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***Kafālah* Issues: Concept and It's Application in Indonesian Islamic Banks**

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Abstract: This article is to analyze the concept of *kafālah* and its implementation in Indonesian Islamic banking. *Kafālah* is a contract that is closely related to the guarantee in Islamic banking. The purpose of *kafālah* is to provide assistance and convenience in working on a business or project for customers. With a bank guarantee, customers can run a project or business. In order for a bank to issue a bank guarantee, the customer must have a certain amount of savings in the bank. Savings can be in the form of time deposits or demand deposits. This article is to deeply examine the concept of *kafālah* according to *fiqh mu'amalah* and its implementation in Indonesian Islamic banking with a bank guarantee product. This study is a library study with descriptive approaches, which describes and explains the analysis of *kafālah* contracts according to *fiqh mu'amalah* and Its application in Indonesian Islamic banks. The method of collecting data in this study is based on documentation,



journals and books. Further it analyses the data using content analysis, through analyzing the library data with a scientific analysis approach. Data analysis methods are deductive, inductive and comparative. The result of the study is that *Kafālah* is a contract of guaranteeing (*makfūl alayh*) given by one party to another in which the guarantor (*kāfil*) is responsible for the repayment of a debt which is the right of the guarantor (*makfūl*). In this principle, the bank acts as a *kāfil* (guarantor), while the customer is the *makfūl* (the guaranteed party). Meanwhile in practice, the application of *kafālah* in Indonesian Islamic banking is employed by a certificate of bank guarantee to guarantee its customers. Bank guarantee certificate is a payment guarantee that is given by the bank to the recipient of the guarantee, either individuals or companies.

Keywords: *Kafālah Implementation, Islamic Banking, Indonesia.*

Introduction

In the business world, capital is the key factor b. Employers will use personal capital or borrow from other parties to run their businesses, to make loans to banks, of course, those who lend capital will ask for conditions, including business feasibility. There are several functions of Islamic banks, namely providing guarantees to customers. The guarantee is a guarantee given by the insurer to the third party to fulfill the obligations of the second party, in this case the second party or the customer will provide a fee (*ujrah*) to the bank for services provided by the bank to the customer (Maulidizen, 2017:116). To meet the needs of customers Islamic banks provide services, because to run business customers need guarantees to other parties, for which Islamic banks have an obligation to help customers run the business with a guarantee scheme based on sharia principles. Based on the principle, therefore, the existence of *kafālah* in Islamic banks is significant so that it requires detailed discussion of *kafālah* in Islamic banks, what is meant by *kafālah*?, then what is the legal basis of *kafālah*, and and conditions *kafālah* contract. In addition, the most important thing is that the author will explain about the application of the *kafālah* contract in Indonesian Islamic banks.

As an instrument used in Islamic Banking, *kafālah* is needed to overcome obstacles emerged in Islamic financial transaction. However, studies on *kafālah* is lacking attention from reseachers especially in Islamic banking industries. Abikan (2017) examined the practice of *kafālah contract* in Islamic finance institutions in

Nigeria. Nevertheless, a specific study on the experience of its concept by Indonesian Islamic banks is an interesting study area to explore more. In this regard. This study contributes to results for further references needed by Indonesian Islamic banks to effectively and purposively practice of the concept in their transactions.

This study is a library study with descriptive approaches, which are describing or explaining the analysis of *kafālah* contracts according to *fiqh muamalah* and Its application in Indonesian Islamic banks. The method of collecting data in this study is based on documentation, journals and books. The data then are analyzed using content analysis, which is by analyzing library data that scientifically. Data analysis methods are deductive, inductive and comparative.

Kafālah According To Fiqh Mu'āmalah

Etymologically *kafālah* comes from the word *al-daman* which means guarantee, ie a person's guarantee of his/her property to others to meet the needs or interests of a person who is given a guarantee by himself to others (Sābiq, 1973 :283). *Hamalah*, which means load, that is, the burden of the person we guarantee will be the burden of the guaranteeing person called *kāfil* and *za'āmah* which means dependents. That meaning shows that we bear the responsibility of the people we guarantee. Usually the term *al-dhamān* is used for dependents in terms of wealth, then the word *hamalah* is used for dependents on *dhiyāt* or objects. Whereas *za'im* is used for dependency problems in terms of very much assets or in large scale (Al-Zuhayli, 1985:158). The word *kafālah* comes from Arabic which means merging or called *iltizam* which is combining or entering the obligations of others so that the person's obligation will also be a shared responsibility. while the meaning of *kafālah* in terms is a guarantee that is given by the guarantor (*kāfil*) to the third person (*makfūl lahu*) to fulfill the obligation of the second person or party that is borne by the *kāfil*. (*makfūl 'anhu*). *Kafālah* also means transferring responsibility from one party to the other. In the sense of banking, the contract of *kafālah* means financing based on sharia principles, namely providing money or bills that can be equated based on lending and borrowing agreements between the banks and other parties which require parties to fulfill their obligations for refunds or bills within a period of time. has been determined with a note that it will get a reward or a share of the profits obtained from the results of the business it carries out (Sutedi, 2007:35).

In essence, the giving of *kafālah* will give a sense of security to third parties

to believe that the second party or customer borne by the bank will carry out the agreed work contract obligations without worrying if the customer will default (Institut Bankir Indonesia, 2001:239). According to experts of Islamic economics about *kafālah*. According to Antonio, *kafālah* is a guarantee granted by the insurer (*kāfil*) to a third party to meet the obligations of a second party or incurred (Antonio, 2001:123). While according to Shāfi'ī, *kafālah* is “the contract that sets the right of the right to the other (burden) of the other or which presents the substance charged or presented by the person entitled to it (Al-Juzayrī, 1996:188) . While Mālikī, *kafālah* is “the person who has the right to do the burden of his burden and his own burdens which are united, both bearing the same (or similar) (Al-Juzayrī 1996:1990). Ḥanafī, *kafālah* has two meanings, the first *kafālah* means merging one *dzimah* to another *dzimah* in the collection of zakat debt or substance in the form of things. While the second meaning. *Kafālah* combines one with other *dzimah* in principal debt only. It means that in that definition it includes the responsibility of a person to the liability of another person in a claim, in other words, the person is responsible for the responsibility of the person who is responsible for the matters of life, debt, loan, etc (Sulaymān, 1998: 190). However, the guarantor is said not to be in debt, and the debt obligations do not fall with the guarantor guaranteeing him, the debtor must fulfill his obligation to pay the debt to the third party. Lastly, according to Ḥambalī, interpreting *kafālah* equals the commitment of something which is obligated to others and the permanence of the thing which is in the burden or the determination of the person having the right to bring 2 property (the owner) to the person entitled (Sulayman, 1998:191).

The provision of bank guarantees is one of the products of Islamic banks, because the bank guarantee is a form of guarantee in accordance with Sharia principles. The Koran and Hadith allow humans to help in the form of guarantees. Allah says: They say: “We have lost the king’s cup, and whoever returns it will get a loaf of camel, and I will guarantee it.” (Yusuf, 12: 72). This is an excerpt from the surah Yusuf who explains the Kafalah “And help each other in (doing) virtue and taqwa, and do not help in sin and infringement (al-Maidah 5: 2). Ya’qūb said: I will not let him go with you until you give me a firm promise in the name of Allah that you will bring

him back to me unless you are surrounded by enemies. When they give their promises. Then Ya'qūb said: "Allah is witness to what we say (this) (Yusuf 12: 66). From Salamah ibn al-Akqwa ra he said, "We are sitting on the side of the Prophet Muhammad, suddenly brought the corpse while they say to him,' Pray that the corpse is! 'He asked,' Does he have debt obligations?' replied, 'No.' Then he asked again, 'Did he leave the property?' They replied, "No." Then the Prophet shalat for the corpse (HR Bukhari) ((Al-Bukhārī, 1994:799). From Abī Umamah, the Prophet said, "The Guarantor is the person who is obligated to pay (Pasaribu, 1996:150). In addition to the Quran and Ḥadīth, the legitimacy of the causal agent of this kafalah is a fiqh rule which reads "Basically, all forms of muamalah can be done unless there is a forbidden and dangerous (Indonesia 2003:76).

The scholars agree related to the possibility of *kafālah* because it is very necessary in certain conditions and because of the existence of Al-quran and Ḥadīth that have stated or also describe *kafālah* in the days until now there are still many who use the *kafālah* contract. Because some people need capital in their business and to get the capital, usually there must be a guarantee from someone who is trusted, moreover the business that is being undertaken is very large, it will give a sense of worry to those who lend the capital. Kafalah as one of the products in Islamic banking which is engaged in the service sector has obtained the legal basis contained in Law number 10 of 1998. About changes based on Law number 7 of 1992 concerning banking. With the enactment of Law number 21 of 2008 concerning Islamic banking, it is not expected to get a stronger legal basis. Article 19 of the Sharia Banking Act includes, among other things, buying, selling or guaranteeing a certificate. The existence of *kafālah* as an agreement in the field of Islamic Bank services DSN-MUI Fatwa No. 11/DSN-MUI/IV/2000 in which he wrote the *kafālah*. Service products in sharia banking based on *kafālah* contract are technically based on PBI No.9/19/PBI/2007 which contains about implementing sharia principles in the activities of collecting funds and channeling funds and services in Islamic banks, as already amended by PBI No.10/16/PBI/2008 article 3 PBI which is intended to mention the fulfillment of sharia principles as done through service activities by using, among others, *kafālah*, *hiwālah*, and *sharf* contracts (Widjanarto, 2003:96).

Kafālah as a guarantee service is one of the forms of alliance in Islam. As a form of Islamic alliance, the terms must be based on the principles of sharia. According to Sayyid Sābiq; a) the agreed Shariah law; the meaning of the agreement made by the party is not an act that is contrary to the positive law and Islam, because the agreement contrary to Islamic law is illegal. There is therefore no obligation for each party to carry out or carry out the agreement, b) to be clear; that is what the parties are saying is clearly what the content of the agreement is, so it does not lead to misunderstandings between the parties, c) Must be preferred and selective; the meaning of the agreement made by the parties shall be based on mutual agreement. The terms of the Islamic alliance are the conditions that must be fulfilled by all types of alliance committed in the life of society, especially *kafālah* (Suhrawadi, 1996: 2). According to the Fatwa Council of the National Sharia Council, the Rukun and *Kafālah* requirements are (1) the guarantor (*kāfil*), baligh (adult), the condition is reasonable and entitled to take legal action in the affairs of his property willingly with that *kafālah* lien, (2) the borrower (*makfūl 'anhu*), the condition is willing to hand over his liabilities (receivables) to the guarantor and known by the guarantor, (3) The party who owes (*makfūl lahu*), the conditions are identified, can be present at the time of contract or give power and soundness, (4) The object of guarantee (*makfūl bih*), the conditions are borne by the debtor either in the form of money, objects or work, can be carried out by a guarantor, is a binding (common) receivable that is impossible to delete unless after being paid or released, it is clear the value, amount and specifications and not contrary to the Sharia (Indonesia 2003:76).

Types of *Kafālah* are (1) *kafālah bi al-nafs* are the guarantees provided by the guarantor of the self (personal guarantee). In this *kafālah* the customer will get a guarantee from the guarantor in the form of good or good name because the guarantor is the leader of society, so people believe in the character because of having a good name in society, (2) *kafālah bi al-māl* is a guarantee that is used to guarantee goods, guaranteed that the item will be paid/repaid the debt. This contract is commonly used by banks to get fee/ujrah from their customers. *Kafālah bi al-māl* is divided into 3 types. The First, *kafālah bi al-dayn*, which is a debt guarantee that must be paid by the borrower to the one who gives the debt. The second, *kafālah bi al-taslim* is when delivering rented/property goods that are rented to the owner, on behalf of the tenant when the lease contract ends. This type of guarantee can be carried

out by the bank for customer needs in the form of cooperation with the leasing company, while guarantee of payment for banks or fees obtained by banks can be guaranteed customer deposits/savings, banks are permitted to pay fees or *ujrah* to customers who are guaranteed. The *third*, *kafālah bi al-dark* is a guarantee given by the seller to the buyer, if there is a defect in the goods he buys, the seller will compensate for the defect/return the funds to the buyer, (3) *kafālah al-munjazah* that is the absolute guarantee in the contract is not limited by time for any purpose/specific purpose. In the world of banking *kafalah* this type is called performance bond (guarantee of achievement). (4) *kafālah al-muallaqah* which is a simplification of *kafālah al-munjazah* because the guarantee provided by the guarantor has a deadline for example in the 3 months the party guaranteed to complete the project or the debt he has made with the third party must be on time. In modern Islamic banks this can be applied to guarantee the implementation of a project (performance bond) or guarantee of the form of bidding while in its implementation this *kafālah* in the form of a bank guarantee and Islamic banks get fees or *ujrah* (Muhammad, 2005:37).

The risk of *kafālah*'s contract has a very high consequence, such as when *al-dhamān* unites the guarantor's responsibility to the responsibility of a person who is guaranteed (*al-ashil*) so that the matter is guaranteed to be the responsibility of both or shared responsibilities. With the payment or repayment of either party, the contract is over. If The owner of the receivable has the right to choose to charge the person who owes it or charge the guarantor. Because *kafālah* is a union of responsibility and it is clear that his responsibility is borne by both of them so is allowed to charge to one of them. But because of this the charitable goodness of the guarantor and his deeds to help others, it is best to first charge the debtor, if he does not pay it then he is jailed until he can not afford to then charge the guarantor to pay it. This is the opinion of the Mālikī and is directed by Ibn Qayyim. If a person who guarantees (*dhāmin*) fulfills his obligations by paying the debts of the person he assures, he may request the money back to *al-madhmūn 'anhu* (the guarantor), if the payment is on his or her order or permit and he intends to reimburse. This is according to the agreement of four mazhabs. But they disagree, if the guarantor pays or discharges the burden of the person he or she guarantees

without the consent or demand of a person who is guaranteed. According to Syāfi'ī and Ḥanafī schools that paying the debts of guarantees without the permission of them is sunnah and *dhāmin* (guarantor) has no right to seek compensation for *al-madhmūn 'anhu*. According to Mālikī, the *dhāmin* has the right to repatriate to *al-madhmūn 'anhu*. According to Ibn Hazm, *dhāmin* did not have the right to repay to *al-madhmūn 'anhu* for what he had paid good with *al-madhmūn 'anhu* or not. *Kāfil* is obliged to guarantee and cannot avoid the charges except pay or *al-madhmūn lahu* (the person guarantees) freed the debt for the abolition of the covenant, even though *al-madhmūn 'anhu* and *kāfil* are not willing.

The end of *kafālah* contract, when (1) Debt or right shall be paid, either from the debtor (*makfūl 'anhu*) or the guarantor (*kāfil*) or other person, (2) The owner of the receivable from the guarantor of the guarantee and the guarantor, (3) If the guarantor (*kāfil*) reconciles with the owner of the obligatory right (*makfūl lahu*) of the debt with a certain compensation, (4) Transfer of debt from *Kāfil* to another person properly or debt transfer by the owner of the debt to another person correctly, due to debt transfer such as the handover, (5) If there is any breach of the secured or unpaid debt. Due to the loss of debt holders' responsibility, the guarantor's liability is also lost, (6) The loss of certain property that is alleged or the goods that are used as collateral are destroyed because of human deeds. If the consequences of human deeds are not finished and obliged to destroy or eliminate them to replace them, (7) The owner of the deceased receivables and all heirs shall be the right of the indebtedness, and shall be liable for his compensation, (8) If the debt repaid the debt and the debtors have the same debt with the nominal equivalent of the debt, As if there was a barter between the debt and its receivables in the *kāfil*, (9) Austerity ends when a lawyer handed over a guarantee to the claimant in a place where the prosecutor could reach him to attend at the trial, (10) The death of the *Kāfil* terminates the covenant when there is no carelessness or incorruption. If there is an indication of carelessness during his life then the Kafa will continue to run and be taken from his inheritance in order to safeguard the right of the owner of the receivable. (11) In the case of anaphylaxis, the death of the guilty person removes his rights, since the law is only required to be prescribed and is impossible with his death.

The Application of *Kafālah* in Indonesian Islamic Banks

Kafālah is applied in Sharia Financial Institutions, specifically Islamic Banks where banks act as guarantor (*kāfil*) and customers as parties that are guaranteed (*makfūl 'anhu*). In this case the bank gets a fee for the guarantee given to the customer. In the view of (Bank Muamalat Indonesia), there are several applications of the concept of *kafālah*, the first *kafālah bi al-nafs*, is a contract to provide guarantees for oneself. For example, a customer who gets financing by guaranteeing the good name and personhood of a person or community leader. Even though the bank does not physically hold any items, the bank hopes that the figure can make a payment when the financed customer experiences difficulties. Second, *kafālah bi al-taslim*. This type of *kafālah* can be done to guarantee the return of goods rented when the lease period ends. This type of guarantee can be carried out by the bank for the benefit of its customers in the form of cooperation in the leasing company (leasing company). Payment guarantees for banks can be in the form of deposits /savings and banks can charge fees to customers. Third, *kafālah al-munjazah*, which is an absolute guarantee that is not limited by the time period and for certain purposes and purposes. One form of *kafālah* is a guarantee in the form of performance bonds (guarantee of achievement) (Yasin, 2009:209).

Al-Kafālah products provided by Islamic banks in the form of guarantees. A bank guarantee is a amount of money held by a bank as a guarantee for someone or a customer that will be a requirement to do a certain job. Storage of money is intended, the bank gets services as a cover for customers who do work (Ali, 2008: 229). Regarding the product guarantee or guarantee from the bank, there is a bank guarantee. Bank guarantees are services provided by banks in order to provide guarantees to customers. This guarantee can be given by the bank to customers in bidding for job offers from employers, as well as to do something for the benefit of other parties, and various other bank guarantees, bank guarantees arise because of the customer's need to fulfill the obligations requested by other parties. One of the obligations needed by the employer is the existence of a guarantor (bank) to the customer. The issuing bank guarantee will get a fee from the customer (Ali, 2008:230).

In the bank guarantee mechanism there are three parties involved,

namely the bank as guarantor, guaranteed (customer requesting guarantee), and the recipient of the guarantee. In granting a bank guarantee, a large guarantee deposit is required, for example, 10-30% of the total value of the guaranteed object. In addition, the bank collects fees and charges interest on the amount of the collateral value (Yasin, 2009:210). For example, the following scheme can be an illustration of the implementation of the kafalah contract in Islamic financial institutions; (1) The customer submits a guarantee application to an Islamic bank for a given job, and Islamic banks provide guarantees/guarantees to the employer for the work of the customer, (2) Under the guarantee provided by Islamic banks, Islamic banks request collateral from the insured/customer, (3) The customer must carry out work in accordance with the contract between the customer and the employer, and (4) If the customer does not carry out work in accordance with the contract, the Islamic bank will bear the loss (Ismail, 2011:202). The bank guarantee is used to guarantee payment of a payment obligation. Banks can require customers to place a certain amount of this facility as *rahn*. Banks can also accept these funds under the *wadi'ah* principle. Banks can reimburse fees for services provided (Muhammad, 2005:103)

The application of *Kafalah* Procedure in transactions of Indonesian Islamic banks, is regulated in the Fatwa of Dewan Syariah Nasional No. II/DSNMUI/IV /2000 where the provisions of the *kafalah* are determined with consideration as follows: (a) In the course of carrying out its business, a person often requires guarantees from other parties through *kafalah* agreements, namely guarantees provided by the insurer (*kāfil*) to third parties to fulfill the obligations of the second party or are borne (*makful 'anhu*), (b) That in order to meet these business needs, the Islamic Banking is obliged to provide a guarantee scheme (*kafalah*) based on shari'ah principles. Bank guarantee is a guarantee of payment provided by the bank to the recipient of the guarantee, both individuals and companies, and this is usually called a beneficiary. This certificate is a written guarantee from the bank given to the customer (guaranteed party). if the guaranteed party cannot fulfill the obligation (default). So in this case the bank guarantees the customer to fulfill an obligation to another party in accordance with the agreement or based on an agreed contract agreement.

In the bank guarantee there are three parties involved, namely the bank as the guarantor, the project management customer as guaranteed by the company. The bank in granting this guarantee will ask for compensation for services provided by the bank to the project manager in part or in full from the total value of the project being run, and the bank can also require the customer a number of funds from project management to place the funds as *rahn*. The receipt of these funds also to banks can be in the form of *wadi'ah*/ deposit. Because of this, banks can get a substitute for bank employee salary and administrative costs. In addition, the benefits for banks that issue bank guarantees are (1) as a form of administrative acceptance in terms of fees or commissions (2) as deposit guarantee deposits which are low-cost funds (3) as services to customers so that they become loyal to the bank.

The mechanism for issuing bank guarantees involves three parties, namely guarantors, guarantees and recipients of guarantees. (1) guarantor, namely a bank that issues guarantees to its customers to obtain a bank guarantee. (2) the customer or contractor as the party guaranteed by the bank by using the bank guarantee, this is because the customer makes a request to the bank to submit a bank guarantee in order to be able to cooperate with the contractor or a third party. (3) the recipient of the guarantee is that the person receives a guarantee from the bank or the project owner, who receives the guarantee if at any time the party making the agreement with him will have the party to bear it, so the party feels secure with the project. The risk of granting a bank guarantee is tantamount to giving credit. The bank guarantee assessment is the same as the lending analysis, such as a letter of application for opening a bank guarantee and a customer, an application identity document. The step for bank Guarantee are (1) Agreement on project cooperation/conversation between contractor and project owner, (2) The contractor submits a bank guarantee to a bank by paying a provision or commission, (3) The bank provides a bank guarantee certificate to the contractor, (4) The certificate is given to the project owner when the project owner has given the project to the contractor to do it (5) When the contractor defaults or cannot keep his promise, the project owner can withdraw the bank guarantee certificate from the bank issuing the certificate, (6) The guarantor bank can pay the bank guarantee certificate to the project owner, and (7) When the work or

project can be completed by the contractor, the guarantee certificate held by the project owner must be returned to the customer, then give it to the bank that has guaranteed it.

In order for the bank to issue a bank guarantee, the customer must have a number of savings to the bank that will guarantee it. The savings can be in the form of deposits or demand deposits. The trust contract (Bank Guarantee) in Islamic banks is no different from a conventional bank, except that the terms of the contract and its operational processes are adjusted to Islamic values. The legal guarantee of the bank guarantee is a form of underwriting which is regulated in Chapter 17 of book III of the Civil Code. Underwriting is an agreement whereby a third party owes a party to debt to fulfill its performance (default). Collateral is a certificate that is bound by a bank or non-bank financial institution which results in the obligation to pay to the party receiving the guarantee if there is a party guaranteed to default (Ali, 2003:262).

The financing in Bank Syariah Mandiri: "In providing credit based on sharia principles, commercial banks are required to have confidence based on analysis that is based on the customer's ability or ability to pay off debts in the initial agreement." *Kafālah* submission mechanism (bank guarantee) at Bank Syariah Mandiri Sentul branch; (1) The contract is made to the contractor as (*makhfūl 'anhu*) with the bank as (*kāfil*) at the request and approval of the project owner as (*makhfāl lahu*), (2) Contractor (*makhfūl 'anhu*) is a BSM customer who has a demand deposit account, (3) The contractor (*makhfūl 'anhu*) submits *Kāfil* with the intention of the contractor wanting to carry out work from the project owner (*makhfūl lahu*), (4) The contractor (*makhfūl 'anhu*) submits an application letter to the bank (*kāfil*) and (*kāfil*) will issue a bank guarantee if the contractor meets the required conditions, including having deposited the opponent's guarantee, (5) The issued bank guarantee certificate is then given to the contractor (*makhfūl 'anhu*) and the original bank guarantee is submitted by the contractor to the project owner (*makhfūl lahu*). 6. If something unwanted or can be detrimental to the owner of the project (*makhfūl lahu*), then the project owner can immediately bring the original warranty held in the bank (*kāfil*) to be disbursed, (7) The bank (*kāfil*) will provide compensation by disbursing the opponent's guarantee

that is handed over by the contractor (*makfūl 'anhu*). Reimbursement will be made after going through study that the customer has indeed broken the promise, and (8) If the project does not have a problem in its work, the project owner will immediately return the original warranty to the contractor, so the contractor can return it to the bank and withdraw the opponent's guarantee.

The purpose or function of the kafalah (bank guarantee); (1) For banks the purpose is to provide assistance and facilities in terms of doing a business or project. With the bank guarantee customers can run a project/business, (2) For bank guarantee holders, it provides assurance that the holder will not lose if the guaranteed party neglects its obligations, because the holder will get compensation from the bank guarantee, (3) Fostering mutual trust between the guarantee provider, which is guaranteed and receives a guarantee, will be bound in a mutually beneficial agreement within the bank guarantee, (4) Provide security and peace for the bank and for other parties. This is clearly especially for guarantors. Thus the bank as the giver of guarantee will not suffer losses as long as the opponent's guarantee is given correctly and according to the conditions set. The customer will not dare to break the promise because of the guarantee of the opponent left in the bank, and (5) For banks, in addition to the benefits above, they will also benefit from the costs that must be paid by the customer and the guarantee of the opponent given. The bank will also increase its credibility in the eyes of the customer.

The *kafalah* application in Bank Syariah Mandiri uses a current account based on *wadi'ah* contract as a guarantee of customers to the bank to obtain *kafalah* services. The scholars agreed that the *Tabarru'* Agreement would not be changed into a commercial contract unless there was an agreement from both parties to commit themselves to the contract. *Tabarru'* contract can be changed into a commercial contract provided that both parties in exchanging their assets must be determined at the beginning of the contract with certainty, both in quantity, price and time of delivery (Karim, 2006:69). Bank guarantees can be extended because the project owner still needs security to continue the project, if the party that needs a bank guarantee extension, the customer is required to extend the bank guarantee to the bank by making a new agreement accompanied by

attaching several documents to the bank. Period of bank guarantee claims Guaranteed parties or third parties are usually given no later than 30 days. This submission must be completed with documents that include evidence that states the customer is defaulted or does not carry out the project. The guarantee bank will expire if: (1) the obligation has been fulfilled or has been completed (2) the bank guarantee has matured (3) the third party has returned to the bank guarantee (4) the third party releases the right of the claim.

A guarantee letter issued by the guarantor bank to those guaranteed so that the business project can be completed within the time frame agreed by the project owner. (1) Bid bond, which is the same as the description of the definition of bank guarantee above, that is, the bank will issue collateral to the customer as requested by the customer so that the project runs smoothly and smoothly. (2) Performane bonds are almost the same as bid bonds, the guarantor banks will provide guarantees to those who need guarantees for the projects that are carried out, except that performance bonds are more focused or emphasized to the party managing the project and the project manager can run the business safely and can also be very comfortable to run the project. (3) Advance performance bonds are almost the same as the explanation above except that only the difference is the party guaranteed, the party that guarantees, and the party guaranteed by the project owner to the contractor (4) Rentetion bond guarantees issued by the bank as a request from customers to guarantee projects that are done or that are being run by partners who work with customers. (5) This collateral Custom bond is concerned and is closely related to imported goods import duties which are requested to be suspended from payments if they meet the conditions specified in the suspension. (6) Shipping bonds are collateral by the bank issued due to the customer's request, due to the expenditure of imported goods from the port/shipping company before the arrival of the original import documents for negotiation.

Conclusion

Kafālah is a guarantee given by a guarantor (*kāfil*), to a third party to fulfill the obligations of a second party, the legal origin of *kafālah* according to the fatwa of the National Sharia Council is based on the Quran, Ḥadīth, and ijtihad. Along with the development of today's *kafālah* is not limited

to as guarantees for someone. The implementation of *kafālah* contract in contemporary jurisprudence as in Islamic banking uses a product called bank guarantees to guarantee its customers. Bank guarantee is a guarantee of payment provided by the bank to the recipients of a good guarantee whether they are individuals or companies which are commonly called the beneficiaries. The customer requests to issue a bank guarantee certificate provided that the customer has a number of savings or deposits in the form of deposits or deposits at the bank, with the intention that if the customer defaults on the project agreement, the bank will pay the project owner. Issuance of bank guarantees involves three parties, namely guarantor, guaranteed, guarantee recipient (guarantor). The validity period of the bank guarantee is at the maturity date and if it is not extended then the bank guarantee automatically becomes invalid. If the work has been completed in accordance with the work contract, and the project owner has stated that they have received the project results, automatically the bank guarantee is no longer valid and the customer is asked to return the bank guarantee. The bank guarantee can be extended because the project owner still needs to secure the project. The customer proposes a new agreement by attaching a number of documents to the bank. For banks, the purpose is to provide assistance and facilities in terms of doing a business or project. With the bank guarantee customers can run a project/business.

References

- Al-Bukhārī, Abū 'Abdullah Muḥammad Ibn Ismā'īl Ibn Ibrāhīm. 1994. *Ṣaḥīḥ Al-Bukhārī*. Beirut: Dār al-Fikr.
- Abikan, Abdulqadir Ibrahim. 2017. Contract of Kafalah (Guarantee) in Islamic Fianance, Extending The Frontier of Islamic Law. *Journal of Islamic Law Research*. Volume 2 Number 1 pp. 157-178.
- Al-Juzayri, 'Abd Al-Rahman. 1996. *Kitab Al-Fiqh 'Ala Al-Madzahib Al-Arba'Ah*. Beirut: Dār al-Fikr.
- Al-Zuhaylī, Wabbaḥ. 1985. *Al-Fiqh Al-Islāmi Wa Adillatuhu*. Damaskus: Dār al-Fikr.
- Ali, M. Hasan. 2003. *Berbagai Macam Transaksi Dalam Islam*. Jakarta: Raja Grafindo Persada.
- Ali, Zainuddin. 2008. *Hukum Perbankan Syariah*. Jakarta: Sinar Grafika.

- Antonio, Muhammad Syafi'i. 2001. *Bank Syariah Dari Teori Ke Praktek*. Jakarta: Gema Insani Press.
- Indonesia, Dewan Syariah Nasional Majelis Ulama. 2003. *Himpunan Fatwa Dewan Syariah Nasional Untuk Lembaga Keuangan*. 2nd ed. Jakarta: DSN dan BI.
- Institut Bankir Indonesia, Tmi Pengembangan. 2001. *Bank Syariah: Konsep, Produk Dan Implementasi Operasional*. Jakarta: Djambatan.
- Ismail. 2011. *Perbankan Syariah*. 1st ed. Jakarta: Kencana.
- Karim, Adiwarman Azwar. 2006. *Bank Islam, Analisis Fiqih Dan Keuangan*. Jakarta: PT. Rajawali Press.
- Maulidizen, Ahmad. 2017. "Islamic Finance In Theory And Practice: A Critical Analysis." *Jurnal Ekonomi Islam* Volumen 8 Number 2, pp. 111–40.
- Muhammad. 2005. *Bank Syariah Problem Dan Prospek Perkembangan Di Indonesia*. edited by 1. Yogyakarta: Graha Ilmu.
- Pasaribu, Suhrawadi K. Lubis dan Chairuman. 1996. *Hukum Perjanjian Dalam Islam*. Jakarta: Sinar Grafika.
- Sabiq, Sayyid. 1973. *Al-Fiqh Al-Sunnah*. Beirut: Dār al-Fikr.
- Sulayman, A. R. M. 1998. *Majma' Al-Anhār Fi Syarḥ Multaqā Al-Abhār*. Beirut: Dār al-Kutub al-Ilmiyyah.
- Sutedi, Andrian. 2007. *Perbankan Syariah*. Jakarta: Ghalia Indonesia.
- Widjanarto. 2003. *Hukum Dan Ketentuan Perbankan Di Indonesia*. IV. Jakarta: Pustaka Utama Grafiti.
- Yasin, M. Nur. 2009. *Hukum Ekonomi Islam*. Malang: UIN Malang Press.