

Application for *Wakalah bi al-Ujrah* Contract in Various Banks, Insurance, and Syariah Mutual Funds Indonesia According to Wahbah Zuhaili

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Abstract

Wakalah is one of the most frequently used transactions in insurance, mutual funds, and especially Islamic banking. Insurance is one of the economic activities that we often hear about, many of these activities, such as health insurance, education, and etc. This paper uses a literature analysis method by using journals as its primary source. According to Wahbah Zuhaili there is insurance that is allowed to do and there is insurance that is illegal to do. Basically, the purpose of the insurance is having a mutual help. So if the participant does not use the insurance premium they have been paid, this premium will be allocated to others. Until there is a help-seeking action based on sincerity. However, it will be illegal if the purpose of this insurance activity is based solely on profit. Thus, it will create a synergy that will eliminate the benefits. So this insurance being an illegal activity. which is containing five elements, there are riba, gharar, gaban, qimar, and jahalah, which can damage human benefits and harms. Then insurance activity is illegal.

Keywords: *Insurance, Shariah Banking, Shariah Law, Wahbah Zuhaili*

Introduction

Indonesia is a country with the largest Muslim population, so it has a very high potential for industry based on *sharia* elements. Seeing the development of *sharia* market that has been growing rapidly,¹ it is also able to encourage the country's financial sector, both from *sharia* banking, *sharia* insurance, or other *sharia* financial institutions. The Islamic banking assets have increased on average 60 per cent in the last four years. They rose from US\$ 1.498 billion (1 per cent of the total banking assets) in 2004 to US\$ 2,6 billion (1,8 per cent of the total banking assets) in 2005. Bank Indonesia has devised a roadmap to ensure that the Islamic banking industry has a share up to 6 per cent of the total Indonesian banking market by 2011. There are 30 *takaful* and re-*takaful* companies in the country. In 2005, *takaful* industry held 1,5 per cent of total insurance market which was expected to increase to 2 per cent by the end of 2006. There are growing opportunities to invest in Islamic stocks, bonds, and money market instruments in Indonesia.² With the emergence of various Islamic financial institution companies, the products offered are also growing and one of the various contracts offered to customers is *wakalah* contract.

Wakalah contract almost being a principal contract in every bank product. The contract itself is a power of attorney from a person called *muwakkil*, to a person who represents the *muwakkil* to perform certain legal actions.³ Some of the products that use this contract are insurance, mutual fund, and another product. Where the contract becomes a legality in the course of the transaction. However, in the field, many economic activities are not based on an appropriate contract, or not fulfilled a contract which results in the cancellation of the contract to the invalidity of the transaction. Currently, several insurance applications that occur are violating the rules and detrimental to customers (*shahibul maal*), the example, the insurance at BTPN *Syariah*, indirectly gives the impression that MMS is forced to pay premiums to all parties in executing insurance claims. Insurance (Allianz) does not hand over claims directly because

¹Nur Hisamuddin, "Implementasi Akuntansi Akad *Wakalah bil Ujrah* Perusahaan Asuransi *Syariah* Berdasarkan PSAK 108: Studi di PT Asuransi *Takaful Keluarga*", *Jurnal Addin*, Vol. 8 No. 1, 2014, 54.

²M. Mansoor Khan and M. Ishaq Bhatti, "Islamic Banking and Finance: On Its Way to Globalization", *Managerial Finance*, Vol. 34 No. 10, 2008, 718.

³Fatwa DSN-MUI No. 113/DSN-MUI/IX/2017 Tentang Akad *Wakalah bil Ujrah*.

those who submit the claim and the technical payment as well as the amount of premium that must be paid. Because premium payments are combined with financing installment payments. BTPN *Syariah* provides claims only for customers and customers' husbands who died and there is no return of claims for customers who did not pass away and for customers who made early repayments.⁴

In case of Islamic mutual fund, *sharia* committee must be provided to oversee that the offered products are fully *sharia* compliance. *Sharia* committee will guide the fund manager in choosing the products that categorized as *sharia* compliance. *Sharia* principle encourages the business activity especially in Islamic capital market to be free from usury (*riba*), gambling (*maysir*), and (*gharar*) uncertainty activities.⁵ However, the *sharia* law has regulated it in such a way that nothing happens and can cause harm to both parties. So, according to the case before, the researcher will discuss a research about "*Application for Wakalah bi al-Ujrah Contract in Various Banks, Insurance, and Syariah Mutual Funds Indonesia According to Wahbah Zuhaili*".

Literature Review

A. Biography of Wahbah Zuhaili

Wahbah az-Zuhaili is a contemporary scholar who is known as a great scholar. He is a figure scholar who is famous in the field of *fiqh* and also expert in commentator. Almost all of his time is only focused on developing scientific fields. He lived in the 20th century who was equal to other figures, such as Thahir Ibn Asyur, Said Hawwa, Sayyid Qutb, Muhammad Abu Zahrah, Mahmud Syaltut, Ali Muhammad al-Khafif, Abdul Ghani, Abdul Khaliq, and Muhammad Salam Madkur with understanding and guidance from knowledge. Since childhood Wahbah az-Zuhaili was familiar with the basics of Islam. At the age of 7, his friends also attended *ibtidaiyah* school in his village until 1946. Entering his formal education, he spent almost 6 years of

⁴Viddy Cariestya Genoveva, et. al., "*Kedudukan Hukum Akad Asuransi dalam Akad Pembiayaan Murabahah Nasabah BTPN Syariah MMS Majalengka*", *Jurnal Ekonomi Syariah dan Bisnis*, Vol. 1 No. 2, 2018, 135.

⁵Faaza Fakhrunnas, "*The Performance of Islamic Mutual Funds, Why Is It Not Better than Conventional?*", *Islamic Management Accounting and Economics*, Vol. 1, 2018, 21.

secondary education, and in 1952 he received a diploma, which was the first step to continue to university. Namely the *Sharia* Faculty of Damascus University, obtained his bachelor's degree in 1953 AD. Then continue his doctoral studies, he deepened his knowledge at al-Azhar University in Cairo. And in 1963 he officially became a Doctor with his dissertation entitled *Atsar al-Harb fi al-Fiqh al-Islami*.⁶

B. *Wakalah bi al-Ujrah* Contract

According to DSN-MUI, the *wakalah bil ujrah* contract is the contract used between the insurance participant and institution. *Wakalah* itself means (representation) or the hand over, delegation, or granting of a mandate or power of attorney for the transfer of authority by one party to another party in matters which may be represented.⁷ So it could be assumed that *wakalah bi al-ujrah* is *wakalah* which accompanied by rewards in the form of *ujrah* which also called by *wakalah bi al-tijarah*.

Meanwhile, according to Bank Indonesia regulations "*wakalah bil ujrah*" is the granting of authority from *sharia* deposit certificates investors to a *sharia* deposit certificates transaction supporting institutions to conduct a *sharia* certificate of deposit transactions in exchange (*ujrah*)⁸ which is applied to the deposit transaction certificate.

Based on the DSN-MUI, this contract is said to be valid if it meets all the criteria. *First*, a *muwakkil* and *wakil* may be a person (*syakhshiyah thabi'iyah/natuurlijke persoon*) or who is likened to a person, whether incorporated or not incorporated (*syakhshiyah i'tibariah/syakhshiyah hukumiyah/rechtsperson*), in accordance with applicable laws and regulations. *Second*, a *muwakkil* and *wakil* must be competent with the law in accordance with *sharia* and the applicable laws and regulations. *Third*, *muwakkil* must have the authority to provide power of attorney to other parties, both authority which is pure or *ashliyyah* and represented or *niyabiyyah*. *Fourth*, a *muwakkil* must have the ability to pay fee or *ujrah*. *Fifth*, a *wakil* must have the ability to realize the legal acts authorized to him.⁹

⁶Sadiani dan Abdul Khair, "Analisis Kritis Pemikiran Wahbah az-Zuhaili Tentang Penetapan", *Fenomena*, Vol. 8 No. 2, 2016, 145.

⁷Fatwa DSN-MUI No. 113/DSN-MUI/IX/2017 Tentang Akad *Wakalah bil Ujrah*.

⁸Peraturan Bank Indonesia Nomor 20/9/Pbi/2018 Tentang Transaksi Sertifikat Deposito Syariah di Pasar Uang.

⁹Fatwa DSN-MUI No. 113/DSN-MUI/IX/2017 Tentang Akad *Wakalah bil Ujrah*.

In the object, it must fulfill the following requirements. *First*, *wakalah bi al-ujrah* can only be done on activities or legal actions that may be represented. *Second*, the object of *wakalah bi al-ujrah* must be a certain work or act and must be clearly known by the representatives and *muwakkil*. *Third*, the object of *wakalah bi al-ujrah* must be carried out by the representative. *Fourth*, the contract of *wakalah bi al-ujrah* may be limited in terms of time by *muwakkil* (authorizer). *Fifth*, the *wakil* is not obliged to bear the risk of losses arising from the actions he did, except because *al-ta'addi*,¹⁰ *al-taqshir*,¹¹ or *mukhalafat al-syuruth*.¹²

The provisions of the *ujrah* given are as follows. *First*, the *ujrah* can be in the form of money or goods that may be used according to *sharia (mutaqatuwam)* and the applicable laws and regulations. *Second*, the quantity and quality of the *ujrah* must be clear, either in the form of a nominal number, a certain percentage, or a formula that is agreed upon and known by the parties making the contract. *Third*, the *ujrah* may be paid in cash, installments and resilient in accordance with *sharia*, agreements, and/or applicable laws and regulations. *Fourth*, the agreed upon *ujrah* may be reviewed for benefits that have not been received by *muwakkil* according to the agreement.¹³

C. Insurance and Syariah Mutual Funds in Various Syariah Bank

Insurance is an agreement between two or more parties, by which the insurer binds itself to the insured, by receiving insurance premiums¹⁴ to provide reimbursement to the insured due to loss, damage or loss of expected profits, or legal liability to third parties that may be suffered by the insured arising from an uncertain event, or to provide a payment based on death or someone's life is insured.¹⁵ In this case Indonesia has two types of insurance which are very contradictory, namely conventional insurance and *sharia* insurance. The conventional insurance, funds are collected from customers (premiums) become fully owned by the company. Thus, the

¹⁰*Al-ta'addi* is doing something that should not be done.

¹¹*Al-taqshir* is not doing an action that should be done.

¹²*Mukhalafat al-syuruth* is violating the content and/or substance or conditions agreed in the contract.

¹³Fatwa DSN-MUI No. 113/DSN-MUI/IX/2017 Tentang Akad *Wakalah bil Ujrah*.

¹⁴The insurance premium is an amount of money that must be paid each month as the obligation of the insured for his participation in insurance that has been determined by the company.

¹⁵Indah Nihyatia, "Penerapan dan Aplikasi Akad *Wakalah pada Produk Jasa Bank Syariah*", *Jurnal Ekonomi dan Hukum Islam*, Vol. 3 No. 2, 2013, 91.

participant of the fund will be forfeited if he does not make any claim during the coverage period. Conventional insurance companies also have freedom in determining the allocation of investment premium funds. Apart from how to manage it, conventional insurance risk management is in the form of risk transfer from participants to insurance companies (risk transfer). Where the risk is borne or charged by insurance participants.

But in *sharia* insurance, the *sharia* principle is the basis of its operation. Which is based on the principles of Islamic law in insurance activities based on fatwas issued by institutions that have the authority to determine. With the premium paid by participants to the insurance institution. The epidemic that was collected from the policyholders was still jointly owned by the participants. The position of the insurance company only acted as a trustee to manage it on the basis of a contractual agreement, either with *ujrah* (commission) or without *ujrah*. Therefore, the *sharia* insurance company will return its *tabarru'* fund management underwriting surplus to participants who have not made a claim. Although there are also some who do not return the funds when participants have stated their donation during the contract.¹⁶ *Syariah* insurance also called by *takaful*, between *takaful* and insurance are institutions involved in risk management which aim to reduce the suffering experienced by individuals. *Takaful* also has an element of mutual help which distinguishes it from conventional insurance. *Takaful* is a system whereby participants regularly contribute a certain amount to a common fund with the intent of jointly guaranteeing each other.¹⁷

Syariah mutual funds is an investment facility that can be used by the public to develop a portfolio of securities that can be obtained in increasing the value of the Net Asset Value (NAV). Mutual funds are instruments that are used financially to raise funds from the investor community which are then invested in a securities portfolio by the investment manager. Mutual funds are a collection of shares, resignations, or other securities owned by a group of investors and managed by an investment company.¹⁸ Some of the contracts that

¹⁶Deni Purnama, "Penerapan Akad *Wakalah bi al-Ujrah* dalam Industri Asuransi dan Lembaga Keuangan *Syariah* Lainnya", *Jurnal Ekonomi dan Hukum Islam*, Vol. 2 No. 1, 2012, 212.

¹⁷Aisyah Mustafa and Asmak Ab Rahman, "The Islamic Perspective on the Underwriting of Health *Takaful* Products: A Study of Selected *Takaful* Operators in Malaysia", *New Developments in Islamic Economics*, Vol. 9 No. 3, 2018, 136.

¹⁸Setia Mulyawan, "Kinerja Reksa Dana *Syariah* dan Beberapa Faktor yang

occur in *syariah* mutual funds, such as *wakalah bil ujarah* if the investor as the owner of the fund (*shahibul maal*) is subsequently invested in the securities portfolio by the investment manager as a *shahibul maal* representative according to the provisions and principles of Islamic *sharia* fund owners (investors) who wish for a *halal* investment will secure their funds under a *wakalah* contract to the investment manager. *Sharia* mutual funds will act in a *mudharabah* agreement as a *mudharabah* that manages mutual funds from investors. As proof of participation, investors will receive participation units from Islamic mutual funds. Islamic mutual funds will be placed back into the activities of the issuer (other company) by purchasing *sharia* securities. In this case, Islamic mutual funds act as *shahibul maal* and the issuer acts as *mudharib*.¹⁹

Methodology

This research used qualitative methods. And, it was used with a study approach based on the examination of previous studies.²⁰ With a normative learning using a conceptual approach from individual life history by Wahbah Zuhaili and statute approach by looking at phenomena and making statements and concluding them.²¹ So that documents are processed and analyzed through two stages, namely explaining and describing. This research is a library research with the object of the research on related phenomena. To obtain data through this research, primary data was carried out by analyzing journals and several books relevant to this research.

Result and Analysis

A. Application for Wakalah bi al-Ujarah Contract in Indonesian Insurance

Wakalah bi al-ujrah that have been implemented in some various product such as insurance itself. Some of case that occur,

Memengaruhinya: Studi di Pasar Modal Indonesia 2010-2013", *IJTIHAD: Jurnal Wacana Hukum Islam dan Kemanusiaan*, Vol. 16 No. 2, 2017, 219.

¹⁹Ade Nanda Sawitri, "Analisis Investasi dalam Asuransi Syariah di Indonesia Terhadap Portfolio Optimal", *Media Ekonomi*, Vol. 19 No. 2, 2017, 35-36.

²⁰Paola Paoloni and John Dumay, "The Relational Capital of Micro-Enterprises Run by Women: The Startup Phase", *The Electronic Library*, Vol. 34 No. 1, 2017, 175.

²¹Siti Muflichah, "Implementation and Protection of Legal Law on Cash Waqf Toward Tabung Wakaf Indonesia of Dompot Dhuafa Jakarta", *Jurnal Dinamika Hukum*, Vol. 17 No. 2, 2017, 1.

such as contract between customers and the companies as the risk management service at PT *Asuransi Takaful Keluarga* is *tijarah*. The use of *tijari* contract is comprised of *mudharabah*, *mudharabah musytarakah*, and *wakalah bil ujarah* in PT *Asuransi Takaful Keluarga* can be implemented on almost any products that have an element of risk management in the form of savings as well as secure investments in accordance with *sharia* law. Recognition, measurement, presentation, and disclosure undertaken by PT *Asuransi Takaful Keluarga* are appropriate based on PSAK 108.²² Another case which happened in PT Family MTakaful and Prudential Insurance, use *mudharabah* deposits and *sharia* bonds for the contract of investment. The next PT Insurance Allianz have the optimal type of investment, which is mutual funds.²³ However, several obstacles that occur at BTPN *Syariah* indirectly give the impression that MMS is forced to pay premiums for all parties in executing insurance claims. Insurance (Allianz) does not hand over claims directly because the person submitting the claim and submitting the technical payment, as well as the amount of premium that must be paid. Because premium payments are combined with financing installment payments. BTPN *Syariah* provides claims only for customers and customers' husbands who died and there is no return of claims for customers who did not pass away and for customers who made early repayments.²⁴

The scholars agreed that in insurance the relationship between the insurance participant and his institution uses the *wakalah* contract, because in essence it is the *tabarru'at* contract (voluntary-benevolence) so that there is no legal consequence (*ghairu laazimah*) for the representative (*al-wakiil*). *Tabarru'* contract (grant) is used for participant relations, where basically the contract is done on the basis of assistance (*ta'awun*). Because, basically the system implemented in *sharia* insurance is a system that operates with a sense of mutual responsibility, helping, and protecting each other between the participants.²⁵

²²Hisamuddin, "Implementasi Akuntansi Akad *Wakalah bil Ujarah* Perusahaan *Asuransi Syariah* Berdasarkan PSAK 108", ..., 1.

²³Sawitri, "Analisis Investasi dalam *Asuransi Syariah* di Indonesia Terhadap *Portofolio Optimal*", ..., 49.

²⁴Genoveva, et. al., "Kedudukan Hukum Akad *Asuransi* dalam Akad *Pembiayaan Murabahah Nasabah BTPN Syariah MMS Majalengka*", ..., 135.

²⁵Amalia Fadilah dan Makhrus, "Pengelolaan *Dana Tabarru'* pada *Asuransi Syariah* dan Relasinya dengan *Fatwa Dewan Syariah Nasional*", *Hukum Ekonomi Syariah*, Vol. 2 No. 1, 2006, 90.

So in the collection of premiums or insurance funds must be in *tabaru'* which comes from the word *tabarra'a-yatabarra'u-tabarru'an*, which means donations or charity.²⁶ Where there is a separation between *tabarru funds'* with company funds, so do not recognize the term charred funds. Thus, funds collected from participants in the form of contributions remain the property of participants, companies or Islamic insurance entities only as holders of trust in managing the funds.²⁷ But for the relationship between participants and insurance companies used a *tijarah* agreement (*ujrah/fee*), *mudharabah* (profit sharing), *mudharabah musyarakah*, *wakalah bil ujah* (representative), *wadiah* (safekeeping), *syirkah* (union).²⁸

If the contract is changed to *wakalah bi-ajr (wage)*, then the condition changes to *laazimah* (legal consequences) and is classified as a barter-compensation agreement (*mu'aawadhaat*). Because, *wakalah bil ujah* that occurs in this insurance activity by giving power of attorney from the participants to the insurance company to manage the funds of participants in exchange for the gift of *ujrah* (fee). *Wakalah bil ujah* may be done between insurance companies with participants. The application of *wakalah bil ujah* can be done in *sharia* insurance products in the form of saving or non-saving (*tabarru'*). Funds collected from the participants by the *sharia* insurance fund are obliged to invest the fund in the form of saving (*mudharabah*) and non-saving (*tabarru'*) and *sharia* insurance companies are required to invest on *sharia* basis.

This Islamic insurance aims to help you, so that in its management if you experience a loss it will divide the risk among insurance participants (risk sharing).

B. Application for Wakalah bi al-Ujrah Contract in Various Banks in Indonesia

Apart from insurance, the *wakalah bi al-ujrah* contract also available in *sharia* banking products. This is the case when the customer gives a power of attorney to the bank to represent himself doing certain service work. However, as stated in the Law No. 21 of 2008 on *Sharia* Banking, Islamic banks have several functions, not

²⁶*Ibid.*, 91.

²⁷Teguh Suropto dan Abdullah Salam, "Analisa Penerapan Prinsip Syariah dalam Asuransi?", *JESI (Jurnal Ekonomi Syariah Indonesia)*, Vol. 7 No. 2, 2018, 135.

²⁸Fadilah dan Makhrus, "Pengelolaan Dana Tabarru' pada Asuransi Syariah dan Relasinya dengan Fatwa Dewan Syariah Nasional", ..., 87.

only as an association and distribution fund but also as a service institution.

Banking services is a bank service for customers that do not use cash. And, for this service the bank accepts a fee. These services are in the form of money transfers, check disbursement (collection), foreign exchange (forex), letters of credit (*sharia* import letter of credit & *sharia* export letter of credit), in the implementation of letters of credit import, not only has one of my contracts but many contracts like *wakalah bil ujarah* with *qard*, *wakalah* with *mudharabah*, *wakalah* with *hiwalah*. Whereas the export letter of credit uses a contractual agreement with *qard* and contractual agreement with *mudharabah*. Other *sharia* banking products such as letters of guarantee, custody, factoring, trustee, *sharia* mutual fund investment, *sharia* bank account financing, and *sharia* insurance.²⁹

C. Application for Wakalah bi al-Ujrah Contract in Syariah Mutual Funds

Mutual funds are an alternative investment for the community of investors, especially small investors who do not know and do not have much time to calculate the risk of their investment. Mutual funds are designed as a means to raise funds from people who have the capital and desire to invest, but only have limited time and knowledge.³⁰

Whereas *sharia* mutual fund contain the meaning of management or policies whose investments refer to Islamic law. This means not investing in stocks or bonds whose management or products are against *sharia* law. According to the *Ulama'*, *sharia* mutual funds are mutual funds whose management and investment policies are based on *sharia* law.³¹ So that the contract used is either in the form of a contract between the financier as the owner of the assets (*sahib al-mal/ rab al mal*) with the investment manager as the representative of *shahib al-mal*, and between the investment manager as the representative

²⁹Nihyatia, "Penerapan dan Aplikasi Akad Wakalah pada Produk Jasa Bank Syariah", ..., 94.

³⁰Nooria Fitri, *Implementasi Akad Wakalah dan Mudharabah pada Reksa Dana Syariah Sebagai Alternatif Investasi* (Semarang: Universitas Islam Negeri Walisongo, 2019), 15.

³¹Bintang Pratama Buana Putra dan Imron Mawardi, "Perbandingan Kinerja Reksadana Syariah di Indonesia Menggunakan Metode Sharpe (Studi Kasus Reksadana Syariah Saham, Reksadana Syariah Pendapatan Tetap, dan Reksadana Syariah Campuran Periode 2012-2014)", *Terapan*, Vol. 3 No. 9, 2016, 15.

of *shahib al-mal* and the user capital.³² So that the *wakalah bil ujah* happens. The conditions must be in accordance with predetermined *sharia* law.

More clearly, the mechanism for purchasing *sharia* mutual funds between investors and investment managers is carried out using the *wakalah* system, whereby investors mandate the investment managers to invest in the interests of investors in accordance with the prospectus. Then the investment manager manages funds from investors to be invested in various investment instruments in the capital market with a collective investment contract scheme with a custodian bank where the investment manager has the authority to manage a collective investment portfolio. Custodian banks are given the authority to carry out collective safeguards. Meanwhile, investment managers and investment users are conducted using the *mudharabah* system, which is the distribution of profits between the capital owners represented by investment managers and investment users based on agreed proportions. The owner of the capital only bears the risk of the funds that have been given. The investment managers do not bear the risk of loss, unless it occurs due to negligence.³³

D. Application for Wakalah bi al-Ujah Contract in Various Banks, Insurance According to Wahbah Zuhaili

According to Wahbah Zuhaili, there are only two types of insurance, namely cooperative insurance (mutual insurance) or in the terms *al-ta'min al-ta'awuni* and insurance with fixed pay or *al-ta'min bi as-tsabit*. As for what is meant by *al-ta'min al-ta'awuni* are a number of people who agree that each of them pays a certain amount of money in order to compensate members affected by certain calamities.³⁴ The insurance agent is not an organization which is divided with the participants, but the members involved in this insurance do not aim to obtain profit. But its members only aim to ease the burden of losses caused by disasters and other unexpected things. So the premiums paid are based on sincerity. As was realized in the word of Allah:

³²Fitri, *Implementasi Akad Wakalah dan Mudharabah pada Reksa Dana Syariah Sebagai Alternatif Investasi, ...*, 6.

³³*Ibid.*, 94.

³⁴Syamsudin, *Analisis Pendapat Wahbah al-Zuhaili Tentang Asuransi dalam Kitab al-Fiqh al-Islam wa Adillatuhu* (Mataram: Skripsi Fakultas Syari'ah dan Ekonomi Islam Universitas Islam Negeri Mataram, 2017), 4.

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ﴿٣٥﴾

While insurance with a fixed premium (*al-ta'min bi qis thabit*) is a person who is guaranteed security (insurance) is responsible for making certain payments to the insurer. As for the insurer is an insurance company consisting of a number of people who have certain shares. Based on the amount of payment given by the insurance recipient, the insurer is responsible for providing certain insurance services in the event of a hazard or disaster to the insurance recipient.³⁶

The most fundamental difference between business insurance (*al-ta'min bi qis thabit*) and cooperative insurance (*al-ta'min al-ta'wuni*) is, business insurance (*al-ta'min bi al-tsabit*) is insurance which is managed by a stand-alone institution outside of the group of participants who deposited the premium. So it can be distinguished in detail that in this insurance there are two parties that play a role, namely, the insurance management agency (guarantor) and the insurance participant (guaranteed) where the orientation of the insurance is profit.

While cooperative insurance (*al-ta'min al-ta'wuni*) is the insured party and the guarantor is in one group itself. This means that the party who holds money or in terms of insurance is known as a premium is a person who shares it not from another party that stands alone as well as business insurance. And, as the main orientation of this insurance is to help with the willingness of the heart, so the concept of insurance like this are allowed in Islam according to Wahbah al-Zuhaili.³⁷

The solution is the *takaful* contract, *takaful* and insurance are institutions involved in risk management which aim to reduce the suffering experienced by individuals. *Takaful* also has the element of mutual help which distinguishes it from conventional insurance. *Takaful* is a system whereby participants regularly contribute a certain amount to a common fund with the intent of jointly guaranteeing each other.³⁸

Basically, Wahbah Zuhaili forbids insurance because it assumes that insurance is unlawful with five elements, there are five factors

³⁵Al-Qur'an Surat al-Maidah Ayat 2.

³⁶Syamsudin, *Analisis Pendapat Wahbah al-Zuhaili Tentang Asuransi dalam Kitab al-Fiqh al-Islam wa Adillatuhu, ...*, 53.

³⁷*Ibid.*, 63.

³⁸Mustafa and Rahman, "The Islamic Perspective on the Underwriting of Health Takaful Products: A Study of Selected Takaful Operators in Malaysia", ..., 136.

that cause insurance to be unlawful. *First is riba*. The compensation provided by insurance companies exceeds all premiums given by the insurance recipient, and the excess given without reciprocity is considered prohibited usury. Added to the fact that insurance companies invest their capital on projects that promote usury, and charge interest to insurance recipient in the event of delinquency of premium installment payments to be paid.

Second, insurance contains *gharar* benefits in the form of something speculative, not fixed, uncertain, and this is a form of *gharar*. Insurance companies must pay compensation to the recipient without compensation in accordance with *gharar*. *Third*, insurance contains element of deception/fraud (*gaban*) because the goods and prices become unclear. Whereas certain information of goods and prices is a legal requirement of a transaction. *Fourth*, insurance contains elements of *qimar*. This business insurance agreement is classified as a form of gambling, because there are advantages in financial compensation, where the recipient of the insurance pays a small amount of contribution and waits for a large profit, this is the nature of gambling. *Fifth*, insurance contains an element of misery (*jahalah*), where the amount of the premium to be given by the recipient to the insurer is not clear, as is apparent in life insurance. Then both parties in insurance refer to the transaction that does not notify how much loss and profit will be obtained by both parties of the insurer.³⁹

Based on the factors above, insurance that aims to seek profit, it will cause usury/*riba*, *gharar*, *gaban*, *qimar*, *jahalah*. And all of this refers to thankfulness so that this insurance becomes *haram*.

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³⁹Syamsudin, *Analisis Pendapat Wahbah al-Zuhaili Tentang Asuransi dalam Kitab al-Fiqh al-Islam wa Adillatuhu, ...*, 44-46.

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