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LEGAL DUE TO THE PRACTICES OF WAQF INSURANCE BENEFITS THAT DO NOT COMPLY WITH FATWA PROVISIONS DSN-MUI NO.106/DSN MUI/ X/2016 CONCERNING WAQF INSURANCE BENEFITS AND INVESTMENT BENEFITS OF ISLAMIC LIFE INSURANCE IN INDONESIA

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ABSTRACT:In creating legal order and sharia compliance in waqf to protect the property of the waqf insurance benefits, this study refers to the legal consequences arising from waqf of insurance benefits that are not following the fatwa on waqf of insurance benefits, following the legal system regulated in the Law. Number 41 of 2004 concerning waqf, which regulates waqf and must comply with Islamic Law. Through normative research methods with statutory and conceptual approaches, and in this research, the materials used are primary and secondary legal materials obtained through literature review. Due to the incompatibility of waqf insurance benefits with the provisions of fatwa number 106 / DSN-MUI / X / 2016 concerning waqf insurance benefits and investment benefits in Islamic life insurance, it has resulted in missing aspects of sharia. It has resulted in legal consequences: 1. If the mismatch is related to the terms and conditions of the waqf insurance benefits object, it becomes null and void, 2. If the mismatch is connected to the terms and conditions of waqf insurance benefits, then the practice of benefits can be canceled. Benefits in sharia insurance companies cannot be used as guidelines for imposing sanctions on insurance companies.

I. INTRODUCTION

The problem with the development of waqf in Indonesia occurs when the waqf law designates Islamic law regarding whether or not waqf is valid in Indonesia. Submission of law that carries legal consequences for everything related to waqf must be following sharia. The development of waqf objects from time to time has developed to guarantee legal certainty. Article 16 of the Waqf Law states that waqf assets consist of immovable objects and immovable objects. Immovable objects that can be donated are in the form of money, precious metals, securities, vehicles, intellectual property rights, lease rights, and other movable or immovable objects following sharia provisions and applicable laws.

The waqf law opens opportunities for other objects that have beneficial values according to Islamic law to be used as waqf objects. The number of waqf insurance benefits practices in insurance companies is one reason for this research, which provides waqf services from the insurance benefits received by policyholders. Waqf insurance benefits mean donating part of the assets, which are part of the value that will be received by the policyholder when the insurance policy has been liquidated by the primary insured with the knowledge of the heirs when the policy benefits are due and die according to the agreement.

The existence of insurance benefits as an object of waqf has been accommodated in the Fatwa of the National Sharia Board-Indonesian Council of Ulema No.106 / DSN-MUI / X / 2016 regarding Waqf Insurance Benefits and Investment Benefits in Sharia Life Insurance. This fatwa defines insurance benefits as several funds sourced from tabarru 'funds handed over to the party experiencing the disaster or the party appointed to receive it. However, the condition of the object of waqf in Islam should be noted because the assets that are donated must be clear and measurable. The assets that are presented must be fully owned by the waqf when the waqf contract is carried out, then can the benefits of insurance be measured and whether it is the whole property of the wakif to Islamic law.

Regarding the Insurance Benefit Waqf, there are several provisions governing insurance benefit waqf stating that there is a limit to the amount of ujah associated with the insurance benefit waqf product allowed in the first year a maximum of 45% of the regular contribution. Besides, this fatwa states that Islamic insurance companies cannot take up more than 50% of the insurance benefit waqf product's accumulated regular contributions. However, in several practice studies in Islamic insurance companies, many insurance companies do not comply with the fatwa's provisions on insurance benefit waqf. Rita (2018) states that the insurance

company PT. Sun Life Financial Syariah, through its product brilliance, hasanah is prosperous, taking ujah in the first year, which is 80%, that is, it exceeds the limit set by the fatwa, which is a maximum of 45%.

Meanwhile, in her research, Umami (2019) states that the procedure for implementing the insurance benefit waqf at the AXA Mandiri Syariah Unit is not entirely following the Fatwa rules of the National Sharia Board-Indonesian Council of Ulama (DSN-MUI). This is because of two things, namely: first, in the waqf agreement form, which does not state a binding promise to donate insurance benefits, but the one who states the promise is the policyholder (insurance participant), even though the fatwa states "The party appointed to receive insurance benefits. states a binding promise (wa'd mulzim) to donate insurance benefits". Second, in the fatwa of the National Sharia Board-Indonesian Council of Ulama (DSN-MUI) it is explained that "Assets that are donated must be assets that are fully owned (al-milk at-tam) for wakif at the time the waqf contract is carried out". Meanwhile, policyholders are not full owners of insurance benefits.

In a different study, Zain et al. (2020) stated that the implementation of insurance policy waqf in prudential sharia is a discrepancy regarding donating up to 95% valid for submitting new PSBG and PSIA policies starting January 10, 2019, provided that the main participant has an existing policy (conventional and/or sharia) which is still active. Therefore it is not following fatwa No.106 / DSN-MUI / X / 2016, where the insurance benefits that can be donated are at most 45% of the total insurance benefits.

From some of the research above, it can be concluded that there are several insurance benefits waqf practices that are not following the provisions of the fatwa. In creating legal order and sharia compliance in waqf to protect the property of insurance benefits waqf, this study refers to the legal consequences arising from insurance benefit waqf which are not following the DSN-MUI fatwa No. 106 / DSN-MUI / X / 2016 concerning Waqf Insurance Benefits and Investment Benefits in Sharia Life Insurance following the legal system stipulated in the laws and regulations concerning waqf and must be following Islamic law, it is intended for the benefit of the general public according to with the purpose and function of waqf.

II. RESEARCH METHODS

In this case, the researcher uses normative legal research or doctrinal research. This research departs from legal issues related to the legal consequences of the incompatibility of the practice of insurance benefits waqf in insurance companies with the provisions of the fatwa of the National Sharia Board-Indonesian Council of Ulama (DSN-MUI) No.106 / DSN-MUI / X / 2016 concerning Waqf Insurance Benefits and Investment Benefits in Sharia Life Insurance.

There are two approaches used in this research, namely: the statutory approach and the conceptual regulatory approach. The legal materials used in this research are primary and secondary law materials obtained from the literature review. The data analysis is qualitative and complete. Complete analysis means interpreting the data with no part being forgotten, and everything has been included in the analysis. Then, the results of the study are formulated into quality, orderly, sequential, logical, non-overlapping, and practical sentences.

III. RESULTS AND DISCUSSION

A. The validity of the Waqf Insurance Benefits Object

Anshori (2006) defines that waqf comes from the word (وقف) which means stop, stay put, or hold back. Meanwhile, according to the term, the scholars have different opinions about the meaning of waqf. They define waqf with various definitions according to the different schools of thought. Furthermore, Tiswarni (2016) explains the meaning of waqf as stated in Article 1 paragraph (1) of Law No. 41 of 2004, states that waqf is a legal act of waqf which separates and or gives up part of his property to be used forever or for a certain period according to his interests. for the purposes of worship and general welfare according to sharia. Tiswani (2016) describes several pillars of waqf, according to which there are several important elements in waqf, including the following:

1. Wakif (someone doing waqf)
2. Mauquf (Waqf Object)
3. Allocation of Waqf
4. Sighat Waqf
5. Nazhir
6. Duration of Waqf

Furthermore, pillars are something that must be present in every worship. If one of the pillars is not fulfilled, then the worship is considered invalid (canceled). In terms of waqf, there are four pillars of waqf as quoted above: mauquf or the object of waqf. In the view of an-Nawawi, the waqf object is defined as any particular property that is owned, and it is possible to transfer it. Its benefits do not eliminate the item, and it is the property of the wakif. Thus, the waqf object includes several conditions so that it is worthy of being the item being donated.

At least five conditions must be owned by these objects, as reported by al-Kabisi (2004: 247). The five conditions are that waqf property has a value (there is a price), waqf property is clear, waqf property is the wakif property (in the form of immovable objects, such as land or objects adapted to existing waqf habits), and waqf assets must be separated. The following is a description of these terms:

1. Waqf assets has value (Price)
2. Waqf assets must be clear (Known)
3. Waqf assets are the property of the Wakif
4. Waqf assets can be handed over
5. Waqf assets must be separated

After presenting the object of waqf in a fiqh perspective, this section will review the definition of waqf and the object of waqf in the perspective of Indonesian wakaf fiqh has been codified in Law Number 41 of 2004. Waqf in Article 1 of the Law is defined as an object is a legal act. wakif to separate and / or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purpose of worship and / or public welfare according to sharia. As for the object of waqf - in the language of this law in the same Article it is referred to as waqf property - is property that has long lasting durability and / or long-term benefits and has economic value according to sharia which is represented by waqf.

In detail, the object of waqf in Law Number 41 Year 2004 explains that waqf property can only be donated if it is legally owned and controlled by wakif (Article 15). Waqf assets consist of immovable objects and movable objects (Article 16 paragraph (1)).

Immovable objects include (Article 16 Paragraph (2)):

1. Land rights in accordance with the provisions of the prevailing statutory regulations, whether registered or not;
2. The building or part of the building that stands on the land as referred to in letter a;
3. Plants and other objects related to land;
4. Ownership rights over apartment units in accordance with the provisions of the prevailing laws and regulations;
5. Other immovable objects in accordance with sharia provisions and applicable laws and regulations.

Movable objects are assets that cannot be used up because they are consumed, including: a) Money; b) Precious metals; c) Securities; d) Vehicles; e) Intellectual property rights; f) Right to lease; and g) Other movable objects in accordance with sharia provisions and applicable laws and regulations (Article 16 paragraph (3)).

Movable objects other than money are described in Government Regulation Number 42 of 2006 concerning the implementation of Law Number 41 of 2006 concerning Waqf Articles 19, 20, and 21. Article 19 states that:

1. An object is classified as a movable object because of its nature that can move or be moved or because of statutory provisions.
2. Movable objects are divided into moving objects that can be spent and those that cannot be spent due to use.
3. Movable objects that can be used up due to use cannot be donated, except for water and fuel oil which have a sustainable supply.
4. Movable objects that cannot be spent due to use can be donated with due observance of the provisions of sharia principles.

Article 20 states that movable objects due to their waqable nature include: a) Ships, b) Airplanes, c) Motorized vehicles, d) Industrial machines or equipment that are not embedded in buildings, e) Metals and precious stones; and / or, f) Other objects classified as moving objects because of their nature and have long-term benefits.

Furthermore, Article 21 states that movable objects other than money due to the statutory regulations that can be donated as long as they do not conflict with sharia principles are as follows:

1. Marketable securities in the form of, a. Shares, b. state bonds, c. bonds in general, and / or d. Other securities that can be valued in money.
2. Intellectual property rights in the form of: a. Copyrights, b. Brand rights, c. Patents, d. Industrial design rights, e. Trade secret rights, f. Integrated circuit rights, g. Plant variety protection rights; and / or . h. Other rights.
3. Rights to other movable objects in the form of: a. Lease rights, usufructuary rights and usufructuary rights over movable objects; or b. Engagement, claims for the amount of money that can be billed for movable objects.

The waqf law opens opportunities for other objects that have beneficial values so that they can be used as waqf objects. In this regard, as we know that nowadays insurance institutions are starting to develop which provide endowment services for insurance benefits. This is certainly very interesting where a Muslim has a testament which means ordering to do something, or also means a promise to another party to do something while he is still alive or after he has died. Doing something here, is donating part of the assets which is part of the value that will be received by the policy holder when the insurance policy has been disbursed by the main insured with the knowledge of the heirs when the policy benefits are due and / or wakif dies.

The insurance benefit is the sum insured that comes from the Tabbaru fund when a disaster, in this case, dies. Meanwhile, investment benefits are the amount of funds submitted to insurance program participants originating from the participant's investment contributions and investment returns. Based on the opinion of the scholars regarding the fulfillment of the requirements for property ownership that waqf is permitted by means of a will. However, on the condition that the implementation of the waqf is valid if the property is officially the property of the wakif. This is confirmed in Article 15 of the Waqf Law that assets can only be donated if they are legally controlled and owned by waqf. As for the consequences of the implementation of wills, if the nadzhir is given a will on a land or waqf property, the waqf can only be managed if the person who gives the will has passed away and the property is actually owned by the wakif at the time of the implementation of the waqf at a later date.

In the context of waqf with the object of insurance benefits and investment benefits, the implementation of waqf at a later date is not only death, which is a condition for the transfer of an object in a will. But also, the fulfillment of the obligations stated in the policy as an agreement made between the policy participant and the insurance company contains rights and obligations that cannot be separated from one another.

The obligations stated in the policy, especially the premium payment obligation clause, are the determining factors whether or not the insurance benefits and investment benefits waqf occur or not, because these waqf will be submitted in a will at a later date. When viewed from the point of view of Islamic law, the terms of the agreement ('aqad) are divided into two. First, the conditions for the existence (formation of) aqad, which if this harmony is not fulfilled this contract is null and void. Second, the conditions for the validity of the contract, namely the conditions for completing the formation of the contract, if the validity is not fulfilled then the agreement is not valid, this contract is called aqad fasid.

Perfect authority over the object of the contract is fulfilled by the parties having ownership of the object in question or having the power of the owner of the said object funds not belonging to someone else. Reflecting on this, that the legal action of the insurance benefit waqf contract has met the requirements. because in terms of ownership, the insurance benefits are owned by the wakif while for the delivery of waqf it is represented by the heirs or representatives appointed by the deceased wakif.

Based on the nature of the ownership of the insurance benefit object, it is only in principle, the perfection of the ownership of this object is determined by the fulfillment of the obligations contained in the insurance policy, so that if the obligations contained in the insurance policy, the contract is valid and has legal consequences or Nafidz. However, if there is a violation of the clause stated in the policy, it will automatically be damaged (fasid).

According to Islamic law, the provisions of the donated object (Mauquf) must meet the first requirements, that the object must have a use value and can be utilized which this utilization must be lawful and lawful according to the Shari'a. second, the object must have a clear shape, limit and really belong to waqf. Then the method of obtaining the object must not contradict the provisions of the applicable Islamic Sharia.

The policy is an authentic deed containing a binding agreement between the parties to the insurance. One of the clauses contained in it contains a statement, the insurance company declares its ability to compensate for the insurance object in the event of a disaster. Due to the existence of this clause, the policy can be said to be securities because it has a monetary value in it, when referring to the provisions of Government Regulation Number 42 of 2006 concerning the implementation of Law Number 41 of 2006 concerning Article 21 Waqf, the policy can be waqf because it includes securities with requirements to meet the provisions of the principles of sharia in Islam.

The uncertainty regarding insurance in Islamic law which creates various polemics that cause differences in opinion of the scholars regarding whether or not insurance should be paid attention to, because it affects the validity of the object of the waqf. Because this is also related when the insurance waqf management agency uses an insurance policy as collateral and takes advantage of the value of the sum assured (UP) and the cash value when the insurance company matures.

Some people still think that insurance was not taught in the era of the Prophet Muhammad. This is what makes polemics and problems in the general public, especially for people who have little knowledge of Islam. Islam does not prohibit having insurance. Insurance is allowed as long as the funds collected are managed in accordance with Islamic law. Whereas in general syari'ah insurance is an effort to protect and help each other between a number of people / parties through investment in the form of assets and tabarru 'which provides a pattern of return to face certain risks through a contract (agreement) that is in accordance with shari'ah.

The National Sharia Board-Indonesian Council of Ulema (DSN-MUI) in the Sharia Board Fatwa No: 21 / DSN-MUI / X / 2001 Regarding the General Guidelines for Shari'ah Insurance defining Sharia Insurance (Ta'min, Takaful or Tadhmun) is protect and help among a number of people / parties through investment in the form of assets and tabarru 'which provides a pattern of return to face certain risks through an agreement (agreement) that

is in accordance with sharia. The contracts that are in accordance with the sharia are those that do not contain gharar (fraud), maysir (gambling), usury, zhulm (persecution), risywah (bribery), haram and immoral goods. This insurance benefit waqf donates a portion of the value that will be received by the policyholder when the insurance policy is disbursed. People who have insurance policies from insurance companies that have sharia products after they become policies and become securities, then the benefits or the sum insured and other benefits, and donate part of the value that will be received if the insurance policy has been disbursed whether they want it in whole or in part based on the agreement letter from policyholders and made a waqf contract and that is what is known as insurance benefit waqf.

Waqf for Sharia insurance benefits is a form of worship that is *maliyah* (assets). The point is a form of worship that expects Allah's approval by using the assets they have. The form of assets used in Islamic life insurance benefits waqf is the category of cash waqf, in which cash waqf is a movable asset so it is called cash waqf. This is allowed on the grounds that the property used is durable and not disposable because it can be processed directly without waiting for a long time and is not disposable because it can be processed directly without having to wait long.

If the sharia insurance policy has expired or has received a claim, this will expired. And objects that are exchanged like that must also have a certain period of time. If the time is part of the contract then the contract is invalid if the time period is unknown. In this case, including transactions that are affected by time, the time period must be determined. If the time is not determined the scholars' divide the insurance into insurance for individuals and insurance for objects. Sometimes there is another form of insurance called liability insurance, and this in itself is a matter of *fiqh*.

Article 5 of the Waqf Law states that the function of waqf is to realize the potential and economic benefits of waqf property for the benefit of worship and to promote public welfare so that management by waqf institutions must be adjusted to the applicable Islamic law because increasing public welfare must be in line with the interests of waqf worship that submit their assets are to be managed by the waqf institution.

Waqf insurance benefits are a waqf plan which legally bequeath part of the ownership of the waqif assets when the person concerned dies but can still enjoy the benefits of the waqf asset as long as the waqf is alive. Insurance Policy Waqf is donating part of the value that will be received if the insurance policy that is already owned has been cashed.

In the matter of the validity of the insurance benefit waqf, there is no legal opinion found among the schools of thought, so the determination of the ability of waqf in insurance benefits requires *ijtihad jama'iy* (collective) through the method of some argumentation of extracting Islamic law based on detailed arguments in accordance with *ushul fiqh*. In this case, it appears that the benefit value is the main argument in providing an argument against the object of waqf insurance benefits and investment benefits because, in the problem of waqf insurance benefits and investment benefits in Islamic life insurance where no legal opinion is found among the *mazhab*, it is necessary to use a *istislahi* pattern, namely consideration of general benefit text.

If we look at the insurance benefit, waqf is a forum for Muslims to be able to carry out waqf in an easy way, only through an insurance agreement with a sharia insurance company with a commitment to pay premiums. The customer or *wakif* can waqf, not having to wait for the object first. Given that waqf is a means of worship to provide general benefit to the community.

The *maslahat* argument in the insurance benefit waqf uses general verses that are collected to create some general principles, which are used to protect or bring certain misfortunes. These principles have been arranged into three levels (*daruru'iyat*), namely essential coincidences, *hajiyat* which is secondary needs and, *tahsiniyat*, namely luxury needs). The argument for the permissibility of waqf insurance benefits must always pay attention to general issues (*mashalih 'ammah*) and *maqasid asy-syari'ah*. This can be seen from the point of view of its *maqashid*, which aims to guard against or avoid the tone of misconduct by the trustee, which will have the effect of not fulfilling the objectives of the contract itself.

The ability of the insurance benefit waqf is based on the absence of a detailed argument to reject or reject it. Because until now the practice of waqf in the form of insurance benefits and investment benefits is reasonably suspected of proposing a waqf system, so the argument and legal exploration is based on *Maslahah al-Mursalah*. In order to evaluate *Maslahah*, we need the *dalil sadd az-zariah*so that the *fiqh* argumentation can be applied.

In this matter there is no legal opinion found among the schools of thought, the ability of waqf in insurance benefits is also based on the results of *ijtihad jama'iy* (collective) through *sad adz-dzariah*. avoiding or blocking the road to damage and avoiding misconduct by the trustee, which will have the effect of not fulfilling the objectives of the contract itself. The ability of waqf for insurance benefits is intended to provide space in realizing *maqashid ash-sharia*.

Islamic Legal Basis of Waqf Sharia insurance benefits

1. Law Number 41 of 2004 concerning waqf.

2. Government Regulation Number 42 of 2004 concerning the implementation of Law Number 41 of 2004 concerning waqf.
3. Regulation of the Minister of Religion Number 73 of 2013 concerning Procedures for Representing Immovable Objects Apart from Money.
4. Regulation of the Minister of Religion Number 4 of 2009 concerning the administration of Money Waqf Registration.
5. Waqf Board Regulation Number 1 of 2008 concerning Procedures for Compiling Recommendations for Applications for Exchange / Change of Status of Waqf Assets.
6. Waqf Board Regulation Number 3 of 2008 concerning Procedures for Registration and Replacement of Immovable Waqf Assets in the Form of Land.
7. Waqf Board Regulation Number 1 of 2009 concerning Guidelines for the Management and Development of Cash Waqf Assets.
8. Accounting Guidelines for Waqf issued by the Indonesian Waqf Board in 2016.
9. Indonesian Council of Ulema Fatwa No.106 / DSN-MUI / X / 2016 concerning: Endowments for Insurance Benefits and Investment Benefits in sharia life insurance.

Valid conditions are all requirements that do not violate the principle of waqf and do not conflict with the law of waqf, even in line with the law of waqf, do not hinder the benefits (benefits) of waqf or mauquf 'alaih and do not contain violations of Sharia. The law of valid requirements is that waqf accompanied by valid conditions is valid and must be implemented, except in some cases as exceptions, and does not contain violations of Sharia. Therefore the methods used are *maslahah* and *sadz-dzudariah* which are used to (interpret) the Qur'an and Hadist.

B. Legal Consequences of The Practice of Waqf Insurance Benefits That are not in accordance with the DSN-MUI Fatwa No. 106 / DSN-MUI / X / 2016 Concerning Waqf for Insurance Benefits and Investment Benefits in Sharia Life Insurance

In the first discussion, it has been explained about the validity of the insurance benefit waqf as an object in the practice of waqf worship. In this discussion, the author will discuss more deeply the management and management of waqf insurance policy wills according to Islamic law and the Waqf Law so that the practice of the insurance policy waqf is orderly and efficient to achieve the goals and functions of waqf for the benefit of the people and the welfare of the people as listed in article 5 of the Waqf Law.

In the implementation of the insurance benefit waqf, it can be categorized as a will with a will because the insurance benefit waqf can be implemented if the wakif has received the insurance benefits that will be received after the wakif dies or the end of the contract period of an insurance policy. Article 24 of Law No. 41 of 2004 concerning waqf states that:

Waqf with a testament either orally or in writing can only be made if witnessed by at least 2 (two) witnesses who meet the requirements as referred to in Article 20. The witness referred to in Article 20 is a witness in the waqf pledge must meet the following requirements:

1. Adult;
2. Muslim;
3. Rational;
4. Not prevented from doing legal actions.

The National Sharia Board-Indonesian Council of Ulema issued fatwa number 106 / DSN-MUI / X / 2016 concerning insurance benefit waqf and investment benefits in sharia life insurance. which states that the implementation of waqf, the object of which is insurance benefit, has several provisions, namely as follows:

1. The party appointed to receive insurance benefits declares a binding promise (*wa'd mulzim*) to inherit the insurance benefits;
2. Insurance benefits that may be donated are at most 45% of the total insurance benefits;
3. All the designated insurance beneficiaries or their successors declare their agreement and agreement;
4. The waqf pledge is implemented after the insurance benefits in principle have become the rights of the appointed party or its successor.

Based on the fatwa, there is a requirement that the beneficiary of the insurance benefit must state a binding promise to donate the insurance benefits, because basically the beneficiary of the insurance is the owner of the insurance benefits which are *tirkah* assets or legacy, this is an anticipation of the cancellation of waqf by the heirs.

Another provision in the DSN-MUI Fatwa No: 106 / DSN-MUI / X / 2016 concerning insurance benefit waqf and investment benefits in sharia life insurance is *Ujrah* related to waqf products.

1. The first year *Ujrah* is at most 45% of the regular contribution;
2. The accumulation of *ujrah* for the following year is at most 50% of the regular contribution.

According to Azzam (2014) wages are an absolute necessity to do something as a certain payment for a certain job or something that is not yet known with something that is certain or something else. From the fatwa above,

the provisions contained in the DSN-MUI Fatwa No: 106 / DSN-MUI / X / 2016 concerning insurance benefit waqf and investment benefits in Islamic life insurance determine the provisions of the first year Ujrah at maximum 45% of regular contributions and accumulated year ujah next at most 50% of regular contributions Based on civil law article 1320, the legal terms of an agreement including the insurance benefit waqf agreement in a sharia life insurance company are an agreement between the parties, skills, certain matters, and a lawful cause. the legal consequence of an agreement if an agreement does not meet subjective conditions, then the agreement can be canceled. Cancelable means that one of the parties can request cancellation. The agreement itself remains binding on both parties, as long as it is not canceled (by the judge) at the request of the party entitled to request the cancellation (the incapable party or the party who agreed not freely). Meanwhile, if an agreement does not meet the objective requirements, then the agreement it is null and void. Void by law means that from the beginning it is considered that there was never an agreement was born and there was never an agreement.

The waqf insurance benefits mechanism follows the provisions of the MUI fatwa No.106 / DSN-MUI / X / 2016 as a fatwa that specifically regulates insurance benefit waqf. However, in fact there are sharia insurance companies that do not comply with the fatwa. Fatwa is not a form of legislation as a hierarchy in a positive legal rule that has binding power for all citizens, but fatwas can have binding power after being transformed into positive law into various forms of Prevailing Laws as needed. In fact, the fatwa issued by the DSN-MUI (The National Sharia Board-Indonesian Council of Ulema) has made a positive contribution to regulation in the sharia economic legal system. Along with the growth of the Islamic economy, the fatwa from the DSN-MUI continues to be needed because it is an important part of the building of the Islamic economic legal system. from the living law to in the end be able to give birth to a comprehensive Islamic economic legal system and can be used as a guide for every sharia economic actor including sharia insurance.

Ma'ruf Amin (2008) explains that a fatwa is a legal decision on a problem carried out by a scholar who is competent both in terms of knowledge or citizenship. The existence of the MUI fatwa cannot be underestimated. The fatwa issued by the MUI has received support from Muslims. Many MUI fatwas (in this case issued by the DSN-National Sharia Board which was formed by MUI in 1998 based on the Decree of the MUI Leadership Board No. Kep-754 / MUI / II / 1999 which was essentially formed with the task and authority to ensure conformity between products banking services and business activities based on sharia principles) which have been transformed into laws and regulations such as Bank Indonesia Regulations and Financial Services Authority Regulations which are used to regulate sharia economic activities.

Based on Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Formulation of Legislation, types and hierarchy of statutory regulations are as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Laws / Government Regulations
4. Government regulations;
5. Presidential decree;
6. Provincial Regulation; and
7. Regency / City Regional Regulations.

Then in Article 8 paragraph (1 and 2) In lieu of Law; Law No. 12 of 2011 also states that the existence of types of laws and regulations other than those referred to in Article 7 paragraph (1) includes regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission. , Bank Indonesia, Ministers, agencies, institutions, or commissions at the same level as established by Law or the Government at the behest of the Law, Provincial Regional People's Representative Council, Governor, Regency / City Regional People's Representative Council, Regent / Mayor, Village Head or whose existence is recognized at the same level and has binding legal force as long as it is ordered by a higher level of legislation or is established based on authority.

Observing the regulations that can be issued by state institutions as mentioned above, the fatwa of the Indonesian Council of Ulema is not one of the products of the Invitational Laws so that the fatwa of the Indonesian Council of Ulema is not a binding regulation but an organization of Muslim ulama alim and is not a state-owned institution, Ainun Najib (2012) states that the fatwa of the Indonesian Council of Ulema is not a state law that can be enforced and has no sanctions and must be obeyed by all citizens. The fatwa of the Indonesian Council of Ulema is a religious opinion, not a positive law that can be followed and may not be followed so that those who violate the fatwa of the Indonesian Council of Ulema cannot be sanctioned or punished. Fatwa is binding on oneself and is not regulated in law.

Referring to the types and hierarchy as stated in Law No.12 of 2011, the Fatwa position of The National Sharia Board-Indonesian Council of Ulema does not constitute a type of statutory regulation that has a binding force in general. However, the position of the Fatwa of The National Sharia Board-Indonesian Council

of Ulema contains Law Number 40 of 2007 concerning Limited Liability Companies; Article 109 of Law Number 40 of 2007 states:

1. Companies that carry out business activities based on sharia principles in addition to having a Board of Commissioners are required to have a Sharia Supervisory Board.
2. The Sharia Supervisory Board as referred to in paragraph (1) consists of one or more sharia experts who are appointed by the GMS on the recommendation of the Indonesian Council of Ulema.
3. The Sharia Supervisory Board as referred to in paragraph (1) is tasked with providing advice and suggestions to the Board of Directors as well as supervising the Company's activities in accordance with sharia principles.

If you look at the position of the DSN-MUI fatwa contained in Law Number 40 of 2007 concerning Limited Liability Companies, the DSN-MUI fatwa is a binding set of rules for community life for sharia insurance companies as a regulator of insurance benefits waqf, so there is an obligation to contain material contained in the MUI Fatwa can be absorbed and transformed into sharia insurance products in the field of insurance benefit waqf. So that the DSN-MUI fatwa has legal force and is general binding. Therefore, the insurance company cannot make a product regulation related to sharia insurance that contradicts the sharia principles stipulated in the DSN-MUI fatwa, other than that only the DSN-MUI fatwa can be used as a guideline in product manufacture and its applicable rules, meaning that the company Sharia insurance may not refer to fatwas issued by other institutions even though the institution that issued the fatwa is an institution that is competent in issuing fatwas.

One thing that distinguishes conventional insurance and sharia insurance according to Ismanto (2016) is that a Sharia insurance company has a Sharia Supervisory Board (DPS) which is tasked with overseeing the products marketed and managing their investment funds. This Sharia Supervisory Board is not found in conventional insurance.

The DSN-MUI fatwa has binding legal force so that it must be obeyed by sharia economic actors. This legal force is based on several provisions that apply in statutory regulations, either directly or indirectly. Directly, it is clearly stated in the regulations that fatwas are a sharia principle that must be obeyed, if not obeyed, sharia economic actors will be subject to administrative sanctions. Indirectly is the mention of the role of the Sharia Supervisory Board (DPS) which must be in sharia banking institutions. In carrying out its role as a sharia supervisor, SSB must adhere to the fatwas issued by the DSN-MUI.

The existence of the DSN-MUI fatwa increasingly shows its role in guiding the implementation of sharia principles in sharia insurance so that it requires stakeholders to pay attention to and adjust business activities in accordance with the sharia principles stated in the Fatwa issued by the DSN-MUI. Regarding compliance issues sharia (sharia compliance) whose authority lies with the Indonesian Ulema Board (MUI) which is represented through the Sharia Supervisory Board (DPS) which must be established in each insurance company and Sharia Business Unit.

Apart from that in article 2 of Law no. 41 of 2004 concerning Waqf states that waqf is valid if it is implemented according to sharia. The position of the DSN-MUI fatwa in the field of sharia in Indonesia often serves as a guideline for its Islamic aspects. Fatwas are recognized as valid in the Islamic legal system as lawful laws to be followed, because they are issued by organizations or individuals who have the capability. Thus, fatwas are not only a non-binding legal opinion, as well as legal information for several sharia fields including waqf. The position of the DSN-MUI fatwa comes from the Al-Qur'an, Hadith, Ijma', and Qiyas. The existence of the DSN-MUI fatwa which is often supported by the prevailing laws and regulations in Indonesia, the DSN-MUI fatwa acts as positive law and has binding legal force.

In terms of insurance benefit waqf, this has been regulated in the fatwa of the National Sharia Council, MUI issued fatwa number 106 / DSN-MUI / X / 2016 concerning insurance benefit waqf and investment benefits in sharia life insurance should be used as a guideline for regulating future insurance benefit waqf as cash waqf which has been positivized through Law No. 41 of 2004 concerning waqf, so the regulations regarding future waqf should follow the fatwa to maintain its syariah. The spirit of Law Number 41 of 2004 concerning Waqf that wants to realize the potential and economic benefits of waqf assets in the interest of advancing public welfare must be continued, besides that it is also necessary to improve regulations on waqf by realizing the potential of waqf and with a good management system.

IV. CONCLUSIONS

As a result of the incompatibility of the practice of insurance benefit waqf with the provisions of fatwa number 106 / DSN-MUI / X / 2016 concerning insurance benefit waqf and investment benefits in sharia life insurance, the sharia aspect is lost, resulting in the following legal consequences:

1. If the mismatch is related to the terms and conditions of the object of the insurance benefit waqf, it will be null and void

2. If the mismatch is related to the terms and conditions of the subject of insurance benefit waqf, the practice of insurance benefit waqf can be canceled.
3. The incompatibility of the practice of waqf insurance benefits in sharia insurance companies cannot be used as guidelines for imposing sanctions on insurance companies

V. DEDICATION

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