



Liability of Islamic Banks in Bancassurance Activities

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ABSTRACT

The development of Islamic banking in Indonesia has driven collaboration between Islamic banks and insurance companies through bancassurance. However, this practice raises legal issues, particularly concerning the responsibility of Islamic banks in these activities. This study aims to analyze the legal relationship between parties in bancassurance and the responsibility of Islamic banks toward consumers. Using a normative legal method with a juridical approach, this research examines relevant legislation, including the Sharia Banking Law and regulations issued by the Financial Services Authority (OJK). The findings reveal that Islamic banks act as marketing agents for Islamic insurance products and do not bear direct responsibility for the contractual engagement between customers and insurance companies. However, they are obligated to ensure transparency of information and consumer protection in accordance with sharia principles and prevailing consumer protection regulations. The study highlights the necessity for more comprehensive regulations on sharia-based bancassurance to ensure legal certainty regarding the rights and obligations of all involved parties. The results contribute to academic discourse, provide regulatory insights for policymakers, and offer practical implications for the Islamic financial industry in enhancing consumer trust and compliance with sharia principles.

Keywords: bancassurance, consumer protection, islamic bank, islamic insurance, legal relationship.

INTRODUCTION

The role of banks in daily life is undeniable, as they serve not only as a place to store funds but also as financial intermediaries providing capital for businesses (Greenbaum et al., 2019). In Indonesia, banks operate based on Law Number 10 of 1998, which amends Law Number 7 of 1992 concerning Banking. This regulation defines banks as financial institutions that collect funds from the public in the form of deposits and distribute them as credit or other financial services to improve economic welfare.

In the context of Islamic banking, the expansion of the industry has created new opportunities for financial products that align with sharia principles, including bancassurance. Bancassurance in Islamic banking refers to the cooperation between Islamic banks and insurance companies in providing sharia-compliant insurance services (Guemmaz, 2023). According to the Director of Asuransi Central Asia (ACA), Muljadi Kusuma, the increasing number of Islamic financial institutions presents significant opportunities for the growth of sharia-based insurance.

Bancassurance products may take various forms, such as savings accounts bundled with life insurance or insurance policies linked to bank savings for premium payments. However,

bancassurance is not merely a distribution system; it also involves legal, operational, and cultural aspects integral to its implementation. Bank Indonesia defines bancassurance as a bank service that offers insurance products for financial protection and long-term investment (Bagasworo & Simatupang, 2022). For banks, bancassurance serves as a strategy to enhance fee-based income, strengthen customer loyalty, and improve overall sales effectiveness while mitigating financial risks.

Globally, bancassurance has seen significant growth, particularly in Europe, where more than half of life insurance transactions occur through banks (Hoschka, 2016). This distribution model emerged in the 1970s and gained prominence in the 1980s, particularly in France, before expanding to other regions, including Asia. Given its growing relevance, this study aims to analyze the legal relationships between parties involved in bancassurance activities. The findings of this research are expected to contribute valuable insights for academia, practitioners, and the broader community regarding the legal framework governing bancassurance.

RESEARCH METHODS

This research employs a normative legal research method, which focuses on the study of positive law through the analysis of legal norms and principles. The study is conducted using a juridical approach, primarily examining the legal framework governing bancassurance, with Law Number 21 of 2008 and Bank Indonesia Circular Letter Number 12/35/DPNP concerning the implementation of risk management in banks engaging in marketing cooperation with insurance companies as the primary objects of analysis.

Legal materials in this study are categorized into primary and secondary legal sources. Primary legal materials consist of statutory regulations and official legal documents that serve as the foundation of the analysis (Wacks, 2021). Secondary legal materials, on the other hand, include literature, books, scholarly articles, research papers, and relevant online sources that provide supporting interpretations and context. The process of data collection involves a systematic review of legal documents, followed by qualitative legal analysis to interpret and categorize the legal principles under study. To ensure the validity and reliability of the legal data, the study employs a structured approach to source verification, cross-referencing key legal texts, and applying doctrinal legal analysis to establish consistency in legal reasoning. This methodological rigor strengthens the academic credibility of the research and ensures that the conclusions drawn are well-founded within the existing legal framework (Heston, 2024).

RESULTS AND DISCUSSION

Parties in Bancassurance Activities

The parties in carrying out bancassurance activities are banks and insurance companies, and there are also customers who do takaful contracts in accordance with sharia principles which aim to help each other, not merely to seek profit. The relationship is based on a bancassurance cooperation agreement between Islamic banks and insurance companies based on sharia principles

(Iqbal, 2021). With the development of bancassurance in Indonesia, there are more and more cooperative relationships between Islamic banks and Islamic insurance companies. With this, it is necessary to examine a clear and definite legal basis regarding bancassurance within the scope of sharia insurance.

In the Islamic insurance system takaful has two main mechanisms which are the basic principles of the operation of insurance companies (sharia insurance), namely the principle of al-mudharabah and the principle of tabbaru (Irkhami, 2017). With these two basic principles, the insurance company system can be in harmony with sharia law, besides that insurance companies also have the concept of wakalah bil ujah to run their business but this concept is included in the theory of al-mudharabah, namely the investor hands over capital to the entrepreneur (insurance company) on the principle of amanah (entrustment) and wakalah (authorization) to be invested and the profits will be shared according to the agreed agreement.

Insurance companies work with Islamic banks to market Islamic insurance products that have been determined by the business model to refer, distribute, or integrate them into banking products while still providing clear limits on risk and product separation (Davies & Chambers, 2018). The legality of bancassurance cooperation regarding the bancassurance business model refers to Bank Indonesia Circular Letter Number 12/ 35 /DPNP dated December 23, 2010 Implementation of Risk Management in Banks Conducting Marketing Cooperation Activities with Insurance Companies (Bancassurance), namely Reference, Distribution Cooperation and Product Integration. And there are also special rules related to the marketing channel of insurance products through cooperation with banks (bancassurance) in Circular Letter of the Financial Services Authority Number 32 / SEOJK.05 / 2016 mentioned in General Requirements, namely Cooperation between the Company and the Bank is categorized as bancassurance if the cooperation mechanism uses one of the three business models as follows: Namely Reference, Distribution Cooperation and Product Integration.

In Article 24 paragraph (1) letter d of the Islamic Banking Law, banks are prohibited from conducting insurance business activities, but banks can become marketing agents for insurance products as stipulated in the Explanation of Article 24 paragraph (1) letter d. Based on Law No. 21 of 2008 concerning Islamic Banking Article 19 paragraph (1) letter q, it is explained that Islamic banks can carry out other activities commonly carried out in the banking sector and in the social sector as long as they are not contrary to sharia principles and in accordance with the provisions of the applicable laws and regulations, so that in this case the bank only acts as a representative of an Islamic insurance company to market, refer Islamic insurance products to customers, which if the customer is interested in using these services, the bank can bring the customer together with the Islamic insurance company to get further information.

From a legal perspective, Bancassurance is a legal activity arising from an agreement between an insurance company and a bank where the bank agrees to act as an agent for the sale of insurance products within the market coverage area owned by the bank. From the sale of insurance products, the bank will get payment in the form of fees or commissions in the agreed amount

(Hussain et al., 2016).

In the agreement there is a third party made by the agent on behalf of the principal. The relationship between the agent and his principal is basically a relationship of power of attorney with authority, as regulated in BW, as stated in Article 1792, namely Granting power is an agreement by which one person gives power to another person, who accepts it, to carry out an affair on his behalf (Pohan, 2022).

Related to the engagement between Islamic banks and customers, it does not cause an engagement between banks and their customers related to Islamic insurance products that customers want (Yasin et al., 2020). It is also mentioned that the legal relationship between Islamic banks and customers in the business activities of Islamic banks is divided into 3 (three) categories,28 namely:

- a) Fund-raising activities are carried out in the form of savings, current accounts and deposits. For Islamic banking, savings and current accounts are divided into two types, namely savings and current accounts based on wadiah contracts and savings and current accounts based on mudharabah contracts. Meanwhile, deposits only use a mudharabah contract as regulated in Article 19 of the Islamic Banking Law.
- b) Activities of channeling funds to the public by Islamic banks in the form of financing, namely murabahah, salam, istisna, mudharabah, musyaraka, ijarah wa iqtina / ijarah muntahiyah bitamlik and qardh. Islamic banks will get rewarded 28 Trisadini Prasastinah Usanti and Abd.Somad, Banking Law, Faculty of Law, Universitas Airlangga and Lutfansah Mediatama, Surabaya, 2015, p.39 in the form of profit margins for murabahah and musyarakah, rent for ijarah and ijarah wa iqtinah / ijarah muntahiyah bittamlik and administrative fees for Qardh as stipulated in Article 19 of the Islamic Banking Law.
- c) Bank Services, the business activities of Islamic banks in the field of services, can be in the form of providing bank guarantees (kafalah), letters of credit (L/C), hiwalah, wakalah, buying and selling foreign exchange / sharf and others as regulated in Article 19 and Article 20 of the Islamic Banking Law.

The above explanation is clearly related to the legal relationship between customers and Islamic banks in terms of conducting sharia bak business activities (Majeed & Zainab, 2018). As explained above the Explanation of Article 24 paragraph (1) letter d. Banks can become agents of insurance companies related to marketing insurance products based on Law No. 21 of 2008 concerning Islamic Banking.

This is explained in Article 39 KMK No. 426/PMK.06/2003 where the insurance company is responsible for all bank actions related to insurance transactions marketed through cooperation with banks. The consequences of the agreement arising from the insurance agreement marketed by the bank to its customers do not cause an agreement between the customer and the bank (Hutomo et al., 2024).

Characteristics of Sharia Insurance

Referring to Bank Indonesia Circular Letter Number 12/ 35 /DPNP dated December 23,

2010 concerning the Implementation of Risk Management in Banks Conducting Marketing Cooperation Activities and Circular Letter of the Financial Services Authority Number 32 / SEOJK.05 / 2016 insurance product marketing channels through cooperation with banks. then the definition of bancassurance is a cooperative activity between banks and insurance companies in order to market insurance products through banks. If bancassurance is applied based on sharia principles, then the marketing cooperation must be carried out by parties who in carrying out their business activities must be based on sharia principles (Alrianta, 2024). The following are the results of Muslim scholars and economic experts regarding the differences between bancassurance based on sharia principles (takaful) with conventional bancassurance, as follows:

- 1) Takaful insurance operations are based on Islamic teachings, such as eliminating prohibited elements. While conventional insurance is not based on sharia so that the company's operations cannot avoid elements prohibited by Islam, such as al- gharar, al-maisir and al-riba.
- 2) From a contractual point of view, the takaful contract is based on the principles of al-takaful and al-mudharabah, so the conventional insurance contract is a contract based on commerce or buying and selling.
- 3) Takaful practices the principle of guaranteeing cooperation and mutual assistance based on the concept of tabarru' among participants, while conventional insurance has no tabarru' practice, only an indemnity agreement by the insurance company.
- 4) Takaful participants will get two benefits, namely investment profits and financial benefits, while conventional insurance participants only get the advantage of replacement money.
- 5) Takaful has a sharia supervisory board (DPS) that functions to oversee the skim (product) and investment of funds obtained, while conventional insurance does not have a sharia supervisory board.
- 6) In takaful, the investment of funds is based on the results system (al- mudharabah), while in conventional insurance the consolidation of funds is based on interest.
- 7) In Takaful, the investment of funds is based on a profit-sharing system (al- mudharabah), while in conventional insurance the funds collected from participants belong to the insurance company.
- 8) In Takaful, the money given to participants comes from tabarru' funds, while in conventional insurance the funds that arise are derived from money belonging to the insurance company.
- 9) The profits received by the takaful company will be distributed to participants in accordance with the al-mudharabah contract agreement, while in conventional insurance all profits belong to the insurance company.

Akad Tabarru in Sharia Insurance

Tabarru' contract is a contract in Islamic insurance business activities that truly refers to sharia principles and as mentioned above regarding the privileges of Islamic insurance companies that apply this tabarru' contract, shows that Islam is rahmatanlilalamin, Islam is a perfect religion, a religion that can solve all kinds of complex problems, a religion that helps each other in terms of goodness.

Tabarru' agreement, according to Fatwa DSN-MUI No. 53/DSN-MUI/III/2006 concerning tabarru' in Islamic insurance, is an agreement inherent in all insurance products, namely an agreement made in the form of grants with the aim of benevolence and help between participants, not for commercial purposes.

This tabarru' agreement must at least mention :

- 1) Rights and obligations of each individual participant;
- 2) Rights and obligations between participants individually in the tabarru' account as participants in the sense of a body/group;
- 3) How and when to pay premiums and claims;
- 4) Other conditions are agreed upon in accordance with the type of insurance being entered into.

In its development, insurance products issued by insurance companies must be in accordance with sharia principles where in conventional insurance in Indonesia there is liability insurance and life insurance, of course in its management it is not guided by principles in accordance with sharia, with the existence of this division, sharia insurance, namely sharia life insurance, is family insurance or family takaful and sharia liability insurance. There are also insurance products that are now known as Unit Link insurance.

Referring to the cooperative relationship between Islamic banks and Islamic insurance companies as mentioned above regarding the Application of Risk Management to Banks Conducting Marketing Cooperation Activities with Insurance Companies as an example of PT Bank Muamalat Indonesia, Tbk, which implements the concept of sharia in collaboration with Islamic insurance company PT Asuransi Jiwa Manulife Indonesia which is a form of bancassurance cooperation with marketing patterns, or distribution cooperation. There are 3 sharia-based insurance products, namely Zafira Protksi Sejahterah, Zafirah SaveLink and zafirah Mediacash,³⁰ as life insurance products and Zafira SaveLink, a sharia-based unit link insurance product that combines investment and self-protection.

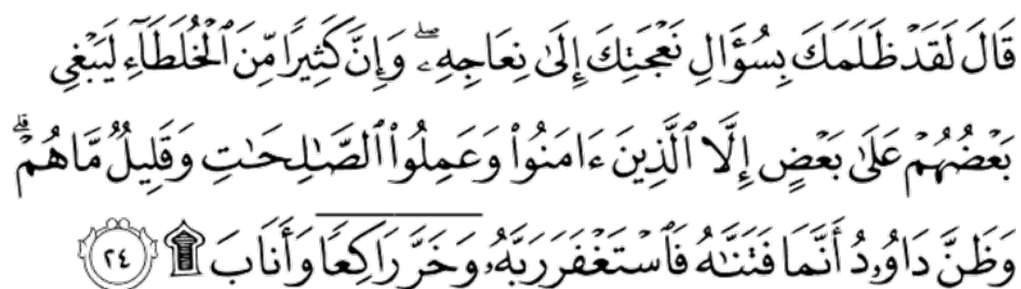
The advantage of being a customer of a Unit Link product is that customers get double benefits, namely insurance protection and investment, while in sharia insurance products it will be offered in the form of health insurance or life insurance (Dewi, 2023). In the investment, profit sharing will be prioritized in contrast to insurance that uses conventional principles, then in the practice of sharia unit links, from the insurance side using shared risk bearing.

The link practice uses a representative contract (wakalah), namely the insurance participants mandate the insurance company to manage funds from participants to obtain halal profits (Prabowo, 2020). Thus, the insurance company acts as an Investment Manager. While the work contract used by insurance companies with parties who manage participant funds is a mudharabah contract (profit sharing) ownership of funds in sharia unit links is the right of participants as shahibul mal, while the company is only a trustee to manage funds (mudharib), the profit sharing of sharia unit links is shared between the company and participants in the principle of profit sharing with the proportion (nisbah) that has been agreed upon if there is profit in it.

Responsibility of Islamic Banks for Consumer Losses in Bancassurance Activities

Responsibility of Parties in a Bancassurance Agreement

Islam is a religion that is rahmatanlilalamin, where the religion of mutual help and mutual benevolence towards others, and the act of giving property without expecting pleasure and rewards other than Allah SWT, this term in Islam is called ta'awun as previously explained in the previous chapter, therefore in conducting a business activity it must be based on the Word of Allah SWT in the letter Shaad verse.



David said: "Indeed, he has wronged you by asking for your sheep to add to his. And indeed most of those who join together, some of them do wrong to others, except those who believe and do righteous deeds; and they are very few". And David knew that We were testing him, so he sought forgiveness from his Lord, bowed down and repented.

Legal Protection for Customers in Bancassurance Activities

With the development of bancassurance products in Indonesia, it is inseparable from the role of agents in marketing and explaining the benefits of products that will be purchased by bank customers who have previously established agency cooperation relationships between Islamic banks and insurance companies that use sharia principles, as mentioned in the previous chapter. The role of agents in marketing these insurance products to customers first, must have a qualified capacity and have an agency certificate in this case based on sharia, of course to get the certificate must be registered in an Indonesian Life Insurance Association (AAJI), of course to give birth to insurance agents who are competent in their fields, they must take the exam held at the insurance company. After being registered as an insurance agent, the agent has the right to sell sharia insurance products, it is necessary to underline that in carrying out agency activities it is necessary to attach a sharia salesperson certificate, related to this, the Sharia Insurance Association (AASI) in collaboration with the Indonesian Life Insurance Association (AAJI) on January 1, 2014 will implement a Certificate Program for Sharia Salespersons with the name of the Program Grandfathering Sharia salespersons, the program is valid for 1 (one) year effective from January 1, 2014 and ends December 31, 2014. The sharia grandfathering program is a program of awarding Sharia Life Insurance agency certificates and licenses to agents who currently have conventional insurance certificates and licenses from the Indonesian Life Insurance Association (AAJI), which

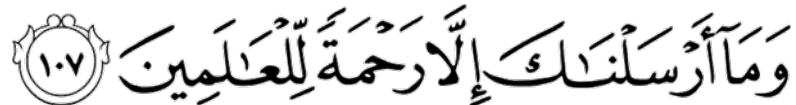
will market sharia-based jiwaan insurance products without taking the sharia insurance agency certification and license exam. In carrying out the duties of an agent as a seller of a bancassurance product is required to explain in detail the risks and benefits that exist in it to prospective buyers of insurance products, namely, Islamic bank customers. Public ignorance of an insurance product can cause new problems where customers who do not understand in detail the benefits of the insurance product because there are agents who in carrying out their duties do not provide correct information about an insurance product. This is also confirmed by Mrs. Ayu Ramadhani where agents in carrying out their duties as agents in marketing a bancassurance product have very little knowledge of agency so that there is a miss selling in product explanation so that customers in buying the product feel disadvantaged.

Claim Submission Procedures for Customers Who Buy Bancassurance Products

Customers as buyers of a bancassurance product who want to submit an insurance claim can go directly to the nearest bank branch office as the nearest service office (Latorre Guillem, 2020). In this case, it means that customers who buy a bancassurance product owned by PT Bank Muamalat or PT Manulife Life Insurance Indonesia can go directly to the branch office or contact the hotline service of PT Bank Muamalat or through the service number of PT Manulife Life Insurance Indonesia⁴⁵ In the DSN-MUI fatwa on insurance.

Dispute Resolution in Bancassurance Products

Islam is a religion that prioritizes deliberation in resolving any existing problems in all aspects which refer to sharia principles (Mirahmadi, 2021). In addition, Islam is a religion that upholds peace, this is in line with the principles and objectives of sharia, namely (ishlah) and eliminates hostility as mentioned in the Word of Allah SWT.



Meaning: "And we have not sent you but to be a mercy to the universe". In the bancassurance cooperation relationship that refers to this sharia principle, the parties to the dispute must uphold the values contained in the Word of God.

Dispute Resolution Through Basyarnas

Dispute resolution through Basyarnas is a judicial institution in its simplest form and from the historical literature of Islamic law, such a term is better known as tahkim or hakam (Mirahmadi, 2021). This term literally means appointing as a referee or peacemaker, as a third party in resolving a problem. The character of this institution is to prioritize deliberation accompanied by the council. Dispute resolution through basyarnas is actually more effective for finding solutions and finding a middle point in resolving a problem related to bancassurance products.

Dispute Resolution Through Court

The process of resolving a dispute through the court, is the last choice that many parties choose in resolving a dispute, where the parties no longer find common ground in peace outside the court (Shamir, 2016). In this process the court will adjudicate, especially disputes here related

to Islamic banking in the bancassurance cooperation relationship, it is clear here that the competent in adjudicating a dispute is the Religious Court as mentioned in the previous sub chapter, in resolving disputes through this religious court decision, each party to the dispute must prepare files or documents or problems submitted to the court. and for that if all the parties have entered the courtroom, there will be a sense of distrust of each other. For this reason, the court settlement route is the last resort for the parties.

CONCLUSION

Islamic banks in bancassurance arrangements act solely as marketing agents for Islamic insurance companies, promoting their bancassurance products. The relationship between banks as agents and insurance companies as principals is legally framed as an agency agreement, where banks operate on behalf of the insurance companies in their interactions with customers. This cooperation follows the business model outlined in Bank Indonesia Circular Letter Number 12/35/DPNP dated December 23, 2010, concerning the Implementation of Risk Management in Banks Engaging in Marketing Cooperation with Insurance Companies (bancassurance). Additionally, there are specific regulations governing the marketing channels for insurance products through bank partnerships.

Regarding liability in bancassurance activities, Islamic banks do not bear direct responsibility for agreements between customers and insurance companies. Referring to the Minister of Finance of the Republic of Indonesia Regulation Number 426/KMK.06/2003 Article 39, insurance companies involved in bancassurance bear full responsibility for all bank actions related to insurance transactions conducted through such cooperation. This legal framework establishes that banks act solely as representatives of insurance companies, ensuring that the contractual obligations remain with the insurers. However, to strengthen consumer protection in line with Islamic principles, it is necessary to enhance regulatory oversight and ensure stricter compliance with Law Number 8 of 1999 on Consumer Protection, particularly Article 4, which mandates that information provided to consumers must be clear, transparent, and truthful. Additionally, banks as marketing agents must meet competency requirements by obtaining agency certification from the Indonesian Life Insurance Association and the Indonesian Sharia Insurance Association. Strengthening these measures will help prevent misselling and enhance consumer confidence in Islamic bancassurance practices. Furthermore, regulatory improvements should focus on clarifying dispute resolution mechanisms to protect consumer rights and ensure that bancassurance operations align with sharia principles and ethical banking practices.

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