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Formal Compliance and Substantive Justice in the Auction of Murabahah Collateral: A Maqāṣid al-Sharīʿah Analysis of Ḥifẓ al-Māl

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Abstract

Islamic banks that finance customers through murabahah and then auction the collateral of defaulting customers face a question that legal compliance alone does not answer: whether the right to execute is exercised fairly. This normative study asks how the auction of collateral securing murabahah financing in the case of CV Megatama Distribution against PT Bank Syariah Indonesia and the Jambi State Assets and Auction Office should be assessed under the concepts, sources and philosophy of Islamic economic law, and how far the auction reflects justice and the protection of wealth (ḥifẓ al-māl) in maqāṣid al-sharīʿah. It uses statutory, conceptual and case approaches, and examines the case through the published study of it because the court decision was not available. The study finds that the bank's right to execute is consistent with Islamic law, but that notice, valuation, price and the return of any surplus decide whether execution protects the wealth of both parties. A five-criterion test derived from ḥifẓ al-māl shows that, on the available record, the reported sale price and the alleged absence of notice raise questions that cannot be resolved without the decision and the auction file. Islamic banks should treat execution as part of their sharia duty, document each stage and place execution decisions under sharia supervision.

Keywords

Murabahah; Auction; Collateral; Maqasid; Justice; Falah

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Introduction

Islamic economic law regulates the relations of people in the management, use and exchange of wealth. Fiqh muamalah, the part of Islamic law on economic relations

between people, keeps these relations within the limits set by the sharia,[1] and it is more than a test of whether a transaction is valid: it requires balance, justice, legal certainty and the protection of the parties' interests. The principles of consent, clarity of the contract and the prohibition of *riba* (interest) and *gharar* (excessive uncertainty) serve both to decide validity and to prevent injustice and loss.[2]

The issue becomes concrete when an Islamic bank finances a customer through *murabahah*. Murabahah is called financing, but in sharia terms it is a sale: the bank first acquires the goods and then sells them to the customer at a price made up of the cost price and an agreed margin.[3] The word "financing" therefore does not turn murabahah into a loan. The bank usually secures the customer's payment obligation, and when the customer defaults and the collateral is sold at auction, the legal question is no longer only whether the bank has the right to execute. It is whether the right is exercised openly, on a defensible valuation, with regard to the interests of the pledger, and in a way that matches the justice that Islamic economic law seeks.[4]

This question arose in the dispute between CV Megatama Distribution, PT Bank Syariah Indonesia (BSI) and the Jambi State Assets and Auction Service Office (*Kantor Pelayanan Kekayaan Negara dan Lelang*, KPKNL). According to the published study by Agustin and Rasito, the plaintiff objected to the auction of collateral for murabahah financing on the grounds that no official notice of the auction was given, that the sale price was well below the market estimate, and that the collateral was being leased out when it was sold.[5] These are allegations as reported in a secondary source. They are used here to test a framework, not as established findings.

Earlier work approaches the subject from three directions. Agustin and Rasito examine the conduct of the bank and the auction office against positive law, prudence and openness.[6] Rosadi reviews the philosophy of Islamic law on the contract in sharia economic policy and argues that a legalistic regulation of the contract tends to narrow its ethical and moral dimension, so that Islamic law serves less as an instrument of justice and public benefit.[7] Hartati and Hulwati supply the

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[1] Sawitri Yuli Hartati, *Hukum Ekonomi Syariah*, 1st ed (Padang: CV Dunia Penerbitan Buku, 2026) at 1–2.

[2] *Ibid* at 2.

[3] *Ibid* at 98.

[4] *Ibid* at 59–60.

[5] Bella Agustin & Rasito, "Analisis Yuridis terhadap Tindakan Perbankan dalam Pelaksanaan Lelang Jaminan Pembiayaan Murabahah: Studi Kasus CV. Megatama Distribution Melawan PT Bank Syariah Indonesia dan KPKNL Jambi [Juridical Analysis of Banking Conduct in the Auction of Murabahah Financing Collateral: The Case of CV Megatama Distribution v PT Bank Syariah Indonesia and KPKNL Jambi]" (2025) 7:2 *Jurnal Hukum Legalita* 288 at 290, DOI: <10.47637/legalita.v7i2.1901>.

[6] *Ibid*.

[7] Imron Rosadi, "Telaah Filsafat Hukum Islam terhadap Akad dalam Kebijakan Ekonomi Syariah [A Review of the Philosophy of Islamic Law on the Contract in Sharia Economic Policy]" (2025) 3:2 *Equality: Journal of Islamic Law* 193, DOI: <10.15575/ejil.v3i2.1978>.

philosophical basis of Islamic economics, and Ismail links the goal of *falāḥ* (well-being in this world and the hereafter) to *maqāṣid al-sharīʿah* (the objectives of the sharia).[8][9][10] What is missing is an analysis that takes the execution of collateral in one murabahah case, separates the bank's right from the manner in which it is exercised, and tests the manner of exercise against explicit criteria drawn from *ḥifẓ al-māl* (the protection of wealth). The novelty of this article lies in that test.

The article asks two questions. First, how should the auction of collateral securing murabahah financing in the CV Megatama Distribution case be assessed under the concepts, sources and philosophical basis of Islamic economic law and the positive law on security and auctions? Second, how far does the auction reflect justice and the protection of wealth (*ḥifẓ al-māl*) in the maqāṣid al-sharīʿah, and what follows for the relationship between formal compliance and substantive justice? Its purpose is to answer both questions and to set out criteria that banks, supervisors and courts can apply.

Research Method

This is normative (doctrinal) legal research.[11] It uses a statutory approach to the provisions on Islamic banking, security rights and auctions, a conceptual approach to murabahah, *rahn* (pledge), fiqh muamalah, justice, ḥifẓ al-māl and falāḥ, and a case approach to the dispute between CV Megatama Distribution, BSI and KPKNL Jambi.[12] The case approach has a limit that should be stated at the outset: the court decision and the auction file were not available to the authors, so the facts of the case are taken from the study of Agustin and Rasito and are treated as allegations, not as findings of a court.

Materials were selected for relevance to the three elements of the research problem: the murabahah and security relationship, the procedure of execution and auction, and the maqāṣid framework. The reliance on a single published study for the facts of the case, and on a small number of Indonesian books for the philosophical and maqāṣid framework, are limits of the design and are taken into account in how the findings are stated.

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[8] Hartati, *supra* note 1 at 11–12.

[9] Hulwati, *Ekonomi Islam: Teori dan Praktiknya dalam Perdagangan, Obligasi Syari'ah di Pasar Modal Indonesia dan Malaysia*, Revised ed (Padang: Fakultas Syari'ah IAIN Imam Bonjol Padang and Ciputat Press Group, 2009) at 1–3.

[10] Nurizal Ismail, *Maqasid Syariah dalam Ekonomi Islam* (Jakarta: Tazkia Press, 2021) at 61–62.

[11] Kristiawanto, *Memahami Penelitian Hukum Normatif*, 1st ed (Depok: Prenada Media, 2022) at 23–25.

[12] *Ibid* at 28–30.

The primary legal materials are Law No 4 of 1996 on Security Rights over Land (the Mortgage Law), Law No 21 of 2008 on Sharia Banking as amended by Law No 4 of 2023, Minister of Finance Regulation No 122/PMK.06/2023 on auction guidelines, the Compilation of Sharia Economic Law (*Kompilasi Hukum Ekonomi Syariah*, KHES), the fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) on murabahah, rahn and the settlement of murabahah receivables, and the murabahah product guidelines of the Financial Services Authority (*Otoritas Jasa Keuangan*, OJK). The secondary materials are the books and articles cited in the footnotes. Materials were collected through library research and documentation.[13]

The analysis is qualitative and follows five steps: norm, fact, conformity, maqāṣid al-sharīʿah and conclusion. The norms on the bank's right to execute and on the manner of execution are identified first; the reported facts are then set against them; conformity is assessed criterion by criterion; the result is read through ḥifẓ al-māl; and the conclusion states what the record allows and what it does not.[14] The research did not involve interviews or fieldwork.

Results and Discussion

Islamic Economic Law as a Normative and Philosophical Framework

Islamic economic law is more than a set of rules on the validity of transactions. Its sources are the Qur'an and the Sunnah as the primary sources, *ijmāʿ* (consensus) and *qiyās* (analogy) as the sources of development, and methods such as *istiḥsān*, *istiṣḥāb*, *al-maṣlaḥah al-mursalah* and *ʿurf* (custom) for new problems.[15] This matters here because contemporary financing, security and auctions do not appear in the classical texts in their present form. The positive law on them has to be read together with the sharia principles on which the relationship rests: positive law gives certainty about rights, duties and procedure, and sharia gives the values that govern how a right is used. The two need not be opposed.

The philosophical basis is that economic activity is part of worship. Hulwati explains Islamic economics through *tawḥīd* (the oneness of God), *rubūbiyyah* (God's lordship and care), *khilāfah* (human stewardship of the earth) and *tazkiyah* (purification of the soul),[16] and Hartati places the human being as servant and

[13] *Ibid* at 31–32.
[14] *Ibid* at 32.
[15] Hartati, *supra* note 1 at 11.
[16] Hulwati, *supra* note 9 at 1–3.

steward who must manage resources responsibly.[17] Wealth is therefore a trust (*amānah*) for which the holder answers, and the right to acquire and use it must be exercised with honesty, justice and regard for others. The final orientation is falāḥ, which Ismail connects to the maqāṣid and to the welfare of people.[18] For an institution that carries the identity "sharia", the relevant question about any act is therefore twofold: whether it has a legal basis, and whether the way it is done reflects the values the sharia pursues. Falāḥ does not require a bank to yield to its customer or to waive the debt. The bank keeps its right to payment, and what is required is that this right be protected fairly and without sacrificing the other party's rights disproportionately.

This framework explains why "formally valid" and "substantively good" are different assessments. A relationship must have a legal basis and meet the requirements of the contract, but compliance with the form of law should not be separated from the purpose the law serves. If a transaction meets the formal requirements and yet its performance involves unclear terms, deception, manipulation or an unreasonable loss to one party, the legal question is not closed by saying that the contract was validly made. Islamic economic law places justice and balance among the aims of regulating economic activity,[19] and a critical review of the philosophy of the contract in sharia economic policy reaches a similar view: where regulation concentrates on form, the ethical and moral purposes of the contract are narrowed.[20]

Murabahah, Rahn and the Statutory Security Right

Murabahah is a contract of sale (*bayʿ*), not a loan. The seller states the cost price, adds an agreed profit, and the buyer pays at the agreed time; in banking practice the bank buys the goods the customer needs and resells them on those terms.[21] The DSN-MUI fatwa on murabahah is built on the same structure,[22] and the OJK murabahah guidelines of 2023 give the current standard for implementation.[23] Articles 116 and 119 of the KHES likewise require the seller to buy the goods in its own name and to disclose the cost price honestly, and provide that, even where the purchase is made through an agent (*wakālah*), the murabahah contract follows once

[17] Hartati, *supra* note 1 at 11–12.
[18] Ismail, *supra* note 10 at 61–62.
[19] Hartati, *supra* note 1 at 4.
[20] Rosadi, *supra* note 7.
[21] Hartati, *supra* note 1 at 98.
[22] National Sharia Council–Indonesian Ulema Council, Fatwa No 04/DSN-MUI/IV/2000 on Murabahah.
[23] Otoritas Jasa Keuangan [Financial Services Authority], *Pedoman Produk Pembiayaan Murabahah* [Murabahah Financing Product Guidelines] (Jakarta: Otoritas Jasa Keuangan, 29 November 2023).

the goods belong to the seller; Article 117 places the duty to pay the agreed price on the buyer.[2425] The KHES is a compilation issued under a Supreme Court regulation as a guide for judges in Islamic economic disputes, not a statute, so it informs the contract's content and does not by itself fix the bank's duties on execution. The consequence is that a customer's default is a failure to perform an obligation arising from a sale, and the relationship was not a conventional loan from the start.

Security is distinct from the principal contract. In fiqh, *rahn* is the delivery of property as security for a debt, with the pledgee (*murtahin*), the pledgor (*rāhin*), the pledged object (*marhūn*), the secured debt (*marhūn bih*) and the contract as its elements (KHES art 373).[2627] Security does not change the nature of murabahah; it protects the performance of the obligation. Two points should be kept apart, however. First, rahn in the KHES and the DSN-MUI fatwa is a contractual security of fiqh.[28] Second, the *Hak Tanggungan* (security right over land) used in Indonesian bank practice is a statutory right created by Law No 4 of 1996 and is not a development of rahn.[29] Land security is sometimes described as a development of rahn; the better view, adopted here, is that Hak Tanggungan is the statutory instrument through which land security is registered and enforced, and that the sharia requirements of rahn apply to it as a matter of the bank's obligation to follow sharia principles in its operations (Law No 21 of 2008), not as a matter of identity between the two institutions.

The rahn rules show that security serves repayment and is not an opportunity to take the customer's property. Under Article 393 of the KHES, in certain circumstances the pledgee may sell the pledged object to repay the debt; any surplus over the debt must be returned to the person entitled, and a shortfall can still be claimed.[30] The DSN-MUI fatwa on rahn is generally read in the same way: the object is sold, the proceeds settle the debt and any surplus belongs to the pledgor.[31] The sale of the collateral is thus a means to repayment. This sets the standard against which the Megatama auction is examined: the bank's right is legitimate, but it is limited by the purpose of the security and by the interests of the pledgor.

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[24] Kompilasi Hukum Ekonomi Syariah [Compilation of Sharia Economic Law], rev ed (Jakarta: Direktorat Jenderal Badan Peradilan Agama, 2011), arts 116 and 119.
[25] *Ibid*, art 117.
[26] Hartati, *supra* note 1 at 59–60.
[27] Compilation of Sharia Economic Law, *supra* note 24, art 373.
[28] National Sharia Council–Indonesian Ulema Council, Fatwa No 25/DSN-MUI/III/2002 on Rahn.
[29] Law No 4 of 1996 on Security Rights over Land and Land-Related Objects (Indonesia).
[30] Compilation of Sharia Economic Law, *supra* note 24, art 393.
[31] Fatwa No 25/DSN-MUI/III/2002, *supra* note 28.

Because the security is accessory to the debt, its enforcement is measured by the debt it secures. The consequence for this case is practical. The bank may sell only for the purpose of repayment; the proceeds are applied to the murabahah receivable; any surplus is returned; and a shortfall remains a claim against the customer. These consequences make the sale price important in two directions. A low price harms the pledgor if it leaves a deficiency that would not have arisen on a fair sale, and it harms the bank's own purpose of recovery as well. A fair price therefore serves the legitimate interests of both parties, which is the reason the price cannot be treated as a purely commercial detail in an Islamic bank's execution decision.[32]

Restructuring before Execution

Before collateral is executed, the financing is a problem financing, and Islamic economic law requires its settlement to follow justice, openness and good faith, in line with the dual character of Islamic banking as subject to both banking regulation and sharia compliance.[33] Restructuring is one tool, to be used with prudence, risk management and regard for the features of the contract used,[34] and the DSN-MUI fatwa on the settlement of murabahah receivables from customers who cannot pay is the sharia reference for the available options.[35] The relevant OJK regulation on asset quality and restructuring should also be applied in a full case study; it is not analysed here.

According to Agustin and Rasito, payments were regular at the beginning, the business declined from 2016, and the financing was restructured; from 2020 the plaintiff is said to have looked for a buyer and to have leased the collateral to help meet the obligations.[36] If accurate, this shows that settlement was attempted before execution. Restructuring does not remove the bank's right to execute if the debt remains unpaid. What must be tested is whether, after these efforts, execution was proportionate, transparent and in accordance with law and sharia. The plaintiff alleged that no official notice was given, that the value of the object was wrongly set and that consultation (*musyawarah*) was not adequately pursued.[37]

The Auction under Positive Law and the KHES

[32] Compilation of Sharia Economic Law, *supra* note 24, art 393.
[33] Hartati, *supra* note 1 at 91–93.
[34] Otoritas Jasa Keuangan, *supra* note 23.
[35] National Sharia Council–Indonesian Ulema Council, Fatwa No 47/DSN-MUI/II/2005 on Settlement of Murabahah Receivables of Customers Unable to Pay.
[36] Agustin & Rasito, *supra* note 5 at 290.
[37] *Ibid* at 291.

Law No 4 of 1996 gives the first holder of a Hak Tanggungan the right to sell the object if the debtor defaults, and Article 20(1) provides that the object is sold through public auction under the procedure laid down in the regulations to repay the holder's claim.[38] The bank's position as secured creditor therefore gives it a legal basis to execute, and the auction itself is not contrary to Islamic economic law. The Elucidation to Article 20 explains that public auction is intended to obtain the highest price for the object, and that any surplus after the claim is paid belongs to the grantor of the Hak Tanggungan.[39] The law thus balances the interests of the creditor and the owner: the creditor is protected, but the owner's right to the economic value above the debt is kept. Other provisions of the Law, notably Article 20(2) and (3) on sale under the hand where it yields the highest price and subject to notice and announcement, are relevant to whether the bank chose the right route and should be applied in a full case study.

The reported facts fit this framework as follows. The collateral was auctioned with a limit value of Rp1,508,500,000 and sold for Rp1,081,900,000, while the market estimate of the object is said to have been Rp2,320,800,000; the plaintiff also alleged that no official notice of the auction was given and that the result was not confirmed to it.[40] Two cautions apply. First, the sale price reported is lower than the limit value reported, although a lawful auction ordinarily does not close below its limit value; the figures should therefore be checked against the source or the auction minutes before conclusions are drawn. Second, a difference between the limit value and the market estimate does not by itself make an auction invalid, since the limit value is a floor set on a valuation and is not the expected price. What has to be examined is how the limit value was set, whether the valuation can be defended, how announcement and notice were carried out and whether all required steps were taken.[41] On the reported figures the sale price was about 47 percent of the market estimate, which is why the valuation is the central factual question.

The bank's side of the matter should be given its weight. An auction is a market mechanism, and its price is set by the bidders; a price below an appraisal is not in itself a sign of wrongdoing. The fact that the collateral was leased when it was sold, which the plaintiff raised,[42] may well have lowered the interest of bidders and so the price, a point that cuts in two ways: it may explain a lower price, but it also

[38] Law No 4 of 1996, *supra* note 29, arts 6 and 20(1).
[39] *Ibid*, art 20, Elucidation.
[40] Agustin & Rasito, *supra* note 5 at 290.
[41] *Ibid* at 291.
[42] *Ibid* at 290.

raises the question whether the valuation and the announcement took the lease into account and whether the lessee's position and the possibility of a sale by the owner were considered. Hindsight comparison between a market estimate and an auction price is also unreliable unless the two are made at the same date and on the same assumptions. For these reasons the analysis here asks what process was followed, and treats the price as one indicator among several.

Agustin and Rasito use Minister of Finance Regulation No 122/PMK.06/2023 as a basis for assessing the procedure, and state that execution auctions of Hak Tanggungan involve notice to the debtor, a limit value based on a valuation and an announcement of the auction.[4344] Which auction regulation governed the Megatama auction depends on the date of the auction, which the available sources do not give; if the auction preceded the entry into force of the 2023 regulation, its predecessor would apply. The applicable regulation therefore has to be fixed by the auction date.

From the standpoint of Islamic economic law, openness and justice are not only moral values but part of how a contract and the relations under it are to be carried out; Hartati places clarity, justice and the prohibition of gharar among its principles.[45] The step from the prohibition of gharar to the assessment of a state-conducted auction should be taken carefully. Gharar concerns uncertainty in a contract, and the auction is run by the state auction office under public law. The sharia norms that bind the bank in execution are better identified in the fiqh and fatwa rules on the sale of the pledged object: the sale serves repayment, the pledgor's consent or the authority of a court or competent body is relevant, the surplus belongs to the pledgor, and the sale should not give anyone an undue benefit from the object.[4647] If notice, valuation or openness were deficient, the matter is therefore a compliance issue under positive law and a sharia issue at the same time. The question "does the bank have the right to auction?" is answered, in principle, yes where the conditions for execution are met. The better question is whether the right was exercised by a lawful, open and fair procedure that also protects the wealth of both parties, and that question leads from formal compliance to substantive justice.

Sharia Supervision and the Responsibility of the Bank

[43] Minister of Finance Regulation No 122/PMK.06/2023 on Implementing Guidelines for Auctions (Indonesia).
[44] Agustin & Rasito, *supra* note 5 at 291.
[45] Hartati, *supra* note 1 at 1–4.
[46] Compilation of Sharia Economic Law, *supra* note 24, art 373.
[47] Fatwa No 25/DSN-MUI/III/2002, *supra* note 28.

Compliance in Islamic banking does not end with a valid contract. Supervision has two complementary parts, supervision of finance and prudence and supervision of sharia compliance,[48] and the Sharia Supervisory Board (*Dewan Pengawas Syariah*, DPS) advises management and checks that products, services and procedures do not conflict with DSN-MUI fatwas.[49] Ghufron likewise describes supervision as a means of keeping the integrity of the institution and of its financing and services.[50] Sharia compliance therefore extends beyond the form of the contract at the time of financing to what is done after the contract is running, and the decision on how to settle a problem financing falls within supervision.

For the Megatama case this matters because the dispute is about the manner of exercising a right. The data available do not allow any conclusion that the DPS or BSI breached any duty, and none is drawn here. The case shows, however, that supervision should reach the stage of settlement of problem financing, and especially execution. If an act meets the formal procedure but leaves questions about transparency, fairness, communication and protection of wealth, it can still be tested against sharia principles. Supervision can then serve as a bridge: the rules give legal certainty, and supervision ensures that the certainty does not lose its purpose of a just, trustworthy and beneficial transaction.[51] The current rules on the DPS and sharia governance (Law No 21 of 2008 and the OJK regulations) are not analysed here and should be added in a follow-up study.[52]

Ḥifẓ al-Māl as a Test of Protection of the Parties' Wealth

The maqāṣid al-sharīʿah are the objectives of the sharia, and ḥifẓ al-māl is one of its principal objectives. Law is to achieve benefit (*maṣlaḥah*) and prevent harm (*mafsadah*), and Ismail places benefit and well-being in this world and the hereafter as the orientation of Islamic economics.[53] In a murabahah relationship, ḥifẓ al-māl protects the wealth of both parties. The bank has a right to payment and an interest in protecting the funds it has disbursed; the customer has an interest that the pledged property is not sold in an unreasonable way that causes loss. Protection of wealth is therefore not a ban on execution: execution can itself protect the bank's

[48] Hartati, *supra* note 1 at 91–94.
[49] *Ibid* at 93–94.
[50] Sofiniyah Ghufron, *Sistem dan Mekanisme Pengawasan Syariah* (Jakarta: Renaisan, 2007) at 17–18.
[51] Agustin & Rasito, *supra* note 5 at 291–292.
[52] Law No 21 of 2008 on Sharia Banking (Indonesia).
[53] Ismail, *supra* note 10 at 61–62.

wealth when the customer has truly failed to pay. The question is whether execution is fair, open, proportionate and free of avoidable loss.[54]

Rosadi's analysis supports reading the maqāṣid as a measure of substance: legality is the basis, and justice and benefit are the measure of whether a legally valid act achieves the aims of the law.[55] To make this measure usable, five criteria are derived here from ḥifẓ al-māl and from the norms discussed above: notice and opportunity to settle; a defensible valuation; adequacy of the price; handling of any surplus and shortfall; and consideration of alternatives. They are tested against the facts reported in the case in Table 1.

Table 1. Ḥifẓ al-māl test applied to the reported facts of the Megatama auction

Source: compiled by the authors from the sources cited, using the facts reported by Agustin and Rasito. The facts are allegations and not findings of a court.

The table shows that the framework can be applied but that the available record cannot settle the outcome. If the bank valued the object on a defensible basis, gave notice, followed the auction procedure and obtained a justifiable result, execution is itself a form of ḥifẓ al-māl because it protects the bank's right to repayment. If, in contrast, the procedure caused the customer's asset to lose value out of proportion while the bank's interest could have been protected by a more open and reasonable mechanism, the aim of protecting wealth is put in doubt.[56] Ḥifẓ al-māl does not favour debtor or creditor in advance; it requires that each party's wealth and legal interest be protected in proportion.

The criteria in Table 1 also indicate the evidence needed. For notice, the bank and the auction office should be able to produce the written notices, proof of delivery and the announcement. For valuation, the appraisal report, the name and competence of the valuer, its date and the reasoning for the limit value are needed. For price, the auction minutes (*risalah lelang*) and the bids are the record. For the surplus and any shortfall, the account of the application of proceeds; and for alternatives, the correspondence on restructuring and any offer of a voluntary sale. A court or a sharia supervisor applying the test would ask the bank to show these documents, since the bank holds them. The test does not presume bad faith; it makes good faith demonstrable.[57]

From Formal Compliance to Substantive Justice

[54] Hartati, *supra* note 1 at 12–13.
[55] Rosadi, *supra* note 7 at 201.
[56] Agustin & Rasito, *supra* note 5 at 290–292.
[57] *Ibid* at 291–292.

A formally lawful act can still call for evaluation of its manner and consequences where there are signs of loss, lack of transparency or imbalance. Legality is the foundation, and justice and benefit are the substantive measure.[58] Four statements follow from the analysis. Compliance with law gives certainty. Justice keeps the balance of interests. Ḥifẓ al-māl protects the wealth of both parties. Maṣlaḥah directs that protection toward falāḥ. In this way the identity "sharia" is shown not only in a valid contract or a completed procedure but in how the institution decides when financing fails.

It is also necessary to state what this article does not show. Agustin and Rasito describe allegations and issues in the case; their study does not by itself prove that every act of the bank was found unlawful by a final judgment.[59] The article does not say that the Megatama auction was unjust. It says that the questions raised by the reported facts are the right ones to ask, that they can be put in testable form, and that a full assessment requires the decision, the valuation report and the auction minutes.

Implications for Islamic Banks, Supervisors and Courts

For Islamic banks, the main implication is that execution is part of the sharia duty of the institution and not a step outside it. The decision to execute and its manner should be taken with the same attention to sharia as the decision to finance, and the reasons should be recorded. This is consistent with the view that sharia identity is shown in how a bank acts when its financing fails.[60]

For supervisors, the implication is that sharia supervision of the settlement of problem financing needs defined content: the DPS or the sharia compliance function can review the notice given, the valuation used and the handling of the surplus before and after execution, and report on them. The DSN-MUI and the OJK are able to set minimum standards on these points, building on the existing fatwa on the settlement of receivables and on the OJK murabahah guidelines.[6162] For courts and other dispute bodies, the five criteria offer a structure for asking whether a formally complete execution also protected the parties' wealth, without replacing the statutory grounds on which an auction may be set aside.

Comparison with Earlier Research

[58] Rosadi, *supra* note 7 at 201.
[59] Agustin & Rasito, *supra* note 5 at 290–292.
[60] Hartati, *supra* note 1 at 91–94.
[61] Fatwa No 47/DSN-MUI/II/2005, *supra* note 35.
[62] Otoritas Jasa Keuangan, *supra* note 23.

The findings agree with Agustin and Rasito that the bank's right to execute rests on positive law and that the points in dispute are notice, valuation and the treatment of the interested parties,[63] and they add a way to organise those points through explicit ḥifẓ al-māl criteria (Table 1). They also qualify one step: the sharia prohibition of gharar is not the best basis for assessing a state auction, and the fiqh rules on the sale of the pledged object fit better. They support Rosadi's argument that a legalistic approach to the contract narrows its ethical dimension,[64] and they illustrate it in a concrete setting: procedural compliance is necessary, but without a test of substance it does not show that the aim of the law has been achieved. Compared with the textbook accounts of Hartati, Hulwati and Ismail, the contribution is to turn broad statements about amanah, justice and falāḥ into criteria that can be applied to a particular execution.[65][66][67]

Conclusion

The auction of collateral securing murabahah financing is a mechanism available when the customer fails to perform. Murabahah is a sale that creates a payment obligation and rahn, or in practice the statutory Hak Tanggungan, secures it, so the bank's right to execute is not contrary to Islamic economic law if it rests on the contract and on the applicable law and sharia. In the Megatama case, the reported issues concern notice, the setting of the limit value, the sale price and settlement with the interested parties. Because they are allegations taken from a secondary source, they show what must be examined, and the study cannot conclude that the auction was unlawful or unjust.

Under ḥifẓ al-māl, protection of wealth applies to both parties. The bank may protect and recover its funds; the customer's asset should not lose value unreasonably through an opaque or disproportionate process. Formal compliance is therefore necessary but not sufficient to show that the substantive aims of Islamic economic law are met, and an institution that carries the name "sharia" is expected to show amanah, justice, transparency and benefit in how it decides when financing fails.

Three recommendations follow. Banks should document each stage of execution (notice, independent valuation shared with the customer, offer of voluntary sale or

[63] Agustin & Rasito, *supra* note 5.
[64] Rosadi, *supra* note 7.
[65] Hartati, *supra* note 1 at 12–13.
[66] Hulwati, *supra* note 9 at 1–3.
[67] Ismail, *supra* note 10 at 61–62.

restructuring, and the return of any surplus) so that the process can be defended in law and in sharia. Sharia supervision should extend to the settlement of problem financing and to execution decisions, not only to contract design. And regulators and the DSN-MUI should consider guidance that links execution procedure to the maqāṣid, for example through minimum standards of notice and valuation for Islamic banks. The study is limited by its reliance on one secondary account of a single case, the absence of the decision and the auction file, and the fact that the OJK rules on restructuring and the DPS are not analysed, and the forum for such disputes (Religious Courts under Article 55 of Law No 21 of 2008, as affected by Constitutional Court Decision No 93/PUU-X/2012) was not examined.[6869] Further research should obtain the decision and apply the test in Table 1 to the evidence.

Ethics and Data Availability

This normative legal research did not involve human participants or personal data, so ethical approval was not required. All legal materials and publications used are publicly available and cited in the references.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

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[68] Law No 21 of 2008, *supra* note 52.

[69] Constitutional Court of the Republic of Indonesia, Decision No 93/PUU-X/2012 (29 August 2013).

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Criterion	Norm	Fact reported	Assessment on the available record
1. Notice and opportunity to settle	Law No 4 of 1996; PMK 122/PMK.06/2023; justice and openness	Plaintiff alleges no official notice and no consultation before the auction	Unresolved: depends on the auction file and the court's findings
2. Defensible valuation	Law No 4 of 1996 (highest price); PMK	Limit value Rp1,508,500,000 against a market estimate of	Unresolved: the valuer, date and method need to be identified

	122/PMK.06/2023 (limit value based on valuation)	Rp2,320,800,000; basis of both not reported	
3. Adequacy of price	Elucidation of art 20 of Law No 4 of 1996; ḥifẓ al-māl (avoidance of avoidable loss)	Sale at Rp1,081,900,000, about 47 percent of the market estimate; reported as lower than the limit value	Raises a serious question; the figures must first be verified
4. Surplus and shortfall	KHES art 393; fatwa on rahn	No information on the application of proceeds	Not assessable
5. Alternatives	Fatwa on settlement of murabahah receivables; restructuring practice	Restructuring in 2016; plaintiff's search for a buyer and lease from 2020	Settlement efforts reported before execution; their adequacy is not assessable