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*Research Paper*

# Integrating Maqasid al-Shariah into Indonesia's Mortgage Rights: A Normative Analysis toward Substantive Justice

*Frida Nurrahma Masturi[a], Asti Inayah[b], Nur Wakhid[c]*
*[a,b,d] Faculty of Law, Jenderal Soedirman University*

*Corresponding email: Frida.masturi@unsoed.ac.id*

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**ABSTRACT**

Mortgage right serves as a form of material security that provides legal certainty and protection for creditors when debtors fail to fulfill their obligations. In Indonesia, however, the implementation of mortgage rights particularly within the Islamic financial system remains grounded in the Indonesian Civil Code, which does not fully reflect the core principles of Islamic law: justice (*'adl*), benefit (*maslahah*), and trust (*amanah*). This study employs a normative juridical approach to examine the concept of mortgage rights from an Islamic legal perspective and its relevance to land mortgage rights. By exploring the doctrine of *rahn* and the objectives of *maqasid al-shariah*, the research reveals that Sharia based mortgage rights emphasize not only legal protection but also ethical responsibility and social balance. Accordingly, their implementation should prioritize *sulh* (amicable settlement) before execution to ensure substantive justice. The study concludes that incorporating *maqasid al-shariah* values into Indonesia's material security law reform can harmonize legal certainty with moral fairness, thereby promoting justice and public welfare.

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## Introduction

In the face of rapid economic and financial development, collateral such as mortgage rights has become a crucial instrument for providing legal certainty for creditors in the event of a debtor's default. Mortgage serve as a collateral mechanism that allows creditors to seize the debtor's assets in the event of a contractual breach. The legal system governing mortgages in Indonesia is derived from Western law, such as the Indonesian Civil Code and Law No. 4 of 1996 concerning Mortgage Rights on Land. This legal system places greater emphasis on legal certainty and creditor protection, but does not fully reflect the values of justice and welfare, which are the primary foundations of Islamic law.

According to the provisions of the Mortgage Law, the process from encumbrance to execution of collateral is more fully regulated in Articles 10 to 20 of the Mortgage

Law. These articles cover the preparation of a Deed of Granting Mortgage Rights (APHT), the obligation to register at the land office, and the procedures for execution if the debtor fails to fulfill their obligations. Based on legal certainty, this provision demonstrates that the national legal system tends to prioritize protection for creditors over maintaining a balance of rights and obligations between the parties.

Matters governing the elimination of mortgage law are regulated in Article 18 of the Mortgage, including the elimination of debt rights secured by mortgage rights; release of mortgage rights by the mortgage holder; cleaning of mortgage based on the ranking determination by the Head of the District Court and the elimination of land rights burdened with mortgage rights. Article 20 of the Mortgage Law regulates that the execution of mortgage can be carried out through three events, namely the first mortgage holder to sell mortgage rights on his own authority through a public court; execution of the executorial title contained in the mortgage certificate; and private execution.

Therefore, Islamic law views the implementation of material collateral not only as ensuring the repayment of obligations but also as maintaining balance and mutual benefit for all parties. The principles of justice ('adl), responsibility (amanah), and protection of assets (hifdz al-mal) serve as guidelines in determining the form and mechanism of collateral that is in accordance with Sharia.

Problems are increasingly complex in the field of Islamic finance, where the principles of justice ('adl), benefit (maslahah), and responsibility (amanah) must be the primary objectives. Currently, the application of mortgage in Islamic financing still adopts a Indonesian civil code framework that does not yet reflect Islamic values, potentially creating imbalances. This not only triggers normative conflicts between positive law and Islamic law but also hinders the development of a sustainable Islamic financial system in Indonesia, where the majority of the population is Muslim (Ahmad Syafiq, 2019).

This phenomenon has become increasingly relevant with the rapid growth of the Islamic finance industry, encompassing murabahah and musharaka products. However, the inconsistency between the existing legal system and Sharia principles can undermine public trust in Islamic financing, as it does not fully guarantee fairness and protection for all parties. A model of material collateral is needed that not only guarantees legal protection for creditors but also balances the interests of debtors, while simultaneously promoting a more sustainable and inclusive Islamic financial system (Fauzi et al., 2021). This is in line with the maqasid sharia, namely the goals of Islamic law which include the protection of religion, soul, mind, descendants and property (Tohari & Kholish, 2020).

The paradigm differences between positive law and Islamic law regarding mortgage rights stem from the values that underlie them. Indonesian Civil Code, derived from Dutch law, emphasizes legal certainty (rechtszekerheid) and protection for the party with the primary right to property, namely the creditor. Islamic law, on the other hand, emphasizes a balance between rights and obligations and emphasizes moral values and social responsibility. Regarding mortgage, Islamic law emphasizes not only debt repayment but also considers aspects of justice and the benefit of the

debtor to avoid inequality or injustice (zulm).

In practice, Islamic financial institutions in Indonesia still rely on the Mortgage Law because there are no specific regulations governing Sharia-based collateral. This creates a legal dilemma because, even though financing contracts have been adapted to Sharia principles, the collateral mechanism remains subject to conventional Indonesian civil code.

Disputes between creditors and debtors can be resolved through litigation and non-litigation channels. Litigation is the process of resolving disputes through the courts. Non-litigation is the process of resolving disputes outside the courts, namely through mediation, negotiation, arbitration, and conciliation (Rosita, 2017). And the final alternative is through an auction, which falls under the litigation process. The bank will auction off the debtor's collateral in the event of default. The object promised in the contract is officially registered under the bank's name. Therefore, if the customer has payment problems, the object promised in the contract will be auctioned off by the bank (Janisriwati et al., 2021). Dispute resolution and guarantee execution are carried out through a general auction mechanism that does not take into account the principles of Islamic justice, such as deliberation, proportional payment delays (ta'wil ad-dayn), or partial elimination of obligations (ibra').

Therefore, it is crucial to develop a mortgage model based on Sharia values without neglecting the national legal system. This model is expected to integrate the principles of Islamic substantive justice with the legal certainty that underpins the civil system. This integration can be achieved by strengthening the principles of trust and honesty in securing collateral, and clarifying the role of Islamic financial institutions as entities that pursue not only profit but also safeguard social welfare. Therefore, the material collateral system in Sharia financing not only provides legal protection for creditors but also serves as an instrument for achieving the overall objectives of the law (maqasid al-sharia), namely justice, welfare, and sustainability in the economic life of society.

Previous research conducted by Fauzi et al regarding the implementation of mortgage rights in Islamic banking through a study of the Tanjungkarang Religious Court's decision showed that even though the financing agreement is sharia-based, the mechanism for executing mortgage rights still fully refers to the Mortgage Law which is oriented towards legal certainty, so it does not fully reflect the values of justice and benefit in maqasid al syariah (Fauzi et al., 2021). Furthermore, research conducted by Jamilah et al. regarding the imposition of collateral rights on murabahah contracts in Islamic banking shows that there is disharmony between Islamic principles in financing contracts and the use of collateral instruments originating from Western civil law, thus potentially causing injustice for customers as the weaker party (Jamilah et al., 2021). Research by Adi et al. which examines the implementation of the execution of mortgage rights in murabahah financing through the Medan Religious Court, with research results showing that the execution process still emphasizes formal-procedural aspects and does not take into account the sulh (deliberation) mechanism and the economic conditions of the debtor, so that it does not fully reflect the principle of substantive justice in Islamic law (Adi et al., 2022).

Based on previous research, the study of Mortgage Rights in Islamic financing is still dominated by the normative approach of Mortgage Law which emphasizes legal certainty and the creditor's executorial power, without an in-depth analysis of its compliance with Islamic principles such as justice, welfare, and asset protection. Previous research also shows a disharmony between Islamic financing contracts, especially murabahah, with the use of conventional collateral instruments and formal-procedural execution practices that ignore the sulh mechanism and the debtor's condition. Therefore, the novelty of this research lies in the effort to reconstruct Mortgage Rights from the perspective of maqāṣid al-syarī'ah through an integrative approach with the concept of rahn tasjili, so as to be able to provide legal certainty as well as substantive justice and welfare in Islamic financing.

This study analyzes mortgage rights within the framework of maqasid al-shariah, where the principles of justice ('adl), benefit (maslahah), and trust (amanah) are positioned as derivative normative values of maqasid, particularly in relation to the protection of property (hifdz al-mal) and substantive justice.

**Method**

This research was compiled using a normative juridical research method, because this research aims to analyze the applicable legal norms, both in the Indonesian positive legal system and in Islamic law related to mortgage rights as collateral for material in sharia financing. The approaches used are the statute approach, conceptual approach, and comparative law approach. This research analyzes the basic concepts of mortgage rights in Indonesian civil code and sharia principles, such as justice ('adl), benefit (maslahah), trust, and maqasid sharia as the normative foundation in the sharia financial system. The research compares the regulation of mortgage in the Indonesian civil legal system, namely the Indonesian Civil Code and Mortgage Law, with the principles of sharia law, and examines practices in other countries that have developed sharia guarantee systems. The data sources used are secondary data obtained from literature studies covering laws and regulations (Indonesian Civil Code, Mortgage Law, Sharia banking regulations) and previous research related to material collateral and the maqasid of sharia. The literature analyzed includes books, scientific journals, legal articles, and documents relevant to the research topic. Data are analyzed qualitatively by examining the conformity between positive legal norms and sharia principles and identifying points of intersection and fundamental differences between the two. The results of the analysis are used to formulate an ideal sharia mortgage model relevant to the needs of a sustainable Islamic financial system in Indonesia.

**Results and Discussion**

**Theoretical Framework: Substantive Justice, Legal Protection, and Maqasid al-Shariah**

Law should not only pursue formal certainty, but also guarantee justice that lives in society in accordance with the theory of substantive justice (Satjipto Rahardjo, 2006). In mortgage, this theory explains that the implementation of collateral execution as stipulated in Article 6 of the Mortgage Law, which authorizes creditors to execute

collateral objects without the debtor's consent, has the potential to cause substantive injustice if it does not demonstrate the social conditions and economic capabilities of the creditor. Based on this theory, every execution process in Islamic financial institutions is not only guided by formal legal aspects, but also considers the values of justice and the benefit of customers. Articles 10 to 20 of the Mortgage Law, which regulate the mechanism for encumbrance and execution of mortgage, show that the positive legal system emphasizes formal legal certainty and the effectiveness of enforcing creditors' rights. However, this approach often ignores the dimension of substantive justice, which is a primary concern in Islamic law. Therefore, in the context of Islamic financing, the principle of justice as stated by Satjipto Rahardjo is important in reinterpreting the implementation of Article 20 of the Mortgage Law to align with humanitarian values and the benefit.

The theory of legal protection is also used to provide protection to the weaker parties from arbitrary actions by parties with stronger power or legal standing. This theory is relevant when applied to Islamic banking practices, where the position of customers as debtors is often weaker compared to financial institutions (Philipus M. Hadjon, 1987). In Islamic law there is the Maqasid Al Shariah theory which is the normative basis that every legal rule must be directed at achieving human problems and preventing damage (jalb al-mashalih wa dar' al-mafasid). This theory includes protection of religion (hifdz ad din), soul (hifdz an nafs), reason (hifdz al aql), descendants (hifdz an nasl), and property (hifdz al-mal). The application of maqasid al-shariah in mortgage requires that the implementation of material guarantees, including the execution of mortgage rights, not only ensure the repayment of obligations but also protect the debtor's assets so that practices that are tyrannical or detrimental to weak parties do not occur.

The principle of hifdz al-mal emphasizes that every legal instrument, including mortgage, must guarantee fair and proportional protection of property ownership. Islamic law stipulates that ownership is not an absolute right but a trust that must be exercised in accordance with the values of social justice. Therefore, mortgage from a sharia perspective, not only aim to ensure debt repayment but also maintain a balance between the creditor's rights and the debtor's survival. Execution of collateral must not result in excessive harm (dharar) for any party. This aligns with the fiqh principle of "la dharar wa la dhirar," which means that it must not cause harm and must not endanger each other.

Meanwhile, the principle of 'adl (justice) emerges as a fundamental value inherent in every application of Islamic law, ensuring that the law is not merely a formal mechanism but truly achieves a balance between the interests of creditors and debtors. The emphasis on substantive justice is highly relevant; the law must even consider the socioeconomic conditions of the debtor and not impose technical requirements.

Based on these three theories, it can be concluded that the ideal model of sharia mortgage rights must balance legal certainty as stipulated in Article 6 of the Mortgage Law with substantive justice and legal protection based on sharia values. The implications of these theories mean that financial institutions cannot rely solely on executorial rights but must adopt an approach that prioritizes mediation, deliberation,

and social justice. This reformulation will strengthen public trust in the Islamic financial system while encouraging the creation of a fair and sustainable legal ecosystem for collateral in Indonesia.

**The principles of Sharia law view the concept of mortgage as a form of material guarantee in the Indonesian legal system**

In Sharia law, collateral, or rahn, is considered a form of binding an object as collateral for a debt, intended to provide a sense of security to the creditor (murtahin) without eliminating the debtor's ownership rights. The main principle is to maintain a balance between certainty of repayment of obligations and protection of ownership rights so as not to give rise to injustice or injustice in legal relations. Therefore, Islamic law does not reject collateral but establishes moral and social boundaries so that its implementation is in line with the values of justice ('adl), responsibility (amanah), and welfare (maslahah) (Awaliah, 2024).

There are two forms of Rahn, Rahn Hakiki (perfect pledge) and Rahn Tasjili (perfect pledge), which are equivalent to a mortgage in positive law. Rahn Hakiki is when the collateral is physically transferred to the mortgagee. This practice is similar to conventional pawning, where the goods are under the control of the creditor (Hidayati et al., 2018). Meanwhile, Rahn Tasjili (registered pawn) only provides proof of ownership, such as a land title certificate or Motor Vehicle Owner's Book, which is transferred, while the goods remain in the hands of the rahin (debtor). Rahn Tasjili is closer to the concept of fiduciary and mortgage, where the collateral is officially registered to grant preferential rights to the mortgagee (Sabir & Tunnisa, 2020).

A mortgage is a form of collateral frequently used by banks to provide financing. The collateral is an accessory or additional agreement, so a principal agreement must be in place first (Rahmawati, 2021). The principal agreement determines whether or not a mortgage exists. The mortgage serves as a guarantee that the debtor can fulfill their obligations under the financing agreement, so the mortgage will always be preceded by a financing agreement. Financing provided by banks certainly carries significant risks due to the possibility of late payments, no payments at all, or default. The debtor's assurance to the bank that they are able to repay the installments is the primary guarantee in a credit agreement (Badriyah, 2015).

Mortgage have several characteristics (Guntoro et al., 2020) Among them is giving a position to the creditor who is prioritized (droit de preference); always following the object that is guaranteed in the hands of whoever the object is (droit de suite) this nature is similar to rahn tasjili, namely guarantee in the form of goods for debt where the collateral remains in the possession of the owner of the goods or customer (rahin) but proof of ownership is submitted to the creditor (murtahin); fulfilling the principles of specialist and publicity which aim to bind third parties and provide legal certainty to interested parties; and easy and certain implementation of its execution.

The subject of a mortgage is mortgage provider and recipient of mortgage. The objects that can be encumbered with a mortgage are rights to land and objects related to the land, including ownership rights, business use rights, building use rights, state use rights, land rights including buildings, plants, and existing or future works that are part of the land, and which belong to the land rights holder. The mortgage encumbrance

process itself has two stages, namely the stage of granting a mortgage by making a Deed of Granting a Mortgage Right (APHT) by the Land Deed Making Officer (PPAT) which is preceded by a secured debt agreement (Aufima, 2020), and the registration stage by the land office which is the time when the mortgage rights are born (Valentini & Yogantara, 2021).

Mortgage in Indonesian Civil Code have the same concept as rahn, namely guaranteeing debt repayment by using immovable property as collateral. However, in practice, the mortgage regulated in the Mortgage Rights prioritize the principle of legal certainty and executorial power for creditors. The provisions of Article 6 of the Mortgage Law give creditors the right to directly execute the collateral object when the debtor defaults. Under Sharia law, this process has the potential to create imbalances because it does not consider the debtor's social conditions and capabilities, whereas in Islam emphasizes leniency in payments (ta'wil ad-dayn) and the prohibition of oppressing the weaker party. This principle is in line with the command of the Qur'an in Surah Al Baqarah verse 280, which explains that if the debtor is in difficulty, they must be given leniency until they are able to pay. In practice, the implementation of murabahah financing execution still refers to conventional Indonesian civil code without considering the principles of deliberation and substantive justice (Adi et al., 2022).

Furthermore, the implementation of land title guarantees in Islamic banking is still guided by the Mortgage Law rather than pure Islamic principles. This creates a legal dilemma because financing contracts are based on Islamic principles, but the guarantee mechanism is subject to Western civil law. Consequently, dispute resolution and collateral enforcement are often conducted through public auctions, which in practice often ignore the benefits and social justice of debtors (Adi et al., 2022). The execution of mortgage in problematic financing at sharia banks often does not reflect the values of maqasid al-shariah, because legal procedures take priority over the principles of humanity and social responsibility.

Therefore, Sharia legal principles require adjustments to the mortgage system to reflect substantive justice, not just legal certainty. Sharia law positions the concept of collateral not only as a security instrument for creditors but also as a means of maintaining a balance in socio-economic relations between parties. By utilizing the values of maqasid al sharia, mortgages can be directed to ensure transaction security without sacrificing the public interest. This means that the implementation of mortgages in the Indonesian legal system ideally does not conflict with Sharia principles as long as they adhere to the principles of proportionality, honesty, and protection for the debtor.

The use of material collateral (rahn) is permitted in Islamic law as a precautionary measure to safeguard and protect the rights of both parties, both debtors and creditors, as long as its implementation does not deviate from the provisions and principles of sharia (Fauzi et al., 2021). The primary purpose of a guarantee is to build mutual trust between the parties and ensure the fulfillment of payment obligations. However, the guarantee should not be used as a means of pressure or harming either party. If the guarantee is enforced, any excess sales proceeds must be returned to the debtor. If the

value is insufficient, the remaining balance can be collected in accordance with the applicable agreement (Fathorrozi, 2022).

Based on Islamic law, the principle of sulh, or peace through deliberation, is not merely seen as an alternative procedure, but as the core objective of Islamic law, namely to create benefits and avoid harm (dharar) for the parties. Sulh is positioned as the primary and ideal stage in dispute resolution, particularly in the economic and financial fields. Scholars argue that before legal action, such as execution, the parties should first attempt to find a peaceful way through dialogue and mutual agreement. Therefore, based on the maqasid al sharia and Islamic legal theory, the implementation of sulh is not an exception or additional procedure but a direct manifestation of the purpose of the rahn contract, namely to safeguard property (hifrdz al mal) while maintaining social balance and economic relations between the parties (Al-ramahi, n.d.).

Constitutional Court Decision Number 93/PUU-X/2012 dated August 29, 2012, explains that the Religious Court has the authority to conduct an Auction process on the Guarantee of mortgage for sharia contracts. Supreme Court Circular (SEMA) Number 4 of 2016 explains the technical instructions that mortgage and other debt guarantees in sharia economic contracts can still be executed in the event of default even though the repayment due date has not yet been agreed upon after being given a warning in accordance with the applicable powers. Referring to the Compilation of Sharia Economic Law, what is meant by murabahah is mutually beneficial financing carried out by shahib al maal with the party in need through a sale and purchase transaction by explaining that the procurement price of goods and the selling price have an added value which is a profit or gain for shahib al mal and the return is made in cash or installments (Adi et al., 2022).

The definition of murabahah or Rabh is gain, profit, or additional income. Sales in murabahah must specify costs, and the contract or agreement must be made with an agreed profit margin (Ayub, 2009). According to Rivai and Andria Permata Veithzal, murabahah is an item with a price agreed upon between the seller and the buyer, after the seller has previously stated the actual purchase price of the item and the amount of profit he will obtain (Rivai, 2008). It can be interpreted that the contract that occurs in murabahah is a form of natural certainlu contract because in murabahah the profit is determined (Sabir & Tunnisa, 2020).

In the perspective of maqasid shariah, every form of guarantee should function to safeguard and protect property (hifdz al-mal) and uphold the principle of justice (‘adl). Therefore, its implementation must avoid practices that harm, oppress, or oppress the weaker party in the transaction (Ahmad Syafiq, 2019). The implementation of mortgage should be carried out by considering the balance between the rights and obligations of the parties. If a default occurs, the resolution should ideally be carried out through deliberation and a family approach to achieve justice and the common good (Rahman & Mapuna, 2021).

So, it can be concluded that the principle of justice ('adl) emphasizes that every exercise of mortgage must not harm either party, whether creditor or debtor, and must be carried out through a fair and proportional execution process. The principle of benefit (maslahah) is oriented towards efforts to maintain benefits and prevent harm,

so guarantee mechanisms must be designed to provide mutual benefits and avoid practices that suppress weak parties. Furthermore, the principle of trust requires transparency, responsibility and honesty in every stage of the guarantee agreement, both in the binding process and in its completion. Meanwhile, the principle of hifdz al-mal or property protection is the basis that mortgage rights must be exercised to safeguard and protect the assets of both parties, not solely for economic interests, but also to maintain social balance and fairness in financial transactions.

**The ideal sharia mortgage model to support a sustainable Islamic financial system in Indonesia**

The rapid development of the Islamic financial industry in Indonesia demands a material guarantee system that not only provides legal certainty for financial institutions but also reflects the values of justice and welfare as stipulated in Islamic principles. To date, the application of collateral rights in Islamic financing has relied on positive legal provisions that focus solely on legal certainty, often ignoring the moral and social dimensions that are characteristic of Islamic law. This situation creates an urgent need to formulate a Sharia-based collateral model one that integrates the principles of maqasid al-sharia with the national legal system, while simultaneously supporting the creation of a sustainable and inclusive Islamic financial system in Indonesia.

In line with the need to develop a fair and sustainable sharia-based mortgage model, it is also necessary to pay attention to various practical problems that may arise during the execution of mortgage rights that require a balance between legal protection for creditors and mortgage holders who are unwilling to vacate and/or abandon the mortgage object voluntarily, or there may also be resistance from second or third parties.

Creditors or mortgage holders, such as financial institutions, often face situations where the debtor, as the mortgagee, voluntarily refuses to surrender or vacate the mortgaged object. This occurs during the execution phase through a court auction. This occurs even though the debtor has defaulted on the agreed contract or agreement and has received notification or warning from the creditor.

Article 218 paragraph (2) R.Bg which is equivalent to Article 200 paragraph (11) HIR regulates the real execution in the case of an Auction that is not carried out voluntarily by the losing party. This article is the legal basis for the Auction winner to ask the losing party to vacate and hand over the land or house being auctioned, and if they do not comply, forced vacate can be carried out with the help of the authorities.

Another problem that often arises during the execution of the mortgage is that the object used as collateral for the mortgage is currently in the status of collateral or mortgage rights to another party. So that when the execution seizure is carried out or the auction execution process is underway, the second, third, and subsequent mortgage holders also have the right to the object that was seized because the debtor who broke the promise had made the execution object as collateral to the second, third, and subsequent mortgage holders.

Furthermore, during the execution of the mortgage, it can be discovered that the property is not in the debtor's own name, but rather in the name of another person, such

as a parent, sibling, or spouse. Then, when the mortgage is to be executed, the party objects, claiming they never agreed to the debtor using the property as collateral.

The ideal Sharia mortgage model begins with specific legal recognition of rahn-based collateral instruments or rahn tasjili within the national legal system. This recognition is crucial so that the collateral mechanism in Sharia financing does not merely refer to conventional civil law but also has a legal basis that aligns with Sharia principles. The imposition of collateral rights in murabahah contracts often raises issues because there are no legal norms that explicitly regulate collateral mechanisms based on Islamic values, forcing Sharia banks to follow conventional legal patterns that pay little attention to aspects of justice (Jamilah et al., 2021).

Furthermore, the ideal model also requires the mandatory involvement of related parties, especially heirs, before the execution process is carried out. In practice, many disputes arise because heirs are not given the opportunity to deliberate or reschedule before execution. In some cases of murabahah financing, the Religious Courts prioritize legal certainty for creditors without considering the principles of deliberation and payment flexibility (ta'wil ad-dayn) taught by Islam. Therefore, official notification and mediation opportunities must be provided before the guarantee execution process is carried out (Adi et al., 2022).

This principle is explicitly mentioned in the Qur'an, Surah Al-Baqarah, verse 280: "And if (the debtor) is in difficulty, then grant him respite until he is free." This verse is an important normative basis which shows that the implementation of the guarantee must contain an element of compassion (rahmah) and must not be unjust to the debtor.

Furthermore, a Sharia-compliant mortgage execution mechanism needs to be designed in a phased and proportionate manner, avoiding immediate confiscation or auction. Ideally, the settlement phases should include financing restructuring, private sale negotiations, and a limited auction option with social protection for the debtor and heirs (Meylawati et al., 2024). The effectiveness of executing collateral rights in problematic financing will increase if the process takes into account humanitarian aspects and is not solely oriented towards asset recovery.

The Sharia mortgage model must also prioritize transparent and fair asset valuation standards. Valuations and auctions must be conducted based on fair market value to avoid harming the debtor. If the proceeds from the sale exceed the value of the debt, the excess must be returned to the debtor or heirs. Conversely, if the collateral value is less than the total obligation, collection of the remaining debt must be conducted in a fair and humane manner. Asset valuation practices in Sharia banking still tend to be conventional and lack guidelines that guarantee fairness for all parties (Anam & Nafis Khakimuddin, 2024).

To ensure comprehensive Sharia compliance, financial institutions need to implement the rahn tasjili mechanism and the National Sharia Council of The Indonesian Ulama Council (DSN-MUI) fatwa as the operational basis for Sharia mortgage. This way, every financing process, from binding to execution, will remain within the bounds of Islamic law. Strengthening the role of the Sharia Supervisory Board (DPS) and coordination with the Financial Services Authority (OJK) are crucial to ensuring compliance and consistent implementation of Sharia values (Rusyidi

nasution & Mustapa Khamal Rokan, 2022). The importance of supervision and sharia literacy among legal officials so that the implementation of mortgage in sharia institutions is truly based on the principles of justice and welfare.

The implementation of the ideal Sharia mortgage model, as previously described, will strengthen the foundation of the Islamic financial system in Indonesia, making it more stable and sustainable. This model not only provides legal certainty for financial institutions but also fosters public trust in Sharia-based financing. This is because the model achieves a balance between legal certainty and substantive justice, in line with the core values embodied in the maqasid al-sharia.

The DSN-MUI fatwa provides a normative basis that can harmonize Mortgage Law and sharia principles. DSN-MUI Fatwa Number 25/DSN-MUI/III/2002 concerning Rahn emphasizes that collateral is permissible as long as it is not used as a tool of oppression against the debtor. In this fatwa, the collateral remains the property of the rahin (debtor), while the murtahin (creditor) only has the right to retain the object as collateral. This principle aligns with the principle of non-transfer of ownership in rahn, in contrast to the construction of mortgage law, which have the potential for unilateral seizure of the object by the creditor.

Furthermore, DSN-MUI Fatwa Number 17/DSN-MUI/IX/2000 concerning sanctions for customers who delay payments emphasizes that sanctions can only be imposed on customers who intentionally delay payments, not due to inability. This demonstrates the moral distinction and substantive justice in Islamic law that are not found in the absolute execution mechanism of the Mortgage Law. Whereas the Mortgage Law authorizes direct execution, sharia principles actually demand moral verification if a payment delay occurs due to the debtor's economic condition, which is not yet able to make payments.

The Mortgage Law focuses on protecting property rights, while the DSN-MUI fatwa focuses on protecting social welfare (social justice). Both can be harmonized through the maqasid al sharia approach, which guarantees legal certainty (hifdz al mal) while ensuring justice (adl) and responsibility (amanah). A progressive interpretation of Articles 6 through 20 of the Mortgage Law is needed to ensure its application in Islamic financial institutions does not result in practices that conflict with the principles of Islamic justice.

The maqasid al sharia approach demands that collateral law not only protect creditors' rights but also serve as an instrument of equity and social responsibility. When Islamic financial institutions implement the principle of rahn, or sharia mortgage, the aim is not only to guarantee repayment of obligations but also to ensure that the weaker party, in this case the debtor, is not exploited.

Therefore, the DSN-MUI fatwas can be viewed as complementary norms to the Mortgage in the context of sharia financing. These fatwas do not change the substance of the Mortgage Law, but rather provide ethical and moral guidelines that differentiate conventional financing from sharia financing. This integration is also in line with Constitutional Court Decision No. 93/PUU-X/2012 and SEMA No. 4 of 2016, which affirm the authority of Religious Courts to resolve sharia economic disputes, including the execution of mortgage rights. Therefore, the Mortgage Law does not need to be

revised completely but needs to be interpreted contextually to align with the maqasid al sharia values, namely realizing justice, welfare, and protection for all parties in sharia financial transactions.

## Conclusion

From the perspective of maqasid al-syariah, Mortgage Rights as a material security institution can in principle be accepted normatively as long as its application is directed towards realizing benefits (jalb al-masalih) and preventing harm (dar' al-mafasid). The function of Mortgage Rights in guaranteeing debt repayment and providing legal certainty for creditors is in line with the goal of asset protection (hifdz al-mal), which is one of the main objectives of sharia. However, the enforcement of Mortgage Rights that only relies on the principle of formal legal certainty as regulated in Law Number 4 of 1996, without consideration of justice and balance between the parties, has the potential to conflict with the principle of justice (al-'adl) and the prohibition of injustice in Islamic law. Therefore, normatively, a contextual and just interpretation and application of Mortgage Rights is required, especially in sharia financing, by prioritizing the principles of deliberation, proportionality, and protection of the weak party. The integration of the values of maqasid al-syariah into the practice of imposing and executing Mortgage Rights is an urgent need so that the collateral instrument is not only legally valid, but also morally and sharia-compliant, and is able to realize a financing system that is fair, sustainable, and oriented towards the public interest.

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