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APPLICATION OF THE CONCEPT OF HYBRID CONTRACTS FOR PAWN AND GOLD INVESTMENT AT BANK SYARIAH INDONESIA KCP KADIPATEN MAJALENGKA

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Abstract

The practice of pawning gold and investing in gold has been widely carried out by Indonesian Sharia Banks. In this case, the author chose Bank Syariah Indonesia (BSI) Kadipaten Sub-Branch Office, Majalengka as the object of writing, namely to look at the practice of gold pawning and gold investment carried out. In this research, the author determines two problem formulations, namely how to implement Hybrid Contracts on gold pawning and gold investment at Bank Syariah Indonesia (BSI) Kadipaten Sub-Branch Office, Majalengka and how Islamic law views the implementation of Hybrid Contracts on gold pawning and gold investment in Bank Syariah Indonesia (BSI) Kadipaten Sub-Branch Office, Majalengka. In the process of writing this paper, the author used qualitative and descriptive qualitative research methods. The data collection technique used interview techniques, sources from books and related journals. After research, BSI Kadipaten carried out 3 contracts, namely the rahn contract, the qardl contract, and the ijarah contract for the practice of pawning gold and 2 contracts for the practice of investing in gold., Majalengka is legal and may be carried out and there are no violations of Sharia and there is nothing different from the standards for gold pawning at Bank Syariah Indonesia (BSI) Branch Offices. Assistant Duchy, Majalengka, while the legal basis for sharia gold investment is Law no. 21 of 2008 concerning Sharia Banking, and DSN-MUI Fatwa No. 77/DSN-MUI/VI/2010 concerning Non-Cash Buying and Selling of Gold. BI Circular Letter (SE BI) Number 14/7/DPBS dated 29 February 2012 concerning Gold-backed Qardh Products for Sharia Banks and Sharia Business Units (UUS). DSN-MUI fatwa no. 25/DSN-MUI/III/2002 dated 26 June 2002 concerning Rahn and DSN MUI Fatwa No. 26/DSN-MUI/III/2002 dated 28 March 2002 concerning Rahn Emas. There are two opinions regarding the validity of sharia gold investment, there are some scholars who allow it and there are those who prohibit it.

Keywords: *Gold Pawning, Gold Investment, Islamic Economic Law View*

1. INTRODUCTION

The shari'ah banking industry in Indonesia is entering a growth phase and urgently needs public trust and loyalty to continue to increase its productivity. Trust and loyalty are absolutely needed to enter the maturity phase of Islamic banking in the face of global competition. Trust and loyalty cannot be obtained without products that are able to answer the needs of the community. Islamic bank products should be able to meet all components of society, both in funding, financing, and services products. Therefore, innovation of Islamic bank products is an absolute requirement as an indicator that Islamic banks are able

to adapt to the needs of modern humans. Product innovation is one of the important elements to be able to maintain the sustainability of the company. Product innovation represents the company's ability to meet market needs as well as an effort to obtain company profits. Islamic banks have basically made a series of innovation efforts, one of which is by "engineering" (engineering) akadakad in fiqh muamalah. Some contracts in muamalah fiqh are not simply adopted by Islamic banking, but are also "adapted" to the needs of the public for banking services.

This engineering and adaptation is indeed a necessity, because if adoption is carried out as it is, Islamic bank products are doubtful to provide the right benefits for the community. The principle of freedom of faith in Islam is the main capital to deal with the complexity of economic problems and the large public demand for the role of Islamic banking. (Ruslan Abdul Ghofur, 2015: 493) In order to meet the needs of the community and develop an increasingly competitive banking and finance industry, innovation in doing business carried out by Islamic banking through a series of adaptations has indeed become a business demand. (Hasanudin Maulana, 2011:156) As an example, it can be stated, among others, in the application of sharia pawns and gold investment. The products in Islamic financial activities contain several contracts. For example, in sharia pawn transactions there are ijarah, qardh, and kafalah contracts. Gold investments contain at least a mudharabah (or ijarah) contract and wakalah, and are sometimes accompanied by kafalah or wa'd.

In every transaction, these contracts are carried out simultaneously and every contract contained in a product cannot be abandoned, because everything is a unit. Such transactions are known as multicontract (Indonesia) or hybrid contract (English) or al-'uqud al-murakkabah (Arabic). Hybrid contracts are still a hot discussion among Muslim scholars to determine the validity of the law. The first opinion says that the law is based on the rules of fiqh al-ashlu fi al-mu'amalat al-ibahah (the original law of muamalah is permissible). The second opinion forbids based on hadiths that forbid two contracts in one contract (bai'ataini fi bai'atin), or forbid two contracts in one contract (shafqatain fi shafqatin). (M. Hafidz, 2015: 71)

2. IMPLEMENTATION METHODS

2.1. Research methods and types of data

This study used qualitative research methodology. The data used by the author are qualitative descriptive data from interviews and written sources.

2.2. Data Sources.

The source of research data used is the primary data source focused on employees of Bank Syariah Indonesia (BSI) Sub-Branch Office of Kadipaten, Majalengka who handle gold pawns and gold investment. While secondary data sources are in the form of various relevant written references such as the Qur'an, hadith, Fiqh Muamalah, books, scientific journals, and other sources that support the writing of this paper.

2.4. Data Collection Techniques

Data collection using interview techniques or interviews via WhatApp to Bank Syariah Indonesia (BSI) Sub-Branch Office of Kadipaten, Majalengka which handles specifically related to gold pawns, gold investments, books and other documents.

2.5. Data Analysis

The data obtained from the data source is then analyzed qualitatively which is presented descriptively from observation, interview (interview), or written sources.

Based on this analysis, it can then be known what Hybrid Contract contracts are used in gold pawn transactions and gold investments by BSI KCP Kadipaten, Majalengka with its concepts and provisions according to Islamic law.

3. RUSULT AND DISCUSSION

3.1. *Hybrid Contract Concept*

In Indonesian, hybrid contracts are termed multicontracts. Multi means many, more than one, more than two, or multiple. Thus, hybrid contract (multicontract) in Indonesian means multiple contracts or many, more than one contract. While in the text of fiqh muamalah, hybrid contracts are mentioned in various terms, such as: Al-'uqud al-murakkabah (composed contracts); Al-'uqud al-muta'addidah (multiple contracts); Al-'uqud al-mutaqabilah (paired contracts); Al-'uqud al-mujtami'ah (assembled contracts); Al-'uqud al-mukhtalitah (mixed contracts); Al-'uqud al-mutakarrirah (repeated contracts); Al-'uqud al-mutadakhilah (contracts that enter into other contracts); Al-uqud al-mutajanisah (similar contracts). Among the eight terms, the most popular are al-'uqud al-murakkabah and al-'uqud al-mujtami'ah. Al-'uqud al-murakkabah consists of two words namely al-'uqud (plural form of 'aqd) and al-murakkabah. Etymologically, al-'aqd means to cement, bind, connect, or connect. (Yosi Aryanti, 2016:178)

It can be concluded that the definition of a hybrid contract is an agreement between two parties to execute a muamalah which includes two or more contracts, for example a sale and purchase contract with ijarah, a sale and purchase contract with a grant, and so on, so that all the legal consequences of the combined contracts, as well as all the rights and obligations they cause, are considered an inseparable entity, which is equal to the legal consequences of a contract.

3.2. Fiqh Review of Prohibited Hybrid Contracts

Scholars place restrictions on the practice of hybrid contracts. This limitation should not be bypassed, as it will cause hybrid contracts to be banned. In general, the limits agreed by scholars are as follows: (Lutfi Sahal, 2015: 160)

a. Hybrid contracts banned due to religious nash

In the hadith, the Prophet clearly stated three forms of hybrid contracts that are forbidden, namely hybrid contracts in buying and selling (ba'i) and loans, two contracts of buying and selling in one contract and two transactions in one transaction. A contract is permissible as long as the object, price, and time are known to both parties.

If one of them is not clear, then the law of the contract is prohibited. Imam al-Shafi'i gave an example, if a person wants to buy a house for one hundred, on condition that he lends (salaf) to him one hundred, then in fact the sale and purchase contract is not clear whether it is paid with one hundred or more. So the price of the sale and purchase contract is not clear, because the one hundred received is a loan ('ariyah). So the use of the benefits of one hundred is not clear, whether from buying and selling or borrowing. Ibn Qayyim argues that the Prophet forbade a hybrid contract between salaf (lending/qardh) and buying and selling, although both contracts, if applicable, are legally permissible.

The prohibition of collecting salaf and buying and selling in one contract to avoid falling into riba is forbidden. It happened because someone lent (qardh) one thousand, then sold an item worth eight hundred at a price of one thousand. He seemed to give a thousand and goods worth eight hundred in order to get paid two thousand. Here he gained an excess of two hundred. In addition to hybrid contracts

between salaf and buying and selling which are prohibited, scholars also agreed to prohibit hybrid contracts between various buying and selling and qardh in one transaction. All contracts containing elements of buying and selling are prohibited from being combined with qardh in one transaction, such as between ijarah and qardh, salam and qardh, sharf and qardh, and so on.

b. Hybrid Contract as Hilah Ribawi

Hybrid contracts that become hilah ribawi can occur through the agreement of sale and purchase 'inah or vice versa and hilah riba fadhl.

1) 'Inah

An example of a contract in the form of 'inah that is prohibited is to sell something at a price of one hundred in installments on the condition that the buyer must resell it to the seller at a price of eighty in cash. In this transaction it seems that there are two contracts of sale and purchase, when in fact they are usury hilah in loans (qardh), because the object of the contract is pseudo and not factual in this contract. So that the purpose and benefits of buying and selling determined by sharia are not found in this transaction. Ibn al-Qayyim explains that religion stipulates that a person who gives a qardh (loan) should not expect his funds to be returned unless a certain amount of qardh is given, and it is forbidden to prescribe an addition to the qardh either by hilah or otherwise. Similarly, buying and selling is prescribed for those who expect to give ownership of goods and obtain prices, and it is forbidden for those who aim at riba fadhl or riba nasa', not for the purpose of prices and goods.

2) Hilah riba fadhl

This happens when a person sells a certain amount (e.g. 2 kg of rice) of ribawi property at some price (e.g. Rp 20,000) on condition that he at the same price (Rp 20,000) must buy from the buyer a quantity of similar ribawi property of a greater (e.g. 3 kilograms) or less (e.g. 1 kilogram). Such transactions are a model of forbidden riba fadhl. Such transactions are prohibited based on events in the time of the Prophet where the inhabitants of Khaibar traded perfect quality dates one kilo with low quality dates two kilos, two kilos with three kilos and so on. Such a practice was forbidden by the Prophet and he said that when selling low quality dates are paid at their own price, so is it when buying perfect quality dates also at their own price. The point is that the first and second sale contract must be separated. The second trade is not a perfect condition for the first trade, but stands alone. This is intended so that the two contracts are separated, not interconnected, let alone interdependent on each other.

c. Hybrid Contract Causes Fall to Usury

Any hybrid contract that leads to the haram, such as usury, is haram, although the contracts that establish it are permissible. The association of some contracts whose original law is permissible but bringing it to the prohibited causes the law to be prohibited.

d. Hybrid contracts consist of contracts whose legal consequences are opposite or opposite

Maliki scholars prohibit hybrid contracts between contracts with different legal provisions and/or legal consequences that contradict or contradict each other. This prohibition was based on the Prophet's prohibition of combining salaf contracts and buying and selling. These two contracts contain different laws. Buying and selling is a muamalah activity that is thick with nuances and efforts to calculate

profits and losses, while salaf is a social activity that prioritizes aspects of brotherhood and affection as well as noble goals. Therefore, Maliki scholars forbid hybrid contracts from contracts that differ in law, such as between buying and selling with ju'alah, sharf, musaqah, shirkah, qiradh, or nikah.

3.3. Fiqh Review of Permissible Hybrid Contracts

Although there are hybrid contracts that are forbidden, the principle of this hybrid contract is permissible and the law of the hybrid contract is related to the law of the contract that builds it. This means that every muamalat that collects several contracts, the law is halal as long as the contracts that build it are permissible. This provision provides an opportunity for the creation of a transaction model containing hybrid contracts. The majority of Hanafi scholars, some Malikiyya scholars, Shafi'iyah scholars, and Hanbali scholars argue that hybrid contract laws are valid and permissible according to Islamic law. (Ali Amin Isfandiar, 2013:207)

For those who allow reasoning that the original law of the contract is permissible and valid, it is not forbidden and canceled as long as there is no legal proposition that forbids or cancels it. The original law of sharia is that it is permissible to make a hybrid contract transaction, as long as each contract that builds it when done individually is legal and there is no reason that prohibits it. When there is a prohibitive proposition, it does not apply generally, but excludes it in cases that are forbidden according to that proposition. Therefore, the case is said to be an exception to the general rule that applies to the freedom to perform contracts and carry out agreements that have been agreed. Of course, scholars who allow the practice of hybrid contracts do not mean allowing freely, but there are still restrictions that cannot be bypassed as explained above.

3.4. Hybrid Contract in Gold Pawn at Bank Syariah Indonesia KCP Kadipaten Majalengka

The View of Islamic Economic Law on the Implementation of Gold Pawn at Bank Syariah Indonesia (BSI) Sub-Branch Office of Majalengka Duchy that there are three contracts used. namely the rahn contract, qardl contract, and ijarah contract, and in the transaction there are two parties who make an agreement, namely between the customer and the bank. While the pillars and conditions of the three contracts are:

a. (Rukun akad rahn), rahn is the existence of rahin (one who mortgages or customers) and murtahin (one who receives a pawn or the bank), and the existence of marhun which is a pawn (gold), and sighat is a statement of ijab qabul. Meanwhile, regarding the requirements of the rahn contract, which must be capable or reasonable, puberty in the sense that rahin and murtahin are not crazy, clever or legally capable, and not children.

   This is in accordance with what is in Bank Syariah Indonesia (BSI), where in the requirements here the customer must collect an identity card or commonly referred to as an ID card that shows that the customer is puberty or not a minor and has common sense (not a madman) in the eyes of the law, and is considered legally capable. Meanwhile, the bank is considered puberty and sensible is from service to customers and normal muamalah activities in daily life. Customers are asked to bring pawn goods (gold) so that the conditions of marhun have been met, followed by an agreement or ijab qabul. The amount of maintenance costs for goods has been determined from the center so that Bank Syariah Indonesia (BSI) KCP Kadipaten, Majalengka only runs in accordance with applicable rules and the cost of

maintaining this pawn has been agreed upon by both parties at the beginning of the agreement (contract). Pawn maintenance carried out at Bank Syariah Indonesia (BSI) KCP Kadipaten, Majalengka is checking the cleanliness of goods and storage of pawn goods, trim used to store gold must also be in accordance with anti-explosive and bulletproof standards, warehouse doors must use passwords so that only special employees can open the pawn storage warehouse.

Pawned goods when stored in the bank will get the care of the goods which means there is less chance of fraud, defects, and loss of goods. If there is damage to the pawned goods (gold), the bank will replace the damage or risk to the goods. So that the goods deposited to the bank (BSI) require costs for maintenance and rental of the place charged to customers. Thus, the contract of rahn used is real because there is indeed a pawn here, and the mortgaged goods are gold and the livelihood of the pawned goods is borne by the owner of the goods.

b. Akad qardh, The pillars that must be fulfilled are the existence of muqridh (lender) namely the bank, the existence of muqtaridh (borrower) namely the customer, ma'qud 'alaih which is money or goods (in the form of financing given to the customer), and shighat which is the statement of ijab qabul. The requirement of qardh is that muqridh is a person who has the ability to use his property and there is no coercion from any party. In this case, the muqridh or the bank provides loans to customers as seen from the agreement between the customer and the bank before the receipt of the loan (financing). Muqtaridh is a customer (borrower) who goes to the bank to get a loan. Assets borrowed from banks must be clear in nominal amount to facilitate the return process. The return of qardh is required to be no more than the loan, meaning that there must be no agreement at the beginning of a certain addition when repaying the loan (commonly called interest) because it includes usury.

Regarding qardh at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy, from the results of the interview, it was stated that there was no increase in the repayment of customer loans to BSI. So from the point of view of the qardh contract there is no issue at issue, that what is borrowed and what is returned is the same nominal amount. In this case, the gold owner (borrowing customer) who wants to mortgage the gold only bears the cost of maintaining a place for gold storage.

c. Akad ijarah, related to the pillars that must be fulfilled is the existence of mu'jir (person who rents) which is the bank, while musta'jir (person who rents) is the customer, ujrah (rent or wages) is the rental fee charged to the customer with the calculation of daily rent given by the bank to the customer, shighat is the statement of ijab qabul.

Related to the requirements of the ijarah contract is the existence of 'aqid (perpetrator), namely between the two parties must be puberty and reasonable, which has been explained in the previous point. The existence of a place that will be used as a storage place for the goods, in this case ujrahnya (wages or rent) must be clear so that the gold pawn agreement here must be clear about the cost of financing and the nominal amount of rental costs that must be paid by the customer.

Regarding the storage of pawned goods (gold), the bank uses the Safe Deposit Box (SDB) service which is a box rental service, storage of goods or securities that are specifically designed. The determination of rental fees or maintenance costs at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy

is carried out based on the estimated value of gold, not based on the principal value of the loan (amount of money).

Table 1. Goods Maintenance Cost

No	Gold Estimated Price	Maintenance Cost
1	IDR 500,000 to < IDR 20,000,000	1.8% per month
2	IDR 20,000,000 to < IDR 100,000,000	1.5% per month
3	IDR 100,000,000 - IDR 250,000,000	1.1% per month

Source: (BSI KCP Kadipaten, Majalengka)

In Indonesia, gold pawns have their own fatwa umbrella, which is regulated in Fatwa DSN-MUI No. 26/DSN-MUI/III/2002 and Fatwa DSN-MUI No. 25/DSN-MUI/III/2002 concerning Rahn. The general provisions of the fatwa state that they are: (Rio Erismen Armen: 2022)

First, "Murtahin (consignee) has the right to detain Marhun (goods) until all debts of Rahin (who delivered goods) are repaid". In its implementation at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy, the bank acts as a murtahin (consignee) has the right to hold the customer's property until the customer pays off all his debts (DSN-MUI, 2002a).

Second, "Marhun and his benefits remain with Rahin. In principle, Marhun should not be used by Murtahin except with Rahin's permission, without reducing the value of Marhun and its use is merely a substitute for the cost of its maintenance and maintenance". In its implementation at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy, the pawn remains the property of the customer but the gold pawn is stored by the bank as collateral for the debt until it pays off all the principal financing and maintenance.

Third, "The maintenance and storage of 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". In the implementation of Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy, the maintenance and storage of pawn goods in the form of gold is carried out by the bank, while storage and maintenance costs are charged to customers who are obliged to pay gold storage and maintenance costs to the bank.

Fourth, the amount of Marhun maintenance and storage costs should not be determined based on the loan amount. In its implementation at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy related to the amount of maintenance and storage costs of pawn goods in the form of gold, namely based on the estimated value of gold mortgaged, not based on the amount of loans (financing) received by customers.

Fifth, the sale of Marhun. In its implementation at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy, if it is due, the bank reminds the customer to immediately pay off the debt or financing. If the customer still cannot pay off the debt, then the bank sells the collateral in the form of gold in order to pay off all customer debts to the bank after deducting unpaid costs such as maintenance costs. If the proceeds from the sale of the collateral are insufficient to pay off all customer debts, then the customer is obliged to pay off the shortfall in the sale of the pawned goods. Conversely, if the

proceeds from the sale of goods exceed the customer's debt, the bank will return the excess sales to the customer.

Based on the provisions of Fatwa DSN-MUI No. 26/DSNMUI/III/2002 concerning gold rahn, the cost and cost of storing goods (marhun) are borne by the pawner (rahin). In its implementation at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy, the costs are administrative costs and gold storage or maintenance costs and these are borne by the customer. As for the third point, the cost referred to in paragraph 2 is based on expenses that are actually necessary. In its implementation, the costs and nominal financing received by the customer are determined by the bank and the costs in question are administrative costs and gold storage or maintenance costs which are determined based on the estimated value not based on the loan amount. In the fourth point of the fatwa provisions, the cost of storing goods (marhun) is carried out based on the Ijarah contract". In its implementation at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy, collateral is stored by the bank. As for the storage and maintenance costs for the storage and maintenance of the collateral, the bank determines it in accordance with the ijarah contract.

Based on the data collected by the author above, it can be seen that its implementation at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy has been attempted to comply with the provisions of the fatwa from DSN-MUI. The ujrah value is determined based on the estimated value of the pawn and it is permissible. Unlike the case if ujrah is associated with the principal value of the loan, then it is not allowed because it is feared that it will fall into the practice of usury. (Nida: 2023)

And this has been guided by Fatwa DSN-MUI No: 26 / DSN-MUI / III / 2002 concerning Golden Rahn. Return of the mortgage and settlement of debt at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy that the gold pawn financing is declared ended if the customer has paid off all loans provided and from the bank will return the gold used as collateral or lien on the loan. It is very clear that the procedure for expiring the gold pawn contract at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy has complied with the provisions in Islamic law, among others, the pawn is returned to the owner, namely the customer (rahin) after paying off all loans or debts.

In terms of harmony and conditions as stated above, they are in accordance with each contract. In addition, there is no additional benefit to its debts which causes it to fall into usury practices. In addition, transaction procedures carried out in the practice of gold pawning at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy are also assessed in accordance with sharia principles. (Teti: 2023)

3.5. Hybrid Contract in Gold Investment at Bank Syariah Indonesia KCP Kadipaten, Majalengka

The legal basis for gold investment is the fatwa of the National Sharia Council of the Indonesian Ulema Council No. 77/DSN-MUI/VI/2010 concerning the Sale and Purchase of Gold Cashlessly. This Islamic gold savings model has actually been quite old, only warming up during the sharia boom. The principle is almost the same as any other savings, only without interest if adhering to the sharia system. Gold investment is also assessed not from the interest deposit but from the value of gold purchased by the Islamic gold savings. There are many conventional banks that introduce Islamic gold savings, although it can be doubtful which investment model they will continue. It could be that by closing your eyes there is no need to worry about the designation, although it could be used for investment with an interest system. The Islamic gold savings model

managed by conventional banks must indeed be seen as a conventional banking system, clearly allocating its investment to the conventional investment system

Basically, the contract used in gold installments of Islamic banks is *murabahah (*buying and selling) and *rahn* (pawn) contracts. That is, customers buy gold and immediately pawn it at Islamic banks. Thus, customers do not have to pay in full the price of gold. Sharia banks will provide gold pawn financing so that customers only need to pay the difference in selling price minus financing from Islamic banks, plus administrative costs. The difference paid by this customer is commonly termed as *a down payment* (DP) or down payment for gold purchases. DP value is required, usually 20% of the price of precious metals. Furthermore, customers only need to pay in installments of precious metals and pay pawn fees every month. Like financing in general, Islamic bank pawn financing also has a maximum financing limit.

Quoting from interviews with Bank Syariah Indonesia employees, the down payment must be paid in cash by the customer with their own money and not from financing. If the requirements are approved by Bank Syariah Indonesia, customers can obtain financing of a maximum of 80 percent of the acquisition price of gold bars. The determination of the gold acquisition price is determined at the time of contract. In the contract, the collateral in this transaction is the goods that are the object of financing or gold bars. This guarantee cannot be exchanged for other types of goods. As long as the customer is still bound by financing and has not paid off the installments, the physical of Antam Precious Metals will be stored in the bank during the financing period. However, Bank Syariah Indonesia applies a minimum limit for Gold Installment financing. Antam Precious Metals that can be paid in installments for a minimum nominal of 10grams. The installment period offered is two to five years which can be paid in installments per month. The installment deficiency can be paid off after the installment runs for at least one year. (Egi Erlangga: 2023)

Regarding the law of buying and selling gold in installments, scholars differ as follows: The forbidding scholars put forward arguments with the generality of the hadiths on usury, which among other things argue "forbidden", and the majority opinion of the fuqaha, of the Hanafi, Maliki, Shafi'i, and Hambali schools assert:

"Thou shalt not sell gold for gold, and silver for silver, except in cash."

They stated that gold and silver are *tsaman* (the price of a means of payment, money) that should not be exchanged directly or toughly, because it causes usury. There are also those who think "may" and this is the opinion of Ibn Taymiyah, Ibn Qayyim and contemporary scholars who say it is permissible to put forward the following propositions:

"That gold and silver are goods (sil'ah) that are sold and bought just like ordinary goods, and are no longer tsaman (price, means of payment, money)."

Humans really need to buy and sell gold. If it is not allowed to buy and sell gold in installments, then it will damage the benefit of people and they will experience difficulties. Gold and silver after being formed into jewelry turn into clothes and goods, and are not tsaman (price, means of payment, money). Therefore there is no usury, usury (in exchange or buying and selling) between jewelry and the price (money), just as there is no usury (in exchange or buying and selling) between the price (money) and other goods, although not of the same type. If this door (buying and selling gold in installments) is closed, then the door to accounts receivable is closed, the community will experience untold difficulties.

Opinion of Dr. Khalid Mushlih in Hukmu Bai'al-Dzahab bi al-Nuqud bi al-Taqsith:

"Globally, there are two opinions of scholars about buying and selling gold for paper money in installments: First opinion: haram ; This is the opinion of the majority of scholars, with arguments (istidlal) differing. The most prominent argument in this opinion is that paper money and gold are tsaman (price, money); While tsaman may not be traded except in cash. It is based on the hadith "Ubadah bin al-Shamit that the Prophet Muhammad (peace be upon him) said, "If this type (of usury property) is different, then sell it according to your will if it is done in cash."

Second opinion; may; (buying and selling gold in installments). This opinion is supported by a number of fiqaha today; among the most prominent was Sheikh Abdurahman As-Sa'di. Although they differ in providing arguments (*istidlal*) for this view, it is just that the argument on which they are based is the opinion put forward by Shaykh al-Islam Ibn Taymiyah and Ibn Qayyim regarding the permissibility of buying and selling jewelry (made of gold) with gold, with gold with deferred payments. Regarding this Ibn Taymiyah states in the book al-Ikhtiyarat. (Ala'al-Din Abu al-Hasan al-Ba'liy al-Dimasyqi, 2005:146)

"It is permissible to buy and sell jewelry from gold and silver of its kind unconditionally must be the same (tamatsul), and the excess is used as compensation for jewelry manufacturing services, whether the sale and purchase is with cash payments or with deferred payments, as long as the jewelry is not intended as a price (money)."

Ibn Qayyim explains further:

"The permissible jewellery (of gold or silver), because the manufacture (of being jewellery) is permissible, changes its status to a type of clothing and goods, not a type of price (money). Therefore, zakat is not obligatory on jewelry (made of gold or silver), and also does not apply riba (in exchange or sale) between jewelry and the price (money), just as riba (in exchange or buying and selling) between the price (money) and other goods, even if not of the same type. That is because with this manufacture, the jewelry (of gold) has gone out of the purpose of price (no longer being money) and has even been intended for commerce. Therefore, there is no prohibition against buying and selling gold jewelry of the same type..." (I'lam al-Muwaqqi'in, 2/247)

Cashless buying and selling of gold in the Indonesian context is allowed, of course, with legal considerations and other social benefits. This ability is then responded quickly by Islamic financial institutions, especially Islamic banks that facilitate gold ownership financing schemes. In addition to financing gold ownership, Islamic banks also open sharia pawn services based on fatwas No. 25 and 26 of 2002 concerning pawns in general, gold pawns specifically. In Bank Indonesia's records, the gold pawn business in Islamic banking actually developed several years ago, but its echo was evident after 2011 along with the crisis that hit the European region. At the same time, public *awareness* of gold commodities as a hedging tool is getting stronger. As a result, the pawn business in Islamic banking found momentum, this can be seen by the increase in financing, including for gold rahn experienced a very significant increase. However, in the development of practice, there are several things that confuse and harm customers as buyers. Therefore, Bank Indonesia as the state financial parent issued SE-BI No. 14/DPbs/2012 dated February 29, 2012.

Before the Bank Indonesia Circular Letter was enacted, the practice of gold pawning in Islamic banking was widely misappropriated into gold investment products. Along with the times, Islamic banks offer a variety of gold pawn products. These products offer gold investment products wrapped in gold pawn products. According to sharia principles, gold pawns are not an investment product, but a source of financing for someone who is pressed for short-term financial problems. Therefore, the contract

used is a Qardh (lending-borrowing) contract in the framework of *Rahn* (pawn) not for investment purposes. *Qardh* is borrowing funds without compensation with the obligation of the borrower to return the principal in one lump sum or installments within a certain period of time, so in the *Qardh* contract there is no reward for lending in any form, including profit sharing let alone interest.

Akad *Qardh* in the context of a gold pawn is an agreement (agreement) to provide loans from banks to customers accompanied by the submission of a mandate for the bank to maintain the collateral submitted. In gold pawn products, banks usually include maintenance costs using an *Ijarah* (rent) contract. However, because the price of gold experienced a phenomenal increase in 2011, gold pawn products also developed so that many customers no longer use the principle of pressing funds in pawn transactions.

The phenomenon that develops in Islamic banks is not gold pawns, but speculative gold procurement that is not in accordance with Islamic gold principles. Through gold pawn and gold gardening programs, several Islamic banks reap large profits from the withdrawal of fees and the increase in the price of gold itself. But as gold prices plummet, the risks of these pawn products begin to look dire. There are also investors who feel cheated because they cannot participate in harvesting gold gardens like their friends or relatives. Investors forget that every type of investment carries risks. The greater the profit, the greater the risk of loss. Most investors are more interested in promises of large profits, especially the investment program held by Islamic banks which should prioritize the sharia system that upholds justice and openness.

The deviation of gold pawn practices in Islamic banks finally prompted Bank Indonesia (BI) to issue a new legal product aimed at limiting and returning gold pawns in accordance with sharia principles. Namely Bank Indonesia Circular Letter (SE-BI) No. 14/7/DPS, issued and effective since February 29, 2012. Bank Indonesia only wants Islamic banks to make *Standard Operational Procedures* (SOPs) and no longer use the term gold pawn in marketing their products so as not to confuse the term gold pawn which is also used in sharia pawnshops. Gold pawns in Islamic banks were renamed *as Gold-Backed Qardh* products. As a result of the issuance of Bank Indonesia Circular Letter No. 14/7/DPbs/2012. There is a problem with pawn contracts that already exist. The pawn contract owned by the customer cannot be renewed because it is not in accordance with the rules of the Bank Indonesia Circular, and when the contract matures the gold price is also declining. The bank resorted to unwise ways to make adjustments by imposing all losses on customers. The issuance of Bank Indonesia Circular Letter is intended to provide a reference for Islamic banks in running Gold-Backed Qardh products, which is an implementation of Bank Indonesia Regulation (PBI) No. 10/17/PBI/2008 concerning Sharia Bank and Sharia Business Unit products. These provisions apply to Sharia Commercial Banks (BUS), Sharia Business Units (UUS), and Sharia Financing Banks (BPRS).

The explanation of the majority of scholars who forbid, it can be obtained an important point if Islamic financial institutions act as gold selling agents from gold shops, then they are allowed to buy and sell gold with notes: in cash, there is no maturity / tough, the price of gold is in accordance with the market price, although there is a difference with the original price of the gold shop, because gold is traded with metal / paper money that does not include usury goods. The debate is the fatwa of DSN No. 77/DSN-MUI/V/2010 concerning Cashless Buying and Selling of Gold, which states that buying and selling gold cashlessly is permissible (mubah), as long as gold does not become an official medium of exchange (money), either through ordinary buying and

selling or buying and selling murabahah. Fatwa DSN MUI considers that today the world community no longer treats gold or silver as money, but rather functions as goods. The MUI DSN fatwa is the same as the opinion of scholars who allow the practice of buying and selling non-cash gold. This view is famously referred to by Ibn Taymiyah and Ibn Qayyim, from classical circles, and is supported by some contemporary scholars who share the same opinion as both figures. Among them are Sheikh Abdurahman As-Sa'di and the Mufti of the Egyptian Fatwa Institute (Dar Al-Ifta' Al-Mishriyyah), Sheikh Ali Jumu'ah. According to the perspective of this group, buying and selling gold and silver is no longer a medium of exchange in society and both have become goods like other goods.

Another consideration used on the basis of DSN-MUI's fatwa in this case is consideration with socio-cultural background, one of which is the Jurisprudence Rule: "The law based on adat (custom) applies with the custom and void (does not apply) with it the ethics of adat is void, like currency in muamalat....". (Al-Qarafi: 228) In other words, the fatwa on the MUI is also used on the basis that the status of something declared as money is adat (custom or community treatment). The limits and conditions that must be followed from the permissibility of buying and selling gold in installments in the DSN-MUI fatwa are:

1. The selling price (*tsaman*) should not increase during the term of the agreement even if there is an extension of time after maturity.
2. Gold purchased with non-cash payments can be used as collateral (*rahn*).
3. Gold used as collateral as referred to in paragraph 2 may not be sold or used as an object of other contracts that cause the transfer of ownership.

4. CONCLUSION

A hybrid contract (al-'uqud al-murakkabah) is an agreement between two parties to execute a muamalah that includes two or more contracts, such as a sale and purchase contract with ijarah, a sale and purchase contract with a grant, and so on, such that all the legal consequences of the combined contracts, and all the rights and obligations they cause, are considered an inseparable entity, which is equal to the legal consequences of a contract. Hybrid contracts have been used in various Islamic banking product innovations. Examples include sharia pawns and gold investments.

Based on research and discussion on "Islamic Legal Views on the Implementation of Gold Pawn at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy" several things can be concluded. First, the implementation carried out by Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy related to gold pawn using 3 (three) contracts agreed by the customer and the bank, namely Rahn, Qardh, and Ijarah. The implementation of gold pawn at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy has been running and is guided by the applicable provisions in Fatwa DSN-MUI No.: 25/DSN-MUI/III/2002 concerning Rahn and Fatwa DSN-MUI No.: 26/DSN-MUI/III/2002 concerning Golden Rahn. This can be seen in the contract used, the procedure for implementing gold pawns, pillars and conditions, and the sale of Marhun (pawn goods) based on sharia principles. Second, according to the perspective of Islamic law, the implementation (practice) of gold pawn at Bank Syariah Indonesia (BSI) Sub-Branch Office of the Duchy has fulfilled the pillars and requirements of each contract used. In addition, there is no indication of Sharia violations in the implementation of gold pawns at Bank Syariah Indonesia (BSI) Sub-Branch Offices of the Duchy.Thus, the implementation of gold pawn financing at Bank Syariah Indonesia (BSI) Sub-Branch Offices of the Duchy has been legal and can be carried out.

Cashless buying and selling of gold is a process of transferring property rights in the form of gold which is considered as property or commodity goods to other parties using money as one of the means of exchange which is paid gradually at a price level or installments in accordance with the agreement and willingness of both parties when making a contract. National Sharia Council Fatwa No. 77 of 2010 concerning Cashless Buying and Selling of Gold explicitly allows gold buying and selling transactions in installments or installments. This fatwa answers the confusion of the public and financial institutions whether cashless gold buying and selling transactions will be allowed. However, in the practice applied by financial institutions, especially Islamic Banks, there are many irregularities. Even the contracts contained in the fatwa (*rahn* and *murabahah*) are considered incompatible by some Muslim scholars.

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