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Reducing Over-indebtedness through Shariah Compliant Crowdbuying

Mohamed Hamza Ghaouri*
Abdelmajid Hmaittane
Salina Kassim

Abstract: Households' over-indebtedness has various social and economic consequences. With an increasing number of over-indebted households and rising individual bankruptcies, especially in the post-COVID-19 pandemic era, the efficiency of the solutions available to target this issue is becoming questionable. The purpose of this study is to propose an innovative Shariah-compliant mechanism based on crowd-buying, aiming at alleviating households' over-indebtedness. The present study adopts a qualitative research design based on an extensive review of the existing literature and a case study of the Real Estate Crowdbuying (REC) model. The study also presents a Shariah assessment of the REC model. The study found that the REC model has five contradictions with the guidelines of Shariah and proposes an enhanced version based on Shariah compliant contracts. As per the authors' knowledge, this is the first study that provides a Shariah assessment to the REC model and proposes an enhanced Shariah-compliant version. The main limitation of this research is the limited focus on the Shariah compliance of the model. Further studies might explore the regulatory challenges of the application of this model in Malaysia and other Muslim countries. The proposition made by this paper contributes to broadening the range of Shariah-compliant instruments aiming at alleviating households' over-indebtedness and curbing individual bankruptcy rates.

Keywords: Households, Over-indebtedness, Real Estate Crowdbuying, Shariah compliance.

JEL Classification: G51, G53

* Corresponding author

Dr., International Islamic University Malaysia, ghaourihamza@gmail.com 0000-0002-6969-638X
Professor, Ibn Zohr University, a.hmaittane@uiz.ac.ma 0000-0003-3277-4273
Professor, International Islamic University, ksalina@iium.edu.my 0000-0002-7514-8750

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Introduction

In recent years, household debt has shown an overall upward trend, especially in the post-COVID-19 period. In many developed countries and emerging economies, household debt-to-GDP ratios have already reached extremely high levels (Bolibok, 2020). Households are progressively depending on debt to meet their daily needs. Without loan facilities, higher education would remain a dream for many. Without mortgage facilities, it would have been nearly impossible for many workers to own a house. The more developed the countries, the more widespread the culture of debt and the greater the debt burden. The so-called development represented by higher standard of living is considerably increased by debt (Farooq, 2015).

The increase in household indebtedness can be explained by the phenomenon of "democratization of credit" which is the extension of credit to new (and riskier) borrowers. The democratization of credit is also seen to be driven by the evolution of technology. As lending technology improves, loans to the riskier becomes profitable. However, given the teachings of Islam regarding debt as being allowed although not desirable, and considering the reality of people's vulnerability to consumer debt in an environment of poor financial literacy, Muslim societies are, unsurprisingly, also prone to adopt a normalised cultural attitude towards debt.

Consequently, the last few decades have seen a dramatic increase in personal bankruptcy filings. The phenomenon has recorded a significant increase in many countries where the institution of personal bankruptcy exists. The increase in bankruptcy filings is one of the main motivations to study default in consumer debt markets, even in papers that did not directly address the issue. This is not surprising, as in Malaysia, for example, the rate of personal bankruptcy has increased in the last few years (Malaysia Department of Insolvency, 2020). However, while there is no shortage of proposed explanations for this phenomenon, it is still a very active area of research, especially research that presents solutions rather than multidimensional causes and consequences.

Recently, with the emergence of fintech, many technologies based on social finance products have emerged. Since its introduction, fintech has helped to overcome many issues through financial inclusion by reaching many segments of society and providing liquidity to those who are excluded from the financial system (Hudaefi, 2020; Sahay et al., 2020)the existing literature of SDGs is explored to understand its original idea and its recent implementation, particularly in Indonesia. Following this, the official reports from the domestic regulators are referred to select the fintech firms which meet the criteria of Islamic fintech lending based on the proposed definition. The selected firms are then analysed based on several themes which best capture their position in promoting the SDGs. Finally, the discussion is linked to the recent performance of Indonesia in implementing SDGs. Findings: This work finds that the reviewed fintech firms have been promoting the idea of financial inclusion, for example, financing the underdeveloped sectors such as agriculture and small and micro enterprises (SMEs. It has even been used to pull funds from groups of investors to improve the situation of over-indebted households through the Real Estate Crowdbuying (REC). The REC is an instrument that has been widely used in France to provide liquidity to the ones in financial distress by collecting funds from several investors based on an electronic crowdfunding platform.

The successful use of this model and the social support it has brought to many families over the past few years is remarkable according to their testimonials (ImmoComplexe, 2023; StayHome, 2023). However, with the growing trend of households' over-indebtedness in Muslim countries, it becomes increasingly important to explore the application of effective solutions such as the REC model. Therefore, the main objective of this paper is to analyse this financial arrangement, identify its contradictions with Shariah guidelines, and propose a developed version based on Shariah-compliant contracts.

In light of this, this research paper is divided into five sections. The first section is an introduction to the subject. The second section presents the literature review on households' over-indebtedness, its consequences at the micro and macro-economic levels, with a particular focus on the Malaysian context. The section also discusses existing solutions to the excessive indebtedness among households and provides an explanation of the REC model. In the third section, we discuss over-indebtedness from a Shariah perspective and highlight solutions to this issue in Islamic finance. The fourth section is dedicated to the analysis of the REC model through the lens of Shariah guidelines to identify its non-conformities. The section also proposes an enhanced model based on Shariah-compliant contracts. Whereas the fifth, and final section, contains the conclusion.

Over-indebtedness

Household debt is not always a sign of financial problems. Most households take loans to finance home purchases and other types of private consumption, and even for private and business investment. Generally, loans are provided by financial institutions based on the repayment capacity of the borrowers. However, if a household's financial hardship accumulates due to unforeseen life circumstances (unemployment, serious illness, etc.) or any other circumstances, the household may no longer be able to manage its debts, therefore, the existing financial problems will become more serious.

Definitions and consequences

Indebtedness is generally referred to as the condition in which a household falls behind in its loan repayments and cannot escape the legal consequences of unfulfilled financial obligations (Turunen & Hiilamo, 2014). It can be defined as the failure to repay debt on time, leading to a significant drop in a household's living standards (Turunen & Hiilamo, 2014). However, a household is regarded as over-indebted when its members are unable, although willing, to fulfil their non-professional debt obligations (D'Alessio & Iezzi, 2013), or whose existing and predictable resources are insufficient to meet its financial commitments without lowering its living standards (Ntsalaze & Ikhide, 2016).

The declining aspect of household disposable income with the increase in the cost-of-living leads to a serious threat to the well-being of low and middle-income households. Faced with such circumstances, these households struggle to maintain their relative levels of consumption by resorting to indebtedness, implying that debt could potentially be a substitute for income. Furthermore, households use available consumer credit options to meet their current consumption needs and avoid the impact of temporal fluctuations on it, based on the expectation of an increase in their income in the future (Kolios, 2021).

The sustainability of household debt and the increase in the level of indebtedness have important macroeconomic implications (Kolios, 2021). Based on the analysis of a panel of 30 countries over the period 1960-2012, Erner et al. (2017) found that rising household debt-to-GDP ratio results in a slower economic growth and higher unemployment on the medium and long term (Erner et al., 2017). Similarly, based on a sample of 80 advanced and emerging economies over the period 1950-2016, the researchers found that in the medium term, strong growth in household borrowing is negatively associated with economic growth (Alter, Xiaochen Feng, & Valckx, 2018).

On the individual level, being over-indebted is considered to be a major factor of poverty (Costa, Vanneschi, Castelli, & Peres, 2020; Mutsonziwa & Fanta, 2019); it is linked to higher levels of stress and depression (Drentea & Reynolds, 2012;

McLaughlin et al., 2012; Sweet, Nandi, Adam, & McDade, 2013; Turunen & Hiilamo, 2014). Studies found that higher levels of debt are associated with the deterioration of mental health (Cannuscio et al., 2012; Drentea & Reynolds, 2012; Fitch, Hamilton, Bassett, & Davey, 2011; Ntsalaze & Ikhide, 2017), physical health (Angel, 2016; Martin, Shreffler, Schoster, & Callahan, 2012), well-being (Wang, 2010), as well as self-esteem and social relationships (Costa et al., 2020). It can even lead to family breakdown (Bridges & Disney, 2016), and increase a person's risk of participating in a crime (McIntyre & Lacombe, 2012), as well as developing suicidal intents (Hatcher, 1994; Hintikka et al., 1998; Meltzer et al., 2011).

Alarmingly, the culture of debt has become an integral part of the modern way of life, commonly seen in developed and developing societies alike. As highlighted in the aforementioned literature, this debt culture has severe consequences on the individual level as well as on the economies. The increase in the level of indebtedness and households' dependence on credit to finance their consumption and investment weakens their ability to cover their debt in the future (Kolios, 2021).

In Malaysia, the central bank issued a report highlighting the high levels of household debt-to-gross domestic product ratio caused by the increasing trend in consumer loan demand. The report also highlighted a significant climb in non-performing consumer loans (Bank Negara Malaysia, 2020). Moreover, in a study concluded by the Credit Counselling and Management Agency (AKPK), the institution highlighted the high levels of over-indebtedness among households in Malaysia (AKPK, 2018). The severity of the issue has led to an increase in bankruptcy filings in the country (Malaysia Department of Insolvency, 2019, 2020). Alarmingly, bankruptcy records show that people who were declared bankrupt are getting younger (Eaw, Kok, Rajagopalan, & Abdul Hamid, 2014). Personal bankruptcy in Malaysia has become an alarming problem as the increasing number of cases is having a negative impact on the Malaysian economy, as well as on the society. As exposure to debt increases, households become more sensitive to changes in income and the cost of borrowing. Consequently, unemployment and real household income can have a significant effect on existing debt, hence the urgent need to explore solutions to household over-indebtedness.

Solutions to over-indebtedness

Although Islamic finance aims to introduce Islamic principles and values into the financial dimension of Muslim life, unfortunately, while legalistic Islamic finance has developed specific modes of transactions, its debt creation is similar to the conventional system in many ways. Islamic finance industry either favours or is neutral vis-à-vis the debt culture that has pushed conventional finance towards previous crisis trajectories. It is relevant to point out that although Islamic finance products are not inherently interest-based, they still create debt based on the underlying Islamic contracts. A study has shown that the Islamic finance industry is biased towards modes of debt creation, which leads to the promotion of the same type of debt culture as in the conventional financial system (Farooq, 2015). Both Islamic and conventional banks offer consumer loans and credit cards, which only increases the chances of unnecessary consumption of unearned income among the middle and lower classes, and therefore increases their propensity towards over- indebtedness.

Financial institutions offer various solutions dedicated to those suffering from financial difficulties. However, most of these solutions have a drawback on the financial situation of households in the long run. In the early stages of financial difficulties, one of the internal instruments commonly used between the lender and borrower is negotiation. The over-indebted can negotiate with his lender debt rescheduling in order to overcome his temporary crisis without having recourse to a third party. If the financial distress persists, the indebted will be obliged to pay penalties and/or even additional interest which will put an additional burden on his balance sheet.

In an attempt by the Malaysian central bank to curb the country's high household debt levels, it launched the credit counselling and management agency (AKPK) in 2006. This agency provides financial advisory, financial education, as well as debt management programs (DMP) to help Malaysian households regain control of their debts. AKPK aims to empower distressed borrowers to regain control of their debts by working closely with advisors to develop a personalized debt repayment plan in consultation with clients' respective financial service providers. Thus, it is compulsory for the over-indebted to have a formal debt. In other words, among the conditions of intervention of this agency, the individual must not be excluded financially. The success rate of debt management services rendered by the institution since its inception in 2006 is as low as 11%. In addition, it only accepts people struggling with debts approved by the BNM. In other words, non-formal and unstructured loans are not subject to DMP despite their prevalence (AKPK, 2018).

The last resort of an overindebted household is declaring bankruptcy. In Malaysia, a debtor is declared bankrupt, according to an order issued by the High Court against him, if he is unable to pay debts of at least RM 30,000 (Malaysia Department of Insolvency, 2020). Bankruptcy results in loss of control over households' properties and assets, while their accounts get frozen by the authorities. They will also be refused any loan application, will not be able to travel abroad, and will not be able to act as guarantors.

To prevent over-indebted households from going bankrupt, various startups and fintech platforms (Stayhome[1], MakeMeStay[2], PortageInvest[3], Solutis[4], MediationImmo[5]) in France are promoting the concept of REC. This instrument is available to over-indebted households who own an asset that they can use to raise capital by temporarily mortgaging this asset. This solution has proven to be effective in helping many debtors avoid foreclosure.

Real Estate Crowdbuying model

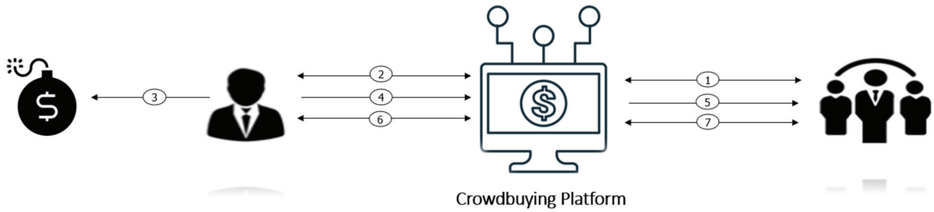
The REC is a socially oriented financial arrangement that consists of raising funds from a group of investors to buy at a discounted price, through an REC platform, a real estate of an overindebted household with a buyback option at a pre-agreed price. In this temporary transfer of ownership, investors contribute through a crowdfunding platform to buy the property from a financially distressed owner at a price reduced from 10% to 30% of its market value and sell it back to him at the same price once he has regained his financial balance. While still occupying the real estate, this solution allows the debtor to use his property to repay all his debts and avoid the risk of losing it permanently through foreclosure.

Provided that the property is fully owned by the customer at the time of the transaction, the platform acquires the asset and authorizes the seller to occupy it in exchange for the payment of an advantageous monthly rent. At maturity, the initial owner can either buy back his home and reimburse an amount that the platform can reinvest, or the platform recovers the property. In parallel, the monthly occupancy allowance represents a return on investment for socially responsible investors who have contributed to the acquisition of the property. These investors aim to make a solidarity contribution by lending an amount of money for a fee

1 https://www.stayhome.fr/
2 https://makemestay.com/
3 https://portage-invest.net/
4 https://www.solutis.fr/portage-immobilier.html
5 https://www.mediationimmo.fr/portage-immobilier

while obtaining a guarantee through the property. This instrument is a kind of soft landing for the former debt-burdened household.

Figure 1: Real Estate Crowdbuying model



Source: Author's own

The mechanism of the REC model is presented as follow:

1. The crowdfunding platform publishes the received financing requests of different households and collects the necessary funds from investors in exchange for shares.
2. Temporary acquisition of the property at a discounted price.
3. The customer uses the amount of the sale for the repayment of his outstanding debts in order to avoid a possible foreclosure and regain his financial balance.
4. Payment of monthly rent.
5. Return on investors' capital.
6. As soon as the customer regains his financial balance, he can proceed at any time before the contract's expiration to purchase the asset by obtaining a bank loan to which he remains eligible.
7. Redeeming shares.

The main advantage of this model is that it prevents debtors from foreclosure. However, although they are required to pay monthly rent, this rent is calculated and adjusted according to their income and considers their release from any unpaid debts. This allows households to resume regular and reduced payments, without the risk of making their situation worse. Households can regain ownership of their home by applying for a bank loan, to which they will be eligible given their release from a high level of debt, and by buying back the asset from the platform.

Over-indebtedness in Islamic finance

Debt and over-indebtedness in Islamic finance

In the modern world, debt has become a common personal means of coping with the rising cost of living and changing lifestyles. The human need for debt financing is as old as human civilization itself. However, since Islam is a way of life compatible with the nature of human beings, Shariah law does not prohibit the practice of debt financing (Ghazali, 1994). Islam is not against a decent, comfortable or even abundant life, according to the ideal of moderation. However, it is firmly against waste or extravagance.

Most of the time, people go into debt to buy luxurious and unnecessary things or to satisfy an unwarranted desire due to illusions, class competition, or show-off to enjoy an unsustainable lifestyle while forgetting Allah's warning:

> *"Beautified for men is the love of things they covet; women, children, much of gold and silver (wealth), branded beautiful horses, cattle, and well-tilled land. This is the pleasure of the present world's life; but Allah has the excellent return (Paradise with flowing rivers, etc.) with Him". (Qur'an: Aal-Emrana 3:14)*

The best way to avoid unnecessary borrowing and indebtedness is to live a moderate lifestyle. From an Islamic perspective, moderation and honesty constitute good behaviour in life. Muslims can live a moderate life by avoiding an extravagant way of life, as Allah (SWT) commanded the believers to avoid being extravagant or stingy in their life, but rather remain moderate, as in the verse below:

> *"And those, who, when they spend, are neither extravagant nor niggardly, but hold a medium (way) between those (extremes)". (Qur'an: Furqa'an 25: 67)*

Islam considers indebtedness to be permissible, but it is adamant when it comes to motivating the believers to avoid debt and value a debt-free life (Farooq, 2015). A pious Muslim is expected to take only necessary loans with a good intention of repaying as soon as possible, as Abu Huraira narrated, the Prophet (SAW) said:

> *"Whoever takes the money of the people with the intention of repaying it, Allah will repay it on his behalf, and whoever takes it in order to spoil it, then Allah will spoil him".* (Sahih al Bukhari, Loans, Payment of Loans, Freezing of Property, Bankruptcy Book 43, Hadith 3)

Debt is considered as an Amanah and the debtor must make every effort to repay his debt. Islam regards the non-payment of the debt as a breach of a contractual obligation and considers it a sin. Allah SWT said:

"O you who believe, fulfil the contracts.". (Qur'an Al-Ma'idah 5:1)

Freedom from debt was one of the things the Prophet Muhammad (pbuh) used to regularly mention in his supplication. As narrated by Anas bin Malik, the Prophet Muhammad (pbuh) used to supplicate Allah in his prayer saying:

> *"O Allah, I seek refuge with you from all sins, and from being in debt." Someone said, O Allah's messenger! (I see you) very often you seek refuge with Allah from being in debt. He replied, "If a person is in debt, he tells lies when he speaks, and breaks his promises when he promises". (Al-Bukhari, Vol. 4, Loans, Freezing of Property, Bankruptcy, Book 43, Hadith 13)*

In the above Hadith, out of all the calamities of life that befall human beings, the Prophet (pbuh) chose to ask Allah (SWT) for protection from indebtedness. The Hadith also explains that when a person is in debt, he is likely to be morally corrupted by telling lies and breaking promises. This supplication of the Prophet should be taken seriously, simply because it reflects his values and preferences; His teachings shed further light on the ethical implications of the culture of debt, where people make themselves vulnerable to its burden.

Furthermore, failing to pay off a debt is a serious sin; it can even affect the soul of the debtor after his death as he remains indebted to the lender even in the Hereafter. The Prophet reminded Muslims on several occasions of the seriousness of the debt which remains unpaid when due, given that a debtor tends to become a liar and breaches promises to avoid the lender's anger and the consequences of low credibility. Thus, to ensure a serious settlement commitment, a more severe consequence awaits the soul of a deceased debtor. The prophet (pbuh) was asked: *"O Messenger of Allah, what is this strict issue that has been revealed?"* He (pbuh) said:

> *"By the One in Whose hand is my soul, if a man were killed in battle for the sake of Allah, then brought back to life, then killed and brought back to life again, then killed, and he owed a debt, he would not enter Paradise until his debt was paid off." (Sunan an-Nasa'i, Vol. 5, Book 44, Hadith 4688).*

The above hadiths and verses from the Quran indicate Islam's clear stance towards the heavy burden of debt and the importance of settling debts down on time. However, Islam has provided some instruments and teaching in order to assist those who are genuinely burdened by debt.

Solutions to over-indebtedness in Islamic finance

At the individual level, indebtedness creates vulnerability to exploitation (*Dulm*). While slavery in the past often resulted from a crippling vicious cycle of debt, in modern times there is still widespread servitude and debt bondage, the consequences of which are similar to those of slavery. Therefore, Islam protects debtors and relieves them from economic tyranny by setting up different rules, such as forbidding Riba (interest) which multiplies the debt, encouraging leniency of creditors as well as giving them the right to receive zakat.

Islam encourages the creditor to give the debtor more time to pay the debt if the debtor is in genuine financial trouble. It urges leniency from the side of creditors when the debtor is in financial difficulty (Hassan, Othman, & Ali, 2019). Allah SWT said:

> *"If the debtor is in a difficulty, grant him time till it is easy for him to repay. But if ye remit it by way of charity, that is the best for you if ye only knew". (Qur'an Al-Baqarah 2: 280)*

It is evident that Allah SWT encourages empathy over debtors unable to pay their debts. The creditor must be willing to grant an extension of the time limit for the debtor to settle the debt or even cancel the debt. It is even argued that debt rescheduling is compulsory when the debtor is in difficulty, and there can be no increase in the amount due (Furqani, Ansary, Mikail, Azrak, & Laldin, 2015).

Moreover, the world has never known a system that includes in its constitution the rights of debtors to financial assistance. When the debt becomes a burden, Islam frees debtors from the obligation and humiliation of their loans by prescribing for them a share from zakat funds. In doing so, Islam relieves indebted people without forcing them to liquidate essential assets necessary for their lives. Allah SWT, clearly states in Surat Al-tawba:

> *"The Sadaqat (prescribed alms) are (meant) only to be given to the poor, the needy, to those employed to collect them, to those whose hearts are to be won, in the cause of the slaves and those encumbered with debt, in the way of Allah and to a wayfarer. This is an obligation prescribed by Allah. Allah is All-Knowing, Wise". (Qur'an At-Tawbah 9:60)*

Accordingly, the Hanafi school considers as beneficiaries of zakat those in debt who do not have a *nisab* above what is needed to pay their debts (Qardawi, 2009).

It is important to take into consideration that Islam has made these instruments available only to genuine debtors and has qualified the procrastination of debt payment by solvent debtors as injustice. The prophet Muhammad (pbuh) said:

> *"Procrastination (delay) in repaying debts by a wealthy person is injustice". (Sahih al-Bukhari 2400, Book 43, Hadith 16, Vol. 3, Book 41, Hadith 585).*

Indeed, Islam distinguished the creditor with good faith from the one with bad faith. For the former, it is possible to grant a grace period while the latter will be penalized. Accordingly, there are two types of defaulters: those who are too poor to pay their debts and those who can afford to repay but choose not to. As for those who can afford to repay but choose not to, they are considered guilty and legal action can be taken against them.

The aforementioned solutions are the main solutions available to assist households in financial difficulty. However, the use of these instruments in reality has been criticised by many scholars as Islamic banking system in many countries promotes the culture of debt (Farooq, 2015) while zakat institutions where seen as neglecting the issue of over-indebtedness (Shah & Hassan, 2017) by favouring other categories of zakat recipients although the seriousness of the issue. Practically, indebted households have access to a narrow range of instruments to extinguish their debt burden, hence the need for new instruments serving this purpose.

Proposed Shariah-compliant REC models

REC through the lens of Islamic finance

The use of the debtor's assets is a good solution to provide him with liquidity to meet his binding commitments before losing them definitively through foreclosure. Based on a financial arrangement that is successfully used within the conventional finance for the same purpose, we aim to examine whether the model discussed has contradictions with Shariah law and whether it can be used within the framework of Islamic finance.

The REC is a social investment mechanism and ethical financing process that helps over-indebted households improve their financial stability and regain their financial balance by breaking free from the debt spiral. Despite its positive impact, this instrument remains questionable from the precepts of Shariah. After carefully examining the REC model process and the contractual relationship between all stakeholders, and by taking as a reference the Shariah standards issued by the (AAOIFI, 2015), we have defined the following contradictions:

The first contradiction (Rights and obligations arising from the asset): The tenant, being the former and the future owner of the asset (as the property is transferred temporarily), is responsible for all the rights and obligations arising from the asset. This requirement is a mechanism enforced by the platform to mitigate its risk exposure. By abstaining from assuming risks associated with the underlying assets, the platform can maintain a pure financial intermediary role. However, this is in contradiction with rights and obligations of the lessor and tenant in Ijarah contract. A tenant should only bear the responsibility to repair or restore the asset if the impairment is due his misconduct and is responsible for operating periodical (ordinary) maintenance. Meanwhile, the lessor assumes responsibility for repairing the asset if the impairment is due to an event outside the tenant's control and the asset requires major maintenance. Shariah standard number 9 states clearly that the leased asset is the responsibility of the lessor throughout the duration of the Ijarah, unless the lessee commits misconduct or negligence. The lessor may take out permissible insurance on it whenever possible, and such insurance expenses must be borne by the lessor. The lessor may take this into account implicitly when the lease rental is to be fixed.

The second contradiction (Repurchase Price): The REC platform's stipulation for the debtor to repurchase the asset at a pre-defined price, which is identical to the initial selling price, raises concerns from a Shariah perspective. In fact, transactions should be conducted with transparency and fairness, ensuring that prices are determined based on current market conditions and the intrinsic value of the asset. It is essential to highlight that the platform reserves the right to grant a privileged price on the debtor during the buyback period, given such an arrangement was not previously agreed upon by the involved parties. This approach promotes equitable dealings and prevents any potential exploitation or unfair advantages.

The third contradiction (Contract combination and execution): The initial sale and the rental agreement (which is considered the sale of the usufruct) are executed mutually, without any time gap and are documented in the same contract. However, the two different operations should be documented separately while allowing a time gap between the signature of each one of them. The two sale contracts must be carried out at different intervals. A simultaneous combination of the sale and lease contracts is impermissible. This prohibition is based on a well-known hadith that prohibits two sales in one sale.

The fourth contradiction (Binding bilateral promise): REC's contractual agreement includes terms under which both parties commit to mutually execute the second sale of the asset. A bilateral commitment to execute a transaction is not permitted from a Shariah perspective. A bilateral promise is considered permissible only when it grants the option for either or both parties to decide on its execution. However, if the bilateral promise becomes mandatory and denies the element of choice, it becomes invalid. This is because it resembles an ordinary sale, and in Shariah, the seller must possess the asset being sold to avoid violating the Prophet's (pbuh) prohibition of the sale by a seller of what is not in his possession (Irwani Abdullah, 2010)its application and limitation in the present practices. Design/methodology/approach – Analysis of conceptual nature and status of promise is made in the light of classical and contemporary juristic rulings (ijtihad and ifta'.

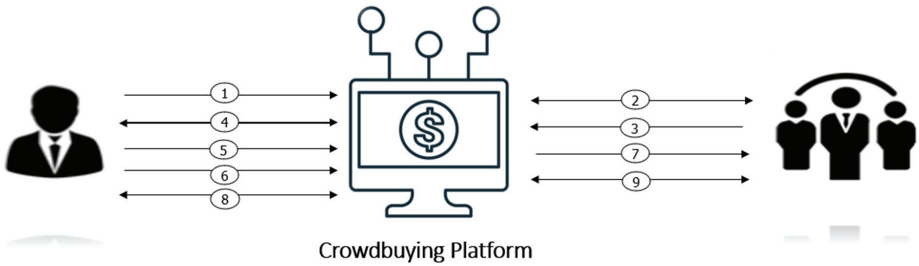
The fifth contradiction ('Inah): The time frame between the initial and final transfer of property introduces an element of uncertainty, which can lead to a contradiction with Shariah. This uncertainty arises from granting clients the right to repurchase the asset whenever they become financially capable. In the context of the situation described, the arrangement of allowing the client to buy back the asset at an undetermined future time could raise concerns of 'Inah-like elements. This is because the potential for the client to repurchase the asset creates a scenario that mirrors the prohibited 'Inah transaction. In fact, the contractual agreement of the REC appears to involve two forms of 'Inah, which raise concerns from a Shariah perspective. Firstly, there is 'Inah of property, where the client sells the asset with an undertaking to repurchase it once financially capable. This type of arrangement can be seen as a means of circumventing riba. Secondly, there is 'Inah of the usufruct ('Inah al-manfa'a), where the usufruct (benefits or use) of the asset is transferred to the platform through the sale agreement and then returns to the debtor through the tenancy agreement without any specified timeframe. This second form of 'Inah, involving the usufruct, presents a similar concern. To comply with Shariah principles and avoid such contradictions, it is essential to structure the arrangement in a way that ensures a reasonable and definite time frame between the initial sale and any potential repurchase (including the one of usufruct), thereby avoiding the pitfalls of 'Inah and upholding the ethical guidelines set forth by Shariah.

After analysing the REC's arrangement, we believe that this instrument presents five main contradictions with the precepts of Shariah. Most of these contradictions are manifested either in the process of carrying out the operation or in the formulation of the contracts. However, the aspects of non-compliance can be overcome by introducing Shariah compliant instruments (Sale, Ijarah, Wakala, and Wa'd) and bringing some changes to the overall process of this financial arrangement.

Ijarah based REC Model

The use of an Ijarah contract as the basis of the REC financial arrangement will help to address the non-compliances identified in the previous section. The updated model will be presented as follows:

Figure 2. Ijarah based REC



Source: Author's own

1. The over-indebted client requests financing by submitting information related to his situation to the crowdfunding platform. The platform analyzes the profile of the applicants, and through a screening based on several criteria, such as the financial ability to buy back the asset, it will accept the adequate profile to be financed and, therefore, publish the selected cases on the platform.
2. Investors choose on the platform the cause to which they wish to contribute and transfer the amount of the investment. They receive investment certificates representing their share in the overall investment. These certificates allow them to receive a periodic return and can be sold on the platform to another interested investor before maturity.
3. Investors sign a Wakala agreement, appointing the platform to act on their behalf.
4. The client sells the asset with the exception of the usufruct for one year, at a price agreed upon by both parties and which is lower than the price of the complete asset (the title and the usufruct).
5. The client agrees through a unilateral binding Wa'd to rent the property as soon as the ownership of the usufruct is transferred to the Wakeel (after one year).
6. After one year, the client signs an Ijarah contract for a defined period. The Ijarah duration and the monthly rent payment take into consideration the financial situation of the client and his ability to buy back the asset.

7. Investors will receive a periodic return on their investment based on the rent paid by the client.
8. At the maturity of the Ijarah contract, the client decides whether he will buy the property at a preferential price, or he can drop his rights of the repurchase, which gives the platform the right to dispose freely of the property.
9. Redeeming the investment certificates.

The developed structure aims mainly to overcome the five Shariah contradictions spotted in the REC in its conventional form. The first non-conformity will be automatically resolved since the rights and obligations arising from the property, as well as the maturity of the contract as defined by the AAOIFI in the Shariah standards governing the Ijarah contract, will be observed. This will result in:

- The lessor (Wakeel) assumes the rights and obligations resulting from the ownership, while the tenant is responsible for the rights and obligations resulting from the use of the leased asset.
- Specifying the duration of the lease: Neither party has the unilateral right to terminate the contract before the expiration date. The Ijarah contract can only be terminated before the expiry date if both parties have agreed.

Although AAOIFI allows sale and leaseback, in order to overcome the remaining contradictions, some conditions need to be respected:

- Ijarah transaction should not be stipulated as a condition of the purchase contract by which the institution acquires the asset.
- The separation of Ijarah and purchase contracts.
- A reasonable period of time between the lease contract and the time of the sale of the asset to the lessee must have expired, to avoid the contract of 'Inah. This period must be long enough so that the leased property or its value could have changed.
- In the event of a client's request for early possession of the property, it is possible to agree with the wakeel on the sale during the Ijarah period, provided that a reasonable period (at least one year) between the two sales has elapsed.
- Combining contracts in one set can be done without imposing one contract as a condition to the other.
- The Wa'd agreement must be unilateral, and the conditions triggering its execution must comply with applicable standards.

- No obligation to buy or lease from the client or sell from the wakeel should appear in the contracts and documents governing this financial arrangement.
- The time gap between the two sales of the usufruct (the complete sale of the asset and the lease) is a solution to avoid 'Inah of the usufruct (Al-manfa'a).

In the shariah standard (SS9) governing the Ijarah contract, AAOIFI states:

"The duration of an Ijarah contract must be specified in the contract. The period of Ijarah should commence on the date of execution of the contract, unless the two parties agree on a specified future commencement date, resulting in a future Ijarah, that is, an Ijarah contract to be executed at a future date."

"The basis for the permissibility of leasing an asset to the person from whom it is purchased by way of Ijarah Muntahia Bittamleek on condition that the parties observe the lapse of a period of time is that this prevents the contract from becoming a 'Inah transaction. The physical changes to the asset or changes in the value of the asset during this period give it the economic characteristics of a different asset".

In the shariah standards (SS25) governing the Combination of Contracts, AAOIFI states:

"It is permissible to combine more than one contract in one set, without imposing one contract as a condition in the other, and provided that each contract is permissible on its own. Combining contracts in this manner is acceptable unless it encounters a Shari ah restriction that entails its prohibition on exceptional basis"

In 2020, the Shariah Advisory Council (SAC) has issued a resolution on `Inah sale and resolved that its implementation shall comply with the following conditions (Security Commission Malaysia, 2020):

- The sale and purchase of asset shall be executed via two clear and separate contracts.
- The sale and purchase of asset shall not have the conditions for repurchase or resale of asset.
- Both sale and purchase contracts shall be executed at different times.
- The sequence of execution for each sale and purchase contract shall be based on proper sequence.
- The sale and purchase of asset shall give effect to the transfer of ownership of asset and the existence of possession or holding of asset (Qabd), which is valid according to Shariah and customary business practice.

By complying with these guidelines, the REC model can be used in a Shariah-compliant manner to assist overindebted households in temporarily using their property to overcome their indebtedness spiral and avoid bankruptcy. The value of the property will allow them to pay their debts, while the one-year gap where they will be allowed to occupy the property without paying any rent will allow them to strengthen their financial position. The proposed model aims to provide liquidity to clients suffering from over-indebtedness and having no financial alternative to overcome this situation.

The solutions proposed to overcome the contradictions aim to comply with the Shariah as well as the regulations and guidelines implemented by AAOIFI and SAC to enable the operation of the new version of REC in Malaysia. Moreover, the proposed structure can be assimilated to the structure of Sukuk Al-Ijarah. As Sukuk Al-Ijarah is a Shariah-compliant arrangement commonly used to provide liquidity to businesses, it can also be used to provide over-indebted households with the necessary funds to overcome their desperate financial situation.

Conclusion

Besides enabling wealth accumulation by facilitating households' access to assets such as housing, debt can serve as a consumption smoothing mechanism, allowing households to finance their desirable consumption over time. However, borrowing requires careful and wise use, as with increased debt levels, financial vulnerability increases. Debt sustainability is conditional on the borrower's ability to service debt repayments and the ability to repay debt in the future. Unfortunately, excessive indebtedness among households is becoming an increasingly widespread phenomenon in many countries around the world, including Malaysia. Moreover, with the devastating consequences of uncontrollable levels of household debt on an individual level and on the economy, it is crucial to explore innovative solutions, particulary by leveraging the benefits of financial technology and learning from the best practices around the world.

This study focuses on the severity of over-indebtedness among households by shading light particularly on the Malaysian context and highlights the need for more Shariah-compliant solutions to reduce excessive indebtedness among households in Muslim countries. The paper also introduces and provides a detailed explanation of the REC model as a good-practice financial arrangement which is successfully deployed in France for the same purpose. However, as with any financial instrument used within the framework of conventional finance, the REC might have some contradictions with Shariah guidelines. Hence, we provide in this paper a Shariah assessment to the different stages of the REC financial arrangement and identify five contradictions. The study concludes that the REC model can be adapted to the Shariah guidelines and that it is possible to overcome these contradictions by introducing some Islamic financial instruments such as Sale, Ijarah, Wakala, and Wa'd.

In this paper, we propose an enhanced version of the REC model that is based specifically on Ijarah contract. By offering this enhanced model, we attempted to comply with AAOIFI as well as SAC standards and guidelines. This new Shariah-compliant instrument aims to reduce over-indebtedness in Malaysia and other Muslim countries. By contributing to broadening the range of Shariah-compliant financial products dedicated to reducing over-indebtedness among households, the proposed solutions serve one of the five main purposes "*Maqassid*" of the Shariah, which is the protection of wealth, and that is by protecting households' properties from foreclosure. Admittedly, the proposed solutions are not perfect, they could contain some limits, and they can be qualified as a form of "*Hilah*". But this structure might be used only in the case of dire necessity "*Darurah*".

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