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Contemporary Legal Certainty in Insurance Default Claims: A Comparative Study of Islamic and Positive Law Perspectives

Abstract: The breach of contract (wanprestasi) in contemporary insurance practices often results in legal uncertainty, particularly for insured parties who experience losses due to denied or inadequately fulfilled claims. This article examines the legal challenges associated with breach of contract claims in the Indonesian insurance context through a comparative analysis of positive and Islamic law perspectives. Utilizing a normative juridical approach, the study analyzes relevant legislation, including the Indonesian Civil Code (KUHPer) and Financial Services Authority (OJK) regulations, alongside principles of fiqh muamalah related to contracts, justice, and legal certainty. The findings reveal that while positive law offers a relatively structured legal framework, its practical implementation still encounters significant barriers to ensuring adequate legal protection. Conversely, Islamic law underscores the importance of contract clarity—particularly in *tabarru'* and *tijarah* agreements—and upholds justice as a core value in transactional relationships. These principles can enhance legal certainty and ethical standards in dispute resolution processes when applied. This article contributes to the academic discourse by providing a theoretical and comparative foundation for developing a more inclusive and justice-oriented insurance dispute resolution model that integrates national legal norms and Islamic ethical values. It is expected to offer valuable insights for policymakers, legal scholars, and practitioners in designing responsive insurance policies aligned with the needs of a pluralistic society.

Keywords: Breach of Contract, Contemporary Insurance, Islamic Law, Legal certainty, Positive law.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

INTRODUCTION

As an instrument of economic protection, insurance has a vital role in anticipating financial risks amid the uncertainty of modern life.[1] In the Indonesian context, the development of the insurance industry has experienced significant growth in line with increasing public awareness of the importance of protection against unexpected risks.[2] However, the reality on the ground shows that there are still high disputes between the insured and the insurer, especially related to default claims.[3] The main problem arises when the insurance company rejects the claim or does not fulfill its obligations as stated in the policy agreement, thus creating legal uncertainty and harming the insured.[4]

In Indonesia's positive law, default in an agreement is regulated in the Civil Code (KUHPerdata) and is emphasized by sectoral regulations issued by the Financial Services Authority (OJK).[5] However, the implementation of these rules still leaves problems, especially in the aspects of law enforcement and consumer protection. Complicated claims settlement procedures, lack of transparency in policy clauses, and the dominance of insurance companies' bargaining positions exacerbate the inequality of the legal relationship between the insured and the insurer.[6]

From the perspective of Islamic Law, the problem of a default claim is not only seen as a violation of a contract but also as a violation of the principles of justice (*al-'adl*), honesty

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[1] Nikita Febiana Putri dan Arista Candra Irawati, "The Legal Protection of Insurance Policyholders Against Default by Insurance Companies," *The Virtual International Conference on Economics, Law and Humanities* 2, no. 1 (2023): 252–258.

[2] Yovenska L.Man, "Aktualisasi Asuransi Syariah Di Era Modern," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 4, no. 1 (7 Juli 2018): 77–84, https://doi.org/10.29300/mzn.v4i1.1012.

[3] Muhammad- Yasid dkk., "Legal Responsibility of Insurance Companies for Actions of Default in Insurance Agreements," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 3 (2023): 710–723, https://doi.org/10.31941/pj.v22i3.3951.

[4] Gary Gagarin, "Optimalisasi Peran Dewan Pengawas Syariah (Dps) Pada Perusahaan Asuransi Syariah Di Indonesia," *Istinbath : Jurnal Hukum* 14, no. 2 (9 Desember 2017): 170–186, https://doi.org/10.32332/istinbath.v14i2.945.

[5] Hendro Purnomo dkk., "Initiating Preventive Legal Protection for Defaulted Insurance Customers: An Axiological Study," *East Asian Journal of Multidisciplinary Research* 3, no. 11 (29 November 2024): 5405–5416, https://doi.org/10.55927/eajmr.v3i11.12387.

[6] Novi Puspitasari dkk., "Factors Affecting Solvability Analysis of Indonesian Sharia Life Insurance Companies," *Al-Uqud : Journal of Islamic Economics* 7, no. 2 (30 Juli 2023): 172–185, https://doi.org/10.26740/aluqud.v7n2.p172-185.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

(*shidq*), and responsibility (*amanah*) in muamalah. The contract in insurance (both categorized as *tabarru'* and *tijarah*) must be based on an explicit agreement and does not contain elements of gharar (uncertainty) or zulm (injustice).[7] Therefore, Islamic Law pays special attention to the clarity of the rights and obligations of the parties in the contract, as well as a dispute resolution mechanism oriented towards substantive justice, not just legal formalities.

Research related to default claims on insurance issues has been done before. Rossy Ibnul Hayat and Sukardi, in an article entitled "Analysis of Judges' Considerations in Deciding Sharia Economic Cases Related to Default: A Study of Decision Number 0132/Pdt.G/2016/PA. Stg", examine the judge's considerations in resolving default cases in the realm of sharia economics. Their study focuses on the juridical aspects and the basis of sharia economic law used in the decision.[8] However, this study has not explored the integrative aspects between Islamic Law and positive law, especially regarding legal certainty for insurance claims.

Meanwhile, Yusriana Maida Hastuti and Siti Ngainnur Rohmah, through the article "Settlement of Defaults in *Murabahah* Financing During the Pandemic Perspective of Islamic Law and Positive Law: A Case Study at KSPPS BMT NU Sejahtera Haurgeulis District," examined the settlement of defaults in *murabahah* contracts during the pandemic, by reviewing the perspective of Islamic Law and Positive Law.[9] This study makes an essential contribution in the context of force majeure in Sharia financing. However, the topic of legal certainty for insurance claims is not the primary focus of this study.

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[7] Syihabudin Syihabudin dan Najmudin Najmudin, "The Purchasing Decisions of Sharia Insurance Products During Covid-19 Period; Effectiveness of Theory Planned Behavior," *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah* 7, no. 2 (2 Agustus 2023): 185–195, https://doi.org/10.29313/amwaluna.v7i2.9442.

[8] Rossy Ibnul Hayat dan Sukardi Sukardi, "Analisis Pertimbangan Hakim Dalam Memutus Perkara Ekonomi Syariah Terkait Wanprestasi," *Khatulistiwa Law Review* 1, no. 2 (8 November 2020): 163–181, https://doi.org/10.24260/klr.v1i2.72.

[9] Yusriana Maida Hastuti dan Siti Ngainnur Rohmah, "Penyelesaian Wanprestasi Dalam Pembiayaan Murabahah Pada Masa Pendemi Perspektif Hukum Islam Dan Hukum Positif; Studi Kasus Di KSPPS BMT NU Sejahtera Kecamatan Haurgeulis," *Mizan: Journal of Islamic Law* 5, no. 1 (19 Juni 2021): 87–100, https://doi.org/10.32507/mizan.v5i1.947.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

Previous studies have focused more on normative analysis of the legality of insurance contracts in Islamic Law or juridical studies of consumer protection in positive law. However, few have specifically examined the interaction and relevance between the two legal systems in the context of a default claim. This is where the novelty of this research lies: it presents a comparative approach between Islamic Law and positive Indonesian Law in examining the practice of default claims in contemporary insurance, as well as how the two can complement each other in creating fair and applicable legal certainty.

Through this study, the author wants to explore the form and characteristics of default in contemporary insurance claim practices in Indonesia and how favorable legal construction views and resolves these problems. This research also aims to critically explore the perspective of Islamic Law on the settlement of default claims in insurance contracts, including how the principles of justice and responsibility are emphasized in fiqh muamalah. Furthermore, this article seeks to reveal the common points and differences between the two legal systems in ensuring legal certainty for the parties to the dispute and formulate a conceptual offer for improving the governance of insurance claims that is more fair, transparent, and religious-integrative.

By examining the root of the problem of default in insurance from two legal perspectives living in Indonesia, this article is expected to make an academic contribution to the development of insurance legal theory, as well as provide direction for the formulation of regulatory policies and dispute resolution practices that are more fair, inclusive, and following Indonesian and Islamic values.

METHOD

This study employs a normative juridical approach[10], examining legal norms and principles in various authoritative legal sources. The research aims to analyze the position of default (wanprestasi) in contemporary insurance claims and to evaluate how legal certainty can be upheld fairly within the Indonesian context. To achieve this, two main approaches are applied: the comparative legal and conceptual approaches. The comparative

[10] Burhan Bungin, *Analisis Data Penelitian Kualitatif* (Jakarta: PT Raja Grafindo Persada, 2003).

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

legal approach is used to identify points of convergence and divergence between Islamic law and Indonesia's positive legal system in regulating and resolving insurance-related defaults. This includes an analysis of each system's normative foundations, mechanisms of dispute resolution, and application of justice and legal certainty. Through this approach, the study seeks to explore potential integrative frameworks that reconcile both legal traditions in a contextually relevant and normatively sound way.

On the other hand, the conceptual approach is used to critically examine the legal doctrines and theoretical underpinnings of default and insurance claim regulation. This includes exploring concepts such as contractual fairness, consumer protection, and moral responsibility, as recognized in Islamic jurisprudence and statutory law. This approach is essential for understanding the philosophical and ethical dimensions behind the formulation of legal norms. The data sources consist of primary legal materials, including the Indonesian Civil Code (KUHPerdata), Law No. 40 of 2014 on Insurance, and relevant regulations from the Financial Services Authority (OJK), as well as fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) concerning sharia-compliant insurance. Secondary legal materials include classical and contemporary fiqh literature, legal textbooks, and peer-reviewed journal articles.

Tertiary sources such as legal dictionaries and encyclopedias serve as supporting references. All data are analyzed using qualitative normative analysis[11], emphasizing deep legal interpretation and critical engagement with the ethical and normative meanings embedded within the studied concepts. The ultimate aim is to identify shared principles and fundamental differences between Islamic and positive legal systems, leading to a more equitable, transparent, and contextually responsive framework for insurance law in a pluralistic legal environment.

[11] Matthew B Miles dan A. Michael Huberman, *Analisis data kualitatif : buku sumber tentang metode-metode baru* (Jakarta: Universitas Indonesia Press, 2014).

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

RESULTS AND DISCUSSION

Characteristics of Default in Contemporary Insurance Claims Practices in Indonesia

Default in the context of contemporary Insurance in Indonesia has distinctive characteristics and often harms the insured.[12] Based on the results of studies of various cases and court decisions, the most common forms of default that appear include the unilateral rejection of claims by insurance companies without an apparent legal reason. Typically, these rejections are based on a narrow interpretation of a clause in the policy or using exceptions that were not explained in detail when the agreement was made. This practice shows a systematic effort to avoid contractual obligations contrary to the principle of pacta sunt servanda.

In addition to unilateral rejection, another form of default is the late payment of claims. Insurance companies often delay the verification process or declare that the documents submitted by the insured are incomplete when, in fact, all administrative requirements have been met. This delay is not only financially detrimental but also psychological, especially in the case of health or life insurance, where the insured or heirs are in dire need of funds as soon as possible. This delay shows the company's lack of commitment to the legal responsibilities that have been agreed.

Furthermore, fulfilling obligations that do not follow the policy's content is also a relatively common form of default. In some cases, the insurance company pays a claim value lower than the insured should have received under the pretext of additional provisions or changes to terms that were not previously informed. This violates the principle of transparency and can be categorized as a form of contractual manipulation, where the insured does not get rights in full despite having fulfilled all premium payment obligations.

This default problem is exacerbated by the insured's low understanding of the contents of the insurance policy. Many clients do not know the details of their rights and obligations because the policy is written in technical and complicated legal language. Clauses such as exclusion clauses are often the primary basis for rejecting claims, even

[12] Parmujianto Parmujianto, "Perspective of Law No. 40 of 2014 Concerning Sharia Life Insurance Business in Risk Management," *Maliki Islamic Economics Journal* 1, no. 1 (11 Juni 2021): 42–52, https://doi.org/10.18860/miec.v1i1.12545.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

though they are not clearly explained at the beginning of the agreement. This situation creates an imbalance in the bargaining position between the insurer and the insured and opens a gap for contractual injustice.

Information imbalance between insurance companies and customers is a chronic form of information asymmetry in the insurance industry in Indonesia.[13] Companies tend to control all information and have stronger legal capabilities, while customers are passive and rely on one-sided explanations from the insurance company.[14] This creates unequal and unequal relationships, which should be avoided in a legal system that upholds justice and consumer protection. In addition, weak supervision from authorities such as the OJK also contributes to the rampant default practice. Although there are already regulations regarding information transparency obligations and standards of treatment for consumers, their implementation in the field is still far from ideal.[15] Many consumer complaints are not handled effectively; some cases even lead to civil lawsuits that take a long time and cost money.[16] This indicates that the insurance dispute resolution mechanism has not fully provided efficient legal protection for the public.

The default phenomenon can also be attributed to the crisis of public trust in the insurance industry. When claims that should have been paid are complicated or rejected without a good reason, people tend to doubt the protection function promised by insurance products. This is a paradox because insurance, as a financial institution, is supposed to provide policyholders with a sense of security and legal certainty. In the long term, uncertainty in the realization of the insured's rights may hinder the insurance industry's growth. Therefore, the characteristics of default in contemporary insurance

[13] Falikhatun Falikhatun dan Dhanti Shofia, "The Performance of Sharia Insurance Companies Based on Maqashid Sharia Index in Indonesia, Malaysia, and Bahrain: A Comparatif Study," *Falah: Jurnal Ekonomi Syariah* 6, no. 2 (29 Agustus 2021): 29–43, https://doi.org/10.22219/jes.v6i2.15651.

[14] Teguh Suripto dan Abdullah Salam, "Analisa Penerapan Prinsip Syariah Dalam Asuransi," *JESI (Jurnal Ekonomi Syariah Indonesia)* 7, no. 2 (28 Februari 2018): 128–137, https://doi.org/10.21927/jesi.2017.7(2).128-137.

[15] S. Sopa dkk., "Social Security Programs in Islamic Law: A Comparative Study of Fatwa Institutions on Indonesia's Health Insurance," *Jurnal Hukum Unissula* 40, no. 1 (2024): 187–203, https://doi.org/10.26532/jh.v40i1.37174.

[16] M.M. Abdulrahman dan A. Abbas, "Health Insurance Cover in the Light of Islamic Law," *Manchester Journal of Transnational Islamic Law and Practice* 19, no. 3 (2023): 165–178.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

claims indicate systemic problems that need to be addressed comprehensively, not only from the perspective of regulation and supervision but also from the perspective of business ethics and consumer protection. It is necessary to reformulate the concept of legal protection that can fairly bridge the interests of the insurer and the insured and integrate the values of substantive justice in the framework of positive law and Islamic law. This research seeks to fill this space by providing a normative and conceptual analysis of the problem of default in insurance claims in Indonesia. The following table outlines the key features of default in the context of insurance claims in Indonesia:

Table 1. Characteristics of Default in Contemporary Insurance Claims in Indonesia

No.	Forms of Default	Cause	Impact on Insured	Legal Basis Violated
1	Denial of claims without a clear basis	Unilateral interpretation of policy clauses and lack of customer knowledge	Loss of entitlement to receive insurance benefits	Civil Code Article 1320, Law No. 40/2014, the principle *of pacta sunt servanda*
2	Late payment of claims	The inefficient internal verification process, technical, and administrative reasons	Financial and psychological losses, especially in life/health insurance	Law No. 40/2014 Article 53, OJK Regulation No. 69/POJK.05/2016
3	Claim payment does not match the contents of the policy	Deviant interpretation of the value of the coverage and additional provisions	The Customer receives a payment that is lower than his entitlement	The principle *of good faith*, the provisions of Article 1338 of the Civil Code
4	Non-transparent application *of exclusion clause*	Lack of socialization and explanation of the exclusion clause	A claim is void without a thorough understanding of the insured	Consumer Protection Law No. 8/1999, DSN-MUI Fatwa No. 21/DSN-MUI/X/2001
5	Information asymmetry	Lack of education from the company, complex and technical policy documents	Weak insured bargaining position and vulnerability to contract fraud	The principle of contractual fairness, the principle of transparency in treaty law

Source: Author's Interpretation

The table above presents five main characteristics of defaults that often occur in contemporary insurance claims practices in Indonesia. The most common forms of default include rejection of claims without a clear basis, late payment of claims, and payment of

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

claims that do not match the content of the policy. Each default form has different causes, ranging from unilateral interpretation of policy clauses to inefficient internal company processes. The inaccuracy in the implementation of the contract violates the basic principles of the agreement in the Civil Code and the Insurance Law, especially the principle of pacta sunt servanda and the principle of good faith, which should be the basis of the relationship between the insurer and the insured.

In addition, this table also highlights two additional characteristics often at the root of the problem, namely the non-transparent application of exclusion clauses and the information imbalance between insurance companies and customers. Lack of adequate education and the use of complex legal language in insurance policies reinforce the insurer's dominant position, while the insured often does not fully understand their rights and obligations. This creates inequality in contractual relations that violates the principles of transparency and fairness in treaty law. Therefore, improving the consumer protection system, public education, and regulatory enforcement are essential steps to answer the challenges of default in the national insurance industry.

Insurance Default Claim Dispute Positive Legal Perspective

In Indonesia's positive legal perspective, insurance claims disputes due to default are classified as civil disputes. The primary reference is the Civil Code (KUHPer), especially Articles 1238 and 1243. Article 1238 states that the debtor is deemed negligent or in default after being formally warned to fulfill the obligation. Meanwhile, Article 1243 explains that losses arising from default can be sued if the debtor does not fulfill his obligations after being summoned. In the context of insurance, the insurance company, as the insurer, becomes the debtor obliged to pay the insured's claims according to the content of the policy. If these obligations are not met, the insurance company can legally be considered to have committed a default.[17]

[17] Muhammad Hajir Susanto, Fattah Nuur Muizz, dan Muhammad Habibi Miftakhul Marwa, "Penerapan Alternatif Penyelesaian Sengketa Wanprestasi Atas Premi Pemegang Polis Di PT. Asuransi Jasindo Yogyakarta," *Borobudur Law Review* 3, no. 2 (16 Agustus 2021): 84–98, https://doi.org/10.31603/burrev.5253.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

In addition to the Civil Code, a positive legal framework regarding insurance is also regulated in Law Number 40 of 2014 concerning insurance. This law reinforces the obligation of insurance companies to be responsible for claims filed by the insured and emphasizes the importance of the principles of prudence and consumer protection. Article 53 of the Law states that insurance companies are obliged to settle claims on time and transparently. This law also emphasizes strengthening supervision of the insurance industry by the Financial Services Authority (OJK) to ensure fair and accountable practices in this industry.[18]

As a supervisory institution, OJK also issues several technical regulations, such as POJK No. 69/POJK.05/2016 concerning the Implementation of Insurance Business contains provisions related to the claim mechanism, payment deadline, and dispute resolution. In addition to the courts, insurance claim disputes can be resolved through alternative dispute resolution such as mediation, arbitration, or financial services consumer dispute resolution forums such as LAPS SJK. This alternative aims to speed up the resolution of cases and reduce the burden on the conventional justice system.[19]However, in practice, the effectiveness of positive law in resolving insurance claim disputes still faces various obstacles. Many insured have difficulty claiming their rights due to a long, non-transparent, and sometimes confusing bureaucratic process.[20] Although there are clear rules normatively, implementation in the field does not fully reflect substantive justice. Delays in checking claim documents, repeated file returns, and convoluted administrative requirements are obstacles that consumers often experience.

Furthermore, most people do not have adequate access to legal information and legal aid, especially those from economically disadvantaged groups. Limited knowledge of

[18] Andika Jinaratana, Yofi Permatasari, dan Meliana Kartika H, "Legal Protection of Policyholders for Claim Issues Insurance Coverage Based on Positive Indonesian Law," *Asian Journal of Social and Humanities* 1, no. 07 (25 April 2023): 302–309, https://doi.org/10.59888/ajosh.v1i07.32.

[19] Raina Rafika, "Penyelesaian Sengketa Asuransi Melalui Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan," *SALAM: Jurnal Sosial dan Budaya Syar-i* 9, no. 4 (25 Juni 2022): 1209–1222, https://doi.org/10.15408/sjsbs.v9i4.26601.

[20] Canra Batara Oloan Sinambela, "Efektivitas Arbitrase sebagai Alternatif Penyelesaian Sengketa dalam Kontrak Bisnis Perusahaan Asuransi," *Jurnal Hukum Lex Generalis* 5, no. 4 (29 September 2024), https://ojs.rewangrencang.com/index.php/JHLG/article/view/715.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

dispute settlement rights and procedures has led to many claims that should be legitimate and not fought legally.[21] This gap shows that legal certainty is determined not only by the existence of norms but also by the accessibility and partiality of the system towards vulnerable parties. The weak supervision and enforcement of sanctions against violations by insurance companies are also critical.[22] Although the OJK has the authority to impose administrative sanctions, the reality shows that many violations of claim payment obligations are not strictly acted upon. This raises the assumption that financial services business actors have a higher bargaining position than consumers, ultimately reducing the effectiveness of positive legal protection for the insured.

On the other hand, the judiciary, which should be the last place in seeking justice, also faces challenges in the form of long case settlement times and high process costs. Many insured lawsuits against insurance companies take years to obtain, which sometimes may not necessarily be effectively enforceable.[23] This situation confirms the urgent need for reform in the insurance dispute resolution system so that it is not only formalistic but also substantive in ensuring the protection of consumer rights. Although positive law has provided a strong normative foundation for regulating and resolving disputes over default claims, there is still a gap between regulation and implementing reality. Therefore, synergy is needed between strengthening supervisory institutions, simplifying legal procedures, and improving public legal literacy to create a fair, transparent insurance system that responds to the need for proper legal protection. To support this objective, examining how Indonesia's positive legal system currently addresses disputes arising from default in insurance claims is essential. The following table presents key elements of the positive legal perspective on such disputes:

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[21] Rudi Ansyah, "Penyelesaian Sengketa Asuransi Melalui Mediasi Di Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan," *TAQNIN: Jurnal Syariah dan Hukum* 5, no. 02 (1 Januari 2024), https://doi.org/10.30821/taqnin.v5i02.13442.

[22] Adi Kurnia Hidayat, Achmad Firdaus, dan Indra -, "Early Warning System Kerentanan Keuangan Asuransi Syariah Di Indonesia," *Indonesian Journal of Islamic Economics and Business* 9, no. 2 (14 Desember 2024): 258–278, https://doi.org/10.30631/ijoieb.v9i2.2066.

[23] Karin Amelia Safitri, Muhammad Akbar Abung, dan Dedi Harsongko, "Readiness of the Sharia Life Insurance Industry and the Role of Indonesian Sharia Insurance Associations in Facing the Sharia Insurance Spin-Off in 2024," *Proceedings* 83, no. 1 (2022): 37, https://doi.org/10.3390/proceedings2022083037.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

Table 2. Positive Legal Perspective on Insurance Default Claims Disputes in Indonesia

No.	Aspects	Legal / Regulatory Basis	Practice Implementation	Problems / Challenges
1	Definition of Default	Civil Code Articles 1238 and 1243	The insurer does not pay the claim according to the policy terms and the promised time.	The difficulty of proving default without legal assistance
2	Insurer's Obligations	Law No. 40 of 2014 concerning Insurance (Article 53)	Obligation to pay claims in a timely and transparent manner	Delays in claims are often left unpunished
3	Dispute Resolution Procedure	BOY NO. 69/POJK.05/2016 BOY NO. 1/POJK.07/2013	Internal mediation, complaints to the OJK, arbitration (LAPS SJK), or lawsuits to the court	Mediation has not been maximized with the long process and high court costs.
4	Consumer Protection	POJK and the Consumer Protection Law OJK Regulation regarding compliant services	OJK provides a complaint channel; The Company is obliged to convey rights/obligations to the Customer	Insurance information is often difficult for consumers to understand; Unilateral police contracts (adhesions)
5	Supervision and Sanctions Function	OJK's authority in supervising and imposing administrative sanctions	OJK can issue reprimands, fines, freezing of business activities	Enforcement of administrative sanctions is still weak; Less effective supervision
6	Legal Aid Accessibility	Not specifically regulated; can refer to legal aid institutions based on Law No. 16/2011	The aggrieved insured must seek help independently through LBH or a legal representative.	The general public is less likely to have access to or knowledge of legal aid related to insurance claims.
7	Inequality of Contractual Position	There are no explicit regulations on the equal distribution of legal positions between the insured and the insurer.	The policy is standard, drawn up unilaterally by the insurance company	The insured cannot negotiate the contents of the policy, creating contractual inequality
8	System Reform	Discourse on the revision of the Insurance Law and strengthening the OJK	The need for a fast, fair, and accessible dispute resolution system	There is no legal system that is integrative between consumer

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

	protection and the efficiency of the legal process

Source: Author's Interpretation

The table above provides a comprehensive overview of how Indonesia's positive law views and regulates claims of default disputes in contemporary insurance practices. Through five primary columns—namely aspects, legal basis, implementation, and challenges—it can be seen that normatively, the relevant legal foundations are quite complete, starting from the Civil Code, Law No. 40 of 2014 concerning Insurance, to various OJK regulations such as POJK No. 69/POJK.05/2016 and POJK No. 1/POJK.07/2013. The aspects raised, such as the definition of default, the insurer's obligations, and the dispute resolution mechanism, illustrate that positive law has provided a formal instrument to ensure legal certainty for the parties to the insurance agreement. However, aspects of consumer protection and equality of contractual position are still weak in implementation.

Although dispute resolution mechanisms are already available, including internal mediation, complaints to the OJK, arbitration through the SJK LAPS, and litigation channels, there are still many obstacles at the practice level. Bureaucratic procedures, weak enforcement of sanctions, and lack of public understanding of the rights and content of the policy are the main challenges. Especially in contractual relationships, adhesive policy contracts often place the insured in an unequal position. This shows the urgent need to reform the insurance legal system to be more adaptive to substantive justice and responsive to the community's position as structurally weaker parties.

Default Claims in the Insurance Perspective of Islamic Law

From the perspective of Islamic Law, a default in an insurance agreement is seen as a violation of a valid contract, which is the basis of the legal relationship between the two parties.[24] Islamic law emphasizes clarity in the contract, which is called the Shariah

[24] S. Mankahady, "Insurance and Islamic Law: The Islamic Insurance Company," *Arab Law Quarterly* 4, no. 3 (1989): 199–205, https://doi.org/10.1163/157302589X00316.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

contract—that is, an unambiguous agreement without ambiguity.[25] This serves to avoid misunderstandings that can cause disputes in the future.[26] Therefore, if a party does not fulfill the obligations that have been agreed in the contract, then it is considered a violation that must be resolved legally and following the principles of Islamic Law. Contracts not carried out following this provision are considered ta'addi, which is a deviation from the rights and obligations mutually agreed upon.

Furthermore, Islamic Law teaches that there must be equality of information between the two parties in every transaction.[27] Clear information about the rights and obligations in the contract is essential so that each party can make a conscious decision based on a complete understanding. In the context of insurance, this leads to the need for openness between the insurance company and the insured regarding the contents of the policy, its conditions, and the potential risks involved. The lack of clarity of information provided to the insured can be considered a violation of the principle of justice in Islamic Law, which must provide benefits and avoid losses (*maslahah*) for both parties.[28]

The principle of *maslahah* in Islamic Law requires that every transaction provide balanced benefits and avoid harm. In this case, if an insurance agreement causes injustice or harms the weaker party (the insured), the agreement can be considered contrary to the basic principles of Islamic Law.[29] In practice, this leads to the need to ensure that the provisions in the insurance policy do not harm the insured substantially and that the insurer must provide services that meet the principles of fairness and balance. Deviations

[25] I.M. Jadalhaq dan L. Russi, "Finding Direction at the Edge of Law and Life: Islamic Fiqh, Correspondence, and UAE Takāful Insurance Regulation," *Canadian Journal of Law and Society* 35, no. 3 (2020): 477–497, https://doi.org/10.1017/cls.2020.19.

[26] Agus Waluyo, "Spin-Off Policy on Islamic Insurance Industry Development in Indonesia: Maslahah Perspective," *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 11, no. 2 (31 Desember 2020): 133–148, https://doi.org/10.18326/muqtasid.v11i2.133-148.

[27] Fadli Daud Abdullah dkk., "Contemporary Challenges for Sharia Financial Institutions to Increase Competitiveness and Product Innovation Perspective of Sharia Economic Law: Evidence in Indonesia," *MILRev: Metro Islamic Law Review* 3, no. 2 (6 Desember 2024): 141–173, https://doi.org/10.32332/milrev.v3i2.9202.

[28] Sri Ulfa Rahayu, Sahrudin Sahrudin, dan Sandrina Malakiano Ritonga, "Analisis Jual Beli Dalam Perspektif Islam," *El-Mujtama: Jurnal Pengabdian Masyarakat* 4, no. 2 (4 Oktober 2023): 1171–1179, https://doi.org/10.47467/elmujtama.v4i2.4841.

[29] Muhammad Muhammad, "Asuransi Dalam Perspektif Hukum Islam," *Jurnal Hukum IUS QUIA IUSTUM* 8, no. 18 (2001): 151–177, https://doi.org/10.20885/iustum.vol8.iss18.art11.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

from this principle can be considered a form of *ta'addi*, which requires a deliberative and fair settlement effort.

In addition, Islamic Law expressly rejects the element of *gharar* (ambiguity) in every transaction, including insurance. Gharar refers to any uncertainty or confusion about the contract's content that can harm one of the parties. In many insurance cases, ambiguities can arise in exclusion clauses that are difficult for the insured to understand or in a non-transparent claims policy.[30] Islamic Law requires that any agreement made be free from ambiguity and as clear as possible so as not to cause disputes in the future. Such ambiguity can be considered a significant obstacle to applying the principle of fairness in insurance transactions.

The principle of *zulm* (tyranny) is also a significant concern in Islamic Law, where any form of injustice that causes harm to another party is considered a sin. In insurance practice, the abuse of conditions in which the insured feels "forced" to accept unilateral terms from the insurance company can be considered a form of *zulm*.[31] For example, there is an imbalance of bargaining positions between the insurance company and the insured, where the insured party has no choice but to accept the terms set by the company. From the perspective of Islamic Law, this is contrary to the principle of justice and balance that must exist in every contract.

In addition, Islamic Law also emphasizes that transactions that contain elements of nikah (coercion) are invalid.[32] In the insurance context, this coercion often occurs when the insured feels pressured to accept unfair policy terms due to their urgent need or lack of understanding of the agreement's content. This coercion harms the insured and violates the basic principle of Islamic Law, which requires that every transaction must be carried

[30] Atik Devi Kusuma dkk., "Gharar Dalam Transaksi Ekonomi: Analisis Hukum Islam Dan Implikasinya," *Jurnal Kajian Dan Penelitian Umum* 2, no. 6 (12 Desember 2024): 140–152, https://doi.org/10.47861/jkpu-nalanda.v2i6.1413.

[31] Septarina Budiwati, "Akad Sebagai Bingkai Transaksi Bisnis Syariah," *Jurnal Jurisprudence* 7, no. 2 (3 Februari 2018): 152–159, https://doi.org/10.23917/jurisprudence.v7i2.4095.

[32] Muhammad Azani, Hasan Basri, dan Dewi Nurjannah Nasution, "Pelaksanaan Transaksi Akad Jual Beli Dalam Kompilasi Hukum Ekonomi Syariah (KHES) Kecamatan Tampan Pekanbaru," *Jurnal Gagasan Hukum* 3, no. 01 (12 Agustus 2021): 1–14, https://doi.org/10.31849/jgh.v3i01.7499.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

out with free will and without pressure from any party. Thus, the element of ikrah in an insurance transaction can be a valid reason to cancel a contract or agreement.

Dispute resolution in Islamic law emphasizes an ethical approach and the principle of substantial justice, not just a legal formality. This means that the primary focus of dispute resolution is to find a fair solution for both parties by prioritizing the principles of deliberation and deliberation that produce wiser decisions. This contrasts positive legal approaches, which are often more formal and procedural. In Islamic Law, dispute resolution should consider moral and ethical aspects and prioritize solutions that benefit all parties involved, not just procedural resolving matters.

The Convergence and Difference of Default Claims in Insurance between Islamic Law and Positive Law

In legal studies, a claim for default in insurance involves two legal systems with different approaches and normative bases, namely positive Law and Islamic Law. These two systems, although derived from different traditions, basically have a common point in the recognition of contractual obligations as well as the importance of protection for parties aggrieved by default. These two legal systems agree that contracts are an essential instrument in ensuring the rights and obligations between the parties involved and that in the event of negligence or non-compliance with the agreement, the aggrieved party is entitled to compensation or compensation. Thus, both in Islamic Law and positive Law, a default in insurance is still recognized as a violation of an agreement that needs to be resolved through appropriate legal mechanisms.

However, despite the similarity of principles, there are fundamental differences in the dispute resolution approach carried out by these two legal systems. Positive law, which is generally adopted in the modern legal system, emphasizes clear and structured legal procedures. Here, the settlement of default disputes in insurance tends to be carried out through litigation, where the court has a central role in assessing and deciding cases based on applicable regulations. Positive law prioritizes legal-formal aspects, such as applying

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

written and procedural rules to resolve disputes.[33] This ensures clarity and legal certainty, where the aggrieved party will get compensation or fulfill their rights through legal mechanisms recognized by the state.

On the other hand, Islamic Law has a more ethical-substantive approach to resolving defaults. In the context of Insurance, Islamic Law prioritizes the principle of justice and balance between the rights and obligations of the parties, considering moral and spiritual aspects.[34] One of the main differences between Islamic Law and positive law is the emphasis of Islamic Law on the principle of morality derived from religious teachings. Islamic law not only regulates the contractual relationship between the parties involved but also reminds us that any action taken in an insurance contract must follow Sharia's guidance, which prioritizes honesty, justice, and social responsibility. In this case, the party who violates the contract will be held accountable before the world's laws and God.

In addition, one of the essential aspects that distinguishes Islamic Law from positive law is the dispute resolution approach. Positive law provides more space for litigation, namely dispute resolution through the courts. This can be time-consuming and costly and often leads to decisions that may not be satisfactory to all parties.[35] On the other hand, Islamic Law emphasizes resolving disputes through *Sulh* or mediation.[36] *Sulh*, in Islamic Law, is a form of peace achieved by involving a neutral third party to help the disputing parties reach an agreement. In this way, it is hoped that conflicts can be resolved without formal court channels, which often adds to tensions and prolongs the time it takes to resolve disputes.

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[33] Rr Annischa Zahraningtyas Putri dan Fitria Nurma Sari, "A Review of the Regulations and Challenges of Sharia Insurance in Indonesia," *Islam in World Perspectives* 4, no. 2 (2025): 225–232.

[34] Faricha Maf'ula dan Denizar Abdurrahman Mi'raj, "Islamic Insurance in Indonesia: Opportunities and Challenges on Developing the Industry," *Journal of Islamic Economic Laws* 5, no. 1 (11 Maret 2022): 116–138, https://doi.org/10.23917/jisel.v5i1.16764.

[35] Audrey Bintang Silado dan Moody R. Syailendra, "Upaya Hukum Terhadap Perbuatan Wanprestasi Dalam Perjanjian Pengikatan Jual Beli Tanah," *UNES Law Review* 6, no. 2 (17 Desember 2023): 5647–5658, https://doi.org/10.31933/unesrev.v6i2.1392.

[36] Abd Rahman, "Pendekatan Sulh Dan Mediasi Sebagai Alternatif Terbaik Penyelesaian Sengketa Ekonomi Syariah," *Jurnal Ilmiah Ekonomi Islam* 7, no. 2 (1 Juli 2021): 961–969, https://doi.org/10.29040/jiei.v7i2.2488.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

This Sulh mechanism can be a more efficient and harmonious alternative to resolving default claims in the insurance context. This can reduce the burden on the justice system and create a more conducive atmosphere for problem-solving. This approach reflects the basic principles of Islamic Law that prioritize reconciliation and peace and avoid tensions caused by protracted conflicts. *Sulh* is considered one of the best ways to achieve a favorable settlement for both parties, which can increase trust between the parties involved in the insurance contract.[37]

However, this *Sulh* approach is often seen as less effective in positive law, which is more concerned with formalities and strict legal procedures. In this case, positive law considers that litigation in court is a more appropriate way to ensure that the aggrieved party's rights can be reasonably met.[38] As state institutions, the courts have greater authority in enforcing rules and making binding decisions. Nevertheless, courts in the positive legal system still allow room for alternative dispute resolution, such as mediation or arbitration, which aligns more with the approach used in Islamic Law.

In terms of spirituality, Islamic Law adds another dimension to the arrangement of insurance contracts, including worldly interests and *ukhrawi* (hereafter) interests. Islamic Law teaches that every contract must be performed in good faith, and any breach of contract is considered a sin to be accounted for in this world and the hereafter.[39] In this case, morality and hereafter responsibility are the main drivers for the parties to act honestly and fairly in the insurance agreement, given that a breach of contract can impact not only the party who is materially harmed but also their moral and spiritual standing. Although there are differences in approach between Islamic Law and positive law regarding insurance default claims, they still have similarities in fundamental principles that prioritize justice

[37] Yusriana Maida Hastuti dan Siti Ngainnur Rohmah, "Penyelesaian Wanprestasi Dalam Pembiayaan Murabahah Pada Masa Pendemi Perspektif Hukum Islam Dan Hukum Positif; Studi Kasus Di KSPPS BMT NU Sejahtera Kecamatan Haurgeulis," *Mizan: Journal of Islamic Law* 5, no. 1 (19 Juni 2021): 87–100, https://doi.org/10.32507/mizan.v5i1.947.

[38] Nafisa Nur Apriyanti dan Kustiawan Abdurrahman, "Analysis of the Role of Sharia Insurance in the Indonesian Economy," *Islamic Micro Finance Journal* 1, no. 2 (2 Juli 2024), https://journal.iai-alfatimah.ac.id/index.php/imfj/article/view/60.

[39] Ahmad Yunadi, "Maqasid As-Syari'ah Dan Asuransi Syari'ah," *JESI (Jurnal Ekonomi Syariah Indonesia)* 10, no. 2 (29 Desember 2020): 159–172, https://doi.org/10.21927/jesi.2020.10(2).159-172.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

and protection for the aggrieved party. Positive law prioritizes legal certainty through formal procedures and the judicial system, while Islamic Law emphasizes moral aspects and peace-based settlements more. Therefore, in practice, integrating these two approaches can result in a fairer, more efficient, and moral system for handling default claims in the insurance industry. The following is a table that contains a comparison of the common points and differences in claims of default in Insurance between Islamic Law and Positive Law:

Table 3. The meeting point and the difference between default claims in Insurance between Islamic Law and Positive Law

Aspects	Positive Law	Islamic Law
Normative Dasar	Legal-formal, referring to state-recognized written regulations	Ethical-substantive in nature, based on Islamic moral and Sharia principles
Dispute Resolution Approach	Emphasizing litigation with structured and clear legal procedures	Prioritizing *Sulh* (mediation/peace), avoiding formal litigation
The Role of the Court	The court has a central role in resolving disputes	Dispute resolution is more through *Sulh*, not court
Dispute Resolution Speed	The process tends to be longer, depending on the litigation procedure	Faster resolution through mediation, avoiding lengthy processes
Legal Certainty	Providing legal certainty with a binding decision	Certainty is obtained through an agreement between the parties to the dispute by involving a neutral third party.
Aspects of Spirituality	It has no direct connection to spiritual or moral aspects	Emphasizing the responsibility of the hereafter and morality in the contract
Responsibilities of the Hereafter	Focus on worldly settlements, no accountability in the hereafter	The party who violates the contract is considered a sinner and must be held accountable for his actions in the hereafter
Purpose	Legal certainty and protection for the materially harmed party	To realize justice and balance, paying attention to morals and spiritual well-being

Source: Author's Interpretation

Table 3 illustrates the comparison between Islamic Law and Positive Law in the context of claims of default in insurance. These two legal systems have different approaches to resolving disputes arising from default. Positive law prioritizes legal procedures structured through litigation, where the court plays a central role in deciding disputes. This system provides apparent legal certainty and can be accounted for worldwide. In contrast,

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

Islamic Law emphasizes the resolution of disputes through *Sulh* (mediation), which aims to achieve peace and reconciliation without involving the courts. In this case, an approach that prioritizes moral and spiritual aspects makes Islamic Law more focused on achieving more comprehensive justice, both from a secular and *ukhrawi* perspective.

Another difference lies in the hereafter liability aspect in Islamic Law, which reminds the parties to act honestly and fairly in insurance contracts. Default is considered a violation of worldly law and a sin that must be accounted for before God. In the Positive Law, although there is protection for the materially harmed, spiritual responsibility is not recognized. Nevertheless, both agree that the main goals are protecting the aggrieved party and fairness in the contract. Integrating these two legal systems, considering aspects of justice, efficiency, and morality, can create more effective dispute resolution in the context of insurance.

CONCLUSION

This study finds that default in contemporary insurance practices remains a significant legal issue, particularly due to its potential to create uncertainty for policyholders. The rejection or improper fulfillment of claims undermines public trust in the legal protection system. While Indonesia's positive legal framework—primarily through the Civil Code and OJK regulations—provides a formal basis for addressing such disputes, its implementation has yet to ensure equitable, timely, and effective legal remedies for all parties involved. In contrast, Islamic law offers a normative foundation grounded in moral responsibility, contract clarity, and justice. Principles such as honesty (*sidq*), transparency (*wuduh*), and accountability before God (*mas'uliyyah*) support the development of insurance relationships that are not only legally valid but also ethically just. Incorporating these values into Indonesia's insurance dispute resolution mechanisms could strengthen legal certainty and substantive justice. Therefore, fostering synergy between positive law and Islamic legal principles is essential to building a more responsive, inclusive, and culturally rooted legal system. Future research should explore integrative dispute resolution models that combine formal procedures—such as litigation and arbitration—with sharia-based approaches like

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

Sulh (amicable settlement) and deliberation. Empirical studies are also needed to assess the effectiveness of Islamic mediation and arbitration bodies in handling insurance default cases in Indonesia. Comparative research on countries with advanced sharia-based insurance systems could further enrich policy formulation. These efforts can provide valuable insights for regulators, legal scholars, and industry practitioners in designing a fairer and more contextually appropriate insurance legal framework.

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AUTHOR CONTRIBUTIONS STATEMENT

Isdiana Syafitri was central in conceptualizing the research idea, designing the study framework, and conducting the primary data collection and analysis. She also led the drafting of the initial manuscript, ensuring coherence between the research objectives, methodology, and findings. Sunarmi made significant contributions to shaping the theoretical and conceptual foundation of the study. Her critical insights and scholarly feedback were instrumental during the manuscript revision process, enhancing both the depth and clarity of the academic arguments presented.

Tan Kamello provided expert input on the legal dimensions of the study, particularly in contextualizing the findings within relevant legal frameworks. He also played

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 4 No. 1 Januari-June 2025, Pages 539-565

a key role in refining the research methodology to ensure its rigor and relevance to the topic. Hasim Purba was actively involved in interpreting and synthesizing the research findings. He also provided valuable oversight and academic supervision throughout the research process, contributing to the work's strategic direction and final quality. All authors contributed substantively to the intellectual content of the manuscript, reviewed the final draft thoroughly, and approved it for submission.

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