



PERSPECTIVE OF LAW NO. 40 OF 2014 CONCERNING SHARIA LIFE INSURANCE BUSINESS IN RISK MANAGEMENT

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Abstract:

Sharia life insurance is a coverage or agreement between two parties in which one party is obliged to pay contributions or premiums. In sharia insurance, it is usually a contract in the form of a *tijarah* agreement and or *tabarru* contract. Where *Tijarah* contract is all forms of contracts carried out for commercial purposes such as *Mudhorobah*, *Wadiah*, and *Wakalah*. While *Tabarru* agreement is all forms of contracts that are done with the purpose of kindness and help is not shown for commercial. The approach used in this study is a qualitative approach. The conclusion in this discussion is that PT. Asuransi Syariah Keluarga Indonesia (ASYKI) Pasuruan Unit is good and in accordance with Law No.40 of 2014 concerning sharia life insurance business in risk management based on sharia principles, although it does not cover the possibility of individuals registering individually, but the recommended solution from PT ASYKI Pasuruan Unit against individual policy insurance applicants will be directed against one of business entity in cooperation with PT ASYKI Pasuruan Unit.

Keywords: Sharia Life Insurance Business, Risk Management

JEL Classification Code: G22, G23, G32

1. Introduction

The development of Sharia Insurance in Indonesia has progressed very rapidly caused by the majority of the Muslim population, making the demand for sharia insurance even higher. There are several types of insurance offered by insurance companies in Indonesia, one of which is life insurance. Insurance is a coverage or agreement between two parties in which one party is obliged to pay contributions or premiums and the other has the obligation to provide full guarantees to the payer of contributions in case something happens to the first party or his property in accordance with the agreement that has been made. The term insurance usually refers to everything that gets coverage.

Therefore, a person who applies for insurance has the purpose that if something happens to him so that there is a company that is willing to cover it. Various types of insurance that not only offer sick coverage, but also offer the toughness of goods, employment and life. Along with the development of many institutions that establish sharia-based insurance services, of course the insertion used in the management of ss according to the principles of Sharia and Islamic teachings. In the purpose of insurance there is also an element of mutual help



between human beings in this case based on the command of God contained in Q.S Al-Maidah verse 2. Insurance if viewed sharia in fact is a form of activities to shoulder each other's risks among human beings so that each other becomes insurers for the risk of the other (A. Abdullah, 2011).

According to fatwa DSN. No21/DSN-MUI/X/2001. Sharia insurance (Ta'min, Takaful or Tadamun) is an effort to protect each other and help each other among a number of parties through investments in the form of asset assets and provide a pattern of return to face certain risks through agreements (alliances) in accordance with sharia.⁵ Some hadiths describing life insurance in the Book of Trade Law (KUHD) are regulated in book 1 Chapter X article 302 to article 308 KUHD. And also, this life insurance in accordance with the provisions of Article 255 KUHD containing life insurance must be held in writing with a form of deed called a policy. According to the provisions of article 304 of the KUHD, the life insurance policy contains. the day of insurance, the name of the insured, the name of his life insured, when the start and end of the even, the amount of insurance and insurance premiums (Mahkamah Agung, 2013).

In the Law of the Republic of Indonesia Number 40 of 2014 concerning insurance article 3 paragraph 6 "Life Insurance Business is an effort that organizes risk management services that provide payments to policyholders, insured, or other parties entitled in the event that the insured dies or remains alive, or other payments to policyholders, insured or other parties entitled at a certain time stipulated in the agreement, the amount of which has been determined and or based on the results of the fund management". And there is also the same article in paragraph 9 "Sharia Life Insurance Business is a risk management business based on Sharia Principles to help each other and protect by providing payments based on the death or life of participants, or other payments to participants or other parties entitled at a certain time stipulated in the agreement, the amount of which has been determined and based on the results of fund management".

According to the above article the main use in life insurance is the effort to help each other and protect each other or between brothers which in Islam an accident, the death of one's destiny no one can know it except Allah SWT. While the reality in people's lives many still do not know about the existence of life insurance, some really do not know or know but hesitate to register or follow life insurance.

2. Literature Review

The word insurance comes from English, insurance, which in Indonesian has been adopted in the Great Dictionary of The Indonesian Language with the equivalent of the word "coverage". Echois and Shadily use the word insurance with (a) insurance, and (b) guarantee. In Dutch commonly referred to *assurantie* (insurance) and *verzekering* (coverage). Muhammad Muslehuddin in his book *Insurance and Islamic Law* adopts the definition of insurance from encyclopedia



Britanica as a supply prepared by a group of people, who are affected by losses, in order to deal with events that are not clearly enlivened, so that if the loss befalls one of them, then the burden of loss will be spread throughout the group (Astuti, 2016). Since the time of the Prophet, until now Muslims have an important role in introducing the insurance system to the world. Muslim entrepreneurs started the takaful system, a fundraising system that would be used to help entrepreneurs with each other who were suffering losses; such as when his freighter hit a reef and sank, or when a person is robbed resulting in the loss of some or all of his property. The term is better known as "Sharing of Risk" (A. Abdullah, 2011).

According to Dr. Jafril Khalil in relation to fatwa DSN-MUI Some contracts contained in sharia insurance are not only limited to tabarru and Mudharabah contracts, but there are other types of Tijarah agreements such as Al-Musyarokah (partnership), Al-Wakalah (appointment of representatives), Al-Wadiah (deposit agreement), Ash-Syirkah (association), Al-Musahamah (contribusi) and others that are recognized and allowed syar'i to be used in sharia insurance. In sharia insurance, it is usually a contract in the form of a tijarah agreement and or tabarru contract. Where Tijarah contract is all forms of contracts carried out for commercial purposes such as Mudharabah, Wadiah, and Wakalah. While Tabarru agreement is all forms of contracts that are done with the purpose of goodness.

The contract stipulated in sharia life insurance at the beginning of premium acceptance applies two forms of contract, namely investment savings contract and contribution agreement. For investment savings agreements based on Al-Mudharabah principle and for contribution agreements applying the principle of grants, grants are made in congregation that contain mutually charged effects. The amount of the grant is 5% to 10% of the total premium and the remaining 95% to 90% will go into the investment savings of participants. In life insurance that is suspended is caused by death. The death resulted in the loss of income of a particular person or family. The risk that may arise after life insurance mainly lies in the "time element", because it is difficult to know when a person dies. To minimize the risk, the soul is held.

However, nowadays agreements or contracts between insurers and the insured almost always use agreements or contracts in the form of books (policies). The use of this standard agreement is done so that service transactions can be done efficiently and practically without any obstacles as a result of the occurrence of "bargaining" before closing an agreement. In standard agreements, clauses in the agreement have been unilaterally established by the insurer so that they tend to prioritize the rights of the insurer over the rights of the insured and the obligations of the insurer. So now this insurance agreement will be easier and simpler also will not take long. It causes the development of life insurance with the form of unit link (Punky, 2010).



While in another discussion that the life insurance agreement according to the law must be set forth in a deed called a policy as evidence of the existence of insurance agreements as contained in the Book of Trade Law (KUHD) article 225 concerning the formal terms of the policy is further regulated in article 265 of the Book of Trade Law, so that in the article regulates the General Provisions that must be reviewed in order for a deed to be referred to as a policy. The terms of the life insurance agreement are stipulated in Article 1320 of the Trade Law (KUHD). According to the provisions of the article there are 4 conditions for the validity of an agreement: the existence of an agreement, the existence of authority, the presence of certain objects, and the existence of lawful power.

While the benefits of unit link product life insurance are considered very profitable for the insured. Some benefits include: additional protection, unpaid premiums, long coverage period, multi benefits, ease of investment, and premium leave facilities. Insurance can help people in order to overcome all the risk problems they face. Insurance has now increased its function, not only as a protection provider to the insured against the risks faced, but also manage public funds with investments called unit link product life insurance. Unit link product life insurance is formed by entering into a risk transfer agreement where the insured party of unit link product life insurance reminds themselves to pay premiums and the handler who informs the terms and procedures to the prospective insured to participate in unit link product life insurance. If the prospective insured meets the conditions and procedures, there will be a legal relationship that gives birth to the rights and obligations between the parties that must be fulfilled contained in the contents of the policy (Alfa, 2019).

There are types of risks commonly known in the insurance business, among others Pure risk is the uncertainty of the occurrence of a loss or in other words there is only a chance of loss and not a profit opportunity. Pure risk is a risk that if it occurs will give and if it does not occur, does not cause losses but also does not provide profit. For example, the car being driven may have been hit. If a car is insured and then hit, then for the owner will suffer losses. But if this does not happen in the owner does not lose and does not benefit. In its operations insurance companies are always dealing with this type of pure risk. In addition, there are investment risks that are risks related to the occurrence of two possibilities, namely the opportunity to suffer financial losses or opportunities to gain profit. Differences in pure risk and investment risk are likely to be losses or gains. For example, in investing in stocks on the stock exchange, and so on. Fluctuations in the share price will be able to cause losses or profits. Then, there are individual Risks that are risks that affect a person's capacity or ability to make a profit. The individual risk can be distinguished into 3 (three) kinds of risks. First, Personal risk, for example the risk of a person resulting in a decrease or loss of capacity of a person to benefit that may be caused by young death, age, physical disability, and loss of employment. Second, property risk at this risk will occur financial loss if we have an object or property that makes the opportunity



for the property to be lost, stolen, or damaged. Loss of property means financial loss. Third, liability risk is a risk that may be experienced as a liability due to harm to other parties. If a person bears the loss of another person, then he must pay it, so this is a financial loss (Yona, 2019).

It has been explained in The Book of Trade Law Chapter X on "Insurance or coverage against fire hazards, against dangers that threaten agricultural products that are harvested, and about life insurance" in this case especially life insurance contained in article 302 "A person's life can be suspended for the purposes of an interested person, either for life or for a time specified in the agreement." And also continued in article 303 "The interested can hold coverage, even beyond the knowledge or permission of the person whose soul is insured". The terms of the policy that must be fulfilled are also explained in the Book of Trade Law article 304 "The policy contains: the results of the procurement of coverage, the name of the insured, the name of the person whose soul is insured, the time of danger for the insurer begins to run and ends, the amount of money insured and the premium of coverage".

Article 306 "If the person whose soul was insured at the time of procurement of coverage has died, the agreement is struck, although the insured cannot know about the date unless otherwise required" Article 307 "If the person who is responsible for his life commits suicide or is put to death, the insured is killed" (Mahkamah Agung, 2013).

3. Research Methods

The approach used in this study is a qualitative approach. Qualitative approach is a type of research whose findings are not obtained through statistical procedures or other forms of calculation. Furthermore, the selection of research because of the stability of researchers based on their research experience and qualitative methods can provide more complex details about phenomena that are difficult to express by the quantitative method.

Objects in qualitative research are natural objects, or natural settings so this research method is often referred to as naturalistic methods. Natural objects are objects that are what they are, are not manipulated by researchers so that the conditions at the time the researcher enters the object, once inside the object, and after exiting the object is relatively unchanged.

Qualitative research methods are used to obtain in-depth data, a data that contains meaning. Meaning is actual data, data that must be a value behind the visible data. Therefore, qualitative research does not emphasize generalization, but rather suppresses on meaning. Generalization in qualitative research is called transferability, meaning that the results of the study have characteristics that are not much different (B. Abdullah & Saebani, 2014).

Qualitative research is a type of social science research generally that collects data working with non-numerical data and that seeks to interpret the



meaning of this data that helps researchers understand social life through population studies or targeted places. People often frame it as opposed to quantitative research, which uses numerical data to identify large-sized trends and uses statistical operations to determine casual relationships and correlations between variables (Aminah & Roikhan, 2019).

One type of characteristic in qualitative research is that it is done in a natural environment. As a consequence, when researchers are conducting research, they are committed to taking the time to do field work. This will ensure that the resulting data is not biased. This method of research is usually done in small cases or small groups. Another characteristic of qualitative research is that it is personal and contains little scientific terminology (Aminah & Roikhan, 2019)

In-depth interviews are used to dig deeper into information from interested parties and connect directly with research objects. Research by conducting observation techniques or making observations directly involved (participatory), as conducted by researchers in the field of anthropology and ethnology so that researchers are directly involved with the researched. In practice, researchers conducted reviews of various documents, photographs and artifacts. The interview used is a closed interview (B. Abdullah & Saebani, 2014).

Data analysis in qualitative research was conducted before researchers entered the field, while in the field, and after completion in the field. Analysis begins from formulating and explaining problems, before entering the field, until the writing of the results of research. The data became a handle for further research until if possible, a grounded theory. However, in qualitative research, data analysis is more focused during the process in the field along with data collection. Qualitative data analysis takes place during the data collection process, then continues after data collection (B. Abdullah & Saebani, 2014).

After collecting data and describing the results of research that has been collected, it is necessary to discuss further analysis. The analysis of the results of the study intends to elaborate and further study the results of the research in accordance with the original purpose of the study (Nofriansyah, 2014).

The method of data analysis in this research method uses qualitative descriptive method. Descriptive is trying to describe, analyze, and assess the material that is the focus of research. The data analyzed are data collected from various data sources, both primary and secondary data, namely the results of interviews, field records, official documents and related web, problems that researchers discuss. The material is in the form of management system analysis at PT. ASYKI Pasuruan Unit.

4. Finding and Discussion

Overview of PT. ASYKI Pasuruan Unit was established by activists and practitioners of Sharia Economy and Microfinance who from the beginning have concerns and concerns to build self-reliance and develop the economic welfare of



the community, especially families from the middle and lower economic circles or low-income people through Sharia Micro Finance Institutions (LKMS) and Sharia Insurance. PT ASYKI has a background that people in their lives cannot be spared from disasters, but as social beings when disasters occur are obliged to help and help each other. Sharia Insurance has the main function as an operator in sharing risk among participants or policyholders if a disaster occurs. The basic concept of Sharia Insurance is to help you all in Goodness and Taqwa. This principle makes insurance participants as a large family that each other help each other and help each other. Therefore, PT ASYKI is present to be part of Ta'awun and share blessings with the ummah. PT ASYKI Pasuruan Unit also has the concept and philosophy of Ta'awun where the concept of Ta'awun in the Qur'an has been explained. Human beings as individual beings as well as social beings are a unity that cannot be separated. They must realize that their new life has meaning or meaning, if people are involved in social relationships or interactions initiated by helpful attitudes among pluralistic or pluralistic communities of society. In other words, without others or social life, one is meaningless and does nothing. When man maintains life and pursues a better life, it is impossible for one to work alone without the help and help of others. Therefore, Islam encourages its adherents to have an attitude of helping each other and helping each other in living their lives. this attitude will go well if between them there is communication or understanding of it. Because human interests are always related to other human beings.

In the Qur'an, Allah is All-Merciful. has commanded Muslims to always unite and help each other for the sake of the solidity and success of Muslims. If this happens, then Muslims will be brought, favored, and respected by other groups that are outside Islam. This is the truth from Allah. in QS. al-Maidah (5): 2 which reads as follows: "And help you in goodness and Taqwa, and do not help in sin and transgression. And fear Allah, verily Allah is severe". By embedding the verse above, it can be understood that the attitude of helping the good is an effort to increase piety to God almighty. this attitude is not only found in material issues, but also on non-material issues. For example, people who are experiencing stressed and difficulties. In this context, the help we can provide is non-material. What is meant on the side is to give advice and motivation in order to comfort or encourage his heart. As a result, his concerns and distress will change with joy.

But in that verse, the help in question is non-material help. In the view of the author, help in this form, can be termed with da'wah. That is, help by inviting people to do good or according to the term of the verse is Al-Birr and Al-Taqwa. It can be said that the perpetrator or the person who can do help is not limited to certain people, especially in non-material assistance. Except for material assistance, the only person who can do so is the one who has the material. For example, the rich man helps his poor brother and so on. In the context of people's lives, (read Indonesia) this attitude has become the culture of the nation known



as "Mutual Help". This culture has been practiced for generations since the ancestors of the Indonesian nation until the generation of this century. But the form of assistance varies according to the ability and conditions faced. In the city for example, the help or assistance provided is more material. While rural communities, the assistance or assistance provided is more non-material in the form of energy or the like. Therefore, such habits should be preserved continuously when and wherever we are. This is in accordance with the teachings of Islam that always encourages its adherents to help each other and help each other, especially fellow Muslims. Thus, there will be solid unity and unity and close brotherhood among mankind. Especially Allah. will send down his help as long as a servant helps his brother. This is confirmed by the Prophet in his words as follows: "From Abi Hurayrah that the Messenger of Allah (peace and blessings of Allah be upon him) has said: "Allah almighty. will help a servant as long as I help his brother" (HR. Muslims). Listening to the hadith, it can be said that a man must decorate himself with a helpful attitude. If this is the case of every human being, then Allah is all-regard. will help and protect and be with him.

Background PT ASYKI Pasuruan Unit in his life cannot be avoided from disasters, but as social beings when disasters occur are obliged to help and help each other. Sharia Insurance has the main function as an operator in sharing risk among participants or policyholders if a disaster occurs. The basic concept of Sharia Insurance is to help you all in Goodness and Taqwa. This principle makes insurance participants as a large family that each other help each other and help each other. Therefore, PT ASYKI Pasuruan Unit is present to be part of Ta'awun and share blessings with the ummah. PT ASYKI Pasuruan Unit also has the concept and philosophy of Ta'awun where the concept of Ta'awun in the Qur'an has been explained. Human beings as individual beings as well as social beings are a unity that cannot be separated. They must realize that their new life has meaning or meaning, if people are involved in social relationships or interactions initiated by helpful attitudes among pluralistic or pluralistic communities of society. In other words, without others or social life, one is meaningless and does nothing. When man maintains life and pursues a better life, it is impossible for one to work alone without the help and help of others. Therefore, Islam encourages its adherents to have an attitude of helping each other and helping each other in living their lives. This attitude will go well if between them there is communication or understanding of it. Because human interests are always related to other human beings. In the Qur'an, Allah is All-Merciful. has commanded Muslims to always unite and help each other for the sake of the solidity and success of Muslims. If this happens, then Muslims will be brought, favored, and respected by other groups that are outside Islam.

Vision and Mission of PT ASYKI Pasuruan Unit Vision is To Be a Pioneer of Sharia Micro Life Insurance Pride Ummah Mission: Provide Comprehensive Sharia Micro Life Insurance Services so as to Provide Added Value for Participants, Partners, and Shareholders. Legality of The Company Deed of



Establishment No. 11 Dated December 11, 2014 Notary H. Syarif S. Tanudjaya, S.H. Ratification of Document Number: AHU-41722.40.10.2014 Dated December 29, 2014 Operational License from OJK. Number: KEP-124/D.05/2015 Dated November 30, 2015/ 18 Shafar 1437 H NPWP No.71.835.697.5-061.000 Deed of Appointment No.02, May 9, 2018 Notary Arminawan, S.H30 4.2. Analysis of the results of the study based on observations and interviews that have been conducted, researchers found several findings related to the formulation of problems that are related to how sharia life insurance management system at PT ASYKI Pasuruan Unit. Mr. Ahmad Durri as Office Staff of PT ASYKI Pasuruan Unit, said that: "ASYKI is only a representative office, all systems are used in accordance with the head office in Bogor, here we only serve corporates such as Schools and Institutions. It was not only in 2016 that the insurance company established ASYKI in collaboration with BMT Sidogiri. ASYKI does not open representative branches only Marketing Unit".

PT ASYKI Pasuruan Unit has several sharia life insurance products, namely: a. Mu'awanah Sakinah Program that is shown to provide a means for families to help each other (Ta'awuni) and protect (Takafuli) among family members through the establishment of a fund group (Tabarru Fund) managed in accordance with sharia principles to face a risk in the form of compensation. Sharia micro life insurance for all members of this family has terms and conditions, namely: firstly, mu'awanah sakinah program agreement using Tabarru' and Wakalah Bil Ujroh Contract. Tabarru Contract is a Grant Agreement in the form of grants from participants to the Tabarru' Fund for the purpose of helping. Contract of Wakalah Bil Ujroh is an agreement between participants collectively or individually with the management (Insurance Company) with commercial purposes that give power to the manager in accordance with the power or authority given, with the reward in the form of Ujroh. Second, contributions, in PT ASYKI amounted to Rp 100,000, - per Year. Third, compensation for each family member of Rp 2.500.000 for died from illness. Valid for 30 days period (period during which there is no right to apply for your compensation Mu'awanah). Fourth, Insurance Is valid for 1 Year from the date of activation of your Mu'awanah Sakinah card successfully. Fifth, the requirements of membership: a. Healthy physical and spiritual; b. Minimum age 1 year and maximum 69 years; c. Family members are spouses and children registered on the family card; d. Maximum age of children 25 years and unmarried; e. Mu'awanah Sakinah valid at least 90 days since the family card issued; f. Your registration card number is the participant number; g. Mu Mu'awanah Sakinah card is proof of membership; h. One card applies to one family. Sixth, membership data: a. Surname; b. Family card number; c. Number of family members. Seventh, how to apply for compensation 1. Participants or beneficiaries must report the incident (died) through: a. Service offices; b. PT ASYKI Pasuruan Unit Office; c. Via SMS. Send completeness of compensation documents. Eighth, Compensation claim document: a. Copy of card "Mu'awanah



Sakinah"; b. Copy of participant's ID card and family card; c. Letter of compensation from family members; d. Death letter from the hospital if died in the hospital; e. Death letter from the Village Office / village; f. Certificate from the police if died by accident. Ninth, Compensation Exemption is not granted if a family member: a. Suicide or death penalty by the court; b. Due to unlawful acts or involvement in fights, brawls, or mass riots; c. Outbreaks of disease (Epidemics) or natural disasters; d. Misuse of alcohol, illegal drugs, or other addictive substances; e. Sexual intercourse disease, AIDS, HIV, ACR, and all the consequences b. Mu'awanah Virtue Group of Students Terms and conditions, which is a differentiator among them special provisions include: 1. Participants insurance a. Students aged 3 year to 25 years; b. Teachers / Staff aged 18 years to 65 years; 2. Special terms: a. The insurance period is a minimum of 1 year according to the date stated on the participant's card; b. For risks caused by disease (not accident) valid waiting period for 7 days effective from the start date of insurance indicated on the participant's card.

The procedure that runs in the registration process at PT ASYKI Pasuruan Unit according to Mr. Ahmad Durri as a Staff of Pasuruan Unit Branch Office is: "The contract that we use is Wakalah Bil Ujroh, we use Mu'awanah customer represents if the customer has a disaster, we directly help him, the risk that befalls one of the customers for financing can be directly installment, where is the money? Members submit money to ASYKI using Tabarru' agreement, the money is divided into the first Tabarru and the second is given to the Company or using the contract Ujroh, its division is 50% Ujroh and 50% Tabarru".

From the results of the interview, it is known that the company only accepts insurance policy registration only through the corporate which is also explained by Mr. Ahamd Durri: "Sidogiri is only mapping stocks, customer financing that we usually call insurance broker, so in 2016 more precisely the insurance trophy established ASKY Pasuruan Unit in collaboration with BMT Sidogiri. ASYKI did not open a representative branch of only 33 marketing units" From the interview results can be seen that PT ASYKI Pasuruan Unit conducts a management system with adjustment of the system located at the Bogor head office. Which according to the view of Law No.40 of 2014 mentions that sharia life insurance business based on sharia principle. Seen in terms of occur and also field practices PT ASYKI is in accordance with sharia law and also has a valid identity and legality in accordance with state law. Through the management system that has been used by PT ASYKI Pasuruan Unit, we can see efforts in handling insurance based on sharia principles such as monitoring from the initial identification process to the final stage of risk control.

5. Conclusions

Based on the results of the analysis in the discussion that PT ASYKI Pasuruan Unit in general and its management is good and in accordance with



Law No.40 of 2014 concerning sharia life insurance business in risk management based on sharia principles, although it does not cover the possibility of individuals registering individually, but the recommended solution from PT ASYKI Pasuruan Unit against individual poly insurance applicants will be directed against salah one business entity in cooperation with PT ASYKI Pasuruan Unit and in the future PT ASYKI Pasuruan Unit will open opportunities for individual policy applicants so that the public is more free to know and apply sharia life insurance easily without having to go through a business entity or company that becomes an intermediary.

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