



## CONTRACT REVIEW ON GOLD LEASING PRACTICES AT BIREUEN CITY

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### **Abstrak**

*Muamalah is the one part of Islamic law that regulates several things that are directly related to the way of life between humans in everyday life. Cooperation and mutual assistance between humans, one of which is now entering the community is the practice of leasing gold. The lease agreement is a contract for taking the benefits of an object, so terms of the use of the object of the lease must be concisely to both parties, this study aims to find out how the gold lease agreement in Bireun, and how the Islamic perspective on the practice of leasing gold. The research he field research, which is a study that aims to obtain data or information on the original situation in the field. Primary data was obtained through interview method. The data analysis method in this research is descriptive qualitative analysis. The approach that the author takes in this article is to use the empirical normative method. The analys described is based on the implementation of gold leases at Kota Juang Bireun Regency, based on the high level of injustice and harm to one party, especially to the tenant. concludes that the author from Islamic law says it is not permissible in accordance with syara provisions where the implementation does not meet the terms and conditions of the lease.*

**Kata Kunci:** *Contract, Lease, Gold*

### **A. PENDAHULUAN**

In the economy, there is a relationship between one another. Where engagement creates a legal relationship between those who engage in economic engagement. Apart from that, an engagement is a regulation regulated by law that connects one party to another, some of which arise from agreements such as buying and selling, leasing, work agreements, and so on. However, some arise from the provisions of the law, namely bonds to compensate for actions that harm others (Wahab Khallaf, 2004). An agreement is an event where a person promises to another person or two people who promise each other to carry out something, then from that agreement a legal relationship arises between the two parties who make the agreement. Agreements is in the form of an agreement promise or commitment that is spoken or written. Agreements in everyday life will not be separated from an engagement. Buying goods creates an engagement with the seller, selling goods also creates an engagement and with the buyer. Likewise, the lease will also not be separated from the engagement, the person who rents out creates an engagement with the lessee, and vice versa, the lessee creates an engagement

with the person who rents out. Thus, the relationship between the engagement and the agreement is very close because the agreement creates an engagement (Antonio, 2001). One source of engagement is an agreement, so an agreement is also called an agreement because both parties agree to do something.

In social life, humans are creatures who are always dependent and bound and need each other. Instinctively, humans help each other in order to achieve a goal that is extorted. But those many people who help each other many people helped gave limitations in terms of withal help or attitudes that must be applied to meet the needs of life between them. Individual relations with others, such as discussing issues of rights and obligations, assets, buying and selling, cooperation in various fields, borrowing and renting, renting, using services and other activities that are indispensable for humans in daily life, are regulated in muamalah fiqh (Firdaus, 2000).

Various references have been outlined by Islamic law such as rules in buying and selling, accounts payable, leasing and so on. On that basis, the target of a contract must always refer to the goals desired by syara' in every legal requirement, namely the benefit of mankind as a whole. If in a transaction there are indications of benefit, it means that there is God's law. For that in any way that benefit can be achieved, then the conditions and even then are prescribed.

Leasing is a form of mutual assistance, leasing is giving something goods or objects to other people to benefit from an agreement that has been mutually agreed upon by the person who rents it out and the person who receives it, where the person who receives the goods must provide compensation as compensation. payment for the use of the benefits of the goods or objects with certain pillars and conditions. Leasing as a contract occurs by agreement (Azzam, 2010). This means that everyone can perform the act as long as it fulfills the requirements set out as a condition for the occurrence of the legal event and besides that, it must fulfill the contents of the agreement that was agreed as an obligation of the legal bond between the parties.

Based on the above understanding, it can be seen that what is meant by leasing is taking the benefits of an object, so in this case the object is not reduced at all, in other words, with the occurrence of a rental event that moves only the beneficial occurrence object being leased. In this case, it can be in the form of goods benefits such as vehicles, houses, and work benefits. The legal basis for this lease is the Word of God as stated in Surah Al-Baqarah verse 233:

Meaning: "And if you want your child to be nursed by someone else, then there is no sin for you if you pay according to what is appropriate. Fear Allah and know that Allah is All-Seeing of what you do." (Surat al-Baqarah: 233)

The recommendation to help each other is based on the word of God as stated in the Surah Al-Maidah verse 2:

Meaning: "And help you in goodness and piety to Allah and do not help you against sin and enmity. (Surat al-Maidah: 2)".

An example of cooperation and mutual assistance between humans, one of which is now entering the community is the practice of leasing gold. The lease agreement is a contract for taking the benefits of an object, so the terms of the use of the object of the lease must be of concern to both parties. The benefits of the leased goods must be clear and can be utilized by the lessee in accordance with the use of the goods if the goodbye agreement can be canceled. The benefits of the object for rent must also be direct benefits from the object, it is not justified to lease the benefits of an object that is indirect. The use of the object of rent must be an item than an indirect object. Rental agreements for goods whose benefits are not permitted by the provisions of religious law are invalid and must be abandoned, for example, rental agreements for houses to be used as places for prostitution, or selling liquor and gambling venues, as well as giving money to fortune-tellers.

This is different from the practice of leasing in Gedong Village, Juang City, Bireuen Regency, the rental case that occurred in this village is that gold which is the object of rent is used by the tenant by selling it to get money. Tenants rent gold to people who rent gold because the tenant is in need of money for urgent needs, the rental fee of needs 100.000 per month needs the lease without specifying a time limit and the tenant is allowed by the person who rents it to sell the gold in order to meet his needs and the payback period to the tenant ttom in the form of a necklace. so as long as the tenant pays the rent every month, the gold is still considered to be in a state of being rented out to the tenant.

According to Rahmat Syafe'i, linguistically Ijarah is (selling benefits). The majority of fiqh scholars are of the opinion that ijarah is selling the benefits, not the object. There think renting out trees for their fruit, sheep for milk, wells for water, because these are not benefits but objects.

## **B. METHODS**

In this study, to obtain the data and information needed, the writer uses a field research type of research, namely a data collection technique where the author goes directly to the field to obtain data with initial observations followed by interviews. Through this qualitative approach, it is hoped that an in-depth understanding and interpretation of the meaning and relevant facts will be obtained. Research using a qualitative approach is intended to identify and describe clearly and in detail the "Contract Review on the Practice of Leasing Gold in the City of Bireuen.

## **C. DISCUSSION**

### **1. Legal Basis of Lease**

Jumhur Ulama are of the opinion that ijarah is prescribed based on the Al-Quran, As-Sunnah think-Qur'an:

Asy-Shafi'i r.a. said: "People say that it is not obligatory and permissible to rent a house, land and animal backs, and that it is ownership, and ownership is buying and selling. So the lease is the subject of buying and selling from all sides, and all of that is permissible.

Q.S Az-Zukhruf verse 32:

Meaning: "Are they the ones who distribute the mercy of your Lord? We have determined between them their livelihood in the life of this world, and We have raised some of them above some others by several degrees, so that some of them can use some of the others. And the mercy of your Lord is better than what they collect." (Q.S Az-Zukhruf: 32).

The interpretation of the above verse explains about what are those who distribute the mercy of your Lord? (what is meant by mercy is prophet hood), We have determined between them a livelihood in the life of this world (so we show some of them rich and others poor) and we exalted some of them (with wealth) over others by several degrees, so that some of them can limit (the class of people who are well off) some others (on the class of poor people) as hard workers for the purpose of managing, namely heaven, your Lord) is better than what the the Berny).

a. The legal basis of leasing in As-Sunnah

1) Hadith of Ibn Umar

Meaning: "From Ibn Umar he said: The Messenger of Allah said: Give it to the worker before his sweat dries." (H.R. Ibn Umar).

2) Hadith of Abu Dawud:

It was narrated from Sa'id bin Musayyib and Sa'ad bin Abi Waqqash that he said: "We rent out the land with the plants that come out of it (meaning the rental price is the result of certain land from the leased land) and with a portion of the water flowing (meaning the price of the leased land). rent is the result of watered land). So the Messenger of Allah (saw) forbade us to do that and he ordered us to rent it out for gold or silver."

3) Hadith of Imam Muslim

It is narrated from Handzolah bin Qois Al Anshori that he said: "I asked Rafi' bin Khudaij by leasing land with gold and silver. So he said: "It's okay, people used to rent land to each other in the time before the Messenger of Allah. with the produce of the land on the part near the water and the dam and with a certain part of the crop, so that one part here perishes and another part is saved, and this part is saved and the other part perishes. And man does not rent except by this model, which is why it is forbidden. As for the lease with something that is clearly known, then there is nothing wrong with it."

b. The legal basis of in Ijma'

Besides the Al-Quran and As-Sunnah, the legal basis for Ijarah is Ijma'. Muslims at the time of the Companions had agreed that ijarah is permissible because it is beneficial for humans, all scholars agree and there is no scholar who disputes this agreement of ijma', even though there no scholar dispute save different opinions (Ali & Zainuddin, 2010).

With the above legal basis, the law of permitting leasing is very strong because the legal basis is the main soul of Islamic law (Al. From some of the above bases, it can be understood that leasing is permissible in Islam because



basically humans are always hit by limitations and shortcomings. Therefore, humans are related and need each other, and renting is one of the limitations that humans need in social life.

## 2. Types of Lease

From the point of view of the object, leases can be divided into two types, namely:

- a. Beneficial leases, for example, are renting houses, shops, vehicles, clothing, and jewelry. If the benefit is a benefit that is permitted by sharia to be used, then the majority of scholars agree that it can be used as an object of lease.
- b. Employment leases, namely by hiring someone to do a job. This kind of leasing is legal if the type of work is clear. There are rentals like this that are personal, for example paying a housemaid, gardener, and security guard, as well as union rentals, namely a person or group of people who sell, their services for the benefit of many people, such as shoemakers, factory workers, and others. tailor. Both forms of leasing of this work are legal (al-Hafidz, 1993).

## 3. Pillars and Terms of Lease

### a. Rukun Lease

A general transaction, a new lease is considered valid if it has fulfilled the pillars and conditions, as generally applicable in other transactions. According to the number of Ulama, there are four pillars of leasing, namely:

#### 1) Two Parties Performing the Contract

In terms of Islamic law, the person who rents is called Mu'jir, while the person who rents out is called Musta'jir. Both parties who make the contract are people who are capable of acting in law, namely having the ability to be able to distinguish good and bad (reasonable) and mature (baligh) (as-Syafi'i, 2000).

#### 2) There is a contract (Ijab and Qabul)

Akad according to the language comes from the Arabic "Al-Aqdu" which means engagement, agreement, and consensus. Meanwhile, according to the term, the contract is the ties of ijab (statement of making a bond) and qabul (statement of accepting a bond), by the will of the shari'a which affects the object of the engagement (al-Mahli, 2012).

#### 3) Rewards (Ujrah)

The rent or compensation for the use of the benefits of the goods is called Ujrah. The lessee and the lessor agree on the rental price in which an offer is made between the two. Ujrah is given at the time of the contract as in a sale and purchase transaction. But at the time of the contract, the parties can enter into an agreement such as payment may be made by prioritizing the reward or terminating the reward (al-Ghazali, 2002).

## 4. Lease Object

- a. The goods that are the object of the lease should be used for their use.

- b. The goods that are the object of the lease can be handed over to the lessee and their uses.
- c. Benefits and objects for rent are permissible (permissible) according to syara", not things that are prohibited (forbidden). The object being leased remains in substance until the time specified according to the agreement in the contract (Abi Husein, 1998).

## 5. Terms of Lease

Each of the pillars (elements) that make up the above contract requires conditions so that the elements (rukuns) can function to form the contract. The various conditions in question are:

- a. For tenants and renters

The conditions for the parties to the contract are that they are mature and reasonable (according to the Shafi'i and Hanbali schools). Thus, if the parties to the contract have not or have no sense, such as a child or a madman, renting out their property or themselves as laborers, then the contract is invalid. This is different from the opinion of the Hanafi and Maliki schools which state that the person who makes the contract does not have to reach the age of puberty, but a child who has mumayyiz may enter into a lease agreement provided that his guardian has obtained approval (an-Nawawi, 2012).

People who perform ijarah are also required to know the benefits of the goods contracted perfectly so as to prevent disputes from occurring and every Muslim who performs the contract in mu'amalah must know the measurements and nominal amounts of the goods contracted later before the contract takes place both parties must do the following: things that are formally known by several witnesses. This is to avoid events that are not possible, such as one of the parties running away or passing away (Muhammad Musadi, 2001).

- b. The willingness of both parties

Each party expresses its willingness to enter into a lease agreement, if in the lease agreement there is an element of coercion then the lease is invalid. This provision is in accordance with the word of Allah in the letter An-Nisa verse 29 which reads:

Meaning: "O you who believe, do not eat each other's property in a vanity way, except by way of commerce that applies with mutual likes between you. And do not kill yourselves, indeed Allah is most merciful to you." (Q.S. An-Nisa": 29).

It can be understood from the above verse that in carrying out the lease there should not be an element of coercion, but it must be their own desire, besides that the lease must be carried out voluntarily between the two. Thus, the rental contract which is carried out by people who are forced to do it not on the basis of their own will is invalid (Muhammad Aziz Hakim, 1996).

- c. Wages (Rewards)

Wages or rewards in the rental agreement must be clearly certain and something of property value, this is intended to avoid disputes in the future.

- d. Rental object

The object of the lease is the object that causes the lease agreement to occur. The lease agreement is considered valid if the object of the lease meets the specified conditions, namely:

- 1) The condition of the goods is clean, not unclean or forbidden objects.

- 2) Goods can be used, not for consumption needs but the value of the object is not reduced (permanently).
- 3) The object is legally owned by the person who made the contract or has the permission of the owner of the item.
- 4) The lessor may deliver the goods which are the object of the lease in accordance with the form and amount agreed upon at the time of delivery of the goods to the lessee.
- 5) Knowing the condition of the goods, knowing the amount of payment and knowing the payment period.
- 6) The contracted goods are in hand, an item that has not been in hand (not in the control of the party who rents it out) is prohibited because it could be that the goods have been damaged or cannot be delivered according to the agreement

In running a business, one thing that is very important is the issue of the contract (agreement). Akad as one way to obtain property in Islamic law which is widely used in everyday life. Akad is a way that is pleasing to Allah and its contents must be enforced. In Islamic law leasing is *ijarah*, which according to language is a reward (replacement) and can also mean recompense, while according to the term contract it is about a benefit in exchange for or replacement (Abdul Ghafur, 2010).

Islam provides limits on human behavior models so that in each of their actions they do not harm themselves or others. Therefore, it is hoped that every human being can benefit each other in a straight way according to religious norms, without deceit and falsehood. As the word of Allah in Surah An-Nisa verse 29 which is mentioned in chapter II where it is not permissible to take property in a vain way except through voluntary buying and selling between the two parties. In principle, in *mu'amalah* adheres to the principles of justice and voluntary work, the two principles are closely related to each other because there is a balance between the rights and obligations of both parties with the principle of justice, any injustice that can arise in making an agreement can be prevented in this way (Helmi Karim, 2013).

In carrying out *muamalah* activities, many things must be considered regarding the validity of the *muamalah* contract being carried out. A valid contract can be seen from the fulfillment of the pillars and conditions of the contract. Therefore, through this stage the author will analyze several things, including the fulfillment of the pillars and terms of the lease, including the following:

1. Both parties who make the contract.

The person entering into the rental contract must be mature and of sound mind. For children who have *mumayyiz* are allowed to do the contract with the permission of their guardian. Another condition for the person entering into the contract is the will of each party, if there is an element of coercion then the lease contract is invalid.

2. Wages (rewards)

Wages or rewards in the rental agreement must be clearly defined and the value of the property is certain, this is intended to avoid disputes in the future. In *sunnah fiqh* it is stated that the reward must be in the form of assets whose value is clearly known, either by witnessing it or by telling its characteristics. Because it is a price benefit payment.

3. There is a contract (ijab and qabul)

The lease occurs and is valid if there is a contract, either in the form of words or in the form of another statement indicating an agreement between the two parties in carrying out the lease. But it would be nice if it was listed as evidence someday when something went wrong.

4. Rental object

- a. The goods that are the object of the lease should be used not for consumption needs, but the value of the object should not be reduced (permanently).
- b. The goods that are the object of the lease can be handed over to the lessee and their uses.
- c. Benefits and objects for rent are permissible (permissible) according to syara', not things that are prohibited (forbidden).
- d. The object being leased remains in substance until the time specified according to the agreement in the contract.

In the practice of leasing gold that occurred in Geudong-geudong Village, Kota Juang District, Bireuen Regency, the motivation of the perpetrators was not forced, even the tenants who came to meet the gold owner to rent the gold, most of them rented gold to sell. While one of the legal conditions for buying and selling in Islam is that the goods being traded must be fully owned (the goods do not belong to someone else), while in practice in Geudong-geudong village the tenant sells the rented goods, which means they are not fully owned (the goods belong to someone else). others) this is what happens contradictory to the terms of sale and purchase or lease in Islam. As for their purpose of selling the gold to get money to meet their daily needs, the essence of money cannot be used as an object of the lease because the legal condition for the object of a lease is that the object for rent is eternal in substance and the object can be used not for consumption needs, but the value of the object. not reduced (permanently) (al-Kahlani, 1960).

The tenant makes money as a benefit from the object of the lease, after the money is used up to meet his needs, the tenant still has to pay rent every month without enjoying the benefits of the rented item and must collect money to pay (replace) the gold he rented to return it to the owner of the gold. The gold owner does not specify a time limit for the gold lease, the gold leases are considered to end if the lessee returns the gold he rented with the same shape and weight (grams).

## D. CONCLUSION

Based on the analysis described above, the implementation of gold leases in Geudong-gelding Village, Kota Juang District, Bireuen Regency, shows a high element of injustice and harms one party, especially for the tenant, because the tenant rents goods that do not have direct benefits, the tenant rents gold whose benefits can only be exhibited and can only be sold for money after the money is used up the tenant continues to pay the rent every month without enjoying the benefits at all and must replace the gold he rents with the same shape and weight. Meanwhile, the gold owner gets the advantage because he always gets the rent every month and the gold he rents back with new goods and the same form of goods. which doubled because he always got rent every month and the gold he rented kept coming back with the same shape and weight.



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