

## ISLAMIC LEGAL FRAMEWORK FOR ENHANCING TAKAFUL IJTIMĀ'Ī THROUGH WAQF-MUSHĀRAKAH MODELS IN INDONESIA AND MALAYSIA

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### ABSTRACT

Sharia insurance (at-Takāful) is founded on the principle of mutual assistance (at-Takāful al-Ijtimā'ī), yet existing models often fail to ensure equitable outcomes. Most contemporary Sharia insurance practices rely on hybrid contracts (multi-'aqd), combining 'Aqd Tabarru' (charitable contribution) and 'Aqd Muḍārabah (profit-sharing). However, these approaches have limitations in achieving social justice. This study examines the integration of Waqf and Mushāraakah models as alternative solutions to enhance fairness in Islamic insurance. While Indonesia's Takāful system predominantly uses traditional hybrid contracts, Malaysia employs a more advanced Takāful framework, incorporating Waqf and Mushāraakah to strengthen social justice and economic sustainability. Using a normative legal research approach, this study employs a doctrinal approach and compares Indonesian and Malaysian Takāful structures, analyzing the legal and economic implications of adopting Waqf and Mushāraakah in Sharia insurance. The findings suggest that the Waqf model aligns with Islamic economic objectives such as poverty alleviation (raf' al-faqr) and wealth distribution (taqwīm al-tharwah), while Mushāraakah fosters cooperative principles and equitable profit-sharing (al-ta'ūwun wa al-'adālah al-māliyah). The study concludes that integrating Waqf and Mushāraakah into Indonesia's Sharia insurance system can enhance Takāful Ijtimā'ī principles and promote greater financial justice in accordance with the Maqāṣid al-Shari'ah.

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## INTRODUCTION

Social justice in Islam, reflected through the concept of *Takāful Ijtīmā'ī*, emphasizes a commitment to ensuring every individual in society enjoys a reasonable quality of life. This concept extends beyond mere sustenance, such as food, to encompass vital necessities like shelter, education, health, and clothing.<sup>1</sup> Social justice plays a crucial role in guaranteeing equitable income distribution and access to social services, striving to ensure that every member of society meets an acceptable minimum standard of living. Legally, social justice in Islam is considered *Fard Kifāyah*, a collective responsibility (*al-mas'ūliyyah al-jamā'īyyah*) where every Muslim has a duty to support others to the best of their capacity, with the state (*al-dawlah*) playing an essential role in ensuring the success of this system.<sup>2</sup> This dual obligation highlights the state's authority in enforcing Sharī'ah law and promoting social justice, while also recognizing the roles of individual and community participation. The *Ḥadīth* of the Prophet Muḥammad further supports this shared responsibility: "Muslims are like a building, each part supporting the other".<sup>3</sup>

Despite this strong normative foundation, translating the principle of *Takāful Ijtīmā'ī* into contemporary Islamic financial institutions, particularly *Sharī'ah* insurance (*takaful*), remains conceptually and operationally challenging. The core problem lies in whether existing *takaful* contractual structures are capable of fulfilling the Islamic mandate of equitable risk sharing, mutual protection, and social solidarity, rather than merely replicating commercial insurance logic in *Sharī'ah*-compliant form. However, despite the importance of social justice, issues related to its effective implementation remain prevalent in countries like Indonesia and Malaysia, where both have adopted *takaful ijtima'i* within their Sharia insurance systems.<sup>4</sup> These two jurisdictions are selected for comparison not merely due to their shared Muslim-majority contexts, but because they represent contrasting institutional responses to similar social justice objectives within Islamic insurance. Indonesia and Malaysia operate under comparable socio-religious environments, yet differ significantly in regulatory design, contractual structures, and the extent to which social justice principles are substantively embedded in their *takaful* systems.

In Indonesia, the current *Sharī'ah* insurance system, primarily based on hybrid contracts such as *'aqd Tabarru'* (charitable contribution) and *'aqd Muḍārabah* (profit-sharing), faces challenges in achieving its intended social equality and justice. Critics point to issues of inequitable risk-sharing and inadequate mutual assistance (*ta'āwun*).<sup>5</sup> In practice, the Indonesian *takaful* model has been criticised for leaning toward a commercial orientation,

<sup>1</sup> J M Muslimin, Bahrul Qamar, and Hasbi Sen, "Waqf, Sharia Venture Capital, And Institutional Problems: Socio-Legal Cases In Indonesia," *Akademika: Jurnal Pemikiran Islam* 27, no. 1 (July 2022): 15-30, <https://doi.org/10.32332/akademika.v27i1.4524>.

<sup>2</sup> Sbrong Sinarok Martin, "Legal Consequences of Bankruptcy Towards Legal Position of Waqf Assets on Foundation," *Jurnal Hukum Novelty* 12, no. 1 (2021): 48, <https://doi.org/10.26555/novelty.v12i01.a16990>.

<sup>3</sup> Siska Lis Sulistiani, Ramdan Fawzi, and Intan Nurrachmi, "Waqf Crowdfunding Model in Post-Pandemic Economic Improvement According to Islamic Sharia and National Law," *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah* 7, no. 1 (2023): 73-81, <https://doi.org/10.29313/amwaluna.v7i1.10130>.

<sup>4</sup> Bustami, Rio Laksamana, and Zuliana Roviqoh, "Waqf Fundraising through Money in the Industrial Revolution 4.0 Era: A Case Study on Baitulmaal Munzalan Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, no. 1 (2020): 23-39, <https://doi.org/10.18326/ijtihad.v20i1.23-39>.

<sup>5</sup> Helza Nova Lita, "The Implementation of Waqf to Actualize Economic Justice Based on Islamic Law," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 1 (2020): 1-18, <https://doi.org/10.22304/pjih.v7n1.a1>.

where risk transfer mechanisms, surplus distribution, and participant protection do not always reflect genuine mutuality. This raises a fundamental question: does the prevailing Indonesian takaful structure sufficiently operationalise *Takāful Ijtīmā'ī*, or does it fall short of Islamic social justice ideals in terms of benefit distribution, participant empowerment, and protection of vulnerable groups? This discrepancy raises questions about whether the current system aligns with the Islamic principles of *Takāful Ijtīmā'ī*.

In contrast, Malaysia has taken a more robust approach by integrating *Waqf* (endowment) and *Mushārah* (partnership) into its *Takāful* system. Malaysian *Takāful* is regulated under a strong framework by Bank Negara Malaysia, with a focus on risk-sharing (*taqāsīm al-khaṭar*) and mutual aid (*ta'āwun*). This model offers greater alignment with the principles of social justice by directing charitable resources, such as those from *Waqf*, to support the disadvantaged (*al-muḥtājīn*).<sup>6</sup> The Malaysian *waqf-mushārah* model is therefore not merely an institutional innovation, but a normative response to the shortcomings of conventional takaful contracts. By embedding social funds and partnership-based risk-sharing into the takaful structure, Malaysia provides a mechanism that strengthens collective responsibility, enhances participant protection, and redistributes surplus toward social welfare objectives. Despite its successes, questions remain about whether these methods are replicable or adaptable to other contexts, such as Indonesia.

Previous studies have explored the role of *takaful* in promoting social justice, emphasizing the need for stronger regulatory frameworks.<sup>7</sup> However, while research highlights the differences between Indonesian and Malaysian approaches, there is limited comparative analysis on the integration of *Waqf* and *Mushārah* into Indonesia's *Sharī'ah* insurance system. Existing literature largely examines waqf-based takaful either in isolation or within a single jurisdiction, without systematically analysing how specific contractual innovations can address concrete social justice deficits in other national contexts.<sup>8</sup> Studies by prior scholars have discussed the theoretical compatibility of waqf with takaful, but have not sufficiently examined regulatory transferability, institutional constraints, or problem-driven adaptation within Indonesia's legal and financial framework.

The works have underlined the potential benefits of such models in achieving better social equity, but there is a gap in understanding how these models might be effectively incorporated into Indonesia's existing framework. This study, therefore, advances the existing literature by offering a comparative, social justice-oriented analysis of Indonesian and Malaysian takaful systems. Its originality lies in identifying specific regulatory, contractual, and institutional weaknesses within Indonesia's takaful framework, and demonstrating how the Malaysian *waqf-mushārah* model provides a viable normative and operational response to those weaknesses.

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<sup>6</sup> Bustami, Laksamana, and Roviqoh, "Waqf Fundraising through Money in the Industrial Revolution 4.0 Era: A Case Study on Baitulmaal Munzalan Indonesia."

<sup>7</sup> Muslimin, Qamar, and Sen, "Waqf, Sharia Venture Capital, And Institutional Problems: Socio-Legal Cases In Indonesia."

<sup>8</sup> Jalaluddin, M S A Majid, and M Agustina, "The Role of Waqf in Islamic Life Insurance: The Dual Benefits of Insurance and Investment in View of Fatwa of Indonesian Ulema Council," in *2023 International Conference on Sustainable Islamic Business and Finance (SIBF)*, 2023, 271-75, <https://doi.org/10.1109/SIBF60067.2023.10380044>.

This study aims to compare the takaful systems in Indonesia and Malaysia, focusing on the incorporation of new models, such as Waqf and Mushārah, into Indonesia's Sharia insurance. By analyzing these approaches, the study seeks to identify best practices and recommend adaptations that could enhance the social justice goals of Indonesia's Takāful system. The core argument of this study is that the Malaysian *waqf mushārah* takaful model addresses key deficiencies in Indonesia's takaful system, namely inequitable risk sharing, limited social fund mobilization, and weak participant protection, by institutionalizing collective ownership, partnership-based risk distribution, and socially targeted surplus utilization. Integrating these elements into Indonesia's takaful framework can therefore strengthen its alignment with *Takāful Ijtīmā'ī* and Islamic social justice principles. The core argument of this study is that the Malaysian waqf mushārah takaful model addresses key deficiencies in Indonesia's takaful system, namely inequitable risk sharing, limited social fund mobilization, and weak participant protection, by institutionalizing collective ownership, partnership-based risk distribution, and socially targeted surplus utilization. Integrating these elements into Indonesia's takaful framework can therefore strengthen its alignment with *Takāful Ijtīmā'ī* and Islamic social justice principles.

The urgency of this study lies in the need to reform Indonesia's *takaful* system to address its shortcomings in social justice. Given the significant role that Sharia insurance plays in Indonesia's financial ecosystem, aligning it with Islamic principles of mutual aid and fair resource distribution is crucial. Additionally, Malaysia's more advanced model offers valuable insights that could be applied to Indonesia, making this study vital for fostering a more equitable and efficient *Takāful* system in the region. The study's findings could inform policy reforms and inspire future cross-border collaboration to advance Islamic social justice.

## METHODS

This research aims to examine the fundamental principles of at-Takāful organizations, with particular emphasis on the spirit of mutual assistance that underpins Sharī'ah insurance (at-Takāful al-Ijtīmā'ī). The study adopts a normative legal research methodology, employing doctrinal and comparative approaches to analyze the legal norms, principles, and conceptual foundations governing the implementation of Sharī'ah insurance, particularly the Waqf and Mushārah models. Legal materials are collected through a comprehensive literature review encompassing primary, secondary, and tertiary sources, including legislation, fatwas, government policy documents, and academic literature related to the concepts of at-Takāful, Waqf, and Mushārah models, as well as the regulatory frameworks of Sharī'ah insurance in Indonesia and Malaysia.

The study also applies a normative case study approach to examine the implementation of hybrid contracts (multi-‘aqd) in Indonesia's takaful practices and the integration of the Waqf and Mushārah models within Malaysia's takaful system, with particular attention to normative compliance, social justice considerations, and participant protection. The doctrinal approach is used to examine the principles of Islamic law and Sharī'ah norms that underpin the Waqf and Mushārah models, while comparative analysis identifies regulatory and institutional differences between the two jurisdictions and formulates normative recommendations to

strengthen Indonesia's Sharī'ah insurance system in alignment with the principles of Takāful Ijtīmā'ī and Islamic social justice.

## RESULTS AND DISCUSSION

### Sharī'ah Insurance Principles in Light of Social Justice and Maqāṣid al-Sharī'ah

The Malaysian takaful programme represents one of the most institutionally developed models of *Sharī'ah* insurance in the contemporary Islamic finance landscape. It is primarily structured around hybrid contractual arrangements, including *Wakālah bil Ujrah*, *Muḍārabah*, *Mushārakah*, and, more recently, waqf-based takaful models. Operationally, these contracts are designed to separate participants' risk funds (*tabarru'* funds) from shareholders' funds, thereby reinforcing the principle of collective risk-sharing rather than risk transfer. The implementation of these contracts is governed by a comprehensive legal and regulatory framework, most notably the Islamic Financial Services Act (IFSA) 2013, supported by regulatory oversight from Bank Negara Malaysia (BNM) and Sharī'ah advisory rulings issued by the Sharī'ah Advisory Council (SAC). This framework ensures doctrinal consistency, legal certainty, and operational transparency in takaful operations, while embedding Sharī'ah compliance at both contractual and institutional levels.<sup>9</sup>

From a social justice perspective, the Malaysian takaful model explicitly promotes equitable risk-sharing (*taqāṣīm al-khaṭar*), mutual assistance (*ta'āwun*), and fair distribution of benefits among participants. The integration of waqf instruments further extends takaful beyond commercial risk management by allocating endowment-based funds to support disadvantaged groups, thereby aligning takaful operations with broader social welfare and *Maqāṣid al-Sharī'ah* objectives, particularly the protection of life (*ḥifẓ al-nafs*) and wealth (*ḥifẓ al-māl*).

*Sharī'ah* insurance, which adapts conventional insurance principles, is distinguished by its guiding core concepts. These include *ta'āwanū 'alā al-birr wa al-taqwā* (mutual collaboration in virtue and righteousness) and *al-ta'mīn* (provision of security). These principles foster a sense of collective responsibility among participants, viewing them as members of an extended family committed to risk-sharing.<sup>10</sup> Central to *sharī'ah* insurance is the concept of *Takāful* (mutual aid), which forms the foundation of its contractual structure. This concept emphasizes the shared obligation of members to support one another during times of need. Beyond *ta'āwun* (mutual support), *sharī'ah* insurance aligns with other essential principles, such as shared accountability, fairness, and the avoidance of prohibitions like *gharar* (excessive uncertainty), *maysir* (gambling), and *ribā* (interest).<sup>11</sup>

*Gharar* refers to undue uncertainty or ambiguity in transactions. It arises from a lack of complete knowledge, deception, or inherent risks in the subject matter of a contract. In Islamic

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<sup>9</sup> Muhammet Hudayberdiyev, "IMPLEMENTATION OF THE WAKALAH BIL UJRAH AGREEMENT IN SHARIA LIFE INSURANCE INDONESIA AND MALAYSIA," *Jurnal Justisia Ekonomika: Magister Hukum Ekonomi Syariah* 8, no. 1 SE-Artikel (June 20, 2024): 1027-41, <https://doi.org/10.30651/justeko.v8i1.22264>.

<sup>10</sup> Ahmad Lukman Nugraha et al., "Waqf Literacy: The Dynamics of Waqf in Indonesia," *Journal of Islamic Economics and Finance Studies* 3, no. 2 (2022): 107, <https://doi.org/10.47700/jiefes.v3i2.5082>.

<sup>11</sup> Siska Lis Sulistiani, "The Legal Position of Waqf for Non-Muslims in Efforts to Increase Waqf Assets in Indonesia," *Samarah* 5, no. 1 (2021): 357-71, <https://doi.org/10.22373/sjkh.v5i1.9161>.

finance, transactions characterized by significant risk–reward asymmetries are prohibited, particularly when profit is sought without a corresponding acceptance of risk. Gharar is evident in insurance contracts when there is uncertainty regarding the amounts to be paid or received, as is often the case in traditional life insurance models that rely on exchange-based contracts.<sup>12</sup> Similarly, *maysir* denotes gambling or speculative trading, which is strictly forbidden in Islam due to its unpredictable outcomes that can lead to either financial gain or loss. The Qur’ān explicitly prohibits gambling, as stated in Sūrah al-Baqarah [2:219] and Sūrah al-Mā’idah [5:90], considering it an act of *shayṭān*. In the context of insurance, *maysir* can manifest in various forms, such as when a policyholder suffers a significant loss despite paying a relatively small premium, when no claims are made and the insurer retains the full premium, or when a policyholder cancels the policy early and receives little to no refund, depending on the insurer’s terms.<sup>13</sup>

Another prohibited element in Islamic finance is *ribā*, or interest, which refers to any excess or increase in a financial transaction without equivalent consideration. In the context of insurance, *ribā* issues may arise from investments made by insurance companies that inadvertently involve interest-based instruments.<sup>14</sup> Unlike conventional banks, which frequently engage in interest-bearing transactions, *Shari’ah*-compliant insurance firms must ensure that their investments adhere strictly to *ḥalāl* standards, avoiding any involvement in interest-based financing.<sup>15</sup> Having established the Malaysian *takaful* model as a normative and operational benchmark grounded in *shari’ah* principles and social justice objectives, this framework provides a relevant point of comparison for assessing other national *takaful* systems, particularly Indonesia.

By focusing on integrating these core *shari’ah* principles, this research introduces a new perspective on how *shari’ah* insurance systems, particularly in Indonesia and Malaysia, might evolve to better align with social justice goals while mitigating the risks associated with gharar, *maysir*, and *ribā*. The study’s findings underscore the need to refine *shari’ah* insurance structures to meet religious guidelines and address modern economic needs, offering a more equitable approach to mutual risk management.

### Hybrid Contracts in Sharia Insurance

Hybrid contracts in *shari’ah* insurance (*Takāful*) represent an evolving framework that seeks to address the dynamic needs of modern insurance markets while staying true to Islamic ethical principles. While Indonesia and Malaysia share similar *shari’ah* insurance foundations, there are notable differences in how these hybrid contracts are structured and applied. This

<sup>12</sup> Winda Fitri, “The Legal Protection for Security Crowdfunding Based on Sharia Investment in MSMEs Economic Recovery,” *International Journal of Law Reconstruction* 7, no. 1 (2023): 39, <https://doi.org/10.26532/ijlr.v7i1.30917>.

<sup>13</sup> Isti’ناه Zainal Asyiqin, Ani Yunita, and Muhammad Habibi Miftakhul Marwa, “Penguatan Pemahaman Jama’ah Masjid Baiturrahman Tentang Bahaya Riba Dan Keutamaan Perekonomian Berbasis Syariah,” *PengabdianMu: Jurnal Ilmiah Pengabdian Kepada Masyarakat*, 2022, <https://doi.org/10.33084/pengabdianmu.v7i6.4036>.

<sup>14</sup> Rasmuddin Rasmuddin et al., “Legal Clarity for Sharia Lodging Businesses through Sharia Certification,” *Jurnal Media Hukum* 31, no. 2 SE-Articles (July 20, 2024): 206–23, <https://doi.org/10.18196/jmh.v31i2.18635>.

<sup>15</sup> Zainal Abidin et al., “Determinants of Financial Behavior in Young Investors’ Islamic Stock Investment Decisions in Indonesia,” *American International Journal of Business Management (AIJBM) ISSN* 3, no. 11 (2020): 7.

section will explore these distinctions and the challenges inherent in combining altruistic, risk-sharing contracts with profit-driven elements.<sup>16</sup> In Indonesia, *Shari'ah* insurance is primarily guided by the fatāwā issued by the Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI). These fatāwā not only provide regulatory clarity but also establish a framework within which hybrid contracts operate. Key regulatory references include DSN-MUI Fatwa No. 21/DSN-MUI/X/2001 on General Guidelines for Shari'ah Insurance, Fatwa No. 51/DSN-MUI/III/2006 on *Wakālah bil Ujrah*, and Fatwa No. 52/DSN-MUI/III/2006 on *Muḍārabah Mushtarakah*, which collectively legitimise the use of hybrid contractual arrangements in Indonesian takaful practice. One key challenge is the integration of charitable elements, such as *tabarru'*, with more commercially driven contracts like *Wakālah bil Ujrah*. This hybridization is necessary to meet both social goals and business objectives, yet it raises questions about maintaining the integrity of the charitable intent. In particular, the risk arises that commercial interests may overshadow the humanitarian aspects, potentially leading to exploitation of participants who are primarily seeking mutual support rather than profit.<sup>17</sup>

A critical point of debate is the blending of *Muḍārabah* and *Muḍārabah Mushtarakah* contracts, which introduce profit-sharing mechanisms into the *shari'ah* insurance model. These contracts, while commercially viable, must be carefully managed to ensure that the profit motive does not override the altruistic goals of risk-sharing and *ta'āwun* (mutual aid). The challenge here lies in maintaining transparency and accountability, particularly in how profits are distributed and ensuring that participants are not misled about the risks and returns associated with their contributions. This concern has been echoed in academic literature that highlights governance weaknesses in surplus distribution and information asymmetry between operators and participants within hybrid takaful models. In Malaysia, the *shari'ah* insurance system similarly relies on hybrid contracts but with a slightly different approach to regulatory oversight. Malaysian practices often emphasize more advanced financial instruments and greater integration with global financial markets. The Malaysian takaful industry operates under a comprehensive legal framework, particularly the Islamic Financial Services Act (IFSA) 2013, complemented by Bank Negara Malaysia (BNM) policy documents such as the Takaful Operational Framework (2019) and the Waqf-Featured Takaful Discussion Paper. This integration has led to the evolution of hybrid contracts, particularly in the application of *Wakālah bil Ujrah*. Here, insurance companies may leverage these contracts not just as a service agreement but as a means of maximizing financial returns, which introduces a layer of complexity in balancing the profit-driven nature of the system with its original humanitarian purpose.<sup>18</sup>

In both Indonesia and Malaysia, there is a growing recognition of the need for greater oversight and regulation to prevent the commercialization of the charitable aspects of Shariah

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<sup>16</sup> Istianah Zainal Asyiqin and Fe Fikran Alfurqon, "Musyarakah Mutanaqisah: Strengthening Islamic Financing in Indonesia and Addressing Murabahah Vulnerabilities," *Jurnal Media Hukum* 31, no. 1 (2024): 61, <https://doi.org/10.18196/jmh.v31i1.20897>.

<sup>17</sup> Ubaidillah Ubaidillah, Haniyah Haniyah, and Dimas Aji Perdana, "Perbandingan Prinsip Keadilan Sistem Jaminan Sosial Dengan Maqasid Syariah," *Synergy: Jurnal Ilmiah Multidisiplin* 1, no. 04 SE-Article (December 2023): 224-30.

<sup>18</sup> Abu Umar Faruq Ahmad and Mohanmad Ashrafu Mobin, "Promoting Maqashid Al-Shari'ah and Achieving Sustainable Economic Development: The Potential of Proposed Two Tier Mudarabah Business Model on Cash Waqf," *Media Syari'ah* 17, no. 1 (2015): 1-36.

insurance. Scholars and regulators are increasingly calling for stricter guidelines on applying hybrid contracts to ensure that the original principles of *ta'awun*, risk-sharing (*taqāsīm al-khaṭar*), and community support remain central to the system. This calls for innovative regulatory frameworks that can balance financial innovation with the ethical imperatives of *Shari'ah* law. Comparative studies in Islamic finance literature argue that regulatory intervention is essential to realign takaful operations with their social justice mandate, particularly in jurisdictions where market-driven pressures dominate. In this context, it is crucial that both countries foster greater collaboration between regulators, insurers, and scholars to continuously monitor and refine the use of hybrid contracts in *shari'ah* insurance. Furthermore, the rise of digital technologies and fintech in both Indonesia and Malaysia offers a potential avenue for enhancing the efficiency and accessibility of hybrid *shari'ah* insurance products. Digital platforms could streamline risk-sharing pool management, enhance transparency in profit distribution, and facilitate easier tracking of contributions and returns for participants. However, the use of technology also raises concerns about data security, privacy, and potential market instability, making it essential for regulators to stay ahead of technological advancements and incorporate these into the regulatory framework for *shari'ah* insurance.<sup>19</sup>

Therefore, hybrid contracts in *shari'ah* insurance represent a necessary evolution in the system, aligning traditional Islamic values with modern financial practices. However, the continued success of these contracts hinges on the ability to balance commercial interests with the core principles of *ta'awun* and risk-sharing. As *shari'ah* insurance continues to grow, both Indonesia and Malaysia will need to refine their regulatory frameworks to ensure that hybrid contracts remain ethical, transparent, and fair for all participants.<sup>20</sup>

### **Comparative Analysis of Shari'ah Insurance Practices in Indonesia and Malaysia: Integrating Waqf and Hibah within the Takāful Framework**

In Malaysia, *shari'ah* insurance practices are regulated by Bank Negara Malaysia, which has established comprehensive guidelines for *Takāful* operations. Malaysian *shari'ah* insurance incorporates a blend of contracts similar to those in Indonesia, but with notable differences in implementation and integration. *Wakālah bil Ujrah* and *Muḍārabah* are also prevalent in Malaysian *shari'ah* insurance. However, Malaysian practices often integrate these contracts more seamlessly with additional elements, such as *Waqf* (endowment). The inclusion of *Waqf* adds a layer of charitable giving and community support, enhancing the social justice aspect of *Takāful*.<sup>21</sup>

The Malaysian model tends to employ a more cohesive approach to hybrid contracts. For instance, the combination of *Waqf* with *Takāful* provides a mechanism for additional charitable contributions beyond the basic *Tabarru'*. This integration helps address some of the

<sup>19</sup> Hisam Ahyani et al., "Building the Values of Rahmatan Lil 'Alamin for Indonesian Economic Development at 4.0 Era from the Perspective of Philosophy and Islamic Economic Law," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 1 (2021): 111–36, <https://doi.org/10.19105/al-lhkam.v16i1.4550>.

<sup>20</sup> Risfiana Mayangsari, "The Islamic Economic Law Perspective on Sharia Mutual Fund Investment," *INNOVATIO: Journal for Religious Innovation Studies* 20, no. 2 (2020): 182, <https://doi.org/10.30631/innovatio.v20i2.116>.

<sup>21</sup> Rosnia Masruki, Mustafa Mohd Hanefah, and Bablu Kumar Dhar, "Shariah Governance Practices of Malaysian Islamic Banks in the Light of Shariah Compliance," *Asian Journal of Accounting and Governance* 13, no. April (2020): 92, <https://doi.org/10.17576/ajag-2020-13-08>.

challenges faced by conventional insurance models and reinforces the ethical foundation of *Takāful*. In Malaysia, the application of Hibah (gifts) in *sharī'ah* insurance is handled differently compared to Indonesia. While Indonesia has debated the permissibility of reclaiming granted funds, Malaysian practices often emphasize a more integrated approach where charitable contributions and profit-sharing elements are harmonized. This approach avoids conflicts between charitable and commercial elements, offering a more balanced and socially responsible insurance system.<sup>22</sup>

A notable distinction between the Indonesian and Malaysian *sharī'ah* insurance schemes lies in the handling of Hibah. In Indonesia, the usage of Hibah with returns is influenced by competitive forces and economic factors. This pragmatic approach differs from the traditional understanding of Hibah as a completely voluntary donation made without any expectation of return. Indonesian *Sharī'ah* insurance often employs Hibah, offering participants the prospect of rewards or refunds, which suggests a strategy that promotes economic benefits while upholding religious and ethical principles.<sup>23</sup>

The Indonesian approach combines *Tabarru'* (charity) and *Tijāri* (commercial) contracts in a hybrid form, striking a balance between humanitarian and profit-oriented purposes. This dual strategy demands prudent financial management to ensure that philanthropic donations are not overshadowed by commercial interests. The emphasis on returns in Indonesian *Sharī'ah* insurance reflects the competitive environment in which these organizations operate, where product viability is critical for recruiting and retaining participants.

In contrast, Malaysia's approach to *sharī'ah* insurance emphasizes balancing charitable and economic components through innovative structures such as *Waqf* (endowment).<sup>24</sup> The incorporation of *Waqf* within the *Takāful* system not only benefits communal welfare but also aligns with the broader goals of social justice inherent in Islamic finance. This aligns with *maqāsid al-syarī'ah*, which prioritizes the protection of life, intellect, and property to achieve social welfare and justice.<sup>25</sup> Malaysian *sharī'ah* insurance enhances the altruistic dimension of *Takāful* by introducing *Waqf*, which provides additional funds for charitable causes while preserving the ideal of *ta'āwun* (mutual assistance). Malaysian *sharī'ah* insurance practices follow a more integrated form, with *Takāful* principles reinforced by additional mechanisms that ensure the system's overall sustainability. The use of *Waqf* provides a long-term source of funds dedicated to social welfare, addressing several challenges encountered by traditional insurance models.

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<sup>22</sup> Nurjannah Hasmad and Abdulrahman Alosman, "Islamic Home Financing in Malaysia: An Overview of Islamic Finance Concepts Applied," *Al-Afkar Journal For Islamic Studies* 5, no. 1 (2022): 171-193, <https://doi.org/10.31943/afkarjournal.v5i1.210>.

<sup>23</sup> Efri Syamsul Bahri, Irfaul Risqoh, and Al Rieza, "Cash Waqf Investment Models in Indonesia," *ZISWAF: Jurnal Zakat Dan Wakaf* 10, no. 2 (2023): 203-18, <https://doi.org/10.21043/ziswaf.v10i2.23232>.

<sup>24</sup> Shahida Shahimi, Mohd Umar Mohd Marzuki, and Zaimi Embong, "Potential of Cash Waqf for Poverty Alleviation in Malaysia: A System Dynamics Approach," *Jurnal Ekonomi Malaysia* 47, no. 2 (2013): 149-63.

<sup>25</sup> Ahmad Ar-Risumi, *Nazariyyah Al-Maqasid 'Inda Al-Imam Al-Syatibi*, 1995. see also Bunyamin Bunyamin et al., "Reforming Indonesia's Correctional System: The Role of Maqāsid Al-Syarī'ah in Ensuring Justice and Rehabilitation," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 1 (2025): 52-71.

This approach minimizes potential conflicts between philanthropic and commercial components, resulting in a balanced and socially responsible insurance system.<sup>26</sup>

These distinctions have far-reaching implications. Indonesia's approach, with its emphasis on economic rewards, may appeal to participants seeking tangible returns on their investments, thereby expanding its client base. However, this strategy risks diluting the altruistic spirit fundamental to *sharī'ah* insurance. On the other hand, Malaysia's integrated model, which blends *Waqf* and *Takāful*, strengthens the ethical and spiritual foundation of *sharī'ah* insurance. Malaysia's approach is more consistent with the ideals of Islamic finance, emphasizing social justice and community welfare.<sup>27</sup> This enhances the legitimacy and appeal of *sharī'ah* insurance among participants who value ethical and religious considerations in financial decision-making.<sup>28</sup> In conclusion, although both Indonesia and Malaysia employ hybrid contracts in *sharī'ah* insurance to balance charitable and commercial objectives, their methods differ significantly. Indonesia's model focuses pragmatically on economic benefits, whereas Malaysia's model promotes the incorporation of social welfare instruments such as *Waqf*.<sup>29</sup> These distinctions highlight diverse pathways for tailoring *sharī'ah* insurance to meet both ethical and practical demands, offering valuable insights for the global advancement of Islamic finance.<sup>30</sup>

### **Integrating *Waqf* and *Mushārah* Models to Strengthen *Takāful Ijtīmā'ī* in Indonesia**

Indonesia's current *Sharī'ah* insurance institutions have yet to fully realize the ideals of equitable cooperation and *ta'āwun* (mutual assistance). To enhance the cooperative nature of *Sharī'ah* insurance, this study proposes the adoption of two contractual models that embody the spirit of collaboration and mutual aid: *Waqf* (endowment) and *Mushārah* (partnership). *Waqf* is particularly suited to the objectives of insurance, as it promotes mutual assistance and collective prosperity (*al-falāḥ al-mushtarak*).<sup>31</sup> As a form of 'Aqd Tabarru' (charitable contract), *Waqf* is not profit-oriented but dedicated to communal benefit, making it highly compatible with the ethical foundation of *Sharī'ah* insurance.<sup>32</sup> The comparison between *Waqf* and Hibah (gift)

<sup>26</sup> Ahmad Khaliq, Nazimah Hussin, and Mohammad Tahir Sabit Haji Mohammad, "WAQF UNIT TRUST AS AN ALTERNATE MODEL TO REALIZE WAQF SUSTAINABILITY," *European Journal of Islamic Finance* 1, no. 13 SE- (August 2019), <https://doi.org/10.13135/2421-2172/3623>.

<sup>27</sup> Muhammad Shulthoni and Norma Md Saad, "Waqf Fundraising Management: A Conceptual Comparison between Traditional and Modern Methods Inthe Waqf Institutions," *Indonesian Journal of Islam and Muslim Societies* 8, no. 1 (2018): 57-86, <https://doi.org/10.18326/ijims.v8i1.57-86>.

<sup>28</sup> Windi Afdal et al., "Genealogy of Islamic Business Organization: The Institutional Approach Towards Current Islamic Corporate Law," *Jurnal Media Hukum* 31, no. 1 (2024): 59-77., <https://doi.org/10.18196/jmh.v31i1.20132>.

<sup>29</sup> Kiki Yulia Nurul Ramadhani, Malvina Marchase, and Verliani Dasmara, "Murabahah Financing on Non-Performing Finance In Sharia Commercial Banks In Indonesia," *International Journal of Accounting, Management, Economics and Social Sciences (IJAMESC)* 1, no. 1 (2023): 42-48, <https://doi.org/10.61990/ijamesc.v1i1.7>.

<sup>30</sup> Mahmud Yusuf et al., "Islamic Banks: Analysis of the Rules of Fiqh on the Fatwa of the National Sharia Board-Indonesian Ulama Council," *International Journal of Law, Environment, and Natural Resources* 3, no. 1 (2023): 21-37, <https://doi.org/10.51749/injurlens.v3i1.44>.

<sup>31</sup> Selamet Hartanto and Devid Frastiawan Amir Sup, "Konsep Wakaf Uang Dalam Perspektif Hukum Di Indonesia," *Journal of Indonesian Comparative of Syari'ah Law* 4, no. 1 SE-Hukum Islam dan Hukum Positif (August 2021): 39-62, <https://doi.org/10.21111/jicl.v4i1.5778>.

<sup>32</sup> Alfiyatul Fitriyah et al., "Potensi Wakaf Saham Di Indonesia Dan Kendala Yang Dihadapi Perspektif Maqashid Syariah," *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 6, no. 5 SE-Articles (April 2024): 3676-88, <https://doi.org/10.47467/alkharaj.v6i5.1169>.

reveals key distinctions as outlined by Majelis Tarjih wa al-Tajdīd Muhammadiyah. Both involve asset transfer, yet *Waqf*s intended for public benefit and requires durable assets, whereas Hibah may be given to individuals and can include consumable goods. In *Shari'ah* insurance, the *Waqf* object is typically monetary, which is permissible under Article 16, Paragraph 3 of Law No. 41 of 2004 on *Waqf* and supported by the DSN-MUI Fatwa on Cash *Waqf*.<sup>33</sup> *Shari'ah* insurance institutions may act as *nāzīr* (trustee or custodian) of cash *Waqf*, ensuring responsible investment and management of funds. Profits from these investments may then be used to finance claims, operational expenses, and the beneficiaries defined by the *Waqf*'s objectives.<sup>34</sup>

To implement this concept effectively in Indonesia, Takāful operators should ideally be structured as mutual business entities (*sharikat ta'āwuniyyah*) rather than limited liability companies, aligning with the principles of *Shirkah* or *Mushārahah*. Under this partnership model, capital owners collaborate to build a joint enterprise, sharing profits and losses equitably, as regulated in DSN-MUI Fatwa No. 08/DSN-MUI/IV/2000 on *Mushārahah* Financing.<sup>35</sup> In Malaysia, the integration of *Waqf* into the Takāful system is more advanced. The Malaysian model effectively harmonizes charitable and commercial components through innovative *Waqf*-based structures. This approach not only supports community welfare but also aligns with the broader objectives of Maqāṣid al-*Shari'ah*, particularly in realizing social justice (*al-'adālah al-ijtimā'iyah*) within the Islamic financial ecosystem. Malaysian Takāful practices demonstrate a cohesive model in which ethical and commercial elements complement each other, with *Waqf* providing sustainable funding for social welfare and enhancing the principle of *ta'āwun*.<sup>36</sup>

Indonesia and Malaysia differ significantly in their treatment and implementation of *Waqf*. Indonesia's pragmatic model emphasizes economic viability, attracting participants through *Waqf* bi al-istithmār (productive *Waqf*) that generates returns.<sup>37</sup> This approach reflects the competitive landscape of Indonesia's *Shari'ah* insurance industry. Conversely, Malaysia's integrated model prioritizes the ethical and social justice dimensions of Islamic finance. By embedding *Waqf* into *Takāful*, Malaysia ensures that charitable contributions directly serve the ummah's welfare, thereby reinforcing both financial and spiritual objectives in accordance with Islamic values. A *Waqf*-based *Shari'ah* insurance model offers key advantages consistent with both financial sustainability and Islamic ethics. Chief among these is the preservation and growth of assets. *Waqf* assets are intended to appreciate over time, forming a sustainable resource base that benefits the community while providing long-term stability to the *Takāful* system. As participation expands, *Waqf* funds accumulate, strengthening financial capacity and fostering

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<sup>33</sup> Abdurrahman Kasdi, "Potensi Ekonomi Dalam Pengelolaan Wakaf Uang Di Indonesia," *Journal Equilibrium* 2, no. 1 (2014): 35–48.

<sup>34</sup> Mustopa Kamal, "Pengelolaan Wakaf Uang Di Indonesia," *Istinbath: Jurnal Penelitian Hukum Islam* 16, no. 2 (2021): 135–54, <https://doi.org/10.36667/istinbath.v16i2.133>.

<sup>35</sup> Istianah Zainal Asyiqin et al., "Mushārahah Mutanāqīshah (Diminishing Partnership) Regulation for Housing Finance in Indonesian and Malaysian Law," *Al-Ahkam* 34, no. 1 (2024): 159, <https://doi.org/10.21580/ahkam.2024.34.1.20133>.

<sup>36</sup> Masruki, Hanefah, and Dhar, "Shariah Governance Practices of Malaysian Islamic Banks in the Light of Shariah Compliance."

<sup>37</sup> Ridwan Ridwan and Arung Gihna Mayapada, "Does Sharia Governance Influence Corporate Social Responsibility Disclosure in Indonesia Islamic Banks?," *Journal of Sustainable Finance & Investment* 12, no. 2 (April 2022): 299, <https://doi.org/10.1080/20430795.2020.1749819>.

both material and spiritual benefit, offering protection in this world and reward in the Hereafter (*ajr al-ākhirah*).<sup>38</sup>

Moreover, *Waqf*-based *Shari'ah* insurance enhances the *Tabarru'* fund reserves essential for claim coverage and participant protection during crises. Profits from *Waqf* investments contribute to replenishing these reserves, ensuring that the *ta'awun* principle remains viable. A portion of these profits may also fund operational costs, reinforcing institutional sustainability. Additionally, *Waqf* funds can be invested in socially beneficial assets, hospitals, schools, and rental properties, generating income while promoting community welfare. This alignment with *al-maṣlahah al-ūmmah* (public interest) reflects the spirit of Islamic finance, which aims to advance the welfare of society while maintaining financial soundness.

However, integrating *Waqf* and *Mushārah* models into Indonesia's *Shari'ah* insurance system presents several challenges. Chief among them is the regulatory framework. Effective implementation requires a legal environment that formally recognizes and supports mutual business structures (*al-sharikāt al-ta'awuniyyah*) and hybrid contracts involving *Waqf* and *Mushārah*.<sup>39</sup> Legal adjustments may be necessary to ensure these contracts are enforceable and transparent.

Public awareness and acceptance are equally vital. Educating the Muslim community about the benefits and mechanisms of *Waqf*-based Takāful through community outreach and public education initiatives can foster greater trust and adoption. Operational expertise is another key factor; managing *Waqf* funds demands specialized financial and *Shari'ah* governance knowledge to ensure the role of *nāẓir* is fulfilled with integrity. Pricing competitiveness must be considered. The inclusion of *Waqf* and *Mushārah* structures may initially result in higher contributions compared to Hibah-based models. Thus, Takāful operators must clearly communicate the long-term value and ethical merit of these models, emphasizing their contribution to social welfare (*al-khayr al-ūmm*) and sustainable community empowerment.

Therefore, integrating *Waqf* and *Mushārah* into Indonesia's *Shari'ah* insurance system represents a viable and ethically robust strategy to strengthen the cooperative spirit of Takāful Ijtīmā'i. By harmonizing economic and philanthropic aims, this model can create a long-term, socially responsible insurance framework that benefits the ummah. Drawing from Malaysia's experience, Indonesia can develop a *Waqf*-based Takāful model that balances financial sustainability with the moral imperatives of *Shari'ah*, advancing both equity and community well-being.<sup>40</sup>

<sup>38</sup> Fadia Fitriyanti et al., "Application of Sharia Principles in Sharia Financial Institutions," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 2 (2023): 157–66, <https://doi.org/10.25041/fiatjustisia.v17no2.2849>.

<sup>39</sup> Evi Eka Elvia et al., "Basyarnas As a Place for Dispute Resolution of Musyarakah Financing in Sharia Banking in the Disruption Era," *El-Mashlahah* 13, no. 1 (2023): 39–56, <https://doi.org/10.23971/el-mashlahah.v13i1.5345>.

<sup>40</sup> F Y Soumena et al., "Institutional Framework and Regulatory Challenges in the Development of the Sharia Financial Sector in Indonesia: A Political Economy Perspective," *Jurnal Ar-Ribh* 6, no. 2 (2023): 61–72, <https://doi.org/10.26618/jei.v6i2.12812>.

## CONCLUSION

*Sharī'ah* insurance in Indonesia has not yet fully realized its cooperative ideals nor established a system grounded in mutual support (*ta'āwun*) and justice (al-'adālah). To address this, integrating 'Aqd *Waqf* and 'Aqd *Mushārah* is essential. A *Waqf*-based *Sharī'ah* insurance model offers dual benefits, enabling participants to attain both worldly and spiritual rewards through their premium payments and charitable contributions toward the welfare of the ummah. The *Waqf* funds collected can be productively invested (al-*Waqf* al-Istithmārī), with the generated returns benefiting participants and sustaining the system. However, implementing this model requires normative readiness, particularly in legal frameworks, as well as public acceptance. The Takāful operator should ideally be established as a mutual business entity, such as Shirkah al-'Inān, rather than a limited liability company. Shirkah al-'Inān, which resembles mutual insurance, involves collaboration among participants who contribute varying amounts of capital, sharing profits and risks in proportion to their investments. The *Mushārah* contract, as defined in DSN-MUI Fatwa No. 08/DSN-MUI/IV/2000, ensures fairness (al-'adālah al-mu'āmalah), where the manager also participates in the Takāful scheme, promoting prudence and transparency in the management of funds. In contrast, Malaysia's Takāful system has effectively integrated charitable and commercial dimensions, harmonizing economic and ethical objectives. Supported by a strong regulatory framework and high public awareness, Malaysia has fostered trust and ensured responsible utilization of *Waqf* for community welfare initiatives such as hospitals, schools, and other social institutions. While Indonesia's *Sharī'ah* insurance industry is still evolving, the incorporation of *Waqf* and *Mushārah* models could significantly enhance its effectiveness and ethical integrity. By adopting Malaysia's integrated approach, Indonesia can establish a socially responsible, *Waqf*-based Takāful model that fulfills financial objectives while upholding Islamic moral and social values consistent with the Maqāṣid al-*Sharī'ah*.

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