

THE IMPLEMENTATION OF SHARIA PAWN TO CONFORM TO THE GUIDANCE OF THE QUR'AN AND AS-SUNNAH USES THE INSTRUCTIONS AND LIMITATIONS OF AL QAWA'ID AL-FIQIYYAH

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Abstract

The progression of time is inevitable, including all manifestations of dispute, particularly in economics, which encompasses a diverse range of transactions, including pawn transactions. To ensure that pawning aligns with Islamic teachings, examining the pawn procedure's legal aspects through the principles of fiqh is imperative. This paper discusses the four principles of fiqh: asasiyah (fundamental), furu'iyah (branch), kulliyah (general), and khasasi (specific). These principles can be employed in sharia pawn (rahn) practice. Fiqh asasiyah, similar to the principles of maslahat, prioritizes the promotion of benefit and justice in rahn. The comprehensive regulations of furu'iyah can facilitate the implementation of Islamic law in rahn. The regulations governing the terms and conditions of rahn are addressed in the kulliyah rules. At the same time, the khasasi law focuses on specific provisions concerning rahn, such as the types of products that can be used as collateral. The topic encompasses fifteen fiqh laws of rahn, which regulate the pillars, conditions, and regulations of rahn. The principles of fiqh are crucial in ensuring that the implementation of rahn aligns with Islamic sharia and effectively addresses the contemporary challenges associated with rahn due to societal advancements. This text employs descriptive analysis, incorporating prior studies' literary evaluations and data from reference works that delve into sunnah, hadith, pawn, and fiqh rules. By understanding the rules of fiqh, pawning practices can be in accordance with sharia and implemented by companies and individuals in the contemporary era without worrying about usury contamination.

Keywords: Rules of Fiqih, Rahn, Sources of Islamic Law

Abstrak

Perkembangan zaman tidak bisa dihindari, termasuk segala wujud perselisihan, khususnya di bidang ekonomi, yang mencakup berbagai macam transaksi, termasuk transaksi gadai. Untuk memastikan bahwa gadai sejalan dengan ajaran Islam, maka mengkaji aspek hukum tata cara gadai melalui prinsip-prinsip fiqh sangatlah penting. Tulisan ini membahas empat prinsip fiqh: asasiyah (dasar), furu'iyah (cabang), kulliyah (umum), dan khasasi (khusus). Prinsip-prinsip ini dapat diterapkan dalam praktik gadai (rahn) syariah. Fiqh asasiyah, serupa dengan prinsip maslahat, mengutamakan pemajuan kemaslahatan dan keadilan dalam rahn. Peraturan furu'iyah yang komprehensif dapat memudahkan penerapan hukum Islam dalam rahn. Ketentuan yang mengatur syarat dan ketentuan rahn diatur dalam kaidah kulliyah. Sementara itu, hukum khasasi menitikberatkan pada ketentuan khusus mengenai rahn, seperti jenis produk yang dapat dijadikan jaminan. Topiknya mencakup lima belas hukum fiqh rahn yang mengatur tentang rukun, syarat-syarat, dan aturan rahn. Prinsip-prinsip fiqh sangat penting dalam memastikan bahwa penerapan rahn selaras dengan syariah Islam dan secara efektif mengatasi tantangan kontemporer terkait rahn akibat kemajuan masyarakat. Teks ini menggunakan analisis deskriptif, menggabungkan evaluasi literatur penelitian sebelumnya dan data dari karya referensi yang mendalami kaidah sunnah, hadis, gadai, dan fiqh. Dengan memahami kaidah fiqh, maka praktik gadai dapat sesuai syariah dan dilaksanakan oleh perusahaan maupun perorangan di era kekinian tanpa perlu khawatir akan tercemarnya riba.

Kata Kunci: *Kaidah Fiqih, Rahn, Sumber Hukum Islam*

Introduction

To carry out financial practices that align with Islam's teachings, many financial institutions provide sharia pawn services or rahn. In the practice of sharia pawning, knowledge of Islamic finance and the prevailing rules of fiqh is needed. Rahn can be done by giving collateral from the pawner (rain) to the pawner (Az Zuhaili, 2010). The substance in the condition of mortgaging is aimed at avoiding the harm caused by the default of one or both parties during the stages of pawn transactions (Ali, 2008).

Aside from established organizations and banks engaged in pawnbroking, some individuals actively engage in this activity within their local communities, a practice that has been ongoing for several decades. The pawn process involves various complexities, including imposing additional costs on funds provided to pawnshops. This practice is applied to both collateral in the form of productive land and goods. Consequently, usury contamination can be observed and experienced in the pawn process. It is worth noting that this contamination may not consistently be recognized as usury due to a lack of understanding regarding the proper conduct of pawn business by Sharia principles.

This study offers the public a comprehensive understanding of the gradual and continuous integration of pawns falling within the Sharia category to prevent social upheaval about Sharia-compliant pawns within society. To understand the appearance of a pawn by Sharia, we must analyze it within the framework of fiqh norms, which serve as the foundation for defining the fiqh applied in the Sharia pawn procedure.

It will discuss the rules of fiqh *asasiyah*, *furu*, *kulliyah*, and *khasasi*. These four rules can be used in the practice of sharia pawning. The source of Islamic law, the Qur'an and al-hadith, or Sunnah, provides the basis for the rules of fiqh, which are needed to explain actions to remain by the Shari'a.

There is a benefit in Islam according to the rules of fiqh *Aaliyah*. This method can be used in Islamic pawns to calculate the collateral value. The value of the goods must not harm other parties and must be commensurate with the money lent to the customer.

The rules of *Furuiyah Fiqih* (branch) are very detailed rules of fiqh, different from those of *asasiyah* (Talhah, 2014), from one school to another about the laws of practice, civility, and morals discussed in Islam and the agreement of Muslims. As a result, the rules of *furuiyah* jurisprudence include concrete and organized principles. This rule is beneficial in understanding and applying Islamic religious laws in everyday life..

The rules of *kulliyah* fiqh address universal laws that apply to everyone and are accepted by the *madhhabs* (Rafsanajni, 2018). This regulation applies when discussing the terms and conditions of a pawn in the context of a sharia lien. Customers cannot accept a sharia lien if they do not meet specific requirements. In addition, there are also provisions governing how the sale of collateral is carried out if the customer cannot pay the debt.

The rules of fiqh *khasasi* speak of unique and specific laws that apply to a particular situation. In the case of Sharia pawns, this rule can be used when determining goods that can be pledged or that cannot be guaranteed.

The development of the times and the technology accompanying them makes financial transactions change more and more developed and increasingly technology-minded. In addition, changes in the way transactions need to be anticipated with the rules or Islamic laws attached to them. The active implementation of a Sharia-based economy needs to be an option for Muslims so that *fuhaha* and Islamic or Sharia economists can

make rules that underlie economic activities by the community so that Sharia economic adaptation can keep pace with the changes that occur.

Learning and understanding the three rules of fiqh can help Sharia pawn practitioners carry out their business activities better and maintain justice and benefit for both pawners and pawners. Moreover, acquiring knowledge of the fiqh principles about pawn transactions might mitigate or eliminate inadvertent engagement in usury.

Research Methods

This scientific study employs library research methods for its preparation. Library research systematically gathers data by examining library resources, such as books, scientific journals, encyclopedias, and pertinent websites. The data acquired is qualitative secondary data specifically focused on the principles of jurisprudence about pawning, also known as rahn. The sampling technique employed is purposive sampling, wherein the purposeful selection of library sources is based on the relevance and applicability of their contents to the topic of study about pawn jurisprudence concepts. Data collection involved utilizing document review sheets to meticulously document and consolidate significant information extracted from each chosen reading source. Data analysis employs content analysis through categorizing data, assessing its significance, and synthesizing information to investigate both broad and specific concepts of pawning law. The concepts of pawning jurisprudence can be traced back to the roots of the Al-Quran and As-Sunnah. This study focuses exclusively on the well-acknowledged concepts of mortgage jurisprudence. Limitations are imposed to facilitate a thorough investigation of the chosen subject. The study findings are after that reported descriptively..

Results And Discussion

To ensure that discussions regarding pawns are always in line with Islamic teachings, particularly Sharia pawns, examining the Islamic laws that serve as their foundation is essential. Fiqh rules seek Islamic law when it is not explicitly stated in the Quran and As-Sunnah. These additional laws are necessary to allow for the adaptation and application of the flexibility inherent in the content of the Quran and As-Sunnah to the constantly evolving content.

1. The Qur'an as the Source of Islamic Law

One of the muamalah activities in economics or iqtisadiyah is pawn as stated by Alloh Almighty in one of the suras al Baqarah namely in verse 283.

﴿ وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنِ مَقْبُوضَةً فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ أُمٌّ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ ۝﴾

If you are on your way and do not have a recorder, a security item should be held. However, if some of you believe in others, let the believer fulfill his commission (his debt) and let him fear Allah his Lord. Do not hide your testimony; whoever conceals it has a sinful heart. Allah knows what you do. (Katsir, 2005).

The verse explains the ability to make a pawn (rahn) while traveling and not find a debt recorder. Rahn is allowed to guarantee debts or loans. The implementation of rahn is also accompanied by the obligation to fulfill the mandate and maintain justice between the two parties.

This verse shows the importance of rahn sharia as a form of security for the trust given to others, and emphasizes trust and honesty in its implementation. In addition, the Quran also explains that the use of property used as collateral must be adjusted to Islamic law.

Surah Al-Baqarah verse 283 broadly explains the ability to make a pawn (rahn) on the way if you do not find the author or are residing; this the imams approve this of madhhabs (Makik, Abu Haneefah, Ahmad bin Hambali, and Asy Shafi'i) (Hubairah, 2016). The essence of the verse is that rahn or pawns are allowed as collateral for a debt or loan in Islam while on the go and do not find the author. The implementation of Rahn must be accompanied by responsibility and trust. Fraud or concealment of testimony is avoided by using money. Rahn defended the rights of both parties. Rahn is done by withholding the debtor's property, also known as marhun, as collateral for his debt. The lienee, also known as a murtahin, is responsible for properly safeguarding the lien estate and not using it without permission. To help each other in the right way, money shows

Islamic economic justice. In Islam, rahn is allowed for the common good by maintaining the values of trust and justice.

2. Al Hadith or As Sunnah as the Second Source of Islamic Law

Hadith or as-Sunnah is about rahn or pawn done by Prophet Muhammad SAW.

Hadith narrated by Ibn Madjah number 1990 – 2466 (Al Albani, 2007)

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا
أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اشْتَرَى مِنْ يَهُودِيٍّ طَعَامًا إِلَى أَجَلٍ وَرَهْنَهُ دِرْعَهُ

Means

From Aisha (r), he said, "That the Prophet (peace be upon him) bought food from a Jew for a certain period of time, and he pawned his armor." (HR Ibn Majah). The above hadith is also narrated by Bukhori number 2326, Muslim number 3008 and Nasa'i number 4530.

The hadith mentioned above can be interpreted as the pawn is allowed (Sabiq, 1996), Based on the stipulations in the Qur'an. Can muamalah, especially with non-Muslims or dzimmah races (Shaukani, 1993), Those prohibited from conforming to a person whose majority of property is haram property, while it is not known that the object of the muamalah is illegal, do not fall into the category of pawn (Mardani, 2014).

The hadith does not indicate that you may sell weapons to infidels because pawns do not include weapons, and the armor that the Prophet Muhammad mortgaged was armor, which was considered by those who believed that it would be guarded and guarded so that there was no fear of betrayal. Indeed, helping enemies and infidels with weapons is haram and treason.

Wheat is referred to as a staple food, unlike others who call it Al hinthah, which means wheat grain. According to some stories, he bought twenty or thirty sha of wheat. This suggests that pawns can be made while in residence, but verse 283 of Al Baqarah indicates the general situation when there are no writers and witnesses in the middle of the journey. Most scholars agree with this opinion, but Mujahid argues that pawning should only be done during travel, not in residence. This is the basis for understanding the verse.

3. Rules of Fiqih

The rules of fiqih vary from the broadest to the smallest and smallest. The most essential thing in the rules of fiqih is that benefit is the goal and rejects evil. Some human traits and behaviors lead to benefit or good; some bring bad. Everything that is *maslahat* is commanded by Sharia, and everything that is *mafsadat* is forbidden by Sharia. Every benefit has a certain degree of goodness and benefit and merit, and every advantage has a degree of harm and efficacy (Djazuli, 2006).

The rules of fiqih referred to in this study are those of fiqih regarding rahn or pawn. Literature review used basic fiqih rules (*al qawa'id al asasiyah*) which contained five rules along with *furuiyahnya* (its branches), general fiqih rules (*al qawa'id al ammah*) and special fiqih rules (*al qawa'id al khasasi*).

Fiqih rules used for the field of discussion of rahn or pawn enter the order of special fiqih rules in the field of *muamalah* or transactions, more specifically fiqih rules related to *tausiqah* contracts including pawns (*rahn*), transfer of receivables (*hiwalah*) and dependents or guarantees (*kafalah* or *daman*)(Hidayat, 2021).

3. Understanding Fiqih Rules

According to Muhammad Abu Zahrah, the rules of fiqih are a collection of cognate *syara* laws with an equation or the existence of provisions or fiqih provisions that frame these rules (Zahrah, 2010). Call it the rules of ownership, rules of *dhaman*, rules of *khiyar* and rules of *fasakh* in general. Another word for the rules of fiqih is the rules or theories taken from collecting various fiqih problems from the results of the *ijtihad* of the *mujtahids*. According to Musthafa Ahmad az Zarqa (Musadad, 2019b) The rules of fiqih are the general basics of fiqih and use brief redactions of a regulatory nature, and cover public sharia law about events that fall within its scope.

The benefits of fiqih rules are that they can know the general principles of fiqih and will see the subject matter that colors fiqih, becoming the meeting point of fiqih problems (Musadad, 2019a). Laws are created to protect adjacent or more significant interests, as shown by the summary of issues in one bond.

Understanding the fiqh rules allows one to grasp the fundamental principles of fiqh and gain knowledge about the specific topics that fall within the scope of fiqh, which

serves as the focal point for addressing fiqh issues. The purpose of laws is to safeguard the interests nearby or of greater magnitude, as evidenced by the compilation of concerns in a single bond.

Introducing the discussed fiqh standards is anticipated to alleviate concerns among business individuals who seek to align their business practices more closely with Islamic religious principles. One of the business signals pertains to the laws of fiqh and has been described by earlier academics and the author.

While numerous other fiqh rules exist, this paper provides a valuable reference and guide for conducting business, particularly in the pawn industry. This sector is experiencing rapid growth in terms of the amount of money involved and the range of collateral options available.

4. Rule of Fiqih the Foundation

There are five faiths in the primary fiqh faith (Fawzi, 2018). These five primary rules that make up the rules of basic jurisprudence include the rules of each matter depending on the intention. In establishing laws, the rules of belief cannot be eliminated because of doubt, the regulations of difficulty make it easier, the rules of harm must be eliminated, and customary rules are considered.

Rule Number One : *Each matter depends on its intention* (according to as Suyuthi(Ibrahim, 2019)).

الأَعْمَالُ بِالنِّيَّاتِ

The rule of furu in the first faith about muamalah rahn is the *holding in the akad, which is the purpose and meaning of not lafadh and the order of its redaction.*

العِبْرَةُ فِي الْعُقُودِ لِلْمَقَاصِدِ وَالْمَعَانِي لَا لِلْأَلْفَاظِ وَالْمَبَانِي

Based on the furuiyyah rule, "every matter depends on its intention," in the field of muamalah rahn, it can be explained as follows: Rahn, also known as a pawn, requires clear intentions from both parties. In practice, the mortgaged party (rahin) must intend to surrender the goods as collateral for the borrowed debt, not to be deposited or sold. The

party receiving the pledge (murtahin) must intend to obtain the borrowed debt, not to deliver the goods as collateral.

Both sides perform rahn contracts consensually (Kurdi et al., 2022), not by force. Therefore, a clear and Shari'a-compliant intention from both parties is fundamental in a rahn transaction because if the intention does not match, the rahn contract can become invalid.

Rule Number Two: *Belief cannot be eliminated because of doubt* (according to as Suyuthi (Ibrahim, 2019)).

الْيَقِينُ لَا يُزَوَّلُ بِالشَّكِّ

The furu rule of this second rule is: *the original law of something is to apply it according to what existed before.*

الأَصْلُ بقاءُ مَا كَانَ عَلَى مَا كَانَ

The furuiyyah rule, "faith cannot be eliminated because of doubt" in the field of muamalah rahn, can be explained as follows: In a rahn contract, the mortgaging party, or rahin, must ensure that he or she has the legally mortgaged goods. If Rahin is in doubt or unsure that he has the mortgaged goods, then Rahn's contract becomes invalid. The party receiving the pledge, or murtahin, must also ensure that the rahin has the legally mortgaged goods. If the murtahin doubts that the rahin has the mortgaged goods, the rahn contract becomes invalid (Suprihatin, 2022). If it is proven that Rahin obtained the lien illegally, Rahn's contract is considered legally void.

The confidence of both parties when making the rahn contract cannot be violated by doubts that arise later after the contract occurs.

Rule Number Three: *Difficulty brings ease* (according to as Suyuthi (Ibrahim, 2019)).

المَشَقَّةُ تُجَلِّبُ التَّيْسِيرَ

The furu rule of the third rule is *that emergencies can allow something that was previously prohibited, both general and specific.*

الضَّرُورَاتُ تُبَيِّحُ الْمَحْظُورَاتِ

In the case of a pawn, Ulama fiqh makes it possible to enter into a rahn contract first before the delivery of collateral, also known as rahn hukmi (Sriani et al., 2023). Receiving liens whose value is less than the loan with the permission of the lien.

On forced circumstances, you can accept a pawn stolen by a thief without the owner's knowledge. This is an emergency exception to the general rule that lien property must be the legal property of the borrower. You can lend money with gold or silver collateral that will be received later if the person needs money urgently. However, the collateral lien must be submitted when the contract is executed (Surahman, 2017). So, the difficulty of getting one item whose value is suitable for the pledge guarantee is facilitated by some concessions, so the pawn contract can still be made even under challenging circumstances.

Rule Number Four: *Prosperity must be eliminated* (according to as Suyuthi(Ibrahim, 2019)).

الضَّرْرُ يُزَالُ

The furu rule of the fourth rule is: *Harm is rejected as much as possible*

الضَّرْرُ يُزَالُ

Explanation of the application of the rule of furu' "harm must be eliminated" in the field of muamalah rahn (pawn): Rahan may not be done to dangerous or dangerous lien goods if kept by the pawnee (murtahin). Pawning wild animals or chemicals is hazardous because it can harm the apostates who support them. Murtahin may not ask for reimbursement of mortgaged goods to rahin because it would hurt Rahin. Since pawned items can be damaged and lose value, murtahin should not use them without rahin's permission. This includes disturbing rahin. If the lien becomes the source of a dispute between the pawner and the lien, the conflict is settled in court. This is done to eliminate the harm that comes from tyrannizing each other. If the murtahin cannot pay the debt he

owes, the lien has the right to sell the lien (Sari & Meidina, 2022), So Rahin will not be harmed because of the constant pawning.

So, applying the above rules in Rahn aims to avoid the harm that the pawn transaction may cause for both parties

Rule Number Five: *Custom is considered in establishing the law* (according to as Suyuthi(Ibrahim, 2019)).

الْعَادَةُ مُحْكَمَةٌ

The furu rule of the fifth rule: *which has become a habit of many people then it is common to become an argument (proposition or reason) that must be done.*

مَا اسْتَقَرَّ مِنَ الْعُرْفِ كَانَ حُجَّةً يَجِبُ الْعَمَلُ بِهَا

Application of the rule of fur on considering customary customs in establishing the law of Rahn (pawn) transactions in Islam: According to Hanafi scholars, the custom of local communities allows the pawning of agricultural land, although the land cannot be moved. Because it is customary for people to mortgage their agricultural land, according to Malikiyah scholars, pawning dates, palm trees, and fruits still on the tree are allowed based on the customs commonly practiced by the people of Medina. However, pawns are usually against movable items. According to the habits of Indonesian farmers, they can pawn crops such as rice that are still in the fields. However, the plant does not necessarily grow and bear fruit when the pawn matures. According to the practice of rural breeders, he is allowed to accept farm animals as collateral for a pledge. Although animals can breed, it is difficult to determine their value. Although the house cannot be moved from its place, mortgages are still allowed according to the customs of urban people.

So, fiqh scholars consider the customs of the local people in establishing appropriate pawn laws s (Wahyuni, 2023), as long as they do not contradict the general principles of sharia.

5. General Rules of Fiqih

Standard fiqh rules are also called al qawaid al Fiqihyah al ammah. The rules of the five basic rules are rules separated from the five basic rules that can be incorporated into the general rules of jurisprudence. There are several standard rules of fiqh, called qawaid kulliyah (Hakim et al., 2022) in the regulations that exist in Islam.

Rules on *al mani wa al muqtada (obstruction and claim)*(Arfan, 2013)

It reads: *If there is a conflict between the barrier (prohibition) and the lead (cause) then the barrier takes precedence.*

إِذَا زَالَ الْمَانِعُ عَادَ الْمَمْنُوعُ

According to this rule, if it is discovered what causes something to exist and what hinders it, then the law is to take what hinders rather than punish the existence of something before what hinders it. However, when the power of the cause is greater than the barrier, the cause wins. In this case, a person willing to die can take care of other people's food and should replace it.

The implementation of this rule in the field of muamalah, especially pawns, is mainly about the law of selling pawned goods by the pawnee. The power between the cause and the barrier is the same, that is, between the receivables in the hands of the lien and the pawned goods or marhun in the hands of the lien recipient(Arfan, 2013). This means there is a similarity between the value of the debt and the price of the goods it mortgages, so it is permissible for the pawnee to sell the pawned goods or Marbun belonging to the pawner. However, because both are equally strong, the underdog is a barrier, meaning a ban on selling pawned goods according to this rule.

Prohibition of selling unclean goods(G et al., 2018), Such as pork, with sacred goods, such as lamb or buffalo, is more important than the demands of the sale of halal goods.

Rules about *al asl wa al fara (trees and branches)* (Arfan, 2013)

The rule reads: *If a subject falls, the branch falls.*

إِذَا سَقَطَ الْأَصْلُ سَقَطَ الْفَرْعُ

Al furu, or branch, here means something that depends on something else and becomes its original tree. Therefore, if the principal is lost or dies, the branches will die, not vice versa.

The application is that when the debtor waives the debt, the person who is the guarantor of the person also waives the debt. Since the debt is the principal and the guarantor is the branch, when the lien recipient or the person who owes the lien waives his debt to the lien, the lien or the lien item in the hands of the lien automatically turns into a trust and is no longer a security item or debt. Since the debt is the principal and the guarantor is the branch, the branch is also considered settled when the principal is deemed settled.

Rules on *al kharraj wa al daman (benefits and responsibilities)* (Arfan, 2013).

The reason reads: *Acts that are legally permissible thus denying responsibility*

الْعَمَلُ الْمُبَاحُ شَرْعًا يَنْفِي الضَّمَانَ

Accordance with this principle, everything that the Shariah permits, both to do and to be abandoned, removes responsibility. This means that one cannot claim compensation for damages incurred since it is legal or permitted by Sharia. This means there is no sin, and one cannot claim compensation.

In the case of the ability to do something, one of the implementations in the transaction is if a person receives a power of attorney or mandate that authorizes a person to sell something on credit or gives power to mortgage something, then the representative is not responsible if the creditor goes bankrupt or the goods he mortgaged are damaged, so he will not pay compensation to the owner of the goods who authorized him for his actions.

If a person takes a trust item and hands it over himself or through a trusted person, and it is lost or damaged before it reaches the owner's hands due to negligence or willfulness, the owner is not responsible.

Rules on *al bayyinah wa al iqrar (evidence and confession)* (Arfan, 2013).

The rule goes: *evidence is an argument that has legal effect on others, while a pledge or confession is a limited argument for oneself.*

الْبَيِّنَةُ حُجَّةٌ قَاطِعَةٌ عَلَى الْغَيْرِ وَالْإِقْرَارُ حُجَّةٌ عَلَى الْمَقْرَرِ لِنَفْسِهِ

According to the explanation of the above rules, recognition is a human statement about people's rights to themselves. This explains the difference in the legal impact of evidence and confession. While confession is an argument for the confessor himself, evidence is an argument for the owner, so the legal implications do not extend to others. This is because the confession is based on one's prejudices, not arguments against others.

If a person claims that the lien item in the lien's hands belongs to him, the claim has no legal consequences to anyone else, either the lien or the lien, unless he can prove that he has evidence that has legal consequences for both.

6. **Kaidah Fiqih who is Special in Muamalah**

Muamalah fiqh rules are rules that take care of transactions carried out by humans in fulfilling daily needs. Human needs for goods and services cause many efforts to be made to deal with fulfilling these goods and services.

The contemporary period, with the emergence of more sophisticated science and technology and the increasing desires of society, gave rise to new models of transactions or contracts that required the settlement of legal status in terms of Islamic law. Clearing comprehensive matters from a perspective that remains Islamic and from another point of view can clean up real-life affairs that occur in society; one way is to do ijhtihad by using the rules of ushuliyah and the rules of fiqh (Musadad, 2022).

The collection of fiqh rules in the field of muamalah begins with basic rules and their branching or furu'iyah, general rules, and special rules, which scholars then compiled in the past to become a basis for solving problems faced in this contemporary era.

Rule fiqh muamalah is a group of faiths that are associated with the problem of fiqh muamalah where the object of business is price or muamalah maliyah, for example, related to akad buy sell, rental, waqf, cooperation, rahn and other akad. All will go into the various books of Fiqih in special chapters, such as the chapter on buying and renting.

Compared to other fields of fiqh, such as fiqh siyasah, fiqh munakahat, fiqh jinayah, and fiqh mawaris, this issue of muamalah fiqh has a greater role in the field of fiqh (Mu'adzah, 2022). Therefore, the principles will also be more significant. In addition, it does not rule out the possibility that the rules of muamalah fiqh will produce new rules. In addition to the standards that have been set and put forward by scholars along with the times, it is also its nature, especially the problem of flexible muamalah.

Special Fiqh Faith Related to Rahn or Mortgage

Kaidah Number One: *Everything that is legal is sold then valid is also mortgaged*

كُلُّ مَا يَجُوزُ بَيْعُهُ جَازٍ رَهْنَهُ

(Qurafi, 1994)

In the case of collateral, goods that can be bought, sold, or given away can also be mortgaged (Indrasukma, 2021). On the other hand, items that are prohibited from being sold and given should also not be mortgaged (Qatrunnada et al., 2018).

There are three exceptions to this rule. First, profits can be sold through rentals but cannot be mortgaged because profits cannot be handed over. For example, selling a service requires human labor, and the service cannot be mortgaged.

Secondly, debts can be sold because there is a guarantee from the other party who will pay them, but debts cannot be mortgaged. Third, collateral can be sold by the guarantor or the person receiving the pledge, known as apostasy, but may not mortgage it again to another person.

Rule Number Two: *It is permissible to pawn everything that is legally owned*

رَهْنُ كُلِّ شَيْءٍ يَصِحُّ تَمَلُّكُهُ

(Hidayat, 2021)

The second rule of explanation is something we can own because it has been bought from another human being, and then something can be mortgaged to others because the rule has something to do with the previous rule. First, goods that can be mortgaged are mortgageable. The second is goods that can be owned but cannot be traded because

certain elements are under certain conditions. For example, fruit on a tree should not be sold before it is fully ripe. The third item can be owned but not traded because certain elements, such as carcass skin, exist before tanning. Fourth, the issue debated by scholars is whether it can be mortgaged, such as animal skins that have been categorized as carcasses after processing, if we follow the opinion of the fuqaha who allow it. Conversely, we should not mortgage it if we follow the opinions of those who oppose it.

In this contemporary era, ownership of an item can be proven through a letter of ownership, such as a house certificate or vehicle ownership certificate if the item is a motor vehicle. Proof of ownership of the goods guaranteed or withheld by the person who gave the loan or murtahin until paying off the debt, but the property remains in the hands of the owner, not in the hands of murtahin.

Rule Number Three : *Everything that deserves to be sold and there is an armpit of akad and includes valuable and deliverable property, thus it can be mortgaged.*

كُلُّ شَيْءٍ كَانَ صَاحِبًا لِلْبَيْعِ مُوجِبًا دَاوِقَتِ الْعَقْدِ وَمَا لَمْ يَتَّقُ مَا وَمَعْلُومًا وَمَقَدَّ
وَمَقْدُورَ التَّسْلِيمِ يَجُوزُ رَهْنًا

(Haidar, 2003)

The rule means that the property to be mortgaged must be precise when it will occur. Is it related to its existence, type, brand, form, and things related to the codification of the goods?

The illegitimacy of pawning a car stolen or seized by someone else cannot be handed over when it will happen. Likewise, for example, when pawning a car with a different brand, if someone pawns it unclearly which brand he will make, the penalty is also invalid. The impropriety can cause hostility in the future. After all, there will be different perspectives on the mortgaged goods.

Rule Number Four: *Each that is durable then it can be pawned.*

كُلُّ شَيْءٍ ثَبَتَ وَدَامَ فَقَدْ رَهْنٌ

(Qurafi, 1994)

To be legitimate, the item mortgaged must be durable, meaning it will not be damaged forever. Therefore, pawning food and drinks is not legal because the food and drinks will spoil when used by pawners. Renting food and drinks is also not legal.

In the modern world, the custody of a pawned item requires proof of ownership, not the item itself, because the pawnshop retains possession of it. However, the item must not be damaged or lose its price when sold if the debt is due and the debt has not been paid.

Rule Number Five: *Before the handover, the collateral does not include rahn.*

وَقَبْلَ الْقَبْضِ لَا يَكُونُ رَهْنًا

(Qurafi, 1994)

This rule relates to handover as a legal condition of the rahn contract. The pawned goods are handed over to the recipient of the pledge or murtahin by the mortgaging party. In this case, the murtahin who receives the pawned item can delegate it to someone else if it cannot do so himself. Before the handover of the pawned goods took place, it was not considered a contract of rahn. Once it occurs, it will be binding or prevalent.

Based on the hadith of the Prophet Muhammad, when Ibn Umar bought food from villagers without weighing it, the Prophet forbade him to move the food from its place if the item could be measured. This rahn prevalence is exclusive to the uterus, so jazz for those who apostatize. Before the handover of marhun occurs, the womb is not allowed to cancel the contract unilaterally without the permission of the murtahin and also has the right to control or detain marhun.

Rule Number Six: *Extras that come out of collateral include collateral together with the principal.*

الزِّيَادَةُ الْمُتَوْلَدَةُ مِنَ الْمَرْهُونِ تَكُونُ مَرَهُونَةً مَعَ أَصْلِ الرَّهْنِ

(Haidar, 2003)

The rules in question also relate to changes that occur in pawned goods. This refers to the law of origin of liens, namely the detention of collateral so that it becomes prevalent (Qatrunnada et al., 2018). If the collateral is an animal, such as a cow, that secretes milk or gives birth to offspring, it is also mortgaged. Likewise, if the collateral is a tree bearing fruit, it is also mortgaged.

The development or addition of existing collateral does not change the ownership of the uterus. This applies whether the collateral is in the hands of murtahin, rahn, or another party, or if the collateral is lent by another party with the permission of the womb. Murtadhin must take care of the development or addition of the collateral as he guards it.

Rule Number Seven: *Indeed, the murtahin has the right to detain marhun, not to use it and to target it.*

انَالثَابِتَ لَمْ بِالْوَضِعِ فِي يَدِهِ هُوَ حَقُّ الْاِمْسَاكِ لَا الْاِنْتِفَاعُ وَالتَّصَرُّفُ
(Kasani, 2003)

The seventh rule concerns the right to avail of marhun or mortgaged goods vested in the pawner because they belong entirely to the rahin but only in moderation. The first of the second rule comes from the hadith of Said bin Musayyib, narrated by Imam Malik and Imam Shafi'i, which means that the owner of the goods has the right to take advantage of it and must also bear risks, such as maintenance costs, for the benefit of Marhun, the two rules mentioned above.

Murtahin cannot take advantage of the mortgage extensively (Qatrunnada et al., 2018). For example, if the collateral is a car, the curtain may not ride on it, the clothes, or the house, except to sell it, rent it out, or mortgage it again to another party.

Rule Number Eight: *If rahin requires marhun to be utilized, then that condition is legally broken* (Qudamah, 1997).

فَاِنْ شَرَّ طَا فِي الرَّهْنِ اَنْ يُنْتَفَعَ بِهِ الْمُرْتَهِنُ فَالشَّرُّ طَا فَسَدَ

The rule referred to in the book al Mugni volume 6 p. 510 regarding the permissibility of the requirement so that murtahin can use the collateral of the receivable debt initially from buying and selling. If it comes from interest-bearing receivables, it is

not legally permissible for someone to say, "I sold this car to you as long as you put your energy and time into working at my company for one year." For example, such conditions are allowed while conditions that are not allowed if, for example, someone says, "I will lend you money as long as the guarantee is that you hand over the car to me for my use," or someone says "give me a loan of 250 million rupiah later I will hand over a guarantee in the form of a car and you can use the car". The requirement is broken or façade and void. The condition is opposite the purpose of the jaw or pawn contract. This is a loan and loan that can attract benefits and fall into the category of usury.

Rule Number Nine: *Rahn is insured because of damage*

الرَّهْنُ يَضْمِنُ بِالْأْتْلَافِ

(Hidayat, 2021)

This method refers to the position of the lien, murtahin as trustee and lender (Murtadho, 2021). Therefore, marhun must be guarded in the same way as entrusted goods or wadiah. Ali Bin Abi Talib's opinion states that apostasy must bear the consequences that occur at his hands if it is intentional. However, if not, then apostates do not have to bear it, and the debt of the uterus does not necessarily disappear.

Rule Number Ten: *It is permissible to replace rahn with another rahn*

جَوَّازٌ زَنْدِيلُ الرَّهْنِ بِرُهْنٍ أُخْرٍ

(Haidar, 2003)

According to this rule, if a person makes an item as collateral for his debt, he can do it also if it is necessary to replace the marhun or the collateral with another item. To do this, both parties must be pleased with each other, and the successor must be comparable to the previous marhun unless the pawner allows it. If both parties have done so, then the successor must be comparable to the previous marhun.

Rule Number Eleven: *If the lien damages the collateral, then the debt becomes void according to its degree.*

إِذَا أَهْلَكَ الْمُرْتَهِنُ سَقَطَ مِنَ الدَّيْنِ بِمَدَارِ قِيَمَتِهِ

(Hidayat, 2021)

The method in question applies when the pawner accidentally damages the mortgaged goods. When that happens, the pawnshop's debt to him disappears according to its perfunctory. The matter is settled if the collateral is proportional to the debt. However, if the collateral is more expensive than the debt, then the excess price belongs to the lien on the mortgage. The need for collateral does not have to be proportional to existing debts (Nasution, 2016), when the lender wants to lend money to the pawnshop, the collateral price must be proportional to the existing debt.

Rule Number Twelve: *If the mortgager dies before paying off the debt, the collateral is sold to pay the debt.*

أَدَامَاتُ الرِّهَانِ قَبْلَ أَجْلِ الدَّيْنِ بَيْعُ الرِّهَانِ وَقُضِيَ الْحَقُّ

(Qurafi, 1994)

Both parties must execute the lien agreement in the presence of each of their heirs to determine whether the lien contract automatically expires. In this case, the lien can sell the collateral if the pawnshop dies before paying the debt (Arianti et al., 2022).

Rule Number Thirteen : *If you sell collateral without the liener's permission, the sale is invalid.*

أَذَابَاعَ الرِّهَانِ الرِّهَانِ بُدُونِ رِضَى الْمُرْتَهِنِ لَا يَكُونُ بَيْعًا نَافِذًا

(Qurafi, 1994)

In cases where the pawner is forced to sell the collateral because there is an urgent need when the security period has not expired, such conditions apply. This means that the pawner has permission to sell the collateral with the liener's permission (Arianti et al., 2022). If the pawner allows it, it can be done; if not, it should not. What if the pawnshop cannot pay in an emergency because it is challenging to communicate with him? If so, later permits are allowed, and the sale is legal. The lien does not need to cancel the trade.

This is often the case in this modern era when collateral must be sold, but usually, pawnshops notify the pawner in advance. If the lien needs money, even more so if he wants to pay the security immediately, he will allow it. However, if the lien is intended to lend the money from the beginning because he wants to take advantage of the guarantee, he will prevent it. The purpose of pawnshops like this is contrary to the purpose

of pawn contracts, which are social purposes that turn into business, which impacts prohibited usury.

Rule Number Fourteen: *The pawnier must not ruin the akad without murtahin*

لَيْسَ لِلرَّاهِنِ أَنْ يَفْسَخَ عَقْدَ الرَّهْنِ بِدُونِ رِضَى الْمُرْتَهِنِ
(Haidar, 2003)

In the case of a pawn, this rule applies to pawnshops after the handover of collateral. In other words, the pawnshop cannot break the contract without the lien's permission (Malarangan et al., 2020). In other words, the pawnshop cannot cancel the contract unilaterally because it harms the murtahin party if the debt has not been paid.

Rule Number Fifteen: *A pawn agreement is not void because of the death of rahin and murtahin*

لَا يَبْطُلُ الرَّهْنُ بِوَفَاةِ الرَّاهِنِ وَالْمُرْتَهِنِ
(Hidayat, 2021)

When one of the pawners and the lien dies, the lien agreement is not broken. However, if the pawnshop dies, the heirs cannot take the collateral if the pawnshop has not paid the debt. Therefore, the right of the lien must take precedence over the right of the heirs of rahin (Sholihah, 2019), even if they do not share their inheritance before paying their debts. If the lien party dies, the lien's heirs will receive the right to take the collateral.

It is essential to carefully comprehend each fiqh rule to ensure its application in the business world is adaptable and accommodating to variations and differing viewpoints. This will allow for mutual complementation and prevent the assertion of one opinion as being more correct or dominant than others.

Conclusion

Sharia pawn transactions can be governed by four jurisprudence rules: *asasiyah*, *furuiyah*, *kulliyah*, and *khasasi*. These regulations govern the coherence, circumstances, and guidelines of rahn. According to Islamic beliefs, the practice of Sharia pawning (Rahn) must be conducted in a just and socially advantageous manner. Jurisprudential guidelines offer practical instructions for correctly applying rahn in compliance with

sharia law. A thorough comprehension of the regulations of pawn jurisprudence enables the development of operational standards for sharia-compliant rahn.

This guide can be applied in the contemporary day without the potential for usury pollution. According to Islam, Rahn is allowed to assist. The task must be executed with trust and justice, ensuring neither party is harmed. To avoid the presence of riba, the current implementation of rahn must adhere to the principles of jurisprudence.

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