

From Hybrid Contracts to *Waqf-Musyarakah*-Based *Takaful*: A *Maqāṣid al-Syari'ah* Comparative Legal Analysis of Indonesia and Malaysia

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|| Received: 22-07-2024 | Revised: 13-03-2026 || Accepted: 30-03-2026

Abstract: Islamic insurance is founded on the principles of mutual assistance, justice, and collective protection, yet its practice in Indonesia remains predominantly structured through hybrid contracts such as *tabarru'*, *wakalah*, and *muḍārabah*. Although these contracts are formally recognized in *takaful* practice, they are not necessarily optimal in realizing the objectives of *maqāṣid al-syari'ah*, particularly wealth protection, distributive justice, social solidarity, and public welfare. The study analyzed the legal frameworks of *takaful* in Indonesia and Malaysia and formulated a normative reconstruction of a *waqf-musyarakah*-based *takaful* model for Indonesia. The study employed normative legal research, drawing on statutory, conceptual, and comparative approaches, with *maqāṣid al-syari'ah* as the main analytical framework. Despite that, Indonesia's hybrid model remains formally valid, while *takaful* is still placed within a commercially managed structure in which the social function of *takaful ijtimā'i* is not yet fully institutionalized. Malaysia, by contrast, offers comparative lessons through a more integrated governance framework and stronger participant-oriented regulation. The article argues that a *waqf-musyarakah*-based model provides a more *maqāṣid*-oriented direction for reform by strengthening the social foundation of participant protection and promoting a more participatory governance structure, provided that it is supported by clearer regulation and stronger institutional safeguards.

Keywords: Hybrid Contracts; Islamic Economic Law; *Maqāṣid al-Syari'ah*; *Musyarakah*; Islamic Insurance; *Takaful*; *Waqf*

Introduction

*T*akaful cannot be understood solely as a financial product that functions to mitigate risk, but rather as a collective protection instrument rooted in the Islamic values of solidarity, social justice, and shared responsibility (Ossofo et al., 2025). Within the framework of *mu'āmalah*, *Takaful* embodies the spirit of *ta'awun* and *Takaful ijtimā'i*, namely a mechanism for mutual support among community members to face potential losses or disasters in a fair and dignified manner. Therefore, ideally, Islamic insurance should be assessed not only by the formal validity of the contract used, but also by the extent to which it achieves asset protection, equitable distribution of benefits, and collective welfare, as desired by the *Maqāṣid al-Syari'ah*.

In practice, the construction of Islamic insurance in Indonesia is still dominated by the use of hybrid contracts, such as *tabarru'*, *wakalah bil ujah*, *muḍārabah*, and *muḍārabah musytarakah*. This model has gained normative legitimacy in Islamic insurance institutional practice and is seen as a way to align Islamic principles with the needs of the modern financial industry (A. A. Ahmad et al., 2024). However, the use of these hybrid contracts raises normative issues when the operator's commercial orientation becomes more prominent than the social function of *Takaful* itself (Hidayah & Rahman, 2025). In this context, important questions arise about whether the current contractual construction truly reflects the spirit of mutual

assistance, distributive justice, and collective protection at the core of *Takaful*. In other words, the formal validity of a contract model is not necessarily identical to its conformity to the substantive objectives of Islamic law.

Compared with Indonesia, Malaysia offers a more institutionally integrated *Takaful* framework, particularly in regulatory coordination, centralized sharia supervision, and the governance architecture of *Takaful* operators (Norhayate et al., 2018). This development suggests a more systematic regulatory effort to position *Takaful* not merely as a commercial instrument, but also as part of the broader social orientation of Islamic finance, especially in relation to participant protection and collective welfare. Malaysia is therefore used as a comparative reference to assess how *Takaful* governance may be more closely aligned with *Maqāṣid al-Syari'ah*. The comparison with Malaysia is important not to simplify by positioning one country as superior to another, but rather to identify normative lessons that can be applied to strengthen the legal framework and governance of Islamic insurance in Indonesia.

Previous studies, including the works of Fatkhur Rohman Albanjari et al., (2025) and Lubis et al., (2025) have largely focused on *Takaful* in general, *Waqf* as a mechanism of Islamic philanthropy (Kamarzaman et al., 2025), and *Musyārakah* in the sphere of financing and commercial partnerships. Despite these contributions, there remains a relative lack of studies that undertake a normative legal comparison between Indonesia and Malaysia (Daod et al., 2019), employ *Maqāṣid al-Syari'ah* as an analytical framework for evaluating *Takaful* contractual arrangements, and simultaneously develop a reconstructed *Waqf-Musyārakah* model for Islamic insurance governance in Indonesia. This scholarly gap underscores the significance of the present study, which aims not only to identify and explain the legal differences between the two jurisdictions but also to critically assess the adequacy of existing *Takaful* models and to formulate a direction for legal reconstruction that is more consistent with the objectives of sharia.

Against this background, this study addresses three principal questions. First, how are hybrid contracts legally structured in the Islamic insurance systems of Indonesia and Malaysia? Second, to what extent do these contractual structures reflect the objectives of *Maqāṣid al-Syari'ah*? Third, how can *Waqf* and *Musyārakah* be reconstructed as an alternative model of *Takaful* governance in Indonesia based on comparative lessons drawn from Malaysia? In line with these questions, this study seeks to analyze the legal construction of *Takaful* in Indonesia and Malaysia, assess its conformity with *Maqāṣid al-Syari'ah*, and formulate a reconstruction of the *Waqf-Musyārakah* model as an alternative framework for strengthening Islamic insurance governance in Indonesia.

Literature Review

Maqāṣid al-Syari'ah as a Framework for Islamic Financial Justice

Maqāṣid al-Syari'ah refers to the higher objectives and normative purposes of Islamic law (Zainal Asyiqin, 2020). In the field of *mu'amalah*, this framework is important because it allows legal and institutional arrangements to be evaluated not only in terms of formal compliance but also in terms of whether they actually realize justice, protect legitimate interests, and generate public benefit (Putra et al., 2025; Rizal & Soemitra, 2022). For that reason, this article does not use *Maqāṣid al-Syari'ah* merely as a general ethical reference (N. Ahmad et al., 2025; Sanuri et al., 2025). Instead, it employs *maqāṣid* as a diagnostic framework to examine whether the governance and contractual structures of *Takaful* in Indonesia and Malaysia are substantively aligned with the objectives of Islamic law. In this study, the *maqāṣid* framework functions as a set of specific evaluative criteria. The first is *ḥifẓ al-māl* (protection of wealth). This article treats *ḥifẓ al-māl* not merely as the formal existence of participant funds or the legal recognition of *Shariah*-compliant finance, but as a test of whether the governance structure genuinely protects participant wealth from misuse, undue extraction, managerial overreach, or dilution through operator-centered control. Thus, the relevant question is not only whether *Takaful* funds are segregated, but whether the legal and institutional design prevents those funds from being subordinated to interests inconsistent with their protective function (Qoyum, 2018).

The second is *'adl* (justice). In this article, *'adl* is used to assess whether rights, risks, obligations, and economic benefits are distributed proportionately between the operator and participants. Justice, therefore,

is not treated as an abstract moral aspiration, but as a question of legal structure: who controls the fund, who bears the risk, who receives economic benefit, and whether surplus, authority, and responsibility are allocated in a balanced way. A *Takaful* arrangement may remain formally valid in *Shariah* terms while still falling short of *'adl* if one party enjoys structural dominance without a proportionate burden or limitation (Baining et al., 2024; Solehudin et al., 2024).

The third is *tahqīq al-maṣlahah* (realization of public benefit). This criterion is used to evaluate whether a *Takaful* model produces collective utility beyond formal contractual compliance. In this sense, *maṣlahah* is not satisfied merely because a product avoids *ribā*, *gharar*, or *maysir* in doctrinal form. Rather, the relevant inquiry is whether the institutional design of *Takaful* strengthens participant resilience, supports sustainable collective protection, and advances the broader social function of Islamic finance. This distinction is crucial for determining whether *Takaful* represents a genuine normative alternative or merely a sharia-labeled version of a commercially managed insurance structure. The fourth is *ta'āwun* (mutual assistance). In this article, *ta'āwun* is not used only to describe the spirit of solidarity underlying *Takaful*, but to test whether the governance structure itself genuinely centers mutuality. The existence of a collective fund does not, in itself, satisfy this *maqāṣid*. Mutual assistance becomes substantively meaningful only when the institutional design of *Takaful* reflects shared responsibility, participant-oriented governance, and a legal structure that preserves the collective nature of protection. A system may invoke solidarity at the level of rhetoric while weakening it in practice if decision-making, surplus logic, and fund control remain overwhelmingly concentrated on the operator side.

Accordingly, *Maqāṣid al-Syarī'ah*, as presented in this article, serves as a diagnostic tool that links the legal structure to the ethical outcome. Through *ḥifz al-māl*, this study examines whether *Takaful* governance protects participant wealth from misuse and excessive control. Through *'adl*, it assesses whether rights, risks, and surplus are distributed proportionately. Through *tahqīq al-maṣlahah*, it evaluates whether the model produces collective benefit beyond formal compliance. Through *ta'āwun*, it asks whether mutuality is actually embedded in governance rather than merely declared as an objective. This diagnostic use of *maqāṣid* is central to the argument of this article, because the main issue in *Takaful* governance is not simply whether contracts are valid, but whether institutional design remains faithful to the higher objectives of Islamic law.

***Takaful Ijtimā'ī* and the Social Function of Islamic Insurance**

The concept of *Takaful ijtimā'ī* reflects the social and collective dimension of Islamic protection mechanisms. It is rooted in the understanding that members of society share a moral obligation to support one another in times of difficulty, loss, or vulnerability. In this sense, *Takaful* is not merely a financial arrangement for compensation, but a manifestation of solidarity based on brotherhood, mutual assistance, and shared responsibility. This understanding is consistent with the legal and doctrinal character of *Takaful* as developed in contemporary Islamic finance, including the Malaysian regulatory framework, which emphasizes brotherhood, solidarity, and mutual assistance as the defining basis of *Takaful* (Md. H. Rahman et al., 2024). This social character is essential because Islamic insurance is normatively expected to operate on the basis of *risk-sharing* rather than *risk-transfer*. In a conventional risk-transfer model, the insured party shifts risk to the insurer in exchange for payment, creating a bilateral commercial relationship centered on exchange and liability transfer. By contrast, *Takaful* ideally embodies a cooperative structure in which participants collectively contribute to a common pool for mutual protection, while the operator manages the fund in accordance with agreed sharia principles. Accordingly, the ethical foundation of *Takaful* remains collective protection and mutual assistance rather than pure profit maximization. This distinction is widely recognized in the *Takaful* literature, which treats risk-sharing as the core element that differentiates *Takaful* from conventional insurance (Md. H. Rahman et al., 2024).

The relationship between *Takaful ijtimā'ī* and *Maqāṣid al-Syarī'ah* is therefore direct and substantial. From the perspective of *ḥifz al-māl*, *Takaful* protects participants against economic vulnerability and unforeseen harm. Through *tahqīq al-maṣlahah*, it contributes to broader public welfare by establishing a cooperative mechanism of financial resilience. Through *'adl*, it requires fairness in the governance of the fund, the distribution of benefits, and the legal relationship between operator and participants. Through

ta'āwun, it affirms that the purpose of Islamic insurance is not exhausted by contractual validity, but extends to solidarity and collective welfare. Studies on *Takaful* from a *maqāsid* perspective have accordingly shown that *Takaful* should be understood not only as a Sharia-compliant financial product, but also as an institutional mechanism that advances ethical protection, public benefit, and Islamic accountability (Abderrezzak, B., Lakikza, Y., & Reggad, 2025).

Accordingly, the concept of *Takaful ijtīmā'ī* serves as an operational lens in this study to evaluate whether contemporary Islamic insurance systems continue to embody the social function of Islamic law. Where *Takaful* structures become overly dominated by commercial considerations, managerial asymmetry, or contractual formalism, their conformity with *maqāsid* becomes questionable. Conversely, models that reinforce mutuality, community welfare, and equitable participation are more likely to reflect the genuine spirit of Islamic insurance. In this regard, *Takaful ijtīmā'ī* forms an important conceptual bridge between doctrinal legality and substantive justice in the governance of Islamic insurance.

Legal Concepts of *Tabarru'*, *Waqf*, and *Musyārahah*

A sound analysis of Islamic insurance governance requires a clear distinction between the legal concepts that shape *Takaful* structures, particularly *tabarru'*, *Waqf*, and *Musyārahah*. Although these concepts may all involve voluntary transfer, cooperation, or collective benefit, each carries a distinct legal character and institutional consequence. For that reason, they cannot be treated as interchangeable without careful doctrinal clarification. In the context of *Takaful*, *tabarru'* refers to participants' contributions to a collective fund intended to provide mutual assistance in the event of risk or loss. Its legal basis lies in solidarity and benevolence rather than direct commercial exchange (Hidayah & Rahman, 2025). However, as Sarah explained in her study on the efficiency of *tabarru'* fund management in Islamic insurance companies in Indonesia, once *tabarru'* is institutionalized within the operational structure of Islamic insurance, it becomes not only a charitable concept but also an issue of governance, efficiency, and accountability (Sarah et al., 2019). The management of the *tabarru'* fund, therefore, raises important questions about administration, control, and the preservation of its social purpose within a professional insurance framework.

Compared with *tabarru'*, *Waqf* has a more enduring and institutionally structured character (Nofiardhi & Helmy, 2024). Rather than merely functioning as a voluntary contribution, a *Waqf* is directed toward a sustainable social objective in which the principal asset is preserved while its benefits are continuously allocated for broader welfare (Zaenurrosyid et al., 2025). Ishak, in his discussion of the *wakālah-Waqf model*, shows that *Waqf* may be developed through an agency-based institutional framework that supports the sustainable development of productive *Waqf* assets (Ishak, 2025). This perspective is significant for Islamic insurance governance because it demonstrates that *Waqf* is not only a charitable instrument, but also a legal and institutional mechanism capable of strengthening the long-term social foundation of *Takaful* (Naz et al., 2025). At the same time, incorporating *Waqf* requires clarity on management authority, purpose, and fund structure, ensuring consistency with both Sharia principles and institutional accountability (Anggareni et al., 2024; Anggriani et al., 2025).

Musyārahah, by contrast, is fundamentally different from both *tabarru'* and *Waqf*. It is a partnership contract based on joint participation in capital, risk, and profit. Yustiardi et al. emphasize that *Musyārahah*, together with *mudarabah*, represents one of the principal profit-and-loss sharing contracts in Islamic finance, reflecting cooperation, shared responsibility, and equitable distribution of outcomes among the parties involved (Aulia Fitria Yustiardi et al., 2020). In a similar vein, previous scholarship on *Musyārahah Mutanaqisah* has shown that partnership-based models may offer a fairer and more participatory alternative within Islamic finance, particularly in addressing structural weaknesses associated with debt-oriented arrangements (Asyiqin & Alfurqon, 2024). These insights are relevant to *Takaful* governance because they suggest that *Musyārahah* may provide a more participatory and justice-oriented framework for organizing relationships between participants and operators.

These distinctions are important because the uncritical mixing of charitable, endowment-based, and partnership-based concepts can create ambiguity regarding ownership, entitlements, and governance. A *Takaful* model that combines *tabarru'*, *Waqf*, and *Musyārahah* without doctrinal precision risks weakening the coherence of its legal foundation. Accordingly, any proposal to reconstruct Islamic insurance through

Waqf and *Musyārakah* must first clarify the legal functions of each concept, as well as the relationships among social purpose, fund management, and institutional responsibility. Only through such clarification can the resulting governance structure remain faithful to both the ethical aims of Sharia and the operational demands of contemporary Islamic insurance (Maf'ula & Mi'raj, 2022).

Hybrid Contracts in *Takaful*: Legitimacy and Normative Tension

Hybrid contracts, often referred to as *multiakad*, have become a central feature of contemporary Islamic insurance. In the *Takaful* context, the operational structure commonly combines several legal relationships within a single institutional arrangement, including *tabarru'* as the basis of mutual contribution and other contracts related to fund management and investment (Hidayati et al., 2021). The doctrinal basis for such practice can be traced, among others, to DSN-MUI Fatwa No. 21/DSN-MUI/X/2001 on General Guidelines for Islamic insurance, which recognizes Islamic insurance as an effort of mutual protection and help among participants through investment and/or *tabarru'* based on contracts that are consistent with Islamic law (National Sharia Council-Indonesian Ulama Council, 2001). This formulation shows that the legal construction of *Takaful* in modern practice is not limited to a single contract, but rather accommodates a layered arrangement intended to reconcile mutual assistance, institutional management, and financial sustainability (Naz et al., 2025).

From a doctrinal perspective, the use of hybrid contracts in *Takaful* may be regarded as legally legitimate so long as each contractual element remains valid in itself and the overall structure does not produce prohibited elements such as *gharar*, *maysir*, and *ribā*. In Islamic financial practice more broadly, the combination of contracts has often been justified as a necessary response to the complexity of modern institutions. As observed by Aulia Fitria Yustiardi et al., the application of contracts such as *mudarabah* and *musyārakah* in Islamic financial products is normatively acceptable, yet their implementation frequently raises issues concerning governance, risk allocation, transparency, and the practical consistency between contractual theory and institutional reality (Aulia Fitria Yustiardi et al., 2020). Although their discussion is situated in the context of Islamic banking products, the same logic is relevant to *Takaful* (R. Ahmad et al., 2024), where the combination of charitable and commercial elements similarly requires careful legal structuring (Ichsan et al., 2024).

Nevertheless, legal permissibility does not automatically eliminate the normative tensions embedded in hybrid *Takaful* models. The central concern lies in the possibility that the formal use of *tabarru'* may coexist with a governance structure that is largely shaped by operator control, fee-oriented management, or investment priorities, thereby weakening the mutual and solidaristic nature of *Takaful*. In such circumstances, the institution may remain Sharia-compliant in form while becoming thinner in its substantive realization of justice and collective protection. This concern becomes more evident when *Takaful* is examined not merely through contractual legality, but through the framework of *Maqāṣid al-Syarī'ah*. As argued by Assane Buana Ossofo et al., the application of *maqāṣid* in *Takaful* requires attention to whether the system genuinely protects property rights, safeguards legitimate interests, and realizes fairness in the distribution of rights and obligations (Ossofo et al., 2025). Their analysis suggests that the legitimacy of *Takaful* should not be measured solely by formal compliance, but also by its capacity to secure justice and protect stakeholders substantively. Accordingly, the key question is not simply whether hybrid contracts are permissible, but whether they continue to realize *mutuality*, *fairness*, and *social justice* in practice. From the perspective of *Maqāṣid al-Syarī'ah*, a *Takaful* structure should be evaluated based on whether it protects wealth (*hiḍḍ al-māl*), advances public welfare (*tahqīq al-maṣlahah*), and strengthens collective solidarity rather than merely reproducing a commercial arrangement under Islamic terminology. Where hybrid contracts generate asymmetry between operator and participants or reduce mutual protection to a formal label, their conformity with *maqāṣid* becomes open to challenge. In this sense, hybrid contracts in *Takaful* must be understood as both legally legitimate and normatively contestable.

This tension also provides the basis for exploring alternative constructions that may better integrate the ethical and social foundations of Islamic insurance. In this regard, Rosele et al. show that the revival of a *Waqf*-based *Takaful* model in Malaysia emerged precisely from the need to address structural and normative issues in conventional *Takaful* arrangements (Rosele et al., 2024). Their study indicates that

incorporating *Waqf* may strengthen *Takaful*'s social orientation by reinforcing its charitable foundation and long-term communal function. Read in this light, the movement toward a *Waqf-Musyarakah*-based reconstruction is not merely a technical innovation, but a normative response to the limitations of hybrid models that, although valid in legal form, may still fall short of the broader objectives of *Maqāṣid al-Syarī'ah*.

Method

The normative legal research employed statutory, conceptual, and comparative approaches. The statutory approach was used to examine the legal frameworks governing Islamic insurance and related Islamic financial instruments in Indonesia and Malaysia. Secondly, the conceptual approach was applied to analyze the legal and doctrinal meanings of *Takaful*, hybrid contracts, *Waqf*, and *Musyarakah* within the broader framework of Islamic law. Accordingly, the comparative approach was employed to identify similarities, differences, and normative implications in the governance and contractual structures of *Takaful* in both jurisdictions. This study used *Maqāṣid al-Syarī'ah* as the main analytical framework to assess whether the governance and contractual arrangements of *Takaful* in Indonesia and Malaysia reflect the objectives of Islamic law, particularly justice, mutual protection, and public welfare. Through this framework, the study evaluated not only the formal validity of contractual structures, but also their substantive conformity with the social and ethical purposes of sharia. The research relied on primary legal materials, including legislation, regulations, and fatwas related to Islamic insurance, *Waqf*, and Islamic financial governance in Indonesia and Malaysia. It also used secondary legal materials, consisting of scholarly books, journal articles, and academic commentaries, as well as tertiary legal materials, such as legal dictionaries and other supporting references. All legal materials were analyzed qualitatively through legal interpretation and prescriptive reasoning in order to formulate a normative reconstruction of a *Waqf-Musyarakah*-based *Takaful* model for Indonesia.

Results and Discussion

Regulatory Construction of Islamic Insurance in Indonesia

Legal Basis of Islamic Insurance in Indonesia

The legal construction of Islamic insurance in Indonesia rests on a dual normative foundation: state insurance regulation and Sharia normative guidance. At the statutory level, Law No. 40 of 2014 on Insurance recognizes Sharia principles in insurance activities and defines Islamic insurance as risk management based on Islamic principles for mutual help and protection (Law No. 40 of 2014 on Insurance, 2014). The same law also positions the Financial Services Authority (*Otoritas Jasa Keuangan* or OJK) as the principal regulator of the insurance sector, including Islamic insurance. This means that Indonesian Islamic insurance is not governed solely by private religious interpretation, but by a combination of positive law and Sharia-based compliance standards (Financial Services Authority Circular Letter No. 25/SEOJK.05/2017, 2017, 2017). Within that structure, OJK plays a central institutional role in translating the general statutory framework into operational regulation. OJK's Islamic insurance regulations govern, among other things, business organization, financial soundness, fund segregation, reporting, and prudential standards for Islamic insurance companies and Sharia business units (Asyiqn, 2025). The regulatory emphasis on financial health and prudential management shows that the Indonesian system is designed to ensure institutional stability and solvency (Tahiri-Jouti, 2022). For example, OJK's regulation on the financial soundness of Sharia insurers requires the separation of guarantee funds. It sets detailed prudential rules concerning company funds, participant investment funds, and other financial obligations.

At the Sharia normative level, DSN-MUI provides the doctrinal basis for the permissibility and structure of Islamic insurance. Fatwa No. 21/DSN-MUI/X/2001 sets out the general guidelines for Islamic insurance, while later fatwas specify the contractual forms used in practice (National Sharia Council-Indonesian Ulama Council, 2001), including Fatwa No. 52/DSN-MUI/III/2006 on *wakālah bil ujrah*, Fatwa No. 53/DSN-MUI/III/2006 on *tabarru'* in Islamic insurance (National Sharia Council-Indonesian Ulama Council, 2006), and Fatwa No. 51/DSN-MUI/III/2006 on *muḍārabah musytarakah* in Islamic insurance

(Alhammadi, 2023). The DSN-MUI fatwa archive also shows that the institutional Sharia framework was later supplemented by Fatwa No. 81/DSN-MUI/III/2011 on the return of *dana tabarru'* for participants who stop before the contract ends. This indicates that the Indonesian *Takaful* model has developed through a layered fatwa-based contractual architecture rather than through a single unified model (M. M. Rahman & Khan, 2026).

Normatively, this dual structure has both strengths and weaknesses. Its strength lies in the fact that Indonesian Islamic insurance already possesses a fairly complete formal basis: positive law secures institutional legality, while DSN-MUI fatwas secure Sharia legitimacy. However, this same structure also produces fragmentation. The legal system tends to focus on regulatory validity, prudential compliance, and contract recognition, while the broader social aims of *Takaful* are not always made central in the legal design. From a *maqāṣid* perspective, this raises an important question: whether the current legal framework merely validates Sharia-compliant contracts, or whether it also substantively advances *ḥifẓ al-māl*, *'adl*, and *ta'āwun* as the ethical foundation of Islamic insurance.

Hybrid Contracts in Indonesian *Takaful* Practice

In practice, Indonesian Islamic insurance is predominantly constructed through hybrid contracts. The common architecture combines *tabarru'* as the basis for participant contributions to mutual assistance, *wakālah bil ujah* as the basis for operator management and fee-taking, and, in certain products or investment components, *muḍārabah* or *muḍārabah musytarakah* as the basis for profit-sharing. The structure is doctrinally possible because DSN-MUI has issued separate fatwas validating these contracts, and the OJK framework accommodates the separation of participant-related funds and company funds within Islamic insurance operations. The dominant position of *tabarru'* in Indonesian *Takaful* is legally significant because it provides the formal basis for mutual assistance among participants. In this construction, the participant's contribution—or the *tabarru'* portion of it—enters a mutual risk fund intended to pay claims and other obligations arising from insured events. OJK's prudential regime recognizes the need to classify and separate such funds, while DSN-MUI's fatwa structure confirms that *akad tabarru'* is central to the Sharia character of insurance (Harahap et al., 2023). Even so, once *tabarru'* is placed within an institutional framework managed by an operator, the charitable logic of the fund is no longer purely interpersonal; it becomes mediated by corporate governance, actuarial calculation, reporting obligations, and fee-based administration (Sabrina & Rulindo, 2023).

The operator occupies a powerful position in this structure. Under the *wakālah bil ujah* model, the operator acts as manager of the insurance arrangement and is entitled to a fee for performing underwriting, administration, and investment-related functions. Formally, this arrangement is justifiable because agency with compensation is recognized in Sharia and expressly accommodated in DSN-MUI fatwas on insurance. However, the legal effect of this structure is that the operator's role is not merely technical. The operator becomes the institution that designs products, establishes management systems, administers funds, and, indirectly, shapes the relationship between participants and the *tabarru'* pool. As a result, the practical balance between participant mutuality and operator managerial control becomes a central issue in assessing fairness.

The management of *dana tabarru'* further illustrates this hybrid logic. Regulatory materials show that the fund is treated within a formal prudential framework and that certain matters—such as the formation, combination, and possible return of *tabarru'* fund under specific conditions—must be disclosed and, in some cases, approved within sharia governance processes, including consideration by the *Dewan Pengawas Syariah* and the company actuary. This demonstrates that the *tabarru'* fund is not merely a moral pool of solidarity, but a legally structured and institutionally supervised fund subject to managerial and regulatory control. The logic of underwriting surplus also reflects the hybrid and somewhat ambivalent character of Indonesian *Takaful*. OJK's Sharia financial soundness regulation contemplates the distribution of *surplus underwriting* and even allows distribution to the company fund under certain conditions, with the *Dewan Pengawas Syariah* required to provide consideration for such distribution. At the participant level, eligibility conditions apply for receiving surplus. This arrangement shows that the excess in the *tabarru'* fund is not automatically treated as a purely communal reserve; rather, it may be allocated among several

destinations, including participants and, conditionally, the company. While this may be defended on operational or incentive grounds, it also reveals how the mutual aid fund is juridically connected to managerial and institutional interests.

Seen from the standpoint of legal design, Indonesian *Takaful* therefore does not operate through a single cooperative contract, but through a layered combination of donation, agency, and investment/profit-sharing arrangements. This hybrid structure is one reason the system remains commercially workable and formally Sharia-compliant. Yet it also creates normative tension: the more the system depends on managerial fees, actuarial discipline, and product competitiveness, the greater the risk that *Takaful* moves away from solidarity-centered protection and toward a regulated Islamic variant of insurance commercialization.

Maqāṣid-Based Assessment of Indonesia's Current Model

From the perspective of *Maqāṣid al-Syarī'ah*, the Indonesian model has an important formal strength. The existing legal framework already recognizes sharia insurance as a lawful institutional form, supports it through statutory regulation, and requires prudential safeguards such as fund segregation, solvency standards, and *Shariah* supervision. In terms of *ḥifẓ al-māl*, this formal architecture is significant because it aims to preserve financial order, protect participant funds from institutional disorder, and maintain the solvency of *Shariah* insurance operators (Andini et al., 2025). At this level, the Indonesian model cannot be described as normatively empty; it already reflects a serious legal effort to secure formal protection of wealth through regulation, supervision, and contractual recognition. However, *maqāṣid*-based analysis does not end with formal legality. The more decisive issue is whether the legal design of the current model also preserves the substantive structure of mutual protection that distinguishes *Takaful* from an ordinary commercially managed insurance scheme. Here, the dominant use of *wakālah bil ujrah* becomes normatively important. Under this structure, the operator is legally positioned as the central manager of the *Takaful* arrangement (Ishak, 2025). Although the operator is not the owner of participant funds, it designs the product, administers contributions, manages underwriting arrangements, determines operational mechanisms, and receives *ujrah* for those managerial services. Participants, by contrast, are mainly positioned as contributors to a collectively managed fund rather than as co-governing parties with meaningful institutional authority over the structure through which their mutual protection is organized (Alhammadadi et al., 2022).

This legal arrangement creates a structural asymmetry in governance. The asymmetry is not merely factual or managerial, but juridical: the party that controls administration, product structure, and operational decision-making is not the same party that primarily bears the communal purpose of the fund. In normative terms, this matters because *ta'āwun* in *Takaful* should not be confined to the declared purpose of the fund alone. Mutual assistance becomes institutionally meaningful only when the governance structure also reflects shared responsibility and participant-centered protection. Where participants are normatively central as the beneficiaries and contributors of mutual protection, but remain structurally peripheral in governance, the legal design risks reducing mutuality to a functional label rather than preserving it as an institutional principle.

The same point is clearer in the treatment of underwriting surplus. The *tabarru'* fund is justified in sharia terms as a fund of mutual assistance among participants. Its normative basis lies in collective protection, not in the creation of commercial gain for the operator (Ridwan & Mayapada, 2022). Once the legal framework allows surplus from that fund, under certain conditions, to be distributed not only to participants but also to the company, an important normative shift occurs. The issue is not simply whether such a distribution is technically permitted under positive regulation or tolerated in practice. The more important issue is whether the structure preserves a clear legal distinction between a solidarity-based fund and the operator's economic interest. When the operator exercises greater managerial control over the fund and may also become a conditional beneficiary of its surplus, the proportionality of rights and benefits becomes more difficult to justify from the perspective of *'adl*.

In this respect, the *maqāṣid* concern is specific. A structure may formally satisfy contractual permissibility, yet still fall short of justice when authority, benefit, and risk are not proportionately aligned.

Participants provide the social basis of the fund and bear the collective logic of contribution. At the same time, the operator occupies the dominant position in administration and may, in certain conditions, share in the economic consequences of the fund's excess. This does not necessarily render the model unlawful. However, it does indicate that the current design may allow the social logic of *tabarru'* to be partially redirected toward managerial or corporate interest. That is why the issue should not be framed merely as "operator dominance" in an abstract sense, but as a normative problem of disproportion between control, benefit, and the collective purpose of the fund.

Seen from this angle, the weakness of the current Indonesian model lies not in the existence of hybrid contracts as such, but in the cumulative legal effect of their institutional configuration. *Wakālah bil ujrah* strengthens operator-centered governance; the operator-managed administration of *tabarru'* weakens participant-centered mutuality at the institutional level; and the possibility of allocating underwriting surplus to the company blurs the normative boundary between solidarity-based resources and commercial interest. Taken together, these elements produce a structure in which the *Takaful* arrangement remains formally valid, but its conformity with *maqāṣid* becomes only partial. The shortfall is therefore not merely intuitive. It is traceable through the legal structure itself: governance asymmetry weakens *ta'āwun*, disproportion in control and benefit raises concerns of *'adl*, the possibility of indirect extraction from participant-oriented funds affects *hifz al-māl*, and the limited institutionalization of participant-centered solidarity constrains the realization of *tahqīq al-maṣlahah* (Alhammadi et al., 2022).

For that reason, the present Indonesian model may be described as formally *Shariah*-compliant yet substantively incomplete from a *maqāṣid* perspective. It protects wealth at the levels of solvency and legal recognition, but does not yet fully secure participant wealth from excessive managerial dominance or the possible diversion of collective benefits. It recognizes mutual assistance as the declared objective of *Takaful*, but does not yet place mutuality at the center of governance design. It affirms justice at the level of contractual validity, but still leaves open a structural imbalance in the distribution of authority and benefit between operator and participants. Thus, the main normative issue is not whether hybrid contracts are lawful, but whether the current legal design preserves *Takaful* as a genuinely cooperative structure of mutual protection rather than allowing it to drift toward a commercially managed form of Islamic insurance.

This diagnosis also explains why legal reform is necessary. First, the prudential and operational regulatory framework should be refined so that participant-oriented funds are more clearly insulated from operator interests, particularly by imposing stricter limits on the circumstances under which underwriting surplus may be allocated to the company. Second, DSN-MUI may need to strengthen its fatwa guidance on the social orientation of *tabarru'*, the treatment of surplus, and the normative boundary between mutual funds and operator remuneration. Third, Indonesian *Shariah* insurance law should begin to explore more participant-centered governance forms, including mutual or partnership-based arrangements that better reflect the cooperative basis of *Takaful*. Fourth, stronger governance safeguards should be developed for participant funds, such as a dedicated governance board or supervisory structure specifically tasked with protecting the *tabarru'* fund and participant interests. These reforms would not negate hybrid contracts, but would reposition them within a more coherent *maqāṣid*-oriented framework.

Regulatory Construction of *Takaful* in Malaysia

Legal and Institutional Framework of Malaysian *Takaful*

The legal construction of *Takaful* in Malaysia is built on a more centralized and institutionally integrated framework than in Indonesia, particularly in the relationship among statutory regulation, regulatory supervision, and centralized *Shariah* interpretation. The principal statutory basis is the Islamic Financial Services Act 2013 (IFSA 2013) (Islamic Financial Services Act, 2013), which regulates and supervises Islamic financial institutions, including *Takaful* operators, with the stated objectives of promoting financial stability and *Shariah* compliance. Significantly, the Act also emphasizes fairness, accountability, and proper conduct, indicating that the Malaysian legal framework is concerned not only with institutional solvency but also with governance and participant protection. Within this framework, Bank Negara Malaysia (BNM) occupies a particularly strong position (Bank Negara Malaysia, 2022).

Unlike a regulatory arrangement in which prudential supervision and sharia guidance may be institutionally separated, Malaysia places both within a more coordinated legal structure. BNM functions not only as a prudential supervisor, but also as the principal authority shaping governance expectations, operational standards, and regulatory policy for *Takaful* business. This creates a more unified legal environment in which institutional governance, sharia compliance, and market conduct are more closely connected (Hussain, 2016).

A further institutional feature is the role of the Sharia Advisory Council (SAC) of Bank Negara Malaysia. The SAC serves as a centralized authority for Islamic finance matters under BNM's supervision, including *Takaful* (Bank Negara Malaysia, 2022). This gives Malaysia a more centralized structure for sharia interpretation than systems that rely on more dispersed fatwa production, although the normative effectiveness of such centralization still depends on how it is implemented in practice. In comparative terms, the significance of this arrangement lies less in centralization as such than in the degree of coordination it permits between legal regulation and *Shariah* governance. This institutional architecture is complemented by BNM's operational policymaking. Although the contractual bases commonly used in Malaysian *Takaful* still include *wakālah* and *muḍārabah*, the *Takaful* Operational Framework reflects regulatory concern for operational efficiency, sustainability of *Takaful* funds, and the protection of participants' best interests. While this does not mean Malaysia has moved beyond hybrid structures, it does indicate a regulatory openness to contractual development within a more coordinated legal framework (Maf'ula & Mi'raj, 2022).

From a comparative standpoint, the relatively stronger element in Malaysia is therefore not that it uses fundamentally different contracts, but that its legal and institutional framework appears more coherent in coordinating regulation, supervision, and sharia governance. This point is important for Indonesia, although it should not be misunderstood as suggesting that Malaysia offers a complete institutional model ready for direct transplantation. Its framework is shaped by Malaysia's constitutional setting, legal tradition, and administrative history, which differ in important respects from those of the Indonesian context.

Governance and Social Function in Malaysian Practice

The discussion of Malaysia in this article should not be taken to suggest that its *Takaful* model is uniformly superior in all respects. Rather, Malaysia is used as a comparative reference to identify specific institutional and regulatory features that may offer limited but important lessons for Indonesia. Certain aspects of Malaysia's *Takaful* framework appear normatively stronger, particularly in how governance discourse is linked to participant interests, fund sustainability, and the broader social orientation of Islamic finance. The policy orientation of the *Takaful* Operational Framework suggests that *Takaful* governance is framed not only in terms of operator viability, but also in terms of how the underlying fund structure serves participants. Compared with a model that treats mutual funds largely through fee-based managerial logic, this orientation is closer to a governance paradigm in which operator legitimacy is tied to accountability toward participants and the sustainability of the fund (Sufyan & Othman, 2025).

Malaysia also appears to be more willing to connect parts of its Islamic finance framework with broader social inclusion goals. The *Perlindungan Tenang* initiative, for example, reflects policy concern for expanding *Takaful* access to underserved and lower-income groups. This does not, by itself, transform Malaysian *Takaful* into a fully socialized protection regime, but it does indicate that *Takaful* may be positioned within a wider policy discussion on financial inclusion and social protection. A similar orientation can also be observed in Malaysia's broader Islamic finance ecosystem, particularly in its openness to integrating social-finance elements such as *Waqf*. This point, however, must be treated carefully. The existence of *Waqf*-featured funds or *Waqf*-related financial initiatives in Malaysia should not be equated directly with a *Waqf*-based *Takaful* model (Rosele et al., 2024). The Securities Commission Malaysia's *Waqf*-Featured Fund Framework belongs to the Islamic capital market rather than the *Takaful* regulation proper (Securities Commission Malaysia, 2020). Nevertheless, certain Malaysian regulatory developments indicate a legal willingness to integrate commercial and social objectives within the broader

Islamic finance sector. In that limited sense, Malaysia's broader regulatory environment appears relatively more open to combining Islamic finance with structured social-benefit mechanisms.

The comparative value of Malaysia, therefore, lies not in the claim that it has already produced a complete *Waqf-Musyarakah Takaful* model, but in the evidence it offers of a legal culture and regulatory architecture that appear more receptive to embedding social-purpose considerations within formal financial governance (Daud et al., 2022). At the same time, these features remain context-dependent. Malaysia's governance strength is linked to a centralized *Shariah* authority, tighter regulator-led standard-setting, and longer institutional experience in Islamic finance development. What Indonesia can learn from Malaysia is thus the importance of governance integration and social-function design, not necessarily the precise institutional form through which Malaysia achieves it.

***Maqāṣid*-Based Assessment of the Malaysian Model**

From the perspective of *Maqāṣid al-Syarī'ah*, the Malaysian model appears relatively stronger in several respects, particularly in governance design and regulatory integration. First, in relation to *ḥifz al-māl*, the combination of IFSA 2013, BNM supervision, and centralized sharia authority provides a more coherent framework for protecting participants' interests and preserving the integrity of *Takaful* funds. Legal order, prudential supervision, and sharia oversight are more closely coordinated, thereby reducing fragmentation and strengthening the institutional conditions for wealth protection. Second, in relation to *'adl*, the Malaysian framework appears relatively stronger because fairness and accountability are articulated more explicitly in the legal-regulatory structure. This does not mean the model is free from commercial pressures or governance asymmetries. *Takaful* operators still function as institutional managers, and the system remains embedded in a competitive financial market. Even so, the regulatory framework places clearer emphasis on participant interests, governance discipline, and system-wide sharia consistency (Sufyan & Othman, 2025). From a *maqāṣid* standpoint, this provides Malaysia with a relatively stronger foundation for substantive justice than a model in which contractual validity is recognized without the equally strong institutionalization of fairness concerns. Third, in relation to *tahqiq al-maṣlaḥah* and *ta'āwun*, Malaysia appears to be more normatively open to linking parts of its Islamic finance framework to collective welfare. This point should not be overstated. It would be inaccurate to claim that Malaysian *Takaful* as a whole has become a fully socialized *Waqf*-based protection regime. A more careful assessment is that Malaysian regulatory development shows a broader willingness to connect Islamic finance, including *Takaful*-related initiatives, with inclusion, participant welfare, and selected social-finance mechanisms. This orientation is arguably more compatible with the social aspirations of *Takaful ijtīmā'i* than a purely formalistic reading of sharia-compliant contracting (Daud et al., 2022).

Even so, the Malaysian model should not be romanticized. Its strengths are primarily institutional and regulatory, not proof that every aspect of its *Takaful* practice fully realizes *Maqāṣid al-Syarī'ah*. Commercial viability, operator incentives, and market competition remain part of the system. Moreover, Malaysia's stronger centralization may not be fully replicable in Indonesia, where regulatory pluralism and the role of DSN-MUI shape the legal environment differently. The comparative lesson, therefore, is selective rather than absolute: Indonesia may learn from Malaysia's integrated governance logic, stronger participant-oriented regulation, and broader openness to social-purpose design, but any reconstruction must still be adapted to Indonesia's own legal and institutional framework (Sufyan & Othman, 2025).

Comparative Legal Analysis of Indonesia and Malaysia

A comparative legal analysis of Indonesia and Malaysia shows that the two jurisdictions share a common reliance on hybrid contracts in *Takaful*, yet differ significantly in governance orientation, institutional coherence, and the extent to which social justice is embedded in the legal design. Accordingly, the comparison should not be limited to identifying contractual similarities, but must also assess how each system regulates fund management, positions the operator, and protects the social function of Islamic insurance. From that perspective, the relevant comparison concerns not only legal form, but also substantive compatibility with *Maqāṣid al-Syarī'ah*, particularly *ḥifz al-māl*, *tahqiq al-maṣlaḥah*, *'adl*, and *ta'āwun*.

Table 1. Comparative Legal Analysis of *Takaful* in Indonesia and Malaysia

Comparative Aspect	Indonesia	Malaysia	Legal Implication	<i>Maqāṣid</i> Assessment	Lesson for Indonesia
Legal basis	Insurance Law, OJK regulations, DSN-MUI fatwas	IFSA 2013, BNM policies, SAC authority	Indonesia relies on dual legitimacy; Malaysia shows stronger regulatory coordination	Malaysia appears relatively stronger in institutional <i>ḥifẓ al-māl</i>	Strengthen coordination between state regulation, prudential supervision, and sharia governance
Contractual structure	Hybrid contracts dominate through <i>tabarru'</i> , <i>wakālah bil ujah</i> , and profit-sharing contracts	Hybrid contracts are also used, but within a more coordinated governance framework	The issue is not multi- <i>akad</i> itself, but its institutional configuration	Indonesia's structure is formally valid, but Malaysia appears relatively stronger in governance-supported <i>maqāṣid</i> realization	Reorient hybrid contracts toward mutuality, proportionality, and participant protection
Fund management	<i>Tabarru'</i> fund is segregated but managed within operator-centered governance	Fund sustainability and participant interest are more explicitly emphasized	Indonesian participant funds remain more exposed to managerial dominance	Malaysia appears relatively stronger in <i>ḥifẓ al-māl</i> and <i>maṣlahah</i> at the regulatory level	Clarify the protective and social function of participant funds
Role of the operator	The operator holds dominant managerial authority	Operator remains central but is more constrained by accountability-oriented governance standards	Greater governance asymmetry in Indonesia	Indonesia faces a more explicit ' <i>adl</i> ' concern in the distribution of authority and benefit	Reduce operator-participant asymmetry through stronger participant-oriented governance
Underwriting surplus	May be distributed to participants and conditionally to the company	More closely linked to participant interest and fund governance	In Indonesia, the boundary between the solidarity fund and operator interest may become blurred	Indonesia is more vulnerable to shortfalls in ' <i>adl</i> ' and <i>ta'āwun</i>	Redesign surplus allocation to preserve the social logic of <i>tabarru'</i>
Social function	Normatively recognized, but weakly institutionalized	More visible in governance orientation and broader social-finance linkage	Malaysia offers a more supportive environment for embedding social-purpose considerations	Malaysia appears relatively closer to <i>maṣlahah 'ammah</i> and <i>ta'āwun</i> in	Create a clearer legal space for institutionalizing <i>Takaful</i> 's social function

				regulatory orientation	
Compatibility with <i>maqāṣid</i>	Formally valid, substantively partial	More substantively supportive, though still imperfect	The core difference lies in governance quality, not merely contract type	Indonesia shows a <i>maqāṣid</i> shortfall caused by governance asymmetry and limited participant-centered design	Shift reform from formal contract validation to governance reconstruction

Source: Author's analysis.

The table shows that the principal similarity between Indonesia and Malaysia lies in their shared reliance on hybrid contracts in *Takaful* operations. The central comparative issue, therefore, is not the formal permissibility of *multiakad* itself, since both jurisdictions employ layered contractual structures. Rather, the decisive issue is how those contracts are institutionally configured and whether their governance effects remain consistent with the *maqāṣid* of *Takaful*. In Indonesia, the cumulative legal effect of the current hybrid structure tends to produce stronger operator-centered governance. The operator occupies the dominant role in fund administration, product design, and surplus-related decision-making, while participants remain primarily contributors to a collectively managed fund rather than co-governing parties in a genuinely mutual structure. This creates a clearer risk of governance asymmetry. From a *maqāṣid* perspective, such asymmetry is significant because it may weaken *ta'awun* by reducing mutuality to the declared purpose of the fund, and may also weaken *'adl* when authority and possible benefit are not proportionately aligned. Malaysia, by contrast, appears relatively stronger not because it abandons hybrid contracts, but because its legal and institutional framework coordinates regulation, *Shariah* governance, and participant protection more coherently. Its comparative strength lies mainly at the level of regulatory integration, participant-oriented governance discourse, and greater openness to social-purpose design. Even so, this should not be overstated. The Malaysian framework is not presented here as a perfect or directly transplantable model, but rather as a comparative reference showing that *Takaful* governance may be structured in a way that more strongly supports participant protection, fund sustainability, and broader social orientation. For Indonesia, the comparative lesson is therefore selective rather than imitative. What should be learned from Malaysia is not the wholesale adoption of its institutional structure, but the importance of designing a *Takaful* framework in which contractual validity is matched by participant-oriented governance, clearer protection of solidarity-based funds, and stronger institutional support for the social objectives of *Takaful*. This is precisely why reconstruction through a *Waqf-Musyārakah*-based model becomes normatively relevant.

Reconstructing a *Waqf-Musyārakah*-Based *Takaful* Model for Indonesia

Normative Justification for *Waqf-Musyārakah* Integration

The preceding analysis has shown that the main weakness of Indonesia's current *Takaful* model does not lie in the formal invalidity of hybrid contracts, but in the limited extent to which those contracts are institutionally arranged around the social and cooperative objectives of Islamic insurance. Although the existing framework remains *Shariah*-compliant, its governance structure still tends to place *Takaful* within a commercially managed insurance model in which participant funds are administered through a predominantly operator-centered structure. In this context, the integration of *Waqf* and *Musyārakah* may be considered a normative direction for legal reconstruction, as both concepts offer stronger foundations for collective welfare, fairness, and participatory governance. The normative relevance of *Waqf* lies in its social and enduring character (Rosele et al., 2024). Unlike ordinary donation, *Waqf* preserves the principal of an asset while directing its benefits toward a sustained charitable or collective purpose. In the *Takaful* context,

this feature is important because it provides a legal mechanism for strengthening the social basis of participant protection beyond a purely transactional contribution model. A *Waqf*-based component would allow part of the *Takaful* structure to be oriented explicitly toward communal protection, continuity of benefit, and long-term social utility, thereby reinforcing the *maqāṣid* dimensions of *tahqīq al-maṣlahah* and *ta'āwun* (Widiastuti et al., 2022).

The relevance of *Musyārakah*, by contrast, lies in its partnership logic. Unlike agency-based structures that place the operator in a dominant managerial position, *Musyārakah* is based on shared participation, shared risk, and shared entitlement according to agreed principles. Applied to *Takaful* governance, this concept is significant because it offers a more participatory framework for structuring the relationship between participants and the operator. Rather than treating participants merely as contributors to a managed fund, a *Musyārakah*-oriented arrangement would support a governance model in which the operator's role is more clearly tied to partnership responsibility, accountability, and the equitable sharing of institutional outcomes (Ossofo et al., 2025).

Taken together, *Waqf* and *Musyārakah* offer a stronger normative basis for reconstructing *Takaful* in line with *Maqāṣid al-Syarī'ah*. *Waqf* strengthens the social and redistributive dimension of Islamic insurance, while *Musyārakah* strengthens its participatory and cooperative dimension. Their combination is therefore relevant not because it replaces all existing contractual elements in practice, but because it provides a more coherent normative foundation for reorienting *Takaful* away from excessive commercialization and toward a governance model more consistent with *ḥifẓ al-māl*, *'adl*, *ta'āwun*, and *maṣlahah 'ammah*.

Proposed Legal Construction of a *Waqf-Musyārakah*-Based *Takaful* Model

The reconstructed *Waqf-Musyārakah*-based *Takaful* model for Indonesia should be designed as a layered legal structure in which *Waqf* functions as the social-endowment component of the protection fund, while *Musyārakah* governs the institutional relationship between participants and the operator. In this model, *Musyārakah* should not be understood as replacing the entire contractual basis of *Takaful*, but as restructuring its governance logic so that the relationship between participants and the operator is no longer purely operator-centered. The participants should therefore be regarded not merely as contributors to a managed risk pool, but as parties with a collective legal stake in the *Takaful* institution. The *Musyārakah* element thus operates primarily at the level of governance and institutional participation, while the *Waqf* element operates at the level of the socially protected fund (Ishak, 2025).

Under this construction, participant contributions should be legally divided into at least three distinct components. First, a risk-sharing contribution should be allocated to the *tabarru'* fund for ordinary mutual protection purposes, including claims and participant assistance (Norhayate et al., 2018). Second, a defined *Waqf* allocation should be directed to a dedicated *Waqf* fund whose principal is preserved and whose returns are used for the long-term strengthening of the participant protection structure, including emergency support, reserve reinforcement, or other sharia-compliant collective purposes. Third, where the *Takaful* product includes an investment element, a separate investment share may be maintained under a distinct contractual arrangement that is clearly segregated from both the *tabarru'* and *Waqf* components. This tripartite allocation is necessary to avoid doctrinal confusion and to preserve the distinct legal functions of mutual assistance, social endowment, and investment.

The *Waqf* component may originate from several legally recognized sources, provided that their status is clearly defined. The most direct source would be a designated portion of participant contributions that participants knowingly dedicate as a cash *Waqf* at the inception of the contractual relationship. In addition, the model may also accommodate external *Waqf* contributions from philanthropic donors, institutional supporters, or even the operator itself, so long as such contributions are legally separated from ordinary commercial assets and are administered in accordance with *Waqf* law. This multi-source structure is important because it allows the *Waqf* fund to serve not only as a participant-funded reserve, but as a broader social support layer capable of strengthening the collective sustainability of *Takaful* (Ishak, 2025).

The legal position of the participants within the *Musyārakah* element must also be clarified. In this model, the participants should collectively constitute one side of the *Musyārakah* relationship (Asyiqin & Alfurqon, 2024), while the operator constitutes the other side as the institutional manager and service

provider. The operator does not become the owner of the collective fund, but a partner with defined managerial responsibilities and limited economic entitlement. In that sense, the *Musyārakah* does not apply to every individual claim transaction, but to the institutional governance structure through which the *Takaful* arrangement is organized and administered. This means that *Musyārakah* should apply primarily at the level of institutional participation and governance rights, rather than transforming the protection fund itself into an ordinary commercial partnership pool.

The operator may still receive compensation, but such compensation should be more carefully structured than in a purely *wakālah bil ujrah* model (Muhamat & McIver, 2019). A *Waqf-Musyārakah*-based *Takaful* model does not necessarily require the complete elimination of *ujrah*, especially because modern *Takaful* operations involve professional management, actuarial administration, and regulatory compliance costs (Widiastuti et al., 2022). However, *Ujrah* should be limited to clearly defined managerial services and should not become the institution's principal organizing logic. The operator's broader economic entitlement should be linked to its partnership role under *Musyārakah*, subject to transparent governance rules and a more participant-oriented accountability structure. In this way, the model does not deny the need for operator remuneration, but prevents remuneration from dominating the legal character of the *Takaful* arrangement.

The treatment of underwriting surplus must also be reconstructed in a more operationally precise way. Under this proposed model, underwriting surplus arising from the *tabarru'* fund should follow a hierarchy of allocation. First, it should be used to strengthen the solvency and sustainability of the collective protection fund. Second, part of it may be transferred to reinforce the *Waqf* social pool where such transfer is consistent with sharia principles and regulatory design. Third, if a surplus remains after the protection and sustainability needs of the fund have been secured, it may be distributed to eligible participants under transparent and predefined conditions. By contrast, allocation of underwriting surplus to the operator should be strictly limited and should not arise automatically from mere managerial control over participant-oriented funds. This is necessary to preserve the distinction between solidarity-based resources and corporate income. In operational legal terms, therefore, the proposed model should be understood as follows: *tabarru'* remains the mechanism for ordinary mutual protection; *Waqf* provides the enduring social-benefit layer that strengthens sustainability and collective welfare; and *Musyārakah* restructures the governance relationship between participants and the operator so that *Takaful* is no longer organized solely through an operator-centered managerial logic. The model does not abolish all existing hybrid contractual elements, but reorders them into a more coherent structure in which social purpose, participant involvement, and institutional accountability are more explicitly aligned.

To avoid doctrinal ambiguity, this model should not be understood as collapsing *tabarru'*, *Waqf*, and *Musyārakah* into a single undifferentiated arrangement. Each element performs a distinct legal function. *Tabarru'* remains the mechanism for ordinary mutual protection and claim-related assistance, *Waqf* provides the enduring social-endowment layer that strengthens sustainability and collective welfare, and *Musyārakah* governs the participatory institutional relationship between the participants and the operator. The legal coherence of the proposed model depends precisely on maintaining these distinctions while integrating them within a single *Takaful* governance structure.

Sharia Governance and Institutional Safeguards

A *Waqf-Musyārakah*-based *Takaful* model would require stronger governance safeguards than those currently found in a predominantly operator-centered structure. Because the model involves a socially dedicated fund and a more participatory governance orientation, the management of participant-oriented assets should not be left solely to the internal commercial logic of the operator. A more distinct governance mechanism is therefore necessary. At the level of *Shariah* governance, the role of the *Dewan Pengawas Syariah* should be strengthened beyond formal contract compliance. *Shariah* supervision should include monitoring whether the *Waqf* fund is preserved and used consistently with its designated social purpose (Ishak, 2025), whether participant rights are adequately protected, and whether managerial decisions remain aligned with the *maqāṣid*-based goals of justice, solidarity, and public welfare. In this sense, *Shariah*

governance should function not only as a filter for formal permissibility, but also as a safeguard for the substantive social character of *Takaful*.

At the institutional level, a separate governance or oversight mechanism should be considered for participant-oriented funds, especially the *tabarru'* and *Waqf* components. This could take the form of a dedicated fund governance board, a trustee-like supervisory structure, or a reinforced participant representation mechanism within the governance framework of the *Takaful* institution. The purpose of such a mechanism would be to ensure that social funds are not subordinated to short-term operator interest and that the governance of collective funds remains transparent, accountable, and *maqāṣid*-oriented. These safeguards are important because integrating *Waqf* and *Musyārakah* would otherwise risk being reduced to mere terminology. Without stronger governance protection, a reconstructed model might formally adopt social and partnership-based concepts while still reproducing the same asymmetrical structure (Bank Negara Malaysia, 2022) criticized in the current system. The success of any (Bank Negara Malaysia, 2022) *Waqf-Musyārakah* model therefore, depends not only on contractual innovation, but also on institutional design.

Regulatory Implications for Indonesia

Implementing a *Waqf-Musyārakah*-based *Takaful* model in Indonesia would require several legal and regulatory adjustments. First, OJK's prudential and operational framework would need to provide clearer rules on the status, governance, and protection of socially dedicated participant funds, including restrictions on how underwriting surplus may be allocated and under what circumstances company interests may arise. Regulatory clarification would be necessary to ensure that funds structured with *Waqf* characteristics are not treated merely as ordinary operational reserves.

Second, DSN-MUI would likely need to formulate more specific fatwa guidance on integrating *Waqf* and *Musyārakah* into *Takaful* governance. Existing fatwas on *tabarru'*, *wakālah bil ujah*, and *muḍārabah musytarakah* provide the basis for the current hybrid structure, but they do not yet offer a sufficiently detailed framework for a *Takaful* model that combines social endowment principles with partnership-based governance. More explicit doctrinal guidance would therefore be required, particularly concerning ownership, management authority, participant status, surplus treatment, and the separation between social-purpose funds and operator remuneration. Third, Indonesian law and policy should begin to explore whether a more mutual or partnership-oriented institutional form is feasible for at least certain segments of the *Takaful* sector (Zaini & Bin Shuib, 2021). This does not necessarily mean that all existing insurers must be transformed into mutual entities. However, legal reform should create room for more participant-centered governance models that better reflect the cooperative foundations of *Takaful*. At present, the dominance of the operator-centered corporate model limits the extent to which *Takaful* can be reconstructed around solidarity and equalized participation. Fourth, any such reform should proceed gradually and contextually. The purpose of the proposed model is not to transplant Malaysian arrangements directly into Indonesia, nor to discard all existing hybrid structures. Rather, it is to provide a *maqāṣid*-oriented direction for legal reconstruction in which the social purpose of *Waqf* and the participatory logic of *Musyārakah* can be institutionally integrated into the development of Indonesian *Shariah* insurance.

Maqāṣid-Based Significance of the Proposed Reconstruction

The significance of the proposed reconstruction lies in its closer alignment with the objectives of *Maqāṣid al-Syarī'ah*. By strengthening the protection and segregation of participant-oriented funds, the model supports *ḥifẓ al-māl*. By reorienting *Takaful* toward sustained collective benefit and social utility, it advances *tahqīq al-maṣlahah*. By reducing governance asymmetry between operator and participants, it responds more directly to *'adl*. By reinforcing the collective and solidaristic nature of protection, it gives more substantive effect to *ta'āwun* and *Takaful ijtīmā'ī*. For this reason, the proposed *Waqf-Musyārakah* model should not be understood merely as an alternative contractual arrangement, but as a normative attempt to reconstruct the institutional logic of *Takaful* itself. It does not claim to offer a final or complete blueprint, but it does establish that reforming Indonesian sharia insurance requires more than formal

validation of hybrid contracts. It requires a governance model in which legal structure, institutional accountability, and social purpose are more clearly aligned with the higher objectives of Islamic law.

Conclusion

This study demonstrates that both Indonesia and Malaysia rely on hybrid contracts for *Takaful* operations, but the two jurisdictions differ significantly in how those contracts are institutionally configured and governed. Indonesia has established a formally valid *Shariah* insurance framework through the combination of statutory regulation, OJK supervision, and DSN-MUI fatwas. Malaysia, by contrast, offers a relatively more coordinated legal and institutional framework in which regulatory supervision, sharia governance, and participant-oriented protection are more closely connected. The principal comparative finding, therefore, is not that one system employs hybrid contracts while the other does not, but that the legal effect of those contracts differs according to the quality of governance that surrounds them. From the perspective of *Maqāṣid al-Syarī'ah*, the Indonesian model remains formally legitimate but substantively partial. Its main weakness lies not in the existence of hybrid contracts as such, but in the cumulative legal effect of their current institutional configuration. The dominance of operator-centered governance, the limited institutional role of participants, and the possibility that underwriting surplus may partially flow toward company interests create a normative structure in which *ḥifz al-māl*, *'adl*, *ta'āwun*, and *tahqīq al-maṣlahah* are only partially realized. The Malaysian framework appears relatively stronger because it provides a more coherent governance setting for participant protection, accountability, and social-purpose orientation, although it remains imperfect and cannot be transplanted into Indonesia without adaptation. Based on these findings, this article argues that reform of Indonesian *Shariah* insurance should move beyond the formal validation of hybrid contracts toward a reconstruction of governance design. In this regard, a *Waqf-Musyārakah*-based *Takaful* model offers a plausible normative direction. *Waqf* can strengthen the enduring social and redistributive foundation of participant protection, while *Musyārakah* can support a more participatory and proportionate institutional relationship between operator and participants. The article, therefore, concludes that a *Waqf-Musyārakah*-based model provides a stronger framework for aligning Indonesian *Takaful* with the objectives of Islamic law, provided that such reform is accompanied by clearer regulatory rules, more explicit sharia guidance, stronger protection of participant-oriented funds, and governance safeguards capable of preserving the mutual and social character of *Takaful*.

Acknowledgement

The author gratefully acknowledges the support and contributions of all participants involved in this study. Special thanks are extended to colleagues and reviewers for their valuable insights and constructive feedback. Appreciation is also given to the affiliated institution for providing the necessary resources to complete this research.

Conflict of Interest

The authors declare no conflict of interest.

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