

Utilization of Land Pawning Objects in Minangkabau in The Perspective of The Scholars of Schools of Thought

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Abstract

This paper aims to explain the practice of pawning in Sariek Laweh, the law on the use of land pawning objects in Minangkabau from the perspective of Islamic scholars, and the solutions of pawning. This research is a field study using a normative approach, which is analyzed using a comparative descriptive method. The results of the study are: that in general, pawning in Minangkabau is carried out with the ability to use the object of land pawning and to take all the proceeds by the pawn holder. This applies until the mortgagee is able to pay off the debt. Scholars have different opinions regarding the use of pawn objects by pawn holders, the majority (*jumbur ulama*) forbid it. The second opinion (*minority*) says that it is permissible to take advantage of the pawn object, but there are still provisions in this matter. Based on the findings of this study, the practice of pawning in Sariek Laweh is not in accordance with the provisions of the Islamic Sharia which are seen from various schools of thought, apart from the element of exploitation of the pawn holder, the mortgagee does not receive any compensation from the goods used, other than fixed loan funds which must be paid according to the amount of the initial loan, without any reduction, also because there are conditions for taking benefits included in the contract, all schools of thought agree that this practice is not permissible. Regarding the pawning solution, it is in the form of *musyarakah* between the pawn holder and the owner of the pawn object. The pawn holder processes and takes the proceeds with a sharing system with the land owner.

Keywords: Minangkabau; utilization; pawn object; land

Abstrak

Tulisan ini bertujuan untuk menjelaskan praktek gadai di Sariék Laweh, hukum pemanfaatan objek gadai tanah di Minangkabau menurut pandang ulama mazhab, dan solusi gadai. Penelitian berupa studi lapangan dengan menggunakan pendekatan normatif, yang dianalisis dengan metode deskriptif komparatif. Hasil penelitian adalah: bahwa secara umum gadai di Minangkabau dilaksanakan dengan kebolehan memanfaatkan objek gadai tanah dan pengambilan seluruh hasilnya oleh pemegang gadai, ini berlaku sampai yang menggadaikan mampu melunasi hutangnya. Ulama berbeda pendapat dalam menyikapi pemanfaatan objek gadai oleh pemegang gadai, mayoritas (jumhur ulama) mengharamkannya. Pendapat kedua (minoritas) mengatakan boleh mengambil manfaat dari objek gadai, namun tetap ada ketentuan dalam hal tersebut. Berdasar hasil temuan penelitian ini, maka praktek gadai di Sariék Laweh belum sesuai dengan ketentuan Syariat Islam dilihat dari berbagai mazhab, selain adanya unsur eksploitasi dari pemegang gadai, yang menggadaikan tidak mendapatkan kompensasi apa-apa dari barang yang dimanfaatkan tersebut, selain dana pinjaman yang tetap wajib dibayar sesuai jumlah pinjaman awal, tanpa ada pengurangan, juga karena adanya persyaratan pengambilan manfaat yg disertakan di dalam akad, semua mazhab sepakat bahwa praktek tersebut tidak boleh. Terkait solusi gadai, berupa bentuk musyarakah antara pemegang gadai dengan pemilik objek gadai, pemegang gadai mengolah dan mengambil hasil dengan sistem berbagi dengan pemilik tanah.

Kata Kunci: Minangkabau; pemanfaatan; objek gadai; tanah

Introduction

The concept of ownership of high heritage land is different from the concept of land ownership in general, which allows the owner to transfer it freely. In Minangkabau, this is not the case. The majority of agricultural land or plantation land in Minangkabau is the land included in the high heritage land category, which is jointly owned by one clan. It is the land that originates from ancestors which is passed down from generation to generation through the female lineage. *Ulayat* land or low inheritance land that is not inherited by Islamic inheritance in two generations can be turned into high inheritance land. If they are under economic pressure, they can only pawn it, with the hope that later they can redeem the land, even if it is passed on to their children and grandchildren later on. The most important thing for them is that the ownership

status of the land does not transfer to other tribes.¹ Based on Minangkabau customary provisions, high heirloom assets (including rice fields) may not be traded. This property is a very important element in adat and is a place to grow and seek life such as rice fields and fields. This area is the power of the *penghulu* (chief) in Minangkabau. Therefore, a *penghulu* in Minangkabau is traditionally prohibited from selling the heirlooms because the high inheritance belongs to the company of a people/tribe.²

High heritage land can be mortgaged for one of 4 reasons, which are indeed allowed based on customary provisions, such as renovating the *Gadang* (big) house, daughter's wedding expenses, funerals, and *membangkit batang terendam* (can literally be translated as raising a submerged rod or enforcing adat).³ If the land owner is still pressed for economic necessity, then the mortgaged land may be explored for pawning (asking for additional debt to the debtor). In this case, the land owner asks for an additional loan with the collateral of the land without mentioning the time limit for the loan plus the pawn holder's ability to take all the proceeds.⁴ Usually they only mention at the beginning of the contract, the minimum loan limit is three times the harvest, while the maximum limit is not stated. So it's no wonder that pawning can last for tens of years, even having changed several generations. Sometimes you don't remember how many generations of ancestors used to pawn. Pawning practices are sometimes termed pawnshops, *salang pasalang*, pawn selling, and borrowing.⁵

This research is a field research in Nagari Sariék Laweh Payakumbuh, which is analysed by comparative descriptive method. The type of the research is qualitative research, using a normative approach. The normative approach was carried out by considering the provisions of pawning in texts, both in the *Quran*, *sunnah*, and *ijma'iid* (opinion of scholars of schools of thought). The data obtained were based on interviews as well as documentation, processed using a descriptive-comparative flow of thinking, after describing the problems related to findings in pawning practices, then an analysis of the topic was carried out by comparing the opinions of scholars on findings in pawning practices based on the provisions of pawn law according to the views of various schools of thought.

¹ Hasnaeni, "Tradisi Lokal Pagang Gadai Masyarakat Minangkabau dalam Perspektif Hukum Islam," *ISLAM REALITAS: Journal of Islamic & Social Studies* Vol. 1, no. No.1 (2015).

² Idrus Hakimi Dt Rajo Pengulu, *1000 Pepatah-Petitih Mamang Bidal Pantun Gurindam*, Cet. Ke VIII (Bandung: Rosda Karya, 2001). h. 70

³ Ibrahim Dt. Sanggoeno Diradjo, *Tambo Alam Minangkabau; Tatanan Adat Warisan Nenek Moyang Orang Minang* (Bukittinggi: Kristal Multimedia, 2017). h.240

⁴ Interview with Ustad Gusrizal Gazahar (Ketua MUI Sumbar 2015-2020 & 2020-2025) on 30 December 2018

⁵ Interview with Ustad Gusrizal Gazahar (Ketua MUI Sumbar 2015-2020 & 2020-2025) on 30 December 2018

This paper aims to explain the practice of pawning land in Nagari Sariék Laweh, the law on the use of pawn objects in Minangkabau using the viewpoint of scholars from various schools of thought, as well as finding solutions to the problem of pawning in the community of Nagari Sariék Laweh. This study is important considering that there are still many practices of taking land pawn objects in the community, although there have been previous studies such as by Hasni Hasyim who examined the *'urf* perspective on pawning in Minangkabau,⁶ or Zuhalein Kuas, who examined *bay al-wafa'* from the point of view of *al-Maḥābiḥ al-Arba'ah*,⁷ also Sulaeman Jajuli about pawning in the Bogor area of West Java,⁸ then Dedi Wandra who studied the implementation of pawning high heirlooms in Nagari Pematang Panjang, West Sumatra.⁹ However, these research have not completely answered the pawning problem that occurred in Sariék Laweh, with the clarity of the status of the use of the object of land pawning in Minangkabau from the perspective of scholars of schools of thought, along with this solution. It is hoped that similar practices can be eliminated.

Discussion

Pawning in Minangkabau is different from pawning done by the community in general. Pawning rice fields (especially rice fields that are in the high heritage category) in Minangkabau must be based on customary law mechanisms according to the flow and proper.¹⁰ If in general pawning is just a civil relationship between a mortgage person and the owner of the money,¹¹

⁶ Hasni Hasyim, "Urf dan Pagang Gadai di Minangkabau" (Tesis (tidak dipublikasikan), Jakarta, UIN Syarifhidayatullah Jakarta, 1996).

⁷ Haniva, "Pelaksanaan Sistem Gadai Terhadap Tanah ulayat Minangkabau (di Kabupaten Padang Pariaman)" (Tesis, (tidak diterbitkan), Semarang, Universitas Diponegoro, 2008).

⁸ Sulaiman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam*, Cet. I (Ciputat: Cinta Buku Media, 2015).

⁹ Dedi Wandra, "Pandangan Hukum Islam Terhadap Pelaksanaan Pagang Gadai Harta Pusaka Tinggi di Nagari Pematang Panjang Kecamatan Sijunjung Kabupaten Sijunjung, Tesis (tidak diterbitkan)" (Tesis (tidak diterbitkan), Padang, IAIN Padang Sumatera Barat, 2014).

¹⁰ Ahmad Kosasih, "Upaya Penerapan Nilai-Nilai Adat dan Syarak dalam Penyelenggaraan Pemerintahan Nagari," *Jurnal Humanis* Vol.XII, no. No.2 (Th 2013).

¹¹ Wiryono Prodjodikoro, *Hukum Perdata Tentang Hak-hak Atas Benda*, Cet. V (Jakarta: Intermasa, 1986). h. 153; Kasmir, *Bank dan Lembaga Keuangan Lainnya*, (Jakarta : PT. Raja Grafindo Persada, 2004), h. 246; Kartini Muljadi & Gunawan Widjaja, *Hak Istimewa, Gadai, dan Hipotek*, (Jakarta : Jakarta : Kencana Prenada Media Grup, 2007), Cet. II, 74; Ter Har Bzn, *Asas-Asas dan Susunan Hukum Adat (Terj.)*. K. Ng. Soebakti Poesponoto, (Jakarta : Pradnya Paramita, 1960), 93; Urip Santoso, *Hukum Agraria : Kajian Komprehensif*, (Jakarta : Kencana Prenadamedia Group, 2114), cet. Iv, 135; K Wantjik Saleh, *Hak Anda Atas Tanah*, Jakarta : Ghalia Indonesia, 1977), 50; Suriyama Mustari Pide, *Hukum Adat, Dahulu, Kini dan Akan Datang*, (Jakarta : Prenadamedia Grup, 2015, Cet. II, 146; Van Dijk, (terj.), A. Soehardi, *Pengantar Hukum Adat Indonesia*, (Bandung : Subur, 1979), 97; Imam Sudiyat, *Hukum Adat Sketsa Asas*, (Yogyakarta : Liberty, 1981), Cet. II, 28; dan lainnya

then pawning in Minangkabau is not only like that, but is closely related to the main family (excluding the father),¹² extended maternal family, and even people in a *nagari* (village).¹³ Essentially, this high heritage land is not privately owned land, but is communal land that has been managed for generations by the female lineage.¹⁴

A. Pawning Practices in Nagari Sariak Laweh

The pawn provisions in Minangkabau are closely related to four things; first, it is done by offering it to a closer family first, such as to people who share the same house. If no one is ready or willing, then it is offered to families of the same stomach (cousins from the maternal line), then relatives in the same village, and finally to people who are in the same clan.¹⁵ Likewise with the terms of pawning in Sariak Laweh, someone who wants to pawn a rice field must first offer it to close family, if there is none, then offer it to outsiders.¹⁶

The provisions for pawning high heritage rice fields are also different from those for search fields (sometimes it is simplified in the low heritage rice field group).¹⁷ In a search of field pawn, a person is more free to offer the field pawn to outsiders (although offering it to the closest family first is still more important as a form of respect). On the other hand, in high heritage rice fields, this provision is absolute. Although sometimes there are people who violate customary provisions like this, for example, when someone wants to pawn a high inheritance rice field worth the desired needs, while the close family who

¹² Misnal Munir, "Sistem Kekerabatan dalam Kebudayaan Minangkabau: Perspektif Aliran Filsafat Strukturalisme Jean Claude Levi-Strauss," *Jurnal Filsafat* Vol. 25, no. No. 1 (Februari 2015).

¹³ Laras Shesa, Oloan Muda Hasim Harahap, dan Elimartati, "Eksistensi Hukum Islam dalam Sistem Waris Adat yang Dipengaruhi Sistem Kekerabatan Melalui Penyelesaian al-Takharujj," *Al-Istinbat: Jurnal Hukum Islam* Vol. 6, no. No. 1 (2021).

¹⁴ Edison Magindo Sutan dan Nasrun Dt Marajo Sungut, *Tambo Minangkabau : Budaya dan Hukum Adat di Minangkabau*, Cet. I (Bukittinggi: Kristal Multimedia, 2016).h. 317

¹⁵ Diradjo, *Tambo Alam Minangkabau; Tatanan Adat Warisan Nenek Moyang Orang Minang*. H, 242

¹⁶ Interview with Melda Putra (Wali Nagari) Sariak Laweh on 28 June 2017

¹⁷ Amir M.S, *Adat Minangkabau : Pola dan Tujuan Hidup Orang Minang* (Jakarta: PT. Mutiara Sumber Widya, 2003). h. 98; Edison Mangindo Sutan dan Nasrun Dt Marajo Sungut, *Tambo Minangkabau : Budaya dan Hukum Adat di Minangkabau*, (Bukit Tinggi : Kristal Multimedia, 2016), h. 266-268; Hamka, *Islam dan Adat Minangkabau*. (Pustaka Panjimas, 1985), Cet. II, h. 96; Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau*, (Jakarta : PT Gunung Agung, 1982), Cet. I, h.217; Lembaga Kerapatan Adat Alam Minangkabau (LKAAM) Sumatera Barat, *Pelajaran Adat Minangkabau*, (Padang, LKAAM Sumbar, 1987), h. 157; Ibrahim Dt. Sanggoeno Diradjo, *Tambo Alam Minangkabau...*, h. 230

wants to accept it does not have that much money, it is finally given to someone else.¹⁸

The next process is the notification to *mamak*. This is a form of respect for the role of a *mamak*, especially for assets that fall into the high heritage category, so it is not enough just to notify them, but they must ask for permission, while for lower inheritances it is enough to notify the *mamak*. The party receiving the pawn will usually make sure whether or not a *mamak* knows or has permission for the pawned rice fields offered. Without *mamak*'s knowledge, their contract is vulnerable to being sued.¹⁹ Small talk or an offer to the closest family when they want to pawn, also applies when they want to redeem the pawned rice field. After being asked to the nuclear family to redeem the pawned rice field, then it turned out that no one was able or unwilling, so it was passed on to the same mother's family. After that, only the *Senenek* and *Seniniak* families, and finally those of the same clan and village.²⁰

Second, regarding the time limit, almost all pawnshops in Sariak Laweh do not mention the length of time a paddy field is mortgaged. As long as the owner of the rice field is unable to redeem it, the status of the rice field remains as a pawn item. It's no wonder that mortgaged rice fields can last for years and even change generations. Sometimes the person who pawns and the recipient of the pawn have passed away, so the status of the pawning field becomes a hereditary inheritance.²¹ Although sometimes it is stated in the agreement that the agreed time limit has been reached, it still does not end immediately, or the mortgaged rice fields are transferred or sold to pay off debts previously borrowed. Usually a new contract is made in the form of deepening.²²

Third, the solution if the agreed period is not fulfilled (the time limit above) then what the rice field owners usually do is to explore (extend the mortgage period, but with additional loans), because in principle, high heirloom rice fields should not be sold. It can only be pawned with relatively heavy conditions. In addition, another alternative is to transfer the lien to a third party (in exchange for the person holding the lien). Even for a lien in general which has no time limit, the transfer of this lien may occur.

¹⁸ Syofyan Asnawi, *Penggadaian Tanah di Minangkabau dalam Muchtar Na'im (Ed), Menggali Hukum Tanah dan Hukum Waris di Minangkabau* (Padang: Minangkabau Studies Press, 1968), h. 141

¹⁹ Interview with Burza Engku Permato on 29 June 2017. Burza Engku Permato is a Sariak Laweh religious figure who is also part of the Cadiak Pandai group, a group that is responsible for all traditional activities in the nagari, both in the field of religion and custom. He can act as a liaison between institutions in the nagari such as KAN, bundo kanduang, religious scholars, and youth;

²⁰ Interview with Nasrun on 30 June 2017. Nasrun is the lien holder of three heritage rice fields in Sariak Laweh.

²¹ Syofyan Asnawi, *Penggadaian Tanah di Minangkabau...*, h. 141

²² Interview with Melda Putra (Wali Nagari Sariak Laweh) tanggal 28 Juni 2017

Fourth, regarding the proceeds from the pawned fields, the proceeds from the pawned fields are usually taken by the pawn holders. It is indeed different from the practice of pawning in official institutions such as pawnshops which only hold the correspondence of the pawned object. In Minangkabau, in general, pawning of rice fields is carried out with all the control over the pawned rice fields, as well as the management and utilization of the results.²³

The management pattern for pawn rice fields is the same as what Nasrun said. The person working on it depends on the agreement, sometimes the pawn holder and sometimes the land owner. If the land owner is working on it, then he must share the yield with the pawn holder. Processing capital is issued, then the net result is divided by two. On the other hand, if the pawn holder does the processing, nothing will be given to the land owner. At present there are not many pawn holders who are able (willing) to work on it, so other people (usually the land owner) work on it in a profit-sharing manner. So the person who has the right to work on it is the pawnbroker until it is redeemed.²⁴ As long as the debt has not been paid, the land remains in the possession of the one who lent the money. During that time, the entire land (paddy field) becomes the right of the pawnbroker which thus constitutes the interest on the debt. Sometimes the processing of pawned fields, there is also alternately between the land owner and the pawn holder.²⁵

From the several pawn agreements obtained, several conditions were found that were included (written) in the contract letter, including: a. The rice fields can be redeemed after 4x completion, b. As long as the fields have not been redeemed by the first party (the pawnbroker), then the fields are worked on by the second party (the pawnbroker), c. As long as the first party (the pawnbroker) has not redeemed it, then all proceeds obtained from the field are fully the rights of the second party (the pawnbroker).²⁶ Based on information obtained from the pawn agreement letter, as well as based on interviews, it was found that regardless of the harvest taken by the owner of the capital, it still does not reduce the debt of the rice field owner. This means that the status of the rice fields remains mortgaged until the owner of the rice fields repays the loan amount, this is what Jasmi Loen emphasized.

A person who borrows money with rice fields as collateral has the right to use or cultivate the fields and then take the proceeds. This remains in effect until the debtor is able to repay, as well as take advantage of the proceeds.²⁷

²³ Interview with Burza Engku Permato on 29 June 2017

²⁴ Interview with Nasrun on 30 June 2017

²⁵ Interview with Melda Putra on 28 June 2017

²⁶ The pawn agreement belongs to several members of the Sariék Laweh community.

²⁷ Interview with Jasmi Loen, (The Chief of Syarak Nagari Sariék Laweh Institution) on 2 July 2017

Essentially, pawning is only for collateral for a debt (so it is not to be used except for livestock for maintenance costs), but in its application, pawn in the Sareik Laweh community sounds in the pawn agreement that pawned rice fields may be used with all its utilization (cultivation), even nowadays the person who accepts the pawn makes it part of the business by accepting the pawn field and taking the proceeds. When conveyed to the public that pawning like that is not in accordance with religion, the community finds it difficult to accept. This had been studied long before in the Tanah Datar area, that only maintenance costs were allowed for mortgaged paddy fields, as at the time of the Prophet that when camels were mortgaged, only the maintenance costs for the camels were allowed.²⁸ This is part of the concept of *hifz al-mal* (maintaining the benefit of wealth in terms of utilization) that it is included in the five main benefits for the benefit of human life in the world and the hereafter which are *maqashid al-shariah*, commonly referred to as *al-kulliyat al-khamsah*.²⁹ In Indonesia, to ensure this happen, there is the National Sharia Council (DSN) from the MUI.³⁰

B. The Law of Utilization of Pawn Objects According to the Scholars of Schools of Thought

Al-rahb (pawn) in principle has a *tabarru 'lit-ta'awun contract* (pure contract to help).³¹ Thus, the practice of taking advantage of pawned goods, including using them, is not permissible in Islam. Including usury every attempt to increase profits from the contract. This logic is developed from the concept of *tabarru'*. The *qiradh* provisions apply when a pawn agreement that was originally non-profit (*tabarru'*) changes to a profit-oriented (which brings benefits), then it enters the category of usury which is prohibited in Islamic law.³²

The Fiqh Rule states:³³

كُلُّ قَرْضٍ جَرَّ مَنَفَعَةً فَهُوَ رِبًا

“Every loan that flows benefits is included in usury”.

²⁸ Interview with Jasmi Loen on 2 July 2017

²⁹ Ahmad Nashoha, Yusefri, Sri Wihidayati, “Kesaksian Non Muslim dalam Putusan Hakim, Pengadilan Agama Curup Nomor 571/Pdt. G/2016 (Analisis Maqâshid al-Syari’ah),” *Al-Istinbath: Jurnal Hukum Islam* Vol.5, no. No.2, (2020).

³⁰ M. Atho, Mudzhar, “The Legal Reasoning And Socio-Legal Impact of the Fatwās Of The Council Of Indonesian Ulama On Economic Issues,” *Jurnal Abkam* Vol. XIII, no. No. 1 (Januari 2013).

³¹ Ilda Hayati, “Aplikasi Akad Tabarru’ Wadi’ah dan Qard di Perbankan Syariah,” *Al-Falah: Journal of Islamic Economics* 1, no. 2 (Desember 2016).

³² Abu Muhammad Abdullah ibn Ahmad ibn Muhammad ibn Qudamah Al-Muqaddasy, *Al-Mughny ‘ala Mukhtashar al-Kharaqy*,), *Juz: IV* (Beirut: Dar al-Kutub al-Ilmiah, Tt). h. 274

³³ Muhammad al-Ruki, *Qawa’id al-Fiqh al-Islami*,), Cet. I h. 26 (Beirut: Dar al-Qalam, t.t.). h. 267

For some scholars, the above method is a hadith, but it is included in the *daif* category.³⁴

Regarding the use of pawned objects, some Hanafiyah scholars are of the opposite opinion, that it is permissible to take advantage of pawned objects, that is, if they obtain permission from the owner of the goods. With this permit, there is no obstacle for the pawn holder to use the item.³⁵

In the case of a pawn where the rice field is the object of the pawn, it does not mean that the owner of the pawn has changed, in which he/she is free to assign it, the status of the rice field remains as an object of collateral for the debt made by the owner. If until the time limit, the debtor cannot be paid by the debtor, then the collateral may be sold to pay off the debt, provided that the owner of the object has agreed in advance to sell the object of pawning.³⁶

In the practice of pawning in Sariék Laweh (Minangkabau in general), the purpose of the pawn contract is to take advantage of the object of the pawn. This can be seen from the conditions stated in the pawn contract. The object of collateral is utilized, while the debt of the land owner is not reduced at all. Pawn in its original nature is with the aim of helping each other, not to take advantage. Then if the purpose from the start is not in accordance with the provisions of the syarak, then the contract will also be invalid.

Based on the explanation of the pawn practice in Nagari Sariék Laweh above, the pawn law, based on the provisions of pawning according to the views of the 4 leading schools of fiqh regarding the use of pawned goods, is as follows:

1. The Hanafi School of Thought

There are three opinions of Hanafi Scholars³⁷ regarding the law of taking benefits from the object of pawn by the recipient of the pawn:

- a. Some Hanafi Scholars have opinion that the recipient of the pawn may not benefit from the object of the pawn, unless the *rabin* gives permission. If the recipient of the pledge takes advantage of it, then the object of the pledge is damaged when it is used, then he/she is obliged to replace the value of the item which is the object of the pledge (*marhun*) in its entirety.

³⁴ Ahmad ibn Ali ibn Hajar al-Ashqalani, *Bulugh al-Maram min Adilab al-Abkam* (Kairo : Dar al-Itiba', 2014). H. 289

³⁵ Mahmud Syaltout, *Al-Fatawa*, Cet. III (Mesir: Dar al-Qalam, Tt, t.t.). h. 355; Wahbah Al-Zuhaili, *al-Fiqh al-Islamiy wa Adillatub*, (Beirut : Dar al-Fikr, 1997) Cet. IV, Jil. VI, h. 4290; Sayyid Sabiq, *Fiqh Sunnah*, (Kairo : Maktabah Dar al-Turas, Tt), Jilid III, h. 188

³⁶ Ibnu Rusyd, *Bidayah al-Mujtahid wa Nihayah al-Muqtasid*, Jilid. I (Beirut: Dar al-Fikr, 1978). h.207

³⁷ Ala al-Din Abi Bakr ibn Mas'ud, *Bada i' al-Shana i' fi Tartib al-Syara'*, *Juz VI* (Beirut: Dar al-Fikr, 1996). H. 146; Ibn Abidin, *Radd al-Muhtar 'ala al-Dar al-Mukhtar*, (Beirut : Dar al-Fikr, tt), Jilid 10, h. 82-83

- b. Another Hanafiah scholars says that the recipient of the pawn may not take advantage of the object of the pawn even though *rabin* gives permission, because that includes usury or resembles usury, while permission from *rabin* or pawn to the recipient of the pawn to take the benefit cannot be something that including usury or anything resembling usury becomes lawful.
- c. The third opinion of some Hanafi scholars is if permission from *rabin* is a mandatory requirement during the contract, then that is unlawful, because that is what is included in usury. If it is not required, then the law is allowed, because that is only in the form of *tabarru'* from *rahin* to the recipient of the pawn.

The argument regarding the opinion of the Hanafiyah Scholars which says that the pawn recipient has the right to benefit from the pawned object is the pawn recipient, based on a hadith narrated by Bukhari, originating from Abi Hurairah and dan Abi Syalh:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الظَّهْرُ يُرْكَبُ إِذَا كَانَ مَرْهُونًا وَلَبَنُ الدَّارِ يُشْرَبُ إِذَا كَانَ مَرْهُونًا وَعَلَى الَّذِي يَرْكَبُ وَيَشْرَبُ نَفَقَتُهُ

*Rasullallah Saw, The Messenger of Allah said: "vehicle animals may be driven if the animal is mortgaged and its milk may be drunk if it is pawned and for those who ride and drink it are obliged to provide a living."*³⁸

According to some Hanafiah scholars, based on the words of Rasulullah SAW: "objects that are collateral for a debt can be ridden and milked, and whoever rides and milks them, it is obligatory to provide a living". The living for the pledged object is the obligation of the person who uses it, namely the pawnbroker, because the pledged object is in the hands of the pawnbroker and is under his control. Because the person who provides a living is the recipient of the pawned object, the recipient of the pawned object is also entitled to benefit from the pawned object.

This hadith specifically mentions animals that can be ridden and milked. It does not mean that objects other than animals are not included in the scope of this hadith. The provisions for the object of pawning in the form of other objects, apart from animals, are also based on *qiyas*, namely by *qiyas* to the hadith mentioned above, the pawning that occurred in Sariiek Laweh according to some Hanafiah scholars is permissible, because there is already permission from the pawnbroker which can be seen with the proof of the pawner's signature on the contract letter, which requires the benefits of the object of the pawn to be fully taken by the recipient of the pawn. However, according to the

³⁸ Abu Isya Muhammad ibn Isya ibn Saurah Al-Tirmizi, *Sunan al-Tirmizi*, vol. Cet. I (Beirut: Dar al-Kutub al-Ilmiyah, 2000). Hadis No. 1175

opinion of some other Hanafiah scholars, such permission should not be a mandatory requirement. If it is a condition during the contract, then that is illegitimate because the pawn contract in Sariek Laweh contains several conditions in the contract, then the law is haram, and if you continue to take advantage of the object of the pawn then that is usury.

The second opinion, according to the opinion of some other Hanafiah scholars, that the pawnbroker is still not allowed to use the pawned object even if he has permission from the pawnbroker, because that includes usury, and the pawnbroker's permission cannot make something that includes usury become halal. Based on this opinion, pawning that occurred in Sariek Laweh is something that is unlawful. Even if earlier there were some Hanafi scholars who allowed it because of permission from the pawnbroker. This permission was not something that was required at the time of the contract. Where the first condition that must be adjusted is to change the form of the pawn contract which requires all proceeds from the pawned object to be fully taken by the pawn recipient.

Furthermore, regarding the contract (*ijab kabul*), according to the Hanafiyah Scholars, it should not be associated with any conditions, or related to the future, because the *al-rahm* contract is the same as a sale and purchase contract in terms of payment. If the contract is accompanied by certain conditions, or is linked to the future, then the *al-rahm* contract is considered fasid (damaged), namely the conditions are void, while the contract is valid, then with this provision, if what will be taken are guidelines in pawning practices in Sariek Laweh belongs to the Hanafi school of thought, so all conditions associated with the contract must be abolished, if the pledge contract is still contained, then conditions such as collateral assets may be used and other things are void, even though the pawn agreement is still valid.

2. The Maliki School of Thought

The proceeds obtained from the pledged object are the rights of the person who pledged them as long as the person receiving the pledge does not require anything. If the pawn recipient requires that the proceeds from the object of pawn for the pawn recipient, then according to Malikiyah scholars³⁹ it is permissible if the condition of the pledge is in the form of: 1) the lien debt that occurs due to buying and selling or for example, is not debt in the form of qardh; 2) the second condition is that if the party receiving the pledged object requires that the benefits of the pledged object be for him, 3) The timeframe for taking the required benefits must be determined, if the time is not specified, and the time limit is not known then it becomes invalid.

³⁹ Rusyd, *Bidayah al-Mujtahid wa Nibayah al-Muqtasid*. h. 273

So according to Malikiyah scholars, the use of the object of pawn by the recipient of the pawn is only allowed if the pawn is not a debt in the form of a *qardh* loan. If the breakdown occurs because of a debt in the form of *qardh*, the recipient of the guarantee may not take the benefit, even Imam Malik himself is of the opinion that taking the benefit of the object of the pledge by the recipient of the guarantee includes usury. If we look at the pawn debt that occurred in Sariek Laweh solely in the form of a *qardh* loan, not a debt that arises as a result of buying and selling an item, then according to the Maliki school, such a pawn is not allowed for the recipient of the pawn to benefit from the object of the pawn, the law is haram.

Regarding the pawn contract, the Maliki Scholars also said that the pawn contract should not be associated with any conditions that are not in accordance with or contrary to the nature of al-rahn, if it is also required then the condition is void. This means that if we look at the opinion of the Maliki school of thought, we can conclude that the pawning that occurred in Sariek Laweh was not in accordance with the provisions of the pawn in terms of: first, the recipient of the pawn took advantage of the object of the pawn, which is unlawful, because the pawn that occurred in Sariek Laweh is a debt in the form of *qardh*; Second, the conditions stated in the pawn contract are also not in accordance with the pawning provisions, where the pawn contract may not include conditions that contradict the intent of the pawn in the form of helping, or the *tabarru'* contract, all conditions that contradict the intent of the pawn as contained in the contract. Sariek Laweh's pawn is void.

3. The Syafi'i School of Thought

According to the Shafi'i school, the recipient of the pawn has no right to use the object of the pawn at all, including driving if it is a vehicle or riding an animal, or milking it if the object being pawned is a livestock. If the pawnee requires to take advantage of the object being pawned, such as to occupy a house that is used as the object of the pledge, or the services of a slave who is pawned, or other benefits from the object of the pawn, including from the object of the pawn in the form of livestock, then the condition is void. Because the benefits of the goods or objects of the pawn are only the rights of the person who pawned it, this is based on the words of Rasulllah Saw:

«لَا يَغْلُقُ الرَّهْنُ مِنْ صَاحِبِهِ الَّذِي رَهَنَهُ، لَهُ غُنْمُهُ وَعَلَيْهِ غَرْمُهُ» قَالَ الشَّافِعِيُّ رَضِيَ اللَّهُ عَنْهُ:
 غُنْمُهُ: زِيَادَتُهُ، وَغَرْمُهُ: هَلَاكُهُ وَنَقْصُهُ⁴⁰

⁴⁰ Abu Abdillah Muhammad Ibn Idris Muhammad bin Idris Al-Syafi'i, *Musnad Imam Shafi'i*, Jil. I (Jakarta: Maktabah Dahlan, 1990). Jil. I, hadis nomor 722

“A pawning transaction does not cover the owner of the goods pawned, he/she is the one who redeems them, and he/she is also the one who bears the fines. Al-Shafi'i said that *ghurmuhu* means expansion, and *ghurmuhu* means shrinkage”.

Because the yield and risk of the pawned goods are the right of the *rabin*, the ownership rights of the pawned goods belong to the *rabin*. Therefore the pawn recipient may not take advantage of the object of the pawn. If the pawnbroker requires the use of the pawned object in a pawned contract based on a *qardh* contract, then the contract becomes void, as well as the mortgage contract, because doing so can damage the interests of the owner of the goods (*rabin*). According to Abdurrahman Al-Jaziri, the pawnbroker is not entitled to take any benefit from the pledged object if this is indicated in the contract, but if the pawnbroker allows the pawnbroker to take advantage of the object to be pawned before the contract occurs, then such benefits may be taken after the contract is in progress, for example the pawnshop allows the use of the item before the contract, then the use of it after the contract by the *mujtabid* is permissible.⁴¹

The pawnee is not allowed to take the benefits of this pawn in general, even if the object of the pawn is in the form of livestock based on the hadith:

عَنْ أَبِي صَالِحٍ ، عَنْ أَبِي هُرَيْرَةَ ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ : «الرَّهْنُ مَرْكُوبٌ وَمَحْلُوبٌ»^{٤٢}

From Abu Salih, from Abu Hurairah, from the Prophet SAW, he said, "An animal that is pawned may be driven and its milk squeezed." (HR Daruqutni and Ibn Hakim).

So according to the Shafi'i school, the only person who has the right to take advantage of the object of pawning is the person who pawns it, because in the hadith it is explained that the animal that is used as the object of the pawn may be ridden and also milked, then the one who has the right to ride and milk the animal must be the owner, who makes the animal as a pawnbroker. the object of the pledge, not the recipient of the pledge (*murtabin*).

If we criticize the implementation of the pawning of rice fields in Sariek Laweh based on this Syafi'i school, we find that the recipient of the pawn may not benefit from the object of the pawn at all. Likewise in the case of the contract, because the pawn contract is accompanied by a condition that the proceeds from the object of the pawn become the property of the pawnee, the conditions in the contract are void. The Shafi'i school agrees with the Maliki

⁴¹ Abdu al-Rahman Al-Jaziri, *Fiqh ala Mazahib al-Arba'ah* (Beirut: Dar al-Kutub al-Ilmiyah, 2003). H. 299

⁴² Imam Kabir Ali Ibn Umar Al-Daruquthni, *Sunan Daruquthni, Jil. II* (Beirut: Dar al-Fikr, tt, t.t.). hadis No. 2907

school above in terms of all the conditions associated with the pawn contract if the conditions are contrary to the nature of the al-rahn contract, then the condition is void.

4. The Hanbali School of Thought

According to Ulama Hanabilah, the law of taking advantage of the pawned object by the pawn recipient depends on the object pawned:

- a. If the object of the pawn is in the form of goods other than animals which do not require maintenance costs such as houses, jewelry and others, then according to the Hanbali school, the recipient of the pawn is prohibited from using the goods without the permission of rahin, and it is not known that there are different opinions from other Hanabilah scholars. with this opinion. This is because the object of the pawn is the property of the pawnner, so no one can take advantage of the item, nor anything that is there except with the permission of the owner. If the owner of the goods allows the recipient of the pledge to take advantage of the object of the pledge without changing the price, while the mortgage debt is a debt in the form of qardh, then this is not justified and is unlawful.
- b. If the object of the pawn is an animal or requires a fee for its maintenance, the recipient of the pawn may use it either by changing the price of the benefit taken, or not, with permission from the pawnbroker to take advantage of the animal in exchange for feeding it. If there is no permission from the pawnbroker, then in this case it is divided into two, first, if it is an animal that is milked and ridden, then it is permissible to take advantage just as a reward for its maintenance, based on the hadith of the Prophet Muhammad:

الظَّهُرُ يُرَكَّبُ إِذَا كَانَ مَرْهُونًا وَلَبَنُ الدَّرِّ يُشْرَبُ إِذَا كَانَ مَرْهُونًا وَعَلَى الَّذِي يَرْكَبُ وَيَشْرَبُ
نَفَقَتَهُ

"Vehicle animals may be ridden if the animal is mortgaged and its milk may be drunk if it is mortgaged, for those who ride and drink it are obliged to provide a living"⁴³

According to Hanabilah scholars, although the law of using the object of the pawn by the recipient of this pawn depends on the object of the pawn, but if we relate it to the pawn that occurred in Sariék Laweh, it is still not allowed because the object of the pawn is only allowed to be taken advantage of by the

⁴³ Al-Tirmizi, *Sunan al-Tirmizi*..., hadist no 1175. Abu Isa said; This hadith is hasan sahih, we do not know it as a marfu' hadith except from the hadith of Amir Ash Sha'bi from Abu Hurairah and this hadith has been narrated by many narrators from Al A'masy from Abu Salih from Abu Hurairah in a mauquf manner, this hadith can be used as a basis charity according to some scholars, this is the opinion of Ahmad and Ishaq. While some scholars say; One cannot benefit from pawning at all.

recipient of the pawn, only if it is an animal that can be ridden and milked, while the object of pawning in Sariek Laweh which is the discussion of this research is specifically for pawning rice fields, then the use of the object of pawn in the form of rice fields according to the Hanbali school is also not justified, even though there is permission from the pawner because the debt incurred is in the form of *qardh*. If the owner of the goods allows the recipient of the pawn to take advantage of the object of the pawn without changing the price, while this pawn debt is a debt in the form of *qardh*, then that is forbidden and haram, while what happened in Sariek Laweh was taking benefits from the object of pawning the fields, and this debt including debt in the form of *qardh* debt. So, according to the Hanbali School, the practice of pawning rice fields in Sariek Laweh is not justified.

Likewise with regard to the pawn agreement that took place, the Hanbali school of thought agreed with the Shafi'i school of thought as well as the Maliki school of thought, that all conditions related to the pawn agreement, if the conditions conflict with the nature of the *al-rahm* contract, or are related to the future, then the conditions if the agreement is cancelled, then the pawning contract associated with the pawn practice of pawning heritage rice fields in Sariek Laweh is canceled according to these four schools of jurisprudence, both according to the Hanafi, Maliki Syafi'i and Hanbali schools. As for the use of pawn objects by pawn recipients in Sariek Laweh according to the Maliki, Syafii and Hambali schools of thought, they agree that this is not justified, even though there are some Hanafi scholars who allow it, but the pledge agreement must be changed, it cannot be associated with any conditions.

Burza Engku Permato, one of the religious leaders of Sariek Laweh who allowed the use of pawned goods in the practice of pawning rice fields in Sariek Laweh, said that it was permissible for the reason of *qiyas* on animal pawning, as stated that because keeping animals that are used as collateral for debt requires a fee, it is permissible to take the milk and may be used as a riding animal because it is fed. Likewise, receiving a pawn of fields, it requires a lot of costs. It costs money to plant, fertilize and weed. If it is not funded then there is no result. So, the law takes advantage of the object of the pawn in the form of a rice field to pawn livestock that can be climbed on its back and its milk is taken. It is different if the pawned goods continue to produce and do not issue funds (only prohibited from taking benefits). This opinion, although there is some truth in it, where a small number of Hanafi scholars allow taking advantage of the object of the pawn that is not an animal by giving it to livestock, but it does not mean that the recipient of the pawn can take full benefit, or may not take all the proceeds of the object of the pawn, but only only the costs incurred, because in a hadith it is explained that:

إِذَا أَتَى شَاةٌ شَرَبَ الْمُرْتَهِنُ لِبَنِّهَا بِقَدْرِ عِلْفِهَا فَإِنْ اسْتَفْضَلَ مِنَ الْبَنِيِّ بَعْدَ تَمَنِ الْعِلْفِ فَهُوَ رِبَا (رَوَاهُ أَحْمَدُ عَنْ أَبِي هُرَيْرَةَ)

"If you make a goat as collateral, then the person who receives the object of collateral may drink its milk, the size of the maintenance costs incurred for the goat. If the milk taken exceeds the cost of maintenance, then the excess is usury."

Based on this hadith, the recipient of the pawn cannot take full benefit, or may not take all the results of the object of the pawn, but only the costs required for the maintenance of the fields, even if the rice fields will be processed for planting. Then the yield of the rice fields, if it has exceeded maintenance costs, or costs used to work on the rice fields so that the fields are not damaged, become the rights of the owners of the fields, meaning that if the fields are cultivated by the recipient of the pawn, then the results of the fields after the costs used for maintenance costs or the costs of working on the fields become the rights of the owner of the object of the pawn together with the cultivator. Because the status of the rice field remains the property of the pawnbroker, not the recipient of the pawn, while the recipient of the pawn only has the right to hold the rice field, if the certificate of ownership of the field is not available, as is the case for high inheritance land in Minangkabau in general, in Sariék Laweh in particular, which is not legally allowed to be certified, although there are also individuals who try to certify it without the knowledge of the tribesmen.

Also, because this opinion takes the opinion of some Hanafiah scholars who allow benefit from the pawned object, then -besides not being able to take all of the proceeds-, with regard to the pawn contract in Sariék Laweh, it must also be adapted to that school of thought, as explained above. There should be no conditions associated with the contract at all. Next, the maximum time for the pledge must be determined, on the other hand, the minimum time limit must be abolished.

C. The Solutions

Because the practice of pawning that occurred in Sariék Laweh is not in accordance with the opinion of the majority of Islamic school scholars who say it is unlawful to take advantage of the object of pawning, as well as the opinion that allows taking advantage of the object of pawn which is the opinion of a minority of Islamic school scholars, but in various cases, the practice of pawning is not in accordance with the provisions of this school, so the offer from the author as a solution to the problem of pawning in Sariék Laweh is to continue to take the opinion of some Hanafiah scholars, but by changing various existing

⁴⁴ Ibnu Hajar, *Fath al-Bari*, hadis No. 3464, Ahwadzi, *Tuhfab al-Hadis* No. 2015, <https://carihadis.com/Fathul-Bari Ibnu Hajar/3464, Tuhfatul-Ahwadzi/2015>

provisions, which are not in accordance with that school. Among them, such as the conditions that apply in the contract, as well as the time limit, which must all be adjusted to the provisions of the pawn according to this Hanafi school. Besides not ignoring the provisions in the hadith above, which states that the results taken exceed the maintenance costs are usury. "If you make a goat as collateral, then the person who receives the object of the guarantee may drink its milk, the size of the maintenance costs incurred for the goat. If the milk taken exceeds the cost of maintenance, then the excess is usury." The argument that guides the Hanafi school in allowing for the benefit of pawning objects that are not in the form of livestock is to equate their permissibility with taking the benefits of the pawn object in the form of livestock.

The concrete solution offered, in terms of cultivating rice fields, is the practice remains as it has been, namely rice fields are still cultivated by the recipient of the pawn because high heritage rice fields cannot be certified based on customary provisions (although it can be done), then every high heritage rice field does not have a certificate. property rights that can be submitted as collateral. This is one of the causes or the basis for the inheritance (object of pawn) which is controlled by the recipient of the pawn as collateral, not a certificate of ownership. Furthermore, what is regulated is that the provisions for cultivating the fields are not as if they belonged to the recipient of the pawn as is currently the case, but only as the manager of the fields with a *mu'araah* system whose results will be divided between the cultivator and the owner, with the agreement of both parties, for example in thirds, then part of the proceeds. The rice fields that are the rights of the rice field owners can be taken by the cultivator, as a form of installments from the debt, and can also be given directly each time the rice field owner (who pawns it) harvests but the amount of the debt remains the same as before or does not decrease.

The rice fields belong to both parties. The proceeds are divided in three, with one third being the right of the owner of the field or the pawnbroker, and two thirds being the right of the pawnbroker. The mortgage recipient receives two-thirds of the proceeds with the provision that one-third is for the maintenance of the fields, be it for buying fertilizers and other things, while the one-third is for working on the fields.

This solution will not conflict with any school of thought, even though the majority of school scholars forbid taking advantage of the pawned object, but what is taken by the pawn recipient is only the proceeds as cultivators of the fields and wages for maintaining the fields according to the generally accepted provisions. Even if it is disputed whether this is not contrary to the provisions of the majority ulama which prohibits taking pawn benefits, because as the recipient of the pawn, he/she is allowed to work on the rice fields that are the object of the pawn, then according to the author this is a natural thing, a person who has nothing to do with the owner of the field can only working on other

people's fields with this muzaraah system, especially people who are entrusted with maintaining the rice fields which are the object of this pawn, so that their fields are not damaged. If the owner is working on it, it is worried that the owner will act arbitrarily on the pawned object, such as pawning it or making the object pawn again to someone other than the first pawn recipient, while this high heritage rice field certificate does not exist. A solution like this can minimize these possibilities.

It is another case if the object of the pawn is a rice field in the form of low inheritance, then the general provisions on pawning can apply, without giving the rice field to the recipient of the pawn, but only a certificate of ownership. If there are no people who can provide loans with this system, the rice field owners can pawn the rice fields in the form of low heritage rice fields to sharia pawnshops in the local area.

Conclusion

There are three conclusions that can be drawn from the explanation above: first, the practice of pawning in Nagari Sariak Laweh is generally the same as pawning rice fields in other Minangkabau areas, that is, without a time limit for pawning, the land owner may request additional funds from objects that have been pawned before, and the pawn holder may fully utilize the proceeds of the pawn object without reducing the debt of the land owner. In average, the fields that are used as collateral are high heritage rice fields that are jointly owned by one clan. There has also been a shift in the reasons for pawning from the 4 reasons that are permissible under Minangkabau customary provisions, and there are several terms included in the pawnshop. Second, the scholars of the schools of thought differed in opinion regarding the law on the use of pawned objects, but regarding the pawn of land (other than livestock) the scholars of the schools of thought agreed to forbid the taking of benefits from pawned objects, especially the pawning of land in Sariak Laweh which is a loan in the form of *qard*, except for a small group from the Hanafi madhhab who allow it if there is permission from the owner of the pawn object. However, such permission may not be a mandatory requirement. If it becomes a condition during the contract (as happened in Sariak Laweh), then such thing is unlawful. With regard to the pawn agreement which requires the benefit to be taken by the pawn recipient that occurs in the pawn practice, all scholars of the schools of thought agree that the conditions included in the pawn contract are not valid because these conditions are not in accordance with the demands of the pawn contract. Third, suggestions or solutions to existing problems are divided into two: One, related to pawning objects in the form of high inheritances, the practice remains as is already in effect, i.e. that rice fields may be cultivated by pawn recipients, but only as rice field managers with a *muzaraah* system whose results are later divided between cultivators and owners, with the agreement of

both parties. Two, if the object of pawning is in the form of a low inheritance, general terms of pawning can be applied, without handing over the fields to the pawn recipient, but only the ownership certificate that is used as the object of pawning.

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Interview with Engku Burza Permato on 29 June 2017

Interview with Melda Putra (Wali Nagari) Sariak Laweh on 28 June 2017

Interview with Nasrun on 30 June 2017

Interview with Jasmi Loen, (The Chief of Syarak Nagari Sariak Laweh Institution) on 2 July 2017

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