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Utilization of Land Pawning in Customary Law and Its Solutions Under Islamic Law

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ABSTRACT

Purpose: This research aims to ascertain the practice of land pawning as security for loans and understand its law. A land pawner utilizes the collateral and retains the proceeds. However, a land pawnbroker is not entitled to obtain the pawner's land management results.

Methodology: This study belongs to normative juridical research, examining the relevant legal provisions and their implementation in society. This research investigated problem-solving in the practice of land pawning under customary law.

Findings: The findings reveal that the customary pawning practice refers to the pawner's land position as collateral. Muslim communities sometimes commit land pawning to obtain loans. The land pawner utilizes the collateral and retains the proceeds. In contrast, the land pawnbroker receives no benefit from the pawner's land management.

Practicality: This study is anticipated to guide pawnshops and banking institutions to ensure that solutions that conform to Islamic law are developed when pawning land following customary law. Islamic law offers a solution to employ a multi-contract, not a single one, as conducted so far, among others via *qard* and ijarah contracts.

Novelty/Originality: The solution to the land pawning issue is utilizing a multi-contract, such as *qard* and ijarah contracts. An ijarah contract is not a condition or *ta'aluq* of the *qard* contract, as is the case with customary law's practice of pawning. The ijarah agreement is entered into when pawned commodities are used as a means out of the deadlock created by the practice of land pawning contracts according to customary law, which utilizes a single contract. The profit earned by the pawner is derived from ijarah. Both parties gain equally in this case; the owner of the pawned property retains ownership of the lien and receives a profit share from the rent on the land used as collateral for his obligations.

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INTRODUCTION

Pawning has been practiced in Indonesia for a long period. It has existed historically since the colonial era when the pawnshop institution was introduced to the populace. Since then, pawning has grown ingrained in the dynamics of the Indonesian people's lives, both via pawnshops and through customary pawning. Capital and consumptive demands of families for survival drive individuals to engage in pawning arrangements as a solution.

Capital requirements are often associated with company expansion, while consumptive requirements are linked to practical necessities for the family's economics. To address these necessities, lending and borrowing money from individuals with wealth has been ingrained in the Indonesian people's daily patterns (Bahsan, 2003). For example, when land is pawned, a legal connection exists between a person (a pawnbroker) and the land of another person (a pawner) who has received a particular amount of money. In other words, a pawn contract can be described in practice as the transfer of land from the pawner to the pawnbroker who has given a certain amount of money in cash with the understanding that the pawner is still entitled to recover the pawned goods by redeeming them from the pawnbroker. The amount of money required to be returned to the pawnbroker is identical to the amount received at the initial contract (Rahmadi, 2008).

Indeed, lending and borrowing occur not just in pawnshops, both conventional and customary, but also financial organizations such as banks. What sets it apart from other pawnshops, particularly conventional pawnshops, is the nature of the pawned commodities. At banking, pawned things are often immovable, such as land or rice fields; however, in pawnshops, they can be tangible, including moveable items such as motorbikes, vehicles, and gold. The primary distinction between sharia pawnshops and other conventional pawnshops is the application of sharia principles. Sharia law is Islamic law governed by the Qur'an and Hadith (Pratama, 2019). Many people believe that Islamic financial institutions are conventional by using Islamic terms, have portions of contracts affixed with the phrase *bismillahirrahmaanirrahiim,* and employ employees who wear Muslim clothing and greet one

another; however, they also hold the perception that these institutions implement contracts using methods prohibited by Islam (Zeehan et al., 2019). Although the expansion of Islamic financial institutions is thriving now, Muslims have been used to interest-based conventional bank services for decades; it will take some effort to achieve an interest-free alternative in line with sharia (Wardah and Arinta, 2020).

On the other hand, rural communities prefer to borrow from pawnshops, particularly customary ones, to meet their requirements. Historically, customary pawnshops offer several benefits over conventional pawnshops or banking financing. Conventional pawnshops and financial institutions have a borrowing time limit. If the pawner is unable to return it before maturity, the land used as collateral, for example, becomes the pawnbroker's property, and the pawner loses control. In contrast to customary pawning, which has no maturity requirements, the land used as collateral can be reclaimed anytime the pawner repays it. In certain instances of customary pawning contracts, the pawner is not required to repay the loan money according to the terms of the settlement agreement until the contract is transmitted to their descendants and great-grandchildren (Ridwan, 2019). There is another distinction, in that in conventional pawnshops and financial institutions, the pawner retains ownership of the pawned commodities, but in customary pawning, the pawnbroker retains command of the pawned goods. The pawner's resources are completely employed, and as a consequence, the pawnbroker can enter into a leasing arrangement with a third party.

To date, the law that governs civil affairs in Indonesia is pluralistic in the sense that three sources of law apply and can be selected by the Indonesian populace: customary, Islamic, and Dutch Codification law. Customary law evolves and develops alongside civilization, becoming the earliest source of law in society; Islamic law evolves alongside the spread of Islam in Indonesia, and there is an opinion that when a person embraces Islam, he acknowledges the existence and enforceability of Islamic law. Meanwhile, the Dutch legacy law developed alongside colonialism, and some norms are still in effect to avoid a legal vacuum in Indonesia (Andria, 2017).

What has been a point of contention among Muslim scholars about the customary practice of pawning is the pawnbroker's use of land as collateral. How is the legislation to use property subject to a lien a guarantee that the pawner will never forget about the loan? For

instance, Imam Hambali studied land pawning in two communities in West Nusa Tenggara (Imam, 2020). Both communities committed land pawning to obtain loans. The land pawner used the collateral and retained the proceeds. The land pawnbroker received no benefit from the pawner's land management. Imam claimed that this kind of pawning could not be justified under Islamic law since it was extra and unjust because the pawnbroker did not acquire the same benefits from the land's administration. Thus, customary pawning in the two villages involved usury since the pawner gained yields from managing the pawned assets. The practice of land pawning, as researched by Imam, has been prevalent across Indonesia. Unfortunately, in this case, Imam did not provide a remedy to the contract classed as usury even though most parties to pawn contracts in Indonesia were found to be Muslims. As a result, a remedy must be found to ensure they do not engage in usury in the pawn contract following customary law.

RESEARCH METHOD

This research belongs to doctrinal or normative juridical research. The authors employed both normative or legislative and conceptual methods in this doctrinal investigation (Suteki, 2018). The normative method is concerned with the provisions of statutes, customary law, and Islamic law, while the conceptual method refers to related ideas and concepts that can serve as the foundation for the current study. This study entitled "Utilization of Land Pawning in Customary Law and Its Solutions Under Islamic Law" applied secondary data in the form of information indirectly gathered from sources in the field. Primary legal resources, secondary legal materials, and tertiary legal materials were all included in these secondary data. Fundamental legal resources encompassed legally binding documents/data, such as the land pawning law, the Civil Code, customary law, Islamic law, and other primary legal materials pertinent to this study.

DISCUSSION

Land Pawning in Positive and Customary Law

When discussing pawn contracts, particularly land as pawned commodities, three prevalent expressions in Indonesian are pawned goods, guarantees and collateral (Sri Soedewi, 1981). These three terms are interchangeable in the business of pawn contracts. Article 1150 of the Civil Code contains an explanation of the pawn contract. According to positive law, this article discusses the pawn contract. Article 1150 of the Civil Code reads as

follows: “A right gained by a creditor on moveable property entrusted to him by the debtor or another person on his behalf to guarantee a debt and that permits the creditor to recover the goods first from the creditors.”

Following the article, pawning is a material right over the moveable property (pawned commodities, guarantees, and collateral) transferred from a debtor (pawner) to the person who accepts the loan (pawnbroker) as security for his receivables. In this case, the status of the moveable property as the pawned property is irrelevant to the debt settlement. If the debtor is not compensated for his obligation, the moveable property remains the property of the property rights holder.

As asserted by R. Subekti and R. Tjitrosudibio (Subekti, 2014), pawning or *pandrecht* in Dutch refers to a material right to a moveable item belonging to another person, wherein the owner agrees to deduct the repayment of a debt from the property’s sales revenue in exchange for relinquishing the object’s assets. Subekti’s critical argument is that the pawnbroker gains complete ownership of the promised items as collateral, both throughout the arrangement and after the default. If the pawner repays the obligation, the collateral is returned to the lien owner, but, in the case of a default, the pawnbroker has the right to sell it for profit.

The information gained from article 1150 of the Civil Code is still vague about the use of land as collateral, which is the primary subject of this research. Positive legislation information on land pawning can be found in law (UU) No. 56 of 1960 on the Determination of Agricultural Land Areas. The law defines land pawning as the act of the borrower (the pawner) pledging collateral to the lender (the pawnbroker) as a condition of the loan arrangement. Property used as security for a lien, as long as the pawner does not repay his obligation, the pawnbroker retains possession of the land used as collateral. Throughout the loan duration, the pawner retains ownership of the whole property, which he retains the ability to manage or not manage. In contrast, the pawnbroker is not entitled to the pawner’s management outcomes. Meanwhile, the pawner can reclaim the lien if he has paid off all debts following the arrangement. The terms of the agreement restrict land ownership as collateral in terms of repaying debts or determining their expiry.

When analyzed closely following positive law, it is possible to establish that the material rights in land pawning are accessory; they are intrinsic parts of the principal agreement in the form of a loan-borrowing arrangement. In other words, the land's tangible rights exist to prevent the pawner from defaulting on his loan. As defined in Article 1160 of the Civil Code, this lien is complete and cannot be separated. By paying a portion of the amount, the lien is not erased. The pawn stays affixed to the thing as a whole. In contrast to customary law, pawned items are not accessory agreements but stand-alone under customary law (Meliala, 2008).

In his book *Hukum Jaminan Fidusia dalam Perjanjian Pembiayaan* Konsumen (Law on Fiduciary Guarantees in Consumer Financing Agreements), D.Y. Witanto discusses the distinction between material rights that offer the enjoyment of the item and material rights that provide guarantees. Additionally, Witanto discusses two types of material rights over his objects: (1) material rights that provide enjoyment over one's property, such as property rights, and (2) material rights that provide enjoyment over other people's property, such as usufructuary rights and use business. Witanto cited pawning, mortgage, fiduciary, and mortgage rights as instances of material rights that offer assurances (Witanto, 2015).

Mariam Darus Badrul Zaman mentioned in *Bab-bab tentang Creditveband, Gadai, dan Fidusia* (Chapters on Credit Band, Pawning, and Fiduciary) (Mariam, 1987) that pawning that seeks to repay commitments via the pledge of land must have a monetary value. In light of this, the law of guarantee is inextricably linked to the law of objects. In addition to using land pledges as collateral to satisfy commitments, land pledges can be used to establish a preference or precedence over other creditors for collecting debt repayments from the guarantee's target. Even if the debtor files for bankruptcy, the creditor retains priority rights, giving the creditor status as a separatist creditor (Imron, 2017).

According to Mariam Darus Badrulzaman's book *Mencari Sistem Hukum Benda* Nasional (Finding a National Property Law System), there are ten material rights principles, including the following (Mariam, 2010): The Closed Principle, the *Droit de Suit* Principle, the Publicity Principle, the Specialty Principle, the Totality Principle, the *Accessi* Principle, and the Horizontal Separation Principle, the Object Ownership Principle, the Protection Principle, and the Absoluteness Principle.

In reality, conventional pawnshops and pawnbrokers have benefitted from pawning contracts by setting interest on the principle of the loan capital. The land pawnbrokers receive a profit from the interest on this loan. As Islamic law considers, additional capital is a kind of usury prohibited. Following Islamic law, the principal capital shall bear no extra duty if someone borrows money. Land pawning as security at a pawnshop seems quite onerous for the land pawner. He must repay the debt over the amount borrowed. If he fails, he will lose the collateralized land. The land pawner suffers two losses in this situation: the increase of the primary loan capital and the loss of land rights.

Along with the phrase guarantee, another term is synonymous with the guarantee used in conventional pawnshops or bank financial institutions: collateral. This phrase appears in Banking Law No. 7 of 1992, revised by Banking Law No. 10 of 1998. The terms collateral with assurances is defined explicitly in Articles 1 and 8 of the law. According to Article 1 No. 23, "collateral is an extra guarantee provided to a bank by a customer or creditor to provide credit or financing facilities based on Sharia principles." Additionally, Article 8 paragraph (1) states that "to mitigate this risk, the bank must consider the guarantee of providing credit or financing based on Sharia principles in the sense of confidence in the customer's or creditor's ability and willingness to repay his obligations following the agreement." To acquire this assurance, the bank must thoroughly review the customer's or creditor's character, abilities, capital, collateral, and business prospects prior to giving credit or financing.

When the phrases guarantee and collateral are used interchangeably under the preceding provisions of the legislation, the term guarantee has a wider meaning than the term collateral. According to J. Satrio's book *Hukum Jaminan, Hak-hak Jaminan Pribadi, Tentang Perjanjian Penanggung dan Perikatan Tanggung Menanggung* (Guarantee Law, Personal Security Rights concerning Insurance Agreements and Insurance Engagements), the two phrases have distinct meanings. According to Satrio, collateral is much more than that (Satrio, 1996).

Distinctions exist between positive and customary law when it comes to land pawning. Positive law governs land pawning in conventional pawnshops, where transactions are conducted in writing, while customary land pawning is regulated by the local community and normally conducted verbally. As previously stated, land can be in the form of immovable or

mobile goods for conventional pawnshops. Immovable things include rice fields, gardens, and yard land with associated structures, while movable objects include jewels, motorbikes, and electrical devices. In contrast, immovable assets such as fertile land or rice fields are often utilized as collateral for customary pawnshops.

In conventional pawnshops, the pawnbrokers do not have the power to control the land used as collateral for a loan or promise. Land used as collateral remains entirely within the pawners' authority, allowing them to manage it. Pawnshops have profited from loan interest as a commercial organization. Whereas in customary pawnshops, the contract is social lending, there is no increase in the principle lent capital. The pawnbroker earns money by managing the pawned property. The pawner does not get any income from the pawned land's administration. According to Islamic law, the addition of managing the revenues of land pawning falls within the category of usury. It is consistent with fiqhiyah regulations: *kullu qardhin jarra manfatan fahua ar-riba* (every loan that causes additional or is accompanied by benefits, then the addition is usury).

Positive and customary law have distinct approaches to land pawning. To begin, the duration of the pawning under positive law is restricted by agreement. If the land matures according to the agreed-upon schedule, it becomes the pawnbroker's property. Meanwhile, under customary law, the pawning duration is unpredictable, depending on the pawner's capacity to repay the pledged funds, which might be years. If the pawner is unable to restore it, the pawned land is often sold to the pawnbroker. Second, pawned commodities can be mobile, such as motorbikes, gold, jewels, and the like, or immovable, such as land, gardens, and the like. For instance, collateral does not have to be producing land. Positive legislation does not empower the pawnbroker to handle it; the pawner is alone responsible for management.

Meanwhile, in customary law, pledged commodities are often immovable items such as land or productive gardens. The pawned commodities of land or gardens and the results remain wholly the property of the pawnbroker. When the pawnbroker earns a profit, this contrasts with positive law, which earns interest on pawned funds. Thirdly, it deals with the consequence of the pawner's failure to repay his loan. According to positive law, if the pawner is unable to repay his obligation following the agreement, the pawnbroker retains complete authority over the land as an alien item. The pawnbroker will organize an auction of

the pawned items, with the earnings toward repaying the pawned money. There are no repercussions under customary law since it does not restrict the duration of the pawn arrangement. If the pawner cannot repay the debt, the connection between the pawnbroker and the pawner will remain (Rahmadi, 2003).

Multi-Contracts As A Solution

Today, the usage of a single contract in commercial operations is insufficient; innovation is required to fulfill the requirements of contemporary society. The process of land pawning with a single contract, as mentioned above, requires a solution since it is insufficient. The novelty is the advancement of contract theory, specifically the multi-contract theory (hybrid contracts). In other words, a multi-contract is a substitute for a single contract in Islamic financial institution product development, including giving solutions for land pawning. According to Agustianto's remarks (Agustianto, 2014), academics have paid attention to this multi-contract, for example, Aliudin Za'tsari in his book *Fiqh Muamalah al-Muqaran*; Nazih Hammad in his book *al-Uqud al-Murakkabah fi al-Fiqh al-Islamy*; al-'Imrani in his book *al-Uqud al-Murakkabah: Dirasah Fiqhiyah Ta'shiliyah wa Tathbiqiyah*, and Usman Tsabir in his book *Fiqh Muamalah Maliyah al-Muashirah*.

Indonesian experts often use three terminologies: multi-contract, hybrid contract, and *al-uqubah al-murakkabah*. These three names are frequently used synonymously and have the same meaning. A multi-contract is a linguistic term that combines the terms multiple and contract. Multi has several meanings, more than two, multiplied. Meanwhile, fiqh defines a contract as a unified expression of the intent of the person who gives or creates a bond (ijab) to the qabul and a declaration of acceptance of the bond following Sharia, which has legal repercussions for the contract's object. In various languages, the term "multi-contract" refers to a collection of many contracts.

The term "hybrid contract" originates in English. The term "hybrid" refers to an invasion, graft, crossbreed, while "contract" refers to an agreement. When the two terms are combined, a hybrid contract refers to many agreements that are hybrids.

A multi-contract is referred to in Arabic as *al-uqud al-murakabah*. *Al-uqud* is the plural form of the word *lafad al-'aqd*, which translates as contracts, while *al-murakkabah*

translates as constructed, collected, or a compilation of multiple contracts. In layman's terms, Nazih Hammad defines *al-uqud al-murakkabah* as an agreement between two parties to carry out a contract that incorporates two or more contracts, such as a sale and purchase contract with a lease, grant, wakalah, *qard*, muzaraah, sharf, or musyarakah, and so on, so that all the legal consequences of the incorporated contracts are viewed as an inseparable unit (Agustianto, 2014).

Al-'Imrani describes *al-uqud al-murakkabah* more simply in his work *al-Uqud al-Maliyah al-Murakkabah*. Al-'Imrani uses the phrase *al-uqud al-maliyah al-murakkabah* to refer to various contracts. *Al-uqud al-maliyah al-murakkabah*, he asserts, is a compilation of multiple material contracts incorporated in a single contract, both jointly and reciprocally, so that all rights and responsibilities flow from it are seen as legal consequences of that one contract.

The two figures are not the only ones creating various contracts; rather, the two figures might symbolize the numerous persons who define several contracts. Agustianto makes reference to musyarakah mutanaqisah, mudharabah, *bay wafa'*, *bay Tawaruq*, *bay istiglal*, and *bay at-takjiri* (lease-purchase) contracts, among others. Although it has consolidated into a single unit, while writing a contract, certain contracts classed as several contracts can be integrated into a single contract document (title), while others can be split.

Agustianto cited an example of certain specialists who continue to distinguish between two contracts that should be consolidated under a single title. Consider the musyarakah mutaqisah (MMq) contract as an example. According to these circles, the MMq contracts are classified individually as musyarakah and ijarah. Indeed, Agustianto said, the two contracts could be consolidated into one. Similarly, each contract should be split yet seen as a distinct entity for take-over finance.

Types of Multi-Contracts

Al-'Imrani categorizes multi-contracts into five categories (Al-Imrani, 1431). To begin with, the contracts convened (*al-Uqud al-Mujtami'ah*). Al-'Imrani defined assembled contracts as many contracts bundled together to generate a single contract name. For instance, there are *mudharabah musytarakah, mudharabah bil wadi'ah, musyarakah mutanaqisah,* and *ijarah muntahiyah bit tamlik* contracts.

This first sort of multi-contractual arrangement can also exist when two contracts have dissimilar legal effects, as in the case of a combination of sale and buy contracts and leases. Even though they are distinct, there is no conflict when combined, such as leasing and buying. This contract is already well-known and has developed into a solid 'urf. This contract is free of usury and banned gharar. Agustianto argued in response to this contract that the contract's compilation was not an issue when examined through the lens of maqasyid sharia. The lease-purchase contract does not include maqasyid gharar because it is unlikely to generate a disagreement; rather, it does not contain gharar since the contract's provisions are fully explicit. It is where the maqasyid approach in examining various contracts must be created.

Secondly, a comparable contract (*al-Uqud al-murakkabah al-Mutajanisah*). Al-Mutajanisah is derived from the term *tajanasa*, which translates as similar. What is meant by a comparable contract is a collection of similar contracts. This type of contract does not affect the law or its legal repercussions. This sort of multi-contract can include a single form of contract, such as a sale and buy agreement, and another type of contract, such as *bay wafa'*. *Bay wafa'* collects two types of contracts: sale and buy contracts, or from various contract kinds, including purchasing, selling, and renting contracts. Additionally, this multi-contract can be constructed from two contracts governed by the same or separate set of laws (Hasanudin, 2019).

Al-Uqud al-murakkabah al-mutanaqidhah is the third. *Al-mutanaqidhah* translates as "opposite and mutually contradictory." If this pronunciation's meaning is connected to the pronunciation of *al-Uqud al-murakkabah*, then the contracts gathered are mutually contradictory. This *murakkab* contract has been consolidated into a single document. For instance, a *qard* contract that includes a present. When a *qard* contract is fulfilled, an agreement is made to receive a reward. This contract is void because it contains an element of usury. According to fiqhiyah law, every *qard* transaction that includes extra or beneficial terms is considered usury.

Al-uqud al-murakkabah al-mukhtalifah is the fourth. In Arabic, *al-mukhlatifah* means "different." Thus, *al-uqud al-murakkabah al-mukhtalifah* is a collection of contracts with varying legal ramifications. A multi-contract example combines a sale and buying contract with a rental contract. Each of these two contracts has distinct legal ramifications. A time

provision is necessary for a lease contract, although it must be presented when the deal is certified effective in a sale and buy contract. On the other hand, these two contracts do not, and the contract becomes ruined or gharar because sharia justifies the combination of a buying and selling contract and a leasing contract, just as *bay wafa'* justifies the combination of a buying and selling contract and a pawn contract.

Al-uqud al-murakkabah al-mutaqabilah is the fifth. *Al-mutaqabilah* has the linguistic sense of facing each other or greeting, as defined in the *al-Munawir* lexicon (Al-Munawir Dictionary, online). If it is connected to a contract, the aim of welcome here is to indicate that the contract is mutually reliant or conditional on the outcome of another transaction. Because they are interdependent in a single transaction, experts refer to this as a conditional contract or *ta'alluq*.

This multiple-contract arrangement is banned due to usury, such as *bay al-'inah*. There are two contracts in this *bay al-'inah*, meaning two sale and purchase agreements; another example is a sale and purchase agreement linked with a *qard* agreement in a single transaction by covenant. "I gave you ten million dollars on the condition that you purchase my laptop," for example. A *qard* contract (to lend money) included in this agreement must be hanged or required by a selling and purchase agreement (willingness to buy a laptop). This sale is restricted because of concern that those who lend money can earn profits or advantages from borrowing by purchasing and selling gains.

Agustianto announced the addition of a sixth contract, *al-uqud al-murakkabah al-mustatirah* (hidden). Contracts in Islamic banking are an example of this multi-contract structure. For instance, a *mudharabah* savings contract with a sharia-compliant bank includes ATM card ownership. However, Agustianto mentioned that a single contract is insufficient and must be supplemented by a *kafalah* contract when an ATM is used to take funds from another bank. This *kafalah* contract is omitted (*mustatirah*) since it has evolved into a banking urf in which all savings can be withdrawn at designated ATMs. Agustianto highlighted that certain contracts must be kept distinct in this multi-contract environment while others can be consolidated into a single document (one stamp). For instance, Agustianto asserted that the *syirkah mutanaqisah* contract must be distinguished from its contracts, the first is a syirkah inan contract, and the second is a special ijarah contract.

According to Rachmat Syafe'i (Syafei, 2018), the six forms of multi-contracts listed above can be condensed into two categories: first, dependent/conditional multi-contract; and second, non-dependent/conditional multi-contract (*al-uqud al-mutaqbilah).* Second, a series of contracts is integrated (*al-uqud al-mujtamiah*). Multi-contract transactions (*al-uqud al-mutaqbilah*) are those in which the first contract generates a second contract in response, with the perfection of the first contract contingent on the perfection of the second contract via a reciprocal process referred to in classical fiqh as *isytirath' aqd bi 'aqd*. Meanwhile, "multi-contract combined" (*al-uqud al-mujtamiah*) refers to a transaction that combines many distinct contracts into a single entity. This second kind of multi-contracts opens up various possibilities, including the possibility of several existent contracts occurring in the same or distinct contract objects, at the same or different periods, and with the same or different legal effects. According to Rachmat Syafe'i, certain multi-contracts are unlikely to be legitimate, such as contradictory contracts (*al-uqud al-mutanaqidhah, al-mutahadhah, al-mutanafiyah*), while others, such as distinct contracts (*al-uqud al-mukhtalifah*) and similar contracts, can become valid (*al-uqud al-mutajanisah*).

Following Rachmat Syafe'i, the validity of a multi-contract transaction cannot be determined solely by the kind of multi-contract; rather, each contract must be examined individually to determine if it is lawful or not in line with sharia regulations. Both deals are somewhat different.

Multi-Contract Terms

A multi-contract is permitted, although some types are disallowed. Multiple contracting is forbidden for a variety of reasons. (1) Religious writings forbid it. This religious literature is referred to in Hadith, such as those recounted by Imam Malik and Ahmad. According to Imam Malik's account, the Messenger of Allah prohibited purchasing and selling in the same transaction. Similarly, Ahmad's narration indicates that the Prophet prohibited purchasing, selling, and borrowing. These two hadiths forbid usury and gharar. If usury and gharar do not exist, a multi-contract is acceptable since it is abolished. It is consistent with the rule: *al-hukmu yaduru ma'a illiharai wujudan wa'adaman*. (2) Banned from usury due to *hilah*. Combining *tawarug*, *wakalah*, and *wadi'ah* contracts for multi-purpose funding is an example of this ban. A multi-contract is not permitted if the third party is a subsidiary of the bank

supplying the money or the third party is not a subsidiary. (3) A multi-contract results in insolvency. A salaf and buying-selling contract is an example of a multi-contract. Salaf (*qard*) is accompanied by buying and selling; this multi-contract constitutes usury. Purchasing and selling are required prior to borrowing (*qard*) money. The contract's sale and buy are highly suspected of resulting in extra expenditures since the sale and purchase are at a higher price than the market price.

According to al-'Imrani, this dual contract is allowed if the sale and buy are made at market prices. (4) Numerous contracts result in gharar. For instance, a multi-finance corporation can sell a vehicle to a client at a fixed price, such as $250 million over a 24-month period, without needing an urbun at the start of the offer for business competitiveness. However, the corporation provides numerous alternate urbun quantities without defining them in the contract. If the urbun is paid for in the sixth month, for example, the price is lower; if the urbun is paid for in the thirteenth month, the price is that much more; and so on. With varying urbun costs, there is no assurance on the buying price of these commodities. It is referred to as gharar, which might result in conflict due to pricing instability.

Multi-Contracts and Use of Land Pawning Goods

Positive law, particularly the practice in pawnshops and financial institutions, permits the pawner to utilize land pawned items since the land serves as collateral. The land pawner can utilize and grow his land and wholly hold the earnings from such usage. The pawner benefits from utilizing the pawned items in this case. Loan interest has helped pawnshops and banks. What is seen as incompatible with Islamic law is that when the pawner defaults, the land pawned is no longer in the pawner's hands but is transferred to the pawnbroker; in this instance, the pawnshop or banks. Thus, two points distinguish Islamic law from positive law: interest and the complete transfer of authority of the pawner over the land pawned. Islamic law prohibits interest, and even in default, the pawner retains complete ownership of the collateral.

Customary law established a mechanism for borrowing and lending money secured by land pawning. In customary law, the pawner is not charged interest, as is the case under positive law, to ensure that the owner of the land lien repays the loan amount within the stipulated time of the arrangement. The word default is not used in customary legal practice.

No matter how long the land pawner has the capacity to repay the debt, he must nevertheless refund the loan amount. The land pawnbroker retains complete ownership of the land pawned. After the loan is paid off, the land used as collateral will be restored to the pawner. This customary rule has three benefits. First, there is no interest levied on the principle of the loan. Second, since maturity does not exist, there is no default. Third, land used as collateral does not pass to a third party; rather, it remains the pawnbroker's property. Borrowing agreements, according to customary, are permissible under Islamic law since there is no interest on the loan's principle. However, this customary rule has a flaw, particularly in the use of land collateral. According to customary law, as long as the debt cannot be repaid, the land reverts to the land pawnbroker's complete authority. Generally, under customary law, collateral is a fertile land. When farmed by the pawnbroker, the land generates a great deal of produce. In this case, the pawner receives nothing. It is where the inconsistency with Islamic law manifests itself since the pawnbroker is not permitted to obtain further compensation. If the pawnbroker obtains more funds, it is classified as usury, defined by positive law as the activity of pawning.

The customary practice of land pawning must find a way to be consistent with Islamic law. According to Islamic law, the correct answer is to employ a multi-contract, not a single contract, as performed so far. Multi-contract alternatives include the *qard* and ijarah contracts. This multi-contract transaction combines contracts with distinct objectives (*al-uqud mukhtalifah*) into a single contract; the *qard* contract's object is the borrowing of cash, while the ijarah contract's object is the land promise. The *qard* contract is social and does not include any interest or other advantages, but the ijarah contract is used to lease land between the pawnbroker and the pawner.

According to the contract types, the *qard* and ijarah contracts are both permissible contracts under Islamic law, excluding forbidden contracts, so that the use of a multi-contract does not violate Islamic law. According to the kinds of multi-contract, the option between *qard* and ijarah includes the type of combined multi-contracts (*al-uqud al-mujtamiah al-mukhtalifah*), which contain all permitted multi-contracts. Indeed, several contracts are used in conjunction with the potential of two valid and invalid outcomes. Multi *qard* and ijarah contracts can be formed as part of a legitimate joint contract for land pawning. The contracts

included in multi-contracts used for land pawning are usually non-conflicting, making them permissible under Islamic law.

It must be carried out proportionately and fully in this ijarah contract, considering the actual components required to lease land pawned. This examination is necessary to prevent numerous interpretations of hilah usury's existence and to fall into the act of usury via several contract transactions. The parties to this multi-contract profit equally; the pawner benefits from loan money and rents from his land via an ijarah agreement, while the pawnbroker benefits from two sources: management of the pawned assets, which avoids usury, and social advantages. The pawner obtains the addition via the ijarah contract. While the pawnbroker receives an extra charge, the fee is received via an ijarah arrangement. It is distinct from the customary law addition of land pawn management. In other words, the use of land pawned commodities according to an ijarah agreement is a technique to circumvent the land pawn agreement paradigm as enforced by customary law.

Thus, the pawner receives benefits from the ijarah contract. The pawnbroker profits from this arrangement by getting the rental fee. Profitability is determined by the pawnbroker's lease of the land pawned. The ijarah contract must be proportionate; the fee must be reasonable. Thus, the increase received by the pawnbroker is not added because it is needed under the *qard* contract between the land pawner but rather is derived from the ijarah contract. This strategy is a *takhrij* (alternative) to customary land pawning since the pawner has no right to benefit from the pawnbroker's administration of his property and avoids usury. Thus, the ijarah contract is not a necessary condition precedent to the *qard* contract.

CONCLUSION

Pawning, both under positive and customary law, is prohibited under Islamic law due to its element of usury. When positive and customary law are applied to the practice of pawning via the use of a single contract, namely a loan-borrowing contract or *qard*, the meaning of this single contract is usury. As a result, a solution to the issue of land pawning must be found via various contracts, namely *qard* and ijarah contracts. This ijarah contract is not a condition or *ta'aluq* of the *qard* contract, as is the case with customary law's practice of pawning. The ijarah agreement for pawned items is designed to resolve the deadlock created by the customary law practice of land pawning contracts based on a single contract. The profit

earned by the pawnbroker is derived from ijarah. Both parties gain equally in this case; the owner of the pawned property retains ownership of the pawning and receives a profit share from the rent on the land used as collateral for his obligations. What the pawner obtains from the rental revenue is not received via customary pawning.

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