

## Principles of Rahn Contract Based on MUI Fatwa Number 25/DSN-MUI/III/2002 Concerning the Use of Pawn Land in the People of Southeast Aceh

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### Abstract

*The goods pledged as collateral in Southeast Aceh is land. The full utilization of the pawned land by the pawnee is a practice that is detrimental to one side. This is of course contrary to the Fatwa of DSN MUI Number: 25/DSN-MUI/III/2002 concerning Rahn. This research is an empirical research using qualitative methods. The approaches used are normative legal approaches, normative theological approaches, and sociological approaches. This research is located in Southeast Aceh Regency, Aceh Province. The data collection techniques used are observation, interviews and documentation. The results of this study are; First, there is a discrepancy between the practice of pawning land carried out by the people of DSN-MUI Fatwa Number: 25/DSN-MUI/III/2002 concerning rahn, that the fatwa is explained that the recipient of the pawn may only use the pawned land with the pawner's permit for maintenance and repair costs. whereas in practice the recipient of the pledge is fully entitled to the use of the pledged goods by taking all the profits from the proceeds of the pawned land. Second, the use of pawned land as practiced by the people of Southeast Aceh, although there are benefits to be gained, there is a greater harm, so that it is not in accordance with the purpose of the revelation of shari'ah, namely to realize the maslahah.*

**Keywords:** *Pawning, utilization of the pawned land, Fatwa, Maslahah.*

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### 1. INTRODUCTION

Pawn in arabic is called rahn, which literally means as something restrained (Anshori, 2006). The word rahn also means fixed and eternal (Mustafa Al-Bugha, 2019). Whereas in terminology, rahn is to make an object that has the value of property in the view of syar'a as collateral against a debt, which allows it to settle all or part of the debt from the object (when it cannot be repaid) (Sabiq, 2008). Meanwhile, according to the National Sharia Council, Rahn is to hold goods as collateral for debts. (DSN-MUI, National Shari'a Council Fatwa Association, 2006). According to Sayyid sabiq, rahn is to make goods that syara' have the value of property as collateral against a debt, so that the person concerned can take the debt or take advantage of the item.

Looking at some of the definitions above, it can be concluded that rahn is to make an item worth property as collateral against a debt where the item

will become a redemption when the debtor is unable to pay off the debt. In Islam it has been stated in the validity of a transaction that there must be conditions and pillars that must be met. These two things are an inseparable whole. Even a contract is said to be void by the scholars if there are conditions and pillars that are not met, such as the person who has the right to do it, the object of the contract, the shighat (ijab qabul) and the conditions. Including pawn or rahn contracts.

Indonesia, whose majority are adherents of the Shafi'i madzhab, certainly takes many laws both in terms of worship and mu'amalah from the view of the madzhab. Including in the case of this pawn or rahn. Regarding the use of pawn goods (marhun), Shafi'iyah scholars allowed the use of hock goods if they were carried out by the person who mortgaged (rahin). While the use of pawn goods is carried out by the person who receives the pawn (murtahin), the Shafi'iyah scholars do not allow it even with the

permission of the owner. (Shaikhu, 2020)

This is in accordance with the general provisions of the Fatwa of the National Shari'a Council number: 25/DSN-MUI/III/2002 second, which contains: "Marhun and its benefits remain the property of Rahin. In principle, Marhun should not be used by Murtahin except with Rahin's permission, without reducing the value of Marhun and its utilization is merely a substitute for the cost of its maintenance and maintenance". (DSN-MUI, National Shari'a Council Fatwa Association, 2006)

It is explained that the beneficiary of the pledge must not use the pawned goods, except only for the replacement of the maintenance costs of the collateral goods. There are many items that are worth property that can be used as collateral, such as animals, vehicles, gold, including land. The people of Southeast Aceh themselves do a lot of pawning or rahn. The majority of goods or property used as collateral are land or rice fields.

But in practice the person in debt gives his land to the creditor as collateral. There are two kinds of pawn models carried out by the people of Southeast Aceh, first with a certain deadline and the second without a deadline, where as long as the debt has not been paid, during which time the land is in the hands of the debtor (murtahin). In these two circumstances, the murtahin is fully entitled to the land. He has the right to take advantage of, work and plant anything that benefits him as long as the rahin has not returned the debt he borrowed. While rahin is not entitled in the slightest to take advantage of the land he is collateralizing, even though he is still basically considered the rightful owner of the land. Surely he has the right to take advantage of it. The above pawn practice according to the author is very interesting to study. Because in plain sight, the practice is clearly contrary to the DSN MUI Fatwa above and it is certain that rahin is the party who gets the loss and mudharat. As for mashlahah in terms of language, it is interpreted as a benefit. Meanwhile, in terms according to Syatibi mashlahah, it is seen from two sides; in terms of maslahat in the real world and in terms of the demands of the syara'. First, he stated that mashlahah is: Something that returns to the establishment of human life, the perfection of life, and the attainment of all that is desired by the absolute nature of the shahwati and aklinya. Whereas from the second point of view, mashlahah is the purpose of establishing a shari'a law'.

The purpose of establishing the law of shari'a is also called maqashid Shari'ah. Because according to Shari'a, Shari'a was made with the aim of realizing the benefit of man both in the world and in the hereafter. Then it is certain that the benefit must be present in every obligation (taklif) addressed to man. Because a law that has no purpose is taklif maa laa yuthaaq (imposing something on man that he cannot carry out). (Asafri Jaya Bakri, 1996). This benefit can be realized if the five main elements or also known as ushul al-khamsah can be realized. The five main elements are religion, soul, reason, descendants and property.

The pawn practice carried out by the people of Southeast Aceh aims to realize the establishment of human life and the achievement of the perfection of life and everything it wants. Just like the first definition of maslahah mentioned by the Syatibi priest. Just as it is also the case that the purpose of establishing the law of the law of the 'shari'a is the existence of benefit for man. So based on the above exposure, the author feels that these two things (pawn and mashlahah) when combined are very interesting to research. Because it is clear that the practice of pawning carried out is contrary to the principle of lien mentioned in the Fatwa of the DSN MUI, but if you look at it with the naked eye, there are benefits obtained by the two. So according to the author, it needs to be studied more deeply the problems caused so that we can find the common thread as a bright spot of the two. Thus, using the maslahah theory approach, the author is interested in conducting research with the title: "The Principle of the Rahn Contract based on MUI Fatwa Number 25 / DSN-MUI / III / 2002 concerning the Use of Pawn Land in the People of Southeast Aceh.

There are two research questions asked in this study. The first is how the practice of pawning land in the people of Southeast Aceh. The second is how to use pawn land in the people of Southeast Aceh based on MUI Fatwa Number: 25 / DSN-MUI / III / 2002.

There have been several studies related to this research theme. Among them are the research of Muazir (2017), Ahmad Irsyadul Ibad (2017), Nasruddin Yusuf (2006), and Bagus Hermawan (2015). Although many have researched, no one has studied the DSN MUI Fatwa on rahn which was analyzed using maslahah theory.

The significance of this research can be seen in the goal of making the public more aware of how exactly pawn contracts are allowed in Islam. This

research will provide solutions to pawn actors, especially land pawns, which occur a lot in the midst of Indonesian society in general and the people of Southeast Aceh in particular. So that with this solution, neither side is persecuted, and no party eats property in a vanity way.

## **2. METHOD**

The type of research (Syahrums, 2012) used is qualitative research (Moleong, 2010). Researchers took one case that occurred in the Southeast Aceh community related to the practice of pawning which was visibly contrary to Islamic law and fatwa (DSN-MUI) Number: 25 / DSN MUI / III / 2002. The scientific approaches used include the normative legal approach (Yati Nurhayati, 2021), the normative theological approach (Nata, 2008), and the sociological approach (Soekanto, 1986). This study was located in several different villages in Southeast Aceh Regency. among them are: Darul Amin Village, Lawe Alas District, Deleng Megakhe Village, Badar District, Alas Merancar Village, Babussalam District.

Primary data were obtained by researchers through field research (Sugiyono, 2013) by conducting interviews with six pawn actors (pawn givers and recipients) in three sub-districts in Southeast Aceh. The data collection techniques used by the authors in this study are; observation (Mustamil, 2019), interview (Shahrums, 2012) and documentation (Moleong, 2010). Interviews were conducted with two patterns, namely purposive sampling and Snowball sampling patterns. The characteristics of informants in this study are the lien receiving party, the lien party, and the one who is willing to be interviewed.

Once data from observations, interviews, and documentation are collected, the data is then analyzed. The data analysis technique used is qualitative analysis which includes data reduction, namely summarizing and selecting the main and important things from the data collected, then presenting the data presented in the form of a brief description or in the form of a chart and the like, and drawing conclusions. Through the presentation of data, the data is organized, arranged in relationship patterns, so that it will be easy to understand and draw conclusions (Moleong, 2010).

## **3. RESULT AND DISCUSSION**

### **Pawn Practices in the People of Southeast Aceh**

Pawn as already mentioned by shafi'iyah scholars, that a lien or rahn is to make an item as collateral against a debt, where the goods are used to redeem debts that cannot be repaid.

Southeast Aceh is a region with a topography consisting of highlands and lowlands. The vast lowlands are a very valuable asset that can be used as land for farming and gardening as well as other profit-making activities. With about 50 tributaries flowing throughout the Southeast Aceh region, it can be said that this region is a fertile region. So in practice, making land or land as collateral against a debt is normal in Southeast Aceh district.

The pawning practice carried out by the people of southeast Aceh is a helping contract (ta'awun) that occurs between them. This is said to be because the lien beneficiary also known as murtahin gave a loan to the rahin to help him meet his needs. This is in line with what was conveyed by Mr. Kamudin:

"The reason I do the pawn is to help the brother who needs money to meet their needs"

"Actually our reason for doing the pawn is to help us. It just so happened that at that time we were in need of money for our child's marriage capital. So the alternative we're taking is to do this pawn."

"I mortgaged the land, because I was in need of money for my son's school fees. My son is eager to continue his schooling, now the funds are not there. That's why we have to mortgage the land so that my son doesn't drop out of school."

"The reason my rice field was mortgaged was for the cost of my son's marriage. If it is sold, in the future, this little property will be used up, while if I mortgage it, maybe when I can't redeem it, my children will be able to make up for it in the future".

Please help this is basically very permissible in islam, it is even recommended to do so. This is what underlies the people of Southeast Aceh to always do help, including through this pawn contract.

Regarding the use of pawn goods, what often happens to the community is that the right in its use is taken over by the recipient of the pawn (rahin). Rahin as the beneficiary of the pawn has the right to use it such as cultivating the land and plowing it. On this practice both parties actually benefit. Where the liener receives benefits by obtaining the loan money he needs, while the mortgagee also benefits from the existence of the guarantee where this collateral item is entitled to be used as he pleases. This is also in line with what Satine's mother has conveyed below:

"Here we both help each other and of course there are benefits obtained. The pawner earns a profit with the loan money we provide, with which he can meet his needs while we as the pawning party also benefit from the existence of collateral in the form of land that we can later cultivate and we take advantage of."

"yes, the mortgaged land is fully utilized by us, we are the ones who cultivate and harvest the results"

Then it can be understood that the one who fully utilizes the collateral is the beneficiary of the pledge, he who has the right to work and harvest the proceeds. However, it is undeniable that although most of the pawn contracts that occur in the community are with the use of pawn land that is completely taken over by the pawn recipient, the author finds someone whose pawn mechanism is different from others, especially in terms of the use of pawns. Where the lien beneficiary only has a holding right not a right of use and the one who has the right to use it is the lien giver, while the proceeds will be divided in half.

"that's right. I also have such a lien contract, where the one who makes use of the hock land is the pawn giver, he who works then the profit and the proceeds are halved."

A contract like this is a muzara'ah contract that is hoarded on a pawn contract. As for the mechanism by carrying out a lien contract, namely receivables debt by making an asset as collateral, after the lien agreement occurs, both parties make a new contract, namely the muzara'ah contract following the existing lien contract.

Then this pawn contract is also done in writing in black on white. This is so that the contract carried out is more bound, so that both parties feel that they have to fulfill their obligations, especially for the mortgagee.

"certainly. There is black on white for this pawn contract. Usually, the required file is only a photocopy of the Identity Card (KTP) of both parties, then the signatures of the two are known by the village head".

Furthermore, for pawn contracts carried out by the people of Southeast Aceh themselves, most of them set a tempo of 2-3 years. This stipulated time is the result of an agreement between the two parties between the mortgagee and the lien beneficiary. However, if it has reached maturity and the debt has not been paid by the lien giver, then the collateral is still in the hands of the lien recipient or murtahin. During that time, the murtahin had the right to use the pledged land and enjoy the proceeds and benefits. As

stated by Mr. Kamudin::

"usually the pawns performed have a period of 2 to 3 years. During that time, the murtahin had the right to use the land. And if it is due while the rahin has not been able to pay the debt, the use of the land is still in the hands of the murtahin"

Most of the pawnlers, when interviewed by the author, knew the practice of pawns and their laws in Islam, although some of them also did not understand how pawns actually are in Islam.

The author explains the mechanism of pawn practice carried out by the people of Southeast Aceh:

a. Reasons for Pawning

The reason for the community in carrying out this pawn practice is because there is a need that requires pawning. The mortgagee needs money that can be obtained by going into debt even though it must be with collateral, while the mortgagee needs the land to be used. Among the several reasons a person mortgages his land is for the needs of paying debts, the cost of children's education, and the cost of marriage.

b. The form of the contract performed

With regard to the form of the contract performed by both parties, here the author gets two answers from the contract performed: First, it is stated that the collateral in this case is the land mortgaged against the debt that may be fully utilized by the lien beneficiary. Second, the collateral against the debt is utilized by the mortgagee with a record of the profit and the proceeds obtained will later be divided in half with the mortgage recipient.

c. Collateral goods

What is used as collateral for a debt owed to the people of Southeast Aceh is agricultural land or land that can be cultivated. This is in accordance with the topographical state of Southeast Aceh in the form of a large expanse of land

d. Utilization of pawn goods

Generally, the use of mortgaged land is entirely the right of the lien recipient, but there are some of them whose use is only carried out by the mortgager, the proceeds of which are then divided in half.

e. Perjanjian yang dilakukan

This agreement is written in black on white, where both parties sign a letter containing a description of the pawn made by both parties and known by the village head. In this letter, the mortgage deadline will be written, which is about 2 to 3

years, where if it is due but has not been paid as well, then the mortgage recipient is still entitled to take advantage of the pledged item. In addition, what is also a requirement in this letter is a photocopy of the ID cards of both parties who have a mask.

From the explanation above above, it can be understood that the mechanism of the lien contract carried out by the people of Southeast Aceh is with a black and white written contract which contains an agreement in the form of a lien with a certain period of time, which if within that period the debt has not been paid, then the pawn recipient is still entitled to control the lava that is used as collateral in the lien.

#### **Analysis of Pawn Land Utilization in Southeast Aceh Communities Based on MUI Fatwa Number: 25/DSN-MUI/III/2002**

The pawn that occurs in the people of Southeast Aceh, namely the use of pawn land carried out by the pawn recipient or murtahin, is a disguised "robbery". Because this can be detrimental to the next party, namely the mortgage party. Rahin as the mortgagee is entitled to the hock land because he is the original owner. As for the murtahin or lien beneficiary, he only has the right to hold the land and not to use it let alone cultivate and take full advantage of the arables. Of course, what these two pawned parties did was not in accordance with shari'a. Seeing the pawn practice carried out above, the author feels the need to review the pawn contract in accordance with Shari'a.

The National Shari'a Council in its fatwa Number: 25/DSN-MUI/III/2002 on rahn has stated that: "Marhun and his benefits remain Rahin's. In principle, Marhun should not be used by Murtahin except with Rahin's permission, without reducing marhun's value and its utilization is merely a substitute for the cost of its maintenance and maintenance." The statement of the MUI above is in accordance with the hadith of the Prophet Muhammad Saw:

الظهر يركب بنفقته إذا كان مرهونا ولين الدر يشرب بنفقته إذا

كان مرهونا وعلى الذي يركب ويشرب النفقة (وراه البخاري)

"Pawned mounts (vehicles) can be boarded at their expense and mortgaged farm animals can be milked at their expense. People who ride and milk are obliged to bear the cost of care and maintenance" (Bukhari, 1996).

أخبرنا أبو زكريا بن أبي اسحاق المزكي حدثنا أبو العباس محمد بن يعقوب: أخبرنا الربيع بن سليمان أخبرنا الشافعي حدثنا محمد بن اسماعيل بن أبي فديك عن ابن أبي ذئب عن ابن شهاب عن سعد بن المسيب أن رسول الله صلى الله عليه وسلم قال: لا يغلق الرهن من صاحبه الذي رهنته له غنمه وعليه غرمه (رواه البيهقي)

"Abu Zakaria ibn Abi Isaac preached that he had conveyed to us Abu Abbas Muhammad ibn Ya'kub, had preached to us Ar-Rabi' bin Sulaiman, had told us Muhammad bin Ismail bin Abi Fudaik of Ibn Abi Dzi'b of Abis Shihab of Sa'id bin Musayyib that the Messenger of Allah said: The ownership of pawn goods is inseparable from the owner who mortgaged them. He can take advantage of it and he bears the risk." (HR. Baihaqi) (Shaikh, 2020)

Therefore, from the fatwa above, it is very clear that the utilization of collateral goods in this case is land, should not be done by murtahin. (Imam, 2016) The above also mentioned the permissibility of the use of hock goods by murtahin with the permission of rahin. However, it can be understood that the ability referred to here is not what the community does in the field, but rather the ability within certain limits, namely to simply obtain maintenance and maintenance costs (Sudiarti, 2018).

If we refer back to the pawn mechanism carried out by the people of Southeast Aceh, we find that the pawn actually occurs because of consensual elements or what is called taradhin or mutual ridho, as they have said:

"here we benefit from each other. The mortgagee receives benefits in the form of loans, while the mortgagee receives benefits in the form of the mortgaged land".

It is very clear the joy that arises to both parties in this agreement. Without this excitement, this contract would never have happened. As we also know that among the basic foundations in a muamalah is the existence of mutual ridho (taradhin). This has been mentioned in the word of Allah swt:

يأيها الذين آمنوا لا تأكلوا أموالكم بينكم بالباطل إلا أن تكون تجارة عن تراض منكم

"O people of faith, do not eat each other's property in a vanity way, except by means of commerce that prevail by mutual liking (between you)" (RI, 2010).

Invisibly, the verse very clearly shows that what is done by both parties is a contract that occurs on a consensual or taradhin in accordance with what Allah said in his Qur'an. But what needs to be understood here is that we need to retrace the word *tijarah* in the verse above. What kind of plundering is actually intended in the verse above. Of course, what is buried here is a *tijarah* or business that is in accordance with Shari'a and Islamic law, that is, those that are fulfilled by the conditions and pillars. As is the case with this pawn contract. The contract carried out by the people of Southeast Aceh has met the criteria for the correct contract in law, because the conditions and pillars have been met. A contract will not be valid if one of its pillars is not fulfilled. The pawn bills in question are: *Rahin* (the one who mortgages), *Murtahin* (the beneficiary of the pawn), *Marhun* (mortgaged goods), *Marhun bih* (debt), and *Sighat* (*ijab and Kabul*) (Az-Zuhaili, 2013).

The pawn pillars in the southeast Aceh community have fulfilled the 5 elements above. Namely the existence of *rahin* (pawner) and *murtahin* (beneficiary of the pawn), the existence of *marhun* (debt) which in this case is in the form of money, *marhun bih* (collateral) which is in the form of land, and *sighat* (*ijab kabul*). However, the real problem is only in the use of pawn land carried out in this contract..

After making observations from the results of observations and interviews, the author found a very clear difference between the pawn practice carried out by the people of Southeast Aceh and the DSN-MUI Fatwa. In its fatwa, the MUI has explained that the ability to use the pawn goods in question is only limited to taking benefits to be used as costs in maintaining the collateral goods. Meanwhile, the practice that occurs in the community is very inversely proportional, where the pawn recipient can use the pawn land during the time period agreed in the agreement, which is 2 or 3 years as is the case in general in Southeast Aceh.

At that grace period, the lien beneficiary has the right to work on the hocked land and of course the profit from the arable is the full right of the lien beneficiary. Then the pawn recipient gets a huge profit

here. He can even earn many times the return of the initial capital he gives as a loan to the mortgager. Of course, this kind of thing contains elements of usury, seeing the amount of profit he has gained. As already mentioned in the hadith that the Messenger of Allah saw.:

كل قرض جربه منفعة فهو ربا

"any loan that makes a profit then it is usury (Suyuthi, 2017)"

The profit intended herein is the profit required when the contract takes place. This is as explained by Dr Oni Sahroni:

"The usury referred to here is the usury required in the contract. So if the concentration of the pawn land is mentioned during the contract, or exists in writing when the contract takes place, this is what is called usury in this hadith" (Sahroni, 2022).

What is mentioned in the hadith and also what has been explained by Dr Oni Sahroni, it is like what happened in the field. The profit obtained from this contract is the profit that has actually been written in the black on white letter of agreement. Such circumstances constitute the agreement of both parties to the terms. In fact, the author several times encountered people who were looking for who wanted to mortgage his land, with the aim that he could use the land of people who needed loans. Furthermore, Dr. Oni Sahroni also explained that the mutual blessings claimed in the pawn contract that occurred to the people of Southeast Aceh could not be used as a justification for what they did. Because what must be seen first is the contract. Whether it has been in accordance with shari'a or not. As he put it,:

"mutual blessings are not the main thing in this pawn contract. It must be considered again. How does it fit into shari'a. If it is in accordance with the provisions of Shari'a, then we can see the next foundation of *muamalah*, namely *ridho*"

So the researcher began to draw the conclusion in this regard that the mutual willingness of both parties as the basis for the contract they carried out, was not at all in accordance with the MUI Fatwa. Because since the beginning the contract has been inconsistent with Shari'a.

Furthermore, Dr. Oni Sahroni explained the solution that can be used to keep this contract valid, namely by not mentioning the use of the land in the letter of agreement, as he said:

"The solution that can be done (so that this contract becomes a valid contract) is not to mention the agreement or conditions for the use of the land when the contract, or it can also be by adding a lease agreement, or a profit-sharing contract".

This kind of pawning practice has long been practiced by the people of Southeast Aceh. Almost every generation that has grown up there is a practice like this. It is as if this contract is already like the custom of the people of Southeast Aceh. In Islam this custom or custom is called 'urf. Although there are scholars who distinguish 'urf from customary customs (Zahro, 2011), yet here the author equates it looking at the thinness of the difference between the two. In terms, Abdul Wahab Khallaf defines 'urf as:

" Something that is known and carried out by man and made into something ordinary, whether it is a word or a deed"

'urf is one of the sources that can be used as a source of islamic law, although it is still disputed by scholars. There are scholars who allow it, some who do not include it in the source of the law. But to make it a source of law, of course, this 'urf has certain conditions. Here are the conditions: a. Valid forever, b. The urf' applies generally to the majority of the people, and c. Does not contradict the nash (Abdul Wahab Khallaf, 1972).

These three conditions must be met in order for the 'urf to be used as a source of law. 'Urf itself is actually divided in half when viewed from its validity. Namely Urf Shahih or 'urf who meets the above conditions, that is, the customs prevailing in the midst of society, which do not conflict with nash (verses or hadith) and do not bring mudharat to the community nor deprive the existing benefits. Then the second is 'urf fasid, i.e. 'Urf as opposed to nash, so that 'Urf like this cannot be made hujjah (Rosyadi, 2005).

After the author's analysis, it is actually a contract that is usually done by this society if it is associated with 'urf, especially the first and second pillars, then a contract like this is okay to do. Because basically, this kind of contract has been done for a long time by the community. However, the problem is the incompatibility of this practice with nash. Related nash intended here is a ban on menzhalimi. The author draws such a conclusion, because there is something that is not placed in its place, namely the use of the pledged land where it should be used by the owner,

but what happens is the exploitation of the pawner's property carried out by the mortgagee recipient. Pawnors who need funds from the beginning, with a heavy heart are forced to do pawns like this because there is no other choice. Allah swt has forbade man to commit mischief Allah declares that those who do zhalim will get His anathema as He says in Hud verse 18:

ألا لعنة الله على الظالمين

"remember the anathema of Allah (inflicted) upon those who are zhalim" (RI, 2010)

Furthermore, Allah also conveyed the prohibition of doing zhalim in the hadith qudsi which reads:

قال الله تبارك وتعالى: يا عبادي، إني حرمت الظلم على نفسي،

وجعلته بينكم محرماً فلا تظالموا

"Allah Tabaaraka wa ta'ala said: 'O my servant, verily I am forbidden to tyranny over myself, and I am also illegitimate to you, so do not do anything against each other'"

Allah through the orality of the Messenger of Allah expressly forbids man to do zhalim. The author sees that the pawn contract that occurs contains an element of indifference, as already explained that the use of pawn land carried out by this murtahin is an exploitation of other people's property. Seeing the mortgager is the org that really needs it. Pawn contracts occur basically because of these needs. Although, when the mortgagee has provided a loan and the recipient has met his needs, it is undeniable that there will actually be a greater difficulty after that, namely the cost of repaying the loan, while the mortgagee no longer has other efforts to find replacement money. This has been conveyed by one of the mortgage parties whom the author interviewed in the field:

"in fact, this lien contract can meet the needs, but on the other hand, when we are not entitled to use the land, I find it a little difficult. Maybe when I as the mortgagee can cultivate the land, more or less the daily livelihood can be fulfilled even though it is not abundant". (Rasinah, 2022)

It was obviously the multiple distresses he had gained. In Islam itself, it has been recommended to help each other by not helping each other by not giving back to you. The Messenger of Allah saw. Said:

المسلم أخو المسلم لا يظلمه ولا يسلمه، ومن كان في حاجة أخيه

كان الله في حاجته....

"A muslim is another muslim brother, he does not dishonour him and does not (also) let him (dishonour/hurt), whoever helps (meets) his brother's needs, then Allah will help (meet) his needs..." (al-Asqalani, tt.)

The hadith above explains the position of muslims, namely brothers. He wasn't supposed to be a Muslim brother. Seeing the many nash arguments containing the prohibition of committing *kezhaliman*, the author draws the conclusion that the pawn contract carried out by the people of Southeast Aceh, although it has become 'urf or customary, but cannot be used as a *hujjah*, because it is contrary to *shari'a*.

A lien is an agreement that occurs due to debt. This lien occurs as a form of guarantee against the debt that occurs. Society when interviewed by the author, states that their reason for performing the lien is to meet their needs. Likewise with the pawn recipients, when interviewed by the author, they said that the reason for receiving the lien was to help the mortgager in need. There are also those who reason because he is also in need. By being able to benefit, it has indirectly actually helped their economy as well. Then there are benefits for both parties here.

Benefits are obtained in order to realize happiness. Naturally, human beings are always looking for pleasure and avoiding difficulties. Then it is clear that the main purpose of man in this life is to achieve happiness. Among the ways to achieve it is the use of pawns carried out by the community. Bentham in his theory emphasizes that an act will be considered good if it brings happiness and vice versa that an action will be considered bad if it causes unhappiness. So, if we analyze, this pawn actually brings happiness to both parties. Where the mortgagee gets the loan money he needs, while the recipient will also feel lucky with the profit from the land he holds as collateral. In accordance with the basic principles related to utility theory mentioned by Jeremy Bentham among others:

- a. The purpose of the law is to provide guarantees of happiness to individuals or many people, according to the principle of this theory, namely "the greatest happiness of the greatest number" (the greatest happiness for as many people as possible). So here both parties have certainly got the happiness they want, namely with the benefits.

- b. The principle must be applied qualitatively, since the quality of pleasure is always the same. For this passage according to the author is not true, since the standards of faithful happiness of people are different. We can't say that immortality is the same level. Particularly related to property i.e. in this context is money and land. Thus, this principle does not correspond to the reality on the ground.

- c. To realize happiness, the legislation made must achieve four objectives, namely: To provide subsistence, To Provide abundance, To provide security, To attain equity

In this third part, it is stated that happiness must include the four things above. However, according to the author's analysis, even with the existence of a lien contract like this, and benefits here is the second party, namely the recipient of the pledge. As one of the interviewees interviewed about pawns replied:

"Actually, this mortgage agreement can meet the needs, but on the other hand, when we are not entitled to use the land, I find it a little difficult. Maybe when I as a mortgage party can cultivate the land, more or less the daily livelihood can be fulfilled even though it is not abundant" (Rasinah, 2022)

It is obviously the sad look on the face that the author caught when interviewing Rasinah's mother. So the author argues that the first and second parts, which are fulfilling a living, cannot be fulfilled. As for the third part, which is "to provide protection", then here the author agrees on this. The collateral is a guarantee against the certainty of the return of the money lent by the mortgagee to the mortgagee. Moreover, looking at the current reality that there are rampant cases of fraud by running away other people's money. So, with this guarantee, a person will feel that his property can be safely protected from fraud and theft.

So by analyzing the theory of utilitarianism initiated by Jeremy Bentham, it cannot be said that the practice of pawning carried out by the people of Southeast Aceh has given birth to benefits so that the happiness of both parties can be fulfilled. However, although it is undeniable that there is a difference that occurs with a contract like this, the existing happiness is not comprehensive for both parties.

Maslahat is a benefit obtained and is the purpose of *syara'* in the establishment of Islamic law as it is



stated that mashalahah in terms of language is interpreted as benefit. Meanwhile, in terms according to Imam Syatibi mashlahah it is viewed from two sides; in terms of maslahat in the real world and in terms of the demands of the syara'. First, he stated that mashlahah is: Something that returns to the establishment of human life, the perfection of life, and the attainment of all that is desired by the absolute nature of the shahwati and akliya. Meanwhile, from the second point of view, mashlahah is the purpose of establishing a syara law' (Syarifuddin, 2014).

The purpose of establishing the law of shari'a is also called maqashid Shari'ah. Because according to Shari'a, Shari'a was made with the aim of realizing the benefit of man both in the world and in the hereafter. Then it is certain that the benefit must be present in every obligation (taklif) addressed to man. Because a law that has no purpose is taklif maa laa yuthaaq (imposing something on man that he cannot carry out). The benefit referred to here is the benefit or benefit obtained by humans by maintaining the five principles or so-called kulliyat alkhamsah (five points that must be protected) in order to achieve benefit (Sholikhah, 2019), namely by maintaining religion (hifzu ad-din), guarding the soul (hifzu an-nafs), guarding reason (hifzu al-aql), guarding offspring (hifzu an-nasl) and guarding property (hifzu al-mal).

The pawns carried out by the people of Southeast Aceh were based on an urgent need, so they had to mortgage the land to meet their needs. As the author has explained, among the needs they convey are for the cost of child marriage, and the educational needs of children. The pledged land will be fully utilized by the pawn recipient. This is contrary to the fatwa of the DSN MUI Number: 25/DSN-MUI/III/2002 on rahn has stated that:

"Marhun and his benefits remain Rahin's. In principle, Marhun should not be used by Murtahin except with Rahin's permission, without reducing marhun's value and its utilization is merely a substitute for the cost of its maintenance and maintenance."

The use of pawned land that occurs in the community is contrary to the fatwa above. However, they do it because there is an urgent need. What the author is interested in for the analysis here is the problem that will be obtained by both parties.

#### **Pawnshop (rahn)**

As the author has explained in the previous section that among the reasons for the mortgagee to mortgage the land is because of an urgent need. They

need funds for the cost of child marriage and child education.

"I mortgaged the land, because I was in need of money for my son's school fees. My son is eager to continue his schooling, now the funds are not there. That's why we have to mortgage the land so that my son doesn't drop out of school."

"The reason my rice field was mortgaged was for the cost of my son's marriage. If it is sold, in the future, this little property will be used up, while if I mortgage it, maybe when I can't redeem it, my children will be able to make up for it in the future".

Both of the above reasons are common reasons for both parents. Because education is one of the ways taken to preserve offspring and preserve it. With the loan provided by the mortgagee, he was able to continue his education properly. Here the maintenance of children's rights can be fulfilled properly and this is called hifzu an-nasl or the maintenance of offspring which is urgent and enters into primary needs or daruriyat.

Similarly, the second reason, which is for married capital. The author sees that marriage is something that is encouraged to be moved. The Messenger of Allah saw himself has said:

عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ لَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ( يَا مَعْشَرَ الشَّبَابِ ! مَنْ اسْتَطَاعَ مِنْكُمْ الْبَاءَةَ فَلْيَتَزَوَّجْ ، فَإِنَّهُ أَغْضُ لِلْبَصَرِ ، وَأَخْصَنُ لِلْفَرْجِ ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ ؛ فَإِنَّهُ لَهُ وَجَاءٌ ) مُتَّفَقٌ عَلَيْهِ

Abdullah Ibn Mas'ud Radliyallaahu 'anhu said: The Messenger of Allaah 'alaihi wa Sallam said to us: "O younger generation, whoever among you has been able to have a family should he mate, for he can subdue his gaze and maintain the pubic. Whoever is unable should fast, for he can control you." Muttafaq Alaihi.

This advice has been conveyed by the messenger of allah saw. For young men who have been married to encourage marriage. Because getting married is better for them. Even in one condition the law of marriage can change from what was originally a miracle, to mandatory when a person feels that he has been able to marry and can fall into sin if he does not marry. So in this case marriage is an obligation. Because if you don't get married, a person with this

condition can fall into adultery. Surely this adultery is a forbidden act and is a great sin. In fact, it does not even end there, the act of adultery also has an impact on the destruction of the adulterer's keturuna. And this is certainly very contrary to maqashid shari'ah and causes the non-achievement of basic needs, namely daruriyat khamsah or primary needs of the five, one of which is hifzhun nasl (maintaining and preserving offspring).

Furthermore, with the practice of liening that occurs, where the mortgage recipient is entitled to fully utilize the pawn goods, indirectly the pawn recipient exploits the land owned by the mortgagee. In the MUI fatwa, it has been mentioned regarding the use of this pawn land:

"Marhun and his benefits remain Rahin's. In principle, Marhun should not be used by Murtahin except with Rahin's permission, without reducing marhun's value and its utilization is merely a substitute for the cost of its maintenance and maintenance."

By withholding the property, the mortgagee is harmed here. The pawn's property that should have been protected and respected, and that should have been preserved was actually treated unkindly. The use of land is carried out as a forcible taking of other people's property so that it can damage the element of property preservation in daruriyat hifzul mal (preservation of property). The preservation and preservation of the property in question includes the prohibition of stealing, taking or taking the property of others by force, and so on. Allah swt has also said that thieves should be cut off hands, as He says:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

"male thieves and female thieves cut off their hands both in return for them and as a torment from God. And Allah is Most Glorious all-wise"

Although in this verse it is stated that thieves are punished by cutting off hands, it does not mean that the beneficiary of the lien is also enforced as such. Because obviously these two things although they seem to be similar, there are differences between the two. Where the thief takes the goods in the wrong way, whereas the mortgagee has been allowed, although still the right that should belong to the mortgagee, it is precisely the lienee who takes advantage of it. This is how Islam takes great care of and respects treasures

(hifzhul mal) and includes them in the main thing to be guarded (dharuriyat).

Analyzing more deeply regarding the effect of the use of pawn land taken over by the mortgagee recipient, the benefits obtained by the mortgagee are essentially not greater than the mudharat obtained by him. Mortgagees who are landowners will be harmed by an agreement like this. Because he basically mortgaged his land because of his inability to fulfill his needs. Even after pawning he will still have difficulty in repaying debts and meeting his needs, so that the mudharat he earns is greater than before. In the fiqhiyah method has been mentioned:

الضرر يزال

"that danger (should) be eliminated"

الضرر لا يزال بالضرر

"danger cannot be eliminated with other danger"

The above two methods of jurisprudence explain that mudharatan should be eliminated and how to eliminate it should not be by bringing in another mudharat, especially with the greater mudharatan (Azzam, 2005). Thus, eliminating mudharatan is with complete benefit or with a mudharat that is lighter than before. Because in essence eliminating mudharat is more important than bringing in maslahat. As mentioned in the jurisprudence method also:

درء المفاسد أولى من جلب المصالح

"avoiding danger is more important than bringing in maslahat"

Whereas in this contract the author finds that the mudharat obtained by the pawner is greater than the maslahat he earns. Thus, the author concludes that mortgagors are better off avoiding this kind of practice because of the amount of mudharatan obtained after making a contract.

#### **Pawn Beneficiary**

The beneficiary of the lien is also actually a person who is entitled to be protected by his property. Because guarding the property (hifzhul mal) is not only on the side of the pawner, but also for the pawn recipient. The receiving party of the pledge is the party who has the right to hold and hold the hock goods. This hock item's purpose is as collateral for the money he gives to the mortgager as a loan. Of course, he must also save his property in this way. So here the maintenance of the property of the beneficiary of the pledge is in accordance with the purpose of shari'a to maintain and maintain the property.

But what the researchers are analyzing here is that as before is the use of the pledged land obtained by the lien beneficiary. Most of the lien beneficiaries that the author encountered in the interview replied that their reason for accepting the lien was that the profit could be used as an additional reassurance with the utilization. As spoken by mr. Saludin:

“with a pawn like this I find it helpful. Because of the reason I did it, in addition to helping our brothers and sisters in need, I also got guidance with the use of the land. That way the family economy is also better (Saludin, 2022).”

“Here we both help each other and of course there are advantages gained. The pawn giver gets a profit with the loan money we provide, with which he can meet his needs while we as the pawning party also benefit from the existence of collateral in the form of land that we can later cultivate and we take advantage of” (Satine, 2022)

However, with this kind of practice, the mortgage recipient indirectly eats other people's property in a vanity way. Allah swt has forbade it in the qur'an as He said:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ  
تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

"O people of faith, do not eat each other's treasures in a vanity way, except by the means of commerce which prevail in a way that prevails in a way of mutual liking (between you)".

Seeing the urgency of the pawn recipients with the reasons they mentioned, the author feels that the reason cannot be categorized as the primary need of the need is only a tertiary need (hajiyat) or it can even be called a secondary need (tahsiniyat). It is clear, then, that what they are doing is not in accordance with the purpose for which the shari'a is derived, namely the existence of maslahah. Seeing the existence of maslahah and mudharat that occur here, it can be said that this contract is contrary to the fatwa of the DSN MUI even if it is analyzed in terms of 'urf or custom and also in terms of maslahah.

#### 4. CONCLUSION

Based on all the descriptions that have been discussed above, the author will present several conclusions. First, the pawning practice that occurs in the people of Southeast Aceh is a practice that is carried out with a mechanism in the form of a contract

written in black on white, in order to avoid lysis that may occur in the future. In addition, the lien beneficiary is fully entitled to the use of the pledged land. He has the right to cultivate, plant it, and take full advantage of the results of such utilization. Of course, this kind of practice when viewed from the DSN-MUI fatwa Number: 25 / DSN MUI / III / 2002 concerning rahn is very inappropriate, this is because in the Fatwa DSN MUI it has been explained that the recipient of the pawn must not take advantage of the pawned goods. Even if it can be used, then the utilization of the pawned goods must be with the permission of the mortgagee and can only take the costs for the maintenance and maintenance of the goods.

Second, the use of pawn land as carried out by the People of Southeast Aceh although it is allowed because of the benefits obtained, but the contract is also inseparable from mudharat, and the mudharat obtained is greater, so it is not in accordance with the purpose of passing down shari'a, namely to realize benefits.

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