

# MUAMALAH FIKH OVERVIEW OF SHARIA BANK GUARANTEE

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**Abstract-** At this time the Indonesian economy is developing, of course, the needs of the community are also increasing. But in terms of development with funding factors, the Indonesian nation is still experiencing a slump, this is due to the lack of guarantees to guarantee the development project. To meet customer needs, various products need to be created. -More advanced products and higher competition. For this reason, Islamic banks add new service products, namely guarantees (bank guarantees) to meet the needs of business transactions and to increase banking service revenues.

**Keywords:** bank guarantee, sharia bank, Islamic economics, muamalah fiqh

## 1. Introduction

Bank Guarantee is a payment guarantee given by a bank to one party, either an individual, a company or another entity/institution in the form of a guarantee letter. Transfer is a money transfer service, either between the same bank or to different banks. Transfer services can be made within the same region, to other regions or abroad.

Banking institutions are financial institutions whose main activity is to collect funds from the public and channel these funds back to the public and provide other banking services.

The business world and the general public are in dire need of banking services to complete their financial transactions. Transactions that are generally carried out by people in banking are saving money and withdrawing it. For business people, banking transactions are not just about saving and withdrawing company funds. The innovation of banking products today is evidence of the diverse demands of the business world for the services that can be offered by banks. Bank Indonesia in a seminar on December 16, 2013 with the theme “New Era of Sharia Banking: Towards the Development of Integrated and Cross Sector Sharia Banking” launched the 2014 Sharia Banking Outlook.

Islamic banking has existed in Indonesia since 1991 which was marked by the establishment of Bank Muamalat. In addition, the existence of Islamic banking has been recognized with the issuance of Law no. 21 of 2008 concerning Islamic Banking. As is well known, in addition to funding and financing activities, banks also launch service products such as money transfers, bank guarantees, letters of credit, etc. Service income at Islamic banks plays a very important role in increasing revenue, especially when income decreases due to competition from competitors, especially conventional ones.

Based on the background of the problems described above, the author presents the main problem, namely "Overview of muamalah fiqh on sharia bank guarantees"

## **2. Discussion**

### **A. Definition of Islamic Bank**

Islamic bank consists of two words, namely bank and sharia. The word bank means a financial institution that functions as a financial intermediary from two parties, namely those who have excess funds and those who lack funds. The word sharia in the version of the Indonesian sharia bank is a rule of agreement based on what is done by the bank and other parties for the deviation of funds and financing of business activities and other activities in accordance with Islamic law. Islamic bank is a financial institution that functions as an intermediary for parties who have excess funds with parties who lack funds for business activities and other activities in accordance with Islamic law. In addition, Islamic banks are commonly called Islamic banking or interest free banking, which is a banking system that does not use interest (riba), speculation (maisir), and uncertainty or obscurity (gharar) in its operations.

Islamic banks as a financial institution have a basic mechanism, namely accepting deposits from capital owners (depositors) and having an obligation (liability) to offer financing to investors on the asset side, with a financing pattern or scheme in accordance with Islamic law. On the liability side, there are two main categories, namely interest-free current and saving accounts and investment accounts based on the PLS (profit and loss sharing) principle between the bank and the depositor, while on the asset side, which includes all forms of pattern financing that is free from usury and according to sharia principles or standards, such as mudharabah, musyarakah, istisna, greetings, etc. Another term used for the designation of Islamic banks is Islamic banks, academically, the terms Islam and Sharia are different but technically the terms Islamic banks and Islamic banks have the same meaning. Islamic bank is a financial institution whose main business is providing credit and services in payment traffic and money circulation whose operations are adjusted to the principles of Islamic sharia. So it can be said that what is meant by an Islamic bank is a financial institution whose main function is to collect funds to be distributed to people or institutions who need it with an interest-free system.

### **B. The purpose of Islamic banks**

The goal of Islamic banks is to spur economic development and social progress of member countries and Muslim communities, both individually and collectively, while the main purpose of establishing Islamic banks is to avoid interest on money carried out by conventional banks.

#### **1) Islamic bank products, namely:**

##### **a) Islamic bank fund collection**

Islamic bank products are aimed at mobilizing and investing savings for economic development in a fair manner so that fair profits can be guaranteed

for all parties. In this case, Islamic banks do so not with the principle of interest (riba) but with principles that are in accordance with Islamic law.

- b) Funding with the wadi'ah principle in the form of wadi'ah demand deposits is a sharia bank funding product in the form of deposits from customers in the form of current accounts for security and ease of use. And also wadiah savings are sharia bank funding products in the form of savings from customers in the form of savings accounts for security and ease of use, such as wadiah current accounts, but not as flexible as wadiah current accounts because customers cannot withdraw their funds by check. it can be concluded that wadiah is funds or assets deposited by someone whose purpose is to be kept, the funds may be used as long as the owner allows it.
- c) Funding with the mudharabah principle, namely the giving of assets from one person to another as business capital, but the profits obtained will be divided between the two of them and if the loss will be borne by the owner of the capital. Mudharabah is divided into two, namely mudharabah mutlaqoh and mudharabah muqayyadah.
- d) Funding with the qard principle, namely when the bank is considered the recipient of an interest-free loan from the depositor's customer as the owner of capital. Banks can use loan funds from depositors for any purpose, including for profit-seeking productive activities, while customers are guaranteed to get their funds back in full, whenever the customer wants to withdraw their funds. agreement.
- e) Funding with the principle of ijarah is a contract to exchange something for something in return.

## 2) Islamic banking services

Banking service products with other patterns generally use tabarru' contracts which are not intended to seek profit, but are intended as service facilities to customers in conducting banking transactions. Therefore, the bank as a service provider only charges administrative costs. The banking services of this group which are not included in the tabarru' contract are the sharf contract which is a contract of exchange of money for money and ujr which is part of the ijarah (rent) which is intended to earn wages. So according to researchers, services from banks must be improved to be more diverse, not only that. So that people are more able to not get bored and their needs can be fulfilled in their entirety.

## C. Definition of Bank Guarantee

Bank Guarantee is etymologically derived from two words, namely, Bank and Guarantee. In simple terms, a bank is defined as a financial institution whose business activity is to collect funds from the public and channel these funds back to the community and provide other banking services. Meanwhile, in general, the term Bank Guarantee is a guarantee of payment given to a party, either individuals, companies, entities, or institutions where the bank states it will fulfill the obligations of parties who do not fulfill (pay) obligations to other parties. So, banks will provide service

guarantees to their customers if there is a manifestation with their customer's business partners. While the definition of a financial institution is any company engaged in finance whose activities are only to collect funds or only to distribute funds or both. Then according to Law No. 10 of 1998, what is meant by a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of the people.

According to the researcher, the bank guarantee itself is a written commitment given by the bank to the recipient of the guarantee that the bank will pay a certain amount of money to him at a certain time if the guaranteed party cannot fulfill its obligations.

From the definition above, it can be concluded that a bank is a financial institution whose activities are:

- a) Collecting funds (money) from the public in the form of savings, meaning in this case the bank as a place to store money or invest for the community. The types of deposits offered vary greatly depending on the bank concerned. In general, the types of deposits in banks consist of demand deposits, savings deposits, and time deposits.
- b) Channeling funds to the public, meaning that banks provide loans (credit) to people who submit applications. In other words, banks provide funds for people who need them.
- c) Providing other bank services, such as remittances (transfers), collection of securities originating from within the city (clearing), collection of securities originating from outside the city and abroad (inkaso), letters of credit (L/ C), safe deposit boxes, bank guarantees, bank notes, travelers checks and other services. While the meaning of guarantee in language means a guarantee or a dependent. Bank Guarantee is a guarantee of payment given by the bank to a party, whether an individual, company or other entity / institution in the form of a guarantee letter, meaning that the bank guarantees to fulfill (pay) the obligations of the guaranteed party to the party receiving the guarantee, if which is guaranteed later turns out to not fulfill obligations to other parties in accordance with the agreement or breach of contract.

Issuance of bank guarantees by banks involves various interested parties. Each party has a specific purpose and purpose in issuing bank guarantees. In the bank guarantee there are parties involved in providing bank guarantee facilities, namely:

- a). Guarantor (bank), namely the bank as the party providing the guarantee.
- b). Guaranteed (customer), namely the party who is guaranteed by the bank
- c). Guarantee recipient (third party), namely the party who receives the guarantee.

Kafalah According to the language, it means gathering. And according to the term syara 'means the collection between the dependents of a guarantor (kafil) and someone who is borne (ashil) in meeting the demands of debt or life, or goods or

labor. This definition is according to the Hanafi Fiqh experts. As for the definition of other priests, Kafalah is a collection, between two dependents in meeting demands and debts. So it can be concluded that kafalah is a guarantee given by the insurer to a third party to fulfill the obligations of the second or borne party.

Kafalah as a contract used for sharia banking service products is referred to by Law No. 21 of 2008 in Article 19 paragraph (1) and (2) letter i, kafalah in this paragraph is one alternative choice besides ijarah, musyarokah, mudharabah, murabahah and hawalah for sharia commercial bank business activities which include buying, selling or underwriting at own risk third party securities issued on the basis of sharia principles. Article 19 paragraph (1) is intended for BUS and Article 19 paragraph (2) is intended for UUS. Real transactions in the two paragraphs above are transactions based on tangible assets.

The provision of bank guarantees is one of the functions of commercial banks, this is in accordance with Article 6 of Law no. 10 of 1998 concerning amendments to Law No. 7 of 1992, namely carrying out other activities commonly carried out by banks as long as they do not conflict with the applicable laws and regulations. Meanwhile, judging from the provisions of the Civil Code, Bank Guarantee is a debt guarantee agreement (Borgtoch) as stipulated in book III Chapter XVII, namely articles 1820-1850, where the bank in this case acts as the guarantor. In general, in issuing a Bank Guarantee, the bank must enter into a transaction first. In a sense, to issue a Bank Guarantee there must be a main activity that will be guaranteed through a Bank Guarantee. The main activities, for example: winning the tender for a particular project. This activity results in an obligation to pay at a certain time in the future and so on. The main activity takes time and after that period certain parties must fulfill obligations in the future, a bank guarantee is needed, namely a Bank Guarantee.

The Bank issues a Bank Guarantee as a written acknowledgment whose contents agree to bind themselves to the recipient of the guarantee within a certain period of time and conditions, if in the future it turns out that the guaranteed person does not fulfill his obligations to the guarantee recipient. Therefore, the Bank is considered a bona fide institution, people believe that in due time the Bank can and will realize the Guarantee that has been issued. The parties involved in the process of providing Bank Guarantee facilities are:

- a) The Guarantor or Bank Bank in issuing a Bank Guarantee wants a counter guarantee from the debtor if the debtor breaks his promise.
- b) Guaranteed Party or Debtor Is a party who asks for guarantees from the Bank to finance a business or project. It is intended that the customer is considered to have a certain amount of money by the employer.
- c) Guarantee Recipients or Creditors Is the party that gives work to work on a project. This is necessary so that the debtor can complete the work properly and correctly and not break his promise.

Bank Guarantees are given by customer requests in order to provide convenience for customers in doing their business. The purposes of providing the Bank Guarantee are:

- a. Provide assistance with facilities and convenience in facilitating customer transactions.
- b. For the holder of the guarantee, the Bank Guarantee is to provide confidence that the holder of the guarantee will not suffer losses if the guaranteed party neglects his obligations, because the holder will receive compensation from the bank.
- c. Fostering mutual trust between the guarantor, who is guaranteed and to receive the guarantee.
- d. Provide a sense of security and peace in doing business, both for the Bank and for other parties.
- e. For the Bank, in addition to the benefits above, it will also benefit from the fees that must be paid by the customer and the guarantee against the opponent that has been given.

From these things, it can be concluded that the Bank Guarantee aims to provide creditors or guarantee recipients to guarantee the obligations (achievements) of the debtor or guaranteed as mutually agreed. If the debtor does not fulfill its obligations, the Bank will guarantee these obligations.

Prohibitions in Financial Transactions In the fiqh muamalah literature, there are many prohibitions that must be avoided in transactions, including: usury, maisir, gharar, tadlis, ba'i najasy, ihtikar, iktinaz, talaqqi rukban, etc. Among these prohibitions, there are 3 prohibitions that most often occur in banking transactions, namely usury, maisir and gharar. The following is a brief description of the three prohibitions.

#### D. Riba

Etymologically, usury means ziyadah (additional), to grow, to enlarge. Terminologically, usury is taking additional from principal or capital that is not good or contrary to sharia principles. The usury that was practiced during the jahiliyah period can be divided into two, namely usury on accounts payable and usury of buying and selling. The first group is further divided into usury qardh and usury jahiliyah. The usury of buying and selling is divided into usury fadhl and usury nasi'ah. The brief explanation is as follows:

- a) Riba qardh is usury borrowing where in the contract it is stated that the lender demands more return to the borrower.
- b) Riba jahiliyah is a debt that is paid in excess of the loan principal because the borrower is unable to repay the loan at maturity. This inability is exploited by lenders to take advantage.
- c) Riba fadhl, namely usury due to the exchange of similar goods that do not meet the criteria in terms of quality (mitslan bi mitslin), quantity (sawaa an bi sawaa

in), delivery (yadan bi yadin) resulting in ambiguity (gharar) between the two parties.

- d) Riba nasi'ah or usury duyun, namely usury arising from the suspension of delivery or receipt of usury goods exchanged for other types of usury goods. Riba in nasi'ah arises because of differences, changes, or additions between what is given now and what is given later. In conventional banks, usury nasi'ah is found in loan interest, deposit interest and savings interest. The percentage of loan interest to customers is determined at the beginning of the transaction based on the funds provided, even though the customer's business is not necessarily profitable. The percentage of interest on savings and time deposits is also determined at the beginning, even though banks may lose money in channeling funds to debtors.

#### E. Maisir

Maisir can be interpreted as something that contains elements of gambling (gambling) which places one party at the expense of the other. Every game or match, whether in the form of a game of chance, game of skill or natural event, must avoid the occurrence of a zero sum game, which is a condition where one or several players have to bear the burden of other players.

Allah SWT says: "O you who believe, verily (drinking) khamr, maisir, (sacrificing for) idols, drawing fate with arrows, are heinous acts including the actions of the devil. So stay away from these actions so that you will get good luck. Indeed, the devil intends to cause enmity and hatred among you because of (drinking) alcohol and gambling, and preventing you from remembering Allah and praying; then stop you (from doing that work)". (Surat al-Ma'idah: 90-91).

#### F. Gharar

Gharar can be interpreted as uncertainty/vagueness or speculation for both parties who transact (uncertainty to both parties) where incomplete information occurs.

Gharar can occur in 4 things, namely quantity, quality, price and delivery time. At the beginning of the transaction, both parties were equally willing, even though the situation was still unclear to both of them. When there is uncertainty in the future, one of the parties will feel wronged.

In the Qur'an, Allah does not forbid usury and at the same time it remains gradual, namely:

- a) Surah Ar-Rum 30:39. This verse does not show any indication regarding the prohibition of usury. This verse explains God's hatred of usury as well as a warning to stop the activity of usury.
- b) Surah An-Nisa 4: 160-161. At this stage, Allah threatened to reward the Jews who ate usury. Riba is described as a bad thing.
- c) Surah Ali Imran 3: 130. Riba is forbidden by being associated with an additional that is multiplied. The commentators argue that taking usury at a fairly high level was widely practiced at that time.

#### G. The existence of Islamic banks in religious moderation

Currently, Indonesia actually has the largest number of Islamic financial institutions in the world. There are 34 sharia banks, 58 takaful (sharia insurance) operators, 7 sharia venture capitalists, more than 5,000 sharia microfinance institutions, and more than 23 million customers. This condition makes the opportunity for the development of Islamic banking in the country is still wide open. If we really encourage the Islamic finance industry, Islamic finance can become one of the main solutions in financing development in our country, both for the economic development of the people, infrastructure, roads, bridges, ports, power plants, as well as in financing poverty alleviation programs, as well as reducing poverty. social inequality.

With the inauguration of the KNKS, the Islamic banking market in the country is able to grow even more. Currently, based on available data, the Islamic banking market for 2016 only reached 5.3 percent of all assets of the national banking industry. "In fact, with the capital strength of the largest Muslim population in the world, Indonesia should and should be at the forefront, become a leader, and become the world's center of Islamic finance. Just look at Saudi Arabia, which has 51.1 percent of the Islamic banking market, and Malaysia which has reached 51.1 percent. 23.8 percent, and the United Arab Emirates which reached 19.6 percent. This is an opportunity that must be taken advantage of. Do not let other countries take advantage of it later.

### **3. Conclusion**

Bank Guarantee is a guarantee of payment given by a bank to one party, either an individual, a company or another entity/institution in the form of a letter of guarantee. Transfer is a money transfer service, either between the same bank or to different banks. Transfer services can be made within the same region, to other regions or abroad.

The goal of Islamic banks is to spur economic development and social progress of member countries and Muslim communities, both individually and collectively, while the main purpose of establishing Islamic banks is to avoid interest rates carried out by conventional banks.

There are 3 prohibitions that most often occur in banking transactions, namely usury, maisir and gharar. In the Qur'an, Allah does not forbid usury and at the same time remains gradual, namely: QS Ar-Rum 30:39, QS An-Nisa 4: 160-161, QS Ali Imran 3: 130.

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