

DZIAUDDIN SHARIF

Islamic Science University of Malaysia, Malaysia

AMIR SHAHARUDDIN

Universiti Sains Islam Malaysia, Malaysia

NURUL AINI MUHAMED

Universiti Sains Islam Malaysia, Malaysia

UNDERSTANDING THE REASONING PATTERN OF ISLAMIC JURISTS' VIEWS ON THE STATUS OF AR-RAHN (ISLAMIC PAWN BROKING) CONTRACT AND ITS RULING

Abstract:

According to Islamic jurisprudence, ar-rahn can be described as the detention of the pledge to the creditor or the seller in securing his debt or fulfilling his right. However, Muslim jurists differed in determining the nature of ar-rahnu contract. The Ḥanafī, Shāfi'ī and Ḥanbalī jurists viewed ar-rahnu as a charitable (tabarru') contract whereas the Maliki jurists considered it as a form of an exchangeable (mu'āwaḍāt). These differences originated from the different interpretation of the verse 2: 283 in the Qur'an. Using the taxonomical classification's approach founded by Rosch (1976), this paper examines the pattern of reasoning adopted by the jurists of main schools of Islamic jurisprudence. Rosch's model is chosen as it can assist the researcher to categorize the aspects of discussion between the ar-rahn's nature, conditions (shurūṭ) and rulings (ḥukm). While the model consists of superordinate and subordinate relationships, the paper enhances the conceptual framework of rahn into the discussion of conditions and rulings. Thus, the harmonized effort of taxonomical classification is been developed to discuss the related rulings of expanded discussion resulted from the status of ar-rahn either a form of charity or an exchange contract. The finding shows that Mālikī and Shāfi'ī were seen to be the most consistent schools in holding their stance about ar-rahn's nature. The consistency can be identified through the examination of ar-rahn's rulings that matched with their original position. It is also found that the rulings of Mālikī jurists are more lenient about the stipulation of conditions in the contract while Shāfi'ī stood otherwise.

Keywords:

Reasoning pattern, ar-rahn (Islamic Pawn Broking), Ruling

JEL Classification: B30, G21

1. Introduction

Since the early days of Islam, the problem of understanding an Islam did not arise as the Prophet Muhammad (pbuh) is a messenger of Allah and a leader to guide all things in Muslim's life. After the death of the Prophet, the difference of opinions between the companions regarding the understanding of the Islamic laws already started to some extent. These differences were increasingly vibrant in the days of *tābi'īn*¹ (Spectorsky 2013) in which some scholars have their own *fiqh*² (al-Uthmaniyyah n.d.) methodology in determining a rule on a particular matter. Ultimately, several of Islamic schools of thought were born that based on a specific methodology developed by their scholars. The birth of the major schools such as Ḥanafī, Mālikī, Shafī'ī and Ḥanbalī around the eighth century AD is not intended to amend the religious fundamentals, but to determine the branches rules in religion that based on the methodology that they held. These methodological differences should never revise a fundamental belief that is already clear in the Quran such as the articles of faith, the pillar of Islam and so on. On the other hand, this methodology has been formulated based on the diversity of reasoning and understanding of past scholars against general Islamic texts and relevancy of a current situation at the time. What was interesting about the differences between the *fiqh* scholars was that they usually debated a particular discussion by using the evidences of revealed textual (*naḳlī*) and intellectual (*'aḳlī*). A debate of a specific position for a particular topic is extremely important to apprehend before a further ruling of a legal rule can be determined. A clear understanding and a reasonable justification for a position given by each school could create a discipline and a consistency in a particular method. Thus, an appreciation and a respectful for the efforts of rule determination by a scholar from a particular school could be reared.

2. Literature Review

In *Quranic* exegesis, Ibn Kathīr is one of the scholars that explained very well about *ar-rahn* regarding surah *al-Baqarah* verse 283 (al-Qurashi, 1999). Bukhārī and Muslim alone have recorded at least ten to eleven text of various degree of hadith about *ar-rahn* in their respective books, *Ṣaḥīḥ Bukhārī* (al-Bukhārī, 810-870M/194 – 256H) and *Ṣaḥīḥ Muslim* (al-Nīsābūrī)³. Similarly, the jurists from every age and school of thoughts have contributed tremendous and magnificent works through discussion of a particular topic. They were devoted throughout their life in seeking truthful inputs for every angle of the Islamic law. The great names such as Ibn 'Ābidīn, al-Shaybānī, al-Ḥaṣḳafī and al-Shaybānīarakhsi of Ḥanafī, al-Mawardi, al-Syīrazī, al-Rāfi'ī and al-Nawawī of Shāfi'ī, al-Dāsūqī, al-Dardīr, al-Khalīl and al-Qaraḳfī of Mālikī as well as Ibn Qudāmah of Ḥanbalī are indeed become “*a living legend*” to the modern scholars in Islamic law. The great collection of *ar-rahn* issues had flourished through the meticulous process and methodology developed by them. The reviewing process, the debate of the issues, the comparative methods, the evidences they used and the principles of jurisprudence that they held became the extraordinary efforts that nobody could deny (Sharif D. et.al, 2013).

¹ The successors of the prophet's companions

² A knowledge of legitimate process gained from the detailed evidence.

³ See the various text of hadith about *ar-rahn* through al-Bukhari (810-870M), no. 2068, 2200, 2252, 2386, 2509, 2511, 2512, 2513 and al-Nisaburi (1015-1016M), no: 1603/124-126, p.1226 & 1919

2.1 The research objective and structures

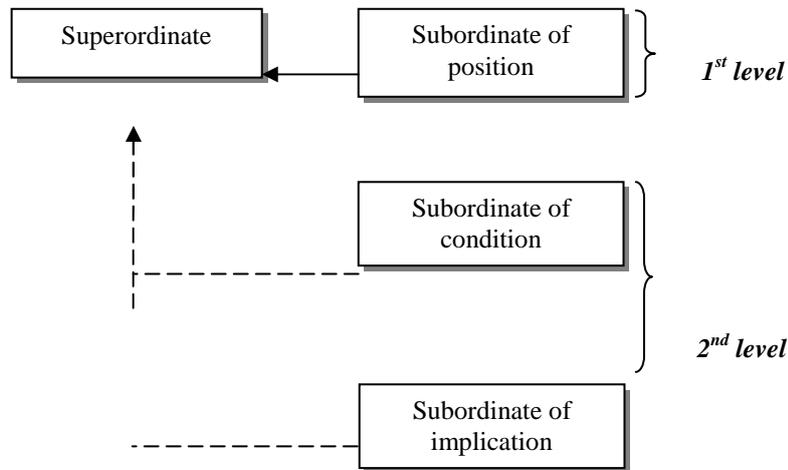
This paper focuses on the reasoning pattern of *ar-rahn*'s status and its rulings between the main schools of Islamic jurisprudence. In achieving its objective, this paper is structured as follow:

1. It starts with the selection of an appropriate methodology to be used in classifying the variety of *ar-rahn*'s condition and its ruling. In seeing the pattern more clearly, the taxonomical classification approach is determined.
2. The method produces two levels of discussion namely status and condition-ruling discussion. These two levels resulted from the process of harmonization from the original model of Rosch.
3. The harmonization is the process of suiting the original model founded by Rosch to the other discipline of knowledge and for this case; the basic status of *ar-rahn* is a fundamental matter for Islamic scholar's stance in determining their further discussion about the condition and ultimately its ruling in the contract.
4. Later, the classified reasoning model is designed resulted from the process of first and second level of discussion that ultimately determining the superordinate and subordinate of taxonomical classification.

3. Methodology

This paper is adopted with the mind that it will not reject parts of the theoretical model of *ar-rahn* as issued by the scholars. In this case, there are reasons behind each of judgment among the scholars. Therefore, this study adopted a taxonomical classification's approach that leads to a classification of some identified rulings that inter-related to each other. The relationship between the numbers of attributes is called taxonomy. According to Eleanor Rosch et.al (1976), she defines *taxonomy* as a system by which categories are related to one another by means of class inclusion. Each category within taxonomy is entirely included within one other category but is not exhaustive of that more inclusive category. A resulting taxonomy is a particular classification, arranged in a hierarchical structure or classification scheme. Typically, this is organized by super type-subtype relationships, also called generalization-specialization relationships. (Clive Seal 2007).

While the introduced model consists of superordinate and subordinate relationship as what suggested by Rosch (1976), an exploration for a harmonization of a model is a need to suit other's discipline of knowledge. One of the harmonized efforts of taxonomical classification is to discuss related attributes of expanded matter from the original *ar-rahn*'s definition from each school. The related attributes of expanded matter that excluded from the common attention is become the second level of a discussion. The second level has a significant value when the attributes that appear in the first level have been refined. This classification process from the refinement of a discussion requires a deep and lengthy debate on the *ar-rahn*'s status and its ruling between scholars, so that every classification of the attributes is inclusive. Chernyak and Mirkin (2013) is the latest example of study that uses a two-step approach to devising a hierarchical taxonomy of a domain while refining computationally of a Russian-language on Wikipedia (Chernyak E. L. and Mirkin B. G. 2013).

Diagram 1: The harmonized model of taxonomical classification

4. Findings and discussion

In discussing the *ar-rahn* status, condition and ruling of each schools of jurisprudence, a classification of jurists' views, stance and rulings has been classified to identify the related aspects of the discussion. This taxonomical classification derived from the various thought of Islamic jurisprudence namely *Ḥanafī*, *Mālikī*, *Shāfi'ī* and *Ḥanbalī*. Even though all of them were discussed about the same thing; a different methodology and adopted by each school has led them giving a different prominence against the ruling of *ar-rahn*'s condition that stipulated in the contract. Although the classification process included the focused status; a harmonized model of *ar-rahn*'s ruling asserts the second level of an expanded discussion. The second level of discussion is the related ideas and views from the first level of discussion of *ar-rahn*'s status that written by scholars of each school. The harmonization of model begins with a process of status' determination that had written by scholars of all schools before the details of discussion about the contract's condition and its ruling will take place. The first level of discussion is called *ar-rahn*'s status while the second level is called *ar-rahn*'s condition-ruling discussion.

4.1 The status of *ar-rahn* among the main the jurists

Ḥanafī, *Shafi'ī* and *Ḥanbalī jurists* state that *ar-rahn* is a charity contract (عقود) regardless of either the conditions is stipulated during the contract or after the right⁴ is confirmed. Meanwhile, Al-Zaila'ī of *Ḥanafī* said that *ar-rahn* is usually bonded by the offer and the acceptance because it is a form of charity such as gifts and *sodaqah* (Al-Zaila'ī 1414H). However, *ar-rahn* contract is sufficient if only bonded by the offer without the acceptant because of same reason. Therefore, a clear understanding about the giver of the pledge is not obligated to give something to the holder of pledge in order for him to get a loan must be conducted through offer and acceptance. (al-Bābartī 1970)

Al-Rāfi'ī of *Shāfi'ī* said; there is a slight different between the sale and the pledge contract. Unlike the sale contract that required the contracting parties to have an obligation of loss responsibility and risk willingness, *ar-rahn* is not burdened by it. In fact, *ar-rahn* is a contract that conducted voluntarily by the giver of the pledge for the debt he owes (Al-Rāfi'ī 1997). According to al-Buhūti of *Ḥanbalī*, *ar-*

⁴ Right refers to the money or asset of the holder of the pledge who lent out or sold to the giver of the pledge

rahn contract is lawful as long as the contracting parties did not require the fulfillment of certain condition. (Al-Buhūṭī 1947)

Meanwhile, the Mālikī jurists view that *ar-rahn* that bonded to a required condition in the contract is no longer a form of charity. The contract of *ar-rahn* should be applied after the debt contract in order to remain the status of *tabarru'* (charity). Al-Dāsūqī of Mālikī allows *ar-rahn* to be stipulated in the sale or loan contract as long as engaged by the eligible contracting parties or non-eligible such as a *mumaiyyiz*, an irresponsible and a servant if they get a guardian's consent. If not doing so, the status of *tabarru* is void. (al-Dāsūqī n.d.)

4.2 First level of discussion: The status of *ar-rahn*

When Kāḍī Zādah had discussed the Ḥanafī's justification about *ar-rahn* as *tabarru'* contract, he claimed the inconsistency of volunteering action is occurred along the process of the contract. He claimed the contract is more to a form of *mu'āwaḍāt* (exchange) rather than *tabarru'* (charity) as the holder of pledge or the value of the pledged item is become a guarantor or a guarantying object to a loss pledged item. It means, in the event of damage or loss, the situation can be considered the settlement of the giver of the pledge's debt. On that reason, the offer of giving the pledged item by the giver of the pledge must be accepted by the holder of the pledge, so that, he can be bonded by the responsibility for any risk of damage or loss (Ibn Hammam, 681H).

This view has been strengthened by al-Kasānī as he said puberty, a free people, a children and a slave whose have their guardian's consent is not restricted to carry out the contract of *ar-rahn*. This group of people can be able to own a business and the act of giving and receiving the pledge is a part of it as it secures the debts fulfillment and possibly transfers an ownership. (Al-Kasani 1971)

Al-Buhūṭī also views, *ar-rahn* is not an obligatory contract and a person who gets involved is based on the principle of charity. Thus, any condition stipulated in *ar-rahn* contract will be considered as *mu'āwaḍāt*⁵ (Mat Noor Mat Zain and Azlin Alisa Ahmad n.d.). However, al-Kasani explains that there is an evidence shows about *ar-rahn* is neither fully *mu'āwaḍāt* nor *tabarru'at*. He claims the action of giving and receiving the pledged item is not an exchange for something but at the same time, the purpose of securing a debt is not an optional. The jurists of Ḥanafī say that the holder of the pledge has a right to reclaim a debt by selling collateral as long as it is not loss. In the event of loss, the function of *ar-rahn* as a debt or deferred sale's security is ended. (Al-Kasani 1971) Meanwhile, al-Rāfi'ī of Shāfi'ī agreed the explicit view of Mālikī about the stipulation of condition in the contract. He said the status of *ar-rahn* as *tabarru'* is not endangered by the condition stipulated in *ar-rahn* contract or even *ar-rahn* as a condition to be stipulated to other contract. (Al-Rāfi'ī 1997)

4.3 Second level of discussion: The condition and its ruling

This section is the ruling of previously discussed about the status of *ar-rahn* contract. As stated above, there are two views regarding *ar-rahn*'s status. Firstly, a group that consider *ar-rahn* as *tabarru'* contract and secondly, a group that allows *ar-rahn* can be changed to *mu'āwaḍāt* contract such as a sale and a lease contract if it is stipulated by a required condition. Thus, these views implicate the further effect of condition that are divided into two types; the agreed and disputed condition. The agreed condition is the unanimous agreement between jurists of every school in terms of its ruling while the disputed condition is the undecided agreement of its ruling.

There are three conditions that results the agreed rules of *ar-rahn* that discussed by the jurists:

⁵ It is an exchange-based ownership contract in which the benefits of the contract obtained by both contracting parties.

1. The condition required by the contract
2. The condition that contrary to the nature of the contract
3. The condition neither required nor contrasted to the need of the contract

The first type of agreed condition is requiring the giver of the pledge to place a pledged item (collateral) to the holder of the pledge and sell it by the expiry period of redemption. In this case, the holder of the pledge can impose a condition in the contract of settling his debt first than the other creditor of the giver of the pledge.

The second type is the giver of the pledge requires a holder of the pledge of not holding a pledged item or selling it by the expiry period of redemption or in the event of a default; or a giver of the pledge did not give a priority in settling the holder of the pledge's debt. In this situation, all scholars from Ḥanafī, Mālikī, Shafī'i and Ḥanbalī are unanimously agreed such condition is unlawful. However, they differed in opinion about the whole contract's effect either it is defective (*fāsid*) or terminated (*bāṭil*).

The third type is the condition that based on *maṣlaḥa*⁶ (Khadduri n.d.) purpose which merely aims to strengthen the existing requirement. For example: a testimony of *ar-rahn*, *ar-rahn* in a sale contract and *ar-rahn* with compensation. These added elements are neither necessary nor unnecessary to the *ar-rahn* contract. All scholars of Ḥanafī, Mālikī, Shāfi'ī and Ḥanbalī agreed that this condition is lawful and the contracting parties should fulfill it or otherwise one of the parties involved can terminate the contract.

In summary, the ruling of the stipulated condition is divided into two types; lawful (*ṣaḥ*) and defective (*fāsid*). The lawful condition is the condition that fulfills the nature of the contract or denies the absence of the contract's nature. If it is neither fulfills nor denies the nature or the absence (of the nature), it is considered *maṣlaḥa*. Meanwhile, the defective condition is the condition that contrary to the nature of the contract. The Shāfi'ī *school* view the defective condition is denied the nature of the contract and the *maṣlaḥa*. However, its denial did not affect the termination of the contract as a whole. For an example: a condition of prohibition from eating animals used for the agricultural purposes is defective but the whole contract is not affected.

The conditions that affected the disputed rules of *ar-rahn*

In this section, the jurists did not unanimously agree these conditions are denied or not to the nature of the contract. Some of them said the conditions are denied the nature of the contract and led to the unlawful effect while the others are not. There are five situations have been discussed by the jurists:

1. The holder of the pledge requires a pledged item for a sale after the expiry period of redemption
2. The holder of the pledge requires benefit utilizations in *ar-rahn* contract
3. The holder of the pledge requires the benefit of the pledged item can be turned into his ownership
4. The holder of the pledge requires a guaranty or a release from it
5. The holder of the pledge requires the termination of the ownership of the giver of the pledge

1. In the event of the holder of the pledge requires a pledged item for a sale after the expiry period of redemption, there are two views regarding this situation:

⁶ the public interest or welfare

The first opinion: The condition is lawful because the agreement of debt's repayment is mandatory to be fulfilled. This is the view of the Ḥanafī (Al-Zaila'ī 1414H), Mālikī (Al-Tasuli 1998) and Ḥanbalī. (Ibn Qudāma 1405H)

Second opinion: The holder of the pledge is not allowed to require a sale of pledged item and if he does, the condition is unlawful and thus, it should be ignored. This is the view of Shāfi'ī scholars. However, the effects of contract are varies and there are two views in this regard: (al-Muṭī'ī n.d.)

a. The dominant opinion said it is unlawful and contrary with the nature of the contract because of giving an additional benefit to a holder of the pledge and a harmful to a giver of the pledge.

b. It is lawful since *al-rahn* is a *tabarru'* contract and did not affect by a defective condition.

The Shāfi'ī's justification of favoring a holder of the pledge as a representative rather than a buyer is to avoid the conflict of interest. If a holder of the pledge is a buyer of a pledged item, this would create a conflict of an opposite wants. The giver of the pledge wants the highest price of the pledged item that can possibly be sold but the holder of the pledge wants back his (her) lent money or deferred payments of a sold asset in a soonest period regardless of its price. This opposite wants creates unfavorable situation for both contracting parties. It was like someone who becomes the agent of buying something that is determined but he (she) bought it at his own wish. (al-Muṭī'ī n.d.) However, it is argued that the contradicted wants can be avoided if the holder of the pledge's right becomes the priority for the giver of the pledge to fulfill. Meanwhile, the analogy of an agent to purchase an item on behalf of itself is irrelevant. (Ibn Qudama 1405H)

2. In the event of the holder of the pledge requires a benefit utilizations in *ar-rahn* contract, there are two views regarding this situation:

First opinion: It is lawful and should be fulfilled. This is the view of Ḥanafī, Mālikī and Shāfi'ī. (Al-Zaila'ī 1414H) On the other hand, the Ḥanafī, Mālikī and Ḥanbalī said the growth that arising from a pledged item such as plants, biological offspring (of human and animal) and fruits can be stipulated as it is not contradict to the nature of the contract. The Shāfi'ī School view that to require the growth of the pledged item is permitted to be stipulated in the contract, if its value is lesser than the original pledged item. However, the condition will be terminated if someone requires the growth as the proceeds of the pledged item. In this case, proceeds are likely to be meant as a profit generation (al-Shaybānīyarbini 977H)

Second opinion: The condition is defective (*fāsīd*). This is the majority of Shāfi'ī scholars' view. They justified the growth considered unknown (*majhūl*) and pre-determined and thus against the condition of *ar-rahn* that must be existed and known. (al-Sharbinī 977H)

3. In the event of the holder of the pledge requires the benefit of the pledged item can be turned into his ownership, the views are divided according to the schools of Islamic jurisprudence

Ḥanafī School: *Makrūh Tahrim*⁷ (Ibn 'Ābidīn 2000)

Mālikī School: The benefit can either be a type of debt or its own type (benefit). If the benefit is not a type of debt, the holder of the pledge can require the benefit of the pledged item to be turned into his ownership with two conditions:

⁷ a matter that prohibited by *Sharī'a* with a definite prohibition (*ḥarām*) but based on the presumption evidence (*zannī*).

- i. The period of benefit utilization is prescribed
- ii. The pledged item is stipulated in the sale contract

If the period is not prescribed, the factor of ignorance and loan that draws a benefit could lead to the unlawful contract. If the benefits came from a type of debt; then it should be included⁸. If the benefit is included as a condition, it cannot be postponed and only can be conducted in the debt contract only. If the benefit is due to the excess of debt given for a delay of payment; then it is prohibited either in the debt or sale contract. If the benefit is due to excess of debt intended to be given back to the debtor; then it should be included in the debt contract only, not in the sale contract. (al-Dāsūqī n.d.)

Shāfi'ī School: There are two situations to be further discussed.

- i. The benefits shall be given without an exchange

The benefit imposed in the contract is unlawful either it is determined or not, either the debt resulted from the deferred sale or the loan contract or none of the both of them. This is based on the hadith narrated by Imam Mālik, Bukhārī and Muslim. (Al-Aṣbahī 1991) about the imposition of releasing the slave of *mukātab*⁹

".....Then he (Prophet Muhammad) said, 'What is wrong with the people who make conditions which are not in the Book of Allah? Any condition which is not in the Book of Allah is invalid even if it is a hundred conditions. The decree of Allah is truer and the conditions of Allah are firmer, and the wala' only belongs to the one who sets free.'"

The contents of the above *ḥadis* shows the condition of imposing a benefit is not stated in Quran and *Ḥadis*; and therefore such condition is considered unlawful. In the following consequence, the scholars have differed opinion either such benefits will be affected the whole contract or not. There are two views for *Shāfi'ī* regarding this matter. Firstly, the contract is unlawful as it contradicts to the nature of the contract and this is the dominant view. Secondly, the contract is still valid as it is a form of charity (*tabarru'*).

- ii. The requirement of benefits in the contract should be exchange for something (*'iwaḍ*)¹⁰ (Linant de Bellefonds 2013)

The word "*'iwaḍ*" is used in works of *fiqh* to denote the counterpart of the obligation of each of the contracting parties in onerous contracts which are called "commutative"; that is, contracts which necessarily give rise to obligations incumbent upon both parties. Thus in a sale, the price (*thaman*) and the thing sold are each the *'iwaḍ* of the other. Understood in this sense, compensation must be exactly determined and, in theory, equal in value to the thing of which it is the counterpart. Should it be lacking, then unjust enrichment (*faḍl māl bilā 'iwaḍ*) will follow. Should the balance between the two dues be merely uneven then there is an illicit profit (*ribā*) gained by the man who receives more than he has given. There are two circumstances in this case of either the period (of benefit) should be determined or not:

- a. If period is not specified; such condition and even a whole contract are unlawful because it raises the element of ignorance (*juhālah*).

⁸ the benefit is a part of the debt

⁹ the slave who enters a contract of manumission with a master according to which he/she is required to pay a certain sum of money during a specific time period in exchange for freedom

¹⁰ Exchange value, compensation, that which is given in exchange for something.

b. If the period is specified as the following says: "I sell to you my slave for 100 dinars in deferred time provided you pawned to me your home which the benefits to be mine for a year, then a part of the slave will be a selling price and the other half is for a rental in exchange for the benefit of the home that I used". (al-Du'ailaj 1986) For an example, if the value of the benefits equivalent to 50 dinars then the actual value of slave was 150 dinars. This means two-third of the actual value is the selling price of a slave and another one-third is a rental of the house payable to the buyer in lieu of benefits from the house that the seller used. This is a combination of sales and lease agreement with an exchange between benefit of the house and its rental. In this case, there are two opinions in the *Shāfi'ī* School:

i. The sale and rental are two allowable contracts and it can be joined together. Thus, a condition of requiring the benefits is bounded and counted in the contract due to the existence of a measurement. If it is not notified during the contract, it is unlawful.

ii. The sale and lease contract; and its condition were unlawful. The sale of slave is defective and *ar-rahṅ* is resolved (*maḥlul*) due to the unknown period of sale and lease.

However, the contract is lawful if the selling price of the goods and the value of the benefit were determined. This is according to one opinion as the following says: "I sell to you my slave for 100 dinars (in a deferred payment) on condition that you pawn your house to me with benefits (that I can utilize) for a year and 5 months. (Al-Syirāzī 1992)

Ḥanbalī School: The requirement of the benefits is defective as it violates the nature of the contract. However, it does not lead to the termination of *ar-rahṅ* contract. (Ibn Qudāma 1405H)

In conclusion, Ḥanafī, Shāfi'ī and Ḥanbalī School did not allow a condition of inserting a benefit in the *ar-rahṅ* contract but the Mālikī School says it is permissible.

4. The holder of the pledge requires a guaranty or a release from it

Ḥanafī School view that the pledged item must be secured by the holder of the pledge. However, the secured value of the pledged item should be less than the value of the pledged item and the debt and this is agreed by Mālikī.

Mālikī School holds to the original law of guaranty as the loss of the pledged item should be borne by the holder of the pledge. If it is not lost, then the pledged item is not guaranteed.

Shāfi'ī and Ḥanbalī school views that the pledged item is a form trusteeship. The holder of the pledge can be responsible for any loss except in the case of negligence.

There are two situations needs to be discussed further regarding the issue of guarantee.

First: A holder of the pledge requires a release from guaranty - Ḥanafī (Ibn 'Ābidīn 2000) and Mālikī (al-Dāsūqī n.d.) said when the holder of the pledge requires a release from any loss of pledged item; such condition is unlawful because it denies the nature of the contract and the responsibility. According to the opinion of Asyhab of Mālikī School, a release of any guaranty by the holder of the pledge is permissible as *ar-rahṅ* is a voluntary contract. Thus, a holder of the pledge can be freed and escaped from any responsibility from the pledged item.

Second: A giver of the pledge requires a holder of the pledge to guarantee - Shāfi'ī (al-Sharbīnī 977H), Ḥanbalī (Ibn Qudama 1405H) and Mālikī (al-Dāsūqī n.d.) said if the pledged item is guaranteed by the holder of the pledge that he held; such condition is defective because of denying the nature of the contract. However, Asyhāb of Mālikī says it is permissible. The dispute in Mālikī's school is about the status *ar-rahṅ* either a voluntary or non-voluntary contract. The condition stipulated in *ar-rahṅ* is lawful when the status of the contract is a voluntary.

Apparently, Ḥanafī and Mālikī say that such condition is lawful as it agrees the needs of the contract. Similarly, if the things are not guaranteed, it is also lawful for a similar reason¹¹. This is a view of Shāfi‘ī, Ḥanbalī and part of Mālikī. The disagreement between Asyhab and other Mālikī scholars are about the different views between these two problems. Asyhab's says the preferable view (*rājih*) is in the first case while the non-preferred view (*marjuh*) is in the second's one. The first case is preferable according to him because the original method of *ar-rahn* in the Mālikī School is no guarantee against pledged item. Making a holder of the pledge as a guarantor will cause him a financier for the missing pledge. Therefore, imposing a condition of unguaranteed is in line with the nature of the contracts; thus, Asyhab's view is closer to the original law of *ar-rahn* for Mālikī.

5. The holder of the pledge requires the termination of the giver of the pledge's ownership

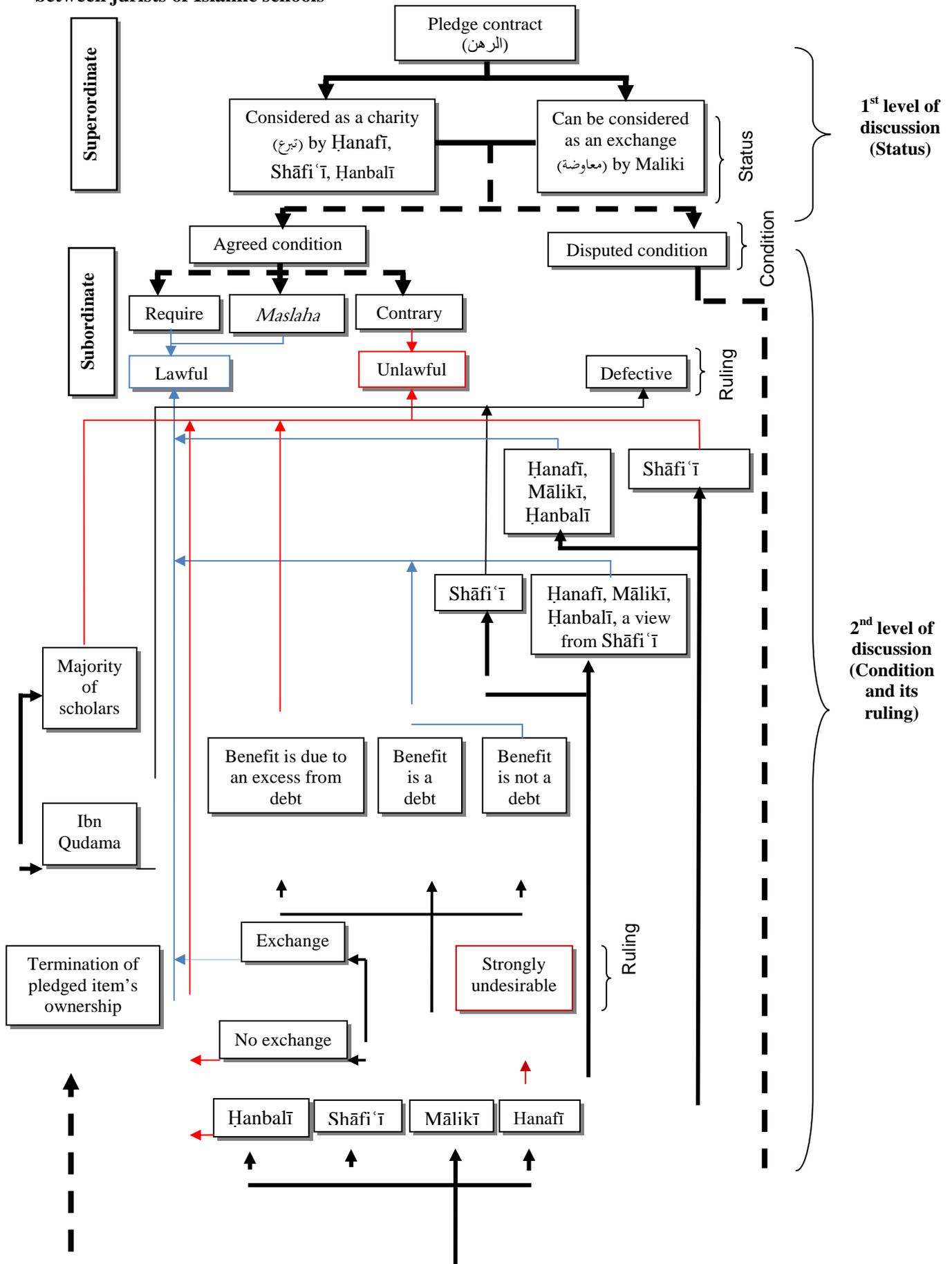
The majority of scholars' view it is unlawful if a holder of the pledge imposes such condition. It will be affected to the status of pledged item from a mortgage to a debt of giver of the pledge in the event of debt's default. This means the giver of the pledge will be burdened by a multiple debt; first is the loan contract and secondly, the changing status of pledged item's ownership which is now a no longer asset for the giver of the pledge. Ibn Qudāmah says “It is a defective condition if a holder of the pledge changes the status of the pledged item to the debt or the selling item is belonging to him (holder of the pledge) in the event of default. This was narrated by Ibn ‘Umar, Shuraiḥ, al-Nakhā‘ī, Mālik, and none of the *ahl ra'y*¹² (Hasan 1967) has differed about it. (Ibn Qudāma 1405H) This is based on the hadith narrated from Abū Hurairah (May Allah be pleased with him), the prophet said: *"The pledged item will not go away from the owner who pledges, all profits belong to him and all losses incurred borne by him"*. (Al-Asbahi 1991) within

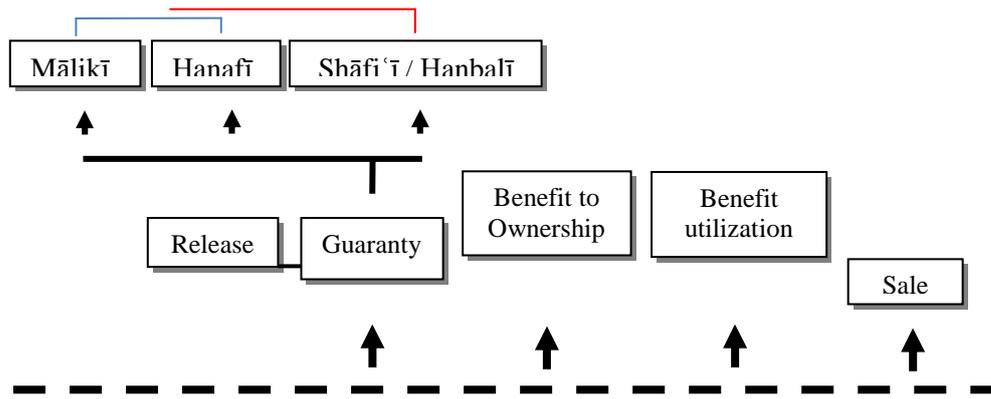
In more clarifying view, the *ar-rahn* taxonomical classification reasoning model is designed as below:

¹¹ only for those who considered *ar-rahn* as a *tabarru‘* contract

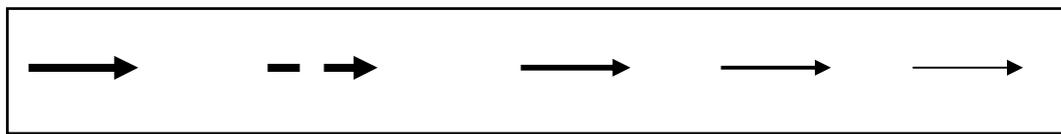
¹² A reasoning group of Islamic jurists

Diagram 2: The taxonomical classification model for *ar-rahn*'s status, condition and ruling between jurists of Islamic schools





The signage of the arrows:



3 PT arrow 3 PT dashed arrow 2 ¼ PT arrow 1 ½ PT arrow standard arrow

Before going further of model explanation, the signage of the arrow is crucial to apprehend. There are five kinds of arrows in the model called 3 PT arrows, 3 PT dashed arrows, 2 ¼ PT arrows, 1 ½ PT arrows and standard arrows. The 3 PT arrows connect the main topic with the status of *ar-rahm* and 3 PT dashed arrow implicates the agreed and disputed condition of *ar-rahm*. It is also indicating the border line between two levels of discussion (status and condition-ruling). Meanwhile, 2 ¼ PT arrows connect the condition with the jurists' views classification and 1 ½ PT arrows connect the jurists' views with their details and explanations. Ultimately, the standard arrows will connect all the views to the ruling; either lawful, unlawful defective or strongly undesirable. A colored (blue, red, brown) of standard arrows are displayed to avoid an obscure.

The model above shows the classified model of taxonomical classification for *ar-rahm*'s status, condition and ruling. It contains two levels of discussion called the status and condition-ruling discussion. The first level that focuses on the status of *ar-rahm* has been divided into two kinds of status; for those who were said *ar-rahm* is a form of charity and second; for those who were permitted *ar-rahm* to be a form of non-charity or an exchange contract that can transfer an ownership or obtain a benefit. In the second level, the process of classification has determined two classified items of condition and four classified items of its ruling. The two classified items are the agreed condition and the disputed condition. Meanwhile, the four classified items of its ruling are lawful, unlawful, defective and strongly undesirable. Later, the pattern of discussion can be seen through their views on the ruling of each condition that resulted from their stance of *ar-rahm*'s status.

For an example, all schools of Islamic jurisprudence except Mālikī considered *ar-rahm* is a form of charity. Meanwhile, Mālikī had loosened their stance on *ar-rahm* as they said it is an exchange contract when it is stipulated by the condition. However, the condition that stipulated in the contract did not restrict the other three schools of Ḥanafī, Shāfi'ī and Ḥanbalī *from* remaining their status of *ar-rahm* as a form of charity. These different statuses among them have led to further details about the agreed and disputed conditions in the second level of discussion. This second level of discussion continued to the classification of the ruling whether it is a lawful, unlawful, defective or strongly

undesirable. This ruling has been derived from a long debate of discussion among the jurists of each school. Ultimately, the pattern of reasoning from the first level to the second level of discussion can be seen easily. Except for a few disputed rulings from their own scholars, Mālikī and Shāfi'ī were seen to be the most consistent schools in holding their stance about *ar-rahn*'s status. Mālikī is the school that allows the status of *ar-rahn* to become a form of an exchange contract while Shāfi'ī hold it as a form of charity. The consistency can be identified from the arrows that frequently reached to the classification of ruling are matched with their original stance. It is also that the rulings of Mālikī scholars are more lenient in imposing conditions to be stipulated in the contract while Shāfi'ī stood otherwise.

5. Conclusion

Ḥanafī, Mālikī, Shāfi'ī and Ḥanbalī have their specific methodology that they have developed for hundreds of years ago. Their difference of stance about the status of *ar-rahn* is due to many reasons and one of them is the difference in term of understanding the evidence or determining their ways of reasoning. While revisiting the status of *ar-rahn* and its ruling, the differences can be seen between scholars of the school in reasoning the *ar-rahn*'s ruling that derived from their stance and conditions. There were scholars that favored on remaining the status of *ar-rahn* as a form of charity while the others are not. The consistency and the strength of their evidences will ultimately determine which of the rulings are more preferred upon the other. However, this situation did not show an emblem of delirium but rather an indication of priority level and a different understanding between them. Thus, the various condition and rulings about certain aspects of a given different emphasis by every school is about a reasoning pattern between Islamic scholars of the main schools of jurisprudence.

References

- Al-'Uthmāniyyah, L. M.-K. (n.d.). *Majallah Al-Aḥkām Al-'Adliyyah* (Vol. 1).
- Al-Aṣḥabī, M. b. (1991). *Muwaṭṭa' al-Imām Mālik* (Vol. 2). Damsyik: Dar al-Qalam.
- al-Bābartī, A. a.-D. (1970). *Al-'Ināyah Syarḥ al-Hidāyah* (1 ed., Vol. 10). Egypt: Mustafa al-Bābī al-Ḥalabī.
- Al-Buhūtī, M. b. (1947). *Kasyāf al-Qina' 'An Matn al-Iqnā'* (Vol. 3). Cairo: Maṭba' Anṣār al-Sunnah al-Muḥammadiyyah.
- al-Bujūrimī, S. b. (1950). *Ḥāsyiah al-Bujūrimī 'alā Syarḥ Minhāj al-Ṭullāb* (Vol. 2). Egypt: Syarikah Maktabah wa Matba'ah Mustofa al-Babi al-Halabi wa Auladihi.
- al-Bukhārī, M. b. (810-870M/194 – 256H). *Al-Jāmi' al-Musnad Al-Ṣaḥīḥ al-Mukhtaṣar min umūr Rasūlillah wa sunanihi wa ayyāmihi* (1 ed., Vol. 4). Dar Ṭauq al-Najāḥ.
- al-Dāsūqī, A. b. (n.d.). *Ḥāsyiah al-Dāsūqī 'alā al-Syarḥ al-Kabīr* (Vol. 3). Beirut: Dār al-Fikr.
- al-Du'ailaj, M. b. (1986). *Ar-rahn Fī al-Fiqh al-Islamī*. Riyāḍ: University of Imam Muhammad bin Sa'ūd al-Islāmī.
- Al-Kasānī, ` . a.-D. (1971). *Bada'i' al-Ṣanā'i'* (Vol. 8). Cairo: Maṭba'ah al-Imām.
- al-Maghribī, S. a.-D.-R.-T. (2003). *Mawāḥib al-Jalīl Li Syarḥ al-Mukhtasar al-Khalīl* (Vol. 5). Madīnah: Dār al-'Ālam al-Kutub.
- al-Mardawī, ` . a.-D.-H. (1419H). *al-Inṣāf Fi Ma'rifah al-Rājiḥ Min al-Khilāf 'Alā Mazhab al-Imām Aḥmad bin al-Ḥanbal* (Vol. 5). Beirut: Dār Iḥya' al-Turāth al-'Arabi.

- al-Muṭī'ī, M. N. (n.d.). *Tukammilah Al-Majmū' Syarḥ al-Muhazzab* (Vol. 9). Jeddah: Maktabah al-Irsyād.
- al-Nīsābūrī, M. i.-H.-H.-Q. (406H/1015-1016M). *Al-Musnad al-Ṣaḥīḥ al-Mukhtasar bi al-Naql al-'Adl 'An al-'Adl ilā Rasulillah* (1 ed., Vol. 3). Beirut: Dār Ihya al-Turāth Al-'Arab.
- al-Qurṭubī, A. .-A.-K.-D. (1964). *Al-Jāmi' li Ahkām al-Qur'ān* (2 ed., Vol. 12). Cairo: Dār al-Kutub al-Masriyyah.
- Al-Rāfi'ī, A. a.-Q.-K. (1997). *Faḥḥ al-'Azīz Bi Syarḥ al-Wajīz (Syarḥ al-Kabīr)* (Vol. 10). Beirut: Dār al-Kutub al-'Ilmiyyah.
- al-Syarbinī, M. b. (977H). *Mughnī al-Muḥtāj* (Vol. 2). Beirut: Dar al-fikr.
- Al-Syīrāzī, I. b. (1992). *al-Muhazzab* (Vol. 1). Damsyik: Dār-al-Qalam.
- Al-Tasūlī, A. a.-H.-S. (1998). *Al-Bahjah fi Syarḥ al-Tuhfah* (Vol. 1). Beirut: Dār Kutub al-'Ilmiyyah.
- Al-Zailā'ī, F. a.-D. (1414H). *Tabyīn al-Haqā'iq Syarḥ Kanz al-Daqā'iq* (Vol. 6). Cairo: Dār al-Kutub al-Islāmī.
- Chernyak E. L. and Mirkin B. G. (2013). Computational refining of a Russian-language taxonomy using Wikipedia. *International Conference on Computational Linguistics. 1*, p. 177. Moscow: The Linguistics Institute of the Russian State University for the Humanities.
- Clive Seal, G. G. (2007). *Qualitative Research Practice*. London: SAGE Publication.
- Sharif D. et.al. (2013, January 28). The Improvement of *Ar-rahn* (Islamic Pawn Broking) Enhanced Product in Islamic Banking System. (E. Chui, Ed.) *Asian Social Science*, 9, 36-47.
- Eleanor Rosch, Corresponding author contact information, Carolyn B Mervisa, Wayne D Gray, David M Johnson, Penny Boyes-Braem. (1976, July). Basic objects in natural categories. *Cognitive Psychology*, 8(3), 382-439.
- Hasan, A. (1967). Early modes of ijtihad: Ra'y, Qiyās and Istiḥsān. *Islamic Studies*, 6(1), 47-79.
- Ibn Qudāma, ' . A. (1405H). *Al-Mughnī* (Vol. 4). Beirut: Dar al-Fikr.
- Ibn 'Ābidīn, M. A.-'. (2000). *Hāsyiah Rad al-Mukhtār Li Ibn 'Abidin 'Alā al-Durr al-Mukhtār li al-Haṣḥafī* (Vol. 6). Beirut: Dār al-Fikr.
- Ibn Hammam, K. a.-D. (681H). *Faḥḥ al-Qadir* (Vol. 10). Beirut: Dār al-Fikri.
- Jeeb, S. A. (1988). *al-Qāmūs al-Fiqhī* (Vol. 1). Damascus: Dār al-Fikr.
- Khadduri, M. .. (n.d.). *Encyclopaedia of Islam, Second Edition*. (T. B. P. Bearman, Editor, & B. Online, Producer) Retrieved October 2, 2013, from http://ezproxy.usim.edu.my:2109/entries/encyclopaedia-of-islam-2/maslaha-SIM_5019
- Kuwait, T. M. (1404-1427H). *Al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah* (Vol. 1). Kuwait: Dār al-Salasil.
- Linant de Bellefonds, Y. (2013). *Encyclopaedia of Islam, Second Edition*. (T. B. P. Bearman, Editor, & B. Online, Producer) Retrieved October 3, 2013, from http://ezproxy.usim.edu.my:2109/entries/encyclopaedia-of-islam-2/iwad-SIM_3711
- Mat Noor Mat Zain and Azlin Alisa Ahmad. (n.d.). *Mu'awadāh Contract: Concept, Characteristics and its types*. Bangi: Jabatan Syariah, FPI, UKM.

P.J. Bearman, T. B. (n.d.). *Encyclopaedia of Islam, Second Edition, Glossary and Index of Terms*. Retrieved 9 24, 2013

Qadi Zadah, S. a.-D. (1317H). *Natā'ij al-Afkār Fī Kashfī al-Rumūz Fī Tukammilah Fath al-Qadīr of Ibn Hammām* (Vol. 10). Egypt: al-Maṭba'ah al-Kubrāa al-Amīriyah.

Shu'ayb, K. b. (2005). *Mukhtasar Khalīl* (Vol. 1). Cairo: Dar al-Hadis.

Spectorsky, S. A. (2013). *Encyclopaedia of Islam, Second Edition*. (T. B. P. Bearman, Editor, & B. Online, Producer) Retrieved October 3, 2013, from http://ezproxy.usim.edu.my:2109/entries/encyclopaedia-of-islam-2/tabiiun-SIM_7259