



Employment insurance perspective on islamic law and job creation law no. 11 of 2020 on manpower no. 13 of 2003

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ABSTRACT

Background: The study of insurance within the framework of Islamic law is a relatively recent development, lacking representation in classical fiqh literature. Discussions surrounding insurance have emerged primarily with contemporary scholars, highlighting its importance in modern financial management. Today, insurance serves as a critical tool for financial planning, aimed at eliminating, avoiding, and minimizing potential risks that individuals and businesses may face. **Methods:** This research employs a qualitative approach, utilizing a case study methodology. The author gathered primary and secondary data through various field research methods, including observations, direct interviews, documentation, and library research. To address the research questions, the analysis is grounded in the theory of law implementation, focusing on the values of justice and legal certainty to achieve meaningful outcomes in practice. **Findings:** The findings reveal that, from an Islamic law perspective, conventional insurance cannot be classified as Islamic insurance due to its non-compliance with key characteristics and its inclusion of elements such as gharar (uncertainty), maysir (gambling), and usury. In contrast, Islamic insurance is defined by five fundamental characteristics: it is based on the principle of cooperation (tabarru'), aims to mitigate the impact of potential risks, features a membership association representing its members, ensures that insurance funds and investment returns remain the property of the members, and positions the insurance company as a service provider managing the funds. These characteristics are documented in the DSN-MUI fatwas concerning insurance. **Conclusion:** Despite these insights, the legal objectives intended by Islamic law and Law No. 13 of 2003 concerning manpower have not been fully realized. The core values of justice, legal certainty, and the benefits of the law remain inadequately achieved. The author argues that the existence of multiple regulatory frameworks governing employment insurance leads to legal dualism, resulting in a lack of clear legal certainty in employment insurance regulations. **Novelty/Originality of this article:** This article contributes to the understanding of Islamic insurance by clarifying the distinctions between conventional and Islamic insurance practices, emphasizing the need for clear regulations. It addresses the contemporary challenges faced in aligning legal frameworks with the principles of Islamic law, paving the way for further discussions and developments in the field of Islamic financial management.

KEYWORDS: employment insurance; legal certainty; tabarru.

1. Introduction

In sharia principles, the field of muamalah, or business transactions, is fundamentally open. This openness means that Allah, in the Qur'an, provides only general rules concerning business, leaving much to be interpreted by mujtahid scholars through ijihad, or independent reasoning. Scholars are therefore permitted to interpret and develop rules for

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modern transactions as long as they adhere to Qur'anic guidance and the hadith. In today's world, various innovative muamalah products, like Islamic finance and insurance, continue to emerge to meet contemporary needs. These modern adaptations emphasize the need for established frameworks and guidance to ensure that such practices align with sharia principles, particularly in transactions like sharia insurance, which require a deeper understanding and reference (Syula, 2004).

The concept of insurance in Islamic jurisprudence is relatively new and is not explicitly mentioned in classical Islamic legal texts. Only with the contributions of modern scholars has the idea of insurance been incorporated into Islamic sciences, reflecting the need to address contemporary financial challenges. In modern financial management, insurance is seen as a tool to mitigate and manage risk, and it provides a safety net against potential future losses. This approach aligns with the broader goals of financial planning, allowing individuals and businesses to protect themselves from uncertainties, which is encouraged in Islam under lawful frameworks (Maimun, 2007; Moho, 2019; Wirdyaningsih et al., 2005). Given the dynamic nature of modern finance, Islamic jurisprudence aims to balance traditional principles with contemporary financial needs.

In the context of Islamic law, sharia-compliant insurance is commonly referred to by terms such as *tadhamun*, *takaful*, and *at-ta'min*, each of which emphasizes mutual responsibility and community-based support. These terms underscore the ethical foundation of Islamic insurance as a means of promoting social solidarity and shared responsibility. The Arabic term *al-ta'min* is used for insurance, with the insurer being referred to as *mu'ammin* and the insured as *mu'amman* or *musta'min*. This concept reflects the essence of sharia insurance, which is to provide protection and peace of mind, aligning with the Qur'anic verse QS. Quraysh 4, which speaks to the assurance of safety and security. Thus, sharia insurance not only seeks to fulfill financial protection needs but also adheres to the spiritual values of mutual care and trust within the Muslim community.

At-ta'min, in the context of sharia insurance, refers to the process by which an individual makes regular payments or installments so that, upon the occurrence of specific conditions, they or their heirs receive an agreed-upon sum of money or compensation for lost assets. This agreement entails a contractual commitment, where the insurer, known as the *mu'ammin*, is obligated to fulfill the agreed provisions to the insured, or *musta'min*, once predetermined conditions are met or have matured. The arrangement is structured upon the payment of dues by the insured, reflecting the core principle of shared risk and responsibility. This concept aligns with the legal definition found in Article 246 of the Commercial Code, which defines insurance as an agreement wherein the insurer, in exchange for a premium, commits to compensate the insured for any loss, damage, or unrealized profits resulting from an uncertain event (Undang-Undang Hukum Dagang Pasal 246). In this framework, sharia insurance functions not only as financial protection but also as a mechanism rooted in mutual support, ensuring that participants benefit from a security net while adhering to Islamic principles.

Thus, it can be concluded that insurance is a way to protect humans against various risks (threats) and dangers that may occur in the course of their life activities, including economic activities. In insurance, there is an agreement where the insuring party promises the guaranteed party to receive a certain amount of premium money in lieu of losses, which may be suffered by the guaranteed due to an unforeseen event. There are at least three elements involved in insurance. First, the insured party who promises to pay premium money to the insurer in a lump sum or in installments. Second, the insurer who promises to pay a sum of money to the insured party in one lump sum or in installments if an insured event occurs. Third, an event that has not yet clearly occurred (Pasaribu & Lubis, 2006).

The group that forbids sharia insurance includes Ibn Abidin. Hanafi scholars argue that insurance is haram because the participant's deposit money (premium) is *iltizam ma lam yalzam* (obligating something that is not obligatory). Muhammad Bakhit al-Muthi'i (mufti of Egypt) stated that the insurance contract that guarantees property is essentially included in the *kafalah* or *ta'addi* or *itlaf*. Muhammad al-Ghazali said that insurance is haram because it contains usury. He sees usury in the management of insurance funds and premium returns

accompanied by interest when the agreement period has expired (Zainuddin Ali, 2008). The group that allows sharia insurance argues that there is no nash from the Qur'an or hadith prohibiting insurance, and there are no elements as mentioned by the previous opinion. This view is held by scholars such as Ibn Abidin, Wahab Khalaf, Mustafa Ahmad Zarqa (professor at Sharia University), Shaykh Abdurrahman Isa (professor at al-Azhar University, Egypt), Prof. Dr. Muhammad Yusuf Musa (professor at Cairo University), Shaykh Abdul Khalaf, and Prof. Dr. Muhammad al-Bahi (Sudarsono, 2013).

The author discovered an established standard contract related to insurance practices, which prompted a deeper exploration of the role and mechanisms of insurance within the company context. This investigation considers the provisions outlined in Manpower Law No. 13 of 2003, which comprehensively addresses the rights and obligations of workers, including aspects related to insurance and welfare. Additionally, guidance from the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) provides a foundation for applying sharia principles to contractual agreements in life transactions, underscoring the importance of aligning modern employment practices with Islamic legal frameworks. Motivated by these considerations, the author aims to conduct an in-depth study analyzing the structure, processes, and systematics of employment insurance within the company. The research title, to be finalized by the author, will reflect this focus on harmonizing legal, ethical, and practical elements of insurance for a comprehensive understanding of employment rights and protections.

2. Methods

To ensure the research data is complete, objective, reliable, and valid, the author applies various strategies in developing the research methodology, as emphasized by Bungin (2011). This study employs a field research design with a qualitative approach, which allows for in-depth exploration of employment insurance practices. Data collected from the field will be processed through descriptive narratives, providing detailed explanations of the study's findings. The chosen methodology aligns with a juridical-normative approach, emphasizing legal perspectives in the examination of employment insurance contracts. This approach not only considers formal legal norms but also takes into account non-positivized norms, or principles that are regarded as law even if they have not been formally codified, thus providing a comprehensive view of the legal landscape.

Data for this study will be gathered using a triangulation method that includes observation and interviews to ensure accuracy and depth. This triangulated data collection process allows for a multi-faceted understanding of contract practices within employment insurance. Once collected, the data will be systematically analyzed and then formulated into qualitative descriptions, enabling an assessment of the degree to which labor insurance is implemented in accordance with sharia principles. By using the induction method, the author will draw conclusions based on specific observations to generate broader insights, following the analytical steps outlined by Soetadyo Widyosubroto (2013). This comprehensive approach is designed to reveal both practical and legal aspects of employment insurance, ensuring that the findings are both robust and meaningful.

3. Results and Discussion

In Islamic insurance, there are several verses and hadiths of the Prophet that form the basis for the determination of the law. The research or determination of Islamic insurance law must be grounded in these verses and hadiths. Therefore, before establishing the law, it is essential to include verses and hadiths about Islamic insurance to ensure that the determination of the law aligns with its main sources, namely the Quran and hadith. If we trace, there are several verses in the Quran and hadiths of the Prophet that serve as the main sources for Islamic insurance law. Furthermore, the importance of citing a proposition or main source in the determination of law is to clarify the origin or source of the principles

described in the establishment of a law. For example, in the establishment of insurance law, one of the principles in Islamic insurance is mutual assistance. However, if the source of the principle of mutual assistance is not mentioned, it can lead to misunderstandings. Therefore, according to researchers, it is crucial to include the main sources in the establishment of a law, especially Islamic law, namely the verses of the Quran and hadith (Iqbal, 2006).

Islamic insurance, as defined in sharia, is structured around the concept of the *tabarru'* contract, which emphasizes mutual cooperation and responsibility among participants. To be classified as Islamic insurance, several key characteristics must be met. First, the insurance operates on principles of cooperation and the *tabarru'* contract, agreed upon by all parties to ensure that the premiums paid align with these values (Liana, 2019; Suganda, 2011). The primary goal is to shield members from specified risks, providing compensation to insured members for any losses incurred due to these risks. The company designates representatives from within the membership to handle the investment of insurance funds and other corporate activities, ensuring these representatives share the same rights and responsibilities as other members. Furthermore, the premiums collected and any profits from investments remain the collective property of the members, managed by their appointed representatives rather than belonging to the company. In this model, the insurance company acts solely as a service provider, managing and investing the premium funds on behalf of the members. The company's earnings are determined by mutual agreement, either as service fees or through profit-sharing arrangements, thus aligning with Islamic principles of fairness and transparency.

After understanding the characteristics described above, it is clear that certain principles must be followed when implementing Sharia insurance. Muhammad Syakir Sula argues that there is a *garar* (uncertainty) in insurance because the contract used in conventional insurance is a *tabaduli* contract. In a *tabaduli* contract, it must be clear how much one has to pay and how much one will receive. However, in insurance, the premium amount is unknown until the risk occurs, even though the benefits may be estimated based on the value of the insured goods. To address this, Muhammad Syakir Sula proposes replacing the contract with a *takafuli* contract or *tabarru* contract and a *mudarabah* contract for profit sharing, as terms in the exchange contract are no longer needed (Waldy Nopriansyah, 2016).

The concept of Sharia insurance is based on mutual cooperation and shared risk among members. With this concept, members become each other's bearers for the risks that arise, based on mutual assistance through *tabarru*. The insurance fund remains with the members. Muhammad Syakir Sula also emphasizes that in Sharia insurance, there is no transfer of risk from members to insurance companies because the premiums paid by members remain the property of the members. The amount of premiums paid, especially in loss insurance, is based on the principle of probability. Insurance or coverage is an agreement by which an insurer binds himself to the insured person or company, by receiving a premium to provide compensation for loss, damage, or injury that may occur due to a specified event (Ali, 2004).

In gambling, or *maisir*, both parties enter an agreement where each is bound to fulfill their obligation if the outcome is unfavorable to them; for instance, the losing party is required to pay the agreed amount, while the winner gains the reward. This arrangement inherently involves an element of probability, as neither party knows with certainty whether they will win or lose. *Maisir* resembles a *mu'awadah* (exchange) contract in that both participants agree to the potential outcomes of either gain or loss. Similarly, insurance involves a contractual commitment where the insured is obligated to pay premiums, while the insurer or insurance company is bound to provide compensation or benefits should a specified risk eventuate (Anshori, 2010). This parallel between gambling and insurance raises questions about the nature of risk and compensation in conventional insurance practices.

Muhammad Syakir Sula offers a perspective on this similarity, asserting that conventional insurance contracts share characteristics with gambling. He explains that in an

insurance contract, the insurer (insurance company) is obligated to pay the insured a specific amount in the event of a covered risk, yet benefits from the premium payments if no such risk arises. This exchange resembles a "contract of chance" because it is conditioned on uncertain future events, similar to gambling or betting agreements. The involvement of *maisir* in insurance, he argues, is closely tied to *gharar* (excessive uncertainty) present in conventional insurance contracts (Basyir, 1983). The uncertainty regarding potential risks and outcomes thus contributes to the contentious nature of conventional insurance under Islamic law.

Additionally, conventional insurance often includes discrepancies between the premiums paid by the insured and the benefits ultimately received, which can lead to *riba* (usury) concerns. When the amount paid matches the compensation but is deferred over time, it may constitute *riba nasai*, due to the delay in repayment. If the compensation amount exceeds the premiums, *riba fadl* and *nasai* are implicated, suggesting that the insured has gained undue interest over time. Furthermore, the insured may also incur interest in the form of fees or charges on their premium payments. Conventional insurance companies often engage in activities that involve interest, including interest-accruing investments and loans, which further entrench these products in *riba* (Dewi, 2004). This reliance on interest-bearing financial activities conflicts with Islamic principles, which strictly prohibit *riba* in financial transactions, thereby making conventional insurance an area of concern within Islamic jurisprudence.

Law Number 1 of 1992 on insurance business defines insurance as an agreement involving two or more parties in which the insurer commits to provide coverage to the insured. In exchange for a premium, the insurer promises to compensate the insured for various potential losses, damages, or even the loss of anticipated profits resulting from unforeseen events. This coverage may also extend to legal liabilities involving third parties, offering protection against potential claims made against the insured due to unforeseen circumstances. Additionally, insurance agreements under this law can include provisions for payments related to the insured's life events, such as death or life changes, securing financial support in critical times. Thus, the law underscores the mutual obligations between the insurer and the insured, aiming to provide a safety net for losses tied to uncertain future events and ensuring a structured risk management mechanism (Rawls, 2006).

According to Article 27, paragraph 2 of the 1945 Constitution, alongside Article 1, point 2 of Law Number 13 of 2003 on Manpower, labor encompasses all individuals capable of working to produce goods and services, whether for personal needs or societal benefit. As the backbone of development, especially in industrial growth, labor involves a network of social, legal, and organizational relationships that create mutual rights and obligations, all of which are rooted in the values of Pancasila. The formulation of Labor Law is essentially similar to general legal principles, where the pursuit of justice must pervade all aspects of life while respecting prevailing traditions. In this context, legal justice requires that laws apply equally to everyone without discrimination. Social justice calls for equal employment opportunities based on each individual's abilities and skills, while government justice ensures equal standing for all people in government, regardless of ethnicity, nationality, language, or culture (Sidharta, 2000).

Legislation plays a crucial role in establishing the validity and binding authority of laws, offering structured guidance in law-making and ensuring that statutory norms align without conflict. According to Nasution (2015), the principle of legal certainty relies on four foundational elements. First, positive law is equated with legislation itself, establishing its basis in written, codified rules. Second, law must be rooted in factual realities, reflecting the conditions and needs of society. Third, legal provisions must be precisely formulated to ease practical implementation and reduce interpretative errors. Finally, stability is key; positive law should not be subject to frequent or arbitrary changes, preserving its reliability and consistency over time.

The primary purpose of laws is to regulate human behavior in a way that ensures the smooth functioning of society, minimizes conflicts, and promotes fairness among individuals. Laws are not developed in isolation; they are shaped by human communication and interactions, which help anticipate and address potential negative consequences. This interconnectedness highlights the fundamental relationship between justice, certainty, and legal benefits, as emphasized by Purwosutjipto (1996). Effective laws must adapt to societal needs and reflect the values of the community they serve, allowing for a more just and equitable society. Ultimately, a well-structured legal framework fosters an environment where individuals can coexist peacefully, knowing their rights and responsibilities.

In Indonesia, the evolution of social security programs for labor dates back to the early years of independence. The government recognized the need for protective laws, leading to the enactment of Law No. 33 of 1947 concerning Work Accidents, followed by Law No. 34 of 1947 addressing War Accidents. These foundational laws set the stage for subsequent legislation, including Work Law No. 12 of 1948, which introduced regulations concerning labor age, working hours, workplace conditions, housing, and labor health. This historical progression illustrates the government's commitment to enhancing labor rights and welfare. By implementing these laws, Indonesia aimed to create a safer and more supportive environment for its workforce, ensuring that workers are protected from potential risks associated with their employment.

The primary purpose of social security is to safeguard workers and their families from various risks associated with the labor market, including job loss, wage reductions, work-related accidents, illnesses, disabilities, old age, and even death. By providing this protection, social security aims to instill a sense of peace of mind among workers, which, in turn, is expected to enhance their work discipline and overall productivity. In Indonesia, the social security program administered by PT. Jaminan Sosial consists of four key worker protection initiatives: work accident insurance, death guarantees, old age guarantees, and health care guarantees. Each of these programs is designed to address specific needs and vulnerabilities that workers may face throughout their employment and life stages. Ultimately, the implementation of these programs is crucial in fostering a supportive work environment, promoting worker welfare, and contributing to national productivity.

According to Law No. 3 of 1992, contributions or premiums for the Jaminan Kecelakaan Kerja (JKM), Jaminan Kematian (JKK), and Jaminan Pemeliharaan Kesehatan (JPK) programs are entirely the responsibility of the employer. This framework of social security provides essential protection for workers, offering compensation in the form of monetary support to supplement their income when faced with various socioeconomic risks. The underlying philosophy of Social Security is rooted in independence and self-esteem, aiming to empower workers in navigating these challenges. However, a common misconception exists that the term "worker" is limited to individuals in factories, cleaning services, or office administrative roles. In reality, labor law defines a worker as any individual who performs work for another and receives wages or alternative forms of remuneration.

This broader definition encompasses a diverse range of occupations, reflecting the complexity of the labor market. Compensation can take many forms, including non-monetary goods or objects, the value of which is determined through mutual agreements between employers and workers. This flexibility in compensation structures aims to accommodate the varying needs and circumstances of workers, promoting fairness and equity in the workplace. As a result, social security programs play a vital role in ensuring that all workers, regardless of their job classification, receive the support they need. Understanding the comprehensive nature of labor law and social security is essential for fostering a more inclusive and equitable labor environment in Indonesia.

Employment development encompasses various dimensions and involves collaboration among multiple stakeholders, including the government, employers, and workers. To achieve effective employment development, it is essential to implement an integrated approach that fosters mutually beneficial cooperation among these parties.

According to Article 3 of Law No. 3 of 2003, manpower development should be grounded in the principle of integration, facilitated through coordinated cross-sectoral functions at both central and regional levels. Additionally, Article 4 of Law No. 13 of 2003 outlines key objectives for employment development, which include empowering and optimally utilizing the workforce in a humane manner. This framework also aims to ensure equal employment opportunities, align labor supply with national and regional development needs, provide protection for workers to enhance their welfare, and ultimately improve the quality of life for workers and their families.

The issue of unlimited power held by employers often leads to the potential for coercive practices and unfair agreements that can adversely affect workers, who are generally considered the weaker party in the labor dynamic. To mitigate this power imbalance, labor law is designed to protect the rights and welfare of workers, thereby promoting social justice within the workplace. While it is true that both parties—workers and employers—can enter into agreements freely, such agreements alone do not suffice to safeguard workers' interests, particularly given their socioeconomic vulnerabilities. Labor laws establish a framework that seeks to balance the power dynamics between employers and employees, ensuring that the latter are not subjected to arbitrary actions that could jeopardize their rights and livelihoods. Ultimately, the goal of these protections is to foster a fair and equitable working environment where workers can thrive without fear of exploitation.

The scope of labor law, as outlined in Article 1 point 1 of Law No. 13 of 2003 concerning employment, encompasses all matters related to labor throughout the entire employment lifecycle—before, during, and after the employment period. According to Gebiedsleer's theory of JHA, the applicability of law pertains to the specific conditions or fields to which the legal methods are applied. This can be categorized into four distinct spheres. The personal sphere focuses on the regulation of entities involved, including labor as a natural person, businessmen as legal entities, and the government in its official capacity. The time scope delineates the regulatory framework in terms of when legal provisions apply, covering the phases before, during, and after the employment relationship. Additionally, the territorial scope addresses the geographical context of legal events, distinguishing between regional (both non-sectoral and sectoral) and national (non-sectoral and sectoral) applications. Finally, the scope according to objects pertains to specific matters regulated by the law, which include labor direction and utilization, the employment relationship, occupational safety and health (K3), labor social security, and procedures for layoffs and the resolution of industrial relations disputes (Jehani, 2006; Wijayanti, 2014).

Protecting labor is essential to guarantee the basic rights of workers, ensure security, and provide opportunities and fair treatment without discrimination based on any factor, ultimately aiming to realize the welfare of workers and their families while also considering the progress and development of the business world. According to Article 4 of Law No. 13 of 2003 concerning Manpower, there are four key objectives of labor law as articulated by Rusli (2004, 2007). First, the law aims to empower and utilize the workforce optimally and humanely. Unfortunately, instances of inhumane treatment towards workers, such as unpaid forced overtime and various forms of abuse from superiors, still persist, necessitating action to foster a conducive work environment (Salam, 2009). Second, the law seeks to ensure equal employment opportunities and labor provisions that align with national and regional development needs, thereby contributing to the prosperity and welfare of the working community. This involves providing legal certainty, justice, expediency, order, protection, and enforcement as the employment sector develops in response to economic challenges. Third, labor law is intended to protect workers and ensure their welfare, addressing ongoing issues such as wages and fair treatment. Violations, including arbitrary layoffs and salary cuts, undermine workers' livelihoods and highlight the need for adequate protection to promote a just and equitable society. Lastly, improving labor and family welfare is a central goal of labor law, as regulations have been established to ensure the welfare, safety, and humane treatment of both workers and their families.

Despite over half a century of independence, challenges related to wages and welfare remain prevalent, indicating that ongoing discussions, particularly around health protection for workers and their families, must be prioritized, especially since many lack adequate health facilities due to insufficient support from their employers.

The goal of implementing the law—encompassing justice, certainty, and legal expediency—has not been fully realized, indicating a need for improvement in the legal framework governing labor relations. To address this gap, a governance system grounded in the principles of Shariah and labor laws is crucial. Such a system would ensure an impartial review of regulations, guaranteeing their relevance and effectiveness in the context of the employment life insurance system while supporting workers in fulfilling their obligations to the company. By adhering to the principle of justice, the law can be designed to protect all parties involved, thereby preventing any form of harm. Additionally, ensuring legal certainty and expediency is vital to fostering a fair and balanced working environment. As members of society, it is imperative to observe and uphold these principles across all facets of life, ensuring that justice is not merely an ideal but a lived reality that enhances the welfare of workers and promotes harmonious labor relations (Agus, 1995).

4. Conclusions

Islamic insurance, fundamentally rooted in Shariah principles, operates on the principle of cooperation through *tabarru'*, which fosters a communal approach to risk management. This cooperative framework allows participants to share the burden of specified risks detailed in the insurance contract, providing them with compensation when such risks materialize. A key feature of Islamic insurance is the establishment of a membership association that represents its members in transactions with insurance companies. This structure ensures that the funds contributed by participants are held in their names, safeguarding their interests rather than those of the insurance company. Additionally, representatives within this system must be registered as Insurance Participants, enhancing accountability and transparency in the operation of Islamic insurance.

In contrast, conventional insurance companies do not qualify as Islamic insurance providers because they do not adhere to the essential characteristics of Shariah compliance. These companies often involve *garār*, or excessive uncertainty, particularly regarding whether members or the insured will receive compensation based on unpredictable events such as death. This inherent uncertainty can lead to financial instability, as conventional insurers may experience potential losses when they pay out compensation. Such scenarios arise from the unpredictable nature of risks, creating a profit motive for the company when risks do not occur and premiums are retained. This fundamental difference highlights the need for distinct operational principles between Islamic and conventional insurance, ensuring that Islamic insurance aligns with ethical standards and offers a fairer system for all participants.

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References

- Agus, P. (1995). *Hukum Asuransi dan Kesehatan Perusahaan Asuransi*. Agusmidah. (2010). *Hukum Ketenagakerjaan Indonesia*. Ghalia Indonesia.
- Ali, A. M. H. (2004). *Asuransi Dalam Perspektif Hukum Islam*. Jakarta: Kencana.
- Anshori, A. G. (2010). *Hukum Perjanjian Di Indonesia (Konsep, Regulasi, dan Implementasi)*. Gajah Mada University Press.
- Basyir, A. A. (1983). *Hukum Islam tentang Riba, Utang Piutang, dan Gadai*. Al-Ma'arif.
- Bungin, B. (2011). *Metodologi Penelitian Kualitatif*. Rajawali Pers.
- Dewi, G. (2004). *Aspek-Aspek Hukum Dalam Perbankan dan Perasuransian Syari'ah di Indonesia*. Prenada Media.
- Dinas Tenaga Kerja dan Transmigrasi. (2015). *Himpunan Peraturan Perundang-Undang Tentang Ketenagakerjaan Bidang Hubungan Industrial*. Pemerintah Provinsi Banten.
- Iqbal, M. (2006). *Asuransi Umum Syariah Dalam Praktik, Upaya Menghilangkan Gharar Dan Riba*. Gema Insani.
- Jehani, L. (2006). *Hak-Hak Pekerja Bila di PHK*. Visi Media.
- Liana, L. (2019). *Hukum Asuransi, Perlindungan Hukum Bagi Nasabah Dalam Penyelesaian Klaim Asuransi Jiwa Di Indonesia*. Laksbang Justitia.
- Maimun. (2007). *Hukum Ketenagakerjaan Suatu Pengantar*. Pradnya Paramita.
- Moho, H. (2019). Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan. *Warta Dharmawangsa*, 13(1). <https://doi.org/10.46576/wdw.v0i59.349>
- Nasution, B. J. (2015). *Hukum dan Keadilan*. Mandar Maju.
- Pasaribu, C., & Lubis, S. K. (2016). *Hukum perjanjian dalam Islam*. Sinar Grafika.
- Rawls, J. (2006). *Teori Keadilan Dasar-Dasar Filsafat Politik Untuk Mewujudkan Kesejahteraan Sosial Dalam Negara*. Pustaka Pelajar.
- Rusli, H. (2004). *Hukum Ketenagakerjaan*. Ghalia Indonesia.
- Rusli, H. (2007). *Hukum Ketenagakerjaan*. Sinar Grafika Offset.
- Salam, M. F. (2009). *Penyelesaian Perselisihan Perburuhan Industrial Di Indonesia*. Mundur.
- Sidharta, B. A. (2000). *Refleksi Tentang Struktur Ilmu Hukum*. Mandar Maju.
- Sudarsono, H. (2013). *Bank Dan Lembaga Keuangan Syariah*. Ekonisia.
- Suganda, A. (2011). *Bunga Rampai, Perkembangan Peraturan Perundang-Undangan Ketenagakerjaan di Indonesia*. PT. Gading Inti Prima Anggota IKAPI, Jakarta.
- Syaifuddin, A. (2014). *Ushul Fiqh*, Jilid-I, Cet-V. Kencana.
- Syula, M. S. (2004). *Asuransi Syariah (Life and General): Konsep dan Sistem Operasional*, Cet I. Gema Insani Press.
- Wijayanti, A. (2014). *Hukum Ketenagakerjaan Pasca Reformasi*. Sinar Grafika.

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