

Juridic Analysis of Takaful Insurance as Islamic Financial Institution in Indonesia Connected With Law No. 2 Year 1992 Concerning Insurance Business

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Abstract

Where Islamic economics always prioritizes the blessings of every economic transaction, In Islamic teachings, insurance has actually been practiced since the time of the Prophet Muhammad until this insurance practice continued to be developed during the time of Khulafa 'al-Rasyidin, especially during the time of Umar bin Khattab. At that time, the government encouraged the population to perform al-'āqilah nationally. But now insurance as one of the financial institutions engaged in coverage is a modern institution that was invented by the Western world which was born at the same time as enlightenment. This institution together with bank financial institutions became the driving force of the economy in the modern era and continues to this day. This study uses a descriptive analytical method, which is a method of writing that aims to provide an overview and analyze the operational principles of Takaful Insurance as an Islamic financial institution in Indonesia in relation to existing and still valid laws and regulations. The approach used is a normative juridical approach, which is an approach in legal research (writing) using the primary source of secondary data. The results of this study explain that, Insurance is an institution that has been practiced before Islam came, which is commonly known as al-'āqilah. The institution was later ratified by the Prophet to become part of Islamic law as outlined in the Medina Charter and further developed during the Khulafa al-Rasyidin period, especially during the time of Umar bin Khattab. Takaful insurance operations are based on the principle of protection and profit sharing in accordance with Islamic Shari'ah, in the At-Takaful principle contained a broad meaning, in which the principles of mutual responsibility, mutual cooperation or mutual assistance, and mutual protection of each other's suffering are enforced each other. These three principles, basically worship, are in the form of tabarru (Dana). The difference between the operational principles of Takaful insurance and conventional insurance can be seen from the element of uncertainty (Gharar), namely in conventional insurance, life insurance agreements include Tabadduli contracts or exchange contracts in which premium payments are exchanged with the sum assured.

Keywords

Tafakul insurance; financial institutions; insurance



I. Introduction

Everyone realizes that the world is full of uncertainty, except for death, which nevertheless also contains uncertainty in it, including when and how death occurs. Where that uncertainty results in a risk that might give birth to a loss event interested parties. Especially in the business world, uncertainty and its risks are something that cannot be ignored, but must be considered carefully, if people want success. These risks include: fire,

damage, accidents, theft, fraud, fraud, embezzlement and so on, which can cause no small loss (Puspitasari, 2011).

In connection with this fact, everyone must try to overcome it, which means trying to minimize uncertainty and its risks so that the losses incurred can be eliminated or at least minimized. Dealing with these uncertainties and risks can be done in various ways, including by transferring or transferring risk to other parties, namely by entering into an insurance contract (coverage) with an insurance company against certain risks, by paying a certain amount of insurance premium, namely payments from the insured to the insurer. , as a reward for the transfer of risk to the insurer who has been determined, so that the insurance company will compensate if a loss actually occurs in accordance with the agreement (Hasanah, 2013). Financial statements are basically a source of information for investors as one of the basic considerations in making capital market investment decisions and also as a means of management responsibility for the resources entrusted to them (Prayoga and Afrizal 2021) . Financial performance is a measuring instrument to know the process of implementing the company's financial resources. It sees how much management of the company succeeds, and provides benefits to the community. Sharia banking is contained in the Law of the Republic of Indonesia No.21 of 2008 article 5, in which the Financial Services Authority is assigned to supervise and supervise banks. (Ichsan, R. et al. 2021)

In this regard, a strong insurance business is needed, which can accommodate losses that may arise from the existence of risk. But unfortunately, it turns out that in practice in the field it is found that, today's insurance companies in running their business contain the risk of deception, by displaying their advantages or advantages by covering up their bad things. This system undoubtedly contains deception.

And the existing insurance (conventional insurance) contains 3 (three) elements, namely the element of gharar (uncertainty), the element of maisir (chance/gambling) and the element of usury (interest/determination of results up front). This, seen from the teachings of all religions, is clearly a despicable act, and is forbidden by all religions. In connection with the above, the Islamic economists who are members of the Association of Indonesian Muslim Intellectuals (ICMI) on July 27, 1993 agreed to form a new insurance company whose operational principles are based on Islamic Sharia, namely what we know as "Insurance Insurance". Takaful". The establishment of Takaful Insurance aims to maintain Muslims so that they do not fall into things that are forbidden by Islamic Shari'ah (Kristianto, 2009).

In Indonesia, insurance was born since the introduction of the WvK (Wetboek van Koophandel) in the Netherlands in Indonesia based on Article 131 IS (Indische Staatsregeling) which explains that the law in the Dutch East Indies (Indonesia) must be equated with the law in the Netherlands (Concordance). Concordance with the WvK of the Netherlands. Furthermore, the WvK of the Netherlands was announced on April 30, 1847 (S. 1847-23). With the enactment of this WvK in Indonesia, the law of coverage (insurance) as regulated in the WvK of the Netherlands applies, which on August 17, 1945, we call the Dutch East Indies WvK, the Code of Commercial Law, abbreviated as KUHD.

This is the starting point of the birth of insurance in Indonesia, that's a bit of insurance history which is the forerunner of the current insurances, both in Indonesia and abroad. The main legal principle underlying all insurance contracts is the existence of an insurable interest, meaning that if an event can cause a loss to a person, it means that the person concerned has an interest in the loss, so that the person can insure the loss, the interest must be insured it must exist. If there is no interest in the object being insured, the insurer is not required to pay a claim for compensation (Article 250 KUHD). This means

that if there is no interest, there is also no insurance. So, interest is an absolute requirement for insurance (Aravik, 2016).

Insurance contracts are often called policies, Article 255 of the Commercial Code states that every coverage must be made in writing in a deed called a policy. Furthermore, Article 256 states that every policy, except for those concerning life insurance, must state, the day the insurance is closed, the name of the person who covers the insurance at his own expense or at the expense of a third person, the amount of money for which coverage is held, the dangers borne by the insurer when where the danger begins to apply to the insurer's dependents and at the expiration of the insurance premium, in general all conditions that are important for the insurer to be aware of, and all conditions agreed between the parties, the policy must be signed by each insurer.

In the KUHD there are two ways of setting insurance, namely general arrangements contained in book I Chapter IX Articles 246-248 of the KUHD which apply to all types of insurance, both those regulated in the KUHD and those regulated outside the KUHD, unless specifically specified otherwise. Special arrangements are contained in book I Chapter X Article 287-308 KUHD and book II Chapter IX Article 592-695 KUHD with the following details, insurance or general coverage (Article 246-286), coverage against fire hazards, crop hazards and life insurance (Article 287-308), coverage against marine hazards (Article 592-685), coverage against land transportation hazards and in inland waters (Article 686-695) (Jannah & Nugroho, 2019).

Insurance that is known by today's society, is recognized by experts, it did not exist in the time of the Prophet, the Companions and the generations that followed. And in the Al-Qur'an and Al-Hadith there is not a single provision that explicitly regulates insurance. Therefore, this insurance issue in Islam is included in the field of "Ijti Gift" which means that to determine whether this insurance is halal or haram it is still necessary to play the minds of the scholars of jurisprudence through *ijtihad*.

Apart from the above, Muslims in Indonesia expect an insurance based on Islamic Sharia. Because Muslims believe that the current insurance (conventional insurance) contains many elements of uncertainty (*Gharar*), gambling or gambling (*Maisir*), interest (*Riba*) and commercial. So seeing this, the Indonesian Muslim Intellectuals Association (ICMI) through the Abdi Bangsa Foundation together with Bank Muamalat and the Tugu Mandiri Life Insurance Company, on July 27, 1993, agreed to initiate the establishment of Takaful Insurance by setting up the Indonesian Takaful Insurance Forming Team (TEPATI). The presence of this takaful insurance means that it has added financial institutions based on Islamic Sharia, which previously existed, such as Bank Muamalat, BPR Syari'at and Baitul At-Tanwil (BMT). Thus, Muslims in Indonesia will find it easier to implement on the basis of Islamic Sharia (Yuliani, 2017).

Seen from the perspective of muamalah shari'ah, "takaful" has the meaning of taking risks among other people, so that each other is the bearer of the other's risks. This mutual sharing of risk is carried out on the basis of mutual assistance in goodness by means of each issuing worship funds (*tabarru*) which are intended to bear the risk. On the basis of the foregoing, Takaful insurance is an act under the authority of two parties, namely the customer (the insured) and the insurance company (the insurer) and "qubal" (receipt) from another party, in this case the Takaful insurance company as the insurer. As with agreements (contracts) in general, in Takaful insurance, apart from the specific contract conditions, the legal terms of an agreement in Article 1320 of the Civil Code also apply. So based on the description of the background above, the researcher is interested in researching and describing takaful insurance as an Islamic financial institution in Indonesia by being linked to Law no. 2 of 1992 concerning the insurance business

II. Research Method

The method used in this paper is descriptive analytical writing method, which is a method of writing that aims to provide an overview and analyze the operational principles of Takaful Insurance as an Islamic financial institution in Indonesia associated with existing and still valid laws and regulations. The approach used is a normative juridical approach, which is an approach in legal research (writing) using the primary source of secondary data. Secondary data is data obtained through library materials, including "primary legal materials", namely binding materials, consisting of basic norms or rules, basic regulations, statutory regulations and others, "secondary legal materials", namely legal materials that provide explanations of primary legal materials, such as the results of research by experts, scientific works from legal experts, papers in seminars, as well as books written by experts and others. The data analysis used is non-statistical qualitative analysis, because the data analyzed is qualitative data, obtained through literature searches and interview results as a complement and without using tables, statistical and mathematical formulas. The data is then analyzed and the results of the analysis are presented in the form of a conclusion (Effendi, 2016).

III. Result and Discussion

3.1 The Role of Takaful Insurance as a Financial Institution in Society

The Islamic economic system has very different characteristics from the conventional economic system. Where Islamic economics prioritizes the blessings of every economic transaction, there is a transcendental relationship in economic and other activities. It is this substantial difference that is claimed that the Islamic economic system is expected to one day replace the current economic system. One of the instruments in the economy is financial institutions. Financial institutions, both conventional and Islamic, are divided into two sectors of financial institutions, namely: bank financial institutions and non-bank financial institutions. One of the many non-bank financial institutions in the sharia sector is insurance which is also known as takaful, the contract model used can be in the form of *tijarah* and it can also be in the form of *tabar*. Insurance is a mutual agreement between community members to guarantee and bear each other by collecting money and making a joint financial fund savings that is used as a relief fund for someone who is in trouble. This is done as an effort to deal with events that might happen to someone and lead to losses. In this modern era, the need for insurance is increasing in line with economic growth and international trade. Every individual who opens a trading business always needs safety protection and welfare guarantees for his business. With that, today's insurance protection is considered important for the safety and well-being of both companies and individuals (Rahman, 2011).

While insurance in Arabic is known as *takaful*, *ta'min* or *tadamun ta'min* means to give a sense of security to one of the transacting parties. This sense of security and avoidance of misgivings is the object of the *ta'min* transaction referred to in that term. The definition of sharia insurance according to the MUI fatwa, which is better known as *ta'min*, *takaful*, or *tadhamun* is an effort to protect and help each other between a number of people or parties through investment in the form of assets and or *tabarru* providing a pattern of returns to face certain risks through contracts compliant with sharia.

From the definition explained by the MUI Fatwa above, it states that Islamic insurance has substantial differences with conventional insurance. First, the initial contract on sharia insurance is intended at the beginning of the contract that the participants have

the aim of helping each other (tabaru) among insurance participants by setting aside some of their funds to help each other. This is different from contracts that occur in conventional insurance, where there is a transfer of risk (transfer of risk) to an insurance company by being required to pay a premium (Hardi, 2016).

The establishment of insurance companies has also contributed greatly to the economic sector of a country. Besides being able to provide financial assistance to individuals and the state, companies also benefit from investing in companies engaged in the development of important state sectors managed by the private sector or the government. Therefore, its existence is very necessary for development. However, insurance companies in their activities cannot be separated from things that are prohibited by Islamic law. Many scholars argue that insurance is a contract that contains elements of usury, gharar, and maisir and has many negative impacts that arise in society.

There are many cases where someone kills or destroys something of their own or someone else's with the aim of getting money from the insurance company. Therefore, studies on insurance continue to be carried out to answer this problem, which in the end emerged the concept of insurance in accordance with Islamic law as a result of that study. The establishment of a takaful company is a continuation of the efforts of the scholars in realizing an institution that guarantees the protection of self and property in accordance with Islamic law. Conceptually, principles, and philosophy of takaful are based on Islamic teachings sourced from the Koran and al-Hadith. Takaful is an Islamic insurance system whose operational mechanism is based on what the scholars aspire to, namely a protection system based on Islamic teachings to provide welfare and community integration in hopes of the pleasure of Allah SWT (Anugrahadi & Prasetyo, 2018).

Takaful Insurance as one of the financial institutions engaged in financial services that collects public funds through the collection of insurance premiums has a very important role in the community using insurance services against possible losses due to an uncertain event or to a person's life, and also Takaful Insurance has played a role in economic development, especially in the field of funding. Takaful insurance is an accumulation of funds and people for the people that is used to overcome uncertainty and the risks that befall people who use insurance services. In addition, the funds collected from these premiums are used to finance projects that are in accordance with sharia. Takaful Insurance seeks to empower the economy of Muslims who are the majority population in Indonesia so they don't go anywhere, so that the economy of Muslims, which has been felt weak and lacking, will become strong and uplifted (Hidayatullah, 2016).

From the description above, it can be seen that Takaful Insurance has a major role in the socio-economic life of the community (ummah), both for people who are directly involved in Takaful Insurance activities and for people who are indirectly involved in it. The At-Takaful principle contains a very broad meaning, which includes the principles of mutual responsibility, mutual cooperation or assistance, and mutual protection of each other's suffering. These three principles, basically worship, are in the form of tabarru (Dana). In practice, this kind of thing is a condition that must be followed by all Takaful Insurance participants (Yulianto, 2018).

The conditions for a valid Takaful insurance contract (agreement) are as follows, agree that those who bind themselves, are capable of making an agreement, a certain thing (object) is legal according to law, a lawful cause (causa), not prohibited by syara, contract give benefit or benefit

AI-Musyarakah is a cooperation agreement between two or more parties who own capital (money or goods) to finance a business. The profit from the business, which does not have to be equal to the share of capital of each party in the event of a loss, the loss is

divided according to the share of each capital, however the AI-Mudharabah principle is different from the AI-Musyarakah principle, namely the AI-Mudharabah principle. Mudharabah there are parties who provide funds only (shahibul mal) and there are parties who are responsible for business management (mudharib) with an agreed profit ratio (Hisamuddin, 2015).

In AI-Mudharabah, when the contract has been signed and the shahibul mal has handed over the funds to the mudharib, the shahibul mal no longer has the authority to engage directly in business management. This principle is clearly identical with the principle of separation of ownership from modern management which is believed to have a high efficiency impact for the company.

Syirkah Mudarabah is a partnership agreement between the owner of capital (money or goods) and an entrepreneur (entrepreneur). Where the owner of the capital is willing to fully finance a project/business and the entrepreneur agrees to manage the project/business with profit sharing in accordance with the agreement. Owners of capital are not allowed to participate in project/business management, but are allowed to make proposals and carry out supervision. On the basis of the foregoing, in syirkah mudharabah in takaful insurance, namely a partnership agreement between the insured party by submitting funds (premiums) with the insurance company as the insurer. Where the insurer is willing to manage the premium money by sharing the profits from the development of the insured's funds (premiums) in accordance with the agreement.

Syirkah Mudharabah can end (void), if it violates the requirements specified in the contract (agreement), the executor neglects his duties as a manager/maintainer of capital, the manager (mudharib) violates the contents of the agreement that has been agreed on the percentage of profit sharing, one of the parties making the mudharabah agreement dies, and the capital manager makes the mudharabah again to another party (NUHRAM, 2014).

Takaful Insurance as a financial institution that operates based on Islamic Sharia principles, will be useful, especially for participants as follows (1) To provide a place to save or save for participants on a regular and safe basis, both for the short and long term, both for the long term and in the short term. now and in the future (2) To prepare for the future of the participant's heirs, if at any time God calls or dies (3) To prepare for participants if at any time they get a calamity both to themselves and their property, funds are available to overcome it (4) If the insured is still alive, he will get back the part of the money savings that have been collected along with the profits and excess (5) Islamic banks (Bank Muamalat Indonesia and BPR-Islamic BPR) in Indonesia will provide Takaful insurance as an asset and given to customers (Ridlwan, 2016).

With the principles mentioned above, the various objections faced by the conventional insurance system are non-existent. Likewise, the element of uncertainty (Gharar), the element of gambling/gambling (Maisir) and the element of interest (Riba) will disappear. With such an insurance system, the benefits of Takaful Insurance can be enjoyed even more, for Takaful Insurance participants, Takaful Insurance companies as well as for the community and nation.

3.2 Differences in Takaful Insurance's Operational Principles with Conventional Insurance

The difference between the operational principles of Takaful insurance and conventional insurance can be seen in the following points. In conventional insurance, life insurance agreements include Tabadduli contracts or exchange contracts, namely the exchange of premium payments with the sum assured. In this contract, there is still an element of uncertainty (Gharar), because the customer knows for sure the amount insured,

but does not know the total premium to be paid: Only Allah knows the time limit for someone to die. In Takaful Insurance, the contract is based on a Takaful Agreement or mutual assistance and mutual guarantor. For example, a participant named X dies, then the other participant's kinship Y, T and 2 must help him, and vice versa (Muhammad, 2022).

The At-Takaful principle contains a very broad meaning, which includes the principles of mutual responsibility, mutual cooperation or assistance, and mutual protection of each other's suffering. These three principles, basically worship, are in the form of tabarru (Dana). In practice, this kind of thing is a condition that must be followed by all Takaful Insurance participants.

Maisir in the sense of insurance is the existence of one party who is lucky but on the other hand actually suffers a loss. In conventional insurance, one party experiences a profit, while the other party suffers a loss. For example, a policyholder, for certain reasons, cancels his contract before the Reversing Period, usually in the third year, then the person concerned will not receive back the money that has been paid except only a small part. In Takaful Reversing Insurance, the period starts from the beginning that each participant has the right to get Cash Value and get all the money paid, except for only a small part, which has been put into a special account for participants in the form of donations (Ismanto, 2014).

The celestial (celestial) religions, namely Judaism, Christianity, and especially Islam have stated that usury is haram and considers usury to be one of the major sins. In fact, Allah has cursed those who participate in usury transactions. Bukhari and Muslim and others narrated from Jabir as quoted by Abu Sura'i A.H, that the Messenger of Allah said Allah cursed the eater of usury, the payer, the writer and the two witnesses." Returning to the issue of the element of usury (interest) in insurance, we can see that in conventional insurance there is an element of usury because in its operations it does business and invests by lending funds on an interest basis, especially with banks and Fund Manager Companies, while in Takaful Insurance not doing business and investing with the application of the interest system, because he must place his funds in investments in accordance with the principles of shari'ah.

In conventional insurance, the commercial element is still prominent, as a result of the application of interest. And almost all conventional insurance forfeited funds are always there. For example, a person who insures a building against fire hazards, for example for a period of 5 (five) years by paying a premium of one million rupiah per year, if until the insurance period expires the building does not experience a fire, then he will not get his money back which has been deposited with the insurance company (Ipi, 2019).

Likewise, if for some reason the insured does not continue to pay the premium paid in installments, then the money that has been paid simply disappears, or if it is returned the amount will be reduced altogether from the amount that has been deposited. Thus the insured will experience a loss, while in Takaful Insurance the commercial element is covered by the element of "ta'wun", or assistance as a result of the application of the principle of Al-Mudharabah, with a profit-sharing system.

In its operations, Syarikat Takaful (Takaful Insurance) cooperates with Takaful participants (insurance policy holders/insured) on the basis of the Al-Mudharabah (profit sharing) principle. Syarikat Takaful acts as AI-Mudharib recipient of payments from Takaful participants to be administered, invested in accordance with sharia principles, while those who act as Shahibul mal (fund providers) are Takaful participants, who will benefit from protection services and profit sharing of Syarikat Takaful (Saidah, 2014).

The Indonesian Muamalat Arbitration Board (BAMUI) stated that Syarikat Takaful provides two types of Takaful protection, namely, family takaful (life insurance) and

general takaful (loss insurance). Family insurance is a form of Takaful that provides financial protection to Takaful participants in the face of catastrophic deaths and accidents that befall Takaful participants, the forms of family Takaful offered are planning takaful, financing takaful, education takaful, Hajj fund takaful, term takaful and health takaful . General Takaful is a form of Takaful that provides financial protection to Takaful participants in the face of disasters or accidents of property belonging to Takaful participants. The general forms of takaful offered are fire takaful in the form of providing protection against loss and or damage as a result of fires caused by sparks, lightning strikes, explosions and aircraft crashes and the risks they cause. Besides that, it can also be expanded with additional wider guarantees (Wahyuningsih, 2009).

Motor vehicle takaful is in the form of protection against partial loss and or total loss as a result of accidents or theft as well as legal liability to third parties. The general Takaful fund management mechanism is carried out as follows, the takaful premiums received are put into a special account (Tabarru), which is a special account provided for good in the form of payment of claims to participants if at any time a disaster strikes both the property and the participant's self. The Takaful premium is included in the participant's fund pool, then developed through project investment that is justified by Islam. In maintaining the institutional function so that the operational activities of Takaful insurance do not deviate from the demands of Islamic Sharia, in Takaful insurance there is a supervisory body called the Sharia Supervisory Board.

The Sharia Supervisory Board is a board body established to oversee the course of Takaful insurance so that in its operational activities it does not deviate from the principles of muamalah according to Islam. The Sharia Supervisory Board is in charge of discussing issues and business transactions that are submitted to the Council, so that it can be determined whether or not these problems are in accordance with the provisions of Islamic Sharia. In addition to being under the supervision of the Sharia Supervisory Board, Takaful insurance as a form of insurance business as regulated in Law no. 2 of 1992 concerning Insurance Business, is also under the guidance and supervision of the Minister of Finance of the Republic of Indonesia (Supriyadi, 2017).

Takaful insurance operational activities besides being based on the principles of muamalah according to Islam, also operate in accordance with the provisions of the laws and regulations that apply in Indonesia based on Pancasila and the 1945 Constitution, and are not exclusive and can contribute to the development of society as a whole. Takaful insurance with its operational principles based on Islamic Sharia principles will be able to direct the people's economy to practice, especially in muamalah related to insurance, in order to avoid gambling or gambling practices (Maisir), interest (Riba) or other types of insurance. Other types of businesses that contain fraud (Gharar), these types of businesses are not only prohibited in Islam, but also have a negative impact on the economic life of the people. In addition, with the implementation of Islamic Sharia principles in its operations, Takaful Insurance will be able to save Muslims, especially from the conventional system which causes Muslims to be under the power of insurance and cannot carry out their religious teachings in full, especially in the field of business and economic activities. . Thus, the prospects for the operational principles of Takaful Insurance are quite good, both now and in the future, because the benefits will be enjoyed by Takaful participants, Takaful companies, the community and the nation.

IV. Conclusion

Takaful insurance operations are based on the principle of protection and profit sharing in accordance with Islamic Shari'ah, in the At-Takaful principle contained a broad meaning, in which the principles of mutual responsibility, mutual cooperation or mutual assistance, and mutual protection of each other's suffering are enforced each other. These three principles, basically worship, are in the form of tabarru (Dana). The difference between the operational principles of Takaful insurance and conventional insurance can be seen from the element of uncertainty (Gharar), namely in conventional insurance, life insurance agreements include Tabadduli contracts or exchange contracts in which premium payments are exchanged with the sum assured. In this contract (agreement) there is still an element of uncertainty (Gharar), because the customer knows for sure the amount of the coverage, but does not know the total amount of premium to be paid. In Takaful Insurance, the contract is based on the Takaful Agreement or mutual assistance and mutual guarantee. In this takafuli principle, all insurance participants become mutual helpers and guarantors. In its operations, the tafakul organization (Takaful Insurance) cooperates with Takaful participants (insurance policy holders/insured) on the basis of the AI-Mudharab (profit sharing) principle. Syarikat Takaful acts as AI-Mudharib (manager) and recipient of payments from takaful participants to be administered, invested in accordance with shari'ah principles, while those who act as Shahibul mal (fund providers) are Takaful participants, who will benefit from protection services and profit sharing in the benefits of the Takaful Company.

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