



(MUDIMA)



## Analysis of Sharia Pawn Dispute Resolution in Indonesia in Terms of the Concept of Maqashid Al-Syari'ah

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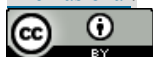
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### ABSTRACT

Sharia pawn institutions continue to grow marked by the increasing number of financing and customers, so the potential for disputes between rahin and murtahin or with other parties is also increasing. This research aims to analyze the forms of sharia pawn disputes in Indonesia along with the rules and practices of its settlement efforts. This research also intends to analyze the efforts to resolve sharia pawn disputes in Indonesia from the perspective of maqashid al-syari'ah. The research method used is qualitative, with the research subject being PT Pegadaian Syari'ah Unit. The results reveal that the forms of sharia pawn disputes in Indonesia are disputes caused by differences in perception and understanding of the contract, damage/loss of the pawn object, differences in the estimated value of the pawn object, and customer rejection of the auction of the pawned goods. The settlement of the dispute goes through three stages, namely consensus deliberation as the main effort, through the arbitration institution, namely Basyarnas, and the last effort through the Religious Court. The settlement of sharia pawn disputes according to the maqashid al-syari'ah perspective is by basing these efforts on the principle of good faith so as to avoid arbitrary behavior and produce a settlement that brings good to all parties

## INTRODUCTION

The development of Islamic pawn institutions, the number of financing and customers also continues to increase. Along with this, the potential for disputes between *rahin* and *murtahin* or with other parties is also increasing. Research conducted by Iskandar et al. (2021) stated that the greater the financing carried out by PT Pegadaian Syariah, the lower the rate of return on financing by customers, which means that the number of *wanpretasi* from *rahin* will increase. In addition, the potential for violations that may occur is also increasing, both committed by *rahin* and *murtahin*. Some forms of violations that may occur and can lead to disputes in sharia pawn include: a) embezzlement by *murtahin*; b) return of pawned goods from *murtahin* to *rahin* which is not appropriate; c) *murtahin* damages the goods pawned by *rahin*; d) *murtahin* sells goods pawned by *rahin* before maturity; e) *rahin* does not pay installments according to the contract to *murtahin*; and f) *rahin* does not pay pawn rent to *murtahin*. (Pertaminawati, 2019).

Dispute resolution efforts by the Arab community at the time of the Prophet became a reference for resolving disputes in the Islamic economic system at this time. There are 2 (two) ways of resolving economic disputes in the era of the Prophet PBUH. First, resolving disputes through the judiciary (*al-Qadha*). At the beginning of the Islamic period when the Muslim community was still small, only covering the city of Medina and its surroundings, the role of the judge and the judiciary was the Prophet himself. However, when the territory and power of Islam expanded, the Prophet appointed several companions as judges (*qadhi*) who were placed in several areas far from the city of Medina. Second, resolving disputes through *tahkim* (refereeing/arbitration). This effort has been known since the pre-Islamic period which was later adopted by the Prophet Muhammad SAW through several adjustments to Islamic law. (Osman & Abdillah, 2019).

Although dispute resolution has been guided by the Qur'an and has been exemplified by the Prophet and his companions, efforts to resolve sharia

economic disputes today continue to develop along with the increasingly complex economic activities of the community. Economics itself is a *muamalah* issue that continues to evolve with the times. Therefore, thoughts to solve economic problems have also changed, especially in the Islamic economic system which is still relatively new in Indonesia and continues to experience rapid development. (Nurbaeti et al., 2022).. This can be seen from the DSN MUI which has issued more than 100 fatwas on Islamic economics since 2000, and 4 (four) of them are related to changes in the sharia economic dispute resolution clause. (Yasin, 2017). Although thoughts about efforts to resolve sharia economic disputes continue to develop and change, these efforts must still comply with the corridors of Islamic law to realize the goals and objectives of sharia itself, or what is called *Maqashid al-Syari'ah*. (Fauzia & Riyadi, 2018).

*Maqashid al-Syari'ah* is considered the right theory to develop the value and spirit of Islamic law in human *muamalah* activities, although the theory has been degraded due to Muslims memorizing and following standard examples, rather than using the theory as an analytical tool. (Fathony, 2018). Although the term *Maqashid al-Syari'ah* has not been clearly mentioned during the Prophet's time, but conceptually it has become a guide in determining Islamic law according to its purpose, namely creating benefits and avoiding harm. The study of *Maqashid al-Syari'ah* received more attention from the companions after the death of the Prophet PBUH, namely when Muslims were faced with social problems that were increasingly complex and had never happened at the time the Prophet was alive. The Companions seriously studied *Maqashid al-Syari'ah* in an effort to make legal breakthroughs to respond to social changes that occurred. (Khatib, 2018).

As mentioned earlier, one of the dynamics in Islamic economics in Indonesia is the development of thoughts and rules in efforts to resolve Islamic economic disputes. This research seeks to analyze dispute resolution efforts in one of the sharia economic activities in Indonesia, namely sharia

pawn, according to the concept of Maqashid al-Syari'ah. No research has been found that examines the rules and practices of sharia pawn dispute resolution in Indonesia according to Maqashid al-Syari'ah. Some studies only go as far as examining the efforts made to resolve sharia pawn disputes, such as research by Atoriah (2020); Indriyani (2021); and Lukmana et al. (2022). Some other studies examine dispute resolution in general in the Islamic economic system in Indonesia, such as research by Pertaminawati (2019); Osman & Abdillah (2019); and (Nurbaeti et al., 2022).. It is still rare for research to use Maqashid al-Syari'ah to analyze the settlement of Islamic economic disputes, and even if there are still in general, such as those conducted by Hardiat & Yunus Rusyana (2021) and Adzkiya' (2020). No one has specifically used it to analyze the settlement of Islamic pawn disputes in Indonesia.

## **METHODS**

This research uses qualitative methods. This research was conducted at PT Pegadaian, specifically at the sharia pawn business unit. The data in this study were collected by means of interviews and literature studies. The interview technique that will be used in this research is an in-depth interview with the branch manager of the Sharia business unit of PT Pegadaian in Jakarta, customers, and scholars. As for the document study, the data includes the form of sharia pawn disputes in Indonesia, the rules and practices of efforts to resolve sharia pawn disputes in Indonesia, as well as the resolution of sharia pawn disputes in Indonesia from the perspective of maqashid al-syari'ah. Data analysis is carried out with qualitative analysis through 4 main stages, namely data collection, data reduction, data display, and conclusion making.

## **RESULTS AND DISCUSSION**

The results of the analysis show that the forms of sharia pawning in Indonesia consist of 4 (four) things, namely disputes caused by different perceptions or understandings of the clauses of the pawn contract that have been agreed by the parties at the beginning of the transaction, disputes caused by damage/loss of pawn objects both stored and maintained in pawnshops and outside pawnshops,

disputes caused by differences in the estimated value of pawn objects between customers and pawnshops, and disputes caused because customers do not want the pawned goods to be auctioned. Disputes caused by different perceptions or understandings of the pawn contract clauses that have been agreed by the parties at the beginning of the transaction can trigger disputes at a later date because there are articles that are not understood. The implication is that the customer can be considered in default. This form is also later referred to by Djamil (2003) as the main dispute in contract law, because there is a breach of promise by one of the parties.

Regarding default, Muhammad in Djamil (2003) states that when viewed in the Islamic scientific treasury, this is understood as *mumatalah*. Default in the context of pawn can be made by *Rahin* or *Murtahin*. The scholars agree that for *Rahin* who is unable, he must be given an extension of time (*inẓār*) from the fulfillment of payments or be released from his obligations (*alms*). Default (breaking promises) as a form of breach of engagement in the perspective of Islamic law can be the cause of the cancellation of the contract (*fasakh al-'Aqd*). If the contract is canceled due to default, then all parties return to the initial state as if there had never been a contract, and each party must return the achievement to its original state, if one or each party has carried it out. Then, if the return of the performance cannot be realized, compensation will be imposed. The compensation is determined based on the agreement of both parties and according to Islamic law.

In the second form of sharia pawn dispute is a dispute caused by damage/loss of pawn objects both stored and maintained in the pawnshop and outside the pawnshop. This form, if induced by the statement of Dewi, Wirnyaningsih, and Barlinti (2006), is a dispute in the form of goods risk liability. In the context of this type of dispute, the main responsibility of Pegadaian Syariah can be done by replacing the pawned goods according to the estimated value x 125%. However, this step is basically a clause that limits the responsibility of the pawnshop as a pawn holder, because the amount of

compensation provided by the pawnshop is considered unfair to the customer. The pawnshop should determine the value of the amount of compensation that has been adjusted to the market price at the time the agreement is made. Although market prices can change at any time, at least the compensation given is the same value as when the collateral was pawned, because the amount of compensation was not notified to the customer when the customer pawned the collateral (Suharto, Triyono, and Oktavianto, 2016).

This form of sharia pawn dispute caused by the damage/loss of the pawn object, both stored and maintained in the pawnshop and outside the pawnshop, also confirms that sharia pawn disputes generally occur between the pawn giver and the pawn holder. This statement is at least in line with the statement of Mujahidin (2010) which states that sharia economic disputes are broadly divided into three, namely disputes between financial institutions and sharia financing institutions and their customers; disputes in the field of sharia economics between financial institutions and sharia financing institutions; and disputes in the field of sharia economics between people who are Muslims, where the agreement contract explicitly states that the business activities carried out are based on sharia principles.

The dispute between the pawn giver and the pawn holder is also caused by the difference in the estimated value of the pawn object and is caused because the customer does not want the pawned item to be auctioned. If induced by the statement of Dewi, Wirnyaningsih, and Barlinti (2006), this is included in the dispute of sharia economic activities due to price. In addition, in the context of goods being auctioned, this is basically allowed to happen. However, the auction process can be carried out if there is an article in the contract that states that if the contract deadline is not extended, Rahin agrees to the sale of his pawned goods by Murtahin for the repayment process (Mujahidin, 2010).

The results of this study indicate that there are 3 (three) stages of efforts to resolve sharia pawn disputes in Indonesia, namely consensus

deliberation, through Basyarnas, and through the Religious Court. The first stage is through consensus deliberation. The deliberation process is carried out by sending warning letters to customers and inviting customers to the Pegadaian Syariah office. In addition, so that the goods are not auctioned off and the customer's installments are resolved, Pegadaian Syariah offers the customer to sell the goods independently. Efforts to reach consensus are carried out by negotiations between customers and pawnshops. The party who feels disadvantaged is generally the customer, and the negotiations carried out are aimed at compensating for these losses. When consensus is reached, it means that the disputing parties agree to end the dispute. However, if consensus is not reached then the settlement process continues to the next stage, namely through Basyarnas.

In dispute resolution through Basyarnas, the first stage is the making of a lawsuit application and then presenting evidence in the form of a contract document in which there is a clause stating that in the event of a dispute between the parties, settlement efforts can be made at Basyarnas. The next step is the determination of the arbitrator. If at the first hearing there is an amicable settlement, then the arbitration process is declared complete and a deed of peace is drawn up for both parties to reduce the risk of a change of stance. However, if the two parties do not reach an amicable settlement, then the further process carried out is the replication and duplicates. The process of determining the judge's decision in the arbitration hearing refers to the evidence that has been tested. The end of the arbitration hearing at Basyarnas occurs when the arbitrator considers the hearing to have been sufficient, so that the arbitrator will close the hearing and set a hearing day to pronounce the decision taken. The annulment of an award can occur if it contains 3 main elements, namely: 1) a letter or document submitted in the examination, after the award has been rendered, is recognized as false or declared false; after the award has been rendered, a decisive document is found to have been concealed by the opposing party; or the award has been rendered as a result of deceit

committed by one of the parties in the examination of the dispute.

Dispute resolution can proceed to the next stage, namely through the Religious Court. In the dispute resolution process through the Religious Court, the first step is to examine the arbitration clause. Second, understanding the form of the agreement. The examination of the form of the agreement aims to ensure that only sharia economic disputes are authorized by the Religious Court to resolve. Third, the selection of the settlement form of the lawsuit. In this case, sharia economic cases can be filed in the form of a simple lawsuit or with ordinary procedures. If the maximum loss value is Rp500,000,000, then the dispute is carried out with a simple lawsuit, while when the loss is more than Rp.500,000,000, the lawsuit can be carried out in the usual way.

Shari'ah pawnshops are part of the shari'ah economic system, so that the settlement of disputes that occur should be subject to Islamic law (shari'ah). Classical Islamic tradition resolves sharia economic disputes through peace (al-Sulh), arbitration (tahkim), and judicial power (Wilayat al Qadha). (Nurhayati, 2019). It appears that the efforts to resolve sharia pawn disputes in Indonesia are in accordance with the efforts to resolve sharia economic disputes according to the Classical Islamic tradition. Consensus deliberation can be seen as an effort to achieve peace or al-Sulh. Basyarnas can be seen as an arbitration institution or tahkim. And the Religious Court can be seen as judicial power or Wilayat al Qadha in the Classical Islamic tradition.

The settlement of sharia pawn disputes in Indonesia which is the finding in this study can be said to be in accordance with the steps of dispute resolution according to positive law in Indonesia. According to Nurjaman & Witro (2022) DSN-MUI has adopted legislation that authorizes an institution to conduct an examination and make a decision on a sharia case. In this case, the institutions are Basyarnas and the Religious Court. However, from the various options for resolving sharia pawn disputes, the main effort that must be prioritized before other efforts is deliberation to reach

consensus. Meanwhile, dispute resolution efforts through the arbitration institution, namely Basyarnas, become the second choice after consensus fails to be reached. Dispute resolution efforts through the Religious Court are the last choice after the previous two efforts were unable to resolve the dispute that occurred.

The results of this study also reveal that the efforts to resolve sharia pawn disputes in Indonesia according to the maqashid al-syari'ah perspective are based on the principle of good faith. Good faith must be owned by both parties to the dispute, which means that dispute resolution efforts are aimed at providing goodness to all parties. The good is not only for the parties to the dispute but also other parties who have a relationship with the decision that will be taken. With this good faith, dispute resolution efforts will avoid arbitrariness from any party.

The concept of Maqashid al-Syari'ah is divided into 5 main perspectives, namely hifdzu ad-din (protecting religion), hifdzu an-nafs (protecting the self), hifdzu an-nasl (protecting offspring), hifdzu al-maal (protecting property), hifdzu al-'aql (protecting the mind). (Maudhunati & Muhajirin, 2022). Of these 5 perspectives, there are 2 perspectives that are fully implemented in Islamic pawn disputes, namely hifdzu ad-din and hifdzu al-maal. Implementation in hifdzu ad-din and hifdzu al-maal can be seen in the existence of a long enough time for customers to pay their installments. This time, in addition to maintaining good relations with customers, is also seen as a way for each party to protect property and religion. The dispute resolution process through Basyarnas and the Religious Court using the concept of Maqashid al-syari'ah is based on good faith, namely by prioritizing the norms of compliance and decency.

## CONCLUSION

This research found that: 1) the forms of sharia pawn disputes in Indonesia are disputes caused by differences in perception and understanding of the contract, damage/loss of the pawn object, differences in the estimated value of the pawn object, and the customer's rejection of the auction of the pawned

goods; 2) the settlement of sharia pawn disputes in Indonesia is carried out through three stages, namely consensus deliberation as the main effort, through the arbitration institution, namely Basyarnas, and the last effort through the Religious Court; and 3) the settlement of sharia pawn disputes in Indonesia according to the maqashid al-syari'ah perspective is to base these efforts on the principle of good faith, so that with the existence of good faith in the parties to the dispute, the dispute resolution efforts taken can avoid the arbitrariness of any party.

Based on these conclusions, the suggestions that can be given are: 1) for sharia pawn institutions it is advisable to prevent disputes by, among others, providing a complete understanding to prospective customers regarding the contents of the contract to be made, compiling and carrying out procedures for securing and maintaining pawned goods properly to avoid damage or loss, using techniques or tools or methods of objective assessment of the value of pawned goods so that they can be accepted by all parties, and carrying out procedures for auctioning pawned goods that are agreed upon or agreed upon by both the customer and the pawnshop; 2) for the parties to the dispute in sharia pawn, it is advisable to prioritize efforts to reach consensus based on good faith (maqashid al-syari'ah) of the parties to the dispute, so that there is no arbitrariness from any party and the dispute resolution decision taken does not harm anyone.

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