

JURIDICAL ANALYSIS OF THE APPLICATION OF SHARIA PRINCIPLES IN THE EXECUTION OF MORTGAGE RIGHTS IN SHARIA BANK

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Abstract

Background - Sharia banking in Indonesia is experiencing rapid growth, reflecting increasing public awareness of the importance of an economic system in harmony with Sharia principles. However, despite this growth, a legal vacuum remains, hindering the full implementation of Sharia principles, particularly in the area of mortgage rights execution. Currently, regulations concerning mortgage rights in Sharia banking still refer to Law Number 4 of 1996 concerning Mortgage Rights over Land and Land-Related Objects, which is more suited to conventional banking practices. The reliance on conventional legal frameworks presents significant challenges for Islamic banks, as they fail to accommodate the specific requirements of Sharia compliance, which operates under different principles and procedures than conventional banking. To support the growth of Sharia banking, Indonesia enacted Law Number 21 of 2008 concerning Sharia Banking, which provides a legal basis for Sharia-compliant banking operations. However, this law does not specifically regulate collateral rights in Sharia banking, leaving Islamic banks to rely on fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), such as Fatwa No. 68/DSN-MUI/III/2008 concerning Rahn Tasjily and Fatwa No. 92/DSN-MUI/IV/2014 concerning Financing Based on Sharia Guarantees. These fatwas, however, do not constitute legally binding provisions like the mortgage law, thus they are ineffective in resolving legal disputes or ensuring comprehensive Sharia compliance. This legal gap creates uncertainty, which may undermine public trust and cause discrepancies in the execution of mortgage rights that do not align with the justice principles espoused by Sharia.

Purpose - This research seeks to examine how Sharia principles are applied in the enforcement of mortgage rights within Islamic banking and to propose policy recommendations for the government to enhance legal certainty for the public. The study specifically explores the regulatory framework governing mortgage rights and their execution mechanisms in the context of Islamic banking in Indonesia, aiming to promote the harmonization of Sharia principles with the national legal system.

methodology - Using a normative juridical approach combined with qualitative analysis methods, the research reviews relevant laws, DSN-MUI fatwas, and academic literature. The findings reveal notable discrepancies between the ideal Sharia principles and the reality of current regulatory practices, highlighting critical gaps that undermine the justice and credibility of Islamic banking operations.

Findings - This study highlights legal challenges in the execution of mortgage rights by Islamic banks, which do not fully conform to Sharia principles. These challenges stem from the absence of explicit and comprehensive regulations based on Sharia principles to guide the execution process, resulting in legal uncertainty and potentially compromising justice for the involved parties. A notable finding of this study is that Islamic banks often depend on conventional legal frameworks, which are not tailored to address the distinct principles and practices of Sharia-compliant financial transactions. This dependency leads to discrepancies between the operational methods of Islamic banking and the core values of Sharia, thereby amplifying the difficulties in achieving legal certainty and maintaining public trust.

Originality - This research makes a valuable contribution to the legal field by identifying the gaps in the legal framework regarding the execution of mortgage rights in Islamic banking, particularly in Indonesia. While previous studies have examined various aspects of Islamic banking, few have specifically focused on the intersection of Sharia principles and the execution of mortgage rights within the current legal system. This study stands out by highlighting the discrepancies between Sharia-compliant banking practices and conventional legal frameworks, proposing practical solutions to resolve these issues and improve legal certainty. Additionally, it offers policy recommendations aimed at better aligning the regulations governing Sharia principles with national law, a topic that has not been thoroughly addressed in the existing literature.

Keywords: Sharia banking, Sharia principles, mortgage rights, execution of mortgage rights, regulatory gaps
