



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



IMAM AS SYAFEI BUILDING
 Faculty of Law, Sultan Agung Islamic University
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD ISLAMIC UNIVERSITY
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Welcome to Participants on International Conference

"LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

SPEAKERS :

1. Prof. Shimada Yuzuru
Nagoya University, Japan
2. Prof. Dr. Ruzian Markom
Universitas Kebangsaan Malaysia, Malaysia
3. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M
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Indonesia, September 05th 2017

WORLD ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

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Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : **Faculty of Law UNISSULA**
Semarang-Indonesia

5
September
2017

FACULTY OF LAW
Sultan Agung Islamic University

SPEAKERS :

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Sultan Agung Islamic University, Indonesia

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

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AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.

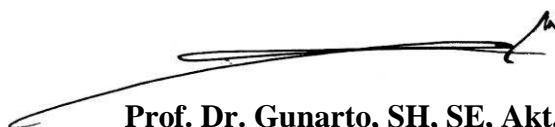
Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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THE CONSTRUCTION OF THE RAHN SYARIAH LAW
IN THE LEGAL SYSTEM OF WARRANTIES OF INDONESIA

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Abstract

Pand According the Civil Code is developed into a Syariah Pand (Rahn) based on the National Syariah Fatwa MUI Number: 25 / DSN-MUI / III / 2002 about Rahn, that is loan by using goods as guarantee in the form of Rahn is allowed. That is the form of submission the property of borrower as guarantee of loan that their received. The research purposes are to know more about the legal construction of Rahn in Indonesian Law System. To achieve that purpose, Juridical normative is used in this research, while the specification of the research is the application of law. The data obtained will be analyzed by using qualitative. Based on the finding and discussion it can be concluded that: the Construction law of Rahn is similar to Pand Law according to Civil Code. It was as an accessoir agreement on the principal agreement that commonly know borrowing agreements, or lending agreement. The object of that agreement such as moving object and the object should be removed from the debtor's authority, it also given right to the creditor to take early repayment on the object execution result with Specifically attached. As known that Rahn as variant of the Pand in Civil Code so that it can be implemented in overall Pand by analogy.

Keywords: Law Construction, Rahn, Indonesian Law

1. Introduction

In globalization era and the increasing of development in all fields which is required much fund. The available fund from internal and external sector is often channelled through the banking or financial institutions. This fund needs to be protected, because the funds came from the community. If funds cannot be returned or jammed, it will cause stagnation or interference in development and ultimately made the community worried of that.

Remind that the importance of the Fund's position in the development process, the giver and receiver of credit in another relevant parties got protection through, a strong guarantee and can provide legal certainty for all parties concerned. These protections were included of the guarantee of legal certainty especially for their rights and there is facility that easy and quick to do execution upon the poverty of debtor. Those were as the object of legal guarantee arrangement. Related to legal guarantees J. Satrio said that legal guarantees as the law rule which is set about the guarantee of account receivable from creditor to the debtor (Satrio, 1991, p. 3). This means that the law is set out in the guarantee especially about providing legal protection (the guarantees) to the creditor in maintaining and implementing their right to get repayment of account receivable from a debtor.

The Guarantees for banks or creditors are commonly means as the facility to create the confidence of creditors that the debtor will fulfill its obligations to the creditor. The form of guarantee can be differentiated between the guarantees that arising from the legislation and guarantees because of promised. The guarantees arising from the legislation is the existence of a guarantee that has been determined by law. While the guarantee which is arises because of promised, it can be can be differentiated into individual guarantees, such as borgtocht and warranties formed as material, such as pand, mortgages, rights of Dependants and Fiducia (Satrio, 2002, p. 15).

Regarding the provisions of this mortgage is arranged in civil code book II Chapter XX Article 1150 to 1160 Article. Meanwhile, the definition of pand itself is regulated in article 1150 civil code which is showed as follows: "Pand is a right of the creditor of moving object then submitted to them (debtor) or by another that used the debtor name, and the person who gave to the creditor to take repayment of such things by taking precedence from another creditor with the exception of those costs to auction things and the cost incurred to save after the item is mortgaged, where costs should be firstly handled".

Pand occurs when the debtor submit things as a guarantee to the creditor then the creditor is given the power to take repayment by selling goods of guarantees, if the debtor is wanprestasi. Pand is as the agreement which is accessoir, means that the pand's right is depending on the primary agreement, for example credit agreement. In the reality, pand which refers to the civil code, it developed become the syariah islamic pand (Rahn) based on the MUI, This effort is done by financial institutions such as banks, pand shops, BPR housing, for example is a gold pand of the Islamic Syariah Bank. Moreover, the pand business competition in the increasingly open. Meanwhile, there is no the existence of the legislation that sets about Rahn as the new legal relation in pattern of guarantee transactions field. It caused the empty law of islamic syariah pand. To fill the empty law it is required the law construction that is a critical analytical action by i.e. to understand a pattern of legal relation so that it can be determined for the law construction.

Islamic syariah pand (rahn) was holding one of the customer's poverty (rahn) as goods guarantee (marhun) for the debt/loans (marhunbih) that received (Rezza, 2014: p. 8). So that such, the parties that hold or receive a pand (murtahin) got a guarantee to be able to take back all or part of their account receivable.

2. Research Question

How is the law construction of Islamic syariah pand in guarantee law system in Indonesia?

3. Purpose of the study

This research is academically to know more about law construction of Islamic syariah pand in guarantee law system in Indonesia.

4. Research method

4.1. Normatif juridical approach is used in this research that, law seen as a system or a normatif rule which are autonomous or independently out of non-legal factors, in this case is the system of legal guarantees (Mahmud, 2012, p.25).

4.2. Data source :The data in this research used secondary data sourced from documents, legislation, literature and books which related to the object of this research. The research is conducted at the housing of pandshop in Purwokerto. The data which are collected then analyzed qualitatively by deductive thinking.

5. Finding and Discussion

The meaning of rahn in Arabic is *ats-tsubutwa al-dawam*, meaning "fixed" and "eternal", as in the sentence *maunrahin*, which means the calm water. Those, based on the word in the AL-QUR'AN. Al-Muddatstsir (74), verse 38: "every person is responsible for what he has done."

According to the Fatwa of national syariah senate number 25/DSN-MUI/III/2002, dated June 26, 2002 that the loan by using the goods as collateral in the form of syariah pand (Rahn) is allowed, that is a form of submission the poverty of the borrower as the guarantee for the loans he received. Rahn is developed through Islamic banks and financial institutions (not a bank), namely Islamic syariah pandshops.

Pand principle as follows :

1. Aqid (contract people). Aqid is people doing contract which includes 2 (two) direction, namely:
 - a) Rahin (people who given the pand goods), and
 - b) Murtahin (people who as creditor or received goods), or the recipient of the pand.
2. Ma'qud ' alaih (the goods that are in contract). Ma'qud ' alaih include 2 (two) things, namely:
 - a. Marhun (pand goods)
 - b. Marhunbih (Dáin), or because of the debt so it held contract rahn.

The terms of the pand, according to Islamic law:

1. Shigat
2. The parties that able to do contract according to law
3. Debt (MarhunBih)
4. Marhun.

Heri Sudarsonosiad, "Pand in fiqh are called rahn, means that the goods which is as a guarantee. While according to syara' it means holding a number of poverty that are submitted as guarantee of right, but it can be taken back as a ransom (Sudarsono, 2003, p. 41). The next is from Ahmad Azhar Basyir mentioned "Rahn means fixed, progress and holding something goods as dependents debts. Rahn means making something worth according to syara' as a guarantee of the debt; the existence of objects that become dependent on this whole or part of the debt could be given (Basyir, 977, p.50).

Based on the description above it can be found the elements of Rahn, namely: 1) the institution of guarantee, 2) The object is an object that has an economic value, 3) It is done with the submission of objects to the creditor, 4) holding objects, sell and take repayment of the proceeds when the debtor wanprestasi, 5) the guaranteed debt is debt without interest

(riba). Based on the above this is related pand in civil code. So that it can be described the difference the both of them as follows:

Tabel 1

The Comparison of Pand (BW) and Islamic Pand (Rahn)		
Pand Understanding	Pand Giver	Islamic Pand (Rahn)
	The rights of creditors to take payment over the guarantee objects	The rights of creditors to take payment over the guarantee objects
	The debtor or party III	The debtor
Recipient Of The Pand	People are individuals, the Bank	People are individuals, the Bank
The debt is guaranteed	Debt of all kinds of Alliance	Borrowing the money without interest
Recipient's Rights of pand	<ol style="list-style-type: none"> 1. Execution Parate (pand sells rights over its own power) 2. The rights of revindikasi and other material rights 3. Right of retention 4. The right of taking payment first 5. Exempt from lawsuits relating to the objects of the pawn 	<ol style="list-style-type: none"> 1. Right master pand objects until the debts repaid 2. Rights to sell to take payment
The Recipient's Obligation Pand	<ol style="list-style-type: none"> 1. Notify the debtor if executing 2. Keep the pand objects and made risk due to wrong 3. Return the money the rest of execution results 4. Had the right to receive interest from the goods that as accounts receivable 	<ol style="list-style-type: none"> 1. Maintaining and storing objects pand 2. Notify the debtor in order to immediately pay off the debt 3. Return the money the rest of execution
The Right Pand Giver	<ol style="list-style-type: none"> 1. Receive refund the remainder of the execution 2. Request a refund if misused pand objects 3. Receive compensation in case of lost/damaged pand objects 	<ol style="list-style-type: none"> 1. Receive refund the remainder of the execution 2. Receive compensation in case of lost/damaged pand objects

The Obligation Of Pand Giver	Ensure that the pledge is property of the pand giver	<ol style="list-style-type: none"> 1. Pay the cost of maintenance and storage 2. Ensure that the pledge is property of the giver
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By implementing Rahn by Islamic banks or Islamic pandshops, it carried legal consequences in Indonesia, there are three types of pand transactions, namely, first is Pand, according to civil code which are used as guarantee in the Conventional Bank business activities; Second, Pand (Verpanding) according to the basic rules of pandshops/ADP (Pandhuis Reglement) as the principal business activity at the housing of pandshops; Third, the Rahn as the guarantee of borrowing money on the business activities of Islamic banks and Islamic pandshops. Based on the three types of the pand, the pand and housing of pandshops are already regulated in legislation, while Rahn has not been regulated for in legislation.

Based on the table above it can be stated that basically, the construction of the law essentially Rahn is similar to pand according to civil code, namely: both of them are same viewed that the agreement as aaccessoir from basic agreement guaranteed. The object that is used as a guarantee is moving objects, the pand objects are removed from the power of pand giver. The main creditor's right is selling pand's object (execution) in case the wanprestasi debtor to take repayment with the obligation of giving back the sale proceeds (execution).

There are essential difference, such as: at Rahn debtor is obliged to pay the cost of the saving and maintenance, while the pand is not. The assumption of the existing obligation for debtor that including cost of saving and maintenance is based on the character of lending money secured by the Rahn, so for creditors recipients, pand is given the opportunity to get extra income from the primary lend by count the percentage of primary debt and count in each month as charge of keeping and saving pand guarantee objects.

Furthermore, out of the main differences, two settings of the pand in civil code are included on first, pand giver is as third parties so that in this case, the person can pand the goods for another person's debt or as the opposite, people have a debt with the pand guarantee object for another person (article 1150 KUH. The Civil Code); Second, the pand objects consist of moving objects with no-bodied or a right charged, which is differentiated into bills on name (op naam), as the carry (aan toonder) and the Bill as the choose (aan order).

In this case, it added the various pand object; Third, the ban of promised on own of property, where it is determined that the creditor should not automatically have a pand goods if the debtor is wanprestasi, all promises which contrary is canceled by law (article 1154 KUH. The Civil Code). It is intended to protect the debtor from possible acts of abuse of authority by the creditor as receiver pand; Fourth, the creditor can be appealed to a Judge to determined another way of selling pand object or appealed for judge so that a pand holders were allowed to buy a price which determined by the judge (article 1156 KUH. The Civil Code); Fifth, the pand object are cannot be divided, it means that paid a part of debtor debt, it cannot as a reason for asking the free for pand object from the relaion pand guarantee (chapter 1160 KUH. The Civil Code).

The substantial similarities between Rahn and pand, that the rules of the pand in Civil Code are as provisions which have become recognized and known in legal regulations guarantee internationally, thus logically Rahn serves as the variant form of the pand. The consequent is that various provisions of the pawn (pand) as set forth in KUH. Civil liability may be applied in order to supplement the provisions of the law of Rahn in the analogy. One provision of the pand is according to the civil code. Civil liability that is not regulated in the provisions guarantee of Rahn, it is not lightly moving objects or rights charged that can be differentiated into bills on behalf of (op naam), bring up Bill (aanTønder) and the Bill over the top (aan order). As a variant of the pand with the consequence is that in several pand provision as regulated on civil code and can be implemented to complete Rahn law provision

analogically. One of the pand provision based on the civil code and not regulated in Rahn provision is that the guarantee of moving object with no-bodied or right charged, those can be divided into bills on name (op naam), as the carry (aantoonder) and the Bill as the choose (aan order). Nowadays, the development of bussiness or economic while faced the globalization era, it can be prosecuted for the developing of moving object criteria which can be as a guarantee of debt. Meanwhile the provisions above it is used as the recognize provision and known in regulation, internationally. As the varian of pand, it is chosen that Rahn get administration fee, insurance, maintenance costs and saving of pand objects(arun) based on the lease agreement (Contract Ijarah).

6. Conclusion

Construction law Rahn(Islamic Pawn) is similar to the pand according to civil code. The civil code, namely, as the agreement which is accessoirto the primary agreement subjects generally as the lending agreement or credit agreements, its own form of moving objects and the object must be removed from the power of the debtor, as well as giving the rights to the lender to take repayment of first the result of execution of the objects that are specifically hold up. Considering the provisions of variant Rahn as pand inThe civil code, so as can implement the provisions of the pand by analogy.

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