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APPLICATION OF DWANGSOM (COERCED MONEY) IN DISPUTE RESOLUTION BREACH OF PAYMENT OF SHARIA LIFE INSURANCE CLAIMS (Study of Supreme Court Decision Number 364 K/Ag/2023)

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Abstract

The ruling in the Supreme Court Decision Number 364 K/Ag/2023 contains a penalty of payment of a sum of Rp538,178,014.00 (five hundred thirty-eight million one hundred seventy-eight thousand and fourteen rupiah) and also contains a penalty of dwangsom (forced money) to the defendant/applicant of cassation in the amount of Rp100,000.00 (one hundred thousand rupiah) for each day the defendant is late in carrying out the contents of the decision that has obtained permanent legal force. If referring to the norm in Article 606a Rv, the judge can only impose a penalty of dwangsom (forced money) if the judge's decision contains a penalty other than the penalty of paying a sum of money. The deviation in the application of the penalty of dwangsom (forced money) in the decision is based on considerations of justice and legal benefits as contained in the legal considerations. The research method in this writing is a normative legal research method by analyzing legal norms with legal principles. The purpose of this writing is to provide an understanding of the judge's authority in imposing a dwangsom (forced money) penalty in a default decision which includes a penalty of payment of a sum of money in a sharia life insurance case which is guided by the principles of justice, legal benefit, and the principle of ta'awun (mutual assistance).

Keywords: ***Islamic life insurance, dwangsom (forced money), justice, benefit, ta'awun principle***

INTRODUCTION

Following the issuance of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, all courts within the religious court system have the authority to examine and adjudicate Islamic economic disputes, which were previously the domain of general courts. Religious courts have the authority to adjudicate 11 (eleven) Islamic economic disputes, ranging from Islamic banking disputes to Islamic business disputes. This additional authority does not directly create new procedural law for adjudicating Islamic economic disputes. The procedural law used remains the same as that applicable in general courts. However, it cannot be denied that there are subsequently special provisions regarding the procedural law for examining Islamic economic disputes. One of the applications of civil procedural law in Islamic economic cases is the punishment of dwangsom (forced money) as regulated in the legal norms in Article 606a and 606b of the Reglement Op de Rechtvoordering (Rv) which reads:

> "As long as a judge's decision contains a punishment for something other than paying a sum of money, it can be determined that as long as or every time the convict does not fulfill the punishment, he must be handed over a sum of money the amount of which is determined in the judge's decision, and this money is called compulsion money." (Article 606a Rv)
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> "If the decision is not complied with, then the opposing party to the defendant is authorized to enforce the decision for a predetermined amount of forced money without first obtaining a new legal basis. Article 606 also applies in this case. If the opposing party files a lawsuit to obtain a new legal basis as referred to in the first paragraph, then the defendant may file a rebuttal as regulated in the first paragraph above against its implementation without a new legal basis." (Article 606b Rv)

From these norms, dwangsom (forced money) is defined as an attempt to force one party to pay a certain amount of money to another party through a court decision.[1] The imposition of a dwangsom (forced money) is based on a lawsuit containing a petition for dwangsom (forced money) so that it can be decided in a court decision. The decision regarding dwangsom (forced money) also serves as an additional penalty that follows the main penalty in the court decision.[2]This dwangsom (forced money) is considered as legal protection for other parties who are entitled to receive compensation.[3] One of the court decisions containing the punishment of dwangsom (forced money) due to the defendant's breach of promise (default) is Supreme Court Decision Number 364 K/Ag/2023 dated April 5, 2023. This case began with the act of delaying and rejecting the plaintiff's claim submission as a customer to the defendant as a sharia life insurance unit throughout 2018 to 2021.

In its decision, considerations of justice and legal benefits became the ratio decidendi to impose a penalty of dwangsom (coercive money) in the amount of Rp100,000.00 (one hundred thousand rupiah) on the defendant. With these considerations, in fact the Panel of Judges deviated from Article 606a and Article 606b Rv which states that, "As long as a judge's decision contains a penalty for something other than paying a sum of money...". The reason is that in the decision of this case there is a penalty for the defendant to pay the losses suffered by the plaintiff in the amount of Rp538,178,014.00 (five hundred thirty-eight million one hundred seventy-eight thousand and fourteen rupiah). In addition, the limitation of the authority to impose a penalty of dwangsom (coercive money) has also been determined in the Supreme Court jurisprudence Number 793 K/SIP/1972 dated February 26, 1973. Departing from the deviation in the application of the legal norms, in this article the considerations of the Panel of Judges in sentencing the defendant to pay dwangsom (forced money) to the plaintiff will be analyzed based on considerations of justice and legal benefits even though it deviates from the norms of Article 606a and Article 606b Rv as well as considerations of the principle of ta'awun (mutual assistance) as one of the main principles in Islamic life insurance.

LITERATURE REVIEW

1. The thesis written by Muhamad Ali Muhsim entitled "The Application of Dwangsom (Coercive Money) in Child Custody Decisions from the Perspective of Aristotle's Theory of Justice". This paper discusses the legal considerations in the decision of the Banda Aceh Sharia Court regarding the imposition of a dwangsom (forced money) sentence which is not preceded by a petitum in the lawsuit regarding the demand for a dwangsom (forced money) sentence. The results of this study indicate that the judge's considerations in the decision are in accordance with the criteria of corrective justice put forward by Aristotle, namely there is a violation that should be obtained, there is an attempt to correct (restore) rights, losses can be measured, correction can be measured, and based on proportion. The similarities are discussing the analysis of the judge's considerations in imposing a dwangsom (forced money) sentence. The differences are (1) The object of the case in the decision analyzed in this thesis is a child custody case while the object of the case in this study is a case of default in a sharia life insurance case; (2) The theory in this thesis is Aristotle's theory of corrective justice, while in this research it is the theory of justice, utility, and the principle of ta'awun (mutual assistance); and (3) The main problem analyzed in this thesis is the legal consideration of the judge who imposed a dwangsom (forced money) sentence which was not demanded in the lawsuit, while the main problem in this research is the legal consideration of the judge who imposed a dwangsom (forced money) which was imposed together with the imposition of a sentence of payment of a sum of money.[4]
2. The thesis written by Dewi Oktavia with the title "Implementation of the Dwangsom Decision and Its Contribution to the Reform of Islamic Family Law in Indonesia (Study of Decision Number 792/Pdt.G/2018/Pa.Kla)". This paper discusses the legal considerations in the Kalianda Religious Court's decision regarding the imposition of child custody (hadlanah) and the dwangsom (forced money) penalty, both of which were demanded by the plaintiff in the lawsuit, the procedure for implementing the dwangsom (forced money) penalty, and the contribution of dwangsom (forced money) in the renewal of Islamic family law in Indonesia. The results of this study indicate that the decision attempts to prevent the defendant from implementing the court's decision and the judge interprets that children cannot be executed because they are not included in assets or objects, therefore dwangsom (forced money) can be used as an embodiment of the values of benefit and justice in the renewal of Islamic family law in Indonesia. The similarity is discussing the analysis of the judge's considerations in imposing the dwangsom (forced

[1]Harifin A. Tumpa, 2010, Understanding the Existence of Forced Money (Dwangsom) and its Implementation in Indonesia, Bandung: Alfabeta, p. 18.
[2]Abdul Manan, 2008, Application of Civil Procedure Law in the Religious Courts, Jakarta: Kencana Prenada Media Group, p. 438.
[3]Lilik Mulyadi, 2009, Judges' Decisions in Indonesian Civil Procedure Law: Theory, Practice, Techniques for Making Decisions, and Problems, Bandung: PT. Citra Aditya Abadi, p. 70.
[4]Muhammad Ali Muhsin, 2022, Application of Dwangsom (Coercive Money) in Child Custody Decisions from the Perspective of Justice Theory (Study of Decision Number 8/Pdt.G/2020/MS.Bna), Thesis, Master Program in Al-Ahwal Al-Syakhshiyyah, State Islamic University of Maulana Malik Ibrahim Malang.

money) penalty. The differences are (1) The object of the case in the decision analyzed in this thesis is a divorce case of cumulative child custody lawsuit while the object of the case in this research is a case of default in a sharia life insurance case; (2) The main problem analyzed in this thesis is the legal consideration of the judge who imposed a dwangsom (forced money) sentence which is an effort to prevent the defendant from carrying out the decision and the dwangsom (forced money) sentence as a form of renewal of Islamic family law in Indonesia, while the main problem in this research is the legal consideration of the judge who imposed dwangsom (forced money) which was imposed together with the imposition of a penalty of payment of a sum of money in a sharia life insurance case.[5]

3. Journal written by Dina Amalia, Nyoman Sugiartha, and Ketut Adi Wirawan with the title "Implementation of the Use of Forced Money (Dwangsom) Against Judge's Decisions (Case Study of Denpasar Religious Court)". This paper discusses the application of the dwangsom (forced money) penalty in judge's decisions at the Denpasar Religious Court and the obstacles for parties sentenced to dwangsom (forced money) but are unable to carry out the decision. The results of this study indicate that decisions containing the dwangsom (forced money) penalty are decisions that create a comprehensive and healthy legal culture, meaning that parties sentenced to dwangsom (forced money) are obliged to immediately carry out the decision without having to pay dwangsom (forced money) or without the need for execution by the court. The similarity is discussing the application of the dwangsom (forced money) penalty in religious civil cases within the Denpasar Religious Court. The differences are (1) The object of the case in the decision analyzed in this paper is the civil religious cases in the Denpasar Religious Court as a whole, while the object of the case in this research is the case of default in the sharia life insurance case; (2) The main problem analyzed in this thesis is the application of the dwangsom (forced money) punishment in the Denpasar Religious Court and describes the obstacles in implementing the payment of dwangsom (forced money) for parties who are sentenced but have economic limitations, while the main problem in this research is to focus on the legal considerations of the judge who imposed dwangsom (forced money) which was imposed simultaneously with the imposition of the penalty of payment of a sum of money in the sharia life insurance case.[6]

METHOD

The type of research in this paper is normative legal research. This research was conducted by analyzing laws and regulations, legal principles, legal systematics, and principles in Islamic economic law, especially regarding Islamic life insurance law. This research uses prescriptive analysis, meaning the analysis carried out is in the form of discovering the relevance between legal norms and the principles of behavioral law to then provide recommendations in the development of legal science, especially Islamic economic law, and input for judges in deciding Islamic economic disputes, especially Islamic life insurance disputes. The approaches in this research are the statute approach, the case approach, and the conceptual approach. The legal materials used in this research are primary legal materials consisting of applicable laws and regulations, secondary legal materials consisting of legal research, and tertiary legal materials consisting of non-legal materials.

RESULTS AND DISCUSSION

1. The Concept of Dwangsom (Forced Money)

Dwangsom(forced money) is defined as an attempt to force one party to pay a sum of money to another party who is being sued through a lawsuit to then be decided through a final court decision.[7]The provisions regarding dwangsom (forced money) are regulated in Article 606a Rv, Article 606b Rv, and other provisions in Article 225 HIR, Article 259 RBg, and Article 1267 of the Civil Code.[8] Dwangsom(Coercion money) is closely related to the implementation of court decisions and execution. Every decision issued by a judge and having permanent legal force must be immediately implemented, considering that every decision must contain orders or prohibitions for the parties to the case.[9]Failure by a party to comply with a court decision results in the imposition of a dwangsom (forced money) and serves as a warning to the party to implement the decision based on their own conscience without having to resort to coercive measures through court execution procedures. If the party fails to immediately implement the decision without their own conscience, it will only further burden their personal burden. The

[5]Dewi Oktavia, 2021, Implementation of the Dwangsom Decision and Its Contribution to the Reform of Islamic Family Law in Indonesia, Thesis, Islamic Family Law Study Program, Raden Intan State Islamic University of Lampung.

[6]Dina Amalia, et al., 2024, Implementation of the Use of Coercive Money (Dwangsom) Against Judges' Decisions (Case Study of the Denpasar Religious Court), Journal of Legal Analogy, Volume 6, Number 3.

[7]Harifin A. Tumpa, 2010, loc.cit.

[8]A. Mukti Arto and Ermanita Alfiah, 2018, The Urgency of Dwangsom in Hadanah Executions, Jakarta: Prenadamedia Group, p. 6-7.

[9]Roihan A. Rasyid, 1996, Religious Court Procedure, Jakarta: PT. Raja Grafindo, p. 199.

position of dwangsom (forced money) is very strong because it has the same status as execution. When talking about execution, real execution is directly aimed at carrying out the principal punishment, while dwangsom (forced money) is defined as a pressure tool that encourages the obligated party to implement the decision, whether in the form of payment of a sum of money, fulfillment of obligations, or prohibition from doing something voluntarily without coercive measures from the court.[10] When imposing a dwangsom (forced money) sentence, the judge must pay attention to the main principles of dwangsom (forced money). Several opinions state three principles for imposing a dwangsom (forced money) sentence, which are:

a. DwangsomAccessory in nature. A claim containing a dwangsom (forced money) must be accompanied by the main claim, and the sentence must be imposed simultaneously with the main verdict. In this case, the plaintiff filed a dwangsom (forced money) claim along with a claim for material damages for the defendant's breach of contract.
b. Dwangsomnot the main punishment. The imposition of a fine (dwangsom) only has legal force if the punished party does not carry out the main/main punishment, but if it has been carried out, the fine is no longer valid.
c. Dwangsomis a psychological punishment (dwaang middelen) for the defendant so that he can carry out the court's decision voluntarily, not just because of coercion.[11]In this case, the defendant was psychologically forced to carry out the court's decision voluntarily.

The main function of imposing a dwangsom (forced money) sentence is to enforce the court's decision.

2. Theory of Justice

Linguistically, justice can be defined as giving something in balance. Aristotle defined justice as "justice consists in treating equals equally and unequals unequally, in proportion to their inequality." This means that justice can be applied not only to equality but also to inequality arising from real diversity.[12]

Aristotle's opinion, as put forward by Theo Huijbers, states that justice in the field of legal interpretation is defined as justice that makes the law a general entity and therefore needs to be concretized through legal interpretation by judges. The judge's interpretation through court decisions constitutes an epikeia, or a sense of what is appropriate.[13]The essence of justice contained in the law is a perfect priority, meaning that the public places trust in the laws that have been made by legislators to be able to gain a sense of security in their lives.[14] Aristotle also interpreted justice as corrective or reparative justice. This justice is defined as justice given to everyone in order to protect and uphold the law against violations. Therefore, corrective/reparative justice can be implemented by a judge through a court decision. This corrective justice will address the wrongdoing, the losses resulting from the breach of promise, and the efforts to restore the losses suffered.[15] Corrective justice can only be achieved if five aspects are met: a violation has occurred that causes a person's rights to be violated or taken away, the restoration of the violated rights, the measurability of the violation of the rights committed, the restoration of the violated rights through measurable compensation, and the restitution based on proportional aspects. To fulfill these aspects, the legal facts in the trial serve as the basis for his considerations. With these facts, the Judge can measure the rights violated, the losses suffered, and the obligation to compensate equivalent to the rights violated and the losses suffered. In several theories of justice, a type of justice emerges: substantive justice. Substantive justice is defined as justice derived from legal norms, although these norms may ultimately be disregarded due to considerations of a sense of justice. This substantive justice can be fulfilled by judges as law enforcement officers. Judges can realize substantive justice only if they possess broad insight, adequate abilities/skills, and good moral capacity. In addition to these theories, justice can also be interpreted as distributive justice (justitia distributiva). Distributive justice can be measured if the rights held by each party are distributed proportionally based on their respective qualities. Each person's capacity is different, so the rights held also vary. This distributive justice is in line with the legal principle, namely the principle of authority proposed by Scholten. This principle of authority gives rise to the view that justice is inequality, meaning there is special treatment for someone who is actually in a weak position.[16] The theory of justice is also based on the theory put forward by Yusuf Al-Qardhawi, who states that justice is the most noble human nature, perfected through other supporting pillars. Justice in Islam is defined as all actions that do not involve mutual oppression. Justice in Islam is commanded in Surah

[10]Harifin A. Tumpa, 2010, op.cit, p. 20-21.
[11]Ibid.
[12]Bernard L. Tanya, et al., 2013, Legal Theory: Human Order Strategies Across Space and Generations, Yogyakarta: Genta Publishing, p. 117.
[13]Mahrus Ali, 2010, The Constitutional Court and Progressive Interpretation of Law, Constitutional Journal, Volume 7, Number 1, p. 68.
[14]Rizcha Indah Mustamilinda, 2023, Legal Injustice for the Poor Linked to the Theory of Justice According to Aristotle and Thomas Aquinas, Jurnal Das Sollen: Jurnal Studi Contemporary Hukum dan Masyarakat, Volume 2, Nomor 1, p. 8.
[15]Ibid.
[16]Sudikno Mertokusumo, 2006, The Discovery of Law: An Introduction, Yogyakarta: Liberty, p. 9-10.

An-Nahl, verse 90, which obliges everyone to uphold justice and perform good deeds for others, while prohibiting cruel, unjust, and hostile acts.[17]In Islam, justice is defined as the soul of law, meaning that law without justice is considered dead. Justice in judgment is defined as justice rendered by God Almighty through the judge, His representative on earth. From an economic perspective, justice is defined as actions that do not seek personal gain that harm others. This justice can be concretely expressed in several forms, such as:

a. Provide equal service without discrimination.
b. Providing balance between parties.
c. Providing balance by considering contribution and distribution.
d. Granting rights to the owner.
e. Provides protection against power gaps between parties.
f. Imposing punishment on people who are entitled to compensation.[18]

3. Utility Theory

Utility is linguistically defined as zwechmatigheid, doelmatigheid, or ultility.[19]The utility of law is closely related to the happiness achieved by many, as Jeremy Bentham's utilitarian theory suggests. The happiness achieved through the application of law should not be directed solely at one party, and therefore must be impartial.[20]Furthermore, in a different opinion, John Stuart Mill defined utility as closely related to justice. Utility means good and right actions whose ultimate goal is justice, rather than bad actions whose ultimate goal is evil.[21]The benefit of using the law as a source of happiness for the less fortunate, or defined as those who have the opportunity to attain prosperity that they do not yet have and therefore require special protection. Benefit aligns with justice, which provides equal rights and opportunities for all and minimizes socioeconomic disparities for all, whether fortunate or unfortunate.[22] Legal utility lies at the intersection of justice and legal certainty. One form of utility in court decisions is the application of legal norms, not merely textual rules, but rather the application of legal norms to benefit the parties and society in general. The utility of court decisions is an effort to create balance and maintain public trust in law enforcement.[23]Through court decisions, judges can also restore social conditions to a healthy state (restitutio in integrum). If one party is proven at fault, they should be punished, while the injured party should be rehabilitated through compensation or other means that restore their rights.[24]

Legal expediency is the purpose of law, which plays a role in creating a clear basis for overriding legal certainty. With legal expediency, court decisions must protect the interests of every entitled person. With legal expediency, one of the goals of society—to feel safe and not be harmed—and the goal of living in a peaceful and orderly state—can be achieved.[25]Legal benefit is the public's expectation of law enforcement. Therefore, court decisions are a manifestation of the implementation of laws and regulations while simultaneously realizing the goals of the law.[26] Verse 178 of the Quran, Al-Baqarah, serves as the basis for understanding the essence of legal benefit. This verse states that all believers are obligated to forgive one another in the hope of receiving greater mercy from Allah SWT. This principle can be interpreted as meaning that the law must provide benefits and be effective for society. One example of the application of benefit is during the time of Umar ibn Khattab, who punished a thief (citing necessity and emergency) who stole from the house of a wealthy person who never gave alms with the punishment of

[17]Waldi Nopriansyah, 2016, Sharia Insurance: The Last Unexpected Blessing, Yogyakarta: Andi, p. 25-26.
[18]A. Mukti Arto, 2018, The Discovery of Islamic Law to Achieve Justice: The Professional Application of Legal Discovery, Ultra Petita & Ex Officio Judges, Yogyakarta. Pustaka Pelajar, p. 52.
[19]Agus Setiawan, 2017, Legal Reasoning Capable of Proportionally Realizing Legal Objectives, Mimbar Justitia Law Journal, Volume 3, Number 2, p. 204.
[20]Endang Pratiwi, et al., 2022, Jeremy Bentham's Utilitarian Theory: The Purpose of Law and Methods of Testing Legal Products?, Constitutional Journal, Volume 19, Number 2, p. 274.
[21]Muharir and Slamet Haryono, 2023, John Stuart Mill's Concept of Utilitarianism: Its Relevance to Behavioral Economics, Jurnal Ekonomica Sharia: Thought and Development of Islamic Economics, Volume 9, Number 1, p. 117-118.
[22]Rommy Haryono Djojorahardjo, 2019, Realizing the Aspect of Justice in Judges' Decisions in Civil Courts, Journal of Legal and Judicial Media, Volume 5, Number 1, p. 93.
[23]Amir Ilyas, 2016, Collection of Legal Principles, Jakarta: Rajawali, p. 91.
[24]Rommy Haryono Djojorahardjo, op.cit., p. 96-97.
[25]Muhammad Ridwansyah, 2016, Realizing Justice, Certainty and Legal Benefit in the Aceh Qanun on Flags and Institutions, Constitutional Journal, Volume 13, Number 2, p. 288.
[26]Suwardi Sagama, 2016, Analysis of the Concept of Justice, Legal Certainty and Benefit in Environmental Management, Journal of Islamic Schools: Islamic Legal Thought, Volume 15, Number 1, p. 35.

amputating his hand. In this incident, Umar ibn Khattab provided considerations that serve as guidelines for benefit and welfare in every law enforcement.[27]

4. The Principle of Ta'awun (Mutual Assistance)

This principle is defined as requiring everyone to have the intention to help each other among Sharia life insurance participants. This principle is based on QS. Al-Maidah verse 2 permits sharia life insurance in the form of mutual assistance, "And help one another in righteousness and piety" (And do not help one another in doing evil) and prohibits insurance in the form of helping one another in evil, "And do not help one another in doing evil" (And do not help one another in doing evil). sin and enmity). The application of the principle of ta'awun (mutual assistance) is based on 3 (three) arguments, namely:

a. Ta'min ta'awuniis part of the tabarru' contract, which aims to establish a reciprocal relationship to eliminate or minimize losses from disasters/calamities experienced by participants. Based on this principle, Islamic life insurance is not based on a commercial spirit or a competition to maximize profits (profit-oriented).
b. Ta'min ta'awuniThe aim is to free individuals from usurious practices (riba al-fadhl or riba nasi'ah). Sharia life insurance directs insurers to avoid involvement in usurious transactions.
c. Ta'min ta'awuniFreeing from the practices of gambling (maysir), fraud (gharar), and deception (ju'alah). With sharia life insurance, participants are encouraged to return a portion of the benefits they receive to other participants.[28]

The principle of mutual assistance (ta'awun) is a form of selfless concern among fellow Sharia life insurance participants. From the outset, all participants are guided by a desire to help each other in alleviating the calamities and losses of others.[29] This principle aligns with the principles of mutual responsibility and mutual protection. Mutual responsibility means that all participants in Islamic life insurance are willing to be accountable to one another, shouldering their responsibilities with the good intention of worshipping Allah SWT.[30] Mutual protection means that all participants in Islamic life insurance agree to protect each other and help cover losses due to disasters/calamities experienced by other participants through a cooperation mechanism with the Islamic life insurance company.[31]

In the application of the principle of ta'awun (mutual assistance) in sharia life insurance, it is carried out through a tabarru' (gibah) contract for the relationship between insurance participants, while the contract between the company and participants is through a tijarah contract, mudharabah contract, mudharabah musyarakah contract, wakalah bil ujrah contract, wadiah contract, and syirkah contract. Sharia life insurance companies divide fund management entities into three accounts, namely tabarru' funds, participant investment funds, and company funds. Claim payments are made from the tabarru' fund post, which from the beginning was intended to help participants in the event of a disaster, and if the tabarru' fund post experiences a deficit, the company must cover it using company funds. Meanwhile, the participant fund post is forever the right of the participant which is kept by the company to manage it through mutually agreed investments.[32]

5. Analysis of Dwangsom (Coercive Money) Punishment.

In the Decision of the South Jakarta Religious Court[33], the plaintiff (customer) filed a lawsuit for breach of promise by the defendant (sharia unit) for delaying and rejecting several insurance claim submissions belonging to the plaintiff from 2018 to 2021. The plaintiff and defendant are bound by a tabarru' agreement with Policy number 4240580052 which is valid since September 13, 2018. Due to this incident, the plaintiff filed a claim for material compensation in the amount of Rp. 538,178,014.00 (five hundred thirty-eight million one hundred seventy-eight thousand fourteen rupiah) and immaterial compensation in the amount of Rp. 300,000,000.00 (three hundred million rupiah). In addition, the plaintiff also filed a demand for dwangsom (forced money) in the amount of Rp. 1,000,000.00 (one million rupiah) for each day the defendant is late in carrying out the decision that has been inkracht. In his response, the defendant argued that the demand for dwangsom (forced money) was not legally valid and must be rejected. The defendant argued that referring to Article 606a of the Indonesian

[27] Achmad Irwan Hamzani, 2018, Principles of Islamic Law: Theory and Implementation in Legal Development in Indonesia, Yogyakarta: Thafa Media, p. 85-87.
[28] M. Arif Hakim, 2011, At-Ta'min At-Ta'awuni Alternative Insurance in Islam, Muqtasid Journal, Volume 2, Number 2, p. 250-252.
[29] Elis Mediawati, 2023, Insurance and Insurance Principles in Islam, Jakarta: Indonesian University of Education, p. 5.
[30] Nazri B. Kulup Mahmud and Muhammad Rahimi, 2000, Takaful: Islamic Insurance Systems in Islamic Economics, Kuala Lumpur: Uitm Bureauteks, p. 90.
[31] Ending Solehudin, 2020, Comparison of Sharia and Conventional Insurance, Bandung: Pustaka Setia, p. 124.
[32] Amalia Fadilah and Makhrus, 2019, Management of Tabarru' Funds in Sharia Insurance and its Relationship with the Fatwa of the National Sharia Council, Journal of Sharia Economic Law, Volume 2, Number 1, p. 100.
[33] Decision Number 3234/Pdt.G/2021/PA.JS.

Rv/Article 616a paragraph (1) of the Dutch Rv, the sentence of dwangsom (forced money) may not be applied to a judge's decision containing the main sentence in the form of payment of a sum of money as stated in the book "Demand for Forced Money (Dwangsom) in Theory and Practice" by Lilik Mulyadi. The defendant also based his objection on Jurisprudence Number 791 K/Sip/1972 which provides guidelines for judges not to impose a sentence of dwangsom (forced money) at the same time as the sentence of payment of a sum of money. The Panel of Judges referred to Article 606a Article 611a paragraph (1) Rv, so that they were of the opinion that if in his lawsuit, the plaintiff submitted a demand for payment of a sum of money which had been granted and the demand for dwangsom (forced money) was closely related to the demand for collateral confiscation which had been rejected, therefore the demand for dwangsom (forced money) submitted by the plaintiff should be rejected.

The rejection from the Panel of Judges at the South Jakarta Religious Court was then upheld at the appeal level through the Decision of the DKI Jakarta High Religious Court.[34]However, it turned out that at the time of the cassation level decision,[35]The Panel of Judges revised the ruling regarding the demand for dwangsom (forced money). The Panel of Judges also referred to the same legal norms and based their considerations on considerations of justice and legal benefits, so that they concluded that the Panel of Judges in certain circumstances can sentence the defendant to pay dwangsom (forced money) to fulfill the rights of the parties. Due to these considerations, the Panel of Judges granted the demand for dwangsom (forced money) in the amount of Rp100,000.00 (one hundred thousand rupiah) for each day the Defendant is late in carrying out the court decision that has become binding.

From the explanation above, conflicting opinions were found between the Panel of Judges at the first level to the cassation level regarding the imposition of a dwangsom (forced money) sentence on the defendant due to the breach of contract he committed. The Panel of Judges is not permitted to impose a dwangsom (forced money) sentence on a case containing a decision to pay the amount as stated in the cassation level decision. However, what is interesting is that the Panel of Judges at the cassation level deviated from the provisions contained in the legal norms by using the principles of justice and legal benefit to fulfill the rights of the parties.

There is no standard for assessing the meaning of justice in the ratio decidendi presented by the Panel of Judges at the cassation level, because what one party believes in may be injustice, according to another party. Therefore, the meaning of justice, clearly stipulated in Surah An-Nahl, verse 90, can serve as a guideline for assessing the meaning of justice in every decision. Allah SWT, in this verse, directly commands humans to act fairly, especially judges, who are God's hands, dispensing justice on earth. This verse also interprets justice as an effort to place justice in the lives of the people who are their place or to grant rights to their owners through the most appropriate means. This meaning of justice indicates that the granting of rights to their owners must be done fully and promptly without any delay in any form. Delays in granting rights to owners are interpreted as an abuse of the meaning of justice.[36]

Justice is the most important and primary value in every law enforcement. Justice must be prioritized by judges in giving their decisions as mandated in Article 2 paragraph (1) "State courts implement and enforce law and justice based on Pancasila," and Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society." If we refer to justice in the field of legal interpretation as put forward by Aristotle as referred to by Theo Huijbers,[37]Judges are the only profession capable of impartially interpreting the law through their decisions. Through their interpretations, justice, which is inherently abstract, can be concretely realized in court decisions. This concreteness allows the parties, both specifically and generally, to feel secure in the current situation.[38] The justice that has been concretized by the judge in the decision shows that corrective justice or reparative justice has been felt by the parties. This justice received is the hope of the parties, so that the law can provide protection for the losses they have experienced and the law can also uphold the plaintiff's rights as regulated in the legal norms in Article 31 paragraph (3) and (4) of Law Number 40 of 2014 concerning Insurance:

3) Insurance companies, Sharia insurance companies, reinsurance companies, Sharia reinsurance companies, insurance brokerage companies, and reinsurance brokerage companies are required to handle claims and complaints through a fast, simple, accessible, and fair process.

[34]Decision Number 83/Pdt.G/2022/PTA.JK.
[35]Decision Number 364 K/Ag/2023.
[36]M. Quraish Shihab, 2000, Tafsir Al-Mishbah: Messages, Impressions and Harmony of the Qur'an, Jakarta: Lentera Hati, p. 324.
[37]Mahrus Ali, 2010, loc.cit.
[38]Rizcha Indah Mustamilinda, 2023, loc.cit.

4) Insurance companies, Sharia insurance companies, reinsurance companies and Sharia reinsurance companies are prohibited from taking actions that could delay the settlement or payment of claims, or not taking actions that should be taken, resulting in delays in the settlement or payment of claims.

Article 37 paragraph (1) of Financial Services Authority Regulation Number 69/POJK.5/2016 concerning the Implementation of Business of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies, with the provision, "Sharia Companies or Units are prohibited from taking actions that could delay the settlement or payment of claims, or not taking actions that should be taken so as to result in delays in the settlement or payment of claims." Corrective justice, or reparative justice, as defined above, specifically addresses the errors and losses incurred by the defendant's breach of contract. This justice also allows the plaintiff to obtain compensation for the defendant's actions, allowing the plaintiff to feel that their loss can be restored through a court decision. With this compensation, the plaintiff's rights and losses can be replaced, returning the plaintiff to a state of normalcy.

Referring to the cassation level decision above, the Panel of Judges has clearly deviated from the legal norms in the Rv above. This deviation can be said to be an effort to obtain substantive justice. Substantive justice is defined as justice that can be obtained even though there is a deviation from legal norms. However, it is important to understand that this deviation must be based on the judge's adequate knowledge and belief as well as the judge's good morality. This deviation is not prohibited by Article 5 paragraph (1) of the Judicial Power Law, as long as it is based on the legal values and justice obtained by the judge during the case examination process. This deviation shows that not only does the judge apply the law textually, but the judge is a law enforcer who can uphold justice, benefit, and legal certainty.

The rejection of the dwangsom (forced money) sentence against the plaintiff's lawsuit of Rp1,000,000.00 in the first and appeal levels, but then revised by granting the dwangsom (forced money) demand at the cassation level decision to Rp100,000.00 shows that the Panel of Judges clearly and clearly provides proportional consideration and realizes justice as the main legal objective for the actions carried out by the defendant from 2018 to 2021. The reason is that during that period, the plaintiff must pay for the costs of surgery, care, and treatment at the hospital independently even though the plaintiff has been covered by the defendant's sharia life insurance product in the form of the Berkah Healthsafe product. The product clearly states that the defendant guarantees reimbursement of costs according to the table of benefits for care and surgery at the hospital, before September 13, 2052 for participants and/or additional participants according to the maximum repeat age limit for participants and/or additional participants and fully follows the special provisions of the Berkah Healthsafe additional insurance.

Besides being based on justice, the ratio decidendi rendered by the Panel of Judges at the cassation level is also based on legal expediency. Positioning legal expediency between justice and legal certainty demonstrates that legal expediency is correlated with both. Legal expediency linked to public happiness/satisfaction extends its reach, as it is felt not only by the litigants but also by the public.[39] With this legal benefit, the Panel of Judges aims to bring happiness to those less fortunate. This means that the plaintiff is positioned as disadvantaged because he was denied adequate health protection through Sharia life insurance.[40]Therefore, this benefit can minimize the gap between the defendant, who is a sharia life insurance company that is given full authority to manage the insurance funds, and the plaintiff, who is a customer/insured who has the right to obtain the insurance funds.

The legal benefit granted by the Panel of Judges is manifested in the sentence of dwangsom (forced money) to the defendant. The sentence of dwangsom (forced money), which is a psychological punishment, aims to prevent previous disputes from recurring in the future, so that people interested in using sharia life insurance products feel safe and have no doubts about the protection services provided by the insurance product. This legal benefit, in theory, can override legal norms, which also means overriding the goal of legal certainty. This is because in this case the Panel of Judges' considerations differ from the legal norms contained in Articles 606a, 606b, and 611a Rv, which should prevent the sentence of dwangsom (forced money) from being imposed in a decision that also includes an order regarding the punishment of payment of a sum of money.

The legal benefits that form the basis of the Panel of Judges' considerations have also clearly aimed to provide protection for the plaintiff whose right to claim for care and treatment during his illness from 2018 to 2021 has been taken by the defendant. In addition, it is necessary to understand that if it has been bound by the tabarru' contract that is always present in sharia life insurance products, the defendant as a company is obliged to carry out its business based on the principles of ta'awun (mutual assistance), the principle of justice, the principle of benefit, and must not contain uncertainty/ambiguity in the process of

[39]Amir Ilyas, 2016, loc.cit.
[40]Rommy Haryono Djojorahardjo, 2019, loc.cit.

disbursing insurance claims.[41] By binding the parties to the tabarru' contract, the defendant is obligated to use the participants' collective tabarru' funds to pay material assistance to participants affected by a disaster. If the collective funds prove insufficient/incur a deficit, the company is obligated to cover the deficit using company funds.[42]Due to this, it is appropriate for the Panel of Judges to impose a penalty of dwangsom (coercive money) on the defendant in the amount of IDR 100,000.00 for every day that the defendant is late in implementing the final court decision.

CONCLUSION

Ratio decidendiThe Panel of Judges in giving the defendant a penalty of Rp100,000.00 (one hundred thousand rupiah) is in accordance with the objectives of the law which are just and beneficial and in accordance with the principle of ta'awun (mutual assistance) which is the main principle in sharia life insurance. Justice in the form of returning the plaintiff's rights that have been violated, legal benefits in the form of providing equality of position for the plaintiff who was previously weaker than the defendant as a sharia life insurance company, and the principle of ta'awun (mutual assistance) which is applied through the distribution of funds in sharia life insurance, namely tabarru' funds, participant investment funds, and company funds should be able to create the financial health of the sharia life insurance company so that there are no delays or rejections in paying sharia life insurance claims to insurance participants. These legal considerations have clearly been based on broad insight, adequate capabilities, and good moral capacity possessed by the Panel of Judges.

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