
The Concept and Development of Takaful Insurance in the Framework of Sharia Economic Law

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Abstract: *Allah Almighty has fully established the Sharia laws relating to the field of worship and creed. Establishing the Shari'a is always based on the general principles of Shari'a actions, not burdensome, not increasing the burden, and gradually. Establishing laws is also in line with the good of the crowd. The establishment of Islamic law is divided into two forms, namely dhanny, and qatiiyah. Dhanni is a law whose nature has not been able to fulfil its one hundred per cent capacity of truth in a matter. This problem is not closed to the possibility for jurisprudence scientists to differ in views on the legal status. The so-called qat'iyah is a law that is true and also has a clear purpose, so there is no way for dissent. Problems arise with the development of time. Man needs protection that can protect himself or one's soul. It is necessary to have a company that can provide guarantees or guarantees for oneself or one's soul. The company is in the form of insurance. The research aims to analyze insurance laws that are developing today. This article is classified as literature research with a qualitative approach. The methodology used is an empirical juridical study. The results of the study concluded that as long as the insurance is applied there is no element of usury, element of maisir, and element of fraud, it is permissible in Islam.*

Keywords: *concept, takaful, development, insurance, sharia economic law.*

INTRODUCTION

The Qur'an is a revelation revealed by Allah (swt) to the Holy Prophet Muhammad through the medium of the angel Gabriel and serves as the primary source of law for Muslims on the surface of this world [1], [2]. The second source of law for Muslims is the Hadith of the Prophet Muhammad, both in the form of deeds, words and also the message of the Prophet Muhammad [3], [4]. If all the verses of the Qur'an and the matan Hadith either in the form of commandments, prohibitions, or choices, it will result that, the laws decreed by Allah Almighty do not escape their purpose or are also called maqasid as-Shar'iyah [5].

The regulations and laws of the Shari'ah relating to the field of worship and creed have been established by Allah Almighty in such a complete way, from the beginning of the revelation revealed to the Prophet Muhammad SAW, until the death of the Messenger [6]. Establishing the Shari'a is always based on the general principles of Shari'a actions, not burdensome, not increasing the burden, and gradually. Establishing laws is also in line with the good of the crowd [7].

Furthermore, if traced, it can be concluded that Islamic law is divided into two forms. Among them, there is a dhanny, which is a law whose nature has not been able to meet its one hundred per cent capacity of truth in a matter. This problem is not closed to the possibility for jurisprudence scientists to differ in views on the status of the law [8], [9]. There is also a law of a qatiiyah nature. The point is that a law is certain to be true and also has a clear purpose, so there is no way for dissent. However, disagreements against the dhanniyah laws should not cause divisions within the Muslim community [10], [11]. These differences of opinion are Divine Sunnah because in the Qur'an Allah Almighty has explained, that Allah Almighty makes humans always in disagreement. Disagreements as long as they do not violate the Quran and the Hadith of the Holy Prophetsa, are normal in the body of Muslims.

Plus, the rapid development of the times can cause new problems. Man needs protection that can protect himself or one's soul. It is necessary to have a company that can provide guarantees or guarantees for oneself or one's soul. The company took the form of insurance [12], [13]. The purpose is to provide protection or protection for one's life or property and others. Thus the matter necessarily requires legal firmness [14]. Reviewed further, it can be said that, the implementation of insurance is also part of the muamalah fiqh action which is something that cannot be separated from the problem of how much benefit insurance has for the economy of Muslims. Departing from that, the author will try to explain about the law related to Shari'ah insurance [15], [16].

LITERATURE REVIEW

Takaful Insurance is a concept that develops within the framework of sharia economic law, which aims to provide financial protection to participants through sharia principles. This concept is based on the principles of mutual aid and risk sharing, which are following Islamic values. In Takaful insurance, participants pay contributions or donations into a pool of funds that are managed transparently and following sharia by Takaful companies. These funds are then used to pay claims if one of the participants experiences a loss or disaster. The development of Takaful insurance has experienced significant growth, especially in countries with a majority Muslim population [15], [16].

Along with that, many financial institutions and insurance companies that are Sharia-based have started offering Takaful products as an alternative that complies with sharia principles. On the legal side, various regulations have been introduced to regulate Takaful's insurance practices to ensure compliance with sharia principles and protect the interests of participants. With the growing understanding and demand for Islamic financial products, the development of Takaful insurance is expected to continue to increase, providing solutions following Sharia principles for the financial protection needs of Muslim communities around the world.

So the literature review of the concept and development of takaful insurance within the framework of sharia economic law is an important study that explores various perspectives from several previous studies. Along with the growth of the Islamic economy, takaful insurance has become a major focus in this literature. The basic concept of takaful insurance lies in the principles of fairness and togetherness, which distinguishes it from conventional insurance. Several studies examine critical aspects such as legal and regulatory structures that affect takaful operations, highlighting how Islamic economic law provides a solid foundation for takaful practice [15], [16].

In addition, the literature also highlights the development of the takaful industry over time, including the challenges and opportunities faced. These studies provide in-depth insights into the evolution of takaful within the framework of Islamic economic law as well as provide the basis for further development in the industry.

Table 1. Literature Review on the Concept and Development of Takaful Insurance in the Framework of Sharia Economic Law

Writer	Article Title	Research Objectives	Key Findings
Siddiqi, N. M.	Islamic insurance: a modern approach to Islamic economics.	Explain the basic concepts and principles of Islamic economics in the context of takaful insurance.	Stating that takaful insurance is based on the principles of justice, cooperation, and risk sharing following Islamic economic principles.
Al-Hawari, M. A.	Takaful: an Islamic insurance instrument.	Explain the development and implementation of takaful in the practice of Islamic finance.	Presents the evolution of takaful from a theoretical concept into a rapidly growing industry in the Islamic economy.
Hassan, M. K.	Islamic takaful: a model for participatory insurance.	Analyze the participation model in takaful insurance from the point of view of Islamic economics.	Demonstrate that takaful aims to minimize uncertainty and encourage active participation of participants in risk management.
Khan, F.	Takaful: Principles and Practices.	Explain the concepts, principles, and practices of takaful insurance under sharia economic law.	Describing the role of the Shariah Supervisory Council in ensuring the suitability of takaful products with the principles of sharia.
Abdul-Hamid, N. A.	Development of Takaful in Malaysia: A Review.	Assess the development of the takaful industry in Malaysia and its impact on the Islamic economy.	Concluding that strict regulations, product innovation, and increased public awareness have driven significant growth of the takaful industry in Malaysia.

This table provides a brief overview of various articles relevant to the topic, including the author, article title, research objectives, and main findings. By presenting information in tabular form, readers can easily compare and understand the contribution of each article to the understanding of the concept and development of takaful insurance within the framework of Islamic economic law.

METHODOLOGY

This research is classified as literature research with a qualitative approach [17], [18]. The methodology used is an empirical juridical study. Primary data are books on jurisprudence, especially muamalah jurisprudence, and books on insurance. So are other linear books [19]. The secondary data are data on books of jurisprudence and kawaid fihyah in addition, secondary data are obtained through library literacy such as scientific journals and books published in the last 5 years. As for tertiary data, it is taken through digital references such as websites, online newspapers, online magazines, and other supporting reading sources [20].

RESULTS AND DISCUSSION

Definition of Sharia Insurance

Insurance was originally known in Western Europe around the Middle Ages, namely fire insurance [21], [22]. Then in the 13th-14th centuries, because of the increase in sea traffic transportation between islands, sea freight insurance developed. Life insurance was only recognized in the early 19th century [23], [24]. This insurance is codified in a legal article made by Napoleon Bonaparte in the KUHD (Commercial Law Act) [25].

However, the concept of takaful insurance has existed since the time of the Prophet SAW called Aqilah. This has been the custom of Arab tribes since ancient times. Where if one member of the tribe is killed by a member of another tribe, then the heir of the victim will be paid a sum of blood money (diyat) as compensation by the next of kin of the murderer. So, the murderer's closest relative, called Aqilah, had to pay blood money in the name of the murderer.

The word insurance comes from the Dutch word assurance [26], in Dutch law, the word verzekering is used. This word was later translated into Indonesian with the word insured [27]. In the KUHD in the insurance article, it contains 3 elements. The first is the existence of interests, the second is the existence of uncertain events and the third is the existence of losses. While the types of insurance are:

- a) Fire insurance
- b) Insurance against the dangers of agricultural products
- c) Insurance against the death of people
- d) Insurance against dangers at sea and slavery
- e) Insurance against hazards in transportation on land and rivers [28].

This codification later influenced the Dutch Criminal Code, some of which are still used today by Indonesia [29]. Likewise, the term insurance is often used as the term coverage, this term follows the terms in Dutch, namely assurance or insurance and persevering or coverage.

In the general dictionary, Indonesian insurance is interpreted as an agreement between two parties. One party will pay money to the other party, in case of accidents, and so on. while the other party will pay dues. Thus insurance in general can also be interpreted as an agreement from the guaranteeing party promising the guaranteed party to receive a certain amount of premium money as compensation because the consequences of an unclear event will occur [30].

While shari'ah insurance consists of two words, namely insurance and shari'ah. Previously, the author wanted to explain the meaning of words. The definition of insurance itself has been explained first. While the word syara' is etymologically a path. Al-Abadi in his dictionary explains that the meaning of sharia is: the entire religious order that Allah Almighty applies to His servants or all the rules and commandments of Allah Almighty shown to all His servants such as prayer, fasting, zakat, Hajj, and other good deeds. Likewise, Mahmud Syaltut said, that the so-called sharia is the rules or basics of rules made by Allah Almighty so that humans use them as rules in dealing with Allah or fellow humans Muslims, and the universe [31].

Then when combined between the word insurance and shari'a, it can be understood that shari'i insurance is a guarantee agreement between two parties, namely from the guarantor in this case the insurance company to give several assets or wages or replace other goods. Funds donated by participants, to the guaranteed party, namely insurance customers, in the event of a disaster, which is explained by agreement in exchange for payments given by customers to companies by the spirits of the sharia of Allah [32].

This sharia insurance can also be known as at-ta'min. The insurer can be referred to as mu'amin, while the insured person is called mu'amman lahu or musta'min. At ta'min, these words are derived from amana which means to give protection, tranquillity, security, and freedom from fear, this is according to Q.S. Quraysh (106): 4.

الَّذِي أَطْعَمَهُمْ مِنْ جُوعٍ وَأَمَّنَّهُمْ مِنْ خَوْفٍ

Meaning: He is the God who secures them from fear.

The concept of Islamic insurance is not new, because it is understood that at the time of the Holy Prophetsa, this insurance system had emerged known as aqilah, this is evident when there is a hadith of the Holy Prophetsa narrated by Imam Hanafi "once two women from the tribe of Huzail quarrelled when one of them hit the other with a stone resulting in the death of the woman and the baby in her womb. Then the heir of the victim took the matter to the Prophet (peace be upon him), who then gave the Prophet Muhammad (peace be upon him) a decree that compensation for the murderer of an infant child is to free a male or female slave while compensation for killing a woman is blood money or also called diyat which must be paid by Aqilah from the accused" which is like this in the books of fiqh also known as diyat [33].

In the book Insurance and Riba Murtadha Mutahhari explains that It is wrong if someone says ad-Diyat 'ala al-'Aqilah, the word al-'Aqilah comes from the word 'Aqilah comes from the word 'aql (reason), so the expression is interpreted as a fine imposed on a reasonable person (already an adult) [34], [35]. But this is not the case, but 'Aqilah is a term in itself. Murtadha continued in Arabic the meaning of al'aql is a fine and al 'aqil is one who pays the fine. Because in some cases Islam imposes insurance fines on others (not those who commit violations). But in ad-Diyah, the cause is not intentional, but by mistake. If ad-Diyah is intentional, then no insurance bears this responsibility. Therefore, it is required that the damage is not caused intentionally. On the issue of ad-Diyah, all scholars say, "It is obligatory to pay a fine for some damage caused by misconduct or negligence such as murder or negligent wounding" [36], [37].

Purpose of Sharia Insurance

The Sharia-based economy in Indonesia has experienced rapid and encouraging development. This is marked that since Bank Muamalat Indonesia (BMI) was established and began operating in 1992, the growth of Islamic banking has increased sharply. Insurance products are one form of product that provides many uses for the survival of individuals, communities, and companies. Insurance products are expected to accommodate various risks encountered in people's daily lives [38].

According to the author, there are at least two kinds of objectives of shari'ah insurance, including:

Help each other in covering losses arising from dangers and disasters. This is as Allah Almighty commands in the Qur'an Surah Al Maidah verse 2 which means "...., and help you in doing good and piety, do not help in doing sins and transgressions..."

Be accountable to each other. This concept is based on a hadith with the meaning, do not believe one of you so that he loves his brother as he loves himself (H.R. Bukhari). The purpose of this hadith can be understood as that, the meaning of love is very broad including being responsible for fellow people, with a person being responsible means that he has also lightened the burden of his brother's life by therefore Allah will alleviate his needs.

Sharia Insurance Forms

Sharia insurance companies are non-bank financial institutions that have a role that is not much different from banks, namely engaged in services provided to the public in overcoming risks that occur in the future through the concept of takaful. The development of insurance companies in Indonesia experienced a fairly rapid development after the government issued deregulation in the 1980s and was strengthened by the issuance of Law No. 2 of 1992 concerning Insurance Business. With this deregulation, the government provides convenience in terms of licensing, thus encouraging the growth of new companies, and in turn will increase national production [39]. [40].

Sharia Insurance Practices

According to Islamic teachings, one should try and use one's wealth in a halal way, so should one have an economic plan to save part of one's income as well as future security from unexpected risks, one way is by surfacing sharia instead of conventional insurance. Sometimes conventional insurance contracts also apply based on the principle of urgency (dlaruriyah). All transactions based on the principle of urgency are permissible and by the word of Allah Almighty in Surah Al-An' Am verse 145 [41].

قُلْ لَا آجِدُ فِي مَا أُوْحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ
حَمًّا خَنِزِيرٍ فَإِنَّهُ رَجَسٌ أَوْ فِسْقًا أُهْلًا لِعَيْبٍ لَعَنَ اللَّهُ بِهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ رَبَّكَ عَفُورٌ
رَّحِيمٌ

That is:, Whoever is in a state of compulsion, while He does not want it and does not (also) transgress the limit, Then Verily Your Lord is Most Forgiving and Merciful" (Q.R. Al-An' am: 145).

Also, in line with the rule, that means: "Compulsion can be allowed things that are prohibited" Therefore, a life insurance policy that applies based on the principle of urgency in providing material protection for both poor widows, as well as descendants and heirs at the time of death of the dependent party is a solid basis.

The practice of insurance is also based on several doctrines, including the doctrine of public interest (masalih al-mursalah) which emphasizes reducing the hardships of one's life and also pays attention to the welfare of the poor who may suffer as a result of loss or damage. This is stated in the Qur'an where Allah Almighty always commands goodness and a decent life for His creatures without having to face any difficulties [42].

The practice of takaful insurance is usually that there are four parties involved in it, namely participants, insurers (managers), the insured, and the recipient. Takaful nature emphasizes that everyone has the legal capacity to pay a certain amount of money to the cooperation fund to ensure one's material safety from agreed risks. From that it can be understood that those who have paid joint funds are called participants those who face risks and are assisted by funds are called the insured, and those who receive benefits from the funds are called recipients, while the contribution of funds paid by participants is called joint donations, this is in line with the word of Allah in the Qur'an surah al-An'am verse 160 which reads:

مَنْ جَاءَ بِالْحَسَنَةِ فَلَهُ عَشْرُ أَمْثَالِهَا وَمَنْ جَاءَ بِالسَّيِّئَةِ فَلَا يُجْزَى إِلَّا مِثْلَهَا وَهُمْ لَا يُظْلَمُونَ

Meaning: Whoever brings good deeds, and to him (the reward) is ten times his charity; and Whoever brings evil deeds He is not rewarded but in balance with his wickedness, while they are not in the least persecuted (harmed) (Q.R. Al-An' Am: 160).

Thus, the idea of sharia insurance can be mentioned that it is related to mutual risk bearing among participants, where one participant becomes the insurer of the other participant. The responsibility to bear the risk is based on helping in good by each way of spending funds intended to bear the risk. The takaful insurance company in this case is only limited to being a facilitator of mutual coverage among insurance participants. From this, it appears that the difference between Sharia insurance and conventional insurance where in conventional insurance the parties who bear each other are between insurance participants and insurance companies [43].

From the explanation above, it is clear, which here the company is looking for a way to help a participant who wants to participate in insurance, this action is recommended by Islam, as Allah says in the Qur'an letter which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحْلُوا شَعَائِرَ اللَّهِ وَلَا الشَّهْرَ الْحَرَامَ وَلَا الْهَدْيَ وَلَا الْقَلَائِدَ وَلَا آمِينَ الْبَيْتِ
الْحَرَامِ يَبْتَغُونَ فَضْلًا مِّن رَّبِّهِمْ وَرِضْوَانًا وَإِذَا حَلَلْتُمْ فَاصْطَادُوا وَلَا يَجْرِمَنَّكُمْ شَنَا نُ قَوْمٍ أَنْ
صَدَّقْتُمْ عَنِ الْمَسْجِدِ الْحَرَامِ أَنْ تَعْتَدُوا وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ
وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

Meaning: And help you in virtue and piety, and do not help in committing sins and transgressions (QS Al-Maidah: 2).

Therefore, it can also be said that this shari'ah insurance was established to uphold the establishment of a community based on mutual help. On the other hand, the relationship between participants and companies is to bear each other's risks in managing funds. In investment or management of sharia funds, riba (interest), gharar, and maisir, these three prohibitions are areas that must be avoided in sharia insurance practice while in the issue of takaful insurance contributions, for example in life insurance, the insured pays premiums as contributions to the welfare of his heirs, and at the same time, the insurer pays several donations from funds that can be given to recipients and parties Insured in addition to premiums paid and profit sharing [44].

The form of practice is in sharia insurance using two contracts, one contract in the form of mudharabah and the other using the principle of please help by giving up some customer funds as assistance funds to fellow customers who need help, the principle of help is by the word of Allah.

And help you in virtue and piety, and do not help in committing sins and transgressions (QS al-Maidah: 2).

Likewise in the hadith narrated by Bukhari, Nasai, Hakim, and Baihaqi which means: "Give gifts to each other and love each other"

Likewise in the hadith which means: "Whoever fulfils his brother's hajad Allah will fulfil his hajad" (H.R.Bukhari, Muslim and Abu Daud)

Thus, in sharia insurance, this gharar problem can be overcome by replacing the tabaduli (replacement) contract with the takafuli (please help) contract or the tabarru contract. As for what is meant by Akad Tabarru' is all forms of contract carried out with the aim of benevolence and help, not just for commercial purposes, this can also be seen in the Fatwa of

the National Sharia Council of the Indonesian Ulema Council No: 21 / DSN-MUI / X / 2001 concerning General Guidelines for Sharia Insurance, and with a mudharabah (profit sharing) contract [45].

From the explanation above, it can be understood that the operational system of sharia insurance prepares two accounts or premiums paid by participants, the first is an investment fund account which is then used according to the concept of mudharabah and the other is a donation or alms account as a help fund or tabarru account that has been sincerely intended (proposed) every participant enters sharia insurance, this is by the spirit of Islam, with the word of Allah Almighty in Sura al-Baqarah verse 261 with it reads:

مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سُنْبُلَةٍ مِائَةٌ
حَبَّةٌ وَاللَّهُ يُضَاعِفُ لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ

Meaning: The parable of those who spend their wealth in the way of God is similar to a seed growing seven grains, on each one hundred seeds. God multiplies (rewards) for whom He wills. and Allah Almighty (His gift) is again All-Knowing (Q.R. Al-Baqarah: 261).

So, in this tabarru account, ' all participants' tabarru funds are accommodated as help funds or benevolent funds, which amount to about 5%-10% of the first premium (depending on age). Furthermore, from this fund, participant claims are also paid if any of the participants claim or take cash value [46].

In this way, it can be avoided from the form of qarar, because in the concept made in the form of sharia insurance, the problem of qharar can be eliminated, plus because the contract used is not aqad tabaduli but aqad takafuli or help and guarantee each other. Therefore, a transaction similar to an insurance contract containing elements of contributions and donations is certainly allowed.

At first glance, it can be said that the nature of a life insurance policy is the same as a pension benefit scheme. Al-Zarqa and Al-Awan argue that all contemporary Muslim scholars agree with the validity of the pension allowance scheme, as it guarantees security for the insurer as well as his family in case of hardship or death, as for the reason all scholars accepted the idea of pension benefits, that this tradition was widely accepted during the time of the caliph Omar ibn Khattabra.

Among other things that can distinguish between Islamic insurance and conventional insurance is the part of the risk that is managed and underwritten, and how insurance funds are managed. A further difference is in the relationship between the operator (in conventional insurance the term used: insurer) and participants (in conventional insurance the term used: the insured). In risk management and coverage, Sharia insurance does not allow gharar (uncertainty or speculation) and maisir (gambling). In conventional insurance there is gharar because the mechanism is to transfer risk where individuals can sell uncertainty with certainty, if uncertainty has occurred in a contract then maisir (gambling or speculation) will usually occur as well [47].

As for takaful insurance, if a participant experiences a disaster, the participant's loss will be reimbursed by the shari'ah insurance program. Payment is generally enough to repair, replace, or also to renovate something that is broken. It can also be said to be the main differentiator between shari'ah insurance and conventional insurance, namely, in sharia insurance, individual risks are spread or shared with others who have relatively the same risk nature, from this model individuals pay contributions in the form of donations provided that if there is a risk to one of the participants, the participant will receive donations or shari'ah insurance funds to cover the losses he faces, While the insurance is only limited to facilitators [48].

To be clearer, the speaker will give an example of Sharia life insurance practices in managing risk. Where in the concept of sharia insurance all insurance participants become helpers and guarantors of each other. For example, in shari'ah insurance consists of 11 participants, namely A, B, C, D, E, F, G, H, I, J, and K. So, if the participant (A) dies, then participant (B), (C) (D), (E) (F), (G) and so on, must help him, and vice versa, but in this case, there is a problem, namely what if the (A) takes a 15-year insurance package with a sum insured, for example, 20 million. If in the fourth year, the (A) dies and only pays the premium of 13 million, then his heirs get the full amount of 20 million. The question arises, from which the remaining 7 million was obtained. Because with the concept of takaful, the remaining 7 million was received from other participants through funds in the tabarru account which from the beginning had been pledged to donate so that the 7 million amounts of money did not include interest and qharar.

CONCLUSION

From the description above, the following conclusions can be drawn: 1). All forms of transactions whose form is by the spirits of the Shari'a are justified by Islam, namely takaful insurance. 2). Takaful insurance is permissible because it is by the Qur'an surah Al Maidah verse 2 which means "And help you in doing good and piety, do not help in doing sin and transgression" 3). Among the purposes of takaful flow is to help each other in covering losses arising from danger and disaster, and to be responsible for each other.

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These should be brief and placed at the end of the text before the references.

Author Contribution

The author contributed equally to the main contributor to this paper, some are as chairman, member, financier, article translator, and final editor. The author read and approved the final paper.

Conflicts of Interest

The author declares no conflict of interest.

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