



J-HES

Jurnal Hukum Ekonomi Syariah

Volume 05 | Nomor 02 | Desember 2021
p-ISSN: 2549-4872 | e-ISSN: 2654-4970

Analisis Penerapan Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia No. 26/DSN-MUI/III/2002 tentang Rahn Emas

Dina Khairunnisa

Institut Agama Islam Negeri Pontianak | dinakhairunnisa93@gmail.com

Abstrak

Penelitian ini bertujuan untuk menganalisis penerapan fatwa akad pembiayaan gadai emas syariah di salah satu bank syariah di Pontianak, dan menjelaskan kesesuaian teori dan praktek yang terjadi di lapangan setelah terbitnya fatwa MUI DSN Nomor 26 / DSN -MUI / III / 2002 tentang *Rahn* Emas yang disampaikan bank dalam peresmian perjanjian halal Gadai Emas BSI. Penelitian ini menggunakan deskriptif analitik kualitatif yang menjelaskan gambaran secara menyeluruh dan sistematis, dan untuk memahami fenomena pembiayaan gadai emas di bank syariah seperti kontrak, praktik, motivasi, tindakan dll secara holistik dan melalui detesis berupa kata-kata dan bahasa, dalam konteks alami dengan memanfaatkan berbagai metode ilmiah. Penelitian ini menunjukkan bahwa gadai emas di bank syariah ini menggunakan akad *qardh*, *rahn* dan *ijarah*. Dalam pelaksanaan pembiayaan gadai emas ini belum sepenuhnya sesuai dengan syariah, karena diindikasikan *riba'* dalam pemberian *ujrah* diambil sesuai dengan besarnya jumlah yang diterima nasabah. Hal ini mendokumentasikan konteks analisis isi yang berbeda dengan fatwa MUI DSN Nomor 26 / DSN-MUI / III / 2002 Tentang *Rahn* Emas, karena dalam akad *qardh* tidak boleh ada penambahan laba atas laba. Dalam akad *ijarah*, *ujrah* harus dihitung dari nilai taksirannya, sehingga terjadi ketidaksesuaian teori dan praktek yang terjadi di lapangan.

Kata Kunci: *Rahn Emas, Bank Syariah Indonesia, Fatwa MUI DSN*

Analysis Implementation Of Fatwa National Sharia Council Of Indonesia Assembly Of Ulama Number 26/DSN-MUI/III/2002 Concerning Gold Rahn

Abstract

This study aims to analyze the application of fatwas to the Islamic gold pawn financing agreement in one of the Islamic banks in Pontianak, and explain the suitability of the theory and practice that occurred in the field after the issuance of MUI DSN fatwa Number 26 / DSN-MUI / III / 2002 concerning Rahn Emas submitted by the bank in the inauguration of the halal agreement of the BSI Gold Pawn. The research uses a qualitative descriptive analytic which explains the picture thoroughly and systematically, and to understand the phenomenon of gold pawn financing in Islamic banks such as contracts, practices, motivations, actions etc. holistically and by means of detesis in the form of words and language, in a natural context by utilizing various scientific methods. This study show that gold pawning in this Islamic bank uses qardh, rahn and ijarah contracts. In the implementation of gold pawn financing this is not fully in accordance with sharia, because it is indicated that usury in giving ujarah is taken according to the large amount received by the customer. It documents different context of content analysis that MUI DSN fatwa Number 26 / DSN-MUI / III / 2002 Concerning Rahn Emas, because in the qardh contract there must be no additions to the return on profit. In the ijarah contract the ujarah should be calculated from the estimated value, so that there is a mismatch of theories and practices that occur in the field.

Keywords: *Rahn Emas, Bank Syariah Indonesia, MUI DSN Fatwa*

INTRODUCTION

According to Sabiq, rahn is turning goods that have a property value according to the Islamic view as collateral for debt, so that the person concerned can take the debt or he can take part (of the benefits) of the goods. This definition is based on the practice that if a person wants to be in debt to another person, he makes his property, whether in the form of movable property or in the form of livestock, is under the control of the guarantor until the recipient of the marhun bih repays the debt. (Muslich: 2010)

In the MUI DSN Fatwa number 25 / DSN-MUI / III / 2002 concerning Rahn, rahn is defined as: "Holding

property as collateral for debt". Based on the MUI DSN fatwa No.26 / DSN-MUI / III / 2002 concerning the Gold Rahn are as follows:

- a. Gold Rahn is permitted based on Rahn's principle (see DSN fatwa number 25 / DSN-MUI / III / 2002)
- b. Costs and costs of storing goods (marhun) are borne by the pawner (rahin)
- c. The fees as referred to in paragraph 2 are based on expenditures which are clearly needed
- d. The cost of storing goods (marhun) is based on an ijarah contract

Referring to Book 2 Compilation of Islamic Economic Law (KHES) Chapter I on the General

Provisions of article 20 paragraph 14 states that Rahn / mortgage is: The occupation in question is the collateral goods entrusted by the pawnbroker to the deposited party, so that all responsibility is transferred to the beneficiary and the goods are deposited. (Pusat Pengkajian Hukum Islam dan Masyarakat Madani: 2009). The provisions of article 26 KHES which states that the contract is not valid if it is contrary to one of the Islamic laws.

The gold mortgage service conducted by Bank Syariah Indonesia is based on Article 1 number 13 of Law No.10 of 1998 on Changes in Law No.7 of 1992 on Banking explains the principles of shariah. In this article it is explained that sharia principles are the rules of agreement based on Islamic law between banks and other parties for the storage of funds, and / or financing business activities, or other shariah-compliant activities, among others, financing based on revenue sharing principles (mudharabah), financing based the principle of capital participation (musyarakah), the principle of buying and selling with profit (murabahah), or financing of capital goods based on the principle of pure rent without option (ijarah), or with the option of transfer of ownership of goods leased to another party (ijarah wa iqtina). (Anshory: 2005)

The legal basis for implementing sharia pawning as one of the business activities at Bank Syariah Indonesia has also been regulated in Article 19 paragraph (1) and (2) Law

Number 21 of 2008 concerning Islamic Banking and Article 36 of Bank Indonesia Regulation Number 6/24 / PBI / 2004 concerning Commercial Banks Conducting Business Activities Based on Sharia Principles. Therefore, after knowing the legal basis of sharia gold pawn services, it is important to know how it is implemented in the field.

Based on the background description above, the authors feel interested in researching contract problems that should match theory, foundation and practice in the field. The main problem is the analysis of the fatwa decision on the ability of gold pawning as stated in the MUI DSN fatwa Number 26 / DSN-MUI / III / 2002 concerning gold rahn. So that practical problems must be evaluated in accordance with applicable theory and law.

METHODOLOGY

This research used a qualitative descriptive analytical. The research location was at Bank Syariah Indonesia (BSI) KCP Diponegoro Pontianak by acting as a gold pawn customer for 8 months. During that time, the research process was carried out in the field from the initial opening of the sharia gold pawn to closing the account. With a capital of 5 grams of precious metal, certified by PT Antam.

This study used a purposive sampling approach, namely determining the subject / object according to the objectives by using personal considerations in accordance

with the research topic, the researcher chose the subject / object as the unit of analysis.

The data collection method was to analyze the gold rahn contract draft and direct interviews with the gold pawning at BSI KCP Diponegoro Pontianak. The data analysis method used is descriptive analytic, namely research which is a problem-solving procedure that is currently investigated based on facts. Will be arranged according to the phenomena in the field, which are adjusted to the theory.

RESULT

Gold pawning at BSI KCP Diponegoro Pontianak has several advantages for its customers when using BSI gold pawn products, namely that we get cheap pricing, are convenient in service transactions, and a wide network spread across all cities in Indonesia. So that in the comparison of pawnshops and gold pawnshops at Bank Syariah Indonesia, the cost is cheaper and the service easier.

Some of the benefits obtained in BSI gold pawning are safe and secure because the goods are stored in SDB and insured, the process is easy and fast in fulfilling needs, low maintenance costs are very different from Islamic pawnshops because the percentage distance is much cheaper, and can be connected with other facilities, such as savings accounts, ATMs, etc.

BSI determines the Financing To Value (FTV) in accordance with that stipulated by Bank Indonesia (BI).

FTV is a comparison between the amount of financing received by the Customer and the gold value pledged by the Customer to the Bank. With the provision of FTV for Jewelry, namely 80%, and FTV for Mulia is 95%.

We can examine the analysis of the gold rahn contract draft from the Gold Pawning Proof (SBGE) of BSI sharia gold pawn financing using 3 contracts, namely:

1. The contract used is the Qardh contract in the framework of Rahn.
2. Qardh in the framework of Rahn is an agreement to give marhun bih from the bank to customers, accompanied by assignments so that the bank will safeguard the collateral submitted.
3. Maintenance costs using the ijarah contract.

While the application / application of the contract in the sharia gold pawn financing at BSI KCP Diponegoro Pontianak will be explained as in the results of the interview on the application of the sharia gold pawn financing contract at BSI KCP Diponegoro Pontianak are:

"The gold pawn financing here uses the pawning contract (rahn) and the Ijarah contract because it has guarded and secured the gold, so the contract used is the Ijarah contract only. The Rahn and qardh contracts only support the technical delivery of goods in gold pawning transactions. then BSI assessed the gold, after finishing assessing the gold BSI performed the

contract, the contract explained that through the BSI marhun bih written on the SBGE. BSI provides cash financing to customers, and if you have a BSI account it can be transferred directly to the savings book. The customer will be charged administrative fees as well as rental fees for the financing received."

From the results of interviews and being directly involved in the field as a customer, it was found that there was an inaccurate explanation of the contract used. SBGE explained that there are three contracts that should be adjusted to the MUI DSN regarding the three contracts, but in its application only use the Ijarah contract as the master contract and the other contracts become technicians only. So this violates the maximality of the contract set out by the MUI DSN regarding Rahn Emas which has three contracts, in which all the three pillars and the conditions must be fulfilled.

In the pawning agreement above, it is only a guarantor for goods which are only symbolically delivered, so it is not a master contract. Only as an agreement for the delivery of goods at the expense of gold pawning in the qardh contract, and kept in accordance with the ijarah contract.

The Rahn Pegadaian Syariah financing stipulates three contracts, namely the Rahn contract (borrow and borrow with collateral), the qardh contract (debt in marhun bih) and the ijarah contract (use of goods by paying rent). What is meant by contract amalgamation is when those who wish

to receive financing indirectly hand over the collateral, otherwise the receivable will not give marhun bih. And there is no explanation that the goods will be stored according to the ijarah contract, so that it indicates a joint contract.

In the analysis of BSI gold pawning financing in the three contracts above, it is explained that the bank has the right to take profits in accordance with bank regulations. This contradicts the Fatwa of the MUI DSN which explains the qardh, ijarah and rahn contracts. Where the contract is only allowed to take fees that are clearly required, not according to unclear benefits that are not explained by the bank. So that the occurrence of gharar in this transaction, the SDB price does not match the cost of saving with the amount of gold. So it is calculated with the saving cost adjusted for the cost of marhun bih given, so that this causes usury.

Maintenance Cost Simulation for BSI Gold Pawn

In determining the amount of financing to be given to customers, the estimated price for the day is multiplied by the ratio between the amount of financing received by the Customer and the gold value pledged by the Customer to the Bank, which has been determined by BSI, namely 95% for precious metals and 80% for jewelry. So that the financing of precious metals is obtained 95% of the estimated price below the

market price, then the result is the total financing that will be received.

In determining the administrative costs received, there are differences in the amount of financing that will be received by the customer. Financing under IDR 5,000,000 will be

subject to an administration fee of IDR 18,000, above which a different administration fee will be charged. So that the greater the financing, the greater the administrative costs that must be paid.

Table 1: Gold Pawn Service Fees

Numb	Type	Carat	Estimate	Marhun bih (max 95%)	Ujrah/4 bulan	Adm
1	LM 5 Gr	24	Rp4.385.000	Rp4.165.750	Rp249.945	Rp18.000
2	LM 5 Gr	24	Rp4.385.000	Rp3.000.000	Rp180.000	Rp18.000
3	LM 5 Gr	24	Rp4.385.000	Rp1.500.000	Rp90.000	Rp18.000

Based on the table above, it is very clear that the *ujrah* is determined based on the amount of *marhun bih*, not the estimated price. It is proven by the difference in the number of *ujrahs* when the amount of financing received is different, even though the estimated price and value of the goods are the same. So it has the potential for usury to occur, because it uses the determination of the monthly percentage equation of 1.50% with a gold base price of IDR 877,000. In this case, the implementation of sharia gold pawn financing indicates that *riba* violates several DSN fatwas and the applicable muamalah law.

The DSN-MUI fatwa is a set of rules that are non-binding and there is no legal compulsion for the target of issuing a fatwa to comply with the fatwa's provisions. A number of provisions in the MUI DSN fatwa will have binding legal force after being formalized through Bank Indonesia

regulations and OJK regulations. The provisions which were initially still normative in nature were then formalized by the state, then these provisions have become provisions of national law or have become positive law in Indonesia.

The power in effect comes from the state so that it can be forced to be applied in economic activities. In addition, when a Sharia Financial Institution has a case in a religious court or a sharia court, the legal position of the DSN-MUI fatwa is binding in the operation of the Sharia Financial Institution. This can be seen in KMA / 032 / SK / IV / 2006 concerning the Enforcement of Book II Guidelines for the Implementation of Court Duties and Administration, the DSN-MUI Fatwa is one of the material laws in case resolution, especially in the Religious Courts / Islamic Courts, Maliki school of Islamic scholars stated that the scope of *rahn* includes tangible

objects and property rights and that delivery can be real or legal delivery by submitting proof of ownership, it is clear that the scope of rahn is wider than what has been found so far where rahn is only limited to pawning and fiduciary. However, if you follow the opinion of the hanafiah ulama as stated in the MUI DSN fatwa regarding rahn, rahn is only in the form of a pawn. The author argues that by following the results of the *ijtihad* of the malikiah ulama, the law and scope of rahn become broader and can accommodate the development of guarantees that exist in this modern era.

Gold Pawn in Fatwa DSN MUI number 26 / DSN-MUI / III / 2002 at Bank Syariah Indonesia KCP Diponegoro Pontianak

According to data obtained from the field, the rahn application on gold pawn products at Bank Syariah Indonesia is applied as a financing guarantee. With a gold guarantee, customers will get liquid and liquid funds, so that the gold pawn product is in great demand by many people who are in need of fast funds with the following mechanism.

According to the theory, gold pawn financing at Bank Syariah Indonesia bank includes productive financing, in which the bank provides financing as capital after the customer pawns his gold as collateral.

In the rahn mechanism or application for gold pawning products at Bank Syariah Indonesia, it is in accordance with what has been

regulated by the DSN-MUI fatwa Number: 26 / DSN-MUI / III / 2002 concerning sharia gold pawning, which is based on the following conditions:

1. Gold pawning is permitted on principle rahn.
2. The costs and costs of storing the goods (*marhun*) are borne by the pawner (*rahn*).
3. The amount of storage costs is based on the expenses that are actually needed.
4. The cost of storing goods (*marhun*) is based on an *ijarah* contract, that is, the customer has to pay rent or wages according to the provisions of the bank.

To obtain Bank Syariah Indonesia gold mortgage rahn financing is an easy process, if the customer meets the requirements and passes the authenticity check and gold assessment, the financing will be processed as soon as possible and disbursed according to the gold valuation results. The implementation of the period (maturity) of this gold rahn financing is for 4 months and can be renewed (extended) 2 times after the first contract, and during that time the costs will continue to be calculated per day according to the specified *ujrah* payments during maturity. However, if the customer is unable to pay off the total financing along with the *ujrah* at maturity, the bank will provide a grace period for repayment of 15 calendar days from maturity, and during this grace period the customer will be

charged daily maintenance and storage fees taken at the time of debt repayment.

CONCLUSION

From the results of the above research it was found that there are two things. First, the application of the MUI DSN fatwa Number 26 / DSN-MUI / III / 2002 regarding the gold rahn in determining the Islamic suitability of gold pawn products is in accordance with the MUI DSN fatwa No. 25 / DSN-MUI / III / 2002 concerning Rahn, and the DSN MUI fatwa No. 26 / DSN-MUI / III / 2002 About Rahn Emas. That the concept of the gold rahn contract in the sharia gold pawn financing at BSI KC Pontianak has 3 written contracts in the SBGE, namely aqad qardh in providing financing, then the rahn contract in holding gold guarantees, and the last is the ijarah contract as a maintenance service for pawned goods. The master contract in the gold pawn financing is the ijarah contract for profit taking, but the rahn contract and the qardh contract are only technicians. However, in BSI, the collection of ujah is carried out according to the amount of marhun bih received by the customer. There is no price reduction dispensation as determined by BSI itself. So that it

violates the DSN MUI fatwa number 19 / DSN-MUI / IV / 2010 concerning qardh, in which the customer must return the marhun bih in the amount of the initial marhun bih received by the customer. The stipulation of the ujah should be in accordance with the MUI DSN fatwa taken from the estimated price, and the administration fee must be in accordance with the actual costs incurred. So this is indicated by riba in determining ujah, so that there is no fundamental difference other than the contract from conventional pawnshops.

Second, the DSN-MUI fatwa is a set of rules that are non-binding and there is no legal compulsion for the target of issuing a fatwa to comply with the fatwa's provisions. A number of provisions in the MUI DSN fatwa will have binding legal force after being formalized through Bank Indonesia regulations and OJK regulations. The provisions which were initially still normative in nature were then formalized by the state, then these provisions have become provisions of national law or have become positive law in Indonesia. This is because the gold pawning BSI product is still growing with the existence of the pros and cons of the halal product.

BIBLIOGRAPHY

- AAOIFI pasal 19 ayat 7 tentang qardh.
- AAOIFI pasal 25 ayat 4 tentang penggabungan beberapa akad dalam satu akad.
- Al-Hammam, I. (2010). *Ringkasan Shahih Muslim*. Jakarta: Insan Kamil.
- Ali, Z. (2008). *Hukum gadai Syariah*. Jakarta: Sinar Grafika
- Ascarya. (2011). *Akad dan Produk Perbankan Syariah*. Jakarta: PT. Raja Grafindo Persada.
- Dwika, "Keadilan dari Dimensi Sistem Hukum", [\(http://hukum.kompasiana.com\)](http://hukum.kompasiana.com), (02/04/2020), diakses pada 24 Juli 2020.
- Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor 09/DSN-MUI/VI/2000 Tentang *pembiayaan Ijarah*
- Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor 19/DSN-MUI/IV/2001 tentang pembiayaan *Al-qardh*
- Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor 24/DSN-MUI/III/2002 tentang Safe Deposit Box
- Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor 25/DSN-MUI/III/2002 Tentang *Rahn*
- Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor 26/DSN-MUI/III/2002 Tentang *Rahn* Emas
- Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor 56/DSN-MUI/V/2007 Tentang Ketentuan *Review Ujrah* pada Lembaga Keuangan Syariah
- Ghofur, A. (2016). *Gadai Syariah Di Indonesia Konsep, Implementasi Dan Institusionalisasi Revisi*.
- Kompilasi Hukum Ekonomi Syariah Pasal 26 tentang sahnya akad gadai.
- Kompilasi Hukum Ekonomi Syariah Pasal 373 – 408 tentang ketentuan umum dan khusus gadai.
- Pasal 1150 sampai dengan Pasal 1160 KUHPerdara Tentang Hukum Dasar Gadai Pemerintah No.103 tahun 2000 tentang pegadaian
- Peraturan Pemerintah No.10 tahun 1990 tentang pegadaian Peraturan
- Peraturan Pemerintah Pasal 1 ayat 26 UU Nomor 21 Tahun 2008 Tentang Perbankan Syariah
- Press, U. I. I. Antonio, Muhammad Syafi'i. 2001. *Bank Syariah: Dari teori ke Praktik*. Jakarta: Gema Insani Pres. HS, Salim. 2004.
- Pusat Pengkajian Hukum Islam dan Masyarakat Madani. (2009). *Kompilasi Hukum Ekonomi Syariah, Edisi Revisi*. Jakarta: Kencana.
- Sugiyono, D. (2010). *Memahami penelitian kualitatif*. Bandung: Alfabeta.