

A Study on Shariah Issues of Tabarru' and Underwriting Surplus in Takaful

Abrista Devi¹

¹*INCEIF University, Malaysia*

Surplus underwriting in the context of Islamic insurance (takaful) refers to the process of managing and distributing any surplus that may arise in the takaful fund after covering claims and operational expenses. This paper attempts to discuss two sharia issue regarding the tabarru' concept that is applied in takaful operations, and underwriting surplus of the tabarru' fund. To obtain coherent and comprehensive analysis, this paper discusses the opinion from the opponents and the proponent's side of view. There are two main views, whereby AAOIFI, IFSB, and Fatawa Ta'min, Dallah al-Barakah stated that underwriting surplus must be fully distributed to the participants. Meanwhile, SAC-BNM, MUI (Majelis Ulama Indonesia), and the majority of scholars are of the view that underwriting surplus is allowed to be shared between participant's and takaful institution as long as stipulated upfront in the contract.

Keywords: Tabarru', Surplus underwriting, Takaful, Shariah

OPEN ACCESS

*Correspondence:

Abrista Devi
abristasmart@gmail.com

Received: 11 September 2023

Accepted: 17 December 2023

Published: 31 December 2023

Citation:

(2023) A Study on Shariah Issues
of Tabarru' and Underwriting
Surplus in Takafu.
Maqasid al-Shariah Review.
2.2.

INTRODUCTION

Over the last decade, global takaful industry has witnessed an increasing growth, particularly during pandemic Covid-19 due to the increasing in demand for health and life protection from virus infection. The growth of Takaful industry is also predicted to increase along with the increasingly aware of the public to have protection funds for unexpected losses or events. (Insurance prediction data). Yet, despite of this promising growth in number and product, takaful industry also continuously deal with some sharia issues.

The takaful industry is a type of Islamic insurance that operates based on the principles of Sharia, the Islamic law. The word "takaful" is derived from the Arabic root word "kafala," which means to guarantee or to take care of one's needs. In conventional insurance, policyholders pay premiums to the insurance company, and in returns, the company provides coverage against specified risks. In contrast, takaful is founded on the principles of mutual cooperation, shared responsibility, and solidarity. It aims to provide insurance coverage while adhering to Islamic principles that prohibit activities such as charging or paying interest (riba) and involving excessive uncertainty (Ikhwan & Rusydiana, 2022; Maliha, 2023; Puspita & Kartikawati, 2022).

The takaful industry has seen significant growth in recent years, reflecting the increasing demand for Islamic financial products. It offers an alternative for individuals and businesses seeking insurance solutions that align with their religious beliefs. Takaful products cover a wide range of areas, including life insurance, health insurance, property insurance, and more.

Islamic insurance, known as takaful, and conventional insurance differ significantly in their principles, structures, and operations due to their distinct underlying philosophies. Islamic Insurance is based on the principles of mutual cooperation, solidarity, and shared responsibility. It operates in accordance with Sharia (Islamic law), avoiding elements such as interest (riba), uncertainty (gharar), and gambling (maisir). Meanwhile, onventional insurance operates on a for-profit model. It involves a contract where policyholders pay premiums to the insurance company in exchange for coverage against specified risks. The company bears the risks and aims to make a profit.

Tabarru is a fundamental concept in Islamic insurance (takaful). The term "tabarru" refers to the voluntary donation or contribution made by the

participants (policyholders) in the takaful arrangement. This contribution is a key element that differentiates takaful from conventional insurance. Overall, tabarru plays a crucial role in fostering a sense of community and social responsibility within the takaful framework. It reflects the Islamic principles of mutual assistance and caring for one another, reinforcing the idea that participants are not just clients of an insurance company but members of a community bound by shared values and responsibilities (Ali et al., 2014).

Surplus underwriting in the context of Islamic insurance (takaful) refers to the process of managing and distributing any surplus that may arise in the takaful fund after covering claims and operational expenses. Unlike conventional insurance, where profits are typically retained by the insurance company, surplus underwriting in takaful involves returning excess funds to the participating policyholders in a manner consistent with Islamic principles.

It's important to note that surplus underwriting is one of the distinguishing features of takaful, highlighting its cooperative and participatory nature. This aspect aligns with the principles of risk-sharing, mutual assistance, and ethical financial practices in Islamic finance. The surplus distribution serves as a way to provide tangible benefits to the participating policyholders and reinforces the concept of community support within the framework of Islamic insurance.

This paper attempts to discuss two sharia issue regarding the tabarru' concept that is applied in takaful operations, and underwriting surplus of the tabarru' fund. To obtain coherent and comprehensive analysis, this paper discusses the opinion from the opponents and the proponent's side of view. The study utilizes the Muslim scholars' opinion from Fiqh or Ushul Fiqh literature, and group of international fatwas that are issued by reputable fatwa-issuing body.

METHOD

This study uses a qualitative-elaborative method. This study uses a 'discussion' approach between differences of opinion and argumentation on sharia issues. Next, the author provides an opinion based on dialectics and various arguments. This study is based on Islamic sharia literature with various schools of thought. Qualitative analysis is a research method used to explore and understand the qualities, characteristics, meanings, and underlying factors associated with a particular phenomenon. It is often used in social sciences, humanities, and other fields

where researchers seek to gain in-depth insights into human behavior, experiences, and perspectives. Qualitative analysis contrasts with quantitative analysis, which focuses on numerical data and statistical measurements. Debates and discussions take the form of opinions and reasons which are included in the 'opponent' category, and opinions which are included in the 'proponent' category.

ANALYSIS

First Issue: Sharia issue on Tabarru' concept in Takaful

It has been noticed that tabarru' contract is widely used in takaful operations as the exchange to *riba*, *gharar*, and *maysir* scheme in conventional contract. To begin with, the definition of tabarru' contract will be firstly provided. According to SAC-BNM (2010), tabarru' is a gratuity or charity contract, where a portion of contribution is donated as the obligation of mutual help. The portion of money will be used to pay claim to the eligible participant. Takaful industry applies tabarru' scheme in their operations to denote the relationship among participants. AAOIFI Sharia standard No. 26 regarding Islamic insurance does not specifically mention about the tabarru' contract yet points out the donation fund as the commitment for payment of participant to get the compensation from insurance company if the risk happens. Further, AAOIFI explains the donation in takaful exists in the form contribution in premium and has independent financial liability. This donation fund is used to indemnify the participants who experiences injury, or any other specific risk. The donation fund is managed by insurance company to be invested in the selected investment instrument, or joint stock company.

AAOIFI 5/1: *Donation commitment, as it should be stipulated that the participant donates his contribution and the returns thereon to the insurance account for payment of indemnity and may undertake to bear any deficit that may occur, as per regulations.*

It is widely considered that all sharia scholars agreed to the tabarru' contract and contain no sharia issue in it. However, the sharia issue exists regarding the application and implementation of tabarru' concept in insurance company (takaful). This is because, some conditions are applied in tabarru', such as (1) the participant should contribute amount of donation fund to get the compensation due to the unexpected risk in the future. (2) the amount of contributed is determined

by the probability level of risk. Normally, higher risk that might occur, the participant will be charged higher amount of money. These conditions that is applied to the donation action leads to at least two sharia issues in tabarru' concept. First, tabarru' concept is supposed to be done in a voluntarily basis not compulsory basis. Second, if the participant experiences the risk and receive compensation from takaful industry, then it leads to bilateral contract (*mu'awwadhab*). Bilateral contract can be seen from the donation fund that is paid by participant is exchanged with claim. In this vein, the issue of *gharar* and *maysir* arise in takaful just like conventional insurance. Following view of scholars in term of first issue in tabarru' contract which is making voluntary basis contract as compulsory.

1. *Itizām bi al-tabarru'*

Proponent:

Maliki Schools: according to Maliki schools of thought, the donation or contribution that is paid by participant is considered as *iltizām bi al-tabarru'* (self-commitment to donate), and *iltizām bi al-tabarru'* is allowed in sharia. Based on Maliki schools, the payment of contribution from the participants will be considered as *iltizām bi al-tabarru'* because it is from one side (unilaterally), and it is not a contract of exchange (*uqd al-mu'awwadhab*). Equally, the payment of compensation from takaful operator in the event of risk incurred is also in conformity to the principle of *iltizām bi al-tabarru'* from one side, and there is no inter-relation of one *iltizām* to the other. Making a commitment to ourselves to do donation as a good deed, Shurayh Ibn Al-Harist Al-Kindi as quoted by Ali Ahmad An-nadawi mentioned that: "*Whoever imposes something on himself voluntarily without coercion, then he must carry out something*". Ad-Dasuqi's opinion: "*Whoever is committed to doing a good deed, then he is obliged to do it*". Ibn 'Arabi said that "*Whoever is committed to doing something, then (according to the syara') must fulfill it*".

Regarding the commitment, Hammad highlighted some points to strengthen the argument in contributing some fund regularly as a form of self-commitment to donate. First, the commitment must involve the intended benefits, as the fiqh terminology term explains that intended benefit refers to the one to which a valid purpose is related. In takaful case, the intended benefit is to fulfill a real need for such protection when there is a possible loss that is occurred as a life-threatening as well as its property. Second, the benefit in such a commitment has monetary value. This means that the benefit in the commitment must involve

monetary value according to the customs of the people. According to Al-Qarafi in His book *Adh-Dakhirah*, objects and benefits are of three categories: (1) that which may be exchanged for a consideration, such as wheat and rent; (2) that which may not be exchanged for a consideration, such as alcoholic beverages; and (3) that which is open to controversy such as manure, phlebotomy, cupping, etc. Therefore, if we link these considerations to the concept of commitment in sharia, then self-commitment to give charity even though in expecting the return (if any risk occurs) is permissible as long as the benefit is not something forbidden in sharia. The last point is the benefit is lawful. In regard to the issue in takaful, the benefit obtained from the commitment to contribute some amount of money in exchange with risk protection is viewed permissible and considered to have a monetary value according to sharia. Hakim Ibnul 'Arabi stated that: "Any benefit permitted under the sharia may be sold and consideration may be taken in return for it. In addition, Az-Zayla'i pointed out that "any item allowed to be benefited from under the sharia, whether on the spot or a later date, and which has a value, may legally be sold. If it is other than this, then it is not permissible".

Further issue arises whether self-commitment is binding? Maliki schools from Musthafa Zarqa', in the book of Nizham al-Ta'min; Ahmad Sa'id Syaraf al-Din in the book of 'Uqud al-Ta'min wa 'Uqud Dhaman al-Istitsmar, and Sa'di Abu Jaib in the book of al-Ta'min bain al-Hazhr wa al-Ibahah stated that analysis of fiqh in term of the obligations of participants to giving tabarru' alternately in the contract of ta'awuni (insurance) is "the rule of fiqh regarding the obligation to give tabarru' ". Or in another word, a self-imposed promise is enforceable. This issue in term of a promise that is legally binding also has been resolved in the year 1409 AH/1988 CE by the IFA-OIC (ISRA, 2016).

Opponent:

Some scholars are in opinion that tabarru' in takaful industry contains two commitments, donation and indemnification which will lead to bilateral commitment. However, indemnification is not certain, as it is only paid to the participant if the risk occurs. Habib & Shaukat (2016) studied the sharia appraisal of tabarru' concept in takaful practices. They conclude that the practice of tabarru' in takaful industry nowadays is much more violation to the sharia rather than compliance to sharia, due to the absence of risk sharing concept in takaful practices. They suggested to re-examine and reform that concept of tabarru' in

takaful industry into other sharia compliance contract that is not contradict to the spirit of sharia. Similar with the view by Al Zukhruf from Saudi Arabia, that current takaful model is not sharia compliance because it is the contract of exchange, and similar to the conventional arrangement.

The famous legal maxim "*al-ibrat bi al-ma'ani la bi al-faaz*" (one should look at the objectives of a contract and not at its wordings) is used to back up this objection. While the money given to the insurance company is called a donation or contribution, it is in fact, a premium because the participants are still being indemnified on that basis. And practically, the donation is similar to the premium in the way it is calculated and enforced in the conventional insurance industry.

2. *Hibah bi thawab*

Proponent:

Some scholars are in opinion that the contribution that is exchanged with compensation benefit from tabarru' fund is manifested as *hibah bi thawab* (a gift with expected compensation). According to Sharh Al-Kharshi, *hibah bi thawab* is a donation that is given as the purpose to get financial compensation in the future. And according to majority of the mazhab, except syafi'i schools, *hibah bi thawab* or giving donation in return is permissible.

AAOIFI Sharia standard, No. 26 article 4(c), acknowledged that *the relationship between the policy holder and the fund takes the form of donation commitment at the stage of making contribution, and indemnification commitment at the stage of providing compensation for injury as per regulation and underlying constituent documents*. Wahbah Al-Zuhaili, in his book *al-Mu'amalat al-maliyah al-Mu'ashirah* stated that legal relationships that arise between insurance participants as a result of the *ta'min jama'i* contract (collective insurance) is a tabarru contract, each participant donate tabarru' to other participants who were affected by the disaster in the form of compensation (assistance/claim) to which they are entitled; and at the same time, he is entitled to receive tabarru' funds when disaster strikes.

Opponent:

In term of *hibah bi thawab*, majority of jurists view that *hibah bi thawab* will change the nature of tabarru', from the unilateral contract to bilateral contract. Muhammad (2010) argues that if the price is exchanged with the claim, then the ruling of donation similar to the ruling of sale. Nevertheless, some other jurists view that *hibah bi thawab* is unilateral contract

because it is considered as pure gift, therefore all related rulings and *hukum* are applied. If tabarru' contract in takaful is equated with bilateral contracts in conventional insurance, then it can be realized that sharia insurance is the same as conventional insurance. This was also conveyed by Syaikh Mustafa Zarqa (1983) in his book *atta'miinul Islami* that from the very beginning, there is no difference between conventional insurance and Islamic insurance. What is known as cooperative model, is very much similar to conventional due to its bilateral scheme. Eventually, he comes to the argument in allowing the application of tabarru' concept in takaful due to Maslahah. He argued that the insurance is a new contract, and if the contract achieves the benefit of the contracting parties, and attempts to protect life or property, therefore there is a maslahah, and its permissible. However, this opinion is debated by the majority of scholars, and they propose the alternative of insurance is takaful based on ta'awun concept.

Second Issue: Sharia issue on underwriting surplus of tabarru' fund

The application of tabarru' fund in takaful industry creates another ensuing issue, whereby in the end of period, underwriting tabarru' fund may become surplus or deficit (loss). According to AAOIFI accounting standard No. 13, underwriting income means *"the excess of the total premium/contributions paid by policyholders during the financial period over the total indemnities paid in respect of claims incurred during the period, net of reinsurance and after deducting expenses and changes in technical provisions"*. Meanwhile, IFSB Takaful governance standard, No. 8 define underwriting as *the takaful fund's financial outturn from the risk elements of its business, being the balance after deducting expenses and claims (including any movement in provisions for outstanding claims) from the contributions income and adding the investment returns (income and gains on investment assets)*.

The sharia issue arises when the underwriting surplus occurs, and what parties are eligible to this surplus. Whether the underwriting surplus is fully returned to participant's individual account, or distributed to tabarru' fund, or shall it be distributed as well to takaful industry. In this vein, there are two views stand over the distribution of underwriting surplus. First view believes that the underwriting surplus must be fully distributed to the participants, because it is exclusively their right. While second view treats the underwriting surplus must be shared between participant's and takaful institution. It should also be underlined that, as takaful has two main schemes of

product, first is pure takaful (the product include protection only) and second unit-link takaful (the product include protection and investment), then underwriting surplus needs to be distributed to three parties are participant's individual account, tabarru' fund account, or takaful industry. As practiced most GCC countries, surplus underwriting is fully distributed to participants. Meanwhile in Indonesia and Malaysia, surplus underwriting can be distributed to the participants and takaful operator.

First view: underwriting surplus must be fully distributed to the participants

1. AAOIFI sharia standard on Takaful stated that *"the underwriting surplus and its returns, less expenses, and payment of claims, remain the property (milk) of the policyholders, which is the distributable surplus. This is not applied in commercial insurance, where the premiums become the property of the (insurance) company, by virtue of contract and acquisition, which would make its revenue and a profit for commercial insurance"*.

AAOIFI is in position that surplus underwriting must be distributed according to its origin. Which means that, the origin of underwriting fund comes from participants contribution fund (premium fund). Therefore, the participants have the exclusive right to enjoy a portion of an excess over claim. Furthermore, AAOIFI's stand on surplus according to the principle of agreement (contract) and there is no explicit agreement to offer surplus to the takaful institution in the application of ta'arru' contract.

2. IFSB asserts the definition of underwriting surplus or deficit as the participant's risk fund. According to IFSB's definition, underwriting surplus is *the participants' risk fund's or retakāful risk fund's financial result from the risk elements of its business of a takāful or retakāful fund, being the balance after deducting expenses and claims (including any movement in technical provisions) from the contributions income*. Therefore, the surplus from the balance after deducting expenses and claim will be returned to the participants' risk funds.
3. Fatawa Ta'min, Dallah al-Barakah (1986) asserts that the surplus underwriting must be fully distributed to the participants, because it is their exclusive right. In addition, the fatwa stated that takaful institution has no right to receive any portion from the surplus.

Numerous of studies discussed the argument of underwriting surplus cannot be distributed to takaful operator. [Hendon, et al \(2009\)](#) argue that in takaful wakalah model, wakalah fee is paid two times, first upfront and second if there is surplus in tabarru' fund (underwriting surplus). According to them, this model skewed the principle of wakalah and has diluted the Islamic principle on wakalah model. [Wahab, et al \(2017\)](#) agrees that wakalah fee is charged two times by the takaful operators. [ISRA \(2016\)](#) mentioned that most opinion is the fund should remain as reserves fund due to three reasons: (1) it consolidates the fund for paying claims in the following years; (2) the subsequent contributions can be brought down with the availability of that reserve, which means less financial burden on the participants with regard to their contributions; and lastly, (3) the drop in the contributions (pricing) makes the takaful industry more competitive.

Second view: underwriting surplus is allowed to be shared between participant's and takaful institution

1. According to the origin rule of tabarru', the majority of scholars agreed that the ownership of donation wealth is no longer owned by donator but transferred to recipient. Ibn Qudhamah, in his book *Al-Mughni* highlighted that hibah or donation requires donor to enable the beneficiary to own the object of hibah. Which means that the donor (or in this case participant) is principally does not have any right over the contribution fund. Otherwise, the participant will be entitled to the contribution fund if there is a stipulation in the agreement whereby mention that the surplus from underwriting will be exclusively shared to participants or sharing portion between participants and takaful institution. To put it more simply, sharing or distribution of surplus underwriting can be tackled according to the upfront agreement in the contract.
2. Sharia Advisory Council – Bank Negara Malaysia (SAC-BNM) resolution (ref. no. 09/07/07) stated that “*The Sharia Advisory Council of Bank Negara Malaysia (the council) has made the resolution that the distribution of surplus from the tabarru' fund in takaful scheme is permissible from sharia perspective. The council's resolution in allowing the distribution of surplus from the tabarru' fund (for both family and general takaful plans) to the participants/certificate holders and takaful operator is*

based on the premise that takaful contract is generally established on the sharia principles of tabarru' (donation) and ta'awun (cooperation), apart from the agreement among the contracting parties. In the formulation of takaful product, the principle of tabarru' has been the main underlying Shari'ah principle, although the application of other principles such as wakalah and mudharabah also complement the takaful operational structure. The council's resolution to allow such distribution is also based on the permissibility of performance fee for the takaful company.”

3. According to regulation of the Indonesia's Minister of Finance (PMK) No. 18, there are three ways in terms of allocating underwriting surplus: (a) All surplus funds are used as reserve funds for tabarru', (b) Surplus funds are divided for tabarru' fund reserves and for participants, and (c) Surplus funds are divided for tabarru' reserve funds, participants, and takaful institution.
4. According to Indonesia Ulama Council fatwa No. 53/DSN-MUI/III/2006,

The takaful operator may treat the underwriting surplus based on the three options:

- a. All underwriting surplus is put into the reserve fund.
- b. The underwriting surplus is divided into two portions: One portion is for reserve fund and the other is for participant
- c. Certain percentage is allocated for reserve, and the remaining portion is shared or distributed between participants and takaful operator. However, it is subject to the consent from the participants.

To support the view, some studies pointed out the case of underwriting surplus distribution, one of them is [Alhabshi \(2021\)](#) stated that sharing of surplus underwriting and investment is allowed in jurisdictions of Islam. This practice similarly to the practice of mudharabah and ta'awun. Further, he explained that the distribution of surplus underwriting is allowed in some jurisdictions that have adopted the pure wakalah model. Surplus underwriting is considered a cost or wage over performance for a takaful company for its ability to manage participants' risk fund. In addition to SAC-BNM view, [BNM \(2010\)](#) assert that the wakalah fee that is charged upfront to cover the commissions and management expenses occurred in the management of takaful funds. However, this practice has been approved by the National Sharia Council in

Malaysia due to the performance appreciation to takaful operator on their works in the form of gift or *hibah*, *ju'alab* (performance fee) and *tana'ul* (where the participants can waive part of their surplus shares).

DISCUSSION: THE CHOSEN OPINION

In response to the issues in takaful practices, I will start with providing my own opinion on the issue of tabarru' in takaful. To start with, there are two lines of business in takaful. First is family insurance and second is general insurance. In term of family insurance, the commitment element is principle. Let assume we subscribe family takaful insurance product which has covering period for 20 years, and as a return, takaful company will cover two types of risk (health, and life). As the compensation for these benefits, we are charged the premium payment. The payment are off two categories, (a) single payment (once a lifetime payment); and (b) frequently payment such as yearly, quarterly, or monthly payment. In this sense, we make commitment to pay the contribution fee on regularly basis payment. Once the arrangement is settled, here is the time of commitment for tabarru' comes. In another word, my contribution will work only if I regularly make payment, and the payment must be made continuously by participant if we want to get the benefit. According to the above scheme, the issue regarding there is a contractual agreement from the existence of commitment in tabarru', I would say that sharia permits in applying commitment in tabarru' or charity contract. This practice similar to the practice of whereby the company obliged you to pay infaq every month, and the payment is automatically deducted from your salary, so you must obey and fulfill the commitment. Even though charity is considered as a voluntarily basis, but we still can make commitment to do charity. It relies to some of the views from scholars regarding a commitment to do a good deed, Shurayh Ibn Al-Harist Al-Kindi as quoted by Ali Ahmad An-nadawi mentioned that: "Whoever imposes something on himself voluntarily without coercion, then he must carry out something". Ad-Dasuqi's opinion: "Whoever is committed to doing a good deed, then he is obliged to do it". Ibn 'Arabi said that "Whoever is committed to doing something, then (according to the syara') must fulfill it".

In concert with the need of public at large, takaful scheme provides protection to the participants at the time loss occurs. This practice is considerable new and unique in mu'amalat. We cannot simply say

that takaful in practice is a unilateral agreement. Because it more like in between, whereby neither pure charity scheme nor commercial. It is widely noticed that takaful or insurance in common is strictly regulated company, therefore, some regulations are applied in the practices, such as the amount of contribution fee, the condition of claim, etc. Providing Sharia product in term of risk protection either for wealth or life under government control and proper regulation is becoming a public *maslahah*. According to *Maslahah Mursalah* (public benefit), an act which is initially *mandub* could become *wajib*, or in another word, *maslahah* can change the rulings that initially *mandub* become *wajib*. Therefore, providing sharia product as an alternative and solution from its conventional may become *wajib* for scholars. Additionally, referring to the popular rule of *muamalat* that in principle all financial transaction is permissible, until there is evidence to prove as *haram*.

The second context is in term of the distribution of underwriting surplus in tabarru' fund, I stand with the view that if there is any surplus on the tabarru' fund, then it can be distributed to the participants and takaful operator. Despite of this notion in line with the majority of scholars and numerous fatwa bodies, the determination of the parties that are eligible to receive underwriting surplus must be identified from the owner of the fund and what have been stipulated in the contract. Who own the tabarru' fund? Principally tabarru' fund belongs to the participants, therefore, if there are any surplus in tabarru' fund due to the less claim, participant has fully right to determine the distribution of tabarru' fund. Additionally, if in the agreement of the takaful contract is mentioned the policy of underwriting surplus, and this is agreeable among the parties, then it must be fulfilled. Particularly if fatwa bodies and representative government oblige tafakul company to do so, then the instruction must be obeyed. Referring to Surat An-Nisa (4:59) "O you who have believed, obey Allah and obey the Messenger and those in authority among you".

Because of these issues and considering the arguments from the two opinions, some scholars purposed the alternative to takaful model, namely, *waqf* model as the underlying of tabarru' contract, instead of either to use *Iltizam bi al-tabarru'* or *hibah bi thawab*. According to Salleh (2020), takaful model based *waqf* is combining the spirit of takaful and *waqf*, whereby the participants will have to abandon their right of ownership of takaful fund to become *waqf* entity which is using tabarru' principle. By doing this, the participants will obtain two reward, first good deed

from doing ta'awun and helping each other, second good deed to do waqf. On the other hand, in accordance to solve the issue of ownership over the underwriting surplus, some scholars in some literatures propose the concept of wadiah yad dhamnah (safekeeping with guarantee). Through this concept, takaful industry behaves as custodian or depository institution whereby the participant can place their fund into takaful in form of deposit and coupled with a clause that some deposit will be released and donate to other participants if the risk occurs (Bouheraoua & Ahmad, 2011). In addition, Frenz & Soualhi (2010) pointed out that some sharia scholars purpose the "condition contribution" scheme to be applied to takaful fund. Under this scheme, the participants are required to contribute some amount of money in purpose to receive mutual assistance on condition that if there is any surplus from the contribution fund, then it must be re-distributed to the participant.

Although there are several alternative takaful models developed by some scholars as a solution to answer the two issues contained in the takaful practice above, it is necessary to conduct an in-depth study of the benefits and risks of both technical and sharia aspects of the takaful contract development. Therefore, it is expected in the future to find takaful implementation with a practical contract and do not violate sharia rules.

CONCLUSION AND RECOMMENDATION

Despite of this promising growth in number and product, takaful industry also continuously deal with some sharia issues. This paper discussed two sharia issues in takaful practices, first related to tabarru' concept in takaful and second related to underwriting surplus distribution. In term of sharia issue on Tabarru' concept in Takaful, the nature of donation has been considered with skepticism by some Muslim scholars as it is supposed to be a unilateral rather than bilateral contract. Some scholars are in opinion that the current practice of takaful is similar to conventional practices, because the claim only can be made if the participants give donation. Consequently, takaful is no longer operate in unilateral transaction, but bilateral transaction instead. There are two opinions regarding to this, first view from Maliki Schools that the donation or contribution that is paid by participant and the compensation that is paid by takaful operator are considered as iltizam bi al-tabarru' (self-commitment to

donate), and iltizam bi al-tabarru' is allowed in sharia. And as opponent, some other scholars are in opinion that tabarru' in takaful industry contains two commitments, donation and indemnification which will lead to bilateral commitment. Therefore, exchanging money with money can attract the issue of gharar, riba, and maysir. However, the author is in favor that tabarru' is not bilateral contract due to iltizam bi al-tabarru' act.

The second issue is underwriting surplus distribution, can the participant take his own donation back or is the participant allowed to share it to takaful operator as a profit? There are two main views, whereby AAOIFI, IFSB, and Fatawa Ta'min, Dallah al-Barakah stated that underwriting surplus must be fully distributed to the participants. Meanwhile, SAC-BNM, MUI (Majelis Ulama Indonesia), and the majority of scholars are of the view that underwriting surplus is allowed to be shared between participant's and takaful institution as long as stipulated upfront in the contract.

REFERENCES

- Accounting and Auditing Organisations for Islamic Financial Institutions (2010). Accounting, auditing & governance standards (for Islamic financial institutions), English version. Bahrain.
- Alhabshi, S. M. (2021). Takāful Risk Fund and Surplus Management.
- Ali, M. M., Hassan, R., & Hasan, S. M. (2014). An exploratory study of shari'ah issues in the application of tabarru'for takaful. *Global Review of Islamic Economics and Business*, 1(3), 164-174.
- Bouheraoua, S & Ahmad, M.A (2011) Takaaful Operation: Appraisal of the Existing Models and Exploration of a Possible Alternative, the Wadi'ah Model. *Revue des Sciences Économiques et de Gestion* N°11, 2011.
- Fatawa Ta'min, Dallah al-Barakah. (1986).
- Fatwa Dewan Syariah Nasional No. 53/DSN-MUI/III/2006 tentang Akad Tabarru' pada Asuransi Syari'ah.
- Frenz, T., and Soualhi, Y., (2010). Takaful & Retakaful: Advanced principles & practices (2nd edition). Kuala Lumpur. Institute of Islamic Banking Finance & Munich Re.
- Habib, F., & Shaukat, M. (2016). Shariah Appraisal of the Takaful Model Based on Tabarru'(Donation). *Journal of Islamic Banking & Finance*, 33(3).
- Hendon, R., Zuriah, A.R. and Sharifah Sakinah, S.A. (2009). Economic determinants of family

- Takaful consumption: evidence from Malaysia. *International Review of Business Research Papers*, Vol. 5 No. 5, pp. 193-211.
- Ibn Qudamah, Al-Mughni, Vol. 9, p.68
- Ikhwan, I., & Rusydiana, A. S. (2022). Stability of insurance efficiency during the Covid-19 pandemic: A comparative study between Islamic and conventional insurance in Indonesia. *Jurnal Ekonomi & Keuangan Islam*, 60-76.
- Indonesia Ulama Council fatwa No. 53/DSN-MUI/III/2006
- Islamic Financial Services Board/IFSB (2020). Disclosure to promote transparency and market discipline for takaful/retakaful undertakings.
- ISRA (2016). Islamic Financial System. Principles and Operations: 2nd Edition. Cagamas.
- Maliha, H. (2023). N-Vivo Analysis on Indonesia Islamic Insurance Studies. *Fara'id and Wealth Management*, 3(1).
- Puspita, A. T., & Kartikawati, D. R. (2022). A Review on Islamic Micro-insurance Studies. *Tamkin Journal*, 1(1).
- Salleh, M.C.M., Razali, S.S., Laksana, N.N.M., Embi, N.A.C., & Abdullah, N.I. (2020). Developing a sustainable model of waqf-based takaful for flood victims in Malaysia. *Journal of Islamic Accounting and Business Research*, Vol. 11, No 19, p. 1941-1952.
- Shariah Advisory Council of Bank Negara Malaysia (2010). Resolutions of Shariah Advisory Council of Bank Negara Malaysia.
- Wahab, A.R., Lewis, M.K. and Hassan, M.K. (2007). Islamic Takaful: business models, Shariah concerns, and proposed solutions. *Thunderbird International Business Review*, Vol. 49 No. 3, pp. 371-396.
- https://www.bnm.gov.my/documents/20124/938039/std_028_5.pdf/ddfb3c29-b09f-0cc1-14e6-caedda7a2b4f?t=1592211098335.