



## Legal Aspects of Sharia Insurance Agreements: A Review of Sharia Principles in Insurance Products

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### Abstract

Sharia insurance is a form of protection agreement based on the principles of Islamic law, as an alternative to the conventional insurance system that contains elements of *gharar*, *maysir*, and *riba*. This research aims to examine the legal aspects of sharia insurance agreements in Indonesia, with an emphasis on the compatibility between the contract in the policy and sharia principles such as *ta'awun*, *tabarru'* contract, *tijarah* contract, as well as the value of justice and transparency. The method used is a literature study with a normative juridical approach, through an examination of laws and regulations, DSN-MUI fatwas, and the results of previous research. The results of the study show that although sharia insurance already has a strong legal basis in positive law and *muamalah fiqh*, the practice still faces challenges in terms of the clarity of the contract, the management of participant funds, and the dispute resolution mechanism. Therefore, harmonization between national law and Islamic law, as well as strengthening technical regulations and education to the public, is needed to realize a sharia insurance system that is fully sharia-compliant.

## I. INTRODUCTION

Sharia insurance exists as a response to the incompatibility of the concept of conventional insurance with Islamic legal principles, especially in terms of *Gharar* (uncertainty), *Shirley* (speculation), and *usury* (flower) (Fitriani & Nisa, 2024). In contrast to conventional insurance which is based on risk buying and selling (*Risk transfer*), sharia insurance implements a help-help system (*ta'awun*) based "A Tribute to *Tabarru'*", where participants bear each other's risks collectively. This concept reflects the principles of solidarity and justice that are the moral basis of Islamic economics. The existence of sharia insurance has become an important need, especially for Muslim people who want to get financial protection without violating sharia principles (Siregar, 2025).

In Indonesia, sharia insurance has been gaining ground since the early 1990s and continues to grow rapidly to this day (Ghozali et al., 2019). The government through Law No. 40 of 2014 concerning Insurance officially recognizes the existence of sharia insurance as a separate entity that is different from conventional insurance (Noval, 2022). In addition, the existence of the fatwa of the National Sharia Council of the

Indonesian Ulema Council (DSN-MUI) has also strengthened the legal and operational framework of sharia insurance (Asti & Aulia, 2025). However, even though the regulation is increasingly complete, in practice there are still many problems from the legal side, such as the lack of uniform implementation of contracts, overlapping supervisory authorities, and the lack of optimal legal protection for insurance participants.

One of the main challenges in the implementation of sharia insurance is the diversity of contracts used and the lack of standard standards regarding the validity of these contracts in the context of national law (Khasanah et al., 2024). For example, some companies use "A Tribute to *Tabarru'*" pure, while others combine it with *Contract Tijarah* (commercial contract), which raises questions about legal certainty and protection for participants. In the context of Islamic law, the validity of a contract depends heavily on the clarity of elements such as *Ijab-Qabul*, the object of the contract, and the purpose of the contract. When these contracts are mixed in one insurance product, the potential for legal confusion is even greater (Fahrana et al., 2023).

In addition to contract problems, the management of participant funds is also a crucial issue. In sharia insurance, the participant's funds must be separated from the company's funds and can only be used in accordance with sharia provisions. However, in practice, not all companies have high transparency and accountability in the management of these funds. Some findings suggest that *tabarru'* funds are sometimes used to invest in instruments that are not necessarily in accordance with sharia principles, raising legal and ethical questions. This discrepancy can affect the legitimacy of sharia insurance products in the eyes of the public and potentially lead to legal disputes (Wahyuni & Qadariyah, 2024).

Another problem that also often arises is in terms of dispute resolution. Disputes in sharia insurance generally relate to claim rejections, late payments, or inconsistencies between the content of the policy and the performance of services (Elizabeth & Kansil, 2024). Unfortunately, the dispute resolution mechanism that is truly based on sharia is still limited, both in terms of institutions and procedures. Dispute resolution institutions such as the Indonesian Insurance Mediation and Arbitration Agency (BMAI) are not fully sharia-based. Meanwhile, religious courts, which should have a better understanding of Islamic law, do not yet have explicit authority in handling sharia insurance cases (Adolph, 2016).

Nevertheless, the development of sharia insurance still shows a positive trend, both in terms of the number of participants, the number of organizing companies, and the variety of products offered. This indicates that the public's need for insurance in accordance with Islamic values is getting higher. In this context, it is important for stakeholders, both regulators, business actors, and academics to strengthen the legal foundation of sharia insurance in order to ensure legal certainty, justice, and optimal protection for all parties involved.

Based on this background, this study aims to examine the legal aspects of agreements in sharia insurance, especially in relation to sharia principles which are the main foundation in the insurance product. The main focus of this study is how to implement the principles of *tabarru'*, *ta'awun*, and justice in sharia insurance contracts that apply in Indonesia. By using a normative juridical approach and literature study on regulations, DSN-MUI fatwas, and Islamic legal theories, it is hoped that this research can

contribute to the understanding and development of the sharia insurance legal system in Indonesia more comprehensively.

## II. RESEARCH METHODS

This research uses a normative juridical approach with a literature study method (library research) (Mahmud Marzuki, 2005). This approach aims to analyze laws and regulations, fatwas, and scientific literature related to sharia insurance from the perspective of Islamic law and positive law in Indonesia. This research does not involve the collection of primary data through the field, but rather examines secondary legal materials such as Law Number 40 of 2014 concerning Insurance, the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), regulations of the Financial Services Authority (OJK), as well as various relevant scientific journals and legal books.

The data obtained are analyzed qualitatively descriptively, with the aim of describing, interpreting, and examining the legal principles underlying agreements in sharia insurance. The analysis was carried out by tracing the conformity of sharia principles such as the *tabarru'* contract, *tijarah*, *ta'awun*, and the values of justice to applicable regulations. The results of this study are expected to provide a comprehensive understanding of the legal aspects of sharia insurance agreements, as well as highlight the strengths and weaknesses of the implementation of these principles in the legal context in Indonesia.

## III. RESULTS AND DISCUSSION

### A. Sharia Principles in Insurance

Sharia insurance is built on the foundation of Islamic principles sourced from the Qur'an, Hadith, and *ijtihad* of scholars through fatwas and contemporary *muamalah fiqh* studies. The main goal of sharia insurance is not only to provide protection against financial risks, but also to establish a system of social solidarity that is in accordance with Islamic values. Therefore, there are several main principles that are the foundation of sharia insurance practice (Sula, 2004).

First, the principle *ta'awun* or help. This principle is a core value in the sharia insurance system, where all participants help each other and bear each other's risks through the contribution of funds (Hafsoh & Kurniawati, 2025). The funds collected are then used to help other participants

who have experienced disasters or losses. The value of *ta'awun* is what distinguishes sharia insurance from conventional insurance, which is a commercial transaction between two parties who exchange premiums for a promise to pay claims (Roni & Putro, 2020).

Second, the principle of *the tabarru' contract*. This contract is a grant agreement or voluntary giving from participants to collective funds as a form of social solidarity (Febriyani, 2019). In the context of sharia insurance, every contribution or premium paid by participants is treated as a donation (*tabarru'*) to the mutual fund, not as a payment to buy protection (Nopriansyah, 2024). This confirms that there is no element of risky buying and selling in this system, so that the elements of *gharar* (uncertainty) and *maysir* (gambling) are avoided, which are expressly prohibited in Islam (Tona, 2022).

Third, the principle *Contract Tijarah*. In addition to the *Scarlet Witch*, the sharia insurance company performs the function of managing participants' funds and carrying out investment activities (Sobirin, 2023). For this purpose, the company carries out a contract of *tijarah*, such as *The Bills of Ujrah* (representation in return) or *Mudharabah* (profit sharing), which regulates the relationship between participants and the company as the fund manager. This *tijarah* agreement clarifies the status and rights of each party in the sharia insurance business structure (Aghnaa, 2022).

Fourth, the principles of *al-'adl* (justice) and *al-shidq* (honesty/transparency). These two principles are moral principles that bind all muamalah activities in Islam, including in the implementation of sharia insurance. Justice is the basis for sharing risks and business results between participants and companies, while transparency is needed so that no party is harmed due to ignorance or hidden information (Armansyah, 2022). In the context of agreement law, this principle is realized through the clarity of the contract, the disclosure of the policy content, and the equality of position between the participant and the company (Sabrie et al., (2022).

With the application of these principles, sharia insurance strives not only to be a halal risk management tool, but also to be an instrument for economic empowerment of the people who prioritize ethical values and social responsibility.

## B. Legal Basis of Sharia Insurance in Indonesia

The legal framework governing the existence and operationalization of sharia insurance in Indonesia has undergone significant development in the last two decades. This legal basis consists of national laws, state-recognized ulema fatwas, as well as technical regulations from financial authorities (Dewi & Mranani, (2024).

The main legal basis is Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance (Nurainiyah, Astawa & Setiady, 2024). In this law, sharia insurance is explicitly recognized as a separate system that is different from conventional insurance. This law stipulates that sharia insurance providers must separate participant funds and company funds, manage funds with sharia principles, and have a Sharia Supervisory Board (DPS) tasked with overseeing operational compliance with Islamic sharia (Ali, 2023). The existence of this law provides legal certainty for sharia insurance actors and participants, as well as the basis for legal protection in the event of a dispute or breach of contract (Munthe, 2014).

In addition to the law, the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) also plays an important role in shaping the legal basis for sharia insurance (Kurniawan, (2023). DSN-MUI Fatwa No. 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance is the main reference fatwa that explains the principles, structure of contracts, and governance of sharia insurance. This fatwa explains that sharia insurance is obliged to avoid elements of *gharar*, *maysir*, and *usury*, and use *tabarru'* and *tijarah* contracts in accordance with Islamic law. The DSN-MUI fatwa is morally binding and is recognized by the state as a legitimate source of law in the Islamic (National) financial system.

Furthermore, the Financial Services Authority (OJK) as an institution that oversees the financial services sector in Indonesia also issues technical regulations to support the development and supervision of the sharia insurance industry (Adrian Sutedi, 2014). One of them is OJK Regulation (POJK) No. 69/POJK.05/2016 concerning the Implementation of Sharia-Based Insurance Business, which regulates operational mechanisms, risk management, consumer protection, and investment management in Islamic insurance companies. This regulation also emphasizes the importance of fund segregation,

sharia-based reporting, and the existence of DPS as a guarantor of sharia compliance.

With a combination of national laws, ulema fatwas, and regulations of technical authorities, the sharia insurance legal system in Indonesia already has a fairly strong and comprehensive foundation. However, the main challenge ahead is how to ensure synchronization between the three elements in practice on the ground, as well as strengthen the capacity of law enforcement and public education to ensure the sustainability of a fair, transparent, and sharia-compliant sharia insurance system.

Based on the results of the literature study conducted, it was found that the implementation of sharia insurance in Indonesia has referred to the basic principles of Islamic sharia, both from theoretical and regulatory aspects. Sharia insurance is carried out with the main principle of *ta'awun* (help-help), which is realized in the form of participant contributions to the collective fund called *the tabarru' fund*. These funds are used to provide compensation to other participants who experience disasters or losses, not as a form of compensation from the sale and purchase contract as happens in conventional insurance (Wulandari & Kurniawan, 2022). This principle shows the fundamental difference between sharia insurance and conventional insurance, where the former emphasizes solidarity and sincerity, while the latter emphasizes more aspects of business transactions and commercial profits.

In addition, the contract structure in sharia insurance is also built using two main types of contracts, namely *the tabarru' contract* and *the tijarah contract*. *The tabarru' contract* is used as the legal basis for the participant's contribution in the form of grants or donations, while *the tijarah contract* is used for commercial relations between the participant and the insurance company (operator), such as *the wakalah bil ujah* (representative in return) or *mudharabah* (profit sharing) contract. These two contracts are regulated normatively through the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), such as Fatwa No. 21/DSN-MUI/X/2001, which stipulates the general principles of the implementation of sharia insurance.

Indonesia's positive law also gives legitimacy to the implementation of sharia insurance, as stated in Law Number 40 of 2014 concerning Insurance, which recognizes that sharia insurance is a form of insurance business that is different

from conventional insurance, with the obligation to separate participant funds and company funds and the need for a Sharia Supervisory Board (DPS).

Insurance law in Indonesia basically still refers to the principle of freedom of contract as stated in Article 1338 of the Civil Code, which states that all agreements made legally are valid as laws for the parties who make them. However, in the context of sharia insurance, this principle must be balanced with the principles of *muamalah fiqh* so as not to conflict with Islamic law. Therefore, sharia insurance agreements must meet the requirements for the validity of the contract according to Islamic law, such as the existence of *ijab-qabul*, the clarity of the object of the contract, and do not contain elements of *gharar*, *riba*, and *maysir*. In some Islamic legal literature, sharia insurance is considered valid as long as it is carried out with the intention to help, use the correct contract, and funds are managed according to halal principles.

The findings in this study are in line with the results of previous research, such as those conducted by Prayogo & Syufaat, (2023), which shows that many Islamic insurance companies in Indonesia still face challenges in terms of contract standardization and fund management transparency. Other research by Nasution and Nurhayati (2019) also revealed that there are still differences in interpretation between the sharia principles outlined by DSN-MUI and the actual implementation in the company, especially in terms of the distribution of underwriting surplus and the clarity of participant rights. In addition, research by Marlina (2020) highlights the weak position of participants in policy agreements because terms and clauses derived from the conventional system are still dominant, which has the potential to make it difficult for participants to understand the content of contracts according to sharia principles.

Therefore, although the legal framework for sharia insurance in Indonesia is already available, both in terms of laws and regulations and religious fatwas, its application in practice still faces obstacles, especially in terms of harmonization between positive law and Islamic law. Continuous updates are needed in the form of strengthening derivative regulations, increasing legal literacy among industry players, and educating the public as consumers so that sharia principles are truly realized in the practice of

sharia insurance in Indonesia in a comprehensive and fair manner.

The implementation of sharia insurance in Indonesia has been juridically legitimized in the national legal system. Sharia insurance is expressly regulated in Law Number 40 of 2014 concerning Insurance, where in Article 1 paragraph (3) it is emphasized that the sharia insurance business is organized based on sharia principles. These principles are also strengthened through technical regulations from the Financial Services Authority (OJK) and the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) which is the authoritative source of Islamic law in the practice of Islamic finance. This legal aspect shows that normatively, the sharia insurance regulatory framework is fully available, both from the substantive and institutional aspects.

However, at the implementation level, serious problems are still found, especially in the aspect of conformity between sharia principles and contractual practices in sharia insurance policies. Some insurance companies still use a policy format that mimics the conventional model, even though the principles of contracts in sharia are fundamentally different. This is in line with the results of research by Nasution and Nurhayati (2019), who stated that there is an editorial and substantial inconsistency between the content of the policy and the principles of *the tabarru'* contract and *the tijarah contract*, which can ultimately trigger disputes or interpretations that are detrimental to participants.

Furthermore, the existence of double contracts (*tabarru'* and *tijarah contracts*) in one insurance product poses its own challenges. If it is not explained separately and in detail, it will give the impression that there is an element of *gharar* (uncertainty) that is contrary to the principles of sharia itself. In Khairani's (2021) research, it was explained that this confusion was caused by the lack of standard guidelines that regulate the uniform editorial structure of contracts in the sharia insurance industry, which should be the concern of the OJK and DSN-MUI in strengthening the supervision of contract substance.

On the other hand, the principles of justice (*al-'adl*) and transparency (*al-shidq*) in sharia insurance have not been fully realized. For example, many companies do not publicly disclose information about the mechanism for managing *tabarru'* funds, including in terms of the distribution of underwriting surpluses. According

to Marlina (2020), in some cases participants did not get adequate information about the surplus, as well as the basis for the calculation. In fact, in sharia insurance, the surplus should be distributed fairly to participants as a form of appreciation for their contribution in the help-help system. This lack of transparency can undermine the principle of *al-shidq* which is very important in Islamic law.

From the aspect of dispute resolution, it was also found that there was an inequality between sharia principles and the available formal legal mechanisms. Settlement of sharia insurance disputes is generally still carried out through district courts or non-sharia forums such as the Indonesian Insurance Mediation and Arbitration Agency (BMAI), which are not yet fully sharia-based. In fact, according to the principle of *fiqh muamalah*, dispute resolution should be carried out by considering Islamic law substantively. This shows that there is a procedural law vacuum, which requires institutional reforms such as strengthening the role of the Religious Court in handling sharia economic cases, including insurance.

Thus, it can be concluded that the practice of sharia insurance in Indonesia still faces three main challenges from a legal perspective, namely: (1) the inconsistency between the policy drafting and the principle of sharia contracts, (2) the lack of transparency in fund management and surplus distribution, and (3) the lack of optimal sharia-based dispute resolution mechanisms. Nevertheless, improvement efforts continue to be made by regulators and industry players, including through DPS certification, OJK policy revisions, and public education. However, the success of this improvement is highly dependent on the seriousness of all parties in ensuring that sharia principles are not only labeled, but truly become the legal and moral foundation in all aspects of sharia insurance.

#### IV. CONCLUSIONS AND SUGGESTIONS

##### A. Conclusion

Based on the results of the literature review, it can be concluded that sharia insurance in Indonesia has a fairly strong legal basis, both in terms of positive regulations through Law Number 40 of 2014 concerning Insurance, and in terms of sharia principles through DSN-MUI fatwas. The main principles such as *ta'awun*, *tabarru'* contract, *tijarah contract*, justice (*al-'adl*), and honesty (*al-shidq*) have been used as the

foundation in the implementation of sharia insurance. However, the implementation of these principles in practice is not yet fully optimal. There is still a discrepancy between the structure of the contract in the policy and the principles of Islamic law, the lack of transparency in the management of participant funds and the distribution of surpluses, and the limited sharia-based dispute resolution mechanism.

In line with some previous research, it was found that most sharia insurance companies still face challenges in translating sharia principles into clear, fair, and accountable contraceptive forms. In addition, the existing legal system has not been fully able to provide adequate legal protection to participants, especially in terms of dispute resolution and legal officials' understanding of sharia contracts. Therefore, harmonization between positive law and Islamic law is needed, as well as increasing the capacity of supervisory and regulatory institutions to supervise the consistent and comprehensive application of sharia principles.

## B. Suggestions

Continuous efforts are needed from all stakeholders, both regulators, industry players, academics, and the public, to strengthen the implementation of sharia principles in sharia insurance. This can be done through the preparation of standard contract standards in policies, increasing transparency in fund management, developing sharia-based dispute resolution institutions, and sharia legal education and literacy to the public in order to create a fair, trustworthy, and sustainable sharia insurance system.

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