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A Juridical Review of Constitutional Court Decision No. 18/PUU-V/2007 on the Establishment of Ad Hoc Human Rights Courts in Indonesia

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ABSTRACT

This study provides a normative legal analysis of handling defaults in Sharia mortgage (KPR Syariah) contracts based on Fatwa DSN-MUI No. 17/DSN-MUI/IX/2000 concerning sanctions for customers who are able to pay but delay payment (ta'wil). The research aims to examine the conformity of Sharia-based mortgage default handling with Islamic legal principles and Indonesian national law. Using a normative juridical approach, this study analyzes primary legal materials including the DSN-MUI Fatwa, the Compilation of Sharia Economic Law (KHES), the Law on Sharia Banking, and Financial Services Authority (OJK) regulations. The findings indicate that default handling in Sharia mortgages should emphasize fairness, compassion, and the avoidance of riba (interest), while administrative sanctions can be applied to encourage payment discipline. The study also identifies the need for synchronization between DSN-MUI fatwas and national banking regulations to ensure both Sharia compliance and legal certainty. The results contribute to understanding the practical and doctrinal implications of Islamic financial law in Indonesia's mortgage sector.

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1. INTRODUCTION

The development of Islamic finance in Indonesia has shown remarkable progress, marked by the growing demand for Sharia-based financial products such as Sharia mortgages (Kredit Pemilikan Rumah Syariah or KPR Syariah). These financial products are designed to comply with Islamic legal principles (Sharia), which strictly prohibit riba (interest), gharar (uncertainty), and maysir (speculation). Instead, Islamic finance emphasizes fairness, transparency, and social responsibility in all contractual relationships. In this context, KPR Syariah serves as a financing alternative that allows individuals to purchase homes through contracts based on murabahah (cost-plus sale), musyarakah mutanaqisah (diminishing partnership), or ijarah muntahiyah bittamlik (lease-to-own) schemes. The development of Islamic finance in Indonesia, particularly in the realm of Sharia mortgages (KPR Syariah), has been significant, driven by the need for financial products that comply with Islamic principles. These products, such as murabahah, musyarakah mutanaqisah, and ijarah muntahiyah bittamlik, offer alternatives to conventional interest-based mortgages, aligning with Sharia's prohibition of riba, gharar, and maysir. The implementation of these contracts in Indonesia reflects a growing demand for ethical and socially responsible financial solutions. Murabahah, a cost-plus sale contract, is widely used in Sharia mortgages in Indonesia. It involves the bank purchasing a property and selling it to the customer at a profit margin agreed upon in advance, and this method is compliant with DSN-MUI guidelines and is prevalent due to its straightforward structure and alignment with Sharia principles [1], [2]. The murabahah contract remains the most dominant in Islamic banking, reflecting its significant role in the market [2]. Meanwhile, musyarakah mutanaqisah, a diminishing partnership contract, is considered beneficial for both customers and financial institutions as it allows for shared ownership, with the customer gradually buying out the bank's share [3]. In addition, ijarah muntahiyah bittamlik, a lease-to-own scheme, provides flexibility and is particularly suited for fixed asset financing such as property [4]. Despite these advantages, challenges such as regulatory complexity and limited customer understanding persist; therefore, addressing these through increased socialization and enhanced operational capacity can further strengthen the competitiveness and sustainability of Islamic finance in Indonesia [4].

Despite adhering to Islamic principles, the practice of KPR Syariah faces legal and operational challenges, particularly in managing payment defaults (wanprestasi) caused by economic hardship, job loss, or negligence. Unlike conventional banking, which relies on interest-based penalties, Sharia systems prohibit riba and emphasize justice and compassion, requiring distinct approaches grounded in fiqh muamalah and national financial law. The National Sharia Council (DSN-MUI) addresses this through Fatwa No. 17/DSN-MUI/IX/2000, which permits non-punitive, non-interest-based administrative sanctions for customers who deliberately delay payments, ensuring fairness and social justice (al-'adl wa al-ihsan). Implementation of this fatwa varies across institutions: Bank Syariah Indonesia (BSI) applies ta'zir through warning letters to late-paying customers [5] BMT NU Sejahtera Semarang executes guarantees as a last resort [6] and BSI KCP Jepara 1 imposes automated fines that are not considered riba [7] Some, like BSI KCP Surabaya UINSA, offer flexible solutions for customers facing financial hardship [8] The fatwa also provides mechanisms for resolving disputes through deliberation, arbitration, or religious courts, reflecting diverse interpretations in practice [9].

The implementation of this fatwa, however, presents practical challenges. Financial institutions must interpret and apply the principles set forth by DSN-MUI while remaining compliant with Indonesia's positive law, particularly regulations issued by the Financial Services Authority (Otoritas Jasa Keuangan or OJK) and the Sharia Banking Law (Law No. 21 of 2008). Tensions sometimes arise between Sharia-based provisions and conventional legal mechanisms related to debt recovery, collateral enforcement, and dispute resolution through civil courts or the National Sharia Arbitration Board (Badan Arbitrase Syariah Nasional or BASYARNAS). In practice, aligning Islamic ethical principles with statutory regulations requires careful legal interpretation to ensure that both justice and compliance are upheld.

Given this background, this study provides a normative legal analysis of how KPR Syariah defaults are handled under DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000, focusing on the compatibility between the fatwa and Indonesia's legal framework, as well as the principles guiding default resolution in Islamic law. The objectives are to analyze the legal foundation of the fatwa within the context of Sharia mortgages, examine how Islamic principles regulate default-handling mechanisms, and identify the challenges of implementing the fatwa within Indonesia's dual legal system. Employing a normative legal method that emphasizes statutory and conceptual analysis based on Islamic jurisprudence, DSN-MUI fatwas, and national financial regulations, this study aims to establish a comprehensive understanding of how Sharia mortgage defaults can be resolved justly and in accordance with both Islamic and national legal standards—thereby strengthening public trust in Indonesia's Sharia banking system.

2. LITERATURE REVIEW

2.1 *Concept of Sharia Mortgage (KPR Syariah)*

Sharia mortgages, or KPR Syariah, are financial products designed to facilitate home ownership in compliance with Islamic law, which prohibits interest (riba) and mandates fairness and transparency. These mortgages are structured around contracts such as murabahah (cost-plus financing), musyarakah mutanaqisah (diminishing partnership), and ijarah muntahiyah bittamlik (lease-to-own), each offering distinct benefits and challenges that contribute to the growing popularity of Sharia-compliant home financing in Indonesia. The Sharia Banking Law of 2008 strengthens this framework by integrating Islamic principles into the national financial system. In practice, murabahah is the most widely used contract, where the bank purchases a property and sells it to the customer at an agreed profit margin, with payments made in installments to ensure price certainty and fixed obligations that support financial planning [10], [11]. Its dominance reflects its transparency and strong alignment with Sharia principles, though it still faces challenges such as high credit risk and limited public understanding [2], [11]. Meanwhile, musyarakah mutanaqisah allows joint ownership between the bank and the customer, with the customer's share increasing over time as payments are made, ensuring a fair distribution of ownership and risk [3], [10]. This partnership-based model is regarded as mutually beneficial and consistent with the spirit of shared responsibility in Islamic finance [3]. However, despite the strong appeal of murabahah and other contracts, certain practices in Islamic banks have not fully adhered to Sharia principles, including arrangements resembling riba and inconsistencies in project management, underscoring the need for stricter compliance to maintain public trust and integrity in Sharia banking [12].

2.2 *Legal Basis for Handling Defaults in Sharia Mortgages*

Handling defaults in Islamic finance within Indonesia requires adherence to Sharia principles while ensuring compliance with the country's positive law. Unlike conventional banking, which often resorts to interest-based penalties, Islamic banking prohibits riba, necessitating alternative mechanisms rooted in justice and compassion. The National Sharia Council of the Indonesian Ulema Council (DSN-MUI) addresses this through Fatwa No. 17/DSN-MUI/IX/2000, which permits sanctions on customers who are financially capable but intentionally delay payments, with the collected fines allocated for social causes rather than bank income. This approach aligns with the Qur'anic principle of fairness and leniency toward debtors facing hardship, as stated in Surah Al-Baqarah (2:280). Within this framework, Islamic banks in Indonesia operate under a legal structure emphasizing profit-sharing and compliance with Sharia principles, as outlined by the DSN-MUI (Haning, 2024). Although DSN-MUI fatwas are not statutory regulations, they serve as an authoritative legal foundation for aligning financial practices with Islamic law [13]. In implementation, sanctions are applied solely to customers who are financially able but deliberately postpone payments, fostering financial discipline without generating profit for the bank [14]. However, challenges persist, particularly regarding the absence of standardized criteria to determine customer capability and the duration of delinquency before fines are enforced [14]. Importantly, exemptions for customers experiencing genuine financial hardship reflect the objectives of maqāṣid asy-syarīʻah, which aim to preserve essential human needs and uphold welfare [15]. This balance between justice and compassion ensures that Islamic financial institutions maintain the ethical integrity and social responsibility central to the values of Islamic finance [15].

2.3 Theoretical Perspectives on Default and Sanctions in Islamic Finance

Islamic law categorizes debt defaults based on the debtor's intention and ability to pay, emphasizing ethical considerations in financial transactions. If a debtor is genuinely unable to pay (mu'sir), Islamic law mandates that the creditor should grant additional time or reschedule the debt, reflecting compassion and fairness. Conversely, if the debtor is capable but deliberately delays payment (mumathil), the creditor may impose administrative measures to discourage such behavior, provided these do not involve riba (usury). A newer category, muta'atthir, refers to solvent debtors experiencing temporary liquidity issues, highlighting the need for flexible and tailored restructuring mechanisms [16]. This ethical framework aligns with the ta'wil concept in DSN-MUI Fatwa No. 17/2000, which ensures that sanctions remain corrective rather than punitive, maintaining the moral integrity of Islamic financial systems. Islamic law also stresses the protection of creditor rights while safeguarding debtor welfare, in line with the objectives of Sharia to promote justice (adl) and wisdom (hikmah) [17]. The ethical foundation of Islamic contracts demands a balance between enforcement and compassion, ensuring sanctions serve reformative purposes rather than punishment [17], [18]. Furthermore, the principles of maslahah (public interest) and adl (justice) are central to resolving default cases, guiding decisions toward outcomes that uphold equity, prevent harm, and sustain social benefit [19].

2.4 Previous Studies and Legal Implications

The application of DSN-MUI fatwas within Indonesia's Sharia banking sector presents both significant strengths and notable challenges. These fatwas serve as essential ethical guidelines that ensure financial transactions remain compliant with Sharia principles, though their implementation often encounters issues related to enforcement and consistency. As DSN-MUI fatwas are not positive law but rather a source of law in a material sense, their effective application depends on integration with state regulations to guarantee legal certainty and enforceability [20]. Among their key strengths, DSN-MUI Fatwa No. 17/2000 provides clear ethical direction in sanctioning deliberate defaults, thereby improving customer discipline and managing financing risks [21]. Moreover, the fatwas ensure financial institutions maintain adherence to Sharia principles, preserving the moral and operational integrity of Islamic banking [22], and their binding nature compels Islamic financial institutions to operate strictly within the framework of Sharia law [23]. Despite these advantages, several challenges persist, including the lack of detailed procedural mechanisms for enforcement, which can cause variations in implementation [20] Additionally, inconsistencies arise when some institutions impose administrative fees that closely resemble interest, potentially contradicting the principles of Sharia compliance [22]. Therefore, stronger integration between DSN-MUI fatwas and regulations issued by the Financial Services Authority (OJK) remains crucial to ensuring coherence, transparency, and sustained public confidence in Indonesia's Sharia banking system [20].

2.5 Conceptual Framework

Based on the reviewed literature, the handling of defaults in KPR Syariah operates within a tri-dimensional framework encompassing the religious, ethical, and legal dimensions. The religious dimension emphasizes adherence to Sharia principles that prohibit riba, uphold fairness, and promote compassion toward debtors. The ethical dimension ensures that sanctions imposed are corrective rather than punitive and that any fines collected are directed toward social purposes, reinforcing the moral integrity of Islamic finance. Meanwhile, the legal dimension focuses on integrating DSN-MUI fatwas with Indonesia's positive law to guarantee enforceability and legal certainty. This conceptual integration allows the default-handling mechanisms in KPR Syariah to remain both Sharia-compliant and legally binding, aligning with the broader objectives of Islamic finance to promote justice, social welfare, and sustainable economic growth.

3. RESEARCH METHODS

3.1 Research Approach

This study employs a normative legal research approach, also known as doctrinal legal research, which focuses on analyzing legal norms, principles, and doctrines derived from statutory laws, Islamic jurisprudence (fiqh muamalah), and authoritative fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). The primary objective of this approach is to understand how existing legal rules—both Islamic and national—govern the handling of Sharia mortgage (KPR Syariah) defaults and to assess their consistency with the principles of justice, legality, and Sharia compliance. As explained by Soerjono Soekanto (1986), normative legal research examines the law in its conceptual and prescriptive dimensions, focusing on "law in books" rather than "law in action." Accordingly, this study does not rely on empirical data collection but instead emphasizes interpretation, comparison, and synthesis of legal sources to develop a systematic and coherent understanding of how Sharia mortgage defaults should be resolved within Indonesia's dual legal framework.

3.2 Nature of Research

The nature of this research is descriptive-analytical. It seeks to describe and analyze the legal framework governing the resolution of defaults in Sharia mortgage contracts, particularly those guided by DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000. The study describes the provisions contained in Islamic law, fatwas, and Indonesian financial regulations, followed by an analytical interpretation of their interrelationships. The analysis aims to identify potential gaps, overlaps, and harmonization efforts between Sharia-based principles and national positive law.

3.3 Sources of Legal Materials

This study utilizes three types of legal materials: primary, secondary, and tertiary sources. The primary legal materials serve as the main foundation and include the Qur'an and Hadith as the primary sources of Islamic law; Fatwa DSN-MUI No. 17/DSN-MUI/IX/2000 concerning sanctions for customers capable of paying but delaying payment (ta'wil); Law No. 21 of 2008 on Sharia Banking; relevant OJK and Bank Indonesia regulations governing Sharia banking operations; the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah or KHES); and Constitutional Court Decision No. 93/PUU-X/2012, which affirms the jurisdiction of Religious Courts in Sharia economic disputes. The secondary legal materials complement and interpret the primary sources, comprising scholarly books, journals, and theses on Sharia banking, Islamic finance, and legal enforcement mechanisms; works by Islamic legal scholars such as Muhammad Syafi'i Antonio, Taqi

Usmani, and Mahmoud El-Gamal; commentaries on DSN-MUI fatwas and Sharia economic law; as well as academic studies analyzing fiqh muamalah principles related to debt and default resolution. Lastly, the tertiary legal materials provide contextual and terminological support through legal dictionaries, encyclopedias, official glossaries, and explanatory notes issued by OJK and Bank Indonesia on Islamic banking policies.

3.4 *Data Collection Techniques*

Since this study employs a normative legal analysis, data collection is conducted through a documentary study or literature review by systematically examining primary and secondary legal materials from both printed and digital sources. The process includes library research, involving a comprehensive review of legal documents, statutes, fatwas, and academic literature; textual analysis of DSN-MUI fatwas—particularly Fatwa No. 17/2000—to identify legal reasoning and its implications for Sharia mortgage defaults; and a comparative study between DSN-MUI provisions and conventional financial regulations to evaluate their compatibility and potential areas of conflict. All data are obtained from credible academic databases, government publications, and institutional repositories to ensure the authenticity, accuracy, and validity of the legal materials analyzed in this research.

3.5 *Data Analysis Techniques*

The study employs a qualitative juridical analysis to interpret and evaluate the collected legal materials through several systematic stages. First, the identification stage involves determining the relevant legal sources governing default handling in Sharia mortgages. Second, the interpretation stage applies various methods of legal interpretation, including grammatical interpretation to understand the literal meaning of legal texts, systematic interpretation to position the fatwa within the broader framework of Islamic financial law, and teleological interpretation to assess its underlying objectives (maqasid al-shariah), such as justice and social welfare. Third, the comparison stage contrasts Sharia-based norms with national financial laws to identify areas of harmonization and potential inconsistencies. Finally, the evaluation stage assesses whether the existing regulatory framework aligns with the ethical and legal objectives of Islamic finance. The results of these analytical stages are synthesized into a comprehensive legal reasoning framework, demonstrating how DSN-MUI Fatwa No. 17/2000 can be effectively implemented to ensure fairness, legal certainty, and full Sharia compliance in the handling of KPR Syariah default cases.

4. RESULTS AND DISCUSSION

4.1 *Overview of Sharia Mortgage (KPR Syariah) Implementation in Indonesia*

The implementation of Sharia mortgage (Kredit Pemilikan Rumah Syariah or KPR Syariah) in Indonesia has developed rapidly in line with the increasing public demand for Sharia-compliant financial products. Based on data from the Financial Services Authority (Otoritas Jasa Keuangan or OJK), Islamic banking assets have shown consistent growth, supported by customer trust in ethical and interest-free financial systems. KPR Syariah is among the most popular financing products, primarily offered under three contract types: murabahah (cost-plus sale), ijarah muntahiyah bittamlik (lease-to-own), and musyarakah mutanaqisah (diminishing partnership).In these contracts, the Sharia bank acts not as a lender, but as a seller or co-owner. The bank purchases the property and then transfers ownership to the customer through installments. This mechanism ensures the transaction is based on an underlying asset (underlying transaction), distinguishing it from conventional credit systems that rely on interest (riba). The ethical foundation of KPR Syariah is rooted in justice (al-'adl), transparency, and mutual cooperation (ta'awun).

However, challenges often arise when customers experience financial difficulties or intentionally delay payments, as the absence of an interest-based penalty system requires Sharia banks to implement non-punitive measures consistent with Islamic legal ethics. To address this issue, DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000 serves as the primary legal and ethical guideline for handling defaults in KPR Syariah. In practice, Sharia banks such as PT. Bank Muamalat Indonesia and BMT Purwakarta Amanah Sejahtera impose fines on customers who are financially capable but deliberately delay payments without valid reasons, applying the principle of ta'zir to discipline customers and ensure fulfillment of obligations [24]. The fines collected are generally allocated for social causes, including disaster relief and community welfare programs, reflecting the ethical orientation of Islamic finance [25]. The fatwa also reinforces the legal standing of Islamic banks within Indonesia's civil law framework by providing a clear legal foundation for imposing sanctions on defaulting customers [26]. Importantly, sanctions are not applied to customers facing force majeure or genuine financial hardship, demonstrating a strong ethical commitment to fairness and justice in Islamic finance [25]. For example, at Bank Syariah Indonesia, penalties are issued in the form of warning letters and other non-monetary measures to ensure compliance with the fatwa while maintaining ethical standards [5]. whereas BMT PAS exempts customers from fines if they are genuinely unable to pay due to unforeseen circumstances, embodying a compassionate approach aligned with Islamic values [25].

4.2 Legal Position of DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000

The Fatwa DSN-MUI No. 17/DSN-MUI/IX/2000 on Sanctions for Customers Able to Pay but Delaying Payment (Ta'wil) provides the normative foundation for addressing intentional payment delays in Islamic financial transactions. The fatwa explicitly distinguishes between two types of debtors: mu'sir—those genuinely unable to pay due to legitimate financial hardship, who must be given leniency and rescheduling opportunities—and mumathil—those who are financially capable but deliberately delay payment, who may receive administrative sanctions aimed at enforcing contractual discipline. According to the fatwa, such sanctions are non-compensatory and cannot serve as profit or penalty income for the bank. Instead, any collected amounts must be directed toward social or charitable purposes (ta'widh sosial), ensuring that the sanction mechanism aligns with Islamic ethical principles and avoids resemblance to interest-based fines. These provisions are rooted in the Qur'anic injunction from Surah Al-Baqarah (2:280), which emphasizes compassion toward debtors in hardship while maintaining the importance of fulfilling contractual obligations (amanah).

Under Law No. 21 of 2008 on Sharia Banking, DSN-MUI fatwas have binding authority within Sharia financial institutions as part of the compliance framework overseen by OJK and Bank Indonesia. Thus, the fatwa serves not merely as a moral guide but as a normative legal reference in Indonesia's Islamic financial system. It provides a comprehensive framework for maintaining ethical and legal balance by ensuring that sanctions are aligned with Sharia principles and directed toward social welfare rather than institutional profit [26]. The fatwa's practical application allows Islamic banks to impose sanctions on customers who intentionally delay payments while upholding compassion for those in genuine financial distress, thus strengthening justice and accountability in Sharia-based financial operations [26].

Empirical studies show that the implementation of this fatwa has been effective in improving customer discipline and managing financing risks, as illustrated by the case of BSI Kajen Pekalongan's BSI OTO product [21]. Fines are calculated automatically and are not considered riba, as they do not contribute to bank income but are allocated for charitable and social purposes [7]. Nevertheless, challenges remain, such as information asymmetry, low financial literacy, and limited access to Sharia-based dispute resolution mechanisms [27]. To address these issues, recommendations include reformulating contract structures, strengthening the role of the Sharia Supervisory Board, and enhancing public education on the rights and obligations within Islamic banking systems [27].

4.3 Mechanisms for Handling Sharia Mortgage Defaults

The handling of defaults (wanprestasi) in KPR Syariah must align with the provisions of DSN-MUI Fatwa No. 17/2000 and uphold the Sharia principles of fairness and compassion. Based on the findings of this study, Islamic financial institutions generally follow several key steps. First, they conduct an identification of the default cause to determine whether the customer's default stems from genuine financial incapacity (force majeure) or intentional negligence (ta'wil), as this classification dictates the appropriate response. Second, if the customer's inability to pay is due to hardship (mu'sir), the institution provides leniency through rescheduling or restructuring of payment terms, in accordance with Surah Al-Baqarah (2:280) and the principles of social justice in Islamic law. Third, for customers who deliberately delay payments despite having the financial capacity, administrative sanctions may be applied as stipulated in DSN-MUI Fatwa No. 17/2000, provided they are predetermined in the financing contract, serve solely to maintain discipline rather than profit, and any funds collected are allocated for charitable or social purposes. Finally, in the event of a dispute, resolution mechanisms such as mediation or arbitration—preferably through the National Sharia Arbitration Board (BASYARNAS)—are pursued as mandated by Article 55(2) of Law No. 21/2008, with the Religious Court (Pengadilan Agama) serving as the final authority if arbitration fails, as affirmed by Constitutional Court Decision No. 93/PUU-X/2012. This structured mechanism ensures that the resolution of KPR Syariah defaults remains consistent with Sharia principles while maintaining conformity with Indonesia's national legal framework, thereby promoting justice and balance for all parties involved.

4.4 Harmonization Between Sharia Law and National Legal System

One of the core findings of this research is that Indonesia's dual legal structure—comprising both conventional and Sharia systems—requires strong harmonization to prevent inconsistencies in managing defaults. Although DSN-MUI fatwas are religiously binding within Islamic financial institutions, their legal authority is realized through regulatory integration with OJK and Bank Indonesia frameworks. The OJK Regulation No. 31/POJK.05/2014 concerning Sharia financing mandates that all Sharia institutions adhere to DSN-MUI fatwas in their business operations. Likewise, the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah or KHES) formalizes these fatwas into procedural rules applicable in Religious Courts, thereby reinforcing legal certainty while upholding Islamic ethical values in financial governance.

However, several challenges persist. In practice, certain institutions continue to treat administrative sanctions as operational income, which violates the fatwa's stipulations and undermines its ethical intent. This issue underscores the need for stricter supervision and clearer enforcement mechanisms to ensure full adherence to Sharia principles. Strengthening regulatory synergy among DSN-MUI, OJK, and judicial authorities—particularly the Religious Courts—is essential to guarantee that the implementation of Sharia financial law remains consistent, transparent, and harmonized with Indonesia's broader legal system.

4.5 Comparative Analysis

The distinction between Sharia and conventional mortgage systems becomes evident in how they treat defaulting customers:

Table 1. Comparative Analysis

Aspect	Conventional Mortgage	Sharia Mortgage (KPR Syariah)
Legal Basis	Civil Law & Banking Law	Islamic Law, DSN-MUI Fatwas, Sharia Banking Law
Penalty Mechanism	Interest-based fines or late fees	Administrative sanctions (non-profit, for social purposes)
Default Classification	Single category (breach of contract)	Two categories: inability (mu'sir) and intentional delay (mumathil)
Enforcement	Through civil courts and foreclosure	Through BASYARNAS or Religious Courts
Ethical Foundation	Contractual and financial performance	Justice (adl), compassion (rahmah), and social welfare (maslahah)

Table 1 presents a comparative analysis between conventional mortgage systems and Sharia mortgage (KPR Syariah) frameworks, emphasizing their legal, ethical, and procedural distinctions. Legally, conventional mortgages operate under civil and banking law, focusing on contractual enforcement and financial performance, whereas Sharia mortgages are governed by Islamic law, DSN-MUI fatwas, and the Sharia Banking Law (Law No. 21 of 2008), which prioritize compliance with fiqh muamalah and integrate religious ethics into financial transactions. In terms of penalty mechanisms, conventional systems impose interest-based fines or late fees that are punitive and profit-oriented, while Sharia mortgages prohibit riba (interest) and instead apply non-profit administrative sanctions, with collected funds directed toward social and charitable purposes in line with the principles of adl (justice) and maslahah (public benefit). Default classification also differs substantially: conventional systems view all defaults as simple contractual breaches, whereas Sharia systems distinguish between mu'sir (genuine inability to pay) and mumathil (intentional delay), offering leniency to the former and administrative sanctions to the latter. In terms of enforcement, conventional mortgage disputes are resolved through civil courts and foreclosure, while KPR Syariah disputes are handled via the National Sharia Arbitration Board (BASYARNAS) or Religious Courts, ensuring resolutions remain consistent with Sharia law and moral accountability. Ethically, Sharia mortgages extend beyond financial performance by upholding adl (justice), rahmah (compassion), and maslahah (social welfare), reflecting Islam's holistic vision of fairness, balance, and mutual benefit in financial relationships.

4.6 Discussion

The findings of this study reveal that DSN-MUI Fatwa No. 17/2000 functions as a vital normative instrument that harmonizes Islamic ethics with financial discipline in Sharia-based financial systems. Legally, it bridges the regulatory gap created by the absence of interest-based penalties in Islamic finance by allowing administrative sanctions for deliberate payment delays, thereby promoting contractual discipline without violating the prohibition of riba. Ethically, the fatwa reinforces the Islamic moral values of fairness, empathy, and social responsibility by prohibiting punitive penalties and redirecting collected sanctions toward charitable and social causes in accordance with the principle of maslahah 'ammah (public benefit). This dual function strengthens the alignment between Sharia compliance and legal enforcement while maintaining the moral integrity of Islamic financial practices.

However, several challenges remain in the fatwa's implementation. Ambiguity in enforcement procedures often leads to inconsistencies across institutions, as many banks lack standardized mechanisms for assessing a debtor's financial capacity. Oversight by OJK regarding the proper allocation of sanction funds for social purposes also remains limited, increasing the risk of misuse. Additionally, low public awareness of Sharia financial ethics causes some customers to misinterpret administrative sanctions as equivalent to conventional fines. To address these issues, stronger coordination among DSN-MUI, OJK, and Sharia financial institutions is essential. Enhancing compliance frameworks, establishing transparent mechanisms for managing social funds, and improving public literacy on Sharia finance ethics can collectively strengthen trust and accountability within Indonesia's Islamic banking system.

5. CONCLUSION

Based on the normative legal analysis conducted, the handling of Sharia mortgage defaults in Indonesia must adhere to the principles outlined in Fatwa DSN-MUI No. 17/DSN-MUI/IX/2000, which emphasize fairness, responsibility, and strict Sharia compliance. The fatwa prohibits the imposition of interest or punitive penalties but permits administrative sanctions to discipline customers who are financially capable yet negligent in fulfilling their obligations. This framework reflects the moral and ethical foundations of Islamic law, ensuring justice for both financial institutions and customers. The study concludes that effective default management requires strong integration between DSN-MUI fatwas, the Sharia Banking Law (Law No. 21 of 2008), and Financial Services Authority (OJK) regulations to guarantee legal certainty and preserve public confidence in Islamic banking. Furthermore, Sharia financial institutions should prioritize negotiation, restructuring, and amicable settlement mechanisms grounded in compassion and mutual consent, in line with the principles of Islamic economic justice (al-'adl wa al-ihsan). Strengthening Sharia supervision and harmonizing regulatory frameworks are essential to ensure that Sharia mortgage practices remain consistent with both Islamic jurisprudence and Indonesia's national legal system.

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