

# Hybrid Contract on Sharia Life Insurance in Indonesia

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**Abstract:** (Abstract) *Akad* (contract) is a central point of a contract and is the determinant of a contract whether it is valid or not. If a contract is considered valid, then it will lead to the reciprocal relationship of rights and obligations between the parties. In Islamic law, *akad* is divided into two types, *akad tijari* (profit oriented) and *akad tabarru'* (non-profit oriented). In line with the improvement of society's needs and the Islamic economic institutions, a new concept of *akad* is introduced. A hybrid contract which involves the combination of contract in a transaction becomes one of the alternative options in sharia insurance. This is because there is a minimum requirement of two *akad* in every single transaction, whether it is bilateral or unilateral, and both are applied together. The aim of this paper is to examine the permissibility of hybrid contract in Shariah insurance in Indonesia. In analyzing the contract, the normative legal research method is applied by using secondary data. The studies showed that the shariah insurance is applying *aqad tabarru'* and permissible according to Shariah.

**Keyword:** akad tijari, akad tabarru', hybrid contract

## 1. Introduction

Sharia insurance, in the context of Islamic law, is grouped into the field of *muamalah*. In *muamalah*, concept of the contract has a very important position. The contract will become the first stepping-point to make sure that all business matters can be done properly under the guidelines of Islamic values, so it will distinguish clearly whether something is legitimate or not. In Islamic law, *akad* is divided into 2 (two) large groups, namely *tijari* (profit oriented) and *tabarru'* (nonprofit oriented). Along with the development of Islamic economic institutions and the needs of the society, then there is also a development of the *akad* concept or model. In relation to that condition, the mixing of multiple contracts (hybrid contracts) in a single transaction becomes widely used as an alternative in practice. The sharia insurance contracts are now more likely to become hybrid contract (*al-uquud al-murokkab*) or can be called as multi-*akad*. This is because there must be at least 2 (two) types of contracts applied at the same time in each transaction, both bilateral (*akad tijari*) and unilateral (*akad tabarru'*) applied jointly. The questions then arise: how does the concept of hybrid contracts used in the sharia insurance in Indonesia? Does the sharia life insurance use the hybrid contract?

In order to answer those questions, the normative legal research method is applied by using secondary data. The data analysis will be done descriptively and qualitatively. The secondary data which is used in this research can be found, among others, in the form of regulation or legislation documents, such as insurance legislation, KHES, and *Fatwa DSN MUI*. In the sharia insurance discourse, *akad* (contract) is the important element to distinguish between the sharia insurance and the conventional insurance. According to asy-Syaukani [1] [Khallaf, 1993], there is a rule in *muamalah*, which states *al-aslu fi al-muamalah al-ibahahhattayadulludalil 'alatahrimiha*, means that in *muamalah*, everything is allowed (*mubah*), as long as there is no prohibition that forbids it. But the permissibility must be accompanied by legal acts that are not forbidden by religion, such as a contract that is free from elements of *gharar*, *maysir*, and *riba*.



*Akad*, in Arabic, means a bond or “a knot rope” [2] [Munawir, 1997]. It can also mean *al-Rabtuwa al-syaddu*, which is a physical bond such as tying something with a rope. In other words, *akad* is interpreted as an obligation or a tie (Abdurahman, 1999). Literally, the contract can be understood as connecting or binding (Syamsul Anwar, 2012). The Compilation of Islamic Economic Law (KHES) provides the definition of *akad* as an agreement between two or more parties to do or not to do certain legal acts. Especially for the sharia insurance, *Fatwa DSN MUI* clearly mentions the use of 2 (two) contracts in each transaction, both contracts are used together to avoid the elements that are prohibited by Islam, namely *maysir*, *gharar*, and *riba*. Those contracts mentioned by *Fatwa DSN MUI* are *akad tabarru'* and *akad tijari*. *Akad tabarru'* is represented by the use of grant contract, and *akad tijari* is represented by the use of *mudharabah*. Combining 2 (two) contracts in one transaction, hybrid contracts, as in the sharia insurance is legally allowed and may be done. Its legal reasoning comes from the principle which states that the law of origin of all things is permissible [Abdul Haq, Ahmad Mubarak, and Agus Rouf, 2006]. However, due to the lack of clarity of the *akad* regulation in the *fatwa*, as well as the development of the sharia insurance institutions in Indonesia, MUI then issued several *fatwa* regulating *akad* on the sharia insurance, such as *Fatwa No. 21/DSN-MUI/X/2001* on Sharia Insurance Basic Guidance, *Fatwa No. 51/DSN-MUI/III/2006* on *Akad Mudharabah Musytarakah*, *Fatwa No. 52/DSN-MUI/III/2006* on *Akad Wakalah Bil Ujrah*, and *Fatwa No. 53/DSN-MUI/III/2006* on *Akad Tabarru'*.

With the issuance of those *fatwa*, it is clearly seen that the range of focus (the scope) from such regulations are only related to (cover) the *tijari* agreement. That is because of, as it is known before, the implementation of the *tijari* in the sharia insurance are represented by the *mudharabah* contract. But, through the existence of new *fatwa*, nowadays, the *tijari* agreement is not only can be represented by the *mudharabah* contract, but also can be represented by the *akad mudharabah musytarakah* and *akad wakalah bil ujrah*. *Akad tabarru'* is a contract that must be presented and attached to every Islamic insurance product, including the sharia life insurance. *Akad tabarru'* itself is a form of contract made between the policyholders, therefore *akad tabarru'* can be said as a form of commitment to mutual relationship in which every participants, as customers of the sharia insurance, helping each other. Through this *tabarru'* contract, it can eliminate the element of *gharar* in insurance [Brian Kettell, 2011]. According to Adiwarman Karim [Karim, 2006], *akad tijari* is a kind of agreement concerning profit transaction. In the sharia life insurance, it is possible for participants follow only the insurance without investment, so for that purpose, in that system uses *akad tabarru'* only.

The model of agreement used in the sharia life insurance is *mudharabah* (*Fatwa No. 21/DSN-MUI/X/2001*), and *mudharabah musytarakah* (*Fatwa No. 51/DSN-MUI/III/2006*). In the context of *akad mudharabah*, in the sharia life insurance, *tabarru'* fund (the premium collection) only comes from the policyholders as *shahibul mal* so that the insurance company only acts as a fund manager (*mudharib*). Meanwhile, in the *mudharabah musytarakah*, *tabarru'* contract (the premium collection) not only comes from the policyholders, but also comes from the company as the fund manager (*mudharib*), or in other words, in the *mudharabah musytarakah* agreement, the collection of premium (*tabarru'* fund) consists of the policyholders and the company as the holders of trust. *Akad wakalah bil ujrah* is done between the insurance companies with the participants, and can be applied to insurance products that contain elements of saving and non-saving. With the existence of *wakalah bil ujrah*, then the participants give rights to the insurance company to manage the funds of participants and/or perform other activities in exchange for receiving *ujrah* (fee).

## 2. Findings

In the sharia life insurance, the hybrid *akad* used is *akad tabarru'* which is represented by the grant agreement, and *akad tijari* is represented by the *akad mudharabah* and *akad mudharabah musytarakah* and also *akad wakalah bil ujah*. The implementation of *akad tabarru'* in *takaful* insurance system is realized in the form of division of premium deposit into 2 (two) purposes. For products containing saving elements, the paid premium will be divided into the participant's funds account and the other is for *tabarru'* account. While, for products that do not contain elements of saving (non-saving), every premium paid will be put entirely into *tabarru'* account.

The existence of a *tabarru'* account becomes very important to answer the question of the uncertainty's presence (*gharar*) in the insurance from the side of claim payments. For example, a participant takes a life insurance package with 10 (ten) years of coverage with a benefit of 10 (ten) million rupiah. If he dies in the fourth year and only pays 4 (four) million, so heirs will receive a full amount of 10 (ten) million. The question is, where does the remaining payment of 6 million come from? From that situation then *gharar* problem can arise. For that reason, it is required a special mechanism to remove *gharar*, which is in the form of the establishment of particular account (*tabarru'* account) only for paying the claims. Furthermore, the funds collected from the participants (*shahibul maal*) will be invested by the manager (*mudharib*) into investment instruments that are not contrary to the sharia (to avoid *riba*). If the return on investment is profitable, after deducting the insurance expenses, the profit will be shared to *shahibul maal* (participant) and *mudharib* (manager) based on the *mudharabah* agreement (profit sharing).

3. The use of *mudharabah musytarakah* contract in practice is quite difficult to apply. This is because, in *akad mudharabah musytarakah*, the company as holder of trust participates to collect *tabarru'* fund (collection of premium). If the company as the policyholder participates as a collector of *tabarru'* funds (collection of premiums), so the form of the company will not be a limited company, but mutual entity (partnership). This is the reason why *akad musharabah musytarakah* is difficult to be practiced because, formally, the company is in the form of a limited liability company. But inside it, its system is in the form of mutual relationship (partnership). In mutual relationship system (partnership), all allied partners in it must give their capital, while in limited liability company system, the party who will give the capital is the shareholder only. **Conclusion**

In conclusion can be stated that: The concept of hybrid contracts used in *takaful* insurance in Indonesia is *akad tabarru'* which is represented by the grant agreement. The implementation of *akad tabarru'* in *takaful* insurance system is realized in the form of division of premium deposit into 2 (two) purposes. For products containing saving elements, the paid premium will be divided into the participant's funds account and the other is for *tabarru'* account. Meanwhile, for products that do not contain elements of saving (non-saving), every premium paid will be put entirely into *tabarru'* account.

The sharia life insurance in Indonesia is using hybrid contract, especially *akad tabarru'*. This is because the *tabarru'* contract can eliminate the uncertainty (*gharar*) in the life insurance system. To eliminate *gharar*, it is required a special mechanism in which there is a particular account established, namely *tabarru'* account.

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