

## ANALYSIS OF THE VALIDITY OF COMMERCIAL INSURANCE CONTRACTS (*AL-TA'MĪN AL-TIJĀRĪ*) ACCORDING TO RAFĪQ YŪNUS MIŞRĪ

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### Abstract

This study examines the validity of commercial insurance contracts (*al-ta'mīn al-tijārī*) from the perspective of muamalah fiqh, focusing on the opinion of Rafiq Yūnus Mişrī. Insurance (*ta'mīn*) is a contemporary muamalah instrument that has developed rapidly in the modern economic system and is divided into two primary forms, namely social insurance (*ta'mīn ta'āwunī/takāfulī*) and commercial insurance (*ta'mīn al-tijārī*). The validity of social insurance is relatively uncontroversial because most ulama allow it. However, the legal status of commercial insurance is still debated, given that most contemporary ulama reject it because it contains elements of *gharar*, *maisir*, *riba*, and *jihālāh*. Conversely, Rafiq Yūnus Mişrī considers commercial insurance to be valid because it does not contain any elements that would invalidate the contract and actually brings benefits. The research method used is a conceptual approach with normative legal research. The research data was obtained through library research, covering primary legal materials in the form of the works of Rafiq Yūnus Mişrī, as well as secondary legal materials from related books and articles. The analysis used a descriptive-prescriptive method to understand the legal position and assess its relevance in contemporary muamalah. The results of the study show that there are three types of views among the ulama: (1) rejecting both forms of insurance, (2) accepting social insurance but rejecting commercial insurance, and (3) accepting both. Rafiq Yūnus Mişrī belongs to the third group with the argument that the main difference lies only in the motivation for profit (*ribḥ*), which remains valid as long as it provides benefits. Based on the principle of *maṣlaḥah*, commercial insurance can provide benefits for both participants and management companies so that it can be categorised as a valid contract according to contemporary Islamic law. This study emphasises the importance of contextual reasoning in muamalah fiqh to respond to the challenges of ever-evolving modern transactions.

**Keywords:** *Commercial Insurance, Al-Ta'mīn Al-Tijārī, Muamalah Jurisprudence.*

### Abstrak

Penelitian ini mengkaji keabsahan akad asuransi komersial (*al-ta'mīn al-tijārī*) dalam perspektif fikih muamalah dengan fokus pada pendapat Rafīq Yūnus Miṣrī. Asuransi (*ta'mīn*) merupakan instrumen muamalah kontemporer yang berkembang pesat dalam sistem ekonomi modern dan terbagi menjadi dua bentuk utama, yakni asuransi sosial (*ta'mīn ta'āwunī/takāfulī*) dan asuransi komersial (*ta'mīn al-tijārī*). Keabsahan asuransi sosial relatif tidak menimbulkan perdebatan karena mayoritas ulama membolehkannya. Namun, status hukum asuransi komersial masih diperdebatkan, mengingat sebagian besar ulama kontemporer menolaknya dengan alasan mengandung unsur *gharar*, *maisir*, *riba*, dan *jihālah*. Sebaliknya, Rafīq Yūnus Miṣrī menilai asuransi komersial tetap sah karena tidak terdapat unsur pembatal akad dan justru membawa kemaslahatan. Metode penelitian yang digunakan adalah pendekatan konseptual (*conceptual approach*) dengan jenis penelitian hukum normatif. Data penelitian diperoleh melalui studi kepustakaan (*library research*), mencakup bahan hukum primer berupa karya-karya Rafīq Yūnus Miṣrī, serta bahan hukum sekunder dari buku dan artikel terkait. Analisis dilakukan dengan metode deskriptif-preskriptif guna memahami posisi hukum dan menilai relevansinya dalam konteks muamalah kontemporer. Hasil penelitian menunjukkan adanya tiga corak pandangan ulama: (1) menolak kedua bentuk asuransi, (2) menerima asuransi sosial namun menolak asuransi komersial, dan (3) menerima keduanya. Rafīq Yūnus Miṣrī termasuk dalam kelompok ketiga dengan argumentasi bahwa perbedaan utama hanya terletak pada motivasi keuntungan (*riḥḥ*), yang tetap sah selama menghadirkan manfaat. Berdasarkan prinsip *maṣlahah*, asuransi komersial dapat memberikan keuntungan bagi peserta maupun perusahaan pengelola, sehingga layak dikategorikan sebagai akad yang sah menurut hukum Islam kontemporer. Penelitian ini menegaskan pentingnya penalaran kontekstual dalam fikih muamalah agar mampu menjawab tantangan transaksi modern yang terus berkembang.

**Kata Kunci:** Asuransi Komersial, Al-Ta'mīn Al-Tijārī, Fikih Muamalah.

### INTRODUCTION

According to Muamalah fiqh, insurance is referred to as *al-ta'mīn*, *al-takāful*, or *al-taḍāmūn*. *Ta'mīn* in muamalah fiqh is used when a person pays or submits instalment payments for themselves or their heirs to receive a sum of money as compensation for losses incurred due to events listed in the agreement.<sup>1</sup> *Takāful* in muamalah jurisprudence means the activity of sharing risks among members so that each member becomes responsible for the dangers of the other members.

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<sup>1</sup>Muhammad Syakir Sula, *Asuransi Syariah (Life and General): Konsep dan Sistem Operational* (Jakarta: Gema Insani Press, 2016), 26-27.

Meanwhile, *taḍāmun* also means sharing responsibility to cover losses due to an event, namely a disaster that has occurred.<sup>2</sup>

This insurance system has two forms, namely commercial insurance or *ta'mīn tijārī* and cooperative and mutual insurance or *ta'mīn ta'āwunī/al-takāfulī*. The purpose of *ta'mīn tijārī* or commercial insurance is a contract between the insured and the insurance company, whereby the former is required to pay the latter a predetermined financial instalment (premium) or lump sum in exchange for covering the consequences of a risk that is permissible to insure by paying the insured or beneficiary a sum of financial compensation if the insured risk materializes. Meanwhile, *ta'mīn ta'āwunī* or social insurance refers to the participation or involvement of a group of individuals in a pool of assets without the aim of making a profit, based on *tabarru'* (mutual assistance) and intended to provide compensation to those who have suffered a misfortune. It is called *ta'āwunī* insurance because its purpose is to help each other reject risks, not profit and material gain.<sup>3</sup>

From a legal (fiqh) perspective, the contemporary ulama agree that *al-ta'mīn al-ta'āwunī* (social insurance) is permissible. The mechanism is that the parties, as insurance members, mutually bear the costs of losses suffered by members by using a social contract and mutual assistance, so that the contract used in *ta'mīn ta'āwunī* insurance is a social contract or *tabarru'*, which is mutual assistance among its members. However, in the context of *ta'mīn al-tijārī* (commercial insurance), the ulama differ on its legal status.

Most contemporary ulama prohibit commercial insurance (*ta'mīn al-tijārī*). The reasons for this are that in commercial insurance there is an element of *gharar* (uncertainty) in the contract, there is *maisir* or gambling and it is speculative in nature, there is an element of *ghaban* (imbalance) between the premiums that must be paid at any given time and the possible risks borne by the members, there is an element of *riba* (*fadl* and *nasi'ah*) because the insurance company receives an additional benefit. There is deception or *al-jihālah*.<sup>4</sup> The prohibition of *ta'mīn al-tijārī*

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<sup>2</sup>Rini Cahyandari, Neng Hani Rahmawati, dan Irwan Girana, *Asuransi Syariah Model Integrasi dengan Python* (Jakarta: RajaGrafindo Persada-Rajawali Pers, 2024), 16.

<sup>3</sup>Atep H. Waluya, *Fikih Muamalah Keuangan Kontemporer* (Banyumas: Wawasan Ilmu, 2025), 43-44.

<sup>4</sup>Muḥammad Al-Zuhailī, *Al-Ta'mīn 'ala Al-Duyūn fī Al-Fiqh Al-Islāmī* (Kuwait: Jāmi'ah Al-Syari'qah, 2006), 14.

is upheld by scholars such as Wahbah Al-Zuhaili,<sup>5</sup> Muḥammad Al-Zuhaili, Yūsuf Al-Qaradāwī,<sup>6</sup> and others.

Some other contemporary ulama, however, permit *ta'mīn al-tijārī*. Among their reasons are: *First*, commercial insurance contracts or *ta'mīn al-tijārī* are new contracts that were not known in the classical period, while Muslims are permitted to engage in new transactions out of necessity, as the original ruling on something is that it is permissible. *Second*, it is analogous (*qiyās*) to several contracts that have been prescribed in Islam, including the analogy to the *'āqilah* system in the law of diat in murder cases, the analogy related to the *muwālāt* contract (guardianship) of a person whose guardianship is unclear and who appoints himself as guardian to another person, as well as bequeathing his property to the recipient of the guardianship. An Analogy to social insurance because the implementation system does not have significant differences. An analogy to the opinion of the Hanafi kalangan, the ulama, about giving money to a guarantor when there is danger during a journey. *Third*, the existence of *maslahah* (*public interest*). *Fourth*, analogizing it with *ta'mīn al-ta'āwunī*. The ulama who take this view are Muṣṭafā Al-Zarqā, 'Alī Al-Khafīf, Muḥammad Salām Madkūr, Muḥammad bin Al-Ḥasan Al-Ša'ālābī, Abdurrahmān' Īsā, Yūsuf Mūsā, 'Īsawī Aḥmad, Rafīq Yūnus Mišrī, Abdullāh bin Zaid Ālu Maḥmūd, and it was also decided by the Sharia Council of Al-Rājiḥi Islamic Banking in Riyadh, Saudi Arabia.

The above views show that the ulama are still not unanimous in their conclusions regarding commercial insurance (*al-ta'mīn al-ta'āwunī*). The opinions of the ulama who permit commercial insurance tend to be interesting to study further because they contradict the views of the majority of the ulama, and because the practice is quite common today, both in insurance companies that specialize in insurance matters and in companies that collaborate with insurance companies, including motorcycle and car *showrooms*, and even in banking and cooperative companies that have developed today.

This study aims to examine further the legal reasons, specifically analyzing the views of Rafīq Yūnus Mišrī, a professor of law and researcher from Damascus, Syria. According to Rafīq Yūnus Mišrī, in terms of operational systems, there are similarities between *ta'mīn tijārī* and *ta'mīn al-ta'āwunī*, namely in the matter of guarantee contracts. In both cases, some costs must be paid. However, the difference lies in the profit. If in the contract of *al-ta'mīn al-tijārī* there is a motivation to seek

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<sup>5</sup>Wahbah Al-Zuhaili, *Al-Fiqh Al-Islāmī wa Adillatuh*, Jilid 5, (Terj: Abdul Hayyie al-Kattani, dkk), (Jakarta: Gema Insani Press, 2012), 67.

<sup>6</sup>Yūsuf Al-Qaradāwī, *Al-Ḥalāl wa Al-Ḥarām fī Al-Islām*, (Terj: M. Tatam Wijaya), (Jakarta: Qalam, 2017), 409-414.

profit, then in the contract of *al-ta'mīn al-ta'āwunī/al-takāfulī* there is no intention to seek profit. Therefore, *al-ta'mīn al-tijārī* is permissible because it is permissible to seek profit in a muamalah legal process, and in this contract, there are no elements that invalidate the contract, such as *gharar*, *riba*, gambling, and others.<sup>7</sup>

Rafīq Yūnus Mişrī argues that commercial insurance (*ta'mīn tijārī*) is similar to social insurance, the difference being that in social insurance, there is no profit. In contrast, in commercial insurance, there is profit. In Islam, seeking such profit is permissible.<sup>8</sup> According to Rafīq Yūnus Mişrī, the insurance system is one of the catalysts for risk-taking. If a Muslim loses his job and is affected by a pandemic or disaster, he is not left helpless, but receives assistance and comfort from the community and the state. Currently, Muslims are interested in finding a modern cooperative insurance formula that not only protects people from poverty, but also from danger, returning them to a level of wealth and production efficiency.<sup>9</sup>

Rafīq Yūnus Mişrī assesses insurance contracts as a means of achieving security and compensation. Insurance of any kind requires costs, so the most essential thing in its application is to meet needs, achieve justice, and balance the interests of all parties, including the insurer, the insured, and the beneficiaries.<sup>10</sup>

In Indonesia, there are many types of commercial insurance with broad coverage, ranging from life, education, and health insurance to motor vehicle insurance. For example, PT. Allianz Life Indonesia, PT. Prudential Life Assurance, PT. AXA Mandiri Financial Services and others are engaged in life and health insurance. The operational pattern is that customers who register for insurance pay monthly premiums. When they fall ill or die, the customer or their heirs can use the insurance to cover hospital and other costs as agreed. The insurance company will pay claims in accordance with the policy provisions. In this case, customers only receive insurance funds when a risk covered by the insurance occurs.

In the field of motor vehicles, there are many commercial insurance companies such as Asuransi Astra Buana, Sampo Insurance, and others. These companies offer various types of motor vehicle insurance, including *all-risk* and TLO (*total loss only*) schemes. Motor vehicle insurance contracts are usually limited to a specific period of vehicle use. All *risk* schemes (e.g., damage due to accidents, fire, loss due to theft, or others) are generally only valid for 1 year of vehicle use. This means that the

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<sup>7</sup>Rafīq Yūnus Al-Miṣrī, *Al-Khaṭar wa Al-Ta'mīn: Hal Al-Ta'mīn Al-Tijārī Jā'izun Syar'an* (Damaskus: Dār Al-Qalam, 2001), 51-52.

<sup>8</sup>Rafīq Yūnus Al-Miṣrī, *Fiqh Al-Mu'āmalāt Al-Māliyyah* (Damaskus: Dār Al-Qalam, 2005), 278-279.

<sup>9</sup>Rafīq Yūnus Al-Miṣrī, *Uṣūl Al-Iqtisād Al-Islāmī* (Damaskus: Dār Al-Qalam, 2010), 116.

<sup>10</sup>Rafīq Yūnus Al-Miṣrī, *Buḥūs fī Al-Iqtisād Al-Islāmī* (Damaskus: Dār Al-Maktabī, 2009), 296-297.

company will cover all costs during that one year if an accident or other risk occurs. Conversely, if no *risk* category arises during that period, the insurance costs can no longer be used by the customer.

The insurance system for various muamalah products requires various adjustments, especially regarding the contracts used and the fulfilment of Sharia principles. In Indonesia, insurance regulations are governed by several rules, including the provisions of Law Number 40 of 2014 concerning Insurance, Financial Services Authority Regulation No. 69/POJK.05/2016 on the Implementation of Insurance Business, both of which regulate that insurance companies can operate based on sharia principles, namely with the obligation to separate sharia business units from conventional ones. More specifically, the provisions on sharia insurance in Indonesia, including the contracts, are also regulated in the Fatwa of the Indonesian The ulama Council's National Sharia Board (DSN-MUI) No. 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance, and DSN-MUI Fatwa No. 53/DSN-MUI/III/2006 concerning *Tabarru'* Contracts. This means that the legal specifications regarding Islamic insurance in Indonesia have been legitimized, from the contract to the process, procedures, and implementation patterns, which must comply with Islamic principles.

In practice, several court decisions have permanent legal force, which essentially state that there are Islamic insurance practices carried out by companies that are not in accordance with Sharia principles, for example, in Decision No. 426/Pdt.G/2021/PA.JS. In this ruling, insurance activities were deemed not to reflect the principles of fairness and transparency in Sharia contracts such as wakalah and *tabarru'* contracts.<sup>11</sup> In addition, there is also the Jakarta Central Sharia Court Ruling No: 7/Pdt.G/2023/PTA. JK, an appeal against the Jakarta Central Sharia Court Ruling No. 1228/Pdt.G/2022/PA.JP. The essence of the case is a dispute related to Sharia insurance products deemed not in accordance with the promised contract. The Sharia implication in this ruling is that the company's practices are deemed not in accordance with the principles pledged in the agreement, thereby harming insurance participants.<sup>12</sup> This shows that cases of violations of Sharia principles occur in insurance companies.

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<sup>11</sup>Linggar Ekapaksi dan A. M. Hasan Ali, "Pertimbangan Hakim Dalam Putusan Kasus Asuransi Syariah," *Jurnal Paradigma* Vol. 19, no. 2 (Agustus 2022): 25–40, <https://doi.org/10.33558/paradigma.v19i2.4571>.

<sup>12</sup>Pengadilan Tinggi Agama Jakarta Memeriksa dan Mengadili pada Tingkat Banding dalam Sidang Musyawarah Majelis Telah Menjatuhkan Putusan dalam Perkara Asuransi Syariah, Putusan Nomor 7/Pdt.G/ 2023/PTA.JK (Pengadilan Tinggi Agama Jakarta 2023). [https://ditbinganis.badilag.net/ekonomisyariah/ dokumen\\_putusan/1785.pdf](https://ditbinganis.badilag.net/ekonomisyariah/ dokumen_putusan/1785.pdf).

Even so, there are quite a few insurance companies in Indonesia that implement a sharia operational system. The method or form of insurance is not commercial, but social. Contribution funds from customers not used to claim risks are transferred to social funds or so-called *tabarru'* funds. Based on these issues, this article aims to analyze in depth the argumentative reasons put forward by Rafiq Yūnus Mişrī.

## METHODS

This study employs a conceptual approach, which is based on opinions or doctrines relevant to the legal issues being studied, allowing these doctrines and legal views to serve as a basis for analyzing the issues at hand.<sup>13</sup> The legal issue in this study concerns commercial insurance (*ta'mīn al-tijārī*) from the perspective of muamalah fiqh, focusing on the views of Rafiq Yūnus Mişrī. This type of research is normative legal research, namely *doctrinal* legal research that traces and examines library materials in the form of legal experts' views,<sup>14</sup> and other library data that reviews discussions related to the research object, specifically regarding commercial insurance (*al-ta'mīn al-tijārī*) from the perspective of muamalah fiqh: a study of the opinions of Rafiq Yūnus Mişrī.

The sources of Islamic law are those used by the jurists, which are derived from the sources of Islamic law consisting of written sources,<sup>15</sup> in the form of legal rulings from Rafiq Yūnus Mişrī, in his book, the book *Ail-Khaiṭair wai Ail-Tai'mīn: Hail Al-Tai'mīn Al-Tijārī Jā'izun Syair'ain*, the book *Fiqh ail-Mu'āmailāt Al-Māliyyaih*, the book *Uṣūl Ail-Iqtiṣād Ail-Islāmī*, the book *Buḥūs fī Ail-Iqtiṣād Ail-Islāmī*, and other books by Rafiq Yūnus Mişrī. Then, secondary laws are laws that support primary laws, such as the book *Waihbaih Al-Zuḥailī*, *Fiqh Al-Islami wa Aldillaituh*, Saiyyid Saibiq, *Fiqh Al-Sunnaih*, Abdurrahmain Al-Jaizirī, *Fiqh Al-Maiṣāhib Al-Airbai'aih*, and other books. Tertiary legal sources are legal sources that complement the primary sources, such as legal dictionaries, encyclopedias, and journals.

The data for this article were collected by searching for legal provisions that had been determined beforehand through a *survey book* or *library research*. Furthermore, the data was analysed qualitatively, using *prescriptive analysis*, closely related to the ideal concept of law. In contrast, a descriptive study was used to analyse the actual situation in accordance with the perfect law.<sup>16</sup> In this context,

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<sup>13</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. 13, (Jakarta: Kencana Prenada Media Group, 2017), 133.

<sup>14</sup>Jonaedi Efendi dan Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris* (Jakarta: Kencana Prenada Media Group, 2018), 149.

<sup>15</sup>Efendi dan Ibrahim, 149.

<sup>16</sup>Marzuki, *Penelitian Hukum...*, 41.

*prescriptive analysis* aims to examine legal rulings on commercial insurance (*ail-tai'mīn ail-tijārī*) from the perspective of mu'amalah fiqh, specifically the rulings of Raifīq Yūnus Miṣrī.

## RESULTS AND DISCUSSIONS

### The Concept of Insurance

Insurance agreements or contracts are widely developed in modern countries today. The purpose is to overcome future risks that humans will experience in the form of coverage from one party to another based on agreed terms. Insurance agreements or contracts are collaborations in which a coverage contract exists between an insurance company and its members or participants.

The term insurance comes from the English word insurance, which means guarantee.<sup>17</sup> In the Dutch language, it is referred to as "verzekering" (insurance). The term underwent a developmental process that culminated in the formation of the modern-day terms "assureur" and "geassureerde." The former is translated as "insurer," while the latter is translated as "insured."<sup>18</sup> The term *insurance* was then absorbed into Indonesian and became one of the standard words used in legislation. The term insurance is defined as coverage (an agreement between two parties, one party is obliged to pay premiums and the other party is obliged to provide full coverage to the premium payer if something happens to the first party or their property in accordance with the agreement made).<sup>19</sup> Meanwhile, in Arabic, the term insurance is often referred to as *takaful*, *ta'mīn*, and *tadhamun*, all of which mean to bear or mutually bear.<sup>20</sup>

According to the terminology, the word insurance has various definitions, including that stated by Robert I. Mehr, quoted by Muhammad Syaikir Sula, that insurance is a tool to reduce risk by combining several risky units so that individual losses can be collectively predicted. These predictable losses are then divided and distributed proportionally among all units in the combination.<sup>21</sup>

According to Abdul Manan, insurance is a mutual responsibility between fellow human beings. Sharia insurance is based on the principle of mutual assistance in goodness by sharing social funds and is intended to cover risks. The

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<sup>17</sup>John M. Echols dan Hassan Shadily, *Kamus Indonesia Inggris*, Edisi Ketiga, (Jakarta: Gramedia Pustaka Utama, 1992), 326.

<sup>18</sup>Abdul Manan, *Hukum Ekonomi Syariah dalam Perspektif Kewenangan Peradilan Agama*, (Jakarta: Kencana Prenada Media Group, 2016), 237.

<sup>19</sup>Tim Pustaka Phoenix, *Kamus Besar Bahasa Indonesia*, Edisi Ketiga, Cet. 3, (Jakarta: Pustaka Phoenix, 2012), 104.

<sup>20</sup>Manan, *Hukum Ekonomi Syariah...*, 237.

<sup>21</sup>Sula, *Asuransi Syariah...*, 26.



insurance company acts only as a facilitator. Meanwhile, in conventional insurance, the company and the insurance participants share the responsibility, and only one party benefits.<sup>22</sup> Thus, there is a fundamental difference between Islamic insurance (sharia insurance) and conventional insurance. The difference lies in the profits earned by the company. In Islam, the funds collected as premiums are viewed as social funds for the benefit of the members. According to Andri Soemitra, in sharia insurance, each participant intends to help and protect one another by setting aside funds as charitable contributions called *tabarru'*. The form of contract used must be in accordance with sharia principles, meaning that there are no elements of injustice (*zhulm*), usury, fraud, and uncertainty in the contract (*gharar*) and other elements that would invalidate the agreement.<sup>23</sup>

In Islam, insurance (especially Sharia insurance) is referred to as *ta'mīn*, *takaful*, and *tadhamun*. Given that the term insurance is new to the context of Islamic law, Ālū Maḥmūd has mentioned that insurance or *ta'mīn al-ijtimā'i* is a new provision that was not and is not recognized in Islamic law.<sup>24</sup> According to Wahbah Al-Zuhailī, the terms insurance or *al-ta'mīn* and *al-takaful* are new terms that emerged in the 14th century AD. The meaning of insurance or *ta'mīn*, according to Al-Zuhailī, is divided into two concepts: cooperative insurance and insurance with fixed payments or premiums. Cooperative insurance is insurance where several people agree that each will pay a certain amount to compensate members who suffer an inevitable misfortune. Insurance with a fixed payment is where the insurance provider gives the person responsible for making a certain payment a security guarantee (insurance). The insurer is an insurance company consisting of several people who own certain shares.<sup>25</sup> Al-Zarqā states that insurance is a way or method of protecting people from various risks and dangers that may occur in their lives, in the course of their activities, or in their economic activities. This insurance system is a *ta'awwun* and *tadamun* system that aims to cover losses from events or disasters by a group of insured parties to those affected by the disaster, with the compensation coming from their premiums.<sup>26</sup>

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<sup>22</sup>Manan, *Hukum Ekonomi Syariah...*, 238-239.

<sup>23</sup>Andri Soemitra, *Bank dan Lembaga Keuangan Syariah* (Jakarta: Kencana Prenada Media Group, 2017), 251; Abdul Rahman Ghazaly, Ghufroon Ihsan, dan Sapiudin Shidiq, *Fiqh Muamalat*, 1, Cet. 4 ed. (Jakarta: Kencana Prenada Media Group, 2015), 235-236.

<sup>24</sup>Abd Al-Laṭīf Maḥmūd Ālū Maḥmūd, *Ta'mīn Al-Ijtimā'i fī Ḍau' Al-Syarī'ah Al-Islāmiyyah*, (Beirut: Dar Al-Nafā'is, 1994), 416; Al-Zuhailī, *Al-Fiqh Al-Islāmī...*, 105.

<sup>25</sup>Al-Zuhailī, *Al-Fiqh Al-Islāmī...*, 105.

<sup>26</sup>M. Ma'ruf Abdullah, *Hukum Keuangan Syariah pada Lembaga Keuangan Bank dan Non Bank* (Yogyakarta: Aswaja Pressindo, 2016), 166.

The legal basis for insurance in Islam does not have a detailed legal basis, especially in the Qur'an and hadith.<sup>27</sup> These two primary sources of Islamic law do not explicitly explain the law of insurance, whether it is permissible or not. This is – once again – because insurance is relatively new in Islamic muamalah. Therefore, determining whether insurance is haram or halal, legal or not, depends on the presence or absence of elements that invalidate or permit it. When discussing the legal basis of insurance in Islam, there is no specific legal basis. Still, the Islamic insurance that has developed and is currently practised in the Islamic world always refers to general arguments. Insurance is generally only considered to meet Sharia values if its operations do not violate Islamic law. QS is the primary reference that establishes the legality of Sharia insurance according to the ulama. Al-Ma'idah verse 2, which reads as follows:

...وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ...

“...and help one another in righteousness and piety, and do not help one another in sin and aggression...”. (QS. Al-Maidah: 2).

This verse contains a command to help one another. According to Imam Al-Ṭabarī, the meaning of helping one another in righteousness in the above verse is that ideally, we should help one another in righteousness, namely by carrying out the commands of Allah SWT. Imam Al-Qurṭubī quoted Al-Akhfaisy's statement that the above verse is disconnected or separated from the previous verse. The command to help one another in doing good deeds and piety is a command to all human beings to help one another and strive to do what Allah commands and apply it.<sup>28</sup>

When undertaking an endeavour or business, Islam encourages mutual assistance in goodness, and this element of mutual assistance can even be made into a contract, especially in insurance. In insurance practice, the willingness of members (customers) of an insurance company to set aside funds to be used as social funds (*tabarru'*) is an example of this.<sup>29</sup>

Another general reference is found in QS. Al-Ḥasyr verse 18:<sup>30</sup>

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَلْتَنْظُرْ نَفْسٌ مَّا قَدَّمَتْ لِإِعَادٍ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ.

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<sup>27</sup>Gibtiah, *Fikih Kontemporer*, 1, Cet. 2 ed. (Jakarta: Kencana Prenada Media Group, 2018), 87.

<sup>28</sup>Abī Bakr Al-Qurṭubī, *Jāmi' li Ahkām Al-Qur'ān*, (Terj: Masturi Irham, dkk) (Jakarta: Pustaka Azzam, 2009), 114.

<sup>29</sup>Sula, *Asuransi Syariah...*, 27.

<sup>30</sup>Sula, 27.

“O you who believe! Fear Allah and let every soul look to what it has put forth for tomorrow (the Hereafter), and fear Allah. Verily, Allah is All-Aware of what you do”. (QS. Al-Ḥasyr: 18).

This verse contains advice for humans to prepare themselves in life. Imam Al-Qurṭubī mentioned that the meaning of tomorrow in the above verse is the Day of Judgment. Arabs refer to the future as tomorrow.<sup>31</sup> As discussed above, "tomorrow" is a warning that the Day of Judgment is near. Al-Hasan and Qatadah said that the Day of Judgment is so close that Allah has made it like tomorrow. Everything that will come is something that is near, and death is something that will definitely come.<sup>32</sup>

The command to prepare for the future can take the form of preparing oneself in case a disaster occurs in the future.<sup>33</sup> Insurance is a form of business that prepares oneself financially by cooperating with an insurance company so that any disasters and risks that may occur in the future can be easily handled and resolved. Here, the operational pattern carried out by a sharia insurance company must be able to accommodate sharia principles.

Another verse that is also relevant to the context of insurance is QS. Al-Quraisyi verse 4 mentions Allah's command to protect one another in times of hardship. QS. Al-Quraisyi verse 4 shows that those who feed them after they have previously felt hungry.<sup>34</sup> This means that Allah's command to protect one another in times of hardship is intended to protect the interests and welfare of humans. In addition, the next legal basis for insurance is the story of Al-Bukhārī from Abu Nu'aim, which mentions that it is better to leave heirs in a state of wealth than to leave them in a state of poverty. In this case, the Prophet Muhammad SAW was very concerned about life in the future, namely by preparing early on for the provisions that would be needed for life. This is in line with the operational implementation of insurance. Insurance organizations practice the values contained in the hadith by requiring their members to pay premiums as savings, which are returned to their heirs if an adverse event occurs, such as the death of the customer or an accident.<sup>35</sup> In addition, the Prophet Muhammad also instructed people always

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<sup>31</sup>Al-Qurṭubī, *Jāmi' li Ahkām...*, Jilid 18, 315.

<sup>32</sup>Al-Qurṭubī, Jilid 18, 315.

<sup>33</sup>Wirdayaningsih dkk., *Bank dan Asuransi di Indonesia*, (Jakarta: Kencana Prenada Media Group, 2005), 190.

<sup>34</sup>Al-Qurṭubī, *Jāmi' li Ahkām...*, Jilid 20, 783.

<sup>35</sup>Wirdayaningsih dkk., *Bank dan Asuransi...*, 239.

to be vigilant against losses or misfortunes that may occur, rather than immediately surrendering everything (*tawakal*) to Allah SWT.<sup>36</sup>

The law of sharia insurance in Islam also refers to the law of *aqilah* (fine) implemented by Umar Ibn Khattab. This agreement was evident in that no other companions opposed its implementation. *Aqilah* is a penalty in the form of a fund collected by the family of the male (*asabah*) of the murderer (the person who caused the death unintentionally). The group responsible for the payment is the family, because the murderer is a member of that group.<sup>37</sup>

The historical perspective on the law of *aqilah* developed during the companions' time, especially during the time of Umar. At that time, the government encouraged the population to implement *aqilah* nationally. During Umar's reign, he ordered the establishment of a *Diwān Al-Mujahidīn* in several regions. Anyone whose name was recorded in the *Diwān Mujahidīn* had to pay blood money for murders committed by people in their tribe.

The concept of insurance in Islam continued to develop. In the 19th century, a Hanafi jurist, Ibn Abidin, discussed the idea of insurance and its legal basis. Ibn Abidin was the first to view insurance as an official institution, rather than a customary practice in society. In the 20th century, Islamic law expert Muhammad Abduh issued two fatwas legalizing the practice of insurance. In his fatwas, Abduh used several sources to explain why he permitted the practice of life insurance. One of his fatwas viewed the relationship between the insured and the insurer as a *mudharabah* contract, while the other fatwa legitimized a transaction model similar to life insurance waqf.<sup>38</sup>

Specifically, the implementation of insurance in Islam must avoid various elements that can invalidate sharia contracts, namely usury, *gharar* (uncertainty), *tadlis* (deception), *zalim* (oppression), *maisir* (gambling), and coercion (*ikrah*). Conceptually, insurance takes several forms. In terms of products, insurance consists of life insurance, education insurance, accident insurance, and health insurance. Meanwhile, regarding operational patterns, insurance is generally divided into two forms: social insurance and commercial insurance.

1. Social insurance, also known as cooperative insurance and referred to in Islam as *ta'mīn al-ta'āwunī*, is a charitable agreement whose working concept is based on group membership, oriented and motivated by mutual assistance

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<sup>36</sup>Muhammad Amin Suma dan Iim Qo'imudin Amin, *Asuransi Syariah di Indonesia: Telaah Teologis, Historis, Sosiologis, Yuridis dan Futurologis*, (Jakarta: Amzah, 2020), 133.

<sup>37</sup>Wirdyaningsih dkk., *Bank dan Asuransi...*, 191.

<sup>38</sup>Uswatun Hasanah, "Asuransi Dalam Perspektif Hukum Islam," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, Vol. 47, no. 1 (Januari 2013): 1, <https://doi.org/10.14421/ajish.v47i1.63>.

and helping one another do good deeds.<sup>39</sup> The system works by each member voluntarily contributing a certain amount of money. 'Alī Aḥmad Al-Sālūs refers to this type of insurance as *ta'mīn ta'āwunī* or *ta'mīn tabādulī* and *al-ta'mīn al-Islāmī*.<sup>40</sup> Social insurance has no business orientation and does not seek profit. According to Sa'id Abdul Aẓīm, *ta'mīn al-ta'āwunī* is included in the *tabarru'* (voluntary) contract, which aims to build cooperation in an effort to avoid disasters or accidents.<sup>41</sup>

2. The second form is commercial insurance, which in Islamic jurisprudence is called *ta'mīn al-tijārī*.<sup>42</sup> Commercial insurance is insurance related to commerce, trade, or the exchange of property. Al-Zuhailī states that commercial insurance agreements are speculative and gambling contracts, specifically those applied by insurance companies with fixed premiums and payments. A similar statement was made by Sa'id Abdul Aẓīm, who said that commercial insurance contracts have elements of gambling and are speculative or profit-seeking in nature.<sup>43</sup>

Regarding the second form, modern Islamic legal scholars still debate two general opinions regarding insurance law. Some determine that it is haram, while others declare it permissible. Those who permit insurance agreements then name it sharia insurance, which avoids elements that invalidate contracts, such as *riba*, *gharar*, *maisir*, and others.

### **Opinions and Argumentative Reasons of Rafīq Yūnus Miṣrī in Determining the Law of Commercial Insurance (Al-Ta'mīn Al-Tijārī).**

Rafīq Yūnus Miṣrī is considered one of the leading Islamic economists and Muslim scholars. Rafīq Yūnus Miṣrī is a professor of Islamic economics at universities in Saudi Arabia, an expert and researcher in the fields of interpretation, inheritance, and Islamic sciences. He won the Islamic Development Bank Award in 1417 AH or 1997. He has many publications on Islamic economics, Islamic banking, zakat, and others.<sup>44</sup> In the field of Islamic economics, he has many publications in

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<sup>39</sup>Al-Zuhailī, *Al-Fiqh Al-Islāmī...*, 81.

<sup>40</sup>'Alī Aḥmad Al-Sālūs, *Al-Iqtisād Al-Islāmī wa Al-Qaḍāyā Al-Fiqhiyyah Al-Mu'āṣirah*, (Qatar: Dār Al-Ṣaḡāfah Al-Dūḥah, 1998), 371.

<sup>41</sup>Sa'id 'Abd Al-'Aẓīm, *Akhṭa' Syā'i'ah fī Al-Buyū' wa Ḥukm Ba'du Al-Mu'āmalāt*, (Terj: Iman Firdaus), Cet. 2, (Jakarta: Qisthi Press, 2014), 5.

<sup>42</sup>Muḥammad 'Uṣmān Syubair, *Al-Mu'āmalāt Al-Māliyyah Al-Mu'āṣirah fī Al-Fiqh Al-Islāmī*, (Yordania: Dār Al-Nafā'is, 2007), 87.

<sup>43</sup>Sa'id 'Abd Al-'Aẓīm, *Akhṭa' Syā'i'ah fī Al-Buyū'...*, 1.

<sup>44</sup>Muḥammad Umar Syābirā, *Mustaqbal 'Ilm Al-Iqtisād min Manẓūr Al-Islāmī* (Damaskus: Dār Al-Fikr, 2004), 1.

the field of banking and economic transactions, especially the formation of the Islamic financial system.<sup>45</sup>

At the beginning of this article, it was briefly discussed that the ulama have agreed on the permissibility of social insurance or *al-ta'mīn al-ta'āwunī*. Still, the ulama are not unanimous in their response to the law of commercial insurance or *al-ta'mīn al-tijārī*. In this case, Rafiq Yūnus Mişrī is one of the figures who explicitly permits commercial insurance, which most contemporary ulama reject. For Rafiq Mişrī, all types of commercial insurance are allowed, regardless of the kind of commercial insurance, whether it is life, vehicle, education, health, or other types. According to Rafiq Yūnus Mişrī, *al-ta'mīn al-ta'āwunī* and *al-ta'mīn al-tijārī* differ in their operational systems. The difference between social insurance and commercial insurance is that social insurance does not aim to make a profit, whereas commercial insurance aims to make a profit. Rafiq Mişrī actually considers both to be permissible according to Islamic law. This is because if the difference is only in terms of profit, then *al-ta'mīn al-tijārī* is also acceptable, as he emphasized in one of his opinions below:<sup>46</sup>

لَكِنَّ الْفَرْقَ بَيْنَ التَّأْمِينِ التَّعَاوُنِيِّ وَالتَّأْمِينِ التِّجَارِيِّ يَتَلَخَّصُ فِي النَّهَايَةِ بِأَنَّ الْأَوَّلَ لَا يَهْدَفُ إِلَى الرِّبْحِ،  
وَالثَّانِي يَهْدَفُ إِلَيْهِ. فَإِذَا كَانَ هَذَا هُوَ الْفَرْقُ الْوَحِيدَ الْمُتَبَقِّي بَيْنَهُمَا، لَرُبَّمَا جَازَ التَّأْمِينُ التِّجَارِيُّ أَيْضًا.<sup>47</sup>

"However, the difference between *al-ta'mīn al-ta'āwunī* and *al-ta'mīn al-tijārī* is that the former does not aim to make a profit, while the latter aims to make a profit. If this is the only difference between the two, then *al-ta'mīn al-tijārī* is also permissible".

On another occasion, it was stated as follows:<sup>48</sup>

وَيَبْدُو لِي أَنَّ الَّذِي يَمْنَعُ التَّأْمِينَ التِّجَارِيَّ، وَيُجِيزُ التَّعَاوُنِيَّ، هُوَ كَمَنْ يَمْنَعُ الْوَكَالََةَ بِأَجْرٍ، لِمُجَرَّدِ جَوَازِ الْوَكَالََةِ  
بِلَا أَجْرٍ، أَوْ كَمَنْ يَمْنَعُ جَوَازَ الْإِجَارَةِ، لِمُجَرَّدِ جَوَازِ الْإِعَارَةِ، أَوْ كَمَنْ يَمْنَعُ جَوَازَ الْجُعَالَةِ، لِمُجَرَّدِ جَوَازِ  
الْإِجَارَةِ، أَوْ كَمَنْ يَمْنَعُ جَوَازَ الْبَيْعِ، لِمُجَرَّدِ جَوَازِ الْهَبَةِ.<sup>49</sup>

In my opinion, those who prohibit commercial insurance and instead permit cooperative insurance are like someone who prohibits *agency* with payment simply because *agency* without payment is permissible, or like someone who forbids leasing simply because lending and borrowing are acceptable, or

<sup>45</sup>Luţfī bin Hamadī Al-'Amdunī, *Al-Biṭāqāt Al-Bankiyyah fī Fiqh Islāmī* (TASQ Company, t.t.), 171.

<sup>46</sup>Al-Miṣrī, *Al-Khaṭar wa Al-Ta'mīn...*, 52.

<sup>47</sup>Al-Miṣrī, 52.

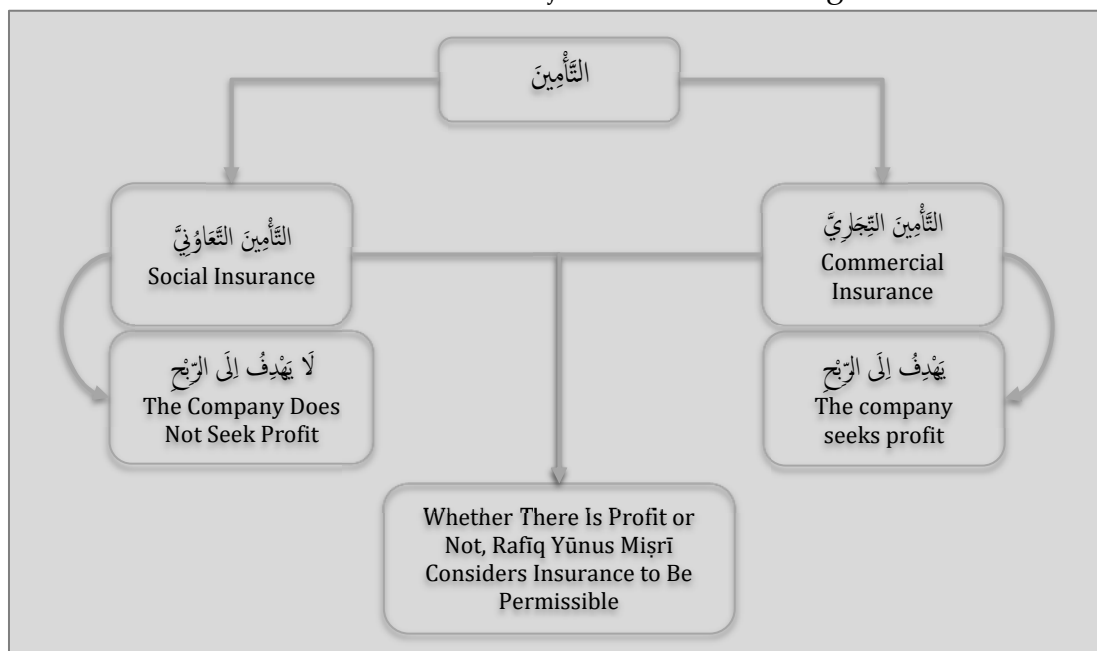
<sup>48</sup>Al-Miṣrī, 103.

<sup>49</sup>Al-Miṣrī, 103.

forbids *ja'alah* simply because leasing is allowable, or prohibits buying and selling simply because gifts are permissible.

The two quotes above basically have the same meaning. That is, Rafiq Yūnus Mişrī actually sees the difference between social and commercial insurance as being in the profits made by insurance companies. With that difference, there is nothing wrong with Islamic insurance companies applying profits in commercial insurance. This is similar to several laws in Islam, such as the process of buying and selling with gifts, where the two have differences, namely that buying and selling have profits, while gifts do not. Similarly, in the contract of *wakalah* accompanied by wages with *wakalah* without wages, each law has profits and is commercial (trade). Some are *tabarru'* contracts or social contracts. This also applies in the context of insurance. Social insurance has no profit, while commercial insurance has profit, and Rafiq Yūnus Mişrī considers both to be permissible. This is because in Islam, seeking profit is acceptable.<sup>50</sup>

**Gambar 1.** Differences in the Operational Patterns of *Al-Ta'mīn Al-Ta'āwunī* and *Al-Ta'mīn Al-Tijārī* and Their Rulings



Sumber: Author's Data (2025)

For Mişrī, an insurance contract is a contract that aims to achieve security and compensation. Regardless of the type, all forms of insurance require costs. Therefore, according to Mişrī, the most essential thing in insurance applications

<sup>50</sup>Al-Miṣrī, *Fiqh Al-Mu'āmalāt...*, 278-279.

(both social and commercial) is to meet needs, achieve justice, and balance the interests of all parties, including the insurer, the insured, and the beneficiaries.<sup>51</sup>

The aspect still disputed by the ulama in responding to commercial insurance practices is the existence of concerns, or assumptions, that commercial insurance practices involve elements of usury, gambling, and *gharar*. In this context, Rafiq Yūnus Miṣrī sees that commercial insurance does not include aspects of usury and gambling. However, *gharar* (uncertainty) in the management of premiums can still be negated by considerations of public interest.<sup>52</sup> In his explanation, Rafiq mentions that there are no elements of usury in *ta'mīn al-tijārī*, because insurance companies must avoid usury in their operations. There are no elements of usury in the process of paying premiums and receiving insurance benefits. The same applies in the context of gambling (*maisir*). In commercial insurance contracts, there is basically no speculation about future misfortunes. Still, the costs paid in the form of premiums are part of anticipating the possibility of misfortune experienced by customers. In practice, commercial insurance does not involve any practices that actually lead to gambling. As for *gharar* (uncertainty), Rafiq Yūnus Miṣrī actually considers that *gharar* does arise in commercial insurance contracts, but that *gharar* can be eliminated and annulled by considerations of greater benefit to society.<sup>53</sup>

Rafiq Yūnus Miṣrī's view that there are no elements of usury, gambling, or *gharar* in commercial insurance can be understood from the following explanation:

فَالرُّبَاُ خُلْدٌ لَهُ مِنْهُ (إِذْ نَحْنُ بِدَلْدٍ إِنْشَاءِ شَرِكَاتٍ إِسْلَامِيَّةٍ، لَا التَّعَامُلِ مَعَ شَرِكَاتٍ فَائِمَةٍ)، وَكَذَلِكَ الْقِمَارُ الْمَحْضُ، أَمَّا الْغَرَرُ فَيُجِبُ يَسِيرًا مُعْتَقَرًا بِإِزَاءِ الْمَالِحِ الْكَبِيرَةِ لِلْأُمَّةِ الْإِسْلَامِيَّةِ، أَمَّا قَوْلُهُمْ إِنَّ الْغَرَرَ يُعْتَقَرُ فِي التَّبَرُّعَاتِ دُونَ الْمُعَاوَضَاتِ بَلَدٌ بِجَوَازِ التَّأْمِينِ التَّعَاوُنِيِّ، فَيُمْكِنُ الْإِجَابَةُ عَنْهُ بِأَنَّ التَّبَرُّعَ فِي التَّأْمِينِ التَّعَاوُنِيِّ لَيْسَ هُوَ كَذَلِكَ تَبَرُّعًا مَحْضًا، بَلْ هُوَ تَبَرُّعٌ عَلَى أَمَلٍ الْمُعَاوَضَةِ! وَبِهَذَا يَكُونُ التَّغْرِيفُ الْجَائِزُ لِعَقْدِ التَّأْمِينِ بِأَنَّهُ عَقْدُ أَمَانٍ بِعَوَضٍ.<sup>54</sup>

As for usury (in commercial insurance contracts), we avoid it (because we establish Islamic companies, not deal with existing companies), as well as pure gambling, but *gharar* becomes easy and forgivable in the face of the greater interests of Muslims. As for those who say that *gharar* is forgivable in donations but not in transactions to justify social insurance, it can be answered that donations in cooperative insurance are also not pure donations, but

<sup>51</sup>Al-Miṣrī, *Buḥūs fī Al-Iqtisād...*, 296-297.

<sup>52</sup>Al-Miṣrī, 296.

<sup>53</sup>Al-Miṣrī, 296.

<sup>54</sup>Al-Miṣrī, 296.



donations with the hope of receiving compensation! Thus, the correct definition of an insurance contract is that it is a security contract with compensation.

The above quote shows that Rafiq Yūnus Miṣrī actually assesses commercial insurance practices that clearly contain elements of *maisir*, *riba*, and *gharar*, so that the practice can be modified into a sharia contract, but still in the position of commercial insurance (insurance for the purpose of making a profit). In his other explanation, he also states the following:<sup>55</sup>

1. As for the statement that there is usury in insurance, his opinion is that usury is not inherent in insurance, because insurance premiums can be invested in ways that do not involve usury, such as profit sharing. In addition, insurance premiums are not considered loans, so the amount of insurance is said to be usury if it exceeds the insurance premium. Usury in loans is clearly prohibited, but in insurance practices, the increase is not guaranteed, meaning that an increase may or may not occur. Therefore, in this commercial insurance contract, aspects that could open up opportunities for usury can be modified into non-usury agreements, and their application remains in line with Sharia principles.
2. As for the statement that insurance is gambling, basically, the element of gambling is found in games, and insurance is not a game. Gamblers in gambling create risks, while the insured in commercial insurance are protected from risks.
3. As for the statement that there is *gharar* in insurance, this opinion is that there are two aspects of *gharar* in insurance, namely *gharar* (uncertainty) in the relationship between the insurance company and the total number of insured parties, and *gharar* (uncertainty) in the relationship between the insurance company and each insured party individually. Given the many insured parties, the risk is significantly reduced in the first relationship. As for the second relationship, although it is riskier, it is influenced by the relationship between the company and the total number of participants, so that the risk becomes relatively minor. Then, in the concept of law, this element of *gharar* is more forgivable in donations than in general transactions, in the sense that *gharar* is more excusable in insurance and easier.<sup>56</sup>

Rafiq Yūnus Miṣrī acknowledges the permissibility of *ta'mīn al-tijārī* if viewed solely from the perspective of profit. However, in practice, Miṣrī also imposes strict conditions, namely that it must avoid elements that invalidate contracts, such as

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<sup>55</sup>Al-Miṣrī, *Al-Khaṭar wa Al-Ta'mīn...*, 99-100.

<sup>56</sup>Al-Miṣrī, 99-100.

*gharar*, *riba*, gambling, and others.<sup>57</sup> Specifically regarding profits in the *commercial insurance* system and operational patterns, Rafiq Yūnus Miṣrī considers that if insurance companies take reasonable, moderate profits that are still within the reasonable range, then this is permissible. Miṣrī gives several examples of issues that were initially prohibited by Muslims but are now permitted, such as paying wages to muezzins, imams, preachers, and the many practices in Islamic banks that accommodate various contracts. All of this is in response to the changing times. Similarly, in the case of *ta'mīn al-tijārī*, it is also part of a current need, and its operation is permissible even if the company takes a profit.<sup>58</sup>

Rafiq Yūnus Miṣrī bases his opinion on the fulfilment of interests or benefits for the running of the contemporary muamalah system. He acknowledges this in his review of his opinion, that insurance—both commercial and social—provides benefits to society. In one of his explanations, he states the following:

وَهَكَذَا إِذَا اعْتَرَفَ الْبَاحِثُونَ بِأَنَّ التَّأْمِينَ لَهُ وَظَائِفُ أَفْعَالٍ دِينِيَّةٍ وَاجْتِمَاعِيَّةٍ لَا غِنَى عَنْهَا لِلْمُجْتَمَعِ الْإِسْلَامِيِّ  
الْمُعَاوَةِ لِمُجْتَمَعَاتٍ أُخْرَى، وَتَتَحَقَّقُ بِهِ مَقَالِحَتُهُ فِي الْحَقَائِقِ بِرُكْبِ الْأُمَمِ الْمُتَقَدِّمَةِ، سَهْلُ الرُّدِّ عَلَى  
كَثِيرٍ مِنَ الشُّبُهَاتِ وَالْإِعْتِرَاضَاتِ الَّتِي تُنَارِ حَوْلَهُ.<sup>59</sup>

Thus, if researchers acknowledge that insurance has economic and social functions that are indispensable to contemporary Islamic societies and other societies, and that insurance serves their interests in catching up with advanced nations, it will be easy to answer many of the doubts and objections raised against insurance (commercial insurance).

The above quote is essentially a comment by Rafiq Miṣrī on the urgent benefits and necessity of insurance (commercial or social), making its existence necessary, providing benefits, and meeting the needs of society. On that basis, doubts about the legality of insurance can also be automatically nullified. This means that both social and commercial insurance have benefits (*maṣlaḥah*). The insurance system (both social and commercial) is a catalyst for risk-taking. If a Muslim loses their job and is affected by a pandemic or disaster, they are not left helpless, but receive assistance and comfort from the community and the state. Currently, Muslims are interested in finding a modern cooperative insurance formula that not only protects people from poverty, but also from danger, restoring them to a level of wealth and production efficiency.<sup>60</sup>

<sup>57</sup>Al-Miṣrī, 51-52.

<sup>58</sup>Al-Miṣrī, 52.

<sup>59</sup>Al-Miṣrī, 54-55.

<sup>60</sup>Al-Miṣrī, *Uṣūl Al-Iqtisād...*, 116.

Based on the above description, it can be seen that Rafiq Yūnus Miṣrī argues that *al-ta'mīn al-ta'āwunī* and *al-ta'mīn al-tijārī* have the same objective, but what distinguishes them is only their motivation or purpose, namely that *al-ta'mīn al-ta'āwunī* does not seek profit, and is carried out entirely through social contracts. In contrast, in the case of *al-ta'mīn al-tijārī*, insurance companies seek to profit from the contracts they enter into.

Rafiq Yūnus Miṣrī's view above differs from that of the majority of contemporary ulama. For example, Wahbah Al-Zuhailī's view states that commercial insurance agreements are speculative or gambling contracts, especially in the practices of insurance companies with fixed premiums and payments. Today's insurance agreements include akad *al-mu'awadah al-māliyah* or exchange of property, and the compensation given by the insurance company to its members is not a donation.<sup>61</sup> Speculative contracts in commercial insurance fall into the category of akad *gharar*, which contains elements of fraud, risk, uncertainty, and unpredictability. This is because at the time of the contract, it is unknown how much wealth each party will transfer and obtain. The reason is that sometimes new members join the insurance and only pay the insurance premium once, then they experience an incident/risk. Conversely, members who have been with the insurance company for a long time and have paid premiums many times may not have experienced any incidents.<sup>62</sup> In conclusion, Al-Zuhailī states that commercial insurance is haram. The prohibition of commercial insurance is due to its contract, which contains elements of *gharar* and *riba*. The aspect of *gharar* in commercial insurance is the same as that of *gharar* in a *gharar* sale and purchase contract, where uncertainty lies in the speculative nature of the contract, i.e., luck. There are two possibilities in this type of insurance agreement: it may or may not be related to the risk faced. The element of *gharar* in commercial insurance is considered very serious, not moderate or light, because the fundamental component of insurance is risk and incident, while risk and incident are still possibilities.<sup>63</sup>

A similar view was also expressed by Muhammad Al-Zuhaili (brother/younger brother of Wahbah Al-Zuhaili), who stated that *ta'mīn al-tijārī* is conventional insurance of a commercial nature, where its implementation is indeed intended for the profit of the company. The concept of *ta'mīn al-tijārī* is haram according to Sharia. This is because it gives rise to many aspects that violate Sharia values, such as *gharar* (uncertainty), *ghaban* or imbalance between the premiums

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<sup>61</sup>Wahbah Al-Zuhailī, *Al-Fiqh Al-Islāmī wa Adillatuh*, Jilid 6, (Terj: Abdul Hayyie al-Kattani, dkk), (Jakarta: Gema Insani Press, 2012), 79.

<sup>62</sup>Al-Zuhailī, 79.

<sup>63</sup>Al-Zuhailī, 80.

paid and the benefits received. In addition, it also contains elements of *riba*, *qimar* or gambling, and deception. According to Al-Zuhailī, all of these things are part of the elements that undermine commercial insurance contracts.<sup>64</sup>

In addition, the views of Yūsuf Al-Qarāḍāwī, Muḥammad bin Ṣāliḥ Al-Uṣaimīn, Abu Zahrah, and others essentially state that conventional commercial insurance in its current practice is contrary to the principles of Islamic law, due to the elements of usury, gambling, and *gharar* (uncertainty) contained therein. This opinion differs from that of Yūnus Miṣrī, as mentioned earlier. For Miṣrī, commercial insurance, in particular, does not give rise to usury or gambling. The ulama who view commercial insurance as involving usury believe that usury can arise from investing premium funds by insurance companies in financial instruments that generate interest (usury). However, this assumption is refuted by Rafīq Miṣrī, who states that the participants' funds are invested in Sharia-based companies.

On the other hand, the ulama who see gambling elements because there is speculation on the possibility of misfortune or risk, consider this to be part of gambling speculation. However, Rafīq Miṣrī argues that there are no gambling elements, only risk coverage between one participant and another. As for the element of *gharar* (uncertainty in both fund investment and risk), Miṣrī acknowledges it, because there is indeed an element of *gharar* in commercial insurance. However, the element of *gharar* in commercial insurance is the same as in social insurance, and this element of *gharar* can be nullified by considering a greater aspect, namely, the welfare of society at large.

## CONCLUSION

In conclusion, this study has demonstrated that the concept of insurance in Islamic jurisprudence is divided into two main types: *ta'mīn al-ta'āwunī* (social insurance) and *al-ta'mīn al-tijārī* (commercial insurance). Both are relatively new contractual forms not found in classical literature; thus, their legal status has only been debated among contemporary scholars. The findings show three main perspectives: some scholars reject both forms of insurance on the grounds of *gharar*, *riba*, and *maisir*; others permit social insurance but prohibit commercial insurance; while a third group allows both. Rafīq Yūnus Miṣrī belongs to the latter group, as he argues that the alleged invalidating elements in commercial insurance are not relevant. For him, the only difference lies in the profit motive (*ribḥ*), which is permissible as long as it provides benefits. The authors agree with Rafīq Yūnus

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<sup>64</sup>Al-Zuhailī, *Al-Ta'mīn 'ala Al-Duyūn...*, 14.

Miṣrī's reasoning that commercial insurance, when viewed through the principle of *maṣlaḥah*, generates tangible benefits not only for participants but also for the insurance companies that manage the funds. Therefore, it can be considered a valid and lawful contract in the framework of contemporary Islamic jurisprudence. To address the ongoing debates and reduce ambiguity in legal interpretations, the authors recommend further *ijtihād* that contextualises insurance practices in light of modern economic realities. This approach will allow Islamic law to remain adaptive and responsive to the evolving nature of financial transactions in contemporary society.

## BIBLIOGRAPHY

- Al-'Amdunī, Luṭfī bin Hamadī. *Al-Biṭāqāt Al-Bankiyyah fī Fiqh Islāmī*. TASQ Company, t.t.
- Al-Miṣrī, Rafiq Yūnus. *Al-Khaṭar wa Al-Ta'mīn: Hal Al-Ta'mīn Al-Tijārī Jā'izun Syar'an*. Damaskus: Dār Al-Qalam, 2001.
- — —. *Buḥūs fī Al-Iqtisād Al-Islāmī*. Damaskus: Dār Al-Maktabī, 2009.
- — —. *Fiqh Al-Mu'āmalāt Al-Māliyyah*. Damaskus: Dār Al-Qalam, 2005.
- — —. *Uṣūl Al-Iqtisād Al-Islāmī*. Damaskus: Dār Al-Qalam, 2010.
- Al-Qaraḍāwī, Yūsuf. *Al-Halāl wa Al-Ḥarām fī Al-Islām*. (Terj: M. Tatam Wijaya), Jakarta: Qalam, 2017.
- Al-Qurṭubī, Abī Bakr. *Jāmi' li Ahkām Al-Qur'ān*. (Terj: Masturi Irham, Dkk). Jakarta: Pustaka Azzam, 2009.
- Al-Sālūs, 'Alī Aḥmad. *Al-Iqtisād Al-Islāmī wa Al-Qaḍāyā Al-Fiqhiyyah Al-Mu'āṣirah*. Qatar: Dār Al-Ṣaḳāfah Al-Dūḥah, 1998.
- Al-Ṭabarī, Ibn Jarīr. *Jāmi' Al-Bayān 'an Ta'wīl Ayy Al-Qur'ān*. (Terj: Amir Hamzah, Dkk), Jakarta: Pustaka Azzam, 2009.
- Al-Zuhailī, Muḥammad. *Al-Ta'mīn 'ala Al-Duyūn fī Al-Fiqh Al-Islāmī*. Kuwait: Jāmi'ah Al-Syarī'ah, 2006.
- Al-Zuhailī, Wahbah. *Al-Fiqh Al-Islāmī wa Adillatuh*. Jilid 5, (Terj: Abdul Hayyie al-Kattani, Dkk), Jakarta: Gema Insani Press, 2012.
- — —. *Al-Fiqh Al-Islāmī wa Adillatuh*. Jilid 6, (Terj: Abdul Hayyie al-Kattani, Dkk), Jakarta: Gema Insani Press, 2012.
- Cahyandari, Rini, Neng Hani Rahmawati, dan Irwan Girana. *Asuransi Syariah Model Integrasi dengan Python*. Jakarta: Rajagrafindo Persada-Rajawali Pers, 2024.
- Echols, John M., dan Hassan Shadily. *Kamus Indonesia Inggris*. Edisi Ketiga, Jakarta: Gramedia Pustaka Utama, 1992.
- Efendi, Jonaedi, dan Johnny Ibrahim. *Metode Penelitian Hukum Normatif dan Empiris*. Jakarta: Kencana Prenada Media Group, 2018.
- Ekapaksi, Linggar, dan A. M. Hasan Ali. "Pertimbangan Hakim Dalam Putusan Kasus Asuransi Syariah." *Jurnal Paradigma* Vol. 19, no. 2 (Agustus 2022): 25–40. <https://doi.org/10.33558/paradigma.v19i2.4571>.

- Ghazaly, Abdul Rahman, Ghufron Ihsan, dan Sapiudin Shidiq. *Fiqh Muamalat*. 1, Cet. 4 ed. Jakarta: Kencana Prenada Media Group, 2015.
- Gibtiyah. *Fikih Kontemporer*. 1, Cet. 2 ed. Jakarta: Kencana Prenada Media Group, 2018.
- Hasanah, Uswatun. "Asuransi Dalam Perspektif Hukum Islam." *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, Vol. 47, no. 1 (Januari 2013): 1. <https://doi.org/10.14421/ajish.v47i1.63>.
- Maḥmūd, 'Abd Al-Laṭīf Maḥmūd Ālū. *Ta'mīn Al-Ijtimā'ī fī Ḍau' Al-Syarī'ah Al-Islāmiyyah*. Beirut: Dār Al-Nafā'is, 1994.
- Manan, Abdul. *Hukum Ekonomi Syariah dalam Perspektif Kewenangan Peradilan Agama*. Jakarta: Kencana Prenada Media Group, 2016.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Cet. 13,. Jakarta: Kencana Prenada Media Group, 2017.
- Pengadilan Tinggi Agama Jakarta Memeriksa dan Mengadili pada Tingkat Banding dalam Sidang Musyawarah Majelis Telah Menjatuhkan Putusan dalam Perkara Asuransi Syariah, Putusan Nomor 7/Pdt.G/2023/PTA.JK (Pengadilan Tinggi Agama Jakarta 2023). [https://ditbinganis.badilag.net/ekonomisyariah/dokumen\\_putusan/1785.pdf](https://ditbinganis.badilag.net/ekonomisyariah/dokumen_putusan/1785.pdf).
- Sā'id 'Abd Al-'Aẓīm. *Akhṭa' Syā'i'ah fī Al-Buyū' wa Ḥukm Ba'du Al-Mu'āmalāt*. (Terj: Iman Firdaus), Cet. 2,. Jakarta: Qisthi Press, 2014.
- Soemitra, Andri. *Bank dan Lembaga Keuangan Syariah*. Jakarta: Kencana Prenada Media Group, 2017.
- Sula, Muhammad Syaikir. *Asuransi Syariah (Life and General): Konsep dan Sistem Operasional*. Jakarta: Gema Insani Press, 2016.
- Suma, Muhammad Amin, dan Iim Qo'imudin Amin. *Asuransi Syariah di Indonesia: Telaah Teologis, Historis, Sosiologis, Yuridis dan Futurologis*. Jakarta: Amzah, 2020.
- Syābirā, Muḥammad Umar. *Mustaqbal 'Ilm Al-Iqtiṣād min Manzūr Al-Islāmī*. Damaskus: Dār Al-Fikr, 2004.
- Syubair, Muḥammad 'Uṣmān. *Al-Mu'āmalāt Al-Māliyyah Al-Mu'āṣirah fī Al-Fiqh Al-Islāmī*. Yordania: Dār Al-Nafā'is, 2007.
- Tim Pustaka Phoenix. *Kamus Besar Bahasa Indonesia*. Edisi Ketiga, Cet. 3,. Jakarta: Pustaka Phoenix, 2012.
- Waluyo, Atep H. *Fikih Muamalah Keuangan Kontemporer*. Banyumas: Wawasan Ilmu, 2025.
- Wirdyaningsih, Karnaen Perwataatmadja, Gemala Dewi, dan Yeni Salma Barlinti. *Bank dan Asuransi di Indonesia*. Jakarta: Kencana Prenada Media Group, 2005.