

Mediation As an Alternative for Dispute Resolution in Sharia Insurance in Indonesia

Bambang Heri Supriyanto¹

¹Universitas Bina Sarana Informatika
e-mail: bambang.bhs@bsi.ac.id

Cara Sitasi: Supriyanto, B H (2025) Mediation as an Alternative for Dispute Resolution in Sharia Insurance in Indonesia, *Cakrawala-Jurnal Humanioran dan Sosial* 25(1), 1-10

Abstract - Mediation is an alternative dispute resolution process that prioritizes a consensus approach in accordance with its consensual, consensus-based, collaborative nature. Mediation can produce a win-win solution. Mediation in resolving sharia insurance problems certainly uses a process in accordance with Islamic values. The reality of resolving sharia insurance disputes is still conventional, namely the system is not sharia-compliant. National Sharia Arbitration Board (Basyarnas) as a permanent and independent body functions to resolve sharia disputes that arise. The discussion of the problem in this paper includes the implementation of mediation as an alternative dispute resolution characterized by its consensual and collaborative approach, potentially producing mutually beneficial results, the parties often turn to Mediation which prioritizes consensual and collaborative processes to reach a common ground in disputes in sharia insurance, the role of mediators in mediation as an alternative means of dispute resolution in sharia insurance and also the driving and inhibiting factors of the mediation process at the Indonesian Muamalat Arbitration Board (Basyarnas). The conclusion is the implementation of the mediation process in resolving sharia insurance disputes in Indonesia. Primarily as a solution to resolve dispute problems in sharia insurance that occur, mediation is consensual or consensus and collaborative. Mediators in resolving sharia insurance problems quickly, precisely, comprehensively in order to maintain conducive conditions, in order to maintain the investment climate and public interest in sharia insurance. Factors in the mediation process to resolve sharia insurance conflict issues in Indonesia, namely: Limited number of mediators in the insurance sector; Good faith; lawyers; socialization.

Keywords: Mediation, Sharia Insurance, Basyarnas

INTRODUCTION

Humans are social creatures, the "zoom politicon," interacting with one another. Human relationships are reciprocal, so it is not uncommon for conflicts of interest to arise, resulting in disputes due to differing interests. Law plays a crucial role in resolving problematic issues within society.

Globalization significantly impacts the lifestyle of the Indonesian people, particularly in the legal and economic spheres. Indonesia's economic legal reality continually encounters new values developing within the dynamics of international mobility in other countries. The increasing intensity of trade and investment not only leads to higher economic value but also increases the intensity of disputes between communities with diverse goals and interests.

The reality in both developing and developed countries concerns the judiciary as a means of dispute resolution in society, fulfilling a sense of justice. Business and investment actors generally criticize the slowness of the judicial process, the high costs, and the complexity of the process. Moreover, in the trade and business sector, which is

very large and diverse and requires fast, effective, efficient dispute resolution and produces a dispute resolution that is acceptable to the disputing parties by prioritizing a "win-win solution".

Tony McAdams stated that: "Law has become a very big American business, and that litigation cost may be doing damage to the nation's economy. This means that the high cost of litigation is considered a very damaging factor to the American economy." (Yahya Harahap, 2017: 155).

The court system for resolving disputes has long been known to people around the world in general, and to people in Indonesia in particular. However, court resolution often carries complex consequences, making it difficult to resolve disputes effectively. (Ridwan Khairandy, 2020: 4).

The high cost of litigation impacts the economy not only in developed countries but also in developing countries, including Indonesia. Among the urgent criticisms are: (Suyud Margono, 2020: 34).

1. Slow dispute resolution;
2. Expensive court costs;
3. Unresponsive justice;

4. Court decisions often fail to resolve problems;
5. Judges' generalist abilities.

The rapid changes and shifts of the industrial era have ushered humans into a borderless world, one of the most prominent economic characteristics of globalization. Peacemaking is essentially a system of Alternative Dispute Resolution (ADR) that is inherent in the foundation of the Indonesian state, Pancasila. Its philosophy implies that the principle of dispute resolution is deliberation to reach consensus. This is also implied in the 1945 Constitution.

The law governing peacemaking or mediation, Law Number 4 of 2004 concerning Judicial Power, specifically the explanation of Article 3, states that "Dispute resolution outside the courts on the basis of peacemaking or through a referee remains permitted." As amended by Law Number 48 of 2009 in Chapter XII Article 58 to Article 61 which contains provisions that permit resolving disputes outside the court through Arbitration or other Alternative Dispute Resolution agreed upon by the parties such as consultation, negotiation, mediation, conciliation or expert assessment in Article 60 paragraph (1) of Law Number 48 of 2009.

The existence of mediation is emphasized in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1, number 10, which states that "Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court dispute resolution through consultation, negotiation, mediation, conciliation, or expert assessment."

Efforts to formulate this law have been underway since the 1980s by the National Legal Development Agency (BPHN), which at that time submitted a draft of the Indonesian Trade Bill, one section of which regulated mediation. (Huala Adolf, 2016: 8).

Indonesia plays a vital role in the current era of globalization. Various economic collaborations have entered the international sphere. This will undoubtedly have both positive and negative impacts. On the positive side, it is hoped that this era of globalization will lead Indonesia to become a country with increasing economic income due to the increasingly narrowing gaps between countries.

As a form of win-win solution, mediation is essentially a form of dispute resolution in sharia insurance based on an agreement between the disputing parties. Therefore, mediation plays a role as an alternative to voluntary dispute resolution in sharia insurance. The agreement reached by the parties to resolve the dispute through an out-of-court

forum must be adhered to by the parties. (Gunawan Widjaya, 2021: 2)

The world of insurance is currently growing, not only through conventional means but also through Sharia principles. This is due to growing public awareness of the benefits of insurance in their lives, offered through various methods and conveniences, which indirectly attract people to utilize insurance services. Insurance plays a crucial role in society because it provides a transfer of risk for losses suffered by insured persons, so that when a loss occurs, the insurance company immediately covers the loss.

Indonesia recognizes at least three types of insurance companies: General Insurance Companies; Life Insurance Companies; and Reinsurance Companies. To carry out their activities, insurance support companies are supported by at least five insurance support companies in Indonesia: insurance brokerage companies, reinsurance brokerage companies, insurance loss appraisal companies, actuarial consulting companies, and insurance agents.

In order to protect the interests of each party against possible losses, the Indonesian Insurance Mediation Agency (BMAI) has been established and has been operating effectively since 2006. It was established based on the Joint Decree of the Coordinating Minister for Economic Affairs Number KRP.45.MEKON/07.2006, Governor of Bank Indonesia Number 8/50/KEP.GBI/ 2006, Minister of Finance Number 357/KMK.012/2006, Minister of State-Owned Enterprises Number KEP-75/MBU/2006 concerning the Financial Sector Policy Package stipulated on July 5, 2006.

BMAI, now the National Sharia Arbitration Board (Basyarnas), is a one-stop-service institution easily accessible to all insured individuals or policyholders to resolve claim disputes (demands for compensation or benefits) and provides a simple solution for insured individuals who cannot afford to go to court or cannot afford legal assistance. (Jimmy Joses Sembiring, 2021: 140).

The concept of win-win dispute resolution, such as mediation, is also known and practiced in Islam in Indonesia, often referred to as the Islamic legal system. Although not called mediation, the dispute resolution method used resembles that used in mediation, namely "ishlah."

Ishlah in Islam prioritizes peaceful methods for resolving disputes, conflicts, or disputes by setting aside the differences that are at the root of the dispute. This involves forgiving each other's mistakes and practicing peaceful forgiveness among

the disputing parties in order to find a solution that is acceptable and agreeable to them.

Trade, commerce, and business between Muslims are now not limited to one country but worldwide. Therefore, the concept of *ishlah* has developed into a broader use for resolving both economic and non-economic disputes. *Ishlah* can be interpreted as the same as mediation or conciliation.

Therefore, *Ishlah* is an alternative dispute resolution (ADR) that already exists within the Islamic sharia system and has been implemented within the realm of societal interactions. It has proven to be highly successful, as all humans need each other. According to Islamic law, the best human being is one who is beneficial and provides blessings to all creatures on earth.

To anticipate the growing public interest in insurance, particularly sharia insurance, an agency was established whose core principles and operational activities comply with sharia provisions: the National Sharia Arbitration Board (Basyarnas), which was originally the Indonesian Muamalat Arbitration Board (BAMUI).

The presence of Basyarnas is anticipated by Indonesian Muslims not only because of the awareness and interest of Muslims in implementing Islamic sharia in the realm of muamalat or commerce, but also because it has become a necessity and a necessity, in line with the development of economic and financial life for the Muslim community, especially in the jurisdiction of Indonesia, where the population is predominantly Muslim. (Rachmadi Usman, 2023: 332).

Because the aim of Basyarnas is as a permanent and independent body that functions to resolve the possibility of a muamalat or sharia dispute arising in business cooperation relations such as: trade, financial industry, financial services including sharia insurance services, and others among Muslim business actors in Indonesia.

Indonesia, with the largest Muslim population in the world, should prioritize the needs of its majority and potential population to maximize access to economic, trade, and business opportunities to support mobility in both domestic and international transactions, in accordance with the concepts and principles of Sharia, or the core principles of the religion, namely the principles of the Sharia system according to Islam.

In civil disputes, primarily concerning Sharia insurance services, between policyholders or insured parties whether between legal entities, in this case Sharia insurance companies, or between Sharia insurance companies and individuals, the resolution

of these disputes is expected to facilitate a smooth process between the two parties, thus eliminating hostility and fostering harmonious relationships. Furthermore, peace settlement is beneficial to avoid costly litigation and protracted litigation.

Alternative forms of dispute resolution include mediation. Mediation needs to be introduced to business people in Indonesia, who are more familiar with courts or arbitration institutions as a means of resolving disputes. The rapid development of alternative dispute resolution outside the courts, particularly in Indonesia and in both the Western and Eastern hemispheres, is evident, and its significant benefits are being recognized by Sharia insurance businesses in Indonesia.

Referring to the above description, several key issues can be raised as follows:

1. How is mediation implemented as an Alternative Dispute Resolution for Sharia Insurance in Indonesia?
2. What is the role of the mediator in mediation as an alternative dispute resolution in Sharia insurance in Indonesia?

What factors encourage and hinder the mediation process at the National Sharia Arbitration Board (Basyarnas)?

RESEARCH METHODOLOGY

The methodology used in this research is normative, employing a descriptive research type with a normative legal approach, based on applicable laws and regulations. This research uses a descriptive analytical method using library research. The author uses secondary data as a normative research approach, seeking and utilizing literature such as scientific papers and journals, books on mediation, alternative dispute resolution, and Islamic insurance as references, as well as studying related legislation.

RESULTS AND DISCUSSION

1. Implementation of Mediation as an Alternative Dispute Resolution for Sharia Insurance in Indonesia

Mediation is essentially a negotiation involving a third party with expertise in effective mediation procedures. This can assist in conflict situations by coordinating their activities and thus more effectively negotiating a solution to the dispute.

Mediation can be successful if the parties have equal bargaining power and still value a good relationship going forward. If there is a desire to resolve the issue without the intention of prolonged and deep hostility, mediation is the most appropriate option for the disputing parties.

The implementation of mediation as an alternative dispute resolution (ADR), both in court and out of court, has been increasingly developing since the enactment of legislation regarding Alternative Dispute Resolution (ADR), particularly regarding Sharia insurance, which is inseparable from the characteristics of the Indonesian nation.

The Indonesian nation, both normatively and historically, is known and viewed as a nation with a culture that consistently prioritizes and upholds the values of a consensus approach in resolving societal issues, thereby maintaining and preserving a harmonious cosmopolitan order.

In several indigenous communities, terms can be found that illustrate the importance of a consensus approach or consensus in resolving issues. The founders of the Indonesian nation believed that the deliberation and consensus approach was a noble national value, and they later actualized it as a method for high-level political decision-making, as formulated in the fourth principle of Pancasila, the foundation of the Indonesian nation and state.

The second theoretical perspective views the power of the disputing parties as the dominant factor. This means that people are willing to pursue mediation primarily because of the relatively equal power of the parties. Power in conflict theory can manifest in various forms, including legal power, financial power, economic power, social power, and moral power.

In addition to legal force, in the realities of life, whether in society, the state, or interstate relations, it is not uncommon for parties to conflict or disputes to use extrajudicial force as a power game to strengthen their position against the opposing party, such as acts of fighting, terror, roadblocks, destruction of property, hostage-taking, and acts of war.

The development of Alternative Dispute Resolution (ADR) institutions in Indonesia relies on at least five main factors:

1. Every effort to increase competitiveness in attracting investment to Indonesia. Legal certainty, including the availability of an efficient and reliable dispute resolution system, is a crucial factor for economic actors seeking to invest in Indonesia. Based on the principles of independence and professionalism, it can resolve disputes and ensure a sense of justice;
2. Public demand for efficient mechanisms capable of satisfying a sense of justice;
3. Efforts to balance the increasing critical thinking of the public, coupled with demands for an active role in the development process;
4. Fostering a climate of healthy competition (peer pressure) for the judiciary. The presence of APS

institutions and quasi-courts (tribunals), if optional, will result in a selection process that reflects the level of public trust in a particular dispute resolution mechanism. The presence of these peers is expected to encourage these dispute resolution institutions to improve their image and public trust.

5. Business actors' desire to resolve disputes can be accommodated through alternative dispute resolution methods outside the courts, with various patterns available for individual choice. APS is not yet very popular in Indonesia due to its lack of publicity, unlike in other countries such as Japan, Australia, Canada, and the United States.

The advantages of mediation as a modern Alternative Dispute Resolution (ADR) are:

1. Voluntary;
2. Information/Flexible;
3. Interest-Based;
4. Future-Looking;
5. Party-Oriented;
6. Party Control.

Therefore, mediation is a solution that consistently addresses the issues at hand by prioritizing a cooperative nature, a spirit of continued cooperation and fostering good relations between the disputing parties, in accordance with the values of the local wisdom of the Indonesian nation and state, born from the acculturation of cultural customs and religious values embraced by the majority Muslim Indonesian people, actualized in the reality of a pluralistic society with a strong level of tolerance and togetherness.

Based on all of this, in response to the public's demands for implementing religious law in their daily lives, the Indonesian government, as the entity entrusted with running the nation's economy and creating a conducive investment climate for investors, particularly those who utilize the Sharia system in their business practices, is highly appropriate.

The government is well placed to create products that can stimulate public investment enthusiasm, enabling them to contribute to the development of the Indonesian nation and state. One such initiative is Sharia insurance, recognizing the opportunities and prospects of insurance as a means of supporting the lifestyle and safety of modern society. Almost all sectors of society, from vehicles to personal safety, come into contact with insurance products.

The Sharia insurance sector has significant potential for future growth in a country with a predominantly Muslim productive population. This represents a significant business opportunity for the future. Therefore, the government and business players,

particularly in the insurance sector, are establishing an agency to address the insurance issues that arise as more and more people use insurance products for their own safety, both for themselves and their families, and for their businesses.

Because Islamic insurance adheres to Islamic principles, any dispute or disagreement regarding Islamic insurance products is resolved through methods consistent with Islamic values and principles, namely by prioritizing win-win solutions, which prioritize kinship or brotherhood and future cooperation.

The concept of win-win solutions, such as in mediation, is also recognized and practiced in Islamic legal systems. Although not specifically referred to as mediation, the dispute resolution model used in arbitration, particularly in Islamic muamalat, is closely similar to the model used in mediation. In Islamic muamalat, "ishlah" refers to prioritizing peaceful methods for resolving disputes, conflicts, or disputes, by setting aside the differences that underlie the dispute. This involves forgiving each party's mistakes and practicing peaceful means to mutually forgive each other, thus maintaining harmonious relationships and fostering cooperation in the future. Ishlah can be interpreted similarly to mediation or conciliation. Strengthened by the fatwa of the Indonesian Ulema Council (MUI) regarding businesses in the sharia services sector.

To anticipate the growing public interest in insurance, particularly sharia insurance, a body was established whose principles and activities comply with sharia provisions: The National Sharia Arbitration Board (Basyarnas). Basyarnas aims to be a permanent and independent body that resolves potential muamalat or sharia compliant disputes arising in trade, the financial industry, services, and other Islamic contexts.

Indonesia, with the largest Muslim population in the world, has the potential to leverage the broadest possible access to economic, trade, and business opportunities to support mobility in both domestic and international transactions in accordance with sharia principles, or religious principles.

Based on the need for an independent institution that can serve as a forum for insurance business actors in the event of insurance disputes, insurance associations in Indonesia established an agency in 2006 called the Indonesian Insurance Mediation Agency (BMAI). BMAI is now the National Sharia Arbitration Board (Basyarnas) which has 152 members, an independent and impartial institution whose formation was pioneered by insurance associations under the Federation of Indonesian Insurance Associations (FAPI).

Various insurance associations, both conventional and especially Sharia insurance, such as the Indonesian General Insurance Association (AAUI), the Indonesian Social Life Insurance Association (AAJSI), and the Indonesian Life Insurance Association (AAJI), have agreed to use mediation as the first line of defense for resolving insurance claim disputes between insurance companies and insureds or policyholders.

Within the BMAI is now the National Sharia Arbitration Board (Basyarnas), a special division has been established to address Sharia insurance issues in Indonesia. The use of mediation as a means to resolve insurance claim disputes is not based on statutory provisions, but rather on the policies of insurance associations in Indonesia. The use of mediation in insurance claim disputes is voluntary or based on mutual agreement between the parties.

The BMAI, now the National Sharia Arbitration Board (Basyarnas), has a two-stage process for resolving disputes regarding compensation or benefits:

1. Mediation: Providing a mediator to assist the Insured/Policyholder and the Insurance Company in resolving reported claim disputes amicably and fairly for both parties, as long as the claim falls within their jurisdiction. The Insured and the Insurance Company are exempt from any fees.
2. Adjudication: If a claim dispute (demand for compensation or benefits) cannot be resolved through mediation, the case will be referred to an adjudicator, who can render a decision based on the available facts. At this stage, the Insured or Policyholder and the Insurer or Insurance Company are also exempt from any fees.

To request a resolution of a dispute that cannot be resolved directly between the Insured or Policyholder and the Insurance Company, the National Sharia Arbitration Board (Basyarnas) can contact the National Sharia Arbitration Board (Basyarnas) directly to seek resolution through the National Sharia Arbitration Board (Basyarnas), the legal institution responsible for resolving insurance disputes between insurers and insureds.

Insureds or policyholders facing disputes or issues that cannot be resolved directly with the insurance company can submit their disputes or complaints to the National Sharia Arbitration Board (Basyarnas) free of charge, either in person or by fax, post, or email. This is intended to ensure that the insurance dispute resolution process is not hampered by administrative issues and rigid, inflexible procedures.

A mediator will process any claims disputes received. If the claim submitted by the insured or

policyholder falls within the jurisdiction of the National Sharia Arbitration Board (Basyarnas), the mediator will contact the relevant insurance company and facilitate a resolution of the claim dispute through mediation. The insured or policyholder is exempt from all fees for this service.

If a resolution cannot be reached, the insured or policyholder may choose to proceed to adjudication, and the National Sharia Arbitration Board (Basyarnas) will appoint an adjudicator or panel of adjudicators, as needed. For this level, the insured or policy holder and insurance company will also be exempt from administrative fees which will be decided by the adjudicator or adjudicator panel.

Adjudication decisions are not binding on the insured or policyholder, but they are binding on the insurance company. If the insured or policyholder is dissatisfied with the adjudication decision, they are free to reject it and take further steps to resolve the dispute. This means there is no disadvantage for the insured or policyholder in pursuing a claim dispute resolution through the National Sharia Arbitration Board (Basyarnas).

The timeframe for dispute resolution varies from case to case, depending on the complexity of the case. Sometimes, some cases can be resolved in less than a week, while others can take months.

The National Sharia Arbitration Board (Basyarnas) will strive to resolve disputes as quickly as possible so that rights and achievements in insurance can be carried out in accordance with statutory regulations so as not to impact the level of public trust in insurance companies in Indonesia, because until now it has been proven that insurance can collect funds from the public on a large scale and in a long term, and investment funds from insurance products can be used to improve the wheels of development of a nation such as Indonesia which is currently in need of investment for development.

2. The Role of the Mediator in Dispute Mediation in Sharia Insurance in Indonesia.

Essentially, a mediator acts as an "intermediate" to assist the parties in resolving their disputes. The mediator will also help the parties frame the existing issues as issues that need to be addressed together, in order to reach an agreement, and simultaneously assist the disputing parties in formulating various dispute resolution options.

The primary role of the mediator is to reconcile these differing interests to find common ground that can serve as a starting point for resolving the problem. It also helps the disputing parties understand each other's perspectives and helps them locate issues that are important to those in conflict.

The mediator facilitates the exchange of information, encourages discussion of differences in interests, perceptions, and interpretations of situations and issues, and allows for, but regulates, the expression of emotions. It also prioritizes issues and emphasizes discussion of common goals and interests. (Garry Goodpaster, 2016:16).

Garry Goodpaster argues that the role of a mediator is to analyze and diagnose a specific dispute and then design and manage the process and other interventions with the goal of helping the parties reach a healthy consensus. Dispute diagnosis is essential to helping the parties reach consensus.

The important roles of a mediator include:

1. As a catalyst;
The mediator's presence in the negotiation process can foster a constructive atmosphere for discussion. Therefore, the mediator's function is to minimize polarization.
2. As an educator;
The mediator strives to understand the desires, aspirations, work procedures, political constraints, and business constraints of the parties. He or she must immerse themselves in the dynamics of the differences between the parties to enable them to grasp the parties' reasons or rationale for agreeing to or rejecting each other's requests.
3. As a translator;
The mediator must strive to convey and formulate the proposals of one party to the other using language or expressions that are pleasing to the ear, but without diminishing the intent or objectives of the proposer.
4. As a Resource Person;
The mediator must be able to leverage or maximize the benefits of available information sources. People often become frustrated when participating in discussions, especially when faced with a lack of information or resources, such as research facilities, computers, and scheduling negotiations or meetings with relevant parties who have information.
5. As a Bearer of Bad News;
The mediator must be aware that parties in the negotiation process can be emotional. Therefore, the mediator should schedule separate meetings with only one party to accommodate various proposals.
6. As an Agent of Reality;
The mediator must strive to inform or warn one or both parties frankly that their goals are impossible or unreasonable to achieve through the negotiation process. Furthermore, the mediator must remind the parties not to focus on a single solution that may be unrealistic.
7. As a Space goat;
The mediator must be prepared to take the blame if the people they represent are not fully satisfied

with the terms of the agreement. The negotiator may shift their failure to advance the interests of the parties they represent to the mediator's fault.

There are at least three types of mediators: (Christopher W. Moore, 2017: 85).

1. Social mediator (social network mediator);
This is a mediator who plays a role in a dispute based on the social relationship between the mediator and the disputing parties, for example, in a dispute between coworkers and business partners. Mediators who are religious figures fall into this typology.
2. Authoritative Mediator;
This is a mediator who seeks to help the disputing parties resolve their differences and holds a powerful position, giving them the potential or capacity to influence the final outcome of the mediation process. However, this mediator does not use their authority or influence during their role. This is based on the belief or view that the best solution to a case is not determined by the mediator alone, as the influential party, but must be achieved through the efforts of the disputing parties themselves.
3. Independent Mediator;
This is a mediator who maintains distance between the parties and the problem at hand. These mediators are commonly found in society. This situation can be seen or proven by the birth and development of the mediator profession, such as the professions of lawyer, doctor, accountant and so on.

Insurance companies are supported in carrying out their activities by other companies, also known as insurance support companies. Insurance support companies are companies that have a direct relationship with insurance transactions. Indonesia is known for at least five insurance support companies:

1. insurance brokerage companies,
2. reinsurance brokerage companies,
3. insurance loss assessors,
4. actuarial consulting companies,
5. insurance agents.

Insurance, particularly Sharia insurance services, is growing rapidly in Indonesia due to the enthusiasm of the public who have begun to implement Sharia in their daily lives, not only in private but also in public spaces such as for safety, vehicles, education, and even in businesses or businesses managed or owned by Muslims.

It is natural that human relationships are not always conducive; conflict, even if unintended, inevitably occurs. The situation between customers or insured

and insurance companies or insurers is not always harmonious, as disputes between insurance companies and their customers are likely to arise.

Disputes can arise due to differing interpretations of the provisions stipulated in a Sharia insurance policy. This is because there is a possibility of differing interpretations and discrepancies in the amount of compensation that should be received by Sharia insurance company customers.

A mediator, as someone who mediates disputes arising in the insurance sector, between policyholders and insurance companies, must employ approaches aimed at resolving disputes quickly, accurately, effectively, and comprehensively to avoid future problems between the disputing parties.

A mediator must possess and meet both de facto and de juridical criteria, ensuring their expertise in resolving the issues faced by the disputing parties who have used the mediator's services. This ensures that the resulting agreement between the disputing parties satisfies all parties and maintains harmony between them in the future.

The role of a mediator in resolving insurance disputes, particularly those involving Sharia insurance, must utilize the principles of Islamic law to find a resolution to the dispute in accordance with the values contained in the Qur'an and the Hadith, as both are fundamental norms in the Islamic Sharia system.

By relying on these Islamic sources, it is hoped that the mediation results conducted by mediators handling Sharia insurance disputes will remain consistent with the values of the legal sources contained in Islamic law, including the Qur'an, Hadith, Ijma' (consensus), Ihtihad (religious consensus), and customs within Islamic society. Therefore, mediators who want to resolve sharia insurance issues should prepare themselves with adequate Islamic knowledge so that in resolving problems in sharia insurance, the results do not conflict with the values of the main sources of reference in Islam, namely the Qur'an and the Sunnah of the Prophet Muhammad SAW and the opinions of Islamic scholars, so that the results of the agreement can be accepted by the disputing parties, in this case Muslims as users of sharia insurance services which have great potential.

The primary role of a mediator in resolving Sharia insurance issues, as mentioned above, is to satisfy the disputing parties quickly, accurately, and comprehensively to maintain a conducive environment for Sharia insurance economic activity in Indonesia, safeguarding the investment climate

and the Indonesian public's interest in Sharia insurance.

The role of a mediator in resolving Sharia insurance issues must utilize Islamic Sharia values, namely through mediation or *Ishlah* (reconciliation) as a process to maintain the value of Islamic brotherhood among Muslims. Mediators must also continually enhance their knowledge and capacity regarding Islam so that they can better understand the values of the Islamic Sharia system, as practiced by the majority of the Indonesian population, in resolving disputes.

3. Factors Driving and Inhibiting the Mediation Process at the National Sharia Arbitration Board (Basyarnas).

Mediation, as a means to resolve legal issues arising from conflicts of interest and insurance coverage in Indonesia, is also influenced by factors that act as strengths or obstacles that prevent mediation from functioning as intended.

The strengths of mediation are one option that can be utilized by those in dispute, namely: (Laurance Boulle, 2016: 35-41)

1. The implementation of the mediation process is not regulated in detail by law, so the parties have flexibility and discretion and are not trapped in formalism;
2. Mediation is generally conducted behind closed doors or confidentially. This means that only the disputing parties and the mediator are permitted to attend mediation sessions.
3. In the mediation process, both parties can directly participate in negotiations and bargaining to find a resolution to the problem without having to be represented by their respective attorneys.
4. Through the mediation process, the parties can discuss various aspects or sides of their dispute, not only the legal aspects but also other aspects.
5. In accordance with its consensual, consensual, and collaborative nature, mediation can produce a win-win solution for the parties.

On the other hand, mediation, as an alternative dispute resolution method, also has several weaknesses, namely:

1. Mediation can only be conducted effectively if the parties have the will or desire to resolve the dispute by consensus. If only one party desires mediation, while the other party does not share the same desire, mediation will not be possible, and even if it does occur, it will be ineffective. This is especially true if mediation is voluntary.
2. Disloyal parties may exploit the mediation process as a tactic to delay dispute resolution,

such as by not adhering to scheduled mediation sessions or negotiating simply to gain information about the opponent's weaknesses.

3. Some types of cases may not be amenable to mediation, particularly those involving ideological issues and core values that do not allow the parties to compromise.
4. Mediation is considered inappropriate for use when the primary issue in a dispute concerns the determination of rights, because disputes concerning the determination of rights must be decided by a judge. Whereas mediation is more appropriate for resolving disputes related to interests;
4. Normatively, mediation can only be used in the private sector, not in criminal law.

Factors and obstacles in the mediation process for resolving Sharia insurance conflicts in Indonesia include:

1. Limited number of mediators in the insurance sector;
The number of insurance mediators, particularly Sharia insurance, significantly influences the resolution of insurance problems that arise in the insurance industry in Indonesia. This is despite the increasing number of insurance problems in Indonesia as more and more Muslims use Sharia insurance as a means of security. Consequently, the role of mediators in resolving disputes effectively, appropriately, and expeditiously has not been optimal.
2. Good faith of the disputing parties;
Good faith is also a crucial variable in mediating between the disputing parties, resulting in a mediation that satisfies both parties. Good faith is crucial in the mediation process to achieve a win-win solution. If the parties fail to address their own needs and only pursue profit, reconciliation through mediation will be very difficult to achieve.
3. Support from lawyers;
Similarly, lawyers are still rarely willing to resolve legal issues between disputing parties, particularly in the field of sharia insurance, due to the potential reduction in their fees. Lawyer fee patterns are divided into three categories:
 - a. First, lawyers have regular clients and receive a fixed fee, usually annually or monthly;
 - b. Second, lawyers receive an honorarium based on the handling of the case until its completion;
 - c. Third, lawyers receive a fee from clients based on working hours or the frequency of court visits.

This last pattern is usually what causes lawyers to tend to be negative about efforts to institutionalize mediation.

4. Lack of mediation public awareness in the insurance sector;

To date, mediation as an alternative dispute resolution tool has received limited publicity because calls and notifications about mediation are made when the disputing parties are already facing insurance-related issues.

Mediation is often considered an extension of the negotiation process, as disputing parties are unable to resolve their disputes on their own and therefore require the services of a neutral third party to help them reach an agreement to resolve the conflict of interest between them.

Mediation in Islamic insurance is a process used to reconcile disputing parties. In Islam, mediation is often referred to as *ishlah* (reconciliation). In Islamic insurance, the term *ishlah* is often used more often than mediation. However, the essence of both mediation and *ishlah* is the same: resolving problems while prioritizing collaborative methods between the disputing parties.

Mediation is highly recommended in Islam because it aligns with Islamic philosophy, which states that all Muslims are brothers, and brothers are encouraged to maintain harmonious values to strengthen their Islamic brotherhood.

Unlike adjudication, where a third party applies the legal system to the facts to reach a conclusion, in mediation, a third party assists the disputing parties by applying values to the facts to reach a final outcome. These values include law, a sense of justice, beliefs, religion, ethics, morals, and others. (Gatot Subroto, 2016:122).

Dispute resolution through Alternative Dispute Resolution (ADR) has advantages over adjudication. It is far more efficient and effective than adjudication. It is faster, less costly, and most importantly, results in an agreement acceptable to all parties. The parties can determine the method and duration of the dispute resolution process.

Some of the benefits often obtained from the mediation process are:

1. Cost-effective decisions
2. Quick resolution
3. Satisfactory results for all parties
4. Comprehensive and customized agreements
5. Practice and learning creative problem-solving procedures
6. Greater control and predictable outcomes
7. Individual empowerment

8. Preserving existing relationships or ending them more amicably
9. Implementable decisions
10. Better agreements than simply accepting compromises or win-lose procedures
11. Decisions that are valid regardless of time.

On the other hand, mediation institutions also have weaknesses, including: (Munir Fuady, 2020: 50)

1. It usually takes a long time.
2. The enforcement mechanism is difficult because the method of executing the decision is similar to the enforcement of a contract.
3. It relies heavily on the parties' willingness to resolve the dispute.
4. Mediation will not produce good results, especially if insufficient information and authority are provided to the mediator.

If a lawyer is not involved in the mediation process, it is possible that important legal facts may not be conveyed to the mediator, thus biasing the decision.

CONCLUSION

Based on the discussions presented here, the author attempts to draw conclusions, hopefully providing greater clarity regarding the issues of Islamic insurance in Indonesia.

1. The Role of Mediation as an Alternative Dispute Resolution in Indonesia. Primarily as a solution to resolve Islamic insurance disputes, mediation utilizes a consensus approach. Due to its consensual, collaborative, and consensus-based nature, mediation can produce win-win solutions for all parties.
2. Mediators in resolving Islamic insurance disputes must satisfy the disputing parties quickly, accurately, and comprehensively to maintain a conducive environment for Indonesian economic activity, maintain the investment climate, and foster public interest in Islamic insurance. Mediation as an alternative dispute resolution tool in Islamic insurance in Indonesia.
3. Factors in the mediation process in resolving the problems of sharia insurance conflicts in Indonesia, namely: Limited number of mediators in the insurance sector; Good faith of the disputing parties; Support from lawyers; Lack of mediation socialization in the insurance public space;

The author's suggestions are as outlined below:

1. The government, as the Policy Obligor, should create policies aimed at increasing public interest in using Sharia insurance services by creating a

conducive environment by consistently enforcing laws and regulations that encourage investors, entrepreneurs, and users of Sharia insurance services, particularly regarding mediation under Islamic law.

Realizing this reality by promoting mediation as an effective, efficient, and expeditious means of dispute resolution, particularly in Sharia insurance disputes in Indonesia. This will ensure that the public will feel comfortable and comfortable using Sharia products that comply with Islamic law.

REFERENCE

- Adolf. Huala, (2016). *Analysis and Evaluation of Dispute Resolution Law through Arbitration (Law Number 30 of 1999)*, BPHN. 8.
- Boulle. Laurance, (2016). *Mediation Principles, Process, Practice.*, Sydney: Butterworths. 35-41.
- Fuady. Munir, (2020). *National Arbitration: An Alternative for Business Dispute Resolution.*, Bandung: Citra Aditya. 50.
- Goodpaster. Garry, (2016). *Review of Dispute Resolution. In the Basics of Economic Law Series 2: Arbitration in Indonesia.*, Jakarta: Ghalia Indonesia. 16.
- Harahap. Yahya, (2017). *Several Reviews of the Judicial System and Dispute Resolution.*, Bandung: PT. Citra Aditya Bakti. 155.
- Khairandy Ridwan, (2020). *Looking for Alternative Solutions, Business Law*, October-November Edition. 4.
- Margono Suyud, (2020). *ADR & Arbitration – Institutionalization Processes and Legal Aspects.*, Bogor: Ghalia Indonesia. 34.
- Moore Christopher W, (2017). *Basic Principles Underlying an Environmental Dispute Resolution System.*, Jakarta: Indonesian Center for Environmental Law. 85.
- Widjaya. Gunawan, (2021). *Alternative Dispute Resolution*. Jakarta: Raja Grafindo Persada. 2.
- Sembiring. Jimmy Joses, (2021). *How to Resolve Disputes Outside the Court (Negotiation, Mediation, Conciliation, Arbitration)*, Jakarta: Visi Media. 140.
- Subroto. Gatot, (2016). *Arbitration and sMediation in Indonesia*, Jakarta: PT Garmedia Pustaka Utama. 122.
- Usman. Rachmadi, (2023). *Options for Dispute Resolution Outside the Court*, Bandung: Citra Aditya Bakti. 332,

PROFIL PENULIS

Bambang heri supriyanto SH, MH. Menjadi Dosen beberapa universitas kini telah menjadi pengajar di hukum bisnis pada Universitas Bina Sarana informatika selain mengajar juga menjadi praktisi hukum.