

## **BANK SYARIAH INDONESIA GOLD PAWN LAW IN DENPASAR, BALI**

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### **ABSTRACT**

This study aims to analyze the legal contract for Sharia gold pawn financing in an Islamic bank in Denpasar and explain the suitability of theory and practice that occurred in the field after the issuance of the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN MUI) Number 26/DSN-MUI/III/2002 regarding Gold *Rahn* which was conveyed by the bank in the inauguration of the BSI Gold Pawn Halal Agreement. This study uses a qualitative descriptive-analytical research method in which the primary source is based on direct fieldwork by observing the phenomena that occur and processes in real terms, then analyzing the suitability between theory and practice in depth. This research shows that gold pawning at the Denpasar Indonesian Islamic Bank uses 3 contracts, namely *qardh*, *rahn*, and *ijarah* contracts. The implementation of gold mortgage financing is not fully by Sharia, because it is indicated that the usury in giving *ujrah* is taken according to the amount received by the customer. In the *ijarah* *ujrah* contract, it must be calculated from the estimated value, so that there is a discrepancy between theory and practice that occurs in the field. This documents the context of content analysis which is different from the DSN MUI fatwa No. 26/DSN-MUI/III/2002 concerning Gold *Rahn*, because, in a *qardh* contract, there is no addition to profit.

**Keywords:** *gold pawn, Indonesian sharia bank, MUI DSN fatwa*

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### **INTRODUCTION**

Generally, humans need loans not only because the factor economy is medium to down, will but because fulfillment increasing needs. So that those who have an income medium to above also require loans for different needs. Islam also teaches us always help each other, so sustenance can flow *min haitsu la yahtasib* (from a place that doesn't presumably). when we see life as mundane, a lot of very active helpful business life man for carry out their life, so borrowing be one method best for getting a loan for all need human. So principal help (ta'awun) other men becomes a factor main exists borrow because man no can live alone in this world (Muslich, 2022).

One considered product easy and interesting is pawn gold because have benefits and principles help. Factor another are many golds collected by the ancients for inheritance make the most valuable treasure, so for help need temporarily the safest way is to mortgage them direct-sold (Tarmizi, 2019). After the formation of Regulation Government (PP) no 10 (PP/10) on April 1, 1990, got said become a milestone beginning resurrection pawn shop. One thing is necessary to scrutinize that PP No. 10 confirms must mission taken by the pawnshop to prevent the practice of usury. Mission This no changed until the issuance of PP 103 of 2000 which was made the base activity business Public Corporation Pawnshop until now.

Pawn Sharia gold increasingly develop post issuance of the following Fatwa of the National Sharia Council of the Indonesian Ulema Council abbreviated as DSN MUI No. 26/DSNMUI/III/2002 concerning *Rahn* gold. Since the moment That services Islamic pawnshops are rife growing in a variety of institutional finance both banks and non-banking.

Several sharia banks, such as Bank Syariah Indonesia (BSI), Bank Bukopin Syariah (BBS), and Bank Nasional Indonesia Syariah (BNIS) opened product pawn sharia gold in one product consumptive (Dahlan, 2021).

*Rahn* as product financing refers to the base Alqur'an and Hadith, as for the foundation in Alqur'an Surah Al-Baqarah (2) verse 283. Where is verse This as instruction for applying principle caution if somebody does accounts payable transactions using period time, then must note as the sign has lent A goods to giver goods (Febrianasari, 2020). Base *rahn* gold reinforced by DSN MUI fatwa No. 26/DSNMUI/III/2002 which states that loan with pawn goods as debt guarantee form *rahn* with provision *rahn* who has applied. As well as existence compilation law regulated the sharia economy in Article 373 to Article 408 which explains all something provision general and special about pawns.

With the more lively development practice of pawn sharia gold in Indonesia, pros and cons arise in the practice of pawn sharia gold. As we do know, the system of the product in one company Can be different from a company in another (Balgis, 2017). In between agreeing party exists financing pawn gold say that practice pawn existing sharia gold moment this allowed during no there is the aggrieved party, as well between *rain* and *mountain* each other agreed with the agreement that has been agreed upon in the advance contract. With thereby cost save the law can as cost maintenance pawned goods (Tarmizi, 2019).

For those who don't agree explain what happens to merging two contracts becomes one contract (multiple contracts) that are prohibited by sharia, namely contract *cards* (debt), contract *rahn* (pawn), and contract *ijara* (fee save) (Supriadi, 2012). Referring to the hadith prophet explained that no one can combine two contracts in one transaction sell buy. Pawning customers the goods will get a loan worth a certain by bank calculations, with an 80% estimate for gold jewelry and 95% for gold bars (Al-Albani, 2015).

Furthermore, customers must pay the cost of service maintenance gold as determined by the bank. However, costs are determined by the size loan given. For example, cost administration from one million to one hundred million to different from fifteen range thousand rupiahs arrived with one hundred thousand rupiahs (Priliana & Hisamuddin, 2015). In the matter this happened exists usury on extras are given, though called with term cost save on goods pawn in contract *rahn* between Sharia Pawnshop with the customer. Because in the contract *rahn* is not allowed to take benefits and costs on contract (Ghofur, 2016).

In addition, cost keeps it in pawn sharia gold, still using a decisive percentage amount of cost saved. So that Still in category take benefit in a cost save pawn gold. Inside Sharia pawnshops, ranging from 1-2% of the rate estimate to be given. That includes usury, though employee pawn gold and talk that That is cost save (Habiburrahman & Rahmawati, 2012).

Next, happened a mistake in loading cost save. In case of this, party *curtain* (Sharia pawn shop) is called charge cost save based on mark loans that don't allow. it was arranged with clear on the DSN MUI Fatwa No. 25/DSN-MUI/III/2002 regarding *Rahn*. Where to through cost save by the deal, no from cost loan nor from cost the estimate has been given. However, in the case of pawn gold, not applied by the applicable MUI DSN. So that customers also consider the same just between Islamic and conventional pawnshops.

## **METHODS**

Type research used in the study This is qualitative descriptive-analytical. The research location is at the Indonesian Sharia Bank (BSI) KC Denpasar which act as customers pawn gold for 8 months. In time the research process is carried out jump into the field from the beginning opening letter pawn sharia gold arrived closing account. With metal capital glorious heavy 5 grams certified by PT. Antam.

Study this uses the approach of *purposive sampling* is determine the subject/object in accordance objective with the use of consideration of appropriate personality with topic research, the researcher chooses the subject/object as unit analysis (Sugiono, 2005).

Method data collection analysis of the draft contract *rahn* gold and interviews direct to pawning gold at BSI Denpasar. Method data analysis used is descriptive analytics which is a research which is procedure solving the problem being investigated at the time Now based on facts. Will be arranged by phenomenon in the field, which is adjusted with theory.

## **RESULTS AND DISCUSSION**

BSI Gold Pawn is a financing product based on collateral in the form of gold as an alternative to get cash quickly. Intended for individuals with the type of collateral in the form of precious metals and jewelry (Amah, 2017). For precious metals, it starts from 5 grams up to 100 grams, while jewelry only accepts red and yellow gold. White gold cannot be mortgaged at Islamic banks, because the appraisers only have the tools to detect red and yellow gold (Ascarya, 2011).

The pawn shop at BSI Denpasar has developed over the last 10 years in 2013 to be precise. During these 10 years of development, BSI in this gold pawn shop has had several advantages for its customers if they use BSI gold pawn products, namely we get cheap, convenient pricing in service *transactions* and an extensive network spread across all cities in Indonesia (Rodoni et al., 2008). So that in comparison to pawnshops and gold pawnshops at Bank Syariah Mandiri, the cost is cheaper and the service is easier.

Some of the benefits obtained in the BSI gold pawnshop are safe and security because the goods are stored in *the Save Deposit Box* (SDB) and insured, the process is easy and fast in fulfilling needs, and low maintenance costs are very much different from sharia pawnshops because the percentage distance is much cheaper, and can be connected to other facilities, such as savings accounts, ATMs, etc (Musa, 2020)

*BSI* determines *Financing to Value* (FTV) by that determined by Bank Indonesia (BI). FTV is a comparison between the amount of financing received by the customer and the value of gold that is pledged as collateral by the customer to the bank. With the provisions of FTV Jewelry, which is 80%, and FTV for Precious Metals, which is 95% (Khairunnisa, 2021).

In financing Sharia gold pawning, BSI uses 3 contracts, namely: The contract used is the *Qardh contract* in the framework of *Rahn*. *Qardh* in the framework of *Rahn* is a loan agreement from a bank to a customer accompanied by assignment of tasks so that the bank takes care of the collateral that is submitted. Maintenance costs use the *ijarah contract* (Fauziah et al., 2019).

From the results interview and plunge right on the field as a customer found exists an imperfection explanation contract used. As described in Securities Pawn gold (SBGE) exists three contracts should be customized with DSN MUI the third contract, will but in the application only use contract history as contract master, and contract other become technician

just. So that This violates maximum the contract stated in the DSN MUI fatwa regarding *Rahn* Gold having three contracts, where the third contract must fulfill all get-along conditions (Hayati & Sri Sudiarti, 2022)

In an analysis of the draft contract in financing pawns in sharia Gold at BSI, there are 3 contracts in the Pawn Proof Gold (SBGE), namely:

### **Contract Qardh**

Contract This is made and signed by and between the bank and also the customer. The center of BSI is on Jalan Thamrin No. 5, Central Jakarta, which has given the power to internal bank approval on the part-end contract. And customers receiving party identity financing written down in a manner complete sheet form application pawn gold.

In terms and conditions contract *cards* often very matter small left just on implementation financing pawn gold at BSI, for example, customers not demanded to read the provision contract will but already told the signature especially first (Al-Asqalani, 2015). So that customers no can analyze in a manner critical that has been agreed upon, though still in a position of incomprehension on the ongoing agreement. Out of necessity be pressed customers still take financing the in fulfillment their needs.

The permissibility of taking costs that are required in the *qardh* contract process is also agreed upon by AAOIFI in Article 19 concerning *cards* paragraph 9 which reads: "Financial institutions that provide loan can interesting fare cost loan limited cost real character direct and real needed without can take a bit profit from cost this". However in the contract *qardh* BSI above No explanation of How fees a real must issue. In contrast, *qardh* above fare cost safekeeping will enter in *ijara*, because No take profit on financing this and merging contract No intended on cost specified loan.

### **Ijarah contract**

The reality is becoming base main determinant rates *ujrah* is mark estimate or not mark loan. However, If scrutinized more away, researchers find that Actual determination rates *ujrah* still depend on the size mark loan on each transaction. this showed with existing enforcement compensation form discount on rates *ujrah* for *womb* which is not maximizing the loan.

*Ujrah* is also determined by magnitude according to the length of financing, a minimum of 15 days, and a maximum of 4 months. Can be extended 2 times, with the extension only paying cost fees and expenses administration for 4 months. After that goods were auctioned when already no capable pay tree loan.

In the contract, *ijarah* does not yet explain provision cost appropriate administration with real costs issued by the bank. So that happens the difference between cost administration by the magnitude of the financing provided. Cost rent is neither does storage explained by magnitude cost SDB, so customers only accept the magnitude fee received without clear specifications. In thinking customers only equalize flower in financing on cost administration and costs rent maintenance gold.

### Pawn Agreement (*Rahn*)

In contrast, pawn only as guarantor goods only in a manner symbolically submitted, so no is a contract parent. Just as agreement on the submission of goods on financing pawn gold in contract *qardh*, and saved by contract *ijara* (Setiawan, 2016).

On financing, *Rahn* Sharia Pawnshop stipulates three contracts that is contract *Rahn* (borrow with goods collateral), contract *qardh* (debt in loans), and contracts *ijara* (utilization to use goods with pay wages rent). What is meant by the merging contract is when you want to get financing in a manner with no direct delivery goods guarantee, if no si receivables no one will give a loan. And no there is explanation goods will save by contract *ijarah*, so indicated contract is combined.

The analysis of financing pawn, the third BSI gold above contract explains that the bank is entitled to take profit by bank terms. this is contrary to the DSN MUI Fatwa explaining contract *qardh*, *ijarah*, and *rahn*. Where is the contract the only allowed take real costs necessary, no in accordance obscurity no advantage explained by the bank (Djuwaini, 2020). So that happening *gharar* in a transaction this, SDB prices are not by cost save with many golds. So that counted with cost save customized cost loan granted, matter This cause exists *usury*.

In the study become customers of pawn metal noble, the researcher knows the calculation process cost SDB maintenance/rental at BSI. In case on January 18, 2023, the Customer brings gold for a mortgage from the Metal Glorious team with 24-carat content and weighs 5 grams. how much cost of necessary maintenance be paid, if the Customer pays off by May 18, 2023? (Gold Base Price (HDE): Rp.988,000)

Known:

Time/period Pawn: January 18, 22 – May 18, 23 = 4 months.

A. Estimated

$$\begin{aligned} &= (\text{carat}/24) \times \text{weight of gold} \times \text{HDE} = (24/24) \times 5 \times \text{Rp.998,000,-} = (1) \times 5 \times \text{Rp.998,000,-} \\ &= \text{Rp.4,990,000} \end{aligned}$$

B. Financing

$$\begin{aligned} &= \text{Estimated} \times \text{FTV} \\ &= \text{Rp.4,990,000} \times 95\% \\ &= \text{Rp.4,740,500} \end{aligned}$$

C. Maintenance costs if the financing is Rp.2,000,000

$$\begin{aligned} &= (\text{Financing} \times \text{Rate}) \times \text{pawn time} = (\text{Rp.2,000,000} \times 1.40\%/\text{month}) \times 4 \text{ months} = \\ &(\text{Rp.28,000}/\text{month}) \times 4 \\ &= \text{Rp.112,000}/4 \text{ months} \end{aligned}$$

So the cost of necessary maintenance paid by the Customer is Rp.112.000,-/4 months, and Rp. 28,000, -/month.

However, cost maintenance If financing in the amount of Rp.4,740,500

$$\begin{aligned} &= (\text{Financing} \times \text{Rate}) \times \text{time pawn} \\ &= (\text{Rp.4,740,500} \times 1.40\%/\text{month}) \times 4 \text{ months} \\ &= (\text{Rp.66,367,-}/\text{month}) \times 4 \\ &= \text{Rp.265. 468,-}/4 \text{ months} \end{aligned}$$

So the cost of necessary maintenance paid by the Customer is Rp.265. 468, -/4 months, and Rp.66,367,-/month.

In financing gold above explain that estimate got from the results multiplication of carats divided by the maximum carats, then multiplied by heavy gold, and next multiplied by price base gold (HDE) days. Sometimes price base of gold rose even down no sure, so the assessment daily with the same gold will be different.

Determining the amount of financing to be given to the customer, estimate price day multiplied by a comparison between the amount received financing customer with mark pledged gold Customer to the Bank, which has been set by BSI that is 95% for metal noble and 80% for jewelry. So that financing metal noble earned 95 % of the price estimate below market price, then result be the total financing that will be accepted.

In determining cost administration received, experienced differences to many amounts of financing to be accepted by customers. Financing under Rp.5,000,000 will impose a cost administration of Rp.18,000, above That imposed by different administrations. So that the more big financing the more the cost is greatly necessary for administration paid. In matter, this cost administration emits 2 pieces of 6000 stamp duty, photocopy, and fee insurance goods with remainder expenditure administration.

The determination cost *ujrah* or service maintenance gold, financing is multiplied by the average monthly rate and then multiplied by the length of time loan. However should cost of maintenance no can be by the amount of financing, but by estimated and actual costs of SDB issued. if appropriate with cost loan so That named *usury* so that no is by the applicable sharia and against the DSN MUI fatwa regarding *ijara* and there is additional *usury* from contract *qardh*, where no can add debt repayment loan.

**Table 1. Pawn Service Fees Gold**

No.	Type	Rust	Estimate	Loan	Ujrah	Adm
1.	LM 5 Gr	24	Rp.4,740,500	Rp.4,740,500	Rp.265,468	Rp.18,000
2.	LM 5 Gr	24	Rp.4,740,500	Rp.2,000,000	Rp.112,000	Rp.18,000
3.	LM 5 Gr	24	Rp.4,740,500	Rp.1,500,000	Rp.84,000	Rp.18,000

Based on the table above, very clear that *ujrah* is determined based on the amount of loan no from the estimated price. Proved with difference amount *ujrah* when the amount received financing differently, though price estimate and value goods that same. So it's very potentially happening usury because use determination equality gratuity monthly by 1.40% with price base gold Rp.998,000. In case this implementation financing pawn indicated sharia gold exists usury that violates several DSN fatwas and laws muamalah what happened.

**Table 2. Cost Administration**

No.	Amount Financing	Cost Administration
1.	Rp.500,000- Rp.10,000,000	Rp.18,000
2.	Rp.10,000,001-Rp.25,000,000	Rp.35,000
3.	Rp.25,000,001-Rp.50,000,000	Rp.60,000
4.	Rp.50,000,001-Rp.100,000,000	Rp.100,000

In the amount of financing pawn gold given costs different administrations, accordingly with many stored gold and loans provided by customers. Financing gold from Rp.500,000-Rp.10,000,000 is given cost administration Rp.18,000, that is so on until the biggest funding worth Rp.100,000,000 fee administration Rp.100,000. Cost administration is also determined by the magnitude amount loan customers, will but funds will divert to more insurance big after reduced fare real in administration agreement transaction financing pawn gold at BSI.

In the procedure settlement pawn, there is an exception no one can accept installment ujah, will but subtraction tree financing can be done. With method pay deadline payment principal, and calculations return ujah by loans used customer. The more a little financing, the ujah also reduced, customers. This violates MUI DSN rules where not can There is repayment financing determined by the amount loan. So that contain exists usury, which violates the rule of contract qardh (Ansari, 2011: 124).

## CONCLUSION

Application contract *rahn* gold in financing pawn sharia gold still not yet can said sharia, because taking ujah that should be taken from estimate mark goods. However, in BSM taking ujah done calculations by big loan received customer. So that violates the DSN MUI fatwa number 19/DSN-MUI/IV/2010 concerning qardh, where the customer must return the loan as a big amount loan beginning received by customers. So matter this in determination ujah indicated usury, so no there is a fundamental difference besides contract from pawnshop conventional.

Suitability practice *rahn* in financing pawn sharia gold in BSM yet can say perfect sharia, deep application contract Already by DSN MUI fatwa No. 25/DSN-MUI/III/2002 Concerning *Rahn*, and DSN MUI fatwa No. 26/DSN-MUI/III/2002 Concerning *Rahn* Gold. That there are three contracts used in financing pawn gold, will but in application contracts that take place in the field there is an inside indication contract that is not by sharia. Determination ujah should adapt with the DSN MUI fatwa taken from the estimated price and pick-up cost administration must be by the fare issued.

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