



## LEGAL PROTECTION OF PAWN DEBTORS FOR DAMAGE AND LOSS OF COLLATERAL OBJECTS IN PRIVATE PAWN BUSINESSES

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### ABSTRACT

*This study aims to analyze legal protection for pawn debtors concerning damage and loss of collateral in private pawn businesses. The growing phenomenon of private pawning practices without formal legality has led to legal uncertainty and increased risks to the rights of debtors. The research method employed is normative legal research with a literature review approach, utilizing data sources such as the Indonesian Civil Code (KUHPerdata), Law Number 8 of 1999 concerning Consumer Protection, Financial Services Authority Regulation (POJK) Number 31/POJK.05/2016 concerning Pawnshop Businesses, and Islamic legal instruments related to pawning (rahn). The results indicate that legal protection for debtors in private pawn businesses remains suboptimal. Although POJK Number 31/POJK.05/2016 provides adequate protection for licensed pawnshops, the regulation does not extend to individual private pawn practices. Consequently, debtors face difficulties in asserting their rights when collateral is damaged or lost. From the perspective of Islamic law, the principles of amanah (trustworthiness) and 'adl (justice) require the pawn recipient (murtahin) to safeguard and return the pledged item in good condition and to provide compensation in the event of negligence. This study recommends the need for regulatory reform to broaden the scope of legal protection to encompass all forms of pawn businesses, including home-based pawn operations. Integrating Islamic legal values, such as justice, trustworthiness, and consumer protection, into national regulations is essential to strengthen the legal standing of debtors and to create fairer, safer pawn transactions oriented toward public welfare. Thus, strengthening debtor protection not only reinforces the microfinance system but also supports the principle of social justice in Indonesia.*

**Keywords:** Legal Protection, Pawn Debtor, Private Pawn Business, Rahn, Islamic Law.

## 1. INTRODUCTION

In the dynamics of modern socio-economic conditions in Indonesia, the public's need for access to capital continues to increase, driving the growth of various non-bank financial institutions, including private pawn businesses. This phenomenon is reflected in the high public enthusiasm for utilizing private pawnshops, which offer easier loan processes compared to formal institutions (Ng, 2023; O'Connor, 2022; Wisnu et al., 2024). However, behind this convenience lies a significant social risk, namely the high potential for damage to or loss of pledged items, especially in individually operated pawn businesses without formal legality (Adhi & Hendrawan, 2023; Allam & Larasati, 2021). In this context, there is a legal imbalance between debtors and creditors that can lead to injustice in lending practices. From an Islamic perspective, justice (al-'adl) is a fundamental principle in muamalah (social transactions), as emphasized in the Qur'an, Surah An-Nahl [16]:90, which commands the upholding of justice in all aspects of life, including financial transactions.

In the realm of legal literature, the protection of debtor rights has actually been regulated through the Indonesian Civil Code (KUHPPerdata), particularly Articles 1150–1160 concerning pawning (Asari & Firdaus, 2022; Pasaribu et al., 2024). In addition, modern regulations such as the Financial Services Authority Regulation (POJK) Number 31/POJK.05/2016 prohibit the use, possession, or misuse of pledged items by pawnshop institutions (Sembiring, 2024). However, this regulation is still limited to licensed pawnshops and does not explicitly cover home-based or informal pawn practices, creating a legal vacuum that endangers debtor rights (von Hesse, 2024). In Islamic teachings, the practice of pawning (rahn) is recognized with the primary condition of maintaining trust (al-amānah) over pledged items. The Prophet Muhammad (peace be upon him) stated: "A pledged item is not to be sold except by its owner" (Narrated by Al-Baihaqi), emphasizing the importance of safeguarding entrusted property honestly and justly.

This study aims to analyze the validity of pawn agreements in private pawn businesses and to examine appropriate forms of legal protection for debtors against the damage or loss of pledged items (Kumalasari & Kharisma, 2024). Practically, this research not only examines national positive law but also proposes the application of protection values rooted in Islamic muamalah, such as the principles of justice, trustworthiness, and the protection of the rights of the vulnerable parties in transactions. The findings are expected to contribute both theoretically and practically to improving regulations and increasing legal awareness among the public regarding equitable pawn transactions.

Based on social analysis, positive law, and the principles of Islamic law, the author hypothesizes that the weakness of legal protection for debtors in private pawn businesses is caused by regulatory ambiguities and the minimal application

of the principle of amanah (trustworthiness) in pawn practices. Therefore, it is crucial to integrate the strengthening of national positive law with Islamic legal values in the practice of pawning, so that debtor rights are better protected and justice and public welfare (al-maslahah) are achieved in pawn transactions in Indonesia. Through this approach, not only is formal legal protection enforced, but the moral integrity of transactions is also strengthened in accordance with religious teachings.

### **Legal Protection for Debtors in Pawn Transactions**

Legal protection for debtors in pawn transactions serves as a guarantee for the rights of debtors over the pledged collateral handed over to the creditor (Usman, 2023; Wibowo, 2023). In general, consumer legal protection is regulated under Law Number 8 of 1999 concerning Consumer Protection, which emphasizes that every consumer has the right to comfort, security, and safety in consuming goods and/or services (Ghapa & Ab Kadir, 2021; Herrine, 2022). In the context of pawning, debtors as consumers are entitled to protection of their pledged goods against all forms of damage, loss, or misuse (Salsabila et al., 2024; Siswanto et al., 2025).

Pawn transactions create a legal relationship involving the rights and obligations of both parties, namely the debtor and the creditor. According to the Indonesian Civil Code (KUHPerduta), specifically Article 1150, a pawn is defined as a right acquired by the creditor over a movable object handed over by the debtor, granting the creditor priority in the repayment of debts from the value of the pledged item over other creditors. Therefore, any violation of the debtor's rights over the pledged collateral constitutes a breach of contract (wanprestasi), which can result in legal claims.

### **The Framework of Positive Law on Pawn in Indonesia**

In Indonesia's positive law, the regulation of pawning is outlined in the Indonesian Civil Code (KUHPerduta) Articles 1150 to 1160 (Bakhri & Arifin, 2024; Ramadhan, 2024). These articles govern the validity requirements of pawning, the rights and obligations of the pledge holder, and the rights of the debtor over the pledged item. However, these regulations do not explicitly detail the mechanisms for debtor protection in the context of private, individual pawn businesses. In addition to the Civil Code, the Financial Services Authority Regulation (POJK) Number 31/POJK.05/2016 on Pawnshop Businesses serves as a modern legal framework for licensed pawnshops. This regulation requires registered pawnshops to safeguard and protect pledged goods. However, the POJK does not cover individual (home-based) pawn practices that operate without legal entity status, resulting in a legal vacuum that poses risks to debtor protection.

### **The Concept of Consumer Protection Rights in Islamic Law**

From the perspective of Islamic law, pawning transactions are known as rahn (Dalimunthe et al., 2024; Kholil et al., 2024; Putra et al., 2024). Islam places significant emphasis on justice and the protection of rights within muamalah (social and economic transactions). The principle of justice ('adl) is fundamental in every contract, as commanded by Allah in Surah An-Nahl [16]:90, which urges the upholding of justice (Azmi, 2021; Sikumbang et al., 2024; Suhendar et al., 2023). Amanah (trustworthiness) is also a core principle, whereby the creditor (murtahin) is obliged to safeguard the pledged goods responsibly. The Prophet Muhammad SAW stated: "A pledged item must not be sold except by its owner" (Narrated by Al-Baihaqi), emphasizing the prohibition against misusing the pledged item. Therefore, in Islamic law, the debtor has full rights over the pledged item until repayment is completed or a new contract is made.

### **Theory and Principles of Islamic Muamalah in Pawn Practices**

Rahn, as the concept of pawn in Islam, comprises essential elements, namely the existence of a pledged item, the pledgor (debtor), the pledgee (creditor), and a valid contract (Agustina et al., 2022; Lubis & Milhan, 2024; Syam et al., 2024). The pledged item remains the property of the debtor, while the creditor has only the right to hold the item until the debt is settled. In Islamic law, the rights and obligations of the murtahin include the responsibility to preserve the pledged goods, the prohibition against using them without permission, and the duty to return them in good condition after the debt is repaid. If loss or damage occurs due to negligence by the pledgee, they are obligated to compensate for the loss. Dispute resolution in Islam prioritizes sulh (peaceful settlement) to maintain good relations and avoid prolonged conflict.

### **The Need for Reformulating Legal Protection for Private Pawn Businesses**

The absence of specific regulations for individual pawn businesses has created a legal vacuum that jeopardizes debtor protection (Hidayah et al., 2024; Xiong, 2022). Therefore, there is a need for regulatory reform that integrates the principles of positive law and Islamic legal values. Strengthening legal protection should focus on the implementation of the principles of amanah (trust) and 'adl (justice) in the management of pledged goods, the obligation to register private pawn businesses, and the imposition of strict sanctions for violations of debtor rights. These efforts are expected to create a fair pawn system oriented toward consumer protection.

## **2. RESEARCH METHOD**

This research is a normative legal study employing a literature review approach (Hamzani et al., 2023). Normative legal research focuses on the study of legal

principles, norms contained within statutory regulations, and relevant legal theories. This literature study aims to analyze and examine the forms of legal protection for pawn debtors against the damage and loss of collateral in private pawn businesses, based on provisions of positive law and the principles of Islamic law.

The data sources for this research are secondary data obtained through the review of legal documents, statutory regulations, and relevant literature. The data reviewed includes:

- The Indonesian Civil Code (KUHPerduta), specifically Book II, Chapter XX concerning Pawn;
- Law Number 8 of 1999 concerning Consumer Protection;
- Financial Services Authority Regulation (POJK) Number 31/POJK.05/2016 concerning Pawnshop Businesses;
- Other statutory regulations related to private pawn practices, as well as relevant Islamic legal instruments concerning pawn transactions (rahn).

The data collection technique used is documentation, by tracing, identifying, and reviewing both primary and secondary legal sources. Primary legal sources include applicable statutory regulations, while secondary legal sources consist of textbooks, academic journal articles, previous research findings, and expert legal opinions.

The collected data were analyzed qualitatively by interpreting applicable legal norms, comparing the legal instruments reviewed, and constructing legal arguments based on the literature analysis. This analysis aims to identify the strengths and weaknesses of legal regulations concerning the protection of debtors in private pawn businesses and to propose alternative solutions based on the principle of justice in Islamic law.

### 3. RESULT AND ANALYSIS

#### **Legal Protection for Pawn Debtors in Cases of Damage and Loss of Collateral in Private Pawn Businesses**

Legal protection for pawn debtors in private pawn businesses has become an important issue in line with the increasing practice of pawning by private institutions that are not fully legally incorporated (Haryanto, 2025; Maysura et al., 2023). Based on the Financial Services Authority Regulation (POJK) Number 31/POJK.05/2016 concerning Pawnshop Businesses, it is explicitly stated that pawnshop companies are prohibited from using, storing at the customer's premises, possessing, or re-pawning the collateral (Article 18 letters a, c, and d). This provision aims to provide maximum protection to debtors over their ownership rights during the pawn period. However, this regulation does not cover

individual private pawn businesses that operate without legal entity status, creating a legal vacuum in many pawn practices found in the community.

From an Islamic legal perspective, the practice of pawning is known as rahn. The basic principle of rahn emphasizes amanah (trust) in safeguarding the pledged item (Putri & Effendi, 2020). According to the hadith of the Prophet Muhammad (peace be upon him), "A pledged item must not be sold except by its owner" (Narrated by Al-Baihaqi), emphasizing that the pledgee (murtahin) must properly protect the item and is not allowed to use it without permission. In this context, Islam strictly regulates the protection of debtor rights to ensure that justice ('adl) is upheld in financial transactions (muamalah). Thus, if there is damage or loss, the pledgee is obligated to compensate the pledgor (rahin) for the loss incurred.

The absence of clear regulations regarding private pawn businesses poses serious implications for society, particularly for the lower-middle economic groups that often use these services due to the ease of loan procedures. The lack of standardized management for pledged items results in a high risk of collateral loss, and it becomes difficult to seek legal accountability from private pawn operators in the event of disputes. In this regard, Islamic law teaches that every pawn agreement must be based on the principles of honesty (sidq) and full responsibility toward the rights of the other party.

Therefore, legal protection for debtors in private pawn businesses in Indonesia remains suboptimal. Efforts are needed to reform regulations by expanding the supervisory scope of the Financial Services Authority (OJK) to include all forms of pawn businesses, including home-based pawnshops. Furthermore, it is important to internalize Sharia values into the practices of private pawning, such as the principles of amanah (trust) and 'adl (justice), to create a fairer pawn practice and protect consumer rights.

### **Forms of Protection and Dispute Resolution**

Forms of legal protection for pawn debtors in private pawn businesses can be observed from various existing regulations. Based on the provisions of POJK Number 31/POJK.05/2016, pawnshop companies are required to return pledged items in the same condition as when they were handed over (Zein & Nurhilmayah, 2023). If damage or loss occurs, the company must provide compensation in the form of money or an item of equivalent value (Article 25). However, this provision only binds licensed pawn companies, thus debtors in private pawn businesses do not always receive the same level of protection.

In Islamic law, the principle of responsibility for pledged items is highly emphasized. According to the concept of rahn, if the pledged item is lost or damaged due to the negligence of the pledgee, they are obliged to provide compensation. This aligns with the legal maxim *al-ghunmu bi al-ghurmi*, which states that profit must correspond with risk, meaning that those who gain benefits from a contract must also bear its risks and responsibilities.

Dispute resolution within the framework of positive law is conducted through litigation (court proceedings) based on the Civil Code (KUHPerdata) and the Consumer Protection Law (Abdillah et al., 2024). A debtor can claim compensation for damages based on unlawful acts (Article 1365 of the Civil Code) if they can prove that the creditor was negligent in safeguarding the pledged item. In Islamic law, dispute resolution is recommended through the sulh (amicable settlement) mechanism before resorting to litigation. This principle aims to maintain good relationships between parties and prioritize peaceful settlements.

Nevertheless, in practice, dispute resolution in private pawn businesses often faces obstacles due to the lack of written evidence and minimal formal protection for debtors. This severely weakens the bargaining position of debtors. Therefore, legal protection through formal regulations and the strengthening of Sharia principles such as justice, transparency, and absolute responsibility is necessary to reinforce the legal standing of debtors in the practice of private pawning in Indonesia.

### **Consumer Protection in Islamic Law**

In Islamic law, the protection of consumer rights is an integral part of the principles of justice ('adl) and trustworthiness (amanah), which form the foundation of all muamalah (social and economic transactions) activities (Ramadora, 2024). Islam regulates not only rights and obligations in the context of worship but also in socio-economic relations, including buying and selling, lending, and pawning (rahn). The primary principle in consumer protection under Islamic law is to ensure justice for all parties and to prevent any form of oppression (zulm) in transactions.

One of the legal bases emphasizing the importance of consumer protection in Islam is found in the Qur'an, Surah Al-Mutaffifin, verses 1–3, which strongly condemn those who diminish the rights of others in weighing and measuring. Allah SWT says, "Woe to those who give less [than due], who, when they take a measure from people, take in full. But if they give by measure or weight to them, they cause loss." (QS. Al-Mutaffifin [83]: 1–3). This verse explicitly prohibits all forms of fraud in transactions, aligning with the modern concept of consumer protection.

In the contract of rahn (pawn), Islam emphasizes the obligation of the pledgee (murtahin) to carefully protect and maintain the pledged item with full trustworthiness. If damage or loss occurs due to negligence or misuse, the pledgee is required to compensate. This is based on the hadith of the Prophet Muhammad (peace be upon him), who said, "Each of you is a shepherd, and each of you is responsible for his flock." (Narrated by Bukhari and Muslim). In Islamic perspective, a pawned item is a trust (amanah) that must be safeguarded, ensuring the full protection of the owner's (debtor's) rights.

Beyond the principle of trustworthiness, Islam also teaches the principle of maslahah (public welfare) in transactions. Consumer protection is directed at creating welfare, safeguarding property, and preventing harm to individuals. Within the framework of maqashid al-shariah (objectives of Islamic law), one of

the main objectives is *hifz al-mal* (protection of property), which underlines the importance of safeguarding consumer rights in economic transactions, including in pawning activities.

In dispute resolution, Islam prioritizes the principle of peaceful settlement (*sulh*) over open conflict. This is affirmed in the Qur'an, Surah An-Nisa, verse 128, which encourages peaceful resolutions in every dispute. This approach is highly relevant in the context of consumer protection, where, in the case of a violation of rights in a pawn transaction, the first effort should be to pursue amicable negotiation to reach a fair agreement before resorting to litigation.

Overall, the concept of consumer protection in Islamic law not only aims to guarantee security in transactions but also fosters social relationships based on honesty, justice, and responsibility. In the context of private pawn businesses, the application of these Sharia values is crucial to ensure that the rights of debtors as consumers are respected and protected, even in conditions where formal regulations may be lacking. Therefore, integrating Islamic legal principles into the practices of private pawn businesses in Indonesia is a significant step toward strengthening consumer legal protection in a fairer and more sustainable manner.

#### 4. CONCLUSION

Based on the discussion regarding legal protection for pawn debtors in cases of damage and loss of collateral in private pawn businesses, it can be concluded that legal protection for debtors in Indonesia still has many weaknesses, particularly in pawn practices conducted by private, non-legalized businesses. Although regulations governing pawnshop businesses have been established through the Financial Services Authority Regulation (POJK) Number 31/POJK.05/2016, this regulation applies only to officially registered and licensed pawn companies. Home-based or unregistered private pawn businesses are not explicitly covered by these regulations. As a result of this legal vacuum, many debtors face a high risk of damage, loss, or misuse of their pledged items. The absence of adequate protection standards significantly weakens the legal standing of debtors when disputes arise. In many cases, proving negligence or misuse of the pledged item is difficult due to the lack of formal documentation. This worsens legal uncertainty and increases the potential for significant losses for debtors.

From the perspective of Islamic law, the concept of debtor protection in pawn transactions is very clear and strict. Islam, through the concept of *rahn*, emphasizes the principles of *amanah* (trustworthiness) and *'adl* (justice) in all financial transactions, including pawning. Pledged items provided by debtors must be safeguarded and cared for properly by the creditor. Any negligence resulting in damage or loss of the collateral becomes the responsibility of the pledgee (*murtahin*), who must compensate the pledgor (*rahin*). This principle not only



ensures the security of the goods but also promotes healthy social relations based on honesty (*sidq*) and moral responsibility.

The concept of consumer rights protection in Islamic law is further reinforced through Qur'anic verses such as Surah Al-Mutaffifin verses 1–3, which strongly condemn fraud in transactions, and the principle of *sulh* (peaceful settlement) in dispute resolution as recommended in Surah An-Nisa verse 128. These principles emphasize that consumer protection is not merely about fulfilling formal obligations but is also an act of worship and a moral responsibility for Muslims.

On the other hand, under Indonesia's positive law, consumer protection has been regulated through Law Number 8 of 1999 concerning Consumer Protection and the Indonesian Civil Code (KUHPerdata), granting consumers the right to claim compensation for damages or loss due to business negligence. However, the enforcement of this protection in the context of private pawning remains far from optimal due to weak oversight and the absence of specific regulations governing individual pawn businesses.

Therefore, regulatory reforms are needed to broaden the scope of legal protection to cover all forms of pawn businesses, not only licensed institutions. The government, through the Financial Services Authority (OJK), needs to develop new regulations that govern licensing, supervision, and operational standards for private pawn businesses, including mechanisms for protecting pledged items, risk management, and mandatory insurance requirements for collateral. In addition, the integration of Sharia values into private pawn practices must be strengthened. The application of principles such as *amanah*, 'adl, protection of wealth (*hifz al-mal*), and dispute resolution through *sulh* should serve as moral foundations in every pawn transaction.

Thus, pawn practices in Indonesia will not only be legally protected under positive law but also ethically and religiously grounded, creating transactions that are fair, responsible, and oriented toward the common good. With the harmonization of positive law and Islamic principles, it is expected that a stronger, more transparent, and fairer legal protection system for debtors will be established. This is important not only to increase public trust in private pawn services but also to strengthen Indonesia's microfinance sector as part of efforts to ensure equitable economic access for all segments of society. Overall, this research confirms that legal protection for debtors in private pawn businesses in Indonesia requires serious attention. Without more comprehensive regulations and the application of ethical values in pawn practices, the risk of debtor rights violations will continue to rise. Therefore, regulatory reform and the integration of Islamic legal values are strategic steps that must be taken to realize justice, consumer protection, and more equitable economic development in Indonesia.

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