



# THE SAFE-KEEPING FEE IN AL-RAHN AND *SHARIAH* COMPLIANCE

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## Abstract

*Al-Rahn* is an Islamic pawn broking system introduced to help the needy and further develop the Islamic financial system in Malaysia. This Islamic mortgage system is an alternative system to conventional charge system. The Islamic institutions will charge a safe-keeping fee to pawner good. The safe-keeping fee is calculated on the basis of the pledge as *wadi'ah* as clearly stated in the brochure scheme by the institution concerned that the scheme is based on the principle of *al-qard, al-hassan al-rahn and al-wadi'ah*. The purpose of this paper is to determine whether the safe keeping fee (imposed by the financial institutions offering Islamic pawn broking facility in Malaysia) is following the *Shariah* compliance. A survey has been conducted to Islamic Scholars from various backgrounds using an open ended questions focusing on the safe keeping fee and the operation of the *al-rahn* system. Based on the findings, it was found that the *al-rahn* system is acceptable as truly fulfilled the Islamic *Shariah* in Malaysia by the respondents and by refusing any additional charges or profit taken over and above the safe-keeping fees. This is because any additional charges are considered to be '*riba*' which is prohibited in Islam based on Al-Quran and Sunnah.

**Keywords:** Al-Rahn; Shariah Compliance; Riba; Safe-keeping; Gharar

## 1. Introduction

Islamic mortgage system (introduced in Malaysia since 1992) is an alternative to conventional charge system. In the practice of conventional mortgage, pawn shops are entitled to charge interest of 2 percent per month on loans (Khairul, Nor, and Nurul, 2019). This practice is contrary to the principles of Islamic Muamalat prohibiting all forms of profit-taking on the loan money (Al-Quran, 3:130). In order to clear the charge from the practice of usury (*Riba*), an Islamic pawnshop system has been introduced to help the poor and further develop the Islamic financial system in Malaysia (Zuhaili and Aiman, 2022). The Islamic institutions in Malaysia have imposed safe-keeping fee charge to pawner

by the establishment of 'Muassasah Gadaian Islam Terengganu' (MGIT) in January 1992. Storage rates are calculated on the basis of the pledge as *wadiah* (the commission given by the depositor to the depositary for holding his property in safe-custody; *al-amanah* and done on the *baisi* of charity) as clearly stated in the pamphlet scheme by the institution concerned that the scheme is based on the principle of *al-qard al-hasan* (an interest free loan), *al-rahn* (mortgage or pawning) and *al-wadiah*. The question is, whether the basis of the applicable safe-keeping fee decision is comply with the *Shariah* law or not? Thus, this paper aims to obtain view of Islamic scholars on the safe-keeping fee practiced in *al-rahn*. This can determine the

principles of *riba* and how it will affect *al-rah*n system as it is exemplified by the Prophet in the Sunnah (Al-Quran, 3:130) and as it is described in the al-Quran. Although the concept of *al-rah*n scheme is using the *Shariah* compliance of *al-qardh* and *al-rah*n but the extended time period and amount prescribed is still uncertain.

## 2. Literature Review

### 2.1 Riba and Gharar: Its' Prohibition in the Shariah

*Riba* in Arabic language, literally means an "increment" or "addition" (Al-Quran, 30:39; 23:50; 2:265,276). In Islamic *Fiqh* Muslim jurisprudence based on the Qur'an and Sunnah, *riba* is an unjustified increment in borrowing or lending money, paid in kind or in money above the amount of loan, as a condition imposed by the lender or voluntarily by the borrower (debt usury) (Chapra & Umar 1986). *Riba* in the *Shariah*, technically refers to the "premium" that must be paid by the borrower to the lender along with the principal amount as a condition for the loan or for an extension in its maturity (Chapra & Umar 1986). In Islam, *riba* in any form (and for any reason) is prohibited by Allah SWT. Obviously, it is illegal usury laws as proof range in the word of Allah S.W.T. in the verses of the Quran relating to usury as follows.

Al-Quran prohibits Muslims from taking Riba. Allah S.W.T says: "O ye who believe! Fear Allah, and leave the rest of the *riba* (which has not been collected), if you are believers" (Al-Quran, 2: 278). Allah S.W.T will give punishment for people who devour usury as He says: "And because of their taking usury when they were forbidden it and their devouring people's

wealth by way of vanity. We have prepared for the disbelievers among them a painful punishment" (Al-Quran, 4:161).

Based on Islamic teaching, *Riba* will not bring blessings. Allah S.W.T says: "and a *riba* (optional) that you give Him to increase in the property of men, will have no increase with Allah and whatever you give in charity, do you mean to achieve the pleasure of Allah, then (to do so) that those who multiplies (reward)".

Gharar, on the other hand, and according to Waemustafa (2016), is sometimes interpreted as 'uncertainty' rather than deception. In Islamic law, it is clearly stated that *gharar* should not be present in contractual agreement (Al-Quran 2:219). A Muslim is prohibited to sell something that he/she does not own; Likewise, a person cannot sell an item of an uncertain quality, an unborn calf for instance, since the buyer and the seller do not know exactly what they are trading (Aysh, 2019). Under this prohibition, any contract should be free from uncertainty, risk and speculation. Contracting parties should have knowledge of the counter values intended to be exchanged as a result of their transactions (Uddin, 2016).

### 2.2 Islamic Principles in Al-Rahn

The concept of *al-rah*n is one of the means provided in *Shariah* law to achieve the main objective of *Shariah* in *muamalat*, namely to protect and preserve wealthiness and property of human beings (Noor Lizza & Wan Amirul, 2021). In order to achieve such objective, regulation and principle of *al-rah*n have been tailored in a way that could leading to the achievement of *al-rah*n's own specific objective, which is primarily to protect the wealth of the

creditor by ensuring the liquidation of the debt. This means, failure to comply with this rules and principles might result failure to achieve *al-rahn* objectives. Consequently, it will lead to a non-compliance of the main objective of *Shariah* in *muamalat*. *Al-rahn* is an Islamic pawn broking scheme using the *Shariah* compliance of *al-qard* and *al-rahn* which allow gold jewelry items to be as collateral for cash loans. The bank will keep gold adornments as security and charge stockpiling wages for capacity administrations. A sum of money will be given as a loan to the pawner where the sum conceded will be assessed in view of the present business sector cost of gold or 75% from the pledge or do not exceed RM1,500 (*Muassasah Gadaian Islam Terengganu*, 2008). Pledge period is given for 3 months as an extra. After the expiry of the period, the debtor is obliged to repay the principal amount loaned .

*Al-Rahn* scheme is established on the basis of *Fard Kifaya*, a communal obligation in Muslim legal doctrine (Aishah, 2016). Its main purpose is to eliminate usury/interest and *gharar* found in conventional pawnshops. This scheme provides an alternative to existing loan facilities as well as an option to the borrower to obey the *Shariah* (rules and regulations pawnbroker (amendment), 1982). As a channel-free loans compatible, the scheme incorporates a number of *fiqh* concepts such as *al-qard al-hasan*, *al-rahn* and *al-wadi'ah yad damanah* (guarantee depository). Based on the concept of *al-qard al-hasan*, a scheme operated by a benevolent loan without any interest. As a channel of soft loans, the scheme will help the target group comprising low-income earners and small businesses. In Islam, *al-qard* contract is

introduced as a form of charity to help the poor who suffer from a shortage of funds. Its importance can be understood by the encouragement and appreciation assigned by the Prophet Muhammad. For those who generously lend to others in need as stated in the *Hadith*: "the Prophet said: Those who lend to a Muslim twice so it was like he is giving alms once."(*Ibn Majah*).

In *al-rahn*, the borrower can get the loan easily and he/she has to pay only the principal loan amount in the stipulated time frame (rules and regulations set by the mortgage institution). However, the borrower is required to pledge jewelry to the bank or pawn as collateral to the loan. The pawn will be kept with the bank until all debts settled. If the debt is not paid, then the pledge could be sold to pay. Pawned items will be sold and the proceeds will be used to repay debt and the balance returned to the pawner (as stipulated in the mortgage institution rules and regulations). To achieve these loan guarantees, the banks and pawnshops have restricted admission pledge to items made of gold only. This contract is meeting the recommendations of Malaysia legislation that is favorable to business. On the basis of *al-wadi'ah*, the scheme will impose wage payment deposit box (safe custody fee) on this pledge (Najahudin, 2018).

### 3. Methodology

#### 3.1 Qualitative Approach

Qualitative research aims at the systematic application of a predetermined set of procedures, to collect and analysed evidence, and present findings that resolve issues (P. Aspers, 2019). According to scholars, qualitative research provides complex description of how people experience a given research issue. It

provides overview of: (1) the human side of an issue in terms of behaviours, beliefs, opinions, emotions, and relationships; and (2) intangible factors such as social norms, socioeconomic status, gender roles, ethnicity, and religion. In general, qualitative research is useful in the midst of the early periods of a study when a researcher may be indeterminate of correctly what will be mulled over what to focus on. This gives the researcher chance to let the study unwind all more naturally. Another good position to qualitative approach is that a researcher gains point by point and rich data as sweeping formed portrayals or visual affirmation, for instance, photos.

### 3.2 Unstructured Interview

This study is using unstructured interview. Unstructured interview includes direct collaboration between the researchers and a respondent or group. Tegan (2022) defines unstructured interviews as interviews in which neither the question nor the answer categories are predetermined. They rely on social interaction between the researcher and informant to extract information. Rosales (2017) regarded unstructured interview a natural extension of participant observation. He defined that the unstructured interview relies entirely on the spontaneous generation of questions in the natural flow of interaction, typically an

interview that occurs as part of on-going participant observation fieldwork.

Research questions were developed by using open-ended questions to gain basic knowledge and individual interpretation of *ar-rahn* system. The questions were picked from the previous research done by the Islamic Scholar’s researchers using historical research and philosophy research which are guided by the *hadith* and *sunnah* of the Al-Quran (Shamsiah & Safinar, 2008). The questions can be categorized into interview or focus groups (British Dental Journal, 2008). This method requires a small groups rather than large diffused samples (N.Nayab, 2011).

### 4. Findings and Discussion

Participants were asked to answer the open-ended questions about the *al-rahn* system on the safe-keeping storage fee to determine whether the system implemented is complying with the Islamic *Shariah* or not. All respondents (i.e. Islamic scholars) are from different backgrounds. Out of 15 surveys distributed, 8 feedbacks received from the respondents. Comments that are of wider views are set out in the following questions:

#### 1. Is the principle of *Al-Rahn* truly fulfill the Islamic *Shariah*?

Table 1

No	Respondents	Feedback
1	A	Yes, the principle of <i>al-rahn</i> fulfilled the Islamic <i>Shariah</i>
2	B	Yes, the operation of <i>al-rahn</i> in Malaysia has fully fulfilled the principles of <i>shariah</i> . Those principles are: a. <i>Al-rahn</i> scheme is based on <i>al-qard al-hasan</i> (a free-interest loan) b. The value of the pledge item stated in the receipt for the <i>al-rahn</i> transaction

		c. In <i>al-rahn</i> transaction, the ratio of the loan to the value of the pledged item is mentioned upfront. The pledge can obtain a loan which is amount to 55% to 70% of the pledge value. <i>Al-rahn</i> transaction in Malaysia is free from the prohibited practices of <i>riba</i> , <i>gharar</i> and <i>gambling (maysir)</i>
3	C	Yes
4	D	Yes as long as the institutions who runs <i>al-rahn</i> scheme should impose safe keeping fee to their customers in 2 basis i.e.: (a) Counterclaim for maintenance care pawned items that have been issued (b) Loan services that involve certain costs
5	E	Yes
6	F	Yes, in <i>al-rahn</i> operation, there are combinations of contract such as: a. <i>wadiah</i> (safe-keeping) b. <i>qard</i> (loan) c. <i>rahn</i> (collateral)
7	G	Yes
8	H	Yes

Overall, as shown in Table 1, respondents agreed that the principle of *al-rahn* is in line with the Islamic *Shariah* with 3 respondents B, D, F giving more extensive answers as above. Based on the responses received, it can be said that the level of trust (showed by the respondents towards the *al-rahn* system) is very high as long as it is following the *Shariah*. According to the analysis done by Uzaimah, Safinar and Ahmad (2006), *al-rahn* is one of the means

recognized in *Shariah* that may be used to achieve the objectives of *Shariah* that are related to protection and preservation of wealth. However, this is not consistent with studies conducted by Shamsiah and Safinar, 2008 whereby the study found that the basis did not match the Islamic law.

## 2. Are the goods (in the custody of charge lien holder) deemed *wadiah* that allow the holder to charge a storage fee?

**Table 2**

No	Respondents	Feedback
1	A	Can take storage fee. Not to the pledge
2	B	The goods or the pledged items in the custody of the pledge are not deemed as in the contract of <i>al-wadiah</i> . However, the safe-keeping in the contract of <i>al-rahn</i> is considered as <i>Ijarah</i> (leasing) contract and the operations of <i>al-rahn</i> charge a fee for safe-guarding the pledged item.
3	C	-
4	D	When pawner mortgaging property to the mortgage holder, then it is the right of pledge and pledger to put under its control. The rights were acquired to secure repayment of debts or loans from pawner.

		In other words, when the completion of contract <i>al-rahn</i> , is duty-bound to submit a pledge to the lien holder.
5	E	Storage fee should be calculated based on the last number of months and the late charge up the pledge redeemed
6	F	Yes, the goods that are in custody are deemed <i>wadiah</i> . When there is storage fee, then it is considered as <i>wadiah bil ujrah</i> contract (safe-keeping with fee)
7	G	Yes, can
8	H	Yes

Based on Table 2, it shows that there is no obligation for the holder to charge storage fee as they have the right to acquire secure payment. Respondent B mentioned that the goods that are in the custody of charge lien holder are not deemed as the contract of *al-wadiah*. However, the safe-keeping in the contract of *al-rahn* is considered as an *Ijarah* (leasing) contract. In the leasing contract, when pawner mortgage its property to the mortgage holder, then it is the right of the mortgage holder to secure repayment of debts or loans from the pawner. According to the previous study done by Shamsiah and Safinar (2008), the

custody of charge lien holder are not deemed as the contract of *al-wadiah* and it was also mentioned by the Malaysia Central Bank (Wadi'ah Guideline issued in 2016), whereby in which position the pledge in the hands of the lien holder is not derived from *al-wadiah* contract but it is *al-rahn* itself. Thus, making the principles of *al-wadiah yad damanah* as a basis for allowing the institutions that offer mortgage facilities to Islam in Malaysia is not in accordance with Islamic law.

### 3. Is it appropriate for parties to take profit of the payment?

**Table 3**

No	Respondents	Feedback
1	A	Can charge at the safe-keeping cost only.
2	B	The obligation (of paying costs in safe-keeping) is under the pledger for taking the loan and granting the item to be pledged. The operators of <i>al-rahn</i> can take profit from the fees of safe-keeping, but they are prohibited to take any additional charges.
3	C	It makes sense to take advantage but the question is what percentage of the profits? Maximum advantage should be determined by the body concerned.
4	D	The lien holder can charge the chargor certain claims on the basis of the expenses incurred by him.
5	E	-
6	F	Yes, but problem appear when charge/fee impose is subject to the current gold price i.e. if higher the gold price, charge also will be high.
7	G	Yes, subject to <i>Shariah Law</i> .
8	H	Yes

The respondents commented (as shown in Table 3) that the charge or profit should be at the safe-keeping cost only. One respondent said that it must be complied to the *Shariah* compliance. Respondent B commented that the operators of *al-rahn* can take profit from the fees of safe-keeping, but they are prohibited to take any additional charges. Overall, respondents were very concerned of the profit or advantage that the holder would take on top of the safe-keeping fee which indicates that the cost of care, which must be repaid by the chargor does not exceed the actual costs

incurred by the lien holder. This is due to what is required of pawner is because holders of mortgage debt puts his money for expenses pawned items concerned. Therefore, it is highly improper for mortgage holders to demand more than the expenditure incurred (Monir, 2016).

**4. If the cost of custody fee to be borne by the owner (i.e. pledger) then how to manage these expenses? Should the holder get a down payment or charge all expenses based on the date of redemption?**

**Table 4**

No	Respondents	Feedback
1	A	It depend on the institutions who give the services. There are some institutions requesting the pawner to settled the storage fee when due date. This is to secure the continuation of the storage charge. But some institutions allow the safe-keeping even though it is over due date (normally 6 months).
2	B	The cost of custody or safe-keeping can be paid according to the agreement of the two contracting parties in the contract of <i>al-rahn</i> , whether as a down payment or it is paid on the date of redemption
3	C	If the deposit is required, it is not practical because the owner needs the money to pawn. So it is unlikely the owner can provide the down payment. More reasonable is to claim on the date of redemption.
4	D	Based on the hadith narrated by <i>Salama bin Hammad</i> , explained that the payment may be claimed by the lien holder is just what has been spent. This means that mortgage holders cannot make such payments as a way to earn money.
5	E	-
6	F	-
7	G	No deposit needed. But can be charged monthly or during the redemption.
8	H	No

Six of the respondents said that no deposit should be taken at the early stage of the transaction. It can be concluded that the cost of the custody can be paid according to the agreement made by the pawner and lien

holder as in the contract of *al-rahn*. However, any operation expenses payment claimed must just be the amount that had been spent. This is consistent with the study done by Shamsiah and Safinar (2008) in

which they referred to the hadith narrated by Hammad bin Salamah, explained that the payment may be claimed by the lien holder is just what has been spent. This means that mortgage holders cannot make

such payments as a way to earn money.

**5. Can mortgage holders charge a whim even taking profit of these payments?**

**Table 5**

No	Respondents	Feedback
1	A	No, must be transparent.
2	B	The mortgage holders cannot charge any other additional charges, other than the fees of safe-keeping. Any other additional charges are considered to be a <i>riba</i> as what was mentioned by the Prophet that ‘any loan which attract benefit is <i>riba</i> .
3	C	The government or the central bank must set the maximum fees chargeable by the lien holder.
4	D	Based on the hadith narrated by <i>Salama bin Hammad</i> , explained that the payment may be claimed by the lien holder is just what has been spent. This means that mortgage holders cannot make such payments as a way to earn money
5	E	-
6	F	No
7	G	Cannot, must be fixed as accordance to the <i>Shariah</i> law.
8	H	No

Majority of respondents did not agree that the lien holder to charge any additional charges aside from the safe-keeping fee. Therefore, in determining the costs involved in the care of the pledge, the lien holder can set a reasonable formula and in this case the lien holder may refer to the relevant specialists. The most important thing is that the formula can be the basis for the calculation of the expense involved (Shamsiah & Safinar, 2008). One respondent said that the maximum fee chargeable by the lien holder must be control or set up by the Central Bank. Muneeza, 2019, believed that the formula for determining the safe-keeping of goods need to be referred to a specialist in that field which could be referred to the Central Bank of Malaysia, but if the existing formula implemented by the mortgage

institutions in Malaysia is reasonable and able to determine the expenses safe-keeping cost, thus the formula can be acceptable.

**5. Recommendations and Conclusions**

*Al-rahn* and charge to secure repayment of a debt could be achieved as long as the parties abide by the rules and procedures. As taking *riba* out of the debt is forbidden under *al-rahn*, the legal provisions of charge also indicate that no interest is charged unless the banks opt to impose it. With this position, the creation of charge under home financing would further enhance the achievement of the objectives of *Shariah* in protecting and preserving the wealth and property of mankind from any kind of transgression and their rights and interests from any form of deprivation.



*Al-Rahn* system is based on three main principles of *Shariah* (i.e. *al-qard al-Hasan*, *al-Rahn* and *al-yad wadi'ah damanah*). The first principle refers to loans granted to customers or pawner by the institutions. The second principle refers to the security given by the customer or pawner to the institution. While the third refers to the principle of safe-keeping of goods that are imposed on the customer or pawner. From the foregoing, it is clear that safe-keeping fees imposed on pawner is based on the principle of *al-yad wadi'ah damanah*. This means that mortgage holders keep the pledge to guarantee the safety and the charge storage fee at the rate specified. The safe-keeping (of goods in *al-rahn* scheme) is based on the concept of *wadi'ah yad damanah*. Islam allows charge to be imposed only to serve as a guarantee to refund the debt instead of the permitted channels of legislation for profit. *Akad* known as *al-rahn* is an agreement which can only be done in conjunction with debt covenants (loan or any other form of debt covenants such as buying on credit). In exchange for debt, the debtor is obliged to repay the amount received immediately and the creditor is not allowed to charge more. Any additional charges or benefits charged by the institutions or creditor are considered as *riba* in which is prohibited by the *Shariah* law.

Future research can be done by approaching or getting respondents from the financial institutions who are running the *al-rahn* scheme to investigate on the formulas they used for calculating the safe-keeping fees or any additional charges to the customers or pawners if any.

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