

Al-Rahn in Malaysia and Indonesia: Legal History and Upcoming Trajectory

Fauzan Muhammadi, Nor Fahimah Mohd Razif, and
Rahimin Affandi bin Abdul Rahim

Akademi Pengajian Islam Universiti Malaya

Email: fauzan.m@siswa.um.edu.my

Abstract: This article examines the legal history of the application of *Al-Rahn* in two countries: Malaysia and Indonesia. Malaysia and Indonesia have similar roots in the implementation of Islamic law during the emergence of Islamic kingdoms in the *Nusantara*. However, these two countries developed different legal systems after colonialism: Britain colonized Malaysia and the Netherlands colonized Indonesia. These two phases, the Islamic kingdoms and the colonization of two European nations (Britain and the Netherlands), also influenced the historical development of the application of *Al-Rahn* to date. This study was conducted normatively with a comparative approach to legal history. This study's qualitatively processed data are secondary data in statutory documents, books, and journal articles related to *Al-Rahn*. Comparatively, it was found that *Al-Rahn* was legally applied in these two countries during the development of the Islamic kingdoms, but then receded and even sank during colonialization. The influence of European law, whether Common Law or Civil Law, was so deeply rooted that it took a while to reach the stage where *Al-Rahn* was set into motion again. However, the practice of *Al-Rahn*, both in Malaysia and Indonesia, is yet to be accommodated under a single legal basis, rather, it is scattered in several different laws and regulations.

Keywords: *Al-Rahn; legal history; Malaysia and Indonesia*

Abstrak: Artikel ini mengkaji sejarah hukum penerapan *Al-Rahn* di dua negara, yaitu Malaysia dan Indonesia. Malaysia dan Indonesia memiliki akar penerapan hukum Islam yang sama pada masa bersemunya kerajaan-kerajaan Islam di wilayah *Nusantara*. Namun demikian, kedua negara ini memiliki corak sistem hukum yang berbeda pasca kolonialisasi; Inggris menjajah Malaysia dan Belanda menjajah Indonesia. Dua fase tersebut, kerajaan Islam dan kolonialisasi dua Bangsa Eropa (Inggris dan Belanda), turut serta mempengaruhi perkembangan sejarah penerapan *Al-Rahn* sampai saat ini. Kajian ini dilakukan secara normatif dengan pendekatan komparasi sejarah hukum. Data yang diolah secara kualitatif dalam penelitian ini adalah data-data sekunder berupa dokumen perundang-undangan, buku, dan artikel jurnal berkaitan dengan *Al-Rahn*. Secara komparatif ditemukan

bahwa *Al-Rahn* secara legal diterapkan di dua negara ini pada masa kerajaan Islam berkembang, namun kemudian surut dan bahkan tenggelam semasa kolonialisasi datang menjajah dua negara tetangga ini. Pengaruh hukum Eropa, baik *Common Law* atau *English Law*, sangat kuat sehingga membutuhkan waktu lama sampai tahap di mana *Al-Rahn* dipraktikkan kembali. Walaupun demikian, praktik *Al-Rahn*, baik Malaysia dan Indonesia, masih belum memiliki gantungan hukum yang tunggal, namun masih terpecah-pecah di beberapa perundangan dan peraturan.

Kata kunci: *Al-Rahn; sejarah hukum; Malaysia and Indonesia*

Introduction

For a long time, humans have developed economic interaction with one another. The inherent social character encourages humans to fulfill their life needs. This has been the basis for Ibn Khaldun's sociological observation in which the interaction of one individual with another is a humane form known as *al-Insān al-Jamā'i* (humans who are social/together/need each other).¹ This social interaction encourages reciprocal relationships that benefit both parties. This social interaction is an instinct that exists deep within humans, also referred to as a spontaneous order.²

Islam facilitates this social interaction within the *ummah*. It is through the *ummah* that reciprocal relationships can operate systemically and fairly. Through this interaction, there is also a commitment to act positively and to deny negative things. Allah in QS. Ali Imran: 104 has established so with a pattern of invitations, orders, and prevention so that from there, legal regulations are built that regulate interactions with one another.³

Economic activity is one of the social interactions regulated by Islamic Sharia in the *mu'amalah māliyah* space. This arrangement is also intended to fulfill one of the objectives of *maqāshid al-syari'ah*, namely

¹ Ibnu Khaldun, *Muqaddimah Ibn Khaldun* (Beirut: Dar Al-Fikr, 2001).

² Albert Loan, "Institutional Bases of the Spontaneous Order: Surety and Assurance," *Humane Studies Review* 7, no. 1 (1991), p. 1.

³ Fauzan Muhammadi, "The Islamic Contract and Its Basis of *Maṣlaḥa*" (ILC 2017 - 9th UUM International Legal Conference, The European Proceedings of Social & Behavioural Sciences, 2018), p. 2, <https://doi.org/10.15405/epsbs.2018.12.03.60>.

hifz al-māl (guarding property) that opens the door to *maṣlahat* (benefit).⁴ This economic interaction then gives rise to several characteristics of contracts such as *qard al-ḥasan* (loans based on the principle of goodness), *musyarakah*, and *muḍārabah*.⁵ Although Islam introduced the term *qard al-ḥasan*, an example of which is debt, it is not free from economic risk, especially when intermediary institutions are developing (financial institutions such as banks or pawnshops). Therefore, Islam gave rise to another contract that guarantees a given loan.⁶ One of the guarantee contracts in Islamic law is the *Al-Rahn* contract as an *accessoir* contract. The nature of this *accessoir* is intended as an additional agreement that follows the main contract as a guarantee.⁷

There are numerous treasures of Islamic literature relating to *Al-Rahn*. This refers to the various classical *fiqh* studies in each Islamic school discussing the *Al-Rahn* contract, or the interpretation literacy which defines the verses related to the *Al-Rahn* contract. Meanwhile, in terms of *hadith*, two valid references after the Holy Quran, namely Bukhari and Muslim, also developed an inventory of dozens of *hadiths*

⁴ Muḥammad ibn Ishāq Al-Shāṭibī, *Al-Muwāfaqāt Fi Uṣūl Al-Sharī'ah*, vol. 2 (Dār ibn 'Affān, 1997), pp. 17-20.

⁵ Suhaimi Ab Rahman, "Guarantees in Early Islamic Financial System," *Arab Law Quarterly* 29, no. 3 (2015), pp. 275–278, <https://doi.org/10.1163/15730255-12341304>.

⁶ Suhaimi Ab Rahman, "Development of The Classical Islamic Guarantee Through Fatwa In Modern Islamic Banking," *International Journal of Business and Society* 19, no. 3 (2018), p. 371.

⁷ Suharnoko, "Legal Issues on Pledge Share Agreement," *Indonesia Law Review* 1, no. 1 (2011), p. 1, <https://doi.org/10.15742/ilrev.v1n1.94>; Noor Saptanti, Adi Sulistiyo, and Burhanudin Harahap, "Debt Guarantee Charging Based on the Justice Principal," *Journal of Advances in Social Science and Humanities* 7, no. 4 (2021), p. 1463, <https://doi.org/10.15520/jassh.v7i4.593>; *Accessoir* contract is a contract related to the rule which reads *accessorius sequitur principalem* or an accessory follows or depends upon the principal. The existence of this accessory contract is intended to ensure the implementation of the main contract, such as a guarantee contract or a pledge contract. See: W T Pegues, "The Action of Resolution as an Accessory of the Credit in Contracts of Sale," *Louisiana Law Review* 1, no. 4 (1939), p. 806. Therefore, *Al-Rahn* as a form of ensuring the main contract stands as an *accessoir* which in *fiqh* terms is included in *al-'uqud al-tab'īyah*. See: Abdul Majid Al-Shalahin, Kaludiyani Zanyimawi, and Ismail Al-Buraisyi, "Huquq Al-Murtahin Wal Tizamatuh Binal Fiqh Al-Islami Wal Qanun Al-Madani Al-Urduni," *Al-Majallab Al-Urduniyah Fi Al-Dirasat Al-Islamiyah* 17, no. 1 (2021), p. 165.

about *Al-Rahn*.⁸ The large number of studies on *Al-Rahn* is inseparable from the historical sequences that have developed from the practice and oral guidance of the Prophet Muhammad to date.

Nor Aishah Mohd Ali conducted an inventory of studies on *Al-Rahn* which were grouped into four publication categories: scientific journals (40%); seminar proceedings (36%); working papers (14%); and thesis/dissertation (10%). This literature inventory process was collected in the period 1986-2016.⁹ Looking at the current timeframe, the publication of studies on *Al-Rahn* has not been collected again until 2021. Hence it can be assumed that the percentage of studies on this topic may increase. However, among those that can be traced, studies on *Al-Rahn* in legal history are still relatively minimal.

Specific studies on the historicity of *Al-Rahn* to date have been detected in two journal publications. Wan Abdullah studied the history of the development of *Al-Rahn* in Malaysia which was published in 1999,¹⁰ while Iskandar and Addiarrahman conducted a study of the history of *Al-Rahn* in Indonesia which was published in 2017.¹¹ The two studies generally investigate the history of the development of *Al-Rahn* in Malaysia and Indonesia.

The study conducted by Addiarrahman, has not shown anything related to the historicity of Islamic pawning in *Nusantara* (re: reference to Indonesia and its closest neighbouring countries in the past) in the era of the Islamic kingdoms. He simply divides his discussion into

⁸ Dziauddin Sharif et al., "The Improvement of Ar-Rahn (Islamic Pawn Broking) Enhanced Product in Islamic Banking System," *Asian Social Science* 9, no. 2 (2013), p. 37, <https://doi.org/10.5539/ass.v9n2p36>; Dziauddin Sharif, Amir Shaharuddin, and Nurul Aini Muhamed, "The Reasoning Pattern of Islamic Jurists' Views on al-Rahn (Islamic Pawn Broking) Contract and Its Ruling," *Journal of Contemporary Islamic Studies* 2, no. 1 (2016), p. 2.

⁹ Nor Aishah Mohd Ali, Yang Chik Johari, and Muhammad Mukhlis Abdul Fatah, "Ar-Rahnu: A Review of Literature and Future Research," ed. M.Y. Jaaffar, A. Abdullah Sani, and A. Muhammad, *SHS Web of Conferences* 36 (2017), p. 3-4, <https://doi.org/10.1051/shsconf/20173600033>.

¹⁰ Wan Abd Rahman Khudzri Wan Abdullah, "Historical Development of Pawning Practice in Malaysia: From Pajak Gadai to Al-Rahn," *Jurnal Pembangunan Sosial* 1 (1999), p. 1.

¹¹ Iskandar Iskandar and Addiarrahman Addiarrahman, "Sejarah Sosial Perkembangan Hukum Gadai Dan Rahn (Gadai Syariah) di Indonesia," *Al-Risalah* 17, no. 02 (2017), p. 1, <https://doi.org/10.30631/al-risalah.v17i02.62>.

several studies, namely: (1) *Asal Mula Praktik Gadai* (The Origin of Mortgage Practices); (2) *Gadai dalam Bingkai Adat* (Mortgage in Customary Frames); (3) *Gadai pada Masa Kolonial* (Mortgage during the Colonial Period); and (4) *Gadai Setelah Kemerdekaan* (Mortgage After Independence). The link between Islam and pawning in Addiarrahman's study is placed in the second discussion, namely *Gadai dalam Bingkai Adat* (Mortgage in the Customary Frame) which he calls a transformative pattern, namely instilling Islamic values in the customary practices of *Nusantara*.¹² Addiarrahman has not studied the history of the legal practice of *Al-Rahn* (mortgage in Islam) in *Nusantara*. Meanwhile, the study conducted by Wan Abd Rahman included four topics, namely (1) the Early Traditional Malay Society; (2) After the Emergence of the British Colonialism and the Chinese Immigrants; (3) After Malaysian Independent; and (4) the Era of Islamic Resurgence. The four discussions have not discussed much about the legal history of the practices of *Al-Rahn*, but rather the development of the activities of *Al-Rahn* in Malaysia.¹³

The two historical studies above still offer some loopholes that have not been addressed, namely the history of law and the projected development of *Al-Rahn* in Malaysia and Indonesia. For this reason, this article formulates two points regarding how the history of the legal practice of *Al-Rahn* in Malaysia and Indonesia is reviewed comparatively as well as the projection of its development. The two formulations are reviewed normatively with a comparative approach to legal history in the first formulation. Due to its normative nature, the data used in this study is secondary data in the form of legal materials, legal materials, books, scientific journals, and theses/dissertations. These data are processed and analyzed qualitatively. This study is important to discuss, considering that Malaysia and Indonesia, although they have the same Islamic and archipelagic historical roots, both have different legal systems as a result of the two colonial countries that colonized each other: England and the Netherlands.

¹² Iskandar and Addiarrahman, p. 166-169.

¹³ Wan Abdullah, "Historical Development of Pawning Practice in Malaysia: From Pajak Gadai to Al-Rahn," p. 66-80.

Al-Rahn Contract in Malaysia and Indonesia: Historical Comparison

Malaysia and Indonesia are two neighboring countries that share the same background from various aspects such as history and culture, as well as from a multi-cultural, multi-ethnic, and multi-religious aspects. In terms of the majority population, the two countries also have something in common in which Islam is a religion that is widely practiced by the population.¹⁴ One of the implications of the dominance of Islam in these two countries is the development and promotion of the Islamic economy, especially from the Islamic banking sector, which is relatively advanced and growing.¹⁵

The development of the Islamic economy, with its various products, in Malaysia and Indonesia cannot be separated from the historical roots of the Islamization of *Nusantara*. The history of the existence of Islam in *Nusantara* may at least offer an assumption that the practice and implementation of the law are based on the Sharia. This can be seen when *Nusantara* became a trading destination for Muslim merchants. These foreign merchants in *Nusantara* eventually gave birth to a Muslim community amid the Hindu-Buddhist kingdom. That being said, with this kind of community, they might conduct diplomatic lobbying to the pre-existing kingdoms to give them the freedom to implement the Sharia, including the scope of the trade and economy.¹⁶ The diaspora of Muslim merchants from outside to *Nusantara* was at least a factor in instilling an understanding of Islam which John W. Chaffe mentioned as the most enduring legacy of understanding.¹⁷ Included among this Islamic cultivation is the prohibition of the practice of usury which is regulated by Islamic

¹⁴ Patrick Ziegenhain, "Islam and Nation-Building in Indonesia and Malaysia," *ASIEN The German Journal on Contemporary Asia* 146 (2018), p. 79.

¹⁵ Azlan Amran et al., "Social Responsibility Disclosure in Islamic Banks: A Comparative Study of Indonesia and Malaysia," *Journal of Financial Reporting and Accounting* 15, no. 1 (2017), p. 100, <https://doi.org/10.1108/JFRA-01-2015-0016>.

¹⁶ Jajat Burhanudin, *Islam dalam Arus Sejarah Indonesia* (Jakarta: Prenada Media, 2017), pp. 129-130.

¹⁷ John W. Chaffe, *The Muslim Merchants of Premodern China: The History of a Maritime Asian Trade Diaspora, 750-1400* (Cambridge: Cambridge University Press, 2018), pp. 315-316.

kingdoms, both in Sumatra and Java.¹⁸ Christine Dobbin listed the names of *surau* (re: smaller mosques) and *pesantren* in subsequent developments as part of developing the practice of Islamic law, including market and trade activities in the maritime area.¹⁹

The existence of trade in *Nusantara*, either in Malaysia or Indonesia, in its details practice can also be derived from the existence of a mortgage contract which in Islamic law is known as *Al-Rahn*. Mortgage activities that are correlated with debt have become entrenched and rooted in society. This is because the practice of debt itself has been traced back to the Proto-Austronesian period.²⁰ This mortgage contract is, undoubtedly, inseparable from the customs of the local community, as previously mentioned by Wan Abd Rahman in *Tanah Melayu*, namely mortgaging the land, mortgaging the goods, or selling promises. Likewise, Indonesia traditionally has several naming terms such as *Pagang Gadai*, *Adol Sande*, *Ngajual Akad* or *Gade*.²¹ This debt habit then came into contact with various laws, one of which was Islam, legitimized by the growing Islamic kingdoms at that time.²²

The activity of guaranteeing debts is traditionally known as '*gadai*' (mortgage) in *Nusantara* with various local language derivations. Mortgage activities in *Nusantara*, in particular, have not been confirmed to have a concrete structure at the beginning of the introduction of Islam.²³ The assumption of awareness of Islamic law in applying *al-Mu'amalah al-Syar'iyah* can be concluded as structured on the triumph

¹⁸ Carol Kersten, *A History of Islam in Indonesia* (Edinburgh: Edinburgh University Press, 2017), p. 26.

¹⁹ Christine Dobbin, "Islam and Economic Change in Indonesia circa 1750-1930," in *Indonesia: Australian Perspectives* (Canberra: SOCPAC, 1980), pp. 248-249.

²⁰ The use of the word '*hutang*' (debt) in question is in the local language of the past, namely '*utang*' (also translated as debt). See: S. A. Wurm and B. Wilson, *English Findex of Reconstructions in Austronesian Languages* (Canberra: The Australian National University, 1975), p. 53.

²¹ Wan Abdullah, "Historical Development of Pawning Practice in Malaysia: From Pajak Gadai to Al-Rahn," p. 1.; Iskandar and Addiarrahman, "Sejarah Sosial Perkembangan Hukum Gadai Dan Rahn (Gadai Syariah) di Indonesia," p. 168-169.

²² Jan Wisseman Christie, "Preliminary Notes on Debt and Credit in Early Island Southeast Asia," in *Credit and Debt in Indonesia, 860-1930: From Peonage to Pawnshop, from Kongsi to Cooperative* (Singapore: Institute of Southeast Asian Studies, n.d.), p. 41.

²³ Syahbudi, "Pemikiran Dan Gerakan Sistem Ekonomi Islam Di Indonesia," *Hermenia: Jurnal Kajian Islam Interdisipliner* 2, no. 2 (2003), p. 205.

of Islamic kingdoms in *Nusantara*. One of the legalizations of mortgage practice is found in a legal *Risalah* (Tract) in Pahang, Perak, and Johor during the reign of Sultan Abdul Ghafur. Even though it is an Islamic kingdom, the word used in this *Risalah* is not *Al-Rahn* but '*gadai*' (mortgage.) It is mentioned in the *Risalah* that there are two types of mortgages, namely those with interest and those without interest. The inclusion of two types of mortgages shows the kingdom's accommodation to two systems that go hand in hand, one of which is the Sharia system through the abolition of usury.²⁴ The inclusion of a mortgage is also contained in the Old Minangkabau Law at point 41 as a guarantee mechanism for the debt given.²⁵ The rules for pawning in the Islamic kingdom are also stated in the *Simboer Tjabaja Bangkahulu Law*. Mortgage here is contained in the section on '*Adat Perbukuman*' (Customary Punishment) regarding debts for goods or plantations (Article 1, Article 10, and Article 11).²⁶

The practice of mortgages as a form of guaranteeing debts in various legislations of Islamic kingdoms in *Nusantara* at that time finally shifted its legal tradition with the arrival of two colonial countries, namely England and the Netherlands. Through the Anglo-Dutch Treaty of 1824, these two countries agreed to divide their colonial territory; The Malay Peninsula and parts of Borneo were under British and Dutch control in what was then known as the Dutch East Indies.²⁷ Referring to the interests of colonial politics, the Dutch felt the need to subdue the application of Islamic law. The British also experienced

²⁴ The original written mention of the word *Risalah* in its current designation is the Old Malay Law or A Malay Legal Digest. See: John E. Kempe and Richard O. Winstedt, "A Malay Legal Digest Compiled for 'Abd al-Ghafur Muhaiyu'd-Din Shah Sultan of Pahang 1592-1614 A.D. with Udated Additions," *Journal of the Malayan Branch of the Royal Asiatic Society* 21, no. 1 (1948), p. 8 & p. 35-36; Wan Abdullah, "Historical Development of Pawning Practice in Malaysia: From Pajak Gadai to Al-Rahn," p. 67.

²⁵ Sir Richard Winstedt, "An Old Minangkabau Legal Digest from Perak," *Journal of the Malayan Branch of the Royal Asiatic Society* 26, no. 1 (1953), p. 6.

²⁶ Sirajuddin M., Ahmad Mathori, and Ahmad Abas Musofa, *Undang-Undang Simbur Cabaya Bangkahulu: Sejarah, Kearifan Lokal, Dan Sumber Hukum Nasional* (Yogyakarta: Samudra Biru, 2021), p. 62, 68, 103-104.

²⁷ Khairudin Aljunied, *Islam in Malaysia: An Entwined History* (Oxford: Oxford University Press, 2019), p. 107; Mohd Hazmi Bin Mohd Rusli et al., "The Straits of Malacca and Singapore: Maritime Conduits of Global Importance," *Research in World Economy* 12, no. 2 (2021), p. 125, <https://doi.org/10.5430/rwe.v12n2p123>.

similar experiences in Malaysia, such as formulating The Charter of Justice which had implications for the use of English Law in the judicial system.²⁸ This implication also touches on economic centers, including the practice of Islamic mortgages. If previously pawning activities were regulated in the laws of the Islamic kingdoms, since the infiltration of two legal streams from Europe; Common Law and English Law, this nuance is getting minimized. In addition, the colonial economic interest in the practice of trade monopoly benefits the colonial state.²⁹ The colonialists minimized Islamic practices as a form of superiority in controlling traditions and laws that Muslims had long practiced before colonialization.³⁰ The span of centuries of colonialization, Malaysia and Indonesia, is sufficient to base the assumption that European legal infiltration (British and Dutch) can shift the practice and understanding of Islamic law. It is common to find various legal records with colonial nuances during the colonial period, so pawning or guaranteeing debts during the colonial period was more conventional than Islamic.

In addition to the colonialization factor, the thick practice of conventional mortgages is also the result of the immigration of Chinese people to *Nusantara*. China, which basically has historical roots in the practice of pawnshops,³¹ through the diaspora of its inhabitants introduced the concept of (conventional) mortgage in Malayan lands in the 15th century. The introduction of these pawnshops was a form of diplomatic cooperation between China and the Malacca Kingdom at

²⁸ Ahmad Imam Mawardi, "Islamic Law and Imperialism: Tracing on The Development of Islamic Law in Indonesia and Malaysia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13, no. 1 (2018), p. 12 & 16, <https://doi.org/10.19105/al-ihkam.v13i1.1583>.

²⁹ Noor Aziera Mohamad Rohana et al., "ZA'BA, Melayu, Dan Kolonialisme Inggeris," in *Proceeding of 2nd International Islamic Heritage Conference (ISHEC 2017)* (Alor Gajah: Academy of Contemporary Studies (ACIS), Universiti Teknologi MARA Cawangan Melaka, n.d.), p. 36.

³⁰ Nadzrah Ahmad, "Indonesian Islam during the Reign of Colonialism (1600-1942): An Historical Account of Challenges and Responses towards the Dutch Policies," *Journal of Islam in Asia* 16, no. 1 (2019), p. 241, <https://doi.org/10.31436/jia.v16i1.785>.

³¹ Lien-sheng Yang, "Buddhist Monasteries and Four Money-Raising Institutions in Chinese History," in *Chinese Economic History up to 1949*, vol. 1 (Leiden: Brill, 2008), p. 1; Trakarn Thakranontachai, "Orient's Oldest Financial Institutions: The Pawn Shop," *ABAC Journal* 2, no. 2 (1982), p. 1.

that time.³² In its development, the Chinese community also became human resources in the trade and mining business at the invitation of the British.³³ From this effort, Chinese immigrants continued to introduce mortgages institutions in Malaysia since 1871, which have licenses and at the same time monopolize the practice of mortgage in an institutional way as much as 80-85%.³⁴ Hence, from the mortgage practices carried out by Chinese immigrants, the UK got the proceeds from business tax levies apart from the opium business and pig farming.³⁵

Malaysian independence from 1957 to 1963 was the beginning of the formation of the Malaysian state with the merging of countries in peninsular Malaysia and northern Kalimantan. The legal system in effect for the first time became independent from British law. Islamic law, which was commonly practiced before the colonial period or became the the Malay community's daily life, was not regulated under British law but specifically through Sharia law. The application of Sharia law is derived from the ability of countries in the territory of Malaysia to form their own Islamic judicial system to handle cases of Islamic law. The desire to expand the area of systemic application of Islamic law in Malaysia was marked in the 1970s.³⁶ Included in this is the implementation of the Islamic economic system in Malaysia which was marked initially by the formation of the first Islamic bank in 1983. The existence of this Islamic bank encouraged the thought of also establishing other financial institutions such as insurance and pawnshops. What is interesting is that the institutionalization of Sharia

³² Calvin W. H. Cheong and Jothee Sinnakkannu, "Ar- Rahn: Opportunities and Challenges in Malaysia," (2012), p. 3, Available at SSRN: <https://ssrn.com/abstract=2112809> or <http://dx.doi.org/10.2139/ssrn.2112809>; Payal Bhatt, "Ar-Rahn (Islamic Pawning Broking) Opportunities and Challenges in Malaysia" (6th International Islamic Finance Conference, Malaysia, 2008), p. 2.

³³ Wan Abdullah, "Historical Development of Pawning Practice in Malaysia: From Pajak Gadai to Al-Rahn."

³⁴ Zainal Abidin and Ab Rashid Rosemaliza, "Pajak Gadai Di Malaysia," in *Landskap Kewangan 2002* (Sintok: Universiti Utara Malaysia, 2002), p. 118.

³⁵ Barbara Watson Andaya and Leonard Y. Andaya, *A History of Malaysia* (London: Macmillan Education UK, 1982), p. 136, <https://doi.org/10.1007/978-1-349-16927-6>.

³⁶ Farid Sufian Shuaib, "The Islamic Legal System in Malaysia," *Pacific Rim Law & Policy Journal* 21, no. 1 (2012), p. 86.

pawnshops in Malaysia has begun to use the term *Al-Rahn*, different from previous times.

The activities of pawnshops in Malaysia prior to the 1990s were still regulated solely by the 1972 Mortgage Tax Deed, which was later amended in 1982 and 2003.³⁷ In 1992, the first Sharia pawnshop in Malaysia appeared in the Terengganu area named *Muassasab Gadaian Islam Terengganu* (MGIT) which was founded by the Religious Council of Islam and Malay Customs (MAIDAM). This first institution was then followed by others such as *Kedai Al-Rahnu* (KAR) in the same year under Permodalan Kelantan Berhad in Kelantan. Next, the Malaysian Minister of Finance issued a scheme called *Skim Al-Rahnu* (SAR) through the collaboration of three institutions: Bank Negara Malaysia, the Malaysian Islamic Economic Development Foundation (YaPEIM) and *Bank Rakyat*. The existence of this Sharia-based pawnshop is a superior alternative to rival the old existence of conventional pawnshops owned by Chinese immigrants.³⁸ Apart from financial institutions, in its development, Sharia pawnshops in Malaysia were also opened by non-financial institutions such as *Pos Malaysia Berhad* and the Malaysian Army Cooperative Berhad.³⁹ The growth of Sharia pawnshops in Malaysia is also influenced by the weaknesses of conventional pawnshops. High-interest rates, a reduction in the value of collateralized goods, a reduction in the value of the quality of jewelry, and the non-refundability of the remaining value of the collateral after the sale of the collateral, have motivated people to switch to the *Al-Rahn* concept. The impetus for the *Al-Rahn* concept can be seen from

³⁷ Azalia Abdul Razak, "Economic and Religious Significance of the Islamic and Conventional Pawnbroking in Malaysia: Behavioural and Perception Analysis" (Doctoral Thesis, Durham, Durham University, 2011), p. 94.

³⁸ Ahmad Faizal 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* 1, no. 2 (2017), p. 33; Azizah Othman and Atikullah Abdullah, "Al-Rahn Development in Malaysia: A Case of Al-Rahn Institution under the Terengganu Islamic Religious and Malays Custom Council," *International Journal of Islamic Business* 4, no. 1 (2019), p. 57; Nor Fadilah Bahari and Zurina Shafii, "Overview of Regulatory and Legal Framework of Pawnbroking System in Malaysia," *Journal of Muwafaqat* 4, no. 1 (2021), p. 4.

³⁹ Kambara Kentaro, "The Role of Islamic Collateral Loans (Ar-Rahnu) in the Malaysian Credit System: Evidence from Customer's Borrowing Behaviors," *Kyoto Bulletin of Islamic Area Studies* 11 (2018), p. 4.

the interest-free Sharia principles (usury), an easy system, fast loan approvals, guaranteed jewelry security guarantees, and the principle of returning the excess value that is returned to customers after the mortgaged goods are sold.⁴⁰

Meanwhile, in Indonesia, the VOC was the first to monopolize mortgage activities through The Batavian Loan Bank or later called the Bataviase Bank van Lening which was founded by Governor-General Baron Van Imhoff in 1746.⁴¹ Unlike England, the Netherlands actually monopolized the practice of pawnshops to compete with the pawnshop practices of Chinese immigrants in the Dutch East Indies.⁴² After the VOC left Indonesia, during the brief British occupation by Thomas Stamford Raffles, Bank van Lening was disbanded, and the change in monopoly policy became a stunt. Through the *licentie stelsel*, people who want to open a pawn are welcome for a certain fee. This is like what Britain did in Malaysia by giving Chinese citizens the freedom to open a mortgage business applied to the colonial government. This licensing policy was not free from problems, which later resulted in the rise of moneylenders who harmed the British at that time in Indonesia. In the end, this change was changed to *pacht stelsel*, namely permits for those who can afford high taxes.⁴³ After a brief British rule, the Dutch took over and reinstated the concept of a mortgage monopoly. The emergence of this pawn monopoly cannot be separated from De Wolf van Westerode's recommendation on the results of his research on pawnshops that occurred in Java.⁴⁴ On this recommendation, the Netherlands issued a monopoly regulation on a mortgage in *Staatsblad* (Stbl) No. 131, 1901. This regulation became the beginning of

⁴⁰ Hassanudin Mohd Thas Thaker et al., "Drivers of Ar-Rahn (Pawn) Acceptance: Malaysian Evidence," *Journal of Islamic Marketing* 12, no. 7 (2021), p. 1242, <https://doi.org/10.1108/JIMA-08-2019-0161>.

⁴¹ G. Louisa Balk, *The Archives of the Dutch East India Company (VOC) and the Local Institutions in Batavia (Jakarta)* (Leiden: Brill, 2007), p. 81.

⁴² Michael T. Skully, "The Development of the Pawnshop Industry in East Asia," in *Financial Landscapes Reconstructed*, ed. F. J. A. Bouman and Otto Hospes (New York: Routledge, 1994), p. 4-5, <https://doi.org/10.4324/9780429038891-21>.

⁴³ Adrian Sutedi, *Hukum Gadai Syariah* (Bandung: Alfabeta, 2011), p. 144.

⁴⁴ Abdul Wahid, "Ethical Policy in Pawn: The Government Pawnshops Service in Late Colonial Java, 1900-1940," *Lembaran Sejarah* 9, no. 2 (2012), pp. 8-7.

establishing the State Mortgage Tax, which has a monopoly right to this day.⁴⁵

After Indonesia's independence, political will began to emerge related to the implementation of Sharia, or at least the cultivation of Sharia aspects in Indonesia. This political will is ultimately classified into three periods of the relationship between the government and the will of Muslims in implementing Islamic law. Abdul Ghofur and Sulistiyono divide it into three, namely antagonistic relations (1966-1981), reciprocal relations (1982-1985), and accommodative relations (1986-1998). The injection of Sharia principles, for example, occurred in the government's plan to operate a profit-sharing system in 1983.⁴⁶ This effort continued with banking deregulation in the October 1988 Policy Package (PAKTO), which allowed banks to set loan interest at 0%, which was assumed to be a form of free of usury.⁴⁷ This process continued until the presence of the first Islamic bank in Indonesia, namely Bank Muamalat Indonesia, in 1991. The following year, Sharia was recognized in the financial realm through Law No. 7 of 1992 on Banking by presenting Sharia principles and profit-sharing clauses. Islamic financial institutions in the form of banking were later recognized by Law No. 10 of 1998 on Amendments to Law No. 7 of 1992 on Banking and Law No. 21 of 2008 on Islamic Banking. Recognition of Islamic Financial Institutions in the form of Banking became a factor in the birth of Sharia Pawnshops. Its first appearance was supported by the provision of capital from Bank Muamalat as a form of commitment to distributing of capital based on Sharia.

Comparatively, it is apparent from the similar roots in the practice of *Al-Rahn* in Malaysia and Indonesia during the Islamic kingdoms. During this period, *Al-Rahn* activities were regulated in several laws of Islamic kingdoms. However, this legislation uses a local term as '*gadai*' (mortgage/pawn) instead of mentioning it narratively with the *Al-Rahn*. The similarity of the mortgage regulations in each of the Islamic kingdoms in these two countries was eventually displaced

⁴⁵ Sutedi, *Hukum Gadai Syariah*, p. 81-82.

⁴⁶ Asnaini Asnaini and Herlina Yustati, *Lembaga Keuangan Syariah; Teori dan Praktiknya di Indonesia* (Yogyakarta: Pustaka Pelajar, 2017), p. 2-3.

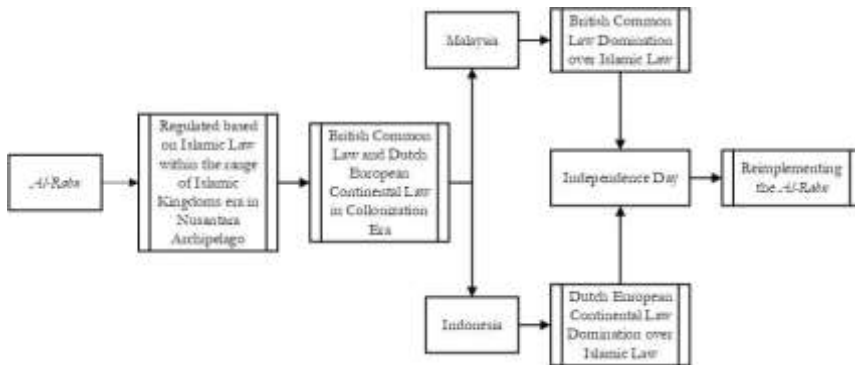
⁴⁷ Khotibul Umam and Allamuddin Al Faruq, "Politik Hukum Pengembangan Kelembagaan, Produk, dan Aktivitas Perbankan Syariah di Indonesia," *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum* 50, no. 2 (2016), pp. 455-456.

by the presence of two colonial countries that colonized Malaysia and Indonesia. The introduction of the British legal system in Malaysia and the Dutch legal system in Indonesia gradually distanced people's habits from Islamic law. Thus, the economic monopoly policy and the conventional structured pawnshop practice, whether monopolized by the colonial government or Chinese immigrants, really affects the pace of development of mortgages that Sharia previously regulated.

Efforts to re-instill Sharia economic practices in conventional and Sharia mortgages, in particular, began to grow after each country's independence. Both Indonesia and Malaysia are trying to re-embed Islamic elements into their respective countries' financial systems. Not to be missed is the principle of *Al-Rahn* in the application of the pawn system in their respective countries. Not only reintroducing the concept of *Al-Rahn* in Islamic law, but also the use of the term *Al-Rahn* has also begun to be introduced and used.

Figure 1.

The Flow of the Development of *Al-Rahn* in Malaysia and Indonesia



The visible starking difference from the history of these two countries is the development of Sharia *mu'amalah* between the two countries. Malaysia is known as a country, when compared to Indonesia, which introduced and legalized the Islamic economic system earlier.⁴⁸ This also applies to the development of the *Al-Rahn* practice,

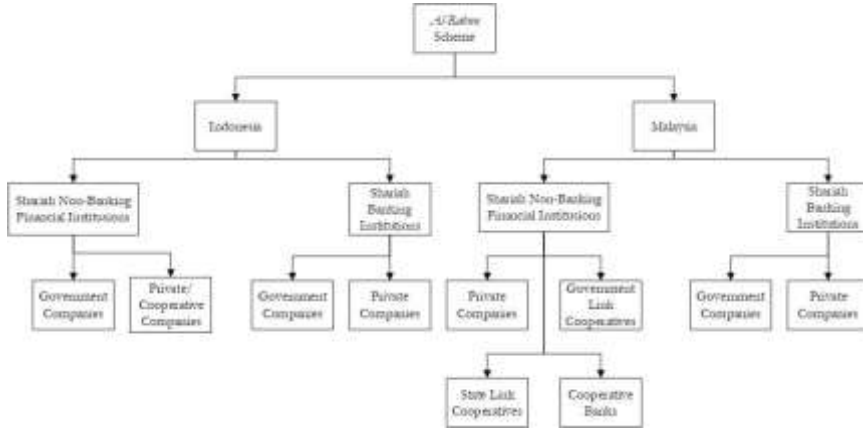
⁴⁸ Mutiara Dwi Sari, Zakaria Bahari, and Zahri Hamat, "History of Islamic Bank in Indonesia: Issues Behind Its Establishment," *International Journal of Finance and Banking Research* 2, no. 5 (2016), pp. 178.

where Indonesia is ten years younger than Malaysia, which has implemented the post-independence *Al-Rahn* concept since 1992.

Seen from the point of view of the management and implementation of Sharia mortgage (*Al-Rahn*) in Malaysia and Indonesia, Sharia mortgage is a Sharia service unit developed by *Perum Pegadaian* (re: Indonesian state-owned enterprise specialized on mortgage/pawn) so that its operation and establishment follows the parent company above it. However, it has a separate managerial pattern, considering the sharia principles he holds so as not to mix his finances with the conventional system that is still applied by *Perum Pegadaian*. Meanwhile, in terms of *Al-Rahn* as a contract that follows the main contract which is common and often occurs in the banking world with the language of guarantee or collateral, its implementation follows the mechanism of Islamic banking. This is based on what is presented in Law No. 21 of 2008 on Islamic Banking. Therefore, *Al-Rahn* as an *accessoir* contract in the realm of Islamic banking is carried out not only by state-owned banks, but also private Islamic banking spread across Indonesia. However, Islamic banking in Indonesia has also developed *Al-Rahn* as a limited product, namely mortgage in gold.

Differing from Malaysia, where *Al-Rahn* as a product organized by non-bank Islamic financial institutions is not only owned by the government, but also private Sharia pawnshops, pawnshop institutions that cooperate with the state, pawnshop institutions that cooperate with the states (kingdoms) scattered in Malaysia, and pawn institutions that cooperate with banks. This shows that from the point of view of non-bank institutions, Malaysia is broader than that of the financial institutions that manage the *Al-Rahn* scheme. Meanwhile, in Indonesia, the separation of management or implementation of *Al-Rahn*, whether in its form as a product or an *accessoir* contract, is only carried out by the government or the private sector in general.

Figure 2.
Management Chart of *Al-Rahn* Scheme



The Development of Legal Structure of *Al-Rahn* in Malaysia and Indonesia

The legislative structure of *Al-Rahn*, either in Malaysia or in Indonesia, as described in the initial study above, has developed since the peak of the glory of the Islamic kingdoms in *Nusantara*. After that era, legal insertions from two European colonial countries emerged: England and the Netherlands. This led to the cessation of the application of *Al-Rahn* due to the extraordinary legal infiltration embedded in Malaysia and Indonesia as colonized lands.

Post-independence, the development of *Al-Rahn* in these two countries conjure a legal position that is unique to each other. The will and aspiration to reintroduce the practice of Islamic *muamalah* on an initiative arose, referring to the early historical roots of its implementation in the early era of Islam in *Nusantara*. However, the peculiarities of each as a result of the influence of legal knowledge introduced by the British and the Dutch also accompanied the development of the legal structure of *Al-Rahn* itself.

After the reappearance of the *Al-Rahn* contract in Malaysia in 1992, the legislative framework regarding *Al-Rahn* is still bound by the 1972 Mortgage Tax Deed. But in the end, this Mortgage Tax Deed can no longer be referred because it contains things that are contrary to

Sharia⁴⁹ therefore *Al-Rahn* in Malaysia is not bound by this law. Regulatory legislation was then drafted because this scheme cannot be empty of regulations. The Malay Islamic and Customary Council (MAIDAM), the first pioneer to establish a pawn company in 1992, introduced the procedures for managing the *Ar-Rahnu* MAIDAM scheme.⁵⁰ Subsequently, the Islamic Mortgage Guidelines were published through the Ministry of Housing and Local Government. However, this guide only applies to pawnshops. Meanwhile, other Islamic financial institutions and cooperatives that implement the *Al-Rahn* scheme have their regulatory references. Islamic financial institutions in the form of banks refer to the guidelines issued by *Bank Negara Malaysia* (BNM), namely the 2018 *Rahn* Policy Document and the *Al-Rahnu* Product Proposal based on *Tawarruq*, which are effective in 2020. Meanwhile, specifically for cooperatives that have mortgage services, they are guided its regulation by *Suruhanjaya Koperasi Malaysia* (SKM) (Cooperative Societies Commission) by issuing GP25 (Guidelines for Islamic Pawn Tax Activities).⁵¹

On the other hand, Indonesia began to introduce the *Al-Rahn* scheme through *Pegadaian Syariah* (Sharia Pawnshop) which is part of one of the Sharia service units of *PT Pegadaian* (re: Indonesian state-owned limited liability company on mortgage/pawn) in 2002. Through Government Regulation No. 103 of 2000 on Pawnshop Public Company, the concept of implementing mortgage is intended to keep the community away from the practice of usury.⁵² In its development, the *Al-Rahn* scheme in Indonesia generally refers to several laws, such

⁴⁹ This Law is basically not contradictory in its entirety, except in certain parts, such as in Section 17 which allows for pawn holders (pawn service providers) to take advantage of loans provided with an interest model. See: Shamsiah Mohamad, "Akta Pemegang Pajak Gadai 1972: Suatu Analisa Dari Perspektif Islam," *Jurnal Syariah* 3, no. 2 (1995), p. 3.

⁵⁰ Asiah Alkharib Shah, Nurhafilah Musa, and Salmy Edawaty Yacob, "Masa Depan Pengawalseliaan Ar-Rahnu di Malaysia Menurut Perspektif Perundangan," *Journal of Contemporary Islamic Law* 3, no. 1 (2018), p. 4.

⁵¹ Asiah Alkharib Shah, Nurhafilah Musa, and Salmy Edawati Yaacob, "Tadbir Urus dan Pengawaseseliaan Ar-Rahnu di Malaysia: Bidang Kuasa Siapakah?," *Kanun: Jurnal Undang-Undang Malaysia* 30, no. 2 (2018), pp. 243–50; Bahari and Shafii, "Overview of Regulatory and Legal Framework of Pawnbroking System in Malaysia," pp. 9-10.

⁵² Jerry Tarantang et al., *Regulasi Dan Implementasi Pegadaian Syariah di Indonesia* (Yogyakarta: K-Media, 2019), p. 35.

as the Civil Code, Law No. 42 of 1999 on Fiduciary Guarantees, and Law No. 4 of 1996 on Mortgage Rights on Land. These three laws are legally binding on all financial institutions, whether bank or non-bank. However, specifically in Islamic banking, the arrangements related to the *Al-Rahn* scheme, which is *accessoir* to the main contract such as murabahah financing or others, refer to Law No. 21 of 2008 on Islamic Banking. In this law, the *Al-Rahn* scheme is referred to using a collateral language where the term is stated in the three main laws at the beginning of this paragraph. While in practice, specifically in pawnshops, there are regulatory references such as the Financial Services Authority Regulation (POJK) No. 31/POJK.05/2016 on Pawnshops.⁵³

From the regulatory reference point of view, the *Al-Rahn* scheme, which is practically included in the scope of mortgages and guarantees in general, still refers to conventional laws. The existence of Sharia principles in the implementation of the *Al-Rahn* scheme, both bank, and non-bank, is returned to the determination of Sharia principles whose authority is owned by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). This reference to the DSN-MUI *Fatwa* (re: collective understanding of ulema on certain matters in Sharia) is recognized in two regulations, namely Law No. 21 of 2008 on Sharia Banking and POJK No. 31/POJK.05/2016 on Pawnshops. So from this point of view, the completeness related to the regulation on the application of *Al-Rahn* is published by the DSN-MUI in the form of a *fatwa*. Several *fatwas* from DSN-MUI, such as DSN *Fatwa* No. 25/DSN-MUI/III/2002 on *Rahn*, DSN *Fatwa* No. 68/DSN-MUI/III/2008 on *Rahn Tasjily*, DSN *Fatwa* No. 92/DSN-MUI/IV/2014 on Financing Accompanied by *Al-Rahn*.⁵⁴

⁵³ Tri - Hidayati et al., "Mekanisme Penggunaan Jaminan Kebendaan (Rahn Tasjily) dalam Pembiayaan Bank Syariah di Indonesia dan Malaysia," *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 18, no. 1 (July 17, 2018), p. 5, <https://doi.org/10.19109/nurani.v18i1.2458>; Lastuti Abubakar and Tri Handayani, "Telaah Yuridis Perkembangan Regulasi dan Usaha Pergadaian Sebagai Prana Jaminan Kebendaan," *Jurnal Bina Mulia Hukum* 2, no. 1 (2017), p. 83.

⁵⁴ Tuti Hasanah, "Transformasi Fatwa Dewan Syariah Nasional ke dalam Hukum Positif," *Syariah Jurnal Hukum dan Pemikiran* 16, no. 2 (2017), p. 2, <https://doi.org/10.18592/sy.v16i2.1022>; Agus Waluyo, "Kepatuhan Bank Syariah Terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi Ke Dalam Hukum Positif," *Inferensi Jurnal Penelitian Sosial Keagamaan* 10, no. 2 (2016), p. 3.

Looking at the two sides of regulatory developments between Malaysia and Indonesia, both countries have similarities in terms of the absence of regulations equivalent to the law that regulates the mechanism of *Al-Rahn* practices thoroughly and comprehensively. The regulations governing the *Al-Rahn* mechanism are specifically outside the law. For example, regulations or technical guidelines published by *Bank Negara Malaysia* and in Indonesia guidelines issued in the form of *fatwas* by the DSN-MUI.

Meanwhile, the difference between these two countries can be seen from the side of the legal force. The existence of BNM in Malaysia as a central bank, for example, has a recognized legal authority even though it is not in the form of a law.⁵⁵ In Indonesia, however, the DSN-MUI *fatwa* essentially has no legal force equivalent to other laws or regulations that exist in the legal hierarchy in Indonesia. Reference to the DSN-MUI *fatwa* is only recognized through several clauses which indicate that the authority to formulate or issue Sharia principles is the DSN-MUI. Apart from the DSN-MUI *Fatwa*, Indonesia also has a special regulation called the Sharia Economic Law Compilation (KHES) which contains a mechanism for implementing *Al-Rahn* in one of its discussions. However, like the DSN-MUI *Fatwa*, KHES does not have the same legal force as the law due to its status as a mere Supreme Court Regulation (PERMA).⁵⁶

Even though the existence of *Al-Rahn* regulation in Malaysia by several official regulators (BNM, KPKT, and SKM) amounts to having a legally binding force,⁵⁷ it is precisely within the development of the

⁵⁵ M. Shabri Abd. Majid, "Regulasi Perbankan Syariah: Studi Komparatif Antara Malaysia Dan Indonesia," *Media Syariah Wahana Kajian Hukum Islam Dan Pranata Sosial* 16, no. 1 (2014), p. 13.

⁵⁶ Atmo Prawiro, "Kelemahan Fatwa Dan Kompilasi Hukum Ekonomi Syariah Dalam Kebijakan Legislasi Ekonomi Di Indonesia," *Jurnal Al-Asbriyyah* 2, no. 1 (2016): p. 182; Andi Fariana, "Urgensi Fatwa MUI Dalam Pembangunan Sistem Hukum Ekonomi Islam Di Indonesia," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 1 (2017), p. 103.

⁵⁷ Siti Aishah Kasmon and Nor Raihan Abas, "An Analysis on the Shariah and Operational of Ar-Rahnu: Post-Announcement of BNM Rahn Policy Document," *Journal of Islamic Economics and Law* 1, no. 2 (2020), p. 1; Asiah Alkharib Shah and Salmy Edawati Yaacob, "Pembangunan Infrastruktur Tadbir Urus Dan Pengawal Seliaan Ar-Rahnu," *Journal of Advanced Research in Business and Management Studies* 6, no. 2 (2017), p. 1.

regulation that there are non-uniform regulations.⁵⁸ Meanwhile, in Indonesia, the acknowledgment of the DSN-MUI *Fatwa* as the sole interpreter of the Islamic Economy is deemed insufficient as a legally enforceable rule as long as it has not been entered into the law.⁵⁹

The future development of the regulation of the *Al-Rahn* scheme in these two countries seems to be flowing. Judging from the problems that have also been concluded in several studies, it is commonplace that there is a special law that talks about Sharia contracts, including the *Al-Rahn* contract. Centralizing of regulatory reference sources will make it easier for Islamic finance practitioners and the public in general to access *Al-Rahn* services. Thus, developments in the following periods will depend on the political will of regulators or legislators at the government level, ulema, and the community in realizing a complete and comprehensive law in the field of *mu'amalah*.

Conclusion

The existence of *Al-Rahn* in *Nusantara*, particularly in Malaysia and Indonesia, did not appear in an instance. Since the beginning of the period of the Islamic kingdoms in *Nusantara*, this particular scheme has been practiced and its mechanism has been regulated in the form of official royal regulations. Indeed, this regulation also involves state stakeholders who accommodate Islamic law as the official law of the kingdom. The introduction of the law of two colonialist countries; Britain and the Netherlands became a factor in the dim implementation of the laws of the Islamic kingdoms. The efforts of colonialism in the context of economic glory were accompanied by the planting of British and Dutch legal policies in their respective occupied areas. This resulted in the conventional side of the practice of mortgages which displaces the practice of *Al-Rahn* in accordance with the Sharia. Nevertheless, the political will of Muslims in these two countries has never subsided. This can be seen from the desire of Muslims to be able to *muamalah* in Sharia and also the prospect of *muamalah* Sharia which tends to be easy and does not ensnare economically. Thus, post-independence efforts were seen in the context of the re-introduction

⁵⁸ Aznan Hasan and Nor Razinah Mohd Zain, "Ar-Rahnu: Isu dan Penyelesaian Semasa," *Malaysian Journal of Syariah and Law* 9, no. 1 (2021), p. 10.

⁵⁹ Ifa Latifa Fitriani, "Jaminan Dan Agunan Dalam Pembiayaan Bank Syariah Dan Kredit Bank Konvensional," *Jurnal Hukum & Pembangunan* 47, no. 1 (2017), p. 144.

of the mortgage in the realm of Islamic finance. In the light of that, the results can be seen in its development to this date. Nonetheless, this development does not stop, the dynamics of Islamic finance, especially in this case the *Al-Rahn* contract, demands reforms in a complete and comprehensive regulatory pattern. Through this, the perception or half-hearted view in providing the legitimacy of the legal power of Islamic finance will disappear, so that public confidence in the services of *Al-Rahn* in particular or other Sharia financial products will increase.

Bibliography

- Ab Rahman, Suhaimi. "Development of the Classical Islamic Guarantee Through Fatwa in Modern Islamic Banking." *International Journal of Business and Society* 19, no. 3 (2018): 17.
- . "Guarantees in Early Islamic Financial System." *Arab Law Quarterly* 29, no. 3 (August 10, 2015): 274–84. <https://doi.org/10.1163/15730255-12341304>.
- Abidin, Zainal, and Ab Rashid Rosemaliza. "Pajak Gadai Di Malaysia." In *Landskap Kewangan 2002*, 118. Sintok: Universiti Utara Malaysia, 2002.
- Abubakar, Lastuti, and Tri Handayani. "Telaah Yuridis Perkembangan Regulasi dan Usaha Pergadaian Sebagai Pranata Jaminan Kebendaan." *Jurnal Bina Mulia Hukum* 2, no. 1 (2017): 83.
- Ahmad, Nadzrah. "Indonesian Islam during the Reign of Colonialism (1600-1942): An Historical Account of Challenges and Responses towards the Dutch Policies." *Journal of Islam in Asia* 16, no. 1 (2019): 241. <https://doi.org/10.31436/jia.v16i1.785>.
- Aljunied, Khairudin. *Islam in Malaysia: An Entwined History*. Oxford: Oxford University Press, 2019.
- Al-Shalahin, Abdul Majid, Kaludiyān Zanyimawī, and Ismail Al-Buraisyi. "Huquq Al-Murtahin Wal Tizamatuḥ Bainaḥ Fiqḥ Al-Islami Wal Qanun Al-Madani Al-Urduni." *Al-Majallah Al-Urduniyah Fi Al-Dirasat Al-Islamiyah* 17, no. 1 (2021): 165.
- Al-Shāḥibī, Muḥammad ibn Ishāq. *Al-Muwāfaqāt Fi Uṣūl Al-Shari'ah*. Vol. 2. Dār ibn 'Affān, 1997.

- Amran, Azlan, Hasan Fauzi, Yadi Purwanto, Faizah Darus, Haslinda Yusoff, Mustaffa Mohamed Zain, Dayang Milianna Abang Naim, and Mehran Nejati. "Social Responsibility Disclosure in Islamic Banks: A Comparative Study of Indonesia and Malaysia." *Journal of Financial Reporting and Accounting* 15, no. 1 (April 10, 2017): 99–115. <https://doi.org/10.1108/JFRA-01-2015-0016>.
- Andaya, Barbara Watson, and Leonard Y. Andaya. *A History of Malaysia*. London: Macmillan Education UK, 1982. <https://doi.org/10.1007/978-1-349-16927-6>.
- Asnaini, Asnaini, and Herlina Yustati. *Lembaga Keuangan Syariah; Teori Dan Praktiknya Di Indonesia*. Yogyakarta: Pustaka Pelajar, 2017.
- Bahari, Nor Fadilah, and Zurina Shafii. "Overview of Regulatory and Legal Framework of Pawnbroking System in Malaysia." *Journal of Muwafaqat* 4, no. 1 (2021): 13.
- Balk, G. Louisa. *The Archives of the Dutch East India Company (VOC) and the Local Institutions in Batavia (Jakarta)*. Leiden: Brill, 2007.
- Bhatt, Payal. "Ar-Rahnu (Islamic Pawning Broking) Opportunities and Challenges in Malaysia," 2. Malaysia, 2008.
- Burhanudin, Jajat. *Islam Dalam Arus Sejarah Indonesia*. Jakarta: Prenada Media, 2017.
- Chaffe, John W. *The Muslim Merchants of Premodern China: The History of a Maritime Asian Trade Diaspora, 750-1400*. Cambridge: Cambridge University Press, 2018.
- Cheong, Calvin W. H., and Jothee Sinnakkannu. "Ar- Rahn: Opportunities and Challenges in Malaysia," 2012, 3.
- Christie, Jan Wisseman. "Preliminary Notes on Debt and Credit in Early Island Southeast Asia." In *Credit and Debt in Indonesia, 860-1930: From Peonage to Pawnshop, from Kongsi to Cooperative*, 41. Singapore: Institute of Southeast Asian Studies, n.d.
- Dobbin, Christine. "Islam and Economic Change in Indonesia circa 1750-1930." In *Indonesia: Australian Perspectives*. Canberra: SOCPAC, 1980.
- Fariana, Andi. "Urgensi Fatwa MUI Dalam Pembangunan Sistem Hukum Ekonomi Islam Di Indonesia." *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 1 (2017): 103.

- Fitriani, Ifa Latifa. "Jaminan Dan Agunan Dalam Pembiayaan Bank Syariah Dan Kredit Bank Konvensional." *Jurnal Hukum & Pembangunan* 47, no. 1 (2017): 144.
- Hasan, Aznan, and Nor Razinah Mohd Zain. "Ar-Rahnu: Isu dan Penyelesaian Semasa." *Malaysian Journal of Syariah and Law* 9, no. 1 (2021): 10.
- Hasanah, Tuti. "Transformasi Fatwa Dewan Syariah Nasional ke dalam Hukum Positif." *Syariah Jurnal Hukum dan Pemikiran* 16, no. 2 (2017): 2. <https://doi.org/10.18592/sy.v16i2.1022>.
- Hidayati, Tri -, Syarifuddin Syarifuddin, Ibnu Elmi AS. Pelu, Syaikhu Syaikhu, Mohammad Azam Hussain, Mohd Zakhiri Md. Nor, and Alias Azhar. "Mekanisme Penggunaan Jaminan Kebendaan (Rahn Tasjily) dalam Pembiayaan Bank Syariah di Indonesia dan Malaysia." *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 18, no. 1 (July 17, 2018): 5. <https://doi.org/10.19109/nurani.v18i1.2458>.
- Iskandar, Iskandar, and Addiarrahman Addiarrahman. "Sejarah Sosial Perkembangan Hukum Gadai dan Rahn (Gadai Syariah) di Indonesia." *Al-Risalah* 17, no. 02 (2017): 1. <https://doi.org/10.30631/al-risalah.v17i02.62>.
- Kasmon, Siti Aishah, and Nor Raihan Abas. "An Analysis on the Shariah and Operational of Ar-Rahnu: Post-Announcement of BNM Rahn Policy Document." *Journal of Islamic Economics and Law* 1, no. 2 (2020): 1.
- Kempe, John E., and Richard O. Winstedt. "A Malay Legal Digest Compiled for 'Abd al-Ghafur Muhaiyu'd-Din Shah Sultan of Pahang 1592-1614 A.D. with Udated Additions." *Journal of the Malayan Branch of the Royal Asiatic Society* 21, no. 1 (1948): 68.
- Kentaro, Kambara. "The Role of Islamic Collateral Loans (Ar-Rahnu) in the Malaysian Credit System: Evidence from Customer's Borrowing Behaviors." *Kyoto Bulletin of Islamic Area Studies* 11 (2018): 4.
- Kersten, Carool. *A History of Islam in Indonesia*. Edinburgh: Edinburgh University Press, 2017.
- Khaldun, Ibnu. *Muqaddimah Ibn Khaldun*. Beirut: Dar Al-Fikr, 2001.

- Loan, Albert. "Institutional Bases of the Spontaneous Order: Surety and Assurance." *Humane Studies Review* 7, no. 1 (1991): 1.
- M., Sirajuddin, Ahmad Mathori, and Ahmad Abas Musofa. *Undang-Undang Simbur Cahaya Bangkabungulu: Sejarah, Kearifan Lokal, Dan Sumber Hukum Nasional*. Yogyakarta: Samudra Biru, 2021.
- Majid, M. Shabri Abd. "Regulasi Perbankan Syariah: Studi Komparatif Antara Malaysia dan Indonesia." *Media Syariah Wahana Kajian Hukum Islam Dan Pranata Sosial* 16, no. 1 (2014): 13.
- Mawardi, Ahmad Imam. "Islamic Law and Imperialism: Tracing on The Development of Islamic Law in Indonesia and Malaysia." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13, no. 1 (July 31, 2018): 1. <https://doi.org/10.19105/al-ihkam.v13i1.1583>.
- Mohamad, Shamsiah. "Akta Pemegang Pajak Gadai 1972: Suatu Analisa Dari Perspektif Islam." *Jurnal Syariah* 3, no. 2 (1995): 3.
- Mohd Ali, Nor Aishah, Yang Chik Johari, and Muhammad Mukhlis Abdul Fatah. "Ar-Rahnu: A Review of Literature and Future Research." Edited by M.Y. Jaaffar, A. Abdullah Sani, and A. Muhammad. *SHS Web of Conferences* 36 (2017): 00033. <https://doi.org/10.1051/shsconf/20173600033>.
- Muhammadi, Fauzan. "The Islamic Contract and Its Basis of Maṣlaḥa," 603–12. *The European Proceedings of Social & Behavioural Sciences*, 2018. <https://doi.org/10.15405/epsbs.2018.12.03.60>.
- Othman, Azizah, and Atikullah Abdullah. "Al-Rahn Development in Malaysia: A Case of Al-Rahn Institution under the Terengganu Islamic Religious and Malays Custom Council." *International Journal of Islamic Business* 4, no. 1 (2019): 57.
- Pegues, W T. "The Action of Resolution as an Accessory of the Credit in Contracts of Sale." *Louisiana Law Review* 1, no. 4 (1939): 11.
- Prawiro, Atmo. "Kelemahan Fatwa Dan Kompilasi Hukum Ekonomi Syariah Dalam Kebijakan Legislasi Ekonomi Di Indonesia." *Jurnal Al-Asbriyyah* 2, no. 1 (2016): 182.
- Razak, Azalia Abdul. "Economic and Religious Significance of the Islamic and Conventional Pawnbroking in Malaysia: Behavioural and Perception Analysis." Doctoral Thesis, Durham University, 2011.

- Rohana, Noor Aziera Mohamad, Nurul Asma Mazlan, Noraini Abd Muaziz, and Ermy Azziaty Rozali. "ZA'BA, Melayu, Dan Kolonialisme Inggeris." In *Proceeding of 2nd International Islamic Heritage Conference (ISHEC 2017)*, 36. Alor Gajah: Academy of Contemporary Studies (ACIS), Universiti Teknologi MARA Cawangan Melaka, n.d.
- Rusli, Mohd Hazmi Bin Mohd, Ade Maman Suherman, Aryuni Yuliantiningsih, Wismaningsih Wismaningsih, and Noer Indriati. "The Straits of Malacca and Singapore: Maritime Conduits of Global Importance." *Research in World Economy* 12, no. 2 (January 11, 2021): 123. <https://doi.org/10.5430/rwe.v12n2p123>.
- Saptanti, Noor, Adi Sulistiyono, and Burhanudin Harahap. "Debt Guarantee Charging Based on the Justice Principal." *Journal of Advances in Social Science and Humanities* 7, no. 4 (2021): 1463. <https://doi.org/10.15520/jassh.v7i4.593>.
- Sari, Mutiara Dwi, Zakaria Bahari, and Zahri Hamat. "History of Islamic Bank in Indonesia: Issues Behind Its Establishment." *International Journal of Finance and Banking Research* 2, no. 5 (2016): 178.
- Shah, Asiah Alkharib, Nurhafilah Musa, and Salmy Edawati Yaacob. "Tadbir Urus dan Pengawaseliaan Ar-Rahnu di Malaysia: Bidang Kuasa Siapakah?" *Kanun: Jurnal Undang-Undang Malaysia* 30, no. 2 (2018): 243–50.
- Shah, Asiah Alkharib, Nurhafilah Musa, and Salmy Edawaty Yacob. "Masa Depan Pengawaseliaan Ar-Rahnu di Malaysia Menurut Perspektif Perundangan." *Journal of Contemporary Islamic Law* 3, no. 1 (2018): 4.
- Shah, Asiah Alkharib, and Salmy Edawati Yaacob. "Pembangunan Infrastruktur Tadbir Urus Dan Pengawal Seliaan Ar-Rahnu." *Journal of Advanced Research in Business and Management Studies* 6, no. 2 (2017): 1.
- Sharif, Dziauddin, Amir Shaharuddin, and Nurul Aini Muhamed. "The Reasoning Pattern of Islamic Jurists' Views on *Al-Rahn* (Islamic Pawn Broking) Contract and Its Ruling." *Journal of Contemporary Islamic Studies* 2, no. 1 (2016): 18.

- Sharif, Dziauddin, Amir Shaharuddin, Nurul Aini Muhamed, Nasif Sidquee Pauzi, and Mohamad Zaid Mohd Zin. "The Improvement of Ar-Rahn (Islamic Pawn Broking) Enhanced Product in Islamic Banking System." *Asian Social Science* 9, no. 2 (2013): p36. <https://doi.org/10.5539/ass.v9n2p36>.
- Shater, Ahmad Faizal, 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* 1, no. 2 (2017): 33.
- Shuaib, Farid Sufian. "The Islamic Legal System in Malaysia." *Pacific Rim Law & Policy Journal* 21, no. 1 (2012): 86.
- Skully, Michael T. "The Development of the Pawnshop Industry in East Asia." In *Financial Landscapes Reconstructed*, edited by F. J. A. Bouman and Otto Hospes, 357–74. New York: Routledge, 1994. <https://doi.org/10.4324/9780429038891-21>.
- Suharnoko. "Legal Issues on Pledge Share Agreement." *Indonesia Law Review* 1, no. 1 (2011): 55. <https://doi.org/10.15742/ilrev.v1n1.94>.
- Sutedi, Adrian. *Hukum Gadai Syariah*. Bandung: Alfabeta, 2011.
- Syahbudi. "Pemikiran Dan Gerakan Sistem Ekonomi Islam Di Indonesia." *Hermenia: Jurnal Kajian Islam Interdisipliner* 2, no. 2 (2003): 205.
- Tarantang, Jerry, Maulidia Astuti, Annisa Awwaliyah, and Meidina Munawaroh. *Regulasi Dan Implementasi Pegadaian Syariah Di Indonesia*. Yogyakarta: K-Media, 2019.
- Thaker, Hassanudin Mohd Thas, Ahmad Khaliq, Mohamed Asmy bin Mohd Thas Thaker, Anwar bin Allah Pitchay, and K. Chandra Sakaran. "Drivers of Ar-Rahn (Pawn) Acceptance: Malaysian Evidence." *Journal of Islamic Marketing* 12, no. 7 (2021): 1242. <https://doi.org/10.1108/JIMA-08-2019-0161>.
- Thakranontachai, Trakarn. "Orient's Oldest Financial Institutions: The Pawn Shop." *ABAC Journal* 2, no. 2 (1982): 1.
- Umam, Khotibul, and Allamuddin Al Faruq. "Politik Hukum Pengembangan Kelembagaan, Produk, Dan Aktivitas

- Perbankan Syariah di Indonesia.” *Asy-Syir’ah Jurnal Ilmu Syari’ah Dan Hukum* 50, no. 2 (2016): 455–56.
- Wahid, Abdul. “Ethical Policy in Pawn: The Government Pawnshops Service in Late Colonial Java, 1900-1940.” *Lembaran Sejarah* 9, no. 2 (2012): 8–7.
- Waluyo, Agus. “Kepatuhan Bank Syariah Terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi Ke Dalam Hukum Positif.” *Inferensi Jurnal Penelitian Sosial Keagamaan* 10, no. 2 (2016): 3.
- Wan Abdullah, Wan Abd Rahman Khudzri. “Historical Development of Pawning Practice in Malaysia: From Pajak Gadai to *Al-Rahn*.” *Jurnal Pembangunan Sosial* 1 (1999): 1.
- Winstedt, Sir Richard. “An Old Minangkabau Legal Digest from Perak.” *Journal of the Malayan Branch of the Royal Asiatic Society* 26, no. 1 (1953): 6.
- Wurm, S. A., and B. Wilson. *English Findexlist of Reconstructions in Austronesian Languages*. Canberra: The Australian National University, 1975.
- Yang, Lien-sheng. “Buddhist Monasteries and Four Money-Raising Institutions in Chinese History.” In *Chinese Economic History up to 1949*, 1:1. Leiden: Brill, 2008.
- Ziegenhain, Patrick. “Islam and Nation-Building in Indonesia and Malaysia.” *ASIEN The German Journal on Contemporary Asia* 146 (2018): 79.