

## ABSTRACT

Hafidz Aditama Nurdi. 2013. *Comparison Between Khiyâr 'Aib in Islamic Law and Guarantee in Civil Law*. Thesis. Department of Business Law Sharia. Faculty of Sharia. State Islamic University Maulana Malik Ibrahim Malang. Mentor: Dr. M. Nur Yasin, M.Ag.

---

Keywords: *Khiyâr 'aib* and *guarantee*

The process of goods production that is growing now because of the progress of science and technology which is very rapid lately, producing the products that can't be predicted the risk, disability, and benefits by consumers. This causes the hidden information on the goods. For that, there is a need of the assurance of goods. *Khiyâr 'aib* and guarantee are a form of guarantee items. *Khiyâr 'aib* essentially gives buyer the right to continue or to cancel the transaction if there are defects which are not known before the contract. At this time, the concept of *khiyâr 'aib* already has the legal power as the guarantee.

In this research, there is formulation of the problem, namely: 1) What are the similarities and differences between *khiyâr 'aib* in Islamic law and guarantee in the Civil law? 2) What are the juridical implications between *khiyâr 'aib* in Islamic law and guarantee in civil law? The purpose of this research is to understand the similarities and differences between *khiyâr 'aib* in Islamic law and guarantee in civil law. In addition, this research also aims at revealing the juridical implications between *khiyâr 'aib* in Islamic law and guarantee in civil law.

The type of research that used in this research is normative legal research because it uses literatures as the source of research data. This research uses the legislation approach and the conceptual approach. In this research, methods of law material processing is done in a deductive law, which describes the conclusions from the general problems to the concrete problem. This research is a descriptive analysis of comparative research that seeks to describe or explain *khiyâr 'aib* in Islamic law and guarantee in civil law.

The results of this study can be concluded that *khiyâr 'aib* and guarantee are almost the same, because they have more similarities than differences. There are 4 (four) similarities, first in definition, second in the settlement between the seller and the buyer, third in the refund on the defective goods, and fourth the form of disability. There are 2 (two) differences: first, in Islamic law the seller guarantee the defects are visible, while in the civil law the seller must not guarantee the visible disability. Second, differences in the provision of the guarantee period. Juridical implications between *khiyâr 'aib* in Islamic law and guarantee in civil law there are three, namely subject, object, and contract.