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ENCUMBRANCE OF LAND RIGHTS IN POJK NO. 31/POJK.05/2014 FROM THE PERSPECTIVE OF THE PRINCIPLES OF SECURITY LAW

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Abstract

This research examines the encumbrance of land rights as set forth in the Financial Services Authority Regulation (POJK) No. 31/POJK.05/2014 on the Implementation of Sharia Financing Business, with a particular focus on a review of the principles of security law. This research project aims to examine whether the considerations set out in the POJK, which emphasise that the business of Islamic finance companies must comply with Islamic sharia principles, are in accordance with the principles of security law. The primary objective of this research is to examine the compatibility between the POJK provisions and the principles of security law, including the Publicitet Principle, the Specialitet Principle, the Indivisibility Principle, the Inbezittstelling Principle, and the Horizontal Principle. The objective of this research is to test the compatibility between the POJK's reasoning and the existing principles of security law. In order to achieve this, a legal analysis method has been employed. The contribution of this research is twofold. Firstly, it provides a better understanding of the legal framework for encumbering land rights in the context of organising Islamic financing businesses. Secondly, it identifies the implications of the principles of security law in that context.

Abstrak

Riset ini membahas pembebanan hak atas tanah dalam Peraturan Otoritas Jasa Keuangan (POJK) Nomor 31/POJK.05/2014 tentang Penyelenggaraan Usaha Pembiayaan Syariah dengan fokus pada tinjauan asas-asas hukum jaminan. Riset ini bertujuan untuk meneliti apakah konsideran-konsideran dalam POJK tersebut, yang menekankan bahwa usaha perusahaan pembiayaan syariah harus mematuhi prinsip syariah Islam, telah sesuai dengan asas-asas hukum jaminan. Fokus utama penelitian adalah untuk mengeksplorasi kecocokan antara ketentuan POJK dengan asas-asas hukum jaminan, seperti Asas Publicitet, Asas Specialitet, Asas tak dapat dibagi-bagi, Asas Inbezittstelling, dan Asas Horizontal. Metode analisis hukum digunakan untuk menguji kecocokan antara konsideran POJK dengan asas-asas hukum jaminan yang ada. Kontribusi riset ini adalah memberikan pemahaman yang lebih baik tentang kerangka hukum pembebanan hak atas tanah dalam konteks penyelenggaraan usaha pembiayaan syariah, serta implikasi asas-asas hukum jaminan dalam konteks tersebut.

INTRODUCTION

In the context of Islamic finance in Indonesia, the issue of land encumbrance is of great significance. Indeed, it is often the case that land is used as collateral to obtain financing (Napitupulu, 2024). In the context of Islamic finance, the principles of fairness and transparency are of paramount importance. Consequently, it is vital to have a clear and comprehensive legal framework in place that governs the manner in which land can be encumbered as collateral. POJK Number 31/POJK.05/2014 is a regulatory instrument that provides legal certainty for the parties involved, both creditors and debtors [1]. The objective of this regulation is to enhance transparency in the encumbrance process while safeguarding the rights of third parties through a recording mechanism at the National Land Agency (BPN). Consequently, the existence of this POJK is highly pertinent in facilitating Islamic financing practices that are secure and in accordance with Sharia principles, while supporting sustainable economic growth in Indonesia [2].

The principles of Indonesian security law, including those of publicity, speciality, indivisibility, inbezitstelling and horizontality, are of fundamental importance in the creation of a legal framework that ensures certainty and fairness in financing transactions. The principle of publicity necessitates the documentation of collateral for the purpose of providing transparency to third parties, thereby preventing future conflicts and safeguarding the rights of all parties involved. In contrast, the principle of speciality underscores the necessity for clear delineation of the collateral, thereby obviating any ambiguity regarding the assets that are subject to encumbrance [3]. The indivisibility principle emphasises the necessity for the collateral to remain intact and undivided, thereby ensuring that the creditor is entitled to the full value of the asset. The inbezitstelling principle, which stipulates that the collateral must be in the possession of the debtor, underscores the debtor's obligation to safeguard the pledged assets. In conclusion, the horizontal principle offers protection to creditors in terms of the collateral taking precedence over the debtor's other assets. Collectively, these principles establish a legal framework that provides the essential certainty and protection in financing relationships, thereby fostering trust between creditors and debtors and supporting robust economic growth [4].

Although several previous studies have addressed the technical and regulatory aspects of POJK Number 31/POJK.05/2014, there remains a significant gap in the exploration of the relationship between the regulation's preamble and the principles of security law, particularly in the context of Islamic financing (Putra, 2024). A significant number of studies concentrate on the technical aspects of legal norms, without addressing the manner in which the fundamental principles of security law, such as publicity, speciality and horizontality, interact with the provisions set forth in the POJK. This is a significant issue, given the distinctive characteristics of Islamic finance, where the principles of fairness, transparency and Sharia compliance are of paramount importance. By failing to undertake a detailed examination of the ways in which the POJK's reasoning may be reinforced or undermined by the principles of security law, previous research has failed to identify the potential for formulating more comprehensive and pertinent policy recommendations for the practice of Islamic financing in Indonesia. This gap in the existing literature demands further attention in order to facilitate a more nuanced understanding of the ways in which regulations and legal principles can reinforce each other in order to create a more effective and equitable financing system (Purba, 2023).

Despite the POJK No. 31/POJK.05/2014's objective of establishing a transparent legal framework for the encumbrance of land rights, there remains a dearth of comprehension regarding the extent to which this regulation aligns with and implements fundamental principles of security law,

[1] Muhammad Yasir Khalid, Zaenal Abidin, and Ita Tryas Nur Rochbani, 'The Digital Economy: Opportunities and Difficulties Isamic Economy's Future', *Zabags International Journal Of Economy*, 2.2 (2024), 106–11 <https://doi.org/10.61233/zijec.v2i2.85>.

[2] Ega Rusanti, A. Syathir Sofyan, and Syarifuddin, 'Implementasi Konsep Ekonomi Islam Pada Sektor Pertanian Berbasis Kearifan Lokal Dan Tantangan Pembiayaan Di Perbankan Syariah', *Jurnal Ilmu Perbankan Dan Keuangan Syariah*, 5.1 (2023), 29–51 <https://doi.org/10.24239/jipsya.v5i1.188.29-51>.

[3] W. Werdiningsih, 'Asas Publisitas Perjanjian Perkawinan (Post Nuptial Agreement): Konsep Kepastian Dan Perlindungan Hukum Bagi Pihak Ketiga', *Jurnal Ilmu Kenotariatan*, 4.1 (2023), 45 <https://doi.org/10.19184/jik.v4i1.38537>.

[4] Diva Darda Davita, 'Eksistensi Container House Sebagai Objek Jaminan Berdasarkan Hukum Jaminan Di Indonesia', *El-Mujtama: Jurnal Pengabdian Masyarakat*, 4.5 (2024), 2966–91 <https://doi.org/10.47467/elmujtama.v4i5.4186>.

such as publicity, speciality and horizontality (Kholifah, 2019). This lack of clarity has significant implications for the implementation of Islamic financing in Indonesia, where financial industry players are often uncertain about the validity and strength of the collateral provided. In the absence of a comprehensive grasp of the manner in which POJK interacts with these principles, creditors and debtors may be unable to exploit the full potential of the extant financing system, which could in turn impede economic growth and confidence in Islamic transactions [5]. This indicates the necessity for additional initiatives aimed at disseminating knowledge and educating stakeholders on the legal intricacies of collateral as outlined in the POJK. This will ensure that all parties engaged in Islamic finance are equipped with the understanding and expertise to implement the regulation in a manner that aligns with the principles of fairness and transparency that are expected in an Islamic context.

This research project aims to examine the compatibility between the provisions of POJK Number 31/POJK.05/2014 and the applicable principles of security law, with a particular focus on their application in the context of Islamic financing in Indonesia. The objective of this research is to examine the extent to which the POJK is aligned with the fundamental principles of security law, including publicity, speciality, indivisibility, inbezitstelling and horizontality. Additionally, it seeks to identify potential challenges and obstacles that may emerge in practice. It is hoped that this in-depth analysis will make a significant contribution to closing the existing knowledge gap and provide useful recommendations for policymakers, legal practitioners, and Islamic financing providers. The research results are expected to strengthen the existing legal framework, improve public understanding of the regulations, and support the growth of an equitable and transparent Islamic financing sector.

LITERATURE REVIEW

A review of the literature on the legal foundations of land title encumbrance reveals the necessity for clear and transparent arrangements to support the sustainability of an Islamic financing system in Indonesia. In this context, the principles of security law, such as publicity, speciality and horizontality, play an important role in ensuring legal certainty and the protection of the rights of all parties involved. The principle of publicity, for instance, enables third parties to ascertain the status of the provided collateral, thereby reducing the likelihood of future disputes. The principle of speciality ensures that each guarantee is clearly defined and detailed, thus avoiding confusion regarding the assets being charged. Furthermore, the principle of horizontality affords priority to creditors with regard to claims against the debtor's assets, which is of particular significance in the context of Islamic finance, where adherence to the principles of fairness and transparency is of paramount importance. Consequently, a comprehensive grasp of these principles is vital for the formulation of a legal framework that facilitates efficiency and fairness in Islamic finance practices, while also reinforcing public confidence in the existing Islamic financial system.

Prior research on the implementation of sharia principles in Islamic financing regulations indicates a range of effectiveness in the implementation of these principles, as reflected in policies such as POJK Number 31/POJK.05/2014 and other related regulations. A considerable body of research indicates that, despite the intention of these regulations to provide a transparent and secure framework for financial transactions, there are still shortcomings in the application of sharia principles, including fairness, transparency and legal certainty. Some studies have indicated that a lack of comprehension among practitioners and the general public of the sharia-related provisions within these regulations is a significant impediment to effective implementation. Furthermore, the difficulties encountered in aligning sharia principles with conventional legal norms frequently result in confusion, which may ultimately diminish public confidence in Islamic financing products. As stated in a study

[5] Maulani Salsabila, Siska Lis Sulistiani, and Eva Misfah Bayuni, 'Analisis POJK Terhadap Mitigasi Risiko Dan Penyelesaian Pembiayaan Bermasalah Pada P2P Financing Syariah', 2024, 1–8.

by Faiz Rahman, this POJK plays an instrumental role in establishing a legal framework that ensures that financing transactions remain in accordance with sharia principles [6]. Nevertheless, the efficacy of this regulation in integrating sharia principles with the land title encumbrance mechanism remains a topic of contention. These findings underscore the necessity for enhanced socialisation and continuous education to enhance comprehension and acceptance of existing regulations, as well as encourage the formulation of policies that are more responsive to local needs and contexts, thereby reinforcing Islamic financing practices in Indonesia.

The existing literature on security law in the context of Islamic finance offers valuable insights into the principles of security. However, many studies have not sufficiently emphasised the relevance of these principles to the provisions set out in POJK Number 31/POJK.05/2014. While these studies typically emphasise the significance of security law principles, such as publicity and speciality, in upholding legal certainty and safeguarding the rights of creditors and debtors, the direct correlation with specific regulations, such as the POJK, is frequently disregarded. Some studies delve more deeply into the theoretical and philosophical dimensions of the law, yet fail to elucidate the manner in which these principles are integrated into Islamic financing practices that are governed by the POJK and other regulations.

In alignment with the findings of Amalia's study, which underscores the enhanced stability afforded by land as collateral in Islamic finance when compared to other forms of collateral (Amalia, 2019), However, the study does not sufficiently address the relationship between the provisions in POJK Number 31/POJK.05/2014 and the principles of security law. It is necessary to conduct further examination to ascertain whether this regulation effectively adopts the principles of security law in Islamic financing practices. This has resulted in a lack of clarity that may impede the effective implementation of security law provisions in Islamic finance, as well as the potential to reinforce existing regulations. It is therefore imperative that further in-depth and focused research is conducted which links aspects of security law with current regulatory provisions. This will provide more comprehensive guidance for practice and policy in the sector. In addition, a number of studies have explored the legal aspects of security in Islamic financing, including the use of land as an object of security.

The theory of legal institutionalisation offers a valuable perspective for the analysis of the implementation of legal norms, particularly in the context of Islamic finance. The theory posits that law is not merely a set of established rules; rather, it is the product of intricate interactions between social actors, institutions, and culture that coexist within a given society. In the context of Islamic finance, this theory has been employed to examine the integration of Sharia norms into the extant legal system, as well as the challenges encountered in this process [7]. For instance, numerous studies have demonstrated that sharia norms frequently must adapt to conventional legal frameworks, which can result in tensions or ambiguity in their application. These studies indicate that the successful institutionalisation of Islamic legal norms is contingent upon factors such as institutional support, public understanding, and harmonisation with existing regulations, including POJK. Consequently, legal institutionalisation theory not only elucidates the dynamics of the implementation of these norms but also provides a framework for further analysis of how policies can be formulated to facilitate a more integrated approach between sharia principles and the legal system in Indonesia.

The literature review reveals that although numerous studies have been conducted on the legal aspects of collateral and Islamic financing regulation, further analysis is required to ascertain the compatibility between the provisions of POJK Number 31/POJK.05/2014 and the fundamental principles of

[6] Faiz Rahman, 'Kerangka Hukum Perlindungan Data Pribadi Dalam Penerapan Sistem Pemerintahan Berbasis Elektronik Di Indonesia', *Jurnal Legislasi Indonesia*, 18.1 (2021), 81 <https://doi.org/10.54629/jli.v18i1.736>.

[7] Dyah Ayu and others, 'Prinsip-Prinsip Ekonomi Islam Dalam Operasional Bank Syariah : Studi Kasus Di Indonesia', *Jurnal Ekonomi Manajemen (JEKma)*, 28.7 (2024), 31–39.

collateral law. Previous studies have identified the significance of principles such as publicity, speciality and horizontality in ensuring legal certainty. However, there is a paucity of research that adequately addresses the manner in which these principles are operationalised within specific regulatory frameworks. This gap indicates the necessity for further research that not only examines theoretical aspects but also analyses practical applications. This research should investigate how POJK interacts with the principles of security law in the context of Islamic finance. Such analysis could provide a more comprehensive insight into the effectiveness of the regulation and its contribution to fairness and transparency in Islamic finance transactions. This could also support the development of policies that are more responsive to the needs of all parties involved.

METHODS

This research employs a qualitative legal analysis approach to evaluate the provisions of POJK Number 31/POJK.05/2014 in relation to the relevant principles of guarantee law. This method was selected for its capacity to examine the subtleties and intricacies of regulations and legal practices within this field, thereby facilitating a more profound comprehension of the interplay between legal norms and the prevailing socio-economic milieu (Pahleviannur, 2022). By undertaking a detailed examination of the legal text and considering a range of perspectives, this research aims to identify the extent to which the POJK provisions align with the principles of guarantee law. Furthermore, this approach enables researchers to consider contextual factors, such as the culture and behaviour of social actors, which may influence the implementation of regulations. Consequently, this legal analysis method is anticipated to provide more precise and pragmatic recommendations for policymakers, legal practitioners, and Islamic financing providers, as well as contribute to the advancement of a legal framework that is more effective and responsive to the needs of society.

The research process commenced with the collation of legal data pertinent to POJK Number 31/POJK.05/2014. This entailed a comprehensive examination of official documents, relevant regulations, and academic literature pertaining to the regulation. This process entailed the tracing of pertinent legal sources with the objective of attaining a comprehensive understanding of the provisions set forth in the POJK. Subsequently, the research identifies fundamental collateral law principles, such as publicity, speciality and horizontality, by referring to existing literature and applicable legal norms. Once these two elements were collected, an analysis was conducted to evaluate the compatibility between the POJK provisions and the principles of security law. This analytical process included an in-depth comparison to identify conformities, mismatches, and challenges that may arise in practice. The systematic and structured nature of this process was designed to provide clear insights into how POJK can be optimised to support the principles of security law, as well as to improve the practice of Islamic financing in Indonesia.

The data analysis in this study was conducted using a qualitative approach that integrates legal institutionalisation theory as the main analytical framework, with the objective of understanding the process and challenges faced in the institutionalisation of legal norms in Islamic financing. Once the legal data pertaining to POJK and the legal principles of guarantee had been collated, the initial step was to categorise and structure the information in accordance with the principal themes that had emerged. Subsequently, legal institutionalisation theory was employed to examine the interplay between the norms enshrined in the POJK and the socio-economic milieu in which Islamic finance operates. By examining the manner in which these norms are adopted, applied and accepted by a range of actors, including policymakers, legal practitioners and the general public, this study aims to identify the factors that facilitate and impede the process of institutionalisation. This analytical process is not solely concerned with the legalistic aspects, but also considers the cultural and social dynamics that influence the acceptance of legal norms. The results of the analysis are expected to provide insights into how POJK provisions can be optimised to create a more effective environment for Islamic financing practices, as well as recommend measures to improve the implementation of appropriate legal norms.

RESULT AND DISCUSSION

The analysis of POJK Number 31/POJK.05/2014 reveals that the regulation as a whole is in substantial alignment with the tenets of security law, particularly those pertaining to publicity and legal certainty [8]. One of the most notable aspects of this conformity is the stipulation that encumbrances on land rights must be recorded at the National Land Agency (BPN). This recording represents a crucial step in guaranteeing that all parties involved in the financing transaction have access to transparent information regarding the status of the collateral. By ensuring clear and comprehensive recording, third parties are also safeguarded, reducing the potential for disputes that may arise in the future.

The recording process provides transparency for the parties involved and also safeguards the rights of third parties who may interact with the charged land. The registration of security rights provides creditors with the assurance that their rights are legally recognised, which is a fundamental element in the establishment of trust in financing transactions. This trust serves as a robust foundation for economic activity, as creditors are more inclined to extend financing to debtors who can offer transparent and registered collateral. Consequently, this regulation not only safeguards the interests of creditors but also contributes to the stability and sustainability of the Islamic financing sector in Indonesia.

However, the analysis also revealed some discrepancies in the application of the enforcement principle. Although the POJK regulates the mechanism for enforcing land rights as collateral, many creditors face difficulties in implementing it. The enforcement process is often hampered by bureaucratic complexities and local regulations that can slow down the legal process. This suggests that while legal norms are in place, challenges in practice mean that they are not fully integrated into the broader legal system. These constraints point to the need to revise or improve enforcement procedures to make them more efficient and responsive to practical needs on the ground.

Moreover, the findings of recent research studies suggest that the general public has limited awareness and comprehension of the stipulations outlined in the POJK. A significant proportion of debtors appear to lack a comprehensive understanding of the implications of pledging land rights as collateral. This may contribute to a certain degree of resistance to the regulatory framework. It is therefore evident that socialisation and education regarding these provisions is of the utmost importance in order to increase public acceptance. Without adequate understanding, both creditors and debtors may not optimally utilise this financing system. In order to achieve the objectives of the regulation and ensure effective implementation, there needs to be a sustained effort in informing and educating the public on the importance of land encumbrance as a safe and legal security instrument.

The findings pertaining to POJK Number 31/POJK.05/2014 can be subjected to further analysis through the lens of legal institutionalisation theory. This theory describes law as the result of intricate interactions between social actors, institutions and culture [9]. In the context of land title encumbrance, this process reflects the dynamics whereby the regulations implemented depend not only on the written norms, but also on how they are accepted and adapted by the community. To illustrate, the stipulation regarding the documentation of land rights at the National Land Agency (BPN) as part of the principle of publicity evinces a discernible endeavour to engender transparency and legal certainty

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[8] Hendri Sutanto, 'Peran Otoritas Jasa Keuangan Terkait Perlindungan Konsumen Pada Layanan Peer To Peer Lending Fintech Ditinjau Dalam Perspektif Maqashid Syariah (Studi Pada Otoritas Jasa Keuangan Lampung)', *Skripsi*, 2021, 1–80.

[9] OJK, 'Pojk.05/Nomor 31', *Otoritas Jasa Keuangan*, 2014.

in transactions. This documentation serves not only as an administrative instrument but also symbolises a commitment to information disclosure, which is indispensable for all parties involved.

Nevertheless, the achievement of this objective hinges on the active participation of a multitude of stakeholders, including financial institutions, governmental entities, and the broader community. The efficacy of regulatory implementation is contingent upon the fulfillment of roles and responsibilities by the relevant actors. In the event that one of the actors in question lacks comprehension or support for the aforementioned regulation, the efficacy of its implementation will be jeopardised. This, in turn, may precipitate uncertainty in financing transactions. To illustrate, financial institutions lacking sufficient comprehension of the recording procedures may eschew the utilisation of land collateral in financing, whereas communities lacking awareness of the significance of recording land rights may neglect this step. It is thus imperative to guarantee that all actors comprehend and pledge adherence to this regulation, thereby facilitating the effective institutionalisation of legal norms in Islamic financing practices.

Furthermore, legal institutionalisation theory emphasises the significance of cultural context in the process of accepting legal norms. The findings indicate that the community's lack of understanding of the provisions in the POJK demonstrates that existing legal norms are not always readily accepted without adjustments to local values and beliefs. The diverse cultures of different communities can influence how land rights and security are viewed. For example, in some communities, land is not only considered an economic asset, but also has deep meanings related to identity and heritage. In this context, the imposition of land rights as collateral may be viewed with scepticism, as it could threaten the continuity of traditions and values associated with land ownership.

In this regard, the theory serves to illustrate that the successful legal institutionalisation of a given concept or practice requires a culturally sensitive adaptation. Such adaptation is crucial to circumvent potential conflicts that may emerge from the coexistence of disparate values and interpretations within the community. To achieve this, it is necessary for the government, financial institutions and local communities to work together to establish constructive dialogue. By adopting an inclusive approach, it is anticipated that legal norms can be more effectively internalised, thereby fostering a positive relationship between the community and the regulation. Consequently, enhancing community understanding and acceptance of the provisions in the POJK can reinforce the implementation of legal principles of guarantee in Islamic financing, while supporting the maintenance of existing social and cultural stability.

This lengthy and intricate process serves to illustrate that the process of legal institutionalisation is an ongoing endeavour, rather than a definitive and immediate outcome. To guarantee the effective adoption of the POJK, it is essential to maintain an ongoing dialogue between diverse social actors and policymakers. The involvement of the public in the socialisation and education of the rights and obligations associated with land encumbrance is a pivotal step that can facilitate constructive feedback. By establishing a platform where communities can express their opinions and experiences, policymakers will gain a deeper understanding of the challenges encountered on the ground.

This dialogue offers policymakers the chance to implement the necessary adjustments to regulations in order to ensure greater responsiveness to the needs and expectations of society. By adopting a collaborative approach, the process of legal institutionalisation can be conducted in a more effective manner, with legal norms being effectively integrated into existing social and cultural practices. This not only enhances regulatory compliance, but also fosters mutual trust between the government, financial institutions and the public. Therefore, the successful implementation of POJK is contingent upon not only the existing legal provisions, but also the capacity of all stakeholders to collaborate and adapt to the evolving dynamics within the social and cultural context.

The central proposition of legal institutionalisation theory is that this process is a lengthy and intricate journey, during which laws are formed through dynamic interactions between a variety of social and cultural actors. In the context of POJK Number 31/POJK.05/2014, the process of legal institutionalisation is evident in the manner in which the regulation seeks to establish a framework that facilitates the encumbrance of land rights as collateral. Nevertheless, the successful institutionalisation of a written norm is contingent upon the extent to which it is accepted and integrated into existing social practices. This creates a cyclical process in which legal norms must adapt to the evolving needs and conditions of society, while society must also adjust to the established norms.

Furthermore, the characteristics of successfully institutionalised legal norms tend to exhibit high flexibility and relevance to the local context. Norms that are adaptable and resonant with community values are more likely to be accepted and implemented effectively. In the case of land rights encumbrance, if the norms are in line with the community's perspective on land ownership and use, it will be easier to gain widespread support. Conversely, norms that are deemed irrelevant or contradictory to local cultural practices will face major challenges in implementation. Therefore, an in-depth analysis of existing cultural values is essential in formulating effective norms.

The process of legal institutionalisation demonstrates that not all norms can be successfully institutionalised. Some norms remain controversial, particularly if they encounter resistance from the public or if the legal socialisation and education process has been inadequate. In the context of POJK, the finding that the public often does not fully understand the provisions suggests that there are gaps in this process. It is therefore important for policymakers to engage the public in dialogue and education on new legal norms in order to improve public understanding and create a sense of ownership of the regulations, thereby strengthening the overall success of legal institutionalisation.

An analysis of POJK Number 31/POJK.05/2014 offers valuable insights into the functioning of this regulation as part of the legal institutionalisation process. The findings demonstrate that, although the POJK is intended to establish legal certainty with regard to the encumbrance of land rights, the challenges encountered in implementing these norms reflect the intricate interactions between a multitude of social actors. In this context, financial institutions, the National Land Agency (BPN), and communities play a pivotal role in influencing the implementation and reception of these regulations. Financial institutions, for instance, must comprehend the procedures for recording land rights to mitigate risks associated with providing financing, whereas the BPN serves as the institution responsible for ensuring the validity and transparency of data pertaining to land rights.

The theory of legal institutionalisation posits that the operation of law is not a mere function of a vacuum; rather, it is shaped by dynamic interactions where new norms must be adapted by society and related institutions. It is therefore crucial to gain a profound comprehension of the requirements and perspectives of each actor in order to facilitate the broader acceptance of this regulatory framework. In the absence of the involvement and endorsement of all relevant parties, the implementation of POJK may encounter significant challenges, ultimately reducing its efficacy in establishing legal certainty. By adopting an inclusive approach that fosters dialogue between all stakeholders, this regulatory framework can be adapted in a more effective manner, thereby enhancing its acceptance and integration into Islamic financing practices in Indonesia.

Moreover, the evidence concerning the difficulties encountered in the execution of land rights as collateral demonstrates that, although legal norms exist, their efficacy is frequently constrained by structural and cultural factors. The lack of familiarity with the procedures set out in the POJK, for instance, creates a discrepancy between theoretical understanding and practical application. This underscores the necessity for a deeper public comprehension of the rights and obligations enshrined in the regulations to ensure their effective implementation. This lack of understanding not only impedes the process of encumbering land rights but also has the potential to erode public trust in the legal system.

In this context, legal institutionalisation theory emphasises the significance of socialisation and education as integral elements in the process of legal norm acceptance. In the event that individuals do not comprehend or deem the norms to be inconsequential, resistance may emerge, which ultimately impedes the implementation of the principles enshrined in the guarantee law. An effective educational process and public engagement in discussions concerning legal provisions can facilitate the development of awareness and trust in the regulatory system. Consequently, the successful institutionalisation of a regulatory framework is contingent upon not only the clarity of the regulations themselves, but also upon the manner in which the norms are accepted and applied in everyday life. By educating the public and facilitating dialogue, it is possible to anticipate positive changes that will enhance the effectiveness of the regulation, while simultaneously strengthening the position of the guarantee law in the context of Islamic finance.

The process of legal institutionalisation demonstrates that norms that are successfully integrated into social practice tend to exhibit characteristics that are responsive and adaptive to the local context. In this regard, the findings indicate the necessity for improvements in communication and engagement with communities to facilitate the effective implementation of POJK. Relevant parties, including policymakers and financial institutions, must adopt a more inclusive approach, demonstrate receptivity to community input, and adapt to their concerns. By engaging the public in constructive dialogue, this regulation will not only be better received, but will also be able to function optimally, thus creating a more solid and credible legal environment for collateral-based financing.

The research findings related to POJK Number 31/POJK.05/2014 have significant practical implications for policymakers, particularly in the context of developing more responsive and effective regulations. One potential avenue for improvement is to revisit the land rights execution procedures outlined in this regulation. By assessing the challenges encountered in practice, such as bureaucratic hurdles, policymakers can develop policies that are more streamlined and facilitate the execution process. This evaluation is vital to identify areas of the regulation that may be susceptible to legal ambiguity and delays in the execution process.

Improvements in execution procedures will not only enhance public confidence in the financing system, but will also reinforce the legal position of creditors and debtors. As the execution process becomes more transparent and accessible, creditors will be more confident in providing financing, while debtors will feel more secure in using their land rights as collateral. This creates a more conducive environment for investment and financing, where all parties can operate with a higher degree of legal certainty. Consequently, remedial measures taken based on the findings of this study can make a positive contribution to the development of the Islamic financing sector, as well as strengthen the integrity of the legal system as a whole.

These findings demonstrate the crucial role that legal practitioners play in facilitating the alignment between legal norms and practice in the field. It is incumbent upon legal practitioners to be proactive in educating their clients, both debtors and creditors, on the rights and obligations that arise from land encumbrance. By facilitating a better understanding of the provisions set forth in the POJK, legal practitioners can assist their clients in making more informed and strategic decisions, thereby increasing trust and regulatory compliance. Furthermore, this education can also mitigate the potential for disputes that may arise due to a lack of understanding of the procedures and rights involved.

Moreover, it is imperative that legal practitioners engage in active dialogue with policymakers to articulate the challenges and necessities encountered in the implementation of regulations. Given their experience in the field, legal practitioners are well placed to offer insights into the implementation of regulations and the challenges faced by clients. Their input can provide an important perspective for policymakers, facilitating continuous improvement in the existing legal system. Through close collaboration between legal practitioners and policymakers, it is hoped that the process of legal institutionalisation can be more effectively managed, creating a more stable financing ecosystem that is responsive to the needs of society.

The findings of this study confirm the necessity for Islamic finance business organisers to develop more adaptive business models based on Sharia principles. In addition to fulfilling regulatory requirements, such models should align with the values of fairness and transparency expected in Sharia practices. By integrating these principles into their operations, organisers can increase public and client confidence, thereby driving the growth of the Islamic finance sector as a whole.

Furthermore, it is imperative that organisers engage in a collaborative process with policymakers and communities to guarantee that the resulting policies align with the needs and expectations of all stakeholders. This more inclusive and participatory approach will enable organisers to gain insights directly from practical experiences on the ground, as well as the aspirations of the communities they serve. Consequently, the potential for policy improvement will be greater, and the Islamic financing system can develop well. This collaboration will not only result in more effective and relevant policies, but also provide greater benefits to society as a whole, strengthening the position of Islamic financing as a sustainable and ethical alternative in the financial system.

CONCLUSION

This research offers significant insights into POJK Number 31/POJK.05/2014, demonstrating that although this regulation is intended to establish legal certainty in the encumbrance of land rights, challenges in its implementation reflect the complexity of interactions between diverse social and cultural actors. The theoretical implications of these findings emphasise the significance of the legal institutionalisation process, which necessitates the adaptation of legal norms to local contexts and community requirements. In practice, this study recommends that policymakers evaluate and improve the procedures for executing rights, while legal practitioners should be more proactive in educating clients about existing regulations. Furthermore, Islamic financing business organisers must develop more responsive business models. While this study has made a significant contribution, its methodological approach and geographical coverage are limited, suggesting the need for further exploration, particularly in understanding the impact of local culture on the acceptance of legal norms. Recommendations for future research include a more in-depth study of community experiences of land encumbrance and how these interact with existing cultural values, in order to produce more inclusive and effective policies.

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