

IMPLEMENTATION OF DSN-MUI FATWA ON SHARIA INSURANCE PRODUCTS AT PT. ASURANSI TAKAFUL PALEMBANG BRANCH

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Abstract

Insurance problems do not only stop at transactions, but also at investments. Most of the insurance purchased by the public is actually insurance that contains maysir, gharar, and usury. This means that the money received from the investment received by the customer is also not maintained as halal. It is different from investing in Sharia insurance because there is a Sharia Supervisory Board which ensures that all insurance mechanisms and investment allocations do not conflict with Sharia law. Sharia Insurance Companies are entrusted by the participants to manage premiums, develop in a lawful way, provide compensation to those who experience disasters according to the contents of the agreed agreement deed, based on the characteristics of takafuli, tabarru and mudharabah. This study aims to analyze how the implementation of the DSN-MUI fatwa regarding general guidelines for sharia insurance at PT Asuransu Takaful. This study uses a Qualitative Approach that is related to phenomena that refer to the actions of economic actors, namely humans who act around economic phenomena as well as in consumption, production and distribution with all kinds of transaction derivatives and their interactions. The research results show that tabarru funds that has been collected is managed by the company on the basis of wakalah through insurance invested in various sharia investment instruments so that the funds are more productive. The results of the tabarru' investment are actually purely the rights of the participants, while the insurance company can obtain profit sharing from the investment through a tijarah contract. Companies can also benefit from wakalah bil ujah contracts. This is in accordance with the DSN MUI fatwa No. DSN-MUI No.21/DSN-MUI/X of 2001 concerning General Guidelines for Sharia Insurance.

Keywords: Sharia Insurance, DSN-MUI Fatwa, Tabarru', Tijarah

INTRODUCTION

According to Islamic teachings, the human race in this world is one family. Therefore, every human being is equal in the eyes of Allah SWT and in front of the law that was revealed by Him. The concept of brotherhood and equal treatment of all Humanity before the Law has no meaning if it is not accompanied by Economic justice, which allows everyone to live as they should. (Hanafi, 2013)

Life that is increasingly complex at this time allows it to bring risks that threaten human life. To deal with a risk that may occur at any time, therefore the community should have guarantees to guarantee life, health, happiness in old age, even education for their children. One of the places that obtain this guarantee is insurance. The insurance company will provide protection against risks that may be faced by the community, so that the community feels safe because they have a guarantee (Fadilah & Makhrus, 2019). To realize this kinship and togetherness, cooperation, mutual assistance, and mutual guarantees are needed among human beings. Those who are rich should help those who can't afford it, and those who have leeway help those who are in trouble and are being hit by calamities. Establishing brotherhood among human beings is indeed very important because in reality humans cannot live alone without the help of other parties.

Among the scholars there are those who argue that in principle all types of conventional insurance are related to the element of gambling (speculative). They also expressed characteristics or signs that insurance is unacceptable and cannot be separated from the elements of usury and gharar. Among the scholars who think so are Sheikh Al-Bakheet, Abdullah al-Qalqeli, Mustafa Zaid, Mufti Muhammad Syafi, Jalal Mustafa al-Sayyad (Siddiqi, 1981). Abdus Sami' al-Misri gives the opinion that today's insurance system is based on the practice of usury which was pioneered and supported by the Jews from the beginning . The results of studies by Muslim scholars and economists regarding conventional insurance argue that conventional insurance is not based on sharia so that company operations cannot be avoided from elements that are prohibited by Islam, such as al-gharar, al-maisir, and al-riba (Al-Misri, 1993). Meanwhile, the private/commercial insurance sector in Indonesia is starting to grow rapidly. The factual condition that is really happening right now is the Case of Default in Conventional Insurance. According to Budi, the cause of the default was because the company promised high returns. For Kresna Life Insurance, for example, the company promises a return of around 9% for its two products, namely Kresna Link Investa (K-LITA) and Protecto Investa Kresna (PIK). Meanwhile, Sraya Life Insurance guarantees returns of between 9%-13% through the JS Saving Plan product. (Warta, 2021)

PT Asuransi Jiwa Bakrie Life, The default case of the insurance company belonging to the Bakrie Group occurred with the Diamond Investa product, which is of the unit link type (insurance and investment). The product failed to pay in 2008 because the company was too

aggressive in investing in the stock market, at that time stock -stocks fell due to the global crisis that was triggered by the subprime mortgage case in the United States (US). The Capital Market and Financial Institution Supervisory Agency (Bapepam-LK), which has now changed its name to OJK, stated that Diamond Investa's default reached IDR 500 billion. To resolve this problem, an agreement was reached that Bakrie Life would repay the obligation. However, the installments made by Bakrie Life were problematic. Not all policyholders had their funds returned until finally in 2016, the OJK revoked Bakrie Life's operational license. (CNBC, 2021)

PT Asuransi Bumi Asih Jaya, OJK revoked the business license in the field of insurance for PT Asuransi Jiwa Bumi Asih Jaya (BAJ) on October 18, 2013 no longer able to fulfill provisions related to financial soundness (Risk Based Capital) and the ratio of investment balance to technical reserves and debt claims. During its journey after being revoked, Bumi Asih Jaya has not been able to carry out its obligations to the OJK, so the OJK filed a bankruptcy lawsuit at the Central Jakarta Commercial Court. As for the Bumiputera 1912 Life Insurance, the problem is more focused on miss management or mismanagement of the company. In January 2018 the company admitted that it had experienced delays in payment of claims within 1-2 months due to the minimum premiums generated by the company. .008 trillion. As of semester I-2019, Bumiputera's RBC ratio was minus 628.4%, while its investment adequacy ratio was only 22.4%, and its liquidity ratio was 52.4%. (CNBC, 2021)

Insurance products are actually intended to attract people to buy insurance products. However, the product is precisely misused. Because, spiced with the promise of definite returns with high returns. To fulfill this promise, many insurance companies then place their customers' funds in stock instruments which are actually high risk and fluctuate because they do not have a guarantee of returns. Then, directly or indirectly, this will affect the economic growth and welfare of its customers. From these problems, a solution is needed to overcome them. Sharia insurance is a solution to the principle of interest which has been used by conventional insurance in investing the funds it receives.

In conventional insurance, customers buy protection or guarantees from insurance companies. Whereas in Sharia Insurance, the agreement is that the customers bind themselves in a community and bear each other if a problem occurs. Of course the different agreements will have different consequences, for example the problem of premium money ownership. In conventional insurance, because the transaction is a sale and purchase, the premium that has

been paid fully belongs to the company. Whereas in Sharia Insurance, premiums that have been paid by customers remain the property of customers who are entrusted to Sharia insurance companies to manage and develop their funds.

Insurance problems do not only stop at transactions, but also at investments. Because most of the insurance purchased by the public is actually insurance that contains investment (dual-purpose insurance). So far, conventional insurance invests the funds it gets without considering halal-haram factors. Of course, this means that the money received from the investment received by the customer is also not guaranteed to be halal. It is different from investing in Sharia insurance because there is a Sharia Supervisory Board which ensures that all insurance mechanisms and investment allocations do not conflict with Sharia law. Sharia Insurance Companies are entrusted (Amanah) by the participants to manage premiums, develop in a lawful way, provide compensation to those who experience disasters according to the contents of the agreed agreement deed, based on the characteristics of takafuli, tabarru and mudharabah. (Burhanuddin, 2010)

One of the insurance companies with syriac principles is PT. Takaful Insurance which acts as a manager of participant savings funds to be invested through certain contracts and investment models in accordance with the terms of the selected product. Family Takaful uses a tabarru' contract and a tijarah contract to maintain the validity of the transaction in accordance with the DSN-MUI FatwaNo.21/DSN-MUI/X of 2001 concerning General Guidelines for Sharia Insurance.

TINJAUAN PUSTAKA

Sharia Insurance

In Arabic, insurance is known as at-ta'min, the insurer is called mu'ammin, the insured is called mu'amman lahu or musta'min. at-ta'min is taken from amana which means giving protection, calm, feeling safe, and free from fear. Contemporary jurist Wahbah Az-Zuhaili defines insurance based on its distribution. He divided Insurance into two forms, namely at-ta'min at-ta'awuni and at-ta'min bi qist crescent. at-ta'min at-ta'awuni or mutual help insurance is an agreement by a number of people to pay a sum of money as compensation when one of them gets a loss. At-ta'min bi qist sickle or insurance with a fixed distribution is a contract that requires a person to pay a certain amount of money to an insurance party consisting of several

shareholders with an agreement that if the insurance participant has an accident, he will be compensated. (Abdul Aziz Dahlan, 2004)

From the point of view of understanding takaful has a broad meaning which emphasizes the aspects of mutual cooperation (mutual cooperation), mutual protection (mutual protection), and mutual responsibility (mutual responsibility) without thinking whether it is individual or group, as a government or governed, in order to improve the standard of living of the people (Salamon, 1999). In the context of Islamic insurance, Takaful means an agreement between group members or participants who agree to work together to guarantee or insure between them in the face of losses or disasters that might befall one of them. So that whoever is overthrown by these difficulties will receive a sum of money or financial benefits taken from the fund.

Tabbaru Contract

Tabarru' comes from the word *tabarraa ya tabarra' tabarrauan*, which means donation or alms. People who donate are called *mutabarri'* (generous). Intention *tabarru'* is a legal and permissible alternative to money. *Tabarru'* intends to give benevolent funds sincerely for the purpose of helping each other takaful participants, when one of them gets into a disaster. According to the dictionary, the *tabarru'* contract is the contract of ownership of something without *'iwadl* or exchange, such as: grants, sadaqah, wills and endowments (Karim, 2004). *Tabarru'* is an attitude or act of seeking blessings from an action.

In the *tabarru'* contract, the party doing the good is not entitled to require any compensation from the other party. The reward for the *tabarru'* contract is from Allah SWT, not from humans. In relation to Takaful Insurance, *tabarru'* is defined as a donor, and giving something voluntarily. In line with that, *tabarru'* is also the agreement of takaful participants to give a sum of money in the form of charity/volunteer in a certain amount or the entire amount of takaful installments or takaful donations. This is done with the intention of achieving the goal of mutual sharing as meant in the concept of takaful. (N. I. Hasan, 2014)

The concept of *Tabarru'* in Islam, the act of giving property or the benefit of an object that is done not because of an obligation and not expecting a return or reward in the form of property in Islam is called the act of *tabarru'* besides that it is also known as *tathowwu'*. Because of that, there are many explanations about the act of *tabarru'* which is also known as *al-tathowwu'*.

Tabarru' is an act that is based on the Qur'an and has been practically exemplified by the Prophet Muhammad, who is mentioned in the Al-Sunnah. (Kencana, 2016)

The operation of a sharia insurance company is carried out on the tabarru principle; this means some of the money will be donations that are not expected to benefit and return. With the tabarru' principle, the takaful company only manages the benevolent fund. In accordance with the objective of tabarru' itself, namely to create a financial fund to provide joint assistance, it is these funds that will be paid to participants who participate in takaful. In accordance with the tabarru' principle as the operational basis of a takaful company, participants do not think about profit or getting back the capital they donated. Everything returns to the managerial policies of takaful companies in terms of gifts, gifts, entertainment grants or vice versa. The principle of tabarru' is younger and does not cause problems if implemented by companies, because the functions actually help each other collectively. Those who are participants and do not experience calamities naturally help others. (Tahir, 1997)

Tijarah Contract

A tijarah contract is an agreement between participants collectively or individually and a company with commercial purposes. According to Muhammad Syakir Sula, in the Sharia Insurance book, a tijarah contract is an insurance participant contract that is invested as a participant's savings fund, which must then be returned and handed over to the participant. (Sula, 2004)

Contracts entered into between participants and the company itself consist of tijarah contracts and tabarru' contracts. Tijarah contracts are all forms of contracts made for commercial purposes. Tabarru' contracts are all contracts made with the aim of kindness and helping each other, not merely for commercial purposes. In a tijarah (mudharabah) contract, the company acts as the managing mudharib and the participant acts as the shahibul mal 'policy holder'. The type of tijarah contract can be changed to the type of tabarru' contract if the party whose rights are withheld voluntarily relinquishes its rights thereby aborting the obligations of the party that has not fulfilled its obligations. The tabarru' contract type cannot be changed to the tijarah type of contract. (Sula, 2004)

RESEARCH METHODS

This study uses a Qualitative Approach that is related to phenomena that refer to the actions of economic actors, namely humans who act around economic phenomena as well as in consumption, production and distribution with all kinds of transaction derivatives and their interactions (Leksono, 2013). This research was conducted at the Agency Office of PT. Insurance Takaful Palembang branch which is located on Jl. Sukabangun II Komplek. Nuansa Puspita Blok. CA No. 1 Kel. Sukajaya Kec. Sukarami Palembang City. Postal Code 30151.

The subject of this research is the Marketing Agency Coordinator of PT. Asuransi Takaful Palembang Branch. While the object is the implementation of the Tabbaru contract and the Tijarah contract at PT. Asuransi Takaful Palembang branch. The primary data in the study were obtained from informant sources, namely individuals or individuals in the form of the results of interviews conducted by researchers (I. Hasan, 2002). While secondary data obtained from library materials, literature, previous research, books, and so forth.

Collecting data in this study using a qualitative descriptive approach. Descriptive research is an effort to process data into something that can be stated clearly and precisely with the aim that it can be understood by people who do not directly experience it (Vardiansyah, 2008). So that what is meant by Descriptive Qualitative Research is an approach to a particular behavior, phenomenon, event, problem, or situation that is the object of research. The findings are in the form of meaningful sentence descriptions that explain certain understandings. Of course, because as part of qualitative research, the character of qualitative descriptive research in its analysis does not use numerical calculations and also does not make predictions, as according to its non-positivistic paradigm (Leksono, 2013).

RESULTS AND DISCUSSION

Analysis of Conformity of Islamic Insurance Contract Mechanisms to Conventional Insurance Problems

Sharia insurance adheres to a shared ownership system. This means that the funds collected from each insurance participant in the form of fees or contributions belong to the participant (shahibul mal). The syari'ah insurance company is only a safe buffer in its management. These funds, except for tabarru' (non-commercial) can be withdrawn at any time and without interest.

This is where the fundamental difference lies in life insurance if a participant, because of a very urgent need, may take part of the existing accumulated funds.

Sharia Insurance has a Sharia Supervisory Board (DPS) which is an integral part, in addition to that, the DPS is tasked with supervising the daily operations so that they always run according to Sharia principles in order to avoid irregularities under Islamic law that can harm other people. Whereas Conventional Insurance does not have a supervisory board in carrying out planning, processes and practices. Conventional insurance does not have an independent body to control and oversee the running of the insurance so that irregularities arise, for example legal and administrative irregularities. In managing funds from participants, Sharia insurance companies use 2 (two) fund management mechanisms, among others (Sula, 2004):

1. A system that does not contain an element of savings, in this system the insurance participants only pay tabarru' funds, without saving. The tabarru' funds are then kept by the manager in a separate account that is separate from accounts from other funds. This fund functions for the purpose of helping each other and is paid if the participant dies and the agreement has ended (if there is a surplus of funds). The Tabarru' funds collected will be invested by the company according to Sharia principles. The profit from the investment after deducting administrative costs will be shared with the insurance company using the Mudharabah principle with a predetermined percentage at the beginning of the contract.
2. In a system that uses an element of savings, the insurance participants pay the tabarru' funds together with the savings funds. Tabarru' funds are funds intended by participants for the purpose of helping each other, while savings funds are funds belonging to participants that are handed over to insurance companies which are then invested in accordance with Sharia principles. The profit from the investment after deducting administrative costs, will be shared using the mudharabah principle with a predetermined percentage at the beginning of the contract.

Of the two management mechanisms, there are two products in Sharia insurance, namely general insurance and life insurance. paid directly by participants is divided into two accounts, namely tabarru' (non-commercial) participant accounts. Likewise, the process of the relationship between the participant and the company in the coverage mechanism for sharia insurance is sharing of risk.

This shows that the syari'ah insurance system is always based on the principle of helping each other (ta'awun), that is, funds collected in the form of tabarru' funds are invested and developed, then the proceeds can be used for the benefit of insurance participants, not for the insurance company's management body. Syariah insurance in investing its funds only to sharia banks, BPRS, Sharia Bonds, and other activities in accordance with Sharia principles.

Sharia insurance is ta'awun, helping each other and they are afraid of the dangers (disasters) that threaten them (Anshori, 2007). In establishing the principles, practices and operations of Sharia Insurance is based on the Qur'an, Sunnah, Ijma', Fatwa of friends, mashallahah mursalah, qiyas, istihsan, urf or tradition, and DSN-MUI fatwa. So that clarity is convincing to insurance participants with a Sharia contract between the company and insurance participants.

The element of usury is reflected in the way conventional insurance companies conduct business and invest from premium funds collected on the basis of interest. In conventional insurance there is no separation of funds between participants and shareholder funds, whereas in Sharia insurance for products that contain an element of savings the two sources of funds are strictly separated in which in the mechanism there are two channels, namely the flow of funds for takaful participants and the flow of shareholder funds. (Basyir, 1993)

Conventional insurance has a legal source based on the human mind, philosophy and culture. While the modus operandi is based on positive law. Because of this, they do not have clear legal sources, they tend to make transactions that do not have certainty and clarity going forward. Conventional insurance also does not have a supervisory board in carrying out planning, processes and practices. It is known that several cases of default on Conventional Insurance claims at several of these companies were the result of the company's investment errors.

Later it was discovered that the BUMN ministry also indicated that there had been an investment error that was trapped in a number of fried stocks. The term fried stock shows that there are stocks whose movements are engineered so that a significant increase is carried out by stock market players with a specific purpose, besides that there is an indication of Froud in the company's management. (Nizar, 2021).

This is also related to the weak supervision of regulators both in terms of product and investment. Then the company's obligation to prioritize Transparency on the advantages and

disadvantages of the products offered so that prospective customers can consider the choice of insurance product to use. Miss management is the main cause of failure in companies in managing insurance. The company should have managers who are capable of coordinating and managing the company's team and wheels, so that the company becomes "sustainable" in channeling the desired turnover, profit and cash.

The Tabarru' contract and the Tijarah contract could be a solution to conventional insurance problems, but conventional insurance companies shouldn't make changes that easily. Changes were made starting from products and investments as well as transparency in the management of participant funds as well as other fundamental changes. (Nizar, 2021)

Implementation of Tabarru' Contract on Insurance Products of PT. Takaful Insurance Palembang Branch

According to the fatwa of the National Sharia Council No. 53/DSN-MUI/III/2006 concerning tabarru' contracts in Sharia Insurance and Sharia Reinsurance, tabarru' contracts are contracts made in the form of grants with the aim of mutual assistance between participants, not for commercial purposes. Any tabarru' funds that have been given cannot be taken back. In the Hadith narrated by Ibn Abbas ra, the person who takes back his gift is like a dog that vomits and then eats its vomit again. The nature of the parable is very bad. For this reason, it is not good for a Muslim to attribute himself to a bad character so that he is likened to the worst animal at the worst condition.

The concept of tabarru' takaful funds and separately managed savings funds is invested under the principle of profit sharing using a mudharabah or musyarakah contract. Riba (interest) in the management of insurance premiums is not in accordance with the basic principles of Sharia transactions as stipulated in the fatwa of the Indonesian Ulema Council (MUI) on December 16, 2003 which states that interest is included in the Riba category. The concept of interest is not justified in the Fatwa of the National Sharia Council No. 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance. This fatwa requires that investment in Sharia insurance funds be carried out in accordance with Sharia.

Tabarru' funds are those that apply on the basis of gifts or assistance, such as grants. once the tabarru' contract has been agreed upon, the contract is not converted into a tijarah contract (commercial contract) unless there is an agreement between the two parties to bind themselves

to the *tijarah* contract. The funds that have been collected are managed by the company on a *wakalah* basis. the insurance company invests the *tabarru'* pool of funds so that the funds are more productive. Invested according to Sharia principles, even though *tabarru'* is a non-profit transaction, the management company is a professional, profit-oriented institution so that *tabarru'* funds are invested and the profits can be shared between the company and the participants.

However, the results of the *tabarru'* investment are actually purely the rights of the participants, while insurance companies can obtain profit sharing from the investment through a *mudharabah* or *mudharabah musyarakah* contract. The company can also benefit from other contracts, for example a *wakalah bil ujah* contract where the insurance company as the manager will get a fee or *ujrah* through the contract. (Sholihin, 2010)

In current sharia insurance practices, there are differences in the implementation of the *tabarru'* contract. Some sharia insurances in practice provide profit sharing (*mudharabah*) if there is a surplus of *tabarru'* funds, referring to the system implemented in Syarikat Takaful Malaysia, which is currently the largest sharia insurance in the world. However, some other sharia insurance companies do not distribute it on the grounds that *tabarru'* is a fund that has been willing to help, participants do not need to expect anything in return except to hope for goodness (reward) from Allah SWT. (Faozi, 2016)

In the context of the contract in sharia insurance, *tabarru'* intends to provide benevolent funds with sincere intentions to help each other among *takaful* participants. if any of them get into trouble. The claim funds provided are taken from the *tabarru'* fund account which was intended by all participants when they were about to become participants in sharia insurance, for the benefit of benevolence funds or mutual assistance funds. Therefore, in a *tabarru'* contract, the giving party sincerely gives something without any desire to receive anything from the recipient, except goodness from Allah SWT. (Nizar, 2021)

Sharia insurance is different from conventional insurance which uses a *mu'awadhah* contract. That is, each of the two parties as the guarantor and the other party as the insured. The insurer obtains insurance premiums as a substitute for the sum insured that has been promised to be paid. Meanwhile, the insured gets sum assured if an event or disaster occurs as a substitute for the premiums paid (Hisan, n.d.). If in Sharia Insurance this action is the same as

someone giving a grant, then taking it back. In addition, an act like this is based on the agreement of the *juhur* of scholars, which is an act that is forbidden.

The contract used in conventional insurance is a *tabaduli* (exchange) contract. Exchange in terms of premium payment with sum insured. In conventional insurance, the premium elements consist of: (Rohmah & Abidin, 2017)

1. *Mortality tables* namely a list of death tables that is useful for knowing the size of claims that may incur losses due to death, as well as predicting how long a person can live.
2. Beneficiary of interest (to set rates, interest calculations must be calculated in it).
3. Insurance costs consist of commission fees, out-of-office fees, advertising costs, sale promotions, and policy making costs (administrative costs), maintenance costs and other costs such as collections.

In the *tabaduli* contract, it must be clear how much the premium must be paid and the number of claims that can be accepted. In conventional insurance it is very possible for *gharar* to occur because there is certainty of how much sum insured will be received, but there is no certainty of how much premium will be paid. Meanwhile, the life and death of a person only Allah.Swt knows. The solution provided by Sharia insurance to eliminate this *gharar* element is to provide a savings program while still providing protection for one's soul through *tabarru'*.

Implementation of Tjarah Agreement on PT. Takaful Insurance Palembang Branch

Implementation of *tjarah* contracts by using contracts between participants collectively with management for commercial purposes or contracts that aim to seek profit/profit. This *tjarah* contract is to manage premium money that has been given to a sharia insurance company that is domiciled as manager (*Mudarib*), while the customer is domiciled as the owner of the money (*Shohibul Mal*). when the agreement period expires, the premium money contracted with the *tjarah* contract will be returned along with the profit sharing according to DSN-MUI Fatwa No. 21/DSN-MUI/X/2001 regarding general guidelines for sharia insurance (Abdulah, 2018). The *tjarah* contract is divided into three that is :

1. *Wakalah bil ujah*, is a contract that authorizes the insurance company as the participant's representative to manage the *tabarru'* funds or the participant's investment funds in exchange for an *ujrah* (fee). The goal is for administrative activities, fund management, payment of claims, risk portfolios, and distribution of the percentage of underwriting

surplus. According to the fatwa, the wakalah bil ujah contract may be applied between the insurance company and the participants. Wakalah bil ujah in sharia insurance is interpreted as giving power of attorney from the participant to the company to manage premium funds collected from the participants in return in the form of giving ujah (fee). Wakalah bil ujah contract can not only be applied to savings type insurance products, but also can be applied to non-saving products (Nizar, 2021).

2. *Mudharabah*, a tijarah contract that authorizes the insurance company as the participant's representative to manage the tabarru' funds or the participant's investment funds in exchange for a profit sharing (nisbah) of which the amount has been agreed upon.
3. *Mudharabah musyarakah*, a tijarah contract that authorizes the manager as a participant's representative to manage the investment of the tabarru' funds and the participant's investment funds, which are combined with the company's assets, to the extent of the power or authority granted based on the composition of the assets combined and the agreed ratio.
4. Underwriting surplus, namely the difference between the total income of tabarru' funds and expenditure of tabarru' funds. Profits earned by syariah insurance from underwriting surplus, reinsurance commissions and investment returns are not wholly owned by the company but are shared (*mudharabah*) between the company and the participants (Rohmah & Abidin, 2017).

While the concept of conventional insurance in accordance with the law on insurance business, insurance or coverage is an agreement between two or more parties where the insurer binds himself to the insured by accepting insurance premiums to provide reimbursement to the insured due to loss, damage or loss of expected profits or legal liability to third parties that may be suffered by the insured arising from an uncertain event or to provide payment based on the death or life of a person (Law of the Republic of Indonesia No. 2 of 1992 concerning Insurance Business).

According to government regulations, investment must be made by conventional insurance in the type of investment that will be profitable and has liquidity in accordance with the obligations that must be fulfilled by the company. In addition, it must pay attention to the investment provisions contained in the Decree of the Minister of Finance of the Republic of Indonesia No. 424/KMK 6/2003. Meanwhile, the profit obtained from the Underwriting

Surplus belongs to the company that has previously shared the GMS to shareholders or returned to the equity participation company.

In the conventional insurance system, there is a forfeited fund system, namely insurance participants who cannot continue paying premiums and want to resign before the reservation period (does not contain elements of savings) or loss insurance. If the contract expires and no claims occur, then the premium will be paid. paid by the insurer to the company will be forfeited or become the property of the insurer. (Rohmah & Abidin, 2017)

CONCLUSION

Tabarru funds that has been collected is managed by the company on the basis of wakalah through insurance invested in various sharia investment instruments so that the funds are more productive. Although tabarru' is a non-profit transaction, the management company is a professional institution that is profit oriented so that tabarru' funds are invested and profits can be shared between the company and the participants. However, the results of the tabarru' investment are purely the rights of the participants, while the insurance company can obtain profit sharing from the investment through a tijarah contract. The company can also benefit from other contracts, for example a wakalah bil ujah contract where the insurance company as the manager will get a fee or ujah through the contract. This is in accordance with the DSN MUI fatwa No.DSN-MUI No.21/DSN-MUI/X of 2001 concerning General Guidelines for Sharia Insurance

The use of tijarah contracts consists of Mudharabah, Mudharabah musyarakah, and wakalah bil ujah and is implemented in almost all products that have elements of risk management in the form of savings and safe investments in accordance with Islamic Sharia. However, regarding the management of company funds, it is managed directly at the Central Takaful Insurance office in the city Jakarta, so it is less understandable because the Takaful Insurance office, Palembang branch, is a branch office that only has the task of being an intermediary between potential participants and the company in making policies and handling claim submissions.

Tabarru' contract and Tijarah contract can be a solution to problems that are often experienced by conventional insurance. The Sharia Insurance System has been designed in accordance with the rules and regulations set by Allah SWT so that no party feels

disadvantaged. However, it is not easy for Conventional Insurance to make changes. Conventional insurance was born from individual societies, and the concept of insurance itself keeps the individualism of a society growing. So the implementation of an ideal guarantee in Islam requires a contract that is based on virtue (tabarru') which is understood as a system for helping each other not for profit. Because by helping others there are already 2 benefits, namely the reward in the hereafter and peace in the world. Keuntungan inilah yang hendaknya menjadi alat ukur bagi implementasi jaminan dalam islam. This advantage should be a measuring tool for the implementation of guarantees in Islam.

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