



## Review of Insurance Law in the Perspective of Sharia Insurance: An Analysis of Principles and Implementation in Indonesia

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| Article Info  | Abstract  |
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| <b>Article History</b><br>Received : 2025-11-14<br>Revised: 2025-11-22<br>Published: 2025-12-30<br><br><b>Keywords:</b><br><i>Insurance; Sharia;<br/>Islamic Law; Takaful;<br/>Sharia Finance</i> | Insurance is an important part of the modern economic system that plays a role in providing protection against unforeseen financial risks. In the context of sharia economics, conventional insurance is often seen as incompatible with sharia principles because it contains elements of <i>riba</i> , <i>gharar</i> (uncertainty), and <i>maysir</i> (speculation). As an alternative, the concept of sharia insurance ( <i>takaful</i> ) emerged which is based on the principle of helping and protecting each other between participants. This research aims to examine insurance from the perspective of Islamic law and highlight how sharia principles are applied in the practice of sharia insurance in Indonesia. Using a descriptive qualitative approach and literature study as the main method, this study found that sharia insurance has a strong legal foundation both in terms of <i>fiqh</i> and laws and regulations in Indonesia. The results of this study are expected to provide a deeper understanding for the Muslim community regarding the halalness of insurance products and encourage the development of a sustainable Islamic financial system. |

### I. INTRODUCTION

The development of the increasingly advanced times has encouraged humans to be more proactive in planning efforts to deal with various life risks. One form of anticipation that is often carried out in dealing with these risks is through the existence of insurance. In general, insurance is understood as a form of protection against various possible losses that occur unexpectedly, such as accidents, illnesses, deaths, and other material losses (Nopriansyah, 2024). In this case, insurance plays a role in providing a guarantee of reimbursement for the risks that befall the insured party (Khan et al., 2016).

However, conventional insurance practices have received attention from a number of circles, especially Muslim scholars and academics, because they are considered to contain elements that are contrary to Islamic law, such as *riba* (interest), *gharar* (ambiguity), and *maysir* (gambling elements) (Mufid, 2021). This condition encourages the presence of an alternative in the form of an insurance system based on sharia principles that is designed to be in accordance with the values of Islamic teachings.

Sharia insurance or known as *takaful* is built on the principle of mutual help (*ta'awun*) and joint responsibility (*tabarru'*), where participants share risks with each other. The funds collected from the participants are managed in a trustworthy and transparent manner, and are used to provide compensation to participants who experience disasters, not just to pursue company profits (Antonio, 2001).

The emergence of sharia insurance is an answer to the anxiety of Muslims who want to get financial protection products that are in accordance with religious teachings. In Indonesia, the sharia insurance industry has experienced significant development, both in terms of regulations, institutions, and the level of community participation (Abdul et al., 2022). However, the public's understanding of legal principles in sharia insurance is still relatively uneven.

Based on this background, this study aims to review and examine more deeply the legal aspects of insurance from a sharia perspective. This study is expected to be able to provide a complete understanding of the legality of insurance in Islam

and explain how the implementation of sharia insurance in Indonesia can be carried out in accordance with Islamic principles.

## II. RESEARCH METHODS

In a scientific activity, research methods are an important element used to determine approaches and systematic steps in obtaining valid and relevant data. This methodology is designed so that research has a clear, measurable direction, and is able to answer the formulation of problems that have been formulated previously. With the right method, researchers can compile a logical and objective analysis to produce conclusions that can be scientifically accounted for (Muhaimin, 2020).

This research was conducted to examine the legal aspects of insurance from a sharia perspective, as well as to look at the implementation and challenges of sharia insurance in Indonesia. Therefore, the approach used must be in line with the type of data analyzed and the nature of the problem being studied. The researcher chooses a qualitative method with library research techniques, because the object of study is conceptual and normative, and requires a deep understanding of literature sources such as laws and regulations, fatwas, books, journals, and other legal documents (Mahmud Marzuki, 2005).

## III. RESULTS AND DISCUSSION

### A. Implementation of Sharia principles in Sharia Insurance

The results of the study show that sharia insurance companies in Indonesia have adopted basic sharia principles such as the *tabarru'* contract, *wakalah bil ujah*, and the existence of a Sharia Supervisory Board (DPS). However, in its implementation, there is still a variation in understanding among industry players about how this contract is implemented practically (Antonio, 2001).

Most companies have developed product structures based on the DSN-MUI Fatwa and OJK regulations, but regulations issued by the OJK, such as POJK No. 67/POJK.05/2016, require companies to institutionally separate sharia units from conventional units. But until now, not all companies have run spin-offs according to the set time target (Suryawadi, 2025). This indicates that supervision needs to be strengthened and socialization of spin-off obligations must be more massive (Safira et al., 2022).

In addition, the sharia supervision mechanism by the DPS still experiences challenges in its implementation, especially in the capacity of human resources and a deep understanding of *muamalah fiqh*. This has an impact on the quality of internal fatwas and operational decisions of the company (Ridlwani, 2016).

### B. Regulatory Compliance Evaluation

An evaluation of regulatory compliance in the sharia insurance industry in Indonesia shows that although there is a clear and strong legal basis, its implementation in the field still faces considerable challenges. Main regulations such as POJK No. 67/POJK.05/2016 concerning Licensing and Institutional Licensing of Sharia Insurance Companies regulate the obligation of conventional insurance companies to separate sharia units (*spin-offs*) no later than 2024. However, based on the OJK report as of the end of 2023, only a small number of companies have carried out a full spin-off. Many companies are still asking for an extension of time or declaring difficulties due to limited capital and infrastructure (Hasanah et al., 2024).

Non-compliance with spin-off deadlines shows weak regulatory enforcement and lack of incentives from regulators. In addition, the lack of strict sanctions also affects the company's motivation to immediately transform into an independent sharia entity (Sam et al., 2022).

Supervision of aspects of sharia compliance also still faces various obstacles. The existence of a Sharia Supervisory Board (DPS) in every company is mandatory, but in practice, many DPS only play a symbolic role. Based on a study conducted by Syafii Antonio (2021), only 47% of DPS are actively involved in sharia decision-making and auditing of sharia insurance companies. The main problem is the limited number of scholars or *muamalah fiqh* experts who have competence in the field of modern finance and insurance (Antonio, 2001).

Other evaluations include limitations in reporting mechanisms and internal oversight. There are still few companies that implement technology-based sharia compliance systems such as sharia compliance dashboards or digital audit trails. As a result, the reporting process becomes manual and slow, making it difficult for the OJK and MUI to verify operational compliance periodically (RAMADHANI, 2025).

With these conditions, it is necessary to update the supervisory strategy by regulators, improve

the competence of DPS, and enforce regulations through a reward and punishment approach so that the implementation of sharia insurance law is more optimal and reliable. This has an impact on the quality of internal fatwas and the company's operational decisions.

### **C. Problems and Challenges in Sharia Insurance Practice**

The practice of sharia insurance in Indonesia still faces various structural, regulatory, and cultural challenges that affect the effectiveness of its implementation (Hapsari, 2025). One of the main problems is the low literacy of Islamic finance in the community. Data from the Financial Services Authority in 2022 shows that the Islamic financial literacy index is still at a very low number, so some people still have a wrong perception by considering insurance as a practice that is not in line with Islamic teachings. This condition has a direct impact on the low penetration rate and acceptance of sharia insurance in the community.

In addition to the literacy factor, the competitiveness of sharia insurance products is also still relatively weak compared to conventional insurance products (Wulandari & Sari, 2025). Sharia products are often considered less flexible, have lower investment returns, and claim procedures that are not optimal. The lack of product innovation caused market growth to slow and encouraged some participants to return to conventional insurance. Another challenge can be seen in the practice of underwriting surplus distribution that has not been fully implemented in a transparent and accountable manner. In some companies, the management of tabarru' funds is still mixed with operational funds, so it has the potential to obscure the rights of participants and reduce the level of public trust in the principle of justice in sharia insurance.

Problems also arise from the limitation of human resources, especially experts who have adequate competence in the field of Islamic insurance and finance. The number of Sharia Supervisory Boards that truly understand the complexity of modern insurance products is still limited, which has an impact on the quality of supervision and the accuracy of fatwas. On the other hand, the use of digital technology and infrastructure in Islamic insurance companies has not been optimal. In fact, an integrated digital system is very important to improve the efficiency of fund management, transparency of

underwriting surplus, and the quality of Islamic financial reporting (Wulandari & Sari, 2025).

The next challenge relates to the weak integration and synergy between the Sharia Supervisory Board, company management, and regulators. In practice, the role of the DPS often does not have a significant influence in strategic decision-making, while coordination with the OJK and DSN-MUI still needs to be strengthened so that supervision runs effectively. In addition, the spin-off obligations of sharia business units as stipulated in POJK Number 67/POJK.05/2016 also face various operational constraints, such as limited capital, human resources, and business strategy readiness. This obstacle not only complicates the process of separating sharia units, but also has an impact on the slow development of the sharia insurance industry as a whole.

### **D. Comparison of Implementations in Other Countries**

A comparison of the implementation of sharia insurance between Indonesia and several other countries shows significant differences in regulatory readiness, governance, and operational practices. Malaysia is often used as a reference for its success in building a comprehensive and integrated takaful ecosystem through a strong legal framework, especially the Islamic Financial Services Act (IFSA) 2013 (Raditya et al., 2025). This regulation is supported by the active role of Bank Negara Malaysia and the Islamic Financial Services Board (IFSB) in ensuring sharia compliance and harmonization with international standards. Practices in Malaysia are characterized by high transparency in the management and distribution of underwriting surpluses, strict separation of tabarru' and operational funds, and the use of digital technology in real-time sharia auditing and reporting.

Sudan implements a comprehensive sharia insurance system by requiring all insurance companies to operate based on the principle of sharia cooperative through a wakalah or mudharabah scheme (Kholis, 2021). All participant funds are managed collectively, but industrial development in this country is still constrained by limited technological infrastructure and low product competitiveness. Saudi Arabia adopts a cooperative insurance model that is adapted to sharia principles and is overseen by an independent Shariah Supervisory Board, although product innovation is still

relatively limited (Latifah, 2017). Meanwhile, Pakistan is implementing a wakalah and hybrid model with the obligation to separate takaful units from conventional insurance, which is regulated through the Takaful Rules 2005 and has been quite effective, especially in the separation of participant funds.

From this comparison, it can be seen that Indonesia still faces various challenges, especially related to the delay in the implementation of spin-off sharia units, weak supervision of the Sharia Supervisory Board, limited technological infrastructure, and low public literacy of sharia insurance products. Nevertheless, Indonesia has great potential considering the majority of its population is Muslim and the government's commitment to the development of the sharia economy. By learning from the experiences of Malaysia and Pakistan, it is necessary to accelerate regulatory transformation, strengthen the quality of Islamic human resources, and digitize the supervision and operational system so that the Islamic insurance industry in Indonesia is able to grow sustainably and be more competitive at the global level.

#### **E. The Relevance of Maqashid Syariah in the Development of Sharia Insurance**

Sharia insurance is an Islamic financial instrument that is closely related to the main purpose of maqashid sharia, especially in the aspects of protecting life, property, and descendants (Prayitno, 2024). Through a mutual aid mechanism based on tabarru' funds, sharia insurance provides financial protection against various life risks such as accidents, deaths, and disasters, so that the survival of participants' families is maintained. This protection not only serves to maintain human safety and dignity, but also prevents economic losses that can disrupt family stability and widen social inequality. Thus, sharia insurance represents the real implementation of hifz al-nafs, hifz al-mal, and hifz al-nasl in the context of modern life (Syuhada & Mursyid, 2024).

In addition to its economic function, sharia insurance also contains strong ethical and spiritual dimensions. The tabarru' fund reflects the value of sincerity and solidarity between participants as a manifestation of Islamic ukhuwah, so that sharia insurance is not only an instrument of risk protection, but also a means of practicing Islamic values. The principles of fairness and trust that are part of the sharia

maqashid require the governance of sharia insurance companies to be carried out in a transparent, accountable, and fair manner, especially in fund management, distribution of surplus underwriting, and provision of benefits to participants (Syuhada & Mursyid, 2024).

However, in practice there is still a gap between normative concepts and actual implementation. A number of problems such as the mixing of tabarru' funds with operational funds, the weak role of the Sharia Supervisory Board, and the lack of transparency in the management of surpluses show that the value of sharia maqashid has not been fully internalized. Therefore, strengthening the implementation of sharia maqashid in sharia insurance requires improving the quality of human resources who understand muamalah fiqh and sharia maqashid, the use of technology to support sustainable supervision of sharia compliance, strengthening the strategic role of the Sharia Supervisory Board, and increasing public literacy so that sharia insurance is understood not only as a financial instrument, but also as a form of worship and social solidarity.

## **IV. CONCLUSIONS AND SUGGESTIONS**

### **A. Conclusion**

Based on the results of the studies that have been discussed, it can be concluded that sharia insurance in Indonesia is a financial protection system that has a strong legal basis, both from the perspective of sharia and national positive law. Principles such as ta'awun and tabarru' are the main foundations that distinguish sharia insurance from conventional insurance.

However, the implementation of these principles still faces challenges, including delays in spin-off of sharia units, weak supervision of sharia compliance, and low public literacy. In addition, the governance structure and surplus underwriting system still need to be improved to be more transparent and fair.

The relevance of sharia maqashid in sharia insurance is very strong, especially in protecting lives, property, and family sustainability. Therefore, sharia insurance not only serves as a financial instrument, but also as part of an Islamic social system that supports the values of ethics, solidarity, and sustainability.

### **B. Suggestions**

To encourage the growth of the sharia insurance industry that is healthy and in

accordance with the principles of sharia maqashid, it is necessary to strengthen the role of the Sharia Supervisory Board and sharia human resources through continuous training so that supervision and strategic decision-making run effectively. The use of digital technology in sharia compliance supervision and reporting is also important to increase transparency and accountability of companies. On the regulatory side, the acceleration and enforcement of the sharia unit spin-off policy needs to be carried out strictly accompanied by providing incentives for compliant companies. In addition, product innovation that is responsive to the needs of the community and the improvement of Islamic financial education and literacy must continue to be developed. These efforts need to be strengthened through international collaboration by adopting best practices from other countries, such as Malaysia and Pakistan, so that the sharia insurance industry in Indonesia can develop sustainably and fairly.

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