

The Necessity for *Rahn* Guarantee Registration Agency

Syaifuddin¹, Yasir Nasution², Tan Kamello³

¹Ph.D Student in State Islamic University of North Sumatera (UINSU), Medan, Indonesia

²Lecturer in State Islamic University of North Sumatera (UINSU), Medan, Indonesia

³University of Sumatera Utara (USU), Medan, Indonesia

syaifuddin1997@gmail.com

Abstract : *Rahn's* introduction as a material guarantee law, the main arrangements contained in the *Quran*. By the Prophet gave an explanation of how the practice of *rahn* contained in the *Quran*. The practice of *rahn* by the *ulema* is not interpreted as a *sunnah* that is *ta'abbudiy*, but it classifies to the *sunnah* which is *ta'aquliy*, therefore the practice of *rahn* can be done unlike the practices that existed during the Apostle. Thus, if the *ulema* interpret the order of leveraging *marhūn* does not have to be mastered physically, then there needs a legal instrument that guarantees the *marhūn* can be used as repayment of *rāhin's* debt. For this reason, the instrument is *marhūn*, it is registered in the space provided. Thus, the *rahn* guarantee registration agency is needed.

Keywords : *Rahn* guarantee; agency.

I. Introduction

One of the problems which has not been seriously studied when discussing the Islamic economic system in Indonesia is *rahn* as material guarantee for the debt mentioned in verse 283 of al-Baqarah. This can be proven by *rahn* which is only paired with a pawn in the fatwa of the National Sharia Council and Muhammad Syafi'i Antonio with mortgages as well as various literatures that discuss Islamic economics. So, as if there was an impression that the *rahn* was seen partially, *adhoc* and not intended for Indonesians, but only as a translation of various Hadiths and *asar* which had been grounded in Arabic at the time of the Apostles, Khulafaurrasyidin and Umawiyah.

The development of Islamic economics in Indonesia since the end of the twentieth century AD has not been offset with adequate legal guarantee tools, although it cannot be denied that guarantees are one of the legal instruments in realizing *hifz al-māl* which will have an impact on non-performing financing (NPF) in Islamic Banking in the year 2014 has shown an increase, because the *qord* or *dain* without being matched by adequate guarantee, *dā'in* may lose the opportunity to get debt repayments from *Madīn*

Debt guarantees in Islamic law consist of material guarantees and personal guarantees. Personal guarantees is called *kafālah*, while material guarantees is called *rahn*. *Rahn* as a material guarantee mentioned in verse 283 of Surah al-Baqarah, the object covers all material guarantees objects in positive law in Indonesia, there is movable objects (*manqul*) and immovable objects (*'iqār*). Even including animals and humans whose ranks are slaves also do not come out of the guarantees object *rahn*. These last two objects become one of the points of refinement between guarantees in positive law in Indonesia and material guarantees in the Islamic economic system.

From the point of binding the guarantees, *rahn* requires that the recipient of *rahn* (*murtahin*) must physically control the object used as guarantees for debt (*marhun*), whether there is a movable object (*manqul*) or immovable object (*'iqār*), whereas in the material guarantees in positive law in Indonesia different between liens, fiduciary guarantees, warehouse receipts and mortgage and mortgages. In addition to the mortgage guarantee, available institutions where registration. How is the guarantee of *rahn* whose object is a movable and immovable object, is it necessary to have the institution to register the guarantee

of *rahn* as mentioned in verse 283 of Surah al-Baqarah and the various Hadiths and *Asar* which form the basis of the material guarantee formulation by *fiqh* scholars since ± 12 century which then.

The objective condition of the implementation of material guarantee in the Islamic economic system which has not been accommodated in the law of positive material guarantee in Indonesia on the one hand and the absence of regulation on *rahn* guarantee as a whole, it is necessary to study whether an institution that functions as a place to register *rahn* guarantees, see in verse 283 surah al-Baqarah which is the basis of *rahn* guarantee law does not talk at all about the *rahn* guarantee registration agency.

II. Review of Literature

The law of guarantees for the debt of *madin* to *dāin* contained in the Qur'an and hadith is *rahn*. How the *rahn* guarantee law practiced when the Apostle was still alive or after the Apostle's death, it is seen a description of its practice in various *asar* which by the ulema/scholars had systematized it into applied law in the form of *fiqh*. In verse 283 surah al-Baqarah gives a description that objects that are used as guarantees for debt by *madin* to *dāin* must be done *qabad* by *murtahin*. Mubarak ibn Muhammad said, although in verse 283 surah al-Baqarah it is said that guarantees for debts in the form of material guarantees called *rahn* must have *qabad*, but he further stated that the *qabad*'s procedures were not found. Therefore the *qabad* procedure contained in the Quran is returned to how '*urf* (customs) that occur in a country.

Until now, as long as the authors examine the verses of the Quran and Hadith that talk about buying and selling, there has not been found a *nas* in the Quran and Hadith that shows the sale and purchase agreement in cash made in the form of a certificate, as well as buying and selling of movable or immovable objects. Likewise ownership of land as immovable property which is also known in the book of *fiqh* with '*iqār* has not been found the proof of ownership in the form of a certificate, and there is the land was acquired by way of buying and selling or by opening land, therefore physical control is one- the only way is that *marhun*, which is used as a debt guarantee by *Madin*, cannot be transferred by *Rahin* to someone else.

Indonesia as a country that adopts a written legal system requires the existence of a certificate as proof in every engagement, there is a buy and sell agreement or a debt agreement. Likewise evidence that shows the legal relationship between a person and an object is also required in the form of a certificate, such as a certificate of land rights which is evidence that determines a person's legal relationship with the land. Thus the physical authority of an immovable object cannot be used as evidence that the master as the legal owner of the object, because it must be seen in advance the status of a person's relationship with the object being controlled.

The word "فريان مقبوضة" in verse 283 of Surah al-Baqarah is in line with the Arabic understanding of the word "مقبوضة" which is the *isim maf'ul of fi'il madi* "قبض" which means levering. Then practiced at that time by physically transferring goods from the hands of *rāhin* to the hands of *murtahin*, so that the *qabad* contained in verse 283 of Surah al-Baqarah on the guarantee of *rahn* is practiced by the Apostle in a *Fī'li* Hadith by surrendering the object which is the object of *rahn*'s guarantee to the *murtahin* and the practice of the companions who are

allowed to silence *rahn* by the Prophet called the *taqriri* Hadith is a description of the practice of *rahn* guarantees that occurs when the verse is revealed. To see whether in the *rahn* guarantees agency required guarantees registration agency, the author will see it from two angles of understanding in *istinbāt al-ahkām*, that is from an understanding deductive and understanding based on *illat* law.

III. Discussion

3.1 Deductive Understanding

The study in this context is whether to place physical *marhūn* in the authority of *murtahin* in *rahn* guarantees as carried out by the Apostle as the *qabad marhūn ma'sur* procedure so that it must be followed or as a description of an effective way to guarantee debt repayment at that time so. The author seems to be more inclined to choose this second opinion, so that *qabad* is not interpreted by the absolute submission of physical objects that are used as *rahn* guarantees objects, but can be divided between movable objects with immovable objects, because when associated with *al-Qurtubi's* opinion which states that the objectives are given "the surety of this *rahn* guarantee is to guarantee the maintenance of the wealth (*hifz al-māl*) *madīn* which is in the hands of *dā'in*. Thus, if the repayment of debt to *mudin* is achieved without physically placing the object made by *rahin*, then there is no urgency to give the object burdened with the *rahn* guarantee is physically controlled by *murtahin*.

Apart from that, the *qabad* terminology in the case of *rahn* guarantees contained in surah al-Baqarah verse 283, is not a terminology that only exists in *rahn* guarantees, but can also be found in various contracts involving the transfer of ownership, including the buy and sell agreement. Shafi'iyah, Hanibilah and Abu Yusuf stated that the *qabad* contained in the *rahn* guarantees is the same as the *qabad* procedure contained in the buy and sell problem which aims to ensure the buyer's ownership of the object bought. With regard to the concept of *qabad marhūn* contained in surah al-Baqarah verse 283 the question arises as to whether the concept of *qabad* is *ta'abbudiy* whose nature must be followed and is part of worship or *ta'akkuliy* whose nature is to guarantee the realization of *hifz al-māl* as one of the fulfillment of the problem *daruriyah al-khamsah* for humans.

Regarding the issue of *qabad marhūn's* procedures, Wahbah Zuhaili also argues that in performing *qabad marhūn* it does not have to be as stated in verse 283 of surah al-Baqarah, but it can be done in any way if by such procedures it can guarantee the protection of the *murtahin* right to *marhūn* and *marhūn* can be used to pay off *madin* debt to *dā'in* if *madin* debt has matured and *madin* has not paid its debt, because according to Wahbah that the *qabad* procedures contained in verse 283 are not classified as *ta'abbudi*, but are *ta'aqquli*. Thus Wahbah continued, the *qabad marhūn* could have been carried out in accordance with the regulations contained in the country where the *rahn* was practiced, such as by giving notes in the land book that the land had been used as a debt guarantees.

If in practice of *qabad marhūn* does not have to physically surrender everything that is the object of *rahn* guarantees, but can follow the *qabad marhūn* procedure contained in the regulations applicable to a country where the *rahn* guarantees is enforced, then the legal instruments regarding *rahn* guarantees follow the legal instruments that are applies to guarantee laws that already exist in a country. Thus there are differences in the procedures of *qabad marhūn* between movable objects and immovable objects and between certain moving objects and moving objects in general.

Rahn is a guarantee in Islamic economics based on *al-matlu*'s revelations, in contrast to the guarantee law that exists in capitalist and socialist economies, including the guarantee legal system in Indonesia which is only based on human thought. Therefore *rahn* as a guarantee law as referred to in *fiqh* which follows the procedures outlined in the Qur'an and the Hadith of the Prophet and the behavior of the Companions, is the same when the Apostle was still alive or after the Apostle died.

Besides sourced to the Qur'an and Hadith also the consensus of the Ulema and the analogy or *qiyas* by not ignoring the benefit as one of the most important aspects in formulating a set of laws in Islam. Even Abd Wahhab Khallaf said that in determining the law, he must really pay attention to *maqāṣid al-syari`ah*, as well as *taklifiy* law, as well as *wad`iy* law.

One of the *maqāṣid al-shari`ah* that is classified as *darūry* is *hifz al-māl* (preserving property), which is to protect one's property from falling into others in ways that are not in accordance with the rules of Islamic Law. In positive law in Indonesia, objects that are classified as immovable objects that cannot be controlled physically as well as control over movable objects, then the relationship of ownership of a person with an object is determined by an authentic certificate. In other words, who can prove with a letter that he has a legal relationship with the object, even though the object is controlled by someone else, then the owner is the person who can show the authentic deed, not the person who controls the object. On this basis, the person who holds the authentic deed of the property can transfer it to anyone he wants, even if the object is in the control of another person.

Based on the description above, then interpreting (فرهان مقبوضة) by physically controlling the guaranteed object will not prevent the owner whose name is listed in the authentic deed to transfer the immovable object which is in the possession of *murtahin*. If this is the case, then *hifz al-māl* as one of the sharia *maqasids* that will not be achieved.

Seeing the Qur'an and Hadith as a source of law in Islam, so as long as about *rahn*, there is no *nas* that requires the registration of *rahn* guarantees and there is also no *nas* that prohibits the registration of *rahn* guarantees. However, registration is not something that is prohibited in Islam as long as there is a benefit, because *maslahat* is *maqāṣid al-shari`ah*. Even Abd Wahhab Khallaf said that in determining the law, he must really pay attention to *maqāṣid al-syari`ah*, as well as *taklifiy* law, as well as *wad`iy* law.

Regarding with *rahn* guarantees which must be physically controlled by *murtahin* as referred to in verse 283, by Mujahid and Zahiri it is said to be limited to debt guarantees made at the time of pilgrimage, but Imam Mujtahid who is of the four opinion, mentions the pilgrimage clause as a condition of physical authority of *rahn* guarantees objects, is not a requirement, but as an objective condition that occurs at that time, that is in a state of pilgrimage it is difficult to get people who are good at writing. Regardless of differences opinion about pilgrims, whether as a condition to secure the object of physical *rahn* guarantees or not, but one thing that is not possible to do in the pilgrimage condition at that time is to provide *rahn* guarantees with immovable objects (*'iqār*) to *murtahin* and by *murtahin* physically mastered it.

When referring to the statement of the four Mujtahid Ulemas which stated that the objective conditions of pilgrims at that time was it was difficult to get a person who was good at writing which was also connected with the impossibility of *madin* to provide *rahn* guarantee that physical objects were immovable objects on one side and the impossibility of physically leveraging on immovable objects (*'iqār*) on the other hand, then based on *dilalah isyarah* verses

282 and 283 of al-Baqarah, it can be concluded that the physical authority of *rahn* guarantees objects whose immovable objects are facultative (*mubah*), not imperative.

Regarding the practice of *qabad marhūn* contained in verse 283 during the time of the Apostles, Companions, *tābi'n* and *tābi'n at-tābi'in*, Wahbah Zuhaili argues that the procedures for *qabad marhūn* practiced by the Apostles are not *ta'abbudi*, but are *ta'aqquli*, because the most important thing according to Wahbah is the attainment of *rahn's* prescribed goals, if without physical authority of *marhūn* by *murtahin* the objective of *rahn's* prescribed can be achieved, then *marhūn's* physical authority is not a necessity. In fact, according to Wahbah, *qabad marhūn* could have been carried out with the *qabad marhūn* procedure in accordance with the applicable laws and regulations in a country, such as by recording in a land book that land in the name of *madin al-rāhin* had been used as a debt guarantee with *rahn* guarantees .

Starting from the *qabad marhūn* procedures that apply to a country adapted to the *qabad marhūn* procedures contained in the legislation in force for a country on one side and *rahn* guarantees are the only guarantee agency contained in the Quran whose object covers all the object of guarantees contained in the guarantees law stipulated in the applicable laws and regulations of Indonesia on the other hand, with the enactment of *rahn* as guarantees for debt guarantees in Indonesia it is deemed necessary to have a *rahn* legal guarantee registration agency specifically, because the legal character of the material guarantees referred to with *rahn* different from the character of the guarantee law contained in various legislative regulations in force in Indonesia.

3.2 Understanding Based on *Illat* Law

Abdul Wahab Khallaf said *illat* is a trait found in origin that serves as the basis for setting laws on *furu* ' (العلة هي وصف في الاصل بني عليه حكمه ويعرف به وجود هذا الحكم في الفرع). Regarding to this, *illat* can be positioned as one of the factors that influence changes in the law, because in the *qaidah usuliyah* it is stated that the change in law depends on the *illat* law الحكم يدور مع العلة وجودا وعمدا, in other words, that the law will not change as long as the *illat* law is used in establishing its law does not change.

The *illat* law stipulates physical authority of *rahn* guarantees object as a condition to formally and *rahn* guarantee material that contains in verse 283 of Surah al-Baqarah (وإن كنتم (على سفر ولم تجدوا كاتباً) is a pilgrimage and there is no official made the certificate. These two *illat* are used as cumulative conditions, not alternatives. On this basis, research is needed whether the same legal status when the stipulation of legal terms is formally binding and *rahn* guarantee material if the object of *rahn* guarantee is physically in the possession of *murtahin*.

At the time of the descent of the Quran surah al-Baqarah verse 283 mentioned above is a period of time that not many people are good at reading, so according to Wahbah Zuhaili, the objective condition at that time was that it was difficult to get someone who was good at writing. It is different now in Indonesia, looking for people who are good at reading is not a difficult thing, so even in a state of pilgrimage there is no difficulty in finding people who are good at reading.

Thus, if *illat* law that causes physical authority of *murtahin* to be made as *rahn* guarantee object is the difficulty in finding someone who is good at writing and reading to make an agreement between *dāin* and *mudin* in writing, then in Indonesia at this time it is not found anymore, even in Indonesia there is already an agency that has the authority to make a certificate of credit agreement between *dāin* and *mudin*. Objective conditions that exist in Indonesia at this time when related to *qawaidul usuliyah* which states that menyebutkan

العلة stipulates a law stating the conditions for binding *rahn* guarantee with immovable objects must be controlled physically *marhun*, because it cannot be enforced because illat law which is used as the basis for stipulating the law as mentioned above has changed, then the law formulated from verse 283 of the surah al-Baqarah has also changed, therefore based on understanding the conditions for the verse contained in verse 283 surah al-Baqarah above it can be concluded that the physical authority of immovable objects which are used as *rahn* guarantees objects does not become a requirement for binding on guarantees .

If physical authority of *marhūn* which is categorized as immovable object is not a requirement to bind *rahn* guarantees, whereas binding to *rahn* guarantees is a the requirement that guarantees for immovable property creates material properties which subsequently also provides the position of Islamic Banking as *dā'in* which has precedence from other *dā'in*, then the guarantee law in force in Indonesia is required for registration of guarantees at the authorized agency. Thus, because physical control of *marhūn* does not constitute a requirement to bind *rahn* guarantees, whereas binding formal and material guarantees in Indonesia is the registration of *marhūn* at the authorized registration agency, so that registration of the deposit at the authorized agency will give birth to material rights over the *rahn* guarantee. Apart from that, with the registration of *rahn* guarantee to the authorized agency will give privileged position to *dā'in murtahin* compared to other *dā'in*, so that the guaranteed return of *dā'in* receivables, because by registering *rahn* guarantee will give birth to material rights and *marhūn* can be sold for repayment of *madīn's* debt to *dā'in* if *madīn* does not pay his debt to *dā'in*. Thus, the return of *dā'in's* assets to *Madīn* is guaranteed in the form of accounts receivable which is one of the *maqāsid asy-shariah* classified as *uryarury* that is *hifz al-māl*. Because of the guarantee of the return of *dā'in's* assets in *Madīn* in the form of accounts receivable by registering a *rahn* guarantee at the authorized agency, the agency of registering the *rahn* guarantee is required.

III. Conclusion

Rahn is a material guarantee law which the objects include movable and immovable objects. This *rahn* guarantee is found in its basic rules in the Qur'an and as an indication of its implementation to see how *rahn* was practiced by the Prophet. In the Prophet's practice, leveraging is done by physically controlling *marhūn*. Regarding this matter, Abdul Wahab Khallaf argued that the Prophet's practice was not Sunnah which is *ta'abbudiy*, but belonged to the Sunnah which is *ta'aqquliy*, therefore leveraging on immovable objects did not *marhūn* physically controlled by *murtahin*, but it can be done only by handing over the letter which forms the basis of the *marhūn's* rights which is then registered with the authorized agency for that. Thus, the *rahn* guarantee registration agency is needed.

References

- A. P. Parlidungan, *Komentar Atas Undang-Undang Pokok Agraria*, Bandung: Mandar Maju, Cet. VIII, 1998.
- Anas, Malik ibn, *Mudāwanah al-Kubrā*, Juz XV, Beirut: Dār aṣ-Ṣādir, ttp., tt.

-
- Andalusi, Ali ibn Ahmad ibn Hazm, al, *al-Ihkah fī Usūl al-Ahkām*, Juz II, Kairo: Dār al-Hadīs, Print. I, 1404 H.
- Antonio, Muhammad Syafi'i, *Bank Syari'ah Dari Teori ke Praktek*, Jakarta: Gema Insani, Print. VII, 2003.
- Da'a'ilij, Mubarak ibn Muhammad ibn Hammad, ad, *ar-Rahn fī al-Fiqh al-Islāmy*, Riyad: tp., 2000.
- E. Utrecht and Moh. Saleh Djindang, *Pengantar Hukum Indonesia*, Jakarta: Pustaka Sinar Harapan, Print. XI, 1989.
- Government Regulation Number 36 Year 2007 and technical instructions Minister of Trade Regulation Number 26 / MDAG / PER / 6/2007.
- Government Regulation Number 103 of 2000 concerning Public Corporation (Perum) Pegadaian.
- Government Regulation Number 24 of 1997 concerning Land Registration
- Government Regulation Number 24 of 1997 concerning Land Registration.
- H.M. Ichwan Syam (et-al) (Editor), *Humpunan Fatwa Dewan Syari'ah Nasional*, Jakarta: Dewan Syari'ah Nasional Majelis Ulama Indonesia, Print. III, Revised Edition, 2006.
- Hanafī, Ibrahim ibn Abi al-Yamn Muhammad, al, *Lisān al-Hukām*, Kairo: al-Babi al-Halabi, Print. II, 1973.
- Hawali, Hiza', al, *Muhāwalāt at-Tajdīd fī Uṣūl al-Fiqh*, (ttp:tp, tt), P. 613.
- Ibn Qudāmah, Abdillāh ibn Ahmad, *al-Mugnī fī Fiqh al-Imām Ahmad ibn Hanbal asy-Syaibāni*, (Beirut: Dār al-Fikr, Print. I, 1405 H.), Juz IV, p. 328.
- Kasānī, 'Alāuddin, al, *Badāi' as-Sanā'ī* (Beirut: Dār al-Kitāb al-'Arabī, Print. II, 1982), Juz VI, p. 135.
- Khallaf, Abd Wahhab, *Ilm Uṣul al-Fiqh*, Kairo: Maktabah Da'wah Islamiyah, Print. VII, 1956.
- Khallaf, Abdul Wahab, *Ilm Usul al-Fiqh* (Kairo: Maktabah ad-Dakwah al-Islamiyah, Print. VII, 1956.
- Khatīb, Abdul Hamīd Muhammad Ali Quds ibn Abd al-Qādir, al, *Laṭā'if al-Isyāt*, Bandung: Maarif, tt.
- Law Number 4 of 1996 concerning Mortgage Rights.
- Law Number 9 of 2006 concerning Warehouse Receipt Systems.
- Law Number 9 of 2011 concerning Amendment to Law Number 9 of 2006 concerning Warehouse Receipt System
- Louis Ma'luf, *al-Munjid fī al-Lugat wa al-'Ilam*, Beirut: Dar al-Masyrik, Print. XXXI, 1998.
- Muhammad ibn Abi Sahl asy-Syarkhasi, *al-Mabsūt*, Juz XII, Beirut: Dār al-Ma'rifah, 1406 H.
- Muhammad, Muhammad ibn Muhammad ibn Muhammad ibn Hasan ibn Ali ibn Sulaiman ibn Umar ibn, *Kitāb at-Taqrīr wa at-Takhbīr fī'Ilm Usūlal-Jāmi' Bain Istilāh al-Hanafiyah wa asy-Syafi'iyah*, Juz II, Beirut: Dār al-Fikr, Print. I, 1996.
- Rusyd, Muhammd ibn Ahmad ibn Muhammad ibn Ahmad ibn, *Bidayah al-Mujtahid wa Nihayah al-Muqtasad* (Beirut: Dar al-Qolam, 1988), Juz II, p. 271.
- Suyuti, Jalaluddin Abdurrahman ibn Abi Bakr, *al-Asybah wa al-Nazā'ir fī al-Furū'*, (Beiriut: Dār al-Fikr, tt.), p. 121.
- Syairazī, Abū Ishāq Ibrāhīm ibn Ali ibn Yusūf, asy, Syairazī, *al-Luma' fī Uṣūl al-Fiqh*, Beirut: Dār al-Kutub al-'Ilmiyah, tt.
- Syarbainī, Muhammad al-Khātīb, asy, *Mugnīal-Muhtāj ila Ma'rifah Ma'ānī al-Alfāz al-Minhāj*, (Beirut: Dār al-Fikr, tt.), Juz II p. 128.

Syaukânî, , Muhammad ibn Ahamd ibn Muhammad, asy, *al-Qaul al-Mūfīdu fī Adillatil Ijtihādi wa at-Taqlīd*, Kuwait: Dār al-Qolam, Print. I, 1396 H.

Tabarī, Muhammad ibn Jarīr ibn Yazīd ibn Khālid, at, *Jāmi' al-Byān 'an Ta`wīl Ay al-Qur`ān*, Juz III, Beirut: Dār al-Fikr, 1405 H.

Wahbah Zuhailiy, *al-Fiqh al-Islamiy wa Adillatuh*, (Dar al-Fikr: Dar al-Fikr, Print. X, 2007), Juz V, h. 4239.

Zahrah, Muhammad Abu, *Uṣul al-Fiqh*, ttp: Dār al-Fikr al-`Arabiy, 1958.

Zuhaili, Wahbah, al, *Uṣul al-Fiqh al-Islamiy*, Juz I,

Zuhaili, Wahbah, al-Fiqh il-Islāmiyah wa Adillatuh, Juz V, Damsik: Dar al-Fikr, Print. III, 1989.

Zuhailiy, Wahbah, *al-Fiqh al-Islamiy wa Adillatuh*, Juz V, Damaskus: Dar al-Fikr, Print. III, 1989.