

**SENDEN PAWN ISSUES AND PROSPECTS FROM
AN ISLAMIC PERSPECTIVE: A CASE STUDY
CANTUK BANYUWANGI**

THESIS

Submitted to Postgraduate Program University of Darussalam Gontor
in Partial Fulfillment of the Requirements for a Masters Degree
in Islamic Economics Law



By:

Tesa Mellina

Reg Number: 38.2.3.286

**ISLAMIC ECONOMICS LAW
POSTGRADUATE PROGRAM
UNIVERSITY OF DARUSSALAM GONTOR
1440 H/ 2019 M**

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Supervisor:

Dr. Imam Kamaluddin, Lc, M.Hum

**ISLAMIC ECONOMICS LAW
POSTGRADUATE PROGRAM
UNIVERSITY OF DARUSSALAM GONTOR
1440 H/ 2019 M**



**Postgraduate Program
University of Darussalam (UNIDA) Gontor**

LEGALIZATION SHEET

Title of Thesis : Senden Pawn Issues and Prospects from an Islamic
Perspective: A Case Study of Cantuk Banyuwangi

Author : Tesa Mellina

Register Number : 38.2.3.286

Program of study : Islamic Economics Law

Has been received as one of the requirements for a Master Degree in
Islamic Economics Law.

Ponorogo, 18 May 2019

Director,

Dr. H. Hamid Fahmy Zarkasyi, MA, M.Phil

NIY: 880061

The committee of thesis examination impartial fulfillment of requirement of the degree of Magister in Law of Islamic Economics, having held the thesis examination on:

Day and Date :

Venue :

State the student below

Name : Tesa Mellina
Reg Number : 38.2.3.286
Program of Study : Islamic Economics Law
The Title : *Senden* Pawn Issues and Prospects from an Islamic Perspective: A Case Study of Cantuk Banyuwangi

Has been successfully defended in front of the Board of Examiners and accepted as part of the requirements for a degree of Magister in Law of Islamic Economics.

Board of
Examiners:

1. Dr. Imam Kamaluddin, Lc. M.Hum
(Chairman)


(.....)

2. Dr. Dr. Iza Hanifuddin, M.A.
(Examiner I)


(.....)

3. Dr. Dr. Setiyawan bin Lahuri, M.A.
(Examiner II)


(.....)

4. Dr. Hartomi Maulana, M.Sc
(Examiner III)


(.....)

DECLARATION

I hereby,

Name : Tesa Mellina
Registered Number : 38.2.3.286
Degree : Magister
Program of study : Islamic Economics Law

I declare sincerely that this thesis originally belongs to my own work and not belong to other researchers for a different degree. Furthermore, this thesis is not a work that has been published before, except for some parts with their original references.

Ponorogo, 18 May 2019

The Researcher,

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GRAM TERBUKUK

Tesa Mellina

OFFICIAL NOTE

Appendix : 4 copies
Subject : Submission of Thesis

To Honorable,
Director of Postgraduate Program
University of Darussalam Gontor

Assalamu 'alaikum warahmatullahi wa barakatuh

It is my honor to present the thesis written by:

Name : Tesa Mellina
Reg. Number : 38.2.3.286
The Title : *Senden Pawn Issues and Prospects from an Islamic
Perspective: A Case Study of Cantuk Banyuwangi*

I declare that this thesis has been processed and corrected to fulfill the requirement for completing the Postgraduate Degree in the Department of Islamic Economics Law. Therefore, I request that the thesis could be examined soon.

Wassalamu 'alaikum warahmatullahi wabarakatuh.

Ponorogo, 18 May 2019

Supervisor.



Dr. Imam Kamaluddin, Lc., M.Hum

MOTTO



وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ
شَدِيدُ الْعِقَابِ

“and help one another in goodness and piety, and do not help one another in sin and aggression; and be careful of (your duty to) Allah; surely Allah is severe in requiting (evil)”

(Al-Mai’dah: 2)

DEDICATION

Thanks to My Lord Almighty,

Allah Subhanahu Wa Ta'ala

Prayer and greetings for the prophet Muhammad (pbuh)

This achievement is nothing but a blessing from the prayers and
motivations

of valuable person to me

Thanks to my Mom Mrs. Ririn and my Dad Mr. Budi

Thanks to my beloved brother Tegar Fitra Budi

Thanks to Fadlurrahman for everything

Thanks to my big family in Banyuwangi

And everyone who knows me and considers me as a companion.

I'll never stop praying to Allah for you all

to fulfill lives with happiness in this world and hereafter

aamiin.

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Praise belongs to God, the Effuser of Lights, Opener of Eyes, Unveiler of Mysteries and Lifter of Covering. Praise be to God, Whose praise should preface every writing and discourse. Praise be to almighty Allah for enabling me to complete this humble thesis. Peace be upon the final prophet of Islam, Muhammad SAW and his family, companions and his followers.

Realizing her dependence on so many persons in order to complete this thesis, the researcher feels also to necessitate to convey gratitude for all indispensable direction, guidance, and assistance. So, on this occasion, the researcher would like to thank several individuals who have instigated her to look into gates of knowledge.

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7. All researcher's friend in this Prime Law of Islamic Economic who feel mutual sorrow in this Postgraduate Program.

May Allah reciprocate a proportionate reward for them and bless them, and may this humble thesis be valuable and useful for the readers and especially for the researcher. Finally, the researcher would like to offer her deepest respect and gratitude to all her companions for their support and help to complete this thesis, may Allah gives great rewards in this world and hereafter.

Ponorogo, 18 May 2019

The Researcher

Tesa Mellina

Abstrak

Tesa Mellina, 2019, Isu dan Prospek Gadai Senden Berdasarkan Perspektif Islam: Studi Kasus di Cantuk Banyuwangi.

Kata Kunci: Gadai, Rahn, Bay' Al-Wafa'

Secara umum gadai senden merupakan suatu transaksi yang dilakukan berdasarkan kebiasaan masyarakat setempat. Sebagaimana hasil beberapa penelitian menyatakan pada transaksi gadai pihak penggadai seringkali terugikan karena pemanfaatan barang jaminan yang berlebihan oleh penerima gadai. Namun hal ini justru berbanding terbalik dengan apa yang terjadi di desa Cantuk. Praktik gadai yang terjadi tidak hanya merugikan pihak penggadai namun juga seringkali merugikan pihak penerima gadai. Hal inilah yang mendorong peneliti untuk melakukan penelitian dengan judul "Isu dan Prospek Gadai Senden Berdasarkan Perspektif Islam" untuk mengetahui bagaimana praktik gadai senden yang sebenarnya terjadi berdasarkan perspektif Islam.

Jenis penelitian ini adalah penelitian studi kasus yang dilaksanakan di Desa Cantuk, Banyuwangi. Untuk mendapatkan data yang valid, peneliti menggunakan beberapa metode pengumpulan data yaitu wawancara, observasi dan dokumentasi. Sumber data dalam penelitian ini ada dua yaitu sumber data primer hasil dari wawancara dengan perangkat desa, tokoh masyarakat, penggadai dan penerima gadai, sementara data sekunder berupa dokumen-dokumen, buku, catatan dan sebagainya. Sedangkan analisa data-data yang telah terkumpul menggunakan metode analisis deskriptif dengan menggunakan pendekatan kualitatif.

Berdasarkan hasil penelitian, diperoleh hasil bahwa praktek gadai senden termasuk dalam kategori fasid karena marhun belum memenuhi beberapa rukun dan syarat sebagaimana yang telah disyariatkan. Dalam praktiknya masih terdapat beberapa transaksi dimana marhun yang dijadikan jaminan belum menjadi milik penuh rahin dan tidak diserahkan lengkap dengan pokoknya. Selanjutnya, apabila didasarkan kepada telaah fiqh muamalaat praktik gadai senden pada dasarnya merupakan praktik bay'al-wafa' bukan rahn, karena dalam praktiknya menyerupai praktik bay'al-wafa'. Sementara legalitas bay'al-wafa' sendiri masih diperselisihkan oleh kalangan ulama. Adapun hasil analisis problematika dalam gadai senden, tindakan rahn maupun murtahin dalam problem yang terjadi tidak hanya bertentangan dengan hakikat gadai sebagai akad tabarru' namun juga mengesampingkan masalah dalam praktiknya. Penelitian ini masih jauh dari kata sempurna, karenanya peneliti berharap penelitian ini dapat menjadi referensi bagi penelitian-penelitian selanjutnya untuk dapat dikembangkan dengan pencapaian yang lebih baik lagi.

Abstract

Tesa mellina, 2019, Senden Pawn Issues and Prospects from an Islamic Perspective: A Case Study of Cantuk Banyuwangi

Keywords: Pawn, Rahn, Bay 'Al-Wafa'

Senden pawn in a general way is a transaction based on habits of local society. According to the previous studies revealed that pawn transactions are often disadvantage rahin because of excessive use of marhun by murtahin. However, the findings of some of these studies are contradicted to what happened in Cantuk Village. Senden pawn practices that occur not just harm the rahin but often harm the murtahin. Based on this problem the researcher intends to raise senden pawn practices that occur among society of Cantuk village into a study entitled "Senden Pawn Issues and Prospects from an Islamic Perspective: A Case Study of Cantuk Banyuwangi" to know how the practice occur in accordance Islamic view.

This type of research is a case study research in Cantuk Village, Singojuruh Subdistrict, Banyuwangi Regency. To get the valid data, researchers used several methods of data collection, namely interviews, observation and documentation. There are two sources of data in this study, namely primary data sources from interviews with the rahin, murtahin, broker, head of village, village officials and also religious figure of Cantuk society and secondary data in the form of documents, books, journals, newspapers, or other literature that are relevant to research. While the analysis of data collected is using the descriptive analysis method with qualitative approach.

Based on the results of the analysis, it was concluded the senden pawn practice that occurred in Cantuk Village was imperfect category. Because the transactions which are the status of marhun has not become the ownership of rahin and are not submitted fully with the principal document. Based on Islamic view, senden pawn practice basically is not the practice of rahn but the practice of bay' al-wafa', because senden pawn resembles the practice of bay' al-wafa'. While the legal validity of bay' al-wafa' itself still debated by jurists. Furthermore the results of analysis in senden pawn issues and prospect that is both rahn and murtahin are not only contradicting the values of pawn as tabarru' (contract but also turn aside the maslahah in senden pawn practice.

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CHAPTER I

INTRODUCTION

A. Background of the Study

Humans as social beings are destined to help each other in carrying out daily life. Especially in the economic matter, it is inseparable from the affairs of debts. Usually, a person borrows money to others to fulfill their urgent need. In this case, the person who gives the loan requires *marhu>n* to maintain trust.¹ This practice is one form of *muamala>t* which known as the pawn or *rahn* in Islam.²

In Islamic law, pawn includes permitted transactions. Pawn is one form of manifestation of *muamala>t* which is prescribed in Islam. Practice of pawn itself has been around since the time of Prophet Muhammad, where the pawn has a high social value because the basic of a pawn as *tabarru>3* contract makes easiness for humans to meet the necessities of life. Hence is becoming a necessity of every Muslim to help each other in social life,⁴ as the word of God:⁵

¹ Ah Kusairi, "Konsep Gadai Dalam Hukum Islam (Studi Analisis Terhadap Mekanisme Operasional Gadai Syari'ah Di Perusahaan Umum Pegadaian Syari'ah Pamekasan)", *Jurnal Al-ahkam*, (Vol. 7, No. 1, 2012), p. 117

² *ahn's* contract is categorized as a *tabarru{'* contract that is helpful to help so that what is given a pawn cannot be exchanged for something. Where *Rahn* has four elements, namely *rahi>n* (one who gives *marhu>n*), *murtahin* (who receives), *marhu>n* (collateral goods), and *marhu>n-bih* (debt).

³ *Tabarru{'* contract (gratuitous contract) is an agreement involving not for-profit transactions. This transaction is essentially not a business transaction for commercial gain. *Tabarru{'* contract is done with the purpose of helping in order to do the goodness. In the *tabarru* contract, those who do goodness do not have the right to require any compensation to the other party. The reward of the *tabarru{'* contract is from Allah, not from humans. See Arif Fauzan, "tabarru{ 's Principles Theory and Implementation in Islamic Banking", *Jurnal Al-Amwal*, Vol. 8. No. 2, 2016, p. 5

⁴ M Sulaeman Jaluli, "Kepastian Hukum Gadai Tanah Dalam Hukum Islam Di Kabupaten Bogor", *Jurnal Ahkam*, (Vol. 15, No. 2, 2015), p. 1

⁵ Q.S Al-Mai'dah: 2

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ
الْعِقَابِ

It means: “and help one another in goodness and piety, and do not help one another in sin and aggression, and be careful of (your duty to) Allah; surely Allah is severe in requiting (evil)”. (Al-Mai’dah: 2).

Senden pawn is one form of the helping practice that done by the society of Cantuk Village, Banyuwangi.⁶ People who stay in this village are often involved this practice because they think that *senden* pawn practice is very helpful in fulfilling the urgent needs.⁷ *Senden* pawn in a general way is a transaction based on the habits of local society.

As previous studies conducted by Hukmiah, Munir and also Safrizal revealed the flaws in the implementation of the pawn. The existence of this flaw made the pawn transactions do not match with the purpose of helping. As the results, pawn transactions are often disadvantaged the *rahi>n* because of excessive use of *marhu>n* by the *murtahin*. The same thing is said by Hukmiah which revealed that the practice of pawn is actually used as a land to seek more profits by *murtahin*.⁸

Here Hukmiah’s research is in line with the finding of a study conducted by Munir where the rich use the pawn practice to seek more profits.⁹ With such pawn practice, it makes rich people who have capital

⁶ *Senden* is a condition used to make money lending transactions among the people of Cantuk Village by providing *marhu>n* to the *murtahin* in the form of rice fields or vehicles owned. Where the full use of *marhu>n* is controlled by the *murtahin*. There is no *marhu>n* auction in this pawn and the *marhu>n* will eventually return to the owners (*rahi>n*).

⁷ Mas Budi (Village Head of Cantuk), Interview on tuesday, february 20, 2018, at 16.00 pm

⁸ Hukmiah, “Implementasi Hukum Ekonomi Syariah Dalam Praktek Gadai Sawah”, *Jurnal Fenomena*, (Vol. 8, No. 2, 2016)

⁹ Munir, “Praktik Gadai Sawah Dan Implikasi Sosial Ekonomi (Studi Kasus Di Desa Juruan Daya Kecamatan Batuputih Kabupaten Sumenep Madura), *Jurnal Ilmiah*, Fakultas Ekonomi Dan Bisnis Universitas Brawijaya Malang, 2014, p. 3

excess take advantage of this opportunity to lend money to pawns as an investment. The use of *marhu>n* of pawn practice by *murtahin* with this fact makes the rich become richer and the poor become poorer.¹⁰ Therefore the practice is making society getting suffer.

However, the findings of these studies are contradicted to what happened in Cantuk Village. *Senden* pawn practices that occur often harm both *rahi>n* and *murtahin*. The practice of *senden* pawn is still focused on the village tradition which is the practice often neglects the rules of both law and religion. So that the pawn practice that occurred cause some disputes among local society.¹¹

Supposedly, as *tabarru{‘* contract, the practice of pawn should be accordance with sharia, namely a transaction as a form of helping to meet the needs and do not harm any party.¹² So that, the implementation does not cause some new problems that have an impact on the conditions of the social and economic life of the local society.

Through obtained information in the land, even though it is often found to be flawed in its implementation, the society still exists to carry out the transaction. Several studies revealed that the reason for the society to make pawn practice was because the society did not have any other options but pawning to fulfill their needs.¹³ The other reason for the practice of pawn itself can make people get money quickly and easily, for fulfilling their urgent needs.¹⁴

¹⁰ Safrizal, "Praktek Gadai Sawah Dalam Perspektif Syari'ah (Studi Kasus Di Desa Gampong Dayah Syarif Kecamatan Mutiara Kabupaten Pidie Provinsi Aceh)", *Jurnal Islam Futura*, (Vol. 15, No. 2, 2016), p. 231

¹¹ Mas Budi (Village Head of Cantuk), Interview on tuesday, february 20, 2018, at 16.00 pm

¹² Mustafa Imam, *Fiqih Muamalaat Kontemporer*, (Yogyakarta: Kaukaba Dipantara, 2014), p. 171

¹³ Mas Budi (Head Village of Cantuk), Interview on tuesday, february 20, 2018, at 16.00 pm

¹⁴ The reason is also one of the reasons for the society of Sumatra in doing *bay'al-wafa'* practice. See: Sri Sudiarti, "Bay'al-Wafa': Permasalahan dan Solusi dalam

Based on this problem and regarding with not all pawn practices in each place have similarities because of the habits of each different region, then this study intends to raise *Senden* pawn practices that occur among the people of Cantuk Village into a study entitled “***Senden* Pawn Issues and Prospects from an Islamic Perspective: A Case Study of Cantuk Banyuwangi**”

B. Problem Formulation

1. How is the practice of *senden* pawn in Cantuk Village?
2. How is the issues and prospects of *senden* pawn practice from an Islamic perspective?

C. Purpose of the Study

1. To analyze the practice of the *senden* pawn. This is intended to ascertain how the practices of *senden* pawn actually occur in Cantuk Village which causes disadvantage.
2. To examine Islamic view on the practice of *senden* pawn, so that it is expected to contribute scientific treasures, especially in pawn contracts.

D. Significance of the Study

1. Theoretical Significance

- a. It is expected to contribute ideas about the model of pawn practices in the society, it's issues and prospects from an Islamic perspective.
- b. It may be a reference and learning material for researchers and other students to conduct the research more on the existence of pawn practices in society.

2. Practical Significance

- a. From the results of the study, it is hoped that it can be used as a guide by the parties in the *senden* pawning practice to carry out a pawning contract in accordance with the Islamic concept.

- b. For the government, it can be used as logical research to fix *senden* pawn practices that occur the society by using a contract based on the Islamic view.

E. System of Writing

Chapter I Introduction: This chapter consists of a background of study, problems formulation, the purpose of research, benefits of research and systematics of writing.

Chapter II Literature Review: The first sub-chapter in this chapter discusses the theoretical basis used, namely related to pawn and *rahn* in *fiqh muamala*, the second sub-chapter discusses the review of previous studies, and the third sub-chapter discusses the conceptual framework of research.

Chapter III Research Methodology: This chapter discusses the methods used in research.

Chapter IV Discussion and Analysis of Research: This chapter explains the general description of Cantuk Village, the practice of *senden* Pawn in the Cantuk village, the utilization and problems of the *marhu* in the *senden* pawn practice as well as the analysis of *senden* pawn issues and prospects from an Islamic perspective

Chapter V Closing: This chapter contains results and suggestions from the research.

CHAPTER II

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

A. Previous Research

In this section, the researcher tries to examine the problems that occur from the existing literature, so that it is clear that the problem is worthy for further investigation. Some relevant literature discussed further in the following paragraph:

Munir (2014) examined “Praktik Gadai Sawah Dan Implikasi Sosial Ekonomi (Studi Kasus Di Desa Juruan Daya Kecamatan Batuputih Kabupaten Sumenep Madura)”¹⁵. The research method used is descriptive qualitative research with phenomenological approaches and case studies. The data analysis technique used is the reduction data, a display data and a verification data. The results showed that the practical process of land pawn that occurred in the village is walk by well, including the social relationships that existed between them also going well. As an economic impact the pawning practices that occur have a very important role in moving the wheels of the economy, while as a social impact the practice of land pawn does not affect their lives and activities. However, the practice of land pawn that occurs is not in accordance with Islamic law. The research equation with the research that the researcher did was to examine the practice of pawning based on Islamic law. The difference between Munir’s focus was the practice of land pawn and social implications in Juruan Daya village, Madura, while the writer focused on analyzing *senden*’s pawning practices in Cantuk village, Banyuwangi according to fiqh muamalaat perspective.

¹⁵ Munir, “Praktik Gadai Sawah Dan Implikasi Sosial Ekonomi (Studi Kasus Di Desa Juruan Daya Kecamatan Batuputih Kabupaten Sumenep Madura), Scientific Journal, Faculty of Economics and Business, University of Brawijaya Malang, 2014

Muhammad Azani (2015) investigated “**Praktik Akad Gadai Dengan Jaminan Lahan Sawah Dan Gadai Emas Di Kecamatan Mempura Kabupaten Siak Berdasarkan Hukum Islam.**”¹⁶ The extension research used the dialogue method, while the extension evaluation used questionnaire method. From the results of the study understood that the level of understanding of the people in the district of Siak, Mempura about Islamic pawning is very goods with indications that most of the people involved in the activity can understand sharia pawning as an alternative financing based on Islamic law. Furthermore, the pawning contract that has been carried out by the society in Mempura is apparently not a sharia pawn based on Islamic law. The practice of buying gold then pawned at a time when the gold prices high were not a pawning practice based on Islamic law, but more similar to buying and selling gold or rather speculation on the price of gold, because gold prices could vary according to the gold market in the international market. The similarity of this research with the research that the researcher did was to examine the practice of pawning and be analyzed based on Islamic law. The difference is found in the objects used in pawning practices. The object of the practice of pawning Azani in the form of land pawn and gold, while the object of research that the researcher did was in the form of land pawn and vehicles.

Muchsin (2016) assessed “**Tinjauan Hukum Islam Terhadap Parktik Gadai Sawah (Studi Kasus Desa Salu Balo Kecamatan Mehalaan Kabupaten Mamasa)**”.¹⁷ In this study Muchsin used a descriptive quantitative method. The purpose of research to know how the practice about land pawn according to Islamic Law. The result showed that the practice of land pawn in Salu Balo Village according to the agreement, right or obligation and utilizing of

¹⁶ Muhammad Azani, “Praktik Akad Gadai Dengan Jaminan Lahan Sawah Dan Gadai Emas Di Kecamatan Mempura Kabupaten Siak Berdasarkan Hukum Islam”, *Jurnal Perspektif Hukum*, (Vol. 15, No. 2, 2015)

¹⁷ Muchsin, “Tinjauan Hukum Islam Terhadap Praktik Gadai Sawah (Studi Kasus Desa Salu Balo Kecamatan Mehalaan Kabupaten Mamasa)”, *J-Alif Jurnal Penelitian Hukum Ekonomi Syariah dan Sosial Budaya Islam*, (Vol. 1, No. 1, 2016)

collateral is not suitable to Islamic view. The similarity of this research was to examine the practice of pawning. The difference of Muchsin's research was used the quantitative method while the researcher analyse the practice of pawn using the qualitative method.

Hukmiah (2016) studied about "Implementasi Hukum Ekonomi Syariah Dalam Praktik Gadai Sawah".¹⁸ Using applied research of qualitative methods, there is an attempt by researchers to apply something new to the object of research. The research was carried out with a specific purpose, namely to take certain steps as policies or models that are considered effective in applying sharia economic law to the practice of land pawn. Researchers try to combine exploration, description and explanation systems. The approach used in the study is a multidisciplinary and sociological approach where this approach is used to examine the state of the society with the application of the land pawn pattern practiced. Furthermore, in collecting data, the researcher used an interactive method in the form of open interviews. The results of the study showed that the land pawn system run by the local society indicated that there was a usury system and a form of tyranny. Furthermore, the practice was far from the element of ta'awun. While the implementation of sharia economics concept in the practice of land pawn as an alternative solution in avoiding the practice of usury is by using the forms of the *qardh al-hasan*, *mudharabah* and *mudharabah* system. The research equation with the research that the researcher did was to examine the practice of pawning based on Islamic law. The difference is found in the method used, scientific research in collecting data using interactive methods in the form of open interviews while here in data collection not only through interviews but also observations.

Safrizal (2016) analysed with a study entitled "Praktik Gala Umong (Gadai Sawah) Dalam Perspektif Syari'ah Di Desa Gampong Dayah Syarif

¹⁸ Hukmiah, "Implementasi Hukum Ekonomi Syariah Dalam Praktek Gadai Sawah", *Jurnal Fenomena*, (Vol. 8, No. 2, 2016)

Kecamatan Mutiara Kabupaten Pidie Propinsi Aceh.”¹⁹ The results showed that the practice of Gala Umong seen from the components and the pawning conditions made by the local society has not fulfilled the components and conditions of *rahn* in Islamic concept. Namely, in this practice there is no deadline for debt repayment which must be done by *rahi>n* to the *murtahin*, so that the effect causes a fight between the people. Another thing that is not appropriate is the use of the results of *marhu>n* in this case in the form of productive rice land that are used by the recipient of the pawning, which if left to the rich get richer and vice versa. The research equation is to examine the practice of pawning based on Islamic law, the difference in research Safrizal only focuses research on the analysis of pawning practices based on the perspective of sharia, while here the researcher also examines the problems of pawning practices on society.

Based on the explanation of previous research, it can be understood that the research equation is examining the practice of pawning based on Islamic law, while the difference located in the object of the pawn study, research methods, research sites and research focus. Based on these reasons and considerations, this research needs to be done to complete and examine more deeply related to the practice of pawning that occurred in Cantuk village. While pawn transaction certainly has a difference in its implementation in each village, it is to find out how the impact on the socio-economic life of the society. In this study, the researcher focuses her research on the analysis of *senden* pawn issues and prospects from an Islamic perspective in Cantuk Village, Singojuruh Sub. District, Banyuwangi Regency.

¹⁹ Safrizal, "Praktek Gadai Sawah Dalam Perspektif Syari'ah (Studi Kasus Di Desa Gampong Dayah Syarif Kecamatan Mutiara Kabupaten Pidie Provinsi Aceh)", *Jurnal Islam Futura*, (Vol. 15, No. 2, 2016)

B. Theoretical Framework

The theory used in this study is the theory of pawn, *rahn* and *bay' al-wafa'*. The following section discusses them more details.

1. Pawn

a. Definition of pawn

The definition of pawn is the creditor's right of moving goods as collateral for the debtor as a security of the debt and the goods can be sold by the creditor if the debtor cannot pay the debt at maturity time.²⁰

While the definition of pawn according to article 1150 of the KUHP, the pawn is a right acquired by the creditor of a movable object or immovable object given to the creditor by the debtor to secure a debt.²¹

The pawn in a custom law society is known as a pawn sale²² that is the transaction to hand over a piece of land to others by receiving a sum of money with the provision that the land will be returned to the landowner after returning the debt to creditor.²³

b. Pawn Object

Pawn object as stated in article 1153 KHUP is any movable object that is neither bodily and can be moved.²⁴

²⁰ Muhammad Sholikul Hadi, *Pegadaian Syariah*, (Jakarta: Salemba Diniyah, 2003), p. 17

²¹ Kitab Undang-Undang Hukum Perdata (KUH Perdata) Pasal 1150, tentang Gadai

²² The pawn sale transaction applies to the Minangkabau community, where the pawn goods is not a guarantee, but the transfer of ownership rights and use of a piece of land from the land owner to another person by receiving a certain amount of money agreed upon between the landowner and the pawn holder.

²³ Rozalinda, *Fikih Ekonomi Syariah: Prinsip dan Implementasi Pada Sektor Keuangan Syariah*, p. 265

²⁴ Kitab Undang-Undang Hukum Perdata (KUH Perdata) Pasal 1153 tentang, Gadai

c. Rights and Obligations pawnbroker²⁵

Rights of pawnbroker

- 1) Receiving the residual income from the sale of collateral after deducting principal receivables, interest and other expenses
- 2) Accepting replacement of collateral if the collateral has expired from the rights of pawn holder.

Obligations of pawnbroker

- 1) For the care of pawn object, the pawnbroker is obliged to ensure a pawn object
- 2) If there is charged as a receivable, then during the receivable the pawnbroker may not charge or receive the payment from the debtor of the pawn.

d. Pawn Characteristics

As for the characteristics of the pawn, as stated in article 1150 Book of the civil law, namely:²⁶

- 1) Pawn granted on the movable object
- 2) Pawn must be removed from the control of the pawnbroker
- 3) Pawn gives the creditor to obtain advance repayment of creditors receivables
- 4) Pawn authorizes to creditors to take their own repayment of the debt.

e. Similarities and Differences Between Pawn and *Rahn*

The equation between the pawn and *rahn*:²⁷

- 1) The pawn's right obtained for the loan money
- 2) The existence of collateral as collateral of debt
- 3) Cannot take the benefits of the pawned object

²⁵ Adrian Sutedi, *Hukum Gadai Syariah*, p. 62-63

²⁶ Kitab Undang-Undang Hukum Perdata (KUH Perdata) Pasal 1150, tentang Gadai

²⁷ Sasli Rais, *Pegadaian Syariah: Konsep dan Sistem Operasional: Suatu Kajian Kontemporer*, (Jakarta: UI-PRESS, 2005), p. 46

- 4) Cost of pawn object is borne by the pawnbroker.
- 5) If the time limit of the loan has been exhausted, the pawned object may be sold or auctioned.

While the difference between pawn and *rahn* are as follows:²⁸

- 1) *Rahn* in Islamic law is done on the basis of mutual help without seeking the profit, while the pawn according to civil law as well as mutual aid behavior to seek profit from the interest or from the rent capital.²⁹
- 2) In the civil law, the pawn practice only applied to movable objects, while in Islamic law, *rahn* applies to all object whether the movable or immovable object
- 3) According to Islamic law, there is no condition of interest in *rahn*
- 4) Pawn according to civil law, implemented through an institution in Indonesia called “Perum Pegadaian”, while *rahn* according to Islamic law can be implemented without going through an institution.

2. *Rahn*

a. Definition of *Rahn*

The pawn in Islam is called *rahn*. The word of *rahn* itself comes from the Arabic language that is “rahana-yarhanu-rahnan” which means determine something.³⁰ In the sense of *rahn* is *al-subut wa al-dawam* which means permanent and

²⁸ Heri Sudarsono, *Bank dan Lembaga Keuangan Syariah: Deskripsi dan Ilustrasi*, (Yogyakarta: Ekonosia, 2003), p. 181

²⁹ Case study research is a type of qualitative research that seeks to find meaning, investigate the process and gain intensive and detailed understanding of an individual, group or situation. Judging from the region, the case study only covers a very narrow area or subject. but in conditions of the nature of the research, case studies are more in-depth. See: Suharsimi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktik*, p. 185

³⁰ Abdul Ghofur Anshori, *Gadai Syariah di Indonesia: Konsep, Implementasi dan Institusionalisasi*, (Yogyakarta: Gadjah Mada University Press, 2006), p. 126

eternal.³¹ While *rahn* understanding is a treasure that is used as debt collateral that can be used as debt payer if the debtor cannot pay the debt.³² Under Article 20 paragraph 14 Sharia Economic Law Compilation (KHES) the definition of *rahn* is the domination of the *rahi>n*'s property by the *murtahin* as a *marhu>n*.³³

According to Wahbah Zuhayli: “to restrain property that can be used as debt repayment, or to repossess the property of the property in the view of the faith” for the trust of a debt thereby allowing to take all or part of the debt from the object “.³⁴

While the definition of *rahn* according to jurists is as follows:³⁵

- 1) Madzhab Maliki: the goods that made by its owner as a *marhu>n* of binding bond
- 2) Madzhab Hanafi: making an item as *marhu>n* for the right of the debt which may be used as the payer of the debt even in whole or in part
- 3) Madzhab Shafi'i and Hanbali: make the goods as a debt collateral that can be used as a payer if the debtor cannot pay the debt

From the description of the above definition, there is no overlap between scholarly opinions about the character of *rahn*.

³¹ Because of this principle, *rahn* is categorized as *tabarru{‘* contract which is a contract of help and not for the purpose of seeking profit. See: Ala'Uddin Za'tari, *Fiqh Al-Mu'amalah Al-Maliah Al-Muqaran*, (Damaskus: Dar Al-Ashoma', 2010), p. 354

³² Louis Ma'luf, *Al-Munjid*, (Beirut: Darul Masyrik, 1986), p. 284

³³ Kompilasi Hukum Ekonomi Syariah (KHES) Pasal 20 Ayat 14, tentang Akad

³⁴ Wahbah Al-Zuhayli, *Financial Transactions in Islamic Jurisprudence*, Translated. Mohammad A. El-Gamal, (Damascus: Dar Al-Fikr, 2002), p. 79

³⁵ Mustafa Imam, *Fiqh Muamalaat Kontemporer*, (Yogyakarta: Kaukaba Dipantara, 2014), p. 164

That is to make the goods as a reinforcement of trust in the receivable transaction. Based on the various definitions above, it can be understood that *rahn* is debit transaction by providing a *marhu>n* to the *murtahin*, whereby the *murtahin* is entitled to sell the *marhu>n* if the *rahi>n* is unable to repay the debts at the maturity time. By note that the sale of *marhu>n* exceeds the amount of debt then the rest must be returned and on the contrary, if it is less the *rahi>n* must pay the deficiency.

b. Legal Basis of *Rahn*

The permissible basis of *rahn* has been regulated in Qur'an, sunnah and ijtihad.³⁶

1) Proof from the Qur'an:

The basis of the law of *rahn* is provided by verse:³⁷

وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنَ مَقْبُوضَةً

“..... If you are on a journey and cannot find a scribe, the use the receipt of pawned object” (as an act of insurance, instead of the proscribed documentation). Based on this verse, the Qur'anic verse mentioned the state of travel to alert people that there is an easy means of documenting a debt if there is no scribe at hand.

2) Proof from the Sunnah is provided by the Hadith.³⁸

حدثنا مسدد : حدثنا عبد الواحد: حدثنا الأعمش قال : تذاكرنا عند إبراهيم الرهن والقبيل في السلف، فقال إبراهيم : حدثنا الأسود، عن عائسة: أن النبي

³⁶ وهبة الزحيلي، المعاملات المالية المعاصرة، الطبعة الأولى، (دمشق: دار الفكر، ١٤٢٢ هـ - ٢٠٠٢ م) ص ٨٢

³⁷ Yazid Afandi, *Fiqh Muamalaat dan Implementasinya dalam Lembaga Keuangan Syari'ah*, p. 148

³⁸ علي حيدر، درر الحكام شرح مجلة الأحكام، الطبعة الأولى، (بيروت: دار الجيل، ١٤٢٣ هـ - ٢٠٠٣ م) ص ٦١

اشترى من يهودي طعاما إلى أجل، ورهنه درعه.^{٣٩}

حدثنا قتيبة: حدثنا جرير، عن الأعمش، عن إبراهيم، عن الأسود، عن عائشة قالت: اشترى رسول الله صلى الله عليه وسلم من يهودي طعاما، ورهنه درعه.^{٤٠}

Aisha says that the Messenger of Allah bought food from a Jew and lent him armor. Based on the hadith we know that pawn has been around since the time of the prophet, even the prophet himself practiced it.

- 3) Muslims have also reached a consensus that pawning is permissible.

About the pawn agreement, the jurists said they are allowed the pawn and they did not have any disagreements about the possibility of pawning. This is because the pawn itself has been practiced since the time of Prophet Muhammad until now and no one opposed it.⁴¹

^{٣٩} أبو عبدالله عبد السلام بن محمد بن عمر علوش، صحيح البخاري، مكتبة الرشد، ناشرون: الرياض، كتاب الرهن، أنظر باب من رهن درعه، رقم الحديث ٢٥٠٩، ج ١، ص. ١٣١٦/٣٣٣

^{٤٠} أبو عبدالله عبد السلام بن محمد بن عمر علوش، صحيح البخاري، مكتبة الرشد، ناشرون: الرياض، كتاب الرهن، أنظر باب الرهن عند اليهود وغيرهم، رقم الحديث ٢٥١٣، ج ١، ص. ١٣١٦/٣٣٣

^{٤١} أبي محمد عبد الله بن أحمد بن محمد بن قدامة المقدسي الجماعيلي الدمشقي الصالحى الحنبلى، المغنى، (الرياض: دار عالم الكتب)، ص ٤٤٤

4) Rules of *Fiqh*⁴²

درأ المفساد أول من جلب المصالح^{٤٣}

Meaning:

“Rejecting the mafsadat is preceded by reaching out to the maslahah”

The rule relevance with the pawn practice is the act done by the *murtahin* must provide benefits. With the guarantee provided by *rahi>n*, the benefits will awaken, the two parties will feel mutually calm and comfortable.

ما أدى إلى الحرام فهو حرام

“what brings to the haram is also illegal”

The rule above explains how the law prohibits an act when in the process it is illegal to do so.⁴⁴ The relevance of this rule with the practice of pawn is that if the intention of *murtahin* at the beginning of pawning is to make money because of the element of interest. Then the process of the practice of pawn is included in the forbidden transaction, because interest in Islamic law is illegal.

العادة محكمة^{٤٥}

“customs (considered in) judged”

Rule explained that not all custom forms that occur in society can be established as law. Customary custom in

^{٤٢} السيد سابق، *فقه السنة*، الطبعة الأولى، (القاهرة: دار الحديث، ١٤٢٠ هـ - ٢٠٠٤ م) ص ٩٣٧

^{٤٣} علي أحمد الندوي، *القواعد الفقهية*، الطبعة الثانية، (دمشق: دار القلم، ١٤١٢ هـ - ١٩٩١ م) ص ١٧٠

⁴⁴ A. Djazuli, *Kaidah-Kaidah Fikh*, (Jakarta: Prenada Media Group, 2006), p. 31

⁴⁵ محمد بكر إسماعيل، *القواعد الفقهية بين الأصالة والتوجيه*، (بيروت: دار المنار، ١٩٩٧ م)، ص ١٥٧

society cannot be justified when contrary to Islamic law.⁴⁶ This is in line with pawn practice, if the pawning that occurs in the middle of the society contains the elements of exploitation then it can be contrary to Islamic law. It is said because of the purpose of a pawn for *ta'awun* and not for the purpose of personal gain.

الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم⁴⁷

“the law of all things is possible until there is a proposition indicating its harm”

The rule above explains essentially the law of all things is *muba>h* except the proposition that causes the activity to be *hara>m*. The forbidden elements reported in the practice of pawn is essentially the element of exploitation in utilizing *marhu>n* by *murtahin*.

ما ثبت بزمن يحكم ببقائه ما لم يوجد دليل بخلافه⁴⁸

“the time appointed, then the law is established based on the time so long as there is no conflicting argument with it “

The rule explains the applicable law based on the prescribed time. The earliest time of pawn is for helping, then in the present time the element of mutual help must be done in accordance with the goal.

⁴⁶ محمد عثمان شبير، القواعد الكلية والضوابط الفقهية في الشريعة الإسلامية، (عمّان الاردان: دار النفائس ١٤٢٨هـ / ٢٠٠٧م) ص ٢٣٣

⁴⁷ محمد صدقي بن أحمد البونو أبوالحارث الغزي، القواعد الفقهية، (لبنان: مؤسسة الرسالة، ١٤٢٤هـ-٢٠٠٣م) ص ١١٥

⁴⁸ محمد صدقي بن أحمد البونو أبوالحارث الغزي، القواعد الفقهية، (لبنان: مؤسسة الرسالة، ١٤٢٤هـ-٢٠٠٣م) ص ٧٠

الأمر بالتصرف في ملك الغير باطل^{٤٩}

“all matters relating to the use and use of the property of others without the permission of the owner are null.”

According to this, the rule explains when *rahi>n* does not approve the utilization of *marhu>n* by *murtahin* then the process of contract is become void. If in its practice, *rahi>n* agrees with the utilization of *marhu>n* with compulsion, then the contract is declared invalid.

لا يجوز لأحد أن يتصرف في مطلب الغير بلا إذنه^{٥٠}

“one cannot use someone else’s property without the permission of his owner”

c. Components and Condition of *Rahn*⁵¹

According to jurists, the components of *rahn* namely:

- 1) *Marhu>n* (pawned goods)
- 2) *Marhu>n bih* (debt)
- 3) *Aqidain* “*rahi>n wal murtahin*” (people who transact)
- 4) *shighat ija>b qabu>l* (agreement)

The condition of *rahn*:

- 1) Condition of *aqid* is intelligent and *mumayyiz*
- 2) Condition of *shighat*

According to Hanafiah, *rahn* cannot be suspended on condition and not backed up to the future. When it is done, then the contract becomes imperfect or *fasid* like the sale and purchase. If the *rahn* is accompanied by an imperfect

^{٤٩} محمد صدقي بن أحمد البونو أبو الحارث الغزي، القواعد الفقهية، (لبنان: مؤسسة الرسالة، ١٤٢٤هـ-٢٠٠٣م) ص ٢٦٩

^{٥٠} محمد صدقي بن أحمد البونو أبو الحارث الغزي، القواعد الفقهية، (لبنان: مؤسسة الرسالة، ١٤٢٤هـ-٢٠٠٣م) ص ٥٣

⁵¹ Dumairy, *Gadai Syariah di Indonesia*, (Yogyakarta: Gadjah Mada University Press, 2006) p. 91

condition then his law is legal but the condition is nullified because *rahn* is not a *mu'awadhah maliyah* contract. The condition associated with *rahn* law elaborated into four parts:⁵²

- a) When the condition in accordance with the purposes of the contract, then the contract and condition of *rahn* its valid
- b) when the condition is not consistent and there are no beneficiaries, then the contract of pawn is valid but its condition is canceled
- c) When the condition is adverse *murtahin* and favorable *rahi*>*n*, such *marhu*>*n* cannot be sold at maturity, it is to be invalid contract and condition
- d) When condition favorable *murtahin* and adverse *rahi*>*n*, such as the benefits of *marhu*>*n* can be taken by *murtahin*, the law is in dispute. In a general opinion, the conditions and legal conditions of the law are null because of the conditions contrary to the purpose of the contract. Some also argue that the conditions are null, because the pawn is *tabarru'* contracts, so it is not affected by the imperfect requirements.

In essence, if the condition did not contradict the purpose of the contract then the law is valid. Whereas if the condition is contradicting the purpose, then the conditions are imperfect and the contract can be canceled.⁵³

⁵² Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, (Yogyakarta: Deepublish: 2015), p. 92-96

⁵³ وحيد بن عبد السلام باهي، قوانين الشريعة الإسلامية، الطبعة الأولى، (الأزهر: دار التقوى، ١٤٣٤ هـ - ٢٠١٣ م) ص ٩٩

3) Conditions of *Marhu>n*

Based on the agreement of the jurists, the conditions that apply to *marhu>n* are same as the conditions of the sale and purchase object. Because *marhu>n* must be traded by *murtahin* when *rahi>n* unable to pay its debts. Related to the condition of the jurists, there are several opinions among the jurists, namely:⁵⁴

- a) According to Shafi'i all goods can be sold as follows:
 - (1) The real manifest, so it can be handed over directly
 - (2) The goods are ownership of *rahi>n*, because if not to be ownership, the goods cannot be pawned
 - (3) The pawned goods status should be as receivables for *murtahin*.
- b) According to the Maliki, category of *marhu>n* in the view of Islam not only applies to movable goods but also the types of immovable goods, where the goods can be sold.

So based on the above statements, it can be understood that the type of *marhu>n* that can be used as collateral is all of movable or immovable goods⁵⁵ with the provisions of the goods can be sold.⁵⁶ The provisions of *marhu>n* that can be used as general collateral must meet the following requirements:⁵⁷

- a) The goods are real and tangible
- b) The goods are valuable, *hala>l*, affordable and can be

⁵⁴ وحيد بن عبد السلام باهي، قوانين الشريعة الإسلامية، الطبعة الأولى، (الأزهر: دار التقوى، ١٤٣٤ هـ - ٢٠١٣ م) ص ١٠٠

⁵⁵ Ahmad Wardi Muslich, *Fiqh Muamalat*, (Jakarta: Amzah, 2017), p. 292

⁵⁶ الإمام جلال الدين عبد الرحمن السيوطي، الأشباه و النضائ في قواعد وفروع فقه الشافعية، (الرياض: مكتبة نزار مصطفى الباز، ١٤١٨ هـ - ١٩٩٧ م) ص ٢٠٩

⁵⁷ Adrian Sutedi, *Hukum Gadai Syariah*, p. 39

stored and utilized⁵⁸

- c) The goods are legally owned
 - d) The goods must be submitted during the transaction
 - e) The goods must be traded
 - f) The goods shall be intact and not in a separate state
 - g) The goods pawned should be complete with the substance. It is unlawful to pawn the fruits without mastering the tree.
 - h) The goods charged must be separate from the other's property. It is mean the goods not shared. Therefore, it is not allowed to pawn half of the house, while the other half is another's owned.
- 4) Condition of *Marhu>n Bih*⁵⁹
- a) *Marhu>n bih* should be a right that must be delivered to its owner
 - b) The rights of *marhu>n bih* should be clear and not vague
 - c) *Marhu>n bih* should be a fixed debt
 - d) The debt is binding on both the present and future
 - e) The debt should be clear and determine the rate for the parties who did the contract.

d. Position of *Marhu>n*

Marhu>n as a mandate that must be kept by *murtahin* during entrusted to him. In order to safeguard the security of the goods, it may go through a third party. However, some parties view this unauthorized, as one of the legitimate conditions of a pawn agreement is a *marhu>n* being given immediately to *murtahin* and not to a third party.⁶⁰

⁵⁸ Muhammad Sholikul Hadi, *Pegadaian Syariah*, p. 57

⁵⁹ علاء الدين زعتري، *فقه المعاملات المالية المقارن، الطبعة الأولى*، (دمشق: دار العصماء، ١٤٣٢ هـ - ٢٠١٠ م) ص ٣٥

⁶⁰ السيد سابق، *فقه السنة، الطبعة الأولى*، (القاهرة: دار الحديث، ١٤٢٠ هـ - ٢٠٠٤ م) ص ٩٣٧

e. The Risk of *Marhu>n* Damage

There are two opinions about it, *first* when *murtahin* as trustee had kept *marhu>n* as best as possible, then the damage occurred accidentally or caused not by the negligence of *murtahin* so according to the Shafi'i and Hanbali *murtahin* not bear the risk of damage. However according to Hanafi, *murtahin* still bears the risk of minimum price of *marhu>n*. *Second*, when the damage of *marhu>n* caused by negligence of *murtahin*, all jurists agree that *murtahin* bear the risk for such damage.⁶¹

f. Assessment of *Marhu>n*

Marhu>n assessment is categorized into two categories of moving and non-moving goods. The provisions are as follows:⁶²

Movable goods

- 1) *Murtahin* saw the prevailing pricing standards when estimating the goods
- 2) *Murtahin* adjusts the price developments
- 3) *Murtahin* performs the quality test of *marhu>n*
- 4) *Murtahin* decondition the valuation value of the collateral

Immovable goods

- 1) *Murtahin* ask for information or document of land to *rahi>n* to know the general description of *marhu>n*
- 2) *Murtahin* saw directly or indirectly the condition of *marhu>n*
- 3) *Murtahin* doing quality testing of *marhu>n*
- 4) *Marhu>n* determine the assessment of the value

⁶¹ الإمام أبي محمد الحسين بن مسعود بن محمد بن الفراء البغوي، التهذيب، الطبعة الأولى، بيروت: دار الكتب العلمية، ١٤١٨ هـ - ١٩٩٧ م) ص ٤

⁶² Muhammad Sholikul Hadi, *Pegadaian Syariah*, p. 54

g. Time and Authorization of *Marhu>n*

The execution time of the contract is after or at the same time as the debts progress. This is what the Messenger of Allah (pbuh) did when he owed the wheat to a Jew.⁶³ Therefore, if the *rahi>n* has not handed the *marhu>n* to the *murtahin*, it is to be an invalid contract.⁶⁴ As Allah said: “There should be a burden held” (QS Al-Baqarah: 283).

h. Rights and Obligations of *Rahn*⁶⁵

- 1) The Rights of *Murtahin*
 - a) *Murtahin* right to sell *marhu>n* when *rahi>n* cannot fulfill its obligations at maturity. Then proceeds of the sale of *marhu>n* is taken and if there is an excess it is returned to *rahi>n*
 - b) *Murtahin* entitled to get replacement fee that has been incurred to maintain *marhu>n*
 - c) As long as *marhu>n* *bih* has not been paid, *murtahin* entitled to hold back *marhu>n*.
- 2) The Obligation of *Murtahin*
 - a) *Murtahin* obliged to be responsible if the damage or loss of *marhu>n* caused of *murtahin*
 - b) *Murtahin* not allowed to use *marhu>n* for personal gain
 - c) *Murtahin* obliged to notify *rahi>n* before carrying out the *marhu>n* auction
- 3) The Rights of *Rahi>n*
 - a) *Rahi>n* entitled to get *marhu>n* back after pay off *marhu>n* *bih*
 - b) *Rahi>n* entitled to claim compensation of damage or loss of *marhu>n*, when it is caused by negligence of

⁶³ Muhammad Sholikul Hadi, *Pegadaian Syariah*, p. 56

⁶⁴ Adrian Sutedi, *Hukum Gadai Syariah*, p. 53

⁶⁵ Adrian Sutedi, *Hukum Gadai Syariah*, p. 55

murtahin

c) *Rahi>n* entitled to get the rest of the sale of *marhu>n* after deducting redemption fees and other fees

d) *Rahi>n* have the right to take *marhu>n* when *murtahin* was clearly abusing *marhu>n*.

4) The Obligation of *Rahi>n*

a) *Rahi>n* is obliged to pay *marhu>n bih* that has received from *murtahin* within the time limit, including other costs

b) *Rahi>n* is obliged to give up sales of *marhu>n* when the *rahi>n* could not pay *marhu>n bih* to *murtahin*.

i. Utilization of *Marhu>n*

Pawn practice have a high social value. But in the fact some people feel disadvantaged, so in the society, the concept is judged unfair. Where the *murtahin* felt harmed, such as inflation, long repayment, while collateral is not executed. On the other hand, collateral goods (*marhu>n*) can be benefited. In addressing the problems in the use of *marhu>n* the opinion of legal experts on *marhu>n* cannot be used by either *rahi>n* as owner or *murtahin* as mandate holders unless it obtains permission and approval of both parties.⁶⁶ The rights of *murtahin* here just to hold back *marhu>n* and no right to take the benefit. It's same to *rahi>n*, as long as *marhu>n* in the hand of *murtahin*, then *rahi>n* may not use it. Such a provision occurs when nothing happened between the two parties. There is a description of the possibility of utilizing of *marhu>n*. Here some of jurists have a different opinion, as follows:

⁶⁶ Ahmad Isa Asyur, *Fiqih Islam Praktis: Bab Muamalaat*, (Pustaka Mantiq), p. 53

1) Shafi'i⁶⁷

According to Shafi'i jurists despite the position of *marhu>n* under the authority of *murtahin*, the benefits of *marhu>n* belong to *rahi>n* and *murtahin* is not entitled to the benefit of the *marhu>n*.⁶⁸ The opinion of the Shafi'i is:

a) First, the hadith of the prophet Muhammad (pbuh)

means: "From Abu Hurairah of the Prophet Muhammad (pbuh), He said: *The pawn does not cover the owner from the benefit of goods, the benefits belong to him, and he is obliged to assume all (damage and costs)*". (Narrated by Asy-Syafi'i and Darulquthny and he said that it *sanad* is Hasan and continued).

The content of the hadith explains that *rahi>n* entitled to benefits *marhu>n* during *rahi>n* bear everything of *marhu>n*.

b) Second, the hadith of Prophet Muhammad (pbuh):⁶⁹

Meaning: "From Abu Hurairah, he said, the Messenger of Allah said. Which means: "*marhu>n can be ridden and squeezed*".

The hadith understood that the party entitled to use the *marhu>n* or in the hadith (riding and milking) is *rahi>n*.

Based on the above hadith, syafi'iyah argues that the *marhu>n* is nothing but a guarantee. The ownership and benefits of *marhu>n* remains the property of *rahi>n*.

⁶⁷ Adrian Sutedi, *Hukum Gadai Syariah*, p. 62-63

⁶⁸ Muhammad Aqil Haidar, *Memfaatkan Barang Gadai Bolehkan*, (Jakarta: Rumah Fiqih Publishing, 2019), p. 27

⁶⁹ أبي محمد عبد الله بن أحمد بن محمد بن قدامة المقدسي الجماعيلي الدمشقي الصالحى الحنبلى، *المغنى*، (الرياض: دار عالم الكتب)، ص ٥١٥

2) Maliki⁷⁰

Malikiyah jurists believe that everything produced by *marhu>n* is the *rahi>n*'s rights. The advantage is the *rahi>n*'s right as long as *murtahin* does not require. However, if *murtahin* requires the *marhu>n* for him, it happens with the following condition:⁷¹

- a) Payables for purchase. As a person sells goods that are paid in goods form, then the person asks for a pawn with an item in accordance with his debt, it is permissible
- b) *Murtahin* requires that the benefits of *marhu>n* belong to him
- c) Duration in making the benefits have been determined. If it is unknown and there is not a time limit specify then it becomes null.

The reason for Malikiyah opinion about the *murtahin*'s right is just to restrain the *marhu>n* is same as the reason of Syafi'iyah namely hadith Abu Hurairah and Ibn Umar.

3) Hanabillah⁷²

Hanabilah are more concerned with *marhu>n*, that is animals or non-animals, since animals are distinguished between animals that can be squashed or ridden and cannot be milked or ridden.

Today's condition, the *marhu>n* of the animal precisely equated by the vehicle. Equitable illusion is that animals and vehicles are equally as capable of being ridden. And for animals that can be milked he was illustrated with

⁷⁰ علاء الدين زعتري، فقه المعاملات المالية المقارن، الطبعة الأولى، (دمشق: دار العصماء، ١٤٣٢ هـ - ٢٠١٠ م) ص ٣٥٩

⁷¹ Adrian Sutedi, *Hukum Gadai Syariah*, p. 41

⁷² علاء الدين زعتري، فقه المعاملات المالية المقارن، ص ٣٥٩

the use of the vehicle for the produce, on condition that it does not damage the vehicle. The thing that can be likened to the cause is the result, when the animal result in milk, the vehicle results in money.

The condition of *murtahin* to take benefit of non-animals are:

- a) There is a permit from the *rahi>n*
- b) The pawn transaction is not caused by debt

While the *marhu>n* is cannot be milked and ridden, then the goods are divided into 2 parts:

- a) If *marhu>n* is an animal, then made as *khadam*
- b) When *marhu>n* is not an animal, such as a house, a rice land, a garden and it is kind, they cannot take advantage of it.

The reason of Hanabilah opinion are: *Firstly*, the ability of *murtahin* to take the benefit from *marhu>n* that can be ridden and milked is in the hadith of Prophet Muhammad:

حدثنا محمد بن مقاتل : أخبرنا عبد الله: أخبرنا زكرياء، عن الشعبي، عن أبي هريرة قال: قال رسول الله صلى الله عليه وسلم : الرهن يركب بنفقته إذا كان مرهونا، ولبن الدر يشرب بنفقته إذا كان مرهونا، وعلى الذي يركب ويشرب النفقة.^{٧٣}

Abu Hurayrah he said, the prophet (pbuh) said: “goods pawned ridden because of his living, if he pawned and milk was drunk, with his livelihood when pawned and for those who rode and drank milk must pay for it.” (Narrated

^{٧٣} أبو عبد الله عبد السلام بن محمد بن عمر علوش، صحيح البخاري، مكتبة الرشد، ناشرون: الرياض، كتاب الرهن، أنظر باب باب الرهن مركوب ومحلوبو ، رقم الحديث ٢٠١٢، ج ١، ص. ١٣١٦/٣٣٣

by Bukhari(

Other used as the excuse of *murtahin* to benefit the *marhu>n* is the hadith of the Prophet (peace be upon him) that was narrated by Hammad, “From Hammad bin Salamah he said, said the Prophet (pbuh): *If a goat was pawned, then those who received pawns may drink their milk according to the level of giving their food, if drinking milk exceeds the price of giving it, it includes usury*”.

The hadist allowed the *murtahin* to use the *marhu>n* for the sake of permission from the *rahi>n*, and the value of the use must be adjusted to the costs incurred for the *marhu>n*.⁷⁴

Secondly, it is not permissible for *murtahin* to take the benefits of *marhu>n* apart from the items that can be ridden and milked according to the following hadith: “From Abu Hurairah ra from the Prophet (pbuh), he said: *the pawn would cover the one from the benefits of the goods, avail him and he must be responsible for everything* (Narrated by Bukhari)

The hadiths that were used as the basis for the inability to take advantage of the *marhu>n* by the *murtahin* were the same as those used by the Shafi’i, Maliki and other jurists.

4) Hanafiyah⁷⁵

According to this scholar there is no difference between the use of *marhu>n* which results in a lack of price or not. Then when *rahi>n* allow then *murtahin* legitimately takes advantage of *marhu>n*. Following are the reasons for

⁷⁴ Muhammad Aqil Haidar, *Memfaatkan Barang Gadai Bolehkan*, (Jakarta: Rumah Fiqih Publishing, 2019), p. 28

⁷⁵ Ade Sofyan Mulazid, *Kedudukan Sistem Pegadaian Syariah*, p. 45

Hanafiyah jurists related to the utilization of *marhu>n*:

First, based on the hadith of Prophet (pbuh): “From Abu Shalih from Abu Hurayrah, actually the Prophet SAW said: Guaranteed debt can be ridden and milked and on the basis of riding and milking the milk must provide support” (Narrated by Bukhari).

Because *marhu>n* is in the hands of *murtahin*, the obligation to provide for *marhu>n* is in *murtahin*. Therefore, Hanafiyah jurists argue that those who have the right to take advantage of *marhu>n* is *murtahin*.

Second, based on mind reason. When viewed from the function, then the status of *marhu>n* as collateral and trust *murtahin*, then *marhu>n* dominated by *murtahin*. In this case, the opinion of the Hanafiyah scholar are:

If *marhu>n* is controlled by *rahi>n*, the collateral is meaningless. Whereas if the *marhu>n* is left unused by *murtahin*, it means removing the benefits of the *marhu>n*, if the *marhu>n* requires maintenance costs.

Then if at any time *rahi>n* must come to *murtahin* to maintain and take advantage of it. This will bring harm to both parties, especially to the *rahi>n* party. Likewise, if *Murtahin* has to maintain and deliver the benefits of the pawn to *rahi>n* this is equally dangerous. Thus, it is the *murtahin* who has the right to utilize the *marhu>n* because it is the *murtahin* who maintains and holds the item as collateral.

So here, Hanafiyah jurists suggest that those who have the right to use *marhu>n* is *murtahin*. For reasons because *marhu>n* has been maintained by *murtahin* and is under his control.

j. Riba in *Rahn*⁷⁶

Pawn contract is basically a debt agreement, the only difference is the guarantee. In its own pawn transaction, usury will occur if the pawn agreement is determined that *rahi>n* must provide additional funds to the *murtahin* when paying off the debt. Another reason is that if *rahi>n* is unable to pay his debt until maturity, then he will sell the *marhu>n* by not giving the excess price of *marhu>n* to *rahi>n*. This kind of thing if it occurs in a pawn transaction, then usury is in effect in the pawn.

k. Ending of *Rahn Contract*⁷⁷

Marhu>n is a mandate of *murtahin*, where *murtahin* is not obliged to ask for a change unless it has passed the deadline. *Rahn*'s contract was declared ended if:

- 1) Pawn items are handed over to their owners with their own endeavors
- 2) *Rahi>n* has paid off all of his debts
- 3) The agreed repayment time is due
- 4) Guaranteed goods are sold at the judge's command from *rahi>n* 's request
- 5) Cancellation by *murtahin*, even though there is no agreement from *rahi>n*
- 6) The damaged goods without the cause
- 7) Utilizing of *rahi>n* goods by leasing, granting or alms even from *rahi>n* and *murtahin*

⁷⁶ علاء الدين زعتري، فقه المعاملات المالية المقارن، ص ٣٥٩
⁷⁷ وهبة الزحيلي، المعاملات المالية المعاصرة، الطبعة الأولى، (دمشق: دار الفكر، ١٤٢٢ هـ - ٢٠٠٢ م) ص ٨٥

3. *Rahn* as *tabarru{‘}* contract

Tabarru{‘} contract is very important to be implemented in the implementation of pawn. It was stated as such because the essence of *tabarru{‘}* as a contract of help was in harmony with the purpose of the implementation of pawning carried out by society. Another reason is that in Islam *rahn* is a contract that is carried out without compensation in return for the purpose of mutual help with goodness and devotion.⁷⁸

Tabarru{‘} contract is categorized as a nonprofit contract.⁷⁹ *Tabarru{‘}* contract is not intended to seek commercial profits in business transactions. This is very appropriate if applied in the implementation of a pawn with the aim to help others not to seek profit as it is now. Based on this, there are two problems if it is associated with *rahn*:⁸⁰

- a. The reason people do *rahn* is because that they really need money to fulfill their living needs or urgent needs, so using paddy land as a guarantee to convince *murtahin* to lend money.
- b. *Murtahin* who has over-funded deliberately look for pawned paddy land for the sole purpose of seeking profit. So, with the *tabarru{‘}* contract, it is expected that this will not happen. So that *murtahin* does not apply as a usurer in carrying out the pawn.

Tabarru{‘} contract is an agreement in which the party does not have the right to impose any condition on other parties. Then the reward obtained by *murtahin* in the *rahn* contract is basically from Allah SWT. *Tabarru{‘}* contract is purely a contract of mutual help

⁷⁸ Hendi Suhendi, *Fiqh Muamalaat*, (Jakarta: PT RajaGrafindo Persada, 2016), p. 111

⁷⁹ Enang Hidayat, *Transaksi Ekonomi Syariah*, (Bandung: PT Remaja Rosdakarya, 2016), p. 199

⁸⁰ Ala'Uddin Za'tari, *Fiqh Al-Mu'amalah Al-Maliah Al-Muqaran*, (Damaskus: Dar Al-Ashoma', 2010), p. 354

in kindness so this contract cannot be changed into a commercial contract.⁸¹

Tabarru{‘ is a contract that is solely intended to expect a reward from Allah. That is why the *tabarru{‘* contract has not aimed a profit. That way, if the *tabarru{‘* contract is done to look for commercial profits then this contract is no longer called *tabarru{‘* but instead turns into a commercial contract. If the contract wants to continue to use the *tabarru{‘* contract, then it may not benefit from the *tabarru{‘* contract. Conversely, if what is desired is to make a profit, then use commercial contracts.⁸²

Therefore, there are several principles that must be considered in the *tabarru{‘* contract, including the following:⁸³

a. Principles of unity

As explained in the word of Allah al-Baqarah verse 177: *“It is not a virtue to bring your face to the east and west, but in truth it is faith in Allah, the day after, angels, books, prophets and giving the wealth he loves to his relatives, orphans, poor people, travelers (who need help) and beggars; and (liberating) slaves, establishing prayers, and performing zakat; and those who keep their promises when they promise, and those who are patient in pain, suffering and in war. They are the righteous (faith); and they are the ones who fear “.*

Based on the verse, it is very clear that helping as an element of goodness in the *tabarru{‘* contract is a principle of unity and wisdom. The unity principle in the *tabarru{‘* contract is a principle that states that in each act must refer to divine values. The unity principle is the basis of all human actions in making relation.

⁸¹ See: Arif Fauzan, “Prinsip *tabarru{‘* Teori dan Implementasi di Perbankan Syariah”, *Jurnal Al-Amwal*, Vol. 8. No. 2, 2016, p 5

⁸² Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 113

⁸³ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 121-124

Likewise, in the implementation of *rahn*, a *murtahin* must believe that Allah as the *khaliq* and man is his caliph in the earth where every behavior is known and will be accountable before Him. This is a manifestation of human faith as a servant of Allah. By believing in the principle of unity, the *murtahin* will not be able to do usurer or other actions that can harm other people.

b. Principles of justice

One of the objectives of the revelation of the Qur'an is to bring justice to all humanity. Justice is ordered to be enforced while the opponent is tyranny which is an act that is prohibited by Islam. With the upholding of justice, it is the same as destroying tyranny.

The principle of justice in *tabarru*{' contract which is applied in the implementation of pawn land is realized by fulfilling the rights and obligations of *rahi>n* and *murtahin*. Basically, other forms of justice can be applied in every transaction carried out by both parties. One application of the principle of justice in pawn is when *murtahin* utilizes the land that are used as collateral by *rahi>n*, then not all profits will be enjoyed by *murtahin*, but this benefit should also be given to the *rahi>n*. This is because there is a right that must be given to *rahi>n* as the main owner of the land.⁸⁴

c. Principle of Mandate

In the implementation of the pawn agreement, both *rahi>n* and *murtahin* are parties who both hold the mandate. The land that are pawned are the mandate of the *rahi>n* party which must be guarded by the *murtahin*. While the money lent is a mandate from the *murtahin* to *rahi>n* which must be returned. For example, the mandate principle in the *tabarru* contract can be realized by the *rahi>n* party in carrying out the pawn by

⁸⁴ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, (Yogyakarta: Deepublish: 2015), p. 121

giving information when it is able to return the loan money. So here when *rahi>n* has been able to restore, *rahi>n* may not pretend or prolong the time of return against *murtahin*. If that is the case, then the information has mixed with lies. This has violated the mandate principle and is considered not to have good intentions in implementing the *tabarru{‘* contract. While the embodiment of the mandate principle by the *murtahin* is realized by safeguarding collateral. Then it is not permissible to do something that can harm the *rahi>n*.⁸⁵

d. Principles of mutual help (ta’a>wun)

Ta’a>wun can be interpreted as helping each other or working together. In the *tabarru{‘* contract, the principle of helping becomes the main character in its purpose to alleviate the difficulties of others. The principle of mutual help between creatures is based on social beings who will never be able to live alone without the help of others, therefore this principle must exist for everyone.⁸⁶

4. Bay’ Al-Wafa’ as a Concept of Land Pawn in Islam

a. Definition of *bay’al-wafa’*

According to the language the definition of al-bai ‘is buying and selling. Whereas *al-wafa’* according to language means the opposite of betrayal. Thus الوفاء is the same as أوفي that has the definition of fulfilling a promise.⁸⁷ The contract is called *bay’al wafa’* because in the contract there is a necessity for the buyer to keep the promises that have been agreed with the seller, namely the promise to resell items that have been purchased to the seller (owner).⁸⁸

⁸⁵ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 121

⁸⁶ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 122

⁸⁷ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 123

⁸⁸ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 124

Whereas according to the condition *bay'al-wafa'* is interpreted as follows:⁸⁹

البيع بالشرط أن البائع متى رد الثمن يرد المشتري المبيع اليه

“Buy and sell on the condition that the seller can buy back the goods he has sold to the buyer at a mutually agreed time»

أن يبيع المحتاج الى النقد عقارا على أنه متى رد الثمن استرد العقار المبيع

“Someone who sells immovable goods ('aqar) for example land - in cash, then at the appointed time he buys it back at the original price”.

From some definitions above, it can be understood that *bay'al-wafa'* is a contract of a contract in the form of a sale transaction with the requirement that the goods sold can be bought back by the seller if the specified time period has arrived.

b. History of *bay'al-wafa'*

Bay'al-wafa' first appeared in the 5th century Hijri in Bukhara and Balkh. At that time, many creditors did not want to lend money without any compensation received. While many debtors are unable to pay off their debts because they have to repay the loan and the additional. On the other hand, according to *fiqh* jurists, all forms of additional or reward is given on the basis of lending money are usury. For this reason, the people of Bukhara and Balkh engineered this form of buying and selling with *bay'al-wafa'*. So that the new form of buying and selling namely *bay'al-wafa'* is used as a solution so that the needs of the society can be fulfilled as well as the wishes of rich people.⁹⁰

⁸⁹ Enang Hidayat, *Transaksi Ekonomi Syariah*, p. 200

⁹⁰ Abdullah al-Muslih dan Shalah ash-Shawi, *Ma La Yasa' at-Tajira Jahluhu*, Cetakan ke-4 (Jakarta: Darul Haq, 2013) p. 128

Subsequent developments took place at the time of the compilation of Al-Ahkam Al-Diyyah Magazine (codification of Ottoman Turkish civil law in 1287 AH) where Bay al-Wafa 'had become the custom of the people and went well. At that time *bay'al-wafa'* for the community Bukhara and Balkh, made as one of the separate chapters covering 9 chapters, namely articles 118-119 and chapters 396-403. Furthermore, Al-Ahkam Al-Diyyah Magazine was applied to all Ottoman territories on the 23rd of Sya'ban 1293 H.⁹¹

This development continued when Egypt compiled the Civil Code Act in 1948. At that time *bay'al-wafa'* was legally recognized with the inclusion of *bay'al-wafa'* in article 430. However, the article for *bay'al-wafa'* is no longer included after a revision in 1971. Something similar happened to the Syrian Civil Code (al-Qanun al-madani al-Suri) where *bay'al-wafa'* was included in article 433. The article was finally abolished by the Syrian government following the policy carried out Egypt.⁹²

c. Concept of *Bay'al-Wafa'*

In the concept of *bay'al-wafa'* the form of transaction has two dual formats, namely one side of the contract is buying and selling, but on the other hand the contract is the pawn. However, the pawn agreement is more dominant in its application. As Ahmad Al-Zarqa stated, *bay'al-wafa'* description is as follows:⁹³

- i. In it there is a law of sale and purchase, where after carrying out the contract the buyer has the right to own and utilizes the purchased item.
- ii. There is the law of *rahn* as follows:

First, the buyer does not have the right to transfer

⁹¹ Enang Hidayat, *Transaksi Ekonomi Syariah*, p. 201

⁹² Enang Hidayat, *Transaksi Ekonomi Syariah*, p. 202-203

⁹³ Nasru Harun, *Fiqh Muamalaat*, (Jakarta: Gaya Media Pratama, 2007), p. 157

ownership to other people in any way. The buyer must maintain the purchased item.

Second, the buyer is required to resell the purchased item at the time specified to the seller at the original price according to the conditions agreed upon in the agreement. *Third*, the merchandise is not allowed to be used as a *syuf'ah* item (ownership of the item is in association with another person), because the item will be returned to the original seller.

Fourth, if the buyer needs maintenance costs for the item, then the financing is left to the seller, because ownership remains with the seller.

Fifth, the goods that are traded on the status are collateral items that are in the hands of the buyer. In other words, if the item is damaged in the hands of the buyer, then he must be responsible for replacing it. As happened in the pawned goods, if the *marhu>n* is damaged in the hands of *murtahin*, then the *murtahin* is responsible for the damage to *marhu>n*.

d. Agreement on *Bay'al-Wafa'*

In its implementation, there are 3 contracts, namely:⁹⁴

- i. Including a buy and sell agreement,⁹⁵ because in a transaction the contract used is buy and sell agreement proven through the *ija>b qabu>l*.
- ii. Transactions in the form of an *ija>rah* contract (leasing)⁹⁶, because the land sold at the specified time and must be resold to the original seller.

⁹⁴ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 142

⁹⁵ Susiawati, Wati, "Jual Beli Dalam Konteks Kekinian", *Jurnal Ekonomi Islam*, (Vol. 8, No.2, 2017), p. 172

⁹⁶ An *ijarah* transaction is a transaction based on the displacement of benefits not ownership. See: Ita Rofiqah, "Analisis Penerapan Akad Ijarah Pada Produk Pembiayaan Multijasa Barokah Di BMT UGT Sidogiri Cabang Seririt", *e-journal Jurusan Pendidikan Ekonomi*, (Vol. 10, No. 2, 2017), p. 3

- iii. This transaction is in the form of a *rahn* (pawn) contract. Because at the time of maturity, the seller must return the money to the buyer by buying back the land and the buyer must return the land by selling it at the original price to the seller.
- e. Components and condition of *Bay'Al-Wafa'*

Components and conditions on *bay' al-wafa'* are the same as those on buying and selling. *Ija>b* and *qabu>l* become a component in the purchase and sale contract. While the party, the goods purchased and the price of goods do not include the components but include the condition of buying and selling. The conditions of the *bay' al-wafa'* are generally the same as the conditions of purchase and sale. The difference in *bay' al-wafa'* contract is the goods must be sold back by the seller.
- f. Difference between *Bay'Al-Wafa* and *rahn*⁹⁷
 - i. In the *rahn* contract, the buyer does not have the goods because it must be returned to the seller, while in *bay' al-wafa'* the goods are buyer's property during the agreed time period
 - ii. In *rahn* contract, if the *marhu>n* is damaged because of the buyer, it is to be the responsibility of *marhu>n* holder. While in *bay' al-wafa'*, it becomes the responsibility of the buyer if the goods damage totally.
 - iii. In *rahn* all costs needed in the maintenance of goods (*marhu>n*) are the responsibility of the goods owner. Whereas in *bay' al-wafa'* the maintenance costs are the responsibility of the buyer during the agreed time period.

⁹⁷ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, (Yogyakarta: Deepublish: 2015), p. 142-143

g. Opinion of Jurists Related to *Bay 'Al-Wafa'* Law

Bay' al-wafa' when viewed from the characteristic and substance is *Rahn*. The majority of jurists stated that *bay' al-wafa'* is a form of the pawnshop. This opinion is based on the similarity of the law applied in the practice of pawning. The problems that have been debated by *fiqh* jurists in *bay' al-wafa'* are as follows:⁹⁸

- i. Jurisprudence scholar of *Madzahibul Arba'ah* agreed to the pawning transaction provided that the *murtahin* was not excessive in taking advantage. If the money has been lent to *rahi>n* in managing the land, then it should be returned to *rahi>n*. So here if *bay' al-wafa'* is legalized to replace the pawnshop and the profit earned, the holder remains in the category of usury because it can utilize the fully guaranteed land.
- ii. Profits in *bay' al-wafa'* are very promising and multiply. One of the reasons that makes people interested in doing *bay' al-wafa'* itself is because in helping there are condition that must be fulfilled *rahi>n* namely *murtahin* can use the land as a whole and the overall benefit belongs to *murtahin* without the slightest bit. This basically has led to *murtahin* in the behavior of usurer.
- iii. *Bay' al-wafa'* does not reduce the property rights of *rahi>n*, where *rahi>n* can get the goods back in its entirety, this is acknowledged as the truth. But for the buyer, the status of having the goods that have been purchased is only limited to being able to be worked on. Then it can be understood the peculiarities in the form of *bay' al-wafa'*. Unusual occurrence here that causes *bay' al-wafa'* to be categorized as a strange sale and purchase.

⁹⁸ Nasru Harun, *Fiqh Muamalaat*, p. 155

Then what happened to *bay' al-wafa'* was to use a sale and purchase contract (*bay'*) but when *rahi>n* would take the item back using the pawn rules. Here there is a transfer of the subject matter from the *bay'* contract then the item is taken back using the *rahn* contract. Regarding the law of *bay' al-wafa'* itself, there are jurists who agree and disagree with the following reasons:⁹⁹

- 1) The jurists who agree with this contract (Abu Hanifah and Imam Shafi'i) Recognizing that the transfer of a sale and purchase transaction debt to a pawn is valid. With the reason that what must be considered in the contract is an agreement agreed by both parties.
- 2) The jurists who do not approve the contract (Imam Hanbali and Maliki) Expressing disagreement regarding the transfer of contract rules from *bay' al-wafa'* to *rahn*, or vice versa. The main reason stated is, because all transactions are declared valid if the contract is true and validity is deconditioned by the agreement of both parties. Thus *bay' al-wafa'* cannot be said by *rahn* and vice versa, because both are different contracts and cannot be equated.

In this case, the seller and buyer have double status. On the one hand the seller as *rahi>n* also as *ba'i*, as well as the buyer the status as *murtahin* but on the other hand also as *musytari*. In short, the first party as a seller and *rahi>n*, while the second party as a buyer and *murtahin*. This is made *bay' al-wafa'* has multi dimensions between buy/sale and pawn. Furthermore, *bay' al-wafa'* cannot be justified on the grounds that:¹⁰⁰

⁹⁹ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 142-143

¹⁰⁰ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 146

- 1) In the sale and purchase agreement, is not justified a grace period for returning goods, because buying and selling is a contract that transfer ownership rights from the seller to the buyer.
 - 2) In the sale and purchase agreement there must not be a condition that requires the goods to be sold back to the first seller.
 - 3) The form of this buying and selling was never found at the time of the Prophet Muhammad or *shohabah*.
 - 4) The type of this sale and purchase is an engineer that is not in line with the conditions of sale and purchase in Islam.
 - 5) When the seller returns money to the buyer after maturity, the buyer is obliged to give the goods to the seller.
- h. Pawn provisions in *Bay 'Al-Wafa'*

Here are some things that must be considered in the provisions of *bay' al-wafa'* which apply the rules of pawn:¹⁰¹

i. Unfull ownership (bay 'al-naqs)

After the contract is implemented, the pawned goods document is still held by the seller, while the goods are managed by the buyer with the condition that all profits belong to the buyer. From the explanation, it can be understood that both have the same status, that is, they do not have the full status (milku tamm) but (milku naqs).

ii. Authority status

Not allowed in *bay' al-wafa'* make changes to the status of goods that have been purchased unilaterally, this is different from the rules in the pawn that allow *murtahin* to sell *marhu>n* if it has not been redeemed by *rahi>n* for a long time. In *bay' al-wafa'*, changing status as such is

¹⁰¹ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 147

included in the violation, because it is stated to have come out of the original concept and eliminates the essence of *bay' al-wafa'* itself.

iii. Costs incurred in maintaining *marhu>n*

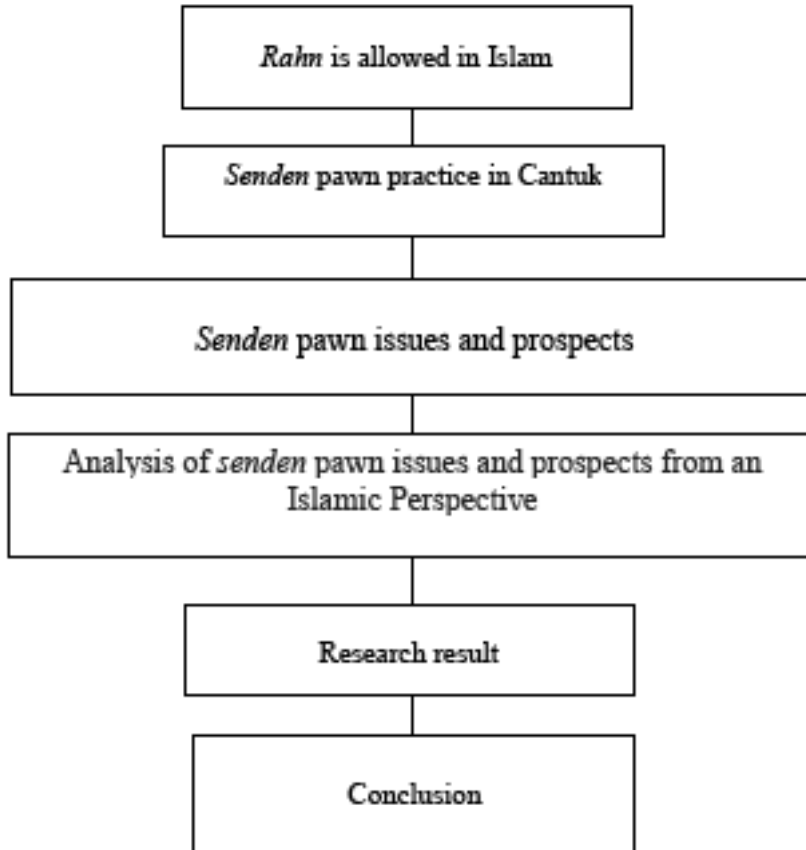
In *bay' al-wafa'* during *marhu>n* managed by the buyer, the maintenance costs are the responsibility of the buyer. While if there is damage caused by the deliberate or negligence of the buyer, then it is the buyer's obligation to finance the repairs. In conditions of financing and maintaining *marhu>n*, Imam Hanafi divides it into 3 types, namely, the fund of *marhu>n* integrity, productivity costs, and unexpected costs. For an example in the division, that is, the *marhu>n* tax is borne by the seller, the processing costs are the responsibility of the buyer and accidental damage is the obligation of both parties.

iv. Redemption of *marhu>n*

In returning the *marhu>n*, back to the first agreement of *bay' al-wafa'* which is *marhu>n* to be returned to the party that sells after the seller has the capital to redeem it. Then if *marhu>n* has been redeemed by the seller, the seller has the right to control the *marhu>n* back, as well as the *murtahin* has the right to receive the money back.

C. Framework Concept

Picture 2.1



CHAPTER III

RESEARCH METHODOLOGY

A. Types of Research

The research is a type of case study¹⁰² research with using descriptive qualitative methods.¹⁰³ The method is used to describe various indications that occur in social life. While the approach used is a qualitative approach to understand the indication or facts that occur in such a way as to exclude quantitative things.¹⁰⁴ Thus, the indications and facts found cannot be measured using numbers or statistics, but through the prevailing theoretical logical interpretations. In a qualitative approach, the data is descriptive wherein the form of indication categorized or in other forms such as photos, documents and land notes at the time the research was conducted. The design of a qualitative approach is general, changeable and developed according to the situation in the land.¹⁰⁵

In this qualitative study, all data obtained from existing indication are explained as they are without additions and subtractions. Researchers can provide the logical meanings to social reality in a systematic and gradual manner, then reinforce with theories or scientific propositions so that the

¹⁰² Case study research is a type of qualitative research that seeks to find meaning, investigate the process and gain intensive and detailed understanding of an individual, group or situation. Judging from the region, the case study only covers a very narrow area or subject. but in conditions of the nature of the research, case studies are more in-depth. See: Suharsimi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktik*, p. 185

¹⁰³ Qualitative research is a descriptive study in which the researcher is more interested in the process, meaning and understanding of participants experiences and subjective appreciation. Descriptive methods in qualitative research are used to describe the contents of the concept from the original source. See: Moh nazir, *Metodologi Penelitian*, (Jakarta; Ghalia Indonesia; 1988), p. 27

¹⁰⁴ Boedi Abdullah dan Beni Ahmad Saebani, *Metode Penelitian Ekonomi Islam Muamalaat*, p. 49

¹⁰⁵ Boedi Abdullah dan Beni Ahmad Saebani, *Metode Penelitian Ekonomi Islam Muamalaat*, p. 77

meaning can be maintained. Researchers make comparative efforts between various concepts and theories, or contradict the social reality with existing theories.¹⁰⁶

Descriptive qualitative methods were used because the problems to be examined were unclear, dynamic and full of meaning. It was impossible for data on social situations obtained from *senden* pawn practice to be filtered using quantitative methods with instruments such as tests and questionnaires. In addition, the method with a qualitative approach is used to be able to describe and understand how the *Senden* pawn practices that occur in the village of Cantuk in depth, by eliminating all things that are quantitative.

1. Research Object

Object of research may refer to people, individual or group that are the unit under study. For this research, the target is the society of Cantuk village who involved in *senden* pawn this is because the practice occurred in this village and the local society was very interested in doing this practice in fulfilling their urgent need.

2. Data Sources

The main data sources in qualitative research are words and actions, the rest are additional data such as documents and others.¹⁰⁷ Data information in the study was obtained through two sources namely primary and secondary data. Primary data sources include those obtained from informant through the results of interviews, observation and documentation. The primary documentary information source is in the form of archives relating to the research problems such as village profiles and *senden* pawn report. While,

¹⁰⁶ Boedi Abdullah dan Beni Ahmad Saebani, *Metode Penelitian Ekonomi Islam Muamalaat*, p. 85-87

¹⁰⁷ Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, Bandung: PT Remaja Rosdakarya Offset, 2007, p. 157

secondary data sources in the form of notes or documents of research results, data from journals or magazines, as well as previous studies in accordance with the focus of research written by others.¹⁰⁸

Primary Data Sources

Primary data sources are data sources that are directly related to the object of research,¹⁰⁹ including:

- 1) Resource persons in this research is Cantuk society who practice *Senden* pawn include the *rahi>n*, *murtahin* and broker.
- 2) Informants that is who provide information about the situation and objective conditions of the research area, in this case are head of village, village officials and also the religious figure of Cantuk society.
- 3) Primary documentaries such as the *Senden* pawn report and the documents in the village office that describe the condition area and society of Cantuk village. More details can be seen in the following table:

Table 3.1

Profil of the Respondents

No	Name	Role	Jobs	Education
1	Informant 1	<i>Murtahin</i>	Housewife	Senior High School
2	Informant 2	<i>Rahi>n</i>	Teacher	S1
3	Informant 3	<i>Rahi>n</i>	Entrepreneur	S1
4	Informant 4	<i>Murtahin</i>	Entrepreneur	S1
5	Informant 5	<i>Murtahin</i>	Traders	Senior High School
6	Informant 6	Brokers	Housewife	Senior High School

¹⁰⁸ Boedi Abdullah dan Beni Ahmad Saebani, *Metode Penelitian Ekonomi Islam Muamalaat*, p. 87

¹⁰⁹ Kaelan, *Metode Penelitian Kualitatif Interdisipliner bidang Sosial, Budaya, Filsafat, Seni dan Humaniora* (Yogyakarta: PARADIGMA, 2012), p. 156

7	Informant 7	Head of Village	Head of Village	Senior High School
8	Informant 8	Staff of Village	Village official	S1
9	Informant 9	Religious Figure of Society	Village official	Senior High School

Secondary Data Sources

Secondary data sources also called external data.¹¹⁰ Secondary data sources used are data contained in books, journals, newspapers, or other literature that are relevant to research.

3. Sampling Techniques

Small samples are characteristic of a qualitative approach, because in this approach the emphasis on sample selection is based on the quality, not the amount. The accuracy of choosing a sample is one of the main keys to success in producing goods research in qualitative methods.¹¹¹ In this study, the techniques used to determine the sample used nonprobability sampling techniques, namely purposive sampling and snowball sampling.

Purposive sampling is a sampling technique of data sources by considering the level of one's knowledge of the social situation researched, in this case is the practice of *senden pawn*. While snowball sampling is a sampling technique of data sources that initially amounted to a little and eventually became large. The technique is fed like a rolling snowball that gets bigger and bigger.¹¹²

In this study snowballing technique is used to find gatekeepers who understand the object of research and can help the researcher during the research. As well as the first person

¹¹⁰ Muhammad Teguh, *Metodologi Ekonomi teori dan aplikasi*, (Jakarta: PT.Rajagrafindo Persada, 2005). p. 121.

¹¹¹ Boedi Abdullah dan Beni Ahmad Saebani, *Metode Penelitian Ekonomi Islam Muamalaat*, p. 77

¹¹² Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R&D*, p. 219

interviewed then show other informants who are more understand and can be interviewed to complete the information that has been obtained.¹¹³

The sampling technique using purposive and snowball can be described as follows:¹¹⁴

- a. researcher has chosen Q as the first person chosen to be the data source in his research. Where Q is who can recognize the situation or practice of *senden* pawn widely.
- b. Furthermore, Q suggests to R and S. Furthermore, from R and S have not obtained complete data, the researcher expands the information to T and U. then from T and U have not obtained accurate data, then proceed to V, then to W, To X, to Y and the last to Z. After up to Z the data is saturated, so that the sample data source is sufficient and does not require other new samples.

4. Data Collection Techniques

In the research using descriptive qualitative research methods, data collection was carried out directly by the researcher. Qualitative researchers are actively involved in data collection, namely physically meeting the subject and object of research in natural situations.¹¹⁵ Data collected uses in-depth interviewing techniques using a snowball technique, which refers to people who can provide information, then the informant points to other people onward.

¹¹³ Sugiyono, *Metode Penelitian Kuantitatif Kualitatif Dan R&D*, (Bandung: Alfabeta, 2015), Cet. Ke-22, p. 140

¹¹⁴ Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R&D*, p. 220-221

¹¹⁵ This is done with several considerations, first, because researchers are sensitive tools and can react to all environmental symptoms that are thought to be meaningful to researchers, secondly, researchers as tools that can adapt directly to all aspects studied so that they can understand the various situation. Thus, researchers will be easier to analyze the data obtained. See: Boedi Abdullah dan Beni Ahmad Saebani, *Metode Penelitian Ekonomi Islam Muamalaat*, p. 88

In this study, the methods used were: interview methods,¹¹⁶ observation¹¹⁷ and documentation.¹¹⁸ First, researchers conduct interviews with resource persons or informants who have been determined. Where interviews are conducted in-depth interviews by using unstructured interview techniques. In unstructured interviews the interview guidelines used are only in the form of outlines of the problems that will be asked to the resource person.¹¹⁹

Second, after the data from the interview obtained, the researcher continues to collect data sources through the observation method, namely by observing *rahi>n* and *murtahin* in carrying out the pawning contract using passive participatory observation methods. What is meant by passive participatory observation here is observation by not being involved in the activities of cultivating land, but only as independent observers.¹²⁰

Then, the last method used by researchers in data collection is the documentation method. After the data source is obtained through two methods, namely interview and observation, then the final method used to complete the data obtained is through

¹¹⁶ Interviews are data collection by asking questions directly by the researcher to the resource person, and the sources' answers are recorded with a tape recorder. See: Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R&D*, p. 85

¹¹⁷ Observation is a technique of collecting data carried out through careful research and systematic recording. In the observation method the researcher makes many observations by being careful about the object being observed. See: Muhamad Teguh, *Metodologi Penelitian Ekonomi Teori dan Aplikasi*, p. 134

¹¹⁸ Documentation is a record of past events. Documentation can be in the form of writing, images or monumental works of a person. Documentation techniques are a complement to the use of observation and interview methods. Where the results of the study will be more credible or trustworthy if supported by photographs or works of someone. See: Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R&D*, p. 240

¹¹⁹ Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R&D*, p. 85

¹²⁰ Nanang Martono, *Metode Penelitian Kuantitatif*, Jakarta: PT RajaGrafindo Persada, 2014, p.

the documentation method.¹²¹ These data include such records, archives, and government documents obtained through the results of village documentation.

5. Data Analysis

The descriptive method used is the descriptive analytical method, which is a method that describes and analyze collected data as they are.¹²² This method is used with the aim to describe and understand the model of social behavior as it occurs in the land. Researchers will look for facts that occur in the Cantuk village society regarding the practice of *senden* pawn. Then analyze the findings with the concept of *rahn* in *fiqh muamala*>*t*.

Qualitative data analysis is an inductive analysis¹²³ and emphasizes the process more than the product.¹²⁴ Data analysis in the research before entering the land, when in the land and after in the land.¹²⁵ But in qualitative research, data analysis is more focused during the process in the land in conjunction with the data collection process. Then the data analysis continued after data collection process. The following are the steps used by researchers in processing qualitative data before data analysis:¹²⁶

¹²¹ Sugiyono, *Metode Penelitian Kuantitatif Kualitatif Dan R&D*, p. 240

¹²² Nyoman Kutha Ratna, *Metodologi Penelitian Kajian Budaya dan Ilmu Sosial Humaniora pada Umumnya*, Cet-1, (Yogyakarta: Pustaka Pelajar, 2010), hal. 336

¹²³ Inductive method is a research method from something general to specific, Lihat: Sartono Karto Diharjo, *Pengantar Penelitian Ilmiah*, p. 24

¹²⁴ Inductive data analysis is used because of several reasons. First, the inductive process is more able to find multiple realities as contained in the data. Second, inductive analysis is more able to make researcher-responders relations become explicit, known and accountable. Third, such an analysis can more fully describe the background and can make decisions about whether or not the alteration can be made to another setting. Fourth, inductive analysis is more able to find mutual influence that sharpens relationships. Fifth, such an analysis can take into account values explicitly as part of an analytic structure See: Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, p. 11

¹²⁵ Boedi Abdullah dan Beni Ahmad Saebani, *Metode Penelitian Ekonomi Islam Muamalaat*, p. 221

¹²⁶ Sugiyono, *Metode Penelitian Kuantitatif Kualitatif Dan R&D*, p. 249

a. Data Reduction

According to Sugiyono, data reduction is a summarizing activity, selecting the main things, focusing on important things and looking for themes and patterns. At this stage, the researcher simplifies the results of interviews, observation and documentation techniques before data exposure is carried out.

b. Data Exposure

At this stage, the researcher presents data that has been simplified to become a group of structured information.

c. Withdrawal of Conclusions and Verification

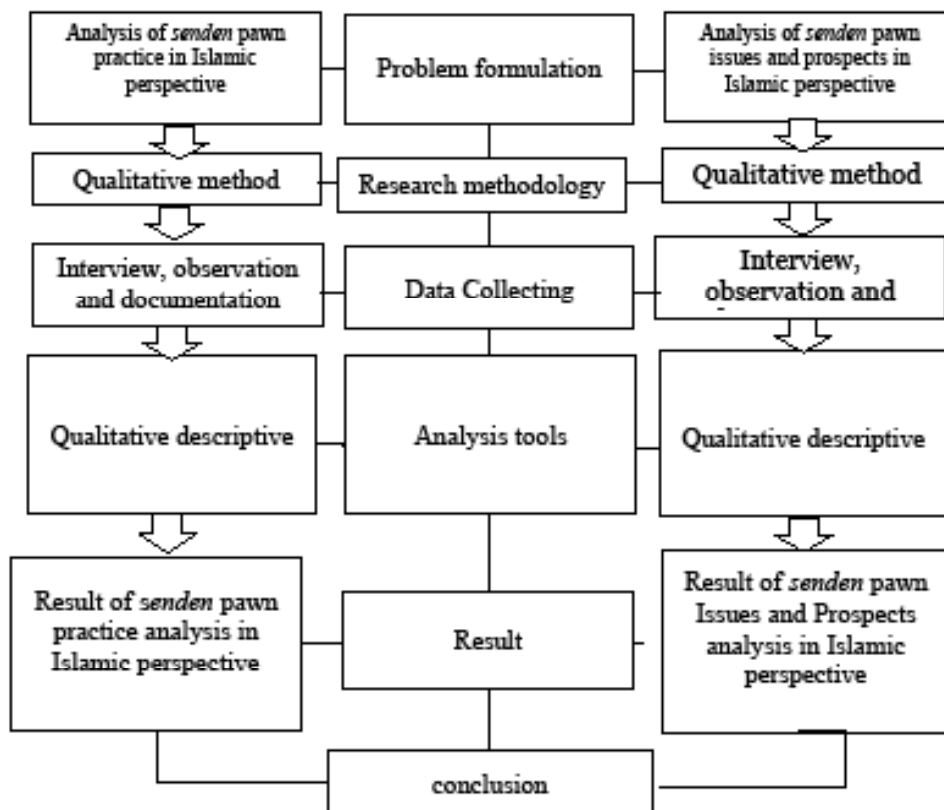
In this final stage, the author conveys the final decision from a set of information arranged to answer the focus of the research.

The following are the steps used in the data analysis method:¹²⁷

- a. Data collection that has been processed, namely data on the implementation of *senden* pawn practices obtained from the research area
- b. Data classification, namely selecting customized data with the question and purpose of the research
- c. Interpretation of the data contents, which means the contents of data with the method of data content analysis
- d. The results as long as it relates to the practice of *senden* pawn in Cantuk village, issues and prospects in its practice on Islamic view

B. Research Method Framework

Picture 3.1



CHAPTER IV

ANALYSIS AND DISCUSSION OF RESEARCH

A. Description of Research Location

Cantuk village is one of the Village in Banyuwangi with an area of 313, 18 ha /m². Cantuk village is divided into four hamlets, namely south Cantuk, north Cantuk, Rampan and Kelampokan. As for the village boundaries area are as follow:

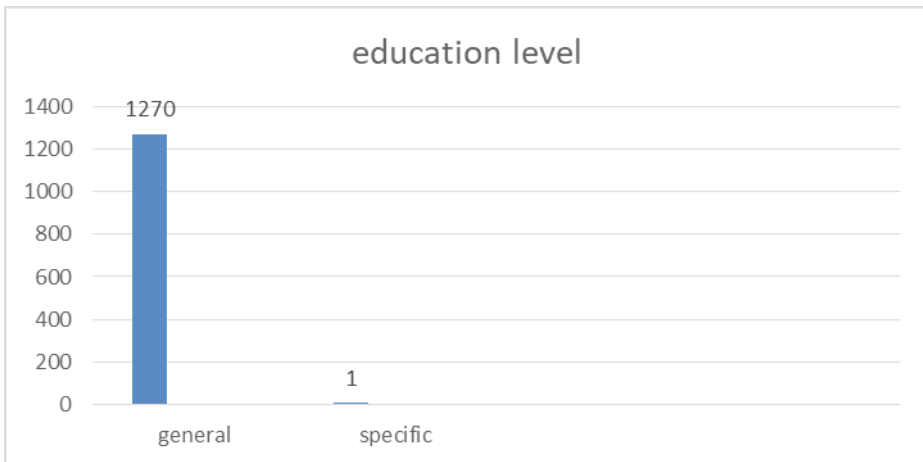
North Side	:	Padang Village
East	:	Singojuruh Village
South Side	:	Gumirih Village
West Side	:	Kemiri Village

Most of the population are Muslim while the other 6 are Christians from a population of around 4,362. The male population is 2,051 while women are 2,311. The livelihood of the majority of the population is farm laborers, reaching 1060 people. Whereas the other livelihoods involved are farmers, entrepreneurs, traders, tailors and border businesses.¹²⁸ More details can be seen in the following chart:

¹²⁸ Profil of Cantuk Village

Picture 4.1**Population-based on religion**

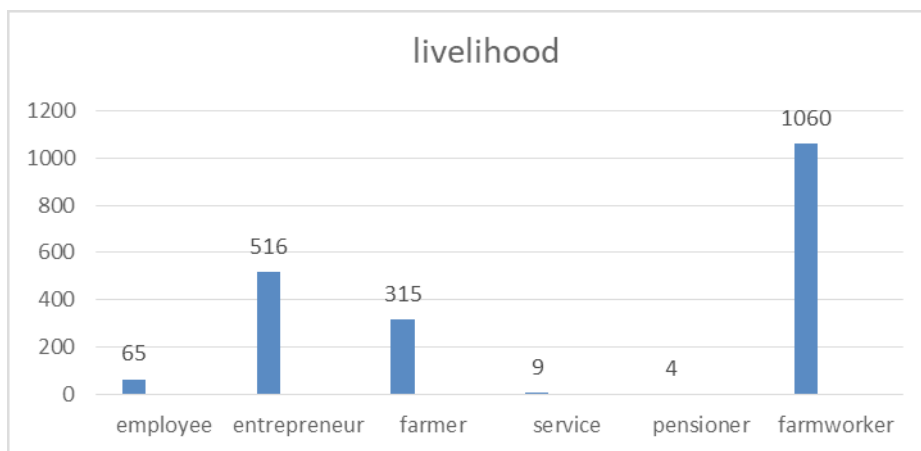
The chart above shows that most of population is Muslim

Picture 4.2**Population-based on education level**

While based on the level of education, the majority of the community receive public education

Picture 4.3

Population-based on livelihood



In terms of livelihoods, based on the chart above, it shows that farm laborers are illustrated to be more dominant, followed by entrepreneur, then farmer.

C. *Senden* Pawn According to the Society

According to society who practice the *senden* pawn, they revealed that *senden* pawn is a selling goods transaction where the goods sold will be repurchased according to the time specified. But in *senden* pawn practice, the status of the goods that have been sold is as the status of the goods in the pawn transaction.

While the definition of *senden* pawn according to the one of the village governments, is understood as a loan lending transaction where the *rahi*>n handed over *marhu*>n to be used by *murtahin* as an advantage for debt. Where as long as the pawn transaction takes place, the *marhu*>n is controlled by the *murtahin* to be used until the *rahi*>n is able to return the debt. This practice is accompanied by an agreement that the *marhu*>n item will not be sold if *rahi*>n has not been able to pay off and will become the property of *rahi*>n again until the *rahi*>n is able to pay off the debt.¹²⁹ From

¹²⁹ Mas Budi (Head of Cantuk Village), *Interview* on Monday, January 21, 2019, at.

the explanation, it can be understood that *senden* pawn is a debt transaction to get money because of an urgent need by sale and purchase contract with the condition that the purchased goods can be purchased again by the seller. While the status of the goods is as collateral as in the pawn contract.

Senden pawn that occurred in the Cantuk village is a pawn transaction between individuals not by financial institutions.¹³⁰ Usually, the implementation of a *senden* pawn begins with a *rahi>n* or broker¹³¹ meet *murtahin* to state their intention to borrow money by pawning his property. If *murtahin* has the money to be loaned to the *rahi>n* and knows the goods to be pawned, then there is an agreement between the two parties.¹³² Usually, the contract is agreed to using receipts and stamps.

Based on village head understanding, in essence the practice of *senden* pawn that occurs among the society because both those who want to borrow money (*rahi>n*) and those who lend money (*murtahin*) both of them do need. But the party that needs more is a *rahi>n*, mostly for reasons of urgent needs.¹³³ Whereas the *murtahin* position that lend money. They are generally seeking profits from the loan money given. It is said that because the *senden* pawn transaction itself will never occur if there is no collateral (*marhu>n*) that is handed over to the *murtahin*.¹³⁴ It is very rare for *murtahin* to lend money in the context of help, but rather to seek profit. So here, for those who have excess money will lend the money to the *rahi>n* with the

09.00 am.

¹³⁰ Maskiya (*murtahin*), Interview on Saturday, August 25, 2018, at 14.00 pm.

¹³¹ Trusted person (as mediator to convey *rahi>n* intentions to *murtahin* in this case are commonly called “broker”).

¹³² Mas Budi (Head of Cantuk Village), *Interview* on Monday, January 21, 2019, at 09.00 am.

¹³³ Rustam (staff of Cantuk Village Government), *Interview* on Monday, January 21, 2019, at. 10.00 am.

¹³⁴ As said by Mr. Halim as the religious figure of society, in his interview he stated that he believed that the use of collateral was one of the conditions that must be fulfilled by the pawnr in the *Senden* pawn contract. Interview on Monday, January 21, 2019, at 9:00 a.m.

aim of how the money lent can be returned intact but can generate profits, namely through the results of the management of the land that are used as collateral by the *rahi>n*.¹³⁵

D. *Senden* Pawn Practice

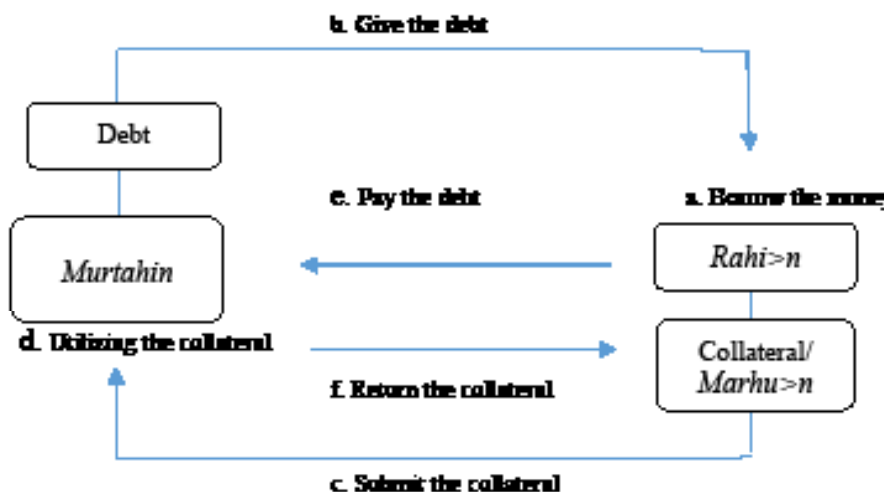
Generally, in the implementation of *Senden* pawn in Cantuk village through two types of processes, namely:¹³⁶

1. Direct

Direct pawn, namely the implementation of direct pawn between *rahi>n* and *murtahin* without through the village government and usually in the form of land and vehicles pawn. The mechanism for implementing direct pawn, it can be seen in this following illustration:¹³⁷

Picture 4.4

Direct Transaction



¹³⁵ Halim (religious figure of society), *Interview* on Monday, January 21, 2019, at 09.00 am.

¹³⁶ Mas Budi (Head of Cantuk Village), *Interview* on Sunday, January 21, 2019, at 09.00 am.

¹³⁷ Mas Budi (Head of Cantuk Village), *Interview* on Saturday August 25, 2018, at 14.00 am.

Description:

- a. *Rahi>n* or broker meet *murtahin* to state their intention to borrow money by pawn his property (pawn the land or vehicles).
- b. If transaction has been agreed, *murtahin* give a sum of money to *rahi>n*.
- c. Furthermore, *rahi>n* allows *murtahin* to utilize the collateral (*marhu>n*) according to the agreed time limit.
- d. *Murtahin* utilize *marhu>n* until *rahi>n* is able to return the debt to *murtahin*.
- e. Then if *rahi>n* has returned the debt, *murtahin* will automatically return the *marhu>n* (land or vehicles) to *rahi>n*.

The following is an example of a direct pawn transaction by Nuryati and Dian:¹³⁸

Example 1:

The following transaction was carried out by Mrs. Dian as *rahi>n* with Mrs. Nuryati as *murtahin* of the *senden* pawn. As a statement from Mrs. Nuryati, Mrs. Dian came to her with the purpose to borrow the money in the amount of 100 million rupiah by pawn her land for the reason of the urgent need. When Mrs. Nuryati agreed, the money was loaned and she was able to use the *marhu>n* automatically by utilizing the land. However, the *marhu>n* submitted is only in the form of utilizing land without submitting the ownership document of the land.

The problem is occurred in this transaction after a few months when the land has been cultivated by *murtahin*. The problem is because of the habits of the local society that pawn an item without the submission of ownership document. In this transaction, the land was not property of *rahi>n* but belonged to the Mrs. Dian's mother (at the time of the contract, the Mrs. Dian's mother didn't know anything about that pawning practices because position of

¹³⁸ Nuryati (*murtahin*), Interview on Monday, January 21, 2019, at. 15.00 pm.

her mother is abroad) and it turns out that the land document has been pawned to the bank before the *senden* pawn transaction with Mrs. Nuryati. When there is bad credit, the bank will conduct an auction through the land document.

When the bank will carry out the confiscation, the legal owner of the land comes and finally by Mrs. Dian's mother as the legal owner, the land is sold to pay off the bank, then Mrs. Nuryati as *murtahin* automatically becomes a victim of that transaction. This happens because the goods pawned are not belong to the *rahi>n* and has been pawned on another transaction. In that case, *marhu>n* has been used for two transactions, namely as collateral in the bank and also as *marhu>n* of *senden* pawn.

Example 2:¹³⁹

The pawn practice did by Mrs. Maskiya and Mr. Jakwan. Mrs. Maskiya as *murtahin* revealed that this transaction was approved on the basis of helping the difficulty of *rahi>n* who was her brother. The reason for this pawn is because her brother needed to pay the debts that must be paid immediately. The *senden* pawn agreement that is carried out is for one year or equivalent to twice the utilization of land (two plots). If the *murtahin* has used the land for two times, then *rahi>n* is obliged to pay off the debt.

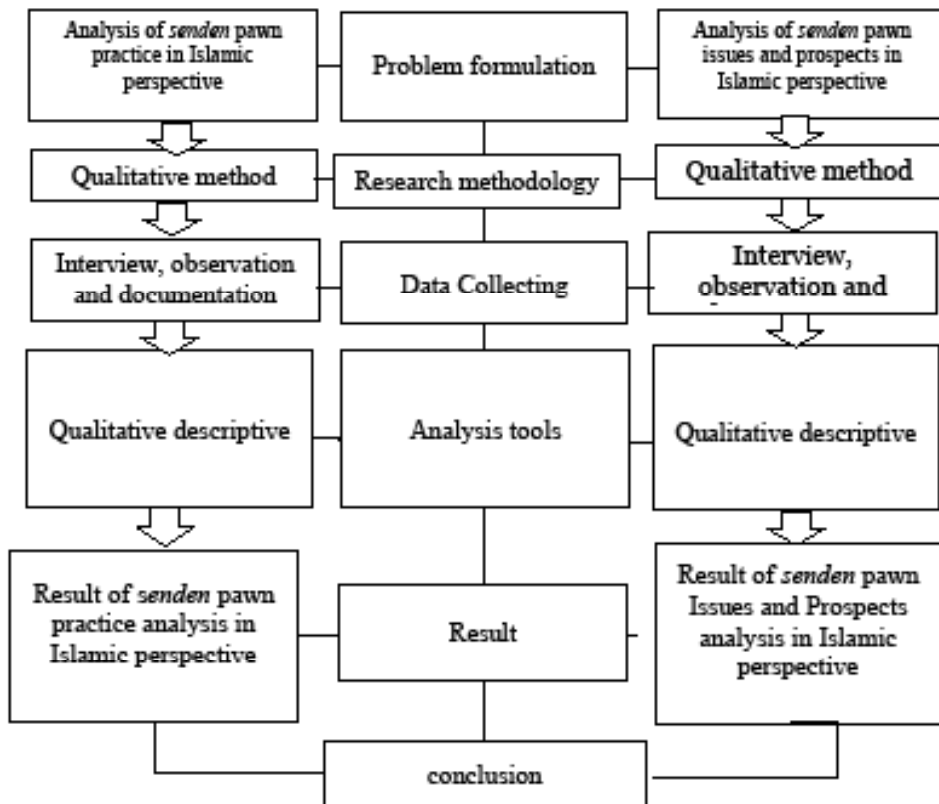
During the transaction, both *rahi>n* and *murtahin* did not encounter any problems. The transaction runs as stipulated at the beginning, and even the time of payment as agreed before, that is after the use of land for two cultivation. In the case of contract, both use direct contract without passing the local village government. The reason for using direct contract is because *rahi>n* was her brothers and trust each other.

¹³⁹ Maskiya (*murtahin*), Interview on Saturday, August 25, 2018, at 14.00 pm.

2. Indirect

Whereas indirect pawn is a pawn transaction that implementation through the local village government. Usually, the transaction that use this form is the transaction of the land pawn. Next, an illustration of the implementation of indirect pawn:¹⁴⁰

Picture 4.5
Indirect Transaction



¹⁴⁰ Mas Budi (Head of Cantuk Village), *Interview* on Saturday, August 25, 2018, at. 14.00 pm.

Description:

- f. *Rahi>n* or broker meet *murtahin* to state their intention to borrow money by pawn his property (pawn the land or vehicles).
- g. If transaction has been agreed, *murtahin* and *rahi>n* go to the local village government to legalize transaction.
- h. Then after the village government permit the transaction, *murtahin* hands over a sum of money to be lent to the *rahi>n* and *rahi>n* allows *murtahin* to utilize the land which are used as *marhu>n* according to the agreed time limit that have been made and witnessed by the village government.
- i. *murtahin* utilize collateral until *rahi>n* is able to return the debt to him
- j. Then if *rahi>n* has returned the debt, *murtahin* will return the land that are used as *marhu>n* automatically. However, if *rahi>n* has not been able to pay off the debt at maturity, then *murtahin* has the right to manage that land until *rahi>n* is able to return it. Here, the time of debt return is fully handed over to *rahi>n*.

The example of *senden* pawn through the village government is the transaction did by Mr. Malakin with Mr. Irwan:

Example 1:¹⁴¹

Transaction that occurred began with Mr. Malakin as a *rahi>n* who needed money with the reason of urgent needs. This transaction starts from the meeting between broker and Mr. Irwan to convey the purpose to pawn the land. After the agreement, both parties went to the local village office to be witnessed by the village government and legalized. Furthermore, after obtaining the legality from the village government, both parties signed an agreement made in the *senden* contract. Then *murtahin* handed over the money to the *rahi>n*. As well as the land that were used as *marhu>n* can

¹⁴¹ Malakin (*rahi>n*), *Interview* on Saturday, January 21, 2019, at. 19.00 pm.

be worked automatically by *murtahin* until the agreed time limit. If it has matured and *rahi>n* is able to return the money, then the transaction is ends.

E. Collateral Goods (*marhu>n*) in *Senden* Pawn

In a *Senden* pawn, goods that are used as collateral in the form of movable and immovable goods are land and vehicles. The collateral was handed over after the agreement between the two parties to do the pawn agreement. Where the contract is through two processes, either directly between *rahi>n* and *murtahin* or through the local village government. The surrender of collateral is only limited to the utilizing of land or vehicles by *murtahin*. While the ownership document of the vehicle is not submitted and remains in the hands of *rahi>n*.¹⁴²

In *senden* pawn practices, the majority of people pay less attention to the ownership of collateral goods. For example, regarding the collateral of land, society should know their ownership. About the ownership it can be proven by showing an ownership document. But like what happened in this practice, most society did not think so. The most important thing is the utilizing of collateral and the money can be returned intact. Even though many the ownership document over the land that are used as collateral have been used in other transactions. Usually ownership document is used as collateral for debt guarantees at financial institutions. When bad credit occurs, the financial institution or bank has the authority to auction off the land that are also pawned. In this problem who to be the victims is *murtahin* who had managed the land without having the ownership document of the land.¹⁴³

As explained above, the surrender of collateral only without an ownership document often causes problems. This happened because the

¹⁴² Halim (Religious figure of society), *Interview* on Monday, January 21, 2019, at. 09.00 am.

¹⁴³ Mas Budi (Head of Cantuk Village), *Interview* on Monday, January 21, 2019, at. 09.00 am.

ownership document was not handed over to *murtahin*. So that triggers the *rahi>n* to use it in another transaction. In the end, it often causes problems between *rahi>n*, *murtahin* and also financial institutions.¹⁴⁴

F. Utilization of *Marhu>n* in the Practice of *Senden* Pawn

In the *senden* pawn transaction, the use of *marhu>n* has become a condition that must be fulfilled by a *rahi>n*. According to the religious figure of the local society, *senden* pawn itself will never occur if *rahi>n* does not hand over *marhu>n* to be used by *murtahin*.¹⁴⁵ Someone gives a loan to the *rahi>n* in essence because they can utilize the *marhu>n*. Thus, the practice of pawn that occur in the Cantuk village can be said very far from the mutual help which is the main goal of pawn practices. Because the reality that is happening now is more on efforts to seek profits from the debt.¹⁴⁶

In a *senden* pawn, if *rahi>n* wants to get a loan of money from *murtahin*, the *marhu>n* must be utilized by *murtahin*. This is will occur until *rahi>n* is able to repay the loan. If the *rahi>n* cannot fulfill this condition, usually it will be difficult for the *rahi>n* to get people who want to accept the offer of transaction. This condition is what ultimately changed the pawn practice as a form of helping into the practice that is utilized in reaping more profits by *murtahin*.¹⁴⁷

¹⁴⁴ Halim (Religious figure of society), *Interview* on Monday, January 21, 2019, at. 09.00 am.

¹⁴⁵ Halim (Religious figure of society), *Interview* on Monday, January 21, 2019, at. 09.00 am.

¹⁴⁶ Some people mention the practice of *senden* itself can lead to the practice of usury, because this is the same as getting additional money lent. While it is known that all kinds of additional forms of debt are called usury. Interview with Rustam (staff of Cantuk Village government), on Monday 21 of January 2019, at 9:00 a.m.

¹⁴⁷ Mas Budi (Head of Cantuk Village), *Interview* on Monday, January 21, 2019, at. 09.00 am.

G. Issues of *Marhu>n* in the Practice of *Senden* pawn

The transactions through the village government are usually in the form of land pawn. Those who make transactions through the village government are essentially afraid of taking the risks, therefore asking for protection of the village government for the transactions. Especially those who lend money usually come to the village government to be legalized. So that, if something happens, the village government can resolve it.¹⁴⁸

Whereas for those who have did the vehicle pawn transactions, they have never used transaction through the village government. The vehicle pawn transaction among society will be known by village government after a problem occurs. Usually, they ask for help from the village government by reporting problems that have occurred to be resolved. In the end, the government found the problem from the society report. Vehicle pawn in *senden* transactions that often trigger such problems are usually the vehicle that being pawned as a guarantee was the status still in credit and have not paid off. This reason is made those who carried out vehicle pawning never went through the legality of the village government.¹⁴⁹

Basically, the people who do *senden* pawn without going through the village legality as mentioned above are people who are deliberately seeking profits by lending money to the *rahi>n*. This is done because transactions such as *senden* pawn itself are very profitable. It is said to be advantageous because *marhu>n* is usually leased back to someone else by *murtahin* while the money will return in full to *murtahin*. Whereas the *rahi>n* actually suffered a loss because the loan must be reduced by the broker's fees as mediator in the transaction.¹⁵⁰

As explained earlier, the practice of *senden* pawn is generally

¹⁴⁸ Rustam (Staff on Cantuk Government), *Interview* on Monday, January 21, 2019, at. 10.00 am.

¹⁴⁹ Rustam (Staff on Cantuk Government), *Interview* on Monday, January 21, 2019, at. 10.00 am.

¹⁵⁰ Mas Budi (Head of Cantuk Village), *Interview* on Monday, January 21, 2019, at. 09.00 am.

detrimental to the *rahi>n*. But as happened in the village of Cantuk, this practice is not only detrimental to *rahi>n*, but the practice of *senden* pawn sometimes detrimental to the *murtahin*. This happened because the *marhu>n* that were handed over to be managed by *murtahin* were basically not legitimate property of the *rahi>n*. Because the *senden* pawn transaction itself is very easy, sometimes the *rahi>n* takes advantage of the opportunity to pawn the goods that are not his property. Like, land owned by their parents or vehicles that are still in credit and have not paid off. In fact, the document of land ownership had been pawned previously to the bank.¹⁵¹

H. Analysis of *Senden* Pawn Issues and Prospects from an Islamic Perspective

1. Analysis of *Senden* Pawn Practice in Islamic Perspective

Senden Pawn is a transaction that has been practiced by society of Cantuk Village for a long time. Although the problems are often encountered in the practice, but its existence is recognized to help the society in meeting their urgent needs.¹⁵² The implementation of *senden* pawn generally uses two contracts, namely purchase and sale contract also pawn contract. Both purchase and sale contract or pawn contract is a transaction that is permitted and recognized in Islam. This is based on the word of God in Surah Al-Baqarah verse 283:¹⁵³

وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنَ مَقْبُوضَاتٍ

If you are on the way (and you are not in related cash) while you are not getting a writer, then there should be hold items held (by those who owe).

¹⁵¹ Halim (Religious figure of society), *Interview* on Monday, January 21, 2019, at. 12.00 am.

¹⁵² Mas Budi (Head of Cantuk Village), *Interview* on Monday, January 21, 2019, at. 09.00 am.

¹⁵³ QS. Al-Baqarah: 283

This is reinforced by a statement in which pawn has been practiced in the prophet's day, as stated in the following hadith:¹⁵⁴

حدثنا قتيبة: حدثنا جرير، عن الأعمش، عن إبراهيم، عن الأسود، عن عائشة قالت: اشترى رسول الله صلى الله عليه وسلم من يهودي طعاما، ورهنه درعه.

Aisha says that the Messenger of Allah bought food from a Jew and lent him armor. Based on the hadith we know that pawn has been around since the time of the prophet, even the prophet himself practiced it.

The paragraph about purchase and sale in the word of Allah in surah Al-Baqarah: 275, as follows:¹⁵⁵

وأحل الله البيع وحرم الربا

“And God justify purchase and sale and forbid usury.”

However, the jurists state that conditional transactions containing double rules are illegal and prohibited by *syara'*.¹⁵⁶ This is as the warned prophet:

“From Abdullah bin Umar reported: The Messenger of Allah, peace and blessings be upon him, said: it is not lawful to purchase and sale *salaf* contract mixed with ordinary purchase and sale contract and neither in one sale. And there are no benefits as long as there is no responsibility and no purchase and sale transaction that is not yours.” (Narrated by Turmudzi, he said this hadith is *hasan saheeh*).

As for the pawn has become the customs of the local society who are recognized to assist in fulfilling the needs. But the problems

¹⁵⁴ أبو عبد الله عبد السلام بن محمد بن عمر علوش، صحيح البخاري، مكتبة الرشد، ناشرون: الرياض، كتاب الرهن، أنظر باب الرهن عند اليهود وغيرهم، رقم الحديث ٢٥١٣، ج ١، ص. ١٣١٦/٣٣٣

¹⁵⁵ Al-Baqarah: 275

¹⁵⁶ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 165

that arise from the implementation must still be considered. As in the rules of fiqh it is stated that better to refuse *mafsadah* than reach the *maslahah*:¹⁵⁷

درأ المفاسد أول من جلب المصالح

Connection of that rule with the pawn practice is that if the danger is greater than the benefits, then the pawn practice is not justified. In addition, in the decision of the law also needs the consideration.¹⁵⁸ Because not all customs that are in the midst of society can be decided as the law if it is against the sharia.

More clearly, the analysis of the pawn practice will be described in the explanation below:

1. Based on Definition

In the practice some people understand that *senden* pawn as a purchase and sale contract but some others understand it as the pawn contract.¹⁵⁹ This happens because in the *senden* pawn transaction on the one hand it resembles a purchase and sale transaction but on the other hand resembles a pawn transaction. It is said that because *senden* pawn transactions begin by using a purchase and sale contract by selling land or vehicles. *Senden* practice using the pawn contract and implemented with the condition of pawn contract. This is because the goods that have been sold are only as *marhu>n*, so the utilizing is such as the use of *marhu>n* in the pawn agreement.

¹⁵⁷ علي أحمد الندوي، القواعد الفقهية، الطبعة الثانية، (دمشق: دار القلم، ١٤١٢هـ-١٩٩١م) ص ١٧٠

¹⁵⁸ Custom considered in establishes law. The rule explains that not all customary forms that apply in society can be defined as law. Then a custom that develops in the community cannot be justified if it conflicts with Islamic law. this is in line with the practice of pawn, if customary pawn that occur in the middle of society contain elements of exploitation, it can be ascertained that this is contrary to Islamic law. Because the essence of pawn is to put forward the *ta'awun* element rather than personal gain.

¹⁵⁹ Mas Budi (Head of Cantuk Village), *Interview* on Monday, January 21, 2019, at. 09.00 am.

More details of *senden* pawn process are as follows:

- 1) *Senden* pawn is borrowing money transaction that begins by using a purchase and sale contract
- 2) Then as long as the practice using the provisions as in the pawn contract, namely:
 - a) The status of goods that sold is as collateral (*marhu>n*)
 - b) Buyer does not have the right to transfer ownership to other parties
 - c) The goods may not be used to other transaction because it is required to be returned to the seller.
 - d) At the maturity time the goods can be bought back by the seller
- 3) In the redemption of *marhu>n*, if *rahi>n* is unable to redeem at the specified time limit, then the time of redemption is completely surrendered to *rahi>n*. And during that time, *murtahin* was free to use *marhu>n*.

As explained above, the essence of the *senden* pawn that occur in Cantuk village according to Islamic view is the practice of *bay' al-wafa'*.¹⁶⁰ In the explanation above, it is very clear that the pawn practice on one side is purchase and sale, but on the other hand is pawn practice. In *muamala>t*, transactions that contain multiple contracts as happens in a *senden* pawn contract is the contract of *bay' al-wafa'*. While the law of *bay' al-wafa'* itself is debated by jurists.¹⁶¹ The parties that allow it are the Hanafi on the grounds that:

- 1) *Bay' al-wafa'* is based on *istihsan urf*, which is justifying a problem that is generally accepted and running well in the midst of society.
- 2) The transfer of the sale and purchase debt to the pawn is valid.

¹⁶⁰ Enang Hidayat, *Transaksi Ekonomi Syariah*, p. 201

¹⁶¹ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 146

With the reason that what must be considered in the contract is an agreement agreed by both parties.

While other *fiqh* jurists do not justify the form of this purchase and sale contract, for the following reasons:¹⁶²

- 1) The main reason stated is because all transactions are declared valid if the contract is correct. Thus *bay' al-wafa'* cannot be said to be *rahn* and vice versa, because both are different contracts and cannot be equated
- 2) In the purchase and sale contract is not justified the length of the return of goods, because purchase and sale are an agreement that resulted in the transfer of property rights completely from the seller to the buyer
- 3) In the purchase and sale agreement there should be no requirement to return the goods that has been sold to the original seller
- 4) This form of purchase and sale contract has never been found at the time of the Prophet Muhammad
- 5) The type of purchase and sale transaction is a hindrance that is not in line with the conditions of purchase and sale which are prescribed by Islam.

2. Based on the Contract

Senden pawn transaction if analyzed in more detail related to the form of contract is as follows:

- 1) Including the purchase and sale contract, because at the time of the agreement the contract used is a purchase and sale contract
- 2) This transaction is in the form of leasing contract, because the goods sold at a specified time and must be resold to the original seller
- 3) This transaction is in the form of *rahn* contract, because at maturity the seller must return the money to the buyer by

¹⁶² Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 147

redeeming the item and the buyer must return the land by selling it with the original price to the original seller.

When viewed from the above explanation, there is an oddity that occurs from *senden* pawn practices. If done using a purchase and sale contract, the goods should be fully owned by the buyer.¹⁶³ But what happens is the opposite, the goods that have been sold are only as collateral (*marhu>n*) and will be repurchased at the specified time.

Based on this, *senden* pawn practice is a practice that combines several contracts. Seeing the three contracts contained in *senden* pawn practice is a different contract and cannot be combined. Then the merging of the contract will form an unusual contract.¹⁶⁴ In addition, the merger of the three is something that is prohibited by sharia.¹⁶⁵ This is in accordance with the hadith of the Prophet Muhammad which prohibits multiple transactions:

عن عبد الله بن عمر رضي الله عنهما: لا يحل سلف وبيع ولا شرطان في بيع,
قال الترمذي هذا حديث حسن صحيح.

Meaning:

“From Abdullah bin Umar reported that the Messenger of Allah, peace and blessings be upon him, said: it is not lawful to purchase and sale *salaf* contract mixed with ordinary purchase and sale and neither in one sale. And there are no benefits as long as there is no responsibility and no purchase and sale transaction

¹⁶³ Based on definition buying and selling means exchanging something with something. Where the law of buying and selling is permissible in Islam. However, it does not cover the possibility of changing the status of buying and selling itself. It depends on whether or not the components and condition of buying and selling are fulfilled. See: Shobirin, “Jual Beli dalam Pandangan Islam”, *Jurnal Bisnis dan Manajemen Islam*, (Vol. 3, No.2, 2015) p. 245

¹⁶⁴ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 146

¹⁶⁵ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 165

that is not yours.” (source: Turmudzi, he said this hadith is hasan saheeh).

Furthermore, the number of ulama in addition to Hanafi stated that the ransom requirement in purchase and sale which contains the pawn rules is an act that violates the law and eliminates the meaning of sales.¹⁶⁶ This is as happened in *bay' al-wafa'* and this is not justified because it is deemed legal and as an illegal purchase and sale.¹⁶⁷

3. Based on Components and Condition of *Rahn*

Based on pillar and condition in the practice of *senden* pawn are as well as those contained in *rahn*. Because in the implementation using pawn practice and no longer using the practice of purchase and sale. In the practice, the *marhu>n* used is not only fixed on movable goods as stipulated in conventional pawnshops.¹⁶⁸ In the *senden* pawn the *marhu>n* is in the form of movable and immovable goods as in the provisions of *rahn*.¹⁶⁹ The things that have not been fulfilled based on analysis of pillar and condition in *senden* pawn according to the concept of *rahn* are as follows:

Viewed in conditions of components, according to jurists, there are four components of *rahn*, namely:¹⁷⁰ *marhu>n*, *marhu>n bih*, *aqidain*, *ija>b qabu>l*.

¹⁶⁶ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 166

¹⁶⁷ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 168

¹⁶⁸ In the conventional pawn concept, collateral must be in the form of movable property. See: Rozalinda, *Fikih Ekonomi Syariah: Prinsip dan Implementasi Pada Sektor Keuangan Syariah*, p. 264

¹⁶⁹ In *rahn* concept, the collateral it is not only for movable property but include the immovable property. See: Abdul Ghofur Anshori, *Gadai Syariah di Indonesia: Konsep, Implementasi dan Institutionalisation*, p. 126

¹⁷⁰ وحيد بن عبد السلام باهي، قوانين الشريعة الإسلامية، الطبعة الأولى، (الأزهر: دار التقوى،

١٤٣٤ هـ - ٢٠١٣ م)

1) *Marhu>n* (pawned goods).

The *marhu>n* which is pawned in *senden* pawn that has occurred in general has fulfilled several requirements such as:

- a) The goods are real and tangible
- b) The goods in the form of valuable goods, clear, lawful, can be stored and utilized
- c) The goods can be submitted during transactions
- d) The goods can be traded
- e) The goods are intact and not in a separate state

However, in this case, there are several requirements that have not been fulfilled in the *senden* pawn practice. As it is known that the main requirement in *rahn* is the status of the goods that are used as *marhu>n* must be “*al-qabdh al-marhu>n*”,¹⁷¹ where it implies that the *marhu>n* must be legally controlled by *murtahin*. This requirement is important, because thus the *rahn* contract will become clear and binding on both parties. So, it is fitting for these conditions to be fulfilled in the implementation. The following are things **that have not been fulfilled** in the practice of *senden* pawn:

- a) The goods pawned are not complete with the document. Where in the pawn both land and vehicles that were pawned not by the inclusion of ownership document, but only limited to the submitting of land and vehicles without the ownership document. Whereas in fact, based on the conditions set out in Islam, the goods pawned must be complete with the principal, this is likened to being illegitimate in raising fruit without controlling the tree.¹⁷² This is in line with the *senden* pawn practice, it cannot be said to be legitimate when

¹⁷¹ Heri Sudarsono, *Bank dan Lembaga Keuangan Syariah: Deskripsi dan Ilustrasi*, (Yogyakarta: Ekonosia, 2003), p. 181

¹⁷² Adrian Sutedi, *Hukum Gadai Syariah*, p. 39

pawning a land or vehicle without including the ownership document.

- b) The goods pawned must be separate from other people's ownership, namely not joint ownership but full ownership of *rahi>n*.¹⁷³ But some *marhu>n* used in the *senden* pawn transaction have not been fully owned by the *rahi>n*. For an example motorbikes whose status is still credit and have not been paid off. There are also *marhu>n* that which are not legitimate property of *rahi>n*, and there is even a *marhu>n* which is used in two transactions. Where this is very contrary to the conditions of *marhu>n* which must be separate from another people's ownership.

2) *Marhu>n bih* (debt)

Among the requirements which bind *marhu>n bih* or debt in the *rahn* transaction is as follows:¹⁷⁴

- f) *Marhu>n bih* should be a right that must be delivered to its owner
- g) The rights of *marhu>n bih* should be clear and not vague
- h) *Marhu>n bih* should be a fixed debt
- i) The debt shall be binding on both the present and future
- j) The debt should be clear and determined the rate and nature for the parties who did contract.

From the conditions mentioned above, the implementation of *senden* pawn has fulfilled these requirements. Debt that occurs through the practice of *senden* pawn is in the form of clear, binding debt and has been determined the level and deadline for payment.

¹⁷³ Sutan Remy Sjahdeini, *Perbankan Dan Kedudukannya Dalam Tata Hukum Perbankan Indonesia*, (Jakarta: Pustaka Utama Grafiti, 1999), p. 79

¹⁷⁴ الإمام أبي محمد الحسين بن مسعود بن محمد بن الفراء البغوي، التهذيب، الطبعة الأولى، بيروت: دار الكتب العلمية، ١٤١٨ هـ - ١٩٩٧ م) ص ٤

3) *Aqidain* “*rahi>n* and *murtahin*”

Senden pawn transactions that occur in the village must be carried out between the pawn party (*rahi>n*) and the recipient of the pawn (*murtahin*) and are usually assisted by broker and witnessed by the village government when the *senden* pawn is carried out through the village. In this case the conditions that must be fulfilled by the pawner (*rahi>n*) and the pawning recipient (*murtahin*) as the party conducting the transaction are:¹⁷⁵

1) Adult

A person who carries out a pawn must be a person who is *baligh* or mature. Here, the author has conducted interviews with related parties both *rahi>n* and *murtahin* who have fulfilled adult requirements. The age of *rahi>n* and *murtahin* that occur in the village can range from 35-60 years.

2) Intelligent

whereas what is meant by intelligent is someone who has been able to distinguish between good and bad for himself. If one of the parties to the transaction does not meet these requirements, then the transaction is declared invalid. This refers to the word of God in the surah An-Nisa verse 5 which forbids his servant to give up property to people who are not understanding.

وَلَا تَوَدُّوا السُّفَهَاءَ أَمْوَالِكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَمًا وَارزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

Meaning: “And do not surrender to those who are not perfect minds, the property (those who are in your power) who are made by Allah as the subject of life. Give them

¹⁷⁵ وحيد بن عبد السلام باهي، قوانين الشريعة الإسلامية، الطبعة الأولى، (الأزهر: دار التقوى، ١٤٣٤ هـ - ٢٠١٣ م) ص ٩٩

shopping and clothes (from the proceeds of the treasure) and say to them goods words.”

In practice, *senden* pawn have been carried out by sensible people. Based on the interviews conducted, *rahi>n* and *murtahin* can distinguish and know which ones are goods and which are bad for themselves. But there are still some people who are not trustworthy in carrying out the *senden* pawn agreement.

4) *Shighat ija>b qabu>l* (handover greeting)

Where *ijab qobul* can be done both in written and oral form.¹⁷⁶ As happened in the village of Cantuk, *ija>b qabu>l* was also carried out in two forms namely written and oral. Usually written contracts are more often done when *senden* pawns are carried out through the village government. While oral contract usually occurs in *senden* pawn practices that are carried out by *rahi>n* and *murtahin* of pawns directly without going through the local village government. The implementation is not much different either directly or indirectly. Usually the *rahi>n* meets the *murtahin* firstly to convey his intention to borrow money. Then after *ijab qobul* agreement is done and then followed by the surrender of *marhu>n* to the *murtahin*.¹⁷⁷

This has been in accordance with the condition of *ija>b qabu>l* which are stated in Islam. where in the *ija>b qabu>l* the time limit for repaying the debt has been determined.

From the results of the components and conditions analysis in the *senden* pawn we know that there are still a number of components and conditions that have not been fulfilled, thus

¹⁷⁶ وحيد بن عبد السلام باهي، قوانين الشريعة الإسلامية، الطبعة الأولى، (الأزهر: دار التقوى، ١٤٣٤ هـ - ٢٠١٣ م) ص ١٠٠

¹⁷⁷ Mas Budi (Head of Cantuk Village), Interview on Monday, January 21, 2019, at 09.00 am.

the *senden* pawn is categorized as a damaged contract because all the components and conditions that have not been fulfilled.

4. Based on Utilization of *Marhu>n*

Provisions for the use of *marhu>n* in the implementation of *senden* pawn are as follows:

- 1) The utilization of *marhu>n* is in the hands of *murtahin*. Then the results obtained from the use of *marhu>n* are the right of *murtahin*. Expressed this way because the *marhu>n* is fully owned by *murtahin* during the agreed time period
- 2) All costs required for *marhu>n* care is the responsibility of the *murtahin* during the agreed period of time
- 3) As long as *rahi>n* has not been able to repay the debt at maturity, then the time for repayment is fully handed over to *rahi>n*. And during that time *marhu>n* is available to be used by *murtahin*.

The third point basically creates obscurity in the *senden* pawn agreement. However, by giving up the redemption time to *rahi>n* that cannot pay at maturity, making the deadline only as mere formality. So that it does not cover the possibility of a *senden* pawn contract happening for many years.¹⁷⁸ This happens because of unclear return time.

The implementation of *senden* Pawn which lasted for years and even exceeding 7 years contained elements of tyranny and included the category of usury. Based on Indonesian legislation, this practice has contradicted to the Law Number 56 of the PRPU of 1960 concerning Establishment of Agricultural Land in Article 7 paragraph (1) and (2) as follows:¹⁷⁹

- 1) Whoever controls the agricultural land with liens which at the

¹⁷⁸ الإمام أبي محمد الحسين بن مسعود بن محمد بن الفراء البغوي، التهذيب، الطبعة الأولى، (بيروت: دار الكتب العلمية، ١٤١٨ هـ - ١٩٩٧ م) ص ٤

¹⁷⁹ UU Nomor 56 Prpu Tahun 1960 Tentang Penetapan Luas Tanah Pertanian dalam pasal 7 ayat (1) dan (2)

time of entry into force of this regulation has lasted 7 years or more, is obliged to return the land to the owner within a month after the existing plants have been harvested with no right to demand ransom payments.

- 2) Regarding liens which at the time of entry into force of this regulation have not lasted 7 years, the landowner has the right to request it again at any time after the existing plants are harvested, by paying a ransom amount calculated according to the form $(7+1/2)$ - When the liens x pawn money takes place provided that when the liens have lasted 7 years, the pawn holder must return the land without payment of a ransom within a month after the existing crop is harvested.

But even though this is contradictory, the *senden* pawn is still held. For the society, the contract that is carried out is legal because the contract they use is purchase and sale not pawning, so they are free to use *marhu>n*.¹⁸⁰ Even so, there is a lot of harm caused in practice. From here, it can be understood that the two contracts used in the *senden* pawn are essentially to legalize the utilization of *marhu>n* in the long condition. This is nothing but to find loopholes in order to be able to seek profits from *senden* pawn practices and also as a form of legal deception to avoid usury. That has been far from the goal of pawn as a non-profit contract.¹⁸¹

This was confirmed by the statement of local society stating that the practice of *senden* pawn was far from the goal of helping.¹⁸² The practice of *senden* pawn itself will never occur if the *marhu>n*

¹⁸⁰ Mas Budi (Head of Cantuk Village), *Interview* on Monday, January 21, 2019, at 09.00 am.

¹⁸¹ This is in line with the findings of research conducted by Hukmiah. See: Hukmiah, "Implementasi Hukum Ekonomi Syariah Dalam Praktek Gadai Sawah", *Jurnal Fenomena*, (Vol. 8, No. 2, 2016), p. 17

¹⁸² Halim (Religious figure of society), *Interview* on Monday, January 21, 2019, at 12.00 am.

cannot be used by *murtahin*. Therefore, this is done solely for the aim at *murtahin* does not suffer losses, and still gets profit from the use of *marhu>n* and the debt is returned in full. Then it is very clear that the practice carried out is not on the basis of mutual help but rather to seek profit.

Some society said that basically this practice is the behavior of usurer because the results obtained from the *senden* pawn practice are very multiplied from the loans given.¹⁸³ Where in this case there is injustice on one of the parties. But even so, *senden* pawn is still carried out because for society the practice of *senden* Pawn is the only transaction that makes them easy for get money quickly in urgent conditions.¹⁸⁴

In fiqh *muamala>t*, related to the use of *marhu>n* is still debated by some jurists. The Syafi'iyah argue that *marhu>n* is nothing but a guarantee. Ownership and the results of the *marhu>n* still belongs to *rahi>n*.¹⁸⁵ While Malikiyah argue that the right of *murtahin* is limited to holding the *marhu>n* which functions as guarantee, this is similar to the reasons of the syafi'iyah namely the hadith of Abu Hurairah and Ibn Umar. Malikiyah argues that everything produced by *marhu>n* is the right of *rahi>n* as long as *murtahin* does not require it.¹⁸⁶ Whereas Hanabilah jurists only allow the utilization of the benefits of *marhu>n* on the animals that can be ridden and milked. Whereas if the *marhu>n* is not from an

¹⁸³ Rustam (Staff on Cantuk Government), *Interview* on Monday, January 21, 2019, at. 10.00 am.

¹⁸⁴ This reasoning was also one of the reasons of Aceh society in *Gala Umong* practice, it is based on the results of research conducted by Safrizal. See: Safrizal, "Praktek Gadai Sawah Dalam Perspektif Syari'ah (Studi Kasus Di Desa Gampong Dayah Syarif Kecamatan Mutiara Kabupaten Pidie Provinsi Aceh)", *Jurnal Islam Futura*, (Vol. 15, No. 2, 2016), p. 3

¹⁸⁵ علاء الدين زعتري، *فقه المعاملات المالية المقارن، الطبعة الأولى*، (دمشق: دار العصماء،

١٤٣٢ هـ - ٢٠١٠ م) ص ٣٥٩

¹⁸⁶ علاء الدين زعتري، *فقه المعاملات المالية المقارن*، ص ٣٥٩

animal, then the utilization is still being *rahi>n*'s right.¹⁸⁷ While the Hanafiyah indicated that the party entitled to use the *marhu>n* was *murtahin*. For reasons because *marhu>n* has been maintained by *murtahin* and is under his control.¹⁸⁸

The benefit of *marhu>n* basically cannot be taken either by *rahi>n* or *murtahin*. This is because the status of the *marhu>n* is only as guarantee. If based on the opinion of jurists above, the utilization of *marhu>n* by *murtahin* in *senden* pawn is not justified. While if the *marhu>n* is a vehicle, it is permissible because it is saturated with animals that can be ridden and milked as the opinion of the Hanabilah jurists. Meanwhile, in the opinion of Hanafiyah jurists, the use of *marhu>n* in *senden* pawn is permitted.¹⁸⁹

However, if seen based on its implementation, *senden* pawn is more directed at profit and exploitation. This element of exploitation is reported as a prohibition in *senden* pawn practices.¹⁹⁰ If related to the opinion of jurists above, this transaction is not permitted. Because the utilization of *marhu>n* must not harm one party. Apart from that, *senden* pawn which is practiced, is more aimed at commercial purposes, namely by seeking profit and shifting its original goal as a mutual help contract. Thus, this utilization has led to the occurrence of usury, and this is not allowed. As explained in the rules of *fiqh*:¹⁹¹

“Something determined based on time, then the law is determined based on the validity of that time as long as there is no

¹⁸⁷ Muhammad Aqil Haidar, *Memfaatkan Barang Gadai Bolehkan*, (Jakarta: Rumah Fiqih Publishing, 2019), p. 27

¹⁸⁸ وهبة الزحيلي، المعاملات المالية المعاصرة، الطبعة الأولى، (دمشق: دار الفكر، ١٤٢٢ هـ - ٢٠٠٢ م) ص ٨٥

¹⁸⁹ وهبة الزحيلي، المعاملات المالية المعاصرة، الطبعة الأولى، (دمشق: دار الفكر، ١٤٢٢ هـ - ٢٠٠٢ م) ص ٨٥

¹⁹⁰ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 185

¹⁹¹ Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, p. 95

argument against it". The rule describes the law that applies based on the specified time. The initial time of pawning is for the purpose of helping, then even today the element of mutual help must be carried out in accordance with the initial treatment.

Then when referring to the utilization of *marhu>n* and the problems that occur in *senden* Pawn, the opinions of Malikiyah and Hanafiyah jurists can be used as alternatives.¹⁹² Where the *murtahin* may use the *marhu>n* while obtaining permission from the *rahi>n*. But that does not mean accepting that opinion absolutely, because it will lead to exploitation and it is classified as usury. This opinion is used as an alternative with the intention that *murtahin* can use the *marhu>n* just to overcome its losses. Where this can also avoid *marhu>n* from the *mubadzir*.

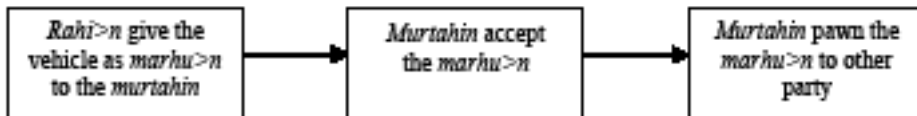
2. Analysis of *Senden* Pawn Issues from an Islamic Perspective

The problems that occur during the practice of the *Senden* pawn are Illustrated as follows:

- a. *Marhu>n* often pawned to the third party by *murtahin* 193

Picture 4.6

Issues of *marhu>n*



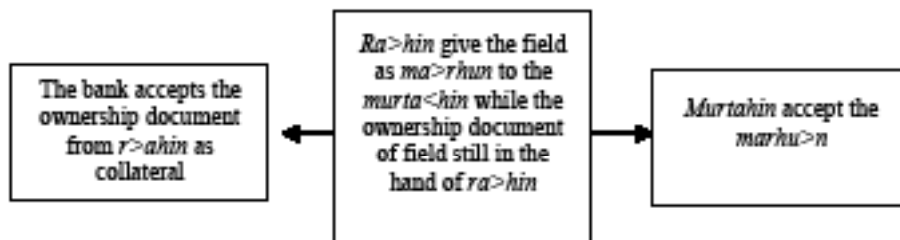
¹⁹² Muhammad Sholikul Hadi, *Pegadaian Syariah*, (Jakarta: Salemba Diniyah, 2003), p. 84

¹⁹³ The problem that often occurs is in vehicle pawn transactions that are carried out without going through the village government. Usually *murtahin* pawn the vehicle to a third party. Then the third party pawns the vehicle to the fourth party and so on. In the end this was detrimental to the *rahi>n* because of the unclear vehicle that had been mortgaged to *murtahin*. See: Ddy.als, "Sindikad Gadai Motor", Radar Banyuwangi, January, 21 2019, p.

- b. *Marhu>n* often used as collateral item for other transactions with other parties by *rahi>n*

Picture 4.7

Issues of *marhu>n*



The problems arrised when the status of the goods being traded in the *Senden* pawn is happened. However, goods that become *marhu>n* in *Senden* pawn practice are only limited to the submission of land or vehicles without being accompanied by an ownership document. While in practice there are parties both *rahi>n* and *murtahin* who are not trustworthy. As a result, it triggers the emergence of actions that cause new problems such as:

- a. *Rahi>n* utilize the document of ownership for other purposes through transactions with other parties. For example, it is used as collateral to conduct transactions in banking.
- b. *Marhu>n* is pawned back to other parties by *murtahin*. Usually this happens in a vehicle pawn.

This is not permissible in Islam, because it is against the rules of pawning also contradictory as explained in the following fiqh rules:¹⁹⁴

الأمر بالتصرف في ملك الغير باطل

“All cases relating to the use of the property of others without the owner’s permission are canceled”

¹⁹⁴ محمد صدقي بن أحمد البونو أبوالحارثالغزي، القواعد الفقهية، (لبنان: مؤسسة الرسالة، ١٤٢٤هـ-٢٠٠٣م) ص ٢٦٩

This happened due to the merger of two contracts which caused unclear conditions in the *senden* pawn contract. In addition, the lack of society understanding of *marhu>n* position may be due to why such transactions occurred. As consequences, if not implemented properly, it will certainly have a bad impact. In the end this will only cause problems that affect the loss of one party.

Furthermore, based on problems above, it can be seen that both *rahi>n* and *murtahin* have not understood the essence of pawn. As explained in the previous chapter, that the essence of pawn is as *tabarru{‘* contract wherein the *tabarru{‘* contract contains values that must be fulfilled by both *rahi>n* and *murtahin* including: the unity, justice, trustful and the mutual help (ta’a>wun). Based on the analysis, both *rahi>n* and *murtahin* involved in *senden* Pawn have ignored that values.

Based on the explanation above, it is understood that the *senden* pawn practice often creates the new problem. The problems which emerged from the practice was more than the kindness. In Islamic view it is recommended to leave the problems instead of reaching the kindness. As explained in the *fiqh* rule:

درأ المفساد أول من جلب المصالح^{١٩٥}

Meaning:

“Rejecting the mafsadah is preceded by reaching out to the maslahah”

From the explanation above, it can be understood that the harm caused is more than the goodness. So that raises a problem and generally this is harms the *murtahin*. This is what causes the *senden* pawn practice in the village of Cantuk not only to harm *rahi>n* but on the other hand it is also harm to *murtahin*.

^{١٩٥} علي أحمد الندوي، القواعد الفقهية، الطبعة الثانية، (دمشق: دار القلم، ١٤١٢هـ-١٩٩١م)

The analysis of pawn pledge practices based on the explanations described above are briefly presented in the following table:

a. Based on Definition

Table 4.1

<i>Senden</i> Pawn Practice	Analysis
Based on societies - understanding, they understand that <i>senden</i> pawn as a purchase and sale practice but some others understand the practice as a pawn. This is because on one side the <i>senden</i> pawn resembles a purchase and sale contract but on the other hand resembles a pawn contract.	The essence of the <i>senden</i> pawn practice that applies in the society of Cantuk village according fiqh <i>muamala</i> > <i>t</i> is the practice of bay 'al-wafa'. In fiqh m <i>muamala</i> > <i>t</i> transactions that contain multiple contracts, namely the mix of purchase and sale contract the pawn contract as well as occur in the <i>senden</i> pawn practice, are included the category of bay 'al-wafa' contract. While the law of bay 'al-wafa' itself is still debated by the ulama.

b. Based on Contract

Table 4.2

<i>Senden</i> Pawn Practice	Analysis
<p>1) <i>Senden</i> pawn including a purchase and sale contract, because the contract used in the <i>senden</i> pawn agreement is purchase and sale contract.</p> <p>2) The <i>senden</i> pawn -transactions in the form of an <i>ijarah</i> or lease contract, because the goods sold at a specified time must be sold back to the origin seller.</p> <p>3) <i>Senden</i> pawn transaction in the form of <i>rahn</i> contract, because at maturity the seller must return the debt to the buyer by redeeming the land or vehicle and the buyer must return the land or vehicle by selling it at the original price to the seller.</p>	<p><i>Senden</i> pawn practice is a practice that combines several contracts. Seeing the three contracts contained in the <i>senden</i> pawn practice is a different contract and cannot be combined. Then the combination of the contract forms an unusual or strange contract. Whereas in fiqh <i>muamala</i>><i>t</i>, merging that three contracts in one transaction is prohibited.</p>

c. Based on Components and Condition

Table 4.3

Senden Pawn Practice	Analysis
<p>some things that have not been fulfilled in the practice of <i>senden</i> pawn are as follows:</p> <p>1) The <i>marhu>n</i> is not complete with the principal. Where in the <i>Senden</i> pawn <i>marhu>n</i> were pawned not by the inclusion of ownership certificate, but only by giving the land and vehicles without a certificate of ownership.</p> <p>2) Some <i>marhu>n</i> used in the <i>Senden</i> pawn transaction have not been fully owned by the <i>rahi>n</i>.</p> <p>3) There are several transactions where <i>rahi>n</i> is not able to redeem <i>marhu>n</i> at maturity, so <i>murtahin</i> still uses <i>marhu>n</i> and the time of redemption is waiting until <i>rahi>n</i> can redeem. In this case the return time limit is left to <i>rahi>n</i>.</p>	<p>based on the conditions set out in Islam, the <i>marhu>n</i> must be complete with the principal.</p> <p>The <i>marhu>n</i> must be separate from other people's ownership, namely not joint ownership but full ownership of <i>rahi>n</i>.</p> <p>The time of redemption given to <i>rahi>n</i> makes the time limit set at the beginning as if it were merely a formality. This causes unclear timing of redemption. So that it has an impact on the practice of <i>Senden</i> pawn which lasts for years without clarity on the time of redemption.</p>

Based on the results of the components and condition analysis above, the researcher agrees with the results of a study conducted by Safrizal which understood that the obscurity of the time of redemption ultimately resulted in community disputes. Therefore, components and condition are very important to

note. From the results understood that there were still a number of components and conditions that had not been fulfilled. Then *senden pawn* is categorized as a defect contract because there are components and conditions that have not been fulfilled.

d. Based on Utilization of *Marhu>n*

Table 4.4

Senden Pawn Practice	Analysis
<p>1) The utilization of <i>marhu>n</i> is in the hands of <i>murtahin</i>. Then the results obtained from the use of <i>marhu>n</i> are the right of <i>murtahin</i>. Expressed this way because the <i>marhu>n</i> is fully owned by <i>murtahin</i> during the agreed time period</p>	<p>In <i>fiqh muamala>t</i> there are differences of opinion among ulama related to the utilization of <i>marhu>n</i>. However, if seen based on its implementation, <i>Senden pawn</i> is more directed at profit and exploitation.</p>
<p>2) All costs required for <i>marhu>n</i> care is the responsibility of the <i>murtahin</i> during the agreed period of time</p>	<p>This element of exploitation is reported as a prohibition in <i>senden pawn</i> practices. Where exploitation causes usury and the usury is not allowed in Islam.</p>
<p>3) As long as <i>rahi>n</i> has not been able to repay the debt at maturity, then the time for repayment is fully handed over to <i>rahi>n</i>. And during that time <i>marhu>n</i> is free to be used by <i>murtahin</i>.</p>	<p>The exploitation has caused something halal to be something that raises the usury, and this is not allowed in Islam, as in the rules of <i>fiqh</i> mentioned:</p>
	<p>الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم</p> <p>“the law of all things is possible until there is a proposition indicating it’s proscribed”</p>

The results of this analysis is in line with the results of research conducted by Hukmiah who revealed that pawning

practices in Sumatra indicated the tyranny towards one party. Related to the *fiqh* and also the opinion of jurists above, this transaction is not permitted. When referring to the problems of utilization of *marhu>n* in *senden* pawn, the opinions of Malikiyah and Hanafiyah jurists can be used as alternatives. Where the *murtahin* may use the *marhu>n* while obtaining permission from the *rahi>n*. But that does not mean accepting that opinion absolutely, because it will lead to exploitation and it is classified as usury. This opinion is used as an alternative with the intention that either *rahi>n* or *murtahin* can utilize the *marhu>n* together. Where this can also avoid *marhu>n* from the condition of *mubadzir*.

e. Based on Issues

Table 4.5

Senden Pawn Practice	Analysis
1) <i>Marhu>n</i> often pawned to the third party by <i>murtahin</i>	In this practice both <i>rahi>n</i> or <i>murtahin</i> have not fulfilled their obligations in pawn contract.
2. <i>Marhu>n</i> often used as collateral item for other transactions with other parties by <i>rahi>n</i>	Based on the analysis, both <i>rahi>n</i> and <i>murtahin</i> in the problems that occur in the execution of the pawn itself not only contradicting the value of rahn as <i>tabarru{‘</i> contract but turn aside the <i>maslahah</i> in the practice of <i>senden</i> pawn.

Based on the results of the above research, the researchers disagree with the results of previous research which states that the *rahi>n* party is the party that is always harmed. Because as happened in Cantuk, not only *rahi>n* is harmed but *murtahin*

can also be harmed. This is because not all pawn practices carried out in a place have similarities with the practice of pawn carried out elsewhere.

CHAPTER V

CLOSING

A. Result

1. Based on the results of the analysis, it was concluded the *senden* pawn practice that occurred in Cantuk Village was an imperfect category. This is because when transactions occurred, the status of *marhu>n* has not become the owner of *rahi>n* and are not submitted fully with the principal document. Based on Islamic view, *senden* pawn practice basically is not the practice of *rahn* but the practice of *bay' al-wafa'*, because *senden* pawn resembles the practice of *bay' al-wafa'*. While the legal validity of *bay' al-wafa'* itself still debated by jurists.
2. The results of analysis in *senden* pawn issues both *rahi>n* and *murtahin* are not only contradicting the values of pawn as *tabarru'* contract but also turn aside the *maslahah* in *senden* pawn practice.

B. Suggestions

1. As concluded that the *senden* pawn practice is the practice of *bay' al-wafa'*. Considering that *bay' al-wafa'* has been agreed by the jurists as an imperfect contract, then in the practice of *senden* pawn must be renewed so that its application is in accordance with Islamic concept.
2. The existing problems will never occur if the society realizes the *maslahah* and the importance of Islamic law. Therefore, the socialization of the rules of *senden* pawn in accordance with Islamic concept must be explained so that it can be understood by society.
3. The issues of utilizing *marhu>n* in *senden* pawn practice is reported to be containing elements of usury, then the opinions of Malikiyah and Hanafiyah jurists can be used as alternatives. Where the *murtahin* may use the *marhu>n* while obtaining permission

from the *rahi>n*. But that does not mean accepting that opinion absolutely, because it will lead to exploitation and it is classified as usury. This opinion is used as an alternative with the intention that either *rahi>n* or *murtahin* can utilize the *marhu>n* together. Where this can avoid *marhu>n* from the condition of *mubadzir*.

BIBLIOGRAPHY

Arabic Sources

إسماعيل، محمد بكر ، القواعد الفقهية بين الأصالة و التوجيه، بيروت : دار المنار، ١٩٩٧ م

باهي، وحيد بن عبد السلام، قوانين الشريعة الإسلامية، الطبعة الأولى، الأزهر: دار التقوى، ١٤٣٤ هـ - ٢٠١٣ م

الحسين، الإمام أبي محمد بن مسعود بن محمد بن الفراء البغوي، التهذيب، الطبعة الأولى، بيروت: دار الكتب العلمية، ١٤١٨ هـ - ١٩٩٧ م

حيدر، علي، درر الحكام شرح مجلة الأحكام، الطبعة الأولى، بيروت: دار الجيل، ١٤٢٣ هـ - ٢٠٠٣ م

الزحيلي، وهبة، المعاملات المالية المعاصرة، الطبعة الأولى، دمشق: دار الفكر، ١٤٢٢ هـ - ٢٠٠٢ م

زعتري، علاء الدين، فقه المعاملات المالية المقارن، الطبعة الأولى، دمشق: دار العصماء، ١٤٣٢ هـ - ٢٠١٠ م

السيد سابق، فقه السنة، الطبعة الأولى، القاهرة: دار الحديث، ١٤٢٠ هـ - ٢٠٠٤

السيوطي، الإمام جلال الدين عبد الرحمن ، الأشباه و النظائ في قواعد وفروع فقه اشافعية، الرياض: مكتبة نزارمصطفى الباز، ١٤١٨ هـ-١٩٩٧ م

شبير، محمد عثمان، القواعد الكلية و الضوابط الفقهية في الشريعة الإسلامية، عمان الاردان: دار النفائس ١٤٢٨ هـ/ ٢٠٠٧ م

صدقي، محمد بن أحمد البونو أبوالحارثالغزي، القواعد الفقهية، لبنان: مؤسسة

الرسالة، ١٤٢٤هـ-٢٠٠٣م

عبد الله، أبي محمد بن أحمد بن محمد بن قدامة المقدسى الجماعىلى الدمشقى
الصالحى الحنبلى، المغنى، الرياض: دار عالم الكتب.

محمد، الإمام أبي الوليد بن أحمد بن محمد بن أحمد بن رشد القرطبي، *بداية المجتهد*،
بيروت: دارالمعرفة، ١٤٠٢ هـ - ١٩٨٢ م

محمد، شمس الدين بن الخطيب الشربيني، *مغني المحتاج*، الطبعة الأولى، بيروت:
دارالمعرفة، ١٤١٨ هـ - ١٩٩٧ م

الندوي، علي أحمد، *القواعد الفقهية*، الطبعة الثانية، دمشق: دار القلم،
١٤١٢هـ-١٩٩١م

English Sources

Zuhaily, Wahbah Al. 2002. *Financial Transactions in Islamic Jurisprudence*,
Translated. Mohammad A. El-Gamal, Damascus: Dar Al-Fikr.

Indonesian Sources

Abdullah al-Muslih dan Shalah ash-Shawi. 2013. *Ma La Yasa' at-Tajira
Jahluhu*. Cetakan ke-4. Jakarta: Darul Haq.

Anshori, Abdul Ghofur. 2006. *Gadai Syariah di Indonesia: Konsep,
Implementasi dan Institusionalisasi*. Yogyakarta: Gadjah Mada
University Press.

Asyur, Ahmad Isa. *Fiqh Islam Praktis: Bab Muamalaat*. (Pustaka Mantiq)

Azani, Muhammad, "Praktik Akad Gadai Dengan Jaminan Lahan Sawah Dan
Gadai Emas Di Kecamatan Mempura Kabupaten Siak Berdasarkan
Hukum Islam", *Jurnal Perspektif Hukum*, Vol. 15, No. 2, 2015.

Boedi Abdullah dan Beni Ahmad Saebani, *Metode Penelitian Ekonomi*

Islam Muamalaat

- Djazuli, A. 2006. *Kaidah-Kaidah Fikh*. Jakarta: Prenada Media Group.
- Dumairy. *Gadai Syariah di Indonesia*. 2006. Yogyakarta: Gadjah Mada University Press.
- Fauzan, Arif, "Prinsip *Tabarru'* Teori dan Implementasi di Perbankan Syariah", *Jurnal Al-Amwal*, Vol. 8. No. 2, 2016.
- Hadi, Muhammad Sholikul. 2003. *Pegadaian Syariah*. Jakarta: Salemba Diniyah.
- Haidar, Muhammad Aqil. 2019. *Memfaatkan Barang Gadai Bolehkan*, Jakarta: Rumah Fiqih Publishing.
- Harun, Nasru. 2007. *Fiqh Muamalaat*. Jakarta: Gaya Media Pratama.
- Hidayat, Enang. 2016. *Transaksi Ekonomi Syariah*. Bandung: PT Remaja Rosdakarya.
- Hukmiah,"Implementasi Hukum Ekonomi Syariah Dalam Praktek Gadai Sawah", *Jurnal Fenomena*, Vol. 8, No. 2, 2016.
- Jajuli, Sulaeman. 2015. *Kepastian Hukum Gadai Tanah Dalam Islam*. Yogyakarta: Deepublish.
- Jaluli, M Sulaeman, "Kepastian Hukum Gadai Tanah Dalam Hukum Islam Di Kabupaten Bogor, *Jurnal Ahkam*, Vol. 15, No. 2, 2015.
- Kaelan, 2012. *Metode Penelitian Kualitatif Interdisipliner bidang Sosial, Budaya, Filsafat, Seni dan Humaniora*. Yogyakarta: PARADIGMA.
- Kusairi, Ah,"Konsep Gadai Dalasm Hukum Islam (Studi Analisis Terhadap Mekanisme Operasional Gadai Syari'ah Di Perusahaan Umum Pegadaian Syari'ah Pamekasan), *Jurnal Al-ahkam*, Vol. 7, No. 1, 2012.
- Ma'luf, Louis. 1986. *Al-Munjid*. Beirut: Darul Masyrik.
- Martono, Nanang. 2014. *Metode Penelitian Kuantitatif*. Jakarta: PT RajaGrafindo Persada.
- Nazir, Moh. 1988. *Metodologi Penelitian*. Jakarta: Ghalia Indonesia.

- Moleong, Lexy J. 2007. *Metodologi Penelitian Kualitatif*, Bandung: PT Remaja Rosdakarya Offset.
- Mulazid, Ade Sofyan. 2016. *Kedudukan Sistem Pegadaian Syariah*. Jakarta: Prenadamedia Group.
- Munir, “Praktik Gadai Sawah Dan Implikasi Sosial Ekonomi (Studi Kasus Di Desa Juruan Daya Kecamatan Batuputih Kabupaten Sumenep Madura), *Jurnal Ilmiah*, Fakultas Ekonomi Dan Bisnis Universitas Brawijaya Malang, 2014.
- Muslich, Ahmad Wardi. 2017. *Fiqh Muamalat*. Jakarta: Amzah.
- Mustafa, Imam. 2014. *Fiqh Muamalaat Kontemporer*. Yogyakarta: Kaukaba Dipantara.
- Rais, Sasli. 2005. *Pegadaian Syariah: Konsep dan Sistem Operasional: Suatu Kajian Kontemporer*. Jakarta: UI-PRESS.
- Ratna, Nyoman Kutha. 2010. *Metodologi Penelitian Kajian Budaya dan Ilmu Sosial Humaniora pada Umumnya*. Cet-1. Yogyakarta: Pustaka Pelajar.
- Rozalinda. 2016. *Fikih Ekonomi Syariah: Prinsip dan Implementasi Pada Sektor Keuangan Syariah*. Jakarta: PT RajaGrafindo Persada, 2016.
- Safrizal, ”Praktek Gadai Sawah Dalam Perspektif Syari’ah (Studi Kasus Di Desa Gampong Dayah Syarif Kecamatan Mutiara Kabupaten Pidie Provinsi Aceh)”, *Jurnal Islam Future*, Vol. 15, No. 2, 2016.
- Shobirin, “Jual Beli dalam Pandangan Islam”, *Jurnal Bisnis dan Manajemen Islam*, Vol. 3, No.2, 2015.
- Sjahdeini, Sutan Remy. 1999. *Perbankan Dan Kedudukannya Dalam Tata Hukum Perbankan Indonesia*. Jakarta: Pustaka Utama Grafiti.
- Sudarsono, Heri. 2003. *Bank dan Lembaga Keuangan Syariah: Deskripsi dan Ilkustrasi*. Yogyakarta: Ekonosia.
- Sudiarti, Sri, “Bay’ Al-Wafa’: Permasalahan dan Solusi dalam Implementasinya”, *Jurnal Analytica Islamica*, Vol.5, No.1, 2016.

- Sugiyono. 2015. *Metode Penelitian Kuantitatif Kualitatif Dan R&D*. Cet-22. Bandung: Alfabeta.
- Suhendi, Hendi. 2016. *Fiqh Muamalaat*. Jakarta: PT RajaGrafindo Persada.
- Susiawati, Wati, "Jual Beli Dalam Konteks Kekinian", *Jurnal Ekonomi Islam*, Vol. 8, No.2, 2017.
- Sutedi, Adrian. 2011. *Hukum Gadai Syariah*. Bandung: Alfabeta.
- Teguh, Muhammad. 2005. *Metodologi Ekonomi teori dan aplikasi*, Jakarta: PT.Rajagrafindo Persada.
- Yazid Afandi, *Fiqh Muamalaat dan Implementasinya dalam Lembaga Keuangan Syari'ah*, p. 148
- Za'tari, Ala'Uddin. 2010. *Fiqh Al-Mu'amalah Al-Maliah Al-Muqaran*. Damaskus: Dar Al-Ashoma'.
- Muchsin, " Tinjauan Hukum Islam Terhadap Praktik Gadai Sawah (Studi Kasus Desa Salu Balo Kecamatan Mehalaan Kabupaten Mamasa), *J-Alif Jurnal Penelitian Hukum Ekonomi Syariah dan Sosial Budaya Islam*, Vol. 1, No. 1, 2016

Other Sources

- UU Nomor 56 Prpu 1960 Tentang Penetapan Luas Tanah Pertanian dalam pasal 7 ayat (1) dan (2).
- Ddy. Als, "Sindikad Gadai Motor", dalam koran *Radar Banyuwangi*, January, 21 2019.
- Kompilasi Hukum Ekonomi Syariah (KHES) Pasal 20 Ayat 14, tentang Akad
- Kitab Undang-Undang Hukum Perdata (KUH Perdata) Pasal 1150-1153, tentang Gadai



**PEMERINTAH KABUPATEN BANYUWANGI
KECAMATAN SINGOJURUH
DESA CANTUK**

*Jalan Sritanjung No. 01 Kode Pos 68464
CANTUK*

SURAT KETERANGAN

No. 470/45/42.508.08/2019

Bismillahirrahmanirrahim,

Assalamu 'alaikum Warahmatullahi Wabarakatuh,

Yang bertandatangan di bawah ini Kepala Desa Cantuk Singojuruh Banyuwangi Jawa Timur, menerangkan dengan sebenarnya bahwa mahasiswa pascasarjana berikut:

Nama : Tesa Mellina
NIM : 38.2.3.286
Fakultas : Hukum Ekonomi Syariah

Telah melaksanakan penelitian di Desa kami dengan topik:

Isu dan Prospek Godai Sendan Dalam Perspektif Islam

Demikian surat keterangan ini kami buat, agar menjadi maklum bagi yang bersangkutan dan dapat digunakan dengan sebaik-baiknya.

Wassalamu'alaikum Warahmatullahi Wabarakatuh

Cantuk, 21 Januari 2019
Kepala Desa Cantuk
(H. MAS BUDI)

**SURAT PERNYATAAN JUAL BELI GARAPAN
TANAH SAWAH**

Yang bertanda tangan dibawah ini kami :

- I. Nama : YUYUN WAHYUNI
 Umur : 32 tahun
 Pekerjaan : Wiraswasta
 Alamat : Des. Cantuk Ler Rt. 02 Rw. 02 Desa Cantuk Kec. Singojuruh Kab. Banyuwangi.

Yang selanjutnya disebut **PIHAK I (Pertama)**

- Nama : HJ. SITI ZULAIHA, Umur : 47 tahun, Pekerjaan : Wiraswasta, Alamat : Des. Kendal Rt. 01 Rw. 01 Desa Sragei Kec. Songgom Kab. Banyuwangi.

Yang selanjutnya disebut **PIhak II (Kedua)**

- II. 1. Kami Pihak **Pertama** menyatakan dengan sejujurnya bahwa kami benar-benar mempunyai sebidang tanah sawah yang terletak di Desa Cantuk Kec. Singojuruh Kab. Banyuwangi sesuai dengan Petak / Sertifikat Nomor : 278 PERSIL 50 BLOK / 024 NOP : 0025 KLAS : S I LUAS : 0.670 M² ATAS NAMA : ABDUL HAMID dengan batas-batas sebagai berikut :
- | | | | |
|-------|-------------------------|---------|------------------|
| Utara | : Sawah milik MAWAR | Selatan | : Saluran Air |
| Timur | : Sawah milik MAWARIYAH | Barat | : Bel Keraso Aqi |
2. Kemudian tanah sawah tersebut telah kami nyatakan telah kami jual garapan kepada **PIHAK KEDUA** seharga Rp.33.600.000,- (Tiga Puluh Tiga Juta Enam Ratus Ribu Rupiah) per garapan Rp.2.800.000,- (Dua juta Delapan Ratus Ribu rupiah) sebanyak 12 garapan dengan perjanjian sebagai berikut :
- Pembayaran PBB ditanggung oleh **PIHAK KEDUA**
 - Pihak ke II (Dua) tidak bisa menjual / menggarikan ke orang lain tanpa adanya persetujuan dari pihak I (Pertama)
 - Bila tanaman terserang hama atau berumur dibawah 2 bulan garapan ditutup

III.

- IV. Demikian Surat Pernyataan ini kami buat bersama dalam keadaan sadar tanpa adanya paksaan atau tekanan dari pihak manapun, dan setelah dibacakan kami menyetujui/mengerti maksudnya. Pernyataan ini tidak bisa diganggu gugat oleh siapapun dan dapat dipergunakan sebagai alat bukti bila mana diperlukan.

Cantuk, 25 Februari 2012

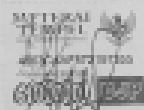
KAMI YANG MEMBUAT PERNYATAAN :

PIHAK KEDUA



HJ. SITI ZULAIHA

PIHAK PERTAMA



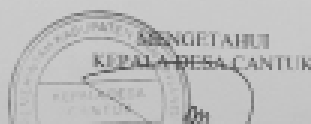
YUYUN WAHYUNI

SAKSI

1. ABDUL HAMID



2. JULAIDI

**SURAT PERNYATAAN JUAL BELI GARAPAN
TANAH SAWAH**

Yang bertanda tangan dibawah ini kami :

- I. Nama : **DIAN MULYA SARI**
 Umur : 28 tahun
 Pekerjaan : GURU TK
 Alamat : Des. Kelampayan Rt. 01 Rw. 01 Desa Cantuk Kec. Singajuruh Kab. Banyuwangi.

Yang selanjutnya disebut **PIHAK I (Pertama)**

1. Nama : **Mr. ALI HAEROMEN**, Umur : 52 tahun, Pekerjaan : Tani, Alamat : Des. Cantuk Kidul Rt. 03 Rw. 03 Desa Cantuk Kec. Singajuruh Kab. Banyuwangi.

Yang selanjutnya disebut **Pihak II (Kedua)**

- II. 1. Kami Pihak **PERTAMA** menyatakan dengan sejujurnya bahwa kami benar-benar mempunyai sebidang tanah sawah yang terletak di Desa Cantuk Kec. Singajuruh Kab. Banyuwangi sesuai dengan Petak Nomor : **PERSIL : 87 BLOK : 034 NOP : 0002 KLAS : S 1** LUAS : 7.330 M² ATAS NAMA : **ISRONIA** dengan batas-batas sebagai berikut :
- | | |
|-----------------------------|-----------------------------|
| Utara : Sawah milik HUSAINI | Selatan : Sawah milik WAKAF |
| Timur : Sawah milik HUSAINI | Barat : Sawah milik WAKAF |
2. Kemudian tanah sawah tersebut telah kami nyatakan telah kami jual garapan kepada **PIHAK KEDUA** sebagai Rp.30.000.000,- (Tiga Puluh Juta Rupiah) per garapan Rp.3.000.000,- (Tiga juta rupiah) sebanyak 10 garapan dengan perjanjian sebagai berikut :
1. Pembayaran PBB dianggung oleh **PIHAK KEDUA**.
 2. Bilamana dapat garapan bisa dibeli kembali dengan harga tetap
 3. Bila tanaman teraseng hama masih berumur dibawah 2 bulan garapan dihapus
- III. Demikian Surat Pernyataan ini kami buat bersama dalam keadaan sadar tanpa adanya paksaan atau tekanan dari pihak manapun, dan setelah dibacakan kami memahami/ mengerti maknanya. Pernyataan ini tidak bisa digugur gugat oleh siapapun dan dapat dipergunakan sebagai alat bukti bilamana diperlukan.

Cantuk, 17 Februari 2010

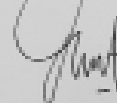
KAMI YANG MEMBUAT PERNYATAAN :

PIHAK KEDUA



M. ALI HAEROMEN

PIHAK PERTAMA



DIAN MULYASARI

KASUS CANTUK KIDUL.



SUAMI



IMRON

SAKSE



DESA BUDI

TRANSKIP WAWANCARA

A. Narasumber 1 (murtahin)

1. Apa gadai senden menurut pemahaman bapak/ibu/saudara/i?
Jawab: ada orang butuh uang, kemudian menjual sawahnya dan nanti dibeli kembali
2. Bagaimana sejarah gadai senden yang bapak/ibu/saudara/i ketahui?
Jawab: yang saya tahu gadai senden itu memang sudah dari dulu dilakukan
3. Apa saja yang menjadi objek gadai senden?
Jawab: sawah, motor
4. Siapa saja yang terlibat dalam pelaksanaan akad gadai senden?
Jawab: yang terlibat yang minjam dan meminjami uang
5. Kapan dan dimana akad gadai senden dilakukan?
Jawab: biasanya yang pinjem uang dating kerumah yang meminjami
6. Bagaimana pelaksanaan praktik gadai senden?
Jawab: pelaksanaannya, biasanya kalau yang melakukan saling kenal atau keluarga sendiri langsung saja tidak melalui pemetintah desa
7. Apa yang menjadi alasan bapak/ibu/saidara/i melakukan gadai senden?
Jawab: untuk membantu tetangga yang butuh uang
8. Kapan barang jaminan diserahkan kepada penerima gadai?
Jawab: jika telah ada kesepakatan dari yang meminjam dan memberi pinjaman
9. Kapan penggadai menerima uang hasil dari gadai senden?
Jawab: jika barang jaminan telah diserahkan
10. Ada persyaratan tertentu yang disyaratkan oleh penggadai dalam praktik gadai senden?
Jawab: yang penting kalau sudah jatuh tempo uang dikembalikan
11. Bagaimana cara menetapkan waktu berakhirnya pelaksanaan gadai

senden?

Jawab: tergantung kesepakatan masing-masing

12. Apa pernah terjadi perjanjian gadai sudah jatuh tempo tetapi penggadai belum mampu untuk melunasi uang pinjaman? Apabila pernah apakah alasannya dan bagaimana kebijakannya?

Jawab; iya pernah, itu sudah pasti. Kebiasaan masyarakat tidak mampu melunasi pada waktu jatuh tempo, akhirnya seperti ini gadai berlangsung lama sampai bertahun-tahun juga ada

13. Apa ada penjualan barang gadai saat jatuh tempo jika penggadai tidak mampu melunasi?

Jawab: tidak ada, karena sesuai kesepakatan barang jaminan akan dijual kembali ke pemilik aslinya

14. Dalam pelaksanaan gadai senden sebagai penerima gadai anda merasa dirugikan atau justru diuntungkan? Alasannya?

Jawab: yang saya alami, saya dirugikan sekali. Mungkin karena saya terlalu percaya untuk meminjamkan uang dan tidak melalui pemerintah desa untuk dilegalkan. Biasanya saya lancar-lancar saja, cuman pernah ketika itu saya tertipu dan akhirnya hanguslah uang yang saya pinjamkan tidak kembali.

15. Apa pernah terjadi permasalahan antara bapak/ibu/saudara/i dengan penggadai selama melaksanakan gadai senden?

Jawab: iya pernah. Jadi ceritanya yang saya pinjami uang menggadaikan sawah milik ibunya, namanya Dian. Ternyata sertifikat sawah tersebut sudah dijadikan jaminan di bank. Pada akhirnya karena Dian ini terbelit kredit macet di bank, bank mau menyita itu sawahnya. Saat itu sawah masih saya garap, dan saya tidak tahu sebelumnya kalau sertifikat sawah itu dijadikan jaminan hutangnya di bank. Akhirnya yang dirugikan disini otomatis saya, karena saya tidak memiliki bukti yang kuat untuk menuntut.

16. Bagaimana penaksiran jumlah uang yang dipinjamkan dalam praktik gadai senden?

Jawab: kita lihat dulu berapa banyak nilai barang yang digadaikan

17. Apa bapak/ibu/saudara/i mengetahui bagaimana praktik gadai yang sesuai dengan islam?

Jawab: iya saya tahu, selama saya tidak meminta bunga menurut saya wajar-wajar saja

B. Narasumber 2 (rahin)

1. Apa gadai senden menurut pemahaman bapak/ibu/saudara/i?

Jawab: gadai senden merupakan jual beli sawah

2. Bagaimana sejarah gadai senden yang bapak/ibu/saudara/i?

Jawab: sejarahnya saya kurang tahu, kita tahu gadai senden turun temurun

3. Apa saja yang menjadi objek gadai senden?

Jawab: biasanya sawah

4. Siapa saja yang terlibat dalam pelaksanaan akad gadai senden?

Jawab: orang yang punya banyak uang dan yang butuh uang

5. Dimana akad gadai senden dilakukan?

Jawab: kalau dilakukannya tergantung kesepakatan bersama, tapi biasanya dari pihak kita yang meminjam uang pergi ke rumah orang yang mau meminjam uang

6. Bagaimana pelaksanaan praktik gadai senden?

Jawab: pelaksanaannya biasa saja, jika ada kesepakatan ya sudah barang jaminan diserahkan dan uang juga diterima

7. Apa yang menjadi alasan bapak/ibu/saidara/i melakukan gadai senden?

Jawab: saat itu saya butuh uang untuk keperluan mendesak

8. Kapan barang jaminan diserahkan kepada penerima gadai?

Jawab: setelah uang pinjaman diberikan

9. Kapan bapak/ibu/saudara/i menerima uang hasil dari gadai senden?

Jawab: setelah menyerahkan barang yang digadaikan

10. Ada persyaratan tertentu yang disyaratkan oleh penerima gadai dalam praktik gadai senden?

Jawab: tidak ada, yang penting kalau jatuh tempo dikembalikan uangnya

11. Bagaimana cara menetapkan waktu berakhirnya pelaksanaan gadai senden?

Jawab: tergantung kesepakatan masing-masing, jadi berbeda-beda

12. Bagaimana penaksiran jumlah uang yang dipinjamkan dalam praktik gadai senden?

Jawab: biasanya disesuaikan dengan nilai barang gadaian

13. Apa pernah terjadi perjanjian gadai sudah jatuh tempo tetapi penggadai belum mampu untuk melunasi uang pinjaman? Apabila pernah apakah alasannya dan bagaimana kebijakannya?

Jawab: iya pernah, kalau seperti ini biasanya ada kesepakatan baru diantara pelaku gadai

14. Apa ada penjualan barang gadai saat jatuh tempo jika bapak/ibu/saudara/i tidak mampu melunasi?

Jawab: tidak ada, karena sistemnya kekeluargaan

15. Dalam pelaksanaan gadai senden sebagai penggadai anda merasa dirugikan atau justru diuntungkan? Alasannya?

Jawab: kalau saya tidak merasa dirugikan karena kebutuhan saya terpenuhi, tapi sebenarnya yang minjemin uang lebih banyak untungnya

16. Apa pernah terjadi permasalahan antara bapak/ibu/saudara/i dengan penerima gadai selama melaksanakan gadai senden?

Jawab: alhamdulillah selama ini lancar-lancar saja

17. Apa bapak/ibu/saudara/i mengetahui bagaimana praktik gadai yang sesuai dengan islam?

Jawab: sepaham saya, selama saya tidak membayar bunga itu sah-sah saja

C. Narasumber 3 (rahin)

1. Apa gadai senden menurut pemahaman bapak/ibu/saudara/i?
Jawab: gadai senden adalah dimana kita dapat mendapatkan pinjaman uang dengan jalan menggadaikan sawah kita untuk beberapa waktu
2. Bagaimana sejarah gadai senden yang bapak/ibu/saudara/i?
Jawab: gadai senden sudah ada sejak dulu sebelum saya lahir mungkin sudah ada
3. Apa saja yang menjadi objek gadai senden?
Jawab: kadang sawah, kadang juga berupa kendaraan
4. Siapa saja yang terlibat dalam pelaksanaan akad gadai senden?
Jawab: yang terlibat yang pinjam uang dan yang mau memberi pinjaman, saksi dan kepala desa. Ada juga biasanya yang pakai makelar.
5. Dimana akad gadai senden dilakukan?
Jawab: di balai desa
6. Bagaimana pelaksanaan praktik gadai senden?
Jawab: setelah ada kesepakatan, kami meminta legalitas dari kepala desa. Jadi penyerahan uang pinjaman dan penyerahan barang jaminan gadai kita lakukan di balai desa dengan disaksikan saksi dan juga kepala desa.
7. Apa yang menjadi alasan bapak/ibu/saidara/i melakukan gadai senden?
Jawab: untuk membiayai anak saya sekolah dan ada keperluan lain yang mendesak ketika itu
8. Kapan barang jaminan diserahkan kepada penerima gadai?
Jawab: saat sudah dilegalkan di balai desa
9. Kapan bapak/ibu/saudara/i menerima uang hasil dari gadai senden?
Jawab: setelah adanya bukti penyerahan barang jaminan dari balai desa
10. Ada persyaratan tertentu yang disyaratkan oleh penerima gadai dalam praktik gadai senden?

Jawab: syaratnya barang jaminan saya serahkan kepada orang yang memberi pinjaman uang untuk digarap sawahnya

11. Bagaimana cara menetapkan waktu berakhirnya pelaksanaan gadai senden?

Jawab: tergantung kesepakatan masing-masing, jadi berbeda-beda

12. Bagaimana penaksiran jumlah uang yang dipinjamkan dalam praktik gadai senden?

Jawab: biasanya tergantung harga barang jaminan yang digadaikan, jadi tidak tentu

13. Apa pernah terjadi perjanjian gadai sudah jatuh tempo tetapi penggadai belum mampu untuk melunasi uang pinjaman? Apabila pernah apakah alasannya dan bagaimana kebijakannya?

Jawab: iya pernah, biasanya kalau seperti itu kita buat kesepakatan baru untuk perpanjangan waktu pelunasan

14. Apa ada penjualan barang gadai saat jatuh tempo jika bapak/ibu/saudara/i tidak mampu melunasi?

Jawab: tidak ada

15. Dalam pelaksanaan gadai senden sebagai penggadai anda merasa dirugikan atau justru diuntungkan? Alasannya?

Jawab: kalau saya merasa beruntung dapat pinjaman uang, ya walaupun sawah tidak bias saya garap karena harus saya jadikan jaminan

16. Apa pernah terjadi permasalahan antara bapak/ibu/saudara/i dengan penerima gadai selama melaksanakan gadai senden?

Jawab: kalau saya sendiri belum pernah, tapi beberapa tetangga saya pernah mengalami hal tersebut. Biasanya yang melakukan gadai senden illegal, kalau sayakan melalui pemerintah desa, biar aman ada suratnya jadia jelas transaksinya

17. Apa bapak/ibu/saudara/i mengetahui bagaimana praktik gadai yang sesuai dengan islam?

Jawab: yang sesuai yang penting tidak ada riba

D. Narasumber 4 (murtahin)

1. Apa gadai senden menurut pemahaman bapak/ibu/saudara/i?
Jawab: ada yang butuh uang jual sawahnya, kemudian nanti ditebus kembali kalau sudah jatuh tempo
2. Bagaimana sejarah gadai senden yang bapak/ibu/saudara/i ketahui?
Jawab: sejak zaman nabi Muhammad juga sudah ada gadai setahu saya
3. Apa saja yang menjadi objek gadai senden?
Jawab: kebanyakan sawah
4. Siapa saja yang terlibat dalam pelaksanaan akad gadai senden?
Jawab: yang pinjam uang dan yang meminjamkan uang, tapi ada juga yang melibatkan saksi atau kepala desa
5. Kapan dan dimana akad gadai senden dilakukan?
Jawab: tergantung maunya dimana
6. Bagaimana pelaksanaan praktik gadai senden?
Jawab: kalau saya pelaksanaanya langsung saja tidak melalui kepala desa, karena yang pinjam uang saudara saya sendiri jadi lebih kekeluargaan saja
7. Apakah yang menjadi alasan bapak/ibu/saidara/i melakukan gadai senden?
Jawab: membantu saudara saya yang butuh pinjaman uang
8. Kapan barang jaminan diserahkan kepada penerima gadai?
Jawab: setelah uang pinjaman saya serahkan
9. Kapan penggadai menerima uang hasil dari gadai senden?
Jawab: intinya saat barang jaminan diserahkan, uang pinjaman juga diserahkan
10. Ada persyaratan tertentu yang disyaratkan oleh penggadai dalam praktik gadai senden?
Jawab: tidak ada, yang terpenting setelah uang diserahkan, kita bias menggarap sawahnya
11. Bagaimana cara menetapkan waktu berakhirnya pelaksanaan gadai senden?

Jawab: biasanya setelah dua garapan sawah selesai uang pinjaman harus dikembalikan

12. Apakah pernah terjadi perjanjian gadai sudah jatuh tempo tetapi penggadai belum mampu untuk melunasi uang pinjaman? Apabila pernah apakah alasannya dan bagaimana kebijakannya?

Jawab; selama ini saya belum pernah mengalami

13. Apa ada penjualan barang gadai saat jatuh tempo jika penggadai tidak mampu melunasi?

Jawab: tidak ada

14. Dalam pelaksanaan gadai senden sebagai penerima gadai anda merasa dirugikan atau justru diuntungkan? Alasannya?

Jawab: kalau yang saya rasakan sekarang justru tidak dapat untung, karena saat menggarap sawah terkadang hasilnya tidak sesuai yang diharapkan. Sedangkan uang yang saya pinjamkan kalau saya puter lagi untuk usaha sebenarnya bisa dapat untung banyak dalam waktu dua garapan sawah

15. Apa pernah terjadi permasalahan antara bapak/ibu/saudara/i dengan penggadai selama melaksanakan gadai senden?

Jawab: selama ini tidak pernah

16. Bagaimana penaksiran jumlah uang yang dipinjamkan dalam praktik gadai senden?

Jawab: kita sesuaikan dengan harga sawah saat itu

17. Apa bapak/ibu/saudara/i mengetahui bagaimana praktik gadai yang sesuai dengan islam?

Jawab: iya saya tahu

E. Narasumber 8 (murtahin)

1. Apa gadai senden menurut pemahaman bapak/ibu/saudara/i?
Jawab: gadai senden adalah menggadaikan sawah atau kendaraan yang kita miliki untuk dapat pinjaman uang dari pihak yang mau diajak transaksi gadai
2. Bagaimana sejarah gadai senden yang bapak/ibu/saudara/i ketahui?
Jawab: yang saya tahu ini sudah ada sejak lama turun temurun
3. Apa saja yang menjadi objek gadai senden?
Jawab: biasanya sawah
4. Siapa saja yang terlibat dalam pelaksanaan akad gadai senden?
Jawab: yang menggadaikan dan yang meminjami uang
5. Kapan dan dimana akad gadai senden dilakukan?
Jawab: biasanya dirumah yang mau meminjami uang
6. Bagaimana pelaksanaan praktik gadai senden?
Jawab: pelaksanaannya langsung saja seperti jual beli dipasar, tapi kadang ada juga yang pakai kwitansi atau melalui desa untuk dibuatkan surat bukti gadainya
7. Apa yang menjadi alasan bapak/ibu/saidara/i melakukan gadai senden?
Jawab: kalau saya selaku yang meminjami uang alesannya selain membantu kita bisa menggarap sawahnya
8. Kapan barang jaminan diserahkan kepada penerima gadai?
Jawab: jika kita telah menandatangani perjanjian gadai senden
9. Kapan penggadai menerima uang hasil dari gadai senden?
Jawab: setelah barang jaminan diserahkan
10. Ada persyaratan tertentu yang disyaratkan oleh penggadai dalam praktik gadai senden?
Jawab: syaratnya kalau belum bisa membayar hutang kita masih dapat menggarap sawah yang dijadikan jaminan
11. Bagaimana cara menetapkan waktu berakhirnya pelaksanaan gadai senden?
Jawab: tergantung kesepakatan yang kita buat

12. Apa pernah terjadi perjanjian gadai sudah jatuh tempo tetapi penggadai belum mampu untuk melunasi uang pinjaman? Apabila pernah apakah alasannya dan bagaimana kebijakannya?

Jawab: pernah, biasanya alasannya karena belum cukup uangnya untuk menebus

13. Apa ada penjualan barang gadai saat jatuh tempo jika penggadai tidak mampu melunasi?

Jawab: tidak

14. Dalam pelaksanaan gadai senden sebagai penerima gadai anda merasa dirugikan atau justru diuntungkan? Alasannya?

Jawab: karena selama menggarap sawah baik-baik saja, bagi saya menguntungkan

15. Apa pernah terjadi permasalahan antara bapak/ibu/saudara/i dengan penggadai selama melaksanakan gadai senden?

Jawab: selama ini baik-baik saja walaupun mereka melunasi hutang lebih dari batas jatuh tempo yang telah disepakati

16. Bagaimana penaksiran jumlah uang yang dipinjamkan dalam praktik gadai senden?

Jawab: tergantung jaminannya berapa hektar

17. Apa bapak/ibu/saudara/i mengetahui bagaimana praktik gadai yang sesuai dengan islam?

Jawab: yang saya tahu praktik gadai wajar-wajar saja untuk dilakukan

F. Narasumber 9 (makelar)

1. Apa gadai senden menurut pemahaman bapak/ibu/saudara/i?
Jawab: senden merupakan transaksi meminjam uang dengan jalan menggadaikan sawah atau kendaraan
2. Bagaimana sejarah gadai senden yang bapak/ibu/saudara/i ketahui?
Jawab: sejarah pastinya saya kurang tahu, setahu saya turun temurun dari nenek moyang kita dulu
3. Apa yang menjadi alasan masyarakat melakukan gadai senden?
Jawab: kebanyakan karena butuh uang mendesak dan mereka tidak mau ribet jadi melalui gadai senden
4. Biasanya pihak manakah yang seringkali dirugikan?
Jawab: kalau menurut saya penggadai, karena sawahnya digarap yang meminjami uang sedangkan nanti penggadai juga harus menebus kembali sesuai pinjaman yang diberikan. Tapi adakalanya pemberi pinjaman dirugikan kalau tidak hati-hati dalam memilih penggadai, biasanya bisa tertipu
5. Apa persyaratan yang ada membebani penggadai atau justru sebaliknya?
Jawab: mungkin beberapa merasa terbebani apalagi kalau mata pencahariannya petani, otomatis kalau sawahnya digadaikan mereka tidak bisa menggarap. Tapi disisi lain mereka terbantu dengan adanya pinjaman
6. Sebagai makelar apakah anda merasa diuntungkan atau dirugikan?
Jawab: kalau saya kan hanya menjembatani kedua belah pihak, dan pastinya saya untung jika transaksi terjadi karena saya dapet upah
7. Bagaimana pelaksanaan praktik gadai senden?
Jawab: biasa saja, tapi tidak semua melalui makelar, ada juga yang langsung kalau mereka bersaudara
8. Apa makelar terikat hingga berakhirnya transaksi gadai senden?
Jawab: enggak, sebatas menghubungkan saja, tapi kalau diminta bantuan lagi saya siap membantu
9. Apa pernah terjadi problem selama melaksanakan gadai senden?

Jawab: selama ini tidak pernah, karena saya juga pilih-pilih kalau mau membantu saya harus pastikan dulu pihak penggadai bisa dipercaya

G. Narasumber (Kepala Desa, Staff Perangkat Desa, Tokoh Agama)

1. Apa gadai senden menurut pemahaman bapak?

Jawab: Gadai senden yang terjadi di desa cantuk banyuwangi bukanlah suatu transaksi yang dilakukan oleh lembaga keuangan, melainkan transaksi gadai yang dilaksanakan antar individu. Biasanya pelaksanaan gadai senden diawali dengan calon penggadai atau orang kepercayaan (sebagai perantara untuk menyampaikan niat penggadai pada calon penerima gadai dalam hal ini biasa disebut dengan istilah “makelar”) menemui calon penerima gadai untuk menyampaikan maksudnya meminjam uang dengan menggadaikan barang berharga miliknya. Kemudian apabila calon penerima mempunyai uang untuk dipinjamkan kepada penggadai dan telah mengetahui sawah atau kendaraan yang akan digadaikan, maka selanjutnya terjadilah kesepakatan antara kedua belah pihak. Biasanya akad tersebut disepakati dengan menggunakan kwitansi dan materai.

2. Bagaimana pemahaman masyarakat terhadap praktik gadai senden?

Jawab: Selama ini Sepengetahuan saya, gadai itu dalam masyarakat menyebutnya jual beli, dari kata jual beli kan seharusnya ada yang menjual ada yang membeli, namun pada hakikatnya yang dilaksanakan masyarakat itu lebih pada pergadaian. Kemudian mengapa hal ini bisa terjadi, karena masyarakat ini baik yang mau meminjam uang yang selanjutnya dikatakan (penggadai) terus yang meminjami uang selanjutnya yang dikatakan (menerima gadai) itu memang sama-sama membutuhkan, tapi yang paling membutuhkan itu adalah penggadai, disini posisi yang meminjami uang lebih pada kepentingan cari keuntungan.

Dan transaksi ini tidak akan terjadi akad apabila tidak ada jaminan yang diserahkan untuk dikelola. Jadi jaminan itulah baik yang berupa sawah atau kendaraan selanjutnya dikelola, sehingga yang meminjamkan uang tadi bukan berangkat dari semata-mata untuk menolong, malah itu jarang sekali orang yang minjami konteksnya untuk menolong tapi lebih pada mencari keuntungan. Jadi mereka yang punya duit tersebut meminjamkan, bagaimana uang yang dipinjamkan dapat kembali utuh tapi bisa diuntungkan lewat pengelolaan sawah tersebut. Seperti contoh jika bicara mobil atau sepeda. Yang punya uang mereka pinjamkan uang, tapi sepedanya dipakek dan kadang justru disewakan ke orang lain. dan sebenarnya sangat berbahaya, karena biasanya yang meminjamkan uang orang yang tidak mengerti hukum, orang awam karena sudah kebiasaan yang penting bagi mereka bagaimana dia diuntungkan dengan meminjamkan uang tersebut tanpa disadari kadang kala sawah yang dijadikan jaminan bukan milik dirinya, ada yang terjadi seperti itu. Sehingga ada yang punya hak atang mengambil, ya secara otomatis yang meminjami tadi kehilangan, dan kebanyakan orang yang menggadaikan itu orang yang punya sawah dimana sertifikatnya sudah di jaminkan dibank. Itu hampir 99% seperti itu.

3. Bagaimana sejarah gadai senden yang bapak/ibu/saudara/i?

Jawab: gadai senden pada hakikatnya adat masyarakat Cantuk yang dilakukan secara turun temurun

4. Ada berapa jenis gadai yang terdapat di desa cantuk?

Jawab: ada dua, yaitu langsung dan tidak langsung. Transaksi langsung ini yang dilakukan antara penggadai dan penerima gadai saja. Sedangkan yang tidak langsung transaksinya melalui kita pemerintah desa untuk minta dilegalkan. Transaksi gadai atau jual beli yang telah dipahami masyarakat didesa kami kebanyakan yang melalui desa adalah yang melakukan gadai sawah. Mereka yang melakukan transaksi melalui desa ini pada hakikatnya mereka rasa ketakutan/merasa takut, didesa meminta perlindungan agar tidak

terjadi sesuatu/resiko, mereka menyadari bahwa yang dilakukan tidak kuat sehingga meminta bantuan didesa untuk menyaksikan, apabila terjadisesuatu desa bisa membantu menyelesaikan.

Kemudian bagaimana kalau gadai motor atau sepeda motor? Selama ini yang terjadi di desa kami, mereka yang gadai kendaraan tidak pernah melalui desa, desa hanya mengetahui gadai kendaraan tersebut berlangsung apabila terjadi masalah. setelah ribet permasalahan gadai kendaraan muncul ternyata sepeda yang digadaikan dipindah tangankan terus kepihak yang lain baru dibawa ke pemerintaha desa, minta dibantu dan diselesaikan. Dari situ kami mengetahui bahwa sebenarnya belum lunas, sepeda merupakan angsuran kredit di dealer baru beberapa angsuran kemudian sudah digadaikan. Yang meminjami uang pada hakikatnya mau mencari untung, jadi setiap ada transaksi sepeda dan mobil ujung-ujungnya ribet, saat itu sampai ada kasus sampai masuk pidana kena vonis kasus penggelapan yang pada akhirnya menjual rumah untuk pembebasan. Jadi tidak ada mereka menggadaikan dengan menyerahkan sawah atau kendaraan dengan sertifikatnya itu tidak ada.

5. Bagaimana pelaksanaan gadai senden di desa cantuk?

Jawab: Kalau gadai sawah kebanyakan yang melakukan transaksi, terutama pihak yang meminjamkan uang datang ke desa untuk dilegalkan atau diresmikan. Sehingga sebagai kepala desa menghadapi masalah seperti ini, karena saya sadar benar bahwa seharusnya gadai, yang boleh menggadaikan adalah orang yang punya izin pegadaian, kalau orang yang mau meminjamkan uang adalah orang yang tentunya harus punya izin meminjami uang seperti KSP, bank dsb. Sehingga disitu transaksi gadai yang hakikatnya gadai, tapi didalam transaksi kami buat transaksi sewa, tapi untuk transaksi gadai kendaraan belum pernah menerima atau menyaksikan. Jadi mereka yang melakukan gadai kendaraan tidak pernah melalui desa, walaupun ada pasti dari kami sendiri menolak, karena biasanya pasti ujung-ujungnya ribet.

Pada dasarnya, kebanyakan pelaku-pelaku gadai senden yang tanpa melalui desa seperti disebutkan diatas merupakan oknum masyarakat yang memang sengaja mencari keuntungan dengan meminjamkan uang kepada pihak penggadai. Hal ini dilakukan karena transaksi semacam gadai senden sendiri sangat menguntungkan. Dikatakan menguntungkan karena jaminan biasanya disewakan kembali keorang lain oleh penerima gadai sementara uang yang dipinjamkan kepada pihak penggadai nantinya tetap kembali utuh. Sedangkan penggadai sebenarnya menderita kerugian mengingat uang pinjaman yang diterima pihak penggadai harus dikurangi ongkos makelar terlebih dahulu sebagai perantara dalam transaksi. Transaksi gadai kendaraan seperti ini kerap terjadi di desa cantuk dan pada akhirnya sering kali bermasalah dengan hukum.

6. Apa saja yang menjadi objek gadai senden?

Jawab: mayoritas sawah dan kendaraan

7. Apa pernah terjadi problem selama melaksanakan gadai senden? Jika ada pihak manakah yang seringkali dirugikan?

Jawab: Iya pernah, biasanya yang sering terjadi problem itu pada transaksi yang dilakukan secara langsung antara mereka saja tanpa melibatkan pemerintah desa. Problem muncul biasanya karena status barang jaminan yang digadaikan tidak sesuai. Kebanyakan masyarakat dikampung itu biasanya dia melihatnya apabila barang itu sudah dikelola atau dikuasai oleh seseorang sudah lama dianggap sawah itu sudah menjadi hak yang bersangkutan. Padahal apabila kita berbicara sawah, seyogyanya kita harus tahu sudah benar atau belum ini pemilikinya, bicara pemilik ini kan harus dibuktikan dengan surat atau sertifikat hak milik. Jadi kebanyakan orang-orang tidak berfikir seperti itu, jadi kebanyakan dari mereka tidak berfikir bahwa sertifikatnya sudah dijamin di bank.

Jadi kebanyakan dari mereka tidak mementingkan bagaimana jaminan tersebut yang penting dapat dikelola dan uang dapat kembali utuh. Padahal logikanya orang yang menggadaikan sawahnya tadi,

itu hampir dapat dipastikan sudah tidak dapat usaha lagi dibank karena sertifikatnya telah dipinjamkan, sehingga tatkala terjadi kredit macet ya bank enak aja tinggal ngambil sehingga yang akan menjadi korban adalah pihak yang meminjami uang yang telah mengelola sawah yang dijaminakan tadi.

8. Mengapa transaksi gadai senden lebih diminati dari pada melakukan transaksi dilembaga keuangan yang tersedia di desa?

Jawab: Transaksi senden sangat marak karena selain transaksinya mudah, nominal yang didapat juga lumayan besar tidak seperti di lembaga keuangan desa, selain itu kadangkala kalau gadai sawah itu yang meminjami uang dapat dipercaya.

9. Adakah Lembaga keuangan di desa Cantuk?

Jawab: Ada, dulu awalnya ada BKD (bank kredit desa) ada juga PNPM yang sekarang telah dilakukan transformasi menjadi BUMDES bersama, masyarakat bisa langsung meminjam engan mudah namun nilainya kecil.

10. Bagaimana penaksiran jumlah uang yang dipinjamkan dalam praktik gadai senden?

Jawab: Ada juga yang bedarsakan luasa sawah ada juga yang sesuai kebutuhan. Misalnya saya punya sawah setengah hektar atau 5000 m persegi. Itu kalau digadaikan pasarannya di desa kita 100 juta. Maka kalau 1 hektar kan berarti 200 juta kalau setengah hektarnya 100 juta. Tapi ada juga yang menggadaikan 1 hektar dengan pinjaman 100 juta saja sesuai kebutuhan. Jadi orang-orang sangat marak melakukan gadai sawah di desa ini dari pada saya pinjamkan ke bank, dibank kalau kita pinjam 100 juta maka perbulannya 3juta sekian kali 4 bulan katakan sudah berapa juta, kalau dikelola sawah biaya garapnya berapa, jadi gadai senden ini cepet transaksinya enak, tapi ya itu tadi resikonya. Pada hakikatnya yang lebih berpotensi menanggung resiko adalah pihak yang menerima gadai, seperi yang kami sampaikan sebelumnya, terjadi kasus penipuan gadai sawah oleh saudari nuryati dan dian yang melakukan transaksi

langsung tanpa melalui desa. (kalau melalui desa tentunya kami akan mengecek terlebih dahulu terkait kepemilikan sawah tersebut)

11. Kapan berakhirnya praktik gadai senden?

Jawab: perjanjiannya biasanya sampai 3 kali garapan (3x4= 1 th) maka uang akan dikembalikan setelah satu tahun. Maka jika belum mampu mengembalikan sebagaimana yang telah disepakati maka sawah tersebut tetap dikelola, tergantung kesepakatannya, biasanya seperti itu.

12. Apa yang menjadi alasan masyarakat dalam melakukan gadai senden?

Jawab: biasanya karena kebutuhan mendesak dan mereka butuh uang cepat

13. Apa dalam pelaksanaan gadai senden masyarakat berpedoman pada hukum islam?

Jawab: tidak, mereka melakukannya berdasarkan tata cara turun temurun yang ada di desa Cantuk

14. Bagaimana tanggapan bapak terhadap praktik gadai senden yang selama ini dilakukan masyarakat desa Cantuk jika dilihat dengan kacamata Islam?

Jawab: apabila didasarkan pada hukum Islam menurut saya transaksi senden kalau bisa jangan sampai terjadi karena praktik yang berlangsung seperti halnya lintah darat. Praktiknya lebih mengarah mencari keuntungan lebih. Jadi disini pihak penggadai menyerahkan jaminan, barang jaminan dimanfaatkan penerima gadai, dan pada akhirnya penggadai juga harus mengembalikan uang pinjaman secara utuh kepada penerima gadai. Adapun kerugian yang diderita penerima gadai biasanya mereka yang melakukan transaksi tanpa melalui desa dan terlalu menggampangkan transaksi.

Umumnya praktik yang digunakan dalam masyarakat istilah yang digunakan itu jual beli, padahal pada hakikatnya bukan jual beli. Jika jual beli itukan ada yang jual dan yang beli. Dan tidak ada tendensi persyaratan yang harus ditentukan. Yang penting seorang penjual

ada barang yang dijual dan pembeli ada uang yang diserahkan. Tapi pada kenyataannya disini, bunyinya istilahnya jual beli tapi si pemilik barang harus mengembalikan uang tadi secara utuh. Kemudian contoh barang yang dijual adalah sawah itu digarap/dimanfaatkan dan diambil hasilnya, dan barang itu akan dikembalikan lagi sesuai dengan perjanjian apabila uangnya akan dikembalikan oleh yang meminjam tadi. Akad senden ini tidak seperti ketentuan jual beli yang sesungguhnya, karena ada pengembalian barang.

Seharusnya kalau niatnya menolong jaminan ya hanya sebagai jaminan tidak dipergunakan, ini berbeda dengan senden, saat seseorang menggadaikan barang, selanjutnya barang jaminan dimanfaatkan oleh yang meminjamkan uang. Dan disini apabila tidak mampu melunasi saat jatuh tempo, biasanya sawah tetap digarap sampai penggadaai mampu melunasi hutang dan bukan dilelang sebagaimana sistem pada pegadaian

