

## Sharia Principles in Takaful in Indonesia: A Legal Study

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### Abstract

This article conducts a comprehensive legal analysis of the sharia principles underpinning Takaful (Islamic insurance) in Indonesia, reflecting on its historical roots and current regulatory framework. Takaful distinguishes itself from conventional insurance by adhering to Islamic laws that prohibit gharar (uncertainty), maysir (gambling), and riba (usury), thereby aligning its operations with ethical investments and risk-sharing mechanisms. The core of Takaful is the mutual assistance among participants, which is implemented through contributions to a collective pool that guarantees financial aid to any member encountering predefined risks, without yielding profit from the misfortune of others. In Indonesia, Takaful has seen significant growth since its establishment by the Minister of Finance Decree No. Kep-385/KMK.017/1994. The development of Takaful aligns with the rising demand for financial services that comply with Islamic principles, reflective of Indonesia's majority Muslim population. This study examines the legal texts, including the Indonesian Commercial Code and the Insurance Law No. 40 of 2014, to elucidate how Takaful operates within these statutes and the specific roles of entities such as the Sharia Supervisory Board. Additionally, the paper discusses the challenges and innovations within the Takaful industry, such as capital requirements and the adaptation to Indonesian economic customs and Islamic financial principles. The findings aim to contribute to the broader discourse on the integration of Islamic finance into mainstream financial systems, offering insights into the balance of religious values with economic needs in a pluralistic society. This study not only underscores the significance of Takaful in enhancing financial inclusivity but also its role in fostering a resilient financial environment in Indonesia.

**Keywords:** *takaful, sharia, law, finance, regulation.*

### Introduction

The progress of world civilization encourages humans to continue to make changes in thought patterns and start movements to face the future regarding the possibilities that will happen someday. Predicting future events through events must still be done, so that humans can learn lessons from events that have already occurred. Through these activities, it is hoped that humans can measure and learn to determine the best steps. In Islamic law, customs that are commonly practiced are legal provisions that can be used as law for subsequent events (*al-'adah muhakkamah*) (M. A. Zaini, 2015).

In recent years, many economic activities have developed based on Islamic law. This situation has led to the development of various Sharia Business Units, including Sharia Banking, Takaful, Sharia Pawnshops, Sharia Leasing, and even Sharia Tourism (Sri Kurnialis et al., 2022). This shift is due to significant transformations in human rationality and societal living, evolving from a state of social and economic freedom to a new phase that emphasizes religious values (Hera Susanti, 2024). This financial services institution uses a Sharia basis in its operations, including the Al-Qur'an, Sunnah and the book of Fiqh, which are part of comprehensive Islamic teachings (Aisyah Afinna Azharoh & Agus Wahyudi, 2024). Operationally, Sharia Financial

Institutions are based on regulations and laws that apply to Indonesia, including fatwas issued by the National Sharia Council - Indonesian Ulema Council.(F. Zaini & Bin Shuib, 2021)(Setyowati & Prabowo, 2021)

Islamic economics is a fair and comprehensive system. It aims to ensure that wealth is not just concentrated in one group, but is distributed throughout society. This important characteristic of the Islamic economic system is explained in the verse of the Al-Qur'an Chapter Al-Hasyar verse 7 which states that "So that wealth does not only circulate among the rich among you". With the development of Islamic economics, economic activities have become more balanced. In Islamic economic theory, all economic activities must have a commensurate goal, namely between worldly interests and divine affairs. Economic activities must observe a real balance between material goals and spiritual values which are absolutely necessary for the success of life in the world.(Asmawati, 2021)

Every human being will definitely face uncertainty which can cause risks. However, humans can prevent this risk in the future. To carry out life and make groups mutually responsible and care for each other, this human activity is human activity as a social creature. In dealing with risks experienced by humans, such as fire, loss, death, and so on, actions are needed that can prevent risks by implementing insurance.(Mohamed Fisol & Ismail, 2021)

Article 246 of the Commercial Code defines insurance or coverage as a mutual agreement where the insurer commits to the insured, agreeing to receive a premium in exchange for compensating losses, damages, or foregone profits resulting from an unpredictable event(Rambe & Sekarayu, 2022). Additionally, under Law No. 2 of 1992 of the Republic of Indonesia, insurance is described as a contract involving two or more parties where the insurer, upon receiving a premium, agrees to reimburse the insured for any losses, damages, potential profits lost, or legal obligations to third parties triggered by an uncertain event(Herryani, 2023). This could be linked to either the death or survival of the insured person. According to these definitions, three core elements of insurance—risk of liability, insurance premiums, and the compensation amount—are identified as being in conflict with the principles of Sharia law.

The concept of takaful was practiced during the era of Prophet Muhammad, known as Aqilah(Zein et al., 2021). Thomas Patrick notes in the Dictionary of Islam that this tradition has long existed among Arab tribes. It occurs when a tribe member is slain by someone from a different tribe, and the perpetrator's closest relatives, referred to as Aqilah, are required to pay a set amount of blood money (diyat) as compensation to the victim's next of kin.(Salman Farooq, 2020)

Takaful was initiated in Indonesia through the establishment of Indonesian Takaful Insurance, sanctioned by Minister of Finance Decree No. Kep-385/KMK.017/1994 on August 25, 1994. The development of this insurance was spearheaded by the Indonesian Takaful Insurance Formation Team (TEPATI), comprising notable contributors like the Indonesian Muslim Scholars Association (ICMI) through the Abdi Bangsa Foundation, Bank Muamalat Indonesia, Tugu Mandiri Life Insurance, officials from the Ministry of Finance, and various Indonesian Muslim entrepreneurs.(Sam et al., 2023)

## Research Methodology

This study adopts a normative legal research methodology to explore the implementation of Sharia principles in the Takaful system in Indonesia. It is primarily based on the analysis of secondary data, which includes legal documents, statutes, and academic literature relevant to Takaful and Sharia law. The primary sources of law, including the Indonesian Commercial Code and Insurance Law No. 40 of 2014, serve as the foundational texts for this research. Relevant regulations from the Minister of Finance and fatwas issued by the National Sharia Council -

Indonesian Ulema Council are also critically analyzed. Secondary sources include scholarly articles, books on Islamic finance, and previous studies on Takaful. The legal texts are examined through a statute approach, where the provisions relevant to Takaful and Sharia compliance are scrutinized. This involves a detailed interpretation of the texts to understand the regulatory intent and the application of Sharia principles in the Takaful framework. The research also considers various interpretations and scholarly debates surrounding key Sharia concepts like *gharar* (uncertainty), *maysir* (gambling), and *riba* (usury).

## Theoretical Framework

### Maqashid al-Shari'ah

Maqashid al-Shari'ah refers to the objectives of Islamic law, which aim to preserve and protect essential human interests: religion (*al-din*), life (*al-nafs*), intellect (*al-'aql*), property (*al-mal*), and lineage (*al-nasl*). In the context of takaful, these objectives are embodied in the principles of mutual cooperation (*ta'awun*), donation (*tabarru'*), and justice. By avoiding elements prohibited in Islamic law such as *riba* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling), takaful is designed to achieve these higher purposes. This theoretical lens allows for evaluating whether the regulatory framework and practical implementation of takaful in Indonesia align with these core Islamic legal objectives. (Abdullah, 2015)

### Legal Pluralism

Legal pluralism recognizes the coexistence of multiple legal systems within a single state. Indonesia embodies such pluralism, where state law, Islamic law, and customary law function in parallel, especially in matters related to personal, religious, and financial affairs. The implementation of sharia-based insurance (takaful) under national legislation, such as Law No. 40 of 2014 on Insurance, exemplifies how Islamic legal principles are integrated into the statutory legal framework. This theory aids in analyzing the extent to which Islamic legal concepts are accommodated within the national legal system, and how effectively the state law facilitates the development of sharia-compliant financial products. (Lukito, 1970)

## Result and Discussion

### Conventional Insurance Concept in Indonesia

Insurance companies are a service that really needs a trust factor. The role of insurance is not only for business, but also as a financial instrument for the peace and prosperity of its customers. Peace and prosperity are the main goals in insurance promises (Yunadi, 2020). Article 246 in the Commercial Code explains that insurance is an agreement where there is a bond between an insurer and an insured (Soca Daru Indraswari, 2023). Where the insured, with a premium used to provide compensation to the insurer, due to the occurrence of an event caused by an uncertain event. Meanwhile takaful itself is a method used to manage risks that may arise and is carried out in accordance with sharia, namely helping each other between participants and also operators. In this case, the groups that play an important role in getting involved in takaful are insurance participants and operators, as well as the general public. (Abdullah, 2012)

Based on Law no. 2 of 1992 dated 11 February 1992 concerning Insurance Business which has been revoked by Law no. 40 of 2014 dated 17 October 2014 concerning Insurance, contains the definition of insurance as an agreement between two parties, namely the insurance company and the policy holder, which is the basis for receiving a sum of money (premium) by the insurance company in return for providing a replacement to the insured or policy holder due to loss, damage,

costs incurred, loss of profits, or legal liability to third parties that may be suffered by the insured or policy insurer due to the occurrence of an uncertain event (Samudra et al., 2024). Apart from that, insurance companies also provide payments based on the death of the insured or payments based on the life of the insured with benefits whose amounts have been determined and/or based on the results of fund management (Rambe & Sekarayu, 2022).

The principles of conventional insurance are Utmost Good Faith, Insurable Interest, Subrogation, Indemnity, Proximate Cause, and Contribution. The principles of takaful are very different from the principles of conventional insurance. The first principle that takaful is built on is monotheism to Allah SWT (Uddin et al., 2020). This means that takaful needs to be based on mutual assistance. Some of the participants' funds will be set aside for a *tabaru* fund to help if they are hit by a disaster. Takaful also has the principle of trust (Zein et al., 2021).

### **Takaful Operation in Indonesia**

Islamic economics recognizes the existence of financial institutions such as banks, or non-banking economic financial institutions. Among them is takaful. Linguistically, insurance is called; at *Tafakul*, at *Tadhamun*, and at *Ta'min*, which means bearing each other. The insurer himself is called *mu'amin* and the insured is called *mu'amman* or *musta'min* (Hemed et al., 2021).

In general, sharia financial institutions are financial institutions whose business operations are based on sharia principles. Sharia Financial Institutions can also be divided into bank and non-bank Financial Institutions. Islamic financial institutions began to develop in Indonesia in 1992 with the establishment of Bank Muamalat as the first Islamic bank in Indonesia. Non-bank financial institutions are financial institutions that provide financial services and withdraw funds from the public indirectly (non-depository). Non-bank financial institutions consist of insurance, pension funds, pawnshops, capital markets, *sukuk*, and so on (Moeljadi et al., 2021).

The definition of a sharia financial institution is not much different from the definition of a conventional financial institution, only the difference lies in the principles of running it. Sharia financial institutions have Islamic legal principles in banking and financial activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia (Nisa' et al., 2023). The definition of financial institution itself according to Decree of the Minister of Finance of the Republic of Indonesia no. 792 of 1990 is all business entities operating in the financial sector where what they do is collect funds and distribute them to the community or customers, especially for development investment costs (F. Zaini & Bin Shuib, 2021). A sharia financial institution is defined as a financial institution whose operating principles are based on Islamic principles and avoidance *dzalim*, *maisir*, *gharar*, and *riba*.

Insurance is permitted based on Islamic law, as long as the practices applied such as the contract, money management, investment, money ownership, premium elements and other matters related to operating techniques must be guided by the Al-Qur'an and Sunnah (Iqbal, 2021). This must be considered because the general principles in muamalah also underlie takaful. Based on the 2001 fatwa of the National Sharia Council of the Indonesian Ulema Council in DSN fatwa no. 21/DSN-MUI/X/2001, stated that takaful is an effort to protect each other and help each other among a number of parties/people through investment in the form of assets or *tabbaru'* which provides a return pattern to face certain risks through contracts (engagements) that are in accordance with sharia. Takaful is a type of business that protects each other and helps the parties through investment in the form of assets or *tabarru'* which provides a return system to face risks through contracts or agreements that have been determined by Islamic law or sharia principles (Basyirah et al., 2022).

Premiums are a number of costs that must be paid by each insurance member based on the agreement in the contract (Ghozali & Afifah, 2020). Because after becoming an insurance member, of course every person can have a claim, which means a right that must be granted by the

insurance company based on the agreement in the contractual agreement. In conventional insurance, the contract that applies here is buying and selling, therefore the money that has been given completely belongs to the company's assets. Unlike takaful, the premium submitted will remain the property of the customer which is entrusted to the company through a good agreement, namely *tijarah* or *tabarru'* (Mohamed Mazahir et al., 2017).

The development of insurance companies based on Islamic teachings in Indonesia is tied to the operation of sharia banks, so the presence of takaful services is needed. As of January 31 2011, in Indonesia there were 44 companies operating in the takaful sector, five of which were full Islamic insurance systems, namely PT. Family Takaful Insurance (ATK), PT. General Takaful Insurance (ATU), and PT Asuransi Syariah Mubarakah (ASM), PT. Jaya Proteksi Takaful, and PT. Al-Amin Life Insurance. Furthermore, there are 37 Takaful units and three insurance companies that have sharia units. This situation shows that the takaful business in society has increased, which can be seen as the fact that people in Indonesia are getting used to making transactions using Islamic sharia. WAHYU

In Indonesia takaful companies are increasing and the facilities are getting easier for both units and non-units, even foreign companies mark Indonesia as the biggest market because of the large majority of Muslims in Indonesia. Takaful based on the industry in Indonesia seems to have a strong desire to continue to improve conditions, such as the pattern of the takaful industry with spin offs, this pattern must be implemented by takaful business units in Indonesia. There are differences regarding the development of takaful in Indonesia and neighboring countries. Firstly, community customs, in Indonesia before the colonialists were only based on the principle of mutual cooperation, while neighboring countries already had little practice based on insurance. Second, an explanation of insurance from different colonialists. Third, the government system factor. Only a few modernizing people in Indonesia are aware of the importance of insurance practices because people in Indonesia are still traditional in their way of thinking, while neighboring countries have a more advanced level of modernization and dominant thinking. Fourth, namely Islamic economic factors. The fatwa guidelines regarding takaful are slower, while in neighboring countries the fatwa issued regarding insurance is earlier. (Abubakar, 2019)

The takaful industry is growing. Therefore, there must be steps to educate about the factors of progress in the takaful industry. The challenge for the sharia industry is that the minimum industrial capital is IDR. 100 billion. Low awareness among ordinary people who do not understand when carrying out takaful. So, people prefer national insurance. Apart from that, the level of financial literacy is still lacking. (Ramadhani, 2015)

The investment characteristics of takaful contain the principle that the company is positioned as a trust holder (*mudharib*) which is trusted by the participants/fund owners (*shahibul maal*) to be able to carry out investment efforts against a collection of funds from participant premiums. Takaful uses a system where participants provide some or all of the funds that will be used to pay claims if a disaster occurs to other participants (*sharing of risk*). Takaful does not contain prohibited elements such as *gharar*, *maisyir* and *usury*. This is because in carrying out its business there is a Sharia Supervisory Board (DPS) to supervise the implementation of the company's management and operational activities. Funds collected from participants in the form of contributions or contributions belong to the participants and the company only acts as a trustee to manage them. Company profits from underwriting surpluses, reinsurance commissions and investment returns do not belong to the company completely but must be shared (*mudharabah*) with participants. (Zein et al., 2021)

The principle of monotheism is the basic capital used in every product in financial institutions found in Islam. Every activity of human life must be in line with divine values. Basically, when insuring, we must pay attention to how to create an atmosphere of unity guided by divine



values when carrying out insurance business activities. Therefore, Takaful is not only about investing to make a profit, but also to carry out Islamic religious commands.(Suripto & Salam, 2017)

Justice is the second basic principle in Takaful. Justice is an effort to place rights and obligations between the insured and the insurance company. The insured needs to realize that he has an obligation to always pay a certain amount of premium to the insurance company and has the right to obtain a certain amount of funds if losses or difficulties occur. An insurance company which functions as a fund investment institution has an obligation to pay claims to the insured. Sharia insurance has specific prohibitions, including the application of usury (riba), gambling (maysir), injustice, bribery, immoral acts, and involvement with unlawful (haram) goods. Sharia insurance represents a halal (permissible) investment; therefore, it must have a Sharia Supervisory Board to ensure that the insurance company operates in accordance with Islamic principles.(Sula et al., n.d.)

Takaful has a special agreement. The form of agreement in takaful includes mudharabah. According to the term, mudharabah is an agreement or cooperation contract between both parties where there is a shahibul maal (capital owner) who provides his capital to be managed by the mudharib and the profits are divided according to the agreement. Muamalah transactions are permissible as stated in one of the rules of fiqh, basically all forms of muamalah are permissible unless there is an argument that forbids it.(Hemed et al., 2021)

The scholar who first discussed conventional insurance was Ibn Al Abidin in 1784-1836 (Hanafiyyah circles) in his book entitled Hasyiyah Ibn Al Abidin (Hasyiyat Rad Al Mukhtar 'Ala Al Dar Al Mukhtar Syarh Tanwir Al Abshar). Regarding insurance activities, it is unlawful because it requires something that should not be mandatory (Iltizam Ma Lam Yalzam). Meanwhile, takaful scholars and Muslims agree regarding halal insurance in takaful. This opinion is based on the agreement of the Second Muslim Ulama Congress 1960, the VII Muslim Ulama Congress 1392, the Fiqh Ulama Meeting 1938 H. Takaful is far from the practices of usury, gharar, jahalah and qimar. Takaful uses the method of association and Syirkah Wa Ta'awaniyyah (help). This activity does not violate the Islamic religion, in fact it encourages Muslim communities to help each other in piety and kindness.(Milhim, 2002)

The success of takaful in Indonesia has developed very rapidly. The majority of Indonesia's population is Muslim, making takaful more developed. Takaful is not only developing in Indonesia but in various countries around the world. Takaful cannot achieve success without the role of society who are aware of the importance of insurance(Sula, 2004)

In fact, non-formal insurance practices in Indonesian society are often carried out. For example, when one of the community members experiences a disaster, other community members will provide assistance in the form of death donations.

These non-formal insurance practices have long been practiced by Indonesian people with full awareness and sincerity. However, it turns out that Indonesian people still do not take advantage of the existence of insurance companies as a means of protecting themselves, their families and property from events that are uncertain when they will occur. People are still very unfamiliar with insurance and are not familiar with the types of insurance production available. Moreover, the understanding of the majority of Indonesian Muslims, who constitute the majority of religious adherents in Indonesia, is half-assed or half-assed about insurance law from the perspective of Islamic teachings.

## Conclusion

Sharia insurance in Indonesia is regulated in Law No. 40 of 2014 concerning insurance. According to Law Number 40 of 2014 article one, sharia insurance is a collection of agreements,

which consists of agreements between sharia insurance companies and policyholders and agreements between policyholders, in the context of contribution management based on sharia principles to help and protect each other.

The essence of sharia insurance is to be responsible for each other, and help and bear each other's suffering. Therefore, insurance is allowed if it is carried out in accordance with sharia, because the basic principles of sharia invite everything that results in solidarity between human beings and to something that alleviates their disasters.

The implementation of insurance in Indonesia in general, be it in sharia insurance or in conventional insurance, is based on article 25 of Law No. 40 of 2014 concerning Insurance, where the object of insurance in Indonesia can only be insured by insurance companies and sharia insurance companies that have obtained a business license from the Financial Services Authority (OJK).

The authenticity of sharia insurance in Indonesia is needed by strengthening all sharia insurance products to run in accordance with sharia provisions, in this case the role of the Sharia Supervisory Board (DPS) is an important part of conducting strict supervision of the activities of sharia insurance institutions. DPS is an independent body placed by the National Shariah Council (DSN) on Islamic financial institutions. The role of the sharia supervisory board (DPS) is strategic in the application of sharia principles and according to DSN-MUI No. Kep-98/MUI/2001 that DSN gives tasks to DPS, namely: conducting periodic supervision, submitting development proposals, reporting products and operations at least twice in a budget year, and formulating problems that require discussion with DSN.<sup>1</sup>

Islamic insurance is part of general insurance according to sharia principles, meaning using principles in accordance with Islamic law, precisely sharia economic law for the first time is expressly regulated in Law No. 40 of 2014 concerning insurance and is also the legal basis for Sharia Insurance in Indonesia. Sharia insurance uses different methods and concepts than conventional insurance. For example, using the principle of mutual help and mutual protection, in the running of sharia insurance, insurance policyholders collaborate with sharia insurance companies in preparing and operating funds (fund investments) that are not in the principles of conventional insurance.

Case settlement in relation to the law of insurance contract agreements in sharia insurance can be resolved through the litigation process (court) or non-litigation settlement (out of court) through the arbitration process or alternative case settlement such as the mediation process by the financial services authority (OJK) which is authorized to regulate and supervise the entire financial services sector, precisely the activities of the Indonesian sharia insurance sector.

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