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TAWARRUQ AS AN ALTERNATIVE TO AR-RAHNU STRUCTURE

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INTRODUCTION

In Malaysia, pawnbroking was introduced by Chinese Hakka from China in the 15th century during the Sultanate of Malacca while trading in Malacca (Mohamad Shukri et al. 2006, Abdul Razak 2011, KPKT 2020). The business starts to grow well, and back in 1871, the Pawnbrokers Ordinance 1871 was introduced by the government. The ordinance was later repealed and replaced by the Pawnbrokers Ordinance 1898 (Wan Abdullah, 1999). To create standardization and harmonization with all the states in Malaysia, the Pawnbrokers Act 1972 and Pawnbrokers Regulation 1972 have taken their place. These acts are under the supervision of the Ministry of Housing and Local Government (KPKT). Currently the latest act governing this industry is Financial Service Act (FSA) 2013.

The pawnbroking industry has continuously flourished with ar-rahnu in 1992, which was two decades ago. It was established as an alternative for Muslims other than the conventional pawnbroking. The private and state government have started to introduce ar-rahnu to the society especially to the Muslims even without any specific ruling governing on it. It's now has become a profitable business as more banks and non-bank financial intermediaries start to add ar-rahnu in their business line. The earliest effort was started by Muassasah Gadaian Islam Terengganu by Majlis Agama Islam dan Adat Melayu Terengganu (MAIDAM) (Othman et al, 2013). Besides, Yayasan Pembangunan Ekonomi Islam Malaysia (YaPEIM) also putting their effort to offer ar-rahnu in Malaysia. In addition, Majlis Agama Islam Kelantan has also established Kedai Ar-Rahnu (KAR), a subsidiary company of Permodalan Kelantan Berhad in the same year.

In Malaysia, the ar-rahnu operates based on different conduct and guidelines depends on the institutional category. There are four types of ar-rahnu institutional categories, namely banking institution, non-bank financial intermediaries, cooperative and state link companies. These institutions are governed by different rulings for their ar-rahnu operations. For instance, Ar-Rahnu Bank Islam and Ar-Rahnu Bank Muamalat are under banking institution category and regulated under the Islamic Financial Service Act 2013. Ar-Rahnu Bank Rakyat and Ar-Rahnu Agrobank are non-bank financial intermediaries regulated under the Development Financial Institution Act 2002. Ar-Rahnu YaPEIM Berhad and Pos Ar-Rahnu Berhad are the examples of cooperative institution category under the Societies Commission of Malaysia (SKM), and the last type is state link companies such as Ar-Rahnu Express, Muassasah Gadaian Islam Terengganu (MGIT), regulated by the Ministry of Housing and Local Government (KPKT) (Shah & Yaacob, 2017).

Ar-Rahnu is the best alternative to personal financing, and this micro-financing allows society to acquire immediate fund compliance with the syariah and the law (Azman et al. 2016). In Malaysia, the 77th Muzakarah of the Fatwa Committee of the National Council for Islamic Religious Affairs held on 10-12 April 2007 has accepted ar-rahnu with the following conditions; i) Sources of working capital for Islamic pawnbrokers (ar-rahnu) must be obtained from Islamic banking or sources that are halal and free from riba, gambling and gharar and other activities that are not in accordance with syariah requirements, ii) Holders of ar-rahnu must take out Islamic insurance (takaful) coverage and must not be involved with conventional insurance; iii) If the collateral is lost or stolen or destroyed, etc. the holder of ar-rahnu shall pay compensation for the balance of the value of the collateral at the time it is assessed; iv) ar-rahnu holders are encouraged to appoint an internal syariah advisory panel to monitor ar-rahnu's operations and activities. In addition, ar-rahnu structure combines several syariah contracts, including qard hassan, wadiah yad dhamanah, ujah, and ar-rahnu. All these contracts are structured together to offer the ar-rahnu services to the customers.

However, in 2020 the ruling made in 2017 is now repealed and replaced by the new ruling, even though the ruling has been used for more than 14 years by the industry. Based on the continuous research made by the various scholars, it is found that the combination of few elements in operations of ar-rahnu structure are no longer complying with the Syariah. The SAC 194th meeting on 25 June 2019 has concluded that the former structure of ar-rahnu is prohibited starting on 1 February 2020. Therefore, most of the players are now offering new structure for their ar-rahnu product like ar-sarf and tawarruq. In table 1, we can see most of the ar-rahnu operators are using the tawarruq contract. Therefore, the objectives of this paper is to highlight the issues that makes the former ar-rahnu structure is no longer syariah compliance and why the tawarruq contract is taken as one of the best solutions for ar-rahnu contract.

Table 1
List of ar-rahnu operators with tawarruq structure

No.	Institution	Ar-rahnu structured based on Tawarruq
1.	Bank Islam Malaysia Berhad	✓
2.	Bank Muamalat Malaysia Berhad	✓
3.	Co-opbank Pertama	✓
4.	Agrobank	✓
5.	Bank Kerjasama Rakyat Malaysia Berhad	✓
6.	Ar-Rahnu YaPEIM	✓
7.	Ar-Rahnu POS Malaysia	✓
8.	Ar-Rahnu TEKUN	✓
9.	Ar-Rahnu Koputra	✓
10.	Ar-Rahnu Koop Sahabat	✓
11.	Ar-Rahnu PKB	✓
12.	Ar-Rahnu KPKNK	✓
13.	Koptown Ar-Rahnu	✓
14.	Kobanas Ar-Rahnu	✓
15.	My Ar-Rahnu Koguru	✓
16.	Ar-Rahnu KPDRM	✓
17.	Ar-Rahnu Express	✓

Ar-rahnu is a contract of pledging a security which is binding if possession of the pledge has taken place. It is an arrangement whereby the asset is placed as a collateral for the financing.

There are several contracts used in ar-rahnu structure. First, al wadiah yad dhamanah is a safekeeping contract where the bank guarantees to safe keep the asset in a safe place and will charge the customer for services rendered in keeping the asset (ujrah). Second is qardhul hasan or benevolent loan whereby the customer is only required to pay the amount borrowed and this is done without any of the elements forbidden by the syariah like riba, gharar and maysir (Faizal et al., 2017). Next, is ar-rahnu where the applicant will be required to place asset as collateral for the loan extended by the bank. The modus operandi of ar-rahnu structure as in figure 1.

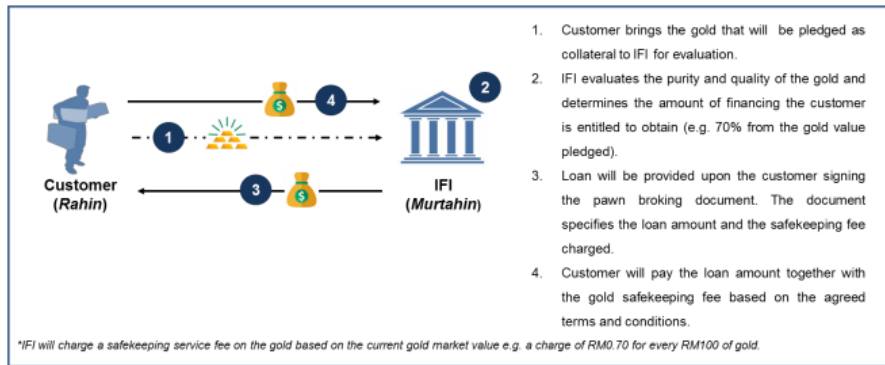


Figure 1: Modus operandi of ar-rahnu structure by NSAC BNM

Tawarruq is a contract of commodity murabahah which means selling commodity at cost plus profit. For this ar-rahnu contract, it is a combination between tawarruq and ar-rahnu. The modus operandi of the contract as in figure 2.

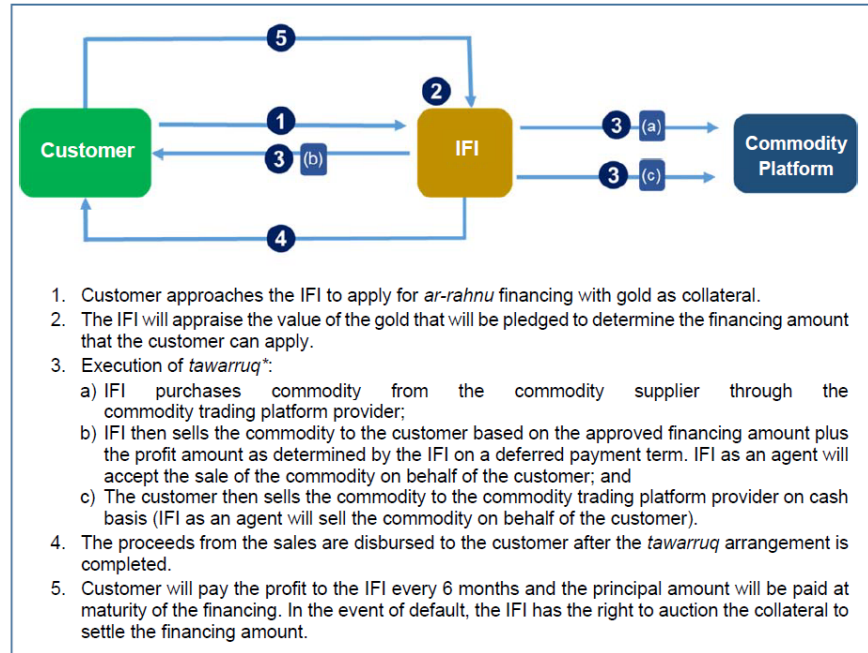


Figure 2: Modus operandi of ar-rahnu structure based on tawarruq by NSAC BNM

TAWARRUQ: THE NEW AR-RAHNU?

Since the inception of ar-rahnu, it has always come with issues and debated by the scholars. There are several syariah issues in the existing ar-rahnu contract highlighted by (Ahmad et al.,

2019). These include conflict in the essence of the combined contract, custodial fees, and benefitting from the marhun. In addition, Ghani and Abdullah (2006) also mentioned on the issue of the combination of contract that makes it not syariah-compliance. Bahari et al. (2015) also found some syariah issues on existing ar-rahnu structure related to pawned item, amount of financing and safe keeping charge. Nevertheless, sale contract with loan, qard jar mafaah, combining ar-rahnu and wadiah on the same subject matter, guarantee in a wadiah contract and bay wafa are among issues identified by Abdul Khir et al. (2013). Therefore, the main issue in this structure is related to the combined contract. The SAC 194th meeting on 25 June 2019 ruled that current ar-rahnu products offered based on a combination of qard (loan), rahn (collateral), wadiah (savings) and ujah (savings) contracts did not meet syariah requirements.

According to NSAC BNM, this combination issue is related to two syariah concerns namely qard jarra naf'an and bai' wa salaf. Qard jarra naf'an exists in ar-rahnu when the customer must pay for safekeeping fee when they pledge the jewellery as a condition of the contract. Here, ar-rahnu is interest free loan, but it has a condition to pay for the safekeeping fees. In addition, there are some ar-rahnu operators that provide two kinds of safekeeping fee, one for keeping the gold only, which charges lesser on safekeeping fees and the other one with higher charge when the depositor borrows money by pledging the gold. Therefore, safekeeping fee that relates to the loan gives rise to qard jarra naf'an. This element is prohibited in syariah as it is a loan that gives benefit to the lender. Also, bai' wa salaf rises when the operators combined the pledge and loan contract together in ar-rahnu structure for the profit and this is against the objectives. The real problem arises when the combination of the contract comes with a stipulating condition which it becomes a compulsory borrowing with payment. Hence, it comes with an element of profit, and it leads to the essence of usury. One of hadith Rasullullah SAW highlighted on bai' wa salaf which forbids loans combined with buying and selling. For example, Ani lent Minah RM2000 with no interest, but Ani required that Minah must buy a watch from her for RM200 in instalments. This was forbidden by the Prophet SAW because it leads to riba. Both activities are not wrong, but it should be separated and not to become the condition of the contract. If Ani says, "you can borrow, but you have to buy our product for RM200", then this is prohibited.

However, due to the new resolution made by NSAC BNM regarding syariah non-compliance of ar-rahnu structure based on the safekeeping method, most of operators have shifted and taken initiatives on ar-rahnu based on tawarruq to ensure they are compliance with syariah and offering legit Islamic product to customers especially to the Muslims. Tawarruq is basically an arrangement of several sales contract to obtain cash. The details modus operandi is shown in figure 2. Tawarruq contract is when one party buys commodity by instalments from another party at a higher price, then sell cash to a third party at a lower price. Based on the NSAC ruling, they have come into consensus that profit generated from the tawarruq sales is in line with syariah. In addition, combination contract of ar-rahnu and tawarruq is not associated with qard jarra naf'an and bai' wa salaf. Ar-rahnu contract in this structure is permissible as well because it will safeguard the interest of operators in the event of default.

CONCLUSION

The constant research and efforts made by the scholars, researchers and academicians allows betterment of Islamic banking product and services. The proposed modus operandi by NSAC BNM is intended to replace the existing ar-rahnu structure used by the ar-rahnu operators. The main issues on the existing ar-rahnu structure is the combination of the contract where it is having the element of qard jarra naf'an and bai' wa salaf. The new ar-rahnu structure based on tawarruq has eliminated these elements and apparently this is a structure that the operators need to adopt. The improvement in ar-rahnu structure based on tawarruq will enhance the product in Islamic banking system.

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