

## Urgency of *Akad* as The Protection of *Rahn* Consumer

Ika Atikah

Universitas Islam Negeri Sultan Maulana Hasanuddin Banten

[ika.atikah@uinbanten.ac.id](mailto:ika.atikah@uinbanten.ac.id)

Nur Rohim Yunus

Universitas Islam Negeri Syarif Hidayatullah Jakarta

### Abstract

*This paper analyzes consumer protection in Rahn's transactions from the perspective of sharia economic law. This normative legal research uses a statutory and conceptual approach. The analysis technique uses prescriptive analysis. The results show that, customer protection in rahn transactions can occur if the pillars and conditions are valid for the contract by applying the principles of expediency, justice and equality (al-musawah), where the parties have a close relationship to fulfill their rights and obligations. According to the DSN MUI Fatwa No. 25/DSN-MUI/III/2002 rahn contracts must meet the following conditions: Murtahin (recipient of goods) has the right to hold Marhun (goods) until all debts of Rahn (who delivered goods) are repaid. Marhun and his benefits remain the property of Rahn. Marhun may not be used by Murtahin except with Rahn's permission, without reducing the value of Marhun and its utilization. The maintenance and storage of Marhun is Rahn's obligation, but it can be done by Murtahin, while the cost and maintenance of storage remains Rahn's obligation. Maintenance and storage costs should not be determined based on the loan amount. When it is due, Murtahin must warn Rahn to pay off the debt immediately. However, if Rahn is unable to pay off the debt, then Marhun may be sold through auction in accordance with sharia economic law. The proceeds from the sale of Marhun were used to pay off outstanding debts, maintenance and storage costs. The excess of the sale proceeds belongs to Rahn and the shortage becomes Rahn's obligation.*

**Keywords:** *Akad; Customer protection; Rahn*

### Abstrak

*Akad (perjanjian) sebagai salah satu unsur penting dalam transaksi gadai syariah. Fungsi dari akad sebagai bentuk perlindungan hukum konsumen (peminjam) uang dari lembaga gadai syariah. Objek jaminan gadai syariah sebagai perjanjian asesor sehingga transaksi gadai menjadi sah secara hukum dilakukan. Tanpa ada unsur akad yang diterapkan dalam sistem gadai syariah, maka transaksi menjadi tidak sah. Penelitian ini merupakan normatif dengan pendekatan konseptual dan analisis. Sumber hukum utama merujuk pada jurnal, karya ilmiah relevan hukum ekonomi Islam. Sedangkan hukum sekunder merujuk buku hukum ekonomi Islam. Hasil dari penelitian ini bahwa*

*perlindungan konsumen gadai syariah diawali dengan menggunakan akad rahn. Isi daripada perjanjian pokok dan perjanjian asesoir sebagaimana Fatwa DSN MUI No. 25/DSN-MUI/III/2002 yang merupakan kompilasi dari sumber hukum Islam, kaidah fiqih, dan pendapat ulama bahwa membolehkan rahn dengan memenuhi ketentuan Murtahin (penerima barang) mempunyai hak untuk menahan Marhun (barang) sampai semua utang Rahn (yang menyerahkan barang) dilunasi. 2. Marhun dan manfaatnya tetap menjadi milik Rahn. Pada prinsipnya, Marhun tidak boleh dimanfaatkan oleh Murtahin kecuali seizin Rahn, dengan tidak mengurangi nilai Marhun dan pemanfaatannya itu sekedar pengganti biaya pemeliharaan dan perawatannya. 3. Pemeliharaan dan penyimpanan Marhun pada dasarnya menjadi kewajiban Rahn, namun dapat dilakukan juga oleh Murtahin, sedangkan biaya dan pemeliharaan penyimpanan tetap menjadi kewajiban Rahn. 4. Besar biaya pemeliharaan dan penyimpanan Marhun tidak boleh ditentukan berdasarkan jumlah pinjaman. Apabila jatuh tempo, Murtahin harus memperingatkan Rahn untuk segera melunasi utangnya. Apabila Rahn tetap tidak dapat melunasi utangnya, maka Marhun dijual paksa/diekseseksi melalui lelang sesuai syariah. Hasil penjualan Marhun digunakan untuk melunasi utang, biaya pemeliharaan dan penyimpanan yang belum dibayar serta biaya penjualan kelebihan hasil penjualan menjadi milik Rahn dan kekurangannya menjadi kewajiban Rahn.*

**Kata Kunci:** *Perlindungan nasabah, Rahn (gadai), Ekonomi Syariah*

## **Introduction**

An Agreement has a significant influence on Islamic economic transactions. In Islamic Law, an agreement is known as a contract. The function of the contract is fundamental about Islamic financial transactions such as sharia pawnshop. Sharia pawning is a sharia financial institution that promotes money lending for people who need funds by guaranteeing money-valued goods.

The presence of sharia pawning itself has become an inseparable part of the daily lives of the majority of Indonesian Muslims, so that the implementation of the Islamic economy in Indonesia has a positive effect, including an increase in the country's economic income with people's interest in using the services of Islamic financial institutions. However, the emergence of these Islamic economic institutions is, of course, accompanied by regulations involving the consistency of the government's role in implementing Islamic financial institutions in Indonesia. Thus, in "driving" these transactions by Islamic economic institutions at that time, they still referred to the regulations that were integrated with conventional institutions (Ika, 2018, p. 2).

Since the coronavirus or covid-19 has plagued almost all countries, including Indonesia, Pawning has become one of the solutions for people when they need funds by pawning money-value collateral to disburse loan funds by people who apply for pawns at

official institutions such as sharia pawnshops. People in pawning transactions, known as *rahn in fiqih muamalah*, need to get attention from the government in the form of protection for customers as consumers of the sharia economy because it is not uncommon for consumers in Islamic economic transactions to have parties who do not have discretion, in the sense that they follow the rules of the pawn company in the process of providing loan funds with pledged collateral. Protection of consumer customers as parties without bargaining power. Consumers are considered weaker than contract partners and professionals and are considered unable to protect their interests because of their lower bargaining power (Atikah, 2020b, p. 135).

A mortgage is a legal relationship between a person and the land of another person who has received a mortgage from him. As long as the mortgage money has not been returned, the land is controlled by the “pawn holder” as long as all land products are the right of the lien holder. The return of the mortgage or what is commonly called “redemption” depends on the willingness and ability of the owner of the land being pawned. The pawn can be interpreted as handing overland from the landowner to the pawnshop holder (pawnshop) to receive cash payments from the pawnshop holder, provided that the pawn holder has the right to return the land by redeeming it from the pawnshop holder (Miller, Di, & Hanke, 2019).

Inevitably, pawning institutions harm consumers where the rules made do not prioritize the principle of balance and the focus of trust. The pawnshop located on the side of the road is unregistered or illegal, so it has several items that can be pawned. Like the Pawn Center, the shop accepts goods such as cellphones, cameras, televisions, and BPKB motorbikes with a specified year.

Based on OJK’s data, 30 illegal pawnshops, of which 57 illegal outlets, were found. Behind the ease with which it is easy to get money is a threat that results in consumers losing money. Items pawned will be auctioned if they cannot be redeemed. However, the written agreement arrangement has not protected consumers, so that the accessory agreement and agreement is an essential matter in a pawning transaction.

The agreement or contract can reduce all problems between creditors and debtors. Contractual relationships in Islamic financial institutions (*Rahn*) are, of course, based on financial agreements and sharia principles. This ensures Justice in the contract and avoids the exploitation of injustices such as *usury*, *gharar*, *maysir*, and speculation.

There is no difference in the nominal amount of the ransom money, which is the same as the money handed over by the pawnshop holder at the beginning of the pawn transaction to the pawn seller. Of course, the money to be received by the mortgage has been agreed upon by both parties. Meanwhile, the payback period depends on the willingness and ability of the pawning party, so the timing of the mortgage is uncertain (Tsay, Lin, & Yang, 2018). The longer the mortgage loan period carries its own risk, namely changes in the value of the currency, which results in a different amount of money from the initial pawning transaction with the land return transaction (ransom). Pawning is borrowing cash within a specific time limit by handing over the goods as dependence. If the time is not disbursed, then the item becomes the right to make a loan.

Regarding contract failure, it can occur due to internal factors of the parties as well as external factors that affect the existence of the contract concerned; in this case, Agus Yudha Hernoko explained several essential elements that failed to fulfill contractual obligations, namely, "Default, overmatch/coercion, and difficult circumstances (hardship)." Kartini Muljadi and Gunawan Widjaja stated that "Pawning gives creditors the authority to take the repayment themselves in advance, because the material guarantee gives the guarantee holder the right to sell the guaranteed object himself and then collect the payment by himself ahead of the sales proceeds. According to Wirjono Prodjodikoro: "The right to receive debt payments from the sales of pawned goods is regulated in Article 1155 and Article 1156 of the Civil Code. The pawn owns the goods and if an agreement is also made that allows this; the agreement is null and void. What is allowed is only to calculate the return of the loan money with the money from the pawning sale" (Adjie & Saputro, 2015, pp. 53–54).

Damage or loss of pledge collateral is one of the legal issues requiring legal certainty. When the loan repayment to the pawnshop institution, consumers can take back the collateral object in good condition and not defective. According to Muhammad, the emergence of sharia economic institutions such as pawning (*Rahn*) in Indonesia, according to Muhammad was built on five bases, namely divinity (divine), Justice (*al-'adl*), prophethood (*al-Nubuwah*), government (*al-Khalifah*), and results (*al-'adl*) or profit (Nahrowi, 2004, p. 95).

The value of fairness is one of the crucial principles for implementing all Islamic economic transactions. Acting fairly is based on the written texts and *as-sunnah*, but it

becomes a consideration of the nature of Law, which is based on balance and Justice. The concept of Justice referred to in economics determines how prices can be controlled by implementing policies tailored to consumers, ensuring the quality of goods and the consequences of these established economic policies (Manan, 2016, pp. 10–11).

The application of fairness and effort to rule out all irregularities becomes the major scale as written in surah *al-Maidah*: 8 the substance of the verse calls on Muslims to continue to uphold what is right because Allah SWT to become witnesses who prioritize the principle of Justice. Some Muslims hate other people for some reason, and then put that hatred aside to avoid injustice because Justice is closer to piety. Pawning (*Rahn*) is one of the agreement transactions or debt-receivables contracts. In carrying out a *Rahn* transaction, a guarantee is needed as a condition for the application of the principle of trust between creditors and debtors so that the goods pawned become a condition for funds to be processed. Since the time of prophet Muhammad SAW, the practice of Pawning has been carried out by Muslims at that time, so it requires a specific understanding of customer protection as consumers in contract transactions on pawning (*Rahn*) from the context of Islamic Law.

In previous research, it is imperative for this research; researchers carry out the literature review by exploring what has been stated by previous researchers to support a more comprehensive arrangement. Some of the previous studies include: 1) Windy Indah Yulianda and Muhammad Syaifullah, Practical Of Syariah Pawn (*Rahn*) In Fatwa Of National Shariah Board -Indonesia Ulama Council (Case Study At Syariah Indonesia National Bank (BNI), 2) Yunita, Afidela et al. Pawn Execution to PT Pegadaian against Collateral Object Which Does Not Belong to the Pawner, and 3) Lastuti Abubakar and Tri Handayani, Legal Issues in Sharia Pawn Gold Practice in Indonesia. The comparison of the three previous studies with the research conducted by the researcher was different. The research object, research method, and the researcher had not found an investigation with the same title as the previous research title. This research is the development of knowledge from book theories and previous research.

Generally, in Indonesia, *Rahn*'s practice is accepted by the community as a substitute for conventional Pawning, which applies an exciting system and causes the owner to lose property. In contrast, the *Rahn* system is a viable choice for Indonesians. As in Koe and Nor Zalindah (2015) research, it is stated that conventional Pawning was already famous at

that time, but Islam cannot enforce it because of the *usury* and *gharar* systems. Thus, *Rahn* is a solution to the problem that most financial institutions adhere to a strict sharia system and public interest, both Muslims and non-Muslims (Bakar, Abd Aziz, Mohd, & Muhammad, 2018, p. 81). The problem in this research is how the contract as an agreement in *Rahn* transactions can protect consumers?

## Methods

This type of research uses normative research. Normative research is also known as doctrinal research (Jonaedi Efendi, Johnny Ibrahim, & SE, 2018, p. 124). The approach used in this research is a conceptual approach and an analytical approach. The conceptual approach is the approach used in normative research and the analytical approach needed in normative research. Primary sources are taken from books, journals, proceedings, statutory regulations, and Islamic economic Law. The technique of collecting data is by processing the data found by describing the data found to produce conclusions from the problems discussed.

## Result and Discussion

### 1. *Rahn Akad* (Theoretical Context)

The implementation of the concept of sharia has three basic characteristics in the sharia economic system, namely, Justice, staying away from prohibited activities, and prioritizing benefits. The three of them are focused on avoiding the practice of interest, but it is necessary to apply all the principles of Islamic Law in a balanced economic system. The basis of the economic foundation of the *ummah* is an effort to realize Islamic human relations for those who carry out various transactions or contracts and engagements. The spirit and ethics of Islamic economics emphasize mutual interests through the exchange of benefits (*taba'dul al-mana'fi*) based on mutual acceptance (*a tara'dlin*), mutual benefit (*murabahah*), mutual trust (*Amanah*), and cooperation (*musyarakah*), in various forms. All these actions are carried out voluntarily (sincerely) based on tauhidullah and brotherhood (*ukhuwah*) so that there is no *gharar*, *maisir*, *usury*, and *ikhtikar* (Ika, 2018, p. 5).

Islamic Law regulates every human movement as a whole, including the relevant aspects of that life. The relationship between humans and Allah SWT is held in the element of worship and matters relating to each other among humans in the field of *muamalat*.

*Muamalat* is an important part of the wheel of human life because *muamalat* is related to the two, giving rise to obligations so that all things expected to achieve their daily needs will be created (Manan, 2016, p. 71).

There are two existences of rights in every human being, namely:

- a. Use of ownership or to assign ownership. A person can be said to be exercising his rights when he reduces, releases, or restricts the freedom of others to do something to reduce the space of that person to get what he wants.
- b. Leaving the rights. A person can be said to renounce his rights when he neglects his righteousness, by giving up his rights and by exchanging rights to others in return (mutual transferring rights) (Sugianto, 2013: 74).

Mutual exchange of rights or mutual transfer of ownership, according to Hobbes, is said to be a contract. According to him, a person can exchange rights with others either with goods, money, instant services, or promises in the future. Even though the implementation is in the future, the contract must make right away. Hobbes concluded that human life is narrow, destitute, vile, brutal, and at times without a warranty. Islamic Law distinguishes between a promise and an agreement or contract. The term promise sometimes has the same meaning as the term agreement/contract. The agreement is seen as a contract. Both are different by promise. The contract contains a statement of a positive desire from one of the parties involved and accepted by the other party due to the Law on the object of the agreement and the rights and obligations. Meanwhile, promises are more about the wishes expressed by someone to do something, act, or say to provide benefits for other parties. The difference lies in the legal situation from the advantages; the contract is binding (*mulzim*) of the perpetrator, it is obligatory to be implemented, both from a legal perspective and from a religious point of view, when all the conditions of the agreement/contract are fulfilled (Manan, 2016, p. 73).

In implementing contract/contract law, the people involved in it have obligations along with rights. A sale and purchase contract, in which the seller is required to give the goods/goods, is the buyer's right, and the buyer is obliged to provide the seller's good money. Reciprocity like this is called contractual obligations. However, two types distinguish contract law: the fundamental Law from Islamic Law and other laws determined and agreed upon by the maker (Leu, 2014, p. 62). Transactions carried out have relationships between humans related to assets, rights, and settlement of cases concerning

these matters to meet the daily needs of humans by adhering to the Sharia. This definition indicates the existence of a relationship between transactions with Sharia. Sharia serves as a guideline for all transaction activities. Transaction activities that do not follow the provisions of the Sharia are prohibited (Hasan, 2004).

Sharia is a reference that comes from the provisions of Allah to be used as a guide for Muslims in living the life of the world. Sharia is a way of life that a Muslim must believe in bringing him the happiness of life. Allah SWT can determine the provisions and paths that humans must obey and obey because Allah SWT is the creator and ruler of the universe. All trading activities refer to the guidelines established by the Sharia (Pradja, 2012, p. 102). Pawn or *Rahn*, in the opinion of M. Syafi'i Antonio is one way to hold the borrower's property to be used as collateral for the loan he receives.

Meanwhile, goods that are detained and used as collateral certainly have economic value. In short, *Rahn* is a form of debt security. According to Sri Nurhayati, the pawning contract (*Rahn*) is a form of agreement accompanied by a guarantee by keeping the borrower's property as a condition for the fulfillment of the loan he receives (Subagiyo, 2014, p. 166).

*Rahn* (Pawn) is defined as the *syara* 'withholding something due to an indication of an enabling right to be done from that something, which means making *al-aini* or objects or goods, assets or objects of value whose interests are clear or concrete, the opposite of *ad-dain* or debt of value or selling power according to the *syara* view as *watsiqah* or confirmation, collateral for debts, in which the goods can be used to be paid in whole or in half of the existing debt payments. Something used as *watsiqah* or guarantee requires something of value to the selling power of the goods (Nasution, 2016, p. 76).

*Rahn* has a reasonably broad meaning, not just a pawn term that most scholars themselves define *Rahn*. Imam Maliki and his followers, *Rahn*, can be divided into several kinds. So far, *Rahn* that has developed in the Islamic economy, both in Indonesia and in other countries that have developed the concept of Islamic economics and include *rahn* in it, *rahn* consists of *Rahn aqari* (رهن عقاري) known and equated with pawn and *Rahn tasjily* / *Rahn rasmi* / *Rahn hukum* which is correlated with fiduciary. Etymologically, *Rahn* is defined as permanent/eternal and collateral. *Rahn* (Pawning) contract itself in positive Law is collateral. Terminology defines *ar-Rahn* as the detention of one of the assets that have money belong to the borrower/debtor as collateral for the loan funds he receives, the party



who takes the item as collateral if the borrower cannot pay the loan repayment, the goods can be sold to either fully or partially borrow the loan (Manahaar, 2019, p. 100).

*Rahn* (Pawning) transactions in Islamic economic Law have many meanings, one of which is permanent and ongoing. The scholars explain *Rahn* with the statement "making the property as collateral for debt to be repaid with that guarantee if it cannot be repaid." Islam permits the system of debt transactions in *Rahn*. Through the National Sharia Council, the Indonesian Ulama Council issued several sharia regulations, namely the DSN-MUI fatwa No. 25/DSN-MUI/III/2002 concerning *Rahn* and the National Sharia Council Fatwa No. 26/DSN-MUI/III/2002 concerning Gold *Rahn*.

The concept of pawning (*ar-Rahn*) in Islam is based on the *tabarru* contract and the existence of a guarantee (*al-dhaman*) is one of the pillars of *ar-rahm*. But if in practice it can cause one of the parties to be disadvantaged, then this is not justified according to the *syara'*. Interestingly, this phenomenon can be investigated, considering that two things are contradictory in a pawning transaction (*ar-rahm*). Also related to the use of land taken over by *sharia* pawning recipients (*murtahin*) which is not legal under Islamic Law (Jannah & Fanani, 2019, p. 123). However, according to Subagyo, there are two pawnings (*rahm*) contracts: the *rahm* contract (pawn) and the *ijarah* contract. *Rahn* said the contract is the debt contract in pawning assets as collateral for goods on loan funds. Second, it is classified as an *ijarah* contract, which means that the rental and storage services for the goods are pawned. Pawnshop rents out premises and provides storage services, while customers rent storage and storage services. Then the two contracts are simultaneously signed the pawning customer (*Rahn*) hands over the goods with the value of his money (Subagiyo, 2014, p. 167).

Some scholars, such as Syafi'i interpret *rahm* as collateral for loan debts that can be used to repay debts when the debtor cannot pay them. Likewise, the Hanafi ulama, interpreting *rahm* as property (goods), is used as collateral that can be used to repay loan funds if they do not pay off the loan. Maliki also have the same interpretation from the Syafi'i and Hanafi scholars that *rahm* is valuable as property/*mutanwal*, which the owner gives as a binding to a permanent debt, where according to him the property is not only of material but also of benefit (Indriasari, 2014, p. 64). In *fiqh*, *rahm* is collateral for a debt, in which goods can be sold to pay debts that have not been paid off. *Rahn* itself in *fiqh* is divided into 2 (two) of them, *rahm ju'li* is *rahm* (Pawning) making *rahm* goods as collateral to

pay debts and *rahn syar'i* is pawning regarding the inherited property, which is to pay all debts during life so that the heirs do not have the right to use the inheritance for other purposes (Mardanis, 2020: 3).

## **2. Urgency of *Akad* as the Protection of *Rahn* Consumer**

Talking about customers, of course, has something in common with the consumer context. Consumers are defined as every person who is an end-consumer (Shidarta, 2018, p. 178). Protection of customers as consumers is defined as legal protection for customers in the Islamic economy to avoid something that can harm them (Atikah, 2020a, p. 17). Legal protection is an act or acts to protect the public from arbitrary actions by the authorities, not by legal regulations to create order and peace to enable humans to enjoy their dignity as human beings. Protection will not be carried out if Justice has not been upheld. Rights approve Justice, carried out fairly (impartially) and honestly, and is responsible for the actions taken. A sense of Justice and Law must be upheld as state law regulates it so that Justice needs to be upheld in-laws made by people who want to achieve a safe, protected, and peaceful (Atikah, 2020b, p. 135).

According to Wahbah Zuhaily, Justice has become a work done by every Prophet, and Justice has not experienced a shift from the generation of an apostle to the next apostles, including the Prophet Muhammad SAW. Prophet Muhammad SAW, as the last Messenger of Allah, taught about Justice. Therefore, Muslims have a vital source of Islamic Law besides al-Qur'an and al-Hadith, namely from the Prophet Muhammad SAW in understanding the concept of Justice and can be practiced in individual and social life (Dery, 2002: 338).

In my opinion, Justice in sharia pawning transactions is one of the crucial elements so that the problem of borrowing money between pawnshops and consumers is specific in practice so that the credit element is paid off and the collateral returns to the consumer perfectly flawlessly.

Understanding the paradigm of the reciprocal relationship between social phenomena and Law in the sense that the Law does not get the proper support from non-legal social norms, the weakening of the value system (value system) in society generally as a result of modernization, so that the influence that comes tends to weaken the authority of the Law, legal norms are not or not by social standards that are not legal, laws that are

formed are too progressive so that they are perceived as foreign norms to the people, there is no legal awareness and proper awareness of standards so that the goal is not achieved. Law, legal officials are not aware of their noble obligation to maintain the laws of the country (Suadi, 2018: 21).

In Indonesia, it is known as a rule of Law that adheres to a shared economic system based on the principle of kinship by the mandate of the 1945 Constitution of the Republic of Indonesia Article 33 (1). Still, the fate of consumers is not guaranteed. This is since the state is more inclined towards the economic system of capitalism. As a reflection of the dire future of consumers and as compensation for the design and economic Justice that has been running so far, the Indonesian government has issued two laws, namely Law No.5/1999, which was promulgated on March 5, 1999, concerning the prohibition of engaging in monopolistic practices and unfair business. Unhealthy and Law Number 8/1999, promulgated on April 20, 1999, regarding protection for consumers.

The same opinion on the country's growth and development was initiated by Ibn Khaldun, standing based on the principle of mutual interest to balance social, political, economic, legal, cultural, and security. The state is the primary institution for adequate balance because the state has territory towards concrete achievements. But the freedom is protected by laws and regulations. Religion in a country is essential, according to Ibn Khaldun. According to him, it is necessary to understand the concept of the state in its thought structure, namely 1) the concept of territory and state, being the origin of equality and perfected form in the state, 2) power and state, providing orderly and peaceful rules in people's lives so it is very important to apply and potentially in itself, 3) the relevance of public power is below the level of state power, 4) the state power always develops the potential for rotation in that power. The dynamic that develops occurs because there is nothing eternal in the universe, 5) for him, in essence, the politics of cooperation and help (Suadi, 2018: 125).

Protection of customers is very important in this era of disruption because consumers have general and specific rights. Thus, legal regulations relating to consumer protection contain global values and specific values as these values grow in society and contain values in Islam (Ja'far, 2014, p. 102).

As I have explained above, that the problem of customer protection at least provides proof in a legal principle based on a hadith which means, "there must be no harm (loss)

and harm (harm) in Islam” (HR. Ahmad, Ibnu Majah, al-Hakim, al-Daruquthni from Abu Sa’id al-Khudhri) (Pane, 2007, p. 63). Therefore, the establishment of Islamic Law in terms of *muamalat* contains *maslahat*, which is the background (rationable) for the determination of the Law because Islamic Law is the only Law that is always able to provide solutions to various contemporary and futuristic problems.

I was able to study pawnshop lending behavior in-depth using a pawnshop lender’s unique transaction data set at the time of the transaction and include information about collateral or “pawns,” start date, and maturity date, repayment results, and demographic characteristics of the borrower. I studied the nature of collateral as collateral separately, distinguishing items that may have an intrinsic value to their owners that exceed the rupiah value of the item, i.e., sentimental value. I found that borrowers were more likely to return to repay their mortgage loans when they pawned sentimental items, such as jewelry.

*Muamalah*, of course, cannot be separated from the legal context, which contains contract transaction rules that bind the parties along with the object of money-valued collateral. This principle can determine the effective contract based on Islamic provisions. Thus, without a contract (contract), there is no *muamalah*. The contract specifically binds transactions in the form of a *qabul* which is said by one of the parties who has contracted with the *qabul* stated by the other party, giving rise to legal influence, and the object becomes the guarantee.

Protection of money borrowers from pawnshops, starting with a valid agreement that is harmonious and conditions are met. This, of course, comes from the agreement between creditors and debtors. The contract (agreement) that is used indicates that the pawning transaction becomes valid so that it does not get out of the substance or main content of the agreement. Thus, the conditions become mandatory before being executed and after the contract is applied. The position of the condition is actually outside the priority of the contract but still the essence of the pillar itself (Ibrahim, 1997, p. 10). However, the principles become invalid if it is not accompanied by contract terms.

Sharia pawnshops have contributed to society by providing sharia money loans by not implementing the usury system. Of course, the impact on people’s income is not the same. Although there are many pawnshops on the corner of urban roads, this certainly needs to be watched out for in borrowing, especially in the principle of contract transactions.

Not a few pawning institutions do not follow the legal rules of the government so that in its implementation, it is detrimental to consumers because of its high interest rates; many criticize salary loans as predatory loans. Payroll lenders, critics, accuse, target low-income borrowers who are so desperate for funds that they are willing to pay exorbitant interest rates. Critics also argue that the lending structure exploits consumers by covering up the true costs of borrowing. Those on the other side of the debate maintain high interest rates by pointing out borrowing costs to high-risk borrowers and by emphasizing the value for low-income households to have access to (even expensive) credit. Proponents of payday loans also claim that restricting access to payday loans will only shift consumer loans to other, more expensive forms of credit, such as returned checks or late fees on bills.

A fundamental part of the conditions for implementing contract transactions of all contract transactions in Islamic Law is *At-taradin*, aka consensual. This pleasure is subjective which cannot be known, except with the implementation of the transacting party, either verbally, in writing, action, or a gesture. Therefore, in a *qabul* consent transaction, the participation of people who have expert skills, that is, mature or mature and reasonable, is required. Amenable consent/const must also be avoided from intimidation, fraud, and injustice, and disguise (Buang, 1998, p. 5).

In general, the scholars have divided the terms in the contract between legal terms and invalid or damaged terms. Legitimate terms, namely terms that have legal consequences of the agreement, such as the obligation to deliver goods and payment, are important terms in the agreement which are the conditions for payment, such as cash payments or debt, the actual terms of its function or use, but not categorized as a consequence of the agreement, and not for the sake of the agreement and does not conflict with the consequences of the agreement. Meanwhile, the terms that are considered invalid or damaged are those that are incompatible with the agreement by continuing to carry out the terms and conditions on the basis of the contractual agreement, and conditions that make the opportunity for *usury* and *gharar* and illegal elements to enter, terms that are contrary to the consequences of the agreement, and terms make the pact dependent.

In practice, there are several contracts that are used by sharia pawning, namely the *aqad Qard al-Hasan*, which is carried out by customers in pawning their valuable goods for consumptive purposes. The customer / *Rahin* is charged a fee, namely the wages of the *murtabin*, for caring for and maintaining the pawned goods. However, there is a condition

whereby the *murtabin* cannot use the *marhun* in the form of goods unless it is sold by means of an auction to pay off the loan made by the *murtabin*. However, this contract is social in nature because there is no profit sharing. *Murtabin* charges a fee as administrative compensation.

The debt and service contract comes second; the debtor (*rabin*) comes to the creditor (*murtabin*) to facilitate financing by guaranteeing that valuable goods (*marhun*) that cannot be used or managed will be handed over to the creditor. The creditor (*murtabin*) checks, estimates the price, after it is fulfilled, the creditor and debtor perform the contract.

The *aqad mudharabah* is a contract that is applied to increase business capital by pledging valuable goods, so that the debtor will provide results according to the profits he gets to the creditor according to the agreement until the borrowed capital is paid off. Then there is the *ba'i muqayyadah* contract, a contract that can be done when a debtor is looking for goods because of productive needs, such as buying a working capital tool. Requirements for getting a loan, the debtor must get valuable goods as collateral that can be used properly by the debtor or creditor. From the results of his business, the debtor can benefit from marking up the goods purchased by the creditor. In short, the creditor can provide the goods the debtor wants with a sale and purchase contract system based on an agreement. *Aqad ijarah* is *aqad* whose object is to exchange benefits at a certain time in exchange for a reward, which is the same as selling benefits. In this agreement, it is permissible to use services with a compensation system.

The purpose of the contract is following *'yara'*. Thus, if the agreement is carried out by overriding the Law, it is null and void (Manan, 2016). The ability to place conditions in contract transactions is limited to the substance of the contract and the terms of sanctions that aim to make the contract run smoothly and fairly for all parties who make the contract and have the responsibility to complete their contractual obligations. In providing guarantees, certain conditions are needed to prioritize legal principles rather than contracts and avoid damage. The intent of breaking a transaction is both perilous and eliminates many benefits. Therefore, legal sanctions may be applied to avoid confusion in *muamalat*, including acts against the Law of default of the agreement, according to the letter al-Maidah: 1.

Customers and sharia pawn institutions have confidence when storing guaranteed goods as long as loan installments are still carried out until repayment. Without the

principle of “trust”, there will be no guarantee of *rahn* goods between consumers and sharia pawning institutions. *Rahn* institutions provide “trust” in money lending accompanied by the object of consumer collateral as protection as stated in the agreement, so that if the customer is unable to pay it off, then goods with a value of money can be sold to pay off the debt based on the agreement. In principle, the *Rahn* institution as a non-banking financial institution is very close to the wider community, so it requires confidential protection of customer data. The institution is obliged to maintain the confidentiality of customer data as the privacy of the customer. Whenever the *Rahn* institution violates, then the customer becomes a loss (Hidayatulloh, 2016: 71).

There are two indicators of the desire to carry out the contract, namely the desire to be born (intention and intention) in the presence of willingness and the existence of free will (*ikhtiar*) in the contract. As with Hanafiyah scholars, they differentiate between willingness and effort, while other scholars do not differentiate. Physical desires are manifested by *lafaz* or *shigat*, which express inner desires. If the physical and mental desires match, then the contract is declared valid. In this case, there are many explanations, namely: 1. An agreement that is born from a contract while the mind is hidden according to the several of scholars is categorized as invalid, among others: a contract when crazy, sleeping, not yet *mumayyiz*, not understanding what is being said, a contract when studying or acting, a contract due to an error, and a contract due to compulsion, 2. Freedom (*ikhtiar*) in acting is the main foundation. Freedom of expression is based on the existence of pleasure based on Qs. An-Nisa: 29. Based on the terms of the contract, there are two, namely the unconditional contract (*munjiiz*), that is, without giving any restrictions or conditions so that it will directly impact the Law and the conditional contract (*ghair munjiiz*). There are three conditional contracts, namely *ta'liq* terms, *taqyid* conditions, and *ifadhab* requirements. The freedom to determine the conditions according to the ulama's legal basis is permissible. According to Hanabilah, the terms of the contract are absolute; that is, every condition does not get the prohibition, then the Law is permissible. According to Hanabilah, the terms of the contract are limits; that is, any conditions that do not violate the boundaries that have been set by *syara'* are considered valid (Soemitra, 2020, pp. 44–45).

Some things can damage the pleasure of the parties who have contracted namely the existence of coercion, the existence of errors, and the existence of fraud. In KHES, it is

stated that the contract is an agreement in the agreement, does not contain elements that can damage the contract transaction, including 1. Mistakes can occur on the subject of the agreement. However, if it is not included in the main element of the agreement, then it does not cancel the agreement, 2. Compulsion is carried out by parties who are displeased and do not have the freedom to choose. This causes the contract to be canceled if forced to do so that the party who is forced to have a strong suspicion that the coercing party is asking to carry it out by obeying it, so that the force here results in the psyche of the person being forced, and this has violated the Law. 3. Deceit by influencing the other party to be deceived during the contract based on that the agreement is for the benefit. But the truth is that the hoax was due to the reason the contract was canceled when one of the parties used methods against the Law, 4. Taking undercover actions in which there is no balance between achievements and rewards from fulfilling the obligations set out in the contract (Soemitra, 2020, pp. 51–52).

From the explanation above, the substance of the agreement must not contain elements of fraud and loss to the debtor so that the implementation of sharia pawning loan transactions can be carried out correctly and avoid being caught in the wrong. This is very important for the main agreement and accessories agreement to be perfectly carried out and allowed in Islamic Law. Although sometimes the *fasakh* is permitted, that is, it is carried out based on the wishes of the parties with an agreement and *fasakh* which is based on willingness and agreement (Djamil, 2001, pp. 57–58).

Sometimes in a transaction, the loss arises because of a pure risk factor. The obligation to bear losses that are not caused by the fault of either party is stated as risk. In KHES article 34, it is stated that the liability for losses caused by events other than the fault of one of the parties in the contract, in a one-sided agreement is borne by the borrower, the liability for losses caused by events other than the fault of one of the parties in the reciprocal agreement, is borne by the loaning party.

Generally, the contract can end when the goal of the contract has been fulfilled. In addition, a contract may end due to several things, namely the cancellation of the contract (*fasakh*), expiration of the contract period, death, or in the *mauquf* contract which in fact the original owner did not give permission. In cases that contain legal consequences (common), it can occur in some situations, namely, the fulfillment of the objectives of the contract (the achievement of what is the goal of the contract. In the sale and purchase



agreement, the buyer has obtained the goods, and the seller has received the payment completely. The lease has ended), the cancellation of the contract is caused by when the contract is damaged (*fasid*) due to things that are not justified by Islamic Law such as buying and selling of goods that are not owned by the seller, the transaction stops until it can be fulfilled, there are *khayar* rights both *khayar rukyah*, *khayar* disgrace (disability), *khayar* conditions, or *khayar* majelis. There was a cancellation of the contract (*iqalah*) from one of the parties because of the regret over the contract that had been carried out. For parties who grant the request to cancel the contract are promised to have their difficulties removed on the Day of Judgment, it is impossible to carry out the contract; the parties do not fulfill the obligations that arise (*Li'adam al-tanfidi*), the contract period ends. Then one of the parties dies, and there is no permission from the right (the contract depends on the other party (*mawquf*) such as the *aqad fudhuli* which must have permission from the authorities and the *mumayyiz* child contract, then the contract ends if it does not get permission from the rightful) (Mardani, 2014, p. 99).

It can be concluded that customer protection in a *rahn* (Pawning) contract transaction occurs because of a contract or agreement between the two which is based on consensual or agreement between the parties to transfer goods and handover money in the *rahn* transaction contract by prioritizing the principle of Justice to fulfill the responsibility. in the completion of the contract. A contract clause cannot even have a contractual condition to be invalid so that the customer as a debtor does not suffer losses in fulfilling his responsibilities as written in the *Rahn* contract. In fact, customers can also cancel contracts when they are obtained, which can damage the customer's pleasure due to indications of coercion or intimidation, mistakes or mistakes, disguised goods prices, and fraud. Mustafa Ahmad al-Zarqa believes that coercion that occurs in contracts is following Islamic Law or is not legally justified. However, if coercion is legally required, then the coercion does not affect the cancellation of a contract. Abdul Halim Mahmud al-Ba'ly also stated about fraud (*tadlis*) which is considered an attempt not to tell the truth by hiding defects in the object/object of the contract and providing an explanation that is not following the reality to mislead the contracting party and result in detrimental to one of the parties. the contractor (Manan, 2016, pp. 92&94).

## Conclusion

Protection of customers of *rahn* transactions (Pawning) is a very important part of applying the principle of pleasure and the principle of Justice between debtors and creditors as outlined in a written form called a contract (*aqad*) or agreement. Customer protection can occur, is harmonious, and the legal conditions of the contract (contract) are fulfilled by implementing the principle of equality and equality (*al-musawah*), in which the parties who contract an agreement have a very close relationship to fulfill certain rights and obligations. Just do the restoration so that the performance in the contract becomes effective. The contents of the main agreement and assessment agreement as stated in the MUI DSN Fatwa No. 25 / DSN-MUI / III / 2002 which is a compilation of sources of Islamic Law, fiqh principles, and the opinion of the Ulama that allowing *rahn* by fulfilling the provisions of the Murtahin (the recipient of the goods) has the right to hold Marhun (goods) until all of Rahin's debts (who hand over the goods) ) paid off. 2. Marhun and its benefits remain Rahin's property. In principle, Murtahin should not use Marhun unless with Rahin's permission, without reducing Marhun's value, and its use is merely a substitute for its maintenance and maintenance costs. 3. 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 Rahin's obligation. 4. The amount of Marhun's maintenance and storage costs should not be determined based on the loan amount. When due, *Murtahin* must warn Rahin to pay off his debt immediately. If Rahin still cannot pay off his debt, then *Marhun* is forcibly sold/executed through an auction, according to sharia. The proceeds from the sale of *Marhun* are used to pay off debts, unpaid maintenance and storage costs, and sales costs. The excess proceeds from the sale belong to *Rahin*, and the shortfall becomes *Rahin's* obligation.

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