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Waqf Benefits of Insurance Policies and Investment Benefits for Increasing Welfare in the Perspective of Islamic Law

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Abstract

There are 4 main points to be addressed clearly in abstract section: (1) background of research title, (2) research purpose, (3) research methodology, and (4) research result/contribution. Background section should be the shortest part of the abstract and should very briefly outline the following information: What is already known about the subject, related to the paper in question? What is not known about the subject and hence what the study intended to examine (or what the paper seeks to present - purpose). In most cases, the background can be framed in just 2–3 sentences, with each sentence describing a different aspect of the information referred to above. The purpose of the research, as the word itself indicates, is to provide the reader with a background to the study, and hence to smoothly lead into a description of the methods employed in the investigation.The methodology section is usually the second-longest section in the abstract. It should contain enough information to enable the reader to understand what was done, and important questions to which the methods section should provide brief answers.The results section is the most important part of the abstract and nothing should compromise its range and quality. The results section should therefore be the longest part of the abstract and should contain as much detail about the findings as the journal word count permits.

Keywords: Waqf, Insurance, Islamic Law

I. INTRODUCTION

Waqf is one of worship to collect the practice of jariyah. This practice leads a person to hand over some of their property to be used for worship and general welfare. Currently there has been a development of waqf instruments which can not only be done by giving immovable assets such as land or buildings, but can also use money or cash waqf.

The legitimacy of cash waqf seems to be getting appreciation when the MUI fatwa Commission on May 11 2002 stipulated a fatwa regarding the permissibility of cash waqf (cash waqf). The contents of the MUI fatwa are as follows:

1. Cash waqf (cash waqf/ waqf al-nuqud) is a waqf made by a person, group of people, institution or legal entity in the form of cash.
2. Included in the meaning of money are securities.
3. Waqf money is legal jawaz (permissible).
4. Cash waqf may only be channeled and used for things that are permitted by syar'i. The principal value of cash waqf must be guaranteed for its sustainability, it may not be sold, donated or inherited.

Then the MUI Fatwaon May 11, 2002, as the basis for the issuance of the FatwaMajlisUlama Indonesia Number.106/DSN-MUI/X/2016 Concerning waqf insurance benefits and investment benefits in sharia insurance insurance benefits and investment benefits in sharia insurance, soto improve their products, many insurance companies open up new innovations with sharia features such as endowments for insurance benefits and sharia investment benefits, as has been done by PT. Sun Life Financial Indonesia (Salam HijrahInvesta'swaqf).PT. Prudential Life Assurance(Waqf from PRUsyariah), PT. Family Takaful Insurance (Takafulink Salam Wakaf), PT.AllianzSyariah (AlliSya Protection Plus Policy Waqf).Then the insurance company distributes waqfthe will of the sharia life insurance policy to a waqf institution that has been registered with the Indonesian Waqf Board. For example the Al-Azharwaqfinstitution.Waqf insurance policy iswaqf in the form of a sharia insurance policy in which the investment value and or insurance benefits are waqfed by the main insured with the knowledge of the heir to the waqf/Nazir receiving institution whose contract has been made at the time the insurance agreement was made.Thewaqf insurance policy has two benefits, both for the insurance company as the insurer and for the insurance customer as the insured, including:First,in terms of insurance benefits, protecting community members from economic risks that arise due to old age, or die when they are young or of productive age by leaving the family as heirsSecond, in terms of investment benefits, the insurance business plays a role in raising funds from the public to be invested and for the insured to receive investment returns that can be donated.

The existence of a sharia life insurance policy waqf is specifically designed to meet the investment needs of the afterlife/worship of the Wakifs, becauseWaqf is a unique maliyah worship because its pillars are different from other maliyah worship (including grants and gifts); In waqf there are five pillars: 1) waqif (wakif, the party who donates his assets); 2) mauquf 'alaih (nadzir, the party that manages and invests waqf objects/assets); 3) mauqufbih (mauquf, waqf object),4) shighat (a statement of will/approval for waqf). While the latter, namely 5) mauquflah (the beneficiary of the waqf) in general the scholars (jumhur) do not make it a pillar. Besides that, there is an insurance policy waqf to accommodate the need for inheritance for heirs through waqf wills becauseOne of the mu'amalahfiqh topics related to waqf is wills. In Indonesian positive law, the existence of testamentary waqf is recognized. One of the important topics in a will is the maximum amount of property to be donated. Practically, wills are also related to the distribution of inheritance (al-tirkah, al-mawruts). In the hadith narrated by a number of hadith experts, it is explained that a will should not exceed one-third (33.3%) of the total assets left by the deceased (as well as the bequeathing party). Abu Sa'id (father of 'Amir Ibn Sa'id) when he was ill explained to the Prophet. that he has an only daughter; and that explanation is then followed by a question: is it permissible to make a will with half of the property that will become an inheritance? Prophet Saw. said that the will of half the assets that will be left behind is too much. How about a third? Abu Sa'id's next question. Prophet Saw. said: "One third is still too much or too big." 'Amir Ibn Sa'id then explained that “people (believers) will bequeath a third of their wealth. In practice like PT. Sun Life applies to policies with a minimum sum insured of 10 (ten) Million to a maximum of unlimited, then when the policy benefits mature, the investment value is a maximum of 30% and for waqf insurance benefits if the waqif dies then the insurance benefits can be waqf 45% of the sum insured can be waqf to a waqf management institution / Nazhir to be managed and developed for the welfare of the ummah as an inheritance for their heirs who have received approval when the insurance contract was made.All of these efforts have clearly helped economic development in our country, which can then be enjoyed for the welfare of community members.

In the management of productive waqf assets, the party that has the most role in the success or failure of the utilization of waqf assets is the nazhirwaqf, namely a person or group of people and legal entities entrusted with the task of the wakif (a person who donates assets) to manage waqf objects. By paying attention to the purpose of waqf which wants to preserve the benefits of waqf assets, the existence of a professional nazhir is urgently needed, because it is on nazhir's shoulders that the responsibility and obligation to maintain, maintain and develop waqf and distribute the results or benefits of waqf to the community as an effort to improve people's welfare.

Articles 42, 43, 44 and 45 of the Law on waqf form the basis for regulating the management and development of waqf objects, including regulating and explaining that in terms of management and development of waqf assets, it must be carried out productively and a guarantor is needed, so a sharia guarantee institution is used. ah, so that the benefits can be used for the welfare of society.

Seeing the large role of waqf for improving people's welfare, so is the case with the waqf of sharia insurance policies which is one of the waqf objects to improve the welfare of the ummah, but in practice the waqf issues must be managed properly as intended by the waqifs, then the implementation of management and development The insurance policy waqf must be reviewed, analyzed, and implemented management strategies in the context of sustainable waqf development so that waqf assets, especially waqf sharia insurance policies in the context of empowering the people's economy must be further increased in accordance with clear rules, so that does not cause problems later on after the policy is donated.

Then the concept in order to further improve the management and development of waqf insurance policies, among othersare: 1. Expanding the network by cooperating with all sharia insurance companies. 2. Conduct socialization and direct training to the wider community, although there are several things that become obstacles in its implementation, such as understanding that the community is still fixated on religious waqf, this needs to be socialized to the wider community about the magnitude of the role of waqf. 3. Waqf objects are managed productively, for example cash waqf, beneficial asset waqf, rights transfer waqf, securities, professional waqf, and collective/organizational waqf. people can waqf through insurance benefits.

II. LITERATURE REVIEW

Theoritical Framework

State the objectives of the work and provide an adequate background, avoiding a detailed literature survey or a summary of the results. A Theory section should extend, not repeat, the background to the article already dealt with in the Introduction and lays the foundation for further work. Acalculation section represents a practical development from a theoretical basis.

In the world of science, theory occupies an important position. Theory provides a means for us to be able to better summarize and understand the problem we are discussing. Theory provides an explanation by organizing and systematizing the issues being discussed. There is doubt among academics about the place of the disciplines of legal theory with legal philosophy, jurisprudence, normative law and positive law. There are those who equate legal philosophy with legal theory. According to ImreLakatos, theory is the result of thoughts that will not disappear and just disappear when other theories are basically diversity in a study. The theory here contains:

a. Crowning system
b. Consists of scientific laws
c. General statements containing regular relationships between facts or phenomena
d. Serves to provide explanations, predictions and understanding of various facts or symptoms

Regarding the definition of legal theory, there is no single standard definition. There are many opinions of experts regarding the discipline of legal theory, including:

Hans Kelsen,Legal theory is the science of applicable law, not of what law should be. The legal theory in question is pure legal theory, which is called positive legal theory. Pure legal theory, it means because it only explains the law and seeks to clear the object of explanation from everything that has nothing to do with law. As a theory, it explains what law is, and how it exists.

Friedman.Legal theory is a science that studies the essence of law which is related to legal philosophy on the one hand and political theory on the other. the discipline of legal theory does not get a place as an independent science, so the discipline of legal theory must get a place in the discipline of law independently.

Ian McLeod,Legal theory is something that leads to a systematic theoretical analysis of the basic characteristics of law, legal rules or legal institutions in general.

John Finch,Legal theory is the study which includes the essential characteristics of laws and customs which are general in nature to a legal system which aims to analyze the basic elements that make it a law and distinguish it from other regulations.

Jan Gijssels and Mark van Hocke,Legal theory is a science that explains or explains law. Legal theory is an independent discipline whose development is influenced by and closely related to general law teachings. They view that there is continuity between the General Law Teachings in the following two aspects.

Legal theory as a continuation of the General Law has an object of independent discipline, between legal dogmatics on the one hand and legal philosophy on the other. Today legal theory is recognized as a third discipline in addition to complementing legal philosophy and legal dogmatics, each of which has its own areas and values.

Legal theory is seen as a value-free a-normative science, which differentiates it from other disciplines.

buggink. The theory of law is all statements related to the conceptual system of legal rules and legal decisions and the system is for the most part positive. This understanding has a double meaning, namely the definition of theory as a product and process.

There are others who say that the theory of law is a theory of human order, because it gives an answer about what is law in a different, strategic way for self-order, which colors legal theory.

By taking into account the opinions of experts, the formulation of the discipline of legal theory is as follows:

a. Legal theory is the same as legal philosophy;

b. Legal theory has a different understanding from legal philosophy;

c. Legal theory is synonymous with legal science.

From the explanation above, Lili Rasjidi and Ira ThaniaRashidi try to distinguish between legal theory and legal philosophy. Legal theory is the science that studies the basic notions and systems of law. Such basic notions are, for example, legal subject, legal action, and others which have general and technical meanings. These basic understandings are very important in order to understand the legal system in general as well as the positive legal system

Furthermore, Lili Rasjidi and Ira Thania explained that legal theory reflects the objects and methods of various forms of legal science.

There are two major views on legal theory that are contradictory but exist in one reality, such as the expression of the image of a coin that has two different parts. First, the view supported by three arguments, namely the view that law as a system can in principle be predicted from accurate knowledge of the current condition of the system, the behavior of the system is determined by the smallest parts of the system and legal theory is able to explain the problem as it really is. regardless of the person (observer). This leads us to the view that legal theory is deterministic, reductionist and realistic. Second, the view that law is not an orderly system is still something related to irregularity. cannot be predicted, and that the law is greatly influenced by the perception of people (observers) in interpreting the law. This view is widely expressed by those with sociological and post-modernist views, where they view that at any time changes, whether small or large, evolutionary or revolutionary.

To The origin of law does not only explain what law is to concrete things, but also to the fundamental issues of that law. As Radbruch said, quoted by SatjiptoRahardjo, the task of legal theory is to make clear values by legal postulates up to the highest philosophical explanation. Legal theory will ask questions such as: why does law apply, what is the basis of force that binds it, what is the purpose of law, how is law understood, what is the relationship between the individual and society, what is supposed to be done by law, what is justice, and how is law which is fair. Legal theory is a continuation of efforts to study positive law. Legal theory uses positive law as study material with philosophical analysis as a means of assistance in explaining law. Legal theory has been studied since ancient times, by Greek and Roman jurists. Prior to the nineteenth century, legal theory was the most important by-product of religious, ethical or political philosophy. At first the greatest legal thinkers were philosophers, religious experts, political experts. The most important change in legal philosophy from philosophers or political experts to legal philosophy from jurists, has only recently taken place. Namely after the great developments in research, technical studies and legal research. Legal theories in ancient times were based on general philosophical and political theories. Meanwhile, modern legal theories are discussed in the language and thought systems of the legal experts themselves. The difference lies in the method and emphasis. The legal theory of modern jurists, such as the legal theory of the scholastic philosophers, is based on the highest belief whose inspiration comes from outside the field of law itself.

Based on the understanding of legal theory above, it can be concluded that the characteristics of legal theory are as follows:

Thinking about law, looking for everything about law, asking questionswhich is the law, asking what is the content of the legal system, does not form a stable law, obtains the materiality of the science of law, is a meta-theory of law, is a reflection of legal techniques, the way jurists speak law, speak law from a non-juridical technical perspective with language which is not technically juridical anyway,

Ask about whether or not logical interpretation techniques can be used. Talking about the considerations or reasoning of jurists, it does not matter which solution is the most suitable, examines the considerations of jurists and the instruments used by jurists. as well as being able to focus more on solving legal problems in accordance with the objectives to be achieved in answering the formulation of the problem in research related to the Study of Management and Development of Waqf Insurance Benefits and Investment Benefits of Sharia Insurance Policies for Increasing Welfare."

The theoretical framework used as an analytical tool is the insurance policy waqf theory as a grand theory (basic theory), progressive legal theory as a middle theory and welfare law theory as an applied theory (applicative/applied theory). Grand theory summarizes the main theory that connects all the variables in the study. Middle theory explains the theory that underlies one or several variables in research that are within the scope of grand theory – the relationship between propositions. The applied theory is to explain the relationship between concepts.

A. Theory of Management and Development of Waqf of Sharia Insurance Policy

1. Justice

Justice is one of the most widely discussed legal goals throughout the history of legal philosophy. The purpose of law is not only justice, but also legal certainty and expediency. Ideally, the law should accommodate all three. The judge's decision, for example as much as possible is the resultant of the three. Even so, there are still those who argue that among the three legal objectives, justice is the most important goal, some even argue that it is the only legal goal.[1]. Radbruch states that justice must be considered as one of the components of the legal idea.[2]The other components are finality and certainty. Law and justice as two sides of one coin. If justice is described as material and law as form, then the value of justice is material that must fill the form of law. Law is a form that must protect the value of justice. Thus, justice has both normative and constitutive characteristics for law. Justice is normative for law because it functions as a transcendental prerequisite that underlies every dignified law. Justice is the moral basis of law and a benchmark for a positive legal system. In other words, justice is always the basis of law. Whereas law is constitutive because justice must be an absolute element for law to be recognized as law without justice, a rule does not deserve to be called law.[3]

2. Legal Certainty

In the eyes of the positivists, justice is indeed the goal of law. However, they are also fully aware that the relativity of justice often obscures another important element, namely the element of legal certainty. Adigium that is always echoed is summun jus, Summa injuria, summa lex, summa crux. Literally the expression means that harsh law will hurt, unless justice can help it. This expression actually signifies the

[1]One of the Indonesian judges, Bismar Siregar said, "If it is to uphold my justice sacrifice legal certainty, I will sacrifice the law. Law is only a means, while the goal is justice. Surabaya: Our CV, 2006, page 106.
[2]Radbruch G, Rechtphilosophie (Stutgart: Kochler, 1973) p. 164
[3]Bernard L Tanya, Yoan N. Simanjuntak and Markus Y. Hage, Legal Theory: Human Orderly Strategies Cross Space and Generations,

positivist's lack of faith in true justice. Because, the highest justice is the highest injustice. If only justice is pursued, positive law will no longer be certain. A further consequence of this legal uncertainty is injustice to a larger number of people.

Broadly speaking, the flow of legal positivism can be reviewed through 2 (two) thoughtsprincipal, namely John Austin who is termed as tfigure of the analytical positive law school, and Hans Kelsen through Pure Law Theory.[4]John Austin views law as an order from the ruler to the people he governs in an independent political society. Austin's view of law is also frequently cited as "Imperative Law Theory"[5]The ruler has the power on behalf of the state to compel his people to obey his orders. As a consequence, a new regulation may be called "law" or "positive law" if it contains 3 (three) elements, namely:

a. The desire expressed by the ruler (political superior)
b. Miserable sanctions if orders are not carried out.
c. An expression is expressed through words.

An order must be supported by sanctions. Sanctions and orders both come from the sovereign authorities[6]. Without the three elements mentioned above or if wrong one element is missing, then it is notpositive law but only is "positive morality"[7]Austin's view of law forms the basis for the development of the Pure Law Theory that was raisedwill by Hans Kelsen. Austin rejects the influence of various other elements outside the law on the law. Law is closed (closed logical system) from elements of values outside the law. ThusAustin rejects the fact that laws are obeyed becauseThe law is in accordance with the values of human justice (natural justice).[8]Austin does not talk about justice, because for him justice is a value that is outside the law, so it must be separated. If the law is an order (command), then the order has nothing to do with itto do with justice. Hence the criticisms of Austin in generalhighlighting his views on seblawlike an order. According to Hart's HLA, there are several laws that do not contain sanctions, because they only lay the basis for how a transaction occurs, for example regarding the validity of agreements, marriages or wills. Laws like this do not force other people to act according to certain provisions. There are also legal provisions that do not impose an obligation but facilitate the occurrence of a condition.[9]The application of this theory is so that a people's economy can be realized which can provide welfare for all Indonesian people, the Government in this casemust be firm in making policies that favor the people's economy, for examplewith the Cooperative Act andMicro, Small and Medium Enterprisesguaranteelegal certainty.

3. Progressive Legal Theory

[4]Lily Rasjidi & Ira Tania Rasjidi, Fundamentals of Philosophy and Legal Theory, Bandung: Citra Aditya Bhakti, 2001, pp. 58-59.
[55]Ibid, pp. 58-59
[6]*Ibid*, pp. 58-59

[7]ZR Zafer, Jurisprudence, An Outline, Kuala Lumpur : International Law Book Service, 1994, page 7.
[8]*Ibid*, p. 8.
[9]*Idem*, p. 11

Progressive legal theory is the thought of the legal scholar SatjiptoRahardjo, this theory was born from anxiety facing legal chaos in maintaining legal unity and harmony. At the same time, it is necessary to pay attention to the interaction between the political system and the (legal) system in which individual legal bearers work. This is because the democratic (and/or participative) level of legal products made through the political process also determines how far legal development can make progressive breakthroughs.[10]The important character of progressive law is to carry out liberation, namely liberation from traditional-conventional thoughts, when it hinders the flow of more correct thoughts. Progressive legal connotation as a legal thought that always strives to be (more) correct. The progressive legal method, namely making the law always open, dynamic and flowing.[11]

The definition of progressive law according to SatjiptoRaharjo as quoted by ElitaRahmi, is to change quickly, make a fundamental reversal in legal theory and practice and make various breakthroughs. This liberation is based on the principle that law is for humans and not vice versa and that law does not exist for itself, but for something broader, namely for human dignity, happiness, welfare and human glory. The definition as stated by SatjiptoRaharjo means progressive law is a series of radical actions, by changing the legal system (including changing legal regulations if necessary) so that law is more useful, especially in raising self-esteem and guaranteeing human happiness and welfare. progressive law, important in order to find laws that are not status quo, so that laws can find justice and legal certainty as well as benefits of law in the context of developing laws for society. The modalities are compassion, empathy, sincerity, and dare. As a consequence of the "law for humans" paradigm, law enforcement must not be flat, but full of conscience to protect and serve humans. rather it contains a strong modality load. The modalities are compassion, empathy, sincerity, and dare. As a consequence of the "law for humans" paradigm, law enforcement must not be flat, but full of conscience to protect and serve humans. rather it contains a strong modality load. The modalities are compassion, empathy, sincerity, and dare. As a consequence of the "law for humans" paradigm, law enforcement must not be flat, but full of conscience to protect and serve humans.

4. The Law Happiness/Welfare Theory

Indonesia's goal is the welfare of its people. Prof. Mr. R. Kranenburg, revealed "that the State must actively strive for welfare, act fairly that can be felt by all people equally and equally, not for the welfare of certain groups but for all the people. In order to realize the welfare of its people, it must be based on the five pillars of the state, namely democracy, law enforcement, protection of human rights, social justice and anti-discrimination. According to Harold J. Laski, as quoted by Bahrullah Akbar, philosophically the goal of the state is to create conditions where its people can achieve their desires to the fullest ("creation of those conditions under which the members of the state may attain the maximum satisfaction of their desires"). In the Encyclopedia Americana it is stated that the welfare state is a state "a form of government in which the state assumes responsibility for minimum standards of living for every person" (a form of government in which the state is

[10]Tristam & Rachmani, Progressive Law: Solutions to Moral Justice in Pluralism Legal Systems, In Deconstruction and Progressive Legal Thought Movements, Progressive Law Consortium Diponegoro University Semarang, (Yogyakarta, Thafa Media, 2013), p.79

[11]Suteki & Awaludin Marwan, In Deconstruction and Progressive Legal Thought Movement, Progressive Law Consortium of Diponegoro University Semarang, (Yogyakarta, Thafa Media, 2013), p. ix

considered responsible for guaranteeing a minimum standard of living for every citizen). According to W Friedmann, the function of the state is divided into 4 functions, namely: 1) as an organizer or guarantor of welfare or the state as provider; 2) as regulator or as regulator; 3) as a businessman or entrepreneur; and 4) as a referee or the state as umpire. The purpose of the insurance policy waqf is for the welfare of the people.

Conceptual Framework

1.Insurance and Risk

Insurance in Arabic is called al-ta'min and al-takaful. The meaning of al-ta'minsecara etymologically it is a safe derivative (al-amnu) trusting (al-iman), trustworthy/trustworthy (al-amin/amanah), and calm (al-thuma'ninah), therefore al-ta'min linguistically means calm, namely avoiding fear (ithma'anawa lam yakhaf)[12]. In addition, insurance is linguistically seen to have the same meaning as the words al-takafuli (mutual help) al-ta'awuni and al-tadhamun (mutual protection/guarantee). In the DSN-MUI fatwa, the terminological meaning of insurance is an attempt to protect and help each other among a number of people/parties through investment in the form of assets and/or tabarru' which provides a pattern of return to face certain risks through contracts/agreements that are in accordance with sharia. ,[13]namely contracts that do not contain gharar (obscurity), maysir (gambling), usury, zhulm (persecution), risywah (bribes), illicit goods and immorality;[14]and the contracts operated are tabarru' contracts and tijarah/mu'awadhat contracts. Substantively, the insurance regulations both carried out in the Civil Code and in sharia (unwritten laws in the form of DSN fatwas), and from five insurance perspectives (namely from an economic, legal, business, social, and mathematical point of view), it appears that insurance cannot be separated from the risk that is guaranteed / insured. Nitisusastro emphasized that insurance is synonymous with the transfer of risk from a party who owns property and responsibility to a third party (liability), to another party (insurer) whose line of business is engaged in risk management, namely an insurance company.[15]Therefore, conceptually, scholars explain that insurance is associated with mashlahat (read: benefits) in the form of efforts to deal with/overcome/reduce risks that may occur in the future. Risk and Motivation for Insurance Risk (risk) can be included as the core of insurance discussion. Therefore, business law experts and business science experts explain the risks from various approaches even though in substance they focus on relatively the same issues, namely the possibility of a financial burden due to certain risks.

1. Risk is the chance of loss;[16]in statistics, the word chance is defined as something that shows the level of probability (likelihood) that a certain event will occur; therefore, the chance of loss is defined as the possibility that a loss will occur;

[12]Ali Muhy al-Din al-Qurah Daghi, al-Ta'min al-Islami: Dirasah Fiqhiyyah Ta'shiliyyah muqaranat(an) bi alTa'min al-Tijari ma'a Tathbiqat al-'Amaliyyah (Beirut: Syirkar Dar al- Bsya'ir al-Islamiyyah. 2005), p. 15.

[13]DSN-MUI Fatwa Number: 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance, general provisions, number 1.

[14]DSN-MUI Fatwa Number: 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance, general provisions, number 2.

[15]Mulyadi Nisusastro, Insurance and Insurance Business in Indonesia (Bandung: CV ALFABETA. 2013), p. 43.

[16]According to Agus Prawoto (1995) in his book, The Law of Insurance and Health Insurance Companies, risk in the insurance industry is defined in a very specific and simple sense; risk is the uncertainty of financial loss (uncertain loss); thus, risk, emphasized Wardana, risk has two elements; namely uncertainty and loss. See Kun

2. Risk is uncertainty; and

3. Risk is a deviation of actual results from expected results (risk is dispersion of actual from expected results). Of the three definitions, Silalahi emphasized that risk is the possibility of unwanted or unexpected adverse consequences/losses which are caused, among other things, by timeframes (read: deadlines) and/or limited information.[17]Hartono quoted the opinion of Robert Riegel and friends who explained that risk is: 1) a loss that cannot be foreseen in advance; and 2) the uncertainty one faces about the future.[18]In addition, Hartono also quoted H. Gunanto's opinion which stated that risk in insurance science is divided into several meanings, the point of which is the possibility of loss or danger.

1) on objects that are objects of danger, and

2) on the person who is the target of coverage. Therefore, Hartono emphasized that risk is the possibility of a loss or cancellation of all/part of an expected profit due to an event beyond human control or due to the actions of other humans. With this definition, Hartono also added that there are two elements of risk, namely uncertainty and loss.[19]

In sharia science it is explained that the pillars of insurance (arkan 'aqd al-ta'min) are:

1) contracted parties;

2) shighat (a statement of ability to undertake insurance [ijab] and a statement of acceptance from another party [qabul]); and

3) Expensive al-'aqd (ma'qud 'alaih, the object of the contract).

The object of the contract includes three things:

a) al-khathr (risk [insured hazard]),

b) al-qisth (premium [coverage premium]), and

c) mablagh (insurance benefits [amount of coverage compensation]).[20]

Wahyu Wardana, Insurance Law: Transportation Accident Protection (Bandung: CV Mandar Maju. 2009), p. 15-16. Risk is also defined as the possibility of loss (risk is the probability of loss). Ferdinand Silalahi, Risk Management and Insurance (Jakarta: PT Gramedia Putra Utama. 1997), p. 4-6.

[17]Salim explained that risk is uncertainty that may give rise to losses. Uncertainty is divided into three: 1) economic uncertainty (economic uncertainty); namely events that arise due to changes in consumer attitudes caused by changes in tastes, consumer interests, changes in prices, technology, or the acquisition of new inventions; 2) uncertainty caused by nature, for example fires, storms, typhoons, and floods; and 3) uncertainty caused by human behavior (human uncertainty), for example war, theft, robbery, and murder. Salim also stressed that only natural and human uncertainties could be insured, while economic uncertainties could not be insured because they were speculative and severity difficult to measure. See H. Abbas Salim, Insurance and Risk Management (Jakarta: PT RajaGrafindo Persada. 2005), p. 4.

[18]Sri Rejeki Hartono, Insurance Law and Insurance Companies (Jakarta: Sinar Graphic. 2008), p. 70.

[19]Sri Rejeki Hartono, Insurance Law and Insurance Companies (Jakarta: Sinar Graphic. 2008), p. 71.

[20]Ali Muhy al-Din al-Qurah Daghi, al-Ta'min al-Islami: Dirasah Fiqhiyyah Ta'shiliyyah muqaranat(an) bi al-Ta'min al-Tijari ma'a Tathbiqat al-'Amaliyyah (Beirut: Syirkar Dar al-Bsya'ir al-Islamiyyah. 2005), p. 31-44; and see Muhammad Firdaus NH, et al (editor), Sharia Insurance Operational System (Jakarta: RENAISAN. 2005), p. 17.

To achieve benefit, humans/business actors/companies cannot escape risk. Therefore, risks need to be analyzed and solutions sought for:

1) minimize the risk,

2) transfer the risk,

3) control the risk, and

4) funding/provision of risk funds.

5) Transferring risks as explained by IrhamFahmi are risks that may occur, being transferred, among others, by way of insurance.[21]

In terms of motivation, the person/business actor/company that insures a risk with an insurance company is to transfer the risk or share the risk with other parties (share of risk). Therefore, the aim is not to obtain profits which are then donated as waqf (benefits of insurance [mablagh] are used as waqf objects [mauqufbih]). The benefit of insurance means avoiding insurance participants from the possibility of experiencing financial difficulties due to certain risk events.

Principles of Insurance Agreement and Nature of Coverage:

In coverage there are basic agreements that must be considered, namely:

1. The agreement, the insurance agreement made must be based on mutual understanding between the parties who make it. The insured object must be stated in the insurance policy clearly/in detail; for example the insured object is a ship and its cargo;

2. Legal proficient; the parties making the insurance agreement must be capable/capable of carrying out legal actions. Children, crazy people, and women who are in the period of marriage may not enter into an insurance agreement, unless the woman has permission from her husband;

3. The insurance agreement must contain certain purposes or useful considerations for the agreement to apply. In order for a property liability agreement to be carried out, there must be a clause:

a) the insurance company will pay for losses in the event of damage to a person's property, and

b) the insured will pay the premium in such coverage; and the contents of the insurance contract must not conflict with: a) the public interest, b) morals, and c) the law.[22]

Nature of coverage:

Insurance has several characteristics in coverage, namely:

[21]Irham Fahmi, Risk Management: Theories, Cases, and Solutions (Bandung: CV ALFABETA. 2013), p. 6-7.

[22]H. Abbas Salim, Insurance and Risk Management (Jakarta: PT RajaGrafindo Persada. 2005), p. 163-164. Meanwhile, Darmawi explained that the general provisions of an insurance contract are: 1) there must be approval from the parties who are bound; 2) the goal must be legal/not contradictory with government politics; 3) both parties must be legally capable/competent; and 4) there must be a reward exchanged. See Kun Wahyu Wardana, Insurance Law: Transportation Accident Protection (Bandung: CV Mandar Maju. 2009), p. 64-65.

1. Contribution contracts; namely the amount of money to be paid in the insurance agreement may not be the same amount as the money we will receive (for example: the premium payment is not the same amount as the money received back in the event of a compensation/claim);

2. Contract of adhesion; the insurance contract is made by the company, and cannot be bargained about the contents of the contract; the participant's right is to accept the contents of the contract (to take it); means becoming an insurance participant, or refuses to do so; means not being an insurance participant;

3. Unilateral contracts; the insurance agreement is a unilateral contract; namely the agreement applies unilaterally if the insured has paid the premium, and the insurance company must pay compensation or what was promised;

4. Terms and conditions; i.e. if the contract contains a clause stating that the loss must be notified to the insurance company no later than one day after the incident, then reporting that is overdue/late will result in the loss of the right to compensation;

5. A contract uberrimacfidei/contract of utmost good-faith; i.e. the contract must be made honestly. This is especially important for transport insurance, because insurance companies do not have enough time to research potential insurance buyers;

6. Contract of indemnity; namely the prohibition of seeking profit by fraudulent means in insurance, for example damaging goods intentionally with the aim of obtaining a new replacement. The nature of this contract gave birth to the following three doctrines: a) the doctrine of insurable interest; the insurance buyer has the right to ask for compensation if a loss actually occurs; b) doctrine of limitation of recovery; there is a maximum amount that can be given as compensation; and c) doctrine of subrogations; the right to collect against third parties is transferred by the insurance company; and

7.Warranty; a guarantee that what is promised now will actually be fulfilled in the future.[23]

H. MulyadiNitisusastro emphasized that the principles of the insurance agreement are: 1) the principle of the utmost good faith, 2) the principle of insurableinterest), 3) the principle of indemnity, 4) the principle of subrogation, 5) the principle of contribution, and 5) the principle of following the fortune of the ceding company.[24]In outlining the principle of indemnity, Nitisusastro explained that if the insured suffers a financial loss caused by a certain risk event guaranteed by the insurance company, then the insured will receive compensation for the amount of the loss. suffered. The compensation includes: 1) paying in cash the amount of the loss suffered; 2) repairing the insured object that is damaged; 3) replace with another of the same quality/quantity; and/or 4) rebuild damaged insured objects.[25]Related to the motivation of the insured person/party/company, and the principle of indemnity; (the prohibition of seeking profit by fraudulent means in insurance), which gave birth to three doctrines: 1) the doctrine of insurable interest, 2) the doctrine of limitation of recovery, and 3) the doctrine of subgrogations, so insuring an insurance policy

[23]Abbas Salim, Insurance and Risk Management (Jakarta: PT RajaGrafindo Persada. 2005), p. 164-166; and see Kun Wahyu Wardana, Insurance Law: Transportation Accident Protection (Bandung: CV Mandar Maju. 2009), p. 66-71.

[24]H. Mulyadi Nitisusastro, Insurance and Insurance Business in Indonesia (Bandung: CV ALFABETA. 2013), p. 67-75.

[25]Ibid., p. 69.

is not in line with this principle. However, this principle only applies to general insurance (measured by the amount of loss) while life insurance (death) cannot be applied.

Study in terms of the nature of Tamlik-Waqf:

The theory of waqf includes the pillars and terms of waqf. Waqf is a unique maliyah worship because its pillars are different from other maliyah worship (including grants and gifts).

In waqf there are five pillars:[26]

1) waqif (wakif, the party who donates his assets);

2) mauquf 'alaih (nadzir, the party that manages and invests waqf objects/assets);

3) mauqufbih (mauquf, waqf object); and

4) shighat (a statement of will [approval] for waqf). While the latter, that is

5) mauquflah (the beneficiary of the waqf) in general the scholars (jumhur) do not make it a pillar. Among these pillars, the pillars that are relevant (read: important) to study are regarding the terms of mauqufbih (mauquf, object of waqf).

In the book al-Fiqh al-Islami bi al-Adillah, wahbah al-Zuhaili explains that the conditions for waqf objects are:

1. The assets that are donated must be assets that are valuable/sharia-valued (mal mutaqawwam); therefore, waqf is not valid for assets that are not sharia worthless, other assets are prohibited between and/or may not be owned individually;

2. The assets that are donated must be assets that are clear and measurable (ma'lum)

3. The assets being donated must be assets that already belong to the perfect wakif (milk[an] tam[an]) at the time the waqf contract is made

4. The assets that are donated must be assets that are clear in the sense that they are not assets that still have to be divided because there are rights belonging to other parties).[27]

In terms of the terms of the waqf object (mauqufbih), it can be seen that waqf for insurance policy benefits and waqf for investment benefits must meet the requirements as described above:

1. So in the waqf of life insurance policy benefits, for example, the insurance benefits received by the family (wife and children who died) do not belong to the deceased, but belong to his heirs as a tirkah/inheritance; and

2. Waqf investment insurance policies that are savings in nature (saving elements) can be categorized as waqf whose object conditions are met; because in this insurance there is the property of the wakif (insurance

[26]Ali Fikri, al-Mu'amat al-Madiyah wa al-Adabiyah (Egyptian: Mushthafa al-Babi al-Halabi. 1938), vol. II, p. 307; and Wahbah al-Zuhaili, al-Fiqh al-Islami bi al-Adillah (Damascus: Dar al-Fikr. 2006), vol. X, p. 7605-7606.
[27]Wahbah al-Zuhaili, al-Fiqh al-Islami bi al-Adillah (Damascus: Dar al-Fikr. 2006), vol. X, p. 7634-7636.

participant) which is perfect, including the addition/follow-up, namely profit sharing for the company's business.

Study in terms of the nature of the Tamlik-Wasiat

A study of policy waqf in terms of wills needs to be carried out because there are some experts who propose/propose the concept of waqf wills. In Indonesian positive law, the existence of testamentary waqf is recognized. One of the mu'amalahfiqh topics related to waqf is wills.

One of the important topics in a will is the maximum amount of property to be donated. Practically, wills are also related to the distribution of inheritance (al-tirkah, al-mawruts). In the hadith narrated by a number of hadith experts, it is explained that a will should not exceed one-third (33.3%) of the total assets left by the deceased (as well as the bequeathing party). Abu Sa'id (father of 'Amir Ibn Sa'id) when he was ill explained to the Prophet. that he has an only daughter; and that explanation is then followed by a question: is it permissible to make a will with half of the property that will become an inheritance? Prophet Saw. said that the will of half the assets that will be left behind is too much. How about a third? Abu Sa'id's next question. Prophet Saw. said: “Even a third is still too much or too big.” 'Amir Ibn Sa'id then explained that “people (believers) will bequeath a third of their property; that much they may do.”[28]

In Law Number 41 of 2004 it is stipulated regarding the method of waqf by will:

1) wills for waqf may be made orally; and

2) wills for waqf may also be made in writing. Wills for waqf either orally or in writing must be witnessed by two witnesses who meet the requirements; The requirements for testamentary witnesses for waqf are:

1) adults;

2) are Muslim;

3) reasonable; and

4) not hindered from carrying out legal actions.[29]

The second provision relating to waqf through a will relates to the amount of assets bequeathed for waqf. In Law Number 41 of 2004 it is stipulated that waqf assets that are donated by will are at most 1/3 (one-third) of the total inheritance after deducting the debts of the beneficiary, except with the approval of all the heirs.[30]In the provisions regarding the amount of assets donated through a will, there are exceptions; namely assets donated by will through a will at most one-third of the total inherited assets, unless all the heirs agree. That is, assets donated through a will may be more than one-third of the inheritance on one condition, that is, all heirs agree.

The third provision relating to waqf through a will is the execution time of the will:

[28]Abi Abd Allah Muhammad Ibn Isma'il Ibn Ibrahim Ibn al-Mugirah Ibn Bardazabah al-Bukhari al-Ja'fi, Sahih al-Bukhari (Indonesian: Dar Ihya' al-Kutub al-'Arabiyyah. 1981), juz III, p. . 187

[29]Law Number 41 of 2004 concerning Waqf, article 24

[30]Ibid., art. 25.

First, waqf through a will is carried out by the beneficiary after the bequeathing party dies;[31]

second,the beneficiary acts as a proxy for waqif;[32]and

third, endowments with wills are carried out (pledges and registration) in accordance with the procedures for endowments regulated in laws and regulations.[33]In Law Number 41 of 2004 concerning Waqf it has been anticipated regarding the possibility of denial or disobedience of a will made by the beneficiary. defiance by the beneficiary of the will, in the Law it is stipulated that the Religious Courts can order (force, the recipient) the recipient of the will to carry out the will at the request or request of the party or interested parties. Among the interested parties are the heirs, witnesses, and the beneficiaries of the waqf allocation.[34]In the classical fiqh books, the terminology of waqf wills shows that the substance is a will from someone to donate, where the waqf contract will be effective (nafadz) if the waqif (Mushi, testator) dies. This is implicitly explained in Abu Hanifah's view regarding the usual nature of waqf contracts. Among the differences of opinion of scholars in the field of waqf are regarding ownership and the law of selling objects that have been donated. According to Abu Hanifah, the object that has been donated still belongs to the party giving the endowment because the waqf contract (transaction) includes the usual ghair contract (does not cause a transfer of ownership of the waqf object), except for four things waqf: 1) waqf for mosques, 2) waqf determined by judge's decision, 3) will waqf, and 4) waqf for graves (graves). Therefore, objects that have been donated, other than the four waqf, may/can be sold, inherited, and donated. Waqf objects will turn into inheritance objects (tirkah/mauruts) when the beneficiary (wakif) has died.[35]Two of Abu Hanifah's arguments regarding the permissibility of selling waqf objects are: 1) the rational argument in the form of qiyas, namely Abu Hanifah analogizes (qiyas) waqf to borrowing (al-'ariyah); the loan contract includes customary ghair so that the object still belongs to the lender;[36]And 2) the argument in the form of a hadith which was later narrated by Imam al-Baihaqi stating that the Prophet Muhammad SAW. ever sold waqf objects.[37] Wahbah al-Zuhaili, al-Fiqh al-IslamiwaAdillatuh It is important to study and analyze the terms of the object being bequeathed (mushabih); namely: 1. The inherited property must be the inherited property because the testamentary contract is a normal contract (ownership of the object being inherited is transferred, intiqal al-milkiyyah); and the difference is with a grant, a grant contract is effective (nafadz) when the contract is made, while a will is effective when Mushi (who makes the will) dies; besides that, assets that can be bequeathed must be assets that are permissible/acceptable to be owned (qabil[an] li al-tamlik); therefore, a will is considered void if it involves an object that cannot be owned, such as a will related to carrion and blood; 2. The inherited assets must be sharia-compliant assets; namely assets that are permissible/can be utilized according to sharia. 3. The

[31]Ibid, article 26, paragraph (1).
[32]Ibid, article 26, paragraph (2)
[33]Ibid, article 26, paragraph (3).
[34]Ibid, article article 27
[35]Wahbah al-Zuhaili, al-Fiqh al-Islami wa Adillatuh (Beirut: Dar al-Fikr al-Mu'ashir. 1997), vol. X, p. 7599-7600; and Abi Bakr Muhammad Ibn Ahmad Ibn Abi Sahl alSarkhasi al-Hanafi, Kitab al-Mabsuth (Beirut: Dar al-Kutub al-'Ilmiyah. 2001), vol. XI, p. 23-24.
[36]Abi Bakr Muhammad Ibn Ahmad Ibn Abi Sahl alSarkhasi al-Hanafi, Kitab al-Mabsuth (Beirut: Dar al-Kutub al-'Ilmiyah. 2001), vol. XI, p. 27
[37]Abi Bakr Ahmad Ibn al-Husein Ibn 'Ali al-Baihaqi, al-Sunan al-Kubra (India: Mathba'ah Da'irah al-Ma'arif al-Otsmaniyyah. 1352 H.), vol. VI, p. 163.

inherited assets may not be controlled by the bequeathing party at the time the testamentary contract is made, including the will regarding receivables which at the time of the contract are controlled by the debtor (Madin). Jumhurulama allow wills over assets that can be absolutely owned, even though Mushi does not exist or is not controlled by Mushi at the time of the will, provided that the assets exist at the time the will is effective (nafadz). If the will relates to certain assets (including houses and certain plants), then the majority of scholars (besides Hanafi) require the existence of the object of the will at the time the will is effective, namely when Mushi dies; 4. The inherited assets must be assets that already belong to the Mushi at the time the will is pledged/written if the will is related to the substance (substance) of the property because the will is a statement (read: contract) in which the ownership of the object is transferred; then it is mandatory that mushabih already belong to Mushi at the time the will is made/written; a will on the property of another person/party (not belonging to Mushi), is invalid; and 5. Willed assets are not bequeathed to be used as a medium for carrying out immoral acts or are prohibited according to sharia wills because they are acts that are classified as tabarru' and kindness (ihsan), so the purpose or use of the object of the will must not conflict with tabarru' and ihsan. then it is mandatory that mushabih already belong to Mushi at the time the will is made/written; a will on the property of another person/party (not belonging to Mushi), is invalid; and 5. Willed assets are not bequeathed to be used as a medium for carrying out immoral acts or are prohibited according to sharia wills because they are acts that are classified as tabarru' and kindness (ihsan), so the purpose or use of the object of the will must not conflict with tabarru' and ihsan. then it is mandatory that mushabih already belong to Mushi at the time the will is made/written; a will on the property of another person/party (not belonging to Mushi), is invalid; and 5. Willed assets are not bequeathed to be used as a medium for carrying out immoral acts or are prohibited according to sharia wills because they are acts that are classified as tabarru' and kindness (ihsan), so the purpose or use of the object of the will must not conflict with tabarru' and ihsan.[38]From the provisions related to the testamentary object explained by the expert, it seems appropriate to have a discussion on whether the testamentary object should belong to Mushi completely if the object is related to certain (physical) objects; and the object of the will must already belong to Mushi completely (tamm) at the time the testamentary agreement is effective (ie when Mushi dies) if the object of the will is among other things in the form of receivables (the object of which did not/did not exist at the time the will was written/pledgeed). This provision is supported and contained in the Law on Testaments in Egypt (art. 10) and the Law on Testaments in Syria (art. 216). Regarding policy waqf, it can be seen that although it is proposed to use a waqfwaqf scheme (read: bequest for waqf),

2. Waqf Insurance Policy.

Insurance Policy Waqf is donating a portion of the value that will be received if the insurance policy that has been owned has been disbursed. In this case, 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 can be donated as waqf. Then the garden is managed and the results are for the benefit of the community. Of course this waqf is a productive waqf in the sense of bringing economic aspects and social welfare.

[38]Wahbah al-Zuhaili, al-Fiqh al-Islami wa Adillatuh (Beirut: Dar al-Fikr al-Mu'ashir. 1997), vol. X, p. 7478-7483.

Conceptually, the basis for the contract in the sharia insurance waqf policy is not a sale-purchase contract or a mu'awadhah contract as is the case with conventional insurance. But what underlies it is a mutual help contract by creating a new instrument to channel benevolent funds through the tabarru' contract. But in this insurance waqf using two dimensions, namely the dimensions of the world and the hereafter. When a prospective wakif (person who is waqf) will make an insurance policy waqf, there are two contracts used, namely:

1. Waqf contract for productive waqf which is part of the value of the insurance policy which includes waqf insurance benefits on the Sum Insured (UP), and waqf benefits on investment value at maturity on sharia insurance.

2. Good deeds/worship contract for the benefit of the wakif, the wakif's family, the public interest, a portion of the value of the Insurance Policy (UP and Cash Value) at maturity. The insurance policy waqf system is generally used to build permanent community facilities; such as mosques, schools, campuses, hospitals and others. Because the initial concept of waqf is to let something go and hope for the pleasure of Allah SWT, in the form of goods or assets that are eternal and do not run out in time.

Basically, in general, the concept is almost the same as the concept of takaful with a saving model. It's just that the saving section is allocated more for waqf. For example (in the takaful model with the concept of mudharabah/ wakalahbilujrah) when a customer pays a premium, the premium will be applied to the following three allocations: 1. 50% for ujrah, which is allocated for company operations. 2. 50% for tabarru', for mutual assistance funds, allocated to customers affected by the disaster (claims). And 50% for savings, belongs to the participants and will be fully returned to the participants along with their investment results. Whereas in the concept of insurance policy waqf, the distribution of premiums is almost the same, except on the saving side that turns into waqf, namely: 50% for ujrah, which is allocated for company operations. And 50% for tabarru', for mutual assistance funds, allocated to customers affected by the disaster (claims). And 50% for waqf that is donated for the benefit of the people (not returned to the customer). Endowed waqf funds may not be used for operational costs, claim costs or anything related to the operations of a sharia insurance company. Waqf funds must be fixed assets whose existence is relatively "eternal". Because the concept of waqf is that the assets that are donated cannot be reduced, cannot be used up, but are productive and produce. Meanwhile, the return on investment from the waqf fund may be used for the operations of a sharia insurance company, a maximum of 12.5% of the investment return, and of course it can also be used to increase tabarru' reserves of 87.5%. This is of course quite interesting to add to the sharia insurance company's tabarru' reserves. In addition to actually sharia insurance companies have also managed tabarru' customers, and have obtained tabarru reserves.

III. METHODOLOGY

In this study, the author uses a normative juridical approach. In this approach, the research aims to identify the nature, values, teachings, and legal meaning of the data, facts, or documents on the problem under study. This normative legal research is a procedure and way of scientific research to find the truth based on the scientific logic of law from a normative perspective.

IV. RESULTS AND DISCUSSION

Results should be clear and concise. Discussion should explore the significance of the results of the work, not repeat them. Avoid extensive citations and discussion of published literature.

- This study concludes that fatwa number 106/DSN-MUI/X/2016 is in line with waqf arrangements in the compilation of Islamic law and increasing welfare through investment in waqf insurance benefits.
- This study also concludes that community readiness and the structure of business institutions in Indonesia are one of the factors constraining the implementation of the management and development of waqf insurance policies.
- Trust and accountability in the management of waqf assets have not been maximized, meaning that people's trust in the nadzir has not been maximized.
- Human Resources, Nadzir. Waqf is not yet professional or not conventional/traditional, meaning that Nadzir is still passive, that is, he only accepts property issued by the Waqif, and has not been able to make waqf productive.
- The community's understanding of waqf is that waqf is only in the form of land, buildings, trees. Meanwhile money, copyrights, artistic rights, patents and others have not been widely understood as part of what can be donated.
- The lack of cooperation with Islamic Financial Institutions (LKS) especially at the district level and the existence of the Indonesian Waqf Board which temporarily still exists at the central and provincial levels is a challenge why waqf institutions at the district level cannot run optimally.

V. CONCLUSION

Then the concepts in order to further improve the management and development of waqf insurance policies include:

1. Expanding the network by cooperating with all sharia insurance companies.
2. Conduct socialization and direct training to the wider community, although there are several things that become obstacles in its implementation, such as understanding that the community is still fixated on religious waqf, this needs to be socialized to the wider community about the large role of insurance policy waqf.
3. Waqf objects are managed productively, for example cash waqf, beneficial asset waqf, rights transfer waqf, securities, professional waqf, and collective/organizational waqf. people can waqf through insurance benefits.

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