

ABSTRAK

KONSEP PEMBENTUKAN BADAN HUKUM DANA TABARRU SEBAGAI WAKIL PEMANGKU KEPENTINGAN PESERTA ASURANSI SYARIAH

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Penelitian ini mengakar pada beberapa isu seperti kepemilikan dana kolektif (dana tabarru), kemanunggalan fungsi perusahaan, penyaluran santunan, kebijakan Spin off, Surplus Underwriting, Ujrah atau Fee dan bagi hasil investasi, Penyelesain Sengketa, dan Diskon Klaim. Persoalan ini hanya dapat diselesaikan dengan pembentukan wakil dari peserta asuransi syariah.

Tujuan penelitian ini untuk menganalisis konsep pembentukan Badan Hukum Dana Tabarru' sebagai wakil kepentingan peserta dalam asuransi syariah, serta mengkaji regulasi pemerintah dan fatwa DSN-MUI yang mendasari pembentukan badan tersebut

Metode penelitian yang digunakan dalam penelitian ini, yakni Normatif yuridis dengan pendekatan perundang-undangan, Perbandingan Hukum, dan konseptual. Sumber hukum primer berupa peraturan perundang-undangan dan fatwa dewan syariah nasional majelis ulama indonesia, sumber hukum sekunder diperoleh dari karya ilmiah, maupun dokumen hukum lainnya seperti surat keputusan, putusan pengadilan, hingga surat kabar yang berkredibilitas.

Hasil dari penelitian ini yang *pertama*, Konsep pembentukan Badan Hukum Dana Tabarru dimaksudkan sebagai bentuk representasi hukum atas kepemilikan kolektif peserta asuransi syariah, melalui badan hukum internal yang diisi oleh perwakilan peserta berdasarkan wilayah, menyerupai model Badan Perwakilan Anggota dalam asuransi usaha bersama. Gagasan ini muncul untuk menjamin perlindungan hak peserta dan menghindari konflik kepentingan akibat peran ganda perusahaan. Sebagai alternatif, jika pembentukan badan hukum internal belum memungkinkan, maka Komisaris Independen atau Dewan Pengawas Syariah dapat berperan sebagai wakil peserta dengan penguatan mandat dan fungsi pengawasan.. *Kedua* Penerapan konsep badan hukum dana tabarru dalam bentuk badan internal peserta menuai hambatan mulai dari aspek permodalan, kriteria pengurus, dan efisiensi bisnis, serta belum ada regulasi khusus selain itu terbatasnya kewenangan DPS. Oleh karena itu solusinya melalui Komisaris Independen dengan dasar Pasal 117 UU PT, Pasal 11 UU Asuransi, Pasal 52 angka 5 UUP2SK, Pasal 96 POJK Perizinan, Pasal 29, Pasal 30, dan Pasal 32, serta Pasal 34 POJK Tata Kelola. Kemudian komisaris independen perannya diperkuat dengan pembentukan komite khusus dana tabarru sesuai Pasal 121 ayat (1) UU PT.

Kata Kunci:

Badan Hukum Dana Tabarru, Komisaris Independen, Regulasi Asuransi Syariah

ABSTRACT

CONCEPT FOR THE ESTABLISHMENT OF A LEGAL ENTITY OF TABARRU FUNDS AS A REPRESENTATIVE OF STAKEHOLDERS OF ISLAMIC INSURANCE PARTICIPANTS

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This research is rooted in several issues such as ownership of collective funds (tabarru funds), unity of company functions, distribution of compensation, Spin off policies, Underwriting Surplus, Ujrah or Fee and investment profit sharing, Dispute Resolution, and Claim Discounts. This issue can only be resolved by the formation of representatives of sharia insurance participants.

The purpose of this study is to analyse the concept of the establishment of the Tabarru' Fund Legal Entity as a representative of the interests of participants in sharia insurance, as well as to examine government regulations and DSN-MUI fatwas that underlie the formation of the agency.

The research method used in this research is juridical normative with a statutory, comparative law, and conceptual approach. Primary legal sources are in the form of laws and regulations and fatwas of the National Sharia Council of the Indonesian Ulema Council, secondary legal sources are obtained from scientific papers, as well as other legal documents such as decrees, court decisions, and credible newspapers.

The results of this study are first, the concept of the establishment of the Tabarru Fund Legal Entity is intended as a form of legal representation of the collective ownership of Islamic insurance participants, through an internal legal entity filled by representatives of participants based on the region, resembling the Member Representative Body model in joint venture insurance. This idea arises to ensure the protection of participants' rights and avoid conflicts of interest due to the company's dual role. Alternatively, if the formation of an internal legal entity is not possible, the Independent Commissioner or Sharia Supervisory Board can act as a participant representative with strengthened mandate and supervisory functions. Second, the application of the concept of legal entity of tabarru funds in the form of internal bodies of participants has encountered obstacles ranging from aspects of capital, management criteria, and business efficiency, and there is no specific regulation besides the limited authority of the DPS. Therefore, the solution is through an Independent Commissioner on the basis of Article 117 of the PT Law, Article 11 of the Insurance Law, Article 52 number 5 of the UUP2SK, Article 96 POJK Licensing, Article 29, Article 30, and Article 32, and Article 34 POJK Governance. Then the independent commissioner's role is strengthened by the formation of a special committee for tabarru funds in accordance with Article 121 paragraph (1) of the PT Law.

Keywords:

Tabarru Fund Legal Entity, Independent Commissioner, Islamic Insurance Regulation