

## **Collateral Binding Principles in Sharia Banking Financing Agreements**

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### **Abstract**

Sharia Banking is based on these sharia principles, all operational activities must not conflict with sharia principles, including financing. The Financing has an important role in the development of Islamic banking. This is to anticipate various risks in bank financing to apply the obligation to provide collateral by customers. The binding of collateral must be clearly regulated and based on sharia principles to achieve sharia compliance. The purpose of this research is to find out and analyze the arrangement of binding collateral in Islamic banking financing, as well as the fulfillment of sharia principles in binding collateral in Islamic banking financing. This is a normative research whose subject matter is the rule of law, legal doctrine to answer certain legal issues. This study concludes that kafalah and rahn are guarantees in the concept of Islamic law, regulated by the DSN-MUI Fatwa Number: 11/DSNMUI/IV/2000 concerning Kafalah. Fatwa Number: 25/DSN/MUI/III/2022 concerning Rahn, Fatwa Number: 92/ DSNMUI/IV/2014 concerning Funding accompanied by Rahn (Al-Tamwil Al-Mautsuq Bi Al-Rahn). However, it has not been set forth in laws and OJK regulations, so that the collateral binding arrangements for Islamic banking use conventional banking guarantee institutions, namely. Pledges, mortgages, fiduciaries, mortgages and warehouse receipts. Not all substances in conventional guarantee institutions can be applied to Islamic banking which prioritizes Islamic principles, namely the values of justice, expediency, balance and universality and does not carry out business activities that contain elements of usury, maisir, gharar, unlawful and unjust, and most importantly overrides the tabbaru principle in Islam.

**Keywords:** *Sharia principles; Binding of Collateral; Financing Agreement.*

### **Abstrak**

Perbankan Syariah berdasarkan kepada prinsip syariah, seluruh kegiatan operasionalnya tidak boleh bertentangan dengan prinsip syariah termasuk pembiayaan. Pembiayaan mempunyai peranan yang penting dalam perkembangan Perbankan Syariah. Untuk mengantisipasi berbagai resiko dalam pembiayaan, bank menerapkan kewajiban memberikan agunan oleh nasabah. Pengikatan agunan



tentunya harus diatur secara jelas dan berdasarkan prinsip syariah untuk mewujudkan syariah compliance. Tujuan penelitian untuk mengetahui dan menganalisis pengaturan pengikatan agunan pada pembiayaan Perbankan Syariah, serta pemenuhan prinsip-prinsip syariah dalam pengikatan agunan pada pembiayaan Perbankan Syariah. Penelitian ini merupakan penelitian normatif yang pokok kajiannya adalah aturan hukum, doktrin hukum untuk menjawab isu hukum tertentu. Penelitian ini menyimpulkan kafalah dan rahn merupakan jaminan dalam konsep hukum Islam, yang diatur pada Fatwa DSN-MUI Nomor : 11/DSNMUI/IV/2000 tentang Kafalah. Fatwa DSN-MUI Nomor : 25/DSN/MUI/III/2022 tentang Rahn, Fatwa DSN-MUI Nomor : 68/DSN-MUI/III/2008 tentang Rahn Tasjily diperbolehkan adanya jaminan barang., Fatwa DSN-MUI Nomor : 92/DSNMUI/IV/2014 tentang Pembiayaan yang disertai Rahn (Al-Tamwil Al-Mautsuq Bi Al-Rahn). Namun belum dituangkan dalam peraturan perundang-undangan ataupun peraturan Otoritas Jasa Keuangan, sehingga pengaturan pengikatan agunan pada Perbankan Syariah menggunakan lembaga jaminan perbankan konvensional yaitu ; gadai, hipotik, fidusia, hak tanggungan, dan resi gudang. Tidak semua substansi pada lembaga jaminan konvensional dapat diberlakukan pada Perbankan Syariah yang mengutamakan prinsip-prinsip keislaman yaitu; nilai-nilai keadilan, kemanfaatan, keseimbangan, dan keuniversalan (rahmatan lil 'alamin) serta tidak melakukan kegiatan usaha yang mengandung unsur riba, maisir, gharar, haram dan zalim, serta yang paling utama mengesampingkan prinsip tabbaru dalam islam.

**Kata Kunci:** Prinsip Syariah; Pengikatan Agunan; Akad Pembiayaan.

## INTRODUCTION

The economy and national development of a country can be seen from the development of its financial institutions, one of which is banking. Banking institutions, both conventional banks and Islamic banks, have helped economic activities by meeting the need for funds. This is realized by providing loans in the form of bank credit. The definition of bank according to Article 1 paragraph (2) of Law Number 10 of 1998 Amendment to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law), emphasizes that: "Bank is a business entity that collects funds from the community in the form of savings and channeling them to the community in the form of credit and/or other forms in order to improve the standard of living of many people".

Indonesia adheres to a dual banking system based on the Banking Law. This system adheres to the notion of interest-based and non-interest-based banking or what is familiarly known as conventional banking and Islamic banking. Law Number 21 of 2008 concerning Sharia Banking provides legal certainty for Islamic banking in Indonesia. Covers the type of business, sharia provisions, implementation of operational activities, distribution of funds, and prohibitions for sharia banking. The implementation of sharia principles in sharia banking activities is the main difference between sharia banking and conventional banking (Aisjah et al., 2022; Maarif & Munir, 2022). In essence, the principles of sharia refer to Islamic sharia which is primarily guided by the Koran and Hadith which is based on the values of justice, benefit, balance and universality (rahmatan lil 'alamin), and every business does not contain elements of usury, maisir, gharar, haram and unjust (Ali, 2010).

Sharia banking business activities in the form of raising funds and channeling funds to the public in the form of financing, is one of the products of Islamic banking that has an important role. Financing according to Article 1 paragraph (2) of the Sharia Banking Law is: "Provision of funds or equivalent claims in the form of: profit sharing transactions in the form of *mudharabah* and *musyarakah*, rental transactions in the form of *ijarah* or hire purchase in the form of *ijarah Muntaiya bittamlik*, sale and purchase transactions in the form of *murabahah*, salam and *istishna* receivables, loan transactions borrowing In the form of *qardh* receivables, and service rental transactions In the form of *ijarah* for multi-service transactions."

Financing products include: a). financing with the principle of profit sharing consisting of *al-musyarakah*, *al-mudharabah*, *al-muzara'ah*, *al-musaqah*, b). financing using the buying and selling principle consists of *bai al-murabaha*, *bai as salam*, *bai al istishna*. c). Financing under the lease principle consists of *al-ijarah*, *al ijarah al-muntakia bit-tamlik*, d). Financing with the principle of services consisting of *al-wakalah*, *al-kafalah*, *al-hawalah*, *ar-rahn* and *al-qardh* (Sumitro, 2004).

Financing distributed by banks to customers' needs to pay attention to the precautionary principle, to reduce various risks that will occur in the future. This precautionary principle manifests itself by having confidence that customers are able to return the funds that have been given by the bank (Bintang et al., 2022; Sueb et al., 2022). This precautionary principle in channeling banking funds is known as the 5C principle, namely character, financial capacity, capital, economic conditions and collateral (HS, 2012). This is also an implementation of Article 23 of the Sharia Banking Act (Shomad, 2012).

Collateral is an important factor that must be assessed in the 5C principle, based on Article 1 paragraph (26) of the Sharia Banking Law, collateral is additional collateral in the form of movable and immovable objects submitted by the owner of the collateral to the sharia bank and/or Business Unit Sharia, in order to guarantee the payment of the obligations of the customer receiving the facility.

Sharia banking based on Islamic law recognizes collateral in the form of *kafalah* and *rahn*. *Kafalah*, also known in *muamalah fiqh*, is a guarantee given by the guarantor (*kafil*) to a third party to fulfill the obligations of the second party or the insured. In this case, *kafalah* also means transferring the responsibility of someone who is guaranteed by holding on to the responsibility of another person as guarantor (Nurbaedah & Machmud, 2021). Sharia banks obtain profits that arise from wages as guarantors, while *rahn* according to *fiqh* terms is using property as collateral. From a debt liability, where the property is used as a tool to pay debts later (Ihtiar, 2016).

In addition to laws and regulations related to sharia banking, sharia banking also carries out activities based on decisions of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) which has the authority to issue fatwas related to sharia banking products and activities. Fatwas related to collateral include; DSN-MUI Fatwa Number: 11/DSNMUI/IV/2000 Concerning *Kafalah*, DSN-MUI Fatwa Number:

25/DSN/MUI/III/2022 Concerning Rahn, DSN-MUI Fatwa Number: 68/DSN-MUI/III/2008 concerning Rahn Tasjily is allowed to guarantee goods, DSN-MUI Fatwa Number: 92/DSNMUI/IV/2014 concerning Financing accompanied by Rahn (Al-Tamwil Al-Mautsuq Bi Al-Rahn) (Usman, 2016).

In practice, Islamic banking overrides the above fatwas related to collateral, and uses the guarantee institutions that apply to conventional banking in terms of binding collateral. Guarantee institutions used by conventional banking includes: mortgages, mortgages, mortgages, fiduciaries and warehouse receipts. Another phenomenon is seen in the issue of collateral execution in Islamic banking which gives rise to sharia economic disputes, binding of collateral using mortgages or fiduciary rights results in procedural law civil courts in religious courts and non-fulfillment of sharia principles and peaceful dispute resolution in Islam will not materialize (Sari, 2020). This can be seen by the many execution problems in Islamic banking today.

The guarantee Institution used by Islamic banking is the same as conventional banking, formally and legally it is not against the law, but the problem is in the context of sharia itself. Where sharia financing (which is a contract and part of a sharia engagement) must be linked to sharia collateral in order to achieve sharia compliance (shariah compliance) (Maulana, 2014).

Previously, various studies related to collateral in sharia banking had been carried out. The first research shows the differences and similarities in binding collateral according to positive law and Islamic law (Fitriani, 2017). Where in terms of principles the two have significant differences, where Islamic law prioritizes the tabbaru principle which is not reflected in binding collateral according to positive law. The second research shows that the implementation of sharia guarantees in laws and regulations, especially the Banking Law, has not been regulated explicitly, namely by the enactment of guarantee Institutions in conventional banking.

This research uses the normative law research method, which is research based on normative case studies, such as conducting a study of laws known as normative research. The main points of study are specifically the inventory of positive law, legal principles and doctrine, legal discovery in cases in concerto, legal systematics, synchronization levels, legal comparison and legal history (Soewandi, 2005).

This approach uses a statutory approach (statute approach), conceptual approach (conceptual approach), as well as a comparative approach by collecting secondary data. Secondary data is data that already exists, which includes laws and regulations, doctrine, legal theory, books, reports, journals and others related to research.

## **DISCUSSION**

### **Collateral Arrangements in Sharia Banking Financing**

The Sharia Banking Law as the main basis for sharia banking in Indonesia is considered to regulate limited collateral, which can be seen in the articles below:

1. Article 1 paragraph (26) explains the meaning of collateral as additional collateral, whether in the form of movable or immovable objects, which are handed over by the owner of the collateral to the Sharia Bank and/or UUS, in order to guarantee the repayment of the obligations of the customer receiving the facility.
2. Article 23 paragraph (1) explains that Sharia Banks and/or UUS must have confidence in the willingness and ability of potential customers receiving facilities to pay off all obligations on time, before Sharia Banks and/or UUS distribute funds to customers receiving facilities.
3. Article 23 paragraph (2) explains that in order to obtain confidence as referred to in paragraph (1), Sharia Banks and/or UUS are required to carry out a thorough assessment of the character, abilities, capital, collateral and business prospects of prospective customers who receive facilities.
4. Article 40 paragraph (1) explains that in the event that the customer receiving the facility does not fulfill his obligations, Sharia Bank and UUS can purchase part or all of the collateral, either through or outside an auction, based on voluntary surrender by the owner of the collateral or based on the granting of authority to sell from the owner of the collateral, provided that the purchased collateral must be disbursed no later than 1 (one) year.
5. Article 40 paragraph (2) explains that Sharia Banks and UUS must take into account the purchase price of collateral as referred to in paragraph (1) with the customer's obligations to the Sharia Bank and UUS concerned.
6. Article 40 paragraph (3), in the event that the collateral purchase price as referred to in paragraph (1) exceeds the amount of the customer's obligations to Sharia Bank and UUS, the excess amount must be returned to the customer after deducting auction costs and other directly related costs. The process of purchasing collateral.
7. Article 40 paragraph (4), further provisions regarding the purchase of collateral as intended in paragraph (1), paragraph (2), and paragraph (3) are regulated by Bank Indonesia Regulations explaining the voluntary principle in the event that the customer cannot fulfill his obligations, while in terms of binding collateral it is not regulated at all in the Law.

Bank Indonesia as the banking monetary authority and the Financial Services Authority as a supporter of bank regulations and supervisory develops also do not clearly regulate the binding of collateral for sharia financing. Sharia banking which is under the direct supervision of the National Sharia Council has issued several fatwas related to collateral, namely DSN-MUI Fatwa Number: 11/DSNMUI/IV/2000 concerning Kafalah, DSN-MUI Fatwa Number: 25/DSN/MUI/III/2022 concerning Rahn , DSN-MUI Fatwa Number: 68/DSN-MUI/III/2008 concerning Rahn Tasjily allowing collateral for goods, DSN-MUI Fatwa Number: 68/DSN-MUI/III/2008 concerning Rahn Tasjily allowing collateral for goods, DSN-MUI Fatwa Number:

92/DSNMUI/IV/2014 concerning Financing which is accompanied by Rahn (Al-Tamwil Al-Mautsuq Bi Al-Rahn).

Every aspect of life must have a clear basis that regulates it so that there is no legal vacuum, which is also in line with the concept of a rule of law as intended in the 1945 Constitution. Indonesia is a country that is not separate from religion. This legal vacuum also continues at the implementation stage of the Sharia Banking Law. The absence of legal regulations governing the binding of collateral in sharia banking means that sharia banking still uses collateral institutions that exist in conventional banking in practice.

The binding of material guarantees to conventional banking uses guarantee Institutions, including (Usman, 2016):

1. Pawnshop, is the first collateral institution whose legal basis for regulation is contained in the *Burgelijk Wetboek* or Civil Code Articles 1150 - 1160. Borrowers are called "pledgers" and those who take an oath are called "recipients or pawn holders". Sometimes there are three parties involved in a pawn, namely the debtor (the party who owes the debt), the pledger (the party who hands over the pawned object), and the creditor (the pawn recipient). The Civil Code defines a lien right as a right obtained by a debtor over movable objects handed over to him by the debtor or another person who grants power of attorney on his behalf to the debtor, to receive payment for the goods which has priority over other debtors.
2. Mortgages are only used to bind debt collateral in the form of ships weighing 20 m3 or more in accordance with the provisions of Article 314 of the Criminal Code and Law Number 21 of 1992 concerning shipping with reference to the mortgage provisions written in Article 1162 of the Civil Code.
3. Mortgage Rights, the legal basis for guaranteeing mortgage rights is Law Number 4 of 1996 concerning Mortgage Rights (hereinafter referred to as the Mortgage Rights Law) where land and objects related to land are the binding objects. The definition of mortgage rights in accordance with Article 1 paragraph (1) of the Mortgage Rights Law is the security right to land as stated in Law Number 5 of 1960 Basic Agrarian Regulations, whether or not there are other objects which are part of the property, as payment of certain debts to other creditors. Article 9 of the Mortgage Rights Law states that: "the holder of mortgage rights is an individual or legal entity whose position is the party that owes the debt." So it can be concluded that the subject of the mortgage right is the giver and holder of the mortgage right, namely the parties who have an interest in relation to the debt and receivable agreement whose repayment is guaranteed. The object of mortgage rights in Article 4 paragraph (1) of the Mortgage Rights Law is that land rights that can be encumbered with mortgage rights are ownership rights, business use rights and use rights over state land. According to the applicable provisions, these rights must be registered and according to their nature can be transferred. Article 4 paragraph (2) of the Mortgage

Rights Law, apart from the rights to land, which can also be encumbered with mortgage rights, namely the use rights to state land, which according to the applicable provisions must be registered and according to its nature can be transferred. Article 4 paragraph (4) of the Mortgage Rights Law states that mortgage rights can also be imposed on rights to land including buildings, plants and works that already exist or will exist which are an integral part of the land, and which belong to the holder of the rights to the mortgage. Land whose encumbrance is expressly stated in the relevant Deed of Encumbrance of Mortgage Rights.

4. Fiduciary, the legal basis for fiduciary institutions is Law Number 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as the Fiduciary Guarantee Law). Fiduciary objects are movable and tangible objects, which are based on trust where the transfer of ownership rights to an object adheres to the provisions of the object whose ownership rights are guaranteed to remain in the control of the owner of the object. Article 1 paragraph (2) of the Fiduciary Guarantee Law, namely: “Security rights over movable objects, both tangible and intangible, and immovable objects, especially buildings which cannot be encumbered with mortgage rights, as intended in Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the fiduciary, as collateral for review of certain debts, which gives the fiduciary a preferred position over other creditors.”
5. Warehouse receipts are a guarantee institution whose legal basis is Law Number 9 of 2011 concerning Amendments to Law Number 9 of 2006 concerning the Warehouse Receipt System.

According to Islamic Law, collateral consists of two forms, namely kafalah and rahn. Kafalah means guarantee or guarantee. Kafalah is known as an individual guarantee. Kafalah in terms is a guarantee, a guarantee given by the guarantor (kafil) to a third party for the obligations of the second party, namely those who are covered (makful). Kafalah is a transfer of responsibility to the guarantor. In sharia banking, kafalah is one of the tabbaru contracts. Arrangements for kafalah contracts in sharia banking are regulated through DSN-MUI Fatwa No: 11/DSN-MUI/IV/2000 concerning Kafalah. Implementation of kafalah contracts in sharia banking in the form of bank guarantees. The Kafalah contract is a guarantee contract or borgtoch (based on BW) so it is appropriate to use for bank guarantee products which are also a form of guarantee. In a bank guarantee agreement, a risk borne by the Issuing bank can be protected by a guarantee contract provided by the insured/customer (Yolanda et al., 2020).

Rahn is collateral in a fixed, eternal, continuous form or *rahana-yarhanu-rahnan* in Arabic. Ar-rahn has the meaning of giving property to guarantee repayment of debt, as payment or return if you cannot pay it back. Ar-rahn is one of the tabbaru contracts which is an agreement to hold an item as a dependent (Purnamasari, 2014).

In sharia banking, the arrangement of rahn contracts is also a tabbar contract, regulated in several Fatwas of the National Sharia Council of the Indonesian Ulama Council (DSN-MUI), namely DSN-MUI Fatwa Number: 25/DSNMUI/III/2002 concerning Rahn, DSN-MUI Fatwa Number: 68/DSNMUI/III/2008 concerning Rahn Tasjily, DSN-MUI Fatwa Number: 92/DSNMUI/III/2014 concerning Financing accompanied by Rahn (Maulana, 2014).

Rahn according to fiqh terms is using property as collateral for a debt when it is difficult to pay it off. These assets are used as a precautionary tool when debts cannot/are difficult to pay or are repaid, then you can use rahn (marhun) assets to pay debts (Rukmanda, 2020).

Al-rahn has the character of tabbaru (helping) because what the rahin gives to the murtahin is not in return for something or a charity contract that does not require remuneration, in principle it is a debt and receivable activity that has a social function or mutual help in the form of lending and borrowing, as stated in a contract, which aims to ensure that no party is harmed. Islamic law pays great attention to and safeguards the interests of creditors so that they are not harmed. The implementation of the rahn contract in sharia banking is often used in pawning. Sharia pawning was developed based on the fatwa related to rahn, gold rahn, and tasjily rahn which consists of two contracts, namely the rahn contract, namely a debt contract (qardh) entered into by the rahin (customer) with the murtahin (sharia bank/pawnshop) which pledges certain assets as collateral debt. Second, the Ijarah contract, which is a service contract where the murtahin rents a place and provides care services to the rahin (Rukmanda, 2020).

Contracts (sharia agreements) have been clearly regulated in the Sharia Banking Law, while collateral which is an inseparable part of a sharia contract which is an interconnected unit of course also requires clear and kaffah regulations. Sharia banking financing should implement the sharia-compliant guarantee concept implemented in its legal regulations. Both are two sub-systems in the legal system that have a close relationship pattern. This is a gap and is not in accordance with sharia principles which are based on the values of justice, benefit, balance and universality (rahmatan lil 'alamin).

The existence of fatwas related to kafalah and rahn in practice in sharia banking is still ignored. Sharia banking enjoys more guarantee institutions that are well known to the public, namely those that apply to conventional banking, such as mortgage and fiduciary rights because they have preferential rights so they are considered to be profitable when later executed as fulfillment of the debtor's debt when a default occurs. This condition needs serious attention so that it does not cause legal problems in the future and have an impact on sharia economic disputes (Ihtiar, 2016).

Clear legal rules will foster trust and legal certainty among people seeking justice. Gustav Radbruch explained that justice and legal certainty are a permanent part of the



law, because they are something important that must always be paid attention to. (Hafidah, 2013). The financing agreement is the main agreement, while the collateral agreement is an additional agreement (accessor). Looking at the theory of legal certainty regarding agreements, every legal action in implementing an agreement must provide clarity regarding the legal consequences of default in an agreement.

Every aspect of life must have a clear basis that regulates it so that there is no legal vacuum. This legal vacuum also continues at the implementation stage of the Sharia Banking Law, because there are no legal regulations governing the binding of collateral. Sharia banking enjoys more conventional-based guarantee institutions. The lack of implementation of sharia collateral in accordance with the concept of Islamic law in sharia banking requires serious attention, because in the context of the implementation of sharia principles there have been inconsistencies. So that the mandate of Sharia Banking is not realized where the rationale for the formation of the Sharia Banking Law Is to implement sharia principles into laws and regulations related to sharia banking in particular and the national legal system in general, and realize sharia compliance.

### **Fulfillment of Sharia Principles in Binding Collateral in Sharia Banking Financing**

The main objective of Islamic banking is to apply Islamic sharia principles in every aspect of sharia economics. Sharia banking is required to always apply sharia principles in every aspect of its business activities as the basis for its operations consistently and kaffah. Article 2 of the Sharia Banking Law explains that "Sharia banking carries out its business activities based on sharia principles, economic democracy and the principle of prudence".

Sharia banks are banks that operate based on sharia principles. The application of sharia principles is the main difference from conventional banks. In essence, these sharia principles refer to Islamic sharia, which is mainly based on the Koran and Hadith. Islam as a religion is a concept that regulates human life comprehensively and universally as well as in relation to the Creator (Habluminallah) and in human relations (Habluminannas) (Shomad, 2012).

There are three main pillars of Islamic teachings (Yolanda et al., 2020), namely:

1. Aqidah is part of Islamic teachings which regulates belief in the existence and power of Allah so that it must be the belief of a Muslim when carrying out various activities on earth only to become a caliph who receives orders from Allah to achieve Allah.
2. Sharia is part of Islamic teachings that regulates the life of a Muslim both in the areas of worship (hablu minallah) and muamalah (hablu minannas), namely the manifestation of faith that leads to faith. Even though Muamalah himself covers several areas of life, including those related to finance or property and business, he is called Muamalah Maliyah.
3. Morals are the foundation of behavior and personality that characterizes him as a devout Muslim based on the principles of devotion and Aqedah which are his

guidelines. That's why he is called *akhlaqul karimah*, as in the hadith of the Prophet which says: "That I would not have been sent if it were not for *akhlaqul karimah*".

Islamic banking must always operate based on the following principles: (Maimun & Tzahira, 2022)

1. Fairness, namely the distribution of profits based on actual sales according to the contribution and risks of each party.
2. Partnership, namely the position of investor-client (fund depositor) and user of funds, as well as the financial institution itself, on an equal basis with business partners who use synergies between each other to generate profits.
3. Transparency, Islamic financial institutions provide financial reports transparently and continuously so that investment clients can know their financial health.
4. Universal, meaning there is no distinction between ethnicity, religion, race and class in society according to Islamic principles such as "*Rahmatan Lil Alamin*".

Sharia banking prohibits activities that contain the following elements: (Maimun & Tzahira, 2022).

1. *Riba*, etymologically, *riba* means "*Az-Ziyadah*", which means "additional". On the other hand, according to the terminology, additional or compensation is required for one of the two parties to the transaction (contract). Meanwhile, according to Sharia, usury means a certain exchange agreement without a comparison that is known in sharia assessment in an agreement or jointly ending both exchanges and one of them. *Surah Al-Baqarah*, verse 275: explains:  
"People who eat (take) *Riba*' cannot stand but are like those who are possessed by the devil because of (the pressure of) insanity. Their situation is like that, because they say (opinion), actually buying and selling is the same as usury', even though Allah has permitted buying and selling and forbidden usury'. Those who have received a prohibition from their Lord, then continue to stop (from taking *riba*'), then for him is what he had taken previously (before the prohibition came); and its affairs are (up to) Allah. Those who return (take usury'), then those people are the inhabitants of hell; they will abide therein."
2. *Maisir*, is a transaction that depends on conditions that are not safe and happy because it is uncertain and is a matter of chance. A synonym for *maisir* is *qimar*. According to Muhammad Ayub, both *maisir* and *qimar* were the targets of gambling (game of chance) which was profitable. The Arabic word *maisir* literally means "to get something" quite simply there is no hard work or profit without work, which is usually called gambling. Gambling is defined in religious terminology as "a transaction between two parties to possess goods or services that benefits one party and harms the other party through the association of transactions with certain functions or events".
3. *Gharar*, including one of the most important prohibitions in *muamalah* transactions based on Article 2 paragraph (3) of Bank Indonesia Regulation

Number: 10/16/PBI/2008 concerning Amendments to Bank Indonesia Regulation Number: 9/19/PBI/2007 concerning Implementation of Sharia Principles 'ah in fund collection activities in the distribution of funds and Sharia Bank services explains gharar as a transaction whose subject is unclear, is not owned and is not known to exist or cannot be handed over at the time of the incident, unless otherwise regulated by sharia. Gharar refers to uncertainty caused by lack of clarity regarding the subject of the contract or the price of the object promised in the contract. Imam Shafi'I stated that Gharar is a situation where the emergence of actions that we fear or do not want, everything that is not clear is hidden from our view.

4. Haram, is an object that is prohibited in sharia transactions, by definition it is every forbidden and disgraceful act which according to sharia must be rejected with firm and clear reasons, followed by the threat of punishment for the perpetrator and reward for those who refuse. Etymologically, haram means something that is prohibited from being used. According to Islamic law, haram can be seen from two perspectives, namely first, according to its limits and essence and second, according to its form and nature.
5. Unjust, is something that is in an inappropriate place. This word is usually used to symbolize cruel, inhuman nature. According to Arabic, the word zalim in Islamic teachings means dholim, which means an event or something that is out of place. People who act unfairly are called unjust. Meanwhile, etymologically, the word zalim is an accepted Arabic word, namely *dho la ma*, which has a vague meaning. However, the word "zalim" in the Koran uses the words "baghyu" and "zhulm" to refer to other people's rights that are violated by this act.

Based on Islamic law, material collateral is more of what is called al-rahn, which is collateral for debts and receivables, which does not absolutely have to exist. Al-rahn is mutual help in Islam. This characteristic of mutual assistance is a sharia collateral concept in Islamic Law. According to Bank Indonesia, Rahn is a contract to hand over goods/assets from the customer to the bank as collateral or any obligation. Rahn's application in banking is that a character is formed with the aim of returning the goods to the bank to finance the goods (Hidayatullah, 2017). Attachments must meet the following criteria: 1) Belong to the customer, 2) Size, style and value provisions are clear according to the actual value according to market prices. 3) Allowed to be used but not controlled.

Al-rahn Offering benefits means that it offers peace for the marhunbiih (owner of money) and/or a guarantee of security for borrowing money. Apart from that, another important element arises from the existence of a previous debt contract. In practice, sharia guarantees are first divided into two (two) forms of al-rahn (as institution), namely material guarantees and Al-Kafalah, which is a single individual guarantee (Rudiansyah, 2020).

In the concept of BW contract law, al-rahn is similar to an "accessory agreement" or follow-up agreement (amendment). As a legal guarantee, al-rahn can be analogous to a guarantee institution and other conventional guarantee institutions are "collateral agreements", hence mortgages, trusts and mortgage rights. Another thing that needs to be understood is that ar-rahn has tabbaru' characteristics because rahn gives it to him in a murtahi, not for something or a charity contract that does not require a reward (Maimun & Tzahira, 2022).

In essence, al-rahn is an activity that is believed to have a social impact or help or what is usually called mutual help. The concept of helping is implemented in the form of lending and borrowing which must be reported as an agreement so that no party is harmed. Islamic law pays great attention to and protects the interests of creditors so that they are not damaged or harmed. Therefore, creditors can ask for the debtor's goods as collateral for their debts, so that when the debtor goes bankrupt by paying the debt, the debtor can sell the collateral.

This concept in Islamic jurisprudence is called al-rahn. The concept of mutual cooperation is clearly written in the Koran, namely that people who are able and strong to help in good deeds must help the poor and weak, help the rich, the poor and the needy. The above proves the beautiful brotherhood that exists in the lives of Muslims (Rukmanda, 2020). This is as written in QS. Al-Maidah verse 2, which means:

"O you who believe, do not violate the syar'ah of Allah, and do not violate the honour of the haram months, do not (disturb) the animals of Had-ya, and animals, and do not (also) disturb the people who visit Baitullah while they are seeking grace and pleasure from their Lord and when you have completed the Hajj, then you may hunt. And never let (your) hatred against a people because they prevent you from leaving the Grand Mosque, encourage you to do harm (to them). And help you in (doing) righteousness and piety, and do not help you in committing sins and transgressions. And fear Allah, verily Allah is Severe in punishment."

The values of justice and balance in Islam are also required to be implemented in collateral binding arrangements in sharia banking financing. The value of justice is part of the value of balance. According to some experts, the balance value is said to be about the principle of balance, which in this case is very close to contractual issues. Agus Yudha Hernoko stated that the principle of balance means "equality". To create balance between the contracting parties. The aims of the balance principle is that the bottom line determines rights and obligations. Conversely, the value of balance also creates the value of justice. At first glance, the value of balance and the value of justice appear to have similarities. However, on closer analysis, the content and urgency become clear that balanced values emphasize responsibility (Nurbaedah & Machmud, 2021).

This responsibility aims to create social balance and harmony in the more real dynamics of life. Responsibility does not mean only individual responsibility, but the state and government always strive for balance in life. For example, the balance of

control over public resources, even taxes, the balance between the state's powers over its people.

In general, Islamic economic values are universal values, meaning that the meaning of these values is not only concentrated in one branch of the economy, but covers all forms of Islamic economic activity. Based on the Koran and Alhadith, fiqh scholars agree that al-rahn is a guarantee based on Islamic law. According to most scholars, enforcement of sharia guarantees is permissible because of the many benefits. In the context of Muamalah's relationship with fellow humans and as moral guidance in the implementation of Islamic economics. However, the concept must not conflict with sharia principles based on Islamic law.

Sharia obligations and sharia guarantees are two (two) legal entities that cannot be separated. The existence of sharia guarantees only emerged after the existence of sharia agreements. That is the analogy, because a sharia guarantee is a civil law concept, it is an "accessory contract" while a sharia contract is the main contract.

This means that the legal principles that form the basis of sharia obligations can also be applied mutandis as legal principles of sharia guarantees. Sharia obligations (Iltizam) are a unified legal system with sharia guarantees (Al-rahn). The legal principles that apply to sharia agreements are: (1) Al Hurriyah (principle of independence), (2) Al Musawah (principle of equality and justice), (3) Al'Adalah (principle of independence), (4) Al-Ridha (principle of will), (5) Asy-Shidq (principle of honesty and truth); and (6) Al-Kitabah (principles of the holy book) apart from that, it is also based on sharia principles in accordance with the concept of sharia banking based on the Sharia Banking Law and Financial Services Authority Regulations, namely referring to Islamic sharia and always in the corridor of justice, partnership, transparency and universal (Fitriani, 2017).

These principles are also the basis for sharia collateral. In practice, sharia banking should be able to apply ar-rahn in tying up financing collateral. So that the concept of Islamic law with the foundations, values and principles contained therein as the basis for sharia banking operations can truly be implemented well, consistently and efficiently. Sharia banking should be able to truly break away from conventional banking and have complete regulations in the form of regulations contained in national law in Indonesia.

Currently, the guarantee institutions that exist in conventional banking are used by sharia banking. Not all of the substances contained in the laws which form the legal umbrella for conventional banking guarantee institutions can be followed by sharia banking, because they differ from sharia principles, economic democracy and the principle of prudence." More details can be seen in table 1:

**Table 1**

Provisions for Binding Collateral in Conventional Guarantee Institutions which are different from Sharia Principles in Sharia Banking

Provisions for Conventional Guarantee Institutions	Analysis based on Sharia Principles
<p>Article 1131 Civil Code (Civil Code) All of the debtor's property, both movable and immovable, whether existing or which will exist in the future, shall be borne by all his individual obligations."</p>	<p>The phrase, whether it already exists or will exist in the future, is a liability for all individual engagements, is not in accordance with sharia principles, because it is included in gharar, namely transactions whose object is unclear</p>
<p>Article 3 paragraph (1) of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. Debt whose repayment is guaranteed by a Mortgage Right can be In the form of debt that already exists or has been agreed for a certain amount based on a debt-receivable agreement or other agreement that gives rise to the debt-receivable relationship in question."</p>	<p>Explanation of Article 3 Paragraph (1): Debt guaranteed by a Mortgage can be debt that already exists or that does not yet exist but has been agreed upon, for example debt arising from payments made by creditors for the benefit of debtors in the context of implementing a bank guarantee. The amount can also be determined permanently in the relevant agreement and can also be determined later based on the calculation method specified in the agreement which gives rise to the debt and receivable relationship In question, for example interest payable on the principal loan and other costs, the amount of which can only be determined later. Interest, the amount determined at a later date, is not in accordance with sharia principles because it is an activity that is prohibited in sharia banking</p>
<p>Article 1 paragraph (1) of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. "Mortgage Rights over land and objects related to the land, hereinafter referred to as Mortgage Rights, are security rights Imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, whether or not the following other objects which are an integral part of the land, for the repayment of certain debts, which give certain creditors a preferred position over other creditors"</p>	<p>In conventional banking, the provision of funds is absolutely debt/credit, whereas in sharia banking, the provision of funds is not absolutely financing, but you must first look at the form of the contracts in sharia banking itself. The contracts that we most often encounter in practice in sharia banking include ijarah, musyarakah, mudharabah and murabahah contracts. The contracts offered by Sharia banking are not the same as debt/credit. Ijarah with the tenancy principle, musyarakah is a cooperation agreement between two or more parties for a particular business where each party provides capital funds with the stipulation that profits will be shared according to the agreed agreement, while losses will be borne according to their respective portions of funds. Mudharabah is a business cooperation agreement between the first party</p>

	<p>(malik, Shahibul Maal, or sharia bank) who provides all the capital and the second party (amil, mudharib, or customer) who acts as fund manager by sharing business profits in accordance with the agreement agreed In contract, while losses are borne entirely by the capital owner unless the second party makes an intentional mistake, is negligent or violates the agreed rules. A murabahah contract is an agreement to finance an item by stating the purchase price to the buyer and the buyer pays the higher price as an agreed profit. In a murabahah contract here it is not tied to the method of payment, whether it is paid in cash or using a credit system, so it is still said to be a sale buy muarabahah means the phrase debt in mortgage rights is not appropriate to use in sharia banking</p>
<p>Article 4 paragraph (4) Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land "Mortgage rights can also be imposed on a land title including existing buildings, plants and work results or a property which is an integral part of the land, and which belongs to the holder of a land property whose encumbrance Is expressly stated in the Deed of Granting Mortgage Rights. concerned"</p>	<p>Article 4 paragraph (4) Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land "Mortgage Rights can also be imposed on a land title including existing buildings, plants and work results or a land property which is an integral part of the land, and which belongs to the holder of the land property whose encumbrance is expressly stated in the Deed of Granting Rights. Dependents concerned" The phrase "or will exist" is not in accordance with sharia principles, because it is included in Gharar, namely transactions whose object is unclear, not owned, whose whereabouts are unknown, or cannot be handed over at the time the transaction is carried out unless otherwise regulated in sharia.</p>
<p>Article 7 Letter c Law Number 42 of 1999 concerning Fiduciary Guarantees "Debt whose repayment is guaranteed by a fiduciary can be in the form of: c. debt whose amount at the time of execution can be determined based on the principal agreement giving rise to an obligation to fulfill the requirements of a performance."</p>	<p>Explanation of Article 7 Letter c: Debt referred to in this provision is interest debt 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), prohibited in sharia principles, in the form of usury, gharar and maisir</p>
<p>Article 10 Letter a Law Number 42 of 1999 concerning Fiduciary Guarantees "Fiduciary guarantees include the proceeds from objects that are the object of fiduciary guarantees"</p>	

Article 96 paragraph (3) Regulation of the Head of the Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments to the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Implementation of Government Regulation Number 24 of 1997 concerning Land Registration  
“Registration of changes to land registration data as intended In Article 95 paragraph (1) and the making of a Deed of Granting Mortgage Rights as intended in Article 95 paragraph (2) cannot be carried out based on a deed whose preparation is not in accordance with the provisions in paragraph (1)”

Article 20 paragraph (2) Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land.

“The executorial title contained in the Mortgage Rights certificate as Intended in Article 14 paragraph (2), the Mortgage Rights object is sold through a public auction according to the procedures specified In the statutory regulations for repayment of the Mortgage Rights holder's receivables with the right to precede other creditors.”

Explanation of Article 10 Letter c: What is meant by "results from objects that are the object of fiduciary guarantee" are everything obtained from objects that are encumbered with fiduciary guarantee.

Deed of Granting Mortgage Rights and letter h regarding SKMHT, the procedures for filling which must be made in accordance with the attachment to the regulation. In practice, the SKMHT or APHT, which is the standard form of the National Land Agency, must have its editorial changed to align with sharia banking which does not recognize "credit/debt" or "Credit Agreement/Debt Agreement", which if returned to the Regulation of the Head of the Land Agency above, it can be said that this is not in accordance with the filling procedures determined by the National Land Agency (hereinafter referred to as BPN).

Article 40 of the Sharia Banking Law states that in the event that the customer receiving the facility does not fulfill his obligations, the sharia bank and UUS can purchase part or all of the collateral either through auction or outside auction based on voluntary delivery by the collateral owner or based on the authorization to sell from the collateral owner. Provided that the collateral purchased must be disbursed no later than 1 (one) year. This provision is basically in line with the voluntary principle (*ridha'iyah*) in sharia economics, namely that economic transactions in any form carried out by banks with other parties, especially customers, must be based on the principle of mutual consent, which should also apply to guarantees provided. is in the financing contract at a sharia bank, where the guarantee provided must be given voluntarily by the customer for the purpose of paying off its obligations to sharia banking. In practice, the application of Article 40 of the Sharia Banking Law can be said to still not be implemented, because the execution of Mortgage Rights, which basically have executorial power in accordance with what is stated in Article 20 of the Mortgage Rights Law, cannot immediately be implemented. It can be said that the process of executing Mortgage Rights itself is often carried out by taking legal action to dispute first through the Court. This includes costs that must be incurred during the auction process, late fines, and



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other costs related to settling customer obligations through the auction. In practice, the costs of execution through auction and other costs are fully borne by the customer, the bank fully calculates the costs incurred and the customer's remaining obligations taken from the results of executing the guarantee through auction. So it can be said that the principle of justice in the execution of Mortgage Rights itself is not yet fully applicable or in accordance with the process of executing Mortgage Rights itself

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Based on the table above, it can be understood that not all substances in collateral binding arrangements in conventional banking comply with sharia principles, there are still various deviations and inconsistencies and are contrary to sharia principles. Philosophically, something that is different does not necessarily conflict, but sharia banking should be able to implement sharia principles, namely justice, benefit, balance and universality (*rahmatan lil 'alamin*) in binding material collateral so that sharia can be implemented in a *kaffah* and *istiqomah* manner.

## CONCLUSION

Regulations for binding collateral in sharia banking have not yet been contained in the form of statutory regulations or regulations of the financial services authority as the institution with the authority to supervise banks. Based on the principle of *lex specialist derogate lex generali* which is inherent in Law Number 21 of 2008 concerning Sharia Banking, Islamic banking carries out collateral binding using collateral institutions that exist in conventional banking, namely; pawn, mortgage, fiduciary, mortgage, and warehouse receipt. Several fatwas related to collateral based on the concept of Islamic law regarding collateral in Islam, namely *kafalah* and *rahn*, have been issued by DSN-MUI, including DSN-MUI Fatwa Number: 11/DSNMUI/IV/2000 concerning *Kafalah*. DSN-MUI Fatwa Number: 25/DSN/MUI/III/2022 concerning *Rahn*, DSN-MUI Fatwa Number: 68/DSN-MUI/III/2008 concerning *Rahn Tasjily* allowing collateral for goods, DSN-MUI Fatwa Number: 92/DSNMUI /IV/2014 concerning Financing accompanied by *Rahn (Al-Tamwil Al-Mautsuq Bi Al-Rahn)*.

Not all substances in conventional guarantee institutions can be applied to sharia banking. Several articles were analyzed as contrary to sharia principles which prioritize Islamic principles. The collateral arrangements used currently do not appear to fulfill the values of justice, benefit, balance and universality (*rahmatan lil 'alamin*) and do not carry out business activities that contain elements of usury, *maisir*, *gharar*, *haram* and *unjust*, and most importantly ignore the principles *Tabbaru* in Islam.

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