

## LEGAL ANALYSIS OF GOLD PAWN AGREEMENT IN SYARIAH BANK (Study at PT. Bank Syariah Indonesia Kutacane Branch Office)

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### ABSTRACT

Islamic banking in Indonesia is rapidly growing, especially with gold pawn services offered by Bank Syariah Indonesia (BSI). This product is popular for its quick process and compliance with Sharia principles. However, gold pawn agreements at BSI face legal challenges regarding adherence to Sharia and national regulations. This study analyzes the characteristics, implementation, and legal implications of these agreements using an empirical legal method with a juridical-sociological approach based on literature review and interviews at BSI KC Kutacane. Findings show that BSI's gold pawning uses Sharia contracts, is free of usury, and supervised by OJK and Fatwa DSN-MUI. The process begins with customer application and asset evaluation, but the *ujrah* fee calculation does not align with fatwa, as it is based on the loan amount rather than actual costs. If customers fail to redeem, the goods are auctioned and remaining debts remain their responsibility.

**Keywords: Legal Analysis, Agreement, Gold Pawn, Islamic Bank.**

### A. Introduction

The development of sharia product technology in Indonesia, including the pawn sector, is increasingly rapid. Perum Pengadaian has launched a sharia pawn product that does not charge interest (*riba*), uses money as a medium of exchange, and focuses on service rewards and profit sharing. Gold, as a means of hedging, is also considered a fast and reliable source of financing, with pawn practices that are already well-known to the public.<sup>1</sup> In general, a pawn is a loan that uses collateral in the form of movable property. This term refers to the creditor's right to receive repayment of the pawned item before other creditors, after prioritizing the costs of auctioning and saving the item, according to Article 1150 of the Civil Code.<sup>2</sup> Pawn in Islam, or *rahn*, is part of the *muamalah* activity that prioritizes the rights of the lender. In this transaction, the borrower must provide collateral in the form of goods to the lender. If the borrower fails to repay the loan, the lender has the right to sell or auction the collateral according to the agreed agreement.<sup>3</sup>

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<sup>1</sup> Nunung Uswatun Habibah. 2017. "Perkembangan Gadai Emas Ke Investasi Emas Pada Pengadaian Syariah". *Jurnal Ekonomi dan Keuangan Syariah*. Vol.1 No.1, halaman 81-97

<sup>2</sup> Susanti Sembiring. 2024. *Hukum Perbankan Dan Lembaga Pembiayaan*. Purbalingga: Eureka Media Aksara, halaman 63.

<sup>3</sup> Ongky Alexander.dkk. 2023, "Konsep Rahn (Gadai) Dalam Islam dan Peraturan Perundang-Undangan Indonesia kajian Fikih Muamalah". *Hukum Tata Negara*. Vol. 2. No.1, halaman 41.

Gold pawn services have become a popular financial alternative in Indonesia, especially for urgent funding needs. This product is safe because it uses gold as collateral and is in accordance with sharia principles without usury elements. At Bank Syariah Indonesia (BSI), this service is regulated in a rahn contract, which allows customers to pawn valuables such as gold and get financing, with a commitment to return the goods after paying off the financing. However, on the other hand, gold pawn products in sharia banking face several challenges. First, its implementation must always comply with sharia principles, especially in determining storage fees and other fees that may be charged to customers. Second, there are positive legal provisions in Indonesia that need to be followed, considering that the gold pawn agreement is a product supervised by the Financial Services Authority (OJK). This situation creates a dilemma between compliance with sharia principles and conventional banking regulations. Bank Syariah Indonesia Kutacane Branch Office, as a gold pawn service provider, has the responsibility to ensure legal pawn practices that comply with sharia principles. This study is important to examine the legal aspects of gold pawn agreements at BSI, including practices, compliance with sharia law, and obstacles faced, such as customers who cannot redeem gold pawns within the specified deadline. In this case, the bank provides an extension, but if the customer still does not redeem, the collateral in the form of gold can be auctioned. The legal basis for pawn agreements in Islam can be found in the Qur'an, namely Qs. Al-Baqarah verse 283, which states the importance of collateral in debt transactions. In addition, the hadith of the Prophet Muhammad SAW also shows the practice of pawning, where he pawned his armor to get food on credit.

## **B. Research Methods**

A study cannot be called research if it does not have a research method.<sup>4</sup> Research methods are one of the factors of a problem that will be discussed.<sup>5</sup> The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method.<sup>6</sup> The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.<sup>7</sup>

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<sup>4</sup> Koto, I., Hati, L. P., Manurung, A. S., & Siregar, A. S. (2024). Islamic Holy Days: The Contention of Rukyatul Hillal and Hisab Hakiki Wujudul Hilal Disputes for Muslims in Indonesia. *Pharos Journal of Theology*, 105(2).

<sup>5</sup> Hanifah, I., & Koto, I. (2025). Legal Protection for Workers with Fixed-Term Employment Agreements Before and After the Job Creation Law. *Kosmik Hukum*, 25(2), 245-256.

<sup>6</sup> Simatupang, R. S. A. (2024). Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, 11(1), 54-63.

<sup>7</sup> Perdana, S., & Koto, I. (2024). Providing Legal Protection for Consumers Against Standard Clauses/One-sided Agreements Made by Business Actors. *DE LEGA LATA: Jurnal Ilmu Hukum*, 9(1), 23-30.

## C. Discussion

### 1. Characteristics of Gold Pawn Agreements at Bank Syariah Indonesia

Islamic banks can be defined as financial institutions that operate based on sharia principles. Types of Islamic banks include Islamic general banks, Islamic business units, and Islamic people's financing banks. When discussing Islamic banking, we refer to these three types. Characteristics The difference between Islamic banks and conventional banks lies in the presence of the Sharia Supervisory Board (DPS) which is tasked with supervising bank activities and bank products to comply with sharia principles. Gold pawn at BSI has different characteristics from conventional pawn, especially in the agreement agreement based on sharia principles. In gold pawn as collateral to obtain a loan, and the agreement must be in accordance with sharia provisions, avoiding usury and unfair practices. The following are the characteristics of gold pawn at BSI that distinguish it from conventional pawn:<sup>8</sup>

- a) The form of agreement in BSI is written and sharia-based, the agreement is made in writing and uses sharia contracts to ensure that there are no elements of usury or gharar (uncertainty), while in pawnshops in conventional banks the agreement is also made in writing, but uses an interest-bearing loan system.
- b) The principle of the contract, in sharia gold pawnshops using the rahn contract, namely gold as collateral, but the owner remains in the hands of the customer. Qard contract, loans are given without interest. Ijarah contract, namely the customer only pays the cost of maintaining the gold, not interest. While in conventional pawnshops using an interest-bearing loan contract where the loan is given with an interest system (riba), where the customer pays interest on the loan given.
- c) In sharia gold pawnshops there is no usury (interest) in the loan, only reasonable maintenance costs. While in conventional pawnshops the interest increases over time where the longer the loan is not paid off, the greater the interest that must be paid.
- d) In a gold pawn at a sharia bank, the security and ownership of the gold remains with the customer, the gold is only kept as collateral at the bank. Meanwhile, in a conventional pawn, the security and ownership of the gold can change hands if the customer fails to pay the pawned item and the ownership changes to the pawn institution without the remaining money being returned.

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<sup>8</sup> Rice Agustin, "Tinjauan Hukum Islam Terhadap Praktik Gadai Emas Di Bank Syariah Indonesia Kantor Cabang Bandar Lampung", Diponegoro, Fakultas Syari'ah, Universitas Islam Raden Intan, Lampung, 1143 H/2021 M, halaman 17.

- e) Transparency of costs in pawning gold at sharia banks, all costs including maintenance costs, are clearly explained in the contract. Meanwhile, conventional pawnshops are less transparent in explaining what the costs are, so some conventional pawnshops have hidden costs.
- f) In a sharia pawn with a flexible repayment system, customers can pay off the loan at any time without being subject to fines or penalties and the *ujrah* is calculated according to the length of the pawn period. Meanwhile, in conventional pawning there are fines or penalties if the customer wants to pay off the pawn debt early.
- g) The gold pawning period at BSI 4 can be extended after paying maintenance fees (*mu'nah*) and new administration fees. Meanwhile, conventional pawning is also 4 months and can be extended but with additional interest costs.
- h) If the customer fails to pay off the gold pawn at BSI, the gold is sold by the bank, but the proceeds of the sale (after deducting debt and costs) are returned to the customer if the auction proceeds are insufficient to cover the debt costs, then the customer is required to pay the remaining pawn debt. While in conventional banks, if the customer fails to pay off the pawn, the gold is auctioned and there is no remaining proceeds from the sale to the customer if the proceeds are excessive from the amount of debt, and if the proceeds from the auction of collateral are less than the amount of the loan, then the customer is required to pay the remaining pawn debt.
- i) Gold pawns in Islamic banks are supervised by the OJK and DSN-MUI where all processes must follow sharia rules and Indonesian financial law. While pawns in conventional banks are only supervised by the OJK and there are no sharia rules, so they still use the interest system.

## **2. Gold Pawn Agreement Process at Bank Syariah Indonesia Kutacane Branch Office**

The gold pawn agreement process at BSI Kutacane begins with the submission stage by the customer. Customers who wish to pawn gold must come directly to the branch office with the gold to be pawned and the required identity documents, such as an Identity Card (KTP). Upon arrival at the bank, customers will be asked to fill out a gold pawn application form containing personal data and information about the gold to be pawned. After that, bank officers will examine and verify the documents submitted by the customer to ensure their validity.

After the documents are verified, the next stage is the assessment of the gold value by the bank officer. This assessment process is carried out by considering several factors, such as

the weight of the gold, the gold content (carat), and the prevailing gold market price at that time. Based on the assessment results, the bank will determine the amount of loan that can be given to the customer. Usually, the amount of the loan given does not reach 100% of the value of the pawned gold, but around 80-90% of the total estimated value of the gold. This is done to anticipate fluctuations in gold prices in the market. After the loan value is determined, the bank officer will convey the information to the customer. If the customer agrees to the amount of the loan offered, the next process is signing a gold pawn agreement using the rahn contract in accordance with sharia principles.

#### **D. Conclusion**

Characteristics of gold pawn at Bank BSI are that the agreement is made in writing and uses a contract, uses the principle of contract, there is no usury in the loan, the security and ownership of the gold remains the customer's, transparency of costs, a flexible repayment system, gold pawn can be extended after paying maintenance fees (mu'nah) and new administration fees, in the event that the customer fails to pay off the gold pawn, the gold will be sold by the bank and will be reduced by the debt, but if it is not enough to pay off the debt, the customer is required to pay the pawn debt, and gold pawn at Bank Syariah Indonesia is supervised by the OJK and the Fatwa of the National Sharia Council (DSN) where all processes must follow sharia rules and Indonesian financial law.

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