

10-1-2011

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Recommended Citation

Hasanah, Uswatun (2011) "Insurance and Islamic Law," *Indonesian Journal of International Law*. Vol. 9 : No. 1 , Article 17.

DOI: 10.17304/ijil.vol9.1.340

Available at: <https://scholarhub.ui.ac.id/ijil/vol9/iss1/17>

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Insurance and Islamic Law

Prof. Dr. Uswatun Hasanah¹

In Islam, insurance has actually been practiced since the time of the Prophet Muhammad saw. The precursor of Islamic insurance, according to some scholars is al-diyah 'ala al-'aqilah. Al-'aqilah is the habit of Arab tribes having been practiced long before Islam where if one member of the tribe were killed by other tribe members, the heirs of the victim will be paid with blood money (al-diyah) as compensation by the next of kin of the killer. Next of kin of the killer is known as al-'aqilah. After the arrival of Islam, al-'aqilah system was approved by the Prophet PBUH as part of Islamic law. Furthermore, al-'aqilah was contained in the Charter of Medina. In the next period, this al-'aqilah or insurance continued to be practiced by the caliphs, especially during Caliph Umar ibn al-Khattab until now. Islamic Insurance or sharia-based insurance is more nuanced with generosity rather than profit oriented. Therefore, the aspect of mutual help always serves as a primary basis of the practice of Islamic insurance. Islam regards insurance as a social phenomenon formed on the basis of mutual-help and a sense of humanity. Today Islamic insurance is growing rapidly in many countries. This suggests that Islamic insurance is quite attractive to the public in various countries. The problem is, until now there are many people including some Muslims who do not understand Islamic insurance.

Keywords: 'aqilah, insurance, syariah

I. Introduction

According to Islamic teachings, human beings existing in this world constitute a single family. Therefore, every human being poses the equal level in the eyes of Allah and in front of His revealed law. The concept of brotherhood and equal treatment of all mankind before the law is meaningless without being accompanied with economic justice, where each person can live appropriately. To realize the said brotherhood and togetherness, there must be cooperation, mutual assistance, and mutual guarantees among mankind. The riches shall help the poor, and those who are overly abundant in wealth shall help those deprived and those are in misery. Es-

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tablishing brotherhood among human beings is very imperative because in fact human being can not live solely without the help of others. Therefore, it is necessary to live a life of cooperation among human beings. To facilitate the cooperation, God confers advantages to human beings some over others. Allah says regarding this issue:

"... We raise some of them above others in ranks, so that some may command work from others. But the Mercy of thy Lord is better than the (wealth) which they mass" (al-Zukhruf, verse 32).

The advantages that Allah grants as mentioned in the verse above does not necessarily mean that the person is awarded a higher degree than others, but this means that every person must have his advantages and disadvantages. With the existing advantages, he can cover the deficiencies of others, and vice versa. Thus everyone shall cooperate with others in accordance with his/her advantages and disadvantages of each person. The existence of a distinctive and profound Islamic commitment of the brotherhood, then the mutual guarantees, mutual help among human beings is highly recommended. In Islam, there is one financial institution that can be exploited for mutual-help and mutual guarantees, namely insurance. As already known insurance is one of the financial institutions which at present, is indispensable to the community. This is because insurance is one institution that is expected to provide composure and serenity for persons who feel the possibility of harm to selves or properties owned. Insurance is expected to reduce the fear or worry of one's self and family. The question is whether insurance practice is allowed in Islam? To know the answer, this article will discuss "insurance and Islamic law".

II. Insurance in the perspective of Islamic law

In Islam, the insurance has actually been practiced since the time of the Prophet PBUH. The forerunner to the concept of Islamic insurance according to some scholars is *al-diyah 'ala al-'aqilah*. *Al-'aqilah* is a habit of Arab tribes long before Islam. If one member of a tribe were killed by other tribe members, heirs of the victims will be paid blood money (*al-diyah*) as compensation by the next of kin of the killer. Next of kin of the killer was known as *al-'aqilah*. Ibn Hajar al-'Asqalani in his book "*Fathul*

Bari", as quoted by Syakir Sula, said that on further developments after the arrival of Islam, the *al-'aqilah* system was approved by the Prophet as part of Islamic law.² According to Muhsin Khan, the main idea of *al-'aqilah* was originated from Arab tribes, which in ancient times should always be ready to make financial contributions on behalf of the murderer to pay the heirs of the victims. Readiness to pay a financial contribution was equal to premium of the present insurance practices. Meanwhile, the compensation paid based on *al-aqilah* could be deemed as the amount insured in the present insurance practice because it was a form of financial protection for the heir to an unexpected death of the victim.³ *Al-'aqilah* is even contained in the first constitution in the world, made by the Prophet, known as the Constitution of Medina (622 AD). The Constitution was imposed on the people of Medina, such as Muhajirin, Anshor, Jews and Christians. In this Constitution social insurance was introduced as reflected in several forms, namely:

a. Through *al-diyah* practices

Al-diyah or blood money should be paid by *'aqilah* (close relatives of the killer) to the victim's family to save the killer from the burden of the law. It is mentioned in Article 3 of the Constitution of Medina, "The Emigrants of Quraish tribe will be responsible for their words and will pay the blood money in the form of cooperation between them".⁴

b. Through *fidyah* payment (ransom)

The Prophet Muhammad also enforced the provision in the first constitution relating to the saving of lives of prisoners. He declared that anyone who was imprisoned in war, *al-'aqilah* of the prisoner must pay a ransom to the enemy to liberate the prisoner.⁵ Ransom payments of this kind can be considered as another form of social insurance. In the Medina Constitution Article 4-12a states that the Mujahideen of the Quraish tribe should be responsible for the release of prisoners by way of ransom payments, so that cooperation among the believers can be in compliance with the principles of wisdom and justice. This rule was also applicable for other tribes living in Medina as Banu Harith, Banu Najjar, Banu Jusham, and others.

2 M. Syakir Sula, *Asuransi Syariah (Life and General) Konsep dan Sistem Operasional*, (Jakarta: Gema Insani Press, 2004), page 31.

3 Ibid., page 31.

4 M. Ma'sum Billah, *Kontekstualisasi Takaful dalam Asuransi Takaful, Tinjauan Hukum dan Praktik*, translated by Suparto (Selangor Malaysia: Sweet & Maxwell Asia, 2010, page. 8.

5 Ibid.

- c. Society is responsible for forming a joint venture with the principle of mutual understanding in providing the necessary relief assistance for people who is in need, sick and poor.⁶

These insurance practices continued to be developed during the Khilafat al-Rashideen, particularly during Umar bin Khattab. At this time, the Government encouraged the residents to perform *al-'Aqilah* nationally. During his reign, Umar ordered the establishment of a Diwan Mujahideen in several districts. Anyone whose name was recorded in the Diwan Mujahideen had to pay blood money as a compensation of murder committed by someone in his tribe. In Islamic world, insurance practices continue to be developed although there are always ups and downs. For instance, in the 14-17 century AD, a sharia-based insurance was developed by a sufism school of Kazeruniyya, although in the end it suffered a setback. In the 19th century, Ibn Abidin, a jurist of Hanafi School discussed the idea and the legal basis of insurance. Ibn Abidin was the first to consider insurance as an official institution instead of as a customary practices. This opinion of Ibn Abidin is an eye opener for Muslims who do not accept the legality of insurance practices. His ideas then encouraged other Muslims to accept the idea of involvement in the insurance business. In the 20th century, a well known expert on Islamic law, i.e., Muhammad Abduh issued two fatwas, legalizing the practice of insurance. In his fatwa Abduh used several sources as reason why he allowed the practice of life insurance. One of his fatwa suggested the relationship between the insured and the insurer as *mudlarabah* contract, while another fatwa legitimizing a model of transaction which is the same with the endowments of life insurance.⁷

Insurance as a financial institution specializing in security is a modern institution found by the Western world which was born along with the enlightenment. Up to the present this institution, together with bank financial institutions serves as the driver of the economy in modern era. The basic spirit of the modern insurance operations is oriented to the capitalist system that is essentially concentrated in the collection of capital for private purposes or a particular group, and is lack of or do not have roots to economic development at the comprehensive level. Meanwhile, insurance which is based on *sharia*, is more nuanced with social value rather than economic or profit oriented. This is due to the aspect of mutual help which became the main base in enforcing the insurance practice in Islam.⁸

⁶ Ibid.

⁷ Ibid., page 9-10.

⁸ AM. Hasan Ali, *Asuransi dalam Perspektif Hukum Islam Suatu Tinjauan Analitis Histo-*

Islam regards the insurance as a social phenomenon formed on the basis of mutual-help and a sense of humanity. Bearing one another in Islam is much emphasized, and bearing one another in Islam is often called takaful. Moh. Ma'sum Billah took to mean takaful as joint warranty provided by a group of people who live in an the same environment against the risk or catastrophe befalling to one's life, property, or anything of value.⁹

Besides Ma'sum Billah, Muhammad ibn Ahmad ash-Salih also used the term takaful. In addition to the word takaful, tadhamun also has the same meaning as takaful, namely bearing one another. Among those who used the word "tadhamun" is Mohammed Sauqi al-Fanjari who took to mean it as mutual social responsibility. In addition, al-Fanjari also used al-Ta'min. Some other scholars who used the word at-ta'min is Hussein Hamid Hassan, Isa Abdu, Wahbah az-Zuhaily, and (the late) Satria Effendi M. Zein. Satria Effendi M. Zein construed the term "at-ta'min" as a synonym for insurance. He defines at-ta'min as a transaction agreement between two parties: one party is obliged to pay contribution and other parties shall provide full assurance to the contribution payer in case something happened to the first party in accordance with the agreement entered into".¹⁰ From the illustration above, it is clear that the Islamic insurance is called Takaful and sometimes is called at-ta'min. Takaful is used in Malaysia as Takaful has become a trademark or trademark of insurance company in Malaysia, namely PT Syarikat Takaful Malaysia. Meanwhile at-ta'min is used by the Egyptian school because it more refers to the pure meaning of the word and has not been used as label of insurance company.¹¹

III. Legal Principles of Takaful

At this time a matter of worry, safety, risk of life and property, and the need for insurance are issues that occupy human minds as there are many people stricken with fear, anxiety of the safety of self, family, and loss of possessions they have. Therefore, it is reasonable if there are people who seek for minimizing the risk of life and property they own. In order to minimize the risk of such losses, there are variety of insurance companies

ris, Teoritis, & Praktis, (Jakarta: Prenada Media, 2004), page 55.

⁹ Ibid., page 62. Lihat juga Ma'sum Billah, *Principles and Practices of Takaful and Insurance Compared*, (Kuala Lumpur: IIUM Press, 2001), page 7

¹⁰ Ibid., page 64. Lihat juga Abdul Aziz Dahlan, *et.al.*, (Editor), *Ensiklopedi Hukum Islam*, jilid I, (Jakarta: PT. Ichtiar Baru Van Hoeve, 1996), page 138.

¹¹ AM. Hasan Ali, *op.cit.*, page 64.

that offer a sense of safety from fears and worries. The question is whether or not insurance is allowed according to Islamic law. According to Abu Zahra as quoted by Husain Husain Syahatah, collective insurance (ta'awuni) is lawful, and he deemed that this type of insurance an attitude of mutual help in the implementation of virtue and piety that Allah commands.¹² In al-Qur'an, al-Maidah verse 2 Allah says: "... Help ye one another in righteousness and piety, but help ye not one another in sin and rancor: fear Allah, for Allah is strict in punishment". According to Husaini, principle of helping one another also applies to self-supported collective insurance either it is voluntary self-supported collective insurance or obligatory collective insurance imposed by the government. Essentially it is a joint firm under the possession of its users, who collectively became the insurer and the insured at once. The requirements thereof are the funds obtained shall be lawful (halal) and do not bear doubtful (shubhat). Such model of insurance has also been applied at the beginning of Islam in the form of brotherhood between the Muhajirin and Anshar.¹³ In al-Qur'an there is no verse that clearly and unequivocally regulate insurance. Nevertheless in al-Qur'an there are verses indicating the principles related to insurance, such as mutual assistance, cooperation and enthusiasm to protect against what will happen in the future. In verse 2 al-Maidah, as already noted, human beings are created in the world not alone but together with other human beings. Naturally human beings are social creatures that can not live solely; they live together with other human beings in a community. In order for human to live conveniently, they have to help each other with their fellow humans. Islamic insurance is essentially a kind of mutual help among human beings. With the mutual assistance life will be easier and more comfortable, because no one knows his fate in the future. This is in accordance with Allah's word Surah Luqman verse 34:

"Verily the knowledge of the Hour is with Allah (alone). It is He Who sends down rain, and He Who knows what is in the wombs. Nor does any one know what it is that he will earn on the morrow: Nor does any one know in what land he is to die. Verily with Allah is full knowledge and He is acquainted (with all things)".

From the verses above mentioned it is clear that human knowledge is very limited, usually humans can only plan, what will happen tomorrow

12 Husain Husain Syahatah, *Asuransi dalam Perspektif Syariah*, translated by Kailasufa (Jakarta: AMZAH, 2006), page 159.

13 Ibid.

morning or in the future is beyond his knowledge. As a human, he is only given the ability to manage life and living to achieve happiness in both this world and the hereafter. One way to achieve happiness is by preparing supplies (protection) for the future, so that everything negative in nature, in the form of loss of disaster, accident, fire or death, can be minimized.¹⁴ In al-Qur'an Allah warns people to make preparation well for the difficult times may come in the future, and this is one of the principles that became the benchmark of the philosophy of Islamic insurance, beside the spirit of mutual assistance and cooperation.¹⁵ For example is the warning in Surah Yusuf, al-Quran verses 46-49, which mean as follows:

(After the waitress met with Joseph, he exclaimed) "O Joseph!, O man of truth! Expound to us (the dream) of seven fat kins whom seven lean ones devour, and of seven green ears of corn and (seven) others withered: that I may return to the people, and that they may understand." In the next verse namely verse 74 Yoseph said: "For seven years shall ye diligently sow as is your wont: and the harvests that ye reap, ye shall leave them in the ear,- except a little, of which ye shall eat." In next verse it is said "Then will come after that (period) seven dreadful (years), which will devour what ye shall have laid by in advance for them,- (all) except a little which ye shall have (specially) guarded." In the same Surah verse 49 it is explained "Then will come after that (period) a year in which the people will have abundant water, and in which they will press (wine and oil)." In Surah al-Hashr verse 18 Allah also said: "O ye who believe, fear Allah, and let everyone pay attention to what has been made for tomorrow (hereafter). And fear Allah, Allah is Informed of what ye do ".

In addition to the verses of the al-Qur'an, the Prophet also reminds us in the need for mutual assistance as he said:

"The parable of the believer in mutual empathy, love and sympathy among them is as the body; if one limb suffer (of pain) then the whole body will responds by staying up (being not able to sleep) and fever (Hadith narrated by Bukhari Muslim).

14 AM. Hasan Ali, op.cit., page 107-108.

15 Syakir Sula, op.cit., page 725.

As already explained at the beginning of the discussion, Islamic insurance was also practiced by the Prophet and His companions. This shows that according to Islamic law, insurance is allowed as long as the practice performed such as transaction, fund management, fund investment, proprietary of funds, premium element, and other matters relating to technical operations, remain being based on the al-Qur'an and al-Sunnah. This issue should really be taken into account as general principles underlying the *muamalah*, which is also applicable for Islamic insurance.

Whereas, the principles contained in the Islamic insurance are as follows:¹⁶

a. *Tawhid* (piety)

When we examine the verses of *muamalah* in al-Qur'an, it reveals clearly that Allah always suggests mankind that the *muamalah* performed shall take them to piety to Allah. A Muslim when do buying and selling, renting and hiring, exchanging with others in the property or any benefit, he is always subject to the rule of Allah. He will not strive with something forbidden as usury, hoarding, ruthlessness, cheating, gambling, stealing, bribing and accepting bribes. Allah put the principle of *Tawhid* (devotion) as the main principle in *muamalah*. Therefore, all activities categorized as *muamalah* should always direct the performer to increase the devotion to God.¹⁷

b. Being just

The second principle of *muamalah* is to be just. Quite a few verses of the al-Quran that commands mankind to be just to everybody including himself. Al-'Adl (the fairest) is among the names of Allah (*Asmaul Husna*). The opposite of *justice* is *injustice* (*al-zhulm*), which is forbidden by Allah upon Himself, as it has been forbidden over his servants. Allah loves those who do justice and hate those who do evil, even curse them. Allah's word in Surah Hud: 18, "Behold! Curse of Allah is on those who do wrong". To be just is also needed when determining the ratio of *mudaraba*, deliberation, *wakalah*, *wadi'ah* etc, in Islamic banks. To be just is also required in Islamic insurance when determining the profit sharing in *surplus under writing* and profit sharing in investment between the company and participants. Therefore, transparency in the Islamic banking and insurance are very important.

¹⁶ Ibid., page 723.

¹⁷ Ibid., page 725

c. Prohibition of ruthlessness

Ruthlessness is the opposite of the principle of justice. Therefore, Islam is very strict in giving attention to violations of ruthlessness, the enforcement of the ban against it, a strong rebuke to those who do ruthlessness, a threat to them from the toughest punishment of in the world and the hereafter. In the Surah al-Shura verse 40 Allah says: "He does not like people who do ruthlessness", and in the Surah al-Baqarah verse 258 Allah says: "Allah does not give guidance to people who do ruthlessness". Dr. Mustaq Ahmad said that Muslim business people are required to be careful not to perform actions that harm and endanger others, or even hurt himself due to his actions in the business world.¹⁸ Al-Qur'an warns business people who do not pay attention to the interests of others, as Islam also warns of something that will cause harm to others. The act was not only not approved, but more than that such behavior is condemned. Al-Qur'an has determined the issue in several passages, among others, in a Surah al-Baqara, verse 41: "And do not redeem my verses of Mine with low prices only for Me you shall be devout."

d. *Al-Ta'awun*

The fourth principle, which becomes the principle of ethics in *muamalah* is *ta'awun*. *Ta'awun* is one of the main principles of *muamalah* interaction. Even *ta'awun* can be the foundation in building a social system, the rich pay attention to the poor in terms of financial needs, and the poor help the rich in terms of labor or others. *Ta'awun* is the core of the concept of Takaful, where one participant to another participant each bear the risk, ie, through a funding mechanism of *tabarru* with the correct contract namely '*Aqd Takafulli* or '*Aqd Tabarru*'. *Ta'awun* may become a solution so that people may escape from poverty, because the attention of rich people to the poor has been regulated in sharia. Do not revolve the wealth only around the rich, or around the conglomerates.¹⁹

e. *Al-Amanah* (reliability/honesty)

According to Yusuf al-Qaradlawi, among the most important value of business transactions is *al-Amanah* or 'honesty'. It is the culmination of faith morality and the most prominent characteristics of the believer. In fact, honesty is a characteristic of the Prophets. Without honesty, religious life will not stand up straight and the worldly life will not run properly. On the other hand, a lie is the branch of hypocrisy and is one of the charac-

¹⁸ Ibid., page 731. See: Mustaq Ahmad, *Business Ethics in Islam*, (Pakistan: The International Institute of Islamic Thought), page 150.

¹⁹ Ibid., page 737

teristics of hypocrites. Defects in our world trade market and those mostly worsening the image of trade are lies, manipulation and mixing the truth with falsehood, both lying in explaining the specifications of the merchandise and in showing off the others, or in notifying the purchase price or the selling price to other people and about the great number of order and so forth. This is why *al-Amanah* becomes one of the principles in *muamalah*. Honesty, professionalism, including the placement of the appropriate person in accordance with the skills and abilities possessed is part of the principle of *al-Amanah* in the Islamic *muamalah*.²⁰

f. *Ridha* (Mutual Agreement)

In al-Qur'an Allah says: "O ye who believe, do not eat the property of each other unless by consensual manner among you". According to Abul A'la al-Mawdudi, the verse has set two conditions as the requirement of validity of a trade.²¹ First, trade should be done in consensual manner among parties. Second, the profit of one party does not stand on the losses of others. That is as described in His word: "... and do not kill yourselves ...". The commentators, Maududi said, interpret them with two meanings, both of which are relevant to this discussion. The first meaning, do not kill each other among you. The second meaning, do not kill with your own hands. This is where the importance of the mutual agreement principle (consensual) in *muamalah* resides. Because, without the willingness principle, then the entire contract in *muamalah* will become void. Thus, the position of the willingness principle is very important in contract made in sharia-based *muamalah*. According to Fathi Ahmad Abdul Karim, contract in Islam will not be perfect unless it applies the principle of consensual and consensus between the two party of contract. Islam has established perfect guidance in the implementation of the principle of willingness to both parties by requiring both parties of the contract be *mukallaf* (mature and sensible), so there is room for bargaining between the two sides.²²

g. Prohibition of *riswah* (bribes)

Prohibition of *riswah* or 'bribe' is a very serious *muamalah* principle in its implementation. This is because *riswah* has almost become culture in the corrupt society like Indonesia. In Islam *riswah* is prohibited, because this deed can damage the arrangement of professionalism in business. The

²⁰ Ibid., page. 739

²¹ Abul A'la A-Maududi. *Asasul Iqtishad Bainal Islaam wannidzamul Ma'ashirah* (Kairo: Al-maktabah al-Fikr, t.t.), page 117

²² Ahmad Muhammad al-Asal dan Fathi Ahmad Abdul Karim, *An-Nizaamul Iqtisaadi Fil Islam Mabaadiuhu wa ahdaafuhu* (Kairo: Maktabah Wahbah, 1979), page 196

right of person in a business may be lost due to *riswah* made by other parties (competitors). *Riswah* can be used to justify a prohibited stuffs (*haram*) by unbeliever or vice versa. Therefore, in al-Hadith the Messenger of Allah curses the perpetrator and receiver of *riswah*. "The Prophet cursed the one who gives *riswah*" (Narrated by Abu Daud and Tirmidhi). Ahmad Muhammad Al-Assal²³ said that the Prophet himself had cursed those who gave bribes (*riswah*) in order to reach a position inappropriately or taking those he is not entitled to. He also cursed those who accept bribes, intends to take it and also cursed intermediary bribes on the roads so muddy that.²⁴

h. *Maslahah* (benefit)

According to Ibn al-Qayyim, the Sharia is the basis of wisdom and human welfare in the world and the Hereafter. This welfare lies on perfect justice, mercy, happiness, and wisdom. Whatever that turns justice into oppression, mercy to be difficult, well-being into misery, and wisdom into ignorance has nothing to do with Sharia.²⁵

i. *Khidmah* (service)

Messenger of Allah said: "A leader (*Imam*) is the caretaker and regulator of people affairs. He will be questioned over the affairs of his people" (Bukhari and Muslim). The Prophet said that, the manager is a public servant. In a broad sense, it means that a company in any business especially business related to services, must be able to provide optimum services to its customer. Because the service (*khidmah*) is the important part of Islamic *muamalah*.²⁶ To serve customer, one must use the principles of good service such as smiling, well-spoken, sweet-faced which may please those who are served. In al-Qur'an Allah says in Surah al-Hijr, verse 88: "but lower thy wing (in gentleness) to the believers". Muslim businesses people are required to behave politely in their business according to those recommended by al-Qur'an and Sunnah. Courtesy is the basic foundation and core of the good behavior, and it is also the basis of spirit of serving in the business. This character is highly valued and even covers all sides of human life.

j. Prohibition of *tathfif* (cheating)

Tathfif in Arabic means be thrifty, frugal, or stingy. While *al-muthaffif* is one who reduces the portion of other person when weighing/measur-

²³ *Ibid.*, page 150

²⁴ Syakir Sula, *op.cit.*, page 742

²⁵ *Ibid.*, page 744. See: M. Umar Chapra, *Towards a Just Monetary System*, (London: The Islamic Foundation, 1985), page 1.

²⁶ Syakir Sula, *op.cit.*, page 746.

ing for others. One form of frauds in business is to reduce the measurement and weights. Al- Qur'an considers this issue important; therefore, eliminating *tathfif* is one of the principles of *muamalah*. In al-Qur'an it is mentioned that eliminating *tathfif* (cheating) is one of ten of his will at the end of al-An'am, which means" ... give measure and weight with (full) justice;- no burden do We place on any soul, but that which it can bear ... ". (Q. S. Al-An 'am: 152). In addition, in Surah al-Isra' verse 35 Allah also says, which means: " Give full measure when ye measure, and weigh with a balance that is straight: that is the most fitting and the most advantageous in the final determination". From the above verses it is clear that in Islamic law, reducing measurement and weight is unlawful, because it is a form of cheating which is forbidden by Allah.

k. Keeping away from *gharar*, *maisir* (gambling) and *riba* (usury)

The main principle in Islamic *muamalah* especially in Islamic Financial Institutions is keeping away from *riba*, *gharar*, and *maisir*. In al-Qur'an Allah says: "Allah justifies trade and prohibits usury". From these verses it is clear that Islam justifies trade and prohibits usury. The definition of usury does not exist in al-Qur'an and al-Hadith. However, the practice is prohibited by the Prophet PBUH. It can be said that usury is taking addition from principal amount or capital assets unlawfully. Razi in the book of Tafsir Kabir suggests a number of reasons regarding the prohibition of usury, namely:²⁷

- 1) Usury is taking someone else's property without any counter-weight value. Yet according to the Prophet saw, one's possession is as unlawful as his blood for others;
- 2) Usury is prohibited because it prevents people to engage in active business;
- 3) Usurious contract is the medium used by people to take advantage of the capital. The act is unlawful and in contrary to justice and equality;
- 4) Usurious contract leads to strained relations between human beings;
- 5) Prohibition of *riba* is evidenced by many verses of *al-Qur'an*, and it is unnecessary to know the reason of the prohibition.

Whereas, *maisir* is gambling. Zarqa said that the existence of *al-gharar* may raise *al-qumar*, while *al-qumar* is the same with *al-maisir* or

²⁷ AM. Hasan Ali, op.cit., page 132-133. See: Fakhruddin Muhammad ar-Razi, Tafsir al-Kabir, (Bulaq: 1872), page 532.

gambling where one party may win and the others can be suffered from loss. According to Hussain Hamid Hassan, gambling contract is *gharar* contract, because each party of the gambling contract determines the amount of money taken or given, and determining the amount given can be carried out later depending on an uncertain event, i.e. if you win the amount received is known and if you lose then the amount given is also known.²⁸ This is apparent when the policyholder with the specific reasons cancels the contract before the reversing period. Beside that, the existence of profit element is influenced by underwriting experience, where the profit-loss occurs because of the determination. M. Anwar Ibrahim explained that the jurists have agreed that *gharar* is chancy speculation equally strong between being existing or not, or something may and may not be materialized.²⁹

These three things, namely *riba*, *maisir*, and *gharar*, essentially constitute the reason for Ulemas to prohibit all transactions of banking, insurance, mortgage, exchange, leasing, capital, venture etc., which do not use sharia principles. It is because in their operation there must be one or even all the three transactions of *gharar*, *maisir*, and *riba*.

IV. Differences between Islamic Insurance and Conventional Insurance

As already discussed above in Islamic Insurance there are principles considered as operational foundation. These principles distinguish among other the practice of Islamic insurance from conventional insurance. Looking at the principles of Islamic insurance and its operational systems, one will understand that the Islamic insurance services do not operate solely from the point of material interest. According to Syakir Sula, the presence of Islamic insurance conveys a mission to empower people (in economic and human resources) and cultural enlightenment. The differences between the Islamic insurance principles from conventional insurance are as follows:³⁰

- a. In terms of concept. In conventional concept, insurance is an agreement between two or more parties, with which the insurer bind itself to the insured with insurance premiums received, to give the indemni-

28 AM. Hasan Ali, *op.cit.*, page 134. See: Husain Hamid Hasan, *Hukmu al-Syari'ah al-Islamiyyah fi 'uqud al-Ta'min* (Cairo: Dar al-I'tisham, No Year), page 117-128.

29 AM. Hasan Ali, *op.cit.*, page 135.

30 Syakir Sula, *op.cit.*, page 326-328.

ties to the insured. Whereas in Islamic concept, insurance is a group of people who help each other, mutually guarantee, and cooperate by respectively spend *tabarru'* fund;

- b. Origin. Conventional insurance comes from Babylon 4000 - 3000 BC, known as Hammurabi agreement. In 1668 AD at the London Coffee House Lloyd's of London, a forerunner of conventional insurance was established. The Islamic Insurance originates from *al-Aqilah*, an Arab tribal customs long before Islam. Then it was approved by the Prophet as an Islamic law, and even poured in the world's first constitution (Constitution of Medina) made directly by the Prophet;
- c. Legal sources. Conventional insurance comes from the human mind and culture. Conventional insurance is based on positive law, natural law, and examples that existed before. While Islamic insurance comes from Allah's revelation, *sunnah* of Prophet Muhammad *saw*, consensus, *qiyas*, *istihsan*, *'urf* (tradition), and *mashalih mursalah*;
- d. Conventional insurance is not in harmony with Islamic law because it contains *maisir*, *gharar*, and *riba*, which are forbidden in *muamalah*, while Islamic insurance is free from *maisir*, *gharar*, and *riba*.
- e. In conventional insurance there is no Sharia Supervisory Board, since its principles are not based on sharia, so that there are many practices that violate sharia;
- f. Conventional insurance uses contract of sale (*mu'awadhah*, *idz'aan*, *gharar* and *mulzim* contract), while Islamic insurance uses *tabarru'* contract and *tijarah* contract (*mudlarabah*, *wakalah*, *wadiah*, *syirkah*, etc.);
- g. In terms of security/risk. Conventional insurance uses transfer of risk, where the risk is transferred from the insured to the insurer, while Islamic insurance uses sharing of risk, where a process of securing one another among the participants (*ta'awun*) shall apply;
- h. In terms of management. In conventional insurance there is no separation of funds, which results in forfeited funds (for life-saving products). Whereas in Islamic insurance, in saving (life) products there is separation of funds, i.e. *tabarru'*, charity and participant funds, so there is no forfeited fund. In the term of insurance (life) and general insurance all are *tabarru'* in nature;
- i. In conventional insurance participants are free to invest within the limits of statutory provisions, and not restricted to lawful and unlawful nature of the object or investment system being used. Whereas in the

Islamic insurance, investments can only be made in accordance with statutory provisions, as long as not contrary to the principles of sharia. In addition to the investment process, insurance shall be free from usury and from prohibited investments areas;

- j. In conventional insurance, the funds collected from premiums of all participants belong to the company. The company is free to use and invest the funds everywhere. Whereas in Islamic insurance, the funds collected from participants in the form of dues or contributions, are owned by the participants (*shohibul mal*), Islamic insurance only serves as the holder of mandate (*mudlarib*) in managing the funds;
- k. In conventional insurance, the premium element consists of mortality tables, interest, and insurance costs. In Islamic insurance, dues or contributions consists of *tabarru'* elements and savings (which does not contain elements of usury). *Tabarru'* is also calculated from the mortality table, but without technical interest calculation;
- l. Loading in conventional insurance is quite large, it is especially designated for commission agents, and it can absorb the premium of the first and the second years. Therefore, the cash value in the first and second year is usually nil, while in some Islamic insurance, loading (commission agents) are not charged to participants but from the shareholders' funds. However, some others will get around 20-30 percent of the first year premium. Thus, the first year cash value has been established;
- m. In conventional insurance, the cost of claims is taken from the company's account, as a consequence of being insurer of the insured. With respect to the practice, it seems true that conventional insurance is a pure business and there is no spiritual nuances; Whereas in Islamic insurance, financing sources of claim is taken from *tabarru'* account in which participants bear one another. If one of the participants get a catastrophe, then the other participants jointly bear the risks;
- n. The accounting system adopted by the conventional insurance is the concept of accrual basis i.e. the process of accounting that recognizes the occurrence of events or non cash circumstances. Moreover conventional insurance also recognizes income, assets increase, expenses, and liabilities in a certain amount which will be received in time to come. Whereas, Islamic insurance applies the concept of cash basis of accounting, which recognizes what really exists, while the accrual basis is considered in contrary to the sharia because it recognizes the exist-

- ence of income, property, or the debt which will occurs in the future, whether it really can or cannot happen only Allah knows;
- o. In conventional insurance, the benefits of underwriting surplus, reinsurance commission, and the results of investments belong to the company. While in Islamic insurance, the profit earned from underwriting surplus, reinsurance commissions and investment returns, does not entirely belong to the company, but it is shared (*mudlarabah*) among the participants;
 - p. Broadly speaking, the primary mission of conventional insurance is of economic and social mission. While the mission carried by the Islamic insurance is *aqidah* mission, the mission of worship (*ta'awun*), economic mission, and mission of empowering the people.

V. The development of Islamic Insurance

In the 20th century in many Muslim countries and Western countries insurance practices based on *sharia* flourished. These developments are very encouraging for the Muslims in particular and the people who wish to conduct insurance activities without the *gharar*, *maisir* and *riba*. Although many areas are still necessary to be addressed, these development indicates that quite a lot of people who welcome the presence of insurance based on *sharia*. Some Islamic insurance companies operating at present among other are: 1St Takaful Insurance Company(Kuwait), Abu Dhabi National Takaful Co PSC(United Arab Emirates), Al-Ahlia Insurance Co For Co-operative Insurance (Saudi Arabia), Al-Bakara Insurance Co (Sudan) Ltd (Sudan), Al-Borz Insurance Co (Iran), Al-Sagr Company for Co-operative Insurance (Saudi Arabia), Amana Takaful Limited (Srilangka), Amin Reinsurance Company (Iran), Amity Insurance Corporation EC (Bahrain), Asuransi Syariah Mubarakah (Indonesia), Arab American Takaful Insurance Co. Ltd (Jordan), Arabia ACE Insurance Company Ltd EC (Bahrain), Arabian Malaysian Takaful Co (Bahrain), ASEAN Retakaful International (L) Ltd (Malaysia), Beit Eaadat Ettamine Tounsi Saoudi (BEST-RE)-Tunisia (Tunisia), Bumi Putera Muda 1967 General Insurance, PT (Indonesia), Commerce Takaful Bhd (Malaysia), Commercial Services Company Arabia (Saudi Arabia), Dana Insurance Co (Iran), Day Insurance Co (Iran), Dubai Islamic Insurance & Reinsurance Company (AMAN) PSC (United Arab Emirates), Egyptian Saudi Insurance House (Egypt), El-Nilein In-

insurance Co. Ltd (Sudan), Export & Investment Insurance Co (Iran), Gulf Takaful Insurance Co KSCC (Kuwait), Hong Leong Tokyo Marine Takaful Bhd (Malaysia), HSBC Amanah Takaful (Malaysia) Sdn Bhd (Malaysia), Insurance Islam TAIB Sdn Bhd (Brunei), International Islamic Insurance Co (Bahrain), Islamic Takaful Insurance Co (Bahrain), MAA Takaful Bhd (Malaysia), Mayban Takaful Bhd (Malaysia), Prudential BSN Takaful Bhd (Malaysia), PT Asuransi Takaful Umum (Indonesia), Qatar Islamic Insurance Company (Qatar), Savanna Insurance Co Ltd (Sudan), SMAI Islamique (Mauritania), SOSAR AL-AMANE-Senegalese Company of Insurance and Reinsurance (Senegal), Syarikat Takaful Malaysia Berhad (Malaysia), Taamin Assurances Islamiques (Mauritania), Takaful IBB Bhd (Brunei), Takaful Ikhlas Sdn Bhd (Malaysia), Tokyo Marine and Nichido Fire Insurance Company Ltd (Japan), Tokyo Marine and Nichido Retakaful Pte Ltd (Singapore), Yemen Islamic Insurance Company-YSC (Yemen).³¹

From the discussions above, it is clear that the insurance institution has actually existed since the beginning of Islam. Practices and developments of new Islamic insurance have been flourishing lately. At present, the study of Islamic insurance and practices in various countries continues to be carried out, including in Indonesia, hoping that the world community particularly the Muslim community hold appropriate understanding on the practice of Islamic insurance. At this time Islamic insurance in Indonesia has also been developing rapidly. Based on the data existing on the National Sharia Council, at this moment in Indonesia there are 47 sharia insurance companies, namely PT. Asuransi Takaful Umum, PT. Asuransi Takaful Keluarga, PT. Asuransi Syariah Mubarakah, PT. MAA Life Assurance, PT. Great Eastern Life Indonesia, PT. Asuransi Tri Pakarta, PT. AJB Bumiputera 1912, PT. Asuransi Jiwa BRIngin Life Sejahtera, PT. Asuransi BRIngin Sejahtera Artamakmur (BSAM), PT. Asuransi Jasindo Takaful, PT. Asuransi Central Asia (ACA), PT. Asuransi Umum Bumi Putera Muda 1967, PT. Asuransi Astra Buana, PT. BNI Life Insurance, PT. Asuransi Adira Dinamika, PT. Staco Jasapratama, PT. Asuransi Sinar Mas, PT. Asuransi Tokio Marine Indonesia, PT. Asuransi Jiwa Sinar Mas, PT. Tugu Pratama Indonesia, PT. Asuransi Allianz Life Indonesia, PT. Avrist Assurance, PT. Panin Life Tbk, PT. Asuransi Ramayana Tbk, PT. Asuransi Jiwa Mega Life, PT. AJ Central Asia Raya, PT. Asuransi Umum Mega, PT. Parolamas, PT. Asuransi Jiwa Askrida, PT. Prudential Life As-

³¹ M. Ma'sum Billah, *op.cit.*, page 10-12.

surance, PT. Jasaraharja Putera, PT. AIA Financial, PT. Asuransi Jiwa Sequis Life, PT. Sunlife Financial Indonesia, PT. AXA Service Indonesia, PT. Asuransi Chartis Indonesia, PT. Asuransi Jiwa Manulife Indonesia, PT. Anugrah Life, PT. Asuransi Syariah Duta Future Internasional, PT. Jaya Proteksi Takaful, PT. Asuransi Jiwa Syariah Al-Amin, PT. Asuransi Ekspor Indonesia (Persero). In addition, there are three Islamic reinsurance companies, namely PT. Reinsurance International Indonesia (Reindo), PT. National Reinsurance Indonesia (Nasre), and PT. Reinsurance Carriers Indonesia Tbk (Marein). Regarding to the broker, there are seven Sharia Insurance and Reinsurance Brokers, namely: PT. Fresnel Prime Mandiri, PT. Asiare Binajasa, PT. Amanah Jamin Indonesia, PT. Asrinda Arthasangga & PT. AA Pialang Asuransi, PT. Madani Karsa Mandiri, PT. Aon Indonesia, VBS Insurance Brokers.

From the list of insurance companies above, it is noticeable that the development of insurance in both Indonesia and other countries is growing rapidly. The quite rapid development cannot be separated from legal politics the government adopts, which accommodates the implementation of Islamic law through positive law. In Indonesia, there are quite many Islamic financial institutions having been regulated under law, such as Islamic Banking, State Islamic Securities, Waqf, and Zakat Management. This shows that legal position of Islamic economic institutions in Indonesia has been strongly established. Although there have been some institutions regulated under legislation regulation, there are still some institutions that have not been regulated in legislation regulation, namely Islamic insurance. As a matter of fact Islamic insurance as already noted has long been practiced in the society and its development is very fast. With the emergence of quite many Islamic insurance companies and now, Islamic insurance has not been regulated in a special legislation regulation, therefore, in order that its position becomes increasingly stronger, at this moment Islamic insurance greatly need the support of legislation that could create a more conducive climate for its development in the future.

VI. Closure

The very fast development of Islamic insurance in many parts of the world including in Indonesia shows that the Islamic insurance is quite appealing for community. This is probably because of the practice of Islamic

insurance which is based on principles strongly supporting the existence of a sense of convenient, secure, mutual help, fair, and even mutually beneficial between the policyholders and companies. The problem is, there are still quite a lot of Muslims who do not understand the importance of sharia-based insurance. In addition, although the practice of Islamic insurance has long been carried out in various countries, some countries have not set up Islamic insurance in legislation regulation, therefore the position has not been as strong as Islamic banks, for example. These conditions also occurred in Indonesia.

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