THE APPLICATION OF BANK GUARANTEE EXECUTION IN SHARIA CONCEPT

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***Abstract**:* One sector that helps a country's economic growth is banking. The types of guarantee institutions as they are known in the Indonesian legal system, can be classified according to the way they occur, according to their nature, according to their objects, according to the authority to control them. Initially, Indonesian banks preferred the conventional banking system to a banking system based on Islamic sharia. With the establishment of Bank Muamalat Indonesia in 1991, which was the first bank based on Islamic sharia. In addition, the enactment of Law Number 21 of 2008 concerning Sharia Banking shows a strong commitment to the development of Islamic banking. Article 19 paragraph (1) of the Law regulates business activities carried out by Islamic banks, including sharia contracts such as mudharabah, murabahah, ijarah, kafalah, and others. In sharia bank guarantee products, kafalah is a contract, if there is a default, execution will be carried out on the object of the guarantee, execution is an attempt by a party won in a decision to obtain what is rightfully entitled to him with the help of legal force. Therefore, this study uses a statute approach and conceptual approach where there are rules regarding kafalah in Islamic banks which will then be seen as appropriate or not with what has been applied in Islamic banks in Indonesia.

***Keyword**:* Execution, Bank Guarantee, Sharia.

Introduction

The guarantee institution is classified as a neutral field of law that does not have a close relationship with the spiritual and cultural life of the nation. So that against such a law there is no objection to being regulated immediately. Lately the law of guarantees is popularly called The Economic Law (economic law), Wiertschafrecht or Droit Econonique which has the function of supporting economic progress and development progress in general. (Tutik, 2008)

The word "guarantee" in the Laws and Regulations can be found in article 1131 of the Civil Code and its explanation article 8 of Law No. 7 of 1992 as amended by Law No. 10 of 1998 concerning Banking, but in both regulations does not explain what is meant by guarantee. But it can be known that a guarantee is related to debt problems, where in the loan and loan agreement the creditor asks the debtor to provide collateral in the form of a number of assets for debt repayment, if the debtor does not pay off the debt within the agreed time. The value of a guarantee given to creditors usually exceeds the credit value, this is done by the creditor so that he is protected from losses. (Kasmir, Bank dan Lembaga Keuangan lainnya, 2014)

So, when there is a credit jam, the bank can use or sell the credit guarantee to pay or cover bad credit. The purpose of the credit guarantee here is to protect the bank from delinquent customers, because only a few customers can afford but do not pay their credit. The point is that the credit guarantee here is tied by the debtor to the creditor with the debt owned by the debtor's asset guarantee, so that the debtor does not run away from his debt. The payment of debt with collateral is by auction as stipulated by applicable regulations, and if there is residue from the auction, it is returned to the debtor.

The first difference between a *kafalah* agreement in a sharia bank guarantee and a debt guarantee agreement in a conventional bank guarantee is the legal basis. Bank guarantees in conventional banks are generally subject to the provisions of the Burgerlijk Wetboek and are specifically regulated by regulations established by Bank Indonesia, while Islamic bank guarantees are based on the rules in the Quran and Al Hadith, according to scholars, Fatwas of the National Sharia Council, as well as rules issued by Bank Indonesia. The second difference is regarding the characteristics of the agreement. In the borgtocht agreement, the guarantor has the right to demand back payment if it owes default, giving rise to the guarantor's obligation to pay first. Whereas in the kafalah, the guarantor can only claim back payment to the guaranteed party if the *kafalah* is at the request of the debtor. The third difference is regarding the presence of the parties when the agreement is made. In bank guarantees at conventional banks, not all parties must be present at the time of agreement, while in Islamic bank guarantees all parties must be present.

In principle, the collateral must belong to the debtor, but the law also allows property belonging to third parties to be used as collateral, provided that the party concerned gives up the goods to be used as collateral for the debtor's debt. , so that it can be concluded that the guarantee is a debt payment by the debtor to the creditor if in the future there is a bottleneck in the payment of the debtor's debt with a number of assets belonging to the debtor in accordance with the agreement that has been made according to applicable laws and regulations. (Supramono, 2013)

In Islamic banking they offer a wide range of services, one of which is lending. Conventional banks usually offer bank guarantees, but Islamic banks provide bank guarantees in different ways. *Kafalah* products, which are guarantees provided by banks on loans, are referred to as bank guarantees in Islamic banking.

Every Islamic bank conducts *kafalah* based on an agreement between the two parties. This agreement addresses the types of *kafalah* to be agreed upon, including *kafalah bin nafs* and *kafalah al muallaqoh*. Thus, bank guarantee products do not fully comply with Islamic banking principles, one of the steps that must be taken is to restore the Islamic banking system in accordance with existing regulations, which will have an impact on the concept of *ta'awun*. (Ghoni, 2016) In Islamic economics, especially in the field of Islamic banking, various kinds of contracts are known to be used in a banking transaction, *Sighat akad* (ijab and kabul) is something that is relied on by two contracting parties that shows what is in the hearts of both of them about the occurrence of a contract, (Lubis M. S., 2022) one of which is the *kafalah* contract. *Akad kafalah* is a guarantee given by the insurer (*kafil*) to a third party to fulfill the obligations of the second party or the insured. , In Article 20 number 12 of the Compilation of

Sharia Economic Law, *kafalah* is defined as a guarantee or guarantee given by a guarantor to a third party/lender to fulfill the obligations of a second party/borrower. (Antonio, 2001)

Akad kafalah in sharia economics comes from Islamic law, namely the Quran and Al Hadith. In Q.S. Joseph verse 66 :

He (Jacob) said, "I will not release him (go) with you, until you swear to me in the (name of) God, that you will surely bring him to me back, unless you are surrounded (enemies)." After they took their vows, he (Jacob) said, "God is a witness to what we say."

In *Akad Kafalah* there are several conditions that must be met, some of these conditions are related to *shighat* (ijab), some are related to the *kafil*, some are related to the *ashil* (*al Makful 'anhu*), some are related to the party *al Makful lahu* (the party who is guaranteed, the party who has guaranteed rights) and some are related to *al Makful bihi* (something guaranteed). (Zuhaili, 2007)

In Islamic banks, in general, the legality of the *kafalah* contract is based on Islamic law whose legal sources mainly come from Quran and AI Hadith. Some verses that indicate the permissibility of a sacrifice are shown in Q.S Yusuf verse 66, Q.S Yusuf verse 72, and also the Hadith Narrated Bukhari from Salamah bin Akwa'. Apart from the Quran and Al Hadith, the opinions of some scholars are also used as the basis for the implementation of the *kafalah* contract. In Indonesian sharia banking, regulations regarding *kafalah* contracts are also regulated in the Compilation of Sharia Economic Law, namely in Chapter XI from Article 291 to Article 317.

The regulation of the contract of *kafalah,* which comes from the Quran and Hadith, is considered to improve national law in line with the development of Islamic banking in Indonesia.

Basically, guarantees are divided into two categories, namely:

1. Individual Guarantee or in legal terms called personlijke zekerheid.
   Individual guarantees give rise to individual rights, so there is a special legal relationship between creditors and people who guarantee the repayment of debtors (guarantors). From this comes the term:
   a. Individual guarantee / borgtocht / personal guarantee (in case the guarantor is an individual)
   b. Company guarantee (in the event that the guarantor is the company).
   c. Bank guarantee (in case the guarantor is the bank).

Individual assurance comes from *the word persoonlijke zekerheid.* There is also a mention with the term immaterial guarantee. Individual guarantee is the guarantee of a person from a third party who acts to guarantee the fulfillment of the obligations of the debtor. The definition of individual guarantees can also be seen from various views and opinions of experts. Sri Soedewi Masjchoen Sofwan, defines immaterial guarantees (individuals) as: "Guarantees that give rise to direct relationships with certain individuals, can only be maintained against certain debtors, against the assets of debtors in general"

Soebekti defines individual guarantee as: "An agreement between a debtor (creditor) and a third, which guarantees the fulfillment of the debtor's obligations (debtor). (Subekti, 1997) It can even be held outside (without) the debtor". (HS, 2004)

2. Material Guarantee or in legal terms called *zakelijke zekerheid*.
   This guarantee is an absolute right to a certain object, in the form of part of the debtor's or guarantor's property, thus giving preference to creditors over other creditors over the object.
   Property is a guarantee whose object is in the form of goods, both movable and immovable, specifically intended to guarantee the debtor's debt to creditors if in the future the debt cannot be paid by the debtor. The pledged goods belong to the debtor and as long as they are collateral for the debt cannot be transferred or transferred by either the debtor or creditor. If the debtor defaults on his debt, the object of the guarantee cannot be owned by the creditor, because the guarantee institution does not aim to transfer title to an item. (Supramono, 2013, p. 59)
   Material guarantees consist of:
   a. Fixed objects (immovable)
      For example: land and other objects that are a unity with the land. This type of object will be burdened with the Right of Liability in accordance with Law No. 4 of 1996 concerning the Right of Liability along with other objects contained on it.
   b. Moving objects
      For example: cars, motorcycles, machinery, accounts receivable, and so on. The object is burdened with three types of guarantees, namely:
      1) Fiduciary based on Law No. 42 of 1999
      2) Mortgage on shares
      3) Cessie on bill
   c. The object is movable but its net size exceeds 20 m3
      Such as ships, barges and similar ships weighing more than 20 m3. The object will be encumbered with a mortgage in accordance with the Civil Code.
   d. Objects erected on the pedestal of the other party's property
      Such as buildings erected on Hak Milik or Hak Guna Bangunan land, the landowner and the building owner are different subjects.

Personal guarantee is a guarantee in the form of a statement of ability provided by a third party, in order to guarantee the fulfillment of the debtor's obligations to the creditor, if the debtor concerned defaults. (Naja, 2005, p. 210)

The elements of individual guarantees are:

1. Have direct contact with a particular person;
2. Can only be defended against certain debtors; and
3. Against the debtor's assets generally.

The word "individual" in the guarantee of an individual must be interpreted as a legal subject, consisting of individuals (humans) and legal entities. Therefore, individual guarantees can be in the form of personal guaranty (person/personal guarantee) and *corporate guaranty* (legal entity/business entity guarantee). (Meliala, 2015, p. 46)

In providing credit in addition to credit guarantees in the form of confidence based on an in-depth analysis of the good faith and ability of the debtor, the bank needs to ask for additional

collateral in the form of material guarantees, namely movable or immovable objects that have clear value and documents and in-material guarantees. (Sutarno, 2003, pp. 140-141)

The sources of banking law in Indonesia in various rules are as follows:

1. Law No. 7 of 1992 concerning banking, State Gazette of the Republic of Indonesia No. 21 of 1992 amended by Law No. 10 of 1998, State Gazette of the Republic of Indonesia No. 182 of 2008 hereinafter referred to as UUP. Law No. 10 of 199 8 does not abolish or replace all articles contained in Law No. 9 of 1992 but only amends and adds some articlesthat are considered important.
2. Act No. 23 of 1999 concerning Bank Indonesia, later amended and refined by Law No. 3 of 2004, which was subsequently amended again by government regulation No. 2 of 2008 concerning the second amendment to Law No. 23 of 1999 concerning Bank Indonesia into Law, namely into Law No. 6 of 2009;
3. Law No. 24 of 2004 on the Board of Guarantors of Savings, which subsequently underwent changes with the Government Regulation of Substitute Law No. 3 of 2008 on Changes to Law No. 24 of 2004 which was later decommissioned into Law No. 7 of 2009.
4. Law No. 21 Thun 2008 on Sharia Banking
5. Government Regulation No. 28 of 1999 concerning Bank Mergers, Consolidations and Acquisitions,
6. Bank Indonesia Regulation No. B/26/PBI/2006 dated 8 November 2006 concerning rural banks;
7. Bank Indonesia Regulation No. 11/1/PBI/2009 dated January 27, 2009 concerning Commercial Banks. (Asikin, 2014, pages 21-22)

The occurrence of credit is based on the existence of an agreement, an agreement or agreement in the terms of the Civil Code, which is an act by which one or more people bind themselves to one or more other people (Article 1313 of the Civil Code). The relationship between two persons is a legal relationship in which the rights or obligations between the parties are guaranteed by law. (Naja, 2005, p. 21) Types of credit agreements, formally juridical there are two types of credit agreements / bank guarantee that banks use in releasing their credit or in providing bank guarantees. Basically, a bank guarantee is a guarantee agreement regulated in Article 1820 of the Civil Code. (Naja, 2005, p. 183)

The term warranty itself comes from the English guarantee or guaranty which means guarantee or guarantee. In Dutch it is called borgtog. In providing banking services to customers, banks can provide bank guarantee services, as long as they do not contradict / violate laws and regulations including Bank Indonesia regulations. In fact, by the bank the provision of this bank guarantee is already a product or service offered in order to get income (fee). However, as we know, the bank business is very conservative.

The types of credit agreements / bank guarantees are credit agreements / bank guarantees made under the hands and credit agreements / bank guarantee made before a notary or authentic deed. Debt guarantee agreements are regulated in Articles 1820 to 1850 of the Civil Code. Underwriting is an agreement, where a third party, for the benefit of creditors, binds itself to fulfill its binding (Article 1820 of the Civil Code) so it is clear that there are three parties involved in the debt guarantee agreement, namely creditors, debtors and third parties.

The nature of the debt guarantee agreement is accesoir (additional) while the main agreement is a credit agreement or money loan agreement between the debtor and creditor.(Naja, 2005, p. 184) (H.S, 2003, p. 90)

Bank guarantee itself is essentially a guarantee in the form of a letter issued by the bank which results in an obligation to pay to the party receiving the guarantee if the guaranteed party defaults (Article 1 paragraph (3) letter (a) of the Decree of the Board of Directors of Bank Indonesia No. 23/88/KEP/DIR dated March 18, 1991) or in other words a guarantee from the Issuing Bank to the Beneficiary that the Bank Guarantee Provider (Applicant) will fulfill his obligations. Referring to the nature of the bank guarantee, the bank guarantee is actually a derivative agreement (accessoir) in the form of a guarantee agreement (borghtocht) as stipulated in the Third Book Chapter XVI Articles 1820 to Article 1850 of the Civil Code (Civil Code). However, the provisions in the Civil Code only regulate the subject of coverage in general and the legal consequences of an insured. Therefore, a technical rule is needed to be a guideline for banks in issuing bank guarantees, to answer these needs.

A bank guarantee agreement is also referred to as a guarantee agreement or borgtocht in accordance with Article 1820 BW which is an agreement whereby a third party, for the benefit of the debtor, binds himself to fulfill the debtor's debtor, while the debtor defaults. In the underwriting agreement or borgtocht there is an obligation to fulfill the performance of the insurer (when the debtor defaults) stated in the accessoir agreement, The bank guarantee agreement is a form of written agreement in which the bank has agreed to bind itself to the recipient of the guarantee in order to fulfill the guaranteed obligation within a certain period of time and with certain conditions in the form of payment of a certain amount of money, If the guaranteed party in the future turns out not to fulfill its obligations to the recipient of the guarantee or there is a default. The provisions mentioned above indicate that the underwriting is an accessoir agreement, that is, because the underwriting depends on the existence of a principal agreement, namely an agreement whose fulfillment is borne or guaranteed by the underwriting agreement itself.

One of the clear bases for banks regarding the necessity of a credit agreement is from Article 1 paragraph (12) of Law Number 7 of 1992 concerning Banking. The inclusion of the words agreement or loan agreement in the definition or definition of credit as Article 1 paragraph (12) mentioned above can have several meanings as follows:

a. That the framer of the law intends to affirm that the bank credit relationship is a contractual relationship between a bank and a debtor customer in the form of lending-borrowing.
b. That the framers of the law intend to require that bank credit relations be established on the basis of a written agreement. If only from the sound of the provisions of article 1 paragraph (12) of the Banking Law 1992. It is difficult to interpret that the provision does require that bank credit should be granted under a written agreement. However, the provisions of the law must be linked to the presidium cabinet instruction Number 15/EK/IN/10/1996 dated October 3, 1996 jo Bank Indonesia Circular Letter Unit 1 Number 2/539/UPK/Pemb. Dated October 8, 1996 and Bank Indonesia Circular Letter Unit 1 Number 2/649/UPK/Pemb. Dated October 20, 1996 and the instruction of the Presidium of the Ampera Cabinet Number 10/EK/IN/2/1967 dated February 6, 1967,

which specified that in providing credit in any form banks must use/make credit agreements.

However, in practice, both conventional and sharia banking systems remain guided by the arrangements provided by Bank Indonesia as the body or institution that has the authority to regulate and supervise banks in Indonesia. Regulations regarding bank guarantees in conventional banks and Islamic banks are specifically regulated by the same regulation, namely the Decree of the Board of Directors of Bank Indonesia Number 23/88/KEP/DIR concerning the Granting of Bank Guarantees dated March 18, 1991.

Bank guarantees in conventional banks are generally subject to the provisions of the Burgerlijk Wetboek and are specifically regulated by regulations established by Bank Indonesia, while sharia bank guarantees are based on the rules in the Quran and Al Hadith, Opinion of Scholars, Fatwa of the National Sharia Council, and rules issued by Bank Indonesia. The second difference is regarding the characteristics of the agreement. In the borgtocht agreement, the guarantor has the right to demand back payment if it owes default, giving rise to the guarantor's obligation to pay first. Where as in the *kafalah*, the guarantor can only claim back payment to the guaranteed party if the kafalah is at the request of the debtor. The third difference is regarding the presence of the parties when the agreement is made. In bank guarantees at conventional banks, not all parties must be present at the time of agreement, while in Islamic bank guarantees all parties must be present. In sharia bank guarantees, it is also known as the opposite guarantee. The guarantee can be in the form of guarantees from banks abroad, cash collateral, or other assets. In practice, banks prefer to ask for cash collateral rather than other collateral. Cash collateral can be in the form of deposits of money, savings, or deposits owned by the party requesting a bank guarantee. The savings used as collateral for the opponent will be temporarily blocked by the party until the term of the bank guarantee and claim submission expires."

Library Review

There are several things that will be discussed in this study, namely:

Execution is a legal action taken by the court to the losing party in a case, is a rule of procedure for the continuation of the continuous examination process of the entire civil procedural legal process. (Salah M. Y., 2000)

Warranty can be defined as the dependents or guarantees of the seller that the goods he sells are free from defects and damage that were not known before. This implies that there is an exception to defects or defects that have been described or notified by the seller to the buyer. Thus, warranty is one form of service provided by producers or sellers to consumers as fulfillment of consumer rights, namely the right to obtain goods in accordance with the exchange rate issued. (Hidayat, 2006)

Islamic banks are banks that operate in accordance with Islamic sharia principles, meaning banks that in their operations follow the provisions of Islamic sharia, especially those concerning Islamic muamalah procedures The basic philosophy of operating Islamic banks that

animate all transaction relationships is efficiency, justice, and togetherness. (Ghoni, 2016, p. 68)

Research Methods

This research uses normative juridical method This concept views law as identical to written norms made and promulgated by authorized institutions or officials and reviews law as an independent normative system, closed and independent of real community life and considers other norms not as law. This research refers to the provisions of positive laws and regulations in Indonesia. The type of data used in this study is secondary data, the approach used in this type of research is literature research. This research collects data related to the problem under study and then parses that data thoroughly to determine the problem, solution, and solution. (Lubis, 2019)

Discussion

Credit Agreement / Bank Guarantee For a release of credit and / or bank guarantee by the bank to its customer, it will always first begin with a request by the customer concerned. If the bank considers the application appropriate to be given, in order to carry out the release of credit and / or bank guarantee, it must first be by holding an agreement or agreement in the form of a credit agreement and / or guarantee agreement

Based on the provisions of Article 8 of Law Number 7 of 1992 as amended by Law Number 10 of 1998, that based on the provisions in this article, the bank can provide credit to whomever it wants, provided that the bank wishes the ability and ability of the debtor to pay off the debt as agreed, meaning that credit can be provided even without being accompanied by collateral or additional guarantees provided that the bank believes to the ability and ability of the debtor to pay off his debt. The value of a guarantee given to creditors usually exceeds the credit value, this is done by the creditor so that he is protected from losses. So, when there is a credit jam, the bank can use or sell the credit guarantee to pay or cover bad credit. The purpose of the credit guarantee here is to protect the bank from delinquent customers, because only a few customers can afford but do not pay their credit. The point is that the credit guarantee here is tied by the debtor to the creditor with the debt owned by the debtor's asset guarantee, so that the debtor does not run away from his debt. (Kasmir, Manajemen Perbankan, 2004, p. 80)

In general, there are four efforts that banks can take to deal with non-performing loans in the event of debtor default, including:

a. Credit restructuring efforts or business restructuring that can be taken through the 3Rs (*rescheduling, reconditioning, restructuring*).
b. Banks can make direct collections using the authority of execution parate based on the agreement to bind collateral.
c. The bank may seek the court's assistance to carry out the execution.
d. The bank can file a civil lawsuit against the debtor through the court.

The agreement in the Banking Credit Agreement must be made in written form. This provision is contained in the Explanation to Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which requires banks as credit

providers to make written agreements. The requirement for banking agreements to be in written form has been stipulated in the main banking regulations by Bank Indonesia as referred to in Article 8 paragraph (2) of the Banking Law. According to Badriyah Harun, the main provisions stipulated by Bank Indonesia are:

1) The provision of credit or financing based on sharia principles is made in the form of a written agreement;
2) The Bank must have confidence in the ability and ability of the debtor customer which among others is obtained from a careful assessment of the character, ability, capital, collateral, and business prospects of the debtor customer.
3) The obligation of banks to develop and implement procedures for providing credit or financing based on sharia principles;
4) The obligation of banks to provide clear information regarding credit or financing procedures and requirements based on sharia principles;
5) Prohibition of banks from providing credit or financing based on sharia principles with different requirements to debtor customers and/or affiliated parties; Dispute resolution. (Laughter, 2018)

Application of Bank Guarantee Execution in Sharia Concept

The legal basis of the Bank Guarantee, is a guarantee agreement *(borgtocht*) regulated in the Civil Code articles 1820 to 1850.To ensure the continuity of the Bank Guarantee, the insurer has a "privilege" given by law, namely to choose one, using article 1831 of the Civil Code or article 1832 of the Civil Code. Article 1831 of the Civil Code: The insurer is not obliged to pay to the debtor, other than if the debtor is negligent, while the debtor's objects must first be confiscated and sold to pay off the debt. While article 1832 of the Civil Code reads: The insurer cannot demand that the *debtor's property first be confiscated and sold to pay off the debt.* Things to Look for in Bank Guarantee:

a. Time of validity and expiration of the principal agreement
b. Time of validity and expiration of Bank Guarantee
c. The time of occurrence of a valid promise can still be covered by a Bank Guarantee
d. Time at the latest for the submission of claims by the insured.

The four things above need attention, especially for the insured, so that if something unexpected happens, then claims can still be made. The insured must also pay attention to whether the Bank Guarantee used article 1831 or 1832, because if it uses article 1831, the Bank does not necessarily pay the claim. Either of these two articles must be chosen in the making of the underwriting agreement. If the deed does not expressly select the two articles, then the deed of granting underwriting is considered to choose article 1831 of the Civil Code. The obligation to choose Article 1831 or 1832 of the Civil Code in every issuance of debt coverage is important because it will involve very broad legal consequences. So that the purpose of providing a bank guarantee by the bank to the recipient of the guarantee or guaranteed is as follows: (Widiyono, 2009, p. 270).

a. Provide assistance, facilities and convenience in facilitating customer transactions.

b. The collateral holder will not suffer losses if the guarantor neglects its obligations, because the holder will receive compensation from the bank.
c. Fostering mutual trust between the guarantor, the guarantor and the undertaker
d. Provide a sense of security and peace in doing business well, for the bank and for other parties,
e. For banks, in addition to the above benefits, they will also benefit from the fees that must be paid by customers and the opposing guarantees provided.(Kasmir, 2014, p. 169)

Bank guarantees in Islamic banks are not entirely based on the provisions regarding kafalah, which is basically a contract to help. In bank guarantees at Islamic banks, the basis used in the agreement is more directed towards the *kafalah*, but the agreement is still adjusted to the needs of the bank and the management of risk management of hedit in banking, so that some provisions in the *kafalah* are not fully used by Islamic banks.

Please note that in *kafalah*, there are two forms of *kafalah* when viewed from the knowledge of the guaranteed party about the existence of a *kafalah* contract, the first is *kafalah* at the behest of the guaranteed party. The guarantor has the right to charge the guaranteed party, if indeed the *al-Kafalah* is based on the order or request of the guaranteed party, the second is the *Kafalah* which is not based on an order. If the existing *al-kafalah* is not based on the orders and requests of the guaranteed party (*ashiil*), then the party who is amin (*kafiil)* has no right to continue to follow and sue the guaranteed party when he continues to be followed and billed by the owner of the right. This is what is actually the existence of *kafalah* which is a *tabarru* contract. However, in Islamic banking practice, what is used is a *kafalah* contract based on an order or request from a guaranteed party.(Zuhaili, 2007)

In the guarantee agreement on which the bank is based, there is actually no known existence of opposing guarantees, both in the presentation of guarantees in the Civil Code, and *kafalah* contracts in Islamic law. However, the existence of an opposing guarantee, in a bank guarantee is important because in issuing a bank guarantee the bank bears the risk. In a sharia bank guarantee, this risk exists when a claim is filed from the *makful lahu* for the bank guarantee issued, so that the bank's obligation arises to pay a sum of money to the *makful lahu*. In this case, the bank guarantee which was originally a non-cash loan turned into a cash loan because the bank had issued funds for kJaim payments. Since the moment of payment of the claim, the *kafalah* contract which is an agreement between 3 (three) parties, namely *kafil, makful 'anhu, and makful lahu* has ended.

In the Conventional system, the executory power of the Bank Guarantee against the assets of the defaulting debtor refers to the principal agreement made by the parties that does not conflict with the Law, so it can be said that if the debtor defaults, the bank can directly execute the guarantee in the form of the "*Bank Guarantee*".

Conclusion

The executory power of bank guarantees against the assets of defaulting debtors refers to Article 1131 and Article 1132 of the Civil Code. The execution in this civil case is carried out

based on the application of the party declared victorious by the Judge's Decision, beginning with a warning given by the Chief Justice of the District Court to the party declared defeated to carry out the decision voluntarily in a matter of days and given a period.

In the borgtocht agreement, the guarantor can demand repayment from the guarantor, whereas in the *kafalah* contract, repayment can only be demanded if the contract is ordered by *makful 'anhu*. In the borgtocht agreement, not all parties must be present when the agreement is made, while in the *kafalah* contract, all parties must be present when the contract is executed.

Counter guarantee in bank guarantee at Islamic banks is allowed in the form of savings deposits owned by customers by blocking the customer's account during the period of the bank guarantee.

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