

REVIEW OF ISLAMIC LAW AND THE CIVIL CODE ON DEBTS AND RECEIVABLES USING COLLATERAL

Depri Liber Sonata¹, Deni Achmad², Firganefi³

Abstract

Pawning is a category of debt-receivable agreement, where for the trust of the person who owes the debt, the debtor pawns his goods as collateral for the debt. This practice is carried out without any written agreement but only verbal agreement and based on mutual trust. This research answers the questions stated in the problem formulation, namely: How is Islamic Law and the Civil Code reviewed regarding debts and receivables using collateral? The research results show that according to Islamic law, in Islamic law, the definition of pawning is similar to the Civil Code, that pawning is a guarantee resulting from debts and receivables. Islam allows pawning based on arguments originating from the Koran, Sunnah and ijma'. In Islamic law and civil law in Indonesia, collateral can be used in receivables or debt transactions. The Civil Code also explains that this practice is not valid because the goods used as collateral must be tangible movable objects and intangible movable objects.

Keywords: Legal Review, Accounts Payable, Guarantees.

I. INTRODUCTION

Islam is a message sent down by God to Muhammad SAW. as a guideline that contains perfect laws to be used in organizing life procedures for humans, namely regulating relationships between humans, humans and nature and humans' relationship with God, His Creator. Humans are social creatures who have various needs for life, to fulfill their needs it is impossible to produce them themselves.⁴ Humans are social creatures who have various needs for life, to fulfill these needs it is impossible to produce them themselves.⁵

Islam, as a universal divine message, comes to deal with human life in various aspects, both spiritual and material aspects. This means that Islam is not only about faith, but also includes political, social, cultural and economic systems aimed at all mankind. This is what is expressed by the term: Islam is ad-din which includes matters of faith and sharia. As the most perfect teaching, Islam is equipped with economic systems and concepts. This system can be used as a guide for humans in carrying out economic activities.

¹ Faculty of Law, Universitas Lampung, depri.liber@fh.unila.ac.id

² Faculty of Law, Universitas Lampung, deni.achmad@fh.unila.ac.id

³ Faculty of Law, Universitas Lampung, firganefi@fh.unila.ac.id

⁴ Ahmad Azhar Basyir, *Asas-asas Hukum Muamalah* (Yogyakarta: UII Press, 2000), 11.

⁵ Kemenag RI, *Ar-Rahman Al-Qur'an dan Terjemahannya* (Bandung: CV Mikraj Khazanah Ilmu, 2014), p. 106

According to its followers, Islam is to adhere to and practice Islamic teachings in a kaffah (comprehensive/comprehensive) manner in various aspects of life. For a devout Muslim, of course his various business activities or efforts are based on Islamic financial transactions.⁶ They will do everything they can when they don't have money, from halal methods to haram methods. For example, what is halal is working, farming, being a labourer, getting into debt, trading and what is haram is cheating, thieving, and so on. However, when people cannot meet their needs, the most supportive factor for getting money quickly is debt.

Debts and borrowings or borrowing money are an agreement in which a debtor/borrower is obliged to return it with the same item. Meanwhile, according to fiqh experts, a debt or loan is a transaction between two parties, one of whom hands over money to another voluntarily to be returned the amount owed.⁷

According to Ulama Hambali and Syafi'i, (goods) are collateral for debt, which can be used as debt payment if the person in debt cannot pay the debt. In terms of borrowing and borrowing, the provisions of Islamic Sharia are similar to use loans found in the provisions of Article 1740 of the Civil Code.⁸

In general, many people in Indonesia who carry out debts and receivables with collateral for collateral do not enter into agreements with creditors. In debt and receivable agreements, creditors and debtors are basically free in oral or written form depending on the parties entering into the debt and receivables agreement. Even though every creditor hopes that when entering into an agreement with the debtor, he always hopes that the collateral agreed with the debtor is the same as the selling value of the debt and receivables given by the creditor, but there are times when the debt and receivable agreement does not match the selling value of the collateral, but the parties who make the agreement still carry out an agreement according to what was agreed by the parties entering into the agreement in accordance with Article 1320 of the Civil Code Law.

Every item that can be bought and sold can be pawned for debts and receivables. Pawning can be done while traveling or while living, as explained in the hadith about the Prophet as narrated by Bukhari (1962) and Muslim (1603) from Aisyah Ra. that: Rasulullah saw. bought food from a Jew and pawned him armor.⁹ According to article 1150 of the Civil Code, a pawn is a right obtained from a person who owes money over a movable item, which is handed over to the person who claims money or another person on his behalf.

II. DISCUSSION

⁶ Rozalinda, *Ekonomi Islam* (Jakarta: PT Raja Grafindo, 2014) , p.1.

⁷ Abu Sura'i Hadi, *Bunga Bank Dalam Islam* (Surabaya: Al-Ikhlash, 1993), p.129.

⁸ Subekti R& Tjitrosudibio R, *Kitab Undang-Undang Hukum Perdata*, (Jakarta: Pradya Paramita, 2009), p. 448.

⁹ Mustafa Dieb al-Bigha, *Fiqh Sunnah Imam Syafi'i* (Jakarta: Fathan Media Prima), p.258-259.

Review of Islamic Law and the Civil Code on Debts and Receivables Using Collateral

The need for funds can occur at any time and by anyone from various circles. Therefore, the issue of loans and debts is a problem that cannot be separated from life. Fortunately, in the long history of human life, there have always been parties willing to provide loan funds, both individuals and institutions, both with philanthropic and business motives.¹⁰

However, looking for a loan/debt is not easy because currently there are very few people who can be completely trusted. So, to be confident in getting a loan, there must be collateral, better known as a pawn (Rahn), which is a debt-receivable contract accompanied by collateral.

In Islam, debts and receivables are known as Al-Qardh, etymologically the word Al-Qardh means Al-Qath'u which means deductions. Thus, Al-Qardh can be understood as the property handed over which is a piece of the property of the person giving the debt.¹¹ According to the language, debt (al-qardh) comes from the word qaraba, whose synonym qataa means deduction.¹² Meanwhile, according to the syar'i qard is a form of taqarrub towards Allah SWT, because qard means being gentle and loving fellow human beings, providing convenience and solutions to the sorrows and difficulties that befall other people. Islam strongly recommends and likes people who lend (qard), and allows people who are given qard, and does not consider it as something that is not makruh, because they receive assets to be used in an effort to meet their living needs, and the borrower returns the assets as before.¹³

Accounts payable and receivable are one of the public transactions that are commonly carried out when there is an urgent need that has not been met (achieved). Debts and receivables mean the obligation of the borrower to return what was borrowed (debts do not have to be in the form of money, they can be in the form of goods). Meanwhile, receivables mean people who provide loans. Debts and receivables in positive law are regulated in the third book of the Civil Code (debts). Debt can be defined when there is one person in debt (debtor) and another person (creditor). This debt is a legal relationship on the basis that someone can expect an achievement from someone else.¹⁴

Accounts payable and receivable are one of the important things in economic activities. In economic activities, all parties involved need to have collateral so that debts and receivables can be resolved properly. In Indonesia, there are several

¹⁰ Abdul Ghofur, Ali Murtadhodkk, *Menuju Lembaga Keuangan Yang Islami dan Dinamis*, (Semarang : Rafi Sarana Perkasa, 2012), p. 115

¹¹ A. Marzuki Kamaluddin, *Fiqih Sunnah jilid XII*, (Bandung : PT. Al-Ma'arif, 1998), p. 129.

¹² Ismail Nawawi, *Fiqh Muamalah* (Jakarta: Dwiputra Pustaka Jaya, 2010), p. 300.

¹³ Sayyid Sabiq, *Fiqih Sunnah*, Cet I (Jakarta: Pena Pundi Aksara, 2006), p. 181.

¹⁴ Sri Soedewi Masjchoen Sofwan, *Hukum Perhutangan: Bagian A* (Yogyakarta: Liberty, 1980), p. 1.

collaterals that can be used for accounts payable. First, collateral in the form of assets. Assets are one of the types of collateral most often used in accounts payable. Assets can be property, shares, bonds, etc. By using assets as collateral, the debtor can guarantee that the debt and receivables will be resolved properly.

Second, collateral in the form of a fiduciary. Fiduciary is a guarantee in the form of rights to an asset. The party who owes the debt can give rights to an asset as collateral for debts and receivables. If the debt and receivables are not resolved, the party in debt is obliged to hand over the assets to the creditor. Third, guarantees in the form of contracts. A contract is a guarantee given by a debtor to a creditor. Contracts can be in the form of agreements to pay off debts and receivables in a certain amount. By using a contract as collateral, the party in debt can guarantee that the debt and receivables will be resolved in accordance with the agreed agreement.

Fourth, guarantees in the form of guarantees. Guarantee is a guarantee provided by a third party. The third party who acts as a guarantor will be responsible for payment of the debt if the party in debt cannot fulfill it. Fifth, guarantees in the form of government guarantees. This guarantee is provided by the government to protect the rights of debtors from high credit risks.

By using government guarantees as collateral, the debtor can guarantee that the debt and receivables will be resolved properly.

The implementation of lending and borrowing or financing requires collateral (guarantee) as an attitude of trust between the creditor (lender) towards the debtor (loan recipient) so that they are not harmed. In the Islamic concept, one of the terms for such a transaction is called rahn, namely holding material collateral belonging to the borrower (rāhin) as collateral for the loan he has received, and the goods received have economic value so that the party holding back (murtahin) obtains collateral to take all or part of the debt is from these goods.¹⁵

A guarantee is defined as something given to a lender (creditor) to create confidence that the loan recipient (debtor) will fulfill obligations that can be valued in money arising from an agreement. Guarantees are generally regulated in Article 1131 of the Civil Code which stipulates that "all property rights of the debtor, both movable and immovable, both existing and those that will exist in the future are borne by all his obligations." In relation to legal regulations, guarantees can be divided into 2 places, namely in Book II of the Civil Code and outside Book II of the Civil Code. There are several provisions of articles which are closely related to collateral law which are still valid in the Civil Code, namely articles which regulate pawning (Articles 1150-1161 of the Civil Code) and mortgages (Articles 1162-1232 of the Civil Code). Basically, guarantees have several functions, namely:

¹⁵ Zainudin Ali, *Hukum Gadai Syariah* (Jakarta: Sinar Grafika, 2008), p. 3

- 1) Provide legal certainty for creditors (parties who owe money) and debtors (parties who owe money). For the creditor, namely the creditor, this is legal certainty to obtain the return of the credit principal and interest, and for the debtor, namely the debtor, there is legal certainty to repay the credit principal and interest that has been determined.
- 2) To make it easier for the debtor to obtain credit and for the debtor not to worry about developing their business.
- 3) Provide security for a mutually agreed debt and receivable agreement.

Pawning in the Civil Code Article 1150 is a right obtained by a person who owes a debt over a movable item, which is handed over to him by a debtor or by another person on his behalf, and which gives the debtor the power to take payment for the item first. than other creditors, with the exception of the costs of auctioning the item and the costs incurred in rescuing it after the item has been pawned, which costs must take priority.¹⁶

The legal basis for pawning is regulated in book II of the Civil Code, namely in the twentieth chapter from articles 1150 to article 1160. These articles explain the meaning, object, procedures for pawning, and matters relating to security rights for pawning.¹⁷ Islam has regulated whether transactions using pawn contracts are permissible, these regulations are found in the Koran, Sunnah and ijtihad.

Pawning in the Islamic tradition is not new, because the practice of pawning was implemented during the time of the Prophet Muhammad. In ancient times the Prophet made a mortgage with the Jews.¹⁸ In muamalah fiqh literature, the term pawn is equivalent to rahn.¹⁹ In the book *Al Figh Al Islāmī wa Adillatuhu* written by Wahbah Az Zuḥailī pawning is understood as an understanding of the rights to a valuable item so that it is possible to take back all or part of the property. In a simpler sense, as expressed by Sasli Rais rahn, it is a debt contract with property as collateral.²⁰

According to Arabic, pawning is rahn, which means permanent and sustainable, and is also called al-hasbu, meaning detention. As it is said, "Ni'matun Rahinah" means a gift that remains and lasts.²¹ Linguistically, the word ar-rahn means "making a material item as a servant of debt" and there are also those who explain that `rahn means being trapped or entangled.²²

¹⁶ R.Subekti Dan R.Tjirosudibio, *Kitab Undang-Undang Hukum Perdata Cet 40* (Jakarta:Pradnya Paramita, 2009), p. 297

¹⁷ Rachmadi Usman, *Hukum Kebendaan, Cet. II* (Jakarta: Sinar Grafika, 2013), p. 105.

¹⁸ Muhammad bin Idris Asy-Syāfi'ī, al-Umm, Juz 4 (Qahiroh: dar al-Wafa',2001) p. 289

¹⁹ Abdul Ghofur Ansori, *Gadai Syariah Di Indonesia: konsep, Implementasi dan Institusionalisasi* (Yogyakarta: Gajah Mada University Press, 2006), p. 88.

²⁰ Sasli Rais, *Pegadaian Syariah: Konsep dan Sistem Oprasional (Suatu Kajian Kontemporer)* (Jakarta: Penerbil Universitas Indonesia, 2008), p. 3.

²¹ Sayid Sabbiq, *Fiqih Sunnah, Juz 12*, terj. Kamaluddin A,dkk, (Bandung: Alma"rif, 1997), p.139.

²² Hendi Suhendi, *Fiqih Muamalah*,(Jakarta: Raja Grafindo Persada, 2002), p. 105.

An almost similar meaning regarding rahn was put forward by Ibn Qudamah. Quoting the opinion of Hanabilah scholars, Ibn Qudamah understands rahn as assets that are used as assets that are used as payment assets if the party who owes the debt cannot pay the debt to the lender as a substitute for the party borrowing money or goods.²³

Modifications to pawn contracts are currently applied to pawnshop institutions, namely by having multiple contracts or two contracts in one transaction, namely a pawn contract with rent or a pawn contract with financing. For what happens in society, they still use pawning based on custom ('urf). The implementation of pawning based on custom that occurs in the community is like someone who needs money going to the house of a neighbor or other community member who has money by offering the collateral they have and only stating it with a pawn agreement.

As has been explained, in Islamic fiqh, pawned goods are seen as a trust in the hands of the murtahin, the same as other trusts, he does not have to pay if the goods are damaged, unless it is because of his actions. The pawnee is only responsible for looking after, maintaining and making every effort to ensure that the item is not damaged. Warranty items that are damaged beyond reasonable means do not have to be replaced. It has been stated above that collateral is a trust that cannot be interfered with by murtahin. Meanwhile, maintenance costs may be taken from the benefits of the goods in the amount required.

According to civil law in Indonesia, collateral can also be used in receivables or payables transactions. In this case, collateral functions as collateral that will be used by the lender to guarantee that the borrower will pay the loan that has been given to him. If the borrower fails to repay the loan according to the specified schedule, the lender can use collateral to redeem the unpaid loan.

Collateral in debts and receivables according to civil law is one of the mechanisms used to protect the rights of the parties involved in a credit agreement or debts and receivables. A guarantee, also known as a "guarantee", is a commitment given by a lender to a borrower to guarantee that the borrower will fulfill its obligations to repay its debt. Collateral in debts and receivables under civil law requires the lender to guarantee that the funds deposited by the borrower will be sufficient to repay the debt.

Collateral in debts and receivables according to civil law can be in the form of assets owned by the borrower or a commitment to pay off the debt with a certain amount of money. Assets owned by borrowers can include land, property, shares and bonds. A commitment to pay off a debt with a certain amount of money can take the form of a commitment from another person to pay the debt if the borrower fails to pay it.

²³ Yadijanwardi, *fiqh lembaga keuangan syariah*, (Bandung: Remaja Rosdakarya, 2015), p.102.

Pawning in the Civil Code places more emphasis on discussing pawning in general, meaning that the Civil Code is a regulation or law left over from the former Netherlands and does not look at race and religion in its discussion. Along with the times, the Compilation of Sharia Economic Law appeared. The KHES regulates articles regarding rahn and the rahn regulated in it have undergone developments or there are additional rules that have not been discussed in the Civil Code.

The Civil Code formulates a pledge as follows: A pledge is a right obtained by a debtor over a movable item, which is handed over to him by a debtor or by another person on his behalf and which gives the debtor the power to take payment for the item before anyone else. -other debtors.²⁴

Lien rights according to the Civil Code are regulated in Book II Chapter XX Articles 1150 - 1161. The party who pledges is called the "pledge giver" and the person who receives the pledge is called the "recipient or pawn holder". Sometimes three parties are involved in a pawn, namely the debtor, the party who owes the debt, the pledgor, namely the party handing over the pawned object, and the pawn holder, namely the creditor who controls the pawned object as collateral for the receivable.²⁵

According to sharia provisions, if the agreed period for debt repayment has passed, the debtor is obliged to pay the debt. However, if the debtor does not have the will to repay the loan, he should give permission to the pawn holder to sell the mortgaged item. And if this permission is not given by the pledgor, the pawnee can ask the judge for help to force the pledgor to pay off the debt or give permission to the pawnee to sell the pawned goods. The rahn contract ends with the following things:

- 1) The goods are handed back to the owner;
- 2) Rahin paid his debt;
- 3) Sold by judge's order on Rahin's orders;
- 4) Debt relief in any way, even if there is no agreement from Rahin's party.²⁶

Based on the handing over of objects or goods that are pledged, there are similarities between the Civil Code and the Compilation of Sharia Economic Law, including similarities, namely: handing over of the pawned object at the time of execution of the pawn contract, where the pledged object must be there at the time of handover between the pawn recipient. with the pledgor. In addition, if the pawnee is negligent in its obligations to safeguard the pawned goods, the pawnee is obliged to compensate for the damaged or defective goods.

²⁴ *Ibid.*, p. 270

²⁵ Subekti dan R. Tjitrosudibio, Kitab Undang-Undang Hukum Perdata, Cet. 19, (Jakarta: Pradya Paramita, 1985), p. 297-298

²⁶ Zainuddin Ali, Hukum Gadai Syariah, (Jakarta: Sinar Grafika, 2008), p. 39

III. CONCLUSION

Pawning in the Civil Code is regulated in Book II Chapter 20 Article 1150 to Article 1161 of the Civil Code which is a right obtained by a person receivable over a movable item, which is handed over to him by a debtor or by another person on his behalf, and which gives authority to the person receivable. In order to take payment for the goods in advance of other debtors, the Civil Code also explains the articles regarding the nature of the pledge, the rights and obligations of the pawn holder and the end of the pledge.

In Islamic law, the definition of pawning is similar to the Civil Code, that pawning is a guarantee resulting from debts and receivables. Islam allows pawning based on arguments originating from the Koran, Sunnah and ijma'. The existence of a basis that permits something certainly has implications for the beneficial elements contained in it. One of them is that this pawn is allowed because it has the aim of helping someone who is experiencing difficulties in their daily activities. Pawning (ar-Rahn) itself has certain pillars and conditions that must be fulfilled so that the pawn can be carried out based on the goodness and benefit of both parties carrying out the transaction. If the pillars and conditions of the pawn are not fulfilled or violate the terms and conditions in Islam and elements of benefit, then the law is declared null and void.

REFERENCES

- Ali, Zainudin, 2008, *Hukum Gadai Syariah*, Jakarta: Sinar Grafika
- Basyir, Ahmad Azhar, 2000, *Asas-asas Hukum Muamalah*, Yogyakarta: UII Press.
- Ghofur, Abdul, Ali Murtadhodkk, 2012, *Menuju Lembaga Keuangan Yang Islami dan Dinamis*, Semarang : Rafi Sarana Perkasa Hukum Islam" Al-Syir'ah: 06.
- Kamaluddin, A. Marzuki Kamaluddin, *Fiqh Sunnah jilid XII*, 1998, Bandung : PT. Al-Ma"arif
- Kemenag RI, Ar-Rahman *Al-Qur'an dan Terjemahannya*, 2014, Bandung: CV Mikraj Khazanah Ilmu
- Mait, Tokichi K. "*Tinjauan Yuridis Terhadap Eksekusi Gadai Dan Perlindungan Hukum Menurut Hukum Positif Di Indonesia.*" *Lex Et Societatis* 7, no. 9 (n.d.)
- Muin, Abd, and Ahmad Khotibul Umam. "Eksistensi Kompilasi Hukum Islam Dalam Sistem Hukum Positif." *Risâlah, Jurnal Pendidikan Dan Studi Islam* 3, no. 1 (2016)
- Nawawi, Ismail, 2010, *Fiqh Muamalah*, Jakarta: Dwiputra Pustaka Jaya
- Rais, Sasli, 2008, *Pegadaian Syariah: Konsep dan Sistem Oprasional (Suatu Kajian Kontemporer)*, Jakarta: Penerbil Universitas Indonesia

- Rozalinda, 2014, *Ekonomi Islam Jakarta*: PT Raja Grafindo, 2014
- Sabiq, Sayyid, 2006, *Fiqih Sunnah, Cet I*, Jakarta: Pena Pundi Aksara
- Setyawati, Fitri. 2017. "Riba Dalam Pandangan Al-Quran Dan Hadis" *AlIntaj*: 02.
- Shiddieqy, Hasbi Ash, 1990, *Hukum-Hukum Fiqih Islam*, Yogyakarta: PT Rosda Karya
- Sofwan, Sri Soedewi Masjchoen, 1980, *Hukum Perhutangan: Bagian A*, Yogyakarta: Liberty
- Suhendi, Hendi, 2002, *Fiqih Muamalah*, (Jakarta: Raja Grafindo Persada
- Usman, Rachmadi, 2013, *Hukum Kebendaan, Cet. II* Jakarta: Sinar Grafika
- Wasik, Abdul & Imam Fawaid. 2016. "Reformulasi Pemanfaatan Barang Gadai Perspektif Hukum Islam" *Lisan Al-Hal*: 320.