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Participation Finance Standards

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SURETYSHIP STANDARD

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Contents of the Standard

This standard comprises the nature of the suretyship transaction in participation banking, the legal provisions that must be observed during this transaction, and the Sharia bases for these provisions. Modern suretyship methods such as letters of guarantee, contracts of warranty, and aval, which are considered as non-cash financing and assurance methods, are not included in this standard as they will be discussed in an independent standard.

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1. Definition of Suretyship Contract

Suretyship is a contract that is established between the creditor and the surety in order for securing the receivable and results in the surety being liable for the debt like the principal debtor.

2. Establishment of Suretyship Contract

2.1. The suretyship contract is established by the declaration of will of the surety and the creditor. The principal debtor's approval is not required for the establishment of the contract. In order for the declarations of intent to be valid, it is the liability of the parties to fulfill the fiqh requirements and the legal requirements, if there is any.

2.2. The suretyship contract can be established as a condition of a contract that arises the receivable to be secured, or it may be established later as an independent contract.

3. Conditions of Suretyship Contract

For the establishment of a suretyship contract, the following conditions must be present on the matter and the parties of the suretyship:

3.1. Conditions Regarding the Subject of Suretyship

3.1.1. The receivable secured by suretyship must have arisen for a reason that complies with the principles and standards of participation banking.

3.1.2. A suretyship contract may not be established for matters that do not have a debt nature, and a suretyship contract may not be established in order for securing a property that is the subject of the contracts that do not cause damage liability for the possession unless there is a fault or a breach of the contract.

3.1.3. Just as one may stand surety for existing debt, s/he may also stand surety for a debt that is likely to arise in the future or that is conditional, which will become valid when it arises or when the condition is fulfilled.

3.2. Conditions Regarding the Parties of Suretyship

3.2.1. Like real persons with full legal capacity, legal entities may also be parties to the suretyship contract. Accordingly, company partners or managers may stand surety for the debts of companies with legal personality, as well as other persons,

and these legal persons may also stand surety for the debts of their partners or managers.

3.2.2. More than one person may stand surety for the same debt collectively or separately.

4. Nature and Legal Consequences of the Suretyship Contract

4.1. In the suretyship, the maximum amount for which the surety will be liable may be determined.

4.2. In principle, the suretyship contract is binding on the surety from the moment it is established, and the surety may not unilaterally withdraw from the transaction without the consent of the creditor.

4.3. The suretyship contract may be established depending on the fulfillment of a condition, or it can be established to start from a certain date. In such suretyships, the surety may withdraw from the contract before the debt arises, under certain conditions.

4.4. When the debt becomes due, the creditor may apply either to principal debtor or surety. However, in the contract, it may be decided that the debt will be requested from the principal debtor first and that the surety will be applied to in case the principal debtor is unable to make the payment.

4.5. In the suretyship contract, the debt of the surety is subject to the same provisions as the principal debt, as a rule, in matters such as the time, manner, and conditions of fulfillment, unless otherwise agreed.

4.6. In the event that more than one person stands surety for debt together, the parties to the suretyship contract may freely determine the priority order and scope of the liabilities of the sureties. In cases where no determination is made in this regard, each of the sureties becomes liable for the amount obtained by dividing the debt by the number of sureties.

5. Miscellaneous Provisions Regarding Suretyship

5.1. The surety may not collect any fee from the debtor merely due to the suretyship contract, except for the expenses incurred in order for carrying out the suretyship transaction.

5.2. In a contract where the debtor is required to present a surety, the creditor may terminate the contract in case this condition is not fulfilled. The right of the creditor

to have the debtor indemnify him/her for the actual losses incurred due to the termination of the contract is reserved.

5.3. The surety also benefits from the additional time granted by the creditor to the debtor. The principal debtor may not benefit from the additional time that the creditor will only grant to the surety.

5.4. The suretyship contract may be established for a certain debt, or it may be established between the participation bank and its customer whose financing relationship is continuous, in a way that covers all debts in a certain period, provided that the upper limit for which the surety will be liable.

5.5. In the suretyship contract, the liability of the surety may be limited to a certain period of time.

6. Provisions Regarding Additional Assurances in the Surety Transaction

6.1. In order to secure his/her receivables, the creditor may also demand assurance such as a pledge or mortgage from the debtor as well as the surety.

6.2. It is possible to stand surety for the debt of the surety arising from the suretyship contract.

6.3. In the event that the surety pays the debt subject to the suretyship and recourses it to the debtor, the surety may request personal or in-kind guarantees such as surety, pledge, and mortgage from the main debtor in order to secure his/her receivables.

6.4. In the suretyship contract, it can be decided that the pledge and mortgage given by the principal debtor to the creditor will have the nature of assurance in favor of the surety who pays the debt.

7. Provisions Regarding Recourse and Indemnification Regarding Suretyship

7.1. In order for the surety to recourse to the main debtor in the event that s/he fulfills the debt, s/he must have had become the surety with the debtor's request, permission, or knowledge.

7.2. In case the debt secured by the suretyship is due, the surety has the right of recourse to the principal debtor as soon as s/he pays the debt. The right of recourse of the surety, who pays a term debt early, arises only when the debt is due.

7.3. In case the debt becomes due for any reason in term debts, the debt does not become due for the surety unless otherwise agreed in the contract.

7.4. The surety may only recourse to the principal debtor in the amount of the payment made to the creditor. The surety may also claim the expenses incurred due to the suretyship.

8. **Termination of Suretyship Contract**

8.1. In all cases where the principal debt is finished due to fulfillment, release, or other reasons, the suretyship debt also disappears.

8.2. In the event that the creditor releases the surety, the debt of the surety and the persons standing surety to the surety ends, but the liability of the principal debtor and other persons who stand surety to the principal debtor continues.

8.3. The suretyship contract terminates when the principal debt relationship to which the suretyship is connected becomes invalid.

8.4. The guarantee established for a period of time ends with the expiration of the period.

8.5. The debt arising from the surety does not end with the death of one of the parties.

Sharia Bases of the Suretyship Standard

1. Sharia Bases for the Definition of Suretyship Contract

Being used as a comprehensive term in the classical fiqh literature, the suretyship is a contract that is established between the creditor and the surety in order for assuring the receivable and results in the surety being liable for the debt as the principal debtor. The standard deals with suretyship within this framework.

Suretyship is a transaction that is included in the Qur'an and Sunnah and is considered legitimate by the consensus of Islamic jurists.

The application of suretyship is mentioned in the Qur'an in the story of Yusuf (PBUH) through a content close to its technical meaning: "*The king's men said: We have lost the king's water bowl, there is a camel's load of reward for those who find it. I stand surety that this reward will be given."* (Yusuf 12/72). In addition, the hadith "The surety is in debt" (ez-zaîmü gârimün) is one of the main pillars of the suretyship (Tirmizî, “Büyûʿ”, 39, “Veṣâyâ”, 5; İbn Mâce, “Sadaḳât”, 9).

As a requirement of the structure of economic and commercial life, the party in the position of a creditor may request assurance from the debtor in order for securing its receivables, before or after entering into this transaction. The assurances are divided into

two as in-kind and personal assurances. Pledge (and mortgage) is the primary example for in-kind assurance while suretyship is the one for personal assurance. In the pledge contract, the creditor secures the right to claim with the right of pledge on the pledged property, and in the suretyship, the creditor obtains the authority to request the receivable from the person or persons other than the principal debtor. Meaning that the surety undertakes the fulfillment of the debt against the creditor by participating in the liability of paying the debt of the principal debtor (principal) through the suretyship transaction. Since the surety is now liable like the debtor, the suretyship contract is described in the fiqh literature as a contract ensuring that the surety is equally liable with the debtor in order for assuring the payment of a debt. Even though the suretyship contract discussed in our standard is similar to the "contract on participation in debt", which is another type of contract used for assurance in this respect and "where the party to the debt is jointly liable with the debtor against the creditor" regulated in Article 201 of the Turkish Code of Obligations (TBK), since the person who undertakes the debt in the suretyship contract is bound to the principal debt, in other words, s/he is under a secondary liability, the suretyship contract regulated in this standard has a different nature from the contract on participation in debt. Because in distinguishing between participation in debt and suretyship contract, the main determining factor is whether the undertaking of debt is of principal or secondary nature.

2. Sharia Bases for the Provisions Regarding the Establishment of the Suretyship Contract

Even though some of the Islamic jurists accept that the suretyship may be established through a unilateral declaration of the will of the surety, taking into account the donation aspect, they have adopted that the creditor may refuse this suretyship in such a case (Mecelle, art. 621). According to the other view, the suretyship contract is established by the declaration of will of the surety and the creditor. According to this view, suretyship is close to the nature of a commutative transaction resulting in the recovery of the given amount rather than unilateral borrowing and donation. In the standard, this second approach was preferred in line with the views of Abu Hanifa and Imam Muhammad.

Even though suretyship involves a triple relationship between the surety, the creditor, and the debtor, the contract is made between the surety and the creditor, regardless of the consent of the debtor in the suretyship contract. Since it is in the favor of the principal

debtor and does not create a new liability or debt for him/her, it is not necessary for the debtor to give approval for the establishment of a suretyship contract. However, this approval and consent are important for the surety to recourse to the debtor after paying the debt. The establishment of the suretyship contract is independent of the provisions regarding recourse.

In Islamic law, like many other contracts, there is no specific form requirement in a suretyship contract. Therefore, the suretyship contract may also be established verbally with the offers and acceptances consisting of the mutual consents of the parties, namely the surety and the creditor. However, in case the legislation requires certain conditions for the suretyship contract to be valid, such as being in writing and specifying the amount of liability in the surety's handwriting, it is important for the parties to fulfill these conditions, to avoid legal grievances and to secure their rights.

The suretyship contract is usually established by the parties in which the creditor stipulates the suretyship in order for securing the receivables that will arise during the contract that the parties are about to conclude. For example, in a sales contract, the seller, who will deliver the commodities to the customer and receive the price on a deferred basis, may request a surety from the buyer to make this sales contract. When a suretyship contract is established by the creditor's approval of the person who has agreed to stand surety for the customer, the seller executes the sales contract. Here, the suretyship has a nature of a prerequisite for the conclusion of the sales contract.

The suretyship can also be established after a contract that gives rise to debt is concluded. For example, the seller may sell a commodity where s/he will receive the price on a deferred basis and ask the buyer for a surety at a later time. However, unless there is a contrary arrangement in the contract between the parties, the debtor's failure to present a surety does not invalidate the existing contract, nor does it give the creditor the authority to terminate this contract unilaterally.

3. Sharia Bases for the Provisions Regarding the Conditions of the Suretyship Contract

3.1. Sharia Bases for the Conditions Regarding the Matter of Surety

Receivables arising from transactions such as the sale of alcoholic beverages, gambling, and debt with interest, which do not comply with the principles and standards of participation banking, may not be subject to a suretyship contract. This provision is based

on the fact that it is not permissible to support them, just like doing something haram and gaining illegal income. Being a guarantor for a debt arising from a religiously illegitimate reason is subject to the same provision as the legitimacy of the debt.

The fact that a suretyship contract may not be concluded for matters that the principal debtor is not liable for, in other words, matters that do not have the nature of a debt, is based on the fact that the suretyship to be made in this case is an unnecessary transaction since there is no reason to it. Because, in principle, suretyship is established with the aim of securing a debt that has arisen or may arise. Since a matter that is not mandatory to pay for the principal debtor may not be qualified as a debt, it is unnecessary to make a suretyship contract in this regard. Again, in contracts where the suretyship does not create liability for damage to the person holding a property (possession), it would be meaningless to establish a suretyship contract since no debt will arise in case of damage. For this reason, a suretyship contract may not be established against liability for damage on the commodities subject to trust-based contracts such as deposit and bailment. In these contracts, the bearer does not bear any liability due to the damage, since the bearer who has the property of the deposit and bailment is not liable for compensation. On the other hand, in case of fault of the person who possess the property, suretyship is possible since there is a possibility of such a debt arising.

Again, in contracts such as mudarabah, musharakah, wakala, the principal and profits cannot be the subject of suretyship since the party holding them is not under the liability of damage (mazmun). It is possible to stand surety for the debt that will arise in mudarabah, in the case of an misconduct or negligence of the laborer in mudarabah, or the proxy in the wakala, which causes damage or loss, or in case they breach the terms of the contract. Because such situations will cause these persons to be liable to indemnify and become indebted.

According to the majority of Islamic jurists, suretyship is valid for debts that have not been arisen and have not yet been fixed in zimmah. The relevant verse (Yusuf 12/72), which informs about a suretyship for a liability that has not yet been arisen, is one of the foundations of this provision. Since the debt subject to the suretyship does not have to have actually arisen for the validity of the suretyship contract (see Serahsi, *el-Mebsût*, XXI, 157; Ali Haydar, *Dürerü'l-hükkâm*, II, 128), it is permissible for the participation

bank to be a guarantor for the debts of real and legal persons that have arisen and/or will arise and to request a surety in this regard.

3.2. Sharia Bases for the Conditions Regarding the Parties of Suretyship

Commercial companies have a separate and independent legal personality from their partners and managers, who are real persons. For this reason, a suretyship relationship can be established between the company and its partners or managers. Certain restrictions in legal regulations on this subject may be considered as regulatory public dispositions made in order for ensuring the public interest in the permissible area.

Since the purpose of the suretyship contract is to secure the receivables, a single person may become the surety for the debtor or more than one person may become the surety. In case more than one person becomes surety, they may stand surety separately or collectively. There is no obstacle to this in the structure of the suretyship contract.

4. Sharia Bases for the Provisions Regarding the Nature and Legal Consequences of the Suretyship Contract

The general principle in the formation and payment of a debt is that the debt is known in terms of quantity and quality. As an exception to this general principle, since the suretyship in Islamic law is considered as a grant contract, at least from the beginning, it has been stated that the surety is liable for the amount that the principal is liable for, without mentioning the maximum limit at the point of debt. However, the maximum amount that the surety will be liable for may also be determined in the suretyship contract. Specifying the maximum amount of liability of the surety in the contract is a kind of restricted surety. Just as muzaf and muwaqqat (temporary) surety is permissible, so is surety with an upper limit of liability. It may even be more appropriate to determine the maximum amount of liability of the surety so that the debt is far from uncertainty (gharar).

Contracts in Islamic law are divided into different groups in terms of binding. While there are contracts that bind both parties or one of the parties, there are also contracts non-binding for the parties. Since the suretyship contract is binding only for the surety, the liability of the surety continues as long as the debt of the surety is not terminated by means of fulfillment or release, and in principle, the surety may not withdraw from the contract under his unilateral will. Because the suretyship is made for the purpose of securing a receivable, the surety's unilateral will to get rid of the debt by removing this suretyship

may harm the creditor. However, as stated in clause 4.3, the surety may withdraw from the suretyship before the debt arises in the conditional suretyship.

The liability of the surety to the creditor manifests itself as a right for a claim and liability for the creditor. Therefore, the suretyship contract is not binding for the creditor. The termination of the contract by the creditor through a unilateral statement and thus releasing the surety is in favor of the surety and does not put him/her under any additional liability. For this reason, the creditor, unlike the surety, may unilaterally withdraw from the contract.

Unless the condition is fulfilled, the surety is not deemed to have undertaken to pay the principal's debt in the (muallak/suspended) surety contracts established under conditions. Because the surety has bound the arising of his/her liability to a condition and the condition has not been fulfilled yet. The surety's withdrawal from the contract before the condition is fulfilled does not cause any aggrievement for the creditor representing the other party of the contract. For example, in case the surety guarantees to pay his/her receivables arising from the sale in the event that a person sells commodities to another person, s/he may withdraw from the contract before the conditional sale takes place. However, in case withdrawal from suretyship is subject to certain conditions in the legislation or contract, the right of withdrawal arises depending on the emergence of the debt as a result of the fulfillment of these conditions. The same is true for a (muzaf) suretyship contract that will start from a certain date.

The suretyship contract is the addition of a person's liability (zimmah) to the principal debtor's liability in terms of the capability of the creditor claiming the debt. Thus, due to the nature of the suretyship contract, the creditor has the authority to demand its receivables from both the principal debtor and the surety.

With the establishment of the suretyship contract, the surety who is involved in the debt relationship undertakes the same liability as the principal debtor. Therefore, the liability of the surety is not a secondary but a primary liability besides the liability of the principal debtor. For this reason, according to the general opinion adopted in the fiqh literature, the creditor may demand his/her receivable from the debtor as well as from the surety at the same time. However, based on the view adopted in the Maliki sect "the creditor must first follow the principal debtor and then apply to the surety when s/he may not collect his/her receivables from him/her" (Sahnûn, *el-Müdevvene*, IV, 99, 100; İbn Şâs, *ʿİḳdü'l-*

cevâhiri'ş-şemîne, II, 817), a condition may be added to the contract that the debt will be requested from the principal debtor first and that the surety will be applied to in case the principal debtor is unable to pay. In the standard, it is possible to reach an agreement that the creditor will apply to the principal debtor before the surety, taking into account the opinion of the Maliki sect, as it protects the surety and responds better to today's needs.

As the liabilities of the principal debtor and the surety are subject to the same debt and equal to each other in the suretyship contract, they are subject to the same provisions as a rule. Furthermore, in the suretyship contract, the liability of the surety can be differentiated from the liability of the principal debtor in matters such as the time, manner, and conditions of fulfillment. Accordingly, the time of fulfillment of the surety's debt may be determined to be different from the time of fulfillment of the principal debtor's debt. In other words, the due date of the surety's debt may be later than the due date of the principal debt. Likewise, it may be decided that the principal debtor should pay the debt in advance, while the surety should pay the debt in installments, or that the arising of the surety's debt is conditional while the debt of the principal debtor is unrestricted.

There may be only one person standing surety for a debt, as well as more than one person. Likewise, each of the sureties may be liable for the entire debt or only a part of it (Mecelle, art. 647). In cases where each surety is liable for the entire debt, it is permissible within the scope of this Standard for the surety to determine a priority order among the claims to be directed to them. Because, in principle, it is possible to put forward conditions regulating the obligations of the parties in the contract. In this respect, the creditor and the surety may decide that the liability of the surety will arise in the event of the insolvency of the principal debtor, or they may also decide that the liability of one of the sureties will arise only in the event of the insolvency of other surety/sureties. It may also be decided that each of the sureties will be liable for a part of the debt. In cases where more than one person stands surety for the same debt together and the priority order and scope of the liabilities of the sureties have not been determined by the parties, each of the sureties is considered liable for the amount obtained by dividing the debt by the number of sureties.

5. Sharia Bases for Miscellaneous Provisions Regarding Suretyship

Being a contract that has the nature of donation in its structure, suretyship approaches the commutative contract nature in case the surety pays the debt and recourses it to the principal debtor. The fact that it is not permissible for the surety to receive a payment

solely on the basis of the suretyship contract relies on the principle that the suretyship contract has a nature of donation and that it becomes a loan contract in case the surety makes a payment. Because, in the contract of loan (kard), the lender demanding a return other than the amount given by the lender is considered as interest and it is not permissible. The fact that it is permissible for the surety to demand from the debtor the expenses incurred due to the suretyship is because this price is not just a fee received due to the suretyship contract, but is the equivalent of the expenses incurred.

The requirement of complying with the contracts and the conditions set forth in the contracts is based on evidence such as the verse "*O you who believe, fulfillall contracts*" (Mâide 5/1) and the hadith "*Muslims fulfill their conditions*" (Buhârî, "İcare",14; Ebû Dâvud, "Akdıye" 12). The right of the participation bank to terminate the contract in case of non-fulfillment of the condition in a contract in which the customer is required to present a surety is based on the general fiqh rule (Mecelle, art. 19) derived from the hadith "Harming is not allowed and responding to harm with harm is not allowed as well" (Ibn Mace, "Ahkâm", 17). The surety request of the participation bank is to eliminate the potential loss that it may encounter. Failure to fulfill this condition may result in loss of the participation bank. The basis of the participation bank's right to compensate the customer for actual losses due to the termination of the contract is the general fiqh rule of "The loss should be compensated" (Mecelle, art. 20).

The benefit of the surety from the additional time granted by the creditor to the debtor is based on the fact that the suretyship gives rise to a secondary debt related to the principal debt. For this reason, changes made on the principal debt are also valid for the surety as long as it is in his/her favor. Because the changes made on the principal debt to the detriment of the surety may cause damage to the surety, it is not binding for him/her. On the other hand, the principal debtor may not benefit from the changes made in favor of the surety. Because while it is possible to reflect the change on the principal to the secondary debtor, the change on the secondary debtor is never directly reflected.

According to the majority of Islamic jurists, it was not considered necessary to know the guaranteed debt and its amount, taking into account the donation nature of the suretyship contract. Accordingly, it is allowed to establish a suretyship contract to cover all debts that will arise in a certain period. However, considering that in case the surety recourses the debt to the debtor, the suretyship will lose its donation feature, it is more appropriate

to prefer the view that requires the surety to know the amount of the debt that s/he stands surety of. This preference also comes to the fore in terms of ensuring the stability of legal proceedings, reducing the causes of a potential dispute as much as possible, protecting the surety, and being compatible with today's practices.

In the suretyship contract, it is permissible to limit the liability of the surety to a certain amount or to a certain period of time. The applicability of such restrictive conditions is basedon the principle of freedom of contract, which may be understood from the hadith "Muslims are bound by their conditions as long as these conditions do not render a halal haram and a haram halal" (Tirmizî, "Ahkâm", 17).

6. Sharia Bases for the Relevant Provisions Regarding Suretyship

Since securing the receivable is a legitimate right, both the surety and the pledge may be demanded from the debtor. Islamic jurists have given the creditor the right to receive as much assurance as they wish, provided that they do not require an extra benefit for themselves by going beyond their purpose and using assurances. As a matter of fact, the creditor may request more than one surety from the debtor (Mecelle, art. 627), as well as a pledge whose value is more than the amount of the receivable (Meydânî, *el-Lübâb,* II, 62).

The possibility of standing surety for the debt of a surety arising from the suretyship contract is due to the fact that s/he is liable to the creditor as the principal debtor in the fulfillment of the debt. The justifications for the legitimacy of the suretyship contract require that the surety, who has the same liability as the principal debtor, may also stand surety for his/her debt. This issue, which is unanimously accepted by Islamic jurists (Serahsî, *el-Mebsût*, III, 203; Buhûtî, *Keşşâfu'l-kınâ'*, VIII, 236; Şîrâzî, *el-Mühezzeb*, XIV, 403; Desûkî, *Hâşiyetü'd-Desûkî,* III, 343), is clearly stated in Article 626 of the Mecelle as "A person may *validlystand surety for a surety*". It is also possible to stand surety for the second surety for the same reasons and to increase the number of sureties by taking this further.

In case the surety has become a surety at the request of the debtor, s/he may recourse the debt to the debtor after s/he has fulfilled the debt s/he has undertaken to pay. Because the debtor's asking a person to stand surety for his/her debt is like implicitly asking him/her to lend money (Molla Hüsrev, *Dürerü'l-hükkâm*, II, 302). For this reason, after the surety fulfills the debt, the principal debtor becomes indebted to the surety. As a matter of fact,

Islamic jurists, taking into account this situation in the suretyship contract, have seen it as close in nature to donations at the beginning and to the loan contract (lending) in terms of the result. Due to the fact that the suretyship contract has the nature of a loan, the surety becomes a creditor after the fulfillment of the debt, and thus, s/he may request a real or personal assurance from the principal debtor in order to secure his/her receivables in case s/he pays the debt s/he has undertaken. Even though the surety becomes a creditor after the fulfillment of the debt, not directly through the suretyship contract, this does not prevent him/her from demanding assurance. Because this assurance secures his/her right. As stated in clause 3.1.3 hereunder, it is not necessary for a receivable to have arisen in order for securing a liability.

The surety may demand a pledge from the principal debtor, since s/he has the liability to pay the debt and has the right of recourse to the principal debtor in the event that the debt is fulfilled by himself/herself in the suretyship contract concluded at the request of the debtor. Since s/he has such a right, s/he may also request that the pledge given to the creditor by the principal debtor be transferred to him/her.

7. Sharia Bases for Provisions Regarding Recourse and Indemnification on Suretyship

The most important result of the suretyship contract in terms of the relationship between the surety and the principal debtor is that the surety may recourse the debt to the principal debtor after paying it. The basic condition for the surety to recourse to the principal debtor is that s/he stood surety with the debtor's approval (Kâsânî, *Bedâi'u's-sanâi'*, VI, 13; İbn Kudâme, *el-Muğnî*, V, 86). Even though the suretyship has the characteristics of a donation contract from the beginning, when the surety recourses the debt to the principal debtor, it approaches to the commutative contract nature. For this reason, the surety has the right to demand what s/he has paid from the principal debtor, since it will be deemed to have given him/her an unrequited loan when s/he becomes the surety with the request and approval of the principal debtor.

However, according to the dominant view in Islamic law, the surety is deemed to have made a donation, that is, s/he has done a favor to someone else, even though there is no demand or subsequent approval of the principal debtor, and the surety is not given the opportunity to recourse.

Since the surety's debt is secondary, it is dependent on the principal debt on fundamental issues such as arising, expiration, and maturity. In cases where the principal debt is due, the debt of the surety also becomes due and when it is termed, the debt of the surety also is termed (İbn Kudâme, *el-Muğnî*, V, 89; Zeylaî, *Tebyînü'l-hakâik*, IV, 168). The surety, who fulfills such a due debt, has the right to recourse to the principal immediately unless there is a different agreement between him/her and the principal. Because the surety becomes the successor of the creditor's right of maturity by paying the debt.

In cases where the principal debt is due, there is no reason to make it possible for the surety to recourse before the maturity date. In this case, by making an early payment, the surety does something that the suretyship does not oblige him/her to do so.

The debt of the surety is dependent on the principal debt and secondary to it in matters such as its arising, expiration, and maturity. For this reason, as long as the changes made on the principal debt are not against the surety, they are also valid the surety, but the changes that may be against the surety are not binding for the surety. This issue may be considered as an exception to clause 4.5 of this standard. Accordingly, one of the changes that may be against the surety is to bring the maturity of the debt forward. Because the surety may have taken into account the determined maturity of the debt while accepting the suretyship. On the other hand, the maturity of the debt on which the surety accepts the suretyship is like a condition for the surety. As a rule, it is necessary to comply with the conditions in the contracts (Mecelle, art. 83, 653, 654).

The surety has the right to demand only the amount s/he has paid from the principal debtor, after s/he has paid the debt s/he stood surety for. Making a demand more than what s/he paid leads to excess interest, which is haram by rules of fiqh. Because the suretyship becomes a kind of loan contract with the surety's recourse to the principal debtor, and for this reason, the amount paid by the surety to the creditor and the amount that the surety will collect from the debtor must be equal.

On the other hand, in case the surety fulfills the suretyship and has incurred additional expenses for the fulfillment of the debt, s/he may demand this amount from the principal debtor. Since these additional costs are not included in the principal debt, they are not considered as interest.

8. Sharia Bases for the Provisions Regarding the Termination of the Suretyship Contract

Since the debts arising from the suretyship contract have a secondary nature, they are considered subject to the same provisions as the principal debt in matters such as their arising, expiration, and payment maturity. For this reason, all situations that terminate the principal debt mean that the liability of the surety gets terminated without the need for any additional action. As a matter of fact, this issue is expressed in the Mecelle as "If the principal debtor fails, the surety also fails." (art. 50).

Since the surety's debt is a secondary liability that functions as a guarantee for the principal debt, the creditor's release of the surety ends his/her debt, but this does not affect the principal debt. Therefore, the principal's liability to pay the debt continues. This issue is expressed in the Mecelle as "The release of the suretyship does not bring about the release of the principal debtor" (art. 661).

In case the original debt becomes null and void after its arising due to a valid reason, the debt of the person who stood surety for it also ends. Because the surety's debt has a secondary nature. For instance, in the event that one stands surety for the price of a sold commodity, if a reason arises that terminates the liability of the principal customer, in cases where the contract of sale is terminated, the money is taken from the customer due to the fact that it belongs to someone else, the debt of the surety ends together with the principal debt, the purchased commodities are returned due to a defect.

A suretyship contract established for a certain period of time becomes effective only during the agreed period. Therefore, with the expiration of the period, the contract expires by itself.

A suretyship contract does not expire with the death of the creditor or surety. The death of the creditor leads to the right to claim getting transferred to his/her heirs. The death of the surety does not end the debt of him/her.