

Akad bay wafa as a land pawn practice in islamic economy: The Practice of lawn pawn in bay wafa contract

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Abstract

One of the muamalah fiqh contracts, bay al wafa, is still up for controversy among Muslim academics today. However, certain nations, including Indonesia, continue to use this agreement as a means of financing their economies, particularly in the agricultural sector. This study aims to determine the extent of bay al wafa practice in Indonesia. The research approach employed in this study was an in-depth interview. According to the study's findings, many Indonesians employ the idea of bay al wafa in conjunction with expressions like pagang pawn, selling pawns, and taxation to finance their everyday necessities using agricultural land as collateral. People utilize this agreement because it is more convenient and adaptable. Bay al Wafa is one of the contracts that this study suggests Islamic banks adopt to finance the agricultural industry since it is simple and adaptable.

Keywords : bay wafa, contract, pawning, lawn pawn, Islamic economics

Introduction

An agreement or bond can be seen as akad or contract. According to Az-Zuhaili (2000), this contract can tighten and enhance relationships between a number of people under some circumstances, and it can be either concrete or abstract on one side or on both sides. This contract is separated into tabarruq (good deeds) and tijarri in Islamic trades (commercial contracts). For instance, tijarri transactions utilized for profit are included in financing and funding, whereas non-profit transactions are included in services (fee-based revenue), social activities, and funding. One contract in this tijarri transaction can be found in Bay' al-waf, which emerged in Central Asia after the fourth century of hijra.

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This agreement was born out of the people's financial struggles at the time.

One of the contracts in Islamic banking that reflects human needs and continues to adhere to the principles and traits revealed in the Qur'an and Sunnah is this one.

The Hanafi school holds that even if the bay wafa contract in the tijarri transaction involves stipulations, since the buyer can possess and use the commodities at the same time, it is not a part of the contract that the prophet forbade. By doing this, usury in transactions is avoided. The offer by the IB is still relatively limited since it is thought to pose various threats to Islamic banking, unlike the salam contract where the seller is only limited to clearly specifying the products offered to the buyer because at the time of the transaction the goods are not available in nature (Abrista, 2009 ; Adi, 2012 ; Affandi, 2014 ; Ashari and Saptana, 2005 ; Muneeza dkk., 2011 ; Ningsih and Wardayati, 2016 ; Roziq dkk., 2014) . A condition or agreement that the products sold may be purchased back by the seller after the stipulated grace period has passed is included in the Bay Wafa contract between two parties (Az-Zarqa).

But even today, experts continue to disagree over this agreement. Despite the disagreements among Muslim jurists, bay' al wafa has come to be regarded as standard procedure, much like it was in Turkey during the Ottoman era. A transaction or contract that can still be approved by modern legal authorities is the Bay al Wafa practice (Tyser, 1967). Regarding the bay al-wafa (redemption sale) contract, he views it as a guarantee rather than a sale in the Hanafi school.

In the Hanafi school, a commitment is preferred than a purchase.

But most academics, both past and present, view this bay al wafa 'as an invalid contract. In its seventh session held in Jeddah (1412 AH/1992 AD), the Islamic Fiqh Academy of the Organization of the Islamic Conference (O.I.C.), now the Organization of Islamic Cooperation, likewise affirmed its prohibition. But there are also academics who approve of this bay al wafa. Ibn Abidin argues that the priority in economic concerns is the eradication of troublemakers and the prohibition of usury. He justified Bay' al Waf's claims after taking this into account , relying on the authority of al-Bazzāziyyah. According to this agreement, the owner sells his property with the understanding that he will receive it back after paying the buyer the purchase price. In other words, it is a sale contract with a built-in cancellation clause, requiring the buyer to return the item if the seller returns the money.

Bay al wafa is used in a number of Islamic nations, including Malaysia. In Malaysia, a transaction called bay al wafa, commonly referred to as a sale of promise, is one in which the borrower grants the lender usufructuary rights to the property until the debt is returned. The right to receive income from the land in the form of a lease may be one of

the usufructuary rights. Until the loan is fully repaid, these rights will be fully enforceable. Nevertheless, this Bay Al Wafa contract is still used in some areas as one of the Tijarri contracts.

Indonesia, with its majority Muslim community, has a fairly large agricultural area. In the practice of agricultural land lease agreements in Indonesia, the practice that can be found in the midst of the community is the same pattern as bay' al-wafa', the community uses the terms taxation, selling pawns and holding pawns, and the term holding pawns is used by the people of West Sumatra called the "*Pagang Janji*".

Although in the agricultural sector, this salam contract is more in demand by Islamic banks, this contract is seen as more vulnerable to risk than other Islamic commercial contracts used by Islamic banks such as in Malaysia.

Because the wealthy do not wish to lend their money to those in need voluntarily (al-qardh al-hasan) without receiving anything in return, the Hanafi school permitted this type of buying and selling with the intention of eliminating the predominance of usury among the populace. The owners of surplus assets will also profit from this deal because their money is being put to good use. As a result, the two parties provide one another with help for a while. According to the Hanafi school, the sale and purchase of bay' al-wafa' is not among those forbidden by the prophet, despite the fact that it is conditional. This is because bay' al-wafa' is carried out through a buying and selling contract where the buyer can own the goods and use them at the same time. In Islamic banking, *riba* is an act that is against the law of Islam. In order to prevent usury, this bay wafa contract is a legitimate method.

The transaction of taxing rubber plantations in the province of North Sumatra by using paddy fields and coconut plantation taxes as well as selling pawns of agricultural land where these transactions are common and have been practiced by the community for a long time can be seen as a representation of the reality on the ground. Vanity and injustice can occasionally lead to the taking of one another's property, which is obviously wrong and requires special attention from Islamic banking institutions. As a result, these institutions must build their products using bay' al-wafa' as a design or manufacturing process. To prevent negative things or the rights of the owner of the garden or land from being violated, the form of the contract signed by the community on the garden or land simply connected the community with banks or Islamic financial institutions through this contract.

How are bay al wafa contracts used by Indonesian society, why have they become common there, and how can they be built in a way that makes them appropriate for agricultural finance products in Islamic banking?

Review of literature

The concept of Bay Al Wafa

According to Imam Hanafi, the only difference between bay' al-waf and a pawn is their capacity to use goods. Consequently, although if the contract in question is a sale and purchase agreement, it is actually a pledge rather than a sale and purchase since a sale and purchase agreement is made so that the buyer can profit from the items, whereas if the agreement is pawned, this cannot happen.

Regarding the legitimacy and permissibility of bay' al-wafa, where the contract is considered legal and is thought to have no limitations, some Hanafiyah and Syafiyah scholars hold the mutaakhhirin opinion. They claim that this waf's sale and purchase is legal because buying and selling are generally acceptable and that the inclusion of conditions has no negative effects on the contract because it is carried out outside of it.

In a Bay "al-wafa" sale and purchase agreement, the buyer is free to use the goods he purchases; the only restriction is that he must not resell them to anyone other than the original seller because the goods are held by the debtor as collateral for the debt for the duration of the agreed-upon deadline. The products must be given back to the seller if the owner already has enough cash on hand to pay up the debt and the original selling price of the goods at the designated grace period. By using the bay' al-wafa technique, it seems that usury can be prevented. This is a sort of benefit that is established in the midst of human life for the purpose of rejecting damage, meeting their wants, and fostering healthy relationships amongst people.

Akad bay wafa dalam lahan pertanian

Research design

In-depth interviews are used in this study's qualitative design to obtain data (Yin, 2009). Interviews can give a rich account of an event, events, and the connections between them (Stake, 1995). The nature of the information in study is exploratory as it was at the time the research was undertaken (Ellram, 1996). The research is only conducted in the province of North Sumatra due to the high cost of interviewing participants throughout all of Indonesia. Interviews were performed and kept up until the hypothesis had been fully absorbed (Glaser dan Strauss, 1967) . Given that they are still in the Covid-19 epidemic era, interviews were undertaken directly, semi-structured, and in-depth before being performed using normal interview techniques.

Participants

13 participants were interviewed for this study, including government-representing village officials and Bay' al Wafa actors who appeared to be local farmers pawning their land.

Data Collection

In-depth interview techniques were used for the primary data collection, allowing participants in the study to provide their perspective on drop-shipping (Charmaz, 2014). Face-to-face interviews were conducted adopting health guidelines, and they lasted between 20 and 60 minutes per person. Open-ended interview questions were used to get extensive responses from participants in their own words, as well as a balanced viewpoint and free of bias (Corbin and Strauss, 2014). The researcher personally conducted this in-depth interview using a set of questions, and it was taped. The interviews' findings were then verbatim summarized in a conclusion.

These are the steps taken during this in-depth interview:

1. Preparation and transcription

At this point, preparation and transcription of the interview were done using notes and key words, and each interview question was then described in the form of a transcript to ensure the quality of the interview. Every interview transcript will be coded to make it simpler to distinguish the interview's findings (Miles dan Huberman, 1994).

2. Report verification

At this point, all transcripts were examined once more to spot any inconsistent question answers. Deeper inquiries on the Bay' al Wafa' practice will be posed to the participants. Afterward, evaluating the interview results so that they can reach a trustworthy conclusion.

These are the inquiries:

1. What motivates Bay Al Wafa's practice?
2. What form does North Sumatra's bay al wafa practice take?
3. How do you feel after performing Bay Al Wafa?

Findings and Discussion: Results of interviews

Reasons for practicing bay al wafa '

In practice, bay al wafa 'is done for various reasons, such as meeting the needs of proper education for the family. Following are the results of interviews conducted with the participants.

GU said:

"... I pawned this coconut plantation to get the money I needed to pay for my son's college tuition in Medan, if I sell the garden it's too much money and I need only a little money and in the next two or three months, InshaAllah (God willing) I can pay. (Interview, ...,)

Is said:

..... Children need money to continue their education outside of the village because some of them attend the AKPER (Nurse School) in

Medan and their siblings also attend universities there. As a result, an enormous amount of money is required and it must be acquired right now. So, this need can be met by taxing it.

Fulfillment of daily needs is also one of the reasons used by the participants to do bay wafa. As the following interview results:

Is said:

"... My frequent taxation of the garden is a habit that is very beneficial to our family life, so through this method of taxation, demands can be addressed."

Another participant says the same thing, Ern said:

"... Therefore, I may use what I need right now because I have a very urgent need for it.

Sut said:

If I sell off the money, I receive too much money when I only need a little, and the person who gave the loan doesn't mind holding out the money I need with immediately and quickly I get the money without having to wait for time and a complicated process. If, however, by selling the pawn, the rice field that I sold as a mortgage will return to me.

In addition to financing weddings, bay al wafa is sometimes utilized to assist families suffering from misfortunes like illness.

Ahmad Hajidin said:

... Because there was a child who wanted to throw a party but didn't have enough money, I levied a tax on this rubber plantation.

Form of bay al wafa practice in Indonesia

North Sumatra as one of the provinces in Indonesia is an area with a lot of agricultural land and many people work as farmers. It is often found that these farmers mortgage or tax their agricultural land to obtain funds. So in muamalah fiqh, this process is referred to as bay al wafa. As for the practice of bay al wafa in North Sumatra, it has various terms such as taxation, Pagang gadai and jual gadai. Some of the participants gave their answers as follows.

MS said,

"..... Yes... we often pawn our land to people who want to buy it. But we agreed that later our land would be sold to us again. Usually we say taxation here."

Another same regard said by ER.

.... Typically, we don't have enough money for a celebration; instead, we charge those who want it. The deal is that we will sell it again if we have money.

This bay al wafa practice is also frequently referred to by the term Pagang Gadai.

SU said,

"... We typically pawn the mortgage to those who wish to maintain our garden if we don't have enough money for school fees. When we have enough cash, we'll eventually buy back our coconut farm. It is a contract with the purchaser..."

GU asserted.

"...we normally pawn it if we need money for our family. Garden tax, also known as pagai gadang, is mentioned here.

The phrase "selling pawns" is frequently used by residents of North Sumatra in addition to the terms "taxation," "pagang gadai," and "garden tax."

JU confirmed,

"... Our paddy pawns are typically sold as soon as the kids start school. You require that expense."

The same thing was said by AN.

We typically sell pawns to members of our family or other trustworthy individuals. He can plant rice later, and then sell the harvest. but afterwards sold to us again."

This form of funding is preferred by farmers because it is simpler, more adaptable, and safer. Some of the findings from participant interviews are listed below.

We are selling this pawn to make things easier, AZ remarked. The guarantee is to simply come to an arrangement with our garden land. so it is safer. "

AJ said the same thing.

"... We can more easily pawn our land. We'll ask the person who purchased it to extend the period if we believe we won't be able to pay off our loan. Right, the customer is secure because it is his responsibility to resell the field-produced goods.

It's secure if we use an arrangement like this pawn sale, MS stated. Additionally, our land is secure because the buyer can't simply sell our fields to other people without first getting our consent.

Its social impact

Bay al wafa practice has an effect on people's needs in Indonesia, particularly in North Sumatra.

GU explains: "... The coconut plantation that I pawned had fruit that the person who took the pawn could take as payment for enabling me to fulfill my immediate requirements. I frequently do this since I feel tremendously helped in a short period of time. receive the funding I require.

The same issue is also stated in IS: "... I frequently tax my garden when I need money, and the garden will be handled and the garden's results

will be taken by the person who provided me the loan as long as the money I borrowed cannot be returned”

Bay Wafa as Indonesian agricultural financing product

Sharia Finance Products for Agriculture, including mudharabah, musyarakah, muzara'ah, mukhabarah, musaqah, bai' murabahah, istishna, salam, and rahn are some sharia-compliant schemes that enable the realization of agricultural sector financing.

While Bay al Wafa is a form of indigenous knowledge that enriches Islamic Economics' scientific riches. The sale and purchase agreement is fulfilled subject to the buyer returning the purchased item to the seller along with the amount (the money) (haidar, tt). According to Zahrah, the bay al Wafa first appeared among the tenth-century populations of Bukhara and Balkh. As a result of the presence of a aversion, the person who is selling the item has to give money to someone who needs it if they don't give an offer. For the population that is in need, this situation is likely to be quite upsetting. This phenomenon causes the aforementioned population to develop an independent akad in order to meet its needs. This is intended to protect the local population from riba practice.

In North Sumatra, the bay al-wafa contract is used differently than it is generally. But this transaction's goal and the contract's structure are both the same. People in North Sumatra use a variety of phrases to refer to financial transactions for the agriculture sector.

1. Taxation

In the North Labuhanbatu region of North Sumatra, this term is used. As for the example of this taxation, someone who needs money/funds for a child's or family's school fees taxes the garden to receive the money, with the understanding that the garden used as the transaction's object will be returned to the garden owner if the money obtained earlier can be returned. The garden's owner is permitted to use the garden during that time as long as the money hasn't been returned by them. They believe that what these people are doing is acceptable since there is no evidence of gharar or fraud among them, and instead, they are very helpful and will help them with their affairs, which will benefit them and prevent damage from coming into their lives—this is the goal of the law. Islam. Here, it is possible to say that this taxing policy is another way of saying bay al-wafa.

2. Pagang Gadai (Pagang Pawn)

North Sumatran residents in the Mandailing Natal region use this term. When a person needs money or cash for their children's school tuition or other family requirements, they come into a pagang agreement, or what some refer to as a garden tax like coconut plantation land. They came to an agreement that the coconut plantation would be given up as a pledge item from the loan he acquired in exchange for the funds/money needed, which would be a debt for him. The coconut plantation is returned to the owner of the coconut plantation if the prior funds can be recovered. During the term of the agreement, the

money cannot be returned by the owner of the plantation, during which time the creditor can take the benefits or proceeds from the coconut plantation. According to the local community, transactions with this type of agreement may be carried out because according to them there is no element of gharar or fraud between them, even the community feels very helped by this transaction and will facilitate their affairs. And this agreed contract is a contract agreement that creates benefit and rejects harm in the life of the community. The purpose of benefiting and rejecting harm is what is the purpose of Islamic law.

3. Jual Gadai (Selling Pawn)

North Sumatran residents also use this phrase, particularly in the Serdang Bedagai region. The method of practice is compared to someone who desperately needs money to pay for a child's education or other family needs, so this person sells his or her rice field or field to raise the money, with the understanding that the rice field or field that was the subject of the transaction can be returned to the owner if the money can be recovered. a field's or fields' proprietor. The owner of the rice field or fields cannot return the payments during the duration of the agreement; thus the buyer of the rice field may benefit during that time. The residents of Serdang Bedagai claim that all of these activities are legal because there is no chance of fraud and because everything is simple. Additionally, they made Serdang Bedagai residents' lives better and rejected doing them any damage.

We can draw the conclusion that a large portion of these finance operations take place in North Sumatra, which can be viewed as the region's expertise in the financing of agricultural. In fact, this transaction is just another way of saying Bay Al Wafa.

Building Models for Agricultural Financing Products in Islamic Banking

In terms of sharia funding, there are numerous programs available, including mudharabah, musharakah, muzaraah, ukharabah, musaqah, bay murabahah, istishna ', salam, and rahn.

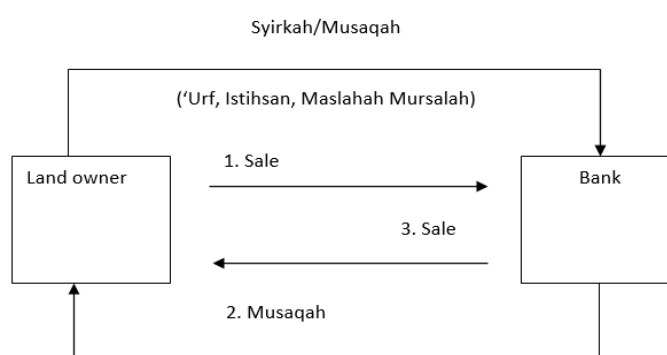
When considered from a sharia viewpoint between the commercial (real) and financial (monetary) sectors, some of these cooperation models must be interrelated, which would be undoubtedly distinct from traditional economic methods. The monetary sector in a capitalist conventional economy moves more quickly and is overextended, so what happens there does not always reflect the true state of the economy. The issue with Islamic financial institutions today is how much of a role they play in promoting the expansion of the real sector. Islamic financial institutions, in contrast to conventional financial institutions, forbid the possibility of a decoupling between the financial and real sectors.

Despite the fact that in present practice, Islamic banking has implemented financing products in the agriculture sector utilizing a salam contract in which the money is provided at the beginning and the goods are delayed until a specific grace period. Even if the DSN MUI fatwa was issued in 2000, in reality there hasn't been a single Islamic bank that has selected this strategy. This parallel greeting

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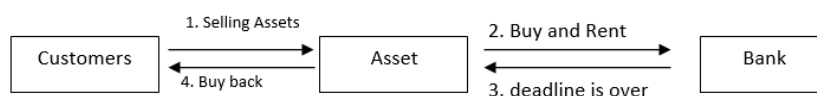
scheme's design is unrealistic and does not meet the needs of the buying public. Because of the risks, challenges, and strict implementation requirements in the agricultural sector, Islamic banks do not risk engaging it. Therefore, it appears that the Bay Al Wafa contract is one of the most adaptable ones that can be used to meet the demands of agricultural financing products in Islamic banking. These examples will help to illustrate the Bay Al Wafa scheme.

Figure 1. Bay al wafa scheme applied in bank



Following are some additional alternatives to this Bay Al Wafa scheme.

Figure 2. Alternative scheme of bay al wafa in banking



Islamic doctrines include the directive to be just, particularly with regard to rulers or umara, the directive to provide zakat, infaq, and alms to the wealthy, the law of inheritance, the recommendation to lead a simple life, and the prohibition of excess. Baitul Maal is evidently heavily laden with the ideals of justice, particularly distributive justice and the values of shared prosperity, and is being implemented by the state and others to aid the needy (social welfare).

A derivative in the world of finance (finance) is a bilateral contract or payment exchange agreement whose value is derived or derived from the product that is the "principal reference" or also known as the "underlying product." Rather than trading or physically exchanging an asset, market participants make an agreement to exchange funds, assets, or a value in the future with reference to the asset that is the main reference.

Derivatives can be used as a mechanism to shift risk, among other things. For instance, producers can offer purchasers futures contracts on their crops before they are harvested. The buyer accepts this risk transfer in the hopes of still receiving a reward or profit, while the farmer uses it to hedge against rising or declining crop prices. The buyer will profit if the selling price rises, but he will suffer a loss if the selling price falls. The farmer can forecast the selling value of the produce that he will receive later.

Similarly, Islamic banking can apply agricultural finance products with a contract or futures contract model; the contract that will be employed in fiqh words or contexts is known as a bay al-Wafa' contract. When we consider the use of contracts that have persisted for a while and developed into social norms, the application of the bay al-Wafa' contract in Islamic banking makes perfect sense. This way, there won't be any questions about the legality of the transaction and people will feel secure. It's fine; in fact, the community benefits enormously from this in terms of providing for their family. Following are some examples of contracts that can be used as agricultural finance instruments in Islamic banking:

As an example of the previously described schemes, it can be seen that the garden owner sells his land to the bank as a customer who needs financing from the bank. Once the bank has control of the garden, the bank then enters into an agricultural syirkah contract with the garden owner through the use of musaqah. When the musaqah occurs, the garden owner or client can receive a portion of the harvest in exchange for the upkeep of the garden, and with the money earned, he can pay the bank loan that is due in installments. As a result, both parties sign into an agricultural syirkah contract known as a musaqah during which the garden owner can settle his bank debts as long as he is the garden's caretaker. Following the settlement, the bank sells the garden to the original owner or client it had financed. With a contract like this, it goes without saying that the community will face less fraud or injustice related to the taxation, selling, or holding of pawns—practices known as bay al-wafa' in fiqh—that they engage in.

CONCLUSION

This contract is still not widely used because of the Bay Al Wafa Debate on financing deals in the agriculture sector. Despite the fact that other nations, like Malaysia, have used this procedure for a long time. This bay al wafa is known by a variety of names in Indonesia, including taxation, pagang gadai, and jual gadai. In banking itself, financing products in the agricultural sector use salam contracts. Although it already has a DSN MUI fatwa regarding the use of this salam contract for financing the agricultural sector, it turns out to be less attractive to Islamic banks because of the many risks, complicated and rigid if practiced. So the author recommends bay al wafa as an alternative mechanism for financing Islamic bank products.

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