

Implementation of Hybrid Contracts in the Gold Pawn Practice in Sharia Pawnshops

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Abstract

The hybrid contract in sharia pawn practice is very unique. This gives rise to different views on the transaction model. Several contracts are often applied in hybrid contract of sharia pawn practice include qardh, rahn, and ijarah. In an ijarah contract of sharia pawn, there is indication of irrelevance in the calculation of ujah from the clause of the fatwa No.25/DSN-MUI/III/2002 concerning Rahn. This research intends to examine the implementation of hybrid contract in sharia pawn practices by raising the case of gold pawn referring to clause of the fatwa. This study applies a qualitative research paradigm with data characteristics consisting of concepts and qualitative statements. The sources of data were obtained from the implementation of sharia pawn practice in several sharia financial institutions and pawnshop companies, contract concepts, and DSN MUI fatwas. From this study, it was found that the rahn and qardh contracts in Islamic pawnshops complied with the clause of the DSN fatwa No.26/DSN-MUI/III/2002 concerning gold rahn. However, there is a potential for riba practices in ijarah contract in sharia pawn that conflict with the DSN fatwa No.25/DSN-MUI/III/2002 concerning Rahn. The potential for riba is indicated from the calculation of ujah based on the amount of loans.

Keywords: *Hybrid Contract; Islamic Pawnshop; Gold Pawn*

Received: 2023-05-17
Accepted: 2023-12-12
Published: 2023-12-23

Abstrak

Kontrak gadai multi akad dalam pegadaian syariah memiliki sisi keunikan. Hal itu menimbulkan berbagai pandangan mengenai model transaksi tersebut. Beberapa akad yang sering diterapkan dalam multi akad dalam pegadaian syariah antara lain akad qardh, rahn, dan ijarah. Dalam akad ijarah dari pegadaian syariah, terdapat indikasi adanya penyimpangan perhitungan ujah dari ketentuan fatwa DSN No.25/DSN-MUI/III/2002 tentang Rahn. Penelitian ini hendak menelaah implementasi multi akad dalam praktik gadai syariah dengan mengangkat kasus gadai emas mengacu pada ketentuan fatwa tersebut. Penelitian ini menggunakan paradigma penelitian kualitatif dengan karakteristik datanya terdiri dari konsep dan pernyataan kualitatif. Sumber data diperoleh dari implementasi gadai di pegadaian syariah di beberapa lembaga keuangan syariah dan perusahaan pegadaian, konsep-konsep akad, dan fatwa-fatwa DSN MUI. Dari penelitian ini, ditemukan bahwa akad rahn dan qardh dalam pegadaian syariah telah sesuai dengan ketentuan fatwa DSN No.26/DSN-MUI/III/2002 tentang rahn emas. Akan tetapi, terdapat potensi praktik riba dalam akad ijarah dalam pegadaian syariah yang bertentangan dengan fatwa DSN No.25/DSN-MUI/III/2002 tentang Rahn. Potensi riba ini tampak pada perhitungan ujah berdasarkan besarnya pinjaman.

Kata kunci: *Multi Akad; Pegadaian Syariah; Gadai Emas*

Introduction

The hybrid contract in sharia pawn practice is unique. It is not surprising that there are some views that prohibit this transaction model.¹ In the contract, there are two types of transaction applied, namely sale and purchase contract and pawn contract.² A sale and purchase contract is an agreement that involves the process of buying and selling goods using money or securities as a medium of exchange. The first party (customer) hands over the goods to the second party (pawnshop) who will sell the goods and take money or securities as a medium of exchange.³ Meanwhile, a pawn contract is an agreement that involves the process of buying and selling using goods as a medium of exchange. The first party (customer) hands over the goods to the second party (pawnshop) as collateral to pay debts. The second party will also determine the amount of debt that must be paid by the customer. This hybrid contract in pawn practice combines a sale and purchase contract and a pawn contract so that customers can take advantage of both contracts. In the contract, the customer will receive money or securities as a medium of exchange as compensation for the goods delivered. The customer will also receive the amount of debt that has been determined by the second party. After this contract is completed, the customer will receive the goods back if he has paid the debt.⁴

Several contracts that are often applied in hybrid contracts in sharia pawn practice are *qardh*, *rahn*, and *ijarah* contracts.⁵ A *qardh* contract is a contract

¹ Abdulhanaa, *Kaidah-Kaidah Keabsahan Multi Akad (Hybrid Contract) and Desain Kontrak Ekonomi Syariah*, 2nd ed. (Yogyakarta: TrustMedia Publishing, 2020), <http://repositori.iain-bone.ac.id/448/>.

² Surepno, "Studi Implementasi Akad Rahn (Gadai Syariah) Pada Lembaga Keuangan Syariah," *TAWAZUN: Journal of Sharia Economic Law*, 1, No. 2 (2018): 174, <https://doi.org/10.21043/tawazun.v1i2.5090>.

³ Choirunnisak Choirunnisak and Disfa Lidian Handayani, "Gadai dalam Islam," *Ekonomika Sharia: Jurnal Pemikiran dan Pengembangan Perbankan Syariah*, 6, No. 1 (2020): 61–76, <https://doi.org/10.36908/esha.v6i1.141>.

⁴ Hasyim et al., "Analysis of the Role of Pawnshops in UMKM Business Development (Case Study at PT. Pegadaian Kanwil Medan)," *Indonesian Journal of Accounting and Financial Technology*, 1, No. 2 (2023): 71–82, <https://doi.org/10.55927/crypto.v1i2.4268>.

⁵ Moh Arifkan, "Penerapan Multi Akad dalam Kontrak Gadai di Pegadaian Syariah Sampang Madura," *Fintech: Journal of Islamic Finance*, 1, No. 2 (2021), <http://ejournal.kopertais4.or.id/madura/index.php/fintech/article/view/4638>.

based on the principle of goodness and will, which is one of the contracts that are in accordance with Islamic law. The *qardh* contract in sharia pawn practice is carried out by way of the debtor repaying the loan or paying off the debt that has been given by the creditor. While *rahn* is a contract in which the creditor provides a loan in the form of goods or services to the debtor. In sharia pawn practice, *rahn* is implemented by means of the debtor handing over valuables as collateral for a loan provided by the creditor. Thus, a *qardh* contract is a contract in which the creditor provides a loan in the form of money, while *rahn* is a contract in which the creditor provides a loan in the form of goods or services. In sharia pawn practice, the *qardh* contract is implemented by means of the debtor repaying the debt that has been given by the creditor, while *rahn* is implemented by means of the debtor handing over valuables as collateral for the loan provided by the creditor. An *ijarah* contract is an agreement between the debtor and the creditor in which the debtor is willing to pay a fee (*ujrah*) for the services of storing goods pawned to the creditor.

In fact, not all sharia pawn practice apply the same system in calculating *ujrah*. This shows that each Islamic financial institution has different policies one another. In practice, Islamic financial institutions in Indonesia in implementing pawning practices determine *ujrah* in two ways; First, there are sharia pawnshops that calculate *ujrah* based on the pawned goods amount;⁶ secondly, there is also *ujrah* which is calculated based on the loan amount.⁷ Meanwhile, according to DSN fatwa No. 25/DSN-MUI/III/2002 regarding *Rahn* it was stated that "The amount of maintenance and storage costs for *marhun* may not be determined based on the amount of the loan".⁸ Thus, the study on the *ujrah* in sharia pawn practice should be carried out considering that there is indication of irrelevance of *ujrah* calculating from the clause of the MUI fatwa in sharia pawn practice.

⁶ PT. Bank Aceh Syariah, "Rahn (Gadai Emas)," Bank Aceh, 2023, https://www.bankaceh.co.id/?page_id=555.

⁷ PT. Bank Syariah Indonesia, Tbk., "BSI Gadai Emas: Solusi Kebutuhan Dana dengan Mudah, Cepat dan Aman," 2023, <https://www.bankbsi.co.id/produk&layanan/produk/bsi-gadai-emas>.

⁸ Dewan Syariah Nasional MUI, "Fatwa Dewan Syariah Nasional Nomor: 25/DSN-MUI/III/2002 Tentang Rahn," Dewan Syariah Nasional MUI (Jakarta, 2002), <https://mui.or.id/wp-content/uploads/files/fatwa/25-Rahn.pdf>.

Researchs on the topic of hybrid contracts has basically been carried out a lot. Existing studies generally examine fiqh muamalah issues in hybrid contract. Harun's research (2018), entitled "Multi Akad dalam Tataran Fiqh" examines hybrid contract of business in Islamic legal perspective in general.⁹ Aryanti's research (2017), entitled "Multi Akad (*Al-Uqud Al-Murakkabah*) di Perbankan Syariah Perspektif Fiqh Muamalah" examines fiqh issues in the cycles of Islamic banking.¹⁰ Furthermore, research conducted by Akmal et al. (2019) entitled "Tinjauan Fiqh Muamalah Terhadap Transaksi Multi Akad dalam Fatwa DSN-MUI Tentang Pembiayaan Likuiditas Jangka Pendek Syariah" examines the issue of *riba* vulnerability in the BMWBS contract contained in the DSN fatwa 109/DSN-MUI/II/2017 concerning Sharia Short Term Liquidity Financing. In this research, we focus on the issue of implementing hybrid contracts in sharia pawn practices. This research takes a different side from several previous studies.¹¹

This study aims to complement existing studies. This research aims to examine the application of hybrid contracts in sharia pawn practices. This is considering that the application of the hybrid contract in sharia pawn practice indicates irrelevance from the clause of the DSN-MUI fatwa. It can be said that research specifically examines the application of hybrid contracts in sharia pawn practices in several Islamic financial institutions has not been carried out. This research will answer two questions, namely: how does the implementation of hybrid contracts in sharia pawn practice; whether multiple contracts in sharia pawn practices have been implemented in accordance with the DSN-MUI fatwa. This study is expected to be able to open a discourse regarding the potential weaknesses of the hybrid contract in sharia pawn practice as well as to find practical solutions that can be applied.

⁹ Harun, "Multi Akad dalam Tataran Fiqh," *Suhuf*, 30, No. 2 (2018): 178–93, <https://doi.org/10.23917/suhuf.v30i2.7642>.

¹⁰ Yosi Aryanti, "Multi Akad (*Al-Uqud Al-Murakkabah*) di Perbankan Syariah Perspektif Fiqh Muamalah," *JURIS: Jurnal Ilmiah Syariah*, 15, No. 2 (2016): 177–189, <https://doi.org/10.31958/juris.v15i2.498>.

¹¹ Haerul Akmal and Mohammad Hanief Sirajulhuda, "Tinjauan Fiqh Muamalah terhadap Transaksi Multi Akad dalam Fatwa DSN-MUI tentang Pembiayaan Likuiditas Jangka Pendek Syariah," *Al-Istinbath: Jurnal Hukum Islam*, 4, No. 2 (2019): 195–212, <https://doi.org/10.29240/jhi.v4i2.922>.

Research Methods

This research applies a qualitative research paradigm with data characteristics consisting of concepts and qualitative statements.^{12,13} This is also included in the library research with the nature of the data in the form of static documents.¹⁴ The data sources were obtained from the pawn practice in several Islamic financial institutions and pawn companies, contract concepts, and DSN MUI fatwas. The data were obtained from various sources such as journals, online articles and other online documents. The collected data are then analyzed inductively to yield categories.¹⁵

Results and Discussion

Sharia Pawn

Sharia pawn is a service in a financial institution that provides loans in the form of pawning goods based on Islamic principles. The main principles in Islamic pawn that are run by pawnshops include honesty, fairness, and prudence. It also has similarities with the sale and purchase contract in the Sharia pawn contract. In fiqh terms, the purpose of a pawn is so that the person who gives the debt (*murtahin*) can trust the person who owes it (*râhin*) by providing pawned goods. In addition, the pawned goods is also intended so that the responsibility arises to pay off debts on time. In practice, the maintenance of pawn goods is delegated to the *murtahin*. *Murtahin* can take some maintenance costs from pawned goods. However, these costs should not be determined by the amount of the loan.¹⁶

Sharia pawn is a type of Islamic financial service, which was established so that people can apply Islamic sharia principles in doing business. The pawning

¹² John W Creswell, *Research Design Pendekatan Kualitatif, Kuantitatif dan Mixed*, ed. Saifuddin Zuhri Qudsy, 3rd ed. (Jakarta: Yayasan Mitra Netra, 2019).

¹³ Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, 18th ed. (Bandung: PT Remaja Rosdakarya, 2018).

¹⁴ Rifa'i Abu Bakar, *Pengantar Metodologi Penelitian Linguistik*, 1st ed. (Yogyakarta: SUKA Press UIN Sunan Kalijaga, 2021).

¹⁵ Sugiono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D* (Bandung: Alfabeta, 2017).

¹⁶ Surepno, "Studi Implementasi Akad Rahn (Gadai Syariah) Pada Lembaga Keuangan Syariah," *TAWAZUN: Journal of Sharia Economic Law*, 1, No. 2 (2018): 174, <https://doi.org/10.21043/tawazun.v1i2.5090>.

contract in Islamic pawnshops is a sale and purchase agreement, in which the debtor provide valuable goods (objects) to the Sharia pawnshop as the object of pawning. Furthermore, the the sharia pawnshop provides money as a selling price according to the agreed amount. The implementation of sharia pawnshops has been regulated in the Financial Services Authority form Letter Number: 53/SEOJK.05/2017 Concerning the Business Conduct of Pawn Company Companies That Organize Business Activities Based on Sharia Principles.¹⁷

Sharia pawnshops use hybrid contract transactions in pawn contracts. Hybrid contract is a contract that consists of several types of contracts that are interrelated. In the context of a pawn contract, these contracts will include sale and purchase agreements, *qardh* (loan) contracts and *hawalah* contracts (transfer of property rights).^{18,19} A sale and purchase contract is an agreement that requires the owner of the goods (debtor) to hand over certain goods (collateral) to the pawnshop (creditor) as payment guarantees. In other words, the pawnshop claims ownership of the goods.

The rules of Islamic law regarding buying and selling in pawn contracts.

According to the scholars, buying and selling in a pawn contract is permissible as long as it is carried out with the conditions required by sharia law.²⁰ These conditions include: 1) Goods used as pawn objects are valuables; 2) The money received by the pawning party is cash; 3) Goods that are used as pawn objects must legally and correctly belong to the debtor; 4) The debtor has not settled the debt; 5) The creditor (The sharia pawnshop) must return the pawned

¹⁷ OJK, "Otoritas Jasa Keuangan Nomor 53/SEOJK.05/2017 Tentang Penyelenggaraan Usaha Perusahaan Pergadaian yang Menyelenggarakan Kegiatan Usaha Berdasarkan Prinsip Syariah" (2017), https://www.ojk.go.id/id/kanal/iknb/regulasi/lembaga-jasa-keuangan-khusus/surat-edaran-ojk/Documents/SAL_SEOJK_53_-_pergadaian_syariah.pdf.

¹⁸ Abdulahanaa, *Kaidah-Kaidah Keabsahan Multi Akad (Hybrid Contract) dan Desain Kontrak Ekonomi Syariah*.

¹⁹ Lamtana and Vemmy Mayditri, "Penerapan Prinsip Syariah Pada Akad Rahn di Lembaga Pegadaian Syariah (Studi Gadai Syariah Berbagi Berkah Samarinda)," *Jurnal Pendidikan dan Kewirausahaan*, 10, No. 2 (2022): 425–30.

²⁰ Abdulahanaa, *Kaidah-Kaidah Keabsahan Multi Akad (Hybrid Contract) Dan Desain Kontrak Ekonomi Syariah*.

object after the debtor pay the debt off; and 6) The sharia pawnshop must hand over the money immediately to the debtor.²¹

One of the contracts in the sharia pawn practice at the pawnshop is *qardh*. *Qardh* is a contract that requires the owner of the goods to pay a certain amount of money to the pawnshop. In other words, the pawnshop lends money to the owner of the goods. *Qardh* itself is a contract of borrowing and lending assets by people in need and must be returned according to the initial nominal, without compensation and returned within a certain period according to the agreement between the customer and the Islamic financial institution, can be in installments and paid in full from the loan.²²

Qardh is a contract applied by Islamic pawnshops to provide loans without a pawn. This contract is a form of lending originating from assistance which is given without any specified reward. This loan can be given to anyone who needs it, and does not require any pawns. *Qardh* can also be a form of loan given to third parties to bear certain costs, such as shipping costs or other costs. Thus, *qardh* in the sharia pawn contract is a form of nonprofit loan provided by the creditor.

In Indonesia, the implementation of the *rahn* contract has been regulated by the DSN MUI fatwa. The fatwas are the DSN fatwa No.25/DSN-MUI/III/2002 concerning *Rahn* and the DSN fatwa No.26/DSN-MUI/III/2002 concerning golden *Rahn*. This arrangement is intended to prevent the pawn practices from *riba*. In sharia pawnshops, this *rahn* contract is combined with entrusted services resulting in *ujrah* (fee). The fee is set only once and is paid in advance so that it does not incur *riba*. *Rahn* can be beneficial for life if it is done properly as needed, for example it is used for trading so that it can obtain business capital and profits from business results.²³

²¹ Surepno, "Studi Implementasi Akad Rahn (Gadai Syariah) pada Lembaga Keuangan Syariah."

²² Syamsudin Abu Abdillah, *Terjemah Fathul Qarib* (Surabaya: CM Grafika, 2010).

²³ Andika and Aldi, "Pegadaian Syariah Beri Kemudahan Pembiayaan untuk UMKM," KNEKS, 2020, <https://kneks.go.id/berita/343/pegadaian-syariah-beri-kemudahan-pembiayaan-untuk-umkm?category=1>.

Rahn is a contract applied by a pawnshop to provide collateral-based loans. This contract requires the debtor to provide a pawn (*rahn*) as a form of repayment of the loan principal. This pawn can be in the form of goods or valuable assets, such as gold, cars, and others. The provided pawn will be kept by the pawnshop until the loan is paid off. If the debtor cannot pay off the loan, the pawnshop has the right to sell the pawn to pay off the loan.²⁴

Ijarah in a pawn contract is a contract that causes *ujrah* or fees to be charged to the debtor. This fee is legal according to jurisprudence and the DSN MUI fatwa.²⁵ The fee referred to in the practice of pawning is a fee that has been agreed upon clearly in advance regarding the amount and period of time. This contract is an income for sharia pawnshop institutions/companies. This *ijarah* contract is an alternative to calculating the cost of renting/maintaining pawned goods instead of interest based calculating. In the interest based calculating, the cost of renting/maintaining pawned goods is calculated based on the amount of loan. Meanwhile, in an *ijarah* contract, the fee, known as *ujrah*, is calculated based on the area/volume of pawned goods storage. *Ujrah* can also be calculated based on the value of the pawned goods.²⁶

Implementation of Hybrid Contracts in Gold Pawn at Islamic Pawnshops

Hybrid contract is a concept developed by a sharia pawnshop to provide flexible and creative financial solutions for consumer needs. Hybrid contract transactions involve several contracts that are carried out simultaneously. In practice, hybrid contracts at sharia pawnshops combine concepts from several different sharia contracts, such as sale and purchase contracts, *qardh* (loan), *mudharabah*, and *musyarakah* contracts.²⁷

²⁴ Dewi Oktayani, "Pelelangan Barang Gadai dalam Perspektif Islam," *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita*, 8, No. 2 (2019): 260–69, <https://doi.org/doi.org/10.46367/iqtishaduna.v8i2.179>.

²⁵ MUI, "Fatwa Dewan Syariah Nasional Nomor: 25/DSN-MUI/III/2002 Tentang Rahn."

²⁶ Ilham, "Pengaruh Nilai Taksiran, Promosi dan Ijarah terhadap Keputusan Nasabah Pembiayaan Barang Gadai Emas (Rahn) dan Pelayanan Pada Bank Syariah Mandiri," *At-Thariqah: Jurnal Ekonomi*, 1, No. 1 (2020): 109–25, <https://doi.org/doi.org/10.47945/at-thariqah.v1i1.299>.

²⁷ Abdulahanaa, *Kaidah-Kaidah Keabsahan Multi Akad (Hybrid Contract) dan Desain Kontrak Ekonomi Syariah*.

In pawn contracts at sharia pawnshops, hybrid contract transactions are implemented to improve the security of the pawn contract. By using hybrid contract transactions, Islamic pawnshops can exercise tighter control over assets that are used as a pawn. In addition, multi-contract transactions also allow pawn contracts to follow stricter sharia rules that apply to all parties involved. This makes it easier for consumers to choose the most appropriate product for their needs and allows the sharia pawnshop to offer more flexible and creative solutions in providing loans to consumers.

Hybrid contract allows the sharia pawnshop to provide loans with more affordable conditions for consumers. Hybrid contract also allows sharia pawnshop to make products that are more flexible and creative. With hybrid contracts, Islamic pawnshops can offer loans with shorter terms, lower interest rates, as well as more flexible payment options for consumers. Hybrid contracts also help the sharia pawnshop manage assets efficiently and provide larger and more complex loans. Hybrid contract increases consumer awareness about the products available and increases their trust in the sharia pawnshop. Through hybrid contract, consumers can choose the loan product that best suits their needs and enjoy the benefits derived from the flexibility and creativity of the products offered. This can help the sharia pawnshop to get more customers and increase their market share.

Pawn contracts at Islamic Pawnshops include several types, such as *riba*, *hawalah*, *qardh*, and buying-selling contracts. Each contract has different requirements. *Riba* contracts, for example, can be used to borrow money by offering assets as a pawn. The *hawalah* contract requires the borrower to provide a pawn in the form of securities or other assets of value. The *qardh* contract requires the borrower to keep assets as collateral and can only retrieve them after returning the loan. The sale and purchase contract requires the borrower to surrender assets as collateral and pay cash in exchange. Through hybrid contract transactions, sharia pawnshops can protect the rights of the parties involved in the pawn contract. Hybrid contract transactions also allow the parties involved to follow stricter sharia rules that apply to all parties involved. Thus, sharia pawnshops can improve the safety of the pawn contract and ensure that each party gets the same rights.

Gold pawn is a financing product based on collateral in the form of gold as an alternative to quickly obtaining a cash loan, with the benefits as follows: fast, easy processing, and guaranteed security.²⁸ The arrangement of contracts commonly applied by financial institutions in gold pawn practice is a *qardh wal ijarah* contract and a *murabaha wa rahn* contract. Based on the arrangement of the merging of these contracts, there are two transactions with different laws: *mu'awadhah and tabarru' contracts*. Al-Imrani stated that a hybrid contract that combines *mu'awadhah* and *tabarru'* contracts is not permitted. Based on the argument of the texts which states the prohibition of uniting *ba'i* and *salaf*, we can conclude from the meaning of the hadith which prohibits the uniting the *mu'awadhah and tabarru'* contracts. This is because the *tabarru'* contract carried out on the basis of *mu'awadhah* has lost its social meaning and has turned to the reward.²⁹

The fallibility that often occurs in a gold pawn contract at a sharia financial institution through a *qardh wal ijarah* contract is that the amount of the fee from the pawn refers to the amount of the loan, not to the cost of renting a place for the pawned gold during the pawn contract period. This practice causes additional fees charged to *rahn* to lead to *riba* which is prohibited. Meanwhile, the fallibility that occurs in gold pawn practice through a *murabahah wal rahn* contract are: (1) requiring buying and selling in a *rahn* contract which includes hybrid contracts that lead to *riba*. (2) The object of the contract in the form of gold bars has not been handed over by the financial institution to the customer which leads to the category "Shofaqotaini fii shofqoh wahidah" which is prohibited.

The Overview on the Contracts Applied in Gold Pawn Practice In Sharia Pawnshops

In sharia pawnshops, the *qardh* contract in the gold pawn practice is an agreement made between debtor and creditor with a promise to pay a certain

²⁸ Dina Nudia Ahsanah, "Emas sebagai Instrumen Investasi Jangka Panjang," *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah*, 8, No. 1 (2022): 177–187, <https://doi.org/doi.org/10.37567/shar-e.v8i1.1297>.

²⁹ Abdullâh bin Muhammad bin Abdullâh Al-Imrâni, *Al-'uqûd Al-Mâliyah Al-Murakkabah: Dirâsah Fiqhiyyah Ta'shîliyah Wa Tathbîqiyyah* (Riyadh: Dâr Kunûz Eshbelia li al-Nasyr wa al-Tauzî', 2006).

amount at a predetermined time. Creditors provide loans or financing to debtor which are usually calculated based on the amount of pawned gold. In several pawnshops/Islamic banks, the difference lies in the amount of gold that is pawned or commonly called the gold metal valuation standard (SPLE).³⁰ So far, the *qardh* contract at sharia pawnshops has complied with the clause of the DSN MUI fatwa. This is because the *qardh* contract is clearly defined and agreed upon by both parties. This *qardh* contract is permissible according to the DSN-MUI Fatwa with the following conditions: a) The party who acknowledges the debt (debtor) is a person of sound mind and common sense; b) The amount of debt recognized must not exceed the value of gold pawned; c) The period for payment of debt must be stated explicitly; d) The debtor (gold owner) has no right to take other benefits apart from debt repayment; e) The *qardh* contract must be made in writing; and e) The party who acknowledges the debt (debtor) may not use pawned gold to make buying and selling transactions.

Based on these conditions, the *qardh* contract applied in the gold pawn practice is valid and in accordance with the clause of the DSN-MUI Fatwa. The other contract in sharia pawnshops is the *rahn* contract. Fatwa No.26/DSN-MUI/III/2002 concerning gold *rahn* states that the *rahn* contract on the gold pawn practice is permitted by sharia.³¹ A *rahn* contract is a debt or *qard* contract made by providing gold as collateral, in which the debtor is obliged to return the loan or financing after it is due. For the guarantee submitted by the debtor, the creditor submits a pawn letter to the debtor as a guarantee for the pawned gold. Conformity between the *rahn* contract on the gold pawn practices and the clause of the DSN-MUI can be seen in a number of ways as follows: a) The owner of the property is willing to surrender the property as collateral for a certain period of time, and within that period, the owner of the property has the right to take back the property by paying an amount of money or goods; b) The amount of money or goods paid is agreed upon by both parties, and the amount must not exceed

³⁰ Bank Jatim, "Emas IB Barokah," 2023, <https://bankjatim.co.id/id/syariah/pembiayaan/emas-ib-barokah-1>.

³¹ Nurul Hidayati and Nur Eka Mutmainnah, "Analysis Hybrid Contracts on Gold Pawn Take Over Financing (Study on BSI KCP Sumenep Trunojoyo 1)," *Jurnal of Business Finance and Economic*, 4, No. 1 (2023): 128–34.

the market price of the guaranteed property; c) Money or goods paid must include fees, interest and other costs related to the transaction; d) The owner of the property may not be tortured or forced to surrender the property as collateral. Based on the foregoing, it can be concluded that the *rahn* contract in the gold pawn practice complies with the clause of the DSN-MUI. This contract fulfills the conditions determined by the DSN-MUI as a sale and purchase agreement that is acceptable to sharia.

In the practice of Islamic gold pawn, researchers found two models for calculating *ujrah* (fee) that arise as a result of *rahn* contracts. The first model is that *ujrah* is calculated by the amount of gold as a pawn. This is interpreted in terms of the amount of *ujrah* determined by the size of the storage area. That is, the heavier the gold pawned, the wider the space needed. This causes the amount of storage space rent to be more expensive. Second, *ujrah* is calculated based on the amount of the loan. This second model often invites controversy. This is because the calculation of *ujrah* based on the amount of loan is the same as the calculation of interest in conventional banks.

Cited from the official website of Bank Jatim Syariah, it is illustrated "The customer pawns his gold bullion weighing 25 grams. Bank Jatim Syariah provides Pawn facilities with the following calculations;³² 1) Estimated Value: Weight of gold x SPLE 1 = IDR N (25 grams x IDR 400,000.00 = IDR 10,000,000.00); 2) Financing/loan provided: 100% x Estimated Value = IDR N (100% x IDR 10,000,000.00 = IDR 10,000,000.00); 3) Maintenance costs (*ujrah*) per 10 days: Maintenance costs/gr/day x weight of gold x days = N IDR (146.70 IDR x 25 grams x 10 days = 36,667.00 IDR)".

The way of the *ujrah* calculation as above is clearly free from riba. This is because the calculation is based on the weight of the gold pawned multiplied by the pawn period and maintenance or storage costs. This is also applied in several Islamic banks such as Bank Aceh. One of the provisions is that the determination of *ujrah* is carried out by charging a rental fee of IDR 4,500/gram/month.³³

³² Bank Jatim, "Emas IB Barokah."

³³ PT. Bank Aceh Syariah, "Rahn (Gadai Emas)."

The second method of calculation is as follows.³⁴ 1) "Administration Fee: IDR 500.000 to < IDR 20 Million: IDR 25,000, 20 Million to < 100 Million: IDR 80,000, >100 million: IDR 125,000; 2) *Ujrah*: 500.000 IDR to < 20 Million: eq. 1.80% of loan, 20 million to < 100 Million IDR: eq. 1.50% of loan, > 100 Million IDR: eq. 1.10% of loan". From this second way, there is the potential for *riba*. This is because the amount of *ujrah* is calculated based on the amount loan. The above system is similar to the system at PT Pegadaian as presented in the following table.

Table 1. Gold pawn simulation at PT. Pegadaian³⁵

Goals	Financing	Capital Rent	Administration
A	Rp 50.000 – Rp 500.000	1,0%	Rp 2.000
B	>Rp 500.000 – Rp 5.000.000	1,2%	Rp 10.000 – Rp 35.000
C	>Rp 5.000.000 – Rp 20.000.000	1,2%	Rp 50.000 – Rp 100.000
D	>Rp 20.000.000	1,1%	Rp 125.000

- Capital rent every 15 days calculated from the financing value
- Maximum period of 120 days

Source: <https://sahabat.pegadaian.co.id/produk-gadai-emas>

Table 1 above explains that the amount of *ujrah* arising from the gold pawn is calculated based on the amount of the loan or financing approved by the creditor. Such a calculations is potential for *riba* because the *ujrah* is calculated based on the amount of the loan.³⁶ However, whether *riba* occurs or not in such a calculation must also be viewed from another perspective, for example from the perspective of *masalahah* or others.

From this study, it appears that the gold pawn practice in Islamic pawnshops still has weaknesses, namely the potential for *riba*. This indicates two things: first, further studies are needed regarding ideal practices in sharia pawnshops so that they are truly in line with the DSN MUI fatwa in the Indonesian context. Second, companies that provide sharia pawnshop services must really explain the *fiqh* aspect and the suitability of the system used with the

³⁴ PT Bank Syariah Indonesia Tbk., "BSI Gadai Emas: Solusi Kebutuhan Dana Dengan Mudah, Cepat Dan Aman."

³⁵ PT. Pegadaian, "Gadai Emas: Solusi Keuangan Sepanjang Zaman," 2023, <https://www.pegadaian.co.id/produk/gadai-emas>.

³⁶ DSN-MUI, "Fatwa DSN MUI No: 25/DSN-MUI/III/2002 Tentang Rahn." (Jakarta: DSN-MUI, n.d.).

DSN MUI fatwa so that customers know for sure, without any doubts, to use pawnshop service products at Islamic pawnshops or sharia financial institutions. This becomes very important as a distinction between sharia and non-sharia pawnshops.

Conclusion

Hybrid contracts that meet the principles of sharia are the contracts that meet the standards set by the Fiqh rules and DSN MUI Fatwa. From the explanation of the practice of hybrid contracts in gold pawn at sharia pawnshops, it is concluded that the rahn and qard contracts are in accordance with the clause of the DSN fatwa No.26/DSN-MUI/III/2002 concerning gold rahn. However, there is potential for riba practices in ijarah contracts in sharia pawnshops. The potential for riba is indicated in the calculation of ujrah based on the amount of the loans. This practice contradicts the DSN fatwa No.25/DSN-MUI/III/2002 concerning Rahn. From this study, it appears that the gold pawn practice in Islamic pawnshops still has weaknesses, namely the potential for riba. This potential deserves further study so that its validity becomes clear from a sharia point of view.

This study still has a weakness, namely the small number of Islamic banks used as samples. In addition, information regarding the gold pawn practice in Islamic banks is only based on the written provisions listed on the official websites. To increase the validity of the research, it is suggested for future researchers to conduct research on the same topic by increasing the number of samples and using field surveys in order to obtain a more comprehensive description of the gold pawn practices in sharia pawnshops or Islamic banks.

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