

INNOVATION OF LAW ON CONTRACT IN SHARIA PAWNSHOPS

MUHAMMAD ALI RUSDI BEDONG

Sharia and Islamic Law, IAIN Parepare Indonesia. E Mail: malirusdi@iainpare.ac.id

HANNANI

Sharia and Islami Law, IAIN Parepare Indonesia. E mail: hannani@iainpare.ac.id

FIKRI

Sharia and Islamic Law, IAIN Parepare Indonesia. E mail: fikristainpare@gmail.com

ABDUL SYATAR

Universitas Islam Negeri Alauddin Makassar, Indonesia.

E mail: abdul.syatar@uin-alauddin.ac.id

Abstract:

This paper informs on the innovation law of contract in Sharia Pawnshops. There are three problems, 1) regulation of the DSN-MUI fatwa on sharia pawnshops, 2) pawn products in Sharia Pawnshops, and 3) the method of calculating sharia pawnshops and auction of goods pawn. The descriptive-qualitative was used methods were observation, interview and document analysis. The result showed that character of pawn law based on the Fatwa DSN MUI Number 25 DSN-MUI/III/2002 and and the Compilation of Islamic Economic Law that murtahin as recipient of goods pawn have the right to suspend marhun until all are repaid. Pawn products in Sharia Pawnshops is have easy and practical lend skim service to meet the funds needed by people with a pawn system in accordance with sharia by handing over gold, jewelry, diamonds, electronics, and motor vehicles. If the rahin cannot pay off the debt until the due time, then the warning can be given to the customer first. However, if the customer cannot pay off, conducted auctions on goods pawn.

Key-Words: -Innovation of Law, Contract, Sharia Pawnshops, Debts, Customer.

1 Introduction

As social beings, people in carrying out their activities, always related to contracts made together for their daily needs. But sometimes people do the economic system is dominated by the interest system. Almost every contract is made using the interest system, such as pawnshops usually called rahn means suspending, holding or storing goods from customers. Rahn is one of the forms of the contract that contains loan agreements by ensuring the security of goods retained. Rahn can also be likened to al-hasbu which means holding back the collateral at the time of the transaction, so that the customer there is an effort to redeem the guarantee goods.

Rahn is a contract with the mention of the guarantee goods, both rahin and murtahin can agree to gain profit from marhun [1]. The concept of pawnshops built by Sayyid Sabiq indicates that murtahin can manage the guarantee goods to make a profit, otherwise the rahin may benefit from debt. Rahn is doing an estimate with the goods as a debt guarantee, by

paying the debt until the goods can be returned [2]. Thus, rahn is the goods delivered to the debt agreed upon, so that people have debt, one day do not pay the debt, then the guarantee goods in the contract can be used for payment.

While people from all classes used pawnshops for subsistence loans and pawned goods to raise business capital or meet other financial needs, pawning relations were primarily shaped by the daily practices of wives, widows and single women provisioning their households [3]. Nowday, pawnshops are more popular than other financial institutions. Because, not only the transaction costs on the part of the borrower is very minimal, the loan is also easy to obtain as long as the value item can be presented as collateral [4]. Pawnshops were established as a business network chosen for alternative financial services, often referred to as marginal economies. This legal business provides services that can be considered non-bank disbursements; but offers short-term cash loans [5].

The existence of a pawnshop aims to suspend consumer goods as a mechanism for economic sustainability, so that the pawnshop itself can answer for social progress on the part of the poor to the middle class [8]. Therefore, the facts indicate that pawnshops in major countries such as France, Belgium and Italy prohibit the management of independent pawnshops, thus supporting the management of non-profit pawnshops [9]. Certainly in the context of pawnshops in Indonesia is to help the economy of society so that its existence not only to benefit from customers. Especially with the existence of sharia pawnshops of course can make a difference with the conventional pawnshop operations.

Table1.The Pillars of sharia pawnshops

Pillars of Sharia Pawnshops		
The position each other in activity	Rahin	the owner of goods
	Murtahin	act of holding goods
	Marhun	guarantee goods in sharia pawnshops
	Shigat	a statement of ijab and qabul or agreement of both parties

Rahn in Islamic societies is usually known as sharia pawnshops, contracts that place the law to regulate the relationships between people who agree, suspended by murtahin who are willing to lend money are determined in accordance with the number of goods estimated [10,11]. Currently, sharia pawnshops are growing very rapidly in Islamic societies in Indonesia. However, it seems that pawnshops are determined by the syara 'there are different implementations in the Burgerlijk Wetbook (BW). Sociologically, the difference between the pawnshops in the 'legal' law that the lien can be managed for profit. But at BW that the mortgaged goods, the interest is charged as payment more than the agreement until the goods paid in full [6]. Sharia financing products offered include investment accounts, commodities and equity-based fund management facilities and sharia pawnshops [13,14]. The existence of sharia financial institutions can solve the financial problems of the community. People believe that shariah pawnshops participate to assist Muslim economic activities when their economy is unstable [15,16]. Sharia banks can also manage pawn products to meet people's

finances. Therefore, sharia banks innovate in developing business products including gold pawns and other valuables.

Therefore, sharia pawnshops always increase the trust of people in financial management. Sharia pawnshops recently introduced many sharia products. Thus, sharia pawnshops appear to provide solutions to economic problems in the country of Indonesia. Through the sharia pawn system provides services quickly and short term. Sharia pawnshops also provide security for all depositors and deposit holders that the funds are not lost, if the customer breaks promises because there are goods that can be guaranteed.

2 Literature Review

Economic and business developments will always be followed by credit developments and their facilities such as collateral or guarantees. In this context, the existence of a pawnshop is something that is really needed. Pegadaian is one of the State-Owned Enterprises (BUMN) in Indonesia which is engaged in lending and borrowing money to the public. The institution is very well known to provide financial assistance to the community for various purposes.

Shabbir M who studied the development of informal sharia pawnshops said that the existence of informal pawnshops in traditional markets is difficult to avoid because both formal pawnshops and informal pawnshops need each other. Furthermore, based on research conducted by Ambariani et al., it is stated that the application of sharia pawnshops according to the Fatwa of the National Sharia Council Number 25/DSN-MUI/III/2002 is an effort to control the operations of Islamic financial institutions, especially sharia pawnshops. This statement was strengthened by the Indonesian Ulema Council through the National Sharia Council Fatwa No.25/DSN-MUI/III/2002 which regulates the amount of maintenance and storage costs for *marhun*, where the value cannot be determined based on the amount of the loan. According to the author, this rule is a mistake made by the National Sharia Council, where the determination of maintenance costs is adjusted based on the loan amount, not the estimated price of goods. (Damayanti and Nurhasanah 2021).

In addition to credit products, *Arrum Haji* can also be used to get a bailout for Hajj funds through gold as collateral. Sharia-based pawnshops provide this product as an alternative choice for people who find it difficult to finance the pilgrimage. The credit product uses the *Akad Rahn Tasjily* and *Akad Ijarah*. Regarding the form of the contract, it is stated in Fatwa No. 68/DSNMUI/IV/2008 dated March 6, 2008 regarding *Rahn Tasjily* and Fatwa No. 09/DSN-MUI/IV/2000 concerning *Ijarah* Financing in accordance with DSN MUI Fatwa No.25/DSN-MUI/III/2002 concerning Islamic Finance Financing for Hajj Management.

3 Research Methodology

This article is qualitative descriptive-analytical method that is conducted to explain the innovation of law in contract in sharia pawnshops. The approach used is a formal juridical and sociological approach. The study was conducted from June to November 2017. The research location is located in Pegadaian Parepare and Sharia Pawnshops Sidrap.

Primary data sourced from field in the form interview result with pegadaian employee. Secondary data source is reference material from primary source. Furthermore, the secondary sources in this study may also be sourced from the data necessary to sharpen the legal innovation in the contract in the sharia pawnshop. The method used in collecting data for this study is the collection of library materials, namely collecting data and information. Secondary data is collected by conducting literature study, that is by searching and collecting legal sources of pawnshops, research results, scientific journals, scientific articles, and seminar papers related to sharia pawnshops.

Collecting materials from the field study, which is conducted through interviews. Interview is a way of collecting data by asking questions directly to infoman. The data collection instrument is a list of interview questions. Processing techniques and data analysis used are qualitative to secondary data and primary data. Furthermore, the data is constructed based on the content and structure of the discussion to obtain an overview of the concept of law innovation in contracts in sharia pawnshops.

4 Results

4.1 The Regulation of the DSN-MUI Fatwa on Sharia Pawnshops

Law Number 21/2008 on Sharia Banking states that in every product of the activities of all activities of sharia financial institutions there must be agreement from the National Sharia Council (DSN) to function as a supervisory institution of Sharia Banking in Indonesia. Fatwa No.26/DSN/MUI/III/2002 become a guideline for sharia pawnshops practices, which are implemented June 26, 2002. Through fatwa giving the legality of sharia financial institutions both banks and non-banks in pawn sharia system. However, the practice of sharia pawnshops has been implemented in sharia financial institutions, although there is no specific regulation in the legislation.

It is realized that the legal regulations in sharia pawn operations still refer to Law Number 21/2008 which is a regulation of sharia banking. Therefore, if sharia banking runs a product with a pawn system, then there are similarities of the system within the institution of sharia pawnshops themselves. For the management of sharia pawnshops in Indonesia it is very important to create their own legal regulations, so that the management is run independently without relying on the legal regulations of other institutions including the implementation of sharia banking law into sharia pawn institutions.

This fatwa is supported in the Compilation of Islamic Economic Law article 20 verse 14 that the pawnshops "the possession of the borrower's possessions by the lender as a guarantee." While the inherent nature of the pawnshops of the regulation, that murtahin receive the merchandise and have the right to suspend the object of pawning is to redeem all the debts. Thus, murtahin and rahin bond each other in a contract, while the contract should not be canceled by the rahin. Based on the fatwa of DSN-MUI No.26/DSN-MUI/III/2002 allow combination of qard and ijarah agreement. Qard occurs when sharia pawnshops provide loans to customers with a guarantee of gold. Meanwhile, ijarah occurs when the pawnshop leases

the hoard storage [7]. In contrast to the theory, the incorporation of qard with ijarah covenant is not allowed, because it is considered contrary to the hadith of the Prophet which forbids the merging of the purchase contract with the qard. Therefore, the merger of the contract does not contain usury. The Prophet's prohibition on merging trade agreements and ijarah aims to close the gap of usury. Anything that is prohibited for sadduzzariah is allowed when there is a need. In the case of gold mortgage, the need is in the form of security of gold storage which is pawned.

The use of goods guaranteed in the Compilation of Islamic Economic Laws contained in article 357 is that recipients of goods guaranteed cannot be used without the consent of the pledge giver (rahin), "while the maintenance cost in Article 362 that" the guaranteed provider shall be responsible for the cost of storage and maintenance of goods guaranteed, unless otherwise specified in the contract.

The Regulation in the Compilation of Islamic Economics affirms that the goods under guarantee, murtahin cannot be managed without obtaining the consent of rahin. However, innovation from the contemporary sharia pawn contract, such as motor vehicles into goods guaranteed, simply by BPKB alone held by murtahin. Furthermore the vehicle can be utilized by rahin to pay off its debts.

4.2 Pawn Products in Sharia Pawnshops

Sharia pawnshops more socialize to customers, to be interested in transacting the products offered. Efforts to increase customers, sharia pawnshops are very concerned about the quality of services to run the business operations. Through the quality of these services customers will feel conducive and more comfortable to transact in shariah pawnshops. Commitment that can strengthen the existence of sharia pawnshop is to strengthen cooperation with other sharia financial institution to promote the product. The results of strong relationships with other financial institutions provide a significant increase in income.

The development of sharia pawnshops products nowadays can facilitate the service of loan scheme to fulfill funding requirement for the society with the system of delivering guarantee goods such as gold, jewelry, diamond, electronics, and motor vehicles. Operational sharia pawnshops, as an implementation of improving the quality of services provided convenience to customers to obtain loans by fulfilling some requirements of submitting a copy of ID card or other official identity, submit the guarantee goods, if the motor vehicle, submit ownership documents such as BPKB or copy STNK, fill out the form in accordance with demand loan, and sign the contract.

The "Mulia product" is the murabahah of precious metals for long-term investment, the "Mulia" program is a sharia pawn product that is intended for people to invest long-term. Mulia products are facilities provided by sharia pawnshops to the public to have precious metal gold by buying in sharia pawnshops, while customers pay by installments.

Another product, Ar-Rum product is serving sharia-compliant loan scheme for small micro entrepreneurs for business development through installment payback system and using BPKB

motor or car in general sharia pawnshops operating mechanism can be described as follows: through the covenant of rahn, customers hand over moving goods then the pawnshop and maintain it in place that has been provided in the pawnshops. The consequences arising from the storage process are the incidence of costs which include the value of the depositary investment, the maintenance cost and the whole process of the activity. This view is justified for the pawnshop using the rental fee to the customer in accordance with the amount agreed by both parties.

By developing various products used to serve customers, such as Rahn, Ar-Rum is the financing for SMEs, gold installment, deposit service and others. To contribute to financing, Islamic pawnshops offer Ar-Rum financing for small and medium enterprise sectors to provide a source of capital. Ar-Rum is an Islamic finance product in Islamic pawnshops for SME development through Bookkeeper Vehicle Ownership (vehicle ownership certificate). Ar-Rum transaction mechanism based on Islamic principles applying fairness and interest-free refers to the National Sharia Council - Majelis Ulama Indonesia (DSN-MUI) No. 80/DSN-MUI/III/2011 [18].

4.3 The Method of Calculating Sharia Pawnshop and Auction of Goods Pawn

According to the method of calculation sharia pawnshops can be elaborated by the following descriptions:

Table2. Sharia pawnshop deposit fee

Loan	Goods cargo within 4 months	Administration fee
1,000,000	68,000	18,000
5,000,000	340,000	18,000
20,000,000	1,360,000	35,000
25,000,000	1,700,000	60,000
40,000,000	2,720,000	60,000
50,000,000	3,100,000	60,000
80,000,000	4,480,000	100,000
100,000,000	5,600,000	100,000
250,000,000	11,700,000	125,000

To understand the operational systems of sharia pawnshops according to the table and show differences with the conventional pawnshop operations, for example:

- A bracelet + a ring with an estimated value is 9,099,200.00;
- Date for August 16, 2017 (making a pawning);
- Due date for December 16, 2017 (4 month period);
- Sale date of goods guaranteed (auction): December 19, 2017;
- Administration Fee for 25,000.00;
- Rental storage fee for 476,000.00;

g. Financing (loan) is 7,000,000.00.

However, the sharia pawnshops calculation method is known as the deposit fee, whereas in a conventional pawnshop system implements the interest calculation system. That is the reason by the Islamic society to not conduct every transaction that contain elements of usury. Through the cost of deposits applied in sharia pawnshops is an advantage in easing the burden of customers.

The marhun auction, if the rahin is negligent on the obligation in paying the debt to the sharia pawnshop or if the time of the agreement has expired, then the pawnshop makes a warning to the customer earlier, a week before the due date. If the customer is still negligent to pay, then sharia pawnshops will auction off marhun.

4.4. Unique Statement

At first, the pawnshops that spread in Indonesia were conventional pawnshops. The existence of the conventional pawnshop raises aspirations from the Muslim community to accommodate sharia pawnshops in accordance with the provisions of Islamic law in Indonesia.

In practice, sharia or rahn pawn transactions are not enough to only use one type of transaction contract. This situation encourages contract innovation by using various other contracts in one pawn transaction, even though normatively there is a prohibition on carrying out two transactions in one contract. Contract innovation is able to attract new customers to transact at sharia pawnshops. This is certainly different from the development of conventional pawnshops in South Sulawesi, Indonesia.

5 Conclusions

Fatwa No.26/DSN/MUI/III /2002 serves as guidelines for sharia pawn practice. Fatwa provides the legality of sharia financial institutions both banks and non-banks in the system of pawn sharia. Shariah pawn practice has been implemented in sharia financial institutions supported by the Compilation of Islamic Economic Law. While the inherent nature of the pawnshop of the rule is the murtahin accepting the merchandise and has the right to suspend the object of pledge to redeem all debts.

There are two shariah pawn products which are disclosed in this article; "Noble Products" is the murabaha of precious metals for long-term investments, the "Mulia" program is a pawnshare of sharia products intended for people to invest long-term. Mulia products is a facility provided by sharia pawnshops to the public to have precious metal gold by purchasing in shariah pawnshops, while customers pay by installments. Other products, Ar-Rum products serve sharia-compliant loan schemes for business development through installment payment system and using motor vehicle or car BPKB in general mechanism of sharia pawnshops operation through rahn agreement, customer hand over moving goods then pawnshop and keep it in place provided in pawnshop.

Marhun auctions, if the rahin cannot pay off the obligations that must be paid to the sharia

pawnshops or can be said until the due date then the pawnshops are made to commemorate the customer first, a week before due date. If the customer still cannot pay off then sharia pawnshops will auction off the marhun.

References

- [1] Salim, A. (2012). Aspek Sosial dalam Gadai. *Journal Sosial Budaya*, 9(1), 4–5.
- [2] Hidayat, E. (2016). *Transaksi Ekonomi Syariah*. Bandung: Remaja Rosdakarya, 189-191.
- [3] Francois, M. (2004). Cloth and Silver: Pawning and Material Life in Mexico City at The Turn of The Nineteenth Century. *Americas*, 60(3), 326.
- [4] Lamberte, M. B. (1991). An Analysis of The Role of Pawnshops in The Philippine Finacial System. *Savings and Development*, 15(3), 297–323.
- [5] Degenshein, A. (2017). Strategies of Valuation: Repertoires of Worth at The Financial Margins. *Theory and Society*, 46(5), 387–409.
- [6] Ecobici, N.(2017). Determining Vat Pro Rate. Case Study at A Pawnshop in Romania. *Economy Series*, 1, 91–94.
- [7] Edwards, L. & Lomax, W. (2017). Financial Credit and Social Discredit: The Pawnbroking Dilemma. *Journal of Financial Services Marketing*, 22(2), 77–84.
- [8] McCants, A. E. C. (2007). Goods at Pawn The Overlapping Worlds of Material Possessions and Family Finance in Early Modern Amsterdam. *Social Science History*, 31(2), 213–238.
- [9] Woloson, W. A. (2007). In Hock: Pawning in Early America. *Journal of the Early Republic*, 27(1), 35–81.
- [10] Cenar, L. (2009). The Legal and Accounting Dimension of Pawn. *Economy and Applied Informatic*, 199–206.
- [11] Supriadi, A. (2012). Struktur Hukum Akad Rahn di Pegadaian Syariah Kudus. *Journal Penelitian Islam*, 5(2), 7.
- [12] Alma, B. (2009). *Manajemen Bisnis Syariah*. Bandung: Alfabeta, 31-32.
- [13] Wilson, R. (2000). Challenges and Opportunities for Islamic Banking and Finance in the West: The United Kingdom Experience. *Islamic Economy Studies*, 7(1&2), 35–59.
- [14] Addo, P. A. & Besnier, N.(2008). When Gifts Become Commodities: Pawnshops, Valuables, and Shame in Tonga and the Tongan Diaspora. *The Journal of the Royal Anthropological Institute*, 14(1), 39–59.
- [15] Suny, R. G. (2010). The Pawn of Great Powers: The East-West Competition for Caucasia. *Journal of Eurasian Studies.*, 1(1), 10–25.
- [16] Opera,D. Z. (2016). Pertumbuhan Pembiayaan Kongsy Kepemilikan Rumah Syariah (KPRS) di Bank Muamalat. *Analytica Islamica*, 5(2), 396.
- [17] Zhang, Z. J., et al. Spatial Comparison of Areas at Risk for Chistosomiasis in The Hilly and Mountainous Regions in the People’s Republic of China: Evaluation of the Long-Term Effect of the 10-Year World Bank Loan Project. *Geospatial Health*, 6(2), 205–214.
- [18] Edgina, L., Jazil, T. & Nursyamsiah, T. Strengthening the Role of Islamic Pawnshop in Islamic Financing for Micro Small and Medium Enterprises : Anp Approach. *Tazkia Islamic Financial and Business Review*, 10(1), 34–49.