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ISLAMIC INSURANCE AND CONVENTIONAL INSURANCE : WHAT'S THE DIFFERENCE?

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ABSTRACT

The aim of this research is to describe the differences between sharia insurance and conventional insurance, namely by looking at the principles, objectives and legal basis of the two types of insurance. The method used in this research is a qualitative method with a literature study approach. The data used in this research comes from literature from website articles, books, previous journals, and other related documents related to the research. The results of this research show that sharia insurance and conventional insurance have differences in several aspects, especially in terms of objectives and principles. Islamic insurance is based on the principles of Islamic law, while conventional insurance operates based on conventional financial principles.

Keywords : *Islamic Insurance; Conventional Insurance*

INTRODUCTION

There are many risks and uncertainties in life, such as the possibility of being sick, having an accident, or even dying. Because risks like these cannot be completely eliminated, people must make detailed plans for the future in order to deal with these challenges. The ability to reduce these risks via savings—often referred to as insurance savings—is one method to have a better and more financially secure future. Since the goal of insurance is to benefit the ummah and provide convenience, there are no clear and strict regulations governing the practice of insurance in Islam. As a result, legal research by ulama' (Ijtihad) is required to ensure that the insurance system does not violate religious norms. (Ridlwan, 2016).

In the past few decades, sharia insurance has grown significantly as a financial tool, helping both people and businesses reduce risk and maintain financial stability. Islamic economic concepts that promote equity, shared accountability, and economic sustainability are the foundation of the sharia insurance system. Within this paradigm, sharia insurance is regarded as both a traditional financial product and a crucial component in comprehending and implementing Islamic moral and ethical principles within the realm of commerce and finance.

The general public's interest in sharia insurance has grown dramatically in recent years. This expansion corresponds with a growing comprehension of the advantages of sharia insurance, including both financial gain and adherence to Islamic precepts. (Ismanto, 2018).

In essence, insurance is a person's way of preparing for an unforeseeable or unseen loss or calamity. Should that individual suffer a loss, the loss will be shared by both parties or by the business. (Abdullah, 2018). Sharia insurance is a financial product that has grown significantly over the past several decades and is essential for both people and businesses looking to reduce risk and maintain financial stability. Islamic economic principles, which promote equity, shared accountability, and economic sustainability, are the foundation of the sharia insurance system.

RESEARCH METHOD

The analysis of the distinctions between traditional insurance and sharia insurance is the main goal of this study. This study employed a qualitative methodology with a library research approach. The literature review covers theoretical analysis, empirical research, citations, and literature pertaining to customs, norms, and values atmerged in the local community under the monitored field conditions. (Latifah, 2020). Data for this study was gathered by looking up pertinent articles and other sources on traditional and sharia insurance. Books, articles from websites, back issues of journals, and other relevant materials are some of the sources consulted. Digital libraries, reputable websites, and scholarly databases were used for the literature searches. Next, pertinent data sources are located and gathered for use in the discussion and results.

RESULT AND DISCUSSION

Islamic Insurance

1. Purpose of Islamic Insurance

Jawari (2005) states that sharia insurance is set up to ensure that sharia is consistently applied in the financial sector, to prepare for the country's growing prosperity, to raise public awareness of insurance, and to help Muslims advance their managerial skills in the insurance sector (Hendro & Rahardja, 2014: 292). According to Atika (2008), sharia insurance is given for the following reasons: First, people should cooperate with one another since wealth is a gift from Allah SWT that should be used to alleviate the pain and dependency of others. To gain Allah's approval, sharia insurance premiums must be based on mutual assistance and cooperation in compliance with His directives. Second, it is human nature to protect one another from harm in order to rid the world of dread. Third, there is a shared need to enhance humanity's sense of fraternity and solidarity (Hendro & Rahardja, 2014: 292) (Asra, 2019).

2. Legal basis for sharia insurance

a. Al-Qur'an

1) God's Word about the command to prepare for the future

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ ٱتَّقُواْ ٱللَّهَ وَلۡتَنظُرۡ نَفۡسٞ مَّا قَدَّمَتۡ لِغَدٖۖ وَٱتَّقُواْ ٱللَّهَۚ إِنَّ ٱللَّهَ
خَبِيرُۢ بِمَا تَعۡمَلُونَ ١٨

"O you who believe, fear Allah and let everyone pay attention to what he has done for tomorrow (the afterlife); and fear Allah, verily Allah is All-Knowing of what you do." (QS. Al-Hasyr [59]: 18)

2) God's Word about the principles of mu'amalah, both those that must be implemented and avoided

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ أَوۡفُواْ بِٱلۡعُقُودِۚ أُحِلَّتۡ لَكُم بَهِيمَةُ ٱلۡأَنۡعَٰمِ إِلَّا مَا يُتۡلَىٰ عَلَيۡكُمۡ
غَيۡرَ مُحِلِّي ٱلصَّيۡدِ وَأَنتُمۡ حُرُمٌۗ إِنَّ ٱللَّهَ يَحۡكُمُ مَا يُرِيدُ ١

"O you who believe, fulfill these aqads. Livestock is permitted to you, except for those which are read to you. (That is) by not permitting hunting while you are performing Hajj. Indeed, Allah establishes laws according to what He wills." (QS. Al-Maidah [5]: 1)

3) **God's Word about the command to help each other in positive actions,**

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا تُحِلُّواْ شَعَٰٓئِرَ ٱللَّهِ وَلَا ٱلشَّهۡرَ ٱلۡحَرَامَ وَلَا ٱلۡهَدۡيَ وَلَا
ٱلۡقَلَٰٓئِدَ وَلَآ ءَآمِّينَ ٱلۡبَيۡتَ ٱلۡحَرَامَ يَبۡتَغُونَ فَضۡلٗا مِّن رَّبِّهِمۡ وَرِضۡوَٰنٗاۚ وَإِذَا حَلَلۡتُمۡ
فَٱصۡطَادُواْۚ وَلَا يَجۡرِمَنَّكُمۡ شَنَـَٔانُ قَوۡمٍ أَن صَدُّوكُمۡ عَنِ ٱلۡمَسۡجِدِ ٱلۡحَرَامِ أَن
تَعۡتَدُواْۘ وَتَعَاوَنُواْ عَلَى ٱلۡبِرِّ وَٱلتَّقۡوَىٰۖ وَلَا تَعَاوَنُواْ عَلَى ٱلۡإِثۡمِ وَٱلۡعُدۡوَٰنِۚ وَٱتَّقُواْ
ٱللَّهَۖ إِنَّ ٱللَّهَ شَدِيدُ ٱلۡعِقَابِ ٢

"O you who believe, do not violate the syi'ar-syi'ar of Allah, and do not violate the honor of the haram months, do not (disturb) the animals of had-ya, and the animals of qalaa-id, and do not (also) disturbing people who visit the House while they are seeking grace and pleasure from their Lord and when you have completed the Hajj, then you are allowed to hunt. And never let (your) hatred against a people because they prevent you from leaving the Sacred Mosque, encourage you to do harm (to them). And help you in (doing) righteousness and piety, and do not help you in committing sins and transgressions. And fear Allah, verily Allah is severe in punishment."

b. Hadith of the Prophet Muhammad

Hadiths of the Prophet sallallaahu alaihi wasallam regarding several principles of mu'amalah

“Whoever relieves a Muslim of any difficulty in the world, Allah will relieve him of the difficulty on the Day of Resurrection; and Allah always helps His servant as long as he (likes) helping his brother" (HR. Muslim from Abu Hurairah).

“The parable of believers in compassion, loving each other and loving like (one) body; if one part suffers from illness, the other parts will suffer too" (HR. Muslim from Nu'man bin Basyir).

c. Positive law in Indonesia

1) Principle of Tauhid

A fundamental tenet of sharia insurance is tawhid. For essentially, everything of a Muslim's life activities, including muamalah (shariah insurance), must be based on monotheism. This implies that the fundamental goal of obtaining sharia insurance must be founded on the monotheistic premise of seeking Allah SWT's pleasure. For instance, from the standpoint of the business, the idea behind sharia insurance goes beyond just making money or seizing market opportunities where sharia is currently in vogue. Above all, though, the original goal was to introduce sharia principles into the insurance industry. From the customer's point of view, however, sharia insurance is not just about "protection" in case of calamity; rather, it is about conducting transactions in the form of mutual help based on sharia principles. In this sense, the sharia insurance sector embodies the value of monotheism.

2) Principle of Justice

The fairness principle is the second value that should be considered when establishing sharia insurance. This implies that sharia insurance needs to be really equitable, particularly when it comes to establishing a pattern of interactions between clients and sharia insurance providers about their respective rights and responsibilities. Sharia insurance cannot oppress clients by imposing conditions that will be onerous or harmful to them. From an insurance company's perspective, there is a great deal of room for injustice to be done. For example, in savings products, the aspect of lost funds applies when a customer enrolls for an insurance program (like education insurance) then, for whatever reason, withdraws within the program's term. In sharia insurance, the customer's savings funds that were used to pay premiums must be given back to them, together with the profits from their investments. In fact, sharia insurance can become perplexed when customers' savings accounts are withdrew or terminated in the middle of the insurance term, and they never receive the money back despite being notified via letter or other channels. What use do you want to make of these funds? Because these monies are the customer's and not the property of Sharia insurance. The consumer in question has been informed and contacted for many years, but they have not taken it.

3) Principle of Mutual Assistance

One crucial element of sharia insurance operations is the spirit of mutual aid. Since this idea essentially forms the foundation of the sharia insurance concept. where participants share tabarru' or donate to charities to help other clients afflicted by natural disasters. Donations to sharia insurance businesses are not made by customers; rather, participants only give to other participants. The sharia insurance provider solely serves as a manager. As a result, the business is unable to demand or accept payment from clients for tabarru. The consumer pays the ujrah (charge) to the company for managing the tabarru's finances in addition to contributions (premiums). The sharia insurance provider oversees the tabarru's money, which are invested in accordance with sharia and subsequently distributed to other clients who have been impacted by calamity. And with a notion such as this, it implies that other clients have adopted mutual support, notwithstanding their virtual interactions.

4) Principle of Coorporation

The type of contract that sharia insurance businesses use determines how well they cooperate with their clients. The sharia insurance firm functions as mudharib (manager/entrepreneur) and the customer acts as shahibul maal (capital owner) in a cooperation known as the mudharabah musytarakah contract (this contract will be detailed separately in a particular discussion of the contract). Should these funds yield a profit, it will be allocated according to the prearranged ratio, for instance, 40% going to the sharia insurance provider and 60% to the policyholder. When a cooperative relationship is well-established, both clients and sharia insurance businesses meet their legal requirements. This creates a positive pattern of cooperative connections that, with any luck, will benefit both sides.

5) Trust Principle

The notion of trust is also very crucial. Since this life is essentially a trust that needs to be answered to Allah SWT. It is necessary for businesses to handle premium monies with integrity. Customers must also be reliable when it comes to the dangers involved. Allowing consumers to fabricate claims in order to make what shouldn't be claimed become a claim would undoubtedly cause losses for other participants. Don't allow this to happen. Similarly, businesses can't just take advantage of situations that cause them to lose clients.

6) Principle of Mutual Pleasure

Every transaction must always be accompanied with the mutual blessing, or taradhin, aspect. Sharia insurance firms are glad with the trust customers have placed in them to manage their contributions (premiums), and customers are happy that their monies are managed by a sharia insurance company that is reliable and professional. In a similar vein, clients appreciate that their money is distributed to less fortunate clients in order to lessen their pain. Because everyone helps with sincerity and pleasure, cooperates with sincerity and pleasure, and transacts with sincerity and joy as well, sharia insurance gives aiding one another a profound and comprehensive meaning.

7) Principle of Avoiding Usury

Avoiding usury in transactions is crucial, particularly when it comes to insurance. Since the fallacy of muamalah transactions is usury. The lowest degree of usury-related sin is equivalent to having an affair with one's own mother. Customer contributions, or premiums, must be placed in investments that are unquestionably halal and compliant with sharia. Similarly, in order to remove the element of usury in the process of supplying consumers with sharia insurance benefits (claims), the sharia insurance operational system must also implement the notion of sharing of risk, which is founded on the tabarru' contract.

8) Principle of Avoiding Gambling

Conventionally managed insurance will lead to aspects of maisir (gambling). because a client might pay premiums for up to twelve times without ever filing a claim. Conversely, some clients just pay the premium once before making a claim. This occurs as a result of the fundamental idea behind traditional insurance—the transfer of risk. When traditional insurance firms receive premiums, the money is automatically deemed to be their property, and the company's account is used to settle claims. This results in either large profits for the company—that is, when there are many premiums and few claims—or large losses for the company—that is, when there are many claims and small premiums.

9) Principle of Avoiding Gharar

Gharar is the unknown. When we discuss risk, we are also discussing uncertainty because hazards have no guarantee of happening. We are not permitted to conduct transactions employing ambiguous terms under Islamic law. Participants in (traditional) insurance are unsure of whether they will receive a claim because it mostly depends on the risk that they incur. He will receive a claim if there is a risk; else, he won't receive one. Such things are considered gharar because they involve a contract or idea of risk transfer. When using the sharing of risk element, however, this ambiguity does not turn into gharar; rather, it becomes a warning sign that, in the event that it materializes, other clients will assist one another in aiding other participants who are impacted by calamity. This assistance is provided by sharia insurance companies using tabarru funds, not company funds.

10) Principle of Avoiding Risywah

Sharia insurance providers and their clients ought to keep as far away from the risywah element (bribery or bribery) as feasible when conducting business. Regardless of the justification, risywah will undoubtedly help one party while harming other others. For instance, clients might not bribe insurance representatives in order to receive benefits (claims), or the insurer would not need to bribe clients in order to receive insurance premiums (contributions). But everything needs to be done correctly, openly, equitably, and in accordance with Islamic brotherhood (Winarno, 2015).

Conventional Insurance

1. Definition of Conventional Insurance

The word "insurance" originates from the Dutch word "assurantie," which is also known as "verzakering," which meaning "coverage" in Dutch law. Several terminology, such "assuaduer" for the insurer and "geassureede" for the insured, come from this concept (Syakir, 2004: 26). The Bappepam-LK annual report states that there are two main categories of insurance: life insurance and general insurance. In accordance with Chapter 1, Article 1 of Law of the Republic of Indonesia Number 2 of 1992 concerning insurance businesses, "Insurance or Coverage is an agreement between two or more parties, whereby the insurer binds itself to the insured by accepting insurance premiums, to provide compensation to the insured due to loss, damage, or loss of expected profits, or legal liability to third parties that the insured may suffer, arising from an uncertain event, or to provide a payment based on the death or life of the insured person" is the definition of insurance as per Hardi (2015).

2. Purpose of Conventional Insurance

Conventional insurance businesses have solely commercial objectives. Making significant profits is the aim, just like in most other firms. The money received from customer premiums, which all become the company's property, demonstrates this (Rosidah, 2013).

3. Principle of Conventional Insurance

According to the Commercial Law Book, conventional insurance has 6 basic principles that are used, namely:

a. Insurable interest, is the legally protected or recognized right to insurance that results from the presence of a financial relationship between the insured and the object of insurance.
b. Utmost good faith, means that a reciprocal insurance arrangement must be founded on an insurance agreement in good faith by both parties.
c. Proximate cause, is a theory about issues that could come up if something happens that could generate losses for the party who is covered.
d. Indemnity, is a procedure and framework necessary for the loss compensation procedure.
e. Subrogation, is a theory that applies in cases where the insured suffers a loss as a result of a third party (someone else).
f. Contribution, means that the insurance company has the right to request that other insurance companies engaged in the object reimburse the losses in line with the contribution principle once the insurance company has compensated the insured party. (Rosidah, 2013).

Table 1. Differences between Sharia Insurance and Conventional Insurance

Difference	Sharia Insurance	Conventional Insurance
In terms of concept	The concept of sharia insurance is a concept in which an attitude of mutual assistance and risk-bearing is developed among fellow participants. In this way, one participant becomes responsible for the other participants in the risks that arise.	In conventional insurance, the insurance business is a business in the financial services sector that collects public funds through collecting insurance premiums,
In terms of legal sources	The source of sharia insurance law is Islamic sharia which is based on the Al-Quran, Sunnah, Ijma' and Qiyas.	The source of conventional insurance law is the human mind and culture
In terms of relationships with Maisir, Gharar, and Riba	Sharia insurance, both life insurance and casualty insurance, is free from things that are forbidden by religion, namely free from the presence of forbidden elements (maisir, gharar, usury).	Conventional insurance in its activities cannot be separated from maisir (gambling), (gharar), and usury
In terms of contracts (agreements)	The terms used in sharia insurance are the tijaroh contract and/or the tabarru' (grant) contract.	In conventional insurance, the agreement used is the mu'awadhah contract

In terms of risk coverage	The coverage mechanism in sharia insurance is sharing of risk (bearing each other's risks).	Meanwhile, in conventional insurance, the coverage mechanism is transfer of risk.
In terms of Fund Management	In sharia insurance, for products that contain a savings element, the funds paid by participants are immediately divided into two accounts, namely the participant account and the tabarru' account.	Fund management mechanism in conventional insurance, there is no separation between participant funds and tabarru' funds. All funds are mixed together and the status of these funds is company funds
In terms of investment funds	In sharia insurance, investment of funds collected from participants is only permitted through instruments that use contracts that comply with Islamic sharia.	In conventional insurance, both according to Government Regulations and Decrees of the Minister of Finance, investments made are based on an interest system.
In terms of Fund Ownership	In sharia insurance, the funds collected from participants in the form of contributions or contributions belong to the participant (shahibul mal), while sharia insurance is only the trustee (mudharib) who manages the funds.	In conventional insurance, all funds collected belong to the company.
In terms of premiums	Premiums for sharia insurance consist of tabarru' and savings elements (for life insurance), and usur tabarru' only (for loss insurance).	In conventional insurance, the premium elements consist of a mortality table, interest and insurance costs

CONCLUSION

From the results and discussion above regarding sharia insurance and conventional insurance, it can be concluded that there are several differences between the two types of insurance, especially in terms of basic legal objectives and principles. The legal basis for sharia insurance is the Al-Quran and hadith. Sharia insurance aims for the common good, whereas in conventional insurance the aim is purely to make a profit. Sharia insurance also has the principles of monotheism and justice, and does not contain usury, maisir or gharar. whereas conventional insurance does not emphasize these elements.

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