Riba Potentials in DSN-MUI’s Fatwa Concerning Gold Rahn

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Abstract

This study aims to analyse the usury potential contained in the National Sharia Council-MUI Fatwa Number: 26/DSN-MUI/III/2002 about Gold Rahn. This research was conducted to examine the fatwa from the perspective of Usul Fiqh. Islamic Sharia forbids riba (usury) and things that can encourage usury. The things that can encourage the occurrence of usury prohibited by Islamic Sharia are the merger of the Qardh contract and buying and selling, as well as other exchange contracts, such as ijarah. On the other hand, Fatwa of the National Sharia Board-Indonesian Council of Ulama (DSN-MUI) Number: 26/DSN-MUI/III/2002 about Gold Rahn actually opens the opportunity for usury because it allows the merger of the qardh and ijarah contract. This research combines literature and field research methods. Data was collected through literature search, documentation techniques and interviews. Triangulation techniques are used to test the validity of data. Next, the data is analysed and concluded. This research found that: 1) the potential for usury is due to the absence of restrictions on taking marhun maintenance fees by Islamic Financial Institutions. If the amount of service fees imposed by the Islamic Bank in maintaining marhun exceeds a reasonable price, the excess is considered usury. 2) The price excess is approved by the customer solely because the customer gets a loan from the Sharia Finance Institution (LKS). Also, LKS wants to provide loans to customers solely because customers want to pay fees that exceed reasonable maintenance costs.

Keywords: hybrid of contract, Ijarah, Qardh, Riba Potential


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Introduction

Sharia Financial Institutions (LKS) are any institutions whose business activities are in the financial sector based on sharia or Islamic law, such as banks, mutual funds, takaful, and so on. (Tim Penulis DSN-MUI, 2003). Sharia or Fiqh, which is the basis of LKS operations, is Fiqh Muamalah, especially regarding the agreement (contract). Fiqh muamalah, which has been written by the National Sharia Council of the Indonesian
Ulema Council (DSN-MUI) became the operational basis of LKS. The fatwa issued by the DSN is binding on Sharia banks. This is because Law Number 21 of 2008 concerning Islamic Banking in Article 26 requires sharia business activities and/or products and services to comply with Sharia Principles. The Sharia Principles referred to are those stated by the Indonesian Ulama Council.

A number of contracts which are the basis for the LKS operation which are obliged by the DSN-MUI include bai' (sale and purchase), mudharabah (profit sharing), syirkah/musyarakah (partnership), wadiah (deposit), ijarah (lease), qardh (accounts payable), raahn (pawnning), hawalah (debt transfer), kafalah (debt handling), and wakalah (power of attorney). Some of the DSN-MUI fatwas are stand-alone, and some are in the form of a merger of contracts.

Basically, contract that may stand-alone may be combined with one another unless there is a prohibition. Among the forbidden contracts are the merger of qarḍ/debt contract and bay' (sale and purchase) contract as confirmed in the hadith of the Prophet Muhammad PBUH narrated by Abu Daud (2009).

According to Ibn Taimiyah, the prohibition on merger debt contracts and buying and selling contract also applies to the merger of a debt contract with an ijarah (lease) contract, because buying, selling and ijarah are both contract (mu'awadhah) or exchange, are both commercial contracts. In fact, this prohibition also applies to combine sale and purchase contract ijarah with grants and 'arrah (borrow and use) because debt, grants, and 'arrah (borrow and use) are both tabarru'social contracts. (Ibn Taimiyah, 1987) When buying and selling are combined with qardh it will increase the prices. Thus, the additional price is compensation for the benefits of qardh, and it is forbidden usury.

The DSN-MUI, which has the authority as the issuer of fatwa in sharia economic matters in Indonesia, has issued a fatwa, which in fact, allows the merger of the ijarah and qardh contracts, namely the DSN-MUI Fatwa Number: 26/DSN-MUI/VI/2002 concerning Gold Rahn. Whether the DSN-MUI in this fatwa has closed the gap for usury is interesting to study.

There have been many studies on the DSN-MUI fatwa. Muhammad Syifa Amin Widigdo and Homaidi Hamid in "The Power of Fatwā in Indonesia: An Analysis of MUI’s Controversial Fatwa" stated that MUI fatwa is followed and obeyed when external factors, either state or society, politically or voluntarily support the implementation of the fatwa. (Widigdo & Hamid, 2018)

Zawawi, in the "Fatwa of the Sanction Clause in Akad: A Comparative Study of the Fatwa from National Sharia Council (DSN), Indonesian Ulama Council (MUI) and the Majma Fiqh Organization of the Islamic Conference (OIC)" states that there are fundamental differences between the Fatwa Majma 'Fiqh-OKI and DSN-MUI in determining the type of contract that can receive a penalty clause in the form of a fine. According to the Majma 'Fiqh-OKI Decree, the imposition of fines is not allowed on contracts that cause debts, such as salam, buying, and selling in installments and qardh. On the other hand, the DSN-MUI Fatwa allows a penalty clause to be imposed on all contracts that give rise to debts. (Zawawi, 2016)

Chaibou Issoufou and Naziruddin Abdullah, in “Revisiting The Concept Of Legal Guarantee In Islamic Law For Structuring Islamic Financial Products,” stated that in Islamic law, legal guarantees are permitted to prevent possible losses to traders and investors, and to protect public interests. In the view of classical and contemporary
Muslim scholars, collateral is not limited to debt guarantees but extends to guarantees of other commercial transactions such as guarantees of future liabilities and corporal punishment (Issoufou & Abdullah, 2019).

Mukhlis Rahmanto, in "Rowing In The Flow Of Khalaf; Indonesian Salafism Response Towards Contemporary Islamic Economics," concludes that the spectrum of Salafi Islamic economic thought is still around the field of economic fiqh (law), even though their role model, Ibn Taimiyyah, not only focuses on the field of economic fiqh but also analyzes micro-economic and macro variables – economics (Rahmanto, 2019).

Dakhoir, A. in "The fatwa authorities of the National Sharia Council of the Indonesian Ulama Council in supporting the principle of Sharia compliance," explains the importance of the position and existence of a fatwa in increasing compliance with sharia principles. Fatwa in Indonesia is issued by the Indonesian Ulema Council. MUI has become an important agent in the midst of frequent non-compliance with Sharia principles in the course of Islamic economics and finance. To encourage the application of sharia principles in economic traffic, fatwas issued by the National Sharia Council of the Indonesian Ulama Council have significant authority in addition to laws that have gone through the legislative process. (Dakhoir, 2019)

Dahlan, M.A.D., Hamid, S.A., Noor, M.M.M., and Ahmad, K. in "Implementation of the authoritative statement of the Shafi’i Madhhab in the economic legal ruling in the State of Kedah and State of Penang" concluded that the economic fatwa in Kedah and Penang as defined by the Shafi’i Madhab of thought is very small. These findings also show that other madzhab, such as Hanafi, Maliki, and Hanbali, have been taken into account in determining economic fatwas in both countries. (Dahlan et al., 2019)

Ullah, S, Harwood, Ian A., and Jamali, D. in “Fatwa Repositioning: The Hidden Struggle for Shari’ah Compliance Within Islamic Financial Institutions” revealed that Sharia scholars and managers of Islamic Financial Institutions have different goals, which are creating objective mismatches at the strategic level. These findings illustrate the latent tensions and struggles for Sharia compliance, referred to as the 'Fatwa Repositioning', which results in four possible consequences: deep, reasonable, minimum, and superficial Sharia compliance. Fatwa repositioning is the core category of the study, showing how Sharia managers and scholars strive to position the Shariah compliance of their institutions so that they can best serve their respective objectives. Interestingly, Sharia scholars do not seem to always control Shari'ah compliance. (Ullah et al., 2018)

Khairuldin, W.M.K.F.B.W.a, Embong, A.H.b, Hassan, S.A.c, Yasin, M.F.M.b, Anas, W.N.I.W.N.a in "Strategic management in fatwa-making process" The research results show that the process of making fatwas in Islam has four main processes, such as al-Taswir, al-Takyif, al-Hukm, and al-Ifta’ . Clearly, the process of making a fatwa visualizes a complete and concrete strategic management to avoid mistakes in determining the law for problems faced by the Muslim community. (Khairuldin et al., 2019)

Kelik Wardiono and Wardah Yuspin in “The Sharia Microfinance and The Counter-Hegemonic Movement: Examining the Legal Norms Regulating Aspects of Institutional And Business Activities in Surakarta,” concluded that the legal norms set and used to regulate the institutional and business aspects of the four Microfinance Institutions Sharia in Surakarta show that there are certain aspects in common, and
differences on the other. The norms used in regulating the institutional and business aspects of Islamic Microfinance Institutions in Surakarta show a mixture of norms in Islamic law and MUI fatwas, norms in positive law governing banks, financial institutions, partnerships, and cooperatives, with elements of the Islamic law that more prominently. (Wardiono & Yuspin, 2019)

Yulianda and Syaifullah in "Practical of Syariah Pawn (Rahn) in fatwa of national Shariah board -Indonesia Ulama council (case study at Syariah Indonesia National Bank (BNI)," concluded that the practice of gold pawning in BNI Syariah Pontianak City does not meet the provisions of the MUI DSN Fatwa. No: 25/DSN-MUI/III/2002. It is due to the cost of maintaining marhun is based on the amount of debt or the estimated price of gold. (Yulianda & Syaifullah, 2018) In this article, the potential for usury in the fatwa is not examined.

Maleha and Saprida, in "Performance of Islamic law against pawn implementation systems in Betung village Lubuk Keliat Sub-District Ogan Ilir district," concluded that the pawn system implemented by some Betung people was not in accordance with Rahn's provisions. (Maleha & Saprida, 2019) Maleha & Saprida’s research does not examine the potential for usury in the rahn contract since it combines the ijarah and qardh contracts.

Yahaya and Mohamad, in “Factors influence the acceptance of al-rahn among entrepreneurs,” concluded that understanding of rahn and considerations of halal and haram has a significant effect on acceptance of rahn. Meanwhile, The benefit returns factor and preferential use factor have no significant effect on Rahn acceptance. This research shows that small entrepreneurs have a positive view of rahn as a product based on Sharia and Islamic principles. (Yahaya & Mohamad, 2019) In this study, there was no discussion of the potential for usury in the rahn contract.

Rusby, in "Analysis of factors effected to rahn public service quality at shari'a pawnshop Pekanbaru," concluded that physical evidence (tangible), reliability, responsiveness, assurance, and empathy affect the quality of services Rahn at the Shari'a Rahn Pawnshop Branch, Harapan Raya Branch Pekanbaru. Of the five factors, the most influential factor is the assurance factor. (Rusby, 2016) Rusby did not examine aspects of sharia compliance in his research.

From the existing researches, no one has examined Rahn's fatwa in terms of the possibility of riba due to merging the qardh and ijarah contracts. Therefore, researchers are interested in analyzing the fatwa gold rahn in terms of the gap of usury in the merger of qardh and ijarah contracts.

The results of the research are beneficial to:
1. The National Sharia Council in formulating fatwas on merging qardh contracts with buying and selling or ijarah contracts.
2. Sharia Supervisory Board in supervising rahn contracts.
   Practitioners of Islamic Financial Institutions in implementing the rahn contract

Method
This research is a combined researches between library research and field research. Literature research was conducted by reviewing DSN-MUI DSN-MUI Fatwa Number: 79/DSN-MUI/III/2011, DSN-MUI Fatwa Number: 26/DSN-MUI/III/2002, DSN-MUI Fatwa Number: 29/DSN-MUI /VI/2002, and DSN-MUI Fatwa Number:
Field research was carried out by examining the arguments of the National Sharia Board administrators who issued the fatwa.

Data collection techniques were carried out through documentation and interviews. Documentation will be carried out by reviewing Fatwa DSN-MUI Number: 26/DSN-MUI/III/2002 concerning Gold Rahn and related fatwa, as well as fiqh books in various Madzhab regarding merging social and commercial contracts and related contracts mentioned in the four DSN-MUI Fatwa.

Interviews were conducted to central DSN-MUI administrators who understand the background of the fatwa and why the fatwa was chosen even though there is a hadith which prohibits 'merging the qardh and bai contracts'.

The technique of checking the validity of the data is done through triangulation, such as the technique of checking the validity of the data by comparing other things outside the data for checking purposes or as a comparison of the data. Triangulation is carried out using sources, methods, and theories. (Mokong, 2000, p. 178)

The analytical method used by the author is field analysis. Thus, this analysis is carried out when data collection takes place, and after completing data collection within a certain period. The process of analyzing the data, the first writer reduces the data, such as summarizes and selects the main things, focuses on the critical things, after that it is presented in a clear, detailed, and systematic description, the last stage of the conclusion is to conclude the discussion that has been compiled and answer the problem formulation.

Result

DSN-MUI’s Fatwa Number: 26/DSN-MUI/III/2002 concerning Gold Rahn was issued in response to the request for a fatwa on Gold Pawn Products by Bank Syariah Mandiri. The fatwa stipulation consists of four things, (1) Gold Rahn is permitted based on Rahn’s principle (see Fatwa DSN number: 25/DSN-MUI/III/2002 concerning Rahn). (2) The costs of storing the goods (marhun) are borne by the pawner (rahin). (3) The amount referred to in paragraph 2 shall be based on the expenditure, which is clearly needed. (4) The cost of storing goods (marhun) is based on an Ijarah contract.

Fatwa concerning gold rahn is related to the general fatwa on Rahn, Fatwa DSN-MUI number: 25/DSN-MUI/III/2002 on Rahn. This fatwa defines rahn as "holding goods as collateral for the debt." DSN allows Rahn with five provisions (1) Murtahin (the recipient of the goods) has the right to hold Marhun (goods) until all of Rahin’s debts (who hand over the goods) are paid off. (2) Marhun and its benefits remain Rahin’s property. (3) In principle, a murtahin may not use Marhun unless it has the permission of Rahin, without reducing the value of Marhun, and its use is merely a substitute for its maintenance costs. (4) Maintaining and storing Marhun is basically Rahin’s obligation, but it can also be done by Murtahin, while the cost and maintenance of storage remains Rahin’s obligation. (5) Sale of Marhun: (a) When due, Murtahin must warn Rahin to pay off his debt immediately. (b) If Rahin is still unable to pay off his debt, then Marhun is forcibly sold/executed through an auction, according to sharia. (c) The proceeds from the sale of Marhun are used to pay off debts, unpaid maintenance, and storage cost as well as selling costs. (d) Any excess proceeds from the sale become Rahin’s property, and the shortfall becomes Rahin’s liability.
Discussion

A. DSN-MUI’s Fatwa Concerning Rahn

(1) Murtahin (the recipient of the goods) has the right to hold Marhun (goods) until all of Rahin’s debts (who hand over the goods) are paid off.

The right of the murtahin to withhold marhun until the debt is repaid by rahin is agreed upon by all jurists. According to Hanafiyah, the authority of murtahin over marhun is yad dhamanah for marhun, which is equivalent to debt. Meanwhile, the excess value of marhun over debt is a mandate. (al-Zuḥailī, 2004) For example, if the debt is Rp. 1,000,000, while the marhun value is Rp. 1,500,000 then the authority of murtahin over marhun worth Rp. 1,000,000 is the yad dhamanah. If the marhun is damaged or lost in the hands of the murtahin, then Rahin’s debt of one million is considered to be paid off because the murtahin is responsible for the marhun worth one million rupiahs in debt. If the damage or loss of the marhun is not due to negligence, nor is it due to the act of the murtahin that exceeds the limit, then the murtahin is not obliged to replace 500 thousand in cash, the excess of the value of the debt. If the loss of marhun due to negligent murtahin or exceeding the limit, he is obliged to replace Rp. 500,000. (Sarakhsi, 2017)

According to Jumhur fuqaha, the authority of murtahin over marhun is yad amanah. He is not responsible for compensating for damage/loss of marhun unless he is negligent or overreached. Rahin's debt to murtahin does not fall because of the damage of marhun (al-Zuḥailī, 2004). The argument used by jumhur is the hadith of the Prophet Muhammad SAW narrated by Baihaqi that the pawnshop is not protected from the goods being pawned. He is entitled to the benefits and is responsible for the risks (Ibn al-Husain al-Baihaqī, 1344).

(2) Marhun and its benefits remain Rahin's property.

Marhun still belongs to Rahin based on the hadith of the Prophet Muhammad SAW narrated by Baihaqi that the pawnshop is not protected from the goods being pawned. He is entitled to the benefits and is responsible for the risks (Ibn al-Husain al-Baihaqī, 1344). Regarding the use of marhun, according to Hanafiyah Rahin, it is not permissible to use marhun without the permission of the murtahin, and vice versa, murtahin must not use marhun without Rahin's permission. (Sarakhsi, 2017, p. 102) Hanabilah shared the same opinion as Hanafiyah: Rahin should not use marhun without the permission of the murtahin.

Malikiyah has a tighter opinion. According to Malikiyah, Rahin is absolutely not allowed to take advantage of marhun. Even if the murtahin allows Rahin to use it it will result in Rahin's cancellation. Rahin still owns the benefits of marhun. Therefore, rahin can allow murtahin to take advantage of it.

According to Syafi‘yyah, Rahin still has all the rights to use marhun. Therefore, he can use marhun as long as it does not reduce the value of marhun. If its utilization can reduce marhun, it must be approved by murtahin. (al-Zuḥailī, 2004) The provisions of this DSN-MUI’s fatwa, according to the views of the researchers, follow the opinion of Syafi‘yyah.

(3) In principle, a murtahin should not use Marhun unless it has the permission of Rahin, without reducing the value of Marhun, and its utilization is merely a substitute for its maintenance costs.
This third provision is in line with the opinion of *Jumhur Ulama* other than *Hanabilah* that *murtahins* should not take advantage of *marhun* at all. They understand the hadith that allows animals to be milked and driven, that is, as long as the *rahin* refuses to pay for *marhun*. If *rahin* refuses to pay for the *marhun* then the *murtahin* finances it, then the *murtahin* may take advantage of the *marhun* according to the costs they have incurred.

Meanwhile, *Hanabilah* allows *murtahin* to take advantage of *marhun* if it is an animal. *Murtahins* may milk *marhun* animals and ride them according to the value of the costs incurred to maintain *murtahin*.

According to *Hanafiyah*, *murtahin* must not use *marhun* at all without *Rahin*'s permission because the right of *murtahin* is to hold *marhun* not to use it. If the *murtahin* uses it with *rahin*'s permission, some *Hanafiyah* allow it absolutely, and some absolutely prohibit it because it is considered usury, and some detail it. According to the details, if at the time of the contract, *Rahin* allowed the *murtahin* to take advantage of the *marhun*. As a result, it was *haram* because it was classified as usury. If at the time of the contract, it does not require the use of *marhun* by the *murtahin*, and *rahin* allows it, then the law is permissible. If usually *murtahin* uses *marhun* then the law is the same as the conditions, becomes *haram*. Something that becomes a habit is the same as a requirement.

According to Wahbah az-Zuhaili, this last provision is in line with the spirit of sharia, which prohibits usury. In matters of debt, legal caution is mandatory. The applicable rules are “Every debt that attracts the required benefits that have become a habit is usury.” (al-Zuhaili, 2004)

The *Malikiyah Madhab* provides details. If the *rahin* gives permission to the *murtahin* to take advantage of the *murtahin* or the *murtahin* requires the use of the *murtahin*, the law is permissible if the debt strengthened by pawning arises from buying and selling without cash or similar to buying and selling and the use of *marhun* is determined by the time. The status is to buy, sell, and rent. If the debt secured by a pledge is in the form of *qardh*, debt-receivable, the use of legal *marhun* may not be classified as usury (Ibn Arafah, 2011).

The *Shafii Madhab*, in general, has a similar opinion to the *Maliki Madhab* of thought. A *murtahin* must not use *marhun* without *Rahin*'s permission, because the benefits of *marhun* are *Rahin*'s. If the *murtahin* requires things in the *qardh* contract that are detrimental to *rahin*, for example, the result of *marhun* or its benefits for *murtahin*, then the terms and *rahn* are void. If the time for the benefits of *marhun* is determined, and it is required in the sale and purchase, not in cash, then the law is permissible because it is calculated as a combination of sale, purchase, and lease in one contract. For example, the seller says: "I sell this horse for 100 dirhams on the condition that you mortgage your house to me and the right to use it for me for a year." This means that part of the horse's body costs 100 dirhams, and part of it is for one year's rent. If, in the contract, there is no agreement on the use of *marhun* by the *murtahin*, then *rahin* allows the *murtahin* to use it, and the law is permissible. The reason is that *rahin* is the owner of *marhun*, therefore it is permissible for anyone to take legal action on his property. And the use of *marhun* by *marhun* does not diminish the right of *murtahin* to hold *marhun* because *marhun* is still in his hands (al-Syarbînî, 2000)

According to *Hanabilah*, *marhun* other than animals that do not need *mu'nah* or provision (food), *murtahin* must not use them without *Rahin*'s permission, because
marhun, its benefits, and its products belong to Rahin. If rahin allows murtahin to take advantage of marhun without compensation, while the debt that is strengthened by a mortgage arises from qardh (debts), the law is haram, because it is classified as a debt that attracts benefits. If the mortgage is a guarantee for the selling price or rent of the house, then Rahin allows the murtahin to use it, and the law is permissible. If the marhun is an animal, the murtahin may use it by driving it if it is an animal that can be ridden or drinking its milk if it can be milked at an even cost even though Rahin does not allow it. The basis of the hadith of the prophet narrated by Bukhari that if an animal is mortgaged, it can be ridden by paying for it, and its milk can be drunk by paying for it. Those who drive and drink the milk are obliged to pay for it (Ibn Isma'il al-Bukhārī, 1987).

According to Ibn Hajar, zahir hadith is evidence for those who argue that a murtahin can take advantage of the marhun even if the owner does not allow it. This is the opinion of Ahmad and Isaac. A group of Ulama are of the opinion that murtahin take advantage of marhun by riding and drinking their milk according to the level of their living; they should not be used in any other way. The use of marhun is specifically for murtahin, not others. The reason for using rahin against marhun because he owns the object, not because he finances it, is different from murtahin. He has the right to use the marhun not because he owns it, but because he finances it (Ibn Hajar, 1379).

The Hanbali Madzhab argues that paying for a pawning animal is obligatory, while murtahins have rights over the animal. He made it possible to fulfill his rights from the marhun and replace the two animal owners in carrying out his obligations. This is lawful as a wife can take her expenses from her husband's assets without her permission when her husband does not want to support her, and represents her husband in spending her assets.

On the other hand, Jumhur ulama do not practice this hadith. According to jumhur this tradition is revised by another hadith the hadith of the Prophet Muhammad SAW narrated by Baihaqi that the pawnshop is not protected from the goods being pawned. He is entitled to the benefits and is responsible for the risks (Ibn al-Husain al-Baihaqī, 1344)."

It's just that the nasakh claim by the two hadith above is not supported by a chronological explanation that the two hadith came after the previous hadith. Auza'I, Laits, and Abu Tsaur understand the hadith of the ability to ride and drink pawn animal milk when Rahin refuses to pay for it. At that time the murtahin may pay for it to keep him alive. As compensation, he can use it by driving and drinking milk provided that it does not exceed the value of the costs incurred to raise a pawn animal.

In fact, these seemingly contradictory hadith can be compromised. The hadith that prohibit the use of marhun by murtahins as proof of 'aam are confirmed by the hadith of the ability to ride and drink marhun animal milk.

(4) Maintaining and storing Marhun is basically Rahin's obligation, but it can also be done by Murtahin, while the cost and maintenance of storage remain as Rahin's obligation.

The maintenance costs for marhun are mandatory for the rahin, which is the agreement of the jurists. This is because the one who has the right to enjoy marhun is rahin, so that the risk is also his responsibility according to the hadith of the Prophet
SAW: the hadith of the Prophet Muhammad SAW narrated by Baihaqi that the pawnshop is not protected from the goods being pawned. He is entitled to the benefits and is responsible for the risks (Ibn al-Husain al-Baihaqī, 1344).

The fukaha differ on the types of costs that are mandatory for the rahin. According to Hanafiyah, all costs needed for the benefit and integrity of marhun are the obligation of rahin, because marhun belongs to him. All costs needed to maintain marhun are the obligation of the murtahin, because it is the murtahin who has an interest in holding marhun that it is his obligation. For example, the cost of eating and drinking animals as well as irrigation costs for trees, is Rahin's obligation. Meanwhile, the cost of the guard and the storage area for the marhun becomes the authority for the murtahin.

According to Malikiyah, Syafi’iyyah, and Hanabilah, all costs of marhun, both related to wholeness and maintenance of marhun are mandatory for rahin because of the use of marhun is the right of rahin, so all costs become obligations. (al-Zu’hairī, 2004)

The provisions in the DSN fatwa are in line with the views of jumhur jurists. In contrast to the provisions in al-Mi’yār al-Syar’ī No (39) 3-2-10. According to al-Mi’yār al-Syar’ī, rahin bears all the real needs that must be met for the integrity of the marhun. On the other hand, murtahin bears all the needs related to maintaining, documenting, and selling marhun. (AAOIFI, 2017) Based on this provision, rahin cannot be used for commercial purposes because maintenance costs are borne by murtahins.

(5) Sale of Marhun: (a) When due, Murtahin must warn Rahin to pay off his debt immediately. (b) If Rahin is still unable to pay off his debt, then Marhun is forcibly sold/executed through an auction, according to sharia. (c) The proceeds from the sale of Marhun are used to pay off debts, unpaid maintenance, and storage cost as well as selling costs. (d) Any excess proceeds from the sale become Rahin's property, and the shortfall becomes Rahin's liability.

Pawning is collateral for the debt. The purpose of the pawning is to pay off the debt from the price of the marhun if Rahin does not pay off the debt when the payment is due, by selling the marhun. Under normal conditions, the sale is made by Rahin or his representative, because Rahin is the owner of the marhun.

On that basis, when the debt matures, the murtahin asks Rahin to pay off his debt. If Rahin pays his debt, the debt and credit affairs are finished. If Rahin does not pay off his debt, either because he is reluctant, unable, or where his residence is not known, then the judge is the one who forcibly sells it according to the fukaha agreement.

According to Hanafiyah and Malikiyah Hakim, the judge has the authority to force Rahin's deputy to sell marhun. According to Syafi’iyyah and Hanabilah, judges are not authorized to force rahin representatives to sell marhun. The judge himself sells the marhun if there is no rahin, or is there but is reluctant to sell it.

First, the judge asked Rahin to sell marhun. If Rahin is willing, it's done. If Rahin is not willing, the judge has the authority to sell marhun without the need to force Rahin to sell it by detaining him or beating him, according to the opinion of Malikiyah, Syafi’iyyah, Hanabilah, and the two friends of Abu Hanifah.

According to Abu Hanifah, the judge is not authorized to sell the marhun in the hands of the murtahin without Rahin's consent. The judge has the authority to hold Rahin until he sells it. If Rahin's hand has the same type of debt, then the debt will be
paid off of that asset.

According to al-Ma'āyīr al-Șyar'iyyah, the murtahin may require the murtahin to authorize the murtahin, or to the murtahin’s deputy, or to someone who has agreed to sell the marhun, and the murtahin asks for repayment of their debt from the selling price of the marhun when Rahin does not pay off his debt without the need to bring it to court. Rahin has no right to withdraw this wakalah/authorization. (AAOIFI, 2017)

If the sale of marhun costs money, the cost is borne by Rahin because he is the owner. He is bound to pay off his debt. And the sale of marhun as a result of him not paying off his debt. (AAOIFI, 2017)

B. DSN-MUI’s Fatwa Concerning Gold Rahn

Next, the writer will examine the gold rahn. The stipulations in the fatwa regarding gold rahn consist of four things, (1) Gold Rahn is permitted based on Rahn’s principle (see Fatwa DSN number: 25 / DSN-MUI / III / 2002 concerning Rahn). (2) The costs of storing the goods (marhun) are borne by the pawner (rahin). (3) The amount referred to in paragraph 2 shall be based on the expenditure, which is clearly needed. (4) The cost of storing goods (marhun) is based on an Ijarah contract.

(1) Gold Rahn is permitted based on Rahn's principle (see Fatwa DSN number: 25/DSN-MUI/III/2002 concerning Rahn).

Gold can be pawned because gold is māl mutaqawwim/property that is valued in sharia (assets that can be used according to sharia and are already under someone’s control). Apart from being māl mutaqawwim, marhun must be certain and can be handed over. (AAOIFI, 2017).

(2) The costs of storing the goods (marhun) are borne by the pawner (rahin).

This provision is the same as the provisions of the Fatwa DSN number: 25/DSN-MUI/III/2002 concerning Rahn provision number (4), which the researcher has previously explained along with the jurist’s views on this matter.

(3) The amount referred to in paragraph 2 shall be based on the expenditure, which is clearly needed.

This fatwa stipulation limits the number of maintenance costs for marhun according to the expenses that are clearly needed. It's just that the provisions of this fatwa do not specify what measures of expenditure are clearly required. According to researchers, this provision should be understood that the cost of maintaining marhun should be a reasonable cost in accordance with the market price. The amount of the fare must not exceed the market price. If the cost of maintaining marhun exceeds the market price, it will be classified as usury. Rahin agreed that the excess price of maintenance costs was because Rahin owed the murtahin a debt. On the other hand, murtahin gives debt to Rahin because Rahin is willing to pay the cost of maintaining the marhun, which exceeds the market price.

(4) The cost of storing goods (marhun) is based on an Ijarah contract.

This fourth provision opens the opportunity for the merger of the commercial contract and the tabarru’ (social) contract prohibited in the hadith of the Prophet
Muhammad SAW narrated by Abu Daud that it is not lawful to combine debt contract with buying and selling contract (Abu Daud, 2009).

According to Ibnu Taimiyah, the prohibition on combining debt contracts, buying and selling also applies to the merger of a debt contract with an ijarah (lease) contract, because buying, selling, and ijarah are both contract (mu'awadhah) or exchange, are both commercial contracts. According to Ibn Taymiyyah, the merger of the exchange contract and the social contract is not allowed because the social contract is carried out solely for the sake of implementing the exchange contract, not a purely social contract. Ibn Taymiyyah gave an example of someone cashing out 1000 dirhams to someone and selling an item whose market price was 500 dirhams for 1,000 dirhams. Creditors do not want to deposit money to the debtor unless the debtor buys the goods above the market price. On the other hand, the buyer is actually not willing to take the excess from the market price. He accepted it solely for the sake of getting a debt of 1,000 dirhams from the seller. According to Ibn Taymiyyah, this was not selling goods worth a thousand, and neither was it pure debt. According to Ibn Taymiyyah, the merger of buying and selling and debt is classified as debts that attract profit, subject to the law of usury, by using a sale and purchase contract as a means of hilah. (Ibn Taimiyyah, 1987)

According to Azharuddin Latif, Chairman of the DSN-MUI Institute, basically, the merging of the qardh and ijarah contracts is forbidden in Islamic sharia. In the DSN Fatwa number: 25/DSN-MUI/III/2002 concerning Rahn, there is no mention of ijarah. The mention of ijarah is contained in Fatwa Number: 26/DSN-MUI/III/2002 concerning the Gold Rahn. This fatwa, according to Azharuddin has been revised through. Therefore, the fatwa on Rahn has been revised with FATWA DSN NUMBER: 92/DSN-MUI/IV/2014 concerning Rahn's Accompanied Financing.

In the Financing Fatwa accompanied by Rahn, the provisions related to Murtahin's Income are stipulated (1) In the event that rahn (dain/marhun bih) occurs because of a sale-purchase contract (al-bai') for which the payment is not cash, then Murtahin's income only comes from profit (al-ribh) buying and selling; (2) In the event that rahn (dain/marhun bih) occurs because of a lease agreement (ijarah) for which the payment of ujarah is not cash, then Murtahin's income only comes from ujarah; (3) In the event that rahn (dain/marhun bih) occurs because of borrowing money (akad qardh), then the Murtahin's income will only come from mu'nah (maintenance/guarding services) for marhun, the amount of which must be determined at the time of the contract as ujarah in the ijarah contract; (4) In the event that the rahn is carried out in a mandate agreement, the income / income of Murtahin (Syarik / Shahibul Mal) will only come from the profit sharing of the business carried out by the Amanah Holder (Syarik-Manager / Mudharib).

In this last fatwa, the income of murtahin comes from the mu'nah imposed on the rahn. The term is not ujarah, but mu'nah, so it seems that there is no ijarah in rahn. The maintenance fee for marhun is only charged to the rahn who owes the qardh contract. The question is, why not apply it to rahn for other reasons, even though murtahin both have to keep marhun? This fatwa distinguishes between things that are actually the same. The murtahin must both protect and maintain marhun.

The amount of mu'nah must be determined at the time of the contract, as is the case in the ijarah contract. The amount of mu'nah, according to Azharudin Latif, is based on the agreement of rahn and murtahin, not based on the real costs needed to
maintain marhun. Because the amount of mu'nah is left to the agreement between rahin and murtahin this opens the opportunity for usury to occur. It is usury because the agreed mu'nah exceeds real reasonable costs. Rahin was forced to agree to mu'nah because he was in debt to the murtahin. On the other hand, murtahin agrees to give debt to rahin because rahin is willing to pay mu'nah more than its reasonable price.

Conclusion

The DSN-MUI’s fatwa on Gold Rahn and related fatwas provide an opportunity for usury in combining the Qardh and ijarah contracts. The gap in usury is if the amount of ujrah/mu'nah exceeds the reasonable cost. Rahn contract can fall into usury if the mu'nah cost of maintaining marhun bih/debt guarantee exceeds the price of a reasonable cost. Usury occurs in the rahn contract if the Sharia Financial Institution is willing to give qardh/debt to the customer if the customer is willing to pay the lease to maintain collateral exceeding the fair/market price. On the other hand, a customer is willing to pay a maintenance lease for collateral that exceeds the market price because he/she receives a qardh/debt from a Sharia Financial Institution. The excess of the cost of maintaining collateral from the fair price is the benefit of qardh/debt, which is usury.

References

Hamid


