

Research Article

Gold Pawn Analysis On Islamic Banking Gold Partner Products Maslahah In Bank Jabar Banten Sharia Indramayu Branch Office

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Abstract. The contract used for gold pawning on gold partner products IB maslahah at Bank Jabar Banten Syariah Indramayu Sub-Branch Office uses a multi-contract which is structured in qard contracts, rahn contracts and ijarah contracts. Adhering to the DSN fatwa No.26/DSN-MUI/III/2002 and the Civil Code (KUHPerduta) articles 1150-1160 and to the *ijarah contract* which functions as an *ujrah* (fee), where the customer agrees to the DSN fatwa No. 09/DSN-MUI/IV/2000 giving *ujrah* to banks for bank services in storing and maintaining customer gold . The view of muamalah fiqh in the implementation of gold pawning on gold partner products IB maslahah at Bank Jabar Banten Syariah Indramayu Sub-Branch Office regarding the contract is the gold pawning contract used in Islamic banking, especially at Bank Jabar Banten Syariah has 3 (three) contracts, namely, qard contract

(*cooperation contract*), *rahn* (pawn) contract and *ijarah contract* (leasing), the three contracts are used in one transactions or what we call multi-contracts (*hybrit contracts*). Multi-contract activities in the Islamic economy itself have opinion Which different with activity multi-contract Alone. In classical muamalah fiqh pawning gold which has an element of merging contracts between buying and selling and leasing is strictly prohibited, due to fear of elements of usury. However, contemporary muamalah fiqh expert Erwandi Tarmizi allows the existence of multiple rahn and qard contracts. in which there is an ijarah contract with conditions, Islamic banks must provide two choices to customers.

Keywords: Pawn, Gold Pawn, Islamic Bank.

INTRODUCTION

Banks are financial institutions that collect funds from the public in the form of savings deposits or time deposits and channel them through other forms of financing with the aim of improving the people's economic welfare. Islamic banks are banks that operate without relying on interest. Islamic Banks or commonly referred to as Islamic Banks, are financial/banking institutions whose operations and products are developed based on Al-Quran and hadith.

In order to improve the country's economic activity, a productive financial institution is needed to support economic activity in that country. As for one of the financial institutions that have a strategic role as a supporter economic activity, namely banking, because banking has a function as a financial intermediary institution that connects parties who have excess funds and those who need funds, then with this function banking will greatly influence the economic activity of a country. However, in the current economy, it turns out that Islamic banking is experiencing very rapid growth compared to conventional banks. Islamic Bank itself is a financial or banking institution whose operations and products are developed based on the Al-Quran and hadith.¹

In Law No. 10 of 1998 Islamic banking began to be widely used and explained in detail the legal basis and the types of businesses that can be operated and implemented by Islamic banks. Along with the quantity of needs and developments, society is also one of the supporting factors that is very important for the development of banking sharia, there is a public need for financing that is fast, easy, safe and of course in accordance with sharia principles, triggering sharia banking to issue products that suit the needs of the community, one of the products issued by sharia banks to support the needs of the community is sharia gold pawning. Product innovation is influenced by changes in market tastes, technological advances, and economic conditions. Inner market This is the customer, whose tastes are constantly changing according to globalization. Meanwhile, economic conditions affect the

¹Khaerul Umam, *Management Banking Sharia* (Bandung: CV References Loyal. 2013), p. 15.

banking business strategy. Therefore, in recent years, Islamic banking has developed a financing product, namely pawning gold.

One of the sharia banks that provides gold pawning services is Bank Jabar Banten Syariah Indramayu Sub-Branch Office with the name of the product, Mitra Emas IB Maslahah. There are so many problems regarding gold pawning activities both in the form of managerial issues, marketing and problems in the implementation of contracts. In this case the researcher will focus his research on the problems of the applied gold pawning contract on product partners gold IB maslahah Bank West Java Banten Sharia.

Mitra Emas is a gold-backed *qardh product* in which the bank provides financing facilities to customers with collateral in the form of gold jewellery, gold bar/bullion (precious metal) from the customer concerned by following the principles of *qardh* and *rahn*. The said gold items are placed in the control and maintenance of the bank, for such maintenance the bank charges a rental fee based on the *ijarah principle*. The maximum amount of financing that can be provided by the bank to customers, namely: 1). 90% from mark estimate Metal Noble/Gold bars And coins/money gold, 2). 85% of value estimate gold jewelry, 3). Mark loan start from Rp. 1,000,000.00 (One million rupiah), 4). rounding off loan in thousand rupiah to the top.

In general, the implementation of gold pawning in banking uses three contracts, namely *qard*, *rahn*, and *ijarah*. *Qardh* is a contract that is used for loans given to customers, *qardh* is giving or lending assets to other people that can be billed or asked to return as much as borrowed.² Then there is a *rahn contract* for gold which is used as collateral, *rahn* in language is a stipulation or detention.³ Meanwhile, according to the term *rahn* is a contract whose object is to hold the price of a right that may be fully paid for from it.⁴ And *ijarah* is a contract for payment of the cost of renting a place and safekeeping of gold which is used as collateral.

Qardh product where the bank provides financing facilities to customers with collateral in the form of gold jewelry, gold bars/bullion (precious metal) or gold coins from the customer concerned by following the principles of *qardh* and *rahn*. Bank Jabar Banten Syariah Indramayu Sub-Branch Office Minimum loan term is one month, one day up to 28, 29, 30 or 31 days counting a month. If the lease/loan period has ended and the customer has not paid off the loan, a grace period of 15 (fifteen) days is given.

Pledge which is one of the categories of debt agreements where for a trust from the person who owes the person who is in debt pawns his goods as collateral for the debt, namely the collateral remains the property of the person who pawns

² Atang Abd. Hakim, *Fiqh Banking Sharia: Transformation Fiqh Muamalah to in Laws and Regulations* (Bandung: PT Refika Aditama. 2011), p. 266.

³ Hendi Suhendi, *Fiqh Muamalah* (Jakarta: PT. RajaGrafindo Homeland. 2011), p. 105.

⁴ Hasbi Ash-Shiddieqy, *Introduction Fiqh Muamalah* (Jakarta: Month Star. 1984), p. 86

or the person who owes but is controlled by the recipient of the pledge or the person who owes the practice This kind of thing has existed since the time of the Prophet and the Prophet himself used to do so. Pawn has a very high social value and was done voluntarily basic help.⁵

In general, the operation of Islamic gold pawning is similar to conventional services, namely pawning goods to obtain a certain amount of guaranteed money for this service. generally temporary in pawn gold Sharia customers No subject to fixed interest collected from customers is the cost of safekeeping, maintenance of care and interpretation of goods pawned. The main difference between sharia pawn fees and conventional interest is the nature of interest that can accumulate And folded double temporary pawn fees gold Sharia only once and fixed in advance.⁶

Contract modification is part of ijtihad so that contracts contained in fiqh can be applied to modern transactions. Permission to modify the contract must be based on the validity of each application that contract shape it. That is, modification contract is said to be valid if the pillars and conditions of the contract that make it up are fulfilled, in addition to paying attention to the limitations set by the hadith. In order for the pillars and conditions of the contract to be met, several contracts may not merge into one. In the hadith of the prophet Muhammad SAW, he is centuries old which means "The person who releases a Muslim from his difficulties in the world, Allah will release his difficulties on the Day of Judgment; and Allah always helps His servant he (likes) to help his brother." (HR. Muslim).

In this case, based on the problems above, the authors are interested in conducting research related to analyzing gold pawning on gold partner IB maslahah products at Bank Jabar Banten Syariah, Indramayu Sub-Branch Office and this research focuses on the problems of the contract used.

METHOD

The method used in this research is descriptive research method with a qualitative approach. namely the data collected in the form of words, pictures, not numbers. Qualitative research is a research procedure that produces descriptive data in the form of written or spoken words from people and observed behavior.

Meanwhile, descriptive research is a form of research aimed at describing or describing existing phenomena, Good phenomenon natural nor manipulation man. As for objective of descriptive research is a systematic analysis, factual, and accurate regarding the facts and characteristics of a particular population or area. The researcher tries to present the research data in the field that is about analysis

⁵Mohammed sholikul Hadi , *Pawnshop Sharia* (Jakarta: Salemba Diniyah, 2003) p 2

⁶Sofiniyah, ed. *Overcome Problem With Pawnshop Sharia* , Jakarta: Renaissance, 2005) matter 14

gold pawning on IB maslahah gold partner products at Bank Jabar Banten Syariah Indramayu Sub-Branch Office as well as suitability according to applicable law.

RESULTS AND DISCUSSION

Gold pawning product in the form of maslahah IB gold partners at Bank Jabar Banten Sharia is product borrow Money in deadline certain by handing over the goods as dependents, if it has arrived at If the time is not redeemed, the item becomes the right of the lender. Which is dependent in this case in the form of gold.

Article 1150 of the Civil Code states that pawning is a right that is obtained by a creditor on a movable object, which is handed over to him by a debtor or another person on his behalf, and which gives authority to the creditor to take payment of said item in priority over other creditors; with the exception of the cost of auctioning the items and the costs incurred to salvage them after they have been pawned, which costs must come first. According to Prof. R. Subekti, SH, with reference to Article 1150 of the Civil Code, *pandrecht* is: "something right material on something object moving property belonging to another person, which is solely agreed by handing over the bezit of said object, with the aim of taking repayment of a debt from the revenue from the sale of the object, earlier than other collectors."⁷

In the implementation of pawning there is a process consisting of 2 (two) phases, namely: The *first phase* is a loan agreement (credit) with a promise to be able to provide movable objects as collateral. This agreement is consensual, obligatoir. This agreement is the beginning of the pledge agreement. *The second phase* is the surrender of the pawn object to the authority of the pawn recipient in accordance with the pledged object being a movable object, so that object must be released from the power of the debtor or pledge giver. The handover must be real, not only based on a statement from the debtor, while the object is within the power of the debtor. This is in accordance with Article 1152 paragraph (2) of the Civil Code.⁸

Both parties, both the pawn giver (customer) and the pawn receiver (bank) after the pledge agreement is agreed upon, each has rights and obligations. The rights and obligations of one party deal with the rights and obligations of another. These rights and obligations must be carried out for each party so that there is no dispute that results in losses for one party or both.

If a *force majeure* occurs, the customer must notify in writing by attaching evidence from the agency authorities to the bank no later than 14 (fourteen) working days from the date *the force majeure* occurred. If there is a delay in the notification, *the force majeure will not be acknowledged*. And all problems arising

⁷Subekti, *Main points Law civil*, Interamas, Jakarta, Cet. XXI, 1982, (hereinafter abbreviated as Subekti I) p. 79.

⁸Mariam Darus Badrulzaman, *Chapters About creditverband, Pawn And Fiduciary*, Image Aditya Bakti, Bandung, 1991, (hereinafter abbreviated as Mariam Darus Badrulzaman I), page 58

from *force majeure* will be resolved by the bank and the customer by deliberation to reach a consensus. This is without prejudice to the rights of the bank as stipulated.⁹

Force majeure or *overmacht* is a situation where the debtor fails to carry out his obligations to the creditor due to events that are beyond the control of the party concerned, for example due to an earthquake, earth, land landslide, epidemic, unrest, war, And etc. This term is also known as *force majeure* in Indonesian. Provisions regarding *force majeure* are regulated in article 1244 of the Civil Code and article 1245 of the Civil Code. The following is an excerpt: Article 1244 reads "If there is a reason for that, the debtor must be punished with compensation for costs, losses and interest if he cannot prove that the matter was not or was not carried out at the right time, due to something unexpected, nor can he be held accountable, all of that even if bad faith is not on his part." Article 1245 reads "There is no reimbursement of costs, losses and interest, if due to coercive circumstances or because of things that happen by chance, the debtor is prevented from giving or doing something that is required, or doing something that is prohibited for him".

Provisions for pawning gold on partner products Maslahah IB gold at Bank Jabar Banten Syariah is guided by deep *qardh* contract, the *rahn* (pawn) contract itself adheres to the DSN fatwa No. 25/DSN-MUI/III/2002 and the Civil Code (KUHPerdata) Articles 1150-1160 and on the *ijarah* contract which functions as an *ujrah* (fee), where the customer agrees to give *ujrah* to the bank for the bank's services in storing and maintaining the customer's gold.

Contract Pawn Gold perspective Fiqh Contemporary Muamalah

The gold pawn contract used in Islamic banking, especially at Bank Jabar Banten Syariah, has 3 (three) contracts namely, *qardh* contract (cooperation contract), *rahn* contract (pawn) and *ijarah* contract (leasing), the three contracts are used in One transaction or We call multi-contract (*hybrit contracts*).

Multi-contract activities in the Islamic economy itself have different opinions from multi-contract activities themselves. With the existence of hadiths that prohibit the occurrence of two contract transaction activities in one contract, this raises many questions, whether Islamic financial products that use Multi-contracts can be seen as fulfilling sharia principles or vice versa.¹⁰ On the other hand, the multi-contract linkage with the Islamic economy is a necessity, but on the other hand, it is feared that it will conflict with sharia principles. Due to the need in the world economy, muamalah fiqh experts allow it with conditions there is an option in determining the *ijarah* contract for the customer.

⁹Interview with Khodijah Kholidatul Muna, date 12 March 2020 in Bank West Java Banten Syariah Indramayu Sub-Branch Office

¹⁰Hasanuddin Maulana, "Multikad In Transaction Sharia Contemporary On Islamic Financial Institutions in Indonesia, p. 157

There are two types of contracts for gold pawn products in Islamic banks, namely *first*, applying to fellow contracts that are charitable or *tabarru*, namely a combination of a *qardh contract* and a *rahn contract*. *Second*, apply a commercial or *tijarri contract* with a charity or *tabarru contract*, which is a combination of a *qardh* or *rahn contract* with an *ijarah contract*. Merging *qardh* and *rahn contracts* in one contract is a type of multi-contract *al-'uquud al-mutaqaabilah* (dependent or conditional contract), namely multiple contracts in the form of a second contract responding to the first contract, where the perfection of the first contract depends on the completion of the second contract through a reciprocal process. Meanwhile, the merger *qardh* or *rahn* with contract *ijarah* in One contract is the opposite type of multi-contract (*al-'uquud al-mutanaaqidlah*). The opposite multiple contracts are contracts that cannot be combined into one contract.¹¹

In addition to the dependent or conditional multi-contract type and the opposite multi-contract type, product transactions gold pawn based on sharia principles with *qardh contracts* in *rahn contracts* and *ijarah contracts*, can adhere to multiple similar contracts (*al-'uquud al-mutajaanisah*), namely contracts that may be combined in one contract, with the *ijarah contract not being bound* by a *qardh* or *rahn contract*, with the words Another *ijarah contract* is an option for customers to give their trust to the bank in maintaining gold.

The National Sharia Council of the Majelis Ulama Indonesia or known as DSN-MUI issued fatwa number 26 of 2002 concerning gold *rahn* as an industrial need that sees opportunities in which society in general has made gold a valuable thing that is stored and made it an object of *rahn* as collateral for debt to get a loan of money. In addition, *rahn* is used to provide guarantees to Islamic banks for financing submitted by customers. This is stated in the DSN fatwa number 92 of 2014 concerning financing accompanied by *rahn*. Insurance item or *marhun* must be valuable assets both movable and immovable objects that are permissible and can be traded.

The existence of the DSN fatwa number 92 of 2014 concerning financing accompanied by *rahn* makes the application of the *rahn contract* itself wider because No limited only For *tabarru* (on contract *qard*) but also for *tijarri* (on tough sale and purchase agreements, leases, musyarakah and mudharabah), this is seen as more in line with current developments in the financial industry where financing occurs also due to more varied community needs such as business capital, property selection and others.

Erwandi Tarmizi, an expert on contemporary muamalah fiqh, gave an example. To find out this, you need to look at some of the actual rental prices for a

¹¹Nur wahid, *multi contract in institution finance sharia*, cv favor main, yogyakarta, 2019, matter. 77

safe deposit box (SDB) if you don't combine *qard* (loans) with pawning gold.¹² For example: Islamic banks provide three sizes of SDB at various prices: small size (3 * 10 * 24 inches) at a price of IDR 200,000 per year, medium size (5 * 10 * 24 inches) at a price of IDR 350,000 per year and large size (10 * 10 * 24 inches) at a price of IDR 700,000 per year.

In the *qard contract* by pawning gold combined with pawning gold leasing for the sake of security, Islamic banks charge fees that vary, starting from Rp. 225,000 to Rp. 750,000 per year for pawning gold weighing 25 grams. Even though it costs that much to rent SDBs ranging from small to large sizes that can accommodate hundreds of 25 gram gold bars. And even sadder, when he pawned his gold for the second time, he was charged another fee equal to the cost of sending an SDB, even though the SDB paid on the first line was still able to accommodate hundreds of 25 gram gold bars.

From this explanation, it is clear that Islamic banks make a lot of profit from the cost of storing gold as collateral, not just the cost of storing it which is really needed. If this happens, the bank takes profit from the cost of storing the pawned gold, so the *qard (loan)* contract with gold pawning done by the community has turned into *riba dain*, because of the nature of pawning gold is that loan party giver loan get benefit (profit) of the loan in the form of gold storage fees on top of the costs required. And loans that earn profits for giving legal loans are usury.¹³

Erwandi Tarmizi is of the opinion that this can still be obtained with the condition that the fee is not required in the *qard contract*. That is, when customers pawn gold to Islamic banks, banks provide choices to customers. *First*, customers do not pay gold safekeeping fees with the consequence that humans are not guaranteed by the bank if something happens outside the will of the bank, because it is limited to trust as stated by the scholars. *Second*, the customer provides storage fees in the amount of costs that are really needed for that. With the record that the bank is not allowed to take even a penny of profit to enter the bank's cash. And the consequences of paying the deposit fee require the bank to guarantee the pawned gold if something goes wrong.

If you choose number two, which is taken by the customer, then this deposit fee will be charged though Still including *ijarah* the law allowed Because bank do not get profit from this transaction and the merger contract is not intended for the bank to profit from the loan. Thus, there is no usury in the merger of this contract. And the prohibition of the prophet's hadith regarding the merging of *ba'i* contracts and *ijarah* aims to cover up the usury gap, and something that is prohibited from

¹²Erwandi Tarmizi, *Treasure Unlawful Muamalat Contemporary*, B erkat glorious human, Bogor, 2019, matter. 422-423

¹³Erwandi Tarmizi, *Treasure Unlawful Muamalat Contemporary*, Glorious blessing human, Bogor, 2019, matter. 420-421

happening is permissible if there is a need in the case of gold pawning, the decision is in the form of security of the pawned gold storage.

In matter This suitability in determining *the fee or ujrah price* at Bank Jabar Banten Syariah seen from the gram and caratage value, which is determined by the central Bank Jabar Banten Syariah, but the *ujroh price* cannot be ascertained because the price of gold is fluctuating. This discrepancy is a review of the highest orientation of the National Sharia Council (DSN) which regulates the business growth and development of Islamic financial institutions (LKS).

Regarding the *ijarah contract option* according to contemporary muamalah fiqh experts in practice it is not in accordance, because For as a benefit leasing gold safekeeping, because the gold pawn is guaranteed to be the place where the gold is deposited as collateral. So, it is imperative to choose an *ijara contract*. It is part of the conditions for the occurrence of gold pawning on the product Mitra Emas IB Maslahah at Bank Jabar Banten Indramayu Sub-Branch Office.

CONCLUSION

Based on the presentation of the data above, the writer can conclude as follows:

The contract used for gold pawning on gold partner products IB maslahah at Bank Jabar Banten Syariah Indramayu Sub-Branch Office uses a multi-contract which is structured in qard contracts, rahn contracts and ijarah contracts. Adhering to the DSN fatwa No.26/DSN-MUI/III/2002 and the Civil Code (KUHPerduta) articles 1150-1160 and to the *ijarah contract* which functions as *an ujrah* (fee), where the customer agrees to the DSN fatwa No. 09/DSN-MUI/IV/2000 giving *ujrah* to banks for bank services to store and maintain customer gold.

The view of muamalah fiqh in the implementation of gold pawning on gold partner products IB maslahah at Bank Jabar Banten Syariah Indramayu Sub-Branch Office regarding the contract is the gold pawning contract used in Islamic banking, especially at Bank Jabar Banten Syariah has 3 (three) contracts, namely, *qard contract* (cooperation contract), *rahn* (pawn) contract and *ijarah contract* (leasing), the three contracts are used in one transactions or what we call multi-contracts (*hybrit contracts*). Multi-contract activities in the Islamic economy itself have opinion Which different with activity multi-contract Alone. In classical muamalah fiqh pawning gold which has an element of merging contracts between buying and selling and leasing is strictly prohibited, due to fear of elements of usury. However, contemporary muamalah fiqh expert Erwandi Tarmizi allows the existence of multiple rahn and qard contracts. in which there is an ijarah contract with conditions, Islamic banks must provide two choices to customers.

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