



# Insurance Brokers Based on Sharia Principles: A Consideration Fatwa of the National Sharia Council of Majelis Ulama Indonesia (DSN-MUI) Through a Hybrid Contract

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**Abstract.** The exploration of insurance brokers operating under Sharia principles is paramount for advancing Islamic finance. This paper delves into this critical area, focusing on the Fatwa DSN-MUI No. 128/DSN-MUI/VII/2019. By examining the application of a hybrid contract approach in Sharia-compliant insurance brokerage, the study highlights the integration of Islamic economic principles such as mutual assistance (*ta'awun*) and risk-sharing (*tabarru'*). Analyzing the legal and operational frameworks established by the National Sharia Council - Indonesian Ulema Council (DSN-MUI), this paper aims to analyze how the DSN-MUI fatwa on insurance brokerage products is implemented in the insurance sector. The findings suggest that there may be room for improvement in applying the DSN-MUI fatwa to insurance brokerage products. This is evidenced by some agreement clauses diverging from the DSN-MUI fatwa, potentially leading to challenges in the agreement's enforceability. This research contributes to the broader discourse on Islamic finance by offering insights into the practical challenges and opportunities faced by Sharia-compliant insurance brokers in Indonesia.

**Keywords:** Insurance Broker, Sharia Principles, Hybrid Contract, Fatwa DSN-MUI.

## 1 Introduction

According to data from the Financial Services Authority (OJK), in 2023 Indonesia's Islamic financial assets exhibited a growth rate of 13.37% (year-on-year), with a market share of 10.94% and total assets of 2,450.55 trillion, equivalent to approximately USD 163.09 billion. This achievement positioned Indonesia in seventh place in the State of Global Islamic Economy (SGIE) Report 2023. Despite the notable expansion of the Islamic financial industry in Indonesia, the insurance brokerage industry, which plays a crucial role in the financial sector, has largely been overlooked. Thus far, there has been no insurance brokerage company based on Sharia principles, despite the clear need for such a company in the community, particularly among Sharia Financial Institutions

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(LKS) such as Islamic banking, which requires a robust and competitive product offering. The dearth of attention devoted to the Sharia insurance brokerage industry can be attributed to the inability of industry stakeholders to translate DSN-MUI fatwas encompassing a multitude of contracts into tangible operational products, including insurance brokerage products founded upon Sharia principles [9].

The National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has issued 156 fatwas, the majority of which pertain to contracts. These include fatwas related to insurance brokerage products based on Sharia principles. The Financial Services Authority Regulation (POJK) has not codified all DSN-MUI fatwas regarding Islamic financial products that use multiple contracts, including insurance brokerage products based on Sharia principles. This has resulted in discrepancies between Islamic financial industry players in the development of insurance brokerage products based on Sharia principles [3].

The permissibility of multi-contracts is a topic that has been the subject of considerable debate among scholars. There is a divergence of opinion as to whether such contracts are permissible or prohibited. Scholars who permit multi-contracts argue that the original law of multi-contracts is permissible, except for those that contradict the principles of Sharia as outlined in the *Nashsh*. Meanwhile, scholars who prohibit multiple contracts cite the hadith narrated by al-Tirmidhi, Abu Dawud, and al-Nasai [5]. Al-Imrani categorizes multiple contracts into five distinct types: (1) *al-uqud al-mutaqabilah*, (2) *al-uqud almujtami'ah*, (3) *al-uqud al-mutanaqidhah wa al-mutadhadah wa al-mutanafiyah*, (4) *al-uqud al-mukhtalifah*, and (5) *al-uqud almutajanisah* [1].

Iman Sastra Mihajat posited that the majority of Islamic financial and banking institutions utilize a multitude of contractual instruments. Mihajat encourages those involved in the Sharia financial and banking industry to exercise caution in their implementation of multi-contracts, emphasizing the importance of avoiding any actions that could result in their prohibition [8]. Ghalib posits that multiple contracts may be justified if they do not contain elements of *bay' al-'Inah*. *Bai' al-'īnah* is a form of sale and purchase transaction in which the seller sells his goods to the buyer on a deferred basis, and then the buyer sells them to the seller in cash at a lower price, which the latter must pay at maturity [4]. Setiadi posits that the original law of multi-contract is permissible, except for those multi-contracts that are expressly prohibited by the *nashsh*. The identification of prohibited multi-contracts necessitates an in-depth textual and contextual analysis of the *nashsh* [10].

In the contemporary era, the development of efficient and competitive Islamic financial products is a necessity if they are to compete with conventional banking products. One potential avenue for achieving this is the application of multiple contracts within each product. However, this must be by the parameters of *maqashid al-Shari'ah*, which specifically must not lead to changes in prohibited actions, namely multiple contracts that can lead to hidden "*riba*" [7]. Al-Husban [2] posits that multiple contracts are permissible as long as they do not include *bay' al-'Inah*, as suggested by Ghalib.

Hasanudin posits that the DSN-MUI fatwa has adopted *mujtami'ah* and *muta'addidah* contracts and rejected *mutaqabilah* contracts. A *mujtami'ah* contract is a collection of several contracts in one transaction where one contract and another cannot be separated. A *muta'addidah* contract is a combination of several contracts in which

one contract is independent of the others. Akad *mutaqabilah* is a collection of many contracts in one transaction that are mutually dependent (*mu'allaq*) on each other [6].

The DSN-MUI Fatwa does not provide a comprehensive explanation of the limitations (*dhababith*) associated with multiple contracts in insurance brokerage products based on Sharia principles. This results in discrepancies in implementation across the Islamic financial industry, contingent on the rulings issued by each Sharia Supervisory Board (DPS), including in the development of insurance brokerage products based on Sharia principles. Of equal or greater importance than multiple contracts are the issue of other prohibited practices, such as *riba*, *gharar*, and *maysir*. These issues will be elaborated upon in this research.

In light of the aforementioned literature, the author endeavors to investigate the subject of multi-contracts and the prohibitions associated with insurance brokerage products. This research will examine the DSN-MUI fatwa on insurance brokers to ascertain whether it contains any prohibited multi-contracts. It will also investigate whether insurance brokerage products contain elements of *riba*, *gharar*, and *maysir*. Furthermore, it will analyze how insurance brokerage industry players understand the concepts of multi-contract, *riba*, *gharar*, and *maysir*, and their influence on the application of Sharia schemes in Islamic insurance brokerage products.

## 2 Methodology

The research methodology employed is normative juridical, which entails the examination of the application of rules or norms in Islamic law at both the methodological level (*ushul fiqh*) and the level of *fiqh* rules and products (*fiqh*). This research employs the approach of *ushul fiqh*, which encompasses the examination of *fiqh* rules and a comparison between madhhabs. Concerning research paradigms, this research utilizes both qualitative and quantitative paradigms. This approach is necessary due to the primary objective of this research, which is to develop concepts, describe reality, develop theories and understanding, and apply them in the context of economics and Islamic finance.

This research project focuses on the DSN-MUI fatwa, spanning from number 1 to number 156, which pertains to insurance brokerage products based on Sharia principles. In the context of Islamic law, a fatwa is regarded as a text that encompasses both causes and ideas. In this case, the idea under discussion pertains to the matter of multi-contract. The objective of the text study is twofold: firstly, to elucidate the concept of multi-contract in both classical and modern *fiqh* texts; secondly, to ascertain the forms and variations of multi-contracts that are applied in insurance brokerage products based on sharia principles.

The data utilized in this research can be classified into two primary categories: primary and secondary. Primary data are data that are obtained directly from the source and are directly related to the research problem. In this research, the primary data are DSN-MUI fatwas relating to insurance brokers based on Sharia principles, agreement documents (contracts) for Sharia insurance brokerage products, and interviews with

Sharia insurance brokerage industry players. Secondary data are data obtained through document/library studies (library research).

The data analysis was conducted by first gathering the requisite data and then employing a qualitative analysis. A qualitative analysis was conducted using a content analysis approach. First, the DSN-MUI fatwas about insurance brokers under Sharia principles are collated. Thereafter, the fatwas are subjected to analysis and comparison with the opinions of scholars, both classical and contemporary, with the involvement of *Shara'* postulates, *ushul fiqh*, *fiqh* rules, and rules established by relevant authorities, including Bank Indonesia, the Financial Services Authority, and other pertinent institutions. Following the aforementioned analysis, an investigation into the impact of these findings on the implementation of Sharia-compliant insurance brokerage products is warranted.

### 3 Results

A single DSN-MUI fatwa is directly pertinent to the subject of Sharia insurance brokers. This is DSN-MUI fatwa No. 128/DSN-MUI/VII/2019, which addresses the implementation of insurance brokerage and Sharia reinsurance brokerage businesses by Sharia principles. Additionally, 11 fatwas are indirectly relevant:

**Table 1.** Fatwa DSN MUI which is indirectly related

No.	Fatwa Numbers	Content
1	No: 21/DSN-MUI/X/2001	Guidelines for Sharia Insurance
2	No: 50/DSN-MUI/III/2006	<i>Mudharabah Musytarakah</i> Contract
3	No: 51/DSN-MUI/III/2006	<i>Mudharabah Musytarakah</i> Contract in Sharia Insurance
4	No: 52/DSN-MUI/III/2006	<i>Wakalah bil Ujrah</i> Contract in Sharia Insurance and Sharia Reinsurance
5	No: 53/DSN-MUI/III/2006	<i>Tabarru'</i> Contract in Sharia Insurance
6	No: 74/DSN-MUI/I/2009	Sharia Guarantee
7	No: 81/DSN-MUI/III/2011	Refund of <i>Tabarru'</i> Funds for Participants who Terminate before the End of the Agreement Period
8	No: 139/DSN-MUI/VIII/2021	Marketing of Insurance Products Based on Sharia Principles
9	No: 148/DSN-MUI/VI/2022	Sharia Reinsurance
10	No: 149/DSN-MUI/VI/2022	Job Insurance Products and Termination of Job Hubs (PHK) Due to Bankruptcy of Companies, Based on Sharia Principles
11	No: 150/DSN-MUI/III/2022	Health insurance products based on Sharia principles.

In DSN-MUI fatwa No. 128, four contract options are delineated for use by Sharia insurance and reinsurance brokerage companies. These include the *ijarah*, *wakalah*, *wakalah bil ujarah*, and *ju'alah* contracts. If Sharia insurance and reinsurance brokerage companies provide consulting services using an *ijarah* contract, they may utilize the

*ijarah*, *wakalah*, and *wakalah bil ujarah* contracts for brokerage services related to the establishment of Sharia insurance and Sharia reinsurance. Similarly, they may employ the *wakalah*, *wakalah bil ujarah*, and *ju'alah* contracts for claim settlement procedures.

Sharia insurance and reinsurance brokerage companies must remain integrated with the products and contracts utilized by Sharia insurance companies and Sharia guarantee companies. These entities serve as intermediaries and liaisons between Sharia insurance and reinsurance companies and participants, underscoring the necessity for Sharia insurance brokerage companies to adhere to the contracts employed in Sharia insurance, Sharia reinsurance, and Sharia guarantee companies. Based on the author's investigation of the DSN-MUI fatwa on Sharia insurance, Sharia reinsurance, and Sharia guarantees as mentioned in Table 1 above, it can be concluded that in Sharia insurance companies, the contract between policyholders employs a grant (*hibah*) contract, while the contract between policyholders and the company in terms of insurance management employs a *wakalah bil ujarah* contract. Additionally, in investment, it can utilize *mudharabah*, *mudharabah musytarakah*, and *wakalah bil ujarah* contracts.

After an analysis of the DSN-MUI fatwas that are either directly or indirectly related to the insurance brokerage business, the author conducts interviews with the management of Sharia insurance brokerage companies. These interviews are conducted after the author has previously requested agreement documents between insurance brokerage companies and policyholders/participants. A review of the documents provided by the company's management indicates that the contract utilized between the insurance brokerage company and the policyholder/participant is *wakalah bil ujarah*, whereby the insurance brokerage company serves as a representative of the policyholder/participant in closing both the Sharia insurance and Sharia reinsurance and *ijarah* contract in providing consulting services. These two contracts (*wakalah bil ujarah* and *ijarah*) require the policyholder/participant to pay *ujrah* (fee) to the insurance broker company.

Multi-contract is not the only issue that needs to be highlighted in insurance broker products, but there are other issues that need special attention. One such area is the draft cooperation between insurance brokerage companies and Islamic Financial Institutions. The draft cooperation must align with the stipulations outlined in the DSN-MUI fatwa. The draft cooperation can be deemed to comply with the DSN-MUI fatwa if its tenets do not contravene the Sharia principles enshrined in the DSN-MUI fatwa.

Among the most significant issues that warrant scrutiny in the draft cooperation is the composition of the parties involved. The draft cooperation encompasses not only insurance brokerage companies and Islamic Financial Institutions (IFIs) that require the services of insurance brokerage companies, but also other parties, namely Islamic insurance companies, which play an instrumental role in the management of policyholder and participant funds. These include IFIs (LKS) and customers. The relationship between Sharia insurance companies and policyholders/participants must be explicitly delineated in the draft cooperation. Following the DSN-MUI fatwa No. 52 of 2006, the relationship between Sharia insurance companies and policyholders/participants is that of representation, whereby the company serves as the representative of policyholders/participants in the administration of policyholder/participant funds.

Furthermore, the cooperation contract must delineate the relationship between policyholders/participants. By the provisions of the DSN-MUI fatwa No. 53 of 2006, the

legal relationship between policyholders is ~~mutual~~ *hibah*, whereby each party grants the other the right to represent them in the event of a claim. The contributions paid by participants constitute a collective fund, known as the *Tabarru'* fund, which is utilized to offset losses incurred by any of the policyholders/participants who file claims. In such instances, the insurance broker assumes the role of a representative for the policyholder/participant.

In the cooperation contract, the value of insurance benefits must also be stated so that LKS, as a policyholder, can ascertain the benefits to be obtained. In conventional insurance, the term "value of insurance benefits" is not recognized; instead, the term "price of coverage" is used. This refers to the amount of insurance money written in the insurance policy or guarantee certificate requested/determined by the insured/guaranteed as the basis for calculating premiums and the maximum value of claims.

#### 4 Discussions

The author's analysis of the DSN-MUI fatwa on insurance brokers revealed that no multi-contract is prohibited. This is because the contracts do not indicate *ba'i al-Inah*, combine two core contracts such as sale and purchase and *ijarah*, or combine *ijarah* and *qardh* contracts whose *ijarah* profits are directly related to the value of the loan (*qardh*). Nevertheless, the author identifies additional aspects that are not aligned with the provisions of the DSN-MUI fatwa. In this case, the agreement between the Sharia insurance brokerage company and the policyholder is *wakalah bil ujah*, whereby the insurance brokerage company acts as a representative (*muwakkil*) and the policyholder as the authorizer (*wakil*). The object of this *wakalah* is the provision of brokerage services for Sharia insurance. In the *wakalah bi ujah* scheme, the party that provides the *ujrah* (fee) should be the policyholder, who is the *muwakkil* (authorized representative). However, in practice, the Islamic insurance brokerage company, which is the representative, provides the *ujrah*. This can have adverse effects on the *wakalah bi ujah* contract, potentially rendering it void.

The legal relationship between the policyholder/participant and the Sharia insurance company must be delineated in the cooperation contract between the Sharia insurance broker and the LKS, as the policyholder. Under the DSN-MUI fatwa, the legal relationship between the two parties is that of a power transfer (*wakalah*), whereby the participant (LKS) assumes the role of *muwakkil* (authorizer) and the insurance company acts as the representative (authorizer). However, based on the findings of the author's analysis of the Cooperation contract, the relationship relationship between the Sharia insurance company and the participant is that of coverage, wherein the Sharia insurance company serves as the insurer and the LKS (policyholder) is the insured. This contravenes the stipulations outlined in the DSN-MUI fatwa, as the participant, in conjunction with other contributors, assumes the burden through a joint fund collection (*Tabarru'* fund).

Furthermore, the cooperation contract between the Sharia insurance brokerage company and the policyholder (LKS) must also specify the value of insurance benefits. A review of the cooperation contract reveals that no term is provided for the value of

insurance benefits. Instead, the term "price of coverage" is used. However, this term is not appropriate for the relationship between the policyholder and the Sharia insurance company. Rather than an insurer and insured, the relationship is that of a *muwakkil* (authorizer) and deputy (authorizer) in the management of *Tabarru'* funds. The term "insurer and insured" gives rise to a sale and purchase contract for the risk assumed by the insurance company, which acts as the seller, while the policyholder assumes the role of the buyer. This legal relationship gives rise to the existence of prohibited transactions in Sharia law, including *riba*, *gharar*, *maisir*, and so on. *riba* occurs when the coverage paid exceeds the amount of the premium paid. This is referred to as *riba nasi'ah*, as well as *riba fadhl*. Conversely, if the amount of the premium paid by the insurer is the same, it is classified as *riba nasi'ah*.

The concept of *gharar*, or uncertainty, arises when the policyholder and the insurance company are unable to determine the timing of the insurance payout due to the inherent unpredictability of potential risks. About *maisir*, in the event of a disaster affecting the insured or the insured item (for instance, a house burning down), the insurance company is obliged to pay the sum insured and thereby sustain a loss. Conversely, in the absence of a disaster affecting the insured or the insured item, the insurance company benefits.

## 5 Conclusions and Recommendations

The DSN-MUI Fatwa on Sharia insurance brokerage products does not encompass multiple contracts that are proscribed; rather, it comprises several alternative contracts, each of which is tailored to the specific needs of the policyholders. If the requisite service is consulting services, the contract that is utilized is an *ijarah* contract. If the necessity is for intermediary services in the conclusion of Sharia insurance, the contract that may be utilized is an *ijarah*, *wakalah*, or *wakalah bil ujah* contract. Conversely, if the necessity is for the handling of claim settlements, the contract that may be utilized is a *wakalah*, *wakalah bil ujah*, or *ju'alah* contract.

The comprehension of Sharia insurance brokerage industry participants regarding Sharia schemes is not exhaustive, resulting in inaccuracies in the identification of the schemes and contracts that must be delineated in the agreement between the Sharia insurance brokerage company and the policyholder. The author recommends schemes and contracts that are under the provisions of the DSN-MUI fatwa, namely a *wakalah* contract without *ujrah* (fee). Sharia insurance brokerage companies may benefit from *athaya* (gifts) from Sharia insurance companies or Sharia reinsurance. The gifts may then be distributed by the Sharia insurance brokerage company to the LKS as the policyholder.

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