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## 15 Comparison of *Rahn* Contract from the Perspective of Islamic Law and Indonesian Guarantee Law

Aang Asari<sup>1</sup> & Muhammad Irkham Firdaus<sup>2\*</sup>

15 Department of Law (Bachelor), Universitas Islam Negeri Walisongo Semarang, Semarang, Indonesia

<sup>2</sup> Department of Sharia Economics Law (Bachelor), Universitas Darussalam Gontor, Ponorogo, Indonesia

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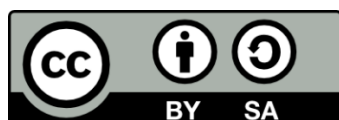
#### Author's email:

[aangasari@walisongo.ac.id](mailto:aangasari@walisongo.ac.id)

[irkham.firdaus@unida.gontor.ac.id](mailto:irkham.firdaus@unida.gontor.ac.id)

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### Abstract

This paper analyzed pawn in comparison between the Civil Code and Islamic law. It examined the specific differences between pawn contracts in Islamic law and Indonesian positive law to compare two contract theories. <sup>21</sup> The method used in this paper is a qualitative approach. The type used in writing this article is library research. The author examines, observes and looks for data from reference books that can be accounted for. The result of the research in this paper is that the term pawn in Islamic law is called ar-rahn. The difference between rahn and pawn in positive law, among others, is regarding the maintenance of the collateral. In Islamic law the pawnbroker is not subject to the term interest or additional costs outside the pawn agreement, but there is only an additional maintenance fee for the collateral. Whereas in positive law, in addition to the cost of maintaining goods, there is also an additional cost called 'interest' that must be borne by the lender. In Islamic law collateral goods are not limited to movable goods, but also immovable goods, while in positive law the collateral object is only limited to movable goods.

**Keywords:** Collateral Law; Islamic Guarantee Law; Islamic Law; Pawn; Rahn

## INTRODUCTION

Islam regulates the relationship of a servant with God and the environment around him. Islam teaches its adherents to worship God through various acts of worship, such as prayer, zakat, fasting, and pilgrimage. In addition, Islam teaches its adherents to living in society, carrying out financial transactions, and other social activities. Fiqh Muamalah is part of Islamic teaching that deals with complex issues around economic and social activities. One of the contracts in the fiqh muamalah is a rahn contract, also known as a pawn contract. It is one of the sub-chapters of fiqh muamalah, which also has its own provisions in positive law in Indonesia.

Economic development is one part of the national development that aims to develop Indonesia in accordance with the mandate of Pancasila and the 1945 Constitution. Therefore, in the context of economic development efforts in Indonesia, there are areas of law that must receive more attention, namely relating to guarantee law in Indonesia. The field of Indonesian guarantee law is a real implementation as a form of Indonesia's economic development to balance other legal fields and activities, such as trading, company, firm establishment, transportation business and other project activities.

These activities which ultimately require credit or financing facilities from third parties to start their business activities, as well as the financier in providing credit require the existence of goods or objects as collateral in granting credit for the safety of their capital and legal certainty (Kashadi, 2001). The guarantee function is the most powerful tool for securing credit, in the event of bad credit (Mulyati & Dwiputri, 2018).

Debt is a legal act that contains many consequences of risk, where the debtor may not fulfill his achievements or will not even be able to pay off his debts. To protect the rights of creditors and ensure the security of their receivables from the debtor, a legal regulation was established to regulate the guarantee of debtors' debts to creditors. The protection includes rights and guarantees of legal certainty for debtors over creditors. This matter will be the object in the study of Indonesian guarantee law. Collateral in a juridical perspective, is one of the efforts to provide legal certainty to the creditor that the debtor will carry out his obligations (Tirana et al., 2019).

Satrio (1991) provides a legal formulation of collateral as a legal regulation that regulates the guarantee of a creditor's receivables against his debtor. It can be understood that the goal in the law of guarantee is to protect the rights of creditors in order to get debt repayments from debtors with goods guaranteed by creditors. Security Law belongs to the field of law which has recently been popularly referred to as economic law, Wiertshaftrecht or Droit de Economique which has a role to promote the economy, so that the legal field is regulated in the law needs to be prioritized (Kusuma, 2014).

Islam also discussed the collateral used to guarantee debt or in Arabic called Rahn. The Rahn contract existed at the time of the Prophet Muhammad. From the narrations of Bukhari and Muslim, the Prophet SAW once mortgaged *diran* (armor) to a Jew named Abu Syahmi for his loan of 30 sha of wheat for his family (Hindi & Rahmah, 2019).

Ar Rahn literally means *ثبوت* (permanent). While in terms *جعل عين مالية وثيقة بدين يستوفى منها* عند تعذر الوفاء (make a valuable object as a debt guarantee that will be used to pay off the debt

when it is difficult to pay off). Pawns cannot be valid except with *ijab* (consent) and *qabool* (acceptance) (Dalimunthe, 2018). The conditions for each of the *Rahin* (person who pawns) and *Murtahin* (person who receives the pawn) are absolute *tasharruf*.

In its application in sharia economics, the rules related to the Islamic economic system and especially banking still adhere to the legal basis of the Qur'an, Hadith, *Ijma'* and *Qiyas* as well as the opinions of the *mujtahids*. So that its application in the guarantee institution also adheres to this basis. This is what sometimes between sharia (Islamic) institutions and conventional institutions has a slight difference in carrying out their duties. Based on the background above, the problem that this paper needs to answer is what is the difference between the application of pawns in the Islamic legal system and the Indonesian guarantee law system?

## LITERATURE REVIEW

### ***Rahn's Contract in the Perspective of Islamic Law*** **Definition of *Rahn* (Pawn)**

Etymologically *al-rahn* means permanent and long, while *al-habs* means holding back against an item with rights so that it can be used as payment for the item. The meaning of pawn (*rahn*) in the language of legislation is referred to as collateral, collateral, and ruins (Syafi'i, 2000). Meanwhile, according to the term *shari'a*, what is meant by *rahn* is to make an item that has the value of assets in the view of *shari'a* as a debt guarantee, which makes it possible to take all or part of the debt from the item (Anshori, 2005). It can be concluded that *al-rahn* in Islam is referred to as collateral, namely goods that are pawned to guarantee unpaid debts.

In addition to the understanding of *rahn* stated above, there is also a meaning of pawn (*rahn*) given by experts, including the Shafi'i and Hanbali scholars who stated that pawning (*rahn*) is to make material (goods) as collateral for debt, which can be used as debt payers if someone the debtor cannot pay the debt (Kelibia, 2021). Hanafi scholars defines *rahn* as making something (goods) as collateral for rights (receivables) that may be used as payment for rights (receivables), either in whole or in part (Lastriyah & Nasution, 2018).

Maliki scholars defines pawn (*rahn*) as something of value taken from the owner as collateral for a debt that is fixed (binding) or becomes fixed. According to Basyir (2000), pawning (*rahn*) according to the term is to make something of value according to the *shari'a* view as a debt-dependent. With the existence of the object being dependent, all or part of the debt can be accepted. According to Antonio (2008), *ar-rahn* is to hold one of the assets belonging to the customer (*rahin*) as collateral (*marhun*) for the loan he received. *Marhun* has economic value. Thus, the party who holds or the recipient of the pledge (*murtahin*) obtains a guarantee to be able to take back all or part of the receivables (Kelibia, 2021).

It can be seen, based on the understanding of *rahn* (pawning) expressed by several experts above, that *rahn* (pawning) is to hold collateral goods that are material belonging to the borrower (*rahin*) as collateral that he receives, and the goods are of economic value so that the party holding (*murtahin*) gets guarantee to take back all or part of the debt from the pledged goods if the party who pledged cannot pay off the debt at the specified time. The nature of *rahn* is generally included as a charitable contract, because what is given by the pawner (*rahin*) to the

pawnee (*murtahin*) is not exchanged for anything. What the *murtahin* gives to *rahin* is a debt, not an exchange for the pawned goods (Antonio, 2008).

### Legal Basis of *Rahn* Contract

Fiqh scholars agree that the law of *rahn* contract is permissible as described in the Qur'an and the Sunnah of the Prophet. <sup>24</sup> In the Qur'an surah al-Baqarah verse 283 Allah says: "And if you are on a journey and you do not find a writer, then let there be collateral held. However, if some of you believe in others, let the one who is trusted fulfill his mandate (debt) and let him fear Allah, his Lord. And do not hide the testimony, because whoever hides it, indeed, his heart is dirty (sinful). Allah is Knowing of what you do."

A hadith by Bukhari, in *Kitab Ar-Rahn*, explained that Aisha r.a. narrated that the Prophet SAW bought food from the Jews which he would pay for at a certain time in the future and he pawned him armor made of iron." The hadith above is also the basis for the permissibility of the *rahn* contract. Because Rasulullah SAW as the Prophet of Muslims has given an example to his people that debt transactions are permissible, and it would be better when owed to other parties by providing guarantees, the aim is to build mutual trust and fulfill <sup>7</sup> the rights and obligations of the parties.

The pillars of pawning in Islam are as follows:

1. *Rahin* is the person who pawns the goods, which also means he is the person who borrows money with the guarantee of the goods.
2. *Murtahin* is the person who receives the pawn or he is the person who lends the money to *ar-rahin*.
3. *Marhun* or *ar-rahn* are objects or goods that are pawned or pledged as collateral.
4. *Marhun bih* is the debt or money lent because there are goods that are pawned (Ghazaly et al., 2010).

While the terms of the pledge in Islamic law, the author will explain in detail below:

1. Terms of *'aqid*

The parties or the giver and recipient of the pawn must be reasonable and mature people so that they can be considered competent to carry out a legal act <sup>10</sup> in accordance with the provisions of Islamic law.

2. *Shighat* Terms

*Lafadz* or *shigat* is a statement of the existence of a pawn agreement. *Shigat* can be done in writing or verbally, the important thing is that there is a pledge agreement between the parties.

3. *Marhun* Terms

The scholars agree that the conditions for *marhun* are the same as those for buying and selling. This means that all legally traded goods are also pawned. In addition, the pawned goods must be present at the time the pawn agreement is made and the goods belong to the pawnbroker, the pawned goods are then under the control of the pawnee.

4. *Marhun bih*/debt terms

Debt incurred must be fixed, unchanged with additional interest or contain elements of usury. In addition, debt is a right that must be returned to the debtor. The debt cannot be

repaid with collateral (Sarwat, 2018).

### Islamic Pawnshop Operational Mechanism

From the Islamic foundation, the mechanism of the operation of Islamic pawnshops can be described as follows; first, through a *rahn* contract, the customer submits movable goods, then the pawnshop stores and cares for it in the place provided by the pawnshop and finally, the pawnshop returns the goods deposited to the customer when the customer has paid the loan (Khoirunnazilah et al., 2022). The consequences arising from the storage process are costs that include the investment value of the storage area, maintenance costs, and the whole process of its activities. On this basis it is justified for the pawnshop to charge a rental fee to the customer according to the amount agreed by both parties (Surepno, 2018).

The Islamic pawnshop will only profit from the rental fees taken, not in the form of additional interest or additional capital rental money which is calculated from borrowed money. So here it can be said that the process of borrowing money is only a "lipstick" that will attract consumers to store their goods at the pawnshop (Choirunnisak & Handayani, 2020). Thus, with sharia pawnshop, it is hoped that Muslims will be able to use the pawn facility as well as possible, because the main purpose of this sharia pawnshop is to spread Islamic da'wah through the economic field, and provide the best facilities for Muslims so they don't feel anxious of carrying out activities like conventional pawnshop.

The provisions of the requirements that accompany the contract include:

1. Akad, the contract does not contain any wicked/vanity requirements, such as *murtahin*, which requires the collateral to be used indefinitely.
2. Marhun bih (loan), a loan is a right that must be returned to the *murtahin* and can be repaid with the goods in the *rahn*. And the loan is clear and certain.
3. Marhun (goods that are handed over), marhun can be sold and the value is equal to the loan, have value, clear size, full legal property of *rahin*, not related to other people's rights, and can be handed over both material and benefits.
4. The maximum amount of *rahn* funds and the liquidation value of the goods confiscated as well as the *rahn* period are determined in the procedure.
5. *Rahin* is burdened by management services for goods in the form of insurance, security, and processing and administrative costs (Choirunnisak & Handayani, 2020).

Pawn is a form of debt-receivable agreement, where to gain the trust of the person who owes the debt, the person who is in debt provides goods that have economic value that can be used as collateral (Ghafar & Purwoadmojo, 2019). As for what needs to be understood that the collateral remains the property of the person who pawns (the person who owes the debt) but is controlled by the recipient of the pledge (who has the debt) and he is prohibited from using the pawned item without the permission of the person who has the debt. While the Sharia Gold Pawn is a pawning or physical handover of the rights of the ruler over valuable assets/goods (in the form of gold) from the customer (*ar-raahin*) to the bank (*al-Murtahin*) to be managed with the *ar-Rahn* principle, namely as collateral (*al-Marhun*) for the loan/debt (*al-Marhumbih*) given to the customer/loan. The practice of pawning like this has existed since the time of the Prophet Muhammad and the Prophet himself had done it. Pawns have a very high social value and are

carried out voluntarily on the basis of help (Hadi, 2003).

The pawned goods can be in the form of vehicles, gold or other movable goods. The gold pawn with the sharia system was approved by the Indonesian Ulema Council. This is based on a letter received by DSN-MUI from Bank Syariah Mandiri No. 3/303/DPM dated October 23, 2001 regarding the application for Fatwa for Gold Pawn Products. Then the results of the plenary meeting of the National Syariah Council on Thursday, 14 Muharam 1423 H/28 March 2002 M decided the DSN-MUI fatwa Number: 26/DSN-MUI/III/2002 concerning the gold *rahn*.

On the basis of the above agreement the gold pawn agreement is allowed based on the *Rahn* principle which has been regulated (in DSN fatwa number: 25/DSN-MUI/III/2002 concerning *Rahn*) where the *murtahin* (the recipient of the goods) has the right to hold the *marhun* (goods) until all debts are paid. *Rahin* (the debtor) is paid off. The use of *marhun* can only be used by *rahin*, because the *marhun* is still in the possession of *rahin*. Meanwhile, *murtahin* are prohibited from using *marhun* except with the permission of *rahin*, without reducing the value of *marhun* and its use is only a substitute for the maintenance and supervision of *marhun*. Storage of goods (*marhun*) which includes costs and costs borne by the person who pawns (*rahin*). The amount of the cost is based on the expenses that are actually needed and issued. The cost of storing goods (*marhun*) is carried out on the basis of an *ijarah* agreement (Dewan Syariah Nasional Majelis Ulama Indonesia, 2006).

What is often a debate among many people is about the use of pawned goods. Where many think that the pawn or *marhun* is allowed to be used by the *murtahin* as long as the debt of the *womb* has not been repaid. Where this case often occurs in rural communities who use *marhun* a lot, namely in the form of rice fields for *murtahin* profits. Therefore, the author in this paper aims at one of the goals to straighten people's thoughts that are a little crooked. The legal basis for implementing sharia pawning as one of the business activities at Bank Syariah Mandiri has also been regulated in Article 19 paragraphs (1) and (2) of Law Number 21 of 2008 concerning Sharia Banking and Article 36 of Bank Indonesia Regulation Number 6/24/PBI /2004 concerning Commercial Banks Conducting Business Activities Based on Sharia Principles.

## **Rahn's Contract in the Perspective of Indonesian Guarantee Law**

### **Definition of Pawn in Positive Law**

The term pawn comes from the translation of the word *pand* in Dutch or in English it is called pledge or pawn (Ashibly, 2018). The meaning of pawn in positive law is a form of surrender of the borrower's property as collateral for the loan he receives. *Rahn* was developed through Islamic banks and non-bank financial institutions, namely sharia pawnshop (Haryanto, 2010). Meanwhile, according to the provisions of Article 1150 of the Civil Code provides an understanding of the concept of pawning is a right obtained by the creditor on a movable property, which is handed over to him by the debtor, or by the debtor's proxy as collateral for his debt (Aji et al., 2019). In addition, it also authorizes the creditor to take repayment of the debtor's debt from the goods if the debt cannot be repaid by the debtor (Subekti & Tjitrosudibio, 2008).

Furthermore, based on the Regulation of the Financial Services Authority Number 31 /POJK.05/2016 concerning the Pawnshop, a pawn is a right obtained by the Pawnshop Company on a movable property, which is handed over to him by the customer or by his proxies, as

collateral for the loan, and which authorizes it. to the Pawnshop to take repayment of the loan from the goods by preempting other creditors, with the exception of costs for auctioning or selling the goods and costs for rescuing the goods which are incurred after the goods are handed over as pledges, which costs must take precedence (Ashibly, 2018).

Based on the definition of pawn which has been explained above, the writer summarizes some of the main elements contained in the pawn contract, including the following:

1. The pawn was born because of the agreement to transfer power over the pawned goods to the creditor as the holder of the pawn.
2. The transfer can be made by the debtor or another person on behalf of the debtor;
3. Goods that become the object of the pawn are only movable goods, both bodily and intangible, such as livestock, motorcycles, cars and so on. not immovable goods such as houses, land and so on.
4. The creditor holding the mortgage has the right to take repayment of the mortgaged goods first than other creditors if the debt owed by the pawn cannot be repaid (Adjie & Saputro, 2015).

### Legal Basis of Pawn in Positive Law

The legal basis for pawning in Indonesian positive law is regulated in book II of the Civil Code. There are ten articles that regulate the pawn, namely Articles 1150 to 1160 (Ashibly, 2018). Article 1150 discusses the definition of the pawn itself, article 1151 explains the evidence if the pawn has been approved. Articles 1152 and 1153 discuss the object of the pledge or the object of the pledged object. According to the article, it is explained that the object of the pledge must be a movable object, meaning that it can be carried or moved, such as vehicles, livestock and so on (Dalimunthe, 2018).

Article 1154 discusses the rights and obligations of the pawning parties. So that the rights and obligations of the parties in the pledge can be fulfilled in full. If it is not fulfilled then everything related to the pawn agreement is legally null and void. Article 1155 describes the default on the part of the pawnbroker or debtor. It is explained that, if the debtor is in breach of contract cannot fulfill the repayment of his debt, then the creditor can sell the pledged goods which are guaranteed by the creditor, after prior warning from the recipient of the pledge or creditor to the party giving the pledge or debtor (Subekti & Tjitrosudibio, 2008).

### Pawn Subject and Object

The subject of the pawn consists of two parties, namely the giver of the pawn or referred to as the supervisor and the recipient of the pawn can also be called the *pandnemer* (Febriani & Arsika, 2014). *Pandgever* is a person or legal entity that provides collateral in the form of movable objects as a pledge to the recipient of the pledge for a loan of money given to him or a third party. The elements that must be present for the pawnbroker are:

1. Legal person or entity
2. Provide guarantees in the form of movable objects
3. To the pawnee
4. There is a loan (Ashibly, 2018).



In Indonesia, the legal entity appointed to manage the pawning institution is the pawnshop company. As regulated in the Financial Services Authority Regulation Number 31/POJK.05/2016 concerning Pawn Business. One of the contents of the regulation explains that the pawnshop business can not only be managed by the government, but may also be carried out by private pawnshops (Febriani & Arsika, 2014).

While the object of the pawn is movable goods, both tangible and intangible, as the author has previously alluded to in the explanation above. Objects as objects of lien that can be used as collateral for debts with encumbered liens are as follows:

1. Examples of movable objects are:
  - a. Motorized vehicles such as cars, motorcycles
  - b. Machinery such as sewing machines, plowing machines, diesel engines/power plants, water pumps and all kinds of other machines;
  - c. Jewelry such as gold, diamonds, pearls, diamonds, silver, and others;
  - d. Precious paintings;
  - e. Ships measuring less than 20 m<sup>3</sup>;
  - f. Inventory of goods (stock);
  - g. Office/restaurant inventory;
  - h. h. Other movable property that has value.
2. Intangible movable objects, for example, securities such as savings accounts, time deposits; certificates of deposit, money orders, promissory notes, bills, bonds, shares, receipts or proof of depositing money as shares, ceel, or receipts for storage of goods in the last warehouse receivables (Ashibly, 2018).

The items that cannot be accepted as objects of pledge are state property, debt securities, securities and other securities. In addition, also animals that live on plants, all food and perishable objects, dirty objects, objects that require permission to control and move them, items that are large in size so that they cannot be stored in a mortgage. In addition, there are objects that are only temporary or whose price fluctuates rapidly, making it difficult for pawnbrokers to assess them. In addition, the object being pawned by someone who is drunk or someone who lacks memory or someone who cannot provide sufficient information about the goods to be pawned (Ashibly, 2018).

## 23 RESEARCH METHOD

The research method used in this paper is a qualitative approach. The qualitative research method is inductive in nature with the aim of gaining understanding or meaning, developing theories and describing complex realities so that they include views on the reality of the object under study (Prapti et al., 2020). Using qualitative approach, this study emphasizes the aspect of in-depth understanding of a problem rather than looking at the problem for a general study. This study provides substantive categories and qualitative research hypotheses (Firdaus & Fitiyani, 2022). Therefore, in this study the data obtained from the results of library research are used as documentation to be described in the form of words or sentences, not in the form of statistical figures or percentages as in quantitative research. the author provides a description of the comparison between pawning in Islamic law and pawning in positive law contained in the

book of civil law laws. As well as providing an understanding, what things are different, both from the legal basis, objects that are guaranteed, as well as the terms and pillars used in the two theories.

The type used in writing this article is library research. The author examines, observes, and seeks data from reliable reference books and articles in scientific journals (Islamic law or legal journals in general) related to this study (Firdaus, 2022). This type of research is library research, which is research conducted by collecting data from various literature books, journals, website writings, magazines, laws, fatwas or from various writings (Firdaus et al., 2022). Research with this method uses the process of collecting library data from several books, MUI fatwas, Islamic law articles that discuss theories in fiqh muamalah related to the concept of contract, rahn contract, the terms *rahn*, *murtahin*, *marhun*, and *marhun bihi*. In addition, it is also taken from several laws and regulations, such as the Civil Code, legal articles related to pawning in positive law, then processing them so that they become the study material in this paper.

## RESULTS AND DISCUSSION

### *Rahn's Position in the Systematics of Indonesian Guarantee Law*

It has been described above, that the regulation of the right to material security is part of Book II of the Civil Code which regulates objects, based on a consideration that material rights have two properties, namely providing enjoyment and providing guarantees. Material rights that are enjoyable means that they provide benefits that can be used, used and also enjoyed by those who carry out the contract. While material rights that are collateral are related to the economic value of objects that can be used as supporting values (debt) or as collateral for debts. Material rights that provide enjoyment can be directed to their own objects, namely property rights (*eigendom*) or directed at other people's objects such as: usufructuary rights (*vruchtgebruik*), building use rights (*opstal*), business use rights (*erfpacht*), and rights of use. While the material rights that provide guarantees are always focused on objects belonging to other people.

Book II of the Civil Code according to the doctrine is closed, in the sense that people are not free to make new material rights except those already regulated by law. The addition of new material rights must be carried out based on a law, such as Fiduciary based on Law Number 42 of 1999, and Mortgage Rights based on Law Number 4 of 1996 (Haryanto, 2010). Until now, the material guarantee institutions regulated in the statutory provisions consist of: Pawns and Fiduciaries for guaranteeing movable objects and Mortgages and Mortgage Rights for guaranteeing fixed objects. With the enactment of *rahn* as a variant form of pawn (*pand*), it must be adjusted to the systematic arrangement of the existing guarantee law; so that it becomes part of the system and there is no conflict within the legal system itself, namely:

1. Whereas *rahn* is only used for guaranteeing movable objects and not for guaranteeing fixed objects such as rights to land and immovable objects according to the provisions of the law;
2. That *rahn* as a new material guarantee must be regulated in the form of a law, due to the closed nature of the legal provisions regarding material rights.

## Comparison of Pawn Agreements in Islamic Law and Positive Law

### *Regarding the legal basis of the pawn*

The legal basis for pawning in Islam is the Koran and the hadith of the Prophet. whereas in positive law the legal basis is the civil law code. It is contained in articles 1150 to 1160. The difference is that in Islamic law, the Koran is a reference for all Muslims, not only Indonesia but Muslims throughout the world and is not specifically binding on Indonesian national law.

Meanwhile, the Civil Code is a reference for Indonesian national law and is binding on Indonesian people, both Muslim and non-Muslim. Consequently, in carrying out the pawn agreement the parties within the jurisdiction of Indonesia must comply with the rules contained in the Civil Code and other regulations relating to pawnshops. If it is not in accordance with the Civil Code, then the pawn agreement can be said to be invalid under positive Indonesian law ([Bawono, 2012](#)).

### *Regarding the object of the goods that are used as collateral*

In the concept of Islamic law there is no provision that the goods that are guaranteed must be movable goods, but also immovable goods, such as rice fields, land, houses and so on that have economic value can be used as objects for pawnshops. As long as the collateral can be sold and the value is balanced with the debt ([Ghazaly et al., 2010](#)).

Whereas in civil law, the object of the pledge must be in the form of movable goods, both tangible and intangible. Tangible, for example, such as a motor vehicle, be it a car or a motorcycle. While intangible, for example, securities, such as savings, time deposits, stocks and so on. Movable items are items that can be moved from one place to another ([Subekti & Tjitrosudibio, 2008](#)).

### *Regarding the cost of maintaining the mortgaged goods*

Regarding the obligation to maintain the mortgaged goods in the Islamic concept, it is *murtahin* or people who lend their debts to the debtor (the recipient of the mortgage). The mortgaged goods are entrusted to the *murtahin* as a trust or deposit. Meanwhile, the maintenance costs must be borne by *rahin* as the mortgagee because the item is basically the original owner of the *rahin*. This is based on the hadith of the Prophet narrated by Al-Shafii, Al-Ataram and Ad-Daruquthni from Muswiyah bin Abdullah Bin Ja'far it says: "He (the owner of the pawn) has the right to enjoy the results and is obliged to bear the burden (the burden of maintenance)" ([Sarwat, 2018](#)).

Whereas in the Civil Code, regarding the cost of maintaining the mortgaged goods contained in Article 1157, it is stated that: "The creditor is responsible for the loss or shrinkage of the pledged item, to the extent that it occurred due to his negligence. On the other hand, the debtor is obliged to reimburse the creditor for useful costs and need to be incurred by the creditor to save the pledged goods" ([Sarwat, 2018](#)).

Basically, the same as in the Islamic concept, that the cost of maintaining the mortgaged goods is borne by the debtor as the original owner of the mortgaged goods. However, the *murtahin* party or the recipient of the mortgage can be charged a fee when the item is damaged

due to negligence on the part of the *murtahin*. For example, such as the mortgaged item in the form of a motorbike, then the motorbike is not properly cared for by the recipient of the pawn, resulting in the motorbike being dead or damaged, then the cost of damage to the motorbike is the responsibility of the *murtahin* (the recipient of the pawn).

#### *Regarding debt repayment*

Islam provides rules that the pledge agreement does not change the ownership of the object of the mortgage (*marhun*) when the debtor (*rahin*) and submits the collateral, is unable to pay off the debt. In Islam with regard to debt repayment, after maturity, the *rahin* has the right to receive goods that are dependent on his debt and is obliged to pay/pay off his debts and the costs of maintaining the mortgaged goods with the amount of money received at the beginning of the debt agreement. Likewise, the *murtahin* is entitled to receive payment of the debt in the amount of money given at the beginning of the debt agreement, and his obligation is to deliver the goods that are the responsibility of the child's debt in full without defects.

However, when the *rahin* is unable to pay off his debts, then at a predetermined time, or maturity, the *murtahin* cannot sell the mortgaged goods as long as there is no court decision. So in this case the judge/court can force the owner of the goods to pay their debts or sell the goods as collateral. The goal is that the proceeds from the sale of the collateral, if sufficient, can be used to pay off the debt. If there is a remainder from paying off the debt, the excess is returned to the owner of the goods, but if there is a shortage, the owner of the goods must still cover the shortage.

Whereas in the concept of Indonesian civil law, as stated in Article 1155 of the Civil Code, that the debtor does not fulfill its obligations after a predetermined time or after a warning has been issued to fulfill the agreement to the creditor, the creditor has the right to sell the mortgaged goods belonging to the debtor according to custom - local customs and according to the terms of the agreement that has been made previously. The goal is that the amount of the debt, the interest and the costs of maintaining the mortgaged goods can be paid off by the debtor with the proceeds from the sale of the collateral (Sarwat, 2018)

#### *Regarding the parties in default/breach of promise in the pawnshop*

As explained in point four above, if the person who owes the debt (*rahin*) is unable to pay, is negligent or breaks his promise to *marhun* regarding the return of his debt after maturity, then the Islamic concept does not allow the party who has the debt (*murtahin*) to sell the goods. guarantees given by *rahin* without first having a decision from a judge or court.

Meanwhile, in positive Indonesian law, it is stated in Article 1156 of the Civil Code that if the debtor is negligent in carrying out his obligations, the creditor can sue through the court so that the mortgaged goods are sold to pay off the debt along with interest and other costs related to the pledge. Later, the judge will determine the terms and procedures for the sale or auction, so that later it can cover the debts that have not been paid off by the debtor. However, this has been given a warning in advance by the creditor to the debtor regarding the repayment of his debt.

### *Regarding the form of the agreement*

In Islamic law, pawning is a form of service contract to help maintain debt collateral. Whereas in positive law it is a form of interest by mortgaging costs. Consequently, in Islamic law, if the goods are sold to pay off debts and there is still a balance or there is an excess, then the excess of the sale value of the collateral is returned to the owner of the mortgage (*rahin*). Whereas in positive law, goods must be auctioned first to be able to pay off all debts owed by the debtor, be it principal debt, interest or maintenance costs.

### *Regarding the implementation of the agreement*

The concept of pawning in Islamic law can be implemented either through an institution or without going through a pawnshop. While pawning in positive law must be carried out through an institution called a pawnshop as technically it has been regulated in the regulation of the financial services authority number 31 /poj.k.05/2016 regarding the pawn business.

To make it simpler to understand, the comparison between pawning in Islamic law and Indonesian positive law, can be described in Table 1.

**Table 1**

#### *Comparative aspects of rahn and pawn in Islamic Law and Positive Law*

No	Aspect	Islamic law	Positive Law
1	Legal basis	The basis of Rahn's law is contained in the Qur'an and the hadith of the Prophet	The legal basis for pawning is contained in the Civil Code Article 1150-1160
2	Pawn object	Objects in rahn can be movable items as well as immovable items	The object of the pawn can only be movable goods
3	Maintenance cost	The cost of maintaining Rahn's object is borne by Rahin as the trustee	The cost of maintaining the object of the pawn is borne by the debtor in accordance with Article 1157 of the Civil Code
4	Debt Repayment	Rahin is enough to pay off the principal debt and the cost of maintaining the object of Rahn	Debtors, in addition to paying off the principal debt and the cost of maintaining the goods plus the interest
5	Default/Broken promise	If rahin is in breach of contract/default, the object of rahn cannot be sold until there is a court decision	If the debtor defaults/defaults, the creditor can demand through the court that the goods are sold to pay off the debtor's remaining debt, interest, and other maintenance costs.
6	Contract Form	The form of the contract in rahn is a tabarru 'contract (helping service) maintenance of debt guarantees	Whereas in positive law it is a form of interest by mortgaging costs

No	Aspect	Islamic law	Positive Law
7	Implementation of the contract	The implementation of the rahn contract may be carried out with an institution or not	The concept of pawning in positive law must be implemented through an institution called a pawnshop

## CONCLUSION

It can be concluded that the pawn is an accessory contract or a complementary contract to the main contract, namely from the debt contract. The meaning of pawn is the delivery of collateral from a person who owes a debt to a person who is in debt with an item that has economic value. In relation to Islam, the term pawn is also referred to as *ar-rahn*, which is not much different from the pawn contract in civil law. However, there are several different aspects, including regarding the costs contained in the pledge agreement and the goods that are collateral for the debt.

Specifically, in this comparison, the author has described seven aspects of the comparison, both pawns in Islamic law and Indonesian Positive Law. These aspects include, the basic legal aspects contained in Islamic law, the legal basis of which is al-Qur'an and al-Hadith and which is in civil law, the legal basis is in the Civil Code. The legal aspect of the object of the pledge or collateral that must be submitted by the party giving the pledge to the recipient of the pledge.

Furthermore, aspects of the cost of maintaining collateral, the period and cost of paying off debt, regarding aspects of default/breach of promise of the parties, aspects of the form of the contract and the implementation of the contract. It has all been described in the above discussion. Hopefully this article can be accepted and can be used as reference material by readers, especially in studying fiqh muamalah and collateral law, the discussion of which is in the Civil Code. At the end of this paper, the author realizes that this paper still has many shortcomings and omissions, so input, even criticism and suggestions are needed so that the author can make improvements, increase motivation and passion to spread knowledge through other writings.

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