat Final dan Mengikat (Binding) Putusan Mahkamah Konstitusi, *Jurnal Konstitusi* Volume III No. 2.

and decisions in the Constitutional Court. Specifically for the final and binding nature of arbitration decisions, the legal basis is Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Law Number 30/1999 on Arbitration and Alternative Dispute Resolution states that a dispute or difference of opinion in a civil dispute can be resolved on the basis of good faith by overriding litigation settlement in court, by holding a direct meeting by the parties within a maximum period of 14 days and the results are set out in a written agreement.

If the agreement between the parties is unsuccessful, then upon written agreement of the parties, the dispute shall be settled through the assistance of an expert advisor or through a mediator. If the expert advisor or mediator cannot bring the disputing parties together, then the expert advisor or mediator may contact an arbitration institution or ADR institution to appoint a mediator, who within 30 days tries to reach an agreement. If an agreement is reached, a written agreement is made, otherwise the case is submitted to a formal or ad hoc arbitration institution. One of the differences between arbitration institutions and court institutions is the legal force of the decisions of each institution. Arbitration awards are in principle final and binding. Final means that the arbitration award is final and in legal language is often referred to as (*inkracht van lewijs*) or permanent legal force, while binding means that the award is binding on all parties to an arbitration and because they may not violate the award. The principle of final and binding arbitration award is contained in Law No. 30 Year 1999 such as Article 17 Paragraph (2), Article 45 Paragraph (2), Article 53 and Article 60. "The appointment as referred to in paragraph (1), results in that the arbitrator or arbitrators will give their decision honestly, fairly, and in accordance with the applicable provisions and the parties will accept the decision as final and binding as agreed upon". "In the event that the peace efforts as referred to in paragraph (1) are achieved, the arbitrator or arbitral tribunal shall make a final and binding deed of peace to the parties and order the parties to fulfill the terms of the peace". "

The binding opinion as referred to in Article 52 may not be challenged through any legal remedy". Legal Problems "Arbitration awards are final and have permanent legal force and are binding on the parties". However, the final and binding arbitration award can be canceled by submitting an annulment of the award to the District Court as stipulated in Law Number 30 of 1999 Articles 70, 71 and 72 which state that: "The parties may file an application for annulment if the arbitral award contains letters or documents recognized as false or declared false, documents have been found to be hidden by the opposing party and the result of deception." "A petition for annulment of an arbitral award shall be filed with the Chairman of the District Court no later than 30 (thirty) days calculated from the day of delivery and registration of the award". "If the application for annulment of the award is granted, the Chairman of the District Court shall further determine the consequences of annulment of the arbitration award in whole or in part and against the decision of the District Court an appeal may be filed to the Supreme Court which decides in the first and final instance".

Looking at these statutory regulations, it is very clear that an arbitration award that is final and binding can be overturned if one of the parties or the parties is not satisfied with the award by submitting the reasons contained in Article 70.

The Legal Force of the Indonesian Insurance Mediation and Arbitration Agency Decision on dispute resolution in Sharia Insurance Institutions.

Indonesian Insurance Mediation and Arbitration Agency has mediators and arbitrators who have sharia scientific backgrounds, so Indonesian Insurance Mediation and Arbitration Agency is also competent in handling sharia insurance cases that are resolved through mediation and arbitration processes. In carrying out its role as a mediation and arbitration institution, Indonesian Insurance Mediation and Arbitration Agency has rules and procedures for conducting mediation and arbitration activities which are regulated in Decree No. 008/SK-BMAI/11.2014 concerning Indonesian Insurance Mediation and Arbitration Agency Mediation Rules and Procedures, and Decree No. 001/SK-BMAI/09.2014 concerning Indonesian Insurance Mediation and Arbitration Agency Arbitration Rules and Procedures. The results of the mediation and arbitration activities conducted by Indonesian Insurance Mediation and Arbitration Agency are the Mediation Peace Deed and the Arbitration Award.

The following is an analysis of the legal force of the Mediation Peace Deed and Arbitration Award at Indonesian Insurance Mediation and Arbitration Agency:

a. Legal force of Indonesian Insurance Mediation and Arbitration Agency Mediation Peace Deed

Mediation rules and procedures at Indonesian Insurance Mediation and Arbitration Agency are regulated in Decree No. 008/SK-BMAI/11.2014 concerning Indonesian Insurance Mediation and Arbitration Agency Mediation Rules and Procedures. The result of mediation activities conducted by Indonesian Insurance Mediation and Arbitration Agency is a Mediation Peace Deed. In Decree No: 008/SK-BMAI/11.2014: Article 17 paragraph (1) also regulates the Mediation Peace Deed which is referred to as the Dispute Resolution Agreement Letter through Mediation (SKPSM). Article 1 paragraph (12) of SK No: 008/SK-BMAI/11.2014 states that: "A Peace Agreement is a Dispute settlement agreement between the Parties facilitated by a Mediator that is final and binding."

Indeed, it can be said that a Mediation Peace Deed is a peace agreement made by the parties and facilitated by a mediator. And basically an agreement will become law for those who make it. This is stated in Article 1338 of the Civil Code which states that: "All agreements made legally shall apply as laws to those who make them." According to Article 1 paragraph (10) of Supreme Court Regulation Number 1 of 2016 concerning Mediation in Court, what is meant by a Mediation Peace Deed is: "Deed of Peace is a deed containing the contents of the peace text and the Judge's decision that strengthens the peace agreement".

With this article, the Mediation Peace Deed will have legal force if there is a decision from the Judge that can strengthen the agreement of a peace. The same thing is also stated in Article 130 *Herzien Inlandsch Reglement* (HIR) or what is known as civil procedural law, namely: "Deed of Peace made legally will bind and have the same legal force as a court decision that has permanent legal force and cannot be appealed. A Deed of Peace can only be canceled if its substance is contrary to the Law."

In this provision, it can be seen that the Mediation Peace Deed has permanent legal force and cannot be appealed. But there are always exceptions in law. There are other legal bases related to the annulment of the peace deed, which are as follows: Civil Code Article 1858: "Between the parties concerned, a peace has the force of a judge's

decision at the final level, the peace cannot be challenged on the grounds that there was an error of law or on the grounds that one of the parties was harmed.

"Article 1859: "However, the peace may be annulled if there has been a mistake concerning the persons concerned or the subject matter of the dispute. Peace may in any case be annulled if fraud or duress has been committed." Article 1860: "In the same way, the annulment of a peace may be demanded if it has been made on account of a misunderstanding concerning the case, concerning a void title, unless the parties have by express declaration made peace with the nullity." Article 1861: "A peace made on the basis of documents which are subsequently found to be false is absolutely void."

Thus it can be said that the Mediation Peace Deed resulting from Indonesian Insurance Mediation and Arbitration Agency or what is referred to as the Dispute Settlement Agreement Letter through Mediation (SKPSM) has permanent legal force and is binding on the parties including the Sharia Insurance company that resolves its dispute to Indonesian Insurance Mediation and Arbitration Agency. Then also cannot be made other legal efforts. However, the SKPSM can only be canceled if there are elements of error, coercion, and letters that are declared false. So, the Mediation Peace Deed or SKPSM made by Indonesian Insurance Mediation and Arbitration Agency should be made as wisely and carefully as possible, in the sense that it must be carefully considered so that nothing happens that can harm the parties to the dispute.

b. Legal force of Indonesian Insurance Mediation and Arbitration Agency Arbitration Award

Similar to mediation, the rules and procedures of Arbitration at Indonesian Insurance Mediation and Arbitration Agency have also been regulated in Decree No. 001/SK-BMAI/09.2014 on Indonesian Insurance Mediation and Arbitration Agency Arbitration Rules and Procedures. The result of a series of Arbitration processes conducted by Indonesian Insurance Mediation and Arbitration Agency results in a Indonesian Insurance Mediation and Arbitration Agency Arbitration Award. The Indonesian Insurance Mediation and Arbitration Agency is explanation of the Arbitration Award contained in Article 1 paragraph (1) (i) states that: 100 Civil Code 65 "(i) An Arbitration Award is a decision rendered on a dispute by a Sole Arbitrator/Arbitration Panel according to these Rules and Procedures."

As for the legal force of the Arbitral Award, it is stated in Article 60 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution, which states that: "The Arbitration Award is final and has permanent legal force and is binding on the parties."⁹ With the provisions of this article of the law, it can be clearly seen that the Arbitration Award is final and binding for the parties and no ordinary or extraordinary legal remedies can be taken. Unlike the Mediation Peace Deed, the Arbitration Award has executorial force if the Arbitration Award is registered with the District Court or Religious Court. This is stated in Articles 61 and 62 of Law Number 30 Year 1999 which states that:

⁹ Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution

Article 61: "In the event that the parties do not execute the arbitral award voluntarily, the award shall be executed by order of the President of the District Court at the request of one of the parties to the dispute.

Article 62:

- 1) The order as referred to in Article 61 shall be given within a maximum period of 30 (thirty) days after the application for execution is registered with the Registrar of the District Court.
- 2) The Chief Justice of the District Court as referred to in paragraph (1) before granting an order of execution shall first examine whether the arbitral award complies with the provisions of Articles 4 and 5 and is not contrary to decency and public order.
- 3) In the event that the arbitral award does not fulfill the provisions referred to in paragraph (2), the Chief Justice of the District Court shall refuse the execution and no legal remedy shall be available against the decision of the Chief Justice of the District Court.
- 4) The Chairman of the District Court shall not examine the reasons or considerations of the Arbitral Award. "103 102 Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution.

However, if the case handled is a sharia economic case, then the implementation of the registration of its decision through the Religious Courts environment. This is stated in Article 13 paragraphs (1) and (2) of Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settling Sharia Economic Disputes, namely:

- 1) The implementation of decisions on sharia economic cases, mortgages and fiduciary guarantees based on sharia contracts shall be carried out by the Courts within the Religious Courts.
- 2) The implementation of sharia arbitration decisions and their annulment, shall be carried out by the Courts within the Religious Courts. "104.

Although the Arbitration Award has permanent legal force and no other legal remedies can be taken, the Arbitration Award can only be annulled. This is explained in Article 70 of Law Number 30 Year 1999 which states that: "Against the Arbitral Award the parties may file a petition for annulment, if the award contains the following elements:

- a. A letter or document submitted in the examination, after the judgment is rendered, is recognized as false or declared to be false;
- b. After the verdict is rendered, a decisive document is found to have been concealed by the opposing party; or
- c. The decision is made as a result of deceit committed by one of the parties to the dispute examination. "105.

With these provisions, it can be understood that the Arbitration Award made by the Indonesian Insurance Mediation and Arbitration Agency has permanent legal force that cannot be subject to other legal remedies such as appeal or cassation. Then it is binding on the parties, including Sharia Insurance Companies that resolve disputes through Indonesian Insurance Mediation and Arbitration Agency. It's just that in the implementation and execution of the decision is registered with the Religious Court. Although the Indonesian Insurance Mediation and Arbitration Agency Arbitration Decision cannot be submitted to other legal remedies, the Indonesian Insurance

Mediation and Arbitration Agency Arbitration Decision can be canceled if there are provisions described in the arbitration law.

3.2. Insurance Dispute Resolution from the Perspective of the National Sharia Arbitration Board and the Indonesian Insurance Mediation Agency

Settlement of Insurance Disputes from the Perspective of the National Sharia Arbitration Board

Basically, National Sharia Arbitration Board has a very important contribution in resolving Islamic insurance disputes. This very important contribution of National Sharia Arbitration Board is to resolve sharia insurance disputes that occur between the parties and in general every company that issues sharia products. In fact, based on the initiative of MUI, the birth of National Sharia Arbitration Board is intended to help resolve disputes arising between BMI, BPR Syariah, and their customers or other banking service users. The presence of BMI, BPR Syariah, *Takaful* Insurance and *Baitul Mal Watammil* has brought a great influence on the economic activities of Muslims. These Islamic economic institutions in carrying out their operational activities are always required to refer to Islamic law. Because the economic relationship is within the scope of Islamic.

After sharia insurance began operating in Indonesia since 1994, marked by the operation of *Takaful* sharia insurance which was the basis of its operation at that time. The public's response to Islamic insurance is quite good *Takaful* can collect a significant amount of premiums in the early years of its operation and continues to rise every year, the Islamic community which was initially lacking about what Islamic insurance was as if it was strong in advancing the economy of the ummah.¹⁰ Every sharia insurance dispute that occurs can be resolved to National Sharia Arbitration Board if the settlement of the sharia insurance dispute has been agreed upon by both parties in the initial agreement or has been stated in the clause of the initial sharia insurance agreement which appoints National Sharia Arbitration Board where the dispute of these cases is resolved and finally decided by National Sharia Arbitration Board in the event of a sharia insurance dispute and if it cannot be resolved by deliberation between the company and its clients internally.

Therefore, since the establishment of National Sharia Arbitration Board until now, there has been no Islamic insurance case entered and resolved by National Sharia Arbitration Board. However, there are only a few cases related to problematic costs and all decisions decided are accepted as final decisions by the parties to the dispute and no one regrets or appeals from the decision. Because basically the cases resolved at National Sharia Arbitration Board always and must prioritize peaceful settlement and are recommended in Islam.

Because the settlement of Islamic insurance disputes at National Sharia Arbitration Board is the last alternative, so that if an Islamic insurance dispute can be resolved by deliberation, and if by deliberation between the insured and the insurer cannot be resolved by deliberation, then the last alternative to the Islamic insurance dispute is resolved through National Sharia Arbitration Board. This is what closes the possibility

¹⁰ M. Luthfi Hamidi, (2003), *Jejak – jejak Ekonomi Syariah*, Jakarta: Senayan Abidi Publishing, Cet. Ke-1, p. 255

that there is no Islamic insurance dispute resolved at National Sharia Arbitration Board because Islamic insurance companies can resolve the case by deliberation and it is in accordance with the statement of the clauses of each insurance agreement if an insurance dispute is resolved by deliberation, and the last alternative is resolved through National Sharia Arbitration Board if the dispute cannot be resolved by deliberation.

However, National Sharia Arbitration Board has contributed to the settlement of sharia insurance disputes by providing benefits to the parties compared to conventional dispute resolution models through the judicial system litigation, including:

1. Quoting the general explanation of Law No. 30 of 1999, it is generally said that the institution of arbitration has advantages over judicial institutions, namely, among others:
 - a. Guaranteed confidentiality of the parties' dispute.
 - b. Delays caused by procedural and administrative matters can be avoided.
 - c. The parties can choose arbitrators who, according to their beliefs, have sufficient knowledge, experience and background on the disputed issues, are honest and fair.
 - d. The parties may determine the choice of law to resolve their dispute as well as the process and place of arbitration; and
 - e. The arbitration award is a decision that is binding on the parties and through simple procedures or directly enforceable.
2. According to Sayyid Sabiq,¹¹ honoring the covenant is obligatory in Islam, given its positive effect and role in maintaining peace, and given its importance in overcoming polytheism, resolving disputes and creating harmony.
3. According to Prof. Dr. Sudargo Gautama.¹² Mentioning several reasons that make arbitration so popular in international transactions, including the avoidance of publicity, not much formality, court assistance only at the level of execution, good for bona fide traders, there are guarantees from business associations that are cheaper and faster.
4. According to Goodpaster, Felix O. Subagio and Fatma Jatim,¹³ mentioned there are several reasons for choosing arbitration, namely:
 - a. Freedom, trust and security.
 - b. Expertise.
 - c. Fast and cost-effective.
 - d. Confidential.
 - e. Non-precedent.
 - f. Sensitivity of the arbitrator.
 - g. Implementation of the decision, and
 - h. Modern trends.
5. According to Huala Adolf.¹⁴ There are several reasons why employers favor arbitration forums over courts, among others:

¹¹ Sayyid Sabiq, (1987), *Fiqh Sunnah II*, Bandung: PT Al-Maa'rif, p. 173

¹² Gunawan Widjaya dan Ahmad Yani, (2002), *Hukum Arbitrase: Seri Hukum Bisnis*, Jakarta: PT Raja Grafindo Persada, Cet. Ke-1, p. 5

¹³ *Ibid.*, p. 5

¹⁴ Huala Adolf, (1994), *Hukum Arbitrase Komersial Internasional*, Jakarta: PT Raja Grafindo Persada, Cet. Ke-1, p. 1-3.

- a. Dispute resolution through arbitration does not follow strict and rigid formalities.
 - b. Arbitration is relatively cheaper.
 - c. The arbitration award is more satisfactory because it is handled by arbitrators who are chosen by the parties based on their expertise.
 - d. Proceeding through arbitration preserves and guarantees the confidentiality of the parties to the dispute.
 - e. From a business and interest point of view, arbitration is seen as an appropriate remedy.
6. According to Pierre Lalive.¹⁵ By resolving a dispute through arbitration, the parties seek to remain in commercial contact in the future. Thus, through this mode of settlement, the arbitral body seeks that the parties do not become adversaries, but maintain their commercial relations after the dispute has been resolved. In short, they remain on good terms after the dispute has been resolved by arbitration.
 7. According to Euis Nurhasanah, dispute resolution through sharia arbitration, especially National Sharia Arbitration Board, has the following advantages:
 - a. Fast and cheap
 - b. No appeal
 - c. Confidential and closed to the public
 - d. Resolved by arbitrators (referees) who are experts and experts.

As an arbitration institution, the legal power made by National Sharia Arbitration Board has binding force. Each copy of the decision is sent to the District Court to become an archive. District Court judges may no longer examine cases that have been decided by National Sharia Arbitration Board. If there must be an execution, National Sharia Arbitration Board can request assistance from the District Court to carry out the execution after having a permanent legal force of 2 months. National Sharia Arbitration Board examines based on the contents of the agreement. Disputes are heard by a single judge or a panel depending on the difficulty of the case. The Arbitrators (judges) are experts in their fields. Each panel consists of legal and Sharia experts as well as sharia business or finance practitioners. More than 20 (twenty) experts join the arbitrators. They will come according to appointment and field of issue. Therefore, the existence of the National Sharia Arbitration Board is very necessary for its contribution to resolve disputes or disputes that occur in Islamic insurance companies when disputes or disputes occur.¹⁶

From the description above, the author can conclude, although there are only a dozen cases examined by National Sharia Arbitration Board and there are no Islamic insurance disputes that enter to be resolved by National Sharia Arbitration Board because all disputes can be resolved by internal deliberation. However, the contribution of National Sharia Arbitration Board is needed by Islamic insurance companies in the event of a dispute, and if the dispute cannot be resolved by internal deliberation. Because dispute resolution at National Sharia Arbitration Board has advantages over other judicial institutions, namely: faster, cost-effective, no appeals, and not publicly exposed so that Islamic insurance companies can maintain their good name. It is different if the dispute resolution is resolved through the District Court (PN) because there is still a process of appeal, cassation, review, and public exposure. In addition, the settlement process is very long and requires a very expensive cost.

¹⁵ *Ibid.*, p. 1-3

¹⁶ Only a Dozen Cases Entered BASYARNAS for 12 Years, www.basyarnas.com, p. 2

Insurance Dispute Resolution from the Perspective of the Indonesian Insurance Mediation Agency

According to the Indonesian Insurance Mediation Agency, a dispute is a dispute arising in connection with a written rejection by a member of an insurance claim submitted by the applicant to the member who is the insurer under the insurance agreement, which is submitted by the applicant to the Indonesian Insurance Mediation Agency no later than 6 (six) months from the date of the rejection letter.¹⁷ Mediation is a dispute resolution process through deliberation and consensus between the applicant and the member facilitated by the mediator. While the mediator is a permanent employee of the Indonesian Insurance Mediation Agency) who is authorized to conduct investigations and mediation processes for disputes submitted by the applicant to the Indonesian Insurance Mediation Agency.¹⁸

The applicant is a customer who has a relationship with a member or a person who has an interest in receiving the benefits of an insurance agreement including a person on whom an insurance agreement is made or a person who has the right to receive the benefits of an insurance claim arising from an agreement, law or subrogation, or an insured person mentioned in the insurance policy or a third party who has the right mentioned in the insurance agreement to submit a claim for an insurance agreement that guarantees or extends to guarantee coverage to third parties. While members are insurance and reinsurance companies that are registered and meet the membership requirements of the Indonesian Insurance Mediation Agency.

At the Indonesian Insurance Mediation Agency there are disputes that can be handled and there are also disputes that are excluded, namely as follows:

1. In article 3 of the Indonesian Insurance Mediation Agency Regulation, disputes that can be handled by Indonesian Insurance Mediation and Arbitration Agency include:
 - a. All forms of complaints or objections (referred to as dispute) from parties who have an interest in an insurance policy guarantee (hereinafter referred to as the applicant) relating to claims for compensation or insurance benefits can be submitted and handled by the Indonesian Insurance Mediation and Arbitration Agency, with the following provisions:
 - 1) The applicant is an interested party
 - 2) The member involved in the dispute must be a party subject to the jurisdiction of Indonesian Insurance Mediation and Arbitration Agency because it is still registered as a member of Indonesian Insurance Mediation and Arbitration Agency.
 - 3) The dispute arises from issues relating to the applicant's relationship with the member.
 - 4) The scope of the dispute must be within the jurisdiction of Indonesian Insurance Mediation and Arbitration Agency since Indonesian Insurance Mediation and Arbitration Agency was established.

¹⁷ BMAI, (2006), *Peraturan Badan Mediasi Asuransi Indonesia*, Jakarta: BMAI, p.7

¹⁸ *Ibid.*, p.7

- 5) The member cannot resolve the dispute directly with the applicant in accordance with the applicant's demands within 30 (thirty) days from the submission of the objection by the applicant to the member.
 - b. The amount of the claim for compensation or policy benefits in dispute does not exceed Rp. 500 million for general insurance and Rp. 300 million for life insurance or social security insurance.
 - c. All disputes that have not been submitted by the applicant to the member so that the member has not had the opportunity to resolve it directly, will be considered as a complaint and if submitted to Indonesian Insurance Mediation and Arbitration Agency, Indonesian Insurance Mediation and Arbitration Agency will return it to the member for further consideration.
 - d. The scope of Indonesian Insurance Mediation and Arbitration Agency is jurisdiction shall only cover disputes over the activities of members or their representatives conducting business within the territory of the Republic of Indonesia.¹⁹
2. Whereas in article 4 of the Regulation of the Indonesian Insurance Mediation Agency, excluded disputes mean disputes that cannot be processed by the Indonesian Insurance Mediation and Arbitration Agency are as follows:
- a. Decisions made on the basis of commercial considerations;
 - b. Pricing and other policies, such as premium rates, fees, and foreign exchange rates;
 - c. Cases that are under investigation by the authorities, including cases with allegations of fraud or criminal acts and the case has been reported to the authorities for investigation;
 - d. Disputes relating to relationship issues between agents and/or brokers and members;
 - e. Disputes that have exceeded 6 (six) months since the member gave the final rejection answer;
 - f. Disputes that have occurred before the establishment of Indonesian Insurance Mediation and Arbitration Agency, unless the dispute is submitted to Indonesian Insurance Mediation and Arbitration Agency within a period of 12 (twelve) months since the operation of Indonesian Insurance Mediation and Arbitration Agency;
 - g. Disputes that have previously been resolved directly between the applicant and the member;
 - h. Disputes that have been or are being heard in court.

During the Indonesian Insurance Mediation Agency was established on May 12, 2006 and operated on September 25, 2006. There have been many cases of disputes that have entered Indonesian Insurance Mediation and Arbitration Agency, approximately 80 cases of insurance disputes, and 10% of these cases have been resolved by Indonesian Insurance Mediation and Arbitration Agency. But it cannot be mentioned what companies have entered Indonesian Insurance Mediation and Arbitration Agency, because it involves the good name of the company. In article 27 regarding confidentiality in the regulations of the Indonesian Insurance Mediation Agency, it is stated that:²⁰

¹⁹ BMAI, (2006), *Peraturan Badan Mediasi Asuransi Indonesia*, p. 9

²⁰ *Ibid.*, p.17

- a. The Claimant and the members shall keep all information, documents, correspondence (including emails), matters or issues discussed, proposals and counterproposals, adjudication decisions, etc., strictly confidential; and shall not disclose or divulge such confidentiality (whether directly or indirectly) to any other party, except as required pursuant to the provisions of any applicable law or regulation or any court order or administrative requirement imposed by any other government agency, or as appropriate to carry out the settlement agreement or adjudication.
- b. Subject to the provisions of any applicable law or regulation, court order or as appropriate to enforce a settlement agreement or adjudication decision, all parties involved in mediation and adjudication proceedings shall maintain confidentiality and not use for any purpose in other proceedings:
 - 1) The fact that the mediation and adjudication process will, is or has taken place
 - 2) Matters arising in the mediation and adjudication process
 - 3) Opinions expressed or proposals submitted for dispute resolution by the parties during the mediation and adjudication process.
 - 4) Proposals made by the mediator and adjudicator.
 - 5) All materials submitted and discussions held during the mediation and adjudication process.
 - 6) Where the applicant does not accept the decision made by the adjudicator, the fact that the adjudicator has made the decision and the substance and terms of the decision and the applicant or applicants rejecting the decision
 - 7) All materials, information, correspondence (including emails), matters discussed, proposals and responses submitted in relation to the mediation and adjudication process, including but not limited to a settlement agreement except where necessary for the execution of the settlement agreement.
- c. Except for compliance with applicable statutory provisions or court orders, all materials, documents or other information submitted for the purposes of mediation and adjudication proceedings are privileged and may not be used as evidence in any other proceeding over the same dispute, unless they are admissible in that proceeding.
- d. Parties may not request a member of the Indonesian Insurance Mediation and Arbitration Agency adjudicator panel (or any of its employees, officers or representatives) as a witness, consultant, arbitrator or expert in a proceeding over the same dispute.
- e. The obligation of the applicant and members to maintain confidentiality is not diminished and remains in full force after the completion of the mediation and adjudication process conducted by Indonesian Insurance Mediation and Arbitration Agency.
- f. The member shall ensure that all of its officers employees, representatives and or agents also comply with the provisions of this section.

In article 14 of the Indonesian Insurance Mediation Agency Regulation on the period of dispute resolution by the mediator, a mediator must strive to resolve the dispute within a reasonable period of time, taking into account the complexity of the dispute.

If the insurance dispute can be resolved through mediation, the mediator must record in writing all the settlement terms reached by both parties. But on the other hand, if the dispute cannot be resolved through mediation, the mediator will request the

approval of the chairman to continue the dispute to the adjudication level in accordance with the procedures stipulated in the regulations of the Indonesian Insurance Mediation Agency.

From the description above, it can be concluded that Indonesian Insurance Mediation and Arbitration Agency is a place for dispute resolution that has a very important contribution, especially for dispute resolution in the field of insurance. Because the mediation process is very appropriate for resolving insurance disputes compared to other alternative dispute resolutions. Dispute resolution through mediation has many advantages in addition to the fast mediation process, free of charge (no fees), mediators who are experts in their fields, and confidentiality is maintained because it is not for the public.

Table 1 Comparison of Sharia Insurance Dispute Resolution at National Sharia Arbitration Board and Indonesian Insurance Mediation and Arbitration Agency

NO	DESCRIPTION	National Sharia Arbitration Board	Indonesian Insurance Mediation and Arbitration Agency
1.	Factors that give rise to sharia insurance disputes	Caused by not in accordance with the initial agreement between the insured and the insurer.	The occurrence of disputes can be caused by the insured and the insurer not complying with the contents of the contract.
2.	Number of disputes that have been resolved	No sharia insurance disputes have been resolved yet.	There have been insurance disputes that can be resolved, approximately 16 insurance disputes.
3.	Cost	Relatively cheap, only for operational costs and paying arbitrators.	There is no cost, because all operational costs have been covered by
4.	Advantages	Fast, relatively cheap, and	AAJI, AAUI and AAJSI.

The Concept of al- *mashlahah* in the Settlement of Sharia Insurance Disputes

According to Ibn Manzur, *aslahah* is goodness and is also a form of *mufrad* (singular) from the statement *masalih* (plural). But *maslahah* itself comes from Arabic. In terms of terms, it is goodness, benefit and also benefit. Rejecting evil and bringing good is *maslahah* according to al-Ghazali.²¹ While Al-Syaitibi states that what is meant by *maslahah* is to achieve a complete sense that is demanded by the characteristics of lust and also aimed at goodness in the perfection of all human life.

The settlement of insurance disputes by the National Sharia Arbitration Board and Indonesian Insurance Mediation and Arbitration Agency bodies if it is related to the concept of al-*maslahah* and its resolution has been regulated in accordance with the article, namely in article 6 of Law No. 30 of 1999 concerning arbitration and dispute resolution, which is as follows:

²¹ Ardi, S., (2017), *Konsep Maslahah dalam Perspektif Ushuliyin*, An-Nahdhah, p.233–258.

a. *As- Sulhu* (Peace)

Islam teaches that in solving problems, peace must be prioritized or often called *al-suhl*. Al-Quran and al-sunnah must be the first reference in achieving the essence of peace in all disputes. Efforts are made by deliberation by emphasizing the Sharia with its principles in order to reach an agreement. So that in this way it will bring about good problems, this can use the theory of *maslahah* al-syaitibi that everything that becomes *maslahah* must be in accordance with the objectives of shara, namely *maqashid* sharia. Disputes that can be resolved through al suhlu are in the field of *muamalat* or Islamic economics or problems in property that have rights rather than humans themselves. So that matters concerning God cannot be reconciled.

b. *Tahkim* (Sharia Arbitration)

Tahkim is a way of solving problems peacefully accompanied by an arbiter or referee. So that *tahkim* becomes a way to prevent disputes. This is if you have not been able to use *al suhlu* or peace so that by means of *tahkim* who presents someone between the people who are in conflict. Nowadays it is better known as arbitration.²² Meanwhile, when associated with the theory of *maslahah al Syaitibi* that this is in order to achieve a shara goal as taught by Islam.²³ In general, in today's modern era, dispute resolution has shifted to an alternative, non-litigation path or better known as ADR (Alternative Dispute Resolution). Even in countries such as Australia and America, almost 90% of disputes are resolved through non-litigation channels, especially among entrepreneurs. In Indonesia, it has also begun to be applied even though it is still limited.²⁴

c. *Qadha* (Shari'ah Judicial Institution)

Religious courts have brought great changes with the enactment of Law No.3 of 2006 concerning the amendment of Law No.7 of 1989 concerning Religious Courts (Hidayanto, 2016).²⁵ So that with this law, problems that arise related to the settlement of sharia polemics can not only be resolved through *suhl* or peaceful means and *tahkim* or sharia arbitration, but can also be resolved by *qadha*, namely through religious courts. The above law has given authority to religious courts in adjudicating issues in the field of sharia economics in addition to those in general, namely marriage, zakat, waqf, grants, wills, *infaq* and *shadaqoh*.²⁶ However, this article focuses on the settlement of disputes outside the judiciary as seen from *al-Syaitibi's maslahah* theory.

4. CONCLUSION

²² Hadiati, M., & Tampi, M. M, (2017), *Efektivitas Mediasi dalam Penyelesaian Sengketa Konsumen oleh Badan Penyelesaian Sengketa Konsumen (BPSK) di DKI Jakarta*, Jakarta: Prioris, p.64–85

²³ Nurhayati, N. (2019), *Penyelesaian Sengketa Dalam Hukum Ekonomi Islam*, *Jurnal Hukum Ekonomi Syariah*, 2019, p.01-11. <https://doi.org/10.26618/jhes.v3i1.2118>

²⁴ Nugroho, S. A., (2019), *Manfaat Mediasi Sebagai Alternatif Penyelesaian Sengketa*. Prenada Media.

²⁵ Hidayanto, B. I. (2016), *Implementasi kompilasi hukum ekonomi syariah pada putusan No.: 3333/Pdt. G/2014/PA. B.* Universitas Islam Negeri Maulana Malik Ibrahim.

²⁶ Prakoso, A. L., (2017), *Tinjauan Terhadap Arbitrase Syariah Sebagai Alternatif Penyelesaian Sengketa Di Bidang Perbankan Syariah*. *Jurnal Jurisprudence*, p. 59–67

The settlement of insurance disputes according to the National Sharia Arbitration Board perspective is if the dispute cannot be resolved by internal deliberation by the insurance company. Meanwhile, according to Indonesian Insurance Mediation and Arbitration Agency, if the insured experiences a dispute with the insurance company and cannot reach a settlement of the dispute. Final and binding is a final decision or the final process of all series, processes or stages of examination in an act or event that has binding force on the will of the parties and cannot be refuted. The application of the final and binding nature applies in the decision of the deed of peace (*dading*), arbitration (National Sharia Arbitration Board), and decisions in the Constitutional Court. Specifically for the final and binding nature of arbitration decisions, the legal basis is Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The legal force of the Indonesian Insurance Mediation and Arbitration Agency Mediation Peace Deed (SKPSM) and the Indonesian Insurance Mediation and Arbitration Agency Arbitration Award both have binding legal force and are final for the parties and Islamic insurance companies that resolve disputes to the Indonesian Insurance Mediation and Arbitration Agency. In the sense that after Indonesian Insurance Mediation and Arbitration Agency issues the SKPSM and the Indonesian Insurance Mediation and Arbitration Agency Arbitration Award, no other legal remedies can be filed. Indonesian Insurance Mediation and Arbitration Agency has mediators and arbitrators who have sharia scientific backgrounds, so Indonesian Insurance Mediation and Arbitration Agency is also competent in handling sharia insurance cases resolved through mediation and arbitration processes. Then the Indonesian Insurance Mediation and Arbitration Agency Arbitration Decision will have executorial legal force or can be executed if the Indonesian Insurance Mediation and Arbitration Agency Decision is registered with the Court. The settlement of insurance disputes by the National Sharia Arbitration Board and Indonesian Insurance Mediation and Arbitration Agency bodies when associated with the concept of *al-maslahah* and its resolution has been regulated in accordance with the article, namely in article 6 of Law No. 30 of 1999 concerning arbitration and dispute resolution, namely *As-Sulhu* (Peace), *Tahkim* (Sharia Arbitration), *Qadha* (Sharia Justice Institution).

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