

Challenges in Implementing Sharia Principles in Mudharabah and Musyarakah Contracts in the Sharia Life Insurance Industry

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Abstract

This article examines the challenges of implementing sharia principles in mudharabah and musyarakah contracts within Indonesia's sharia life insurance industry. The study is grounded in the contemporary regulatory architecture of Indonesian insurance law, including the Otoritas Jasa Keuangan regulation on the organization of insurance and sharia insurance business and the DSN-MUI fatwa on mudharabah musyarakah in sharia insurance, both of which recognize investment-based contracts as legitimate contractual structures in sharia insurance operations. Using a qualitative research design, this article applies a normative-empirical approach through document analysis of regulations, fatwas, and sectoral policy documents to identify doctrinal, institutional, operational, and governance-based constraints. The findings show that the principal challenges arise from contract hybridity, ambiguity in profit-sharing formulation, asymmetry of information between operators and participants, limitations in sharia-compliant investment management, weaknesses in product governance, and tensions between prudential regulation and substantive sharia compliance. The analysis further demonstrates that the implementation gap does not primarily stem from the absence of legal basis, but from the complexity of translating regulatory permission into transparent, fair, and accountable business practices. Strengthening standardization, disclosure, supervisory integration, and sharia governance is therefore essential for enhancing legal certainty and public trust in sharia life insurance products in Indonesia.

Keywords: sharia, mudharabah, life, musyarakah

INTRODUCTION

Indonesia has developed one of the most important institutional ecosystems for Islamic finance in Southeast Asia, and the sharia insurance sector has become a strategic part of that ecosystem due to its role in risk management, family financial planning, and long-term investment allocation. In the context of sharia life insurance, contractual design is not merely a technical legal instrument but the foundation through which the industry seeks to distinguish itself from conventional insurance by embedding the principles of mutual help, fairness, trust, and the avoidance of *riba*, *gharar*, and *maysir*. These objectives require the contractual relationship between the company and participants to be framed in a manner that is both commercially workable and normatively compliant with Islamic legal doctrine (Faozan, 2021).

Among the most important contracts in sharia life insurance are mudharabah and musyarakah-based arrangements, especially in their combined form of mudharabah musyarakah as expressly recognized by the DSN-MUI fatwa for sharia insurance. The fatwa states that mudharabah musyarakah is permissible in sharia insurance, may be used in both saving and non-saving products, and positions the insurance company simultaneously as mudharib and musytarik, while participants act as shahib al-mal either individually or collectively depending on the product structure. This model is significant because it attempts to reconcile entrepreneurial fund

management by the operator with risk-sharing and investment participation principles within one contractual framework (Irawan, 2023).

The regulatory recognition of these contracts has also been reinforced in the positive law framework administered by the Financial Services Authority. The current regulatory corpus governing the organization of insurance and sharia insurance business defines *mudharabah* as a *tijarah* contract authorizing the sharia insurance undertaking to manage investment funds, including participant investment funds, in exchange for a pre-agreed profit-sharing ratio. Regulatory instruments also acknowledge participant investment funds as funds derived from participants' contributions in sharia products that provide benefits linked to the performance of fund management. This demonstrates that Indonesian insurance law no longer treats *mudharabah* merely as a classical jurisprudential concept, but as an operational legal category embedded in sector-specific supervision (Muhaimin, 2024).

Despite this normative and regulatory support, implementation remains challenging. The problem is not simply whether *mudharabah* and *musyarakah* may be used in sharia life insurance, because the legal answer is affirmative under both the DSN-MUI fatwa and OJK regulations. The more complex issue concerns how these contracts are operationalized in actual products, disclosed to policyholders, integrated into investment governance, and monitored in order to maintain substantive compliance with sharia principles while meeting commercial and prudential expectations. In practice, the use of hybrid contracts often creates interpretive complexity, especially where *tabarru'*, *wakalah bil ujah*, and investment-sharing mechanisms coexist in a single policy design (Ernayani & Robiyanto, 2019).

This complexity is particularly visible in family *takaful* or sharia life insurance products that contain saving and investment features. In such products, participants may expect ethical protection, wealth accumulation, and transparent profit-sharing at the same time, whereas the operator must also ensure solvency, product viability, regulatory reporting, and portfolio performance. As a result, contract implementation becomes a site of potential tension between the ideals of partnership and the realities of financial intermediation. The doctrinal elegance of *mudharabah* and *musyarakah* can therefore become difficult to sustain when translated into product pricing, risk allocation, surplus or return calculation, claims administration, and disclosure obligations (Mubarak et al., 2021).

Another source of difficulty lies in the difference between formal legal compliance and substantive sharia compliance. A contract may be labeled *mudharabah* or *mudharabah musyarakah* in product documents, yet its practical operation may still raise issues related to information asymmetry, opacity of investment expense allocation, or unequal bargaining power between the company and participants. In that sense, the implementation challenge is not merely doctrinal but institutional and governance-oriented. It concerns whether the legal architecture can effectively secure justice, transparency, accountability, and the preservation of participants' rights within a heavily regulated financial services industry (Dyah Pekerti & Ridwan, 2022).

The Indonesian context is especially relevant because sharia insurance operates within a plural legal environment. Islamic legal norms, DSN-MUI fatwas, OJK regulations, corporate governance requirements, actuarial principles, and financial reporting standards all interact in the design and administration of sharia life insurance products. While this layered framework may enrich legal legitimacy, it also risks fragmentation if interpretive guidance, supervisory coordination, and product standardization are not sufficiently clear. The implementation of *mudharabah* and *musyarakah* contracts therefore cannot be understood solely through *fiqh* concepts or solely through modern insurance regulation; it must be studied through the interaction between both (Srijani et al., 2023).

This article is important for at least three reasons. First, it contributes to legal scholarship on sharia economic law by analyzing how classical investment partnership principles are institutionalized within contemporary insurance regulation. Second, it addresses the practical

governance problem of translating contract permissibility into compliant, transparent, and efficient product structures in sharia life insurance. Third, it offers a relevant contribution to policy and industry discourse because the future credibility of sharia insurance depends not only on market growth, but also on whether its operational contracts genuinely reflect the principles they claim to embody (Yunika et al., 2024).

The research focuses specifically on the challenges of implementing sharia principles in *mudharabah* and *musyarakah* contracts in the sharia life insurance industry in Indonesia. The phrase “implementation of sharia principles” in this article refers to the practical realization of contract fairness, transparency, trust, proportionality in profit and loss allocation, lawful investment, and institutional accountability in the management of participant funds. The article does not attempt to provide an actuarial valuation model or a quantitative performance study; instead, it offers a legal and qualitative analysis of the main obstacles that arise when these contracts are applied in regulated insurance practice (Yunika et al., 2024).

The research questions addressed in this article are as follows. First, how are *mudharabah* and *musyarakah* principles positioned within the Indonesian legal and sharia framework governing sharia life insurance? Second, what principal challenges emerge in implementing these contracts in the operational context of sharia life insurance products? Third, what legal and governance measures are needed to improve the integrity of implementation so that contractual forms correspond more closely with sharia objectives?

The central argument advanced here is that the main challenge of implementing *mudharabah* and *musyarakah* contracts in sharia life insurance is not the absence of legal recognition but the difficulty of institutional translation. Although the relevant fatwa and regulatory framework clearly permit the use of these contracts, implementation remains vulnerable to ambiguity in role differentiation, complexity in fund segregation, weaknesses in disclosure, and inconsistencies in governance and supervision. Accordingly, stronger standardization of contractual clauses, more transparent reporting of fund management, and a closer integration of legal, prudential, and sharia oversight are necessary to preserve both market legitimacy and sharia authenticity.

This article is organized into six main sections. Following this introduction, the literature review examines the doctrinal foundation of *mudharabah* and *musyarakah* in sharia insurance, the regulatory context in Indonesia, and key debates in implementation. The research method then explains the qualitative normative-empirical design and sources of analysis. The results section identifies the major implementation challenges and presents analytical tables and a visual chart, while the discussion interprets those findings in relation to legal theory, governance, and policy reform. The article ends with a concise conclusion summarizing the main legal implications.

METHOD

This study employs a qualitative research design with a normative-empirical orientation. The qualitative approach is used because the subject of analysis concerns legal meaning, contractual structure, institutional interaction, and implementation challenges that cannot be adequately captured through numerical measurement alone. The normative dimension focuses on the interpretation of legal and sharia norms governing *mudharabah* and *musyarakah* contracts in sharia life insurance, while the empirical orientation is limited to a contextual reading of sectoral implementation issues as reflected in regulatory documents, product-governance concerns, and industry-related legal instruments.

The choice of qualitative methodology is justified by the nature of the research problem. The study does not seek to test a statistical hypothesis or estimate market impact; rather, it investigates how legal norms are translated into operational practice and why implementation gaps may occur despite explicit normative authorization. In legal research, especially within the field of Islamic economic law, a qualitative approach is appropriate where the main object is the interaction between

doctrine, regulation, and institutional practice.

This research applies a statute approach, a conceptual approach, and a case-context approach. The statute approach is directed at the examination of Indonesian positive law governing sharia insurance, especially the OJK regulatory framework on the organization of insurance and sharia insurance business and the regulation on financial soundness of sharia insurers. The conceptual approach is directed at the legal concepts of *mudharabah*, *musyarakah*, and *mudharabah musytarakah* as embedded in the DSN-MUI fatwa. The case-context approach is not designed as a study of one litigated dispute, but as an examination of practical implementation contexts commonly associated with savings-based sharia life insurance products, participant investment funds, disclosure obligations, and governance challenges under sectoral supervision.

The primary legal materials used in this article consist of binding and authoritative documents relevant to the subject matter. First, the study analyzes the OJK regulation governing the organization of insurance, sharia insurance, reinsurance, and sharia reinsurance business, especially the provisions defining participant investment funds and *mudharabah* contracts in sharia insurance operations. Second, the study examines the OJK regulation on the financial soundness of sharia insurance companies insofar as it addresses the management of participant investment funds and supervisory treatment of sharia-compliant fund structures. Third, the study uses the DSN-MUI Fatwa No. 51/DSN-MUI/III/2006 on *Mudharabah Musytarakah* in sharia insurance as the core normative source explaining the legal form, legal roles, and permissible profit-sharing alternatives.

Secondary materials are employed to support interpretation and analytical synthesis. These include doctrinal discussions incorporated within the fatwa, regulatory summaries, and scholarly arguments about hybrid contracts, sharia governance, consumer protection, and the legal transformation of Islamic contracts in modern financial markets. Because the purpose of the article is to produce a legally grounded and academically structured analysis suitable for journal publication, the study privileges authoritative normative sources over anecdotal commentary. This method enhances legal reliability and allows the argument to be built on recognized institutional texts.

Data collection in this study is conducted through document study. Document study refers to the systematic collection, reading, classification, and interpretation of official legal documents and related normative materials relevant to the research problem. The selected documents were chosen based on three criteria: direct relevance to sharia insurance contracts, current or continuing legal authority in Indonesian financial regulation, and substantive importance for understanding the operational structure of *mudharabah* and *musyarakah*-based investment management in life insurance.

The data analysis technique used is qualitative content analysis combined with legal interpretation. The first stage involves identifying key normative provisions related to the status of the parties, the basis of investment authority, the rules on profit-sharing, loss-bearing logic, contractual minimum content, and dispute resolution. The second stage involves coding these provisions into thematic categories of implementation challenge, such as contractual hybridity, disclosure, governance, investment constraints, and supervisory tension. The third stage involves analytical interpretation of how these themes interact and where doctrinal expectations may diverge from operational realities.

In this research, qualitative coding is organized around six analytical dimensions. The first dimension is normative clarity, which concerns whether the relevant legal texts clearly define the contractual model and the role of each party. The second dimension is operational transparency, which concerns whether the contract structure can be understood and monitored in product implementation. The third dimension is governance and accountability, which concerns the capacity of institutions to supervise fund segregation, investment decisions, and distribution outcomes. The fourth dimension is participant protection, which concerns fairness, informed consent, and the risk of asymmetry in information or bargaining power. The fifth dimension is sharia integrity, which

concerns the preservation of lawful investment and the avoidance of formalistic compliance. The sixth dimension is regulatory compatibility, which concerns how sharia partnership principles operate within a prudential financial-services regime.

To support structured analysis, the study converts qualitative findings into an analytical scoring matrix. This matrix does not claim statistical measurement; rather, it translates textual interpretation into an ordered representation of challenge intensity for explanatory purposes. Each challenge category is assigned an indicative intensity level on a scale of 1 to 5, where 1 indicates limited implementation difficulty and 5 indicates very high implementation difficulty based on the density of legal complexity, governance dependency, and potential impact on participant rights. Such visualization is methodologically acceptable in qualitative legal studies when it is used heuristically rather than inferentially.

The validity of the study is pursued through source triangulation and interpretive consistency. Source triangulation is achieved by reading the fatwa together with financial regulations rather than isolating them as separate normative universes. Interpretive consistency is maintained by linking every major analytical claim to the specific legal text from which it is derived, especially on issues of contractual permissibility, allocation of roles, profit-sharing alternatives, and the duty to invest in accordance with sharia principles. This approach reduces the risk of overgeneralization and anchors the analysis in verifiable institutional sources.

The study has several limitations that should be acknowledged. First, because it is a qualitative normative-empirical analysis based on official documents, it does not provide field interview evidence from policyholders, sharia supervisory boards, or insurance practitioners. Second, it does not compare Indonesia with other jurisdictions, even though comparative analysis could enrich the discussion of standardization and governance. Third, the article does not evaluate financial performance outcomes or actuarial efficiency, since its concern is legal implementation rather than commercial optimization. These limitations are deliberate and consistent with the article's objective of providing a comprehensive legal analysis suitable for academic publication.

From an ethical and scholarly standpoint, the research relies exclusively on public, institutional, and documentary sources. The analysis is conducted with attention to doctrinal accuracy, neutrality in interpretation, and transparency regarding methodological boundaries. By focusing on how authoritative texts interact in practice, the method seeks to contribute not only to doctrinal understanding but also to policy reflection on how the sharia life insurance industry can better operationalize the principles embedded in its contracts.

The operational workflow of the study may be summarized in four stages. First, the relevant legal documents were identified and selected based on subject relevance to mudharabah and musyarakah in sharia insurance. Second, the core provisions were extracted and classified into conceptual and regulatory themes. Third, the themes were interpreted against the practical demands of sharia life insurance operations, including product structure, participant investment funds, and governance obligations. Fourth, the findings were synthesized into a comprehensive argument regarding the principal implementation challenges and the reforms needed to improve substantive sharia compliance.

RESULT & DISCUSSION

The analysis shows that the implementation of mudharabah and musyarakah principles in Indonesia's sharia life insurance industry is supported by a relatively clear normative foundation but constrained by substantial operational, governance, and interpretive challenges. The DSN-MUI fatwa expressly permits mudharabah musyarakah in sharia insurance and provides basic rules concerning the roles of the company and participants, the alternatives for profit-sharing, and the proportional allocation of losses according to contributed capital. The OJK regulatory framework further recognizes mudharabah as an investment-management contract and acknowledges

participant investment funds as an institutional category in sharia insurance administration. These findings indicate that the legal basis exists; however, legality does not automatically ensure coherent implementation.

The first major result concerns contract hybridity. The *mudharabah musytarakah* model places the company in a dual role as both fund manager and co-investor, while participants are treated as capital providers either individually or collectively depending on product form. This duality is conceptually permissible, but it complicates the drafting and administration of policy terms because entitlement to returns can arise from more than one legal basis. When this structure is combined in practice with *tabarru'* and, in some products, fee-based operational components, the contractual architecture becomes difficult to explain in a simple and transparent manner to participants.

The second result concerns the formulation of profit-sharing and loss-bearing rules. The fatwa provides two alternatives for distributing investment returns, and both require careful identification of how the operator's managerial share and capital-participation share are separated and calculated. While doctrinally sophisticated, these alternatives may become difficult to operationalize consistently in standardized product documents, particularly where participants are not familiar with technical distinctions between *mudharabah* profit rights and *musytarakah* capital-based allocation. The loss-bearing rule is in principle clearer because the operator bears loss proportionate to its capital contribution as *musytarik*, yet this still requires accurate segregation and measurement of contributed funds in practice.

The third result concerns disclosure and participant understanding. Since the fatwa requires that the contract specify rights and obligations, the ratio and timing of investment-result distribution, and other conditions relevant to the product, transparency is a built-in legal requirement rather than an optional governance preference. However, the regulatory and contractual complexity surrounding participant investment funds, investment performance, and the company's dual role creates a high risk that disclosure may become formalistic rather than genuinely informative. This matters because the legitimacy of a profit-sharing contract depends not only on permissibility but also on informed consent and reasonable comprehensibility to policyholders.

The fourth result relates to sharia-compliant investment management. The fatwa obliges the company as trustee to invest accumulated funds and states that investment must be conducted in accordance with sharia principles. At the regulatory level, participant investment funds are recognized as a legally distinct category whose management carries financial governance consequences. This means that implementation depends on the operator's ability to maintain a portfolio that is simultaneously *halal*, prudent, and commercially sustainable. The challenge intensifies when market conditions, diversification limits, or return expectations put pressure on investment strategy.

The fifth result concerns governance and supervision. Because the same company may calculate investment outcomes, allocate returns, manage participant funds, and benefit economically as a co-investor, strong internal and external oversight is indispensable. OJK regulations provide the prudential setting for supervision, while the fatwa supplies the sharia rationale; yet the integration of these two oversight dimensions is not always seamless in implementation. In effect, supervisory sufficiency depends not only on legal texts but also on institutional capacity, standard reporting, and the quality of sharia governance mechanisms within the firm.

The sixth result concerns the tension between prudential regulation and substantive partnership ethics. Regulatory rules are designed to ensure solvency, orderly business conduct, and product governance, whereas *mudharabah* and *musytarakah* principles emphasize fairness, proportionality, and moral accountability in shared investment. These goals are not inherently contradictory, but they do not always align perfectly in business practice. The result is a recurrent implementation problem in which legal form is maintained while the participatory spirit of the contract risks being narrowed by managerial efficiency and compliance standardization.

Table 1 summarizes the key normative pillars that shape the implementation of mudharabah and musytarakah in sharia life insurance

Normative Pillar	Core Provision	Legal Significance
Permissibility of mudharabah musytarakah	<i>Mudharabah musytarakah</i> may be conducted by sharia insurance companies and may be applied to saving and non-saving products.	Confirms the doctrinal legality of hybrid investment-sharing contracts in insurance.
Status of company	The company acts as both <i>mudharib</i> and <i>musytarik</i> .	Establishes a dual-role structure that creates both flexibility and governance risk.
Status of participants	Participants in saving products act as <i>shahib al-mal</i> ; in non-saving products participants act collectively as investors.	Frames participant rights as investor-based rather than purely policyholder-based.
Contract content	The contract must specify rights and obligations, the amount of nisbah, and the method and timing of return distribution. ¹	Makes disclosure and certainty essential elements of sharia validity.
Loss allocation	The company as <i>musytarik</i> bears loss according to its capital contribution.	Requires accurate segregation and measurement of invested funds.
Investment obligation	Collected funds must be invested and such investment must comply with sharia principles.	Links product legitimacy to ongoing portfolio governance, not only contract drafting.
Regulatory recognition	OJK regulations define mudharabah in sharia insurance as an investment-management contract and recognize participant investment funds.	Integrates sharia contract concepts into positive financial-services law.

Table 1 shows that the legal architecture is internally coherent at the level of principle. Permissibility, party status, minimum contractual content, and investment obligations are expressly addressed in authoritative texts, indicating that implementation problems arise less from normative absence and more from normative translation into institutional practice.

The next step is to identify how strongly each challenge affects implementation. For analytical clarity, the study uses an indicative qualitative intensity matrix on a 1–5 scale.

Table 2. Classification of Category

Challenge Category	Description	Intensity Score (1–5)	Analytical Basis
Contract	Overlap between	5	High doctrinal complexity and

Challenge Category	Description	Intensity Score (1–5)	Analytical Basis
hybridity	mudharabah, musyarakah, and other insurance-related contractual components complicates product structure.		high implementation dependency.
Profit-sharing formulation	Multiple alternatives for allocating returns require technical clarity and precise disclosure.	5	High risk of misunderstanding and miscalculation.
Participant disclosure	Participants may not fully understand fund allocation, rights, and return mechanisms.	4	Strong relevance to consent and consumer protection.
Fund segregation	Accurate separation of participant funds and company funds is operationally necessary.	4	Essential for lawful allocation and prudential integrity.
Sharia-compliant investment	Investment must remain halal while also prudent and market-responsive.	4	Ongoing portfolio challenge under regulated conditions.
Governance conflict of interest	The company's dual role may create self-benefiting discretion without strong oversight.	5	High stakes for fairness and accountability.
Supervisory integration	Prudential supervision and sharia supervision may not always operate in a fully synchronized manner.	4	Institutional coordination challenge.
Dispute resolution readiness	Sharia dispute resolution exists normatively but may be underused or underexplained	3	Moderate challenge due to lower day-to-day operational visibility.

Challenge Category	Description	Intensity Score (1–5)	Analytical Basis
	in product relationships.		

Table 2 indicates that the most severe challenges are contract hybridity, profit-sharing formulation, and governance conflict of interest. These categories score highest because they directly affect the identity of the contract, the legitimacy of return allocation, and the fairness of the operator's conduct. Challenges such as disclosure, fund segregation, investment compliance, and supervisory integration remain highly significant because they shape whether the contract operates substantively as promised.

A further result of the analysis is that fund governance is central to all other challenges. Regulatory treatment of participant investment funds shows that Indonesian law recognizes the need for financial separation and accountability in fund management. Yet the legal recognition of participant investment funds does not by itself resolve the problem of intelligibility for participants or the internal complexity of allocation methods. Instead, it creates a governance obligation that must be accompanied by clear product disclosure, robust accounting controls, and active sharia supervision.

Table 3 maps the main implementation challenges to their likely legal and institutional consequences.

Challenge	Likely Consequence	Sharia Risk	Regulatory/Governance Risk
Contract hybridity	Confusion about legal basis of entitlement and fund flow.	Risk of uncertainty inconsistent with transparent muamalah.	Product design and approval complexity.
Profit-sharing formulation	Disputes or dissatisfaction regarding return calculation.	Risk of unfair distribution contrary to agreed nisbah.	Reporting inconsistency and audit difficulty.
Participant disclosure	Weak informed consent by policyholders.	Risk of formal compliance without substantive understanding	Consumer-protection concern.
Fund segregation	Misallocation of assets or blurred ownership claims.	Risk of violating proportional loss and return logic.	Financial-soundness and governance concern.
Sharia-compliant investment	Pressure to prioritize returns over sharia	Risk of non-halal exposure.	Investment governance concern.

Challenge	Likely Consequence	Sharia Risk	Regulatory/Governance Risk
	screening discipline.		
Governance conflict	Self-serving discretion in allocation or reporting.	Risk of breach of trust and amanah.	Board, DPS, and supervisory weakness.
Supervisory integration	Gaps between sharia review and prudential review.	Risk of unresolved compliance ambiguity.	Regulatory fragmentation.

Table 3 confirms that each implementation problem has both a sharia dimension and a regulatory dimension. This dual character is a crucial finding of the study because it shows that contract implementation cannot be repaired solely by doctrinal clarification or solely by administrative regulation. Effective reform requires joint attention to the legal theory of the contract and the institutional machinery through which it is executed.

Another important result is that participant protection is inseparable from sharia authenticity. The requirement in the fatwa that the contract specify rights, obligations, nisbah, and distribution timing indicates that disclosure is part of sharia legality itself. Therefore, when product structures are too complex for ordinary participants to understand, the problem is not merely a communication deficit but a potential weakness in the realization of sharia principles. This finding challenges any assumption that sharia compliance can be reduced to formal endorsement by label alone.

Overall, the results show a consistent pattern. Indonesia's sharia life insurance sector possesses a valid legal basis for mudharabah and musyarakah-based investment arrangements, but implementation quality depends on how effectively firms and regulators manage hybrid contractual roles, participant information, lawful investment, and integrated oversight. The more complex the product structure, the greater the need for explicit and standardized contractual design. Without that, the normative promise of partnership-based insurance risks being weakened by institutional opacity and governance strain.

Discussion

The results of this study suggest that the implementation problem surrounding mudharabah and musyarakah contracts in Indonesia's sharia life insurance industry should be understood as a problem of legal translation rather than legal absence. The relevant normative sources already provide a legitimate basis for the use of mudharabah musyarakah, define the roles of the parties, require disclosure of rights and profit-sharing ratios, and impose a duty to invest according to sharia principles. Yet the existence of these rules does not ensure that the contractual form will be realized in a manner that is intelligible, fair, and institutionally accountable. This gap between norm and implementation is the central challenge revealed by the analysis (Fithriah et al., 2024).

A first interpretive point concerns the nature of hybrid contracts in modern Islamic finance. The fatwa's recognition of mudharabah musyarakah reflects an adaptive jurisprudential strategy: instead of forcing the insurance business into a single classical contract, it allows a blended arrangement that better matches the realities of pooled investment management. From a policy standpoint, this is a pragmatic and constructive solution. However, the more legal roles that are layered into one product, the greater the burden on governance, disclosure, and supervision. In that sense, hybridity is both a strength and a vulnerability. It enables innovation while simultaneously increasing the risk of opacity.

This study's findings indicate that the company's dual role is the most delicate feature of the contractual structure. In *mudharabah musytarakah*, the operator is both manager and investor, which means it may claim entitlement based on labor-management and capital participation at once. Doctrinally this is permissible, but institutionally it requires a high level of separation between role identification, accounting treatment, and disclosure. Without that separation, participants may find it difficult to know whether a deduction or return allocation arises from the company's managerial share, its investor share, or another contractual component embedded in the product. The legal consequence is not automatically invalidity, but a heightened risk that the substance of informed agreement is weakened (Romadhon et al., 2023).

From the perspective of Islamic legal theory, this issue implicates the principles of *amanah* and fairness. The fatwa is clear that the company acts as a trusted party and that the contract must expressly state rights, obligations, and the method of distribution. Therefore, a product design that leaves participants unable to trace the movement of funds or the rationale for returns may satisfy formal documentation requirements yet still fall short of the deeper ethical purposes of sharia contracting. This demonstrates why substantive compliance is a more demanding standard than formal compliance.

The discussion also shows that profit-sharing formulation is not a peripheral technical matter but the heart of the contract's legitimacy. In *mudharabah*-based arrangements, the ratio of return is the clearest expression of the parties' agreement and of the distinction between lawful profit-sharing and impermissible guaranteed return structures. The DSN-MUI fatwa provides two alternatives for distributing investment results, each of which is conceptually coherent. However, once these alternatives are translated into product documentation for mass-market life insurance, there is a significant risk that their structure becomes too complex for effective participant understanding. This complexity can weaken consent and expose the operator to disputes, dissatisfaction, or allegations of unfairness (Afrizal et al., 2023).

Seen through the lens of consumer protection, this finding is crucial. The modern insurance sector is characterized by standardized contracts, asymmetry of expertise, and long-term performance uncertainty. In that setting, participants do not bargain over clauses as equal commercial partners; they join products that have already been designed and priced by sophisticated institutions. Consequently, the requirement of clear disclosure in sharia contracts should be interpreted robustly, not minimally. It should aim not merely at textual inclusion of clauses but at meaningful comprehension of the economic and legal consequences of participation.

The results further suggest that fund segregation is a foundational governance issue. Once the company is allowed to invest together with participant funds as *musytarik*, precise accounting and segregation become indispensable to preserve the logic of proportional return and proportional loss. OJK's recognition of participant investment funds and its broader prudential framework show that Indonesian law is sensitive to this issue. Nonetheless, legal recognition is only the first step. If internal reporting systems, product administration practices, or audit mechanisms are weak, then even a doctrinally valid allocation model can become vulnerable to operational distortion (Zufriani et al., 2023).

This is where prudential regulation and sharia governance must be read together. Prudential oversight typically focuses on solvency, financial soundness, orderly reporting, and risk control. Sharia governance, by contrast, focuses on contract legitimacy, lawful investment, fairness, and the avoidance of prohibited elements. The study shows that these two frameworks are interdependent. A failure of prudential discipline can damage sharia implementation by blurring fund integrity, while a failure of sharia discipline can undermine the ethical legitimacy of an otherwise solvent institution. Effective implementation therefore requires more than parallel supervision; it requires integrated supervisory reasoning.

A related point concerns the concept of lawful investment. The fatwa obliges the company to invest collected funds and to do so according to sharia principles. In the real market, however,

investment management involves trade-offs between return, liquidity, diversification, and available halal instruments. This creates structural pressure on sharia life insurers, especially when participants expect competitive returns comparable to other investment products. The challenge is not simply finding halal assets, but maintaining a portfolio strategy that remains commercially viable without diluting screening discipline or obscuring the basis on which returns are generated (Harrieti et al., 2023).

This issue also connects to the broader debate on authenticity in Islamic finance. A frequent criticism of modern sharia financial products is that they sometimes preserve the legal form of Islamic contracts while reproducing the economic effect of conventional finance through increasingly complex structures. The present study does not claim that Indonesian sharia life insurance necessarily falls into that pattern. However, it does show that the risk of formalism becomes greater when products are difficult to understand, when operators enjoy wide discretion, and when disclosure does not fully illuminate how contractual principles translate into financial outcomes. In that environment, the credibility of sharia insurance depends not only on fatwa compliance but on procedural and informational integrity.

The discussion of dispute resolution also reveals an underexplored institutional issue. The fatwa provides that disputes should be resolved through sharia arbitration after deliberation fails. This offers a normative pathway for contract enforcement consistent with Islamic commercial principles. Yet in ordinary insurance relationships, participants may not be aware of this mechanism or may lack the practical ability to activate it effectively. As a result, the presence of a dispute-resolution clause cannot be treated as sufficient by itself. Accessibility, awareness, and procedural usability are equally important if dispute-resolution provisions are to serve a meaningful protective function.

In policy terms, the findings support several implications. First, standardization of contractual language is needed, especially for explaining the interaction among operator roles, participant fund categories, and return-allocation methods. Standardization does not require rigid uniformity across all products, but it does require minimum clarity thresholds that ensure comparable disclosure quality throughout the industry. Second, regulatory guidance should encourage stronger integration between sharia supervisory boards, internal compliance units, actuarial governance, and prudential reporting systems. Third, participant-facing disclosure should be redesigned in plain language, with simplified explanatory tables and flow diagrams so that legal validity is matched by practical intelligibility.

From a scholarly standpoint, this study contributes to a more institutionally grounded understanding of Islamic contract law. *Mudharabah* and *musyarakah* are often discussed in abstract doctrinal terms, but their implementation in insurance shows that classical categories acquire new meanings inside a modern supervised market. The operator is not merely a private contracting party; it is also a regulated entity subject to licensing, reporting, solvency control, and product oversight. This means that contemporary Islamic legal analysis must account for administrative law, financial governance, and consumer protection alongside *fiqh* doctrine.

The study also demonstrates that participant rights in sharia life insurance should be understood through a dual lens. Participants are not only beneficiaries or policyholders; under *mudharabah* *musyarakah* they also occupy an investor-like status as *shahib al-mal*. This duality strengthens their claim to transparent disclosure and fair allocation because their relationship with the operator is not purely one of protection purchase but also one of capital participation. Accordingly, inadequate disclosure or poor fund governance should be seen not only as regulatory shortcomings but as deeper disturbances to the contractual justice that the sharia framework intends to secure.

The broader implication is that the future development of Indonesia's sharia life insurance industry depends on substantive trust. Public trust is not built solely by claiming adherence to sharia, but by demonstrating that contractual structures are understandable, supervisory mechanisms are credible, and participant interests are protected in both legal and economic terms. The implementation of *mudharabah* and *musyarakah* principles will therefore remain a defining test of

whether the industry can maintain both religious legitimacy and regulatory maturity. When these two dimensions reinforce each other, sharia life insurance can present itself not only as a faith-compatible product, but as a model of ethically governed financial protection.

CONCLUSION

The implementation of mudharabah and musyarakah principles in Indonesia's sharia life insurance industry is legally permissible and institutionally recognized, yet it remains difficult in practice because the main challenges lie in operational translation rather than normative validity. The DSN-MUI fatwa clearly authorizes mudharabah musyarakah, defines the roles of the company and participants, requires disclosure of contractual rights and profit-sharing terms, and mandates sharia-compliant investment. OJK regulations reinforce this framework by recognizing mudharabah as an investment-management contract and by regulating participant investment funds within the broader structure of insurance supervision. The study finds that the most serious implementation challenges concern contract hybridity, profit-sharing formulation, governance conflicts of interest, participant disclosure, fund segregation, and the integration of prudential and sharia oversight. These challenges show that a contract may be legally valid in form while remaining vulnerable in substance if participants do not fully understand their position or if institutional controls are insufficiently robust. Strengthening standardization of contractual clauses, improving plain-language disclosure, reinforcing fund-governance systems, and integrating sharia supervision more closely with prudential regulation are therefore necessary steps for protecting participants and preserving the authenticity of sharia insurance practice.

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REFERENCES

- Afrizal, Y., Aliamin, A., & Shabri, M. (2023). The Effect of Musyarakah, Mudharabah, and Murabahah Financing on The Financial Performance of Sharia Commercial Banks in Indonesia. *Journal of World Science*, 2(5), 738–744. <https://doi.org/10.58344/jws.v2i3.235>
- Dyah Pekerti, R., & Ridwan, R. (2022). PENERAPAN AKAD MUDHARABAH DAN MUSYARAKAH DI PASAR MODAL SYARIAH INDONESIA. *JURNAL EKONOMI PERJUANGAN*, 4(1), 11–20. <https://doi.org/10.36423/jumper.v4i1.965>
- Ernayani, R., & Robiyanto, R. (2019). FUNDING ANALYSIS OF MURABAHAH, MUSYARAKAH, AND MUDHARABAH ON RETURN ON ASSET ON SHARIA BANKS IN INDONESIA. *Jurnal Dinamika Ekonomi & Bisnis*, 16(2). <https://doi.org/10.34001/jdeb.v16i2.921>
- Faozan, A. (2021). Application of Mudharabah and Musyarakah Financing at the Sharia Rural Banks in The City of Purwokerto. *Ijtimā Iyya Journal of Muslim Society Research*, 6(2), 164–180. <https://doi.org/10.24090/ijtimaiyya.v6i2.8113>
- Fithriah, N., Arso, D. D., & Muthia, A. A. (2024). Implementing Accessibility Principles in Alternative Dispute Resolution for Sharia Economic Disputes in Indonesia. *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, 10(2), 292. <https://doi.org/10.29300/mzn.v10i2.3010>
- Harrieti, N., Ahmad, A. A., Sandra, E., & Utarie, F. (2023). Now and Forward: Customer Deposit Insurance of Sharia Bank in Indonesia. *Udayana Journal of Law and Culture*, 7(2), 159. <https://doi.org/10.24843/UJLC.2023.v07.i02.p03>

- Irawan, H. (2023). The role of Islamic banks in developing a sharia-based economy in the digital era in Indonesia. *Journal of Islamic Economics Lariba*, 9(2). <https://doi.org/10.20885/jielariba.vol9.iss2.art9>
- Mubarok, D. H., Hamidah, D., & Nurmayanti, M. (2021). IMPLEMENTATION OF MUDHARABAH CONTRACT ON CIAMIS PRUDENTIAL SHARIA INSURANCE PRODUCTS. *Syari'ah Economics*, 5(1), 37. <https://doi.org/10.36667/se.v5i1.209>
- Muhaimin, M. (2024). Contemporary Legal Problems of Sharia Insurance Regulation in Indonesia. *Journal of Law and Sustainable Development*, 12(1), e3147. <https://doi.org/10.55908/sdgs.v12i1.3147>
- Romadhon, A., Fahmi, Z., & Harroni, J. (2023). ANALISIS PERBANDINGAN KINERJA PEMBIAYAAN MUDHARABAH DAN MUSYARAKAH TERHADAP PROFITABILITAS BANK SYARIAH INDONESIA PERIODE 2016-2020. *Al-Hasyimiyah*, 1(2), 46–60. <https://doi.org/10.64524/ah.v1i2.35>
- Srijani, N., Aisyah, S., Kadeni, & Hendri, E. (2023). The Sustainability of Sharia MSMEs in the Halal Industry of Indonesia: Funding, Protection, and Sharia Principles. *Futurity Economics&Law*, 32–47. <https://doi.org/10.57125/FEL.2023.12.25.03>
- Yunika, C. P., Iqbal, M., Suryanto, T., & Kurniawan, A. (2024). The Influence of Mudharabah, Musyarakah, Murabahah, Ijarah , and Istishna Financing on Profitability in Sharia People's Financing Banks in 2019-2022. *Robust: Research of Business and Economics Studies*, 4(1), 96. <https://doi.org/10.31332/robust.v4i1.9671>
- Zufriani, Z., Ayu, D., & Asa'ari, A. (2023). Harmonization of Mudharabah Contracts: Study of DSN-MUI Fatwa, Compilation of Sharia Economic Law (KHES), Legislation and Its Application in Indonesian Sharia Banking. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, 21(1), 15–31. <https://doi.org/10.32694/qst.v21i1.2513>