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CONCERNING CONSUMER PROTECTION:

COMPARISON OF KHIYAR 'AIB IN ISLAMIC LAW AND GUARANTEE LAW IN INDONESIA

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Abstract: This article discusses the differences in guarantee law in Islamic sharia and the Indonesian legal system. Both systems agreed that if the products is not in a good condition, it is a must for the seller to provide a guarantee as to his responsibility to the customer. It is called '*khiyar disgrace*' in the perspective of Islamic law and '*garansi*' in Indonesian law. Using library sources this article showed that *khiyar disgrace* has the relations and comparisons with the guarantee law on consumer protection. The similarity between both '*khiyar aib*' and '*garansi*' is that if the sold item is broken, flawed, or damaged, the buyer could make a complaint and receive a replacement for the broken item. The difference between the two is that in '*khiyar disgrace*', the flaw of the transacted item should be found before the transaction whereas, in '*garansi*', the guarantee is given to the customer when the flaw of the sold item is found after the items are traded.

Keywords: *consumer protection, khiyar 'aib, islamic law, guarantee, indonesian law.*



INTRODUCTION

As social beings, humans are bound to help each other and complement each other. *Muamalah* is the exchange of goods or something useful. One form of *muamalah* that occurs is buying and selling. Buying and selling is a contract made based on a statement (*ijab*) and acceptance (*qabul*) that are clearly stated, either verbally or otherwise, with the same goal (Chaudury, 2012). In entering into a contract or contract of sale and purchase, a buyer has the authority or right to refuse or accept an item to be traded in.

In the practice of buying and selling, demand and supply, both price bargaining and bidding in the return of goods that have been purchased will constantly occur. In Islam, this term is called *khiyar*. *Khiyar* is needed to ensure freedom, fairness and benefits for the buyer. *Khiyar* is a concept that exists in Islamic economic law whose function is to correct matters relating to the object of the transaction, whether beneficial to the buyer or not (Dewi, 2005). Linguistically, *khiyar* means 'to choose'. Meanwhile, in terms of terminology, *khiyar* is the right to perform or cancel a sale and purchase contract. This means that what is meant by *khiyar* is supporting the right to declare the seller and buyer to continue or cancel the sale and purchase based on the contract made (PPHMM, 2009).

One of the *khiyar* that often occurs among the people is *khiyar* 'disgrace. The term *khiyar aib* is defined as a right owned by someone from 'aqidain (two people who maintain a contract) to terminate or keep the deals when the buyer finds a defect in the object, which the other party does not advise during the contract (Huda, 2011). Sayyid Sabiq explained that if the *ijab-qabul* has been carried out between the seller and the buyer, then both parties are allowed to continue or cancel the contract as long as they agree that there will be no other *khiyar* after that. If the buyer knows that the agreed goods are damaged, then the contract is valid and there is no *khiyar* right (Sabiq, 2006).

In a sale and purchase action, the object condition must be necessary to be following the selling price or value and be free from defects. However, if the object has defected, it is needful to provide a contract.

Providing guarantees to buyers is one of the efforts made by the seller is warranty service. This condition had in the Indonesian Civil Code Book III concerning Engagement, article 1491 which states that the '*garansi*' that is the seller's obligation to the buyer is to guarantee two things, namely the control of the advantages sold in a safe, peaceful manner and the absence of underlying defects in the goods or in such a way that gives rise to reasons for cancelling purchases (Soimin, 2014).

The word '*garansi*' comes from the English word Guarantee refers to a dependent (Huyasro & Anwari, 1983). In the Indonesian encyclopedia, the '*garansi*' is used by people when they consider it an optional condition in trades. This condition applies when there is a clause stating that the seller is responsible for the condition of traded product within times determined by both parties. The clause states that if the goods are damaged or defective, all repairs handling by the seller. Conventionally, this '*garansi*' regulation had to write in a letter of guarantee (Setiawan et. al, 1980). One of the principles in this agreement remains the principle of freedom of contract. This means a person is allowed to arrange an agreement and bind himself with whomever, as long as there is no laws and regulations issues, decency and public order. The principle of freedom of contract is restricted by article 1315 of the Indonesian Civil Code.

When viewed from the point of view of Islamic law, the discussion of *khiyar 'aib* has similarities with the theory and concept of applying guarantees according to the law consumer protection, Number 8/1999. The similarities between the two concepts can be seen from the KHES article 236 and the Indonesian Civil Code article 1507. Based on the two articles it can be concluded that the *khiyar 'disgrace* and the guarantee both state that if the buyer gets a defect in the goods or products he buys, the buyer is given two choices, namely continue or cancel (Syafei, 2001). However, these two concepts, in theory, have differences that lie in the rules and operational basis. One of the differences between the operational rules of *khiyar 'aib* and guarantee is the binding nature of the two concepts

The provisions that apply in the concept of *khiyar 'disgrace* are carried

out based on *fiqh*, while the operational rules that apply to the concept of warranty must be based on the regulations that have been stipulated in the law (especially Law Number 8 of 1999 concerning Consumer Protection). that being traded must exist, considering the warranty rules in the form of the law itself which binds both parties to the contract (Tim Sinar Grafika, 2012). The difference between *khiyar 'aib* and a guarantee can be seen from the time limit for claiming the collateral. In *khiyar 'aib* it is stated that the prosecution of an item is not determined with certainty. Whereas in the guarantee it is stated that the prosecution of the buyer's collateral goods is limited to the period that has been stipulated in Law Number 8 of 1999 concerning Consumer Protection article 27 letter e, it can be understood that the period stipulated in the Act is 4 (four) years (Sinar Graphic Team, 2012). For this reason, this article poses research questions that are of concern in this article, namely: how Comparison of the law of *khiyar 'aib* used in Islamic law and guarantees according to Law Number 8 of 1999 concerning Protection Consumers?

THE CONCEPT OF KHIYAR 'DISGRACE IN ISLAMIC LAW

Islam teaches every Muslim regarding the permissibility of *khiyar rights*, whether to continue or cancel the sale and purchase transaction. One form of *khiyar* that is commonly implemented in buying and selling transactions to protect the consumer from selecting the object of the transaction that has defects in both tangible and hidden objects is *khiyar 'aib*. The term *khiyar 'aib* has two words that have different meanings, but each of these terms becomes a phrase form which is then used as a separate concept of Islamic law in the field of *muamalah*. According to *fiqh* scholars, *khiyar 'disgrace* is a condition that allows one of the contracting parties to have the right to cancel the contract or continue it if a disgrace is found (disability). from one that is used as a medium of exchange whose owner is not known at the time of the contract (Muslich, 2015).

Conceptually, *khiyar 'aib* can be interpreted as the right to vote for one or both parties who carry out the transaction to carry out or cancel the agreed transaction following the conditions of each party conducting the

transaction in the agreement. The stipulation for the existence of *khiyar* requires the existence of substitute goods, whether clearly or not stated, unless there is the pleasure or willingness of the parties to the contract. On the other hand, if there is no visible defect, a replacement is no longer needed. A *disgrace* that causes a buyer to have the right to return the goods purchased is a *disgrace* that causes a decrease in the price of the goods sold and a *disgrace* that eliminates a *valid* (correct) purpose for the buyer. This is required so that there is no element of wrongdoing and applying the element of buying and selling on a consensual basis.

If we look further, the concept of *khiyar* '*disgrace*' has been developed by mazhab scholars. As explained by Nasrun Haroen, fiqh scholars agree that what is meant by *khiyar* '*aib*' applies since it is known that a defect in the goods being traded can be inherited by the heirs of the *khiyar* right owner, the condition of the defect causes the emergence of *khiyar*. According to the Hanafi and Hanabillah scholars, the defects that cause the emergence of *khiyar* rights are all elements that damage buying and selling and reduce the value of goods according to the traditions of traders, while according to the Malikiyyah and Syafiiyah scholars, everything that can be seen as reduced in value from the goods referred to is all a defect that causes the value of the item to be reduced or the desired element missing from it.

From the opinion of these scholars, it can be understood that defects that can be a reason to cancel the sale are defects that occur in the goods before the goods are delivered thank the buyer. According to ijma' ulama, the return of goods may be returned at the time of the contract. So if the contract has been carried out and the buyer is aware of a defect in the item. Then the contract is valid and there is no *khiyar* after that (Sabiq, 2016). Ibn Rushd also explained that the disabilities that required *khiyar* were mental and physical. Among these defects, some become defects on the condition that there is an opponent (replacement) in the goods sold, which are called defects in terms of conditions. This is a defect whose absence is a reduction in the origin of form. Another defect is that the opposite is perfection and its loss is not a deficiency like artificial results,

mostly in the condition of the soul and body (Rusyd, 2007).

According to Wahbah az-Zuhaili, there are two kinds of defects, namely defects that cause a reduction in the part of the goods or changes in goods from the outside, not the mind, such as blindness, one-sided blindness, squint, paralysis, scalp infections and all diseases that include the body and defects that cause a decrease in goods from the body. the meaning side is not in the form of an uncontrollable riding animal, sluggishness which is not common in walking and the like (Zuhaili, 2007). In this regard, Sayyid Sabiq explained about the damaged goods before handing over there are six alternatives, namely:

- a. If the damage includes all or part of the goods before the handover occurs due to the actions of the buyer, the sale and purchase are not canceled and the contract is valid as before.
- b. If the damage to the goods is caused by the actions of other parties, not the seller and the buyer, the buyer may choose between accepting or cancelling the contract.
- c. If the damage to the goods occurs before the handover due to the seller's actions or is damaged by itself, the sale and purchase will be cancelled.
- d. If the goods are damaged by themselves, the buyer is still obliged to pay the price of the goods, while the seller may choose between cancelling the contract by taking the remaining goods and paying for everything.
- e. If the damage to the goods is partly due to the actions of the seller, the buyer is not obliged to pay for the damage to the goods, while for others he may choose between taking it with a discounted price.
- f. If the damage to goods occurs as a result of a disaster, the price of the goods will be reduced. Then the buyer may choose between cancelling it or taking the remainder with a reduced payment (Sabiq, 2006).

Meanwhile, according to Sayyid Sabiq, goods that are damaged after being received are the responsibility of the buyer and he is obliged to pay the price of the goods if there is no other alternative from the seller. If there is another alternative from the seller, then the buyer replaces the

price of the goods with the same. The right of *khiyar 'aib* applies since the buyer knows of a defect after the contract takes place. The existence of the right of *khiyar* to maintain defective goods by the buyer so that the goods become his property, by asking for compensation for the defect. From some of the explanations above, it can be understood that in *khiyar 'aib*, the buyer has two choices (*khiyar rights*) whether he is willing or satisfied with the goods he bought or vice versa. If the buyer is satisfied and willing with the defects in the goods, then *khiyar* does not apply to him and he must accept the goods he has purchased. However, if he refuses and returns the goods to the owner, then the contract that was made with the seller will be void. Consequently, the seller must accept the return of the item if the defect is purely from the seller's side (congenital defects) and not due to the negligence and fault of the buyer such as a fall and others (2007).

When viewed from the aspect that hinders the return of defective goods to the seller, namely because of several things, namely the buyer is satisfied with the goods he bought even though it is in a defective condition. Then the buyer has cancelled his *khiyar rights* and the damaged or defective goods are caused by the actions or negligence of the buyer. Furthermore, there is an addition to the goods and this is done by the buyer in the future. Regarding this time limit, it is determined based on an agreement between the two parties, namely the seller and the buyer. This agreement can then be used as a guide for the buyer in using the *khiyar right*, whether he wants to continue the transaction they have made or cancel it. What is meant by continuing the transaction here is that the buyer accepts and gives up the goods he buys into his property, whether the condition of the goods is defective or not. While the purpose of cancelling the transaction is that the buyer refuses the goods he bought because of defects in the goods that were previously unknown. In this condition, the buyer can use the *khiyar right* and continue the transaction on the condition that there is a guarantee for the goods (Syafei, 2005).

GUARANTEE IN LAW NO. 8 OF 1999 CONCERNING CONSUMER PROTECTION.

Warranty is a form of service provided by the seller to the buyer as a fulfilment of the buyer's rights, namely the right to obtain goods by the exchange rate issued (Irawan, 2001). In general, the provisions governing the concept of this guarantee are contained in the Consumer Protection Act, namely the Consumer Protection Law Number 8 of 1999 concerning Consumer Protection, then there are also Government Regulations, specifically PP Number 58 of 2001 concerning the Guidance and Supervision of the Implementation of Protection Consumer. In addition, it is also regulated in several articles related to material guarantees contained in the Civil Code (KUHPerdata). In-Law Number 8 of 1999 there is a provision which states that "The existing provisions of the law relating to consumer protection remain valid, as long as they do not conflict or have been specifically regulated by each law". That is, it is necessary to study the legislation regarding consumers or consumer protection in the legal rules of general legislation that may be able to regulate, protect the relationship between consumer problems and the provision of goods and services (Nasution, 2006).

Regarding the warranty provisions in the law, it has been included and explained in the article by article, so that the guarantee becomes part of the legal realm of consumer protection (Irawan, 2001). In the Act, several rules have been set regarding the relationship between the seller and the buyer along with their respective rights and obligations. Based on Law Number 8 of 1999 concerning Consumer Protection Article 4 concerning the rights and obligations of consumers, it states that buyers (as consumers) are entitled to comfort, guarantees, honest information and are entitled to compensation for goods traded. The explanation of the articles is as follows:

- a. The right to comfort, security and safety in consuming goods and/or services
- b. The right to choose goods and/or services and to obtain those goods and/or services by the exchange rate and the promised conditions

and guarantees.

- c. The right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services.
- d. The right to have their opinions and complaints heard on the goods and/or services used.
- e. The right to get an advocate, protection and efforts to resolve consumer protection disputes properly.
- f. The right to obtain consumer guidance and education.
- g. The right to be treated or served correctly and honestly and not discriminatory.
- h. The right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not under the agreement or not properly.
- i. Rights regulated in the provisions of other laws and regulations.

In addition to consumer rights contained in Article 4 of Law Number 8 of 1999 concerning Consumer Protection, there is also Article 7 concerning the obligations of business actors. Laws in Law Number 8 of 1999 concerning Consumer Protection are:

- a. Have good intentions in carrying out their business activities.
- b. Provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as explain the use, repair and maintenance.
- c. Treat or serve consumers correctly and honestly and discriminate.
- d. Guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services.
- e. Provide opportunities for consumers to test and/or try certain goods and/or services as well as provide guarantees and/or guarantees for goods manufactured and/or services traded.
- f. Provide compensation, compensation and/or compensation for losses due to the use, use and utilization of traded goods and/or services.
- g. Provide compensation, compensation and/or replacement of the goods and/or services received or utilized are not under the agreement

(Suma, 2008).

From the above provisions, it can be understood that the guarantee does not only depend on the outcome of the agreement between the parties involved in the transaction. Article 7 letter e of Law Number 8 of 1999 concerning Consumer Protection as mentioned above, expressly states that one of the obligations of business actors is to provide opportunities for buyers (consumers) to test or try goods being traded and to provide guarantees or guarantees for goods traded in a trade. Furthermore, letter g expressly states that the business actor will be responsible for providing compensation, compensation for the replacement of goods traded depending on or based on the results of the initial agreement between the buyer and seller parties or those involved in the transaction.

In the next section, the warranty provisions are the obligations and responsibilities of the seller or business actor who produces damaged goods to the buyer. The provisions related to the responsibilities of business actors are contained in Article 19 of Law Number 8 of 1999 concerning Consumer Protection, namely:

- a. Business actors are responsible for providing compensation for damage, pollution and/or consumer losses, as a result of consuming goods and/or services produced or traded.
- b. The compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of a similar or equivalent value or health care and/or the provision of compensation following the provisions of the applicable laws and regulations.
- c. Provision of compensation is carried out within a grace period of 7 (seven) days after the date of the transaction.
- d. The provision of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error.

In connection with the paragraphs in Article 19 of Law Number 8 of 1999 concerning Consumer Protection above, it is also stipulated that the buyer can claim compensation (warranty) for goods that have defects or damage. This demand must then be fulfilled by the seller, whether in the

form of a refund, replacement of goods whose selling value is equivalent to the damaged goods or in the form of maintenance by repairing the existing damage. This is of course carried out and carried out based on the legislation or the agreement of the two parties conducting the sale and purchase transaction. The buyer can sue regarding the refusal to the relevant agency, by the provisions of the law, if later the seller or business actor does not respond, refuses and does not fulfil compensation for consumer demands. The responsibility of business actors to consumers is broadly based on two categories, namely claims for compensation based on *default* and acts against the law. The provisions contained in Article 19 of Law Number 8 of 1999 concerning Consumer Protection say that the responsibility of business actors includes all losses experienced by consumers, both in the form of material, physical and mental losses (Nugroho, 2011).

Furthermore, Article 27 of Law Number 8 of 1999 concerning Consumer Protection, it is explained the release of the responsibility of business actors to consumers. Where the responsibility for fulfilling compensation for goods traded is not borne by the seller when in predetermined circumstances. Such as defects or damage that arise in the future, negligence caused by consumers, so that the goods purchased are damaged and the seller is not responsible when the period of claiming compensation for goods has passed, meaning that it exceeds the specified period of 4 years or the lapse of the agreed time (Suma, 2008).

SIMILARITIES OF KHIYAR AND GARANSI IN INDONESIAN LAW

When viewed further from the point of view of Islamic law, the discussion of guarantees has similarities with the theory and concept of applying the law of *khiyar 'aib* in fiqh. The guarantee and *khiyar 'aib* state that the buyer may choose between continuing or cancelling the transaction if there is a defect in the object being traded. In the issue of warranty, the main focus is the guarantee of the condition of the goods. While the problems

contained in the concept of *khiyar 'disgrace*, state where the seller and buyer can make a mutual agreement regarding the continuation of the transaction carried out with the right to cancel the sale and purchase and return of goods due to a defect in an item that is not yet known, whether the *'disgrace* exists at the time of the transaction. or only seen after the transaction has been agreed upon before handing over the goods. The seller who knows the goods are in a defective condition, the seller must explain about the condition of the goods. If the seller does not explain it, then he has committed an act of fraud. However, the law of buying and selling is still valid (Zuhali, 2010). If there is a defect or damage to the goods, the buyer can return the goods he has purchased by receiving a replacement for new goods, this is if the buyer wishes to choose (*khiyar*) to continue the transaction that has been made.

The fiqh scholars agree that *khiyar 'aib* applies if since it is known that there is a defect in the goods being traded and can be inherited by the heirs of the *khiyar right owner*, the condition of the defect causes the emergence of *khiyar* (Dewi et. al, 2006). Likewise in the warranty provisions, one form of service is provided by the seller to the buyer as a fulfilment of the buyer's rights, namely the right to obtain goods by the exchange rate issued (Irawan, 2001). However. These two concepts in theory have principal differences. This difference lies in the rules and operational basis, while an explanation of this difference will be explained in the following subsection.

DIFFERENCE BETWEEN KHIYAR'S AND GARANSI

The difference between the operational rules of *khiyar 'aib* and guarantee lies in the binding nature between the two concepts. The concept of *khiyar 'aib*, it states that the provisions are carried out based on fiqh, which is carried out based on an initial agreement from both parties who carry out a sale and purchase transaction. If in the contract there is no agreement regarding guarantees for damaged goods borne by the seller, then the transaction is completed after the contract is held (Huda, 2011). Disability

(*disgrace*) is anything that is lost from its natural nature, resulting in a lack of price in the general view of traders, both large and small defects that are hidden in nature (Zuhaili, 2010). While the word “hidden” in this case means a defect or damage that is not easily seen by a normal buyer, not a buyer who is too careful, because it is also possible that someone who is too careful will find the defect.

This is different from the concept of a guarantee whose operational rules have been stipulated in the Act (especially Law Number 8 of 1999 concerning Consumer Protection). So a guarantee for certain goods that are traded must exist, considering the warranty rules in the form of the law itself which binds both parties to the contract. For example, the seller is required to provide spare parts for the goods sold within a grace period of at least one year after the sale and purchase transaction is made. The provisions regarding the obligation to provide spare parts for an item that are guaranteed are contained in Article 25 paragraph (1) as follows:

Article 25 paragraph (1): “*Business actors who produce goods whose utilization is sustainable within a time limit of at least 1 (one) year are obligated to provide spare parts and/or after-sales facilities and are obligated to fulfil the guarantee or guarantee under the agreement*”.

In Article 1491 of the Civil Code Book III concerning engagements, it is stated that the guarantee that is the seller's obligation to the buyer is to guarantee these two things, namely the control of the goods being sold safely and securely and the absence of hidden defects in the goods or in such a way as to give rise to reasons for the buyer to cancel. sale and purchase agreement. Then according to article 1504 of the Civil Code, what is meant by hidden defects are defects that make the item unable to be used properly, so that if the buyer knows there is a defect, he will not buy the item or buy it at a very cheap price by the defects contained in the item. the goods (Soimin, 2006).

Thus, the binding nature of the right to choose to continue and cancel the sale and purchase transaction is related to the damage to the goods, which depends on whether there is an agreement that has been made

beforehand. The guarantee of goods from the seller against the purchase is valid when the seller agrees that the guarantee agreement exists. Therefore, the rules regarding the operation of the *khiyar 'disgrace concept* only occur when there is an agreement between the two parties who enter into the contract, in other words, the *khiyar 'disgrace* does not occur by itself, even though the intended defect of the goods existed before the goods were transferred.

The difference between the two concepts lies in the time limit for claiming collateral. In the concept of *khiyar 'aib*, *khiyar* rights are stipulated by Islamic law for people who carry out civil transactions so as not to be harmed in the transactions they do, so that the intended benefit in a transaction is achieved as well as possible. The status of *khiyar*, according to *khiyar* fiqh scholars, is prescribed or allowed for each party who makes a transaction so that no party feels cheated (Dewi, 2005). This is different from the provisions contained in the product warranty law, wherein the concept of *khiyar* It is a *disgrace* that it is stated that the prosecution of damaged goods is not determined with certainty. That is, the time limit for this prosecution is left to the agreement between the two parties (Syafei, 2006). The right of *khiyar 'aib* is valid since the buyer knows there is a defect after the contract takes place, but the fuqaha have different opinions regarding the time limit for filing a claim. If the *disgrace* or defect of an item has been known by the buyer, then at that time the buyer can use his *khiyar right* or the buyer may also not use the *khiyar right* (Huda, 2011).

According to the Maliki scholars, the time limit for prosecuting collateral is of two kinds, namely the three days, namely from all defects that occur when at the buyer's place, the three-day period according to the Malikiyyah scholars globally is the same as the days of *khiyar* and days of letting go and the guarantee at that time became the buyer's guarantee and a period of one year, namely from three defects (leprosy, leprosy and insanity), something that happened in one year from these three things in the goods sold, then it came from the seller. While other defects occur, basically it becomes the guarantee of the buyer. This period, according

to Malikiyyah scholars, happened to slaves and also to various kinds of buying and selling whose purpose was to seek profit and bargain (Rusyd, 2007).

It is different from the concept of warranty regarding the time of claiming collateral goods which are regulated in Law Number 8 of 1999 concerning Consumer Protection which states that damaged and damaged goods have existed since before the goods are sold, then the seller is obliged to replace or repair the goods in question to the buyer. . In this case, the buyer is limited by the time limit to make a claim against the seller for the goods purchased. Implicitly, the rules for the grace period have been determined and can be understood from the sound of article 27 letter e concerning business actors who produce goods freed from responsibility for losses suffered by consumers in Law Number 8 of 1999 concerning Consumer Protection, namely:

- a. It is proven that the goods should not be circulated or are not intended to be circulated.
- b. Defects of goods arise at a later date
- c. Defects arise as a result of compliance with the provisions regarding the qualification of goods
- d. Negligence caused by consumers
- e. The lapse of the prosecution period of 4 (four) years since the goods were purchased or the lapse of the agreed period.

From the above provisions, precisely in point e, it can be understood that the period a buyer can claim damaged goods to the buyer is 4 (four) years or the prosecution can be carried out within a time limit that has been agreed upon and agreed upon by both parties. Where the agreed time limit does not exceed the four-year provision. However, according to the provisions of the Act, before the deadline for the prosecution expires, the seller is required to provide spare parts within a period of one year after the transaction is made. This is by the provisions contained in Article 25 paragraph 1 of Law Number 8 of 1999 concerning Consumer Protection, as previously explained if there are defects in the goods purchased that can be detrimental to the buyer.

Thus, it can be understood that in Islamic law the rules regarding claims for compensation for damaged goods occur when an agreement has been made at the beginning of the transaction between the seller and the buyer. If this agreement has been determined, then the parties are bound by the contents of the agreement or agreement. The buyer in this case cannot use the *khiyar right* if the contract has been made and the buyer is aware of a defect in the goods (Sabiq, 2006). So in Islamic law, there is no time limit related to the fulfilment of guarantee rights for consumers and this has many benefits. However, in positive law, the time limit is set for four years. Determination of the time limit in terms of warranty is required to prepare spare parts, if there is a defect in the goods, the seller immediately replaces it with a new one.

Despite the fundamental differences between the two concepts, in certain terms, in general, both have similarities and cannot be separated. Although the concept of a guarantee is not a legal product issued by fiqh scholars or Islamic jurists (*fuqaha*), its provisions can be adapted to Islamic law as binding law, for example regarding the time of demanding the goods being traded.

CONCLUSION

After analyzing the problem of *khiyar 'disgrace* in Islamic law and guarantees according to Law number 8 of 1999 concerning Consumer Protection, the concept of *khiyar 'disgrace* in Islamic law and guarantees according to Law number 8 of 1999 concerning Consumer Protection shows that in selling purchase has been regulated regarding the concept of a guarantee for the goods being traded. The concept of buying and selling according to the perspective of Islamic law stipulates the existence of a person's right to continue or cancel the sale and purchase contract because there is a defect or damage in an object of sale and purchase, in sharia terms, it is called *khiyar 'aib*. The validity of the *khiyar* right on goods that have defects or damage when there is an agreement between the seller and the buyer regarding compensation for the damage to an object of sale and purchase

and the condition of the damaged object existed before the sale and purchase contract was held. While the guarantee according to Law number 8 of 1999 concerning Consumer Protection, guarantees for damaged goods are called warranties. The concept of warranty in the legislation stipulates that the seller or business actor is obliged to provide warranties for the goods sold as a form of guarantee for damaged goods. The similarity lies in the guarantee of the condition of the goods being traded. If there is a defect or damage to the goods, the buyer can return the goods he bought by receiving a replacement for new goods, this happens if the buyer wants to choose to continue the transaction that has been made. Meanwhile, the difference between *khiyar's disgrace* and guarantee lies in the legal construction, where the concept of guarantee stipulated in the law is binding. Meanwhile, regarding the time limit for claiming compensation for the condition of damaged goods, the Law has set a maximum limit for claiming losses, which is 4 (four) years, while in Islamic law it is not stipulated, except on previously determined occasions.

REFERENCES

- Ahmad, Abu Bakar bin Husain bin Ali al-Baihaqi. 1994. Sunan al-Kubra. Bairut: Dar al-Kutub al-'Ulumiyyah.
- Al-Fauzan, Shalih bin Fauzan. 2005. Ringkasan Fikih Lengkap. Jakarta: Darul Falah.
- Ali, Ahmad. 2002. Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis), Jakarta: Gunung Agung.
- Ali, Muhammad. 2013. Fiqh. Bandar Lampung: Anugrah Utama Raharja,
- Anwari, Acmad dan Huyasro. 1983. Garansi Bank Menjamin Berhasilnya Usaha Anda, Jakarta: Balai Aksara.
- Az-Zuhaili, Wahbah. 2007. Fiqih Islam Wa Adillatuhu, Terj. Abdul Hayyin at-kattani, dkk, Depok: Gema Insana.
- Adinugraha, Luthfi. 16 februari 2021. Perbedaan Warranty dan Guarantee, (online), diakses melalui situs <https://turboly.com//2013/04/29/>

- perbedaan-warranty-dan-guarantee/amp/.
- Caudhry, Muhammad Sharif. 2012. Fundamental of Islamic Economic System (Prinsip Dasar Sistem Ekonomi Islam), Terj. Suherman Rosyidi, Jakarta: Kencana Prenada Media Group.
- Dahlan, Abdul Azis. 1996. Ensiklopedia Hukum Islam, Jakarta: PT lectiar baru van hoeve.
- Dewi, Gemala. 2005. Hukum Perikatan Islam di Indonesia, Jakarta: Prenada Media Group.
- Fauzan, Shalih. 2005. Al-Mulakhkhash Al-Fiqh, (Ringkasan Fikih Lengkap), Terj. Asmuni, Jakarta: PT Darul Falah.
- Ghazaly, Abdul Rahman, dkk. 2010. Fiqh Muamalat, Jakarta: Kencana Pranata Media Group.
- Haim, Barkatullah Abdul. 2009. Perlindungan Hukum Bagi Konsumen Transaksi E-Commerce Lintas Negara Indonesia, FH UII Press.
- Harun Nasution. 2017. Fiqh Muamalah. Surakarta: Muhammadiyah University Press.
- Huda. 2011. Qamarul. Fiqh Mua'amalah. Yogyakarta: Teras.
- Irawan, Hendi. 2001. 10 Prinsip-Prinsip Kepuasan Pelanggan. Yogyakarta: Adipura Publishing.
- Komariah. 2002. Hukum Perdata. Malang: Universitas Muhammadiyah.
- Kolter, Philip. 2003. Marketing Insight Form A to Z-80 Konsep yang harus di pahami setiap Manajer. Jakarta: Erlangga.
- K. Lubis, Suhrawardi dan Chairuman Pasaribu. 1996. Hukum Perjanjian dalam Islam. Jakarta: PT. Sinar Grafika.
- Mardani. 2013. Fiqh Ekonomi Syari'ah (Fiqh Muamalah). Jakarta: Kencana.
- Maryana, Ranti Fauza. 2004. Perlindungan Desain Industri di Indonesia dalam Era Perdagangan Bebas. Jakarta: Grasindo.
- Muhammad, Abu Abdullah bin Ismail al-Bukhari 1. 2011. Shahih al-Bukhari, Terj. Masyhar, MA dan Muhammad Suhadi, Jakarta: Almahira,
- Muhammad, Al-Imam Jalaluddin bin Ahmad bin Muhammad al-Mahalli

- dan Al-Imam Jalaluddin Abdirrahman bin Abu Bakar As-Sayuthi. 2015. Tafsir Jalalain, Surabaya: PT. el.BA Fitrah Mandiri Sejahtera.
- Munawwir, Ahmad Warson. 1997. Kamus Al-Munawwir Arab-Indonesia Terlengkap, Surabaya: Pustaka Progressif.
- Muslich, Ahmad Wardi. 2010. Fiqh Muamalah. Jakarta: Amzah.
- Nasution, Az. 2006. Hukum Perlindungan Konsumen. Jakarta: Diadit Media.
- Nugroho, Susanti Adi. 2011. Proses Penyelesaian Sengketa Konsumen di Tinjau dari Hukum Acara serta Kendala Implementasi. Jakarta: Kencana Prenada Media Group.
- Pusat Pengkajian Hukum Islam dan Masyarakat Madani. 2009. Kompilasi Hukum Ekonomi Syari'ah, Jakarta: Kencana.
- Purwodamita, WJ.S. 1982. Kamus Umum Bahasa Indonesia. Jakarta: Balai Pustaka.
- Rachmadi. 2009. Hukum Jaminan Keperdataan. Jakarta: Sinar Grafika.
- Rusyd, Ibnu. 2007. Bidayatul Mujtahid. Terj. Abu Usama Fakhtur. Jakarta: Pustaka Azzam.
- Sabiq, Sayyid. 2006. Fiqh Sunnah. Terj. Nor Hasanuddin. Jakarta: Pena Pundi Aksara.
- Setiawan, Boenjamin, dkk. 1980. Ensiklopedia Indonesia. Jakarta: Ichtiar Baru Van Hoeve.
- Sismami, Dyah Anggun. 24 Februari 2021. Analisis Yuridis, Sosiologis dan Filosofis Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, (online), diakses melalui situs: <https://uns-id.academia.edu/dyahanggunsismami>.
- Soimin, Soedharyo. 2014. Kitab Undang-Undang Hukum Perdata, Jakarta: Sinar Grafika.
- Suma, Muhammad Amin. 2008. Himpunan Undang-Undang Perdata Islam dan Pelaksanaan lainnya di Negar Indonesia, Jakarta: Raja Grafindo Persada.

Susanto, Happy. 2008. Hak-Hak Konsumen jika dirugikan. Jakarta: Visimedia.

Syafei, Rahmat. 2001. Fiqh Muamalah. Jakarta: Pustaka Setia.

Tjitrosudibio dan R. Subekti. 2006. Kitab Undang-Undang Hukum Perdata. Jakarta: pradnya Paramita.

Zainuddin. 2015. Hukum Islam. Jakarta: Sinar Grafika.