

Implementation of Hybrid Contracts in MULIA Financing Transactions at Sharia Pawnshop

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Abstract

This study discusses the implementation of hybrid contract in MULIA financing transactions at Sharia Pawnshop service unit, Pangkajene branch. The contract uses murabahah and Rahn contract. In this study also examined the prospects of the MULIA product marketing efforts and the challenges faced in increasing the number of customer transactions. The type of research used in this thesis is the kind of descriptive research-qualitative, is the plan and structure of the inquiry for answers to questions of researchers in the form of descriptive data are obtained from the results of the in-depth interviews with the informant, observations and collect and analyze data in the form of the document and then do some checking of data with the technique of triangulation. The result of this study found some results that Sharia Pawnshop service unit, Pangkajene branch has implemented with either some provision in the MULIA transaction in accordance with the fatwa but some other of fatwa not implemented yet, for example in terms of the object of the contract should be the property of the Sharia Pawnshop before selling it to the customer also about provisions dealing with procedures using two contracts in one transaction.

Keywords: Hybrid Contract, Transaction, Sharia Pawnshop service unit

1. Introduction

All human activities must refer to Islamic law which is derived from the al-Qur'an and hadith. It is believed that Islamic law is flexible and acceptable in all human activities (Fikri, Bahri, & Budiman, 2018). Included in economic activities.

Conventional economic concepts and Islamic economic concepts have different paradigms. Conventional economics sees it as something secular that adheres to a capitalist or socialist system and is only oriented towards profit or worldly life, while Islamic economics includes elements of monotheism and human responsibility to other humans and human responsibility to God and the hereafter.

The concept of Islamic economics is expected to be able to solve problems faced by humans in their lives. Islam has equipped its adherents with very complete rules and guidelines for living their lives. One part of sharia is to regulate how to conduct economic

activities including the obligation to carry out economic transactions in sharia. All of the sharia rules are summarized into five laws which have the aim of being able to purify the soul, uphold justice and obtain benefits for both religion, soul, mind, descent and property in order to be safe in the world and the hereafter (Adiwarman A. Karim, 2014).

The economic doctrine is an expression of the way which the society prefers to follow on it is economic life and in the solution of it is practical problems; and the science of the economics, is the science which gives the explanation of the economic life, its economic event and its economic phenomena. That the Islamic economic is a doctrine and not science, for it is the way Islamic prefers to follow in the pursuit of its economic life (As-Sadr, 1983).

Baqir as Sadr explained that the difference between Islamic economics and conventional economics lies in economic philosophy, not in economics. Islamic economics is a teaching or doctrine and is not pure science or science because what is contained in Islamic economics aims to provide the best life solutions while economics will only lead to how economic activity works (As-Sadr, 1983).

Murabahah in Islamic jurisprudence is a form of buying and selling that has nothing to do with financing at first. Therefore, some contemporary scholars have allowed the use of *murabahah* as an alternative form of financing with certain conditions that must be considered (Ascarya, 2007).

Murabahah, like buying and selling, requires goods or products that have been controlled or owned by the seller at the time of the contract. However, *murabahah* can also be made for purchases by order and is commonly referred to as *murabahah* to purchase buyers (KPP). It is said so because the seller procures goods to meet the needs of the buyer as the buyer (Antonio, 2001). The practices that occur in MULIA (Murabahah Emas Logam Mulia Abadi Investment) product transactions at the Pangkajene Sharia pawnshop use a *murabahah* contract and involve three parties, namely sellers, buyers and suppliers of goods. The procedure is carried out with a *murabahah* and *rahn* contract and the customer is required to sign both transaction contracts simultaneously. The *murabahah contract* is carried out with a tough payment and the purchased gold is not immediately received by the buyer, but is retained by the sharia pawnshop as the seller with the *rahn* contract., until the payment is paid in full by the buyer or customer. The transaction procedure raises doubts about the existence of two contracts in one transaction because the customer signs the *murabahah* and *rahn* contracts simultaneously or at one time where there should be a

gap between one contract and the next which by *ijtima ulama* agreed at least one day interval. The inability of employees to translate the rules for transacting *hybrid contracts* (Lahafi, Masse, Semaun, Wahidin, & Basri, 2018) has the potential for this transaction to become a transaction prohibited by the Messenger of Allah, namely two contracts in one transaction.

Sharia pawnshops require a guarantee or *rahn* related to the financing it issues. So it appears that in this MULIA financing transaction there are two contracts in one transaction which in terms of fiqh fall into the category of *shofqataini fi shofqoh wahidah*. Rasulullah saw. has banned two contracts in one transaction. It is feared that this transaction will lead to a *two-in-one*, in which one transaction is in two contracts at once, causing uncertainty or *gharar* in the contract used (Adiwarman A. Karim, 2014).

The ordering procedure, the seller provides a financing facility to the buyer with a *murabahah* contract. The buyer must pay an advance in accordance with the agreement, administrative costs, distribution costs and fines if there is a delay in installment payments. As long as the installment payment is not fully paid, the buyer is required to submit collateral as repayment of the *murabahah* financing in the form of gold precious metal purchased. Gold collateral for the purchased precious metal is not handed over directly to the buyer but is retained, it remains under the control of the first party as collateral until the installment payment is fully paid, so that the buyer cannot enjoy the gold he bought. Sharia pawnshops then suspended the delivery of the goods for two weeks after the settlement of the contract on the grounds that the ordering procedure with PT Antam required this. This can lead to prejudice and customer concern that the pawnshop is selling goods that are not yet theirs.

This transaction also has the potential to be included in the wrongdoing transaction due to the necessity to pawn the product as agreed in the non-cash buying and selling procedure, namely in the *murabahah* contract which results in an increase in the margin that must be paid by the customer. First the margin from the *murabahah* contract then the margin from the *rahn* contract.

Transactions of MULIA in sharia pawnshops are also indicated as selling products that are not yet theirs. Orders for new products are made after the *murabahah* contract transaction is signed. This gives an indication of a *gharar* transaction or speculation that is prohibited by sharia, where the product should already belong to and be under the control of the sharia pawnshop party before the transaction is made.

Based on the background of the problems described above, the main problems in this study are; 1) That are the terms of the *hybrid contract* for MULIA product transactions at Sharia Pawnshop Service Unit, Pangkajene branch?; 2) How is the implementation of the terms of the *hybrid contract* at Sharia Pawnshop Service Unit, Pangkajene branch?, and 3) How are the prospects for MULIA products in Sharia Pawnshop Service Unit, Pangkajene branch?.

2. Research Methodology

This type of research is a qualitative descriptive study using triangulation techniques and an empirical approach in which the related variables are described. This method is expected to describe, report and explain the object of research under study and then analyze whether the MULIA financing transaction with the *murabahah* and *rahn* contract is suitable between theory and field application.

3. Results and Discussion

3.1. Hybrid Contract provisions on MULIA Product Transactions at Sharia Pawnshop Service Unit

Islamic pawnshop offer a product for sale and purchase of precious metals in cash or by installments pattern with fast process within period of time specified flexible. The sale and purchase of precious metals offered by Sharia Pawnshop which are named MULIA (*Murabahah* Precious Metal for Perpetual Investment) *financing* using *murabahah* and *rahn* contracts.

The contract in the transaction of the possession of this precious metal is permitted in religion as the rule of muamalah in fiqh which reads “Basically, all forms of muamalah can be done unless there is a argument that prohibits it”. *Aqad murabahah* is permissible in law as stated in the Qur'an. Al-Nisa (4): 29; “O you who believe, do not eat each other’s wealth in a way that is false, except by way of commerce that applies equally among you”.

In classical fiqh literature, *murabahah* refers to a sale where payment is deferred. The main element that distinguishes it from buying and selling in general is the deferral of the payment. Payment is made within a certain period of time either in cash or in installments according to the agreement of the parties. Fatwas regarding *murabahah* that are legally binding or *common in* nature to sellers and buyers of goods are modern fiqh lawsuits

relating to muamalah *maliyah* , especially in banking practices based on the *sad al-zari'ah method* , namely to avoid canceling the contract by the buyer which will cause losses to the bank.

Transaction with a *murabahah* contract by the majority of scholars is allowed on the basis that humans as social creatures always need what is produced and owned by others. The next mechanism for this MULIA transaction is the signing of the *rahn* or pawning contract . This pawning contract is permitted in religion as Allah says in QS. Al-Baqarah / 2: 283; “If you are on the way (and you are not in cash) and you do not get a writer, let there be a liability held (by the debtor)”.

The transaction agreement of this precious metal is carried out with a tough payment, and the gold purchased is not immediately accepted by the buyer, but is retained by the sharia pawnshop as a seller with a *rahn* contract until the payment is paid in full by the buyer or customer. *Rahn* , in operation using the *Fee Based Income* (FBI) method . As a pawn recipient or called *murtahin* , the pawner will receive a *Rahn* (pawning) proof along with a loan-borrowing contract called the Sharia Pawning Contract and the Place Lease Agreement (*ijarah*). In the sharia pawning contract, it is stated that if the term of the contract is not extended, the pawner agrees to sell his collateral (*marhun*) to pay off the loan. Meanwhile, the lease contract (*ijarah*) is an agreement between the pawner and the pawn recipient to rent a place for storage and the pawn recipient will charge a deposit service .

MULIA financing does not recognize the term interest, but there are fees that are set at the beginning of the transaction and agreed upon by both parties , namely ;

First, Price in sharia pegadaian states the price of goods that will be the object of sale and purchase to customers. The price submitted is the purchase price, the difference in price, the resale price and some costs that will arise from the transaction. If both parties agree, the transaction is continued;

Second, Down Payment. Advances are charged to customers as a form of prudence and ensuring the seriousness of customers in precious metal purchase transactions. The amount of the initial payment is 25% of the acquisition cost of the object of financing;

Third, Administrative costs. Administrative fees charged to customers by sharia pawnshops are Rp. 50,000.00 for each transaction which is charged only at the beginning of the transaction and usually counts together with the initial payment. Administrative

costs are charged with the assumption that the real expenses of sharia pawnshops such as office stationery, equipment and labor costs;

Fourth, Monthly installments. Monthly installments are funds that must be paid by the customer on a regular basis according to the date set and agreed upon at the time of the transaction for the settlement of precious metals that have been purchased in a *murabahah* contract. The installment rate is obtained from the amount of the cost less the initial payment then divided by the installment period that has been determined;

Fifth, Margin is the difference between the acquisition cost and the selling price of the object of financing. The margin which is the profit of a sharia pawnshop for lending some funds to customers for the purchase of precious metals. The profit margin for cash purchases was 3% of the cost and non-cash purchases were 6% for the loan term of 6 months, 12% for 12 months, 8 months 18% and 24 months 22%.

3.2. Implementation of Hybrid Contract Provisions on MULIA Transactions Sharia Pawnshop, Pangkajene Branch

MULIA transactions in sharia pawnshops use a legal basis or fatwa from the National Sharia Council of the Indonesian Ulema Council or abbreviated as DSN MUI which regulates the *murabah* contract in its precious metal buying and selling procedure.

Implementation of fatwa through the above procedure, for example in the DSN-MUI fatwa No.77/DSN-MUI/V/2010 concerning Non-Cash Gold Trading. The fatwa states that it is permissible for gold to be used as an object of non-cash sale and purchase, either by installments or firmly as long as gold is not an official medium of exchange (money). This decision, among others, was based on the reason that at this time the world community no longer used gold as a medium of exchange (money), but treated it as a good, therefore the prohibition of selling gold in cash based on the hadith of the Prophet was no longer valid because the illat of the prohibition law had changed. All of the things mentioned above are done because there is a rule that the original law in Islamic economics is permissible, unless there are arguments that prohibit it. (*al-ashl fi al-mu'amalat al-ibahah hatta yadull al-dalil 'ala al-tahrim*). This opens the door wide for breakthroughs and innovations in the formulation of Islamic law related to Islamic economics (Amin, 2017).

In the case of this down payment, in the MULIA transaction at UPS Pangkajene Branch, the amount is determined based on the agreement of both parties. The amount of the down payment is part of the selling price to the customer. If in the future the customer

cancels the *murabahah* contract, then the customer must compensate the sharia pawnbroker from the down payment of the real losses incurred by the sharia pawnshop. Meanwhile, if the down payment is less than the loss, the sharia pawnshop can ask for additional from the customer. Likewise, on the other hand, if the amount of the customer's down payment is greater, the sharia pawnshop must return the remaining excess of the advance payment to the customer. This transaction document in the sharia pawnshop file includes provisions on prices, down payments and margins as stipulated in Article 1 with three paragraphs.

Sharia pawnshops sometimes get a discount from the first seller (supplier), with a discount a problem arises, whether the discount is the right of the seller so that the selling price to the buyer (customer) uses the price before the discount, or is it the right of the buyer (customer) so that the price sales to buyers (customers) using the price after discount.

In its implementation, sharia pawnshops also provide discounts to customers who will transact MULIA. Discounts are also given at the beginning of the contract by deducting the down payment. Customer who makes payments on time or sooner than the agreed time, LKS gives a deduction from the total payment obligation, for legal certainty regarding the matter according to Islamic teachings, DSN-MUI has stipulated DSN-MUI Fatwa No:23/DSN-MUI/III/2002 concerning Repayment Deductions in *Murabahah*.

The provisions of the National Sharia Council regarding the rules for *murabahah* transactions At the point of the contract, it must be usury-free and goods traded are not prohibited by the Shari'a and have been properly implemented by the Pangkajene branch of the sharia pawnshop. Likewise with the provision that sharia pawnshops finance part or all of the agreed purchase price, weight, price and margin. Sharia pawnshops have conveyed to customers the qualifications of goods, cost of goods, benefits and costs that will arise due to the contract.

However, the provisions regarding the ownership of goods state that if the customer has submitted an application to the financial institution and it is approved, the financial institution must first buy the ordered assets from the new supplier and then sell them to the customer. The MUI DSN fatwa also stated that the *murabahah* sale and purchase agreement must be made after the goods become the property of a sharia financial institution clearly or in principle.

This provision cannot be implemented yet because at Sharia Pawnshops Service Unit, Pangkajene branch has only ordered precious metals with the weight of the customer's

order from the supplier after the customer has signed the transaction and made a *down payment* (DP). New orders are made after the customer has paid in installments of 30% percent of the agreed selling price.

The provisions of the National Sharia Council regarding down payments have been well implemented. In the MULIA transaction, the Sharia Pawnshops Service Unit, Pangkajene branch determines the down payment in accordance with the agreement with the customer and both parties have agreed that if the customer cancels the contract in the future, the customer is willing to pay the losses arising from the cancellation which is regulated in the sharia pawnshop document.

The provisions regarding discounts in the fatwa of the National Sharia Council regarding discounts have been well implemented by sharia pawnshops. The sharia pawnshop party has conveyed to the customer if it gets a discount from the supplier or supplier and it has been stated in the sharia pawnshop document signed by the customer.

Provisions regarding sanctions for customers who are able to but delay their payment may be subject to sanctions based on the *ta'zir* principle which aims to make customers more disciplined in carrying out their obligations. Sanctions can be in the form of a fine amount of money, the amount of which is determined on the basis of the agreement and made when the contract is signed. The funds originating from this fine are intended as social funds and used for social activities, for example holding the Muharram Festival, the Prophet Muhammad's birthday, drawing competitions at TK / RA and SD levels and others.

Further provisions regarding repayment deductions if the customer expedites payment have also been implemented properly. The customer gets a large discount according to the agreement of the two parties as stated in the sharia pawnshop document.

Aqad Rahn, by Islamic economists punishable as permissible buying and selling based on the arguments in QS al-Baqarah (2): 283; “And if you are on the way you do not find a writer, then there should be collateral that is held, but if some of you believe in others, let what he believes fulfill his mandate (his debt and let him fear Allah, his Lord”.

Apart from Surah Al-Baqarah verse 283 above, there is also a hadith narrated by Bukhari which states that pawning is possible. This hadith also clearly illustrates the historical fact that pawning was widely practiced during the time of the Prophet Muhammad, as follows; “from Aisyah ra said that Rasulullah said: Rasulullah SAW bought food from a Jew and guaranteed him his armor, (HR. Bukhari)”. In MULIA

transactions, the *rahn* contract is no longer subject to a margin because the profit is determined as the price difference in the *murabahah* contract .

The provisions in the Sharia Economic Law Compilation (KHES) which state that the pawn consists of elements of the pledge recipient, the pledge property, the debt and the contract have been fulfilled in the MULIA transaction in this sharia pawnshop. However, the provisions which state that the pledge contract is only called perfect if the pledge property exists when the contract is made and the pledge property must be handed over has not been implemented in this transaction.

The KHES provisions are the same as the MUI DSN fatwa which further states that if the pledge property is due and the pledge provider has not paid his obligations, the pledge recipient must warn him. If payment has not been made, the pledge is sold through a sharia auction. The proceeds from sales are used to pay off debts, maintenance costs, storage costs and costs incurred in the sales process. The remainder of the sale becomes the right of the pledge giver after deducting his obligations to the pledge recipient. This provision has been properly implemented when a customer is unable to fulfill his/her obligations or is declared bankrupt at Sharia Pawnshops Service Unit, Pangkajene branch.

The provisions in the Rahn contract which state that there should be no conditions in transactions so that they are protected from the presence of aggrieved parties have also been implemented properly at the Pangkajene branch of the Sharia pawnshop because the price has been determined at the beginning of the transaction. There is no increase or decrease in the price of the mortgage. As mentioned in the previous paragraph, the right of murtahin or pledge recipient is only in the amount of the debt and fees that have been agreed between rahin and murtahin.

The theory regarding the hybrid contract and the DSN MUI fatwa Number 25/DSN-MUI/III/2002 regarding the rules for transactions using the *rahn* contract , namely holding goods as collateral for debt and handing them over to the customer after the obligations are settled based on the terms agreed by both parties, so far it has been implemented well by the Pangkajene branch of the Sharia Service Unit . This rahn contract is even used by conventional pawnshops in MULIA transactions.

Theoretically, rahn is a contract that makes something as a guarantee to the completion of settlement of a debt. Usually the collateral is asked by the creditor to the debtor during the commencement of the contract to avoid default from the debtor of not paying the debt (Windy Indah, 2018).

The hibryd contract theory according to Nazi Hammad argues that the original law of syara 'is that it is permissible to conduct multi-contract transactions as long as each contract that builds it is carried out separately. When there is an argument that prohibits it, then the argument is not applied generally but is excluded in cases that are prohibited according to that argument. This case is said to be an exception to the general rule that applies, namely regarding the freedom to carry out the contract and carry out the agreement that has been agreed upon (Hammad, 2010).

Ibn Taymiyyah's theory or concept of pricing regarding equal compensation (*'iwadh al-mitsl*) is not the same as a fair price (*tsaman al-mitsl*). The issue of fair or equal compensation (*'iwadh al-mitsl*) arises when discussing issues of moral and legal obligations. The concept of a fair price according to Ibn Thaimiyah is: "The value of the price at which people sell their goods and is generally accepted as being equivalent to the goods sold or other similar goods at different places and times." Ibn Taymiyyah recognized the idea of profit which was the motivation of traders. According to him, traders are entitled to profit in ways that are generally accepted (*al-ribh al ma'ruf*) without destroying his own interests and the interests of his customers (Hammad, 2010).

Sharia pawnshops have applied Ibn Taymiyyah's theory of this price well. The value of gold or precious metal marketed is in accordance with the value of world gold at the time the transaction is signed by both parties. The costs that arise later are a result of maintenance and insurance and administrative costs in the transaction.

MULIA transactions in sharia pawnshops are appropriate to use *murabahah* and *rahn* contracts but it must be more specifically stated that the *murabahah* contract is a type of *Murabahah* to Purchaser or abbreviated as MPP. It is called MPP because the sharia pawnshop does not always provide goods to be sold but by customer orders. *Murabahah* Purchase Order is a transaction in which two or more parties negotiate and promise to carry out a mutual agreement, where the customer or customer requests assistance from the Sharia Service Unit the Pangkajene branch to purchase the assets referred to in this case are precious metals which are then legally owned by the subscriber with cash or non-cash payments. The orderer's promise to buy the goods he ordered is a binding promise.

3.3. MULIA Product Prospects at Sharia Pawnshop Service Unit

MULIA product sales in the last few years tended to decline from previous years. The reason is because PT Pegadaian has appointed another unit to market MULIA products. The Pangkajene Branch Sharia Service Unit is no longer the unit marketing this

product. However, UPS Pangkajene Branch still helps customers to own this product and receive installment payments from customers.

There are obstacles to MULIA financing by hybrid contract that can show with the *murabahah* and *rahn* agreements at Sharia Pawnshop Service Unit, Pangkajene branch can be explained the barriers to legal opinion that As a new product of sharia pawnshops, MULIA financing with the *murabahah* and *rahn* contracts still leaves different legal opinions regarding several matters, including The object of the contract in the form of gold bullion has not been handed over by the sharia pawnshop to the customer, but has become a pawn item so that there are those who argue that MULIA financing with the *murabahah* and *rahn* contracts is included in the two categories of contracts prohibited by the Prophet SAW. But there are also local scholars who allow it.

There are administrative costs and expedition fees in addition to the margins imposed by sharia pawnshops, which are very burdensome for customers. Likewise, the payment of accumulative late fines is very burdensome for customers.

Constraints from Customers and Sharia Pegadaian Employees. The contract agreed upon by the customer and Sharia Pegadaian is not fully understood by the majority of customers.

Supporting Means Barriers. The object of *murabahah* financing which is also used as a guarantee for repayment of financing remains under the control of the first party as seller and is used as a *marhun* until all obligations of the second party (buyer) are paid off and the remaining *murabahah* debt is also the remaining debt of the *rahn* (pawning) contract, where the first party does not charge *ujrah*.

5. Conclusion

Murabahah Logam Mulia for Perpetual Investment or abbreviated as MULIA is a product of PT. Pegadaian (Persero) which was initially marketed by Sharia Pawnshop Service Unit, Pangkajene branch. This MULIA product has been transferred to another unit to market it. *Murabahah* Agreement has been in accordance with the pillars, namely: sellers, buyers and objects that are traded. The pillars of the *rahn* contract are: *rahin*, *murtahin* and *marhun*. Loans or financing have been determined by sharia pawnshops based on the principles of Islamic law, namely: simple requirements, easy procedures, written contracts, financing or debt guaranteed for goods that have been purchased,

interest free, profit or margin and the contents of the agreement are determined by both parties and financing do not contain *gharar*.

Most of the fatwas of the National Sharia Council of the Indonesian Ulama Council or DSN MUI regarding *murabahah* and rahn contracts have been largely implemented in the MULIA transaction. The unfulfilled condition is the point that the ownership status of the object of sale must be clear before it is sold to the customer. The indication of a prohibited transaction in this case is two contracts in one transaction (*shofqatain fii shofqah waahidah*) because the contract signed at the same time is solely due to employee errors in implementing the fatwa of the MUI National Sharia Council and customers who are ignorant and do not understand how to transact with two contract. The contract, which is more specific for MULIA transactions, should use the *Murabahah* contract to Purchasing Orderers (MKK) because the Pangkajene branch of the Sharia Service Unit does not provide products unless the customer has signed a *murabahah* contract. Customers (*rahin*) often do not fully understand the contract that has been agreed upon because the contract documents have been provided by the pawnshop and the terms of the agreement have been written in the contract document. Likewise, the pawnshop party is not proactive in providing clear information to the customer regarding the contract that is being made so that the contract is not legally flawed because there are hidden factors or the understanding is not clear.

Sharia Pawnshop Service Unit, Pangkajene branch has made maximum efforts to increase the number of customers visiting Sharia pawnshop by holding outreach to the wider community, holding a Muharram Festival, holding a Coloring Contest for TK/RA and SD Levels and others. MULIA products are no longer widely disseminated by Sharia Pawnshop Service Unit, Pangkajene branch due to a policy by the Pawnshop Head Office regarding the transfer of marketing of MULIA products by other units at pawnshop.

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