



The Practice of Transferring Land Ownership to a Pawn Agreement from the Perspective of Sharia Economic Law

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Abstract: Receivable debt agreement, the rabin party binds the pledge guarantee in the form of a Notarial Deed of PPAT which is authorized to make a pledge agreement contract. The lien agreement is usually only carried out by binding collateral to ensure that rabin does not default on receivables given by the murtabin. However, in this agreement, the rabin party immediately promised to transfer land ownership to the murtabin party if the rabin party was unable to pay off the debt. This transfer provision, in substance, is not found in the concept of fiqh muamalah, but the rabin party only guarantees land (*marhun*) as collateral for debt. The focus of the problem in this study is what is the view of Islamic law on the agreement to transfer land guarantees for receivables? Meanwhile, the purpose of this study is the contract of transferring land ownership to a pawn contract from the perspective of shari'ah economic law. This research uses descriptive research method analysis with qualitative approach and literature for secondary and other data. The result of this study is that the land ownership transfer agreement that takes place in the Rahn contract is invalid, because basically the rabin only guarantees land as debt security and the transfer of land ownership has an element of imbalance between the value of debt and the value of land (*marhun*). In order for the Rahn transaction to be in accordance with the provisions of the Shari'a, the agreement in the repayment of the debt can be made provided that the rabin party may give the land (*marhun*) to the murtabin party as debt repayment, and but the murtabin party must increase the money from the remaining debt in the amount of the land price

Keywords: Pawn, Ownership, Transfer

Abstrak: Perjanjian utang piutang, pihak *rabin* mengikatkan jaminan gadainya dalam bentuk Akta Notaris PPAT yang berwenang membuat kontrak perjanjian gadai. Perjanjian gadai tersebut biasanya hanya dilakukan pengikatan jaminan untuk memastikan *rabin* tidak melakukan wanprestasi atas piutang yang diberikan oleh pihak *murtabin*. Namun dalam perjanjian ini pihak *rabin* langsung menjanjikan pengalihan kepemilikan tanah kepada pihak *murtabin* apabila pihak *rabin* tidak mampu melunasi utangnya. Ketentuan pengalihan ini, secara substansi tidak ditemukan dalam konsep fiqh muamalah, tetapi pihak *rabin* hanya menjaminkan tanah (*marhun*) sebagai jaminan hutang. Adapun fokus permasalahan dalam penelitian ini adalah bagaimana pandangan hukum Islam terhadap perjanjian pengalihan tanah jaminan atas utang piutang? Sedangkan tujuan dalam penelitian ini adalah akad peralihan kepemilikan tanah ke akad gadai perspektif hukum ekonomi syariah. Penelitian ini menggunakan metode penelitian deskriptif analisis dengan pendekatan kualitatif dan kepustakaan untuk data sekunder dan lainnya. Hasil dari penelitian ini perjanjian pengalihan kepemilikan tanah yang berlangsung dalam akad *Rahn* tidak sah, karena pada dasarnya pihak *rabin* hanya menjaminkan tanah sebagai jaminan utang dan pengalihan kepemilikan tanah tersebut memiliki unsur ketidakseimbangan antara nilai utang dengan nilai tanah (*marhun*). Agar transaksi *Rahn* tersebut sesuai dengan ketentuan syariat, maka kesepakatan dalam pelunasan utang tersebut dapat dilakukan dengan ketentuan pihak *rabin* boleh

memberikan tanah (*marhun*) tersebut kepada pihak *murtabin* sebagai pelunasan utang, dan akan tetapi pihak *murtabin* harus menambah uang dari sisa utang tersebut senilai dengan harga tanah

Kata Kunci: Gadai, Kepemilikan, Pengalihan

▪ Introduction

Pawn has been a custom since ancient times, and has been recognized in customs and traditions. Pawn itself has existed since the era of Prophet Muhammad and the prophet himself practiced it. In Islam, pawning is not prohibited, but it must be in accordance with Islamic Shariát, such as not charging interest in the practice that is carried out. In the view of Islam, pawn is found in the Qur'an letter al-Muddassir (74) verse 38:

كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ

"Every man is responsible for what he has done" (al-Muddassir (74):38)

The one who owns the goods is still entitled to benefit from the pledged goods, in fact, all the benefits belong to him, even if the damage to the goods is on his responsibility He has the right to take advantage of the pledged goods even without the permission of the person who received the pledge.¹ In language, the word *ar-Rahn* means "to make something material as a debt collateral".² Pawning is permissible like sell and purchase.³

According to experts A.A. Basyir, *Rahn* is an agreement to hold something as a guarantee of debt, or to make something valuable according to the view of shara' as a guarantee of *marhun* bih, so that with

the guarantee of debt all or part of the debt can be accepted.⁴ Meanwhile, according to Nasrun Haroen, quoted in his book, *Rahn* is making something (goods) as collateral for rights (receivables) which may be used as payment for the rights (receivables), either in whole or in part.⁵ Therefore, the pawn collateral (*Rahn*) cannot be taken advantage of by the owner or the recipient of the pawn.

This is because the status of the goods is only limited to debt collateral and as a mandate for the recipient and it is not recommended to take advantage of it. If permission is obtained from each party concerned, from his side the *murtabin* only has the right to hold the pawn collateral, but does not have the right to utilize the goods. Some Hanafiah clerics, Malikiyah clerics and Shafi'iyah clerics are of the opinion that if the owner of the goods allows it, the holder of the collateral may not utilize the collateral. If the collateral is used or sold, then the proceeds of the utilization are usury which is prohibited by Shara' even if permitted by the *rahin*. Because the person who pawned the goods still has the right to the goods he pawned.

Collateral is a form of valuables pledged by the debtor as a form of trust in the payment of the loan within the agreed time. Objects used as collateral usually

¹ Sulaiman Rasjid, *Fiqih Islam* (Bandung: Sinar Baru Algensindo, 2013), 64.

² Sayyid Sabiq, *Fiqih Sunnah* (Bandung: Alma'arif, 1997), 140.

³ Moh. Zuhri, *Fiqih Empat Madzhab* (semarang: As-Syifa Semarang, 1994), 614.

⁴ A.A. Basyir, *Hukum Islam Tentang Riba Dan Utang Piutang Gadai* (Bandung: Alma'arif, 1983), 50.

⁵ Nasrun Haroen, *Fiqih Muamalah* (Jakarta: Haji Masagung, 1998), 163.

consist of land, houses, vehicles and others. Fiqh clerics agree that the collateral agreement is considered perfect when the goods are legally in the hands of the debtor, and the money needed has been received by the borrower. In the case of an object such as land, only a land bond is given.⁶

Guarantees in debt contracts usually, the agreement between the two parties makes the terms and conditions of time in writing to make strong evidence. The problem that often occurs in the community in debt and credit is the creditor's distrust in debt repayment. Therefore, it is necessary to have a guarantee held by the debtor, so that the creditor will pay on time. Both parties must previously make a (written) agreement and agreement within the time limit for returning the debt. The collateral can be taken when the debtor has paid off the debt. With difficult circumstances to pay debts, creditors usually transfer collateral as debt repayment. Collateral goods are transferred based on a contract, both parties are mutually willing. Transfer or transfer of rights is a legal action that aims to transfer rights from one party to another.

The transfer of a right indicates the existence of a legal action deliberately carried out by a party with the intention of transferring his property rights to another person. Thus, the transfer of property rights is known and desired by the party who made the agreement to transfer the right to the object. In this case, the pledged goods are transferred due to a debt and credit agreement on the pledged goods. Therefore, it is necessary

⁶ Abdul Rahman Ghazaly, *Fiqh Muamalat* (Jakarta: Kharisma Putra Utama, 2010), 268.

to have a written agreement as evidence between the two parties when making a loan and submitting collateral.

In muamalah, collateral is the same as pawn (*Rahn*) in the form of a gift or loan, which is accompanied by collateral. Gadai is a debt and credit contract by making property or goods as collateral for the debt.⁷

The holder or receiver of the pawn (*murtahin*) obtains a guarantee to be able to take back all or part of the debt. Therefore, the guarantee is closely related to debt and credit. The form of goods used as collateral is goods that meet the pillars and conditions in the pawn. The pawn consists of immovable objects such as houses and land and movable goods such as gold, land certificates, vehicles, electronic goods and others.⁸

The clerics agree that pawning is permissible but not obligatory, because pawning is only a guarantee if the two parties do not trust each other.⁹ In the problem of the debt and credit agreement, there is a case that the author wants to study, namely the case in Sidoasri, Candipuro, South Lampung. Where the *rahn* binds the pledge in the form of land, in the form of a Notary deed to the PPAT who is authorized to make a pawn agreement contract.

Based on the description above, the problem in this study is how does Islamic law view the agreement to transfer land collateral for debt and credit? The purpose

⁷ Adrian Sutedi, *Hukum Gadai Syariah* (Bandung: Alfabeta, 2011), 20.

⁸ Mardani, *Fiqh Ekonomi Syariah: Fiqh Muamalah* (Jakarta: Kencana, 2013), 210.

⁹ Rahmat Syafe'i, *Fiqh Muamalah* (Bandung: Pustaka Setia, 2006), 160–61.

of this research is a land ownership transfer agreement to a pawn contract from the perspective of sharia economic law. This type of research is library research, namely research whose data sources come from books, journals, documents, and research/scientific papers. The data source of this research is Secondary Data consisting of primary legal materials: al-Qur'an and hadith, secondary legal materials: books and journals and tertiary legal materials: internet. Data collection methods using documentation. Data analysis using inductive thinking logic analysis.

▪ Discussion and Research Results

1. General Provisions on Pawn

In language, the word ar-*Rahn* means "to make something material as a debt collateral".¹⁰ Pawning is permissible like sell and purchase.¹¹

As for the understanding of shara", what is meant by pawn is making an item that has a value according to the view of shara' as a guarantee of trust in debt and credit. In the sense that the entire debt or part of it can be taken because there is already a guarantee of the goods. so that the person concerned may take the debt or may take part (benefit) of the goods that are used as collateral.

According to the language of the word Ar-*Rahn* means *Atsubuutu wa Damamu* which is fixed and eternal, or *al-Habsu wa Luqumu* which means restraint and necessity and can also mean collateral.¹² Whereas according to Shara' if someone wants to owe someone

else, he makes his property either in the form of immovable property or property in the form of ternah under the power (lender) until he pays off his debt.¹³

Rahn in Islamic law is done with the principle of tabbaru' or help and not for profit. But unlike liens in civil law, in addition to the principle of helping also withdraw profits through the system of interest or capital rent in advance.¹⁴ The purpose of a pawn is to pay off the debt borrowed by the creditor, and safeguard wealth for security from elements of fraud. According to the Shafi'iyah clerics, the *Rahn* contract is to make goods as collateral for debt where the goods are used to pay the debt, if the debtor cannot pay the debt then the collateral is used as debt collateral. But not to take advantage of it because the benefit is consumable and damaged, therefore it cannot be used as collateral. According to the Hanbali clerics, the *Rahn* contract is an asset that is used as a debt watsiiqah that when the party bearing the debt cannot pay it, the debt is paid using the proceeds from the sale of the asset that is used as the watsiiqah.

According to experts A.A. Basyir, *Rahn* is an agreement to hold something as a guarantee of debt, or to make something valuable according to the view of shara' as a guarantee of *marhun* bih, so that with the guarantee of debt all or part of the debt can be accepted.¹⁵ Meanwhile, according to Nasrun Haroen, quoted in his book, *Rahn* is making something (goods) as

¹⁰ Sabbiq, *Fikih Sunnah*.

¹¹ Zuhri, *Fiqih Empat Madzhab*.

¹² Wahbah Az-Zuhaili, *Al-Tafsir Al-Munir Fi Al-'Aqidah Wa Ayy-Syari'Ab Wa Al-Manhaj*, XXVI (Damaskus: Dar al- Fikr, 1997), 4207.

¹³ Sayyid Sabiq, *Fiqh Sunnah* 12 (Bandung: Al-Ma'rif, 1987), 150.

¹⁴ Sutedi, *Hukum Gadai Syariah*.

¹⁵ Basyir, *Hukum Islam Tentang Riba Dan Utang Piutang Gadai*.

collateral for rights (receivables) which may be used as payment for the rights (receivables), either in whole or in part.¹⁶

As for the pillars of pawn can be explained as follows:

- a. Shighat or words Shighat according to the Hanafiyah clerics is *ijab* from the *rabin* and *qabul* from the *murtabin*, like other contracts. For example, the *rabin* says "I pledge this item to you for my debt to you", or "this item is a pledge for my debt to you", or something similar. Then the *murtabin* says "I accept" or "I agree", and so on.
- b. The existence of a pawn giver (*Rahn*) and pawn receiver (*murtabin*). The *Rahn* giver must be an adult, reasonable, trustworthy, and own the goods to be pawned. Meanwhile, the pawn recipient is a person, bank, or institution trusted by *rabin* to obtain capital with the guarantee of pawned goods.
- c. The existence of pawned goods (*marhun*). The pawned goods must exist at the time of the pawn agreement and the goods are the property of the pawn giver (*rabin*), the pledged goods are then under the supervision of the pawn recipient (*murtabin*).¹⁷

According to the Hanafi madhhab, there is only one pillar of pawning, namely *ijab* and *kabul*. This is because it is the essence of the contract.¹⁸ Meanwhile, other than the Hanafiyah clerics say that there are four pillars of *Rahn*, namely *shighat*

(*Ijab qabul*), *'aqid* (parties to the contract), *marhuun* (goods that are mortgaged), and *marhuun bih* (debt coverage secured by the pledged goods).

A condition is anything that is necessary or must be present.¹⁹ The conditions for the validity of pawn according to the majority of clerics are:

- a. The *rabin* party and the *murtabin* party are both required to be capable of acting legally. legal capacity is characterized by having reached puberty and reason. Therefore, the *Rahn* contract is not valid for insane people and young children who are not yet *mumayiz*.
- b. *Marhun bih (debt)*, required first is a right that must be returned to the person who gave the debt. second, the debt can be repaid with *marhun* (collateral) and third, the debt is clear and certain.
- c. *Marhun* (collateral). Collateral is used as a condition in a pawn transaction. The requirements for collateral are:
 - 1) It is permissible to sell the collateral for the amount of the debt.
 - 2) The collateral is clear.
 - 3) Must have benefits.
 - 4) Tradable.
 - 5) The collateral is the legal property of the debtor and is under his control.
 - 6) The collateral can be handed over, both materially and beneficially. If the collateral is in the form of immovable objects, such as houses and land, then the land and house documents held by the debtor

¹⁶ Haroen, *Fiqh Muamalah*.

¹⁷ Heri Sudarsono, *Bank Dan Lembaga Keuangan Syariah* (Jakarta: Ekonisia, 2004), 160.

¹⁸ Syaikh Abdurrahman Al-Juzairi, *Fikih Empat Madzhab* (Jakarta: Mizan Publika, 2010), 535.

¹⁹ Tri Kurnia Nurhayati, *Kamus Lengkap Bahasa Indonesia* (Jakarta: Eska Media, 2003), 762.

are handed over to the collateral holder (*murtabin*).

- d. Submission of collateral, if the collateral has been accepted by the *murtabin*, then the debt has also been accepted by the *rabin*, then the pawn contract is binding on both parties.
- e. Conditions related to the Shighat, Hanafiyah scholars are of the opinion that the pawn contract should not be linked to certain conditions. Because the pawn contract is the same as sell and purchase. If the contract is accompanied by certain conditions, the conditions are invalid, while the contract is valid. For example, the debtor stipulates that if the grace period for the debt has expired and the debt has not been paid, then the pledge is extended by one month.

The majority of clerics said that if the condition is one that is conducive to the fulfillment of the contract, then it is permissible, but if it is contrary to the nature of the pawn contract, then it is invalid.

2. The Practice of Transferring Land Ownership to Pawn Agreements

The transfer of rights is something that causes land rights to move or transfer from a person or legal entity to another person or legal entity, then with the transfer of a right indicates the existence of a legal action deliberately carried out by one party with the intention of transferring the owner's rights to another person.²⁰

²⁰ M. Teguh Pulungan, "Tinjauan Hukum Tentang Peralihan Hak Atas Tanah Melalui Perjanjian Gadai Di Bawah Tangan," *Jurnal Ilmiah Penegakan Hukum*, 2017, 62.

An agreement is also a legal act carried out by both parties who make an agreement on their awareness. The agreement made by both parties is binding. In a pawn agreement usually has a period of time determined by both parties to pay off the debt. If the debt loan has been received by the *rabin*, the *murtabin* may ask for collateral (*marbun*) to the *rabin* as a form of guarantee of the debt. And the *rabin* is obliged to pay off his debt at the specified time. After the *rabin* pays off the debt, the *rabin* can take back the pawned item (*marbun*). And if the *rabin* is unable to pay off his debt at the specified due date and does not allow the *murtabin* to sell the pledged goods, the judge or court can force the owner of the goods to pay the debt or sell the goods. The proceeds from the sale of the *marbun*, if sufficient, can be used to cover the debt, and if more, it will be returned to the owner of the goods but if less, the owner of the goods must still add to the shortfall.

Forcibly selling collateral (*marbun*) and asking the *rabin* party to hand over the *marbun*, when the *rabin* party is unable to pay off his debt according to the agreement at the beginning of the contract, then determining the price of the value of the goods refers or is based on the prevailing market price at that time.

The problem that the author examines, related to the case in the research of the land ownership transfer agreement carried out by the *rabin* and *murtabin*, namely the *rabin* directly promises the transfer of land ownership to the *murtabin* if he is unable to pay off his debt. This

provision in substance is not found in the concept of Sharia Economic Law, because in Sharia Economic Law the *rabin* only pledges the land as collateral for debt so that the ownership provisions are contrary to Sharia Economic Law in the pawn contract section. The direct transfer of ownership of the land by the *rabin* can be detrimental to the *rabin* himself, because the direct transfer, the amount of debt he borrowed is not proportional to the item that is mortgaged (*marhun*).

The *rabin* knows that the price of the land is greater than the debt, the reason for the transfer is because the *rabin* really needs fast money. But, if the *rabin* sells the land (*marhun*) first to another party, then the proceeds from the sale of the *marhun* can pay off the existing debt, and the excess proceeds from the sale of the *marhun* become the full rights of the *rabin* himself. This is because the *murtabin's* right is to the amount of the debt and the collateral is a form of debt guarantee, not a transfer of the collateral. There are two possibilities at the time of debt repayment:²¹

The price of *marhun* is less than the *rabin's* debt so that the *murtabin* is harmed, then the *rabin* must add to the shortfall. The price of *marhun* is greater than the *rabin* debt so that the *rabin* is harmed, then the *murtabin* must return the excess to the *rabin*. The opinion of the scholars of the Hambali mahdzab defines *Rahn* as property that is used as a watsiiqah

(guarantee) of debt that when the debt bearer cannot pay off the debt, the debt is paid using the proceeds from the sale of the land (*marhun*) that is used as collateral for the debt.²² So if the *rabin* is unable to pay off his debt, then the mortgaged land becomes a means of paying off his debt. But from the agreement stipulated in the notarial deed, the transfer of ownership of the land is valid by both parties, because the agreement is strong and binding on the parties.

So in this study based on the information I got from the *murtabin*. The *murtabin* does not take a decision on the agreement from the notarial deed, but only as collateral, because considering the *rabin* gets a loss on the value of the land with the debt he borrowed. Therefore, in a family manner and outside of the notarial deed agreement, the *murtabin* gave or added money from the remaining debt of the *rabin* and the land became the property of the *murtabin* by buying it. So that the *rabin* agreed to the additional money given to the *murtabin* without any coercion. This is done by the *murtabin* as a form of helping (*tabarru'*) and so that the *rabin* does not get a loss on the value of the land which is greater than the debt he borrowed.

Cases like this are very rarely found in pawn problems, usually what happens in the community is, the *murtabin* accepts the transfer of ownership of the land, because it will get a large profit. This is not permissible in Islamic law, because the comparison between the price of

²¹ Rina Hutagalung, "Analisis Tanggung Jawab Murtahin (Penerima Gadai) Dalam Pelaksanaan Akad Rahn Emas," *Premise Law Jurna*, 2015, 10.

²² Wahbah Al-Juhaili, *Al-Fiqh Islami Wa Adilatubu* (Damaskus: Dar al-Fiqr alMua'sshim, 2005), 107.

debt and the value of the land (*marhun*) is far different, which benefits one party and harms the other. This falls into usury. Allah says in Q.S Ali 'Imran (3): 130

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا
مُضَاعَفَةً ۖ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ

"For those who believe, do not eat usury with double and fear Allah so that you may be fortunate."

3. The Practice of Transferring Land Ownership to Pawn Agreement

Zakat in its application must adjust national regulations and Islamic sharia in order to promote equality and prosperity for Muslims so that regulation is highly recommended in advancing human resources to prosperity with good zakat management, Zakat needs to be empowered through a designated organization that can carry out the mandate in accordance with the teachings of religion, especially Islam in Indonesia. In Law Number 23 of 2011, problems related to the empowerment of Zakat have been regulated which previously existed in 1999 number 38, the problem of Zakat Empowerment due to non-conformity in progress in the needs of regulations in the community must be highly recommended to be changed by laws that are very relevant and effective in the management of zakat in Indonesia.²³

Pawn transaction (*Rahn*) is a transaction that makes a certain valuable item as debt

collateral, the guarantee is based on the existence of debt and credit transactions within a certain period of time. Qardh (debt) transactions are an act of benevolent help (*tabarru'*) to people who are in need or do not have cash. But for peace of mind, *rabin* provides a guarantee that the money will be paid by the debtor. This means that the *murtabin* may ask for collateral in the form of valuables to *rabin*. The purpose of the pawn is to guarantee the repayment of the debt borrowed by the *rabin*, and the *murtabin* can safeguard the property of the *rabin* for safety from fraud. Regarding the *Rahn* contract stipulated in Islam, there are several provisions regarding the validity of the contract, namely the delivery of the pledged goods and the right to control the pledged goods. The law of asking for collateral by *murtabin* is permissible, this is based on the Word of Allah in the Qur'an al-Baqarah (2): 283 which reads as follows:

وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ
مَّقْبُوضَةً فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ
الَّذِي أُوْتِمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا
تَكْتُمُوا الشَّهَادَةَ ۗ وَمَنْ يَكْتُمْهَا فَإِنَّهُ أُمٌّ
قَلْبَةً ۗ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

"If you are on a journey and you cannot find a recorder, let there be a pledge of security. But if some of you trust others, let the trustee fulfill his trust and let him fear Allah, his Lord. Do not conceal your testimony, for whoever conceals it has indeed sinned in his heart. Allah knows best what you do."

The above verse can be said that in non-cash business or commonly referred to as debt and credit, a third

²³ Made Aristia Prayudi and Hafiez Sofyani, "Organizational Strategic Response in Implementing the Indonesian ISFAS 109 on Accounting for Zakat: Case of Amil Zakat Agency in Bali," *International Journal of Islamic Business and Economics (IJIBEC)* 5, no. 2 (November 25, 2021), p. 86-104, <https://doi.org/10.28918/ijibec.v5i2.3641>.

person witness is needed, and proof of a written agreement agreed upon by both parties. A proof of agreement is not legally strong if it is only an oral agreement, but written proof of agreement is needed. Broadly speaking, *Rahn* is an activity of giving an item to be held or used as collateral / holding, that is, if at maturity the *rabin* cannot return the loan, the *murtabin* still has a collateral item as a binder of trust so that the debt loan it provides can be repaid.²⁴

Objects of pawn goods that can be pawned include movable and immovable goods. Objects of movable goods such as gold, motorized vehicles and so on. Adapaun objects of immovable goods such as land and houses. Land and house objects that are used as collateral are in the form of certificates that are used as collateral. Debt and credit loans by mortgaging land certificates as *marhun* are permissible, provided that the *murtabin* as the owner of the capital has the right to hold the *marhun* in the form of the mortgaged land until the *marhun* can be taken back by *rabin*, namely after *rabin* has successfully paid off the debt from the *murtabin*. *Marhun* can be taken advantage of only by *rabin* as the owner of the land, and the *murtabin* is basically allowed to utilize *marhun* provided that not all of the profits are taken by him. This is in accordance with the provisions of the hadeeth of ad-Daruquthni and al-Hakim, "It is permissible to ride and milk a pawned animal," and the hadeeth of al-Bukhari, "It is permissible to ride the back of an animal because of the

cost of maintenance when the animal is pawned." However, the *murtabin* does not have the right to do anything that would reduce the value of the property. Such as erecting buildings on the pledged land, and cultivating crops on the surface of the pledged land except with the permission of the pledgor. The provision of a pawn object in a pawn agreement is intended so that the *murtabin* has full confidence in the *rabin*.

Akad is a legal action carried out by two or more people who bind themselves to one or more other people. In the contract, a legal relationship arises called an engagement, in which there are rights and obligations of each party that must be carried out, which usually both parties make the agreement at the beginning of the transaction contract made in writing. The fuqaha agree that if in the *Rahn* contract, the *murtabin* requires that when the existing debt has matured and is not repaid, the *marhun* becomes his property, or the *murtabin* requires that the *marhun* be sold to the *murtabin* at the price of the existing debt, then it is an invalid condition.

An-Nawawi in al-Minhaaj says that if it is stipulated that the *marhun* is sold to the *murtabin* when the debt matures, then the *Rahn* contract is invalid and invalid, because of the element of at-Ta'qiit (being given a deadline), and the sale and purchase is invalid because it means that the sale and purchase contract is dependent on something. Whereas in this case the position of the *marhun* before the debt is due is as a trust, because the *marhun* is held on the basis of a damaged and invalid *Rahn* contract, while after

²⁴ Sutedi, *Hukum Gadai Syariah*.

the debt is due, its position is no longer as a trust but as a dependent item because the purchase is damaged and invalid. Based on the condition stipulated by the *rabin* that the *marhun* is transferred to the *murtahin* when the debt is due, according to the opinion of Abul Khaththab, one of the Hanbalis and a version of the opinion of some Hanafiyyah scholars, the *Rahn* contract is not damaged by such a condition. Because the hadeeth above only negates the *ghalaaqur Rahmi*, not the original contract, this indicates that the *Rahn* contract is valid, and only this condition is invalid. Also, because the *rabin* is happy and agrees to the *Rahn* contract with this condition, if this condition is invalidated, then he is also happy and agrees to it. The basis of the *Rahn* contract is helping (*tabarru'*), so the *murtahin* must provide an additional period of debt repayment, to ease the burden on *rabin* in paying his debt. This is as explained in Q.S al-Baqarah (2) : 280, Allah says:

وَأِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۗ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

"If he (the debtor) is in difficulty, give him a grace period until he finds relief. It is better for you to give in charity if you know."

However, in this context I do not think that the *rabin* should promise to transfer ownership of the land directly to the *murtahin*, if he is unable to pay off his debt. The *rabin* should sell the land (*marhun*) first, to another party, or the *murtahin* itself. The proceeds from the sale of the land are given to the *murtahin* as a form of debt repayment, and the rest is the right of the *rabin*

himself. If the *rabin* hands over the land to the *murtahin*, then the calculation of the value of the debt price and the value of the land price must be balanced. If the price value is not balanced or the land price is greater than the debt price, then the *murtahin* must add money from the remaining debt according to the market price of the land.

■ Closing

Based on the agreement, the time period for debt repayment is legitimate, but in the pawn contract the transfer of land ownership is contrary to Sharia Economic Law.

The transfer of land ownership (*marhun*) in a pawn contract on debt and credit from the perspective of Islamic economic law is invalid. Because the pawned item is not separated from its owner.

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