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The Law of Guarantee Engagement in Business Transactions in Indonesia

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Abstract
The law of collateral obligations is a crucial aspect in business transactions because it functions as a legal protection mechanism for creditors against the risk of default by debtors. This study aims to examine how the law of collateral obligations is applied in business practices and to examine the problems faced by the parties in the obligation relationship. This study uses a qualitative approach with a literature study method and in-depth interviews with legal practitioners and business actors. The results of the study show that although collateral instruments such as pawns, fiduciaries, mortgages, and mortgages have been legally regulated, their implementation in the field often faces obstacles, both in terms of legal understanding, contractual interpretation, and implementation of collateral execution. This study recommends the need to improve legal understanding among business actors and strengthen institutions in enforcing collateral law in order to create certainty and justice in business transactions.

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BACKGROUND

The engagement is a translation of the original term, in Dutch "verbintenis". The origin of the word engagement is from obligatio (Latin), obligation (French, English) Verbintenis (Dutch: bond or relationship). An engagement means something that binds between one person and another. The term contract law itself includes all the provisions contained in the third book of the Civil Code. An agreement is born by an agreement or by Law. In Indonesian literature, the word Verbintenis is often called the law of engagement or the law of debt. The law of engagement is a rule that regulates legal relations in the field of property law (vermogenrecht) between two or more people, which gives rights (recht) to one party (creditors) and gives obligations (plicht) to the other party (debtor) for an achievement(N. Febrianto and Putritamara 2017). Rapid progress in the business world requires many alternatives to enforce legal protection, the use of print and electronic media is no longer effective. Activity organizing services are practically a concrete form of public relations business. Service users collaborate with service companies that organize activities for the efficiency and success of these

activities(UNESCO 2018).

Engagement cannot be separated in the business world, both micro and macroeconomic. Business actors always arrange their legal relationship in an agreement. So that rights and obligations arise between them. Each alliance is to give something, to do something, or not to do something. Broadly speaking, the third book of the Civil Code does not specifically explain the meaning of engagement. However, experts give their respective definitions of this engagement, among these experts is Mariam Darus Badrulzaman, giving the meaning of the engagement as "a (legal) relationship that occurs between two or more people, located in the field of wealth, with one party entitled to the achievement and the other party is obliged to fulfill the achievement". Meanwhile, the Law of Engagement itself is interpreted as a rule that provides arrangements for carrying out the engagement. The law of engagement in Indonesia is regulated in the Civil Code (KUHPerdata), especially in Book III of Engagement. An engagement is defined as a legal relationship between two or more people, where one party owes the other party something to do or give something (Ahmad Febrianto, Muhtadin, and Riadi 2022).

A business agreement is a form of engagement born from the will of the parties who bind them to do or not do something. Business agreements can be made orally or in writing, and are subject to the provisions of the applicable contract law in Indonesia. The law of engagement in Indonesia is regulated in the Civil Code (KUH Percivil), especially in Book III on Engagement. An engagement is defined as a legal relationship between two or more people, where one party owes the other party something to do or give something(Mawonde and Togo 2019).

There are several examples of the application of contract law in business agreements, including Sale and Purchase Agreement, In a sale and purchase agreement, the law of the agreement regulates the rights and obligations of the seller and buyer, such as the goods that must be delivered, the price that must be paid, and the time of delivery of the goods (Crystallography 2016). Lease-lease agreements of agreement law govern the rights and obligations of tenants and owners, such as the object being rented, the rental price, and the term of the lease. The legal cooperation agreement of the agreement regulates the rights and obligations of the parties involved in the cooperation, such as the contribution of each party, the sharing of profits, and the resolution of disputes. Based on Article 1233 of the Civil Code, an agreement can be born from an agreement or from a law. Agreements born from laws can be divided into agreements that are born from the law alone and those that are born from the law because of human actions that can be further distinguished into human actions that are in accordance with the law (rechtmatige) and those that are unlawful (onrechtmatige).

For agreements born from law only, agreements arising from agreements include sale and purchase agreements, leases, and others. This business agreement must meet the conditions already in the Civil Code, such as the principle of freedom of contract which allows everyone to enter into an agreement that is based on any agreement and in any case, as long as it does not violate the law (Margolang 2018). An agreement arising from a law, such as an agreement regulated in Article 1359 of the Civil Code, an agreement also has an important role in the protection of the parties to a business agreement. An example of an agreement set forth in Article 1359 is a payment agreement, in which the debtor is obliged to reimburse the creditor for costs, losses, and interest if the debtor is unable to deliver the goods in question or does not take

good care of them to settle obligations. In a business agreement, an engagement can also be an agreement made by an adult child or a person who is under guardianship. This Agreement is invalid and may be declared null and void if complained by the interested party.

Today's society cannot be separated from the important role of banking, from saving, borrowing, to conducting financial transactions, all using bank services. Bank comes from the Italian word banco which means bench. This bench is used by bankers to serve their operational activities to customers. The term bench is officially and popularly becoming a bank (UNESCO 2018). Banks are service industry companies because their products only provide services to the community. Banks as economic dynamizers mean that banks are the center of the economy, a source of funds, the implementation of payment traffic, the production of savings, and the driver of national and international trade progress. Without the role of banking, it is impossible to globalize the economy. Banks are very important and play a role in encouraging the economic growth of a nation because banks are an effective and productive place to save for the community. The law of collateral in business transactions is very important because it can help to increase legal trust and certainty in business transactions (Susana, Pembiayaan, and Bank 2011).

RESEARCH METHODS

The research of this journal uses a qualitative approach, namely the method that explains the law of collateral engagement in a transaction can be explained as a legal relationship that arises between two or more parties, where one of the parties provides collateral as a form of responsibility or reinforcement of obligations arising from the collateral agreement (agreement) this collateral becomes an instrument to provide a sense of security for the party who provides financing or conducts transactions, so that their rights can be protected if the other party does not fulfill their obligations (A Febrianto, Widad, and Aini 2022) (Kharissidqi and Firmansyah 2022) (Emilia Rosa and Sugiono 2022).

FINDINGS AND DISCUSSION

Banking in Indonesia is developing along with the development of people's thinking about the sharia system without the use of interest (riba). Banks are divided into two, namely Islamic banks and conventional banks. These two types of banks have almost the same bank products, only different in their operating systems. Conventional banks use an interest system, while Islamic banks implement a profit-sharing system. The Bank's business activities are always faced with risks that are closely related to its function as a financial intermediation institution. Facing these conditions, the Bank needs to pay attention to all risks both directly and indirectly that can affect the Bank's business continuity, the Bank is also required to be able to adapt to the environment through the implementation of Risk Management in accordance with Sharia Principles.

An alliance is a relationship between two parties in the field of wealth, where one party (creditor) is entitled to an achievement, and the other party (the debtor) is obliged to fulfill that achievement. Therefore, in every engagement there are "rights" on the one hand and "obligations" on the other. An agreement in katakana is a legal punishment between two or two parties, based on which one party has the right to

demand something from the other party and the other party is obliged to fulfill the demand. The party who has the right to demand something is called a creditor (receivable), while the party who is obliged to meet the demand is called a debtor (owed). The relationship between the debtor and the creditor is a legal relationship, so this means that the creditor's rights are guaranteed by law (law). This is emphasized based on the provisions of article 1338 paragraph (1) of the Civil Code which states that all consents made legally are valid as laws for those who make them.

In this case, Vollmar stated, judging from its contents, that the agreement exists as long as a person (the debtor) must perform an achievement that may be enforced on the creditor, if necessary with the help of a judge. From the explanation above, the elements of an alliance consist of legal relationships, wealth, parties, and achievements. The importance of advocating this element is to emphasize that the law attaches "rights" to one party and attaches "obligations" to the other party in the relationship that occurs in society. If there is one party who violates this relationship, the law can force the relationship to be carried out. For example: if Hengky promises to sell his car to Usman, then as a result Hengky is obliged to hand over his car to Usman and has the right to guide the price of the car, while Usman is obliged to hand over money as the price of the car and has the right to demand the delivery of the car. And if one of the parties does not fulfill its obligations, the law can force that obligation to be fulfilled.

The way to assess a legal relationship requires several certain criteria. The criteria for legal relations can be judged by money, it has been abandoned because in society there is also a legal relationship that cannot be judged by money. If a violation is not sanctioned, then there is no justice for the community and this is contrary to one of the provisions of the law to get justice. Therefore, the legal relationship is an engagement if the criteria can be judged by money or the existence of a sense of justice.

If the legal system of engagement in property law is in a closed system, it can be regulated in book II of the Civil Code and this law of engagement has an open system that has been regulated in book III of the Civil Code. If They do not set their own will in making promises, then They will be subject to the law. For example, those who promise to buy and sell only stipulate prices and goods, while others such as the place of delivery, risk, delivery costs, are not stated in the agreement, other than the price and goods of the provisions in book III of the Civil Code. The open system mentioned above is commonly concluded from article 1338 paragraph (1) of the Civil Code which can state that all agreements are made legally as laws for those who make them.

The making of laws according to (Badrulzaman, 1995=107) said all in this article shows that the agreement in question is not only limited to a named agreement but also includes an unnamed agreement. In contrast to the subject (1995:14), the word in article 1338 paragraph (1) of the Civil Code has been interpreted as an ability of the community to make promises and contain anything, the promise can persuade them to make it like a law. In the treaty we can make our own laws. For example, in buying and selling, the risk that hits the goods that are sold is legal and can be borne by the buyer since the promise is closed. Regarding the term legal, the making of the law shows that the agreement must be in accordance with the law, all agreements that have been made in accordance with the law or legally are alluring. This statement shows that the principle is a legal certainty. This law of engagement is also known for the principle of

consensualism which is an alliance that was born from the moment the agreement was reached. Thus, the agreement is valid if it has agreed on basic matters

1. Principles

   The Risk Management Principles that have been applied by Islamic banking in Indonesia are directed in line with the standard rules issued by the Islamic Financial Services Board (IFSB). The Financial Services Authority sets this Risk Management rule as a minimum standard that must be met by BUS and UUS so that Islamic banking can develop according to the needs and challenges that will be faced. Islamic banks will always be faced with various types of risks with various complexities and inherent in their business activities.
2. Conditional Prioritization

   An agreement is conditional if it is dependent on an event that is still to come and will not occur, either by suspending the engagement so that such an event occurs, or by canceling the engagement according to the occurrence or non-occurrence of the event (Article 1253 of the Civil Code)

   In the formulation of the word "condition" means "events" that are still to come and will not necessarily occur. Every time a conditional alliance is opposed by a pure alliance, that is, an alliance that does not contain conditions. The existence of events (conditions) in the agreement does not require a (firm) statement from the parties. It is considered a condition in the agreement, if the circumstances and purpose of the agreement are seen to have that condition. The conditions in this alliance are made as "conditions of silence" (Badrulzman, 1995:47).

   Considering the conditions (events) in determining the article, there are two types of engagements, namely;

   1) Tangguh conditional alliance

      A conditional alliance is an alliance that is born when the event in question occurs. Like: I promised to rent out my house, if I really moved to Jakarta. In the sale and purchase agreement and it is allowed to hand over the price to a third party and if the third party is unable to make such an estimate then there is no purchase, this kind of purchase jul is not classified as an alliance with the condition of Tangguh (subektu, 1979:5)
   2) Conditional alliance void

      A null conditional agreement is an alliance that has been born, even ends or is canceled if the event occurs. Like: I rent a house to Imron with the condition that the engagement ends if my son is abroad and has returned to his homeland. So, the engagement (rental) will end automatically if my son returns to the country.

All conditions which are intended to carry out something which is impossible to carry out, something contrary to good decency or something which is prohibited by law are void, as a result of which the consent used in them is powerless in any case.

The law to determine the conditions that cannot be included by parties to an alliance. If violated, the agreement is void because the condition is the purpose of carrying out something that is impossible to do, such as: Arul promises Zaky to give him a motorcycle, if he succeeds in lowering the moon from the sky. Conditions that conflict with good morality. Such as: Diana promises to gift a motorbike to Citra if she is able to steal her friend's belongings.

The conditions whose implementation depends on the will of one of the parties involved in it are called potestatieve voorwaarde. The conditions are void, such as: I promise to rent out the house to someone when I want it. Promises like this have no force whatsoever.

3. Guarantee law

   Fiduciary comes from the word fiduciair or fides, which means trust, which is the handover of ownership of objects in trust as collateral for the repayment of creditors' receivables. Fiduciary is often referred to as FEO, which stands for Fiduciare Eigendom Overdracht. The assignment of ownership of this property is intended only as collateral for the repayment of certain debts, where it gives priority to the fiduciary (creditor) over other creditors. The definition of fiduciary is stated in Law No. 42 of 1999 concerning Fiduciary Guarantees Article 1 number 1, that: fiduciary is the transfer of ownership rights of an object on the basis of trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the property.39 While the definition of fiduciary guarantee is contained in Article 1 number 2 of the UUJF which states, that: fiduciary guarantee is the right to guarantee movable objects, both tangible and non-tangible tangible and immovable objects, especially buildings that cannot be encumbered with dependent rights as referred to in Law Number 4 of 1996 concerning Dependent Rights that remain in the control of the fiduciary, as collateral for the repayment of certain debts, which gives priority status to the fiduciary over other creditors.
4. Fiduciary position in banking transactions
   - The Position of Fiduciary Guarantees in Banking Transactions A Positive Legal Perspective

     Fiduciary according to its origin comes from the word "fides" which means trust. In accordance with the meaning of this word, the (legal) relationship between the debtor (fiduciary) and the creditor (fiduciary) is a legal relationship based on trust. The fiduciary believes that the beneficiary wants to return the ownership of the goods that have been handed over, after the debt has been paid off. On the other hand, the fiduciary believes that the fiduciary will not abuse the collateral that is in his power.

     The definition of fiduciary according to Law No. 42 of 1999 concerning Fiduciary Guarantees, is "the transfer of ownership rights of an object on the basis of trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the property". The fiduciary guarantee is carried out by means of an object whose ownership rights are handed over to the creditor but is still physically controlled by the fiduciary for the benefit of the fiduciary. Fiduciary transfer of ownership is not intended as a continuous property but its purpose is to provide a guarantee of the repayment of debtors' debts to creditors.

     Fiduciary guarantees are conventional products that are applied to provide protection for creditors in particular. When the debtor defaults, the creditor can seek compensation from the debtor through

the execution of a fiduciary guarantee. With fiduciary registration, the execution of the collateral can be carried out immediately without waiting for a court decision. This kind of condition makes it easier for financial institutions such as banks or pawnshops to withdraw compensation from loans given to customers.

Based on this law, the object of fiduciary guarantee is divided into 2 types, namely: Movable objects, both tangible and intangible, and immovable objects, especially buildings that are not encumbered with dependents. What is meant is a building that is not burdened with the right of dependency here in relation to the building of flats, as regulated in Law Number 16 of 1985 concerning Flats. The subjects of the fiduciary guarantee are the grantor and the beneficiary of the fiduciary. The fiduciary is an individual or corporation that owns the object of fiduciary guarantee, while the fiduciary is an individual or corporation that has receivables whose payment is guaranteed by fiduciary guarantees

- The Position of Fiduciary Guarantees in Banking Transactions Perspective of Islamic Law

  The concept of Islamic law is not known as the guarantee of property rights. However, so far what has happened in the practice of Islamic banking, financing carried out by Islamic banks is also attached to a material guarantee under civil law. Juridically, sharia-based financing activities do not conflict with the law. The problem in the context of sharia arises looking at sharia financing which is associated with the concept of fiduciary guarantees that are not known in the content of sharia economics.

  Thus, sharia financing still requires complementary components of sharia guarantees in order to obtain legal certainty. One of the legal products issued by DSN MUI in Fatwa No. 68/DSN-MUI/III/2008 concerning Ra>hn Tasjily has outlined the concept of guarantee with the transfer of ownership of goods as collateral as a form of service for Islamic financial institutions in accordance with sharia principles

  Fiduciary in Islamic law is known as ra>hn. According to Bahasa, rahn means to remain, endure, and endure. Ra>hn according to the term is holding something in the right way with the aim of fulfilling debt payment obligations for the debtor. Several scholars give a definition of ra>hn, one of which is al-Subki argues that ra>hn is to make an asset as a collateral for financing or loan, so that the financing or loan can be repaid with the value of the financing or collateral asset if the borrower is unable to repay the loan.

  Ra>hn is a guarantee in the form of an object that is handed over on the principle of trust both physically and only the right of ownership of the object by the debtor to the creditor to strengthen the certainty of the smoothness and timeliness in the payment of debts of the debtor (rahin) to the creditor (murtahin), and can be used as a substitute for the repayment of debts that are not paid by the apostahin. Rahn is contained in the Sharia Banking Law Article 1 number 26 which is called collateral, which is an additional guarantee, both in the form of movable and

immovable objects submitted by the collateral owner to the Sharia Bank or Sharia Business Unit to ensure the repayment of the obligations of the customer receiving the facility. The concept of ra>hn in Islam is enforced in order to ensure and provide encouragement to customers who are in debt to pay off their debts according to the set period and avoid acts that can harm the party who gives the debt.

5. Fiduciary Guarantee Practices in Islamic Banking Transactions
    - Fiduciary Guarantee Practices in Islamic Banking Transactions

        In driving fiduciary practice, it is the wheel of the economy whose need for funds is more and more felt, increasing, to solve the problem of lack of funds, an intermediary institution is needed that will act as a creditor who provides funds for debtors who need funds because the economic situation is hampered. In driving the wheels of this economy, the need for funds is felt to be increasing.

        This happens because various business sectors require additional capital to maintain and develop their operational activities. When business actors or individuals experience limited funds, the problem of lack of capital needs to be overcome immediately so as not to hinder overall economic growth. To solve these problems, the existence of financial intermediary institutions such as banks and other financing institutions is needed. This institution functions as an intermediary between parties who have excess funds (investors, savers) and those who need funds (debtors).

        In its role as a creditor, the intermediation institution will provide funds to parties who need the system and with more specific mechanisms. The basic principle in granting credit states that anyone can provide credit, as long as the person concerned has financial ability and meets the applicable legal requirements. However, in practice, credit is generally carried out by official institutions such as banks, since They are subject to regulation and supervision from financial authorities, as well as having more mature risk mitigation mechanisms.

        During the credit application process, especially working capital loans, there is a series of interactions between creditors and debtors. This process usually begins with the submission of a credit application by the debtor, followed by an evaluation of the debtor's financial feasibility by the creditor (through the analysis of the 5Cs: character, capacity, capital, collateral, and condition). If the application is approved, then a legally binding credit agreement or contract is born.

        In the contract, the creditor has the obligation to hand over a certain amount of funds according to the agreed value, while the debtor is obliged to return the funds along with interest (or margin, in the context of sharia) according to the stipulated period. Thus, the relationship between creditors and debtors is a legal relationship that has consequences for both parties, and is carried out on the basis of trust, prudence, and the principle of financial responsibility.

The registration of fiduciary guarantees is regulated in articles 11 to 18 of Law No. 42 of 1999 concerning Fiduciary Guarantees and Government Regulation No. 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and the Cost of Making Fiduciary Guarantee Deeds as follows:

- The application for registration of fiduciary guarantees is submitted to the Minister.
- The application for registration as intended in paragraph (1) is submitted in writing in Indonesian through the office by the fiduciary, his or her attorney or representative by attaching the statement of registration of fiduciary guarantees.
- The application for registration of fiduciary guarantees as intended in paragraph (2) is subject to a fee that is determined by a separate government regulation regarding non-tax state revenue.
- The application for registration of fiduciary guarantees as referred to in paragraph (2) is completed with:
  - A copy of the notary deed regarding the encumbrance of fiduciary guarantees.
  - Power of attorney or letter of delegation of authority to register Fiduciary guarantees.
- Proof of payment of fiduciary guarantee registration fee as intended in paragraph (3) The statement of payment of fiduciary guarantees as intended in paragraph (2) is carried out by filling out a form whose content is determined by the decision of the Minister.

In the bonding of credit with fiduciary guarantees, the object of the guarantee must be described specifically and completely. This is to fulfill the principles of legal certainty and protection of the rights of creditors. Such as type, amount, value, number, and date of purchase (invoice/receipt, sale and purchase agreement), location of storage of goods, number and deed of binding. The fiduciary guarantee certificate has an executory power equivalent to a court decision with permanent legal force, so that the fiduciary can directly execute the object of the guarantee through a public auction without the need for a court process.

The Fiduciary Guarantee Law provides ease of execution for creditors through the execution parate, which is the right to carry out execution on the object of the guarantee without having to go through the court. This is done by way of a public auction. This advantage is not only possessed by fiduciary guarantees, because in the pawn system there is also a similar mechanism that allows creditors to execute the object of the guarantee without a trial, provided that there has been a prior agreement in the pawn agreement.

The execution of fiduciary guarantees regulated in Article 29 is as

follows:

First, if the debtor or fiduciary guarantor is injured by the promise, execution of the object that is the object of fiduciary guarantee can be carried out, executory execution by the fiduciary beneficiary, sale of the object that is the object of fiduciary guarantee on the power of the fiduciary itself through a public auction and taking the repayment of its receivables from the proceeds of the sale. An under-hand sale is made under the agreement of the grantor and the fiduciary if in such a way the highest price can be obtained that benefits the parties.

Second, the execution of the sale is carried out after one month has passed since it has been notified in writing by the grantor and the fiduciary to the interested parties in two newspapers circulating in the interested area. Article 19 paragraph (1) stipulates that the transfer of rights to receivables guaranteed by the fiduciary results in the automatic transfer of the rights and obligations of the fiduciary to the new creditor. Article 19 paragraph (2) requires new creditors to register the transfer of fiduciary guarantees to the Fiduciary Registration Office. This transfer of receivables is known as cessie, which is the transfer of receivables carried out with an authentic deed or under the hand. With a cessie, the rights and obligations of the old fiduciary pass to the new fiduciary, and the fiduciary must be notified of the transfer.

- The Practice of Fiduciary Guarantees in Banking Transactions from the Perspective of Islamic Law.

  Sharia banks are financial institutions that operate on the basis of Islamic sharia principles, which prioritize Islamic ethics and values in their financial services. Here are the main principles of Islamic banks:

  a. Free from Riba (Interest): Sharia banks do not use Bungan in transactions, but rather use a profit-sharing or rental system for financing.
  b. Free from maisir (speculation): Avoid transactions that contain elements of speculation or gambling that are detrimental to one of the parties.
  c. Free from Gharar (ambiguity): Avoids transactions that are unclear or contain uncertainty in their objects or terms.
  d. Principle of justice: To ensure fairness for all parties, with profits and losses shared fairly according to the agreement.
  e. Only finance Halal Business: Sharia Banks only finance business activities that do not conflict with Islamic law, such as haram businesses (alcohol, gambling, etc.).

  Sharia banks have two main roles, namely as a business entity (tamwil) and a social entity (mall). As a business entity, sharia banks have several functions, namely as investment managers, investors and service providers. Sharia Bank As an investment manager, Sharia banks collect funds from their investors/customers on the principle of wadi'ah yad al-damanah (deposit), mudarabah (profit sharing) or

ijarah (rent). As an investor, Sharia banks distribute funds through investment activities with the principle of profit sharing, buying and selling, or leasing. As a banking service provider, Sharia banks provide financial services, non-financial services, and agency services.

Financial services are carried out on the principle of wakalah (giving a mandate), kafalah (bank guarantee), hiwalah (debt transfer), ra>hn (debt guarantee or pawn), qard (policy loan for bailout), and others. Agency services with the principle of mudarabah muqayyadah. Meanwhile, as a social entity, sharia banks have a function as social fund managers for the collection and distribution of zakat, infaq, sadaqah funds (ZIS), as well as the distribution of qard al-hasan (policy loans). Sharia Bank is a bank with the principle of profit sharing which is the main foundation in all its operations, both in the direction of funds and in the distribution of funds (in Sharia banking, the distribution of funds is commonly referred to as financing).

Therefore, the types of fundraising and financing in sharia banks mainly also use the principle of profit sharing. The term bank interest is interesting because of various views and fatwas issued before the development of Islamic banks and Islamic financial institutions. Even though there is a fatwa on riba, the issue of bank interest still needs to be reviewed in line with the development of the current Islamic financial system.

In the practice of rahn, Murtahin (the recipient of goods) has the right to withhold marhun (goods) until the debt of rahin (the handover of goods) is paid off. Marhun and its benefits remain the property of the rahin, and can only be utilized by the Murtahin with the permission of the rahin for maintenance costs. The maintenance and storage of marhun is the obligation of the rahin, although it can be done by the Murtahin, with the cost of maintenance being the responsibility of the rahin. Administrative and storage fees should not be based on the loan amount. The sale of marhun follows the provisions that are in accordance with Islamic law, namely:

a. Does Not Harm the Rahin: The sale of marhun should only be done if the rahin fails to pay the debt. Sales must be made in a fair manner and not detrimental to rahin.
b. Done with the Consent of the Rahin: The sale of marhun must be with the permission or consent of the rahin, except in certain circumstances where the rahin fails to fulfill its obligations and there is already a clear agreement in advance.
c. Fair Selling Procedures: Sales must be conducted in a transparent manner and must not harm either party, and be conducted at a reasonable market price.
d. Proceeds of Sale to Pay Debts: The proceeds from the sale of marhun are used to pay off debts. If

there is any remaining proceeds from the sale after the debt has been paid off, the remainder must be returned to rahin.

e. No Taking Advantage of Marhun: Murtahin (the consignee) must not take advantage of or use marhun for personal gain before the sale is made, except for maintenance or storage in accordance with a valid agreement.

In banking practice, a rahn contract is an accessory agreement, which follows a financing contract. If the debtor pays off the debt, then the financing contract and the rahn contract end. In Islamic banks, rahn is also used as a sharia product, where customers pawn goods (e.g. gold) to get loans. Pawned gold can be sold at maturity, and customers benefit from the difference in gold prices that tend to increase.

The flow of rahn practice in Sharia Financial Institutions is generally as follows:

a. Customer Submits Guarantee (Marhun): Customer (rahin) submits collateral in the form of movable goods, such as gold or jewelry, to an Islamic bank (murtahin).
b. Payment Agreement: An agreement is made between rahin (customer) and murtahin (Islamic bank) which regulates the rights and obligations of each party related to financing and guarantees.
c. Disbursement of Financing: After the financing contract is signed and the collateral is received by the Islamic bank, the bank disburses the financing funds in accordance with the agreement.
d. Repayment of Financing: The customer repays the loan accompanied by the agreed fee, which includes the rental fee and the maintenance fee of the collateral.

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As an investor, Sharia banks distribute funds through investment activities with the principle of profit sharing, buying and selling, or leasing. As a banking service provider, Sharia banks provide financial services, non-financial services, and agency services. Financial services are carried out on the principle of wakalah (giving a mandate), kafalah (bank guarantee), hiwalah (debt transfer), ra>hn (debt guarantee or pawn), qard (policy loan for bailout), and others. Agency services with the principle of mudarabah muqayyadah. Meanwhile, as a social entity, sharia banks have a function as social fund managers for the collection and distribution of zakat, infaq,

sadaqah funds (ZIS), as well as the distribution of qard al-hasan (policy loans).

Sharia Bank is a bank with the principle of profit sharing which is the main foundation in all its operations, both in the direction of funds and in the distribution of funds (in Sharia banking, the distribution of funds is commonly referred to as financing). Therefore, the types of fundraising and financing in sharia banks mainly also use the principle of profit sharing. The interesting thing about the term bank is bank interest. Various views on bank interest, both Decisions and fatwas from these institutions were taken when Islamic banks and financial institutions had not developed as they are today. Even though the issue of bank interest still needs to be reviewed.

In the practice of ra>hn, the Murtahin (the recipient of the goods) has the right to hold the marhun (goods) until all the debts of the rahin (who hands over the goods) are paid. Meanwhile, marhun and its benefits still belong to rahin. In principle, marhun should not be used by murtahin except with the permission of rahin, by not reducing the value of marhun and its use is just a substitute for the cost of maintaining its maintenance. The maintenance and storage of marhun is basically the obligation of rahin, but can also be done by murtahin, while the cost and maintenance of proper storage is the obligation of rahin. The amount of administrative and storage fees should not be determined based on the loan amount.

The sale of marhun follows the provisions in accordance with Islamic law, namely, If it matures, the murtahin must warn the rahin to pay off the debt immediately, if the rahin still does not pay off the debt, then the marhun is forcibly sold/executed, the proceeds of the sale of marhun are used to pay off the debt, unpaid maintenance and storage costs and sales costs, the excess proceeds from the sale become the property of the rahin and the shortfall becomes the obligation of the rahin In banking practices in accordance with banking practices The legal provision that the RA>HN contract is an accessory agreement, if the debtor pays off his debts arising based on financing, then the financing contract will end, and for the sake of the law of the RAHN contract as an accessory agreement will also end. In addition to the rahn contract as an accessory contract to the financing contract as the main contract, in the practice of Sharia banks there is also rahn as a Sharia product. In the mechanism of the rahn contract as a product, the customer needs a certain amount of money and the Sharia bank agrees to provide a loan. For the loan, the customer gives the mortgaged goods to the Sharia bank as collateral, which is usually movable goods such as gold and jewelry. In the practice of gold pawning, it can also be used as an investment alternative, customers buy gold and pawn it to Sharia banks, but when the gold pawn is sold, it is sold. Customers benefit from the difference in the price of gold which is usually always increasing. The flow of ra>hn practice in Sharia financial institutions is generally as follows:

- The customer submits the guarantee (marhun) to the Sharia bank (murtahin). This guarantee is in the form of movable goods
- The payment contract is executed between rahin (customer) and murtahin (Sharia bank)
- After the financing contract is signed, and the collateral is received by the Sharia bank, the Sharia bank disburses the financing

Conclusion

The law of collateral engagement plays an important role in ensuring certainty and fairness in business transactions. An agreement as a legal relationship between creditors and debtors creates rights and obligations that are protected by law. In practice, although various collateral instruments such as mortgages, fiduciaries, mortgages, and rights of dependency have been legally regulated, their implementation still faces various obstacles, such as a lack of understanding of the law, different contractual interpretations, and difficulties in the execution of guarantees. nFiduciary guarantees, both from the perspective of positive law and Islamic law, have a strategic position in guaranteeing debt repayment, especially in Islamic banking. In the Islamic perspective, guarantees are known as the concept of rahn, which emphasizes the principles of justice and trust, as well as avoiding the elements of riba, maisir, and gharar. The guaranteed financing system in Islamic banking must still uphold sharia principles in order to create justice for all parties. Therefore, it is important to increase legal literacy of agreements and guarantees among business actors and strengthen legal institutions so that protection for creditors and law enforcement can be implemented effectively and fairly in every business transaction, both in the conventional and sharia sectors.

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