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وَتَشْرِيفَتِي إِسْلَامًا أَنْبَارًا يُجَسِّبًا مُلَدِّمِيْنَا

THE LAW RELATING TO *AL RAHN* IN ISLAM:
A COMPARATIVE STUDY OF THE OPERATIONAL OF *AL RAHN*
IN TERENGGANU, KELANTAN AND BANK RAKYAT.

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ABSTRACT

This study aims at making a comparison of the three different operations of *al rahn* now in operation in Malaysia, namely, *Muassasah Gadaian Islam Terengganu*, *Kedai al Rahn Kelantan* and *Skim al Rahn Bank Rakyat*. It also examines the question whether *al rahn* is totally in line with Islamic principles and mode of operation. The study examines the administration, legal principles, conditions and regulations prescribed by the three pawnbroking institutions.

It is found that though conceptually all the three institutions follow Islamic principles of *al rahn*, yet there appears to be some shortcomings at the operational level. However, notwithstanding this drawback, it cannot be denied that all these institutions are presenting a role model for the Islamic pawning system in Malaysia, and elsewhere in the world as an alternative to the conventional pawning system.

SUMMARY

This study contains five chapters and is preceded with an Introduction. The Introductory part contains a general discussion, explaining the background of the study, its objective, scope and methodology.

Chapter One discusses the definition of *al rahn*, the *Shariah* basis of *al rahn*, its essentials and conditions, rules relating to pledged items (*al marhun bih*) and the pledgee (*al murtahin*). All these matters are important in making a clear picture of the concept of *al rahn* in Islam.

Chapter Two deals with history of pawning system in Malaysia. It covers three things: historical development of pawnbroking system in Malaysia, advent of pawnbroking system in Malaysia and history of pawnbroking legislation in Malaysia.

Chapter Three, focuses on the Pawnbrokers Act 1972, which governs the pawning system in Malaysia. The discussion firstly covers important provisions of the Act, its weaknesses, both in content and implementation, and an examination of the Act from the Islamic point of view.

Chapter Four deals with the operation of modern system of *al rahn* which was introduced in 1992. The discussion covers the operation of *Muassasah Gadaian Islam Terengganu*, *Kedai al Rahn* in Kelantan and *Skim al Rahn* in Bank Rakyat.

Chapter Five is the concluding chapter which compares the operation of *al rahn* by the three institutions of *al rahn* in Malaysia and ventures to suggest some measures for improving their working so as to achieve and fulfill the goal of laying down an Islamic pawnbroking system which may be better and more equitable than the conventional system based on greed, exploitation and legal technicalities.

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ABBREVIATIONS.

Art.	=	Article.
<i>et.al</i>	=	And others.
<i>Ibid.</i>	=	Same reference.
<i>Id.</i>	=	Same reference with different page.
JMBRAS	=	Journal of Malayan Branch of the Royal Asiatic Society.
<i>loc.cit.</i>	=	Previously cited at same page.
MAJLIS	=	Majlis Agama Islam dan Adat Istiadat Melayu Terengganu.
MCLJ	=	Malaysian Comparative Law Journal.
MGIT	=	Muassasah Gadaian Islam Terengganu.
<i>Muassasah</i>	=	Muassasah Gadaian Islam Terengganu.
no.	=	Number.
n.d	=	No date.
<i>op.cit</i>	=	Previously cited.
PKB	=	<i>Permodalan Kelantan Berhad.</i>
pt.	=	Part.
RM	=	Ringgit Malaysia.
Rev.	=	Review.
s.a.w	=	Sallallah 'alaihi wasallam.

S.E.D.C. = State Economic Development Corporation.
s.w.t = Subhanahu wa Ta'ala
vol. = volume.
YAPEIM = Yayasan Pembangunan Ekonomi Islam
Malaysia.

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Pawnbrokers Enactment of Johore no. 36 of 1917.

Pawnbrokers Enactment of Kedah no. 71.

Pawnbrokers Enactment of Perlis no. 5 of 1916.

Pawnbrokers Enactment of Terengganu no. 42 of 1937.

Pawnbrokers Farm Enactment of Kelantan no. 8 1910.

Pawnbrokers Ordinance of Sabah Cap. 94.

Pawnbrokers Ordinance of Sarawak Ordinance Cap. 115.

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Introduction

INTRODUCTION

Background of Study

During recent years Muslims all over the world, particularly in Malaysia, showed their concern to practice Islam in all aspects of their life, governing economic activities, social and political functioning and legal regulation of these spheres from the perspective of *Shari`ah*.

The establishment of Islamic Bank, Islamic insurance through *Takaful*, the scheme of banking without interest (*Skim Perbankan Tanpa Faedah*) and the Islamic system of *al rahn* are examples of regulating economic activities on Islamic lines by the Muslims in Malaysia.

This study attempts to examine thoroughly the establishment of *al rahn* and its operational aspects. The objective of *al rahn* is to help person who are in need of money in urgent cases, though they may not be poor. There may be situations, where nobody is willing to help, or in order to preserve his sense of

dignity and honour, the person may be hesitant to approach a money-lender, or the article to be pawned does not attract the attention of the pāwnbroker, or the pawnbroker may be offering too low an amount on the security of the article pawned. There may be many other such situations where Islamic institution of *al rahn* may be useful and serve to maintain dignity of the person pawning an article, while giving him best money for the value of his article and security and safety.

This study deals with all the basic concepts of *al rahn* in terms of definition, its legality and general conditions. It also compares the operation of *al rahn* as it is implemented through *Muassasah Gadaian Islam Terengganu*, *Kedai al Rahn Kelantan* and *Skim al Rahn* in Bank Rakyat.

Objective of the Study

This study aims to achieve the following objectives:

- i) to examine *al rahn* as implemented in Malaysia and comparing it with *al rahn* in Islam.
- ii) to compare the operation of the three institutions of *al rahn* in Malaysia as mentioned above.

iii) to propose suggestions for future development of the operation of *al rahn*, particularly in the context of these institutions in Malaysia.

Scope of Study

This study aims to make a comparison of the operation of *al rahn* implemented in the three institutions of *al rahn* in Malaysia. It also attempts to examine the relation between their operation and the principle of *al rahn* in Islam.

The three institutions are chosen because they are the pioneer institutions which introduced this financial service to the public in Malaysia. There are some differences between them which deserve to be noted.

Methodology of Study

Whatever methods thought suitable and necessary in the circumstances have been followed in making this study.

Sources used for the purpose of this study have been obtained from both library research and field studies.

The first part of this study which involves the theoretical aspects of *al rahn* in Islam¹ was obtained from various libraries such as Library of International Islamic University, Law Library of University of Malaya, Library of Tun Seri Lanang of Universiti Kebangsaan Malaysia, Library of Akademi Islam, Universiti Malaya, Nilam Puri and Islamic Public Library of Pusat Islam. Material was gathered from textbooks, articles, periodicals and journals which directly or indirectly related to the subject.

As regards to field research concerning practical aspect of *al rahn* in Malaysia, interviews and discussions were personally conducted with officers of *Permodalan Kelantan Berhad* and *Bank Rakyat*.

Chapter

One

CHAPTER ONE

AL RAHN IN ISLAMIC LAW

1.1. INTRODUCTION

This chapter discusses the definition of *al rahn*, the *Shari'ah* basis of *al rahn*, its pillars and its conditions, and also about the pledged things (*al marhun bih*) and the pledgee (*al murtahin*). All these matters are important in making a clear picture of the concept of *al rahn* in Islamic law.

1.2. DEFINITION

Al rahn, translated into English means *pledge*, which literally means thing given to a person as security for fulfilment of a contract; payment of debt; etc.; thing put in pawn.¹ According to Hornby, pawn

1. George Ostler, *The Little Oxford Dictionary of Current English*, under "pledge" (1984).

means something left with somebody to be kept by him until the giver has done something which he is under obligation to do; article left with a pawn broker.¹

In Arabic, Ibn Manzur in his *Lisan al 'Arab* states that *al rahn* can be defined as fixed and permanent (*al thubut wa al dawam*); it also means to hold out (*al habs*).² The same meaning of *al rahn* can be found in *Taj al 'Arus*.³

Both definitions have been accepted by the majority of jurists.⁴ There are some jurists who accept only the first meaning⁵ and others who accept the second

1. A S Hornby, *Oxford Advanced Learner's Dictionary of Current English*, under "pledge" (1984).

2. Ibn Manzur, *Lisan al 'Arab*, vol.3, under "RAHN" (n.d).

3. al Zubaidi, *Taj al 'Arus* vol.9, under "RAHN", (1985).

4. Wahbah al Zuhaili, *al Fiqh al Islami wa Adillatuh*, vol.5, 180 (1985), see also al Bahuti, *Kashshaf al Qina' 'an Matn al Iqna'*, vol.3, 320 (n.d), Ibn Qudamah, *al Mughni*, vol.4, 361 (1981).

5. al Bajuri, *Hashiyah al Bajuri 'Ala Ibn Qasim al Ghazzi*, vol.1, 359 (n.d), see also al Sharbini al Khatib, *al Iqna' fi Halli Alfaz Abi Shuja'*, vol.2, 23 (n.d).

meaning only¹.

On the other hand, Wahbah Zuhaili opines that the first and second meaning are to compliment one another. The word *al habs* contains within itself the meaning of *al thubut* and *al dawam*.²

According to Abdullah Alwi Hassan³, *al rahn* literally means readiness or immutability and durability. It also implies that a thing is inseparable from or tied up with its acquisition earnings and deeds; it is mentioned in the al Qur'an: "Every soul will be (held) in pledge for its deed."⁴

According to the jurists of Shafi'i, *al rahn* is defined as a giving of an object (*'ain*) as security for a loan, whereby the satisfaction of the loan is claimable from the security upon the failure of usual repayment. Thus the Shafi'is do not recognise the giving of security in the form of usufruct or *manfa'ah*

1. al Ghunaimi, *al Labab fi al Sharh al Kitab*, vol.1, 54 (1985).

2. Wahbah al Zuhaili, *op.cit.*, at 180.

3. Abdullah Alwi Hassan, *Sales and Contracts in Early Islamic Commercial Law*, 146 (1986).

4. Al Qur'an, 73:38.

because it is not an object.¹

The Malikis define *al Rahn* as a propriety matters taken from its owner as a security for an executable loan. In other words, it is an arrangement to take something from a property, whether in the form of object (*'ain*) such as real property, animals and goods or usufruct, provided that the usufruct may be limited by the time or work.

The usufruct must also be capable of qualification so as to deduct it from the pending loans. The Malikis do not dictate that there must be actual transfer of the pledged object since according to them the pledge contract is valid and enforceable by mere pronouncement of the *sighah* or offer and acceptance.²

According to the Hanafis' jurists *al rahn* is to make a property a security in respect of a right of claim, the payment in full of which from that property

1. al Sharbini al Khatib, *Mughni al Muhtaj ila Ma'rifah Ma'ani Alfaz al Minhaj*, vol.2, 121 (1958).

2. al Dardir, *al Sharh al Saghir*, vol.3, 303-25 (1989).