

THE SUITABILITY OF SHARIA LIFE INSURANCE POLICY FOR POJK NO. 69/POJK.05/2016 AND POJK NO. 72/POJK.05/2016

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Abstract

The increasing of sharia insurance companies have sprung up in Indonesia. However, in their policy contracts there are still some parts that are not in accordance with sharia principles. This mismatch can cause information distortion that can harm customers or sharia insurance participants. The Sharia Insurance Policy as a form of written contract between the insurance company and the customer or the insurance participant should duly follow sharia principles in order to avoid the elements that forbid it, therefore in Indonesia the policy making must follow the legislation, namely Financial Services Authority Regulation No.69/POJK.05/2016 (hereinafter abbreviated as POJK No.69/POJK.05/2016) and the Financial Services Authority Regulation No.72/POJK.05/2016 (hereinafter abbreviated as POJK No.72/POJK.05/2016) as the basis of the rule legislation describing the standardization of sharia policy contracts. This study uses qualitative methods, the data used in the form of primary, secondary, and non-legal materials. The technique used is in the form of content analysis with the theme of normative juridical research that analyzes legal principles and systematics, and how much the level of synchronization of ABC Islamic sharia insurance products at PT. XYZ against POJK No.69/POJK.05/2016 and POJK No.72/POJK.05/2016. The results of this study concluded that generally the ABC Islamic Sharia insurance policy PT. XYZ is in accordance with POJK No.69/POJK.05/2016 and POJK No.72/POJK.05/2016, but there are some peculiarities in this policy so that it still needs to be questioned about the welfare side.

Dewasa ini semakin banyak perusahaan asuransi syari'ah bermunculan di Indonesia, namun pada kontrak polisnya masih terdapat beberapa bagian yang tidak sesuai dengan prinsip-prinsip syari'ah. Ketidaksesuaian ini dapat menimbulkan distorsi informasi yang dapat merugikan nasabah atau peserta asuransi syari'ah. Polis Asuransi syari'ah sebagai bentuk kontrak tertulis antara perusahaan asuransi dengan nasabah atau peserta asuransi seharusnya mengikuti prinsip-prinsip syari'ah agar terhindar dari unsur yang mengharamkannya, untuk itu di Indonesia dalam pembuatan polis haruslah mengikuti peraturan perundang-undangan yaitu Peraturan Otoritas Jasa Keuangan No.69/POJK.05/2016 (selanjutnya disingkat POJK No.69/POJK.05/2016) dan Peraturan Otoritas Jasa Keuangan No.72/POJK.05/2016 (selanjutnya disingkat POJK No.72/POJK.05/2016) sebagai landasan aturan perundang-undangan yang memaparkan standarisasi kontrak polis syari'ah. Penelitian ini menggunakan metode kualitatif, data yang digunakan berupa data primer, sekunder, maupun bahan non hukum. Teknik yang digunakan berupa content analysis dengan tema penelitian yuridis normatif yang menganalisis asas-asas dan sistematika hukum, dan seberapa besar taraf sinkronisasi produk asuransi syari'ah jiwa syari'ah ABC PT. XYZ terhadap POJK No.69/POJK.05/2016 dan POJK No.72/POJK.05/2016. Hasil penelitian ini menyimpulkan bahwa secara umum polis asuransi syari'ah jiwa syari'ah ABC PT. XYZ telah sesuai dengan POJK No.69/POJK.05/2016 dan POJK No.72/POJK.05/2016, namun terdapat sebagian keganjilan pada polis ini sehingga masih perlu dipertanyakan sisi ke syari'ahannya.

Keywords: insurance, sharia, contracts, policies, synchronization.

Introduction

One of the interesting things to study in the insurance world is the policy.¹ The policy becomes the most important and inseparable part of the insurance agreement contract that exists between the company and

¹ Andi Soemitra, *Bank dan Lembaga Keuangan syari'ah*. Jakarta: Kencana, 2009. See also, Vanessa Yong and Yasuhiko Saito, "National long-term care insurance policy in Japan a decade after implementation: some lessons for aging countries", *Ageing International*, vol. 37, no. 3 (2012), p. 271; Alvien Septian Haerisma, "Mendesain Nilai Syari'ah Dalam Asuransi", *Al-Ammal: Jurnal Ekonomi dan Perbankan Syari'ah*, vol. 5, no. 2 (2016), p. 4.

insurance participants.² Based on Article 19 paragraph (1) Government Regulation Number 73 of 1992 concerning the Implementation of Insurance Business, it is said that, “Policy or form of insurance agreement under any name, including attachments which are an entity with it, may not contain words, or sentences that can lead to different interpretations of risks covered by insurance, obligations of the insurer (insurance company) and obligations of the insured (insurance participants), or make it difficult for the insured (insurance participant) to take care of their rights.”

In accordance with the Decree of the Minister of Finance of the Republic of Indonesia No.422 KMK-06-2003 concerning the Implementation of the Business of Insurance Companies and Reinsurance Companies, it is assumed that “Insurance policies are insurance policies or agreements, or by any name, and other documents that are an inseparable part of the insurance agreement, including proof of insurance coverage for group insurance, between the insurer (company/manager) and the policyholder or the insured.”

Based on the provisions of the two articles, it can be seen that the policy is a written agreement between the insured (insurance participant) and the insurer (insurance company). For this reason, the agreement contained in the policy must be clear, must not contain words or sentences that allow different interpretations so that it is difficult for the insured (insurance participant) and the insurer (insurance company) to realize their rights and obligations in implementing insurance. In addition, the policy also includes agreements regarding special conditions and special promises that form the basis for fulfilling the rights and obligations to achieve insurance goals.³

² Djoko Kristianto, “Implikasi Akuntansi Syari’ah dan Asuransi Syari’ah dalam Lembaga Keuangan Syari’ah,” *Jurnal Akuntansi dan Sistem Teknologi Informasi*, vol. 7, no. 1 (2012). See also, David Mayers and Clifford W. Smith Jr, “Contractual provisions, organizational structure, and conflict control in insurance markets”, *Journal of Business* (1981), p. 407.

³ Abdul Kadir Muhammad, *Hukum Asuransi Indonesia* (Bandung: Citra Aditya, 2002), p. 59. See also, Hasan Ali, *Asuransi dalam Perspektif Hukum Islam: Suatu Tinjauan Analisis Historis, Teoritis, dan Praktis* (Jakarta: Prenada Media, 2004), p. 5; Abdul Manan, *Hukum Ekonomi Syari’ah* (Jakarta: Kencana Prenada Media Group, 2012), p. 10; Syakir Sula, *Asuransi Syari’ah (Life and General)*, (Jakarta: Gema Insani Press, 2004), p. 23.

The policy provisions are regulated in the Financial Services Authority Regulation No. 69/POJK.05/2016 concerning the Implementation of Business of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies, and Financial Services Authority Regulation No.72/POJK.05/2016 concerning Health Finance of Insurance Companies and Reinsurance Companies with Sharia Principles. Although a detailed explanation of the policy has been explained in KMK No.422/KMK.06/2003, POJK No. 69/POJK.05/2016 and POJK No.72/POJK.05/2016, it is still necessary because this Act explains the importance of sharia policy. Besides POJK No. 69/POJK.05/2016 and POJK No. 72/POJK.05/2016 which regulates insurance provisions in sharia, the general provisions of sharia insurance are also regulated in the fatwa of the National Sharia Council of the Ulama Council (hereinafter abbreviated as DSN MUI) No. 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance as a variation on policy making which instructs that these sharia financial institutions be protected from prohibited elements such as elements of *maysir*, *gharar*, *riba* and so on.

Based on the laws and regulations, a trial of one of ABC's Islamic insurance policy PT. XYZ.⁴ This program is a unit-linked soul sharia insurance program that provides protection and investment protection. For this reason, conformity between Islamic policies of PT. XYZ with POJK No. 69/POJK.05/2016 concerning the Implementation of Business of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies, and POJK No.72/POJK.05/2016 concerning Financial Health of Insurance Companies and Reinsurance Companies with Sharia Principles, so that it can be known whether the policy is in accordance with applicable laws and regulations. The research method used is normative juridical research or library research. This legal research also includes doctrinal research that aims to find positive legal materials that will be used to develop theories and answer existing problems. The approach used is the law approach (statute approach), conceptual approach (conceptual approach) and case approach (case approach). Dogmatic legal research on dogmatic, theoretical and philosophical

⁴ Product names and Islamic insurance companies are deliberately disguised because of requests from the relevant Islamic insurance companies.

levels relies on primary legal material, namely official regulations and legal decisions.

From the background that has been conveyed before, the research problem can be formulated as follows: has the ABC PT XYZ sharia insurance policy fulfilled the provisions contained in POJK No. 69/POJK.05/201 and POJK No.72/POJK.05/2016? The data sources used in this research study are insurance policies, legislation, and related books. The policy used as the object of research is ABC's Sharia insurance policy at PT. XYZ. The legislation in this study is based on the Financial Services Authority Regulation No. 69/POJK.05/2016 and Financial Services Authority Regulation No.72/POJK.05/2016. In the policy, it was examined whether it was in accordance with the actual Indonesian policy standard, namely POJK No. 69/POJK.05/2016 and POJK No.72/POJK.05/2016.

ABC Sharia Life Insurance Policy PT. XYZ

ABC Sharia Life Insurance Products PT. XYZ is a sharia-based unit link life insurance product. Unit link products are insurance products designed by linking life insurance products with investment instruments, the goal is as an alternative product that provides flexibility for policyholders to get protection and directly access the benefits of investment in sharia.⁵

How to pay contributions to ABC policies is done regularly. ABC policies provide benefits in the form of basic benefits in the form of products of death benefits and investment benefits. In this insurance, there is also additional insurance (rider), namely protection added to the basic policy to strengthen and complete the coverage of the basic policy and its benefits. Additional insurance (rider) cannot stand alone, can only be added to the basic products owned by the customer. The ABC policy also provides additional coverage products for hospitalization, critical illness, surgery, accidents and other types of additional life insurance products. On ABC policy investment products PT XYZ also

⁵ Mila Sartika and Hendri Hermawan Adinugraha, "Konsep dan Implementasi Pengelolaan Dana Premi Unit Link Syari'ah", *Jurnal Asuransi Dan Manajemen Risiko*, vol. 1, no. 2 (2013), p. 12.

provides investment options such as the Sharia Market and Sharia Equity.⁶

Conformity of ABC Life Insurance Policy PT. XYZ Viewed From POJK NO. 69/POJK.05/2016 AND POJK NO.72/POJK.05/2016

From the results of the research of the author on the iPLAN Sharia Life Insurance policy at PT. XYZ, then the following is the author's analysis of the suitability of the Sharia iPLAN Life Insurance policy PT. XYZ (hereinafter abbreviated as ABC PT. XYZ) in terms of Financial Services Authority Regulations No.69/POJK.05/2016 and Financial Services Authority Regulations No.72/POJK.05/2016. Analysis of ABC policy PT. This XYZ consists of several special sections that the author has summarized. These things are listed as follows:

Basic Principles

POJK No.69/POJK.05/2016 outlines the basic principles of conducting insurance business as follows:

Principles in organizing an insurance business

In article 53 POJK No. 69/POJK.05/2016, the Sharia Reinsurance Company, or Sharia Unit in carrying out its business activities must apply the following basic principles: 1) Fulfillment of the principle of justice (*‘adl*), trustworthiness (trust), balance (*tawazun*), benefit (*maslahah*), and universality (*syumul*); and 2) Does not contain things that are prohibited, such as uncertainty or obscurity (*gharar*), gambling (*maysir*), interest (*usury*), persecution (*zhulm*), bribery (*risywah*), immorality, and illicit objects.

In Article 54 paragraph (1) POJK also stated that the Takaful policy and sharia reinsurance agreement must contain “Tabarru Agreement” and “Tijarah Agreement”. The Tabarru contract as referred to in this article is a grant contract made between insurance participants. While the tijarah contract in sharia insurance can be in the form of

⁶ Summary of Sharia Term Life-Plan Product Information, available at https://www.generali.co.id/sites/default/files/Ringkasan%20Informasi%20Produk%20Rider%20Term%20Life-PLAN%20Sharia_181003.pdf, accessed on October 27, 2018.

mudharabah contract, wakalah bil ujah, or mudharabah musytarakah contract.

The ABC Policy does not state directly the application of the basic principles as in Article 53 POJK No. 69/POJK.05/2016, but this Policy includes the contract used, as in Article 3 of the ABC Policy which explains the definition of “Tabarru Contract” and its scope and Article 4 ABC policy that explains the definition and scope of the contract of wakalah bil ujah as the contract of contract used in this insurance product.

The application of the basic principles contained in POJK No. 69/POJK.05/2016 can be carried out ABC policies that do not include the basic principles, but still include the contract used in this policy namely “tabarru agreement” in the form of grants and “tjari contracts” in the form of wakalah bil ujah , it can be said that the ABC Policy is in line with the basic principles.

Contribution of Participants in “Tabarru Fund”

At 56 paragraph (3) POJK No. 69/POJK.05/2016 stated that: in the “Tabarru Contract” to be formed “Tabarru Fund” contributions from the policyholder or participant since the beginning of the agreement Takaful or Islamic reinsurance agreement. In Article 3 paragraph (2) ABC Policy PT. XYZ stated that: Policyholders agreed to grant “Tabarru Fund” as a virtue fund in order to help each other between fellow Participants in the form of Insurance Benefits (other than in the form of Policy Value) to *maslahat*, if the Death Participants, in accordance with the policy provisions.

In line with the statement, it can be concluded that contributions in the ‘tabarru funds’ on ABC policies are ensured to exist and are required for all sharia insurance participants. Thus, the contents of the ABC policy that includes participant approval in collecting ‘tabarru funds’ are in accordance with what is meant by POJK No. 69/POJK.05/2016.

Company as Manager of “Tabarru Fund”

Article 57 paragraph (3) POJK No. 69/POJK.05/2016 states that: in terms of investment management “tabarru funds”, “tanahud funds”,

and participant investments are based on wakalah bil ujah, sharia insurance companies, sharia reinsurance companies, or the sharia unit is not entitled to obtain a share of the investment proceeds. In accordance with the statement, in article 3 paragraph (3) of the “tabarru contract” in the ABC policy it is said that “the Policy Holder and Participant agree to entrust the management of the Tabarru Fund.”

Furthermore, in Article 4 paragraph (3) concerning the “contract of wakalah bil ujah” the ABC policy is also said, “Objects authorized to the Manager include, but are not limited to administration of funds management, payment of insurance benefits, underwriting, risk portfolio management, marketing, and/or investment *tabarru* funds.

For these statements, POJK No. 69/POJK.05/2016 and ABC policies contain the same meaning that for each “tabarru fund contained in an insurance company has become the obligation of insurance companies to manage it, and in accordance with the contract used in ABC policy,” contract “wakalah bil ujah” as a contract agreed upon, then “tabarru funds “are managed with this contract. The contract of “wakalah bil ujah” is also a contract that is permitted in the Sharia insurance contract agreement and this is stated in article 54 paragraph 1-3 POJK No.69/POJK.05/2016.

Separation of Wealth and Obligations

a. The Obligation of the Company to Inform the Merger of “Tabarru Funds”

Regarding the obligation of the company to inform the merger of “tabarru funds” regulated in article 3 paragraph 2-4 POJK No 72/OJK.05/2016:

(2) Companies can form “Tabarru funds” for each business line.

(3) The Company must maintain assets that are permitted in “Tabarru Funds” and “Tanhaud Funds” with a value of at least equal to the Liabilities of “Tabarru Fund” and “Tanahud Fund”.

(4) In the case of the establishment of a “Tabarru Fund” for each business line as referred to in paragraph (2), it has not fulfilled the law of large numbers, the company may form a “tabarru fund” combined from several business lines.

(5) The merger of “Tabarru Funds” as referred to in paragraph (4) must be informed by the Company to policyholders or participants and contained in the policy.

From the findings of the analysis on the ABC insurance policy PT. XYZ, not found regarding information on managing “tabarru funds”. The policy only includes the requirement for participant approval in the management and use of “tabarru funds” to the manager, but does not clearly inform the policy how the formation of “tabarru funds” in combination from several business lines is formed. This is of course not in accordance with POJK No 72/OJK.05/2016 which requires information on the merger of “tabarru funds” by sharia insurance companies to insurance participants and includes the information in the ABC policy so that there is no transparency made by the company to insurance participants who should have the right to know about informing “tabarru funds”.

b. Obligations of Companies to Establish Investment Funds

In Article 5 POJK No. 72/OJK.05/2016 it is said that:

(2) Companies are required to form Participant Investment Funds which are classified based on the type of investment management contract used and type of investment portfolio

(3) In the event that the Company will offer a new type of investment portfolio, the Company must inform the policy holder or participant regarding the establishment of Participant Investment Funds for the intended new portfolio type investment.

Based on Article 9 paragraph (1) the ABC Policy is said that in accordance with the agreement given by the Policy Holder at SPAJS (Sharia Life Insurance Request Letter) that the contribution is allocated as an Investment Fund will be directly invested, the Manager will allocate the intended contribution based on the type of investment fund chosen by the Policy Holder. In Article 12 paragraph (1) the ABC Policy also says that the selection of investment funds, allocations and investments, and all changes must be made by completing the SPAJS, forms or media provided by the Manager.

From the statement, it can be seen that the participant or policyholder knows the type of investment made by the manager (insurance company) that is listed on the SPAJS, forms, or other media so that the insurance participant can be chosen when closing the insurance policy. Thus Article 9 paragraph (1) ABC Policy is in accordance with Article 5 POJK No. 72/OJK.05/2016.

Agreement (*'Aqd*)

Tabarru' agreement

In the case of “tabarru funds” given by participants to sharia insurance companies to be managed individually and in groups stated in article 56 paragraph 2 POJK No. 69/POJK.05/2016, in this article it is said that “tabarru contract” used in sharia insurance policies must contain provisions at least:

- a. Agreement of policyholders or participants to help each other (ta'awun);
- b. The rights and obligations of each policyholder or individual participant;
- c. Rights and obligations of policyholders or participants collectively in groups;
- d. Ways and timing of contribution contributions;
- e. The way and time of payment/claim;
- f. Provisions may or may not be withdrawn by the policyholder or participant in the event of a cancellation by the policyholder or participant;
- g. Provisions regarding alternatives and the percentage of underwriting surplus;
- h. Other agreed conditions.

From the findings of policy analysis on ABC insurance policies PT. XYZ, Article 3 paragraph 2 says that, “Policyholders agree to grant “Tabarru Funds” as a virtue fund in order to help each other between fellow Participants in the form of Insurance Benefits (other than in the form of Policy Value) to Termaslahat, if the Participants Died, in accordance with the Policy Conditions.” This is in accordance with Article 56 paragraph 2 letter (a) POJK No. 69/POJK.05/2016.

The rights and obligations of participants individually and in groups at POJK No. 69/POJK.05/2016 listed in Article 56 points (b) and (c) has also been regulated in Article 4 paragraph 4 of the ABC Policy which reads, “Policyholders collectively and individually as representatives (attorneys) are entitled to each Insurance Benefit and are obliged to comply with the terms and conditions stated in this Policy.”

The way and time of payment of Participant Contributions such as the provisions contained in POJK No. 69/POJK.05/2016 Article 56

paragraph 2 point (d) are listed in the ABC policy Article 8 described as follows:

1. Amount of Contributions, Method of Payment Contributions and type of Currency Contributions are listed in the policy summary. Periodic Basic Contributions and Periodic Contribution of Top Up must be paid in advance based on the Payment Method chosen by the Policy Holder.

2. Types of Currencies Contributions listed cannot be changed, but Policyholders can change the number of Contributions and How to Pay Contribution by following the conditions set by the Manager.

3. Specifically for Periodic Basic Contribution payments and Periodic Top up Contributions, Policy Holders are granted a Grace Period.

4. Each Contribution payment must be in the name of the Manager and the contribution paid will only be declared paid on the date the contribution is received and recorded in the Manager's account in accordance with the amount specified in the Policy.

5. If there is a Contribution Payment, as long as the Policy Holder does not determine the allocation of payment, then the Manager will place it as a payment for Periodic Basic Contributions and Periodic Top up Contributions.

6. Billing Contribution that is not successful is done at the billing address or through other billing methods organized by the Manager, does not mean freeing the Policy Holder from the obligation to pay Contributions to the Manager.

7. Costs incurred in connection with the Method of Payment for Contributions chosen by the Policy Holder will be borne by the Policy Holder (if any).

Provisions on the way and time of payment/claims such as the provisions stipulated in POJK No. 69/POJK.05/2016 Article 56 paragraph 2 point (e), then this is also stated in Article 21 paragraph 1 to 15 of the ABC Policy:

1. Insurance benefits claims can be processed if the policy is still valid.

2. All Death Claims must be notified in writing to the Manager. Submission of requests for Payment of Death Benefits, unless specified otherwise in the Policy, must be accompanied by the following required documents:

- a. Original policy;
- b. The form claims the original death that has been filled in completely and correctly by Termaslahat;
- c. Legalized certificate of death of the Participant from the competent authority. The death certificate must be legalized at least by the Indonesian Consulate if the Participant dies abroad;
- d. The original and complete doctor's certificate that has been filled in by the doctor, the doctor's certificate must be legalized at least by the Indonesian Consulate if the participant dies abroad;
- e. The original official report from the police in the event that the participant dies due to an accident;
- f. Photocopy of valid identity card from the Policy Holder, Participant, and the Community;
- g. Photocopy of family card or other legal documents that show insurable interest on the part of the Participant and the Community;
- h. Legalized letter of determination by the Court stating the Participant Dies, if the Participant is lost during a disaster;
- i. Legalize the corpse inspection report (*visum et repertum*) or autopsy from a legitimate and authorized doctor if required by the manager;
- j. Chronological Letter of Death from Termaslahat, if the Participant Died at home/trip to the Hospital;
- k. Power of attorney for a bank account, if it is different from the account holder to receive insurance benefits;
- l. Other documents, including the Participant's medical records, which are deemed necessary by the Manager to support the payment request requirements document Insurance benefits;

Files of payment requests The benefits of the above Insurance must be submitted no later than 90 (ninety) calendar days from the Participant Passing Away, outside the period of time the Manager has the right to refuse requests for payment of Insurance Benefits.

3. Submission of requests for payment of investment benefits (Policy Value), such as Policy Redemption, Investment Fund Withdrawal, Investment Fund Transfer and/or Change in Allocation Placement of Investment Fund Types, must be completed with the following required documents:

- a. Original policy (specifically for Policy Redemption);

b. Investment change form that has been filled in completely and correctly by the Policy Holder or submission through other media determined by the Manager;

c. A photocopy of valid Policyholder's identity card

4. Documents requesting payment of Insurance Benefits, as referred to in paragraph (2) and (3) of this Article, must be made in the Indonesian Language. When translation into Indonesian, the translation must be done by the translator under oath.

5. For Insurance Benefit claims other than those referred to in paragraph (2) and (3) this Article, it must be specified in the Special Conditions of Policy (if any).

6. If there are things or information that are incomplete or not in agreement or conflicting or unclear in the claim document, then the Manager has the right to request and obtain an explanation, additional information and/or other documents that must be fulfilled by the Policy Holder or the Community concerned in the period stipulated by the Manager.

7. In the examination of claims, the Manager has the right to carry out an examination/investigation of the Participant by seeking information from the doctor, hospital, clinic, health center, insurance company, legal entity, individual or organization that has a record of the Participant's condition.

8. Determination of claim decisions will be made by the Manager no later than 60 (sixty) working days after the requirements for payment documents for Insurance Benefits are received by the Manager completely and correctly.

9. The next Benefits Insurance will be paid by Manager at the latest 30 (thirty) working days after the request for payment of the Insurance Benefit is approved by the Manager.

10. For Death Claims, the Manager will pay Death Benefit and Policy Value (if any) following the provisions of Unit Prices on the next working day from the date the Death Claim is approved by the Manager, in accordance with the provisions stipulated by the Manager, and after deducting the obligation Policyholder (if any).

11. Insurance benefits that have not been taken since the Manager stated that the Insurance Benefits can be paid, not given any returns and/or compensation.

12. If the Policy ends or becomes null, the Manager is not liable to pay Insurance Benefit claims that occur after the expiration date or cancellation of the Policy.

13. If in any case a claim submitted is false or is a fraud or an engineering result with the purpose of fraud, or the documents referred to in paragraph (2) and (3) of this Article are known to have been manipulated and/or falsified, made by the Holder Policy or Termaslahat or anyone acting on behalf of the Policy Holder or the Submitted to get the Insurance Benefit for this Policy, the Policy will be immediately canceled and the Manager does not have any liability to the Policy Holder or the Problematic for the cancellation.

14. Costs incurred in connection with a payment of Insurance Benefits, including transfer and provision fees, are fully borne by the recipient of the payment.

15. If there is a claim payment to the Policy Holder or the Community that is not in accordance with the terms and conditions of the Policy, including falsification and/or fraud against the Insurance Benefit claim that has been paid, the Policy Holder or Submitted Legal Officer must immediately return the said payment to the Manager.

Provisions, for whether or not contributions can be withdrawn by policyholders or participants in the event of a cancellation by policyholders or participants in POJK No. 69/POJK.05/2016 Article 56 paragraph 2 letter (f) also addressed in Article 9 paragraph 1 letter (a) which reads:

In accordance with the agreement given by the Policy Holder at SPAJS that the contribution allocated as an Investment Fund will be directly invested, the Manager will allocate said Contribution based on the type of Investment Fund chosen by the Policy Holder. So that if the Policy Holder cancels the Insurance during the period of studying the Policy, then the funds that will be returned by the Manager as referred to in Article 7 paragraph (3) of these General Provisions, will be added to the investment return or investment losses incurred during the Policy Study period.

Provisions regarding alternatives and the percentage of underwriting surplus distribution as stated in POJK No. 69/POJK.05/2016 Article 56 paragraph 2 letter (g), then arranged in

more detail in Article 6 paragraph (1), (4), (5), (7), and (8) POJK No. 72/OJK.05/2016 with provisions:

1. Underwriting surplus can be distributed with the following options:

- a. All of them are added to “tabarru funds”;
- b. Some are added to “tabarru funds” and some are distributed to policyholders or participants; or
- c. Some are added to “tabarru funds”, some are distributed to policyholders or participants, and some are distributed to the Company.

2. Policyholders or participants who receive Underwriting Surplus as referred to in paragraph (1) letter b and letter c, must meet the following requirements:

- a. Has paid contributions for the period of calculation of Underwriting Surplus;
- b. Not in the process of claim settlement;
- c. Never accept payment of claims that exceed the number of contributions allocated to “tabarru funds”;
- d. Do not stop the policy (in force) in the period of calculation of Underwriting Surplus.

3. The choice of distributing Underwriting Surplus as referred to in paragraph (1) and the proportion of the Underwriting Surplus distribution as referred to in paragraph (1) letter c can only be changed with the following conditions:

- a. To increase the solvency of “tabarru funds”;
 - b. Does not reduce the proportion of policyholders or participants
4. In the case of distributing Underwriting Surplus to the policy holder or participant economically it requires a greater cost than the portion to be distributed Underwriting Surplus with the following options:

- a. Add it to “tabarru funds”;
- b. Calculate it to reduce the contribution of policyholders or participants of the next period;
- c. Use it for social funds.

5. The choice and distribution requirements for Underwriting Surplus as referred to in paragraph (1), paragraph (5) and paragraph (7) and the requirements of policyholders or participants as referred to in paragraph (4) must be contained in the policy.

Underwriting Surplus Provisions contained in POJK No. 69/POJK.05/2016 and POJK No. 72/OJK.05/2016 are also stated in Article 5 of the ABC Policy as follows:

1. Underwriting Surplus is the difference between “tabarru funds” plus other elements relating to the addition of “tabarru funds” minus payments for Insurance Benefits and other elements relating to the reduction of “tabarru funds”, within a certain period.

2. The manager will calculate the underwriting surplus from “tabarru funds” no later than 120 (one hundred and twenty) days after the end of the current year and based on the data at the end of the current year. Underwriting surplus from “tabarru funds” will be calculated according to the manager’s status

3. Underwriting surplus will only be distributed if:

a. The policy has been valid for 1 (one) year.

b. All contributions have been paid.

c. Not requesting payment of Death Benefit or Additional Insurance Benefits (if any) under this Policy.

d. Policy still valid

4. The amount of the underwriting surplus is as follows:

a. To reserve “tabarru funds” of 50% (fifty per hundred).

b. For Managers 30% (thirty per hundred).

c. For Policyholders 20% (twenty per hundred) which will then be included in the Policy Value.

5. In the event of a deficit of “tabarru funds”, the Manager will lend funds based on the principle of pure loans (qardh) so that “tabarru funds” are enough to pay for the Insurance Benefits based on this Insurance Agreement. The manager will charge the funds lent on the calculation of the underwriting surplus in the coming year.

In accordance with the ABC Policy PT. XYZ delivered about the definition of underwriting surplus, calculation of underwriting surplus carried out by the manager, policy holder who is entitled to underwriting surplus, the amount of underwriting surplus distribution and what things the company can do if “tabarru funds” have a deficit. This corresponds to 69/POJK.05/2016 and POJK No 72/OJK.05/2016 which contains the choice of distributing “tabarru funds” (on ABC Policy using the provisions of Article 6 paragraph (1) letter (c) POJK No. 72/OJK. 05/2016) namely by adding a portion to the “tabarru

fund”, partially distributed to policyholders or participants, and partly distributed to the company. Provisions regarding policyholders who are entitled to receive an underwriting surplus are also included in Article 5 paragraph 3 of the ABC XYZ ABC Policy. Provisions regarding the distribution of underwriting surpluses are also found in the ABC Policy Article 5 paragraph 2. In the case of the distribution of underwriting surplus to policyholders requiring greater costs, this is in accordance with Article 5 paragraph 4 of the ABC Policy which gives a greater portion of reserves and “tabarru” that is equal to 50%, while for managers 30%, while insurance participants amount to 20%.

By looking at these provisions, it can be said that the provisions of the Underwriting Surplus on ABC Policy are in accordance with 69/POJK.05/2016 and POJK No 72/OJK.05/2016.

b. Akad Wakalah bil Ujrah

The provisions of Article 54 paragraph 8 POJK No. 69/POJK.05/2016 stated that:

Based on the contract of wakalah bil ujarah, mudharabah agreement, and mudharabah musytarakah contract, a Sharia Insurance Company, Sharia Reinsurance Company, or Sharia Unit is obliged to bear all losses incurred in risk management activities and/or investment management activities caused by intentional errors, negligence or default made by a Sharia Insurance Company, Sharia Reinsurance Company, or Sharia Unit.

In accordance with the ABC Policy, the tijarah contract used in this policy is the wakalah bil ujarah contract. In article 57 paragraph 2 POJK No. 69/POJK.05/2016 the contract of wakalah bil ujarah must contain, at least:

- a. Objects/activities authorized by management;
- b. Rights and obligations of policyholders or participants collectively and/or policyholders or participants individually as representatives (attorneys);
- c. The rights and obligations of the Sharia Insurance Company, Sharia Reinsurance Company, or Sharia Unit as representatives (proxy) as representatives (recipient of the power of attorney);
- d. Limitation of power or authority granted by policyholders or participants to a Sharia Insurance Company, Sharia Reinsurance company, or Sharia Unit;

- e. The amount, method and time of *ujrah* deduction (fee); and
- f. Other agreed conditions.

In Article 4 the ABC Policy says that:

1. The contract of the *wakalah bil ujah* is a contract between the policyholder and the manager that is carried out collectively or individually with a commercial purpose by giving a power of attorney to the Manager as the representative of the Policy Holder to manage and invest in the Policy Holder, according rewards in the form of Fees (*ujrah*).

2. *Ujah* is a number of Fees approved by the Policy Holder to be issued to the Manager in connection with the management of Policyholder Contributions based on this Policy.

3. Objects authorized by the Manager include but are not limited to administrative activities, fund management, payment of Insurance Benefits, underwriting, risk portfolio management, marketing and/or investment “*tabarru funds*”.

4. Collective policyholders or individually as representatives (attorneys) are entitled to any Insurance Benefits and are obliged to comply with the terms and conditions listed in this Policy.

5. The manager as the representative (proxy) has the right to refuse any payment of Insurance Benefits that are not in accordance with the provisions of the applicable Policy and the Manager is obliged to bear all losses incurred in risk management activities and/or investment management activities caused by intentional errors, negligence, or default made by the Manager.

6. The Policy Holder agrees to entrust the investment management Contributions to the Manager to maintain the ability to pay for the Insurance Benefits.

The provisions of Article 54 paragraph 8 POJK No. 69/POJK.05/2016 which states that the company’s obligation to bear all losses incurred in risk management activities and/or investment management activities caused by intentional errors, negligence, or defaults carried out by the company, explained in the ABC policy Article 4 paragraph 5 which states that the manager has the right to reject any payment of insurance benefits that are not in accordance with the provisions of the applicable policy and the Manager is obliged to bear all losses incurred in risk management activities and/or investment

management activities caused by errors intentional, negligent, or defaulted by the Manager.

Regarding the object/activity authorized by management, it has been stated in Article 4 paragraph 1 of the ABC Policy which explains the definition of *wakalah bil ujah* and its scope. Rights and obligations of policyholders as Article 57 paragraph (2) letter b POJK No. 69/POJK.05/2016 in accordance with Article 4 paragraph 4 of the ABC Policy which states that policyholders are entitled to each insurance benefit and are obliged to comply with the terms and conditions contained in the ABC Policy. The rights and obligations of insurance companies as Article 57 paragraph (2) letter c POJK No. 69/POJK.05/2016 also conforms to Article 4 paragraph 5 of the ABC Policy which states that the manager has the right to reject any payment of insurance benefits that are not in accordance with the provisions of the applicable policy and the Manager is obliged to bear all losses incurred in the risk management activities and/or investment management activities caused by intentional errors, negligence, or defaults carried out by the Manager. Limitation of authority granted by policyholders or participants to the Sharia Insurance Company as stipulated in Article 57 paragraph (2) letter d POJK No. 69/POJK.05/2016 is also regulated in Article 4 paragraph 3 of the ABC Policy which states that objects authorized to the Manager include but are not limited to administrative activities, fund management, payment of Insurance Benefits, underwriting, risk portfolio management, marketing and/or investment "Tabarru funds".

The amount of method and time of ujah deduction (fee), as stipulated in Article 57 paragraph (2) letter e POJK No. 69/POJK.05/2016, not included in the ABC Policy, in Article 4 paragraph 2 the ABC Policy only says that ujah is a number of fees agreed to be issued by Policy Holders to Managers in conjunction with the management of Policyholder Contributions based on this Policy (ABC Policy).

Seeing the provisions of the *wakalah bil ujah* agreement contained in the ABC Policy as the *tijarah* contract used in the policy, it is known that the ABC Policy has not met the provisions of POJK No. 69/POJK.05/2016 because it does not specify the amount, method, and cutting time of ujah (fee).

Qardh

Article 8 paragraph (1) POJK No. 72/POJK.05/2016 said that companies must have the ability to provide Qardh. In the next paragraph, it is also said that the company is obliged to provide assets available for Qardh to the Company's Funds in case:

a. The solvency level of "tabarru funds" and land funds is smaller than the target level of solvability "tabarru funds" and internal land funds;

b. The amount of investment in permitted assets from "tabarru funds" is smaller than the amount of technical allowance and liability for payment of compensation/claims/ own retention benefits from "tabarru funds" and land funds.

c. There was an underwriting deficit "tabarru funds"; and/or "Tabarru funds" and land funds are not enough to pay compensation /claims/benefits to policyholders or participants.

Returning qardh to the company is made from surplus underwriting and/or from "tabarru funds". Qardh must be deposited in "tabarru funds" in cash. In line with that, Article 5 paragraph 5 of the ABC policy says that:

In the event of a deficit of "tabarru funds", the Manager will lend funds based on the principle of pure loans (*qardh*) so that "tabarru funds" are enough to pay for Insurance Benefits based on this Insurance Agreement. The manager will charge the funds lent on the calculation of the underwriting surplus in the coming year.

Of the two statements, both from article 8 paragraph (1) POJK No. 72/POJK.05/2016 and article 5 paragraph 5 ABC policies contain similarities related to qardh which occur when "tabarru funds" have a deficit. That is, companies must bail out "tabarru funds" to meet compensation payment requirements and "tabarru funds" must be replaced by a surplus of "tabarru funds" in the next financial year.

Conclusion

After an analysis of the ABC Islamic life insurance policy PT. XYZ can be seen that this policy meets the POJK standard No. 69/POJK.05/2016, but it is still not in accordance with the standards set out in POJK No. 72/POJK.05/2016 so that in practice it can cause losses by one of the parties who in this case are sharia insurance participants. In the separation of wealth and obligations in the

management of “tabarru funds” the ABC Islamic life insurance policy does not carry out detailed information about the establishment of “tabarru funds”. Whereas in accordance with article 3 paragraph 2-4 POJK No 72/OJK.05/2016 it is said that insurance companies have an obligation to provide information on how the formation of “tabarru funds” combined from several business lines was formed. Information on the formation of “tabarru funds” in the policy becomes very important because this is part of the rights of insurance participants to know where the “tabarru funds” they are applying are managed. In principle, policy agreement contracts reflect the rights and obligations of insurance participants and sharia insurance companies in carrying out their respective roles so that no party feels disadvantaged.

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