



UTILIZATION OF PAWNED LAND IN MARTADAH VILLAGE COMMUNITY BASED ON THE PERSPECTIVE OF SHAFI' MADZHAB

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Abstract

This research is motivated by the problems that occur in Pasar Arba, Sungai Pandan District, where the implementation of the Regional Regulation of Hulu Sungai Utara Regency No. 9 of 2018 concerning Public Order and Community Peace has not been fully implemented optimally. In its implementation, there are still violations by street vendors which result in disruption of road activities and the function of the road shoulder for pedestrians. The purpose of this study is to determine the extent to which the implementation of the North Hulu River Regency Regional Regulation No. 9 of 2018 concerning Public Order and Community Peace in Arba Market, Sungai Pandan District. This research is a field research with a qualitative approach and the research method uses the case study method. Data collection techniques are interviews and documentation. Data processing techniques through editing, classification and interpretation. Data analysis using descriptive qualitative analysis. Based on the results of the research, the Implementation of Hulu Sungai Utara Regional Regulation No.9 of 2018 concerning Public Order and Community Peace towards controlling street vendors in Arba Market, Sungai Pandan District has not been able to be implemented optimally, because on the one hand there are more and more street vendors and on the other hand the limited location to accommodate traders cannot be developed anymore. This can be seen from along the road to Arba Market in Sungai Pandan Subdistrict, which is increasingly filled with street vendors. The inhibiting factors from law enforcers, street vendors or the community itself so that the implementation is not carried out optimally.

Keywords: Implementation, Control, Street Vendors.

Abstrak

Penelitian ini dilatarbelakangi dengan permasalahan yang terjadi di Pasar Arba Kecamatan Sungai Pandan yang mana pelaksanaan dari Peraturan Daerah Kabupaten Hulu Sungai Utara No. 9 Tahun 2018 Tentang Ketertiban Umum dan Ketentraman Masyarakat belum sepenuhnya dapat dilaksanakan secara maksimal. Dalam pengemplementasiannya masih terdapat pelanggaran-pelanggaran oleh pedagang kaki lima yang mengakibatkan terganggunya aktivitas jalan dan beralih fungsinya bahu jalan untuk pejalan kaki. Tujuan dalam penelitian ini adalah untuk mengetahui sejauh mana penerapan Peraturan Daerah Kabupaten Hulu Sungai Utara No. 9 Tahun

2018 Tentang Ketertiban Umum dan Ketentraman Masyarakat di Pasar Arba Kecamatan Sungai Pandan. Penelitian ini merupakan penelitian lapangan dengan pendekatan kualitatif dan metode penelitian menggunakan metode studi kasus. Teknik pengumpulan data yaitu wawancara dan dokumentasi. Teknik pengolahan data melalui editing, klasifikasi dan interpretasi. Analisis data menggunakan analisis kualitatif deskriptif. Berdasarkan hasil penelitian, Implementasi Peraturan Daerah Hulu Sungai Utara No.9 Tahun 2018 Tentang Ketertiban Umum dan Ketentraman Masyarakat terhadap penertiban pedagang kaki lima di Pasar Arba Kecamatan Sungai Pandan belum dapat terlaksana secara maksimal, karena disatu sisi pedagang kaki lima yang semakin banyak dan disisi lain keterbatasan lokasi untuk menampung pedagang tidak bisa dikembangkan lagi. Hal ini dapat dilihat dari sepanjang jalan menuju Pasar Arba di Kecamatan Sungai Pandan semakin dipenuhi oleh pedagang kaki lima. Faktor penghambat dari penegak hukum, pedagang kaki lima ataupun masyarakat itu sendiri sehingga penerapannya tidak terlaksana dengan optimal. **Kata Kunci:** Implementasi, Penertiban, Pedagang Kaki Lima.

INTRODUCTION

Government is an institution that regulates the rules that exist in society and these rules aim to bring order to society. Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government in Article 1 paragraph (2) states that Regional Government is the administration of government affairs by the Regional Government and DPRD according to autonomy and assistance tasks with the principle of the widest possible autonomy within the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia. Law No. 32/2004 on Regional Government, explains that to assist the Regional Government in enforcing regional regulations and organizing public order and community tranquility, a Pamong Praja Police Unit was established. The scope of duties and authority of the Pamong Praja Police Unit in the element of Government includes law enforcement against Regional Government regulations (Perda) not the Law. Satpol PP enforces local regulations by taking action against those who are deemed to have violated the applicable local regulations.

In social life, humans will interact with other humans, with this interaction, it can be seen that there are various kinds of needs that each person has. To fulfill these needs, a form of work is needed that can produce goods or services. Regarding the rapid development of the times, there are very basic demands that must be faced by the community, namely survival and meeting all their needs. Because it only requires a small capital and without having to take care of a trading license, in Indonesia, street vendors are a profession that is quite popular with the middle to lower class people. Street vendors are a group of traders who sell their goods on the edges of public roads, sidewalks, which are far from clean. Trade activities that can create employment opportunities in two ways, namely the first directly or with the correct labor absorption capacity and second, indirectly or with the expansion of the market created by trade activities on the one hand and the other by facilitating the distribution and procurement of raw materials.

In the explanation of Law Number 9 of 1945 concerning Small Businesses, it is stated that small businesses are business activities that are able to expand employment and provide broad economic services to the community, are able to play a role in the process of equalizing and increasing people's income and encouraging economic growth and also generally play a role in realizing national stability and economic stability in particular. Street vendors can actually provide services to the needs of low-income communities so as to create conditions for equitable distribution of development results. In addition, street vendors have considerable potential to contribute to local revenue in the sector of local retribution along with the needs of the region in the context of implementing regional autonomy. Thus, the existence of an economic crisis and the narrowness of employment opportunities are the drivers of the increasing number of street vendors in various cities in Indonesia, including in the Sungai Pandan sub-district of Hulu Sungai Utara Regency.

The existence of these street vendors, on the one hand, has a positive impact, namely the growth of the economy and opening up employment opportunities. But on the other hand, the existence of street vendors also creates its own problems, namely disturbing public order, traffic congestion and so on. Street vendors take up space everywhere, not only empty or neglected space but also space that is clearly formally designated on the grounds that because of its high accessibility, it has great potential to bring in consumers. Like the street vendors in the Arba market in Sungai Pandan sub-district, even though they are organized, they still interfere with traffic. where street vendors use the roadside to sell, which should be used for pedestrians. So that by changing the function of the roadside, pedestrians have to use the highway to walk, which ultimately creates congestion every Wednesday at the Arba market in Sungai Pandan sub-district.

METHODS

This research was conducted in Martadah Village, Re-mining Sub-district, Tanah Laut Regency, South Kalimantan Province, with the research subject being the village community. This type of research is descriptive research with qualitative methods, namely discussions obtained by collecting data from interviews and literature sources about pawning and then comparing them with the theory from the perspective of the Syafii madzhab. In this case the researcher examines by openly interviewing the community totaling 5 informants, where the utilization of pawned land carried out by them follows the previous people and some have only heard news from word of mouth which is not known whether it is correct according to Islamic law. So this research is intended to reveal the truth of the facts that occur in the field, namely people who pawn land and then use the land and people who lend money using the pawned land how the community views the utilization of pawned land in order to provide a systematic factual and accurate picture, then compared with the perspective of the Shafi'i Mazhab.

RESULTS AND DISCUSSION

Etymologically, katarahan means permanence and permanence as well as detention. In positive legal terms, it is also called collateral and *rungguhan*. While in terminology *arohan* is holding one of the borrower's assets as collateral for the loan he receives and the item has economic value. Do not so the holding party gets a guarantee to be able to take back all or part of his debt. So *rahn* is a kind of debt guarantee or better known as a pawn.¹

The Shafi'iyah scholars define *Rahn* as making a saleable item as collateral for a debt to be fulfilled from its price if the debtor is unable to pay it.

Hanbali scholars define *Rahn* as an object that is used as a trust for a debt to be fulfilled from its price if the debtor is unable to pay the debt.

The Malikiyah scholars defined it as something of value that is taken from its owner to be used as a bond for a permanent debt.²

According to Shaykh Sayyid Hasan Ahmad, one of the modern Shariah scholars in his book *attaqiratu-ssadidat*, *rahn* is making an asset that has economic value as collateral for a debt to fulfill it when there is an excuse in paying off the debt.³

It can be concluded from the opinions of the scholars that the pawn must be something valuable or have a selling value or material goods as collateral or loans received and the goods received have economic value so that the holding party gets a guarantee to take back all or part of his debt from the pawned goods if the pawned party cannot pay the debt at the specified time.

In Arabic terms pawn or *rahn* can also be named *Al-habsu* while *Al-habsu* means detention of an item with the right so that it can be used as payment of the item. In the book of *fiqh sunnah* Sayyid Sabiq, the scholars define pawnshop as the establishment of an item that has financial value in the view of the Shari'ah as collateral for debts, where the debt or part of it can be paid with it. If a person owes a debt to another person and as

¹ Mardanis, *Sharia Pawn (Rahn) in the Perspective of Islamic Economics and Fiqh Muamalah*, Archives PA Pekanbaru, 2017, p.3

² M. Sulaiman Jazuli, *Legal Certainty of Land Pawn in Islam*, (Tangerang: Cinta Buku Media, 2015), p.51

³ Hasan Al-kaff, *Attaqiratus-sadidaah fii masaail al mufidaah*, (Riyadh: Darul Mirats An-Nabawi, 2013), p.50

compensation he hands over to that person a house or an animal that is bound for example until he pays off the debt, then this is a pawnshop according to sharee'ah.⁴

According to Islamic law, a pawnshop is a collateral for debts incurred when the debtor fails to fulfill his obligations and all items that are suitable as collateral can be used as collateral. The collateral may only be sold or valued if, within the time agreed by both parties, the debt cannot be repaid by the debtor. Therefore, the right of the creditor is only related to the collateral if the debtor is unable to fulfill it.⁵

Legal Basis of Pawn

The legal basis for *Rahn* in the Quran surah Al-Baqarah verse 283:

وَأِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهٌ مَّقْبُوضَةٌ فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمْنَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آتَمٌ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

"If you are traveling (and you do business not in cash) and you do not have a scribe, then let there be a bond held by the creditor. But if some of you trust others, then let the trustee fulfill his trust and let him fear Allah his Lord; and do not conceal your testimony. And whoever conceals it, then surely he is a sinner in heart; and Allah knows best what you do."

Based on the verse above, pawning is allowed in Islam as part of *muamalah* and the permissibility is further clarified by the Messenger of Allah (peace and blessings of Allah be upon him) having practiced it from a hadith.

عن عائشة رضي الله عنها أن النبي صلى الله عليه وسلم اشترى طعاماً من يهودي إلى أجل ورهنه درعاً من حدي

Aisha (may Allah be pleased with her) reported: That the Prophet once bought food from a Jew that he would pay for at a certain time in the future and he mortgaged to him an iron armor. H.R Bukhari

Therefore, pawning is something that is allowed if someone is in trouble, practicing pawning as long as it does not conflict with sharia principles in pawning. The practice of pawning in society is common but often causes conflict. It concerns human efforts to meet the needs of life in difficult conditions both in terms of clothing, food and other needs. In fact, sometimes people are forced to borrow money from others even if they have to be accompanied by collateral in order to get the loan. This condition is like concerning the events that occurred at the time of the Prophet Muhammad SAW he pawned his armor to

⁴ Mardanis, Op.Cit.,4

⁵ Ibid. p.3

exchange it for food from a Jew according to the agreement that had been determined both then the shirt would be taken back.

The nature and function of the pawn itself is mutual help between fellow human beings who are rich with the poor and others. To maintain trust, an item is pledged or pawned to the debtor, but in this pawn the goods remain the owner of the person who pawned the person who gave the debt is only limited to holding the goods until the debtor is able to pay off the debt.

Utilization of Pawned Land from the Perspective of Syafii Madhhab

All the scholars of the madhhab agree that the pawned item should not be used because it is feared that it will fall into the element of usury as said by the Prophet Muhammad SAW which reads:

كل قرض جر منفعة فهو ربا

"any loan that generates profit is usury"

The above Hadith in terms of sanad is very weak and even Imam Bukhari said that it is a *munkar* Hadith, but even so, in terms of the text of this Hadith, it is in accordance with the arguments either from the Qur'an or similar Hadiths accompanied by *ijma*, *qiyas* and Companion's *atsar*. All of them indicate that it is forbidden to take advantage of a loan. In conclusion, not every weak or *munkar* hadith is abandoned or not used.⁶

The scholars turned out to be very intelligent in understanding this problem. After collecting and analyzing all the arguments about the meaning of this benefit, they finally made the conclusion that it is not the absolute benefit that is categorized as usury but the benefit that has its own criteria, namely:

1. Additional in nature, for example, someone lends money and then the person who borrowed adds more money back than the borrowed money.
2. It is a pure benefit, meaning that the lender receives the benefit and the borrower has nothing to gain from it except the money borrowed, but if they both gain the benefit, then there is a difference of opinion among the scholars.
3. Additional or benefit is stipulated at the time of the contract, for example, the person who gives the loan says that I will use the land that you pawned.⁷

⁶ Galih Maulana, Is Every Benefit Taken from Lending and Borrowing Transactions Riba?, Rumah Fiqh Indonesia (Jakarta: RFI, 2017), p.2

⁷ Ibid, p.3

Views of the people of Martadah Village

The people of Martadah are of the view:

1. *Rahin* may use the goods he pawned as long as he gets permission from *murtahin* (mutual consent) in this case concerning mutual assistance.
2. *Murtahin* may use if he gets permission from *rahin* in another sense (mutual consent) this is one of the problems.
3. The *murtahin* may use it as rent, which the *murtahin* will pay to the *rahin* as rent.

Then what if we compare it with Shafi'i in this case

1. In the Shafi'i Mazhab *Rahin* may use the goods he pawned as long as he gets permission from the *murtahin* and as long as it does not reduce the value or benefits of the land in other words it can damage the authenticity of the land then it is allowed so in this case the opinion of the Shafi'i Mazhab with the views of the *martadah* community shows a match.
2. *Murtahin* according to the perspective of the Shafi'i Mazhab may not use or utilize the pawned land even though he has received permission from the person who pawned or *rahin* because it includes the element of *ribawi*, a pawned person must allow the person who owes him money to utilize the land he pawned as a sign of his service for lending money. So in this case the Shafi'i Mazhab does not allow it to be used.
3. A *murtahin* may use the land pawned by the *rahin* as rent, but this rent must be outside the pawn contract. A *murtahin* who rents land from the person who pawned his land is the same as relieving the burden of the *rahin*.

What is still a problem today is that there is still someone *murtahin* who uses the pawned land from the person who pawned it and stated to use it at the time of the contract or without permission from *rahin*. This is due to the people's lack of knowledge about *fiqh muamalah* or their unwillingness to learn it, so that they only follow the ancients or only hear rumors that they use as evidence for the permissibility of using the mortgaged land.

From the results of interviews with the people of *Martadah* village, what they often do in pawn matters is that a *murtahin* uses or utilizes the pledged goods in the form of paddy fields and then rents them to *rahin* and pays *rahin* a rental fee or rental fee. Because in the village of *Martadah*, the people are very strong in their kinship ties, even in the village, most of the people have the same bloodline from their upper lineage. So when their relatives or people closest to them get into debt by pledging something, they are very alert to help their relatives who are in trouble. They do a rental contract outside of the pawn so that according to the perspective of *Syafi'i* it is permissible. And rarely do the

people of Martadah village owe money to banks or other financial institutions because they trust their closest relatives more so they are reluctant to owe money to banks or other institutions which according to their view if someone owes money to a bank then it will cause a difficulty either difficulty in taking care of the conditions for owing money to the bank or in repaying their debt to the bank.

Ta'awun principle in pawn

A pawn is a guarantee for repayment of debt where there is a debtor and a debtor for the debtor is the same as providing a convenience or easing the burden for the person who owes him instead of making it difficult or taking the opportunity in the narrowness.

Allah says in the Quran surah al maidah verse 2, namely:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

Meaning: "And help each other in good deeds and piety, and do not help each other in sins and transgressions."

From the verse above, Allah commands us to help each other in terms of goodness and piety, every command of Allah that we carry out will definitely get a reward from Allah subhanahu wa ta'ala in this case it is clarified again through the words of the prophet sallallahu alaihi wasallam in a hadith, namely:

عن أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ، قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَنْ نَفَّسَ عَنْ مُؤْمِنٍ كُرْبَةً مِنْ كُرْبِ الدُّنْيَا نَفَّسَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبِ يَوْمِ الْقِيَامَةِ..... الحديث

Abu Hurairah (may Allah be pleased with him) reported: The Messenger of Allah (peace and blessings of Allah be upon him) said: "Whoever removes one believer's hardship from another believer's hardship in this world, Allah will remove from him one hardship on the Day of Resurrection. "H.R. Muslim

The above Hadith explains that Allah does not mess around with his promise, where his command to tell us to help each other to our brothers in kindness he will reward us with such a great reward, namely by removing our difficulties on the Day of Judgment. In this case we should not make it difficult for our brothers or even take the opportunity in the narrowness. Sheikh Sayyid Hasan Al-Kaff in his book takbiratul sadidah mentions that if giving away the debt then it is more affdol so if we cannot give it away at least we should not make it difficult for people who owe us or even take advantage of an existing incident.

We should not underestimate usury because Allah and his messenger hate usury so much that it is forbidden by Allah subhanahu wa ta'ala as in his words in the Qur'an surah Ali Imran, namely:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۚ ذَٰلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا ۗ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۗ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَىٰ فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ ۗ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۗ هُمْ فِيهَا خَالِدُونَ

Those who eat (take) usury cannot stand but as one possessed by a demon because of insanity. This is because they say that buying and selling is the same as usury, whereas Allah has justified buying and selling and forbidden usury. And as for those to whom the prohibition of their Lord has come, and they have ceased (from usury), then to them belongs what they had taken (before the prohibition came); and their affair is (up to) Allah. But whoever returns (to usury), those are the inhabitants of hell, and they shall abide therein. (QS. Al-Baqarah: 275)

The above verse is clear that Allah hates usury and Allah curses those who carry out usury transactions. Every command or prohibition from Allah must have its own wisdom that we do not know, so therefore stay away from usury transactions as far as possible.

One way to avoid usury

For people who want to be careful For people who want to be careful when they really need or really need money there is a way for them to avoid usury, namely by running it through the uhdah sale and purchase transaction, namely buying and selling with a tempo or buying and selling life, namely someone who is in need of money he comes to someone by offering his goods. A is in need of money because his child is sick and must be operated on, so A goes to B to borrow money for the cost of his child's surgery, but when A goes to B, what A does is not owe money but offers his rice field to be bought by B by saying would you like to buy my rice field worth 10 million but later when I have money, I will buy my rice field that I have sold to you worth 10 million too, In this case, it is permissible to make an agreement like what A did to B, but it must be outside the sale and purchase contract.⁸

However, there is a concern that if B is in dire need of money, he will sell the paddy field to someone else because we do not know the fate of everyone. In that case, it is permissible for Mr. B to sell the land because it is his property, and the issue of the promise is an issue outside the sale and purchase.

CONCLUSION

So in my opinion, according to the results of my research, the mortgaged land may be utilized by the rahin if he gets permission from the murtahin and in its utilization does

⁸ Abdullah Baalawy, *Bughyatu Al-mustarsyidin*, (Surabaya: Alhidayah, 2019), p.133

not damage the authenticity of the mortgaged land. While the murtahin may not at all utilize the mortgaged land even though it has received permission from the rahin because it includes usury except for a murtahin who wants to make the mortgaged land as rent and pay it to the person who pawned it. One way to be free from usury is to run it with uhdah buying and selling or buying and selling with a tempo. In this case there are still many people who do not know the correct system or procedure for pawning according to Islamic law. So the step that needs to be considered is to provide socialization or lessons to the people involved in the field, especially the farmers in the village of Martadah about how to do business correctly according to Islamic law, especially in the issue of pawnshops because they are worried that those who still do not know the procedures correctly fall into usury transactions.

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