

The Synchronisation of Sharia Pawn Execution in the Context of KUH Perdata and KHES

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Abstract: The objective of this research is to formulate the regulatory design of the execution of Sharia lien objects in the perspective of Article 1150 of the Civil Code and PERMA No. 2 of 2008 Compilation of Sharia Economic Law (KHES), with a focus on the synchronization between the two legal systems. The problem under study is concerned with the harmonization of the regulatory design of the execution of Sharia lien objects from two legal perspectives. The present research employs a qualitative approach, utilizing a normative method. The data collection technique employed in this study is a literature review encompassing legislation, legal literature, and associated research results. The data analysis technique employed is juridical content analysis, which aims to establish connections between subjects, objects, and legal relationships in executing sharia pawn objects. This is based on the perspective of Article 1150 of the Civil Code and KHES. The findings of the study indicate that there are inconsistencies between the mechanism of execution of Islamic pawns as outlined in the Civil Code and that stipulated in KHES, particularly about execution procedures and the protection of debtor rights. The present study puts forward a regulatory design capable of synchronizing the two legal systems with a view to establishing fair and transparent legal certainty in the execution of Islamic pawn objects.

Keywords: Paw Execution, Synchronisation, Islamic Law.

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A. INTRODUCTION

In the Indonesian legal system, the execution of pawn objects is regulated in two main legal frameworks, namely the Civil Code and the Compilation of Sharia Economic Law (KHES). Article 1150 of the Civil Code gives the creditor the right to execute or sell the pawn object if the debtor fails to fulfill its obligations, emphasizing the protection of the creditor's rights in fulfilling the repayment of receivables. Meanwhile, KHES through PERMA No. 2 of 2008 regulates the execution of pawn objects based on sharia principles, which demands that the execution process must be carried out fairly, avoid elements of usury, and pay attention to the rights of the pawn giver (rahin) so as not to be harmed. (Wijaya, 2022) In practice, a discrepancy arises between the normative provisions (das sollen) and the reality of implementation (das sein), where the execution procedures that run are often more oriented towards conventional civil law principles without fully accommodating sharia principles. This discrepancy raises legal problems that are urgent to solve, in order to create harmonization between the two legal systems and ensure substantive justice in the implementation of the execution of sharia pawn objects in Indonesia (Sukardi et al., 2023).

Previous studies that examine the execution of sharia lien objects generally focus partially on the regulatory aspects in the Civil Code or in the Compilation of Sharia Economic Law (KHES), without attempting a comprehensive analysis of the harmonization of the two. Most studies only

focus on the provisions of Article 1150 of the Civil Code which regulates the rights of creditors in the execution of liens or, conversely, on the sharia principles in PERMA No. 2 of 2008 which prioritize justice, transparency, and the prohibition of usury (Hayati et al., 2022). As a result, there have not been many studies that try to bridge the inconsistency between the two legal systems, even though in practice synchronization is crucial to ensure that the execution of pawn objects can run fairly as well as legally according to positive law and sharia. In this case, it offers novelty by raising the importance of harmonizing these regulations, analyzing the existing normative gaps, and formulating a regulatory design for the execution of sharia pawn objects that is not only legally effective, but also in line with the principles of justice in Islam (Matuankotta et al., 2023). With this approach, this research is expected to fill the void of literature that has tended to separate the study of positive law and sharia law in the context of pawning.

The urgency of synchronization between Article 1150 of the Civil Code and PERMA No. 2 of 2008 Compilation of Sharia Economic Law (KHES) is very important to answer the needs of Islamic pawn practices in Indonesia based on the principles of justice and legal certainty. Without harmonization, the implementation of the execution of Islamic pawn objects will continue to face legal uncertainty, because the two systems contain fundamentally different principles and mechanisms of execution (Willya et al., 2024). The Civil Code focuses more on the creditor's right to sell the pawn object for debt repayment, while KHES emphasizes the importance of fair procedures, the prohibition of usury, and the protection of the rights of the pawn giver. This inconsistency has the potential to cause disharmony in legal practice, increase the risk of disputes, and weaken legal protection for the parties, especially in maintaining the principles of sharia justice (Munir, 2022). Therefore, synchronization of the two legal systems is not only crucial to create certainty and effectiveness of execution, but also to ensure the sustainability of sharia pawn practices that are in accordance with the values of national law and sharia in Indonesia.

This research aims to formulate a regulatory design for the execution of sharia pawn objects based on harmonization between the provisions in Article 1150 of the Civil Code (KUH Perdata) and the Compilation of Sharia Economic Law (KHES) regulated in PERMA No. 2 of 2008. (Seff & Syarif Hidayatullah, 2020) This harmonization effort is important considering the principle differences between the two legal systems, where the Civil Code gives the creditor the right to execute the pawn object by selling it to pay off the debtor's debt, while in KHES, execution must be carried out by prioritizing the principles of justice and avoiding elements of usury in accordance with sharia provisions. The provisional findings show that there is a normative gap between the Civil Code approach, which emphasizes formal-economic aspects, and the KHES approach, which is based on substantive justice values and sharia validity principles. This gap implies the need to formulate regulations that are not only effective in terms of positive law, but also fulfill the principles of Islamic legal morality. (Arifin, 2021) Thus, this research is expected to make a concrete contribution in creating a fair, transparent, and sustainable sharia pawn object execution system in the context of Indonesian national law.

In the context of the regulation of the execution of sharia lien objects, there are principle differences between the provisions of Article 1150 of the Civil Code which are oriented towards the certainty of debt repayment through the execution of lien objects and sharia principles as stipulated in PERMA No. 2 of 2008 Compilation of Sharia Economic Law (KHES) which

prioritizes justice, prudence, and prohibition of usury. (Hariati, 2024) This inconsistency raises potential problems in practice, given that execution in the sharia system not only demands the fulfillment of creditors' rights, but also must maintain justice for debtors, such as the prohibition of unauthorized use of pawned goods. Therefore, research on the synchronization of these two legal systems is very important to provide a normative basis for creating an execution mechanism that is not only legal in positive law, but also meets the principles of justice and protection of debtor rights according to sharia. Such harmonization is expected to increase the effectiveness of execution, ensure justice between parties, and strengthen the sustainability of the implementation of sharia pawn in Indonesia's national legal system. (Badriyah et al., 2021) Thus, this research is an important contribution in encouraging the creation of sharia pawn execution regulations that are more adaptive, equitable, and sustainable.

B. METHOD

This research uses normative juridical research with a qualitative approach that aims to analyze the synchronization of the execution of sharia pawn objects in the perspective of Article 1150 of the Civil Code and PERMA No. 2 of 2008 Compilation of Sharia Economic Law (KHES). The data used in this research is secondary, which is obtained from the study of written laws such as regulations, Civil Code, KHES, and other related literature. The data analysis technique is carried out using deduction techniques, namely by connecting legal principles, legal principles, and legal theories contained in the two regulations, to obtain a deeper understanding of the execution of sharia pawn objects. Through this approach, this research is expected to provide a clear regulatory design regarding the execution of sharia lien objects, which is synchronized with the provisions of Article 1150 of the Civil Code and PERMA No. 2 of 2008 in the Compilation of Sharia Economic Law, so as to provide a stronger and harmonious legal basis in its implementation.

C. RESULTS AND DISCUSSION

Previous studies on the execution of Islamic pawn objects highlighted the key concept of the rahn (pawn) contract itself as the main foundation. The theory of contracts in fiqh muamalah is the main analytical framework, focusing on the pillars and conditions of a valid pawn, including the existence of marhun (pawned goods), murtahin (pawn receiver), and rahin (pawn giver). A research gap that often arises is the lack of in-depth exploration of how different schools of jurisprudence in interpreting the terms and conditions of rahn affect the implementation and execution of Islamic pawning in the context of Indonesian positive law. (Bakoben, 2024) Another key concept that is repeatedly emphasized is the principle of justice ('is) and the prohibition of usury in Islamic pawn transactions. The theory of distributive justice in Islamic economics becomes relevant in analyzing how the execution mechanism of the pawn object must ensure that no party is unfairly disadvantaged. Case study methods and comparative legal analysis are often used to evaluate the suitability of execution practices with sharia principles. (Hidayatullah & Fadillah, 2022) However, the research gap that needs to be addressed is how the concept of justice and the prohibition of usury are concretely translated in the regulation and practice of execution of pawn objects, especially in the context of potential conflicts with national civil law.

An overview of research shows increasing attention to comparative analysis between traditional (customary law) pawning practices and Islamic pawning. (Seff & Syarif Hidayatullah, 2020) These studies often use qualitative methods, such as ethnographic studies and analysis of customary law documents, to identify fundamental differences in the utilization and resolution of pawn disputes. However, there is still a gap in research that systematically integrates findings from customary law studies into the development of a more comprehensive and contextualized regulatory model for the execution of Islamic pawn objects. Another dominant research trend is the analysis of the effectiveness of Islamic pawn-based financing instruments, such as Ar-Rahn, in empowering certain community groups.

The grouping of themes in previous research reveals that the central issue that continues to be studied is the harmonization between sharia principles and positive law in the context of pawning. Normative law and comparative law studies are often used to analyze the compatibility of Article 1150 of the Civil Code with sharia principles regulated in PERMA No. 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES). (Hayati et al., 2022) A gap that often arises is the lack of empirical research evaluating the implementation of KHES in the practice of execution of pawn objects in religious courts. Another significant theme is the justification of the use of collateral in modern *mudhārabah* (profit-sharing) contracts. Contemporary fiqh studies and analysis of court decisions are the focus of this study, using *istihsan* and *mashlahah mursalah* theories as the basis for the permissibility of collateral. However, further research is needed to understand how these principles are applied in the context of the execution of collateral in *mudhārabah* financing and its implications for the rights of debtors (Maulana & Rozak, 2021).

The identification of under-explored areas of study points to the need for further research into the implications of digital technology developments, such as cryptocurrencies and NFTs, on the concept of the object of pledge (*marhun*) in sharia law. Digital fiqh studies using conceptual analysis and comparison with traditional principles of *rahn* are needed to bridge the gap between classical views and the realities of the digital economy (Yahaya, S. et al., 2024) Another less explored area of study is the aspect of consumer protection in the execution of Islamic pawn objects, especially for vulnerable groups of society. Legal sociology research and case studies can be used to identify potential losses experienced by *rahin* in the execution process and formulate more effective protection mechanisms based on the principles of justice and *ta'awun* (helping) in Islam.

The inconsistency of the study can be seen in the different views of the schools of fiqh regarding the utilization of the pawn object by the *murtahin*. Some schools of thought allow it with *rahin*'s permission, while others prohibit it because it potentially contains elements of usury. This inconsistency shows the need for more in-depth comparative fiqh research and its relevance to contemporary Islamic pawn practices, especially in the context of applicable regulations. Inconsistencies also arise in research on the effectiveness of property collateral in reducing the risk of default in Islamic financing. (Harahap, 2020) While some studies show a positive effect, others highlight the potential moral hazard and transaction costs arising from collateral. Future research needs to clarify the conditions under which collateral becomes effective or counterproductive in the context of execution of Islamic pawn objects, taking into account diverse

financing characteristics and debtor profiles.

Important concepts related to the execution of Islamic pawn objects that have not been explored in depth and require further explanation, thus showing the urgency to conduct research on the design of regulatory synchronization between Article 1150 of the Civil Code and PERMA No. 2 of 2008 KHES. (Rosyadi et al., 2022) First, there is no research that comprehensively analyzes the mechanisms and procedures for the execution of sharia pawn objects empirically in religious courts. The existing studies focus more on normative comparison and fiqh interpretation. As a result, the practical implementation of PERMA No. 2 Year 2008 in the context of execution, including the obstacles faced by judges and related parties, as well as its effectiveness in ensuring the principles of sharia and justice, is still not well documented.

Second, the existing data shows gaps in the understanding and implementation of the concept of sharia consumer protection specifically in the process of executing pawn objects. (Daniel & Budhisulistiyawati, 2021) Although the principles of justice and the prohibition of usury are emphasized, there has been no in-depth research on how existing regulations protect the rights of *rahin*, especially vulnerable groups, during the execution process. The potential asymmetry of information and bargaining position between *rahin* and *murtahin*, as well as fair and efficient dispute resolution mechanisms in the context of execution, require further study. Legal sociology research with concrete case studies can provide valuable insights into the impact of regulations on *rahin*.

Third, the disaggregated data has not significantly discussed the implications and adaptation of the execution of sharia pawn objects to the development of the digital **economy**. The emergence of digital assets as potential pawn objects requires a clear regulatory framework for execution in accordance with sharia principles. (Apriantoro et al., 2025) Digital fiqh research combined with positive law analysis is urgent to identify how Article 1150 of the Civil Code and PERMA No. 2 of 2008 can be synchronized to accommodate the execution of digital assets as *marhun*, while maintaining legal certainty and sharia principles. The absence of in-depth exploration on these three concepts further strengthens the urgency of research on the synchronization design of sharia pawn object execution regulations.

Based on the analysis of Articles 1155 and 1156 of the Civil Code and found a conflict of norms in the mechanism of execution of pawn objects. The subject norm in the Civil Code gives the creditor (*murtahin*) the right to sell the object of pawn (*marhun*) in public after the debtor (*rahin*) defaults and passes the grace period or after a payment warning. (Surya, 2024) The norm object is the act of selling the pawn object. The norm operator is the right for the creditor. The norm condition is the occurrence of default and the lapse of the grace period or the existence of a warning. Meanwhile, KHES in Article 403 paragraph (2) explicitly regulates that if the debtor cannot pay off the debt after maturity and warning (norm condition), then the sale of the pledged property (norm object) is carried out by force through a sharia auction (norm operator). The significant difference lies in the sales mechanism, the Civil Code opens the option of a public sale by the creditor, while KHES specifically mandates a forced sale through a sharia auction. (Sakinah & Suherman, 2021).

Furthermore, Article 1156 of the Civil Code provides an alternative to execution through the mediation of a judge, which indicates the involvement of the court in the sale process. The

subject of the norm is the creditor, the object of the norm is the sale of the debtor's movable property, and the operator of the norm is the creditor's right to do so through the mediation of a judge. This is in contrast to KHES' emphasis on sharia auctions as the only forced sale mechanism after default. (Aisyah & Caesar Purwanto, 2024) Although KHES in Article provides room for the pledgee to apply to the court if the pledgor's whereabouts are unknown, the main focus remains on the sale to settle the debt. This inconsistency creates a legal gap regarding the standard procedure for the execution of sharia pawn objects, especially in terms of the choice of post default sale mechanism, which has the potential to cause legal uncertainty in its application. The implications of this legal gap for the execution of sharia pawn objects are crucial. The Civil Code, as a general law, provides flexibility in the sales mechanism, while KHES, as a special law, provides certainty through sharia auctions. However, the absence of clear synchronization can lead to problems of jurisdiction and legal certainty, especially when there is a dispute over the execution of sharia pawn objects. This condition highlights the need for a regulatory design that is able to bridge the philosophical and procedural differences between the Civil Code and KHES regarding the execution of sharia pawn objects, while still upholding the principles of sharia in pawn transactions (*rahn*) and providing legal certainty for the parties.

The execution of sharia pawn objects based on Article 1150 of the Civil Code and PERMA No. 2 of 2008 Compilation of Sharia Economic Law (KHES), there is a legal relationship that exists between *rahin* (debtor) and *murtahin* (creditor). The principle of *murtahin*'s right, which gives the creditor the right to sell the object of pledge after a default by the debtor, is reflected in Article 1155 of the Civil Code which regulates direct execution by the creditor without going through the court. (Aisyah & Caesar Purwanto, 2024) However, in the context of KHES, the execution of the pawn object must comply with sharia principles, which potentially leads to an auction mechanism that complies with sharia requirements, in contrast to the execution mechanism in the Civil Code. In this regard, the principles of transparency and efficiency upheld in KHES seek to synchronize the execution process applicable in the Civil Code with the demands of sharia principles that prioritize justice and legal certainty (Penerapan & Fifo, 2023).

In addition, the obligation of *rahin* to repay the debt and the legal consequences of default stated in these two regulations show similarities in the basic principles of debtor obligations. However, the fundamental difference lies in the execution mechanism, where the Civil Code provides the option of direct execution (*parate execution*) or through the court, while in KHES, the sharia auction procedure is the main method that must be followed, prioritizing the principles of justice, efficiency, and legal certainty. (Subekti et al., 2022) The principle of protection of debtors (*rahin*) in KHES is also an issue that has not been fully synchronized, given that debtors in the Civil Code system still have room to file objections in execution, while in KHES, sharia auction procedures focus on protecting debtor rights in a more specific way according to sharia.

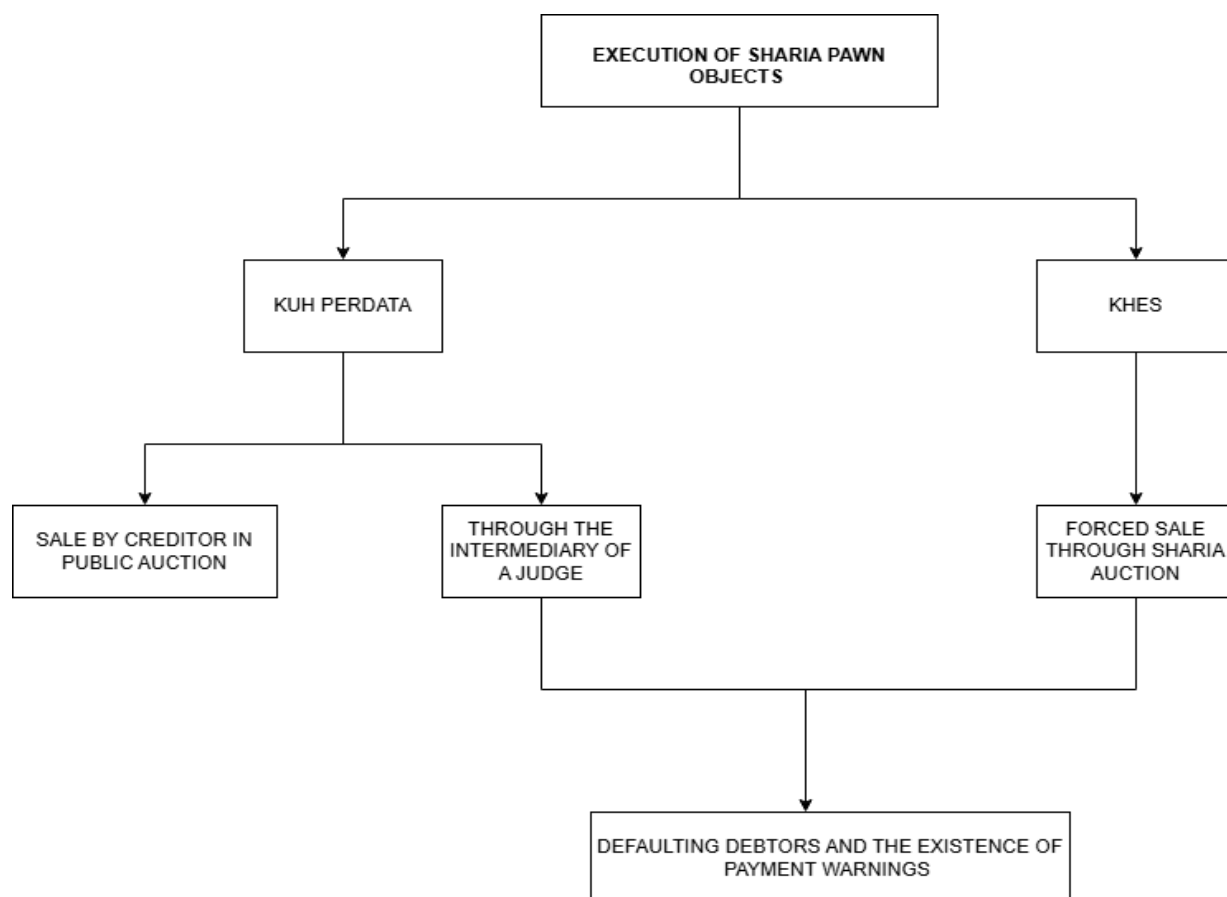


Figure 1. Disparity in the execution of sharia pawn objects

The potential for synchronization between these two regulations lies in efforts to harmonize execution procedures that accommodate both principles. Therefore, legal synchronization between the Civil Code and KHES is very important to create legal certainty in the execution of sharia pawn objects that are fair, transparent, and in accordance with applicable sharia provisions, as well as eliminate uncertainties that may arise due to differences in procedures between the two legal systems. In the context of the execution of sharia pawn objects based on Article 1150 of the Civil Code and PERMA No. 2 of 2008 Compilation of Sharia Economic Law (KHES), the legal relationship between *rahin* (debtor) and *murtahin* (creditor) shows dynamics that are very dependent on the agreed agreement. Articles 1155 and 1156 of the Civil Code regulate the right of *murtahin* to execute the pawn object if *rahin* fails to fulfill its obligations, with the option of direct execution (*parate execution*) or through the court. This implies that *rahin* as a debtor, if in default, is obliged to give *murtahin* the right to sell the object of pledge to pay off the debt along with interest and related costs. (Nisa & Salwa, 2024) This process ensures that *rahin's* obligations are fulfilled even through the execution of the pledged goods.

However, in the perspective of KHES, the execution of sharia pawn objects is more focused on sharia principles, which regulate the auction mechanism as a way to release the rights to the pawn object in order to fulfill the debtor's debt obligations, in accordance with Articles 402 and 403 of KHES which relate to the restoration of the rights of the seized property without adding or reducing the existing value. (Penerapan & Fifo, 2023) One of the main differences affecting this

legal relationship is that in the Civil Code, execution of a pawn can be carried out directly by the creditor (murtahin) without a court through parate execution, whereas in KHES, the auction must be carried out in accordance with sharia provisions which prioritize fairness and transparency. The aspect that has the potential to be synchronized lies in the harmonization of the execution mechanism between the more flexible and fast procedures in the Civil Code and the more transparent and fair auction mechanism in KHES (Nisa & Salwa, 2024). However, the aspect that has not been synchronized is the uncertainty about debtor protection, especially in terms of regulating the rights of debtors to the proceeds from the sale of pawn objects and the procedures that must be followed to carry out executions in accordance with sharia principles. Therefore, it is important to improve the synchronization between the Civil Code and KHES to provide fairer legal certainty for all parties involved.

The legal relationship between rahin (debtor) and murtahin (creditor) in the context of the execution of Islamic pawn objects based on Article 1150 of the Civil Code and PERMA No. 2 of 2008 Compilation of Sharia Economic Law (KHES) reflects the interrelated rights and obligations in the pawn agreement. Article 1155 of the Civil Code gives the murtahin the right to execute the pawn directly if the rahin defaults, namely if the debtor fails to fulfill the obligation within the agreed period. (Penerapan & Fifo, 2023) In this case, the execution process can be carried out by parate execution (directly) or through the court, in accordance with Article 1156 of the Civil Code. This shows that murtahin has the authority to sell the pawn object to fulfill the debtor's unpaid debt.

Meanwhile, in the perspective of the provisions of Article 402 and Article 403 KHES provides a different approach to the pawn object. The execution of the object of pawn must be returned to the owner without change, and if there are buildings or plants on the land that is seized, the obligation to dismantle or cut down and return the object lies with the seizing party. In this context, the legal relationship between rahin and murtahin needs to pay attention to sharia principles that emphasize justice, transparency, and protection of debtor rights, which may not be fully reflected in the execution procedure according to the Civil Code, which is more oriented towards efficiency and speed of execution (Nisa & Salwa, 2024).

The legal event affecting this relationship involves a default by the debtor, which provides the basis for murtahin to execute. The provisions in these two regulations also reflect potential discrepancies in terms of debtor protection. While the Civil Code provides room for the debtor to file an objection or involve the court in the execution process, KHES focuses more on sharia-compliant auction procedures that provide more protection for the debtor, such as the obligation to clearly and precisely notify the debtor of the impending execution (Alam et al., 2023).

An important aspect to be synchronized between these two regulations is the determination of the execution mechanism, especially in aligning the more flexible and fast procedures in the Civil Code with the more transparent and sharia-compliant auction mechanism in KHES. However, the aspect that has not been synchronized is the uncertainty regarding the protection of debtors' rights in these two systems, especially in relation to the right to obtain sufficient information and clear procedures before execution is carried out. (Nisa & Salwa, 2024) This shows the importance of legal harmonization to create more equitable justice between debtors and creditors in Islamic pawn agreements.

Regulation of the execution of Islamic pawn objects based on Article 1150 of the Civil Code and PERMA No. 2 of 2008 Compilation of Sharia Economic Law (KHES), the legal relationship between *rahin* (debtor) and *murtahin* (creditor) is strongly influenced by the provisions governing the obligations of each party in the pawn agreement. Article 1155 of the Civil Code gives *murtahin* the right to execute pawn goods if *rahin* defaults, namely if the debtor fails to fulfill his obligations in accordance with the agreed agreement. This execution process can be carried out through *parate execution* (direct sale by *murtahin*) or through the court. (Surya, 2024) In the context of Article 402 and Article 403 KHES regulates the right of *murtahin* to carry out execution on collateral, with the condition that the goods must be returned without any changes after the debt is repaid, as well as the obligation of *murtahin* to dismantle or cut down plants if the mortgaged item is land.

A legal event that affects the relationship between *rahin* and *murtahin* is a default that occurs when *rahin* fails to repay his debt. In this case, if the *rahin* is unable to fulfill its obligations, the *murtahin* has the right to sell the object of pledge to cover the debt. However, in practice, there are challenges that arise such as fluctuations in the price of collateral (Quarshie, 2023) which can affect the outcome of the auction. In addition, difficulties in contacting *rahin* and *rahin's* ignorance of the consequences of default are also obstacles in the execution process.

The aspect of the relationship that has the potential to be synchronized between these two regulations is the execution mechanism, particularly in terms of the more flexible procedures in the Civil Code with the more transparent and fair auction procedures in KHES. However, an aspect that has not been synchronized is the protection of debtor rights, particularly in relation to clear notice and the debtor's understanding of the consequences of default. *Rahin* do not fully understand the consequences of breaching the contract, which can lead to tension and dissatisfaction. Therefore, it is important to synchronize regulations in order to create a fair balance between the rights of debtors and the obligations of creditors, and to increase the understanding and awareness of debtors regarding the legal consequences of pawn agreements (Quarshie, 2023).

Execution of sharia lien objects, the legal relationship between *rahin* (pledgor) and *murtahin* (pledgee) is regulated by the provisions in Articles 1155 and 1156 of the Civil Code as well as Articles 402 and 403 in the Compilation of Sharia Economic Law (KHES). In the applicable legal system, the relationship between *rahin* and *murtahin* is an agreement that binds both based on trust and responsibility. Article 1155 of the Civil Code gives the *murtahin* the right to sell pledged goods that are not redeemed by the *rahin* after a predetermined period, with the aim that the *rahin's* debt can be repaid through the proceeds of the sale (Alexander et al., 2023). Article 1156 further explains that if the *rahin* fails to perform its obligations, the execution of the pledged goods can be carried out through the court, where the judge will decide how the goods will be sold or settled.

The legal events that affect this relationship include default by the *rahin*, which is when the *rahin* cannot fulfill his obligation to pay his debt. *Murtahin* has the right to carry out execution, which often takes the form of an auction, to cover the value of *rahin's* debt (Nisa & Salwa, 2024) This execution process is in accordance with the provisions in Articles 402 and 403 KHES, which stipulate that the perpetrator of the seizure (in this case the *murtahin*) is obliged to return the

pledged object to the rahin, or dismantle the building and cut down the plants if the land is used as the object of the pledge, which indicates that the execution must be carried out in a legal and fair manner.

The aspect of the relationship that could potentially be synchronized between these two regulations is the mechanism of execution. In the Civil Code, execution can be carried out by parate execution (without court) or through the court, which is adjusted to the practice in KHES which regulates auction as a form of debt settlement with transparency and justice. (Wisnu et al., 2024) The auction practice regulated in KHES prioritizes transparent and fair sharia principles, which are in line with the murtahin's obligation to keep the collateral well until the auction is conducted. However, the aspect that has not been synchronized is the protection of rahin rights in the event of excess auction proceeds. In KHES, the excess proceeds from the sale of the pledged goods must be returned to the rahin, while in the Civil Code and the practices applied in some financial institutions, this may not always be enforced or may face technical obstacles. (Wijaya, 2022) In addition, the issue of fluctuating prices of collateral is also an obstacle that needs to be synchronized between these two legal systems. The fluctuating price of collateral such as gold can affect auction proceeds, which are sometimes insufficient to cover the entire debt of the rahin, necessitating further legal remedies to resolve the difference.

The legal relationship between rahin (pawn giver) and murtahin (pawn recipient), the roles and rights and obligations of both are regulated in the provisions of Articles 1155 and 1156 of the Civil Code as well as Articles 402 and 403 in the Compilation of Sharia Economic Law (KHES). Based on Article 1155 of the Civil Code, if rahin fails to fulfill its obligations (default), murtahin has the right to sell the pawned goods to pay off the debt. (Nisa & Salwa, 2024) In Article 1156, this can be done with or without going to court, provided that the pledgor must be given prior notice. Meanwhile, in the context of sharia law, Article 402 of KHES stipulates that the seizure or taking of the mortgaged object must be done without addition or deduction, which ensures that the rahin's right to the item remains protected, while Article 403 requires the obligation to return the object or cut down the plants on the land pledged as collateral, in the event of a taking or seizure (Surya, 2024).

There are several legal events that affect the legal relationship between rahin and murtahin. One of them is the occurrence of default by rahin, namely when rahin is not able to pay off his debt within the agreed period. This opens the way for murtahin to carry out the execution of pawn goods in accordance with existing regulations. This execution can be through direct sale of pawn goods (parate execution) or through auction (court), depending on the provisions agreed upon in the agreement and applicable regulations. A potentially synchronized aspect of the relationship between the Civil Code and KHES is the execution procedure. There are similar principles regarding the right of murtahin to sell pawned goods to pay off rahin's debt in the event of default, although in the Civil Code, execution can be carried out through the court, while in KHES, more emphasis is placed on transparency and fairness in the auction process which must be carried out in compliance with sharia principles. In addition, the principle of returning excess auction proceeds is also regulated in both systems, namely if the auction proceeds exceed the debt, the remaining proceeds must be returned to the rahin (Hariati, 2024).

However, there are aspects that have not been synchronized regarding the protection of

rahin rights in the two legal systems. In KHES, the principle of returning goods or land seized requires the recovery of the pawn object if no debt is covered (Alam et al., 2023). Whereas in the Civil Code, although there are provisions on notification before execution, in practice there is still uncertainty regarding the procedure for returning or recovering goods if the debt cannot be fully repaid. (Hariati, 2024) In addition, in the principles of Islamic pawn transactions, which require fairness and transparency, there is a potential misalignment between the value of the pawned goods and the actual debt, especially if the pawned goods have decreased in value (for example, gold or land that experience price fluctuations). Although the two regulations have similarities in the basic principles of pawn execution, there are differences in implementation that need to be synchronized, especially in the auction mechanism, protection of rahin rights, and handling fluctuations in the value of pawned goods (Athief et al., 2024).

The legal relationship between rahin (pawn giver) and murtahin (pawn recipient), based on existing data, we can identify the relationship that exists between the two parties in the execution of the pawn object, both in the perspective of Article 1150 of the Civil Code and PERMA No. 2 of 2008 in the Compilation of Sharia Economic Law (KHES). (Hariati, 2024) Articles 1155 and 1156 of the Civil Code give murtahin the right to sell pawned goods under certain conditions, especially when rahin fails to fulfill its obligations (default). In this case, the execution of the pledged goods is carried out after notice to the rahin, who has the obligation to pay off the debt or surrender the pledged goods for repayment. Articles 402 and 403 KHES regulate the obligation to return the pawned goods without addition or deduction, which puts forward the principle of fairness in the execution process and ensures that the collateral is returned to its owner after the debt is repaid (Alexander et al., 2023).

Aspects that have not been synchronized, namely in the procedure for returning pawned goods and handling price fluctuations of pawned goods. Article 1156 of the Civil Code allows execution through the courts if there is a dispute, while KHES prioritizes a more flexible mechanism in the return or recovery of goods seized. In addition, debt settlement mechanisms in the context of KHES often focus more on sharia principles that avoid usury and advocate fair and transparent transactions, while the Civil Code tends to be more formal in its application of execution through the courts. (Nisa & Salwa, 2024) Although there are similarities in principle between the two legal systems regarding the execution of pawn objects, differences in implementation and procedures, particularly in relation to the court, notification, and rahin's rights to excess auction proceeds, need to be bridged to create harmony between the Civil Code and KHES in the practice of pawn law in Indonesia (Iska et al., 2023).

The legal relationship between rahin (pawn giver) and murtahin (pawn recipient) in the execution of pawn objects is mainly influenced by regulations related to the rights and obligations of each party in the pawn agreement. (Iqbal et al., 2024) Based on Articles 1155 and 1156 of the Civil Code, if rahin fails to fulfill its obligations (default), murtahin has the right to execute the pledged goods with the aim of paying off the unpaid debt, by first giving notice to rahin. (O'Connor, 2022) This gives the murtahin the right to sell the pawned goods in public or through other legal procedures approved by the judge. Articles 402 and 403 of KHES emphasize that goods obtained through seizure (execution) must be returned to the owner without addition or deduction, which reflects the principles of justice and protection for rahin. In the execution of an

Islamic pawn, which is usually carried out in sharia-based financial institutions, the pawn receiver must pay attention to the rahin's rights to the pawned goods, including if there is an excess of sales proceeds that must be returned to the rahin (Hakim et al., 2024).

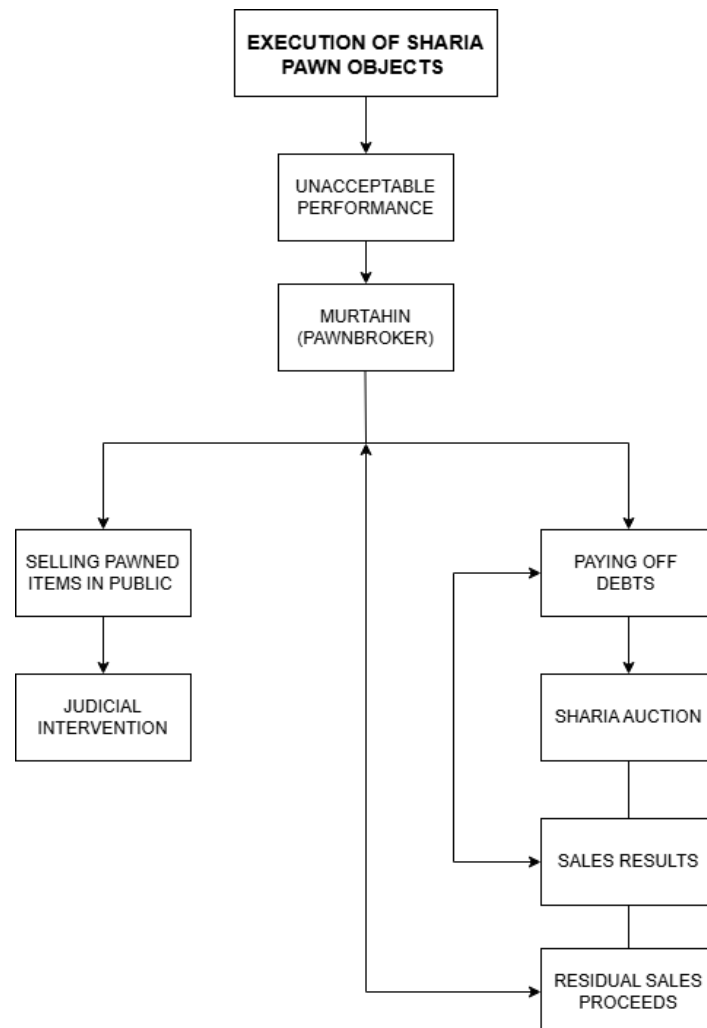


Figure 2. Execution of Sharia Pawn Objects

The legal events affecting this relationship involve situations where the rahin is unable to fulfill its obligation to pay the debt in accordance with the agreement. This leads to the execution of the pledged goods as a form of fulfillment of the obligation. Another influencing event is default by the rahin, which allows the murtahin to take legal steps, including the sale or auction of the pawned goods. (Mamadiyorov et al., 2023) A potentially synchronized aspect of the relationship between the Civil Code and KHES is related to the obligation to notify rahin, which is stated in Article 1155 of the Civil Code and Article 402 of KHES. Both norms emphasize transparency in execution, which must be carried out by giving prior notice to rahin (Hariati, 2024) Another aspect that can be synchronized is the right of rahin to get the remaining proceeds from the sale if the pawned goods are sold higher than the amount of debt owed.

However, the aspect that has not been synchronized is the procedure and requirements for execution between the two legal systems. Article 1156 of the Civil Code states that in the event

of a dispute, murtahin can apply for execution through the court, which can be different from the procedure in KHES, which is more flexible and prioritizes deliberation or negotiation between rahin and murtahin. In addition, the difference in the regulation of pawn and cessie is also an aspect that has not been fully synchronized, especially in terms of the transfer of receivables without direct notification to the debtor (cessus), which is regulated in Article 613 of the Civil Code. (Daniel & Budhisulistyawati, 2021) This raises the potential for legal loopholes, where the object of the pawn or receivable may be fictitious, as is the case with **cessie** made through an underhand deed, which is not as strong as an authentic deed in providing legal certainty of ownership of goods.

In the midst of the hustle and bustle of Islamic financial regulations that seek to cover every transaction, including the mechanism of execution of Sharia Pawn objects, there is a striking narrative of inconsistency between the Civil Code and KHES. The Civil Code offers an agile and nimble execution path, as if prioritizing the speed of settlement of receivables. On the other hand, KHES comes with a spirit of transparency and fairness through a structured auction mechanism. However, behind this difference in approach lies the uncertainty that looms over the minds of debtors (Hakim & Prabandari, 2021) They are like walking in the dim light of information, without certainty of rights protection, especially the right to know clearly the execution procedures that will befall their assets. Furthermore, fluctuations in the price of collateral become high which adds to the uncertainty, as if playing with the value of the assets at stake. However, a glimmer of hope for harmonization emerges in the obligation to notify rahin (pledgers), a common thread that is intertwined between Article 1155 of the Civil Code and Article 402 of KHES, and in the right of rahin to enjoy the excess proceeds from the sale of pledged goods, a justice that deserves to be juxtaposed. (Ashfahany et al., 2023).

D. CONCLUSIONS

The conclusion of this research is that there are significant inconsistencies between the provisions contained in the Civil Code (KUH Perdata) and the Compilation of Sharia Economic Law (KHES) regarding the execution of sharia pawn objects. The Civil Code gives the creditor (murtahin) the right to execute the pawn object through direct sale (parate execution) or through the court, after the debtor (rahin) fails to fulfill his obligations. Meanwhile, KHES stipulates that the execution of the pawn object must be carried out through a sharia auction that prioritizes sharia principles, with the aim of ensuring justice and transparency. This inconsistency arises in the difference in execution mechanisms between the two legal systems, with the Civil Code being more flexible and quick in the execution process, while KHES emphasizes on a more structured and sharia-based auction procedure. In addition, the protection of debtor rights in these two regulations has not been fully synchronized, especially in relation to clear notification to debtors and procedures for returning goods if there are excess sales proceeds.

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