

Legal Protection in Takaful Motor-Vehicle Claims: Procedural Preconditions and Sharia Contractual Duties in Decision No. 0177/Pdt.G/2016/MS Bna

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Abstract

This article examines legal protection for a participant in a Sharia motor-vehicle insurance dispute arising from Decision No. 0177/Pdt.G/2016/MS Bna of the Banda Aceh Sharia Court. The dispute concerned the loss of a Honda CR-V while it was being washed at a car-wash facility and the subsequent refusal by PT Asuransi Takaful to pay a claim on the ground that the event fell within a policy exclusion for fraud or similar conduct. Using qualitative doctrinal content analysis, the article reconstructs the policy relationship, the claimant's arguments, the insurer's exclusion defence, and the court's procedural reasoning. It argues that the most important legal feature of the judgment has often been obscured: the court did not finally determine whether the loss was theft or excluded fraud, nor did it adjudicate the substantive entitlement to the *tabarru'* fund. Instead, it declared the action inadmissible because the contractually required sixty-day process of deliberation and amicable settlement had not been completed. This distinction has major implications for legal protection. A procedural bar postpones merits review; it does not validate the insurer's substantive claim rejection. The article further distinguishes the functions of *tabarru'*, *wakālah bi al-ujrah*, and *kafālah* in takaful and argues that policyholder protection requires transparent exclusion clauses, good-faith claims handling, reasoned classification of insured events, and accessible dispute-resolution mechanisms. Updated Indonesian insurance regulation reinforces the importance of governance and policy-product oversight,

although the 2016 dispute must be assessed primarily under the legal framework and policy terms applicable at the time.

KEYWORDS: takaful; Sharia insurance; insurance claims; tabarru'; wakālah bi al-ujrah; kafālah; procedural precondition; Banda Aceh Sharia Court

Introduction

Insurance disputes sit at the intersection of risk allocation, contract law, consumer protection, and claims governance. In Sharia insurance (takaful), the legal relationship also incorporates mutual assistance through the tabarru' fund and an agency relationship through which the operator manages participant funds. The source manuscript examines a motor-vehicle claim dispute decided by the Banda Aceh Sharia Court in Decision No. 0177/Pdt.G/2016/MS Bna.¹

The case arose after a Honda CR-V, registration number BL 66 HN, disappeared while being washed at Doorsmeer Rakan Droe in Banda Aceh. The participant reported the event to the police as theft and later submitted a claim under a Takaful motor-vehicle policy. PT Asuransi Takaful rejected the claim by invoking the Indonesian Standard Motor Vehicle Insurance Policy exclusion for embezzlement, fraud, hypnosis, and similar conduct. The claimant argued that the event was theft rather than fraud and alleged that the refusal to pay was inconsistent with the tabarru' and wakālah bi al-ujrah arrangements.²

The original article correctly identifies the tension between contractual exclusions and participant protection, but its legal characterization can be sharpened. Most importantly, the judgment should not be described simply as a judicial rejection of the insurance claim. The operative order stated that the plaintiff's action was not admissible because the court found that the parties had not first completed the policy's dispute-resolution process requiring deliberation and amicable settlement within sixty days. In

¹Mahkamah Syar'iyah Banda Aceh, Decision No. 0177/Pdt.G/2016/MS Bna (October 26, 2016).

²Mahkamah Syar'iyah Banda Aceh, Decision No. 0177/Pdt.G/2016/MS Bna; Selvi Harvia Santri, "Penerapan Prinsip Indemnitas pada Asuransi Kendaraan Bermotor," UIR Law Review 3, no. 1 (2019).

Indonesian procedural terms, this is materially different from a merits judgment dismissing the substantive claim.³

That distinction generates the principal research question of this revised article: what form of legal protection is available when a takaful claim dispute is blocked by an unfulfilled contractual precondition before the court reaches the merits? A second question concerns substantive claim governance: how should the insurer justify its classification of an event as excluded fraud when the participant and police report characterize the event as theft? A third question concerns Sharia contractual structure: what roles do *tabarru'*, *wakālah bi al-ujrah*, and *kafālah* play in evaluating the operator's duties and participant protection?

The article contributes by separating procedural admissibility from substantive claim entitlement. It argues that the court's non-admissibility ruling preserved, rather than extinguished, the underlying merits dispute. Accordingly, legal protection cannot be evaluated only by asking whether the plaintiff lost the 2016 case. It must also examine whether the policy's dispute-resolution clause was transparent and workable, whether the insurer's exclusion decision was reasoned and evidence-based, and whether Sharia governance principles were reflected in claims handling.

DSN-MUI Fatwa No. 21/DSN-MUI/X/2001 defines Sharia insurance as an arrangement of mutual protection and mutual assistance among participants through investment in assets and/or *tabarru'* funds, using contracts consistent with Sharia principles. This formulation is important because it frames takaful as more than a bilateral exchange between an insurer and an insured. The operator manages a pool created for collective risk protection, while participants contribute to the pool under a donation-oriented structure.⁴

The source manuscript also grounds takaful in the principle of *ta'āwun* (mutual assistance). That principle does not mean every loss must automatically be paid. Coverage remains subject to the policy and lawful exclusions. But it does require the claims process to remain consistent with

³ Mahkamah Syar'iyah Banda Aceh, Decision No. 0177/Pdt.G/2016/MS Bna. The operative disposition declared the action inadmissible and imposed case costs of IDR 291,000.

⁴ Dewan Syariah Nasional–Majelis Ulama Indonesia, Fatwa No. 21/DSN-MUI/X/2001 tentang Pedoman Umum Asuransi Syariah.

the protective purpose of the arrangement, including clarity, fairness, and good-faith administration.⁵

In contemporary takaful, the *tabarru'* fund and the operator's management role should be analytically distinguished. Participants contribute to a collective fund intended to respond to covered risks. The operator commonly manages that fund under *wakālah bi al-ujrah*, receiving an agreed fee for management services. Thus, the operator is not simply the owner of the pool from which claims are paid. It acts within a fiduciary-like management structure whose legitimacy depends on compliance with the policy, the agreed Sharia contracts, and applicable regulation.

The claimant in Decision No. 0177/Pdt.G/2016/MS Bna relied on this structure to argue that PT Asuransi Takaful had failed to administer the *tabarru'* fund in good faith and had improperly characterized the loss as fraud rather than theft. Whether that contention was correct was not finally determined because the action was disposed of on procedural grounds.⁶

The source manuscript devotes substantial attention to *kafālah*, the classical concept of guarantee or suretyship. *Kafālah* is relevant as an analogy for responsibility and protection, but it should not displace the actual contractual architecture of takaful. The participant's claim in this case arose primarily from the policy, the *tabarru'* mechanism, and the operator's *wakālah* role, not from a conventional surety contract in which a guarantor assumes another person's debt.⁷

For this reason, *kafālah* is best used as a supplementary doctrinal lens rather than as the sole juridical characterization of the insurance relationship. This refinement improves doctrinal accuracy and prevents the analysis from treating distinct Sharia contracts as interchangeable.

Insurance contracts are typically standard-form contracts, creating an information and bargaining asymmetry between the company and the policyholder. Indonesian scholarship has therefore emphasized legal protection for policyholders where claim exclusions, claim procedures, or

⁵Setiya Afandi, "Prinsip Ta'awun dan Implementasinya di Lembaga Asuransi Syariah," *Madani Syari'ah* 5, no. 2 (2022), <https://doi.org/10.51476/madanisyariah.v5i2.408>.

⁶Mahkamah Syar'iyah Banda Aceh, Decision No. 0177/Pdt.G/2016/MS Bna.

⁷Mardani, *Fiqh Ekonomi Syariah: Fiqh Muamalah* (Jakarta: Kencana, 2012); Mugiyati, "Kajian Hukum Islam terhadap Aplikasi Kafalah pada Asuransi Takaful," *Al-Qanun* 17, no. 1 (2014).

standard terms operate to the participant's disadvantage. The principle of good faith is especially important in claims administration because both participant disclosure and insurer decision-making affect the integrity of the insurance relationship.⁸

A well-functioning claim-rejection process should identify the contractual exclusion relied upon, connect the factual event to that exclusion, and provide a reasoned basis for the classification. A conclusory statement that a theft-like event amounts to fraud creates a legal-protection problem if the participant cannot understand the evidentiary basis for that conclusion.

Research Method

This article uses qualitative doctrinal content analysis. The primary source is Decision No. 0177/Pdt.G/2016/MS Bna of the Banda Aceh Sharia Court. The judgment is read together with the policy provisions and claim-rejection narrative reproduced in the source manuscript. Secondary materials include Sharia insurance scholarship, DSN-MUI guidance, literature on insurance claims and good faith, and relevant Indonesian insurance regulation.⁹

The analysis proceeds in four stages. First, the article reconstructs the material facts and procedural history. Second, it separates the insurer's substantive exclusion defence from the court's procedural disposition. Third, it evaluates the participant-protection implications of the policy's sixty-day dispute-resolution clause. Fourth, it examines the case through the Sharia contractual concepts of *tabarru'*, *wakālah bi al-ujrah*, and, more cautiously, *kafālah*.

The study is a single-case doctrinal analysis. It does not purport to measure claim-rejection patterns across the Indonesian *takaful* industry.

⁸Tanti Alfareza Herdianti, Muhamad Abas, and Zarisnov Arafat, "Perlindungan Hukum terhadap Konsumen Mengenai Klaim Asuransi atas Barang yang Hilang," *Justisi: Jurnal Ilmu Hukum* 8, no. 1 (2023), <https://doi.org/10.36805/jjih.v8i1.4878>; Ni Kadek Witarini and Edward Thomas Lamury Hadjon, "Perlindungan Hukum terhadap Pemegang Polis dari Perusahaan Asuransi yang Pailit," *Kertha Semaya: Journal Ilmu Hukum* 1, no. 3 (2018).

⁹The primary doctrinal material is Mahkamah Syar'iyah Banda Aceh, Decision No. 0177/Pdt.G/2016/MS Bna; the source article also relies on secondary literature on Sharia insurance, claims handling, and *kafalah*.

Nor does it independently verify evidence outside the court record. Its contribution lies in legal characterization: distinguishing what the court actually decided from what remained legally unresolved.

Case Background and Procedural History

The participant held Takaful motor-vehicle coverage for a Honda CR-V RM3 2WD 2.4 A/T CKD/Jeep/2013, registration number BL 66 HN. The policy period ran from 8 December 2015 to 8 December 2016. On 10 February 2016 at approximately 17:15, the vehicle disappeared while at Doorsmeer Rakan Droe, Jalan T. Imum Lueng Bata, Gampong Cot Mesjid, Banda Aceh. The participant reported the event to Lueng Bata police and obtained report No. TBL/20/II/2016/SekBata.¹⁰

The source manuscript states that the vehicle key had been handed to the car-wash personnel in the ordinary course of the washing service. The participant subsequently prepared the documentation required under the Takaful policy and sought payment from the *tabarru'* fund for the loss.

On 11 May 2016 PT Asuransi Takaful issued letter No. KLM.LO-033.05.16 rejecting the claim. The company relied on Chapter V, Article 6 of the standard motor-vehicle policy, referring to exclusions for embezzlement, fraud, hypnosis, and similar conduct. The insurer classified the loss as fraud and therefore treated it as unclaimable.¹¹

The claimant disputed that characterization. The pleadings described the occurrence as theft supported by a police report and argued that no evidence showed that the participant, her family, or another person acting on her instructions had intentionally engineered the disappearance. The claimant also alleged breach of the *tabarru'* and *wakālah bi al-ujrah* arrangements and sought payment corresponding to the policy value of IDR 360,000,000 together with claimed immaterial damages.¹²

The Banda Aceh Sharia Court did not proceed to a final substantive determination of whether the event was theft, fraud, or another excluded cause. Instead, the panel focused on the dispute-resolution clause in the policy. The court found no evidence that the parties had completed the

¹⁰Mahkamah Syar'iyah Banda Aceh, Decision No. 0177/Pdt.G/2016/MS Bna.

¹¹Mahkamah Syar'iyah Banda Aceh, Decision No. 0177/Pdt.G/2016/MS Bna.

¹²Mahkamah Syar'iyah Banda Aceh, Decision No. 0177/Pdt.G/2016/MS Bna.

required process of deliberation and amicable settlement within the sixty-day period contemplated by the policy.¹³

The operative judgment therefore declared the plaintiff's action inadmissible and ordered the plaintiff to pay case costs of IDR 291,000. The decision was issued on 26 October 2016. This procedural disposition is the key to understanding the scope of the judgment: it prevented merits adjudication at that stage but did not necessarily establish that the insurer's fraud classification was substantively correct.

Table 1. Analytical separation of the insurance-coverage dispute and the procedural basis of Decision No. 0177/Pdt.G/2016/MS Bna.

Issue	Participant's position	Insurer / Court position	Legal significance
Nature of the loss	Vehicle was stolen; police report supported theft.	Insurer classified event as fraud or similar excluded conduct.	Substantive coverage issue; not finally resolved by the court.
Policy exclusion	Exclusion did not apply to the reported theft.	Insurer relied on the exclusion for fraud/embezzlement/hypnosis or similar conduct.	Requires factual and evidentiary justification.
Tabarru' entitlement	Covered total loss should trigger payment from the participant risk fund.	Insurer denied that the event was claimable.	Substantive claim-management issue.
Dispute-resolution procedure	Plaintiff proceeded to litigation.	Court found the policy's sixty-day deliberation/amicable-settlement procedure had not been completed.	Procedural precondition leading to inadmissibility.
Effect of judgment	Claimant sought policy payment and damages.	Action declared inadmissible; case costs imposed.	No final merits ruling on theft versus fraud.

¹³Mahkamah Syar'iyah Banda Aceh, Decision No. 0177/Pdt.G/2016/MS Bna.

Inadmissibility is not a merits judgment

The source article frequently uses the language of claim rejection and suggests that the judicial decision removed participant protection. That formulation should be refined. The court's operative order was procedural: the lawsuit could not be received because a contractual step had not yet been completed. A procedural non-admissibility ruling does not logically prove that the insurer was entitled to deny the claim on the merits.

This distinction protects both doctrinal accuracy and the participant's legal position. If the procedural deficiency can be cured, the underlying controversy may remain capable of reconsideration through the agreed non-litigation process and, depending on applicable procedural rules, subsequent adjudication. The judgment therefore demonstrates the importance of dispute-resolution clauses as gateways to judicial protection.

The court treated deliberation and amicable settlement as contractually required before litigation. From a contract-law perspective, this approach reinforces *pacta sunt servanda*: parties who have agreed to an orderly dispute-resolution sequence may be required to follow it. The source manuscript itself ultimately acknowledges that the requirement can be regarded as legally valid where it is clearly stated in the policy and adequately communicated to the participant.¹⁴

However, consumer protection requires more than formal inclusion of the clause. A pre-litigation mechanism should be sufficiently clear as to when the sixty-day period begins, which party must initiate the process, how communications must be made, whether the insurer has a corresponding duty to participate, and what happens if one party refuses to engage. Without such clarity, a dispute-resolution clause can become a procedural obstacle rather than a genuine settlement mechanism.

The insurer's rejection letter classified the event as fraud or similar excluded conduct, while the claimant relied on a police report describing theft. The court's procedural ruling left this factual and contractual classification unresolved. The legal-protection issue is therefore not whether courts should automatically accept the police characterization, but

¹⁴The source manuscript concludes that the sixty-day deliberation requirement can be legally valid where clearly incorporated into the policy and communicated to the participant.

whether the insurer's contrary classification was supported by an adequate factual investigation and communicated transparently.

Where an insurer invokes an exclusion, the integrity of the claims process depends on a reasoned connection between facts and policy language. If the event arose because a third party wrongfully took the vehicle after possession of the key was transferred for a legitimate car-wash service, classification may depend on the precise conduct of the wrongdoer and the wording of the exclusion. That analysis requires evidence; it cannot be resolved merely by attaching a label.

The claimant alleged that PT Asuransi Takaful acted without good faith in managing the *tabarru'* fund. The source manuscript cites policy language under which the operator bears responsibility for losses arising from its intentional misconduct, negligence, or breach in risk-fund management. This clause does not automatically establish liability for every denied claim, but it underscores that the operator's duties include more than administrative convenience.¹⁵

Under *wakālah bi al-ujrah*, the operator's claims-management role should be exercised consistently with the policy, Sharia governance, and fair dealing. A participant-protection framework should therefore evaluate the quality of the insurer's investigation, the transparency of its reasons, access to internal review, and the availability of external dispute-resolution mechanisms.

Kafālah as a supporting rather than exclusive theory

The original article treats *kafālah* as a central theoretical foundation. A more precise approach is to recognize its limited but useful role. *Kafālah* illustrates the Sharia concept of assuming responsibility for another's obligation and has been applied in Islamic financial guarantees. Yet *takaful* claims are principally governed by the participant fund, the *takaful* policy,

¹⁵Mahkamah Syar'iyah Banda Aceh, Decision No. 0177/Pdt.G/2016/MS Bna; Gunita Nindya and Siti Nurbaiti, "Prinsip Itikad Baik dalam Ganti Kerugian oleh Penanggung kepada Tertanggung," *Reformasi Hukum Trisakti* 4, no. 4 (2022), <https://doi.org/10.25105/refor.v4i4.14095>.

and the operator's agency function. Describing the operator simply as a *kāfil* may blur the distinction between a surety obligation and risk-pool administration.¹⁶

Accordingly, *kafālah* supports the broader ethical idea of responsibility and protection, while *tabarru'* and *wakālah bi al-ujrah* better explain the actual legal structure of the claim relationship in this dispute.

The 2016 dispute must be assessed under the legal framework and policy terms applicable at that time. Nevertheless, later regulatory developments are relevant to the article's contemporary implications. Indonesia's insurance framework under Law No. 40 of 2014 has been amended by Law No. 4 of 2023 on Financial Sector Development and Strengthening, and OJK has continued to issue regulations specifically addressing Sharia insurance governance and products.¹⁷

For example, OJK Regulation No. 11 of 2023 addresses the separation of Sharia units in insurance and reinsurance companies, reflecting strengthened institutional governance of the Sharia insurance sector. OJK Regulation No. 20 of 2023 regulates insurance linked to credit or Sharia financing and suretyship products, including aspects of claims and interested-party protection. Although these instruments do not retroactively decide the 2016 case, they reinforce the broader policy direction toward stronger governance, risk management, and protection of parties interacting with insurance products.¹⁸

The contemporary lesson from Decision No. 0177/Pdt.G/2016/MS Bna is therefore institutional. Policy wording, claim exclusions, internal review, Sharia governance, and dispute-resolution procedures must be designed as an integrated protection system. Formal compliance at the product-design stage is insufficient if a participant cannot understand why a claim was rejected or how to challenge the decision effectively.

¹⁶Mardani, *Fiqh Ekonomi Syariah: Fiqh Muamalah*; Mugiyati, "Kajian Hukum Islam terhadap Aplikasi Kafalah pada Asuransi Takaful."

¹⁷Republic of Indonesia, Law No. 40 of 2014 on Insurance, as amended by Law No. 4 of 2023 on Financial Sector Development and Strengthening.

¹⁸Otoritas Jasa Keuangan, Regulation No. 11 of 2023 on the Separation of Sharia Units of Insurance and Reinsurance Companies; Otoritas Jasa Keuangan, Regulation No. 20 of 2023 on Insurance Products Linked to Credit or Sharia Financing and Suretyship or Sharia Suretyship Products.

The case supports five practical improvements. First, exclusions should be drafted in plain and precise language, particularly where related concepts such as theft, embezzlement, and fraud can overlap. Second, claim-rejection letters should identify the material facts relied upon and explain why those facts satisfy the cited exclusion. Third, internal review procedures should allow the participant to contest factual classification before litigation.

Fourth, contractual settlement clauses should define the sixty-day process operationally, including initiation, communication, participation, and completion. Fifth, Sharia supervisory review should examine not only the formal validity of product contracts but also whether claim-handling practices reflect the protective and mutual-assistance objectives of takaful.

These measures do not require insurers to pay uncovered claims. Rather, they strengthen procedural justice: a participant should receive a transparent decision, a meaningful opportunity to challenge it, and a dispute-resolution pathway that does not operate as an opaque barrier to substantive adjudication.

Conclusion

Decision No. 0177/Pdt.G/2016/MS Bna is best understood as a case about the interaction between takaful claim protection and contractual dispute-resolution procedure. The dispute began with the loss of a Honda CR-V and PT Asuransi Takaful's refusal to pay on the ground that the event fell within a fraud-related exclusion. The participant maintained that the vehicle had been stolen and relied on the police report, the takaful policy, the *tabarru'* arrangement, and the operator's *wakālah* obligations.

The Banda Aceh Sharia Court did not finally decide that substantive controversy. It declared the action inadmissible because the contractual process of deliberation and amicable settlement had not first been completed within the framework contemplated by the policy. The legal effect of the judgment should therefore not be overstated: it did not conclusively establish that the insurer's fraud classification was correct or that the participant lacked substantive entitlement under the policy.

For Sharia insurance law, the principal lesson is that legal protection depends on both substance and procedure. *Tabarru'* supplies the mutual-risk fund, *wakālah bi al-ujrah* defines the operator's management role, and *kafālah* may provide a supplementary concept of responsibility. Effective participant protection, however, ultimately requires transparent policy terms, evidence-based claim decisions, good-faith fund administration, and dispute-resolution mechanisms that are accessible and operationally clear.

Future research should compare similar Sharia-insurance claim decisions, examine how courts distinguish theft from excluded fraud, and evaluate whether contemporary OJK regulation and Sharia supervisory practice have improved the transparency and fairness of claims handling.

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