

P-ISSN: 2338-8617

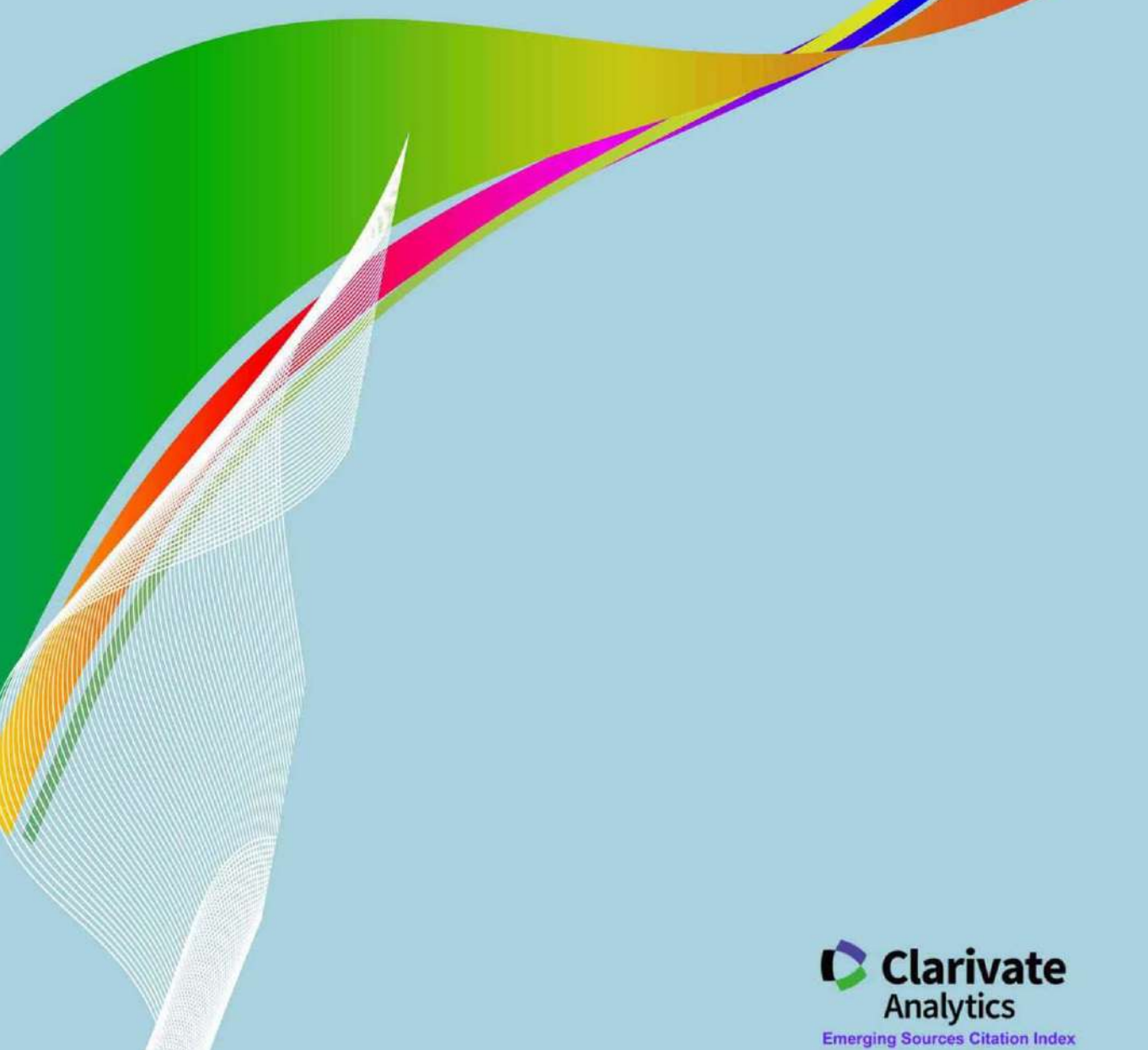
E-ISSN: 2443-2067

Jurnal Ilmiah

PEURADEUN



Vol. 7, No. 1, January 2019



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SCAD Independent
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JIP
The Indonesian Journal of the Social Sciences
www.journal.scad-independent.org
DOI Prefix Number: 10.26811



ACCREDITED "B" by the Ministry of Riset, Teknologi,
dan Pendidikan Tinggi
from October 30, 2017 until October 30, 2022

JURNAL ILMIAH PEURADEUN
The Indonesian Journal of the Social Sciences
p-ISSN: 2338-8617/ e-ISSN: 2443-2067

www.journal.scadIndependent.org

Vol. 7, No. 1, January 2019

Pages: 1-20

Multi Contract as A Legal Justification of Islamic Economic Law for Gold Mortgage Agreement in Islamic Bank

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Article in Jurnal Ilmiah Peuradeun

Available at : <http://journal.scadIndependent.org/index.php/jipeuradeun/article/view/318>

DOI : <http://dx.doi.org/10.26811/peuradeun.v7i1.318>

Jurnal Ilmiah Peuradeun (JIP), *the Indonesian Journal of the Social Sciences*, is a leading peer-reviewed and open-access journal, which publishes scholarly works, and specializes in the Social Sciences that emphasize contemporary Asian issues with interdisciplinary and multidisciplinary approaches. JIP is published by SCAD Independent and published 3 times of year (January, May, and September) with p-ISSN: 2338-8617 and e-ISSN: 2443-2067. Jurnal Ilmiah Peuradeun has become a CrossRef Member. Therefore, all articles published will have a unique DOI number. JIP has been accredited by the Ministry of Research Technology and Higher Education Republic of Indonesia (SK Dirjen PRP RistekDikti No. 48a/KPT/2017). This accreditation is valid from October 30, 2017 until October 30, 2022.

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Vol. 7, No. 1, January 2019

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Published by: SCAD Independent

SCAD Independent is an independent research
institute on democracy in Aceh, established in 2010
with the Notary Deed No. 01, dated 29 October 2012.



MULTI CONTRACT AS A LEGAL JUSTIFICATION OF ISLAMIC ECONOMIC LAW FOR GOLD MORTGAGE AGREEMENT IN ISLAMIC BANK

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Received: Jul 10, 2018

Accepted: Jan 11, 2019

Published: Jan 30, 2019

Article Url: <http://journal.scadindependent.org/index.php/jipeuradeun/article/view/318>

Abstract

In recent years, the gold mortgage agreement has become one of the excellent products in Islamic banks. Practically, the gold mortgage agreement to the customer uses the principle of qard with the guarantee of gold in question through the pledge agreement (al-rahm). Gold as a property shall be the object of debt security placed in the control and maintenance of the Islamic bank with certain fee (al-ijarah). The selected object is focused on the multi-contract of gold mortgage agreement at PT. Bank Syariah Mandiri Tbk. This research uses the combination between bibliographical and empirical methods which is supported by primary and secondary data from relevant literature and interview with the informan, and also analysis of the data uses deductive-inductive approach. The result of this study indicates that gold mortgage agreement at PT. Bank Mandiri Syariah used sharia multi-contract or mutanaqishah contract, in which there were combining gratuitous contract (al-tabarru') and compensational contract (al-tijarah). In the classical Islamic economic law perspective, it looks like a legal justification (hilah syar'iyah) which prohibited taking the excessive benefits from the provision of additional debt (al-ziyadah) and other benefits to cover usury in the practice of ujarah for custodial services, but some opinion of legal jurists allowed it based on the reason that it is included in hilah syar'iyah mahmudah and also relevant to the principle of adillah al-syar'iyah and Fatwa DSN-MUI Number: 25/DSN-MUI/III/2002 on Rahm, Article 1320 Civil Code, and the Islamic Banking Law Number 21 of 2008.

Keywords: Multi-Contract; Gold Mortgage; Legal Justification; Islamic Economic Law.



A. Introduction

The existence of Islamic banks in Indonesia has contributed in helping the country's economic development and banking service needs for the community. Based on data released by the Financial Services Authority (OJK), until the end of 2017, Islamic banking industry in Indonesia recorded 13 Islamic Commercial Banks, 21 Islamic Business Units owned by Conventional Commercial Banks, and 166 Islamic Rural Banks, which totals total assets of IDR 356.50 trillion with a market share of 5.13 percent.

The development of Islamic banking in Indonesia has become a benchmark for the success of Islamic economy that contributes to economic development through financing to customers and providing banking services facilities to support economic activities. The system offered by Islamic banks is not only aimed at profit oriented, but also aimed at social oriented based on profit and loss-sharing principles. This looks very different from the conventional banks that only aim at profit oriented and interest-based principles.

As like any bank intermediary function in general, Islamic banks also have the function of collecting, managing, and channeling funds. Variants of financial products offered to consumers are the same as financial products in conventional banks despite using different operational principles. But in some cases there are some financing products in sharia banks that are still debatable because they use multi-contract as a justification rule for profit taking, one of which is gold mortgage agreement using *qard*, *rahn*, and *ijarah* principles.

In the context of Islamic economic law, *qard* and *rahn* principles are included in the non-profit oriented or *tabarru* contract, but in practice these have been combined with profit-oriented like *ijarah* principle for rent and gold mortgage agreement took place. As for the crucial problem here is the amount of rent and maintenance costs determined by *tiering* that is stratified or tiered. *Tiering* is a classification of special costs in the calculation of maintenance costs of the amount determined by the amount of net loans received by customers who pawned gold.

B. Literature Review on Multi-Contract and Gold Mortgage Agreement

In Indonesian, the terminology of multi can be interpreted many, more than one, more than two, or multiple, and the contract is a bond, agreement, or contract. Therefore combination of contract is simply understood as a multiple agreement or a lot of contracts, more than one. In Arabic terminology, it is linier with the term *al-'uqûd al-murakkabah* which means double contract or duplicate (Munawir, 1997).

In Islamic economic law multi-contract can be categorized in five kinds, namely *al-'uqûd al-mutaqâbilah*, *al-'uqûd al-mujtami'ah*, *al-'uqûd al-mutanâqishah wa al-mutadhâdah wa al-mutanâfiyah*, *al-'uqûd al-mukhtalifah*, and *al-'uqûd al-mutajânisah*. According to him, two of the five kinds of multi-contract it are *al-'uqûd al-mutaqâbilah* and *al-'uqûd al-mujtami'ah* that are the most widely used of covenants. Muslim scholars have a different perspective on the legal status of multi-contract, especially on the law of origin. The differences are related to whether the multi-contract is allowed or prohibited to be practiced (Imranie and Hasanudin, 2009).

In this context, there are two opinions that allow and prohibit. The majority of the Hanafi scholars and some Malikya followers, Syafi'iyah, and Hanbaliyah argue that the legal status of multi-contract is lawful and permissible under Islamic economic law based on the reason that the original law of each contract is lawful and valid as long as there is no other proposition that forbids or cancels it. There are four conditions to support the permissibility of multi-contract such as the contract object is not strictly prohibited in the Quran and the Sunna, the contract object does not fall into justification (*hillah syar'iyah*), the contract object does not have implications to usury, and the contract object is not contrary to each other.

Currently multi-contract is widely used in Islamic business agreements in Indonesia, which one of them is in the practice of gold mortgage in Islamic banks. The original term of mortgage agreement or *al-rahn* is linier with the term of *al-tsubut* in Arabic which means stipulation and detention. Among Muslim Scholars, the term of *al-rahn* is etymologically defined as confined or entangled. Meanwhile, the term of *al-rahn* is



terminologically defined as the form of borrowing services or borrowing the money from pawn companies to the community by requiring the existence of lien as collateral receivables (Al-Husaini, 1986).

There are several different definitions of the meaning of *al-rahm* such as: first, *al-rahm* is a contract whose object holds the price against a right that may be obtained at full cost from it (Ash-Shiddiqiey, 1984); second, *al-rahm* is dedicating a valuable item in the Islamic business view as collateral to debt as long as there are two possibilities to return the money or to take some of it (Sabiq, 1978); third, *al-rahm* is a financing contract by giving goods as debt or guarantee (Zuhdi, 1988); and fourth, *al-rahm* is an agreement of debts or financing by handing over a valuable asset as a dependent item or a collateralized receivable (Ibn Rusyd, 1976).

The practice of mortgage agreement in Indonesia today is generally showed that the transaction of financing from a pawn companies or Islamic bank to the costumers is requiring a valuable asset as a dependent item or a collateralized receivable although there is not always requiring a moving object such as motor vehicles, electronic instruments or precious metals, but also offers mortgage for immovable property, such as gardens, land, rice fields and so forth.

C. Method

This research uses descriptive method and also supported by qualitative approach to show the calculation of how maintenance cost is calculated in *rahm* based product in line of gold mortgage agreement in Islamic bank. Primary and secondary data sources are derived from the number of literatures that are closely related to the research objective. The data collection technique is obtained from book review, documentation, and interview with the informant (the Islamic bank practitioners) regarding on the main topic of this research in the line of the practice of multi-contract as a legal justification of Islamic economic law for gold mortgage agreement in Islamic bank. The data analysis technique consists of compilation, classification, and verification of the data that are done deductively and inductively approach until the formulation of conclusion.

D. Research Finding

1. Technical Terms in Multi-Contract and Gold Mortgage Agreement

Referring to the study of Islamic economic literature and financial regulation in Indonesia, there are several technical terms that are widely used in practical of multi-contract and gold mortgage agreement in sharia banks. These technical terms are reduced from the principles of Islamic economic law in the scope of *fiqh al-muamalah* and then derivated as the instruments in the practice of gold mortgage agreement in Islamic banks (BSM, 2009) such as follows:

- a. Gold Mortgage is one of the sharia bank products that provide financing facility to customer using *qardh* principle with collateral in the form of customer's gold concerned with mortgage bonding. The goods or property are placed under the control and maintenance of the bank, in which the bank imposes a lease fee through *ijarah* principle for the maintenance of the goods or property;
- b. *Qardh* is a loan agreement to the customer provided that the customer is required to refund the funds received at the agreed time (See article 19 verse 1 point e in the Law of Islamic Bank Number 21 of 2008);
- c. *Rahn* is the contract of delivery of goods or property from the customers to the bank as a guarantee of part or all of the debt. The purpose of providing a mortgage facility is to assist the customers for social purposes such as education, health, and other financing for urgent needs (BI, 1999);
- d. *Ijarah* is a contract for the provision of the funds in the context of transferring the use rights or benefits of a good or service based on transactions without being followed by the ownership of the goods themselves (See article 19 verse 1 point f in the Law of Islamic Bank Number 21 of 2008);
- e. Proof Letter of Gold Mortgage is an authentic letter of mortgage agreement, which contains information about the structure of financing, the maturity of financing, description of guarantee goods, and expenses arising;



- f. The Appraiser is a designated officer to serve the customers who make an appraisal of the pledge object, and has responsibility for the assessment and authenticity of the collateral goods in relation to the amount of financing to be provided, to input the system in relation to the disbursement of the financing, and to monitor the repayment of the financing. The appraiser does not have the authority to terminate the approval of the mortgage financing;
- g. Mortgage Officer is someone who appointed to review and verify the estimates made by the Estimator, and has a responsibility for the valuation and authenticity of warranties relating to the amount of financing to be provided and when the sale of collateral goods if the customer is unable to pay off. Mortgage officer has also the authority to decide on financing approval and this authority may be reviewed periodically;
- h. Loan Admin is a branch back office employee who is appointed and has a responsibility for storing the guarantee goods in the main vault contained in the line of repertoire space;
- i. The Mortgage shop Desk is the head office unit tasked with developing the mortgage business, drafting policies and guidelines, developing business risk management, conducting fraud surveillance and other mortgage-related crimes, monitoring the progress and quality of the mortgage portfolio, ensuring the performance of lien service counter set targets, charge pawn fees and set a base price of gold as a standard of value applicable throughout the Branch;
- j. Time is the day, date, and month of the mortgage agreement;
- k. Maintenance Fee is the amount of funds paid by the customer to the bank for the maintenance of the guarantee goods during the *qardh* financing period and paid in advance;
- l. The Cost of Arrangement is a fine fee for the delay in collecting the guarantee goods after the customer paid the *qardh* financing because the bank has to keep and keep the unspecified items;

- m. Accelerated Settlement is the repayment made by the customer before the due date has been determined;
- n. Refund refers to a payback of the amounts paid by the customer due to the time of use of the financing facility faster than the one scheduled in the Evidence Letter of Gold Mortgage;
- o. Reschedule of Mortgage Agreement is a process of extending the mortgage because the customer (*rahin*) has not been able to redeem the collateral provided that the Estimator has reassessed and the customer pays the payable fee;
- p. One Obligor is a provision that in granting new facilities to the customers by taking into account (adding new facilities with all outstanding debt) from all facilities that customers are enjoying;
- q. *Qardh* Financing for *Rahn* is the internal funds derived from capital funds or external funds derived from *wadiah* deposits;
- r. Force Majeure is an unpredictable condition that causes by the non-fulfillment of the agreement (insurance) due to an event that is not due to the fault of the parties, which events are unknown or unpredictable before and beyond human capabilities such as natural disasters, riots, fire, and so forth.

2. Multi-Contract Procedures in Gold Mortgage Agreement

Multi-contract procedures in gold mortgage arrangements in Islamic banks are generally not much different from those applied in other financial institutions. In practice, gold mortgage objects in Islamic banks are precious metals or gold bars. The maximum value of gold mortgage is 85% of the bank's estimated value of the lien regardless on the cost of manufacture. The gold mortgage agreement period is 4 months and can be rescheduled. The requirement of extension of the gold mortgage is the appraiser to reassess the guarantee goods and the customer has paid the renewal fee with the financing value amount IDR 500,000,00 – 100,000,000,00 The binding covers on the mortgage financing agreement and mortgage objects uses *qardh* and *rahn* contracts, including for the fees of maintenance care services uses *ijarah* contract.



For more details, Murtadha and Fitri (2018) explained that any gold mortgage agreement in Islamic bank with multi-contract is done through these procedure and stages:

a. Applicant Requirements in Gold Mortgage Agreement

There are some requirements that must be required by the applicants in mortgage agreement such as individual (Indonesian Citizen), understanding the law, completing application form including ID Card or Passport, sending the mortgage collateral, and the financing value upper than IDR 50 million must have and include Tax Obligation Card or NPWP;

b. Analysis Phase/ Assessment of Gold Mortgage Financing

- 1) The Customer completes the Application Form of Gold Mortgage Financing as the basis for the financing analysis process. Based on customer information and estimated results from the Estimator, the Mortgage Financing Committee provides to take a decision for accept or reject its proposal placed in the column or table that provided for each level of the Mortgage Financing Committee and the Estimator;
- 2) Before financing is given, the Assessor will make an assessment of the guaranteed object in accordance with the level established by the mechanism or procedure of appraisal of goods or mortgage objects referring to the Guidance of Gold Assessment (GGA), especially in terms of the *tiering* of object maintenance fees. This can be seen in the table below:

Category	Criteria	Cost/Gram/Month/24 Carat
A	≤ IDR 20 Million	IDR 5,650,00
B	> IDR 20 - 50 Million	IDR 5,000,00
C	> IDr 50 - 100 Million	IDR 4,850,00
D	> ID 100 Million	IDR 4,750,00
E	LM & Dinar > ID 100 Million	IDR 4,200,00



- 3) The Assessor analyzes compliance with the one obligor principle. It can be seen in the cost list of gold mortgage maintenance practiced in Islamic banks.

No	Gold Category	Estimantion Cost Gold Per Gram (IDR)	LTV	Maintenance Cost Gold Per Gram	
				15 Days	30 Days
1	Gold 16 Carat	217,853,99	85 %	1,883,33	3,766,66
2	Gold 17 Carat	231,469,87	85 %	2,001,14	4,002,28
3	Gold 18 Carat	245,085,00	85 %	2,118,75	4,237,50
4	Gold 19 Carat	258,701,63	85 %	2,236,46	4,472,92
5	Gold 20 Carat	272,317,50	85 %	2,354,17	4,708,33
6	Gold 21 Carat	285,933,88	85 %	2,471,88	4,943,75
7	Gold 22 Carat	299,549,25	85 %	2,589,59	5,179,17
8	Gold 23 Carat	313,165,13	85 %	2,707,29	5,414,58
9	Gold 24 Carat	326,781,00	85 %	2,825,00	5,650,00
10	Dinar 22 Carat	299,549,25	90 %	2,727,09	5,454,17
11	Gold Bar/Coin 24 Carat	326,781,00	90 %	2,975,00	5,950,00

According to Murtadha and Fitri (2018), the formulation of the cost calculation for maintaining the mortgage object is count by *tiering*:

$$\frac{\text{Gold Caratage}}{24} \times \text{Tearing} \times \text{Gram} \times 4 \text{ Months}$$

Example:

The estimation of maintenance cost for gold 20 carat with weight 10 gram.

- Estimation Value (EV) = IDR 272,317,50 × 10 gram = IDR 2,723,175,00
- LTV (Financing Bruto) = 85% × IDR 2,723,175,00 = IDR 2,314,698,75



- Administration Cost (Cash) = IDR 20,000,00 (including Materai IDR 12,000,00 and Mortgage Administration Cost IDR 8,000,00)
- Insurance Cost (Cash) = $0,1333\% \times \text{IDR } 2,723,175,00 \text{ (EV)} = \text{IDR } 3,630,90$
- Total cost must be paid in cash = IDR 23,630,90
- Net Financing = LTV - Total cost must be paid in cash
= IDR 2,314.698,75 - IDR 23,630,90
= IDR 2,291.067,85

Financing Result:

$$\begin{aligned} \text{Maintenance cost} &= \underline{20} \times \text{IDR } 5,650,00 \text{ (Tiering)} \times 10 \text{ Gram} \times 4 \\ \text{Months} & \\ & 24 \\ & = \text{IDR } 188,333,33 \end{aligned}$$

$$\begin{aligned} \text{Total financing must be paid in the last period} &= \text{Bruto Financing} + \\ \text{Maintenance Cost} & \\ & = \text{IDR } 2,314,698,75 + \text{IDR } 188,333,33 \\ & = \text{IDR } 2,503,032,08 \end{aligned}$$

c. Financing Limit

- 1) The maximum estimated value of the amount of financing limit is arranged in accordance with the maximum value of the mortgage.
- 2) If it is less than the maximum estimated value, the customer is allowed to take the financing that is less than the amount of financing limit and tailored to the needs. But it does not affect the amount of fees paid, because the fee paid basically follows the quantity and quality of the collateral goods.

d. Dilution

- 1) The Assessor advises the customers to open a savings account at the bank. Especially for financing above IDR 5,000,000,00, which the Assessor requires customers to open an account at the Bank;
- 2) The Customer has signed the *qardh*, *rahn*, and *ijarah* contracts, and the Gold Mortgage Certificate;

- 3) The Customer has paid the mortgage fee and other charges incurred in connection with the above contracts that may be deducted from the disbursed financing facility.

e. Repayment

The Bank may charge repayment and all fees by debiting directly from the customer's account according to the debit authorization contained in the Gold Mortgage Certificate. In addition, repayment also can be done by asking customers to deposit cash as much as their obligations or use the proceeds of the sale of collateral goods. The type of repayment of financing can be done in three ways:

1) Accelerate Repayment

The Bank may refund the maintenance fees that paid by the customers when they take an accelerated repayment. The refund value is calculated proportionally according to the month that has not been undertaken by the customer. The Bank cannot provide refund of the maintenance fee to the customer if the remaining term of the contract until the maturity period is less than one month.

Example:

The customer signs his contract on 2nd January 2017 and it will due on 2nd May 2017. On 25th March 2017, the customer wants to repayment for 3 months. It means that until 2nd April 2017 is still in 3 months, thus refund can be given for an unused period is 1 month. Refund amount is $1 \text{ month} / 4 \text{ months} \times \text{maintenance cost} = 25\%$.

2) Repayment at Maturity

Repayment at maturity is assumed that the customer want to repayment the mortgage object and paying the maintenance fee at maturity.

Contoh:

The customer signs his contract on 1st January 2017 and it will mature on 2nd May 2017. The mortgage financing value is IDR 20,000,000,00 with the gold agreement of maintenance cost equal to IDR 5,650,00 per month. It means that the customers will be paying



the total expansion at maturity on 2nd May 2017 is IDR 20,000,000,00 plus maintenance cost is IDR 22,600,00. Thus, total repayment fee is IDR 22,022,600,00.

3) Partial Repayment

The Customer may partial repayment on the maturity period or before the maturity date. If there is the event of a partial repayment, the customer may request to bank to reschedule the contract which the bank may give partial of its collateral as long as it is still sufficient for completing the mortgage financing facility.

Example:

The customer signs his contract on 1st January 2017 and it will mature on 2nd May 2017. The mortgage financing value is IDR 20,000,000,00 with the gold agreement of maintenance cost equal to IDR 5,650,00 per month. If the customer want to partial repayment at maturity period on 2nd May 2017, he must pay IDR 10,000,000,00 plus the maintenance cost is IDR 22,600,00. Total partial repayment is IDR 10,022,600,00. In addition, an agreement is automatically renewed until 2nd June 2017. It means that the remaining principal is IDR 10,000,000,00 plus one month maintenance cost of mortgage object is IDR 5,650,00. Thus, total repayment is IDR 10,005,650,00

Based on the above description, the procedure of gold mortgage financing in Islamic banks seems to have fulfilled the terms and conditions of mortgage financing in Islamic economic law, except in the calculation of maintenance costs by *tiering* through the application of tiered costs determined from the amount of net borrowing visible included into usury. The use of *tiering* in the cost of maintaining a mortgage object is only based on article 19 verse 1 point e in the Islamic Banking Law Number 21 of 2008 and justifies what is stipulated in the Fatwa of National Sharia Council-Indonesian Ulama Council Number: 26/DSN-MUI/III/2002 which states that the costs or charges borne by the mortgage amount based on the expenditures that are clearly needed.

D. Discussion

The background for Islamic banks provide bailout 85% of the total price of gold mortgage and insurance is generally intended for gold mortgage financing that is not equipped with authentic documents of gold ownership. It is done to facilitate the customers to get cash and quickly money because of urgent needs (emergency). For example, for the cost of education of children, business capital, medical expenses, business capital, and other economic needs. The product of gold mortgage financing in Islamic banks also provides an opportunity for the customers to get cash financing IDR 500,000,00 – IDR 100,000,000,00. In this context, the object of its mortgage agreement consists of gold jewelry and gold bars with a period of four months and can be extended in accordance with the customers' needs.

The crucial issue in gold mortgage financing is the determination of the cost and the amount of bailout funds by *tiering* system, which means making multilevel or making ties. The use of *tiering* system in mortgage financing in Islamic banks is currently a classification of special costs in the calculation of maintenance costs of the amount determined by the amount of net loans received by customers who gold mortgaged. *Tiering* system may be regarded as part of marketing strategy of financing product in Islamic bank to increase company profit.

The research findings show that the *tiering* system in the practice of gold mortgage financing in Islamic banks is motivated by several factors: first, technological changes are more advanced such as ATM, E-Banking, SMS Banking, and support the service of pawn to be faster; second, the development of the financial industry has resulted the new regulation for mortgage financing in bank and non-bank financial institutions; third, the change of economic behavior among the people who think that mortgage is no longer a shame; and fourth, the volume of gold mortgage financing continues to more increase every year both in terms of the costumers list and the value of financing and corporate profits.

Moreover, the customers factor also influence to the development of gold mortgage financing practices in Islamic banks, where people will be smarter to choose mortgage services at lower cost or cheaper,



convenient and safe, and they also tend not to be shy mortgaging goods again. Competitor factors are also a driving force for bank and non-bank financial institutions competing for each other to develop gold mortgage financing, especially after the issuance of mortgage regulations.

The company factor also become a trigger of the increasing of the users of gold mortgage financing in Islamic bank which is linier with the more optimally the services quality, the more advanced of the utilization of information technology, the availability of infrastructure facilities supporting facilities operations, the increasing quality of human resources, and the development of product innovation is very helping to facilitate service to customers. To be more simply, here will be described the analysis using the TOWS analysis approach:

No	Aspect	Description
1	<i>Threats</i>	<ol style="list-style-type: none"> 1. Entry potential of new players after the issuance of new mortgage regulations); 2. Mortgage corporation and Islamic banking accelerate the expansion of the number of outlets; 3. Reduce crimes potential in mortgage fields such as gold forgery and robbery collateral.
2	<i>Opportunities</i>	<ol style="list-style-type: none"> 1. The market potential is still large and wide; 2. Sharia bank has sale the product of mortgage with <i>rahn</i>; 3. The main corporate can collaborate with the sub-corporate; 4. The mortgage is no longer a shame.
3	<i>Weaknesses</i>	<ol style="list-style-type: none"> 1. The difficulty for getting a reliable assesor; 2. The policy and operational procedure standard have not yet competitive and perfect; 3. Infra-structure has not yet completely available; 4. Human resources competency has not yet capable; 5. <i>Loan Origination System</i> (LOS) is still in development process.
4	<i>Strengths</i>	<ol style="list-style-type: none"> 1. <i>Cost of fund</i> in sharia bank is better than mortgage corporation;



		<p>2. Network and database is very large and biggest;</p> <p>3. Information technology system is more advanced;</p> <p>4. The services quality in Islamic bank is better than the others;</p> <p>5. Sharia bank has a lot of <i>trainer</i> in mortgage practice.</p>
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Referring to the table above, from the perspective of Islamic economic law, gold mortgage financing in Islamic bank is one of the financial products in sharia banks that provide financing facilities to the customers using the principles of *qardh*, *rahn*, and *ijarah*, where the customers can obtain financing funds with surrender the collateral goods as one of the terms of the mortgage agreement. The object of mortgage agreement shall be placed under the control and maintenance of the Islamic bank, which will be charged fee for maintenance cost under the principle of *ijarah* (BSM, 2009).

The implementation of *rahn* contract in Islamic bank is generally used in two aspects, namely as complementary products and individual products. *Rahn* is commonly used as a complementary product that means as an additional contract (collateral) to other products such as in *bai 'al-murabahah* financing. Islamic bank may withhold the customer's goods as a consequence of the contract. Then in the practice of gold mortgage financing in sharia bank, *rahn* is used as a complementary product of *qardh* contract and for the maintenance cost of collateral goods using *ijarah* contract.

In certain circumstances, Harahap (1982) explained that there may be a dispute resulted by either party did not fulfilling their obligations to the agreement or undermining the agreement that had already made. It is based on the provisions of Article 1320 of the Civil Code that the validity of an agreement must at least meet four conditions, among others: first, the existence of licensing or voluntary agreement from those who make the agreement (*toestemming*); second, the ability to make the agreement (*bekwaamheid*); third, concerning a particular thing or object (*bepaalde onderwerp*); and fourth, the existence of a justified cause (*geoorloofde oorzaak*).



In the terminology of Islamic economic law, the dispute arises as a result when one party was disavowing a treaty. An agreement (*al-'aqd*) can be said to be valid if it has fulfilled at least three aspects such as follows: (1) there are two parties (*'aqidain*) who make the contract, (2) the contract object (*mahal al-'aqd*) i.e. services or valuable objects that are not prohibited by sharia law, and (3) there is a consent statement (*sighat ijab qabul*) between both parties, either orally or in writing. According to Article 1320, 1329, 1330, and 1331 of the Civil Code, the legal requirement of the agreement attached to a person is required to be a *baligh*, intelligent, adult, and capable person (not being under the ability). The terms attached to the goods or services are not forbidden by the Quran and the Sunnah.

According to the Fatwa DSN-MUI Number: 25/DSN-MUI/III/2002 dated on 26th June 2002 on *Rahn*, there is explained that loans by mortgaging goods as collateral in the form of *rahn* are allowed then the cost of maintaining and storing *marhun* should not be determined based on the loan amount. There is also emphasized that the gold maintenance cost is permitted only by the principle of *rahn* and the cost of storing goods (*marhun*) is done based on the principle of *ijarah*.

In general, *rahn* can be categorized as a social contract because what is given by the mortgage one (*rahin*) to the receiver of the other mortgage (*murtahin*) is not exchanged for something. Benefits provided by *murtahin* to the *rahin* are debt and not exchangers for the mortgaged goods. In other words, *rahn* is included into the *aqad al-ainiyah*, which is said to be perfect after submitting objects that are made contract, such as grants (*hibah*), borrow (*'ariyah*), deposit (*wadiah*), and soft loan (*qardh*). These are included into the contract for social oriented (*'aqd al-tabarru*) which can be said to be perfect if someone hold the object (*al-qabdu*).

'*Aqd al-tabarru* 'is the certain contracts to seek profit hereafter, because it is not a business contract. This contract can not be used for commercial purposes. As a financial institution, sharia bank aimed to earn a profit and does not intend '*aqd al-tabarru* to earn the profits. So, if the goal is to get a profit, sharia bank can use commercial contracts, namely '*aqd al-tijarah*. However, this does not mean that the '*aqd al-tabarru* can not

be used to all commercial activities at sharia bank. In fact, the use of the *'aqd al-tabarru* is often vital in commercial transactions, because the reason is to bridge or facilitate the *tijarah* deeds.

Based on the explanation above, I can say that the procedure for calculating and fixing the maintenance cost for mortgage object with a tiering system in Islamic bank is currently included in the classification of multilevel costs, which the amount is determined from the net loan. However it is strictly forbidden to take a multilevel profit from any business transaction in Islamic economic law because it belongs to the category of *riba*, *gharar*, and *maisyir* and of course it is clearly contradiction with Fatwa DSN-MUI Number: 25/DSN-MUI/III/2002 dated on 26th June 2002 on *Rahn*. If the fatwa is violated, the practice of multi-contract in gold mortgage agreement in Islamic bank, it is included into the legal justification, which in Islamic law terminology is called *hilah syar'iyah*. In term of Islamic economic law, *hilah syar'iyah* can be defined as transferring the law from the prohibited (*haram*) to be lawful (*halal*) and from the faint (*syubhat*) to be allowed (*mubah*). Theoretically, Islamic scholars categorized *hilah syar'iyah* consists of two kinds such as legal justification allowed (*hilah syar'iyah mahmudah*) and legal justification prohibited (*hilah syar'iyah madmumah*) (Khallaf, 1969, al-Jauziyah, 1975, Zahrah, 1973, Sulaiman, 1983).

Thus, if it analyzes and critics from Islamic economic law perspective, the practice of multi-contract gold mortgage agreement in Islamic banks can be included in *hilah syar'iyah mahmudah*. Some opinion of legal jurist allowed it based on the consideration the principle of *adillah al-syar'iyah* and Fatwa DSN-MUI Number: 25/DSN-MUI/III/2002 on *Rahn*, Article 1320 Civil Code, and the Islamic Banking Law Number 21 of 2008.

In several cases, there are the dispute and conflict possibility among the subjects of mortgage agreement. To solve these cases, the parties can take two legal ways: first is legal mediation or arbitration effort through non-litigation in arbitration institution, and second is legal formal effort through litigation in Religious Court. Non-litigation legal procedure in arbitration institution refers to the Law of Arbitration and Alternative



Dispute Resolution Number 30 of 1999. Litigation legal procedure in religious court refers to the Civil Code, the Sharia Banking Law Number 21 of 2008, and the Law of Religious Court Number 7 of 1989 Jo. Number 3 of 2006 Jo. Number 50 of 2009.

E. Conclusion

At the end of this paper, I would like to formulate the following conclusions: first, gold mortgage financing is one of the financial products in Islamic banks that provide financing facilities to the customers by using the principles of *qardh*, *rahn*, and *ijarah*, where the customers obtain financing funds by delivering goods guarantee of gold object in the form of rent or maintenance cost with the principle of *ijarah*; second, the procedure for calculating and fixing the maintenance cost for the mortgage object by tiering system in Islamic bank is included into the classification of the stratified cost and the category of usury (*riba*); third, taking the excessive benefits from the provision of additional debt and other benefits to cover usury in the practice of gold mortgage financing through *ujrah* in Islamic bank are allowed based on Fatwa DSN-MUI Number: 25/DSN-MUI/III/2002 dated on 26th June 2002 on *Rahn*; and finally, from Islamic economic law perspective, the practice of multi-contract gold mortgage agreement in Islamic banks is included in *hilah syar'iyah mahmudah*. It is allowed based on the principle of *adillah al-syar'iyah* and Fatwa DSN-MUI Number: 25/DSN-MUI/III/2002 on *Rahn*, Article 1320 Civil Code, and the Islamic Banking Law Number 21 of 2008.

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