



Gap Analysis Between the *Rahn* Exposure Draft by Bank Negara Malaysia and *Rahn* Practice in Islamic Pawn Broking Institutions

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Abstract

This paper aims to analyse the existing structure of *rahn*-based Islamic microcredit lending facilities by Bank Kerjasama Rakyat and Pos Malaysia, the two institutions with the largest number of *Rahn* branches in Malaysia, in comparison with the Exposure Draft on *Shari'ah* Requirements and Optional Practices of *Rahn* issued by Bank Negara Malaysia (BNM). The Exposure Draft delineates the *Shari'ah* requirements and Optional Practices pertaining to *Rahn* such that the regulatory body seeks feedbacks and alternative proposals from stakeholders to enhance the current practise of *rahn*. The main purpose of this paper is to investigate whether the practices of Bank Kerjasama Rakyat and Pos Malaysia comply with the proposed policy document by BNM with regard to the *Shari'ah* aspects. This paper employs a qualitative research method based on the data gathered from secondary sources from the literature and other academic materials including the *Rahn* exposure draft, in order to evaluate the theoretical and practical aspects of *rahn* in Islamic microcredit financing. The findings show that in general, the current *rahn* practices by Bank Kerjasama Rakyat and Pos Malaysia are in accordance with the *Shari'ah* requirement in the *Rahn* Exposure Draft issued by BNM, based on available information. However, there are some concerns regarding the current *rahn* practices related to the precautionary measure before accepting the *marhun* (pledged item) to ensure the *marhun* is recognized by *Shari'ah* and the basis of the imposition of safekeeping fee to customers. As such, these issues call for a further examination and appropriate remedy.

Keywords: ar-Rahn, Islamic pawn broking, Islamic micro-credit

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1. Introduction

There have been prescriptions in *Al-Qur'an* and *Hadith* on the legitimacy of *rahn*. Since the time of the Prophet (s.a.w.s), Muslim scholars from different fields have been discussing this subject matter not only in Islamic jurisprudence books, but also in other branches of knowledge, such as Islamic theology and Islamic history. From the Islamic perspective, *rahn* originally serves as a voluntary charitable contract (*tabarru'*) whereby the pledged item is given without any financial compensation (Al-Zuhaily, 2003). *Rahn* is a *muamalat* contract that has been in existence since the time of Prophet Muhammad (s.a.w.s). The practice of *rahn* is supported by the evidence from the *Qur'an* and from the *Hadith* of the Prophet Muhammad (s.a.w.s). As stated in the *Qur'an*:

"If ye are on a journey and cannot find a scribe, a pledge with possession (may serve the purpose). And if one of you deposits a thing on trust with another let the trustee (faithfully) discharge his trust and let him fear his lord." (Al-Qur'an, 2:283)

Also, in the *Hadith* from Aishah (r.a):

"Narrated by Aishah (r.a) that the Prophet (peace be upon him) bought some grain from a Jew on deferred payment, and he pledged steel armour as security for it" (Bukhari and Muslim).

Previously, Muslims around the world and in Malaysia particularly did not have an alternative access to an interest-free and low cost short-term cash advance (Bhatt & Sinnakkannu, 2012). In the conventional

system, pawn broking is a form of secured money lending by pawnshops to enable clients' short-term cash borrowings. The application is totally not in line with the Shariah requirement, where the practise of charging interest on the loan given is clearly a form of *riba* which is prohibited in Islam. This situation has improved for the better when the Islamic pawn broking institutions, founded based on the *Shari'ah* law called *rahn*, was first established in Malaysia in 1992 known as Muassasah Gadaian Islam Terengganu (MGIT), which was later followed by few other institutions. It is advantageous to the society, since it plays a key role in providing cash incentives, financial resources and capital for education and business purposes, thus helping in the expansion of income generation for Muslims community.

However, in a modern economy combining financial growth, a more practical *rahn* practice in the Islamic pawn broking industry incorporates both features of *Shari'ah* compliance and commercial value and is of a great importance to ensure customers are able to engage in an Islamic way and simultaneously allow the institutions to generate income (Sharif et al. 2013). In the contemporary context, *rahn* is heavily utilized in an income-generating way, raising some *Shari'ah* concerns on its operation, which among others, is claimed to contain the element of *riba* in relation to the safekeeping fee being charged to the customer (Sharif et al. 2013). *Rahn* has become increasingly popular among consumers. This situation calls for a supervision of an authoritative body to help monitor and ensure that the *rahn* business operation is conducted in accordance to the *Shari'ah* laws and *Shari'ah* requirements.

1.1. Objective of Study

Ar-Rahnu is an Islamic pawn broking product offered by several banking institutions in Malaysia as well as by the non-banking institutions, co-operatives and state linked companies. It is a short-term financing secured by collateral, which is in form of gold, jewelries or other valuable items. *Rahn* is different from the conventional pawn broking since it operates in accordance with *Shari'ah* requirements. The *Rahn* Exposure Draft by Bank Negara Malaysia (BNM) consists of *Shari'ah* guidelines for the operation of *rahn*. These guidelines should be observed by the institutions that offer *rahn* products, to ensure that these products comply with the *Shari'ah* requirements.

This paper seeks to satisfy a few objectives. One of the objectives is to study the *Rahn* Exposure Draft on *Shari'ah* Requirements and Optional Practices issued by BNM. The second objective of this paper is to examine the current *rahn* practice in selective Islamic pawn broking institution in comparison with the *Rahn* Exposure Draft issued by BNM on selective aspects, which are significant to the validity of *rahn* contract including the pillars of *rahn*, safekeeping fee and liquidation of pledged item. This paper also aims to highlight the gap between the practice of Islamic pawn broking institution and the *Shari'ah* requirement in the *Rahn* Exposure Draft.

1.2. Research Methodology

A qualitative research method is employed in this study with data gathered from secondary sources. It is based on literature and academic texts consisting of theses and articles including reading materials on the theoretical aspects of *rahn*. The Exposure Draft on '*Shari'ah* Requirements and Optional Practices of *Rahn*' issued by BNM is analysed in this study to investigate the *rahn* practices in Bank Kerjasama Rakyat and Pos Malaysia in order to determine whether they adheres to the proposed policy. With the objective of comprehending the structural flow and operational aspects of *rahn* facility, relevant documents, such as the product disclosure sheets (PDS) and the answers given in the frequently asked questions (FAQ) on *rahn* product by Bank Kerjasama Rakyat and Pos Malaysia, are also studied in this paper. This research also relies on documentation analysis to assess the *Shari'ah* issues of the *rahn* structures, such as the imposition of safekeeping fee and the disputes stemming from composite contracts pertaining to *muqtada al-aqd* (nature and impacts of the contract). These are some of the key issues, which certainly require input from scholars. Furthermore, data is derived from secondary-sources. This

2. Literature Review

In order to understand in-depth the current practices of *rahn* and the issues surrounding its application, the literatures and academic writings including theses and articles written by contemporary researchers are the priority list of references for this study. The literature review covers the *rahn* concepts and its practical issues related to the underlying contract of *rahn* and the safekeeping fees.

2.1. Rahn Concept

According to Bahari *et al.* (2015) the institutions that provide *rahn* product can be categorized into four main categories, which include the banking institutions, non-banking institutions, state link companies and Co-operatives structured as Foundations.

Table 1: The list of institutions that offer *Rahn* Product

Banking Institutions	Non- Banking Institution	State Link Company	Co-operative under Foundation
- RHB Islamic Bank - CIMB Islamic - Bank Muamalat	- Agro Bank -Bank Kerjasama Rakyat - Pos Malaysia	-Muassah Gadaian Islam Terengganu (MIGT) -Permodalan Kelantan Berhad (PKB)	- YaPEIM

Source: Bahari *et al.* (2015)

Although according to Bahari *et al.* (2015) Bank Kerjasama Rakyat is classified under non-banking institution, and fall under the jurisdiction of Domestic Trade, Co-operative and Consumerism Ministry, but BNM still regulates the bank in the account and financial management matters. In fact Bank Kerjasama Rakyat was known not only as a cooperative, but as a bank since 1954 (Bank Rakyat, 2018).

As stated in Sabri *et al.* (2013) there are five pillars for a valid *rahn* contract which include:

1. *Rahin* (Chargor) The party that borrow money and secure the loan with his/ her valuable asset.
2. *Murtahin* (Chargee) The party that lend the money and receive the valuable asset of *rahin* as collateral of the loan.
3. *Marhun bih* (Debt) The amount of money lent to *rahin*.
4. *Marhum* (Valuable asset) The pledged item.
5. *Sighah* (contract) Offer and acceptance between *rahin* and *murtahin*.

Generally in the current practice, *rahn* combines four underlying contracts. The main contract is *qard* (loan) which is supported by three other contracts including *wadiyah yad amanah/dhamanah*, *rahn* (Pledge) and *ujrah* (safe-keeping). The function of each contract is further elaborated by Bhatt and Sinnakkannu (2012) as follows:

(1) *Qard*

The loan issued under the concept of *qard* whereby the Islamic pawn broking institutions lend money to the customer. The borrower is only required to pay the same amount borrowed without any interest or profit charged. Upon full payment of loan, the borrower may redeem the pawned item.

(2) *Rahn* (pledge)

The borrower is required to pledge valuable asset as collateral to ensure the loan payment. In Islamic perspective *rahn* means an asset is offered as security for a debt and the lender/pledgee has the right to sell off the asset to settle the loan in case the debtor failed to pay back the debt.

(3) *Wadi'ah yad damanah* (saving with a guaranteed protection)

The Islamic pawnshops have to keep the pledged item safely and guarantee its safety. They have the responsibility to replace stolen or missing assets if it is due to their negligence.

(4) *Ujrah* (fee)

Ujrah means that the Islamic pawnshops is allowed to charge a reasonable fee for the service rendered to the customer including the service to ensure the pawned items are safe and kept in a good condition.

2.2. Practical Issues

2.2.1. The Underlying Contract of *Rahn* Product

Rahn is a financial instrument, which combines different number of underlying contracts such as *qard hassan*, *rahn*, *wadiah yad dhamanah/amanah* and *ujrah* (Mohamad & Salleh, 2008). Fairouz et.al (2012) asserted that the combination of *wadiah* and *rahn* contract is not harmonious since the *muqtada al-Aqad* (objective of the contract) of both is contradictory to one another. This combination has violated the most essential feature of *wadiah*, where the owner has the right to request back the property in the safekeeping at any time whereas in *rahn* contract, the pledgor can only get back the pledged item once the debt has been settled. It is asserted that the inclusion of *wadiah* in *rahn* product is may not be necessary since in the contract of *rahn* itself, the pledgor need to transfer the possession of pledged item to pledgee once the contract of *rahn* has been concluded between the parties. This is based on *surah al-Baqarah* verse 282,

“And the pledged may be held in hand.” (*Al Qur'an*, 2:282)

When the pledged item is in the possession of pledgee, the pledgee will act as a trustee to ensure the safekeeping of the pledged item (Al-Zuhaily, 2003). This shows that the process of transfer of the pledged items between contracting parties and its safekeeping are due to the requirement for a valid *rahn* contract. Having a *wadiah yad dhamanah* may be redundant (Mohamad & Salleh, 2008). In addition, the inclusion of *dhaman* (guarantee) in *wadiah* will initiates more issue, since this will lead toward *tuhmah* (negative perception) that the fee charged to the pledgor is not just for the safekeeping of pledged item but include the fee for the *Dhaman* (guarantee) of safekeeping given by the institutions (Fairouz et.al 2012).

2.2.2. Margin of Financing and Safekeeping Fee

There is an array of financing modes offered by various Islamic pawn broking institutions ranging from 50% up to 70% of the *Marhun* (pledged item) value. The financing margin offered by the Islamic pawn broking institutions is lower compared to the conventional pawn broking that able to offer the margin of loan up to 85% to 90%. As pointed by Sabri *et al.* (2013), this is one of the reasons that attract the pledgor to remain with the conventional pawn broking. The fee charged to the pledgor is based on *ujrah* since in the contract of *rahn*, even though the pledgee has the possession of the pledged item, but the ownership of the asset remains with the pledgor. The pledgor is liable for the maintenance of the asset and the Islamic pawn broking institution has the right to charge fee for the maintenance and safekeeping service of the pledged item in the form of *ujrah* (Azman, 2014).

There are two approaches normally adopted by Islamic pawn broking institutions in calculating the safekeeping fee, either on a daily or a monthly basis. As a result, different rates are imposed, bounded by the margin of financing and method of calculation (Fairouz et.al, 2012). The rate charged to the pledgor is in accordance with the value of *marhun* (pledged items). Generally, the higher the value of *marhun*, the higher will be the fee charged to the pledgor.

It is observed that, there is a linear relationship between the safekeeping fee charged and the amount of loan granted to the pledgor (Fairouz et.al, 2012; Hisham et.al, 2013). The issue here is whether the fee charged to the customer is not only based on the value of *marhun* but also the amount of loan granted to the pledgor? If the fee is charged based on the loan granted, this will trigger the non *Shari'ah* compliant issue on *riba* as stated in the *Hadith* of the Prophet (s.a.w.s.) that every loan which generate profit is considered as *riba* (Fairouz et.al, 2012) . Nevertheless, as compared to the conventional pawn broking, the rate of safekeeping fee in Islamic pawn broking is much lower and more convenience to the customer (Noraini, 2013).

2.3. The *Rahn* Exposure Draft

It is noteworthy that the *Rahn* Exposure Draft on *Shari'ah* Requirements and Optional Practices proposed by Bank Negara Malaysia (BNM) is not yet finalized. The Exposure Draft welcomes any written comments and alternative suggestions from public to help BNM's evaluation in enhancing the *Shari'ah*-compliance aspect in *rahn* and to build a better shariah-based regulatory framework for the industry. The *Rahn* Exposure Draft consists among others the general guidelines of *Shari'ah* requirement for a valid *rahn* contract and this rule

supposed to be observed in every product that include *rahn* as one of its supporting contract.

3. Findings and Discussion

Table 2 consists of the findings from the gap analysis between the *Rahn* Exposure Draft and the practice of *rahn* in the Islamic pawn broking institution specifically by Bank Kerjasama Rakyat and Pos Malaysia. The gap analysis focuses on the *Shari'ah* requirement for some of the pillars of *rahn* as well as on the safekeeping fee and redemption process of the pledged item. Through observation, there is no gap between the Exposure Draft and the practice of both institutions in term of definition. Even though the words used to describe *rahn* product by Bank Kerjasama Rakyat and Pos Malaysia is not verbatim with the definition provided in the Exposure Draft, it is observed as a simplified version that consist all the substances of the definition provided in the Exposure Draft in order to provide better understanding of the products to the layman.

Table 2: Gap Analysis on Definition

Exposure Draft	Bank Kerjasama Rakyat	Pos Malaysia
<p>1. Rahn refers to a contract where a party, as pledgor (<i>rahin</i>) pledges an asset as collateral (<i>marhun</i>) to another party, a pledgee (<i>murtahin</i>) to fulfill an obligor's liability or obligation (<i>marhun bih</i>) owed to the pledgee in the event of default of such obligor.</p> <p>2. The liability or obligation may include those arising from any or a combination of the following:</p> <p>(a) a loan contract (<i>qard</i>)</p> <p>The <i>Rahn</i> Exposure Draft, 8.1 and 14.16, pages 4 and 7 (BNM, 2017)</p>	<p>The contracts included in Rahn product:</p> <p><i>Qard</i> - Loan agreement between the Institution and the customer</p> <p><i>Wadi'ah yad dhamanah</i> - the guaranteed safekeeping of the pledged item.</p> <p><i>Ujrah</i> - Fee for the guarantee and safekeeping service</p> <p><i>Ar-Rahnu Pajak Gadai-I</i>, Product Disclosure Sheet, page 1 (Bank Rakyat, 2018)</p>	<p>This product is a scheme that provides cash financing based on Islamic pawn broking principle. The collateral is using to secure the financing granted.</p> <p>Pos Malaysia, <i>Rahn</i> FAQ 1 (Pos Malaysia, 2018)</p>

In term of combination of *rahn* with other contract, there is no gap in *rahn* practice by Bank Kerjasama Rakyat since the product combines *rahn* with *qard*, *wadiah yad dhamanah* and *ujrah*. For Pos Malaysia, there is no detail on the underlying *Shari'ah* contracts of the product. However, the product is described as cash financing instead of loan.

The word "cash financing" is not clear as it may refer to other *Shari'ah* contract such as *tawarruq* instead of *rahn*. Pos Malaysia should be more transparent on this matter. If the pledged item is used to secure the loan arises from the contract other than *qard*, it should be expressed clearly in the contract or PDS to ensure the customers are aware before they enter into the pledge agreement.

In relation to the contracting parties for *rahn* (Table 3), as observed, there is no contradiction between the eligibility condition of pledgor stipulated by Bank Kerjasama Rakyat and Pos Malaysia with the legal capacity requirement in the *Rahn* Exposure Draft. According to the Age of Majority Act 1971 section 2, a person who attained the age of 18 years is presumed to have legal capacity. The condition for pledgor to be 18 years and above by Bank Kerjasama Rakyat and Pos Malaysia is in line with the requirement in the Exposure draft.

However, Bank Kerjasama Rakyat and Pos Malaysia only highlight on the criteria of pledgor, even though the Exposure Draft mentions on contracting parties, which means the pledgor and the pledgee. Nevertheless, it is understandable that the other contracting party in *rahn* product is the Islamic pawn broking institution itself, which is a legal entity and should be governed by its respective enactments or laws.

Table 3: Gap Analysis on Contracting Parties (*Rahn*/Pledgor and *Murtahin*/Pledgee)

Exposure Draft	Bank Kerjasama Rakyat	Pos Malaysia
<p>A contracting party shall be a natural person or legal entity that must have the legal capacity to enter into the <i>rahn</i> contract.</p> <p>Legal capacity of both natural person and legal entity is governed by Contract Act 2016 and Age of Majority act 1971.</p> <p>The <i>Rahn</i> Exposure Draft, 11.3, page 4 (BNM, 2017).</p>	<p>Eligibility of the pledgor</p> <p>a. Must be 18 and above</p> <p>b. Not a bankrupt</p> <p><i>Ar-rahnu</i>, Bank Rakyat page 1 (Bank Rakyat, 2018)</p>	<p>Eligibility of the pledgor</p> <p>a. Must be 18 and above</p> <p>Pos Malaysia, <i>Rahn</i>, FAQ 17 (Pos Malaysia, 2018)</p>

Through the observation on the conditions of *marhun*, there is a gap identified in *rahn* practice by Pos Malaysia (table 4). As stated in the Exposure Draft, the pledged item must be recognized by *Shari'ah*, means that it should be valuable, exist during the contract and it is not something, which is prohibited (Haram). The pledgor should provide the evidence of his / her ownership of the asset.

If the asset is owned by the other party, then the consent of that person must be obtained, before the Islamic pawn broking institution can accept the pledge. Bank Kerjasama Rakyat ensures that the pledged item is recognized by *Shari'ah* and owned by the pledgor based on the consent of the owner of pledged item through the requirement to produce the Purchase Certificate.

However, this precautionary measure is absent in *rahn* practice by Pos Malaysia. The failure of the Islamic pawn broking institution to ensure the ownership/right to pledge the asset will affect the validity of the contract if it is proven later that the pledged item is not belong to the pledgor but obtained through illegal means and this is also against the *maqasid al-Shari'ah* with regards to the protection of *mal* (property).

Table 4: Gap Analysis on the *Marhun* (Pledged Item)

Exposure Draft	Bank Kerjasama Rakyat	Pos Malaysia
<p>1, The subject matter of the rahn contract shall be –</p> <p>(a) a collateral (<i>marhun</i>) that is recognized by <i>Shari'ah</i></p> <p>The collateral must be owned by –</p> <p>(a) the obligor;</p> <p>(b) a third party; or</p> <p>(c) The obligor and a third party.</p> <p>2. In the case where the pledgor pledges collateral that is wholly or partially owned by a third party, the pledgor must obtain the third party's consent to pledge such collateral.</p> <p>The <i>Rahn</i> Exposure Draft, 13.1, 14.3, 14.5 page 5 and 6 (BNM, 2017)</p>	<p>1.The bank does not accept any pledged item that has the form of any idol or living creatures</p> <p>2. The customer must provide the Purchase Certificate or the Original Certificate of the asset.</p> <p>3. If the asset is a present from the employer, the Certificate of Honor must be made available to the bank.</p> <p><i>Ar-Rahnu</i>, Bank Rakyat, page 1 (Pajak Gadai-i Genius, 2018)</p>	<p>The Institution does not require any receipt to be provided to proof the ownership of the asset.</p> <p>Pos Malaysia, <i>Rahn</i> FAQ 18 (Pos Malaysia, 2018)</p>

Table 5: Gap Analysis on the Safekeeping Fee

Exposure Draft	Bank Kerjasama Rakyat	Pos Malaysia																	
<p>1. Expenses in <i>rahn</i> are categorized into –</p> <p>(a) Expenses incurred in relation to the maintenance of collateral; and</p> <p>(b) All other expenses incurred in relation to the <i>rahn</i> contract including safekeeping, documentation and liquidation of the collateral.</p> <p>2. The pledgee shall not charge any fee that amounts to profit in the <i>rahn</i> contract.</p> <p>3. Notwithstanding paragraph 18.3, the pledgee may claim any direct cost.</p> <p>The <i>Rahn</i> Exposure Draft, 16.1, 18.3, 18.4 page 7 and 9 (BNM, 2017)</p>	<p>Safekeeping fee</p> <table border="1"> <thead> <tr> <th>Financing Limit</th> <th>Financing Margin</th> <th>Safekeeping rate for every RM 100.00Marhun per month</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Up to RM 1,000.00</td> <td>65%</td> <td>0.65</td> </tr> <tr> <td>70%</td> <td>0.75</td> </tr> <tr> <td rowspan="2">> 1,001 – 10,000</td> <td>65%</td> <td>0.75</td> </tr> <tr> <td>70%</td> <td>0.85</td> </tr> </tbody> </table> <p>In the case of Bank Rakyat, the fee is calculated on a daily basis as mentioned in the Product Disclosure Statements (Rakyat & Gadai-i, n.d.) and calculated on the safekeeping rate as follow: $a = b \times c/100 \times 12 \times d/365$ where;</p> <p>a = Safekeeping fee, b = <i>Marhun</i> value, c = Safekeeping rate, d = Loan tenure,</p> <p><i>Ar-Rahnu</i>. Bank Rakyat, page 2 and 3 (Pajak Gadai-i Genius, 2018)</p>	Financing Limit	Financing Margin	Safekeeping rate for every RM 100.00Marhun per month	Up to RM 1,000.00	65%	0.65	70%	0.75	> 1,001 – 10,000	65%	0.75	70%	0.85	<p>Safekeeping fee</p> <table border="1"> <thead> <tr> <th>Safekeeping rate</th> <th>RM 0.85 for every RM 100 Marhun</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> </tbody> </table> <p>The method of calculation is not disclosed in the official website. Pos Malaysia, <i>Rahn</i> FAQ 6 (Pos Malaysia, 2018)</p>	Safekeeping rate	RM 0.85 for every RM 100 Marhun		
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In term of safekeeping fee (table 5), based on observation, there is an issue on the fee charged by Bank Kerjasama Rakyat. According to the Exposure Draft, the Pledgee is allowed to charge the expenses of the pledged item from the owner in form of safekeeping fee. The safekeeping fee should not be based on the amount of loan granted since this will trigger the *Shari'ah* non-compliance issue on *riba* based on the hadith of Prophet S.A.W that every loan, which generates profit is considered as *riba*. The product disclosure sheet by Bank Kerjasama Rakyat provides the explanation that the amount of safekeeping fee charged is based on the value of *marhun* (Pledged item). However, through observation, there is linear relationship between the amount of financing and the rate of safekeeping fee. As seen from the table, for the financing of RM 1,000 and below, the amount of safekeeping rate is much lower compared to the financing above RM 1,000 although at the same financing margin limit. Through limited observation based on the information in the product disclosure sheet, the linear relationship between the safekeeping rate and the amount of loan granted is somewhat reflective of a simple interest calculation, especially taking into consideration that the underlying contract for *rahn* product is *qard* (loan). If this observation is true, the safekeeping fee charged by Bank Kerjasama Rakyat may not be in line with the *Shari'ah* principles that prohibit any interest or profit on any loan granted. As opposed to Bank Kerjasama Rakyat, there is no gap in safekeeping fee of Pos Malaysia with the requirement in the Exposure Draft since the institution only charge one safekeeping rate based on the value of *marhun* for every financing limit.

Based on the observation on the liquidation of pledged item (table 6), there is no gap between the requirements in the Exposure Draft and the liquidation practice of pledged items by both institutions. Consequent to the *rahn* contract, Pledgee is allowed to sell the pledged item if the Pledgor fails to fulfil his/her obligation to pay the loan within the stipulated tenure. For the purpose of clarity, it is highly recommended for the Islamic pawn broking institutions to include the clause that specifies on this right in the agreement. It

is also one of the standards operational for both institutions to send the reminder notice before the expiry of loan tenure to ensure the pledgor is aware on the obligation to make payment within stipulated period. The practice of Bank Kerjasama Rakyat and Pos Malaysia to return the balance from the auction of pledged item is in line with the requirement under the exposure draft. The fact that the pledgor remains the owner of the pledged item entitles the pledgor to receive any excess from the liquidation of the pledged item.

Table 6: Gap Analysis on Liquidation/Auction of Pledged Item

Exposure Draft	Bank Kerjasama Rakyat	Pos Malaysia
In the event that the proceeds from the liquidation of the collateral exceed the liability or obligation of the obligor, the excess amount shall be returned to the owner of the asset. The <i>Rahn</i> Exposure Draft, 17.9, page 8 (BNM, 2017)	If there is balance from the auction of pledged item, it will be returned to pledgor after deduction of safekeeping fee, the financing and any related cost. <i>Ar-Rahnu</i> Product Disclosure Sheet, page 2 (Bank Rakyat, 2018)	The balance will be returned after deduction of safekeeping fee, financing and 3% administrative cost. Pos Malaysia, <i>Rahn</i> FAQ 23 (Pos Malaysia, 2018)
In the event that the proceeds from the liquidation of the collateral exceed the liability or obligation of the obligor, the excess amount shall be returned to the owner of the asset. The <i>Rahn</i> Exposure Draft, 17.9, page 8 (BNM, 2017)	If there is balance from the auction of pledged item, it will be returned to pledgor after deduction of safekeeping fee, the financing and any related cost. <i>Ar-Rahnu</i> Product Disclosure Sheet, page 2. (Bank Rakyat, 2018)	The balance will be returned after deduction of safekeeping fee, financing and 3% administrative cost. Pos Malaysia, <i>Rahn</i> FAQ 23 (Pos Malaysia, 2018)

4. Conclusion and Recommendation

The study is an analysis on the gap between the practices of *rahn* and the *Rahn* Exposure Draft by BNM focusing on the *Shari'ah* aspects and requirement for valid *rahn* contract. From the finding, there are two main gaps in the practice of *rahn*. Firstly, by Pos Malaysia, with regard to the *marhun*, where there is no procedure to ensure the legality of *marhun*, i.e. to ensure that the ownership of the asset really belong to the pledgor or if the pledge is done on behalf of third party, the consent of that party has been obtained. Secondly, on the calculation of safekeeping fee by Bank Kerjasama Rakyat, as observed in the safekeeping fee charge, there is linear relationship between the rate of safekeeping fee and the amount of financing granted to the pledgor. These gaps may trigger the *Shari'ah* non-compliance issue in terms of the *marhun* that should be recognized by *Shari'ah* and the safekeeping fee that should not be based on the amount of financing granted to the pledgor.

However, based on the gap analysis on the aspects that have been discussed in this study, the practice of *rahn* by Bank Kerjasama Rakyat and Pos Malaysia is in line with the *Rahn* Exposure Draft. Nevertheless, some of the issues and gaps that have been highlighted must be taken into consideration to ensure the practice of *rahn* is in accordance with the *Shari'ah* requirement and to ensure the validity of the contract. In addition, the practice of *rahn* varies from one institution to another institution. This is mainly due to the absence of any standardize legislation or guideline on the *rahn* product. Thus, it is suggested for the institutions offering *rahn* to strictly adhere to the *Shari'ah* requirements and to work towards promoting standardization with respect to *rahn* practice.

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