



Pawning Gold in Sharia Banking: Challenges and Opportunities for Fair Financial Development

Muhammad Sabir Rahman¹; Abdul Razak Arsyad¹; Auliah Ambarwati¹; Bakhtiar Tijjang²; Suprpto¹; Muhammad Halifian Herman¹

¹ Faculty of Law Andi Sapada Institute of Social Sciences and Business Parepare, Indonesia

² Faculty of Business Andi Sapada Institute of Social and Business Sciences Parepare, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v11i9.6139>

Abstract

This research uses an empirical approach with the object of study covering the provisions of Sharia and legislation (in abstract) as well as the application of law (In concrete) with an analytical descriptive research type, which explains the rules of legislation related to legal theories and the implementation of law in mortgage agreements. sharia gold in Sharia banking. The results of the research show that the legal protection of Sharia gold pawn customers in Sharia banks is an implementation of the Sharia economy that regulates Sharia principles, especially the principle of helping each other (tawau), and the principle of Islamic pawnshops that the pawned goods belong to the customer from the beginning, a statement in the pawnshop field gold has deviated from the principles of sharia such as the prohibition of the practice of riba, may, gharar, tadlis, risywah. In practice, customers are disadvantaged when the gold matures because they are burdened with the payment of the initial loan difference. However, the customer obtains legal protection through insurance coverage for lost or damaged gold. Practices that have harmed customers have never received reprimands from the National Syariah Council (DSN) as an institution that oversees the activities of Sharia banks and the Sharia Supervisory Board (DPS) which is tasked with overseeing the business activities of Sharia financial institutions following the provisions and principles of sharia.

Keywords: *Legal Protection; Customers; Sharia Banking Gold Pledge*

Introduction

Indonesia as a rule-of-law country has one of the goals of ensuring the implementation of an institutional system that clouds the functioning of a country, ¹including supporting Sharia financial institutions. Sharia financial institutions juridically began with the release of the policy package in

¹Pradana, H. S. A. A., & Haq, M. I. D. U. (2023). The Regulation of Articles on State Institutional Insults to The Right to Freedom of Expression in Indonesia: A Critical Review. *Mulawarman Law Review*, 21-31.

December 1983 and the policy package in October 1988.² Institutionally Sharia began with the establishment of PT Bank Muamalat Indonesia (BMI) in 1991 as the only bank that purely implemented Sharia principles in the form of profit sharing in operations business activities. When the crisis occurred, BMI was factually one of the healthy banks because it had a CAR (*Capital Adequacy Ratio*) with category A (4% to on). During the crisis, Islamic banks still showed relatively better performance compared to conventional banking institutions.

This can be seen from the lower distribution of problematic *non-performing finance* (NPF) *financing* in Sharia banks and the absence of *negative spreads* (banks pay interest costs to depositors at high interest rates, while loan interest rates to customers cannot be adjusted in operational activities).³ This condition can be understood considering that the rate of return of Islamic banks does not refer to interest rates so that they can provide investment funds with relatively low capital costs to the public. The Sharia banking business continued to develop after the issuance of Law Number 7 of 1992 concerning Banking which explicitly allows banks to run businesses based on the principle of profit sharing, which is then confirmed by Article 1 paragraph (1) of Government Regulation (PP) Number 72 of 1992 regarding Banks based on Sharia Principles.

The principle of profit sharing is the principle profit sharing based on sharia used by banks based on the principle of profit sharing in terms of (1) determining the compensation that will be given to the public in connection with the use of public funds entrusted to them; (2) determining the compensation to be received in connection with the provision of funds to the community in the form of financing for both investment and working capital; (3) determine compensation in connection with normal business activities by the bank based on the principle of profit sharing. The banking concept is carried out using the basis of an agreement between the customer and the bank.⁴

Law Number 10 of 1998 concerning Amendments to Laws Number 7 of 1992 concerning Banking allows conventional commercial banks to carry out banking business activities using Sharia principles through the *Islamic Window mechanism*. One of them is establishing a Sharia Business Unit (UUS) which functions as a head office or sub-branch office that carries out business based on the principles of conventional banks. This provision is the beginning of the dual banking *system*.

One of the Sharia banking products is a pawn (*Rahn*), which is holding one of the borrower's assets as collateral for the loan received. In simple terms, *Rahn* is a kind of debt guarantee or pawn. Pawning in Islam functions as collateral for a creditor's debt, as collateral it is of course an *accessory* so its existence is very dependent on the existence of the main agreement. *Rahn* in Islamic law is carried out voluntarily based on mutual help without seeking profit. The regulation and implementation of *Rahn contracts* in Islamic banks are based on DSN-MUI Fatwa Number 25/DSN-MUI/III/2002 concerning *Rahn* and DSN-MUI Fatwa Number 26/DSN-MUI/III/2002 concerning gold *Rahn*. However, in the practice of several Sharia banks, there is a tendency not to apply Sharia principles in operations. Like the BRI Syariah Makassar gold pawn product which tends to be detrimental and sacrifices *human rights*.⁵

One of the customers BRI Syariah Makassar Branch pawned 500 grams of gold with the promise that it would be converted to buy gold bars so that later it becomes 2.5 kilograms. Four months later the customer's gold is required to pay a deposit fee and debt of IDR 37 million, if not paid the gold will be

²Masruron, M., & Safitri, N. A. A. (2022). Analisis Perkembangan Perbankan Syariah Di Indonesia Di Masa Pandemi Covid-19. *Al Birru: Jurnal Keuangan Dan Perbankan Syariah*, 1(1).

³Komarudin, P., & Hidayatullah, M. S. (2021). Alur Legislasi dan Transformasi Hukum Perbankan Syariah di Indonesia. *Mizan: Journal of Islamic Law*, 5(1), 133-144

⁴Kadari, P. N., Saharuddin, S., & Syahril, M. A. F. (2023). Perlindungan Hukum Nasabah atas Penggunaan E-Banking. *Jurnal Litigasi Amsir*, 10(2), 167-179.

⁵Lestari, Y. J., & Hanifuddin, I. (2021). Dasar Hukum Pegadaian Syariah Dalam Fatwa DSN-MUI. *Jurnal Hukum Ekonomi Islam*, 5(2), 144-153.

auctioned. The bank argued that the payment was for deposit fees and fines. Pawning practices in Sharia banking tend to conflict with the basic principles of pledging in Islam as explained in the Al-Quran, As-Sunnah. Surah Al Baqarah verse 283 states "If you are on a journey and you do not find a writer, then there should be collateral that is held (by receivables). However, if some of you trust others, let those you trust fulfil their mandate (debt)." Everyone can enter into a debt and receivable agreement,⁶ including Sharia pawning. Implementation of the agreement in this case is part of the legal mechanism guaranteed in the Indonesian legal system.⁷ The Sharia concept of debt and receivables is carried out in the form of *al-careful Hassan*, with the main aim of fulfilling moral obligations such as social security. Pawning which completes a debt and receivable agreement simply fulfils the recommendation of the Al-Quran, Al-Baqarah verse 283, that there are no additional costs on top of the loan principal for the borrower except those used for the validity of an agreement. In this case, costs such as stamp duty and notarial certificates are the burden of the borrower, interest on money, even in whatever name, is not following sharia principles and cannot be charged.

Pawning practices at BRI Syariah tend to conflict with Article 2 of Law Number 21 of 2008 concerning Sharia Banking which requires business activities to be based on sharia principles, economic democracy and prudence. Sharia principles prohibit elements of usury, maysir, gharar, haram and unjust in transactions. This pawning practice also tends to violate the pillars and legal requirements of the pawn agreement, where the debt must be clear and known to both parties. Apart from that, there is a tendency to conflict with Islamic values such as divine values, leadership, balance, justice, benefit, cooperation, purity and accountability, as well as the principles of Islamic agreements such as *Al-Musawa and Al-Adalah*. Based on this, the author is interested in researching the legal protection of Sharia gold pawning customers in Sharia banking.

Research Methods

This research uses normative legal research methods with a statutory regulation approach and an analytical approach. Normative legal research is a type of research that focuses on the analysis of applicable legal norms.⁸ The aim is to examine statutory regulations, legal doctrine, and the principles that form the basis of a legal system.⁹ Legal research using a statutory regulatory approach, this research will examine various regulations governing Sharia banking, especially those related to the practice of gold pawning. Meanwhile, an analytical approach will be used to describe and analyze how these regulations are implemented in practice in the field, as well as how legal protection is provided to customers in the context of Sharia gold pawning.¹⁰

Analysis and Discussion

Implementation of Sharia Pawning Following the Provisions Regulated in Sharia Economics

Sharia pawning in Sharia banking and Sharia pawning as an implementation of *Iqtishady*/ Islamic economics in the financial sector in banking and non-banking. Pawning or *Rahn* in Islamic law is done

⁶Miftahuddin, A. N., & Karim, K. (2023). Kajian Yuridis Terhadap Wanprestasi Perjanjian Utang Piutang. *Jurnal Litigasi Amsir*, 175-185.

⁷Ramadhan, M. F., Karim, K., & Ambarwati, A. (2023). Kajian Yuridis Terhadap Perjanjian Utang Piutang Tidak Tertulis. *Jurnal Litigasi Amsir*, 51-57.

⁸Juliardi, B., Runtuwuwu, Y. B., Musthofa, M. H., TL, A. D., Asriyani, A., Hazmi, R. M., ... & Samara, M. R. (2023). Metode penelitian hukum. CV. Gita Lentera.

⁹Syarif, M., Ramadhani, R., Graha, M. A. W., Yanuaria, T., Muhtar, M. H., Asmah, N., ... & Jannah, M. (2024). Metode Penelitian Hukum.

¹⁰Nawi, S. (2014). Penelitian Hukum Normatif Versus Penelitian Hukum Empiris. Umitoha Ukhuwah Grafika, Makassar.

voluntarily based on mutual help.¹¹ *Rahn's* aim is solely to help customers in multipurpose activities that comply with Sharia through *Rahn* and *ijarah*.

The implementation of sharia values in sharia products is technically regulated in DSN-MUI Fatwa Number 25 /DSN-MUI/III/2002 concerning *Rahn* and DSN-MUI Fatwa Number 26/DSN-MUI/III/2002 concerning Gold *Rahn* which technically regulates pawning gold. According to the author of the DSN-MUI fatwa, it is not applied according to sharia principles because, in the DSN Fatwa Number 26/DSN-MUI/III/2002 concerning gold *rahn*, it is stipulated that gold *rahn is permitted based on the rahn principle*, then the costs and storage costs of the pawned goods (*marathon*) are borne by the pawnbroker. (*rahin*). Fees are based on necessary expenses. According to the author, this provision needs to be carefully observed because Islamic banks and Sharia procurement in their operations have never transparently disclosed to customers the real expenses.

According to the author of Bank Indonesia circular letter Number 14/7/DPBS, this has deviated and overlapped with previous regulations because pawning according to this Bank Indonesia circular prioritizes profit, not the mutual help aspect and the goods being pawned already belong to the customer. Because sharia pawning is one of the sharia banking products, it cannot be separated from Islamic values themselves. These values must be implemented in the practice of sharia gold pawning, including the value of divinity (*divine*), the value of balance (*tawazun*), the value of justice (*'is*), the value of benefit (*maslahah*), cooperation (*tawaun*), *tazkiyah*. In addition, the Islamic legal contract system is expected to produce business transactions that are free from prohibited elements in the form of gambling (*maysir*), ambiguity (*gharar*), bribery (*risywah*), interest (*riba*), fraud (*tadlis*) and falsehood.¹²

Sharia gold pawning as a Sharia banking product must also be guided by the original legal rules in Sharia, namely in the field of worship the applicable legal rule is that all things are prohibited unless there are provisions based on the Koran and Al Hadith. Meanwhile, in muamalah matters, everything is permitted unless there is a reason forbidding it. This means that when a new transaction appears and is not previously known in Islamic law, it is considered acceptable unless there are implications from the Koran and hadith that prohibit it either explicitly or implicitly. In the field of Ramallah, all transactions are permissible except those that are prohibited.¹³

The reason why a transaction is prohibited is due to the following factors: the substance is haram (*haram li-dzatihi*), the substance is haram apart from the substance (*haram li ghairihi*), and the contract is invalid (complete). Transactions that are prohibited because they are haram apart from the substance, that is, they violate the principle of *a Taradin Minkum*, namely *Tadlis* (fraud). Every transaction in Islam must be based on the principle of willingness between both parties (mutually pleased) and must have the same information so that no party feels cheated (cheated) because there are conditions that are *unknown to one party* (a situation where one of the parties not knowing the information that the other party knows). *Tadlis* can occur in four ways, namely quantity, quality, price and delivery time.

In Sharia gold pawn transactions, according to the author's analysis, the element of *tadlis* (fraud) will be fulfilled when from the start of the transaction process the bank or Sharia pawnshop does not explain transparently and in detail the advantages and disadvantages of the product to the customer. This includes not explaining the possible risks that customers will have to bear if the price of gold falls in the local and world markets in the future. Because gold prices tend to fluctuate and are very susceptible to causing losses to customers in the future.

¹¹Decent, R. (2023). Tinjauan Hukum Islam Terhadap Mekanisme Akad Rahn (Gadai Syariah) pada Bank Syariah Indonesia Kantor Cabang Makassar 1. *Iqtishaduna: Jurnal Ilmiah Mahasiswa Hukum Ekonomi Syari'ah*, 206-221.

¹²Ubaidillah, S. E. (2023). *Mengenal Akuntansi Syariah Teoritis dan Praktis*. CV Pena Persada.

¹³Sumar'in, S. (2023). Implementasi Lembaga Keuangan Syariah.

This is also related to *tables* in prices where banks or pawnshops can increase the price of gold or lower it from the market price by taking advantage of customers' ignorance because information about prices is only obtained by customers when signing or extending a contract.

Based on the author's observations, the explanation of banks and sharia procurement as a form of product transparency to customers is relative so that it can lead to the fulfilment of prohibited elements, namely *tables*. There are times when banks and providers provide explanations to customers directly when making a transaction or through distributing brochures and pamphlets which are disseminated to customers. What banks or procurement agencies explain more to customers is how to calculate the valuation of goods and the amount of loans that customers can take out. This kind of phenomenon occurs in almost all Islamic banks studied by the author, except for Sharia mortgages.

Referring to Bank Indonesia Circular Letter No.14/7/DPbS dated 29 February 2012 regarding gold-backed *card products* for Sharia Banks and Sharia Business Units as the basis for determining the value of loans to customers. After the assessment, the customer is explained, and the bank asks whether or not they accept the assessment value in question. The bank continues to prioritize the principle of sincerity, and blessings from customers and explains to customers that gold pawning at the bank does not follow a speculative system.¹⁴

According to the author, the issue of time is one of the reasons for Islamic banks and Sharia procurement, so that customers do not receive detailed explanations. Especially if customers are already queuing in front of the pawn service place. Apart from that, consideration of the customer's time is also a reason, because most customers have a reason to choose gold pawning products at banks or pawnshops. After all, the gold pawning process is considered short, fast and not too complicated.

Apart from the prohibition on transactions caused by factors: the substance is haram (*haram li-dzatihi*), the substance is haram apart from the substance (*haram li ghairihi*), and the contract is invalid (complete). The prohibition that must not be violated in Sharia banking transactions is the principle of *la tazhlimu wa latuzhlamun* namely, do not oppress and do not be wronged. Practices that violate this principle include *gharar* (*taghrir*), *riba*, *maysir*, and *risywah*. *Gharar* (*taghrir*) is a situation where *incomplete information occurs* due to *uncertainty to both parties* (uncertainty from both parties to the transaction). *Gharar* occurs when we treat something that should be *certain as uncertain*. *Gharar* can also occur in four ways, namely quantity, price quality and delivery time. *Gharar* in Sharia banking is very vulnerable to occurring in terms of price-quality. *Gharar* in price quality where the mutually willing situation achieved is temporary, that is, while the situation is still unclear for both parties. If at a later date, namely when the situation is clear, one of the parties (seller or buyer) will feel wronged even though this was not the case at first.

According to the author, the element of *gharar* is open to the possibility of occurring if during the initial gold pawning process the bank treats something that should be certain as uncertain. This means that the bank does not fulfil the requirements for the validity of an agreement in Islam, namely for a halal reason where the contents of the contract do not conflict with statutory regulations such as the presence of an element of fraud. The reason is that the bank did not explain from the start the possible risks due to the decline in gold prices and the different costs that customers had to bear. The author has encountered this in almost all Islamic banks, where customers at the beginning of the contract do not receive an explanation regarding the risk of price reductions. Most customers only find out about the risks when the gold pledge matures.

¹⁴Minsih, M. (2021). Kebijakan Implementasi surat Edaran Bank Indonesia No. 14/7/DPbS Tahun 2012 Tentang Pengaturan Qardh Beragun Emas pada Bank Syariah Mandiri KFO Imam Bonjol Medan (Pra Merger PT Bank Syariah Indonesia).

The agreement made in this legal act refers to the terms of the agreement in Article 1320 of the Civil Code.¹⁵ Apart from that, in Islamic law there are general conditions that must be taken into account in the agreement as follows:¹⁶

- a. It does not violate Sharia law, because the Messenger of Allah said: that any form of requirement that is not in the book of Allah is false, even if it consists of a hundred conditions.
- b. Must be mutually pleased and based on mutual agreement. Because coercion negates will. There is no respect for a contract that denies a person's freedom.
- c. It must be clear and not vague so that it does not contain various interpretations that usually give rise to misunderstandings when implemented.

Apart from these conditions, Sharia gold pawning in several banks which are the object of the author's research sometimes do not pay attention to the pillars and conditions of agreements in Islam such as the provisions regarding the object of the contract which regulate the conditions for the validity of the contract, namely the object can be handed over and in the future, there will be no loss, the object must be certain and must not contain *gharar*. According to the author, fulfilling the pillars and conditions regarding objects that can be handed over and not causing losses in the future could occur if the price of gold decreases at maturity compared to when the first contract was made, which causes the customer to have to cover the difference from the loan received. In the author's view, fluctuations in the current value of an item do not change the concept of the initial transaction that was agreed upon. This is in line with the pillars and conditions for the validity of a pawn agreement in Islam, namely that the debt must be clear and known to *the rain* and *murtahin*, so the author concludes that pawning in sharia banking fulfils the elements of *gharar*.

Legal Protection for Sharia Gold Pawn Customers Following Legal Provisions for Sharia Banking

1. Proper Transparency of Bank Product Information

The enactment of Law Number 21 of 2008 concerning Sharia Banking where Sharia banking is obliged to implement *good corporate governance* (GCG) in business activities.¹⁷ Article 34 of Law Number 21 of 2008 stipulates the following: 1) Sharia banks and UUS are obliged to implement good governance which includes the principles of transparency, accountability, accountability, professionalism and fairness in carrying out their business activities. 2) Sharia Banks and UUS are required to prepare internal procedures regarding the implementation of Sharia principles as referred to in paragraph (1). Provisions regarding the obligation to implement GCG are also regulated in Indonesian bank regulations such as Bank Indonesia Regulation Number 11/33/PBI/2009 and Bank Indonesia circular letter Number 12/13/DPbS.

According to the author, in the practice of Sharia gold pawning at Sharia banks and Sharia pawnshops, the principles of openness, accountability, professionalism and fairness must be applied from the beginning to the end of the pawning. Transparency means openness in conveying relevant information and in the decision-making process. When a customer comes to the pawn shop or *customer service counter*, the bank must transparently explain the advantages, weaknesses and risks of the product, including the risk of a gold auction if the customer defaults. Also, the bank needs to explain the

¹⁵Rahman, M. S., Phireri, P., & Wangka, Y. C. (2023). Perlindungan Hukum Terhadap Perjanjian Kerja Barista dengan Indische Coffee atas Keterlambatan Pembayaran Upah. *Jurnal Litigasi Amsir*, 10(3), 247-253.

¹⁶Romli, M. (2021). Konsep Syarat Sah Akad Dalam Hukum Islam dan Syarat Sah Perjanjian dalam Pasal 1320 KUH Perdata. *Jurnal Tahkim*, 17(2).

¹⁷Putri, S. R., & Rahmazaniati, L. (2022). Metode RGEC: Penilaian Tingkat Kesehatan Bank Sebelum dan Sesudah Merger Menjadi Bank Syariah Indonesia. *Akbis: Media Riset Akuntansi dan Bisnis*, 6(2), 47-51.

possibility of a decrease in the price of gold at maturity and payment of the difference from the loan value. However, based on the author's observations at Sharia Bank, the transparent explanation is incidental, only covering the estimated value of gold and the maximum loan, without a detailed explanation regarding the acquisition of the estimated value. Non-transparency can also be seen from the fact that the calculation method is not included in the contract sheet, but only the gold valuation amount and maximum loan amount.

It's different when customers are proactive in asking about how to estimate the maximum loan at a Sharia Bank, the gold appraiser will explain the calculation process in detail so that they can get the estimated results and maximum loan. What most banks do is only explain Sharia principles, then customer obligations such as *ijarah* fees, and administration fees, it is very rare for banks to explain the risk of falling gold prices being the customer's responsibility. The reasons for time and busyness are one of the bank's considerations so that customers do not receive a transparent explanation regarding Sharia gold pawning products. Apart from that, we want to be quick and time-effective so that customers rarely ask many questions about the pawned product they have chosen.¹⁸

Meanwhile, the principle of accountability is clarity in the functions and implementation of responsibilities of bank organs so that their management runs effectively. According to the author, this can be realized by establishing *Standard Operating Procedures (SOP)* in each Sharia banking and Sharia procurement following Bank Indonesia Circular No.14/7/DPbS dated 29 February 2012 concerning Gold Backed *Qard Products* for Sharia Banks and Business Units The seventh point of Sharia regarding the characteristics of gold-backed *Qard* products is that the provision of gold-backed *Qards must be supported by* adequate written policies and *Standard Operating Procedures (SOP), including the implementation of risk management.*

The functions and duties of organs in Sharia banking and Sharia procurement range from the duties of pawn appraisers, *and rahn officers* to bank branch leaders as parties who verify gold pawn loan eligibility files. The aspect of responsibility *is* the conformity of bank management with applicable laws and regulations and the principles of healthy bank management. One of them, according to the author, is the obligation of banks to apply the principles of prudence and bank soundness in carrying out business activities following the provisions of Article 2 and Article 35 paragraph (1) of Law Number 21 of 2008.

For the professional aspect, namely having competence, being able to act objectively being free from influence/pressure from any party (independent) and having a high commitment to developing sharia banking. According to the author, the professionalism and competence of pawnshop officers are still relative. Their understanding is only related to technical pawning, such as how to assess and determine the weight and carat of the customer's gold, without being equipped with an understanding of Sharia principles and values. Another aspect is fairness, *namely fairness and equality in fulfilling stakeholder* rights based on agreements and applicable laws and regulations. In several Sharia banks and Sharia procurement, the principle of fairness, *prioritizing* justice and equality, is implemented in the form of giving time dispensations to customers to pay or pay off loans.

2. Equality and Balance in Agreements

The principle in the Islamic agreement that regulates equality or equality is *Al-Musawah*. This principle implies that the parties have the same *bargaining position so that in determining the terms and conditions* of a contract/agreement each party has an equal or balanced position. Islam emphasizes that all

¹⁸Firdaus, R., & Makhtum, A. (2023). Efektivitas Program Kredit Usaha Rakyat (KUR) Syariah PT. Pegadaian untuk Pengembangan Usaha Mikro Kecil Menengah. *Ulumuna: Jurnal Studi Keislaman*, 9(2), 236-263.

people have an equal position before the law (*equality before the law*).¹⁹ Meanwhile, what differentiates one person's position from another in the sight of Allah is the degree of piety.

In the context of a Sharia gold pawn contract at a Sharia bank or sharia procurement, this principle is somewhat difficult to apply because the bank makes a standard contract. This means a contract whose clauses have been determined/drafted by one of the parties, namely the bank. The use of standard contracts in contracts is usually by parties who carry out many of the same contracts with other parties based on Article 1338 (1) of the Civil Code which states that all agreements made legally are valid as law for those who make them.²⁰

The customer is not involved in preparing the Sharia gold pawn contract, so the customer's position is very weak. For example, a Sharia gold pawn contract at a Sharia Bank includes a standard clause that if the customer does not make payment immediately and at the same time when it is due, the customer hereby agrees and/or gives power of attorney to the bank which cannot be withdrawn for any reason, including those specified in the Law. law (including but not limited to the provisions contained in Article 1813 of the Civil Code, namely the granting of power of attorney ends with the withdrawal of the power of attorney with notification of the termination of the power of attorney by the power of attorney, with the death, pardon or bankruptcy of the person giving the power of attorney or the power of attorney, with the marriage of the woman who gives power of attorney or receives power of attorney) to carry out a sale or auction/sale as agreed on the pawn certificate or other date, after the said auction/sale date the customer will receive any proceeds from the auction or sale of goods carried out by the bank and will not submit claims, lawsuits and/or objections in any form to the bank.

If the proceeds from the sale or auction of goods as intended are insufficient to pay off all debts and/or other obligations of the customer, the customer hereby promises and is obliged to pay the entire shortfall.²¹ Likewise, if the goods are not sold or auctioned, the customer is still obliged to pay off the loan and/or other obligations. If there is an excess in the proceeds from the sale or auction of goods, the customer has the right to receive the excess and if within more than one year since the sale or auction of the goods, the customer does not take the excess. The customer agrees and authorizes the bank to distribute the excess as alms. implementation is handed over to the bank.

The position of customers who need money by pawning gold puts them in a weak position and is exploited by the bank. According to the author, ideally, to fulfil the principles of equality and equality or *Al-Musawa*, the customer is involved in making the contract.

3. Compensation and Indemnification

Compensation or debt set-off is regulated in Article 1425 of the Civil Code to Article 1435 of the Civil Code. Compensation is the elimination of each debt by taking into account the debt that can be collected between the bank as a creditor and the customer as a debtor.²²

Meanwhile, there are two causes of compensation, namely breach of contract and unlawful acts. Compensation for breach of contract is regulated in Article 124 of the Civil Code to Article 1252 of the

¹⁹Miftahuddin, A. N., & Karim, K. (2023). Kajian Yuridis Terhadap Wanprestasi Perjanjian Utang Piutang. *Jurnal Litigasi Amsir*, 175-185.

²⁰Ali, A. A., & Fitriani, D. A. F. (2022). *Jurnal: Kepastian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Sebuah Perjanjian Baku Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata*. *Sentri: Jurnal Riset Ilmiah*, 1(2), 270-278.

²¹Juliadi, A. (2020). *Analisis Implementasi Ta'zir dan Ta'widh pada Pembiayaan Murabahah PT. Bank Aceh Syariah Cabang Banda Aceh (Doctoral dissertation, UIN AR-RANIRY)*.

²²Anggi Indah Mulyani Sari, A. I. M. S. (2021). *Penyelesaian Wanprestasi dalam Perjanjian Gadai Antara Nasabah dengan Perseroan Terbatas (PT) Pegadaian Cabang Mayang Mangurai Kota Jambi (Doctoral dissertation, Universitas Batanghari)*

Civil Code and compensation for unlawful acts is regulated in Article 1365 of the Civil Code.²³ Compensation for unlawful acts is a form of compensation imposed on the person who has caused the wrong to the injured party. Compensation arises because of a mistake, not because of an agreement. Compensation for default is a form of compensation imposed on debtors who do not fulfil the contents of the agreement that has been made between the creditor and the debtor.

According to the author, compensation can be given to gold pawning customers, among others, when the customer pays the full *ijarah* fee for a certain period, for example, ten days, one month or four months, but in the middle of the *ijarah* journey it does not reach ten days, one month or four months, then the bank will return proportionally the *ijarah* fee. Likewise, when gold is sold or auctioned according to Sharia, if there is an excess after paying the loan, the money from the sale is returned to the customer. Another compensation that customers receive is giving discounts or *muqasah* to customers if they do not take the *full* loan that should be taken. Meanwhile, the provision of compensation to gold pawning customers is strictly regulated in the contract clause, where each bank and sharia pawning have the same insurance value if the customer's gold is damaged or lost. On the other hand, there are also differences in determining compensation, it all depends on the agreement with the insurance company.

Conclusion

The implementation of Sharia gold pawning in the Sharia economy aims to apply Sharia principles, especially the principle of mutual assistance (*tawaun*) and the principle of pawning in Islam, where the pawned goods have belonged to the customer from the start. However, the practice of pledging gold in Islamic banks often deviates from sharia principles such as the prohibition of usury, *maysir*, *gharar*, *tadlis* and *risywah*. The pawn is often intended for investment and the pawned item is not fully owned by the customer. This practice which is detrimental to customers has never received a warning from the National Sharia Council, which supervises the activities of Sharia banks, or from the Sharia Supervisory Board (DPS), which is tasked with ensuring that the business activities of Sharia financial institutions comply with sharia provisions and principles.

The legal protection that Sharia gold pawning customers receive following Sharia banking law is not comprehensive and often only applies at the beginning of the contract implementation. Customers suffer losses when the gold matures because they have to pay the difference between the initial loan. However, customers get protection through insurance for lost or damaged gold.

Reference

- Ali, A. A., & Fitriani, D. A. F. (2022). Jurnal: Kepastian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Sebuah Perjanjian Baku Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata. *Sentri: Jurnal Riset Ilmiah*, 1(2), 270-278.
- Anggi Indah Mulyani Sari, A. I. M. S. (2021). *Penyelesaian Wanprestasi dalam Perjanjian Gadai Antara Nasabah dengan Perseroan Terbatas (PT) Pegadaian Cabang Mayang Mangurai Kota Jambi* (Doctoral dissertation, Universitas Batanghari).
- Budiman, A. (2024). Perbuatan Melawan Hukum. *Hukum Perdata*, 70.

²³Budiman, A. (2024). Perbuatan Melawan Hukum. *Hukum Perdata*, 70.

- Deceng, R. (2023). Tinjauan Hukum Islam Terhadap Mekanisme Akad Rahn (Gadai Syariah) pada Bank Syariah Indonesia Kantor Cabang Makassar 1. *Iqtishaduna: Jurnal Ilmiah Mahasiswa Hukum Ekonomi Syari'ah*, 206-221.
- Firdaus, R., & Makhtum, A. (2023). Efektivitas Program Kredit Usaha Rakyat (KUR) Syariah PT. Pegadaian untuk Pengembangan Usaha Mikro Kecil Menengah. *Ulumuna: Jurnal Studi Keislaman*, 9(2), 236-263.
- Juliadi, A. (2020). *Analisis Implementasi Ta'zir dan Ta'widh pada Pembiayaan Murabahah PT. Bank Aceh Syariah Cabang Banda Aceh* (Doctoral dissertation, UIN AR-RANIRY).
- Juliardi, B., Runtunuwu, Y. B., Musthofa, M. H., TL, A. D., Asriyani, A., Hazmi, R. M., ... & Samara, M. R. (2023). *Metode penelitian hukum*. CV. Gita Lentera.
- Kadari, P. N., Saharuddin, S., & Syahril, M. A. F. (2023). Perlindungan Hukum Nasabah atas Penggunaan E-Banking. *Jurnal Litigasi Amsir*, 10(2), 167-179.
- Komarudin, P., & Hidayatullah, M. S. (2021). Alur Legislasi dan Transformasi Hukum Perbankan Syariah di Indonesia. *Mizan: Journal of Islamic Law*, 5(1), 133-144.
- Lestari, Y. J., & Hanifuddin, I. (2021). Dasar Hukum Pegadaian Syariah Dalam Fatwa DSN-MUI. *Jurnal Hukum Ekonomi Islam*, 5(2), 144-153.
- Masruron, M., & Safitri, N. A. A. (2022). Analisis Perkembangan Perbankan Syariah Di Indonesia di Masa Pandemi Covid-19. *Al Birru: Jurnal Keuangan Dan Perbankan Syariah*, 1(1).
- Miftahuddin, A. N., & Karim, K. (2023). Kajian Yuridis Terhadap Wanprestasi Perjanjian Utang Piutang. *Jurnal Litigasi Amsir*, 175-185.
- Minsih, M. (2021). Kebijakan Implementasi surat Edaran Bank Indonesia No. 14/7/DPbS Tahun 2012 Tentang Pengaturan Qardh Beragun Emas pada Bank Syariah Mandiri KFO Imam Bonjol Medan (Pra Merger PT Bank Syariah Indonesia).
- Nawi, S. (2014). *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris*. Umitoha Ukhuwah Grafika, Makassar.
- Pradana, H. S. A. A., & Haq, M. I. D. U. (2023). The Regulation of Articles on State Institutional Insults to The Right to Freedom of Expression in Indonesia: A Critical Review. *Mulawarman Law Review*, 21-31.
- Putri, S. R., & Rahmazaniati, L. (2022). Metode RGEC: Penilaian Tingkat Kesehatan Bank Sebelum dan Sesudah Merger Menjadi Bank Syariah Indonesia. *Akbis: Media Riset Akuntansi dan Bisnis*, 6(2), 47-51.
- Rahman, M. S., Phireri, P., & Wangka, Y. C. (2023). Perlindungan Hukum Terhadap Perjanjian Kerja Barista dengan Indische Coffee atas Keterlambatan Pembayaran Upah. *Jurnal Litigasi Amsir*, 10(3), 247-253.
- Ramadhan, M. F., Karim, K., & Ambarwati, A. (2023). Kajian Yuridis Terhadap Perjanjian Utang Piutang Tidak Tertulis. *Jurnal Litigasi Amsir*, 51-57.

- Romli, M. (2021). Konsep Syarat Sah Akad Dalam Hukum Islam dan Syarat Sah Perjanjian dalam Pasal 1320 KUH Perdata. *Jurnal Tahkim*, 17(2).
- Sumar'in, S. (2023). Implementasi Lembaga Keuangan Syariah.
- Syarif, M., Ramadhani, R., Graha, M. A. W., Yanuaria, T., Muhtar, M. H., Asmah, N., ... & Jannah, M. (2024). Metode Penelitian Hukum.
- Ubaidillah, S. E. (2023). *Mengenal Akuntansi Syariah Teoritis dan Praktis*. CV Pena Persada.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).