REVIEW OF ISLAMIC LAW RELATING TO MOTORVEHICLE LENDINGIN BANDUNG DISTRICT

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Abstract

Humans as social beings are creatures that always live in society and always need the help of other people, to meet their needs together in society. Therefore, humans are always in contact with each other. 1 The relationship between one human and another human being in fulfilling needs must have clear rules between the rights and obligations of the two based on an agreement. 2 Pawn (rahn) is an agreement to hand over property by the owner as the person paying the receivables either in whole or only in part. 3 Most pawn agreements are carried out by the community in order to meet needs or help each other among those who really need them, by providing guarantees in the form of money so that they can be trusted or dependents if the person who pawned the goods cannot pay the debt

Keywords: Pawn, Motorized Vehicles, Borrow.

INTRODUCTION

Pawning (rahn) is an agreement to hand over assets by the owner as the person paying the receivables, either in whole or only in part.4 Meanwhile, pawning in fiqh is defined as making an asset as collateral for a debt, which can be repaid with the property or at its price if the debt it cannot be paid. 5 Many people do mortgage contracts in order to meet their needs or help each other among those who really need them, by providing guarantees in the form of money so that they can be trusted or dependents if the person who pawned the goods cannot pay the debt. This has become a tradition in the Baleendah Village community, which is predominantly Muslim¹.

In principle, according to Islam, the goods used as collateral are trustworthy, if rented, you must first ask permission from the motorbike owner. According to Sayyid Sabiq, it is not permissible to take advantage of

¹ Wahyu, Roficoh Luluk. "Aplikasi Akad Rahn Pada Pegadaian Syariah, Masharif al-Syariah". Jurnal Ekonomi dan Perbankan Syariah, Vol. 3, No. 2 (2018).

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the pawned goods even though Rahin allows it because the pawn transaction itself is to ask for trust and guarantee debt, not to seek profit and profit sharing. This is because such a practice is a profitable loan, while any profitable loan is usury. In the use of marhum by murtahin according to Hanafiyah murtahin does not have the right to use marhun without rahin's permission, because he only has the right to detain, not to use. According to some Hanafiah scholars this is not permissible because murtahin gets more benefit value, this is synonymous with usury.²

The practice of pawning motorbikes that occurred in Baleendah Village, Baleendah District, Bandung Regency was the end of the pawn agreement, namely because the pawnshop has paid off its debts according to the time period at the time of the agreement. In KHES (Compilation of Sharia Economic Law) CHAPTER XIII regarding rahn in article 333 it reads: Everything that is included in property or pawned goods. the practice is not in accordance with the concept of Islamic law³ where the person who pawns uses the pawned goods or uses the pawned goods without the pawn owner's knowledge so that the pawn owner feels disadvantaged.

METHODE

The research method used in this study is a qualitative method, namely a method that emphasizes an understanding of the problems of social problems based on complex and detailed (real) reality conditions and natural settings. 'i. The data sources in this study were the people in Baleendah Village who had pawned motorized vehicles, religious leaders, and sources related to the research title. Furthermore, the data collection method used is observation, interviews and documentation. Then, data processing and analysis techniques were carried out through three stages, namely: data reduction, data presentation, and drawing conclusions.

² Sutriani, dkk. "Tinjaun Hukum Terjadinya Wanprestasi Gadai Sawah", Iqtishaduna: Jurnal Mahasiswa Hukum Ekonomi Syariah, Vol 3. No 1 (Oktober 2021).

³ Iryani, Eva. "Hukum Islam, Demokrasi dan Hak Asasi Manusia". Jurnal Ilmiah Universitas Batanghari Jambi, Vol. 17, No. 2 (2017).

RESULT

The practice of pawning for borrowing motorized vehicles that occurred in Baleendah Village, Baleendah District, Bandung Regency

The pawning practice that was carried out in Baleendah Village was like what was done by Mr. Udin, that is, first Mr. Udin went to the pawn shop to check the motorbike that Mr. Udin was going to pawn, starting from the color and suitability of the motorbike. After Mr. Udin felt it was suitable, he made an agreement with the owner of the motorbike. said, while the contents of the agreement are:

- 1. Mr. Udin is willing to provide a security deposit of 6,500,000 (six million five hundred thousand rupiah) so that Mr. Udin can own the motorbike.
- 2. Mr. Udin must be willing to bear all the damage and maintenance of the motorbike he mortgaged.
- 3. If the motorbike is time to be returned and when it is returned the owner feels that the motorbike he gave to Mr. Udin is damaged or so which according to him is a loss then Mr. Udin must be willing to bear the damage by letting go of some of the security deposit he deposited to repair the motorbike.

Rahn in Indonesian banking terms is referred to as collateral, collateral is collateral or collateral, the word collateral in Indonesian has synonyms in the form of the word guarantor, order or budget, dependent. Rahn is an agreement for the delivery of goods to become collateral or collateral for the repayment of financing facilities provided by a bank or creditor. The collateral is called al-marhun, the party providing collateral is called arrahin, and the party obtaining the guarantee or collateral holder or creditor is called al-murtahin.⁴ Pawn lends money by handing over goods as collateral and with a time limit (if the time has not been paid, the goods become the right of the person giving the loan), (goods) goods submitted as debt dependents, illegal, pawn that is not got permission. redeem, redeem items that are debt dependents. Selling goods with an agreement that the goods may be redeemed for a certain time. The house (place) lends money by handing over goods as dependents, debentures as dependents on goods.⁵

The pawn agreement is an agreement of two parties (in terms of two) however, in practice this pawn agreement is often also involved by three parties, namely the debtor (debtor), the pawn giver, namely the person who handing over money objects used as the object of the pawn agreement as well

 $^{^{\}rm 4}$ Sutan Remy Sjahdeini ,S.H, Perbankan Syariah, (Jakarta: Prenamedia Group: 2014), h. 363

⁵ W. J. S Poerwadarminta, Kamus umum bahasa indonesia edisi ketiga, (Jakarta: Balai Pustaka, 2016), h. 289

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as the person who debtors or pawnbrokers (creditors). To understand what is found above, the following illustrates an example as: A borrows money (debtor) to (creditor) then A give his possessions whether in the form of existing movable property under his authority to B, until the debt can be paid returned by person A, according to the agreed time.

The definition of pawn in Islamic Shari'ah is somewhat different from the notion of pawn in our current positive law, it tends to be in the sense of pawn in our current positive law, it tends to be in the understanding of pawn in the civil law code (Civil Code), which in the Criminal Code. In civil terms, the definition of pawning is formulated as follows: pawning is a right that is obtained by a creditor for a movable object, which is handed over to him by someone who owes him or by another person on his behalf and who gives authority to the creditor to take payment of the item automatically, take precedence over other creditors with the exception of costs for auctioning the item and costs incurred to save the item after it is mortgaged, which costs must come first. (see the provisions of article 1150 of the Civil Code).⁶ Apart from being different from the Civil Code, the definition of pawn according to Islamic shari'at is also different from the meaning of pawning according to the provisions of customary law, where in the provisions of customary law, the meaning of pawning is as follows, handing over land to receive payment of an amount money in cash, provided that the seller (pawnbroker) remains entitled to the return of his land by redeeming it back." The terms used in this pawn agreement according to Islamic shari'a provisions: a. The owner of the goods (who is in debt) or the pawnbroker is termed rahin b. The person who owes money or the recipient of the pawn is termed murtahin c. Objects or items that are pawned are termed rahn.

Concerning this pawning agreement in Islamic Shari'ah is punished as an act of jaiz or what is permissible, either according to the provisions Al-Quran, sunnah and ijma'ulama. The legal basis for this permissibility can be seen in the provisions of the Qur'an Al-Bagarah verse 283:

Which means the following: if you are in travel, and do not find a writer, let there be goods dependents held. (H.Bjassin, 1991:631). From the sentence, there should be responsibilities that can be interpreted as a pawn. Meanwhile the opinion of Rasulullah SAW once bought food from the Jews and he mortgaged to him his armor. Regarding the permissibility of this pawn agreement, the majority of scholars also opinion is permissible and they (jumhur scholars) never disagree/disagree. DSN-MUI Fatwa no 25/DSN-

⁶ Pasaribu, Chairuman, Hukum Perjanjian Dalam Islam....., h. 140

MUI/III/2002 concerning Rahn Fatwa This provides the following conditions⁷: a). First: law that borrow by pawning goods as collateral Debt in the form of rahn is permitted. b). Second: general provisions 1) Murtahin (recipient of goods) has the right to detain marhun (goods) until all the debts of rahin (who handed over the goods) paid off.

2) Marhun and its benefits still belong to Rahin. In principle, marhun may not be used by murtahin except with permission rahin, without reducing the value of marhun and its utilization just a replacement for the cost of maintenance dam maintenance. 3) Maintenance and storage is basically an obligation rahin, but can also be done by murtahin, while the costs and maintenance of storage remains a rahin obligation. 4) The cost of maintaining and storing marhuns is not allowed determined based on the loan amount. 5) Marhun sales d. When due, murtahin must warn rahin to immediately pay off the debt. b. If rahin still can't pay off his debt then, marhun forcibly sold/executed through an auction according to sharia. c. Marhun sales proceeds are used to pay off debts, costs unpaid maintenance and storage as well as fees sale. d. Excess sales results belong to the rahin shortage become a duty. c). Third: Closing Provisions 1) If one of the parties does not fulfill its obligations or if If there is a dispute between the two parties, then the solution is resolved.

carried out through a sharia arbitration body after not being reached agreement through deliberation. 2) This fatwa is valid from the date determined with the provisions if in later it turns out that there is a mistake and will be changed perfected accordingly.

⁷ Sutan Remy Sjahdeini ,S.H, Perbankan Syariah,, h. 364-366

Pawn Concept in Islamic Law

Pawn in Arabic is called rahn. Rahn according to the language is a guarantee of debt, while according to syara' means a contract whose object is to hold the price of a right that may be obtained from it in full. The Prophet saw, both laws related to belief and laws related to amaliyah which are carried out by all Muslims and pawning issues are not spared from the rules.

Debt with collateral (pawn or rahn) according to Arabic is al-hasbu which means detention. Meanwhile, in terminology, pawning is holding an object in a right that allows it to be executed, meaning to make an object/goods that have an asset value in the view of syara' as collateral for a debt, as long as the debt cannot be repaid, with the item the debt can be replaced in its entirety. or in part.

The activity of the prevailing pawn agreement is basically an agreement where a person promises another person to carry out something. The cancellation of the agreement is caused by one of the parties leaving the agreement or one of the parties dies making it possible for riba which is prohibited by syara'. Riba occurs when the agreement must provide an additional amount of money or a certain percentage of the principal debt, at the time of paying the debt or at another time determined by the murtahin⁸. It is more often called mortgage interest and actions that are prohibited by syara'. This is because, pawn contract activities in Islam do not justify the practice of collecting interest because of the prohibition of syara', and the parties who are burdened, namely the pawnshop will feel abused and pressured, because apart from having to pay debts,

- a) There are pawnbrokers and pawnbrokers. So a child who is mumayyiz, and an ignorant person with the permission of his guardian is allowed to do rahn.
 - According to Syafi'iyah scholars⁹, two people who enter into a contract (rahin and murtahin) must meet the same criteria as al-Ahliyah, that is, people whose trade is lawful, that is, have common sense and mumayyiz, but are not required to be matured.
- b) The existence of pawned or marhun items

⁸ Wahyu, Roficoh Luluk. "Aplikasi Akad *Rahn* Pada Pegadaian Syariah, Masharif al-Syariah". *Jurnal Ekonomi dan Perbankan Syariah*, Vol. 3, No. 2 (2018).

⁹ Arikunto, Suharsimi, *Dasar-Dasar Research* (Bandung, Tarsito, 1995), h. 25. Basyir, Ahmad Azhar. *Asas-Asas Hukum Muamalat*. Yogyakarta: UII Press, 2000.

Marhunis an item that is used as collateral by the womb. The fiqh scholars agreed to oblige marhun as an item in buying and selling, so that the item can be sold to fulfill the right of murtahin, while the condition for those who hold the contract is a tasharuf expert, namely being able to provide a living and in this case understand pawn-related problems.

- c) Goods that are used as collateral (borg), the conditions for the objects that are used as collateral are the conditions that the goods are not damaged before the debt is promised to be repaid.
 - There is debt (Marhun Bih) Debt (Marhun bih) means: debt is an obligation for the debtor to pay the debtor, it is an item that can be used, if it is not useful then it is invalid, the amount of the item can be counted.

The terms and pillars of pawning in Islamic law are actually in accordance with the practice of pawning in Lere Jaya Village, at the time of the pawn contract there is a word or the word pawning, both the party making the pawn are healthy and sane, there are goods to be used as collateral or pawned goods, namely in the form of money, and there are accounts payable¹⁰.

The majority of scholars are of the opinion that the pillars of Rahn (pawn) exist four as follows: 1. Goods pawned, 2. Mortgage capital, 3. Shighah, and 4. "aqadain (two parties who make transactions), namely Rahin (people who pawn) and murtahin (people who receive pawn). Hanafiyyah argues that there is only one pillar of rahn (pawn), namely shighah because it is the essence of the transaction. As for besides shighah, then it is not included in the substance of rahn (pawn). Thus it departed of their opinion of the transaction as a whole In this pronunciation, according to the author, it can be done both in written or oral form, as long as it is contained therein the purpose of a pawn agreement between the parties. About the giver and the recipient of the pledge is required that both of them are capable people to carry out a legal action in accordance with the provisions Islamic shari'ah, namely reason and baliq. Regarding items that are pawned as pawned items, you have to is the property of the pawnbroker, and the item is there at the time a pledge agreement is held concerning the goods used as This pawn object can be of various types, and pawn goods is under the control of the pawnbroker (murtahin). Regarding the existence of debt, that debt is required to be fixed debt, in other words, the debt is not debt that adds up, or debt that has interest, cause if the debt is already an agreement that contains

¹⁰ Ilyas, Musyfikah. "Tinjauan Hukum Islam Terhadap Musyawarah Dalam Penyelesaian Sengketa Ekonomi Syariah". *al-Qada>u, Jurnal Mahasiswa Keluarga Islam,* Vol. 5, No. 2 (2018).

8 | *Hardi Fardiyansyah, Nanda D. Rizkia, Muhamad Jamalih dan Richard E.G.A Angkuw* elements of usury, while the act of usury is contrary to the provisions Islamic Shari'ah.

Syafi'iyah and Hanabilah argue that the power of people the person receiving the pawn is the power of the trust so he doesn't can cover damage to mortgaged goods unless caused by the mistake. This is based on the hadith: He (the mortgage holder) may not close the mortgage from mortgaged owner. He deserves his share and he is obliged to pay the debt. "(Hadith history al-Bayhaqi). 26 If the pawnbroker is obliged to bear the damaged pawned goods, then no one wants to do it out of fear bear. Hanafiyyah argues that the pawn holder's power is bear power so that he bears the mortgaged goods damaged at a minimal price. They argue with hadith 'Atha'ibnu Abi Rabah who told that a man pawned the horse, then the horse died. Rasulullah Shallahu 'alaihi wa sallam said to the pawn holder (meaning) "has been lost your rights." (History of Abu Dawud).

The Malikiyyah group distinguishes between goods that can be obtained hidden, such as jewelry, and items that can not be hidden, like animals and yards. Pawn holder bear on the first goods and do not bear on the goods second except because of his negligence The opinion that is diligent (valid) is that pawn goods are message in the hands of the pawn holder based on the hadith of Sa'id ibn alMusayyab from abu hurairah Rahiyallahu "anh that "that the Prophet Shallahu 'alaihi wa sallam said: "He (the pawnholder) may not close the mortgage from the person who pawned it. He is entitled to his share and he is obliged to pay his debts. (History of ad-Daruguthni and al-Hakim). That is, the pawnbroker has the right to benefit or result from the goods he pawned, and he also bears the loss and the damage. The pawnshop has been willing to surrender the trust to pawn holder so that he is like a person who deposits goods. Priest Malik argues that something that looks like the damage, like yard, is a trust, then everything is a trust. Abu Hanifah argues that the value of pawn goods is more than the value of debt is a trust, then everything is also a trust.

The lien is the right of the lien and still belongs to him. If he has obtained a debt with collateral for his goods, then he must pay the debt like debt in general without a mortgage. If he pays all his debts, then he is entitled to goods which he pawned. If he is unable to pay all debts or part of it, then he is obliged to sell the goods that he mortgaged himself or represent another person with the permission of the pawn holder, then he pay the debt. If the pawnbroker does not want to pay off the

debt and did not want to sell the goods that were pawned, then the judge detained him and forced him to sell his goods. If he still does implement it, then the judge sells it and pays debt. Thus this is the opinion of Syafi'iyyah and Hanabilah. Malikiyyah argues that the judge sells pawned goods, pay the mortgagee's debts, but do not hold them.

Hanafiyah believes that the pawn holder has the right to sue pawnshop to pay off his debt, and asked the judge to hold him if you are clearly delaying paying the debt. The judge can't sell pawned goods because he will be subject to hajr (withheld from spending his wealth), which means losing the feasibility of buying and selling, then he may not sell the goods that were pawned. However, he detained until he sells it because he anticipates tyranny.28 The opinion that is diligent (valid) is that the judge may sell goods pawn and use it to pay off the mortgage debt without withholding it because his goal is to pay off debts, and has come true with that. In addition, the pawnshop detention can cause negative things in society. If the price of goods is mortgaged can cover the amount of debt, then the business has been completed debts and receivables. If not enough, then the pawnshop must pay off lack.

Concerning the confiscation of mortgaged goods, in case of a pawnbroker not being able to repay the loan is an act that is not permissible, because with a pawn agreement does not mean the occurrence the transfer of rights to the mortgaged goods, strictly speaking, the goods are only just a guarantee of payment from the pawnbroker. According to the provisions of the Shari'ah that if the period has been promised to repay the debt has passed, then the debtor obliged to pay the debt. but if the debtor does not have the ability to repay the loan, let him grant permission to pawn holders to sell goods pawn, and if this permission is not given by the pawnbroker, then the pawnbroker can ask for the help of a judge to force pawnbroker to pay off his debts or give permission to the pawnbroker to sell the pawned goods.

If the pawnbroker has sold the pawned item, and it turns out that there is an excess of what should be paid by the pawnshop, then the excess must be given to the pawnbroker. On the contrary, even if the mortgaged goods have been sold, and it turns out that they have not been able to pay off debts of the pawnbroker, then the pawnbroker still has obligations to pay for the shortfall.

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Regarding the use of pawn goods according to the provisions Islamic law remains the right of the pawnbroker, including the proceeds of the goods the hock, like, the cubs, the fruit, the fur. Because of the agreement carried out only to guarantee debt, not to take one advantage, and the act of the pawn holder utilizing the goods pawn is an act (qirad) is a property that is given to someone, then he returns it when he is able) that gives birth to benefits, and every type of qirad that gives birth Profit is seen as usury

CONCLUSION

Based on the results of the study, it can be concluded that the practice of pawning and borrowing motorized vehicles that occurred in Baleendah Village, Baleendah District, Bandung Regency, is as follows:

The practice of pawning motorbikes that occurred in Baleendah Village, Baleendah District, Bandung Regency, this has been happening for a long time according to the results of an interview with one of the respondents who said that he pawned motorbikes in 2002. you don't have to spend a lot of money to buy a new motorbike, but at an affordable price they can already have a motorbike to use with quality, you can say it's still very suitable for use, and the motorbike pawnshop not only gives mortgages, but also pawns the motorbike if there is one the community needs money by guaranteeing their motorbikes with an estimated value according to the condition of the motorbikes.

The practice of pawning vehicles which is mostly done by the people in Baleendah Village, Baleendah District, Bandung Regency is not valid according to Islamic law because the pawned goods are in the form of debt and there are additional elements and take advantage without notifying the owner of the motorcycle pawnshop, causing an element of fraud and harming one party.

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