The Necessity for Rahn Guarantee Registration Agency

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Abstract: Rahn’s introduction as a material guarantee law, the main arrangements contained in the Quran. By the Prophet gave an explanation of how the practice of rahn contained in the Quran. The practice of rahn by the ulema is not interpreted as a sunnah that is ta'abbudy, but it classifies to the sunnah which is ta'aqquly, therefore the practice of rahn can be done unlike the practices that existed during the Apostle. Thus, if the ulema interpret the order of leveraging marhūn does not have to be mastered physically, then there needs a legal instrument that guarantees the marhūn can be used as repayment of rāhin’s debt. For this reason, the instrument is marhūn, it is registered in the space provided. Thus, the rahn guarantee registration agency is needed.

Keywords: Rahn guarantee; agency.

I. Introduction

One of the problems which has not been seriously studied when discussing the Islamic economic system in Indonesia is rahn as material guarantee for the debt mentioned in verse 283 of al-Baqarah. This can be proven by rahn which is only paired with a pawn in the fatwa of the National Sharia Council and Muhammad Syafi’i Antonio with mortgages as well as various literatures that discuss Islamic economics. So, as if there was an impression that the rahn was seen partially, adhoc and not intended for Indonesians, but only as a translation of various Hadiths and asar which had been grounded in Arabic at the time of the Apostles, Khulafaurrarasyidin and Umawiyah.

The development of Islamic economics in Indonesia since the end of the twentieth century AD has not been offset with adequate legal guarantee tools, although it cannot be denied that guarantees are one of the legal instruments in realizing hifz al-māl which will have an impact on non-performing financing (NPF) in Islamic Banking in the year 2014 has shown an increase, because the qord or dain without being matched by adequate guarantee, dā’in may lose the opportunity to get debt repayments from Madīn

Debt guarantees in Islamic law consist of material guarantees and personal guarantees. Personal guarantees is called kafālah, while material guarantees is called rahn. Rahn as a material guarantee mentioned in verse 283 of Surah al-Baqarrah, the object covers all material guarantees objects in positive law in Indonesia, there is movable objects (manqul) and immovable objects (‘iqār). Even including animals and humans whose ranks are slaves also do not come out of the guarantees object rahn. These last two objects become one of the points of refinement between guarantees in positive law in Indonesia and material guarantees in the Islamic economic system.

From the point of binding the guarantees , rahn requires that the recipient of rahn (murtahin) must physically control the object used as guarantees for debt (marhun), whether there is a movable object (manqul) or immovable object (‘iqār), whereas in the material guarantees in positive law in Indonesia different between liens, fiduciary guarantees, warehouse receipts and mortgage and mortgages. In addition to the mortgage guarantee, available institutions where registration. How is the guarantee of rahn whose object is a movable and immovable object, is it necessary to have the institution to register the guarantee
of rahn as mentioned in verse 283 of Surah al-Baqarah and the various Hadiths and Asar which form the basis of the material guarantee formulation by fiqh scholars since ± 12 century which then.

The objective condition of the implementation of material guarantee in the Islamic economic system which has not been accommodated in the law of positive material guarantee in Indonesia on the one hand and the absence of regulation on rahn guarantee as a whole, it is necessary to study whether an institution that functions as a place to register rahn guarantees, see in verse 283 surah al-Baqarah which is the basis of rahn guarantee law does not talk at all about the rahn guarantee registration agency.

II. Review of Literature

The law of guarantees for the debt of madin to dāin contained in the Qur'an and hadith is rahn. How the rahn guarantee law practiced when the Apostle was still alive or after the Apostle's death, it is seen a description of its practice in various asar which by the ulema/scholars had systematized it into applied law in the form of fiqh. In verse 283 surah al-Baqarah gives a description that objects that are used as guarantees for debt by madin to dāin must be done qabad by murtahin. Mubarak ibn Muhammad said, although in verse 283 surah al-Baqarah it is said that guarantees for debts in the form of material guarantees called rahn must have qabad, but he further stated that the qabad's procedures were not found. Therefore the qabad procedure contained in the Quran is returned to how ‘urf (customs) that occur in a country.

Until now, as long as the authors examine the verses of the Quran and Hadith that talk about buying and selling, there has not been found a nas in the Quran and Hadith that shows the sale and purchase agreement in cash made in the form of a certificate, as well as buying and selling of movable or immovable objects. Likewise ownership of land as immovable property which is also known in the book of fiqh with 'iqār has not been found the proof of ownership in the form of a certificate, and there is the land was acquired by way of buying and selling or by opening land, therefore physical control is one- the only way is that marhnun, which is used as a debt guarantee by Madin, cannot be transferred by Rahin to someone else.

Indonesia as a country that adopts a written legal system requires the existence of a certificate as proof in every engagement, there is a buy and sell agreement or a debt agreement. Likewise evidence that shows the legal relationship between a person and an object is also required in the form of a certificate, such as a certificate of land rights which is evidence that determines a person's legal relationship with the land. Thus the physical authority of an immovable object cannot be used as evidence that the master as the legal owner of the object, because it must be seen in advance the status of a person's relationship with the object being controlled.

The word "فرهان مقبوضة" in verse 283 of Surah al-Baqarah is in line with the Arabic understanding of the word "مقوضة" which is the isim maf'ul of fī'il madi "قبض" which means levering. Then practiced at that time by physically transferring goods from the hands of rāhin to the hands of murtahin, so that the qabad contained in verse 283 of Surah al-Baqarah on the guarantee of rahn is practiced by the Apostle in a Fī'li Hadith by surrendering the object which is the object of rahn’s guarantee to the murtahin and the practice of the companions who are

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allowed to silence rahn by the Prophet called the taqriri Hadith is a description of the practice of rahn guarantees that occurs when the verse is revealed. To see whether in the rahn guarantees agency required guarantees registration agency, the author will see it from two angles of understanding in istimbāt al-akhām, that is from an understanding deductive and understanding based on illat law.

III. Discussion

3.1 Deductive Understanding

The study in this context is whether to place physical marhūn in the authority of murtahin in rahn guarantees as carried out by the Apostle as the qabad marhūn ma’sur procedure so that it must be followed or as a description of an effective way to guarantee debt repayment at that time so. The author seems to be more inclined to choose this second opinion, so that qabad is not interpreted by the absolute submission of physical objects that are used as rahn guarantees objects, but can be divided between movable objects with immovable objects, because when associated with al-Qurtubi’s opinion which states that the objectives are given “the surety of this rahn guarantee is to guarantee the maintenance of the wealth (hifż al-māl) madīn which is in the hands of dā’īn. Thus, if the repayment of debt to madīn is achieved without physically placing the object made by rahn, then there is no urgency to give the object burdened with the rahn guarantee is physically controlled by murtahin.

Apart from that, the qabad terminology in the case of rahn guarantees contained in surah al-Baqarah verse 283, is not a terminology that only exists in rahn guarantees, but can also be found in various contracts involving the transfer of ownership, including the buy and sell agreement. Shafi’iyyah, Hanibilah and Abu Yusuf stated that the qabad contained in the rahn guarantees is the same as the qabad procedure contained in the buy and sell problem which aims to ensure the buyer's ownership of the object bought. With regard to the concept of qabab marhūn contained in surah al-Baqarah verse 283 the question arises as to whether the concept of qabad is ta‘abbudiy whose nature must be followed and is part of worship or ta’aqkuli whose nature is to guarantee the realization of hifż al-māl as one of the fulfillment of the problem daruriyah al-khamsah for humans.

Regarding the issue of qabad marhūn’s procedures, Wahbah Zuhaulii also argues that in performing qabad marhūn it does not have to be as stated in verse 283 of surah al-Baqarah, but it can be done in any way if by such procedures it can guarantee the protection of the murtahin right to marhūn and marhūn can be used to pay off madin debt to dāīn if madin debt has matured and madin has not paid its debt, because according to Wahbah that the qabad procedures contained in verse 283 are not classified as ta‘abbudi, but are ta’aquli. Thus Wahbah continued, the qabad marhūn could have been carried out in accordance with the regulations contained in the country where the rahn was practiced, such as by giving notes in the land book that the land had been used as a debt guarantees.

If in practice of qabad marhūn does not have to physically surrender everything that is the object of rahn guarantees, but can follow the qabad marhūn procedure contained in the regulations applicable to a country where the rahn guarantees is enforced, then the legal instruments regarding rahn guarantees follow the legal instruments that are applies to guarantee laws that already exist in a country. Thus there are differences in the procedures of qabad marhūn between movable objects and immovable objects and between certain moving objects and moving objects in general.

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Rahn is a guarantee in Islamic economics based on al-matlû's revelations, in contrast to the guarantee law that exists in capitalist and socialist economies, including the guarantee legal system in Indonesia which is only based on human thought. Therefore rahn as a guarantee law as referred to in fiqh which follows the procedures outlined in the Qur'an and the Hadith of the Prophet and the behavior of the Companions, is the same when the Apostle was still alive or after the Apostle died.

Besides sourced to the Qur'an and Hadith also the consensus of the Ulema and the analogy or qiyas by not ignoring the benefit as one of the most important aspects in formulating a set of laws in Islam. Even Abd Wahhab Khallaf said that in determining the law, he must really pay attention to maqāṣid al-syari` ah, as well as taklifiy law, as well as wad`iy law.

One of the maqāṣid al-shari` ah that is classified as ḍarāry is hafz al-māl (preserving property), which is to protect one's property from falling into others in ways that are not in accordance with the rules of Islamic Law. In positive law in Indonesia, objects that are classified as immovable objects that cannot be controlled physically as well as control over movable objects, then the relationship of ownership of a person with an object is determined by an authentic certificate. In other words, who can prove with a letter that he has a legal relationship with the object, even though the object is controlled by someone else, then the owner is the person who can show the authentic deed, not the person who controls the object. On this basis, the person who holds the authentic deed of the property can transfer it to anyone he wants, even if the object is in the control of another person.

Based on the description above, then interpreting, the guaranteed object will not prevent the owner whose name is listed in the authentic deed to transfer the immovable object which is in the possession of murtahin. If this is the case, then hifz al-māl as one of the sharia maqasids that will not be achieved.

Seeing the Qur'an and Hadith as a source of law in Islam, so as long as about rhan, there is no nas that requires the registration of rahn guarantees and there is also no nas that prohibits the registration of rahn guarantees. However, registration is not something that is prohibited in Islam as long as there is a benefit, because maslahat is maqāṣid al-shari` ah. Even Abd Wahhab Khallaf said that in determining the law, he must really pay attention to maqāṣid al-syari` ah, as well as taklifiy law, as well as wad`iy law.

Regarding with rahn guarantees which must be physically controlled by murtahin as referred to in verse 283, by Mujahid and Zahiri it is said to be limited to debt guarantees made at the time of pilgrimage, but Imam Mujahid who is of the four opinion, mentions the pilgrimage clause as a condition of physical authority of rahn guarantees objects, is not a requirement, but as an objective condition that occurs at that time, that is in a state of pilgrimage it is difficult to get people who are good at writing. Regardless of differences opinion about pilgrims, whether as a condition to secure the object of physical rahn guarantees or not, but one thing that is not possible to do in the pilgrimage condition at that time is to provide rahn guarantees with immovable objects ('iğār) to murtahin and by murtahin physically mastered it.

When referring to the statement of the four Mujtahid Ulemas which stated that the objective conditions of pilgrims at that time was it difficult to get a person who was good at writing which was also connected with the impossibility of madin to provide rahn guarantee that physical objects were immovable objects on one side and the impossibility of physically leveraging on immovable objects ('iğār) on the other hand, then based on dilalah isyarah verses
282 and 283 of al-Baqarah, it can be concluded that the physical authority of rahn guarantees objects whose immovable objects are facultative (mubah), not imperative.

Regarding the practice of gabad marhūn contained in verse 283 during the time of the Apostles, Companions, tābi’n and tābi’n at-tābi’in, Wahbah Zuhaili argues that the procedures for gabad marhūn practiced by the Apostles are not ta’abbudi, but are ta’agguli, because the most important thing according to Wahbah is the attainment of rahn’s prescribed goals, if without physical authority of marhūn by murtahin the objective of rahn’s prescribed can be achieved, then marhūn’s physical authority is not a necessity. In fact, according to Wahbah, gabad marhūn could have been carried out with the gabad marhūn procedure in accordance with the applicable laws and regulations in a country, such as by recording in a land book that land in the name of madin al-rāhin had been used as a debt guarantee with rahn guarantees.

Starting from the gabad marhūn procedures that apply to a country adapted to the gabad marhūn procedures contained in the legislation in force for a country on one side and rahn guarantees are the only guarantee agency contained in the Quran whose object covers all the object of guarantees contained in the guarantees law stipulated in the applicable laws and regulations of Indonesia on the other hand, with the enactment of rahn as guarantees for debt guarantees in Indonesia it is deemed necessary to have a rahn legal guarantee registration agency specifically, because the legal character of the material guarantees referred to with rahn different from the character of the guarantee law contained in various legislative regulations in force in Indonesia.

3.2 Understanding Based on Illat Law

Abdul Wahab Khallaf said illat is a trait found in origin that serves as the basis for setting laws on furu’. (الأعلية هي وصف في الأصل يبني عليه حكمه ويعرف به وجود هذا الحكم في الفرع). Regarding this, illat can be positioned as one of the factors that influence changes in the law, because in the qaidah usuliyah it is stated that the change in law depends on the illat law. الحكم يتغير مع الأعلية وجودها وندمها in other words, that the law will not change as long as the illat law is used in establishing its law does not change.

The illat law stipulates physical authority of rahn guarantees object as a condition to formally and rahn guarantee material that contains in verse 283 of Surah al-Baqarah (وإن كنتم علّمتكم (على سفر ولم تحذوا كتابا) is a pilgrimage and there is no official made the certificate. These two illat are used as cumulative conditions, not alternatives. On this basis, research is needed whether the same legal status when the stipulation of legal terms is formally binding and rahn guarantee material if the object of rahn guarantee is physically in the possession of murtahin.

At the time of the descent of the Quran surah al-Baqarah verse 283 mentioned above is a period of time that not many people are good at reading, so according to Wahbah Zuhaili, the objective condition at that time was that it was difficult to get someone who was good at writing. It is different now in Indonesia, looking for people who are good at reading is not a difficult thing, so even in a state of pilgrimage there is no difficulty in finding people who are good at reading.

Thus, if illat law that causes physical authority of murtahin to be made as rahn guarantee object is the difficulty in finding someone who is good at writing and reading to make an agreement between dāin and mudin in writing, then in Indonesia at this time it is not found anymore, even in Indonesia there is already an agency that has the authority to make a certificate of credit agreement between dāin and mudin. Objective conditions that exist in Indonesia at this time when related to qawai'dul usuliyah which states that menyebutkan

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الحكم يدور مع الشرط ووجودا وعدما كما يدور مع العلة stipulates a law stating the conditions for binding rahn guarantee with immovable objects must be controlled physically marhūn, because it cannot be enforced because illat law which is used as the basis for stipulating the law as mentioned above has changed, then the law formulated from verse 283 of the surah al-Baqarah has also changed, therefore based on understanding the conditions for the verse contained in verse 283 surah al-Baqarah above it can be concluded that the physical authority of immovable objects which are used as rahn guarantees objects does not become a requirement for binding on guarantees.

If physical authority of marhūn which is categorized as immovable object is not a requirement to bind rahn guarantees, whereas binding to rahn guarantees is a the requirement that guarantees for immovable property creates material properties which subsequently also provides the position of Islamic Banking as dā‘in which has precedence from other dā‘in, then the guarantee law in force in Indonesia is required for registration of guarantees at the authorized agency. Thus, because physical control of marhūn does not constitute a requirement to bind rahn guarantees, whereas binding formal and material guarantees in Indonesia is the registration of marhūn at the authorized registration agency, so that registration of the deposit at the authorized agency will give birth to material rights over the rahn guarantee. Apart from that, with the registration of rahn guarantee to the authorized agency will give privileged position to dā‘in murtahin compared to other dā‘in, so that the guaranteed return of dā‘in receivables, because by registering rahn guarantee will give birth to material rights and marhūn can be sold for repayment of madīn's debt to dā‘in if madīn does not pay his debt to dā‘in. Thus, the return of dā‘in's assets to Madīn is guaranteed in the form of accounts receivable which is one of the maqāsid asy-shariah classified as uryarury that is hifz al-māl. Because of the guarantee of the return of dā‘in's assets in Madīn in the form of accounts receivable by registering a rahn guarantee at the authorized agency, the agency of registering the rahn guarantee is required.

III. Conclusion

Rahn is a material guarantee law which the objects include movable and immovable objects. This rahn guarantee is found in its basic rules in the Qur'an and as an indication of its implementation to see how rahn was practiced by the Prophet. In the Prophet's practice, levering is done by physically controlling marhūn. Regarding this matter, Abdul Wahab Khallaf argued that the Prophet's practice was not Sunnah which is ta'abbudiy, but belonged to the Sunnah which is ta'aqquliy, therefore levering on immovable objects did not marhūn physically controlled by murtahin, but it can be done only by handing over the letter which forms the basis of the marhūn's rights which is then registered with the authorized agency for that. Thus, the rahn guarantee registration agency is needed.

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