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# Unauthorized Sale of Motorcycles with Outstanding Installments: A DSN-MUI Fatwa and Maslahah Mursalah Analysis

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**Abstract:** This study examines the unauthorized sale of motorcycles whose installment obligations remain outstanding in Surakarta. The practice generally involves transferring a motorcycle with its Vehicle Registration Certificate (STNK) but without the Motor Vehicle Ownership Book (BPKB), and without the finance company's consent. Some participants frame the practice as assistance to distressed debtors and resistance to interest-based financing. This qualitative socio-legal study combines field observations, interviews, and document analysis with a normative examination of DSN-MUI Fatwa No. 110/DSN-MUI/IX/2017, Indonesian fiduciary-security law, and maslahah mursalah. The findings identify two patterns: transfers prompted by genuine financial hardship and transfers planned from the beginning through deliberate payment default. In both patterns, the intermediary or laskar connects the debtor with a purchaser and offers the motorcycle at a discounted price. The transaction does not satisfy the Fatwa's requirement that the seller possess valid authority over the object of sale; at most, it resembles bai' al-fuduli, whose legal effectiveness depends on the entitled party's approval. Under Law No. 42 of 1999, transferring a fiduciary object without prior written consent also exposes

***Keywords:*** *Unauthorized transfer; motorcycle financing; DSN-MUI fatwa; fiduciary security; maslahah mursalah*



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the debtor to contractual and statutory consequences. The claimed benefit is not a valid maslahah because it produces broader harm to creditors, purchasers, contractual certainty, and public trust. Lawful alternatives include restructuring, creditor-approved transfer, voluntary surrender, and formal dispute resolution.

**Abstrak:** Penelitian ini mengkaji jual beli tanpa izin atas sepeda motor yang kewajiban cicilannya masih berjalan di Surakarta. Praktik tersebut umumnya dilakukan dengan menyerahkan Surat Tanda Nomor Kendaraan (STNK), tanpa Buku Pemilik Kendaraan Bermotor (BPKB), dan tanpa persetujuan perusahaan pembiayaan. Sebagian pelaku membingkai praktik ini sebagai bantuan bagi debitur yang mengalami kesulitan dan perlawanan terhadap pembiayaan berbasis bunga. Penelitian sosio-legal kualitatif ini memadukan observasi lapangan, wawancara, dan analisis dokumen dengan kajian normatif terhadap Fatwa DSN-MUI No. 110/DSN-MUI/IX/2017, hukum jaminan fidusia Indonesia, dan maslahah mursalah. Hasil penelitian menemukan dua pola, yaitu pengalihan karena kesulitan ekonomi nyata dan pengalihan yang direncanakan sejak awal melalui penghentian pembayaran secara sengaja. Pada kedua pola tersebut, perantara atau laskar mempertemukan debitur dengan pembeli dan menawarkan kendaraan dengan harga lebih rendah. Transaksi tidak memenuhi persyaratan kewenangan penjual sebagaimana ditentukan dalam Fatwa DSN-MUI; paling jauh, praktik tersebut menyerupai bai‘ al-fuduli yang efektivitas hukumnya bergantung pada persetujuan pihak yang berhak. Berdasarkan Undang-Undang No. 42 Tahun 1999, pengalihan objek fidusia tanpa persetujuan tertulis juga menimbulkan konsekuensi kontraktual dan hukum. Manfaat yang diklaim tidak dapat dikategorikan sebagai maslahah yang sah karena menimbulkan mafsadah yang lebih luas bagi kreditur, pembeli, kepastian akad, dan kepercayaan publik.

***Kata kunci:** Pengalihan Tanpa Izin; Pembiayaan Sepeda Motor; Fatwa DSN-MUI; Jaminan Fidusia; Maslahah Mursalah*

## INTRODUCTION

Motorcycle financing enables households with limited liquidity to obtain vehicles through deferred payment. The transaction, however, creates reciprocal obligations: the finance provider releases the vehicle and financing facility, while the debtor undertakes to pay installments and comply with restrictions attached to the financed asset. Contemporary studies of installment and online-credit transactions emphasize that convenience does not remove the requirements of transparency, contractual certainty, and freedom from prohibited elements in Islamic commercial law. [1] [2]

In Surakarta, an informal market has developed for motorcycles whose installments have not been completed. These vehicles are commonly advertised and transferred with the STNK but without the BPKB, which remains controlled by the finance company. The local expression used for these vehicles is motor kredit macet or motor pedotan. The price is substantially lower than the market price because the purchaser receives possession and limited registration documents but not a clean transfer of the financing relationship or security interest.

The practice is socially distinctive because some participants do not describe it merely as an opportunistic transaction. Members of a local anti-usury group, hereafter referred to as the laskar, present their intervention as amar ma‘ruf nahi munkar: protecting debtors from abusive collection and weakening

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[1] Zulfikar Hasan and Muhammad Azli, “The Online Credit Buying and Selling System and Its Compatibility with Islamic Law,” *Journal of Entrepreneurship and Business* 10, no. 2 (2022): 17–29, https://doi.org/10.17687/jeb.v10i2.903.

[2] Rif’atul Muzayanah Al-Mahbubah and Ana Nurwakhidah, “The Frame of Sharia Economic on Paylater Payment System,” *ISLAMICONOMIC: Jurnal Ekonomi Islam* 12, no. 1 (2021): 93–107, https://doi.org/10.32678/ijei.v12i1.288.

institutions considered to operate through riba. The argument combines a welfare claim with a strategy of deliberate non-payment. The normative problem is therefore more complex than ordinary arrears. It concerns whether a religiously framed objective can validate the unauthorized disposition of an asset that remains contractually restricted and encumbered by fiduciary security.

Islamic commercial law recognizes freedom of exchange but conditions a valid sale on legally competent parties, mutual consent, a lawful and sufficiently known object, a known price, and the seller's ownership or authority. DSN-MUI Fatwa No. 110/DSN-MUI/IX/2017 expressly requires the seller and buyer to possess legal capacity and requires the seller to have wilayah, whether original authority or representative authority, over the object sold. Recent fiqh-muamalah scholarship likewise emphasizes ownership, authorization, disclosure, and the avoidance of gharar as central safeguards in a sale. Indonesian fiqh-muamalah scholarship on murabahah and salam contracts similarly ties a valid sale to the seller's lawful authority over the object sold and to mutual transparency between the contracting parties.[3][4] Where a person sells property without adequate authority, the transaction is commonly discussed as

[3] Muhammad Diah and Zulhamdi Zulhamdi, "Implementasi Murabahah Pada Perbankan Syariah," *Al-Hiwalah: Journal Syariah Economic Law* 1, no. 1 (2022): 53–74, https://doi.org/10.47766/alhiwalah.v1i1.875.

[4] Zulhamdi Zulhamdi, "Jual Beli Salam (Suatu Kajian Praktek Jual Beli Online Shopee)," *Syarah: Jurnal Hukum Islam & Ekonomi* 11, no. 1 (2022): 1–19, https://doi.org/10.47766/syarah.v11i1.294.

bai‘ al-fuduli; its effectiveness cannot be detached from ratification by the party whose right is affected. [56]

The same conduct raises issues under Indonesian positive law. Law No. 42 of 1999 on Fiduciary Security allows possession of the secured movable object to remain with the debtor, but Article 23(2) prohibits the fiduciary grantor from transferring, pledging, or leasing a non-inventory fiduciary object without the fiduciary recipient's prior written consent. Article 36 provides a criminal sanction for violation of that prohibition. Recent empirical and doctrinal studies consistently identify unauthorized transfers as a source of loss to creditors, uncertainty for third-party purchasers, and obstruction of enforcement.[789]

Debtor protection must nevertheless remain part of the analysis. Constitutional Court Decision No. 18/PUU-XVII/2019 limits unilateral determinations of default and requires court-equivalent enforcement where default is disputed and the debtor does not voluntarily surrender the object. The decision prevents coercive self-help by creditors, but it does not convert an unauthorized transfer into a lawful transaction. Accordingly, abusive collection

[5] Nabila Azrilia Syahra et al., "Konsep Jual Beli Dalam Perspektif Fiqih Muamalah Dan Implikasinya Terhadap Ekonomi Syariah," *Hikmah : Jurnal Studi Pendidikan Agama Islam* 1, no. 4 (2024): 112–21, https://doi.org/https://doi.org/10.61132/hikmah.v1i4.256.

[6] Dewan Syariah Nasional–Majelis Ulama Indonesia, "Fatwa No. 110/DSN-MUI/IX/2017 Tentang Akad Jual Beli" (Dewan Syariah Nasional–Majelis Ulama Indonesia, 2017).

[7] P Fitriani and T El Rahman, "Tinjauan Yuridis Pengalihan Objek Jaminan Fidusia Pada Perjanjian Pembiayaan Konsumen Kendaraan Bermotor Roda Empat Tanpa Persetujuan Penerima Fidusia," *Viva Justicia: Journal of Private Law* 1, no. 1 (2024).

[8] Republik Indonesia, "Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia," Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168 § (1999).

[9] Z D Zaini and R Irawan, "Pertanggungjawaban Pelaku Tindak Pidana Mengalihkan Benda Objek Jaminan Fidusia Tanpa Persetujuan Dari Penerima Fidusia," *Jurnal Gagasan Hukum* 4, no. 1 (2022): 62–70, https://doi.org/10.31849/jgh.v4i01.8656.

and unauthorized disposition are separate wrongs that require separate remedies.[10]

Previous studies have examined online credit, fiduciary-object transfers, creditor protection, and the use of maslahah in contemporary economic law. Most fiduciary studies are predominantly doctrinal or examine formal disputes after the transfer occurs. They do not adequately explain a field practice in which non-payment and resale are morally justified as anti-usury activism. This study addresses that gap by integrating empirical patterns in Surakarta with three analytical frameworks: the DSN-MUI sale fatwa, fiduciary-security law, and maslahah mursalah. It asks: (1) how are motorcycles with outstanding installments transferred in Surakarta; (2) how does the practice comply with the conditions of sale under Fatwa No. 110/DSN-MUI/IX/2017; and (3) can the asserted social benefit qualify as maslahah mursalah when weighed against the resulting harms?[11] [12] [13]

The distinction between possession and authority is especially important in consumer financing. Physical control of a motorcycle may create an appearance of ownership in everyday transactions, yet possession does not necessarily include the power to transfer an asset free from contractual

[10] Mahkamah Konstitusi Republik Indonesia, *Putusan No. 18/PUU-XVII/2019 Tentang Pengujian Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia* (Mahkamah Konstitusi Republik Indonesia, 2019).

[11] A M H Ali, M S Yusuf, and Q Arsadani, "Arguments of Maslahah and Mafsadat in Modern Islamic Economic Law in Indonesia and Morocco," *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah* 15, no. 2 (2023), https://doi.org/10.15408/aiq.v15i2.34613.

[12] H Hamka, "Pemidanaan Pengalihan Objek Jaminan Fidusia Tanpa Persetujuan Penerima Fidusia," *Philosophia Law Review* 3, no. 1 (2023), https://doi.org/10.56591/pilar.v3i1.19320.

[13] I Shania, S Sanusi, and D Darmawan, "Akibat Hukum Debitor Yang Menyewakan Objek Jaminan Fidusia Tanpa Persetujuan Tertulis Kreditor," *DIVERSI: Jurnal Hukum* 8, no. 1 (2022): 55–77, https://doi.org/10.32503/diversi.v8i1.2067.

restrictions or security rights. In the transactions examined here, the debtor can deliver the vehicle and the STNK, but cannot independently release the BPKB, extinguish the financing obligation, or bind the finance company to recognize the purchaser. This gap between factual possession and legal authority explains why a transaction may look complete at the community level while remaining defective under both Islamic commercial principles and positive law.

The purchaser's position also requires closer attention. A low price may be interpreted as an economic opportunity, but it simultaneously signals incomplete documentation and unresolved legal claims. Purchasers may understand that the BPKB is unavailable, yet they do not always appreciate that the financing debt remains attached to the original contractual relationship and that an informal assurance from an intermediary cannot replace the creditor's written consent. Therefore, the problem is not limited to whether the debtor has acted unlawfully. It also concerns information asymmetry, the quality of consent, and the distribution of risk among parties who possess unequal knowledge of financing and fiduciary arrangements.

From an Islamic-law perspective, the case also tests the relationship between moral intention and transactional validity. The intention to assist a debtor, oppose coercive collection, or criticize riba-based practices may be socially persuasive, but Islamic commercial law evaluates both the objective and the method used to achieve it. A welfare-oriented claim cannot automatically remove requirements concerning authority, honesty, disclosure, and fulfillment of obligations. For this reason, the concept of maslahah mursalah is used in this study not as an independent slogan of benefit, but as a structured test of whether the claimed benefit is real, general, consistent with Sharia objectives, and greater than the harm produced by the chosen conduct.[14] [15]

This study contributes to the existing literature in two ways. Empirically, it documents the role of an organized intermediary in converting repayment difficulty or planned default into an informal resale transaction. Analytically, it brings together three bodies of law that are often discussed separately: the authority requirement in the DSN-MUI sale fatwa, the prohibition on unauthorized transfer in fiduciary-security law, and the benefit-harm assessment in maslahah mursalah. Their integration makes it possible to distinguish sympathy for distressed debtors from legal approval of the mechanism used to dispose of the motorcycle.

## METHODS

This research used a qualitative socio-legal design. The empirical component examined the actors, sequence, motives, and social justification of unauthorized motorcycle transfers in Surakarta. The normative component evaluated the field findings against DSN-MUI Fatwa No. 110/DSN-MUI/IX/2017, Law No. 42 of 1999 on Fiduciary Security, Constitutional Court Decision No. 18/PUU-XVII/2019, and the analytical criteria of maslahah mursalah. A socio-legal design was selected because the study concerns both law in written sources and law as interpreted and practiced by a local community.

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[14] Ali, Yusuf, and Arsadani, "Arguments of Maslahah and Mafsadat in Modern Islamic Economic Law in Indonesia and Morocco."

[15] I A Harun, "Implementasi Konsep Maslahah Mursalah Dalam Ekonomi Islam Menurut Tokoh Islam Dan Jumhur Ulama," *Jurnal Economina* 1, no. 3 (2022): 563–77, https://doi.org/10.55681/economina.v1i3.132.

Fieldwork was conducted in Surakarta from January to March 2025. The study involved 16 informants, comprising five debtors or sellers who had transferred motorcycles with outstanding installment obligations, three laskar members who acted as intermediaries, five purchasers of the motorcycles, and three supporting informants with practical knowledge of consumer financing and fiduciary-security enforcement. Informants were selected purposively based on their direct involvement in, or first-hand knowledge of, the transactions under study.

Data were collected through observation, semi-structured interviews, and documentation. Observation focused on the transaction mechanism, the interaction among the debtor, intermediary, and purchaser, and the way vehicles were offered. Interviews explored the actors' motives, their understanding of ownership and financing obligations, the role attributed to the laskar, and the reasons purchasers accepted vehicles without BPKB. Documentation included transaction-related records and publicly available promotional material relevant to the practice. The social-media screenshot contained in the earlier manuscript has been removed because it did not reliably demonstrate the disputed transactions and created avoidable privacy and evidentiary concerns.

Data analysis proceeded through data condensation, thematic categorization, comparison across actor groups, and interpretation. The main empirical categories were: transaction sequence, seller motive, intermediary role, purchaser motive, documentary status, and claimed religious justification. These categories were then tested against the legal requirements of authority over the object, disclosure, fulfillment of promises, restrictions on fiduciary objects, and the balance between benefit and harm. This procedure is consistent with descriptive qualitative analysis in which empirical meanings are organized and interpreted rather than statistically generalized. [16]

Before each interview, the researcher explained the purpose of the study, the voluntary nature of participation, and the participants' right to withdraw at any stage. Verbal informed consent was obtained before data collection. Personal names and other identifying information were removed from the interview records, and participants were identified only through anonymized codes. Interview data and supporting documents were stored securely and used solely for research purposes.

## RESULTS AND DISCUSSION

### *Transaction Patterns and the Roles of the Parties*

The field descriptions reveal two distinct debtor patterns. The first involves a debtor who initially intended to complete the financing agreement but later experienced reduced income or family economic difficulty. When the debtor could no longer maintain the installments and feared repossession, the motorcycle was transferred to the laskar or to a purchaser introduced by the laskar. Economic distress explains the immediate motive, although it does not itself create authority to transfer the encumbered vehicle.

The second pattern is premeditated default. In this pattern, a person applies for motorcycle financing, satisfies the administrative requirements, selects a long tenor to minimize the initial payment, pays only a small number of installments, and then stops payment. The motorcycle is subsequently offered through the laskar at a discounted price. The debtor may receive a pre-agreed

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[16] Muhammad Rijal Fadli, "Memahami Desain Metode Penelitian Kualitatif," *Humanika* 21, no. 1 (2021): 33–54, https://doi.org/10.21831/hum.v21i1.38075.

amount from the transaction. Unlike hardship-driven arrears, the conduct is organized from the outset around obtaining possession of the motorcycle and disposing of it before the financing obligation is completed.

The laskar functions as an intermediary, information broker, and informal guarantor.[17] It connects the debtor with a purchaser, markets the motorcycle, and reassures the purchaser that the vehicle can be used within the Solo Raya area.[18][19]The guarantee is practical rather than legal: the laskar does not possess written authorization from the finance company to transfer the financing contract, release the fiduciary security, or convey clean title to the purchaser.[20] Its intervention therefore reduces the purchaser's perception of enforcement risk without removing the underlying legal restriction.[21][22]

Purchasers are attracted by the low price and immediate possession. The recorded reasons include use in rural areas, use for transporting goods, and the belief that the motorcycle is not stolen because an STNK is supplied. Some

[17] Muhammad Faiz Aziz, "Perlunya Pengaturan Khusus Online Dispute Resolution ( ODR) di Indonesia Untuk Fasilitasi Penyelesaian Sengketa E-Commerce," *Jurnal Eechts Vinding Media Pembinaan Hukum Nasional* 9 (2020): 275–94, https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v9i2.449.

[18] Hadrian Abdjul, "Socio Juridical Review of the Criminal Action of Embraction of Fiduciary Objects (Case Study of Kabila District, Bone Bolango District )," *Estudiante Law Journal* 5, no. 1 (2023): 244–58, https://doi.org/10.33756/eslaj.v5i1.20533.

[19] Ratih M Puspasari and Muhammad Ngazis, "Debtor Protection in the Execution of Fiducia Securities," *Jurnal Pembaharuan Hukum* 8, no. 1 (2021): 26, https://doi.org/10.26532/jph.v8i1.13798.

[20] Ari T Wibowo, "Legal Basis for Reporting Embezzlement of Motorized Vehicles (Objects of Fiduciary Guarantees) Transferred to Third Parties by Fiduciaries With Pawning," *Authentica* 6, no. 2 (2024): 146–60, https://doi.org/10.20884/1.atc.2023.6.2.433.

[21] Dewi Kurniawati and Moh. Saleh, "Auction of the Executed Collateral Object Under Fiduciary Guarantee," *Santhet (Jurnal Sejarah Pendidikan Dan Humaniora)* 8, no. 1 (2023): 112–23, https://doi.org/10.36526/santhet.v8i1.3189.

[22] Zulfikri Zulfikri and Suryanto Sagala, "Legal Protection of Creditors on the Transfer of Four-Wheel Vehicles by the Debtor to  Third Partiesin Pekanbaru City," *Pena Law International Journal of Law* 1, no. 2 (2022): 99–108, https://doi.org/10.56107/penalaw.v1i2.45.

purchasers also believe that the presence of a seller, buyer, object, and price is sufficient to make the transaction valid under Islamic law. This understanding reduces the pillars of sale to their formal appearance and overlooks the seller's authority, the encumbrance, the financing restriction, and the purchaser's exposure to future claims.

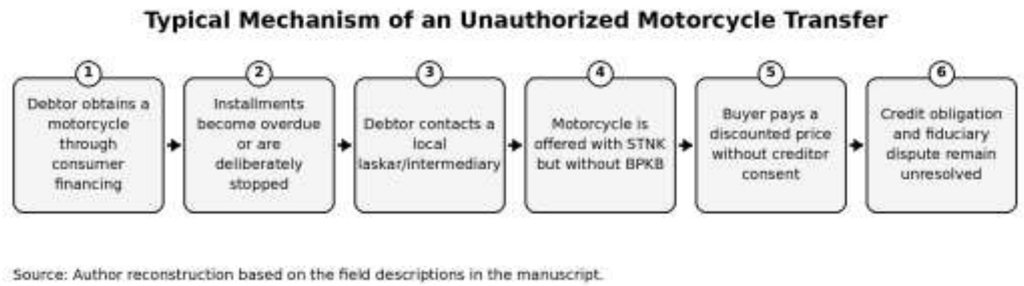


**Figure 1. Typical mechanism of an unauthorized motorcycle transfer in Surakarta**

Across the two patterns, the economic function of the transfer is similar even though the debtor's moral position differs. The transaction converts a restricted asset into immediate cash or debt relief without formally settling the financing relationship. The hardship-driven debtor may view the transfer as an emergency response, while the planned defaulter treats the financing facility as a means of obtaining a vehicle for resale. This distinction is relevant to intention, culpability, and the evaluation of claimed benefit, but it does not alter the absence of creditor authorization at the moment of transfer.[23]The laskar's role is central because it creates social confidence around an otherwise risky object. By locating purchasers, explaining the informal rules of use, and presenting itself as

[23] Risma N Arifah and Dwi Fidhayanti, "Legal Position of Fiduciary Deeds in a Murabaha Contract Following the Indonesian Constitutional Court Decision Number 18/Puu-Xvii/2019 on Default Agreement by Creditors and Debtors," *Jurisdictie Jurnal Hukum Dan Syariah* 12, no. 2 (2022): 211–27, https://doi.org/10.18860/j.v12i2.12570.

a source of protection, the intermediary lowers the purchaser's hesitation. However, the assurance concerns the likelihood of practical disturbance rather than the legal quality of title or the transfer of contractual obligations. The transaction thus operates through social trust that partially substitutes for formal documentation. This substitution may make the market function locally, but it also concentrates risk in the purchaser, who cannot demand the BPKB or obtain a lawful release merely on the basis of the laskar's reputation.

The purchaser's consent must consequently be interpreted with caution. Knowledge that the BPKB is absent does not necessarily amount to full knowledge of the legal consequences. A purchaser may understand that the motorcycle is still financed but believe that payment of a discounted price and possession of the STNK are enough to prevent future claims. The field findings indicate that the appearance of an ordinary sale seller, buyer, vehicle, and price can obscure the continuing rights of the finance company and the continuing liability of the debtor. This is the practical form of the information asymmetry identified in the transaction.

### *Assessment under DSN-MUI Fatwa No. 110/DSN-MUI/IX/2017*

The formal presence of two parties, a motorcycle, and an agreed price does not by itself establish a valid sale. The DSN-MUI Fatwa requires the parties to have legal capacity and the seller to possess authority over the object. It also requires the object and price to be known and capable of delivery. The authority requirement is decisive in the present case.[24] A debtor in possession of a financed

[24] Endang Sriani, Farid Hasan, and Sukron Ma'mun, "Violation of Human Right for Collateral Fraud in Sharia Financial Institution Based on Fiduciary Guaranty Law and Rahn Law," *Juris (Jurnal Ilmiah Syariah)* 22, no. 1 (2023): 133, https://doi.org/10.31958/juris.v22i1.9157.

motorcycle cannot be treated as having unrestricted power to transfer the object free from the creditor's security right and contractual restrictions.[25][26]

The transaction is more accurately characterized as an unauthorized disposition resembling bai‘ al-fuduli. The debtor purports to convey an interest that is legally constrained by the finance agreement and fiduciary security, while the creditor has not ratified the transfer. Consequently, the laskar's approval cannot substitute for the approval of the party whose contractual and security rights are affected. The transfer also fails to move the financing relationship to the purchaser. The original debtor remains liable for the installments, while the purchaser receives physical possession without a lawful release of the encumbrance.

The absence of BPKB is evidentially important but must be described precisely. Retention of BPKB by a finance company is not, by itself, a complete legal test of ownership. The more accurate issue is that the motorcycle remains subject to financing obligations and, where properly constituted, fiduciary security. The debtor therefore lacks authority to convey an unencumbered legal position without consent. Describing the finance company as the absolute owner merely because it holds the BPKB would oversimplify the structure of fiduciary security.

The planned-default pattern also conflicts with the principles of honesty, fulfillment of promises, and avoidance of deception. The purchaser is informed

[25] Nurjihad Nurjihad, "Legal Conformity Between Rahn Tasjily and Fiduciary Guarantee and Obstacles to Implementation in Indonesia," *Prophetic Law Review* 5, no. 2 (2023): 218–39, https://doi.org/10.20885/plr.vol5.iss2.art5.

[26] Ahmad Saparwadi, "Rules and Regulations of Shariah Repurchase Agreement Investment in Shariah Capital Market of Indonesia," *Journal of Islamic Economics Perspectives* 5, no. 2 (2023): 42–59, https://doi.org/10.35719/jiep.v5i2.111.

that the BPKB is unavailable, but disclosure of that fact does not cure the absence of creditor consent or the unresolved installment obligation. Where the transaction is presented as secure or religiously valid despite those restrictions, the representation may create additional uncertainty and misleading assurance. Current fiqh scholarship treats clarity, lawful authority, and protection from gharar as substantive requirements rather than ceremonial elements.[27]`

The concept of wilayah in the Fatwa provides a more precise analytical basis than a simple inquiry into who physically holds the motorcycle. Authority may arise from ownership, representation, or another legally recognized basis, but each form requires the seller to be entitled to dispose of the object in the manner promised to the buyer. Here, the debtor's authority is limited by the financing agreement and the creditor's security interest. The debtor may use the vehicle in accordance with the agreement, but that limited entitlement cannot be expanded unilaterally into authority to convey an unencumbered vehicle to a third party.

Characterizing the practice as bai' al-fuduli also clarifies why the transaction cannot be validated by the intermediary's support. The decisive approval must come from the party whose right is affected. In this case, that party is not the laskar, because it is neither the financing creditor nor an authorized representative capable of releasing the encumbrance or transferring the financing contract. Until ratification or an approved transfer occurs, the purchaser's possession remains disconnected from a complete legal transfer. The transaction therefore produces a fragmented position: possession moves,

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[27] Dessy Asnita dan Syarifah Mudrika, "HIT AND RUN: A Phenomenological Study of Producer Experience in e-Commerce Transactions with the Pre-Order System from a Fiqh Muamalah Perspective," *Muamalat:Jurnal Ekonomi Syariah* 16, no. 1 (2025).

payment is made, but authority, debt, and security rights are not simultaneously resolved.

The uncertainty is intensified in the planned-default pattern. The financing application, initial payments, cessation of installments, and resale form a connected sequence rather than separate events. When the original intention is to obtain the motorcycle and then avoid repayment, the transaction conflicts not only with the technical requirement of authority but also with amanah and the obligation to honor commitments. The anti-usury justification cannot cure this defect because opposition to one perceived wrong does not permit deception or appropriation of another party's legally protected interest.

***Assessment under Indonesian Fiduciary-Security Law***

Article 23(2) of Law No. 42 of 1999 prohibits a fiduciary grantor from transferring, pledging, or leasing a non-inventory fiduciary object without prior written consent from the fiduciary recipient. A motorcycle financed for personal use is not ordinarily inventory. If the vehicle has been bound by fiduciary security, sale to a third party without written consent directly engages this prohibition. Article 36 further provides imprisonment of up to two years and a fine of up to IDR 50 million for the prohibited transfer.[28]

The legal consequences are not limited to criminal exposure. The debtor may remain in breach of the financing agreement, the creditor may lose practical access to the collateral, and the purchaser may face repossession or litigation despite having paid the intermediary or debtor. Recent cases and studies show that third-party transfer generates overlapping contractual, proprietary, and criminal issues. The purchaser's low price is therefore not merely a commercial

[28] Indonesia, Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia.

discount; it reflects unresolved legal risk that cannot be eliminated by an informal guarantee.[29][30][31]

The Constitutional Court's fiduciary decisions require a balanced reading. Decision No. 18/PUU-XVII/2019 protects debtors against unilateral declarations of default and coercive repossession when default is disputed and voluntary surrender is refused. That protection supports lawful complaint mechanisms against abusive collectors. It does not authorize a debtor to frustrate the security arrangement by secretly transferring the motorcycle. The proper response to unlawful collection is legal accountability for the collector or creditor, not the creation of a second unauthorized transaction.

***Maslahah Mursalah: Claimed Benefit and Resulting Harm***

The laskar's justification relies on three asserted benefits: protecting economically weak debtors, resisting coercive collection, and weakening an interest-based financing system. These objectives have moral appeal at an abstract level. Maslahah mursalah, however, is not determined solely by the actor's stated intention. Contemporary scholarship emphasizes that an asserted

[29] Hamka, "Pemidanaan Pengalihan Objek Jaminan Fidusia Tanpa Persetujuan Penerima Fidusia."

[30] L A Rosaline, M Afif, and A Diamon, "Perlindungan Hukum Bagi Kreditur Atas Pengalihan Objek Jaminan Fidusia Tanpa Persetujuan Kreditur," *PESHUM: Jurnal Pendidikan, Sosial Dan Humaniora* 4, no. 3 (2025): 4021–26, https://doi.org/10.56799/peshum.v4i3.8495.

[31] Rosaline, Afif, and Diamon.

benefit must be genuine, consistent with the objectives and limits of Sharia, publicly defensible, and not outweighed by greater mafsadah.[32][33][34]

In the hardship-driven pattern, assisting the debtor is a real concern, but the chosen means shifts the burden to other parties. The creditor loses access to the secured object; the purchaser pays for a vehicle with unresolved documentation and enforcement risk; and the original debtor remains bound by the debt. In the premeditated pattern, the claimed benefit is weaker because the conduct begins with an intention to obtain financing and then defeat repayment. A private advantage obtained through deliberate breach cannot be transformed into public welfare merely by attaching an anti-usury label.

The practice also undermines hifz al-mal, contractual reliability, and the stability of exchange. If repeated, it encourages strategic default, increases financing risk, and may raise costs for other consumers. The harm is distributed beyond the finance company to purchasers, guarantors, compliant debtors, and the wider market. The alleged maslahah is therefore particular and speculative, whereas the mafsadah is direct and multi-party. This imbalance prevents the practice from qualifying as a valid maslahah mursalah.

A structured maslahah assessment requires identification of the beneficiary, the duration of the benefit, and the persons who bear the cost. The immediate beneficiary may be the debtor who receives money or avoids

[32] M Z Yusuf and M R Fauzy, "Maslahah Mursalah Sebagai Metode Penentuan Hukum Dalam Ekonomi Islam: Penerapan Teknologi Untuk Filantropi," *Islamic Economics, Finance, and Banking Review* 5, no. 1 (2025): 37–46, https://doi.org/10.12928/iefbr.v5i1.12114.

[33] T Khoir and E Sulaiman, "Maslahah Mursalah: A Substantial Effort to Overcome Income and Wealth Inequality in Indonesia," *Shirkah: Journal of Economics and Business* 9, no. 3 (2024): 360–77, https://doi.org/10.22515/shirkah.v9i3.716.

[34] Harun, "Implementasi Konsep Maslahah Mursalah Dalam Ekonomi Islam Menurut Tokoh Islam Dan Jumhur Ulama."

surrendering the vehicle. The purchaser may also receive short-term use of a motorcycle at a low price. However, these benefits are unstable because they depend on the creditor being unable or unwilling to enforce its rights. By contrast, the burdens are concrete: unpaid installments, loss of collateral access, uncertainty of ownership documentation, potential criminal or civil proceedings, and reduced confidence in consumer-financing transactions.

The analysis also differs between the two debtor patterns. In genuine hardship, the need for assistance is credible, and compassion toward the debtor is consistent with the social objectives of Sharia. Nevertheless, the appropriate maslahah must solve the hardship without imposing hidden losses on an uninformed purchaser or disregarding the creditor's entitlement. In planned default, the asserted welfare is even less persuasive because the benefit arises from a strategy designed to defeat repayment. The private gain of the debtor and intermediary cannot satisfy the requirement of a broader, legitimate, and non-contradictory public benefit.

The means-end relationship is therefore decisive. Maslahah mursalah cannot be assessed only by naming a desirable end such as debtor protection or resistance to riba. It must also ask whether the method preserves property, prevents deception, and maintains justice between all affected parties. A method that transfers vulnerability from the debtor to the purchaser and creditor does not remove harm; it redistributes and multiplies it. On that basis, the informal transfer fails both because its asserted benefit is limited and because the resulting mafsadah is wider, more predictable, and legally significant.

Lawful alternatives provide a stronger welfare basis. A debtor who cannot pay may seek restructuring, rescheduling, settlement, voluntary surrender, creditor-approved sale, or a formal transfer of obligations. Complaints about threatening or unlawful collection can be submitted through the finance company's complaint mechanism, the Financial Services Authority, law-enforcement institutions, or the courts. These routes address debtor vulnerability without concealing the motorcycle's legal status or transferring risk to an uninformed third party.

### *Theoretical and Practical Implications*

Theoretically, the findings demonstrate that maslahah analysis must evaluate both purpose and means. A socially attractive objective does not validate a transaction that lacks authority, breaches an existing obligation, and creates wider harm. The integration of the DSN-MUI Fatwa with fiduciary-security law also shows that the Islamic-law defect and the positive-law defect are related but not identical: the first concerns authority, honesty, and the validity or effectiveness of the sale, while the second concerns contractual restriction, security rights, and statutory prohibition.

Practically, finance companies should provide transparent explanations of fiduciary restrictions, realistic restructuring channels, and collection practices consistent with the Constitutional Court's requirements. Religious leaders and anti-usury communities should distinguish advocacy against riba or abusive collection from assistance that facilitates deliberate default and unauthorized transfer. Purchasers should verify BPKB status, outstanding financing, creditor consent, and the possibility of a formal novation or approved transfer before paying for a motorcycle offered below market value.

## CONCLUSION

The unauthorized sale of motorcycles with outstanding installments in Surakarta occurs through two principal patterns: transfers prompted by genuine economic hardship and transfers preceded by deliberate, planned default. In both patterns, a laskar intermediary connects the debtor and purchaser, markets the motorcycle at a reduced price, and offers practical reassurance despite the absence of the finance company's written consent. The purchaser generally receives physical possession and an STNK, but not a clean transfer of the financing relationship, BPKB, or release of the security burden.

Under DSN-MUI Fatwa No. 110/DSN-MUI/IX/2017, the central defect is not merely the absence of BPKB but the seller's lack of unrestricted authority over an encumbered object. The transaction resembles bai' al-fuduli and cannot become effective against the entitled party without ratification. Under Law No. 42 of 1999, transfer of a non-inventory fiduciary object without prior written consent can produce contractual, civil, and criminal consequences. Constitutional protection against coercive repossession does not legalize the debtor's unauthorized transfer.

The claimed objective of protecting debtors and resisting riba does not satisfy maslahah mursalah because the means used contradict contractual honesty and generate broader harm to creditors, purchasers, legal certainty, and public trust. The theoretical implication is that maslahah requires congruence between beneficial ends and lawful means. The practical implication is the need for accessible restructuring, creditor-approved transfer, voluntary surrender, transparent consumer education, and lawful remedies against abusive collectors. Further research should compare similar practices across regions, distinguish registered from unregistered fiduciary security, examine purchaser knowledge and vulnerability, and document how finance companies respond to religiously framed strategic default.

## REFERENCES

Abdjul, Hadrian. "Socio Juridical Review of the Criminal Action of Embraction of Fiduciary Objects (Case Study of Kabila District, Bone Bolango District)." *Estudiante Law Journal* 5, no. 1 (2023): 244–58. https://doi.org/10.33756/eslaj.v5i1.20533.

Al-Mahbubah, Rif'atul Muzayanah, and Ana Nurwakhidah. "The Frame of Sharia Economic on Paylater Payment System." *ISLAMICONOMIC: Jurnal Ekonomi Islam* 12, no. 1 (2021): 93–107. https://doi.org/10.32678/ijei.v12i1.288.

Ali, A M H, M S Yusuf, and Q Arsadani. "Arguments of Maslahah and Mafsadat in Modern Islamic Economic Law in Indonesia and Morocco." *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah* 15, no. 2 (2023). https://doi.org/10.15408/aiq.v15i2.34613.

Arifah, Risma N, and Dwi Fidhayanti. "Legal Position of Fiduciary Deeds in a Murabaha Contract Following the Indonesian Constitutional Court Decision Number 18/Puu-Xvii/2019 on Default Agreement by Creditors and Debtors." *Jurisdictie Jurnal Hukum Dan Syariah* 12, no. 2 (2022): 211–27. https://doi.org/10.18860/j.v12i2.12570.

Aziz, Muhammad Faiz. "Perlunya Pengaturan Khusus Online Dispute Resolution ( ODR ) di Indonesia Untuk Fasilitasi Penyelesaian Sengketa E-Commerce." *Jurnal EechtsVinding Media Pembinaan Hukum Nasional* 9 (2020): 275–94. https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v9i2.449.

Dessy Asnita dan Syarifah Mudrika. "Hit and Run: A Phenomenological Study of Producer Experience in e-Commerce Transactions with the Pre-Order System from a Fiqh Muamalah Perspective." *Muamalat:Jurnal Ekonomi Syariah* 16, no. 1 (2025).

Diah, Muhammad, and Zulhamdi Zulhamdi. "Implementasi Murabahah Pada Perbankan Syariah." *Al-Hiwalah: Journal Syariah Economic Law* 1, no. 1 (2022): 53–74. https://doi.org/10.47766/alhiwalah.v1i1.875.

Fadli, Muhammad Rijal. "Memahami Desain Metode Penelitian Kualitatif." *Humanika* 21, no. 1 (2021): 33–54. https://doi.org/10.21831/hum.v21i1.38075.

Fitriani, P, and T El Rahman. "Tinjauan Yuridis Pengalihan Objek Jaminan Fidusia Pada Perjanjian Pembiayaan Konsumen Kendaraan Bermotor Roda Empat Tanpa Persetujuan Penerima Fidusia." *Viva Justicia: Journal of Private Law* 1, no. 1 (2024).

Hamka, H. "Pemidanaan Pengalihan Objek Jaminan Fidusia Tanpa Persetujuan

Penerima Fidusia." *Philosophia Law Review* 3, no. 1 (2023). https://doi.org/10.56591/pilar.v3i1.19320.

Harun, I A. "Implementasi Konsep Maslahah Mursalah Dalam Ekonomi Islam Menurut Tokoh Islam Dan Jumhur Ulama." *Jurnal Economina* 1, no. 3 (2022): 563–77. https://doi.org/10.55681/economina.v1i3.132.

Hasan, Zulfikar, and Muhammad Azli. "The Online Credit Buying and Selling System and Its Compatibility with Islamic Law." *Journal of Entrepreneurship and Business* 10, no. 2 (2022): 17–29. https://doi.org/10.17687/jeb.v10i2.903.

Indonesia, Dewan Syariah Nasional–Majelis Ulama. "Fatwa No. 110/DSN-MUI/IX/2017 Tentang Akad Jual Beli." Dewan Syariah Nasional–Majelis Ulama Indonesia, 2017.

Indonesia, Mahkamah Konstitusi Republik. *Putusan No. 18/PUU-XVII/2019 Tentang Pengujian Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia*. Mahkamah Konstitusi Republik Indonesia, 2019.

Indonesia, Republik. Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia, Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168 § (1999).

Khoir, T, and E Sulaiman. "Maslahah Mursalah: A Substantial Effort to Overcome Income and Wealth Inequality in Indonesia." *Shirkah: Journal of Economics and Business* 9, no. 3 (2024): 360–77. https://doi.org/10.22515/shirkah.v9i3.716.

Kurniawati, Dewi, and Moh. Saleh. "Auction of the Executed Collateral Object Under Fiduciary Guarantee." *Santhet (Jurnal Sejarah Pendidikan Dan Humaniora)* 8, no. 1 (2023): 112–23. https://doi.org/10.36526/santhet.v8i1.3189.

Nurjihad, Nurjihad. "Legal Conformity Between Rahn Tasjily and Fiduciary Guarantee and Obstacles to Implementation in Indonesia." *Prophetic Law Review* 5, no. 2 (2023): 218–39. https://doi.org/10.20885/plr.vol5.iss2.art5.

Puspasari, Ratih M, and Muhammad Ngazis. "Debtor Protection in the Execution of Fiducia Securities." *Jurnal Pembaharuan Hukum* 8, no. 1 (2021): 26. https://doi.org/10.26532/jph.v8i1.13798.

Rosaline, L A, M Afif, and A Diamon. "Perlindungan Hukum Bagi Kreditur Atas Pengalihan Objek Jaminan Fidusia Tanpa Persetujuan Kreditur." *PESHUM: Jurnal Pendidikan, Sosial Dan Humaniora* 4, no. 3 (2025): 4021–26. https://doi.org/10.56799/peshum.v4i3.8495.

Saparwadi, Ahmad. "Rules and Regulations of Shariah Repurchase Agreement Investment in Shariah Capital Market of Indonesia." *Journal of Islamic Economics Perspectives* 5, no. 2 (2023): 42–59.

https://doi.org/10.35719/jiep.v5i2.111.

Shania, I, S Sanusi, and D Darmawan. "Akibat Hukum Debitor Yang Menyewakan Objek Jaminan Fidusia Tanpa Persetujuan Tertulis Kreditor." *DIVERSI: Jurnal Hukum* 8, no. 1 (2022): 55–77. https://doi.org/10.32503/diversi.v8i1.2067.

Sriani, Endang, Farid Hasan, and Sukron Ma'mun. "Violation of Human Right for Collateral Fraud in Sharia Financial Institution Based on Fiduciary Guaranty Law and Rahn Law." *Juris (Jurnal Ilmiah Syariah)* 22, no. 1 (2023): 133. https://doi.org/10.31958/juris.v22i1.9157.

Syahra, Nabila Azrilia, Fitriana Yasintha, Rawdia Tuzahara, and Nur Azmi. "Konsep Jual Beli Dalam Perspektif Fiqih Muamalah Dan Implikasinya Terhadap Ekonomi Syariah." *Hikmah : Jurnal Studi Pendidikan Agama Islam* 1, no. 4 (2024): 112–21. https://doi.org/https://doi.org/10.61132/hikmah.v1i4.256.

Wibowo, Ari T. "Legal Basis for Reporting Embezzlement of Motorized Vehicles (Objects of Fiduciary Guarantees) Transferred to Third Parties by Fiduciaries With Pawning." *Authentica* 6, no. 2 (2024): 146–60. https://doi.org/10.20884/1.atc.2023.6.2.433.

Yusuf, M Z, and M R Fauzy. "Maslahah Mursalah Sebagai Metode Penentuan Hukum Dalam Ekonomi Islam: Penerapan Teknologi Untuk Filantropi." *Islamic Economics, Finance, and Banking Review* 5, no. 1 (2025): 37–46. https://doi.org/10.12928/iefbr.v5i1.12114.

Zaini, Z D, and R Irawan. "Pertanggungjawaban Pelaku Tindak Pidana Mengalihkan Benda Objek Jaminan Fidusia Tanpa Persetujuan Dari Penerima Fidusia." *Jurnal Gagasan Hukum* 4, no. 1 (2022): 62–70. https://doi.org/10.31849/jgh.v4i01.8656.

Zulfikri, Zulfikri, and Suryanto Sagala. "Legal Protection of Creditors on the Transfer of Four-Wheel Vehicles by the Debtor to Third Partiesin Pekanbaru City." *Pena Law International Journal of Law* 1, no. 2 (2022): 99–108. https://doi.org/10.56107/penalaw.v1i2.45.

Zulhamdi, Zulhamdi. "Jual Beli Salam (Suatu Kajian Praktek Jual Beli Online Shopee)." *Syarah: Jurnal Hukum Islam & Ekonomi* 11, no. 1 (2022): 1–19. https://doi.org/10.47766/syarah.v11i1.294.