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The Dynamics of Promise in DSN-MUI Fatwa Number 106/DSN-MUI/X/2016 Regarding the Endowment of Insurance Benefits and Investment Benefits in Sharia Life Insurance

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Abstract. *The differing opinions among Islamic jurists regarding the legal standing of a promise (wa'd) have led to at least three distinct scholarly views on the matter. In the context of implementing Islamic financial products in Indonesia, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has legitimized waqf of insurance benefits through Fatwa DSN-MUI No. 106/DSN-MUI/X/2016 concerning Waqf of Insurance Benefits and Investment Benefits in Islamic Life Insurance. The legal framework of this fatwa is based on the binding nature of a promise in law, as stated in the fatwa's provisions. According to the fatwa, the designated party receiving insurance benefits is required to make a legally binding promise (wa'd mulzim) to dedicate the insurance benefits as waqf. The legal standing of a binding promise is further supported by Fatwa DSN-MUI No. 85/XII/2012 on promises in Islamic financial and business transactions. DSN-MUI holds that a binding promise (wa'd mulzim) aligns with the third juristic opinion, which asserts that fulfilling a promise is obligatory when the promise is conditional or contingent upon a specific cause. This view is deemed more beneficial (maslahah) and meets the necessary requirements (hajah), particularly in the context of waqf of insurance and Islamic investment benefits. In issuing its fatwas, especially Fatwa DSN-MUI No. 85/XII/2012, the DSN-MUI employs two approaches to legal solutions (makhârij fiqhiyyah): the method of al-taysir al-manhaji (methodological facilitation) and i'âdah al-nadzhar (re-evaluation).*

Keywords: *Fatwa's; Insurance; Promise; Waqf.*

1. Introduction

One of the main duties of the National Sharia Council-Indonesian Ulema Council (DSN-MUI) is to issue fatwas in the field of Islamic economics. The fatwas issued by DSN-MUI serve as guidelines for Islamic financial institutions.(Hasanah, 2017) These fatwas are issued in response to requests or inquiries from individuals or institutions seeking legal certainty based on Sharia for the issues they face. Every fatwa issued by DSN-MUI is based on the objective of ensuring that all operations of Islamic finance comply with Sharia principles.(Gayo & Taufik, Irawan, 2009)

The practice of Islamic finance and business in Indonesia was initially based on fatwas issued by DSN-MUI. As mentioned earlier, a fatwa is one of the institutions in Islamic law that provides answers and solutions to issues faced by the Muslim community. In fact, Muslims in general use fatwas as references for their actions and behavior. (Adam, 2017) One of the fatwas issued by DSN-MUI is related to the products and features of endowment in Islamic life insurance. This refers to DSN-MUI Fatwa Number 106/DSN-MUI/X/2016 concerning the Endowment of Insurance Benefits and Investment Benefits in Sharia Life Insurance.(Alam & Hidayati, 2020)

In the fatwa, there are at least two types of endowment in Islamic life insurance products: first, the endowment of insurance benefits. Insurance benefits refer to a sum of money derived from the *tabarru'* fund, which is given to the party experiencing a disaster or to the party designated to receive it. The benefits are endowed to the party designated by the wakif; second, the endowment of investment benefits. Investment benefits refer to a sum of money given to the participants of the insurance program, originating from investment contributions and the returns on those investments. This fund is endowed by the wakif.(Harahap, 2023)

Endowment in Islamic insurance provides a modern and innovative solution to encourage Muslims to develop endowment in Indonesia. In addition to providing protection against future disasters and risks, this product is specifically designed to meet the needs of the wakif's investments for the hereafter through productive and social endowments managed by designated endowment institutions. The introduction of insurance with endowment features represents a new step that is expected to increase public participation in Islamic insurance while also contributing to addressing the social and economic challenges currently faced by Indonesia.(Sembiring et al., 2022)

In the general provisions of the fatwa, it is stated that the party designated to receive the insurance benefits makes a binding promise (*wa'd* mulzim) to endow the insurance benefits. The provision of a binding promise (*wa'd* mulzim) in Fatwa 106 refers to a previous fatwa, namely DSN-MUI Fatwa No. 85/DSN-MUI/XII/2012 regarding Promises (*wa'd*) in Islamic Financial Transactions and Business.(Agus,

2018) In the literature of Islamic jurisprudence and comparative schools of thought, there is an *ikhtilâf* (difference of opinion) among scholars regarding the position and the legal obligation to fulfill promises.(Mubarok & Hasanudin, 2012)

The differences of opinion among scholars regarding the legal obligation to fulfill a promise can be summarized in at least three views: the first view holds that fulfilling a promise is an absolute obligation, the second view considers it merely a recommendation (mustahab), and the third view states that it is obligatory if the promise is conditional (*mu'allaq*).(Muayyad, 2014) The view held by the majority of *fiqh* scholars is that the legal obligation to fulfill a promise (*wa'd*) is not a binding legal duty and is only considered a recommendation (mustahab).(Cecep Soleh Kurniawan & Hajah Mas Nooraini binti Haji Mohiddin, 2021) In contrast to the majority (*jumhur*) of scholars, DSN-MUI views that a promise becomes legally binding when it is conditional. In this case, DSN-MUI's fatwa differs from the fatwa/opinion of most *fiqh* scholars. This fatwa was issued based on legal considerations and the methodology used in the issuance of fatwas, which serves as a guide in formulating and establishing DSN-MUI fatwas.

The differences of opinion have led to legal uncertainty regarding the status and position of a promise in Islamic financial transactions, especially when a promise (*wa'd*) is used as an instrument in an Islamic financial product, such as the endowment of insurance benefits and investment benefits in Sharia Life Insurance. In the context of endowment of Sharia insurance benefits, the promise (*wa'd*) serves as the legal basis used to bind the related parties to ensure the insurance benefits are used as endowment. However, differing legal interpretations can affect the validity of the contract and its application in practice. This study aims to elaborate and analyze the opinions of scholars regarding the position of promises (*wa'd*), as well as analyze the legal construction of DSN-MUI Fatwa No. 106/DSN-MUI/X/2016 concerning the Endowment of Insurance Benefits and Investment Benefits in Sharia Life Insurance and DSN-MUI Fatwa No. 85/DSN-MUI/XII/2012 regarding Promises (*wa'd*) in Islamic Financial Transactions and Business, and to analyze the methods and approach used in the issuance of DSN-MUI fatwas.

2. Research Methods

This study uses a normative juridical approach, which involves the examination and analysis of secondary data in the form of literature. In other words, this research is conducted through a library study that focuses on secondary sources. The types of data used include literature related to the position of promises (*wa'd*) in transactions and Islamic finance, particularly concerning insurance endowments and Sharia insurance benefits. To analyze the data, this study employs a qualitative analysis method, thus not requiring statistical calculations.

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3. Results and Discussion

3.1. The Substance of the National Sharia Council-Indonesian Ulama Council Fatwa on Endowment of Insurance Benefits

The most important aspect related to the concept of insurance endowment is the premium paid and the benefits to be received. These two funds are closely related to the types of insurance endowment. Endowment in the insurance sector can take three forms, namely:(Maksum, 2017)

1) Endowment fund. Endowment as an insurance model, where the *tabarru'* fund currently used in Sharia insurance serves as the endowment fund. The mechanism includes, among other things, that before individuals contribute to *tabarru'*, the company establishes an endowment fund, and then the *tabarru'* funds are deposited into the endowment fund, not the *tabarru'* fund.

2) Endowment policy. A policy that has been issued and is in the hands of the policyholder, with its benefits being endowed to an endowment body/institution. The policy received by the body or institution comes from either conventional insurance or Sharia insurance.

3) Endowment as a feature of Sharia insurance products. A product created by a Sharia insurance company where the investment endowment and insurance benefits are intended to be endowed.

The concept of an endowment fund can be implemented in Indonesia, although there are significant challenges due to fundamental changes in the concept of insurance in Indonesia and the relationship between various parties. As per the DSN-MUI fatwa, the premiums paid by customers are considered as *tabarru'* funds or donations, which are then managed by the insurance company. At some point, these funds are used to pay claims to customers who apply. The *tabarru'* fund may be depleted when the amount of claims exceeds the available *tabarru'* fund. Therefore, the DSN-MUI fatwa anticipates this deficit with advances provided by customers. When the *tabarru'* fund is treated as an endowment fund, it cannot be used to pay claims, as the fund, in its status as endowment, must be preserved. Insurance claim payments are then covered by the investment returns from the endowment fund.

The contractual relationship between the customer and the insurance company can currently use the *mudhârabah musytarakah* or *wakâlah bi al-ujrah* contracts. These contract schemes can still be used in insurance endowment. With these two schemes, the insurance company can act as the *mudhârib* or the manager of the insurance endowment collected on behalf of the nazir, or become a representative of the nazir to manage the insurance endowment. In addition to these schemes, the insurance company can also act as the nazir, meaning the recipient and manager of the insurance endowment directly from the customers (Maksum, 2017).

Endowment of policies and endowment of insurance benefits are models that are more flexible and easier to implement. The DSN-MUI fatwa has legalized insurance endowments for these types, namely the DSN-MUI Fatwa Number 106/DSN-MUI/X/2016 concerning the Endowment of Insurance Benefits and Investment Benefits in Sharia Life Insurance. This fatwa mentions two forms, namely:

1) Endowment of insurance benefits. Insurance benefits are a sum of funds derived from *tabarru'* funds, which are given to the party who experiences a disaster or to the party designated to receive it. These benefits are endowed to the party specified by the wakif.

2) Endowment of investment benefits. Investment benefits are a sum of funds given to the participants of the insurance program, originating from investment contributions and their returns. These funds are endowed by the wakif.

The endowment of a will for a sharia insurance policy is an endowment in the form of a sharia insurance policy, where the investment value and/or the insurance benefits are endowed by the main policyholder with the condition that it must be done with the knowledge of the heirs. Sharia insurance endowment aims to utilize insurance by investing through an endowment management institution, which will later generate returns and benefits that can be used for the welfare of the community. Referring to this definition, it can be understood that, essentially, the insurance product used is a regular life insurance product. What distinguishes it is the provision in the contract that transfers the insurance benefits, which are generally received by the participant or the participant's heirs. In the case of this endowment policy, the benefits are transferred into an endowment form, entrusted to the designated endowment body or institution (Qo'imanuddin, 2020).

According to the DSN-MUI Fatwa Number 106/DSN-MUI/X/2016 on Endowment of Insurance Benefits and Investment Benefits in Sharia Life Insurance, there are two legal provisions: (1) In principle, the Insurance Benefits are intended to mitigate the risks of the participants or the designated parties; and (2) Endowing Insurance Benefits and Investment Benefits in sharia life insurance is permissible, as long as it follows the provisions outlined in this Fatwa (Adam, 2021).

The specific provisions in the DSN-MUI Fatwa Number 106/DSN-MUI/X/2016 on Endowment of Insurance Benefits and Investment Benefits in Sharia Life Insurance are divided into three (3) categories, namely:

1) Provisions on Endowment of Insurance Benefits:

a. The party designated to receive the insurance benefits shall make a binding promise (*wa'd mulzim*) to dedicate the insurance benefits as endowment;

b. The insurance benefits that may be endowed should not exceed 45% of the total insurance benefits;

c. All prospective beneficiaries of the insurance benefits or their replacements must declare their approval and agreement;

d. The waqf declaration is carried out after the insurance benefits, in principle, have become the right of the designated party or their replacement.

2) Provisions for Investment Benefit Waqf

a. Investment benefits may be endowed (waqf) by the insurance participant;

b. The amount of investment benefits that may be endowed (waqf) is a maximum of one-third (1/3) of the total wealth and/or inheritance, unless otherwise agreed upon by all heirs.

3) Provisions regarding *Ujrah* related to the waqf product.

a. The *ujrah* for the first year is a maximum of 45% of the regular contribution;

b. The accumulated *ujrah* for the following years is a maximum of 50% of the regular contribution.

The mechanism for the endowment of insurance benefits is as follows: First, the customer enters into an insurance contract with a sharia insurance company. At the time of the contract, the participant promises to endow a portion of the investment benefits, not exceeding one-third of the total benefits to be received. In the case of endowment of insurance benefits, the promise is made by the party who will receive the benefits. As it is a promise, the endowment statement becomes effective only after the benefits are received. Second, the declaration of the endowment is made in front of an authorized official. A notary certified by the Ministry of Religious Affairs can act as the Official Maker of the Endowment Deed. The endowment deed is submitted to the waqif, the Ministry of Religious Affairs, the nazir, the sharia insurance company, and the endowment recipient. Third, the sharia insurance company transfers the insurance benefits or investment benefits endowment to the nazir appointed by the waqif. Fourth, the nazir manages the endowment and distributes the benefits to the designated party (Maksum, 2017)

3.2. The Opinions of the Scholars Regarding the Legal Status of Fulfilling a Promise (*Wa'd*)

According to al-'Amuri,(Al-'Amuri, n.d.) the discussion regarding the opinions of scholars on the legal status of fulfilling a promise (*wa'd*) can generally be divided into three views. The first view is that fulfilling a promise is an absolute obligation

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(al-wafâ bi al-*wa'd* wâjib muthlaqan). This is the opinion of some scholars from the Maliki school and also of scholars from the Hanbali school. This view was followed by early scholars such as Samurah Ibn Jundab, Umar Ibn Abd al-'Aziz, Sa'id Ibn Asywa al-Hamdani, and Ibn Subramah. This opinion was also chosen by Ibn Taymiyyah and his student, Ibn Qayyim al-Jauziyyah. (Al-Khamis, 2018) The evidence cited to support this first opinion comes from both the Qur'an and the Sunnah. The Qur'anic foundations used to support this argument are Surah al-Shaff (61), verses 2 and 3; Surah al-Tawbah (9), verse 77; Surah al-Isra (17), verse 34; Surah al-An'am (6), verse 152; Surah al-Nahl (16), verse 91; and Surah Maryam (19), verse 54.

The reasoning behind the verses mentioned above, which are used as the basis for the first opinion, is that Allah SWT calls those who make promises but break them by the name of hypocrites (munafik). They are not given punishment by Allah SWT except for the sin they commit (breaking the promise), and failing to fulfill a promise is considered an act of falsehood. Falsehood, in turn, is an act that is prohibited according to consensus (*ijma*'). Allah SWT commands the fulfillment of promises (*al-'ahd*), which includes *wa'd*, because a promise is a declaration to carry out an action in the future.

In addition to being based on the Quran, the argumentation for the first group's opinion that fulfilling a promise is absolutely obligatory is also grounded in several hadiths of Prophet Muhammad SAW. Among them is a hadith narrated by Al-Bukhari and Muslim, which is reported from the companion Abu Hurairah r.a., in which the Prophet SAW said: "There are three signs of a hypocrite: when he speaks, he lies; when he makes a promise, he breaks it; and when he is entrusted with something, he betrays that trust."(Al-Bukhari, 2008) The reasoning behind these two hadiths is that failing to fulfill a promise is a characteristic of a hypocrite, and thus, it is considered a forbidden act (haram). Therefore, fulfilling promises is obligatory (wajib) (Al-Khamis, 2018).There is no indication that would alter the legal ruling of the prohibition of breaking promises to merely dislikeable (makrūh tanzīhī). Therefore, the ruling for fulfilling promises remains wajib (obligatory).

The first group, which argues that fulfilling a promise is absolutely obligatory (wajib mutlaq), bases its reasoning not only on the Quran and the Sunnah of Prophet Muhammad SAW, but also on ijmā' (consensus),(Al-Bar, 1968) qiyās (analogy), and the opinions of the salaf scholars. The view that fulfilling promises is obligatory is also based on qiyās (analogy), by drawing an analogy between keeping a promise and the ruling of a vow (nazar). This is supported by a hadith in which the Prophet SAW instructed Umar Ibn al-Khattab to fulfill his vow made during the time of jahiliyyah to perform i'tikaf in the Masjid al-Haram at night. As for the opinions of the salaf scholars regarding the obligation of fulfilling promises, they are as follows:

وَقاَل ِسمَرُه َ بْنُ جُنْدَبُ رَضِيَ اللهُ عَنْهُ وَهُوَ صَاحِبُ جَلِيْلِ اَيْضًا بِلُزُوْمِ الْوَفَاءِ بِالْوَعْدِ.

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"Samurah Ibn Jundab r.a said regarding the binding nature of a promise and the obligation to fulfill it."

According to the second opinion, the law of fulfilling a promise is not obligatory but recommended (mustahabb). This opinion is the view of the majority of jurists from the *Hanafiyyah, Malikiyyah, Shafi'iyyah, Hanabilah*, and *Zahiriyyah* schools. Below, the researcher will outline the views of each of these schools regarding the law of fulfilling a promise. The argument used by the majority of scholars, who believe that fulfilling a promise is recommended and not legally binding, is based on evidence from the Qur'an, the Sunnah, *ijmâ* (consensus), and *qiyâs* (analogy).

The Qur'anic verse cited by the majority of scholars to support their opinion is Surah al-Kahfi (18), verses 23-24. The argument derived from these verses is that Allah (SWT) has forbidden His servants from making promises without exception. If someone makes a promise without any exceptions, they have sinned in the matter of fulfilling that promise. It is not permissible to compel someone to sin against Allah (SWT), because requiring the fulfillment of a promise might lead to hardship. Thus, Allah does not obligate His servants to do something that would cause them difficulty (Muflih, 2003).

In addition to the Qur'anic verses, several hadiths form the basis of the argument for the majority opinion among scholars. One of these hadiths, narrated by Tirmidhi, is as follows: from Zaid bin Arqam, he said, the Messenger of Allah (peace be upon him) said: "If someone makes a promise and intends to fulfill it, but does not fulfill it, then there is no sin upon him." (Tirmidzi). The reasoning behind this hadith is that Prophet Muhammad (peace be upon him) did not make the fulfillment of promises a binding legal obligation. He also allowed for an exemption from fulfilling the promise, as long as the person had the intention to fulfill it. Therefore, this hadith indicates that fulfilling promises is not obligatory, but rather recommended. However, if the person who made the promise intends not to fulfill it, then this would be considered a hypocritical act. Thus, the fulfillment of promises is encouraged.

As for the *ijmâ* (consensus) of the scholars who state that fulfilling promises is recommended rather than obligatory, this is reported by Ibn 'Abd al-Bar as follows:

وَإِنَّمَا قُلْنَا أَنَّ ذَلِكَ لَيْسَ بِوَاجِبٍ فَرْضًا لِإِجْمَاعِ الْجَمِيعِ عَلَى أَنَّ مَنْ وَعَدَ بِمَالٍ مَا كَانَ لَمْ يَضْرِبْ بِهِ مَعَ الْغُرَمَاءِ
كَذَلِكَ قُلْنَا (إِيجَابُ الْوَفَاءِ بِهِ حَسَنٌ فِي المروءة) (أ) وَلَا يُقْضَى بِهِ

"And we say that fulfilling a promise is not an obligation, based on the ijmâ (consensus) of the jurists, that whoever promises to give something of wealth should not be equated with a debtor. Likewise, we say that fulfilling a promise is a commendable act, but it is not legally binding."(Al-Bar, 1968)

The opinion of the majority of scholars is also based on analogy (*qiyâs*), which holds that a promise is a *tabarru'* (voluntary act) from the wâ'd (the one making the promise). Since there is no evidence that obligates *tabarru'* upon someone, a *tabarru'* contract is not considered lâzim (legally binding), and it can be annulled (*fasakh*) before the *qabdh* (handover). Some scholars equate a promise (*wa'd*) with a gift contract (hibah), because a hibah contract falls under the category of *tabarru'* contracts, which are non-binding (ghair lâzim) before qabdh occurs. Similarly, all contracts that fall under the *tabarru'* category are non-binding, and therefore, a promise is not legally binding unless *qabdh* occurs.

The third opinion states that fulfilling a promise is obligatory if there is a condition or cause, commonly referred to as *wa'd* al-mu'allaq. According to Muhammad Fahd Ahmad al-'Amuri in his research for a Master's degree in Islamic Economics and Banking (*al-Iqtishâd wa al-Mashârif al-Islâmî*) from the Faculty of Sharia and Islamic Studies at Yarmouk University, he explains that the concept of *wa'd* al-mu'allaq is divided into two parts: first, fulfilling a promise is obligatory regardless of whether there is a condition or not; second, fulfilling the promise is obligatory if there is a condition (Al-'Amuri, n.d.).As informed by al-'Amuri, this opinion is held by scholars from the Hanafi and Maliki schools, who argue that the obligation to fulfill a conditional promise (*wa'd* mu'allaq) is mandatory because the promise has fulfilled the requirement of *iltizâm* (commitment)(Al-'Amuri, n.d.)

According to scholars from the Hanafi school, it is obligatory to fulfill a promise if the conditions are met, as the promise is binding. Furthermore, al-'Amuri informs that Ibn Rushd holds the opinion that *wa'd* mu'*allaq* (a conditional promise) has a legally binding nature. In fact, the state can force the *wâ'id* (the promisor) to fulfill the conditional promise if the conditions have been met and the promisor refuses to voluntarily fulfill the promise.

Secondly, in addition to the Hanafi school, scholars from the Maliki school share a similar view that a promise must be fulfilled when it is conditional. Among them are the opinions of Imam Malik, Imam Sahnun, Imam al-Lakhmi, and Ibn Qasim. Their explanations are as follows: (1) Imam Malik in his book *al-Mudawwanah al-Kubrâ* explains that a conditional promise must be fulfilled if the conditions are present. This is to prevent harm (*daf' al-dharar*); (2) Imam *Sahnun* cites the explanation from *al-Qurafi* that if the promise is not conditional, fulfilling it is encouraged; conversely, if the promise is conditional, fulfilling it is obligatory and binding (*mulzim*); (3) Imam al-Lakhmi and Ibn Qasim both hold that fulfilling a conditional promise is an obligation once the conditions have been met (Al-'Amuri, n.d.).

Al-'Amuri explains that the argument for the position of this school is based on three considerations: (1) *Daf' al-Gharar* (Avoiding Uncertainty): Scholars agree that *gharar* (uncertainty) in the context of *mu'âwadhât* (exchange/transaction) contracts has implications for the contract, thus requiring the avoidance of *gharar*

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in *mu'âwadhât* transactions. This uncertainty can occur in terms of quality, quantity, or the subject matter of the contract. Therefore, in the concept of fulfilling promises, scholars agree on the necessity of avoiding *gharar* (uncertainty). Scholars from the Hanafi and Maliki schools have consensus *(ittifaq)* that *wa'd mu'allaq* (conditional promises) are legally binding (mulzim) because they serve to avoid uncertainty *(gharar*); (2) *Daf' al-Dharar* (Avoiding Harm/Danger): Simply put, scholars define *dharar* as an action that causes harm or loss to another party (Al-Quruthi, 2018).The prohibition of *dharar* is mentioned in a hadith of Prophet Muhammad (Saw) narrated by Ibn Majah, which states: "*Lâ dharar wa lâ dhirâr*" (Do not harm others, nor allow harm to be done). (Ibn Majah).

The existence of *wa'd muzlim,* which is conditional (*mu'allaq*) in nature, serves, among other things, to avoid or eliminate harm, especially in business transactions. If the failure to fulfill a promise results in harm to one of the parties involved in the transaction, this is where the obligation to fulfill the promise comes into play. This is because in *mu'amalah* transactions, there are provisions to avoid harm; (3) Huriyyah *Insyâ al-'Uqûd* (Freedom of Contracting): In principle, under Islamic contract law, humans are positioned as legal subjects who have the freedom to enter into agreements. However, this freedom is restricted or limited by the Qur'an, the Sunnah of Prophet Muhammad (Saw), and legal regulations (*qanûn*). Therefore, scholars from the Maliki school argue that humans have *huriyyah* (freedom) in exercising their will. Based on this will, individuals are bound by the expression of their will. This is in line with Allah's command in the Qur'an, Surah al-Maidah (5), verse 1.

3.3. The Legal Status of a Promise in the Fatwa of the National Sharia Board of the Indonesian Ulema Council (DSN-MUI) Number 106/DSN-MUI/X/2016 on the Endowment of Benefits from Insurance and Investment Benefits in Sharia Life Insurance

The DSN-MUI fatwa has legalized insurance endowments for this type, specifically the DSN-MUI Fatwa Number 106/DSN-MUI/X/2016 on the Endowment of Benefits from Insurance and Investment Benefits in Sharia Life Insurance. The legal construction in the fatwa is based on the provisions of a legally binding promise, in accordance with the fatwa's stipulation that the party designated to receive the insurance benefits makes a binding promise (wa'd mulzim) to endow the insurance benefits.

The National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has issued a special fatwa regarding promises (*wa'd*), namely the DSN-MUI Fatwa Number: 85/DSN-MUI/XII/2012 on Promises (*Wa'd*) in Sharia Financial and Business Transactions. At least three considerations led to the issuance of this fatwa related to promises (*wa'd*) in financial and business transactions, namely: first, promises or *wa'd* are frequently used in transactions and products of sharia financial institutions (including products of Islamic banking financing), whether these products are single, parallel, or multi-contract; second, scholars, both classical and contemporary, have differing opinions (*ikhtilâf*) regarding the obligation to fulfill promises, leading to a lack of legal certainty, especially in the realm of business transactions; third, the sharia finance industry and society at large require clarity from a sharia perspective regarding the legal status of fulfilling promises (*wa'd*), particularly in the operational foundation of financial and business transactions, to ensure legal certainty.

Based on the three opinions above, regarding the legal status of fulfilling promises (*al-wafâ bi al-'aqd*), it appears that Fatwa Number 85 issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) adopts the third opinion, stating that fulfilling a promise is obligatory when there are conditions or causes. This is reflected in the specific provisions related to the implementation of *wa'd* stated in the fatwa, which require that the promise (*wa'd*) be linked to a condition that must be fulfilled (*wa'd mu'allaq*). However, it should be emphasized that the fatwa also stipulates that the conditions set within the promise (*wa'd*) must not violate or contradict sharia principles.

The researcher believes that the third opinion (*wa'd muzlim mu'allaq*) or conditional promise is the most relevant to apply, especially in the realm of *mu'âmalah mâliyyah* (financial transactions). This view is supported by three considerations: first, a conditional promise must be fulfilled when the condition is met, providing legal certainty; second, it realizes the principle of benefit in transactions, which is reflected in the *maqâshid al-sharî'ah*, such as *hifdz al-mâl* (protecting wealth) and avoiding harm to one of the parties involved in the transaction; and third, it is a moderate opinion (between the view that makes it an absolute obligation and the view that only recommends it), making it a solution between the two perspectives of scholars regarding the fulfillment of promises.

In the context of doing business in Islamic Financial Institutions (LKS) such as Islamic Banking and Islamic Insurance, the position of a legally binding *wa'd* is explained by al-Qaradawi as follows:

وَرَا اٰخَرُوْنَ اَنَّ الْمُعَامَلاَتِ فِي عَصْرِنَا لاَ تَسْتَقِرُّ اِلاَّ بِالاِزَامِ بِالْوَعْدِ نَظَرًا لِتَغَيُّرِ اَحْوَالِ النَّاسِ وَضُخَامَةِ الصَفَقَاتِ
فَلاَ يَصْلِحُ النَّاسِ اِلاَّ اِلْاَلْزَامَ

"Some scholars argue that in the context of contemporary *mu'amalah,* the position of a legally binding *wa'd* (binding promise) is considered a necessity, based on the consideration of changes in human conditions, the need for transactions, and the pursuit of benefits"(Al-Qaradhâwî, 1995).

In line with the opinion of Yusuf *al-Qaradhawi* above, Ahmad Zarqa provides an explanation that the rationale for favoring the third opinion is that it represents a necessity for humans, especially in the context of business and economic transactions within Islamic Financial Institutions. This is evident in his statement as follows:

وَاِمَّا تَعْلِيْلُ ذَلِكَ اِلْاَلْزَامَ فَهُوَ كَمَا يَقُوْلُ الشَّيْخُ الزَّرْقَا: لِحَاجَةِ النَّاسِ.

"The legal reasoning (ratio legis) behind the obligation to fulfill a conditional promise (the third opinion) is to meet the needs of humans."(al-Zarqa, 2012)

Thus, the human need for business and financial transactions in the present time makes a legally binding promise between the parties involved a matter of *dharūriyyah* (essential).

In the context of endowment of insurance benefits, the promise (*wa'd*) plays an important role as a commitment that binds the designated party receiving the insurance benefits to endow a portion of those benefits. This is regulated in the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Number 106 of 2016 regarding the Endowment of Insurance Benefits and Investment Benefits in Sharia Life Insurance. The party designated to receive the insurance benefits is required to make a binding promise (*wa'd* mulzim) to endow a portion of those benefits. This means that after the insurance benefits become the right of the designated party, they are legally bound under Sharia to fulfill the endowment according to the promise made. The promise (*wa'd*) in the endowment of insurance benefits functions as a Sharia commitment that binds the beneficiary of the insurance to endow part of those benefits. The position of this promise ensures that the endowment process is carried out in accordance with Sharia principles and receives approval from all concerned parties.

In addition, the fatwa on *wa'd* can serve to protect against the risk of losses due to the complexity of banking financial products in the modern era.(Wardhana, 2024) Therefore, the DSN-MUI, as the organization that regulates the implementation of Sharia principles, can act as a protector for transactions involving *wa'd* by issuing a fatwa that governs such promises, including in the context of Sharia insurance activities.(Nor et al., 2020)

The aspect of maslahah (public benefit) in the position and legal status of a binding promise (*wa'd mulzim*), as outlined in the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Number: 85/DSN-MUI/XII/2012 on Promises (*wa'd*) in Sharia Financial Transactions and Business, when implemented in the context of endowment (*wakaf*) through insurance benefits, holds significant value and benefits to support programs and the achievement of the Sustainable Development Goals (SDGs) set by the United Nations. Waqf can contribute to various SDGs by allocating funds and assets for programs aligned with these goals. It has great potential in supporting SDGs, particularly through the allocation of *wakaf* funds for programs in education, health, food security, and environmental conservation. With innovative management and collaboration among

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stakeholders, Waqf can become a strategic solution for achieving sustainable development.

Waqf of insurance benefits, based on a binding promise (*wa'd mulzim*), holds significant relevance in supporting the achievement of the Sustainable Development Goals (SDGs). Through this mechanism, funds from insurance benefits can be allocated to various sustainable development programs. Therefore, with proper management, waqf of insurance benefits based on a binding promise (*wa'd mulzim*) can become an effective instrument in supporting various sustainable development programs in line with the goals of the SDGs.

3.4. The Methodology of Legal Determination in the Fatwa of the National Sharia Council of the Indonesian Ulema Council on *Wa'd* (Promise)

Through the DSN-MUI Fatwa No. 85/XII/2012 on promises in Islamic financial and business transactions, the operational provisions of LKS, including Islamic banks and Islamic insurance, regarding *wa'd* (promise) refer to this fatwa. As previously mentioned, this fatwa was issued based on two considerations: first, the differences of opinion (*ikhtilâf*) among scholars regarding the status of fulfilling promises, and second, the lack of legal certainty regarding the fulfillment of promises, especially in the context of business and financial transactions.

The sharia basis for this fatwa is derived from verses of the Quran that explain the obligation of fulfilling promises (Q.S. al-Maidah: 1), that promises are something that must be fulfilled because one will be held accountable for them (Q.S. al-Isra: 34), the permissibility of the bai' (buying and selling) contract and the prohibition of *riba* (Q.S. al-Baqarah: 275), the command to abandon the remnants of *riba* transactions (Q.S. al-Baqarah: 287), the prohibition of engaging in fraudulent transactions (Q.S. al-Nisa: 29), and the command to fulfill trusts (Q.S. al-Baqarah: 283; Q.S. al-Nisa: 58).

The *bayani* method in this fatwa is based on the verses of the Quran that serve as the sharia foundation for the formation of this fatwa. In Q.S. al-Maidah verse 1 and Q.S. al-Isra verse 34, there is a command to fulfill promises and a command to fulfill trusts, which are stated in Q.S. al-Baqarah: 283 and al-Nisa: 58 using the form of *al-amr* (imperative). Therefore, the legal inference that can be drawn is that the command to fulfill promises is obligatory, as the principle explains that:

اَلأَصْلُ فِي الأَمْرِ الْوُجُوبَ

"In principle, an imperative sentence indicates an obligation."(Muhammad Musthafa al-Zuhaili, 2006)

The next *bayani* method used in the DSN-MUI fatwa on promises can be seen in the Quranic verse Surah al-Baqarah, verse 275, which contains the word al-bai' (buying and selling). The word البيع, which is a singular noun (*ism mufrad*), is

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preceded by the definite article al (the). This makes the word 'âm (general), meaning that the intended meaning of the word البيع in this verse refers to all forms and types of buying and selling contracts.

In addition to using imperative wording as a form of the *bayani* method, this fatwa also employs prohibitive wording (*al-nayh*). This can be seen in the Quranic verses Surah al-Baqarah: 278 and Surah al-Nisa: 29, which prohibit taking the remnants of *riba* transactions and prohibiting the consumption of wealth unlawfully. The wording used in both of these verses employs the form of *al-nahy* (prohibition). Therefore, taking the remnants of *riba* and consuming wealth unlawfully are considered haram. There is a principle that states:

الأَصْلُ فِي النَّهْيِ التَّحْرِيْمُ

"In principle, the word of prohibition indicates something is haram."(Taimiyyah, n.d.)

The hadith of Prophet Muhammad used as the sharia basis in this fatwa includes the hadith prohibiting harmful transactions (*dhārar*); the hadith explaining that peace agreements can be made, so Muslims are bound by the terms they set (their promises), except when they legalize what is haram or vice versa; the hadith about the three signs of a hypocrite; and the hadith stating that a promise is a debt (Al-Thabrani, n.d.)

The *bayani* method in the hadith used as the sharia basis for this fatwa can be seen in the hadith regarding the prohibition of harmful transactions (*dhārar*). Therefore, it can be concluded that any transaction containing elements of harm for the parties involved is considered haram.

In addition to the Quranic verses and the hadith of Prophet Muhammad used as the sharia basis, this fatwa also relies on *fiqh* principles as its foundation. Among these are the principle of *al-ibâhah* (permissibility) in transactions, as long as they do not contain any elements of what is haram; the principle stating that when there is public interest, there is also the law of Allah; the *fiqh* principle of *muwâ'adah*, which, when conditional (dependent on a cause/condition), is binding (*lâzim);* the fiqh principle of the obligation to fulfill promises when the condition/cause is met; and the *fiqh* principle that the policy of the authorities must take into account the values of public benefit.

The *fiqh* principles (*Qawâ'id al-Fiqhiyyah*) used by DSN-MUI in this fatwa, according to the author's perspective, represent an application of the concept of *mashlahah* (public interest) in transactions. Therefore, in this fatwa, it seems that DSN-MUI places more emphasis on the *istislâhî* (public interest-based) method in its sharia considerations.

In Islamic economic law, Islam places both self-interest (*maslahah al-fard*) and social interest (*mashlahah al-'âmah*) as social guarantees and justice as fundamental principles in its economic system. In Islam's perspective, in addition to the Quranic verses and the hadith of Prophet Muhammad (PBUH) that serve as the sharia foundation, this fatwa also relies on *fiqh* principles. Among these are the principle of *al-ibâhah* (permissibility) in transactions, as long as they do not contain elements of what is haram; the principle stating that when there is public interest, there is also the law of Allah; the *fiqh* principle of *muwâ'adah*, which, when conditional (dependent on a cause/condition), is binding (*lâzim*); the fiqh principle of the obligation to fulfill promises when the condition/cause is met; and the *fiqh* principle that the policy of the authorities must take into account the values of public benefit.

The activity of *muamalah* transactions, in addition to aiming for profit (ribh), must take into account the principle of public interest and should not harm other parties *(lâ dharar walâ dhirâr*). Therefore, the legal provision regarding the binding nature of promises (*wa'd muzlim*) in this fatwa is appropriate, given that the *muamalah* transaction system within the context of the sharia industry requires security guarantees and legal certainty. The *istislâhî* method can at least realize public interest in transactions.

In addition, the sharia basis considered by the DSN-MUI fatwa regarding promises (*wa'd*) is the opinions of the fuqaha on the obligation of fulfilling promises. As discussed in the previous section, there are three opinions among scholars regarding the legal obligation to fulfill a promise: (1) the promise is legally obligatory, which is the view of the majority of *fiqh* scholars; (2) it is not legally obligatory; and (3) the opinion stating that a promise is legally binding if it is tied to a condition or a cause, which is the view of the Maliki scholars.

It seems that, in this fatwa, DSN-MUI adopts the third opinion, which states that a promise is legally binding and obligatory if it is conditional and the condition has been fulfilled. Here, DSN-MUI appears to use a sharia/*fiqh* methodology, specifically the method of *al-taysîr al-manhajî,* which involves choosing the opinion that is lighter as long as it still has a legal basis (in the Quran and hadith) that can be justified. The use of *fiqh* methodologies with the *al-taysîr al-manhajî* method is based on the consideration that the opinion stating that a promise is legally binding is more suitable for the context of transactions in the current Islamic financial industry.

In addition to being based on *al-taysîr al-manhajî,* the researcher believes that the *fiqh* solutions *(makhârij fiqhiyyah)* in this fatwa are also based on the method of *i'âdah al-nadzhar,* which involves reviewing the opinions of earlier fuqaha when those opinions are difficult to apply. The majority of scholars view that promises are not legally binding, but DSN-MUI re-examined this opinion and adopted the view that a promise is legally binding if it is conditional, because this opinion is

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easier to apply, especially in the context of Islamic finance, such as Islamic insurance.

The basis of *i'adah al-nadzhar* is a clear statement from DSN-MUI that the door of ijtihad remains open for contemporary scholars. This emphasizes the need for massive, continuous, and structured education on the importance of ijtihad, so that new mujtahids will emerge who are capable of addressing contemporary issues in the field of *fiqh muamalah,* which continues to evolve and will never cease (Hamdan, 2012).The openness of the door to ijtihad itself is indeed one of the intriguing issues in the science of *ushul fiqh* and has been a subject of disagreement among scholars. The correct opinion is that ijtihad remains open at all times, as long as the conditions for ijtihad are met, as stated by Ibn Qayyim al-*Jauziyyah* (Ibn Qayyim, 1991).

The openness of the door to ijtihad is a very realistic matter and even an inevitability for Islam, as a mercy to the worlds, to address various issues and challenges in the contemporary era. This requires the emergence of new ideas and thoughts while adhering firmly to the principles of sharia. A scholar who also supports the openness of the door to ijtihad up to this day is *al-Syaukani* (Al-Syaukani, n.d.).

The theory of *i'adah al-nadzhar* used by DSN-MUI is considered a groundbreaking approach because it challenges the views of certain groups who believe that the door to ijtihad is now closed, or those who argue that contemporary scholars do not meet the requirements for ijtihad. The implementation of *i'adah al-nadzhar* includes reassessing the opinions of the majority of scholars and adopting the opinions of the minority.(Adam & Putra, 2024)

A reassessment of the opinions of scholars and/or fatwa institution decisions can be done for two reasons: first, because the opinion of the majority of scholars (which is considered *râjih* [superior]) does not provide a solution to a real-life issue that requires legal clarity from a sharia perspective, thus allowing for the adoption of an opinion from a scholar that is considered weaker (*marjûh*); or second, because the opinion of the scholars and/or fatwa institution decision is deemed no longer suitable or relevant to the changing *maslahat*.('Audah, 2012)

The reassessment due to the first reason is considered a way to find a solution (*makhârij*) for the stagnation and/or deadlock in law, which requires mujtahids and fatwa issuers to make sincere efforts to realize sharia *maslahat* at all times, in various places, and under different circumstances; abandoning old rulings and replacing them with new ones due to *ta'assur or ta'adzdzur* (difficulty) in realizing the old opinion.

Reconsidering an opinion that is considered weak (*marjûh*) and turning it into an opinion that can be used as a guideline (*mu'taad*) is an innovative effort to overcome the stagnation of jurisprudence in the field of economics, which has long been in a state of stagnation amidst the dominance of conventional business law or trade law theories. On the other hand, developing this theory is more cautious and scientifically measured compared to the views of scholars who are lenient (*mutasahil*) in determining the law based on the *fiqh* principle "*al-ashl fî al-asyyâ al-ibâhah*,"(Al-Sulami, 2005), meaning the default ruling of something is permissibility, or for the sake of *mashlahah* (benefit) or *hâjjah* (urgent necessity).(Hasanudin, 2024)

The law of binding promises, if the promise is conditional, in the context of waqf benefits and sharia investment, the author views that DSN-MUI uses a legal solution (*makhârij fiqhiyyah*), namely re-examination (*i'âdah al-nadzhar*), with the consideration that the opinion of scholars who require the fulfillment of promises (i.e., binding promises) if the conditions are met, because DSN-MUI considers the majority view of scholars—that promises are not legally binding but only morally binding—difficult to implement, especially in the sharia finance and business sectors. This is further reinforced by the shariah necessity (*hâjat syar'iyyah*) for such a solution.

In addition to using the fiqh methodology of re-examination (*i'âdah al-nadzhar*), the ijtihad *intiqâ'i* model shows that, from the perspective of DSN-MUI, the view of the *Malikite* scholars—that promises must be fulfilled legally if the promise is linked to a condition (*wa'd muzlim mu'allaq bi al-syarth*)—is the opinion that leads to greater benefit and provides legal certainty in its application within the sharia finance industry, such as in sharia banking and sharia insurance.

4. Conclusion

The differences of opinion among scholars regarding the status of a promise (*wa'd*) can be categorized into three views: the first view obliges the fulfillment of a promise absolutely because the promise is binding; the second view states that fulfilling a promise is not obligatory, but it is recommended (mustahabb); and the third view asserts that fulfilling a promise is obligatory if there is a condition or cause attached, also known as *wa'd al-mu'allaq.* In the context of implementing a promise (*wa'd*) in the products of beneficial waqf and Islamic insurance investment, DSN-MUI views the legal binding status of a promise (*wa'd mulzim*) in accordance with the third opinion, where fulfilling a promise is obligatory if the promise is linked to a condition or cause. This view is seen as more beneficial and fulfilling the needs, particularly in the context of business and Islamic finance in Indonesia. Moreover, the binding status of a promise in the context of beneficial waqf and Islamic insurance investment holds significant relevance in supporting the achievement of the Sustainable Development Goals (SDGs). Through this mechanism, funds from the benefits of insurance can be allocated for various sustainable development programs. Therefore, with proper management, beneficial waqf based on a binding promise (*wa'd mulzim)* can become an effective instrument in supporting various sustainable development programs in line with SDGs. In formulating the DSN-MUI fatwa, particularly DSN-MUI Fatwa No. 85/XII/2012 on promises in Islamic finance and business transactions, two legal solutions approaches *(makhârij fiqhiyyah)* are used: the *al-taysîr al-manhajî* method, which selects the lighter opinion as long as it has a legal basis (in the Qur'an and hadith) that can be justified, and the *i'âdah al-nadzhar* method, which involves revisiting previous scholars' opinions when those opinions are difficult to implement. The majority of scholars view that promises are not legally binding, and DSN-MUI has revisited this opinion, choosing the view that a promise is legally binding when it is conditional, as this opinion is more easily applicable, especially in the context of Islamic finance, such as in Islamic insurance.

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