

ANALYSIS OF MAQÂSHID AL-SYARÎ'AH ON THE APPLICATION OF THE COLLATERAL IN THE MUDHÂRABAH CONTRACT IN SHARIA FINANCIAL INSTITUTIONS

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Abstract

In the study of classical Jurisprudence, the *mudhârabah* contract is the same contract which has no guarantee provisions in it. Therefore, in the *mudhârabah* contract *there is* no need for collateral, because the *mudhârabah* contract is a contract that is based on the element of trust (*trust*) so there is no need for guarantees given by customers to banks / Islamic financial institutions. The purpose of this study was to analyze *maqâshid al-sharia* on the application of collateral to the *mudhârabah* contract in Islamic Financial Institutions. The method of approach used in this study is normative juridical research with the nature of descriptive analysis. The type of data used in this study are primary and secondary data types. This research is classified as a type of qualitative research. The results show that collateral in the *mudhârabah* contract serves to avoid deviations from the fund management customer so that they do not play around in managing the *mudhârabah* financing fund, and guarantees are not necessary and mandatory conditions on every *Mudhârabah* financing. Therefore, LKS may set the guarantee to clients which serves to avoid the *moral hazard* of the *mudharib* negligent or not according to the contract, which is in line with the values of the benefit in Islamic transactions system.

Keywords: *mudhârabah*, *maqâshid al-Syariah*, *collateral*.

I. Introduction

The concept of *maqâshid al-Syariah* occupies a very important position in formulating Islamic law, including Islamic economic law. *Maqâshid al-sharia* is necessary to formulate macroeconomic policies (monetary, fiscal, public finance), products of Islamic banking and finance as well as micro economic theories of others. *Maqâshid al-syarî'ah* is also very necessary in making banking regulations and Islamic financial institutions. Without *maqâshid al-syarî'ah*, all regulations, fatwas, financial and banking products, fiscal and monetary policies, will lose sharia substance. Without *maqâshid al-syarî'ah*, fiqh muamalah is developed, banking and financial regulations will be rigid and static,

consequently sharia banking and financial institutions will find it difficult to develop let alone defeat conventional banking.

Maqâshid al-syarî'ah is not only the most important factor in determining the birth of Islamic economic products that can realize human benefit, but also more than that, *maqâshid al-syarî'ah* can also give philosophical and rational dimensions to products Islamic economic law that was born in contemporary sharia economic ijtihad activities. *Maqâshid al-syarî'ah* will provide a substantial pattern of thinking in looking at Islamic banking agreements.

One of the contracts developed by Islamic financial institutions, especially Islamic banking, is the *mudhârabah*