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SHARIA GENERAL CONTRACT IN THE CONTEXT OF SHARIA INSURANCE IN INDONESIA

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Abstract

This article aims to identify and study Islamic financial institutions, in this case, Islamic Insurance, which implements an economic system based on the contracts in Islamic Economics. This research is also the result of library research that includes a study of various written works, including books, journals, and others. This article is compiled based on original materials from laws and regulations and the Indonesian Ulema Council on Islamic insurance fatwas. To understand the existence of these contracts and the problems they cause, this article discusses general contracts such as the Tijarah contract and the Tabaru contract in Indonesian Islamic insurance. The Tabarru' and Tijarah contracts are used in Islamic insurance, as evidenced by the results of research based on laws, laws, and regulations, and fatwas issued by the Indonesian Ulema Council. The Tabarru contract is a grant contract, namely a contract that deposits several premiums. These premiums are grants from insurance participants, the purpose of which is as funds to help other insurance participants without expecting a profit. Meanwhile, the Tijarah contract is a premium marketing contract, where profit sharing is carried out by the provisions stipulated in the contract.

Keywords: *Insurance, Takaful, Tabarru's contract, Tijarah contract*

A. INTRODUCTION

Islamic Financial Institutions (LKS) are currently developing and growing very rapidly and rapidly. The number of Islamic banks and other financial institutions, sharia pawnshops, Sharia insurance, and so on is a form of

Muslim attention to the improvement and utilization of the Sharia economy as well as a form of practicing Islamic sharia.

Economic complexity requires a risk guarantee system, including property risks, health, death, injury, and so on. The risk guarantee can be accommodated by

insurance institutions that are intended for guarantee and coverage institutions. Islamic financial institutions, such as those engaged in the field of guarantee or insurance, are present in Indonesia to help insurance institutions avoid the practice of *riba*, *gharar*, *maysir*, and other behaviors prohibited by Islamic law.

Sharia Insurance Institution is a guarantee and coverage institution. In general, Sharia insurance institutions and conventional insurance have almost the same procedures and frameworks. Simply put, Sharia insurance is based on Islamic law.¹ This shows that the legal basis is sourced from the Quran and Sunnah, in addition to its validity is derived from the applicable laws and regulations.

One of the main differences between Sharia insurance and

conventional insurance is insurance risk management. In traditional insurance, the risk management system is the transfer of risk. This indicates that the insurance provider bears all the risks of the participant. Meanwhile, the structure of risk sharing and *tabarru*, or helping each other, is the basic idea of sharia insurance. In Sharia insurance, each insurance member bears the risk jointly.²

In practice, Sharia insurance utilizes special agreements as the basis for insurance implementation contracts.³

. This agreement is an important consideration when choosing an insurance policy. Such as fund management, investment profits, claim submission, and so on. The agreement used in the implementation of Sharia insurance must be by the rules of Islamic law to avoid behavior prohibited by law.

¹ basic principles and concepts of Islamic insurance institutions are much different from the general concepts that exist in the Islamic economy. This is because sharia insurance is a derivative of the Islamic economy itself. The basic principles of sharia insurance include: monotheism, justice, help, cooperation, trust, willingness, prohibition of usury, *maysir* and *gharar*, all of which are based on Islamic sharia. This concept of sharia insurance makes policyholders as a big family that guarantees each other and bears risks. This kind of attitude is certainly due to the fact that in transactions made using contracts in insurance institutions such as contracts (*takafuli*) instead of mutual exchange contracts (*tabaduli*) that have been used by conventional insurance. See Muhammad Ajib, *Sharia Insurance*, (Jakarta: Rumah Fiqih Publishing, 2019), pp. 35-40.

² See Wetria Fauzi, *Insurance Law in Indonesia*, (Padang: Andalas University Press,

2019), p. 90. In addition, conventional insurance recognizes the term forfeited money or loss premium, namely participants who cannot continue the agreement cannot take their funds back, while in sharia insurance there is no premium loss. If in the future there is a customer who tries to resign before the agreement ends, the customer can still take the funds back. Because the insurance company is only the trustee of the customer to manage the funds. See Imaniar Mahmuda and Umi Karimatul Azizah, "A Comparative Study of Sharia Insurance with Conventional Insurance," *Al-Yasini Journal*, Vol. 04 No. 1 May 2019, p. 64.

³ Warsidi, at all, 2024, Implementation of Sharia System in Sharia-Certified Hospitals, *Jurnal Ilmiah Ekonomi Islam*, Vol 10, no 3, <https://jurnal.stie-aas.ac.id/index.php/jie>

On behalf of the Indonesian Ulema Council (MUI), the National Sharia Council (DSN) has also issued a fatwa on the general principles of Sharia insurance. The main focus of this article is on agreements in Sharia insurance with common ones such as *the Tijarah* contract and *the Tabaru* contract contained in Sharia insurance.

B. RESEARCH METHODS

The research methodology of this paper involves examining various books through literature research. Books, journals, and other writings related to the theme of the discussion, as well as examining a number of laws and regulations and MUI fatwas. A descriptive approach is used to study these materials to identify issues of general contracts/contracts such as *Tijarah* and *Tabaru'* and how they are applied in Islamic insurance in Indonesia.

C. RESULTS AND DISCUSSION

1. Overview of Sharia Insurance Institutions

In addition to providing social security and safety, insurance also guarantees the welfare of the community.

Insurance is a well-designed organization, built on consensus among the community to support each other. Insurance is intended to reduce the danger or loss of goods that may occur due to major trade or business losses, accidents, injuries, or death.⁴ In addition, through insurance, a considerable amount of funds can also be collected which can then be allocated for infrastructure development which in addition to being beneficial for insurance participants, can also be beneficial to the community. You can get protection against financial losses due to unexpected circumstances by purchasing insurance.⁵

The term insurance is the root of the word *insurance*. Although the word "insurance" is also known as "*verzekering*," which means "protection," in Dutch law.⁶

While insurance institutions are a form of coverage between two parties, namely the insurer and the insured, In accordance with the definition of insurance set by the government in Law Number 40 of 2014 concerning Insurance, there is also a section that focuses more on discussing sharia insurance companies.⁷

⁴ Nurul Ichsan Hasan, *Introduction to Sharia Insurance*, (Jakarta: Gaung Persada Press Group, 2014), p. 35.

⁵ See Hari Sudarsono, *Sharia Banks and Financial Institutions Description and Illustration*, (Yogyakarta: Ekonisia, 2003), p. 36

⁶ Abdullah Amrin, *Sharia Insurance* (Jakarta: PT Elex Media Komputindo, 2006), p. 2.

Some literature mentions that the word *Assurantie* comes from Latin, (*assecurare*) which means convincing someone. Term *Assurance* then associated with the coverage of a person's life. See Andi Sumitra, *Banks and Islamic Financial Institutions*, (Jakarta: Kencana Perdana Media, 2009), p. 243

⁷ A collection of agreements, consisting of agreements between sharia insurance

Based on the definition above, the existence of an agreement between policyholders identifies the readiness and ability to insure each other against losses experienced in the future. Unlike traditional insurance, which is only talked about between the insured and the provider, this is different.

Hasal Ali in *Perspective Insurance of Islamic Law*, clearly states that insurance is a social organization that accepts or implements the concept of risk change and collects funds from insurance participants to pay for losses or disasters that occur in each policyholder participant.⁸

Furthermore, according to the Fatwa on Insurance or Takaful issued by the MUI, in line with sharia, takaful is a form of mutual commercial protection and support between several individuals or parties through investments in the form of assets and/or *tabarru'*, which offers a pattern of return to face certain risks through an agreement (*akad*). This shows that Takaful, *Te'min*, or *Tadhamun* is

another name for Sharia insurance institutions.⁹

The definition of insurance provided by the MUI above equates insurance with *takaful* and *ta'min*, including the concept of *tadhamun*. Even some literature, both in the form of books and journals, also equates the concept of insurance with the terminology in classical jurisprudence. However, if viewed conceptually, the differences between each will be visible.

Abu Zahrah also defined sharia insurance as *takaful* which has a fairly broad meaning. According to Abu Zahrah, *takaful* is an obligation that must be complied with by members of the community to support or ensure the good of each other. Therefore, *takaful* is an obligation that is shared by Muslims; In this case, *takaful* is intended to support, encourage, and ensure other Muslims in matters related to morality.¹⁰

Takaful emphasizes the concepts of mutual protection, collaboration, and accountability between individuals and groups across all social classes. This

companies and policyholders and agreements between policyholders, in the context of contribution management based on sharia principles to help and protect each other. Article 1 of Law No. 40 of 2014 concerning Insurance.

⁸ Hasan Ali, *Insurance in the Perspective of Islamic Law: A Review of Historical, Theoretical and Practical Analysis*, (Jakarta: Prenada Media, 2004), p. 59

⁹ Fatwa No: 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance.

stated that sharia insurance funds are not only for commercialization (*tijarah contract*), but also for grants (*tabarru'*). This means that if the funding is intended for grants, then the management does not have to provide benefits from the investment value to the capital owner (*sohib al-mal*), and this point is the characteristic as well as the differentiator from conventional insurance.

¹⁰ Khoiril Anwar, *Sharia Insurance; Halal & Maslahat*, (Solo: Triad, 2007), p. 19.

implies that everyone who uses the idea of *takaful* owes something to others.¹¹

In the framework of *takaful*, there are generally four parties in its implementation, namely the participant, the manager (the company as the insurer), the insured, and the recipient.¹² An example of this *takaful* legacy is the health insurance scheme in Indonesia, which is managed by the Social Security Administration Agency (BPJS).

In contrast to *takaful*, *ta'min* is more inclined to individual insurance, where participants pay a certain amount of funds.¹³ In installments to the company to transfer asset risk to the company. Meanwhile, the company is in charge of calculating and collecting premiums and compensating participants if there are claims. In this *ta'min* concept, the goal of an insurance company is to maximize profits and reimbursement of members' cash.¹⁴

Broadly speaking, Islamic insurance is more inclined to the concept of *takaful* as a forum for joint contributions for the common good. Meanwhile, *ta'min* is the forerunner of conventional insurance as individual insurance, and not for a common purpose.

Given some of the words that have been discussed, insurance can be

interpreted as a legal arrangement involving two or more parties (insurer and insured) who are obliged to comply with an agreement or contract to mitigate risks that have not yet occurred but may occur in the future. The insured party is required to pay a certain amount of premium to the insurer as collateral. Meanwhile, *takaful* is an institution formed as a guarantee institution that is help-helping, not inclined towards commercialization.

Even though it is commercialized, the method of distribution must also be in accordance with the provisions stated in the contract and comply with the rules of Islamic law.

2. General Contracts in Sharia Insurance

Insurance, in theory, is a relationship of responsibility between the parties. This means that when one party experiences a loss or risk, then at that time the other party will have an obligation to bear the loss, in other words, the profit and loss are joint dependents.

In order for an insurance contract to be enforced under Sharia law, it must be based on a specific commitment. In order to comply with Sharia principles and avoid violating Islamic law, the

¹¹ Nurul Ihsan Hasan, *Introduction...*, p. 19.

¹² Mohd. Masum Billah, *Contextualization of takaful in Modern Insurance*, (Selangor: Sweet & Maxwell), p. 19.

¹³ Muhammad Syakir Sula, *Sharia Insurance (Lifa and General); Operational Concept and*

System, (Jakarta: Gema Insani Press, 2004), p. 30.

¹⁴ Arif Hakim, "At-Ta'min At-Ta'awuni: An Alternative to Insurance in Islam." *Muqtasid Journal*, Vol.2 No. 2, December 2011, p. 244.

parties to an agreement must comply with its rules and laws.¹⁵

Insurance program participants who adhere to the Sharia insurance program will often be given a contract that is by applicable law. This agreement must be by sharia. Which prohibits the use of haram goods, sin, zhulm (abuse), maysir (gambling), gharar (penipuan), riba, and risywah (bribery). According to the MUI Fatwa, in sharia insurance, the following general agreement applies:

a. Akad Tabarru'

All contracts related to insurance products and carried out for charitable purposes and mutual assistance, not just for profit, are considered Tabarru contracts. Given that the Tabarru contract is a grant, the contract cannot be converted into a Tijaroh contract. Based on the terms of the tabarru contract, members donate funds to support other participants who are going through difficult times. The company has been keeping an eye on the grant for a while.¹⁶ In other words, as a group, the members

guarantee the participation of other participants.

By definition, All insurance participants create Tabarru funds, which are grants, with the aim of helping each other in the event of a disaster. Given that the Tabarru fund is only intended to be used for a long period of time and cannot be claimed as a profit or even used to pay the operational costs of insurance companies, this fund cannot be considered as a fund with a savings component (non-savings).

The Tabarru Fund is a grant only, but insurance companies, as profit-oriented organizations, are allowed and even legal to invest to increase the productivity of the collected premiums. The company then obtains profits from this investment through the distribution of profits based on certain contracts, such as obtaining ujah (wages) through the wakalah bil ujah contract or the mudharabah or mudharabah musytarakah contract.¹⁷

¹⁵ In the contract, it regulates the rights and obligations of participants and companies, the method and time of premium payment, as well as the type of contract and other conditions agreed upon according to the type of insurance contracted. See DSN-MUI Fatwa on General Guidelines for Sharia Insurance.

¹⁶ Fatwa of the National Sharia Council No: 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance. Akad tabarru' (*gratuitous contract*) is a form of transaction or contract agreement that is non-profit (*not-for-profit transaction*) so that it cannot be used for commercial or business purposes but

solely for the purpose of helping in the context of goodness. Therefore, the party who intends tabarru' must not require any reward. See Burhanuddin S, "The Application of Sharia Principles in Insurance Institutions in Indonesia," *de Jure: Journal of Sharia and Law*, Vol. 5 No.1 June 2013, p. 101.

¹⁷ Fatwa of the National Sharia Council No: 53/DSN-MUI/III/2006 concerning the Tabarru' Contract on Sharia Insurance. If the tabarru' fund experiences an *underwriting deficit* due to the large number of claims or compensation to participants, then the

The Sharia insurance tabarru' agreement regulates the interaction between the manager and the participant as a policyholder, by the Fatwa of the MUI National Sharia Council. The views of the parties are formulated as follows:

- a. In a tabarru' (grant) contract, members give a sum of money as a gift, which is then used to help themselves or other participants in the event of a tragedy.
- b. The participants act as guarantors (mu'ammin/mutabarri') and parties who have legitimate claims for tabarru' money (mu'amman/mutabarra' lahu).
- c. In addition to managing investments, the insurance business oversees grants in accordance with the participant's wakalah agreement.¹⁸

Although the manager is not required to provide benefits from the tabarru' money, in addition to being a grantor, participants can also act as grant recipients, as stipulated by the MUI above. Grants are only available if the

insurance claim is made in accordance with the terms of the contract.

In addition, the content of the Tabarru contract is regulated by the Minister of Finance through PMK, and at least contains the following things:

- a. Participants' promise to help each other (ta' awuni)
- b. Individual rights and obligations of each participant
- c. duties and privileges that members of a group collectively;
- d. schedule and method of payment of contributions and compensation/claims;
- e. a clause that determines whether or not a participant can withdraw his or her donation if they decide to cancel it;
- f. clauses relating to the percentage distribution of the guarantee surplus and its alternatives¹⁹;
- g. Agreed on additional clauses.²⁰

b. Tijarah Contract

Contracts made for business purposes are called tijarah contracts. This

insurance company lends the company's funds to overcome the shortage of tabarru' funds.

¹⁸ *Ibid.*

¹⁹ Regarding *the Surplus Underwriting* of the *tabarru' fund*, there are several alternatives, including: a) Treated entirely as a reserve fund in the tabarru' account, b) Partially kept as a reserve fund and distributed the other part to participants who meet the actuarial/risk management requirements, and c) Partially stored as a reserve fund and can be distributed the other part to insurance companies and participants as agreed by the participants. The alternative options above must be approved in advance by the participant and stated in the

contract. Meanwhile, if there is an *underwriting* deficit on tarabarru' funds, the insurance company is obliged to overcome the shortfall in the form of *qardh* (loans). See Fatwa of the National Sharia Council No: 53/DSN-MUI/III/2006 concerning the Tabarru' Contract on Sharia Insurance.

²⁰ Article 8 of the Regulation of the Minister of Finance Number 18/PMK.010/2010 concerning the Application of Basic Principles for the Implementation of Insurance and Reinsurance Businesses with Sharia Principles.

contract can be in the form of mudharabah, wakalah bil ujah, or mudharabah musytarakah. If the party whose rights are obeyed (shohibul mal) voluntarily relinquishes the right, then the obligation of the party who does not fulfill the commitment becomes null and void, and the type of tijarah contract can be changed to a tabarru' contract.

The customer is the owner of the money (shohibul mal), and the Sharia insurance company that acts as the manager (mudorib) will manage the premium money that has been given to him through this tijarah contract. When the contract period ends, the premium money that has been agreed upon in the tijarah contract will be returned along with the results.²¹

Based on the guidelines set by the Ministry of Finance, many forms of tijarah contracts are used in Sharia insurance practices. That is:

**c. Akad Wakalah bil Ujah
(Agency)**

Participants give power of attorney to insurance business entities to manage their assets and submit ujah (wages) in accordance with the provisions of the wakalah bil ujah contract. This agreement applies to insurance plans with a savings component (or none at

all).²² However, if the wakalah bil ujah contract is carried out for the management of tabarru' funds, then the company is required to separate the tabarru' fund and the tijarah fund.

The following determines the positions and clauses of the parties in the Wakalah bil Ujah Agreement:

- a. The company manages its finances as an authorized representative;
- b. Participants (policyholders) in savings and tabarru products each play a role as muwakkil (power of attorney) in managing funds;
- c. By acting as a muwakkil (power of attorney), the participant as a body or group supervises the funds in the tabarru' account;
- d. Without the consent of the muwakkil (power of attorney), the representative is not allowed to represent the other party based on the power of attorney he receives;
- e. The wakalah contract is not arranged as an obligation (yad dhaman) but is arranged as a mandate (yad amanah). This means that unless negligence or default occurs, the risk of investment losses due to salary deductions will not be borne by the representative;
- f. Insurance companies that act as representatives are not entitled to get

²¹ See DSN Fatwa No. 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance.

²² Fatwa of the National Sharia Council No: 52/DSNMUI/III/2006 concerning the Wakalah Bil Ujah Contract on Sharia Insurance and Sharia Reinsurance.

a share of the investment proceeds because the contract in question is a Wakalah contract.²³

Meanwhile, the Regulation of the Minister of Finance regulates the provisions of the wakalah bil ujah contract which at least contains the following things:

- a. Items that are under approved management;
- b. Rights and responsibilities of participants as a group or individual acting as the main actor;
- c. The rights and obligations of the company as a designated party include the obligation to compensate for losses arising from intentional errors, carelessness, or the company's inability to manage risks and/or investments;
- d. Restrictions on the authority or power granted by the participant to the company;
- e. The amount, method, and time of deduction of ujah (wages);
- f. Agreed on additional clauses.²⁴

²³ *Ibid.* See also Article 552 of the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law.

²⁴ Article 10 of the Regulation of the Minister of Finance Number 18/PMK.010/2010 concerning the Application of Basic Principles for the Implementation of Insurance and Reinsurance Businesses with Sharia Principles.

Meanwhile, related to the matters agreed upon in the wakalah bil ujah sharia insurance contract are as follows:

- a. Administrative activities
- b. Fund management
- c. Claim payment
- d. *Underwriting*
- e. Risk portfolio management
- f. Marketing, and/or
- g. Investment.²⁵

d. Akad Mudharabah

The manager (amil/mudharib) and the owner of the capital (malik/shohibul mal) who deposit all the funds, enter into a commercial partnership agreement known as the mudharabah contract. The percentage specified in the contract determines how the business profits are divided among them. In this case, insurance participants who deposit a certain amount of premiums are known as shohibul mal, and mudharib is an insurance institution that acts as a premium manager.

In the *mudharabah contract*, there are four contracts in mudharabah derivatives, the most prominent of which is the mudharabah muqayyadah contract.²⁶, *mudharabah-muthlaqah*²⁷,

²⁵ *Ibid.*"

²⁶ *Mudharabah-Muqayyadah* is a mudharabah contract that is limited by the type of business, period, and/or place of business.

²⁷ *Mudharabah-Muthlaqah* is a mudharabah contract that is not limited by the type of business, period, and/or place of business.

*mudharabah tsuna'iyah*²⁸, and *mudharabah-musyarakah*²⁹. On the other hand, the DSN fatwa number. 115/DSN-MUI/IX/2017 states that the *mudharabah-musharakah* contract is valid if the *mudharabah* contract is consumed in insurance operations.³⁰

e. Mudharabah Musharakah (Hybrid)

The *mudharabah* contract in which the manager (*mudharib*) also invests his money in business operations is known as the *mudharabah-musyarakah* contract (a combination of *mudharabah* and *musyarakah* contracts). As such, insurance providers function as more than just controllers of insurance premiums. But also an investor. Referring to the DSN_MUI fatwa, the distribution of investment proceeds in the *Mudharabah-Musyarakah* contract is as follows:³¹

Alternative I :

- a. A predetermined ratio is used to divide the investment returns between the participants (as *Shahibul Maal*) and the insurance company (as *Mudharib*).
- b. After being set aside for the insurance company (as *mudharib*), the rest of the investment funds are divided by the participants and the insurance

company (as a *musyarak*) according to the amount of capital or finance of each.

Alternative II :

- a. The insurance company, which acts as the principal, and the participants divide the investment proceeds proportionally based on their respective capital or share of the fund.
- b. The participants and insurance companies that act as *mudharib* divide the investment profits after being set aside for the insurance company (as a deliberation) according to the predetermined ratio.

Based on the Regulation of the Minister of Finance, the *Mudharabah-Musyarakah* contract contains at least the following:

- a. The rights and obligations of participants as *shohibul mal* (fund owners), both as a group and as individuals;
- b. The rights and obligations of the company as a *mudharib* (investment manager) are to bear the cost of losses incurred due to the company's intentional mistakes, negligence, or carelessness;

²⁸ *Mudharabah Tsuna'iyah* is a *mudharabah* contract that is carried out directly between *shohibul mal* and *mudharib*.

²⁹ *Mudharabah-Musyarakah* is a *mudharabah* contract whose manager (*mudharib*) also includes its capital in business activities.

³⁰ See the Fatwa of the National Sharia Council No. 115/DSN-MUI/IX/2017 concerning the *Mudharabah Agreement*.

³¹ Fatwa of the National Sharia Council No. 51/DSN-MUI/III/2006 concerning the *Mudharabah Deliberation Agreement on Sharia Insurance*.

- c. Restrictions on the authority given by participants to business entities;
- d. Procedures and schedules for determining the number of participants and company resources;
- e. Ratio, process, and timeliness of distribution of investment returns; and
- f. Agreed on additional clauses.³²

The main difference between mudharabah and mudharabah-musyarakah contracts is the involvement of capital. According to the provisions of the MUI fatwa and the regulations of the Ministry of Finance. The company solely acts as a mudharib (fund manager/legal beneficiary) based on the provisions of the mudharabah contract; All the money was obtained directly from the participants. In the framework of the mudharabah-musyarakah contract, the business functions as the mudharib and the legal recipient. But also as an investor who provides funds.

The Ujrah bill wakalah contract is the most preferred of the many contracts mentioned above because it is considered to offer superior insurance protection than the mudharabah model. The tabarru fund is divided into investment funds and risk funds according to the Wakalah contract. Risk funds are set aside to cover participants who suffer losses or to file

claims and compensate those in need. Meanwhile, investment funds are used for investment businesses with Sharia principles.³³

Although in the *das sollen* the merger of the concepts of insurance and investment is regulated in such a way, in *the das sein* the merger makes insurance seen as a fund development institution, no longer as a guarantee institution. From the explanation above, it can be seen that the contracts in insurance are more dominant to the practice of commercialization, not as *tabarru'*, *ta'awun* which is the basic purpose of sharia insurance as regulated in the principles of Islamic financial institutions.

D. CONCLUSION

From the results of the discussion above, several conclusions can be drawn regarding the general agreement in the implementation of sharia insurance in Indonesia, including:

Sharia insurance is a form of legal contract that involves two or more parties, namely the first party acts as a manager and guarantor, and the second party acts as an insurer as well as a fund provider. Insurance business activities must be based on Sharia principles and have a

³² Article 12 of the Regulation of the Minister of Finance Number 18/PMK.010/2010 concerning the Application of Basic Principles for the Implementation of Insurance and

Reinsurance Businesses with Sharia Principles.

³³ Muhammad Afdi Nizar, *Bunga Rampai: Disruptive Mindset in the Financial Services Sector*, (Bogor: IKAPI Member, 2018), p. 83.

dual purpose, namely helping other participants and generating funds as investments. The difference in the concepts of insurance, *takaful*, and *ta'min* has implications for the different implementation of insurance practices themselves. The *tabarru'* contract is a type of contract which is a contract in the form of grants and the management of funds, investment results, and profits are managed by the company without any profit orientation. Although *tabarru'* funds are grants, insurance institutions that are profit-oriented organizations are allowed to use them for investments that can increase their productivity levels.

A *tijarah contract* is a contract with a business or commercial type. This means that this contract is more likely to be profit-oriented. The implementation of insurance with a *tijarah contract* provides full management to the company with the hope that the funds

collected will be invested in the form of a business with sharia principles with profits divided according to the portion in the contract. In the *mudharabah* contract, the insurance company acts as the *mudharib* and policyholder, *shohibul mal* and *tijarah*. In this contract, participants deposit a certain amount of premium to be invested, while *Mudharib* is the manager of the investment. The advantage of investment results is *profit sharing* by the contract in the agreement.

The *mudharabah-musyarakah* contract as a derivative of the *tijarah* contract is considered necessary to be applied in the implementation of sharia insurance because both participants and companies act as capital depositors (investors). This shows that the business does not only manage funds. As per the agreement, the investment profit system is distributed depending on the capital placed.

REFERENCES

- [1] Ajib, Muhammad, Asuransi Syariah, Jakarta: Rumah Fiqih Publishing, 2019.
- [2] Ali, Hasan, Asuransi dalam Perspektif Hukum Islam: Suatu Tinjauan Analisis Historis, Teoritis dan Praktis, Jakarta: Prenada Media, 2004.
- [3] Amrin, Abdullah, Asuransi Syariah, Jakarta: PT Elex Media Komputindo, 2006.
- [4] Anwar, Khoiril, Asuransi Syariah; Halal & Maslahat, Solo: Tiga Serangkai, 2007.
- [5] Billah, Mohd. Ma'sum, Kontekstualisasi takaful dalam Asuransi Modern: Tinjauan Hukum dan Praktek, Selangor: Sweet & Maxwell.
- [6] Burhanuddin, "Penerapan Prinsip Syariah dalam Lembaga Perasuransian di Indonesia," de Jure: Jurnal Syariah dan Hukum, Vol. 5 No.1 Juni 2013.
- [7] Fatwa Dewan Syari'ah Nasional No. 51/DSN-MUI/III/2006 tentang Akad Mudharabah Musyarakah pada Asuransi Syariah.
- [8] Fatwa Dewan Syari'ah Nasional No: 52/DSNMUI/ III/2006 Tentang Akad

Wakalah Bil Ujrah Pada Asuransi Syari'ah Dan Reasuransi Syari'ah.

- [9] Fatwa Dewan Syari'ah Nasional No: 53/DSN-MUI/III/2006 Tentang Akad tabarru' Pada Asuransi Syari'ah
- [10] Fatwa Dewan Syariah Nasional No. 115/DSN-MUI/IX/2017 tentang Akad Mudharabah.
- [11] Fatwa Dewan Syari'ah Nasional No: 21/Dsn-Mui/X/2001 Tentang Pedoman Umum Asuransi Syari'ah.
- [12] Fauzi, Wetria, Hukum Asuransi di Indonesia, Padang: Andalas University Press, 2019.
- [13] Hakim, M. Arif, "At-Ta'min At-Ta'awuni: Alternatif Asuransi dalam Islam." Jurnal Muqtasid, Vol.2 No. 2, Desember 2011.
- [14] Hasan, Nurul Ichsan, Pengantar Asuransi Syariah, Jakarta: Gaung Persada Press Group, 2014.
- [15] Mahmuda, Imaniar dan Umi Karimatul Azizah, "Studi Komparasi Asuransi Syariah dengan Asuransi Konvensional," Jurnal Al-Yasini, Vol. 04 No. 1 Mei 2019.
- [16] Nizar, Muhammad Afdi, Bunga Rampai: Disruptive Mindset Sektor Jasa Keuangan, Bogor: Anggota IKAPI, 2018.
- [17] Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 Tentang Kompilasi Hukum Ekonomi Syariah
- [18] Peraturan Menteri Keuangan Nomor 18/PMK.010/2010 Tentaang Penerapan Prinsip Dasar Penyelenggaraan Usaha Asuransi Dan Usaha Reasuransi dengan Prinsip Syariah.
- [19] Sudarsono, Hari, Bank dan Lembaga Keuangan Syariah Deskripsi dan Ilustrasi, Yogyakarta: Ekonisia, 2003.
- [20] Sula, Muhammad Syakir, Asuransi Syariah (Life and General); Konsep dan Sisitem Operasional, Jakarta: Gema Insani Press, 2004.
- [21] Sumitra, Andi, Bank dan Lembaga Keuangan Syariah, Jakarta: Kencana Perdana Media, 2009.
- [22] Undang-undang No. 40 Tahun 2014 Tentang Perasuransian.
- [23] Warsidi, at all, 2024, Implementation of Sharia System in Sharia-Certified Hospitals, Jurnal Ilmiah Ekonomi Islam, Vol 10, no 3, <https://jurnal.stie-aas.ac.id/index.php/jie>