

The Analysis of Fatwa DSN-MUI NO. 21/DSN-MUI/X/2001 Concerning Perspectives of *Maqashid Sharia*

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Abstract

Most Muslims in Indonesia in welcoming the future and efforts to estimate the possible consequences in economic life that will be experienced, need to prepare certain funds early on. One of the efforts to meet these funding needs can be tried through sharia insurance, sharia insurance is insurance with the principle of mutual assistance, protecting among participants through the formation of a collection of funds or tabarru funds'. And managed in accordance with sharia principles to face risks. Insurance is a new case that is still being questioned, how is the maqashid sharia or the method of its activities in line with the principles of sharia. Therefore, to meet the needs and respond to citizens' problems, the National Sharia Council considers and requires to stipulate MUI fatwa NO. 21/DSN-MUI/X/2001 concerning insurance that is based on Sharia principles is used as a guideline by the parties who need it. This paper aims to explore a number of thoughts related to insurance according to Maqashid sharia, and insurance principles that are in accordance with sharia and its methodology in the form of analysis, especially in the MUI fatwa NO. 21/DSN-MUI/X/2001. The results, this study found several economic principles in sharia that must be avoided such as usury, gharar, maysir, tajlis, and risywah.

Keywords

sharia insurance law; insurance principles; maqashid shari'ah



I. Introduction

In this modern era, the need for premiums is getting higher along with economic growth and international trade. Every individual who opens a trading business always needs safety protection and welfare development for his business. Therefore, premium protection is currently believed to be very important for the safety and well-being of both companies and individuals. Insurance is a convention between members of society to sue and cover each other by raising money and setting up a financial savings account that is used as a donation fund for someone who is in trouble. This is done as an effort to deal with events that might happen to someone and cause losses.

According to the *Fatwa* of the National *Sharia* Council that *sharia* premiums are an effort to protect and help each other between a number of people or parties through investment in the form of assets or *tabarru'* which provides a pattern of returns to face risks directly through synchronicity contract (engagement) using *sharia*. To face the very basic challenges experienced by companies with *sharia* insurance contributions, *sharia* insurance must really pay attention to aspects related to *sharia* principles and adjusting to industrial culture and human resources by using tactics and structure of business ethics based on Islamic concepts. So far, what we know is that business actors who run *sharia* insurance contribution companies describe people who were originally entrepreneurs of conventional insurance contributions.

The arrival of these people, for example, in the *sharia* insurance contribution industry will inevitably improve the public image if the *sharia* insurance contribution company is silenced. However, apart from that, there are still negative impacts that make people think that *sharia* insurance contribution companies are just forms of companies trying to connect cloudy water. They still have a lot of business ethics in conventional insurance contributions which are influenced by the contribution of Islamic insurance companies. Perhaps one of the reasons is due to ignorance and lack of understanding of the actors using the system that consumers want. Residents really hope that *sharia* business forums prioritize *taawun* for the profit factor, on the other hand the phenomena faced by consumers barely show what they want.

Early History of *Sharia* Insurance in Indonesia is inseparable from the history of premiums in the world. The concept of *sharia* premium based on Arab tribal culture uses the term Al-Aqilah until the time of the Prophet Muhammad. This concept is accepted permanently and as part of Islamic law, it is stated in the hadith of the Prophet Muhammad narrated by Abu Hurairah RA., he said: *"There are two different women based on the tribe of Huzail, then a woman throws a stone on the other side, the woman as a result caused the death of the woman and her unborn child. So, the heirs based on the woman who died previously reported the incident to the Prophet, then the Prophet determined compensation based on the loss of the life of the fetus using the burden of male or female slaves, and determined compensation for the death of women using blood. Money (Diyat) paid by his aqilah (Relatives based on male parents)."* (HR. Bukhari). In addition, the Messenger of Allah (SAW) has also determined the amount of compensation for various accidents, for example: five camels due to bone injuries, 10 camels missing fingers or toes, 12,000 dinars (gold coins) for death. Since the time of the Prophet Muhammad, until now Muslims have played an important role in introducing the premium system to the world.

In the year 200 H, many Muslim entrepreneurs started pioneering the *takaful* system, namely a system of raising funds to be used to help fellow entrepreneurs who suffered losses: For example, when a cargo ship hit a rock and sank or when someone was robbed causing loss of life part or all of their assets. The term is better known by using the name "Shaking of Risk".

Maqashid sharia is a vision that is based on the purpose of implementing Islamic *sharia* in the economic field and is concerned with the benefit of the people, therefore Islamic law is a set of ways and ways of life that are sourced from Allah swt as a biological guide for all mankind. The contribution of *sharia* insurance that comes from the perspective of *maqashid sharia* can save the mindset and image rationally so that it is.

Based on the existing problems, the researcher is interested in learning more about the concept of *maqashid sharia* related to contracts in *sharia* insurance according to the number of mui DSN-MUI 21 in 2001, and how the principles apply in life.

II. Research Method

The research used in this research is library research or library research, which means research that tries to collect news or scientific works that aims to use the object of research or a collection of news stories that are literature, or studies conducted to uncover a battle that is basically focused on critical and in-depth study of relevant library materials. The nature of the research used in this study includes narrative research, serious narrative research in a systematic description of the phenomena obtained when the research is attempted. tidy up the way of collecting research news. This research is qualitative. The

origin of the news in research is defined as the subject according to which the news can be obtained.

If the researcher uses documentation, until the document or note becomes a source of news, then the opposite is the content of the research subject's notes or research variables. In this study, there are two research sources used: The main source is the source who gives the news personally according to the first hand or the meaning of this origin according to the Qur'an, hadith and DSN *Fatwa* Mui No. 21 /DSN-MUI/X/2001 concerning Insurance. Secondary, sources are sources taken from other sources that are not obtained from the main source. Secondary, meaning that these are other books related to the matters that are the main discussion of this paper, including: The Book of Contemporary Fiqh Muamalah by Wasilatur Rohmaniyah, Sharia Economic Law and Fiqh Muamalah in Financial Institutions and Contemporary Business by Doctor Andri Soemitra, MA, "*Halal Haram Online Business*" by Ammi Nur Baits, "Book of Contemporary *Mualamah Fiqh*, Volume three", "Overview of Contemporary Socio-Economic Cases" by *Ustadz* Doctor Oni Sahroni, MA, Books on "Economics and Financial Jurisprudence Contemporary Thematic and Instant Approaches" by Doctors. Moh. Mufid, Lc., MHI, and the Book of "Islamic Economics *Fiqh Muamalah*" by M. Pudijhardjo Nur Faizin.

III. Results and Discussion

3.1 Result

a. Interpretation of Sharia Insurance and Commercial Insurance

Sharia insurance according to the terms *Ta'min*, *Takaful* or *Tadhamun* is an effort to protect and help each other between various parties through investment in the form of inheritance or *tabarru'* which maintains a pattern of returns that experience direct consequences through contracts (Agreements) that are in accordance with sharia (Yusof, 1996). Contracts that are in accordance with sharia are contracts that do not contain *gharar* (Fraud), *Maysir* (Gambling), usury, *dzulm* (Persecution), *risywah* (Bribery), unlawful objects and immorality.

In general, conventional insurance contributions apply the *tabaduli* system (Transfer of risk), in which the customer's securities are transferred to the insurance contribution industry, using the customer's compensation required to pay and exclusive money (Premium) to the insurance contributing party. In this system, for example, there are factors of *gharar*, usury and *maisir*, which are prohibited in Islamic law. Meanwhile, the concept of *sharia* insurance contributions uses the *taawuni* system (Sharing of risk) in which fellow customers donate (*Infaq* or *Tabarru'*) using certain funds intended to help other customers who are stricken by disaster. Donations of customer funds are entered in a special account (*Tabarru'* fund), and the sharia insurance contribution industry is not entitled to spend or use these funds at all. So that in this concept, for example, there is no *gharar*, usury and *maisir*, let alone applying the concept of *wataawanu alal birri wattaqwa* (Hasan, 1996).

Sharia insurance is usually claimed to use the Pool of *Tabarru'* Fund or Risk Sharing Based (*Ta'awuni*). Where the position between fellow participants is to compensate for the consequences if one or more of the *Tabarru'* Fund Pools are affected by one or more disasters. If participants are *Tabarru'* towards fellow participants, and not *Tabarru'* to the *sharia* insurance contribution industry (Wahab, 1998). In the concept of Under Insurance, there are still some contracts that must be considered for the industry itself and for participants. What is meant by the contract itself is between (Groups of) participants who use *Takaful* to manage the *tabarru* fund group using a *tijari* contract. And that's why

Takaful is allowed to pay *ujrah* for its management. In this interaction, for example, the contracts used are *wakalah bil ujah*, *ijarah*, *mudharabah musytarakah*, etc.

In this contract, *Takaful* only acts as an operator or representative to manage customer securities. And for that, *Takaful* is not entitled to take any *Tabarru* funds, not only the agreed *ujrah* and between customers who use *Takaful*. The profit from the *Tabarru*' funds generated will be invested by *Takaful* in *Sharia*-compliant investments using the *Mudharabah* or *mudharabah musytarakah* scheme. Investment profits are divided from the contract used (*Mudharabah*) using for results, *wakalah* using fees or *ujrah*).

b. Sharia Insurance Law Islamic Law Perspective

In classical Islamic *Fiqh* relating to Islamic law regarding *sharia* insurance, as in the *Fatwa* of the National *Sharia* Council of MUI which is based on the source of the Qur'an (Ali, 2004). It is stated that *sharia* insurance law is *halal* as long as the contract and the principles contained therein are carried out in accordance with Islamic law (Syariah, 2016). Word of God:

"O you who believe! Fear Allah and let everyone pay attention to what he has done for tomorrow (hereafter), and fear Allah. Verily Allah is Knowing of what you do."

From the arguments above, according to the scholars, there are at least 4 major things that are strictly forbidden in insurance, namely: Insurance contains elements of *gharar* both in terms of time and *miqdar* (Amount of payment), Insurance contains *rihan* and *muqamarah* (Maisir), Insurance contains elements of usury, namely usury *nasai'* and usury *fadhl*. In it there is an aspect of consuming human property in a vanity manner (*Aklu Amwalinnas Bil Bathil*). There are still several contracts that exist in several parties that have in common using the *sharia* insurance contribution system which of course has an Islamic style and style (*Taawuni*), including: *Nidzam Aqilah*, *Al-Qasamah*, *Al-Muwalah*, *At-Tanahud*, *Aqdul Hirasah*, *Dhaman Khatr At-Tariq* (Solahudin, 2006):

1. Nidzam Al-Aqilah

Is to bear or be responsible for his family. If a member of one tribe kills another member of the tribe, the heirs of the victim will be paid with blood money (*Diyat*) as compensation to the killer's closest relative. The killer's closest relatives are claimed to be *aqilah*. Then they raise funds (*Al-kanzu*) which are meant to help the families who took part in the accidental disappearances. Ibn Hajar Al-Asqolani Asqolani stated that the *aqilah* system was accepted and accepted as part of Islamic law. This is seen in the *hadith* which describes a fight between two women for the tribe of Huzail, where one of them beat the other with a stone causing the death of the woman and the toddler who was still in it. The heirs of the victim took the matter to court. The Prophet still took the decision that compensation for the murder of children under five is to free slaves, both male and female. Meanwhile, compensation for killing women is blood money (*Diyat*) which must be paid by *Aqilah* (Father's brother).

2. Al-Qasamah

This is a very human concept of agreement. This system connects the fundraising business to a savings account or collection of contribution money for participants or assemblies. Benefits will be paid to the heirs of the slain if the issue of loss of life is not known who the killer is or there is no proper witness data to clearly identify who the killer is.

3. Al-Muwalalatakad

Is a guarantee where a guarantor sues someone who has no heirs and whose heirs are unknown. The guarantor agrees to pay it, if the previously confirmed person commits *jinayah*. If the person confirmed dies, the insurer can inherit his property as long as there are no heirs.

4. Tanahud Bagaikan

The food collected for the participants of the trip is mixed into one. After that food was distributed to them on time, although they received different rations. In a narration it is stated "The Ash'ari (Ash'ariyin) family when their family faced a lack of food, until they gathered what they had in one group. After that it was divided among them thoroughly. They are a part of us and we are a part of them." (Narrated by Bukhari). In this case, the food given can be of the same level or different, as well as the food received can be of the same portion or different mechanisms in the principles of managing sharia insurance funds in this case must be truly understood and practiced directly in the life of the insured. The principles that exist in Islamic insurance must be in accordance with the principles on a basis that is in accordance with the teachings of Islamic law.

5. Tawhid (Unity)

The principle of monotheism is the main basis of every form of savings that exists in Islamic law. Every building and activity of human life must be based on divine values. In every insurance activity there is a kind of belief in the heart that Allah SWT is always watching all the mobility of our steps and is always with us.

6. Justice

The principle of fairness in insurance is the fulfillment of the values of justice between the parties who are adrift using premium contracts. Fairness in this case is understood as an effort to place rights and obligations between customers and the premium industry. On the other hand, the profits generated by the industry for the investment results of customer funds must be divided according to the contract that has been agreed upon from the start. If the agreed ratio between the two parties is 40:60, then the reality of profit sharing must also refer to profit.

7. Help Each Other (Ta' awun)

Another basic principle in carrying out mandatory insurance activities is based on the existence of mutual assistance among members. Application assistance at a premium price is the main factor for making transactions (DNA-Chromosomal).

8. Cooperation

The principle of cooperation is a general principle that always exists in Islamic economics literature. Cooperation in the premium business can be in the form of a contract that is used as a reference between the two participating parties, namely between members (Customers) and premium companies. In its operations, contracts used in premium businesses can use the concept of *mudharabah* or *musyarakah*. The concepts of *mudharabah* and *musharaka* are two basic concepts in economic studies and have historical value in the growth of science.

9. Amanah (trusted / al-honest)

The principle of honesty in the company's organization can be realized in the values of industry accountability through the presentation of financial statements for each period. In this case the premium industry must provide a great opportunity for customers to access industry financial reports. Financial reports issued by the premium industry must reflect the values of truth and justice in muamalah and through public auditors. The principle of honesty must also apply to premium customers, someone who as a premium customer is obliged to provide legal coverage related to the use of payment of contributions and not manipulate the losses that befall him.

c. Insurance Principles in *Maqashid Syariah*

Maqashid sharia is a vision based on the purpose of implementing Islamic *sharia* in the economic field. Islam has a vision that plays a role in social order to maintain social justice by utilizing the economic prosperity of the people, therefore Islamic law is a biological rule and procedure that comes from Allah swt. Use it as a biological guide for all mankind. *Sharia* premiums in the *maqashid sharia* perspective are able to maintain a rational and substantial mindset and image in operational activities, contracts and materials offered, so that products designed to grow in accordance with rapidly changing needs are needed according to the times (Priyatno, 2020). The development of the times, must use goals that are in line with *maqashid sharia* to realize the benefit of the people.

Its essence is based on the theory of *maqashid ash-shari'ah* if basically the goal is based on Islamic provisions that describe the realization of benefit for humans (Iqbal, 2005). Says that there are 5 aspects protected by *syara'* that can be known, namely utilizing *al-kuliyah al-khams* by covering belief, soul, logic, generation, and property.

1. Hifz Al-Dien (Maintaining Religion)

Saying that by nature, humans have the readiness (Ability) to understand and believe in Allah. Humans have the potential of monotheism, draw closer to Allah, return to Him and ask for His help when experiencing difficulties. The form of implementation of Islam for Muslims is if they can carry out the pillars of Islam well, which consists of reading the two sentences of the creed, praying, paying zakat, performing *Hajj* for those who can afford it, and fasting. As a model for the application of *sharia* contributions, it is regulated in the DSN-MUI budget *fatwa* No. 39/DSN-MUI/X/2002 concerning hajj fees by using protection on trust, which can be seen from the implementation of *hajj* contribution products that protect the risk of reinforcements that occur to returning *hajj* pilgrims.

The implementation of the concept and operation of *sharia* premiums is also supervised by the *sharia* supervisory board (DPS) in charge of supervising & as an extension of the *Sharia* Supervisory Board (DSN-MUI), so that every business activity on *sharia* premiums is legal and consistent with *sharia* guidelines, this is also included in maintaining the trust (*Hifdz ad-dien*).

2. Hifz Al-Nafs (Keeping the Soul) is held

The first and foremost Islamic right is a biological right. The sanctified right and its glory cannot be destroyed. It is very clear that the implied message comes from the creation of humans, namely nature which He created and made in the best possible form. *Sharia* premium business in the aspect of protecting the benefit of the soul lies in things that pose a threat to life, the destruction of body parts that cause disability or death of a person. The role of premiums in the benefit of the soul is more emphasized on the prevention aspect (*Min nahiyyati al-'adam*).

3. Hifdz Al-'Aql (Keeping Intellect)

One of the advantages of humans compared to using other creatures is to have logic. Not only as a measure of thinking, logic also has the meaning of glory. This means that people who use their minds according to the instructions of Allah SWT are claimed to be intelligent people and when *istiqamah* use the results of their legitimate thoughts so that they nobly use the facts that they know beforehand as a result of avoiding their owners to do bad and evil things. The form of protection of *sharia* premiums against logic is the embodiment aspect (*Min nahiyyati al-Wujud*). One way for humans to protect logic from being destroyed is to use study or study. Although the learning process can be obtained from anywhere and informally, in Indonesia learning activities are generally carried out officially, namely in schools and major academies. For example, because a parent dies, retires, gets old, is dismissed, and so on as a result, they are unable to properly support their child. Of course, this provision is very disturbing for someone to continue their education.

According to Astuti et al (2019) Education is an obligation of every human being that must be pursued to hold responsibilities and try to produce progress in knowledge and experience for the lives of every individual. Education is one of the efforts to improve the ability of human intelligence, thus he is able to improve the quality of his life (Saleh and Mujahiddin, 2020). Education and skills are the main keys in gaining social status in community life (Lubis *et al*, 2019).

This is where premium plays a role as a learning funder. Examples of premium products that protect the benefit of logic are *takaful* premiums for student funds or scholarship premiums. *Takaful* is intended for individuals intended for those who intend to provide study funds for their children.

4. Hifdz Al-Nasl (Keeping Descendants)

The part based on *maslahah dharuriyah* that must be maintained is the generation. One way to protect generations from becoming weak or extinct is to use the method of imitating premium activities. Insurance is designed to protect people from risks that may occur in the future. The role of premiums in gene benefits.

3.2 Discussion

In the 1st Congress of 1978 after issuing a fatwa prohibiting insurance from using a *fatwa*, it reads "The decision of the *Majlis Al Majma'* unanimously allowed cooperative premiums (*Ta'min ta'awuni*) are compensated based on prohibited commercial premiums as follows:

- a. Cooperative insurance (*Ta'mi ta'awuni*) is a grant agreement which basically aims to help each other, relieve the burden of losses and share in suffering when a disaster occurs. By paying a special amount of cash to compensate the people affected by the disaster. So members who join *ta'min ta'awuni* have no commercial purpose of making profit based on assets that do not belong to us.
- b. Cooperative insurance (*Ta'mi ta'awuni*) which is free based on usury using all forms of means. Such as usury *fadh*l and usury *nasi'ah*. Transactions by insurance participants do not include usury contracts and investors will not use *tabarru'* funds collected by participants for usury transactions in any form.
- c. *Gharar* (Not clear in the transaction) the amount of compensation claims that will be received by the cooperative contribution participants in the ongoing contract does not affect the validity of the grant contract. Because the contract that still exists in *sharia* insurance is a gift contract. And *gharar* in gift contracts is allowed and does not include

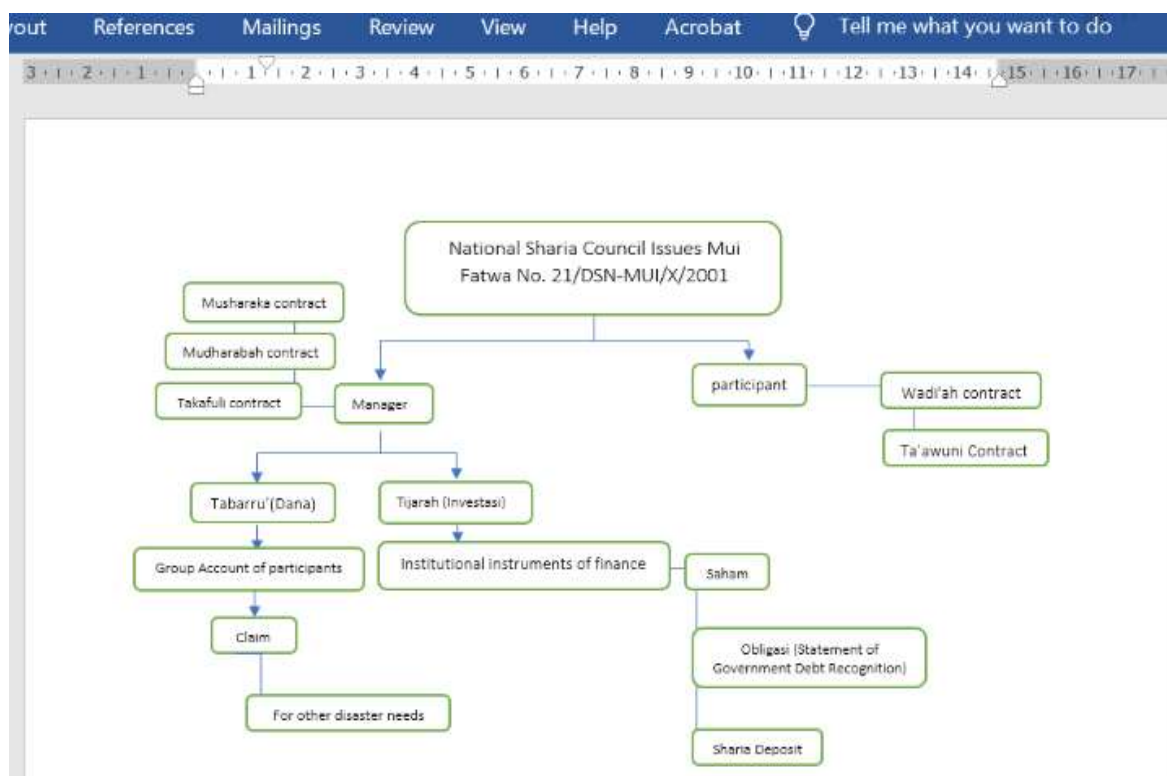
gambling. It is different from using a commercial premium contract, which is a contract that occurs using an exchange that is not allowed in Islamic law.

From the fatwas of the scholars, we can understand that Islamic contributions are avoided based on the elements of *muamalat* that are forbidden, namely usury and gharar. As for usury *bai'*, which is still found in conventional premiums, it does not exist in *sharia* premiums, because *sharia* premiums are not *bai'* (Sales and purchases) contracts but gift contracts (Donations) which have the basic principle of helping and easing the burden on members affected by the disaster. The risk is insured and does not aim to seek profit between the customer or the insurance company.

Some people are still wary of the permissibility of *sharia* insurance because they know that in *sharia* insurance the contract is from gifts. Where the money that has been donated will be returned to the giver in the form of money as compensation for the impact of the risk that has occurred. And the Prophet *Sallallaahu 'alaihi wa sallam* has forbidden to withdraw donations.

Therefore the scholars' forbid insurance based on the arguments of the Qur'an and *As-Sunnah*. Insurance that is free from *gharar*, *qimar*, usury, and business that is more profitable for both parties. This reminds us that insurance is one of the needs of humans in today's modern times so that their lives are more peaceful in the face of difficulties in the future (Hakim, 2011).

Diagram of the Fund Management Mechanism of Sharia Insurance Participants



That the basic principles that exist in *sharia* insurance are built on several principles that exist in *sharia*. The principle of *sharia* insurance can be said to be a binding grant contract. Where it must be stated how much budget each grant participant gives to the fund management agency. Funds and profits will be used for compensation. The managing company is required to have two accounts that are not linked to participant funds, namely a

special account belonging to the company and a special account belonging to a business entity. Business entities and managers of Islamic insurance funds are only representatives. And when the company is appointed to develop the funds raised, the company has the right to act. Profit fund assets (*Tabarru'* funds) are solely for the policyholder, not the company, and vice versa, the deficit is borne by the fund institution. The fund can state that the law of *tabarru'* funds developed is intended as a reserve fund or to cover it as a premium to be paid in the event of a shortage.

Tabarru' funds are distributed to social foundations or partly to policyholders. When insurance is liquidated, all assets and *tabarru'* funds are left, then distributed for social purposes. Some shareholders have the right to become managers or act as insurance commissioners. *Sharia* insurance must have a commitment that applies Islamic teachings in every business and investment activity, and must not bear risks or unlawful acts that have prohibited purposes such as not having *gharar* (Fraud), *maysir* (Gambling), usury, *dzulm* (Persecution), *risywah* (Bribes) things that are unlawful and immoral. The appointment of the sharia supervisory board in the insurance sector issues a *fatwa* that is used as a guideline and must be obeyed by the company's management, there must also be a *sharia* auditor in the company's management structure.

IV. Conclusion

Based on the DSN Decision *Fatwa*, MUI decided to adopt *Sharia* Insurance. Insurance (*Ta'min Takaful or Tadamun*) is an effort to protect and help between people or parties by investing in the form of inheritance and or *tabarru'*, which maintains the pattern of returns to experience direct consequences through an agreement (Agreement) in accordance with *sharia*. Contracts that are in accordance with *sharia* are contracts that do not contain *gharar* (Fraud), *maysir* (Gambling), usury, *dzulm* (persecution), *risywah* (bribes), illicit goods and immorality.

In *Sharia* Insurance there is a *tabarru* contract and a contract. *Akkad* is any form of contract that seeks to use the purpose of benevolence and mutual assistance, not just for commercial purposes. Premium is the insurance participant's obligation to keep a certain amount of funds in the insurance industry in accordance with the convention in the contract. Claims are rights of insurance participants that must be provided by the insurance company in accordance with the conventions in the contract. At first the role of the *tijarah* contract and the *tabarru* contract, in the *tijarah* contract (*Mudharabah*), the industry acts as *Mudharib* (Manager) and the participant acts as *shahibul mal* (Policy holder) who was struck by disaster.

On the other hand, the industry acts as a manager of free push funds. Second, the terms of the *tijarah* and *tabarru'* contracts: The type of *tijarah* contract can be changed to the *tabarru* type of contract if the party whose rights have been withheld is willing to relinquish his rights due to the cancellation of obligations. Parties who do not fulfill their obligations. The type of *tabarru* contract cannot be replaced by the type of *tijarah* contract.

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