

Architecting Hybrid Contract in *al-Rahn*: A Comparative Study between Malaysia and Indonesia

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Abstract

Nowadays, hybrid contracts are recognized as an adaptive form of contract in the implementation of Islamic business. However, the involvement of hybrid contracts in *al-Rahn* has risen numerous legal controversies in Islamic Sharia. Malaysia and Indonesia have different approaches regarding the use of hybrid contracts in *al-Rahn* scheme. In the light of that, this article aims to lay out the two countries' sides in responding to the issue at hand. This qualitative study relies on secondary data and employs conceptual and comparative approach. It investigates the policies relating to hybrid contract in the implementation of *al-Rahn* both in Malaysia and Indonesia. This study indicates that academics in both countries tend to state that the hybrid contracts in *al-Rahn* are not in accordance with the Sharia. The non-compliance with the Sharia prompted Malaysia to create a new policy, namely by utilising the concept of *Tawaruq*. Meanwhile, Indonesia recently still associates *Ijārah* contracts as part of the implementation of *al-Rahn*.

Keywords: *Al-Rahn*, Contract, Hybrid, Indonesia, Malaysia.

1. Introduction

Islam places a great attention to economic interactions in the form of business and entrepreneurship.¹ This economic interaction shows the social mutualism side of humans where benefit is the fundamental basis.² This relationship proves that humans socially need each other, hence it becomes natural as theorized by Ibn Khaldun as *al-Insān al-Jamā'i*.³ However, the said interaction is not created without rules, especially in particular case when humans connect with others for economic purposes.⁴ This economic realm was then normalized into one of the objectives of Islamic Sharia, namely the preservation of assets (*Hifz*

¹ Veland Ramadani and others, 'The Context of Islamic Entrepreneurship and Business: Concept, Principles and Perspectives', *International Journal of Business and Globalisation*, 15.3 (2015), 244–61 <https://doi.org/10.1504/IJBG.2015.071906>.

² Masudul Alam Choudhury, *Contributions to Islamic Economic Theory: A Study in Social Economics* (United States of America, 1986).

³ Abdurrahmān Ibn Khaldūn, *Muqaddimah Ibn Khaldūn*, ed. by Khalil Syahādah and Suhail Zakkār, 1st edn (Beirut: Dār Fikr, 2001).

⁴ Fauzan Muhammadi, 'The Islamic Contract and Its Basis of *Maṣlaḥa*', in *9TH UUM International Legal Conference*, ed. by Asmar Abdul Rahim and others (Kedah: Future Academy, 2018), pp. 603–12 <https://doi.org/10.15405/epsbs.2018.12.03.60>.

al-Māl)⁵ and regulated in jurisprudence known as *al-Mu'āmalah al-Māliyah*.⁶ Through such arrangement, the economy becomes one of the integral parts that is promoted in the context of economic growth and social welfare.⁷

One of the mutualistic human interactions is the relationship of debts and receivables (*hutang-piutang*) and/or borrowings which in Islamic Sharia falls into the category of *Qard al-Ḥasan*.⁸ This category is a reciprocal transaction between parties where one party lends an asset and the other party will return the said asset in its own kind or with the equal value of the asset.⁹ However, this economic transaction is not free from its own risks. Based on the possibility of risks, Islamic Sharia introduces guarantee contracts as a form of guarantee for, for example in the present case, debts granted by creditors to debtors.¹⁰ One of the guarantee contracts that is applicable in Islamic Sharia is *al-Rahn* contract which is understood as one of the contracts that falls within the category of *accessoir* contracts¹¹ which is also known in Islamic Sharia as *al-'Uqūd al-Tab'iyyah*.¹²

Al-Rahn contracts are mechanized by objects (*marhūn*) which are pledged as a form of documentation (*tauṭīq*) which functions as a guarantor for the debt (*marhūn bih*) given by the creditor (*murtahin*) to the debtor (*rāhin*). This particular guarantee arrangement, as we all widely accepted, is part of another repayment route for the debtor when they cannot settle their debt to the creditor. This flow is certainly the standard of operation that needs to be followed. However, this mechanism has not escaped from the attention of academics regarding various legal issues that arise as a result of the dilemma of profit taking by Islamic Financial Institutions (IFI or in Indonesia known as *Lembaga Keuangan Syariah*, LKS).

One of the issues in regards to the *al-Rahn* contracts is the matter of application of the hybrid contract or *al-'Uqūd al-Murakkabah*. The issue of *al-Rahn* contract has attracted the attention of Islamic academics today. Studies on this matter can be started from the application of the said hybrid contract from the Islamic perspective,¹³ through various sides such as *fiqh*¹⁴

⁵ Abū Ishāq Al-Syātibī, *Al-Muwāfaqāt Fī Uṣūl Al-Syarī'ah*, ed. by Abdullāh Darrāz, 3rd edn (Beirut: Darul Kutub Al-Ilmiyah, 2003).

⁶ Fauzan Muhammadi, Nor Fahimah Mohd. Razif, and Rahimin Affandi Abdul Rahim, 'Al-Rahn in Malaysia and Indonesia: Legal History and Upcoming Trajectory', *Asy-Syir'ah Jurnal Ilmu Syari'ah Dan Hukum*, 55.1 (2021), 153-79 <https://doi.org/10.14421/ajish.2021.55.1.153-179>.

⁷ Hossein Askari and Roshanak Taghavi, 'The Principle Foundations of an Islamic Economy', *BNL Quarterly Review*, LVIII.235 (2005), 187–205 <https://econpapers.repec.org/article/pslbnlaqr/2005_3a33.htm>.

⁸ Suhaimi Ab Rahman, 'Guarantees in Early Islamic Financial System', *Arab Law Quarterly*, 29.3 (2015), 274–84 <https://doi.org/10.1163/15730255-12341304>.

⁹ Adnan Ali Al-Malā, 'Al-Qard Al-Ḥasan Wa Taṭbīqātuhi Al-Mu'āshirah Laday Al-Maṣārif Wal Mu'assasāt Al-Māliyah Al-Islāmiyah', *Majallat Kulliyat Al-Qānūn Al-Kuwaitiyah Al-'Ālamiyah*, 1.15 (2017), 213–47 <https://journal.kilaw.edu.kw/wp-content/uploads/2017/12/Alqard-Alhasan-and-its-contemporary-applications.pdf>.

¹⁰ Suhaimi Ab Rahman, 'Development of the Classical Islamic Guarantee Through Fatwa in Modern Islamic Banking', *International Journal of Business and Society*, 19.3 (2018), 368–84.

¹¹ W T Pegues, 'The Action of Resolution as an Accessory of the Credit in Contracts of Sale', *Louisiana Law Review*, 1.4 (1939), 806.

¹² Abdul Majid Al-Shalahin, Kaludiyani Zanyimawi, and Ismail Al-Buraisyi, 'Huquq Al-Murtahin Wal Tizamatuḥ Baina Fiqh Al-Islami Wal Qanun Al-Madani Al-Urduni', *Al-Majallah Al-Urduniyah Fi Al-Dirasat Al-Islamiyah*, 17.1 (2021), 165–91 <http://repository.aabu.edu.jo/jspui/handle/123456789/2071?mode=full>.

¹³ Fathullah Asni and Jasni Sulong, 'Hybrid Contracts According to Islamic Perspective', *International Journal of Academic Research in Business and Social Sciences*, 8.5 (2018), 453–58 <https://doi.org/10.6007/IJARBS/v8-i5/4118>.

¹⁴ M Qoshid Al Hadi, 'Fiqh Mu'āmalah in Theory and Practice: An Overview of Islamic Economics', *Al Hurriyah : Jurnal Hukum Islam*, 6.2 (2022), 16 <https://doi.org/10.30983/alhurriyah.v6i2.5010>.

and hadith.¹⁵ Based on several perspectives in Islam, hybrid contracts become part of Islamic banking product innovation model which is applied in the financial services provided by IFI.¹⁶ However, this implementation encourages further studies regarding its parameters¹⁷ and scope of application¹⁸ to adhere to. This is due to the fact that *al-'Uqūd al-Murakkabah* serves a slight possibility that it may touch upon the usury-based (*riba'*) economic transactions.¹⁹

One of the sharia financial products that also involves hybrid contracts in its application is *al-Rahn*. Certainly, taking off from the parameters or standards for implementing the said hybrid contract, quite a few Islamic academics have observed the legal problems surrounding this practice in the Sharia guarantee scheme (*al-Rahn*). Studies in this topic have two sides of acceptance in regard to the application of *al-'Uqūd al-Murakkabah* in *al-Rahn*. Some Islamic academics view hybrid contracts as having the potential to give rise to legal problems when included in the *al-Rahn* scheme²⁰, while others view that it is permissible to do so based on the conclusion that it does not lead to usury (*riba'*)²¹ or other conclusions drawn because the said practice so far is inevitable.²² If we are to narrow down the area of study geographically, Malaysia and Indonesia are included in the vortex of these two views. What is then interesting is that Bank Negara Malaysia forbids *al-Rahn* which involves hybrid contracts,²³ meanwhile Indonesia is yet to have a specific decision regarding hybrid practice in *al-Rahn*. So far, there is no study on hybrid contract application, especially within *al-Rahn* scheme that compares Malaysian and Indonesian position and this article attempts to fill the lacuna.

¹⁵ Md. Habibur Rahman and Noor Mohammad Osmani, 'Combination of Contracts in Islamic Finance Practices in the Light of Hadith on Prohibition of "Two Contracts in One Contract" (Bay'atan Fi Bay'ah): A Shari'ah Investigation', in *International Conference and Muktamar on Prophetic Sunnah* (Pahang: UnIPSAS Conference & Proceeding, 2021), pp. 1–19 <https://ejournal.kuipsas.edu.my/index.php/jhepi/article/view/164>; Ade Supriatna, Wandy Zulkarnaen, and Suparjiman Suparjiman, 'Two Buy and Sell in One Buy and Sell: Hadith Perspective', *International Journal of Artificial Intelligence Research*, 6.1.2 (2022) <https://doi.org/https://doi.org/10.29099/ijair.v6i1.374>.

¹⁶ Hasanudin Hasanudin and others, 'Hybrid Contract in Islamic Financial Services', *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah*, 14.1 (2022), 111–28 <https://doi.org/10.15408/aiq.v14i1.25692>; Nun Harrieti, 'The Use of Hybrid Contract in the Innovation of Islamic Banking Product', *Hasanuddin Law Review*, 4.1 (2018), 68–80 <https://doi.org/10.20956/halrev.v4i1.1208>.

¹⁷ Muhammad Iman Sastra Mihajat, 'Hybrid Contract in Islamic Banking and Finance: A Proposed Shariah Principles and Parameters for Product Development', *European Journal of Business and Management*, 7.16 (2015), 89–99 <https://www.iiste.org/Journals/index.php/EJBM/article/view/22935>.

¹⁸ Muhammad Asim Mushtaq, Muhammad Naeem Masood, and Muzzammil Iqbal, 'Revisiting the Scope of Hybrid Contracts in Islamic Finance', *COMSATS Journal of Islamic Finance (CJIF)*, 7.2 (2022), 75–90 <https://doi.org/10.26652/cjif.7202225>.

¹⁹ Hasanudin and others.

²⁰ Khairul Ahmad Anuar and others, 'An Overview of the Shariah Issues of Rahn-Based Financing in Malaysia', *Journal of Muwafaqat*, 2.1 (2019), 15–29 <<http://journal.kuis.edu.my/muwafaqat>>; Siti Hazirah Che Harun and Nor Fahimah Mohd Razif, 'Isu-Isu Syariah Di Dalam Produk Al-Rahn Di Perbankan Islam Di Malaysia', *Journal of Contemporary Islamic Studies*, 7.2 (2021), 67–68 <https://jcis.uitm.edu.my/volume-7-issue-2-2021/>.

²¹ Titin Suprihatin, 'The Analysis of Hibryd Contract Validity in The Fatwa of The National Sharia Board of Indonesian Ulema Council Concerning Rahn', *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah*, 6.1 (2022), 143–59 <https://doi.org/10.29313/amwaluna.v6i1.8944>.

²² Sirajul Arifin, 'Litigasi Hybrid Contract Gadai Pada Lembaga Keuangan Syariah', *ISLAMICA: Jurnal Studi Keislaman*, 12.2 (2018), 405–29 <https://doi.org/10.15642/islamica.2018.12.2.405-429>.

²³ Bank Negara Malaysia, 'Mesyuarat Majlis Penasihat Syariah (MPS) Bank Negara Malaysia Ke-194 Dan Ke-195' (Malaysia: Bank Negara Malaysia, 2019), pp. 1–4 <https://www.bnm.gov.my/documents/20124/1085561/SAC+194th+%26+195th+Meeting+Statement+%28BM%29.pdf>.

2. Method

This study uses qualitative method which relies on secondary data, mainly in the form of legal documents. The data was collected especially through library study. This study employs both conceptual and comparative approaches. It investigates the policies relating to the use of hybrid contract in *al-Rahn* scheme both in Malaysia and Indonesia. The collected data were analysed and arranged in a structured descriptive manner.

3. Discussion and Analysis

3.1. Brief Introduction on Hybrid Contract and Its Correlation to Islamic Mortgage

The issue of hybrid contracts in Islamic Sharia usually refers to three hadiths of the Prophet Muhammad, namely the hadith prohibiting two sales and purchase contracts in one sales and purchase contract (*bai'atain fi bai'atin*)²⁴, hadith that prohibits two contractual agreements in one contractual agreement (*ṣafqatain fi ṣafqatin*),²⁵ and the hadith that prohibits combining sales and purchase contracts with loan contracts (*bai' wa salaf*).²⁶ Through these hadiths, contemporary scholars began to emerge a specific term in Muamalah Fiqh called *al-Uqūd al-Murakkabah*. The meaning of this term is a combination of various kinds of contracts in one particular contract, whether it is a combination of contracts itself or the binding of terms between one contract and another contract, which in turn has implications for fulfilling the rights and obligations in the intended contract.²⁷

The hadiths mentioned above encouraged scholars of various schools of thought to issue legal statements regarding the meaning of such combination of contracts. This legal statement starts from two views regarding the legal origin of contracts. The *Ḍāhirī* school tends to state that the original law of a contract is *al-Ḥaẓr* (prohibition) and *al-Buṭlān* (void). Meanwhile, the *Ḥanafī*, *Mālikī*, *Syāfi'i* and *Ḥanbalī* schools tend to state that the legal principles of a contract are *al-Ibāḥah* (permissible) and *al-Ṣiḥḥah* (lawful).²⁸ Those who prohibit hybrid contracts tend to believe that the combination of contracts created is feared to lead to elements of *gharar* and usury.²⁹ On the other hand, scholars who allow the application of hybrid contracts in principle do not state that it is absolutely permissible, but there are limitations and parameters that need to be taken into account so that the combination of contracts in one contract can be legally

²⁴ Muḥammad bin 'Īsā bin Saurah bin Mūsā bin Al-Ḍaḥḥāk Al-Tirmizī, *Sunan Al-Tirmizī*, ed. by Aḥmad Muḥammad Syākir and Muḥammad Fuād Abdul Al-Bāqī, 2nd edn (Mesir: Al-Halabi, 1975).

²⁵ Abū Bakar Aḥmad bin Amr bin Abdul Khālīq bin Khalād bin 'Ubaidillāh Al-'Itkiy Al-Bazzār, *Musnad Al-Bazzār*, ed. by Maḥfūz Al-Raḥmān Zainullāh, Ādil Ibn Sa'd, and Ṣabdri 'Abdul Khālīq Al-Syāfi'i (Madinah: Maktabah Al-'Ulum wal Hikam, 2009).

²⁶ Abu Bakar Al-Baihaqi, *Al-Sunan Al-Kubra*, ed. by Muhammad Abdul Qadir Atha', 3rd edn (Beirut: Darul Kutub Al-Ilmiah, 2003).

²⁷ Yaḥqoob Ali Saleem Almushaifri, Sedrah Alshareef Mustafa Muhamed, and Akhtarzaite Abd Aziz, 'Al-'Uqūd Al-Māliyah Al-Murakkabah Wa Ḍawābiṭuhā: Dirāsah Fiḥiyyah Taḥlīliyah', *Al-Risalah Journal*, 3.3 (2019), 91–122 <https://journals.iium.edu.my/al-risalah/index.php/al-risalah/article/view/193/120>.

²⁸ Abdullāh bin Muḥammad bin Abdullāh Al-'Imrānī, *Al-'Uqūd Al-Māliyah Al-Murakkabah: Dirāsah Fiḥiyyah Taḥlīliyah Wa Taḥbīqiyah*, 2nd edn (Riyadh: Dar Kunuz Eshybilīya, 2010); Fathullah Asni and Jasni Sulong, 'Syariah Analysis on Hybrid Contracts and Its Applications in Islamic Housing Financing in Malaysia', *The Turkish Online Journal of Design, Art and Communication*, Special Ed (2018), 1457–62 <https://doi.org/10.7456/1080SSE/195>.

²⁹ Abdul Majīd Maḥmūd Al-Ṣalāḥīn and Fathīyyah Muḥammad Aḥmad Ziyādāt, 'Al-'Uqūd Al-Murakkabah Wa Aṣaruhā Fī Ḥimāyat Ra'S Al-Māl', *Majallat Al-'Ulūm Al-Islāmiyah Wa Al-Ḥadārah*, 4.1 (2019), 13–57 <https://www.asjp.cerist.dz/index.php/en/article/182738>.

implemented.³⁰

The application limits on the combination of contracts put together in the present days are indicated in details by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). This can be referred to Standard No. The 25 AAOIFI, *viz*:³¹

1. The contracts included are not contracts that have been expressly forbidden by Sharia, as indicated in the three main hadiths on this issue;
2. The combination of contracts is not an engineering practice of usury;
3. Combining contracts is not a reason for the implementation of usury;
4. Contracts that are combined do not have a main objective that is different or contradictory from one another.

However, the limitations of these standards have not received full attention in the implementation of combination of contracts by Islamic financial institutions. *Al-Rahn* contract, for example, has the potential to combine contracts in one implemented scheme. This potential can be seen from the mechanism or procedure for implementing *al-Rahn* contract between *Rāhin* (customer) and *Murtahin* (financial institution). It is known that the customer submitted a debt request (*Marhūn Bih*) to *Murtahin* by including a guarantee of objects (*Marhūn*). Through this procedure, it can be seen that the pillars of the *al-Rahn* contract are *Rāhin* (customer), *Murtahin* (financial institution), collateral for objects (*Marhūn*), and nominal of the debt (*Marhūn Bih*).³² Based on this flow, the customer ultimately obtains the debt and the collateral is then kept by *Murtahin* with a maintenance fee charged to the customer.³³ The collateralized object will find its way out (sold, auctioned) as part of the repayment process when the customer cannot pay off their debt. The flow can generally be described as follows:

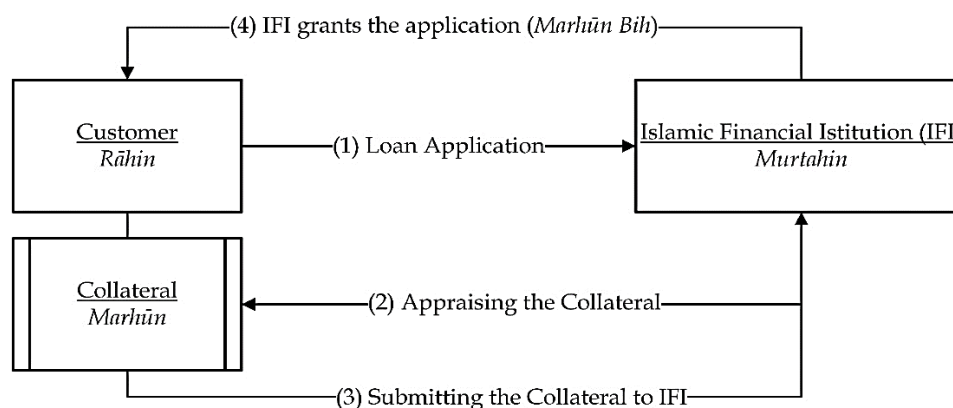


Figure 1. The Mechanism of *Al-Rahn* Contract

³⁰ Mohamed Cherif Benaouali, 'Combination of Contracts and Its Applications in Islamic Banks', *Majallat Al-Dirāsah Al-Islāmiyah*, 10.1 (2022), 45–70 <https://doi.org/https://www.asjp.cerist.dz/index.php/en/article/182738>.

³¹ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), *Shari'ah Standards* (Bahrain: Dar AlMaiman, 2015).

³² Abdurrahman Wahid, Ai Imas Zein, and Anisa Ilmia, 'The Development of Rahn's Thinking From Nash To Qanun', in *Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education, (ICLSSEE)*, ed. by Meida Rachmawati, Faisal Santiago, and Eko Eddy Supriyanto (Jakarta: EAI, 2023), pp. 1–12 <https://doi.org/10.4108/eai.6-5-2023.2333542>; Nor Fadilah bt Bahari and others, 'The Development of Islamic Pawnbroking in Malaysia, Application and Its Challenges', in *The International Conference on Economics and Banking*, ed. by Herry Achmad Buchory and Martha Fani Cahyandito (Bandung: Atlantis Press, 2015), pp. 230–38 <https://doi.org/10.2991/iceb-15.2015.34>.

³³ Muhammad Khaeruddin Hamsin, Abdul Halim, and Rizaldy Anggriawan, 'The Consistency of Sharia Principles Application in Murabaha Contracts During the Covid-19 Pandemic', in *Proceedings of the International Conference on Sustainable Innovation on Humanities, Education, and Social Sciences (ICOSI-HESS 2022)* (Paris: Atlantis Press SARL, 2022), pp. 104–19 https://doi.org/10.2991/978-2-494069-65-7_11.

The process in *al-Rahn* contract above shows how a debt application is followed by collateral as a guarantee of the risk of the debt given.³⁴ It was through this material guarantee that the development of issues related to hybrid contracts in *al-Rahn* mechanism emerged. This issue arose through the handing over of objects from *Rāhin* to *Murtahin* which involved another contract, namely the *ijārah* contract.³⁵ This *ijārah* contract arises based on, at least, the understanding that the customer bears the costs of maintaining the goods handed over as collateral. Meanwhile, *Murtahin* only kept and looked after it at a cost borne by *Rāhin*. This scheme for storing goods and maintaining them then gave birth to an *ijārah* contract in order to meet the costs of storing and maintaining goods. The emergence of the *ijārah* contract which was combined and tied into the *al-Rahn* contract which in fact has a *qard* aspect underlies a legal controversy regarding whether or not the application of the two contracts can take place.³⁶ Especially when compared with the prohibition on several specifications of combined contracts conveyed by the Prophet Muhammad in his hadiths mentioned before. In this context it could be related to the prohibition of *bai' wa salaf* (combining sales and purchase contracts with loan contracts). Additionally, the *ijārah* contract embedded in *al-Rahn* scheme is generating income fee of safekeeping (*ujrah*) and it contradicts the hadith *kullu qard jarra naf'an fahuwa ribā* (any loan contract that obtains/produces benefits, then the benefit is usury). Thus, the mechanism of *al-Rahn* through this procedure has its legal controversy that many of Islamic scholars are trying to find a way out.

3.2. The Hybrid Contract within Islamic Mortgage in Malaysia and Indonesia

Malaysia and Indonesia are two countries that share similarities, both in the sense of historical roots, multi-ethnic, multi-cultural and also religious diversity. Likewise, there are similarities in terms of the majority of the population being Muslim.³⁷ This majority Muslim population has also become a factor in the development of the Islamic economy in these two neighboring countries.³⁸ One report shows that Malaysia was appointed as the leading country in the Islamic Finance Best Performance category, while Indonesia was ranked 10th in the most improved performer category.³⁹ Through these developments and achievements, Malaysia and Indonesia have their own legal policies regarding the implementation or implementation of Sharia economics, following developments in the implementation of Islamic economics in

³⁴ Aang Asari and Muhammad Irkham Firdaus, 'Comparison of Rahn Contract from the Perspective of Islamic Law and Indonesian Guarantee Law', *Journal of Islamic Economics Lariba*, 8.2 (2022), 255–70 <https://doi.org/10.20885/jielariba.vol8.iss2.art1>; Darlin Rizki, Fauzuna Naufal Wijanarko, and Tridjoko Wisnu Murti, 'Rahn Contract Construction as Micro, Small and Medium Enterprises (MSME) Capitalization Solutions in the Halal Industry Sector', *Indonesian Journal of Interdisciplinary Islamic Studies*, 5.3 (2023), 165–82 <https://doi.org/10.20885/ijis.vol.5.iss3.art3>.

³⁵ Muh Shadiqul Fajri AF, Abdul Hamid Habbe, and Abdul Wahab, 'The Potential of Riba in Sharia Gold Pawning', *Dinasti International Journal of Digital Business Management*, 3.1 (2021), 54–64 <https://doi.org/https://doi.org/10.31933/dijdbm.v3i1>.

³⁶ Muhammad Khaeruddin Hamsin, Abdul Halim, Rizaldy Anggriawan, and Hilda Lutfiani, 'Sharia E-Wallet: The Issue of Sharia Compliance and Data Protection', *Al-Manahij: Jurnal Kajian Hukum Islam*, 17.1 (2023), 53–66 <https://doi.org/10.24090/mnh.v17i1.7633>.

³⁷ Patrick Ziegenhain, 'Islam and Nation-Building in Indonesia and Malaysia', *ASIEN: The German Journal on Contemporary Asia*, 146 (2018), 78–95 <https://doi.org/https://doi.org/10.11588/asien.2018.146.14497>.

³⁸ Azlan Amran and others, 'Social Responsibility Disclosure in Islamic Banks: A Comparative Study of Indonesia and Malaysia', *Journal of Financial Reporting and Accounting*, 15.1 (2017), 99–115 <https://doi.org/10.1108/JFRA-01-2015-0016>.

³⁹ Mohammed Ayoub Ledhem and Mohammed Mekidiche, 'Economic Growth and Financial Performance of Islamic Banks: A CAMELS Approach', *Islamic Economic Studies*, 28.1 (2020), 47–62 <https://doi.org/10.1108/IES-05-2020-0016>.

the two countries.⁴⁰ One of the developments in Islamic economics in these two countries is the application of *al-Rahn* which has its own historicity and policy character.⁴¹

The implementation of *al-Rahn* contract, whether in Malaysia or Indonesia, is starting to become the object of criticism in Islamic legal studies.⁴² One of the academic criticisms of *al-Rahn* application problem is the involvement of hybrid contracts within it. Even though these two neighboring countries have the same largest Muslim population, Malaysia and Indonesia have their own contrasting views regarding the hybrid contract in *al-Rahn* contract.

The practice *al-Rahn* contracts in Malaysia as found in numerous academic literatures addresses the application of several mechanisms, namely *al-qard al-hasan* (benevolent loan/interest-free loan), *al-Rahn* as material collateral, *al-wadī'ah* (storage, custody), and *ujrah* (safekeeping fee).⁴³ The combination of these contracts in *al-Rahn* in Malaysia has become a focal subject of critical study, especially in regards to its legal status. This critical study refers to the inclusion of two contract mechanisms, namely *al-wadī'ah* (storage, custody), and *ujrah* (safekeeping fee). Thus, referring to the flow of *al-Rahn* mechanism in Figure 1, the handover of *marhūn* to *murtahin* employs the concept of *al-wadī'ah* (storage, custody). Due to the fact that the said concept is being used, the customer (*rāhin*) will likewise be obliged to pay *ujrah* (safekeeping fee) as a guarantee of the integrity and safety of the goods entrusted/stored in addition to paying the initial debt.⁴⁴

The implementation of these contracts has given rise to issues which then became factors in determining new policies regarding the implementation of *al-Rahn* in Malaysia. These issues are detailed as follows:⁴⁵

1. The issue of entanglement between one contract to another
2. The issue of impermissible combination of contracts
3. The issue of *ujrah* in value that is more than it actually is

The bindingness of the contract to the issues above leads to the process of *al-wadī'ah* and *ujrah* custody being an element of the perfection of *al-Rahn* contract as a whole. With that being said, it can be understood that when the customer does not pay attention to the *ujrah* payment, *al-Rahn* contract becomes imperfect. This is similar as something that is required and is included in the two principles of prohibition, namely *kullu qarḍ jarra naf'an fahuwa ribā* (any loan contract that obtains/produces benefits, then the benefit is usury) and the prohibition of

⁴⁰ Fazlurrahman Syarif, 'Regulatory Framework for Islamic Financial Institutions: Lesson Learnt between Malaysia and Indonesia', *Journal of Halal Product and Research*, 2.2 (2019), 79–85 <https://doi.org/10.20473/jhpr.vol.2-issue.2.79-85>.

⁴¹ Muhammadi, Razif, and Rahim.

⁴² Muhammad Khaeruddin Hamsin, Abdul Halim, and Rizaldy Anggriawan, 'Addressing Cybercrime in the Sharia Digital Wallet Industry: A Legal Perspective in the Indonesian Context', ed. by D. Mutiarin and others, *E3S Web of Conferences*, 440 (2023), 04016 <https://doi.org/10.1051/e3sconf/202344004016>.

⁴³ Shamsiah Mohamad and Safinar Salleh, 'Upah Simpan Barang Dalam Skim Ar-Rahnu: Satu Penilaian Semula', *Jurnal Fiqh*, 5 (2008), 47–65 <https://doi.org/10.22452/fiqh.vol5no1.3>; azizah othman dan atikullah Abdullah, 'Al-Rahnu Development in Malaysia: A Case of Al-Rahnu Institution Under the Terengganu Islamic Religious and Malay Customs Council', *International Journal of Islamic Business*, 4.1 (2019), 54–64 <http://www.ijib.uum.edu.my/index.php/vol-4-issue-2-2019/vol-4-issue-1-54-64>; Luqman Zakariyah and Mohammed Kabiru Musah, 'Examining the Legality of Rahn Contracts in Malaysian Islamic Financial Institutions (Meneliti Kesahihahn Akad Rahn Di Institutusi Kewangan Islam)', *Journal of Islam in Asia*, 15.2 (2018), 363–88 <https://doi.org/10.31436/jia.v15i2.755>.

⁴⁴ Faizal Ahmad Mohd Shater, Mohammad Firdaus Mohammad Hatta, and Mohd Shams Kamis, 'The Attainment of Classical Rulings of Al-Rahn Within the Contemporary Islamic Pawn Broking in Malaysia', *ASEAN Comparative Education Research Journal on Islam and Civilization (ACER-J)*, 1.2 (2017), 33–52.

⁴⁵ Che Harun and Razif.

bai' wa salaf (combination of sales and purchase contracts with debt). This leads to an example of contractual dialogue, "I will give you a debt on the condition that you rent my house". *Ujrah* is a benefit based on the conditions imposed on customers. The issue of combined contracts that arise from the practice of *al-Rahn* above is also related to the basic principles of *al-wadī'ah*. The concept of *al-wadī'ah* tends to have time flexibility, namely that the depositor can and may at any time ask for or take the items entrusted.⁴⁶ Unlike the case with *al-Rahn*, goods guaranteed and handed over to the *murtahin* cannot be requested at any time, but only until the agreed repayment period. This leads to disputes over contractual objectives between one another which should not occur as per the parameters decided in AAOIFI.⁴⁷

Based on the issues that emerged, The Shariah Advisory Council (SAC) of Bank Negara Malaysia (BNM) held its 194th meeting on 25 June 2019 and its 195th meeting on 31 July 2019. The meeting reviewed the implementation structure of *al-Rahn* in Malaysia which consists of several contracts that have been mentioned, namely *al-qard al-ḥasan* (benevolent loan/interest-free loan), *Al-Rahn* as material guarantee, *al-wadī'ah* (storage, custody), and *ujrah* (safekeeping fee). The study by SAC-BNM determined that the intended *al-Rahn* structure was not Sharia-compliant. This decision gave birth to an alternative solution to the implementation of *al-Rahn* in Malaysia, namely by using the *Tawarruq* concept.⁴⁸ Thus, *al-Rahn* contract structure in Malaysia no longer consists of *al-qard al-ḥasan* (interest-free loan), *al-Rahn* as material collateral, *al-wadī'ah* (storage, custody), and *ujrah* (safekeeping fee), but rather, it has shifted towards *al-Rahn* and *Tawarruq*.

AAOIFI defines *Tawarruq* as "...the process of purchasing a commodity for a deferred price determined through *musāwamah* (bargaining) or *murābahah* (mark-up sale), and selling it to a third party for a spot price so as to obtain cash".⁴⁹ Through *Tawarruq*, a customer who needs financing shall come to IFI, then IFI shall buy a commodity and sell it to the customer at the purchase price plus the profit price (principal + profit) in credit scheme (deferred payment). This process has, in principle, transferred ownership of the commodity being transacted: from IFI to the customer. The commodities that are 'owned' by the customer are then sold by the customer to a third party at the current market price (spot price) to obtain financing, while they still bear the credit to IFI.⁵⁰

Based on the above explanation, *Tawarruq* in *al-Rahn* scheme will act as a substitute for *al-qard al-ḥasan* (benevolent loan/interest-free loan), *al-wadī'ah* (storage, custody), and *ujrah* (safekeeping fee). With that, according to MPS-BNM, *al-Rahn* contract scheme in Malaysia only combines two items, namely *Tawarruq* and *al-Rahn* itself. The *ujrah* aspect as part of taking profits that are not permitted in the *al-qard al-ḥasan* scheme which is then replaced by profits obtained from sale and purchase through the *Tawarruq* scheme.

MPS-BNM designs the flow of the new scheme in *al-Rahn* contract with the *Tawarruq*

⁴⁶ Muhammad Khaeruddin Hamsin, Abdul Halim, Rizaldy Anggriawan, and Ahmad Fanani, 'Sharia Compliance on Murabaha Financing in Sharia Rural Banks: A Review of Recent Practices', *Varia Justicia*, 18.3 (2022), 231–47 <https://doi.org/10.31603/variajusticia.v18i3.8376>.

⁴⁷ Che Harun and Razif.

⁴⁸ Nor Razinah Mohd. Zain and Aznan Hasan, 'Ar-Rahnu: Isu Dan Penyelesaian Semasa', *Malaysian Journal of Syariah and Law*, 9.1 (2021), 47–60 <https://doi.org/10.33102/mjsl.vol9no1.239>.

⁴⁹ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), *Shari'ah Standards* (Manama: Dar AlMaiman, 2015).

⁵⁰ Ahmed Mansoor Alkhan and Mohammad Kabir Hassan, 'Tawarruq: Controversial or Acceptable?', *Arab Law Quarterly*, 33.4 (2019), 307–33 <https://doi.org/10.1163/15730255-12334042>.

scheme as follows:⁵¹

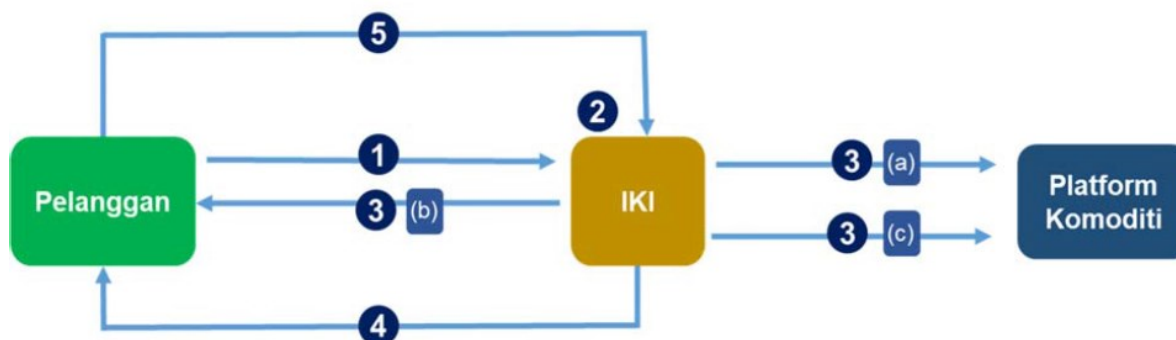


Figure 2. The Structure of *Tawarruq*-Based *al-Rahn* in Malaysia (source: MPS-BNM)

The description is as follows:

1. The Customer (*Pelanggan*) submits an application for *al-Rahn* financing by bringing along their collateral;
2. Islamic Financial Institution (IFI, written in the flow chart as IKI) will then estimate the value of the collateral provided in order to determine the appropriate financing amount;
3. These two processes are then continued with the *Tawarruq* scheme under the following procedure:
 - a. IFI (IKI) purchases a commodity through a commodity trading service provider platform;
 - b. IFI (IKI) then sells the commodity to the customer for the estimated value of the collateral plus profits from selling on credit base. In this situation, the customer legally owns the commodity;
 - c. Because the customer is in need of financing, the customer will then sell the commodity through a service provider platform by appointing IFI (IKI) as the sales agent (representing the customer to sell). Customer shall receive cash financing of the estimated value of the collateral with payment to IFI based on letter b.

In contrast to Malaysia, the hybrid contract application in *al-Rahn* contract in Indonesia remains involving an *ijārah* contract. The application of the *ijārah* scheme in *al-Rahn* contract refers to several fatwas issued by the *National Sharia Council* of the Indonesian Ulema Council (*Dewan Syariah Nasional-Majelis Ulama Indonesia*, DSN-MUI) related to *al-Rahn*. The first is DSN-MUI Fatwa Number 26/DSN-MUI/III/2002 on *Gold Rahn* which states that the cost of storing goods uses an *ijārah* contract. Second, DSN-MUI Fatwa Number 68/DSN-MUI/III/2008 on *Rahn Tasjily*, that storage fees (with proof of ownership/certificate of ownership of goods) are charged based on an *ijārah* contract. Lastly is DSN-MUI Fatwa Number 92/DSN-MUI/IV/2014 on *Financing Accompanied by Rahn*, that *rahn* contracts occur because of *al-qard* (loan), which then, IFI (as *murtahin*) obtains 'income' through maintenance service fees (*mu`nah*) by using an *ijārah* contract. The DSN-MUI fatwas are one of the fatwa categories in terms of involving hybrid contracts among other fatwas which only involve single contracts. In terms of percentage, it can be stated that the DSN-MUI Fatwa that addresses single contract involvement is 54 fatwas (60.68%) and the other category about

⁵¹ Bank Negara Malaysia.

hybrid contract involvement is 35 fatwas (39.32%), one of which is regarding *al-Rahn*.⁵²

Looking at the context of these fatwas, it can be concluded that *al-Rahn* contract in Indonesia thus far does not involve the *al-Wadi'ah* contract as was implemented in Malaysia before the MPS-BNM decision. The mechanism for implementing *al-Rahn* contracts in the context of mortgage products in Indonesia only utilizes several schemes, namely *al-qard al-ḥasan* (benevolent loan/interest-free loan), *al-Rahn* as material collateral, and *ujrah* (safekeeping fee).⁵³

Based on such arrangement, a customer can come to IFI with their mortgaged goods/collateral to submit for a loan request (*al-qard*). Through this application, IFI will assess the estimate of the collateral/mortgage items brought and provide a loan that has been adjusted to the estimated value. Next, the customer will hand over the collateral/mortgage item to IFI for safekeeping. Storage of goods by IFI then results in maintenance and guarding costs which are charged by IFI to customers. This is as shown in Figure 1 but by adding in the third stage the burden of maintenance costs (*mu'nah*) based on the *Ijārah* contract.

However, the involvement of hybrid contracts in the context of *Al-Rahn* in Indonesia, especially those implemented in Pegadaian Syariah (Sharia Mortgage), triggers pros and cons regarding its Sharia legality. Similar to the issue that occurred in Malaysia, the legal status of hybrid contracts in *al-Rahn* is being questioned because of the existence of *ijārah* contracts. This issue raises two views: either it is in compliance to Sharia⁵⁴ or not in compliance with Sharia.⁵⁵ However, the existence of legal issues regarding the existence of *ijārah* contracts in *al-Rahn* scheme has not directly resulted in a response. Thus far, DSN-MUI has not formulated a specific fatwa regarding hybrid contracts in muamalah activities in Indonesia, although fatwas regarding other muamalah contracts feature hybrid mechanisms. Therefore, the implementation structure of combined contract in *al-Rahn* contract still practically involves an *ijārah* contract as part of the income that can be generated by IFI in Indonesia. This will undoubtedly be problematic considering the IFI which accommodates the *ijārah* contract in *al-Rahn* scheme becomes a binding contract as if required. This is clearly visible when this appears in the clause of the agreement signed by the two parties.⁵⁶

4. Conclusion

Malaysia and Indonesia as neighboring countries share the similar character of Islamic economic development, especially in this case in terms of legal guidelines and/or even official regulations for its implementation. *Al-Rahn* contract as part of the contract which is aimed at the financial needs of the community and participates in the development of its implementation structure in the community. The existence of hybrid contracts is indeed a contemporary advancement in the field of Islamic economic law which is practically included

⁵² Burhanuddin Susanto, 'Tingkat Penggunaan Multi Akad Dalam Fatwa Dewan Syari'ah Nasional–Majelis Ulama Indonesia (DSN-MUI)', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 11.1 (2016), 201–18 <https://doi.org/10.19105/al-lhkam.v11i1.862>.

⁵³ Rahmat Ilyas, 'Pawnshops in the Perspective of Islamic Law', *Al-'Adalah*, 16.1 (2019), 1–16 <http://ejournal.radenintan.ac.id/index.php/adalah/article/view/3879>.

⁵⁴ Suprihatin.

⁵⁵ Lutfi Maulana, 'Penerapan Konsep Hybrid Contract Dalam Pembiayaan Rahn Di Pegadaian Syari'ah', *AKSY: Jurnal Ilmu Akuntansi Dan Bisnis Syariah*, 2.1 (2020), 47–66 <https://doi.org/10.15575/aksy.v2i1.7860>; Fajri AF, Habbe, and Wahab.

⁵⁶ Ahmad Syakur, 'Hybrid Contract Dalam Produk Rahn Di Pegadaian Syariah', *KARSA: Jurnal Sosial Dan Budaya Keislaman*, 24.2 (2016), 316–31 <https://doi.org/10.19105/karsa.v24i2.1121>.

in *al-Rahn* scheme. However, fundamental problems arose when the involvement of the hybrid contract in *al-Rahn* contract was allegedly not compliant with Sharia. Seeing these problems, Malaysia has carefully decided that *al-Rahn* contract whose structure involves *al-wadi'ah* and *ujrah* is a hybrid contract that is not in accordance with Sharia. This decision ultimately encouraged Malaysia to create a new mechanism for implementing *al-Rahn* that ceases to apply the said *al-wadi'ah* and *ujrah* but rather the concept of *Tawaruq* as a practical alternative. Meanwhile, Indonesia has not officially confirmed the status of the implementation of *al-Rahn* which remains adhered to *ijarah* contracts, although a good number Islamic legal scholars in Indonesia have stated in their studies that in which such practice is not in accordance with Sharia. In that regard, if the hybrid contract in *al-Rahn* is indeed problematic, this could become a special area for specific studies regarding what kind of alternative implementation of *al-Rahn* can remove the current *al-Rahn* application from legal problems.

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