Ahkam: Jurnal Ilmu Syariah
https://journal.uinjkt.ac.id/index.php/ahkam

The Debate Between Religious and Minangkabau Traditional Figures About Pagang Gadai (Pawn) Land in Agam Regency, West Sumatra, Indonesia

10.15408/ajis.v24i1.32101

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Abstract

This research aims to analyze the debate between religious and traditional figures over *pagang gadai* land in Agam Regency, West Sumatra, Indonesia. This research is essential for religious figures to consider the practice of pawning that the community has carried out to be usury. It employed qualitative methods with a case research approach and used the *maṣlaḥah mursalah* theory to analyze the data. The primary data were obtained from informants, including religious leaders and members of the Indonesian Ulama Council (MUI), Nahdlatul Ulama (NU), and Muhammadiyah, as well as traditional figures comprising *Kerapatan Adat Nagari (KAN)* members. Some relevant books, literature, and journal articles were studied as secondary data. The study shows that the practice of *pagang gadai* is considered usury to religious figures but not traditional ones. Traditional figures view the practice of *pagang gadai* as belonging to *bay' al-wafā',* as it is a form of mutual assistance (*ta'āwun*) devoid of injustice but benefits both parties. The opinion of traditional figures on mutual assistance, based on the concept of benefit, is consistent with the *maṣlaḥah mursalah* theory that *pagang gadai* is valuable to society.

Abstrak

Tujuan penelitian menganalisis perdebatan tokoh agama dan tokoh adat terkait *pagang gadai* tanah di Kabupaten Agam, Sumatera Barat, Indonesia. Penelitian ini penting untuk dilakukan karena praktek gadai yang selama ini dilakukan oleh masyarakat dianggap oleh para tokoh agama sebagai riba. Jenis penelitian kualitatif dengan pendekatan studi kasus dan teori *maṣlaḥah mursalah* digunakan untuk menganalisis data. Data primer diperoleh dari informan, yakni tokoh agama yang terdiri dari pimpinan dan anggota Majelis Ulama Indonesia (MUI), Nahdlatul Ulama (NU), dan Muhammadiyah, serta tokoh adat yang tergabung dalam Kerapatan Adat Nagari (KAN) sedangkan literatur buku dan artikel jurnal relevan dijadikan sumber sekunder. Hasil penelitian menunjukkan bahwa praktik *pagang gadai* dianggap riba oleh tokoh agama, namun tidak bagi tokoh adat. Tokoh adat memandang praktik *pagang gadai* termasuk dalam *bay' al-wafā'*, karena merupakan bentuk gotong royong (*ta'āwun*) yang tidak mengandung unsur zalim namun menguntungkan kedua pihak yang mengambil manfaat darinya. Pendapat tokoh adat yang menitikberatkan pada konsep kemaslahatan, yakni tolong-menolong sejalan dengan teori *maṣlaḥah mursalah* bahwa *pagang gadai* dapat mewujudkan kemaslahatan di masyarakat.

Keywords:
pagang gadai; religious figures; traditional figures; pusako tinggi; pusako rendah

How to Cite:
Willya, E., et.al., (2024). The Debate Between Religious and Minangkabau Traditional Figures About Pagang Gadai (Pawn) Land in Agam Regency, West Sumatra, Indonesia. AHKAM: Jurnal Ilmu Syariah, 24(1).
https://doi.org//10.15408/ajis.v24i1.32101

Introduction

A form of *mu'āmalah* in society is the pawning (*gadai*) practice (Haroen, 2000), which involves lands as one of the frequently pawned assets, including those belonging to the Minangkabau people of West Sumatra, Indonesia (Kaban et al., 2018). However, the meaning of land ownership in this community is interestingly different. The authority of the clan or family in the indigenous province's society is determined by its ownership of a large area of land, which emphasizes one's identity as a native (Yulhendri et al., 2021; Wirasaputra, 2018). Meanwhile, those who do not own lands are classified as "attached" (*malakek*) tribes to landowners and are even referred to as people with unclear origins (Navis, 1986). The land is a treasure preserved for generations in Minangkabau customary law community. Some people said, "*Ado tapian tampek bath, ado basasok bajarami, ado bapandam kukuburan,*" meaning "there is a place to bath, there are rice fields, there is land for family graves" (Hasneni, 2015), indicating the value of land to this community.

Land ownership is the basis for the recognition of tribes/groups in a country, resulting in its importance to the Minangkabau community, where their ownership of land can judge the degree of a person or a people. According to customary law, land cannot be sold but pawned in times of need, with the expectation of redemption at a later date (Adhim et al., 2019). This exchange can persist for years or decades and may be continued by their descendants due to the inability of the pawnbroker to redeem the land.

The practice of land pawning in West Sumatra still uses customary law (Nurdin & Tegnan, 2019), is measured with gold rupiah, and imposes no time limit for redemption. Its implementation involves a loan agreement that guarantees the borrower retains the collateral, providing the debt has not been paid. The pawning process serves as a means of mutual assistance (Toeh, 1985; Citrawan, 2020) with customary provisions that must be redeemed without transferring the land ownership status to other tribes, thereby depicting that land is a permanent wealth, functioning as a binder of people.

However, the long-standing practice of pawning often causes anxiety in society because it is believed to contain elements of usury due to the exploitation of the land by the pawnee, as observed in the last five years among people who pledged land/rice fields. This is reinforced by an appeal from religious leaders that the pawnbroker must return the collateralized land because it contains elements of usury. Likewise, research showed that usury occurs in pawning in this region (Al-Ikhlas et al., 2021). There are several contradictory aspects, such as the unlimited time of the pawning process and the use of goods as collateral.

Public anxiety also originates from the absence of a fatwa from religious and traditional figures concerning the pawning practice, as scholars have only appealed to return pawned goods that have been held for years. In response to this dilemma, Article 7 of Law Number 56 PRP of 1960 concerning Determination of the Area of Agricultural Land, where in paragraph (1) it is explained that anyone who controls agricultural land with a lien which at the time this regulation comes into force has been in place for seven years or more is obliged to return the land to its owner within a month after the existing crops have been harvested, with no right to demand payment of ransom (Maulana et al., 2021). The rules in *fiqh al-mu'āmalat* also condemn utilizing the collateral, stating that the recipient may not take advantage of the pawn because of usury. Meanwhile, *pagang gadai* (land pawning) is not a problem in customary law. This shows that three legal orders coexist among the Minangkabau people, including customary, Islamic, and state law (Benda-Beckmann & Benda-Beckmann, 2014), where each legal order has consequences (Willya et al., 2021), including the issue of land pawns.

The Minangkabau people have long attracted the attention of Indonesian and foreign researchers due to their recognition as devout adherents of the Islamic religion. They exist with the motto *'ādat with sharia, sharia with Kitābu Allah,*' which means 'custom based on Islamic law, and Islamic law based on the Quran (Prasojo, 2016). As the largest matrilineal community in the world, they are unique, including in the practice of *mu'āmalah*.

This research aims to analyze the debate between religious figures (ulamas) and traditional figures over *pagang gadai* land in Agam Regency, West Sumatra, and determine their perspectives of the practice. Little research has been conducted on this subject, mainly examining the practice from other aspects, including the settlement of land pawn disputes through the courts (Amriwan et al., 2020) and customary law (Putri & Montessori, 2020), as well as pawn agreements according to customary rules and positive law (Putra et al., 2019). Therefore, examining the debate between religious and traditional figures about *pagang gadai* is necessary to fill the research gap.

Pawning from the Perspective of Islamic Law

In Islam, the pawn is called *rahn*, meaning 'determination and permanence' or holding (*al-ḥābs*) (Suhendi, 2000). This signifies 'making a valuable object a debt collateral as long as there are two possibilities, namely returning the money or retaining a part of it' (Sābiq, 2000). Pawning (*rahn*) is one of the charity contracts (*tabarru*') because the object is transferred by the pawn to the recipient without compensation (al-Zuhaili, 2011).

Generally, pawned goods cannot be exploited by the owner or pawnbroker unless permitted by both parties. The owner's right to the collateral is also based solely on the condition or nature of the valuable object rather than the use/collection of results (Zuhdi, 1997). Therefore, the pawnbroker only has the right to hold the goods but does not benefit from the results. This is because the debtor, as the owner, is not entitled to use the goods but may receive any proceeds from the property (Sābiq, 2000).

The Maliki school of thought believes that assets used as debt collateral are binding. In contrast, the Hanafi school deems goods as collateral for receivables that can be used wholly or partly as debt settlement. Conversely, the Shafi'i and Hanbali consider pawns as collateral that can be used to pay in situations where the debtor cannot pay (Dahlan, 2006).

A successful pawning process involves the fulfillment of several pillars and conditions. The pillars are (1) *rāhin* (people who gave the pawn) and *murtahin* (people who received the pawn); (2) *ma'qūd 'alayh* (property as collateral for the *rāhin's* loan); and (3) *ṣīghah (ījāb* and *qabūl)* that both parties transact) (al-Jazāirī, 1993). The conditions include (1) the two people in the contract must be adults (*bāligh*) and have an understanding; (2) The form of collateral goods, such as land, vehicles, etc., should be defined during the contract or identified by a certificate of ownership. The pawned goods can be held or controlled by the *murtahin* or his deputy (Sabiq, 2000), provided they are valuable assets according to Islam and not illicit properties such as liquor (*khamr*) (al-Jazāirī, 1993). Also, the item must be a non-perishable, intact property and should not be traded, loaned, or functioning as a debt. (3) *Ṣīghah*, the *lafẓ* of consent and acceptance (*ījāb* and *qabūl*) should be clear and understood by the involved persons. Since pledge agreements are similar to a sale and purchase contract, the Hanafi school of thought requires that the contract's wording be free from conditions or future obligations (al-Zuhaili, 2011). It can be expressed as "I pawn my property" or lack a particular word but still be indicative of the pledge agreement. (4) *Marhūn bih* is the rights given by *murtahin* to *rāhin* through a pawn contract. Scholars, other than the Hanafi school, require its formulation as debt or goods, the approval of payment or a return, and maintain that the object belongs to the *murtahin* (Syafe'i, 2004).

The legal basis for pawning in Islam is its permissibility (*jā'iz*) as stated in the QS al-Baqarah verse 283 that "for those who give and owe debts while travelling and do not obtain a scribe (notary), the course of this *mu'āmalah* should be accompanied by the existence of trust guarantee." This shows that the religion provides relief in oral transactions but requires the submission of dependents to the debtor as collateral. As explained by al-Sa'dī (2003), the inability to find a writer to document a debt contract while on a journey can be replaced with collateral as a form of pawning, in which the *murtahin* can hold the property. The giver and recipient are required to submit the trust received, and Allah reminds the mandated witness that his testimony must be borne truthfully without hiding any information (Shihab, 2012). In addition, the creditor must appropriately maintain the collateral. At the same time, the debtor holds the pawn, and both parties must fulfill their respective mandates as a sign of piety to Allah SWT. The practice of pawning can also be found in the Hadith from Aisyah, which reads, "The Prophet once bought food from a Jew and pawned his armor." (HR. Bukhari and Muslim). According to al-Shawkanī (1999), the Hadith is a proposition for the permissibility of peace with infidels, providing it is not related to acts forbidden by Islam.

Besides the Quran and Hadith arguments, al-Zuhaili (2011) affirmed the agreement (*ijmā'*) of all scholars on the permissibility of pawning. They also compiled *fiqh* rules on the issue, stating that the origin of *mu'āmalah* and every other action is permissible until there is evidence for its prohibition. Likewise, Indonesian scholars issued fatwa No: 25/DSN-MUI/III/2002 through the National Sharia Council (DSN), stating that loans received by pledging goods as collateral for debt in the form of *rahn* are permissible (Author Team, 2003; Mudjib, 2013).

Some *fiqh* experts divided pawned assets into goods that require maintenance (food), divided into two, namely pets that can be ridden and milked, and pawns in the days of ignorance such as *'abd* (enslaved man) and *amah* (enslaved woman). Another category involves pawned goods that do not require maintenance, such as houses and jewellery. At the same time the last type is the murtahin, which is not mandated to provide benefits except with permission from the *rāhin* (pawnbroker) (al-Fawzan, 2018).

Pawning according to the Minangkabau Tradition

Pawning is a Minangkabau custom in which a piece of land is transferred to another person following the receipt of a certain amount of money on the condition that the property will be returned to the landowner once the money is returned (Sihombing & Salim, 1975). Therefore, two parties are involved in the pawning process: the *rāhin* and *murtahin*. The principle of land pawning demands that in circumstances where the redemption period has no time limit and is dependent on the pawner, the right to redeem can be transferred to the pawnbroker's heirs unless agreed otherwise (Hasneni, 2015).

Based on the time of redemption, pawning can be divided into four types (Hasneni, 2015), namely (1) Ordinary pawn, where the land can be redeemed by the owner at any time, with a 1-year harvest limitation or in cases where plants are still growing, and the products have not been collected. (2) Pawning for a period that can be irredeemable or redeemable. (3) Pawning for a period determined by the pawner and the recipient of the pledge, where redemption is prohibited, and the land cannot be retrieved for a certain period. Once the time limit elapses, the pledge becomes an ordinary pawn. (4) Pawning for a period required to be redeemed refers to land the pawnbroker must redeem according to an agreement with the pawnee. The mortgage is lost if the property is unredeemed, resulting in a free sale.

The land is the people's only permanent wealth and binder in territorial customary law communities based on patrilineal and matrilineal lineages, such as the Minangkabau. The close relationship between humans and land stems from a "religious-magical" view that humans have the right to control, utilize, and obtain products from the land, including hunting and defending the animals on it. This agrees with the customary fatwa, '*rumpuik nan sahalai, bilalang nan saikua, land nan sabingkah Penghulu nan punyo'* (one grass, one grasshopper, one piece of land, the ruler who has).

The Minangkabau custom divides assets into four categories. The first is high heritage assets such as rice fields, plantations, and gardens, which have several characteristics. These include: (1) their origin is uncertain; (2) assets are owned jointly by the people and used for the common interest, and (3) the ownership of the property cannot be transferred out of the clan except under the conditions agreed upon by all members are fulfilled. Second, low inheritance assets result from the parents' income during the marriage and the property given to nephews from the *mamak*/uncle's income. These properties are characterized by inheritance through generations due to parental income and the *mamak/*uncle's gift. Third, livelihood assets are obtained due to a person's efforts. These properties are added to the inheritance, so the owner's death results in their bequeathal to subsequent generations. Fourth, *surang* treasure (Sjarifoedin, 2011) refers to properties individually owned by spouses before marriage that maintain their ownership status.

Meanwhile, land in this community is controlled by the *mamak*, who is responsible for maintaining, administering, and defending the land owned by his people and adding to the results of the search (*mamak's* effort) when needed. This responsibility does not confer ownership, as landed properties are possessed by women, meaning inheritance is executed according to the female lineage. The *Mamak's* maintenance of the integrity of the land must be performed very strictly, as the property cannot be transferred without an apparent reason according to the rules of *pusako salingka suku* (heirloom of one tribal ring). This signifies that land ownership can only be transferred to members of the same clan and tribe, not outsiders (Putiah, 2007). In addition, the transfer within the tribe must consider the level/distance of kinship, namely the *sajangka* (a span of an inch), *saheto* (a cubit), the *sadapo* distance (one-fathom), and the *saimbauan* (scream limit) distance (Hasneni, 2015).

Land in Minangkabau is considered an heirloom (high or low inheritance) (Benda-Beckmann & Benda-Beckmann, 2004). It demands the approval of all heirs as well as the witness of the tribal chief or *penghulu* before a transfer. According to Naim (1968), the discovery of four factors are prerequisites to a collective agreement, namely (a) *rumah gadang katirisan*, meaning the traditional house has been damaged, or needs repair, and tribal savings are unavailable at the time; (b) *Gadih gadang/jando alun balaki*, denoting the lack of funds to execute the customs and requirements for the wedding of girls/widows ready for marriage; (c) *Mayik tabujua di tanga rumah*, involving the pawning of land to cover the costs of death, burial, feast, etc., particularly when the deceased is a *penghulu*; and (d) Insufficient resources to fulfill the customs in the *nagari* (region) when the customary law does not represent the people, a house needs to be established by the *penghulu,* or there is a long-standing *penghulu* heritage. The satisfaction of one of the four (4) conditions activates the tradition that "*indak kayu janjang* *dikapiang, indak ameh bungka diasah"* (not wood, wooden ladders are chipped, not gold *bungkal* is sharpened). This means properties, such as plantations or rice fields, can be pawned in the absence of stock in the rice barn and old plants that can be used as money, and no solution is available at the time.

Generally, pawned lands are not included in the customary contract law in the law of land objects. According to Toeh (1985), the conditions for pawning land are (1) approval by all heirs. Otherwise, the contract is considered null and void by law; (2) the absence of an expiration date; (3) the pawnbroker has the first right to cultivate the pawned land unless he is willing to hand over the arable to someone else; (4) the pawnbroker is forbidden from pawning the land held again without the owner's permission; and (5) the owner may request additional money from the pawnbroker, providing the contract is still functional. Following a pawn, the land remains in the ownership of the pawnbroker, indicating that the transfer of control is only temporary. Since land pawn transactions occur only between families, only family members or the *Wali Nagari* (Village Head) are required to approve or witness the process.

Hasneni (2015) mentioned three types of pawns in West Sumatran society: (1) *sando/sandro* (hostage), referring to property that can be redeemed at any time, at least after one harvest. (2) *Sando kudo/sandaro kudo* (horse hostage) denotes assets that cannot be redeemed because of accumulation over time, i.e. mortgage money has been multiplied, leading to a higher value to be returned. Therefore, roasting other people's fields of the same size but at a low price is preferred. (3) *Selamanya, bagai salamo matohari, bulan dan bintang berada, salamo awan putiah, salamo gagak hitam, salamo aia ilia'* means as long as the sun, moon, and stars are in circulation, as long as the clouds are white, the crow is black, and the water flows. Debt-receivable transactions generally cause all types of pawns.

The *Pagang Gadai* Institution is an old and dominant form of legal relationship in Minangkabau, perhaps because of the strict prohibition on the sale of inheritance in the community's matrilineal system. Meanwhile, the procedure for pawning high heritage land is complicated and regulated by the Minangkabau customary law system, which requires approval from all heirs and a witness by the tribal chief (*penghulu*). Obtaining approval is easy when the family has needs, such as repairing damages in a big house, marrying off a girl or widow, burying dead bodies, or enforcing customs that do not stand (Hasneni, 2015).

Before executing a land pawn transaction, several provisions must be made, first seeking help among the closest family members, tribes, or people in one *Nagari*. After obtaining permission from all tribe members and the *mamak* of the heirs, the property can be pawned at the agreed price. The process is implemented in the presence of the *Nagari* Head, and a pledge is made (Sjarifoedin, 2011). Both parties, their heads of inheritance and witnesses of clan members known to the *Nagari* Head, sign a pledge.

According to Minangkabau customary law, pawning arises from mutual and non-extortive agreements (Naim, 1968) and contains social functions. Most pawnbrokers and pawnees belong to the same clan, with some cases involving persons related by marriage or a member of a clan that lives and has become a *nagari* person.

Due to the valuation of a person's wealth through lands in Minangkabau, pawning or selling property in the community is complex. However, land may be mortgaged based on certain conditions, such as the guidance of a pawned high-inheritance property by the oldest *mamak* in the clan (*mamak kapala waris*) because of the matrilineal principle. Supposing the eldest male is absent or still young, the position of the *mamak kapala waris* is replaced by the eldest woman (tail inheritance). This confers the authority to determine the inheritance to be processed by the niece and nephew of the same clan.

The *Mamak* is responsible for maintaining, managing, and defending the land. This responsibility does not equate to ownership, as land in the Minangkabau customary law community is owned by women, meaning inheritance is executed according to the female lineage. Hence, the *Mamak's* responsibility to maintain the integrity of the land controlled by his people must be implemented firmly because land cannot be transferred.

Land in Minangkabau is considered a high or low heritage and must be transferred per the *pusako salingka suku* (heirloom of one tribal ring) rules. This means that property can only be transferred to members of the same tribe and may not be available to outsiders. The level of kinship must also be considered during transfers within tribes.

Consequently, pawning in this society does not transfer property rights such as buying and selling, meaning the owner retains his rights. The Minangkabau community adheres to a communal system and does not recognize individual ownership. This means the customs can protect traded jointly owned property without the threat of poverty to the children and grandchildren, as the land can be redeemed, thereby maintaining the honor of the indigenous people.

Method

This research was conducted from June to November 2021 in Agam Regency, West Sumatra, which was selected because of the *pagang gadai* land practice in the region. A case research approach was considered appropriate (Baldwin & Davis, 2005) for this qualitative research to analyze the debate between religious and traditional figures concerning this practice. Subsequently, the *maṣlaḥah mursalah* theory (Firdaus, 2017) was used to analyze the data, primarily sourced from ten religious leaders and eight traditional figures. The informants were determined through a purposive sampling technique based on predetermined criteria. These were leaders and members or administrators of the Indonesian Ulema Council (MUI), Muhammadiyah, and Nahdlatul Ulama (NU) as the requirements for religious figures, and *penghulu* members of the Kerapatan Adat Nagari (KAN) as the criteria for traditional figures.

Meanwhile, secondary data are chosen from relevant documents, books, and journal articles. The research data were collected by direct observation techniques in Agam Regency, West Sumatra, to observe the *pagang gadai* land practice performed precisely. In-depth interviews were conducted with the informants (Boyce & Neale, 2006) to obtain data on the opinions of religious and traditional figures about the *pagang gadai* land practice. Apart from that, observing the debate between religious and traditional leaders regarding land pawning. The last step involved analyzing documents related to the *pagang gadai* land practice by investigating data obtained from notes, manuscripts, files, photos, etcetera.

Pagang Gadai Practice in West Sumatra

The majority of West Sumatran scholars consider the *pagang gadai* practice in Minangkabau as usury (*haram*) (Asasriwarni, 2021; Gazahar, 2021; Taufik, 2021) because money lenders use the pawned goods, lands, or fields to earn an income (Burhan, 2021). Meanwhile, others equate the practice with *bay' al-Wafā'* in the Hanafi school (Gazahar, 2021).

According to the MUI of West Sumatra, the *pagang gadai* contract is a *dain* or *qaradh*, involving debts and receivables. It is not considered a buying and selling process because inheritance cannot be sold or pawned in the community unless four conditions are fulfilled, such as *rumah gadang katirisan, gadih gadang/jando alun balaki, mayik tabujua di tangah rumah,* and *batagak pengulu* (Gazahar, 2021).

There are two forms of debt in Islamic law: debts with a mandate or without the need for collateral alongside debts requiring collateral. The inability of the debtor to pay within the stipulated time limit will lead to the lender retaining the guarantee, thereby preventing them from being wronged. This second form is a regular occurrence in Minangkabau.

The principle of pawning is not exploitation, as obtaining benefits equates to usury for several reasons, including (1) The declaration of the Hadith that "every debt that produces benefit is usury."; and (2) The general rule that "*mu'āmalah* is allowed on the condition that the general provisions of halal and haram are not violated." However, several aspects of the practice of *pagang gadai* are violated, namely the use of pawned goods by wealthy people to multiply profits while retaining the original amount of the debt. This principle contradicts the purpose of *pagang gadai*, which is assisting needy people, and even the West Sumatran MUI stated that the practice does not aid land/rice field owners or provide economic benefits (Gazahar, 2021). Meanwhile, the practice of *pagang gadai* in sharia contains usury and lends elements of wealth to people in trouble, thereby acquiring multiple benefits without any decline in debt.

Based on the reasons above, the West Sumatran MUI stipulates that this practice cannot be included in the *bay' al-wafā'* category because the initial contract was a *qarḍ* or *dā'in* while *bay' al-wafā'* was not allowed. Therefore, the *pagang gadai* transaction contains usury (Taufik, 2021).

The MUI of West Sumatra has proffered several solutions, such as returning the land to the owner without receiving the borrowed money or creating a new contract with a time limit. Other solutions include refunding the funds borrowed, returning the land with a note that the harvest yields will be taken as instalments for paying off debts or making a sale-purchase contract for half of the pawned land according to the amount owed (Gazahar, 2021).

Currently, *pagang gadai* raises many disputes because the involved goods are high heritage assets pawned without deliberation. Since it entails a joint property, difficulties will be experienced if the pawnbroker dies while the *pagang gadai* is still in progress, resulting in problems concerning the settler of debt. This means it cannot be equated with *bay' al-wafā',* which involves the pawn or sale of personal and not joint property. It is conducted within a specified period, unlike *pagang gadai,* where a time frame is stated in the contract but not implemented.

A common disagreement that arises from this practice is land disputes. These are motivated by the high selling prices of land, which lead to the filing of lawsuits in court since the properties are still tied to the pawn. In courts, certificates possessed by the land/rice field owner but not *pagang gadai* are used (Alfiandri, 2021), harming both parties. The party in charge of the pawned rice fields engages and benefits from usury, while the one that dies without repaying their loan dies in debt (Deswandi, 2021).

Several persisting obstacles and complications arise from *pagang gadai*, namely (1) certificates not land should be given to the moneylender; (2) The pawned land is jointly owned but not allowed to return (*taṣarruf*) to joint property; (3) The pawnbroker or asset-holder uses the property; and (4) The pawner or debtor wants to settle while the lender refuses or vice versa (Deswandi, 2021). These problems can be resolved by selling the pawned goods (land/paddy fields) based on mutual agreement and returning the borrowed money from the proceeds. Previously, usury was avoided by buying and selling *ta'līq*, resulting in the use of two letters for this pawn: a *pagang gadai* letter and a *ta'līq* sale and purchase letter (Deswandi, 2021).

Contrary to the views of religious figures, the adherents of tradition in West Sumatra argue that the *pagang gadai* practice performed by pawnbrokers and pawnees (*murtahin*/pawn recipient) does not include usury because both parties benefit (Zakiruddin, 2021). The pawnbrokers exploit this traditional practice for several purposes, such as financing their children's education up to college. Education is critical (Idris et al., 2020). Likewise, the pawn recipient (*murtahin*) acquires crops as benefits from the managed land, meaning that the money and harvest are used to finance their children's education and each family's needs.

The use of mortgaged goods is permitted for several reasons. According to Sheikh Mahmud Saltut (1893-1963), the pawn recipient (*murtahin*) may use the item, provided the pawner accepts. Sheikh Ibrahim Musa, the Founder of the Sumatra Thawalib Parabek Islamic Boarding School, also stated *pagang gadai* is not a usury practice because buying and selling contracts are used. This means that the mortgaged goods are still the right of the *murtahin* as long as the money has not been returned. Musa added that justifying one deed by one scholar means the work is correct (Zakiruddin, 2021).

In 1970, several Minangkabau clerics, including Buya Hamka and H. Zahirin, agreed that the practice of *pagang gadai* was halal (allowed), with a few notes that the transaction could only occur in urgent circumstances within the clan (Parpatiah, 2021). The departure of the pawner to seek help from outsiders will lead to the shame that the group cannot support itself.

Hence, *pagang gadai* transactions are allowed for two reasons: (1) *Ibāḥah*, involving mutual borrowing and use. The pawning party benefits from the money received, while the *pamagang* collects the harvest from the processed rice fields. (2) Emergency (forced), where pawning is the only way to obtain money. In customary principle, the substance of *pagang gadai* is that high heirloom assets should not be transferred to other people, as the traditional saying '*dijua indak dimakan bali, digadai indak dimakan sando*' (Mudo, 2021), unless four conditions (Parpatiah, 2021) are met. First, the '*rumah gadang katirisan,*' meaning the gadang house is heavily damaged and must be repaired immediately. This house symbolizes tribal unity and must be intact and well-maintained at an equivalent level of luxury or classiness to other people/tribes. In such conditions, immediate repairs are needed to prevent extensive damage, which costs much money.

Second, *'gadih gadang/jando alun balaki*' indicates girls/widows who should be married off. Women are regarded respectably, as they represent the appearance of a descendant. Therefore, marriages are mainly conducted by entertaining people and performing other customary obligations. The inadequate planning of such events may embarrass the people of the clan.

Third, '*mayik tabujua di tangah rumah*,' which means the corpse lies in the middle of the house. In Minangkabau, the death ceremony is held at great expense and involves *tahlilan* in three, seven, forty, one hundred to a thousand days as well as purchasing a shroud and board. These events also include the cost of organizing the death wish to entertain the priest (*urang siak*) in reading the *tahlil* and managing the corpse.

Fourth, '*batagak pengulu*' involves the appointment or inauguration of the *penghulu*. The *Batagak pengulu* is a Minangkabau traditional ceremony for inaugurating a person to become a penghulu, guided by the traditional *petitih* "*maangkek rajo, sakato alam, maangkek pangulu sakato kaum,*" alongside the involvement of the family concerned. This traditional procession costs a lot of money due to several activities, such as slaughtering a buffalo, partying for days by inviting various artists, and buying new *datuk* equipment.

Since some conditions above require high costs, *pagang gadai* may be practiced by pawning rice fields/heritage lands (*pusako* rice fields). Therefore, the true meaning of *pagang gadai* is meeting an emergency (Gadang, 2021), which may include (1) a large family threatened by debts that cannot be paid because of the actions of the nephew's children; (2) A fatherless nephew who wants to continue his education while his mother is classified as poor (Panjang, 2021); and (3) For medicine and the treatment of sick community members (Parpatiah, 2021).

The object of pawning in Minangkabau, though the actual price is always higher than the money lent, can only be produced after being processed by the pawnbroker. Generally, the forbidden '*illah* (basic) aspect of usury is *ẓulm* (Andriyani, 2021), which the *pagang gadai* practice lacks because it aims to help (*ta'āwun*) (Mangkudun, 2021). The owners of the pawned property, such as land/rice fields, were classified as rich but participated in the *pagang gadai* practice to obtain cash to meet their urgent needs.

Islamic View on Pagang Gadai

Land pawning in Minangkabau Customary Village, Agam Regency, West Sumatra, is a long-standing practice (Parpatiah, 2021) performed before Islam arrived in the area (Zakiruddin, 2021). However, *pagang gadai* is not an original Minangkabau custom for several reasons, namely (1) the practice was initially termed *borg* during the Dutch colonial period; (2) it uses a letter, which emerged later when people became good at writing; and (3) there is no *petitih* saying about *pagang gadai* except "*dijua indak dimakan bali, digadai indak dimakan sando*" (Zulhamdi, 2021).

The people of Agam Regency refer to pawning fields as *pagang gadai* and are also familiar with the terms *salang pinjam, pinjam maminjam* (Zainuddin, 2021), and *maanjak sawah* (Zakiruddin, 2021), while pawners are called *'manggadai'* (*rāhin*) (Parpatiah, 2021). *Pagang gadai* is a transaction in which the *pawner* surrenders land to the pawn recipient in exchange for gold rupiah or money. This is accompanied by an agreement that the land/field will be returned to the pawner, who must also refund the money borrowed (Mulyani, 2021).

There is no stipulated period for redeeming the pawned land in the *pagang gadai* practice, as land pawns can occur for years and may even be transferred to the heirs of the parties involved. An example is *Banuhampu* in the *Parabek* community, where the term *maanjak sawah* has existed from 1903 until now (Zakiruddin, 2021).

Land pawning, rice fields and lands are used or cultivated by the pawn recipient (*murtahin*) with the pawnbroker's permit (*rāhin*). There is no stipulated period for the utilization of pawned goods because there is no maximum time for debt repayment. The redemption of assets depends on the ability of the pawnbroker, causing many pawns to persist for years due to the lack of money. Generally, the lent money, measured according to the price of gold, is directly handed over from the lender to the field owner (Deswandi, 2021).

Consequently, pawned goods cannot be sold because there is no debt repayment period. The borrowed money can only be repaid through a refund by the *rāhin* to the *murtahin*, though the settlement can take months or years. If the *rāhin* is unable to pay off their debt, the pawned item, such as rice fields, cannot be sold and will continue to be retained by the *murtahin* until the money is refunded. However, the pawned goods remain in the ownership of the *rāhin,* though the *murtahin* controls the utilization. The pawn recipient can only use the land/rice field indefinitely until the *rāhin* pays off the debt. Supposing the *rāhin* dies and the debt has not been repaid, the obligation is transferred to the heirs and other family members until completely settled (Parpatiah, 2021). This is related to the *pagang gadai* rule in Minangkabau custom, where high heritage rice field assets cannot be sold but pawned in a state of urgency (Muis, 2021).

Pawning in Minangkabau emerges from a helpful contractual agreement with a social function, as the pawner and the property holder belong to one clan and tribe and, frequently, one *Nagari* (Zulkifli, 2021). The reason for pawning is the financial need of a clan member, which motivates the offspring or nephew to pawn the inheritance after receiving approval.

Meanwhile, the transfer of land ownership must correspond to the *pusako salingka suku* (heirloom of one tribal ring) rules, which specify the involvement of only members of the clan or tribe and not external parties. The transfer must also consider several provisions for kinship distance, namely *jarak sajangka* (one span), *jarak saheto* (one cubit), *jarak sadapo* (one-fathom), and *jarak saimbauan* (shouting distance) (Zulkifli, 2021; Hasneni, 2015).

Several land pawn transactions are performed in writing, using a certificate made by the pawnbroker and the asset recipient in the presence of two witnesses. This document is formulated on a seal or stamp duty and signed by both parties, the witness and the *Mamak* of the head of the heirs, supposing the pawned property is a high inheritance land. For a livelihood or low inheritance property, the pawnbroker can sufficiently sign the transaction and the pawnee in the presence of two witnesses, one from each party.

Pawning does not involve a transfer of property rights such as buying and selling. Hence, the ownership status is maintained even after mortgaging the land because the Agam Regency citizens adhere to a communal system that does not recognize individual ownership. This will ensure that jointly owned properties can be traded without the threat of poverty to the children and grandchildren. There is also the expectation of redeeming the land, thereby maintaining the family's honor as a tribal community because they are still recognized as the formal landowners (Zulkifli, 2021).

In the *pagang gadai* agreement, a redemption period is optional. Many people do not indicate a limit on the expiration of pawns, leading to the inheritance by the offspring of the original debtors (Mulyani, 2021). Some *pagang gadai* letters even demand that the rice field not be redeemed for two years, meaning the property owners cannot reclaim their fields even though they wish to repay their debt (Zakiruddin, 2021).

Consequently, a law that describes the *pagang gadai* practice as usury cannot be executed immediately because this practice is different from debt guarantee. Although the party receiving the pawn uses the property, it differs from buying and selling because the land will be returned to the owner when the debt is repaid. Even by contract, *pagang gadai* uses *salang pinjam, pinjam maminjam* (Zainuddin, 2021), and *maanjak sawah* (Zakiruddin, 2021) rather than a debt-receivable contract.

The general practice of *pagang gadai* performed by the Agam Regency citizens is similar to *bay' al-wafā'*. This equivalence is signified by the owner's redemption of pawned goods once the *pagang* is due. The ransom paid for the pawned goods is equal to the amount received when the contract is executed and is usually measured using the value of gold. Furthermore, the pawnee can freely use the goods until the pawnbroker pays off the debt, though money borrowers cannot pay off their debts due to accumulated rewards that must be offset. These rewards included on borrowed money are considered a form of usury by religious figures, particularly *fiqh* scholars.

Meanwhile, *bay' al-wafā'* differs from *rahn* (debt guarantee) because the debtor cannot use the goods collected as collateral. The consumption or use of the collateral is included in the category of usury, which supports the Hadith of Prophet Muhammad that "Every debt accompanied by utilization (for the debtor) is usury." (HR. Baihaqi).

From the beginning, *bay' al-wafā'* was a sale-purchase contract that allowed the buyer to use the item. However, the buyer is forbidden from selling the pawned goods to anyone other than the original seller because the possession of the collateral by the debtor is a debt guarantee during the grace period agreed by both parties. The debtor was also permitted to pay off the debt at the original selling price at the time of maturity, with the return of the goods to the seller, thereby avoiding the possibility of usury'.

According to al-Zarqā, the *bay' al-wafā'* contract consists of three forms, namely 1) a contract transaction is initially created as a sale and purchase, for example, through the seller's words, "I sold my rice field to you for five million rupiahs for two years."; 2) After the transaction is executed and the property is transferred to the buyer, this *ijārah* (borrowing/leasing) contract the purchased goods must be returned to the seller, though the property holder can use and enjoy the results of the goods for the agreed time; and 3) After the grace period expires at the end of the agreement (*aqd*), *bay' al-wafā'* is such as *rahn* because the seller must return the money submitted at the agreed time of maturity to the buyer, who must return the purchased item to the seller.

Therefore, *bay' al-wafā'* was created to avoid usury and constitute a form of help rendered within a certain period by capital owners to people in financial need. The Hanafi school of thought considers this contract valid and excluded the prohibition of Prophet Muhammad concerning buying and selling accompanied by conditions. Although the property must be returned to its original owner, a sale and purchase agreement must be used to prevent the public from usury transactions. The object of the contract (goods sold) does not have the same status as *rahn* because the goods are sold to the buyer, who has the full right to use them. However, the goods must be resold to the original seller at the price of the first sale, which is different from the buying and selling process.

The basic differences between *rahn* and *bay' al-wafā'* highlighted by the Hanafi school of *fiqh* scholars are 1) the buyer does not fully own the goods in *rahn,* as the property must be returned, while the goods in *bay' al-wafā'* are fully owned by the buyer during the agreed grace period. 2) Damage to the pawned property (*al-marhūn*) while in the hands of the buyer is the responsibility of the collateral holder in *rahn*, whereas damage to the goods is the buyer's liability in *bay' al-wafā'* when severe but insignificant to the contract when the destruction is minimal. 3) All costs needed to maintain the goods are the owner's responsibility in *rahn*. In contrast, the maintenance costs in *bay' al-wafā'* are the buyer's full responsibility, as he owns the property during the agreed grace period. Therefore, the Ḥanāfī school of thought justifies *bay' al-wafā'* based on *istiḥsān 'urf,* which defends a generally accepted and functional problem through *istiḥsān*.

Conclusion

The *pagang gadai* land practice in Agam Regency, West Sumatra, involves the transfer of land from a pawner to a pawnee in exchange for money valued in gold rupiah. This transaction is bound by an agreement (*'aqd*) that the pawned land will be returned to the pawner, who must also return the same amount of money received. Hence, the pawnbroker benefits from the money, while the pawnee profits from the processed pawned land, provided the debt has not been redeemed. There is no stipulated period for the redemption of *pagang gadai* land, leading to a process that can occur for years and be inherited by the heirs of both parties involved. Religious figures (ulama) from the MUI, NU, and Muhammadiyah agree that this practice is usury (*ḥarām*), arguing that any profitable debt is usury and view it differently than *bay' al-wafā'*. Contrary to the previous opinion, traditional figures legalized this practice and rejected the claim of the element of usury. They equate the *pagang gadai* practice to a form of help (*ta'āwun*) and maintain that it does not contain any injustice to the pawner and the pawnee because both parties obtain benefits.

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