

CHAPTER I

INTRODUCTION

A. Background

Human beings are social creatures who cannot be separated from other human beings and are obliged to help one another as social beings. Islam also teaches that humanity on this planet should support help one another. There are many things that can be done to benefit fellow human beings, such as lending and borrowing based on a sense of shared obligation and the avoidance of extortion or usury (*Riba*).

Lending and borrowing are not only practiced by fellow individuals but also with financial institutions both banks and non-banks. One of the non-bank financial institutions is Pawnshop, where the pawnshop itself is a government-owned institution that provides financing to customers in the form of channeling credit funds or loans based on pawn law.

According to Article 1150 of the Civil Code, a pawn is a right that a person owed for a movable property, which is surrendered to him by someone who is in debt or by others on his behalf and who gives the debtor the power to take repayment of the object in advance than other debtors, with the exception of the costs of auctioning the goods and which costs must take

precedence.¹ Whereas according to article 20 number 14 the Compilation of Sharia Economic Law *rahn* or pawn is the possession of the borrower's property by the lender as collateral.²

At present the pawnshop consists of two types, namely *sharia* pawnshop and conventional pawnshop. The existence of the *sharia* pawnshop itself is driven by the needs of the Indonesian people who require the presence of an Islamic bank institution based on *sharia*. Its existence is also influenced by the success of other financial institutions that have released *sharia* products such as *Sharia* Banks, *Sharia* Insurance, and so on.

In Islam, the practice of pawning is admitted as mentioned in the Al Baqarah verse 283 about lending and borrowing with collateral (pawn or *rahn*). In the *sharia*, the basis for pawning or *rahn* is Al-Qur'an, Hadith, and *ijtihad* ulama.³ Therefore the Government establishes a legal basis for carrying out the activities of Sharia-based financial institutions especially in the case of pawning. The positive legal basis for a lien is found in Government Regulation Republic of Indonesia Number 51 of 2011 concerning the Transformation of a Legal Entity from Public Company (Perum) into Persero. While in the aspect of fulfillment the Sharia principles is in the Fatwa DSN-MUI Number 25/DSN-MUI/III/2002 concerning *Rahn* and the Fatwa DSN-

¹ Zaein Asyhadie and Rahma Kusumawati, *Hukum Jaminan di Indonesia; Kajian berdasarkan Hukum Nasional dan Prinsip Ekonomi Sharia* (Depok: PT RajaGrafindo Persada, 2018), p.113.

² *Ibid*, p. 112.

³ *Ibid*.

MUI Number 26/DSN- MUI/ III/ 2002 concerning the Gold *Rahn*; the fatwa allows gold pawning based on the *Rahn* principle in which the recipient of the goods (*mutahin*) has the right to hold the goods (*marhun*) until all debts have been paid; the goods, and their utilization remain the property of the pledge, which in principle the goods may not be utilized by *murtahin* except for the pledge of pawning, without reducing the value of the goods and its use is merely a substitute for maintenance and care. Fees and storage costs for goods (*marhun*) are borne by the pawners (*rahin*). The fee is based on expenses that are actually needed. The cost of storing goods (*marhun*) is carried out on the basis of an *ijarah* contract.⁴

Sharia pawnshops also have several pawning objects including home certificates, land certificates, BPKB letters, jewelry, electronic equipment, household equipment, gold, and other precious metals. However, gold is the most popular investment form because gold has a stable value and tends to rise. Then gold excess is equivalent to land that is increasingly rising against the exchange rate. Gold is also an easy item to sell or pawn, because almost all pawnshops always accept gold pawns. Its value also tends to be high and not affected by inflation.

Pawning requires an agreement or contract between the owner of the goods and the pawnshops. The concept of *sharia* pawnshop operations refers

⁴ DSN-MUI, Himpunan Fatwa Dewan Syari'ah Nasional, Cet.3, (Jakarta: Gaung Persada Press, 2006), Pp. 158-159.

to the modern administrative system with the principles of rationality, efficiency, and effectiveness with Islamic values.⁵

Sharia Pawnshop Munggur is one of the non-bank financial institutions of the Service Branch Unit (UPC) of the Sharia Pawnshop of Kusumanegara. Sharia Pawnshop Munggur has several types of pawnshop products and services such as safekeeping services, hajj savings, gold savings, pawn services (gold, electronics, etc.), payment for electricity, telephone, BPJS, and so forth. Therefore, the writer is interested in discussing the contract and operational of gold pawning in the Sharia Pawnshop Munggur because there is no research on this matter.

Based on the above background the writer is interested in discussing the contract and operational of gold pawning in sharia pawnshop. The writer is also interested to discussing the compliance of the contract and operational in sharia pawnshop Munggur, Yogyakarta with Fatwa Number 25/DSN-MUI/III/2002 concerning *Rahn* and the Fatwa Number 26/DSN-MUI/III/2002 concerning the Gold *Rahn*, because as we know, Fatwa MUI allows for gold pawning and establishes Fatwa Number 26/DSN-MUI/III/2002 concerning Gold *Rahn* and the provisions contained in Fatwa Number 25/DSN-MUI/III/2002 concerning *Rahn* but some institutions sometimes do not obey or apply the rules that have been determined.

⁵ Luluk Wahyu Roficoh and Mohammad Ghozali, "Aplikasi Akad Rahn pada Pegadaian Syariah", *Jurnal Masharif al- Syariah: Jurnal Ekonomi dan Perbankan Syariah*, Vol. 3, No. 2, 2018, p. 33.

B. Problem Formulation

1. How are the application of the contract and operational of gold pawning in Sharia Pawnshop Munggur, Yogyakarta?
2. How are the compliances of the contract and operational of gold pawning in Sharia Pawnshop Munggur, Yogyakarta with Fatwa Number 25/DSN-MUI/III/2002 concerning *Rahn* and Fatwa Number 26/DSN-MUI/III/2002 concerning Gold *Rahn*?

C. Objective of Research

1. To explain how the contract and operational of gold pawning in Sharia Pawnshop Munggur, Yogyakarta.
2. To analyze the compliance of the contract and operational of gold pawning in the Sharia Pawnshop Munggur with Fatwa Number 25/DSN-MUI/III/2002 concerning *Rahn* and Fatwa Number 26/DSN-MUI/III/2002 concerning Gold *Rahn*.

D. Benefit of Research

1. Theoretical

Providing benefits in the form of insight and knowledge, in the field of the contract and operational in Sharia Pawnshop Munggur, Yogyakarta especially in gold pawning as well as providing knowledge about the compliance of sharia pawnshops with Fatwa Number 25/DSN-

MUI/III/2002 concerning *Rahn* and Fatwa Number 26/DSN-MUI/III/2002 concerning Gold *Rahn*.

2. Practical

The results of this study are expected to provide useful benefits for the wider community and readers regarding in the contract and operational of Sharia Pawnshop Munggur, Yogyakarta especially in gold pawning and regarding the compliance of sharia pawnshops to Fatwa Number 25/DSN-MUI/III/2002 concerning *Rahn* and Fatwa Number 26/DSN-MUI/III/2002 concerning Gold *Rahn*.