

Justisia Ekonomika

Jurnal Magister Hukum Ekonomi Syariah

Vol 8, No 1 tahun 2024 hal 1027-1041

EISSN: 2614-865X PISSN: 2598-5043 Website: <http://journal.um-surabaya.ac.id/index.php/JE/index>

IMPLEMENTATION OF THE WAKALAH BIL UJRAH AGREEMENT IN SHARIA LIFE INSURANCE INDONESIA AND MALAYSIA

Muhammet Hidayberdiyev

Dragon oil, mollanepes street. 30/38 Ashgabat, Turkmenistan

email: muhammet.itf1@gmail.com

Submitted: 09 April 2024; Accepted: 02 June 2024; Published: 20 June 2024

ABSTRACT

This study examines the increase in public awareness in Indonesia and Malaysia about the importance of insurance, especially Sharia insurance, which both Muslims and non-Muslims prefer because its system is more transparent and fair. Even though public interest in these three countries is increasing, public knowledge about Sharia insurance is still limited. This research aims to understand the implementation of the Wakalah bi al-Ujrah contract in Prudential Sharia life insurance products, analyze its compliance with Islamic law and related fatwas, and identify supporting factors and challenges in its implementation. Using qualitative methods with a descriptive-analytical approach, data was collected through documentation and interviews. The research results show that implementing the Wakalah bi al-Ujrah agreement at Sharia Insurance involves key elements such as the Sharia Participant Application Form (SPAJ), policy summary, general and special terms and conditions, and policy illustrations. This study concludes that the implementation of the Wakalah bi al-Ujrah contract is by Islamic law, because SPAJ regulates the payment of Tabarru contributions and the management of funds based on the Wakalah bi al-Ujrah contract, guaranteeing transparency and fairness in the Wakalah bi al-Ujrah contract. insurance fund management.

Keywords: Sharia Life Insurance, Wakalah bi al-ujrah Agreement, Sharia Insurance

A. INTRODUCTION

According to experts, insurance is a financial mechanism that provides financial protection or compensation to individuals, groups, or companies

against certain risks. In exchange for premium payments, the insured party receives coverage for any loss or damage that may occur to their assets, health, or life. Insurance plays an

important role in managing uncertainty and providing financial security, thereby encouraging recovery after adverse events. This type of insurance covers various risks, including life, health, property, and other general insurance. The basic principle of insurance¹ is to share risk among multiple parties to reduce the financial impact of undesirable events

In Indonesia, there is Law Number 40 of 2014² concerning Insurance which regulates all aspects related to the insurance industry, including the implementation of insurance businesses, insurance companies, reinsurance companies, insurance supporting companies, and insurance supporting professions. This law stipulates provisions regarding licensing, legal entity form, ownership, management, company obligations, as well as supervision by the Financial Services Authority (OJK). This law also regulates protection for policyholders, insureds, or participants, to create a healthy, stable, and trustworthy insurance industry, as well as encouraging national economic growth.

Similar to law no. 40 of 2014, in Malaysia some laws regulate Insurance which are the Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA)³. The FSA regulates the conventional financial industry including insurance, covering

licensing, supervision, consumer protection, and healthy and stable business practices. Meanwhile, IFSA specifically regulates the Sharia financial industry, including Sharia insurance (takaful), by emphasizing Sharia principles in its operations. These two laws aim to ensure the stability, integrity, and growth of the financial industry in Malaysia, both conventional and sharia, with supervision from Bank Negara Malaysia (BNM).

Conventional and sharia insurance companies in Indonesia, apart from having to follow Law No. 40 of 2014, must comply with the regulations of the relevant institutions. Financial Services Authority Regulation (POJK) no. 69/POJK.05/2016 concerning the Operation of Sharia-Based Insurance Companies and Reinsurance Companies in Indonesia regulates the operations of insurance and reinsurance companies that implement Sharia principles. This POJK includes provisions regarding licensing, corporate governance, management of Cabarrus funds (social funds), investment funds, and distribution of underwriting surpluses. In addition, this regulation requires compliance with Sharia principles which are supervised by the Sharia Supervisory Board, to ensure that company operations comply with Sharia law as well as provide

¹ Salim Abas, *Asuransi Dan Manajemen Resiko* (Jakarta: PT Raja Grafindo, 2015).

² Republik Indonesia, *Undang Undang*, No 40 (Jakarta: Republik Indonesia, 2014).

³ Bank Negara Malaysia (BNM)., "Financial Services Act (FSA) and Islamic Financial Services Act (IFSA)" (2013).

protection and transparency for policyholders or participants.

Financial Services Authority Regulation (POJK) no. 72/POJK.05/2016⁴ concerning Good Corporate Governance for Insurance Companies in Indonesia establishes good corporate governance guidelines for insurance and reinsurance companies. This regulation covers the principles of transparency, accountability, responsibility, independence, and fairness in company operations. This POJK regulates the governance structure and mechanisms, including the roles and responsibilities of the board of directors, board of commissioners, and supporting committees. The aim is to increase stakeholder trust, ensure compliance with regulations, and support the creation of a healthy, efficient, and sustainable insurance industry.

The Central Bank of Malaysia Act 2009⁵ provides a legal framework for Bank Negara Malaysia (BNM) to supervise and regulate the entire financial sector, including sharia insurance (takaful). This law strengthens BNM's role in ensuring financial system stability, protecting consumer rights, and developing an inclusive and competitive Islamic financial market. In the context of Sharia insurance, The Central Bank of Malaysia Act 2009⁶ allows BNM to

issue regulations, supervise operations, and ensure takaful companies' compliance with Sharia principles, thereby supporting the healthy and sustainable growth of the Sharia insurance industry

DSN-MUI fatwa fatwa

DSN-MUI (National Sharia Council - Indonesian Ulema Council) issued various fatwas to regulate sharia insurance operations in Indonesia, including:

Fatwa No. 21/DSN-MUI/X/2001 tentang Pedoman Asuransi Syariah⁷:

This Fatwa about Shariah Insurance Guidelines:

First: Sharia insurance must be based on the principle of mutual assistance (ta'awun) and mutual protection (takaful) between the participants. Second: Contracts used in sharia insurance, such as tabarru' and tijari (commercial) contracts, including wakalah bill ujah (representation in return).

Fatwa No. 53/DSN-MUI/III/2006 concerning Wakalah bil Ujah in Sharia Insurance and Reinsurance⁸:

First: Regulating the use of wakalah bil ujah contracts in sharia insurance, where the insurance company acts as a representative (agent) to manage participant funds in exchange for a fee

⁴ Otoritas Jasa Keuangan, "POJK Tentang Kesehatan Keuangan Perusahaan Asuransi Dan Perusahaan Reasuransi Dengan Prinsip Syariah" (2016).

⁵ BANK NEGARA MALAYSIA, "LAWS OF MALAYSIA, CENTRAL BANK OF MALAYSIA ACT 2009" (2009).

⁶ MALAYSIA.

⁷ DSN-MUI, "FATWA DSN-MUI Tentang Pedoman Umum Asuransi Syariah," Pub. L. No. 21/DSN-MUI/IV/2001 (2001).

⁸ DSN-MUI, "FATWA DSN-MUI Tentang Akad Tabarru' Pada Asuransi Syari'ah," Pub. L. No. 53/DSN-MUI/III/2006 (2006).

(ujrah). Second: Emphasize that fees must be agreed in advance and transparent to participants.

Fatwa No. 52/DSN-MUI/III/2006 concerning Sharia Life Insurance⁹:

First: Determine the principles that must be followed in Sharia life insurance operations, including the distribution of underwriting surplus. Second: Regulates the management of participant funds and distribution of claims based on Sharia principles.

Fatwa of the Shariah Advisory Council (SAC) in Malaysia

The Shariah Supervisory Board of Bank Negara Malaysia (BNM) issued various fatwas to ensure that takaful practices are by Shariah. Some important fatwas include:

Guidelines on Takaful Operational Framework¹⁰:

First: Regulating the operational framework of takaful, including the principles to be followed by takaful operators. Second: Emphasis on the use of wakalah (representation) and mudarabah (revenue sharing) contracts in the management of takaful funds.

Resolutions of the Shariah Advisory Council of Bank Negara Malaysia¹¹:

First: Providing guidance and decisions on various sharia issues related to takaful operations, including risk

management and investment of participant funds. Second: Emphasizing the importance of separating tabarru' funds and operator funds to maintain fairness and transparency.

Fatwa on Retakaful (Sharia Reinsurance):

First: Regulate Sharia reinsurance practices (takaful), ensuring that operations and contracts comply with Sharia principles. Second: Directing takaful companies to choose crackaful operators who also comply with sharia principles.

The fatwas issued by the DSN-MUI in Indonesia and the Shariah Advisory Council SAC in Malaysia focus on the application of sharia principles in sharia insurance. These fatwas regulate various operational aspects, starting from the types of contracts used, fund management, and consumer protection, to the corporate governance framework. The main aim of these fatwas is to ensure that all practices in the Sharia insurance industry are in line with Islamic values, transparent, and fair for all parties involved.

Sharia life insurance¹² is a financial protection system governed by Islamic sharia principles, ensuring compliance with ethical and moral values in Islam. In this system, insurance agreements involve several

⁹ DSN-MUI, "FATWA DSN-MUI Tentang Akad Wakalah Bil Ujrah Pada Asuransi Syariah Dan Reasuransi Syariah" (2006).

¹⁰ Bank Negara Malaysia (BNM), "Takaful Operation Work" (2019).

¹¹ Bank Negara Malaysia (BNM),

"Resolutions of Shariah Advisory Council Bank Negara Malaysia" (2010).

¹² Amrin Abdullah, *Asuransi Syariah : Keberadaan Dan Kelebihannya Ditengah Asuransi Konvensional* (Jakarta: IKAPI, 2006).

types of sharia contracts, namely mudharabah, wakalah, and tabarru'.

Mudharabah Agreement (Profit Sharing Cooperation): In this agreement, the customer and the insurance company share profits and losses resulting from managing funds. Customers contribute premiums, and the company manages the funds. Profits obtained from investment funds will be shared between the customer and the company according to the initial agreement. If a loss occurs, the loss will also be shared based on the agreement.

Wakalah Agreement (Appointment of Representative): In a Wakalah agreement, the insurance company acts as a representative or agent who manages the funds provided by the customer. Customers contribute premiums, and the company manages these funds to generate profits. The company receives compensation in the form of *ujrah* (fee) for its management services. In this case, customers give full trust in the company to manage their funds with the principles of fairness and transparency.

Akad Tabarru' (Voluntary Donations): Akad Tabarru' emphasizes the voluntary characteristic of making contributions to the common good. Funds collected through premiums or customer contributions are used to help fellow participants who experience disasters or claims. This principle reflects the values of solidarity and mutual assistance in Islam. Customers contribute a portion of their contributions to the tabarru' fund, which is then used to pay insurance claims.

These principles prevent elements prohibited in Islam such as *riba* (interest), *gharar* (uncertainty or speculation), and *maysir* (gambling). Thus, Sharia life insurance products are designed to meet customers' financial protection needs while still adhering to Islamic values and teachings, ensuring that all transactions are free from prohibited activities.

Insurance, by its very nature, provides protection and hope for the future to individuals, groups, and institutions by offering to address possible losses arising from uncertain events. Apart from ensuring the survival of the company by protecting against economic risks, insurance also provides guarantees for individual income by guaranteeing job stability. With insurance, people gain a sense of security and financial certainty, creating a more stable and protected environment. The presence of insurance is considered very beneficial, making it an important instrument in managing risk and providing economic security for all parties. Unexpected disasters and disasters, such as accidents and fires, are considered provisions of Allah who regulates all aspects of the universe through His laws called *Sunnatullah*. Although humans cannot avoid this fate, they are encouraged to surrender to Allah, pray, and make active efforts to reduce the risks and financial impacts that may arise. In this context, the attitude of *tawakal* (surrender) and *ikhtiar* (effort) is considered part of the human response to God's destiny, with the belief that human efforts in facing disaster are a

form of obedience and responsibility for the life that is given.

The importance of public awareness of insurance, especially sharia insurance, is the key to avoiding mistakes in the future. A good understanding of the concept of sharia insurance provides great benefits, enabling insurance participants to choose products that suit their needs. Apart from considering the type of insurance product, choosing an insurance company that offers the product is also an important factor. This awareness creates a foundation for people to make better decisions, ensuring that the insurance they choose not only provides effective protection but also complies with the desired principles. Efforts to increase public understanding and awareness of insurance, especially Sharia insurance, play a crucial role in ensuring that insurance decisions are directed at the most appropriate and appropriate options.

Sharia insurance has become one of the sharia financial institutions that has successfully grown and developed in Indonesia. Interestingly, users of sharia insurance services are not limited to Muslims only but also involve non-Muslims. The main attraction that causes both Muslims and non-Muslims to choose Sharia insurance is the implementation of a system that is considered more transparent and fair. Openness and fairness in Sharia insurance operations create trust and increase public interest in these products. This shows that the principles of transparency and fairness in Sharia insurance are key factors in

building cross-religious trust and expanding the share of the Sharia insurance market in Indonesia.

The rapid development of the Sharia insurance industry has brought about significant changes in the role and function of insurance. Apart from functioning as a risk insurance or protection institution, Sharia insurance now also acts as a public fund management institution. One innovation that reflects this change is the unit link product, where two main elements, namely protection (insurance protection) and investment, are linked together. Unit links allow policyholders to allocate part of their premiums to investment instruments, such as shares or bonds, while still getting the benefits of insurance protection. This reflects a response to society's increasing understanding and expectations of insurance products that not only provide financial protection but also facilitate the growth and management of long-term investment funds. Thus, Sharia insurance has developed into a more holistic financial institution, covering protection and investment aspects to meet the increasingly complex needs of policyholders.

Sharia insurance companies and conventional insurance have the same financial protection function, but the main difference lies in the operational basis. Sharia insurance companies operate based on Islamic Sharia principles by using Sharia contracts and avoiding usury and activities that are considered haram. The success of Sharia insurance companies is not only

determined by the products or services they offer but also by their effectiveness and consistency in implementing Sharia principles in all aspects of their operations.

In managing funds and bearing risks, Sharia insurance prohibits *gharar* (uncertainty), *maysir* (gambling), and *riba* (interest). These three prohibitions are fundamental principles that must be avoided in Sharia insurance practices, ensuring transparency, fairness, and compliance with Islamic values in every aspect of its operations.¹³

In the context of Sharia insurance, insurance companies not only act as risk bearers but also as managers (operators), while participants act as participants. Each participant commits himself to other participants with similar risks and agrees to make donations commensurate with his risks. These donations are collected and used to pay for the losses of group members who experience disaster. Due to the lack of competence of participants in managing their risk management activities, Sharia insurance companies need experts who are competent in risk selection, collecting donations, investing, adjusting losses, paying claims, and other aspects. The existence of these experts is very important to achieve Sharia insurance goals effectively.

This is where the role of insurance companies as risk managers is needed. In the Sharia context, insurance companies act as risk managers and receive wages based on

the contracts used between participants and managers. There are two contracts in this context. First, the contract between the participants is *tabarru'*, namely a contract that is not commercial but aims to help each other in goodness. Participants contribute as grants without expecting anything in return, forming a mutual aid fund or *tabarru'* fund. Second, the contract between the participant and the manager, where the manager receives wages for his role in managing the risk. The amount of wages is determined according to the agreement between the parties and may vary depending on the contract used.

The contract between the participant and the manager (insurance company) in the Sharia context uses the *wakalah bi al-ujrah* contract. In this agreement, participants bind themselves with managers to represent them in risk management. The *wakalah bi al-ujrah* contract refers to *wakalah*, namely the representation of one party by another party in certain matters. In this case, the insurance company as a representative of the participant asks for wages (*ujrah*) for the tasks carried out. However, this contract is not *tabarru'* (grant), but rather *wakalah bi al-ujrah* which is commercial because insurance companies are business oriented. The legal basis for Sharia insurance with the *Wakalah bi al-ujrah* contract is confirmed in the National Sharia Council Fatwa No: 52/DSN-MUI/III/2006 concerning the *Wakalah bil Ujrah Agreement on Sharia*

¹³ Muhaimin Iqbal, *Asuransi Umum Syariah dalam praktik* (Jakarta: Gema Insani

Press, 2005, Cet 1), h.34.

Insurance and Sharia Reinsurance. Engagements in Sharia Insurance Companies are carried out through various contracts, one of which is the wakalah bi al-ujrah contract. In this contract, the participants (misrepresent) give authority to the Sharia insurance company (deputy) to represent the interests of the exchange for providing ujarah (fee) for a certain time limit. Thus, this company functions as a representative participant in risk management, and wages (ujrah) are given as compensation for the tasks carried out during that period.

In the wakalah bi al-ujrah contract used by Sharia insurance companies, there are prohibitions based on Islamic law. For example, the representative is not entitled to a share of the investment returns of the muklik because the contract used is a wakalah contract. In the fifth point of the second part, it is explained that in managing investment funds (including tabarru' and savings funds), the Wakalah bi al-ujrah contract can be used by following the fatwa provisions related to the contract. Apart from that, a mudharabah contract can also be used by following the provisions of the mudharabah fatwa, or a mudharabah musytarakah contract by the provisions of the mudharabah musytarakah fatwa. This shows that Sharia insurance companies continue to comply with the principles of Islamic law in carrying out their operations.

Some of the problems in the field are:

Problems related to the implementation of wakalah bil ujarah agreements in sharia life insurance include several things, including

unclear ujarah agreements which can lead to customer dissatisfaction and distrust, difficulties in determining fair ujarah due to differences in views regarding risk evaluation, and high competition which can lead to a decline in ujarah but also threaten business continuity and service quality. In addition, difficulties in managing funds can jeopardize the payment of claims and the company's financial obligations, potential non-compliance with Sharia principles can create distrust among customers who are sensitive to Sharia compliance, while a lack of transparency in the wakalah process can disrupt customer trust in fund management and ujarah determination.

To overcome this problem, insurance companies need to pay attention to the provisions in the Wakalah contract, establish good communication with customers, and carry out regular monitoring and evaluation of the implementation of the Wakalah bil ujarah contract. Additionally, the involvement of sharia authorities and independent sharia audits can help ensure compliance with sharia principles.

B. RESEARCH METHODS

In research regarding the implementation of wakalah bil ujarah agreements in sharia life insurance, this researcher adopted qualitative research methods, namely Case Studies and Focus Group Discussions (FGD). Case studies allow researchers to deeply understand every aspect of the

problem¹⁴, including unclear ujah agreements, difficulties in determining fair ujah, and lack of transparency in the wakalah process by using hermeneutic theory to understand the context and meaning of the cases studied. Meanwhile, FGD allows researchers to gather views from various parties involved in the Sharia life insurance industry, such as company representatives, customers, and Sharia experts, to gain a broader and deeper understanding of the problems faced and improvement efforts that can be made. by taking views from communication theories, sociology, or psychology to understand the dynamics of interaction between discussion participants and the implications for research.

C. RESULTS AND DISCUSSION

1. Sharia Life Insurance

Sharia Life Insurance is a form of insurance that is based on Islamic sharia principles. The following is a brief explanation of the definition of sharia life insurance according to law in Indonesia and Malaysia:

Indonesia: According to Law Number 40 of 2014 concerning Insurance, Sharia life insurance is a part of Sharia insurance where participants help each other and bear joint risks in the event of risks related to a person's life, such as death or disability. The basic principles are ta'awun (mutual help) and takaful (mutual support). Sharia life insurance in Indonesia

usually uses contracts such as mudharabah (profit sharing) or wakalah bil ujah (agent for compensation) by Islamic law.

Malaysia: In Malaysia, Sharia life insurance is regulated under the Islamic Financial Services Act 2013. Sharia life insurance or family takaful is an agreement in which participants mutually agree to make contributions (tabarru') into a takaful fund that will be used to help other participants who experience risks related to their lives, such as death or disability. This system operates based on the principles of Islamic law, using concepts such as wakalah (agency) and mudharabah (profit sharing).

Both countries regulate Sharia life insurance to protect by Islamic principles, ensuring that operations and contracts used comply with Sharia law. The purpose of Sharia life insurance is to try to maintain the continuity of life by protecting against the possibility of bad conditions. This is as regulated in the Koran, Surah Yunus which means: And every nation (has) a messenger. So when their messenger has come, the law will be applied to them justly and they will not be oppressed (in the slightest) (QS: 10/47). And they said, "When (comes) the threat if you are truthful people? (QS: 10/48). Say (Muhammad), "I do not have the power to resist harm or benefit myself, except what God wills." For every community, there is a death (time limit). When their death comes, they cannot ask for delay

¹⁴ Sugiono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D*, Thirrd (Bandung:

Alfabeta, 2021).

or acceleration even for a second (QS: 10/49)

Sharia life insurance and conventional life insurance have the same goal, namely risk management or overcoming. However, the fundamental difference between the two lies in the way of management and the contract. Apart from that, each participant's Sharia life insurance premium that has been received is put into two different accounts. First, it is entered into a savings account, namely the participant's savings account. Second, a special account or *tabarru'*¹⁵

Basic Principles of Sharia Insurance

The basic principles that exist in Sharia insurance are not much different from the basic principles that apply to the concept of Islamic economics in a comprehensive and general manner. This is because the study of Sharia Insurance is a derivative of the concept of Islamic economics. Likewise, insurance must be built on solid foundations and basic principles. In this case, there are ten basic principles of Sharia insurance, namely monotheism, justice, mutual assistance, cooperation, trust, willingness, truth, prohibition of usury, prohibition of gambling, and prohibition of *gharar*.

2. Akad Wakalah Bi Al-Ujrah Meaning of Wakalah bi al-

ujrah contract

Akad Wakalah bi al-ujrah is an alliance between the two parties giving authority (representative) who gives his authority to (representative), where (representative) delegates to do something by giving Ujrah (fee/wages) to the representative who performs his duties and the obligation for the representative to carry out the duties of the representative to the best of his ability and cannot be canceled unilaterally. So it can be said that the contract of Wakalah bi al-ujrah will generate a source of obligations that must be fulfilled.¹⁶ If one of the parties does not fulfill its obligations or if a dispute occurs between the parties, the settlement will be carried out through a Sharia Arbitration body after no agreement has been reached through deliberation.¹⁷

Wakalah or representative means handing over, delegating, or giving a mandate by appointing someone to represent him in terms of doing something voluntarily or by providing compensation in the form of ujrah (wages). Wakalah is a delegation agreement, delegation of authority or power from the first party (insurance participant) to the second party (insurance company/operator) to carry out something solely on behalf of the first party, for the full benefit and responsibility of the first party. This Wakalah bi al-ujrah agreement can

¹⁵ Gemala Dewi, *Aspek-Aspek Hukum Dalam Perbankan dan Perasuransian Syariah di Indonesia* (Jakarta: Kencana, 2006, Cet 1), h. 154.

¹⁶ Agus, Ernawan dan dkk, *Solusi Berasuransi : Lebih Indah Dengan Syariah* (Bandung:

PT Karya Kita, 2009, Cet 1), h.94.

¹⁷ Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia No: 52/DSN-MUI/III/2006, tentang *Wakalah bil Ujrah*, bagian enam angka 1, h. 9

*occur between Sharia insurance companies and participants, insurance companies and marketing (agents), or insurance companies and reinsurance companies.*¹⁸

In Indonesia, Wakalah bi al-Ujrah in Sharia life insurance is a concept where the insurance company (takaful operator) acts as an agent (representative) for insurance participants for a fee (ujrah). In this system, participants contribute their premiums to a common fund, which is managed by the insurance company. The mechanism involves a wakalah agreement, where the company is mandated to manage and invest participant funds. The premium consists of Tabarru' funds for mutual assistance between participants and Ujrah as a company fee. The company invests funds according to Sharia principles and uses the proceeds to pay claims. Participants receive insurance benefits from Dana Tabarru' if an insured risk occurs. Surplus funds after claims and administrative costs can be distributed to participants according to company policy. The advantages of this system include transparency, sharia compliance, and fairness in agreed rewards.

Wakalah bil Ujrah is a representative agreement with compensation where the participant gives authority to the insurance company (takaful) to manage funds by

receiving a fee in return¹⁹. In Malaysia, the SAC guides to ensure these contracts comply with Sharia principles. The guidelines emphasize transparency in agreements, trustful management of participant funds, and separation of tabarru' funds from company funds. Participants' investment of funds must comply with Sharia principles, and the company must have an internal Sharia supervisory board. Underwriting surpluses can be shared between participants and the company fairly. The implementation of these rules is supervised by Bank Negara Malaysia (BNM) which ensures takaful companies' compliance with sharia guidelines.

Pillars and Conditions of Wakalah bi al-ujrah

In implementing the Wakalah bi al-ujrah contract, some pillars and conditions must be met, because this is what affects the validity of a Wakalah bi al-ujrah contract. However, the pillars and conditions in the Wakalah bi al-ujrah contract here, it is different from the provisions contained in the Civil Law Code (Burgelik Wetboek). In the Civil Code, an agreement is valid if it fulfills the following conditions, namely the existence of an agreement between the parties, the ability to agree, a specific matter, and a halal reason.²⁰

Rukun Wakalah bi al-Ujrah in

¹⁸ Abdulah Amrin, *Meraih Berkah Melalui Asuransi Syariah* (Jakarta: Gramedia, 2011), h.107

¹⁹ BNM/RH/CP 028-16, *Islamic Banking and Takaful Department, Wakalah-Concept*

Paper, 2016.

²⁰ Nisa Arifiani Umar, "Pelaksanaan Akad Wakalah bil Ujrah Pada Asuransi Jiwa Syariah Di PT Asuransi Keluarga," (Skripsi S1 fakultas Hukum, Universitas Indonesia, 2007), h. 37.

Indonesia includes al-Muwakkil (insurance participant who authorizes the insurance company to manage funds), al-Wakil (insurance company that receives power of attorney by sharia), al-Muwakkil Bihi (management and investment of participant funds), and sighthah (a clear statement and acceptance of power of attorney between the participant and the company). The conditions include clarity of the contract regarding rights, obligations, and ujah (fees), company competence in managing funds according to sharia, fund management without usury, gharar, and maysir, as well as honesty and trustworthiness of the company. The process begins with signing the contract, paying premiums (including tabarru' and ujah funds), managing funds according to Sharia principles, paying claims from tabarru' funds, and distributing surplus tabarru' funds after claims and operational costs to participants according to company policy.

Meanwhile, the pillars and terms of wakalah bil ujah in Malaysia, namely Rukun Akad Wakalah bil Ujah are the basic elements that must be present for the contract to be considered valid according to sharia, namely: al-Muwakkil (insurance participants who authorize the takaful company to manage their funds), al - Wakil (takaful company that receives power of attorney), al-Muwakkil Bihi (management of participant funds including investment and payment of claims), and sighthah (consent and qabul

or statement of handover of power of attorney). The conditions include the suitability of the contracting parties (legally competent participants and licensed takaful companies), clarity of the object of wakalah (management of contributed funds), clarity of ujah (agreed fees), transparency and honesty of the company, as well as sharia compliance in managing funds. The implementation and supervision of this contract is regulated by the SAC guidelines and regulations, Bank Negara Malaysia (BNM) supervision, and the internal Sharia Supervisory Board in each takaful company to ensure operations are by Sharia principles. However, overall, both in Indonesia and Malaysia, because they are based on Islamic sharia, in general, there is no significant difference.

Based on the Fatwa of the National Sharia Council of the Indonesian Ulema Council No: 10/DSN-MUI/IV/2000²¹ concerning Wakalah, the Wakalah bi al-ujrah contract must fulfill the pillars: Al-Aqidain (subject of the engagement), Mahallul'Aqd (object of the engagement), and Ijab -qabul (Sighatal-Aqd). This research analysis links the concept of the Wakalah bi al-Ujah contract in Islamic Fiqh with DSN-MUI Fatwa No. 52/DSN-MUI/III/2006, as well as the Sharia Advisory Council (SAC) in Malaysia regarding wakalah bil ujah which prohibits gharar, maisir and usury. The discussion will assess the suitability of the implementation of the Wakalah bi

²¹ MUI, "FATWA DSN-MUI, TENTANG WAKALAH," Pub. L. No. 10/DSN-

MUI/IV/2000 (2000).

al-Ujrah contract for life insurance in sharia insurance companies with the rules of Fiqh and Fatwa from both DSN-MUI Indonesia and the Shariah Advisory Council, SAC, Malaysia. The related elements in the Wakalah bi al-Ujrah contract for life insurance in Sharia insurance companies include the Sharia Life Insurance Application Letter (SPAJ), Policy Overview, General and Special Provisions, and Policy Illustrations.

The Sharia Life Insurance Application Letter (SPAJ) is part of the Wakalah bi al-Ujrah contract because it includes a statement of the participant's authority to the Sharia Insurance Company to manage the participant's funds based on the tabarru' agreement. Sharia life insurance policies and illustrations are also part of the Wakalah bi al-Ujrah contract because they show the receipt of benefits by the company and details of the participant's insurance benefits. The General and Special Conditions of a Sharia life insurance policy are included in the Wakalah bi al-Ujrah contract because the policy provisions stipulate that the agreement is valid until the date stated, and is an inseparable part of the policy.

The findings show that the Wakalah bi al-Ujrah contract for life insurance at the Sharia Insurance Company has been implemented by DSN-MUI Fatwa No: 10/DSN-MUI/IV/2000 and Fiqh theory. The operational basis of this contract requires the company to fulfill the terms and conditions according to Sharia principles. The subject of the contract consists of the Sharia

Insurance Company and participants (main and additional). The object of the engagement includes tangible and intangible objects. Ijab and Qabul are statements of agreement between the company and the participant, visible when signing the policy. The implementation of the contract is by the pillars and conditions in DSN-MUI Fatwa No: 52/DSN-MUI/III/2006 and Fiqh theory, as well as the end of the contract by the provisions of Islamic law.

According to the Indonesian DSN-MUI Fatwa and the Shariah Advisory Council, SAC, Malaysia, the Wakalah bil Ujrah contract must include the amount, method, and time for taking the Ujrah (fee) for contributions. This fatwa also prohibits insurance companies as representatives from obtaining a share of investment returns because the contract used is the Wakalah contract. In investment management, Wakalah bi al-ujrah, Mudharabah, or Mudharabah Musytarakah contracts can be used according to the applicable fatwa. The findings show that the implementation of the Wakalah bi al-ujrah contract for Sharia life insurance at the Sharia Insurance Company is by the Fatwa of DSN-MUI Indonesia and the Shariah Advisory Council, SAC, Malaysia, which requires companies to state the amount, method, and collection of fees for contributions, where the participant's contribution is deducted by the ujarah stated in the Sharia life insurance policy illustration.

Investment management in Sharia life insurance uses the Wakalah bi al-Ujrah contract, with the ujarah/fees

stated in the life insurance policy illustration. Sharia Insurance Companies also choose investment types according to Sharia principles. Research analysis shows that the implementation of this contract is by Islamic sharia, as regulated in the Fatwa of DSN-MUI Indonesia and the Shariah Advisory Council, SAC, Malaysia, as well as the Hadith of Muttafaq'alah, al-Syukani, and al-Authar which permits receiving ujarah after carrying out duties. participants, according to the management procedures in Sharia life insurance to avoid the element of usury using the Wakalah bi al-Ujarah contract

D. CONCLUSION

Based on the results of the previous analysis and discussion, the implementation of the Wakalah bi al-ujrah agreement in Sharia Life insurance products at Sharia Insurance Companies can be concluded that, regarding the implementation of the

Wakalah bil ujarah agreement in Sharia life insurance, involves several complex aspects. These include unclear Ujarah agreements which have the potential to cause customer dissatisfaction and distrust, difficulties in determining fair Ujarah due to differences in views regarding risk evaluation, and high competition which can result in a decline in Ujarah and threaten business sustainability and service quality. Meanwhile, challenges in managing funds are also a serious issue that can endanger claim payments and the company's financial obligations. The potential for non-compliance with Sharia principles is also a concern, which could create distrust among customers who are sensitive to Sharia compliance. Lastly, the lack of transparency in the wakalah process can damage customer trust in fund management and ujarah determination.

REFERENCES

- [1] Adawiah, Engku Rabiah, *Essential Guide to Takaful (Islamic Insurance)* (Kuala Lumpur: Cert. Publications Sdn. Bhd, 2008).
- [2] Agus, Ernawan dan dkk, *Solusi Berasuransi : Lebih Indah Dengan Syariah* (Bandung: PT Karya Kita, 2009, Cet 1), h.94.
- [3] Ajib Muhammad, *Asuransi Syariah* (Jakarta Selatan: Rumah Fiqih Publishing, 2019).
- [4] Ali Zainuddin, *Hukum Asuransi Syariah* (Jakarta: Sinar Grafika, 2008).
- [5] Amrin Abdullah, *Asuransi Syariah : Keberadaan Dan Kelebihannya Ditengah Asuransi Konvensional* (Jakarta: IKAPI, 2006).
- [6] Amrin, Abdullah. *Meraih Berkah Melalui Asuransi Syariah*. Jakarta: Gramedia, 2011
- [7] BANK NEGARA MALAYSIA, "LAWS OF MALAYSIA, CENTRAL BANK OF MALAYSIA ACT 2009" (2009).
- [8] Bank Negara Malaysia (BNM)., "Financial Services Act (FSA) and Islamic Financial Services Act (IFSA)" (2013).
- [9] Bank Negara Malaysia (BNM)., "Takaful Operation Work" (2019).

- [10] Bank Negara Malaysia (BNM)., “Resolutions of Shariah Advisory Council Bank Negara Malaysia” (2010).
- [11] DSN-MUI, “FATWA DSN-MUI Tentang Pedoman Umum Asuransi Syariah,” Pub. L. No. 21/DSN-MUI/IV/2001 (2001).
- [12] DSN-MUI, “FATWA DSN-MUI Tentang Akad Tabarru’ Pada Asuransi Syari’ah,” Pub. L. No. 53/DSN-MUI/III/2006 (2006).
- [13] DSN-MUI, “FATWA DSN-MUI Tentang Akad Wakalah Bil Ujrah Pada Asuransi Syariah Dan Reasuransi Syariah” (2006).
- [14] Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia No.52/DSN-MUI/III/2006 Tentang Wakalah bil Ujrah.
- [15] Gemala, Dewi. *Aspek – Aspek Hukum Dalam Perbankan dan Perasuransian Syariah Di Indonesia*, Cet.1. Jakarta: Kencana, 2006.
- [16] Muhaimin Iqbal, *Asuransi Umum Syariah dalam praktik* (Jakarta: Gema Insani Press, 2005, Cet 1), h.34.
- [17] MUI, “FATWA DSN-MUI, TENTANG WAKALAH,” Pub. L. No. 10/DSN-MUI/IV/2000 (2000).
- [18] Nisa Arifiani Umar, “Pelaksanaan Akad Wakalah bil Ujrah Pada Asuransi Jiwa Syariah Di PT Asuransi Keluarga,” (Skripsi S1 fakultas Hukum, Universitas Indonesia, 2007), h. 37.
- [19] Otoritas Jasa Keuangan, “POJK Tentang Kesehatan Keuangan Perusahaan Asuransi Dan Perusahaan Reasuransi Dengan Prinsip Syariah” (2016).
- [20] Republik Indonesia, Undang Undang, No 40 (Jakarta: Republik Indonesia, 2014).
- [21] Saharudin Desmadi, *Pembayaran Ganti Rugi Pada Asuransi Syariah* (Jakarta, 2015).
- [22] Salim Abas, *Asuransi Dan Manajemen Resiko* (jakarta: PT Raja Grafindo, 2015).
- [23] Sugiono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D, Third* (Bandung: Alfabeta, 2021).