

Author:

¹Syihabudin, ²Rahmatullah,
³Najmudin, ⁴Henri Bimawan,
⁵Fandy Adpen Lazzavietamsi

Affiliation:

^{1,3} Universitas Sultan Ageng
Tirtayasa, Indonesia

² Sunan Kalijaga State Islamic
University Yogyakarta, Indonesia

⁴ Ez-Zitouna University, Tunisia

⁵ UIN Sultan Maulana Hasanuddin
Banten, Indonesia

Corresponding author:

*syihabudin@untirta.ac.id

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Contemporary Dynamics of Sharia Economic Law: DSN-MUI Fatwa No. 21/2001 in *Takaful* Dispute Rulings

Abstract: This research examines the role of Islamic law (Fatwa) in the formation and interpretation of positive law in Indonesia related to sharia insurance disputes, primarily through the decision of the Constitutional Court. Specifically, this study examines how the Supreme Court considers the DSN-MUI fatwa in resolving family *takaful* disputes, as well as how judicial authorities interpret, accept, or disregard the DSN-MUI fatwa as a consideration in such dispute cases within contemporary Sharia Economic law. Using normative juridical methods and jurisprudential analysis, this study analyses the decisions of the Constitutional Court that refer to Islamic principles such as justice (*al-'adl*), public interest (*maṣlaḥah*), and equality (*musāwāh*). Data were obtained through the analysis of judicial decisions and Islamic law sources. The findings show that while Islamic law (specifically Fatwa) is not a formal source of national law, its values are selectively adopted in Constitutional Court decisions, especially in cases related to public morality, human rights, and Islamic finance. However, the integration of values is normative and symbolic but bare of methodological consistency based on *uṣūl al-fiqh*. This legal ambiguity limits the normative power of Islamic law and raises concerns about the protection of Muslim consumer rights. This study recommends institutionalizing Islamic legal reasoning through standardized methods of interpretation and increasing legal literacy among judges to promote consistent and substantial integration of sharia values in constitutional courts.

Keywords: Constitutional Court, Islamic law, legal Reasoning, Positive Law, Sharia Values.

INTRODUCTION

Over the past two decades, the global Islamic finance industry has experienced significant growth,

including the Islamic insurance (*takaful*) sector, which has expanded to various countries, including in Europe (Switzerland, Luxembourg), Southeast Asia (Malaysia), and Africa (Ghana, Nigeria, Senegal).¹ *Takaful*, which was derived from the Arabic word "kafala" (mutual guarantee), refers to an Islamic insurance system based on the principles of mutual assistance (*ta'awun*), shared responsibility, and cooperation (*tabarru'*) and prohibits elements of uncertainty (*gharar*), gambling (*maysir*) and interest (*riba*),² with a "*wakalah*" or "*mudarabah*" contract.³ In Indonesia,⁴ *Takaful*⁵ has shown a rapid increase since 2011,⁶ as seen from the total gross contribution, which reached IDR 11.55 trillion with an annual growth rate of 51.89% as of June 2021 (AASI).⁷ Islamic insurance asset data also showed an upward trend from IDR 24.6 trillion in 2015 to IDR 44,588 trillion in 2019, although it fell by 6.67% in 2020 following the COVID-19 pandemic. However, assets grew again by 8.59% to IDR 45.1 trillion in 2022.⁸ One of the fastest-growing forms of sharia insurance is family *takaful*, which provides financial protection based on the principle of mutual assistance for Muslim families.⁹

¹Muhammad Maksum, "Pertumbuhan Asuransi Syariah Di Dunia Dan Indonesia," *Al-Iqtishad: Journal of Islamic Economics* 3, no. 1 (2016), <https://doi.org/10.15408/aiq.v3i1.2495>; Zamir Iqbal and Abbas Mirakhor, *An Introduction to Islamic Finance: Theory and Practice* (John Wiley & Sons, 2011), <https://ia600809.us.archive.org/13/items/IntroductionToIslamicFinance/An%20Introduction%20To%20Islamic%20Finance.pdf>

² Billah, Mohd Ma'sum, *Applied Takaful and Modern Insurance: Law and Practice*, (Selangor : Sweet & Maxwell Asia, 2007). <https://opac.itc.ac.ug/bib/357>

³Simon Archer et al., *Takaful Islamic Insurance: Concepts and Regulatory Issues* (John Wiley & Sons, 2011). 47-66., <https://doi.org/10.1002/9781118390528.ch4>

⁴Yahdi Qolbi et al., "Geopolitics and Muslim Countries: Navigating Challenges and Opportunities in Contemporary International Political Dynamics," *MILRev : Metro Islamic Law Review* 3, no. 2 (2024): 217–35, <https://doi.org/10.32332/milrev.v3i2.9910>; A. Fauzi, "Sejarah Perkembangan Asuransi Syariah Di Indonesia," *Bina Ekonomi* 19(1) (2015): 31–40., <http://repository.uinsu.ac.id/id/eprint/9180>

⁵Serap O Gonulal, *Takaful and Mutual Insurance: Alternative Approaches to Managing Risks* (World Bank Publications, 2012). <https://ideas.repec.org/b/wbk/wbpubs/13087.html>

⁶Muhammad Nadrattuzaman Hosen and Deden Misbahuddin Muayyad, "Mendudukan Status Hukum Asuransi Syariah Dalam Tinjauan Fuqaha Kontemporer," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 13, no. 2 (2013): 219, <https://doi.org/10.18326/ijtihad.v13i2.219-232>.

⁷ Umi Kholilah et al., "Perkembangan Asuransi Syariah Di Indonesia," *Jurnal Ilmiah Research and Development Student* 2, no. 1 (2024): 37–46., <https://doi.org/10.59024/jis.v2i1.564>

⁸ Tari Yulia Tilova, Ranti Wiliasih, and Tita Nursyamsiah, "Macroeconomic and Demographic Impacts on Islamic Life Insurance Demand in Indonesia," *Jurnal Ekonomi & Keuangan Islam* 11, no. 1 (2025): 1–13, <https://doi.org/10.20885/JEKI.vol11.iss1.art1>.

⁹D. Darmawan, "Efektivitas Pelaksanaan Takaful Keluarga Syariah Di Indonesia," *Jurnal Hukum Islam* 5(2) (2018): 269–282; N. A. Rahim, A., & Rahim, "Takaful Industry in Indonesia: Issues, Challenges and

Despite its promising growth, disputes in *takaful* practice are inevitable,¹⁰ often arising due to differences in interpretation of policy clauses, delays in claims, or contractual ambiguities.¹¹ In Indonesia's dualistic legal system - combining positive law with sharia principles - problems arise when DSN-MUI fatwas, such as Fatwa No. 21/DSN-MUI/X/2001 on General Guidelines for Sharia Insurance,¹² are not consistently used as legal references by the courts, especially the Supreme Court,¹³ leading to legal uncertainty that impacts public confidence and the effectiveness of the national sharia insurance system.

Previous research Setiawan & Abdul Aziz revealed that a gap remains between the principles of sharia law and judicial practice in Indonesia.¹⁴ Most judges refer to Civil Code Article 246 and Law No. 40 of 2014¹⁵ without paying in-depth attention to the principles of *fiqh mu'āmalah* or DSN-MUI fatwas. This lack of synchronization is exacerbated by the low level of sharia literacy among legal officials and industry players, as well as the suboptimal integration of fatwas into the positive legal framework. This research carries novelty considering that it focuses on the decisions of the Supreme Court as the highest

Way Forward," *International Journal of Business and Society* 20 no. 3 (2018): 1216-1230. <https://islamicfinancenews.com/contents/roundtables/indonesia/Indonesia.pdf>

¹⁰Walid Hegazy, "Fatwas and the Fate of Islamic Finance: A Critique of the Practice of Fatwa in Contemporary Islamic Financial Markets," *Islamic Finance : Current Legal and Regulatory Issues*, 2005, 135-49. <https://ibir-api.hbku.edu.qa/sites/default/files/2019-10/Hegazy-Walid-Fatwas-and-the-Fate-of-Islamic-Finance.pdf>

¹¹M. F. Aziz, "Penyelesaian Sengketa Takaful Keluarga Melalui Arbitrase Syariah Di Indonesia," *Jurnal Hukum Tazkiya* 3(1) (2019): 65-78; Peraturan Otoritas Jasa Keuangan Nomor 65/POJK.05/2016 Tentang Perlindungan Konsumen Sektor Jasa Keuangan. (2016).

¹²M. H Akmal, H., & Sirajulhuda, "Tinjauan Fiqh Muamalah Terhadap Transaksi Multi Akad Dalam Fatwa DSN-MUI Tentang Pembiayaan Likuiditas Jangka Pendek Syariah," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 2 (2019): 195-212, <https://doi.org/10.29240/jhi.v4i1.922>; M. Nurul Irfan Irfan et al., "Peran Basyarnas Dalam Penyelesaian Sengketa Ekonomi Syariah (Studi Pandangan Pelaku Ekonomi Syariah Di Jakarta)," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 2 (2017): 145-60, <https://doi.org/10.24090/mnh.v1i2.1289>; Abbas Arfan, "Prospek Dan Hambatan Bisnis Asuransi Umum Perspektif Hukum Islam," *De Jure: Jurnal Hukum Dan Syar'iah* 1, no. 1 (2009), <https://doi.org/10.18860/j-fsh.v1i1.327>.

¹³Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (University of Hawaii Press, 2008). <https://doi.org/10.5860/choice.46-6446>

¹⁴A. A. Setiawan, E., & Abdul Aziz, "The Factors Influencing the Resolution of Disputes in Islamic Insurance (Takaful) Industry in Indonesia.," *Journal of Islamic Finance and Business Research* 9 (2) (2020): 44-55. <https://sht.wf/BBZs>

¹⁵Iip Harnoto Prayogo and Syufaat Syufaat, "Perlindungan Hukum Pemegang Polis Asuransi Syariah Berdasarkan Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian," *Alhamra Jurnal Studi Islam* 4, no. 1 (2023): 72-75. <https://jurnalnasional.ump.ac.id/index.php/Alhamra/article/download/17162/5979>

judicial actor, which has not been the object of in-depth analysis in *takaful* studies.¹⁶ By examining how the Court has adopted or overlooked the principles in the DSN-MUI fatwa in resolving *family takaful* disputes, this research fills a void in the discourse on how Indonesia's dual legal system operates in the realm of contemporary Islamic economics.

This research aims to address this problem: How does the Supreme Court consider the DSN-MUI fatwa in resolving family *takaful* disputes? And how do judicial authorities interpret, accept, or ignore the DSN-MUI fatwa as a consideration in family *takaful* dispute cases in Contemporary Sharia Economic law? This study aims to evaluate the consistency, integration, and validity of sharia principles in judicial practice and assess the readiness of Indonesian judicial institutions in managing a pluralistic legal system involving religious norms and state law.

METHODS

This research employs a normative juridical approach, drawing on Lawrence M. Friedman's legal system theory¹⁷ and Karl Llewellyn's legal realism¹⁸ to examine the law as a system of norms contained in legislation and religious fatwas (DSN-MUI),¹⁹ as well as their implementation in judicial practice.²⁰ To support the study, the primary data used includes relevant laws and regulations, such as Law No. 21 of 2008 concerning Islamic Banking, Law No. 33 of 2014 concerning Halal Product Guarantee, and Fatwa DSN-MUI No. 21/DSN-MUI/X/2001 concerning General Guidelines for Islamic Insurance.²¹ In

¹⁶ A. Ramadhan, R. H., & Wahyudi, "Pengaruh Keputusan Mahkamah Agung Terhadap Penyelesaian Sengketa Asuransi Takaful Keluarga," *Jurnal Hukum & Pembangunan* 51(1) (2021): 25–38. <https://sht.wf/ChMd>

¹⁷ Lawrence M Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975). <https://www.russellsage.org/sites/default/files/1778056txt.PDF>

¹⁸ Karl N Llewellyn, *The Bramble Bush: On Our Law and Its Study* (Quid Pro Books, 2012). https://archive.org/details/bramblebushonour0000llew_k3l9

¹⁹ Umarwan Sutopo, "Dialektika Fatwa Dan Hukum Positif Di Indonesia: Meneguhkan Urgensi Dan Posisi Fatwa Di Masyarakat Muslim Nusantara," *Justicia Islamica* 15, no. 1 (2018): 87–108, <https://doi.org/10.21154/justicia.v15i1.1435>.

²⁰ Zaeni Mahmud, "Tinjauan Maqasid Al-Syari'ah Terhadap Pasal 195 Kompilasi Hukum Islam (KHI) Tentang Saksi Dalam Wasiat," *El-Usrah* 4, no. 2 (2021): 357–369, <https://doi.org/10.22373/ujhk.v4i2.11146>.

²¹ Surandi Woong Arya et al., "Implementation of Sanctions for Violations of Coral Reef on Protection Laws," *Jurnal Hukum Unissula* 41, no. 1 (2025): 31–53, <https://doi.org/10.26532/jh.v41i1.37362>.

addition, eight Supreme Court decisions relevant to Islamic insurance disputes were purposively selected, especially those related to family *takaful* products, in the period 2017-2021,²² where not many cases of decisions can be accessed and have permanent legal force (*inkracht*). The selection criteria include 1) a direct relationship with Islamic insurance products, 2) mention or use of DSN-MUI fatwa in legal argumentation, and 3) the status of decisions that have been legally enforceable (*inkracht*). Thus, eight decisions that fit the criteria were collected (Decision 51/Pdt.G/2021/MA, Decision 24 K/Pdt.Sus/2019, Decision 171 K/Pdt.Sus/2019, Decision 428 K/Pdt.Sus/2019, Decision 2009 K/Pdt.Sus/2019, Decision 2533 K/Pdt/2019, Decision 3434 K/Pdt/2019, and Decision 8. 98 K/Pdt.Sus/2017).

This normative approach is complemented by a qualitative interpretative analysis method to interpret legal norms in a concrete context.²³ To deepen this interpretation, a legal hermeneutics approach helps interpret the meaning of legal texts (including fatwas and verdicts) in a broader social, cultural, and institutional context.²⁴ As such, the two approaches complement each other: the normative approach identifies the positive norms that apply, while juridical hermeneutics reveals the layers of meaning and value behind the application of those norms. Secondary legal sources consist of academic books and journal articles, most of which have been indexed in Scopus. This literature was used for three main purposes: first, to compare the legal framework in other countries with similar systems (comparative analysis); second, to build a theoretical framework regarding the position of fatwa in the national legal system and Islamic economic law studies; third, to support the jurisprudential analysis by evaluating the theoretical approaches that have been used in previous studies.²⁵

²² <https://putusan3.mahkamahagung.go.id/>

²³Yovenska L.Man, "Aktualisasi Asuransi Syariah Di Era Modern," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 4, no. 1 (2018): 77-84, <https://doi.org/10.29300/mzn.v4i1.1012>.

²⁴ Hendi Hilmi Azizi, "Comparative Study of the Law of Determining the Nasab of Children Outside of Marriage; Perspective of Family Law in Malaysia and Yemen," *Legitima : Jurnal Hukum Keluarga Islam* 6, no. 1 (2023): 39-50, <https://doi.org/10.33367/legitima.v6i1.4811>.

²⁵ Fuat Hasanudin, "Ijtihad Maqashidi: Methodology and Contextualization of Islamic Law in Indonesia," *AlMawarid Jurnal Syariah Dan Hukum (JSYH)* 1, no. 2 (2019): 134-153, <https://doi.org/10.20885/mawarid.vol1.iss2.art2>.

RESULTS AND DISCUSSION

Sharia Norms and the Positivisation of Law: Juridical Reasoning Pattern

DSN-MUI Fatwa No. 21/DSN-MUI/X/2001 on Sharia Insurance serves as the primary normative foundation for the establishment and operationalization of Islamic insurance institutions (*takaful*) in Indonesia.²⁶ This fatwa defines sharia insurance as "an effort to protect and help each other among a number of people/parties through investments in the form of assets and/or *tabarru'* that provide a pattern of return to face certain risks through contracts that are compliant with sharia."

This concept is fundamentally different from conventional insurance because it rejects the elements of *gharar* (uncertainty), *maisir* (speculation), and *riba* (interest), which are prohibited in Islamic law.²⁷ It also integrates *fiqhiyyah* principles such as *al-ghunmu bi al-ghurmi* (benefit proportional to risk), *dar' al-mafāsīd muqaddam 'ala jalb al-maṣāliḥ* (preventing harm takes precedence over attracting benefit),²⁸ and *ta'āwun* (mutual help).²⁹ The choice of *tabarru'*, *wakalah bil ujah*, and *mudharabah* contracts as sharia instruments emphasizes the socio-economic nature of *takaful*, which is based on solidarity, not profit speculation.³⁰

Types of Family Takaful Insurance Disputes

Family *takaful* insurance based on sharia principles may be prone to various disputes between participants and *takaful* service providers.³¹ One of the most common disputes is

²⁶ Wahyu Akbar et al., "Insurance and Sharia Cooperatives in Indonesia: (Philosophical, Historical, Juridical and Sociological Studies)," *At-Tasyri': Jurnal Ilmiah Prodi Muamalah* 15, no. 2 (2023): 187–203, <https://doi.org/10.47498/tasyri.v15i2.2161>.

²⁷ Siti Mupida and Siti Mahmadatun, "Maqashid Syariah Dalam Fragmentasi Fiqh Muamalah Di Era Kontemporer," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 3, no. 1 SE-Articles (2021): 26–35, <https://doi.org/10.20885/mawarid.vol3.iss1.art3>.

²⁸ Azlin Alisa Ahmad and Mustafa Afifi Ab Halim, "The Concept of Hedging in Islamic Financial Transactions," *Asian Social Science* 10, no. 8 (2014): 42–49. <https://doi.org/10.5539/ass.v10n8p42>.

²⁹ Mastura Ab. Wahab and Tajul Ariffin Masron, "Towards a Core Islamic Work Value: Evidence from Islamic Legal Texts and the Muftīs' Verification," *Journal of Islamic Accounting and Business Research* 11, no. 1 (2020): 179–200. <https://doi.org/10.1108/JIABR-11-2017-0158>

³⁰ Nursyuhadah Abdul Rahman et al., "Religious and Socioeconomic Implications of Islamic Insurance: A," *International Journal of Financial Research* 10, no. 5 (2019): 313–320. <https://doi.org/10.5430/ijfr.v10n5p313>

³¹ A. Sudibyo, *Asuransi Dan Aspek Hukumnya* (Penerbit Salemba Empat, 2019). <https://sht.wf/wuKc>

claim rejection when a participant submits a claim for insurance benefits, as it is often seen as failing to fulfill the policy's provisions due to a mismatch in the type of claim or a lack of supporting documents.³² In addition, disputes can also arise in relation to the benefits received due to inadequate benefits or ambiguity in the benefit agreement.³³ The mismatch between the amount of contributions paid and the benefits obtained may also trigger a dispute.³⁴ Other disputes can also stem from incorrect determination of the cash value of the policy can also be a source of conflict, especially when participants want to terminate the policy before the validity period expires;³⁵ vagueness in the content of the contract, such as provisions that are too general or ambiguous;³⁶ low investment returns of participants' funds due to poor selection of investment managers.³⁷ Lastly, conflicts can arise between members of a takaful group, particularly regarding fund governance and group decision-making.³⁸

1. Family Takaful Dispute Resolution Process

³²Tika Afrianny Saragih and Atika Atika, "Analisis Kinerja Agen Asuransi Dalam Membantu Penyelesaian Klaim Nasabah: Indonesia," *PRAJA Observer: Jurnal Penelitian Administrasi Publik* (e-ISSN: 2797-0469) 2, no. 02 (2022): 78–88. <https://aksiologi.org/index.php/praja/article/view/338/232>

³³Yogie Rahmansyah, "Analisis Pelaksanaan Wakaf Polis Asuransi Syariah Berdasarkan Fatwa No 106/Dsn-Mui/X/2016 (Studi Kasus Pt Takaful Keluarga Sharia Life Insurance)," preprint, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2022. <https://repository.uinjkt.ac.id/dspace/handle/123456789/66262>

³⁴Siti Nurhayati, "Dampak Hukum Ketidaksesuaian Klausula Penyelesaian Sengketa Pada Polis Produk Asuransi Syariah (Studi Kasus PT AAI)," preprint, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2022. https://repository.uinjkt.ac.id/dspace/bitstream/123456789/62403/1/SITI_NURHAYATI_FSH.pdf

³⁵Ibrahim Fikma Edrisy, "Hukum Asuransi," preprint, Pusaka Media, 2023. https://repository.umko.ac.id/id/eprint/290/1/Hukum_Asuransi.pdf

³⁶Riwalddi Sahputra, "Perlindungan Hukum Atas Pemegang Polis Yang Tidak Memenuhi Kewajibannya Dalam Pembayaran Premi (Studi Pada Asuransi Jiwa Bersama Bumiputera 1912 PT. Asuransi Takaful Keluarga Di Kota Medan)," preprint, Universitas Sumatera Utara, 2005. <https://repositori.usu.ac.id/handle/123456789/37298>

³⁷Azharuddin Lathif and Diana Mutia Habibaty, "Disparitas Penyelesaian Sengketa Jalur Litigasi Pada Polis Asuransi Syariah Dan Putusan Pengadilan," *Jurnal Legislasi Indonesia* 16, no. 1 (2019): 76–88. [https://download.garuda.kemdikbud.go.id/article.php?article=949695&val=14663&title=Disparitas Penyelesaian Sengketa Jalur Litigasi Pada Polis Asuransi Syariah Dan Putusan Pengadilan](https://download.garuda.kemdikbud.go.id/article.php?article=949695&val=14663&title=Disparitas_Penyelesaian_Sengketa_Jalur_Litigasi_Pada_Polis_Asuransi_Syariah_Dan_Putusan_Pengadilan)

³⁸Muhamad Padil, "Perlindungan Hukum Terhadap Nasabah Pada Asuransi Syari'ah (Studi Di Pt. Asuransi Takaful Keluarga Serang City)," Preprint, Universitas Islam Negeri" Sultan Maulana Hasanuddin" Banten, 2018. <http://repository.uinbanten.ac.id/2349/>

The dispute resolution mechanism in family *takaful* insurance takes place in stages and is based on sharia principles.³⁹ The initial stage involves direct communication between the participant and the *takaful* company, where participants are required to submit a written claim supported by relevant documents. The *takaful* company will then verify and evaluate the claim. If the claim is rejected and the participant is not satisfied with the outcome, then mediation is required. This mediation is facilitated by the company, either through branch offices or customer service centers, to ensure an amicable agreement is achieved. If mediation is unsuccessful, the dispute may be referred to arbitration. In arbitration, a neutral third party is appointed to resolve the conflict, and its decision is binding on both parties. If arbitration fails to settle the dispute, as the last process, a court is involved. In this process, the *takaful* company is responsible for providing the necessary documents and evidence to support the legal proceedings.⁴⁰

2. Common Causes of Disputes

Several factors may cause disputes in family *takaful* insurance, including, first, claim rejection due to non-fulfillment of conditions stipulated in the policy, such as late submission or insufficient evidence;⁴¹ second, cancellation of the policy by the *takaful* company due to violation of the provisions by the participant, such as consecutive late payment of contributions;⁴² third, sudden increases in premiums or contributions that are deemed not compliant, triggering dissatisfaction.⁴³

3. Factors Affecting Dispute Decisions

Several essential factors influence dispute resolution decisions in family *takaful*. In this case, legal certainty is necessary because the entire settlement process must comply

³⁹S. H. Nasution, "Tata Cara Penyelesaian Sengketa Asuransi Syariah Di Indonesia," *Jurnal Hukum Islam* 6 (2) (2018): 187–204. <https://sht.wf/AeSt>

⁴⁰R. I. Putri, "Aspek Hukum Dalam Penyelesaian Sengketa Asuransi Takaful Keluarga Melalui Pengadilan," *Jurnal Ilmu Hukum* 8 (1) (2021): 49–63. <https://sht.wf/iKRh>

⁴¹M. Farid Wajdi, "Perlindungan Asuransi Syariah Untuk Keluarga," *Jurnal Ekonomi Islam* 2 (1) (2016): 12–27. <https://sht.wf/DnhV>

⁴²R. A. Sari, "Efektivitas Mediasi Dalam Penyelesaian Sengketa Asuransi Takaful Di Indonesia," *Jurnal Hukum Islam* 7 (1) (2019): 20–39. <https://sht.wf/ZuTg>

⁴³D. R. Gusti, "Arbitrase Dalam Penyelesaian Sengketa Asuransi Takaful Keluarga," *Jurnal Hukum Bisnis* 7 (2) (2020): 177–194. <https://sht.wf/LdMA>

with the principles of Islamic law. Additionally, strong and clear evidence is crucial in substantiating claims. Documents such as death certificates, medical reports, or proof of accident must be available and valid. Fair settlements are also a priority and are conducted transparently and impartially. Effective communication between companies and participants can help reduce misunderstandings that could potentially lead to disputes. Finally, the level of customer satisfaction with the service and speed of claim settlement contributes to creating a harmonious and conflict-free relationship.⁴⁴

4. Implications of Dispute Decisions for the *Takaful* Industry

Decisions in *takaful* disputes can majorly influence the Islamic insurance industry. First, a company's reputation is highly vulnerable to adverse decisions against participants.⁴⁵ Viral or unfairly perceived disputes can undermine public confidence in the *takaful* industry. Secondly, financially, companies can suffer huge losses due to the obligation to pay compensation or fines, as well as expensive legal fees.⁴⁶ Third, there could also be a regulatory impact; the government could tighten supervision and update industry rules to prevent similar cases.⁴⁷ Fourth, competition among *takaful* companies could heighten, especially among companies that have been reputationally affected by the dispute decision.⁴⁸ Fifth, participants or customers will also be directly affected, depending on the content of the verdict, where they may get their rights or feel disadvantaged.⁴⁹

⁴⁴A. Rahman (Ed.), *Isu-Isu Kontemporer Dalam Ekonomi Islam* (Kuala Lumpur, 2021). <https://sht.wf/yZtS>

⁴⁵M. R. Hasbullah, "Analisis Pengaruh Kepuasan Pelanggan Dan Reputasi Perusahaan Terhadap Loyalitas Pelanggan Pada PT. Takaful Keluarga Cabang Palembang.," *Jurnal Ilmu Manajemen* 7 (4) (2019): 1633-1643. [https://repository.radenfatah.ac.id/746/1/Widiya Lestari_FebEkoIslm.pdf](https://repository.radenfatah.ac.id/746/1/Widiya%20Lestari_FebEkoIslm.pdf)

⁴⁶I. Maulida, "Analisis Dampak Sengketa Klaim Terhadap Reputasi Perusahaan Asuransi Takaful Keluarga.," *Jurnal Akuntansi* 7 (2) (2019): 49-58. <https://doi.org/10.31933/unesrev.v6i1.864>

⁴⁷N. Mardiana, D., & Oktaviyanti, "Pengaruh Dampak Sengketa Klaim Terhadap Reputasi Perusahaan Asuransi Syariah Di Indonesia.," *Jurnal Ekonomi Islam* 7 (2) (2019): 217-228. <https://sht.wf/pWeD>

⁴⁸T. Hidayat, M. S., & Budiarti, "Analisis Pengaruh Reputasi Perusahaan Dan Citra Merek Terhadap Minat Beli Produk Asuransi Takaful Keluarga.," *Jurnal Manajemen Dan Bisnis* 17 (1) (2020): 31-46. <http://repository.uinsu.ac.id/15729/1/Nukrizal-1.pdf>

⁴⁹A. Kurniawan, "Analisis Pengaruh Dampak Sengketa Asuransi Terhadap Reputasi Perusahaan Asuransi Takaful Keluarga.," *Jurnal Akuntansi Dan Keuangan* 26 (1) (2021): 46-59. https://digilibadmin.unismuh.ac.id/upload/40369-Full_Text.pdf

5. Settlement Mechanisms and the Role of the Courts

If all internal dispute resolution mechanisms and arbitration are unsuccessful, the settlement will proceed to court. The court will consider the validity of the *takaful* policy and the viability of the claim.⁵⁰ In reaching a decision, the judge will assess whether the policy is legal and sharia-compliant and whether the participant has fulfilled all applicable conditions. If the claim is deemed valid but is rejected by the *takaful* company without a valid reason, the court may order the company to compensate or pay the claim.⁵¹ The role of the courts is important as a last resort to ensure that justice is served and the rights of participants are not violated.

Practical Relevance and Relevance to Positive Law

Operationally, this fatwa serves as a reference for the Financial Services Authority (OJK) in formulating regulations, such as Financial Services Authority Regulation (POJK) No. 69/POJK.05/2016.⁵² Additionally, this fatwa serves as a standard in sharia auditing by the Sharia Supervisory Board (DPS) in every Islamic insurance company.⁵³ However, the formal position of the fatwa remains non-binding in the national legal system because it has not been positivised into legislation.⁵⁴

⁵⁰M. K. Muhammad, N., Naim, N. A., & Hassan, "An Empirical Investigation of the Determinants of Takaful Demand in Pakistan.," *Journal of Islamic Accounting and Business Research* 9 (1) (2018): 98–115. [https://doi.org/10.31703/grr.2022\(VII-II\).30](https://doi.org/10.31703/grr.2022(VII-II).30)

⁵¹Neneng Sri Setiawati, "Perlindungan Hukum Terhadap Pemegang Polis Asuransi Dalam Menyelesaikan Sengketa Klaim Asuransi," *Spektrum Hukum* 15, no. 1 (2018): 150–168. <https://doi.org/10.35973/sh.v15i1.1115>

⁵²A H Azharuddin Lathif and Diana Mutia Habibaty, "The Suitability of Sharia Life Insurance Policy for POJK No. 69/POJK. 05/2016 and POJK No. 72/POJK. 05/2016," *Jurnal Hukum Dan Peradilan* 8, no. 1 (2019): 63–83. <https://doi.org/10.25216/JHP.8.1.2019.63-83>

⁵³Dhio Bagus Setya and Fatimah Zahara, "Accountability of the Sharia Supervisory Board (DPS) in Managing Sharia Accommodation Based on DSN-MUI Fatwa No. 108 of 2016 on Sharia Tourism (Case Study: Sharia Hotels in Medan City)," *Journal Equity of Law and Governance* 4, no. 2 (2024): 360–65. <https://www.ejournal.warmadewa.ac.id/index.php/elg/article/view/9902>; Rudi Hartono, "Interpretation of Islamic Law Regarding Female Circumcision in Indonesia : Fatwa Analysis and Ulama Opinions," *IJIL: Indonesian Journal of Islamic Law* 03, no. 2 (2020): 74–90, <https://doi.org/10.35719/ijil.v3i2.2037>; Bayu Prasetyo and Dewi Ayu, "Comparative Study of the MUI Fatwa and Sadd Al-Zari'ah Concerning Spirit Dolls," *IJIL: Indonesian Journal of Islamic Law* 5, no. 2 (2022): 60–79, <https://doi.org/10.35719/ijil.v5i2.2008>.

⁵⁴Firda Arina Zulfa et al., "Mapping Contemporary Islamic Legal Thought In Indonesia: A Dialog Between Fiqh And The Culture Of The Archipelago," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 7, no. 1 SE-Articles (2025): 177–202, <https://doi.org/10.20885/mawarid.vol7.iss1.art10>.

Judges are only bound by applicable laws and legal principles such as Law No. 21 of 2008 concerning Islamic Banking,⁵⁵ Law No. 40 of 2014 concerning Insurance,⁵⁶ and POJK related to Islamic financial institutions.⁵⁷ This creates a systemic weakness when an Islamic insurance dispute arises in court. One of the main problems is the legal reasoning pattern of judges who tend to be formalist and textualist. Fatwa, therefore, can serve as a juridical consideration for judges through the principle of unwritten law or as a doctrine in Islamic law recognized in Article 5 paragraph (1) of the Judicial Power Law.⁵⁸ In many cases, sharia insurance contracts are analyzed using conventional civil law principles without adequately considering the sharia principles that underlie the *takaful* structure. As a result, the substantial values of sharia are potentially reduced to the logic of positive law that is not fully compatible. This lack of synchronization has implications for legal uncertainty. Without formal recognition of the DSN-MUI fatwa as a source of law, the outcome of the decision can be highly dependent on the judge's subjectivity and the methodological orientation employed. To overcome this, a more contextualized interpretative approach is needed.

Analysis of the Supreme Court Decision in the Takaful Family Insurance Dispute

This study employs a normative juridical approach combined with jurisprudential analysis to examine the legal position of DSN-MUI fatwas on *takaful* (Islamic insurance) within the national legal system. The normative approach seeks to evaluate the compatibility of positive law, comprising statutes, regulations, and DSN-MUI fatwas, with the principles of Islamic legal norms. Meanwhile, jurisprudential analysis focuses on

⁵⁵Rahmadi Indra Tektona, "Quo Vadis: The Legal Politics of Islamic Banks Under Post-Law Number 21 of 2008 on Sharia Banking," *JCH (Jurnal Cendekia Hukum)* 8, no. 2 (2023): 274-289.

⁵⁶Faridatul Fauziah, "Annuitant Legal Protection Associated with Act No 40 of 2014 about Insurance Business," *J. Legal Ethical & Regul. Isses* 22 (2019): 1.

⁵⁷Arief Dwi Saputra et al., "Financial Services Authority Regulation (POJK) Relevance Based on Sharia Principles by Financial Service Business Actors (PUJK) to Consumers Protection," *Borneo International Journal of Islamic Studies* 6, no. 1 (2024): 43-62.

⁵⁸Undang-Undang No. Tahun 2009 Tentang Kekuasaan Kehakiman, 48AD.

judicial behavior, particularly the legal reasoning employed by Supreme Court judges in resolving family *takaful* insurance disputes.⁵⁹

The analysis is grounded in Lawrence M. Friedman's legal system theory, which posits that law comprises structure, substance, and legal culture.⁶⁰ In addition, Karl Llewellyn's legal realism is used to evaluate judicial discretion in interpreting ambiguous or non-codified rules.⁶¹ These frameworks help us understand how judges apply Islamic legal norms in civil disputes, particularly in the context of *takaful*. Several Supreme Court decisions related to family *takaful* insurance disputes are outlined in Table 1.

Table 1. Analysis of several Supreme Court Decisions related to the Family Takaful case

No.	Supreme Court Decision Number	Subject matter	Supreme Court Decision	Important Notes
1.	51/Pdt.G/2021/MA	Claims not paid despite being covered under the policy	Supreme Court rules <i>takaful</i> companies must pay if claims are viable and evidence is sufficient	Sharia law and the law require financial protection for participants
2.	24 K/Pdt.Sus/2019	Claims according to the <i>takaful</i> contract	Supreme Court orders company to pay claims	Claim procedures must be clear and contractual
3.	171 K/Pdt.Sus/2019	Policy provisions disadvantage participants	Supreme Court rejects participants' lawsuit due to the company's authoritative clause	The importance of transparency and fairness in policy content is emphasized
4.	428 K/Pdt.Sus/2019	Claims for death due to congenital diseases	Supreme Court rejects claim	Pre-existing illness before policy purchase
5.	2009 K/Pdt.Sus/2019	Claims due to accidents	Supreme Court rejects claim due to lack of evidence	The participant fails to prove the

⁵⁹ Soekanto Soerjono and Sri Mamudji, "Penelitian Hukum Normatif Suatu Tinjauan Singkat," preprint, PT Raja Grafindo Persada, Jakarta, 1995, 13-14. <https://lib.ui.ac.id/detail?id=20135943>

⁶⁰ Friedman, *The Legal System: A Social Science Perspective*. <https://www.russellsage.org/sites/default/files/1778056txt.PDF>

⁶¹ Llewellyn, *The Bramble Bush: On Our Law and Its Study*. https://archive.org/details/bramblebushonour0000llew_k319

No.	Supreme Court Decision Number	Subject matter	Supreme Court Decision	Important Notes
				accident is a covered risk
6.	2533 K/PDT/2019	Family <i>takaful</i> claim	Supreme Court rejects claim	Evidence of claim is considered insufficient
7.	3434 K/PDT/2019	Family <i>takaful</i> claim	Supreme Court grants claim	Regularly paid premiums and sufficient evidence
8.	98 K/Pdt.Sus/2017	Dishonest information in the policy	Supreme Court rejects claim	Participants were not transparent about their husband's health condition when purchasing the policy

Data Source: <https://putusan3.mahkamahagung.go.id/>

Table 1 above illustrates eight decisions of the Supreme Court of the Republic of Indonesia relating to disputes in the practice of family *takaful* insurance. From the data, it is evident that there is diversity in the legal considerations and outcomes of decisions on claims filed by participants. Some decisions, including 51/Pdt.G/2021/MA, 24 K/Pdt.Sus/2019, and 3434 K/PDT/2019 show the Court's favor towards protecting the rights of insurance participants, especially if premiums have been paid regularly and the evidence submitted is sufficient. In contrast, in cases under Decisions 171 K/Pdt.Sus/2019, 428 K/Pdt.Sus/2019 and 98 K/Pdt.Sus/2017, the Court rejected participants' claims by considering contract clauses that favored the company or due to information discrepancies in the policy application process. This shows that although sharia principles emphasize the principles of fairness and transparency, the juridical reality shows that challenges in the consistency of its application by the judiciary remain.

The review of the eight Supreme Court rulings reveals inconsistency in applying DSN-MUI fatwas as legal considerations. In cases under Decisions 24 K/Pdt.Sus/2019 and 3434 K/Pdt/2019, the Court upheld the claims of policyholders (*takaful* participants) who had fulfilled premium obligations and met all requirements of the claim. These rulings

reflect the application of Islamic principles such as *ta'āwun* (mutual assistance) and *amanah* (trust), aligning with Fatwa DSN-MUI No. 21/DSN-MUI/X/2001.⁶² Conversely, in Decisions 171 K/Pdt.Sus/2019 and 428 K/Pdt.Sus/2019, the Court rejected the claims based on technical and contractual clauses despite the presence of unfair terms. In Decision 428 K/Pdt.Sus/2019, for instance, the claim was denied due to the participant's failure to disclose a pre-existing condition, although this contradicts the spirit of transparency and justice upheld in Islamic commercial ethics.⁶³ In Decision 98 K/Pdt.Sus/2017, the Court ruled against the claimant based on dishonesty regarding the health condition of the participant's spouse. While this reflects the principle of *ṣidq* (truthfulness), the decision leaned heavily on procedural formalism rather than substantial justice.⁶⁴

The Role of Fatwa Dsn Mui No: 21/ Dsn-Mui/X/2001 on Sharia Insurance

There are several relevant findings based on an analysis of Supreme Court decisions on family *takaful* insurance disputes that have been decided in recent years. Referring to the decision of the Supreme Court that accepted the participant's claim (the decision was won by the participant) and adjusted with Fatwa DSN-MUI, we can obtain the following information:

Table 2. Supreme Court Decision based on Fatwa DSN-MUI

No.	Supreme Court Decision Number	Sharia Principles (DSN-MUI Fatwa)	Compatibility Explanation	Related DSN-MUI Fatwa
1.	51/Pdt.G/2021/MA	Tabarru' & Wakalah bil Ujrah	The Supreme Court ordered the company to pay the claim because it was proven to be feasible. In accordance with the principle of cooperation in <i>tabarru'</i> and as a representative, the company is obliged to	DSN Fatwa No. 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance & No. 52/DSN-MUI/III/2006 concerning the Wakalah bil Ujrah Contract

⁶² MUI DSN, "Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian," *Ojk.Go.Id*, 2014, 3. <https://peraturan.bpk.go.id/Details/38785/uu-no-40-tahun-2014>.

⁶³ Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori Ke Praktik* (Gema Insani, 2001). <https://www.scribd.com/document/344008300/Bank-Syariah-Dari-Teori-Ke-Praktik>

⁶⁴ Syaukani Rahmat and Jaih Mubarak, "Pelaksanaan Akad Tabarru'dan Akad Wakalah Bil Ujrah Pada Produk Asuransi Syariah Di Axa Mandiri KCP Buah Batu," *Al-Muamalat: Jurnal Ekonomi Syariah* 6, no. 2 (2019): 167-178. <https://journal.uinsgd.ac.id/index.php/mua/article/download/9647/4696>

No.	Supreme Court Decision Number	Sharia Principles (DSN-MUI Fatwa)	Compatibility Explanation	Related DSN-MUI Fatwa
			fulfill the mandate according to the contract.	
2.	24 K/Pdt.Sus/2019	Wakalah bil Ujrah & Mudharabah	The decision reaffirms that the company must adhere to the agreed-upon contract in accordance with the principle of contract attachment and fund management based on trust (wakalah).	DSN Fatwa No. 51/DSN-MUI/III/2006 concerning the Mudharabah Agreement on Sharia Insurance
3.	3434 K/PDT/2019	Tabarru' & Wakalah bil Ujrah	The Supreme Court granted the claim because the premiums were paid regularly, and complete evidence was provided. This is in line with the company's obligation to distribute <i>tabarru'</i> funds to participants affected by the disaster.	DSN Fatwa No. 21/DSN-MUI/X/2001 and No. 53/DSN-MUI/III/2006 concerning the Management of <i>Tabarru'</i> Funds

Source: secondary data analysis of Supreme Court decisions and Fatwa DSN MUI

Table 2 above shows that the Supreme Court's decisions granting participants' claims in family *takaful* insurance disputes reflect the application of sharia principles that have been endorsed by DSN-MUI, such as *tabarru'*, *wakalah bil ujrah*, and *mudharabah*. In these cases, the Court emphasized that *takaful* companies are obliged to fulfill their mandate and pay claims if participants have fulfilled their obligation to pay contributions (premiums) and provide valid proof of claim. This is in line with the principle of *tabarru'* as a form of solidarity between participants, as well as the principle of *wakalah*, where the company only acts as a fund manager, not the owner. This decision also indicates that the national legal system accommodates sharia norms in the protection of the rights of Islamic insurance participants, in line with the fatwa of DSN-MUI and the *maqāṣid al-sharī'ah* principle in the aspect of protection of life and property, although it is still limited to certain contexts where out of eight Supreme Court decisions analyzed, only three decisions used Fatwa as the basis for decision making. In general, most of the decisions refer to sharia principles

used in the family *takaful* insurance industry, such as the principles of *tabarru'* (voluntary contribution), *mudharabah* (profit sharing), and *wakalah* (fund management).

These findings are supported by prior research. For example, a study by Hosen and Wulandari (2020) identified inconsistencies in judicial reasoning regarding sharia-compliant insurance due to a lack of comprehensive reference to DSN-MUI fatwas and the National Sharia Board's guidance in many court verdicts, which may result in legal uncertainty for *takaful* participants.⁶⁵ Similarly, research by Lubis et al. (2022) emphasized that the clarity and enforceability of contracts in Islamic insurance are frequently challenged by ambiguous policy language and insufficient disclosure from the insurer's side, which often contributes to disputes.⁶⁶

Moreover, variations in the interpretation of fund management practices emerged in several rulings, indicating a possible misalignment between Sharia governance standards and actual business practices. For instance, Yusof and Sabri (2018) noted that weak internal sharia auditing and oversight mechanisms within *takaful* operators often lead to violations of transparency and trust.⁶⁷ This is consistent with several Supreme Court decisions that have triggered disputes due to a lack of clarity in how customer funds are administered, reinforcing the need for better regulatory supervision.

In addition, administrative errors and differing interpretations of policy clauses also influenced judicial outcomes. According to research by Yasushi Suzuki, dkk. (2019), a lack of standardization in sharia insurance contracts and poor legal literacy among consumers create conditions that are potentially misinterpreted and referred to in litigation.⁶⁸ Thus, strengthening clarity in contract language, enhancing sharia compliance audits, and

⁶⁵ P. Hosen, N., & Wulandari, "Legal Protection for Participants of Islamic Insurance in Indonesia: A Critical Analysis of Judicial Decisions," *Al-Iqtishad: Journal of Islamic Economics* 12, no. 2 (2020): 229-248. <https://sht.wf/PSHL>

⁶⁶ A. R. Lubis, M. A., Sari, M., & Fauzan, "Sharia Governance and Transparency in Islamic Insurance: A Case Study in Indonesia," *Journal of Financial Regulation and Compliance* 30, no. 1 (2022): 74-89. <https://doi.org/10.18860/ed.v12i1.25135>

⁶⁷ H. Yusof, S. A. M., & Sabri, "Shariah Audit Effectiveness in Takaful Operators: The Role of Internal Shariah Review Functions," *International Journal of Islamic and Middle Eastern Finance and Management* 11, no. 1 (2018): 98-112.

⁶⁸ Yasushi Suzuki et al., "Do Islamic Banks Need to Earn Extra Profits?," *Journal of Islamic Accounting and Business Research* 10, no. 3 (2019): 369-381, <https://doi.org/10.1108/JIABR-01-2017-0003>.

aligning judicial reasoning with DSN-MUI fatwas are essential for improving dispute resolution mechanisms in the *takaful* industry.

Dynamics and Challenges of Fatwa Harmonization in Positive Law

One of the significant obstacles in resolving family *takaful* insurance disputes is the limited sharia literacy among civil judges, which causes them to be reluctant or unable to use the DSN-MUI fatwa as an interpretative reference in the litigation process. According to data from the Balitbang Diklat of the Indonesian Supreme Court, as of 2020, the number of Religious Court judges who have attended Sharia Economic Judge Certification Training throughout Indonesia has reached only around 750 people. In fact, with a total of 412 work units of Religious Courts and Syar'iyah Courts in Indonesia, a minimum of 1,236 certified judges are needed to fulfill the needs of one assembly per work unit, and ideally, 2,472 judges for two assemblies per work unit. Thus, the ratio of Islamic economics-certified judges has only reached around 30% of the ideal number needed. This shortage has an impact on the suboptimal application of sharia principles in court decisions, including in family *takaful* insurance disputes, because judges tend to rely on general civil law rather than referring to DSN-MUI fatwas that contain distributive justice values and *maslahat* principles.⁶⁹

Fatwa is Only an Instrument of Contemporary Economic Law

The dynamics of fatwa harmonization with positive law in the context of Sharia economics exhibit similar patterns to the issue of Islamic family law, as observed in Mohammad Syahrul Wardana's study on the prevention of *sirri* marriages in Samarinda City.⁷⁰ In his research, the role of religious leaders with the *sadd adz-dzari'ah* approach - i.e., closing the road to damage - is shown to be an effective instrument in filling the void left by formal regulations. This indicates that the power of non-state norms, such as fatwas and

⁶⁹ Mashudi Daud, "Model Sinergisitas Badilag Dan DSN-MUI Dalam Memperkuat Sistem Ekonomi Syariah Di Indonesia," *Journal of Economics and Development (JEnD) MODEL* 1, no. 1 (2024): 18-30. <https://doi.org/10.70656/jend.v1i1.8>

⁷⁰ Mohammad Syahrul Wardana, "Penanggulangan Nikah Sirri Di Kota Samarinda; Peranan Tokoh Agama Dengan Konsep Sadd Adz-Dzari'ah," *Legitima : Jurnal Hukum Keluarga Islam* 4, no. 1 (2021): 51-67, <https://doi.org/10.33367/legitima.v4i1.2145>.

religious social roles, can serve as a bridge when formal regulations are not fully present or integrated. Meanwhile, in the context of inheritance distribution, Siagian et al. highlighted the differences between *Shafi'i fiqh* and customary practices in South Tapanuli.⁷¹ This reflects the challenges of harmonizing *fiqh*, adat, and national law norms, which are also experienced in the realm of Islamic economics. Thus, in both family law and sharia economics, normative and educative approaches are key to strengthening the role of fatwas and sharia values in the national legal system fairly and contextually.

Inconsistency of Reference to Fatwa of DSN-MUI: Gaps in the Justice System

The main finding of this research shows that the Supreme Court has not consistently used the DSN-MUI fatwa as a legal basis in resolving sharia family insurance disputes. Of the eight decisions studied, only three decisions explicitly refer to or are in line with the principles contained in the DSN-MUI fatwa, such as fatwa No. 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance and other related fatwas. This inconsistency reflects the weak institutionalization of fatwas as a source of positive law, which has a direct impact on legal certainty and substantive justice for Islamic insurance participants.

Non-Reference of Fatwa: Legal Formalism and Regulatory Lacunae

The legal consequences of the unclear position of the fatwa are highly significant for consumer protection. In several cases, such as 428 K/Pdt.Sus/2019 and 98 K/Pdt.Sus/2017, insurance participants lost their rights because they were deemed not to meet administrative requirements, even though the reasons for rejection were contrary to the principles of justice, openness, and mutual assistance (*ta'āwun*) at the core of the *takaful* system. This creates legal uncertainty for consumers and has the potential to undermine confidence in the protection mechanisms in Islamic financial products. On the other hand, when judges refer to sharia principles such as in 24 K/Pdt.Sus/2019 or 3434 K/Pdt/2019,

⁷¹Abdul Siagian et al., *Pembagian Harta Warisan Anak Laki-Laki Dan Anak Perempuan : Perspektif Fiqh Syafi ' i Dan Adat Tapanuli Selatan*, 01, no. 02 (2024): 164-177. <https://sht.wf/GFZY>

participants' rights are better protected, especially if the proof of claim is strong and contributions have been paid in an orderly manner.

Legal Impact on Sharia Insurance Consumer Protection

The legal consequences of the unclear position of the fatwa are very significant for consumer protection. In several cases, such as 428 K/Pdt.Sus/2019 and 98 K/Pdt.Sus/2017, insurance participants lost their rights because they were deemed not to meet administrative requirements, even though the reasons for rejection were contrary to the principles of justice, openness, and mutual assistance (ta'āwun) at the core of the takaful system. This creates legal uncertainty for consumers and has the potential to undermine confidence in the protection mechanisms in Islamic financial products. On the other hand, when judges refer to sharia principles such as in 24 K/Pdt.Sus/2019 or 3434 K/Pdt/2019, participants' rights are better protected, especially if the proof of claim is strong and contributions have been paid in an orderly manner.

Harmonization Challenges and the Need to Strengthen Regulations

This uncertainty reflects the lack of harmonization between sharia norms and the national legal system. Without formal integration through legislation or standardization in permanent jurisprudence (jurisprudence that is consistently referred to), DSN-MUI fatwas remain on the periphery of legal practice. As emphasized in the literature by Hosen and Wulandari (2020)⁷² and Lubis et al. (2022),⁷³ this norm vacuum creates room for broad and non-uniform interpretation between judges, which in turn creates legal vulnerability for consumers.

Recommendations for Legal Reform: Legal Substance, Structure, and Culture

Based on Lawrence Friedman's legal system theory, the solution to this problem needs to touch three aspects: substance (i.e. the need for legal recognition of fatwas in

⁷²Hosen, N., & Wulandari, "Legal Protection for Participants of Islamic Insurance in Indonesia: A Critical Analysis of Judicial Decisions." <https://sht.wf/PShL>

⁷³Lubis, M. A., Sari, M., & Fauzan, "Sharia Governance and Transparency in Islamic Insurance: A Case Study in Indonesia." <https://doi.org/10.18860/ed.v12i1.25135>

positive regulations), structure (strengthening the role of sharia institutions in the judicial system), and legal culture (increasing judges' literacy in sharia economics and *maqāṣid al-sharī'ah*).

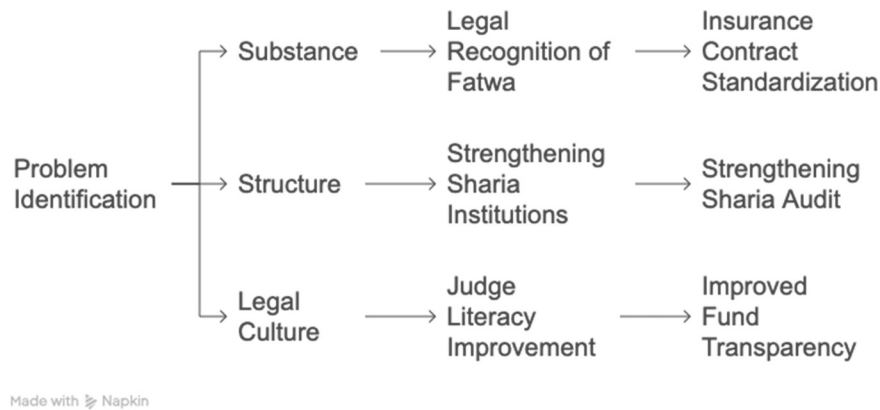


Figure 1. Sharia Law Reform

Source: Results of Primary and Secondary data Analysis (Napkin AI)

In addition, standardization of Islamic insurance contracts, strengthening internal Islamic audits, and increasing transparency of fund management are also essential steps, as suggested in the research of Yusof and Sabri (2018)⁷⁴ and Yasushi Suzuki et al. (2019).⁷⁵

Towards a Coherent and Just Sharia Law System

This study emphasizes that the urgency of strengthening the role of DSN-MUI fatwas in judicial practice is not only a matter of legality but also concerns the protection of participants' rights and substantive justice in Islamic economics. For this reason, the integration of fatwas into the national legal system should be guided by clear regulations, training for law enforcement officials, and the establishment of a permanent jurisprudence that makes sharia principles the primary reference in resolving sharia insurance disputes.

⁷⁴Yusof, S. A. M., & Sabri, "Shariah Audit Effectiveness in Takaful Operators: The Role of Internal Shariah Review Functions." <https://sht.wf/DnhV>

⁷⁵Suzuki et al., "Do Islamic Banks Need to Earn Extra Profits?" <https://doi.org/10.1108/JIABR-01-2017-0003>

CONCLUSION

This study reveals that while Islamic law continues to influence legal development in Indonesia—particularly through Constitutional Court decisions—its integration remains limited, symbolic, and inconsistent. Principles like *al-'adl* (justice), *maṣlaḥah* (public interest), and *musāwāh* (equality) are often mentioned, but without a solid methodological basis or deep engagement with Islamic legal theory. The references to sharia tend to be rhetorical rather than binding, reflecting the dominance of a positivist legal framework that prioritizes statutory texts over ethical-normative principles derived from sharia. This is further constrained by institutional inertia, limiting the transformative potential of Islamic law in Indonesia's plural legal system. The study also highlights tensions within the country's dual legal structure, where Islamic norms have strong social legitimacy but lack clear constitutional and legislative status. This ambiguity leads to selective and inconsistent application by judges, as seen in the uneven use of sharia principles across court decisions. To address this, the study recommends concrete reforms: developing a standardized judicial framework for referencing Islamic sources, enhancing judicial capacity through training in Islamic legal interpretation and *maqāṣid al-sharī'ah*, and clarifying the legal standing of DSN-MUI fatwas. These efforts must balance democratic, constitutional, and religious dimensions, positioning Islamic law not merely as a moral guide but as a substantive source of justice that enriches Indonesia's constitutional vision.

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AUTHOR CONTRIBUTIONS STATEMENT

S, R, N, and H contributed equally to the conception, design, and conduct of the study. S led the legal analysis and drafting of the manuscript. R was responsible for data collection, case review, conducted literature synthesis and theory building. N managed reference curation. H Translations and editing of the final manuscript. All authors read and approved the final version of the manuscript.

CONFLICT OF INTEREST

This article has no conflicts of interest.

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