

**STUDENT HEALTH INSURANCE; ISLAMIC LAW STUDY ON THE  
MANAGEMENT MODEL OF HEALTH INSURANCE  
IN ISLAMIC BOARDING SCHOOLS (PONDOK PESANTREN)**

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**Abstract**

*Health insurance is a right for every citizen, including students in Islamic boarding schools (pondok pesantren). This study aims to explore how the model of health insurance is run in Islamic boarding schools and a review of Islamic law on the health insurance. This research is a field research conducted with a normative-sociological approach. The data sources for this research are the health insurance managers in two Islamic boarding schools, namely Pondok Pesantren Krapyak, Yogyakarta and Pondok Pesantren Darussalam, Purwokerto. These data were obtained through observation, interviews, and documentation. The results of this study are that the santri health insurance model in the two pesantrens is run with a similar mechanism of insurance in which the students pay regular fees to the management. When students (santri) get sick, they can get treatment at the pesantren health facility for free. The difference is in the management of funds where at the Pondok Pesantren Krapyak, the funds are managed by the foundation's management and the clinic will submit a claim every month. Meanwhile, at Pondok Pesantren Darussalam, the management of funds and health services is managed simultaneously by the Poskestren management. In a review of Islamic law, the contract in the guarantee is in line with the provisions of Islamic law. The contribution from students (santri) can be considered as tabarru' funds in the form of grants or alms which are intended to help and bear each other. Contribution funds that have been collected are also managed in a way that does not conflict with the sharia*

**Keywords:** *health insurance, santri, insurance, Islamic law*

**Abstract**

Jaminan kesehatan merupakan hak bagi setiap warga negara termasuk kalangan santri di pondok pesantren. Penelitian ini bertujuan mengupas bagaimana model jaminan kesehatan yang dijalankan di pondok pesantren dan tinjauan hukum Islam terhadap jaminan kesehatan tersebut. Penelitian ini merupakan penelitian lapangan yang dilakukan dengan pendekatan normatif-sosiologis. Sumber data penelitian ini yakni dari pengelola jaminan kesehatan di dua pondok pesantren yakni Pondok Pesantren Krapyak, Yogyakarta dan Pondok Pesantren Darussalam, Purwokerto. Data-data tersebut diperoleh melalui observasi, wawancara, dan dokumentasi. Hasil dari penelitian ini yakni bahwa model jaminan kesehatan santri di dua pesantren tersebut sama-sama dijalankan dengan mekanisme serupa asuransi di mana para santri membayar iuran rutin kepada pengurus. Ketika santri sakit, mereka dapat berobat di fasilitas kesehatan pesantren secara gratis. Perbedaannya ada pada pengelolaan dana di mana pada Pondok Pesantren Krapyak dana dikelola oleh pengurus yayasan dan klinik klinik akan mengajukan klaim setiap bulannya. Sementara di Pondok Pesantren Darussalam, pengelolaan dana dan layanan kesehatan dikelola sekaligus oleh pengurus Poskestren. Dalam tinjauan hukum Islam, akad dalam jaminan tersebut sejalan dengan ketentuan hukum Islam. Iuran santri dapat dianggap sebagai dana *tabarru'* berupa hibah atau sedekah yang diniatkan untuk tolong-menolong dan saling menanggung. Dana iuran yang terkumpul juga dikelola dengan cara yang tidak bertentangan dengan syariat.

**Kata kunci:** *jaminan kesehatan, santri, asuransi, hukum Islam*

## INTRODUCTION

Health insurance for the people of Indonesia has been regulated by the Government and managed by BPJS Kesehatan as stated in Law No. 40 of 2004 concerning the National Social Security System and Law No. 24 of 2011 concerning the Social Security Organizing Agency. In implementing these health insurance efforts, the government also involves the community to independently strive to support the fulfilment of health insurance in their respective neighbourhoods and communities. One of them is the Islamic Boarding School (hereinafter referred to as Pondok Pesantren or just pesantren) institution through the Minister of Health Regulation Number 1 of 2013 concerning Guidelines for the Implementation and Development of Pesantren Health Center (Pos Kesehatan Pesantren/Poskestren). In carrying out health insurance for students and residents, pondok pesantren can make self-management innovations or follow BPJS Kesehatan. In some places, some pesantrens have succeeded in implementing the management model of student health insurance and some others are still in the pioneering stage.

Pondok pesantren that have carried out innovations in the management of student health insurance include Pondok Pesantren Krapyak, Yogyakarta and Pondok Pesantren Darussalam, Purwokerto. In both pesantrens, health funds are withdrawn from santri once a year during registration and regular administration (*shahriah*) payments. Santri who have provided contributions will benefit in the form of guaranteed treatment when experiencing illness with predetermined criteria. For students who for one year do not experience illness, the dues that have been submitted remain the property of the pesantren and the following year are obliged to pay the dues back.<sup>1</sup>

From the elements in it, health insurance in both pesantrens is at first glance similar to the insurance model. This can also be seen from the claim mechanism by BKM Ali Maksum as a health facility to the fund manager in accordance with the number of students who seek treatment at the health facility. Students are required to pay dues paid at once with the payment of *shahriah* (monthly fees). Student contribution funds that have been collected are used for various things such as operational costs, management salaries, medicines, and other health support activities. This use of *tabarru'* funds for various purposes needs to be examined from the perspective of Islamic law.<sup>2</sup>

Based on the principles used, insurance can be divided into two types, namely conventional insurance and sharia insurance. What distinguishes between the two is that sharia insurance determines the existence of part of the premium paid as contributions intended as a grant (*hibah*) to help others (*tabarru'* account), while the other part is a *tijarah* account that can be managed to benefit both customers and insurance companies.<sup>3</sup>

In Indonesia, provisions on sharia insurance have been formulated by DSN MUI through its fatwas, one of which is Fatwa DSN MUI No.21/DSN. MUI/X/2001 concerning General Guidelines for Sharia Insurance. In the fatwa, among others, it is stated that a sharia insurance is carried out using a *tijarah* contract and/or a *tabarru'* contract. This means that an insurance can only use one contract, *tijarah* or *tabarru'* or combine both. The *tijarah* contract

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<sup>1</sup> Ali Makhfud (Head of BKM Ali Maksum), interview, Yogyakarta, February 4, 2022 and Zenita (Head of Poskestren Darussalam), Purwokerto, Februari 1, 2022.

<sup>2</sup> Ali Makhfud, interview, February 4, 2022.

<sup>3</sup> Oni Sahroni, *Fikih Muamalah Kontemporer* (Jakarta: Republika Penerbit, 2019), 258-260.

in question is then determined using a *mudharabah* contract while the *tabarru'* contract in question is a *hibah* contract.<sup>4</sup>

Insurance agreements have been widely analysed with the perspective of Islamic law. Fudhail Rahman said there are three opinions from scholars regarding insurance law when viewed from Islamic law. There are groups of scholars who forbid, some allow, and some others argue that commercial insurance is haram while social insurance is allowed.<sup>5</sup> Regarding sharia insurance, Muhammad Ajib stated that the main differentiator between sharia insurance and conventional insurance is the contract used. The contract on sharia insurance is a combination of *tabarru'* contract and *tijarah* contract. From this contract, the insurance fund will be validated into two, namely the *tabarru'* fund which is intended as a voluntary grant and the *tijarah* fund as an investment with the principle of profit sharing.<sup>6</sup> Writings about pesantren and the economy, among others, were written by Mursyid in his article entitled "Dynamics of Pesantren in an Economic Perspective". Mursyid explained that pesantren have a big role for the life of the nation and state, one of which is in the economic field.<sup>7</sup>

The research that the author conducted aims to analyze how the management model of model of health insurance for santri in the two *pesantrens* as mentioned above and examine how the review of Islamic law, in this case Fatwa DSN MUI, on the health insurance management contract. From various books, articles and research results that already exist, no one has specifically examined health insurance in the pesantren, in this case, especially at the Pondok Pesantren Krpyak, Yogyakarta and Pondok Pesantren Darussalam, Purwokerto. Therefore, this research is relevant to be carried out to complement studies on the application of Islamic economic law in society, especially in Islamic educational institutions. If the practice is in line with Islamic law, it can be a reference for other institutions in carrying out similar activities.

## METHOD

The type of research is field research, which is research carried out by going directly into the field or place/location that will be the object of research.<sup>8</sup> As for the type of data analysis, this researcher includes qualitative research. Qualitative research is used to understand social phenomena from the perspective or perspective of participants.<sup>9</sup> The situation or phenomenon referred to in this study is how the model of ensuring the health of students carried out in Pondok Pesantren.

The subject of this study was the head of BKM Ali Maksum as the health insurance management institution at the Pondok Pesantren Krpyak, Yogyakarta and the head of the Poskestren Pondok Pesantren Darussalam, Purwokerto. The object of research is the student health insurance model that is run in the two pesantrens. The research methods used by researchers are observation, documentation, and interviews with health insurance managers in

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<sup>4</sup> Dewan Syariah Nasional MUI, *Himpunan Fatwa Dewan Syariah Nasional MUI Jilid 1*, (Jakarta: Dewan Syariah Nasional MUI, 2006), 120.

<sup>5</sup> Muh. Fudhail Rahman, "Asuransi dalam Perspektif Hukum Islam", *Al-'Adalah*, Vol. X, No. 1 January 2011.

<sup>6</sup> Muhammad Ajib, *Asuransi Syariah* (Jakarta: Rumah Fiqih Publishing, 2019), 85.

<sup>7</sup> Mursyid, "Dinamika Pesantren Dalam Perspektif Ekonomi", *Millah*, Vol. XI, No. 1 August 2011.

<sup>8</sup> Sumardi Suryabrata, *Metode Penelitian* (Jakarta: PT Raja Grafindo Persada, 2002), 80.

<sup>9</sup> Nana Syaodih Sukmadinata, *Metode Penelitian Pendidikan* (Bandung: PT Remaja Rosydakarya, 2009),

pondok pesantren. In this study, the analysis method that researchers used was to follow the steps of data reduction, data display, and conclusions.<sup>10</sup>

## **RESULTS AND DISCUSSION**

### **1. Health Insurance Management Policy in Pondok Pesantren**

Health insurance is a form of social protection organized by the state to ensure its citizens meet the basic needs of a decent life. The health insurance program is a government and community program whose aim is to provide comprehensive health insurance certainty for every Indonesian so that the Indonesian population can live healthy, productive, prosperous lives.<sup>11</sup> The health insurance program is intended to provide comprehensive health service benefits, ranging from preventive services such as immunization and family planning to services for the program as long as they sign a cooperation contract with the government.

Health insurance is a guarantee of health protection so that participants get health maintenance benefits and protection in meeting basic health needs provided to everyone who has paid contributions or contributions paid by the government. Health Insurance is an individual health service, including promotive, preventive, curative, rehabilitative, drug services, consumable medical material in accordance with the necessary medical indications.<sup>12</sup>

The implementation of health insurance is carried out by 4 (four) main actors, namely Participants, the Health Social Security Organizing Agency (BPJS), Health Facilities, and the Government.<sup>13</sup> Health Insurance participants are any person, including foreigners who have worked in Indonesia for at least 6 (six) months in Indonesia, who have paid contributions. Participants are entitled to health insurance benefits. To continue to obtain health care coverage, participants are required to pay health insurance contributions regularly and continuously until the end of life.

BPJS Kesehatan is a legal entity formed to organize health social security programs.<sup>14</sup> BPJS Kesehatan was established by Law No. 40 of 2004 concerning SJSN and Law No. 24 of 2011 concerning BPJS. These two laws regulate the dissolution of PT Askes Persero and transform PT Askes persero into BPJS Kesehatan.<sup>15</sup> BPJS Kesehatan is a public legal entity that is directly responsible to the President.<sup>16</sup>

In addition to health insurance provided by the government through BPJS Kesehatan, there are other types of health insurance provided by private insurance which are also regulated in the provisions of Law No. 40 of 2014. Although the provisions for participating in health insurance for the public have been arranged, in reality there are still

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<sup>10</sup> B. Mathew Miles dan Michael Huberman, *Analisis Data Kualitatif Buku Sumber tentang Metode-Metode Baru*, (Jakarta: UIP, 1992), 16.

<sup>11</sup> Nana Syaodih Sukmadinata, *Metode Penelitian Pendidikan* (Bandung, PT Remaja Rosdakarya, 2009), 94.

<sup>12</sup> Hasbullah Thabrany, *Jaminan Kesehatan Nasional*, (Jakarta: Raja Grafindo Persada, 216), 17-18.

<sup>13</sup> Chapter VI Part Two of Law Number 40 of 2004 concerning the Guarantee System National Social.

<sup>14</sup> Article 1 number 1 and Article 6 paragraph (1) of Law Number 24 of 2011 concerning Social Security Organizing Agency.

<sup>15</sup> Article 60 paragraph (3) point a and paragraph letter b of Law Number 24 of 2011 concerning the Social Security Organizing Agency

<sup>16</sup> Article 7 of Law Number 24 of 2011 concerning the Social Security Organizing Agency.

many people who do not follow it. This is due to the lack of public knowledge and understanding about the National health insurance program.

As a solution to this problem, specifically for Islamic educational institutions included Pondok Pesantren, another alternative is provided to provide health insurance for its residents, namely the existence of the Pesantren Health Post or abbreviated as Poskestren. Poskestren is a form of Community Resource Health Effort (UKBM) in the pesantren environment, with the principle of, by, and for residents of the pesantren, which prioritizes promotive, preventive, without neglecting curative and rehabilitative aspects carried out under the guidance of the local Puskesmas. The location of Poskestren is within the pesantren environment and does not require a specific building but should have a special room and be able to take advantage of the multipurpose room.

Guidelines for the implementation and guidance of poskestren are regulated in Regulation of the Minister of Health Number 1 of 2013. In the regulation, it is stated that the activities carried out in the management of Poskestren are prioritized in terms of promotive (health improvement) and preventive (prevention) services, without neglecting the curative (treatment) and rehabilitative (health recovery) aspects, which are based on the spirit of mutual cooperation with guidance by the local Puskesmas.<sup>17</sup>

Pondok Pesantren is a form of religious educational institutions that grow and develop from, by, and for the community that play an important role in the development of human resources. It is expected that students and leaders and managers of pesantren are not only proficient in aspects of moral and spiritual development with religious nuanced intellectuals, but can also be movers / motivators and innovators in health development, As well as being an example in behaving clean and healthy for the surrounding community.<sup>18</sup>

The existence of Poskestren aims to realize the independence of pesantren residents and the surrounding community in behaving clean and healthy. The targets of the Poskestren include residents of Islamic boarding schools, the surrounding community, religious leaders, and health workers, as well as other stakeholders. The organization of the Poskestren was prepared independently by the pesantren residents through deliberation at the beginning of the establishment of the poskestren. Activities in Poskestren are basic health services, where some services such as immunization and periodic physical examinations in their implementation are carried out by health workers.<sup>19</sup>

Given that pondok pesantren have grown and developed in almost all regions, it is expected that this activity can spread evenly throughout Indonesia. In general, students who study in Islamic boarding schools are between 7-19 years old, and in some other Islamic boarding schools accommodate adult students. Poskestren is an integral part of School Health Business (UKS), where the target of UKS is all school residents ranging from kindergarten to secondary school, which includes public schools, teachers, Special Schools (SLB), including pondok pesantren, both school and outside school paths When

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<sup>17</sup> Regulation of the Minister of Health Number 1 of 2013 concerning Guidelines for the Implementation and Development of Pesantren Health Posts.

<sup>18</sup> Regulation of the Minister of Health Number 1 of 2013 concerning Guidelines for the Implementation and Development of Pesantren Health Post.

<sup>19</sup> Annex to the Regulation of the Minister of Health Number 1 of 2013 concerning Guidelines for the Implementation and Development of Pesantren Health Posts.

viewed from the health side, in general, health conditions in the pesantren environment still require attention from various related parties, Both in terms of access to health services, healthy behavior and environmental health aspects. One of the efforts to bring health services closer to pesantren residents is to grow Poskestren.

Poskestren is one form of UKBM in the Islamic boarding school environment, with the principle of, by and residents of the Islamic boarding school, which prioritizes promotive (improvement) and preventive (prevention) services without neglecting curative (treatment) and rehabilitative (health recovery) aspects, with the guidance of the local Puskesmas. Poskestren aims to realize the independence of Islamic boarding school residents and the surrounding community in behaving Clean and Healthy Living (PHBS).<sup>20</sup>

The scope of Poskestren's activities includes basic health services that prioritize promotive and preventive efforts without leaving curative and rehabilitative efforts within the limits of Poskestren's authority. In addition, Poskestren also makes efforts to empower Islamic boarding school residents and the surrounding community in the health sector and improve a healthy environment in the Islamic boarding school and surrounding areas. Empowering students as health cadres (*santri husada*) and disaster preparedness cadres (*santri siaga bencana*).

The organizational structure of the Poskestren is determined through the deliberation of pesantren residents at the time of the establishment of the Poskestren. The organizational structure is flexible, so that it can be developed according to the needs, conditions, problems and capabilities of existing resources. The minimum organizational structure consists of the chairman, secretary, treasurer, and cadres of the Poskestren who concurrently serve as members. The services provided by Poskestren are basic health services, which include promotive, preventive, rehabilitative (maintaining health, preventing, restoring health) and curative (treatment). Especially for curative services and certain preventive services, such as immunization and periodic health checks carried out by health workers.<sup>21</sup>

Poskestren's sources of financing come from various sources, including self-help Islamic boarding schools, communities, private / business world, government and local governments. The funds obtained by Poskestren are used to finance Poskestren's activities, including for operational and maintenance costs of Poskestren, referral fee assistance for those in need, costs for increasing the capacity of Poskestren managers and cadres, and Poskestren development costs. Fund management is carried out by Poskestren managers and cadres. Funds should be kept in a safe place. For the purposes of routine expenses, petty cash is provided which is held by designated cadres. Every income and expenditure must be recorded, managed and reported responsibly.<sup>22</sup>

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<sup>20</sup> Annex to the Regulation of the Minister of Health Number 1 of 2013 concerning Guidelines for the Implementation and Development of Pesantren Health Posts.

<sup>21</sup> Annex to the Regulation of the Minister of Health Number 1 of 2013 concerning Guidelines for the Implementation and Development of Pesantren Health Posts.

<sup>22</sup> Annex to the Regulation of the Minister of Health Number 1 of 2013 concerning Guidelines for the Implementation and Development of Pesantren Health Posts.

## 2. Sharia Insurance as a Model for Santri Health Insurance Management

There are several views related to insurance law from an Islamic perspective. The most prominent of these opinions is divided into three, namely: first, the opinion that forbids. Insurance is *haram* in all its forms, including life insurance. This opinion was expressed by Sayyid Sabiq, Abdullah al-Qalqi (mufti of Jordan), Yusuf Qaradawi and Muhammad Bakhil al-Muth'i (mufti of Egypt). The reasons they put forward are; a) insurance is the same as gambling, b) insurance contains uncertain elements, c) insurance contains elements of usury/renta, d) insurance contains an element of extortion, because the policyholder, if he cannot continue paying the premium, will lose the premium that has been paid or reduced, e) premiums already paid will be rotated in usury practices and, f) insurance includes buying and selling or exchanging non-cash currencies. Man's life and death are made objects of business, and so are the precedes God's destiny.<sup>23</sup>

The second is a permissible opinion. This second opinion was put forward by Abdul Wahab Khallaf, Mustafa Akhmad az-Zarqa, Muhammad Yusuf Musa, and Abdurrahman 'Isa. They reasoned; a) there is no passage (Qur'an and Sunnah) that forbids Insurance, b) there is agreement and willingness of both parties, c) mutual benefit of both parties, d) insurance can overcome the public interest, because the premiums collected can be invested in productive and development projects, e) insurance includes *mudharabah* (profit sharing) contracts, f) insurance includes cooperatives (*shirkah ta'awuniah*), f) insurance is analogous (qiyas) to a pension system like a Taspen.<sup>24</sup>

The third opinion states that social insurance is permissible and commercial insurance is forbidden. This third opinion is shared among others by Muhammad Abu Zahrah (professor of Islamic Law at Cairo University). The reason for this third group is the same as the first group in commercial insurance (*haram*) and the same as the reason for the second group, in insurance that is social (permissible). The reason for the group that says its *shubhat* is because there is no explicit evidence that insurance is haram or not haram.<sup>25</sup>

Student health insurance that is run in pondok pesantren when viewed from the elements in it and the agreement model is included in the insurance category, more specifically sharia insurance. In Indonesia, provisions on sharia insurance have been formulated by DSN MUI through its fatwa, namely Fatwa DSN MUI No.21 / DSN. MUI / X / 2001 concerning General Guidelines for Sharia Insurance and Fatwa DSN MUI No.51 / DSN. MUI/III/2006 concerning *Mudharabah Musytarakah* Contract on Sharia Insurance. In the fatwa, sharia insurance is defined as an effort to protect and help each other among a number of people / parties through investment in the form of assets and / or *tabarru'* which provides a pattern of return to face certain risks through contracts (*'aqd*) in accordance with sharia. The *tijarah* contract in question is using a *mudharabah* contract while a *tabarru'* contract uses a *hibah* contract. For the validity of an insurance, it must meet the provisions of each of these contracts.

The National Sharia Council of the Indonesian Ulema Council in its fatwa on general guidelines for sharia insurance, gave a definition of insurance according to him,

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<sup>23</sup> Muh. Fudhail Rahman, "Asuransi Perspektif Hukum Islam", AL-'ADALAH Vol. X, No. 1 January 2011, 30.

<sup>24</sup> Muh. Fudhail Rahman, "Asuransi Perspektif Hukum Islam", 31.

<sup>25</sup> Muh. Fudhail Rahman, "Asuransi Perspektif Hukum Islam", 31.

sharia insurance (*ta'min, takaful, tadhamun*) is an effort to protect and help each other among a number of people or parties through investment in the form of assets and or a number of people or parties through investment in the form of assets and / or *tabarru'* which provides a pattern of return to face certain risks through contracts which is in accordance with sharia.<sup>26</sup>

Muhammad Iqbal defines sharia insurance as a risk management arrangement that meets sharia regulations, mutual assistance involving participants and operators. Sharia comes from the provisions in the Qur'an and the Sunnah of the Prophet Muhammad (PBUH).<sup>27</sup> Sharia insurance is built on strong and solid foundations and basic principles. In this case, the main principle in sharia insurance is *ta'awun* or please help. This principle makes the members or participants of insurance as a large family with each other guaranteeing and bearing risks. This is because the transaction made in *takaful* insurance is a *takafuli* contract (mutual bearing), not a *tabaduli* contract (mutual exchange) that has been used by conventional insurance, namely the exchange of premium payments with sum insured.<sup>28</sup>

The principles of the Islamic covenant as an agreement free from elements of *gharar, maisir, and riba* can be implemented in the business activities of an insurance company. In the fatwa of the National Sharia Council No: 21 / DSN-MUI / X / 2001 concerning General Guidelines for Sharia Insurance, it is stated that the contract made between participants and companies consists of a *tijarah* contract and a *tabarru'* contract. The *tijarah* agreement in question is *mudharabah*. While the *tabarru'* contract is a *hibah*. In the contract must at least be stated rights and obligations of participants and the company, how and when to pay premiums, and types of *tijarah* contracts and *tabarru'* contracts and agreed conditions, in accordance with the type of insurance held.<sup>29</sup>

In a *tijarah (mudharabah)* contract the company acts as a *mudharib* (manager) and participants act as *shahibul maal* (policyholders). In the *tabarru'* contract (*hibah*), participants provide grants that will be used to help other participants affected by the disaster. While the company acts as a grant fund manager.

In carrying out the contract, there are the following provisions; a) The type of *tijarah* contract can be changed to the type of *tabarru'* contract if the party who is restrained by his rights willingly waives his rights so as to invalidate the obligations of the party who has not fulfilled his obligations. b) The type of *tabarru'* contract cannot be changed to the type of contract *loot*.<sup>30</sup>

Premium in sharia insurance is a payment of a sum of money made by the insured to the insurer to compensate for a loss, damage, or loss of expected profit due to the emergence of an agreement for the transfer of risk from the insured to the insurer (transfer of risk).

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<sup>26</sup> National Sharia Council Fatwa No.21/DSN-MUI/X/2001 concerning General Guidelines Sharia Insurance.

<sup>27</sup> Muhammad Iqbal, *Asuransi Umum Syariah Dalam Praktik* (Jakarta: Gema Insani Press, 2005), 2.

<sup>28</sup> Gemala Dewi, *Aspek-Aspek Hukum dalam Perbankan dan Perasuransian Syariah di Indonesia* (Jakarta: Kencana, 2006), 146.

<sup>29</sup> National Sharia Council Fatwa No: 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance.

<sup>30</sup> Dadan Muttaqien, *Aspek Legal Lembaga Keuangan Syariah* (Yogyakarta: Safiria Insania Press, 2008) 75.



- a. Premium payment is based on the type of *tijarah* contract and the type of *tabarru'* contract.
- b. To determine the amount of premiums, sharia insurance companies can use references, such as mortality tables for life insurance and morbidity tables for health insurance, provided that they do not include usury elements in the calculation.
- c. Premiums derived from the type of *mudharabah* contract can be invested and the investment returns distributed to participants.
- d. Premiums derived from the type of *tabarru'* contract can be invested.<sup>31</sup>

The claim mechanism in sharia insurance is implemented with the following conditions; a) Claims are paid based on the contract agreed at the beginning of the agreement. b) Claims may differ in amount, according to the premium paid. c) Claims on the contract are entirely the right of the participant, and it is the company's obligation to fulfill it. d) Claims on the *tabarru'* contract, are the rights of the participants and are obligations of the company, to the extent agreed in the contract.<sup>32</sup>

Sharia insurance institutions can invest the funds collected in a business. The provisions are the company as the trustee is obliged to invest from the funds collected and the investment must be made in accordance with sharia. The management of insurance institutions also has provisions that have been determined as follows; a) Sharia insurance management can only be carried out by an institution that functions as a trustee. b) Sharia Insurance Company obtains profit sharing from the management of funds collected on the basis of *tijarah* contract (*mudharabah*). c) Sharia Insurance Company obtains *ujrah* (fee) from the management of *tabarru'* contract funds (grants).<sup>33</sup>

The Sharia Board of the Indonesian Ulema Council in its fatwa No: 53 / DSN-MUI / III / 2006 concerning *Tabarru'* Contract on Sharia Insurance has also stipulated that the *tabarru'* contract is a contract that must be attached to all insurance products. The provisions of the *tabarru'* contract are as follows; a) Akad *Tabarru'* on insurance is an agreement made in the form of *hibah* with the aim of benevolence and help between participants, not for commercial purposes, b) In the contract of *tabarru'*, it should be mentioned at least; 1) the rights & obligations of each participant individually, 2) rights & obligations between individual participants in the *tabarru'* account as participants in the meaning of bodies/Group, 3) the manner and timing of premium payments and claims, 4) other agreed terms, according to the type offered insurance.<sup>34</sup>

In the *tabarru'* contract, participants provide *hibah* funds that will be used to help participants or other participants who are stricken by disasters. Individual participants are entitled to receive *tabarru'* funds (*mu'amman/mutabarra' lahu*) and collectively as insurers (*mu'ammin/mutabarri'*). The insurance company acts as a manager of *hibah* funds, on the basis of *wakalah* contract from participants in addition to investment management. The management of sharia insurance and reinsurance may only be carried

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<sup>31</sup> National Sharia Council Fatwa No: 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance.

<sup>32</sup> National Sharia Council Fatwa No: 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance.

<sup>33</sup> National Sharia Council Fatwa No: 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance.

<sup>34</sup> National Sharia Council Fatwa No: 53/DSN-MUI/III/2006 concerning *Tabarru'* Agreement on Sharia Insurance.

out by an institution that functions as a trustee. *Tabarru'* fund bookkeeping must be separate from other funds. Investment returns from *tabarru'* funds' become the collective rights of participants and are recorded in *tabarru'* account. From the investment results, sharia insurance and reinsurance companies can get profit sharing based on the *mudharabah* contract or *mudharabah musytarakah* contract, or get *ujrah* (fee) based on the *wakalah bil ujah* contract.

If there is an underwriting surplus on *tabarru'* funds, several alternatives can be made as follows; a) Treated entirely as reserve funds in *tabarru'* accounts, b) Stored partly as a reserve fund and distributed the other part to participants who meet actuarial/risk management requirements, c) Stored partly as a reserve fund and can be distributed the other part to the insurance company and the participants as long as agreed by the participants.<sup>35</sup>

### 3. Student Health Insurance Management Model in Islamic Boarding Schools

The management of health insurance in Pondok Pesantren Krapyak Yogyakarta and Pondok Pesantren Darussalam has several similarities and differences. In Pondok Pesantren Krapyak, the management of health insurance is carried out by BKM Ali Maksum which is directly under the auspices of the Ali Maksum Foundation.<sup>36</sup> While in the Pondok Pesantren Darussalam carried out by the Poskestren Darussalam. The history of health facilities in the two Islamic boarding schools both began with the need for health services for students and the surrounding community. The existence of health service guarantees for students will provide a solution to the anxiety of student guardians when they want to release their sons and daughters.<sup>37</sup>

Health services for students use an insurance-style mechanism where students pay contributions pesantren administrators. This model has similarities to the BPJS model. It's just that the difference in BPJS participants get health services to referral of advanced health facilities without being charged a fee. Meanwhile, student health insurance is only limited to services at the clinic. After paying the dues, students have the right to get health services at the clinic.<sup>38</sup>

Rights and obligations between managers and students are conveyed orally, not stated in special agreement documents. Health contribution funds are included in monthly payments. At the time of registration as a student, the guardians are given a detailed explanation regarding where the allocation of monthly *shahriah* details that must be cashed out. Santri has the obligation to pay their monthly fees, because it contains health costs. As long as the student is still resident and has an active status, the student is entitled to receive health services at the clinic for free. Meanwhile, the manager's obligation in the health insurance contract is to explain the details of the allocation of contribution costs and provide health services for students.

At Pondok Pesantren Krapyak, the health fund paid by students is fully under the authority of the foundation, the clinic only submits claims every month according to the number of services provided. The funds are kept by the treasurer of the foundation and are not allocated for other needs. While in Pondok Pesantren Darussalam, the

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<sup>35</sup> Nation Ali Makhfudz, interview, 12 July 2022.al Sharia Council Fatwa No: 53/DSN-MUI/III/2006 concerning *Tabarru'* Agreement on Sharia Insurance.

<sup>36</sup> Ali Makhfudz, interview, 12 July 2022.

<sup>37</sup> Zenita (Head of Poskestren Pondok Pesantren Darussalam, interview, Purwokerto, 10 June 2022.

<sup>38</sup> Ali Makhfudz dan Zenita, interview, 12 July 2022.

management of funds and health services is managed entirely by Poskestren, so there is no claim process. In addition, the collected health funds are also sought to develop, among others, by holding vaccine services and antigen test services whose profits are again used for the benefit of students.<sup>39</sup>

The innovation of the health insurance model carried out at the Pondok Pesantren Krapyak which is handled by BKM Ali Maksum and Pondok Pesantren Darussalam when viewed from the basic principles of *muamalah* in Islam is no problem considering the flexibility of *muamalah* provisions in Islam. There are many innovative agreements or contracts that have been applied both by the wider community and by financial institutions. In financial institutions, many contracts are found that are applied by modifying contracts known in classical Islamic legal studies. Similarly, in the community, many new contracts and transaction models have emerged ranging from simple to the most complicated.<sup>40</sup>

In Islam, two aspects of law are known, namely the aspect of *'ubudiyyah* (worship) and *muamalah*, which is about how humans build relationships with others and with other creatures. The *'ubudiyyah* aspect is rigid and mostly taken for granted or in Islamic terms called *ta'abbudi*. While the *muamalah* aspect is flexible and more open to innovation in accordance with developments and changing times.<sup>41</sup>

In terms of Islamic legal provisions, the management of student health insurance in pesantren can be grouped into the following aspects:

#### 1. Health Insurance Agreement Mechanism

Health insurance carried out at Pondok Pesantren Krapyak and Pondok Pesantren Darussalam from the mechanism has similarities with sharia insurance. It's just that sharia insurance generally uses two combined contracts, namely *tijarah* contracts and *tabarru'* contracts, because the institution is a business institution. Meanwhile, in the student health insurance model in the two pesantrens, there is only a *tabarru'* contract.<sup>42</sup>

This form of *tabarru'* contract is that the students pay a certain amount of money that has been covered in the initial payment at the time of entry to the pesantren and monthly payments (*shahriyah*). At the beginning, the parents of the students were given an explanation by the pesantren management regarding the payment and the rights to be obtained. The students were given the understanding that the health fund contributions paid were intended as a form of collective help. So if students have paid but do not experience illness and do not use health services, the contributions that have been paid are intended as grants or alms.

This contract mechanism appears to be in line with the provisions of sharia insurance as stated in the Fatwa of the Sharia Council of the Indonesian Ulema Council No: 53 / DSN-MUI / III / 2006 concerning the *Tabarru'* Contract on Sharia Insurance. In the fatwa it is stipulated that the *tabarru'* contract on insurance is a

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<sup>39</sup> Ali Makhfudz dan Zenita, interview, 12 July 2022.

<sup>40</sup> Fathurrahman Djamil, "Pengembangan dan Inovasi Produk Lembaga Keuangan Syariah di Indonesia (Kajian Transaksi Berbasis Syariah dan Hukum Positif)", *Kordinat*, Vol. 15, No. 2, 2016, 158.

<sup>41</sup> Mohammad Hashim Kamali, *Membumikan Syariah; Pergulatan Mengaktualkan Isla*, (Jakarta: Noura Books, 2013), 55-57.

<sup>42</sup> National Sharia Council Fatwa No: 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance.

contract made in the form of grants with the aim of benevolence and help between participants, not for commercial purposes. In the *tabarru'* contract, participants provide grant funds that will be used to help participants or other participants who are stricken by disasters. Individual participants are entitled to receive *tabarru'* funds. This form of contract can also be considered as a *ta'awuniyyah* contract, which is a collective property management contract for the purpose of help. Islam strongly encourages its people to always carry out help in good which among others is mentioned in the Quran surah al-Maidah verse 2.

The relationship between students and foundation administrators or management in this mechanism can be considered as a *wakalah* contract. The management of the foundation in this case acts as a representative responsible for managing the contribution funds that have been collected. While the relationship between students is a contract of *kafalah* (mutual bearing) and *ta'awun* (mutual help) which are both basic principles of sharia insurance.

Both pesantren in carrying out student health insurance only use a *tabarru'* contract without a *tijarah* contract, in the sense that all contributions paid by students are intended as benevolent funds, even though they are mandatory. This choice does not contradict the fatwa of DSN MUI which states the existence of insurance options using a combination of *tijarah* and *tabarru'* contracts or only *tabarru'* contracts.

The obligation to pay contributions is similar to the mechanism in BPJS Kesehatan where people are required to become participants by paying contributions according to their respective classes. The BPJS health-style mechanism is not disputed by the two Islamic boarding school administrators. This is understandable considering the affiliation of pesantren to Nahdlatul Ulama which in its fatwa states that BPJS health is legally permissible with considerations, among others, that BPJS contributions are a form of assistance between citizens.<sup>43</sup>

## 2. Health Insurance Fund Management

The health fund paid by students is fully at the Pondok Pesantren Krapyak under the authority of the foundation, BKM clinic only submits claims every month according to the number of services provided. The funds are kept by the treasurer of the foundation with special bookkeeping records and are not allocated for other needs. If there is an excess of funds from claims submitted by BKM, the funds will be kept by the foundation management as a special health fund. Conversely, if there is a shortage of funds, it will be taken from other funds owned by the foundation.<sup>44</sup>

As for the Pondok Pesantren Darussalam, health funds are directly held by the Poskestren. The management of the Poskestren manages these funds for health service financing needs, operations, and general health development needs. With such management, there is no claim model because the funds are already held directly. The funds raised are also partly sought to be invested in order to develop. The steps taken include holding vaccination services and checking Covid-19 antigen tests. The profits from the business were put back for the benefit of the pesantren.<sup>45</sup>

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<sup>43</sup> Mughni Labib, "BPJS Kesehatan dalam Perspektif Hukum Islam (Studi Fatwa Majelis Ulama Indonesia dan Fatwa Nahdlatul Ulama)", *Jurnal Hukum Islam*, Vol. 16 No. 2, 2018.

<sup>44</sup> Ali Makhfudz, interview, 12 July 2022

<sup>45</sup> Zenita, interview, 10 Juny 2022.

In the provisions of sharia insurance, the collected *tabarru'* funds can actually be invested so that the funds grow. The profit from the investment will be an additional benefit for the insurance participants and partly as *ujrah* for the insurance institution. Even better if the development of the fund is also carried out by business organs owned by pesantren. In this way, pesantren will be able to develop economic independence in their environment.

Mursyid in his article entitled "Dynamics of Pesantren in Economic Perspective" explained that pesantren do have a big role for the life of the nation and state, one of which is in the economic field. There are at least four models of economic activities that are usually carried out in pesantren, namely *kiai*-centered businesses, pesantren economic efforts to strengthen the operational costs of pesantren, efforts to provide economic capabilities for students, and economic businesses for alumni.<sup>46</sup> The management of student health insurance funds as described above can be one form of pesantren economic business.

The management of the health insurance fund does not violate the provisions of sharia insurance. In the Fatwa of the Sharia Board of the Indonesian Ulema Council No: 53 / DSN-MUI / III / 2006 concerning *Tabarru'* Contract on Sharia Insurance it is stated that investment results from *tabarru'* funds 'become the collective rights of participants and are recorded in *tabarru'* accounts. From the investment results, sharia insurance and reinsurance companies can get profit sharing based on the *mudharabah* contract or *mudharabah musytarakah* contract, or get *ujrah* (fee) based on the *wakalah bil ujrah* contract.

The management of health insurance funds in the two Islamic boarding schools seems to have been carried out with trust. The principle of *amanah* is one of the foundations in *muamalah*. Trust is a personal nature and attitude that is loyal, sincere and honest in carrying out something entrusted to him, in the form of property, secrets and obligations.<sup>47</sup>

The form of trustworthiness includes the management conveying about fund contributions at the beginning of the students entering the pesantren and explaining the allocation and mechanism of health insurance in the pesantren. The board also reports regularly to the guardians at the guardian meeting.

## CONCLUSION

The management of health insurance in Pondok Pesantren Krapyak and Pondok Pesantren Darussalam is carried out with a model similar to insurance. The flow of implementing health insurance is that students are required to pay monthly contributions in which there are health costs. Santri who experience health problems can use health services for free with predetermined criteria. There are differences in fund management in the two Islamic boarding schools where in Pondok Pesantren Darussalam, health funds are managed at once by Poskestren, while in Pondok Pesantren Krapyak, health funds are managed by foundation management, while clinics will submit claims every month.

According to the Islamic law review, the health insurance models carried out at the Pondok Pesantren Krapyak and Pondok Pesantren Darussalam are in line with Islamic law,

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<sup>46</sup> Mursyid, "Dinamika Pesantren Dalam Perspektif Ekonomi", Millah, Vol. XI, No. 1 August 2011.

<sup>47</sup> Hamzah Ya'qub, *Etika Islam: Pembinaan Akhlaqul Karimah* (Bandung, CV. Diponegoro, 1996), 98.

especially the MUI DSN fatwas related to sharia insurance. The parties involved have understood the contract and their respective rights and obligations in the guarantee system. The contribution fund paid by the students is a *tabarru'* fund which is intended as a grant or alms from the students and will be given to those who experience health problems. The funds collected are also managed in a way that does not contradict the rules of sharia.

The health insurance model in Krapyak Islamic Boarding School and Darussalam Islamic Boarding School has been running in accordance with Islamic law. Fund management mechanisms can be developed by investing collected contribution funds in safe and secure investment instruments. Thus, the health insurance fund will grow and the benefits will return to students and pesantren residents in general.

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