

Formalization of Sharia Fiduciary Based on DSN Fatwa Number 92/DSN-Mui/Iv/2024

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Abstract: Fiduciary guarantee regulations in Indonesia, which still refer to Law No. 42 of 1999, present challenges for sharia financing practices because they are not in accordance with the principles of sharia justice. Although Fatwa DSN-MUI No. 92/DSN-MUI/IV/2014 outlines Islamic fiduciary, there remains a legal gap between positive law and Islamic principles that must be addressed. This study aims to formalize Islamic fiduciary as a legal norm within Indonesia's national legal system, replacing the morally and legally flawed conventional fiduciary system. Using a normative legal approach, this study analyzes the legal principles contained in the DSN-MUI Fatwa, such as justice, transparency, and the avoidance of usury. The study concludes that the conceptual framework of the Sharia Fiduciary Law must integrate the principles in Fatwa DSN-MUI No. 92/DSN-MUI/IV/2014, by adapting murabahah and qardh contracts as primary contracts leading to fiduciary relationships as accessory contracts. This synchronization requires legislative revisions, including regulations on the execution of collateral based on the principles of Sharia justice, transparency, and dispute resolution through Sharia forums, rather than unilateral execution. Emphasis on the separation of profit and non-profit contracts and the principle of legal certainty must ensure harmony with the objectives of Sharia in the application of fiduciary.

Keywords: Fiduciary, Islamic Law, Fiduciary Law.

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A. INTRODUCTION

The regulation of fiduciary guarantees in Indonesia, which still refers to Law Number 42 of 1999, presents serious challenges for Islamic financing practices because it is not in line with sharia principles. In practice, parate execution procedures are often carried out unilaterally by creditors without prior court proceedings, which opens up space for abuse of power and harms the debtor's position (Sofiani & Suhendar, 2024) . When the principles of justice in Islamic law such as clarity, agreement, and openness are ignored, then fiduciary transactions become incompatible with sharia provisions. This is where the importance of the sharia fiduciary concept that ensures fairness and balance between the parties and avoids usury and gharar practices (Setiawan, 2023a) . Although it does not yet have positive legal force in the form of a law, sharia fiduciary has been elaborated in Fatwa DSN-MUI Number 92/DSN-MUI/IV/2014, which emphasizes the need for fair and transparent financing principles. Problems arise when sharia fiduciary is only understood as a financial ethic, not as a legal norm. Therefore, the urgency of making sharia fiduciary a normative framework in the national legal system is very high. Without regulations in accordance with sharia fiduciary principles,

Islamic financing will continue to be entangled in the morally and legally flawed conventional fiduciary system. Therefore, it is time for the state to formalize the sharia fiduciary system through a legal and equitable law.

A number of studies have tried to bridge the gap between positive law and sharia principles in the fiduciary context. T. Muhammad Ali Bahar (2023) highlighted how sharia fiduciary can be an alternative to the conventional fiduciary system. Merva Putri Salvia's research (2024) also shows that the justice aspect of sharia fiduciary guarantees more protection for debtors. However, these studies have not made Fatwa DSN-MUI a normative source that can be drawn into legal principles in the formation of national regulations. Similarly, Sri Mulyani (2023) and Trianah Sofiani (2023) emphasize the comparative aspect, without examining the legal binding power of the Islamic fiduciary principle. In this context, although sharia fiduciary is often praised in terms of sharia morality, its status is still considered juridically inferior. Muhammad Tun Samudra's research (2022) adds to the discourse that unilateral execution in conventional fiduciary is highly problematic and can be corrected through sharia fiduciary. However, the gap that has not been closed is how to make sharia fiduciary a systemic and legitimate legal building. Thus, academic studies on sharia fiduciary are still limited to the normative-ethical level and have not yet led to the construction of a formal national law.

From various studies that use normative and comparative approaches to explain the potential of Islamic fiduciary, it is still rare to explore the normative role of Fatwa DSN-MUI as a source of public law. This gap occurs because there is no research that compiles a sharia fiduciary legal system to replace the conventional system that is not in accordance with sharia principles (Nugraheni, 2020). Fiduciary itself is a transfer of ownership rights of an object carried out on the basis of trust, provided that the object remains controlled by the owner (Lumbanraja et al., 2021). The Fatwa DSN-MUI contains principles such as openness, justice, and avoidance of usury, but many studies only describe Islamic fiduciary in the context of financing. The legal vacuum regarding Islamic fiduciary has also not been widely highlighted as a regulatory crisis that needs to be addressed by legislators. Therefore, this research places sharia fiduciary as the main object in order to establish a new norm derived from fatwa, not merely as a study of financial ethics.

This research offers novelty by elevating Sharia Fiduciary as a legitimate juridical principle based on the legal principles in the Fatwa of DSN-MUI, making Sharia Fiduciary a source of legal norms, not just a moral recommendation. Through an analysis of the principles of justice and balance in the DSN-MUI fatwkepastiana, this research shows that the application of the precautionary principle in Islamic financing, especially in terms of fiduciary guarantees, is very important to ensure the protection of the rights of the parties and prevent violations of the law (*Salamah, 2023*). By combining the principles of fiqh muamalah and the theory of national law formation, Islamic fiduciary can be systematically formulated as a *lex generalis* that oversees the practice of Islamic guarantees in Indonesia. In addition to that, novelty is also evident from the courage of this research in bridging religious norms and state norms through legal principle justification. This research does not stop at the idealism of Islamic law, but steps

into the normative-juridical stage in drafting a comprehensive sharia fiduciary regulatory framework. Therefore, sharia fiduciary will not only be an alternative, but will appear as the main regulation that shapes the face of collateral law in the future.

The main contribution of this research lies in the theoretical effort to assert that DSN-MUI fatwas have normative power equivalent to other secondary sources of law in the hierarchy of national law. By formulating the legal principles of the fatwa, Islamic fiduciary will be articulated as a system that not only guarantees substantial justice, but can also highlight the importance of applying the precautionary principle in Islamic banking, which not only guarantees the security of transactions, but also ensures that the agreement, registration, and execution of fiduciary guarantees are carried out in accordance with applicable sharia principles (*Salamah, 2023*). Practically, this research also contributes to the Islamic banking world, which has been using conventional fiduciary instruments that hold the potential for legal conflicts (*Alidar et al., 2024*). This research will also develop a roadmap for Islamic fiduciary regulation, starting from the formulation of legal principles to the normative formulation of the articles of the law. Thus, the results of this research are expected to be used by legislators, regulators, and Islamic finance practitioners in designing legal products that are legal and operational. This is the unique contribution of this research in presenting Islamic fiduciary as a legal product born from the integration of fatwa and law.

Based on the above description, the main objective of this research is to formulate the conceptual framework of sharia fiduciary law based on the legal principles in Fatwa DSN-MUI Number 92/DSN-MUI/IV/2014. This research aims to prove that sharia fiduciary can be formalized into a national legal norm that replaces Law No. 42/1999. Through this approach, Islamic fiduciary is not only interpreted as a fiqh product, but as a legal construction that can answer the needs of a fair, certain, and maslahat-oriented Islamic financing system. Another objective is to develop a normative structure that is able to encourage the formation of sharia fiduciary regulations in legislation, as well as to develop conceptual articles that are in line with the principles of national law and sharia values. Thus, the results of this research are expected to be an academic and practical reference in the formulation of the sharia fiduciary law, bridging the fatwa with the national legal system, and strengthening the position of Islamic law in legal development in Indonesia.

B. METHOD

The research method used in this research is normative juridical legal research with a deductive qualitative approach. The focus of this research is to analyze the legal principles of Fatwa DSN MUI Number 92/DSN-MUI/IV/2014 concerning Financing Accompanied by Rahn, to be applied in designing a sharia-based positive legal system through the establishment of a Sharia Fiduciary Law. The main legal concepts that become the object of analysis include the fiduciary *asesoir* contract, the principle of publicity in fiduciary guarantees, the mechanism of guarantee execution, the principle of transfer of ownership rights, the principle of *droit de suite*, and the holistic principle of fiduciary legal norms. The primary legal source in this research is Law No. 42/1999 on Fiduciary Guarantee, while the secondary legal sources are doctrines and scientific literature on security law, especially those

related to the formation of sharia-based fiduciary regulations within the framework of the national legal system (Isman, 2020).

Legal data collection techniques are conducted through document studies, which include identification, selection, and collection of legislation, DSN MUI fatwas, and relevant legal doctrines. This procedure is organized systematically based on the formulation of the problem which includes: (1) how the legal principles in the DSN MUI fatwa can be applied in fiduciary guarantees; (2) how the positive legal structure enables the integration of sharia principles into the national fiduciary system. Data collection was conducted by searching official databases of laws and regulations and fatwa documents, as well as scientific literature on collateral law. Data validity was tested using source triangulation, namely by comparing normative provisions, doctrinal views, and practices of the DSN MUI fatwa, as well as through hierarchical analysis of laws and regulations to assess the compatibility of sharia law norms with the national legal system (Isman et al., 2023) .

The analysis of legal data was conducted with three main stages: interpretation (interpretation of norms and principles), systematization (grouping and structuring norms), and synthesis (combining various norms and principles into a coherent legal framework). The theoretical framework used is the theory of legal principles and the theory of integration of Islamic law in the national legal system. This research will analyze the main subjects, namely: (1) analysis of legal principles in Fatwa DSN MUI relevant to the concept of fiduciary; (2) reconstruction of collateral norms in the perspective of sharia-based *asesoir* contracts; (3) formulation of the principle of publicity and execution of collateral in accordance with sharia principles; (4) adjustment of the principle of transfer of rights and the principle of *droit de suite* in the context of Islamic law; and (5) normative design of the Sharia Fiduciary Law as an integration of Islamic law in the Indonesian positive legal system.

C. RESULTS AND DISCUSSION

1. Results

This research reveals that the combination of *murabahah* contracts with fiduciary guarantees in Islamic financing creates a normative basis that needs to be strengthened with sharia-based positive legal instruments, given the potential legal conflicts that arise due to the use of conventional fiduciary instruments (Solehudin et al., 2024) . Based on DSN-MUI Fatwa Number 92/DSN-MUI/IV/2014, collateral in Islamic financing contracts such as *rahn tasjily* is regulated as a form of *asesoir* agreement, where the rights to the pledged object remain with the pledgor (Nurjihad, 2023) . However, this research confirms that the structure of fiduciary guarantees in the Islamic banking system often takes the form of collateral binding on the main *murabahah* contract, using the principle of ownership of documents (proof of ownership) as a collateral object. This finding indicates that the recognition of the object of collateral in the Islamic fiduciary system has expanded, and it requires strengthening through sharia-based positive legal instruments (Franzoni & Ait Allali, 2024) .

Furthermore, the aspect of *publicity* in fiduciary guarantees is an important finding because there is a disparity in its application between conventional fiduciary and sharia

fiduciary. In the fiduciary system based on Law No. 42/1999, the principle of publicity is applied through registration at the Fiduciary Registration Office as a form of legal certainty. However, in the practice of *rahn tasjily* and collateral binding in sharia financing, there is no explicit and formal publication mechanism, resulting in legal risks for third parties. This research recommends the establishment of an Islamic fiduciary registration mechanism that not only serves an administrative function, but also confirms the validity of the right of *droit de suite*, which is the right of the creditor to follow the object of collateral into the hands of third parties who control it. This guarantee principle also protects the creditor's right to payment even though the pledged object has changed hands (Nugraheni, 2020).

In terms of security execution mechanisms, it was found that conventional fiduciary guarantees have advantages through parate execution and executorial titles recognized by law. Meanwhile, *rahn tasjily* does not have the same executorial power, thus causing uncertainty in the exercise of creditors' rights in the event of default (Res, 2021). This discrepancy is reinforced by the overlapping norms between Fatwa DSN-MUI and technical regulations such as POJK No. 31/POJK.05/2016. Therefore, the drafted Sharia Fiduciary Law needs to guarantee an execution mechanism that is sharia-compliant, but also has legal certainty equivalent to conventional fiduciary, including recognition of the position of preferred creditors and execution through legally appointed sharia institutions, with clear execution procedures through submission of applications to the court to avoid potential abuse of power by creditors (Lumbanraja et al., 2021).

The principle of ownership transfer in Islamic fiduciary based on *qardh wal murabahah* contract, in accordance with Fatwa DSN-MUI No. 31/DSN-MUI/VI/2002, shows that the rights to the collateral and goods in the financing transaction transfer to the customer, in line with the principle of specialty and clarity of rights. The research also reveals that DSN-MUI Fatwa No. 92/DSN-MUI/IV/2014 integrates sharia principles with legal certainty, encompassing *maqashid sharia* to protect key aspects of life. According to DSN-MUI, the principle of transferring ownership in sharia fiduciary through *qardh wal murabahah* contract shows that the right to collateral in the financing transaction transfers to the customer, which is consistent with the principle of clarity of rights and obligations in security law (Asyiqin & Alfurqon, 2024). Therefore, the formality of a fatwa as the basis of the Sharia Fiduciary Law is essential to harmonize sharia law with national law, ensuring the fairness and effectiveness of the collateral system in Islamic financial institutions (Salvia & Putri, 2024).

Table 1. Normative Structure of the Object of Analysis Based on DSN-MUI Fatwa No. 92/DSN- MUI/IV/2014 and Law No. 42 of 1999

Object of Analysis	Subject Norm	Object Norm	Applicable Legal Principles
Fiduciary Acquiescence	Giver and Recipient of Guarantee	Binding of movable objects on <i>murabahah</i> or <i>qardh</i> contracts	Principle of Assesoirity, Principle of Transparency

Principle of Publicity	Third Parties and Creditors	Registration on the fiduciary guarantee information system	Principle of Legal Certainty, Principle of Openness
Execution Mechanism	Creditors, Debtors, and Sharia Institutions	Exercise of rights over collateral objects in the event of default	Executorial Principle, Creditor Preference Principle
Transfer of Title Ownership	New Customer	Transfer of collateral through qardh wal murabahah contract	Principle of specialty, principle of legality
Droit de suite principle	Fiduciary	The right to follow the security object into the hands of a third party	Principle of Collateral Durability, Principle of Continuity of Rights
Holistic Principle of Legal Norms	State, OJK, DSN-MUI	Integration of Fatwa DSN-MUI in the national legal system	Integration of Legal Certainty and Sharia Compliance based on Maqashid Syariah

The table above presents a systematization of the main findings of this research using a normative structure approach, which identifies the subject and object of legal norms within the framework of Fatwa DSN-MUI Number 92/DSN-MUI/IV/2014 and related regulations, in order to form the conceptual design of the Sharia Fiduciary Law. Each column shows the important elements of the analyzed norms-from the asesoir contract, the principle of publicity, the execution mechanism, the principle of transfer of ownership, the principle of *droit de suite*, to the holistic principle-by emphasizing how the fatwa and sharia practice provide distinctive legal characteristics compared to conventional fiduciary (Nugraheni, 2020) . The preparation of this table facilitates the mapping of positive law and sharia principles comparatively, as well as identifying normative gaps or intersections that can be the foundation for the formation of a sharia-based fiduciary regulation that is more systemic and in accordance with maqashid sharia.

2. Discussion

The results of the norm elaboration of the DSN-MUI fatwa and the Fiduciary Law show a contradiction in the implementation of murabahah and qardh contracts in the fiduciary legal relationship as an accessory contract. The DSN Fatwa stipulates murabahah and qardh without interest, while the Fiduciary Law regulates the transfer of ownership of collateral to the fiduciary with executorial rights. In murabahah, the transfer of property rights contradicts sharia principles that require the handover of goods and legal payment. In qardh contracts, the non-commercial nature conflicts with the acquisition of collateral for debt repayment (Kosasih et al., 2022) . Other contradictions arise in the mechanism of collateral execution and the principle of *droit de suite* in the Fiduciary Law which is more efficient, but contradicts *rahn tasjily* in the DSN fatwa which prioritizes justice. The absence of norms that distinguish between profit (murabahah) and non- profit (qardh) contracts expands the gray area of synchronization of these two legal systems (Bahar et al., 2023).

Legislation synchronization requires a dualistic-integrative approach, in which the Fiduciary Law is revised by forming a separate chapter on sharia fiduciary based on DSN-MUI Fatwa 92/DSN-MUI/IV/2014. Prior to the Constitutional Court Decision No. 18/PUU-XVII/2019, the mechanism for implementing parate executie was often discriminatory, as debtors were victims of creditor arbitrariness that carried out executions based solely on unilateral assumptions without legal certainty (Salvia & Putri, 2024). Therefore, this revision includes recognition of the type of main contract (*murabahah* and *qardh*), adjustment of the accessory principle to be in line with the substance of the sharia main contract, and modification of the execution mechanism to be subject to sharia dispute resolution. This synchronization should also include strengthening the principle of publicity that is not only administrative, but also guarantees compliance with the principles of justice, transparency, and legal certainty in accordance with *maqashid sharia* (Solehudin et al., 2024).

Based on the disaggregated data, an exploratory discussion, explanatory, and deductive functional analysis can be developed that examines the main contradictions between the provisions of collateral execution in the Fiduciary Law and the principles in Fatwa DSN-MUI Number 92/DSN-MUI/IV/2014. The Fiduciary Law allows for *direct execution* by the fiduciary against the object of collateral in the event of default, without having to go through a court process. However, in sharia principles, as emphasized in the fatwa, conflict resolution over default is preferred through deliberation mechanisms or sharia dispute resolution forums. This contradiction arises because the unilateral execution system is considered to potentially violate the principles of *justice and certainty of sharia law*, as well as denying *ta'wun* (mutual assistance) in Islamic financial relations (Ghani & Shukor, 2024).

The provisions in the Fiduciary Law that give fiduciaries dominant power in executing collateral can lead to asymmetry in the relationship between creditors and debtors. In the sharia approach, the relationship must be *symmetrical*, maintain mutual trust and ensure the protection of the rights of both parties. Fatwa DSN-MUI emphasizes that the execution of the collateral object must still uphold the principle of *halal profit* and reject the form of *gharar* (uncertainty), which can actually arise from unilateral execution. Therefore, the draft Sharia Fiduciary Law needs to formulate a mechanism for resolving the execution of collateral that is oriented towards sharia principles, through a *hakam* forum or *tahkim assembly* that guarantees justice, equality and transparency.

The next contradiction relates to the *transfer of ownership rights*, which is different between a *qardh* contract and a *murabaha* contract. In a *qardh* contract, the main object is the money lent with the obligation to return it without any additions. The collateral in this contract serves as a guarantor (*tatsbit al-dayn*), and ownership rights should not be transferred automatically because it contradicts the principle of *qardh hasan*, which does not bring benefits to the lender. In contrast, in a *murabaha* contract, the transfer of ownership rights is the main substance of the transaction as it is based on sale and purchase with the addition of an agreed profit margin. In this context, the fiduciary guarantee is only *accessory*, and it is not allowed to mix the profit from the sale and purchase with the benefit from the guarantee, in accordance with the principle of separation of contracts in the DSN Fatwa.

The decision-making in the DSN fatwa allows the application of sharia principles even though it is not explicitly regulated in classical Islamic law, which indicates that the Sharia Fiduciary Law must be in line with sharia principles to maintain harmony between positive law and Islamic law (Zaim et al., 2023). By utilizing legal integration theory, it can be asserted that the Sharia Fiduciary Law must be able to *integrate sharia principles within the framework of positive law* without causing normative conflict. The non-contradiction theory provides a basis to reject the co-existence between the unilateral execution norm in the Fiduciary Law and the peaceful settlement norm in the DSN fatwa. Meanwhile, the *excluded middle* theory asserts that it is impossible for two mutually negating norms (unilateral vs. deliberation) to be applied simultaneously, so the normative design must choose one value system, namely *sharia* principles that prioritize *maslahat, justice, and shura-based legal certainty*.

Theoretically, this finding suggests that the national legal model has not been able to fully accommodate the unique characteristics of sharia transactions. There is a need for *differential recognition* of the Islamic legal system as an equal normative framework, not just a variant of positive law. In practice, this means that specific legal instruments are needed, such as the Sharia Fiduciary Law, which affirms sharia principles in a *kaffah* manner, especially in the mechanisms of default resolution, transfer of rights, and accessory relationships. In this context, Islamic banks must adopt innovative risk management strategies to ensure compliance with sharia principles and maintain stability in the banking system (Independent, 2025). The differences between *rahn* *tasjily* and fiduciary also demand harmonization so as not to cause confusion in the application of the law of guarantee in the system (Apriantoro et al., 2025). As a concrete recommendation, the articles in the Draft Sharia Fiduciary Law need to include:

1. Clause on the *execution of collateral only through sharia dispute resolution institutions* (not unilateral direct execution).
2. It is stipulated that in a *qardh* contract, the *collateral may not be transferred* except as an agreed form of final repayment.
3. The assertion that the *fiduciary contract is accessory*, does not generate profits for the beneficiary except for the maintenance of the goods.
4. The placement of principles such as *kaffah, justice, transparency, prudence and publicity* as key legal norm-forming principles.
5. Reinforcement of the normative structural separation between *murabahah* (sale and purchase) and *qardh* (debt) contracts, including the treatment of collateral objects in each contract in accordance with sharia principles.

Fiduciary law formulation must ensure harmony between national law and sharia principles with an integrative and systemic approach. Based on the theory of legal integration and non-contradiction of norms, the Fiduciary Law needs to be reformulated to comply with sharia contracts such as *qardh* and *murabahah*. In positive law, the fiduciary contract contains the principle of *droit de suite*, while in sharia, the relationship between the creditor-debtor and the object of collateral is functional. The *kaffah* principle requires that the object of collateral

retains the substance of shari'i ownership. Therefore, the ideal Sharia Fiduciary Law must prioritize justice and protection for all parties. The reformulation of fiduciary law in the context of sharia requires special attention to the substantial differences between the principles of positive law and sharia, especially in the aspect of collateral binding, in order to create a balance between legal certainty and sharia justice in its implementation. (Sari et al., 2024)

Fiduciary security in a qardh contract serves to guarantee debt repayment without generating profit for the debtor, in accordance with the DSN Fatwa which emphasizes that the fiduciary can only take profit for the cost of maintaining the collateral. Therefore, the principle of *droit de suite*, which gives the fiduciary the discretion to sell the object of collateral for debt repayment, must be in line with the principle that the control and transfer of goods does not involve usury or unfair practices. Meanwhile, in a murabahah contract, the fiduciary guarantee becomes an integral part of the financing structure, which may lead to a mismatch between the principles of *droit de suite* and *kaffah*, thus requiring reconstruction in the Sharia Fiduciary Law to ensure that the relationship between the main contract and the guarantee contract is harmoniously integrated. In a murabahah contract, the object of collateral not only functions as a guarantor of debt, but is also part of a sale and purchase transaction that is bought and sold in stages, so that the transfer of goods in this context becomes an integral part of the financing structure, which requires an adjustment between the principle of *droit de suite* and the principle of *kaffah* in the implementation of the contract (Arfan et al., 2024).

The fundamental contradiction in the use of fiduciary guarantees in qardh and murabahah contracts lies in the nature of each contract, especially regarding the transfer of ownership rights and benefits from the collateral object. In a qardh contract, which is a loan without additions, the object of collateral must not contain elements of transfer of ownership that bring benefits to the creditor because it will violate the principle of *qardh hasan* and potentially lead to the practice of usury (Ningsih et al., 2024). Fiduciary rights, which contain the principle of *droit de suite* (the right to follow the object) and the possibility of execution against the collateral in the event of default, create ethical and fiqh contradictions if applied rigidly to qardh contracts, because it seems that the collateral can be utilized or transferred ownership, even though this is prohibited in the basic principles of Islamic lending. On the other hand, in murabahah contracts, where there is a transfer of ownership from the seller to the buyer and profit is obtained from the sales margin, the use of fiduciary as collateral is relevant and valid because it does not conflict with the principle of prohibiting the taking of additional benefits that were not agreed upon (Salvia & Putri, 2024). Herein lies the paradox between two different forms of contracts that are subject to the same fiduciary guarantee model, even though their structures and ethical principles are not equivalent.

Based on the theory of legal integration and non-contradiction, all elements of the articles in the Sharia Fiduciary Law must be consistent in ensuring harmony between the objectives of the sharia economy (*maslahah*) and legal certainty (legal security). For example, in terms of collateral execution, there should be no articles that open up space for unilateral seizure without deliberation or without the decision of a sharia dispute resolution institution. In line with the *excluded middle* theory, all articles must ensure that there are no "gray" areas that allow violations of sharia principles through loopholes in positive law (Law & Vol, 2024). In this

case, the legal status of the collateral object must be firm, which means that if it is a *qardh* contract, then the guarantee is purely accessory and does not affect substantial ownership, if it is a *murabahah* contract, then the guarantee is part of the sale and purchase scheme that binds the two parties in a relationship of trust and fairness value (Sri Wulandari et al., 2023) .

This finding contrasts with the conventional literature which tends to sharply separate the law of guarantees and the law of the main contract. In the Shariah framework, this dualism is irrelevant because the accessory contract is morally and legally attached to the main contract. Therefore, in drafting the Sharia Fiduciary Law, it is important to adopt a normative approach that positions the principle of *proportional justice*, rather than mere *priority of execution*, as the foundation article (Mulyani et al., 2023) . Knowledge of Islamic banking can strengthen positive attitudes and perceived behavioral control, which are relevant to the formalization of Islamic fiduciary, as an understanding of Shariah principles increases the intention to engage in Shariah- compliant fiduciary transactions, which in turn supports the redefinition of fiduciary functions from mere formal collateral to part of the ethical and functional mechanism of Islamic transactions (Ashfahany et al., 2023) . In practical implications, fiduciary-related legal procedures need to be adapted to the principles of *kaffah*, *ta'awun*, and *maslahah*.

The contradiction arises between the principle of *droit de suite* in the Fiduciary Law, which allows the fiduciary to pursue the object of collateral to third parties, and the sharia principle in Fatwa DSN-MUI 92, which requires that the collateral remains in the possession of the owner and does not harm other parties. In a *qardh* contract, the collateral object is complementary, not the main commodity (Mulyani et al., 2023) . *Droit de suite* that allows forced confiscation is contrary to the principles of Islamic justice. Based on the DSN-MUI fatwa, the principle of legal certainty and compliance with the contract is a moral principle that must be guided to ensure the certainty of contract implementation, as reflected in QS. Al-Ma'idah [5]:1 and QS. al-Isra' [17]:34.

The principle of publicity is important to ensure disclosure of rights to the object of collateral and prevent third-party disputes, in line with QS. Al-Baqarah [2]:283 regarding the documentation of debt transactions and *maqbudhah* collateral (that which is controlled /strengthened). In a fiduciary contract, physical control is replaced by formal registration that reflects the principles of honesty and accountability (Sriani et al., 2023) . This principle prioritizes trustworthiness and transparency, with the fiduciary certificate serving as mutual protection for creditors and third parties. The principle of publicity is also realized through the registration obligation under Law No. 42 of 1999, as well as the value of honesty in sharia *muamalah*. Corporate governance in Islamic banking involves various mechanisms and instruments that aim to protect the interests of stakeholders, including shareholders, depositors, and society at large (Alam et al., 2025) fairly.

In the context of Islamic fiduciary, the principle of justice in the implementation of the contract is very important, because the transfer of the object of collateral is only in the nature of trust and must meet the requirements of sharia, as described in this study which shows that the contract must be implemented with justice and transparency, and fulfill the rights and obligations of both parties fairly (Rosyadi et al., 2022) . The holistic principle between benefit

and legal certainty reinforces that the ownership of the collateral object remains with the grantor of the collateral, with a transfer of trust, where the execution of collateral is carried out by complying with moral principles such as responsibility for promises (al-'ahd mas'ul).

In the DSN-MUI fatwa, the principle of transferring ownership rights in fiduciary is justified as long as it does not conflict with sharia principles, according to the fiqh rule "al-ashlu fil mu'amalat al-ibahah illa an yadulla dalil 'ala tahrimiha". The pledgor remains entitled to utilize the pledged goods as long as it does not damage its value, based on the principle of *droit de suite*. Although title is transferred, control remains with the fiduciary, and the fiduciary can only execute in the event of default. This approach balances the protection of creditors, the financial system, and individual property rights within the sharia framework. In line with this, the research results show that risk management principles in equity-based financing products, such as musharakah and mudharabah, which also contain elements of risk transfer between banks and customers, need to be continuously strengthened in the context of applying fiduciary principles that are in accordance with sharia provisions (Sari et al., 2024).

One of the points of conflict between the DSN-MUI fatwa analyzed in this paper and the Fiduciary Guarantee Law lies in the mechanism of guarantee execution. The Fiduciary Guarantee Law allows for direct execution (executorial title) by the fiduciary without the need to go through the courts, whereas in the sharia approach as stipulated in DSN fatwa No. 68 and other relevant fatwas, it is emphasized that settlement must go through a sharia-based dispute resolution institution to avoid the element of *zulm* (injustice). This creates a dichotomy between the principle of efficiency and the principle of substantial justice, especially since the sharia system places process and intention (maqashid) as an integral part of legal validity and justice (Alidar et al., 2024). In fiduciary practices in qardh contracts (which are non-profit in nature), the use of direct execution mechanisms is considered incompatible with sharia principles because it eliminates the process of deliberation and opportunities for equitable settlement. Meanwhile, in murabahah contracts (profit-oriented), as long as the clarity of the contract and the principle of transparency are met, and there is no injustice in execution, the principle of *droit de suite* and fiduciary execution can be accepted in sharia because the function of collateral is to ensure the fulfillment of profit-based obligations (Rosyadi & Rizka, 2022).

The principle of *droit de suite* gives legitimacy to the fiduciary beneficiary to execute the collateral object to the third party who controls it, even without any agreement or understanding of the basic principles of sharia from the third party (Arfan et al., 2024). This is contrary to the basic principles of sharia that collateral must remain in the possession and control of its owner, and that there should be no forced transfer of rights that violates the principles of *maslahat*, justice and honesty. In the context of a qardh contract, where the collateral object is accessory and should not be a speculative tool, the principle of *droit de suite* opens a loophole for execution that can harm the original owner or third parties who are not involved in the contract (Apriantoro et al., 2025). To resolve the contradiction, the *exclude law middle* approach can be applied as a method of normative and ethical harmonization between the positive legal system and sharia principles (Setiawan, 2023b).

This approach rejects the absolute dichotomy between positive law and sharia, but also rejects the infinite middle ground, choosing to override positive legal norms that are in direct

conflict with maqashid sharia (Solehudin et al., 2024) . In this case, the provision of droit de suite that allows the execution of collateral to third parties without a substantive justice process must be set aside, and replaced with a sharia fiduciary mechanism that prioritizes justice, public benefit, and protection of property rights. The validation of this principle can refer to the rules of *al-ashlu fil mu'amalat al-ibahah illa an yadulla dalil 'ala tahrimiha and dar'ul mafasid muqaddam 'ala jalbil mashalih*, where the prevention of harm and injustice takes precedence over simply maintaining the formality of positive law (Isman et al., 2024) .

This approach is supported by the holistic principle between legal certainty and benefit. The positive law (Fiduciary Law), which does not distinguish between qardh and murabahah and does not accommodate the kaffah principle in the execution of collateral, needs to be positioned as something that cannot be used as an absolute reference in Islamic economic law. The solution is the need for integration between formal principles (such as registration and execution of collateral) and ethical principles (such as not being unjust, trustworthy, and al-'ahd mas'ul) in muamalah contracts. This approach encourages the reformulation of positive norms to be more in line with the morality of sharia contracts and adapted to the maqashid of sharia as well as the different types of contracts and socio-economic functions.

D. CONCLUSIONS AND SUGGESTIONS

The formulation of the conceptual framework of the Sharia Fiduciary Law based on the legal principles in Fatwa DSN-MUI Number 92/DSN-MUI/IV/2014 must integrate the sharia principles that exist in both legal systems. In this context, fiduciary regulations need to accommodate the fundamental differences between murabahah and qardh contracts, as they have different legal characteristics. For murabahah contracts, the transfer of property rights as part of the sale and purchase transaction must be in accordance with sharia principles that prohibit unagreed profits. Meanwhile, in a qardh contract, the collateral only serves as a guarantor of debt without changing property rights, which is in line with the interest-free qardh hasan principle. Therefore, the design of the Sharia Fiduciary regulation needs to include a provision that clarifies that the execution of collateral can only be done through a sharia dispute resolution institution, not unilaterally by the fiduciary. In addition, the publication principle should also be integrated to ensure transparency and fairness, taking into account the principles of justice and legal certainty in accordance with maqashid sharia. To achieve harmony between national law and sharia principles, amendments are required in the Fiduciary Law to reflect both holistically and fairly, without violating moral and ethical principles in Islamic financial transactions.

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