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LEGAL CONFORMITY BETWEEN RAHN TASJILY AND FIDUCIARY GUARANTEE AND OBSTACLES TO IMPLEMENT ATION IN INDONESIA

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Abstract

The focus of this research is to provide solutions for the problem in the implementation of fiduciary guarantees and Rahn Tasjily. Rahn Tasjily is collateral in the form of goods for debts, with the agreement that only legal proof of ownership will be handed over to the recipient of the guarantee (murtahin), while the physical collateral (marhun) remains in the control and use of the guaranteed provider (rahin). This research aims to achieve two objectives: first, to examine the suitability of the fiduciary guarantee with rahn tasjily and second, to analyze the appropriate formulation to ensure the legal conformity of the fiduciary guarantee with rahn tasjily and its implementation in an engagement/transaction in accordance with sharia principles. This is normative legal research with a statutory and conceptual approach. The study concludes that: (1) Rahn Tasjily as regulated in the fatwa of the National Sharia Council of the Indonesian Ulema Council Number 68/DSN-MUI/III/2008 shares similarities or conformity with the provisions of Fiduciary Guarantee (Law No. 42 of 1999 concerning Fudiciary Guarentee). This conformity refers to the conformity between the object/collateral and the proof of ownership, instead of the form of the object. Both are also referred to as an accesoire agreement; (2) In order to ensure the legal conformity between the fiduciary guarantee and rahn tasjily and its implementation as a material guarantee in sharia financing without doubt, the legislators need to make changes to Law Number 42 of 1999 as a way to provide clear arrangements regarding the main engagements to be burdened with fiduciary guarantees, which include: conventional or sharia-based debt or financing agreements.

Keywords: *Fiduciary Guarantee, Rahn Tasjily, Sharia Financing.*

A. Introduction

General provision regarding guarantee arrangements in Indonesia is contained in Book II and Book III of the Civil Code. General guarantee is particularly regulated in Articles 1131 and 1132, while individual guarantees

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are regulated in Book III in the form of guarantees (*borgtocht*) as one type of agreement known as *benoemde overeenskomst*. In its development, this type of guarantee became a general rule for issuing individual guarantees, such as corporate and bank guarantees. The development of individual guarantees is more flexible because it only necessitates the agreement of the parties involved, except for bank guarantees which must take heed of the terms and conditions issued by the banking authority. This is made possible because Book III of the Civil Code adheres to an open system (Article 1319) and the principle of freedom of contract (Article 1338 Paragraph 1), which provides the parties with the flexibility to make or develop new types of agreements as long as they fulfill the legal requirements of an agreement. The freedom to make an agreement can be interpreted as the flexibility to make an agreement with a new name, the freedom to include clauses to be agreed upon, and the freedom to use any form of agreement, whether it will be made in writing, unwritten, or electronically, as long as it fulfills the legal requirements of the agreement based on Article 1320 of the Civil Code.[2]

In principle, guarantee arrangement can be divided into 2 types, namely: individual guarantees (personal/corporate guarantees) as regulated in articles 1820-1864 of the Civil Code, and material guarantees. The "material goods" of the guarantee are characterized by the ability to give precedence over certain objects and have the inherent nature to follow with along the object in question. Meanwhile, individual guarantees do not give precedence over certain objects but are only guaranteed by a person's assets through the person who guarantees the fulfillment of the engagement in question. Material guarantees are guarantees in the form of absolute rights to an object, with the characteristics of having a direct relationship to certain objects, can be defended against anyone, always following along with the object, and being transferrable. Meanwhile, individual guarantees are guarantees that create a direct relationship to certain individuals, can only be maintained against certain debtors, against the debtor's assets in general."[3]

[2] Lastuti Abubakar, 'Telaah Yuridis Perkembangan Lembaga Dan Objek Jaminan (Gagasan Pembaruan Hukum Jaminan Nasional)' (2015) 12 *Buletin Hukum Kebanksentralan* <https://pustaka.unpad.ac.id/wp-content/uploads/2017/04/Abstrak-Telaah-Yuridis-Perkembangan-Lembaga-Dan-Objek-Jaminan_1.pdf>; Muhammad Maulana, 'Jaminan Dalam Pembiayaan Pada Perbankan Syariah Di Indonesia (Analisis Jaminan Pembiayaan Musyarakah Dan Mudarabah)' (2014) 14 Jurnal Ilmiah Islam Futura 72 <http://jurnal.ar-raniry.ac.id/index.php/islamfutura/article/view/80>.

[3] Ny Sri Soedewi Masjchoen Sofwan, *Hukum Jaminan Di Indonesia Pokok-Pokok Hukum Jaminan Dan Jaminan Perorangan*, vol 1 (1st edn, Badan Pembinaan Hukum Nasional, Departemen Kehakiman 1980) 46-47; Munir Fuady, *Hukum Jaminan Utang* (Penerbit Erlangga 2013); Muhammad Maksum, 'Penerapan Hukum Jaminan Fidusia Dalam Kontrak Pembiayaan Syariah' (2015) 3 Jurnal Cita Hukum <http://journal.uinjkt.ac.id/index.php/citahukum/article/view/1837>.

According to the Civil Code, material guarantees are regulated into pledges and mortgages. Provisions regarding pledges are written in Article 1150-1160 of the Civil Code. Meanwhile, mortgages are regulated in Chapter XXI of the Second Book of the Civil Code, namely Articles 1162-1170, Articles 1173-1185, Articles 1189-1194, and Articles 1198-1232.

Apart from pledges and mortgages, the arrangement of material guarantees is regulated by laws and regulations, and one of them is fiduciary guarantees. Initially, this form of guarantee was developed on the basis of jurisprudence. Fiduciary Guarantees are regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. The objects of fiduciary security are movable and immovable objects (which cannot be burdened with mortgage rights). However, the debtor can still physically control the object, while the creditor only has juridical control (proof) of ownership of the object. A fiduciary guarantee is a guarantee institution based on trust, and thus after the debtor paid his obligations, the creditor is obliged to return the object, and vice versa if the debtor defaults, the creditor has the right to execute the object. Fiduciary guarantee arrangements were made as an additional alternative for guarantee institutions that were not accommodated in the previous guarantee institutions, namely pledges, and mortgages. The previous legal provisions based on jurisprudence were deemed to lack legal certainty for the parties.

In 2008, along with the rapid growth of the Islamic economy, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) issued Fatwa Number 68/DSN-MUI/III/2008 concerning *Rahn Tasjily* as collateral in the form of goods for debt but the collateral (*marhun*) remains in the control (utilization) of *rahin* and proof of ownership is submitted to the *murtahin*. Based on the fatwa, the term *rahn* is broadly defined as a guarantee specifically used to guarantee a pledge. *Rahn tasjily* in conventional guarantee law shares some similarities with fiduciary guarantees.

Fiduciary guarantees allow fiduciary givers to control objects that are guaranteed to carry out their business activities with the financial support of the loans derived from fiduciary guarantees. Initially, objects of the fiduciary guarantee were limited to movable property in the form of equipment. However, in its subsequent developments, objects of fiduciary guarantee include intangible movable objects, as well as immovable objects. The same also applies to *rahn tasjily*. The birth of fatwa of the National Sharia Council of the Indonesian Ulema Council is attributed to the fact that the community necessitates one form of Sharia Financial Institution (LKS) service in the form of a loan or other transaction that

causes debts and receivables by providing material guarantees of goods provided that the goods are still controlled and used by the debtor.

Although the two share some similarities, it is clear that both are based on different normative foundations. As regulated in Article 7 of the Law Number 42 of 1999, debts whose repayment is guaranteed by a fiduciary can be in the form of existing debts, debts that will arise in the future which have been agreed in a certain amount, or debts whose amount is determined at the time of execution based on the principle of agreement agreed upon, and thus creates an obligation to fulfill a repayment. The explanation of Article 7 includes interest payable on the loan principal and other costs, the amount of which can be determined later, but such provisions are contrary to sharia.

In addition, *rahn tasjily* also emphasizes that the storage of collateral in the form of legal evidence of ownership or certificate does not necessitate the ownership transfer of the goods to the recipient of the goods (*murtahin*). This point marks a difference with the fiduciary provisions as regulated in the Law Number 42 of 1999, which stipulates that fiduciary is the transfer of ownership rights to an object on the basis of trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object. On this basis, it is interesting to compare the conceptions of fiduciary and *rahn tasjily* to know the similarities and differences between both.

In the development context of the sharia economy, which gave birth to a new type of legal relationship known as a sharia financing agreement/contract, the two types of guarantee arrangements that share similarities are equally needed as an effort to accelerate the growth and development of the sharia economy in Indonesia. However, both types of guarantee arrangements remain unable to provide a fairly strong foundation to support Islamic economic growth, which requires the utilization of many Islamic financing instruments in carrying out their legal relationships. The regulation of *rahn tasjily* as stipulated in the National Sharia Council of the Indonesian Ulema Council fatwa is deemed to lack of binding power in practice because the fatwa is not considered as a form of legislation. Likewise, the fiduciary guarantees are only regulated in Law Number 42 of 1999, without a particular stipulation related to the principal engagement in the form of Sharia financing which can be burdened with fiduciary guarantees.

Several studies regarding the relationship between fiduciary security and *rahn tasjily* have been carried out by previous authors, but there is no study on the formulation that must be made so that fiduciary security is in accordance with *rahn tasjily* so that they can be

implemented in engagements/transactions that are in accordance with Sharia principles. For example, in the research of Witra Yosi,[4] they concluded that the two do have similarities, but also have differences, namely related to the maintenance of objects that are used as collateral for debts, in terms of binding collateral, cancellation or transfer of rights by one party, transfer of ownership rights, and the mechanism of practice. While the differentiating aspect is the absence of interest (*fa'idah*) in *rahn/rahn tasjily*, Mohamad Hilal Nu'man's research[5] confirms that substantially it cannot be said to have written off interest, because it has been replaced with a saving fee scheme. Thus, research needs to be conducted on this topic to answer the current problem.

B. Methodology

This study focuses on two problem formulations, first, how is the suitability of the concept and arrangement between fiduciary guarantees and rahn tasjily? and second, how is the formulation that must be made to ensure the legal conformity between the fiduciary guarantee and rahn tasjily for further implementation in an engagement/transaction in accordance with Sharia principles. Based on the identification of the abovementioned problems, this research aims to determine the legal conformity between fiduciary guarantees and rahn tasjily, and to formulate fiduciary guarantee arrangements that are in accordance with rahn tasjily to ensure further implementation in engagements/transactions in accordance with Sharia principles.

This is normative legal research[6] using a statutory approach and a conceptual approach.[7] This research used secondary data by comparing the concepts of fiduciary guarantees and *Rahn Tasjly*, to explore the substantial conformity between the two and to deal with the problems of their implementation. The collected data were analyzed qualitatively to answer the problem formulation under study by drawing conclusions using

[4] Witra Yosi, Aidil Alfin and Basri Na'ali, 'Perbandingan Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia dengan Fatwa Nomor 68/DSN-MUI/III/2008 Tentang Rahn Tasjily' (2019) 2 FUADUNA : Jurnal Kajian Keagamaan dan Kemasyarakatan 108 <https://ejournal.uinbukittinggi.ac.id/index.php/fuaduna/article/view/2071>.

[5] Mohamad Hilal Nu'man, 'Implementasi Akad Rahn Tasjily dalam Lembaga Pembiayaan Syari'ah (Analisis Yuridis)' (2018) 1 Aktualita (Jurnal Hukum) 609 <https://ejournal.unisba.ac.id/index.php/aktualita/article/view/4045>; Tri- Hidayati and others, 'Mekanisme Penggunaan Jaminan Kebendaan (Rahn Tasjily) Dalam Pembiayaan Bank Syariah Di Indonesia Dan Malaysia' (2018) 18 Nurani: Jurnal Kajian Syari'ah dan Masyarakat 163 <http://jurnal.radenfatah.ac.id/index.php/Nurani/article/view/2458>.

[6] Lili Rasjidi and Liza Sonia Rasjidi, *Pengantar Metode Penelitian Dan Penulisan Karya Ilmiah Hukum* (FH UNPAD 2005).

[7] Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (12th edn, Prenadamedia Group 2016).

both induced and deductive reasoning, namely from specific/particular reasoning to general reasoning, and vice versa. Data were analyzed thoroughly as a single unit.

C. Discussion and Results

1. Fiduciary Guarantee Arrangements and *Rahn Tasjily*

Currently Prior to the enactment of the Law No. 42 of 1999, Fiduciary guarantees have been used in Indonesia since the Dutch colonial era as a form of guarantee born of jurisprudence. This form of guarantee was widely used in lending and borrowing transactions because the debt loading process is considered simple, easy, and fast, although it does not provide them with legal certainty. In the later stage of development, the fiduciary provisions are regulated in article 15 of Law Number 4 of 1992 concerning Housing and Settlements, which stipulates that houses built on land owned by other parties can be charged with fiduciary guarantees. In addition, Law Number 16 of 1985 concerning Flats regulates the ownership rights to flat units that can be used as debt guarantees with a fiduciary duty, if the land is bearing the status of land use rights over state land.

Fiduciary Guarantee Institutions allow Fiduciary Givers to control the objects that are guaranteed, and to carry out business activities financed from loans derived from Fiduciary Guarantees. Prior to the enactment of Law No. 42 of 1999, most of the objects of Fiduciary guarantees were movable objects consisting of inventory, merchandise, receivables, machine tools, and motorized vehicles. Therefore, in order to meet the growing needs of the community, the object of fiduciary security is defined more broadly by covering tangible and intangible movable objects, and immovable objects that cannot be encumbered with mortgage rights as specified in Law No. 42 of 1999. Article 3 confirms that Law No. 42 of 1999 does not apply to (i) mortgage rights relating to land and buildings, as long as the prevailing laws and regulations determine that collateral for these objects must be registered, (ii) mortgages on registered ships with gross contents measuring 20 (twenty) m3 or more, (iii) a mortgage on an airplane, and (iv) a mortgage.

Law No. 42 of 1999 has regulated the registration of Fiduciary guarantees in order to provide legal certainty to interested parties. The registration of Fiduciary guarantees gives priority to Fiduciary Recipients to other creditors. Because the Fiduciary guarantee gives the Fiduciary Giver the right to continue to control the object of the Fiduciary

guarantee based on trust, the registration system regulated in this Law No. 42 of 1999 can guarantee the Fiduciary Recipient and parties who have an interest in the object.

Given the abovementioned, the Law No. 42 of 1999 defines fiduciary guarantees as collateral for objects or material guarantees (*zakelijke zekerheid, scurity right in rem*) that prioritize the fiduciary recipient. The fiduciary recipient has the rights that take precedence over other creditors and the rights that take precedence over the fiduciary recipient are not nullified due to the bankruptcy of the fiduciary giver. This affirmation dispels doubts and opinions that fiduciary guarantees do not give rise to collateral rights to property, but are only obligatory agreements that give birth to individual rights (*personlijk*) for creditors. Law No. 42 of 1999 also emphasizes that the fiduciary guarantee is an *accessoir* agreement (additional agreement) from the main agreement. As a result of the nature of the fiduciary guarantee as an additional or a follow-up to the main agreement, the fiduciary guarantee is nullified by law if the debt guaranteed by the fiduciary guarantee is canceled.[8]

Several principles are generated by fiduciary guarantees: (1) Specialty for fixed loans, in that fiduciary guarantees, are material guarantees, namely guarantees in the form of assets, both objects and material rights, used for something, and thus if the debtor breaks a promise, it can be cashed for repayment of certain loans; (2) Accessoir, in that fiduciary guarantee is a follow-up agreement to the main agreement, namely a debt agreement. The fiduciary grant agreement often contains words stating that the granting of a fiduciary guarantee is associated with a credit agreement as the main agreement; (3) Preference rights, namely giving priority rights to fiduciary recipients over other creditors in taking the settlement of receivables from objects of collateral, calculated from the date of registration of objects of fiduciary guarantees at the fiduciary registration office; and (4) *Droit de suite*, as regulated in Article 20 of the Law No. 42 of 1999 that fiduciary guarantees continue to follow objects of fiduciary security in the hands of whoever the object is, except for the transfer of inventory objects of fiduciary guarantees.[9]

[8] Ady Kusnadi, *Penelitian Hukum Tentang Perkembangan Lembaga Jaminan di Indonesia* (Badan Pembinaan Hukum Nasional, Departemen Hukum dan Hak Asasi Manusia RI 2007) 83.

[9] Muhammad Yadi Harahap, 'Pengaturan Lembaga Jaminan Fidusia Di Indonesia Perspektif Undang-Undang No. 42 Tahun 1999 Tentang Jaminan Fidusia' (2017) 5 Al-Usrah: Jurnal Al Ahwal As Syakhsiyah 108, 122 <https://jurnal.uinsu.ac.id/index.php/alusrah/article/view/1347/1094>; Abdul Ghofur Anshori, *Gadai Syariah Di Indonesia: Konsep, Implementasi, Dan Institusionalisasi* (1st edn, Gadjah Mada University Press 2006); M Yasir, 'Aspek Hukum Jaminan Fidusia' (2016) 3 SALAM: Jurnal Sosial dan Budaya Syar-i 75 <http://journal.uinjkt.ac.id/index.php/salam/article/view/3307>.

The transfer of ownership rights to objects of fiduciary security is carried out by means of *constitutum possessorium* (*verklaring van houderschap*), namely the transfer of ownership rights to an object by continuing to control the object, which results in the fiduciary giver continuing to control the object in question for the benefit of the recipient of the fiduciary guarantee. The transfer of ownership rights to objects of fiduciary security is carried out in a way that is widely known and used. The transfer of ownership rights in the case of a fiduciary guarantee is intended solely as a guarantee or collateral for debt repayment, not to be permanently owned by the fiduciary recipient.[10]

The transfer of rights to receivables guaranteed by the fiduciary results in the transfer by law of all rights and obligations of the fiduciary recipient to new creditors, as regulated in Article 19 of the Law No. 42 of 1999. The transfer of rights to such receivables is known as *cessie*, namely the transfer of receivables which is carried out by authentic deed or private deed. Based on this *cessie*, all rights and obligations of the old fiduciary recipient are transferred to the new fiduciary recipient and the transfer of rights to the receivables is notified to the fiduciary giver. A fiduciary guarantee agreement serves as a follow-up agreement or an additional agreement from the main agreement, and thus the fiduciary guarantee is canceled if the debt originating from the main agreement is erased. Likewise, the *cessie* will transfer the cessie's rights to the recipient of the basic agreement, and thus all rights and obligations of the old creditor will be transferred to the new creditor.[11]

Article 25 of the Law No. 42 of 1999 has regulated the following points that leads to the abolition of fiduciary guarantees: the abolition of debts guaranteed by fiduciary, relinquishment of rights to fiduciary guarantees by fiduciary recipients, or the destruction of objects of fiduciary guarantees. The destruction of the object of fiduciary guarantee does not nullify the insurance claim as referred to in Article 10 letter b. In accordance with the accompanying nature of fiduciary guarantees, the existence of fiduciary guarantees depends on the existence of receivables that are to be paid off. If the receivable is written off due to debt write-off or due to the disposal, the fiduciary guarantee

[10] Kusnadi, (n 8). 82.

[11] Gunawan Widjaja and Ahmad Yani, *Seri Hukum Bisnis: Jaminan Fidusia* (1st edn, RajaGrafindo Persada 2000) 184; Zaeni Asyhadie and Rahma Kusumawati, *Hukum Jaminan Di Indonesia: Kajian Berdasarkan Hukum Nasional Dan Prinsip Ekonomi Syariah* (1st edn, PT RajaGrafindo Persada 2018); Benny Krestian Heriawanto, 'Pelaksanaan Eksekusi Objek Jaminan Fidusia Berdasarkan Title Eksekutorial' (2019) 27 Legality : Jurnal Ilmiah Hukum 54 <http://ejournal.umm.ac.id/index.php/legality/article/view/8958>.

concerned will automatically be canceled. The fiduciary recipient must notify the Fiduciary Registration Office regarding the annulment of the fiduciary security by attaching a statement regarding the cancellation of debt, waiver of rights, or the destruction of the object of the fiduciary guarantee. The debt write-off is, among others, due to settlement and evidence of the debt write-off in the form of statements made by creditors. In the event that the object of the fiduciary guarantee is destroyed and the object is insured, the insurance claim will replace the object of the fiduciary guarantee.

It can be concluded that in the legal system of fiduciary guarantees, the delivery of objects of fiduciary guarantees is a guarantee against debts and not as a transfer of ownership rights. Fiduciary guarantee is based on the legl basis of a fiduciary agreement that bears certain characteristics, including the engagement relationship between the fiduciary giver and the fiduciary recipient in the form of the creditor's right to request the delivery of collateral goods from the debtor in a *constitutum posessorium*, or the transfer of ownership rights to an object by continuing to control the object. As a result, the fiduciary giver will continue to control the related object for the benefit of the fiduciary guarantee recipient. Such an engagement is an act of giving something, because the debtor submits the goods *constitutum posessorium* to the creditor.

In general, Islamic law (*fiqh*) has divided guarantees into two, namely guarantees in the form of people or known as *dhoman* or *kafalah*, and guarantees in the form of property, known as *rahn*. *Kafalah* is divided into two types, namely *kafalah bin nafs* and *kafalah bil maal*. *Kafalah bin nafs* refers to a guarantee with a soul, namely the willingness of the guarantor (*al-kafil*) to present the person he is responsible for to the debtor (*makful lahu*). *Kafalah bil maal* is a guarantee with assets, namely obligations that must be fulfilled by the *kafil* with the fulfillment of assets.

According to the Fatwa of the National Sharia Council of the Indonesian Ulema Council Number 11/DSN-MUI/IV/2000, the parties in the *kafalah* are required to state the statements of consent and acceptance to indicate their will in entering into a contract (*akad*). The guarantor can receive a fee as long as it is not burdensome. *Kafalah* with rewards is binding and cannot be canceled unilaterally. The object of guarantee (*makful bihi*) is under the responsibility of the party/person who is in debt, whether in the form of money, objects, or work that can be carried out by the guarantor. The object of the guarantee must be a binding (common) receivable that cannot be written off unless it has

been paid/released. Therefore, the value, amount, and specifications must be clear and not forbidden or contrary to the Shariah.

The Fuqaha has put several definitions of *rahn*. According to the Maliki school of thought, *rahn* is a property used by its owner as binding collateral for a debt. Meanwhile, the Hanafi School defines *rahn* as a way to make something as a guarantee for rights (receivables). Madhhab Syafi'i and Hambali define *rahn* in the sense of a contract, as a way to make material goods as debt guarantees that can be used as debt payers if the debtor cannot pay his debt.[12]

The Fatwa of the National Sharia Council of the Indonesian Ulema Council Number 25/DSN-MUI/III/2002 defines *rahn* as the holding of goods as collateral for debts. Loans withholding assets such as collateral for debt are allowed provided that the recipient of the goods (*murtahin*) has the right to hold the goods (*marhun*) until all debts that have delivered the goods (*rahin*) are repaid. *Marhun* and its benefits remain the property of *Rahin*. In principle, *marhun* should not be used by *murtahin* except with the approval/permission of the *rahin*, provided that it does not reduce the value of *marhun* and its use is only a substitute for the cost of maintenance and care.

The maintenance and storage of *marhun* are under the responsibility of the *rahin*, but it can also be done by the *murtahin*, while the cost and maintenance of the storage remains are in charge of the *rahin*. The amount of maintenance and storage costs for *marhun* should not be determined based on the loan amount.

In the context of banking, *rahn* is intended to help customers in multipurpose activities according to sharia. The following principles must be fulfilled for *rahn*: the *marhun* should be the legal and full property of the customer, and the size, nature, quantity and value of the *marhun* must also be clear based on the real market value. In accordance with applicable legal provisions, *marhun* should be controlled directly.[13]

Banks are allowed to charge the *marhun* with administrative fees for keeping the good materials. The administrative costs are borne by the customer and the amount is determined based on the necessary expenses. The storage fee can be made based on the

[12] Prihati Yuniarlin and Dewi Nurul Musjtari, *Hukum Jaminan Dalam Praktek Perbankan Syariah* (Lab Hukum Fakultas Hukum UMY 2009) 191; Dewi Sulastri and Sarip Muslim, 'Penerapan Jaminan Hak Milik Pada Perbankan Syariah Dalam Perspektif Hukum Islam' (2018) 5 Jurnal Hukum Ekonomi Syariah.

[13] Bank Indonesia, 'Bank Indonesia, Kodifikasi Produk Perbankan Syariah' (Direktorat Perbankan Syariah Bank Indonesia 2008) Surat Edaran 10/31/DPbS Tanggal 7 Oktober 2008, 85-86; Hermansyah, *Hukum Perbankan Nasional Indonesia* (2nd edn, Kencana 2013).

ijarah agreement. The owner of the goods (*rahin*) may use/utilize the goods being pledged, but without reducing their value/price.

Along with the development of sharia economy, in 2008 the National Sharia Council of the Indonesian Ulema Council issued a fatwa Number 68/DSN-MUI/III/2008 concerning *Rahn Tasjily*. The birth of this fatwa is underpinned by the demand of the community for loan services or other transactions that cause debts and receivables by providing collateral for goods provided that the goods are still controlled and used by the debtor.

The the National Sharia Council of the Indonesian Ulema Council regulates *rahn tasjily* based on the same principle of *rahn* stipulated in the Sharia principle and several fiqh rules, including:[14]

الأَصْلُ فِي الْمُعَامَلَاتِ الْإِبَاحَةُ إِلَّا أَنْ يَدُلَّ دَلِيْلٌ عَلَى تَحْرِيْمِهَا.

"Basically all forms of muamalat can be done unless there is evidence that forbids it.".

اَلْحَاجَةُ قَدْ تَنْزِلُ مَنْزِلَةَ الضَّرُوْرَةِ

"The need to occupy an emergency position"

اَلثَّابِتُ بِالْعُرْفِ كَالثَّابِتِ بِالشَّرْعِ

"Something that applies based on custom is the same as something that applies based on sharia' (as long as it doesn't conflict with sharia)".

According to the provided fatwa, a loan by pledging goods as collateral for debt in the form of *rahn tasjily* is permitted provided that the *rahin* must submit proof of ownership of the goods to the *murtahin*. The storage of collateral goods in the form of legal evidence of ownership or certificates does not transfer ownership of the goods to the *murtahin*. If later the *marhun* defaults or is unable to pay off the debt, the *marhun* can be forced to sell/execute the object directly either through auction or by selling it to other parties according to sharia principles.

The auction or sale can be carried out by the *rahin* who gives the authority to the *murtahin* to execute the goods in the event of default or inability to pay off the debt. Goods in the control of *rahin* can be utilized by him within reasonable limits according to the agreement. In this case, the *murtahin* may charge for the maintenance and storage

[14] Fatwa of the National Sharia Board of the Indonesian Ulema Council Rahn Tasjily [Fatwa Nomor 68/DSN-MUI/III/2008].

of *marhun*'s goods (in the form of a valid proof of ownership or certificate) which is borne by the *rahin*. The amount of the cost of maintaining and storing *marhun* goods may not be related to the amount of the loan, but is based on real expenses and other expenses based on the *Ijarah* contract.

In early 2014, the National Sharia Council of the Indonesian Ulema Council issued Fatwa Number 92/DSN-MUI/IV/2014 concerning Financing Accompanied by *Rahn* (*At-Tamwil Al-Mautsuq Bi Al-Rahn*). The issuance of this fatwa is attributed to several points: First, the DSN-MUI fatwas regarding *rahn* are seen as unable to accommodate the development of *rahn*-based businesses. The existing fatwas regarding *rahn* still revolve around the law and mechanism of *rahn* in a narrow sense, but are yet to cover other efforts related to *rahn*. This will certainly bring its own dilemma for parties who want their business to progress and develop based on *rahn* (pawning) transactions; Second, Islamic financial institutions (LKS) require a fatwa related to the development of *rahn*-based businesses as a way to ensure their strong legal basis or basic principles in carrying out their transactions. The legal basis can provide answers to existing problems, especially in the development of *rahn*-based businesses in LKS.[15]

The provided fatwa basically gives permission for several types of financing contracts to be accompanied by *rahn*, such as debt-receivable contracts (*al-dain*), buying and selling (*al-ba'i*) which are not cash, leasing (*ijarah*) which charges for the reward (*ujrah)*. non-cash, *musharaka* (partnership), *mudharabah*, and trust contracts (to avoid misbehavior).

The above permissibility refers to the fatwa of the National Sharia Council of the Indonesian Ulema Council Number 07/DSN-MUI/IV/2000 concerning *Mudharabah* Financing (*Qiradh*), which contains one of the points that in principle, *mudharabah* financing contains no guarantee. Thus, to prevent the *mudharib* from any deviations, LKS can ask for a guarantee from *mudharib* or a third party. This guarantee can only be disbursed if the *mudharib* is proven to have violated the things that have been mutually agreed upon in the contract. This practice is also in line with the provisions in Al-Ma'ayir Asy-Syar'iyyah Number 39 (2-3-3):[16]

[15] Habib Wakidatul Ihtiar, 'Analisis Fatwa Dewan Syariah Nasional Nomor: 92/DSN-MUI/IV/2014 Tentang Pembiayaan Yang Disertai Rahn' (2016) 3 An-Nisbah: Jurnal Ekonomi Syariah 23, 30-31 <http://ejournal.iain-tulungagung.ac.id/index.php/nisbah/article/view/274>.

[16] Accounting and Auditing Organization for Islamic Financial Institutions, *Accounting Auditing And Governance Standards : Accounting And Auditing Organization For Islamic Financial Institutions*

لَا يَجُوْز اشْتِرَاطُ الرَّهْنِ فِيْ عُقُوْدِ الأَمَانَةِ كَالْوَكَالَةِ والْإِيْدَاعِ وَالْمُشَارَكَةِ وَالْمُضَارَبَةِ وَالْعَيْنِ لَدَي الْمُسْتَأْجِرِ. فَإِنْ كَانَ للاستيفاء مِنْهُ فِيْ حَالَاتِ التَّعَدِّي أَوِ التَّقْصِيْرِ أَوْ الْمُخَالَفَةِ لِلشُّرُوْطِ جَازَ.

"It is not permissible to require collateral in the form of goods (akad al-rahn) for contracts that are mandated, including wakalah contracts, wadi'ah contracts, musyarakah contracts, mudharabah contracts, and ijarah objects in the hands of musta'jir; If the rahn is intended to be used as a source of payment (the right of the trustee) when the holder of the trust exceeds the limit, is negligent and/or violates the conditions, the rahn contract is allowed.".

In fiqh literature, *rahn tasjily* is a form of *rahn*. There are 2 (two) types of *rahn*, namely: *Rahn Takmini/Rasjily* and *Rahn Hiyazi*.[17] The control of the collateral in *rahn tasjily* is in *rahin*, while in *rahn hiyazi* the debtor controls the ownership of the object that is used as collateral (*marhun*). However, the maintenance cost is charged to the person who owes it. The debtor or *murtahin* is obliged to return the *marhun* to *rahin* if the person concerned has paid off his debt. Fiduciary guarantees used in Islamic financial institutions in Indonesia share closer similarities with the guarantees in the form of *rahn takmini* or *rahn tasjily*. The *rahn hiyazi* is more similar to the concept of pledges that applies to customary law and the Indonesian Civil Code (KUHPerdata), where the object of the pledge is in the control of the pledge recipient (*murtahin*/creditor).[18]

2. Similarities and Differences between Fiduciary Guarantees and *Rahn Tasjily*

Based on the provided explanation, there are some similarities between Fiduciary guarantees and *Rahn Tasjily*, namely both are guarantees for debts where the object of the guarantee is not material or the form of the object, but proof of ownership of the object. In its concept, these two forms of collateral both serve as collateral for debts and

Accounting, Auditing And Governance Standards (Accounting and auditing organisation for islamic financial institutions (AAOIFI) 2015); Dewan Syariah Nasional, Financing Accompanied by Rahn (At-Tamwil al-Mautsuq bi al-Rahn) 2014 [DSN Fatwa Number 92/DSN-MUI/IV/2014].

[17] Sahib 'Abdullah Bashir Al-Shakhanabah, *Al-Damanat al-'Ayniyah al-Rahn Wamada Mashru'iyyatu Istithmariha Fi al-Masarif al-Islamiyah* (Dar al-Nafais 2011) 40; Irma Devita Purnamasari and Suswinarno, *Panduan Lengkap Hukum Praktis Populer Kiat-Kiat Cerdas, Mudah, Dan Bijak Memahami Masalah Akad Syariah* (Kaifa) 127-128.

[18] Adrian Sutedi, *Hukum Gadai Syariah* (Sinar Grafika 2008); Ade Sofyan Mulazid, *Kedudukan Sistem Pegadaian Syariah* (1st edn, Kencana 2016); Gunawan Widjaja and Ahmad Yani, *Jaminan Fidusia* (1st edn, RajaGrafindo Persada 2000); Halimatus Sa'diyah, 'Kedudukan Fidusia Sebagai Jaminan Akad Pembiayaan Murabahah Pada Bank Syariah: Studi Kasus Pada BPRS Bhakti Sumekar Sumenep' (2018) 1 Misykat al-Anwar Jurnal Kajian Islam dan Masyarakat.

make proof of ownership of the object as collateral. The debtor (*murtahin*) simply submits proof of ownership but remain controling the object of the collateral.

In terms of the form of the agreement, both Fiduciary guarantees and *Rahn Tasjily* serve as an agreement/accesoire with the main engagement in the form of a debt agreement that requires both parties, namely *rahin* (the debtor/guarantor) and *murtahin* (the debtor/guarantee), to meet their respective achievements. As a follow-up agreement, upon the cancelation of the main agreement, the follow-up agreement will also be canceled.

Both types of agreement also share similarities in terms of the object, since the objects to be used as collateral for debts must be valuable or have a particular value as assets. The letter or certificate of ownership of the collateral object as a valuable property must be owned and transferrable. If the debtor or *rahin* is unable to pay off the debt, the debtor or *murtahin* may transfer it to him and subsequently may also transfer the object of the guarantee to another party, which includes the object as well as the evidence/certificate of ownership.

Both the fiduciary guarantee and *Rahn Tasjily* also share some similarities in terms of its expiration, in that after paying off the debt of the debtor (*rahin*), the destruction of the object used as collateral due to force majeure, although if it is insured will not annul the claim of the insurance. The nullification could also be due to the release of rights from the fiduciary recipient or cancellation from the *murtahin* party.

Both the fiduciary guarantees and *Rahn Tasjily* are similar in terms of the execution since it will be due when the fiduciary or *rahin* provider breaks his promise or fails to perform it, or when the debtor or *rahin* cannot pay off the debt until it is due. The fiduciary or *murtahin* recipient shall remind or warns the fiduciary or *rahin* in the first place to immediately pay off the debt. Nonetheless, when up to the agreed time, the debtor does not pay off the dect, the fiduciary or *murtahin* recipient is given the right to sell the collateral object (*marhun*). Furthermore, in case an excess of the sales proceeds with the amount of debt that has not been paid, the fiduciary recipient (*murtahin*) must give the excess to the fiduciary giver (*rahin*). Conversely, in case of a shortage from the sale of the collateral object, the shortage will be charged to the fiduciary (*rahin*) to pay it off.

Despite the considerably significant similarities or legal conformity between fiduciary guarantees and *Rahn Tasjily*, they both also share some differences. Fiduciary

Guarantees as regulated in the Law on Fiduciary Guarantees, emphasizes three types of debt that can be charged with fiduciary guarantees, namely: (1) existing debts; (2) debts that will exist in the future and have been agreed upon in a certain amount; and (3) a debt that can be determined at the time of execution based on the main agreement which creates an obligation to fulfill an achievement. Thus, the debt referred to is in a broad sense, covering all achievements that arise in the engagement. Elucidation of Article 7 of the Law on Fiduciary Guarantees states that the debt in question is interest payable on the principal loan and other costs, the amount of which can be determined later.

Meanwhile, *Rahn Tasjily* (as regulated in the fatwa of the National Sharia Council of the Indonesian Ulema Council regarding *Rahn* and *Rahn Tasjily*) did not provide an affirmation of the concept or classification of the related debt. The scope of the agreement to be charged with new guarantees is regulated in the fatwa of the National Sharia Council of the Indonesian Ulema Council Number 92/DSN-MUI/IV/2014 concerning Financing Accompanied by *Rahn* (*At-Tamwil Al-Mautsuq Bi Al-Rahn*). Based on these provisions, all forms of financing/distribution of Islamic Financial Institutions (LKS) may be guaranteed with collateral (*Rahn*) in accordance with the provisions in this fatwa. The fatwa states that the classification of debt may be in the form of money and/or goods, is binding (common), cannot be erased unless it has been paid or released, the quantity and/or quality and time must not be increased due to the extension of the time of the payment term.

Of the three types of debt that can be subject to fiduciary guarantees, the third category of debt is not in line with the debt referred to in *rahn tasjily*. The amount of interest made payable on the principal loan and other costs, which can be determined later is classified as usury, and thus the debt on illegal substances is charged by *rahn tasjily*. The fatwa of the National Sharia Council of the Indonesian Ulema Council Number 1 of 2004 has prohibited the payment of interest and other costs that may contain ambiguity (*gharar*). This element is contrary to the requirements of *marhun bih* proposed by the scholars of the school of thought.

Comparison of the characteristics of Fiducia Security and Rahn Tasjily, can be explained as follows:

Characteristics	**Fiducia Security**	***Rahn Tasjily***	**Information**

Legal basis	Law (No. 42 of 1999)	Fatwa (No. 68/DSN-MUI/III/2008)	The law has binding power, whereas the fatwa does not
Agreement Form	Authentic deed	Not Regulated	Article 5 paragraph (1) of Law No. 42 of 1999 stipulates that fiducia security are made by notarial deed
Object	Movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights	Goods on debt	The fatwa of the National Sharia Council of the Indonesian Ulema Council does not explain clearly what is meant by goods on debt
Collateral Object Holder	Object owner	Object owner/guarantee/rahin	Guarantee recipients only have legal proof of ownership
Profit	Interest	Maintenance and Storage Cost	The amount of maintenance and storage costs should not be related to debt. On the other hand, the amount of interest is in accordance with the amount of the debt.
Collateral Object Execution	Execution, parate execution, or sale of private objects based on agreement	Sales by auction or to other parties	The difference for fiducia security is that there is an executorial implementation
Dispute Settlement	Not Regulated	Sharia Arbitration Board or Religious Court	Law No. 42 of 1999 does not regulate dispute settlement

3. Arrangement Formulation of Fiduciary Guarantee

The importance of material guarantee instruments for risk mitigation is not only needed in debt/credit agreements (conventional), but also in sharia financing agreements which are one of the products of Islamic Financial Institutions. The real practice of *rahn tasjily* has some problems, considering that legal products in the form of fatwas do not

have binding legal force. Although the fatwa (both fatwa of the National Sharia Council of the Indonesian Ulema Council Number 68/DSN-MUI/III/2008 and Number 92/DSN-MUI/IV/2014) states that in case of the default of *rahin, marhun* can be forced to sell/execute the object directly through auction, but in practice it cannot be implemented. The case is different with fiduciary guarantees which are regulated by law, which have binding power.

In contrast, Law No. 42 of 1999 has yet to provide the possibility regarding the use of fiduciary guarantees with sharia financing as the main engagement. Law No. 42 of 1999 does not stipulate sharia financing based on sharia principles as the main engagement in binding fiduciary guarantees. It can be said that the law has not explicitly accommodated sharia-based transactions to use fiduciary guarantee instruments to mitigate potential risks. In contrast, the Fiduciary Guarantee Law, which was stipulated after the issuance of the Banking Law (Law Number 10 of 1998) has sorted out the types of distribution of funds not only to provide credit, but also financing based on sharia principles. Law No. 42 of 1999 did not respond at all to sharia economic transactions, which had seen an enormous growth at the time of the drafting of Law No. 42 of 1999. Islamic economy has witnessed a commendable development since the early 1980s, with the release of various economic policy packages that allow banks to provide 0% credit (zero interest). Such development was followed by a series of policies in the banking sector contained in the October 1988 Package (Pakto 88). In its essence, Pakto 88 was a banking deregulation that made it easy for the establishment of new banks, which led to the rapid growth of the banking industry at that time.[19] In 1991, the growth of Islamic economy has led to the establishment of Bank Muamalat Indonesia as the first Islamic bank in Indonesia.

The issuance of several Fatwas of the National Sharia Council of the Indonesian Ulema Council (Number 25/DSN-MUI/III/2002, Number 68/DSN-MUI/III/2008 and Number 92/DSN-MUI/IV/2014) indicates the importance of guarantees as a primary instrument in Sharia economic transactions. These fatwas were born as a response to the

[19] Abdul Ghofur Anshori, 'Sejarah Perkembangan Hukum Perbankan Syariah di Indonesia dan Implikasinya bagi Praktik Perbankan Nasional' (2008) 2 La_Riba 159 <http://jurnal.uii.ac.id/index.php/JEI/article/view/2540>; Nurfadillah Nurfadillah, 'Urgensi Sinkronisasi Akad Perbankan Syariah Dengan Akad Jaminan Harta Benda Menurut Prinsip Syariah' (2019) 6 Jurnal Kajian Hukum Islam 81 <https://journal.unsuri.ac.id/index.php/jkhi/article/view/7>; Nana Diana, 'Pengaruh Pembiayaan Gadai Emas Dan Pembiayaan Ar-Rum Terhadap Perolehan Laba Pegadaian Syariah' (2016) 1 Journal of Accounting and Finance <https://journal.unsika.ac.id/index.php/accounthink/article/view/534>.

public demands who are increasingly interested in conducting sharia economic transactions along with the increasing awareness in sharia economic literacy. All of them are related to guarantees, especially fiduciary guarantees, which were born long after the issuance of Law No. 42 of 1999. The fatwa of the National Sharia Council of the Indonesian Ulema Council in Sharia banking transactions according to the Sharia Banking Law (Law Number 21 of 2008) occupies a strong position as a source or reference. However, the general explanation of the Law confirms the need to follow up the fatwa with the Regulation of Bank Indonesia. This necessity means that even though a fatwa needs further operation or implementation in the form of regulations or laws in force even though it is a part or instrument in Islamic Banking. Fatwa is not a form of legislation or a statutory regulation, and thus the fatwa does not have binding legal force. The fatwa of the the National Sharia Council of the Indonesian Ulema Council can only serve as the basis for the judge's consideration to make decision in the case of a dispute.

On this basis, the fatwa of the National Sharia Council of the Indonesian Ulema Council does not and has yet to resolve the problem related to the weakness of the Law No. 42 of 1999, which only regulates the use of fiduciary guarantees in debt/credit agreements. Law No. 42 of 1999 does not explicitly regulate the use of fiduciary guarantees in Sharia financing agreements, which have different characteristics from debt/credit agreements.

Hence, it is necessary to make some changes to the Law No. 42 of 1999 in order to fulfill the community's sense of justice. The imposition of a guarantee is not a legal relationship that stands alone, but is related and bound to the legal relationship that precedes it in the form of a principal engagement. Therefore, the main engagement that can be followed by a guarantee binding agreement must be stated clearly and unequivocally in the laws and regulations governing the material guarantee institution. The clear and unequivocal mention of a particular term or phrase in legislation is one of the principles in the formation of laws and regulations. Every statutory regulation must meet the technical requirements for the preparation of laws and regulations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so as not to cause various kinds of interpretations in its implementation.[20]

[20] Law No.12 of 2011 on the Establishment of Legislations Art 5 (f)

In terms of content or material content, statutory regulations must also reflect the principles of justice, order and legal certainty. The material content of laws and regulations must reflect proportional justice for every citizen and must create order in society through by ensuring legal certainty.

Various regulations have provided opportunities and flexibility for every citizen to carry out sharia-based business or economic activities. The right to carry out sharia economic activities is thus a constitutional right guaranteed by laws and regulations. The laws and regulations that are related to each other must be synergistic and complementary. Implementation or operationalization of sharia financing transactions as a product of Islamic banks/financing institutions, in addition to requiring the support of the laws and regulations, also governs these sharia financing products, as well as laws and regulations concerning guarantee institutions which accommodate the main engagement in the form of sharia financing contracts/agreements that can be guaranteed.

In connection with the above issues, the re-formulation of fiduciary guarantees is a necessity. Two alternatives can be proposed in the reformulation of fiduciary guarantees:

> Reformulating the definition and scope of the existing and valid fiduciary guarantee institutions as stipulated in the legislation, by making amendments or changes to the Law No. 42 of 1999.

Forming a new bill specifically on sharia guarantee institutions, which regulates various types of guarantee institutions (including fiduciary guarantees). The existing terminology and terms can be used and remain applicable with additional sharia attributes by turning the phrase into sharia fiduciary guarantee.

Of the two options, the first alternative is seen as more effective and realistic than the second alternative, because the second option requires a longer process and mechanism. The amendment of several articles that are deemed necessary can also be accompanied by the change plan agenda of each legislation regarding the guarantee institution.[21]Although the process of forming laws and regulations for both new laws and amendments must go through relatively the same stages, starting from planning

[21] It can be added with the results of a study on changes to Law No. 42 of 1999 on Fiduciary Guarantees that have appeared in the public sphere, including by raising some issues regarding changes in the definition/formulation of fiduciary guarantees, the scope of the object of guarantees, the use of private deed, electronic registration, and registration offices; Putri Ayi Winarsasi, *Hukum Jaminan Di Indonesia (Perkembangan Pendaftaran Jaminan Secara Elektronik)* (Jakad Media Publishing 2020); Ratna Fitri Andini, 'Implementasi Jaminan Fidusia Atas Pembiayaan Murabahah di BPR (Bank Pembiayaan Rakyat) Syariah Mandiri Mitra Sukses Gresik' (2014) 3 Maqasid: Jurnal Studi Hukum Islam.

(prolegnas), preparation of academic texts, drafting of bills, discussions to ratification and promulgation, to compile special bills that regulates various types of guarantee institutions still requires a more in-depth and comprehensive study. The urgency of rearranging the formulation of fiduciary guarantees that the accommodation of sharia financing as the principal engagement that can be charged with collateral, can be resolved by using the first alternative.

The main changes shall include the formulation of fiduciary guarantees as regulated in Article 1 number 2 of the Law No. 42 of 1999, which shall be amended to: "Fiduciary guarantees are security rights for movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights as referred to in paragraph (1) in Law Number 4 of 1996 concerning Mortgage Rights that remain in the control of the Fiduciary Giver, as collateral for the repayment of certain debts that arise as a result of the implementation of debt or financing agreements conventionally or based on sharia principles, which gives priority to the Fiduciary Recipient against creditors or other creditors."

In addition to changing the definition of the abovementioned guarantee institution, it shall be continued by changing other related articles in the Law No. 42 of 1999 as a way to provide adequate support for understanding sharia financing. Thus, more operational stages, such as the making of a guarantee binding deed, can be appropriately addressed and correctly interpreted in the financing of a sharia agreement/contract, since it is no longer interpreted as a conventional debt/credit agreement.

D. Conclusion

The issuance of the fatwa of the National Sharia Council of the Indonesian Ulema Council Number 68/DSN-MUI/III/2008 concerning Rahn Tasjily is a response to the community's need to carry out transactions that cause debts and receivables by providing guarantees for goods that remain under the control and utilization of the debtor or the guarantor. Rahn tasjily shares some similarities or conformity with the provisions of fiduciary guarantees as regulated in Law Number 42 of 1999. This conformity particularly is related to the object/collateral in the form of proof of ownership, instead of in the form of the real object. Both are also an accesoire agreement for the main agreement of debts. Thus, if the debtor is unable to pay off the debt, the debtor can transfer the object of the guarantee to him or another party by including the object as well as evidence/certificate of ownership.

The same provision also applies to the expiration of the guarantee after the debt is paid off. If the debtor is in default, is unable to pay off his debt when it is due, and still unable to pay off his debt after the first reminder to immediately pay off the debt, the recipient of the guarantee as the party who owes the debt is given the right to sell the collateral object. Furthermore, in the case of an excess of the sales, it shall proceed with the amount of debt that has not been paid, and the excess must be given to the debtor. On the other hand, in the case of a shortage from the sale of the collateral, it is the obligation of the debtor to pay off the shortfall.

Despite a significant match between the two (rahn tasjily and fiduciary guarantees), there are some differences between Fiduciary Guarantees and Rahn Tasjily in terms of the interest payable on the principal loan and other costs. The Law on the Fiduciary Guarantees stipulates that the amount of interest can be determined later, and this is not in line with or contrary to the debt provisions in rahn tasjily which prohibit this practice because it is seen as usury and contains ambiguity (gharar).

Therefore, it is recommended to implement the content of the fatwa of the National Sharia Council of the Indonesian Ulema Council on guarantees, especially rahn tasjily and law on the fiduciary guarantees as an instrument in sharia financing without a doubt. The legislators should plan an agenda for the amendment of Law No. 42 of 1999. The amendments must provide clear arrangements regarding the principal engagements that can be subject to fiduciary guarantees, which include debt-receivable agreements or conventional or sharia-based financing agreements. In addition to the concept or formulation of fiduciary guarantees, changes to the Law No. 42 of 1999 are also needed to respond to various issues, such as the scope of the object of the guarantee, the use of private deeds, electronic registration, and registration offices, as well as transfer issues, and the abolition of collateral.companies.

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