

The Principle of Proportional Contracting in Sharia Bank Financing Contracts in Optical *Maqasid Sharia*

Taufik Kurrohman

Faculty of Law, Universitas Pamulang, Tangerang Selatan, Indonesia, E-mail: dosen00643@unpam.ac.id

Abstract. *The principle of proportionality in Sharia financing contracts upholds equality. The manifestation of equality cannot be seen mathematically but is oriented towards legal equality. The same proportion in the contractual relationship between the parties is manifested in the clauses of the agreement contract. Contractual justice can be realized with two approaches to value: the first is a technical approach that focuses on freedom of will in a contract, and the second is a substantial approach that is reflected in the clauses of the contract. Both approaches will reflect the contract proportionally and distort the dominance of freedom of contract. The method of binding sharia banks which is relatively the same as conventional banks, is one of the factors that builds the perspective of the community that sharia banks are the same as conventional banks but ignores the differentiating meaning of sharia banks is the content of the contract clauses based on sharia principles, especially fiqh muamalat. The research method was conducted descriptively and analytically with a normative legal approach. The results of the study show that first, the principle of proportional contracting based on maqasid sharia can be realized with a balance of risk and benefit (al qurmu bilgurmi), educating individuals is realized with professionalism, transparency, and honesty (dar'ul mafasid aula min jalbil manafi), and the realization of actualized benefits through supervision of sharia contract products based on sharia compliance. Second, the application of the principle of proportionality in contracting in sharia financing contracts is not by maqasid sharia, this is reflected in the major premise of the clause of the sharia bank financing contract such as the mechanism for paying obligations, tax deductions, providing collateral guarantees, breach of promise and clauses of negligence of guarantee statements and clauses of accelerated repayment deductions.*

Keywords: Banking; Contract; Financial; Proportionality; Sharia.

1. INTRODUCTION

The concept of Islamic law is manifested in the form of *Kulliyatul Khamsah*, namely, *maqasid sharia*, which is part of the objectives of Islamic law, which is given greater attention to provide a welfare concept in the field of Islamic economics. Measurement through the concept of *maqasid* is considered broader because it covers it comprehensively in the context of human welfare. (Malang et al., 2025). The concept of *maqasid sharia* is a fundamental value that can also be seen as the manifestation of

the concept of akad and various agreement procedures carried out. Islamic banks are based on Islamic legal values that are codified through fatwas of scholars and formally strengthened through laws and regulations. (Muflih et al., 2024). Islamic banks and conventional banks both have a legal basis for their operations, but the main characteristics are different philosophical and sociological foundations.

Law Number 21 of 2008 concerning Sharia Banking is the operational basis of legality that is specifically made for Sharia banks. Therefore, Sharia banks are different from conventional banks. Sharia banks are based on Sharia principles, serving the Indonesian people in order to optimize national development with the aim of equality to achieve prosperity. (Asyiqin, 2025). Based on the provisions of the laws and regulations, Islamic banks are divided into two, namely Sharia general banks and Sharia business units. Sharia general banks are independent with their articles of association, and Sharia business unit banks are allowed to be established in conventional banks.

Sharia banks and conventional banks in their practical arrangement in the contract process have similarities and differences, but the fundamental similarity is how the binding procedure is carried out, because it has the same concept based on the provisions of laws and regulations. While the fundamental difference between the two banks is the contract clauses where Sharia banks are based on the values of Islamic principles of *fiqh muamalah*, for example in the *ijarah muntahia bittamlik* product which is based on a lease agreement that ends with ownership by selling or donating at the end of the lease period, the *mudharabah* contract is based on a cooperation agreement between the owner of the funds (*shahibul mal*) in this case is the bank with (*rabbul mal*) who runs the business, namely the customer to gain profit and other products based on *fiqh muamalah*. While conventional banks are based on credit agreements, whatever the form of the bank agreement, both in working capital products and multi-purpose products. Therefore, because the basic concept is different, Sharia banks must have unique characteristics in terms of the contract clauses and the contract process carried out.

The basic question of whether the clauses of the financing agreement are by the *maqasid sharia* values? If the contract complies with Sharia principles, there is a value of justice and welfare. Upholding justice in contractual relationships is reflected in the clauses that accommodate the contractants. The fundamental problem in financing agreements in Islamic banks using standard clauses, whether these standard clauses become one of the obstacles to the realization of proportionality in contracts, with the reason of efficiency distorting the meaning of justice at the same time. Sharia bank services in financing agreements in the form of standard clauses can be implemented in the form of flexible and bargaining contract options. Paul Tillich, L.J. Van Apeldoorn, J. van Kan, and J.H. Beekhuis express a shared perspective that similarities and dissimilarities should be treated equally. John Rawls emphasized the principle of "Justice as Fairness," which is based on equality, rationality, and freedom as a principle to obtain rights. In other words, the principle of proportionality in contracting becomes a basis for reflecting a fair exchange of interests in business contractual relationships. (Hernoko, 2016).

So, are P.S. Atijah suggesting that market mechanisms can bring together contractors with fair exchange values. "Freedom of Choice in exchange and freedom of contract" is

the most crucial foundation. (Smith & Atiyah, 2006). The exchange of interests between debtors and creditors in Sharia banks is a business contractual relationship, because borrowers borrow money for business purposes such as working capital or purchasing machinery, warehouses, goods, and other services. Sharia banks, in carrying out their duties and functions as lenders, are also in the business interest to gain profit from what is lent to debtors with a profit-sharing pattern in the form of a margin rate or the form of other service benefits. Thus, the agreement in the Sharia bank financing agreement must prioritize a technical approach where debtors can make offers on what is in the contract. On the other hand, banks must implement effective and efficient operations in formulating binding financing agreements and implementing the principle of prudence.

The phenomenon that occurs in the community, both in working capital products, or home ownership loans in several financing products in practice, the costs charged are higher than conventional banks, so that consumers withdraw and move to conventional banks because of the inconsistency between the agreement that has been made and the reality of the increase in costs that are disproportionate and tend to be high. Of course, this will reduce the meaning of Sharia banks that are based on Islamic law principles. On the other hand, Sharia banks also, in the practical order of products that refer to *fiqh mu'amalah*, only choose products that are low risk and profitable, such as *mudharabah*, *murabahah*, *ijarah*, but ignore high-risk products such as *musyarokah* and *muzarabah*. Then what is the ideal concept of financing contract design that is by *maqasid sharia*?

Al-Ghazali in his book *Mustafa min 'ilm al-ushul* has provided a framework of *maqasid al-syariah* values as a model that can measure benefits, namely safeguarding religion (*hifz al-din*), safeguarding life (*hifz al-nafs*), safeguarding reason (*hifz al-aql*), safeguarding offspring (*hifz al-nasl*), and safeguarding property (*hifz al-mal*). (al-Ghazali, 1904). The value contained in *maqasid sharia* can also be seen whether the proportional contract in the sharia financing agreement reflects balance and justice, where the substance of the value is obtained from safeguarding assets. This study focuses on the first, how is the principle of proportionality in Sharia bank financing contracts, second, how is the application of the principle of proportionality contracted in Sharia bank financing contracts in accordance with the *maqasid sharia*. Based on the clauses of Sharia bank contracts with various products such as *ijarah muntahiya bittamlik*, *murabahah* and *Mudharabah* which are analyzed qualitatively.

2. RESEARCH METHODS

The research method was carried out with a normative legal approach, where norms, principles, and methods are part of the legal manifestation. In the qualitative research method, which was carried out inductively to see how the law works with a socio-legal approach. (Rukhmana et al., 2022). Normative research methods were a characteristic of legal science. (Marzuki, 2005). This method was actualized in the form of an analysis of statutory regulations, including contractual agreements. (Hadjon, 1994). The nature of the research was through descriptive analysis methods based on secondary, primary, and tertiary data. Data collection was carried out by literature studies, analyzed normatively and qualitatively. Supporting document data was obtained from various bank policies and contract documents from Sharia bank financing contract products.

The focus of this study was the application of the clauses of Sharia bank contracts by comparing them to conventional bank credit agreements. The analysis was based on the values of *maqasid sharia*, namely educating individuals, transparency and honesty, and the welfare that is elaborated with the principle of proportionality in contracting. The position of the debtor's bargaining power, which was always below one level with the creditor based on the dominance of freedom of contract, can be examined more deeply to obtain a balance in contractual relations without distorting the principles of Sharia, which were the reference for Sharia banks.

3. RESULTS AND DISCUSSION

3.1. The Meaning of the Principle of Proportionality in Contracts

Based on the adage "every business step is a legal step" is not a mere figment of the imagination, because every business is based on rules both in the context of normative and legal living in the community (living law). The business steps in question include every business sector, whether retail, services, or other types of business. Examples of the establishment of Limited Liability Companies, Limited Partnerships, Law Firms, and other forms of business are manifestations of the law. Contractual relationships occur because of the interests of the parties united in an agreement that gives rise to the rights and obligations of the contracting parties. The contractual relationship is believed to be carried out fairly and proportionally. Smith & Atiyah convey that the substance of the purpose of the contract is, firstly, the mandatory and coercive nature of the contract for the contractor will provide a protective value, secondly, preventing injustice in obtaining wealth unfairly, thirdly, preventive efforts that are inherent in creating opportunities for losses for the contractor. (Smith & Atiyah, 2006)

The principle of proportionality in contracting looks at various aspects, both in technical and substantial contexts. Each stage of the contractual relationship is an important and inseparable part, namely first, the contract preparation stage where the parties have agreed to enter into an agreement with a certain object and the points of the draft that will be agreed upon regarding rights and obligations, at this stage each contractor studies the points of each article that will be stated and it is possible to negotiate the interests of each, Second, the contract signing stage, in this position the contractor must understand the rights and obligations and consistently implement the agreement with full awareness, in the third part, the implementation of the contract where at this stage the contractor implements the contract based on the rights and obligations of each party until the contract ends, if there is a problem of non-fulfillment of rights and obligations due to something, then the settlement refers to the articles contained in the contract can be in the form of deliberation and consensus or through litigation.

The actualization of proportionality is not just a written norm but has an impact on Islamic values. The word proportionality in the context of Islamic law comes from ethical and legal values. (Yulianto & Mufid, 2025). Proportionality has the meaning of similarity in the division of different elements of entities with different interests and goals, and is an actualization of the value of balance as a guarantee of equitable distribution. (Jonas Christoffersen, 2009). Proportionality in the context of contemporary international law has complexity due to the influence of social relations and legal elements that bind the state, organizations, and individuals. (Yulianto & Mufid, 2025). Proportionality, on the other hand, is not a necessity because it depends

on the conditions of the parties. Proportionality is a principle of necessity in the context of contemporary international law that reflects the same actualization as a principle. (Judith Gardam, 2004). Thus, proportionality is an ethics and law that corresponds to bringing together different entities and interests with the same goal.

In line with Agus Yudha Hernoko's (Hernoko, 2016) Explanation of the meaning of the principle of proportionality in contracts, as in the following table:

Table 1.1. Substance of the Principle of Proportionality in Contractual Relations

No	Principle of Proportionality	Explanation
1	Pre Contract	Contract negotiations are conducted fairly with an ideal proportion of rights and obligations. Actions that set aside the values of fairness must be rejected, for example: no negotiation process or negotiations but with bad intentions.
2	Formation of Contract	The urgency of the values of equality and freedom is guaranteed to form a proportion of rights and obligations that are arranged fairly, for example: contractors can negotiate the choice of law when a dispute occurs.
3	Contract Execution	The actualization of the successful and failed contract must be borne together, not burdening one party, but done proportionally. Failure is part of the shared risk so that it is avoided from having implications for losses for one party. It can be seen from the cause of the failure and analyzed based on the burden of the contractor's responsibility, for example: When a company experiences losses due to negligence, the burden of the loss must be borne together proportionally.

Based on the table, the proportional principle of contracting has a substantial role in each stage of the contract and cannot be assessed partially. In the context of practical order, it can be exemplified as follows: A and B will agree on the object of 17 motorcycles, with details of A providing capital of Rp. 70,000,000, - and B of Rp. 140,000,000, -. A is given the trust to run the business if calculated mathematically, the burden of risk and profit is also calculated based on the proportion of capital provided ideally, namely 70% for B and 30% for A, but in a proportional context, the agreement could be made with a profit of 60% for those running the business, namely A and 40% for B, likewise when there is a burden of risk of loss. The rationality of proportionality is not based on mathematical figures but based on the burden of risk borne, those running the business will have a heavier risk so that based on the level of propriety it is appropriate to get a greater proportion of profit even though B places more capital, because even so if there is a risk of loss, A will bear more compensation for losses. The principle of proportionality in contracting can be applied to contracts that are standard contracts, such as in Sharia bank financing agreements, then we will see it from various aspects, especially from the perspective of *maqasid sharia*. The value of *maqasid* is explained in detail based on an understanding of perception in the context of Islamic law and the provisions of laws and regulations, as well as the doctrines of legal experts regarding contracts and the realization of the actualization of the contract.

3.2. The Urgency of *Maqasid Sharia* in Sharia Bank Financing Agreements

The actualization of Sharia banks as banks that are guided by the principles of Islamic law will always be in the spotlight and debate among the community, if there is a perception and assumption that Sharia banks are the same as conventional banks, Sharia banks in financing products are more expensive than conventional banks, Sharia banks are the same as binding agreements with conventional banks and other assumptions that are developing. Based on the history of Sharia banks, which were born from the strength of the people's economy and provide financial solutions, especially for Muslims, like an oasis in the middle of the desert, it can be manifested in the form of real services that have a positive impact on society. So that in the effort to realize the hopes of Sharia banks, the values contained in *maqasid sharia* can be an ideal source. The following is the substance of the concept of *maqasid sharia* in life. (Syamsuar et al., 2024)

Table 1.2. The Substance of *Maqasid Syariah* in the Concept of Islamic Law

No	Maqasid Syariah	Substance	Embodiment
1	Hifz al-din	Religion	Faith, spiritual
2	Hifz al'aql	Sense	Education, health
3	Hifz al-nafs	Life	Life
4	Hifz al-nasl	Descendants	Marriage, family
5	Hifz al-mal	Treasure	Work, Investment

Based on the table, it can be explained that the *maqasid sharia* has values, namely first, maintaining religion (*hifz al-din*) meaning maintaining religion is the actualization of the implementation of sharia law, increasing spirituality based on faith so that it has an impact on individual piety and social piety, compliance with religious teachings by carrying out obligations to leave prohibitions. Second, maintaining reason (*hifz al-aql*), where the implementation of sharia law places reason at a high level because with it becoming educated, which gives birth to intelligent and virtuous people, the loss of reason can have a bad impact both personally and in society. An example is a crazy person or a drunk person, then loses their mind and has a bad impact on the behavior that is carried out.

Third, preserving life (*hifz al-nafs*), which places life as a manifestation of the true value of humanity, cannot be removed by force and intentionally; therefore, there is the implementation of qisas, life paid with life, unless forgiven to preserve the continuity of life and preserve human rights. The meaning of the fourth *maqasid sharia*, preserving descendants (*hifz an-nasl*) is the actualization of the protection of preserving descendants and the continuity of life and, the obligatory marriage and having descendants and finally fourth, preserving property (*hifz al-mal*) which is protection in the aspect of material property both in the context of ownership, development and fulfillment of obligations and the rights of others such as the provision of wages for work, the implementation of Sharia banks, zakat sharia and other obligations.

In this context, *hifz al-mal*, namely safeguarding assets, is the basis for implementing sharia banking, which is based on the principles of Islamic law. The meaning of *maqasid sharia* is further understood as the embodiment of Islamic sharia for its

adherents, but must be seen in depth, both philosophically, sociologically, and anthropologically, from various definitions put forward by experts. In terms of terminology, the meaning of *maqasid sharia*, Jasser Auda defines the origin of the word *maqasid* in the plural, *maqasid*, which means aim or target. Al-Juwayni was the initiator of the concept of *maqasid*, who equated *maqasid* with *al-masalih*, which means goodness, which was then elaborated and classified by Abu Hamid Al-Ghazali with *maslahah mursalah*. (Syamsuar et al., 2024).

Maqasid sharia has an essence that aims to realize welfare by consistently maintaining the objectives of sharia. The objectives of sharia are essentially to produce goodness, prevent evil, gain benefits and eliminate harm in efforts to create prosperity. (Antara & Dan, 2018). Theories and teachings in Sharia law reflect social life, but cannot be fully actualized. For example, in terms of *muamalah*, such as praying, it is taught from opening the eyes, waking up from sleep, until sleeping again, starting with the law of praying, but it is not easy to implement consistently, likewise with transactions of goods, it is not allowed for *gharar*, but in practice many are classified as *gharar*. Sharia compliance provides a clear framework with Sharia principles that Sharia banks manifest from the loss of misunderstandings in carrying out the functions of Sharia banks. (Alam et al., 2021). Islamic financial institutions are based on qualified governance based on Sharia principles, providing certainty about institutional conformity and a good image. (Karbhari et al., 2020). Thus, Sharia compliance is based on the value of *maqasid sharia* as the basic framework in running a Sharia bank.

The actualization of Sharia banks that use the latest technology is also faced with the reality of whether it is under Sharia banks. Sharia experts who have expertise in the field of digital financial technology, who can assess sharia compliance, are very important to be formed as needed. (Asikin et al., 2025). The birth of the term smart contract in the present day is part of the development of technology with general Sharia rules based on fatwa *ijtihad*. (Islam, 2024). Islamic financial institutions from various parts of the world are examining the philosophy of technology-based contract rules that change the paradigm of the contract system. (Islam, 2024). Therefore, it is part of the prudential principle of various contracts that are based on Sharia principles and are examined for conformity based on Sharia principles in their implementation, especially Sharia bank contracts.

The basic principles of monotheism are categorized into the needs of the *dharuriyyah maslahah*. Meanwhile, the principles of justice, law enforcement, trust, deliberation, and brotherhood are classified into the *hajiyyat maslahah*. (Syamsuar et al., 2024). Tawhid is an inseparable part of human needs to believe in something that is believed, something that is believed will encourage someone to obey and obey. For example, the use of Sharia banks among the community, the preference is obedience to the Islamic religion which is believed to avoid *gharar* and usury as something that is forbidden in sharia, although Sharia banks are a banking system, not an ideology, therefore Sharia banks can be accessed by anyone regardless of ethnicity, religion and certain groups. In line with the results of research from Muflih, the substance of which is that trust in Sharia banks is created because of religiosity, which can build personal attachment with high loyalty. Furthermore, it is conveyed that the more religious a person is indicated by the attitude of carrying out all commands and avoiding religious prohibitions, diligently worshiping accompanied by a fair attitude, it gives rise to a

tendency for a high level of trust in Sharia banks, although not all Sharia bank products are of interest. (Muflih et al., 2024)

Maslahah hajiyyat, among others, is talking about the principle of justice, the principle of justice in contractual relationships has a positive impact on public trust in accessing Sharia bank financing products. A person's level of religiosity will not have a significant impact on a Sharia bank that provides services that do not meet public expectations, for example: A is a customer of ABC Sharia Bank's mortgage financing, A buys 1 house unit with a mortgage for Rp. 1,000,000,000, by paying in installments over 7 years, A must pay Rp. 3,500,000,000, -. In the second year, A will pay part of his debt of Rp. 500,000,000, - but is burdened with a penalty or fine of Rp. 17,500,000, -. If this happens to an Sharia bank, then it is not based on Sharia principles, where A should not be burdened with a penalty or fine if he pays off part of the debt. The burden of fines will have an impact on public distrust in Sharia banks and raise questions about whether such rights are permitted in Islamic banks.

Maqasid sharia provides a reference with values that can be used in carrying out contractual relationships of Islamic bank financing. The financing agreement must reflect values that do not contain *gharar* and are clear until the end of the contract period. At the beginning of the agreement, the payment timeline with the agreed margin rate has been conveyed, which is one of the characteristics of Sharia banks. However, on the other hand, in practice, Sharia banks apply such a large margin rate that when compared to conventional banks, Islamic banks will be larger. This is also what makes Sharia banks perceived as the same as conventional banks, and better than conventional banks, because the costs charged are lower. The concept of Sharia banks must be properly addressed with various financing implementations that are stated in an agreement that truly meets the provisions of Islamic principles and provides satisfaction both religiously and materially.

3.3. The Principle of Contractual Proportionality in Sharia Bank Financing Agreements in *Maqasid Sharia* Optics

Islamic law has two parts, namely fixed (*tsabit*) and changeable (*mutagayyiroot*). (Hamid & Putra, 2021). *Tsabit* in nature on things that have no other interpretation and no debate among scholars, such as the obligation of the 5 daily obligatory prayers is fixed. Meanwhile, changeable things are everything that may change according to conditions, era, and time, for example, the use of Sharia banks and the concept of agreements and their products, this is because it fall into the category of *muamalah*. The first three phases of *maqasid sharia* guidelines are based on normative regulations based on Sharia principles, second, a deductive approach based on implementation and evaluation, and third, actual legal decisions to see the implications of *maqasid sharia*. (Zulfikar & Fuady, 2021). The adaptation of sharia contracts aimed at structuring sharia finance with the latest financial moderation and modification of traditional contract features raises whether it is under sharia compliance. (Moqbel & Ahmed, 2020). Therefore, the current contractual conflict within the scope of Sharia banks and the principle of proportionality is a study in implications *maqasid sharia*.

The debate about contractual proportionality with the principle that the company must benefit shareholders is an ongoing issue. The allegation is that Sharia banks adopt conventional banks with a non-neutral system based on capitalism, because basically,

the economy of capitalism is different from the Islamic economy. (Zulfikar & Fuady, 2021). The practice of Sharia banks shows that contracts are dominated by *murabahah* financing transactions and will be based on other financing in the context of *maqasid sharia*, fulfilled legality, but in the social aspect, it has not met the objectives of *maqasid sharia*. Thus, the principle of proportionality in the context of any sharia-based contract should reflect social values and justice in society, and the dominance of sharia-financing-based contracts should reflect the goals of the *Maqasid Sharia*.

One of the bases of the application of Sharia banking to its products is the DSN-MUI fatwa, which is a reference for Islamic economics. The application of the DSN-MUI fatwa, which is based on the principle of *ushul al ashlu fil mu'amalat al ibahah*, in principle, the origin of *muamalah* is that it may be excluded if there is a prohibition that regulates it as proof. The values of being free from *usury*, *gharar*, *tadlis*, and *maysir* are the main principles that are guided in *muamalah*. (Imaniyati & Adam, 2017) Sharia banks as Islamic banking entities have moral and religious goals where these values are manifestations of the values in the *maqasid sharia* which must be applied both in the substantial context of financing agreements and in the context of the practical order of the contract mechanisms carried out.

Sharia banking institutions are expected to have the ability to elaborate more flexible and proportional financing and create a value of justice for the contractor. The deep question is whether the principle of proportionality in contracting can be applied to the standard financing contract of Sharia banks. So, the basic answer is that it can and will depend greatly on the intention of the stakeholders in implementing Sharia principles. Because if we refer to the concept of *muamalah* that exists in society, it is very possible to do it based on the principle of proportionality in contracting. In its actualization, we can see how *muzaroah* is carried out, land cultivators who have debts apply to cultivate the land with a simple contract concept based on its proportions. To pay off their debts, land cultivators try to plant rice at their own expense, and losses are also borne by the cultivators. The proceeds from the sale of rice are used to cover debts to land owners, as is known in the context of *muamalat with muzaroah* (Jamaluddin et al., 2024)

The principle of contractual proportionality is based on *maqasid sharia*, the substance of which is contained in Sharia bank financing contracts. You can study the substance of the meaning of *maqasid* in the following table:

Table 3.1. Substance of the Meaning of *Maqasid* in Financing Contracts

No	Maqasid Syariah	Based on	Embodiment
1	Justice	Al-qurmu bilqurmi	Balance of Risks and Benefits
2	Educating Individuals	Dar'ul Mafasid muqoddamun min jalbil masalih	Professionalism, transparency
3	Honesty	Adhororu Yud'fau Biqodaril imkan	Sharia compliance

The fatwa commission determines the reference collectively based on the evidence of the Qur'an, *hadith*, *ijma* and *qiyas*. Using studies that are carried out comprehensively. (Sodiqin, 2025). Sharia banks running Sharia bank financing products refer to the DSN-MUI fatwa. These financing products are stated in an agreement that binds the contract with commercial intent and purpose, namely to generate profits on the side of

the Sharia bank and generate service benefits from the customer side. In an agreement based on the value of *maqasid sharia*, it can be explained as follows:

The first *maqasid* value, the embodiment of justice, the justice in question is not attached to mathematical values, but the justice can be felt by customers by being relieved of the burden with easy and profitable access. For example, when accelerated repayment is not subject to a penalty or fine but only the principal is charged, this can ease and feel just for Sharia bank customers. This is confirmed by Muflih's research, which conveys measurable justice based on distributive values, procedural justice, and interactional justice as an implementation of the value of freedom; justice can increase loyalty and perceptions of Sharia banks. The concept of justice is manifested in the form of a balance of risk with benefits (*al-qurmu bil qurmi*). (Muflih et al., 2024). Banks as mediators connect those who do not have money with those who have money, so they are called intermediary institutions. So the concept of a bank as a financing entity will not be separated from finance, both in the context of funding and lending. (Putra et al., 2023)

The source of banking law can be seen from the economic, historical, sociological and philosophical aspects which are based on formal and material legal norms. Institutionally, it tends to be based on the needs in the community, but in substance, it binds the community because it is regulated by laws and regulations, where the community and government jointly implement these provisions. (Putra et al., 2023) A reflection of a good legal culture will provide trust to the public, because banks are based on the value of trust, once the value of trust is lost due to an incident that results in a loss, then at the same time the bank will experience a lack of trust.

The second *maqasid* value, the embodiment of educating individuals, at this point, the value can be contained in the operation of Islamic banks. At the time the agreement is made, the proportionality value in the financing agreement is also carried out with measurable transparency and can be understood by the parties. By upholding caution without ignoring the flexibility of the contract. For example, in the *mudharabah* financing agreement, openness in the distribution of profits and losses and the ins and outs of obtaining the profit, the information conveyed is not partial and does not seem to be hidden. The margin rate that will be charged to the customer is fixed, and there is no uncertainty with a rational value. If the repayment is accelerated, it is expressly stated that there is no fine or penalty imposed on the customer. In the operational context, for example, when in the financing of *ijarah muntahia bittamlik*, the leased object must be in the name of the bank first which is directly connected to the seller, after that the ownership process at the end of the lease period with a grant or with a sale and purchase must be carried out practically. Thus, the meaning of educating individuals is actualized in the form of transparency and professionalism in running Sharia bank products by the provisions of the DSN-MUI fatwa.

The third meaning of *maqasid* is honesty. The value of honesty in the context of the principle of proportionality is providing customers with an in-depth understanding of the details contained in the agreement, both in positive and negative contexts, in a financing agreement. For example, in financing *Ijarah Muntahia Bittamlik*, the rental object is not given an excessive burden to the customer and is adjusted to the applicable proportion based on the customer's level of ability by Sharia principles. In the context of collateral, procedural convenience is provided for all collateral land

objects, with costs and risks borne proportionally, not always borne by the customer, and by statutory provisions. In the event of a breach of contract, the bank provides advice that is most likely to be fulfilled by the customer to alleviate it materially and morally. So that the value of honesty can be created with Sharia compliance with rules that do not burden customers.

4. CONCLUSION

The principle of proportionality in contracting by *maqasid sharia* is philosophically realized with justice, educating individuals, and public interest. The manifestation of fairness in contracting presents a balance between risk and benefit (*al-qurmu bil qurmi*). Educating individuals is realized with professionalism, transparency, and honesty (*Dar'ul mafasid aula min jalbil manafi*), and public interest is realized with compliance with sharia (*Adhororu yud'fau bogodaryl imkan*). The actualization of the principle of proportionality in Sharia bank financing contracts by *maqasid sharia* has not been realized with various clause findings, namely on the point of payment mechanism for obligations, tax deductions, provision of collateral, accelerated repayment of penalties, and breach of promise. Proportionality in contracting can be realized by prioritizing the will of the parties without ignoring the side of justice, where the debtor's wishes can be stated in the Sharia bank financing contract, but the element of the principle of prudence is maintained. The clauses in Sharia banking contracts must also take into account aspects of the fatwa of the Indonesian Ulema Council, both substantively and practically.

5. REFERENCES

- Alam, M. K., Islam, F. T., & Runy, M. K. (2021). Why does Shariah governance framework important for Islamic banks? In *Asian Journal of Economics and Banking* (Vol. 5, Issue 2). <https://doi.org/10.1108/ajeb-02-2021-0018>
- Antara, P., & Dan, P. A. (2018). *Konsep Maqashid Al-Syari 'ah*: 5(1), 47–62.
- Asikin, N., Abdul, B., Ahmad, S. Bin, Zakaria, Z. Bin, & Wira, A. (2025). *Sharia Governance and Risk Mitigation in E-Wallets: Implications for SDG 8*. 125–146.
- Asyiqin, I. Z. (2025). *Legal Relationship Between Fund Depositors And Managing Banks In Mudharabah Deposit At Islamic Banks*. 10(1), 112–126.
- Hadjon, P. M. (1994). Pengkajian Ilmu Hukum Dogmatik (Normatif). *Yuridika*, 8(1), 2.
- Hamid, A., & Putra, D. (2021). The Practice of Buying and Selling During Friday Prayer in Mandailing District Natal: A Study With A Maqashid Al-Syari'ah Approach. *Samarah*, 5(2), 1021–1043. <https://doi.org/10.22373/sjkh.v5i2.7575>
- Hernoko, A. Y. (2016). Asas Proporsionalitas Sebagai Landasan Pertukaran Hak Dan Kewajiban Para Pihak Dalam Kontrak Komersial / The Principle Of Proportionality As The Basis Exchange Rights And Obligations Of The Parties In The Commercial Contract. *Jurnal Hukum Dan Peradilan*, 5(3), 447–466.
- Imaniyati, N. S., & Adam, P. (2017). The Fatwa Position Of Dsn-Mui In The National

- Banking System. *MIMBAR, Jurnal Sosial Dan Pembangunan*, 33(1), 142. <https://doi.org/10.29313/mimbar.v33i1.2128>
- Islam, J. H. (2024). *Al-Istinbath*. 9(1), 155–192.
- Jamaluddin, Hayat, M., Masduki, Mukarromah, O., & Jamaludin. (2024). Examining the Synthesis of Islamic Commercial Principles and Local Customary Practices: A Case Study of Nyambut Sawah Traditions in Tejamari, Banten. *Journal of Islamic Law*, 5(1), 86–104. <https://doi.org/10.24260/jil.v5i1.2091>
- Jonas Christoffersen. (2009). *Fair Balance: Proportionality, Subsidiarity and Primarity in the European Convention on Human Rights*. Martinus Nijhoff Publishers.
- Judith Gardam. (2004). *Nesessity, Proportionality and The Use of Force by States*. Cambridge University Press.
- Karbhari, Y., Alam, M. K., & Rahman, M. M. (2020). Relevance of the application of institutional theory in Shariah governance of Islamic banks. *PSU Research Review*, 5(1), 1–15. <https://doi.org/10.1108/PRR-05-2020-0015>
- Malang, M., Sciences, M., Islamic, I., Sciences, M., & Islamic, I. (2025). *A Maqasid - Based Welfare Index In Indonesia: An Empirical Investigation*. 11(1), 119–146.
- Marzuki, P. M. (2005). *Penelitian Hukum*.
- Moqbel, T., & Ahmed, H. (2020). Flexibility and Shari'ah compliance of islamic financial contracts: An evaluative framework. *Arab Law Quarterly*, 35(12), 92–115. <https://doi.org/10.1163/15730255-BJA10052>
- Muflih, M., Zen, M., Purbayati, R., Kristianingsih, K., Karnawati, H., Iswanto, B., & Juniwati, E. H. (2024). Customer loyalty to Islamic mobile banking: evaluating the roles of justice theory, religiosity, satisfaction and trust. *International Journal of Bank Marketing*, 42(3), 571–595.
- Putra, D., Harahap, S. M., & Edi, S. (2023). Islamic Legal Analysis of Bank Interest Allocation on Social Fund: a Case Study of Small Credit Bank (Bpr) Nbp 21 Panyabungan City. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 23(2), 240–257. <https://doi.org/10.30631/alrisalah.v23i2.1442>
- Rukhmana, T., Darwis, D., IP, S., Alatas, A. R., Tarigan, W. J., Mufidah, Z. R., Arifin, M., Cahyadi, N., & ST, S. (2022). *Metode penelitian kualitatif*. CV Rey Media Grafika.
- Smith, S. A., & Atiyah, P. S. (2006). *Atiyah's Introduction to the Law of Contract*. OUP Oxford.
- Sodiqin, A. (2025). *Religion and Science: Analysing Medical Fatwas of the Majelis Ulama Indonesia (2010 – 2021)*. 6(1), 1–20.
- Syamsuar, Chapakia, A. O., Hamsa, A., & Amelia. (2024). Integration of Maqashid Syaria in Nurcholish Madjid's Thingking about Principles for Effective Good

Governance. *Al-Istinbath: Jurnal Hukum Islam*, 9(1), 45–62. <https://doi.org/10.29240/jhi.v9i1.9701>

Yulianto, R. A., & Mufid, A. (2025). *Ahkam: Jurnal Ilmu Syariah The Principle of Proportionality in Armed Conflict under International Law and Islam*. 25(1), 105–124.

Zulfikar, & Fuady, K. (2021). Habib Ahmed's maqāṣid sharī'ah concept on cooperative regulations in Indonesia. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 21(2), 247–272. <https://doi.org/10.18326/IJTIHAD.V21I2.247-272>