

Status uang santunan Asuransi Jiwa Syariah dalam hukum kewarisan islam = The status of sum insured islamic life insurance in islamic inheritance law

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Abstrak

[ABSTRAK

Tesis ini membahas mengenai pertentangan antara ketentuan dalam asuransi syariah tentang penerima manfaat asuransi jiwa syariah dengan ketentuan pembagian waris dalam hukum waris Islam. Dalam asuransi jiwa syariah, penerima manfaat uang santunan asuransi jiwa bila tertanggung meninggal telah ditunjuk sebelumnya dan tercantum dalam polis, sedangkan ketentuan waris Islam menyatakan pembagian harta dari seseorang yang telah meninggal telah diatur di dalam al-Qur'an dan al-Hadits. Penelitian ini adalah penelitian hukum normatif tentang asuransi jiwa syariah dan hukum waris islam, dan alat pengumpulan data yang digunakan dalam penelitian ini adalah melalui penelitian kepustakaan.

Hasil penelitian menunjukkan bahwa polis asuransi jiwa syariah dapat dinilai sebagai wasiat sehingga uang santunan asuransi jiwa syariah menjadi milik penerima manfaat, selama tidak bertentangan dengan ketentuan wasiat dalam KHI. Kedudukan hukum ahli waris yang tidak tercantum dalam polis asuransi jiwa syariah tetaplah sebagai ahli waris yang memiliki hak waris sehingga bila polis asuransi jiwa syariah tidak sesuai dengan ketentuan dalam KHI, ahli waris tersebut berhak atas uang santunan. Dengan ketentuan yang ada saat ini mengenai asuransi jiwa syariah, pemberian asuransi kepada penerima manfaat meski mengganggu hak ahli waris lain adalah terpenuhinya prestasi dan tidak menimbulkan akibat hukum apapun kecuali dosa di mata Allah SWT.

Ketentuan mengenai asuransi jiwa syariah saat ini masih belum sesuai dengan ketentuan hukum waris Islam, sedangkan waris merupakan hak bagi umat Islam yang dilindungi oleh pasal 29 Undang-Undang Dasar 1945. Selain itu, karena uang santunan asuransi jiwa syariah berkaitan dengan kematian seseorang dan sebagaimana diamanatkan Undang-Undang Nomor 3 tahun 2006 tentang Perubahan atas Undang-Undang Nomor 7 tahun 1989 tentang Peradilan Agama, bagi umat Islam di Indonesia wajib melakukan pembagian waris berdasarkan hukum waris Islam.

Oleh sebab itu, pemerintah seharusnya membuat Undang-Undang khusus mengenai Asuransi Syariah yang disesuaikan dengan hukum Islam lainnya, khususnya hukum waris Islam. Meski belum ada peraturan mengenai asuransi syariah ini, kontrak asuransi syariah yang sesuai dengan hukum Islam masih bisa dibuat karena hukum perjanjian di Indonesia mengenai asas kebebasan berkontrak, maka perusahaan asuransi dan nasabah asuransi jiwa syariah bisa membuat kontrak asuransi yang isinya sesuai dengan syariah.

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ABSTRACT

This thesis discusses the conflict between determination of the beneficiaries of islamic life insurance and the distribution of property in Islamic law of inheritance. In the islamic life insurance, the beneficiary of islamic life insurance compensation money when the insured dies has been appointed earlier and listed in the policy, while the provisions of Islamic inheritance declare the division of property of someone who has died has been set up in the al-Quran and al-Hadith. This research is a normative law on life islamic insurance and Islamic inheritance law, and data collection tools used in this research is through literature research.

The results showed that islamic life insurance policy can be assessed as a testament. So the islamic life insurance compensation money belongs to the beneficiaries, as long as not contrary to the provisions of a will in KHI. The legal position of heirs who are not listed in the policy of islamic life insurance remains as an heir who has the right of inheritance so that when the policy of islamic life insurance is not in accordance with the provisions of KHI, these heirs shall be entitled to compensation. With the existing provisions regarding islamic life insurance, providing insurance to beneficiaries despite another heir is the fulfillment of achievement and not cause any legal consequences except sin in the Eyes of Allah. Provisions concerning islamic life insurance is still not in accordance with the provisions of Islamic law. Meanwhile, inheritance is the right of Muslims who are protected by article 29 of the Constitution of 1945. In addition, because the compensation money islamic life insurance related to the death of a person and as mandated by Law No. 3 of 2006 concerning Amendment to Act Number 7 1989 Religious Courts for Muslims in Indonesia are required to conduct the division of inheritance based on Islamic law. Therefore, the government should create a specific law regarding Takaful adapted to Islamic law, in particular the Islamic inheritance law. Although there is no regulation regarding this Islamic insurance, Takaful contract in accordance with Islamic law can still be made because of the law of contract in Indonesia on the principle of freedom of contract, the insurance company and the customer can make an islamic life insurance contract whose contents in accordance with sharia, This thesis discusses the conflict between determination of the beneficiaries of islamic life insurance and the distribution of property in Islamic law of inheritance. In the islamic life insurance, the beneficiary of islamic life insurance compensation money when the insured dies has been appointed earlier and listed in the policy, while the provisions of Islamic inheritance declare the division of property of someone who has died has been set up in the al-Quran and al-Hadith. This research is a normative law on life islamic insurance and Islamic inheritance law, and data collection tools used in this research is through literature research.

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