

Application of Mortgage Law Sharia Gold in Indonesia

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Abstract

Pawning gold is a form of economic transaction activity that is commonly carried out by the people of Indonesia. Gold as a movable object is not only an object of the conventional pawn law applicable in Indonesia, but is also an object of sharia pawning law in Indonesian Islamic law. There are some basic differences between these two practices. This study examines the differences between these two practices. This study discusses the differences between the two pawn practices based on civil law and Islamic law in Indonesia with normative legal research methods based on applicable regulations.

Keywords

Application of the Law;
mortgage; Sharia Gold



I. Introduction

Mature this, in order to fulfill needs more and more life high, many from people who choose owe for complete the problem. Pawnshop is one example non-bank institutions that provide facility credit with guarantee in the form of object move called with pawn. Simplicity form from pawn as well as convenience the procedure make pawn many used by the community.

Guarantee used in pawn could in the form of whatever during including in category object move. Though so, pawn with guarantee gold have rule more alone pecific. Different with pawn in general, pawn gold, other than could carried out at pawnshops, can also be done at Islamic banks. Pawn gold, other than as means for earn money credit, is often considered as one form investment. Different system with pawn in general this often cause problem consequence fluctuation price gold and also calculations rate pawn. More Specific again, pawned gold no always must use the gold already more owned by the giver pawn, but also can conducted with gold earned from institution receiver pawn.

In relation with that, there is a number of perceived issues need for analyzed more continued. Issues law the including:

1. What is the difference between Islamic gold pawning and conventional gold pawning?
2. How authority pawn holders in selling pawned goods unilaterally without the knowledge of the debtor nor sales that don't by auction?

II. Review of Literature

The Legal Concept of Link in Indonesia

Based on the provisions of Article 1150 of the Civil Code , a pawn is "a right that is obtained by a debtor on a movable property, which is handed over to him by a debtor or someone else on his behalf, and which gives the debtor the power to take payment of the goods in advance over the debtor. other debtors; with the exception of the costs of auctioning the goods and the costs that have been incurred to save them after the goods have been pawned, which costs should take precedence."

The word "pawn" in the law is used in 2 (two) meanings, firstly to refer to the object (pledged object, see Article 1152 of the Indonesian Criminal Code), secondly, to its rights (a lien, as in Article 1150 of the Indonesian Criminal Code). The holder of the pawn, both creditors and third parties, is obliged to take care of the pawn items in his hands. He is responsible for the loss or deterioration of the pawned object, if it occurs because of his fault. The pawn holder is also entitled to calculate the costs required to maintain and maintain the pawned object which can later be requested from the debtor or the owner of the goods. Temporary holder pawn also has right as set based on Article 1155 of the Civil Code which includes: Execution Parate . The holder of the pawn under Article parate execution sells the pawned goods as if they were selling the goods themselves. Pawn holders with these rights have an easier and simplified means of taking repayments.

In addition, in article 1156 of the Criminal Code, the holder of the pawn (in the case of the debtor being in default) can also request that the judge determine the method of selling the pawned goods. This may be necessary in order to keep the pawned goods making as much money as possible, because the pawnbroker has an interest in getting the best selling price not cover the debt. In addition, the holder of the pawn may also ask Halim to allow the holder of the pawn to buy the pawned goods themselves at a price determined by the judge.

III. Results and Discussion

3.1 Comparison of Gold Paying In Concept of Conventional Law and Sharia Law in Indonesia

Gold is one _ commodity object valuable included _ in form goods move. Therefore , based on Article 1150 of the Civil Code , gold could Becomes object from pawn with follow provision rights and obligations holder pawn and beneficiary the pawn that has been set in Civil Code . Likewise in the Islamic sharia law in Indonesia, gold is also known as one _ object pawn.

In Under sharia law in Indonesia, Pawn Gold is a product that uses a qardh contract as referred to as collateral in the form of gold tied to a rahn contract , where the gold that is pledged as collateral is stored and maintained by a Sharia Bank or Sharia Business Unit (UUS) for a certain period of time by paying the cost of storing and maintaining gold as a rahn object tied to an ijarah contract. Pawning gold can be done in various places, but usually the most commonly found and done in Indonesia is through sharia pawnshops and sharia banks.

Basically _ pawn sharia gold above two contract that is rahn and ijarah. **Rahn** is hold one _ goods have borrower as guarantee on debt and **ijarah** is contract rent rent where occur transfer right To use or benefit from something goods or service in time certain with payment rent without accompanied with transfer right ownership . get along from contract transaction this consist from the debtor (rahin , the debtor (murtahun), sigah (ijab qabul). Assets granted (marhun) and loans (marhun) beh). Mechanism pawn gold then conducted with method following this :

- Through contract rahn , the customer (rahn) strikes goods (marhun) for pawned .
- pawnshop or Islamic banks (murtahin) will save and care goods that .

Furthermore, according to *Abdul Ghofur Anshori* , pawning gold was proclaimed as one of the services in Islamic banking based on an analysis of the paradigm prevailing in Indonesian society. Where until now there is still an impression in society, that if someone goes to a pawnshop to borrow some money by pawning goods, it is a disgrace and as if that

person's life has suffered. Another case if we go to a bank, there will look more prestigious. Therefore, this is an opportunity for Islamic banks to provide financing products in the form of gold pawns.

In the DSN Fatwa Number: 25/DSN-MUI/III/2002 it is explained in the general provisions that:

- The murtahin (the recipient of the goods) has the right to hold the Marhun (the goods) until all debts of the rahin (the one who delivered the goods) are paid off.
- Marhun and its benefits remain Rahin's possession. In principle, Marhun should not be used by Murtahin except with Rahin's permission, without reducing the value of Marhun and its use is just a substitute for the cost of maintenance and care.
- The maintenance and storage of Marhun is basically Rahin's obligation, but it can also be done by Murtahin while the cost and maintenance of the storage remains Rahin's obligation.
- The amount of maintenance and storage costs for marhun should not be determined based on the loan amount.
- Marhun's sale : (1) if it is due, Murtahin must warn Rahin to pay off his debt immediately; (2) If rahin is still unable to pay off her debt, then Marhun will be forced to sell or be executed through an auction according to sharia; (3) the proceeds from the sale of Marhun are used to pay off debts, unpaid maintenance and storage costs and selling costs; (4) excess sales proceeds belong to Rahin and the shortage becomes Rahin's obligation.

In the implementation, pawn sharia gold know existence form price estimate. Estimated price this is the estimated value/price of Islamic banks for the gold bullion that we will pawn. Even though we know there is a gold price from Antam that can be used as a reference, Islamic banks have their own prices to value our gold bullion. Beside it is also known existence score pawn maximum, that is the maximum value of the mortgage (loan) that can be given by Islamic banks to us. Usually it ranges from 80-93% of the estimated value, depending on the policy of each bank. There is also something form cost drop, which is must cost paid to Islamic banks as long as we pawn our gold bars. Usually calculated per gram per day with a certain minimum daily limit calculation. Islamic banks benefit from pawning gold through this deposit fee. In pawn Sharia gold is also known the existence of Pawning Lama, which is the period of time we pawn our gold bullion. Usually the maximum length of the pledge is 120 days, after 120 days it can be extended again or redeemed.

Between pawns sharia gold and pawn gold conventional there is a number of difference. The basic differences between Islamic gold pawning and conventional gold pawning are:

1. The conventional gold pawn is **interest-based** (determined based on the size of the loan) while the Islamic gold pawn is based **on maintenance and storage costs based on the value of the guarantee, not the loan. There are** gold pawns that are managed conventionally or according to sharia. pawn Conventional gold contains an element of interest (usury), while sharia gold pawn does not contain an element of interest (usury). That is, if the customer borrows money **using a conventional gold pawn**, then the creditor (pawnshop) will ask for a reward in the form of interest from the loan. On the other hand, if the customer borrows money using **a sharia gold pawn**, then the creditor (Islamic bank / sharia pawnshop) does not collect returns on the loan, either the yield is in the form of profit sharing or the yield is in the form of interest on the loan. The income of a sharia bank or sharia pawnshop comes solely from wages (*fees*) for safekeeping services.

2. In conventional gold pawning, the agreement is a credit and pawn contract. While in sharia gold pawning, the contract agreement is a sharia contract (*Rahn* and *Ijarah*). Pawn in Islamic law or sharia principles is called *Rahn* , which is a loan service with a pawn system based on sharia principles. The basic principle of Islamic gold pawning is the intention to help people who are in short-term financial difficulties, not for productive businesses. As a form of trust in Islamic banks, customers are asked to submit collateral in the form of gold deposited in Islamic banks. Because the gold deposited as collateral must be properly guarded, insured and ensured its safety, Islamic banks charge deposit fees to customers. From there, the second contract emerged, namely the *ijarah contract* (lease) so that the customer is charged a fee for renting a place for safekeeping and maintaining collateral. In this way, customers can still get cash loans easily, by mortgaging their gold, without having to engage in transactions that contain usury. Islamic banks also still get a halal profit from rental services for the care and maintenance of gold which is used as debt guarantee. In contrast to sharia gold pawning , the conventional gold pawning system which is based on credit , contains elements of interest or usury. The agreement used in the conventional gold pawn system is a loan agreement between the pawnshop (as the creditor) and the customer (as the debtor) with gold collateral, accompanied by the condition that the debtor must pay interest on the loan. The profits obtained by conventional pawnshops mainly come from loan interest so that it is very contrary to the principles of Islamic gold pawning.
3. There are 6 (six conditions) in the gold pawn, namely:
 - a. The goal is to finance short-term funding needs or additional short-term working capital for Micro and Small Business (UMK) customers.
 - b. The contracts used include 3 types, (a) *qardh contracts* (for binding loan funds to customers), (b) *rahn contracts* (for binding gold as collateral), (c) *ijarah contracts* (for binding the use of gold storage and maintenance services as collateral).).
 - c. Fees charged by Sharia Banks or Sharia Business Units to customers include administrative fees, insurance fees, and storage and maintenance fees.
 - d. Sources of funds can come from the share of capital, profits set aside, and / or third party funds.
 - e. The purpose of using funds by customers must be clearly stated on the product application form.
 - f. Gold submitted as Qardh collateral with gold backing must already be owned by the customer at the time the financing application is submitted.

With these 6 (six) conditions, *sharia gold pawn products* that do not meet these requirements cannot be classified as sharia gold pawning. This is different from the conventional gold pawning provisions which do not have separate conditions but are only subject to the provisions of the Civil Code .
4. The sharia gold pawning at the Sharia Pawnshop is regulated based on the DSN-MUI Fatwa Number: 26/DSN-MUI/III/2002, regarding *Rahn* and the DSN-MUI Fatwa Number: 25/DSN-MUI/III/2002 concerning *Rahn* and Gold. Meanwhile, conventional gold pawning is regulated in the Civil Code, the second book, Article 1150-1160 of the Criminal Code .

3.2 Authority of Sharia Gold Parate Holders in Conducting the Execution Parate

In Article 1155 of the Civil Code it is explained that if the debtor or the pawnbroker defaults, the pawnee has the right to sell the pawned goods in public according to local customs and conditions. This right is obtained by the creditor, if the debtor or pawner is in default. From the moment the debtor or pawner defaults, this right is born. In Article 1155 of the Criminal Code, it is emphasized that the creditor can sell the pawned goods if the debtor is in default after the maturity date. In the DSN Fatwa Number: 25/DSN-MUI/III/2002, it is also explicitly explained that if it is due, Murtahin must warn Rahin to immediately pay off the debt; (2) If rahin is still unable to pay off her debt, then Marhun will be forced to sell or be executed through an auction according to sharia. In this case, the creditor had indeed given a warning to the debtor to pay off the debt, but at that time it was not yet due. So that once again it can be ascertained that there is a PMH carried out by the creditor because it has violated the provisions of the Criminal Code and the DSN Fatwa.

In article 1155 of the Criminal Code in conjunction with the DSN Fatwa Number: 25/DSN-MUI/III/2012, it has been emphasized that if the creditor wants to execute the pledged goods, it must go through an auction process. In this case, it is not explained whether BRI Syariah sells the gold through public auctions or sharia-compliant auctions. In this case, it is only explained that BRI Syariah sells unilaterally. So the authors conclude that BRI Syariah sells not through auction. The solution given in this regard is that the creditor can ask the Religious Court to execute the gold. As contained in Article 1156 of the Criminal Code, where the creditor can request the panel of judges to determine the method of selling the pawned goods. With the execution through the court, it is hoped that the sale of the pawned goods will generate as much money as possible, because the holder of the pawn has an interest so that the selling price at least covers the receivables. So in response to the above case, the creditor has done PMH by selling the pawned goods unilaterally without the knowledge of the debtor. Creditors should apply to the court to execute the gold.

IV. Conclusion

Broadly speaking, the difference between the Islamic gold pawning system and the conventional gold pawning system is that gold pawning is usually carried out with the debtor already owning gold and then using it as collateral, but in Islamic banking, the customer only needs to deposit 10% of the gold price, and immediately pawn it at the Islamic Bank . Besides In addition , there is an interest-based conventional gold pawn (determined based on the size of the loan) while the Islamic gold pawn is based on maintenance and storage costs based on the value of the guarantee, not a loan. Difference Furthermore , in conventional gold pawning , the contract agreement is a credit and pawn agreement. While in sharia gold pawning, the contract agreement is a sharia contract (Rahn and Ijarah) . Temporary that , in Thing execution object pawn in the form of gold by holder pawn done _ in form pawn sharia, then permanent must holding on to provision Civil Code and DSN Fatwa. Regarding the sale of pawned goods without going through an auction, the debtor can submit an application to the Panel of Judges to determine how to sell the pawned goods, in this case to the Religious Court. with holding on to base Article 1156 of the Civil Code .

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