



The Transformation of the Refund Provisions of *Tabarru'* in Islamic Insurance: Fatwa DSN-MUI No. 53/2006 and No. 81/2011

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Abstract

This article examines the management of *Tabarru'* funds in Islamic insurance by analyzing Fatwa DSN-MUI No. 53/2006 and No. 81/2011, which play a crucial role in addressing operational and legal challenges within the Islamic insurance industry. The background of this study highlights legal uncertainties surrounding the status of *Tabarru'* funds, which are defined as non-refundable grants in Fatwa No. 53/2006. In contrast, Fatwa No. 81/2011 introduces flexibility by allowing partial refunds for participants who terminate their contracts early, adapting to market needs. This study employs a normative juridical approach, involving a comprehensive analysis of primary and secondary legal texts, including fatwas DSN-MUI, Islamic legal literature, and case studies on the implementation of these fatwas in the practice of Islamic insurance in Indonesia. The findings indicate that Fatwa No. 81/2011 significantly contributes to the management of *Tabarru'* funds by introducing flexibility in refunding participants. The fatwas concerning *Tabarru'* funds in Islamic insurance demonstrate that they complement each other in regulating the concept and management of these funds. The operational implications of this study include recommendations to strengthen regulations and transparency in the management of *Tabarru'* funds and to enhance the protection of participants' rights.

Kata Kunci:

Asuransi Syariah; Tabarru'; Fatwa DSN-MUI; Pengembalian Dana.

Abstrak

Artikel ini membahas pengelolaan dana *Tabarru'* dalam asuransi syariah dengan mengkaji Fatwa DSN-MUI No. 53/2006 dan No. 81/2011, yang berperan penting dalam menjawab tantangan operasional dan hukum di industri asuransi syariah. Latar belakang penelitian ini berfokus pada ketidakpastian hukum terkait status dana *Tabarru'* sebagai hibah yang tidak dapat dikembalikan, sebagaimana diatur dalam Fatwa No. 53/2006. Sementara Fatwa No. 81/2011 memberikan fleksibilitas untuk pengembalian sebagian dana bagi peserta yang mengakhiri kontrak lebih awal, menyesuaikan dengan kebutuhan pasar. Metodologi penelitian ini menggunakan pendekatan yuridis normatif, dengan analisis mendalam terhadap teks-teks hukum primer dan sekunder, termasuk fatwa DSN-MUI, literatur hukum Islam, dan studi kasus implementasi fatwa dalam praktik asuransi syariah di Indonesia. Hasil penelitian menunjukkan bahwa Fatwa No. 81/2011 memberikan kontribusi signifikan dalam pengelolaan dana *Tabarru'* dengan memperkenalkan fleksibilitas dalam hal pengembalian dana kepada peserta. Fatwa-fatwa mengenai dana *Tabarru'* dalam asuransi syariah ini menunjukkan bahwa keduanya saling melengkapi dalam mengatur konsep dan pengelolaan dana *Tabarru'*. Implikasi operasional dari penelitian ini mencakup rekomendasi untuk memperkuat regulasi dan transparansi dalam pengelolaan dana *Tabarru'* serta meningkatkan perlindungan hak peserta.

INTRODUCTION

As time progresses, human life becomes increasingly complex, marked by uncertainty and risks. People are confronted with various events that are beyond their control and are the will of Allah SWT, which cannot be avoided. The concerns regarding potential risks motivate individuals to protect themselves and their families from various threats that may arise. One of the ways to mitigate these risks is through the acquisition of insurance.¹

Insurance has become one of the most popular methods for individuals to secure protection against potential risks.² Insurance companies help by transferring the risks faced by individuals to the company, providing a sense of security through guarantees that shield them from such uncertainties. The core function of insurance is to alleviate the financial impact of risks that cannot be avoided.³ One of the prominent types of insurance is Islamic insurance, which protects following Islamic principles. In Islamic insurance, policyholders receive compensation when they encounter unforeseen events such as illness, accidents, or death.⁴ The fundamental concept of Islamic insurance is based on mutual assistance among participants. Through this system, all participants help each other and share the risks that may occur, fostering a sense of solidarity and communal responsibility. In Islamic insurance, contributions from participants are divided into three main components: an investment account, a special account designated as a donation fund for the protection of participants, and *ujrah* as compensation for the managing company. The funds in the investment account are returned when the agreement ends, or when the participant withdraws or passes away. The special account is refunded if there is an underwriting surplus.⁵

The amount and payment period of the contributions are determined based on factors such as the participant's age and health history. Policyholders may also choose to cancel their policies prematurely for various reasons, such as switching to another product or due to an inability to continue paying. In such cases, they are entitled to a refund of their contributions, in accordance with the terms of the agreement. However, although policyholders have the right to cancel their policies and receive a refund of contributions, this is closely related to the concepts in Islamic insurance, particularly in the application of the *Tabarru'* contract, which is grounded in the principle of mutual assistance among participants.⁶

¹ Durrotun Nafis, "Analisis Hukum Islam Terhadap Pengembalian Atas Pembatalan Polis Peserta Asuransi Di Asuransi Syariah," 2022, <http://digilib.uinsa.ac.id/id/eprint/54446>; Lisdia Apriliani Sobirin, "Penerapan Prinsip Tolong Menolong Dalam Perjanjian Asuransi Syariah Ditinjau Dari Perspektif Hukum Islam," *JMI: Journal Multidisiplin Indonesia* 2, No. 7 (2023), <https://doi.org/10.58344/jmi.v2i7.324>.

² Kenneth Abraham and Daniel Schwarcz, "The Limits of Regulation by Insurance," *98 Indiana Law Journal* 215 (2022) 98, no. 1 (January 1, 2022), <https://www.repository.law.indiana.edu/ilj/vol98/iss1/5>; Monica Gupta et al., "A Review of the Role of Insurance in Risk Management," in *The Application of Emerging Technology and Blockchain in the Insurance Industry* (River Publishers, 2024).

³ Amalia Fadilah and Makhrus, "Pengelolaan Dana 'Tabarru' Pada Asuransi Syariah Dan Relasinya Dengan Fatwa Dewan Syariah Nasional," *JURNAL HUKUM EKONOMI SYARIAH* 2 (April 27, 2019), <https://doi.org/10.30595/jhes.v2i1.4416>.

⁴ Nafis, "Analisis Hukum Islam Terhadap Pengembalian Atas Pembatalan Polis Peserta Asuransi Di Asuransi Syariah."

⁵ Risma Kartika, Mulya Wardhani, and Dina Fitriisa Septiarini, "Faktor-Faktor Yang Mempengaruhi Kontribusi Peserta Pada Perusahaan Asuransi Jiwa Syariah Di Indonesia," *Jurnal Ekonomi Syariah: Teori Dan Terapan*, no. 10 (2017), <https://doi.org/10.24073/vol4iss201710pp802-816>.

⁶ Sri Zanariyah, Ledy Famulia, and Rendy Renaldi, "High Risk in Loss Insurance in The Perspective of Conventional Insurance and Syariah Insurance," *Al-Adalah* 20, no. 2 (December 20, 2023): 355, <https://doi.org/10.24042/adalah.v20i2.13849>; Galuh Oktavia Siswono, Wawan Hafid Syaifudin, and Wisnowan Hendy Saputra, "A Mathematical Modelling in Determining the

A fundamental contract in Islamic insurance is the *Tabarru'* contract,⁷ which is established as a donation intended for mutual assistance and benevolence among participants. Under this contract, participants contribute a donation fund that is used to help other participants facing unfortunate events. This aligns with the provisions outlined in Fatwa DSN-MUI No. 53/DSN-MUI/III/2006, which governs *Tabarru'* in Islamic insurance.⁸ Unlike conventional insurance, which involves risk transfer, Islamic insurance is based on risk-sharing, where participants collectively bear responsibility for one another.⁹ Furthermore, the contract in Islamic insurance must comply with Islamic law (*sharia*), ensuring they are free from elements prohibited by Islamic teachings, such as usury (*riba*) and uncertainty (*gharar*).¹⁰

The philosophy of Islamic insurance is rooted in mutual responsibility, cooperation, and protection, all of which contribute to the well-being of both individuals and society as a whole. As fragile beings, humans must always recognize that they cannot live in isolation; they depend on the support and assistance of others to navigate life's challenges.¹¹

However, despite its fair and sharia-compliant principles, the management of *Tabarru'* funds in Islamic insurance presents challenges, particularly with regard to the return of these funds when participants cancel their policies before the agreed-upon period.¹² According to Fatwa No. 53/2006, the *Tabarru'* fund is a donation and therefore non-refundable, as it is intended for mutual help, not for commercial purposes. This raises legal issues, especially when participants seek a refund after terminating their policies before the contract's maturity.

To address this issue, in 2011, the DSN-MUI issued Fatwa No. 81/DSN-MUI/III/2011, which specifically addresses the return of *Tabarru'* funds for participants who terminate their policies before the maturity date. This fatwa allows for a partial return of *Tabarru'* funds, even though these funds are essentially classified as donations.¹³ However, this raises significant questions regarding the nature of *Tabarru'* funds as a donation, as, under Islamic law, donations (*hibah*) are generally non-reclaimable by the donor.

Portion of *Tabarru'* Fund for Sharia Life Insurance Based on Wakalah Scheme" (THE 3RD INTERNATIONAL CONFERENCE ON MATHEMATICS AND SCIENCES (THE 3RD ICMSc): A Brighter Future with Tropical Innovation in the Application of Industry 4.0, East Kalimantan, Indonesia, 2022), 050007, <https://doi.org/10.1063/5.0112031>; M. Mahbubi Ali and Lokmanulhakim Hussain, "Application of Hibah Mu'allaqah for Retirement Annuity Plan," *ISRA International Journal of Islamic Finance* 6, no. 2 (December 2014): 163–70, <https://doi.org/10.12816/0019270>.

⁷ Ramadhan Aidil Akbar, "Analisis Fatwa Dewan Syariah Nasional No. 81/DSN-MUI/III/2011 Tentang Pengembalian Dana *Tabarru'* *Tabarru'* Bagi Peserta Yang Berhenti Sebelum Masa Perjanjian Berakhir Pada Produk Prulink Syariah Di PT Prudential Life Assurance" (UIN Sunan Ampel, 2016), <https://digilib.uinsa.ac.id/13074/>.

⁸ Yeni Anggraeni, Rani Alfayani, and Purwanto. Muhammad Aji, "Analisis Manajemen Risiko Pada Akad *Tabarru'* Asuransi Syariah," *Musyteri Neraca Manajemen: Ekonomi Dan Akuntansi* 5, No. 10 (2024), <https://doi.org/https://doi.org/10.8734/musyteri.v5i10.3639>; Fadilah and Makhrus, "Pengelolaan Dana *Tabarru'* *Tabarru'* Pada Asuransi Syariah Dan Relasinya Dengan Fatwa Dewan Syariah Nasional."

⁹ Jumadil Saputra, Suhail Kusairi, and Nur Azura Sanusi, "Pricing Model in the Concept and Practice of Conventional and Takaful Life Insurance," *WSEAS Transactions on Business and Economics* 14 (2017): 436–45, <https://www.wseas.com/journals/articles.php?id=3021>; Ali and Hussain, "Application of Hibah Mu'allaqah for Retirement Annuity Plan."

¹⁰ Usama Adnan Fendi, "Toward Islamic Deposit Insurance Model," *Journal of Islamic Accounting and Business Research* 11, no. 1 (January 6, 2020): 130–51, <https://doi.org/10.1108/JIABR-06-2017-0077>.

¹¹ Wirdyaningsih, *Bank Dan Asuransi Islam Di Indonesia*, 1st ed., vol. 1 (Jakarta: Kencana, 2005).

¹² National Sharia Council Fatwa No. 50/DSN-MUI/III/2006 on Mudharabah Musytarakah Contract.

¹³ Novia Putri Handayani et al., "Problematika Asuransi Syariah (Takaful) Di Indonesia," *Jayapangus Press*, no. 4 (2023), <https://doi.org/10.37329/ganaya.v6i4.2605>.

Previous studies have examined the management of *Tabarru'* funds in Islamic insurance, such as the work by Milna Rohmawati, which focuses on the principles underlying the *Tabarru'* contract and its compatibility with Islamic law.¹⁴ Additionally, empirical research by Nurjanah, Rahmi Syahriza, and Purnama Ramadani Silalahi shows that the return of *Tabarru'* funds for participants who terminate their policies early is partial and subject to conditions, including the deduction of administrative and other costs.¹⁵ While these studies contribute to the understanding of *Tabarru'* fund management, no research has specifically an in-depth examination of fatwas DSN-MUI regulating the return of *Tabarru'* funds, particularly within the framework of Islamic law.

Therefore, this study aims to fill this gap by analyzing the impact of Fatwa No. 53/2006 and No. 81/2011 on the management and return practices of *Tabarru'* funds in Islamic insurance in Indonesia. This article examines the provisions outlined in both fatwas, with a particular focus on their legal implications within Islamic law concerning the management and return of *Tabarru'* funds. The analysis is expected to provide a clearer understanding of how these fatwas are implemented in the Islamic insurance industry in Indonesia and how Fatwa No. 81/2011 contributes to the expansion of existing regulations—particularly regarding the partial return of *Tabarru'* funds and the protection of insurance participants' rights.

RESEARCH METHODS

This study employs a qualitative approach with a normative juridical analysis to explore the management of *Tabarru'* funds and the refund process for participants who cancel their contracts before the agreed period in Islamic insurance. The research method follows a systematic process to collect, analyze, and interpret relevant legal data and practices within the framework of Islamic law and Islamic insurance. The data for this study were collected through comprehensive library research.

The primary legal sources include Fatwa No. 53/2006 and No. 81/2011, which provide the legal framework for the management and return of *Tabarru'* funds. In addition to the primary sources, secondary sources were also consulted, such as books, journals, scholarly articles, and other publications related to Islamic law and Islamic insurance. The selection of secondary sources was based on their relevance to the themes of *Tabarru'* fund management and refund practices, ensuring alignment with the applicable laws and regulations within the Islamic legal system. These sources were specifically chosen for their coverage of the principles of Islamic insurance, particularly the *Tabarru'* contract. Once the data were collected, a descriptive-analytic analysis was conducted on the fatwas DSN-MUI and the associated literature. This analysis focused on understanding the provisions outlined in the fatwas, specifically regarding the management and refund of *Tabarru'* funds.

¹⁴ Milna Rahmawati, "Management of Tabarru Funds in Sharia Insurance," *Ukanus: Indonesian Journal of Economics and Business* 1 (2024), <https://ejournal.ukanus.id/index.php/ijeb/article/view/14>.

¹⁵ Nurjanah, Rahmi Syahriza, and Purnama Ramadani Silalahi, "Analisis Pengembalian Dana Tabarru Bagi Pemegang Polis Yang Berhenti Sebelum Masa Perjanjian Berakhir," *Ganaya: Jurnal Ilmu Sosial Dan Humaniora*, no. 2 (2024), <https://doi.org/10.37329/ganaya.v7i4.3574>.

Furthermore, the study incorporated a practical analysis to assess the real-world implementation of these fatwas within the Islamic insurance industry in Indonesia. This phase involved mapping the current practices of Islamic insurance companies regarding the management of *Tabarru'* funds and refunds, with a focus on evaluating the extent to which these practices align with the stipulations of the fatwas DSN-MUI. The analysis was framed within Islamic legal theories to gain an in-depth understanding of the *Tabarru'* fund management and refund processes, particularly in the context of contract termination in Islamic insurance. This approach ensures that the study is grounded in both legal principles and the practical realities of Islamic insurance practices in Indonesia.¹⁶

RESULTS AND DISCUSSION

Fatwa No. 53/2006 on the *Tabarru'* contract in Islamic insurance states that the *Tabarru'* contract is a form of donation among participants, aimed at providing financial assistance to those facing misfortunes. In the Islamic insurance system, the insurance company is responsible for receiving contributions (premiums), managing the collected funds, utilizing them for business activities, and earning a share of the resulting profits.¹⁷ In general, the implementation of the *Tabarru'* contract in Islamic insurance represents mutual protection and helping effort among participants through investments in assets and *Tabarru'* to face specific risks according to Islamic principles.¹⁸ The *Tabarru'* funds are maintained in a special account, separate from the operational funds of the insurance company. When a participant experiences a misfortune, claims are disbursed from the *Tabarru'* account, reflecting the participants' collective commitment to helping one another.¹⁹ In this context, the *takaful* company functions as a fund manager, regulating the distribution of funds for mutual benefit. Through the *Tabarru'* contract, insurance participants agree to allocate a certain amount of funds (premium) to the insurance company, which functions as the manager of those funds. This fund is not used for individual interests but to help other participants who suffer losses or misfortunes.²⁰

Through the *Tabarru'* contract, the insurance participants agree to contribute a certain amount of funds (premiums) to the insurance company, which functions as the fund manager. These funds are not designated for individual financial gain but are instead allocated to assist participants who experience losses or misfortunes.²¹ The core principle of

¹⁶ Suyanto, *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan*, ed. Suryanto, vol. 1 (Gresik: Unigres Press, 2022).

¹⁷ Abdullah Amrin, *Asuransi Syariah: Keberadaan Dan Kelebihannya Di Tengah Asuransi Konvensional*, (No Title) (Jakarta: Elex Media Komputindo, 2006).

¹⁸ Syeh Muhammad Yusuf Qardhawi, *Halal Dan Haram Dalam Islam Oleh Syekh Mubammad Yusuf Qardhawi*, ed. H. Mu'ammal Hamidy (PT. Bina Ilmu, 1993).

¹⁹ Heri Sudarsono, *Bank Dan Lembaga Keuangan Syariah: Deskripsi Dan Ilustrasi*, vol. 4, 2007.

²⁰ Hasan Ali, "Asuransi Dalam Perspektif Islam," *Al-Mizan: Jurnal Hukum Dan Ekonomi Islam* (UIN Syarif Hidayatullah, 2009), <http://repository.uinjkt.ac.id/dspace/handle/123456789/40924>.

²¹ R. Hassan and S.A. Salman, "Takaful vs. Conventional Insurance from the Risk and Solidarity Perspective," in *Proc. Int. Bus. Inf. Manag. Assoc. Conf., IBIMA - Vis.: Sustain. Econ. Dev., Innov. Manag., Glob. Growth*, ed. Soliman K.S., vol. 2017-January (Proceedings of the 30th International Business Information Management Association Conference, IBIMA 2017 - Vision 2020: Sustainable Economic development, Innovation Management, and Global Growth, International Business Information Management Association, IBIMA, 2017), 1604–7, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85048486548&partnerID=40&md5=7564f9b250a0c33f86bf9cc40a71f550>.

the *Tabarru'* contract is mutual assistance, where the pooled funds are intended to help those in need, ensuring that the risk is shared collectively. This system promotes the values of solidarity and cooperation, consistent with the ethical framework of Islamic law, and serves to protect the participants in the event of unforeseen circumstances.²²

In Islamic insurance, the premiums paid by participants consist of savings funds and *Tabarru'* funds. The savings fund represents a participant's deposit, which is managed and invested by the insurance company. Participants are entitled to a profit-sharing allocation (*mudharabah*) based on the investment returns. When a claim arises, the savings fund, along with its accumulated returns, is disbursed either as a cash value claim or an insurance benefit. On the other hand, *Tabarru'* is a voluntary contribution (donation) made by participants with sincerity, which is used to pay claims or insurance benefits if needed.²³

The distribution of the *Tabarru'* fund in Islamic insurance reflects a prioritization of transparency and accountability in fund management. As illustrated in Figure 1, a significant portion—approximately 70%—is allocated to covering claims for participants facing misfortunes such as illness, accidents, or other unforeseen events. This allocation underscores the primary objective of the *Tabarru'* fund as a means of mutual assistance among participants. Additionally, 20% of the fund is reserved as an underwriting surplus to maintain financial stability and ensure the sustainability of future claims. This strategic allocation safeguards the long-term viability of the *Tabarru'* fund. Additionally, 10% of the fund is designated for operational costs, including administrative and management expenses, ensuring efficient fund management while adhering to Shariah principles. Thus, this distribution not only ensures financial protection for participants but also reinforces the Islamic insurance system's commitment to collective benefits, fairness, and ethical compliance, fostering trust and confidence in the system.²⁴

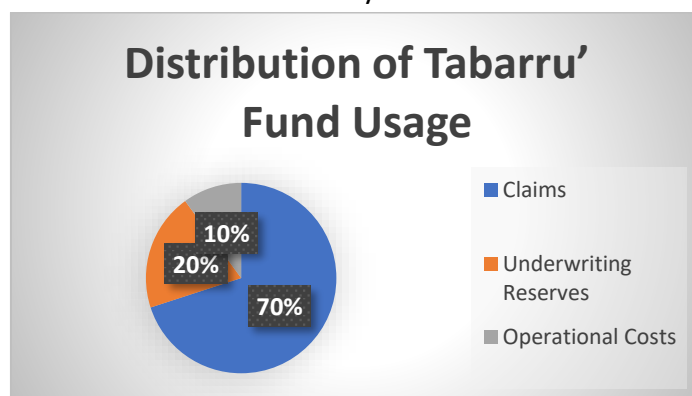


Figure 1. Graph of *Tabarru'* Fund Distribution

Source: The results of the author's analysis and previous research data on the Determinants of the Proportion of *Tabarru'* Funds in Sharia Life Insurance Companies in Indonesia, <https://doi.org/10.20414/iqtishaduna.v11i1.1130>.

²² Laylati Alifatul Mutmainah et al., "Analisis Penerapan Prinsip-Prinsip Syariah Pada Akad Tabarru Di Produk Asuransi Syariah (Studi Kasus Asuransi Prudential Cabang Sampang)," *El-Aswaq* 2, no. 2 (2021), <https://doi.org/http://dx.doi.org/10.31106/laswq.v2i2.15113>.

²³ Amrin, *Asuransi Syariah: Keberadaan Dan Kelebihannya Di Tengah Asuransi Konvensional*.

²⁴ Tesha Aprilyani, "Determinants of the Proportion of Tabarru' Funds in Sharia Life Insurance Companies in Indonesia," *IQTISHADUNA* 11, no. 1 (June 2020), <https://doi.org/10.20414/iqtishaduna.v11i1.1130>.

An example of this can be seen in the financial statements of PT Asuransi Jiwa Syariah Jasa Mitra Abadi Tbk., which demonstrate the practical implementation of transparency and accountability in managing the *Tabarru'* fund. According to the report, the underwriting surplus of the *Tabarru'* fund for the period ending June 30, 2024, amounted to IDR 4,314,298,314, indicating effective fund management and readiness for future claims. A significant portion of the fund was allocated to cover claims from participants, demonstrating how the *Tabarru'* fund operates as a mutual aid mechanism. Notably, no fund distribution was made to participants or managers during the period, indicating that the surplus was retained to ensure financial stability and long-term sustainability. This approach aligns with the principles of fairness and ethical governance in Shariah-compliant finance. This allocation approach reflects a distribution practice aimed at providing financial protection to participants while maintaining operational efficiency, ultimately building trust in the Islamic insurance system.²⁵

In fund management, Islamic insurance companies separate participant fund accounts from *Tabarru'* accounts to ensure that the funds are not commingled. This separation is critical to prevent funds contributed by participants for personal purposes (such as premiums) from mixing with *Tabarru'* funds. This practice aligns with Islamic principles, which emphasize transparency, accountability, and fairness in financial management.²⁶ The fundamental principle used is risk sharing, meaning participants in the insurance scheme share risks without the goal of making a profit.²⁷ These funds are accumulated as a form of charity, used to help other participants who experience misfortune during the term of the agreement.²⁸ The use of *Tabarru'* funds for other purposes would be considered a violation of the contract.²⁹

In the management of *Tabarru'* funds, the principles of the agency (*wakalah*) contract or profit-sharing (*mudharabah*) contract are also applied for Shariah-compliant investment of the funds.³⁰ The DSN-MUI Fatwa plays a crucial role in providing operational and legal guidance for Islamic insurance companies concerning the management and utilization of *Tabarru'* funds, as well as the rights and obligations of participants. The changes outlined in Fatwa No. 81/2011 and No. 53/2006 serve as an important foundation in maintaining the balance between Shariah principles and the needs of the modern insurance industry. These fatwas help ensure that the operational practices of Islamic insurance companies align with both ethical and legal standards, fostering trust and sustainability within the industry while respecting the principles of Islamic finance.

²⁵ Asuransi JMA Syariah, "Laporan Keuangan" (Jakarta, 2024).

²⁶ Fatmawati, "Pemikiran Muhammad Syakir Sula Tentang Sistem Operasional Asuransi Syari'ah" (Riau, 2010), <http://repository.uin-suska.ac.id/id/eprint/1856>.

²⁷ Andri Soemitra, *Bank & Lembaga Keuangan Syariah*, 1st ed. (Jakarta: Prenadamedia Group, 2009).

²⁸ Financial Services Authority Regulation (POJK) No. 69/POJK.05/2016 on the Business Operations of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies.

²⁹ Fatmawati, "Pemikiran Muhammad Syakir Sula Tentang Sistem Operasional Asuransi Syari'ah."

³⁰ Shahid Rizwan and Husam-Aldin N. Al-Malkawi, "Islamic Insurance (Takaful): An Overview," in *Islamic Finance in the Modern Era* (Routledge, 2024).

The Management of *Tabarru'* Funds Based on Fatwa DSN-MUI No. 53/2006

Fatwa No. 53/2006 on *Tabarru'* in Islamic insurance was issued in 2006 in response to the rapidly growing Islamic insurance industry in Indonesia. At that time, the Islamic finance industry, including insurance, faced challenges in designing products that were in accordance with Islamic principles, particularly in separating the social aspects from the commercial aspects. In conventional insurance, the premiums paid by participants are accumulated, and part of the funds is used for investment by the insurance company to generate profit. This system contradicts Islamic principles due to the presence of elements such as uncertainty (*gharar*), interest (*riba*), and speculation (*maysir*). To address these issues, the concept of *Tabarru'* was introduced in Islamic insurance to manage participant funds based on the principles of donation (*hibah*) or charity. Fatwa No. 53/2006 establishes that the *Tabarru'* contract is a mandatory element in all Islamic insurance products. By introducing *Tabarru'*, the Fatwa seeks to ensure that Islamic insurance adheres to Islamic principles of cooperation, where participants contribute funds voluntarily to assist others in case of need, rather than seeking profit. This approach helps to avoid the problematic elements found in conventional insurance, ensuring that Islamic insurance operates on ethical and Sharia-compliant foundations.

The issuance of Fatwa No. 53/2006 on the *Tabarru'* contract was based on several key considerations. First, Fatwa No. 21/DSN-MUI/X/2001 regarding General Guidelines for Islamic Insurance was considered too general and required further clarification to be applied more precisely. Second, one of the aspects that needed a specific fatwa was related to the *Tabarru'* contract in Islamic insurance. Recognizing this need, the DSN-MUI issued a more detailed fatwa to provide clear regulatory direction and enhance the practical implementation of the *Tabarru'* contract in the Islamic insurance sector.³¹

In Fatwa No. 53/2006 concerning the *Tabarru'* contract, it is stated that the *Tabarru'* contract in Islamic Insurance and Islamic Reinsurance is an agreement based on *hibah* (charity) with the aim of mutual assistance among participants, not for commercial purposes.³²

The funds collected are referred to as *Tabarru'* funds and can only be used to cover claims from participants who experience misfortunes. This concept is rooted in the principles of mutual assistance and solidarity upheld in Islamic teachings. The fatwa also emphasizes that *Tabarru'* funds must remain separate from the insurance company's funds and must not be used for investment or commercial purposes. Maintaining this separation ensures that charitable funds are not mixed with the company's operational finances. The management of *Tabarru'* funds must be carried out under Shariah principles, where the company acts as the manager (*wakil*) and only receives compensation for agreed-upon administrative or management fees.³³ Thus, this fatwa provides legal guidance for Islamic insurance

³¹ Suspita Sari, "Analisis Pelaksanaan Akad *Tabarru'* Menurut Fatwa DSN-MUI Pada Asuransi Jiwa Di AJB Bumiputera Kantor Cabang Syariah Banda Aceh" (UIN AR-RANIRY, 2019), <https://repository.ar-raniry.ac.id/id/eprint/17578>.

³² Sari.

³³ Fadilah and Makhrus, "Pengelolaan Dana *Tabarru'* Pada Asuransi Syariah Dan Relasinya Dengan Fatwa Dewan Syariah Nasional."

companies in managing *Tabarru'* funds under Shariah principles.

According to this fatwa, the *Tabarru'* contract in Islamic insurance must clearly define the rights and obligations of each participant, both individually and collectively. It also regulates key aspects such as premium payments, claim submissions, and other requirements based on the type of insurance contract. The management of *Tabarru'* funds must adhere to several main conditions, including separate accounting from other funds and ensuring that investment returns remain the collective right of participants. The insurance company can earn profits through profit-sharing agreements using *mudharabah* or *musyarakah*, or receive a fee through *wakalah bil ujah* contracts. This fatwa also outlines various general provisions related to Islamic insurance, including the principle of mutual assistance among participants without a commercial motive. Additionally, it regulates how surplus underwriting can be managed and distributed, and how underwriting deficits should be covered by loans (*qardh*) from the insurance company, which will later be reimbursed from the *Tabarru'* funds. In the event of a dispute, resolution must be sought through the Shariah Arbitration Body following prior consultation.³⁴

Refund of *Tabarru'* Fund Based on Fatwa DSN-MUI No. 81/2011

The Indonesian Shariah National Board (DSN-MUI) is the authority responsible for issuing fatwas related to financial regulations, including products managed by Shariah Financial Institutions (LKS) such as Islamic banking and insurance. The fatwas issued by DSN-MUI aim to ensure that the operations of LKS comply with Shariah principles.

One of the key challenges in Islamic insurance is determining the refund of *Tabarru'* funds for participants who terminate their policies before the contract period ends. This issue arises because *Tabarru'* funds, which are collectively pooled for mutual assistance, differ from personal funds. This issue necessitates clear guidelines to protect the rights and obligations of participants and the insurance company.³⁵ Therefore, DSN-MUI deemed it necessary to issue a fatwa on the refund of *Tabarru'* contributions, to serve as guidance for LKS, particularly Islamic insurance companies, in addressing this issue and ensuring that their operations remain compliant with Shariah provisions.

Fatwa No. 81/2011 was issued in response to emerging challenges in the practice of Islamic insurance, particularly concerning the refund status of *Tabarru'* funds for participants who terminate their insurance contracts before the agreed period ends. In the context of Islamic insurance, the *Tabarru'* contract is a donation from participants to fellow participants, and therefore, as a principle, donation funds cannot be refunded. However, in practice, many participants terminate their contracts before maturity due to financial difficulties, changing needs, or a perceived lack of necessity for continued insurance coverage. This raises an important question: Do participants who have contributed to the *Tabarru'* fund have the right to receive a partial refund of the *Tabarru'* funds they have paid,

³⁴ Suspita Sari, "Analisis Pelaksanaan Akad *Tabarru'* Menurut Fatwa DSN-MUI Pada Asuransi Jiwa Di AJB Bumiputera Kantor Cabang Syariah Banda Aceh" (UIN AR-RANIRY, 2019), <https://repository.ar-raniry.ac.id/eprint/17578>.

³⁵ Zanariyah, Famulia, and Renaldi, "High Risk in Loss Insurance in The Perspective of Conventional Insurance and Syariah Insurance"; Ali and Hussain, "Application of Hibah Mu'allaqah for Retirement Annuity Plan."

or must the funds remain entirely within the mutual pool managed by the insurance company?

Fatwa No. 81/2011 regarding the refund of *Tabarru'* funds for participants who terminate their contracts before the agreement period ends regulates the legal provisions related to this issue. This fatwa explains how *Tabarru'* funds may be refunded to participants who decide to stop before the Islamic insurance agreement ends, as well as the rules that must be followed in the process. According to this fatwa, several provisions must be observed.

First, individual participants in Islamic insurance are not allowed to request a refund of the *Tabarru'* funds they have paid. *Second*, the Islamic insurance company, in its capacity as a representative of the participants collectively, is also not authorized to refund these funds. However, third, participants as a collective entity have the authority to decide on the management of *Tabarru'* funds, including the possibility of refunds for those who terminate their policies before the contract period ends. If this authority is granted to the insurance company, it must be clearly stated when the contract is made. Based on these provisions, DSN-MUI emphasizes that, in principle, *Tabarru'* funds cannot be refunded if the policy is canceled. However, flexibility is allowed if the refund of funds has been regulated and agreed upon collectively by the participants at the time of the contract. This underscores the importance of a clear initial agreement in the Islamic insurance policy to ensure that the management and refund of funds remain under Sharia principles.³⁶

Fatwa No. 81/2011 emphasizes that *Tabarru'* funds in Islamic insurance cannot be requested for refund by individual participants, as the management and refund of *Tabarru'* funds are the authority of the collective participants who have the right to establish regulations regarding its use, including the refund of funds during underwriting.³⁷ The refund of *Tabarru'* funds may be permitted as long as it has been regulated in the underwriting agreement between the participants and the company, rather than being based on individual rights. The right to refund *Tabarru'* funds fully rests with the collective participants, as outlined in points 3, 4, and 5 of Fatwa No. 81/2011.³⁸

Based on the explanation above, several key points can be drawn from Fatwa No. 81/2011 regarding the status of *Tabarru'* funds in relation to charitable donations (*hibah*). This fatwa states that if an insurance participant cancels their policy before the agreement period ends, the paid *Tabarru'* funds may be refunded. This indicates that *Tabarru'* funds are not entirely considered as non-refundable *hibah*. Instead, refunds may be granted based on the provisions agreed upon in the insurance policy. The fatwa strives to maintain a balance between the principle of mutual assistance in *Tabarru'* and the practical need to regulate the refund of funds if a participant chooses to discontinue their policy. This approach ensures that the Islamic insurance system remains fair, operates in accordance with Shariah

³⁶ Nafis, "Analisis Hukum Islam Terhadap Pengembalian Atas Pembatalan Polis Peserta Asuransi Di Asuransi Syariah."

³⁷ Nurjanah, Syahriza, and Silalahi, "Analisis Pengembalian Dana Tabarru Bagi Pemegang Polis Yang Berhenti Sebelum Masa Perjanjian Berakhir."

³⁸ National Sharia Council (DSN) Fatwa No. 81/DSN-MUI/III/2011 on *Tabarru'* Funds for Insurance Participants Who Terminate Their Contracts Before the Agreement Period Ends.

principles, and considers the rights of participants.

Overall, while *Tabarru'* funds have the characteristics of a charitable donation (*hibah*) in the concept of islamic insurance, Fatwa No. 81/2011 introduces flexibility regarding refunds for participants who terminate their policies before the contract period ends. This fatwa stipulates that participants who voluntarily cancel their insurance contract before maturity are entitled to receive a partial refund of the *Tabarru'* funds, but only if such a provision is allowed in the policy agreement. This refund is made after deducting costs already used to cover claims for other participants and administrative fees.

The fatwa was issued to provide legal clarity in the islamic insurance industry, particularly in response to the growing number of participants who cancel their policies prematurely and the challenges insurance companies face in determining participants' rights to the *Tabarru'* funds. This fatwa is also expected to offer a solution to the dilemma that *Tabarru'* funds should not be refunded because they are considered *hibah*. However, from a practical standpoint, a partial refund can serve as a fair solution for participants who no longer wish to participate in the islamic insurance program. Through this fatwa, DSN-MUI provides flexibility to islamic insurance companies to manage *Tabarru'* funds more practically, without violating islamic principles. The fatwa also emphasizes the importance of transparency in the policy agreement and fund management, ensuring that participants clearly understand their rights in the event of contract termination before the maturity date.

Comparative Analysis of Fatwa DSN-MUI No. 53/2006 and Fatwa DSN-MUI No. 81/2011

Fatwa No. 53/2006 and Fatwa No. 81/2011 have different scopes of regulation but complement each other within the framework of islamic insurance, particularly regarding the management and use of *Tabarru'* funds. Fatwa No. 53/2006 focuses on the fundamental concept of the *Tabarru'* contract, which serves as the foundation for all islamic insurance products. It defines *Tabarru'* as a *hibah* (donation) contract made by insurance participants with the intention of mutual assistance, without any commercial motives. The *Tabarru'* funds are collected to assist other participants who face misfortunes, with the insurance company acting as the fund manager based on the agency (*wakalah*) contract. This fatwa emphasizes that the purpose of islamic insurance is collective goodness, where the *Tabarru'* funds function as a form of social solidarity among participants.

On the other hand, Fatwa No. 81/2011 emerged as a response to the more practical needs in the field, particularly regarding the return of *Tabarru'* funds for participants who decide to terminate their contracts before the agreed period ends. This fatwa provides new guidelines allowing the partial return of *Tabarru'* funds to participants who cancel their contracts early, even though, in principle, *Tabarru'* is a donation (*hibah*) that traditionally cannot be refunded. Therefore, this fatwa addresses the issues that arise concerning the rights of participants who terminate their contracts midway, striving to balance the principle of *Tabarru'* as a form of *hibah* and fairness for participants who stop before the contract's term ends.

The main difference between the two fatwas lies in the focus of regulation. Fatwa No.

53/2006 emphasizes the fundamental principles of the *Tabarru'* contract and how the funds should be managed by the insurance company. Under this fatwa, *Tabarru'* funds are collected to assist participants facing risks, and the investment returns from these funds belong entirely to the participants collectively. In this fatwa, the insurance company acts solely as the fund manager, with the right to receive compensation through *mudharabah* or *wakalah bil ujah* contracts. This fatwa solidifies that islamic insurance operates without commercial motives, and the funds collected are for the benefit of the participants' collective welfare.

In contrast, Fatwa No. 81/2011 focuses more on the flexibility in managing *Tabarru'* funds, especially when a participant cancels their contract. This fatwa introduces the concept of returning *Tabarru'* funds, which is an innovation within the context of islamic insurance, as previously, *hibah* funds could not typically be withdrawn by the donor. This fatwa stipulates that the returned funds must come from the surplus underwriting or excess funds remaining after claims and operational costs are calculated. Additionally, the fatwa provides guidance on managing surplus underwriting, allowing for the possibility of either retaining it as a reserve or partially distributing it to participants.

Fatwa No. 81/2011 provides further details on how insurance companies must address underwriting deficits, stipulating that the company must cover the shortfall through loans (*qardh*), with repayment to be taken from the *Tabarru'* funds in the future. This additional measure is not mentioned in Fatwa No. 53/2006, making this new fatwa a more comprehensive guide regarding financial risk management in islamic insurance.

Overall, both fatwas are closely related in forming the operational framework for islamic insurance in Indonesia. Fatwa No. 53/2006 serves as the foundation for the concept of the *Tabarru'* contract in islamic insurance products, while Fatwa No. 81/2011 provides flexibility in the return of funds for participants who terminate early, while also emphasizing the principles of fairness and transparency in the management of *Tabarru'* funds. Fatwa No. 81/2011 also functions as an extension of Fatwa No. 53/2006 to accommodate the dynamics and more diverse needs of islamic insurance participants, while ensuring their rights are protected in the event of contract cancellation.

Fatwa No. 53/2006 establishes *Tabarru'* as a non-commercial contract focused on collective risk-sharing and non-refundable contributions. Fatwa No. 81/2011 introduces flexibility by allowing partial refunds of funds for participants who terminate their contracts early, under certain conditions. This addition reflects practical adjustments to accommodate participant rights while still adhering to sharia principles. While the two fatwas focus on different aspects, they complement each other in balancing Shariah principles with the operational needs of islamic insurance. A comparative analysis of the two fatwas is presented in Table 1:

Table 1. Comparative Analysis of Fatwa No. 53/2006 and Fatwa No. 81/2011

Regulation Focus	Main Concept	Contract and Fund Management	Treatment of Participants	Objectives and Impacts
Fatwa DSN-MUI No. 53/2006	<i>Tabarru'</i> contract as a gift contract.	Emphasis on the <i>Tabarru'</i> contract as a grant for the purpose of mutual assistance.	Fund management based on the wakalah contract and the investment returns of <i>Tabarru'</i> funds are distributed to participants.	Participants are the parties providing grants to assist other participants.
Fatwa DSN-MUI No. 81/2011	Return of <i>Tabarru'</i> funds before the contract period ends.	Refunds can be made under certain conditions before the agreement expires.	Fund management and guidelines on refunding funds to participants who terminate contracts early.	Procedures for participants who terminate their contracts early, complementing Fatwa No. 53/2006.

Source: Data Processed by the author, (2024).

Fatwa No. 53/2006 on the *Tabarru'* contract provides a clear legal basis for the operations of Islamic insurance, ensuring that Islamic insurance companies operate in accordance with Islamic principles. The focus on charity and mutual assistance strengthens the image of the Islamic insurance industry as one dedicated to social solidarity. For participants, this fatwa clarifies that the funds they contribute in the form of *Tabarru'* are used collectively to assist fellow participants, without the orientation of personal profit. This fosters a sense of social responsibility among participants, as each contribution is aimed at helping others facing adversity. Furthermore, the provisions regarding the return of funds in Fatwa No. 81/2011 offer certainty to participants wishing to cancel their contract before the end of the agreement period, reducing uncertainty regarding their membership status and funds.³⁹

The legal implications for policyholders and Islamic insurance companies based on Fatwa No. 53/2006 and Fatwa No. 81/2011 focus on the collective and transparent management of *Tabarru'* funds. For policyholders, the fatwas emphasize that the contributions made to the *Tabarru'* fund are considered charitable donations, allocated for the collective benefit of all participants. Therefore, individual policyholders do not have the right to request a refund of these funds if they cancel their policy before the end of the agreement, unless otherwise agreed upon in the collective agreement. On the other hand,

³⁹ Siti Gina Imania, "Tinjauan Hukum Tentang Pengembalian Dana *Tabarru'* Pada Peserta Asuransi Syariah Perspektif Fatwa DSN-MUI No. 81 Tahun 2011 Dan Pasal 1688 Kuh Perdata" (Universitas Islam Negeri Syarif Hidayatullah, 2018), <http://repository.uinjkt.ac.id/dspace/handle/123456789/43258>.

Islamic insurance companies act as agents managing the *Tabarru'* fund, with the responsibility to keep this fund's records separate from other funds, maintain transparency, and be accountable for the investment returns, which belong collectively to the participants. Additionally, if a deficit occurs, the company is required to cover the shortfall through a *qardh* (loan), to be reimbursed from future surplus underwriting. These fatwas promote accountability and clarity in the management of *Tabarru'* funds, both for the policyholders and the company, ensuring compliance with the Islamic principles governing Islamic insurance.

Implications of the Research Findings on Policy, Company Operations, and Protection of Insurance Participants' Rights

The findings of this research indicate that the implementation of Fatwa No. 81/2011 offers significant flexibility in managing *Tabarru'* funds, which were previously governed more strictly by Fatwa No. 53/2006. One of the most notable implications of this change is its impact on the policies of Islamic insurance companies. Fatwa No. 81/2011 allows for the partial return of *Tabarru'* funds to participants who decide to terminate their contracts before the agreed period ends, a provision not permitted under Fatwa No. 53/2006. This new policy provides greater flexibility and security for participants, as they now have access to a portion of their contributed funds. As a result, Islamic insurance companies need to adjust their policies to accommodate this change, ensuring clear and transparent mechanisms for the return of *Tabarru'* funds. This shift also has the potential to improve participant retention, as they feel their rights are valued and that the company offers fairer protection.

The implementation of Fatwa No. 81/2011 necessitates adjustments in the financial and managerial systems of Islamic insurance companies. To manage *Tabarru'* funds transparently and fairly, companies must update their accounting systems and ensure efficient processes for calculating and managing the return of funds, including considering surplus underwriting that can be returned to participants. Furthermore, companies must be prepared to manage potential deficits by using mechanisms such as loans (*qardh*) or special reserves to cover shortfalls. This necessitates enhanced financial and risk management capabilities. Another significant impact of Fatwa No. 81/2011 is the increased protection of participants' rights. By allowing the partial return of *Tabarru'* funds to participants who exit their contracts early, the fatwa provides greater financial security. Previously, the provisions in Fatwa No. 53/2006, which did not allow for the return of *Tabarru'* funds, created uncertainty for participants. With the new guidelines, participants feel more valued and protected, which, in turn, increases their trust in the Islamic insurance system.

Therefore, the implementation of Fatwa No. 81/2011 not only affects company policies and operations but also strengthens the relationship between the company and insurance participants. To ensure proper implementation, companies must strengthen their internal monitoring mechanisms and collaborate with regulators to ensure that the management of *Tabarru'* funds is transparent and compliant with Islamic principles. Thus,

the application of Fatwa No. 81/2011 not only enhances participant trust but also contributes to the sustainability and stability of the Islamic insurance industry.⁴⁰

The Relationship Between Fatwa DSN-MUI No. 53/2006, No. 81/2011, POJK No. 69/POJK.05/2016, and Law No. 8 of 1999 on Consumer Protection

In addition to Fatwa No. 53/2006 and No. 81/2011, there are broader regulations such as Financial Services Authority Regulation (POJK) No. 69/POJK.05/2016 regarding the Implementation of Islamic Insurance Business, which provides a comprehensive legal framework. This POJK regulates the principles of transparency and accountability in the management of funds, including *Tabarru'* funds, which align with the principles outlined in the fatwas. However, while the fatwas primarily emphasize the Shariah legal foundation and the principles of the hibah contract, POJK focuses more on the technical and operational aspects. These include the management of underwriting surpluses and financial reporting requirements. It complements the DSN-MUI fatwas, which focus on the Shariah legal foundation and the principles of the *hibah* contract. POJK regulates the operational and managerial aspects of Islamic insurance companies, focusing on compliance with Shariah principles in every product offered, including the management of *Tabarru'* funds.⁴¹

In this context, Fatwa No. 53/2006, which asserts that *Tabarru'* funds are non-refundable, is in line with the provisions of POJK, which require Islamic insurance companies to maintain compliance with Shariah principles in the products offered, including the management of participant funds. However, with the introduction of Fatwa No. 81/2011, which allows flexibility regarding the partial refund of funds for participants who terminate their contracts early, there is alignment with the spirit of POJK, which introduces room for adjustments to Islamic insurance products based on Shariah principles, market needs, and industry dynamics. Consequently, Fatwa No. 81/2011 not only addresses the practical needs of insurance participants but also strengthens regulatory frameworks by enhancing consumer protection, ensuring transparency in fund management, and improving risk management in line with applicable laws. This creates alignment between Shariah principles, national regulations, and the evolving market needs.

In addition, the implementation of the principles of *ta'awun* and *Tabarru'* in Fatwa No. 53/2006 and No. 81/2011 is also in line with the provisions in broader legislation related to consumer protection, such as Law No. 8 of 1999 on Consumer Protection. The flexibility introduced in Fatwa No. 81/2011 regarding the partial refund of *Tabarru'* funds for participants who terminate their contracts early is a response to the dynamic needs of the market, which not only emphasizes compliance with Shariah principles but also considers the practical aspects faced by insurance participants.

The flexibility outlined in Fatwa No. 81/2011 regarding the partial refund of *Tabarru'* funds for participants who terminate their contracts early reflects a response to the dynamic

⁴⁰ Fadilah and Makhrus, "Pengelolaan Dana Tabarru' Tabarru' Pada Asuransi Syariah Dan Relasinya Dengan Fatwa Dewan Syariah Nasional."

⁴¹ Financial Services Authority Regulation (POJK) No. 69/POJK.05/2016 on the Business Operations of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies.

market needs and the more adaptive development of the Islamic insurance industry. This is also in line with the spirit of the Consumer Protection Law, which aims to ensure that insurance participants are not disadvantaged in situations where they choose to terminate their contracts prematurely. By allowing room for the refund of funds, Fatwa No. 81/2011 not only considers compliance with Shariah principles but also addresses the practical needs of participants who may face changing circumstances.

Law No. 8 of 1999 on Consumer Protection serves as a general foundation to ensure consumer rights, including in Islamic insurance services. The principles regulated, such as the right to clear and honest information (Article 4), the obligation of business actors to provide compensation for consumer losses (Article 7), and dispute resolution mechanisms (Articles 45-46), are relevant in the context of managing participant funds in Islamic insurance.⁴² This provision aligns with Fatwa No. 53/2006 and No. 81/2011, which establish Shariah principles in the management of *Tabarru'* funds, as well as the flexibility for the partial refund of funds for participants who terminate their contracts early. Furthermore, POJK No. 69/POJK.05/2016 strengthens operational technical regulations, such as transparency in fund management and financial reporting, which support consumer protection in accordance with Shariah principles. This collaboration creates a comprehensive legal framework, ensuring that the rights of insurance participants are protected while maintaining Shariah compliance, thereby building public trust in the Islamic insurance industry.

Moreover, the provisions in POJK No. 69/POJK.05/2016 provide guidelines for the management of Islamic insurance businesses, including risk management and operational transparency within insurance companies. In this regard, the POJK supports transparent and fair management of *Tabarru'* funds, in line with the principles of *ta'awun* and *Tabarru'* outlined in both fatwas. The POJK also encourages Islamic insurance companies to maintain a balance between Shariah compliance and operational needs, ensuring that Islamic insurance products remain relevant and acceptable to the public.

Table 2. Relationship with POJK No. 69/POJK.05/2016 and Law No. 8 of 1999 on Consumer Protection

Aspect	Fatwa DSN-MUI No. 53/2006	Fatwa DSN-MUI No. 81/2011	POJK No. 69/POJK.05/2016	Law No. 8 of 1999
Management of <i>Tabarru'</i>	Emphasizes that <i>Tabarru'</i> funds cannot be refunded.	Regulates flexibility for partial refund of <i>Tabarru'</i> funds for participants who terminate	Regulates transparency and accountability in fund management, including <i>Tabarru'</i> funds, in line with	Article 4: Consumer's right to accurate, clear, and honest information.

⁴² Law No. 8 of 1999 on Consumer Protection.

		contracts early.	Shariah principles.		
Shariah Principles	Focus on the principles of ta'awun and <i>Tabarru'</i> , which underlie fund management.	Introduces flexibility in the refund of <i>Tabarru'</i> funds while maintaining Shariah principles.	Emphasizes compliance with Shariah principles in every Islamic insurance product offered, including <i>Tabarru'</i> fund management.	Article 7: Obligation of businesses to provide accurate information.	
Compliance with Regulations	No specific provisions on financial reporting in this Fatwa.	Provides provisions on the management of underwriting surpluses and deficits not covered in Fatwa No. 53/2006.	Regulates the obligation of islamic insurance companies to provide transparent and accountable financial reports, ensuring Shariah compliance.	Articles 4 and 7: Consumer rights to compensation and fairness in trans	
Consumer Protection	Emphasizes that <i>Tabarru'</i> funds are not the participant's right to be refunded, thus no direct consumer protection provisions.	Provides room for the refund of partial funds, offering protection to participants who terminate contracts early.	Ensures transparency and fair management, supporting consumer rights protection.	Articles 45-46: Dispute resolution through courts or out-of-court mech	
Market Adaptation	No room for adjustment regarding <i>Tabarru'</i> fund refunds.	Provides flexibility regarding the refund of partial funds according to market dynamics and participants' needs.	Provides guidelines for adjusting islamic insurance products to meet the dynamic market needs.	Article 4: Right to comfort, security, and safety.	

Source: Data Processed by the author, (2024).

The synergy among Fatwas DSN-MUI, POJK, and the Consumer Protection Law establishes a legal framework that fosters the life insurance industry from both Shariah and consumer protection vantages, as demonstrated in Table 2. Fatwa No. 53/2006 establishes the principle of *hibah* in the *Tabarru'* fund, while Fatwa No. 81/2011 offers flexibility for the partial refund of funds for participants who terminate their contracts early, adjusting to market needs. POJK No. 69/POJK.05/2016 supports transparency, risk management, and accountability in the operations of Islamic insurance, in line with Law No. 8 of 1999 on Consumer Protection, which affirms consumer rights to clear, accurate, and honest information, as well as fair treatment in transactions. Although the regulations and fatwas complement each other, challenges remain in terms of information transparency, oversight by OJK, dispute resolution mechanisms, and public education. Therefore, insurance companies need to improve operational practices and information transparency to build trust and ensure the sustainability of the life insurance industry in Indonesia.

Prior to the issuance of these regulations, Law No. 40 of 2014 on Insurance provided a comprehensive legal foundation for the insurance industry in Indonesia. However, this law primarily focused on general principles governing the insurance industry as a whole, including provisions on prudence, supervision, and consumer protection. In this context, regulations such as DSN-MUI Fatwa No. 53/2006 and No. 81/2011, POJK No. 69/POJK.05/2016, and the Consumer Protection Law serve as complementary regulations. They elaborate on the application of Shariah principles in insurance, particularly concerning the management of *Tabarru'* funds and the refund of funds to participants who terminate their contracts early.⁴³

To further understand how these regulations and fatwas contribute to the management of *Tabarru'* funds, it is essential to consider the relevance of prior studies as a foundation for deeper analysis. This study builds upon previous research on *Tabarru'* fund management in Islamic insurance, including those conducted by Milna Rohmawati and Nurjanah, Rahmi Syahriza, and Purnama Ramadani Silalahi. These studies have highlighted the principles of *Tabarru'* contracts and the implications of fund refunds for participants who terminate their policies prematurely. However, this research adds a new dimension by delving deeper into the implications of Fatwa No. 53/2006 and No. 81/2011 within the context of Islamic law and their application in Indonesia's Islamic insurance industry.

The findings reveal that Fatwa No. 81/2011 not only introduces flexibility but also establishes clearer legal certainty regarding the refund of *Tabarru'* funds—an aspect that previous studies have not comprehensively addressed. Moreover, this study offers significant novelty. The primary contribution lies in its in-depth analysis of the regulatory changes introduced by Fatwa No. 81/2011, particularly its provisions for partial refunds of *Tabarru'* funds. This study demonstrates that the arrangements within Fatwa No. 81/2011 reflect an effort to balance Shariah principles with the operational needs of the insurance industry. Additionally, the findings indicate that the flexibility in *Tabarru'* fund management

⁴³ Wetria Fauzi, "Arrangement Investment-Based Insurance with Sharia Principles Post Enactment Law of Number 40 Year 2014 Concerning Insurance," *Ahkam: Jurnal Ilmu Syariah* 18, no. 2 (2018), <https://doi.org/10.15408/ajis.v18i2.6852>.

outlined in the fatwa enhances participants' trust in Islamic insurance while providing a stronger legal basis for insurance companies to handle policy terminations fairly and transparently.

CONCLUSION

This study highlights how Fatwa No. 53/2006 and No. 81/2011 complement each other in regulating the management of *Tabarru'* funds in Indonesia's Islamic insurance industry. Fatwa No. 53/2006 reinforces the principle of *Tabarru'* as a non-refundable donation, reflecting the values of mutual assistance and solidarity inherent in Islamic insurance. In contrast, Fatwa No. 81/2011 introduces flexibility by allowing partial refunds of *Tabarru'* funds for participants who terminate their contracts early, provided this condition is stipulated in the initial agreement.

This study underscores the importance of transparency and accountability in managing *Tabarru'* funds, including maintaining separate financial records, managing underwriting surpluses, and implementing *qardh* mechanisms to address deficits. The flexibility in refunding *Tabarru'* funds enhances participant trust and supports the sustainable growth of the Islamic insurance industry. The integration of the donation principle with operational adaptability serves as a critical foundation for the development of a more equitable and inclusive Islamic insurance system.

However, this study has certain limitations. Its normative juridical approach does not examine empirical practices in the field, nor does it explore the economic impacts or participant satisfaction regarding partial refunds. Additionally, its focus on regulatory and practical contexts in Indonesia limits its global applicability. Future research is recommended to conduct empirical studies on the management of *Tabarru'* funds across various Islamic insurance companies by engaging industry practitioners, regulators, and participants. Further exploration of economic dimensions, such as fund allocation efficiency and its impact on company profitability, is also advised. Comparative studies with practices in other countries could help identify best practices for adoption in Indonesia. A multidisciplinary approach is encouraged to support the inclusive and sustainable development of the Islamic insurance industry.

CONFLICT OF INTEREST

The authors declare no conflict of interest.

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