



Analysis of the Implementation of the Tabarru' Contract in Sharia Insurance Based on DSN-MUI Fatwa No. 53 of 2006

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Article History Received: 2025-04-16 Revised: 2025-05-18 Published: 2025-05-30 Keywords: <i>tabarru contract;</i> <i>sharia insurance; DSN-</i> <i>MUI fatwa</i>	This study aims to analyze the implementation of the tabarru' contract in Islamic insurance in Indonesia by referring to the DSN-MUI Fatwa No. 53 of 2006. The tabarru' contract is a gift agreement that aims to provide mutual assistance between insurance participants, in accordance with sharia principles such as justice, solidarity, and transparency. This study uses a library method by analyzing literature related to fatwas, laws, and academic references. The results of the study indicate a gap between the theory and practice of the tabarru' contract, especially in the management of underwriting surpluses that allow for the return of funds to participants. However, the implementation of this contract has increased public trust in Islamic insurance through the separation of tabarru' funds from company operational funds, transparency of management, and collective responsibility among participants. This study emphasizes the importance of public education to improve understanding of the tabarru' contract as a sharia financial solution that supports shared prosperity. With better implementation, the tabarru' contract is expected to not only function to protect risks, but also reflect the values of worship and social service in Islam.

I. INTRODUCTION

Indonesia is the second largest Muslim majority country in the world, with 87.2% of the total population being Muslim.(Rasyid & Dewi, 2019). Thus, the Islamic financial market in this country holds considerable opportunities and potential. One type of Islamic financial instrument is insurance. Takaful, often referred to as Islamic insurance, continues to grow, clearly benefiting the Indonesian insurance industry. Indonesians are increasingly recognizing the importance of insurance in their lives. Insurance has significant potential for growth.

The goal of the sharia-based insurance system in Indonesia for many years has been to build a modern insurance company that can compete with conventional insurance companies and meet the needs of Muslims in the country.(Ilham, 2020)Indonesia has tremendous commercial potential for sharia insurance because its population is predominantly Muslim. According to Muslims, sharia financial institutions are

necessary to ensure that all transactions are conducted in accordance with sharia. An additional term for sharia insurance is ta'awun, which means "mutual cooperation." (Hardiati et al., 2021). This is known as ta'awun because it is basically based on sharia law, which calls for tolerance between people to foster unity in the face of natural disasters. This principle is contained in verse 2 of Surah Al-Maidah, "And help you in (doing) righteousness and piety, and do not help you in (doing) sin and enmity," in line with that verse.

The basic principles of insurance companies have historically been tied to social values and the concept of people helping each other. Today, the rapidly growing sharia business, both involving sharia-compliant and non-sharia-compliant entities, is driven by insurance.(Azqia, 2022).

The Indonesian insurance industry grew rapidly after the government deregulated the insurance industry in the 1980s. This was further strengthened by Law No. 2 of 1992 concerning

Insurance Business, which defines insurance as an agreement between two or more parties that binds the insurer to the insured by paying an insurance premium to compensate the insured for any loss expected to be suffered by the insured due to damage, loss, or legal liability to a third party that the insured may suffer as a result. Mohammad Shaifie Zein, Chairman of the Indonesian Sharia Insurance Association (AASI), stated that the sharia insurance industry in Indonesia has grown rapidly in recent years. He estimates growth of 1% to 1.5% per year.(Maisaroh et al., 2025).

Sharia insurance services are used by many people, including Muslims and non-Muslims.(LAURA, 2025)This is because the system is more transparent and fair, which is why both parties prefer it. This system has increased public interest in Sharia insurance. Many companies have entered the Sharia insurance industry due to the high public interest in Sharia insurance. Sharia insurance businesses can be run in two ways: establishing a Sharia insurance company or establishing a division or branch.

In the tabarru' contract, ownership of assets is transferred voluntarily from the giver to the recipient without the aim of gaining profit and without any compensation.(Putra et al., 2022)The goal is to expedite the transition to becoming a sharia insurance participant, solely with the expectation of rewards from Allah SWT. Unlike the mu'awadhah contract in conventional insurance, the service provider is permitted to receive compensation from the recipient.(Rafsanjani, 2016)This definition contradicts the pure theory of the tabarru' contract, which states that no compensation is permitted in the contract. In fact, participants in the tabarru' contract have two roles: as contributors to the tabarru' funds and as beneficiaries entitled to the tabarru' funds. In this dual capacity, participants who deposit tabarru' funds anticipate potential allocations if they experience a disaster, because the tabarru' funds are considered the participants' rights.(Putra et al., 2022).

The potential for violations in the tabarru' contract in sharia insurance is demonstrated by

the gap between the theoretical framework and practical application. In practice, sharia insurance participants may be eligible to receive a refund of tabarru' funds if there are no claims due to underwriting surplus, even though the tabarru' contract theoretically prohibits refunds. Participants have the right to access tabarru' funds derived from the collective tabarru' fund allocation that has been deposited by participants, in the event of a claim.(Wahyuni & Qadariyah, 2024).

The gap between the theoretical framework of tabarru' contracts and the practical implementation of Islamic insurance has piqued the author's interest. Although Islamic insurance is a profit-oriented professional entity, it must not alter the fundamental principles of each contract to ensure its implementation is in line with authentic Islamic principles.

Yusuf Qardhawi explained that tabarru' is the same as giving(Fidhayanti, 2012). Taking tabarru funds that have been given is the same as taking a grant that should have been given to someone else.

Reducing the unforeseen risks faced by individuals or groups is the primary goal of insurance. Life has an element of risk that we cannot predict. Therefore, Islam urges Muslims to strive and work to reduce the threats in their lives, enabling them to change their own circumstances. As stated in the Word of Allah SWT in Surah Ar-Ra'd: 11:

For him (man) there are (angels) who accompany him in turn from the front and behind him who guard him at the command of Allah. Indeed, Allah does not change the condition of a people until they change what is in themselves. If Allah wills evil for a people, no one can resist it, and there is absolutely no protector for them besides Him.

The principle of tabarru' according to Fatwa No. 53/DSN-MUI/III/2006 concerning the tabarru' contract in sharia insurance is defined as a gift intended for virtue and mutual assistance among participants rather than commercial purposes. The concept of muamalah rooted in tabarru' is considered an act of worship, which categorizes the contract as non-profit oriented.(Fuadi, 2018). Therefore, there is no doubt about its validity.

The Tabarru contract mechanism works to provide compensation to both parties in the event of a disaster. The principle of mutual risk sharing, which refers to how insurance companies and policyholders work together to provide coverage, is the basis of Islamic insurance. Because tabarru funds are invested and generated with the aim of benefiting members of the Islamic insurance system, this demonstrates the cooperative nature of the Islamic insurance system. The mudharabah method, or profit-sharing system, generates profits by taking into account the participants' funds. Participants control the capital as shohibul maal, and the insurance company acts as trustee. Participants and the company share profits from the fund's growth according to agreed terms.(Fuadi, 2018).

National Sharia Council Fatwa No. 53/DSN-MUI/III/2006 concerning Tabarru' Contracts is the main source used by the author to see how tabarru' contracts are used in sharia insurance. A literature review is used to assist the purpose of this writing in understanding the ideas and practices of the tabarru' contract based on the sharia rules stipulated in the fatwa.

This research is expected to contribute to the development of Sharia law studies, particularly regarding the application of the tabarru' contract in Sharia insurance practices. This analysis was conducted by reviewing the fatwa's comprehensive content to evaluate the extent to which its provisions provide a strong legal basis for the application of the tabarru' contract in Sharia insurance practices.

II. RESEARCH METHODS

This research uses library research, using secondary data obtained from several textual sources.(Muhadjir, 2000)This methodology is used to carefully analyze the legal basis, implementation, and implications of DSN MUI Fatwa No. 53/DSN-MUI/III/2006 concerning tabarru' contracts in sharia insurance. Data were collected from primary sources, such as DSN MUI Fatwa No. 53/DSN-MUI/III/2006, the Insurance Law, and operational guidelines for sharia insurance, as well as secondary sources consisting

of reference books, scientific articles, and relevant research reports.

Data analysis was conducted descriptively and qualitatively, beginning with reading, recording, and compiling data from the collected literature. The data were then analyzed based on three main dimensions: a legal analysis that evaluates the fatwa's alignment with sharia principles; a practical implementation assessment that examines the application of tabarru' contracts in the sharia insurance sector; and an evaluation of the fatwa's relevance and effectiveness in promoting sharia insurance in Indonesia.

This research utilizes only reputable sources from government bodies, such as the Indonesian Ulema Council (MUI), along with academic publications written by experts in Islamic economic law to ensure authenticity. While not conducting interviews or direct observations, this study mitigates these limitations by comprehensively gathering data from current literature. This approach is anticipated to provide a comprehensive analysis related to the topic under study.

III. RESULTS AND DISCUSSION

A. The Concept and Principles of Tabarru' Contract in Islamic Insurance

Tabarru' comes from the word tabarra'a-yatabarra'u - tabarru'an, which means donation, grant, grant, or alms. People who donate money are called mutabarri, which means "generous". Tabarru' is a voluntary gift from one person to another without compensation, which results in the transfer of property from the giver to the recipient. "Tabarru's contract" is a term that refers to various types of transactions that are carried out on a non-profit basis and are not aimed at generating commercial profit. The goal is to achieve goodness in the long term, this contract aims to provide support(Fuadi, 2018).

A Tabarru' contract that is not commercial in nature is a grant contract where one Participant funds the Tabarru' Funds from another Participant with the aim of mutual assistance between the Participants (Minister of Finance Regulation Number 18/PMK.010/2010 concerning the Implementation of Basic

Principles for the Implementation of Insurance and Reinsurance Businesses with Sharia Principles)(Wahyuni & Qadariyah, 2024). In essence, the tabarru' contract is a promise to do pious deeds in the hope of receiving a good reward from Allah SWT. Therefore, the purpose of this contract is not to seek financial gain. He emphasized that if carrying out business in accordance with the provisions of the tabarru' contract results in financial profits, then this aspect of the transaction is no longer considered tabarru' but rather *tijarah*. He cannot obtain profits (money) from the tabarru' contract if he wants to remain a tabarru'. The costs incurred to carry out the tabarru' contract are clearly not his responsibility. This means that he can claim compensation for the costs incurred during carrying out the tabarru contract.(Rafsanjani, 2016).

The money paid by insurance participants in the form of contributions is tabarru' (kindness) from participants to the company, which is used to help participants in need in accordance with applicable provisions. The company gives this money to participants as tabarru', or a pure gift without expecting anything in return. The tabarru' contract is a legal relationship that occurs between insurance participants in a *ta'min jama'i* (collective insurance) contract. Each participant has the right to receive tabarru' funds if they suffer a disaster, and they also have the responsibility to provide tabarru' funds to other participants who suffer a disaster.(Putra et al., 2022). Among the arguments are:

And help you in (doing) righteousness and piety, and do not help you in committing sins and transgressions. And fear Allah, verily Allah is severe in punishment. (QS. al-Maidah : 2).

"Whoever lifts a worldly trouble from a believer, Allah will lift from him a trouble on the Day of Resurrection. Whoever makes things easy for someone who is in trouble, Allah will give him ease in this world and the hereafter.(HR. Muslim from Abu Hurairah).

"The parable of believers in their mutual love, care, and assistance is like that of a body. If one

part of it hurts, the whole body feels it, suffering from sleeplessness and fever."(HR. Muslim from Nu'man bin Basyir).

The basic principle of Islamic insurance is to facilitate fair and proportional risk sharing among relatively homogeneous participants. This framework aims to foster a sense of mutual assistance, ensuring that all participants feel secure and receive the necessary protection.(Suwardi, nd).

One of the legal relationships that originates from the *ta'min jama'i* contract, or collective insurance, is the tabarru' contract. In the tabarru' contract, each participant is a provider of tabarru' funds to other participants who are struck by disaster in the form of compensation, assistance, claims, or whatever is their right, and at the same time they are also entitled to receive tabarru' funds when they are struck by disaster.(Budiman, 2013). Speaking about Tabarru' in Sharia Insurance, Fatwa of the Sharia Council of the Indonesian Ulema Council No. 53/DSN-MUI/III/2006 states that the tabarru' contract must be present in every insurance product. In insurance, the tabarru' contract is a contract carried out in the form of a charity fund that is charitable and mutually beneficial among participants rather than aimed at gaining profit.(Fuadi, 2018).

B. DSN-MUI Fatwa No. 53 of 2006 concerning the Tabarru' Agreement

The basic principle of Islamic insurance, the tabarru' contract, serves to balance the values of justice and solidarity. The implementation of this contract is regulated in detail in DSN-MUI Fatwa No. 53 of 2006, which ensures that all Islamic insurance procedures comply with Islamic law. The legal provisions, contract implementation procedures, the status of the parties, and the management of tabarru' funds are all covered in this fatwa.

- a. This fatwa covers the following matters:(Fuadi, 2018)
 1. The tabarru' agreement is an agreement that must be present in all types of insurance;

2. Insurance includes life insurance, loss insurance, and sharia insurance; and
3. Participants in sharia reinsurance are insurance companies or policy holders.

b. Terms of the Tabarru' Contract

1. The tabarru' contract is used as a gift, with the primary goal of helping participants. This contract prioritizes social responsibility and solidarity among participants, unlike conventional insurance, which prioritizes profit.
2. To provide transparency, the tabarru' contract must include the following:
 - 1) Individual rights and obligations of participants: Participants have the right to be protected and must make contributions;
 - 2) Collective rights and obligations in tabarru' accounts: Participants are jointly responsible for the risks faced.
 - 3) Premium and claim payment times and methods: Comprehensive information about payment schedules.
 - 4) Additional requirements related to the type of insurance: Additional provisions related to the specified insurance product.

c. Position of the Parties in the Tabarru' Agreement

Grant funds are donated by participants to help other participants affected by disasters. According to the regulations, participants are also entitled to benefit from the tabarru' funds.(Fidhayanti, 2012)Participants act as equal risk bearers (mu'ammin/mutabarri'). This demonstrates a collective ethos and shared responsibility. Under the wakalah contract, the insurance company acts as the fund manager. Furthermore, the institution is responsible for managing the investments while adhering to Sharia principles.

d. Tabarru' Fund Management

Tabarru' funds can only be managed by an institution acting as a trustee, ensuring transparency and compliance with sharia. To ensure transparency in the use of these funds, they must be separated from other funds, including investment funds or company-owned funds. Recorded separately in a tabarru' account, investment profits from the tabarru' funds

become the shared rights of all participants. Insurance companies can obtain returns based on prior agreements using mudharabah or ujah contracts.(Putra et al., 2022).

e. Underwriting surplus

There are several alternatives that can be implemented if there is an excess of tabarru' funds:

1. Reserves in tabarru' accounts are treated entirely as tabarru' funds.
2. Part of the funds are kept in a reserve fund, while the remainder is distributed to participants who meet actuarial/risk management criteria.

f. Some of the funds can be kept as a reserve fund, while the remainder can be distributed to the insurance company and participants, provided that the participants agree to it.

1. The contract must be signed by the participants after they agree to select one of the options mentioned above.

g. Underwriting deficit

1. Insurance companies are required to correct the underwriting deficiencies in tabarru' funds through qardh (loans).
2. Reimbursement of qardh payments to insurance companies is provided separately from tabarru' funds.

C. Implementation of the Tabarru' Contract in Sharia Insurance in Indonesia

Based on the Regulation of the Minister of Finance Number 18/PMK.010/2010, Chapter I General Provisions, Article 117, and Regulation of the Minister of Finance Number 11/PMK.010/2011, Chapter I General Provisions, Article 118, it is stated as follows:

1. Tabarru' funds are funds collected from participant contributions to life insurance products with investment components, which are managed by the Company in accordance with the policy. Life insurance products containing investment components are managed by the Company in accordance with established contracts.(Wahyuni & Qadariyah, 2024).
2. Tabarru' contract is a contract for providing funds by one participant to help each other,

which is not intended for commercial purposes.

Tabarru' is the provision of charitable funds with the sincere intention of helping fellow takaful (sharia insurance) participants in the event of a disaster within the context of a sharia insurance contract. Claim funds are drawn from the tabarru' fund account established by all participants when they register for sharia insurance. This fund is intended for mutual assistance or charitable purposes.(Fidhayanti, 2012)Therefore, in the tabarru' contract, the party who sincerely gives something does not expect anything in return from the recipient, except only the goodness of Allah SWT.

1. Tabarru Fund Management System

The concept of risk in Islamic insurance is risk sharing, which involves the process of mutual responsibility between one participant and another. In Islamic insurance, tabarru' funds are accumulated in a fund. When an insurance member experiences a disaster and files a claim, the funds will be withdrawn from the tabarru' fund. The funds will be withdrawn from the tabarru' fund in accordance with the agreed contract. Contributions in Islamic insurance consist of deposit funds and tabarru', which do not contain elements of usury. Interest is not included in tabarru' calculations. The tabarru' account is the source of claim payments, which are shared among the participants. Therefore, if one participant experiences a disaster, the other participants will share the risk.(Fuadi, 2018).

The gharar (uncertainty) and maysir (gambling) factors will be eliminated with the introduction of tabarru' funds in the sharia insurance sector. The separation of accounts and their intended use, as well as separate recording functions, are emphasized in Minister of Finance Regulation No. 18/010/2010 to ensure that the tabarru' funds for mutual assistance are truly pure and not mixed with the company's business operational funds.(Wahyuni & Qadariyah, 2024).

Sharia insurance, particularly life insurance, is implemented in two different forms at the time of premium payment: an investment contract and a contribution contract, which are based on the principles of takafuli and tabarru'. The

mudharabah principle is used to manage the investment savings contract, while the berkah and tabarru' principles are used to manage the contribution contract. The tabarru' account will receive funds, such as 5% of the total premium paid, received under the tabarru' contract. The remaining 95% will be deposited into the investment savings account.(AHMAD, 2022).

In the context of fund management in sharia insurance savings products, funds are divided into tabarru' (charity) funds and participant funds to prevent the occurrence of term fund forfeiture. Meanwhile, all term (life) and general insurance policies are tabarru'. This is in accordance with the concept of sharia insurance, namely a collective effort to protect (takaafulli) and/or assist (ta'awwunii) a number of individuals by investing assets and tabarru', namely providing a pattern of rewards in order to face certain risks through contracts in accordance with sharia. These contracts must not contain elements of gharar (doubt), maysir (gambling), riba, dzulm (abuse), risywah (bribery), illicit goods, and sin.(Zubair & Hamid, 2016).

2. Benefits of Tabarru' Contracts in Islamic Insurance in Indonesia

The benefits of the tabarru' contract in Sharia Insurance in Indonesia are seen from 3 parties, namely: participants, insurance companies, and the community.

Minister of Finance Regulation Number 18/PMK.010/2010 stipulates that the benefits of the tabarru' concept for insurance participants stem from the nature of sharia insurance as a mutual assistance (ta'awun) and collective responsibility (takaful) contract between participants that allows them to participate in the tabarru' fund. The benefits of the tabarru' contract for participants are outlined in Article 2. Tabarru' is guided by the principles of justice (adl), trust (amanah), balance (tawazun), benefit (maslahah), and universality (syumul). It excludes prohibited elements, including uncertainty (gharar), gambling (maysir), interest (riba), oppression (zhulm), bribery (risywah), sin, and prohibited matters. Article 3 requires companies to clearly differentiate between the assets and liabilities of the tabarru' fund and the assets and liabilities of

the company, thereby increasing transparency and clarity; Article 15 also applies. If the tabarru' funds are insufficient to settle the participant's compensation claim, then it is mandatory to deposit financial loan funds (Qardh) into the tabarru' funds to speed up the claim settlement process.(Wahyuni & Qadariyah, 2024).

In Indonesia, sharia insurance products are one example of the implementation of the tabarru' contract, which provides benefits in accordance with sharia principles. One example is the Mitra Mabrur Sharia Life Insurance product offered by AJB Bumi Putera, which offers several key benefits. If the insured survives until the insurance period ends, the insured will receive the cash value. If the insured dies during the insurance period, the designated beneficiary will receive the benefit equal to the initial value, along with a 70% profit share of the investment fund growth. If the insured resigns before the insurance period ends, the insured is still entitled to receive the cash value.(Putra et al., 2022).

A similar approach is evident in the Mitra Iqra Plus Syariah Life Insurance product. The brochure outlines that the insurance benefits for participants include children's education funds in the form of scholarships, provided the participant survives until the end of the insurance period. It also includes welfare benefits, investment funds, and profit sharing (mudharabah) if the participant dies during the insurance period. Disbursement of education funds is carried out according to a specified schedule: 15% in the second year, 20% in the third and fourth years, and 25% in the fifth year.(Putra et al., 2022).

These advantages demonstrate the application of the tabarru' contract in Sharia insurance. The principle of mutual assistance and mutual care among participants is evident in the management of funds in accordance with Islamic law. Grant funds and investment returns are managed transparently for the common good.

Sharia insurance is a system in which participants deposit funds to cover claims in the event of a disaster affecting some of their members. The company's responsibility is limited to overseeing the insurance company's operations and investing contributions received or

transferred to the insurance company.(Fairuzzen et al., 2024).

The purpose of the contract to help each other and contribute grant funds (tabarru') is one of the additional benefits for participants. Furthermore, this contract is free from elements of gambling (maisir), usury (riba), and ambiguity (lack of transparency). The insurance program manages the investments and distributes the profit-sharing ratio between participants, with the insurance company responsible for the remainder. This program provides investment returns (mudharabah).

Based on the fatwa of the National Sharia Council of the Indonesian Ulema Council No. 21/DSN-MUI/X/2001 point ten regarding the management of paragraphs 2 and 3, the benefits of the Tabarru' contract for insurance companies are stated that sharia insurance companies receive ujah (fees) from the management of tabarru' (grant) contract funds and profit sharing from the management of funds collected on the basis of the tijarah (mudharabah) contract.(Budiman, 2013).

Minister of Finance Regulation No. 18/PMK.010/2010 mandates that existing tabarru' funds must be donated to the Sharia Supervisory Board's social advisory body if a company no longer has participants and ceases its business activities at its own request. This regulation outlines the benefits of the tabarru' contract for the community.(Rafsanjani, 2016).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The tabarru' contract is the main foundation of the sharia insurance system, reflecting the values of donation, mutual assistance, and justice in accordance with sharia principles. Theoretically, this contract aims to eliminate elements of gharar, maysir, and riba (usury) in insurance practices. Practically, the implementation of the tabarru' contract in Indonesia has shown positive results, particularly in terms of transparency in fund management, separation of participant and operational funds, and collective responsibility among participants. This implementation aligns with DSN-MUI Fatwa No. 53/DSN-MUI/III/2006,

which establishes tabarru' as the operational basis of sharia insurance.

However, there remains a gap between public theoretical understanding and current practice, making increasing literacy regarding tabarru' contracts crucial. Successful implementation of this contract not only impacts risk protection but also reflects social worship that supports the development of inclusive Islamic finance.

B. Suggestion

The government, Islamic financial institutions, and supervisory authorities need to improve public education and literacy regarding the concept and practice of tabarru' contracts to foster a comprehensive understanding among the public. Furthermore, strengthened regulations and oversight are needed to ensure the management of tabarru' funds remains transparent and in accordance with Sharia principles. With such support, the Islamic insurance industry in Indonesia can grow more rapidly and play an active role in building a fair and sustainable financial system.

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