Comparison Of Sharia Insurance And Conventional Insurance: A Study Of Islamic Law And Market Practice

M. Aliful Ma'luf
Student at IAI An-Nawawi Purworejo
1234alifm@gmail.com

Miftahur Rahman
Lecturer at IAI An-Nawawi Purworejo
miftah131@gmail.com

Abstract :

This research aims to analyze the comparison between sharia insurance and conventional insurance from various aspects, including concepts, basic principles, contract structure, risk management, and practical implementation in the field. Sharia insurance is based on Islamic principles, especially those related to the prohibition of riba (interest), gharar (uncertainty), and maysir (gambling), which have been replaced by the principles of mutual assistance (ta'awun) and profit sharing (mudharabah or musyarakah). Meanwhile, conventional insurance operates on commercial principles that focus on risk transfer with premium payments that are strictly regulated by the insurance company.

Keywords: *Comparison, Insurance, Principles*

A. INTRODUCTION

The insurance industry has an important role in providing protection against financial risks faced by individuals and institutions. In the global context, there are two main systems that are developing in this industry, namely conventional insurance and sharia insurance. Conventional insurance has long been the dominant choice in many countries with the main principle of transferring risk from the insured to the insurer through premium payments. On the other hand, sharia insurance emerged as an alternative based on the principles of Islamic law, where the concepts of help-help (*ta'awun*) and risk sharing are the basis of its operations (Ichsan, 2014).

The fundamental difference between these two systems can be seen from the way risk management and contracts are used. Conventional insurance operates on a commercial principle, where the insurance company functions as an insurer who transfers the risk from the individual to the company in exchange for a set premium. Meanwhile, sharia insurance avoids elements that are prohibited in Islam, such as *riba* (interest), *gharar* (uncertainty), and *maysir* (gambling). Instead, sharia insurance uses the principle of help-help and risk sharing among participants through a *takaful* model, which is based on the collective distribution of profits and losses (Puspitasari, 2011).

B. LITERATURE REVIEW

As public awareness of the importance of sharia principles in finance increases, the demand for sharia insurance continues to increase, especially in countries with a majority Muslim population. However, while both systems aim to provide protection against risk, there are fundamental differences in terms of structure, fund management mechanisms, and the regulations that govern them.

Therefore, it is important to understand the comparison between sharia and conventional insurance in order to see the advantages and challenges faced by each system. This study aims to explore these fundamental differences and how they affect consumer choice and the sustainability of both systems in an increasingly competitive market. This research is expected to provide deeper insight into the role of each type of insurance in meeting the needs of community protection effectively and in accordance with applicable principles.

C. RESEARCH METHODOLOGY

This study uses a qualitative approach with literature study methods and comparative analysis. Data was collected through literature studies in the form of Islamic legal documents, laws on insurance, as well as articles and books related to sharia and conventional insurance. In addition, empirical data from the annual reports of insurance companies as well as interviews with Islamic legal experts and insurance practitioners were also used to enrich the understanding of the market practices of the two types of insurance.

The analysis was carried out comparatively to compare sharia and conventional insurance in terms of legal basis, fund management, and contracts. The main focus lies on the suitability of sharia principles in sharia insurance, such as the prohibition of riba, gharar, and maisir, as well as how these practices are applied in the market. The results of this study are expected to provide a deeper understanding for academics and practitioners of the fundamental differences between the two insurance systems, both in the realm of Islamic law and in their practical application.

D. RESULTS AND DISCUSSION

In Dutch the word insurance is called "*assurantie"*, which consists of the word "*assaredeur*" meaning insurer and *"geassureede"* which means bearing. The word insurance in French is called "*assurance"* which means to bear something that is certain to happen (Ali, 2004).

According to article 246 of the Criminal Code, insurance is an agreement between two or more parties, consisting of the insurer and the insured, where an insurer binds himself to an insured. In this agreement, the insured party receives a premium, to provide compensation to the insurer for an expected loss, damage or loss of profits, which he may suffer due to an unspecified event (Muslim & Hadiwinata, 2018).

The limitation according to Law No. 12 of 1992, article 1 states: "insurance or coverage is an agreement between two or more parties, by which the insurer binds itself to the insured by receiving insurance premiums, to provide reimbursement to the insured for loss, damage or loss of expected profits, or legal liability to third parties that may be suffered by the insured, arising out of an uncertain event, or to provide a payment based on the death or life of an insured person".

Premium is a sum of money paid by the insured for a certain risk guarantee at a certain place and for a certain period of time. *A policy* is a written agreement document between the insurer and the insured. The coverage period is a period of time limited by the start date and the end date of the guarantee provided by the insurance company. The coverage period is generally twelve months which can be extended again after the first twelve month period ends. In life insurance, the term is determined by agreement between the insurer and the insured. A claim for compensation is the insured's right to get payment for the losses he suffers.

Reinsurance is a system or method in which insurance companies (*Ceding Company*) hand over all or part of their covered coverage to another insurer known as a reinsurer. In other words, the insurance company or the session provider pays the reinsurer all or part of the premium it receives and the reinsurer agrees to pay compensation to the insurance company/session provider for the claim or part of the agreement, which must be paid by the insurance company under the original coverage (Fauzi, 2008).

Risk Based Capital (RBC) In order to protect the interests of the insured/policyholder, the government as the Authority that fosters and supervises both insurance companies and the public, issues provisions on the health of insurance and reinsurance companies. This provision is known as *Risk Based Capital*, which is a provision that regulates the minimum amount of premium reserves to a certain limit that must be maintained by each insurer. If this minimum limit cannot be maintained, the insurance company will have difficulty in completing its responsibilities to the insured/policyholder, thus the level of premium reserves is a very strategic thing for every insurance company (Nitisusastro, 2017).

The insurance agreement has the purpose of indemnifying the insured, so the insured must be able to show that he suffered the loss and actually suffered the loss. In general, insurance has a purpose;

Risk Transfer

According to risk *transfer theory*, the insured realizes that there is a threat of danger to his or her property or to his life. If the danger befalls his property or his soul, he will suffer loss or loss of life or physical disability. Economically, material losses or casualties or physical disabilities will affect the course of life of a person or his heirs. To reduce or eliminate the burden of risk, the insured party tries to find a way if there is another party who is willing to take over the burden of risk, threat of danger and he is able to pay a performance contract called a premium. The insured provides insurance with the aim of diverting risks that threaten his property or life. By paying a certain amount of premium to the insurance company (insurer), from then on the risk shifts to the insurer. If at the end of the insurance period there is no adverse event, the insurer is lucky to own and enjoy the premiums he has received from the insured (Rizky & Arief, 2022).

Indemnity Payment

If at some point there is an event that causes an event that causes losses (risk turns into loss), then the insured concerned will be paid compensation in proportion to the amount of the insurance. In practice, what arises is a partial *loss*, not all of them are total losses (*total loss*), thus, the insured conducts an asurannsi with the aim of obtaining compensation payment that he has truly suffered. When compared to the premiums received from several insureds, the amount of compensation paid to the insured who suffered the loss is not so large. The loss reimbursed by the insurer is only a small part of the amount of premiums received from all insureds. From an economic point of view, this situation is a driving factor for the development of insurance companies in addition to the high per capita income of citizens (citizens) (Putri, 2021).

Insurance as an institution that receives risk transfer from its customers has many benefits. The benefits of insurance for life, namely; 1) Providing a guarantee of protection from the risks of losses suffered by one party, 2) Increasing efficiency, because there is no need to specifically hold security and supervision to provide protection that takes a lot of energy, time, and money, 3) Cost equity, which is enough only by incurring a certain amount of costs and does not need to reimburse/pay for the losses incurred, which are indeterminate and uncertain, 4) The basis for the bank to provide credit because the bank needs a guarantee of protection for the collateral provided by the borrower, 5) As a savings, because the amount paid to the insurance company will be returned in a larger amount. This specifically applies to life insurance, 6) Covering *the Loss of Earning Power* of a person or business entity when he or she is unable to function (work) (Umam, 2018).

Scholars' Views on Insurance

Among Muslims, there is an assumption that insurance is not Islamic. A person who does insurance is the same as a person who denies the grace of Allah. It is Allah who determines all things and provides sustenance to his creatures, as Allah says:

وَمَا مِنْ دَآبَّةٍ فِى الْاَرْضِ اِلَّا عَلَى اللهِ رِزْقُهَا.... ﴿٦﴾

"Not a single animal moves on the earth but is guaranteed sustenance by Allah. He knew where he lived and where he kept it. Everything (written) in the real Book (Lauh Mahfuz)". (QS. Hood: 6)

...وَمَنْ يَّرْزُقُكُمْ مِّنَ السَّمَآءِ وَالْاَرْضِۗ ءَاِلٰهٌ مَّعَ اللّٰهِۗ ... ﴿٦٤﴾

"... Who gives you sustenance from heaven and earth? Is there a (other) god with Allah?..." (QS. An-Naml: 64).

From this verse, it can be understood that Allah has actually prepared everything for the needs of all His creatures, including humans as the caliph on earth. God has prepared raw materials, not cooked ingredients. Humans still need to cultivate it, find it and recognize it.(Nurwanti et al., 2022)

Sharia insurance in using a legal basis sourced from the Qur'an explicitly does not have a single verse in the Qur'an that mentions the term insurance as we know it today, either the terms "*al-ta'min*" or "*al-takaful*". However, in the Qur'an there is a verse that explains the concept of insurance and that contains the basic values that exist in insurance practice. Allah's command to prepare for the future of QS. Al-Hashir: 18 which means: *"O you who believe, trust in Allah and pay attention to what is done for tomorrow (the future). And laugh at Allah, indeed, Allah is Knowing, what you are doing."* Allah's command to help each other and cooperate with QS. Al-Maidah: 2, which means*: "... Please help you in doing good and piety and do not help in committing sins and transgressions. And laugh at Allah, indeed, Allah is very severe in His punishment.*

Insurance institutions as they are known today were actually unknown in the early days of Islam, as a result of which many Islamic literature concludes that insurance cannot be seen as a halal practice. Although the term insurance was clearly not known during the Islamic period, there were several activities from the life of the Prophet that led to insurance activities.

Insurance It is good to quote the views of Islamic scholars on the existence of insurance in the early days so that it gave birth to a concept called takaful insurance. The goal is the same as insurance, but differs in many practices and theories. The most prominent of these opinions are divided into three, namely:

Forbidden

Insurance is haram in all its forms, including life insurance. This opinion was expressed by Sayyid Sabiq, 'Abdullah al-Qalqili (mufti of Jordan), Yusuf Qaradhâwi and Muhammad Bakhil al-Muth'i (mufti of Egypt). They argue that insurance is the same as gambling, the elements are uncertain, contain elements *of usury*/rent, contain elements of extortion, because policyholders, if they cannot continue to pay their premiums, will lose the premiums that have been paid or reduced, the premiums that have been paid will be rotated in usury practices, Insurance includes buying and selling or exchanging currencies in a non-cash manner.

Mubah (yes)

This second opinion was put forward by Abd. Wahab Khallaf, Mustafa Akhmad Zarqa (professor of Islamic Law at the Sharia faculty of the University of Syria), Muhammad Yûsuf Musa (professor of Islamic Law at Cairo University of Egypt), and 'Abd Rahman 'Isa (author of the book *al-Muamalah al-Haditsah wa Ahkâmuha*). They reasoned that there was no passage (Qur'an and Sunnah) that prohibited insurance, the existence of agreement and willingness of both parties, mutual benefit.

Social insurance is allowed and commercial insurance is prohibited

This third opinion is held by Muhammad Abû Zahrah (professor of Islamic Law at Cairo University). The reason for this third group is the same as the first group in insurance (Mukhsinun & Fursotun, 2019).

Principles of Sharia Insurance

In general, Sharia insurance is very different from conventional insurance. Sharia Insurance is run based on the intention to help each other, helping fellow participants. In accordance with religious orders. Therefore, the principles in Sharia insurance are in accordance with the Islamic religion. These principles include:

Tawheed (Qatqawan)

In this principle, sharia insurance is carried out on the basis of muamalah that has been determined by Allah SWT, namely muamalah that can bring mankind to devotion to Allah SWT. Therefore, Allah says in Surah Az Zukhruf: 32, which means;

"Are they the ones who share the mercy of your Lord? We have determined among them their livelihood in the life of the world, and We have exalted some of them above others by some degree, so that some of them may make use of some of the others, and the mercy of your Lord. better than what they collect"

is the basis for the implementation of Muamalah sharia insurance which is built in sharia insurance should be based on the letter. Thus, the intention in sharia insurance should not only be to invest to make a profit, but more broadly, to obtain rewards from Allah SWT, with muamalah in accordance with Allah's provisions.

Al-Adl (adil cycle)

Shaykh al-Qaradhawi said that in fact, the pillar of economic freedom that stands on the glory of nature and human dignity is perfected and determined by another pillar, namely "justice". Justice in Islam is not a secondary principle, it is the forerunner and solid foundation that underlies all Islamic teachings and laws in the form of creed, sharia, and morals. When Allah commands three things, justice is the first thing mentioned. In the word of Allah, which means:

"Indeed, Allah commands (you) to act justly and do good, to give to your relatives. and Allah forbids from deeds to wickedness and enmity. He teaches you so that you can take lessons." (An-Nahl: 90).

In this principle of fairness, Sharia Insurance has provided true justice, namely by providing ease for insurance participants to collect funds and return the funds if the participant terminates the agreement in the insurance

Ayd-Julm

Violation of tyranny is one of the basic principles in muamalah. Tyranny is the opposite of the attitude of justice. Therefore, Islam is very strict in paying attention to the violation of tyranny, the enforcement of prohibitions against it, the harsh condemnation of the wrongdoers, the threat of them with the harshest punishment in this world and the hereafter. In this principle, sharia insurance is carried out by paying attention to the benefits obtained by the participants, thus each sharia insurance product must provide the maximum benefit for the welfare of participants.

At-Ta'awun (please help)

In Surah Al-Maidah verse 2, which means:

"Help you in doing good and piety, and do not help in committing sins and transgressions. And fear Allah, indeed, Allah is very severely punished" (QS. Al-Maidah 5:2).

It is the basis of Sharia Insurance. Several sharia insurance companies that have sharia insurance products have applied this principle of help well. Every participant who takes a sharia insurance product will help other participants when they need funds for health, accidents or other losses. With this principle, in Sharia Insurance, each participant's funds will be accommodated and used to help other participants, if the participant quits the insurance program, then the funds can be taken back.

Trust (trusted)

Al-Qaradhawi said that among the most important transaction values in business is *al-amanah* 'honesty'. It is the pinnacle of the morality of faith and the most prominent characteristic of the believers. In fact, honesty is a characteristic of prophets. Without honesty, religious life will not stand tall and life in the world will not go well. In sharia insurance practice, this honesty is manifested in the form of transparent fund management, which can be followed by every participant. Sharia insurance companies will provide fund management reports to participants.

Ridha

Allah said, *"O you who believe, do not eat one another's wealth except by the way of business which is done by mutual consent among you."*

Abul A'la al-Maududi in his book explained, that this verse has stipulated two things as conditions for the validity of trade. First, the trade should be carried out consensually between the two parties, not standing on the other party's losses. Pleasure in muamalah is a condition for the validity of the contract between the two parties, while knowing is a valid condition of pleasure. The factor of knowing is a valid condition for ridha, so that in the transaction there is no *gharar* (Suripto & Salam, 2018a).

Khitmah (Service)

The Prophet said, *"A believer (leader) is a keeper and governs (the affairs of the people). He will be held accountable for the affairs of his people."* (HR. Bukhari and Muslim). *"And humble yourselves towards those who believe."* (QS. Al-Hijr: 88). What is meant by this service is that sharia insurance pays close attention to the interests of its participants. Every interest of insurance participants related to claims, investment of participant funds, and collection of participant funds (tabarru) will receive services from sharia insurance companies properly and transparently. With this convenience, it is hoped that sharia insurance participants will be more comfortable and safe with their membership funds.

Gharar, *Mysore*, Dan Riba

The most important principle in Islamic muamalah especially for Sharia Financial Institutions (LKS) is the principle of *Gharar, Maisir* and Riba. These three things are the basis for scholars to prohibit all banking transactions. insurance, mortgages, stock exchanges, *leasing*, venture capital and so on, which do not use sharia principles. Because, in its operation, there must be one or if not all three of them who are *Gharar, Maisir* or Riba.

Sharia insurance products have been guaranteed to be free from elements of Gharar, maisir, and riba. Because sharia insurance activities are supervised by DSN (National Sharia Council), it serves to supervise all operations or company activities so that they are free from muamalah practices that are contrary to sharia principles.

E. CONCLUSION

In Dutch the word insurance is called "*assurantie*", which consists of the word "*assaredeur*" meaning insurer and *"geassureede"* which means bearing. Insurance is a legal agreement between an insurance company (insurer) and an individual (insured). In this agreement, the insured pays the insurance premium to the insurer.

The insurance agreement has the purpose of indemnifying the insured, so the insured must be able to show that he suffered the loss and actually suffered the loss. Insurance can protect the lives and assets owned by customers when this happens. Customers do not need to sacrifice assets because the insurance company has borne the cost of the incident.

Scholars' views on insurance vary, depending on a variety of factors, such as whether insurance contains usury, an element of uncertainty, or gambling; 1) Some scholars are of the opinion that insurance is haram, because it contains elements of usury, gambling, fraud, and exploitation. Scholars who hold such an opinion include Yusuf Al-Qardhawi, Sayid Sabiq, Abdullah Alqalqili, and Muhammad Bakhit Al-Muth'I, 2) Insurance is allowed, this opinion was expressed by Abd. Wahab Khallaf, Mustafa Akhmad Zarqa (professor of Islamic Law at the Sharia faculty of the University of Syria), Muhammad Yûsuf Musa (professor of Islamic Law at Cairo University of Egypt), and 'Abd Rahman 'Isa (author of the book al-Muamalah al-Haditsah wa Ahkâmuha). They argue that there is no passage (Qur'an and Sunnah) that prohibits insurance, 3) The difference of opinion among Islamic jurists regarding insurance is due to the fact that they do not have a broad or complete picture of insurance itself.

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