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Hybrid Contract in Sharia Insurance Practices in Indonesia

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Abstract

The hybrid contract is a combination of several contracts. It exists due to the increasingly complex demands of human needs in contemporary times. However, its validity according to the Shari'a is still in doubt caused by a hadith of the Prophet that forbids the practice of two (or more) contracts if they are carried out in one transaction. In Indonesia, the hybrid contract is practiced in various transactions, one of which is the practice of sharia insurance. This causes the validity of the practice of sharia insurance to be questioned again. So the purpose of this research is to answer the problem: What is meant by hybrid contract and insurance? How is the hybrid contract mechanism in sharia insurance in Indonesia? How is the hybrid contract law in sharia insurance in Indonesia according to the 5 limits of the Al-Imrani contract?. This study uses a qualitative method with a deductive-inductive model. This library research includes analytical descriptive. The results of this study indicate that hybrid contracts in sharia insurance in Indonesia do not violate the hybrid contract restrictions that are prohibited by sharia according to Al-Imrani. So that the practice is legal by Sharia and the fatwa of DSN-MUI.

Keywords: *Hybrid contract, Islamic Insurance, Sharia, DSN-MUI*

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1. INTRODUCTION

Contract (*'aqd)* in Islamic banking transactions are the gateway for customers to invest their capital. The contract is also a basic guideline in regulating risk management in Islamic banking. Through the contract, the bank also calculates the profit-sharing for each customer. (Haryono, 2019), Combination contracts in today's era are a necessity. However, the problem faced is that the existing Islamic law (Sharia) economic literature in Indonesia has long developed the theory that Islamic law (Sharia) does not allow two contracts in one transaction. However, at the implementation level, various products, both products in the form of raising funds, distributing funds or services to Islamic financial institutions in Indonesia, are based on the hybrid contract concept and are based on the fatwa issued by the National Islamic law (Sharia) Council-Indonesian Ulema Council (DSN-MUI), (Adam et al., 2020).

One way to assess whether a product has complied with Islamic law (Sharia) principles or not is to pay attention to the contracts and various provisions used in the product. The hybrid contract itself is an activity in Islamic finance in which *al-takyif al-fiqh* is carried out, some or most of it can be said to contain several contracts, in which the contracts are carried out simultaneously or at least every contract which is in a product cannot be abandoned because all of them is unity. Hybrid contracts in contemporary *muamalat fiqh* terms are known as *al-'uqud al-murakkabah*. A hybrid contract runs because the form of a single contract is considered incapable of responding to contemporary financial transactions that are always moving and affected by the financial industry, both nationally, regionally, and internationally, (Adam et al., 2020).

According to Nur Wahid, the phenomenon of hybrid contract enforcement is caused by natural dependence on others (*al-'uqud al-murakkabah al-*

tabi'iyah) or because there is a modification (*al-'uqud al-murakkabah al-ta'dilah*). Hybrid contracts that are natural are legal, for example, the relationship between the main contract (*al-'aqd al-ashli*) such as *al-qardh* and the follow-up contract (*al'aqd al-tabi'i*,) such as *rahn* and *hawalah*. (Wahid, 2019).

Meanwhile, according to Nazih Hammad, hybrid contracts are an agreement of two parties to carry out a contract containing two or more contracts, such as in buying and selling with leases, grants, *wakalah, qardh, muzara'ah, sarf* (currency exchange), *syirkah, mudharabah,* and others. next. (Imrani, 2006), There are five types of hybrid contracts, namely *al-'uqud al-mutaqabilah, al-'uqud al-mujtami'ah, al-'uqud al-mutanaqidhah wa al-mutadhadah. wa al-mutanafiyah, al-'uqud al-mukhtalifah,* and *al-'uqud al-mutajanisah* (Imrani, 2006).

The practice of hybrid contract in Indonesia is developed in several models that are used for Islamic financial products. These models are applied based on the fatwa issued by the DSN-MUI. The contract development model ratified by the DSN fatwa is in the form of a combination of contracts. The combination contract itself takes two models, namely *muj'tamiah* and *muta'addidah*. (Imrani, 2006).

The practice of hybrid contact in Indonesia is carried out in various ways, it can be traced from several studies that have been carried out, such as hybrid contact in automotive financing at the Mandiri Purbalingga sharia bank. Research conducted by Regita Ning Permata Ayu entitled "*Analisis Penerapan Konsep Multi Akad Dalam Pembiayaan Otomotif Di Bank Syariah Mandiri Purbalingga*" (Analysis of the Application of the Multiple contracts Concept in Syariah Mandiri Bank, Purbalingga), IAIN Purwokerto. This study describes the procedure for implementing the automotive financing process as well as the application of hybrid contracts in one transaction in automotive financing using a *murabahah bil wakalah* contract. The results of the study can be concluded that Bank Syariah Mandiri Purbalingga uses two contracts in one automotive financing transaction, namely the cost-plus financing contract (*Murabaha)* and the agency contract (*wakalah)*. The transaction is halal and legal in Islam because it has passed DSN supervision by the existing fatwa (Ning Permata Ayu, 2019).

Furthermore, Dian Mega Savitri's research which examines the implementation of hybrid contact in gold pawn products in Islamic Banks. This study describes the implementation of hybrid contact in gold pawn products at the Bank Syariah Mandiri Sub-Branch Office of Kedaton Bandar Lampung. Meanwhile, the signing of the contract on the Gold Pawn Proof (SBGE) is not done separately (Savitri, 2020).

In contrast to existing research, this paper focuses on answering the problem formulation; What is meant by hybrid contact and insurance? How is the hybrid contact mechanism in Sharia insurance in Indonesia? How is the law of hybrid contact in Sharia insurance in Indonesia according to the 5 limits of the *Al-Imrani* contract?

2. RESEARCH METHODS

This paper includes qualitative research with library research methods, based on data obtained by the author through a literature review of books, laws, and DSN-MUI Fatwas. The dependent variable in this study is a hybrid contract in insurance practice, while the independent variable is sharia or Islamic law, economic growth, the historicity of hybrid contracts and insurance, and DSN-MUI regulations related to the practice of hybrid contract sharia insurance in Indonesia Data is also obtained from scientific works in the form of journals, books, and theses. Based on the form of data, from readings, this study emphasizes the normative and historical aspects of the law.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Research Results

Definition of Hybrid Contract

Hybrid contracts in *fiqh* is a translation of the Arabic word *al-'uqud al-murakkabah* which means double contract. While the word *Al-Murakkabah* etymologically means *al-jam'u*, namely to gather or collect (Al-Tahnawi, n.d.). In English, the hybrid contract is consisting of two words, Hybrid means "That is the product of mixing two or more different things",(Al-Tahnawi, n.d.), while Contract means "an official written agreement" (Al-Tahnawi, n.d.), which when put together means that the contract is carried out by more than one or multiple.

In practice, in general, hybrid contact has two opinions, namely based on groups that allow and groups that do not allow. The group that allows it refers to the QS al-Maidah verse 1 and a rule that every *mu'amalah* is allowed unless there is proof that forbids it. While the group that prohibits refers to the QS al-Baqarah: verse 229 (Al-Tahnawi, n.d.).

Although responses to hybrid contact vary widely, currently hybrid contact is widely practiced in transactions with Islamic financial institutions in Indonesia as well as in banking and insurance. The widespread use of hybrid contracts in Islamic financial institution transactions today is certainly inseparable from the hybrid contact legality contained in the DSN-MUI fatwa, as one of the operational foundations of Islamic financial institutions in Indonesia. Products of Islamic financial institutions, which specifically use hybrid contracts, will have enormous potential if human resources and products meet the needs of the community, must continue to be adapted to Islamic law (Sharia). If you look at banking products, most of them contain several contracts, for example, in sharia credit card transactions there are *ijarah*, *qardh*, and *kafala* contracts,(Al-Tahnawi, n.d.).

There are five types of hybrid contracts in the concept of Islamic law. First, dependent contracts, which are multi-contracts in the form of a second contract, responding to the first contract, where the perfection of the first contract depends on the perfection of the second contract through a reciprocal process (Al-Tahnawi, n.d.), Second, collected contracts or known as *mujtami'ah*, that is hybrid contracts that can occur when two contracts have different legal consequences in one contract for two objects with one price, two different contracts with legal consequences in one contract for two objects with two good prices. At the same time or at different times. Third, the opposite contract is a hybrid contact with three terms, including *al-mutanaqidhah, al-mutadhadah*, and *al-mutanafiyah*. (M.Yunus, 2019) Fourth, different contracts or known as multi-contracts with *mukhtalifah* are the collection of two or more contracts that have different legal consequences between the two contracts or some of them. As the difference in legal consequences in a sale and purchase contract and a lease, in a lease agreement, there is a time requirement, whereas in a sale and purchase it is the other way around (M.Yunus, 2019). Fifth, similar contracts, hybrid contracts *mutajanisah* are contracts that may be collected in one contract, without affecting the law and the legal consequences such as buying and selling contracts and leasing (M.Yunus, 2019).

Whereas in the concept of western law, hybrid contact is known simply as a mixed agreement as exemplified in the Lease-Purchase Agreement which occurs having the characteristics and elements of one of two or more named agreements. Mixed agreements in BW allow the concept of this agreement, supported by the Combination Theory or Cumulation Theory which allows mixing several types of Named Agreements in a new form of agreement (M.Yunus, 2019).

So it can be concluded that a hybrid contract is a contract that is carried out by more than one contract. There are 5 types of this hybrid contract. Because hybrid contracts have developed, there are two opinions, those that allow and those that do not allow the practice of hybrid contracts. Hybrid contracts are not only known in the concept of Islamic law, Western law also recognizes the concept of merging contracts.

History of Hybrid Contact Practices in Indonesia

The historicity of the start of the hybrid contract cannot be separated from the development of the times where human needs are increasingly complex. In the field of Islamic *mu'amalah*, the applicable rules are not rigid as long as technical *mu'amalah* is still within the sharia corridor. Because there is a development, there are various kinds of *mu'amalah* that combine various kinds of contracts as a form of modernity response.

Hybrid contracts in Islamic banking and Islamic financial institutions are in dire need of varied product innovations to compete and respond to progress. The issue of hybrid contact in Indonesia is growing rapidly, this is indicated by the presence of an expert who discusses hybrid contracts, namely Nazih Hammad, who in his book defines multi-contract;

> "…as an agreement of two parties to carry out a contract containing two or more contracts so that all the legal consequences of the collected contracts, as well as all the rights and obligations arising therefrom, are seen as a unit that cannot be separated, divided or cut and it is a legal consequence of a contract." (Hammad, 2005).

The development of the Islamic economy in Indonesia has made Islamic financial institutions launch products using Islamic law (Sharia) principles. In 1998 when Indonesia experienced a monetary crisis, Islamic banking was able to survive, unlike some conventional banks which experienced liquidity. The existence of this phenomenon, in the end, makes Islamic financial institutions continue to grow and have their charm. Then in 2010, the number of Islamic banks operating consisted of 5 Islamic commercial banks, 27 Islamic business units, and 131 Islamic

People's Financing Banks (BPRS) throughout Indonesia (Huda & Heykal, 2010).

The operation of the sharia banking system obtains a legal basis, is through Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, although this law does not specifically regulate Sharia banking, in real terms the Sharia banking system has been regulated and accommodated clear in the law. Law Number 10 of 1998 regulates the types of businesses operated by Islamic Banks.

After the establishment of Islamic banks, existing Islamic banking then launched Islamic products. Islamic law (Sharia) products offered are *wadi'ah, murabahah, mudarabah, ijarah, musyarakah, qard, ariyah, salam, istisna, kafalah, wakalah, rahn* (Ascarya, 2011). In practice, these sharia products have not fully implemented Islamic law (Sharia) principles and avoided *riba* (usury). As an alternative, the bank finally did *hilah* (legal fiction) which in the implementation of Islamic banking finally implemented the concept of a hybrid contract. Hybrid contracts are the main reason for launching sharia products, where the amount of risk must be borne by the bank if implementing sharia contracts that are launched purely as contained in *fiqh* rules (Fatorina, 2017).

The issuance of the DSN-MUI Fatwa in legalizing hybrid contracts is also the starting point for the recognition of the hybrid contact system in the world of Islamic banking in Indonesia. This was further strengthened by the existence of a Bank Indonesia Regulation (PBI) and a Circular Letter of Bank Indonesia which indicated that hybrid contact was recognized as a form of business contract in Indonesian law.

Furthermore, the existence of hybrid contracts began to be legally recognized, then Islamic Banks in Indonesia implemented it in the form of banking products and business contracts. In practice, there are now many Islamic bank products that contain hybrid contracts and are commonly practiced, such as *murabahah wa wakalah* financing, *ijarah muntahiya bittamlik* (IMBT), and *musyarakah mutanaqishah* (MMq) (Syamsudin, 2019), In addition to these two things, hybrid contact is also applied in Islamic banking products, for example in sharia cards, take over financing, sharia pawning, current accounts, sharia bank statement financing, sharia bonds, and sharia hedging on exchange rates (Hasan, 2017).

Ijarah muntahiya bittamlik (IMBT) is a lease contract that ends with the ownership of the object of the lease. In practice, Islamic banks lease an object to the customer for a certain time at an agreed rental price. After the rental period is over and all installments are paid, the object of the lease transfers its ownership to the customer by using a new contract, namely a grant or sale and purchase according to *wa'ad*.**(Al-Ijarah Al-Mutahiyah Bi Al-Tamlik, 2002)**

Meanwhile, *musyarakah mutanaqishah* (MMq) is a collaboration between Islamic banks and customers for the procurement or purchase of an item or object, where the assets of the item become joint property. The amount of ownership can be determined according to the amount of capital or funds included in the cooperation contract. After that, the customer will pay a certain amount of capital/funds owned by the Islamic Bank. Transfer of ownership from the portion of the sharia bank to the customer by adding the amount of customer capital/funds from the increase in installments made by the customer. When the installment ends, the ownership of an item is wholly owned by the customer and the share of Islamic bank ownership in the goods decreases proportionally according to the amount of the installment.**(Fatwa Dewan Syariah Nasional No: 73/DSN-MUI/XI/2008 Tentang Musyarakah Mutanaqishah, 2008)**

The birth of innovation in Islamic financial institutions is certainly never separated from the contract. The formation of hybrid contact is not a new theory in *fiqh mu'amalah*. Judging from the historicity above, it can be concluded that the emergence of hybrid contact in Indonesia was not the first originator. Because in the past the classical Islamic scholars have discussed this topic based on the arguments of sharia and authentic ijtihad. So it is important to begin to understand the concept of hybrid contact so that it does not cause any more difficulties for Islamic banking. With the support of the DSN-MUI fatwa, this hybrid contact can be developed properly, which still maintains Islamic law (Sharia) values.

Conventional Insurance and Sharia Insurance

Neither insurance has any history in Islamic history, nor is it specifically regulated in the Qur'an and Sunnah. The Muslim scholars did not issue a fatwa regarding insurance because the practice had not yet occurred at that time. Imam *madzahib* (Imam Abu Hanifa, Imam Malik, Imam Syafi'I, Imam Ahmad bin

Hanbal) lived in the II to IX centuries AD, while insurance appeared in Western Civilization since the XIV century and was only known in Eastern Civilization in the XIX century AD (Agustin, 2020). But in the West, in 1182 there was a scheme similar to insurance when Jews were expelled from France and then guaranteed the risk of their goods transported by sea (Anshori, 2018). Over time, the modern insurance model first appeared in Italy in the 14th century AD in the form of marine insurance. Traders at that time carried merchandise using the services of high-risk ships and traders paid a certain amount of money to one party as collateral. In the event of an accident, the party who was paid will compensate for the entire loss (Anshori, 2018). Then in 1680, the Fire Insurance Institute began to be established in London, because in 1666 there was a fire that destroyed 13000 houses and 100 churches (Hardyanti, 2019). Followed later in the 18th century, fire insurance appeared in America, Germany, and France (Tarmizi, 2019). Some of these events and practices are now practiced again under the name of conventional insurance.

Initially, insurance was taken from Latin; *assecurare* means to convince people, also known in French as *assurance* (Ajib, 2019). Then Dutch; *insurance* which is in Dutch law *verzekering*, has the meaning of liability. C. Arthur Williams Jr. provides an understanding of insurance as protection against financial risk by the party who bears the party being borne (Ajib, 2019), Tuti Rastuti quoting from *Encyclopedia Brittanica* defines insurance as an inventory (in the form of premium payments) prepared by several people in a group in the event of an unpredictable loss (Rastuti, 2018), Premiums obtained from payments in connection with the insurance agreement are recognized as income during the period of the agreement based on the portion of the amount of compensation provided. This income or profit will later become one of the main objectives of the insurance company (Marwansyah & Utami, 2017).

In the 19th-century conventional insurance, practices began to enter Islamic countries. Ibn Abidin (Syam Madzhab Hanafi scholar) issued a fatwa on the illegitimacy of the *saukarah* law (Tarmizi, 2019), which is similar to an insurance scheme. *Saukarah* law, which is similar to insurance, is currently being questioned. The *saukarah* payment scheme is when someone rents a ship belonging to a *harbi* infidel, he pays the rent and also pays a sum of money for the *harbi* infidel in his country. If there is an accident and the merchandise on the ship burns, sinks, or is robbed, the *harbi* infidel gives a guarantee (replaces the goods) in return for the *saukarah* he receives. Therefore, Ibn Abidin explained that it is not lawful to take the compensation because this includes responsibility for something that he should not be responsible for. In 1985 the world's Islamic scholars under the OIC at the II conference in Jeddah agreed to issue a decision no. 9 (9/2) 1985, which reads; "Insurance transactions with certain premiums held by insurance companies are transactions with a high level of *gharar* (speculation). This makes the insurance transaction law null and void (according to the Sharia). Therefore, this transaction is forbidden in Islam." And with the hadith of the Prophet narrated from Abu Hurairah by Imam Muslim, that the Prophet forbade buying and selling *gharar*. (Tarmizi, 2019).

However, the need for insurance services following Islamic law (Sharia) principles is getting stronger and ultimately encourages contemporary scholars to practice ijtihad to explore and develop insurance performance and management that are under Islamic law (Sharia) principles. The contracts used in insurance are reviewed in as much detail as possible, the factors that make it *haram* are eliminated so that insurance can be used by Muslims (Tarmizi, 2019), Finally, the term *takaful* emerged as a sharia-based insurance product, the term previously meant mutual sharing between human beings who were socialist. The term *takaful* was first used by *Daar al Maal al Islaami*, which is an Islamic insurance company in the global arena in Geneva (Mahmuda & Azizah, 2019).

Further affirmation of the differences in the practice of insurance in the West and sharia-based insurance lies in their respective objectives, as explained below:

> *"The objective and the purpose of the Takaful scheme is not only about gaining profits but also to support and bear the loss of other participants. The basic concept of Takaful revolves around sharing risks among participants, providing protection, solidarity, cooperation, and mutual help to all participating members to overcome unpleasant events and conflicts.*" (Nazarov & Dhiraj, 2019).

However, sharia insurance still causes differences of opinion among contemporary scholars so that it is divided into four views, which are: doubtful, forbidden in Islam (*haram*), absolutely

permissible, and permitted under certain conditions. The first opinion says that sharia insurance is doubtful, arguing that the practice has no basis in the Qur'an or Sunnah. While there are always advantages and disadvantages in practice so Muslims should be careful in dealing with insurance. The second opinion says it is haram (Yusuf Qardlawi, Sayyid Sabiq, Abdullah al-Qalqili, and M. Bakhil al-Muthi) because insurance practice contains elements of gharar, maysir, and usury plus unethical making a disaster as a business object. The third opinion says it is permissible because the practice is a new type of *muamalah* and there is no written prohibition on the Qur'an and Sunnah, plus sharia insurance can be mutually beneficial to overcome risks and there is an agreement from the two insured parties (Priyatno, 2020). The last opinion, Muhammad Abu Zahrah (Professor of Islamic Law, Al Azhar University, Cairo, Egypt), argues that insurance is allowed on the condition that the insurance is social and helpful, not commercial and the elements of usury and maysir are removed (Mahmuda & Azizah, 2019).

The scholars who allow the practice of sharia insurance are Ibn Abidin, Abdul Wahab Khallaf (author of *ushul al-fiqh*), Mustafa Ahmad Zarqa (Professor of Islamic Law at the Faculty of Sharia, University of Syria), Muhammad Yusuf Musa (Professor of Islamic Law, Cairo University, Egypt), Sheikh Ahmad Ash-syarbashi (Director of the Muslim Youth Association), Sheikh Muhammad al-Madani (Dean of al-Azhar University), Sheikh Muhammad Abu Zahrar, and Abdurrahman Isa (author of *al-muamalat al-haditsah wa ahkamuha*) (Nasution, 2020) The reasons that underlie insurance is permissible, namely (Mahmuda & Azizah, 2019):

a. Textually, insurance is not prohibited in the Qur'an and Sunnah
b. There is agreement and willingness from related parties, which means that there is no compulsion in using insurance services and services
c. The benefits and benefits of insurance are greater than the disadvantages so that there are benefits to be gained by the parties concerned
d. There is a general interest in insurance schemes because the money from the premiums collected can be used for investment in productive projects and the economic development of the people
e. Insurance is included in a cooperative business whose purpose is to help deal with calamities between participants who use insurance

Other contemporary scholars such as Yusuf Qaradhawy, Sayyid Sabiq, Muhammad Bakhit al-Muth'I, and Abdullah al-Qalili argue that any form of insurance is haram. The reasons underlying the practice of insurance is prohibited in Islam, among others (Mahmuda & Azizah, 2019):

a. Insurance practices lead to gambling and gambling
b. Insurance can suppress and exploit participants to meet premium payments
c. Insurance is a business that depends on one's fate and death so that it precedes destiny

In essence, the explanation of this sub-chapter explains that the history of insurance started from western civilization which was then reconstructed into sharia insurance with the term *takaful* so that Muslims can use it to overcome the risk of a time. The most obvious difference between conventional insurance and sharia insurance lies in the contract and the initial purpose of insurance. If conventional insurance is more focused on making profits and profits as a business field, then Islamic insurance is more focused on the intention of participants to help each other and bear risks that may occur at any time. However, until now there are still differences of opinion among scholars and *fiqh* experts about the law whether or not insurance practice is allowed.

History of Sharia Insurance in Indonesia

The practice of insurance in Indonesia began to be known since the arrival of the Dutch in the colonial era. The Commercial Code (Wet Boek van Koophandel) at that time adopted several articles relating to insurance from the Dutch Commercial Law (*code de commerce*) and Dutch Civil Law (*code civil*), although it only contained marine insurance. Increasingly, the Draft Commercial Code also contained cases of fire insurance, agricultural products, and life insurance in 1838. To have legal force in Indonesia, insurance was promulgated in the Burgelijk Wetboek and Wetboek van Koophandel on April 30, 1847, and contained in the Staatsblad 1847 number 1986. After independence until the New Order era, Indonesia continued to build an independent economy which was followed by the opening of several insurance companies (Agustin, 2020).

Furthermore, insurance is explicitly regulated in Law Number 2 of 1992 concerning Insurance Business, in which the definition of insurance is explained as follows:

> "Insurance or coverage is an agreement between two or more parties, in which the insurer binds himself to the insured, by receiving insurance premiums, to provide compensation 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 providing a payment based on the death or life of the insured person."

If reviewed further, the definition above refers more to conventional insurance products that have existed for a long time, while insurance in conventional financial institutions and banking contains elements of *gharar* (uncertainty). The reason is that each amount of premium paid regularly to the insurer (insurance company) until the time of the risk/accident, cannot be predicted with certainty how much insurance costs will be received by the insured. Besides *gharar* there are other indications such as *maysir* (speculation/gambling), *usury* (interest rate), and elements *dzalim* (injustice) that is not under Islamic law (Hardyanti, 2019).

The Indonesian population, which is predominantly Muslim, has started to pioneer financial literacy and an economic system according to Islamic law (Sharia) principles which have finally paid off with the establishment of PT. Bank Muamalat Indonesia (BMI) by the government in 1922 (Agustin, 2020), Right on July 27, 1993, BMI then collaborated with the Indonesian Muslim Intellectuals Association (ICMI) through the Abdi Bangsa Foundation to initiate the launch of *takaful* insurance. The three institutions initiated the Indonesian Takaful Insurance Formation Team under another name TEPATI, the leader of which is Rahmat Saleh, a president director of PT Syarikat Takaful Indonesia (STI). Initially, 5 TEPATI personnel conducted a comparative study in Malaysia, which had already practiced sharia insurance at Syarikat Takaful Malaysia Sdn. Bhd. since 1985. Furthermore, STI held several seminars in Jakarta and eventually established PT. Family Takaful Insurance was inaugurated on August 25, 1994, followed by PT Asuransi Takaful Umum which was inaugurated on June 2, 1995 (Amrin, 2011).

The success of establishing two companies in a very short period between 1994 and 1995 is rapid progress for the Islamic economy industry in Indonesia. Because the growth of conventional insurance only reached an average of 20% (twenty percent), while the growth of sharia insurance reached 40% (forty percent) in the last five years. This means that sharia insurance enthusiasts in Indonesia continue to grow every year even though at the end of 2005 the sharia insurance market share was recorded to have only reached 1.5% of the total insurance market share in Indonesia (Marwini et al., 2020).

In 2001, the general provisions of Sharia Insurance in Indonesia were officially stipulated in the Fatwa of DSN-MUI NO: 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance. The fatwa explains the definition of sharia insurance:**(Fatwa DSN-MUI No.21/DSN-MUI/X/2001 Tentang Pedoman Umum Asuransi Syariah, 2001)**

> *"Sharia insurance (Ta'min, Takaful or Tadhamun) is an effort to protect and help each other between several people/parties through investment in the form of assets and/or tabarru' which provides a pattern of returns to face certain risks through a contract (engagement) that according to sharia."*

Indonesia is a Muslim-majority country with a population of up to 271 million people, has great potential for the development of sharia insurance products. Data on the Sharia Non-Bank Financial Industry (hereinafter referred to as Sharia IKNB) from the Financial Services Authority (OJK) noted that the market share of the sharia insurance industry from 2010 to 2014 experienced an average annual growth of 36.22%. This figure indicates that sharia insurance continues to gain public interest (Otoritas Jasa Keuangan, 2015).

Then from the research conducted by Dinna Miftakhul Jannah and Lucky Nugroho with the title "Strategy to Increase the Existence of Sharia Insurance in Indonesia" recorded the track record of sharia insurance growth for the period 2014-2015, which was quoted from the Association of Indonesian Sharia Insurance Society (AASI). Significant insurance developments were recorded, in terms of assets growing by 27.75%, investment by 28.80%, and contribution by 16.50% (Miftakhul Jannah & Nugroho, 2019).

Furthermore, research by Alissa Azmul Faoziyyah and Nisful Laila entitled "Internal Factors and Macroeconomic Factors Affecting Profitability of Sharia Insurance in Indonesia for the 2016-2018 Period", citing data from the 2017 Islamic Finance Development Report, Indonesia is listed as one of the countries with growth in Sharia NBFI assets. fastest in

the world with total Islamic insurance assets ranked 5th of the total global Islamic insurance with a value of 1.79 billion USD. Starting from 2016-2018, the total development of sharia insurance finance has increased. In 2018 the assets of the sharia insurance company were Rp. 41.95 trillion, reaching 43.21% of the total assets of Sharia IKNB which totaled Rp. 97.12 trillion. Unfortunately at the end of 2018, there was a decline due to the unfavorable investment climate and macroeconomic conditions (Faoziyyah & Laila, 2020).

From the previous data exposure, it can be understood that the practice of sharia insurance in Indonesia brings good news for economic growth in this country. However, it should be noted again that sharia insurance is not enough just to exist in the archipelago. Sharia insurance companies in Indonesia must always be monitored, evaluated, and supported so that they always find solutions if problems occur, and most importantly must be strictly under Islamic law (Sharia) principles.

Maryam Saeed emphasized the need for in-depth understanding to implement sharia principles in insurance with the following words (Saeed, 2019):

> "…misconceptions about Islamic *takaful* products were owed to the absence of cognizance and educational background in *takaful* study. Poor corporate governance is due to less support from the legal framework of Islamic countries where *takaful* operators operate, poor quality of staff, inefficient usage of resources and poor shariah and it which has also created a non-compliance risk."

These challenges and obstacles must always be anticipated so that standard sharia insurance can be realized following the purpose of holding it. So, this paper then discusses the analysis of hybrid contact in the practice of sharia insurance in Indonesia.

3.2. Discussion

Hybrid Contract Analysis in Sharia Insurance Practices in Indonesia

Hybrid contracts will always be faced with differences of opinion about the validity of their practice due to the Prophet's hadith which prohibits hybrid contracts. However, when reviewed further, the existence of the hadith covers three cases: the prohibition of *bai'ataini fii bai'atin* (two in one sale); prohibition of *shafqataini fii shafqatin* (two in one deals); and the prohibition of *bai'* and *salaf*. Although the first and second hadiths are similar in meaning, the reactions of the two hadiths are still not the same, and even the third hadith is different. This cannot be equated with other problems that do not fit the context and concept. Unfortunately, the prohibition is generalized to all contracts, which ultimately concludes that every contract with more than one contract element is considered null and void and is legally illegitimate (M.Yunus, 2019).

There are several ways to assess whether a hybrid contact is valid or void, one way is by reviewing the elements contained in a hybrid contact one by one. Abbas Arfan quoted an explanation from Al-'Imrani regarding the limits for judging a hybrid contact to be valid or invalid. These limitations include (Arfan, 2017);

a. Hybrid contact is not prohibited by religious texts, namely the Qur'an and the Hadith of the Prophet
b. The hybrid contact does not consist of several contracts whose laws are opposite to each other
c. Hybrid contact is not a shortcut to justify the unlawful
d. Hybrid contracts are not a combination of commercial and social (*mu'awadhah wa tabaaru'*)
e. The hybrid contact does not lead to things that are forbidden (*usury/riba, gharar, maysir*)

These limits can be used as guidelines and assessors for the validity of a hybrid contact in each transaction so that it remains within the corridor of Islamic law so that it is not invalidated.

The practice of multi-contracts applied in sharia insurance schemes in Indonesia generally has the same scheme. Sharia insurance participants agree to join and protect each other in the event of an accident in the future, while the company or sharia insurance service provider acts as a trustee from insurance users to manage and develop their premiums without violating the limits specified in Islamic law (Marwini et al., 2020). So what can be underlined in the practice of sharia insurance is the position of the insurance company only as a facilitator for insurance participants who bear each other's risks.

Arim Nasim concluded that hybrid contact in the practice of sharia insurance in Indonesia contains at least 3 elements of the contract, namely (Nasim, n.d.);

a. *Tabarru contract*, that is the contract that occurs between fellow insurance users. Participants will pay a certain amount of funds according to the provisions which will later be used to finance other participants who have a disaster

b. *Mudharabah/musyarakah*, that is the contract that occurs between the participant and the insurance company. Participants as policyholders or *shohibul mal*, while the company is managers or *mudhaarib*. If the insurance company only provides services/facilities (only manages) without providing capital, then the contract is *mudharabah*. However, if the insurance company participates in sharing capital in practice, then the contract is *mudharabah-musharaka*.
c. *Ijarah contract* or *wakalah bi-l-ujrah*, also known as a contract of power of attorney from the participant to the insurance company to manage the funds. Thus the company is entitled to a fee or wages as the manager of the participant's insurance fund.

The existence of these 3 (three) contracts can generally be applied with 2 (two) models of sharia insurance; first, sharia insurance without savings, and second, sharia insurance with savings (Nasim, n.d.). The two models of hybrid contact transactions in sharia insurance products will be explained as follows:

a. Sharia insurance without savings (non-savings insurance product)
    1) Participants pay *tabarru'* (premium) funds, namely benevolence funds to take care of each other. From these funds, participants are not entitled to require any compensation to other parties. Here the *tabarru'* contract occurs, it cannot be converted into *tijarah* and cannot even be claimed for the company's operations (Rolianah, 2020). *Tabarru'* funds from participants are collected and the books are separated from other funds by the company. This must be done so that there is no element of uncertainty in the management of funds (Humaemah & Ulpatiyati, 2021).
    2) *Tabarru'* funds are non-profit transactions, but the management company still stands as a professional, profit-oriented institution, so that *tabarru'* funds are invested in productive projects according to sharia (Ajib, 2019). This is where the *mudharabah* and/or *musyarakah* contract scheme takes place. *Tabarru'* funds as a mandate from insurance participants are given to be managed by the company so that these funds do not bear losses because later they will be used to pay claims for participants who experience disaster (Humaemah & Ulpatiyati, 2021).
    3) If there is a profit from the investment results of the *tabarru'* fund, the actual profit is purely the right of the participant if the company does not participate in capital sharing (the company holds a *mudharabah* contract). The company will receive a fee with a third contract, namely an *ijarah* contract or *wakalah bi-l-ujrah* for fund management services (Ajib, 2019).
    4) If the company participates in capital sharing (the company holds a *mudharabah-musyarakah* contract) then the company is entitled to investment returns with a profit-sharing scheme according to the agreed terms and is also entitled to a fee for managing funds through an *ijarah* agreement (Nasim, n.d.).
    5) If there is a profit from the investment results, there will be an underwriting surplus, which according to the DSN-MUI fatwa later the funds can be treated (Ajib, 2019):
        a) Entirely reserved in *tabarru'* account, or
        b) As a reserve deposit and divided among participants who meet actuarial or risk management requirements, or
        c) As a reserve deposit and part of it can be distributed to participants and insurance companies according to the agreement
    6) If there is a loss investment, or there are too many claims from participants while there are only a few reserve funds, an underwriting deficit will occur. According to the DSN-MUI fatwa, the insurance company must overcome this deficiency in the form of *qardh*. Qardh returns to insurance companies are set aside from *tabarru'* funds (Ajib, 2019).
    7) If the agreement ends or the participant in question dies, these funds can be returned (Taufiq, 2018).
b. Sharia insurance with savings (savings product) (Taufiq, 2018),
    1) Participants pay premium funds to insurance companies whose amount depends on the participant's financial profile. The premium paid will be separated by the insurance company into two different accounts.
    2) The first account is the *tabarru'* account, which is a collection of benevolent funds collected by participants for goodness and mutual support for each other in case of the calamity in the future. This account will be

managed by the company as well as the management of non-saving insurance funds.

3) The second account is the participant's savings account, that is funds belonging to the participant which can later be paid if; first; the agreement has ended, second; participant resigns, third; participant died.
4) The participant's savings account has added value for the participant himself because if he is destined to die shortly or even during the agreement, then in addition to *tabarru'* funds, he also gets savings funds and profit-sharing profits from his savings and can be given to his heirs (Karimah, 2021).

Both sharia insurance products, both savings and non-savings, have the same scheme and position in their contracts. The difference is only in the existence of a savings account which is treated separately and as additional savings for the participant concerned. So if the hybrid contract transaction model is reviewed further with 5 limits on the validity of Al-Imrani's multi-contract, it will be seen as follows;

a. Hybrid contact is not prohibited by religious texts, namely the Qur'an and the Hadith of the Prophet

The contracts contained in the hybrid contact sharia insurance products for savings and savings are *tabarru', mudharabah* and/or *musharaka*, and *ijarah* contracts. In the Fatwa of DSN-MUI Number 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance, it is stated that each of these contracts is permissible because no evidence in the Qur'an and Hadith prohibits it and the contract does not cause loss to one of the parties. The arguments and related contract law are described as follows;

1) *Tabarru'* contract is allowed, with the argument;
   a) Al-Qur'an Surah Al-Maidah verse 2, which means; "And help you in (doing) righteousness and piety, and do not help in sin and transgression. And fear Allah, verily Allah is severe in punishment
   b) Al-Qur'an Surah Al-Baqarah verse 280, which means; "And if (the debtor) is in trouble, then give him toughness until there is plenty. And giving (some or all of the debt) is better for you if you knew."
   c) The hadith of the Prophet was narrated by Imam Muslim and Abu Hurairah, about helping; "Whoever relieves a Muslim of a difficulty in this world, Allah will relieve him of a difficulty on the Day of Resurrection; And Allah always helps His servant as long as he (likes) helps his brother."
   d) Fiqh rules, "Basically all forms of *mu'amalah* may be done unless there is evidence that forbids it"
2) *Mudharabah* and/or *musyaraka* contracts are legally permissible with arguments;
   a) Al-Qur'an Surah An-Nisa verse 52, which means; "Indeed, Allah commands you to convey the message to those who are entitled to receive it, and when you set a law between people, do it with justice."
   b) Al-Qur'an Surah Al-Baqarah verse 278, which means; "O believers! Fear Allah and leave the rest of *usury* if you are believers."
   c) The hadith of the Prophet was narrated by Muslim, Tirmidhi, Nasa'i, Abu Daud, and Ibn Majah from Abu Hurairah, which means; "The Messenger of Allah forbade buying and selling containing *gharar*"
   d) Fiqh rule, "All *harm* (danger) must be avoided as much as possible"
3) Ijarah contract is allowed with the argument;
   a) Al-Qur'an Surah Al-Baqarah verse 275, which means; "And Allah has permitted trading and forbade *usury*."
   b) Al-Qur'an Surah An-Nisa verse 29, which means; "O you who believe, do not eat (take) other people's property in vain, except if it is a voluntary trade between you."
   c) The hadith of the Prophet was narrated by Tirmidhi from Amr bin 'Auf, which means; "Muslims are bound by the conditions they make except the conditions that forbid what is lawful or make lawful what is unlawful."
   d) Fiqh rule, "All *harm* (danger) must be removed"

The presentation of the arguments (*nash*) about *mu'amalah* based on Islamic law (Al-Qur'an – Prophetic Tradition - *Fiqh*) shows that there is no prohibition against contracts contained in sharia insurance schemes, even with the existence of these contracts can be a means of

social worship while avoiding loss to one and/or both parties.

A hybrid contract in sharia insurance is not the same as the concept of hybrid contract which was prohibited by the Prophet. The prohibition is contained in the hadith of the Prophet, namely; multi-contracts in buying and selling (*bai'*) and loans/debts (*qard*), two buying and selling contracts in one sale and purchase contract, and finally two transactions in one transaction (*bai' salaf*). An example of two transactions in one transaction: if a person is going to buy an item from his friend at a certain price (for example, fifty thousand rupiah), on the condition that his friend lends him (*salaf*) money worth this amount (for example, fifty thousand rupiah), then the sale contract is bought it is not clear; whether paid at a certain price earlier (fifty thousand rupiah) or more. So it is not clear that the sale and purchase agreement will pay a certain price (fifty thousand rupiah) or more. (Arfan, 2017). Thus, the contracts in sharia insurance do not violate the limitations of the first hybrid contract provisions.

b. Multi-contracts does not consist of several contracts whose laws are opposite to each other

This limitation leads to a transaction scheme similar to the merging of *salaf* contracts and buying and selling contracts. These two contracts contain different laws. Buying and selling is *mu'amalah* with a commercial type of contract (very taking into account profit and loss), while *salaf* is included in social activities (Arfan, 2017).

In contrast to the sharia insurance contract; *tabarru'* contract, *mudharabah*/*musyarakah* contract, and *Ijarah* contract (*wakalah bil ujrah*). Although almost similar, the scheme is still not the same. Sharia insurance is more cooperative and does not aim to make a profit from other people's assets. The purpose of the parties in it is solely for the distribution of risk and share some of the risks between them (Tarmizi, 2019). The insured's risk is the loss of paid funds, while the company's risk is that they do not get paid for their work (Hariyanto, 2020).

This is different from conventional insurance where the contract is to exchange money for money (*sharf*). In the contract of exchanging money for money, if the money is of the same type, it is required to have the same nominal value and must hand over cash at the same time. If these conditions are not met, then the contract of exchanging money for money is included in usury (*riba bai'*) (Hariyanto, 2020). That way, the contracts in sharia insurance do not violate the limits of the second hybrid contact provision.

c. Hybrid contact is not a shortcut to justify the unlawful

For example, there are conditions for buying and selling contracts (*bai'*) or the like in debt contract transactions (*qard*). If in a debit transaction there is an advantage for one party and a loss for the other party, then the profit obtained (from the terms of the sale and purchase contract in the debit transaction) is usury/*riba* (Awawda, 2018). Likewise with transactions in *bai' 'inah* and *bai' salaf.* An example of this case is when someone sells something to another person for one hundred thousand in installments on the condition that the other person (the buyer) must sell it again to the first person (the initial seller) for eighty thousand rupiah in cash (Arfan, 2017). The contract in this scheme is different from the contracts in sharia insurance.

Every contract in sharia insurance is *mubah* or permissible. There is no debt contract, and when the contracts are combined, none of them cancels each other out. Transactions of sharia insurance participants do not include *usury* contracts, and the fund manager will not use the funds collected from the participants for *usury* transactions in any form (Tarmizi, 2019). It is concluded that the contracts in sharia insurance do not violate the limitations of the third hybrid contract provisions.

d. Hybrid contracts are not a combination of commercial and social (*mu'awadhah* and *tabarru'*)

It has been explained in the DSN-MUI fatwa Number 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance that there are 2 categories of sharia insurance contracts, *tabarru'* (a grant) and *tijarah* (a combination of *mudharabah* and *ijarah*). The existence of how many contracts that have been collected are not merged into one and are not a condition for each other can be combined and can stand alone/separately one of them. This is because in the *tabarru'* contract the relationship between participants and other participants (granting to bear each other), while the *tijarah* contract is

between participants (as *shahibul maal*) and the company (as fund managers). Thus, sharia accounting transactions with the hybrid contract are permissible because they do not conflict with the fourth hybrid contact provision (Arfan, 2017).

e. Hybrid contact does not lead to things that are forbidden

This limitation becomes a general limitation that can even summarize the previous four limitations. Illegal things should not be in multi-contracts such as *gharar*, *maysir*, *usury*, unclear prices or contract objects, elements of fraud and losses on one side, and so on (Arfan, 2017). Finally, it was concluded that the contracts contained in sharia insurance did not violate the limits and provisions of Islamic law.

It can be seen in the explanation above that the hybrid contract contained in sharia insurance are legal because they do not violate the limits on the validity of hybrid contracts as specified in the Prophetic tradition. However, some people still doubt the permissibility of Islamic insurance. Their opinion is based on the understanding that in sharia insurance the contract is a grant, including the grant that is returned to the grantor. In short, the money that is donated will be returned to the giver in the form of compensation due to the risks that have occurred. While the Prophet *sallallaahu 'alaihi wasallam* forbade a Muslim who withdraws donations back, with the hadith narrated by Muttafaqun 'Alaihi (Imam Bukhari and Imam Muslim):

لَيْسَ لَنَا مَثَلُ السَّوْءِ۞ الَّذِىْ يَعُوْدُ فِىْ هِبَتِهِ كَالْكَلْبِ يَرْجِعُ فِىْ قَيْئِهِ

Meaning: "*We must not imitate the bad. One who takes back his gift is like a dog who takes back his vomit.*"

Necessarily, these hadith intend that what is prohibited is to withdraw gifts/donations that have been issued and have been received by the person for whom the gift/donation is intended. Meanwhile, donations that have been issued but have not been received by the intended person may be withdrawn (Tarmizi, 2019). As did Abu Bakr *radhiyallahu 'anhu* who gave a plot of palm garden for his son Aisyah *radhiyallaahu 'anha*, before Aisyah accepted it Abu Bakr felt his end was near, then said:

"O my daughter, I am very happy that I left you rich, and indeed I once gave you a garden plot which yielded 20 wasaq, if you had received it before, the garden would be yours. But today the garden is part of my inheritance which you share with your brothers and sisters."(narrated by Imam Malik)

There are also rules made by *fiqh* scholars:

لَا يَتِمُّ التَّبَرُّعُ إِلاَّ بِالْقَبْضِ

Meaning: *"The grant contract is not perfect if the goods donated have not been received"*

From the explanation above, it becomes clear that donations that have not been received are not prohibited from being withdrawn. In sharia insurance after the donation money (*tabarru'* fund) is given to the management company, the money does not become the property of the managing company directly. The money belongs to the fund body, part of which is given to participants who are affected by the disaster/insured risk, and the other part is kept. So that the status of the remaining money when it is given back to the person who contributed is not considered to have withdrawn the contribution (Tarmizi, 2019).

If it is concluded in this subchapter, the validity of hybrid contracts in sharia insurance can be reviewed by analyzing one by one each contract in it. According to Al-'Imrani's hybrid contact guidelines, hybrid contracts in the practice of sharia insurance in Indonesia are not prohibited and are legal to do. The existence of doubts among some people about the validity of sharia insurance can be overcome by reviewing the previous *atsar* and other *fiqh* rules so that they can be understood correctly and then concluded the law accurately. So that the Fatwas and General Guidelines for Sharia Insurance in Indonesia are not just a theory and are even very possible to be applied for the benefit as well as the economic development of the people, especially in Indonesia.

Islamic Insurance Company and User's Manifesto: A Critical Review

The existence of sharia insurance when viewed in terms of economic development, continues to grow and continues to contribute to the Indonesian insurance market. The value of sharia insurance which has the principle of mutual help and mutual risk between users, the good effects can be felt up to the scale of increasing the welfare of the people (Miftakhul Jannah & Nugroho, 2019). The principle of social worship (mutual sharing between insurance

users and acceptance of prospective insureds who need help by insurance companies) should not be vague from the start until whenever.

Unfortunately, the facts on the ground are not always as expected. Many sharia insurance users register intending to get more profits. The biggest goal of users is no longer to help and instead wants to be helped. On the other hand, sharia insurance companies choose users with very small risk opportunities who rarely make claims. This indicates that there is still a goal of Islamic insurance companies that are only looking for profit, not for *ta'awun* (Fathoni et al., 2020). Finally, the manifesto of users and sharia insurance companies is questioned, *what is the difference between sharia insurance companies and conventional insurance companies if the facts on the ground are still using conventional schemes?*

Islamic insurance, which is included in the synergy of the Islamic economy, should target deeper hidden values than conventional economics. The orientation being pursued should not only be materialist, starting from planning, marketing, product/service products, and the working team must have a better brand because sharia business is a trusted business, a fair business, and a business that does not contain fraud in the process and results (anti-*usury*, *maysir*, *gharar*, *dhalim*). The impetus for his business must not be coerced and must be from the conscience of each party (Ernawati, 2020). So, sharia insurance must always be guarded so that it remains within the sharia corridor, not just the Islamization of the conventional system. This is where the National Sharia Council-Indonesian Ulema Council (DSN-MUI) and the Sharia Supervisory Board (DPS) become supervisors and control holders so that there is no shift in substance and does not lose the value of the hereafter orientation.

Then, it is important to realize that sharia insurance is also an element of sharia economic synergy, from the financial sector and the real sector. For example, the real sector services for halal tourism such as; sharia restaurants, sharia hotels, and sharia travel agents that are prone to risk and accidents also require risk insurance services that are following sharia principles. If not, the sharia economic synergy in Indonesia will be flawed and imperfect.

It is time for sharia insurance to have a bigger vision and mission than just looking for material benefits. Every sharia insurance company in Indonesia must always fully understand its potential customers about the commitment to *ta'awun* social worship before being registered as a user so that there is no wrong intention in the beginning. Likewise, insurance companies in dealing with potential customers who have very large potential risks must immediately find solutions so that these customers can be helped without harming other participants or the company itself. Sharia insurance companies also need to be back up by organizations and institutions engaged in the real sector to mutually enhance the pillars of the sharia economy in Indonesia. So that the welfare of the people whose orientation is in the world and the hereafter can truly be realized, through the services of sharia insurance companies that can touch the layers of large national-scale institutions to the layer closest to the community.

4. CONCLUSION

Hybrid contracts in *fiqh* is a translation of the Arabic word *al-'uqud al-murakkabah* which means double contract. Another term means a contract that is carried out by more than one. There are 5 types of hybrid contracts. Because hybrid contracts have developed, there are two opinions, those that allow and those that do not allow the practice of hybrid contracts. However, the urgency of human needs in terms of *mu'amalah* is increasingly complex which eventually emerges new products based on hybrid contracts, one of which is hybrid contact happened in sharia insurance.

Insurance is taken from Latin; *assecurare* means to convince people, also known in French as *assurance* and can be defined as the protection against financial risk by the insurer against the insured. Insurance only started to enter Islamic countries in the 19th century and was considered *haram* because it contained *gharar, maysir*, usury, and *dhalim*. The urgency of insurance products and risk protection for Muslims is getting stronger, finally encouraging the birth of insurance products that are under Islamic principles by eliminating elements that are forbidden. This service product is called sharia insurance or *takaful*.

Sharia insurance is different from conventional insurance. The main principle of sharia insurance is to mutually share between insurance users who both avoid risk with the help of the insurance company as the manager. While conventional insurance prioritizes profit which is materialistic with the insurance company as the manager of the business field.

However, differences of opinion still exist among scholars and fiqh experts regarding sharia insurance law.

The validity of a hybrid contract in sharia insurance can be known by examining one by one the elements of the contract contained in it and tracking the transaction process of these service products. With the 5 limits of hybrid contracts that are allowed in Islam according to Al-Imrani, it can be concluded that sharia insurance is legal and can be used for Muslims.

We need to know that sharia insurance should not only be oriented towards materialist profits. Sharia insurance should be ahead of conventional insurance because there are hidden values that must not be lost, namely the element of mutual help between individuals on the smallest scale, as well as the improvement of the pillars of *mu'amalah* in real sector organizations and institutions on a larger scale in sharia economic synergy, especially in Indonesia. Of course, this can be realized optimally with intensive supervision and guidance from DPS and DSN-MUI.

5. REFERENCE

Adam, P., Hadiyanto, R., Hanifa, A., & Yulia, C. (2020). Kritik dan Syarah Hadis Multi Akad Serta Relevansinya Terhadap Pengembangan Produk Lembaga Keuangan Syariah Dalam Fatwa DSN-MUI. *Jurnal Iqtisaduna*, *2020*(2), 104–120.

Agustin, I. W. (2020). Perbandingan Pengembangan Asuransi Syariah di Indonesia dan Malaysia. *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum*, *5*(1), 37–57.

Ajib, M. (2019). *Asuransi Syariah* (A. Husna, Ed.). Rumah Fiqih Publishing.

Al-Tahnawi. (n.d.). *Kasyfu al-Istilahat al-Funun*. Daar as-Shadir.

Amrin, A. (2011). *Meraih Berkah Melalui Asuransi Syariah: Ditinjau dari Perbandingan dengan Asuransi Konvensional*. Jakarta: PT Elex Media Komputindo.

Anshori, A. G. (2018). *Hukum perjanjian Islam di Indonesia: Konsep, regulasi, dan implementasi*. UGM PRESS.

Arfan, A. (2017). Tipologi Multiakad Dalam Produk Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia Perspektif Teori Dan Batasan Multiakad Al 'Imrani. *ULUL ALBAB Jurnal Studi Islam*, *18*(2), 269–292. https://doi.org/10.18860/ua.v18i2.4787

Aryanti, Y. (2017). Multi Akad (Al-Uqud Al-Murakkabah) Di Perbankan Syariah Perspektif Fiqh Muamalah. *JURIS (Jurnal Ilmiah Syariah)*, *15*(2), 177–190. https://doi.org/10.31958/juris.v15i2.498

Ascarya, P. (2011). Akad dan Produk Bank Syariah. *Jakarta: PT. Grafindo Persada*.

Awawda, S. M. (2018). Al-'Uqud al-Murakkabah fi al-Fiqh al-Islamiy wa Tathbiqatihi al-Mu'ashirah kama yajriha al-Bank al-Islamiy al-Falisthiniy. *DSpace Conferences and Workshops*, *148*, 148–162.

Fatwa DSN-MUI No.21/DSN-MUI/X/2001 tentang Pedoman Umum Asuransi Syariah, Pub. L. No. NO: 21/DSN-MUI/X/2001, 1 (2001).

Ernawati. (2020). Strategi Pemasaran Produk Asuransi Syariah Pada PT. Prudential Life Assurance Cabang Kota Yogyakarta. *Adl Islamic Economic*, *2*(1), 99–112.

Faoziyyah, A. A., & Laila, N. (2020). Faktor Internal Dan Faktor Makroekonomi Yang Mempengaruhi Profitabilitas Asuransi Syariah Di Indonesia Periode 2016-2018. *Jurnal Ekonomi Syariah Teori Dan Terapan*, *7*(6), 1146. https://doi.org/10.20473/vol7iss20206pp1146-1163

Fathoni, F. A., Alifuddin, M. H., Izza, R., Dewi, F. S., & Rahmawati, L. (2020). Skema Investasi di Lembaga Asuransi Syariah Studi pada PT. Asuransi Takaful Keluarga Cabang Surabaya. *TAFAQQUH: Jurnal Hukum Ekonomi Syariah Dan Ahawl as Syahsiyah*, *5*(1), 40–55.

Fatorina, F. (2017). *Analisis Konsep Multi Akad Dalam Fatwa DSN-MUI Dalam Perspektif Ulama Fikih*. Pascasarjana IAIN Purwokerto.

Al-Ijarah Al-Mutahiyah bi Al-Tamlik, Pub. L. No. 27, 16 (2002).

Hammad, N. (2005). *Al-Uqud al-Murakkabah fi al-Fiqh al-Islamiy*. Daar al-Qalam.

Hardyanti, N. S. (2019). Otentisitas Penerapan Asuransi Syariah Di Indonesia. *TAQNIN: Jurnal Syariah Dan Hukum*, *1*(1), 1–22. https://doi.org/10.30821/taqnin.v1i1.4870

Hariyanto, M. (2020). Konsep Dan Implementasi Mudharabah Dalam Asuransi. *Al-Iqtishad: Jurnal Ekonomi Syariah*, *2*(01), 44–55.

Haryono. (2019). Dinamika dan Solusi Pengembangan Multi Akad (Hybrid Contract) sebagai Basis Produk Perbankan Syariah. *Ad Deenar: Jurnal Ekonomi Dan Bisnis Islam*, *3*(01), 17–36. https://doi.org/10.30868/ad.v3i01.498

Hasan, N. F. (2017). Hybrid Contract: Konstruksi Akad dalam Produk Perbankan Syariah. *Wadiah: Jurnal Perbankan Syariah*, *1*(2), 1–27.

Huda, N., & Heykal, M. (2010). *Lembaga keuangan islam: Tinjauan teoritis dan praktis* (1st ed.). Kencana.

Humaemah, R., & Ulpatiyati. (2021). Analisis Manajemen Risiko Dana Tabarru Asuransi Syariah (Studi Pada Pt Asuransi Umum Bumiputera Muda 1967 Serang). *Jurnal Syar'insurance (SIJAS) Vol.*, *7*(1), 25–43.

Imrani, A. bin A. A. (2006). *Al-Uqud al-Maliyah al-Murakkabah Dirasat fi Fiqhi Ta'shiliyah wa Tathbiqiyah*. Daar Kumuz Elshabelia an Nasr wa Tausi'.

Karimah, S. (2021). *Analisis Pemikiran Muhammad Syakir Sula Tentang Sistem Investasi Pada Asuransi Syariah*. UIN Sumatera Utara.

Kholijah, S. (2020). Akad Murakkab dalam Produk Keuangan Syariah. *Jurnal BAABU AL-ILMI: Ekonomi Dan Perbankan Syariah*, *5*(1), 104–116. https://doi.org/10.29300/ba.v5i1.3122

Mahmuda, I., & Azizah, U. K. (2019). Studi Komparasi Asuransi Syariah Dengan Asuransi Konvensional. *Jurnal Al-Yasini*, *04*(01), 56–69.

Marizal, M., & Khoerudin, F. H. (2020). Konsep Hybrid Contract Dalam Studi Perbandingan. *Literasi Hukum*, *4*(2), 21–33.

Marwansyah, S., & Utami, A. N. (2017). Analisis Hasil Investasi, Pendapatan Premi, Dan Beban Klaim Terhadap Laba Perusahaan Perasuransian Di Indonesia. *Jurnal Akuntansi, Ekonomi Dan Manajemen Bisnis*, *5*(2), 213. https://doi.org/10.30871/jaemb.v5i2.533

Marwini, Razi, F., & Dja'akum, C. S. (2020). Kontribusi Asuransi Syariah Dalam Dunia Perasuransian di Indonesia. In *Az Zarqa'* (Vol. 12, Issue 2, pp. 21–34).

Miftakhul Jannah, D., & Nugroho, L. (2019). Strategi Meningkatkan Eksistensi Asuransi Syariah di Indonesia. *Jurnal Maneksi*, *8*(1), 169–176.

Fatwa Dewan Syariah Nasional No: 73/DSN-MUI/XI/2008 Tentang Musyarakah Mutanaqishah, Pub. L. No. 73, 14 Nov 1 (2008).

M.Yunus. (2019). Hybrid Contract (Multi Akad) Dan Implementasinya Di Perbankan Syariah. *Jurnal Peradaban Dan Hukum Islam*, *2*(1), 78–102.

Nasim, A. (n.d.). *Kritik Terhadap Asuransi Syariah*. Www.Academia.Edu. Retrieved August 11, 2021, from https://www.academia.edu/9630024/Kritik_Terhadap_Asuransi_Syariah

Nasution, S. (2020). Pelaksanaan Asuransi Pendidikan Dalam Hukum Ekonomi Syariah. *Jurnal Literasiologi*, *3*(3), 100–106. https://doi.org/10.47783/literasiologi.v3i3.107

Nazarov, I. I., & Dhiraj, N. S. (2019). Conceptual Understanding and Significance of Takaful (Islamic Insurance): History, Concept, Models and Products. *International Journal for Innovation Education and Research*, *7*(4), 280–298. https://doi.org/10.31686/ijier.vol7.iss4.1408

Ning Permata Ayu, R. (2019). *Analisis Penerapan Konsep Multi Akad Dalam Pembiayaan Otomotif Di Bank Syariah Mandiri Purbalingga*. IAIN Purwokerto.

Otoritas Jasa Keuangan. (2015). *Road Map IKNB Syariah 2015-2019*. 1–162.

Oxford Learner Dictionary. (n.d.). Retrieved January 15, 2021, from https://www.oxfordlearnersdictionaries.com/definition/english/contract_1?q=contract

Oxford Learners Dictionary. (n.d.). Retrieved January 22, 2021, from https://www.oxfordlearnersdictionaries.com/definition/english/hybrid_1?q=Hybrid

Priyatno, P. D. (2020). *JIEFeS Penerapan Maqashid Syariah pada Mekanisme Asuransi Syariah JIEFeS dalam mengelola keuangan untuk menerapkan manajemen risiko yang mungkin*. *1*(1), 1–18.

Rastuti, T. (2018). *Aspek Hukum Perjanjian Asuransi*. Media Pressindo.

Rolianah, W. S. (2020). Analisis Tabarru Dan Klaim Peserta Pada Asuransi Syariah Di Indonesia. In *Indonesian Interdisciplinary Journal of Sharia Economics (IIJSE)* (Vol. 2, Issue 2, pp. 103–113). https://doi.org/10.31538/iijse.v2i2.393

Saeed, M. (2019). Challenges of Islamic Insurance (Takaful) Globally. *COMSATS Journal of Islamic Finance*, *4*(1), 62–87. https://doi.org/10.26652/cjif.4201915

Savitri, D. M. (2020). *Pelaksanaan multi akad dalam produk gadai emas di Bank Syariah (Studi Kasus Bank Syariah Mandiri Kantor Cabang Pembantu Kedaton Bandar Lampung)*. IAIN Metro.

Suhendar, N. A. S. dan F. R. (2019). Konsep Akad Dalam Lingkup Ekonomi Syariah. *Syntax Literate; Jurnal Ilmiah Indonesia*, *4*(12), 137–150.

Syamsudin, N. (2019). Permasalahan Hukum Dalam Transaksi Multi Akad Pembiayaan Dan Pembuktianya Pada Bank Syariah. *Jurnal Hukum STHG*, *2*(1), 57–82.

Tarmizi, E. (2019). *Harta Haram Muamalat Kontemporer*. BMI Publishing.

Taufiq. (2018). Penerapan Akad Tabarru' Dalam Asuransi Syariah Menurut Perspektif Ekonomi Islam (Studi pada Asuransi Manulife Unit Syariah Lhokseumawe). In *Research IAIN Lhokseumawe*. IAIN Lhokseumawe.

Wahid, N. (2019). *Multi Akad dalam Lembaga Keuangan Syariah*. Deepublish.