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Implementation of the *Kaffah* Concept in *Rahn tasjily* Contracts at Sharia Pawnshops as an Effort to Develop the Sharia Economy

Dewi Nawang Wulan[1], Ahmad Munir[2], Rahmat Setiawan[3] & Ririn Novia Hidayati[4]
[1], [2], [3], [4] Faculty of Law, Universitas Islam Darul `Ulum (UNISDA) Lamongan, Indonesia, E-mail: wulan@unisda.ac.id

Abstract. *This study examines the application of the Kaffah principle in the rahn tasjily contract used by Sharia Pawnshops as an accessory contract to encumber customer collateral through the Arrum BPKB product. The research focuses on the position of Rahn tasjily as collateral with a review based on the Fiduciary Guarantee Law and DSN-MUI Fatwa Number 68 of 2008, while also analyzing the application of the Kaffah principle in the practice of these contracts at Pegadaian Syariah. The research method employs a conceptual approach, drawing on legal views and doctrines related to the Kaffah principle in Islamic economics. In addition, the research employs a legislative approach through a review of regulations related to the Rahn tasjily contract, as well as a case approach by analyzing Islamic economic dispute rulings pertaining to this contract. The results of the study show that the Kaffah principle has not been fully applied to the rahn tasjily contract at Pegadaian Syariah. This is due to its half-hearted nature, specifically the existence of a burden through the Fiduciary Guarantee on the Rahn tasjily contract and the absence of executory power in the contract. This condition renders the contract's application ineffective, necessitating further regulations, such as a Sharia Guarantee Law, to provide legal certainty for the rahn tasjily contract at Pegadaian Syariah.*

Keywords: *Guarantee Agreement; Economic; Kaffah; Rahn Tasjily Contract.*

1. INTRODUCTION

The practice of sharia pawnbroking was first implemented through a collaboration between Perum Pegadaian and PT Bank Muamalat Indonesia (BMI) in May 2002. This collaboration then gave rise to the Sharia Pawn Service Unit, based on DSN-MUI Fatwa No. 25/DSN/MUI/III/2002, concerning Rahn. The synergy between Pegadaian and Bank Muamalat led to innovation, where Pegadaian served as the pawn system administrator, while Bank Muamalat provided the reference for applying sharia principles (Andri Soemitra, 2019). Sharia pawnshops are financing institutions that provide loans or financing based on Sharia pawn principles. The financing mechanism is carried out by submitting collateral in the form of movable assets belonging to customers, where the loan amount is determined by the quality, value, and quantity of the pawned items (Zainuddin Ali, 2008).

Based on data from Sharia Pawnshops, there are currently around 4,400 outlets spread across Indonesia (https://www.pegadaian.co.id, 2024) offering various products, including Rahn, Non-Rahn (micro), Investment, and other services, such as pawnshop remittance and multi-online payment. Rahn products themselves include Sharia Gold Pawn, Hajj Financing, Sharia Installment Gold Pawn, Rahn Hasan, Rahn Fleksi, and Rahn Bisnis. This phenomenon shows that sharia pawnshops play an important role in the development of the sharia economy in society. This growth is also influenced by the increasing literacy of the community regarding the Islamic economy, so that the use of Sharia-based products, both through Islamic banking and Sharia pawnshops, is becoming more widespread. The primary purpose of the Sharia contract is to provide convenience and assistance through guarantees that ensure these financing facilities are not misused by borrowers.

The use of Rahn contracts at Pegadaian Syariah extends beyond the concept of pawnbroking. This aligns with the view of the Maliki school of thought, which posits that rahn has several forms. In Indonesia, the application of rahn includes *rahn 'aqari,* which is equivalent to pawn, and *rahn tasjily* (also known as *rahn ta'mini, rahn rasmi*, or *rahn hukmi*), which is equivalent to fiduciary. Specifically, *Rahn tasjily*, as regulated in Fatwa DSN-MUI Number 68/DSN-MUI/III/2008 (hereinafter referred to as DSN-MUI No. 68/2008) stipulates that the rahin must submit valid proof of ownership or a certificate of the goods used as collateral (*marhun*) to the *Murtahin*. Meanwhile, based on Financial Services Authority Regulation Number 31/POJK.05/2016 (hereinafter referred to as POJK 31/2016) concerning Pawnbroking Businesses, Article 1 point 1 emphasizes that pawnbroking businesses include the activities of providing loans with movable goods as collateral, custody services, appraisal services, and/or other services, including those based on sharia principles. Thus, this provision also applies to sharia pawnshops. Furthermore, Article 13 paragraph (1) of POJK 31/2016 states that pawnshop business activities include the distribution of loans with collateral based on Fiduciary Guarantees. Article 15 adds that these activities must be accompanied by risk mitigation, one of which is through the registration of Fiduciary Guarantees on the items that are the subject of the collateral. Meanwhile, according to DSN-MUI No. 68/2008, *Rahn tasjily* is an additional agreement (accessory contract) to both the main contract, which involves *murabahah*, and the ijarah contract. This type of contract is similar to fiduciary guarantees, mortgages, and encumbrances, because the collateralized items remain in the possession of their owners. However, this study focuses more on the aspect of fiduciary guarantees. From these provisions, there appears to be an overlap (duplication of accessories) between DSN-MUI Fatwa No. 68/2008 and POJK 31/2016. This is because *Rahn tasjily* is a supplementary agreement to the principal agreement, while fiduciary guarantees are also collateral agreements that are accessory to the principal agreement (Dewi Nawang Wulan, 2023).

Rahn tasjily, which is regulated through DSN-MUI Fatwa No. 68/2008 as a supplementary agreement, is not without obstacles. The first obstacle lies in the aspect of encumbering the collateral, because the fatwa does not explain the mechanism for encumbering it. Therefore, to reduce the risk of loss for financing institutions or Islamic pawnshops, the *rahn tasjily* collateral is then registered through a Fiduciary Guarantee institution (Fahmi Rizal Bachtiar et al., 2022). Additionally, there is another obstacle in the form of potentially problematic financing. In the practice of disbursing funds, there is always the possibility of default, which can lead to disputes between financing institutions and customers, sometimes even resulting in court proceedings and the demand for collateral execution. In fact, as an additional contract (accessory) on certain objects belonging to customers, *Rahn tasjily* should, in theory, give rise to absolute property rights, whereby the holder of the collateral has the status of a preferred creditor, entitled to priority repayment. Thus, *Rahn tasjily* should ideally be directly executable in the event of customer default. However, in reality, enforcement can only be carried out through another guarantee institution, namely the Fiduciary Guarantee as regulated in POJK 31/POJK.05/2016. This condition indicates that the *Rahn tasjily* contract lacks executory power, as it is not explicitly regulated in Indonesian positive law. As a result, the *Rahn tasjily* agreement loses its legal basis for execution (Trisadini Prasastinah Usanti, 2014).

2. RESEARCH METHODS

This study employs legal research, which aims to identify and examine legal rules, principles, and doctrines to address the issues at hand Peter Mahmud Marzuki, 2005). Legal issues are analyzed through norms in legislation, allowing for conclusions to be drawn regarding the application of the *Kaffah* Principle in *Rahn tasjily* at Pegadaian Syariah. The methods used include several approaches. First, the Statute Approach, by examining various relevant regulations, including Law Number 42 of 1999 concerning Fiduciary Guarantees, DSN-MUI Fatwa No. 68/2008 concerning *Rahn tasjily*, POJK No. 31/2016 on Pawnbroking Businesses, as well as other regulations related to the imposition and execution of collateral, both sharia and conventional. Second, the Conceptual Approach involves reviewing legal views and doctrines to identify relevant ideas, concepts, and principles, particularly those related to *rahn tasjily* from the perspective of Sharia collateral in Sharia financial institutions, and then linking them to positive regulations on movable property collateral. Third, the Case Approach involves examining court decisions related to the research issue by analyzing the ratio decidendi, or the judge's legal reasoning. It is hoped that, from this, the appropriate legal considerations based on formal and material facts can be identified.

3. RESULTS AND DISCUSSION

3.1. *Rahn tasjily* as Property Collateral in the Perspective of Fiduciary Law and DSN-MUI Fatwa No. 68/2008

One of the guarantee institutions established by Law No. 42 of 1999 concerning Fiduciary Guarantees is an institution formed to respond to the needs of the business world, particularly in providing guarantees for movable objects that remain under the control of the debtor. Property rights in Fiduciary Guarantees arise through the principle of publicity, as stipulated in Article 14 paragraph (3) of the Fiduciary Guarantee Law, namely from the date of registration in the Fiduciary Register. If no registration is made, the principle of publicity is not fulfilled, so that property rights do not arise, and the creditor's position is limited to that of a concurrent creditor.

In addition, through Circular Letter of the Director General of General Legal Administration Number AHU-06.OT.03.01 of 2013, an electronic (online) fiduciary security registration system was introduced. This breakthrough was then reinforced by the enactment of three regulations, namely Permenkumham Number 8 of 2013 concerning the Delegation of Electronic Signing of Fiduciary Guarantee Certificates, Ministry of Law and Human Rights Regulation Number 9 of 2013 concerning the Enforcement of Electronic Fiduciary Guarantee Registration, and Ministry of Law and Human Rights Regulation Number 10 of 2013 concerning Procedures for Electronic Fiduciary Guarantee Registration. With the existence of these regulations, Fiduciary

Guarantee registration is now conducted through an electronic administration system at Fiduciary Registration Offices nationwide in Indonesia.

Fiduciary Guarantee Institutions were established to provide legal protection to both creditors and debtors, as well as to support business activities by ensuring legal certainty for interested parties. Through this mechanism, the fiduciary provider retains control over the collateral, while the fiduciary recipient obtains protection through the registration system as stipulated in the Fiduciary Guarantee Law. Based on General Explanation number 3 of the law, legally, fiduciary institutions are often chosen by financial institutions, loan distributors, and Islamic financial institutions as a legal protection instrument, particularly in relation to the guarantee of movable objects that the debtor still wants to control. The imposition of Fiduciary Guarantees is regulated in Articles 4 to 10, through three main stages. Namely:

First, the creation of a principal agreement, which is the initial agreement that creates an obligation for the parties to fulfill their obligations, as regulated in Article 4 of the Fiduciary Guarantee Law.

Second, the creation of a Fiduciary Guarantee deed, which determines the object of the guarantee through a notarial deed in Indonesian, is a requirement for registration. The deed contains the identities of the parties, the principal agreement data, a description of the object of the guarantee, the guarantee value, and the value of the object of the guarantee (Articles 5 and 6 of the Fiduciary Guarantee Law).

Third, the registration of Fiduciary Guarantees, which is mandatory in order to fulfill the principle of publicity. Registration is carried out at the Ministry of Law and Human Rights through an electronic system based on Permenkumham Number 8, 9, and 10 of 2013, as the implementation of Article 14 paragraph (1) and Article 16 paragraph (2) of the Fiduciary Guarantee Law. This provision covers the registration of applications, changes, and cancellations of fiduciary guarantees, which were previously done manually.

In principle, the imposition of Fiduciary Guarantees aims to mitigate risks in financing by creditors. This mechanism is also applied to pawnshops, including sharia pawnshops, as a form of protection and application of the principle of prudence for financial institutions, both conventional and sharia. In practice, the distribution of loans by sharia pawnshops is subject to risk mitigation provisions as stipulated in POJK 31/POJK.05/2016. This regulation applies because there is currently no specific law governing pawnbroking businesses. Without supervision, these businesses have the potential to harm customers. Therefore, POJK 31/2016 serves to provide minimum standards that pawnbroking companies must meet in conducting their business (Dewi Nawang Wulan, 2023).

The risk mitigation applied by Sharia pawnshops based on POJK 31/POJK.05/2016 is an effort to protect the financing provided to customers. However, when linked to the concept of sharia pawnshops based on the DSN-MUI Fatwa regarding service products, including DSN-MUI Fatwa No. 68 of 2008 concerning *rahn tasjily*, confusion arises. This is because the Sharia rules related to the imposition of *rahn tasjily* are mixed with risk mitigation provisions in the form of Fiduciary Guarantees. *Rahn tasjily* is viewed as collateral, but it does not explicitly regulate the mechanism of imposition or debt classification. This overlap in regulations creates legal uncertainty due to the dualism of collateral agreements, which can, in turn, lead to confusion in law enforcement in the event of a dispute (Ira Chandra Puspita et al., 2018).

Fiduciary guarantees and *Rahn tasjily* are essentially complementary products that function as debt guarantee agreements or contracts, rather than as instruments for generating profits. As an additional agreement to the collateral owned by the debtor, the main strength of the guarantee agreement lies in its executory nature (Amran Suadi, 2019). Execution of the collateral is usually carried out when the debtor or customer is unable to fulfill their obligations, namely failing to pay the debt as agreed. Such conditions include default or breach of contract, which, according to Subekti (Subekti, 2017) refers to the debtor's failure to perform—whether due to non-fulfillment, delay, or non-compliance with the agreement—and can result in a lawsuit in court. Failure to perform is the basis for enforcement, as stipulated in Article 15 in conjunction with Article 29 of the Fiduciary Guarantee Law.

The implementation of execution in the Fiduciary Guarantee Law is a form of regulation related to the settlement of collateral. At Pegadaian Syariah, risk mitigation of collateral is carried out through the Fiduciary Guarantee mechanism, so that if the debtor defaults, execution can be carried out in accordance with the provisions of the law. However, in practice, enforcement, which should be based on the Fiduciary Guarantee certificate, often cannot be applied, especially in the context of Islamic economics related to customer default on *rahn tasjily* contracts guaranteed by Fiduciary at Pegadaian Syariah.

Amran Suadi argues that in Islamic economic disputes, requests for the determination of customer default by financing institutions, such as Sharia Pawnshops, through the fiat of the Head of the Religious Court actually eliminate the essence of parate execution attached to the Fiduciary Guarantee Certificate. In principle, the certificate grants direct execution authority or "under its own authority," but in practice, it has changed to "under the authority of the court." This condition raises two possibilities that make the Fiduciary Guarantee Certificate less than optimal, requiring a final and binding decision from the Religious Court, namely:

1. **Legal Basis of Sharia Pawnshops**: To date, Sharia Pawnshops have been based solely on POJK and do not yet have a definitive legal framework as a lending institution. The process of charging and disbursing loans is regulated through POJK 31/POJK.05/2016 and Fatwa DSN MUI No. 68 of 2008. As a result, the legal force of the encumbrance and execution of collateral cannot be fully enforced. To anticipate this, encumbrance is carried out through Fiduciary Guarantees, which have legal force based on the Fiduciary Guarantee Law.
2. **Legal force of *rahn tasjily* contracts**: Because encumbrance at Sharia Pawnshops is based on *rahn tasjily* contracts, the legal certainty regarding the encumbrance and execution of collateral is still weak. Therefore, the determination of default must be carried out through the Religious Court. This is confirmed in the MUI DSN Fatwa No. 68 of 2008, Section on Closing Provisions, Point 2, which states that if a dispute arises and no agreement is reached, the settlement shall be carried out through the National Shariah Arbitration Board or the Religious Court. This means that the Religious Court still has absolute jurisdiction. However, if we refer to POJK 31/POJK.05/2016, parate execution should be possible without the need to seek the court's intervention.

3.2. The *Rahn tasjily* Contract Burdening System in Sharia Pawnshop Practice

Based on National Sharia Council Fatwa Number 68 of 2008 concerning *Rahn tasjily*, which serves as the basis for fund distribution activities, especially in Sharia Pawnshops, there are several provisions related to the burdening mechanism. This is stated in the Second Stipulation of the Special Provisions, which emphasizes that:

"*Rahn tasjily* may be carried out with the following conditions:

1. The Rahin submits valid proof of ownership or a certificate of the goods used as collateral (*marhun*) to the *Murtahin*;
2. The transfer of collateral in the form of a valid proof of ownership or certificate does not transfer ownership of the goods to the *Murtahin*.
3. The Rahin grants authority (power of attorney) to the *Murtahin* to sell the *Marhun*, either through auction or to another party in accordance with Sharia principles, in the event of default or inability to repay the debt;
4. The use of the pledged goods by the rahin must be within reasonable limits as agreed upon
5. *Murtahin* may impose maintenance and storage fees for the *pledged* goods (in the form of valid proof of ownership or certificates) to be borne by *Rahin,* based on the Ijarah contract;
6. The amount of the fees referred to in point e above may not be linked to the amount of the *rahin's* debt to *the Murtahin;*
7. In addition to maintenance costs*, the Murtahin* may also incur other necessary expenses.
8. *Rahn tasjily's* insurance fees shall be borne by the Rahin.

Based on these provisions, the Rahin is required to submit proof of legal ownership of the goods to the *Murtahin* to be used as collateral for the debt received. This is in line with the KHES, which regulates the Rukun and Syarat Rahn in Chapter XIV, Part One. Article 373 paragraph (1) confirms that the pillars of a rahn contract consist of the *Murtahin*, rahin, *marhun*, *marhun* bih (debt), and contract. Furthermore, Article 374 states that the parties entering into a rahn contract must have legal competence. Article 375 states that a rahn contract is considered complete when the *marhun* has been handed over to the *Murtahin*. Meanwhile, Article 376 stipulates that: (1) the *marhun* must have value and be transferable, and (2) the *marhun* must already exist when the contract is executed. According to Zainuddin Ali, there are three important elements in a rahn contract, namely aqid, ma'qud 'alaih, and *Shighat* akad, which are manifested in the form of *ijab qabul* (offer and acceptance) between the two parties. From all these provisions, it can be understood that there are fundamental elements inherent in *rahn tasjily*, including (Mohamad Hilal Nu'man, 2018):

1. The subject requirement in a *rahn tasjily* contract is the existence of a party who pledges (rahin) and a party who accepts the pledge (*Murtahin*). Both parties must meet the requirements, namely being of legal age, of sound mind, and having legal competence.

2. The object requirement in a *rahn tasjily* contract is that the item used as collateral (*marhun*) must meet certain conditions, including having economic value, being marketable, not being contrary to the law, being the legal property of the rahin, and being classified as movable property.

3. *Shighat* or agreement is a statement of *ijab qabul* resulting from deliberations between the rahin and *Murtahin*, which is then translated into a contract or agreement.

Based on interviews with officers at the Tuban Branch of Pegadaian Syariah who have also carried out the process of encumbering motor vehicles, the mechanism for encumbering *rahn tasjily* contracts at Pegadaian Syariah can be explained as follows:

1. **Initial loan application**: Prospective customers must have a business that will be financed with collateral in the form of a motor vehicle registration certificate (BPKB).
2. **Fulfillment of requirements**: Sharia Pawnshop requests documents including photocopies of ID cards, family cards, business certificates from the village/sub-district head, photocopies of vehicle registration certificates, vehicle licenses, land and building tax certificates, as well as additional documents if the prospective rahin is a widower or widow in the form of a death certificate.
3. **Field survey**: Officers conduct a survey of the prospective borrower's business and the vehicle used as collateral to assess its suitability for the requested loan amount. At this stage, negotiations are also conducted between the borrower and the lender regarding the value of the collateral and the terms of the collateral agreement. If an agreement is reached, the process proceeds to the next stage.
4. **Fulfillment of additional requirements**: Customers are asked to complete additional documents as required by Pegadaian Syariah. At this stage, the vehicle used as collateral is brought to the office to be photographed, and the engine frame number is checked.
5. **Loan disbursement**: Once all requirements have been met, the customer waits for about a week for the loan funds to be disbursed and the *rahn tasjily* contract to be signed.

Based on field findings, Pegadaian Syariah does not automatically impose Fiduciary Guarantees on collateral in the form of movable objects still in customers' possession. The primary factor determining the application of Fiduciary Guarantees is the loan amount. According to an interview with an employee of the Tuban Branch of Pegadaian Syariah, it was revealed that fiduciary guarantees are not imposed if the loan value is below IDR 25,000,000; however, they are imposed if the loan amount exceeds this limit. This condition presents its own challenges, as high operational costs or imposition costs are the primary reasons for not implementing fiduciary guarantees. In addition, in the practice of *rahn tasjily* contracts, which are used as a form of collateral or as a supplement to the principal contract, loan applications with a value of less than IDR 25,000,000 are only made informally with a stamp duty of IDR 10,000, without involving a notary or binding through a Fiduciary Guarantee institution.

3.3. The Position of *Rahn tasjily* Contracts at Sharia Pawnshops

The *Rahn tasjily* contract applied at Sharia Pawnshops is based on the DSN MUI Fatwa as the Sharia basis, which places it as an additional agreement to the principal contract. Based on DSN MUI Fatwa No. 68 of 2008, the *rahn tasjily* contract serves to bind the collateral object. In the "considering" section of the fatwa, it is explicitly stated that transactions that give rise to debts and receivables are the starting point for agreements at Pegadaian Syariah, which are then followed by provisions for the provision of collateral on the condition that the goods remain in the possession of and can be used by the debtor. This reinforces the position of *Rahn tasjily* as an additional contract. In addition, according to KHES section five concerning Rights and Obligations in Rahn, Article 386 paragraph (2) mentions the special right of the *Murtahin* to obtain debt repayment from the property of the deceased rahin. This special right is a characteristic of property rights. In practice at Pegadaian Syariah, the use of the *rahn tasjily* contract as the basis for securing collateral places the rahin as the guarantor by submitting proof of ownership of the goods to the *Murtahin*, while also giving the *Murtahin* the authority to execute the goods in the event of default.

From the perspective of maqashid syariah, the application of *rahn tasjily* at Pegadaian Syariah only serves as proof of ownership, not direct control over the *marhun*. This means that the emphasis is not on the collateral being in the hands of the *Murtahin*, but rather that the *marhun* can be used as collateral and executed in the event of default. In the binding of the *rahn tasjily* contract, the rahin acts as the party that grants the *Murtahin* authority over the collateral, with the stipulation that the rahin's use of the *marhun* remains within reasonable limits and in accordance with the agreement. Meanwhile, the *Murtahin*, in addition to acting as a lender, also plays a role in safeguarding and storing the *marhun* in the form of proof of ownership or certificates. For this maintenance and storage, the *Murtahin* has the right to charge the rahin a fee based on the ijarah contract (Wulan and Aryatie, 2023).

3.4. Analysis of the Implementation of the *Kaffah* Principle in the *Rahn tasjily* Contract at Sharia Pawnshops

According to Arif Fadhilah, the meaning of *Kaffah* in Islam encompasses three main elements: the foundations of Islam, the structure of Islam, and its reinforcements or protectors. *Kaffah* is understood as the comprehensive application of Islamic teachings in every aspect of life, which requires the support of the state through written legal regulations so that it can be implemented in its entirety, especially in Islamic economic practices and Islamic financial institutions (Arif Fadhillah, Islam *Kaffah*, 2004). Meanwhile, Riana Ratna Sari interprets *Kaffah* in QS Al-Baqarah as a comprehensive understanding of Islam, which not only regulates the relationship between humans and Allah through worship, but also governs relationships between humans, encompassing culture, law, politics, social, economic, technological, and other aspects of life (Riana Ratna Sari, 2019). Thus, the meaning of *Kaffah* as totality means practicing all Islamic teachings without being selective according to one's desires, such as only practicing some and leaving others. Because Islam encompasses all dimensions of life, the aspects of faith and Sharia become important foundations in building Islam in a Balanced manner.

In the field of Islamic economics, *Kaffah* is understood as a principle based on the teachings of the Qur'an and Hadith, both in the form of prohibitions and recommendations in economic activities in accordance with Islamic law. Examples include the prohibition of usury, provisions for profit-sharing systems, rules for profit-taking, zakat management, and other provisions. This *Kaffah* principle is evident in Islamic economic practices, such as the application of sales contracts in working capital, the use of mudharabah-based profit-sharing agreements for investments, and the ba'i as-salam contract in project development (Muhammad Syafi'i Antonio, 2017). Islam also emphasizes that economic activities are inseparable from the role of humans as stewards on earth, tasked with realizing welfare and prosperity (QS. Al-An'aam: 165) and carrying out worship in a broad sense (QS. Adz-Dzaariyat: 56). The comprehensive application of sharia economics is realized through sharia-based practices and products, including sharia insurance, sharia mutual funds, sharia banks, sharia pawnshops, sharia financing, sharia pension funds, and various other sharia financial institutions (Mea Aulya, 2017).

Law Number 21 of 2008 concerning Sharia Banking, particularly in the explanation of Article 3, emphasizes that in order to support national development, sharia banking must adhere to sharia principles comprehensively (*Kaffah*) and consistently (Istiqamah). This indicates that the application of *Kaffah* is the primary foundation of the sharia-based economy, not limited to sharia banking regulations, but also to other sharia economic products, which are then regulated through official regulations. In the context of the sharia economy, *Kaffah* means that every product must be implemented with a comprehensive understanding of the provisions outlined in the Qur'an and Hadith. These include the prohibition of using unlawful means, the obligation to seek what is lawful, not to be excessive, to avoid injustice, and to avoid the practices of usury, maisir (gambling), and gharar (uncertainty/manipulation). In addition, the principle of *Kaffah* also includes the obligation of zakat, infaq, and almsgiving as a form of social responsibility. This is the fundamental difference between the sharia economy and the conventional economy, which is generally based on the principle of self-interest.

3.5. Application of the *Kaffah* Principle in *Rahn tasjily* Contracts at Sharia Pawnshops

Historically, Sharia Pawnshops were born out of the desire of the Muslim community to establish pawnshops based on sharia principles, with the motto "overcoming problems in accordance with sharia". The presence of this institution has contributed to the growing development and popularity of Sharia economics, particularly among lower-income groups.

Legally, according to Zainuddin Ali, the establishment of Sharia Pawnshops was supported by the enactment of the Banking Law, which covers not only banking institutions but also non-bank financial institutions, such as insurance companies, investment firms, auditing firms, special credit institutions, and pawnshops. Furthermore, Government Regulation No. 10 of 1990 concerning the change in status of the Pegadaian Government Agency (Perjan) to a Public Company (Perum), which was later updated by Government Regulation No. 103 of 2000, provided legal legitimacy for sharia pawn practices. This is confirmed in Article 5 paragraph (2b), which states that the mission of pawnshops is to prevent practices of usury, riba, and unreasonable loans. These characteristics and legitimacy form the legal basis for the operation of Sharia Pawnshops under the umbrella of Perum Pegadaian. Additionally, Sharia pawn practices also refer to the Fatwa of the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI) as guidelines for their implementation.

In practice, Shariah pawnshops use several contracts, including qard al-hasan, ijarah, and rahn. These contracts have legal force if they meet the requirements in accordance with Sharia provisions (Adrian Sutedi, 2011). The binding of the parties in the contract is based on the DSN-MUI Fatwa as the Sharia basis. One of the contracts used is *Rahn tasjily*, as stipulated in DSN-MUI Fatwa No. 68 of 2008. The sharia principles contained in these contracts are determined by the National Sharia Council, in accordance with the operational system of Pegadaian Syariah, which prioritizes modern administration based on the principles of efficiency, effectiveness, and rationality, while still adhering to Islamic values (Luluk Wahyu Roficoh, 2018). The fulfillment of sharia principles in the *rahn tasjily* contract at Pegadaian Syariah essentially covers three main aspects derived from Islamic economic law studies, namely(Maman Surahman, 2017):

1. **The principle of Tawhid or Faith** is the main foundation of Islamic teachings, which gives rise to three principles of Islamic economic philosophy. First, the entire universe belongs to Allah and is under His will (QS 5:20; QS 2:6), so that humans play the role of caliphs who are entrusted with a mandate, not absolute owners. Second, Allah is the creator of all beings, and all creations are subject to Him (QS. 6:142; QS. 39:21). This affirms equality before Allah, which is the basis for fair (egalitarian) economic treatment, without injustice or futility. Third, belief in the Last Day serves as a reminder of accountability, so that every economic activity must consider the welfare of the people, both now and in the future.
2. **The principle of Ta'awun (mutual assistance)** is a fundamental value that is the spirit of pawn transactions, where economic cooperation is based on a spirit of mutual assistance.
3. **The principle** of **Tijarah (business/trade)** recommended by Islam emphasizes that trading activities are permissible, but the profits obtained must still be in accordance with Sharia provisions.

This basic principle is a crucial element in the formation of the Islamic economic system, as a manifestation of the *Kaffah* principle, which involves the comprehensive implementation of Islamic law in contracts at Pegadaian Syariah, including *rahn tasjily* contracts. However, it is essential to consider the aspect of contract or agreement legitimacy, both in terms of encumbrance and the execution of collateral objects, as regulated in the laws and regulations of the Financial Services Authority, which serves as the legal framework for sharia pawn practices from a positive law perspective. In practice, these rules are not always in line with the *Kaffah* principle derived from the DSN-MUI fatwa. This is due to the view that fatwas alone are not considered strong enough to strengthen the legal position of Islamic economics. As a result, the application of the *Kaffah* principle, which should be the main driver of Islamic economics, cannot run optimally at Pegadaian Syariah (Zulfikar MS, 2014). The analysis of the lack of maximization of the *Kaffah* principle in the *rahn tasjily* contract at Pegadaian Syariah can be demonstrated through the following points:

1. **POJK 31/POJK.05/2016 concerning Pawnshop Business**

Risk mitigation efforts, as stipulated in Article 13 in conjunction with Article 15, actually show the limitations of the DSN-MUI Fatwa in providing a legal umbrella. As a result, the *Kaffah* principle, which should reflect the comprehensive application of Islamic economics, cannot stand alone and may even lead to overlapping regulations regarding collateral charges that have the potential to be ineffective. The use of Fiduciary Guarantee Institutions for movable objects as collateral, as regulated in the POJK for Shariah Pawnshops, canalso not be applied systematically. This is because fiduciary encumbrance can only be carried out if the loan value exceeds IDR 25,000,000, while the high cost of encumbrance makes it difficult for Sharia Pawnshops to implement it directly. In fact, the principles of Islamic economics emphasize the principle of mutual assistance in lending and borrowing agreements, rather than being solely profit-oriented, so that the efficiency of encumbrance costs is very influential in every transaction. On the other hand, the risk mitigation regulations in the POJK do not fully regulate all aspects of risk in Sharia Pawnshops, despite the high level of risk associated with the practice.

In carrying out lending activities, pawnshops are required to implement risk management as a form of applying the principle of prudence. This also applies to Sharia pawnshops, which are institutions that distribute loans to the public. Therefore, pawnshops must regularly monitor the potential risks of financing activities, including assessing the customer's ability to pay, the suitability between the loan value and the collateral value, and, specifically at Sharia Pawnshops, paying attention to the purpose of the loan, whether it is used for business capital or to meet the customer's consumptive needs.

2. Execution of Collateral

The obligation of Sharia Pawnshops to request a court decision in determining defaulting customers is intended as a form of prevention against arbitrary actions, so an agreement is needed to ensure that no party acts unilaterally. However, if we refer to the original purpose of the agreement to encumber the customer's assets as stipulated in Article 1132 of the Civil Code, then this legal basis gives priority rights in debt repayment by making certain objects special collateral for creditors (right of verhaal). In addition, Article 1133 of the Civil Code emphasizes that property rights have a priority nature (droit de preference), meaning that payments from the auction of collateral must be prioritized. Thus, enforcement should be carried out directly in accordance with the authority stated in the property security agreement. Therefore, simplifying the lawsuit mechanism for executing customer collateral can be considered, making the repayment and execution processes easier and more efficient.

3. *Rahn tasjily* Agreement

The *Rahn tasjily* contract, which is based on MUI DSN Fatwa No. 68 of 2008, is used as the Sharia basis by Pegadaian Syariah in imposing charges or as an additional contract (accessoir) on movable collateral belonging to customers. However, this contract does not have specific provisions in positive law or legislation, thus causing legal uncertainty regarding collateral agreements at Pegadaian Syariah (Tri Handayati et al., 2018). In addition, the *Rahn tasjily* contract is not authenticated, but only with a stamped document. As a result, in the event of a dispute, additional evidence is required to support the case. Because there are no specific provisions in the legislation, the *Rahn tasjily* contract does not have direct enforcement or execution powers. Thus, this contract does not reflect the characteristics of property rights, so that in practice the position of the creditor is only equivalent to that of a concurrent creditor (Ghansham Anand, 2018).

3.6. Practical Implementation of *Rahn tasjily* Contracts at Sharia Pawnshops

In disbursing loans using the *Rahn tasjily* contract, Sharia Pawnshops offer a financing product known as Rahn Fleksi, or more commonly referred to as Arrum Mikro. The analysis related to the binding of the *Rahn tasjily* contract based on the Arrum Loan Contract Number: 6041225140000028 is as follows:

1. The binding and encumbrance of collateral at the Tuban Branch of Pegadaian Syariah is carried out through a private agreement, not an authentic deed. This differs from fiduciary collateral, which utilizes a notarial deed and therefore has

full evidentiary force in accordance with Article 1870 of the Civil Code, in conjunction with Article 1868 of the Same Code.

2. The *Rahn tasjily* contract should be positioned as an additional contract (accessory) to the main contract (borrowing and lending). However, based on Arrum Loan Contract Number: 6041225140000028, it appears that the main contract and the additional contract are combined in one agreement. This is considered contrary to the principle of contract law, because an accessory agreement should arise after the principal agreement.

3. In the *Rahn tasjily* agreement, there is a provision regarding the transfer of receivables (Article 16), which indicates the existence of a cessie from the outset. This raises potential legal risks, as per Article 1266 of the Civil Code, regarding the conditions for cancellation. In addition, Article 15 on irrevocable power of attorney contradicts Article 1813 of the Civil Code because it creates an imbalance between the parties.

4. Regarding the mu'nah tariff or maintenance costs for the collateral (BPKB), Article 3 stipulates a fee of IDR 2,478,000 for the duration of the loan. Based on interviews, this fee is calculated at 0.8% of the vehicle's value. However, the agreement does not provide a detailed explanation of the calculation mechanism, which could potentially cause confusion for customers.

5. Property rights are essentially executory in nature, such as the right to execute collateral. However, in Article 12 of Arrum Loan Agreement Number: 6041225140000028, the right of execution granted to the creditor ("the right to seize or withdraw the collateral") does not confer full property rights. Therefore, the execution still requires a court decision to determine default and execution of the collateral.

4. CONCLUSION

Both the Fiduciary Security Law and the *Rahn tasjily* agreement are supplementary agreements (accessoir) to the principal agreement. The difference lies in the legal position of the fiduciary and the Rahin as the owner of the collateral. In a *rahn tasjily* agreement, even though the *Murtahin* is authorized by the rahin to sell the *marhun*, this authority does not automatically make *rahn tasjily* a property security institution. This is because the legal basis for *Rahn tasjily* is based solely on the MUI DSN Fatwa, unlike the Fiduciary Security institution, which is clearly regulated by Law No. 42 of 1999. Thus, the execution must be carried out in good faith, in accordance with Constitutional Court Decision No. 18/PUU-XVII/2019, namely through a voluntary surrender mechanism first, and if necessary, followed by a court decision through a simple lawsuit. The principle of *Kaffah* in the Sharia economic system requires the comprehensive application of Islamic law, both in terms of regulation, imposition, and implementation of agreements, so that Sharia is not implemented half-heartedly or results in ineffective rules. However, in the practice of Sharia Pawnshops, the principle of *Kaffah* has not been fully realized. This is evident from the practice of double imposition, namely the *rahn tasjily* contract, which is also bound by a Fiduciary Guarantee Agreement as stipulated in POJK No. 31/POJK.05/2016 Article 13 in conjunction with Article 15. In fact, the two contracts are not contradictory, so there is no need to apply them simultaneously.

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