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LEGAL ANALYSIS ON THE FATWA OF SHARIA NATIONAL COUNCIL ON RAHN: Between Legal Philosophy and Its Implementation in Indonesia Sharia Pawnshop

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Abstract

The function of Sharia Financial Institutions (SFI) is to provide the easiness for the needs of the community in sharia-compliant funding. One of them is Pegadaian Syariah (sharia pawnshop), which offers the pawning (rahn) contract as one of the sharia-compliant quick funding solutions. The National Sharia Council (NSC) realized the need to issue a fatwa on the guidelines on rahn as a form of response to the needs of the community in various SFI products. However, this fatwa contains biased meaning against the concept the rahn which is obscurely implemented between dain and qardh in some SFI contracts. Therefore, this study tries to analyze the DSN Fatwa NO. 25/DSN-MUI/III/ 2000 and

DSN Fatwa NO. 26/DSN-MUI/III/2000 concerning rahn between legal philosophy and its implementation in sharia pawnshops from the perspective of Fiqh Muamalah. The result of this study emphasizes that it is necessary to include in this fatwa a legal philosophy underlying reason for pawning (rahn) decision, whether it is debt (dain) caused by buying-selling/trading (bai') or due to money loan debt (qardh). This basis will explain the sharia-compliant boundaries of the implementation of the rahn contract in SFI, especially in sharia pawnshops which still makes qardh the basis for the realization of rahn implementation.

Keywords: sharia pawnshops, rahn, qardh, DSN Fatwa NO. 25/DSN-MUI/III /2002 and DSN Fatwa NO. 26/DSN-MUI/III/2002.

Abstrak

Fungsi Lembaga Keuangan Syariah (LKS) yaitu memberikan kemudahan kebutuhan masyarakat dalam pendanaan yang syar'i. Salah satunya adalah Pegadaian Syariah yang menawarkan akad rahn sebagai salah satu solusi kebutuhan dana cepat yang sesuai syariah. Dengan demikian Dewan Syariah Nasional (DSN) memandang perlu menetapkan fatwa pedoman tentang rahn sebagai bentuk respon kebutuhan masyarakat dalam berbagai produk LKS. Namun, dalam fatwa ini memberikan bias makna implementasi akad rahn antara dain dan qardh di beberapa LKS. Maka penelitian ini mencoba menganalisis Fatwa DSN NO. 25/DSN-MUI/III/2000 dan DSN Fatwa NO. 26/DSN-MUI/III/2000 tentang rahn antara legal filosofis dan implementasinya di pegadaian syariah dari prespektif Fiqh Muamalah. Hasilnya adalah perlu dicantumkan dalam fatwa ini legal filosofis sebab yang mendasari penetapan gadai (rahn) yaitu hutang (dain) apakah disebabkan jual beli (bai') atau disebabkan hutang pinjaman uang (qardh). Dasar ini akan menjelaskan batasan-batasan kesyar'ian implementasi akad rahn di LKS khususnya di Pegadaian

Syariah yang masih menjadikan qardh sebagai landasan terwujudnya implementasi rahn.

Kata kunci: Pegadaian syariah, rahn, qardh, Fatwa DSN MUI NO. 25/DSN-MUI/III/2002 and Fatwa DSN MUI NO. 26/DSN-MUI/III/2002.

A. Introduction

The function of sharia financial institutions (SFI) is to provide easiness to the needs of the community in sharia-compliant funding. The easiness can be seen from 4 aspects. *First*, it is financial services; SFI facilitates the exchange of products (goods and services) by using financial services in accordance with sharia principles. *Second*, it is their position in the banking system; SFI Collects funds from the public to be redistributed in the form of financing in accordance with Sharia principles. *Third*, it is financial system; SFI Provides knowledge or information to users and costumers of financial services so as to open opportunities for profitability in accordance with the principles of Sharia. *Fourth*, it is the monetary system; SFI creates liquidity so that funds saved can be used when needed in accordance with Sharia principles.¹

In Indonesia, many Islamic financial institutions have been established. According to the Sharia Banking statistics issued by the Financial Services Authority (*Otoritas Jasa Keuangan*, hereinafter OJK) in January 2019, there are 14 Sharia Commercial Banks (SCB), 23 Sharia Business Units (SBU) and 165 Sharia rural bank with total assets of SCB and SBU reached to Rp. 466,800 billion. The number of Islamic insurance companies is 13, SBU

¹ Andri Soemitra, *Bank dan Lembaga Keuangan Syariah*, (Jakarta: Kencana Media Group, 2009); 30-33

insurance companies is 50, Islamic finance institutions is 7, SBU is 40, Sharia Pension Funds is 3, Sharia Special Financial Institutions is 8, and Sharia Micro Finance Institutions is 42.² Those sharia financial institutions are divided into 2 institutions, namely sharia institution financial depository, and non-depository financial institutions.³ Among non-bank sharia financial institutions are BMT (*Baitul Māl wa Tamwīl*), sharia insurance, and sharia pawnshops.

Sharia Pawnshop is a Sharia Financial Institution from a subsidiary of PT Pegadaian (Persero) under the auspices of the BUMN (State Owned-Enterprises). The underlying reason of establishing a pawnshop Institution is to provide loans or credit with mortgage/pawning system.⁴ The main products of sharia pawnshops offering *rahn* (pawning) contracts as one of the solutions to fast funding requirements that are in accordance with sharia.⁵

As such, the National Sharia Council (NSC) considers it necessary to stipulate the DSN fatwa NO. 25/DSN-MUI/III/2000 and DSN NO. 26/DSN-MUI/III/2000 concerning *rahn* (pawning) as a form of response to community needs in various SFI products. This fatwa is set to become a guideline in each pawn transaction to be in

²Sharia Banking Statistics of Financial Service Authority, January 2019, <https://www.ojk.go.id/id/kanal/syariah/data-dan-statistik/statistik-perbankan-syariah/Documents/Pages/Statistik-Perbankan-Syariah---Januari-2019/SPS%20Januari%202019.pdf>, <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/statistik-iknb/Pages/Statistik-IKNB-periode-Januari-2019.aspx#>, accessed on March 28 2019

³Andri Soemitra,,. 28

⁴ <http://pegadaiansyariah.com/sejarah-pegadaian-syariah/> accessed on May 11 2018

⁵ <http://pegadaiansyariah.co.id/rahn>, accessed on May 11 2018

accordance with sharia principles.⁶ Therefore, this fatwa seeks to realize the implementation of the *rahn* (pawning) contract in sharia pawnshops in accordance with sharia.

However, the implementation of this fatwa provides a biased meaning between the implementation of the *rahn* (pawning) contract, *qardh* (money loan/debt) and *ijārah* (renting) in some SFI. Masfiah's research stated that the implementation of the *rahn* (pawning) contract at BTN Syari'ah Semarang still combines the *qardh* (money loan/debt) and *ijārah* (renting) contract.⁷ Other research of Purbasari and Rahayu found that the implementation of the *rahn* (pawning) contract in sharia pawnshops Pemekasan still contains usury in loan administration funding.⁸ This is consistent with the research finding of Mahmudahningtyas and Manzilati that the implementation of *rahn* (pawning) in the pawnshop is considered to be deficient in accordance with the sharia concept, namely simply the merging of *rahn* (pawning), *qardh* (money loan debt), and *ijarah* (renting) contracts.⁹ Therefore, it is necessary to analyze the DSN Fatwa NO. 25/DSN-MUI/III/2002 and DSN Fatwa NO. 26/DSN-MUI/III/2002 concerning *rahn* (pawning) between legal philosophy and its

⁶ See fatwa DSN NO. 25/DSN-MUI/III/2000 in considering of point c and DSN NO. 26/DSN-MUI/III/2000 about *rahn* in considering of point d.

⁷ Siti Hani Masfiah, Analisis Pelaksanaan Fatwa DSN-MUI NO. 25/DSN-MUI/III/2002 Tentang *Rahn* (Studi Pelaksanaan Gadai Syari'ah Di BTN Syari'ah Semarang), Skripsi Jurusan Muallamah, Fakultas Syari'ah IAIN Walisongo 2011, P. Abstract.

⁸ Indah Purbasari dan Sri Rahayu, Analisis Penerapan Akad *Rahn* (Gadai) Dan Pengenaan Biaya Administrasi *Rahn* Di Pegadaian Syariah (Studi Empiris *Rahn* Di Kantor Cabang Pegadaian Syariah Pemekasan), *Jurnal Hukum Ekonomi Islam*, Vol. 1, No. 1, 2017/1438H.

⁹ Arrum Mahmudahningtyas dan Asfi Manzilati, Analisis Kesyarahan Transaksi *Rahn* Emas (Studi Pada Pegadaian Syariah Cabang Landungsari Malang), *Jurnal Ilmiah Jurusan Ilmu ekonomi dan Bisnis Universitas Brawijaya* 2015. P. Abstract.

implementation in sharia pawnshops from the perspective of Fiqh Muamalah. This article aims at explaining the function, position, and understanding the implementation of two fatwas in sharia pawnshops. The finding provides legal philosophical clarity on the implementation of two fatwas upon *rahn* contracts related to *dain* (debt) and *qardh* (money loan debt) as they are in accordance with Sharia-compliant. This study uses a normative-empirical approach to see the implementation of normative legal provisions (2 fatwas related to the pawning contract) in each implementation of the *rahn* contract in Pasar Legi Jombang Branch office of sharia pawnshops.

B. *Rahn* and Debt in Fiqh Mu`amalah

1. Definition of *Rahn* (the mortgage/pawning)

In Indonesia, the mortgage/pawning (*rahn*) and collateral in the practice of sharia still uses the guarantee legal norms of positive legal system derived from Western law, and this law looks different from the guarantee in Islamic law. The different among the guarantee in positive legal system, and Islamic law is in basic rationale that stipulated both laws.¹⁰ The guarantee in positive legal system is originated from the affected of credit-debit that based on civil law article 1131, while the guarantee in Islamic law is related to *rahn* (pawning) and *kafalah* (the guarantee).¹¹

In Islamic law, collateral is usually related to accounts payable and buying-selling with credit. In this case, this connection gives rise to agreements and contracts in the form of *urbun* (down payment) and collateral. The agreement and contract of collateral will

¹⁰ Ifa Latifa Fitriani, *Jaminan Dan Agunan Dalam Pembiayaan Bank Syariah Dan Kredit Bank Konvensional*, Junal Hukum & Pembangunan, Vol. 47, No. 1. 2017. P. 138

¹¹ *Ibid.*

be applied into mortgage as usual. The collateral of mortgage is based on the instructions in the Qur'an Chapter Al-Baqarah, verse 283:

وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ.

"If you are on a journey (and not in cash) while you are not getting a writer, then there is a dependable item held (by the debtor). But if some of you trust some of the others, then let those who believe fulfill their mandate (debt) and let them fear Allah; and do not let you (the testifiers) hide the witnesses. And whoever hides it, surely he is a sinner, and Allah knows what you do."

With regard to the verse above, in general, it provides a basis for definitions and laws for collateral of mortgage (*rahn*) and debt in particular. In terminology, the definition of *rahn* in *lisnu al-Arab* is the *mashdar* (derivation) of the phrase "*rahana-yarhanu*" which means a pawn given to someone who takes something from him.¹² Whereas according to Imam Malik *rahn* means *habs* (pawns that are detained).¹³ And there are others who define it as "*astsubüt wa addawām*", which means

¹² Muhammad bin Mukrim bin 'Ali, Abu al-Fadhl Jamaluddin Ibnu Manzhur al-Anshari, *Lisānu al-'Arab*, (Beirut: Dār Shādr, 1414 H) Edition. 3, Juz. 13, P. 188

¹³ Abu al-Abbas Ahmad bin Muhammad al-Khuluty, Assyarhu Asshaghir Assyaikh Ad-Dardiri Likitābibi Al-Musamma Aqrabu Al-Masāliku Limadhab Al-Imām Māliki, (dār al-ma'ārif, t.t, t.p), juz. 3, P. 303, atau lihat Attawati bin Attawati, *Al-Mubassath Fi Al-Fiqh Al-Maliki Bi Al-Adilah*, (Arrawiyah : Dar al-Wa'yi, 2010 H) Edition. 2, juz. 5, P. 738

the value and function of the mortgage.¹⁴ Whereas in *Mu'jam Almushtalahāt Al-Māliyah Wa Al-Iqtishādiyyah Fī Lughoti Al-Fuqohā* namely *Māl* (property) which is used as collateral for debt (*dain*) in order to get the price/value of *dain* (debt) if he paid it.¹⁵ According to *fuqaha* (scholars), two opinions are worth mentioning here: first, according to Imam Hanafi that is to make something detained with an obligation to fulfill it from his mortgage like *dain* (debt).¹⁶ Second, according to Imam Shafi'i and Imam Hambali namely making '*ain mutawalli* (the property being collateral) for *dain* (debt) when he impeded to keep his promise.¹⁷

Thus the general definition of *rahn* is something or *mal mutawalli* (something or property that is detained) which is used as collateral for a mortgage to get the value/price of the *dain* (debt) if he impeded to pay. However, this must be limits on the availability of the *rahn* (pawning) contract so as they do not fall into usury when obtaining the value/price of the *dain* (debt).

¹⁴Abu Abdurrahman 'Abdullah bin 'Abdurrahman bin Sholih bin Muhammad bin Ibrahim Albassam Attamimi, *Taudhihu Alahkām min Bulūghī al-Marām*, (Makkah; Maktabah al-Asda, 1423/2003), Edition. 5, Juz. 4, P. 46

¹⁵Nazih Hamad, *Mu'jam Almushtalahāt Al-Māliyah Wa Al-Iqtishādiyyah Fī Lughoti Al-Fuqahā*, (Dār al-Qolām: Damasyqa, 1429/2008), Edition. 1, P. 235.

¹⁶Muhammad bin Abdul Wahid Assiwasi Kamal ad-Din Ibnu al-Hammam, *Syarhu Fathu al-Qadir 'ala al-Hidāyah Syarhi Bidāyati al-Mubtadi*, (Beirut: Dār al-Kutub al-'Alamiyah:, 1423), Edition. 1, Juz. 1, P. 154.

¹⁷ Syamsuddin, Muhammad bin Ahmad Alkhotib Assyarbini Assyafi'i, *Mughni Al-Muhtāj Ila Ma'rifah Ma'āni Al-Fāzh Al-Minhaj*, (Beirut; dar al-kutub al-'ilmiyah, 1315/1994), Edition. 1, P. 38., Wahbah bin Azzuhaily, *Alfiqhu Al-Islami Wa Adilatuhu*, (Damasyqa: Dār Alfikri), Edition. 4, Juz. 6, P. 4208, Abu Muhammad Muwafiq Addin 'Abdullah Bin Ahmad Bin Muhammad Bin Qudamah Al-Jama'ily Almuqoddasi Addamasyqy Alhanbali, *al-Mughni Li Ibni Qudāmah*, (al-Qohirah: Maktabah Alqohirah, 1388H/1968M), Juz. 4, P. 235.

2. Definition of Debt (*Dain*, *Qardh*, Buying-selling with debt)

In Fiqh Mu'amalah, debt (*dain*) can be categorized into three general meanings, namely *qardh* (money loan/debt), debt due to damage, and buying-selling with debt (*bai 'salam* or *bai' taqshith*).¹⁸ Knowing the differences in terms of debt in *fiqh* is important because every difference meaning has different legal conclusions and consequences particularly the limit of adopting the usury. The basic difference between *qardh* (money loan/debt), debt due to damage, and buying-selling with debt (*bai 'salam* or *bai' taqshith*) lies in the scope of its meaning, namely *dain* (debt) has more general meaning than buying-selling with debt (*bai 'salam* or *bai' taqshith*), debt due to damage, and *qardh* (money loan debt).

A clearer definition of *dain* (debt) according to the scholars is in accordance with Ibn Nujaimi's words,¹⁹ that is:

الدَّيْنُ لِرُومٍ حَقٍّ فِي الذِّمَّةِ. فَيَشْمَلُ الْمَالَ وَالْحُقُوقَ غَيْرَ الْمَالِيَّةِ كَصَلَاةٍ
فَائِتَةٍ وَزَكَاةٍ وَصِيَامٍ وَغَيْرِ ذَلِكَ، كَمَا يَشْمَلُ مَا ثَبَتَ بِسَبَبِ قَرْضٍ أَوْ بَيْعٍ
أَوْ إِجَارَةٍ أَوْ إِتْلَافٍ أَوْ جُنَايَةٍ أَوْ غَيْرِ ذَلِكَ.

"Dain is the responsibility in the obligations borne by a person, including assets and liabilities other than assets such as prayer, fasting, zakat, etc., as

¹⁸ Wazarat Al-Auqaf Wa As-Syuunni Al-Islamiyah, *Al-Mausū'ah Al-Fiqhīyah Al-Kuwaitīyah*, (Kuwait: Dār Assalasil, 1406H/1986M), Juz. 21, P. 102

¹⁹ Ibnu Nujaimi al-Hanafi, *Fathu al-Ghaffār bi syarhi al-Manâr*, (Mesir: Mushthafa al-baby al-Halabi, 1355 H), Jilid 3, P. 20, or see Wazarat Al-Auqaf Wa As-Syuunni Al-Islamiyah, *Al-Mausū'ah Al-Fiqhīyah Al-Kuwaitīyah*, Juz. 21, P. 102, or see Muhammad bin Muhammad bin Mahmud Akmaluddin Abu 'Abdillah bin Syamsuddin bin Jamaluddin Ar-Rumi, *Al-'Ināyah Syarhi Al-hidāyah*, (Mesir: Matba'ah Maimaniyah, 1306 H), Jilid 6, P. 346,

well as covering what has been established due to qardh, buying, leasing, damaging or due to criminal offenses or others.”

Therefore, the scope of the *dain* (debt) meaning also includes *qardh*, debt due to damage, and buying-selling with debt (*bai 'salam* or *bai' taqshith*). Whereas the definition of *qardh* is the *mashdar* (derivation) of *qaradha* (meaning: to owed something/property) if the ownership is cut off from the owner, while in terms of *qardh* (money loan/debt) pay off the assets in exchange for intact assets that have been used.²⁰ On another hand, *qardh* (money loan/debt) is more sensitive to fall into usury if it is available the benefit excess of loan money debt. The scholars have provided a method that we must pay attention to regarding *qardh* (money loan debt):

كُلُّ قَرْضٍ جَرَّ مَنَفَعَةً فَهُوَ رِبَاٌ.

*Every receivable that brings benefit (profit), then it is usury.*²¹

²⁰ Muhammad Amin bin umar bin 'Abdul 'Aziz 'Abidin Ad-Damasyqi al-Hanafy, *Raddu al-Muhtâr 'ala ad-Dâr al-Mukhtâr*, (Beirut: Dar Al-Fikri, 1412 H), Jilid 4, P. 171, atau Muhammad Qodry Basya (W:1306H), Mursyid al-Hairaini ila Ma'rifati Ahwal al-Insan, (Bulaq: Mathba'a al-Kubra Al-Amiriyah Bibulaq, 1308H), P. 769, Abu Hasan 'Ali bin Ahmad bin Mukrim As-sha'idi al-'udwi, *Ĥasyiyah al-'Udwi 'ala Syarhi Kifāyatu at-Thâlibi ar-Râbbani*, (Beirut: Dar Al-Fikri, 1414 H), Juz. 2, P. 150

²¹ Taqiyyuddin Abu 'Abbas Ahmad bin 'Abdul Halim Ibnu Taymiyah, *Al-Majmū' Al Fatâwa*, (Madinah: Majma' Fahd lithaba'ah al-Mushhaf as-syarif, 1416/1995), Juz 29, P. 533, Zakarya bin Muhammad bin Zakarya al-Anshary, Zainuddin Abu Yahya al-Assaniki, *Fathu al-Wahâb bisyarhi Manhaj at-Thâlib*, (Dar al-Fikri lithaba'ah wa an-nasyr, 1414/1994), Juz. 1, P. 225, Muhammad bin Ismail bin Shalah bin Muahmmad bin Muhammad al-Husni, et.al, *Subulu Assalam*, (Dar al-Hadits, No date and Place), Juz. 2, P. 74, Muhammad Hasan Abdul Ghifari, *Al-Qawâ'id al-Fiqhiyah baina al-Ashâlah wa at-*

Whereas buying-selling with debt (*bai 'salam* or *bai 'taqshith*) is a trading with requesting the goods with the ahead/down payment (*bai 'salam*); or, buying-selling with cash paid in advance while the goods are delayed in the terms of clear standard, and scales up to a clear deadline.²² Whereas *bai 'taqhsith* is buying-selling with installments/credit payment, buying-selling with credit is permissible based on the Prophet's Hadith:

اشْتَرَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنْ يَهُودِيٍّ طَعَامًا بِنَسِيئَةٍ،
وَرَهْنَهُ دِرْعَهُ. متفق عليه

*"The Messenger of Allah (Muhammad PBUH) bought a portion of food from a Jew with payment owed and he also mortgaged the shield to him"*²³

Consequently, this definition describes that *dain* (debt) occurs through buying and selling transactions to get the value or price desired by the debtor. In the hope that if he cannot fulfill or return what is owed by him then he must pawn something as his collateral. Therefore, there must be limits on the benefit availability of *dain* (debt) in the *rahn* (pawning) contract so as they do not fall into usury.

Taujiyah, (Durus shautiyah qoma bitafrighiha mauqi'i as-syabakati al-islamiyah), Lesson 20, Juz 19, P. 6

²² Wazarat Al-Auqaf Wa As-Syuunni Al-Islamiyah, *Al-Mausū'ah Al-Fiqhiyah Al-Kuwaitiyah*, Juz. 25, P. 191

²³ Muhammad Ismail Abu 'Abdullah al-Bukhari al-Ja'fi, *Al-Jami' al-musnad as-shahih al-mukhtashar min umuri Rasulillah Shalallahu 'alaihi wa sallam wa sunanuhu wa Ayyamuhu=Shahih al-Bukhari*, (Dar Thuq an-Najah, 1422H), J. 3, P. 62, Hadis No. 2096, and Muslim Ibnu Al-Hajjaj Abu Al-Hasan Al-Qusyairi an-Naisaburi, *Al-Musnad As-Shahih Bi Naqli Al-'Adli 'An Al-'Adli Ila Rasulillah Shalallahu 'Alaihi Wa Sallam*, (Beirut: Dar Ihya at-Turats al-'Arabi), Juz. 3, P. 1226, Hadis No. 1603

3. The Principles of *Rahn* (pawning)

The principles of *rahn* according to Imam Syafii are divided into four, namely: first, *marhun* (mortgaged property) is the form of property belonging to the pledge (*al-'aqid*) that has the value for buying-selling, that is not a guarantee of unclean objects, objects of endowments, and so forth as items to be pawned. Second, *Marhūn bih* (debt borne by the pawn party) is the rights/liabilities of tangible debt that must be given and handed over to the owner and enable their use. Third, *al-'aqidain* (the party who mutual contract) is the mutual parties that make the *rahn* agreement, namely *rāhin* (debtor/costumer of sharia pawnshop) and *murtahin* (creditor/sharia pawnshop), they must have the ability of having a healthy mind not a child, a madman, nor a servant. Fourth, *Sighat* (the agreement word) is *rahn* (pawning) contract agreement which has the side of the release of goods and the provision of debt as well as the sale and purchase contract, so that it cannot be bound by certain conditions or at a certain time or with a future.²⁴

Whereas according to the Imam Hanafi who includes principle of *rahn* is only *sighat* and the others are included in the terms of *rahn*.²⁵

4. The Philosophical Foundation of *The Rahn* Contract

The philosophical foundation of *rahn* (pawning) contract refers to Qur'an Chapter 2 verse 283:

²⁴ Wazarat Al-Auqaf Wa As-Syuunni Al-Islamiyah, *Al-Mausū'ah Al-Fiqhīyah Al-Kuwaitīyah*, (Kuwait: Dār Assalasil, 1406H/1986M), Juz. 23, P. 177

²⁵ Ibid, or see 'Ala Addin Abu Bakar Bin Mas'ud Bin Ahmad Al-Kasani Al-Hanafi, *Badā'i'u Asshonā'i'u fī Tartibi Assyarā'i'*, (tt: Dar a-Kutub al-Imīyah, 1406H/1986M), Juz.6, P. 135

وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

"If you are on a journey (and not in cash) while you do not get a writer, then there is a dependent item held (by the debtor). But if some of you trust some of the others, then let those who are trusted fulfill their mandate (debt) and let them fear Allah; and do not you (the testifier) hide the witnesses. And whoever hides it, surely he is a sinner; and God knows what you do."

This verse sill contains the general phrase (*lafadz' al-'amm*) in determining of law. In fiqh law, the general phrase (*lafadz' al-'amm*) have to particularized by the another verse or *hadits* (prophetic tradition) to clarify about the law concept among it, thus it will give the explaining how the implementation of *rahn* (pawning).²⁶ At first glance it is understood that the verse shows the general meaning, namely *وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ* (if you are on a journey (and not in cash) while you do not get a writer). Thus, the general meaning of phrase is the trip which transaction is not in cash until the specified time limit that it will explain the sharia-line in implementation of *rahn* (pawning).

²⁶ Abu Abdullah Ahmad bin Umar bin Musaid al-Hazimi, *Syarhu Qowâid al-Ushuliyah wa Ma'âqidu al-Fi'li*, (Durus Shautiyah Bitafrihiha mauqi'i as-syabakati al-Hazimi) Lesson 23, Juz. 14, P.7, or Muhammad Hasan al-Ghifari, *Taysir Ushul al-Fiqh lil Muftadiin*, (Durus Shautiyah Bitafrihiha mauqi'i as-syabakati al-islamiyah) Lesson 21, Juz 18, P. 9,

According to the general *lafadz* (phrase) in explaining how the implementation of *rahn* (pawning), at least there are three important things to conduct the implementation of *rahn*. *First*, it is being on the way (on trading); *second*, the absence of a writer, and the existence of a collateral. This journey according to the interpretation of Ibn 'Athiyah is the existence of impediment which requires pawning.²⁷ Whereas "writer" here relates to the previous verse (al-Baqarah; 282) that is according to al-Baghawi's interpretation is the record of the *dain* (debt) which has a period of payment (*ila ajalain musamma*) like *bai 'salam* or *bai' taqshith* while *dain* (debt) caused by *qardh* has no period payment.²⁸

The scholars agree that the implementation of *rahn* (pawning) can occurred on the journey or not, on existence of writer or not, and also the situation of impediment to pay for what has been taken in accordance with the Sunnah of the Prophet Muhammad.²⁹ Understanding of '*uzur* (impediment) in this journey according to the interpretation of Al-Qurtubi is not due to obstacles in its journey but based on 2 authentic hadiths namely: ³⁰

²⁷ Abu Muhammad Abdul Haq bin Gholib bin Abdurrahman bin Tamam bin 'Athiyah al-Andalusi, *Al-Muharrar Al-Wajiz Fi Tafsiri Al-Kitab Al-Azizi*, (Beirut: dar kutub al-ilmiyah, 1422 H), juz.1, P.386

²⁸ Abu Muhammad Alhusaini bin Mas'ud al-Baghawi, *Ma'âlimu Attanzil Fi Tafsir Al-Qurân*, (Dâr Thoibah Linnassyri Wa Attauzi', 1417H/1997M), juz. 1, P. 349.

²⁹ Abu Muhammad Muwafiq Addin 'Abdullah Bin Ahmad Bin Muhammad Bin Qudamah Al-Jama'ily Almuqoddasi Addamasyqy Alhanbali, *al-Mughni Li Ibni Qudâmah*, Juz. 4, P. 245 atau lihat Abu Al-Hasan 'Ali Bin Muhammad Bin Habib Al-Bashri Al-Baghdadi, *Al-Hâyi Al-Kabîr Fi Fiqhi Mazdhab Al-Imâm Assyâfi'i Wa Huwa Syarhu Mukhtashar Al-Muzni* (Beirut: Dâr al al-'Ilmiyah, 1419/1999), Edition. 1, Juz. 6, P. 3.

³⁰ Abu Abdullah Muhammad Bin Ahmad Bin Abi Bakr Bin Farh Al-Anshari Al-Khazrajhi Syamsuddin Al-Qurthubi, *Al-Jami Al-Ahkam*

حَدَّثَنَا مُعَلَّى بْنُ أَسَدٍ حَدَّثَنَا عَبْدُ الْوَاحِدِ حَدَّثَنَا الْأَعْمَشُ قَالَ ذَكَرْنَا عِنْدَ إِبْرَاهِيمَ الرَّهْنِ فِي السَّلَامِ فَقَالَ حَدَّثَنِي الْأَسْوَدُ عَنْ عَائِشَةَ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اشْتَرَى مِنْ يَهُودِيٍّ طَعَامًا إِلَى أَجَلٍ وَرَهْنَهُ دِرْعًا لَهُ مِنْ حَدِيدٍ.

“Having told us Mu’alla bin Asad told us ‘Abdul Wahid told us Al A’masy said; We talked about pawning in the sale and purchase of credit (Salam) in the presence of Ibrahim so he said, had told me Al Aswad from ‘Aisha Radliallahu ‘anha that the Prophet Sallallahu ‘alaihi wasallam had bought food from Jews that He would pay at a certain time in later and he pledged it (pawn) with armor”.³¹

حَدَّثَنَا مُسْلِمٌ حَدَّثَنَا هِشَامٌ حَدَّثَنَا قَتَادَةُ عَنْ أَنَسٍ ح حَدَّثَنِي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ حَوْشَبٍ حَدَّثَنَا أَسْبَاطُ أَبُو الْيَسَعِ الْبَصْرِيُّ حَدَّثَنَا هِشَامُ الدَّسْتَوَائِيُّ عَنْ قَتَادَةَ عَنْ أَنَسٍ رَضِيَ اللَّهُ عَنْهُ أَنَّهُ مَشَى إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِخَبِزٍ شَعِيرٍ وَإِهَالَةٍ سِنْخَةٍ وَلَقَدْ رَهَنَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ دِرْعًا لَهُ بِالْمَدِينَةِ عِنْدَ يَهُودِيٍّ وَأَخَذَ مِنْهُ شَعِيرًا لِأَهْلِهِ وَلَقَدْ سَمِعْتُهُ يَقُولُ

Al-Qur’an/ Tafsir Al-Qurthubi, (al-Qahirah: dar alikutub al-mashriyah, 1384H/1964M), Juz 3, P. 407.

³¹ Muhammad Ismail Abu ‘Abdullah al-Bukhari al-Ja’fi, *Al-Jami’ al-musnad as-shahih al-mukhtashar min umuri rasulillah Shalallahu ‘alaihi wa sallam wa sunanuhu wa Ayyamuhu= Shahih al-Bukhari*, (Dar Thuq an-Najah, 1422H), Juz. 3, P. 62, Hadis No. 2096, and Muslim Ibnu Al-Hajjaj Abu Al-Hasan Al-Qusyairi an-Naisaburi, *Al-Musnad As-Shahih Bi Naqli Al-Adli ‘An Al-Adli Ila Rasulillah Shalallahu ‘Alaihi Wa Sallam*, (Beirut: Dar Ihya at-Turats al-‘Arabi), Juz. 3, P. 1226, Hadis No. 1603

مَا أَمْسَى عِنْدَ آلِ مُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صَاعٌ بُرٍّ وَلَا صَاعٌ حَبٍّ
وَإِنَّ عِنْدَهُ لَتَسْعَ نِسْوَةٌ.

“Having told us Muslims have told us Hisham has told us Qatadah from Anas. And also narrated, told me Muhammad bin ‘Abdullah bin Hawsyab had told us Asbath Abu Al Yasa’ Al Bashriy told us Hisham Ad-Dastawa’iy from Qatadah from Anas radhiallahu’anhu that he had been in the afternoon with the Prophet Sallallahu‘alaihi wasallam with stale bread dishes made from wheat and vegetables. Indeed the Prophet sallallaahu ‘alaihi wasallam had pawned his armor to a Jew to get food in Medina and with that he obtained wheat for his family. And really I heard him said: “There is not a single night that has passed to Muhammad’s family where there is one sha ‘from wheat or one sha’ wheat. Even though he had nine wives”.³²

At least from the basis, the general argument above described that the implementation of *rahn* (pawning) concept that to owe for fulfill the primary need trough trading (buying-selling) transaction by pawning his own, because the Prophet PBUH owned for obtaining the primary need for him and his family. Therefore, it can be concluded the clear differences among the implementation of *rahn* is due to debt in buying-selling with credit (*bai ‘taqhsith*), buying-selling by ordering (*bai’ salam*), and debt in money loans (*qardh*). Indeed, the implementation of *rahn* occurred because the Prophet PBUH owed (*dain*) through buying by installment or

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³² Muhammad Ismail Abu ‘Abdullah al-Bukhari al-Ja’fi, *Al-Jami’ al-Musnad as-Shahih al-Mukhtashar min Umuri Rasulillah Shalallahu ‘alaihi wa sallam wa sunanuhu*= *Shahih al-Bukhari*, (Dar Thuq an-Najah, 1422H), Juz. 3, P. 53, Hadis No. 2069

buying-selling with credit then pawning something as collateral.³³

It differed from implementhetation of *rahn* (pawning) among debt (*dain*) due to money loans debt (*qardh*) and buying-selling with credit by pawning some collateral. Surely, in some Scholar's opinion, it is allowed the implementation of *rahn* (pawning) due to money loan debt, but the implementation of *rahn* (pawning) from this side is only as a form of mutual assistance (*mu'āwadhah*) without taking profit of it or that purposed just for charity each other not for profit purpose, unless this implementation is based on *murābahah*, *bai 'salam* or *bai' taqshīth* when the implementation *rahn* gaining the profit from this pathway. Therefore all profit of what is used as collateral (pawned) against *qardh* (money loan debt) can be categorized into usury in accordance with the rules of fiqh "*Every receivable that brings benefit (profit), then it is usury*".³⁴ This would be contrary to the hadith of the prophet which allows the use of pledged goods for those who give debt (*dain*).

C. Fatwas on Rahn and Their Implementation

1. Background of the Fatwa No. 25/DSN-MUI/III/2000 and Fatwa No. 26/DSN-MUI/III/2000

³³ Ibnu Bathal Abu Hasan bin Khalf bin Abdil Malik, *Syarhu Shahih Al-Bukhari li Ibni Bathal*, (Riyadh, Maktabatu ar-Rusydi, 1423/2003), Juz. 7, P. 25

³⁴ Taqiyuddin Abu 'Abbas Ahmad bin 'Abdul Halim Ibnu Taymiyah, *Al-Majmū' Al Fatāwa*, (Madinah: Majma' Fahd lithaba'ah al-Mushhaf as-syarif, 1416/1995), Juz 29, P. 533, Zakarya bin Muhammad bin Zakarya al-Anshary, Zainuddin Abu Yahya al-Assaniki, *Fathu al-Wahāb bisyarhi Manhaj at-Thālib*, (Dar al-Fikri lithaba'ah wa an-nasyr, 1414/1994), Juz. 1, P. 225, Muhammad bin Ismail bin Shalah bin Muahmmad bin Muhammad al-Husni, et.al, *Subulu Assalam*, (Dar al-Hadits, No date and Place), Juz. 2, P. 74

The background of National Sharia Council-the Indonesian Ulama Council (DSN-MUI) in stipulating fatwa No. 25/DSN-MUI/III/2000 and No. 26/DSN-MUI/III / 2000 based on three things, namely: *First*, that one form of financial services that is a public need is a loan by pawning goods as collateral for debt (*rahn*). *Second*, that sharia financial institutions (SFI) need to respond to the needs of the community in their various products, also the community in general, is commonly used to make gold as a valuable item that is stored and make it a *rahn* object as collateral for debt to get money loans. *Third*, that in order for this method to be carried out in accordance with the principles of Sharia, the National Sharia Council considers it necessary to stipulate a fatwa to be used as a guideline on *rahn* (pawning), namely to hold goods as collateral for debt.³⁵

As such, the National Sharia Council has the authority to establish fatwas concerning sharia-based economic activities.³⁶ This determination is required to provide answers to existing problems, especially in establishing guidelines on the implementation of *rahn* (pawning) in Islamic Financial Institutions.³⁷ Therefore, this institution is given the vast mandate and authority in the development of Islamic financial institutions,

³⁵ See, fatwa DSN NO. 25/DSN-MUI/III/2000 in considering of point a-c and DSN NO. 26/DSN-MUI/III/2000 about *rahn* in considering of point a-d

³⁶ Aidil Novia, Kontribusi Fiqh Legal Maxim dalam Fatwa-Fatwa Ekonomi Syariah Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI), *Tsaqafah: Jurnal Pemikiran Islam* Vol. 12, No. 1 May 2016, DOI: <http://dx.doi.org/10.21111/tsaqafah.v12i1.369>.

³⁷ *Ibid*

including in overseeing and issuing fatwas, especially fatwas related to *rahn* (pawning) products.

However, the issuance of two fatwas by the NSC is more likely to justify the existing financial system than to the need for sharia-compliance itself. It can be seen in the background of the fatwa consideration, which is more directed to stipulation of loans by pawning goods as collateral for money loan debt (*qardh*)³⁸ compared to *rahn* (pawning) due to buying-selling transactions such as buying-selling with credit (*bai 'Taahsith*) or buying -selling by ordering (*bai 'salam*). In fact, most of the products offered by SFI are products those are profit oriented,³⁹ it would be the opposite if the product money loan debt (*qardh*) is intended to make a profit with it, even though money loan debt (*qardh*) is intended to help, neither for investment nor profit purpose, moreover the profit just given by Allah SWT. The Prophet Muhammad PBUH said:

مَا مِنْ مُسْلِمٍ يُقْرِضُ مُسْلِمًا قَرْضًا مَرَّتَيْنِ إِلَّا كَانَ كَصَدَقَتِهَا
مَرَّةً. (رواه ابن ماجه)

“Every Muslim who gives loans (qardh) to other Muslims twice, the reward is the same as giving

³⁸ DSN NO. 26/DSN-MUI/III/2000 about *rahn* in considering of point c

³⁹ Nurul Huda, Mustafa Edwin Nasution, *Current Issues Lembaga Keuangan Syariah*, (Jakarta: Kencana Prenada Media Grup, 2014), P. 119

*charity once, (even though the money is back intact to him).*⁴⁰

Therefore, the stipulation of the fatwas is directed to legal provisions that adjust the demand and high pressure in order to establish a more complex and innovative fatwa moreover those two fatwas about *rahn* (pawning).⁴¹ Consequently, the background of fatwa No. 25/DSN-MUI/III/2000 is the consideration of the needs of the community for loans by mortgaging something as collateral for debt, while the background of fatwa No. 26 / DSN-MUI / III / 2000 is due to the consideration of debt guarantees to obtain money loans/debt compared to loan-debt caused by the buying-selling.

At least, the high demand for community needs for the establishment of legal system in Islamic financing can be seen from the high assets in each SFI. As of January 2019, the asset of Sharia Insurance assets reached Rp 43.194 billion, Sharia Finance Institutions reached Rp 25.611, Sharia Pension Fund reached Rp 6.311 billion, Sharia Specialized Financial Institutions reached Rp 26.000 billion, and Sharia Micro Finance Institution reached Rp278 billion.⁴² The increase in

⁴⁰ Ibnu Majah Abu Muhammad bin Yazid al-Qozuwaini, *Sunan Ibnu Majah*, (Dar Ihya al-Kutub al-Arabiyah), Hadits no.2430, Juz. 2, P.812

⁴¹ Walid Hegaz, *Fatwas and the Fate of Islamic Finance: A Critique of the Practice of Fatwa in Contemporary Islamic Financial Markets*, in S. Nazim Ali (Ed.), *Islamic Finance:Current Legal and Regulatory Issues*, (Cambridge: Islamic Finance Project, Harvard Law School, 2005), P. 149, in Aidil Novia, Kontribusi Fiqh Legal Maxim dalam Fatwa-Fatwa Ekonomi Syariah Dewan Syariah Nasional Majelis Ulama Indoensia (DSN-MUI), *Jurnal Tsaqafah: Jurnal Pemikiran Islam* Vol. 12, No. 1 May 2016, DOI: <http://dx.doi.org/10.21111/tsaqafah.v12i1.369>.

⁴²NBFI Statistic of Financial Service Authority, January 2019, <https://www.ojk.go.id/id/kanal/syariah/data-dan-statistik/iknb->

sharia mortgage business is supported by the growth of *Rahn*-shaped Islamic finance loans which reached Rp 3.858 billion in January 2018, up Rp 4.703 billion compared to the January 2019 period. Meanwhile, Islamic finance in the form of *Rahn Tasjili* in January 2018 Rp. 999 billion rose significantly to Rp. 2.301 billion. In contrast, sharia pawnshop noted that the distribution of financing from gold-*mulia* products amounted to Rp. 364 billion, down to Rp. 83 billion in the January 2019.⁴³

2. Legal Philosophy Background of the Fatwa DSN No. 25/DSN-MUI/III/2002 and Fatwa DSN No. 26/DSN-MUI/III/2002

The legal philosophy background of *rahn* in the fatwa No. 25/DSN-MUI/III/2000 and No. 26/DSN-MUI/III/2000 are:

First, Qur'an Chapter (2): Verse 283: "And if you are on a journey (and not in cash) while you do not get a writer, then there is a dependent item held (by the debtor)...." *Second*, The Hadith of the Prophet narrated by al-Bukhari and Muslim from yah Aisyah r.a., he said: "Indeed Rasulullah s.a.w. had bought food with debts from Jews, and the Prophet mortgaged armor to him". *Third*, Hadith of the Prophet narrated by al-Shafi'i, al-Daraquthni and Ibn Majah from Abu Hurairah, the Prophet said: "Not detached the ownership of goods from the owner who pawned the mortgage. He benefits and bears the risk." *Fourth*, Hadith of the Prophet, narrated by Jama'ah, except Muslims and al-Nasa'i, Nabi PBUH said: "The mounts (vehicles) that are pawned may be

mounted with the costs and the pawned livestock can be milked by the costs. People who use vehicles and milk the milk must pay for caring and breeding.”

If we traced in depth, the *rahn*'s legal philosophical basis above is a little contrary to the background of the stipulation of this fatwa. The fundamental contradiction is inconsistency the stipulation background of this fatwa with its legal basis or legal philosophical basis, namely the mechanism for implementing *rahn* (pawning) which is based solely on loan debt money (*qardh*) rather than debt to buying-selling. The legal philosophical basis above is directed to the mechanism of the *rahn* (pawning) concept due to debt of buying-selling transaction even though in some literature it is also permissible for the *rahn* (pawning) caused by money loan debt (*qardh*).

The consequence allowing *rahn* (pawning) caused by money loan debt (*qardh*) is not for profit oriented rather than it purposed for charity oriented for helping each other.⁴⁴ If the determination of this fatwa is needed to respond to SFI, surely SFI responds the community's need to obtain the profit.⁴⁵ Therefore, the proper stipulation for this fatwa in SFI response which it obtains the benefit from *rahn* (pawning) in accordance with sharia is by establishing *rahn* (pawning) due to debt of buying-selling transactions such as buying-selling with credit (*bai 'Taqsith*) or buying -selling by ordering (*bai 'salam*).

Fifth, whereas the *Ijma* used is the agreement of the scholars allowing *rahn*'s contract (al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, 1985, V: 181). However, this agreement of the scholars in allowing *rahn* is due to the

⁴⁴ Erwandi Tarmizi, *Harta Haram Muamalat Kontemporer*, (Bogor: Berkas Mulia Insani, 2016), P. 416

⁴⁵ Nurul Huda, Mustafa Edwin Nasution.,P. 119

impediment existence for paying something in trading that necessitates the *rahn*. This is in accordance with the arguments of the verses and hadiths listed.

Sixth, the basic rules of *ushul fiqh* (Fiqh Legal Maxim) is used "Basically all forms of *muamalah* can be done unless there is a proposition that forbids them".⁴⁶ This basic rule of *qowaidul fiqh* is always used as a general rule that underlies the determination of fatwa. This rule applies in the case of *mu'āmalah* (behavior transactions) is all things or actions were permitted unless there is an argument that prohibits it.⁴⁷ The legal philosophy on the previous explanation of *hadits* and *qur'an* according *rahn* (pawning) is more directed to the consequences that are born of it⁴⁸ namely the *rahn* (pawning) contract is one of *muamalah* contract directed to the debt/loan transactions caused by buying-selling transactions. However, scholars agree that *rahn* (pawning) can also be caused by money loan debt with the consequences of loaning money more intended to help others than just to profit. Even though this determination is more intended for the purpose of SFI in carrying out its business which aims to profit oriented, the stipulation of this fatwa, thus,

⁴⁶ DSN NO. 25/DSN-MUI/III/2000 and DSN NO. 26/DSN-MUI/III/2000 about *rahn* in retracing of point 6,

⁴⁷ Alfitri, "Expanding a Formal Role for Islamic Law in the Indonesian Legal System: The Case of Mu'Amalat." *Journal of Law and Religion* 23, no 1 (2007), 249–70. doi:10.1017/S0748081400002666.

⁴⁸ This is in accordance with the rules of *usul fiqh* الرضى بالشئ رضى، see Abu Abdullah Badruddin Muahammad bin Abdullah bin Bihadir Az-zarkasyi, *Al-Mantsur fi Al-Qawaid Al-fiqhiyah*, (Kuwait: Wazaratul Auqaf al-Kuwaitiyah, 1985/1405), Juz 2, P. 176, or see Abdurrahman bin Shalih al-abdu al-lathief, *Al-Qawaid wa Dhowabitu al-Fiqhiyah al-Mutadhamanah littaysir*, (Madinah: 'Imadatul Bahtsi al-'Ilmi bil-jami'ah al-islamiyah madinatul munawwarah, 2003/1423), Juz. 1, P. 414, or see Muhammad Musthafa az-Zuhaili, *al-Qawaid al-fiqhiyah wa Tatbiquha fi al-Mazahib Al-arba'ah*, (Damaskus, Dar al-Fikri, 2006/1427), Juz. 2, P. 727.

require a correct explanation and in accordance with the suitability of the objectives of sharia-compliant purpose by using *rahn* (pawning) caused by buying-selling (*murabahah*, *bai salam*, and *bai taqsiht*) so that the appropriate explanation for something stipulated does not lead to the cancellation of a provision. This is in line with the rules of the *usul fiqh* "something that requires explanation, then the error in giving an explanation in it is rejected or canceled the explanation".⁴⁹

Seventh, the legal basis of the two opinions of scholars is ibn qudamah in *al-Mughni Li Ibni Qudamah* and Assyarbini in *Assyafi'i, Mughni Al-Muhtâj Ila Ma'rifah Ma'âni Al-Fâzh Al-Minhaj* more directed to the implementation agreement allowed *rahn* based on the legal philosophical foundation.

3. Decision in Fatwa No. 25/DSN-MUI/III/2000 and Fatwa No. 26/DSN-MUI/III/2000

Fatwa No. 25/DSN-MUI/III/2000 decided 2 things, they are: *first*, the ruling: That loans by mortgaging goods as collateral for debt in the form of *rahn* are permitted with the stipulated conditions. *Second*, general provisions; *Murtahin* (recipient of goods) has the right to hold *marhun* (goods) until all of *rahin's* debts (who hands over goods/debtor) are paid off. *Marhun* and its benefits remain the property of *rahin*, maintenance and storage of *marhun* basically the obligation of *rahin*. In principle, *marhun* must not be used by *murtahin* unless authorized by *rahin*, by not reducing the value of *marhun* and its advantage is merely a substitute for maintenance costs. The maintenance and storage of *Marhun* is basically

⁴⁹ This is in accordance with the rules of *usul fiqh* ما يشترط فيه التعين فالخطأ فيه مبطل, see Muhammad Sidqi bin Ahmad bin Muhammad Ali Burnu Abu al-Harits al-Ghazi, *Mausu'ah al-Qowaid al-Fiqhiyah*, (Beirut: Muassasah Ar-risalah, 2003/1424), Juz. 11, P. 1293

Rahin's obligation, but it can also be done by *Murtahin*, while the cost and maintenance of storage remains *rahin's* obligation.⁵⁰ The maintenance and storage costs of *Marhun* must not be determined based on the loan amount. The sale of *Marhun*: When the deadline is due, *Murtahin* must warn *Rahin* to pay off his debt immediately. If *Rahin* still cannot pay off his debt, then *Marhun* is sold forcibly/executed through sharia-compliant auctions, the sale outcome of *Marhun* are used to pay off debts, unpaid maintenance and storage costs, and sales costs. And the excess the sale outcome belongs to *Rahin* and its shortcomings are *Rahin's* obligation.

The fatwa No. 26/DSN-MUI/III/2000 decides four things namely: *first*, *Rahn* with gold is permitted based on the principle of *Rahn* (see DSN Fatwa number: 26/DSN-MUI/III/2002 concerning *Rahn*). *Second*, the storing goods cost (*marhun*) are borne by the debtor (*rahin*). *Third*, the cost as referred to in paragraph 2 is based on obviously necessary expenditure. *Fourth*, the cost of storing goods (*marhun*) is carried out based on the *Ijarah* contract.⁵¹

In general, the decision of the two fatwas permits the *rahn* due to loans by pawning goods or gold as collateral for the money loan debt (*qardh*). Thus, NSC fatwas are not the Qur'an or hadith that have absolute truth. This fatwa is limited to the results of Indonesian *ulama's* *ijtihad* (Indonesian *Ulama* effort) which could be true or false. This fatwa is limited to the results of their *ijtihad* which can be true or false, according to the Prophet's words narrated by Amru bin 'Ash R.A:

⁵⁰ DSN NO. 25/DSN-MUI/III/2000 about *rahn* in decision of second point

⁵¹ DSN NO. 26/DSN-MUI/III/2000 about *rahn* in decision of first point

إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ، فَلَهُ أَجْرَانِ، وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ
أَخْطَأَ فَلَهُ أَجْرٌ..

“If a judge decides a case and he has already issued a law and turns out that the law is true, he will certainly get two rewards and if he turns out he is wrong he will surely get a reward.” (Narrated by Bukhari and Muslim).⁵²

According to the fatwa decision above, there is a legal ruse (*hilatul hukmi*), that is to allow combining or merging the *ijarah* (renting) contract and the *qardh* (money loan debt) contract in the execution of *rahn* (pawning) transactions.⁵³ *Qardh* (money loan debt) contracts occur when SFI lends money owed with something as collateral (can be valuable goods such as gold) while *ijarah* wages (renting) contracts occur when SFI rents out collateral and collects from this renting.

The merging of these two agreements between the *qardh* (money loan debt) contract and the *ijarah* (renting) contract contradicts the Hadits as follow:

لَا يَجْلُ سَلَفٌ وَبَيْعٌ، وَلَا شَرْطَانِ فِي بَيْعٍ، وَلَا رِبْحٌ مَا لَمْ تَضْمَنْ، وَلَا بَيْعٌ
مَا لَيْسَ عِنْدَكَ.

“Not halal combines the loan contract and the buying-selling contract, is not permissible for two conditions in

⁵² Abu Zakarya Muhyiddin bin Syarif An-Nawawi, *Al-Manahij Syarhi Shahih Muslim bin Al-Hajjaj*, (Beirut: Dar Ihya at-turats al-‘araby, 1392), Hadits No. 1761, Juz. 12, P. 13, and Muhammad Ismail Abu ‘Abdullah al-Bukhari al-Ja’fi, *Al-Jami’ al-Musnad as-Shahih al-Mukhtashar min Umuri Rasulillah Shalallahu ‘alaihi wa sallam wa sunanuhu wa Ayyamuhu= Shahih al-Bukhari*, (Dar Thuq an-Najah, 1422H), Juz. 9, P. 108, Hadis No. 7352

⁵³ *Ibid*, no.4

*a sale and purchase, it is not permissible for goods that are not in your guarantee and are not lawful to sell goods that are not yours. (Abu Dawud, According to Albani the degree of this hadith is hahih saheeh)."*⁵⁴

The hadith prohibiting the merging of the two contracts aims to close the gap of usury (*sadduzari'ah*),⁵⁵ and something which is prohibited for *sadduzari'ah* (close the gap of usury) is permissible if there is something (necessity) in the case of a gold pawn in the form of security in storing mortgaged gold.⁵⁶ Therefore, this storage security can still be tolerated by the cost of storing pawning goods for the maintenance of stored goods⁵⁷ without taking the slightest profit from it.

4. The Implementation of *rahn* at Shariah Pawnshop

The legal history of this institution is intended to provide loans or credit with the sharia-compliant mortgage system.⁵⁸ The sharia Pawnshop branch of Pasar Legi Jombang is one of the sharia pawnshops that offers a pawn system in accordance with sharia-compliant.⁵⁹ This institution was founded in 2009 which oversees three sharia pawnshop units (SPU Jombang, SPU Madiun, and SPU Kediri). Nearly ten years' service

⁵⁴ Muhammad Nashiruddin Al-bany, *Shahih wa Dha'if sunan Abi Daud*, (Iskandariyah: Intaj Markaz Nur al-Islamiyah liabhats al-qur'an wa as-sunah, no date), Hadits no. 3504, Juz.1, P.2

⁵⁵ Abu Abdullah Badruddin Muahammad bin Abdullah bin Bihadir Az-zarkasyi, *Al-Bahru al-Muhith fi Ushul al-fiqh*, (Dar al-Kutubi, 1994/1414) Juz. 8, P. 94

⁵⁶ AAOIFI (Accounting and Auditing Organization of Islamic Finance Institutions), *Al-Ma'ayir As-Syar'iyah*, (Bahrain, 2010). P. 271

⁵⁷ See DSN NO. 26/DSN-MUI/III/2000 about *rahn* in decision of 2nd and 3rd point

⁵⁸ <https://pegadaiansyariah.co.id/fatwamui> accessed on Dec 25 2018

⁵⁹ Interview with Head of Branch Office of Pasar Legi Jombang, Mr. Tuhu Amuji, 10 April 2019

to customers runs smoothly and well, while the problems that arise can usually be resolved without difficulty which means according to the instructions of the NSC in its Fatwa.⁶⁰

In general, the basis of the position of sharia pawnshops is based on PERPRES (Presidential Decision) No.103 concerning the pawnshop, and the position of the fatwa of NSC-MUI as the basis and operational guidance in services that are in accordance with sharia-compliant.⁶¹ The position and function of fatwa No. 25 DSN-MUI/III/2000 and No. 26/DSN-MUI/III/2000 is a reference for the implementation and development of mutually-reinforcing *rahn* (pawning) implementations in accordance with sharia-compliant.⁶² Therefore, the implementation of a mortgage system labeled sharia is more marked by the decision and determination of the NSC MUI fatwa.

Currently, *rahn* (pawning) services are based on *rahn* (pawning) contracts, *qardh* (money loan debt) contracts, and *ijarah* (renting) contracts that are applied in the form of transactions at once.⁶³ The process of implementing *rahn* (pawning) begins with lending money to sharia pawnshops with a contract period of 4 months which is guaranteed by mortgaging jewelry, electronics or motorized vehicles. Maintenance cost of collateral is calculated from the date of the contract to the *ijarah* (renting) system repayment of the loan with the results rounded up in multiples of Rp. 100 (rupiah).⁶⁴

⁶⁰ *Ibid*

⁶¹ *Ibid*

⁶² *Ibid*

⁶³ Interview with Head of Branch Office of Pasar Legi Jombang, Mr. Tuhu Amuji, 10th April 2019

⁶⁴ The prevailed rule of Legal drafting of *Rahn* (pawning) contract

If we scrutinized the explanation of implementation of *rahn* (pawning) above, there are still the merging two contracts in one transaction. It should be borne in mind that the *ijarah* (renting) contract is included in the sale and purchase contract, namely the buying-selling of services, while the *qardh* (money loan/debt) is clearly included in the loan agreement. The mergers of the *qardh* (money loan/debt) contract and the *ijarah* (renting) contract contradict the Hadith narrated from the Shua'ib that the Prophet prohibited for merging among the *qardh* (money loan/debt) contracts and *bai'* (buying-selling) contract in one transaction.⁶⁵ In addition to this hadith, the scholars also agreed to punish the illegitimate merging of loan contract (include *qardh*) and buying-selling contract. This *Ijma* (consensus) is quoted by several scholars, including:

Al-Qarafhi who said,⁶⁶

"Muslims have agreed that the law may be for sale and purchase of debt that is separate from the two contracts, but it is forbidden to combine the two contracts in one contract, because this is a gap for usury."

The same statement was also quoted by Az-zarkasyi in the discussion of *sadduzariah* (prohibition on facilities)⁶⁷ and AAOIFI also prohibited the merging of the *qardh* (money loan debt) contract and the *ijarah* (renting) contract which is contained in 2 articles, namely:

⁶⁵ See sunan Abi Daud, Hadits No 3504

⁶⁶ Anwar Al-Qarafhi, *al-furuq fi amwal*, ('alam al-kitab), Jilid 3, P. 266

⁶⁷ Abu Abdullah Badruddin Muahammad bin Abdullah bin Bihadir Az-zarkasyi, *Al-Bahru al-Muhith fi Ushul al-fiqh*, (Dar al-Kutubi, 1994/1414) Juz. 8, 91

1. Mikyar (19) about qardh, verse 7 which reads:⁶⁸

"Islamic financial institutions are not permitted to require bai' contract (buying and selling), ijarah (renting) contract or other mu'awadhah (mutual assistance of charity) contracts which are combined with qardh (money loan debt) contracts. Because in selling /renting, usually the debtor/rahn /customer often receives interest above the market price and this is a means for the occurrence of usury (a loan that brings benefits to creditors (murtahin / sharia pawnshops))."

2. Mikyar (25) concerning the merging of several contracts in one contract, paragraph (4) reads:⁶⁹ *"the requirements may combine several contracts, if there is no prohibition on Sharia. Then it is not permissible to combine the qardh (money loan debt) contract with the bai (buying-selling) 'contract because the amalgamation of the qardh (money loan debt) contract and bai' contract (buying-selling) is a means for usury. And also the scholars that the debtor must rent his house to the creditor so that the contract is punished with batal (canceled) and haram (illicit).*

From the description above it is clear that DSN No. 25 and No. fatwa 26 mutually reinforce the implementation of *rahn* (pawning) in sharia pawnshops. While No. Fatwa 26 there is still the possibility of merging between *ijārah* (renting) and *qardh* (money loan debt) contracts, so that it becomes the basis for the implementation of *rahn* (pawning) in sharia pawnshops to accommodate sharia transactions (i.e. with the existence of legal rules). This amalgamation contradicts international scholars and also the hadith of the Prophet Muhammad which is the source of all fatwas.

⁶⁸ AAOIFI (Accounting and Auditing Organization of Islamic Finance Institutions), *Al-Ma'ayir As-Syar'iyah*, (Bahrain, 2010). P. 270, 276

⁶⁹ *Ibid*, P. 350, 356

So the authors propose to review the fatwa. No. 26 especially in decision point 4.

The mechanism figure for implementing *rahn* (pawning) in sharia pawnshops is as follows:

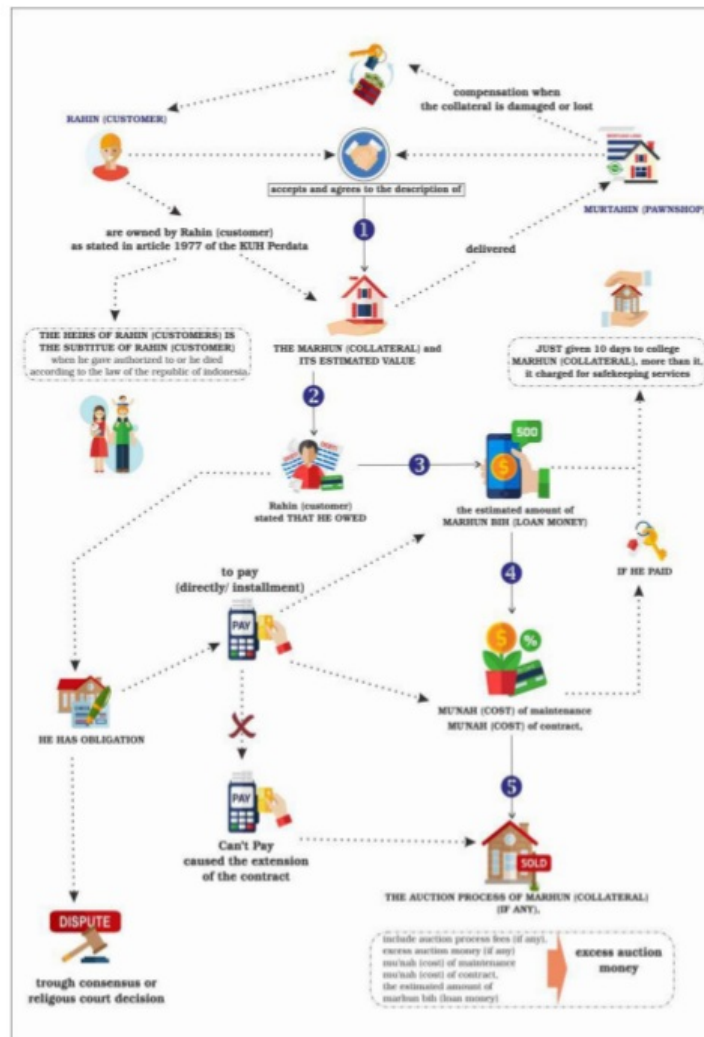


Fig 1. Based on legal drafting of *rahn* (pawning) contract at Sharia pawnshop

The profits received by sharia pawnshops are obtained from the purchase of mortgaged goods or the price of renting maintenance for mortgaged goods storing which are deposited by pawn shops to sharia pawnshops. *Ijarah* (renting) rates range from 5% (minimum APR) to 7% APR (maximum APR) per year and tenor payment options range from 1 day (minimum tenor) to 120 days (maximum tenor).⁷⁰

From the explanation above, sharia pawnshops clearly take profits not less than the cost of storing *marhun* (collateral) that should be it without taking profits in it. If this happens to take profits from the *qardh* contract (loan money debt) by imposing maintenance costs or the cost of goods pledged, then the verdict of it *riba dayn* (usury). This is in accordance with the explanation of Ibn Taymiyah who explained how people in his time outsmarted usury by combining the contract of *bai'* (buying-selling) or the *ijarah* (renting) contract with the *qardh* (loan money debt) contract,⁷¹

"Among the ways to trick/ to rused (hilah) usury is: combining the qardh (money loan debt) contract with buying-selling and ijarah contract (renting). This ruse does not change the law of usury which is unlawful because the prophet forbade combining qardh (money loan debt) contracts and buying -selling. Usury ruse in this way is similar to the ruse of usury made by Jews."

In general, it can be concluded that the implementation of *rahn* in sharia pawnshops has complied with *rahn*'s fatwa. However, there are still implementations that are not in accordance with the DSN fatwa, namely the merger of the *ijarah* contract and the *rahn* (pawning)

⁷⁰ <http://pegadaiansyariah.co.id/rahn> accessed on Dec 25 2018

⁷¹ Taqiyuddin Abu 'Abbas Ahmad bin 'Abdul Halim Ibnu Taymiyah, *Al-Majmū' Al Fatāwa*, Jilid 29, P. 29

contract, and also the implementation of *rahn* (pawning) using the *qardh* (loan money debt) contract. Apart from this incompatibility, the implementation of *rahn* at sharia pawnshop depends a lot on the DSN fatwa that has been set.

D. Conclusion

In Indonesia, in general, the understanding of the community and Islamic Financial Institutions in carrying out sharia-compliant economic system is mostly colored by the DSN-MUI fatwa decision. At least, the stipulation of fatwa provides correct understanding and in accordance with the guidance and schools of Islamic law. While the determination of fatwa No. 25/DSN-MUI/III/2000 and No. 26/DSN-MUI/III/2000 about *rahn* gives little bias to philosophical meaning in the implementation of *rahn*. This bias is due to the use of terms or debt due to money loans (*qardh*) or debt (*dain*) caused by buying-selling seen from *fiqh muamalah* while the sharia *rahn*'s philosophical implementation basis is based on debt caused by buying-selling.

The basic difference between *qardh* (money loan debt) and *dain* (debt) lies in the scope of its meaning. *Dain* (debt) has a more general understanding than *qardh* (money loan debt). In other words, *dain* (debt) includes all types of debt either as a result of a contract or transaction, such as money loans debt (*qardh*), buying-selling carried out on credit, leasing contracts whose wages are terminated and others. Or the result of spending or destroying people's goods, for example by accidentally breaking people's glass, then the broken glass becomes our *dain* (debt). Therefore all *qardh* (money loan/debt) is *dain* (debt), but not all *dain* (debt) are *qardh* (money loan debt).

The sharia pawnshop is an institution that implements *rahn* in its main products. One of the standard

recommendations used is the MUI DSN Fatwa NO. 25 / DSN-MUI / III / 2002 and Fatwa DSN MUI NO. 26 / DSN-MUI / III / 2002 about *rahn*. However, in the sharia-compliant of implementation of *rahn* products in this institution is more colored by money loan debt (*qardh*) which are coated with *rahn* (pawning) contract and *ijarah* (renting) contract, so as it disregards the sharia-compliant of philosophical implementation of *rahn*'s base which is caused on buying- selling debt.

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