

Comparative Study of Civil Law and Islamic Law on Unlicensed Pawn Cases in North Jakarta

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Abstract

This study aims to analyze the practice of unlicensed pawn through a comparative analysis of civil law and Islamic law. This study employs a normative legal methodology with a comparative approach and a case study focusing on a case in North Jakarta, supplemented by empirical data gathered through interviews. The findings indicate that under civil law, such practices do not meet the requirements of a valid contract and can be classified as unlawful acts. Conversely, Islamic law prohibits unlicensed pawn from the outset, as it does not meet the essential pillars and conditions of rahn, particularly regarding ownership and consent. Therefore, it is essential to strengthen verification mechanisms, legal awareness, and ethical values to prevent similar cases from occurring in the future.

Keywords: Rahn, Pawn, Civil Law, Islamic Law

Abstrak

Penelitian ini bertujuan untuk menganalisis praktik gadai tanpa izin melalui analisis komparatif antara hukum perdata dan hukum Islam. Penelitian ini menggunakan metode hukum normatif dengan pendekatan komparatif dan studi kasus pada kasus di Jakarta Utara, serta data empiris melalui wawancara. Temuan penelitian menunjukkan bahwa berdasarkan hukum perdata, praktik semacam itu tidak memenuhi persyaratan kontrak yang sah dan dapat diklasifikasikan sebagai perbuatan melawan hukum. Sebaliknya, hukum Islam tidak memperbolehkan praktik pegadaian tanpa izin sejak awal, karena tidak memenuhi pilar dan syarat sah *rahn*, khususnya terkait kepemilikan dan persetujuan. Oleh karena itu, sangat penting untuk memperkuat mekanisme verifikasi, kesadaran hukum, dan nilai-nilai etika guna mencegah terjadinya kasus serupa di masa mendatang.

Kata kunci: Rahn, Gadai, Hukum Perdata, Hukum Islam

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Introduction

Pawn is a form of agreement that is commonly carried out in people's lives, especially as an alternative to obtaining loans with certain goods as collateral (Winarsasi, 2020). The practice of pawning has existed since ancient times and is used as one of the main methods of obtaining loans with valuable collateral. In the history of civilization, the practice of pawning has been known in various cultures, including in Rome, Greece, and the Islamic world. In Europe, pawnshops flourished in the Middle Ages as a solution for people who needed emergency funds without having to sell their assets (Iskandar & Addiarrahman, 2018).

The practice of pawning in Indonesia dates back to the Nusantara kingdoms, where people used valuables such as gold, land or crops as collateral for debts. In the colonial era, the pawn system was formalized with the establishment of Pegadaian by the Dutch East Indies government in 1901. This pawnshop aimed to provide secured loans to the community without having to rely on loan sharks. Until today, the pawn system continues to develop, both in the form of official institutions and informal transactions carried out between individuals (Rizkia & Fardiansyah, 2022).

In the perspective of Islamic law, the concept of pawn or *rahn* has been known since the time of the Prophet Muhammad Saw. and is explained in various hadiths and *fiqh* books (Harun, 2007). *Rahn* is a valid transaction in Islam as long as it fulfills certain conditions, such as the existence of collateral, the consent of the owner of the goods, and the absence of elements of usury in the

contract (Ashiyah et al., 2024). This concept aims to protect the rights of the owner of the goods while ensuring that the party in need of a loan is not exploited. Islam emphasizes the principles of justice and trustworthiness in pawn transactions, as mentioned in QS. Al-Baqarah (2): 283 which emphasizes that trust in transactions must be maintained and fulfilled according to the agreement. In addition, QS. An-Nisa (4): 58 also emphasizes the importance of conveying trust to those entitled and upholding justice in law (Sumantri, 2022).

However, in practice, various problems often arise in pawn transactions, one of which is pawning without the permission of the owner of the goods (Mahmudah et al., 2024). This action not only causes material losses, but also violates the principles of agreement in civil law and Islamic law. This phenomenon shows that there are still gaps in the supervision of pawn practices, both in conventional and Islamic systems (Pertaminawati, 2019).

In civil law, pawn is regulated in Article 1150 of the Civil Code which states that "*pawn is a right obtained by a creditor over a movable item, which is handed over to him by the debtor, or by his attorney, as security for his debt.*" In addition, the act of pawning goods without permission is contrary to the principles of civil law and can be categorized as an unlawful act as stipulated in Article 1365 of the Civil Code. In Islamic law, unlicensed pawn transactions contradict the principles of justice and trustworthiness that are the basis of the *rahn* contract (Apriyanto et al., 2024).

According to the results of interviews conducted by researchers,

pawn practices carried out by the community have problems related to transparency in pawn agreements and protection of the rights and obligations of *rahin* (borrowers) and *murtahin* (pawn recipients). The phenomenon of unlicensed pawning has the potential to cause significant legal implications. For example, in a case in North Jakarta, the act of pawning goods that do not belong to them can lead to civil suits or even criminal charges related to fraud and embezzlement. The lack of public understanding of the *rahn* contract is also one of the factors that has led to irregularities in the practice of Islamic pawning (Nurkaromah et al., 2025).

Based on the above phenomenon, the problem formulations proposed in this study are: How is the review of civil law and Islamic law on the practice of unlicensed pawn? With this research, it is hoped that people who wish to do a pawn contract can understand the applicable legal aspects and avoid violations that can harm other parties. In addition, the results of this study are also expected to provide policy recommendations for financial institutions and authorities in improving supervision of pawn practices to be more in accordance with applicable legal principles.

Research Methods

A research method is a systematic approach to addressing research problems. This study employs a normative research method, which focuses on secondary data by examining applicable norms, principles, and legal regulations. The comparative approach is used to examine similarities or differences between civil law and Islamic law.

Additionally, the case study approach is utilized to strengthen the analysis through relevant cases (Achjar et al., 2023; Sugiyono, 2020).

This study is also supported by empirical data obtained through interviews with informant who are connected to the subject of the study. The use of this empirical data is intended to provide factual confirmation of the results of the normative analysis while enriching the depth of the discussion (Efendi & Rijadi, 2022).

Results and Discussion

The Concept of Pawn in the Civil Law (KUH Perdata)

Pawn is an instrument in economic activity that aims to provide convenience for the community in meeting urgent needs without having to sell their assets (Muarief, 2024). The provisions regarding pawn are regulated in Book II Chapter 20 Article 1150 to Article 1161 of the Civil Code. Based on Article 1150 of the Civil Code, a pawn is defined as a right obtained by a creditor over a movable item submitted by the debtor or another party on his behalf. This right authorizes the creditor to obtain debt repayment ahead of other creditors, except in relation to auction costs and efforts to rescue the mortgaged goods (Lubis, 2022).

According to Qatrunnada et al., (2018), pawn has several main characteristics, namely:

1. Property rights.
2. Accessoir.
3. Cannot be divided.
4. Right of precedence.
5. Goods that become objects of pledge are movable goods, both those that have a physical form and those that are not tangible.

According to Subekti & Tijrosudibio (2008), the pawn holder has a number of rights, including:

1. The right to sell the pledged goods if the debtor defaults, as stipulated in Article 1155 of the Civil Code.
2. The right to withhold the pledged goods, which authorizes the creditor to withhold the goods until the debts and related costs are repaid by the debtor (Article 1159 paragraph (1) of the Civil Code).
3. The right of compensation, which allows the pledge holder to offset additional receivables with the proceeds of the auction of the pledge goods.
4. The right to reimbursement of the cost of salvaging goods, whereby the debtor is obliged to reimburse the costs incurred by the creditor to maintain the condition of the pawned goods (Article 1157 paragraph (2) of the Civil Code).
5. The right to sell pawned goods in the condition of the debtor's bankruptcy, where the creditor still has the right to execute the pawned goods within a specified period of time after the debtor is declared bankrupt.
6. The right of preference, which gives the pawn holder a higher position than other creditors in obtaining debt repayment.
7. The right to sell the pledged goods with the approval of a judge, if the pledged goods have special value and require certain auction methods.
8. The right to interest on pawn receivables, the pawn holder to receive interest from receivables that generate interest (Article 1158 of the Civil Code).

9. The right to collect pawn receivables, which is carried out by granting power of attorney from the debtor to the pawn holder.

In addition to rights, pawn holders also have obligations, including:

1. Notify the pledgor before the goods are auctioned, which can be done by registered mail or telegraph (Article 1156 paragraph (3) of the Civil Code).
2. Maintain the pawned goods, as stipulated in Article 1157 paragraph (1) and Article 1159 paragraph (1) of the Civil Code.
3. Make a calculation of the auction proceeds, to ensure that the remaining proceeds from the sale of goods are returned to the debtor after deducting the amount of debt and related costs.
4. Returning the pawned goods, if the debts and costs have been paid off or if the pawn holder is proven to have misused the pawned goods.
5. Calculating the results of interest on pawn receivables, so that debtors get a fair calculation regarding interest and debt payments.
6. Returning the remaining proceeds from the collection of pawn receivables to the debtor.

According to Apriyanto et al., (2024), a lien may expire in the following circumstances:

1. The abolition of the main bond, considering that the lien is accessoir, so that if the debt on which the lien is based has been paid off, the lien will also end.
2. The pledge goods leave the power of the pledge holder, as mentioned in Article 1152 paragraph (3) of

- the Civil Code. However, if the goods are lost or stolen and later recovered, the lien remains valid.
3. Damage to the pledged goods, which results in the loss of the pledge object so that the lien ends.
 4. Misuse of the pledged goods by the pledgee, which gives the pledgor the right to claim back the goods, so that the lien is considered void.
 5. Execution of the pledged goods, which results in the ownership of the goods transferring to another party, so that the lien automatically ends.

The Concept of Pawn in Islamic Law

The majority of scholars are of the opinion that a pawn contract consists of four main pillars, namely *shighat* (the memorization of *ijab* and *qabul*), the parties to the contract (*rahin* as the pawn giver and *murtahin* as the pawn receiver), the goods used as collateral (*al-marhun*), and the debt that is the basis of the agreement (*al-marhun bih*). Meanwhile, the Hanafiyah scholars have a different view. According to them, the pillars of a pawn contract only include *ijab* (a statement from the owner of the goods to make them collateral) and *qabul* (agreement from the pawn recipient to accept the goods as collateral) (Iskandar & Addiarrhman, 2018). For this contract to have binding legal force, the Hanafis also require *al-qabdh* (possession of the goods by the debtor). In addition, they consider that the parties to the contract, the collateral, and the debt are not pillars, but only conditions for the validity of the pawn contract (Gunari et al., 2023).

Based on the opinion of *fiqh* scholars, Arifin & Ulumuddin (2023)

stat that the pillars of pawn in the sharia system include:

1. *Rahin* and *murtahin*.
2. *Ma'qud alaih*.
3. *Shighat*.
4. *Rahn* is carried out based on the principle of profit sharing (*mudharabah*).

According to Rukmanda (2020), the sharia pawn contract must be based on the following principles:

1. The goods used as collateral must have economic value and be halal according to sharia.
2. The value of the collateral must be clear and not undergo significant changes within a certain period of time.
3. Lending must not contain elements of usury or additional interest that is exploitative.
4. Made by mutual agreement between the two parties.

When a pawn contract has fulfilled its pillars and conditions, it will have legal consequences that must be carried out by both parties.

1. *Rahin* has an obligation to pay off the debt according to the agreement (Yuliono *et al.*, 2023).
2. *Murtahin* has the right to control the pawn until the debt is repaid.
3. *Murtahin* is obliged to keep the pawn goods in good condition.
4. The cost of maintaining the pledged goods is the responsibility of the *rahin*.

According to, pawn agreements can end due to several factors, including:

1. Return of the collateral, when the pledged item is returned to its owner, the pawn contract is considered complete.
2. Repayment of debt, *rahin* is entitled to take back the collateral after paying off all his debts.

3. Forced sale of *rahn* by the judge, the judge can order the sale of the pledged goods to pay off the *rahn* debt if the *rahn* is unable to pay it.
4. Debt release by the *murtahin*, if the *murtahin* releases the *rahn*'s debt, the pawn contract automatically ends.
5. Cancellation of debt by the *murtahin*, the *murtahin* has the right to cancel the debt.
6. The death of the *rahn*, according to the Maalikis, if the *rahn* dies before handing over the pledged property, then the pledge contract becomes void.
7. Damage or loss of the collateral, if the item used as collateral is damaged or lost, then the pawn contract ends (Rahman, 2024).
8. Transfer of *rahn* to another party, the pawn contract also ends if the collateral is transferred to another party through grants, gifts, or alms.

The legal basis for pawning (*rahn*) comes from the Al-Qur'an, Hadith, and Fatwa DSN-MUI, which explain the validity and rules of pawning in sharia transactions (Arifin & Ulumuddin, 2023).

1. Al-Qur'an

The legal basis for pawning in Islam is found in Al-Baqarah: 282-283.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْب كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمْلَ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ

وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتٌ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَىٰ وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا وَلَا تَسْمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا وَأَشْهَدُوا إِذَا تَبَايَعْتُمْ وَلَا يُضَارَّ كَاتِبٌ وَلَا شَهِيدٌ وَإِنْ تَفَلَّوْا فَإِنَّهُ فَسُوقٌ بِكُمْ وَاتَّقُوا اللَّهَ وَيُعَلِّمُكُمُ اللَّهُ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿٢٨٣﴾ * وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنِ مَقْبُوضَةً فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ أِثْمٌ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ ﴿٢٨٤﴾

2. Hadith

The hadith narrated by Al-Bukhari in hadith number 2049 relates that Aisha r.a. related an incident when the Prophet bought food from a Jew with deferred payment. As collateral for the transaction, he handed over his armor.

حَدَّثَنَا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ حَدَّثَنَا أَبِي حَدَّثَنَا الْأَعْمَشُ قَالَ ذَكَرْنَا عِنْدَ إِبْرَاهِيمَ الرَّهْنِ فِي السَّلْفِ فَقَالَ لَا بَأْسَ بِهِ ثُمَّ حَدَّثَنَا عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا أَنَّ النَّبِيَّ صَلَّى

اللَّهُ عَلَيْهِ وَسَلَّمَ اشْتَرَى طَعَامًا مِنْ يَهُودِيٍّ إِلَى
أَجَلٍ فَرَهَنَهُ دِرْعَهُ

Based on this hadith, the law of pawn is allowed in Islam. This opinion is also reinforced by scholar Hasbi Ash Shiddieqy, who states that pawning can be done both in a state of residence (*hadlar*) and on a journey (*safar*), and this has been agreed upon by the mujtahids (Satar, 2022).

3. Fatwa of DSN-MUI

The National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has issued Fatwa No. 25/DSN-MUI/III/2002 on *ar-rahn* (pawn).

Unlicensed Pawn Case in North Jakarta

The interview results indicate that this issue originated from the informant's experience in North Jakarta regarding ownership of a motorcycle that was still under a loan. The motorcycle was purchased in early 2024 through a credit financing system. In the course of its use, the owner lent the vehicle to a cousin for temporary use over a two-day period. The decision to lend the motorcycle was based on mutual trust rooted in their familial relationship, as well as an agreement that the motorcycle would only be used for a limited time. However, according to the informant, a few days later the motorcycle was pawned by the borrower to a third party without permission.

A Comparative Analysis of Civil Law and Islamic Law on Unlicensed Pawn Cases

In civil law, a pledge is governed by Article 1150 of the Civil Code as a property right arising from the

transfer of movable property to a creditor. Meanwhile, in Islamic law, a pledge (*rahn*) is understood as a contract with specific essential elements and conditions, namely the contracting parties (*rahin* and *murtahin*), the pledged item (*al-marhun*), the debt (*al-marhun bih*), and the offer and acceptance (*shighat*) (Qatrunnada et al., 2018).

From the perspective of the validity of the collateral, Article 1150 of the Civil Code stipulates that the property must be transferred to the creditor as security for the debt. However, this provision does not explicitly require that the party delivering the goods be the sole owner. Consequently, in this case, the handover of goods by an unauthorized party may give rise to a legal dispute (Apriyanto et al., 2024).

Conversely, in Islamic law, the principle of ownership is a fundamental requirement. According to the pillars and principles of *rahn*, the item used as collateral must be the lawful property of the pledgor and must have economic value and be halal. If the item does not belong to the pledgor or if the pledgor has not obtained permission from the owner, the pawn agreement is invalid (*fasid*) (Syuhudi & Jawab, 2023). Thus, Islamic law explicitly prohibits unlicensed pawn from the beginning of the contract.

In terms of the rights and obligations of the parties, civil law grants various rights to the pledgee, such as the right to sell the goods (Article 1155), the right to retain the goods (Article 1159), and the right to reimbursement of expenses (Article 1157). However, these rights can only be exercised if the pledge relationship is valid (Subekti & Tijrosudibio, 2008).

In the case of an unauthorized pledge, the legitimacy of these rights is weakened because the pledged property does not originate from an authorized party.

Meanwhile, in Islamic law, the *murtahin* also has the right to retain the item until the debt is repaid, as well as the obligation to safeguard the pledged item. However, all these rights and obligations apply only if the *rahn* contract fulfills the prescribed pillars and conditions. If not, then there is no legal basis for the creditor to take possession of the item. This indicates that Islamic law places greater emphasis on the validity of the contract as the basis for the emergence of rights and obligations (Yuliono et al., 2023).

Furthermore, in terms of implementation principles, civil law prioritizes property relations and the protection of creditors through preferential rights. Meanwhile, Islamic law emphasizes the principles of justice, honesty, and the prohibition of usury in transactions. In addition, Islamic law also requires mutual consent without any element of coercion, making ethical considerations an integral part of the pawn process (Qatrunnada et al., 2018).

Regarding the termination of a pledge, civil law stipulates that a pledge may terminate, among other reasons, due to the discharge of the debt, the removal of the item from the pledgee's possession, or the destruction of the item (Article 1152 and related provisions). In Islamic law, the termination of a *rahn* also shares these similarities, such as the repayment of the debt, the return of the item, or the destruction of the pledged object. However, Islamic law

adds other aspects such as the cancellation of the debt by the *murtahin* or the death of the *rahn* under certain conditions (Apriyanto et al., 2024; Yuliono et al., 2023).

According to the author, this case demonstrates that although both legal systems share a similar structural foundation regarding the regulation of collateral, they differ significantly in determining legal validity. In the North Jakarta case, civil law allows for interpretive discretion that can lead to disputes when an unauthorized party transfers a motorcycle as collateral, whereas Islamic law would immediately void the contract due to the absence of valid ownership and consent.

The implication of this comparative is that unlicensed pawn creates legal uncertainty under civil law due to its reactive nature, while Islamic law provides a more preventive framework by prohibiting the transaction from the outset. Furthermore, this case can lead to a decrease in trust in social relations and even financial loss to the owner of the goods. Thus, this case highlights the need for verification mechanisms and the integration of ethical values such as honesty and accountability, as emphasized in Surah Al-Baqarah, verses 282-283.

In addition to the resulting implications, the resolution of unlicensed pawn cases under civil law may be pursued through a tort action seeking the return of the property and compensation for damages due to the lack of valid title. Meanwhile, in Islamic law, the *rahn* contract is deemed void (*fasid*), so the goods must be returned to the owner along with an obligation to compensate for losses (*ta'widh*) as a form of restoration of

rights and enforcement of the principle of *amanah*.

Conclusion

Based on the discussion above, it can be concluded that from a civil law perspective, a pledge without consent does not meet the requirements for a valid contract, violates the principle of ownership, and causes harm to the other party. Meanwhile, in Islamic law, such a practice is deemed invalid because it does not fulfill the pillars and conditions of *rahn*, particularly regarding the ownership of the pledged item and the owner's consent, and it contradicts the principles of trust and justice in transactions.

Recommendations

Based on these conclusions, the following recommendations can be made:

1. Regulators and financial authorities should strengthen regulations, oversight, and standards for verifying ownership of collateral prior to pawn transactions.
2. Financial institutions should conduct due diligence and verify documents to prevent legal disputes.
3. The public needs to be made more aware of the law so that they can be more prudent when lending out items and understand the legal risks of unlicensed pawn.

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