THE ATTAINMENT OF CLASSICAL RULINGS OF AL-RAHN WITHIN THE CONTEMPORARY ISLAMIC PAWN BROKING IN MALAYSIA

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Abstract

The al-rahn based Islamic microcredit or well known as ar-rahnu is aggressively and extremely offered by Islamic financial institutions in Malaysia. This facility is seen as the best alternative in helping the low income group who are not able to access any microcredit facility from commercial institutions. It also perceived as a fully Shariah compliance product that free from any prohibited elements in Islam namely riba (interest), gharar (uncertainty) and maysir (gambling). However, this product has strongly been criticized by the Islamic scholars due to the structure of this product sparks some Shariah issues pertaining the ujrah (fee) and wadiah yad damanah (savings with the protection of guarantee) used as hiyal (legal trick) instrument in permitting riba. Thus, this research is qualitative nature, relying in primary and secondary sources of data that will examine all the Shariah issues involves in this product starting from the structure, pawnbrokers act, redemption and auction as from Maqasid al-Shariah (objectives of Shariah) perspectives. For the purpose of this study, data collected from interviews is interpreted using the content analysis method. Interviews have been conducted with three major players in Islamic pawn broking institutions. The interviews are significant to gain their response and solid information pertaining the allegation on this product. At the same time, interviews also involved external observer from ISRA and Shariah Committee of Bank as a counter measure pertaining to the Shariah issues that have been debated by Muslim jurists. Taking consideration on all the Shariah issues relevant to al-rahn, this research proposed the establishment of Islamic pawn broking act and alternative structures with intention to ensure this product genuinely free from any elements of riba and aligned with the Maqasid al-Shariah.

Keywords: Al-Rahn; fees; savings with guarantee; legal trick; interest

Introduction

In Malaysia, the development of al-rahn (pledge) or ar-rahnu which refers to Islamic pawn broking began in the year 1992, and was established by Muassasah Gadaian Islam Terengganu (MGIT) with their objective to provide an alternative for the people
who intend to get speedy cash as well as the only methods which are considered halal (permitted) from the Shariah (corpus of Islamic law). The uniqueness of this Islamic pawn broking offered by MGIT is that, there is no charge imposed to the customer on the loan given. Under the customer’s discretion, a hibah (gift) will be given by the institution as a token of appreciation for giving microcredit. Meanwhile, in Kelantan, the Islamic pawn broking is known as Permodalan Kelantan Berhad (PKB). The effort continues to grow and expend when the Malaysian Islamic Economic Development Foundation (YaPEIM) made their initiatives to introduce the al-rahn concept which is presumed as the first product in the world.

On 21\textsuperscript{st} August 1993, a scheme called “Skim Ar-Rahnu” (SAR) was introduced by the government. In general, al-rahn (pledge) serves as the best alternative for people who intend to get speedy cash as well as the only methods which are considered halal and compliance with Shariah jurisprudence. However, according to Mohamad and Salleh (2008) and Khir, Badri and Hussain (2012), found the essence of al-rahn such as wadiah yad damanah used and ujrah charge embedded with element of riba (interest), which requires more attention from the Islamic jurists. Furthermore, study by Rasmin and Markom (2014) showed Islamic pawn broking guideline not comprehensive as compared to Pawnbrokers Act 1972.

As the result, the Islamic pawn brooking still been influenced and linked by the act that require deep autopsy to be done. In addition, Good Service Tax (GST) imposes in the auction activity give negative impact to parties involved. Thus, it is important in this study to examine and seek the truth between the implementation of al-rahn from the classical point of view against the contemporary practice under the principle of ujrah (fee), wadiah yad damanah (savings with a protection guarantee), qard (loan) and rahn (pledge).

Table 1: Islamic Banking Products and Key Regional

<table>
<thead>
<tr>
<th>Product</th>
<th>Middle East</th>
<th>North Africa</th>
<th>Malaysia</th>
<th>Indonesia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pawn Broking</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>Popular as a form of</td>
<td>Popular as form of financing with gold as</td>
</tr>
<tr>
<td>Al-Rahn</td>
<td>Product</td>
<td>Product</td>
<td>personal financing with</td>
<td>collateral</td>
</tr>
</tbody>
</table>

Source: Oracle Financial Services (2012)

**Al-Rahn**

Al-rahn in Arabic has several meanings. Literally, al-rahn derives from the word rahana, which means either constancy, continuity, holding or binding. Technically, al-rahn term refer to pawning, mortgage, collateral, charge, lien and pledge whereby taking a property a security against debt, which secured property can be utilized to repay the debt in the case of non-payment (Dusuki, 2012). From scholar point of view such as Shafi’i defined al-rahn as “taking a non-fungible property as insurance against a fungible debt, whereby the debt may be extracted from the held property if it is not repaid”. Meanwhile, Hanbali defined it as “property to ensure the payment of a debt in case of default”.


Other scholars, Maliki defined as “act of taking valuable property from its owner as a mean of ensuring payment of loan that has matured or about to mature”. On the other hand, Hanafi submitted al-rahn terms as “holding something right because the taking of debt” (al-Zuhaily, 2007). The legality of al-rahn is base on the following evidence.

"And if you are on a journey (and you owe or provide that the term debt), and you do not find a scribe, there shall be a pledge taken (by person suffice)”.  
(Surah al-Baqarah: verse 283)

"Aisha narrated that the Prophet had bought some food from a Jew and He (SAW) pledged to him His Steel armors".  
(Narrated by Bukhari, Muslim and Ibnu Majah)

**Structure of Al-Rahn (Pledge)**

The concepts of al-rahn (pledge), wadiah (saving with trust), qardhul hassan (benevolent loan) and ujra (fee) make the Islamic pawn broking different from conventional pawn broking as well as the elements of riba (interest) and gharar (uncertainty) have been eliminated in al-rahn system. The concept of qardul hassan refers to “any financial loan with no charge of interest where the murtahin giving loan to rahim without any additional or premium on the principal amount” (Amin, 2011). Under al-rahn, the wadiah contract has been used in order to allow the murtahin to keep the pledge item base on trust where any loss or damage will be under the responsibility of rahin. However, in current practice the Islamic pawn broking adopted concept of wadiah yad damanah (savings with a protection guarantee) as the assurance and guarantee that the pledge item will be safe under the murtahin custody.

**Ujrah (Fee)**

Islamic pawn broking will impose ujrah (fee) where the charge is much lower compare to conventional pawn broking. In current practice the charge will be on the value of marhun (pledge item) (Appannan and Doris, 2011). The disputes rise on how the ujrah have been determined and deemed as hiyal (legal trick) used in permitting riba (Mohammad and Salleh, 2008). Therefore, the ujrah need special guidelines as well as proper calculation in determining the rate whether it is truly base on storage box or other factor counted such as credit risk (Payal Bhatt and Jothee Sinnakkannu, 2008). According Sharif, Shaharuddin, Muhammad, Pauzi & Zin (2013) the ujrah on pledge item must remove from direct linkage with value of loan given to avoid manfaah (benefit). This is because any benefit from loan given will consider riba in Islam
Al-Rahn Governance Law

Although al-rahn is introduced for more than 20 years, but there are still no specific laws or act for Islamic pawn broking compare to conventional pawn broking, which enacted with Pawnbrokers Act 1972. Currently, only a few institutions has legislated policy and administrative guideline to execute al-rahn such as Cooperative Commission of Malaysia and Majlis Agama Islam dan Adat Melayu (MAIDAM) (Rasmin and Markom, 2014). One of the corporative institutions such as Bank Kerjasama Rakyat had come out with their own pawn broking activity guidelines. However, this guideline only cover basic matter about al-rahn as been prescribed by Shariah jurisprudence such as pillar of contract, charges and concept or features used subjected to Shariah committee approval. In general, Pawnbrokers Act 1972 is not used in the operation of Islamic pawn broking due to the permissibility of pawnbroker to impose interest to customer on the loan given. As far as corporative institutions are concerned, these institutions are exempted from the provision Pawnbrokers Act 1972 (Taher, Yusof and Abidin, 2010).

Maqasid Al-Shariah

According to the Mokhtar and Zambahari (2013) al-rahn have been used as the microcredit tools that align with Maqasid al-Shariah (objectives of Shariah). Meeting the Maqasid al-Shariah is important to prevent any manipulation, oppress as well as to avoid any destruction either in the world or hereafter. However, study by Syahidawati (2011), the objectives of Islamic bank or institutions are more towards the institutions performance rather than objective Islamic economic itself which is based on the socio economic justice. As the result, the five elements of Maqasid al-Shariah namely protection of religion, life, intellect, wealth and dignity have been slowly drive away from the objective of Islamic banking or institutions which been replaced by profit oriented entity. Things are getting worse when some of Islamic scholars alleged the al-rahn against the main Maqasid al-Shariah Hifz al-Din (protection of religion) by permitting riba (Mohamad and Salleh, 2008).

Methodology

Discussion of al-rahn status from the perspective of the shariah law would require the use of the shariah principles, mainly of the Quran and sunnah (Prophetic traditions), and the rest of Islamic jurisprudence principles, qiyas (analogical deduction), and its general principles namely al-qawaid al-fiqhiyyah (Islamic legal maxims) as supporting tools. Qiyas is, according to Kamali (2003) the extension of the shariah ruling from the original case or in Arabic known as asl to the new case known as far’ since the new case has the same effective cause (‘illah) as the original. The elements of qiyas consist of four, the three as mentioned and the fourth is hukm or the established rule for the new case.

Meanwhile, al-qawaid al-fiqhiyyah (Islamic legal maxims) according to Mustafa al-Zarqa as translated by Laldin is the ‘general fiqh principles which are presented in a simple format consisting of the general rules of shariah in a particular field related to it’ (Laldin, 2006). The majority of these general principles of fiqh consists of a few words but at the same time would be able to cover the comprehensive meanings that can be applied to various issues of fiqh.
Selection of Data Collection Method

For the purpose of this research, semi-structured face-to-face interview have been adopted in order to explore and gain genuine information pertaining the Shariah issue. Basically, this interview will be using the open-ended questions that give the interviewer the authority to choose on the relevant and appropriate question that needs to be asked. This types of interview also giving the respondent freedom in expressing their own opinion as well as not being confronted by predetermined answers as what practiced in structured interview where the interviewees are not allowed to express judgment out of the scope of questions. Thus, this semi-structured gives the researcher various types of information needed as well as creating a good understanding and relationship between the interviewer and respondents.

Interview Sampling

Table 2: For this research, the respondents are as follow:

<table>
<thead>
<tr>
<th>No</th>
<th>Institutions</th>
<th>Position</th>
<th>Gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(Bank Islam Malaysia Berhad)</td>
<td>Advisory and Research Shariah Division</td>
<td>Male</td>
</tr>
<tr>
<td>2</td>
<td>(Bank Islam Malaysia Berhad)</td>
<td>Advisory and Research Shariah Division</td>
<td>Male</td>
</tr>
<tr>
<td>3</td>
<td>Bank Muamalat Malaysia Berhad</td>
<td>Shariah Department</td>
<td>Male</td>
</tr>
<tr>
<td>4</td>
<td>(Bank Kerjasama Rakyat Malaysia Berhad)</td>
<td>Ar-Rahnu Division</td>
<td>Male</td>
</tr>
<tr>
<td>5</td>
<td>International Shariah Research Academy (ISRA)</td>
<td>Shariah advisor of Al-Rajhi Bank (M’sia) Sdn Bhd</td>
<td>Male</td>
</tr>
<tr>
<td>6</td>
<td>Export-Import Bank of Malaysia Berhad</td>
<td>Shariah Advisor Committee of EXIM Bank</td>
<td>Female</td>
</tr>
</tbody>
</table>

Research Strategy

Thus, for the purpose of this study, all the data will be analyzed using the inductive and deductive approach where it will focus on Shariah and operational aspect of the product. The data collected is analyzed and interpreted using the content analysis method. In general, voice recorder has been used as the main method in conducting and gathering all the information from the interview session. The researcher will listen several times to recorded interview data and every single word mentioned by the interviewee will be recorded as solid evident and main sources. All the recorded information is accurate and reliable which later will be transliterated in written form. The interviewee opinion, feedback and answer are crucial in order to have a clear understanding as well as to eliminate any wrong perception and interpretation. All the data will be analyze across all the interviewee in order to identify the similarities and differences.

Domain Analysis Approach

In this analysis methods, domains will based on the identification within the contends of the key topic and interrelationship between them. Here, domain or key topic will be
presented by *al-rahn Shariah* Issues, which are connected with other factors through observation of the problems.

**Figure 1: Domain Analysis Approach**

<table>
<thead>
<tr>
<th>Domain (Key Topic)</th>
<th>Sub Domain</th>
<th>Method &amp; Objectives</th>
<th>Details of Sub Domain</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Al-Rahn Shariah</em> issues</td>
<td>Structure</td>
<td><a href="#">Methods</a></td>
<td>Any changes of the concept could be made from existing product</td>
</tr>
<tr>
<td></td>
<td>Redemption</td>
<td></td>
<td>Extension period require obligation to pay <em>zakat</em></td>
</tr>
<tr>
<td></td>
<td>Auction</td>
<td></td>
<td>Surplus unclaimed money</td>
</tr>
<tr>
<td></td>
<td></td>
<td>^Ujrah or Fee</td>
<td>Minimize <em>Shariah</em> issues and competitive rate</td>
</tr>
<tr>
<td></td>
<td>Pawnbrokers Act 1972</td>
<td></td>
<td>1) <em>Shariah</em> Issues</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2) Maqasid al-<em>Shariah</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3) Solution</td>
</tr>
</tbody>
</table>

**Source:** Adapted from Spradley (1979)

**Analyses and Results**

In overall, the finding analysis on *Shariah* Issues will be focused on six major area as shown by below diagram.

**Figure 2 : Analysis on *Shariah***

- **Structures of Al-Rahn**
  - *Ujrah* (Fee)
  - Redemption Process

- **Auction Process**
  - Pawnbrokers Act 1972
  - *Maqasid al-Shariah* (Objectives of *Shariah*)
Analyses on Structure of Al-Rahn

Based on analysis had been done; there are two structures that commonly used by Islamic pawn broking in Malaysia.

Figure 3: Qardul Hassan (benevolent loan), Rahn (pledge) and Hibah (gift)

![Diagram of Al-Rahn structure]

The above structure has been used by first Islamic pawnshop in Malaysian known as Muassasah Gadaian Islam Terengganu (MGIT) under the supervision of Majlis Agama Islam dan Adat Melayu (MAIDAM) with main objective to fulfill the needs and welfare of the less fortunate people. At the beginning of MGIT operations, the qardul hassan (benevolent loan) contract been used where loan given are free from any interest or charges. In return, customers are encouraged to contribute a small sum amount known in Islamic finance as hibah (gift) which will not stipulated in the qard (loan) contract but under customer discretion, they may contribute to MIGIT as a token of appreciation for offering the microcredit facility. The Shariah Council of Bank Negara came out with Resolution in its 55th meeting dated 29 December 2005, has resolved that the practice of giving unconditional hibah (gift) in a contract of qard (loan) is permissible.

Prophet Muhammad said:

"The best person among you is the one who does his best in debt settlement."

(Narrated by Bukhari)

"Abu Abdullah al-Hafiz has reported to us, he said, I heard that Abu Zakaria Yahya bin Muhammad al-`Anbari said, I heard that Abu Abdullah al-Busyanji said, about the saying of the Prophet Muhammad SAW: Exchange gifts (among you) and you will love each other."

(Al-Baihaqi, Al-Sunan al-Kubra, Maktabah Dar al-Baz)

Nevertheless, such practice shall not become a norm in order to avoid this practice from becoming an `urf (customs) that resembles a condition attached to the contract
of *qard* (loan). The implication of *urf* (customs) will turn the *hibah* to *riba* (interest) under *qard jarra manfa'ah* (loan with benefit) base on below legal maxim:

اَلْمَعِروَظُ عِرَاقًا كَالْشَّروطُ شَرَطاً

“A matter recognized by custom is like what is stipulated by agreement.”

Figure 4: Combination *Qard* (Loan), *Al-Rahn* (Pledge) and *Wadiah Yad Damanah* (Savings with a Protection Guarantee)

Source: Adapted from Khir, Badri and Hussain (2012)

1) Islamic Pawn Broking provides benevolent loan to Customer
2) Customer pledge item to Islamic pawn broking and guaranteed for any loss or damage. Customer needs to pay *ujrah* for safeguard services
3) Customer makes a full payment of loan and *ujrah*
4) Islamic pawn broking return the pledge item to customer

Pertaining to the above structure, few *Shariah* issues might be related to the inappropriate types of contract that have been used which contradict to the principle or against the classical ruling namely as below:

**Issue on Bay Wa Salaf (Sale contract with loan)**

Combining *qard* (loan) and *bay* (sale) contract is prohibited by the *Shariah*. The following Hadith from prophet Muhammad SAW concludes this prohibition of combining a sale contract with a loan.

Prophet Muhammad said:

لا يجَّالِسَ سَلَفَ وَيَبْعَ

“It is not permissible to execute a loan contract (in combination) with a sale contract”

(Narrated by Abu Dawud)

“Ismail bin Mas’ud had told us from Khalid from Hussein al-Mu’allim from ‘Amru bin Shuaib from his father from his grandfather: Verily Rasulullah SAW forbids combination of salaf (debt) and sale, two conditions within a sale, and profit without guarantee (without taking a risk)”

(Al-Nasa’i, Sunan al-Nasa’i al-Kubra, Dar al-Kutub al’Ilmiyyah,)
In al-rahn, the qard is giving together with ujrah for the protection of the collateral items and ujrah itself has consider as the bay’ contract particularly under wadiah bi ujr (trust with wage impose). Here, the Islamic pawn broking Institution provides safeguard to the pledge items has considered as bay’. Furthermore, in current practice the Islamic pawn broking will also include the takaful expenses as part of the ujrah and customers are compulsory to take group credit takaful protection policy. In other words, the existence buying and selling of takaful policy will also consider as bay’ contract. Basically, there are types of bay (sale) had been practiced by the Islamic pawn broking, which might against the hadith mentioned by Prophet Muhammad SAW on impermissibility the combination qard and bay’.

Table 3: Loan and Bay Contract in Al-Rahn

<table>
<thead>
<tr>
<th>Islamic Pawn Broking</th>
<th>Provide Qardul Hassan (Loan)</th>
<th>Wadiah and Safeguard Service (Pledge Item)</th>
<th>Takaful</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customers</td>
<td>Require to pay loan amount</td>
<td>Require to Pay Ujrah</td>
<td>Require to pay Takaful Policy</td>
</tr>
</tbody>
</table>

Furthermore, there is no decision on permissibility or prohibition has been made by Shariah Advisory Council of Bank Negara pertaining the resolution of bay’ wa salaf (sale contract with loan) in Islamic Banking Institutions but resolution prohibition had been done under the Shariah Advisory Council of Securities Commissioner (securities commission, 2002). From AAIOFI Shariah Standard (2010) clearly stated “it not permitted to stipulated a contract of bay (exchange or sale) or ijara or commutative contract within the contract of qard”.

**Issue of Bay al-Wafa (Sale with Right of Redemption)**

In this study, Usul fiqh tools namely qiyas (deductive analogy) had been adopted in determining the ruling of al-rahn (pledge), which might resemble bay al-wafa (sale with right of redemption). Qiyas can be defines as “the extensions of a shariah value from the original case, to a new case because the latter has the same effective cause (illah) as the former and qiyas aim to extent the same ruling to a new cases based on the share ‘illah” (Laldin, 2006). Here, al-rahn and bay al-wafa have a similar original and new case where the objectives contracting parties execute both al-rahn contract and bay al-wafa to meet their liquidity needs such as getting fast cash money. In term illah (effective cause), both loan giving manfaah (benefit) to the creditor where in bay al wafa the creditor able to use or get manfaah (benefit) from the item while in al rahn the benefit is on the ujrah (fee).

As the result, the International Fiqh Academy in its seventh session has resolved that bay al-wafa’ is not a valid sale contract on the premise that it is in fact a loan contract that draws benefit and serves as a back door to riba. (Resolution No. 68/4/7, Majma’ al-Fiqh al- Islami, 7th session, 1992). At the same time, bay’ al-wafa’ contradicts the substance of a sale contract, as the transfer of ownership does not occur in the absolute and unlimited.
**Issue of Wadiah Yad Dhamahah (Savings with the Protection of Guarantee) cum Hiyal (Legal Trick)**

From the classical view of *al-rahn* (pledge), the *wadiah* (saving with trust) contract that includes protection and safeguard of the collateral items has been served in the *al-rahn* (pledge) and this *wadiah* (saving with trust) contract is deemed as a supporting contract. Furthermore, no liability or guarantee imposed to the trustee. Prophet Muhammad SAW said:

"A pledge does not become the property of mortgagee; it remains the property of its owner who mortgaged it; it is entitled to its benefits and liable for its expenses".

(Narrated by Daruqutni)

Thus, any claim for storage fee, guarantee or expenses in precisely not created under the contract of *wadiah yad dhamanah* (saving with guarantee) as what have been practiced in current structure but a obligation under the *al-rahn* (pledge) contract itself. In other words, using the *wadiah yad damanah* as a base for guarantee might be against the Shariah jurisprudence as well as presence of *hiyal* (legal trick) element in order for the industry to gain more profit. Thus, *hiyal* that gives benefit to creditor especially on debt transaction will consider unlawful. A famous maxim states “*Hiyal affected on debt is a Hiyal for riba (interest)*”.

**Analyses on Ujrah (fees)**

*Ujrah* (fee) is charge on the *marhun* (pledge item) value instead of weight or size of the gold. Charging *ujrah* on *marhun* directly might lead to *manfaah* (benefit) due to amount of *ujrah* will charge differently even though the size or weigh gold is similar. For example gold pledge 10 gram of 999 and 916 purity will give different *ujrah* base on *marhun*. This is because the value of gold 999 purity has high value compare to 916 purity. In Islamic law, any loans that give *manfaah* or *ujrah* impose on loan will be considered as *riba* (interest). This ruling base on the following hadith. Hadith prophet Muhammad SAW:

"Every loan which gives benefit (to the creditors) is considered riba”


Based on below table’ *ujrah* charge using inflated fee; higher amount *marhun* will lead higher amount of loan customer able to get as well as to higher *ujrah*. In reality, the practice much similar to loan given by conventional bank, where the higher loan, the higher profit bank will get due to interest charge on the loan. This showed, direct link between *ujrah* imposed with the loan given. From the legal maxim synthesizes, “*Contracts are to be understood in relation to their intention and substance, not only by the word and phrases used*” (al-ibra fi al-uqud li al-magasis wa al-ma’ani la li al-alfaz wa al-mabani”). Even though, Islamic pawn broking
claimed the loan has been charged on *marhun* value but in reality the intention and substance is to get benefit or *manfaah* from loan given. Similarly, with legal maxim, “*al-umur bi maqasidiha* (matters are determined according to attention)”. Under this legal maxim, the intention of individual will lead and direct to the action human being.

Prophet Muhammad SAW said:

“*Deeds are judged by intentions and every person is judge according to his attention*”

In other hadith: “*There is no deeds to those who have no intention*”

*(Narrated by Bukhari)*

Table 4: *Ujrah* (Fee) Rates and Margin Loan Based on Islamic Pawn Broking Institutions

<table>
<thead>
<tr>
<th>Institutions</th>
<th>Loan Limits</th>
<th>Margin Lending</th>
<th>Wage Rate Per Store to Value Marhun RM100 (a month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank Rakyat</td>
<td>Up to RM1000</td>
<td>65%-75%</td>
<td>0.65-0.75</td>
</tr>
<tr>
<td></td>
<td>RM1,001-RM10,000</td>
<td>65%-75%</td>
<td>0.75-0.85</td>
</tr>
<tr>
<td></td>
<td>Ar-Rahnu Genius</td>
<td>65%</td>
<td>0.85</td>
</tr>
<tr>
<td></td>
<td>RM3000-RM50000</td>
<td>70%</td>
<td>0.85</td>
</tr>
<tr>
<td></td>
<td>Az-Zahab</td>
<td>65%</td>
<td>0.75</td>
</tr>
<tr>
<td></td>
<td>RM10001-RM100,000</td>
<td>70%</td>
<td>0.85</td>
</tr>
<tr>
<td></td>
<td>Up to RM500</td>
<td></td>
<td>0.60</td>
</tr>
<tr>
<td>Bank Islam</td>
<td>RM501-RM2500</td>
<td>Up to 70%</td>
<td>0.70</td>
</tr>
<tr>
<td></td>
<td>RM2500 and above</td>
<td></td>
<td>0.80</td>
</tr>
<tr>
<td></td>
<td>RM100-RM2000</td>
<td></td>
<td>0.50</td>
</tr>
<tr>
<td>Agro Bank</td>
<td>RM2001-RM5000</td>
<td>Up to 70%</td>
<td>0.60</td>
</tr>
<tr>
<td></td>
<td>RM5001 and above</td>
<td></td>
<td>0.75</td>
</tr>
<tr>
<td></td>
<td>RM320-RM1000</td>
<td></td>
<td>0.65</td>
</tr>
<tr>
<td>Bank Muamalat</td>
<td>RM1001-RM5000</td>
<td>Up to 80%</td>
<td>0.75</td>
</tr>
<tr>
<td></td>
<td>RM5001 and above</td>
<td></td>
<td>0.85</td>
</tr>
<tr>
<td></td>
<td>Below RM1000</td>
<td></td>
<td>Free</td>
</tr>
<tr>
<td></td>
<td>RM1001-RM3000</td>
<td></td>
<td>0.50</td>
</tr>
<tr>
<td>MAIDAM (MGIT)</td>
<td>RM3001-RM5000</td>
<td>Up to 80%</td>
<td>0.60</td>
</tr>
<tr>
<td></td>
<td>RM5001-RM10000</td>
<td></td>
<td>0.70</td>
</tr>
<tr>
<td></td>
<td>RM10001 and above</td>
<td></td>
<td>0.80</td>
</tr>
<tr>
<td>Pos Malaysia</td>
<td>RM100 and above</td>
<td>Up 80%</td>
<td>0.75</td>
</tr>
<tr>
<td>YAPIEM</td>
<td>RM0.01-RM800</td>
<td>Up 70%</td>
<td>0.50</td>
</tr>
<tr>
<td></td>
<td>RM801 and above</td>
<td></td>
<td>0.75</td>
</tr>
</tbody>
</table>

*Source: Institutions Website (2015)*

In addition due to strong argument and critique, the *ujrah* has trigger other *shariah* issues namely as below:
i) **Determination of Ujrah (fee)**

The question might rise on methods in determining the *ujrah* (fee) either purely on cost incurred or together with profit. This is because, under classical ruling no profits are allowed in *al-rahn* (pledge).

Prophet Muhammad SAW said:

```
إذا أرتكب فحشة شرب المرمين من لبنها يقدر نصف علفها،
فإن استفاض من اللبن بعد نصف العلف فهو ربا.
```

“When a sheep that had been pawned, mortgage holders can drink the milk than to eat expenditure drink that has been issued for the animal. If the milk is taken over rate was spent then it is usury” *(Narrated by Abu Dawud)*.

ii) **Excessive charge on Ujrah (Fee)**

The *ujrah* charge under *al-rahn* (pledge) are more expensive if compare with safe deposit box (SDB) or personal financing. As the result, the *ujrah* is uncompetitive as well as gives burden to customers.

**Table 5: Percentage or Rate Calculation of Ujrah**

<table>
<thead>
<tr>
<th>Marhun Value</th>
<th>Rate</th>
<th>Period</th>
<th>Ujrah</th>
</tr>
</thead>
<tbody>
<tr>
<td>10,000</td>
<td>0.75</td>
<td>6</td>
<td>450</td>
</tr>
<tr>
<td>900/7000</td>
<td>12.85%</td>
<td>12</td>
<td>900</td>
</tr>
</tbody>
</table>

**Source:** Adapted from Sharif, Shaharuddin, Muhamed, Pauzi and Zin (2013)

**Table 6: Agro Bank: Islamic Safe Deposit Fee (Yearly)**

<table>
<thead>
<tr>
<th>Module</th>
<th>Size of Box</th>
<th>Box Dimension</th>
<th>Yearly Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>3x5x24</td>
<td>RM50</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>5x5x24</td>
<td>RM60</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>3x10x24</td>
<td>RM70</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>5x10x24</td>
<td>RM90</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>10x10x24</td>
<td>RM110</td>
<td></td>
</tr>
</tbody>
</table>

**Source:** Institution Website (2015)

**Table 7: Al-Rajhi Bank: Islamic Safe Deposit Fee (Yearly)**

<table>
<thead>
<tr>
<th>Size of Box</th>
<th>Box Dimension</th>
<th>Yearly Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>S</td>
<td>3x10x24=720</td>
<td>RM300</td>
</tr>
<tr>
<td>M</td>
<td>5x10x24=1200</td>
<td>RM350</td>
</tr>
<tr>
<td>L</td>
<td>10x10x24=2400</td>
<td>RM450</td>
</tr>
</tbody>
</table>

**Source:** Institution Website (2015)
Table 8: Comparative Features of Selective Personal Financing Products

<table>
<thead>
<tr>
<th>Institution</th>
<th>Tenure</th>
<th>Average Rate (Flat Rate Per annum)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank Islam Malaysia Berhad</td>
<td>1-10 Years</td>
<td>4.49%</td>
</tr>
<tr>
<td>Bank Rakyat Malaysia Berhad</td>
<td>1-3 Years</td>
<td>3.65%</td>
</tr>
<tr>
<td></td>
<td>3-10 Years</td>
<td>10.04%</td>
</tr>
<tr>
<td>Bank Muamalat Malaysia Berhad</td>
<td>1-3 Years</td>
<td>5.5%</td>
</tr>
</tbody>
</table>

Source: Institutions Website (2015)

iii) **Basis Calculation of ujrah (fee)**

Islamic pawn broking tends to use monthly basis instead of daily basis. This is because the monthly basis gives high profit to the institutions. Thus, in reality they are more on profit oriented.

Table 9: *Ujrah* (Fee) Base on Redemption Period

<table>
<thead>
<tr>
<th>Features</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly <em>Ujrah</em> (Fee) for a month = Gold Value x Rate /100</td>
<td></td>
</tr>
<tr>
<td>Notes:</td>
<td></td>
</tr>
<tr>
<td>1. The calculation of <em>ujrah</em> (fee) is per month. If the customer pays the financing and redeems the Gold on the 5th month, than the ujrah (fee) must be multiplied by 5.</td>
<td></td>
</tr>
<tr>
<td>Calculation Formula for <em>Ujrah</em> (Fee)</td>
<td>2. If the period of <em>al-rahn</em> is less than a month, the <em>ujrah</em> (fee) will be calculated based on the number of days for the month (i.e. 15 days or less will be calculated as ½ month (0.5) and more than 15 days will be calculated as one month). For example, if the customer makes the settlement of loan on the same day, <em>ujrah</em> (fee) will also be calculated based on ½ month (0.5).</td>
</tr>
</tbody>
</table>

Source: Bank Islam Malaysia Berhad (2015)

**Monthly Basis**

On monthly basis, when customer makes full payment a few days earlier for example 16th June 2015, the total charge will base on 6 months

*Ujrah* (fee) = \( \frac{RM 0.70 \times RM 10,000 \times 6\text{ months}}{RM 100} \)

= RM 420
Customer makes payment earlier for example 5th June 2015, the charge will base on 5.5 months

\[
Ujrah \ (fee) = \frac{RM0.70 \times RM10,000 \times 5.5 \text{ months}}{RM100} = RM385
\]

Source: Adapted from Khir, Badri and Hussain (2012)

**Daily Basis**

For example payment made on 16th and 5th June it will totally count on day incurred.

\[
Ujrah \ (fee) \ pay \ on \ 16^{th} \ June = \frac{RM0.70 \times RM10,000 \times 166/365 \times 12}{RM100} = RM382
\]

\[
Ujrah \ (fee) \ pay \ on \ 5^{th} \ June = \frac{RM0.70 \times RM10,000 \times 155/365 \times 12}{RM100} = RM356
\]

Source: Adapted from Khir, Badri and Hussain (2012)

**Analyses on redemption**

Current practice showed the extension period for redemption might over one year as well as the amount loan more than the nisab (requirement) of zakat (alms). Thus the issues whether the zakat (alms) contribution should be paid by the Islamic pawn broking or by the customer. Study revealed, the institutions are not subjected to zakat (alms) payment since the collateral is consider as “Milk al Naqis” (Not perfect possession) to institutions which require to hand over the property once the debtors make a full payment. This information stated in “Banking Zakat Management Manual published by the Department of Awqaf, Zakat and Hajj (JAWHAR), bank to pay zakat on shareholders’ funds and funds other than the depositor only”. Thus, the zakat (alms) obligation should be paid by the customer. However, in the reality there is no act or penalty impose for customer who reluctant or fail to fulfill their obligation on zakat (alms).

Allah SWT said:

\[
\begin{align*}
&\text{بُعْسَنَتُ عَلَيْهِمْ فِي نَارِ جَهَنَّمَ مَتَّخُودَةً بِهَا جَاهِشَةً} \\
&\text{وَجِدَوْنَهُمْ وَظَاهِرَنَّ هُمْ هَٰذَا مَا كَسَبُوهُمْ لَأَفْسَدُوا مَا كَسَبَوْا مَا}
\end{align*}
\]

“The Day when it will be heated in the fire of Hell and seared therewith will be their foreheads, their flanks, and their backs, [it will be said], ”This is what you hoarded for yourselves, so taste what you used to hoard”.

(Surah at-Taubah: verse 35)

**Analyses on Auction**

Normally, the auction activity will be held inside the Islamic pawn broking premises and any administration cost incurred will be charge to pledger as well as the goods and services tax (GST).

Table 10: The illustration of GST imposed on auction item.
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of Pledge Item</td>
<td>1,666.00</td>
</tr>
<tr>
<td>GST (6%)</td>
<td>99.96</td>
</tr>
<tr>
<td>Sale value of Pledge Item</td>
<td>1,765.96</td>
</tr>
<tr>
<td>Loan</td>
<td>1,000.00</td>
</tr>
<tr>
<td>Storage Fee</td>
<td>97.46</td>
</tr>
<tr>
<td>Administration Fee</td>
<td>50.00</td>
</tr>
<tr>
<td>GST (6%)</td>
<td>53.00</td>
</tr>
<tr>
<td>Surplus return to customer</td>
<td>615.50</td>
</tr>
</tbody>
</table>

Source: Jabatan Kastam Diraja Malaysia (2014)

From the above table, GST totally will cause the price of pledge items getting expensive after plus with GST and at the same time will oppress the pledger due to amount refund by the Islamic pawn broking will be less after deducted the administration fee and GST. The big argument will be on the validity on permitting the GST by the government. This is because some of Islamic scholar considers GST is prohibited in Islam and government is not allowed to impose any tax to public except zakat base on below hadith.

> “A woman came and admitted committed in adultery who want executed sentence on him but he had replied, “By my soul in the hands of God, it really is the woman repented that if a repentant tax collector will also be forgiven him”.

(Narrated by Muslim)

> “Do we oppress and not taken the property of a Muslim without the consent and permission of the owner”.

(Narrated by Ahmad)

> “Verily ruler who imposes 'Maks' (some translate as taxes) is in hell”.

(Narrated by Ahmad)

**Analyses on Pawnshop Act 1972**

Even though Islamic pawn broking declared they not regulated under Pawnbrokers Act 1972, in reality this not really happen. In current practice, Islamic pawn broking need to transfer any surplus unclaimed money to Accountant General under the Consolidated Trust account as stated under section 25 (1) after four months from the date of auctions. This might be against Hadith Prophet Muhammad SAW where for unclaimed money should be hold until one year and holder act as trustee or transfer it to Baitulmal (house of Wealth).

Zayd bin Khalid al-Jahni a companion of the Prophet (s.a.w) saying: “The Prophet was asked about lost but found gold or silver, thus, the Prophet said ‘know its suitability (benefits) and bitterness (liabilities) then find or wait for
the owner for a year, if no one ask after it, then spend or use it, however, you are just a trustee for it, whenever the owner come for it, do return it to him”.

(Narrated by Muslim)

Thus, in this case qiyas (analogical deduction) had been used for the unclaimed money and lost gold as the same ‘illah since both situations the owners are unable to locate and Islamic pawn broking act as a trustee.

Maqasid Al-Shariah

Pertaining to Maqasid al-Shariah (objective of Shariah), study showed al-rahn (pledge) meet the first priority of dharuriyyat (necessity) namely Hifz al-Din (protection of religion). Through al-rahn (pledge), the facility is fully Shariah compliance and free from riba (interest). Thus, the Maqasid Khassas (Specific Objective) in muamalat (trade) free from riba have been achieved and fulfilled the Maqasid Ammah (General Objective) by providing qardul hassan (benevolent loan) for those who in desperate and emergency getting fast money.

Even though the al-rahn (pledge) can be the best alternative to serve microcredit facility, ujrəh (fee) impose consider to high if compare to personal loan or safe deposit box facility offered by Financial Institutions even though it been secured by collateral in the case of default payment. Thus, the Islamic pawn broking Institutions should not taking advantage as well profit oriented as this will eliminate the spirit of ta’awun (cooperation) that been recommended by Islam especially to release burden and hardship for those in difficulties situation. Study also revealed al-rahn current structure might be against the Shariah by permitting riba or consist of shubhah (doubtful) elements.

Thus, the highest priority of Hifz al-Din (protection of religion) or fundamental maqasid in muamalat (trading) failed to achieve as well as violet maqasid of establishment of Islamic pawn broking namely dealing with interest free monetary policy, economic welfare and social equality to Muslims.

Table 11: Status of Al-Rahn Product

<table>
<thead>
<tr>
<th>Ruling on Al-Rahn Product</th>
<th>Percentage of interviewee</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Haram (Prohibited)</td>
<td>50%</td>
<td>Contract involved (interest) and shubhah (doubtful) elements For maslahah (benefit) of ummah but need to modify structure and method to determine ujrəh (fee)</td>
</tr>
<tr>
<td>Halal (Permissible)</td>
<td>50%</td>
<td></td>
</tr>
</tbody>
</table>

Source: Author’s o

Recommendations

Since Islamic pawn broking have been established more than 20 years in Malaysia, this is the right time for the government to come out with solid act that align and specifically designed for Islamic pawn broking. This is because the current manual guidelines provided by the Islamic pawn broking are not comprehensive as what have been stated in Pawnbrokers Act 1972 as well as well as no standardization in activity and process involved starting from pledging until to the auction take place. Most of
the policy and guideline used by Islamic pawn broking is relatively different which influenced by the Institution or cooperative act as well as the Shariah committee of institutions.

Implementation of Bay al-Sarf (currency exchange contract) in al-rahn (pledge) structure. This structure has been proposed by the International Shariah Research Academy (ISRA) which is very significant to eliminated all the Shariah issues that been criticize by Islamic Jurist.

i) Free from bay al-inah (sale and buy back), bay’ al-wafa and muqada al-aqad
ii) Free from Riba (interest) and Hiyal (legal trick)
iii) Free from combination of qard (loan) and bay’ (sale) contract

Figure 5: Sarf Contract 1

(1) Customer agreed to sells jewellery to Islamic pawn broking on a spot basis.
(2) The Islamic pawn broking pays customer in cash on spot basis to customer
(3) The Islamic pawn broking used principle of a binding unilateral promise (wa’d mulzim min tarf wahid) to sell the same weigh of jewellery in the future at specific time and percentage agreed.

Figure 6: Sarf Contract 2

(1) Bank will sell the gold or pledge item under the binding unilateral promise
(2) Customer will pays on a spot basis in the contract session.

Source: Adapted from Khir, Badri and Hussain (2012)

**Conclusion**

In reality, not all the Shariah resolution able to be implemented by the Islamic pawn broking. Full commitment, participation and consideration from all the parties involve such as shareholder and regulators is needed in order to exalt the dignity of religion. There is not much innovation or research done by Islamic pawn broking institution to come out with new structure as well as to close or minimize the Shariah issues. As the
result, the Islamic pawn broking still operating with old structure even though Islamic pawn broking have been established more than 20 years in Malaysia. At the same time, there is no consensus from the institutions and regulator in implementing new structure even though the research and proposal on new structure has been done by ISRA. Until now, roundtable discussion among the institution, regulator and external observer still not able come out with resolutions. Looking for potential of expending this product to other country such as in Middle East, there will high challenges since no consensus in solving the Shariah issues.

References

AL-Quran.


