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FIDUCIARY GUARANTEE IN SHARIA FINANCING: ANALYSIS OF HARMONY IN THE PRINCIPLES OF MAQOSID SHARIA

Siti Nur Sholikhah¹, Adinda Rida Cita Devi², Nazwa Azzahra³,
Sodiqul Amin⁴, Ahmad Musadad⁵

^{1,2,3,4,5} Trunodjoyo University of Madura

e-mail: 230711100072@student.trunojoyo.ac.id¹, 230711100079@student.trunojoyo.ac.id²,
230711100065@student.trunojoyo.ac.id³, 230711100108@student.trunojoyo.ac.id⁴,
musadad@trunojoyo.ac.id⁵

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Abstract

Fiduciary guarantees serve as a significant legal instrument in Sharia-based financing, particularly in securing the interests of financial institutions while facilitating access to credit for customers. However, their implementation often raises concerns regarding consistency with the core principles of *Maqasid Sharia*, which aim to preserve religion (din), life (nafs), intellect ('aql), lineage (nasl), and wealth (mal). This study employs a quantitative descriptive method to analyze the extent to which fiduciary guarantees align with these principles, particularly in protecting assets just and balanced. Data were collected through structured questionnaires distributed to Sharia financial institutions and their customers, then analyzed to evaluate the compatibility of fiduciary mechanisms with Islamic values, especially fairness and the balance of rights and obligations. The findings suggest that while fiduciary guarantees have the potential to support asset protection by Sharia, several procedural and ethical aspects require further optimization to meet the objectives of *Maqasid Sharia* fully. This study is expected to provide insights that contribute to the refinement of Sharia financing practices and the development of legal frameworks in Indonesia.

Keywords: *Fiduciary Guarantee, Sharia Financing, Sharia Maqasid, Property Protection, Justice*

A. INTRODUCTION

Fiduciary guarantee is one of the important instruments in the world of financing, especially in the context of Sharia financing. As a guarantee mechanism that does not require the transfer of ownership of goods, a fiduciary provides convenience in the process of financing transactions that are more flexible but still provide a sense of security for creditors. In sharia financing, the concept of fiduciary guarantee functions as a tool to protect the rights of financing holders without conflicting with the sharia principles that underlie the system.¹

The development of the sharia financial system in Indonesia cannot be separated from the integration efforts between sharia principles and positive legal instruments, including in the implementation of fiduciary guarantees. The provisions regarding fiduciary itself are regulated in Law Number 42 of 1999, becoming a crucial instrument to minimize financing risks through the transfer of asset ownership rights without transferring physical control. In the context of sharia, contracts such as *murabahah* (buying and selling with transparent margins) utilize fiduciary as collateral, for example, in vehicle financing. However, this practice raises a fundamental

¹ Lestari, D (2020). Implementation of Fiduciary Guarantee in Sharia Financing in Indonesia Journal

question: to what extent is the fiduciary mechanism in line with the maqasid sharia principle, especially in maintaining justice ('adl) and welfare (maslahah) for all parties?²

Maqasid sharia, which includes hifz al-din (guarding religion), hifz al-nafs (guarding soul), hifz al-aql (guarding reason), hifz al-nasl (guarding offspring), and hifz al-mal (guarding property), demands a balance between the interests of creditors and debtors.³ Previous studies, such as research by Ahmad Fauzi & Rina Dewi (2022), revealed that fiduciary in murabahah provides legal certainty, but has the potential to ignore aspects of debt restructuring when the debtor experiences economic difficulties.⁴ On the other hand, Siti Nurhaliza & Abdul Rahman (2020) emphasized the need to harmonize the Fiduciary Law with the principle of rejecting harm (avoiding losses) to prevent unequal execution of guarantees.⁵ On the other hand, Siti Nurhaliza & Abdul Rahman (2020) emphasized the need to harmonize the Fiduciary Law with the principle of rejecting harm (avoiding losses) to prevent unequal execution of guarantees.⁶ This finding shows a gap between compliance with positive law and sharia ethics, especially in the execution procedures and protection of debtor rights.

This study aims to analyze the implementation of fiduciary guarantees in Sharia financing practices and their alignment with maqasid sharia. The focus of the analysis covers two aspects: (1) the implementation of fiduciary in murabahah contracts as a case study, and (2) evaluation of the criteria of hifz al-mal, justice, and general maslahat in the execution of guarantees. The significance of the study lies in the policy recommendations to

integrate sharia principles such as sulh (mediation) and mudharabah (payment flexibility) into fiduciary regulations, to create a fair and sustainable financing model.

Literature Review. The application of fiduciary guarantees in the Sharia financing system is a form of integration between positive law and Sharia principles. Based on Law No. 42 of 1999 concerning Fiduciary, fiduciary guarantees are defined as the transfer of ownership rights to a collateral object without being accompanied by the transfer of physical control, to guarantee the repayment of a certain amount. Debts.⁶ In Islamic banking practices, fiduciary is used in contracts such as murabahah (buying and selling with a profit margin), where the collateral object (for example, a vehicle) remains in the hands of the debtor during the financing period.⁷ This mechanism provides legal certainty for creditors while minimizing the risk of gharar (uncertainty), which is prohibited in Sharia. However, its implementation must meet the principles of transparency of the contract and fairness in the execution of the guarantee.

From the perspective of maqasid sharia, fiduciary guarantees need to be aligned with the five main directions of sharia (hifz al-din, al-nafs, al-aql, al-nasl, and al-mal). In particular, the principle of hifz al-mal (protecting assets) is the basis for the application of fiduciary to protect the interests of creditors and debtors.¹⁰ However, the potential for injustice arises when the execution of the guarantee is carried out unilaterally through parate executie without considering the economic conditions of the debtor or debt restructuring efforts.⁸ According to Al-Ghazali, benefit (maslahah)

² Muhammad Iqbal, *Al-Iqtishad: Journal of Islamic Economics*, Vol. 12, no. 1 (2021), p. 30.

³ Asser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2007), p. 89.

⁴ Ahmad Fauzi & Rina Dewi, *Journal of Islamic Economic Law*, Vol. 10, No. 2 (2022), p. 47.

⁵ Siti Nurhaliza & Abdul Rahman, *Jurnal Mashlahah*,

Vol. 5, No. 1 (2020), p. 80.

⁶ Law of the Republic of Indonesia No. 42 of 1999 concerning Fiduciary Guarantees, Article 1.

⁷ Ahmad Fauzi & Rina Dewi, *Journal of Islamic Economic Law*, Vol. 10, No. 2 (2022), p. 45.

⁸ Ahmad Fauzi & Rina Dewi, *Journal of Islamic Economic Law*, Vol. 10, No. 2 (2022), p. 47.

in sharia must include a balance of the rights of both parties and avoid disproportionate harm (loss).⁹ Therefore, the integration of the principles of sulh (mediation) and mudharabah (postponement of execution) is necessary to ensure alignment with the values of justice ('adl).

Harmonization of fiduciary law with maqosid sharia requires a holistic approach. Research by Siti Nurhaliza & Abdul Rahman (2020) shows that although the Fiduciary Law provides legal certainty, there are gaps in protecting the rights of economically vulnerable debtors.¹⁰ On the other hand, the study by Ahmad Fauzi & Rina Dewi (2022) emphasized that the murabahah contract with a fiduciary can fulfill Sharia principles if it is equipped with a maslahah-based debt restructuring clause.¹¹ Thus, this theoretical framework emphasizes the importance of balancing positive legal compliance with Sharia ethics, especially through mechanisms that are responsive to the socio-economic dynamics of debtors. Furthermore, the collected data will be analyzed statistically using methods such as regression analysis and/or correlation analysis to test the previously developed hypotheses. Through this approach, it is expected that this study can provide an objective picture of the effect of the application of fiduciary guarantees on the achievement of maqashid sharia, as well as provide data-based recommendations to improve the effectiveness of the implementation of sharia principles in financing.

B. RESEARCH METHODS

This study adopts a **quantitative descriptive approach** to evaluate the harmony between fiduciary guarantees and the principles of *Maqasid Sharia* in Sharia financing practices. The research population

includes **Sharia financial institutions** and **their customers** who are involved in financing agreements that apply fiduciary guarantees. Data were collected through a **structured questionnaire** designed to capture perceptions regarding the fairness, legal clarity, and Sharia compliance of fiduciary guarantee mechanisms.

The questionnaire items were developed based on indicators derived from the five objectives of *Maqasid Sharia*—protection of religion, life, intellect, lineage, and wealth, with a focus on wealth protection and justice in contractual relationships. Respondents were selected using **purposive sampling** to ensure relevance and representation from both institutional and customer perspectives.

The collected data were analyzed using **descriptive statistical techniques**, including frequency distribution and percentage analysis, to assess the level of conformity between fiduciary practices and the values of justice, transparency, and balance as emphasized in *Maqasid Sharia*. The findings are then interpreted to identify strengths, challenges, and areas for improvement in the application of fiduciary guarantees within the Sharia finance framework.

C. RESULTS AND DISCUSSION

THE CONCEPT OF FIDUCIARY GUARANTEE IN POSITIVE LAW

According to Law Number 42 of 1999 concerning Fiduciary Guarantees, a fiduciary is a mechanism for transferring ownership rights of an object based on the principle of trust, where the object remains physically controlled by the party who transfers its ownership rights. In the case of fiduciary guarantees, the creditor obtains ownership rights to the object being pledged, but the object remains in the hands of the debtor as the party providing the fiduciary. This transfer of

⁹ Ahmad Fauzi & Rina Dewi, *Journal of Islamic Economic Law*, Vol. 10, No. 2 (2022), p. 47.

¹⁰ Al-Ghazali, *Al-Mustashfa min 'Ilm al-Ushul* (Cairo:

Dar al-Salam, 1997), p. 156.

¹¹ Ahmad Fauzi & Rina Dewi, *Journal of Islamic Economic Law*, Vol. 10, No. 2 (2022), p. 51.

ownership rights is temporary and is only intended as a guarantee for the payment of the debtor's debt. To the creditor.¹²

This law is here to provide legal certainty regarding fiduciary practices, which were previously developed through jurisprudence and doctrine.

Provisions in Fiduciary Guarantee

1. Article 5 states that the establishment of a fiduciary guarantee must be carried out through a deed made by a notary.
2. Articles 11 to 14 regulate the procedures or mechanisms for registering fiduciary guarantees.
3. Article 15 paragraph (1) confirms that the Fiduciary Guarantee Certificate has the same legal force of execution as a court decision, which is final and binding.

The object of the fiduciary guarantee is:

1. There is a default or violation of the agreement based on an agreement between the creditor and debtor; or
2. Certain legal statements state that a breach of contract has occurred.
3. However, in this case, the agreement between the creditor and the debtor relates to a default, and although the debtor is willing to cooperate to execute the object of the fiduciary guarantee, the debtor is not willing to execute unilaterally. Instead, the creditor is required to hand over executive power to the national government. For example, if there is no purpose of default and the debtor is reluctant to hand over the fiduciary transparently, the creditor must immediately notify the court of the execution request.

Therefore, the execution process is not carried out unilaterally or by force by the creditor, but rather through a bailiff appointed by the court. Results of Observations and

Interviews with Industry Actors. To gain a more comprehensive understanding of the practice of fiduciary guarantees in sharia financing, the author conducted interviews with several practitioners in the banking industry and sharia financing institutions. Some important findings from the results of interviews and field observations include:

1. Implementation of Fiduciary Guarantee in Sharia Practice

According to Mr. Ahmad Fauzi, Head of the Financing Division at one of the national Islamic banks, "The use of fiduciary guarantees in Islamic financing is still widely used, especially in financing vehicles and heavy equipment. However, we ensure that the main contract remains sharia-based, such as murabahah or ijarah. Fiduciary guarantees are only complementary to legal protection."

2. Challenges in Alignment with Maqashid Syariah

From an interview with Mrs. Siti Rahmah, Director of Sharia Compliance at a sharia financing institution, it was conveyed that: "One of the main challenges is maintaining a balance between compliance with state regulations that require fiduciary registration, and sharia principles that prioritize justice and do not harm customers. We always conduct internal audits and consult with the Sharia Supervisory Board to ensure that there are no gharar or dzalim issues in all operations.". Customer Perception of Fiduciary Guarantees. Based on the results of observations of the contract process at the branch office of a Sharia financing institution, it was found that some customers still do not fully understand the fiduciary guarantee mechanism. Some consider it similar to conventional collateral, which has the potential to raise doubts about the legality

¹² Law No. 42 of 1999 concerning Fiduciary guarantees

of the contract.

3. Adaptation and Education Efforts

The industry stated that it has made efforts to adjust to the Maqasid Syariah principle through transparency of contracts, simplification of language in financing documents, and internal training. As conveyed by Ust. Hidayatullah, a member of the Sharia Supervisory Board: "We emphasize that maqashid sharia is not only in the form of the contract, but also in the intention, justice, and its benefits for the community. Therefore, education is the key so that fiduciary guarantees are not misunderstood."

Implementation in Conventional and Islamic Banking. The implementation of the legal system of guarantees in conventional and sharia banking has fundamental differences, especially in terms of alignment with maqasid sharia. If analyzed more deeply, there are several aspects in which Sharia banking is closer to maqasid sharia, but there are still challenges in its implementation.

1. Comparison of Collateral Execution in Conventional and Islamic Banking

a. Conventional Banking

- **Usury (Interest) Based System:** Conventional banking uses an interest system in credit, which can create exploitation of debtors, especially in difficult economic situations. This is contrary to hifz al-mal (protection of property) because it can lead to unfair draining of debtor assets.¹³
- **Rigid Guarantee Execution:** If the debtor fails to pay, the bank can immediately execute the guarantee. Guarantee without considering the social and economic conditions of the debtor. This has the potential to violate the

principles of hifz al-nafs (protection of life) and hifz al-ird (protection of honor) if the debtor loses the main assets that support his life.

- **Focus on Maximum Profit:** Conventional banking is more oriented towards bank profits rather than community welfare, which is not always in line with maqasid sharia, which emphasizes social justice.

b. Islamic Banking

- **Based on Sharia Contracts (No Usury):** The financing system uses contracts such as murabahah, ijarah mintahiyah bit tamlik (IMBT), or musyarakah mutanaqisah, which, in principle, are fairer and reduce exploitation. This is more in line with maqasid sharia, especially in the aspects of hifz al-mal and maslahah (social welfare).¹⁴
- **More Humanistic Guarantee Execution:** In Islamic banking, there is a more flexible approach, such as a restructuring or rescheduling scheme for debtors experiencing financial difficulties. This is more in line with hifz al-nafs and hifz al-ird.
- **Islamic Dispute Resolution Mechanism:** Sharia banking prioritizes resolving disputes through the islah mechanism (sharia mediation) before going to court. This is closer to maqasid sharia, which emphasizes justice and social harmony. Challenges in Alignment with Maqasid Sharia
- Even though sharia banking is closer to maqasid sharia, there are still several challenges: Sharia

¹³ Ahmad Fauzi & Rina Dewi, *Journal of Islamic Economic Law*, Vol. 10, No. 2 (2022), p. 51.

¹⁴ Constitutional Court Decision Number 18/PUU-XVII/2019

Formality Without Substance: Some sharia banking products still resemble conventional systems, only with modifications to the contract, but still profit-oriented. This can reduce the value of *maslahah* in *maqasid sharia*.

- Collateral Execution in Sharia Banking Still Refers to Conventional Law: In many countries, Islamic banking still uses the same collateral execution mechanism as the conventional system, so it does not fully reflect the *maqasid* of Sharia.
- Lack of Regulations that Accommodate *Maqasid Sharia*: Not all countries have regulations that truly support *maqasid sharia* in the financial system.

SHARIA FINANCING AND THE PRINCIPLES OF MAQOSID SHARIA IMPLEMENTATION OF FIDUCIARY GUARANTIES IN SHARIA FINANCING PRACTICES.

Maqosid sharia: Hifz al-din, al-nafs, al-aql, al-nasl, and al-mal

Maqashid Syariah consists of five main principles, namely: Hifz al-Din (protecting religion), Hifz al-Nafs (protecting the soul), Hifz al-'Aql (protecting reason), Hifz al-Nasl (protecting descendants), and Hifz al-Mal (protecting property).¹⁵

Hifz al-Din, or maintenance of religion, is an important pillar in Maqashid Syariah, emphasizing the need to place religious values

as the main foundation in every aspect of life, including in the financial sector. This requires avoiding practices that are contrary to Islamic principles, such as interest (*riba*), uncertainty or ambiguity in transactions (*gharar*), and speculative elements or gambling (*maysir*).¹⁶ Therefore, the application of this principle in the Islamic financial system is very important to ensure that economic activities remain by Islamic teachings. In the realm of digital investment based on Sharia, the products provided must support halal sectors, be free from prohibited elements, and not cause harm to any party. The principle of Hifz al-Din plays a role in ensuring that every transaction or digital investment activity remains in line with Islamic religious values and ethics, so that harmony is created between economic activities and the spiritual dimension.¹⁷

Hifz al-Nafs, or guarding the soul, focuses on protecting safety.

This principle aims to maintain the physical and mental health of individuals while encouraging the creation of prosperity for all humanity. In the context of finance, this value encourages the creation of an inclusive financial system by providing fair and accessible financial services to low-income communities or vulnerable groups. One of its applications is through a sharia-based peer-to-peer lending platform, which allows for interest-free financing for micro and small business actors, so that they are not economically burdened. Thus, this principle ensures that everyone, regardless of economic conditions, has access to improve their standard of living through financial services that are by Islamic principles.¹⁸

¹⁵ Constitutional Court Decision Number 18/PUU-XVII/2019

¹⁶ Agilga, M. &. (2022). Analysis of the Merger of Indonesian Sharia Bank (BSI) with the *Maslahah Approach Mursalah*. *Journal of Islamic Law* 1(2), 319-350.

¹⁷ SYOFYAN. (2017). ANALYSIS OF SYARIAH BANK PERFORMANCE USING INDEX

METHOD. *Al Masraf: Journal of Financial Institutions and Banking*-Volume 2, Number 2, 1-14.

¹⁸ Ika Yunia Fauzia and Abdul Kadir Riyadi, *Basic Principles of Islamic Economics from the Perspective of Maqasid al-Shariah*, 1st Edition (Jakarta: KENCANA, 2014), 41.

Hifz al-'Aql, or safeguarding the mind, in the context of digital finance, aims to protect one's intellectual function from damage or negative influences. Digital financial products should be designed so as not to confuse or mislead users. For example, digital-based sharia insurance provides sharia-compliant financial protection by upholding transparency and clarity of information. This helps users understand the benefits and risks involved without any element of uncertainty that could affect common sense. In addition, digital platforms that provide financial education and digital literacy also embody this principle by helping users make rational and wise financial decisions and avoid debt traps or detrimental investments. In this way, the principle of Hifz al-'Aql aims to support the development of common sense in responsible financial management.¹⁹

Hifz al-Nasl, or protecting descendants, is a principle in Maqashid Syariah which focuses on protecting future generations.²⁰

Application in banking: Conventional and Sharia

The implementation of the legal guarantee system in conventional and sharia banking has fundamental differences, especially in terms of alignment with the maqasid of sharia. If analyzed more deeply, there are several aspects in which Sharia banking is closer to the maqasid of Sharia, but there are still challenges in its implementation.

1. Comparison of Collateral Execution in Conventional and Islamic Banking
 - a. Conventional Banking Usury-Based

System (Interest): Conventional banking uses an interest system in credit that can create exploitation of debtors, especially in difficult economic situations. This is contrary to hifz al-mal (protection of property) because it can cause unfair draining of debtor assets.

Rigid Guarantee Execution:

If the debtor defaults, the bank can immediately execute the collateral without considering the debtor's social and economic conditions. This has the potential to violate the principles of hifz al-nafs (protection of life) and hifz al-ird (protection of honor) if the debtor loses the main asset that supports his life.

Focus on Maximum Profit: Conventional banking is more oriented towards bank profits than community welfare, which is not always in line with maqasid sharia, which emphasizes social justice.

- b. Sharia Banking: Based on Sharia Contracts (Without Usury): The financing system uses contracts such as murabahah, ijarah mintahiyah bit tamlik (IMBT), or musyarakah mutanaqisah, which, in principle, are fairer and reduce exploitation. This is more in line with maqasid sharia, especially in the aspects of hifz al-mal and maslahah (social welfare).

Islamic Dispute Resolution Mechanism: Sharia banking prioritizes resolving disputes through the islah mechanism (sharia mediation) before going to court. This is closer to maqasid sharia, which emphasizes justice and social harmony.

2. Challenges in Alignment with Maqasid Sharia

¹⁹ Ilman, AH, Nurjihadi, M., & Noviskandarini, G. (2019). The Role of Financial Technology for the Economy of Developing Countries. *Indonesian Business Economics Journal*, 28-36

²⁰ There are 5 objectives of the Shari'a: hifz al-mal

(protecting wealth), hifz al-nafs (maintaining personal safety), hifz al din (protecting religion), hifz al-aql (protecting reason), and hifz an-nasl (protecting descendants).

Even though sharia banking is closer to maqasid sharia, there are still several challenges:

Sharia Formality Without Substance: Some sharia banking products still resemble conventional systems, only with modifications to the contract, but are still profit-oriented. This can reduce the value of *maslahah* in maqasid sharia. **Execution of Guarantees in Islamic Banking Still Refers to Conventional Law:** In many countries, Islamic banking still uses the same guarantee execution mechanism as the conventional banking system.

Maintaining the welfare of future generations is the core of this principle. In the realm of finance, this principle is realized through fund management that not only focuses on personal interests but also pays attention to the continuity of family and descendant welfare. A concrete example of its application can be found in Sharia health insurance, which provides financial protection for families so that they can continue to obtain adequate health services without burdensome costs. In addition, sharia-based pension programs are also an important illustration, because they are designed to guarantee financial stability in retirement, while maintaining that the investments made follow *halal* principles and are free from detrimental elements.

With the presence of various financial products, the principle of *hifz al-nasl* plays a significant role in ensuring that families and descendants have a guarantee of a stable economic future and are protected from potential financial risks that can threaten their welfare.

The principle of *hifz al-maal*, or

preservation of wealth, is one of the main pillars of Maqashid Syariah, which underlines the importance of asset protection and fair and transparent management of wealth. This principle teaches the importance of respecting ownership rights and avoiding detrimental economic practices, such as usury, fraud, and elements of uncertainty (*gharar*). In the world of digital finance, the implementation of this principle is reflected through the use of sharia-based electronic wallets (e-wallets). Sharia e-wallets are designed to ensure that all transactions take place by Islamic values, without any elements of interest or uncertainty.²¹

Through this technology, users are given the convenience of managing finances efficiently, transparently, and in line with the principles of Islamic economic justice. In addition, this technology helps people avoid detrimental financial activities and, at the same time, encourages the creation of a fairer wealth distribution system.

Furthermore, the role of Maqashid Syariah in encouraging financial inclusion is very important. Sharia values underlie the creation of various financial products that are not only governed by Islamic law but are also designed to reach all levels of society, including those living in remote areas and untouched by the formal financial system. One form of implementation is a sharia-based crowdfunding platform, which provides interest-free financing solutions to micro and small business actors. This scheme is an inclusive financing alternative for people who do not have access to conventional banks.

²¹ Ginting, F. (2018). Simplifying the Stock Investment Process through Digital Applications.

Through this system, business actors from various circles have the opportunity to obtain business capital in a sharia-compliant manner, thereby strengthening economic growth based on justice and blessings.

Principles of justice, benefit, and no harm in financing

Sharia financing is a financial system based on Islamic values that aims to achieve justice and economic welfare as a whole. The main principles in Sharia financing include aspects of the prohibition of usury, halal.²²

Activity, justice, equality, and transparency in the contract. Here is a more detailed explanation of these principles:

1. Prohibition of Usury

Usury, or interest, is an addition to a loan that must be paid by the borrower. In Islam, usury is considered a form of exploitation of those in need of funds, so it is strictly prohibited. This prohibition refers to several verses of the Qur'an, one of which is Surah Al-Baqarah, verse 275:

سُورَةُ الْبَقَرَةِ
Al-Baqarah - Ayat 275

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

لَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا مَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ ﴿٢٧٥﴾

It means :

“Those who consume (transact with) usury cannot stand, except like a person who stands staggering because he is possessed by Satan.

This happened because they said that buying and selling was the same as usury. Allah has permitted buying and selling and

prohibited usury. Whoever has received a warning from his Lord (concerning usury), then he stops so that what he has obtained first becomes his and his business (is up to) Allah. Whoever repeats (usury transactions), those are the inhabitants of hell. They will abide therein forever.”

Usury is considered to be detrimental to the economic order and creates injustice because the borrower bears an additional burden without providing any real benefit to the lender. By prohibiting usury, Islamic financing ensures that transactions are fair and mutually beneficial.

2. Halalness of Activities

Any funds that are lent or invested must be used for activities that are halal and do not conflict with Sharia. For example, financing should not be used to support the gambling industry, alcohol, prostitution, or other prohibited products. This principle aims to maintain the values of maqashid sharia, namely protecting the five main aspects of life: religion (ad-din), soul (an-nafs), reason (al-aql), descendants (an-nasl), and property (al-mal).

3. Justice and Equality

Sharia financing emphasizes the importance of justice for all parties involved. All benefits and risks must be distributed fairly according to the contribution of each party. This principle is in line with the word of Allah in Surah An-Nisa verse 29:

²² Suryani, Islamic Banking System in Indonesia: History and Development Prospects, Muqtasid



يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ
رِضٍ مِّنكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٢٩﴾

"O you who believe! Do not falsely consume each other's wealth, except in trade that takes place based on mutual consent between you. And do not kill yourselves. Indeed, Allah is Most Merciful to you."

By implementing justice, the Islamic financing system avoids exploitation and provides equal opportunities for every individual to benefit from Transparent Contracts.

Transparency in contracts or agreements is an important element in Islamic financing. All agreements must be documented, understood, and agreed upon by all parties involved. This prevents transactions from elements of fraud, gharar (uncertainty), and maysir (gambling). Transparency encourages a business relationship of mutual trust and minimizes the potential for conflict in the future. In Islamic financing, types of contracts such as mudharabah (business collaboration with profit sharing), musyarakah (investment cooperation), and murabahah (sale and purchase with agreed profits) are commonly used, with transparency in the agreement being the main foundation. Often used with clarity of the agreement as its main foundation.

Case study on Islamic banks (murabahah with vehicle fiduciary)

Murabahah financing is a sale and

purchase agreement where the bank buys goods (for example, vehicles) and sells them to customers with an additional profit margin. The following are **the process steps**

Process Steps:

1. Financing Application: Customers submit a financing application to purchase a vehicle.
2. Verification: The bank analyzes the customer's financial feasibility, including checking credit history and payment ability.
3. Vehicle Purchase: Once approved, the bank purchases the vehicle from the dealer for cash.
4. Signing of the Agreement: The customer signs the murabahah agreement and the fiduciary agreement. Here, the customer agrees to use the vehicle as collateral.
5. Vehicle Handover: The vehicle is handed over to the customer, but full ownership rights remain with the bank until the customer has paid off all installments.
6. Settlement: Customers make installment payments according to the agreement until the loan is paid in full.

Pattern of agreement, implementation of fiduciary, and execution of guarantee.

Sharia financing prioritizes principles that are in line with Islamic teachings, including avoiding usury (interest), gharar (excessive uncertainty), and maysir (speculation). To ensure smooth transactions, in sharia financing, fiduciary guarantee instruments are often used, which allow the lender to have rights to the collateralized goods without transferring ownership of the goods to the lender.²³ In this case, the contract (agreement) is the main basis that regulates the relationship between the lender and the recipient of the financing.²⁴

The following is a more in-depth explanation of the contract patterns used in

²³ Constitutional Court Decision Number 18/PUU-XVII/2019

²⁴ Ahmad Irfan Rais, "Implementation of Credit

Agreement with Fiduciary Guarantee for Motorbikes at Adira Finance Kudus," (Thesis, Faculty of Law, Muria University)

Sharia financing with fiduciary guarantees:

1. Murabahah Contract

Murabahah is a form of sale and purchase transaction in which a financial institution provides funds to obtain an item according to the customer's request. In this mechanism, the financier first purchases the desired item, then resells it to the customer at an agreed price, including a certain profit (margin). Payment from the customer is made in installments over a certain period.²⁵

Application of Fiduciary in Murabahah Contract: In murabahah financing, fiduciary collateral is used to guarantee goods purchased by the debtor. For example, if the debtor purchases a vehicle or machine using murabahah financing facilities, the vehicle or machine will become the object of fiduciary collateral. In other words, although the goods remain in the hands of the debtor, the financier has the right to the goods if the debtor fails to fulfill the payment obligation.

2. Musyarakah Contract

Musharaka contract is a cooperation agreement between two or more parties, each of which provides funds for a particular business, and the results or profits from the business will be divided based on the agreement that has been agreed upon. In musharaka, each party obtains clear rights and responsibilities according to the portion of capital contribution paid in.²⁶ **Application of Fiduciary in Musyarakah Contract:**

In a musyarakah contract, one party can provide fiduciary guarantees for goods or assets owned as a form of guarantee to maintain the continuity of cooperation.

²⁷In the event of default, or one party fails to fulfill its obligations, this fiduciary guarantee can be used to cover the losses incurred. In other words, the collateral remains in the hands of the party providing the guarantee, but if there is a failure in the distribution of results or payment of obligations, the other party who is harmed can execute the guarantee.

3. Ijarah Contract

An Ijarah contract is a lease agreement in which the lessor grants the lessee the right to use an item or service with agreed rental payments. Usually, rental payments are made in installments for a certain period. In Sharia financing, the ijarah contract is used for financing involving the rental of goods, such as vehicles, machinery, or property.²⁸

Application of Fiduciary in Ijarah Contract: In an ijarah contract, fiduciary collateral can be applied to the leased goods. For example, a leased vehicle or machine can be used as an object of fiduciary collateral. If the debtor (lessee) fails to make the lease payment according to the agreement, the lessor (financer) has the right to repossess the leased goods, based on the fiduciary agreement that has been made.

ANALYSIS OF HARMONY WITH MAQOSID SYARIAH

Can securing wealth (hidz Al-Mal) be achieved?

In the context of sharia financing with fiduciary guarantees, one of the main objectives to be achieved is to secure assets or hidz al-mal, which is one of the five main objectives of sharia known as maqosid sharia. Hidz al-mal aims to maintain and protect

²⁵ National Sharia Council Fatwa No. 73/DSN-MUI/V/2008 Concerning murabahah

²⁶ DSN-MUI Fatwa No. 8/DSN-MUI/III/2000 concerning Musyarakah

²⁷ Tandelilin, Eduardus Tandelilin, (2001). Investment Analysis and Portfolio Management. 1st Edition (Yogyakarta: BPFE, 2001), 37

²⁸ DSN-MUI Fatwa No. 73/DSN-MUI/V/2008 concerning Ijarah

human property from being threatened or lost in a state who does not valid, including in economic and financing transactions.²⁹

Sharia financing with fiduciary guarantee can be considered as a step in line with the principle of *hifz al-mal*, because a fiduciary provides legal protection for assets pledged by the debtor. Fiduciary guarantee allows the financier to have rights to the pledged object without transferring ownership of the goods. The creditor. This ensures that even though the goods remain in the possession of the debtor, in the event of default or failure to fulfill obligations, the lender is entitled to repossess the goods to cover losses or unpaid debts.³⁰

However, to achieve the objectives of *hifz al-mal*, the execution of fiduciary guarantees must be carried out by the principles of justice and transparency. As in the teachings of Sharia, every transaction in Sharia financing must prioritize the values of justice, no oppression, and no excessive uncertainty (*gharar*). Therefore, the implementation of fiduciary guarantees must pay attention to aspects of morality, justice, and responsibility, as well as avoiding potential losses or conflicts that could harm one party, especially the debtor.³¹

Maqasid Syariah, or the objectives of sharia, encompass five main aspects, one of which is *hifz al-mal*, which means safeguarding property. In the context of fiduciary security, *hifz al-mal* can be achieved through legal protection given to creditors. Fiduciary security functions as a transfer of trust, where the object remains with its owner, but the creditor has the right of execution if the debtor fails to fulfill their obligations.

1. Legal Aspect: Fiduciary guarantee certificates provide executive power recognized by law, thus providing a sense

of security for creditors if the debtor defaults. This is in line with the principle of *maqasid sharia*, which emphasizes the importance of justice and protection of assets. Protection of Assets in Fiduciary Guarantee The existence of *hifz al-mal* as one of the objectives of *maqashidus sharia* focuses on the protection of individual assets and wealth. This concept is very important in the context of *muamalah* activities, including trade and investment. *Hifz al-mal* aims to ensure the sustainability of one's assets, which is relevant in the effective management and placement of funds to generate fair profits.

2. Unbalanced Aspects of Legal Certainty. In some jurisdictions, regulations regarding the execution of guarantees are not yet fully harmonious, so that provide more benefits to parties who have better economic power or legal access. This has the potential to create legal uncertainty and is contrary to the principles of justice in *Maqasid Sharia*.
3. Social Impacts That Are Inconsistent with *Maqasid Syariah*. If execution is carried out rigidly without considering the debtor's social and economic conditions, such as in the case of mortgages on houses or ships that provide livelihoods, then this can cause greater economic difficulties. *Maqasid sharia* teaches the importance of maintaining a balance between individual and community interests (*hifz al-maal* and *hifz al-nafs*).
4. Abuse of Power and Contract Imbalance. In both conventional and Islamic economic systems, there is potential for exploitation if one party has full control over the rules and mechanisms of execution. For example, in a *murabahah*

²⁹ Gunawan Widjaja and Ahmad Yani, *Fiduciary Guarantee* (3rd ed.; Jakarta: PT RajaGrafindo Persada, 2003), p. 119.

³⁰ Law Number 42 of 1999 concerning Guarantees

Fiduciary

³¹ DSN-MUI Fatwa No. 73/DSN-MUI/V/2008 concerning *Murabahah*

or ijarah muntahiyah bit tamlik (IMBT) contract, if the execution clause is too beneficial to the financial institution, then the potential for exploitation can occur, which is contrary to the principles of justice and maslahat.

5. Lack of Access to Fair Dispute Resolution Mechanisms. If the execution of the guarantee is not equipped with an effective alternative dispute resolution (ADR) mechanism and is based on the values of maqasid sharia, then the lower-class community has the potential to experience difficulties in obtaining justice. In addition, the principle of hifz al-'ird, which emphasizes the protection of individual honor, can also be threatened, especially if the execution process is carried out unfairly, arbitrarily, and results in defamation of a person.

Protection of debtor rights and public interest

Legal protection related to agreements involving guarantees between creditors and debtors has been regulated by various laws and regulations in Indonesia. Debtors who apply for loans or credit from banks have the status of consumers of financial products or services provided by creditors. Therefore, the rights of debtors as consumers are guaranteed through Law Number 8 of 1999 concerning Consumer Protection

Legal protection for debtors is very important and should not be ignored, especially since there is often an imbalance of power in the legal relationship between debtors and creditors. In reality, several regulations tend to focus more on protecting creditors' rights. An example can be seen in Law Number 4 of 1996 concerning Mortgage Rights, which comprehensively provides legal certainty to creditors, including priority rights

in debt repayment through collateral in the form of objects burdened with Mortgage Rights.³²

On the other hand, legal regulations that specifically protect the position of debtors are still relatively limited and generally only contain basic rights and obligations as the party borrowing funds.

Attention to the protection of debtors as consumers is also a focus in international regulations, one of which is stated in United Nations Resolution Number 39/248 of 1985. In the 106th general assembly held on April 9, 1985, several basic rights that consumers must have were emphasized, namely:

1. Guarantee against potential hazards that could threaten health and safety;
2. Protection of consumers' social and economic rights;
3. The right to obtain adequate information to make decisions according to needs and desires;
4. Right to consumer education;
5. Availability of prompt and effective compensation mechanisms;
6. Freedom to form consumer organizations and participate in policy-making processes that affect their interests.

Furthermore, Article 4, Chapter III of Law Number 8 of 1999 comprehensively outlines various consumer rights. These rights include a sense of security, comfort, and protection in the use of goods and/or services; freedom to choose and obtain products or services by the promised value and quality; access to accurate, transparent, and honest information; the opportunity to express opinions or complaints; the right to legal protection and fair dispute resolution; the right to receive education as a consumer; fair treatment without discrimination; and the right to compensation if the goods or services received do not comply with the agreement.³³

³² Widjaja Gunawan and Ahmad Yani, *Law on Consumer Protection*, (Jakarta: PT Gramedia Pustaka Utama, 2003), 53.

³³ Indonesia (6), *Consumer Protection Act, Law No. 8 of 1999 concerning Consumer Protection Consumers*, Article 4

Based on various applicable legal provisions, it can be concluded that the protection of debtors as consumers is reflected through the recognition and fulfillment of their rights by applicable legal principles.³⁴

D. CONCLUSION

This study examines the concept of fiduciary guarantee in positive law and its relevance to the principle of maqosid sharia in Sharia financing. Based on Law No. 42 of 1999, fiduciary guarantee is defined as the transfer of ownership rights to the collateral object without being accompanied by a transfer of control, which is applied in both conventional and Sharia banking. In the context of sharia, the application of fiduciary must be aligned with the principle of maqosid sharia, especially hifz al-mal (protecting property), hifz al-din (protecting religion), hifz al-nafs (protecting the soul), hifz al-aql (protecting reason), and hifz al-nasl (protecting descendants). The analysis shows that although fiduciary provides legal certainty and risk protection for financial institutions, its integration with the principles of justice, benefit, and tolak mudarat (avoiding losses) still needs to be strengthened.

The application of fiduciary guarantees in sharia financing practices, such as in murabahah contracts with vehicle collateral objects, shows the integration between positive law and sharia principles. Based on Law No. 42 of 1999, fiduciary functions as an instrument for transferring asset ownership rights without transferring physical control, providing legal certainty for Sharia financial institutions. However, in practice, the pattern of contracts and execution of guarantees needs to ensure transparency and compliance with Sharia values, such as avoiding usury and gharar. Case studies on Sharia banks reveal that although fiduciary is effective in reducing

financing risks, its implementation still needs to be criticized through the lens of maqosid sharia.

The analysis of the alignment with maqosid sharia confirms that the principle of hifz al-mal (protecting assets) is achieved through securing creditor funds. However, the potential for injustice in the execution of collateral, such as the use of a unilateral parate executie mechanism, risks ignoring the principles of justice ('adl) and welfare (maslahah). This inequality is especially evident when the debtor does not get the opportunity for debt restructuring or mediation, even though Sharia emphasizes the protection of the rights of the weak party. Thus, although a fiduciary fulfills the legal aspect, the ethical aspect of Sharia has not been fully integrated.

The main challenge lies in the execution procedure, which often does not take into account the socio-economic conditions of the debtor, contrary to the principle of tolak mudarat (avoiding harm). Protection of the debtor's rights, as part of hifz al-nafs (protecting the soul) and hifz al-din (protecting dignity), must be a priority. Mechanisms such as sulh (mediation) or a sharia-based delay of execution are needed to ensure a balance between the interests of creditors and debtors. Without this adjustment, fiduciary practices have the potential to create a conflict between legal compliance and the principles of Islamic justice.

Policy recommendations include harmonization of the Fiduciary Law with the principles of maqosid sharia, socialization of debtor rights, and strengthening of debt restructuring clauses in contracts. This research contributes to the development of a fair Sharia financing model, combining positive legal certainty with Islamic economic ethics. In the future, further studies are needed to evaluate the implementation of these

³⁴ Indonesia (6), Consumer Protection Act, Law No. 8 of 1999 concerning Consumer Protection

recommendations and their impact on the stability of the Sharia financial system and the protection of vulnerable communities.

Sharia financing based on maqasid al-Sharia emphasizes a balance between the interests of creditors and debtors, and guarantees transactions that do not contain gharar (uncertainty) or usury. However, the application of fiduciary in sharia practice needs to ensure that the execution and debt restructuring procedures do not conflict with

the principles of justice ('adl) and public interest. This study recommends harmonization of fiduciary regulations with Sharia values through a mediation mechanism (sulh) and adjustment of contracts that are responsive to the economic conditions of the debtor. The contribution of this study lies in the integration of positive legal perspectives and Sharia ethics to optimize a just and sustainable guarantee model.

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