



Insurance In The Perspective Of Islamic Law

Mimin Mintarsih¹, Saehudin²

¹Universitas Ma'soem

²STAI Al-Mas'udiyah

Email: miminmintarsih@masoemuniversity.ac.id, kaylahasya45@gmail.com

Info Artikel

Sejarah Artikel:

Diterima: 1 Februari 2022

Direvisi: 12 Maret 2022

Dipublikasikan: 1 April
2023

e-ISSN: 2829-2960

p-ISSN: 2829-8101

DOI: 10.69768/ji.v2i1.13

Abstract:

Munculnya asuransi syariah di dunia didasarkan pada anggapan bahwa asuransi yang ada selama ini yaitu asuransi konvensional banyak mengandung unsur gharar, maisir, dan riba. Asuransi ini sangat memegang prinsip yaitu ta'awunu 'ala al birr wa al-taqwa (tolonglah kalian semua dalam kebaikan dan takwa) dan al-ta'min (keamanan). Kajian ini bertujuan untuk mengelaborasi konsep asuransi dari perspektif hukum Islam. Metode penelitian yang digunakan adalah penelitian kepustakaan, termasuk dalam jenis penelitian kualitatif. Hasil kajian menunjukkan bahwa Asuransi Syariah (Ta'min, Takaful, atau Tadhamun) adalah upaya saling melindungi dan tolong menolong di antara sejumlah pihak melalui investasi berupa harta dan atau tabarru' yang memberikan pola kembali menghadapi risiko tertentu melalui akad (perikatan) yang sesuai dengan syariah. Melihat peluang yang besar tersebut, sosialisasi tentang asuransi syariah perlu dilakukan secara lebih serius dan komprehensif, sehingga sangat perlu mensinergikan kepentingan berbagai pihak seperti industri asuransi itu sendiri, pemerintah (regulator), ulama, akademisi, dan lembaga. yang fokus pada pengembangan bisnis syariah. Untuk menjawab besarnya peluang yang ada, diperlukan sumber daya manusia yang profesional dan memadai, disertai dukungan permodalan, ditambah payung hukum yang mendukung.

Kata kunci: Akad, Asuransi, Syariah, Hukum Islam

INTRODUCTION

Technological progress is something that cannot be avoided in this life because technological progress will run in accordance with scientific progress. Every innovation is created to provide positive benefits

for human life. Provide many conveniences, as well as a new way of doing human activities. Especially in the field of technology, society has enjoyed many benefits brought by innovations that have been produced in the last decade.

In order to develop their business sector, insurance companies have precise techniques by collaborating with state-owned banks and private banks. With coverage for risks that will occur and other companies that are felt to be profitable. In our country not only conventional insurance is advanced, but Islam has also formed sharia insurance which began to develop rapidly. On the other hand, many people also ask about conventional insurance, sharia insurance, how it differs, and how the implementation of sharia insurance in Islamic banks. We will discuss this in more detail so that our understanding of sharia insurance is maximized (Linawati, 2020).

According to article 1 of Law No. 2 of 1992 concerning Insurance Business, insurance or coverage is an agreement between two or more parties, by which the insurer binds itself to the insured, by accepting insurance premiums, to provide reimbursement to the insured due to loss, damage or loss of expected profits, or legal liability to third parties that may be suffered by the insured, arising from an uncertain event, or to provide a payment based on the death or life of an insured person (Solahudin, 2006).

Among Muslims, there is an assumption that insurance is un-Islamic. The one who does insurance, just like the one who denies the grace

of God. It is God who determines everything and gives sustenance to His creatures, as God says:

And there is not a single beast on earth except Allah, who gives his sustenance (QS. Hud: 6).

.... And who has provided for you from the heavens and the earth? Is there any god besides Allah?(QS. An-Naml: 64).

God's Word:

And We have made for you in the earth the necessities of life, and of those whom you have not given sustenance.(QS al-Hijr:20).

From these three verses, it can be understood that Allah has actually prepared everything for the needs of all His creatures, including humans as caliphs on earth. God has prepared raw materials, not cooked materials. Man still has to cultivate it, seek it, and recognize it (Hasan, 2000).

Indonesian people have a very high interest in sharia insurance which raises a wide market share, but large interest does not guarantee the sincerity of the sharia insurance industry². This inaction can be seen in the sharia industry not separating sharia insurance from conventional insurance so that sharia insurance chooses to become its own company. It can be possible if there is sharia insurance may be the growth rate is faster, currently, there are 20 sharia insurances consisting of 17 sharia life insurance, 20 sharia general

insurance, and three sharia reinsurance. Of course, it is different from various countries in other parts of the world. The development of Islamic finance in the Middle East depends on oil production if in Europe the banking industry accommodates many funds from the Middle East, namely oil entrepreneurs. While in neighboring Malaysia, there the sharia industry is developing because the government supports more funds managed to come from government funds. Thus, it is important to understand how the Islamic legal perspective views insurance.

METHOD

The research method used is *library research*. This type of research is included in qualitative research (Sugiono, 2013). The source of the data used is as written in the nash of the Qur'an and books of jurisprudence mullah. Data was collected based on observation and documentation. Data is obtained in accordance with research needs and is limited to sharia insurance material only. The data were analyzed using qualitative data analysis. Data is collected, selected and sorted, and then interpreted to produce a justifiable synthesis.

RESULTS AND DISCUSSION

Basic Concepts of Insurance in the Perspective of Islamic Law

The Arabic term insurance is known as at Takaful, at Tadhmun, and at Ta'min, which means: bear each other. The insurer is called *mu'amin*, while the insured is called *mu'ammen lahu* or *musta'min*. at-Ta'min means that a person pays or gives up installments so that he or his heirs can get an amount of money as agreed, or can replace his lost property. However, according to the Encyclopedia of Islamic Law, insurance is called at-Ta'min, which is the occurrence of an agreed transaction between two parties, between the agreements of two parties have been formed parties who are obliged to provide full guarantees to the contributory payer if something happens to the first party in accordance with the agreement (Sidiq, 2017).

The main purpose of insurance is to be aware of the risks to property and also life. The insured is very concerned when they are hit by a disaster that results in mental or material losses and mental disabilities that can affect the lives of others or their heirs. The insured feels it is difficult to bear the burden of risks that are feared at any time can occur. Indemnity payments are one of the purposes for which people choose insurance. In the event that an event occurs that causes losses, then there is no problem with the risk borne by the insurer. The next purpose of insurance is the payment

of compensation. Loss insurance and also life insurance is held based on a free (voluntary) agreement between the insurer and the insured.

However, the law provides for compulsory insurance, meaning that the insured is bound to the insurer because of a statutory order rather than an agreement. The last is the welfare of members. Many associations or communities that feel like members of their own family with a high sense of community they choose to hold insurance for the welfare of the family in the association. The association acts as the insurer and the members of the association are the insured (Andini, dkk, 2022).

Sharia insurance is an iso-management arrangement that meets sharia regulations, namely, there is an element of help between participants and operators based on the provisions in the Qur'an and Sunnah. Basically, the purpose of sharia insurance is to help fellow people if there are difficulties in the future through an investment in the form of *tabarru* assets with a pattern of return to avoid risks in accordance with the contract determined by the Shari'a.

The difference between sharia and conventional insurance lies in the sharia supervisory board which has the duty to supervise the products managed and offered to insurance participants, while in

sharia insurance there is no sharia supervisory board. Then in sharia insurance, the contract offered is based on the principle of help, while in conventional insurance is based on buying and selling. In sharia insurance, there is an investment fund whose results will be divided according to the agreement using the *maharajah* system, while in conventional insurance, the results of investment in the form of interest are haram.

In sharia insurance, the company acts as a rights holder in developing the trust, and the funds still belong to the participants, while in conventional insurance the funds collected from participants belong to the company, so the company is free to determine the allocation of investment funds. Sharia insurance does not recognize forfeited funds as in conventional investments, because if during the contract the participant turns out to be unable to continue paying premiums and wants to resign, then the funds that have entered can be withdrawn, unless the funds that have been agreed for *tabarru'* claim payments on sharia insurance are taken from the *tabarru fund'* which has been agreed by both parties to be used as funds to help if there are participants who are hit by a disaster. And the distribution of profits between participants and companies in sharia insurance has been agreed upon at

the time of execution of the contract, while in conventional insurance all profits belong to the company.

Sharia Aspects in Sharia Insurance

The word insurance comes from the Dutch language, assurance, which in Dutch law is called Verzekering which means coverage. From the term assurance then arises the term assurer for the insurer and greassureerde for the insured. In Arabic Insurance is called *at-ta'min*, the insurer is called *mu'ammin*, while the insured is called *mu'amman lahu* or *musta'min*. Menta'min something, means that someone pays/hands over installments so that he or his heirs get a sum of money as agreed, or to get compensation for his lost property (Tho'in dan Anik, 2015).

The general principles underlying Sharia Insurance are as follows:

1. *Tawhid* (Devotion). If we look at the Qur'anic verses about muamalah, it will be clear that Allah always calls upon His people that the muamalah leads them to devotion to Allah.
2. *Al-Adl* (Fair Attitude). The second principle in muamalah is Al-"Adl fairness. Suffice it for us that the Qur'an has made the purpose of all the celestial treatises the administration of justice. Shaykh al-

Qaradawi said that in fact the pillar of economic freedom that stands on the glory of human nature and dignity is perfected and determined by another pillar, namely "justice". Justice in Islam is not a secondary principle.

3. *Adz-Dhulm* (tyranny). Violation of tyranny is one of the basic principles of muamalah. Tyranny is the opposite of an attitude of justice. Therefore, Islam is very strict in giving attention to the violation of tyranny, the enforcement of prohibitions against it, strong condemnation of those who are tyrannical, and threats against them with the harshest torture in the world and the Hereafter. Here are some of God's words about tyranny.
4. *At-Ta'awun* (Help-Help). The fourth principle that forms the basis of ethics in Islamic muamalah is ta'awun. Undeniably with the strong dahlils described above, ta'awun is one of the main principles in muamalah interaction. In fact, ta'awun can be the foundation in building a strong economic system, so that the strong can help the

- weak, the rich pay attention to the poor, and so on. Ta'awun is the essence of the concept of takaful, where one participant with another participant bears the risk of each other. Namely through the tabbaru fund mechanism" with the correct contract, namely Aqd Takaful or Aqd Tabarru.
5. Al-Qaradawi said that among the most important transaction values in business is al-amanah "honesty". It is the pinnacle of the morality of faith and the most outstanding characteristic of believers.
 6. Rida (Consensual)
 7. Riswah (Bribe) Riswan "bribe" is a muamalah principle that is very heavy to implement. This is because riswah has become a culture in a corrupt society like Indonesia. Therefore, avoiding Riswan is an extraordinarily hard economic jihad job.
 8. Maslahah (Kemaslahatan)
 9. Khitmah (Service)
 10. Tathfif (Cheating). Tathfif in Arabic means to be small, frugal or stingy. Meanwhile, al-muthaffif is one who reduces the share of others when he does.
 11. Gharar, Maisir, and Riba The most important principles in Islamic muamalah especially for Islamic Financial Institutions (LKS) are the principles of Gharar, Maisir, and Riba. These three things are the basis for scholars to ban all banking transactions, insurance, mortgages, stock exchanges, leasing, venture capital, and so on, which do not use sharia principles. Because, in its operation, there must be one or if not all three of them are Gharah, Meisir, or Riba (Tho'in dan Anik, 2015).
- The Dictionary of Islam explains that in ancient times if one member of a tribe was killed by another tribe, the victim's family would be paid by the next of kin of the murderer (aqilah) as compensation (diyat). The practice of aqilah before Islam was accepted in the time of the Prophet as part of Islamic Law.¹⁹ Although the context of the coverage of paying the ransom (diyat) in the narration is related to violations (jarimah), it is possible to apply to socio-economic life. Aren't there certain contracts in muamalah that provide guarantees/dependents to other parties who are experiencing difficulties (Muhsinun dan Fursotun, 2019).
- Murtadha Mutahhari said that insurance is a contract, which is an

action that is within the authority of two parties (customers and insurance companies). He further added that there are requirements and prohibitions for the validity of a contract. Any agreement that does not meet any of these requirements or violates any of these prohibitions is void. As for a contract that fulfills all requirements and is prevented from all restrictions, then the contract is valid, even if it is a new contract. Among a number of conditions, it is for example 1. Baligh (adult). 2. Reasonable, of course, every transaction made by a person who loses his mind is invalid, then the insurance is void. 3. Ikhtiyar (free will), there should be no coercion in unwelcome transactions. 4. Invalid transaction over an unknown. These terms are contained in all transactions. It is not legal to buy and sell if the goods sold are unknown, and it is not legal to pay the price of something unknown. Because the transaction is like gambling. 5. Unauthorized transactions containing elements of usury.

In general, when insurance participants participate in the sharia insurance company program will be given a contract, the Akad given must be in accordance with sharia which does not contain gharar (fraud), *maysir* (gambling), usury, *zhulm* (persecution), *risywah* (bribery), haram goods and immorality. These agreements

include: *first, the tijrah contract*. A *tijarah* agreement is a contract made for commercial purposes. The form of the contract uses *mudhorobah*. The type of *tijarah* contract can be changed to the type of *tabarru* contract if the party who is restrained by his rights, willingly waives his rights so as to invalidate the obligations of the party who has not fulfilled his obligations. This *tijarah* agreement is to manage the premium money that has been given to sharia insurance companies that are domiciled as managers (*Mudorib*), while the customers are domiciled as money owners (*shohibul mal*).

Second, the contract of tabarru'. *Tabarru* contracts are all forms of contracts made for the purpose of benevolence and help, not merely for commercial purposes. Then the contract in the *tabarru* contract is a grant contract and the *tabarru* contract cannot be turned into a *tijarah* contract. In the *tabarru'* (grant) contract, participants provide grants that will be used to help other participants affected by disasters. While the company acts as a grant manager (Fatwa DSN No. 21 / DSN-MUI / X / 2001 concerning General Guidelines for Sharia Insurance). *Akad Tabarru'* is a grant agreement in the form of providing funds from one Participant to the *Tabarru* Fund for the purpose of helping among the Participants, which is not clan in nature not for commercial purposes

(Minister of Finance Regulation Number 18/PMK.010/2010 Regarding the Application of Basic Principles of Insurance Business Implementation and Reinsurance Business with Sharia Principles) (Abdullah, 2018).

Implementation and Implications of Sharia Insurance for the Wider Community

Insurance or Coverage is an agreement between two or more parties, by which the insurer binds itself to the insured, by accepting insurance premiums to provide reimbursement to the insured for loss, damage, or loss of expected profits, or legal liability to third parties that the insured may suffer, arising from an uncertain event, or for payments based on his death or life an insured person. (Insurance Law No. 2 of 1992, Chapter 1 art. 1) Insurance business, which is a financial services business that by collecting public funds through the collection of insurance premiums provides protection to members of the community who use insurance services against the possibility of losses due to an uncertain event or to the life or death of a person. (Insurance Law No. 2 of 1992, Chapter 2 Article 2). Insurance based on sharia principles is an effort to help each other (Ta'awun) and protect (Takafuli) among participants through the

establishment of a pool of funds (Dana Tabarru) managed according to sharia principles to face certain risks.

Ulama who argue that legal insurance is halal in Islam, among others, are Abd Wahab Khallaf, Muhammad Yusuf Musa, Abd Rahman Isa, Musthafa Ahmad Zarqa', and Muhammad Najatullah al Shiddiqy. The reasons they allow insurance are:

1. There is no nash provision of the Qur'an or Hadith that prohibits insurance.
2. There is a voluntary agreement of benefits for both parties, both the insurer and the insured.
3. The benefits of the insurance business are greater than the madharat.
4. Insurance is a contract whose madharat is denied on the basis of Profit loss sharing (profit and loss).
5. Insurance is included in the category of cooperatives (Shirkah ta'awuniyah) which is permissible in Islam (Suhrawardi, 2000).
6. Aim at mutual assistance and solidarity between insured people. The role of the insured person is only to join an organized mutual aid agreement.

7. Does not contain gharar, because everything can be clearly known.
8. In accordance with the rule: "The law of all things is permissible unless there is a proposition forbidding it." In the insurance, there is no evidence that forbids it."
9. Emergency has become a habitual custom.
10. Insurance agreement includes mudharabah contract or similar meaning.
11. Analogize insurance contracts with laws that have been recognized in Islam, such as Wadi'ah (deposit), the pension system, and others.

Sharia insurance in Indonesia has prospective opportunities considering the number of Indonesian Muslims is more than 180 million. In fact, the Muslim population began to have the awareness to express their Muslim identity in various ways. For example, companies engaged in food and beverages began to put halal labels on their products, clothing, and accessories with Islamic identity, Hajj and Umrah travel, educational institutions, and Islamic mass media have continued to increase, especially in the last two decades. In addition, some Muslims want all muamalah interactions they carry

out in an effort to achieve their welfare, in accordance with sharia.

Effendi mentioned several aspects that can be opportunities, threats (challenges), strengths, and weaknesses in expanding the Islamic insurance business network in Indonesia. The aspects that become opportunities include:

1. The superiority of the Islamic insurance concept can meet the demands of a sense of justice from the community.
2. The total Muslim population in Indonesia is more than 180 million people.
3. Increased awareness to meet in accordance with sharia thrives, especially in the middle class.
4. Increasing need for insurance services due to the economic development of the people.
5. The growth of other Islamic financial institutions (LKS) such as banks and financial instruments (Effendi, 2016).

Sharia insurance (takaful) in Indonesia is still in the introductory stage. Generally, the industry at this stage is still introducing basic product design, consumers still have to be convinced to buy the product. The cost of marketing to build consumer knowledge is still relatively high. For this reason, synergy from various parties ranging including the insurance

industry, government, and the community is highly expected.

CONCLUSION

Insurance is an agreement between two parties, where one is the insurer and the other party is the insured. Sharia Insurance (*Ta'min, Takaful, or Tadamun*) is an effort to protect and help each other among a number of people/parties through investment in the form of assets and/or tabarru' which provides a pattern of return to face certain risks through contracts (engagements) in accordance with sharia. Seeing such a great opportunity, socialization about sharia insurance should be carried out more seriously and comprehensively, so it is very necessary to synergize the interests of various parties such as the insurance industry itself, the government (regulator), scholars, academics, and institutions that focus on the development of sharia business. To answer the magnitude of existing opportunities, it is necessary to have professional and adequate human resources, accompanied by capital support, plus a supportive legal umbrella.

BIBLIOGRAPHY

Linawati. (2020). Asuransi Syariah Dan Implementasi Asuransi Syariah Dalam Perbankan Syariah. *SAUJANA: Jurnal Perbankan Syariah dan Ekonomi Syariah*. Vol. 02 No. 01, 2020.

M. Solahudin. (2006). *Lembaga Ekonomi dan Keuangan Islam*. Surakarta: Muhammadiyah University Press.

Tho'in dan Anik. (2015). Aspek-Aspek Syariah Dalam Asuransi Syariah. *Jurnal Ilmiah Ekonomi Islam*. Vol. 01, No. 01, Maret 2015, 1-15.

Hasan, M. Ali. (2000). *Masail Fiqiyah Zakat, Pajak Asuransi dan Lembaga Keuangan*. Jakarta: PT Raja Grafindo Persada.

Muhsinun dan Utihatli Fursotun. (2019). Dasar Hukum dan Prinsip Asuransi Syariah di Indonesia. *Jurnal Labatila: Jurnal Ilmu Eknomi Islam*, Vol. 3 Nomor 1 2019. <https://doi.org/10.33507/lab.v4i01>

Suhrawandi K. Lubis, *Hukum Ekonomi Islam*, Jakarta; Sinar Grafika, 2000, h. 76.

Muhammad Sidiq, "Kedudukan Asuransi Dalam Hukum Islam," *islamic Banking* 2, no. 2 (2017)

Amelia Pratista Andini, dkk. (2022). Perkembangan dan Potensi Asuransi Syarah di Indonesia. *Jurnal Pancawahana: Jurnal Studi Islam*, Vol. 17 Nomor 2 2022, 164-177.

Abdullah, Junaidi. (2017). Akad-akad di dalam asuransi syariah. *Tawazun: Journal of Sharia Economic Law*, Volume 1, Nomor 1, Maret 2018.

Effensi, Arif. (2016). Asuransi Syariah di Indonesia. *Jurnal Wahana Akademika*, Volume 3 Nomor 2, Oktober 2016.