

## IMPLEMENTATION OF *MUDHARABAH* CONTRACT ON CIAMIS PRUDENTIAL SHARIA INSURANCE PRODUCTS

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### Abstract

This research is motivated by the provisions of the DSN-MUI Fatwa Guideline Number 21/DSN-MUI/IV/2001, which states that a *mudharabah* contract can be converted into a *tabarru* contract, but a *tabarru* contract cannot be converted into a *mudharabah* contract. The purpose of this study was to determine the *mudharabah* contract in Pru Taqwa Prudential Syari'ah Ciamis insurance. This study also aims to determine the *tabarru'* contract on Pru Taqwa Prudential Syari'ah Ciamis insurance, as well as to determine the implementation of the *mudharabah* and *tabarru'* contracts on Pru Taqwa Prudential Syari'ah Ciamis insurance. The type of research used is field qualitative with descriptive analysis method. This study uses primary and secondary data sources. The results show (1) the *mudharabah* contract at Pru Taqwa Prudential Syari'ah Ciamis, namely where the insurance participant/insured is domiciled as *shahibul maal* and the Pru Taqwa Prudential Syari'ah company is the *mudharib/manager*. Where participants leave contributions (premium payments) to companies which will then be managed in the form of investments in halal companies that have been approved by the Indonesian Ulema Council. (2) The *tabarru'* contract at Pru Taqwa Prudential Syari'ah Ciamis is a contract that changes the contract where the participant becomes a risk bearer other than the company. The company is only a manager/operator. The manager is not entitled to use the *tabarru'* funds if there is no power of attorney from the insurance participant to avoid *maisyir*, *gharar* and *usury*. (3) The implementation of the *mudharabah* and *tabarru'* contracts on Pru Taqwa Prudential Syari'ah Ciamis is in accordance with existing provisions, namely based on the DSN-MUI Fatwa Number 21/DSN-MUI/IV/2001 concerning General Guidelines for Sharia Insurance, namely the *mudharabah* contract which can be converted into a *tabarru'* contract and a *tabarru'* contract cannot be converted into a *mudharabah* contract.

### Abstrak

Penelitian ini dilatarbelakangi oleh adanya ketentuan pada pedoman Fatwa DSN-MUI Nomor 21/DSN-MUI/IV/2001, yang mengemukakan bahwa akad *mudharabah* bisa diubah menjadi akad *tabarru*, tetapi akad *tabarru* tidak dapat diubah menjadi akad *mudharabah*. Tujuan penelitian ini adalah untuk mengetahui akad *mudharabah* pada asuransi Pru Taqwa Prudential Syari'ah Ciamis. Penelitian ini juga bertujuan untuk mengetahui akad *tabarru'* pada asuransi Pru Taqwa Prudential Syari'ah Ciamis, serta untuk mengetahui implementasi akad *mudharabah* dan *tabarru'* pada asuransi Pru Taqwa Prudential Syari'ah Ciamis. Jenis penelitian yang digunakan adalah kualitatif

lapangan dengan metode analisis deskriptif. Penelitian ini menggunakan sumber data primer dan sekunder. Hasil penelitian menunjukkan (1) akad *mudharabah* pada Pru Taqwa Prudential Syari'ah Ciamis yaitu dimana peserta asuransi/tertanggung berkedudukan sebagai *shahibul maal* dan perusahaan Pru Taqwa Prudential Syari'ah yang menjadi *mudharib*/pengelola. Di mana peserta menitipkan kontribusi (pembayaran premi) kepada perusahaan yang kemudian akan dikelola dalam bentuk investasi pada perusahaan-perusahaan halal yang telah disetujui oleh Majelis Ulama Indonesia. (2) Akad *tabarru'* pada Pru Taqwa Prudential Syari'ah Ciamis merupakan suatu akad yang mengubah kontrak dimana peserta menjadi penanggung risiko selain perusahaan. Perusahaan hanyalah sebagai pengelola/operator. Pengelola tidak berhak menggunakan dana-dana *tabarru'* tersebut apabila tidak ada kuasa dari peserta asuransi agar terhindar dari *maisyir*, *gharar* dan *riba*. (3) Implementasi akad *mudharabah* dan *tabarru'* pada Pru Taqwa Prudential Syari'ah Ciamis yaitu sudah sesuai dengan ketentuan yang ada yaitu berdasarkan Fatwa DSN-MUI Nomor 21/DSN-MUI/IV/2001 tentang Pedoman Umum Asuransi Syari'ah yaitu akad *mudharabah* yang dapat diubah menjadi akad *tabarru'* dan akad *tabarru'* tidak dapat diubah menjadi akad *mudharabah*.

**Keywords:** *Mudharabah*, *Tabarru'*, Insurance, Prudential

## Introduction

No one can predict what will happen in the future perfectly, even by using various analytical writing tools. Every prediction made will not be separated from the calculation errors that have been made. The reason for the miss prediction is because the future is full of uncertainty. Even certain things cannot be calculated at all, such as death and sustenance. Risks in the future can occur to a person's life such as death, illness or the risk of being fired from his job. In the business world, the risks faced can be in the form of the risk of loss due to fire, damage or loss or other risks. Therefore, every risk that will be faced must be overcome so that it does not cause even greater losses (Kasmir, 2014: 258).

Sharia insurance companies as institutions that provide fund management facilities to handle risks in accordance with Islamic principles are a necessity for the Muslim community. Therefore, it is necessary if we know how the sharia insurance is. Insurance does not mean rejecting destiny or eliminating a Muslim's trust in Allah. because everything happens after thinking well, working with full sincerity, thorough and careful and everything that exists in this world is all determined by Allah, while humans are only asked by Allah. to try as much as possible. This is based on the word of Allah. in the Qur'an QS. At-Taghaabun (64): 11. There is no misfortune that befalls a person except with Allah's permission; And whoever believes in Allah, He will guide his heart, and Allah is Knower of all things. (Surat At-Taghaabun (64): 11)

Insurance as a form of modern contract cannot be avoided from the contract that forms it. This is because there are two parties involved in a certain agreement to carry out each other's obligations, namely between the insurance participant and the insurance company. In practice, insurance has two contracts that form it, namely the *tabarru'* contract and the *mudharabah* (tijarah) contract.

Here the author will conduct research at Pru Taqwa Prudential Syari'ah Ciamis Insurance which is located on Jalan Ahmad Yani No. 56 Ciamis, Ciamis District, Ciamis

Regency. Asuransi Prudential is a leading life insurance company in Indonesia that was founded in 1995, a financial services group based in the UK and has many awards. Initially, Prudential insurance did not have an insurance company based on sharia, but along with the development of sharia financial institutions today, it gave birth to Prudential sharia insurance on September 17, 2007 on Jl. Expo, Kemayoran-Jakarta.

In practice, Prudential syari'ah Ciamis insurance offers insurance products that are specifically based on syari'ah, there is no mixing of conventional-based transactions. Insurance participants are given the freedom to choose the type of insurance product they want. In each premium payment, participant funds are managed in two accounts, namely *tabarru'* and *mudharabah* accounts. In a *mudharabah* contract, the profits will be given in accordance with the profit-sharing contract which was mutually made between the company and the insurance participants that had been agreed at the beginning.

Based on the financial statements of Prudential syari'ah insurance in 2016, *mudharabah* assets from investment returns reached Rp. 5,366,592,000,000, - indicates the large amount of assets owned by Prudential sharia insurance.

Research on contract implementation on sharia insurance products has previously been carried out by a Postgraduate student at UIN Sunan Kalijaga Yogyakarta, namely Fathurrohman Husen, (2015) in his thesis entitled "Implementation of Sharia Insurance Contracts (Case Study on Mitra Iqra Plus Products at AJB Bumiputera 1912 Office Surakarta Syari'ah Branch)" stated that there are three contracts included in the Mitra Iqra product contract that show the implementation of the DSN-MUI fatwa, namely the *tabarru'*, *mudharabah* and *wakalah* contracts.

Based on the background that has been stated above, this research is intended to examine, analyze how the implementation of the *mudharabah* contract is used in sharia insurance.

## **Theoretical Review**

### *Insurance Concept*

Insurance has several meanings. Insurance comes from the English word Insurance which means insurance or guarantee. In the Dutch language, insurance is called *assurantie* which consists of the origin of the words *asseradeur*, namely the guarantor and *geassureede*, which is the insured. The word insurance in Indonesian has been adopted into the General Guidelines for Indonesian Spelling (PUEBI) with the equivalent of the word insurance (Nopriansyah, 2016: 9). It is different with sharia insurance which has several equivalents in Arabic (Ali, 2008: 3) including *takaful*, *ta'min* and *tadhamun*, all of which have the meaning of mutually bearing, helping each other.

Sharia insurance law is still limited and has not been specifically regulated in law. More technically the operations of insurance companies/reinsurance companies based on sharia principles refer to the Decree of the Director General of Financial Institutions No. 499/LK/2000 concerning Types, Valuation, and Investment Restrictions of Insurance Companies and Reinsurance Companies with the Syari'ah System and several Decrees of the Minister of Finance, namely KMK No. 422/KMK.06/2003 concerning the Implementation of Insurance Company Business. In addition, sharia

insurance in Indonesia is also regulated in several DSN-MUI fatwas, including DSN-MUI Fatwa No. 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance. DSN-MUI Fatwa No. 51/DSN-MUI/III/2006 concerning the *Mudharabah-Musyarakah* Agreement on Sharia Insurance, DSN-MUI Fatwa No. 52/DSN-MUI/III/2006 concerning *Wakalah Bill Ujrah* on Sharia Insurance and Reinsurance, DSN-MUI Fatwa No. 53/DSN-MUI/III/2006 concerning the *Tabarru'* Agreement on Sharia Insurance and Reinsurance (Soemitra: 2009: 252).

The Qur'an and Hadith do not clearly state what and how to get insurance. However, it does not mean that legal insurance is haram because Islamic law contains Islamic insurance substance, in the Qur'an there is one verse concerning insurance even though it is not mentioned directly, namely in the QS. Al-Maidah (5): 2 commands to help each other.

#### *The Concept of Contracts in Sharia Insurance*

The contracts used in sharia insurance are: (1) *Tabarru'* 'is exerting all efforts to give wealth or benefits to others, either directly or in the future without any compensation, with the aim of goodness and ihsan deeds. There are several pillars of *tabarru'*, namely *wahib* (giver/*tabarru'*), *al-mauhub lahu* (grant recipient/*tabarru'*), *al-mauhub* (wealth to be given) and *as-Shighat* (Ijab and Qabul). (2) *Tijari/tijarah* contract is a commercial profit-oriented contract (for profit oriented). In this contract, each party to the contract has the right to seek profit. Some branches of *Tijari* contracts include *mudharabah* and *wakalah bil ujarah* contracts.

#### **Methods**

This study was designed using a descriptive-qualitative analysis approach. In the preparation of this research, the method used is descriptive-analytical, which is a method that functions to describe or provide an overview of the researched through data or samples that have been collected as they are without analyzing and making conclusions that apply to the public. This research was conducted at Prudential Syari'ah Insurance, Ciamis district. Prudential Syari'ah Insurance is located at Jalan Ahmad Yani No. 56 Ciamis, Ciamis District, Ciamis Regency, West Java 46211.

The sources of data that the researchers collected were using primary data sources and secondary data sources. The data collection technique used in this research is observation. Observation is the process of systematically observing and recording the phenomena studied. This observation becomes one of the data collection techniques if it is in accordance with the research objectives, which is planned and recorded systematically, and can be controlled for reliability (reliability) and validity (validity). The instrument used in this study used several instruments, namely, observation, interviews and documentation. The data analysis used in this research is using triangulation data.

#### **Results and Discussion**

Prudential plc is a leading British financial services company that was founded on 30 May 1848, a company that provides retail financial services and fund management in selected markets, namely the United Kingdom, United States of America, Asia and Europe. Prudential Indonesia has a business license in the field of joint life insurance based on the Decree of the Minister of Finance of Indonesia Number: 241/KMK.017/1995 dated June 1, 1995 in conjunction with the Letter of the Minister of

Finance Number: S.191/MK.6/2001 dated March 6, 2001 juncto Letter Minister of Finance Number S.614/MK.6/2001 dated October 23, 2001 in conjunction with Letter of the Minister of Finance Number S-9077/BL/2008 dated December 19, 2008. The company also has a Sharia Unit business license based on the letter of the Minister of Finance Number KEP 167/KM. 10/2007 issued on 20 August 2007 .

The emergence of sharia insurance for the first time in Indonesia cannot be separated from the name Takaful insurance in 1994. Seeing the opportunities for sharia life insurance in Indonesia, such as the largest Muslim population in the world, makes sharia insurance attractive which is legally religious law is preferred by Muslims has been able to increase the desire of conventional institutions or conventional insurance to include sharia insurance products as one of their products, namely PT Prudential Life Assurance (Prudential Indonesia). Since 2007 Prudential Indonesia has established a sharia business unit and has been trusted as the leader of the sharia life insurance market in Indonesia since its establishment. Prudential Syariah holds the principle of helping (*tabarru'*), where all members in this insurance are considered as a family. One of the Prudential Syari'ah branches which is Pru Taqwa Prudential Syari'ah Ciamis.

Pru Taqwa Prudential, which runs its business with sharia principles, began operating on Sunday, 11 May 2011 through the opening of the first Prudential Syari'ah branch office in Ciamis. The establishment of this sharia-based insurance company began with the initiative of Mr. Widi Keswiyanto who wanted transactions without usury. The number of transactions that use the usury system has resulted in many customers feeling suffocated with conventional-based payments. Therefore, Mr. Widi Keswiyanto submitted an application for the establishment of an insurance that is totally based on sharia without any combination with conventional transactions. Submissions were made to Prudential Indonesia in Jakarta and then Prudential Indonesia approved the establishment of Pru Taqwa Prudential Syari'ah Ciamis in 2010 only to start operating in 2011.

PT Prudential Life Assurance's vision is to be the number one company in Asia in terms of customer service, providing the best results for shareholders, and employing the best people. The mission of PT Prudential Life Assurance is to become the best Retail Financial Services company in Indonesia, exceeding the expectations of customers, marketing personnel, staff and shareholders by providing impeccable service, quality products, highly committed professional marketing personnel and generating profitable investment income.

The Meaning of the PT Prudential Life Assurance Symbol



- 1) Arrows. Symbolizes the ability of a sharp and calculating archer.
- 2) Snake. It is a symbol of wisdom.
- 3) Mirror. Describes a person's ability to see himself as he is.

*Mudharabah* Agreement on Pru Taqwa Prudential Syari'ah Ciamis Insurance

In Pru Taqwa Prudential Syari'ah Ciamis insurance, it is basically the same as in theory, the insurance participant/insured is the *shahibul maal* and the Pru Taqwa Prudential Syari'ah company is the mudharib/manager. Where participants deposit contributions (premium payments) to companies which will then be managed in the form of investments in halal companies that have been approved by the Indonesian Ulema Council. The companies are:

- 1) Investment in Islamic commercial banks such as BMI (Bank Muamalat Indonesia) and BSM (Bank Syariah Mandiri).
- 2) Investment in commercial banks that have sharia branches, such as BNI Syariah, BRI Syariah, BII Syariah, Bank IFI Syariah and so on.
- 3) Direct investment in companies that do not sell illicit or immoral goods with the *mudharabah*, wakalah and wadiah systems.
- 4) Investment in other Islamic financial institutions, such as sharia venture capital, sharia leasing, sharia bonds on the JSX and so on.
- 5) Investment in several hospitals in the area around Prudential's office.

#### *Implementation of Mudharabah and Tabarru' Agreements on Pru Taqwa Syari'ah Ciamis Insurance*

Based on the author's research, the implementation of *mudharabah* and *tabarru'* contracts on Pru Taqwa Prudential Syari'ah insurance is as follows: Firstly, *mudharabah* contract. The procedure in implementing the *mudharabah* contract is that the insurance participant gives a premium to the company which will then be distributed by the company in the form of investment. The company's profit is derived from the profit share of the investment fund based on the profit-sharing ratio principle. The insurance participants are the owners of capital and the company is the manager of capital. The profits derived from the development of the fund are shared between the participants and the company according to the agreed terms. At the Pru Taqwa Prudential Syari'ah company, the distribution of profits to participants is given when the agreement ends, the participant resigns or the participant dies. The results of the investment in the form of shares to companies that have been determined by the MUI will calculate how much profit sharing will be received by the participants and the company every year. The profit from this stock investment will not always be the same and certain every year, because the calculation of profit sharing in sharia is not like conventional profits, which is definitely determined at the beginning how much will be obtained each year. At sharia financial institutions, profits will be received from how much profit the company gets, then it is divided between the company, shareholders and insurance participants according to the *mudharabah* contract principle after deducting expenses, claim payments and operations.

The coverage period for investment is a minimum of 10 years. Prudential is able to make a claim payment of Rp. 9.9 Trillion, 1 claim paid every 8 seconds. This is a Prudential company's advantage compared to other insurance companies. Prudential also has a risk based capital (RBC) which is a capital adequacy ratio of 180%, which is 6 times the minimum mandatory requirement of 30%. Indicates that Prudential is a company that has a high capital adequacy. The contribution of sharia premiums received by Prudential is Rp. 3.4 Trillion. Judging from the amount of premiums received, the number of insurance participants who trust Prudential, especially in

sharia insurance. For each premium payment is adjusted to the ability of participants, but the company has a minimum requirement of Rp. 200,000, - per month.

Secondly, *tabarru* contract. The premium money given by the participants is the participant's *tabarru*' contribution which is put into the *tabarru*' fund and then invested by the company with the management of the wakalah bil ujah contract. The *tabarru*' contribution is determined based on age, gender and the amount of the sum insured. The management of wakalah bil ujah contracts includes administration, managing funds, managing PRUlink sharia investment funds, paying claims, underwriting, managing risk portfolios, marketing and conducting transactions. The amount of the administration fee is Rp. 37.500,-. On the basis of this management, participants are subject to an ujah of 50% of the insurance fee which is charged every month from the start date of coverage. If there is a sharing surplus formed from the *tabarru*' fund, the participant will get a share if he has never received a claim. The distribution of 30% is held in *tabarru*' funds, 14% is handed over to the manager and 56% is distributed to entitled policyholders in accordance with applicable terms and conditions. If the *tabarru*' funds are not sufficient to pay the insurance benefits, the manager will cover the lack of payment of the insurance benefits by using a Qardh contract. The return of Qardh to the manager will be made from the surplus sharing formed from the *tabarru*' fund. In contrast to conventional insurance, if the insurance participant gets an accident, it will be paid by the company and if there is a lack of funds, it will borrow the bailout funds from the reinsurer which will then be charged to the participant at the end.

Based on the explanation above, according to the author, the implementation of the *mudharabah* and *tabarru*' contracts at Pru Taqwa Prudential Syari'ah Ciamis is in accordance with existing provisions. There is no change in the contract, the *mudharabah* contract can be converted into a *tabarru* contract, and the *tabarru* contract cannot be converted into a *mudharabah* contract, because the company tries to maximize the available funds. If there is a shortage of funds for claim payments, they will borrow *tabarru*' reserve funds which will later be replaced if there is a sharing surplus. However, if there are participants who want to donate their investment funds (*mudharabah*), then the company will save them in the *tabarru*' fund account.

If it is related to the provisions of the DSN-MUI fatwa Number 21/DSN-MUI/IV/2001 concerning general guidelines for sharia insurance, namely the related provisions that *tabarru*' premium funds can be invested. Allowance of *tabarru*' premium funds to be invested as stated in the premium provisions in the DSN fatwa on general guidelines for sharia insurance can be seen with the mashlahah mursalah method which considers benefit in its legal determination. This is because the rules regarding "*tabarru*' funds in sharia insurance can be invested" there is no argument that explicitly mentions these rules, both in the Qur'an and al-Hadith.

The provisions regarding *tabarru*' contracts cannot be changed to *tijarah* contracts, what is meant here are the provisions that apply to insurance participants. If the insurance participant has deposited premium funds in the form of a *tabarru* contract in the form of a grant, then the participant may not change the contract into a premium payment with a *tijarah* contract. In the provisions of *tabarru*' premium funds that can be invested, the meaning here is that the insurance company as the manager of

the premium funds is allowed to invest in fields and with procedures that are in accordance with Islamic teachings.

### Conclusion

The conclusions that can be drawn from the discussions that the author has explained in the previous chapters are: (1) the *mudharabah* contract at Pru Taqwa Prudential Syari'ah Ciamis is where the insurance participant/insured is domiciled as *shahibul maal* and the Pru Taqwa Prudential Syari'ah company is the *mudharib/manager*. Where participants deposit contributions (premium payments) to companies which will then be managed in the form of investments in halal companies that have been approved by the Indonesian Ulema Council. (2) The *tabarru'* contract at Pru Taqwa Prudential Syari'ah Ciamis is a contract that changes the contract where the participant becomes a risk taker other than the company. The company is only a manager/operator. The manager is not entitled to use the *tabarru'* funds if there is no power of attorney from the insurance participant to avoid *mayyir*, *gharar* and *usury*. The purpose of the *tabarru'* contract is to help each other if there are participants who are affected by disaster. In the event of an event that is borne by the participant, insurance benefits must be paid, the insurance payment will be charged to the *tabarru'* fund. The *tabarru'* fund is charged in the first and second years of 80% which is allocated from the payment of the participant's contribution (premium), in the third to fifth year only 15% for the following year until the tenth year is included in the investment fund (*mudharabah*). (3) The implementation of the *mudharabah* and *tabarru'* contracts in Pru Taqwa Prudential Syari'ah Ciamis is in accordance with existing provisions, namely based on the DSN-MUI Fatwa Number 21/DSN-MUI/IV/2001 concerning General Guidelines for Sharia Insurance, namely the *mudharabah* contract which can be converted into a *tabarru'* contract and a *tabarru'* contract cannot be converted into a *mudharabah* contract. The company tries to maximize the available funds and if there is a shortage of funds for claim payments, it will borrow the *tabarru'* reserve funds which will later be replaced if there is a surplus sharing. But if there are participants who want to donate their investment funds (*mudharabah*), the company will save them in the *tabarru'* fund account.

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