

Optimizing Land Certificate Pawning Based On Sharia Principles As An Alternative Financing For The Community

Larasati Anyufa¹, Gneissa Beltsazar², Aleksander³, Lastuti Abubakar⁴

Faculty of Law, Universitas Padjadjaran

Email: larasatianyufa@gmail.com

*corresponding author

Article info

Received: Sep 14, 2024

Revised: Nov 8, 2024

Accepted: Dec 30, 2024

DOI: <https://doi.org/10.31599/krtha.v18i3.3027>

Abstrack : *The practice of pawning in Indonesia, especially in the context of customary law, namely selling pawns, is often still used by the community today, but this practice is considered irrelevant along with the development of pawn practices in Indonesia. New regulations from PT Pegadaian (Persero) through pawning with pawn objects in the form of land in Sharia Pawnshops with the aim of providing financing for the community and to micro, small and medium enterprises and farmers who use productive land. The development of pawn practices in Indonesia is also marked by the existence of an online pawn mechanism that is rampant among the public today. On the other hand, online pawning is also considered to provide convenience for the pawn giver because it can be done anytime and anywhere and the pawn giver can also estimate for himself how much the value of the pawn object is, but of course on the other hand this online pawn also has several weaknesses. This research uses normative juridical research methods to describe problems and solutions in the context of the development of pawn practices in Indonesia and uses qualitative research methods and is balanced by conducting interviews with the Padasuka branch of Sharia Pawnshops, Bandung City.*

Keywords : *Pawn of Land Certificates; Financing; Online Pawn.*

Abstrak : *Praktek gadai yang terdapat di Indonesia terutama dalam konteks hukum adat yakni jual gadai tak jarang masih digunakan oleh masyarakat hingga saat ini, namun praktek tersebut dinilai sudah tidak relevan seiring berkembangnya praktik gadai di Indonesia. Regulasi baru dari PT Pegadaian (Persero) melalui gadai dengan objek gadai berupa tanah pada Pegadaian Syariah dengan tujuan untuk memberikan pembiayaan untuk masyarakat dan kepada pelaku usaha mikro kecil, menengah dan petani yang menggunakan tanah produktif. Perkembangan praktik gadai di Indonesia juga ditandai dengan adanya mekanisme gadai online yang marak terjadi pada kalangan masyarakat saat ini. Disisi lain gadai online juga dinilai dapat memberikan kemudahan bagi pemberi gadai karena bisa dilakukan kapan dan dimana saja serta pemberi gadai juga dapat menaksir sendiri berapa jumlah nilai dari objek gadai tersebut, namun tentu disisi lain gadai online ini juga memiliki beberapa kelemahan. Penelitian ini menggunakan metode penelitian yuridis normatif untuk menggambarkan permasalahan dan solusi dalam konteks perkembangan praktik gadai di Indonesia serta menggunakan metode*



penelitian kualitatif dan diimbangi dengan melakukan wawancara dengan pihak Pegadaian Syariah cabang Padasuka Kota Bandung.

Kata Kunci : Gadai Sertifikat Tanah, Pembiayaan, Gadai Online.

I. INTRODUCTION

The development of pawn practices in Indonesia has made a solution for people in need by pawning both movable and immovable objects. Generally, Indonesian people use customary law as a reference in the implementation of legal principles, the term that is often used in customary law is commonly referred to as selling pawn, namely the transfer of land with cash payment with the provision that the pawn giver is entitled to get his land back by redemption, but in the Civil Code hereinafter referred to as the Civil Code does not regulate the sale of pawn because land is included in immovable objects¹ while the Civil Code only regulates the concept of pawn in the form of movable objects, both tangible and intangible.²

The pledgee still controls the land and the results of the land, including the results of the land will also be the right of the pledgee. Not infrequently the rules related to selling pawns in customary law cause pros and cons among the community. Land pawning is considered to have fulfilled the elements of extortion as stated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, hereinafter referred to as UUPA.³ Article 24 of UUPA states *“The use of land owned by non-owners is limited and regulated by legislation”*. This provision clearly states that parties other than the landowner have restrictions on the use of the land.

Government Regulation in Lieu of Law No. 56/1960 on the Determination of Agricultural Land Area, hereinafter referred to as Perppu on the Determination of Agricultural Land Area, is present to answer problems related to the cultivation of agricultural land by non-owner cultivators or users of productive land on the basis of *“free fight”*.⁴ Article 7 paragraph (1) of the Perppu on the Determination of Agricultural Land Area states *“Any person who controls agricultural land under mortgage rights which at the time this Regulation comes into force has lasted 7 years or more shall be obliged to return the land to its owner within a month after the existing crops have been harvested, with no right to demand payment of ransom”*. Both regulations were made with the aim of eliminating the provisions of land pawning on the basis of *“free fight”* and extortion, but in practice there are still some people, especially indigenous people, who continue to apply the practice of land pawning, resulting in different legal dualisms, namely between national agrarian law and customary law that applies to Indonesian society.

According to the applicable provisions, both conventional pawn provisions and sharia principles state that the pawn object cannot be controlled or utilized by the pawn

¹ M. Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, Yogyakarta, Deepublish, 2015.

² Tokichi K. Mait, “Tinjauan Yuridis Terhadap Eksekusi Gadai Dan Perlindungan Hukum Menurut Hukum Positif Di Indonesia”, *Lex Et Societas* 7, no. 9 (2019): 49.

³ Khomaizah, “Pelaksanaan Gadai Tanah Menurut Masyarakat Adat Madura”, *Pattimura Legal Journal* 2, no. 3 (2023): 2-3.

⁴ Anton Lucas, *Seluk Beluk Masalah Agraria*, STPN, Press, 2009.

recipient, although it is not explicitly explained, but the provisions of Article 1157 of the Civil Code state “*the debtor is responsible for the loss or deterioration of his goods only if it has occurred due to his negligence*”. The pawn recipient has the responsibility to maintain the pawn object and is responsible if the pawn object is lost or deteriorated due to his negligence so of course in this case the pawn recipient is not allowed to use or utilize the pawn object.

The many risks and problems in the concept of pawn described earlier, PT Pegadaian (Persero) initiated a Land Certificate Pawn for the community to obtain financing and encourage micro, medium and small businesses and provide legal certainty between the pawn giver and the pawn recipient because the pawn giver did not take back the land used as collateral before because the cost of taking it became very cheap compared to the price that should have been at that time and avoided exploitation by the pawn recipient to the pawn giver. This idea is focused on the middle class such as farmers or agribusiness actors with the aim of facilitating cheap and less burdensome financing. The development of Land Certificate Pawn is a form of development of pawn objects in property collateral so it is necessary to analyze whether this idea is applied.⁵

The legal regulation of collateral in Indonesia including pawn is influenced by the Financial Services Authority Regulation Number: 31/POJK.05/2016 concerning Pawnbroking Business hereinafter referred to as POJK Pawnbroking Business which previously the regulation was regulated in the Civil Code. POJK Usaha Pergadaian regulates in more detail such as deposit services, appraisal services, and other services organized based on sharia principles where previously the practice of pawning in the community developed without any related supervision and regulation.⁶

In this development, Land Certificate Pawn is also known as Rahn Tasjily. Referring to sharia principles as stated in the Fatwa of the National Sharia Council No. 68/DSN-MUI/III/2008 on Rahn Tasjily, which states that Rahn Tasjily is a form of land title pawn: 68/DSN-MUI/III/2008 concerning Rahn Tasjily hereinafter referred to as Fatwa DSN Rahn Tasjily which states that Rahn Tasjily has other mentions such as Rahn Ta'mini, Rahn Rasmi, or Rahn Hukmi, namely collateral in the form of goods for debt, with the provisions of the parties that what is submitted to the recipient of the guarantee (*murtabin*) is only legal proof of ownership, while the physical collateral (*marhun*) remains in the control and utilization of the guarantor (*rahin*).

The provisions in the DSN Fatwa Rahn Tasjily do not mention the type of goods for debt that will be guaranteed in the form of a pawn whether it is included in movable or immovable objects so that there is certainly a difference with the provisions stipulated in the Civil Code which states that only movable goods can be pawned. In addition, the provision also does not regulate in detail how the execution of the pledge object.

In practice, there are several provisions imposed by PT Pegadaian (Persero), the land to be pledged is productive land that has a certificate, while the purpose of this land

⁵ Lastuti Abubakar dan Tri Handayani, “Telaah Yuridis Perkembangan Regulasi Dan Usaha Pergadaian Sebagai Pranata Jaminan Kebendaan”, *Jurnal Bina Mulia Hukum* 2 no. 1 (2017): 87.

⁶ Muhammad Adil Ginting, “Pelaksanaan Perjanjian Gadai Pada Perusahaan Pegadaian Pemerintah Dengan Perusahaan Pegadaian Swasta (Studi Pada Pt Pegadaian Dan Pt Indonesia Gadai Oke Di Indonesia)”, *Jurnal Law of Deli Sumatera: Jurnal Ilmiah Hukum* 2 no.1, (2022): 2.

certificate pawn is as a form of financing that is easy and not burdensome for business actors, especially farmers or agribusiness actors where many productive lands do not have certificates. With these provisions, it will certainly cause obstacles in the future so that further regulations are needed regarding the flow of the pawn of this land certificate.

In addition, in practice, the practice of online pawning is currently widespread, where the pawn giver can carry out pawn transactions online through an application owned by a pawn company, but this practice certainly also has several problems such as the amount of the estimated value of the loan money which only refers to the data entered by the pawn giver in the application service, the goods appraised in the application service are not the object of the pawn that will be submitted to the pawn recipient and other problems that are considered less effective and efficient in its implementation. The rise of online pawning applied by the private sector and its development in practice will certainly cause legal uncertainty for those involved in the transaction, both the pawn recipient and the pawn giver.

II. RESEARCH METHODS

Using normative juridical research methods in the form of literature studies in the form of inventory, study and research on secondary data.⁷ The research specification is analytical in nature which is defined as a description of data regarding the provisions of laws and regulations along with practical legal theory in accordance with the research studied.⁸

III. DISCUSSION

Position of Land Certificate Pawn at Sharia Pawnshops

PT Pegadaian (Persero) has signed a Memorandum of Understanding with the Secretary General of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number 352/S-00015.02/2018, Number 31/SKB-100/IV/2018. These two institutions agree that land certificates that are productive land, especially those belonging to farmers, can be pledged in the form of a pawn at Sharia Pawnshops for the acquisition of business capital. This indicates the development of Sharia Financial Institutions in Indonesia where the application of sharia law is the same as positive law in Indonesia.⁹

In this case there is a new idea characterized by the development of the object of the pawn because originally the object was movable objects (both tangible and intangible) but with this idea, land as an immovable object can be pawned. However, it should be underlined that the land pawn by submitting the land certificate only applies to Islamic pawnshops, not to ordinary or conventional pawnshops because there are different provisions related to the object of the object.

Article 1150 of the Civil Code states several elements of a pawn, namely:

⁷ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta, Rajawali Pers, 2014.

⁸ Ronny Hanitijo Soemitri, *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghafia Indonesia, 1990.

⁹ Asriani, *Perspektif Hukum Islam Dan Hukum Positif Terhadap Gadai Emas Di Lembaga Keuangan, Lampung*, Pusat Penelitian Dan Penerbitan Lembaga Penelitian Dan Pengabdian Kepada Masyarakat IAIN Raden Intan Lampung, 2016.

- a. Movable goods are in the hands of creditors or pawnshop institutions;
- b. If the customer is unable to repay the loan, the pawnshop company can obtain payment through the auction or sale of the movable goods;
- c. As a creditor, the pawnshop company has the right to obtain priority (*droit de preference*) compared to other creditors.

The elements of pawn regulated in the Civil Code explain that conventional Pawnbrokers cannot use land certificates as collateral objects because they are proof of land ownership and are not included in the category of securities which are intangible movable objects. Meanwhile, the pledge arrangement for land is contained in Law Number 4 of 1996 concerning Mortgage Rights, hereinafter referred to as UUHT. Referring to the National Sharia Council Fatwa Number 68/DSN-MUI/III/2008 concerning Rahn Tasjily in the First section regarding General Provisions which states that “*Rahn Tasjily, also known as Rahn Ta'mini, Rahn Rasmi, or Rahn Hukmi, is a guarantee in the form of goods for debt, with the agreement that what is submitted to the recipient of the guarantee (murtahin) is only legal proof of ownership, while the physical collateral (marhun) remains in the control and use of the pledgor (rabin)*”. The elements of Rahn Tasjily, namely:

1. Goods are the object of Rahn, so they can be defined as any type of goods, regardless of whether they are movable or immovable, tangible or intangible.¹⁰
2. Only legal proof of ownership is submitted to the recipient of the guarantee (*murtahin*), while the goods remain in the control and utilization of the guarantor (*rabin*).

Fatwa of the National Sharia Council Number 92/DSN-MUI/IV/2014 concerning Financing Accompanied by Rahn (*At-Tamwil Al-Mautsuq Bi Al-Rahn*) in the Third section regarding Provisions related to Collateral (Marhun) which states “*Collateral (marhun) must be in the form of valuable property (mal), both movable and immovable objects that can and can be traded, including financial assets in the form of sukuk, sharia securities or other sharia securities*”. Based on this regulation, land as an immovable object can be mortgaged.

There are legal pillars and conditions of Rahn, which are as follows:¹¹

- a. People who do the contract, *Rabin* and *Murtahin*;
- b. *Ma'qud alahi*, the property that is used as collateral in the implementation of Rahn;
- c. *Shighat*, a lafadz consisting of *ijab* and *qabul* that is read during the Rahn transaction.

As for the legal requirements of a *Rahn* contract, they are:

- a. The person who makes the contract understands the contract being carried out;
- b. The collateral for *Rahn* exists when the contract takes place, but it is also possible to only show proof of ownership of the collateral;

¹⁰ Lastuti Abubakar, “Telaah Yuridis Perkembangan Lembaga dan Objek Jaminan (Gagasan Pembaruan Hukum Jaminan Nasional)”, *Buletin Hukum Kebansentralan* 12 no. 1, (2022): 8.

¹¹ Abdurrahman Misno, “Gadai Dalam Syari'at Islam”, *Ad-Deenar: Jurnal Ekonomi Dan Bisnis Islam* 1 no. 1, (2017): 29-30.

- c. *Sighat* or lafadz on *ijab qabul* is pronounced clearly and understood by the parties to the contract;
- d. *Marhun bib*, the right given by Murtahin to Rahin at the time of the contract which is required in the form of debt or goods.

In the implementation of Sharia Pawn there are also several contracts, namely:¹²

- a. Qard Al-Hasal, aims to obtain cash intended for consumptive purposes;
- b. Mudharabah Agreement, aims to increase business capital or productive financing;
- c. Ba'I Muqayyadah Akad, aims to make the mortgaged property can have productive benefits;
- d. Akad Ijarah, the mortgaged goods can be utilized again;
- e. Musyarakah Amwal Al-'Inan Akad, the pawn transaction is sponsored by the Islamic pawnshop to share results, contributions, ownership and risks in a business.

There are differences between sharia pawnshops and conventional pawnshops, especially in the concept. Sharia pawnshops refer to Islamic provisions as regulated in the Fatwa of the National Sharia Council, while conventional pawnshops refer to the provisions regulated in the Civil Code.¹³ Differences between conventional pawning and sharia pawning:

1. Legal Basis

Conventional Pawn refers to the Civil Code, while Sharia Pawn refers to the Fatwa of the National Sharia Council of the Indonesian Ulema Council Number 25/DSNMUI/III/2002 concerning Rahn and Fatwa of the National Sharia Council of the Indonesian Ulema Council Number 26/DSNUI/III/2002 concerning Gold Rahn;

2. Source of Funds

Conventional Gadai is sourced from Commercial Banks and Public Financial Institutions, while Sharia Gadai is sourced from Sharia Banks and Sharia Financial Institutions;

3. Parties

Conventional Pawn consists of pawn debtors (pawn givers) and pawn creditors (pawn recipients), while Sharia Pawn consists of Rahin (collateral givers) and murtahin (collateral recipients);

4. Determination of Interest

Conventional Pawn uses interest (Capital Rent) on customers who pawn, while in Sharia Pawn there is no interest term as long as the cost of custody, maintenance and guarding, but still the cost is smaller when compared to conventional pawn;

5. Object of Pawn

¹² Iwan setiawan, "Gadai Pada Pegadaian Syariah", *Adliya* 8 no. 1, (2014): 190

¹³ Dewa Pratama Putra dan Asiah Wati, "Analisis Perbandingan Gadai Syariah Dan Gadai Konvensional Ditinjau Hukum Dan Prinsip", *Al-muzdabir: Jurnal Ekonomi Syariah* 5, no. 2, (2023): 43.

Conventional Pawn has the object of movable objects both tangible and intangible, while in Sharia Pawn it is not explained about the form of goods to be pawned, rahin (giver of collateral) still submits legal proof of ownership or certificate of goods used as collateral (marhun) to murtahin (recipient of collateral);

6. Execution

Conventional Pawn refers to Article 1155 and Article 1156 of the Civil Code, while Sharia Pawn refers to Article 1155 and Article 1156 of the Civil Code and Rahin authorizes murtahin to sell marhun, either through an auction process or sale to other parties, in accordance with sharia principles.

With the enactment of new regulations relating to land certificates, especially those owned by farmers for productive land, can be used as collateral at Sharia Pawnshops to obtain business capital. However, it should be noted that sharia-based financing provided by Sharia Pawnshops is not only limited to productive land owned by farmers, but also fixed-income earners and micro/small entrepreneurs who have collateral in the form of land certificates and building use rights. The tradition of indigenous people, especially farmers, is to temporarily sell the ownership rights to their land, whereby the mortgagor relinquishes ownership rights to the land on the condition that the original owner can redeem it at any time. In the context of customary law, this pawn sale transaction can be considered as a principal agreement, especially as a form of land sale and purchase transaction. The basis for the emergence of this land certificate pawn at Sharia Pawnshops is so that the use of the sale pawn practice can be switched to sharia pawn practices because it is not uncommon for the land that is temporarily released from ownership to be controlled by the pawn buyer or pawn recipient but still cultivated by the pawn seller or pawn giver on the basis of other interests.

Requirements for Certificate Pawn Collateral at Sharia Pawnshops Land for productive land used for farming, gardening and animal husbandry are as follows:

- a. Productive land that is not in a land structure that is difficult to reach;
- b. Land status is not blocked / problematic;
- c. The land status is not used as collateral for loans/is not bound by mortgage rights by other parties;
- d. The location of the land may be different from the customer's residence as long as it is still under the same regional office;

Meanwhile, collateral in the form of land and building for residence/business place has the following requirements:

- a. Having IMB for loans of more than 50 million;
- b. Proof of payment of the UN for the last year;
- c. The width of the road in front can be entered by at least two-wheeled vehicles;
- d. Minimum distance of 20 (twenty) meters from SUTET;
- e. Not a flood area in the last 2 (two) years;
- f. Not a green belt;

- g. Not in legal dispute the location of the land may be different from the customer's residence as long as it is still under the same area office.

With the existence of this land certificate pawn, the wider community should know that there is a solution, especially for indigenous people who usually use customary pawns in pawn transactions which often cause disputes between landowners or pawners and pawn recipients. Not only for indigenous peoples but also for Muslim communities with poor economies as a form of economic fulfillment.¹⁴

In addition, pawning land certificates at Sharia Pawnshops is also considered to be a better solution than pledging certificates at other financial institutions. This is because many people think that Islamic financial institutions are a better alternative than other financial institutions because Islamic financial institutions have the principle of equal participation and equal ownership between creditors and debtors. Islamic financial institutions must avoid things *Maysir* (speculation), *Gharar* (deception), *Riba*, and *Batil*.¹⁵ The pawn of land certificates in this Islamic pawnshop also provides advantages such as the landowner or pawn giver can still utilize the pawn object even though the object is being pawned and is in the control of the pawnshop.

The author has conducted interviews with the Padasuka branch of the Sharia Pawnshop in Bandung City in December 2023. Based on the results of interviews between the author and the Padasuka branch of the Sharia Pawnshop in Bandung City, it is explained that until now since the enactment of the provisions regarding the pawn of land certificates at the Sharia Pawnshop, it has been running well like the pawn provisions in general. The number of people who do not understand that in the Sharia Pawnshop the community can pawn their land certificates based on the applicable terms and conditions previously explained, one of which is as a solution for micro, small, medium and farmer financing.

In addition, in this increasingly advanced era, customers can also apply for a pawn online, this is a convenience provided by the pawnshop for customers. In the case of online pawning in the Sharia Pawnshops digital application, customers can also apply for a land certificate pawn through the Sharia Pawnshops digital application, customers can enter the required data themselves when applying for a land certificate pawn so that the customer can also estimate the nominal amount he will receive with the object used as collateral. Meanwhile, the contract and verification of customer data are still carried out at the pawnshop office offline. However, Sharia Pawnshops digital application must also maximize the principle of prudence when verifying the pawn object received from the pawn giver. This certainly maintains the object of the land pawn that will be received from the pawn giver as well as to avoid disputes that may occur in the future due to the existence of overlapping certificates on one object. So that PT Pegadaian (Persero) will

¹⁴ Yusnedi Achmad, *Gadai Syariah*, Deepublish, Yogyakarta, 2019.

¹⁵ Sulistyowati dan Nabila Rahma Putri, "Peluang dan Tantangan Lembaga Keuangan Syariah Non Bank Dalam Perspektif Islam", *Wadiab: Jurnal Perbankan Syariah* 5, no. 1, (2021): 38 – 66

minimize and avoid disputes that may occur when executing a pawn object because the pawn giver is stuck in carrying out his obligations.

Sharia Pawnshops digital application has several advantages and disadvantages. Among them, Sharia Pawnshops online has advantages: 1) Transparency between Islamic pawnshops and customers so that customers can clearly know the costs and conditions 2) Make it easy for customers to find out the estimated value of *marhun* to be pawned 3) Customers can estimate how many payments will be made according to the customer's ability to pay. Online has disadvantages: 1) the estimated value tends to be standardized according to the value of the *marhun* that the customer enters in Sharia Pawnshops digital application 2) cannot consult directly through the Sharia Pawnshops digital application 3) dependence on internet connection so that customers cannot input *marhun* data when not connected to the internet.

Execution of Land Certificate Pawn Collateral Objects in Sharia Pawnshops

The tradition of Arab society before the arrival of Islam when the Pawn Giver is unable to pay his debt, of course the pledged item will be controlled by the Pawn Receiver. This provision is prohibited by Islam and canceled.¹⁶ There is also disagreement among fiqh scholars as to who has the right to utilize the pledged object, whether the Pawn Receiver has the right to utilize it or not. However, it needs to be clarified that at the time of the contract the right that arises is the right to hold the collateral only, not the right to utilize the collateral.¹⁷

Before the implementation of the pawn transaction at the time of the contract, it was stated "If *rabin* is unable to pay off his debt until the specified time, then the *marhun* becomes the property of *murtahin* as payment of the debt", so that there is no loss to the parties in the implementation of the pawn transaction. In its implementation, it is possible that at the time of payment the price of *marhun* or the object of the pawn becomes lower than the pawn giver's debt which causes losses to the pawn recipient and vice versa if the price of the pawn object becomes higher than the debt that the pawn giver should pay. The obligation of the pawn recipient to carry out the execution of the collateral object of the pawn giver if he is really unable to pay off his debt and is based on the consent of the pawn giver, with the aim that later the proceeds from the sale of the collateral object are used to pay off the debt of the pawn giver and the rest of the sale will also be returned to the pawn giver.¹⁸

The rights and obligations of the pawn recipient in the execution of the collateral object have been regulated in the National Sharia Council Fatwa on Rahn Tasjily, although it is not regulated in detail regarding the technical execution, the execution will certainly follow the existing provisions and not conflict with sharia principles. The Bandung State Wealth and Auction Service Office held a socialization with 10 (ten) Pegadaian Syariah Bandung, saying that if the customer defaults to pay off the debt, the pledged land will be

¹⁶ Amiruddin K, *Gadai Syariah Kontemporer*, Samata, Alauddin University Press, 2020.

¹⁷ Fadllan, "Perspektif Fikih Muamalah dan Aplikasinya dalam Perbankan", *Iqtishadia* 1, no. 1, (2014): 35.

¹⁸ M. Sulaeman Jajuli, *Op.Cit.*

auctioned through KPKNL as an execution auction of UUHT Article 6 or an execution auction of the Religious Court. Regarding the implementation of the execution auction based on Article 6 of the UUHT, the Mortgage Rights Execution Auction is regulated in the Minister of Finance Regulation Number 213 / PMK.06 / 2020 concerning instructions for implementing the auction. Article 6 of the UUHT states *“If the debtor is in default, the first holder of the Mortgage Rights has the right to sell the object of the Mortgage Rights under his own power through a public auction and take repayment of his debt from the proceeds of the sale”*.

In mortgage rights, if the debtor defaults, the first mortgage holder, in this case the creditor, can immediately execute through a public auction and take repayment of the debt from the proceeds of the sale. However, it should be noted that the object of collateral in the form of land on the mortgage can be auctioned after the land is encumbered by a mortgage based on the existence of a Power of Attorney to Enforce Mortgage Rights and Deed of Granting Mortgage Rights, while these provisions are not regulated in the regulation of pawn execution, in pawn also does not recognize the term Deed of Granting Mortgage Rights.

Regarding the execution of conventional and sharia pawn collateral, it still refers to the Civil Code which is stated in Article 1155 and Article 1156 of the Civil Code. From these two Articles, it regulates the execution of the pledge if the debtor is injured and the creditor has the right to sell the pledge object. Thus, the Pawn Receiver or creditor is obliged to notify the Pawn Giver or debtor of the intention to sell the object of the pawn. The notice can also be stated in the main agreement and the pawn agreement *“if at any time the debtor has exceeded the agreed time limit to pay off the pawn and the debtor does not fulfill his obligations, the execution can be carried out”*.¹⁹

IV. CONCLUSION

In this case there is a development related to the object of collateral in pawn, where in conventional pawn the object includes movable objects (tangible and intangible) while in sharia pawn the object includes movable and immovable objects. This new idea from the pawnshop is expected to provide changes for people who initially used the customary pawn mechanism to pawn land to use sharia pawn with a land certificate pawn mechanism. If the Pawn Giver defaults or does not carry out the pawn payment, execution can be carried out according to the provisions of Articles 1155 and 1156 of the Civil Code.

V. ADVICE

Many people do not understand the implementation of land certificate pawning. This mechanism can be a solution for the community, especially business actors who want to finance, so to overcome this, socialization is needed as a form of introducing sharia pawn products to the wider community which have guaranteed security compared to traditional pawning or pawn sales which are often chosen and used by the public.

¹⁹ Habib Adjie, “Perlindungan Hukum Bagi Pemilik Objek Gadai Atas Pelelangan Objek Gadai”, *Jurnal Hukum Bisnis* 1 no. 1, (2015): 8.

REFERENCE

Book

- Amiruddin K, *Gadai Syariah Kontemporer*, Samata, Alauddin University Press, 2020.
- Anton Lucas, *Seluk Beluk Masalah Agraria*, STPN, Press, 2009.
- Asriani, *Perspektif Hukum Islam Dan Hukum Positif Terhadap Gadai Emas Di Lembaga Keuangan, Lampung*, Pusat Penelitian Dan Penerbitan Lembaga Penelitian Dan Pengabdian Kepada Masyarakat IAIN Raden Intan Lampung, 2016.
- M. Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, Yogyakarta, Deepublish, 2015.
- Ronny Hanitijo Soemitri, *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghafia Indonesia, 1990.
- Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta, Rajawali Pers, 2014.
- Yusnedi Achmad, *Gadai Syariah*, Deepublish, Yogyakarta, 2019.

Journal and Paper

- Abdurrahman Misno, "Gadai Dalam Syari'at Islam", *Ad-Deenar: Jurnal Ekonomi Dan Bisnis Islam* 1 no. 1, (2017): 29-30.
- Dewa Pratama Putra dan Asiah Wati, "Analisis Perbandingan Gadai Syariah Dan Gadai Konvensional Ditinjau Hukum Dan Prinsip", *Al-muzdabir: Jurnal Ekonomi Syariah* 5, no. 2, (2023): 43.
- Iwan setiawan, "Gadai Pada Pegadaian Syariah", *Adliya* 8 no. 1, (2014): 190
- Fadllan, "Perspektif Fikih Muamalah dan Aplikasinya dalam Perbankan", *Iqtishadia* 1, no. 1, (2014): 35.
- Khomaizah, "Pelaksanaan Gadai Tanah Menurut Masyarakat Adat Madura", *Pattimura Legal Journal* 2, no. 3 (2023): 2-3.
- Lastuti Abubakar, "Telaah Yuridis Perkembangan Lembaga dan Objek Jaminan (Gagasan Pembaruan Hukum Jaminan Nasional)", *Buletin Hukum Kebansentralan* 12 no. 1, (2022): 8.
- Lastuti Abubakar dan Tri Handayani, "Telaah Yuridis Perkembangan Regulasi Dan Usaha Pegadaian Sebagai Pranata Jaminan Kebendaan", *Jurnal Bina Mulia Hukum* 2 no. 1 (2017): 87.
- Muhammad Adil Ginting, "Pelaksanaan Perjanjian Gadai Pada Perusahaan Pegadaian Pemerintah Dengan Perusahaan Pegadaian Swasta (Studi Pada Pt Pegadaian Dan Pt Indonesia Gadai Oke Di Indonesia)", *Jurnal Law of Deli Sumatera: Jurnal Ilmiah Hukum* 2 no.1, (2022): 2.
- Sulistyowati dan Nabila Rahma Putri, "Peluang dan Tantangan Lembaga Keuangan Syariah Non Bank Dalam Perspektif Islam", *Wadiah: Jurnal Perbankan Syariah* 5, no. 1, (2021): 38 – 66
- Tokichi K. Mait, "Tinjauan Yuridis Terhadap Eksekusi Gadai Dan Perlindungan Hukum Menurut Hukum Positif Di Indonesia", *Lex Et Societas* 7, no. 9 (2019): 49.