

## Legal Certainty in the Renewal of Mudharabah Contracts: An Analysis from the Perspective of DSN-MUI Fatwa

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**Abstract:** The dynamic nature of *muamalah* allows for legal adaptation and development (*mutaghayyirāt*) in response to contemporary economic realities. One of the contracts that has undergone significant *ijtihād*-based development is the *mudharabah* contract. In its classical conception, *mudharabah* is founded on trust (*amanah*) between the capital provider (*shahib al-māl*) and the entrepreneur (*mudhārib*), without requiring collateral as an essential element of the agreement. However, the growing complexity of modern Islamic financial institutions has led to the introduction of collateral requirements in *mudharabah* financing as a risk mitigation mechanism. This practice has generated scholarly debate regarding its compatibility with the original principles of *mudharabah*. As the authoritative body responsible for issuing collective legal opinions (*fatwa jama'ī*) in Indonesia, the Indonesian Council of Ulama (*Majelis Ulama Indonesia*—MUI), through the National Sharia Council (DSN-MUI), plays a strategic role in guiding the development of Islamic economics, finance, and business. The DSN-MUI Fatwa concerning *mudharabah* financing provides legal justification for the use of collateral under specific circumstances, reflecting an adaptive form of contemporary Islamic legal reasoning. This study employs a normative legal research method with a library-based approach. It aims to analyze the renewal of the *mudharabah* contract through the *ijtihād* embodied in the DSN-MUI Fatwa on collateral in *mudharabah* financing and to examine its conformity with the objectives of Islamic law (*maqāṣid al-sharī'ah*). The findings indicate that the inclusion of collateral in *mudharabah* contracts emerges from the need of Islamic financial institutions to safeguard entrusted funds, minimize moral hazard, and ensure contractual compliance. From the perspective of *maqāṣid al-sharī'ah*, the collateral requirement can be justified as an instrument for protecting wealth (*ḥifẓ al-māl*) and promoting legal certainty, provided that it does not alter the fundamental nature of *mudharabah* as a profit-and-loss sharing contract. This study contributes to the contemporary discourse on Islamic contract law by demonstrating how collective *ijtihād* can reconcile classical *fiqh* principles with modern financial governance needs. Furthermore, it enriches the theoretical discussion

on the flexibility of Islamic commercial law and provides a *maqāṣid*-based framework for evaluating contractual innovations in Islamic finance.

**Keywords:** Collateral, Contract Renewal, DSN-MUI Fatwa, Islamic Finance, Maqāṣid al-Sharī'ah, Mudharabah Contract.

## Introduction

Islamic banks, as we know them, carry out their operational activities based on the principle of profit sharing, free from the element of usury. As the understanding of riba is explained in the Word of Allah SWT:

... وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ آلَ رِبَاً ...

"...And Allah has legalized buying and selling and forbidding usury.... (QS. Al-Baqarah: 275).

The products offered by conventional banks have similarities with those of Islamic banks, differing only in the prohibition of riba, gharar, and maysir, and are determined by Sharia or Islamic principles. Therefore, products offered by Islamic banks must avoid these prohibited practices. One of the contracts in Islamic banks' operational activities is the financing contract. (Syarvina, 2021a)

Mudharabah financing is one of the pillars of the sharia economy, embodying Islamic principles to achieve community justice through a profit-sharing system. In the context of banking, *mudharabah* financing is a business cooperation agreement between the bank as the owner of the funds (*shahibul maal*) and the customer as the fund manager (*mudhârib*) to carry out business activities with a profit and loss sharing ratio (*profit and loss sharing*) according to an upfront agreement. In *mudharabah* financing, the relationship between the bank and the fund management customer is based on the principle of trust (*amanah*), meaning that the fund manager (*mudhârib*) is trusted to manage *the mudharabah* capital, he is not subject to compensation for damage, destruction, or loss that befalls him as long as it is not caused by negligence, carelessness, or his actions that violate the conditions in the agreements. Because trust is the most important principle in *mudharabah* financing transactions, it distinguishes financing that uses mudharabah contracts from other contracts. Based on this principle, the owner of the capital (*sahibul mal*) cannot, in principle, demand any guarantee from *the mudhârib* to return the capital.

However, as mudharabah financing has developed in practice, some financial institutions or Islamic banks have begun to require collateral as a condition in mudharabah financing, due to its perceived risk to capital owners or *shahibul malls*. For example, in Small and Medium Enterprise (SME) financing products or small and medium business financing, Islamic banking makes collateral a condition for financing, even though this is contrary to the concept of mudharabah financing as explained by fiqh scholars and also clashes with QS. Al-Baqarah 283 explains the meaning of guarantees: that, in practice, they do not become a necessity, because the application of guarantees is replaced by mutual trust or trust.

So in answering this problem, the Indonesian Ulema Council then issued a Fatwa on *Mudharabah* so that it can be a guideline for LKS in its financing practice, namely in

the DSN-MUI Fatwa Number: 07/DSN-MUI/IV/2000 concerning *Mudharabah* Financing, in number 7 it is explained that "in principle, in *mudharabah* financing there is no guarantee, but in order for the mudhârib not to commit irregularities, the Sharia Financial Institution can ask for a guarantee from the Mudhârib or a third party, the guarantee can only be disbursed if the mudhârib is proven to have violated the things that have been agreed upon in the contract". (D. S. N. MUI, 2000)

## Method

This study employs a normative juridical research method that examines and analyzes legal norms derived from Islamic jurisprudence (fiqh), fatwas, and other relevant legal sources governing Islamic financial transactions. The research adopts a library research approach by systematically reviewing primary and secondary sources, including classical and contemporary fiqh literature, scholarly journal articles, books, legal documents, and fatwas related to Islamic banking and finance. The primary object of this study is the reformulation of the mudharabah contract through DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000 concerning Mudharabah Financing, particularly the provision regarding the use of collateral (*rahn*) in mudharabah transactions, which is subsequently analyzed from the perspective of Maqāṣid al-Sharīʿah.

Data were collected through an extensive literature review and analyzed qualitatively using descriptive-analytical and content analysis techniques. The analysis was conducted through several stages, including the identification and classification of relevant legal materials, the interpretation of fiqh doctrines and fatwa provisions, the comparison between classical and contemporary perspectives on mudharabah, and the critical evaluation of the legal reasoning underlying the permissibility of collateral in mudharabah contracts. The findings were then assessed using the framework of Maqāṣid al-Sharīʿah to determine the extent to which the incorporation of collateral contributes to the realization of the objectives of Islamic law, particularly the protection of wealth (*ḥifẓ al-māl*), the promotion of justice (*al-ʿadl*), legal certainty, and public welfare (*maṣlaḥah*).

To ensure the credibility and trustworthiness of the research findings, data validation was conducted through source triangulation by comparing information from various fiqh references, academic publications, and authoritative fatwas. In addition, the consistency of legal interpretations was maintained through cross-source verification and a transparent audit trail documenting the stages of data collection, selection, and analysis. Through this methodological approach, the study contributes to the contemporary discourse on Islamic financial contract reform by demonstrating how classical mudharabah principles can be adapted to modern banking practices while remaining consistent with the higher objectives and ethical foundations of Sharīʿah.

## Results and Discussion

### The Meaning of *Mudharabah*

*Al-Mudharabah* comes from the word *dharb*, which means to hit or walk. The meaning of hitting or walking here is the process of a person hitting their foot while running a business or traveling to trade. Mudharabah, according to the imam of the

madhhab, is broadly defined as "Akad shirkah in profit, one side is the owner of the property and the other party is the owner of the service." The term *Mudharabah*, in several references, is explained regarding the definition of a *Mudharabah* contract, that *Mudharabah* is a form of contract between two parties where one party plays the role of the owner of capital (*shahibul-maal*) and entrusts a certain amount of capital to be managed by the other party, namely the business executor (*mudhârib*), to obtain profits. (D. W. Muhammad, 2011)

So, according to the author, *mudharabah* is a cooperation contract between two parties where one party as the owner of capital (*shahibul-maal*) entrusts his money to the other party as the manager (*mudhârib*) for the purpose of running a business and the profits are divided according to their agreement as stated in the contract, which *is mudhârib* donate their energy, time and manage their partnership based on pre-agreed proportions. The losses and risks arising under the mudharabah contract will be borne by the investor or the owner of the capital (*shahibul-maal*) himself, unless deliberate mistakes, negligence, or breach of agreement by the *mudhârib* cause the losses. If the manager's fraud or negligence causes the loss, the manager must be held responsible. (Saeed, 2004)

### **The Legal Basis of Mudharabah**

The permissibility of the procedure for implementing mudharabah *financing* contracts is also based on the consideration of the benefits for both parties, so it is hoped that nothing detrimental will occur between the two. In the review of fiqh, there is no prohibition as follows: (Fauzan, 2020)

والأصل في العقود والمعاملات الصحة حتى يقوم دليل على البطلان والتحریم

"The original law in all forms of *muamalah* is permissible unless there is evidence that prohibits it."

The basis of *muadharabah* law is the Qur'an; however, there is no clear mention of mudharabah in the Qur'an, even though the scholars among Muslims have agreed on the permissibility of mudharabah contracts. This can be seen based on the *mudharabah* law as follows:

First, the Word of Allah QS. al-Baqarah [2]: 283:

فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ ۗ

Meaning: *If some of you believe in others, let the trusted one fulfill his mandate (his debt) and let him fear Allah, his Lord*

Second, the Hadith of the Prophet narrated by Ibn Majah from Shuhaib:

"From Shuhaib Ra: The Prophet (peace and blessings of Allaah be upon him) said, "There are three things in which there are blessings, namely buying and selling temporarily, *ber-girâdh* (giving capital to someone with a profit sharing), and mixing wheat with poetry for food at home, not for sale. " (HR. Ibn Majah from Shuhaib). (Al-Asqalani, 2007)

Third, *Ijma*, *Ijma*. It is narrated that several companions handed over (to people, *mudhârib*) the property of orphans as mudharabah, and no one denied them. Therefore, it is seen as *ijma*'. (Wahbah Zuhaili, al-Fiqh al-Islami wa Adillatuhu, 1989, 4/838) (Andiyansari, 2020)

Fourth, *Qiyâs*. According to Wahbah al-Zuhaili, the basis for the evidence of *qiyâs* is that *mudharabah* is *qiyâs*ed in *musaqâh* (telling someone to manage the garden). (Aryanti, 2018a)

### Distribution of *Mudharabah*

Broadly speaking, there are two types of *mudharabah* contracts: first, *Mudharabah Muthlaqah*, also known as unrestricted *mudharabah*, is a form of cooperation that gives the *mudhârib* the freedom to manage capital in any business that can bring profits, as long as it does not conflict with sharia principles. (Burhanuddin, 2009) Second, *mudharabah Muqayyadah*, namely the owner of capital (*shabibul-maal*), limits or conditions the *mudhârib* in the management of their capital, for example, only to perform *mudharabah* in certain fields, methods, times, and places. In modern economic terms, the type of *Mudharabah Muqayyadah* is called a *restricted Investment Account*. (Syarvina, 2021b)

### Fatwa DSN-MUI

The Arabic word *fatwa* is also spelled *al-futyâ* or *al-fatwâ*. Meanwhile, issuing a *fatwa* uses the word *al-ifta*, which is the *masdar* form of the verb *aftâ-yuftî*, meaning to explain. (W. I. Muhammad, 2019) *Fatwa* is also an Arabic word that means a legal statement about a problem that arises for those who seek it. Whoever wants to know Sharia law on religious matters should ask a trusted person known for their expertise in religious law (to get clarification on the law). Thus, a *fatwa* is the explanation of the law of Allah SWT, based on Sharia principles, in general and comprehensively. The legal information provided is called a *fatwa*. The person who asks for a *fatwa* is called a *mustafti*, while the one who is asked to give a *fatwa* is called a *mufti*. At the same time, *al-iftâ'* is the process of explaining the *fatwa* by a *mufti*. (D. S. N. A. S. MUI, 2014) So it can be concluded, according to the author, that a *fatwa* is to provide an explanation of *sharia* law (Islam) based on the Quran, *sunnah*, *ijmâ'*, *qiyâs*, or other *shari'i* postulates to answer the question of *mustafti* (*fatwa* requester), regardless of whether the petitioner of the *fatwa* is an individual, group, or institution. *Fatwas* also do not have binding force on *Mustafa*.

In general, MUI has prepared Guidelines for the Determination of *Fatwa* of the Indonesian Ulema Council Number: U-596/MUI/X/1997. The guideline states that every *fatwa* must be a legal opinion with the strongest basis and that benefits the *ummah*. (Zakirman, 2016) The basis for the MUI's authority to issue a *fatwa* is *ijmâ' ulama*. Imam Al-Shafi'i in the book *Al-Risalah* said, "No one should at any time talk about anything related to *halal* and *haram* but must have a scientific basis. The scientific basis of a problem is the Quran, *Sunnah*, *ijmâ'* and *qiyâs*". (W. I. Muhammad, 2019) The MUI in its *fatwa* also does not reject legal postulates other than those agreed upon by the scholars, such as: *Istihsan*, In general, *Istihsan* is an effort to find the soul of the law based on general principles, the purpose of which is to trace the purpose of the Sharia of the law in the form of identifying *mashlahat*. *Istisbab*, according to the DSN MUI *Fatwa* in 2000, is the preservation of a legal provision that has existed in the past until there is evidence that changes it. *Sad al-dzari'ah*, In the proposal of *fiqh*, what is meant by *dzari'ah* is something that is a means to what is forbidden or *halal*. If there is something as a means to the forbidden or to bring damage (*mudharat*), then the means must be closed or prevented. Moreover, other postulates that scholars still debate.

Furthermore, in discussing the problem, MUI first considers the opinions of previous madhhab and fuqaha imams. Find out the basics and forms of *istidlal*, and consider what is most beneficial for the ummah. If the issue has only one opinion, the MUI (in this case, the fatwa commission or special team) can issue a fatwa. The law that has been agreed upon through *ijmâ'* is mandatory to be followed. If Muslims agree on one law, no one should deviate from that opinion. (Zakirman, 2016) The National Sharia Council of MUI was formed to realize Muslims' aspirations regarding economic issues. Encouraging the application of Islamic teachings in the economic and financial fields, which are carried out in accordance with the guidance of Islamic law. Among the tasks entrusted to the National Sharia Council is issuing fatwas on sharia economics to serve as a guideline for regulators and practitioners. Some of the fatwas issued by the MUI National Sharia Council include waqf, insurance benefits, investment benefits in Sharia Life Insurance, sharia deposit certificates, and others. (Muzakki, 2020)

### ***Mudharabah on Sharia Banking***

Broadly speaking, the risk analysis of financing in mudharabah contracts includes NCC and NUC aspects. The risks that appear dominant in financing through contract formation using the NUC pattern, such as mudharabah, are identified, assessed, and measured by evaluating all risks that debtor customers may incur. Guarantee, as a measure of the debtor's wealth, can be a form of bank confidence. With the guarantee in *mudharabah financing*, *Islamic banks gain confidence in their debtor customers' financial ability*. Both the ability of debtor customers to provide *cash collateral* and collateral in the form of fiduciary and dependency rights.

In line with the development of Sharia financial institutions, scholars are increasingly required to provide input to advance these institutions. In anticipation of these demands, the Indonesian Ulema Council (MUI) established the National Sharia Council (DSN), which is considered an efficient step to coordinate clerics in responding to economic and financial issues. In addition, DSN is expected to function as a driver for the application of Islamic teachings in economic life. Therefore, DSN participates proactively in responding to the development of Indonesian society in the economic and financial fields.<sup>93</sup> One of the DSN-MUI fatwa products related to the application of fund distribution is the DSN-MUI fatwa No. 07/DSN-MUI/IV/2000 on *Mudhârabah Financing*.

If the bank does not have any guarantee from its debtor customer, it cannot enforce its rights when the debtor customer commits a moral hazard action that results in NPF for the Islamic bank. It is even possible that the debtor customer flees, leaving the bank without assets to enforce its debtor obligations. Islamic banks, when carrying out mudharabah contracts, make agreements with customers regarding the specified profit ratio in the contract. Several factors influence the comparison of profits, including customer agreement (*mudhârib*), expected profits, market response, ability to market goods, and the validity period of the contract.

The form of mudharabah *contract* applied by Islamic banking uses two forms of contracts, namely: (Aryanti, 2018b)

1. *Mudharabah muqayyadah on the balance sheet*

*Mudharabah muqayyadah on the balance sheet* (tied investment), namely the owner of the fund (*shahibul maal*) limits or conditions the *mudhârib* in fund management, such as, for example, only doing *mudharabah* in certain fields, methods, times, and places. The conditions of the *mudharabah muqayyadah contract on the balance sheet* are: the financier sets the conditions; both parties agree on the terms of the business and profits; the bank issues a special proof of investment; and the bank separates the funds.

## 2. *Mudharabah muqayyadah of the balance sheet*

This *mudharabah muqayyadah* off-balance sheet is a type of *mudharabah* in which the distribution of mudharabah funds is made directly to the business executor, with the bank acting as an intermediary (*arranger*) that brings together the fund owner and the business executor. Fund owners can set conditions that banks must comply with when selecting business activities to finance and when implementing their activities.

The conditions for *mudharabah muqayyadah off-balance sheet* are: direct distribution to customers, banks receive commissions, banks issue special investment proofs, and banks record in administrative accounts. The failure of an undertaking in the *Mudharabah system* is divided into two categories: *First*, if the business failure or loss is caused by pure business competition, then the loss is borne by the capital owner. *Second*, if a business loss is due to intentional actions by business actors, the cost of compensation for business losses is borne by those actors.

### **Guarantee in DSN's fatwa on *mudharabah financing***

The collateral can be in the form of *cash assets* (current assets) or *fixed assets* (fixed assets). The provisions of goods that can be used as collateral in *mudharabah financing* are as follows: (Nurhayati et al., 2018)

1. *Fixed Asset*, namely, the guarantee is in the form of a house certificate, a motorcycle guarantee, a car guarantee (BPKB) at least 10 years old, and a copy of the STNK.
2. *Cash Assets*, namely, Deposits, current accounts, precious metals (gold and silver), and receivables.
3. *Guarantee (personal/company): the company that guarantees the guarantee (company), or Personal guarantee: mudhârib who recommends others as the guarantee.*

As stipulated in Law Number 21 of 2008 concerning Sharia Banking. As well as the fatwa of the National Sharia Council Number 07/DSN-MUI/IV/2000 in the General Provisions of *mudharabah financing*, in the seventh point, it is explained that: "In principle, in *mudharabah financing* there is no guarantee, but in order for *the mudhârib* not to commit deviations, LKS can ask for guarantees from *mudhârib* or third parties. This guarantee can only be disbursed if *the mudhârib* is proven to have violated the matter mutually agreed upon in the contract.

### **Maqashid Shariah: Definition of *Maqashid Syariah***

*Maqashid Syariah* is composed of two words: Maqashid (مقاصد), the plural form of maqshid (مقصد), which can be interpreted as intending, intending, and willing. (Paryadi, 2021) Meanwhile, Sharia can refer to legal provisions, regulations, and laws that have the same meaning and aim as Sharia. (Nursobah et al., 2022) In the series of two words, Maqashid sharia can mean a system that aims to realize the values of Islamic teachings, thereby creating a happy life in *fiddunya wal akhira* by taking all

benefits and rejecting harm. Thus, benefits for humanity will be realized. (Sholichah, 2022)

*Maqashid Sharia* is the goal of realizing the benefits for humans in this world and the hereafter. In terminology, sharia maqashid is composed of 2 (two) words, namely *maqashid* and Sharia. *Maqashid* means purpose, and Sharia are the teachings, rules, and laws of Allah that are revealed to his servants to achieve the welfare of the world and the hereafter. Given the existence of the Sharia maqashid, there is synergy between Sharia as law and the achievement of goals in providing benefits. (Habibah, 2020)

### **The Purpose of *Maqashid Syariah***

According to Ash-Syatibi, Maqashid Syariah can be grouped into two categories, namely: the first is related to the purpose of Sharia (God). The second concerns the purpose of the Mukallaf (people who are legally able to act). (Tono, 2005) So, it can be seen from two points of view, namely:

1. *Maqashid Al-Syariah* (God's Purpose)

Maqashid al-syariah contains four aspects, namely:

1. The initial goal of Sharia is the benefit in this world and in the hereafter
2. Sharia must be understood.
3. Sharia is a taklifi law that must be carried out
4. The purpose of Sharia is to bring people under the protection of the law (Kurniawan & Hudafi, 2021)
5. *Maqashid Al-Mukallaf* (Tujuan Mukallaf)

According to asy-syatibi, it is divided into three levels: dharuriyat, hajiyat, and tahsiniyat. (Effendi & Zein, 2017)

*Daruriyyat* Linguistically means urgent or emergency need. Five most fundamental things fall into this type, whose interests must always be maintained or protected:

1. Protecting Religion (*al-Din*). Religion is the most important of all basic needs. To protect religious honor, the Shari'ah stipulates severe penalties for religious crimes. Religion ranks first, because the entire teachings of the Shari'ah direct people to act according to His will and God's pleasure. (Finarti & Putra, 2015)
2. Protecting Life (*al-Nafs*) In Islam, human life is something very valuable and must be taken care of and protected. A Muslim is forbidden to kill others or himself.
3. Protecting reason (*al-Aql*). What distinguishes humans from animals is reason; therefore, we are obliged to protect it. With human intellect, it can distinguish between good and bad. (Bahsoan, 2011)
4. Protecting the Family/lineage (*al-Ird*) and *maintaining* the lineage by marrying religiously and stately, and financing family life from the results that are pleasing to Allah for its continuation from one generation to another. All of them are forms of preserving healthy, clean offspring in a peaceful atmosphere.
5. Protecting Property (*al-Mal*) Property is very important and valuable, but Islam prohibits us from acquiring property illegally, such as by stealing or corrupting others.

### **Analysis of MUI Considerations in Issuing DSN Fatwa Number: 07/DSN-MUI/IV/2000 concerning Collateral in *Mudharabah***

Broadly speaking, the contracts for Islamic banks are NCC and NUC. The risks that appear dominant in financing through contract formation using the NUC pattern, such as mudharabah, are identified, assessed, and measured by identifying, assessing, and measuring all risks that may be carried out by the debtor customers. With effective risk management for debtor customer financing, an Islamic bank's management can make the right decision on whether to disburse financing. Risk analysis for every mudharabah financing activity is a must, ensuring positive feedback for banks and their customers. The risk analysis carried out must be systematic and thorough by covering 3 important aspects inherent in these two types of financing, namely: (Sofwan, 1980)

1. *Business risks tend to arise from the first way out and are influenced by: industrial risk, market risk, financing restructuring, force majeure circumstances, and others.*
2. *The shrinking risk arising from a reduction in financing value in the second way out is influenced by Unusual business risk and the selected profit-sharing system.*
3. *Disaster risk*

The risks faced by Islamic banks from the distribution of *mudharabah* financing are very large because NUC financing is completely dependent on market mechanisms and the reliability of debtor customers in managing investments, which allows NPF for banks. This risk factor is what makes Islamic banks very cautious and limits the amount of funds that can be disbursed for *mudharabah* financing. (Rain, 2014)

Guarantee, as a measure of the debtor's wealth, can be a form of bank confidence. In mudharabah financing, Islamic banks gain confidence in their debtor customers' financial ability. Both the ability of debtor customers to provide *cash collateral* and collateral in the form of fiduciary and dependency rights.

In the methodology for making a law, MUI follows *the majority* of scholars in each process. Starting from the agreed sources of law (al-Quran, sunnah, *ijmâ'* and *qiyâs*) to the sources of law that classical scholars, such as *istihsân*, *istishâb*, *sad al-dzari'ah*, and others debate. By paying attention to and considering the opinions of the previous madhhab and fuqaha imams. Find out the basics and forms of *istidlal*, and consider what is most beneficial for the ummah. If the issue has only one opinion, then the MUI (in this case, the fatwa commission or special team) can take it as a fatwa decision. The law that has been agreed upon through *ijmâ'* is mandatory to be followed. If Muslims agree on one law, no one should deviate from that opinion. (Zakirman, 2016)

The legal basis stipulated in the DSN fatwa Number: 07/DSN-MUI/IV/2000 concerning *mudharabah* financing is: (D. S. N. MUI, 2000)

1. The Word of Allah QS. Al-Nisa' Verse 29

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

Artinya : "Hai orang yang beriman! Janganlah kalian saling memakan (mengambil) harta sesamamu dengan jalan yang batil, kecuali dengan jalan perniagaan yang berlaku dengan sukarela di antaramu ..."

1. Hadith of the Prophet

Meaning: "Must not harm oneself or others." (Narrated by Ibn Majah, Daraqutni, and others from Abu Sa'id al-Khudri)

1. Ijma'. It is narrated that several companions handed over (to people, *mudhârib*) the property of orphans as mudharabah, and no one denied them. Therefore, it is seen as ijma'. (Wahbah Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, 1989, 4/838)
2. Qiyâs. Mudharabah *transactions* are qiyased to *musaqâh transactions*.
2. Rules of fiqh

الأصل في المعاملات الإباحة إلا أن يدل دليل على تحريمها

Meaning: "Basically, all forms of muamalah are permissible unless there is evidence that prohibits it."

Based on these provisions, the collateral position is not to *cover* the capital issued by the bank, and collateral is not a principal thing in Mudhârabah financing; in other words, Mudhârabah financing without collateral can be approved/valid. So, the position of the guarantee according to the DSN-MUI Fatwa No. 7 of 2000 concerning Mudhârabah is to avoid deviations on the part of the fund management customer, so as not to mess with managing Mudhârabah financing funds. Guarantees are not a must-have or mandatory condition for every *Mudhârabah financing*. (Karim, 2011) This provision is in accordance with the rules of ushul fiqh, which reads:

أَيْنَمَا وَجَدْتَ الْمَصْلَحَةَ فَتَمَّ حُكْمُ اللَّهِ

Meaning: "Where there is benefit, there is the law of Allah."

الضَّرُّ يُزَالُ

Meaning: "Harm must be eliminated".

The arguments for the permissibility of collateral in *mudhârabah* transactions in Islamic banking are as follows: (Adam et al., 2016)

1. The use of Islamic bank services is large, so that the capital/bank owners do not know for sure the credibility and capabilities of the *mudhârib*, unlike the practice of *mudhârabah* in the time of the Prophet.
2. Commitment to the values of belief as a reason (*'illat*) does not need a guarantee, in accordance with the situation and conditions of society in general, so that the reason (*'illat*) can change.
3. Relating to the risk of breach, negligence, and violation of predetermined agreements.

### **Review of Maqashid Syariah on DSN Fatwa Number: 07/DSN-MUI/IV/2000 concerning Guarantee in Mudharabah**

If you look at the application of guarantees within the scope of *maqāshid al-shari'at*, the guarantees required by the *sharia bank* in the akad *muḍārabah* are special acts that have the purpose of benefit for the parties, both between *sh ibal-mā l* and *muDharma*. Meanwhile, if you look at *maqāshid al-syarī'ah al-juz'īyyah*, the application of guarantees aims to alleviate the bank's difficulties in the event of a dispute. This application is in line with what al-Syāṭibī said that maqāshid syarī'ah is the guardianship of the purposes of beings, be they *ḍarūriyyāt*, *hājiyyāt*, and *taḥsīniyyāt*. (Kurniawan & Hudafi, 2021) Through these three interests, it will be determined whether the application of guarantees is mandatory. (Mayangsari R & Hasni Noor, 2014)

Along with changes in people's behavior, the application of the guarantee law has become a blessing for Sharia banks. This is due to the following: *First*, collateral provides a sense of security for the capital given to *mudharib*. *Second*, the guarantee can convince *ṣāhib al-māl* that *mudharib* is able to carry out his obligations, and *Third*, if there is a loss of capital due to the negligence of *ṣāhib al-māl*, then the collateral can be sold. Behind all the values of *maslahah*, there is a value of *mafsadat* that is obtained for *ṣāhib al-māl* if there is no guarantee, namely, *first*, *ṣāhib al-māl* will have difficulty getting his capital back if the *mudharib* does a bad deed with that capital, such as running away or running away with his capital. *Second*, *ṣāhib al-māl* (*sharia* banks) will have difficulty returning funds to customers who have entrusted them.

Seeing that the guarantee has the value of *maslahah* and *mafsadat* for both parties, the guarantee in the mudharabah financing contract falls under the element of *al-ḍarūriyyāt al-khams*, because it threatens both parties and other parties, such as customers who save at *Sharia* Banks. To see how important the law of guarantee in working capital financing in the view of *maqāṣid syarī'ah* can be seen from the five elements below: (Nopriansyah et al., 2023)

**a) *Hifẓ al-dīn***

There is no guarantee in the contract of *mudharabah*, including damaging Religion. This is because, without collateral, it will allow a person to do evil with the capital given, so that the person eats property that does not belong to him in a null way or that is not pleasing to Allah, because Allah commands us to protect Religion (*hifẓ al-dīn*) by not taking property illegally.

**1. *Hifz Al-Nafs***

Taking care of the soul is the most important thing for life, we are obliged to keep the soul in a healthy and holy state, with the guarantee in the mudharabah contract a person has more sense of responsibility so that using the financing according to the agreement at the beginning of the contract and the soul also feels calm because it runs the financing with a sense of responsibility, but if there is no guarantee a person can feel indifferent to his obligations so that he can eat the property in a way that Allah forbids, therefore it can disturb our souls.

**2. *Hifz Al-'aql***

Reason plays a dominant role in determining the good and bad of a work: if a work is good and correct according to reason, then the *aql* is considered good and correct. The existence of guarantees in the mudharabah contract can prompt the *mudharib* to manage the financing properly and in accordance with the agreement at the beginning of the contract, resulting in the work running smoothly and correctly according to reason. However, when there is no guarantee, there may be thoughts that do not manage the financing, so it eats up property in the wrong way, which can damage our intellect. (Scott, 2018)

**3. *Hifz Al-Nasl***

Eating property that is not his right, be it by cheating, stealing, robbing, or others, will have an impact on our descendants. If there is no guarantee in the *mudharabah* contract so that *the mudharib* does not have a sense of responsibility in the settlement of the financing contract, and then he runs away or deceives the money, and eats it with his

family, then it will damage his descendants, because he consumes or uses something from the money that is haram.

#### 4. *Hifz Al-Mal*

Getting property must be in a halal, good, and correct way. Muslims are taught to protect their property from impurities and usury and so on. In addition, humans are obliged to protect their wealth from those who seek to rob them of it. With the guarantee in the mudharabah contract in the Islamic financial institution, the Islamic financial institution is responsible for controlling the capital given by the bank (shahibul mal) to the Mudhârib, because the capital provided by the bank to the customer is basically savings or deposits from other customers, so many have the responsibility to maintain the property.

*Daruriyyât al-Khams* above shows that humans are well-positioned to carry out muamalah transactions. The governance of muamalah transactions is carried out with full sincerity solely for the sake of Allah. If a work or amâl deed is done with sincerity, then *maqâšid syari'ah* will be formed and realized, and will have implications for sincerity, solemnity, so that that comfort will appear in life. In principle, collateral is a form of maintaining property (*hifz al-mâl*) that plays an important role in reducing risks and realizing benefits for both the *šhib māl* and the *mudârib*. Therefore, the guarantee applied by the bank as protection for property (*hifz al-mâl*) constitutes an aspect of *daruriyah* in *maqâšid syari'ah*.

### Conclusion

Based on the analysis carried out, it can be concluded that the permissible use of collateral in mudharabah contracts in Islamic banking is based on several important considerations. First, the increasing number of users of Islamic banking services makes it impossible for the bank as *šhib al-mâl* to know exactly the level of credibility and capability of each *mudhârib*. Second, the concept of *trust*, which in classical times was the main reason for the lack of guarantees in *mudharabah* contracts, has been adjusted as social and economic conditions have changed. The change is in line with the rules of fiqh *al-h ukmu yadûru ma'a' illatibi wujuand wa' adaman* (the existence of the law depends on the existence or absence of 'illat), so that the need for guarantees can be justified when the factors behind the previous law have changed. Third, the existence of guarantees functions as a risk-mitigation instrument against the possibility of violations, negligence, or deviations from the agreement stipulated in the contract.

From the perspective of *maqâšid al-syari'ah*, the existence of collateral in mudharabah financing serves to benefit the parties while preventing harm. The guarantee is related to the protection of the five main objectives of the Shari'ah (*al-ğ aruriyyât al-khams*), namely *hifz al-dîn* (religious protection), *hifz al-nafs* (protection of the soul), *hifz al-'aql* (protection of reason), *hifz al-nasl* (protection of offspring), and especially *hifz al-mâl* (protection of property). This is because the risk of failure or misuse of financing not only affects banks and *mudhârib* but can also harm other parties, including customers who deposit funds in Islamic banks. In addition, the guarantee serves to prevent moral hazard by business partners (*mudhârib*). From a psychological perspective, the existence of guarantees can also increase the *mudhârib's*

sense of responsibility and motivation to run a business more seriously, professionally, and with greater planning, as well as to build adequate financial capabilities to fulfill obligations arising from mudharabah contracts agreed with Islamic financial institutions. Thus, the application of guarantees in *mudharabah* contracts can be seen as a form of adaptation of Islamic law that aims to maintain a balance between the principle of trust and the need to protect the interests of the parties in contemporary Islamic financial practices.

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### **Author Contributions Statement**

Hidayat Darussalam conceived and designed the study, developed the research framework, conducted the literature review, collected and analyzed the data, interpreted the findings, and drafted the manuscript. Ava Martin contributed to the research design, critically reviewed the conceptual and methodological aspects of the study, assisted in data interpretation, revised the manuscript for intellectual content, and supervised the overall research process. Both authors have read and approved the final version of the manuscript and agree to be accountable for all aspects of the work.

### **AI Usage Statement**

The authors declare that artificial intelligence (AI)-assisted tools were used solely to support language refinement, grammar checking, and editorial improvements during the preparation of this manuscript. AI tools were not employed for data collection, data analysis, interpretation of findings, or the generation of original scientific conclusions. All intellectual content, research design, argumentation, and final manuscript revisions remain the sole responsibility of the authors. The authors have carefully reviewed and verified all content to ensure its accuracy, integrity, and compliance with academic and ethical standards.

### **Conflict of Interest**

The authors declare that they have no conflicts of interest related to the publication of this manuscript.

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