



THE PRACTICE OF BORROWING HOUSES THAT ARE LEASED AS BOARDING ROOMS (CASE STUDY IN HAKURUNG VILLAGE, NORTH DAHA DISTRICT, HULU SUNGAI SELATAN REGENCY)

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Article Info

Article history:

Received April 17th, 2023

Revised May 19th, 2023

Accepted June 25th, 2023

Keyword:

House loan;

Lease;

Sharia economic law
perspective and positive law.

Abstract: *In receiving a loaned item, the borrower should take care of the loaned item as well as possible in accordance with the agreement that occurred between the two parties, but in fact the borrower misused the loaned item and broke the agreed agreement by making the borrowed house a boarding room by renting it out to others without the knowledge of the original home owner. In this case there is a mismatch between the borrower of the house and the party who lent the house, and of course what is done is contrary to Islamic law. This type of research is descriptive qualitative field research. In terms of data collection the author uses observation, interview and documentation techniques. Based on the results of the research, it is found that the practice of borrowing and lending is permitted and belongs to the type of *aqad mu'alaq* and includes the type of *ariyah muqayyad*. The practice of renting is not valid because the terms of the contract are not fulfilled and the terms of the lease, which is the object of its *halalness*, are not fulfilled. From the perspective of Islamic economic law related to the practice of lending and borrowing is valid because the principles of *muamalah* have been fulfilled and renting is not valid because the principles of *muamalah* are not fulfilled. In terms of positive law, the lending and borrowing that occurs is valid in accordance with Article 1320 of the Civil Code, and the leasing that is carried out is invalid because it is not in line with the Law and violates Article 1744 of the Civil Code.*

Abstrak: Dalam menerima barang pinjaman hendaknya si peminjam menjaga barang pinjaman tersebut dengan sebaik mungkin sesuai dengan kesepakatan yang terjadi diantara kedua belah pihak, tapi nyatanya si peminjam menyalahgunakan barang pinjaman tersebut dan mengingkari perjanjian yang disepakati dengan menjadikan rumah yang dipinjam tersebut sebagai kamar kostan dengan menyewakannya kepada orang lain tanpa sepengetahuan pemilik rumah yang asli. Dalam hal ini terjadi ketidaksesuaian antara pihak si peminjam rumah dengan pihak yang

meminjamkan rumah tersebut, dan tentu hal yang dilakukan bertentangan dengan syariat Islam. Jenis Penelitian ini adalah penelitian lapangan (*field research*) yang bersifat deskriptif kualitatif. Dalam hal pengumpulan data penulis menggunakan teknik observasi, wawancara dan dokumentasi. Berdasarkan hasil penelitian diperoleh bahwa praktik pinjam meminjam diperbolehkan dan tergolong kedalam jenis *aqad mu'alaq* dan termasuk jenis *ariyah muqayyad*. Adapun praktik sewa menyewa tidak sah karena segi syarat akad nya tidak terpenuhi dan syarat sewa menyewa nya pun yang menjadi objek kehalalan nya tidak terpenuhi. Dari segi perspektif hukum ekonomi syariah terkait praktik pinjam meminjam sudah sah karena prinsip muamalah nya sudah terpenuhi dan sewa menyewa tidak sah karena prinsip dari muamalah tidak terpenuhi. Adapun dari segi hukum positif bahwa pinjam meminjam yang terjadi sudah sah sesuai dengan Pasal 1320 KUH Perdata, dan pada sewa menyewa yang dilakukan tidak sah karena tidak sejalan dengan Undang-Undang dan melanggar Pasal 1744 KUH Perdata.



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A. INTRODUCTION

At this time life in society is still very thick with culture in social ties such as lending and renting. In receiving borrowed goods, you should take care of the borrowed goods as well as possible and in accordance with the agreement of both parties. Lending and borrowing is commanded by Allah swt in Q.S Al-Hadid verse 11, where the verse explains about lending and borrowing and the rewards for people who lend something useful to others. In Islam, the loan item must fulfil the conditions in accordance with the provisions of Sharia.

The problem of lending and borrowing that occurred was the lending of a house in Hakurung Village, North Daha Sub-district, Hulu Sungai Selatan District. In this case there was a mismatch between the borrower and the lender. Where the borrower violated the agreement and misused the house without the knowledge of the original homeowner by making the empty rooms in the house as boarding rooms. Of course, what the borrower did was contrary to Islamic law because he had misused the borrowed goods not in accordance with what they should be.

Allah swt in Q.S An-Nisa verse 29 explains the prohibition of eating other people's property by unlawful means. Eating other people's property here

there are various ways, for example what the borrower of the house did by making an empty room as a boarding house and the proceeds of the rent were used by himself without the knowledge of the owner of the house, and what the borrower of the house did was wrong because it had interpreted other people's property.

Islam permits giving a loan, whether it is an item or something else, and does not include it in the category of asking for it, because the borrower is taking property to use it to fulfil his needs in accordance with the original situation. But if the loan item is misused and makes one party feel disadvantaged then it is very contradictory.

B. METHODS

The type of research used is field research, namely research obtained from sources in the form of information, events or phenomena that have actually occurred in the field and are more specific.¹ The approach used is a qualitative approach, namely research that intends to understand the phenomenon of what the research subject experiences.² The research location is in Hakurung Village, North Daha District, Hulu Sungai Utara Regency, South Kalimantan. The data collection methods used were observation, interviews and documentation. The analysis used is descriptive analysis in three ways, namely data reduction, data presentation, and conclusion drawing.

C. RESULTS AND DISCUSSION

The Practice Of Borrowing Houses That Are Leased As Boarding Rooms (Case Study In Hakurung Village, North Daha District, Hulu Sungai Selatan Regency)

Hakurung Village is part of the Hakurung Dalam Village Administration which includes Hakurung Dalam Village and Sungai Haji Village, due to the shrinking of the area, Hakurung Dalam Village and Sungai haji Village were merged into one village, namely Hakurung Village. Hakurung Village is so

¹ Rahmadi, *Pengantar Metode Penelitian* (Banjarmasin: Antasari Press, 2011), Hlm. 66.

² Lexy J Moleong, *Metode Penelitian Kualitatif* (Bandung: PT Remaja Rosda Karya, 2005), Hlm. 6.

called because the village is located in the interior (*Takurung*) and there are no access roads other than the deep river. The area of Hakurung Village is approximately 4153 ha, consisting of 15,000 ha of land and 248,000 ha of swamp.³

Based on the results of interviews conducted, the house that was lent was an empty house located in Hakurung Village, North Daha Subdistrict, Hulu Sungai Selatan Regency, as for the reason the owner lent his house because the borrower did not have a private house and only stayed at their parents' house. Seeing this made the owner of the house feel sorry for the borrower, so finally a loan and borrowing agreement was made between the two parties. Before the contract was agreed upon, the owner of the house told the borrower that the loaned house must be looked after and cared for as well as possible, and if there is any damage caused by the borrower's negligence, it must be reported to the original owner of the house.

Initially, the contract went well, but after one year, a neighbour reported that the borrower had turned the empty room into a boarding house without the knowledge of the owner. Finally, after the original homeowner and the borrower met, the borrower explained that the real reason for doing so was because the money was to meet the needs of his family, and in the end, after negotiating between the two parties, the borrower had to take responsibility and had to leave the house.

Lending and borrowing transactions (*'ariyah*) or leasing (*Ijarah*) are contracts that are allowed in Islam, as long as they are in accordance with Islamic law. The implementation of the lending and borrowing (*'ariyah*) or renting (*Ijarah*) contract is based on the Al-Quran and the Prophet's Hadith, which means that humans are not allowed to carry out lending and borrowing (*'ariyah*) or renting (*Ijarah*) if it is not in accordance with Islamic law. Based on the above cases that the author has described, the author concludes that there are two cases of practice discussed, namely the practice of lending and borrowing (*'ariyah*) and leasing (*ijarah*).

³ "RPJM Desa Hakurung Kecamatan Daha Utara Kabupaten Hulu Sungai Selatan," t.t.

In the first case, the practice of borrowing and lending houses is carried out when viewed in terms of the agreement / lending and borrowing agreement ('ariyah) which is carried out in terms of the pillars of the binding contract, namely the person who has the contract is the owner of the house and the borrower. The purpose of the contract is clear, namely the main purpose is an 'ariyah contract by providing benefits from one person to another without any substitute, and from the pillars of shighat al 'aqd, namely ijab and qabul, it has been fulfilled. As for the conditions of this agreement, they have also been fulfilled because the owner of the house and the borrower are capable of doing the 'ariyah contract, and the contract provides benefits for both parties. The contract carried out is included in the type of aqad mu'alaq where in its implementation there are conditions specified in the contract.⁴

In the practice of borrowing and lending ('ariyah) carried out in general there are several pillars of borrowing and lending that must be fulfilled, namely:⁵

- a. Borrowing (al-'iarah)
- b. The person who lends (al-mu'iir)
- c. The borrower (al-muta'ir)
- d. The item being lent (al-mu'ar)
- e. Sighat, either orally or in writing

In terms of the pillars of house borrowing and lending, the conditions have been fulfilled. Regarding the practice of lending and borrowing carried out is included in the type of 'ariyah muqayyad, 'ariyah muqayyad is lending an item that is limited in terms of time and benefit.⁶ So as stated by the owner of the house that the house should not be changed in position means that in terms of its usefulness the item is limited and the borrower can only use the house to the extent permitted by the owner of the house, as for the time limit for lending that the owner of the house does not provide a clear limit on the time limit for lending.

⁴ Hendi Suhendi, *Fiqh Muamalah* (Jakarta: PT RajaGrafindo Persada, 2016), Hlm. 51.

⁵ Siah Khosyi'ah, *Fiqh Muamalah Perbandingan* (Bandung: Pustaka Setia, 2014), Hlm. 141.

⁶ Rachmat Syafe'i, *Fiqh Muamalah* (Bandung: CV Pustaka Setia, 2006), Hlm. 144.

As for lending and borrowing ('ariyah) when viewed from the perspective of Sharia Economic Law and seen from the principles in bermuamalah, the lending and borrowing carried out is included in the tauhidi principle because lending and borrowing is included in helping and it reflects divine values. In the halal principle, in the lending and borrowing practice that occurs, the house is halal and permissible to lend because it is self-owned and halal to lend to others as long as it does not conflict with the Sharia. On the principle of mashlahah, the lending and borrowing practices that occur actually bring benefits to both parties. On the principle of ibahah (permissible), the practice of lending and borrowing refers to the permissibility of lending and borrowing and is not prohibited as long as the lending and borrowing carried out is in accordance with the principles and rules in Islam. In the principle of freedom of transaction, the practice of lending and borrowing is not contradictory because basically what the owner of the house and the borrower of the house do is based on the principle of mutual consent (an taradhin minkum). On the principle of cooperation, the practice of lending and borrowing is in line because what both parties do is based on mutually beneficial cooperation. On the principle of paying zakat, the practice of lending and borrowing is a form of social care. So overall, the practice of lending a house that is rented out as a boarding room in Hakurung Village is in line with the principle of cooperation.

As for the perspective of Positive Law related to borrowing and lending, what is meant here is borrowing and using. Borrowing and use is an agreement in which one party hands over an item for free use to another party, on the condition that the party receiving the item after using it or after a specified time has passed will return the item.⁷ This borrowing and use is regulated in Article 1740 to Article 1753 of the Civil Code. Borrowing and use is basically an agreement. Therefore, the legal requirements of an agreement also apply in the case of borrowing and use. The validity requirements of an agreement are contained in Article 1320 of the Civil Code:

⁷ Filipp Levin, *Kitab Undang-Undang Hukum Perdata*, t.t.

- 1) Agreement of those who bind themselves;
- 2) Capacity to make an agreement;
- 3) A certain subject matter;
- 4) A cause that is not prohibited

The word of the covenant shall not be written, but it shall be verbally binding on those who make it, unless it is written in the law.

From the results of the research conducted related to the act of borrowing and lending a house that was carried out initially was valid according to applicable law, because the elements of the conditions were met.

As for the second case, namely the practice of renting (*ijarah*), that in this practice what is rented out by the borrower is an empty room in the loaned house. In this case, the borrower rented out the room without the knowledge of the original homeowner. In practice, the borrower has been renting out the room for approximately one year to others at a rate of IDR 500,000 per month including electricity and PDAM facilities. In this case the boarder did not know that the room he rented was not his own.

Regarding leasing, M. Ali Hasan mentioned that there are several conditions that must be met, namely:⁸

1. The person who makes the contract has reached puberty and has the right mind.
2. Both parties are equally willing to do the *Ijarah* contract.
3. The benefits of the *ijarah* object must be clearly known.
4. The object of *ijarah* can be delivered and used.
5. The object of *ijarah* is permissible by *shara*.

In terms of the terms of renting (*ijarah*) the boarding room made by the borrower does not fulfil the terms of renting. Regarding the non-fulfillment of the terms of the lease lies in the fifth condition, namely the object of *ijarah* is *halal* by *shara*, meaning that something that is leased or used as an object of lease (*ijarah*) is declared *halal* or valid according to Islamic law. The fact that occurs in the field is that the borrower rents out the room without the

⁸ Ali Hasan, *Berbagai Macam Transaksi Dalam Islam (Fiqh Muamalat)* (Jakarta: Raja Grafindo Persada, 2004), Hlm. 227-231.

knowledge of the homeowner. Actually, the object of ijarah is permissible by shara if there is a prior agreement or the owner of the house knows and allows the empty room to be rented out, but the fact that the borrower rents out the empty room secretly without the knowledge of the original owner then it changes the legal position of the object of ijarah. Renting out goods without the permission of the original owner can be considered as an act that takes away the rights of others because it involves a violation of ownership rights.

In the case of an agreement made by the borrower as regards the condition of the loan, the loan is not permitted by the law because the lender does not have the right to lease the loan. In the exercise of the agreement, that the goods must belong to the person who has the loan or the owner of the property knows and approves that the property is used for other purposes. So the rental practices carried out by the lenders are not allowed in Islam and the loan that occurs is considered void / unlawful.

Based on the perspective of Shariah Economic Law that a lease is to lend a thing to someone else to take advantage of the thing, with the condition that it is returned after it is used to its owner and at the time of its return the thing must be in intact condition according to the beginning of borrowing. Rental lease is the activity of taking advantage of something received from another person by means of payment in accordance with an agreement that has been established under certain conditions.⁹ The law of origin of the lease of rent (the directive) is a uniform or can, with the meaning made in accordance with the provisions established by Islam.

According to the results of the research that the researchers did in the village Hakurung related to the rental rental carried out by the home borrower when viewed from the perspective of the Shariah Economic Law and seen from the principles in Bermuamalah then the rent rental done is not in accordance with the principle of tauhidi because it has abused the goods of others and it includes values that are contrary to divinity. It is contrary to the principle of renting other people's goods without the consent of their owners and it is very

⁹ Moh Saifullah Al Aziz, *Fiqh Islam Lengkap* (Surabaya: Terbit Terang, 2002), Hlm. 377.

clear that this principle is commanded by man to seek a living in a good way and that is good in the way of obtaining, consuming, and using it. The rental is not in accordance with the rental principle because the renting is not allowed because the original owner does not know that the goods are rented to others, of course it is not permitted in Islam and transactions or acts involving abuse, breach of agreement, or other harm is likely to be considered unlawful. The principle of freedom of transaction of renting this rental is not consistent because there is a party who is guilty that is the original owner of the house. And in the rental practice that occurs that the principle of paying zakat is not fulfilled because as it is known that the proceeds of the zakat must be legal and in accordance with the applicable Islamic shariah.

So in general, the rental practices carried out by the borrower without the consent of the original homeowner have violated the main principles of the Shariah Economic Law, so that rental carried on by the lender is unlawful and prohibited in Islamic shariah.

In the case of a lease, the borrower is obliged to provide the benefit of the goods to the other party for a certain period of time by the payment of a price for which the latter party is liable. People can rent all kinds of goods, both fixed and moving.¹⁰ In fact, the rented goods are lawful and not contrary to the law. With regard to the rental carried out by this borrower by law, I am in conflict with the applicable law, because the object of the rent is contrary with the law in force because the goods that are rented are other people's goods and the lender leases such goods without the consent of his own owner.

In connection with this, the lender's direct actions have violated the obligation to keep the goods. In article 1744 of the Constitution, the borrower has the right to keep and maintain the borrowed goods as a good host. And the borrower is entitled to be liable for the consequences of what he has done in accordance with article 1753 of the Code of Procedure. Therefore, it can be concluded that the review of the H.E.L.D. relating to the rental carried out by the borrower is contrary to Article 1744 of the Law because the borrower has

¹⁰ Levin, *Kitab Undang-Undang Hukum Perdata*.

misused the goods of the loan without the consent of the homeowner, and the lender is entitled to be liable for damages.

D. CONCLUSIONS

In the practice of lending and borrowing ('ariyah) carried out is permitted because the purpose is to help and the agreement of lending and borrowing ('ariyah) carried out is included in Aqad mu'alaq and is included in the type of 'ariyah muqayyad. As for the leasing practices carried out in terms of the engagement contract/agreement, it is not valid because in terms of the terms of the contract, it is not fulfilled and when viewed from the terms of leasing (ijarah) it also does not meet the terms of leasing, especially regarding the halalness of the object of ijarah which must be known and permitted by the owner so that the leasing practice (ijarah) carried out is not allowed in Islam. As for the Sharia Economic Law Perspective on the practice of lending and borrowing ('ariyah), it is stated in accordance with the principles of bermuamalah, reflects good social relations, and provides benefits for both parties. However, the practice of renting (ijarah) without the permission of the original owner has violated the principles in muamalah so that it is considered invalid. As for the perspective of Positive Law on the practice of borrowing houses that are rented out to become boarding rooms, the practice of borrowing and lending (pinjam pakai) carried out is regulated in Article 1740 to Article 1753 of the Civil Code, and the fulfilment of the valid conditions of the agreement according to Article 1320 of the Civil Code makes the act of borrowing and lending carried out valid. However, the act of leasing is not in line with the law and violates Article 1744 of the Civil Code, resulting in a violation of the obligation to maintain the borrowed goods. Therefore, the leasing practice carried out is contrary to applicable law and can lead to legal liability in accordance with Article 1753 of the Civil Code.

E. ADVICE

1. The owner of the original loan goods should always communicate regularly with the borrower to know the conditions of the borrowed goods and

ensure that the said agreement is executed according to the agreement. Also make it clear about the importance of adhering to agreements and responsibilities in the care of borrowed goods.

2. For the borrower in borrowing other people's goods should be genuinely guarded and treated as best as possible. Understand and comply fully with the agreed agreement and make sure to comply with the terms and conditions that have been mutually agreed upon. And communicate honestly with the owner of the property and do not misuse the loan without the permission of the original owner.

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