

**UTILIZING MARHUN BIH BASED ON MUTUAL AGREEMENT ACCORDING  
TO HANAFI FIQH AND SYAFI'I FIQH (CASE STUDY OF PEGADAIAN  
SYARIAH BRANCH AR. HAKIM BRANCH, MEDAN AREA DISTRICT, MEDAN  
CITY)**



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**Abstract**

The utilization of Rahn collateral in the view of the Shafi'i madhhab and the Hanafi madhhab is very different whereas the Shafi'i madhhab tends to prohibit this implementation because it is feared that there is usury fadhli in its implementation. The Hanafi school of thought carries it out because it considers that this can be done as long as there is permission from the owner of the rahn collateral. This research uses empirical methods and a living case study approach, as well as a conceptual approach. This research took place at Pegadaian Syariah AR Hakim Branch. The results showed that in the provisions of the utilization of collateral, especially. The Shafi'i school of thought puts forward that the use and utilization of Rahn collateral cannot be carried out even with permission. However, according to the Hanafi school, it can be carried out if you get permission from the rahnun at the beginning of the contract. In its relevance in Pegadaian Syari'ah AR Hakim Branch in Medan City itself, the implementation of the utilization of Rahn collateral itself uses the principles of the Hanafi school of thought. Not only that, if you look at the relevance, of the implementation of the utilization of Rahn collateral itself in the community of Medan City, the Hanafi school is more relevant than the Shafi'i school even though the majority of adherents in Medan City are the Shafi'i school. This is due to the habit of the people of Medan City who consider the utilization of rahn collateral to be commonplace as long as no damage occurs.

**Keywords:** Marhun Bih Utilisation, Mutual Agreement, Shafi'i Mazhab, Hanafi Mazhab

## INTRODUCTION

Human cooperation and relationships that run following the Qur'an and al-Hadith, then developed by scholars is the problem of pawnshop (pawn) or the term in Arabic rahn. The definition of Rahn according to Imam Ibn Qudhamah in the Book of Al-Mughni is something that is used as confidence in debt so that the person concerned can take the debt or he can take some (benefits) of the item (Anshori, 2005).

Pawn (Rahn) provides a modern form of security for creditors that only binds on delivery and can be given to guarantee obligations although binding but still not definitively established. There are two main limitations of Rahn, namely the desire for the creditor to take ownership of the pledged goods (Gunawan, 2022).

The pledgee is not entitled to use the pledge except with the pledgor's permission, and this limitation does not apply to Qard loans. Another limitation is that in case of default, the pledgee is not entitled to sell the pledge to settle the debt without the permission of the debtor or the court (Vogel, 2007).

Taking advantage of pawned objects is emphasized on the cost or labor for maintenance so that those who hold pawned goods such as animals will have additional obligations (Sohibi, 2023). The addition to the pledged goods is due to the food given to the pledged goods, so it is permissible to ask for fees for pledged goods if there is an effort to maintain the pledged goods (Suhendi, 2010). Sometimes the prevalence of a contract comes from one party only, meaning that a contract can become prevalent if it comes from one person and not another, such as a pawn contract, where if the contract is considered perfect by the maker of the contract, it becomes obligatory for the Rahin and it is not permissible to cancel the contract except with the consent of the one receiving the pawn (Azzam, 2010).

The collection of marhun bih benefits is also carried out by pawnshops based on Sharia. The operational mechanism of Sharia Pawnshops can be described as follows: Through the rahn contract, the customer submits movable goods, and then the pawnshop stores and maintains them in a place provided by the pawnshop (Fatma, 2018). The result arising from the storage process is the incurrence of costs which include the investment value of the storage place, maintenance costs, and the entire process of activities. On this basis, it

is justified for Pegadaian to charge rent to customers according to the amount agreed by both parties (Turmudi, 2016).

Pegadaian Syariah will gain profit only from the rent levied on the premises, not additional interest or capital rent calculated from the loan money. So here it can be said that the process of borrowing and lending money is only what will attract consumers to store their goods in Pegadaian (Surepno, 2018).

Variable costs in pawnshops in the community that have occurred include:

1. There is no set administration fee.
2. The calculated capital rental fee does not exist.
3. As long as the debt has not been paid to the lender, all proceeds generated by the mortgaged property are taken by the lender.
4. If the borrower fails to repay the money, the mortgaged property becomes the property of the borrower.

The running of the rahn agreement at Pegadaian Syariah AR Hakim Medan is determined by many things, including the subject and object of the rahn agreement. The subjects of the rahn agreement are rahin (the person who pawns) and Murtahin (who holds the pawn), while the objects are marhun (pledged goods) and marhun bih (debt) received by rahin. When the pledged item has been received by the debtor, the debtor is obliged to keep the pledged item until the time limit of the contract has been determined. (Yusuf, 2006).

The mechanism of the rahn contract in Islam is carried out in one majlis by both parties between rahin and murtahin, besides that both have the right to cancel or continue the rahn contract. This can be done if all aspects are fulfilled. And between rahin (customer) and murtahin (pawnshop), each has rights and obligations, which rights and obligations must be known by both parties to achieve the rahn contract (Nasution, 2019).

As one of the elements forming the rahn contract, the Islamic pawnshop, which acts as Murtahin, besides having to fulfill the conditions for making a contract, also has rights and obligations as a pawn institution. For more details about the rights and obligations of the Pawnshop as Murtahin and the customer as rahin at the AR Hakim Medan Syariah Pawnshop office.

Thus, it can be seen that every pawnshop transaction at the AR Hakim Medan Syari'ah Pegadaian office imposes an addition to the money borrowed on the grounds of administrative costs and maintenance of the pledged goods called mu'nah akad and mu'nah maintenance. Mu'nah akad and maintenance are determined based on the amount of money (estimated) that will be loaned to the customer.

The Shafi'i fiqh views itself on the utilization of marhun bih in the rahn contract cannot be carried out even though there is an agreement between the two. This is also discussed in the Book of Imam Nawawi, a scholar of the Shafi'i school of thought, Kifyatul Akhyar, and the Book of Al Umm by Imam Shafi'i himself. As in the following opinion:

الرهن هو صاحب الحق في منفعة المرهن علي اني الرهون يكون تحت يد المرتهن ولا ترنع يده الا عند الانتفاع  
بالمرهون (Al Jaziri, 2010)

The one who pawns after the one who has the right to benefit from the pawned item, even though the pawned item is not lost except to take advantage of the pawned item.

Imam Shafi'i himself is of the opinion that the utilisation of pawned goods by the murtahin Imam Shafi'i is of the opinion that utilising pawned goods is not permissible. This can be traced in his book Al Umm Juz 4, Imam Shafi'i asserted:

قال الشافعي رحمه الله تعالى: يروى عن أبي هريرة رضي الله تعالى عنه (الرهن مركوب ومحلوب)، وهذا لا يجوز فيه إلا أن يكون الركوب والحلب لمالكة الراهن لا للمرتهن؛ لأنه إنما يملك الركوب والحلب من ملك الرقبة والرقبة غير المنفعة التي هي الركوب والحلب، وإذا رهن الرجل الرجل عبدا أو دارا أو غير ذلك فسكنى الدار، وإجارة العبد وخدمته للراهن، وكذلك منافع الرهن للراهن ليس للمرتهن منها شيء فإن شرط المرتهن على الراهن أن له سكنى الدار أو خدمة العبد أو منفعة الرهن أو شيئا من منفعة الرهن ما كانت أو من أي الرهن كانت دارا أو حيوانا أو غيره فالشرط باطل، وإن كان أسلفه ألفا على أن يرهنه بها رهنا وشرط المرتهن لنفسه منفعة الرهن فالشرط باطل.  
(Syafi'i, 2010)

Meaning: "Imam Shafi'i said: It was narrated from Abu Hurayrah R. A that a pledge (that is utilised (like a cow that is employed and milked), and this is not allowed except that utilising and milking it is for the current owner and not for the murtahin, because he has the right to ride and milk it from the owner's possession from the neck to its entirety in addition to the benefit of riding and milking, and if a man pledges a man a slave, a house, or vice versa, then he lives in the house, and rents the slave and serves him to the murtahin, as well as the benefit of the marhun bih for the murtahin, where the rahn does not have anything,

the condition of the murtahin on taking the benefit is a form of loss is that he has the residence of the house or the service of the slave or the benefit of the marhun bih or something from the benefit of the marhun bih whatever it is or from the marhun bih whatever it is whether a house or an animal or something else, the condition is not allowed, and if the predecessor of a thousand to pawn it as marhun bih and the condition of the marhun bih for himself is the benefit of the marhun bih, the condition is void.

From the explanation described above, it can be seen that the utilization of the property that has been pawned is prohibited because it is haram and is referred to as a category in usury because it utilizes the proceeds of the debt guarantee. Such utilization is prohibited both with and without the permission of the murtahin.

However, the opinion that exists in Syafi'i fiqh itself is opposed by the opinion of Imam Hanafi written in the book *Fiqh Islam Wa Adhillatuhu* by Wahbah Az Zuhaili where Wahbah Az Zuhaili a Hanafi madhhab scholar where it is allowed to utilise marhun bih if there is an agreement. The dilemma in Indonesia itself is that Indonesia is an adherent of the Shafii school of thought by the majority, but Indonesians have the habit of doing business like Hanafi fiqh. The dilemma is that the Indonesian people have a view of Syafi'i fiqh as only limited to worship, but in muamalah, the Indonesian people tend to use Hanafi fiqh.

According to the Hanafiyah scholars, in accordance with the function of pawn goods as collateral and trust for the pawn recipient, if the goods are not utilized by the pawn recipient, it means removing the benefits of the goods, even though the goods require maintenance costs. This can bring harm to both parties, especially to the pawn-giver (Ali, 2008).

In line with this, Sayyid Sabiq, who is a Hanafi school of thought, argues in his book *Fiqh Sunnah* as follows:

لا يجوز للراهن ان ينتفع بالمرهن بأي وجه من الوجوه إلا بإذن المرتهين.

(Imam Abu Hanifa said) It is not permissible for the pledgor to utilize the pledged item in any way except with the permission of the pledgee. (Sabiq, 1995)

So, the Hanafi school of thought believes that it is permissible to utilize pawn collateral if there is a prior agreement agreed upon when first making the contract. From the explanation above, Imam Hanafi allows the use and utilization of pawn collateral if it has the

permission of the murtahin or the one who pawned the object. This is because the object that has been mortgaged has ownership and has not changed hands to other people.

This difference of opinion certainly has an impact on the practice of pawning in Indonesia, the majority of which adheres to the Syafi'i school of thought, which often practices with the Hanafi school of thought. This are certainly not many adherents of Syafi'i who realize it. This difference of opinion certainly provides a practical problem where it appears that Shafi'i adherents who are the majority in Indonesia do not implement the rules of the madhhab as a whole.

## REVIEW OF LITERATURE

### Pawn

Ar-Rahn is a type of agreement to hold an item as collateral for a debt. According to Lughat, the phrase Rahn (gadaian) means "fixed". Some say "Hold back". In its definition, Rahn is an item that is pawned, Rahin is a person who pawns it, while murtahin is a person who gives loan.

### Basic Laws of Pawning

The legal basis for pawning is the verses of the Koran, hadith, and 'Ijma' of ulama. This matter is expressed as follows:

#### 1. Al Qur'an

As in QS. Al-Baqarah (2): 283 which is used as a basis for developing the concept of pawning is as follows:

﴿وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنَ مَقْبُوضَةً فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمْنَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكُنُّوا الشَّاهِدَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

Meaning: (If you are on a journey), that is, while you are incurring debts (and you don't have a writer, then there should be collateral) someone will read 'ruhunun', the plural form of rahnun (which is held) which is strengthened by your trust. The Sunnah states that this guarantee is permissible at the time of residence and in the presence of the author. So, linking it with collateral, because belief in it becomes stronger, while His words, "... and collateral held", indicate that collateral is required to be held and is considered adequate even though

the borrower or his representative is not present. (However, if some of you believe in others), that means those who owe debts to people who are in debt and cannot provide collateral (then let the people they trust fulfill them), meaning those who owe them (their mandate), meaning let them pay their debts (and let them fear Allah, their Lord) in paying their debts. (And whoever hides testimony, then he is a sinner in the heart). It is specifically mentioned here because the heart is the place of testimony and also because if the heart sins, it will be followed by others so that it will receive the same punishment experienced by all the members of the body (And Allah is All-Knowing of what you do) so that nothing is hidden from Him.

Hadith of Aisyah R.A, agreed upon by Imam Muslim, which reads: The verse above means that Allah SWT commands people who carry out transactions with other people, while there is no clerk with him, then he should give a collateral (pawn) to the person who gives him a debt so that he feels calm in giving up money the. Next, the borrower should look after the money or goods so that the debt is not lost or wasted without any benefit.

## 2. Hadith

Apart from the verse above, there are also hadiths which form the basis of the la secondly, among other things, it is expressed as follows:

Hadith of Aisyah R.A, agreed upon by Imam Muslim, which reads:

عَنْ عَائِشَةَ قَالَتْ اشْتَرَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنْ يَهُودِيٍّ طَعَامًا وَرَهْنَهُ دِرْعًا مِنْ حَدِيدٍ

Rasulullah saw. once bought food from a Jew by deferring payment, then he gave up his armor as collateral.”

From the hadith above it can be understood that Islam cannot differentiate between Muslims and non-Muslims in the field of muamalah, then one Muslims are obliged to pay their debts even to non-Muslims.

## 3. Consent

Most scholars agree on the permissibility of pawning. This is based on the story of the Prophet Muhammad SAW. who pawned his armor and forgot food from a Jew. The scholars also took from the example of the Prophet Muhammad SAW. when he switches from the usual transacting with rich friends to a Jew, that is nothing more than the attitude of

the Prophet Muhammad. who doesn't want to be a burden friends who are usually reluctant to take a change or price given by the Prophet Muhammad SAW. to them.

### **Terms and Pillars of Pawning (Rahn) According to the Syafi'iyah School**

In carrying out an agreement, there are pillars and pledge requirements that must be fulfilled. In terms of language, harmony is what must be fulfilled for a job to be valid. Meanwhile, conditions are provisions (regulations, instructions) that must be transferred and carried out. Pawning or lending as collateral for objects has several pillars, including:

1. *Kabul* contract and consent
2. *Aqid*, namely the one who pawns and the one who receives the pawn.
3. Goods used as collateral (borg), the condition for the goods used as collateral is that the goods are not damaged before the debt promise must be paid.

### **RESEARCH METHOD**

This research uses empirical legal research by taking the starting point of analysis according to events in the field. Empirical legal research is a legal research method that uses empirical facts taken from human behavior, both verbal behaviors obtained from interviews and real behavior carried out through direct observation.

Empirical research (field research) or field research, is research whose object is about symptoms, events, and phenomena that occur in society, institutions, or countries that are non-literary by looking at phenomena in society. (Sugiono, 2003) The type of legal research conducted is empirical legal research with consideration of the starting point of analysis of the comparison of the opinions of fiqh Hanafi and fiqh Syafi'i relating to the utilization of the results of the pawn collateral. In empirical legal research, the method used in research is the analysis of cases that occur in the field. The nature of this research is descriptive-analytical which aims to describe fully and accurately the views of Hanafi fiqh and Syafi'i fiqh relating to the utilization of collateral from pawn contracts carried out at the AR Hakim Branch Sharia Pawnshop.

The research approach used in this research is a living case study approach and a conceptual approach. The case approach is used to understand the practice of private pawnshops without legal entities carried out by the AR Hakim Branch Sharia Pawnshop. The

conceptual approach is used to examine the concepts of openness of material facts relating to the terms and conditions of Rahn on the utilization of pawn collateral according to the views of Hanafi fiqh and Syafi'i fiqh.

## **RESULTS AND DISCUSSION**

### **Cases of Utilization of Rahn Objects in Ar Hakim Sharia Pawnshops**

The running of the rahn agreement at Pegadaian Syariah AR Hakim Medan is determined by many things, including the subject and object of the rahn agreement. The subjects of the rahn agreement are rahin (the person who pawns) and Murtahin (who holds the pawn), while the objects are marhun (pawned goods) and marhun bih (debt) received by rahin.

As one of the elements forming the rahn contract, the Islamic pawnshop which acts as Murtahin must not only fulfill the conditions for making a contract but also have rights and obligations as a pawn institution. For more details about the rights and obligations of the Pawnshop as Murtahin and the customer as rahin at the AR Hakim Medan Syariah Pawnshop office.

Thus, it can be seen that every pawnshop transaction at the AR Hakim Medan Syari'ah Pegadaian office imposes an additional charge on the money borrowed on the grounds of administrative costs and maintenance of the pledged goods called mu'nah akad and mu'nah maintenance. Mu'nah akad and maintenance are determined based on the amount of money (estimated) that will be loaned to the customer.

Moving on from the cases that occur in Pegadaian Syari'ah AR Hakim, the actual utilization carried out in Pegadaian Syari'ah AR Hakim is carried out with the following objectives:

1. As maintenance of movable goods so that there is no damage and malfunction to the engine and legs of the mortgaged vehicle;
2. Preventing damage in the hands of the guard, the guard always carries the movable goods as far as 1 km once a week so that the condition of the goods is maintained.

However, the use of this item is sometimes misused by individuals for personal interests such as carrying personal items or to pick up children from school while carrying

out maintenance on the vehicle. Not only that, the maintenance turns out to have a fee that is charged to the owner of the pawned item. So that the maintenance fee is added to the final payment of the principal debt and is not usury because the customer agrees to the fee, but the physical use of the pawned goods by the octum is not even known by the customer.

In other cases, the utilization of this item has been understood by the customer, even the majority of customers of Pegadaian Syari'ah AR Hakim themselves allow their vehicles to be used without their knowledge at all as long as they are still in good condition and not damaged.

The utilization of pawn collateral is allowed as long as it is with permission, either with a legal pawn or an underhand pawn. (Ghafar, 2019). Even so, in the view of the Shafi'i school of thought, it is feared that taking advantage of the pawn collateral will become an element of usury which harms the principle of pawning where Sharia pawning must not contain usury activities (Khotimah, 2022).

This case of utilization of pawned goods itself is not new, but a case that has repeatedly occurred but is considered trivial by some people. Not only movable objects but immovable objects are also often utilized during the pawn tenor that is still running (Wasik, 2016).

This utilization case has even become a serious problem although it does not have an impact in some cases. There are even items that are damaged during use. So any movable goods used in the utilization of pawn goods must be replaced by negotiating with the owner of the goods (Sholihah, 2019).

### **The Provisions of Rahn in the Views of Fiqh Shafi'i and Fiqh Hanafi**

The opinion of the scholars of the Shafi'i school of thought, which only emphasizes the stipulations regarding the pawned goods, stipulates that the validity of the pawned goods is based on the validity of the goods being traded. The followers of both schools of thought say that anything that can be accepted or sold can also be pawned, donated, or given to charity. Therefore, according to them, goods such as livestock, creeping animals, slaves, dinars, dirhams, land, and other goods, as long as they are lawful to sell, are also lawful to pawn. In addition, it is worth mentioning that the opinion of the Imam Shafi'i scholars emphasizes that the pledged item must be a tangible item. If this is not the case, then the

pawn is invalid. Therefore, pawning the benefits of objects such as pawning occupied houses as collateral, according to their opinion, is not valid (Karmaen, 2020).

Therefore, in general, the scholars of the Maliki school, the Shafi'i school, and the Hanbali school agree that this condition is a condition that supports the smooth running of the pawn contract, so it is permissible. However, if the condition is contrary to the nature of the Rahn contract, then such a condition becomes void (Ainulyaqin, 2023). Imam Shafi'i said in his book "al-Umm" that: If a man pawns a pledge, and the pledge is accepted or accepted by a fair person with pleasure, then the pledge is damaged in his hand or the hand of a fair person, it is the same because the pledge is a trust, and the debt is like the pledge, without any deduction from it. If the pawnbroker dies and he is carrying the debt or is in the hands of another person, it is the same. The one who receives the share is more entitled to the price of the pledge so that he fulfills his rights from it. If there is a surplus, then the one who gave the loan is entitled to it. And if it is less than the debt, then the debtor is deducted from his share according to what is left for him in the estate of the deceased.

The Shafi'i school of thought argues that the provisions of the pledge focus on the utilization of the pledged item itself following the opinion of Imam Shafi'i where the utilization of the pledged item is essentially prohibited if the utilization creates new economic value. This means that pawn collateral is prohibited from being utilized if the goods produce other benefits that have a certain economic value.

The Shafi'i Mazhab also has a provision that the pawn will be valid if the item can be known to be of non-haram origin, is fully owned by the rahnun and is not a loan item, is not an unauthorized pledge item, and is also not an item without economic value that is not likely to be auctioned (Al Jaziri, 2010).

If the pledged item is partially damaged, then the undamaged part is a pledge for all debts. It is also permissible to use the pledged goods as long as it does not harm the murtahin (the pledgor) because the pledged goods are a trust in the hands of the murtahin because he also received permission from the pledgor.

They said that Rahnun has only one pillar, namely *ijab* and *qabul*. That is because that is the essence of the contract. Everything else is outside the essence of the contract, as previously stated. (Zuhri, 1994)

The Hanafi school of thought believes that the conditions of the pawn are divided into three, namely:

- a. The conditions for the occurrence of the rahn contract, namely marhun (pledged goods) in the form of property and marhun bih (debt) which is the cause of the pawn.
- b. The conditions for the validity of the rahn contract, namely:
  1. Must be related to conditions that are not desired by the mind.
  2. It should not be tied to a specific time.
  3. Marhun (pawn item) can be distinguished from others.
  4. Marhun (pledged goods) is in the power of the recipient of the pledge after being received by him.
  5. Marhun (pawn goods) are not unclean goods.
  6. Marhun (pawn item) is not an item that cannot be utilized.
- c. Conditions for the permanence of the rahn contract. The Rahn contract is fixed when the marhun (pawned goods) is accepted by the murtahin (pawn recipient) with the occurrence of *ijab* and *qabul*.

For the type of goods, the Hanafi school is in line with the Shafi'i school where the category of goods that are allowed to be pawned, however, in the permissibility of utilizing pawned goods, the Hanafi school itself allows it as long as it is stated during the contract (Hasibuan, 2020). This is a point of difference with the Hanafi school where the utilization of pawned goods is allowed.

Utilization in the Hanafi school itself is limited to the agreed item and limited to the treatment of the pledged item. For example, if it is a movable object then its utilization is limited to mere maintenance and utilization of certain uses and does not change the vehicle and does not damage it. Then, the utilization of immovable goods is limited only to maintenance, and consumptive use such as land. Land that is pawned may be utilized by the fruit on it and even sold during the pawn period if there is an agreement by the rahnun at the time of the contract (Sharakhshi, 1990).

## The Relevance of Hanafi Fiqh with the Opinion of Syafi'i Fiqh Regarding the Utilization of Marhun Bih with the Rahn Habits of Medan City Communities

Syafi'i's fiqh view regarding the use of marhun bih in rahn contracts should not be implemented even though there has been an agreement between the two. This is also discussed in the Book of Imam Nawawi, a scholar of the Shafi'i school of Kifyatul Akhyar, and the Book of Al Umm by Imam Syafi'i himself. As in the following opinion:

الرهن هو صاحب الحق في منفعة المرهن علي اني الرهون يكون تحت يد المرتهن ولا ترنع يده الا عند الانتفاع بالمرهون.

Meaning: The person who pawns after the person has the right to the benefits of the pawned item, even though the pawned item is not lost unless he takes the benefit of the pawned item (Al Jaziri, 2010).

Imam Syafi'i himself is of the opinion that the use of pawned goods by murtahin Imam Syafi'i is of the opinion that it is not permissible to use pawned goods. This can be traced in his book Al Umm juz 4, Imam Syafi'i emphasized:

قال الشافعي رحمه الله تعالى: يروى عن أبي هريرة رضي الله تعالى عنه (الرهن مركوب ومحلوب)، وهذا لا يجوز فيه إلا أن يكون الركوب والحلب لمالكه الراهن لا للمرتهن؛ لأنه إنما يملك الركوب والحلب من ملك الرقبة والرقبة غير المنفعة التي هي الركوب والحلب، وإذا رهن الرجل الرجل عبدا أو دارا أو غير ذلك فسكنى الدار، وإجارة العبد وخدمته للراهن، وكذلك منافع الرهن للراهن ليس للمرتهن منها شيء فإن شرط المرتهن على الراهن أن له سكنى الدار أو خدمة العبد أو منفعة الرهن أو شيئا من منفعة الرهن ما كانت أو من أي الرهن كانت دارا أو حيوانا أو غيره فالشرط باطل، وإن كان أسلفه ألفا على أن يرهنه بهار هنا وشرط المرتهن لنفسه منفعة الرهن فالشرط باطل.

"Imam Syafi'i said: It was narrated from Abu Hurayrah r.a that pawn (which is used (like a cow that is used and milked), and this is not permitted except that the use and milking is for the current owner and not for the murtahin, because he has the right to ride and milk the owner's property from the neck to the whole in addition to the benefits of riding and milking, and if a man pawns a man's slave, house, or vice versa, then he lives in the house, and rents out the slave and serve it to the murtahin, as well as the benefit of marhun bih for the murtahin, where the rahin does not have anything, the condition of the murtahin on taking the benefit is a form of loss is that he has a house residence or slave service or benefit of marhun bih or something from the benefit of marhun bih whatever it is or from any marhun bih whether it is a house or animal or other, the condition is not permitted, and if the

predecessor is a thousand to pawn it as marhun bih and the condition of marhun bih for himself is benefit marhun bih, the condition is cancelled (Syafi'i, 2010).

From the explanation outlined above, it can be seen that the use of mortgaged property is clearly prohibited because it is considered haram and is referred to as a category of usury because it uses the proceeds from debt collateral. This use is prohibited whether with permission or not with permission from the murtahin.

The Syafi'i Madzhab says that the pawnbroker (rahin) has the right to benefit from the mortgaged item because he is the owner, while the pledgee (Murtahin) cannot take any benefit from the pawned item (Borotan, 2024).

However, the opinion contained in the Syafi'i fiqh itself is opposed by the opinion of Imam Hanafi written in the Islamic Fiqh book *Wa Adhillatuhu* by Wahbah Az Zuhaili where Wahbah Az Zuhaili a cleric of the Hanafi school where is permissible to use marhun bih if an agreement is reached. The dilemma in Indonesia itself is that Indonesia is a majority adherent of the Syafii school of thought, but Indonesian citizens have the habit of practicing muamalah as befits Hanafi fiqh. The dilemma is that Indonesian people have a view that Shafi'i fiqh is limited to worship, but in muamalah Indonesian people tend to use Hanafi fiqh.

According to Hanafiyah scholars, following the function of pawned goods as collateral and trust for the pawned recipient, if the goods are not used by the pawned recipient it means eliminating the benefits of the goods, even though the goods require maintenance costs. This can bring harm to both parties, especially to the pawnbroker (Ali, 2008).

In line with this, the Hanafi school of thought holds the following opinion:

لا يجوز للراهن ان ينتفع بالمرهن بأي وجه من الوجوه إلا بإذن المرتهين.

It is not permissible for the pledgor to use the pawned goods in any way except with the permission of the pawnee (Sabiq, 1995).

Apart from that, the use of pawned goods is also permitted as long as it does not become a condition that is detrimental to the murtahin as Wahbah Zuhaili believes as follows:

الشرط املفسد للعقد وهوان يشرط ما يضر امرهتن كشرط ال بيعه بعد حلول اجل وفاء الدين ال بعد شهر او ال بيع باكثر من مثن املثل

The conditions are invalid and the existing ar-Rahnu contract also becomes invalid. Such as requiring conditions that are detrimental to al-Mutahin, such as requiring that

Murtahin cannot sell the mortgaged goods after the existing debt has matured. Meanwhile, Ar-Rahin's side has not yet paid the existing debt except after one month, for example (Zuhaili, 2004)

Apart from that, Hanafi fiqh believes that the pawned goods can be used as long as there is an agreement as stated by Imam Sayyid Sabiq as follows:

لا يجوز للراهن ان ينتفع بالمرهون باي وجه من الوجوه الا باذن المرتهن

"You are not allowed to use pawned goods in any way except with the permission of the murtahin." (Sabiq, 1995)

Imam Hanafi's opinion is also agreed with by Hanafi school scholars such as Imam Syamsuddin Al Sarakhsi who believes that everything depends on the initial agreement which is part of the pillars of pawning as follows:

لَرَهْنٌ يَنْعَقِدُ بِالْإِجَابِ وَالْقَبُولِ وَيَتِمُّ بِالْقَبْضِ قَالُوا : الرُّكْنُ الْإِجَابُ بِمَجْرَدِهِ ؛ لِأَنَّهُ عَقْدٌ تَبَرُّعٌ فَيُهْمُ بِالْمُتَبَرِّعِ كَالْبَيْعِ وَالصَّدَقَةِ وَالْقَبْضُ شَرْطُ اللُّزُومِ عَلَى مَا نُبِيئُهُ إِنْ شَاءَ اللَّهُ تَعَالَى

The contract in the pawn agreement depends on the agreement. What is mandatory is an agreement of delivery (ijab) from the person who pawns the goods to the pawnee recipient. Meanwhile, acceptance from the pawn recipient is not a requirement. Because pawning is a tabarru' transaction like grants and shodaqah. Meanwhile, holding goods as collateral is a requirement in the general criteria (Syarakhsi, 1990).

Imam Syamsuddin Al Sarakhsi's opinion states that utilization can occur if there is an agreement in it. Apart from that, it is reinforced by his opinion as follows:

بِإِذْنِ الرَّاهِنِ أَوْ مَرَهْنَتِهِ مَنْ كَانَ سِوَا إِعَارَةٍ وَلَا إِجَارَةٍ وَلَا لِبَسٍ وَلَا سَكِينٍ وَلَا سِتْرٍ وَلَا مَطْلَقًا بِنَقِاطِ الْإِخْرَاجِ لِلْكَافِرِ

There is no absolute permissibility of taking benefits in the form of secondment, residence, use, wages, or loans from either Murtahin or Rahin except with the permission of each party to the other.

So, the Hanafi school of thought, from the two opinions of Imam Sayyid Sabiq and Imam Syamsuddin Al Sarakhsi, both hold the opinion that it is permissible to use pledged collateral if there is a previous agreement that was agreed upon when the contract was first entered into. From the explanation above, Imam Hanafi allows the use and utilization of pawn collateral if he has permission from the murtahin or the person who pawned the object. This

is because the object that has been pawned has ownership and has not changed hands to another person.

This difference of opinion certainly has an impact on the practice of pawning in Indonesia, where the majority are adherents of the Shafi'i school of thought who often practice with the understanding of the Hanafi school of thought. Of course, not many Shafi'i followers are aware of this. This difference of opinion certainly creates a practical problem where it appears that Shafi'i adherents, who are the majority in Indonesia, do not implement the rules of this school of thought in their entirety.

In terms of its relevance in the city of Medan, especially the Sharia Pawnshop, AR Hakim himself is more inclined towards the Hanafi school of thought. The people of Medan City don't have a problem if they properly use the pawned goods as long as they have permission from the owner of the pawned goods. The Sharia Pawnshop AR Hakim Branch itself uses pawned goods, especially movable goods such as cars and motorbikes. This is done because it looks at the care of the item.

Cars and motorbikes can damage themselves if they are not run or started for a long time. A car, for example, can have its legs damaged, and the axle oil and engine oil can become sticky just because it was never started at all. Therefore, in terms of relevance for the people of Medan City itself, especially in the implementation of will rahn at the Sharia Pawnshop AR Hakim Branch, it would be more relevant to use the Hanafi school of thought.

The legal analysis states that there is a conflict of opinion between the Syafi'i School and the Hanafi School. This lies in the use of goods that the customer does not know about. If viewed from the Shafi'i School of thought, this is also clearly haram because it has been determined from the start that use without permission or with permission is still prohibited. Meanwhile, in the view of the Hanafi School, because there is no permission to use the customer's vehicle, in this case, the Hanafi School also prohibits it because there is no permission.

Nevertheless, the majority of AR Hakim Syari'ah Pegadaian customers don't even have a problem if it is used without permission as long as the item is in good condition and not damaged when finished using it. If you look at this action from the perspective of the

Hanafi school of thought, then this action is permissible if the intention is to maintain the object.

The author's presentation and analysis that has been presented above are more inclined towards the Hanafi School of thought because it is more flexible when applied to the city of Medan. This is because the opinion of the Hanafi School tends to be more similar to the habits of the people of Medan City who, if they entrust goods as collateral to pawn, the debtor or the customer has no problem using the goods within reasonable limits. After all, they will be damaged if left in the warehouse.

The author sides with the opinion of the Hanafi school of thought due to two factors. Firstly, the flexibility of opinion from the Hanafi school of thought follows the culture of the people of Medan City who do not mind whether their goods are used or not as long as there is no damage to the goods, whether minor or major damage. Second, the action taken to utilize the pawned goods is an effort to protect the pawned goods from significant damage. This means that the damage occurs automatically, such as tire pressure, the hardness or softness of the suspension, and even the engine lubrication freezing.

## **CONCLUSION**

Rahn in the Shafi'i and Hanafi schools of thought clearly shows the difference. In terms of the provisions for the use of collateral, especially. The Syafi'i school of thought emphasizes that the use and exploitation of Rahn collateral cannot be carried out even with permission. However, according to the Hanafi school of thought, it can be carried out if you get permission from Rahnun at the beginning of the contract. In its relevance at the Sharia Pawnshop AR Hakim Branch in Medan City itself, the implementation of the use of Rahn collateral itself uses the principles of the Hanafi school of thought. This is because it looks at the maintenance and rejuvenation of the rahn collateral itself. This happens because quite a lot of collateral is in the form of movable goods rather than immovable goods. This of course makes treatment more intensive. Not only that, if you look at its relevance, for the implementation of the use of Rahn guarantees among the people of Medan City, the Hanafi school of thought is more relevant than the Syafi'i school of thought, even though the majority

of adherents in Medan City are of the Syafi'i school of thought. This is due to the habit of the people of Medan City who consider it normal to use collateral as long as there is no damage.

## REFERENCES

- Al Jaziri, A. (2010). *Al-Fih 'ala Mazahibil Arba'ah*. Beirut: Daal Al Qalam.
- Ali, Z. (2008). *Hukum Gadai Syariah*. Jakarta: Sinar Grafika.
- Ainulyaqin, M. K. (2023). Praktek Gadai Sawah di Kabupaten Bekasi Dalam Perspektif Ekonomi Islam. *Jurnal Ekonomi Syariah Pelita Bangsa Vol 8, No 1*.
- Anshori, A. G. (2005). *Gadai Syari'ah Indonesia*. Jakarta: Gadjah Mada University.
- Azzam, A. A. (2010). *Fiqih Mu'amalat*. Jakarta: Bumi Aksara.
- Borotan, A. (2024). Pemikiran Imam Malik Tentang Hukum Pemanfaatan Barang Gadai Sebagai Jaminan Pinjaman Dan Relevansi Penerapannya Di Masyarakat. *HUKUMAH: Jurnal Hukum Islam, Vol. 7, No. 2*.
- Fatma. (2018). Pemanfaatan Barang Gadai. *IQRA: Jurnal Ilmu Kependidikan Dan Keislaman Vol.13 No.2*.
- Ghafar, A. A. (2019). Pemanfaatan Barang Gadai Dalam Perjanjian . *NOTARIUS, Volume 12 Nomor 1*.
- Gunawan, F. R. (2022). Studi Komparatif Antara Gadai Konvensional Dan Gadai Syari'ah (Rahn). *Mu'amalah Jurnal Hukum Ekonomi Syariah, Vol. 2, No. 1*.
- Hasibuan, D. K. (2020). Konsep Gadai Syariah Menurut Syafi'i Antonio. *Jurnal: Penelitian Medan Agama Vol. 11, No. 1*.
- Karmaen, S. A. (2020). Pemanfaatan Barang Jaminan Oleh Murtahin Dalam Perspektif Islam. *EL-HIKAM: Jurnal Pendidikan dan Kajian Keislaman, Vol 13, No 1*.
- Khotimah, H. (2022). Pemanfaatan Brang Dalam Perjanjian Gadai Studi Komperatif Antara Syafi'iyah dan Malikiyyah. *Jurnal Kajian Hukum Ekonomi Syariah Vol 14, No.2*.
- Nasution, A. M. (2019). Gadai Dalam Perspektif Hukum Ekonomi Islam. *Yurisprudentia: Jurnal Hukum Ekonomi Vol. 5 No. 2* .
- Qardhawi, Y. (2001). *Norms and Ethics of Islamic Economics*. Jakarta: Gema Insani Press.
- Sabiq, S. (1995). *Fiqh Sunnah, diterjemahkan oleh Kamaluddin*. Bandung: PT. Ma'arif.
- Saidin, O. (2015). *Aspek Hukum Kekayaan Intelektual*. Jakarta: Rajawali Pers.
- Sholihah, H. A. (2019). Pemanfaatan Barang Gadai Ditinjau Dari Hukum Islam Dan Hukum Perdata Indonesia. *al-Afkar, Journal for Islamic Studies Vol 2, No.2*.
- Sohibi, M. (2023). Penyelesaian Sengketa Gadai Syariah Atas Jaminan Barang Gadai Syariah. *Indonesia Berdaya Vol 4 No.4*.
- Sugiono, B. (2003). *Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada.

- Suhendi, H. (2010). *Fiqih Mu'amalah*. Jakarta: Rajawali Press.
- Surepno. (2018). Studi Implementasi Akad Rahn (Gadai Syari'ah) Pada Lembaga Keuangan Syariah. *Tawazun: Journal of Sharia Economic Law Vol 1 No 2*.
- Syafi'i, M. I. (2010). *Al Umm Juz 4*. Beirut: Daar Al Kutub Ijtima'iyah.
- Syarakhsi, S. (1990). *Al Mabshuth*. Beirut: Dar Al Fikr.
- Turmudi, M. (2016). Operasional Gadai Dalam Sistem Hukum Ekonomi Islam. *Jurnal Al-Adl Vol. 9 No. 1*.
- Vogel, F. E. (2007). *Hukum Keuangan Islam: Konsep Teori dan Praktik*. Bandung: Nusamedia.
- Wasik, A. I. (2016). Reformulasi Pemanfaatan Barang Gadai Perspektif Hukum Islam. *Jurnal Lisan Al-Hal Volume 10, No.2*.
- Yusuf, N. (2006). Pemanfaatan Barang Gadaian Dalam Perspektif Hukum Islam. *Jurnal Al-Syir'ah Vol. 4 No. 2 Juli-Desember 2006*.
- Zuhaili, W. (2004). *Fiqih Islam Wa Adilatuhu, juz VI*. Beirut: Dar Al Fikr.
- Zuhri, M. (1994). *Fikih Empat Mazhab*. Semarang: CV. Asy-Syifa.