

The Perspective of Islamic law on the System of Borrowing Money with Land as Collateral (*sande*) in South Bengkulu Regency

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ABSTRACT

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This study examines the practice of borrowing money with land as collateral (*Sande*) in South Bengkulu Regency from the perspective of Islamic law. The practice, rooted in local tradition, offers a quick and accessible means for individuals to address urgent financial needs without engaging with conventional financial institutions. The *Sande* system is characterized by mutual agreement between the pledgor and the pledgee, involving land as a pledged asset for the loan. While generally aligned with Islamic legal principles, such as honesty, transparency, and fairness in transactions, some practices raise concerns, particularly when the pledgee's benefits exceed the value of the collateral, challenging the ethical boundaries of the agreement.

INTRODUCTION

Various needs that must be met encourage people to find ways to fulfill them, one of which is by borrowing money from others. This loan can be taken with or without collateral. Typically, loans that are frequently made involve collateral, either in the form of goods or other items with economic value. These loans are, of course, based on an agreement between the parties involved.

In social life, humans have the goal of fulfilling their basic needs. These needs vary greatly, ranging from primary, secondary, to tertiary needs. To meet all of these, people need to collaborate and help each other so that all needs can be fulfilled. Islam teaches its followers to help one another, with those who are capable helping those who are in need. This act of helping can take the form of giving or lending.¹ Therefore, Islam encourages its followers to assist one another. As Allah SWT says in Surah al-Ma'idah, verse 2:

"And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, the punishment of Allah is severe."

In *fiqh*, the term "*muamalah*" is known, which is practiced to foster togetherness in social life, promoting mutual help between individuals as social beings, and engaging in transactions to fulfill each other's needs.² The practice of borrowing occurs when someone is unable to fulfill their needs, and others who are able to help can assist. There is nothing wrong with those who are capable helping those who are not, and the rich helping the poor. Thus, life becomes one of mutual sufficiency, and well-being can be improved. To remain noble, a person must be grateful for God's blessings, especially in fulfilling their physical needs in a reasonable way, which in turn allows for spiritual development. This can be achieved by striving to gain the pleasure, mercy, or compassion of Allah SWT through faith, good character, and righteous deeds for the benefit of others and all creatures.³

Borrowing and lending money has been a long-standing practice in societies that have recognized money as a medium of exchange. In these lending and borrowing activities, it is common for the borrower to provide collateral to the lender. The collateral can take the form of goods (physical items), which constitute material security, or a promise to guarantee the debt, known as personal security. Material collateral grants property rights to the holder of the collateral. The system of borrowing and lending money with immovable property such as land as collateral has long been practiced by the community in the South Bengkulu Regency under customary law. This system has almost become a tradition for those who are reluctant to apply for loans through conventional banks, as it is considered faster and does not require much time to secure loan capital.

¹ Chuzaimah T. Yanggo, *Problematika Hukum Islam Kontemporer* (Jakarta: Pustaka Firdaus, 2004), 78.

² Fathurrahman Djamil, *Hukum Ekonomi Islam* (Jakarta: Sinar Grafika, 2013), 149.

³ Saidus Syahar, *Asas-Asas Hukum Islam* (Bandung: Alumni, 1996), 16.

The influence of Islam among the Muslim community in customary law is so significant that it can be said that Islamic law has not only replaced the social norms that were previously in place, but it also appears to have a tendency to eliminate those social norms.⁴ Borrowing and lending money has long been a practice in societies that have recognized money as a medium of exchange. In this practice, borrowers are often required to provide collateral to the lender. The collateral can be in the form of goods (physical items), which constitute material security, or a promise to guarantee the debt, known as personal security. Material collateral grants property rights over the item to the holder of the collateral.

The system of borrowing money with immovable property, such as land, as collateral in Kedurang District has long been practiced by the local community. This system has become a tradition for those who prefer not to apply for loans through conventional banks, as it is considered faster and does not require a long time to secure loan capital.

In the Kedurang community, this system is also known as *Sande*. It has been practiced for generations by the local people, typically in urgent situations or when there is a pressing need to quickly obtain money or goods. In practice, this system is not run by financial institutions such as banks or pawnshops, but is rather a social institution that occurs within the community. This is because the *sande* system is more socially oriented and is not primarily aimed at generating profit.⁵

Economic issues are a critical concern in human life, which is why agreements involving loans with collateral are common in society, such as debt agreements with collateral known as pawning (*Rahn*).⁶ Problems arise when the borrower is unable to repay the agreed-upon debt, causing the collateral given to the lender to lose its rights or even be sold due to the borrower's failure to settle the debt. However, if the borrower is able to repay the loan as agreed, no issues will arise in the agreement. This is the matter that the author needs to examine in order to address the formulated problems. The aim of this study is to analyze money lending with land collateral (*Sande*) in South Bengkulu Regency from the perspective of Islamic law.

METHOD

Research type refers to the steps taken by the researcher to collect and organize data in the study. This research uses an empirical legal research method, which aims to examine law in its real-life context and investigate how law operates within the community. In this context, the study also explores how the practice of borrowing money with land collateral (*Sande*) functions in the social life of the community in

⁴ Sofyan Hasan and Warkum Sumitro, *Dasar-Dasar Memahami Hukum Islam Di Indonesia* (Surabaya: Usaha Nasional, 1994), 10.

⁵ Herawan Sauni, *Hukum Agraria (Akses Petani Untuk Menguasai Tanah Pertanian)* (Jakarta: Cipta Grafika, 2014), 27.

⁶ Chairuma and Suhwardi, *Hukum Perjanjian Dalam Islam* (Jakarta: Sinar Grafika, 2016), 136.

South Bengkulu Regency, and assesses its alignment with Islamic law principles.

Primary data refers to the information obtained directly from individuals or informants deliberately selected by the researcher to gather data or information relevant to the research issues, particularly concerning *Sande*. In this case, the analytical method used in Islamic studies may involve the approach of *fiqh muamalah*, which focuses on social and economic transactions in Islam, to analyze whether the *Sande* practice aligns with Islamic law. *Fiqh muamalah* teaches principles such as justice, transparency, and honesty in transactions, which can be used to evaluate the legality and ethics of this land-collateral loan system.

RESULT AND DISCUSSION

1. The Practice of Borrowing Money with Land Collateral (*Sande*) in South Bengkulu Regency

A pawn giver (*Rahin*) and a pawn receiver (*Murtahin*) must adhere to the principles of Islamic ethics. One of the most important ethical principles is that both parties, the pawn giver (*Rahin*) and the pawn receiver (*Murtahin*), must be honest. Furthermore, they should possess the trait of trustworthiness, both for themselves and others, demonstrate tolerance in their interactions, and fulfill the contract and promises made in the pawning agreement.

In practice, both the pawn giver (*Rahin*) and the pawn receiver (*Murtahin*) involved in the pawning agreement are individuals who possess sound judgment and can distinguish between what is right and wrong. In addition to being of legal age and having sound mind, a pawn giver (*Rahin*) or pawn receiver (*Murtahin*) must also be capable of entering into a contract, known as *Al-Ahliyyah*. *Al-Ahliyyah* here refers to the competency or eligibility to engage in transactions such as buying and selling, which also applies to pawning agreements. Anyone who is legally allowed to engage in buying and selling transactions is also allowed to enter into a pawning agreement, as pawning is a transaction involving property, similar to buying and selling. Therefore, both parties involved in the pawning agreement must meet the required conditions for valid transactions.

Regarding the duration of the *sande* agreement, it is determined by both parties based on mutual agreement. If the agreed-upon time has passed but the pledgor has not been able to repay, a new agreement will be made to determine whether the pledgee still wishes to manage the land or if the land will be transferred to a new pledgee. Typically, as the end of the *sande* agreement approaches, if one party wishes to extend the duration, a new agreement will be made. However, in practice, it is often agreed that if the pledgor has the necessary funds, they can repay the loan, and the pledged item will be returned to the pledgor. In this case, a palm oil plantation that has borne fruit is often used as the pledged object, as the fruit can be harvested by the pledgee, without a long wait to enjoy the results. The pledgee

does not need to incur significant costs to benefit from the pledged property.

In the formulation and establishment of legal regulations, this cannot be done individually or unilaterally, but requires the involvement of multiple parties who ultimately reach a collective decision in the creation of such rules. To enforce the law, a legal institution is established with the primary task of maintaining legal stability within a country. This institution functions to ensure that individuals do not act arbitrarily, as all actions are subject to legal penalties according to the level of crime committed.

The legal structure of the *sande* institution involves the pledgor (debtor), pledgee (creditor), and the object of the *sande*. The *sande* agreement is essentially a debt agreement between the parties. Initially, the debt was typically in the form of goods with economic value such as gold, rice, or coffee. However, over time, this debt has expanded beyond goods to also include money.

2. Islamic Legal Perspective on the Practice of *Sande*

A valid agreement will have legal consequences for the parties involved, namely the obligation to carry out the agreement in good faith. However, if the conditions of the agreement are not met, the agreement will be considered void by law. Failure to meet the objective and subjective requirements results in the agreement being invalid. The majority of Indonesia's population is Muslim, and thus Islamic law automatically applies as a guide for social life, including rules for worship and transactions (*muamalah*). Therefore, it is crucial for Muslims to understand and study the concept of contract law in Islam, in line with religious teachings that encourage the comprehensive (*kaffah*) implementation of Allah's law.

A good understanding of Islamic contract law will lead to business transactions free from elements prohibited by religion, such as gambling (*maysir*), usury (*riba*), uncertainty (*gharar*), and bribery.⁷ Consequently, contract law, obligations, and agreements play a significant role in society, as contracts are the foundation for many human activities. With contract law, business activities can proceed smoothly and correctly. The contract serves as a social tool to support, facilitate, and regulate human life as social beings.

In terms of a valid contract, it must meet the essential elements and requirements stated in Islamic contract law. For example, the components of a pledge contract include the *aqid* (both parties involved), *maqud alaih* (the subject of the contract), and *sighat* (offer and acceptance).⁸ The following is an analysis of the practice of *sande* with land collateral in Kedurang District, South Bengkulu Regency. After

⁷ Mohammad Daud Ali, *Hukum Islam Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 1996), 79.

⁸ Abdul Ghofur Anshori, *Gadai Syariah Di Indonesia* (Yogyakarta: Gajah Mada University Press, 2006), 9.

discussing the practice of money lending with land collateral (*Sande*) in the previous chapter, the author will now analyze the practice of *sande* that has been researched from an Islamic law perspective. The agreement starts with both parties agreeing that the collateral object does not conflict with national law or Islamic law. Usually, before entering into the agreement, the lender will gather information about the pledged object to ensure it belongs to the pledgor, and the community in the village is typically familiar with the owner of the pledged land or plantation, as well as any issues concerning the land.

The three examples of *sande* agreements, conducted by Mr. Jalalludin with Mr. Alimudin, Mr. Martin Bangun with Mr. Joko, and Mr. Gamaludin with Mr. Muna, demonstrate that, based on the requirements of adulthood and legal age, these agreements fulfill the conditions concerning the parties involved in the *sande* agreement. Therefore, both parties are deemed eligible to enter into such agreements.⁹

From the field research, the author did not find any respondents who were underage, mentally ill, or unable to distinguish between right and wrong. All transactions were made voluntarily, without any coercion from other parties. The respondents engaged in borrowing and lending with land collateral because of urgent needs, whether primary or secondary, faced by the land pledgers.

Based on the research findings related to the object of the *sande* agreement, the collateral was the rightful property of the pledgor, which could be proven through a land ownership certificate or land that had been inherited and passed down through generations from the pledgor's parents. Therefore, it can be concluded that there are no issues regarding the object of the collateral provided by the pledgor (penating) in the practice of *sande* in Kedurang District, South Bengkulu Regency.

Based on the content of the agreement made and agreed upon by both parties regarding the duration of the agreement between the penating (the recipient of *sande*) and the pledger, the agreement was made without any coercion from any party. However, in the case of paddy field *sande*, the agreed minimum duration is usually one (1) year, and sometimes even longer, because paddy fields follow the rice planting season. Nonetheless, in the contract, it is sometimes not clearly stated whether the recipient of the pledge is allowed to manage the pledged object. Generally, the community understands that the object pledged will be managed by the recipient of the *sande*, and whether the recipient manages it themselves or not is entirely at their discretion.

The practice of pawn with land collateral (*sande*) involving rice fields or plantations in Kedurang District generally adheres to Islamic principles and does not violate pawn laws, which include mutual agreement between both parties, the existence of an akad (contract), and the pledged item as collateral. However, in certain cases, the legality of the practice becomes unclear because the recipient of the pledge

⁹ The results of the interview and field research conducted on July 20, 2024.

(*sande*) could gain more profit than the actual value of the collateral pledged.

The pillars of a pledge agreement consist of three essential elements: *Aqid* (the contracting parties), *Ma'qud alaih* (the subject of the contract), and *Sighat* (the terms of the agreement). *Aqid* refers to the parties involved in the pledge agreement, namely *Rahin* (the party who pledges the item) and *Murtahin* (the party who receives the pledged item or collateral). *Ma'qud alaih* refers to the pledged item, which is known as *Marhun* (the asset pledged as security for the debt) and *Marhun bihi* (the debt that is secured by the pledge). Meanwhile, *Sighat* refers to the statement of the contract, which is usually expressed through *ijab* (offer) and *qabul* (acceptance), as a formal declaration of mutual consent between both parties involved in the pledge agreement. These three pillars form the foundation for the validity of a pledge contract under Islamic law.¹⁰

In addition to verbal, written, or symbolic agreements, an agreement can also be formed through actions, which involve acts that demonstrate a person's intention or expectation of a desired outcome. In the context of a pledge (*Rahn*), the *sighat* (statement of the contract) must not be conditional or dependent on a future event. This is because a pledge agreement is similar to a sale contract, particularly in the aspect of debt repayment. If the contract is contingent upon a condition or a future event, it becomes invalid, just like a sale contract that does not meet the required conditions. An agreement is only valid if it fulfills the stipulated requirements and conditions, including *sighat*, *aqid* (the contracting parties), and *ma'qud alaih* (the subject of the contract). If any of these three pillars are defective, the pledge agreement is invalid.¹¹

In relation to the practice of *sande* in the Kedurang District, which involves pledging land as collateral, it must also adhere to the established requirements for a valid agreement. The agreement between the *penyande* (the pledger) and *penating* (the pledgee) must meet the necessary conditions of a valid contract, without any uncertain terms or expectations for the future. If the *sande* agreement contains ambiguity or unfulfilled conditions, the contract may be considered invalid and unenforceable under Islamic law.

The elements of a contract include everything that reflects the mutual agreement between two parties, which can be expressed through actions, symbols, or written words.¹² In addition, other essential components, such as the object of the contract and the two parties involved, are necessary to form a valid agreement. This is because the existence of *ijab* (offer) and *qabul* (acceptance) requires both parties to engage in the contract or agreement.¹³

¹⁰ Ibnu Russyd, *Analisa Fiqh Para Mujahid* (Jakarta: Pustaka Amani, 2007), 192.

¹¹ Nasrun Haroen, *Fiqh Muamalah* (Jakarta: Media Pratama, 2007), 252.

¹² Hariman Surya Siregar and Koko Khoeruddin, *Fikih Muamalah Teori Dan Implementasi* (Bandung: Rosdakarya, 2018), 52.

¹³ Qomarul Huda, *Fiqh Muamalah* (Yogyakarta: Teras, 2011), 28.

In the context of the *sande* agreement, which involves pledging land as collateral, these principles remain applicable. A *sande* contract requires the mutual consent of two parties: the *penyande* (the pledger) and the *penating* (the pledgee). Furthermore, the object of the contract, such as the land or farm pledged, must be clearly identified and legally owned by the *penyande*, and both parties must agree on the terms of the contract. With a valid *ijab* and *qabul*, as well as mutual consent regarding the pledged property, the *sande* agreement is considered valid according to Islamic law.

The Hanafiyah scholars define it as "making something (an item) a guarantee for a right (debt) that may be used as payment for that right (debt), either in full or in part." Meanwhile, the Shafi'i scholars define it as making material (property) a guarantee for a right (debt) that may be used as payment for that right (debt), either in full or in part. The definition provided by the Shafi'i scholars implies that the property that can be used as collateral for debt is only material assets.¹⁴

The activities of *mu'amalah*, which include various forms of agreements, are always connected to the values of *tawhid*. Therefore, every individual bears responsibility, not only to society, to others, and to themselves, but also to Allah SWT. As a result of this principle, individuals will not act arbitrarily, as all their actions will be rewarded or punished by Allah SWT.

CONCLUSION

The practice of borrowing money with land as collateral (*Sande*) in South Bengkulu Regency generally aligns with Islamic legal principles, including mutual agreement, clear contractual terms, and the provision of land as a pledged asset. However, certain cases reveal that the pledgee sometimes gains benefits exceeding the actual value of the collateral, which raises questions about the legitimacy of such practices under Islamic law. The validity of the agreement in this practice depends heavily on fulfilling the pillars and conditions of the contract, including the presence of the parties involved (*aqid*), the subject matter of the contract (*ma'qud alaih*), and the expression of mutual consent (*sighat*), encompassing the offer (*ijab*) and acceptance (*qabul*). Any ambiguity or lack of clarity in the agreement may render the contract invalid.

This practice also requires both the pledgor (*Rahin*) and the pledgee (*Murtahin*) to uphold values such as honesty, trustworthiness, and tolerance, as well as to honor the agreed-upon terms without any form of coercion. Furthermore, *Sande* reflects the community's response to urgent economic needs, offering a fast and straightforward alternative, particularly for those reluctant to engage with conventional banking services. The system is more socially oriented rather than profit-driven. Nonetheless, to ensure fairness and transparency, it is essential to avoid disproportionate gains for the pledgee relative to the value of the collateral, so that the practice remains ethically

¹⁴ Haroen, *Fiqh Muamalah*, 252.

and legally compliant with Islamic principles.

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