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THE URGENCY OF COLLATERAL IMPLEMENTATION IN THE MUDHARABAH FINANCE OF SHARIA BANKING IN INDONESIA*

Wetria Fauzi[1], Ratih Agustin Wulandari[2], Raimon Efendi[3]
[1]Universitas Andalas, Kota Padang
e-mail: wetriafauzi@law.unand.ac.id
Universitas Dharmas Indonesia
[2]e-mail: wulandariagustin88@gmail.com*
[3]e-mail: raimon.efendi@gmail.com

Abstract

Mudharabah financing is a transaction based on the principle of cooperation, so it does not require collateral. But financing does not always run smoothly. Finally, Islamic banks require collateral in mudharabah financing. Of course, it is a debate among scholars. For this reason, the purpose of this study is to identify the basis for applying collateral to mudharabah financing, and setting collateral binding for mudharabah financing in Islamic banking. The research objectives will be answered by empirical normative legal research methods which analyze the norms and provisions that apply, supported by field research in the form of interviews, and observation as reinforcement. The identification carried out resulted in First, the ijtihad method is the basis for the obligation to provide collateral in mudharabah financing by not overturning the original concept with the Istihsan method, and adhering to the provisions in UUPS, PBI Number: 7/46/PBI/2005 concerning Contracts for Collection and Distribution of Funds for Banks conducting business activities based on Sharia Principles, and DSN Fatwa Number: 07/DSNMUI/IV/2000 concerning Mudharabah Financing (Qiradh). Second, Islamic banking has not regulated the binding of collateral to mudharabah financing in Islamic banking, so in practice Islamic banking uses guarantee institutions that are used by conventional banks.

Keywords: *Application; Collateral; Mudharabah Financing; Islamic Banking.*

INTRODUCTION

Indonesia adheres to the concept of a dual banking system based on Law Number 10 Of 1998 on Banking (Azheri n.d.) This is the enactment of two forms of bank activities in Indonesia, debt-interest-based and cooperation-based and non-interest-based, namely conventional banking and Islamic banking.

Law Number 21 of 2008 concerning Islamic Banking (from now on referred to as UUPS) as the main foundation of Islamic banking, which emphasizes the obligation of Islamic banking to implement Sharia principles in its operational activities and products (Tektona 2023). Sharia Principles are based on Islamic Law by the Alquran and Hadith; this is emphasized in Article 1 paragraph (12) of the UUPS, namely, every provision underlying the activities of Islamic banks must be based on fatwas issued by the National Sharia Council of the Indonesian Ulema Council based on Islamic Law (Syariah n.d.).

The principles of Islamic banking are also emphasized in Article 2 of the UUPS. Sharia principles must be prioritized in every activity in Islamic banking that upholds economic democracy and the direction of prudence. Sharia principles are based on justice, benefit, balance, and universality (*rahmatan lil 'alamin*) and do not conduct business containing usury,

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maisir, gharar, haram and *zalim* elements (Ali n.d.).

The most crucial benefit of Islamic banking is to collect public funds and give them back to the community through financing. The provision or distribution of funds back to the community from Islamic banking, which is very functional in the country's current economic development, is financing (Firdausi 2021).

Based on Article 1, paragraph (25) of the UUPS, financing is channelling funds in the form of bills (1). Profit-sharing activities known as *mudharabah* (cooperation between Islamic banking as the owner of capital and customers as managers to run a business to obtain profits, and *musyarakah* (partnership cooperation by combining wealth to bring profits that are shared based on agreement and loss-sharing based on the money provided (2). *Ijarah* (leasing activities, or ijarah muntahiya bittamlik (lease purchase in the form of assets) (3). Sale and investment in the form of *murabahah* requirements, *Salam* (a transaction in the condition of sale and purchase where the goods sold do not yet exist, by providing characteristics or specifications of goods provided later or known as buying and selling orders but payment must be made at the beginning), and *Istishna* (sale and purchase transactions by ordering goods as desired to the seller, with precise specifications, but payment may be made at the beginning, middle or end) (4). *Qardh* (lending and borrowing activities between Islamic banking and customers, where the customer is required to return the loan on time, without reward based on the principle of taawun (helping) and (5). *Ijarah* (a transaction based on leasing in the form of provision of funds) (Syariah n.d.).

In Islamic banking, *mudharabah f*inancing is a transaction that is familiar, popular, and in demand by the community. *Mudharabah* has been known since the time of the Prophet. *Mudharabah* is a transaction based on cooperation, profit sharing, and trust from the owner of the capital to the manager as outlined in the agreement or contract. *Shabib almal* owns the money, while Mudharib is the recipient of the capital (Harahap 2020).

Mudharabah, according to Sayyid Sabiq, is where the provision of capital by someone is outlined in the contract to another party for commerce. *Mudharabah*, also called *muamalah*, requires one party to provide means in the form of money to trade to the other party with an agreement to share profits according to what is agreed.

The Shafi'i Madhhab explicitly states that *mudarabah* is a contract, but it does not specify the contract terms and the procedure for dividing the profits. The ruling on *mudarabah*, according to scholarly consensus, is permissible based on the *Alqur'an, Sunnah*, consensus and *qiyas* (Zakiyah and Hisam 2018). The primary purpose of mudharabah is to help in trade from those who are able and robust in capital to those who are skilled in managing it (Maulana 2014).

The opportunity to cooperate in Islam is given, although the *alquran* does not explicitly mention *mudharabah*. The pillars of *mudharabah* it self, according to the scholars, are the subject, the person who owns the capital and the business actor; the object is capital and work; *ijab qabul*, which is a form of agreement

between the parties, the profit ratio. The conditions by the pillars of *mudharabah* are the parties to the contract, capital, profit, work and spigot (Humam. taufiqul 2010).

Mudharabah financing is a transaction that has risks in the future, because it is based on the concept of cooperation between *sahibul mal* and *mudharib*, not always this contract will take place as expected or stated in the contract. *Mudharabah* practice in Islamic banking today is not the same as that applied in the classical concept or the concept of *mudhararabah* in *fiqh*, where losses will be borne entirely by the owner of the capital and does not recognize collateral. The difference can be seen from various important aspects, namely capital, business management, time period, and application of collateral.

Currently, the provisions of *mudharabah* financing implement collateral, but Imam Malik and Imam Syafii as *fiqh* scholars still state that it is not justified to demand collateral in *mudharabah* financing which is a collaborative transaction which results in the destruction of the *mudharabah* concept and the vague concept of profit sharing. The above opinion contradicts what was described by Imam Abu Hanifah, who stated that it is permissible to ask for collateral in *mudharabah t*ransactions. However, it nullifies the conditions, similar to buying and selling, which are still allowed even if they are not appropriate (damaged) (Sa'diyah and Arifin 2013).

In reality, in channelling financing to the community, Islamic banking applies the requirement to provide collateral to the bank. This condition results in a loss of trust or fear of being a part or customer of an Islamic bank whose Sharia principles are doubtful, considering the context of fiqh that is well understood by the community.

Banks, both Islamic banking and conventional banking, in analyzing the feasibility of providing financing, see the feasibility of customers by paying attention to several important factors as determinants, namely character (character), customer ability (capacity), customer capital (capital), collateral (collateral), finally economic conditions (condition of the economy) (Ismiyanti and Mahadwartha 2020).

The collateral principle means that the bank's analysis of the financing proposed by the customer prioritizes the quality and quantity of collateral owned by the customer (Ratih Agustin Wulandari 2021).

The word collateral has the meanings *cagaran*, guarantees and dependencies. According to the Big Indonesian Dictionary (KBBI), the definition of collateral is very much in line with the purpose of the word promise. One of the meanings of the word security, according to KBBI, is "dependence on the loan received; collateral. Collateral or collateral is in the form of goods that prospective customers must provide, which are used to ensure that prospective customers will pay their obligations, which can be valued in money or equivalent (Usman 2016).

Guarantees consist of (1). guarantees that are born based on the law (general guarantees) according to Articles 1131 and 1132 of the Civil Code, which state that all the assets of the debtor, in the form of existing or future goods, movable

or immovable, will become dependents and become collateral for all debts of the debtor even though the object or wealth is not submitted. (2). Guarantees that are born based on agreements (unique guarantees), whether goods or individuals are contained in a particular agreement or known as an additional agreement (accessoir) (Irma Devita Purnamasari 2014). Concrete forms of unique guarantees are mortgages, pawning, fiduciary, warehouse receipts, and personal contracts.

Islamic banking, based on Islamic law, recognizes two forms of collateral: rahn, material collateral commonly used in pawning, and *kafala*h, personal guarantees or the existence of third parties as guarantors (Kartika 2016). The meaning of *rahn*, instead, is a contract that holds goods over debt as collateral (Suwandi 2016).

The application of collateral is by the mandate of the UUPS to realize the principle of prudence and risk management by banks. Not all *mudharabah* financing provided by banks to customers goes according to what is agreed in the contract. There will be conditions where customers experience default. But it cannot be denied that Islamic banking, as mandated by the UUPS, is obliged to carry out every activity and business based on sharia principles as a form of sharia compliance (Ishak, Ilham, and Sabani 2022).

These conditions are a consideration in applying collateral in Islamic banking financing and *mudharabah*, especially here. From the description above, several scholars have different views regarding the application of collateral in Islamic banking financing based on cooperation and profit sharing. However, if examined closely, applying collateral in *mudharabah* contracts is an anticipation of moral hazard from customers, not securing investments from business risks. She quoted from *QS. Al-Baqarah* verse 283, collateral is a relative condition that is unnecessary because the application of collateral can be replaced by mutual trust (*Amanah*).

The application of collateral in mudharabah financing in Islamic banking must also be supported by all precise arrangements related to collateral and binding of collateral to anticipate various problems in the future. The rules that apply to conventional banking related to collateral also apply to Islamic banking.

This certainly needs serious attention where it is separate from the law juridically. Still, the problem is that the consistency of implementing Sharia principles in a *kaffah* and *istiqomah* manner will not be realized according to the Alquran and hadith as outlined in the UUPS (Ratih Agustin Wulandari and Firdaus 2023). Arrangements related to collateral and the entire binding process must be contained in a precise statutory regulation. To avoid a legal vacuum and provide legal certainty to the parties.

Gustav Radbruch suggested legal certainty as one of the objectives of the law because legal certainty will ensure that a person behaves by applicable legal provisions; otherwise, without legal certainty, a person does not have standard conditions in behavior (Sholehudin 2020).

For this reason, this research aims to determine the basis for applying collateral in *mudharabah* financing in Islamic banking and the collateral binding

arrangements in *mudharabah* financing in Islamic banking.

RESEARCH METHODS

This type of research focuses on normative-empirical legal investigation, which translates into legal analysis complemented by empirical knowledge, which is seen as an intermediate foundation for two major types of legal research, namely legal research that is still normative but supported by solid sociological facts (Irwansyah 2021). This type of research uses legislation (Wulandari, Sukron, and ... 2020) including Law Number 21 of 2008 concerning Sharia Banking, Bank Indonesia Regulation Number 7/46/PBI/2005 concerning fundraising and Disbursement Agreements for Banks Conducting Business Activities Based on Sharia Principles, and Fatwa of the National Sharia Council of the Indonesian Ulema Council Number: 07/DSNMUI/IV/2000 concerning *Mudharabah* Financing *(qiradh*). As secondary data, it also uses observation, and interviews are primary data based on field research through observation and interviews (Mukhti Fajar and Achmad 2015). This research aims to strengthen hypotheses to help develop new theories (Muhdlor 2012).

RESULTS AND DISCUSSION

1. Basis of Collateral Application in Mudharabah Financing in Islamic Banking

Imam Shafi'i stated that if someone gives another person some property as business capital for *mudharabah* (profit sharing). Still, if the owner of the money does not oblige the manager to lend his property or prohibit it, then the manager will pay it by sale and purchase; everything is the same if the manager is required to pay compensation unless the owner of the capital accepts it or finds evidence that the owner of the money authorized the manager to do so (Kasmawati et al. 2022).

The manager must also compensate the owner of the capital if he silently makes non-cash transactions with the property as capital for the *mudharabah* business without order or prohibition (i.e., by word) from the owner of the money. Ibn Abu Laila emphasized that compensation can be made by someone other than the manager if he can prove the willingness or order of the owner of the property to carry out non-cash transactions. So, based on the opinions of these two scholars, compensation must be made if the manager gives the capital as debt because *mudharabah* does not contain the concept or principle of debt and credit.

A relationship of "trust/*amanah*" is established between the bank (*shahibul maa*) and the customer (*mudharib*) because the *mudharib* makes the shahibul maal his trust that there is no guarantee in the *mudharabah* contract.

Affirming the prohibition of collateral referred to by some *madzhab* imams in *mudharabah* contracts, where the relationship between *shahibul maal* and *Mudharib* is one of trust, so no collateral is needed, but if *mudharib* is asked for collateral, then the concept of trust is lost. The capital provided by *shahibul maal* is the debt of *mudharib* (Sa'diyah and Arifin 2013).

Imam Shafii said that if a person has a particular debt, a third party will guarantee the debt. In this regard, Abu Hurairahra noted that the bill's owner (i.e.,

the creditor) can demand payment from whomever he wants in the meantime, the guarantor and the one given the guarantee (Maarif and Munir 2022).

However, if it is a transfer of debt, he cannot demand payment from the debtor because he is releasing the debt from the debtor and transferring it to a third party. This is Abu Yusuf's opinion. However, Ibn Abu Laila said that in both cases, the creditor is not entitled to collect from the debtor (i.e., regarding the transfer or the collateral) because if the debtor accepts the collateral, he is releasing the debt unless the property of the guarantor that is used to settle the debt is damaged (Zakiyah and Hisam 2018).

At this time, the creditor can collect payment from the debtor. Meanwhile, if both parties guarantee each other, the creditor can simultaneously collect from whomever he wishes, according to the opinion of both parties.

Imam Malik is in line with Imam Shafi'i's opinion that the *mudharabah* system will be disrupted and cannot be seen and applied effectively if the owner of the capital demands collateral. On the other hand, Imam Abu Hanifah and his followers think that collateral in a *mudharabah* contract is not prohibited. Still, the consequence is that the condition becomes void, just like in a sale and purchase contract; the sale and purchase is still allowed even if the situation is broken.

Differences of opinion among scholars regarding the application of collateral in *mudharabah* transactions still occur. Classical scholars think that collateral is not required in mudharabah transactions because they remain firm in the view that *mudharabah* is a cooperative transaction with capital participation based on mutual interest, mutual need, mutual trust, and confidence of the owner of the capital to hand over money to the manager. The existence of collateral will make the actual value of *mudharabah* disappear.

However, the economy is constantly evolving in the modern economic concept applied by Islamic banking *mudharib*, which is given the necessity to provide collateral.

This provision is by Bank Indonesia Regulation Number: 7/46/PBI/2005 Article 6 letter (o), which explains that banks can request collateral or collateral to anticipate risks if the customer cannot fulfill the obligations stated in the contract due to negligence and fraud.

The Sharia Supervisory Board of the Indonesian Ulema Council (DSN-MUI) is the core institution that ensures that Islamic banking institutions operate according to Sharia principles, (Ltaifa, Saleh, and Derbali 2021) Issued a fatwa that stipulates the obligation to provide collateral in *mudharabah* financing in Islamic banking with DSN Fatwa Number: 07/DSN-MUI/IV/2000 concerning *mudharabah* financing, which states that in principle, in *mudharabah* financing, there is no guarantee, but so that *mudharib* does not commit irregularities, Islamic financial institutions apply the obligation to provide collateral or security to their customers (*mudharib*).

The obligation to provide collateral in *mudharabah* transactions is based on the ijtihad method. There is no intention here to overturn the original law or the beginning of the *mudharabah* context in *fiqh*. Still, it is a form of application of the istihsan method, whose main goal is profit

achieved, no loss, and away from the dangers that will occur later. Because of the development of times, many things happen beyond human reason today, in contrast to ancient times when *muamalah* transactions could be said to run smoothly without any fraud or actions that cause harm because it is considered that humans are very submissive and feel so bound by the values and teachings of the religion they follow, or Muslims with the teachings of Islam (Muhamad 2000).

However, in the development of modern transactions, the tendency to commit crimes in a transaction is enormous. For this reason, it is necessary to be vigilant and anticipate so that no corruption occurs. The request for collateral for *mudharabah* transactions is more based on applying the precautionary principle to avoid such fraudulent/bad practices so that this transaction's possible risks and opportunities can be well recognized in *mudharabah* practicen (Kasmawati et al. 2022).

If there is a guarantee at the time of execution of the *mudharabah*, the deposit can only be paid if it is proven that the mudharab violates the points agreed upon in the contract. This is a consequence of non-compliance with the agreed contract.

It can be concluded that the application of collateral in Islamic banking *mudharabah* financing is based on statutory provisions. It can be seen from Article 35, paragraph (1) of the UUPS, which is related to the prudential principle that must always be applied in business activities. Second, in Article 36 of the UUPS, bank profits must be prioritized. Therefore, the methods must not affect bank losses or customers who deposit their funds. Third, Article 38, paragraph (1) of the UUPS, explains the importance of consistently implementing the principle of knowing the customer to control risk management and prudence.

Fourth, Article 40 paragraph (1) of the UUPS prioritizes the principle of voluntary in the settlement of problem financing, by auction or not; Fifth, Bank Indonesia Regulation Number: 7/46 / PBI / 2005 Article 6 in anticipation of negligence or fraud of bank customers is allowed to ask for collateral. Sixth, National Sharia Council *Fatwa* Number: 07/DSNMUI/IV/2000 concerning *Mudharabah* Financing (*Qiradh*).

Second, it is a security and a form of the customer's ability to make payments and comply with the 5C principle in channeling funds to customers, namely character, capability, capital, condition of economy, and collateral(Ratih Agustin Wulandari 2021).

The explanation of each principle above is as follows. First, the character or nature of the borrower must be genuinely reliable and appropriate for credit. This character can be assessed from the borrower's background, personality, occupation, lifestyle, and family situation. This evaluation aims to understand the borrower's character, honesty, and good intentions to repay the credit loan provided.

Secondly, the debtor's capacity is evaluated through his ability to run a business, his managerial skills, and whether he can lead his company well to repay the credit he receives. Third, the use of capital is evaluated through the company's financial statements, considering the level of liquidity, profitability, solvency, and capital structure. Good conditions can be the

basis for banks to provide credit facilities. Fourth, the collateral provided to the bank, whether tangible or intangible, must exceed the amount of credit granted and meet the bank's requirements. This guarantee will be used in the event of bad credit. Finally, Condition Of Economy, where banks must also assess economic, political, social, and business sector conditions to identify good prospects and minimize credit risk(Fitriani 2017).

While the 5C principles may have some similarities with Islamic banking risk evaluation, Islamic banking principles require a more specialized and Islamic law-compliant approach to assessing projects and financial transactions.

From the results of the discussion above, the author analyzes several essential aspects related to the principle of *mudharabah*, the relationship between the owner of capital and the manager, and the role of collateral in Islamic financial transactions. Imam Shafi'i expressed his perspective on mudharabah, in which he emphasized that if someone provides capital for a *mudharabah* business without obliging the manager to borrow or prohibit it, then the manager can pay for it by buying and selling. Compensation becomes obligatory unless the capital owner accepts it or gives written permission to the manager.

The opinion of two scholars, Ibn Abu Laila and Imam Shafi'i, underlines that compensation must be made if the manager secretly makes non-cash transactions without the written permission of the owner of the capital. However, Ibn Abu Laila provides an exception if the manager can provide written permission from the owner of the money(Ulpah 2020).

The *mudharabah* relationship of trust (amanah) between the *shahibul maal* and *mudharib* is highlighted as the essence of the mudharabah contract. It is emphasized that no collateral is required in this contract. On the contrary, the request for collateral violates the principle of trust, so it can be said that the capital provided is the debt of the *mudharib*.

The different views of Imam Malik and Imam Abu Hanifah and their followers regarding the application of collateral in *mudharabah* show the diversity of opinions among scholars. While Imam Malik and Imam Shafi'i considered that the demand for collateral could disrupt the *mudharabah* system, Imam Abu Hanifah allowed it because the condition became void (Kasmawati et al. 2022).

The modern economic context and Islamic banking regulations in Indonesia stipulate the necessity of providing collateral as a precautionary measure, in line with Bank Indonesia regulations, which are reinforced by Fatwas issued by the Sharia Supervisory Board of the Indonesian Ulema Council, which recognize the necessity of collateral in *mudharabah* financing. However, the basic principle does not require collateral.

The explanation of the 5C principles (Character, Capacity, Capital, Condition of Economy, and Collateral) in channelling funds to customers ultimately illustrates that these principles have similarities with Islamic banking risk evaluation. Nonetheless, these principles also require a specialized Islamic law-compliant approach to assessing financial projects and transactions.

Overall, the analysis opens up insights into the different views of scholars, the application of the principles in the modern context, and the importance of accommodating Sharia values in financial transactions.

2. Collateral Binding Arrangements in *Mudharabah* Financing in Islamic Banking

Collateral cannot be separated from the *mudharabah* financing contract; this is required by Islamic banking to reduce various kinds of risks that will occur in the future. As well as the certainty of the financing provided based on customer needs.

The basis for binding collateral can be seen in Article 23 of the UUPS in paragraph (1) explaining that confidence is needed by Islamic Banks in seeing the customer's willingness and ability to complete the agreement on time for the Facility Recipient Customer, while Article 23 paragraph (2) of the UUPS explains the need to assess the most critical aspects before getting confidence in the form of looking very carefully starting from character, capital, collateral, ability and economic conditions that can affect the customer's future business prospects (Syariah n.d.).

The collateral that banks usually request from customers is material collateral consisting of plantation land, residential land, houses, cars, and other items that, according to the bank, have value and are easily transferred when the customer defaults. The binding of the collateral certainly influences this transfer process.

Related to collateral, DSN MUI has issued several Fatwas, namely: *Fatwa* Number: 11/DSN_MUI/IV/2000 on *Kafalah*, Fatwa Number: 25/DSN-MUI/III/2022 on *Rahn*, *Fatwa* number: 68/DSN-MUI/III/2008 on *Rahn Tasjily*, Fatwa Number: 92/DSN-MUI/IV/2014 on financing accompanied by *rahn*. The above fatwas are the basis for applying collateral in Islamic banks. However, in practice, the binding of collateral is still not carried out with a rahn contract or *kafalah* contract but uses collateral institutions in conventional banking, including *mudharabah.*

This statement is evidenced based on the results of observations made by researchers at one of the BSI Bank KCP Pulau Punjung Dharmasraya information obtained by Islamic banking is still subject to collateral binding based on the provisions applicable in conventional banking using collateral institutions such as mortgages, pawns, mortgages, fiduciaries and warehouse receipts traditional banking which uses collateral institutions consisting of Mortgages, Pawn, Mortgage, Fiduciary and Warehouse Receipts.

The security institution of *Gadai* for ordinary movable objects is regulated in Articles 1150-1160 BW; second, Mortgage for immovable objects, not land, is held in Articles 1162-1232 BW; third, Mortgage for immovable objects, namely land rights based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (from now on referred to as UUHT); fourth, Fiduciary for capital movable objects is subject to all provisions in Law Number 42 of 1999 concerning Fiduciary Guarantees (from now on referred to as UUJF) (Yolanda, Azheri, and Fauzi 2020).

Looking back at the existing provisions in the UUPS, no single article discusses the procedures for binding collateral in Islamic banking, only conditions that emphasize the permissibility of applying collateral as an anticipation of future risks.

Islamic banking laws regulating Sharia contracts (agreements), especially regarding financing, should also introduce the concept of collateral in Sharia substantive (*al-rahn)* in its legislation. Sharia collateral is an integral part of Sharia operations. The agreement, which is the basis for the basis of financing in Islamic banking as evidence of Sharia engagement and collateral or material security (*al-rahn*), are both interrelated and are two subsystems of a legal system, where the engagement is based on Sharia provisions based on a contract which should also be followed by collateral based on sharia provisions as well (Noor Hafidah 2013).

The regulation of sharia collateral binding is only limited to provisions related to sharia financing, which creates gaps for problems in the future. It contradicts sharia principles based on justice, benefit, balance, and universality *(rahmatan lil 'alamin*) (Noor Hafidah 2017).

It should be emphasized here that Islamic banking is based on the principle of profit sharing, not debt and interest in conventional banking, where substantively, the existing provisions in traditional banking relate to collateral, not all of which can apply to Islamic banking.

The following tries to describe examples of collateral provisions in conventional banking that are contrary to Sharia principles. First, Article 1131 of the Civil Code explains that when a person enters into a debt and credit agreement based on what laws and regulations he has, all his property, whether existing or future, movable or immovable, will automatically become collateral for the debtor's debt(Nurbaedah n.d.). The provisions of Article 1131 of the Civil Code are certainly not by sharia principles, which do not allow anything uncertain (*gharar*).

All the debtor's property, both movable and immovable, existing and new ones that will live in the future, become collateral for all his obligations.

Second, Article 3 paragraph (1) of the UUHT Law explains the mortgage right as a guarantor of debt repayment; the debt and receivable agreement is the basis for it, whether it has been agreed or not, which gives rise to a debt and receivable relationship between the bank and the customer (Tanah. n.d.).

This article is considered not by sharia principles in mudharabah financing because *mudharabah* financing is a cooperation contract, not a debt and receivables like in conventional banks. Then, some calculations cannot be determined at the beginning of the agreement but are calculated later, such as interest, which is defined later, fees costs that arise in the future due to negligence or other things that are very contrary to the principle of *gharar*, namely that anything that is not clear, be it the object, price or form of delivery, is prohibited in Islam.

Third, Article 7 Letter C of the UUJF explains that debts for which fiduciaries are guaranteed repayment are in the form of debts whose amount can be determined at the time of execution, the amount of

which is based on the main agreement, giving rise to an obligation to fulfil the requirements of an achievement (Fidusia n.d.)

Explanation of Article 7 Letter c: The debt referred to in this provision is interest payable on the principal loan and other costs, the amount of which can be determined later. This is not in accordance with sharia principles, something that is uncertain, something that is determined later (not clear at the time of the contract), is prohibited in sharia principles, in the form of riba, *gharar* and *maisir*. This article is considered to be contrary to the principle of *gharar* because it contains an element of uncertainty that was not explained at the beginning of the contract, namely in the form of interest payable on the principal loan and other costs incurred.

Binding collateral for mudharabah financing in sharia banking using collateral institutions in conventional banking indicates the lack of clear rules or laws governing the binding of collateral in sharia banking, so this makes it difficult to achieve sharia compliance and the implementation of sharia principles that are kaffah and istiqomah.

According to the author's analysis, collateral is an inseparable element of *mudharabah* financing contracts, required by sharia banking as a strategy to reduce risk and ensure certainty of financing in accordance with customer needs. The basis for binding collateral is found in Article 23 UUPS, emphasizing the importance of the bank's confidence in the customer's abilities and good intentions, as well as the need for a thorough assessment of the customer's character, capital, collateral, abilities and economic conditions.

Collateral required by banks is generally in the form of material collateral, such as land, house, or car, which can be resold when the customer defaults. However, it should be *Fatwa* Number: 25/DSN-MUI/III/2022 regarding *Rahn*, *Fatwa* Number: 68/DSN-MUI/III/2008 regarding *Rahn Tasjily*, *Fatwa* Number: 92/DSN-MUI/IV/2014 regarding financing including *Rahn* implemented, so that *mudharabah* financing no longer uses collateral institutions in conventional banking. It can be concluded that Indonesia currently needs clear regulations regarding collateral in Sharia banking financing, especially mudharabah funding, which are contained in statutory regulations.

CONCLUSION

Judging from what has been described above, it can finally be concluded that:

1. The application of collateral in mudharabah financing in Sharia banking is still a matter of debate among scholars, especially classical scholars who consider the concept of trust. Please help; cooperation and profit sharing in mudharabah will be lost with the obligation to hand over collateral. The requirement for collateral is based on ijtihad in Islam, but there is no aim of overturning the original law, but rather making the Istihsan method the basis. The basis for applying this collateral is UUPS. Bank Indonesia Regulation Number: 7/46/PBI/2005 concerning Agreements for the Collection and Distribution of Funds for Banks that carry out business Activities Based on Sharia Principles, and National

Sharia Council Fatwa Number: 07/DSNMUI/IV/2000 concerning Mudharabah (Qiradh) Financing.

2. Second, Sharia banking still needs to regulate the binding of collateral for mudharabah financing in Sharia banking so that Sharia banking uses collateral institutions used by conventional banking. Legally and formally, it does not violate the legal provisions that regulate it. Still, not all of the substance of the rules of traditional debt and interest-based collateral institutions can be applied in Sharia banking, so it is better for Sharia banking to have collateral-binding regulations that are separate from conventional banking to realize Sharia compliance and implement the principles. sharia that is kaffah and istiqomah.

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