

Critical Analysis of The Law on Purchasing Gold on Credit

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ABSTRACT

This study aims to understand the legal background of gold credit in Indonesia, we can explore more deeply how this product contributes to the development of Islamic banking, consumer protection, and financial market regulation more broadly. It also helps in identifying the challenges and opportunities faced in the implementation of Islamic financial practices in Indonesia. This writing uses a normative method where in this writing a literature search is conducted. Peter Mahmud stated that Legal Research must find a coherent truth, namely legal rules in accordance with legal norms or are there norms in the form of commands or prohibitions that are in accordance with Legal Principles and whether a person's actions are in accordance with Legal Principles or Legal Norms. Legal analysis of gold credit shows that this transaction involves various aspects that need to be considered, including the legal basis, sharia aspects (if applicable), financial risks, and legal treatment. It is important for financial institutions and customers to clearly understand their rights and obligations in gold credit contracts, and to comply with all applicable regulations to minimize risk and maintain fairness in this transaction.

Keywords: **Analysis, Law, Gold credit**

INTRODUCTION

Every human being lives in society, helping each other in facing various problems to cover the needs of each other. The dependence of a person on another is felt when a human is born. After adulthood, no human being is able to do everything alone, they definitely need other people around them to live in muamalah. Muamalah is all the rules created by Allah to regulate human relations with other humans in life and life. Among the many aspects of human cooperation and relations, buying and selling muamalah is one of them. Both in Indonesia and Malaysia, there have been many applications of buying and selling gold on credit, both in accordance with Sharia and not.

Based on Jannah's research (2020:78), the Smart Saver product launched by Hello Gold is in accordance with Sharia principles. Similarly, Sakinah's research (2019:93) explains that the mechanism for buying and selling gold without cash at PT. Tamasia Global Syariah is in accordance with Sharia. In fact, this aspect plays an important role in improving human welfare. Everyone will have difficulty in fulfilling their life needs if they do not cooperate with others. The issue of muamalah in it cannot be separated from the contract (transaction), because with the contract, both parties are legally bound in the transaction. Gold is one of the

investments that is quite popular with the public today, because of its stable value and as an investment in the future. So many people buy gold either in cash or on credit. Buying gold non-cash or on credit is widely chosen by the public because it is an alternative to meet the desired needs in an easy way. In making a sale and purchase transaction, determine the credit law rules that are set. By understanding the legal background of gold credit in Indonesia, we can explore more deeply how this product contributes to the development of Islamic banking, consumer protection, and financial market regulation more broadly. This also helps in identifying the challenges and opportunities faced in the implementation of Islamic financial practices in Indonesia.

RESEARCH METHODS

This writing uses a normative method where in this writing a literature search is conducted. Peter Mahmud stated that Legal Research must find coherent truth, namely legal rules in accordance with legal norms or are there norms in the form of commands or prohibitions that are in accordance with Legal Principles and whether a person's actions are in accordance with Legal Principles or Legal Norms. The approach used is the Conceptual Approach, starting from existing legal rules and building a concept from views or doctrines that develop in Legal Science and this writing uses the Statute Approach, namely using various Regulations.¹

DISCUSSION

In this gold installment transaction, the user buys a certain amount of gold with installment payments within a specified time limit. Gold installment payments can be made in various ways and tend to be more practical, namely by using bank services that can be done by transferring between banks such as ATM cards (Automatic Teller Machines), debit cards, credit cards, electronic wallets (Electronic Wallet) and electronic money cards (E-Money). The background of writing about the legal consequences of gold credit in Indonesia is very important to understand the impact and implications of this practice in the context of Islamic banking and finance law. Here are some relevant background points:

Growth of Islamic Banking

In Indonesia, the Islamic banking sector has experienced significant growth in recent years. Gold credit is one of the products that is increasingly popular among customers who want financial solutions that are in accordance with Islamic principles.

Islamic Banking Regulation

Gold credit regulations in Indonesia are regulated by strict laws and regulations, including from Bank Indonesia and fatwas from the Indonesian Ulema Council (MUI). This regulation aims to ensure that financial transactions involving

¹ Ibid. 137

gold are carried out in accordance with sharia principles, such as the prohibition of usury and fairness in transactions.

Consumer Protection

Consumer protection is an important focus in gold credit regulations. The Consumer Protection Law provides a strong foundation for customer protection in banking transactions, including gold credit, to ensure that their rights are protected and they do not become victims of detrimental practices.

The practice of gold credit also has legal implications that need to be well understood. This includes credit application procedures, legal obligations for the parties involved, and responsibilities in the event of default or non-compliance with the contract.

Supervision and Law Enforcement

Bank Indonesia actively supervises Islamic banking practices, including gold credit, to ensure compliance with regulations. This supervision includes regular audits, bank performance evaluations, and law enforcement actions if violations are found.

Public Education and Awareness

Increasing public education and awareness regarding gold credit is very important. The public needs to understand both the benefits and risks associated with this product, as well as their rights and obligations as customers.

Economic and Social Role

Gold credit not only has a significant economic but also social impact. This product can be an instrument to expand financial access for the community, especially among those interested in investing in gold.

Installments are the right to receive payment or the obligation to make payments at the requested time, or at a future time, due to the delivery of goods now. Meanwhile, in sharia, installments are known as financing, namely providing money or bills based on an agreement or deal between the company and another party, which requires the party to return the financing after a certain period.

Gold transactions are one way to gain more profit by investing less money. In every type of investment, the principle of high risk high return almost always applies. This means that the type of investment that has a large profit opportunity is usually also balanced with an equally large risk.

This gold transaction also has a fairly large risk of loss when the price of gold does not rise. The price of gold does tend to always increase over time. However, it is not impossible that one day the price of gold will also experience a sharp decline.

Having a gold investment cannot provide a positive contribution to real economic growth. This is because the profits owned tend to be used for the personal

interests of investors, although some gold investors use this investment for spending needs where spending or consumption is also an indicator of economic growth.

Legal analysis of gold credit involves considering the legal aspects that govern gold-based credit transactions. Here are some important points to consider in this analysis:

Legal Basis and Regulation

a. Banking Law: In many countries, the practice of gold credit is regulated by banking laws that regulate the types of credit that can be provided by financial institutions.

b. Contract Law: Gold credit transactions involve the creation of a contract between the party providing the credit (usually a bank or financial institution) and the party borrowing (the customer). This contract must comply with general principles in contract law, such as clarity, agreement, and the legal capacity of the parties involved.

c. Gold Law: Some countries may have specific regulations governing gold transactions, including the use of gold as a means of payment or collateral in financial transactions.

Sharia Aspects (For Countries with a Muslim Majority)

a. Sharia Banking: In countries with a Muslim majority, such as Indonesia or Malaysia, gold credit transactions must comply with sharia principles in banking, such as the prohibition of *riba* (interest), transparency, and fairness in transactions.

b. Sharia Financial Products: Gold credit can be provided in the form of sharia financial products such as *murabahah* (sale and purchase with a markup) or *mudharabah* (profit sharing), where the profits or costs related to the credit must be adjusted to sharia principles.

Legal Risks and Liabilities

a. Credit Risk: The party providing the gold credit must consider the credit risk associated with the fluctuating value of the gold itself. This can affect the financial stability of financial institutions and customers.

b. Legal Responsibility: Gold credit contracts must clearly define the rights and obligations of each party, including rights and obligations in the event of default or other problems in the implementation of the contract.

Differences with Conventional Credit

a. Tax Treatment: In some countries, gold credit may have different tax treatment compared to conventional credit. This can affect the overall cost of the transaction and the benefits for the parties involved.

b. Market Regulation: Gold market regulations can affect the structure and mechanism of gold credit transactions, including capital requirements, supervision, and consumer protection.

In Indonesia, gold credit practices are governed by several applicable rules and regulations, especially in the context of Islamic banking and financial markets. The following are the main legal rules governing gold credit in Indonesia:

Banking Law

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (Banking Law) is the main legal basis governing banking activities in Indonesia. Although this law does not specifically mention gold credit, various types of credit and banking products are regulated in a general context by this law.

Bank Indonesia Regulations

Bank Indonesia as the monetary authority in Indonesia also issues various relevant regulations, including those concerning sharia principles in banking. Several Bank Indonesia regulations related to gold credit include: a. Bank Indonesia Regulation (PBI) No. 19/10/PBI/2017 concerning the Provision of Information Technology-Based Financial Services for Islamic Commercial Banks. Although focused on information technology, this PBI also includes sharia principles relevant to gold credit products; b. Bank Indonesia Regulation (PBI) No. 19/8/PBI/2017 concerning the Implementation of Business Activities by Sharia Commercial Banks. This PBI covers sharia principles that must be adhered to by banks in offering products and services, including gold credit. 3. Fatwa of the Indonesian Ulema Council (MUI)

The Indonesian Ulema Council (MUI) issues fatwas that serve as guidelines in the implementation of sharia banking in Indonesia. The MUI fatwa regarding gold transactions or other sharia financial products serves as a reference for sharia banks in designing gold credit products that are in accordance with sharia principles. Prinsip-Prinsip Syariah Gold credit transactions in Indonesia must comply with sharia principles which include the prohibition of usury (interest), transparency, fairness, and clarity in transactions. These principles are emphasized in both Bank Indonesia regulations and MUI fatwas.

Consumer Protection

Law Number 8 of 1999 concerning Consumer Protection is also relevant in the context of gold credit, because it regulates consumer rights in financial transactions, including sharia banking products such as gold credit.

Tax Treatment

Tax treatment of gold credit transactions also needs to be considered. Although there are no specific regulations governing taxes for gold credit, general tax provisions apply depending on the transaction structure and the products used.

In Indonesia, gold credit is regulated by various regulations covering aspects such as banking law, sharia principles, consumer protection, and tax treatment. It is important for parties involved in gold credit transactions, both

banks as credit providers and customers as borrowers, to understand and comply with all applicable regulations in order to maintain legal compliance and avoid legal risks.

Gold buying and selling transactions can be carried out in cash or non-cash with installment payments. The gold buying and selling process can occur without cash because the seller and buyer are not in the same place or assembly, the seller and buyer are separated by distance (not facing each other directly).

CONCLUSION

Legal analysis of gold credit shows that this transaction involves various aspects that need to be considered, including the legal basis, sharia aspects (if applicable), financial risks, and legal treatment. It is important for financial institutions and customers to clearly understand their rights and obligations in the gold credit contract, and to comply with all applicable regulations to minimize risks and maintain fairness in this transaction.

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