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## Integration of Islamic Legal Values and Positive Law in the Peaceful Settlement of Mortgage Right Execution in Indonesia: A Comparative Analysis

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### **Abstract**

*Ideally, the reconciliation process in the execution of security rights in Indonesia should provide a dispute-resolution mechanism that is not only effective and ensures legal certainty but also grounded in substantive justice, mutual consent, and the protection of public interest as taught in Islamic law. However, in reality, the reconciliation mechanism available in positive law is often treated merely as an administrative procedure and has yet to fully reflect the ethical values of sulu, ibra, and the principles of justice that form the foundation of Islamic law. The integration of Islamic legal values and positive law within the reconciliation process of security-rights execution demonstrates that both legal systems share a similar orientation in achieving peaceful, fair, and substantively just dispute resolution, wherein the normative instruments of positive law and the principles of sulu, ibra, and maslahah in Islamic law complement each other. Comparative analysis affirms that the procedural formalism of positive law and the ethical dimensions of Islamic law can be*

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*harmonized to form a more integrative reconciliation model, allowing the execution process to be not only juridically effective but also humanistic, moral, and responsive to the social needs of Indonesian society.*

**Keywords:** *Integration, Security Rights, Islamic Law, Positive Law.*

## **Abstrak**

Idealnya, proses perdamaian dalam eksekusi Hak Tanggungan di Indonesia mampu menghadirkan mekanisme penyelesaian sengketa yang tidak hanya efektif dan memberikan kepastian hukum, tetapi juga berlandaskan keadilan substantif, kerelaan para pihak, serta perlindungan terhadap kemaslahatan sebagaimana diajarkan dalam hukum Islam. Namun, realitasnya mekanisme perdamaian yang tersedia dalam hukum positif sering kali diperlakukan sebagai prosedur administratif semata dan belum sepenuhnya mencerminkan nilai etik *sulh, ibra*, dan prinsip keadilan yang menjadi fondasi hukum Islam. Integrasi nilai hukum Islam dan hukum positif dalam perdamaian eksekusi Hak Tanggungan menunjukkan keselarasan orientasi keduanya dalam mewujudkan penyelesaian sengketa yang damai, adil, dan berlandaskan keadilan substantif, di mana perangkat normatif hukum positif dan prinsip *sulh, ibra*, serta *maslahah* dalam hukum Islam saling melengkapi. Analisis komparatif menegaskan bahwa formalitas prosedural hukum positif dan dimensi etis hukum Islam dapat dipadukan untuk membangun model perdamaian yang lebih integratif, sehingga proses eksekusi tidak hanya efektif secara yuridis tetapi juga humanis, bermoral, dan responsif terhadap kebutuhan sosial masyarakat Indonesia.

**Kata Kunci:** Integrasi, Hak Tanggungan, Hukum Islam, Hukum Positif.

## **Introduction**

The development of law in Indonesia demonstrates increasingly complex dynamics, particularly when confronted with the need to integrate national legal values with Islamic legal traditions that have long lived and taken deep root within society. In the realm of private dispute resolution, especially in the field of financing and secured transactions, the execution of Mortgage Rights becomes an issue with broad social and economic implications (Anggrahini & Kuswanto, 2024). The execution of Mortgage Rights essentially serves as an instrument to ensure legal certainty and creditor protection; however, its process often intersects with social interests, ethical considerations of justice, and the need to maintain harmonious relations between the parties. Within Indonesia's legally plural society, the need arises to examine how the concept of peace or amicable settlement can be harmonized between positive law and Islamic legal values as a manifestation of the principles that guide the majority Muslim population. This becomes increasingly relevant as practical execution shows that peaceful

settlement is not merely an alternative option but often the primary solution most acceptable to the community.

In the execution of Mortgage Rights, Indonesian positive law provides various normative instruments that enable the parties to reach an amicable settlement before, during, and even after the execution process. Mechanisms such as mediation, negotiation, restructuring, and private sale of the collateral indicate that national law not only emphasizes the enforcement of rights but also opens rational space for reconciliation. On the other hand, Islamic law—through the concepts of *sulh*, *ibra*, and dispute resolution mechanisms grounded in mutual consent (*rida*)—has long positioned peace as a primary instrument in resolving *muamalah* conflicts (Mala et al., 2022). Principles such as substantive justice, avoidance of injustice (*zulm*), and the pursuit of collective welfare have made *sulh* a mechanism highly adaptable to contemporary needs, including in modern secured transactions such as Mortgage Rights. The convergence of these two legal systems creates broad opportunities for the development of a peace-based settlement framework that is not only legal-formal but also ethical and socially beneficial.

Ideally, these two legal systems operate harmoniously: positive law provides certainty and clear procedures, while Islamic law offers moral values and substantive justice to enrich the peace process. In this ideal space, dispute resolution in the execution of Mortgage Rights should be able to prevent prolonged conflict, reduce the burden on courts, and preserve the relationship between creditor and debtor (Sherhan, 2022). However, this ideal does not always align with reality. In practice, peace mechanisms are often treated merely as administrative formalities, without reflecting the substantive values upheld by both Islamic law and positive law. The failure to integrate these values results in resolutions that are insensitive to social justice, while pressures in the execution process often disregard the element of voluntary consent, which is the core of *sulh*. The gap between normative principles and field realities thus becomes the central issue of this research—namely, how the integration of Islamic legal values and positive law can be comprehensively formulated so that peace in the execution of Mortgage Rights becomes truly effective, just, and normatively and socially accountable.

Based on these concerns, this study aims to analyze the concept of peaceful settlement in the execution of Mortgage Rights under Indonesian positive law, explore the concept of *sulh* and relevant peace instruments within Islamic law in the context of modern financing practices, and formulate a model for integrating both through a comparative approach. This study contributes to strengthening the theoretical and practical framework of dispute resolution in secured transactions based on a more holistic peace-oriented approach. Additionally, it is expected to provide conceptual insights for policymakers, law enforcement authorities, Islamic and conventional banking institutions, and the wider public in understanding and implementing peace mechanisms that are not only legally valid but also aligned with the prevailing values of justice within Indonesian society. Thus, this study serves as an important foundation for promoting reforms in peace mechanisms in the execution of Mortgage Rights that are more integrative, humanistic, and responsive to the needs of social justice.

## Literature Review

The study of Mortgage Right execution is not entirely new, as numerous researchers have examined this issue using various methods and approaches. Adelia Ifadiyanti, in her work titled; "*Eksekusi Hak Tanggungan yang Belum Jatuh Tempo dalam Pembiayaan Murabahah Perspektif Hukum Positif dan Fatwa DSN-MUI*", discusses how disputes in murabahah financing may lead to the execution of Mortgage Rights even before the financing reaches maturity. This study examines the disharmony between the provisions of positive law—particularly the Mortgage Law—and DSN-MUI fatwas that regulate principles of justice and compliance with sharia contracts. Its main finding shows that execution before maturity may result in injustice and contradict the principles of *rida* and the prohibition of injustice in Islamic law (Ifadiyanti, 2022). The similarity between Adelia's study and this research lies in their shared focus on the relevance of sharia values in the practice of collateral execution. However, the difference is that Adelia's research focuses on issues surrounding premature execution timing, whereas this study highlights the integration of peace values between the two legal systems, not merely procedural discrepancies.

Muhammad Fitri Adi et al., in their work titled; "*Pelaksanaan Eksekusi Hak Tanggungan dalam Perkara Pembiayaan Murabahah melalui Pengadilan Agama Medan*", empirically examine the execution process conducted in the Religious Court. This research outlines the mechanisms and obstacles in executing Mortgage Rights in murabahah financing disputes, including administrative barriers, inter-institutional coordination, and the dynamics of deliberation in mediation. Their findings indicate that the role of the Religious Court is becoming increasingly significant in resolving sharia economic disputes, yet challenges remain in optimizing peace mechanisms before execution takes place (Adi et al., 2022). Its similarity to the present study lies in the shared focus on Mortgage Right execution within the context of Islamic economic disputes. The difference, however, is that their study is empirical and focuses on execution procedures within a single judicial institution, whereas this research is conceptual and comparative, examining Islamic law and positive law values within a peace-based framework.

Novita Alya Maeda et al., through their study titled; "*Pelaksanaan Eksekusi Penyelesaian Kredit Macet Jaminan Hak Tanggungan*", discuss the mechanism for resolving non-performing loans through the execution of Mortgage Right collateral within the framework of Indonesian positive law. This study shows that execution often faces obstacles, including procedural non-compliance, disputes over collateral valuation, and limited alternatives for amicable settlement. One of its key findings highlights the need to strengthen mediation and restructuring instruments to encourage more efficient settlement before execution (Maeda et al., 2023). The similarity between this work and the present research lies in the shared concern for peace-based settlement mechanisms. However, Maeda's study focuses solely on positive law and does not examine peace values in Islamic law as a comparative framework.

Based on the literature review, it appears that most previous studies emphasize procedural analysis, regulatory conformity, or empirical obstacles in

the execution of Mortgage Rights. There is no study that integrates peace values in Islamic law—such as *sulh*, *ibra*, and *rida*—with peace mechanisms in positive law—such as mediation, negotiation, and restructuring—within a unified comparative analysis. Thus, the research gap lies in the absence of studies that conceptually and normatively juxtapose both legal systems to formulate an integrative model capable of strengthening amicable settlement in the execution of Mortgage Rights in Indonesia. This study addresses that gap and proposes a new theoretical construction that is more harmonious and relevant to the character of Indonesian society, which is plural yet deeply rooted in Islamic legal values.

### **Research Methodology**

This article is classified as library research with a qualitative approach, employing normative and comparative legal study as its methodology. The normative juridical framework is combined with comparative analysis to examine the points of convergence and divergence between Islamic legal norms and Indonesian positive law within the context of peaceful settlement in the execution of mortgage rights (Benuf & Azhar, 2020). The research relies entirely on secondary data obtained through literature review, with primary legal materials consisting of the Qur'an and Hadith, classical and contemporary fiqh texts, the Mortgage Law (Law No. 4 of 1996), HIR/RBg, Supreme Court Regulation No. 1 of 2016, and relevant court decisions. Secondary legal materials include literature, books, legal articles, and scholarly journals that support the study of peace mechanisms in both Islamic law and positive law, while tertiary materials such as legal dictionaries serve as complementary sources to clarify key concepts. All legal materials were collected through systematic reading, note-taking, and classification based on the research focus.

Data analysis was conducted qualitatively by placing the principle of *shulh* as the epistemic foundation of Islamic legal reasoning and comparing it with the concept of amicable settlement in Indonesian civil procedural law, thereby producing a mapping of the alignments and divergences between the two legal systems. Data validation was performed through source triangulation, comparing the consistency among primary, secondary, and tertiary legal materials to ensure that every conceptual formulation is grounded in strong normative foundations. The reliability test was carried out through cross-verification between fiqh norms, statutory provisions, and court decisions to ensure that the analysis is not merely theoretical but also relevant to judicial practice. Through this methodological process, the study formulates an integrative model that positions the peace values of Islamic law—particularly *shulh*—as a complement to mediation mechanisms in positive law, with the aim of creating a more just, humane, and peace-oriented system of collateral execution.

### **The Concept of Settlement (Peace Agreement) According to Positive Law in the Execution of Mortgage Rights in Indonesia**

The concept of settlement (perdamaian) in Indonesian positive law is an essential component of dispute resolution, including in cases involving the

execution of mortgage rights, which often trigger conflicts between creditors and debtors. In the context of security rights over property, mortgage rights have a special nature as real rights that grant creditors a privileged position to obtain repayment of debts from the secured object (Pranowo et al., 2024). However, in practice, when a debtor falls into default, the execution process often proceeds without adequate negotiation or communication. This is where the urgency of "settlement" becomes crucial, especially as Indonesian positive law actually provides a normative foundation for mediation as a non-litigation approach that is faster, more affordable, and oriented toward peaceful resolution before execution is carried out.

In the Indonesian civil law system, settlement is recognized and implemented through mediation. Mediation is not merely a method of dispute resolution but a fundamental principle to reduce potential conflicts that may intensify once a dispute enters the execution phase. The regulation of mediation has evolved since the issuance of Supreme Court Circular Letter No. 1 of 2002, strengthened through Supreme Court Regulation (PERMA) No. 2 of 2003, further refined in PERMA No. 1 of 2008, and ultimately revised under PERMA No. 1 of 2016. These regulations stipulate that all civil cases must undergo mediation before the examination of the case begins. Thus, settlement is not merely a moral recommendation but a procedural obligation that judges and disputing parties must undertake.

Nevertheless, positive law does not explicitly mandate mediation for execution cases, including the execution of mortgage rights. However, the Supreme Court, through its judicial policies, continues to require mediation in all civil disputes brought before the court, providing a legal avenue for creditors and debtors to resolve their issues amicably (Gordon, 2016). Unfortunately, in practice, mediation often becomes a mere administrative formality without genuine effort from the parties involved, even though the philosophy of mediation emphasizes simplicity, speed, and lower costs compared to lengthy and expensive litigation. In mortgage execution cases, mediation plays an increasingly vital role because litigation-based dispute resolution is often seen as ineffective. The judicial process is complex, time-consuming, and financially burdensome for creditors—especially banking institutions that consider litigation a last resort after all efforts to rescue non-performing loans have failed.

In civil proceedings, when both parties appear before the court, the judge is obligated to attempt settlement, not only during the first hearing but throughout the proceedings until the case enters substantive examination. Articles 130 of the HIR and 154 of the RBg provide the legal basis for judges to continue encouraging settlement. If the parties reach an agreement, the court will issue a deed of settlement (*akta perdamaian*), which carries executory power and is binding. Although the settlement process is available through the courts, the creditor's position as the holder of privileged rights under the Mortgage Law also creates a strong tendency to proceed directly toward execution (Noor & Heradhyaksa, 2020). A Mortgage Certificate containing the executory clause "For the Sake of Justice Based on the Belief in the One and Only God" possesses the same executory force as a final and binding court decision. Article 20 of the Mortgage Law stipulates three execution methods: parate execution, executory title, and

private sale. Among these methods, parate execution is the most frequently used because it allows creditors to sell the mortgaged property through public auction without court approval.

Although creditors have full authority to execute through parate execution, this action can only be taken after the debtor is declared in default, as stipulated in Article 6 of the Mortgage Law. Through public auction conducted under Minister of Finance Regulation No. 213/PMK.06/2020, the creditor may take the proceeds from the sale as repayment. However, because parate execution takes place outside the court and without mandatory mediation, the potential for conflict is high—especially when debtors feel that they were not given the opportunity to negotiate or salvage their business before the collateral is auctioned (Fitriana, 2023). A notable comparison can be seen in execution through executorial title and private sale, both of which require a court-issued fiat (order of execution). In this mechanism, the court provides an eight-day *aanmaning* (warning) to the debtor to comply with the decision.

During this period, there remains room for settlement that allows both parties to reach a fair agreement, avoiding an execution that might harm the debtor or damage the legal relationship between the parties. Here, settlement is not merely an administrative process but a legal instrument to prevent conflict and produce a more humane resolution. On the other hand, parate execution offers procedural advantages that make it the preferred option for most creditors. The sale of the collateral can occur based on the debtor's authorization in the credit contract or the creditor's legal right—without court involvement, without seizure, without fiat execution, and even without summons if agreed upon (Riyyano, 2020). This speed and efficiency explain why parate execution is favored by financial institutions. However, such efficiency leaves a gap due to the absence of debtor protection mechanisms, such as mediation or consultation before the auction takes place.

Given the ease of parate execution, mediation should ideally be carried out well before creditors take coercive action through auction. Consultation or mediation—whether through the courts, mediation institutions, or financial dispute resolution bodies as regulated in PBI No. 8/5/2006 and POJK No. 61/2020—should serve as an initial platform for aligning the interests of both parties. Although banking mediation regulations exist, their implementation remains far from ideal due to the absence of a functional sectoral mediation institution capable of resolving disputes before execution. As an alternative to execution, credit restructuring also serves as an instrument of settlement prior to execution. Bank Indonesia Circular No. 26/4/BPPP/1993 provides options for rescuing non-performing loans through rescheduling, reconditioning, and restructuring (Oktiana & Muntaqo, 2024).

This restructuring offers a final opportunity for debtors who still have viable business prospects and good faith to repay their debts. However, not all debtors receive this opportunity because banks apply strict internal policies in determining restructuring eligibility, causing some debtors to feel neglected or deprived of their rights. When settlement efforts are not provided or prove ineffective, creditors inevitably proceed with execution through auction or litigation. This demonstrates the weakness of legal protection for debtors, as there

is no regulation explicitly requiring financial institutions to conduct mediation before execution. This legal vacuum often triggers tension, resistance, and even legal challenges from debtors during auction proceedings. Such conflicts may cause greater losses for creditors, including execution delays, opposition lawsuits, and damage to business relationships.

Thus, the concept of settlement in the execution of mortgage rights holds significant urgency as a mechanism to prevent disputes from escalating into open conflict. Mediation conducted before execution provides a lifeline for debtors with genuine good faith to reach a mutually beneficial solution with creditors. Besides saving time and costs, mediation minimizes the potential for non-compliance and avoids lengthy legal processes. Mediation is not just a resolution tool but also a means to maintain the stability of legal relationships within the banking sector. Given its importance, Bank Indonesia and the Financial Services Authority (OJK) should take concrete steps to establish mandatory pre-execution mediation as part of the mechanism for handling non-performing loans. Without firm regulation, conflicts between creditors and debtors will persist, especially within the dominantly applied parate execution system.

### **The Concept of Peace (*Shulh*) from the Perspective of Islamic Law in the Execution of Mortgage Rights in Indonesia**

The execution of mortgage rights has long been understood as a coercive mechanism aimed at obtaining debt repayment from a defaulting debtor. In positive law practice, particularly under the Mortgage Rights Law (UUHT) of 1996, execution may proceed rapidly through *parate executie* or by court order. However, such a repressive model of settlement often produces dissatisfaction, social conflict, or resistance from the debtor, especially when the debtor is economically vulnerable (Mewengkang, 2016). Therefore, an alternative approach that is more humane, just, and compatible with Indonesian societal values—especially within the Muslim community—is needed. This alternative is the concept of peace or *shulh* in Islamic law.

In Indonesian positive law, dispute resolution through peaceful means has been recognized via mediation as regulated in Supreme Court Regulation (PERMA) No. 1 of 2016. Mediation is mandatory in all civil cases before entering the examination of the merits. However, the regulation does not explicitly require mediation in execution matters, including the execution of mortgage rights. Nonetheless, in principle, civil procedure still offers space for parties to reach peaceful settlement that is efficient and minimizes conflict. This condition reveals an opportunity to integrate a deeper and more fundamental principle of peace: *shulh*. Islam recognizes dispute resolution through *al-shulh*, which means reconciliation or agreement to end conflict. The legal basis for *shulh* is firmly rooted in the Qur'an, Sunnah, and scholarly consensus. A hadith narrated by Abu Dawud states that reconciliation is permissible as long as it does not legalize what is forbidden nor forbid what is lawful. This principle emphasizes that *shulh* is founded on justice, voluntary consent (*ridha*), and public benefit (*maslahah*). Therefore, in every dispute resolution, both parties must willingly agree, and no party may be wronged.

Terminologically, *shulh* is an agreement intended to end a dispute or prevent a potential dispute. The Compilation of Sharia Economic Law (KHES) affirms that *shulh* is an agreement to settle disputes through consensus. Scholars such as Wahbah Az-Zuhaili emphasize that *shulh* applies not only to family and property cases but also to commercial transactions, debts, and economic disputes. Thus, in disputes involving mortgage rights—which are rooted in creditor-debtor relations—*shulh* is highly relevant as an ethical and just alternative settlement mechanism. Islamic law places great emphasis on peaceful dispute resolution because it provides substantive justice compared to the rigid and formalistic nature of litigation (Yuliani, 2017). In the context of Islamic financial institutions, Law No. 21 of 2008 on Islamic Banking underscores the importance of resolving disputes through consultation, mediation, or arbitration before bringing the matter to court. KHES Article 251 also states that disputes between capital owners and managers may be resolved through *shulh*. These provisions affirm that peaceful settlement is not merely recommended but constitutes part of sharia principles founded on consent and justice.

Problems in the execution of mortgage rights arise when a defaulting debtor is immediately confronted with coercive measures, such as seizure and auctioning of collateral. *Parate executie*, for instance, can be carried out without a court order. Although convenient for creditors, this execution model often triggers conflicts because debtors feel deprived of the opportunity to negotiate. Empirical studies show high levels of resistance among debtors facing collateral execution, as the economic burden and social pressure involved are severe. Under these circumstances, the application of *shulh* becomes crucial to prevent execution from becoming arbitrary and to ensure consideration of the debtor's situation. *Shulh* provides space for dialogue between creditor and debtor, allowing them to find a middle ground before execution occurs (Grassa & Gazdar, 2014). For instance, debtors may request debt rescheduling, penalty reduction, or more flexible restructuring. Islam also recognizes the concept of *al-ibra'*, namely partial debt forgiveness by the creditor as a form of generosity and justice. This is particularly relevant for debtors who maintain good faith but face financial difficulty. Thus, *shulh* can balance the bargaining position between creditor and debtor to prevent prolonged conflict.

Implementing *shulh* also brings significant benefits to creditors. Litigation or auction processes through the state auction office (KPKNL) often take a long time, require substantial costs, and risk lowering the economic value of the collateral. Through *shulh*, creditors may receive repayment more quickly and efficiently, even before legal proceedings begin. Additionally, peaceful settlement preserves long-term relationships between financial institutions and customers, fostering financial system stability and reducing non-performing loan (NPL) risks. The application of *shulh* aligns with mediation principles under PERMA No. 1 of 2016, which affirms mediation as an effective means of providing satisfying justice for the parties. *Shulh* shares much in common with modern mediation but includes deeper sharia-based values: deliberation (*musyawarah*), justice, public interest, and voluntary consent. Thus, *shulh* holds strong potential for integration with the national legal system, particularly in bankruptcy, non-performing loans, and mortgage rights execution.

Strengthening *shulh* in settling disputes involving mortgage rights is also a legal necessity within Indonesia's majority-Muslim society. Integrating *shulh* principles into positive law can reduce execution practices that neglect humanitarian considerations, prevent social conflict, and deliver substantive justice consistent with the objectives of Islamic law (*maqāṣid al-sharī'ah*) (Nasution & Rokan, 2022). Consequently, dispute resolution would no longer operate under a winner-loser paradigm but instead prioritize legal outcomes beneficial to both parties. Therefore, *shulh* should be further developed as a hybrid approach combining Islamic legal vision and national legal mechanisms for resolving complex civil disputes. Specifically, in the execution of mortgage rights, implementing *shulh* prior to execution may serve as an innovative, humane, and socially relevant policy. Research on integrating *shulh* into mortgage execution thus becomes essential for building a dispute resolution model rooted in Indonesian character and grounded in the universal values of Islam.

### **Integration of Peaceful Settlement in the Execution of Mortgage Rights According to Islamic Law and Positive Law in Indonesia**

The execution of mortgage rights is essentially designed as an instrument that provides legal certainty for creditors by granting them preferential status over the collateral object. Law No. 4 of 1996 on Mortgage Rights provides convenience through the *parate execution* mechanism, allowing creditors to execute without going through lengthy judicial proceedings. However, this formal legal certainty does not always run smoothly in practice (Mewengkang, 2016). Coercive execution often triggers resistance from debtors, social unrest, and even prolonged horizontal conflicts. Therefore, although the formal system grants strong authority to creditors, Indonesian positive law still opens a peace-based space—negotiation, restructuring, and private sale—as more humane alternatives for dispute resolution.

In the tradition of Islamic law, the concept of peaceful settlement emerged earlier and is far more deeply rooted. Instruments such as *shulh* and *ibra* emphasize dispute resolution through willingness, justice, and the avoidance of wrongdoing. DSN-MUI Fatwa No. 47/2005 asserts that dispute resolution in Islamic financial transactions must prioritize consultation and mediation before litigation (Ifadiyanti, 2022). This approach aligns with the character of Indonesian society, which values social harmony, making peaceful mechanisms in Islamic law both a moral and functional approach to mitigating conflict in the execution of mortgage rights. Theoretically, the values within *shulh* are closely related to the principles of freedom of contract and good faith in Indonesian civil law. Both principles emphasize voluntariness, equality, and moral commitment in resolving disputes fairly.

These principles are highly relevant in creditor-debtor relations, which often experience tension when the debtor is unable to fulfill payment obligations. Moreover, Supreme Court Regulation No. 1 of 2016 on Mediation Procedures mandates compulsory mediation in every case before proceeding to trial, making peaceful settlement not merely optional but an obligatory part of the legal process. This demonstrates that Islamic values can serve as a normative reinforcement for

mediation instruments in Indonesia (Fradinata & Firmansyah, 2025). The integration of peaceful settlement in mortgage execution becomes urgent when considering that rigid and formalistic execution processes often generate broad social impacts. Execution through auction or forced eviction frequently sparks emotional conflict, especially when the collateral is a family residence occupied by multiple family members. Such conditions demonstrate that execution cannot be viewed solely from the standpoint of formal legality; it must also consider humanitarian and public welfare aspects that form the core of Islamic law. Therefore, integrating *shulh* values into mortgage execution means seeking solutions that are not only legally valid but also dignified and just for all parties.

Integrating Islamic peaceful settlement values also enriches dispute-resolution models that have long been overly oriented toward procedural legal certainty. Through the *shulh* approach, dispute resolution is not merely based on written rules but also considers social and moral relationships between creditor and debtor. This aligns with the objectives of *maqasid al-shariah*, particularly the protection of property (*hifz al-mal*) and the safeguarding of honor and social relations (*hifz al-'ird*). In other words, peaceful settlement not only resolves economic disputes but also prevents social fractures arising from debt conflicts (Juen, 2024). Islamic law considers *shulh* valid only when it is based on mutual consent without coercion. This principle resonates with the consensualism principle in Indonesian civil law. Both legal frameworks provide broad scope for non-litigation resolution. The Qur'an, in Surah Al-Hujurat verse 9, encourages reconciliation when disputes occur, while national law through Article 130 of the HIR and PERMA 1/2016 mandates efforts at peaceful settlement before a case is examined. This alignment shows that integrating *shulh* into the execution of mortgage rights is not foreign to Indonesian positive law; rather, it aligns with the national legal ideals of justice, certainty, and expediency.

The thought of Wahbah al-Zuhaili provides a strong foundation for the application of *shulh* in collateral execution. He emphasizes three main principles: justice (*adl*), public benefit (*maslahah*), and consent (*rida*). The principle of justice requires that settlement not disproportionately burden either party. The principle of *maslahah* requires outcomes that are socially and economically beneficial. Meanwhile, the principle of consent necessitates that peace agreements result not from pressure but from sincere willingness. These three principles are highly relevant, especially when mortgage execution often results in injustice for debtors who are already in economically difficult situations. The implementation of peaceful settlement in mortgage execution can be applied at three main stages: pre-execution, during execution, and post-execution (Syukron et al., 2023). At the pre-execution stage, creditors may offer negotiation or restructuring through rescheduling, reconditioning, or novation. Agreements may be formalized in an addendum or peace deed before a notary. For Islamic financing, an *ibra* clause (debt relief) may be included as long as it does not increase the principal debt. If private sale is chosen, its implementation must follow Article 20 of the Mortgage Law to ensure transparency and optimal sale value.

At the execution stage, although *parate execution* is underway, positive law still provides space for mediation. The head of the District Court may facilitate ad hoc mediation with a certified mediator during the *aanmaning* process. If an

agreement is reached, it can be formalized in a peace deed (*dading*) with executorial force equivalent to a court judgment. However, if the debtor fails to comply with the peace agreement, the creditor may continue the lawful auction process. This space demonstrates that peaceful settlement does not weaken the creditor's position but offers more flexible and equitable solutions. The post-execution stage is important to ensure that settlement is fully completed. If settlement results in a new repayment scheme, the debtor fulfills the obligations accordingly, and the creditor issues a *roya* to signify the termination of mortgage rights. If execution proceeds through auction, it must follow PMK 122/2023, covering announcement procedures, bid guarantees, auction implementation, and the auction minutes as the basis for transferring rights. Thus, peaceful settlement and formal execution can coexist complementarily within the national legal framework.

The synergy between Islamic legal values and positive law becomes stronger when DSN-MUI fatwas and OJK regulations converge toward the same orientation—peaceful dispute resolution. DSN-MUI Fatwa No. 47 explicitly directs Islamic financial institutions to prioritize consultation and mediation. Meanwhile, OJK Regulation No. 1/POJK.07/2014 provides a legal basis for alternative dispute-resolution institutions in the financial services sector. These instruments not only provide normative guidelines but also affirm that peace-based dispute resolution is an integral part of national financial governance (Ifadiyanti, 2022). In a broader context, the Supreme Court holds a strategic role in strengthening peaceful integration by reforming regulations to expand mandatory mediation in mortgage-execution cases. Religious Courts may also be optimized, as they have jurisdiction over Islamic economic disputes under Law No. 3 of 2006. The recognition of *shulh* as a legitimate alternative within positive law aligns closely with the concept of progressive law, which places substantive justice above procedural formality. Thus, the integration of peaceful settlement contributes not only to legal order but also to the fulfillment of human values that underpin the national legal system.

Aspect	Islamic Law	Indonesian Positive Law	Integrative Analysis
Normative Basis	Al-Qur'an, Hadith, DSN-MUI Fatwa, principles of <i>maṣlaḥah</i> & 'adl	UUHT, Article 130 HIR, PERMA 1/2016, POJK 1/2014	Both provide room for peace before litigation/execution
Main Objective	Substantive justice, avoidance of oppression, maintaining social relations	Legal certainty, execution effectiveness, fast resolution	Objectives can be integrated for fair and effective execution
Peace Instruments	<i>Shulh</i> , <i>Ibrā'</i> , Arbitration ( <i>Tahkim</i> )	Mediation, negotiation, restructuring, private	Sharia instruments can be formalized into a peace agreement

sales			
Pre-Execution	Consultation, relief, restructuring based on consent	Summons, mediation, restructuring addendum	Aligned in promoting peace before execution
During Execution	Peace remains open as long as there is no injustice	Ad hoc mediation during aanmaning, halting execution if agreed	Peace is valid even while execution is ongoing
Post-Execution	Debt redemption & cancellation of rights	Roya, auction settlement, auction minutes	Combination ensures effectiveness & justice

Table 1, Comparative Analysis of Integration

Based on the comparative table, it is evident that both Islamic law and Indonesian positive law fundamentally regard peace as a core principle that should be prioritized in dispute resolution, including in the execution of mortgage rights. Islamic law provides an ethical foundation through the principles of justice, public interest (*maṣlahah*), and consent (*riḍā*), which emphasize harmonious social relationships. In contrast, positive law ensures legal certainty through mechanisms such as mediation, restructuring, and standardized procedural stages. The convergence of these two systems demonstrates that moral and humanistic sharia norms can operate alongside the formal framework of national law, producing dispute resolutions that are not only legally valid but also grounded in substantive justice.

The integration of both becomes particularly relevant because the execution of mortgage rights often generates social tension when carried out coercively. By opening space for peace at the pre-execution, execution, and post-execution stages, the enforcement of creditor rights can proceed without neglecting the protection of the debtor. Concepts such as *shulh*, *ibrā'*, and *musyawarah* in Islamic law can be formalized into peace agreements or official restructuring documents under positive law, resulting in an execution mechanism that is more adaptive, balanced, and responsive to societal needs. Ultimately, this integration strengthens Indonesia's legal orientation toward a dispute resolution model that is more humanistic, effective, and in line with the nation's character.

## Conclusion

The integration of Islamic law and positive law values in the peace process of mortgage rights execution demonstrates that both legal systems share a harmonized foundation in promoting dispute resolution that is peaceful, fair, and proportional. Indonesian positive law provides normative and procedural instruments that enable peace to be achieved at every stage of execution, from summons, mediation, restructuring, to the suspension of execution if an agreement is reached. On the other hand, Islamic law offers ethical principles such as *shulh*, *ibrā'*, and the values of *maṣlahah* and '*adl*', which emphasize consent (*riḍā*),

substantive justice, and the avoidance of oppression. The integration of these two systems shows that peace in the execution of mortgage rights is not merely an administrative mechanism but an instrument that balances legal protection with the human and moral dimensions inherent in Indonesian Muslim society. Thus, harmonizing these two legal systems not only enriches approaches to dispute resolution but also strengthens social legitimacy and the justice that is expected to be achieved.

Through comparative analysis, this study finds that the shared orientation between Islamic law and positive law—namely the achievement of justice, certainty, and public interest (*maṣlahah*)—becomes a key meeting point in building a more integrative peace model. While positive law emphasizes certainty and procedure, and Islamic law highlights ethics, consent (*ridā*), and balance, the two can complement each other in the practice of mortgage rights execution. This comparison shows that peace instruments in Islamic law can be formalized within the framework of positive law, giving them binding power while preserving their moral values. Conversely, positive law mechanisms gain a humanistic and substantive dimension when informed by Islamic legal values. Therefore, this study underscores the importance of an integrative approach to creating a peace process that is not only legally effective but also fair, ethical, and responsive to the social needs of Indonesian society.

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