

Credit Transaction Analysis of "Pagang Gadai" Model as Sharia Law Implementation in West Sumatera: A Systematic Literature Review

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Abstract: *"Pagang gadai" transaction has become a socio-cultural activity for Minangkabau society in West Sumatera. This transaction has been entrenched and rooted in life. However, this activity has begun to change from its initial values, as a principle of helping each other and a cultural tradition, to an economic motive, namely a business transaction, which then turns into a commercial value. Several studies have indicated that "pagang gadai" is no longer merely applying the principle of helping each other and cultural activity but has an economic motive. This shifting pattern leads to the holdover of wealth from one person to another to obtain financial benefits. This transaction allows the pawnbroker to hold productive agricultural lands, such as rice fields, fish ponds, yards, coconut trees, and even cars. The right-of-use land and productive assets then belong to the lender. Some research and empirical studies indicate that "pagang gadai" no longer has a social value but begins to change into usury partially. Therefore, the society should go back to the foundation of custom philosophy "syarak mangato adat memakai", and the application of state law should be consistent as Government Regulation Law in Lieu of Law No.56/1960 about the use of agricultural land in Article 7 limits the period of "pagang gadai" to seven years and the agricultural land is handed back without ransom.*

Keywords: *Minangkabau; pawn sharia law; communal right; pagang gadai; West Sumatera*

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Abstrak: *Transaksi "Pagang Gadai" sudah menjadi aktivitas budaya dan sosial bagi masyarakat Minangkabau di Sumatera Barat. Transaksi ini sudah berurat dan berakar dalam kehidupan. Namun lama kelamaan aktivitas ini mulai mengalami perubahan dari nilai-nilai awal sebagai prinsip tolong menolong dan tradisi budaya menjadi motif ekonomi yakni sebuah transaksi bisnis dan berubah menjadi nilai komersial. Beberapa riset membuktikan bahwa "Pagang gadai" tidak lagi sekedar menerapkan prinsip tolong menolong dan kegiatan budaya namun sudah menjadi motif ekonomi yakni pola pertukaran yang mengarah pada penguasai kekayaan dari seseorang ke seseorang lain dalam rangka mendapatkan benefit finansial. Transaksi ini menjadikan pemegang menguasai sejumlah lahan produktif pertanian seperti sawah, kolam ikan, ladang, pohon kelapa, bahkan mobil. Hak guna dari lahan dan assets produktif ini menjadi hak pemberi pinjaman. Maka dari beberapa riset dan kajian emperis ditemukan pagang gadai tidak lagi bernilai sosial tapi mulai berubah sebagian menjadi perbuatan riba. Sehingga ada baiknya masyarakat kembali kepada landasan filosofi adat, dimana syarak mangato adat memakai dan konsistennya penerapan hukum Negara sebagai mana perpu no.56/1960 tentang penggunaan lahan pertanian pada pasal 7 yang membatasi usia "pagang gadai" 7 tahun dan tanah pertanian kembai tanpa uang tebusan.*

Kata kunci: *minangkabau; gadai syariah; hak komunal; pagang gadai; sumatera barat*

INTRODUCTION

In the past, financial institutions were not as numerous and advanced as they are now, so the need for the new fund was usually fulfilled by the availability of people who had money in every village of Nagari (Minangkabau people regional administrative unit) in West Sumatra. Hence, to ensure that the borrowed money was paid back to the lender, the borrower usually handed over his/her collateral ("gadai") or pawn. This practice was initially aimed to help each other, and the money paid back was as much as the money borrowed. The fields, rice fields and gardens that became the collateral for the "pagang gadai"/pawning transaction were given the right to the lender to be managed and exploited during the borrowing process. *Pagang gadai* still exists in several regions in West Sumatra because the people's access to formal financial institutions, such as banks, cooperatives, microfinance institutions and pawnshops, is not so easy. Access comprises the link between the business feasibility to be funded and the requirement fulfilment to be funded by the bank (bankable). One of the aspects that are not fulfilled is land ownership. Almost most of the plots of land held by the society in West Sumatra do not have the certificates because land ownership is communal and the people in charge, the family owners of the plots of land, are reluctant to certify the land, and then the land is originally customary (*ulayat*) land.

Pagang gadai is a lending and borrowing money or gold system that applies in Minangkabau society with a specific guarantee such as land exploitation in one

community (Hasneni, 2015). In other words, it is a temporary transfer of the right of land management or exploitation in exchange for an amount of money or gold. "Pagang" indicates the expropriation of land rights and the pawn of granting land, this is an interaction and transaction between the pawnbroker and the apprentice (Beckmann, 2014). This tradition has been passed down from generation to generation, becoming a cultural value of helping each other and functioning socially and culturally. *Pagang gadai* arises because the needs of a family or a community are more than the family's capacity, or in other words, family savings are no longer sufficient to finance a large number of things, such as medical treatment and educational costs (Hariati et al., 2012). In implementing pagang gadai in Minangkabau, the assets that can be used are in the forms of *pusako tinggi* (custom heirlooms) and *pusako rendah* (family heirlooms), which have been managed by the family such as rice fields and plantation land. In classic situation, *pusako tinggi* is usually used for: 1) girls who are not married, 2) renovating traditional house, 3) inaugurating custom leader, and 4) corpse management which known as "*gadis gadang alun balaki, rumah gadang katirisan, mambangkik batang tarendam, maik tabujua di tengah rumah*". However, in the subsequent activities, the process of pilgrimage and the debts in the middle of a battlefield are also become the factors causing the practice of *pagang gadai* (Beckmann, 2014).

Pagang gadai usually occurs in one community and one clan of *Rumah Gadang* in a cultural tradition strongly embedded in some village in West Sumatra. In terms of "pagang" and "gadai", there are two words put together; "pagang" in English term is called "pawnee". Meanwhile, *pagang gadai* is a type of contract document registered at formal administrative institutions in the Dutch era. In its practice, the implementation of pagang gadai after Indonesia's independence remains attached to Minangkabau society due to the slow penetration of banking business, pawnshops, cooperatives and other microfinance institutions into *nagari* (village). The society has difficulty in obtaining capital from formal credit institutions because the administrative requirements that must be met complicate small farmers to get this credit. (Fitri, 2006). The MSMEs also have difficulty making connections with financial institutions and banks because they do not have certified land as collateral, and cooperative credit institutions hardly come to the society (Suci et al., 2017). So, the economy at the rural level is more in the form of a relationship between the landlady and the landlady where small community members or farmers are highly dependent on people who have a strong economy (who have the capital) known as the economy patron clan. (Ramidha et al., 2019). Various reasons cause farmers to take a loans (Turvey et al., 2010). Small farmers are guaranteed their daily needs through a business relationship or a permanent job with the owner of the capital and various types of flexible assistance provided by the owner of the capital to farmers. (Platteau, 1995).

In the modern era, the low level of public access to formal financial institutions makes the society still use the traditional pattern "pagang gadai" to overcome the problem of financing social, economic and educational activities in their lives (Aliasman, 2005). Although sharia pawn already exists to be accessed by the society, where it is one of the non-bank financial institutional instruments that is now developing in Indonesia, it has the differentiation of accepting gold pawn as

collateral for a community loan (Roikhan, 2017). However, this sharia pawn service has not yet reached all corners of *nagari* in West Sumatra.

This paper, using literature review, discusses in more depth the mechanism for *pagang gadai*, the transfer of land rights and its impacts on economic existence and the lessons learned for the society in Minangkabau.

RESEARCH METHODS

Identification of the Problem and Focus of the Study

The question formulated in this discussion is, "what are the studies that have been carried out by the researchers regarding *Pagang Gadai* transaction in West Sumatra in the aspects of culture, economy and Islamic law?"

The aspects discussed in the meta-question study are:

1. How is the implementation of credit transactions using land and rice fields?
2. How is *pagang gadai* in the perspective of Islamic law?
3. How is the implementation of *pagang gadai* for small farmers in West Sumatera, land pawn and sharia law?
4. How are *pusako tinggi* and the implementation of Government Regulation in Lieu of Law No. 56/1960 for the society?

Comprehensive Search Performance

From the four aspects of search, the retrieval and validation were done systematically through the screening process, topic, population, and methodological parameters. The databases were selected from the search bases The Lens - Free & Open Patent and Scholarly Search and Google Publish or Perish (harzing.com) Scholar. The searching process had been conducted from March 20-April 2, 2020. The combination of keywords and titles in the database search used: ("Pagang Gadai" or "Islamic Law"); "Transaction"; "Economy"; "Learning"; "West Sumatra" or "Minangkabau Culture". The searching process found articles, reviews, open access documents about social science area, economics, and Islamic law.

The Selection of Relevant Articles

This paper is a systematic literature review using the qualitative meta-synthesis method to identify which studies are most relevant to the analysis of *pagang gadai* transactions. The articles obtained were 637 articles, consisting of 20 from Lens.org and 617 from Harzings application. Then the articles were combined in Mendeley application in the form of RIS format. Moreover, the Mendeley application filtered the similarity of the articles, then 637 articles were obtained. From those articles, the articles with economic and legal aspects were reselected, then became 33 articles.

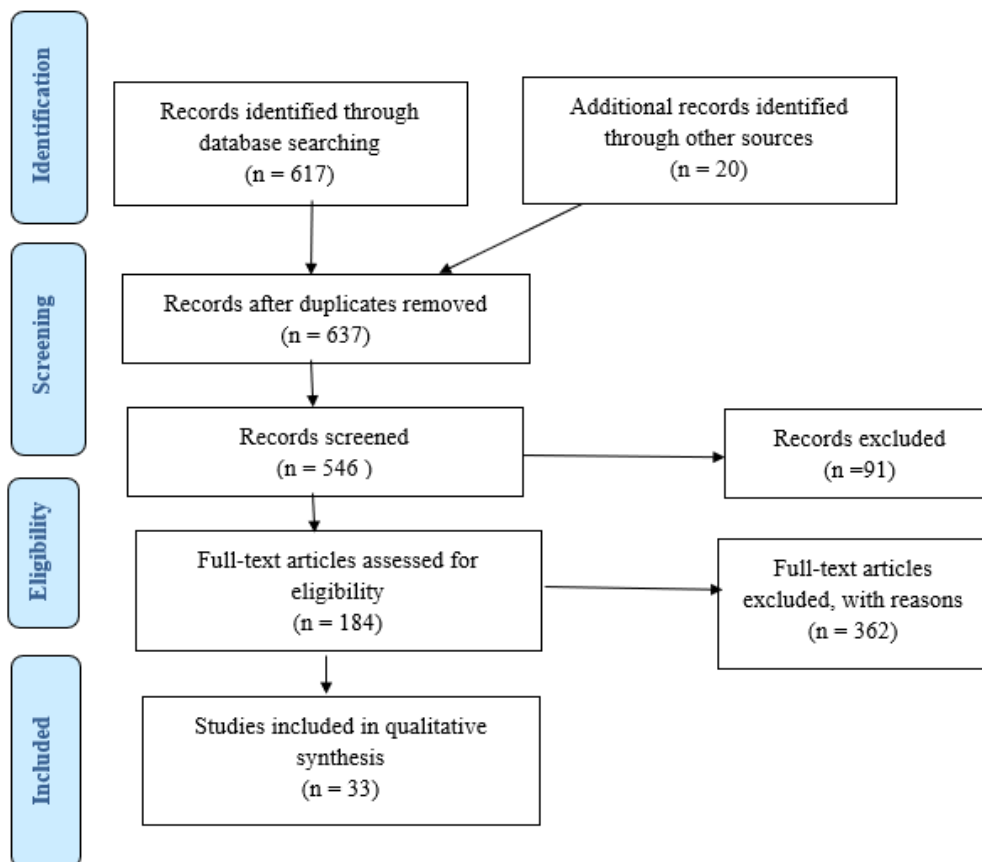


Figure 1. The Flow Diagram Showing the Process of Reviewing the Articles with PRISMA Model

The Summary of the Findings on Study Selection Using Qualitative Technique

A qualitative analysis study has produced the information in four cluster matrixs, based on the findings from the VOSviewer application as shown in the following figure:

Table 1. The map on Based Data, RIS, Titles and Abstract Field, Assurance

Cluster	Keyword	Link	Total Link Strength	Accurrence
Cluster 1	Case Study	6	12	2
	Dept	4	11	2
	Land	9	53	14
	Rice Field	5	10	2
	Self	4	7	2
	Transaction	9	43	10
Cluster 2	Islamic Law	3	6	2
	Nagari Koto Tengah	3	6	2
	Pagang	5	12	16

Cluster	Keyword	Link	Total Link Strength	Accurrence
Cluster 3	Property	5	12	16
	Term	6	8	2
	Time	4	8	2
	Grassroots Study	3	16	2
	Indonesia	10	34	6
	Small Farmers Credit	3	16	2
	West Sumatera	13	58	11
Cluster 4	Tanah Harta Pusako	2	20	4
	UU No 56	2	20	4

Source: Processed through VOSviewer, 2021

RESULTS AND DISCUSSION

One of the outputs from the VOSviewer application, which is based on network visualization, has illustrated that in the articles under examination, four clusters can be described further. Cluster 1 explains the credit transaction using rice fields as collateral for the debt. Cluster 2 examines how Islamic law guides the implementation of credit transactions of *pagang gadai* in *nagari*. Cluster 3 explains how the grassroots in West Sumatera use *pagang gadai* to get easy loans. Furthermore, cluster 4 discusses the pawned *harta pusako* (heirloom assets) and its relation to Government Regulation in Lieu of Law No. 56/1960 regarding agricultural land use.

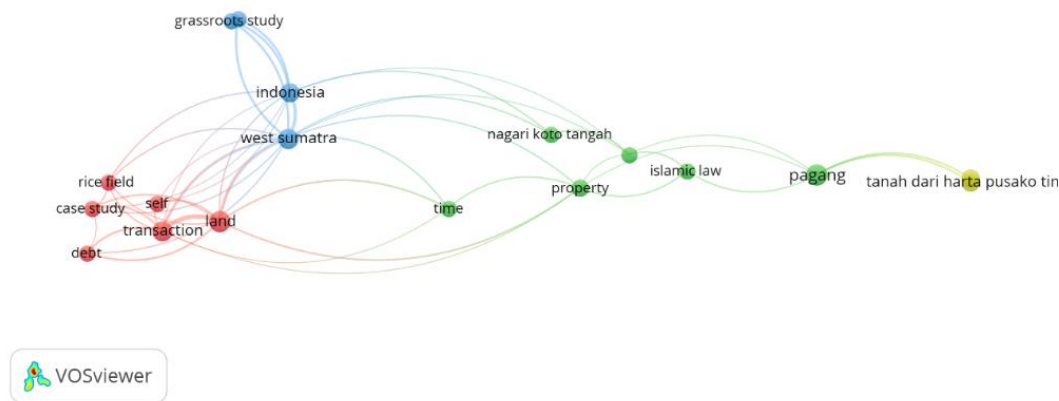


Figure 2. Cluster Network Visualization: Map on Based Data, RIS, Titles and Abstract Field, Assurance

In terms of publication time and article newness, these articles were published in 2000-2020. Even so, some old articles were still used as references, especially the writers who were experts in the field of pawn, especially the writers from the Netherlands. The most recent researchers focused more on the studies of the relationship between *pagang gadai* and *harta pusako tinggi* (custom heirloom

assets), the relationship between land and debt, and the relationship between custom law and the concept of Ar-Rahn or Islamic law.

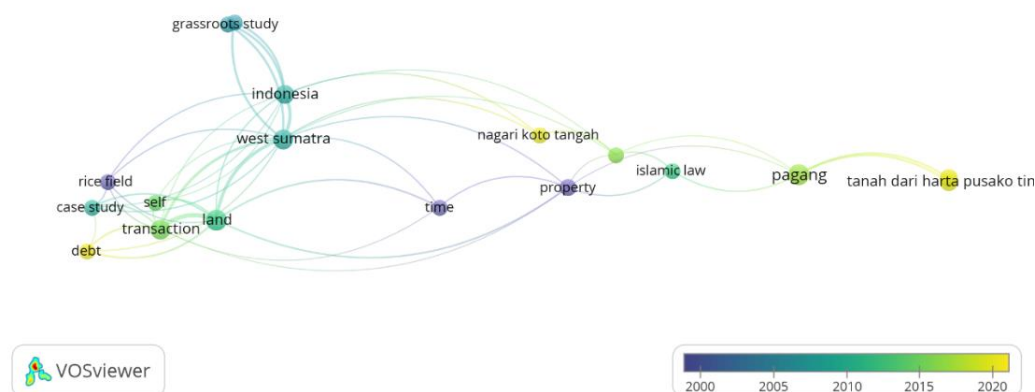


Figure 3. Overlay Visualization from Map on Based Data, RIS, Titles and Abstract Field, Assurance

Credit Transaction Using Land and Rice Fields

The openness of the economy from a collaborative to individualistic economy with market values becomes the society economic spirit and puts the pressure on land ownership and the use of land for individuals higher for commercial activities (Otsuka et al., 1998). Changes in land use are driven by many interactions of local and global factors, so that land becomes multifunctional and has economic value (Lambin & Meyfroidt, 2011). A pawn agreement (*pagang gadai*) is an economic transaction that uses the land object as an asset to be exchanged for a more sought-after asset, namely money. Initially, this activity was intended as a social activity in helping each other (Beckmann, 2014). Then, in fact, in the practice of *pagang gadai* in several areas in Minangkabau, it was originally a tradition and culture of helping each other. It transforms into a business activity with the capitalization of profit exceeding the basic value of *pagang gadai* (Wirasaputra, 2018). Along with its development, the implementation of *pagang gadai* is no longer just a social activity, but rather it is carried out with a motive of margin/profit seeking even usury seeking by pawnbrokers (Alber, 2015).

Pagang gadai, at the beginning of time, helped the borrowers to get money or gold as a medium of exchange to fulfil various economic needs of families (Amir, 2015). However, in its practice, this transaction has an impact in the long term, that the pawned productive land cannot be redeemed so that the right to manage the land remains on the lenders or pawnbrokers. During the loan period, the economic right to land becomes the right of creditors. It shows usury practice and benefits lenders resulting from the decrease and elimination of borrowers' economic rights (Utari, n.d.)

Over time, *pagang gadai* becomes an economic burden for borrowers in the economic perspective called opportunity cost. The opportunities for income and

prosperity are lost due to borrowing. This problem has been resolved legally by the government by issuing Government Regulation in Lieu of Law No. 56/1960, Article 7, which limits the pawn lease of agricultural land to seven years maximum. After that, the right to manage the land automatically returns to the pawner without ransom. However, in its economic practice among society, this regulation has not materialized yet.

Pagang gadai was originally a lending-borrowing transaction to fulfil the pawner's needs through a loan given by a pawnbroker with the collateral of land or rice fields. However, in practice, it eliminates the pawner's economic right because the practice of *pagang gadang* is not implemented following Government Regulation in Lieu of Law No. 56/1960.

Pagang Gadai in the Perspective of Islamic Law

Various studies have outlined the basis for allowing credit transactions in the perspective of Islamic sharia. Allah says in Surah Al-Baqarah verse 283 as follows:

"If you are on a journey and a scribe cannot be found, then security can be taken. If you trust one another, then there is no need for security, but the debtor should honour this trust by repaying the debt—and let them fear Allah, their Lord. Moreover, do not conceal the testimony. For whoever conceals it, their hearts are indeed sinful. Furthermore, Allah fully knows what you do."

The lending-borrowing transaction is a condition when someone or a family needs help because they have limitations. Hence, Allah has demanded us to help each other, as written in Surah Al-Maidah verse 2:

٢- الْعِقَابُ شَدِيدُ اللَّهِ ۗ إِنَّ اللَّهَ ۖ وَاتَّقُوا ۖ وَالْعُدْوَانَ الْإِثْمَ عَلَى تَعَاوُنُوا وَلَا وَالتَّقْوَىٰ الْبِرَّ عَلَى وَتَعَاوُنُوا

"Cooperate in goodness and righteousness, and do not cooperate in sin and transgression. Be mindful of Allah. Surely Allah is severe in punishment."

Good news for those who help each other is reward and heaven, and bad news for those who quarrel and sinners is severe torment. In Surah Al-Baqarah verse 245, Allah SWT previously also has given good news for those who like to help and give a loan, and Allah will multiply the reward as Allah says as follows:

٢٤٥ - تُرْجَعُونَ ۖ وَإِلَيْهِ وَيَبْصُطُ بِقَبْضٍ ۗ وَاللَّهُ كَثِيرَةٌ أَضْعَافًا لَهُ فَيُضِعُّهَا حَسَنًا قَرْضًا اللَّهُ يُفْرِضُ الَّذِي ذَا مَنْ

"Who will lend to Allah a good loan which Allah will multiply many times over? It is Allah alone who decreases and increases wealth. And to Him, you will all be returned." (QS:2:245).

As the primary reference for Muslims, the Qur'an has outlined and allowed credit agreement, and the Prophet Muhammad PBUH also has given the example

that this borrowing is also allowed. MUI has issued three fatwas about this: No. 25, No. 26 and No. 68. In National Sharia Council Fatwa of MUI No. 25/Dsn-Mui/Iii/2002 about *Rahn*, it has been explained, referring to the Qur'an Surah Al-Baqarah verse 283 and several hadiths. The Prophet Muhammad PBUH said, as narrated by Al-Bukhari and Muslim from Aisha RA:

"Verily Rasulullah s.a.w. once bought food in debt from a Jew, and the Prophet pawned armour to him."

The Prophet PBUH also said, as narrated by al-Syafi'i, al-Daraqutni and Ibn Majah from Abu Hurairah:

"Not apart is the ownership of pawned property from the owner who pawned it. He/She gets the benefits and bears the risks."

Hadith of the Prophet narrated by Jama'ah, except Muslim and al-Nasa'i, the Prophet PBUH said:

"A vehicle that is pawned can be ridden at the cost, and a cattle that pawned can get milk from it. The person using the vehicle and milking the cattle is obliged to bear the cost of care and maintenance."

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Fatwa of MUI No. 25/2002 explains the law of pawn as follows: a loan by pawning goods as debt collateral in the form of *rahn* is permitted under the following conditions:

General requirements:

1. *Murtahin* (pawnbroker) has the right to hold *Marhun* (collateral) until all debts of *rahin* (pawner) are paid off.
2. *Marhun* and its benefits remain to be *rahin's*. In principle, *murtahin* should not use *marhun* except with *rahin's* permission without reducing *marhun's* value, and its use is merely a substitute for its maintenance and care costs.
3. Maintaining and keeping *marhun* are *rahin's* obligations, but *murtahin* can also do them while the cost and maintenance of keeping remain *rahin's* obligations.
4. The amount of *marhun's* maintenance and keeping costs cannot be determined based on the loan amount.
5. *Marhun* is sold when the pawn is due.
 - a) *Murtahin* must warn *rahin* to pay off his/her debt(s) immediately.

- b) If *rahin* still cannot pay off his/her debt(s), then *marhun* is forcibly sold/executed through an auction, according to sharia.
- c) The proceeds of the sale of *marhun* are used to pay off the debt(s), unpaid maintenance and keeping costs, and sale cost.
- d) The remaining proceeds of the sale belong to *rahin*, and the deficiency becomes *rahin's* obligation.

Theoretical analysis, relation to Islamic law, MUI fatwa No. 25, 26 and 68, what pawn shops and other financial institutions run do not reflect the initial purpose of *rahn* transaction sharia, as a transaction that promotes help and empathy among human beings. Then this practice is more of commercial nature with credit business resulting in economic disparity and exploitation of income potential from the pawner to the pawnbroker. (Izmuddin, 2016). Furthermore (Izmuddin, 2016) explains that there are four socioeconomic effects of the implementation of Government Regulation No. 103 of 2000 about the public company of pawnshop: 1) there is no enthusiasm for helping lower-middle-class, 2) there is no enthusiasm for eroding economic inequality between the poor and the rich, 3) loan recipients tend to be people who have assets so that the rich are getting richer, and those who do not deserve a pawn cannot get this opportunity, and 4) if there is a loss, the one who gets the risk is always the borrower while the lender does not want to take the risk.

The activity of *pagang gadai* is a transaction that is allowed because it is carried out with the principle of mutual help in kindness, but in some pawning practices, they can be said to be the practices of usury because the lender holds the productive right of land as the collateral to be managed and exploited until the pawner can redeem his/her fields (Priska, 2017). Empirically, based on several studies conducted by some researchers, the practice of *pagang gadai* can be categorized as usury, for instance, the study conducted by (Risnaldo, 2015) about the mechanism for *pagang gadai* implemented in *Campago Village V, Koto Kampung Dalam Padang Pariaman*. In terms of pattern and mechanism, *pagang gadai* transaction is carried out within a certain period with the condition that all yields of plantations that become collateral are the lender's right until the debt is paid off at the principal cost of the loan. This study has concluded that this transaction is against sharia law because of making profit a condition contained in *pagang gadai* contract, which is wealth bearing wealth, or in this case, it can be interpreted as the usury practice. Meanwhile, *pagang gadai* was initially intended as an agreement to help and not to seek profit from others' suffering or to take advantage of others' suffering ("*menagguak diaia karuah, atau manembak diate kudo*").

Hence, *pagang gadai* transaction is a transaction that is allowed according to Islamic law with the principle of helping each other. However, several studies found that in its practice, *pagang gadai* transaction was carried out with the motive of seeking profit and even became a usury transaction because the lender got multiple profits from *pagang gadai* transaction while the pawner was disadvantaged because he/she lost the right to use the collateral.

The Implementation of Pagang Gadai for Small Farmers in West Sumatra Land Pawn and Sharia Law

The financial patterns that occur among the society of West Sumatra are quite diverse, such as *pagang gadai*, *julo-julo* (regular social gathering whose members contribute to and take turns at winning an aggregate sum of money), *arisan suku* (an ethnic group's regular gathering whose members contribute to and take turns at winning an aggregate sum of money) and "friendly moneylenders", which can also become informal financial models for fulfilling their daily/basic and emergency needs or financial pressure (Fitri, 2006). *Pagang gadai* can solve the needs of working capital and fresh money for small farmers in West Sumatra. The implementation of *pagang gadai* can be the impetus to the stability of Nagari's economy even though later, in some cases, there is deviation due to economic factors (Andriani, 2017). Religious leaders, the government of Nagari and custom leaders become important elements in keeping *pagang gadai* from being practised defiantly, as the study conducted in *Nagari Koto Tangah, Tilatang Kamang District, Agam Regency, West Sumatra*.

Implementing the law of pawning land *pagang gadai* has become one of the legal issues in West Sumatra. It is legal in society but carried it out orally without adequate supporting documents. In implementing *pagang gadai*, the productive right of the pawned land is devolved to the pawnbroker or money giver. Every year the productive land is managed and exploited by the pawnbroker. Meanwhile, the pawner cannot manage the land until the ransom money or gold is paid off. The implementation of the pawn in some nagari is only done verbally. A pawner comes to a member of the tribe and borrows some gold or money, then his/her land is handed over to the pawnbroker. This becomes one of the triggers for legal problems in the future. However, the second way is in a written way, and there is a certain clear time. When the period ends, the land is handed back to the pawner without any ransom. This pattern is more of just leasing the land (Aini, 2020). Article 7 of Government Regulation in Lieu of Law No. 56/1960 firmly and clearly explains that the tenure of *agricultural land lien* is only valid for seven years, and if it exceeds that period, the landowner has the right to demand it back without paying any ransom.

The condition in Campago Village is almost the same as the legal fact that occurs in Nagari Koto Tinggi, Baso District, Agam Regency. The implementation of *pagang gadai* is mostly not limited by time, and sometimes it is not done in a written way, so that it can cause legal problems. Moreover, the implementation time is up to years, and the land that is pawned does not return to the original owner as in Government Regulation in Lieu of Law of the Republic of Indonesia No. 56 of 1960 (56/1960) about the determination of the area of agricultural land in Article 7. Additionally, if it is seen from the aspect of custom law, the implementation of *pagang gadai* has violated custom law because its implementation has referred to the act of usury (Aziz, 2020).

In terms of realizing an Islamic society of West Sumatra, with the philosophy "*adat bersendikan sarak dan sarak besendikan Kitabullah*" (customs based on the Shari'a and Shari'a based on the holy book of the Qur'an). Therefore, legal socialization and studies are needed. This learning is intended to make the members

of society have the same perception and view, and the right legal behaviour and actions either in sharia law, positive law or custom law that applies. Custom law must necessarily refer to Kitabullah (the Qur'an) as "*sarak mengato adat memakai*" meaning that actions in daily custom deeds must refer to sharia (Muslim, 2017).

It is concluded that *pagang gadai* has become a solution to the financial needs for the society in West Sumatra. However, the implementation of *pagang gadai* transaction is carried out from generation to generation by handing over collateral to be held and used by the lender. The implementation of *pagang gadai* has the potential to violate Article 7 of Government Regulation in Lieu of Law 56/1960, which states that the period of lien for agricultural land is only valid for seven years, while in practice, it can even be years and even not return to the owner.

Pusako Tinggi and the Implementation of Government Regulation in Lieu of Law 56/1960 for the Society

In West Sumatra, land ownership is divided into two kinds of ownership, namely *pusako Tinggi* (custom heirlooms) and *pusako rendah* (family heirlooms) (Tanner, 1980). *Pusako Tinggi* is held by *Nagari* or ethnic group who is still in the form of unprocessed primary forest, while *pusako rendah* has been processed by family or descent from the ethnic group and clan (Beckmann, 2004; Musda, 2012). Hence, the practice of pawn can usually occur on ulayat *Nagari* right with *pusako Tinggi* and daily transactions. It occurs more commonly in the cases of the economy of the family with *pusako rendah* such as rice fields, fish ponds, coconut trees, and agricultural land, which are exchanged for gold or money.

Pagang gadai transaction triggers conflicts, both openly and privately. According to the study conducted by (Amriwan et al., 2020), there are 5 (five) factors that lead to a dispute over land pawn in West Sumatra: 1) the pawner does not pay pawn ransom or does not pay off his/her debt(s) and the land pawned cannot return to the pawner, 2) the occurrence of illegal acts on the land controlled by "the holder" because he/she controls the land without a legal basis, 3) the violation of contract agreement, in this case, it can be said not to give something or give something but not in time, do not do something and do something that is prohibited in the pawn agreement, 4) the transfer of pawn without the consent from the owner of the land and 5) bad intention, bad intention can arise from the pawnbroker, that is the intention to hold the pawned land even though the pawner has given the ransom. Thus he/she ignores the value of intention of helping the pawner.

In the aspect of positive law in Indonesia, the government also does not remain silent. After paying attention to the sociological condition of the law in Indonesia, that there is a deviation from the basic principles of pawn, the government issued Government Regulation in Lieu of Law of the Republic of Indonesia No. 56 of 1960 (56/1960) about the determination of the area of agricultural land. Specifically, regarding land pawn, it is regulated in Article 7 as follows: "Article 7 (1) Whoever holds agricultural land with a lien, which at the time this regulation was issued has been running for seven years or more, is obliged to return the land to the owner within a month after the existing plants have been harvested, with no right to demand the payment of ransom. (2) For the lien, which at the time this regulation was issued, has not been running for seven years, so the

owner of the land has the right to demand it back at any time after the existing plants have been harvested by paying a ransom of which the amount is calculated according to the formula: $(7 + \frac{1}{2}) \cdot \text{lien time} \cdot 7 \times \text{pawn cost} / 7$ ".

The implementation of this regulation is ineffective because the society still upholds custom values and because of the lack of socialization of legal education about Article 7 of Law No.56/Prp/1960 from the government to the society of Nagari. In some areas, *pagang gadai* transaction is carried out following the agreement. When it has been over seven years, the pawned land cannot be taken back by the pawner because society does not know about the normative rule in Indonesia as regulated in Article 7 of Law No.56/Prp/1960 (Apelia, 2019).

Similarly, a study conducted by (Nurdin, 2019) concludes that the occurrence of the case of legal uncertainty in *pagang gadai* is because some members of society still adhere to *adat istiadat* (custom and tradition), saying that the law of pawn is not limited by time, but it is following the agreement. However, Government Regulation in Lieu of Law No. 56/1960 Article 7 clearly states that the pawn lease for productive agricultural land is only valid for seven years, and if it exceeds seven years it returns to the pawner.

To minimize the occurrence of conflicts in *pagang gadai* transactions, the society can learn from *Nagari Koto Tengah, Tilatang Kamang District, Agam Regency* suggesting that *pagang gadai* agreement should be registered in the administration of the government of *Nagari* and have a written document witnessed by *penghulu suku* (the chief of an ethnic group) in *Nagari* and that the land that is pawned must not be pawned to the resident(s) of outside *Nagari Koto Tengah*. This is intended to keep the aspect of *pusako Tinggi in Nagari* so that it is not pawned or handed over to outsiders (Putra et al., 2019).

Learning from the findings of several legal cases in West Sumatra, some several legal problems or cases can occur in *pagang gadai* transaction activity. These conflicts can be resolved with all conflict resolution processes mediated in a *Rumah Gadang* (Minangkabau traditional house) in a consultation or among an ethnic group with the participation of *penghulu Nagari* and *penghulu suku* with the pattern of "*melarai basamo*" (joint arbitration) and the involvement of *datuk pucuk* (the chief of an ethnic group in the highest position) (Putri & Montessori, 2020). This is in line with a study conducted by Simon (2014) indicating that Minangkabau society is trained and clever at managing quarrels and conflicts with a synergy between a strong Islamic tradition and custom. Conflicts can also occur on *pagang gadai* when there is a generation shift from one higher generation to the generation of children. When *pagang gadai* transaction occurs, the children do not know or have not known the condition. For example, they are not yet adults. So the solution to this case occurring in the society is the role of *Mamak* (mother's brother(s) as the parent(s) in a clan or family as a communicator(s)/mediator(s) in solving the conflict (Oktavian & Noer, 2021).

The issue of pawned land must be handled with serious concern by the local government, *nagari* and State Law Apparatus about law enforcement implementing *pagang gadai*. That there is a legal space allowing a pawner to have the right to get his/her land back legally after seven years becomes the best solution to the practice of *pagang gadai*, which so far has been considered by researchers to be the practice

of usury. Minangkabau society should return to its kaffah (comprehensive, thorough) custom philosophy *sarak mangato adat memakai, adat bersendikan sarak* and *sarak bersendikan kitabullah* (religious teachings state, custom applies, custom must be based on the Shari'a and Shari'a based on the holy book of the Qur'an). Moreover, *pagang gadai* can still be carried out as long as the amount is not much more than their basic economic capacity. For example, less than 0.5 of their annual income, so that the potential to redeem loans can be properly guaranteed.

In collaboration with the local government and colleges, the government of *nagari* needs to synergize socialization activity and legal understanding to the society regarding the object of lending and borrowing in *pagang gadai*. This activity is a social activity with cultural value. It is not an effort for people who have capital in *nagari* to expand their cultivated land and become local capitalists who hold productive land assets in *nagari* to impoverish poor households. Over time this is what is worried by (Nurkse, 1971) as the new source of the vicious circle of poverty. Hence, the discontinuance of this poverty circle has been responded to by the government by developing various sharia-based microfinance institutions, sharia pawn shops and sharia banking institutions that allow borrowers to still use their land to make income. Sharia banking institutions and sharia pawn shops have had a formal and sharia legal basis that regulates the procedures, the legal regulation of credit transactions, and the pawning system.

It is concluded that the implementation of *pagang gadai* occurs mainly with *pusako rendah* for household activities, not pawned with *pusako Tinggi* in West Sumatera. Even so, the possibility of a pawn with *pusako tinggi* in the future is likely to be very rare because potentially and legally *hak menguasai adat* (HMA) and *hak menguasai Negara* (HMN) will have a meaningful interaction in the designation of land. In terms of the implementation of a pawn with *pusako rendah*, there is potential to trigger conflicts because the transaction is carried out only orally and sometimes violates Government Regulation in Lieu of Law No. 56/1960 Article 7 stating clearly that the pawn lease for productive agricultural land is only valid for seven years and if it exceeds seven years the land returns to the pawner. It needs synergy among the government of *Nagari*, the local government and colleges to socialize the legal regulation of *pagang gadai* according to Government Regulation in Lieu of Law No. 56/1960 so that the conflicts in *pagang gadai* transaction can be avoided.

From the explanation above, the conceptual framework of the findings of the literature review can be depicted. Some families who need funds immediately which exceeding their savings rate approach other family members in the same ethnic group and *Nagari* to get loans. When they go to formal financial institutions, they do not have collateral (land certificates). Then, other family members in *Nagari* lend a certain amount of funds and, to guarantee that the borrowers will return the borrowed money, the pawners (borrowers) hand over the right of exploitation and management of land to the pawnbrokers (lenders).

This activity is based on the Hadith of the Prophet, who once pawned his armour to someone when making a loan. However, the Prophet never gave an example of lending-borrowing transactions to guarantee productive lands such as

date palms and others. In researchers' opinion, this practice is considered as usury. Based on the lending-borrowing agreement, the funds lent are not subject to interest on the loans, but the proceeds of the pawned land assets become the right of the pawnbrokers until the pawners pay off the funds lent. Nevertheless, sometimes over time, it is difficult for the pawners to pay the loans back so that for years the assets become the pawnbrokers' right of use. Therefore, the government issued Government Regulation instead of Law No. 56/1960, especially Article 7. This is the state's solution to help land cultivator farmers get their land back without ransom after seven years.

Future Research Agenda

One of the approaches that can be used to examine relevant research in the future is to pay attention to the density and information on the image presented in the output of the VOSviewer application. From Figure 3 previous researchers have widely studied some topics, especially the studies on "*Pusako Tinggi*", "*pagang*", land use, transaction, and field facts in West Sumatera. In the future, some topics can be investigated: the relationship between the use of pagang gadai time and the opportunity of rice field production; the analysis of the use of debt by the grassroots household economic group; Islamic law and its relation to the time of loan; and connecting pagang gadai with the prosperity of pawner family.

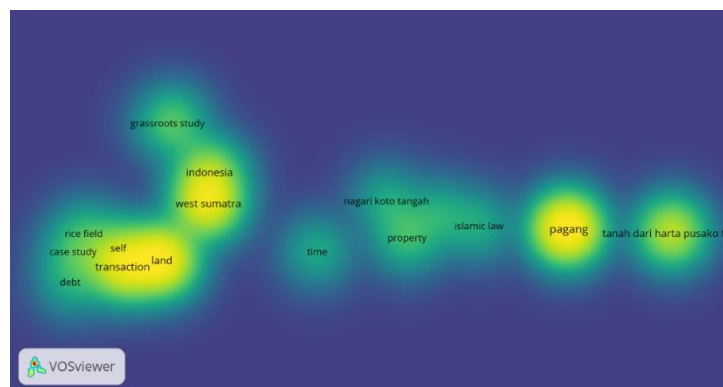


Figure 4. Density Visualization, From Map on Based Data, RIS, Titles and Abstract Field, Assurance

When *pagang gadai* is carried out, there is a transfer of land right to the person who gives the loan, and the money lent is handed over to the pawner. Then the right to hold and manage the land passes from the person who receives the money to the person who gives the loan. Hence, the pawner loses the opportunity to manage the land, which is used as collateral (pawn), and the income from crop production on the land possibly becomes the lender's right of money or gold. Empirical research is rarely conducted, especially on the profit of funds and the losses obtained by the pawnbroker. Quantitative data on the value of profits and losses obtained by both parties economically in the financial transaction activity of *pagang gadai* has not yet been found. This becomes a future research agenda that

researchers can investigate to explain the principle of money capitalization in pagang and the losses incurred by pawners in this transaction.

CONCLUSION

Pagang gadai transaction is a transaction of lending and borrowing money or gold, an exchange between an amount of gold and temporary ownership of agricultural land in a Nagari in one ethnic group. This activity has emerged since the Dutch colonial era and continues to exist in the modern era in Indonesia, especially in West Sumatra and its surroundings. This transaction was initially an activity of helping each other in one clan, which became a socio-cultural value as an implication of the communal society. *Pagang gadai* activity, on the legal side, turns out to be one of the sources of conflict in *nagari* and causes a legal problem. In positive law, the solution to this problem is the government has issued Government Regulation in Lieu of Law No. 56/1960 Article 7, which limits a pawnbroker's hold over agricultural land to only seven years and the land must be returned to the pawner without a ransom being paid back.

Then in sharia, the Prophet practised this principle of lending and borrowing with guarantee and has become a reference for Hadiths that allow *pagang gadai* to be done. This regulation becomes the solution to many pawn lease practices existing in Indonesia that exploit productive agricultural land or the land dispute. However, the practice of *pagang gadai* that occurs in West Sumatra, based on the findings by some researchers, has the potential to bring about usury practice so that this practice can be said to deviate from "*sarak mangato adat memakai*" and the basic philosophy of Minangkabau society "*adat bersendikan sarak dan sarak bersedikan kitabullah*" (religious teachings state, custom applies; custom must be based on the Shari'a and Shari'a based on the holy book of the Qur'an).

In the future, it is supposed that the expansion of the sharia pawnshop business network and sharia-based microfinance institutions can be the right choice for social activities that require funds for business needs. However, for consumptive activities, ethnic group, clan and community relationships should continuously be improved by developing a joint savings financial institution in microfinance institutions and cooperatives as the financial, legal entities approved by the government.

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