The Justification of Shariah, Legal and Operational Improvement in Al-Rahnu Product Framework

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Abstract

The significance of Al-Rahnu (pawnbroking) contract is undeniable. In Malaysia, Al-Rahnu has been widely used for quick financial assistance to those in need, but are not qualified to apply for financing from financial institutions due to nonexistent of collateral. Nevertheless, existing Al-Rahnu products have been criticized for its use of incompatible composite contracts, limited pawned assets, limited repayment period and high ujrah fee. Not only that, Al-Rahnu has also been condemned to contain some prohibited elements. This study is conducted with the aim of exploring ways and possibilities of improving the Al-Rahnu structure by embedding three areas of concern, namely Shariah, Legal and Operational. For such a purpose, the qualitative approach of interviewing professionals of the financial industry was adopted. Data collected from the results of the interviews were recorded and classified into those aspects pertaining to the Shariah, Legal and Operational. The study found that the proposed structure of shariah improvement allows profit generation to be placed in the right position as a trading contract while at the same time maintaining Al-Rahnu as a trust-based security contract, without trying to employ Al-Rahnu for a purpose that contravenes the nature of Al-Rahnu’s contract and its objectiveness. As a result, this structure is ultimately safe from the prohibited elements. The legal consideration suggests the establishment of a Sharī‘ah Department consisting of the Sharī‘ah Risk Management Control, Sharī‘ah Review, Sharī‘ah Research, and Sharī‘ah Audit Function to ensure that their operations achieved a third-party Sharī‘ah perspective so as to avoid a biased sentiment. Lastly, the operational part suggests the current rate of ujrah between 13–16% per annum over the total loans received shall be lessened by 2% or more, or 0.3% for each month. This is because the institution has gained the advantage over the loan margin and the margin of the loan shall increase to 80% or more from the marhūn value since the institution would gain through the ujrah charge.

Keywords: Al-Rahnu, Pawnbroking, Shariah-based Improvement, Ujrah, Marhūn

Introduction

In the current age, undoubtedly, banks play a significant role in seeding and sustaining the economic and financial growth of an economy. Individuals, communities, and organizations are reliant on banks to satisfy their financial needs. This dependency has initiated a variety of contracts, especially the loan contract. This loan contract requires adherence to the bank’s requirements and regulations in the long term. Therefore, various innovative products are designed to ensure that debtors are able to engage in an Islamic way and at the same time, the banks are able to endure their income generation.
As far as the Islamic financial practices are concerned, Al-Rahnu, understood as pawnbroking, is useful and relevant to be considered by the Islamic financial institutions. Since the debt contract is almost impossible to be implemented in the Islamic banking system (as it will lead to an interest), innovative sale contracts that have a commercial value for the bank is the only way to offer loans to the people. The terms like bay’ al-tawarrug, bay’ al-i’nah, bay’ al-murâbahah and many more are used to allow the ‘essence’ of loan contracts to be legalized in the Islamic banking system. Despite the fact that many jurists agreed on such contracts, many others have been 'dissatisfied', as the concept of musharakah and mudarabah – that are highly prioritized - are nearly neglected. The result of using sale contracts is quite successful, and it aids the bank to generate income at ease. The absence of 'win-win situation' between the bank and the public has led to economic instability, as it promotes income inequality in a society. Ironically, this phenomenon seems to be accepted by the masses as 'nature of life', and people tend to do nothing against this discriminating system.

With an effort to explore the potential of Al-Rahnu product, this study would be expecting the possibility of executing the debt contracts, as enjoined by the Qur’ân. However, several challenges may be faced in the course to implement this in banking operations. The questions such as: “whether the scheme can generate a profit to the bank?” or “can profit generation be able to fulfill the shari’ah compliantly?” need serious consideration. These questions are difficult to answer, whether by the scholars or by the operators, as the union of maximizing profits and fulfilling the shari’ah compliance are always a dilemma.

Problem Statement

There are several issues that need to be observed in this research. Beginning with the al-Rahnu product, the practitioners were found to use the incompatible composite contracts in the product. Even though the terms and the concept of Al-Rahnu are well written in the Islamic jurisprudence, there are certain research works and websites that found there are Islamic banks used the inappropriate principles in the product, i.e. by mixing up the terms between financing and loan.

In fact, Shariah Advisory Council (SAC) of Bank Negara Malaysia at its 194th and 195th Meeting resolved that Al-Rahnu product structure offered by Islamic financial institutions (IFIs) through the combination of qard (loan), Al-Rahnu (pledge), wadi’ah (safekeeping) and ujrah (fee) does not fulfill the Shariah requirements in Rahnu Policy Document (BNM, 2019). This probably occurred since the banks noted that the current practice between financing and loan is similar, even though differed in concept. Furthermore, the unnecessary principle of wadi’ah (safeguard) in the Al-Rahnu based-product seems to be a way to generate profit by the bank, since the principle of Al-Rahnu already serves that function, i.e. to detain and to hold.

Some scholars maintained that such practice is considered ‘Hilah’ (plural: Hiyal); a juristic term defines as the use of acumen and ingenuity to avoid difficulty in one’s commitment to Shari’ah rulings, especially in financial and economic matters. Hiyal has been widely exercised in Islamic finance to provide remedies for the fulfilment of financial needs (Khir, Mohamed Fairooz Abdul, 2010. p. 159.) A study shows that an unnecessary inclusion of a contract in a deal is an indicator of the presence of a hilah element as mentioned by Ibn Taymiyyah (Ibn Taymiyyah, 1416 AH, 29:27, Mohamed Fairooz A.K., 2010. p. 159)

“Hiyal, in toto, are of two types: they either include in the subject matter what is not intended, or they include in the contract another contract that is not intended.”

In this case, it appears that the use of hilah also contributes toward confusion over the implementation and concept of financing at the Islamic banks (Guy Cook, 1989)

Another obvious problem with Al-Rahnu is it becomes a good alternative to the existing loan as it has the limitation of the range of receiveable of the pawned asset, where currently, only gold bar and jewellery are accepted. Not many people can afford to buy gold and jewellery as their safe-haven possession. This is in line with the Islamic point of view, where the pawned asset can also be other than these two items. Thus,
other precious metals and valuable assets need to be considered in Al-Rahnu to enhance the product’s structure.

The third issue that needs to be addressed is the duration of the repayment period. To be a good alternative to the financing product, Al-Rahnu would need to consider the loan duration. Unlike the existing practice, the longer duration would make it more competitive to other financing products that offer ten years of duration.

The fourth issue is related to the ujrah fee, which is currently rated at 12.85% a year (if counted in one whole year). It is much higher than the existing financing and loans such as Aslah Personal Financing-I of Bank Rakyat, Personal Financing-I of Bank Islam, which is in the range of 3%-5% for one year up to 3 years of duration. Meanwhile, there is the possibility of linkage between ujrah fees and the value of collateral, as well as its relationship with the number of loans to be given. Is there a connection between ujrah fee in these two contracts? The imposition of fee rates should be independently separated from the loan; otherwise, it can lead to interest (rihā).

Methodology

The study employed the interview method. The interview is an interactive process between the interviewers and respondents. The aim is to obtain valuable data and to exchange ideas and experiences. Therefore, the interview is very important in scientific research to obtain a valid and confirmed data as required by the study. Qualitative research relies heavily on interviews in order to obtain more specific information. Thus, the rationale for selecting this method is closely related to the data acquirement in a clear picture, especially the factual practice from those who are directly involved. This method performed systematically, regularly and academically. The important tasks during the interview are to obtain adequate responses (Trochim, 2006), and to reconfirm the data that the researcher gets from the product concept documents, brochures or websites.

However, the selection of the respondents as interviewees is an important task, whereby the researcher needs authentic data as required. The respondents consist of some selected players in the industry who are eligible to talk precisely on the topic. Basically, there are two groups of respondents that are included in the interview: the shari’ah divisions; and Al-Rahnu department. The shari’ah divisions gave some inputs from the shari’ah compliance's view in terms of the product’s principles. Meanwhile, Al-Rahnu department provided the data in terms of the procedure for the scheme from the perspective of each institution. Hence, the researcher has selected respondents who held the position as the Head of Sharī’ah in the Islamic banks, as it needs to verify data that is related to the Sharī’ah principles of the product.

From the point of operation, the researcher interviewed a person that holds the position as Chief of Operations for Al-Rahnu products that operate in the banks or other cooperative premises in order to get and reconfirm the information that is associated with operating systems and products. In addition, the researcher also reviewed the enforcement aspect in Al-Rahnu’s operation by interviewing some individuals at the policy-making level such as the related directors of department of Bank Negara Malaysia (BNM), especially Islamic Banking and Takaful Department; related in the charged person of the Attorney General's Chamber of Malaysia; as well as the related ministries such as the Ministry of Urban, Well Being, Housing and Local government.

In term of its implementation, the researcher recorded the interview that has been conducted, so that every word is understood and nothing is overlooked. Another objective of recording the interview is to ensure that the researcher comprehends the important contents of the information given so that the information will not be misinterpreted whether in the text or in the context.

Overall, several stages of preparation have been planned as stated below: (Dapzury Valenzuela and Pallavi Shrivastava) (Susan Gustavus Philliber, Mary R. Schwab & G. Sam Slos, 1980)

1. Thematizing

Thematizing is a process of why and what to investigate. In this session, the reason for steering this work will be clarified. It will pinpoint the reasons why this study should be done. The significance and problem statement of
the research will be the main focus during this interview in order to give a proper understanding of the respondent. This understanding can come up with a proper, certain and unswerving answers with the objectives of this work. After that, the essence of the study and a complete description relating to the matter to be explored will be informed. In short, the potential of Al-Rahnu and its capacity to compete with the present financing products would be presented.

2. Designing the study

Research design is considered as a “blueprint” for research; dealing with at least four problems: which questions to study; which data is relevant; what data to collect; and how to analyze the results (Susan Gustavus Philliber, Mary R. Schwab & G. Sam Slos, 1980). In this case, the questions to study are as follows:

i. To investigate the evidence from the Islamic legal point of view, which supports the proposed Al-Rahnu enhanced product in Malaysia.

ii. To investigate various legal factors such as the current banking act, pawnbroking act, and land code that influences the possibilities of adopting the proposed Al-Rahnu enhanced product.

iii. To carry out a thorough investigation into the effects of proposed Al-Rahnu enhanced product to the practitioner.

iv. To suggest the relevant authorities and commercial providers offer a highly beneficial, secured, and new opportunity of accessibility to loan.

The relevant data has been analyzed according to:

i. The relevant Islamic jurisprudence.


iii. The policy of the Malaysia Central Bank and the related Commercial Bank.

iv. The procedure of the implementation of the product.

Shari'ah Improvement

This aspect includes the improvement of the basic structure of the shari'ah product. In this regard, the principle of tawarruq will be adopted by Al-Rahnu institutions. A tawarruq is defined as purchasing an asset with deferred price, either on the basis of musawamah or muraba‘ah, then selling it to a third party to obtain cash (Muhammad Sofiyussalam Mohamad Johari., 2013). Based on this research and analysis that made arguments on both sides, the best option is to change the structure of qard - wad‘ah - rahnu to tawarruq - rahnu, if the amount of financing is more than RM 50,000. The flow of structure is shown based on the following figure:

1. At the first stage, the customer approaches the institution for cash financing. The institution then assesses the customer’s ability to engage in such a contract. This stage is practically critical because most Al-Rahnu institutions do not assess customer’s credit ability in repaying the debt. The absence of a customer’s credit assessment is a great turning point for the success of this suggested structure. Thus, a quick exemption or very minimal assessment is mandatory.
2. The institution buys a commodity from Broker A; normally, this process of buying a commodity is done through Sūq al-Sila’ or Commodity Murābahah House. This trading platform uses commodity such as crude palm oil as the underlying commodity since it has been introduced by Bursa Malaysia in 2009 to facilitate Islamic financial transactions, particularly the application of commodity murābahah which is based on the principle of tawarruq. Usually, this process would include buying and selling transactions in ten minutes, since it is applied through the system in the computer (Khir, Mohamed Fairrooz Abdul, 2010).

3. The institution sells the commodity to the customer at a mark-up price, and the customer pays the price in deferred payment basis, based on six months or above according to the agreed terms and conditions of the contract.

4. The customer's jewelry is pawned to the bank based on Al-Rahnu contract in lieu of a debt, which he/she pays in the deferred time.

5. The customer appoints the institution as his/her agent to sell the commodity to a third party to get cash. This process is also conducted through the mechanism of Sūq al-Sila’ or Commodity Murābahah House. Once again, at this stage, the institution must find a way for the exemption of wakālah fee that is resulted from the appointment of the bank as the customer’s agent. This fee may discourage the customers as the institution is already making a profit from the mark-up price.

6. As the agent, the institution sells the commodity to the third party, who is known as broker B. But this time, the selling price is based on the current market price. This makes the difference in what the customer should pay to the institution.

7. The difference that creates the cash will then be given directly to the customer or credited into the customer's account depending on agreed financing.

This structure suggestively allows the institution to generate a legitimate profit, as it does not involve qard as the underlying contract for profit-generating. In fact, the profit is purely generated from a mark-up sale via tawarruq arrangement that the parties entered into. However, this structure associates the issue of organized tawarruq (tawarruq munazzam), which is controversial in terms of its legitimacy. In principle, the majority of Sharicah scholars approved the permissibility of the classical tawarruq contract. However, they are far from unanimously agreeing with the legality of organized tawarruq (tawarruq munazzam) as practised in contemporary Islamic finance. Those who allow it stipulates specific conditions to avoid prohibited elements such as the three-way ‘inah. The modern scholars who rejected the current practice of organized tawarruq argued that it is a legal trick to circumvent the prohibition of riba. In counting back those arguments, this selected structure shall depend on the following justifications:

I. The unsuitability of Bay Sarf to replace the old structure

Many institutions are reluctant to own the jewellery that has been transferred to an ownership contract due to the cost and operational risk's factors. On the other hand, the composite contract of tawarruq and Al-Rahnu suggested that this work does not involve the transfer of the jewellery's ownership to the institution and this can reduce their risk of market's deficiency for resale. The reselling of the jewellery can be a harder market for the institution to deal with since it has become a used item, and the buyer will perceive it as a cheaper item. This situation occurs when the original seller fails to repurchase the sold jewellery in the first contract of bay sarf, which has taken place earlier. It also reduces the risk of the institution against losses resulting from the gold price fluctuations in the market. Thus, this structure makes the jewellery to be functioned as a security to the commodity's trading activities executed at bursa suq al-sila’ in a tawarruq contract, instead of just being an object of matter.

II. Tawarruq should remain in carrying the real concept of Al-Rahnu

Although there are a variety of products sharing the same principles of shari'ah, or products that shared the same name by using different shari'ah principles, it is hard to compare them with the
Although there are a variety of products sharing the same principles of sharī‘ah, or products that shared the same name by using different sharī‘ah principles, it is hard to compare them with the product of Al-Rahnu itself. The customers always perceive the rahn based product as their source of instant cash. Thus, their jewellery held by the institution cannot be considered as a transfer of ownership, as it would alienate the customers and discourage the policymakers of the institutions (as what structured in bay sarf). It is either that the clients or the institutions do not perceive pawnning as the main contract, but rather as a derivative mechanism to the contract of debt; this perspective is in line with the original ruling of sharī‘ah about Al-Rahnu.

If the pawned jewellery is not deemed as collateral in lieu of a loan given, but a contracted matter in a sale contract as what has proposed in bay al-sarf, then the Al-Rahnu product is pointless as the product’s label carries the element of pawnning. People will get jumbled up if the term ‘pawnning’ only appears as the product’s label, and afterwards, the item’s ownership goes through the legal impact that is affected by the product structure. Therefore, the structure of the product must reflect the actual concept that is supposedly meant for, or else it should be ready for the product rebranding. It will cause transformation on a massive scale for hundreds of the existing Al-Rahnu institutions. Alternatively, the jewellery remains as a security item for the main contract, either the debt or through sale agreement if the structure of tawarruq - that is backed by Al-Rahnu - is executed.

III. The stronger connection of qarḍ and sale in the old structure

The Islamic scholars acknowledge that the structure used today has a link with the prohibition of bay’ wa salaf, as mentioned in the hadith. Even though the connection between the concept of ujarah and qarḍ indirectly links to the product, yet it has a significant dependence upon each other. This happens since the object is served for two different contracts, which vary in nature and its contract objectiveness. Moreover, some institutions have distinguished the rate of ujarah fee for the pawned jewellery; with or without the offer of a loan. For example, Al-Rahnu of Koperasi Perbadanan Melayu Johor (KPMNJ) charges RM 0.15 as ujarah fee for each of RM 100 of marhūn value without a need to borrow cash, while imposing a higher rate of RM 0.70 - 0.75 if a customer needs cash.

This clearly shows a significant relationship between the determining process of ujarah, and the amount of loan in a debt contract that is offered by the institution. Furthermore, a study by Khir showed that there is an unnecessary inclusion of principles in the product of ujarah and wadā‘ ah. He held that the unnecessary inclusion of a contract in the deal is an indicator of the presence of a hilah element (Kuwait 1404-1427H, Ashūr, 1998:251) and for this particular case, the structures that include the principles of ujarah and wadā‘ ah are unnecessary. This occurs since the original concept of Al-Rahnu has already covered the function of ujarah and wadā‘ ah.

IV. An instrument of tawarruq is not prohibited and widely used.

One may argue that tawarruq structure has a problem from the viewpoint of some contemporary fiqh scholars. However, the scholars who disagree about the current practice of an organized tawarruq claimed that it is a legal trick to escape the prohibition of ribā. They took the resolution of Majma‘ Fiqh as a basis of their claim (Hashim, 2014). In response, (Laldin, 2014) insisted that the resolution of Majma’ Fiqh - which refers to the prohibition of the use of tawarruq instrument - is not binding. Furthermore, the contemporary scholars such as Shaykh ‘Abd al-Sattar Abū Ghuddah, Shaykh Nizām Ya’qūbiyy and Dr Mohamed A. Elgari disagreed with the ruling. This resolution was refuted by the Shari‘ah Standard 2010 that permitted such practice.

There are many scholars who allowed such practice, as they claimed that the current structure of tawarruq implemented in the institution is excluded from what the resolution has concluded. They defined that tawarruq munazzam is an arrangement in which the contracting parties have no choice, but to follow only the specified transaction flow from head to toe; for instance, just as the delivery or the sale of goods to the other parties is not allowed. Based on an interview with Ashraf bin Md. Hashim, a Professor and Senior Researcher at
International Shari'ah Research Academy for Islamic Finance (ISRA) on the 14th January 2014 about tawarruq executed in Malaysia’s financial institution, it was discussed that if the buyer at any level has complete freedom in tasaarruf - either to take delivery or sell goods to any party - then it is not included in the “tawarruq munazzam”. The Bursa Suq al-Sila in Malaysia is given this liberty; thus, his viewpoint of such practice is not included in tawarruq munazzam (Ashraf M.H, 2014). Moreover, they also viewed that these instruments are included in the category of makhārij, (AOOIFI, 2010) which is supposed to be temporary (BNM, 2010)

V. A permitted tawarruq structure has fulfilled the specific condition as resolved by AOOIFI Shari’ah Standard.

AOOIFI Shari’ah Standard had permitted such practice; general evidence can be traced in the texts of the Quran and the Sunnah that permit sale transaction. (Mohamad, Shamsiah, 1995.) It has also been confirmed by two resolutions issued by; the Islamic Fiqh Academy of the Muslim World League; the Standing Committee of the Supreme Board of Sharia Scholars of the Kingdom of Saudi Arabia (Fatwa No. 19297); as well as the fatwas of several shari’ah supervisory boards. Therefore, tawarruq is an exit for avoiding ribā rather than a trick for performing it, since it is usually practised by those who do not want to be involved in interest-based borrowing. It has been reported by 'Abd Allāh Ibn Mubārak that Sayyidah ‘Ā’ishah (God bless her) practised it. However, its permissibility depends on the specific condition that must be fulfilled by the transacting parties. Among others are:

i. The prohibition of the composite contract between purchasing the commodity and reselling them, which is justified by the fact that joining them together would impose a commitment on the client to sell the commodity right away. Hence, such immediate transfer of the ownership of the commodity may not enable the client to receive it. This is again the same reason for the prohibition of proxy-related commitment.

ii. The permissibility of resorting to the proxy of the institution when the client, by virtue of law, is unable to sell the commodity directly is meant to safeguard the deal from being nullified by the law.

iii. The ruling that the institution should provide detailed information about the commodity to the client aims at preventing the fictitious transactions and helping the client to obtain the liquidity. Such requirements hold true; whether the subject matters are in the form of a commodity, car, shares, international goods, or local goods. The latter is more suitable for monetization due to the easiness of ensuring their existence and the chance available to the client to actually hold them if he desires.

iv. The ruling that the institution should provide the client with the full description or a sample of the commodity is actual, rather fictitious.

v. Monetization should be subjected to strict controls and restrictions so that institutions fulfil the main objectives underlying their presence and the interest of customers to make dealings with them.

The institutions have to show strict commitments towards using modes of investment and financing such as; the various form of mushāarakah and exchange of goods; usufruct and services that conform the very nature and basic activities of Islamic banking. Hence, the imposition of controls and restrictions on monetization would curb any tendency for expanding the monetization, except in the limited scope defined in the AAOIFI Shari’ah Standard 2010.

In conclusion, this structure has manifest gains over other structures that have been earlier debated. The use of Al-Rahnu in this structure consistently meets the purpose for which the Al-Rahnu contract was constituted by the Shari‘ah, i.e. as an assurance contract. In this structure, profit generation is placed in the right position, which is a trading contract, while Al-Rahnu remains a trust-based security contract. Thus, this structure does not try to employ Al-Rahnu for a purpose that contravenes the nature of Al-Rahnu contract, and its objectiveness. As a result, this structure is ultimately safe from the prohibited elements of bay’ wa salaf or qard jarra manfa‘ah, which regularly arise from the structures such as ījārah (additional exchange contracts), and Al-Rahnu
contract. In addition, there is no conflict of muqata'a al-aqd between wad'ah and Al-Rahnu. This structure significantly enables the bank to generate a legitimate profit, since it does not involve qard as the underlying contract for profit-generating. In fact, the profit is purely generated from a mark-up sale via tawarruq arrangement that the parties enter into.

**Legal Improvement**

Since the product of Al-Rahnu is operated by various types of institutions like banks, cooperative societies, companies, or the subsidiaries under the state government, a special act of Al-Rahnu should be introduced and gazetted in parliament. It aims to facilitate the related authority to regulate all Al-Rahnu institutions under the same roof. It can also develop a set of standards and product quality, which can be maintained and regulated by the provisions of the law.

Although Malaysia Cooperative Societies Commission (MCSC) provided a special rule of Al-Rahnu activities in 2013, yet it is inadequate due to the absence of shari'ah division in regulating and enforcing their rule. This rule does not require the cooperative societies under MCSC to set up their own shari'ah department and does not require the establishment of shari'ah committees that consists of independent experts. Hence, this situation requires a comprehensive framework, in which they are obliged to be enacted under the Al-Rahnu act as what the banking industry has applied through Shari'ah Governance Framework by the Islamic Financial Institutions. Under this framework, the need to establish Shari'ah compliance and research functions within the organisation will depend on the size, complexity, and nature of the business operation at the institutions. The smaller of an institution, the less complex institution may resort to other alternatives or means, e.g. outsourcing, subject to the approval of the top body. (Zulkiflee S., 2013).

In addition, the operators of Al-Rahnu should not be bounded by the Pawnbroker Act 1972, as it contains some clauses, which clearly violates some principle of Shari'ah as stated in the studies that have been conducted before, such as the study by Shamsiah M (1995). Thus, the practice of Al-Rahnu operators who have paid business license to the Ministry of Urban Well Being, Housing and Local Government (formerly known as Housing and Local Government) should be discontinued. This payment is considered useless because the ministry does not have the right to regulate and enforce the operational aspects of Al-Rahnu, especially for shari'ah regulation as there is no such provision that is clearly stated in the act (Wan Imran Farid W.A.L., 2013).

In terms of the banking industry, the study found that the operation of Al-Rahnu is dominated by other acts such as; Development Financial Institutions Act 2002 (DAFIA 2002); Islamic Financial and Services Act 2013 (IFSA 2013); and the Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978. Although this situation is seen positively, it may make certain banks to be selective in binding themselves with a particular act, in order to set in line with organizational concerns. For example, Bank Kerjasama Rakyat (BKR) may interpret their operations in accordance with the Cooperative Societies Act 1992 at a specific situation and later may follow the Bank Rakyat Malaysia Berhad (Special Provisions) Act 1978 or IFSA (2013) on another occasion. This situation has been exploited, just as when BKR assumed itself as a bank, but also as a cooperative society at the same time.

Likewise, a subsidiary under the government state such as Ar-Rahnu MAIDAM did not pay their business license to the Ministry of Urban Well Being, Housing and Local Government, as they claimed that their operations are not bounded by the Pawnbroker Act 1972. However, they are not a cooperative entity under the auspices of MCSC in which they are exempted from paying the license fee to the related ministry (Wan Imran Farid W.A.L., 2013). Thus, as an enhancement, whether cooperative entities, companies, or even banks, their operations should be freed from the Pawnbrokers Act 1972 and therefore, bind themselves to the acts or specific rules that are more relevant.
Through this framework, the act will be introduced and gazetted in the parliament where the related ministries will give authority to regulate al-rahm activities. However, the ministry will only be given duty at the macro level, in which they will receive annual reports and financial statements from the al-rahm institutions. Meanwhile, at the micro-operational level, the detailed tasks and activities will be accountable by al-rahm institutions themselves. At this level, they should establish the Sharī'ah Department that consists of Sharī'ah Risk Management Control; Sharī'ah Review; Sharī'ah Research; and Sharī'ah Audit Function. They must also ensure that their operations achieve the third view party of Sharī'ah perspective, so that a biased sentiment may be avoided. In achieving that purpose, the establishment of the Sharī'ah Committee shall become a statutory requirement under the act.

In line with the existing framework regarding the appointment of Sharī'ah Committee guidelines by BNM, they shall be appointed by the institution upon the recommendations of its Nomination Committee. The number of Sharī'ah Committee members to be appointed must not be less than five, the majority of whom must possess strong knowledge of Sharī'ah, backed by the appropriate qualifications in that area. The institution must ensure that the Sharī'ah Committee members are aware of their fiduciary responsibilities in discharging their duties (BNM, 2010).

Operational (Rate and Margin) Improvement

The determination of ujrah rate in the product shall concern other financial product rates such as personal financing, which is also offered by the Islamic banks. Similarly, the margin rate of the loan that is based on the current marhūn's value must be higher as a part of an attempt to offer a competitive rate. While ar-Rahn's operators are satisfied with the ujrah rate, it does not give advantage to an individual or customers, and this certainly does not bring the products up to the level of becoming a better alternative to the financing products. In this regard, al-rahm products should be able to expand from their old characteristics - exclusive to inclusive. The product must be subscribed by all groups of individuals or society.

The modern society that has its needs and necessities as compared to the past shall significantly boost the growth and expanding role played by the product of ar-rahm. In future, the product should not only be able to spot the lower-income groups, but also a group of people who need instant cash in fulfilling their necessities, regardless of their income. The expansion of the target group of the product should not be seen out of context in ar-Rahn’s philosophy, but it should be viewed from the perspective of magāṣid al-sharī'ah, which enables it to help all types of people including, the entrepreneurs. In fact, the Qur'anic verse shows the inclusiveness of people and does not prescribe a specific group.

Thus, the current rate of ujrah between 13% -16% p.a over the total loans received shall be lessened by 2% or more, or 0.3% for each month; this is because the institution has gained the advantage over the loan margin. This suggested rate is based on the comparison to other financing products, as stated in Table 1 (The comparative rate of selected personal financing products in Malaysia’s Islamic financial institution). Also, the margin of the loan shall increase to 80% or more from the marhūn value, since the institution would gain through the ujrah charge. Currently, the institutions have already gained 30% or more through the loan margin that is based on the average margin of at
least 70% (if the gold price is expected to be stagnant or decrease within the time of contract). Additionally, the urrah charge is held between 13% to 16%, which makes an economic profit of 43% to 46% per year.

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<th>Product</th>
<th>Suggested rate</th>
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<tbody>
<tr>
<td>Ar-rah</td>
<td>0% - 12% + 30% gain from loan margin</td>
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<tr>
<td>Ar-rah</td>
<td>13% - 15% + 25% gain from loan margin</td>
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</tbody>
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The suggested rate is adequate to protect the risk of gold price fluctuation in a six-month period or more, as it has already covered the worst possible scenario. For example, the gold price in 2013, and the average change (%) in 2013 depreciates about 25.7%. Meanwhile, Gold demand fell 1% in 2019 as a huge rise in investment flows into ETFs and similar products were matched by the price-driven slump in consumer demand. However, this scenario rarely occurs if the history of gold prices is to be studied.

Normally, the gold will appreciate over time, and this is proven by the report of World Gold Council dated on February 2015; stating that the gold market ended 2014 on a strong footing, where the fourth quarter demand grew from 930.0t to 987.5t (+6%) (WGC, 2013). Very recently this year of 2020, gold demand inched up to 1,083.8 tonnes (t) in Q1, supported by investment. The global COVID-19 pandemic fuelled safe-haven investment demand for gold, offsetting marked weakness in consumer-focused sectors of the market. Total Q1 demand grew marginally to 1,083.8t (+1% y-o-y). The coronavirus outbreak, which swept the globe during the first quarter, was the single biggest factor influencing gold demand (WGC, 2020).

Conclusion

In conclusion, the proposed al-rahn product structure, which is an enhanced structure of tawarruq and rahn is a feasible and practical composite structure for any al-rahn institutions’ application. Additionally, this new proposed structure is also believed there is a light at the end of the tunnel, for bay’ wa salaf or qard jarra manfa‘ah, which regularly arise from the structures such as ijārah (additional exchange contracts), and al-rahn contract that becomes a debatable issue among many scholars in their previous studies. Undeniably, this proposal is considered to be satisfyingly comprehensive to be noted by all parties involved, especially the practitioners in the industry such as Cooperative Societies, Banks, Companies, Federal or State Agencies. As a start, Yayasan Pembangunan Ekonomi Islam Malaysia (YaPEIM) has already applied this new modified al-rahn starting 7 February 2020 (Berita Harian, 2020, Zainudin, Suharne, 2020). However, the implementation of this product structure is less effective if not accompanied by improvements from other aspects, as already stated in this article.

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