

## UNDERSTANDING THE LEGAL BASIS AND IMPLEMENTATION PRACTICES OF KAFALAH

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### Abstract

*This research explores the concept of kafalah, a crucial element of Islamic law. It discusses the definition of kafalah, its legal foundation, the pillars and conditions of al-kafalah, the different types of al-kafalah, its implementation, and the payment by the guarantor (dhamin). A qualitative method with a library research approach is used, gathering information from both primary and secondary sources. The library research methodology involves analyzing secondary legal materials by reading, analyzing, and compiling data from pertinent literature. The findings reveal that the concept of kafalah in Islam is firmly rooted in the Qur'an, Hadith, and the consensus of scholars. Kafalah is considered important for maintaining social and economic balance and providing assurance for individuals in need. The study also highlights the importance of a proper understanding of the implementation of kafalah to ensure it aligns with Islamic law, including the necessary pillars and conditions and the fair mechanism for payment of dhamin. Thus, a deep understanding of kafalah can contribute positively to the practice of Islamic law in society.*

**Key Words:** Assurance, Guarantor, Implementation, Kafalah, Law.

### 1. Introduction

The *Kafalah* contract is a form of *tabarru'* contract, where a *kafil* (guarantor) assures a third party (the lender) that they will fulfill the obligations of the second party (the borrower). There are three main aspects of *kafalah*: the guarantor's pledge to meet the obligations of another person, the guarantor's capacity to deliver the guaranteed goods, and the guarantor's ability to present the person responsible for the obligation to the other party (Karim, 2008).

Banking plays a crucial role in the development of a country, realized through the function of banks as financial intermediaries. Banks collect funds from the public in the form of deposits and channel them back to the public in the form of loans or other means to improve the standard of living of society. According to Law No. 10 of 1998, the operational principles of banks are divided into two systems: the conventional banking system and the Islamic banking system.



Banking is essential for a country's development, primarily through its role as a financial intermediary. Banks gather funds from the public as deposits and then redistribute them as loans or other financial services to enhance the community's standard of living. According to Law No. 10 of 1998, banks operate under two main systems: the conventional banking system and the Islamic banking system.

Islamic banks are institutions that offer banking services in accordance with Islamic sharia principles. The Islamic banking system has the benefit of a profit-sharing model that ensures fairness for all parties involved. Additionally, the Islamic banking system does not rely on fluctuating interest rates, making it more resilient during economic crises. The services offered by Islamic banks typically use *tabarru'* contracts, which are not intended to generate profit for the bank but rather to provide services to customers conducting banking transactions. One example is the *kafalah* contract.

The *kafalah* contract has been established as a banking service product under the provisions of Law No. 10 of 1998 regarding Banking, and further supported by Law No. 21 of 2008 on Islamic Banking. The guarantor (*kafil*) commits to fulfilling the obligations of the guaranteed party, ensuring the presence of the goods or person responsible for the obligation, and executing responsibilities according to sharia principles.

## 2. Method

This research utilizes a qualitative approach through library research. The method involves gathering diverse sources from primary and secondary literature concerning the subject of *kafalah*. This method is based on library research since the subject of the study is written texts that have been compiled into a corpus (data used as sources and research material).

The research utilizes primary literature focusing on *kafalah*. These primary sources cover various aspects including the definition, legal foundations, principles, conditions, types, implementation, and indemnity payment related to *kafalah*. Additionally, this research also utilizes secondary sources such as books, classical Islamic texts (*kitab kuning*), the Qur'an, journals, newspaper articles, websites, magazines, and others.

In this study, the author uses a content analysis approach. Data obtained from these sources are then collected, filtered, and analyzed using an interpretative method to understand the concept of *kafalah* from an Islamic perspective. This analysis focuses on understanding the legal basis and implementation practices of *kafalah* in the Islamic context, as well as strategies for its application in accordance with Islamic law. Furthermore, the analysis involves an internal coherence method to deepen the understanding of *kafalah* and to seek a central understanding of the

issues surrounding *kafalah* in Islamic law. The research utilizes primary literature focusing on *kafalah*. These primary sources cover various aspects including the definition, legal foundations, principles, conditions, types, implementation, and indemnity payment related to *kafalah*. Additionally, this research also utilizes secondary sources such as books, classical Islamic texts, the Qur'an, journals, newspaper articles, websites, magazines, and others.

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### 3. Result and Discussion

#### 3.1 The Definition of *Kafalah*

*Al-kafalah* is a form of guarantee where a guarantor (*kafil*) commits to fulfilling the obligations of a second party or the party being guaranteed to a third party. *Kafalah* also means the transfer of responsibility from the person being guaranteed to the guarantor as the surety (Djuwaini, 2008).

Etymologically, *al-kafalah* means guarantee (*al-dhaman*), burden (*hamalah*), and responsibility (*za'amah*). According to Sayyid Sabiq, *al-kafalah* is the process of combining the guarantor's (*kafil*) liability with the primary liability in the same claim, whether it involves a debt of goods or services. Iman Taqiyyudin defines *kafalah* as the accumulation of one liability with another. Hasbi Ash Shidiqi states that *al-kafalah* is the merging of one person's liability with another person's liability in a claim. (Suhendi, 2002)

In Sharia, *kafalah* is the act of combining the guarantor's liability with the primary obligor's liability regarding claims related to life, debt, goods, or services. *Kafalah* occurs with the presence of a guarantor (*kafil*), a primary obligor, the creditor, and the liability. The guarantor or *kafil* is the person who commits to fulfilling the liability (Sabiq, 2009).

Some also believe that the term "*kafalah*" refers to a concept in Islamic finance that involves a guarantee or suretyship. This term is frequently used in various financial products and services, particularly in the context of Islamic banking and insurance. *Kafalah* is a contractual agreement within Islamic finance whereby one party (the guarantor) undertakes to guarantee the debt or obligation of

another party (the debtor). This arrangement ensures that the debtor's obligations will be fulfilled in case they are unable to meet them (Amirullah, 2023).

The conditions for becoming a *kafil* are: one must be of legal age, mentally sound, have full authority over their property, and consent to the act of guaranteeing. The primary obligor is the debtor, who is the one being guaranteed. The debtor does not need to be of legal age, mentally sound, present, or consent to the guarantee. Guaranteeing can be done for a minor, a mentally ill person, and an absentee. However, the guarantor cannot claim compensation from the guaranteed party after fulfilling the obligation, except in the case where the guarantee was for a minor permitted to trade by their guardian (Sabiq, 2009).

The creditor is the person who extends the loan. The guarantor must know the creditor, as people differ in their approach to making claims, both in terms of leniency and firmness. Their objectives in making claims also vary. This ensures no fraud in the guarantee process. However, knowing the primary obligor is not required. The liability, whether it concerns life, debt, goods, or services, must be executed on behalf of the primary obligor (Nawawi, 2012).

A *kafil* is someone who is obligated to fulfill the liability (*makful bihi*). They must be of legal age, mentally sound, have full rights to act over their property, and agree to the *kafalah*. A *kafil* cannot be a mentally ill person or a minor, even if they can distinguish right from wrong. A *kafil* is also referred to as a *dhamin* (guarantor), *za'im* (responsible party), *hammil* (burden bearer), and *qabil* (acceptor).

The *ashil* is the debtor, the person being guaranteed. The *ashil* does not need to be of legal age, mentally sound, present, or consent to the *kafalah*. It is sufficient for the *kafalah* to be applied to a minor, a mentally ill person, and an absentee. The *kafil* cannot claim compensation from these individuals unless the *kafalah* was applied for a minor allowed to trade by their guardian.

The *makful lahu* is the creditor. The guarantor must know this party because people differ in their demands. This knowledge facilitates ease and discipline. Claims vary, so without this knowledge, the guarantee is considered invalid. Knowing the primary obligor (*madmun'anhu*) is not required (Djuwaini, 2008).

The *makful bihi* refers to the person, goods, or services that must be fulfilled by the primary obligor (*makful anhu*) (Djuwaini, 2008).

#### a. *Al-Kafalah* According to Four Schools of Thought

- The *Shafi'i* School defines *Al-Kafalah* as a contract that entails assuming responsibility for the rights owed to another person, the delivery of the object of that responsibility, or the presentation of the responsible party (Al-Juzayri, 1996).

• The *Maliki* School of thought defines *Al-Kafalah* as the responsibility of a guarantor to fulfill both their own obligations and those of the person they are guaranteeing, whether these obligations are the same or different in nature.

• *Hanafi* School: In this school, *Al-Kafalah* has two meanings. First, it means combining one's liability with another person's liability in claims related to life, debt, or objects. Second, it refers to combining one's liability with another's specifically concerning debt.

• *Hanbali* School: According to the Hanbali school, *Al-Kafalah* is a commitment to something required by another person and the continuity of the object that is under liability, or the commitment of the person who has the right to present two assets (the owners) to the person entitled to them.

According to Sayyid Sabiq, *Al-Kafalah* is the process of combining the guarantor's (*kafil*) liability with the primary obligor's (*ashil*) in the same claim, whether it involves debt of goods or services. According to Iman Taqiyyudin, *Kafalah* is the consolidation of one obligation with another. According to Hasbi Ash Shidiqi, *Al-Kafalah* refers to the combination of one individual's responsibility with another individual's liability in legal claims (Suhendi, 2002).

In Sharia law, *Al-Kafalah* generally refers to the integration of the guarantor's responsibility with that of the primary obligor regarding claims related to life, debt, goods, or services. This arrangement involves the guarantor (*kafil*), the primary obligor, the creditor, and the liability in question. The *kafil*, or guarantor, undertakes the commitment to fulfill the obligation (Sabiq, 2009).

The *kafalah* contract in Islamic banking serves as a means for banks to ensure the activities or businesses proposed by customers. This guarantee, provided through *kafalah*, can take the form of asset guarantees (*kafalah bi al-mal*) or personal/institutional guarantees (*kafalah bi al-nafs*). In this arrangement, the bank assumes financial or institutional responsibility to guarantee the party requesting this service (Azani & Basri, 2021).

### 3.2 Legal Basis of *Al-Kafalah*

The *kafalah* contract in Islamic banking functions as a mechanism for banks to secure the proposed activities or businesses of their customers. This assurance, facilitated through *kafalah*, can be in the form of asset guarantees (*kafalah bi al-mal*) or personal/institutional guarantees (*kafalah bi al-nafs*). Under this agreement, the bank undertakes financial or institutional liability to ensure the party requesting this service." This verse emphasizes that in any agreement or guarantee, there must be a strong contract between the parties, based on mutual trust in the name of Allah SWT. This is related to *kafalah*, where the guarantor is the one who pays the debt or obligation. This is further reinforced in Surah Yusuf, verse 72: "The callers



proclaimed, 'We are missing the king's cup. Whoever brings it back will receive a camel's load of provisions, and I guarantee it.'" According to Ibn Abbas, the term *zaim* in this verse means *kafil*, which translates to guarantor (Siregar & Khoerudin, 2019).

Additionally, the legal foundation of *kafalah* is supported by the consensus (*ijma'*) of scholars, where Muslims agree that the *kafalah* contract is permissible because it is needed to help each other and prevent harm to those in debt. This contract has existed since the time of the Prophet Muhammad, and to this day, there has been no dispute about its validity due to the benefits it contains (Sabiq, 1971).

Islamic law allows the *kafalah* contract as prescribed in *syar'un man qablana* (the law before us), as explained in Surah Yusuf, verse 72. When the king's cup was lost, the royal courtiers announced a reward: "Whoever finds the king's cup will receive a camel's load of provisions, and the royal court guarantees it" (Departemen Agama RI, 2010).

This is further confirmed in a hadith from Abu Dawud: "The one who guarantees is the one who must bear the responsibility" (Abdurrahman, 2011). According to the consensus of Muslims, the *kafalah* contract is necessary to alleviate the burden of those in debt (Al-Zuhayli, 2018). This is in line with the DSN MUI Fatwa, specifically Fatwa DSN-MUI/IV/2000 on *Kafalah*, which outlines the general provisions of *kafalah*, the pillars and conditions of *kafalah*, and permits the use of *kafalah* contracts in Islamic banking (Fadillah, 2020).

The wisdom behind the implementation of the *kafalah* contract includes fostering mutual assistance, providing security, comfort, and certainty in transactions. According to Wahbah Al-Zuhayli, as quoted by Ghazaly, the wisdom of the *kafalah* contract is to strengthen rights, realize mutual assistance, and facilitate transactions in debt, assets, and loans. This provides peace of mind for both the debtor and the creditor (Ghazaly, Ihsan, & Shidiq, 2018).

A hadith mentions: Massaddad narrated to us, Yahya narrated to us from Sufyan, who narrated to me from Sa'd bin Ibrahim from 'Abdullah bin Syaddad from 'Ali. It is also narrated by Qadishah, Sufyan narrated to us from Sa'd bin Ibrahim, who narrated to me from 'Abdullah bin Syaddad, who said or heard 'Ali (may Allah be pleased with him) say; I have never seen the Prophet (peace be upon him) give a ransom guarantee to anyone except Sa'd, where I heard him say (to Sa'd): "Shoot, for the sake of my father and mother, whom I ransom for you (to Allah)" (Muslich, 2013).

Thus, the legal basis for *kafalah* in Islam is strongly rooted in the Qur'an, hadith, the consensus of scholars, and the fatwa of DSN/MUI, bringing significant benefits to the social and economic life of Muslims.

### 3.3 Pillars and Conditions of *Al-Kafalah*

A contract is considered valid if it fulfills its conditions and pillars. This also applies to *kafalah*. The conditions of *kafalah* refer to the pillars, which consist of the parties (subjects) that give rise to subjective conditions, the object of the contract that gives rise to object conditions, and the form of the contract or agreement. Here is an explanation of the pillars and conditions of *kafalah* (Abdurrahman, 2018):

a. *Kafil* (Guarantor):

Conditions: The *kafil* must be legally competent (ahliyah akad) and capable of entering into a *kafalah* contract. The guarantor must have mutual consent and recognition with the parties involved. According to the majority of scholars, excluding Hanafi scholars, there are five pillars of *kafalah*. However, Hanafi scholars believe that the pillars of *kafalah* consist only of the declaration of offer (*ijab*) and acceptance (*qabul*).

b. *Makful 'anhu/Madin/Ashil* (Guaranteed Party):

Conditions: The guaranteed party must be legally competent and have a good intention to fulfill their responsibilities.

c. *Makful Lahu/Da'in* (Creditor):

Conditions: The creditor must have a clear identity known to the guarantor. They must also be of sound mind and be present during the contract or be represented.

d. *Makful Bih/Al-Dain* (Object/Debt):

Conditions: The guaranteed object must be something for which the *ashil* is responsible, such as a debt, goods, or life. The object must be executable and represent a binding debt.

e. *Shighat* (Declaration of Offer and Acceptance):

Conditions: The contract must consist of an appropriate declaration of offer and acceptance. There must be certainty, and it should not be conditional. The declaration of offer and acceptance must indicate a commitment.

Pillars and Conditions of *Kafalah* According to Various Opinions: According to Imam Hanafi (Antonio, 2001), the pillars of *kafalah* are the declaration of offer and acceptance. Meanwhile, according to the majority of scholars, the pillars of *kafalah* include:

a. *Shighat*: The declaration of offer from the guarantor or acceptance of the contract. The *shighat* can be expressed with words that imply responsibility or commitment, such as "*kafaltu*" (I guarantee), "*dlomintu*" (I ensure), or "*tahamaltu*" (I bear/assume responsibility).

b. *Kafil*: The guarantor must be of legal age (baligh), of sound mind, and not under interdiction for prodigality. The guarantor should not be in severe illness.

c. *Makful Lahu*: The party whose interest is guaranteed or the creditor. Their identity must be clear and known to the guarantor.

d. *Makful 'Anhu*: The guaranteed party. According to Hanbali and Shafi'i schools, the guarantor does not need to know the identity of the guaranteed party.

e. *Makful Bih*: The object of *kafalah*, which can be goods, debt, or tasks that the *makful 'anhu* must perform.

*Kafalah* Contract Scheme: In business, the *kafalah* contract is closely related to banking. The following is the scheme of the pillars of *kafalah*:

a. Guarantor (*Kafil*): Must be an adult (baligh), of sound mind, fully capable in matters of wealth, and willing to assume the *kafalah* responsibility.

b. Debtor (*Makful 'Anhu*): Must be legally competent, have good intentions, and able to hand over responsibility to the guarantor.

c. Creditor (*Makful Lahu*): Must have a clear identity, be present during the contract, or authorize a representative if unable to attend.

d. Guaranteed Object (*Makful Bih*): Must be a responsibility with a clear value and specification, and not contrary to Sharia (Muslich, 2010).

According to Nurjaman & Witro (2021), the object of *kafalah* must be the full responsibility of the debtor and binding. Scholars also allow guaranteeing something that the Prophet Muhammad guaranteed, even if it is unclear (*majhul*). Pillars of *Kafalah* in Fiqh: According to various fiqh literature, the pillars of *kafalah* include:

a. *Kafil*: A person who has empathy, is of legal age (baligh), and of sound mind. It cannot be a child or an incompetent person (*safih*).

b. *Makful 'Anhu*: A person who can accept the guaranteed object, either directly or through a representative.

c. *Makful Lahu*: A person who is of sound mind, of legal age, and present during the contract.

d. *Makful Bih*: A clear and binding object.

e. *Shighat*: Words that imply responsibility and are not temporary.

The Fatwa issued by the National Sharia Council No. 11/DSN-MUI/IV/2000 concerning *Kafalah* encompasses various essential aspects, encompassing general provisions as well as the pillars and conditions of *kafalah*. According to the general provisions, both parties must declare their offer (*ijab*) and acceptance (*qabul*) to signify their mutual agreement in establishing a contract (*akad*). Under a *kafalah*

contract, the guarantor may receive compensation as long as it is reasonable, and a remunerated *kafalah* is legally binding and cannot be unilaterally revoked. The pillars and conditions of *kafalah* stipulate that the guarantor (*kafii*) must be of legal age (baligh), of sound mind, possess full legal capacity to manage their assets, and willingly (*ridha*) accept the responsibility of the *kafalah*. The debtor (*ashiil*, *makfuul 'anhu*) must be able to transfer his obligation (debt) to the guarantor and be known to the guarantor. The creditor (*makfuul lahu*) must have a known identity, be present at the time of the contract or give authorization, and be of sound mind. The guarantee object (*makful*) must represent the debtor's obligation, whether it involves money, goods, or services. It must be enforceable by the guarantor and constitute a legally binding debt that can only be annulled through payment or forgiveness. Furthermore, it should possess clear value, quantity, and specifications, and must not violate Sharia principles. *Kafalah* refers to the guarantor (*kafii*) providing assurance to a third party for fulfilling the obligations of the guaranteed party (*makfuul 'anhu*, *ashiil*), whereas *kafalah bil ujah* involves a fee for this guarantee. One of the hadiths underpinning the guarantee is narrated by Al-Bukhari from Salamah bin al-Akwa', stating that the Prophet Muhammad (s.a.w.) only performed the funeral prayer for a deceased person who had no debts unless a companion guaranteed the debt (Darwin, 2020).

### 3.4 Types of *Al-Kafalah*

*Al-Kafalah* is generally divided into two types: personal guarantee (*kafalah jiwa*) and financial guarantee (*kafalah harta*). Each type has its own specifics, which will be explained further.

#### a. Personal Guarantee (*Al-Kafalah bi An-Nafs*)

Personal guarantee, also known as face guarantee, is the guarantor's commitment to present the guaranteed party to the party entitled to the guarantee. This can be expressed with phrases like "I guarantee so-and-so, his body, or his face," or simply "I am a guarantor," "I am responsible," and similar expressions. This guarantee is allowed if the guaranteed person is responsible for someone else's right. It is not necessary to know the amount of the obligation of the guaranteed person since the guarantor is responsible only for the person, not for any property. However, if the guarantee involves hudud (penalties prescribed by Islamic law) set by Allah, such a guarantee is not valid, whether it pertains to hudud related to Allah's rights, such as those involving alcohol, or human rights, such as accusations of adultery (Sabiq, 2009).

#### b. Financial Guarantee (*Al-Kafalah bi Al-Mal*)

A financial guarantee entails a commitment by the guarantor to fulfill obligations concerning property. This category of guarantee is classified into three types:

- Debt Guarantee: This is a commitment to repay someone else's existing debt, such as loans, sales prices, wages, and dowries. If the debt does not yet exist, the guarantee is invalid. The debt must be clear to avoid fraud. If the guarantor says, "I guarantee for you whatever is in so-and-so's obligation," but neither party knows the amount, the guarantee is invalid (Sabiq, 2009).

- Goods or Delivery Guarantee: This is a commitment to deliver specific goods that are in someone else's possession, such as returning goods taken unjustly or delivering purchased goods to the buyer. The goods must be guaranteed to exist; otherwise, such as in the case of loans and deposits, the guarantee is invalid.

- Future Matters Guarantee: This guarantees something arising from the sold property and related issues (warranty), such as against defects or hazards. This ensures the buyer's rights against the seller if the goods turn out to belong to someone else or are pledged items (Sabiq, 2009).

*Kafalah* can be categorized as follows (Mubarok & Hasanudin, 2017):

a. Based on the Object (*Mahall*):

- *Kafalah bi al-Nafs*: Guarantee of a person, meaning to present someone in court.

- *Kafalah bi al-Mal*: Guarantee of property, divided into three:

1. *Kafalah bi al-Dain*: Guarantee to cover someone's debt if they are unable to pay at maturity.

2. *Kafalah bi al-Uhdah*: Guarantee to stabilize market prices with subsidies.

3. *Kafalah bi al-Taslim*: Guarantee that required goods can be delivered.

b. Based on Nature:

- *Kafalah Muthlaqah*: An unconditional guarantee, not bound by specific conditions regarding payment methods, place, or time.

- *Kafalah Muqayyadah*: A conditional guarantee, bound by specific time and conditions, divided into three:

1. Time-bound guarantee.

2. Conditional guarantee (dependent on specific conditions).

3. Future guarantee (guarantee for future matters).

Types of *Kafalah* Offered by Islamic Banks:

a. *Kafalah bil-Nafs*: This type involves a personal guarantee. In banking, it is exemplified by financing extended to a customer with the assurance of another person's reputation and integrity.

b. *Kafalah bil-Mal*: This guarantees payment for goods or debt repayment. Banks commonly use this contract to provide assurances to customers in return for a fee.

c. *Kafalah bil-Taslim*: This contract is usually used to guarantee the return of rented goods at the end of the lease period. It is used by banks for the benefit of their customers through cooperation with rental companies.

d. *Kafalah bil-Taslim*: This contract ensures the return of leased goods at the lease's end. Banks utilize it in collaboration with rental companies to benefit their customers.

e. *Kafalah al-Muallaqah* refers to a simplified adaptation of *kafalah al-munjazah*, provided by banks or insurance companies, with a contractual time limit (Aini, 2001).

In Islamic banks, there are several types of *al-kafalah* used in sharia financial transactions. Here are a few examples:

a. *Al-Kafalah Bi Al-Ujrah* refers to a form of guarantee used in service transactions, such as import-export services, where the guarantor (*kāfil*) receives *ujrah* (wages/compensation) in exchange for the services provided. For example, as discussed in the study "Fatwa Dewan Syariah Nasional No. 57/DSN-MUI/V/2007 on Letters of Credit with *kafalah* bi al-ujrah contract from the perspective of the Syafi'i and Hanafi schools," this type of *kafalah* is employed in Letters of Credit (L/C) transactions to facilitate commercial transactions (Pratiwi, 2013).

b. *Al-Kafalah Tabarru'*: This form of *al-kafalah* serves as a guarantee offered by a third party to fulfill the commitments of another party. For instance, in the research titled "Implementation of *Al-Kafalah* in Islamic Financial Institutions in Indonesia," *al-kafalah tabarru'* is utilized within the Kartu Indonesia Sehat (KIS) as a guarantee for meeting customer obligations (Asra, 2020).

c. *Al-Kafalah* in Multipurpose Financing and Umrah Financing: This type of *al-kafalah* is used in multipurpose financing products and Umrah financing at Bank Rakyat Indonesia Syariah. According to the study "Fiqh Muamalah Review on the Mechanism of Determining *Ujroh Kafalah* in Multipurpose Financing and Umrah Financing at Bank Rakyat Indonesia Syariah, Citarum Bandung Branch," *al-kafalah* is used as a guarantee to fulfill customers' obligations in multipurpose and Umrah financing (Asra, 2020).

d. *Al-Kafalah* in Sharia Card Financing: This type of *al-kafalah* is used in the issuance of sharia credit cards, such as the Sharia Card. According to the



study "AKAD QARDH IN THE ISSUANCE OF SHARIA CARDS AT BNI SYARIAH BANK," *al-kafalah* is used as a representation, meaning the guarantor (*kâfil*) represents the bank in credit card transactions (Asra, 2020).

In conclusion, *al-kafalah* is used in various forms and purposes in Islamic banks, including service transactions, guarantees, and financing.

Generally, *kafalah* is divided into two parts:

a. Personal Guarantee: Also known as *kafalah al-wajhi*, this involves the guarantor (*kafil*, *damin*, or *za'im*) ensuring the presence of the guaranteed person. This guarantee is valid if it involves human rights, such as retribution (*qisas*) and accusations of adultery. However, it is not valid for *hudud* (penalties prescribed by Islamic law), as these penalties can only be carried out by the individual who committed the offense.

b. Financial Guarantee: The guarantor (*damin* or *kafil*) is responsible for paying the financial obligations. This is divided into three types:

- Debt Guarantee: The obligation to pay someone else's debt. For example, in a hadith, the Prophet Muhammad SAW did not perform funeral prayers for a deceased person who had unpaid debts unless the debt was settled by someone else. This guarantee requires the debt amount to be fixed at the time of the transaction, such as loan amounts, wages, and dowries. The guaranteed item must be known to avoid fraud (*gharar*).

- Goods Delivery Guarantee: The obligation to deliver specific goods held by someone else, such as returning unlawfully taken goods or delivering sold goods to the buyer. The goods must be guaranteed to exist; otherwise, the guarantee is invalid.

- Defect Guarantee (*Aib*): Ensuring that the sold goods do not pose any danger or defects, such as if the goods belong to someone else or are pledged items.

### 3.5 Implementation of *Al-Kafalah*

The development of Islamic economics in Indonesia has undergone a long process since the 1970s, with the implementation of Sharia principles across various economic sectors, including finance. One of the evolving instruments is the *kafalah* contract, which is now widely used in modern business transactions. The emergence of Sharia-compliant financial institutions and instruments, such as the Islamic capital market, is a tangible manifestation of the effort to apply Islamic values in the economy. *Kafalah*, as a form of guarantee, provides security and ensures fairness in various Sharia financial transactions. This aligns with Sharia principles such as justice, transparency, and the avoidance of *riba* (interest) and *gharar* (uncertainty). Consequently, the continued development of Islamic economics in

Indonesia supports the application of *kafalah* in fostering social and economic stability and well-being (Irawan, Wahid, Sani, & Nabir, 2023).

The implementation of *kafalah* can be carried out in three forms: munjaz (tanjiz), mu'allaq (*ta'liq*), and mu'aqqat (*tauqit*).

a. Munjaz (*Tanjiz*) Munjaz refers to an obligation that is fulfilled immediately. For instance, someone might say, "I guarantee Fulan and I assure Fulan right now." When the guarantee agreement takes place, this obligation follows the debt agreement, whether it must be paid immediately, deferred, or in installments, unless there are specific conditions attached to the guarantee.

b. Mu'allaq (*Ta'liq*) Mu'allaq is a guarantee linked to certain conditions. For example, someone might say, "If you lend money to my son, I will repay it," or "If you are billed by A, I will pay it." As stated in the Quran, Surah Yusuf: 72, which means: "And whoever brings it shall have a camel-load, and I will guarantee it" (Departemen Agama RI, 2010).

c. Mu'aqqat (*Tauqit*) Mu'aqqat is an obligation that must be paid at a specific time. For instance, someone might say, "If you are billed during the month of Ramadan, I will cover your debt." Once the agreement is in place, the creditor (*madmun*) can demand payment from the guarantor (*kafil*) or from the debtor (*madmun 'anhu or makful 'anhu*), (Alamisharia, 2020).

Thus, *kafalah* can be implemented in three main forms: obligations that are fulfilled immediately, obligations tied to specific conditions, and obligations associated with specific times. Each form of *kafalah* has its own requirements and conditions that must be met to be valid according to Sharia law.

Applications *Kafalah* is used in various financial products, such as:

- Hajj Bailout Financing: *Kafalah* is utilized to provide financing for Hajj pilgrims who lack funds. This ensures that the pilgrims can complete their pilgrimage without financial constraints (Friatna DKK, 2023).

- Surety Bond Financing: *Kafalah* is employed in surety bond financing to guarantee the payment of debts or obligations. This ensures that the debt will be fulfilled if the debtor fails to meet their obligations (Yusuf & Lubis, 2023).

- Old Age Guarantee Program: *Kafalah* is used in calculating old age security claims, ensuring that the benefits are paid out according to Islamic law (Amri & Yunita, 2023).

- Sharia Compliance: The use of *kafalah* in financial products is crucial for ensuring Sharia compliance. It ensures that financial transactions adhere to Islamic principles and avoid elements of *gharar* (uncertainty) and *riba* (interest), (Mahfudloh & Asy'ari, 2023).

*Al-kafalah* implementation in Indonesia is conducted by Islamic financial institutions like Islamic banks to mitigate financing risks in murabahah contracts. The following are some important aspects of the implementation of *al-kafalah* in Indonesia:

- *Al-kafalah* is implemented in various ways, including *al-kafalah bi al-ujrah*, as endorsed by modern scholars. It is also utilized within the Kartu Indonesia Sehat (KIS) framework (Asra, 2020).
- Comparison with Borgtocht: Borgtocht and *al-kafalah* are two forms of guarantees provided by guarantors to third parties to fulfill the obligations of another party. Both aim to anticipate financing risks. However, there are key differences in the forms and conditions applied to each guarantee (Rizal, 2016).
- In Indonesia, the application of *al-kafalah* is rooted in Islamic jurisprudence. It constitutes a fundamental legal basis, influenced by scholarly *ijtihad* and *ijma* within the Indonesian legal framework (Agustin, Hasuri, & Najmudin, 2022).
- Execution of Collateral Auctions: If the efforts made do not resolve the issue, Islamic banks have the right to auction the collateral. The execution of collateral auctions is based on Islamic legal provisions and Law No. 4 of 1996 on Mortgage Rights, Article 20, paragraph (3), (Sumiati, 2019).

In the practice of *kafalah*, it is important for all parties to have a clear agreement, including mechanisms for profit-sharing and risk management. This is related to how *kafalah* is implemented to ensure fairness in economic transactions (Nuringsih, Mirnawati, Lismawati, & Djauharrudin, 2023).

In conclusion, the implementation of *al-kafalah* in Indonesia by Islamic financial institutions aims to manage financing risks in murabahah contracts. This implementation is based on Islamic legal provisions and is carried out in accordance with financial principles grounded in Islamic values (Mustika, Abdillah, & Malik, 2024).

### 3.6 Payment by the Guarantor

The concept of *dhamin* payment in *al-kafalah* involves the guarantor (*kafil*) reimbursing a third party, thereby fulfilling the obligations of the guaranteed party or debtor. In Islam, *al-kafalah* is encouraged as a means to help those in need and has significant benefits for the community. The payment of *dhamin* can be carried out in several forms, including:

- a. *Munjaz*: An obligation that is paid immediately, such as when someone says, "I guarantee him and I assure his payment right now." When the guarantee contract takes place, the guarantee follows the debt agreement, whether

it must be paid immediately, deferred, or in installments, unless there are specific conditions in the guarantee (Alamisharia, 2020).

b. Mu'allaq: An obligation that is conditional on a certain event, for example, when someone says, "If you lend to my son, then I will pay it," or "If you are billed by A, then I will pay it" (Alamisharia, 2020).

c. Mu'aqqat: An obligation that must be paid at a specific time, such as when someone says, "If billed during Ramadan, then I will cover your debt payment." Once the contract is in effect, the madmun (the one entitled to claim) can claim from the *kafil* (the guarantor), (Alamisharia, 2020).

In practice, the payment of dhamin must be carried out honestly and according to the agreed terms. The guarantor (*kafil*) must ensure the guarantee and cannot withdraw from the *kafalah* unless the debt is repaid by him or by the principal debtor, or if the creditor releases the debt, or if the *kafil* withdraws from the *kafalah*. The *kafil* cannot unilaterally withdraw, as this right belongs to the creditor (Alamisharia, 2020).

In the article "Implementation of *Kafalah* and Hawalah Applications in Islamic Financial Institutions" by Mhd. Thoib Nasution, it is explained that if a guarantor (*dhamin*) fulfills his obligation by paying the debt of the guaranteed person, he has the right to seek reimbursement from the guaranteed person (*madhmun 'anhu*) if the payment was made with their permission (Nasution, 2022).

The scholars agree on this matter; however, they differ in opinion when the guarantor pays or fulfills the obligation of the guaranteed person without their permission. According to the views of Syafi'i and Hanafi, paying the debt of the guaranteed person without their permission is considered a commendable act (*sunnah*), and the dhamin does not have the right to seek reimbursement from the madhmun 'anhu. In contrast, according to the Maliki school, the dhamin has the right to claim reimbursement from the madhmun 'anhu (Nasution, 2022).

Ibnu Hazm holds the view that the dhamin does not have the right to claim reimbursement from the madhmun 'anhu for the payment made, whether with or without the madhmun 'anhu's permission. The guarantor (*kafil*) is obliged to guarantee and cannot evade the obligation unless the debt is paid or the creditor (*madhmun lahu*) forgives the debt, which effectively nullifies (*fasakh*) the *kafalah* contract, even if the madhmun 'anhu and the *kafil* do not consent (Nasution, 2022).

Dhamin Payments in the context of taxation refer to the obligation of taxpayers, such as food stall entrepreneurs in the village of Bandung, Tulungagung, to pay taxes. Research conducted in 2021 indicates that understanding taxation and compliance with tax payments are crucial for increasing regional revenue. A good understanding of taxation and public awareness of the importance of paying taxes

can enhance the awareness and compliance of taxpayers in fulfilling their tax obligations (Triwahyuni, Wildan, & Costari, 2021).

However, regarding old-age security, *Dhamin* payments are not covered under the regulations concerning old-age security. Ministerial Regulation No. 2 of 2022 regarding the Procedures and Requirements for Old Age Security Benefit Payments does not encompass *Dhamin* payments within the scope of old-age security benefits. Research conducted in 2023 found that Ministerial Regulation No. 2 of 2022 refers back to the provisions in Ministerial Regulation No. 19 of 2015, including claims for JHT benefits for participants who resign and those who are laid off. 9 (Yulianto, 2023).

In the realm of bankruptcy, *Dhamin* payments are not specifically addressed in bankruptcy-related regulations. A study conducted in 2023 revealed that Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations does not encompass *Dhamin* payments as a component of the legal implications following a bankruptcy declaration for heirs (Sari, 2023).

#### 4. Conclusion

*Kafalah* is a form of guarantee in which the guarantor (*kafil*) undertakes responsibility for the obligations of a second party towards a third party. In practice, *kafalah* involves merging the liability of the guarantor with the principal liability being guaranteed, whether it involves debt, goods, or services. According to Islamic law, *kafalah* is firmly grounded in the Qur'an, hadith, consensus of scholars (*ijma*), and fatwas, all of which emphasize the importance of mutual assistance and providing security in transactions.

To act as a guarantor (*kafil*), a person must be an adult, of sound mind, and have full authority over their assets. Meanwhile, the guaranteed party (*ashil*) does not need to meet specific conditions such as being of age or present at the contract, and could be a minor or an unsound person.

In the four major Islamic schools of thought, *kafalah* has slightly different definitions but the essence remains the same: ensuring someone else's liability. For instance, in the Shafi'i school, *kafalah* is a contract that establishes a commitment to a right that is someone else's liability, whereas in the Hanafi school, *kafalah* can mean combining someone's liability in debt collection.

*Kafalah* can be applied in various forms, such as personal guarantee (*kafalah nafs*) to ensure someone's presence, and property guarantee (*kafalah mal*) to ensure debt or goods. The execution of *kafalah* can be immediate (*munjaz*), conditional (*mu'allaq*), or time-bound (*mu'qqat*).



The wisdom of *kafalah* includes reinforcing rights, actualizing the spirit of mutual assistance, and facilitating transactions involving debts and assets, providing peace of mind for all parties involved.

Overall, *kafalah* in Islam is a crucial instrument that supports justice and social welfare by ensuring a strong and legitimate guarantee in various transactions and obligations.

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