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Application *Tabarru'* and *Tijarah* Contract on *Sharia* Insurance

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Abstract

In insurance has a contract that has been determined by sharia and has been written in the DSN-MUI namely there are tabarru and tijarah. See the contract offered by sharia insurance then this research aims to analyze how the application tabarru and tijarah authorizes in sharia insurance. The method used in this study is qualitative. The result of this study is wherein the tabarru have a purpose please help between insurance participants and tijarah authorizes have a commercial purpose, where the participant as a mall and company shohibul as a fundraiser. In this case, the tijarah authorizes can be turned into a tabarru contract when the party is willing to release its right to be transferred to tabarru fund. But instead, the tabarru can not turn into a tijarah.

Keywords: *Tabarru, Tijarah, Application, Contract, Sharia Insurance.*

Introduction

In Indonesia, the development of *sharia* finance industry developed so rapidly. This is evidenced by the increase of three industry sectors, one of which is the financial industry of non-bank *sharia* which in two decades was reached in 2014 namely the increase in asset value reaches Rp 43,65 trillion with a market share reaches 10%. Coupled with the development of the number of non-bank financial institutions reach 48 insurance institutions *sharia*

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and 48 *sharia* financing companies.³ Thus, it can be concluded that the *sharia* finance industry has the potential to continue to increase.

Seeing the community needs of money, *sharia* insurance is the right service to help people from various risks that will occur. Because not all human beings have a high level of income to fulfill the needs needed at any time. Seeing this *sharia* insurance is present with the concept of coverage and guarantee.⁴

In insurance has a contract that has been determined by *sharia* and has been written in the DSN-MUI namely there are *tabarru'* and *tijarah* contracts. See the contract offered by *sharia* insurance then this research aims to analyze how the application *tabarru'* and *tijarah* contract authorizes in *sharia* insurance.

Sharia Insurance

³ *Sharia* insurance was first born in 1994, namely PT. Asuransi Takaful Indonesia (STI) on 24 February 1994. After that it was born a subsidiary of STI namely PT. Asuransi Takaful Family (ATK) on 4 August 1994 and also PT. General Takaful Insurance (ATU) on June 2, 1995.⁵ See the development of *sharia* insurance that promises to be a motive for the development of *sharia* insurance.

Sharia insurance institutions are a financial institution that is needed by the community. As an institution that in the operational implementing *sharia* values, it is reasonably appropriate that *sharia* finance institutions use the *akad* that is contained in Islamic law and report it to the financial concept of *sharia* insurance.⁶ Agus Marimin quoted H. A. Dzajuli and Yadi Jazwari that the *sharia* insurance has the principle, *tauhid*, justice, each other, cooperation, trust, willingness, the ban on *riba*, the prohibition of *maisir*, ban *gharar*.

M. Arif Hakim reveals general ⁶ guidelines of *sharia* insurance according to the *sharia* board (DSN) No. 21/DSN-MUI/X/2001 that *sharia* insurance is a mutually protected business and please help among several people or parties through inventory in the form of

³Wiwik Habsiyah AN, "Aplikasi Akad Tabarru' dalam Lembaga Keuangan Syari'ah," *Jurnal Ilmiah Akuntansi*, Vol. 3 No. 1, 2015, 547-548.

⁴Farida Fathony Ashal, "Kedudukan Akad Tijarah dan Akad Tabarru' dalam Asuransi Syari'ah," *Jurnal Human Falah*, Vol. 3 No. 2, 2016, 238.

⁵M. Arif Hakim, "Analisis Aplikasi Akad Tabarru' dalam Asuransi Syari'ah: Studi Kasus pada AJB Bumiputra 1912 Syari'ah Cabang Kudus," *Jurnal Muqtasid*, Vol. 3 No. 2, 2012, 233.

⁶Wiwik Habsiyah AN, "Aplikasi Akad Tabarru' dalam Lembaga Keuangan Syari'ah," ..., 548.

11 assets or *tabarru'* which provides a pattern of return to face certain risks through the appropriate contract of *sharia*.⁷

In *sharia* insurance has an operational system that distinguishes its accounts into two.⁸ First, the *tijarah* authorized account is the savings account of the participants invested as the participant's savings fund and must be returned and handed over to the participant. Second, *tabarru'* account is a collection of welfare funds from the participants as dues to help and mutual help, which will be given to other participants when participants died and the agreement has expired (if there are surplus funds).

Sharia insurance itself has a purpose of minimizing the unexpected risk that will be experienced by each individual, where such risk is not predictable.⁹ That is why Islam teaches its people to keep trying to minimize the various risks that will occur.

The principle in *sharia* insurance which is based on Islamic law is *tauhid*, it must be fair, the prohibition of doing in the case of wrongdoing, *at-ta'awun*, *al-amanah*, *al-rida*. Prohibition of doing *risywah* (bribery), *al-maslahah*, *al-khidmah* (service), the prohibition of cheating, avoiding *gharar*, *maisir*, and *riba*.¹⁰

According to Nurul Ichsan Hasan in his book "Introduction to *Sharia Insurance*" said that in Islam Insurance has a system that is a *takaful* concept that means a treaty among several persons who bind the agreement to each other and bear each other. An overview is given by the *takaful* concept based on the combination of responsibility and fraternity relationships.¹¹

17 According to Wahbah az-Zuhaili, divide the insurance into two *al-ta'min al-ta'awuni* and *al-ta'min bi qist sabit*. *Al-ta'min al-ta'awuni* or insurance please help is a deal of several people to pay a certain amount of money in damages when one of them gets a disaster. *Al-ta'min bi qist sabit* crescent or insurance with a fixed division i.e. the

⁷M. Arif Hakim, "Analisis Aplikasi Akad *Tabarru'* dalam Asuransi *Syari'ah*: Studi Kasus pada AJB Bumiputra 1912 *Syari'ah* Cabang Kudus," ..., 234.

⁸Farida Fathony Ashal, "Kedudukan Akad *Tijarah* dan Akad *Tabarru'* dalam Asuransi *Syari'ah*," ..., 249.

⁹Fachrul Fuadi and Ahmad Badi', "Analisis Akad *Tabarru'* Perspektif Dewan *Syari'ah* Nasional Majelis Ulama Indonesia (DSN-MUI) di Asuransi Jiwa Bersama Bumiputra *Syari'ah* Kediri," *Institusi Agama Islam Tribakti Kediri*, Vol. 29 No. 2, 2018, 353.

¹⁰Uswatun Hasanah, "Asuransi dalam Perspektif Hukum Islam," *Jurnal Ilmu *Syari'ah* dan Hukum*, Vol. 13 No. 1, 2013, 249-255.

¹¹Nurul Ichsan Hasan, *Pengantar Asuransi *Syari'ah** (Jakarta: Gaung Prasada Press Group, 2014), 22.

contract which requires a person to pay some money to the insurer by appointment if the insurance participant gets an accident, he is given damages.¹²

Wahbah az-Zuhaili said in *sharia* insurance should be spared from a disability which will cause loss and injustice. Among the defects of the will is a compulsion, fault, and fraud.¹³ In Islam disability will be called by *'uyub al-iradah* or *'uyub al-rida*. That is anything that inflicts damage in its implementation. And the form of defects of this will is *tadlis* or *tagrir*.¹⁴

Maqasid al-sharia has a purpose to achieve that is the benefit, to protect the five aspects of the *sharia*, namely religion, soul, reason, descent, and property. These five aspects can be protected with protection from insurance. *First*, insurance coverage in the aspect of religion is the protection of *hajj* participants in the implementation, this insurance is called *hajj* rituals but not yet introduced by the insurance company.¹⁵ *Second*, protection in the welfare of the soul both in the form of accidents and others. *Third*, protection in the benefits of reason such as insurance fund scholarship. *Fourth*, protection in heredity such as education fund insurance. *Fifth*, protection in the benefit of such property, fire insurance to bear the losses incurred.¹⁶

The main character of *sharia* insurance is please help. The absence of this element or the sole insurance only pursues business profits proves that the insurance has lost its put many a character that should have to be owned and will get a pinata frozen operational. Thus, in insurance *sharia* is very stressed on the concept of each other and not solely to scoop the maximum profit.

Tabarru' Contract

The legal basis of *tabarru'* contract from the Qur'an is in surah al-Maidah verse 2:

¹⁰ Abdul Aziz Dahlan, et. al., *Ensiklopedia Hukum Islam* (Jakarta: Ichtiar Baru Van Hoeve, 2000), 138.

¹² *حجة الزحيلي، الفقه الإسلامي وأدلته، (بيروت: دار الفكر، ٩٨٩١)، ٢١٢.*

¹³ *وهبة الزحيلي، الفقه الإسلامي وأدلته، (بيروت: دار الفكر، ٩٠٤١)، ٦٣٣-٤٨٣.*

¹⁵ Agus Marimin, "Maqasid Kajian Asuransi Syari'ah," *Jurnal Education and Economics*, 265.

¹⁶ *Ibid*, 267-268.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحِلُّوا شَعَائِرَ اللَّهِ وَلَا الشَّهْرَ الْحَرَامَ وَلَا الْهَدْيَ وَلَا الْقَلَائِدَ وَلَا آمِينَ الْبَيْتِ الْحَرَامِ يَبْتَغُونَ فَضْلًا مِنْ رَبِّهِمْ وَرِضْوَانًا وَإِذَا حَلَلْتُمْ فَاصْطَادُوا وَلَا يَجْرِمَنَّكُمْ شَنَا نُ قَوْمٍ أَنْ صَدُّوكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ أَنْ تَعْتَدُوا وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ﴿٥﴾

“O who believe! Profane not Allah’s monuments nor the sacred month nor the offerings nor the garlands, nor those repairing to the sacred house, seeking the grace and pleasure of their lord. But when ye have left the sacred territory, then go hunting (if ye will). And let not your hatred of a folk who (once) stopped your going to the inviolable place of worship seduce you to transgress; but help ye one another unto righteousness and pious duty. Help not one another unto sin and transgression, but keep your duty to Allah. O! Allah is severe in punishment.”

And surah an-Nisa’ verse 26:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٩﴾

“Allah would explain to you and guide you by the examples of those who were before you and would turn to you in mercy. Allah is Knower, Wise.”

Novi Puspitasari explained in his writing of *Sula* about *tabarru’* definition derived from the word *tabarra’-yatabar’u-tabarru’an* meaning donations, the grant of policy funds or donations. According to the Jumhur Ulama, *tabarru’* is an agreement that resulted in the possession of possessions made by someone in a state of life to others voluntarily.¹⁹

Tabarru’ contract is an agreement where the essence is the goodness done by Allah SWT and not looking for commercial gain.²⁰ The *tabarru’* agreement has the consequences of not being allowed

¹⁷Q.S. Al-Maidah: 2

¹⁸Q.S. An-Nisa’: 26

¹⁹Novi Puspitasari, “Model Proporsi *Tabarru’* dan Ujrah pada Bisnis Asuransi Umum Syariah di Indonesia,” *Jurnal Akutansi dan Keuangan Indonesia*, Vol. 9 No. 1, 2012, 46.

²⁰Wiwik Habsiyah AN, “Aplikasi Akad *Tabarru’* dalam Lembaga Keuangan Syariah,” ..., 548.

to replace the costs incurred and should not take advantage of the *tabarru'* contract.

According to a DSN MUI definition *tabarru'* contract in *sharia* insurance in *Fatwa* number 53/DSN-MUI/III/2006 are all forms of *akad* conducted in the form of grants with the purpose of virtue please help among participants not for commercial purposes.²¹ And in a broader sense, the *tabarru'* is unconditionally good goodness.

Tabarru' contract has the basis of giving something (giving something) or lending something (leading something) and the form of contract agreement is non-profit so it is permissible for business or commercial purposes but the goal must be please help in order of kindness. On the other hand, some say that *tabarru'* contract is a contractual agreement that is social and commercial to benefit in the absence of the party harmed.²²

M. Arif Hakim quoted Sudarsono that there are ten basic principles in *sharia* insurance, namely *tauhid*, justice, each other, cooperation, trust, willingness, the prohibition of *riba*, prohibition of *maisir* (gambling), the prohibition of uncertainty (*gharar*), and prohibition of *haram* and immoral, and the conditions of *sharia* insurance must be based on Islamic *sharia*.²³

Tijarah Contract

Tijarah authorizes is a commercial-purpose contract.²⁴ The funds raised from the participants must be well managed by the company following *sharia* Islam. In this case, the company serves as a complainant, not as the owner of the fund. As for some positions in the *tijarah* authorizes, the company acts as *mudharib* and participants act as policyholders. While in the *tabarru'* agreement participants give grants that will be used to each other help among participants affected by the disaster and the company acts as a grant-making

²¹Novi Puspitasari, "Determinan Proporsi Dana *Tabarru'* pada Lembaga Keuangan Asuransi Umum *Syari'ah*," *Jurnal Akutansi dan Keuangan Indonesia*, Vol. 13 No. 2, 2016, 163.

²²Wiwik Habsiyah AN, "Aplikasi Akad *Tabaru'* dalam Lembaga Keuangan *Syari'ah*," ..., 548.

²³M. Arif Hakim, "Analisis Aplikasi Akad *Tabarru'* dalam Asuransi *Syari'ah*: Studi Kasus pada AJB Bumiputra 1912 *Syari'ah* Cabang Kudus," ..., 239.

²⁴Fachrul Fuadi dan Ahmad Badi', "Analisis Akad *Tabarru'* Perspektif Dewan *Syari'ah* Nasional Majelis Ulama Indonesia (DSN-MUI) di Asuransi Jiwa Bersama Bumiputra *Syari'ah* Kediri," ..., 847.

fund.²⁵ So, according to the author because *tijarah* contract authorizes has a commercial purpose, this contract is not allowed.

In the *tijarah* contract authorizes funds will be invested. The contract is being practiced in insurance where the invested funds are mostly contained *riba*, where the funds invested in the company (capital market) containing *riba*, lend the money accompanied by *riba* if the premium payment is delayed then fined money.²⁶ Thus, the author concluded that the insurance of *tijarah* authorizes is not allowed because it is likely to contain *riba* caused by investment funds if such insurance has lost its main characteristics of each other and free usury.

Application of *Tabarru'* and *Tijarah* Contract in Sharia Insurance

In the application of the wealth and obligations of *tabarru'* fund separated from the company's wealth and obligations of funds. This is as stated in the Financial Minister Regulation No. 18/PMK.010/2010 which uses a separation system of funds in financial management.²⁷ The separation of funds is to be paid to the fund *tabarru'* and corporate funds are not mixed because *tabarru'* contract in *sharia* insurance has the concept please help the participants of the insurance taken from *tabarru'* fund.

Application of *sharia* insurance in Indonesia are still following general or conventional insurance regulations. Regulations in the new *sharia* insurance confirmed in 2000 on the decree of the Director-General of the financial institution No. Kep. 4499/LK/2000 about valuation, type, limitation of the investment insurance company and reinsurance company with *sharia* system.²⁸ As for the legislation governing the permit and the enforcement of insurance business that is Law No. 2 of 1992 on the insured business, government regulation No. 73 the year 1992 on the implementation of insurance business and others.²⁹

Activities please help that is the purpose of the *tabarru'* contract is done by collecting some funds from the *tabarru'* agreement and the

²⁵Yovenska L. Man, "Aktualisasi Asuransi Syari'ah di Era Modern," *Jurnal Mizani: Wacana Hukum, Ekonomi dan Keagamaan*, Vol. 4 No. 1, 2017, 82.

²⁶Husain Hamid Hisan, *Asuransi dalam Hukum Islam*, Terj. Aisyul Muzakki Ishak (Jakarta: CV. Firdaus, 1996), 3-9.

²⁷Novi Puspitasari, "Determinants Proporsi Dana Tabarru' pada Lembaga Keuangan Asuransi Umum Syari'ah," ..., 160.

²⁸Firdaus Djaelani, *Market Share, Perkembangan dan Peraturan yang Berlaku pada Asuransi Syari'ah* (Jakarta: t.p., 2002), 9.

²⁹*Ibid*, 11.

grant funds are given to the insurance of *sharia* in the form of payment contribution (premium). The *tabarru'* fund will be recorded as a group of participant funds and should only be used for participant activities.³⁰ Thus, *tabarru'* funds should not be used in addition to the interests of the participants.

Novi Puspitasari said in his writings that, in the processing of *tabarru'* funds should follow the rules that have been set in the DSN MUI ie: *First*, bookkeeping in the fund *tabarru'* must be separated from other funds. *Secondly*, the investment proceeds from the *tabarru'* fund become the collective right of the participant and are posted in the *tabarru'* account. *Thirdly*, from the investment proceeds, the insurance company can obtain the share of the results based on *mudharabah* or *mutanaqisah mudharabah* or obtaining *ujrah* (fee) based on the *wakalah bil ujah*.³¹

In the application of *tabarru'* contract in *sharia* insurance have a risk as asserted by Novia which quotes Sumanto et al that the insurance activity of *sharia* with *tabarru'* is possible "uncertainty" by example if someone customer who first paid the premium, then got the accident so that the customer received the result of the results of the insurance. While the customers who have paid the premium many times, but do not have benefits because it never got a disaster. And finally, change the agreement with the sale and purchase contract (*tabaduli*) thus make the *tabarru'* contract defective or void legally.³²

As for the fatwa DSN MUI about the *tabarru'* contract on *sharia* insurance as follows:³³

A. Legal Provisions

1. *Tabarru'* is a contract that must be attached to all insurance products.
2. *Tabarru'* on insurance is all form of contract that is performed between the participants of the policyholders.
3. *Sharia* insurance referred to in point 1 is life insurance, loss insurance, and reinsurance.

³⁰*Ibid*, 161-162.

³¹Novi Puspitasari, "Model Proporsi *Tabarru'* dan *Ujah* pada Bisnis Asuransi Umum *Syari'ah* di Indonesia," ..., 46.

³²*Ibid*, 47-19

³³Fatwa Dewan *Syari'ah* Nasional No: 53/DSN-MUI/III/2006.

B. The Provisions of The Agreement

1. *Tabarru'* on insurance is a contract of grants with the purpose of virtue and please help among participants, not for commercial purposes.
2. In *tabarru'* contract, it should be mentioned at least:
 - a. The rights and obligations of each participant individually;
 - b. The rights and obligations between participants individually in the *tabarru'* account as a participant in the meaning of the body/group;
 - c. Payment method and timing of premiums and claims;
 - d. Other agreed terms, by the type of insurance that is being declared.

C. The Position of The Parties in The *Tabarru'* Contract

1. In *tabarru'* agreement (grants), participants gave funds and grants to be used to help participants or other participants who were affected by the disaster.
2. The individual participant is entitled to receive *tabarru'* funds and collectively as the insurer.
3. The insurance company acts as a grant fund manager, based on the contract of participants other than investment expenditures.

D. Management

1. Management of *sharia* insurance and reinsurers can only be done by an institution that serves as a trustee.
2. *Tabarru'* fund bookkeeping is the collective right of participants and posted in *tabarru'* accounts.
3. From the investment, the insurance company and the *sharia* reinsurer can obtain the result of the results based on the *mudharabah* or *mudharabah musyarakah*, or obtaining a *ujrah* (fee) based on the *wakalah bil ujah*.

E. Surplus Underwriting

1. If there is a surplus underwriting for *tabarru'* funds, then it can be done some alternatives as follows:
 - a. Fully treated as a reserve fund in *tabarru'* accounts.
 - b. Partially stored as reserve funds and partially distributed

- to participants who meet the actuarial/risk management requirements.
- c. Partially stored as a reserve fund and can be shared with some other insurance companies and participants as long as agreed by the participants.
 2. The choice of any of the above alternatives must be approved in advance by the participants and outlined in the contract.
 3. Deficit Underwriting
 1. In the case of underwriting the deficit of *tabarru'* (*tabarru'* deficit), the company must cope with the deficiency in the form of *qard* (loan).
 2. The refund of *qard* to the insurance company is given from the *tabarru'* fund.
 4. The Closing Provisions
 1. If either party does not fulfill the obligation or if there is a dispute between the parties, then the settlement is done through the Sharia Arbitration Board after the agreement is not reached through deliberation.
 2. The *fatwa* is valid from the date of the stipulation, with the provision if later it turns out that there is a mistake, will be changed and perfected accordingly.

Tabarru' and *tijarah* authorize in *sharia* insurance have been described and defined so clearly. And each of the *sharia* insurance institutions must follow the provisions that have been stated in the DSN-MUI. So with the research done by Fachrul Fuadi and Ahmad Badi who researched the insurance syaria AJB Bumiputra Syariah Kediri. In the research done mentioning how the *tabarru'* contract is applied in real form, the funds collected with the *tabarru'* contract are used to help insurance participants and not used it to the public. This is stated in the claim submission requirement. Participants *tabarru'* pay a premium that has been agreed when the contract, after which the premiums will be put into *tabarru'* funds and from that premium will be used to pay as well as help any claim that the peseta is proposed insurance. Participants who give *tabarru'* funds also get the right to receive *tabarru'* funds. As explained by *tabarru'* fund can not be taken back, then the Bumiputra AJB to settle *tabarru'* funds to the heirs of participants who pay *tabarru'* funds.³⁴ This application is

³⁴Fachrul Fuadi dan Ahmad Badi', "Analisis Akad *Tabarru'* Perspektif Dewan *Syari'ah*

tabarru' conducted by one of the *sharia* insurance institutions.

Tabarru' done in *sharia* insurance is used for insurance participants with other participants. With *tabarru'* funds collected from the *tabarru'* contract, all funds collected are used to bear the risk that will occur or that will be faced by the participants of the insurance.³⁵ Thus, in this *tabarru'* agreement, it is the participant of the insurance as a party to share risk.

Regarding the contract of law in the *sharia* insurance where the funds will be invested as the savings funds of the participants will be refunded and handed over to the participants.³⁶ Funds from the *tijarah* authorizes must be returned to the participant and funds from the *tabarru'* is the opposite, because the fund *tabarru'* will be given when there are claims from the participants. And both funds will be managed by the company with the aim that the funds can increase and can add benefits to the participants and the company. In sharing the results will use the concept of *mudharabah*.³⁷

Tijarah authorizes is a contract between the insurance participant and the company. This *tijarah* authorizes contains a *mudharabah* principle, unlike the *tabarru'* contract which has a grant principle. With this *mudharabah* same concept bear, where the company invested the funds in the form of *musyarakah*, *murabahah*, and *wadi'ah*.³⁸ In this case, the *tijarah* authorizes can be turned into a *tabarru'* contract when the party is willing to release its right to be transferred to *tabarru'* fund. But instead, the *tabarru'* can not turn into an *tijarah* authorizes.³⁹

Conclusion

The conclusion that can be taken from this research that in the application of the agreement used in *sharia* insurance there are two namely *tabarru'* and *tijarah*. Where in the *tabarru'* has a purpose please help between insurance participants and *tijarah* authorizes have a commercial purpose, where the participant as a mall and

Nasional Majelis Ulama Indonesia (DSN-MUI) di Asuransi Jiwa Bersama Bumiputra Syari'ah Kediri," ..., 356-359.

³⁵Yovenska L. Man, *Aktualisasi Asuransi Syari'ah di Era Modern*, ..., 81.

³⁶Farida Fathony Ashal, "Kedudukan Akad *Tijarah* dan Akad *Tabarru'* dalam Asuransi Syari'ah," ..., 249.

³⁷*Ibid*, 250.

³⁸Yovenska L. Man, *Aktualisasi Asuransi Syari'ah di Era Modern*, ..., 81.

³⁹*Ibid*, 82.

company as a fundraiser. In this case, the *tijarah* authorizes can be turned into a *tabarru'* contract when the party is willing to release its right to be transferred to *tabarru'* fund. But instead, the *tabarru'* can not turn into an *tijarah*. *Tijarah* authorizes is a contract between an insurance participant and a company. In this agreement, it contains the *mudharabah* principle. With this *mudharabah* same concept bear, where the company invested the funds in the form of *musyarakah*, *murabahah*, and *wadi'ah*.

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