Amwaluna: Jurnal Ekonomi dan Keuangan Syariah Vol.6 No.1 January 2022 Page 143-159
Online ISSN : 2540-8402 | Print ISSN : 2540-8399

# THE ANALYSIS OF HIBRYD CONTRACT VALIDITY IN THE FATWA OF THE NATIONAL SHARIA BOARD OF INDONESIAN ULEMA COUNCIL CONCERNING RAHN

**Titin Suprihatin**

Doctoral Student of Islamic Law Postgraduate Program Universitas Islam Negeri Sunan Gunung Djati Bandung Cimencrang Street, Panyileukan, Bandung

titinsuprihatin62@gmail.com

**Abstract**

The DSN-MUI fatwa product concerning rahn is hibryd contract domain. In the study of fiqh muamalah mâliyyah, the use of hibryd contract has issued pros and cons due to the hadith regarding the prevention of hibryd contract transactions. This study aims to determine the construction of rahn contract in the fatwa of DSN-MUI and the hibryd contract validity in the DSN-MUI fatwa concerning rahn. This research is qualitative research with a normative juridical approach and using literature study as its data collection technique. The results indicate that the hibryd contract provisions in the DSN-MUI fatwa concerning rahn did not prohibit hibryd contract standards and limits. This is due to the provisions of mu'nah based on the ijârah contract there is no ta'aluq (relationship) between the cost of maintaining the marhûn and the nominal of loan (qardh). Therefore, the concept of hibryd contract contained in the DSN-MUI fatwa concerning rahn does not issue gharar and *ribâ*. The implication of this research in the fiqh economic sharia framework is the development of methodology and innovation of sharia pawn products based on hibryd contract so that there is a necessity for standardization of fatwas that regulate hibryd contract in Islamic financial transactions.

**Keywords: Rahn; Hibryd Contract; The Fatwa of DSN-MUI**

## I. Introduction

The development of Islamic financial institutions in Indonesia which is a benchmark of the progress of the Islamic economy in Indonesia, include sharia pawnshop institution. The development of sharia pawnshops is a representation of the issuance of Government Regulation No. 10 issued on April 1, 1990, which can be stated as an early milestone in the revival of Pegadaian, one thing that needs to be observed is that Government Regulation No. 10/1990 confirms the mission that must be carried out by Pegadaian to prevent the

Received: 2021-12-19| Reviced: 2021-12-27| Accepted: 2021-12-30
Indexed : Sinta, DOAJ, Garuda, Crossref, Google Scholar | DOI: https://doi.org/10.29313/amwaluna.v6i1.8944

practice of riba. This mission did not change until the issuance of Government Regulation Number 103 of 2000 which was used as the basis for Pegadaian's business activities until now (Nazil Fahmi 2020).

In increasing the development of sharia finance, including sharia pawn (rahn) fatwas have an important role in responding to the needs of sharia economic products. The existence of a fatwa to dynamize Islamic law in responding to emerging problems, including modern economic problems, in accordance with the dimensions of space and time that surrounds it (Moh Arifkan 2021).

Fatwa in principle includes in the domain of legal norms; while the implementation of fatwas in Islamic Financial Institutions (IFI) principally is an effort to realize sharia norms in real life which includes the domain of law implementation (no longer the domain of legal norms) (Hasanudin 2013). The practice of Islamic financial institutions in Indonesia was initially based on a fatwa issued by DSN-MUI. Fatwa as previously stated is one of the institutions in Islamic law to provide answers and solutions to problems faced by ummat. Even Muslims in general use fatwas as a reference in attitude and behavior (Neni Sri Imaniyati and Panji Adam 2017).

Fatwas are essentially a product of ijtihad from individual ulema or mufti or ulama institutions that are authorized to issue fatwas on legal and religious issues. Therefore, fatwas are legal products such as fiqh (Islamic law). Meanwhile, fiqh as knowledge is a product of the fuqaha or mujtahids who necessitate the existence of a process (method and theory) to get the product. Among the results of contemporary ijtihad is the theory of al 'uqud al murakkabah which is often translated with the term hibryd contract or in English hybrid contract used in Islamic Financial Institutions products, including rahn (Abbas Arfan 2017).

The regulation regarding the rahn contract in the Fatwa (DSN-MUI) is regulated in fatwa No. 25/DSN-MUI/III/2002 regarding Rahn. Substantially, this fatwa is a hibryd contract domain, because it is related to the maintenance of marhun (pawned goods). In the general provisions of the fatwa, two things are explained related to the maintenance of marhun, namely: (1) The maintenance and storage of Marhun is basically Rahin's obligation, but it can also be carried out by Murtahin, while the cost and maintenance of storage remains Rahin's obligation; and (2) Marhun's maintenance

and storage costs may not be determined based on the loan amount.

The fatwa is not explaining about the contract which is used in the maintenance of marhun, but in fatwa Number 26/DSN-MUI/III/2002 concerning Rahn of gold, it is explained about contract which is used in the process of maintaining marhun, in the fatwa it is stated that the cost of storing goods (marhun) is carried out based on the ijarah agreement.

Thus, it can be stated that basically the maintenance of marhun is an obligation of the rahin, but if the obligation is delegated to another party (including the murtahin), the person concerned is entitled to an ujrah (fee).

The combination of contract or the combination of multiple/hyibryd contract is still being disputed, this is in accordance with some opinions which view the combination of contract as a classic trick to avoid formal forms of riba. In Sharia pawn, the existence of an ijarah contract in the form of a rahn contract not only issue the possibility that will contradict with the rule of contract, but also issue the commercialization of social contract (Moh Arifkan 2021).

This is because the status of the rahn contract is part of the tabarru, because the rahn contract is a taba'iyyah form of the qardh contract. Before the rahn contract was made, between râhin and murtahin there had been dain, either because of the qardh (râhin as *madîn*/muqridh [the party who has debt] and murtahin as dâ'in/muqtaridh [the party who has the credit] or because of the sale and purchase contract that the price is paid in cash (mu'ajjal). An rahn contract is called an taba'iyyah contract because its existence depends on an mudāyanah contract. There is no rahn contract if there are no debts (dain) between râhin/madîn and murtahin/dâ'in (Mubarok, 2020). therefore, a merger between the rahn contract as tabarru contract with the Ijarah contract as mu'âwadhât contract can lead to riba (Maulana 2016).

Shari'ah pawning products run by shari'ah pawnshops are also not a single contract, but are a combination of two contract in one transaction, namely rahn contract (pawning) and an ijârah contract (rent), so it can categorize as the innovation of hybrid contract or hybrid contract. On the other hand, this innovation is a breakthrough to advance sharia pawnshops, but on the other hand, this application has drawn controversy. Many Moslems forbid this sharia pawn product (Ahmad Syakur 2016).

This indicates that the rahn contains several contract, namely the Qard (debt) and Ijāroh (rent for storage of marhūn). In response to the transaction innovation, there are some scholars who consider the concept

of hibryd contract to be contrary to sharia, because there are texts that prohibit the merging of several contract in one transaction (Ahmad Iqbal Fathoni 2018).

Discussions and debates about the validity of this hibryd contract theory are still being discussed. This is because there are a number of hadiths of the Prophet Muhammad, at least there are three hadiths which textually indicate the prohibition of the use of hibryd contract. For example, the hadith about the prohibition to do bai' (buying and selling) and salaf (debt), the prohibition of bai'ataini fi bai'atin, and shafqataini fi shafqatin (Burhanuddin Susamto 2016). With these hadiths, it is very natural that questions arise, namely: whether Islamic financial products including rahn (Islamic pawning) that use hibryd contract can be seen as fulfilling sharia principles or vice versa.

The hibryd contract provisions in the DSN-MUI fatwa regarding rahn need to be analyzed on their validity. Seeing that there are several hadiths related to the prohibition/prevention of doing hibryd contract, especially combining debt contract with buying and selling contract.

This study uses a qualitative research method with a normative juridical approach, in which the researcher examines theories, concepts, or legal principles related to Rahn contract. The primary data source used in this research is the DSN-MUI fatwa No. 25/DSN-MUI/III/2002 concerning Rahn, fatwa No. 26/DSN-MUI/III/2002 concerning Rahn of Gold and in the DSN-MUI Fatwa No. 92/DSN-MUI/IV/2014 concerning Financing Accompanied by Rahn. The secondary sources in this research are fiqh, hadith, and syarh hadith books as well as scientific articles in the form of journals, reference books that have relevance and correlation with this research. This research is using library research or literature study as its data collection technique. After the necessary data has been collected, the next step is to process and analyze the data and indicate a legal conclusion regarding the validity of hibryd contract in the DSN-MUI fatwa concerning Rahn.

The urgency of this research is expected to contribute ideas in terms of product development and innovation in Islamic financial institutions, especially sharia pawn products and provide legal certainty regarding the validity of sharia pawn products based on hibryd contract.

## II. Discussion

### A. Construction of the Rahn Contract in the Fatwa of the The National Sharia Board of Indonesian Ulema Council (DSN-MUI)

In Islamic law (read: fiqh) the concept of pawn is referred to as rahn. The word al-Rahn comes from the Arabic "رهن-يرهن- رهنا" which means to establish something (Louis Maluf 1986). Etymologically rahn is al-tsubût wa al-dawâm which means "permanent" and "eternal" (Adam 2017). According to Taqiy al-Din Abu Bakr al-Husaini, al-rahn is al-tsubût which is something that is fixed and *al-ihtibas* is holding back something (Taqiyuddin Abu Bakr al-Husaini 1994).

Wahbah al-Zuhaili in the book al-Fiqh al-Islâmî wa Adillatuh describes the etymological meaning of rahn which has 4 (four) meanings: (1) al-tsubût, indicates that the object used as collateral (marhûn) which is a valuable object whose value tends to be constant (its value does not decrease with increasing time); (2) al-dawâm, indicates that in rahn there are components (rukun) in the form of marhûn which must be eternal, in the sense that they are not used up once; (3) *al-habs*, refers to the nature of the marhûn that must be controlled and retained by the party who owes the credit; and (4) al-luzûm, indicates that assets that are used as collateral (marhûn) can be distinguished or separated from others when they are in the control of the party who has the credit (Wahbah al-Zuhaili 2012).

There are differences in fiqh experts in formulating the definition of rahn in terms of sharia. The description of the definition of rahn from the fiqh experts is as follows:

Ulema from Hanafiyyah provides a definition of Rahn is terminological sharia as stated by Ibn Nujaim in the book of *al-Bahr al-Râiq Syarh Kanz al-Daqâiq* as follows:

حَبْسُ شَيْءٍ بِحَقٍّ يُمْكِنُ اسْتِيفَاؤُهُ مِنْهُ

"Retaining something that actually allows the payment of the debt of the detained person" (Nujaim nd).

The definition of Rahn in sharia terminology based on the version of Hanafiyyah at least suggests two things; First, in the rahn contract there is a main component, namely marhûn (collateral) on debt. The collateral must have value (mutaqawam) and allow it to be handed over between the râhin and the murtahin to be physically controlled by the murtahin; second, the position of the collateral as a means of paying the debt if the rahin party fails to pay the debt.

Unlike Hanafiyyah, Syafi'iyyah Ulema like Ibn Hajar al-Haitsami in the book of al-Haitsami *Tuhfah al-Muhjtâj Fî Syarh al-Minhâj* provides a definition of Rahn terminology sharia as follows:

جَعْلُ عَيْنِ مَالٍ وَثِيقَةً بِدَيْنٍ يُسْتَوْفَى مِنْهَا عِنْدَ تَعَذُّرِ وَفَائِهِ.

"Making objects as collateral for debts (which in part) will be used as a means of paying the debt if the debtor fails to pay his obligations" (Al-Haitsami 1983).

Substantially actually there is no difference between the definition of rahn contract between Hanafiyyah and Syafi'iyyah in formulating the Rahn contract, but at least there are three (3) things that distinguishes between the two definitions, namely:

1. Syafi'iyyah does not use the word *bi haqq* [in] which means actually/essentially in the mastery of marhûn by the murtahin. Therefore, the definition according to the Syafi'iyyah scholars is more open, in the sense that there is an opportunity to control the collateral (marhûn) legally (not physically), as now developing and applying collateral known as fiduciary guarantees (al-rahn al- tasjilî). In the concept of a fiduciary guarantee, the object that is used as collateral remains in the control of the râhin, but the proof of ownership is controlled by the murtahin.
2. Syafi'iyyah explains explicitly about the conditions, in which all or part of the collateral (marhûn) will become a means of paying the debt, namely the condition when the râhin (the debtor) fails to pay his debt.
3. It implicitly indicates that marhûn (collateral), either in part or in full, can be used as a means of paying for debts that have failed to pay (Hasanudin 2017).

While the definition of Rahn based on Hanabilah as stated by Ibn Qudaamah in Kitab al-Mughnî as follows:

الْمَالُ الَّذِي يُجْعَلُ وَثِيقَةً بِالدَّيْنِ لِيُسْتَوْفَى مِنْ ا ثَمَنِهِ إِنْ تَعَذَّرَ اسْتِيفَاؤُهُ مِمَّنْ هُوَ عَلَيْهِ

"Wealth that is used as collateral for debts (and) so that the assets or assets of the property can be used to pay debts that have failed to be repaid which are the obligations of the debtor" (Ibn Qudamah 1968).

The definition proposed by Hanabilah has a new dimension, namely al-tsaman (price). Marhûn or collateral are not used as direct payment instruments for debts that have failed to be repaid, but the collateral must be sold first and the proceeds from the sale

(tsaman) are used to pay off debts that have failed to be paid or repaid (Hasanudin 2017).

The definition of rahn according to the Maliki as stated by Wahbah al-Zuhaili is as follows:

بأنه شيء متموَّل يؤخذ من مالكه، توثقاً به، في دين لازم

"Making valuable objects taken from their owners as collateral for debts that must be repaid" (Wahbah al-Zuhaili 2012).

The new nuance in the definition according to Malikiyyah compared to the previous definition, lies in the word debt that must be paid (dain lâzim), namely the debt cannot be paid off, unless it is paid (in full) or released by the creditor (al-ibra'). which is part of the grant contract, namely credit grants.

The definition of rahn according to the DSN-MUI fatwa Number 25 of 2002 concerning Rahn is holding goods as collateral for debts. Meanwhile, Article 20 paragraph 14 of the Compilation of Sharia Economic Law (KHES) defines: "Rahn/pawn is the possession of the borrower's property by the lender as collateral".

From a sharia perspective, contract rahn in Islamic Financial Institutions (IFI) have received the legitimacy of the fatwa of DSN-MUI. The fatwas related to the implementation of rahn transactions in Islamic Financial Institutions are as follows:

1. DSN-MUI Fatwa No. 25/DSN-MUI/III/2002 concerning Rahn;
2. DSN-MUI Fatwa No. 26/DSN-MUI/III/2002 concerning Rahn Emas;
3. DSN-MUI Fatwa No. 19/DSN-MUI/IV/2001 concerning Qardh;
4. DSN-MUI Fatwa No. 9/DSN-MUI/IV/2000 concerning Ijarah Financing;
5. DSN-MUI Fatwa No. 68/DSN-MUI/III/2008 concerning Rahn Tasjily;
6. DSN-MUI Fatwa No. 79/DSN-MUI/III/2011 concerning Qardh by Using Customer Funds: and
7. DSN-MUI Fatwa No. 92/DSN-MUI/IV/2014 concerning Financing Accompanied by Rahn.

In the Fatwa of DSN-MUI No. 92/DSN-MUI/IV/2014 concerning Financing Accompanied by Rahn, it is stated that the rahn contract is permitted only for debts (dain) which, among other things, arise due to qardh contract, buying and selling (bai') which are not paid in cash; or a rental contract (ijarah) in which the payment of ujrah is not cash.

By paying attention to the contract that issues the debts, it can be seen that if

rahn is a guarantee for qardh debts, it can be ascertained that the debts are in the form of money (al-nuqûd). Meanwhile, if the contract which is issuing the debts is a sale-purchase contract or ijarah, the debts may be in the form of money or goods ('urûdh).

Therefore, there are three relationships of marhun (collateral goods), including marhun on debt (qardh), marhun on debt (sales and purchase contract), and marhun on debt (ijarah/rent contract). However, in the DSN-MUI fatwa and Bank Indonesia regulations regarding pawning (especially gold pawning), only one door is opened for partners, namely marhûn for debts due to qardh contract. Therefore, a legal issue was born for Islamic Financial Institutions who received compensation for the financing in the form of the qardh contract.

In the fatwa of DSN-MUI it is clear that the marhûn belongs to râhin, but is in the control of the murtahin. Therefore, every addition to marhûn is a right of râhin. Therefore, its maintenance becomes the râhin's obligation. If the obligation is delegated to another party (including the murtahin), then the person concerned is entitled to an ujrah /fee.

The provisions regarding ujrah in the rahn contract are costs incurred related to the maintenance of marhun. In terms of fiqh muamalah mâliyyah is called al-mu'nah ('Ala al-Din Za'tari 2010).

Wahbah al-Zuhaili in the book *al-Mu'âmalât al-Mâliyyah al-Mu'âshirah* explains that the costs (mu'nah) that issued are related to the maintenance of marhun, among others as follows (Wahbah al-Zuhaili 2002).

1. Ujrah for grazing (ujrah al-râ'iy)
   This happens if the marhun is an animal that requires maintenance services, including providing food, drink, bathing it, and giving it medicine when sick. If in the area there is a field overgrown with grass, the animal is released in the field and must be guarded so that it does not disappear.
2. Ujrah on guard (*ujrah al-hifdz*)
   Goods that are used as collateral must be protected from damage and loss. Care is the obligation of the owner and the person concerned must pay wages to the party who looks after his property. Among the activities included in the domain of security (al- hifdz) are being kept in a safe place (from theft) and having officers (security) who ensure its security.
3. Ujrah for the benefit of marhûn (*ujrah 'alâ al-qiyâm bi mashâlih*)

   In The Fatwa of DSN-MUI Number 92 of 2014 there are provisions

regarding sources of income for murtahin, namely:

1. If rahn (dain/marhûn bih) occurs because of a sale-purchase contract (al-bai') whose payment is not cash, then the murtahin's income only comes from the profit (al-ribh) of buying and selling.
2. If rahn (dain/marhûn bih) occurs because of a rental (ijarah) in which the ujrah payment is not cash, then the murtahin's income only comes from the ujrah .
3. If rahn (dain/marhûn bih) occurs because of a loan of money (qardh contract), the murtahin's income only comes from mu'nah (maintenance/maintenance services) on marhûn whose amount must be determined at the time of the contract, as ujrah in the ijarah contract.
4. If Rahn performed on a mandate contract, revenue/income murtahin (*syarîk/shâhib al-mâl*) only from the results of the efforts undertaken by the trustee (syarîk- manager/Mudharib) (Hasanuddin 2017).

There are 2 (two) important things related to the maintenance of marhun) in the fatwa of DSN-MUI, first, the cost of storing goods (marhun) is carried out based on an ijarah contract; secondly, the amount of maintenance and storage costs must not be determined based on the loan amount.

**B. The Validity of Hibryd contract in the Fatwa of DSN MUI concerning Rahn**

Discussions related to hibryd contract cannot be separated from the sharia prohibition regarding combining two transactions in one transaction or two buying and selling in one sale and the prohibition of combining buying and selling contract with qardh (debt) contract.

As explained in the previous discussion that sharia pawnshop transactions in the provisions of the fatwa of DSN-MUI apply legal provisions regarding mu'nah/maintenance costs of pawned goods. In the fatwa it is explained that the storage fee is based on the ijarah contract.

With the *mura'at al-'illal wa al-mashâlih* approach, ulema explain the traditions related to hibryd contract/al-'uqûd al-murakkabah as follows:

1. Hadith narrated by Imam Ahmad, al-Bazzar, and al-Thabrani from Simak, from Abd al-Rahman Ibn Abdullah Ibn Mas'ud, from his father as follows:

حَدَّثَنَا حَسَنٌ، وَأَبُو النَّضْرِ، وأَسْوَدُ بْنُ عَامِرٍ، قَالُوا: حَدَّثَنَا شَرِيكٌ، عَنْ سِمَاكٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللهِ بْنِ مَسْعُودٍ،، عَنْ أَبِيهِ، قَالَ:

" نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ صَفْقَتَيْنِ فِي صَفْقَةٍ وَاحِدَةٍ " (رواه احمد)

Have told us Hasan and Abu Nadlr and Aswad bin Amir they said; Has told us the Syarik of the Listen from Abdurrahman bin Abdullah bin Mas'ud radliallahu 'anhuma from his father said; The Prophet sallallaahu 'alaihi wasallam forbade two transactions in one contract. Aswad said; Syarik said; Simak said; A man sells merchandise while saying; He is with so and so credit and so and so in cash (Ahmad Ibn Hanbal 2001).

In the book of *Musnad al-Imâm Ahmad Ibn Hanbal* which was *Tahqîq* by Shu'aib al-Arnauth etc., it is explained about the degree of this hadith that in this hadith there is a narrator named Shuaik, he is Ibn Abdullah al-Nakha'i who judged by ulema as dha'if (weak). Shaykh Albani, in the book *Irwâ al-Ghalîl fî Takhrîj Ahâdits Manâr al-Sabîl* explains that in this hadith there is the name of a narrator named Shuraik, he is Ibn Abdullah al-Qadhi, he is a narrator who is bad at memorizing. In line with Albani's opinion, Abu Fadhl, explains in the book Nuzhat al-Albâb Fî Qaul al-Tirmidzî that the narrator named Shuraik is a narrator who is poorly memorized (Adam et al. 2020).

As explained above that this hadith was narrated by Imam Ahmad, this hadith was also narrated by al-Bazzar and al-Syashi, both of whom had a narrator named Shuraik. However, in this hadith there are several shawahid hadiths narrated by Abd al-Razaq as follows:

أَخْبَرَنَا عَبْدُ الرَّزَّاقِ قَالَ: عَنِ الثَّوْرِيِّ، عَنْ جَابِرٍ، عَنِ الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، فِي رَجُلٍ قَالَ: أَبِيعُكَ هَذَا الْبَزَّ بِكَذَا، وَكَذَا دِينَارًا، تُعْطِينِي الدِّينَارَ مِنْ عَشَرَةَ دَرَاهِمَ، قَالَ مَسْرُوقٌ: قَالَ عَبْدُ اللَّهِ: «لَا تَحِلُّ الصَّفْقَتَانِ فِي الصَّفْقَةِ» (رواه عبد الرزاق)

"Has reported to us Abd al-Razaq, he said, from al-Tsauri, from Jabir, from al-Sya'bi from Masruq, about someone saying: "I will sell you this cloth for a few dinars on condition that you give it to me." dinar of 10 dirhams. Masruq said, Abdullah said: "It is not permissible for two transactions in one transaction" (Abd al-Razaq 1403)

The meaning of this hadith according to the jurists is that a certain party offers a mabî' to another party with two tsaman; cash tsaman and tough tsaman. Parties who agree to enter into a bai' contract without agreeing on the chosen tsaman; cash tsaman or tough tsaman. The bai' contract law is null and void in the view of the majority of ulema (al-Syaukani 1993).

Similarly, according to Nazih Hammad, the ban is due to two times the bai' contract with tsaman unclear (tsaman

majhûl/tsaman ghair ma'lûm) which means that the contract included gharar. Law bai' gharar is canceled by the majority of ulema and *fâsid* by the majority of Hanafiyyah ulema (Hammad 2005).

Umar Muhammad Sayyid 'Abd al-Aziz in the book *Ahkâm al-Mu'âmalât baina al-Ta'abbud wa Ma'qûliyyah al-Ma'nâ*, told the opinion of fukaha concerning the purpose of the two transactions in one transaction as follows: first, the hadith related to the prohibition of carrying out two transactions in one transaction is a prohibition that has a legal illat or cause (legis ratio); second, 'illat law prohibits in the hadith because it includes transactions that contain elements of gharar, namely the existence of uncertainty regarding the price (*jahâlat al-tsaman*) and unclear goods that are used as objects (*jahâlat al-mabî'*) (Umar Muhammad Sayyid ' Abd al-Aziz 2010).

Furthermore, Abdullah Ibn Muhammad al-'Imrani in his book al-'Uqûd al-Mâliyah al-Murakkabah stated that the prohibition of two transactions in one transaction because of the 'illat law, namely: first, the 'illat law prevention in the hadith is gharar, namely the existence of uncertainty on the price (*jahâlat al-tsaman*); and second, ta'lîq al-'uqûd ; because two transactions in one transaction are considered as *mu'allaq bi al-syarth*, while the majority of fiqh experts view that buying and selling contract cannot be done mu'allaq (Abdullah Ibn Muhammad Abdullah al-'Imrani 2006).

2. Hadith narrated by Abu Dawud, Tirmidhi, Nasa'i, Ibn Majah, Ahmad, al-Shafi'i and Malik as follows:

   حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا إِسْمَاعِيلُ، عَنْ أَيُّوبَ، حَدَّثَنِي عَمْرُو بْنُ شُعَيْبٍ، حَدَّثَنِي أَبِي، عَنْ أَبِيهِ، حَتَّى ذَكَرَ عَبْدَ اللَّهِ بْنَ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لَا يَحِلُّ سَلَفٌ وَبَيْعٌ، وَلَا شَرْطَانِ فِي بَيْعٍ، وَلَا رِبْحُ مَا لَمْ تَضْمَنْ، وَلَا بَيْعُ مَا لَيْسَ عِنْدَكَ» (رواه ابي داود)

   "Has told us Zuhair bin Harb, told us Isma'il from Ayyub, told me 'Amru bin Shu'aib, told me my father from his father until he mentioned Abdullah bin 'Amru he said, "The Messenger of Allah -peace and prayer of Allah be upon him- Wasallam said: "It is not lawful to combine a debt contract with a sale and purchase contract, there are two conditions in one transaction, the advantage of selling something that you have not guaranteed, and selling something that is not yours." (Abu Dawud 2007).

   This hadith was issued by Abu Dawud in his Sunan book Hadith number 3505. According to al-Albani, the level of this hadith is *shahîh*. This hadith is also issued by al-Nasai in the book of Sunan hadith number 4611, and issued also by al-Tirmidhi in the Book of Sunan his

number 1234. Al-Tirmidhi Hadith states that this hadith is hadith hasan shahîh. This hadith was also issued by Imam al-Hakim in the book of al-Mustadrak hadith number 2185. Al-Hakim considered that this hadith had met the requirements of several Moslem imams and the level was shahîh. Ibn Hazm says that this hadith is authentic and he argues with this hadith. So, it can be concluded that the degree of this hadith is shahih (Adam et al. 2020)

Ibn Qayyim as quoted by Nazih Hammad explains that the intention of the hadith is that two parties perform a qardh contract. The two parties enter into an contract of sale and purchase of an item. The merging of the qardh contract with the bai' contract occurs the following conditions: (Hammad 2005)

a. Muqridh in qardh contract is bâ'i in bai' contract. In the qardh contract, the muqridh may not obtain the agreed and/or additional benefits that become a habit ('urf). Ba'i in a bai' contract may benefit (*al-ribh*). In the event that the bâ'i in the bai' contract is muqridh in the qardh contract and the *musytarî* in the bai' contract is the muqtaridh in the qardh contract, it is suspected or reasonably suspected that the muqridh will receive additional from the qardh contract which he concealed in profit (*al-ribh*) in the contract bai'. In this condition, merging qardh contract with bai' contract has the potential to issue riba, shibh al-ribâ, or syubhat ilâ al-ribâ.

b. Ribâ or shibh al-ribâ will not occur in the following two circumstances:
   1) In the event that the bai' contract is muqridh in the qardh contract and musytarî in the bai' contract is muqtaridh in the qardh contract, it is not possible for muqridh to obtain additional from the qardh contract which is hidden in profit (al-ribh) in the bai' contract. In this condition, merging qardh contract with bai' contract does not have the potential to issue riba.
   2) Although the bai' is mentioned earlier than the qardh contract in the hadith of the Prophet Muhammad, which has the potential to issue riba, in the case that the qardh contract is carried out earlier and the bai' contract is carried out after the qardh contract. Thus, there is no potential for riba which is prohibited in the Shari'a, in the event that the bai' contract is

carried out earlier (qardh contract is carried out after the bai' contract).

Al-Syaukani quoted al-Baghawi's opinion regarding the meaning of the hadith "it is not lawful to combine a debt contract with a sale-purchase contract " is someone said: "I sell my goods to you for 1000 on condition that you lend me 100" or vice versa "I lend you money this to you on condition that you sell your goods to me" (al-Syaukani 1993).

The merging of several contract in the fatwa of DSN-MUI related to hibryd contract on the product of Rahn, the author views that the prohibition/prevention has a legal/illat ratio. There are at least 2 legal illat in the prohibition of the hadith, namely the birth of gharar and riba transactions.

The concept of hibryd contract in the DSN-MUI fatwa concerning rahn is closely related to mu'nah or the cost of maintaining the pawned goods (marhûn). As the author mentioned earlier that in the fatwa of DSN-MUI it is stated that the cost of storing goods (marhûn) is carried out based on an ijarah contract and the amount of maintenance and storage costs for marhun should not be determined based on the amount of the loan.

In the event that the rahn contract occurs due to a qardh contract, then the murtahin's income only comes from mu'nah (maintenance/maintenance services) on marhûn whose amount must be determined at the time of the contract, as ujrah in the ijarah contract. This indicates that the hibryd contract in this fatwa does not contain elements of gharar or riba. Because the income earned by the murtahin is not based on a loan (qardh contract) but is based on maintenance. Meanwhile, fiqh experts agree that murtahin are allowed to receive ujrah for the maintenance of marhn ('Aqil 2008).

The concept of hibryd contract is prohibited if the maintenance cost (mu'nah) is associated with the nominal loan, or is called ta'aluq. Because this is included in the prohibition of the Prophet SAW. regarding the prohibition of combining a debt contract with a sale-purchase contract, including an ijarah contract, because this will lead to the law of riba.

Nazih Hammad made standards/restrictions regarding hibryd contract, namely: first, hibryd contract must merge contract that are not prohibited by sharia; second, hibryd contract must avoid gharar; third, hibryd contract must avoid riba; and fourth, hibryd contract must avoid canceling

each other and contradicting each other (Hammad 2005).

Contemporary fiqh ulema agree on the legal permissibility of hibryd contract for two reasons, namely as follows: First, classical fiqh experts agree on the permissibility of merging more than one contract in muamalah transactions as long as there is no shari'a argument forbidding it, and there is no khilâf (difference of opinion) among the ulema in this regard. When in a muamalah transaction a single contract is allowed, it is also permissible to combine several contract; Second, in sharia law, there is the principle of freedom of contract (huriyyah al-ta'âqud) and the obligation to fulfill the contract or agreement that has been agreed upon based on the principle of consensualism as long as there are no religious texts or qiyâs (analogy) arguments forbidding it. This is in accordance with the fiqh rule which reads. “In principle every contract and its legal requirements are valid and permissible, unless there is a proposition that forbids it" (Mardhi Masyuh al-'Inzi 2015).

In principle, the legal basis of syara' is that it is permissible to combine more than one contract in a muamalah transaction, as long as each contract that combines them when carried out separately is legally permissible and there is no argument forbidding it. However, when a prohibition is found, the argument is not applied in general, but is an exception law in cases that are forbidden according to that argument (Adam 2021).

The author views that the ijarah contract in the rahn product is a complementary contract, so it has nothing to do with the rahn contract that was born as a result of the debt-receivable contract (qardh contract). Moreover, in the fatwa it is emphasized that the cost of storing marhûn should not be determined based on the amount of the loan. Therefore, the hibryd contract concept contained in the fatwa of DSN-MUI regarding rahn does not result in the law of gharar or riba so that the hibryd contract does not violate the hibryd contract rules and limitations formulated by the ulema as informed by Nazih Hammad above.

This research can at least contribute to the development of the ijtihad method in determining fatwas, especially in the field of Islamic economic law, so that the products of Islamic financial institutions can be in accordance with social realities and the times.

## III. Conclusion

Based on the description and analysis, the author draws the following conclusions: first, the practice of sharia pawning (rahn) has received the legitimacy of the fatwa of DSN-MUI, namely the DSN-MUI fatwa No. 25 of 2002 concerning Rahn and several other fatwas related to the practice of Rahn. Second, the concept of mu'nah based on the principles of Ijarah the DSN-MUI fatwa about Rahn does not include the category of riba, it is based on the hibryd contract in fatwa does not violate any standards/limits set by the ulema, as well as the concept mu'nah on the fatwa of DSN-MUI as a takmilah (complementary) contract. Moreover, in the fatwa there is a fairly strict provision that the cost of storing marhûn should not be determined based on the amount of the loan, meaning that hibryd contract are prohibited in the event of ta'aluq between debts (qardh) and mu'nah fees, because this has implications for attractive loans. benefits so that it becomes riba.

This research only focuses on sharia pawn products that use the concept of hibryd contract, so it is necessary to do further research, especially regarding sharia pawning from other aspects related to the development of sharia pawn products in Indonesia.

## Bibliography


Ala al-Din Za'tari. 2010. *Fiqh Al-Mu'âmalât Al-Mâliyyah Al-Muqâran: Shiyâghah Jadîdah Wa Amtsalah Mu'âshirah*. Damaskus: Dâr al-'Ashamâ.

'Aqil, Taufiq Ibrahim Musa Abu. 2008. "Ahkâm Al-Rahn Fî Al-Syarî'ah Al-Islâmiyyah Baina Al-Nadzhariyyah Wa Al-Tathbîq." al-Khalil Palestina.

Abbas Arfan. 2017. "Tipologi Multiakad Dalam Produk Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia Perspektif Teori Dan Batasan Multiakad Al 'Imrani." *Ulul Albab* 18(2).

Abd al-Razaq. 1403. *Al-Mushannaf*. Beirut: Maktabah al-Islami.

Abdullah Ibn Muhammad Abdullah al-'Imrani. 2006. *Al-'Uqûd Al-Mâliyyah Al-Murakkabah: Dirâsah Fiqhiyyah Ta'Shiliyyah Wa Tathbîqiyyah*. KSA: Dar Kunuz Isybilya.

Abu Dawud. 2007. *Sunan Abî Dâwud*. Beirut: Dâr al-Fikr.

Adam, Panji. 2017. *Fikih Muamalah Maliyah: Konsep, Regulasi Dan Implementasi*. Bandung: Refika Aditama.

Adam, Panji. 2021. *Fikih Muamalah Kontemporer: Perkembangan Akad-Akad Dalam Hukum Ekonomi Syariah*. Malang: Inteligensia Media.

Adam, Panji, Redi Hadiyanto, Alma Hanifa, and Candra Yulia. 2020. "Kritik Dan Syarah Hadis Hibryd contract Serta Relevansinya Terhadap Pengembangan Produk Lembaga Keuangan Syariah Dalam Fatwa DSN-MUI." 6: 104–20.

Ahmad Ibn Hanbal. 2001. *Musnad Al-Imâm Ahmad Ibn Hanbal*. Beirut: Muasasah al-Risâlah.

Ahmad Iqbal Fathoni. 2018. "Hybrid Contract Pada Lembaga Keuangan Syariah Perspektif Maqāsidus Syāriah." *Jurnal Wasathiyah* 2(1).

Ahmad Syakur. 2016. "Hybrid Contract Dalam Produk Rahn Di Pegadaian Syari'ah." *KARSA: Jurnal Sosial dan Budaya Keislaman* 22(2).

Al-Haitsami, Ibn Hajar. 1983. *Tuhfah Al-Muhjtâj Fî Syarh Al-Minhâj*. Mesir: Maktabah al-Tijâriyyah al-Kubrâ.

al-Syaukani. 1993. *Nail Al-Authâr Syarh Muntaqa Al-Akhbâr*. Kairo: Dâr al-Hadîts.

Burhanuddin Susamto. 2016. "Tingkat Penggunaan Hibryd contract Dalam Fatwa Dewan Syari'ah Nasional–Majelis Ulama Indonesia (DSN-MUI)." *Al-Ihkam* 11(1).

Hammad, Nazih. 2005. *Al-'Uqûd Al-Murakkabah Fî Al-Fiqh Al-Islâmî*. Damaskus: Dâr al-Qalam.

Hasanudin, Jaih Mubarok dan. 2013. "Dinamika Fatwa Produk Keuangan Syaria." *Ijtihad, Jurnal Wacana Hukum Islam dan Kemanusiaan* 13(1).

Hasanudin, Jaih Mubarok. 2017. *Fikih Mu'amalah Maliyyah; Akad Tabarru'*. Bandung: Simbiosa.

Ibn Qudamah. 1968. *Al-Mughnî*. Kairo: Maktabah al-Qahirah.

Louis Maluf. 1986. *Al-Munjid Lughah Wa Al-A'lâm*. Beirut: Dar al-Masyark.

Mardhi Masyuh al-'Inzi. 2015. *Fiqh Al-Handasah Al-Mâliyyah Al-Islâmiyyah: Dirâsah Ta'shîliyyah Tahtbîqiyyah*. Riyadh: Dar Kunuz Isybilya.

Maulana, Hasanudin. 2016. "Multiakad Dalam Transaksi Syariah Kontemporer Pada Lembaga Keuangan Syariah Di Indonesia." *Al-Iqtishad: Journal of Islamic Economics* 3(1).

Moh Arifkan. 2021. "Penerapan Hibryd contract Dalam Kontrak Gadai Di Pegadaian Syariah Sampang Madura." *Fintech: Journal of Islamic Finance* 1(2).

Mubarok, Hasanudin dan Jaih. 2020. *Teori AKad Mu'amalah Maliyyah*. Bandung: Simbiosa.

Nazil Fahmi, Dkk. 2020. "Implementasi Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI) Nomor: 92/DSN-MUI/IV/2014 Terhadap Pembiayaan Pada Produk Rahn (Studi Pada Pegadaian Syariah

Cabang Palu Plasa).” *Tadayun: Jurnal Hukum Ekonomi Syariah* 1(1).

Neni Sri Imaniyati dan Panji Adam. 2017. “The Fatwa Position of DSN-MUI in The National Banking System.” *Mimbar* 33(1).

Nujaim, Ibn. *Al-Bahr Al-Râiq Syarh Kanz Al-Daqâiq*. Beirut: Dâr al-Kitâb al-Islâmî.

Taqiyuddin Abu Bakar al-Husaini. 1994. *Kifâtat Al-Akhyâr Fî Hall Al-Ikhtishâr*. Damaskus: Dar al-Khair.

Umar Muhammad Sayyid ‘Abd al-Aziz. 2010. *Ahkâm Al-Mu’âmalât Baina Al-Ta’abbud Wa Ma’qûliyyah Al-Ma’nâ*. Dubai: Islamic Affair & Charitable Activities Departement.

Wahbah al-Zuhaili. 2002. *Al-Mu’âmalât Al-Mâliyyah Al-Mu’âhirah*. Beirut: Dar al-Fikr.

Wahbah al-Zuhaili. 2012. *Al-Fiqh Al-Islâmî Wa Adillatuh*. Beirut: Dâr al-Fikr al-Mu’âshir.