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APPLICATION OF HYBRID CONTRACT CONCEPT TO RAHN PRODUCTS IN PEGADAIAN SYARI'AH

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Abstract

Changes and the growth of shari'ah financial problems have faced widespread challenges. Among the important pillars for creating shari'ah financial products in serving the demands of modern society is the development of hybrid conctract (multi-contract). This paper analyzes rahn products that are widely practiced in shari'ah financial institutions, especially shari'ah pawnshops, from the point of hybrid contract. This research uses a qualitative approach with a type of case study research at Pegadaian Syariah Jombang. One of the data collection techniques is in the form of documentation, namely a rahn transaction agreement document between pawn customers and the Jombang Regency shari'ah pawnshop. Data analysis of this study in addition to using the fiqh approach also uses a substantive-normative approach in Islamic legal thinking. The results showed that rahn products in shari'ah pawnshops are still questionable shari'ah practices. If examined more deeply based on the criteria of permissible hybrid contracts, then this product can be included in the prohibited hybrid contract, because it is included in the combination of buying and selling with debts prohibited by hadith and scholars, because it combines two contracts that contradict its character and nature.

Keywords: *Hybrid Contract, Rahn, Shariah Pawnshop*

1. INTRODUCTION

The rapid development and progress of shari'ah finance faces increasingly complex challenges, Islamic banks are required to always innovate so that the products offered can attract customers, as well as compete with conventional banks. The forms of contract in classical fiqh have not fulfilled this progress. Therefore, innovation and new creation of the forms of contract in classical fiqh are needed to suit the needs and demands of the community.

One of the important pillars to create shari'ah financial products in serving the demands of modern society is the development of *Hybrid Conctract* (multi contract). The single form of contract is no longer able to respond to contemporary financial transactions. Method *Hybrid Contract* It should already be a flagship in product development. Mabid al-Jarhi, former director of The Islamic Research and Training Institute Islamic Development Bank (IRTI IDB), as quoted by Agustianto, once said that the combination of contracts today is a necessity. And at the same time, shari'ah economic literature in Indonesia has long developed the theory that shari'ah does not allow two contracts in one contract transaction (two in one). This prohibition is interpreted superficially and incorrectly, thus narrowing the development of shari'ah bank products. In fact, the Shari'ah allows it in a very wide scope. (Agustianto, 2015)

Collecting two or more contracts in one agreement or transaction is commonly used in Shari'ah financial institutions. The understanding of a contract name practiced in shari'ah finance is

much different from the understanding of fiqh mu'âmalah. For example, the product of murâbahah in shari'ah banking is a merger between the contract of murâbahah and the contract of wakâlah. Likewise, in shari'ah credit card transactions there are ijârah, qardl, and kafâlah contracts; and many others (Anshori, 2006). In every transaction, these contracts are carried out simultaneously or at least every contract contained in a product cannot be abandoned, because everything is a unit. Such transactions are termed in this paper *Hybrid Contract* or what in contemporary mu'âmalah fiqh terms is called *Al-'Uqûd al-Murakkabah*.

Although the majority of scholars allow *hybrid contracts*, the concern is that not all forms of hybrid contracts are allowed , *but there are certain restrictions and conditions for hybrid contracts to* be allowed. These limits and conditions are intended so that the purpose of shari'ah in mu'âmalah is maintained and *hybrid contracts* are not used as a tactic to prohibited economic activities.

The shari'ah pawn product run by a shari'ah pawnshop is also not a single contract, but is a merger of two types of contracts in one agreement, namely the rahn contract (pawn) and the ijârah (rent) contract, therefore it is included in the hybrid contract innovation. On the one hand, this innovation is a breakthrough to advance shari'ah pawnshops, but on the other hand, this application has attracted controversy. Many Muslims forbid this shari'ah pawn product. Based on this reality, this paper analyzes rahn products that are widely practiced in shari'ah financial institutions, especially shari'ah pawnshops, from the point of hybrid contract (Rifai, 2015).

2. IMPLEMENTATION METHODS

This research uses descriptive qualitative methodology, which seeks to describe and analyze in depth based on the data obtained. The making of this paper is specifically about Hybrid Contract in Islamic Financial Institution products. The data obtained is then processed by editing and organizing data methods, then analyzed by deduction methods, the aim is to get a complete description of the concept of hybrid contract contracts in Islamic Financial Institution products.

3. RESULT AND DISCUSSION

3.1 Hybrid Contract: Meaning and View of Fiqh Experts

Hybrid contract is a popular term that is a translation of the Arabic word, namely al-*'uqûd al-murakkabah* (double contract). In addition to the term akad murakkab, there are several other terms used by fiqh experts that have relationships, similarities, and similarities with the meaning of akad murakkab. These terms include *al-'uqûd al-mujtami'ah (accumulated contracts), al-'uqûd al-muta'addidah (multi-type* contracts), al-'uqûd almutakarrirah *(repeated contracts*), al-'uqûd al-mutadâkhilah (contracts mixed with each other), and *al-'uqûd al-mukhtalithah* (mixed contracts) (*al-*'Imrânî, 2006). Likewise, in Indonesian, in addition to *hybrid contracts,* there are also several other terms used, including multi-contract and double contract.

In general, a *hybrid* contract is defined as a set of several material contracts conceived by a contract either jam*'î (collecting) or* taqâbulî (reciprocity), so that all rights and obligations arising from it are considered as legal consequences of one contract. (al-'Imrânî, 2006:46)

The use of *hybrid contracts* in financial economic transactions is widely discussed by fiqh experts regarding the range of validity of the multi-contract. The discussion and debate about the validity of this multi-contract arose because of a number of hadiths of the Holy Prophet (peace be upon him) which outwardly indicate the prohibition of the use of multi-contract. In addition, the advancement of contemporary shari'ah finance requires contract innovations that are not limited to old contracts that have been known, including in the form of multi-contracts. The prohibition is among others evident in the following outward hadith:

عن أبي هريرة عن النبي صلى الله عليه وسلم أنه نهى عن بيعتين في بيعة

"Abû Hurayrah narrated from Na-bi (peace be upon him) that he forbade two trades in one trade". (Narrated by al-Tirmidzî, al-Nasâ'î, Abû Dawûd, and Mâlik). (al-Tirmidzî, 1991:351)

The majority of scholars argue that the law of agreement containing two or more contracts is essentially permissible in shari'i and that hadith texts prohibiting the gathering of two or more contracts in one agreement are exceptions to the permissibility. Some scholars consider that the prohibition of two buying and selling in one trade is interpreted as two prices, so the price becomes unclear. Therefore, in another hadith the Holy Prophet(sa) emphasized that if such happens, then the option is the cheapest price, if not, then it includes usury.

عن أبي هريرة قال: قال رسول الله صلى الله عليه وسلم :من باع بيعتين في بيعة فله أوكسهما أو الربا

From Abû Hurayrah said: "The Prophet (peace be upon him) said: Whoever sells two trades in one sale will give him the lowest price or usury." (HR. Abû Dawûd, al-Tirmidzî, Ahmad, and al-Nasâ'î). (al-Tirmidzî, 1991:351)

The view of the above scholars adheres to the rule *of al-istishâb al-ashlîyah*, which states that the original law of all things is lawful or permissible as long as there is no evidence that shows a law that is different from the original law. Based on this rule, Imam al-Shafi'î made a general rule in buying and selling, namely the original law of buying and selling everything is changed if done with the pleasure of the seller and buyer, except what is forbidden by the Messenger of Allah. (al-Shafi'î, 1990:3)

Ibn Taymîyah states the permissibility *of this hybrid* contract more clearly and at length, saying that shari'a law was originally to establish the validity of more than one contract in one agreement, as long as there is no specific prohibition of shari'i in that regard. Because the original law based on the postulates of nash is freedom of contract and the obligation to fulfill everything agreed by both parties as long as there is no nash or *qiyâs shahîh* that forbids it. If there is a nash or *qiyâs shahîh* that forbids it. Therefore, the gathering of some of these contracts is specifically prohibited and transacting with them is considered broken. (Taymîyah:135)

Similarly, Ibn al-Qayyim argued that the original law of contracts and conditions is valid, except those that are nullified or prohibited by religion. Since the original law was permissible, any contract and condition that has not been explained as haram by Allah cannot be declared haram. Allah has explained what is haram in detail, therefore every contract that is declared haram must be clear what kind of haram and how. It is not permissible to forbid what has been sanctioned by Allah or forgiven. Similarly, it cannot justify what has been forbidden by Him. (al-Jawzîyah, 1991:344&383)

Hybrid contracts that exist in business and financial transactions have many forms and varieties. In general, *hybrid contracts* are divided into the following forms:

First, a hybrid contract in the form of a mixture of two or more contracts that gives rise to a new name. *This hybrid contract* is for example buying and selling *tawarruq*, bay' al-wafâ', and so on. *Tawarruq buying and selling* is a mixture of two buying and selling contracts, buying and selling with the first party and buying and selling with a third party. (al-Zuhaylî, 2007:5203)

Second, a hybrid contract that is *mujtami'ah/mukhtalithah with the name of* the new contract, but mentions the name of the old contract as the basis. This type of *hybrid contract* is for example *mudlârabah musytarakah* on life insurance and shari'ah bank deposits and on *musyârakah mutanâqishah products*.

Third, hybrid contracts, whose contracts do not mix and do not give birth to new contract names, but two or more contracts become a package of agreements with the name of the basic contract remaining. *This hybrid contract* is an example of murâbahah *wal wâkalah on murâbahah* financing in shari'ah banking; *Kafâlah wal* ijârah on credit cards, letters of credit, bank guarantees, multi-service financing, and credit cards; qardl, rahn, and ijârah on pawn products and so on. (Agustianto, 2015)

3.2 Allowed Hybrid Contract Criteria

The permissibility *of hybrid contracts* based on the original legal principle of the contract is permissible and permissible with the laws of the contracts that construct it, taking into account the religious provisions that limit it. That is, although hybrid contracts are *allowed, there are restrictions that must not be violated, because these limits become a signpost for* hybrid contracts *not to fall into the practice of mu'âmalah which is forbidden.*

Nazih Hammad provides several criteria for *hybrid contracts* to be allowed shari'i. The criteria are as follows: (Hammad:262)

1) *The hybrid contract* is not prohibited in the nash.

Hybrid contract What is prohibited in the text of the hadith is twofold, namely the gathering of buying and selling with accounts receivable, and the gathering of two buying and selling in one contract. The jurists agreed on the haram of gathering debts by buying and selling in one agreement. This law also covers the collection of debts with contracts of salam, sharf, and ijârah (rent), since all three are included in bay' (buying and selling). (Rusyd, 1993)

In the matter of the gathering of two trades in one agreement, jurists differ in interpreting the object and form of the prohibition. Imam Mâlik, Abû Hanîfah, and the Shafi'î school in one opinion say that the form of the gathering of two forbidden trades is if the seller says to the buyer: "I sell you this shirt for 10 dirhams in cash or 20 dirhams in a year", then the buyer accepts it without specifying which of the two prices is chosen. 'The illat of this prohibition according to al-Shafi'î and Abû Hanîfah is that the price is not clear, so it is included in the buying and selling of gharar prohibited by shara'. Whereas according to Imâm Mâlik, his illat is *sadd al-dzarî'ah*, that is, being a means to riba which is forbidden. (al-Tirmidzî, 1991:351)

While the Hanbalî, Hanafî, and Shafi'î schools in one of their sayings say that the form of the gathering of two forbidden trades is if the seller says to the buyer, "I sell you this garden of mine for 100 dinars on condition that you sell me your house for 70 dinars." The illat of this form of haram is to separate at the time of buying and selling at an unknown price. That is, the price of each sale is unknown, because if each object of sale is sold separately, they both do not agree on the price as the price at the time of being put together. (Rusyd, 1993:153)

Ibn Taymîyah and Ibn Qayyim argue that the form of two trades in one sale that is forbidden is none other than buying and selling 'inah, (Hammad, 1995: 254-255) where the seller says, "I sell this item to you for 100 dirhams within one year on condition that I buy it from you for 80 dirhams in cash". According to Ibn al-Qayyim, only this interpretation corresponds to the text of the second hadith, "hence for him the lowest price or usury". The seller has two options of taking the additional price, so that it consumes usury or takes the lowest first price. (al-Jawzîyah, 1991:119)

2) The hybrid contract is not a means to something that is forbidden.

In the explanation of the first criterion above, it is explained that fuqaha' in responding to the hadith that prohibits two buying and selling in one contract states that the 'illat of the prohibition is the existence of gharar (obscurity) or means (*dzarî'ah*) to the occurrence of usury. Therefore, its haram law can be applied to other forms of *hybrid contracts* that have the same illat based on *qiyâs*, or on the basis of *the postulate sadd al-dzarî'ah*. (Hammad: 189)

3) The hybrid contract is not used as *a hîlah* (ploy) to take usury by other means

Al-hîlah itself linguistically means ingenuity of thought, shrewdness of interaction, and activity and turning the mind over in order to reach the goal. (al-Qazwaynî, 2012: 68) While in terms, some scholars define *al-hîlah* specifically as something that is forbidden. Al-Shathibî, for

example, defines *al-hîlah* as reversing a law that has been sharia-established to another law by doing deeds that are shahîh (right) outwardly, but are really just games. (Al-Shathibî, 108)

However, some other scholars define *al-hîlah* in general terms as the hidden path used to achieve the goal, which is unknown except with certain intelligence and intelligence. If the goal is good, then it belongs to hîlah hasanah (*good strategy) and if the goal is bad, then it belongs to* hîlah qabîhah (bad strategy). (al-Qazwaynî, 2012:68)

Hybrid contracts that are used as a strategy against usury are haram, even if they are legally permissible. The prohibition of this contract is not because it is a *hybrid contract*, but because it is used as a ploy to benefit usury in other ways. Ibn al-Qayyim asserts that the goal is spirit rather than contract. He who makes the contract shahîh or void. Taking i'tibâr based on the purpose of the contract is more important than the i'tibâr based on the pronunciation, because the pronunciation may be intended for other than the pronunciation, while the purpose of the contract is the desired thing of the contract. (al-Jawzîyah, 1991:94)

A single contract that belongs to this type, according to scholars, an example is nikah *muhallil*. While one example of a *hybrid contract* that is used as *hîlah ribawi* is buying and selling *'înah*. This sale and purchase is illustrated that a person sells his goods by deferral, then he buys back the goods from people who have bought the goods at a price less than what he sold, but he pays the price in cash according to the agreement. In this *'inah* sale and purchase two trades are collected in one agreement, and are carried out as a stratagem to usury, where the seller and buyer do not aim to transfer ownership of the goods sold in essence.

4) Hybrid contracts are not included in *mutanâqidlah* (the contracts are opposite).

This limitation is according to the Mâlikî madhhab only and is not used by the number of jurists. They reason that the contract is the cause, because it is the means to achieve the wisdom of the contract in its object. An object cannot be caused by two contradictory or opposing things, so any two opposing contracts cannot be collected in one contract or agreement. Examples of conflicting contracts are sale and purchase and receivables or receivables with ijârah (rent or wages). Buying and selling and ijârah are built on business and profit-seeking. Whereas debts are built on help and worship. (Hammad, 2001)

3.3 Rahn: Its Functions and Conditions

Rahn literally means *al-tsubût wa al-dawâm* (fixed and continuous). In addition, rahn also means *al-habs* (restrained). (Manzhûr, 1386H:115) In the study of Islamic law, rahn is generally defined as a pledge. Ulama define it as property that is used as reinforcement for dependents (dayn) to pay off the dependents from the price if repayment cannot be made (al-Sâlûs, 2004: 1199). It can also be defined as the detention of objects / property as reinforcement of dependents to pay off the dependents from the price of the goods or from the price of benefits when he cannot pay them off (Al-Qurthubî, 1995: 370).

Scholars agree that rahn (pawn) is permissible based on the Qur'an and hadith. Rahn is permissible by the Shari'a because it is needed as *al-istîtsâq* (reinforcement) of transactions, so that both parties to the transaction feel guaranteed their rights. In Islamic law, there are three reinforcers of transactions, namely testimony, rahn and kafâlah. Among these three things, rahn is at the top and most important. This is because testimony only strengthens the existence of transactions, but cannot guarantee the fulfillment of rights. While kafâlah can guarantee the fulfillment of rights, it needs a third party.

The majority of scholars view that there are four pillars of rahn, namely râhin (one who mortgages) and murtahin (pawnee), marhûn (mortgaged goods, marhûn bihi (debt), and shîghah. Whereas scholars of the Hanafî madhhab view rahn as having only one pillar, namely shîghah, because in essence it is a transaction. (al-Thayyâr, 1425H:116)

One of the important consequences of rahn was murtahin's control over mortgaged goods. In fact, Ibn Qudâmah says that rahn is not effective except by the holding of pawns by murtahin. The delivery of mortgaged goods, if the goods can change hands (movable goods), then there is an actual and direct handover of goods. Meanwhile, if the mortgaged goods are immovable goods, such as houses, land, and others, the handover in classical fiqh is by symbolic means or the delivery of things that are a sign of control over the goods, such as the handover of house keys and so on. (Al-Sâlûs: 1236-1238)

Another issue that is no less important in pawn practice is the cost of maintaining and maintaining pawn goods. The majority of scholars say that the usual expenses for pawned goods such as food if they are animals, guarding, storage, etc. are the responsibility of the person who pawns. This is the opinion of the Mâlikî, Syâfi'î, and Hanbalî madhhabs. They reasoned that the cost was a common form of livelihood for the lien, so it was the responsibility of the owner, the pawner. Abû Hanîfah argues that the cost of the lien is the responsibility of the murtahin, because it is the cost of detention and mortgaging.

Within the scope of Indonesia, the basis for the reference of shari'ah pawnshops is fatwa DSN MUI Number 25 / DSN-MUI / III / 2002 concerning rahn and fatwa DSN MUI Number 26 / DSN-MUI / III / 2002 concerning rahn emas. Fatwa DSN MUI Number 26 of 2002 states that gold rahn is permissible based on the principle of rahn. While the cost of storing goods (marhûn) is borne by the pawner (râhin) based on the ijârah contract. (Fatwa DSN, 2002)

In contemporary practice, rahn has developed, so that in today's economy two types of rahn are known, namely al-rahn al-hiyâzî (*pawn) which is commonly known in classical Islamic law, and* al-rahn al-ta'mînî or *al-rahn al-tasjîlî* (fiduciary). According to Law of the Republic of Indonesia No. 42 of 1999, fiduciary is defined as the transfer of ownership rights of an object on the basis of trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object (Law of the Republic of Indonesia, 1999: 42). Unlike a pawn, in a fiduciary that is handed over to the murtahin is not the goods, but a letter or deed that is believed to be proof of ownership of the property, such as land deeds, motor vehicle BPKB, and so on. As for the goods, they still remain in the hands of the owner and can be utilized.

Although *al-rahn al-ta'mînî* is not known in Islamic fiqh, it is included in *al-mashâlih al-mursalah*, because this fiduciary can realize the purpose and function of the lien perfectly, and moreover, the fiduciary has the advantage of the continued use of collateral by the owner (Al-Sâlûs, 2004: 1291). Of course, this practice was not known in classical times, because public administration was not yet known as letters or deeds as proof of ownership of valuables as it is today, so fatwas had to change with changing times and customs. The ability of this fiduciary guarantee in the Indonesian context is further strengthened by Rahn *Tasjîlî* [Fatwa DSN, 2008]

3.4 Rahn Products at Pegadaian Syari'ah

In various literatures, it is generally stated that pawn products in shari'ah pawnshops run on two contracts, namely: First, the rahn contract, which means holding the borrower's property as collateral for the loan he receives, so that with this contract the pawnshop holds movable goods as collateral for customer debts. Second, the ijârah contract, which is a reward for storing the pawn (Mulyani, 2015). However, if examined more deeply, in the pawn product there are three contracts collected. The three contracts are the qardl contract, namely the debts that are the basis of the pawn, the rahn contract as a reinforcement of the debt contract, and the ijârah contract in the storage of mortgaged goods.

The existence of a qardl contract in pawn products is vital, where the rahn contract will not exist without the debt contract. This is also evident in rahn transactions between pawn customers and shari'ah pawnshops in Jombang Regency. The agreement reads, inter alia: (1) the râhin hereby acknowledges that he has received a loan from murtahin in the amount of the loan and with the term

of the loan as stated in the letter of the book of rahn; (2) Murtahin hereby acknowledges that he has received Râhin's property mortgaged to Murtahin, and therefore Murtahin is obliged to return it when Râhin has paid off his loan and other obligations; (3) For the above mentioned RAHN transactions, RAHN is subject to an administration fee in accordance with applicable regulations; (4) and so on.

In addition to the rahn contract, the customer also performs an ijârah contract whose purpose is to promise the costs associated with rahn. The content of this ijârah contract is broadly in the form of recognition of the previous rahn contract and agreement on the ijârah contract. The acknowledgment of the existence of the previous rahn contract contains, inter alia: (1) musta'jir has previously entered into an agreement with the mu'ajjir as stated in the rahn contract which is also contained in this rahn proof letter, in which musta'jir acts as a râhin and mu'ajjir acts as murtahin and therefore the rahn contract is an integral part of this contract; (2) For marhûn based on the above contract, Musta'jir agrees to be subject to ijârah. While the agreement on the ijârah contract contains an agreement on the ijârah tariff in accordance with applicable regulations, for a period of tenths of calendar days with the provision of the use of ma'jûr for one day is still subject to ijârah at the rate of ijârah per ten days. The total amount of the ijârah must be paid at once by the musta'jir to the mu'ajjir at the end of the term of the rahn contract or simultaneously with the repayment of the loan. (Pegadaian Syari'ah Jombang Regency)

Costs taken into account in paying wages include rent, use of premises, maintenance of marhûn and insurance of marhûn. Then the calculation carried out is: (Supriyadi, 2015)

Ijârah = Estimated goods x Tariff (Rp.) x Period.

3.5 Review of Sharia Economic Law on Pawn Products

After looking at the criteria for *permissible hybrid contracts* and the contracts collected in pawn agreements at shari'ah pawnshops, we now weigh the shari'ah of the rahn product, based on these criteria.

The first condition of the ability of *hybrid contracts according to Nazih Hammad is that* the hybrid contract is *not included in the prohibited in the nash. The hybrid contract prohibited in the* hadith text is twofold, namely the gathering of al-bay' (buying and selling) with debts and the gathering of two buying and selling in one contract. If we are guided by the opinion of scholars that the word al-bay' or buying and selling involves contracts of salam, sharf, and ijârah, then the practice of rahn in shari'ah pawnshops is included in *the prohibited hybrid contract*. This is because in the rahn agreement the debt is gathered with the ijârah contract (rent or wages) included in the sale and purchase.

Likewise, if we weigh rahn products in shari'ah pawnshops with the fourth condition of the ability of *hybrid contracts*, we will conclude that the contract is illegal. The condition says that the *hybrid contract* does not belong to the *mutanâqidlah* (the contracts are opposite). The function of rahn in Islam is the reinforcement of debt transactions, where debts are contracts based on help and compassion for others. This is in contrast to ijârah transactions which are profit-seeking. The commercialization of rahn with a mulzim (must) ijârah contract for customers has eliminated the function of rahn based on help.

In addition, the haram rahn collected with ijârah can also be inferred from the application of the rule that says "*kullu qardl jarr naf'an fahuwa ribâ*" (al-Marî, 2015). Every receivable debt that brings benefits is usury. The rahn agreement in the shari'ah pawnshop is inseparable from the customer's debt to the shari'ah pawnshop. If the debt is utilized by the debtor by requiring the customer to perform an ijârah contract on the pawned goods (marhûn), this matter can fall into the category of bringing benefits, so it is included in the prohibited usury.

Indeed, different results will be obtained if we focus on the rahn contract, not on the debt-receivable contract. This is because rahn as a reinforcement of non-cash transactions does not have to coincide with accounts receivable contracts. Akad rahn can be carried out as reinforcement of non-

cash buying and selling transactions, leasing, and others. In this case, rahn is not problematic when combined with the contract of ijârah, because the two do not belong to the opposite contract. However, when viewed from the reality that exists in shari'ah pawnshops, customers who apply for a pawn can almost certainly be based on a money loan or qardl.

3.6 Review of Sharia Economic Law on Ijârah in Pawn Agreements

Another controversial point in the merging of the contract of rahn with ijârah in one agreement is the extent of the need for ijârah. The wages in the ijârah are the wages for care or storage. The hadith on which the permissibility of retrieval of wages for the storage of mortgaged goods (marhûn) by shari'ah pawnshops is actually the remuneration for the care of marhûn that requires care, in this case livestock. So did classical scholars, when speaking of taking wages over marhûn was wages for care not storage.

Among these hadiths is the hadith narrated by Sha'bin from Abû Hurayrah (ra). that the Prophet (peace be upon him) said that mortgaged cattle may be milked according to the cost of care. While mortgaged cattle can be ridden according to the cost of maintenance and people who milk or ride them must pay the cost of maintenance. (Al-Sâlûs, 2004:1252)

Pawn goods in the form of livestock are certainly very different from pawn goods in the form of inanimate objects. Farm animals need food and care, while inanimate objects do not need it all. The above hadith shows that if the pawn is an animal, then the pawnee who takes care of the livestock is entitled to take wages for his labor or reciprocally take advantage of the livestock. If this hadith is used as a postulate for the permissibility of collecting wages for the storage of pawned goods, according to the author, it is inappropriate, because of the difference in the character of livestock pawns with inanimate objects as above.

Thus, the formally-procedurally ijârah contract is used as a means to take additional loans. Indeed, among scholars, especially the Shafi'î madhhab rests on a normative and formal mindset alone. This mindset is evident in al-Nawawî's sentence in explaining the reason for al-Shafi'î madhhab allowing the buying and selling of 'īnah. Al-Nawawî says that permissibility is because what counts is the outward aspect of the contract, not what is in the hearts or intentions of the two transacting. (al-Nawawi, 2012:249)

However, this view was strongly opposed by some scholars, such as Ibn Qayyim and Ibn Taymîyah. They do not only look at the formal normative procedural level, but more than that they look at the substance of the contract, and ignore the conformity of the contract with the formal procedural aspects of the law. They saw the conditions behind the contract. In the case of buying and selling *'īnah*, the person who does it is forced to and there is an urgent need that drives him to do so. If there is no urgent need, where can someone concern themselves with the trade. (Al-Sâlûs, 2004:720-721)

Likewise, the alternative of riba in shari'ah finance is to use shari'îyah contracts. In practice, these contracts are often criticized as merely normatively eliminating usury, but substantively they have not disappeared. Customers must spend additional money, either called profit margin, profit sharing or fees (wages) that are similar to interest because the real activities underlying the additional are not carried out by the shari'ah financial institution. (Saeed, 2004)

In the case of ijârah in pawn products at a shari'ah pawnshop, the imposition of wages for the storage of marhûn, is none other than so that the pawnshop gets additional for the loan provided by the customer. If indeed remuneration for storage is required, this should also be done in fiduciary or rahn tasjili. In a fiduciary, the Shari'ah financial party holds securities representing ownership of certain goods as marhûn without any fee or remuneration for the deposit. In fact, the storage of ownership certificates for valuables with the storage of valuables, such as gold and so on, is not much different. The cost required is relatively the same.

This difference is none other than that rahn tasjili is not used in debts (qardl), but is used in contracts of sale and purchase of murâbahah, musyârakah, ijârah, etc., which the financial institution can get additional, profit sharing or lawful profits from these contracts. While a pawn is associated with a loan that cannot be additional on it, so the ijârah contract is used to get the addition.

4. CONCLUSION

At first glance, rahn products at shari'ah pawnshops seem like there is no problem, but if examined more deeply in practice, rahn products at Sharia pawnshops are still questionable. On the one hand, the shari'ah pawnshop claims that the *hybrid contract* underlying the pawn product has met the requirements of shari'ah, so it is permissible. However, if examined more deeply based on the criteria of *permissible hybrid contracts, then this product can be included in* the prohibited hybrid contract, *either because it is included in the combination of sale and purchase with accounts receivable prohibited in the hadith or based on the criteria of Mâlikîyah scholars who forbid the merger of two contracts that are contrary in character and nature.*

Islamic solutions in shari'ah finance are expected not only at the formal normative and legal levels. Moreover, Islamic solutions must substantively address economic problems based on the values of justice, so that the role of Islam in economics is not only symbolic, but rather value.

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