Examining a distinctive loan contract “Pagang Gadai” practiced in a Muslim society: an Islamic finance perspective

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Abstract
Purpose – This study aims to examine a distinctive loan contract widely practiced in a Muslim society.
Design/methodology/approach – This research adopts a qualitative research approach. The study was divided into two main stages. Stage I research relied on documentary analysis of pagang gadai contracts. Hence, Stage II research was an in-depth study in a selected nagari, adopting an ethnography approach. The study was conducted in the district of Tanah Datar, West Sumatera, from 2020 to 2023.
Findings – The findings of this study show that the distinctive mode of contact breaks some basic rules of Islamic finance (the practice contains riba and gharar). The practice however is prevalent in the society studied due to the influence of the customary law namely the communal ownership of lands. The practice brings impacts on the society both positives and negatives.
Research limitations/implications – This study focuses on the traditional mode of pagang gadai contract, which involves the transfer of right to cultivate productive agricultural lands for an exchange of loan measured in gold measurement system and excludes other modes of pagang gadai.
Practical implications – Revision(s) of the contract mode is an urgent matter if the society to be rescued from practicing this type of contract that contains element of exploitation and oppression.
Social implications – The revision(s) is needed if the society wants to follow the teaching of Islam comprehensively, as claimed in the philosophy adopted.
Originality/value – To the best of the author’s knowledge, this is the first study on pagang gadai that focuses on impacts of the practice on the society studied.

Keywords Indonesia, Islamic finance, Minangkabau, Islamic contracts, Pagang Gadai, West Sumatera

Paper type Research paper

Introduction
Various kinds of contracts are part of human life. Therefore, Islam regulate them and the holy Quran as the source of guidance for Muslims has one Surah named “Contracts” (i.e. Surah Al Maidah. Those various contracts can be non-financial or financial contracts. The current research concerns with financial contracts that can be profit oriented (tijarah) contracts or non-profit oriented (tabarru’) contracts. Both tijarah and tabarru’ contracts should comply with basic principles of Islamic finance (e.g. the strong prohibition of riba). Hence, there is an important rule: it is allowed to shift tijarah to tabarru’ contracts but not vice versa (Karim and Sahroni, 2015). In practice, Islamic finance basic principles may be
violated because of lacked of knowledge about sharia or the influence of customary laws applied in respective societies. This can be seen in the case of “pagang gadai” contract for instance. This contract is widely practiced by a Muslim society (i.e. Minangkabau) that claims themselves as a religious society [1].

Pagang gadai is a combination of two words “pagang” and “gadai”. The literal meaning of pagang is “hold”. In this context, the term pagang refers to an action of holding someone else’s land by giving money measured in gold measurement system, as a loan for the landowners (lending money by taking over the right to cultivate or to manage someone else’s land during the course of the lending). Meanwhile, the literal meaning of gadai is “to hand in”. The term gadai in this context means handing over a productive agricultural land(s) (i.e. rice fields) to another party (the second party) in exchange of getting loan. In other words, gadai means an action of borrowing money by transferring the right to cultivate land(s) to another party. The terms of pagang gadai is therefore translated as “Borrowing and Lending Agreement”.

This paper aims to investigate the pagang gadai contracts in terms of (i) the essence of pagang gadai contract and in what ways the contract violates the Islamic Finance principles (ii) reasons for the prevalent practice of pagang gadai among the society studied and (iii) impacts of pagang gadai practice on the society studied. The main argument of this paper is that pagang gadai contains element of exploitation since the second party takes benefits over the loan provided for the first party. This contradicts with the teaching of Islam whereby helping others should be for the sake of seeking the pleasure of Allah subhanahu wa ta’ala only. Therefore, Muslims are supposed to not mix it with the low worldly motive that is earning profits. On the other side, the second party faces uncertainty or gharar in relation to when the loan contract will end. Next, the prevalent practice of pagang gadai in the society studied is explained by the communal land ownership concept. Finally, the practice of pagang gadai does have impacts on the society.

This paper is structured as follows. Section 1 is introduction. Section 2 presents literature review. The discussion in this section begins with a brief discussion about principles of Islamic finance and contracts in Islam. Then, the discussion is continued to structure, values and customs applied in the society under studied and the last part of the section 2 presents the existing research on pagang gadai. Section 3 describes methodology used in this paper. Section 4 presents results of the study. Section 5 presents conclusions, research agenda and limitations of the research.

**Literature review**

*Islamic finance and contracts*

**Basic principles of Islamic finance.** The teachings of Islam encompass the essence of economic well-being and the development of Muslims at the individual, family, society and state levels. The Quran (the revealed text of Islam) and sunnah (the authentic sayings, actions and the observations of the Prophet Muhammad (pbuh) provide, respectively, the primary source of understanding for the application of Islamic guidance to finance. One of the strongest rules is the prohibition on riba. This and other rules affect how many Muslims seek to interact with finance (cf. Alamad, 2019, p. 1).

The prohibition of riba has been mentioned in four different verses of the Qur’an such as in Surah Al Baqarah, Chapter 2, verse 275:

Those who benefit from interest shall be raised like those who have been driven to madness by the touch of the Devil; this is because they say: “Trade is like riba” while God has permitted trade and forbidden riba. Hence, those who have received the admonition from their Lord and desist, may have what has already passed, their case being entrusted to God; but those who revert shall be the inhabitants for the fire and abide therein forever (Al-Baqarah 2:275).
Then, in Surah Ar-Rum (Chapter 30) verse 39, Surah An Nisa (Chapter 39) verse 161 and Surah Ali Imran (Chapter 3), verses 130–132, Allah Subhanahu wa ta’ala also have clearly stated the prohibition of *riba*.

Indeed, the Qur’an does not provide the definition of *riba* (Alamad, 2019) and Islamic scholars consider *riba* as one of most difficult matters in *fiqh*. The second Chaliph Umar bin Khatab once said “We leave 9/10 *halal* transactions as we are afraid of *riba*.” Therefore, Islamic scholars provide an important guidance of knowing *riba* applications on various contracts: *any loan that gives benefit(s) is riba* (Tarmizi, 2020, pp. 399–400). This does not mean that every forms of benefit(s) obtained from borrowing contract is riba. A benefit out of borrowing contract is seen as riba when meet the following criteria:

- separate benefit, not benefit attached to the contract;
- the benefit is enjoyed only by lender;
- the benefit that is not determined at the beginning is given before the loan is repaid in full.

When benefit is given before the loan is repaid is not allowed, event as a gift.

Therefore, a loan should be more an act of benevolence than a financing tool. “A benevolent loan (qard al-hasan) should be given to a person in a distressed situation, and although the lender may have a claim for the repayment, he should not enforce it if that implies a hardship for the borrower […] majority of Islamic scholars would maintain that no additional benefits must be reclaimed by the creditor. If so, the loan contract would involve *riba* and fall under the Quranic prohibition” (cf. Alamad, 2019, pp. 12–13).

*Riba* is divided into two: *riba dayn* and *riba ba‘i*. *Riba dayn* emerges from borrowing transactions while *riba ba‘i* is from trading transactions. *Riba dayn* is included as a major sin and Allah subhanahu wa ta’ala declares war on those who continue taking riba (Quran Surah Al Baqarah: 279).

Another principle of Islamic finance is the prohibition of *gharar* or uncertainty. *Gharar* literally means “deceit, fraud, uncertainty, danger, peril or hazard that might lead to destruction” (Ayub, 2009). In business terms *gharar* means “to undertake a venture blindly without sufficient knowledge or to undertake an excessively risky transaction” (cf. Lewis, 2001, p. 119). *Gharar* is also defined as “(excessive) uncertainty or ambiguity in a contract, which could lead to disputes about rights and obligations and the fulfillment of a contract, but it can also mean deceit” (Alamad, 2019, p. 11). Another literature defines *gharar* as “uncertainty or loss that may be caused by uncertainty related to one thing or price in a contract or exchange or contracts containing risk” or “absolute uncertainty over the final result of the contract” (Ayub, 2009, p. 91).
Gharar can emerge because of “failing or neglecting to define any of the essential pillars of contract relating to the consideration or measure of the object, the parties undertake a risk which is indispensable for them” (Lewis, 2001, p. 119). To avoid gharar, it must be highly probable that the contract can be fulfilled by both parties and all relevant parameters of the transaction (Alamad, 2019, p. 11). Indeed, uncertainties cannot be eliminated completely; therefore, gharar can be divided into two categories: gharar-yasir (minor/slight/unavoidable/low level/unavoidable of gharar) and gharar-fahish (major/excessive/high level/avoidable of gharar). Minor gharar means that it is not deceit and known to and accepted by the contracting parties (Alamad, 2019) and does not affect the validity of contracts but the excessive gharar violates the validity of contracts (Alamad, 2019; Tarmizi, 2020 and Ayub, 2009). The major gharar, however, violates the validity of contracts. Tarmizi (2020) provides criteria where gharar becomes haram:

- Portion of gharar in a contract is big;
- Existence of gharar in the contract is fundamental;
- The contract containing gharar is not included into a contract needed by public; and
- Gharar attached in buying and selling contracts.

Basic classifications of contracts. A comprehensive discussion about various contracts recognized in Islamic finance is not needed. However, it is useful to introduce main classifications of contracts in the existing literature so that we can locate where the position of the contract under studied (i.e. pagang gadai). The way how authors classifying contracts are not uniform; different ways of classifications have been used, depending on the angle used by the authors. Take as an example contracts such as mudharaba and musharaka are classified as equity-based contracts in Alamad (2019) while they are termed as partnership-based contracts by ISRA (2015). Then, murabaha contract is called as sale-based contracts by Alamad (2019) while ISRA (2015) categorizes this as exchange-based contracts. In essence, there are two basic categories of contracts that are profit oriented (tijarah) and nonprofit oriented (tabarru’) contracts. The current paper concerns with tabarru’ contracts.

The very purpose of tabarru’ contracts is to help others (ta’awun) for seeking the pleasure of Allah subhanahuwa ta’ala only. In dealing with various contracts in life, one should remember that there should be no profit making in tabarru’ contract. If the objective is to make profit, someone should engage in tijarah contracts (Karim and Sahroni, 2015). Indeed, it is possible to change tijarah contract into tabarru’ but not the vice versa. These points should be clear by Muslims, otherwise they can fall into invalid contracts. Tabarru’ contracts cover qard (loan without benefit) and rahn (Zulkiifi, 2003). ISRA (2015) provides more examples: qard, shadaqah, waqf and also rahn. The closer type of contract to pagang gadai is rahn. Therefore, further discussion about the concept of Ar Rahn is provided below.

Features and pillars of Ar Rahn
Ar Rahn is an Arabic word that comes from the word rahana which means constant and continuity, withholding or holding back (p. 308). Technically, Ar Rahn refers to the use of an asset as collateral for debt that is the asset that can be used to repay the debt in case the debt is not repaid. As mentioned earlier, Ar Rahn falls into category of tabarru’ contract because there is no financial compensation involved. Thus, Ar Rahn is similar to other contracts such as qard or wadiah (ISRA, 2015). The validity of Ar Rahn contract is mentioned in the Quran Surah Al Baqarah:

If ye are on a journey and cannot find a scribe, a pledge with possession (may serve purpose). And if one of you deposits a thing on trust with another, Let the trustee ( Faithfully) discharge His trust
and let him fear his Lord. Conceal not evidence; for whoever conceals it, - His heart is tainted with sin. And Allah Knoweth all that ye do (Al Baqarah: 283)

This verse indicates an alternative to document debt in case there is no writer that is through Ar Rahn. Although it was expressed in the contexts of traveling, majority of Islamic scholars agree that Ar Rahn is also allowed in the condition of staying which is based on what practiced by the Prophet Muhammad (pbuh). 

Ar-Rahn is also mentioned in Surah Al Thuur:

An those who believe and whose families follow them in Faith,- to them shall We join their families: Nor shall We deprive them (of the fruit) of aught of their works: (Yet) is each individual in pledge for his deeds (al - Thuur: 21)

Two Hadith related to Ar Rahn are:

A riding animal is used in return for its expenses if it is pledged; and milk is drunk in return for its expenses, if (the animal) is pledged. He who rides the animal or drinks the milk has to pay the expenses (Shahih Al-Bukhari, 2/888).

A pledge does not become the property of the mortgagee; it remains the property of its owner who mortgaged it; it is entitled to its benefits and he is liable for its expenses (Al-Daraqutni, Sunan Al-Daraqutni, 3/33).

Basic requirements of Ar Rahn include:

- *shighah* (offering and accepting);
- parties involved in the contract – debtor and creditor (rahin and murtahin);
- the collateral asset (marhun); and
- the debt (marhun bih). A valid Ar Rahn contract should meet the following pillars (Table 1).

This section is fundamental to analyze the case of pagang gadai contract later on.

**Structure, values and customs of Minangkabau society**

The Minangkabau inhibiting the west coast of Sumatera are known as the most devout Muslims in Indonesia (Abdullah, 1966; Beckmann, 1979). The Minangkabau are also claimed as the world’s largest matrilineal society (Evers, 1975) with unique values and customs such as the customary law related to matrilineal heritage (pusako) and the customary law of the sister’s children (kamanakan). The philosophy “customs based on sharia and sharia is based on the holy Quran” has been always attached to this society up until today. The way of life of Minangkabau is best observed at nagari level. Nagari is a village Republics. Under the current governance system applied in Indonesia, nagari is recognized as the lowest government unit that has a certain degree of autonomy. Nagari is made of matriclans (minimum four). Clans are divided into subclans and subclans are further divided into part of subclans known as paruik. Paruik means womb. Thus, one paruik means that coming from the same womb. Every clan has the clan chief.

**The types of properties in Minangkabau**

For the purpose of this paper, it is useful to present a short explanation regarding different types of properties recognized in Minangkabau customary law. First the distinction is made between inherited property (pusako) and self-acquired property
Inherited property then can be further differentiated between "pusako tinggi" and "pusako randah". Different authors have used different English translation for "pusako tinggi" such as "high ancestral property" (Evers, 1975) or "high inheritance" (Beckmann, 1979 and 2014). High inheritance refers to properties owned communally by clan, or subclans or part of subclans, "to be shared in perpetuity (turun temurun) over generations by all lineage members who can trace their matrilineal descent from these ancestors" (Beckmann, 2014, p. 22). Meanwhile, "pusako randah" (low inheritance) refer to self-acquired properties that are passed down by parents to their children. At one point of time, low inheritance also can turn into high inheritance.

<table>
<thead>
<tr>
<th>Pillars</th>
<th>Descriptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement related to <em>shighah</em></td>
<td>The creditor can sale the collateral asset at the due date of debt.</td>
</tr>
<tr>
<td>Requirements related to parties involved in the contract</td>
<td>The contract becomes invalid if the collateral cannot be sold unless with the price that has been agreed with debtor</td>
</tr>
<tr>
<td>Requirements related to collateral (marhun)</td>
<td>All requirements for sale contract (in terms of parties involved in) apply to <em>Ar Rahn</em> contract. Since, <em>Ar Rahn</em> is a tabarru’ contract, parties involved in the contract should be doing it voluntarily</td>
</tr>
<tr>
<td>Requirements related to debt</td>
<td>Islamic scholars agree that the asset used as collateral in ar rahn contract should meet the requirements of object for selling, so that the object can be sold to repaid the debt. Thus, assets that do not meet criteria for selling cannot be used as collateral in <em>Ar Rahn</em> contract</td>
</tr>
</tbody>
</table>
| Requirements related to acceptance/ownership of the collateral asset (pawned object) | Below are the criteria for asset that can be used as collateral in *Ar Rahn*:
  a) Valuable asset
  b) Permissible goods
  c) Available at the time of contract
  d) Can be handed over
  e) Can be precisely determined: the quantity and the value
  f) The value of sufficient to cover the debt
  g) Under the possession of creditor |

Table 1. *Pillars of Ar Rahn*  
**Source:** Summarized from ISRA (2015, pp 309–312)
The importance of landownership in Minangkabau

Landownership is very crucial matter in Minangkabau since it is a symbol or status of a clan or subclan or part of subclan. A clan must have land(s) owned communally (i.e. rice fields and graveyard). If someone has no land, her origin must be unknown. Communal lands have one important characteristic – the ownerships should be maintained as is. Therefore, communal land cannot be sold except for explicitly stated, specific reasons. In any case, the consent of all adult members of the extended family and of its head, the mother’s brother (mamak kepala waris) is required. Communal land should not be divided until when after five generations a fission of the original lineage into new autonomous units take place. The fundamental importance of rights in land is widely recognized in West Sumatera. The maintenance of communal property is, in a way, the keystone of Minangkabau customary law as a functioning, living system. It is widely recognized that matrilineal inheritance and group coherence depend on common property and that individual ownership of land will demise of Minangkabau social structure (cf. Evers, 1975, p. 89). Most of productive agricultural lands in West Sumatera (i.e. rice fields) are owned communally (inherited lineage property of descent groups) (Beckmann, 2014; Nurdin and Tegnan, 2019).

Research on pagang gadai

Pagang gadai is a multidisciplinary subject in nature. A recent study has been written using a sociological perspective (e.g. Iska et al., 2023). Their study highlights the influence of a capitalist system in the context of pagang gadai in Minangkabau. More clearly, Iska et al. (2023) argues that the practice of pagang gadai has been (re)structured by economic forces and decisions’ (p. 2). Their study attempted to investigate the influence of capitalism idea from both sides: debtor and lender. Iska et al. (2023) wrote:

Initially, PG [pagang gadai] was intended solely to help those who needed assistance; as such, although valuables were used for collateral, the lender would not be able to use them for profit. In the past few decades, however, the PG [pagang gadai] system has significantly transformed, creating economic opportunities for the lenders to maximize their profits (p. 2).

In the quote above, Iska et al. (2023) describes the changing motive of doing pagang gadai from the lender’s perspective. This, however, is contradictive with the fact that pagang gadai indeed has been a mechanism for self-acquiring property recognized in the customary law of Minangkabau (Benda-Beckmann, 1979).

Indeed the shifting attitude of the society in relation to pagang gadai has been obvious from the decision to enter a pagang gadai contract from the landowner’s perspective. Traditionally, pagang gadai can be done only under very strict conditions (see Table 2).

<table>
<thead>
<tr>
<th>Conditions</th>
<th>Descriptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gadih gadang alun balaki</td>
<td>The grown-up girl is still without husband, i.e. money requested for the wedding</td>
</tr>
<tr>
<td>Rumah gadang katirisan</td>
<td>The family house needs repair, or a new family house is to be built</td>
</tr>
<tr>
<td>Mambangkik batang tarandam</td>
<td>The panghulu (clan chief) must be installed</td>
</tr>
<tr>
<td>Mayik tabujua di tangah rumah</td>
<td>The corpse lies in the middle of the house, i.e. money is required for the burial ceremonies</td>
</tr>
</tbody>
</table>

Source: Benda-Beckmann (1979, p. 170)
Currently, landowners no longer hold tightly the traditional principle when making decision for pagang gadai. This change has been highlighted in several studies (e.g. Iska et al., 2023; Putriana, 2021; Wirasaputra, 2017; Hasneni, 2015). The common reasons of doing pagang gadai now include for education, health, even for just a merely consumptive purposes – to cover daily expenses.

Iska et al. (2023, p. 9) concludes that “the customary values of Minangkabau society are in a critical flux. Pagang gadai is dominated by the profit-oriented individualism of the capitalist system. The object of pagang gadai which has been an economic source for the debtors has turned into a source of income for lenders. Debt is no longer for a social transaction, but for a commercial or profitable transaction”.

Next, Nurdin and Tegnan (2019) is a legal study examining pagang gadai in terms of three different legal systems (customary law, national law and Islamic law) and the impact of the contradiction among the three legal systems in resolving any conflicts emerging from pagang gadai contracts. The conflict is described as follows:

While the provisions of the national legislation and Adat law contradict one another, Islamic Law remains silent on the validity of agricultural land pawning. As a result of this grey area in legal systems, not only is the community confused as to which legal system to follow, but district court judges also struggle to decide which legal system should prevail on land matters in general (Nurdin and Tegnan, 2019, p. 2).

The contradiction mentioned by Nurdin and Tegnan (2019) can be explained as follows: according the customary law applied in Minangkabau, a land that has been placed under a pagang gadai contract, can only be returned to the landowner only after the landowner has paid off the debt to the lender (pamagang):

No matter how long it takes, the land will not be returned to the owner until the money borrowed is completely paid back. On the other hand, National Law through Law No. 56 Prp/1960 prescribes that “whoever has possessed a pawned agricultural land for seven years or more must return the land to the owner within a month after the existing crops have been harvested, with no right to demand payment of ransom”. This rule is based on the argument that the land must be returned to its rightful owner because it assumes that the pawnbroker has profited from cultivating the land.

Nurdin and Tegnan (2019) suggests that eventually, the customary law is the most common approach used to resolve any conflict emerging from a contract of pagang gadai. Nurdin and Tegnan (2019) uses a case of pagang gadai contract that took place in Solok in 1926. In This case, the landowner demand for his land to be returned. As the lender refused to do so, the matter was taken to Solok District Court for litigation. “The court ruled in favor of the land owner’s demand, citing Law No. 56 Prp/1960 and arguing that because the pawn has lasted 77 years, which is beyond the time limit set by the law, the land must be returned to its owner without additional fees”. Since the decision was inconsistent with the customary law, the lender appealed the ruling at the High Court in Padang, which, in turn, took his side. Hence, the landowner appealed to the Supreme Court, which upheld the ruling of Solok District Court and nullified the verdict of Padang High Court. However, shortly after the decision was carried out, the Supreme Court, after a judicial review requested by the defendant, dismissed its first verdict and upheld the ruling of Padang High Court through (in favor of customary law).

The case above suggested that the inconsistency is not only between a lower court and a higher court but also within the same high court. “Inconsistency may exist between the verdict of two courts over the same mater, but for the Supreme Court to dismiss its own verdict over the same case is a manifestation of legal uncertainty at the highest level” (8).
This state of legal uncertainty leads to not only confusion and inconsistency in court rulings over land pawning issues but also land-related conflicts and chaos within the community as to which legal system one must turn to in dealing with agrarian problems (cf. Nurdin and Tegnan, 2019, p. 9). Amriwan et al. (2020) is another legal study describing process of resolving conflict emerging from a pagang gadai contract that took place in Nagari Pitalah, Tanah Datar District.

The study of Putri and Montessori (2020) tries to map and formulate the resolution of the conflicts of pagang gadai in Nagari Ladang Panjang, Pasaman District. The results of this study indicate that conflicts emerging can be in the forms of closed and open conflicts. Closed conflict includes: not exchanging greetings and there is mutual suspicion. Meanwhile, open conflict includes bickering in the community, issuing words that are inappropriate (rude) and violence. The conflicts emerged because:

- the pagang gadai period is too long and the pawning money is too high;
- violation of the provisions of the agreement; and
- the organizers and apprentices do not have a sense of respect and respect in the members of the clan.

Conflict resolutions suggested by Putri and Montessori (2020)'s study include: deliberation, cooperation and settlement with local wisdom.

Study on conflicts surrounding the practice of pagang gadai also has been studied from the perspective of communication discipline (i.e. Oktavian et al., 2021). They study the practice of pagang gadai in Nagari Jaho, Tanah Datar District. Oktavian et al. (2021) finds that the causes of conflicts among others were unwritten contract, there is often a problem with validity of heirs, the contracts sometimes are unknown by the head of clans of both parties involved in pagang gadai contracts and borders of the land used as collateral in pagang gadai contract are unclear. Communication barriers found among parties involved in pagang gadai contract because the first descendants were not involved when pagang gadai contract taking place with the reason that they were still under 17 years old. Conflicts usually solved through discussion and consensus.

Suryani et al. (2019) that describes the practice of pagang gadai in Nagari Toboh Gadang, Padang Pariaman District. The specificity of pagang gadai practice here is that lenders who cultivate the land under pagang gadai contracts share harvest with the landowner (1/5 of harvest). Any pagang gadai contract in this nagari is known by the authority in the nagari. Then, Putra et al. (2019) studies the practice of pagang gadai in Nagari Koto Tangah, Agam District. The interesting finding of their study is that stakeholders of Nagari Koto Tangah have initiated a rule: it is prohibited to enter a pagang gadai contract with two parties: first is Non-Muslim and the second one is outsider. This rule was aimed at preventing the loss of the lands in the nagari to non-residents. Similar to practice in Nagari Toboh Gadang mentioned previously, any pagang gadai contract is recommended to register to the authority in nagari.

To conclude, research on pagang gadai still has a large room for further investigations. In terms of perspectives used to study pagang gadai, the existing studies have relied on sociological and legal perspectives. Pagang gadai surely can be assessed through different lens such as Islamic finance perspective. Hence, in terms of setting, the existing studies have explored the practice of pagang gadai in several nagari while there are over 1,000 nagari in West Sumatera. Although the basic principle of pagang gadai practiced in different nagari might be the same, variations may exist because there is no standard of pagang gadai practice basically (Iska et al., 2023). In terms of focus, the existing studies have highlighted
conflicts and disputes may emerge from pagang gadai contracts and how legal systems deal with it. Further investigation is required to look at the dynamic of the conflicts. Then, to the best of my knowledge, there has been no study investigating wider impacts of pagang gadai practice to the society. The current study is expected to fill in this gap.

Methodology
This study adopts a qualitative research approach. The study was divided into two main stages: Stage I and Stage II. Stage I research relied on documentary analysis on pagang gadai contracts. Eleven pagang gadai contracts were obtained through personal contacts. Table 3 presents the 11 contracts involved in Stage I research.

Stage II research was in-depth study undertaken in Nagari X. Stage II research adopted an ethnographic approach. Stage II research was aimed at (i) investigating the conflicts dynamic between parties involved in a pagang gadai contract (ii) discovering impacts of the practice of pagang gadai on the society.

Nagari X was selected for conducting the in-depth study for three reasons. The first, majority of pagang gadai contracts analyzed in Stage I research, were obtained from Nagari X. Then, some contracts in Nagari X involved conflicts. Thus, the problematic contracts were suitable for studying conflict dynamic between parties involved. Finally, the availability of access to the key informants in Nagari X such as the head of the customary leader was important consideration to decide the site of the study.

Data collection techniques used in this stage included in-depth interviews and participatory observations. In depth interviews with key informants lasted for 1–2 h. Key informants were actors directly involved in pagang gadai contracts, the heirs of the actors and the customary leader of Nagari X. Table 4 presents list of informants.

Interviews data were analyzed using thematic analysis technique.

Then, direct observations were undertaken during 2020–2021 in five occasions:

1. The first observation was done at early of 2020 at the time of the researcher accompanied a key informant to resolve conflict with the landowner (PGC5 and PGC6);
2. Then, the second observation was undertaken middle of 2020. I joined the key informant in a visit to the landowner (PGC7);

<table>
<thead>
<tr>
<th>Pagang gadai contract</th>
<th>Year of contract</th>
<th>Nagari</th>
<th>Current status of the contract</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract 1</td>
<td>1945</td>
<td>Nagari X</td>
<td>On-going</td>
<td>PGC1</td>
</tr>
<tr>
<td>Contract 2</td>
<td>1949</td>
<td>Nagari X</td>
<td>On-going</td>
<td>PGC2</td>
</tr>
<tr>
<td>Contract 3</td>
<td>1974</td>
<td>Nagari X</td>
<td>On-going</td>
<td>PGC3</td>
</tr>
<tr>
<td>Contract 4</td>
<td>1978</td>
<td>Nagari X</td>
<td>On-going</td>
<td>PGC4</td>
</tr>
<tr>
<td>Contract 5</td>
<td>2001</td>
<td>Nagari X</td>
<td>Partly resolved in 2021</td>
<td>PGC5</td>
</tr>
<tr>
<td>Contract 6</td>
<td>2003</td>
<td>Nagari X</td>
<td>Partly resolved in 2021</td>
<td>PGC6</td>
</tr>
<tr>
<td>Contract 7</td>
<td>2009</td>
<td>Nagari X</td>
<td>Resolved in 2020</td>
<td>PGC7</td>
</tr>
<tr>
<td>Contract 8</td>
<td>1965</td>
<td>Nagari Y</td>
<td>On going</td>
<td>PGC8</td>
</tr>
<tr>
<td>Contract 9</td>
<td>1975</td>
<td>Nagari Y</td>
<td>On going</td>
<td>PGC9</td>
</tr>
<tr>
<td>Contract 10</td>
<td>2019</td>
<td>Nagari Y</td>
<td>On going</td>
<td>PGC10</td>
</tr>
<tr>
<td>Contract 11</td>
<td>1917</td>
<td>Nagari Z</td>
<td>Ended in 1932</td>
<td>PGC11</td>
</tr>
</tbody>
</table>

Table 3: List of pagang gadai contracts used in the study

Source: Processed by author
(3) Then, the third observation was undertaken beginning of 2021 (listening to a phone conversation with a son of the landowner of PGC5 and PGC6;

(4) The fourth observation was taking place in the key informant house at the time of the landowner of contract number PGC7 repaid her debt; and

(5) Finally, the fifth observation was in 2021 at the house of the key informant at the time of meeting with the landowner of PGC5 and PGC6 and her family.

Thus, the total time spent for this study was around three years and the overall research process described above, can be summarized in Figure 1 below.

<table>
<thead>
<tr>
<th>Informants</th>
<th>Role</th>
<th>Expected information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Informant 1</td>
<td>Heir of an actor</td>
<td>The story related to PGC5 and PGC6.</td>
</tr>
<tr>
<td>Informant 2</td>
<td>The customary leader</td>
<td>Reasons for pagang gadai, the extent of pagang gadai has been practiced in Nagari X impacts of pagang gadai contracts on the society</td>
</tr>
<tr>
<td>Informant 3</td>
<td>Heir of an actor</td>
<td>The story related to PGC5 and PGC6</td>
</tr>
<tr>
<td>Informant 4</td>
<td>Actor</td>
<td>Experience with pagang gadai contract and relevant information</td>
</tr>
<tr>
<td>Informant 5</td>
<td>Heir of an actor</td>
<td>Experience with pagang gadai contract and relevant information</td>
</tr>
<tr>
<td>Informant 6</td>
<td>Actor</td>
<td>Experience with pagang gadai contract and relevant information</td>
</tr>
</tbody>
</table>

Source: Author

Table 4.
List of informants

![Figure 1. Research process](An Islamic finance perspective)
Results and discussions
From the analysis on the 11 pagang gadai contract documents in Stage I research, it can be concluded that a contract of pagang gadai has five elements:

1. title of the contract;
2. when the contract takes place;
3. parties involved in the contract;
4. content of the contracts; and
5. signatures of parties involved in the contract.

Title of the contract
The 11 pagang gadai contracts analyzed in this study have used two different titles: “Surat Keterangan Pinjam Meminjam” (Borrowing and Lending Letter) and “Surat Pagang Gadai” (Pagang Gadai Letter). The first title has been used in nine out of 11 contracts analyzed. Only one contract used the title of “Pagang Gadai Letter” (PGC3).

When the contract take place
A pagang gadai contract states clearly the day, the date, the month and the year of the contract taking place. Some contracts mentioned these details in the first line of contracts (e.g. PGC10) while others stated it after the parties involved in the contracts (e.g. PGC7).

Parties involved in the contract
Every pagang gadai contract involved two parties: The first party and the second party. The first party always refers to the land owners (borrowers termed panggadai) while the second party always refers to the lenders (named pamagang). Different from other contracts whereby the first party and the second party may consist of a single person or an individual, parties involved in pagang gadai cannot be a single person. Parties involved in a pagang gadai contracts usually consists of all adults in the family, included the heirs and the head of inheritance or mamak kepala waris (mother’s brother). The same rule applies to the second party. The reason for this is because the ownership of the land is communal. Thus, one person only cannot enter a pagang gadai contract, unless all members of family agree with and sign the contract.

The content of the contract
The content of a pagang gadai contract is a statement of “the first party (borrower/panggadai) that they have borrowed some money from, and at the same time, they also have lent their land to the second party (lender/pamagang)”. Next, there is also a statement that “the contract is done voluntarily by the two parties and the minimum period of the contract for the each party can return each other asset”.

The amount of money borrow is stated in details, included for instance if the gold coin borrowed is a clean and plain one or the one that previously has been used for accessories. If the gold borrowed is in the form of accessories, it also has to be clearly stated whether in the form of necklace, bracelet or ring. The reason why the conditions and weight of the gold coins borrowed or the forms of gold accessories borrowed mentioned in details is because borrower/panggadai should repay their debt with exactly the same conditions of gold coins or exactly the same form of gold accessories. For the rice field lent to the second party, the location of the rice fields, number of plates, proceeds per year and borders of the rice fields are mentioned in detail.
Below are statements quoted from PGC7:

Kami pihak pertama (I) mengaku telah meminjam kepada pihak kedua (II) [... ] 10 (sepuluh) rupiah mas USA polos bersih [...] dengan perincian sebagai berikut: 5 (lima) buah berat 16.65 gram, 1(satu) buah berat 16.7 gram, 4 (empat) buah berat 16.6 gram.

Dan kami pihak pertama mengaku memperpinjamkan setumpak sawah kami kepada pihak kedua bertempat [...], berbatas [...].

Translated as:

We are the first party acknowledged that we have borrowed 10 (ten) plain and clean USA Gold Coins (Rupiah) with details as follows: 5 coins (weight:16.65 gram), 1 coin (weight: 16.7 gram and 4 coins (weight:16.6 gram).

And we the first party also acknowledged that we have lent our rice field to the second party, located at [...], with borders as follows [...].

Statements as used in PGC 7 have been used in majority of contracts analyzed. Different wording was found in PGC10:

PIHAK PERTAMA mengaku meminjam 5 Ringgit MAS U.S.A ASLI POLOS kepada PIHAK KEDUA dengan BOROHAN 6 (Enam) Lupak Sawah besar kecil yang terletak di [...].

THE FIRST PARTY acknowledged that we borrowed 5 PLAIN U.S.A Gold Coins (Ringgit) to the SECOND PARTY with collateral 6 (six) plates of rice fields big and small, which is located in [...].

PGC10 mentioned the word of “collateral” for the debt. A more classic way of wording was used in PGC3:

Pada tanggal 27 Juli th 1974 [...] Kami tersebut di atas mengaku menggadaikan setumpak sawah harta pusaka kami, tempatnya di [...] Kami gadaikan sawah kami tersebut sebanyak 3 (tiga) buah uang rupiah emas Amerika [...].

Translated as:

On 27 July of 1974 left [...] We acknowledged that we pawned our rice field, located in [...] We pawned that rice field for 3 USA gold coins [...].

From the above description, there seems a tendency to change the wording in the contract from using the word of “gadai” to the use of “borrowing and lending”. Based on the documentary analysis on pagang gadai above, who and what involved in a pagang gadai contract, can be illustrated in Figure 2 below.

**Source:** Figure by author
The essence of pagang gadai contract

In the discussion about the types of properties and the importance of landownership in Minangkabau, it has been mentioned that the ownership of high inheritance is communal. As a consequence, the ownership should be maintained as is. Further implication of this is that the land cannot be sold. When this is linked to the pillars of Ar Rahn discussed in the previous section, the type of asset used as collateral in a pagang gadai contract does not meet the criteria of marhun (collateral asset). Collateral asset in Ar Rahn should meet all the criteria of selling object. The rice field used in pagang gadai contract cannot be sold due to the communal ownership. One may argue that the land with communal ownership is high inheritance, the low inheritance is fall into low inheritance or private asset. The thing is that most of rice fields in West Sumatera fall into category of high inheritance as Beckmann, (2014); Nurdin and Tegnan (2019) and Suryani et al. (2019) have noted and mentioned in the literature review. Moreover, what is transferred in pagang gadai is the right to cultivate the land, not the ownership of the land (Nurdin and Tegnan, 2019). These explain the reason for why the pillars of pagang

<table>
<thead>
<tr>
<th>Concept</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landowner (borrower/panggadai)</td>
<td>A party that borrows money (measured in gold system) from another party by transferring right to cultivate her agricultural land to another party</td>
</tr>
<tr>
<td>Lender (pamagang)</td>
<td>A party that lends money to another party and at the same taking over the right to cultivate the productive agricultural land pledged by the borrower. From the other aspect, the contract also should have the willingness from both parties (borrower and lender)</td>
</tr>
<tr>
<td>Land</td>
<td>Land placed under pagang gadai contract cannot be sold in case borrower fails to repay the debt on the agreed time</td>
</tr>
<tr>
<td>Loan amount</td>
<td>The amount of loan needed by the borrower (measured in gold system).</td>
</tr>
<tr>
<td>Sighah/agreement</td>
<td>Borrower and lender agree to return each other assets after three years</td>
</tr>
</tbody>
</table>

Source: Processed data

Table 5. Pillars of pagang gadai

<table>
<thead>
<tr>
<th>Features</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan amount</td>
<td>Loan amount started from few grams of gold up to several USA gold coins (Ringgit, Rupiah, Uang Suku, Uang Tali) [2]</td>
</tr>
<tr>
<td>Tenure of Loan</td>
<td>Minimum 3 years until unlimited time</td>
</tr>
<tr>
<td>Repayment method</td>
<td>Once time</td>
</tr>
<tr>
<td>Settlement</td>
<td>If the borrower is not able to make the repayment, the land cannot be sold. The contract can be passed to the third party, if managed to find one</td>
</tr>
<tr>
<td>Utilization of the pawned rice field</td>
<td>The right to cultivate the rice field is transferred to the pamagang (lender)</td>
</tr>
</tbody>
</table>

Source: Processed data

Table 6. Features of pagang gadai
<table>
<thead>
<tr>
<th>Code</th>
<th>Year</th>
<th>Title of the contracts</th>
<th>Original value of the contract</th>
<th>No. of plates</th>
<th>Proceed per year</th>
<th>The value of the contracts have been increased</th>
<th>Contracts involved conflicts (yes/no)</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>PGC1</td>
<td>1945</td>
<td>Borrowing and lending letter</td>
<td>11 USA gold coins (Rupiah)</td>
<td>30 Plates (big and small)</td>
<td>25 Katidiang (Volume: 30 Sukat)</td>
<td>Yes (in 1988, in 1990 and in 2020)</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>PGC2</td>
<td>1949</td>
<td>Borrowing and lending letter</td>
<td>2,300 Urip (The currency used during Japanese colonization)</td>
<td>7 Plates (big and small)</td>
<td>10 Katidiang (Volume: 27 Sukat)</td>
<td>Yes (in 1952)</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>PGC3</td>
<td>1974</td>
<td>Pawning letter (Surat Gadai)</td>
<td>3 USA gold coins (Rupiah) (2 plain)</td>
<td>6 Plates (big and small)</td>
<td>5 Katidiang (Volume: 30 Sukat)</td>
<td>Yes (in 1977)</td>
<td>Yes (in 1980, in 1985 and in 1989)</td>
<td></td>
</tr>
<tr>
<td>PGC4</td>
<td>1978</td>
<td>Borrowing and lending letter</td>
<td>3 USA gold coins (Rupiah)</td>
<td>4 Plates (big and small)</td>
<td>7 Katidiang (Volume: 30 Sukat)</td>
<td>Yes (in 1977)</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>PGC5</td>
<td>2001</td>
<td>Borrowing and lending letter</td>
<td>1 USA gold coin and 50 grams gold (necklace, bracelet and ring)</td>
<td>2 Plates</td>
<td>11 Karung</td>
<td>Yes</td>
<td>Yes</td>
<td>Once in 2003</td>
</tr>
<tr>
<td>PGC6</td>
<td>2003</td>
<td>Borrowing and lending letter</td>
<td>3 USA gold coins (Rupiah)</td>
<td>1 Plate</td>
<td>7 Karung</td>
<td>–</td>
<td>–</td>
<td>Yes</td>
</tr>
<tr>
<td>PGC7</td>
<td>2009</td>
<td>Borrowing and lending letter</td>
<td>10 Plain USA gold coins (Rupiah)</td>
<td>5 Plates</td>
<td>–</td>
<td>No</td>
<td>–</td>
<td>Yes</td>
</tr>
<tr>
<td>PGC8</td>
<td>1965</td>
<td>Borrowing and lending letter</td>
<td>3 USA gold coins (Ringgit)</td>
<td>13 Plates (big and small)</td>
<td>13 Katidiang (Volume: 50 Sukat)</td>
<td>Yes (in 1967, in 1968, in 2001)</td>
<td>–</td>
<td></td>
</tr>
<tr>
<td>PGC9</td>
<td>1975</td>
<td>Borrowing and lending letter</td>
<td>2 USA gold coins (Ringgit)</td>
<td>7 Plates (big and small)</td>
<td>5 Katidiang (Volume: 40 Sukat)</td>
<td>Yes (in 1979)</td>
<td>–</td>
<td></td>
</tr>
<tr>
<td>PGC10</td>
<td>2019</td>
<td>Borrowing and lending letter</td>
<td>5 USA gold coins (Ringgit)</td>
<td>6 Plates (big and small)</td>
<td>–</td>
<td>No</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>PGC11</td>
<td>1917</td>
<td>F. 450 (The currency used during the Dutch colonization)</td>
<td>Dry land with old trees (tanaman tua)</td>
<td>–</td>
<td>–</td>
<td>Yes</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

Source: Processed data

Table 7. Summary of important information found in pagang gadai contracts from an Islamic finance perspective.
gadai as summarized in Table 5 have differences with the pillars of Ar Rahn presented in Table 1.

Next, in pagang gadai, lenders utilize the rice field and enjoy the economic benefits of the land for as long as the borrowers have not repaid their loan. On the other hand, under Ar Rahn contract, it is not permitted to use the collateral assets except if the lenders incurred costs of maintenance of the assets such as animals. Lenders spend time, energy and may be cost to take care of the animal. Thus, lenders can milk the animals. Hence, pagang gadai uses unmovable property (i.e. rice field) whereas Islamic law only refers to movable objects to be used as collaterals for debt. From this discussion, it can be concluded that pagang gadai differs from Ar Rahn. Pagang gadai in essence is a borrowing transaction, equipped with a transfer of right to cultivate productive agricultural land (i.e. rice fields) from borrowers to lenders. In other words, pagang gadai is a non-free borrowing transaction. Transferring of right to cultivate the land is a prerequisite of getting loan. This is inconsistent with basic principle of Islamic finance: when a contract is categorized as tabarru’, there should be no profit-seeking motive in it.

As mentioned earlier, pagang gadai involves a transfer of right to cultivate the rice field to the second party for as long as the landowners have not returned the money borrowed in full. This condition can go for years (unlimited time). In this sense, the contract of pagang gadai contains gharar or uncertainty regarding of when the contract will end. As the contract can go for unlimited time, gharar contained in pagang gadai contract can be categorized as high level of gharar. It is really uncertain when lenders can get their money back. Pagang gadai contracts only state the minimum period of contract (see point 2 of pagang gadai features presented in Table 6).

It is true that pagang gadai is one way of getting self-acquiring property in Minangkabau. For those who are intent to turn the rice field obtained through pagang gadai contract as a low inheritance will be happy if the landowners never been able to redeem their land. There are cases, however, when lenders really need their money back. There is no way to force landowners to repay their debt. The only way to get the money back is by passing the pagang gadai contract to the third party (see point 4 of pagang gadai features presented in Table 6). However, it is not always easy to find that third party and it may take time too. The long struggle of lenders to get back their money was revealed in Stage II research (the case of PGC5, 6 and 7). That will be discussed further later.

According to information described by the customary leader interviewed in this study, there are many cases whereby pagang gadai contracts have gone for many years, even until the generation has changed. Analysis on the 11 pagang gadai contracts used in this study as summarized in Table 7, showed that a contract (PGC1) has been 78 years, (PGC2) has gone for 74 years, PGC3 has been 50 years and PGC4 has been 46 years. This is the next different of pagang gadai compared to Ar Rahn whereby in Ar Rahn contract it is stated clearly when the contract should end.

Hence, in terms of riba, the guidance provided by the Islamic scholars in assessing riba applications on various contracts is that “any loan that gives benefit(s)”. In the case of pagang gadai, the extra payments received during the course of the contract can exceed far beyond the original value of the debt. Take as an example, in the case of PGC9 calculation on the value of the harvest from the land cultivated by pamagang (i.e. the second party) has covered the original value of the debt on the third year of the contract (i.e. 1978). By now, the contract has gone for 48 years which means that the proceeds of the land taken by the second party from the 4th year to the 48th year have been extra payments on the original loan. The value of this pagang gadai contract was 2 Ringgit USA gold coins. Total value of the proceeds after 48 years has been over 500tn Rupiah. On the other hand, the current value of debt principal is less than 100mn Rupiah. It means that the proceeds of the land only, have been far beyond the debt principal. The riba element containing in pagang gadai
Why pagang gadai is prevalent in West Sumatera?
The previous section has discussed the different types of properties and the importance of land ownership in West Sumatera. The fact that most of agricultural lands (i.e. rice fields) in West Sumatera have status as high inheritance as also has been highlighted by Beckmann, 2014; Nurdin and Tegnan, 2019 and Suryani et al., 2019, can be argued as the explanation for the prevalent of pagang gadai practice in West Sumatera. This argument was supported by the interview result with the customary leader of Nagari X.

The absence of buying and selling mechanism when comes to rice fields, explains the prevalent pagang gadai practice in West Sumatera, not only from the land owners side but also from the lenders side. If someone really needs a piece of agricultural land, she can get it through pagang gadai mechanism, not through buying mechanism. The ones who do not have their own land also can get agricultural lands through another contract known as muzara’ a which is categorized as equity-based contract in the classification of Alamad (2019). However, in muzara’a contract, someone is not independent in decision related to what to grow and how to cultivate the land. Detail discussion about muzara’a contract is beyond the scope of this paper. Different from muzara’a contract, getting agricultural lands through pagang gadai gives independence to the one who receive the transfer of right to cultivate the land because she lends money to the land owner. This point is a new finding in the literature. The existing literatures usually concerns with motivations of landowners when deciding to go for pagang gadai contract.

This implies that pamagang is not necessarily always a rich people or families. It is also possible that pamagang comes from just an ordinary people but they need a productive agricultural land so that they can run agricultural activities on their own – being an independent farmer (not just being a worker in someone else field). This was experienced by one of key informants in this study. He said that in the past his family life in poverty, his family did not have a piece of agricultural land. Therefore, he and his younger sister used to search for young bamboo to the forest and sell it to the market. That was the way they earned for living. They then kept save money little by little until finally they could get a piece of agricultural land and worked as farmers through pagang gadai contract in 1970s. Gradually, their economic condition improved. He really felt grateful that he and his sister got opportunity of getting a piece of agricultural land through pagang gadai contract.

Then, in 2000, his sister also entered a pagang gadai contract with the value 20 USA gold coins (Rupiah). The rice fields are known as one of the best one in the nagari (close to the water source and the main road – easy to transport crops). The contract has run for 23 years by now. The subclan who owns the land decided to engage in the pagang gadai contract because they needed money to install their new clan chief. The reason for why the subclan still does not pay the debt because subclan members have not achieved an agreement about it. There is one member of the subclan who owns enough money to repay it now but it cannot be done because if one member of subclan repay for debt alone, the land will become her self-acquired property (it will change the status of the property). Thus, they are still persistent for the debt to be paid together by all members of the subclan, so that the communal ownership of the land can be maintained, as told by the landowner in an observation in 2021. This is one of reasons why many pagang gadai contracts can go for years. This point, will be discussed further in the impacts of pagang gadai practice on the society.
Impacts of *pagang gadai* on the society

*The reliance on *pagang gadai* mechanism for overcoming financial problems*

*Pagang gadai* seems to create addictive behaviors of actors involved in it, especially from the landowners’ side. Once a family or a chief clan put the first land in a *pagang gadai* contract, we can expect that there will be the second contract, the third contract and the next. This can carry on to the last piece of lands owned or almost all of the lands have been placed under *pagang gadai* contracts. This makes *pagang gadai* really has been entrenched and rooted in the life of Minangkabau society. This study discloses that someone can involve in *pagang gadai* contracts many times in their life time. The landowner of PGC5 and PGC6 for example, has involved in a number of *pagang gadai* contracts.

The documentary analysis undertaken in Stage I research has revealed that *pagang gadai* creates addictive behaviors (i.e. for landowners). As can be seen from Table 7 a *pagang gadai* contract can be renewed one, two or three times by the landowners. Renewing a *pagang gadai* contract is done through asking for more debt which is known as “*menaiki gadai*”. PGC8 for example, has initial value of 3 Ringgit (i.e. USA gold coins). Two years later (1967) the landowner added the loan 5.625 g gold. Then, a year later, in 1968, the landowner again asked for more debt 1 USA gold coin (Rupiah). Finally, in 2001, the first party (i.e. the heir) asked 1 USA gold coin (Ringgit) again. As a result, the total value of the debt now has become 4 Ringgit (USA gold coin) and 22.305 g gold. For the *pagang gadai* contract taking place on 9 November 1975, with the original value of the debt was 2 USA gold coins (Ringgit), the current value of the debt now is 116.68 g gold because the first party asked for more debt in 1979 for 1 USA gold coin (Rupiah). The practice of increasing the value of the *pagang gadai* contract is very common, as told by the customary leader interviewed.

A landowner also can involve in more than one *pagang gadai* contract if they have many lands (the land can be in several locations or there are several pieces of lands in one location). The landowner of contract number PGC5 and PGC6 for instance, is now involved in three *pagang gadai* contracts at the same time (the start of the contracts may be different but all of them are ongoing). She possesses many agricultural lands in different locations. However, she has put them one by one in *pagang gadai* contracts so that what remain under her control now in one or two locations only. She did involve in *pagang gadai* contract with the same person several times, had experience of renewing one contract several times and had more than one contracts with the same person. It is said that they money obtained from “*gadai*” activity is like a “hot” money – make the actor feel never satisfied, never enough. It is like no barakah in the money. This is understandable since the contract violates what has been prohibited by the sharia.

Many families essentially have lost their lands through *pagang gadai*

As mentioned earlier, *pagang gadai* contract does not specify the maximum period of the contract which means that *pagang gadai* contract has unlimited time frame. This probably what make the landowners do not feel so worried if they cannot pay the debt in their lifetime. They, at least can expect for the next generation can redeem it. However, life is unpredictable. The next generation may have financial capacity to redeem it or maybe not. If the next generation also cannot redeem it, the land remains on the hand of the one who holds the right to cultivate it. This situation can carry on for unlimited time. As a result, many *pagang gadai* contracts remain as are (never been redeemed).

This effect also relates to the fact that *pagang gadai* contract essentially weaken the financial capacity of the landowners (quantity of lands owned reduced after *pagang gadai* or even become zero if all lands have been pawned, at least reduces significantly if most of lands have been pawned). Loosing lands through *pagang gadai* contracts also experienced
by many families whereby the pagang gadai contracts were not written. According to information from the customary leader of Nagari X this was practice in the past.

As a result, there was no written evidence of the two parties involved in the contract. Unwritten pagang gadai contract is fine as long as all parties involved in the agreement are still alive. However, it will be a problem when one of party or both parties have passed away. The heirs of the parties involved in the contract cannot prove if they are the owners of the land. Thus, even if they want to repay the debt, the second party simply can deny it so that the land will remain under her possession forever. Thus, this creates disputes between the two parties.

The shift of land management right to nonresidents of nagari
This effect specific for contracts whereby the ones who hold the right to cultivate the lands are from different nagari with the landowners. This also connects to the problem of unlimited time frame of pagang gadai contracts. This is a specific form of effect number 2. An interview with the customary leader middle of 2023 disclosed very important fact: more than 50% of rice fields in Nagari X have been shifted to the hands of residents Nagari Y through pagang gadai contracts. Stakeholders in Nagari X may follow what have been done in Nagari Koto Tangah that has set a rule to prohibit pagang gadai with nonresidents (Putra et al., 2019).

Disputes among parties involved and family members
Pagang gadai contracts often create disputes between two parties involved in the contracts. High potential disputes present especially when the contracts were not written as mentioned earlier. This is why Allah subhanahu wa ta’la instructs us to write when someone owes money from others (Al Baqarah, Chapter 2, Verse 282).

Disputes are also common among family members if there is a family member who is interested in redeeming the rice fields that have been placed in pagang gadai contracts while the rice fields have status as “high inheritance”. If a family member redeems that land, it will change the status of the land from high inheritance to become self-acquired property (pencaharian). This was told by the landowner of PGC5 and PGC6 at the time of the fifth observation undertaken. She was talking about another pagang gadai contract that she was involved in. This point also has not pointed out yet in the existing literature. Therefore, this is also a new finding in the literature.

Finally, the common disputes faced by many parties involved in pagang gadai contracts recently is that when pamagang have realized about the riba element of the contracts and they want to end the contract by asking the panggadai to repay the debt. The first parties refuse to do so for reasons such as do not have money to repay or simply do not want to redeem their lands because they no longer need it (have stop working as farmers).

In the case that pamagang is not a farmer and then she asked the landowner or panggadai to continue cultivate the land with the agreement that they will share the proceed, landowners sometimes act dishonest regarding the harvest or utilize the land for other purpose for temporarily (e.g. planting other crops other than paddies) [4]. At one point of time, the landowner maybe getting old and no longer is able to cultivate the land. This left the second party with problem in the case that the second party cannot find someone else who can continue to cultivate the land. If the second party asks to end the contract so that she can get her money back, the landowner may not able to repay the debt. At the same time, the second party also cannot sell the land. Thus, it left the second party with no solution. It was experienced by the mother of Informant 1.

After the death of her mother, Informant 1 then tried to end the contract but got unwelcome response from the first party. After one year of trying, Informant 1 finally got the payment but not in a full amount (the value of the debt was 9 USA gold coins (Rupiah)). The remaining 4 Rupiah is still unclear when it will be returned by the landowner. The landowner had put the land into another pagang gadai contract with the third party in order to repay Informant 1. An observation
undertaken in 2021 in the meeting between Informant 1 family and the landowner family, there
was an objection from the landowner to repay the debt. Another observation took place in
Informant 1 visit to the landowner of contract number PGC7 house in 2020. The land owner
seemed to also have an objection to reclaim her land because she had retired from being a farmer.
She has a son who is successful in a business. The son now is in charge of her finance. Informant
1 finally managed to get her mother’s money back just because the son of the landowner had been
aware of the contract contained element of *riba*. Thus, he was willing to repay his mother’s debt.

*Bed endings for actors*

Interviews with key informants revealed a new finding in the literature: the ones who used to
involve in *pagang gadai* tend to have bed ending. Informant 1 for instant felt no *barakah* in their
wealth and therefore, decided to end all of *pagang gadai* contracts that her mother was involved
in. The efforts were unsuccessful at the beginning: the landowners refused to resolve it as
described earlier. They finally managed to get back their money although not 100% after the
death of the mother. This finding was supported by a story disclosed by one of academics in one
discussion about the current research in 2023. She said that her grandmother also used to involve
in *pagang gadai* during her lifetime. She continued the story: “many bad things happened after
the death of the grandmother. We then came to the conclusion that we might have eaten the
things that were not halal. We just decided to return all the lands on our hands to the owners
unconditionally.” The conditions described are consistent with what have been mentioned in the
Quran Surah Al Baqarah, Chapter 2, Verse 275, as quoted earlier.

The main findings of the study are summarized in Table 8 below.

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<td>1.</td>
<td>Essence of <em>pagang gadai</em> contracts</td>
<td>Lending agreement that fall into <em>tabarru’</em> contract (Different from <em>Ar-Rahn</em>).</td>
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| 2.  | The reason for the prevalent of *pagang gadai* contract in West Sumatera | 1. Most of agricultural lands in West Sumatera have status as high inheritance which cannot be sold  
2. Maintaining the lands owned communally is very important because it will pass to the next generations and it determines the status of clan, subclans or parts of subclans in the *nagari*  
3. Buying and selling agricultural lands with status high inheritance is practically unavailable |
| 3.  | Impacts of *pagang gadai* contract on the society | 1. The reliance of landowners on *pagang gadai* to solve financial problems faced  
2. Many families experienced losing their lands because of *pagang gadai*  
3. The shift of control over most of land management to non-residents of *nagari*  
4. Disputes among parties involved in *pagang gadai* and family members of landowners  
5. Bed endings of actors involved in *pagang gadai* |

*Table 8.*  
Summary of findings  
*Source:* Summarized from findings
Conclusions, research agenda and limitations of the study

Conclusions
The essence of pagang gadai contract is a borrowing transaction, equipped by transferring the right to cultivate productive agricultural land from borrowers to lenders for the duration of the contracts. Pagang gadai contract do set the minimum timeline of the contract but there is no mentioned about the limit of the contract. This causes high uncertainty for lenders in terms of when they can get their money back. The practice of pagang gadai therefore contains gharar. Since lender will receive the money back in full whereas she also enjoy the proceeds of the land for the duration of contract that can go for unlimited time, pagang gadai also has element of riba in it. The fundamental different of pagang gadai contract compared to Ar Rahn is terms of collateral asset. Under Ar Rahn, the collateral asset should meet all requirements of selling object. Thus, lenders can sell the asset should the borrower fails to repay the due money. In the context of pagang gadai, however, what is transferred to lenders is the right to cultivate the land, not the ownership of the land. It means that lender cannot automatically sell the land should the landowners fail to redeem their land at the agreed time. Moreover, most of agricultural lands in West Sumatera fall into category of high inheritance which the ownership is communal. The communal ownership of the land means that the land cannot be sold. The ownership should be maintained as is. This what explains the prevalent of pagang gadai practice in West Sumatera.

Since the beginning, the practice of pagang gadai has been always aimed at gaining economic benefit when we look at from the lenders’ perspective. Thus, profit-seeking motive from pagang gadai transaction is not a new phenomenon (from lenders’ perspective). Indeed, there is a shift of attitude of people engaging in the practice of pagang gadai from the borrowers’ perspective. In the past, pagang gadai was done under a very strict conditions but the society has relaxed the conditions now: people can easily make a decision to enter a pagang gadai contract for more contemporary reasons such as for educational purpose, health treatment and even purely consumptive purposes (to cover daily expenses). The finding of this study clarify the existing literature that argue that there has been a changing motive of people doing pagang gadai from social to commercial motive.

An Islamic society which claims themselves as a religious one can be trapped in a practice which is inconsistent with the sharia such as the practice of pagang gadai found in a Muslim society living in West Sumatera. This implies the lacked of knowledge and understanding of the society regarding of their religious teachings. This conveys a message that religious scholars in the region should educate the society about the way the pagang gadai contracts violate basic principles of Islamic finance. This finding also indicates that the society may be reluctant to fully embrace Islamic as guidance in their everyday life; customs in fact still have a big influence on the society more than the religious teachings. Moreover, this finding supports research findings on attitude and preference of people in West Sumatera toward Islamic banking for instance. This finding supports argument of Adisti (2021) that investigated the preference of Muslims in West Sumatera toward cash waqf.

The common practice of pagang gadai in Minangkabau can be associated with the status of most agricultural lands in West Sumatera which are high inheritance – passed down for generations and cannot be sold. Pagang gadai practiced in Minangkabau involves the transfer of right to cultivate the lands from panggadai (landowners) to pamagang (the second parties). In essence, this weakens landowners capacity to repay their debts and eventually never been able to reclaim their lands even after the generation changes. Thus, instead of helping those are in needs, the practice brings disadvantages in the long-term. On the other hand, lenders also can stuck in pagang gadai contracts at the time that she/he no
longer willing to hold the land but the land owners also refuse to repay their debts. The only way of getting her money back is by entering another pagang gadai contract with the third party. This does not solve the problem when someone wants to quit this bathil contract.

The second parties cultivate the land during the agreement period and will receive full amount of money at the time the landowners return the debt. This violates a fundamental principle of contract in Islam: there should be no profit making in lending agreements as the contract actually falls into the category of tabaru’ that is aimed at seeking the pleasure of Allah subhanahu wa ta’ala only. As soon as a lending agreement is used to make profit, it falls into riba because the definition of riba is any additional payments on the principle of debt.

Besides containing elements of riba, and gharar, the practice of pagang gadai does have impacts on the society such as the lost of lands by the owners due to the inability to repay back the debt or due to the absence of documentations; and therefore, the next generations have no proof if that land actually belongs to them. Conflict among extended family members since repaying the debt to second parties should be done after getting approval from all family members and the head of the clan. Pagang gadai is also addictive to the actors, “has been entrenched and rooted in life” (Yulhendri et al., 2021).

Research agenda and limitations of the study
This research is still continuing. The next focus will be on investigating responses of actors involved in pagang gadai contracts if the mode of pagang gadai contract is changed to comply with the Islamic finance principles. An alternative that can be considered is to suggest for the proceeds of the land to be considered as the payments of the debt principal. Thus, whenever the proceeds have covered the value of the debt principal, then pamagang should return the land voluntarily to the owners. This is the reasonable alternative to propose because selling the land to cover the debt is not feasible given the customs applied – no selling and buying mechanism for lands having status communal ownership or high inheritance.

This study focuses on pagang gadai involving productive agricultural lands (i.e. rice fields) and money measured in gold. This is the traditional mode of pagang gadai that has been practiced from long time ago. With the development of economic, pagang gadai may involve other types of agricultural lands such as planted with rubber. Pagang gadai may also involve smaller value of debt in exchange for the utilization of specific fruits trees such as sapodilla tree (manilkara zapota) or other productive trees such as coconut trees. The current study excludes these recent modes of pagang gadai. In a specific district, debt is measured using other than gold such as kilogram beef meat quantity of rice. This study also excludes these types of pagang gadai.

Notes
1. The Minangkabau inhibit the west coast of Sumatera (i.e. West Sumatera Province of Republics of Indonesia) that are known as the most devout Muslims in Indonesia (Evers, 1975).
2. One USA gold coin called ‘Rupiah’ has weight between 16.68–16.70 g gold, 1 Ringgit has 2 times weight of Rupiah, 1 Uang Suku has 1/2 weight of Rupiah and 1 Uang Tali has 1/4 weight of Rupiah.
3. Katidiang is also called ‘Bangkiah’. One Sukat paddy is equivalent with 1.5 liter of rice.
4. In this context, what shared is usually paddy. Thus, if who cultivates the land plant other crops, another party will not receive anything).
References
Ayub, M. (2009), Understanding of Islamic Finance, Gramedia Pustaka Utama, Jakarta.

Further reading


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