

Akad Ijarah Muntahiya Bi Al-Tamlik (IMBT) at Sharia Financial Institutions Perspectives of Classical and Contemporary Ulama

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ABSTRAK

The emergence of the Ijarah Muntahiya Bittamlik contract is also an innovation. However, it has also become a polemic because of the merger of contracts. In this article, the analysis of the Akad Ijarah Muntahiya Bittamlik is described from the Opinion of the Ulama with descriptive methods and normative juridical approaches, the author uses several literature sources, so that it can be categorized as library research. The results show that Islamic economic experts, both contemporary economic thinkers such as Adimarwan, Al-Mujamma' Al-Fiqhi, and classical scholars such as Hanabillah, Malikiyah, Shafi'iyah and Hanabalah, the law of the IMBT contract is mubah (permissible).

ABSTRACT

Hadirnya akad Ijarah Muntahiya Bittamlik dalam keuangan syariah saat ini merupakan sebuah inovasi. Namun, juga menjadi polemik karena adanya penggabungan akad. Dalam artikel ini akan diuraikan analisis Akad Ijarah Muntahiya Bittamlik ditinjau dari pendapat para ulama dengan menggunakan metode deskriptif dan pendekatan yuridis normatif, penulis menggunakan beberapa sumber pustaka, sehingga dapat dikategorikan sebagai penelitian kepustakaan. Hasil penelitian menunjukkan bahwa para pakar ekonomi Islam, baik itu

para pemikir ekonomi kontemporer seperti Adimarwan, Al-Mujamma' Al-Fiqhi, maupun para ulama klasik seperti Hanabillah, Malikiyah, Syafi'iyah dan Hanabalah, hukum akad IMBT adalah mubah.

INTRODUCTION

Akad Ijarah Muntahiya Bittamlik (IMBT) is one of the increasingly popular Islamic financial products in various countries, including Indonesia. IMBT is a lease contract that ends with the transfer of ownership of assets from the tenant to the tenant at the end of the lease period. This product is adopted by Islamic financial institutions as an alternative to conventional interest-based financing, with the aim of providing financial solutions in accordance with sharia principles. IMBT offers a variety of benefits, both for tenants and asset owners. For tenants, IMBT allows the use of assets without having to have large funds at the beginning, while for asset owners or financial institutions, this contract provides certainty of income over a certain period of time. However, despite the many benefits offered, IMBT also presents several challenges and controversies in its implementation. Islamic scholars and economic experts have diverse views regarding IMBT. (Andi, 2019) (Muhayatsyah, 2019) (Windari, 2024)

Some fully support this contract because it is considered to meet sharia principles, such as justice and benefit, and free from riba (interest) and gharar (uncertainty). They argue that IMBT can be an effective instrument in encouraging sharia economic growth. Some of the main criticisms include concerns about the potential abuse of this contract, a lack of transparency in some aspects, as well as risks that may arise for both parties involved. For example, in some cases, the complex structure of the IMBT can lead to misunderstanding or confusion among consumers, which ultimately goes against the principles of justice in sharia law. (Windari, 2024) (Hilal, 2013) (Abdillah, 2021).

The current problems that need to be solved include several important aspects, including the lack of a deep understanding of IMBT among the general public and business actors. Many consumers are still confused about the concept and implementation of IMBT, so more intensive and easy-to-understand education is needed. Some Islamic financial institutions have not fully implemented transparency in IMBT contracts. This can cause distrust and uncertainty among consumers. Efforts are needed to increase transparency and accountability in this process. The risks faced by consumers in IMBT are still a concern. Some consumers may feel disadvantaged if there is a problem in the process of transferring asset ownership or if there is a discrepancy in the contract. Consumer protection must be strengthened to ensure fairness and security for all parties. (Sisminawati & Suminto, 2021).

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Although there are regulations governing IMBT, the implementation still needs to be improved. Stricter oversight and clearer regulation will help reduce potential abuse and increase trust in these products. IMBT must continue to innovate to adapt to the needs of the ever-evolving market. This includes the development of product variants that are more flexible and suitable for various segments of society. In addition, this study aims to present a fresher perspective by examining the implementation of IMBT in the context of digital and fintech. Financial technology innovations can bring greater efficiency and wider accessibility to IMBT products, also demanding more careful supervision to ensure compliance with sharia principles. This research will explore how technology can be used to improve transparency and accountability in IMBT contracts, as well as the potential positive and negative impacts that may arise. (Ayu & Rahmawati, 2021) (National Sharia Council of the Indonesia Ulema Council (DSN-MUI), 2000).

This study will also evaluate the potential of IMBT in supporting financial inclusion in Indonesia. With a large and diverse population, financial inclusion is one of the top priorities for governments and financial institutions. IMBT has great potential to reach segments of society that have not been served by the conventional banking system, especially in rural areas and low-income communities. Through a comprehensive approach and in-depth analysis, this study is expected to provide useful recommendations for the development of a more inclusive and sustainable IMBT (Muhayatsyah, 2019).

METHODS

This research is included in the research using research with a qualitative approach, which according to Sugiyono in the qualitative research method is an approach or search in exploring and understanding a central phenomenon. This research also uses sources from various previous scientific works such as books and journal articles that are relevant to this research. Qualitative research can also be understood as an approach to conduct research oriented to natural phenomena and symptoms (Sugiyono, 2017).

RESULT AND DISCUSSION

Ijarah according to the Ulama

Hanafiyah scholars argue that ijarah is an agreement on benefits with compensation or rewards. Malikiyah is of the opinion that what is meant by ijarah is the ownership of the benefits of something that is allowed at a known time accompanied by a reward. According to Syafiyah scholars, what is meant by an ijarah contract is an agreement on the intended and known benefits that require energy and are allowed by sharia with certain rewards. According to the Hanabilah scholars, ijarah is a contract for the benefits allowed by the Shari'a, can be taken at any time at a predetermined time, either in the form of certain objects or the nature of dependents or certain jobs with certain rewards. However, the majority of scholars are of the opinion that the ijarah contract is binding, unless there is a defect or the item should not be used. The result of this difference of opinion is seen in the case that if someone who is tied to the bond dies, then the ijarah contract is void because the benefits should not be inherited. (Ayu & Rahmawati, 2021) (Al Fasiri, 2021) (Hardiati et al., 2021).

However, the majority of scholars say that the benefits can be inherited because they include property. Therefore, the death of one of the parties to the contract does not cancel the ijarah contract. According to Hanafiyah scholars, the ijarah contract can be damaged by the presence of udzhur. If udzur, the contract is still extended, then the contract is not binding on both parties. While the majority of scholars are of the opinion that the ijarah contract is an alluring contract like a sale and purchase contract, the contract is not damaged because of the udzhur of the contracting party or because of a defect in the object. (Hardiati et al., 2024) (Hardiati & Latifah, 2024).

Ijarah Muntahiya Bittamlik

According to M. Rawas Qal'aji ijarah comes from a sentence that means something that you give to others in the form of a reward in work). Meanwhile, in terms of terminology, it is stated by the jurists with different redactions as follows: Hanafiyah, a contract against benefits with compensation or rewards; Malikiyah, ownership of the benefits of something that is allowed at a known time accompanied by compensation/reward. Shafiyah, an agreement on the intended and known benefits that require energy and are allowed by sharia with certain rewards. (Abdilah & Answer, 2023)

The contract for the benefit of money is allowed by the Sharia, can be taken at any time at a predetermined time, either in the form of certain objects or the nature of certain dependents or work with certain rewards. In order for the ijarah contract transaction to be valid, the harmony and conditions for the validity of the ijarah contract must be fulfilled. As for what is the pillar of ijarah according to Hanafiyah scholars, it is ijab and kabul with the pronouncement of ijarah or istijar. Rukun ijarah according to the majority of scholars has three yaiti, the first is aqidain which consists of mujir and mustajir. Second,

maqud alaih which consists of ujah and benefits; and finally the shighat which consists of ijab and kabul. One of the contemporary scholars who defines ijarah muntahiya bi altamlik is Khalid al-Kafi, stating that ijarah muntahiya bi al-tamlik is a contract between two parties where one of them rents goods to the other party with payment within a certain period of time, at the end of the lease period, the ownership is transferred to the tenant with a new contract. (Primadhany, 2023) (El Husna, 2022; Primadhany, 2023)

Fahd in his book "al-Ijârah al-Muntahiya bi al-Tamlik fi al-Fiqh al al-Hasun in his book defines ijarah muntahiya bi al-tamlik as the beneficial ownership of an item for a certain period of time accompanied by the transfer of ownership of the item to the tenant with a certain replacement. According to Muhammad Usman Syabir, ijarah muntahiya bi al-tamil is a sharia bank that provides goods that will be leased to customers until a certain time with additional ujah (wages) on the basis that customers can own goods after the end of the lease period with a new contract, namely a buy-sell contract. (Islamiah & Sunandar, 2023)

Ijarah is a pure lease, while IMBT is a lease that ends with a transfer of ownership to the tenant. Based on this description in IMBT, there are two contracts, namely the al-bai contract and the IMBT contract. Al-Bai' is a contract of sale and purchase, while it is a combination of renting and buying and selling, while IMBT is a combination of renting (ijarah) and buying and selling or grants at the end of the lease period. This is in accordance with the meaning of IMBT fatwa by DSN-MUI which explains, that IMBT is "A lease-lease agreement accompanied by an option to transfer the rights to the leased object to the tenant after the completion of the lease period". (Al Fasiri, 2021)

Forms of Muntahiya Bi Al-Tamlik

According to Imam Mustofa, ijarah muntahiya bi al-tamlik has five forms, namely: first, the ijarah contract which from the beginning of the contract was intended to transfer ownership of the leased goods to the tenant. The tenant rents an item with rent payment in installments for a certain period of time with a certain amount at the time of the last installment of the rental item changes ownership to the tenant. (Hidayat et al., 2023; Puspita & Yosoef, 2024)

Second, the ijarah contract from the beginning is intended only for the tenant to be given the right to own the rented goods by providing a certain amount of replacement money. In this case, there is nothing binding between the two to transfer rights by way of buying and selling because the contract made is a lease contract. So there are actually two different contracts and not at the same time, namely the ijarah contract or lease for 10 months, then after the rent is paid off, then there is a new contract, namely buying and selling. (Siregar & Siregar, 2023)

Third, the ijarah contract is intended for the lease of an item, namely when the lessee and the lessor make a binding agreement to carry out a contract for the sale and purchase of rental objects. The lessor will sell the rented goods to the tenant at a certain price after the rental installment is paid off. For example, Akbar rented a laptop unit to Zaki for 10 months with a monthly payment of IDR 500,000,-. At the time of the contract, the two made a binding agreement that Akbar would sell the laptop to Zaki at a certain price. After the tenth installment, both parties make a new contract, namely a contract of sale and purchase of the laptop that was previously leased. This contract is ijarah muntahiya bi al-tamlik with a sale and purchase agreement at the end of the lease period. (Siregar & Siregar, 2023)

Fourth, the ijarah contract is meant for the lease of an item, namely when the lessee and the lessor make a binding agreement to grant the rental object. The lessor will grant the rented goods to the tenant. Fifth, the ijarah contract is intended for the rental of an item for a certain period of time with a certain amount of payment. At the time of the contract, the tenant and the lessor make a binding agreement to give the tenant the right to three options. The first option is for the tenant to become the owner with the transfer of a certain amount of money that has been paid in installments along with the rent installments. (Tehuayo, 2018).

Regulation of Ijarah Muntahiya Bi Al-Tamlik in the Banking Legal System in Indonesia

The provisions of IMBT related to banks are related to the status and obligations that must be carried out by banks. Status is contained in SEBI (Bank Indonesia Circular Letter) and obligations are contained in PBI. Status means that the bank is the party that provides the cost of procurement of rental objects in the form of goods, either those that already belong to the bank or goods obtained by renting from other parties. In addition, the bank acts as a promise giver to provide the option of transferring ownership to the customer after the rental object becomes his. This provision is in accordance with one of the conditions for the validity of ijarah, both as explained by DSN MUI No. 9/DSN-MUW 000 and as outlined by jurisprudence, namely that the parties related to ijarah transactions are those who have the ability, both in age and reason.

Analysis of the Muntahiya Bittamlik Ijarah Akad Reviewed from the Opinions of Scholars

As discussed above, the merger of contracts occurs in the Muntahiya Bittamlik Ijarah contract if three components are fulfilled, namely the same object, the same actor and the same period of time. These provisions are cumulative, which means that if one of these components is not fulfilled, there will be no merger of the contract and the contract is legally enforceable. In relation to these three components, the IMBT contract fulfills two components, namely the object of the IMBT contract which is used equally either in the choice to sell goods at the end of the lease period or the option to grant goods at the end of the lease period and the subject of the IMBT contract is the same, namely the Sharia Bank and the customer. Meanwhile, the implementation time is not at the same time. This implementation is based on DSN fatwa No. 27/DSN-MUI/III/2002 and Article 16 of PBI Number: 7/46/PBI/2005 which states that the implementation of the transfer of ownership to the tenant can only be carried out after the ijarah contract is fulfilled.

CONCLUSION

Islamic economic experts, be it contemporary economic thinkers such as Adimarwan, Mujamma' Al-Fiqhi, and classical scholars such as Hanabillah, Malikiyah, Shafi'iyah and Hanabalah, the law of the IMBT contract is mubah (permissible). Ijarah Muntahiya Bittamlik (IMBT) is a contract that combines lease and ownership, where the tenant can own the asset after the lease period ends. From the perspective of scholars, this contract can be accepted in Islamic law as long as certain conditions are met to ensure justice and avoid elements of riba (interest) and gharar (uncertainty). Hanafi Classical School: Accepting IMBT on the condition that the ijarah and tamlik contracts are carried out separately and clearly. Maliki: Be careful with IMBT because of the potential for riba and gharar, but it is acceptable if the conditions of clarity are met. Syafi'i: There is a tendency to be restrictive towards the combination of ijarah and tamlik contracts in one contract. Hanbali: It is more flexible and allows IMBT as long as the two contracts are carried out separately and clearly. Contemporary Ulama: Majma' al-Fiqh al-Islami: Issued a fatwa that allowed IMBT on the condition that the contract was carried out separately and transparently. National Sharia Council (DSN) - Indonesia Ulema Council (MUI): Allows IMBT on the condition of avoiding riba and gharar, and emphasizes fairness and balance in contracts.

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