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### THE CONCEPT OF FATWA DSN-MUI ON WAQF INSURANCE BENEFITS AND INVESTMENT BENEFITS IN SHARIA LIFE INSURANCE: HISTORICAL STUDY

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### ABSTRACT

In general, Indonesian people still do not understand waqf management in Islam correctly and thoroughly. If Muslims examine the benefits of waqf more deeply, it can be ascertained that the benefits can be reaped in this world and the hereafter. The discourse of productive waqf and cash waqf is echoed in Indonesia by several Indonesian figures, thinkers, and scholars so if the main obstacles to waqf are not addressed, it will have an impact on misuse and fraud in waqf. The Indonesian Waqf Board (BWI) should cooperate with the DSN-MUI to issue this waqf fatwa. This article aims to review and analyze the benefits of waqf insurance and investment benefits in Sharia life insurance based on DSN-MUI Fatwa No. 106 of 2016. This research uses a qualitative method with a literature study approach. The results of this study indicate that the principle of this fatwa uses the legal basis of the Qur'an and Hadith by using the istislahi pattern, which is the consideration of benefits based on general nash. In this pattern, general verses are collected to give birth to several general rules that are used to protect or bring certain benefits. They are based on Maqashid Sharia,

so that they can help optimize the waqf program in Indonesia. The issuance of the fatwa on waqf insurance benefits and investment benefits in Sharia life insurance is due to a request from an Islamic financial institution, namely Sun Life Financial Syariah and Al-Azhar Waqf Institution, which applied for the determination of the Sharia aspects of life insurance investment benefits for waqf products and waqf insurance policies. For this reason, this DSN-MUI fatwa can be said to be in accordance with the general principle that fatwas are responsive, proactive and anticipatory.

**Keywords:** Fatwa; DSN-MUI; Waqf Insurance Benefit; Islamic Insurance.

## INTRODUCTION

In Islamic history, waqf has been known since the time of the Prophet Muhammad. Waqf was prescribed after the Prophet Muhammad emigrated to Medina in the second year of *hijriyah*. Two opinions have developed among the *fuqaha'* about who was the first to implement the waqf sharia. According to some of the first opinions (*Anshar*), the first to carry out waqf was the Prophet Muhammad. He donated his land to build a mosque. Meanwhile, the second opinion (Muhajirin) said that the first to implement the waqf sharia was Umar bin Khattab (Departemen Agama, 2006).

Waqf in Islam has at least two forms, namely *ahli* waqf and *khairi* waqf. *Ahli* waqf is only limited to the waqif family. Namely, their children are in the first degree, and all their descendants are from generation to generation until all family members die. Only then can the proceeds of the waqf be utilized by other people, such as orphans, people with low incomes, and other parties who need it (Departemen Agama, 2006).

What is meant by *khairi* waqf is waqf, which was originally intended for the public interest (Zuhaili, 2011). This type of waqf can be used as a source of investment for the economic development of the people, both in the social, economic, educational, and other fields (Nugroho, 2017).

Based on data from Bank Indonesia (BI), the amount of waqf as of December 2016 only reached IDR 3 billion, while the waqf target, according to market potential, was IDR 330 billion. The company targets this potential through the benefits of waqf from Islamic insurance.

The National Sharia Council (DSN) was formed by the Indonesian Ulama Council (MUI) in 1998 and confirmed by *SK Dewan Pimpinan MUI No. Kep-754/MUI/II/1999* dated 10 February 1999. DSN is an institution formed by the MUI, which is structurally under the MUI and is tasked with dealing with issues related to the Sharia economy, whether directly related to Sharia financial institutions or others (Amrin, 2006). The very vital role that the DSN-MUI has in the development of Islamic economics and finance is to issue *fatwa* relating to Islamic economics and finance (Antonio, 2003).

Theoretically, a *fatwa* will only be binding on the person requesting the *fatwa* and the person giving the *fatwa* (Novia, 2016). However, in a modern context, this theory cannot be fully applied because it takes into account the context, nature, and character of current *fatwa* that have developed and are different from classical *fatwa*. Thus, the *fatwa* theory only binds the *mustafti* (person who requests the *fatwa*), which is irrelevant to the DSN-MUI *fatwa*. The current DSN-MUI Sharia economic *fatwa* is not only binding on practitioners of Sharia economic institutions but also on the Indonesian Islamic community; even for Sharia

economic actors, the position of the *fatwa* is binding, especially since these *fatwa* have now been translated through Bank Indonesia Regulations (PBI) (Novia, 2016).

This article aims to examine and analyze the benefits of waqf insurance and investment benefits in Sharia life insurance. The purpose of *Fatwa DSN-MUI No: 106/DSN-MUI/X/2016* is based on the *maqashid sharia* perspective, which aims to guard against or avoid misappropriation of actions by the holder of the trust, which will have the impact of not fulfilling the objective of the contract itself (Jais, 2024).

## METHODOLOGY

The methodology used is qualitative descriptive, with a library research approach (Sup, 2020). This research is continuing research to complete things that may not have been discussed in previous research (Sup, 2019) about *Fatwa DSN-MUI No: 106/DSN-MUI/X/2016*. The data source used is the library data source from books, journals and websites about DSN-MUI (Sup, 2021), especially the literature that discusses *Fatwa DSN-MUI No: 106/DSN-MUI/X/2016*. The data collection method used is documentation (Sup, 2021). The data that has been collected is then compiled and analyzed using the deductive method, meaning that the analysis process is carried out at each stage of writing until a complete discussion of the matter being studied is formed (Sup, 2020), is historical background and the concept of *Fatwa DSN-MUI* on waqf insurance benefits and investment benefits in sharia life insurance.

## RESULTS

### Determination Method of Fatwa DSN-MUI No: 106/DSN-MUI/X/2016

The method used by the DSN-MUI uses the *istislahi* pattern, namely consideration of benefit based on general *Nash*. The principles are organized into three levels (*daruriyat*, namely essential needs; *hajiyyat*, namely secondary needs; and *tahsiniyat*, namely the need for luxury).

The general principles in this DSN-MUI *fatwa* are as follows:

Qur'an Surah Al-Maidah Verse 1

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَوفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَى عَلَيْكُمْ غَيْرَ مُجْلِيَ الصَّيِّدِ وَأَنْتُمْ حُرْمٌ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

Qur'an Surah Al-Baqarah Verse 267

وَإِذَا جَاءَ أَحَدُكُم مِّنَ الْأَرْضِ بِحَدِيثٍ مِّنَ الْخَبِيثِ مِمَّا تَبْتَغُونَ مِنْهُ ثَمَنًا فَلْيَرْتُدَّهُ إِلَىٰ ذِي الْحَرْبِ وَلَا يَخْضِبْ بِهِ ثَمَنًا وَلَا يَكْتُمْهُ فَإِنَّهُ بَالِغٌ فِي الْعُنْفِ إِنَّ اللَّهَ غَفِيرٌ حَمِيدٌ

Hadith Sunan An-Nasa'i Number 3546

Hadith of the Prophet Muhammad narrated by Imam Al-Bukhari, "Has informed us Sa'id bin 'Abdurrahman said, have told us Sufyan bin 'Uyainah from 'Ubaidullah bin Umar from Nafi' from Ibnu Umar said, "Umar said to the Prophet Muhammad. Truly, I have never obtained a treasure that I love more than a hundred parts (land/gardens) that I got in Khaibar. Moreover, I wish to give alms by using it". Then Prophet Muhammad said, "Hold on to the tree and make its fruit in the way of Allah."

## **Factors Behind the Fatwa DSN-MUI No: 106/DSN-MUI/X/2016**

The *fatwa* issued by *ulama* should be precise, not just theoretical, and can be implemented. The benefits are great, and it does not raise doubts about the ummah (Antaranews, 2022). The essence of a fatwa is a “*legal opinion*,” namely an opinion about a law issued by scholars who are competent in their field.

In several Islamic countries, there is a mufti institution whose task is to issue fatwa (Yafi, 2024). In Indonesia, such an institution does not exist. Indonesia only has DSN-MUI, and DSN-MUI is not a government institution. Nevertheless, the fatwa issued by the ulama can be included in legislation, such as banking legislation (Antaranews, 2022).

Based on the above phenomenon, it can be concluded that the factors behind the emergence of this fatwa are as follows:

1. Law Number 21 of 2008 concerning Islamic Banking emphasizes that every business activity must not conflict with sharia, which is referred to in the *fatwa* that has been issued by the DSN-MUI and has been converted into Bank Indonesia Regulations (PBI) to become an important source of product innovation in Islamic financial institutions.
2. There is a request for a determination of Sharia aspects on the benefits of life insurance investment regarding the Confirmation Letter of the Sharia Life Insurance Investment Benefit Program for Waqf by Islamic Financial Institutions, namely Sun Life Financial Sharia and Al-Azhar Waqf Institution regarding Requests for Determination of Sharia Aspects for Waqf Products Willing Insurance Policies.

So, based on the above, DSN-MUI decided on a Fatwa on Waqf of Insurance Benefits and Investment Benefits in Sharia Life Insurance to determine the relationship between waqf of insurance benefits and waqf of investment benefits (DSN-MUI, 2016).

## **Insurance Policy Testament Waqf System**

Testament waqf is a waqf plan by legally transmitting part of the ownership of waqif assets when the person concerned dies but can still enjoy the benefits of the donated assets as long as the waqif lives (Jamal et al., 2023).

An insurance policy is evidence of a written agreement made by the insurance company (the insurer) with the customer who uses the insurance service (the insured), which explains all the rights and obligations between the two parties. Meanwhile, the insurance policy waqf donates a portion of the value that will be received if the insurance policy that has been owned has been obtained (Wakaf al-Azhar, 2023) for people who have insurance policies from insurance companies that have Sharia products after they are made into policies and become securities, the benefits or the guaranteed money and other benefits will be donated.

Meanwhile, in Islamic insurance, the contract used is not a sale-purchase contract or a mu'awadhah contract, as is the case with conventional insurance (Siamat, 1995). However, what is used is a mutual help contract by creating a new instrument to channel benevolent funds through the tabarru contract (Huda, 2010).

But in this insurance, waqf uses two dimensions, namely, the dimensions of the world and spirituality. When a waqif candidate (person who has waqf) goes through an insurance policy, there are two contracts used, namely:

1. The waqf contract for productive waqf is part of the value of the insurance policy, which includes the coverage fund and the cash value at maturity.
2. Charity contract for the benefit of the waqif, the waqif's family, the public interest, and a portion of the value of the insurance policy (coverage fund and cash value) at maturity (Wakaf al-Azhar, 2023).

Even so, it cannot be denied that there is a side of complexity in its implementation, as on the pricing side, which tends to be relatively more expensive. Because it includes the waqf component in the premium component that customers must pay, it becomes less competitive. Moreover, requires much initial capital to implement it (World Bank, 2013).

Investment is investing or placing assets, either in the form of assets or funds, in a fund that is expected to provide income or will increase its value in the future. Meanwhile, financial investment is investing in securities that are expected to increase in value in the future (Pontjowiono, 2003).

Therefore, the main objective of a company's investment policy is to implement program plans designed to achieve positive returns, with the highest probability, considering the direct relationship between risk returns for each risk alternative. Monthly reviews and evaluations are included in the policies taken, and added value for each fund is considered in every investment decision-making process (Acsien, 2000).

The basic principle of Islamic insurance investment is that the company, as the holder of the trust, is obliged to invest in funds collected from participants, and the intended investment must be in accordance with Sharia principles.

As is known, the end of this waqf will is if the insurance policy has expired or has received a claim. Moreover, objects that are exchanged like that must also have a certain period. If time is part of the contract, then the contract is invalid if the period is not known. In this case, including transactions that are affected by time, the period must be determined. If the time is not specified, the scholars divide insurance into insurance for individuals and insurance for objects. Sometimes, there is another form of insurance called liability insurance, which is a *masail fiqhiyah*.

Insurance for objects is like insurance for vehicles, insurance for trade, insurance for fire, and so on. If the insurance period is certain, then there is no problem. Likewise, in some insurances for individuals, such as health insurance, with a limited period, it is not a problem. The customer provides monthly or annual payments for guarantees from the insurance company that if he is sick for a certain period, the insurance company will give a certain amount of money for medical expenses. Likewise, in insurance for loss of work, the customer agrees to provide monthly or annual payments for guarantees from the insurance company, which will pay a certain amount if something occurs that causes job loss. This form of insurance is like insurance on objects, and there are no problems with it (Muthahari, 1995).

### **Waqf-Based Islamic Insurance**

Islamic insurance is also called *takaful*, which means helping each other. In the context of Ramallah, *takaful* means mutual sharing of risks among fellow human beings, with one another being the bearer of another's risks (Sula, 1996). In general, there are two types of insurance: family insurance or life insurance and general insurance, as in Islamic insurance. In terms of the distribution of this type of insurance, there are similarities to the kind of waqf, which consists of family waqf and general waqf, as explained above. Likewise, the goals of both Islamic insurance and waqf are to help each other ease the burden and welfare

together. Even so, it is well known that the two are clearly different, starting from harmony, contract, and management (BWI, 2010).

But at least this resemblance can be used as an entry point for the waqf system in insurance instruments. This is because Islamic insurance does not rule out the possibility of acting as a recipient and manager of cash waqf. If only Islamic banks could provide this, Islamic insurance would also be open to the possibility. This is because both are part of a type of Islamic financial institution, which is mandated by law to be able to cooperate with Nazir in receiving cash waqf. There are several patterns that Islamic insurance companies can take advantage of in synergizing and integrating the waqf system in insurance instruments.

In this context, Islamic insurance companies act as recipients and managers of cash waqf, as well as distributors of investment returns. So, Islamic insurance has a very strategic role. This is the full role of the Islamic insurance company as a nazir of cash waqf. It should be noted that waqf funds that come in may not be reduced in the slightest, let alone used for operational costs, claim costs, or anything related to the operation of an Islamic insurance company. Waqf funds must be "fixed assets" whose existence is eternal. The concept of waqf, as mentioned above, is that the assets that are donated cannot be reduced cannot be used up, but are productive and generate benefits. So, the main obligation of an Islamic insurance company in this role is the same as that of a nazir: managing and developing waqf assets (BWI, 2010).

In the management of the saving model, which is usually applied to the type of family Islamic insurance, also called family takaful, waqf funds are divided into two accounts: savings and Cabarrus. The difference with the insurance system is:

1. Waqf funds in savings accounts may not be returned to participants (waqif) because these funds have already been donated. Likewise, the results of the investment may not be given to participants but must be distributed or used to those who are entitled (*mauquf alaih*) in accordance with the wishes of participants.
2. Waqf funds in *tabarru'* accounts have a different concept. If the funds in the Tabarru account can usually be directly used for claims, then this cannot be applied to waqf funds that enter this account. The waqf fund must be managed and invested first; then, the investment results can be used as a claim fund to help fellow insurance participants. So, at this level, when making a waqf pledge, the participant (waqif) must appoint the company's "insurance participant" as "*mauquf alaih*." This means that the results of the investment are used as mutual funds among fellow insurance participants.

Both "waqf funds" that enter the savings account and *tabarru'* must be intact and may not be used for operations or claims. Operational funds will be taken from investment proceeds, both from savings accounts and *tabarru'* accounts. Meanwhile, claim funds can be taken from investment returns sourced from the *tabarru'* account. After that, the company gets a maximum of 10% of the net proceeds of management or investment (Jamal et al., 2023).

The management of this waqf-based Islamic insurance, the insurance company Nazir, will be very strategic if it is applied to the type of family Islamic insurance (family takaful). This concept is similar to ahli waqf. In ahli waqf, the waqif donates his assets to be managed by nazhir productively. The results of the investment are allocated for family welfare (*mauquf alaih*). This concept is very suitable when mated with instruments in family takaful. In family takaful, benefits or claims are limited by a certain period. It is different from waqf-based family takaful; the benefits obtained by the family will last forever and will be passed down from generation to generation (BWI, 2010).

Operationally, family takaful premiums originating from waqf funds will be collected in the "participant waqf fund." Then, invest in project financing that complies with Sharia (Effendi, 2016). The net profit (after operational deductions) obtained from the investment results will be shared in accordance with the mutually agreed mudharabah agreement, with conditions a maximum of 10% of the profit is for the insurance company, and the remaining percentage is for "mauquf alaih" (DSN-MUI, 2001). If ordinary takaful profits are allocated to insurance companies and participants, it is different from waqf takaful; profits are allocated to companies and "mauquf alaih" appointed by participants (waqif) (Sula, 2004).

It is different from the waqf fund management model in the non-saving Islamic insurance model; there is no savings element. This is commonly practiced in general types of Islamic insurance or general takaful. Funds are managed in one account, namely a tabarru' account, also called a special account. The concept is the same as managing waqf funds in the tabarru account in the saving model. Waqf funds collected in this account may not be used directly for operations or claims. Operational and claims are taken from the results or investment profits. Meanwhile, premium funds in the form of waqf remain intact, lasting forever (Zahro et al., 2023).

So, every premium (waqf fund) received by an Islamic insurance company will be included in the Tabarru account. The premium will be collected into a "participant fund" to be invested in productive projects that comply with Sharia. The net profit from the investment obtained will be allocated to insurance company profits (maximum 10%), and the remainder will be allocated to claims or mutual funds among insurance participants.

After learning about the concept and operation of waqf-based Islamic insurance, we now move on to the conclusion. Apparently, from the combination of these systems, many benefits can be learned. First, the waqf funds collected at Islamic insurance companies will not be reduced in the slightest. This is the character of waqf, which is eternal. Therefore, waqf funds are like a snowball that is increasing as the number of insurers increases and the length of time. Thus, the insurance company will gain profit because of the existence of its endowment fund as a support for expanding the company's productivity. The endowment fund can freely be invested in various sectors, real or financial, as long as it complies with sharia provisions.

Second, when paying premiums, insurance participants are automatically waqf. There are two advantages attached: worldly and spiritual benefits. Worldly benefits are obtained because the waqf funds are used for mutual assistance and general benefit so that welfare is created in the world. The spiritual side is obtained because he gets a reward as a waqif in the form of shadaqah jariyah, whose rewards flow even though he has passed away.

Third, participants will also receive multiple benefits through waqf-based family takaful. It's even worth saying, "Family takaful is based on waqf, more than just term insurance." The combination of these instruments will provide long-term benefits, even lasting forever. The benefits of this insurance can be enjoyed by the family or heirs of insurance participants (waqif) from generation to generation.

## CONCLUSION

The principle of this *fatwa* uses the legal basis of the Qur'an and Hadith, and the suitability of this *fatwa* is based on the *istislahi* pattern, namely, consideration of the benefit based on general *nash*. In this pattern, general verses are collected to create some general principles, which are used to protect or bring certain

benefits and are based on *maqashid sharia* so that they can help to optimize the waqf program in Indonesia. The issuance of a waqf *fatwa* for insurance benefits and investment benefits in Sharia life insurance was none other than a request from an Islamic financial institution, namely Sun Life Financial Syariah and the Al-Azhar Waqf Institute, which requested an application for a determination of Sharia aspects of life insurance investment benefits for waqf and waqf products will insurance policies. For this reason, the DSN-MUI *fatwa* can be said to be in accordance with the general basis that *fatwas* are responsive, proactive, and anticipatory.

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