A Comparative Analysis on Takaful Acts between Malaysia and Indonesia

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Abstract— Rules and regulations are the essential guidelines to ensure the implementations of any subject matter are in order. The aims of this paper intend to make a comparison of takaful rules and regulations in Malaysia and Indonesia. The researchers divided the work into five phases: Phase 1; Developing Framework, Phase 2; Industry roundtable discussion with the proposed draft framework/model, Phase 3; Side visit/Collect Data, Phase 4; Research Finding and Phase 5; Writing and Publishing. Six (6) takaful Companies (handling General takaful) selected as samples for this research comprise of three takaful companies from Malaysia and three takaful companies from Indonesia. Results of interviews were recorded and analyzed using ATLAS. ti software. The findings showed that the current general takaful rules and regulations are Islamic Financial Services Act 2013 (IFSA 2013) in Malaysia and Undang-Undang No 40 (UU40) in Indonesia. However, UU40 was referring to both takaful company and the conventional insurance company, and it only discusses the headlines of the acts and further explanation of it can read from the Peraturan Otaritas Jasa Keuangan (POJK). Contradicting, IFSA 2013 referred entirely to the takaful company covered all the takaful rules and regulations and a compilation of banking, takaful, and money market. In spite of making a comparison with regards to the general rules and regulations and more on administrative matters which referred to IFSA 2013 and UU40, the practitioners suggested to the researchers to compare the crucial operational issues because it will find more differences such as the Takaful Operational Framework (TOF) from Malaysia and the POJK in Indonesia. The results of this study could provide a significant contribution to Takaful operators in ASEN countries especially for Malaysia and Indonesia.

Keywords— Takaful rules and regulations; Act, IFSA 2013; Undang-Undang 40 (UU40); Malaysia; Indonesia

I. INTRODUCTION

Despite 2011 being a milestone year for global financial regulation implementation, the insurance sector is far from having a reliable and standard set of international regulatory requirements. Nowadays, each country has adopted their own rules and regulation. Thus, harmonization of the rules and regulation among countries needs to take place to enable business are easy to cross-border without interference from the domestic law. In some countries, the rules and regulations governed by either government or independent agency. The Independent agency is a separate party which is appointed by the government purposely to monitor the takaful industry. Rules and regulations are the main essential tools to ensure the perfectness of the implementations of any guidelines. Rules and regulations are a set of principles and visibly commanding rules (Berkm, 2014) based on the behaviour of the market and the principle prudentially (Jean Kwon, 2013) under regulatory supervision that create a situation which represents a significant part in determining what can and cannot be done by the industry (Brophy, 2012).

The same situation applies to the insurance and takaful industry. In the United States (US), for example, despite the reforms introduced in the 1990s to unify the set of rules, regulation of the insurance market in the US is state based. Every State Regulatory Commission establishes regulations deemed necessary (Castagnolo, 2013). It shows that a government controlled the rules and regulations. Similarly, the European Union (EU) also practices a government regulation under the European Commission. The role of the European Commission is described precisely in the Treaty of the European Union and is reinforced by the Commission’s house rules. In the European Union, the responsibility to set the legislative agenda is situated to the Commission (Hooghe, 2005). The advent of the European Union has had a further impact due to the desire to create a common market governed by universal principles and harmonize insurers across Europe (Swarup, 2012). In contrast, New Zealand is one of the countries that allowed their independent agency named the Insurance Council of New Zealand to regulate its insurance industry (Castagnolo, 2013).

The changes in the insurance industry need to be dynamic, professional and better capitalized (Kirsten, 2007). It also applies in the takaful industry as well. 2011 is a milestone year for a global financial regulation implementation, and it’s including Islamic financial sectors (Wan Daud et al., 2017). Nevertheless, the takaful industry is still developing the standard set for the international regulatory requirement to suit with the changes in the world economy. According to Khan and Bhatti
(2008), Malaysia and Indonesia are among the Southeast Asian countries which are promoting the most comprehensive and advanced version of Islamic banking and finance in the region.

In the world of the insurance market, takaful is the fastest growing area which grows at 20 percent to 25 percent per annum compared to the average world growth of conventional insurance which is at 5 percent to 8 percent per annum (Nico & Peter, 2010). It was due to the customers and business demand for takaful product. Takaful business can attract even non-Muslim to their product due to its connection with the Islamic Syariah and not just a system. Its business has an apparent ethical structure which can be marketed to both Muslims and non-Muslims. The substantial rise in the demand for takaful insurance is due to this ethical nature of the product which attractive to both Muslim and non-Muslim.

The process of globalization will create an open market for all industries including the takaful industry. Example, the establishment of the ASEAN Free Trade Area (AFTA) allows the takaful operator from another country to operate in another member country. This will foster an open market in the takaful industry which requires a set of minimum standard of rules and regulations to protect the industries from misconduct and unethical practices. The initiation of the General Agreement on Trade and Services (GATS) also require the local company to have the ability to compete with world-class companies in the international market. For takaful industries, it’s very crucial for each country to have rules and regulations which will facilitate and increased the competitive advantage to the insurer and also the insured.

According to Ernst and Young (2014), the enhancement of the regulations has opened new opportunities in rapid growth market in the developing country such as Malaysia and Indonesia. The growth of Malaysia takaful industry contributes about 71 percent of ASEAN gross takaful contributions in 2014. Among the contributing factors to the progress are the enactment of Islamic Financial Services Act 2013 (IFSA 2013) and the support of the Central Bank of Malaysia (BNM) as the regulator of takaful and insurance industries. BNM as the primary regulator for insurance and takaful industry in Malaysia set the minimum capital requirement at RM100 million for both life and non-life Takaful operator. Simultaneously, all takaful operators are subjected to solvency regulation.

Malaysia also has set a target capital available at the level of 130%. The perspective of policyholder protection under the Malaysia Deposit Insurance Corporation (MDIC) administers the takaful and Insurance Benefits Protection System (TIPS) which protects specific benefits under life and general insurance. Interestingly, foreign ownership is generally limited to 70% and the amount exceeding 70% must get approval from BNM on the case to case basis (Sivalap, Chucheep & Arunee, 2014).

Currently, Indonesia adopted Undang-Undang No 40 (UU40) for both takaful and insurance companies. The new act of UU40 covers the aspect of corporate governance, market conduct, consumer protection and licensing. This act also must read together with the POJK No 23. The move is expected to reshape Indonesia takaful industry by spurring mergers as companies try to meet the capital requirement for their expansion purposes. In Indonesia, the Insurance Bureau at the Ministry of Finance (MOF) is the Indonesian regulator for takaful industry. According to Sivalap, Chucheep, and Arunee (2014), the regulator set the minimum capital requirement, the solvency regulation, policyholder protection, and foreign ownership restrictions to protect the industry. Indonesia decided that the risk-based capital (RBC) solvency margin ratio of at least 100 percent and each takaful operator must form its protection fund to protect the interest of participants. Additionally, regarding foreign ownership restriction, Indonesia’s fixed that the foreign shareholders of the entity carrying takaful activities are limited to 80 percent at the establishment of the company.

Therefore, most ASEAN countries including Malaysia and Indonesia had rules and regulations that provide by their regulator to protect the takaful industry. The regulator is responsible for usually set on a minimum capital requirement, the solvency regulation, policyholder protection, and foreign ownership restrictions. It shows the importance of the rules and regulations to protect the takaful industry.

In Malaysia, both the conventional insurance and takaful industries are regulated by the Central Bank of Malaysia (BNM) through the Financial Services Act 2013 (FSA 2013) and Islamic Financial Service Act 2013 (IFSA 2013), (Thanasegaran & Shaiban, 2014). Whereas in Indonesia, Undang-Undang No 40 and also Peraturan Otoritas Jasa Keuangan No 23 (POJK No 23) are the law that applies to both conventional insurance and takaful industry. The Act was issued and control by the Government of Indonesia through its Financial Services Authority of Indonesia (FSAI) and focuses on licensing requirement, Shariah governance and risk assessment (Sukmana & Hidayat, 2014). Thus, the objective of this paper is to present and to make a comparison of takaful rules and regulations in Malaysia and Indonesia.

II. METHOD

This research adopts Yin’s (2003) definition of a case study as empirical inquiry that investigates a contemporary phenomenon within its real-life context when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used. These definitions used to guide through the implementation of the research.
Qualitative is chosen for this research since it attempts to get an in-depth opinion from participant. The objective of this research is to identify the takaful rules and regulations for Malaysia and Indonesia and to analyse the similarities and differences of takaful rules and regulations between Malaysia and Indonesia. Hence, single case study has been adopted in this research since it was more appropriate to the nature and context of this research in order to get a holistic view of the phenomenon under research.

This research uses a semi-structured interview process, non-participant observation and document analysis, where the researcher was the key instrument for data collection (Merriam, 2009). The Case Study Protocol and Implementation have been developed to express the nature of the interview and the interview questions as well as elaborate intricately on how the respondents are selected. Furthermore, content analysis has been chosen for data analysis. In content analysis, the researcher examines artefacts of social communication.

Typically, these are written documents or transcriptions of recorded verbal communication (Strauss, 1987). Holsti (1969) defined content analysis as any technique for making inferences by systematically and objectively identifying special characteristics of messages. Content analysis is a powerful empirical method for analysing text and as a method that technical communicators can use in the research (Thayer, Evans, McBride, Queen & Spyridakis, 2007). It can also expose hidden connections among concepts, reveal relationships among ideas that initially seem unconnected, and inform the decision-making processes associated with many communication practices.

The ways that the researchers choose to analyse data should stem from a combination of factors, which include the research questions, the theoretical foundation of the research, and appropriateness of the technique for making sense of the data.

III. FINDING AND DISCUSSION

The current rules and regulation of takaful used in Malaysia was IFSA 2013 and UU40 in Indonesia. The UU40 act was referring to takaful company and the conventional insurance company which it lists the highlights of the insurance and takaful matters. Further explanation of the lists stated in UU40 can refer in the Peraturan Otatris Jasa Keuangan (POJK). Whereas, IFSA 2013 referred to takaful company covered all the takaful rules and regulations and also a compilation of banking, takaful, and money market.

Part I (1) from IFSA 2013 and chapter I (1) from UU40 explained about the definitions of operational terms which used in takaful operations. Its include ‘approved takaful broker,’ ‘family takaful business,’ ‘family takaful certificate,’ ‘international takaful business,’ ‘licensed for takaful operator,’ ‘takaful agent’ and others. Part II (2) from IFSA and chapter XIII (13) from UU40 described the regulatory objective, power, function of bank and regulations and also supervision for takaful sector. The aims were to promote financial stability and compliance with Shariah. Part III (3) from FSA 2013 and Chapter II (2), Chapter III (3) and Chapter IV (4) from UU40 discussed the authorization which covers the scope of general business for takaful operation. In this part, the regulation act discussed the authorized business to be carried out by an authorized person, grant of a license by Minister and licensed for takaful operator to exercise Family takaful or general takaful operations.

Part IV (4) from IFSA 2013 and chapter VIII (7) from UU40 explained about Shariah compliance, Shariah governance, and audit. It found that the IFSA 2013 discussed in details about the matter highlighted but UU40 explained the Syariah compliance just on the surface. The topic touched in UU40 based on articles 36, 37 and 38 respectively. Part V (5) from IFSA 2013 and Chapter V (5) from UU40 discussed on the payment system based on the designation of payment systems and Islamic payment instruments, the requirement of operation of payment systems and finality of payment. The topics also discussed in UU40 based on the articles 26 and 31. Part VI (6) from IFSA 2013 and Chapter III (3), Chapter V (5), Chapter VI (6) and Chapter XII (12) from UU40 explained the prudential requirements. It included the standard on prudential matters, corporate governance, transparency requirement, auditors, appointed actuaries, takaful fund and shareholders fund and subsidiaries.

Part VII (7) from IFSA 2013 and chapter III (3), Chapter IV (4) and Chapter IX (9) from UU40 discussed the ownership, control, and transfer of business. This part explained the removal of business, reconstruction or amalgamation of a licensed person. It included approval required for business transfer scheme, orders sought by transferee and transferee and prohibition of payment. Part VIII (8) from IFSA 2013 explored on the financial groups which covered and explained the safety and soundness of licensed person. It is quite similar to chapter IV (4) from UU40 where it covered the topic of licensing. Part IX (9) from IFSA 2013 highlighted on the business conduct and consumer protection as a whole. This part covered the act on the interpretation of the wording used, explain the business conduct and how to deal with compliant and dispute. It also included on the takaful issue including the information and secrecy including restriction relating to consumer protection. The UU40 also provide the policyholder's protection, insured or participants in Chapter XI (11) but not in details and some of the information was in the in Chapter V (5). The details of the insurance customer protection provided under chapter V (5) POJK No 23.
IFSA 2013 stated that Part XII (12) and chapter V (5) from UU40 about the business conduct in article 22 and 23 including in chapter XIII (13). It covered how the bank may examine without prior notice the business and affair of an authorized person, a market participant and approved representative office. Part XVI (14) in IFSA 2013 discussed the intervention and remedial action. It explores the winding up process explain in details including the general provisions, the priority of payments and general requirements about actions taken by bank and takaful operators. In UU40 from the similar topics covered in Chapter X (10) from the subtopics of dissolution, liquidation, and bankruptcy.

Part XVI (16) from IFSA 2013 and chapter XV (15) & chapter XVI (16) from UU40 discussed on the penalty and confinement. Its include investigation powers, administrative actions, civil actions, and criminal offenses. Further explanation about the matter provided under part VIII (7) from POJK 23. Part XVII (17) from IFSA 2013 and chapter XIII (13) from UU40 discussed the general provision. It consists of the regulation and supervision by the Minister. In this case, the Minister may decide on a recommendation by the bank to be able to make such rules as may deem necessary.

Part XIII (18) stated in IFSA 2013 and chapter XVIII (17) from UU40 postulated that the transitional matters and provision. It covered conversion to single takaful business and licensed takaful operator which was a private company to convert to a public company. IFSA 2013 stated in details about repeal, saving and transitional matter. Chapter XVIII (18) from UU40 included the closing of the takaful operators, and further explanation of it stated under part VIII (8) from POJK 23.

It found that six (6) different contents available after made a comparison between IFSA 2013, UU40 and POJK 23. Four (4) substances stated in IFSA 2013 but not available in UU40 and also in POJK 23. The four (4) contents were Part X (10) reported about the Islamic money market and Islamic foreign exchange market. Part XI (11) explained in details about the submission of the document. Part XIII (13) stated the circumstances where the bank has the power to issue directions, and part XV (15) discuss the other authority of the bank. All the contents were not related to the takaful operators.

It also found that three (3) additional differences contents found while made a comparison between IFSA 2013, UU40 and POJK 23. It was Chapter VIII (8), Chapter XIII (13) and Chapter XIV (14) which explained on the mandatory insurance programme, regulation and supervision and business association of insurance. These chapters available in UU40 but were not discussed at IFSA 2013.

IV. CONCLUSION

Based All the countries in ASEAN had their rules and regulations provided by their regulator to protect the takaful industry. The regulator was responsible for setting a minimum capital requirement, the solvency regulation, policyholder protection, and foreign ownership restrictions. Good takaful rules and regulations were essential to ensure takaful activities operated in ASEAN countries more prosperous. Therefore, reasonable rules and regulations could reduce mismanagement, increase the level of solvency and strengthen a company’s position in the face of global competition. The takaful rules and regulations used in Malaysia were IFSA 2013 and UU40 in Indonesia. However, UU40 used as a reference for both takaful company and conventional insurance company. A discussion in UU40 was straightforward, and it only discusses insurance and takaful matter. The details explanations of the highlighted issue stated in UU40 further provided in the POJK 23. IFSA 2013 used by Malaysia contain takaful operations included all the takaful rules and regulations and also a compilation of banking, and money market. Based on findings gather while comparing the IFSA 2013, UU40 and POJK 23 which it more on administrative matters the practitioner suggested to make a further comparison between Takaful Operational Framework (TOF) from Malaysia and the POJK from Indonesia.

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