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Implementation of *Al-Ijarah Al-Maushufah Fi Al-Dzimmah* in Indonesian Sharia Bank

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Abstract

This study aims to determine the inhibiting factors for the implementation of the *Ijarah Maushufah Fi Dzimmah* contract in Islamic banks, especially in the city of Makassar. A descriptive method is used to describe and explain the opinions of fiqh scholars about the *Ijarah Maushufah Fi Dzimmah* contract in Islamic law, as well as describe the results of the analysis of Islamic banking records and documents to determine the inhibiting factors for the implementation of the *Maushufah Fi Dzimmah ijarah*. The results showed that the inhibiting factors for the implementation of the *Maushufah Fi Dzimmah* contract include: (1) the absence of standard regulations from the government (OJK and BI) regarding the implementation of the *Maushufah Fi Dzimmah* contract; and (2) the methods of implementing the product development process and system transformation that have been implemented run by Islamic banks is still difficult; (3) lack of knowledge of Islamic bank practitioners on *Al-Ijarah Al-Maushufah Fi Dzimmah* contracts; (4) Islamic banking financing is dominated by *murabahah* contracts; and (5) low public interest in *Ijarah*-based products.

Keywords: implementation; *ijarah maushufah fi dzimmah*; sharia bank

Abstrak

Penelitian ini bertujuan untuk mengetahui faktor penghambat implementasi akad *Ijarah Maushufah Fi Dzimmah* pada bank syariah khususnya di kota Makassar. Metode deskriptif digunakan untuk mendeskripsikan dan menjelaskan pendapat para ulama fikih tentang akad *Ijarah Maushufah Fi Dzimmah* dalam hukum Islam, serta mendeskripsikan hasil analisis catatan dan dokumen perbankan syariah untuk mengetahui faktor penghambat pelaksanaan akad tersebut. Hasil penelitian menunjukkan bahwa faktor penghambat pelaksanaan akad *ijarah maushufah fi dzimmah* antara lain: (1) belum adanya peraturan baku dari pemerintah (OJK dan BI) tentang pelaksanaan akad *Maushufah Fi Dzimmah*; dan (2) metode implementasi proses pengembangan produk dan transformasi sistem yang telah diterapkan oleh bank syariah masih sulit; (3) kurangnya pengetahuan praktisi bank syariah tentang akad *al-ijarah al-maushufah fi dzimmah*; (4) Pembiayaan perbankan syariah didominasi oleh akad *murabahah*; dan (5) rendahnya minat masyarakat terhadap produk berbasis *ijarah*.

Kata Kunci: implementasi; *ijarah maushufah fi dzimmah*; bank syariah

Introduction

Sharia banking in Indonesia, which is rapidly expanding, drives the development of its products. Not only are scholars and practitioners working in Islamic banking maintaining the form of contract that has existed since the Prophet's time, but they are also developing various models of the new contract form, which is an effort to develop Islamic banking as well as adjust Islamic banking to the progress of the times.¹

In the era of the emergence and development of Islamic financial transactions, several types of *ijarah* contracts have been used in community practice, including the use of *al-Ijarah al-maushufah fi al-dzimmah* contracts, or rent-to-rent contracts that are characterized as dependent. This transaction arises due to the practice of rent-to-let that uses service request patterns based on agreed specifications, such as in indenture house financing products, where the customer hires a bank to provide financing for the purchase of an indenture house in accordance with the specifications that have been agreed upon.

Overseeing these developments, at the end of 2016 the Indonesian Ulema Council (MUI) issued Fatwa Number 102/DSN-MUI/X/2016 concerning the *al-ijarah al-maushufah fi al-dzimmah* contract for Home Ownership Financing Products (PPR)—Indonesia. ²This fatwa begins with the consideration that in society there has been much practice of sharia-compliant leasing, the mechanism of which uses a pattern of ordering the benefits of goods and/or services based on agreed specifications, so it is necessary to stipulate a fatwa regarding contracts related to this concept. ³ In this fatwa, the DSN-MUI opens opportunities for Muslims to make transactions in ordering home ownership financing (PPR) in an indent manner that is safe and avoids elements of *gharar* (uncertainty).

The use of Sharia contracts in PPR Inden in Indonesia is quite familiar, but DSN recommends that using an IMFD contract will get a higher profit than using a *murabahah* or *istishna contract*, ⁴] especially when using an *istishna contract*, where it is not allowed to have a term requirement. This is because there is a contract

¹Aang Asari, "DSN-MUI Fatwa No: 101/DSN-MUI/X/2016 Concerning Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah Agreement in the Perspective of Islamic Law and Indonesian Positive Law" (UIN Sunan Kalijaga Yogyakarta, 2018).

²MUI National Sharia Council, DSN-MUI Fatwa No.102/DSN-MUI/X/2016 Concerning the *al-Ijarah al-Maushufah Fi al-Dzimmah* contract for Home Ownership Financing Products (PPR)-Inden, issued 2016.

³Ardiansyah Putra, "Legal Reform of the DSN-MUI Fatwa Regarding Financing (Analysis of Fatwa *Ijarah Maushufah Fi Dzimmah* No. 102/DSN-MUI/X/2016 Regarding PPR Inden Syariah Combination of Sale and Purchase Agreement and *Ijarah*)" (Syarif Hidayatullah Negeri Islamic University Jakarta, 2018).

⁴ibid

called Salam, which has conditions for using orders with a time period, the view of Abu Hanifah.⁵

According to the DSN-MUI, the *al-ijarah al-maushufah fi al-dzimmah* contract is a leasing contract for the benefit of an item (the benefit of "ain") and/or service ("*amal*"), which at the time of the contract only states their properties and specifications (quantity and quality). The *al-ijarah al-maushufah fi al-dzimmah* contract includes an *ijarah* contract for which the price (wages) is paid in cash while the leased object is handed over at an agreed time.⁶

In this case, the *Ijarah Maushufah Fi Dzimmah* contract includes two contract concepts, namely the *Ijarah* contract and the Salam contract, so that the legality of the *Ijarah Maushufah Fi Dzimmah* Contract rests on the legality of the *Ijarah* Contract and the Salam Contract. It is called an *ijarah* contract because what is traded is a service, and it is called a salam contract because the object is traded by order. Scholars are of the opinion that this contract has similarities with the sale and purchase of goods. However, as it is known, *Al-Ijarah Al-Maushufah Fi Al-Dzimmah*, which is a combination of an *ijarah* contract and a salam contract (multiple contracts), raises a debate of ideas among scholars because, basically, the multi-contract law is prohibited, as stated in the hadith:

عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعَتَيْنِ فَيَبِّبَ ۖ

Meaning:

"The Prophet sallallahu 'alaihi wasallam forbade two buying and selling in one sale and purchase contract," said Abu Hurairah.⁷

The majority of Hanafiyah scholars and part of the opinions of Malikiyah scholars, Syafi'iyah scholars, and Hanbali are of the opinion that the multi-contract law is legal and permissible according to Islamic law. The Malikiyah group is of the opinion that multi-contracting is a way out and a convenience that is permissible and prescribed by law as long as it contains benefits and is not prohibited by religion. Because the original law is the validity of the conditions for all contracts as long as they do not conflict with religion and are beneficial to humans.⁸

When comparing this PPR-Indent product to the hadith of Rasulullah seen above, there is a clear prohibition by Shariah because the *al-ijarah al-maushufah fi al-dzimmah* contract consists of several contracts in one transaction, but if using the *istihsan* method, which is prioritizing the purpose of realizing benefits in

⁵Wahbah Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, Cet. 2 (Syria: Dar al-Fikr, 1985).

⁶MUI, Fatwa DSN-MUI No.102/DSN-MUI/X/2016 About akad *al-ijarah al-maushufah fi al-dzimmah* For Home Ownership Financing Products (PPR)-Inden.

⁷Ahmad bin Syu'aib bin Ali Al-Nasa'i, *Sunan Al-Nasa'i*, Cet. I. Halab. *Maktab Al-Matbu'at Al-Islamiyah* (Riyadh: Maktabah al-Ma'arif li al-Nasyr wa al-Tawzi', 1417).

⁸Hasanudin Maulana, "Multi Contracts in Contemporary Sharia Transactions in Islamic Financial Institutions in Indonesia," *Al-Iqtishad* Vol. III, no. 1 (2011), <https://core.ac.uk/download/pdf/295598288.pdf>.

accordance with the meaning of Syariah (*Maqashid al-Shariah*, then there are more benefits than following qiyas.

If these arguments are maintained, it can result in not achieving the desired *maslahah*, where the *al-ijarah al-maushufah fi al-dzimmah* contract is usually used to meet consumption needs, procure houses, or acquire other properties. This requirement enters the *hijaiyyah* level. Some benefits of *al-ijarah al-maushufah fi al-dzimmah* include the elimination of difficulties and difficulties in community life in *muamalah*. Because humans are social creatures who need other people to meet their needs, along with the development of the times, the prices of goods have increased while the needs have also increased, such as housing needs. Many people are trapped by bad credit and even borrow from moneylenders to meet their needs.⁹ For this reason, the *al-ijarah al-maushufah fi al-dzimmah* contract on Inden PPR Products, according to the perspective of sharia economic law, is permissible because it has provided many conveniences for the community, especially in fulfilling the needs of people's lives.

Some people consider this concept a financing solution that is specifically for financing properties that are being built, each of which benefits the parties involved (customers, banks, and contractors) so that the risks of the construction process can be controlled due to the involvement of several parties during the process. construction period. And since the place of residence is the object of the contract, its maintenance, care, and ownership are with the bank (the provider of capital) during the contract period. This provides a large financial guarantee to the financier and can also facilitate the procedure for selling the house in the event of a customer default, non-fulfillment of obligations, or broken promises.¹⁰

This contract also has a number of advantages compared to *murabaha*, for example in refinancing, when a *murabaha* contract is prohibited from being used, this contract provides a solution.¹¹ Apart from that, the bank can also take advantage of the wages paid while the product is still in the process of being developed, and the customer can get a leased object according to the specified specifications.

In several other countries, this agreement has been implemented to finance projects that require large funds, such as the construction of the Doraleh Container Port in Djibouti. This infrastructure financing uses the *al-ijarah al-maushufah fi al-*

⁹Fatechatul Ulfi, "Analysis of the Application of the *Al-Ijarah Al-Maushufah Fi Al-Dzimmah* Contract on Indent Mortgage Products According to the Perspective of Sharia Economic Law" (UIN Syarif Hidayatullah Jakarta, 2021).

¹⁰Amir Abdul Rouf, "*Aqd Ijarah Al-Maushuf Fi Al-Dzimmah Suwaruhu Wa Tawziyufu Fi Al-Tamwil Al-Mu'Asir*" (University of Malaya, 2017).

¹¹Ulfi, "Analysis of the Implementation of the *Al-Ijarah Al-Maushufah Fi Al-Dzimmah* Contract on Indent KPR Products According to the Perspective of Sharia Economic Law."

dzimmah contract.¹² However, in the practice of Islamic banking in Indonesia, home ownership financing products have not implemented the concept of a contract that has been determined by the DSN-MUI, even though this contract is determined in order to meet customer needs in terms of contract availability. Some Islamic banks prefer to use a *murabahah* contract as the underlying financing in almost all segments; however, in the home financing product, the bank itself does not yet have the complete object of the contract, so there are inaccuracies in the contract used.¹³

However, in the practice of Islamic banking in Indonesia, home ownership financing products have not implemented the concept of a contract that has been determined by the DSN-MUI, even though this contract is determined in order to meet customer needs in terms of contract availability. Some Islamic banks prefer to use a *murabahah* contract as the underlying financing in almost all segments; however, in the home financing product, the bank itself does not yet have the complete object of the contract, so there are inaccuracies in the contract used.

Method

This study uses a type of qualitative research. Qualitative research aims to obtain a complete picture of a matter from the point of view of the human being studied. Qualitative research deals with the ideas, perceptions, opinions, or beliefs of the people being studied, all of which cannot be measured by numbers¹⁴ This study examines the application of normative legal requirements to all legal conditions that occur in a society. This research is carried out in an intense, detailed, and in-depth manner on an institution or certain conditions that are appropriate to areas or subjects that are not too broad.

In this study, the data obtained by further researchers was presented using a documentation study. This study was analyzed, and the results were obtained and presented in sentence structure. The time for this research was approximately 3 months starting from initial observations, interviews with informants, to writing the results of data processing. While the location of the research is Bank Muamalat KCU Makassar on Jalan DR. Ratulangi No. 12, Mangkura, kec. Ujung Pandang, Makassar City, South Sulawesi, Bank BTN Syariah Makassar Branch Jalan Talasalapang No. 23, Gunung Sari, Rappocini, Makassar, South Sulawesi, and Bank BNI Syariah Makassar Branch Jalan Dr. Sam Ratulangi No. 140, Mario, kec. Mamajang, Makassar, South Sulawesi.

¹²Rega Felix and Lastuti Abubakar, "Application of *Al-Ijarah Al-Maushufah Fi Al-Dzimmah* for Infrastructure Project Financing in Indonesia," *Yuridika* 35, no. 1 (2020), <https://doi.org/10.20473/ydk.v35i1.9021>.

¹³Ulfi, "Analysis of the Implementation of the *Al-Ijarah Al-Maushufah Fi Al-Dzimmah* Contract on Indent KPR Products According to the Perspective of Sharia Economic Law."

¹⁴Sulistyo-Basuki, *Research Methods* (Jakarta: Wedatama Widya Sastra, 2006).

Data is an important and central part of research activities. The data is related to the problem, while the problem is represented by research concepts or variables. Therefore, if you want to get data, it means that researchers must observe variables that are representative of the existing problem. The research problem is the object studied in the research object. Phenomena or research problems that have been abstracted into a concept or variable are referred to as research objects.¹⁵ The subjects of this study were sharia bank practitioners in the financing division of three Islamic banks in Makassar, namely Bank Muamalat Makassar branch, State Savings Bank (BTN) Syariah Makassar branch and Bank Negara Indonesia (BNI) Syariah Makassar branch. Informants in this qualitative research were selected and determined with certain considerations that had been determined by the researcher. The informants are practitioners who understand the specifications of banking products and the contract concepts used. Meanwhile, the object of this research is the implementation of the *al-Ijarah al-maushufah fi al-dzimmah* contract on financing products for pivotal home ownership.

This study relied on both primary and secondary data. Primary data is data obtained directly from the source, or can be referred to as primary data, namely in the form of transcripts from interviews regarding the implementation of the *al-Ijarah al-maushufah fi al-dzimmah* contract. While secondary data is obtained from data collection techniques that support primary data sourced from books, journals, and other documents related to research problems,

The data collection technique was carried out through direct interviews with practitioners of Muamalat Syariah Bank, BTN Syariah Bank, and BNI Syariah Bank. as well as through a literature review by reviewing books that can help researchers obtain relevant data. Data analysis techniques used in this study include interview transcripts, data reduction, analysis, data interpretation, and triangulation. from the results of data analysis, which can then be used to draw conclusions. This data reduction is accomplished by selecting the data required for the research and then analyzing it using descriptive methods. The descriptive method is used to describe and explain fiqh scholars' opinions on the *Ijarah Maushufah Fi Dzimmah* contract in Islamic law, as well as the results of an analysis of Islamic banking records and documents to determine the impediments to the implementation of the *Ijarah Maushufah Fi Dzimmah* contract at Islamic banks in Makassar city. This analysis activity is carried out by reading the processed data and then connecting it with existing theories so that the data can be concluded according to the formulation of the problem in this study.

¹⁵Ulber Silalahi, *Social Research Methods*, ed. Aep Gunarsa (Bandung: Refika Aditama, 2009).

Results & Discussion

Definition of Akad al-Ijarah al-Maushufah fi al-Dzimmah

The word contract comes from the Arabic al-'aqd which etymologically means engagement, agreement and agreement (*al-ittifaq*). In fiqh terminology, contract is defined as: "appropriate consent (statement of bond) and qabul (statement of acceptance of bond) in accordance with the will of the Shari'a which affects the object of the engagement".¹⁶

As for *al-Ijarah al-Maushufah fi al-Dzimmah*, it is composed of three words, namely *al-ijarah*, *al-maushufah*, and *al-dzimmah*. In language, *ijarah* is taken from the word *أجر* which means rent for a job, and the word *الإجارة* means what is given from the lease to do a job.¹⁷ Meanwhile, in terms of *ijarah*, it is a transaction of beneficial ownership of goods or services by providing rent/wages.¹⁸

The word *al-Maushufah* is linguistically taken from the word *وصف* which means to describe something and the word *الصفة* means a sign or indicator that is appropriate to something.¹⁹ Imam al-Rogib al-Asfahani said that the word *الوصف* means to mention something based on its ornaments and characteristics, and the word *الصفة* means the condition in which something has these ornaments and characteristics.²⁰ Meanwhile, in terms of *al-Maushufah*, it means an expression that shows itself based on the essence of the letter, meaning that it shows a substance based on its nature, for example the word *أحمر* which, based on the essence of the letter, shows the intended meaning, namely *الحمرة* (red color).²¹

The word *al-Dzimmah* in Arabic is taken from the word *ذمم* and the word *الذمة* means an agreement because those who break it must be blamed and the agreement is explained with security and guarantees or dependents, therefore the disbelievers *dzimmiy* are said to be people who are given an agreement because of wealth and His blood is guaranteed security by *jizyah*.²² *Fi al-dzimmah* (*في الذمة*) means dependent, in the sense that the seller or service provider guarantees that he will provide the goods in accordance with the characteristics agreed upon.²³

¹⁶Abdul Rahman Ghazaly, *Fiqh Muamalat*, Cet. 5th (Jakarta: Prenadamedia Group, 2018).

¹⁷Ahmad Ibn Faris Ibn Zakariya, "Mu'jam Maqayis Al-Lughah" (Cairo: Dar al-Fikr, 1979).

¹⁸Kementerian Wakaf in Urusan Islam, *Al-Mawsu'ah Al-Fiqhiyyah Al-Kuwaitiyyah*, Cet. ke-2 (Kuwait: Dar al-Salasil, 1983).

¹⁹Ibn Zakariya, "Mu'jam Maqayis Al-Lughah."

²⁰Al-Rogib Al-Asfahani, *Al-Mufrodat Fi Ghorib Al-Qur'an* (Beirut: Dar El Qolam, 1992).

²¹Ali bin Muhammad Al-Jurjani, *Kitab Al-Ta'rifaat* (Beirut: Dar El Kutub 'Ilmiyah, 1983).

²²Abu al-Fath Naasir al-Diin al-Muttorizi, *Al-Mughrib Fi Tartib Al-Mu'rib* (Suriah: Maktabah Usamah bin Zaid, 1979).

²³Nasrul Fahmi Zaki Fuadi, "Implementation of the Al-Ijarah Al-Maushufah Fi Al-Dzimmah Contract as an Alternative to Financing in Indonesian Islamic Financial

According to the DSN-MUI, the *al-ijarah al-mausufah fi al-dzimmah* contract is a leasing contract for the benefit of an item (benefit'ain) and/or service ('amal) which at the time of the contract only states its properties and specifications (quantity and quality). The *al-ijarah al-mausufah fi al-dzimmah* contract is an *ijarah* contract in which the price (wages) is paid in cash, while the leased object is handed over at an agreed time.²⁴

Syekh Ali al-Qaradaghi said that leasing under dependents is leasing where the object of the contract is in the form of benefits that are classified as dependents which by this nature eliminates ignorance of the object of the contract.²⁵

From the above understanding it can be concluded that *ijarah maushufah fi dzimmah* is a transaction for the ownership of permissible goods/services which are known with the terms and characteristics, especially for a price (wages) paid in cash while the object is delivered at an agreed time.

The Law of Akad al-Ijarah al-Maushufah fi al-Dzimmah

The majority of scholars determine the permissibility of the *Al-Ijarah al-maushufah fi al-dzimmah* contract based on the permissibility of the salam contract. Scholars are of the opinion that this contract has similarities with the sale and purchase of the benefits of goods. However, as it is known that *Al-Ijarah al-maushufah fi al-dzimmah* which is a combination of an *ijarah* contract and a salam contract (multi-contract), this has given rise to a debate of ideas among scholars.

In terms of the object of the contract, Hanafiyyah scholars argue that an *ijarah* contract for the benefit of goods which includes *al-maushufah fi al-dzimmah* is a contract that is prohibited (read: invalid); they argue that the leased goods (*mahal al-manfa'ah*) must have been determined at the time the contract or agreement was made.²⁶ They view and judge that the principle of benefit is abstract in nature. The value of benefits and wages is only considered valid if it is truly concrete. Given the ambiguity in the contract can lead to quarrels, such as the ambiguity of the price in the matter of buying and selling. At this point, which logic can justify an abstract can be bought or paid for. What's more, it's just renting, not buying and selling. Even though there is a guarantee of mentioning the identification of the

Institutions," *Indonesian Journal of Islamic Literature and Muslim Society* 4, no. 2 (2019): 211–32, <https://doi.org/10.22515/islimus.v4i2.1750>.

²⁴MUI, DSN-MUI Fatwa No.102/DSN-MUI/X/2016 Concerning the *al-Ijarah al-Maushufah Fi al-Dzimmah* contract for Home Ownership Financing Products (PPR)-Inden.

²⁵Ali Mahyuddin al-Qaradaghi, "Al-Ijarah 'ala Manafi' Al-Ashkhash," in *European Fatwa Council* (Paris, 2008).

²⁶Nia Mugniati, "Al-Ijarah Al-Maushufah Fi Al-Dzimmah Contract (Comparative Study of the Hanafi and Shafi'i Schools)" (UIN Sultan Maulana Hasanuddin Banten, 2018).

item, it is still majhul (abstract). Strictly speaking, the goods that are leased absolutely must be concrete *mua'ayyanah*.²⁷

The Shafi'i school allows the *Al-Ijarah al-maushufah fi al-dzimmah* contract, because it departs from the origin of *ijarah* law that it is permissible under Islamic law. As for the reason, because formally it is included in the contract.²⁸ Jumhur scholars from the Shafi'iyyah circle, allow *ijarah* contracts for goods that are included in *al-maushufah fi al-dzimmah*; he considers the *al-ijarah al-maushufah fi al-dzimmah* contract to be part of the contract form of buying and selling greetings for benefits.

According to the Syafi'iyah scholars, the object of salam must be an item that is generally available and will not disappear when the delivery time is due, whether the item is present at the time of the contract or not. Because what is important is the ability to deliver the goods, so what counts is their presence at the time of delivery of the goods. It is the same as in the *al-Ijarah al-maushufah fi al-dzimmah* contract, therefore the Shafi'i school of thought does not hesitate to state that *al-Ijarah al-maushufah fi al-dzimmah* is valid. Even if it's a matter of when the goods don't exist yet, when an agreement has been built, in essence the goods already exist.

Syafi'i scholars are also of the view that *ujrah* in the *al-Ijarah al-maushufah fi al-dzimmah* contract needs or must be paid at the beginning of the contract assembly as it is obligatory to pay the price (*tsaman*) in the sale and purchase of salam contract.²⁹

In terms of the classification of the contract, *Al-Ijarah al-maushufah fi al-dzimmah* when viewed from the law of fiqh in practice is a combination of a salam contract and an *ijarah* contract or what is commonly referred to as a multi-contract, it is called an *ijarah* contract because what is traded is a service, and is called salam contract because the object is traded by order. Basically, multi-contract law is prohibited, while the hadith that explains it is:

عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعَيْنِ فَيَبِّبَ ۖ

Meaning:

“from Abu Hurairah said; The Prophet sallallaahu 'alaihi wasallam forbade two buying and selling in one sale and purchase contract.”

The majority of Hanafiyah scholars, part of the opinion of Malikiyah scholars, Syafi'iyah scholars, and Hanbali are of the opinion that multi-contract law is valid and permissible according to Islamic law. Those who allow it reason

²⁷Muhammad ibn Ahmad ibn Abi Sahl As-Sarkhasi, *Al-Mabsuth*, Volume 15 (Egyptian: Dar al-Fikr, nd).

²⁸Sarip Muslim, *Islamic Financial Accounting: Theory and Practice*, Pustaka Se (Bandung, 2015).

²⁹Mugnati, “Akad Al-Ijarah Al-Maushufah Fi Al-Dzimmah (Comparative Study of the Hanafi and Shafi'i Schools).”

that the original law of the contract is permissible and valid, it is not prohibited and canceled as long as there is no legal argument that forbids or cancels it. Meanwhile, the Malikiyah group is of the opinion that multi-contract is a way out and convenience that is permissible and prescribed by law as long as it contains benefits and is not prohibited by religion. Because the original law is the validity of the conditions for all contracts as long as they do not conflict with religion and are beneficial to humans.³⁰

If the *Al-Ijarah al-maushufah fi al-dzimmah* contract on this KPR-Indent product is compared to the hadith of the Prophet SAW above, then it is clearly prohibited by the Shariah because the *Al-Ijarah al-maushufah fi al-dzimmah* contract consists of several contracts in one transaction, but if using the *istihsan method*, that is, prioritizing the purpose of realizing benefits in accordance with the purposes of *Syariah (Maqashid Syariah)*, It was explained that there is a bay' salaf in the *Al-Ijarah al-maushufah fi al-dzimmah* contract on the KPR-Indent product, which is a contract that combines a sale and purchase agreement with a salaf or salam in one sale and purchase transaction, which Rasulullah saw prohibited because it contains gharar. *Al-Ijarah Al-Maushufah Fi Al-Dzimmah*: If it is compared with *bay' salaf*, then the law is haram, because seeing the same illat can cause gharar because it contains several contracts that result in uncertainty about which pillars and conditions must be fulfilled. Allah Swt. has said in Q.S As Sad: 24:

قَالَ لَقَدْ ظَلَمَكَ بِسُؤَالٍ نَعَجَبْتَ إِلَىٰ نَعَاجِهِ وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَىٰ بَعْضٍ إِلَّا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَقَلِيلٌ مَّا هُمْ ۗ وَظَنَّ دَاوُدُ أَنَّمَا فَتَنَّاهُ فَاسْتَغْفَرَ رَبَّهُ وَخَرَّ رَاكِعًا وَأَنَابَ ۗ

Meaning:

Daud said: "Indeed, he has wronged you by asking for your goat to be added to his goats. And indeed, most of the people in the association, some of them wronged others, except for those who believe and do good deeds pious; and these are very few". And Daud knew that We tested him; so he asked for forgiveness from his Lord and prostrated himself and repented.

From this verse, it can be concluded that people who carry out buying and selling (muamalah) transactions have the potential to tyrannize other parties, as well as the *Al-Ijarah al-maushufah fi al-dzimmah* contract on KPR-Indent Products. If the buyer is not careful in choosing a developer, he is likely to be deceived as to an object that is not in accordance with what has been agreed upon, and also if the buyer gives all of his payments at the beginning of the contract and construction is hampered, the money will be difficult to return, which causes the buyer to be tyrannized.

If viewed from the perspective of *istihsan bi al mashlahah*, leaving *qiyas* is seen as having greater benefit than following *qiyas*, then *qiyas* may be abandoned

³⁰Hasanudin Maulana, "Multicontracts in Contemporary Sharia Transactions in Islamic Financial Institutions in Indonesia," *Al-Iqtishad: Journal of Islamic Economics* 3, no. 1 (2016), <https://doi.org/10.15408/aiq.v3i1.2518>.

and what is used is *istihsan*, which is based on *mashlahat* by abandoning the usual argument. If these arguments are maintained, it can result in not achieving the desired benefit, as in KPR-Indent, namely for the developer who defaults. The existence of *mashlahah* that needs to be considered makes *Al-Ijarah Al-Maushufah Fi Al-Dzimmah*, especially in KPR-Indent products, permissible in *syara'* because there are times when the *mashlahat* reaches the *dharuriyyah* level and sometimes it enters the *hijjiyah* level.

In practice, *Al-Ijarah al-maushufah fi al-dzimmah* is usually used to meet consumption needs, procure houses, or acquire other properties. This need enters the realm of *hijjiyah*. Some benefits of *Al-Ijarah al-maushufah fi al-dzimmah* include the elimination of difficulties and difficulties in community life in *muamalah*. Because humans are social creatures who need other people to meet their needs, along with the development of the times, the prices of goods have increased while the needs have also increased, such as housing needs. Many people are trapped by bad credit and even borrow from moneylenders to meet their needs. For this reason, the National Sharia Council of the Indonesian Ulama Council (DSN-MUI) is trying to address the needs of the Islamic community with a pattern of cooperation, one of which is the *Al-Ijarah al-maushufah fi al-dzimmah* contract..³¹

Based on the things that have been described, the *Al-Ijarah al-maushufah fi al-dzimmah* contract on Indent Mortgage Products, according to the perspective of sharia economic law, is permissible because it has brought benefits to society and made it easier for people to meet their daily needs. If people currently need a new contract, such as the *Al-Ijarah al-maushufah fi al-dzimmah* contract for indent mortgage products, to meet their needs, then that's fine. Therefore, the texts of the Qur'an and hadiths have never increased, while the needs are increasing, one of which is the procurement of indent houses using the *Al-Ijarah al-maushufah fi al-dzimmah* contract. Then, carrying out several methods of extracting Islamic law, such as *Istihsan*, needs to be done as explained by the *Usulul Fiqh* scholars.

The criteria related to this contract that may be carried out:

- 1) The criteria for rented goods can be measured even though the object does not yet belong to the lessor (at the time the consent is made).
- 2) When the delivery of the leased object is agreed upon at the time of the contract, the leased object must be believed to belong to the lessor, either by obtaining it from another party or by making it himself.
- 3) It is not required that the payment of *ujrah* be prioritized (to be made at the time of the contract) as long as the *ijab* and *qabul* are not made using the words *salam* or *salaf*.

³¹Ulfi, "Analysis of the Implementation of the *Al-Ijarah Al-Maushufah Fi Al-Dzimmah* Contract on Indent KPR Products According to the Perspective of Sharia Economic Law."

- 4) If the leased goods received by the lessee do not match the agreed criteria, the lessee has the right to refuse and ask for a replacement according to the agreed criteria at the time of the contract.

The fatwa has explained that the provisions regarding the benefits of goods and work of the *Al-Ijarah al-maushufah fi al-dzimmah* contract, must:

- 1) Known clearly and measurably the specifications (*ma'lum mundabith*) so as to avoid disputes and disputes (*al-niza'*)
- 2) Can be handed over both essentially and legally
- 3) In accordance with sharia principles.³²

Overview of Application of *Ijarah Maushufah Fi Dzimmah* Contract on Financing Products

Ijarah maushufah fi dzimmah is a transaction of giving benefits by certain groups (financing institutions) and their partners to other people (clients/customers) who need financing. Financing Institutions get these benefits from their partners by paying them directly, then they provide these benefits to people who need them in return for installment payments.

The general description of the application of the *ijarah maushufah fi dzimmah* contract on financing products can be detailed through the following steps:³³

- 1) The lessor (financial institution) signs an *ijarah maushufah fi dzimmah* contract with the financial institution client before benefiting from a service. At the time of the contract, the subject of the contract or the services to be provided at the stipulated time are described in detail.
- 2) Then, the financial institution signs an *ijarah maushufah fi dzimmah* contract agreement with the service provider/service company taking into account the following matters:
 - a) Financial institutions must require service providers to provide such services to designated financial institutions or clients
 - b) It is not allowed to link between the *ijarah maushufah fi dzimmah* contract with the service provider and the *ijarah maushufah fi dzimmah* contract with the client, because the goods deemed to be dependent cannot be used before the specifications are determined.

An example of its application in a modern context is one of financing the purchase of an indenture house at a sharia bank. Ahmad as a customer at bank X wants to rent a house in a complex. The house is still under development and will be completed in the next 3 months, but Ahmad hired Bank X to provide financing

³²MUI, Fatwa DSN-MUI No.102/DSN-MUI/X/2016 Tentang akad *al-Ijarah al-Maushufah Fi al-Dzimmah* Untuk Produk Pembiayaan Pemilikan Rumah (PPR)-Inden.

³³Ahmad Muhammad Mahmud Nashar, "Fiqh *Al-Ijarah Al-Maushufah Fi Al-Dzimmah Wa Tathbiqotuha Fi Al-Muntaajat Al-Maliyah Al-Islamiah Li Tamwil Al-Khidmat*," in *Islamic Banking Conference between Reality and Hope- May31 - June3 Dubai, United Arab Emirates*(Dubai, 2009), 42.

services for the house for a period of 3 years with a monthly payment of 1 million. This example is an example of *ijarah maushufah fi dzimmah* contract, because the benefits that are leased become like a debt responsibility to Ahmad. The lessor needs to ensure that the specifications of the rental benefits of the house are met when the deadline is reached.

The contract scheme in this case first the client makes a contract with the real estate developer, then the client will turn to the bank to apply for house financing with predetermined specifications then the bank will pay the developer and hold the goods while the client pays the bank in a deferred manner and the goods are given at the end according to the agreement .

In this scheme, it will be difficult to break the existing relationship between the client and the developer unless the bank replaces the client's position in the contract but, not by taking responsibility for the debt. The alternative is for the bank to enter into a contract assuming responsibility for providing the building to agreed specifications for the client and another contract for *istishna* with the developer so that the bank takes full responsibility for the building. The suitability of this arrangement, or the solution to the situation by using an *ijarah maushufah fi dzimmah* (forward *ijarah*) contract that results in ownership. This means that the use of collateral by the bank to finance the client does not result in the bank financing the client's debt to the developer. In addition, it turns the relationship established between them into a three-way relationship where all parties (developers, banks and clients) can feel comfortable.³⁴

Advantages of Financing with the *Ijarah Maushufah fi Dzimmah* Contract

The advantages of *ijarah maushufah fi dzimmah* which make it a contract that is considered important include:

- 1) This product is a great way to finance real estate that is under construction. Customers, finance banks and contractors all benefit from it. This means that the risks of the building process can be better controlled and monitored, as more people are involved in the process during construction and when the house becomes the subject of a contract. The lender retains ownership of the home for as long as the contract lasts. This gives the lender strong financial guarantees and makes it easier to sell the home if the client does not repay the loan.

³⁴Abdul Sattar Abu Ghuddah, "Practical Application of Al-Ijarah Al-Mawsufah Fi Al-Zimmah (Forward *Ijarah*)," *30th Albaraka Symposium 2009* 1 (2009): 1–36, <http://www.iefpedia.com/test/practical-application-of-al-ijarah-al-mawsufah-fi-al-dhimmah-forward-ijarah/%0Ahttp://www.iefpedia.com/english/wp-content/uploads/2009/10/Practical-Application-of-al-Ijarah-al-Mawsufah-fi-al-Dhimmah-Forward-Ijarah.pdf>.

- 2) The implementation of this contract improves the financial performance of corporate customers, because the financing of this contract is not recorded as a debt for the customer but as an expense.³⁵
- 3) This contract has a number of advantages compared to murabaha, for example in refinancing, when a murabaha contract is prohibited from being used, this contract provides a solution.³⁶
- 4) In the event of problematic financing, Islamic banks do not experience income losses as in problematic murabahah financing. In rescheduling murabahah financing, Islamic banks are prohibited from changing the principal amount and margin, while in financing the *Al-Ijarah al-maushufah fi al-dzimmah* contract, you can change the amount of ujah, so that the restructuring does not involve converting the contract but still the *Al-Ijarah Al-Maushufah* contract. *Fi Al-Dzimmah* is just an addendum, namely by changing the amount of ujah, so that it is not subject to the issue of collateral damage which causes additional costs for customers.³⁷
- 5) In the *Al-Ijarah al-maushufah fi al-dzimmah* contract, the customer does not pay tax on the rented asset, because the position of ownership of the goods belongs to the bank. Thus the bank is the one who pays the tax.³⁸
- 6) Banks can take advantage of wages being paid while the product is still being developed.

Results of the Analysis of the Factors of Not Realizing the *Ijarah Maushufah Fi Dzimmah* Contract at Makassar City Sharia Banks

After conducting interviews with one of the bank practitioners in the financing marketing division at BNI Syariah banks, BTN Syariah banks and Muamalat Banks in Makassar City, the authors conclude that among the factors the *ijarah maushufah fi dzimmah* contract was not realized at Makassar Islamic banks, namely as follows:

- 1) There are no rules given by the regulators (OJK and BI) regarding the application of the *Ijarah Maushufah fi Dzimmah* contract

In 2008, the People's Representative Council, with government support, passed Law no. 21 of 2008 concerning Islamic Banking. This law consists of 70 articles and is divided into 13 chapters. In general, the structure of the Sharia Banking Law is the same as the National Banking Law. The new aspects regulated in this Law are related to corporate governance, prudential principles, risk management, dispute resolution, fatwa authority and Islamic banking committees as well as guidance and supervision of Islamic banking. Bank Indonesia still has a

³⁵Ulfi, "Analysis of the Implementation of the *Al-Ijarah Al-Maushufah Fi Al-Dzimmah* Contract on Indent KPR Products According to the Perspective of Sharia Economic Law."

³⁶Ulfi.

³⁷Ulfi.

³⁸Ulfi.

role in supervising and regulating Islamic banking in Indonesia, but for banking regulation and supervision, including Islamic banking under the Financial Services Authority (OJK) in accordance with the mandate of Law no. 21 of 2011 concerning the Financial Services Authority.

OJK and BI as institutions that regulate and supervise the Islamic banking system have not yet established rules regarding financing the purchase of indent houses (PPR-indent) using an IMFD contract, even though the DSN MUI has determined the use of an IMFD contract on PPR indent products, but Islamic banking has not been able to implement the contract because there is no specific regulation regarding the contract from the regulator.

This impedes Islamic banking in implementing pivotal PPR products so that each Islamic bank uses a different contract. The Makassar branch of BNI Syariah applies a *murobahah* contract but is considered not in accordance with sharia principles because a *murabahah* contract is only for ready-made/existing houses (objects must exist) while for pivot PPR products the object of the contract has not yet been made.³⁹As for the Makassar branch of the BTN Syariah bank, the indent PPR product uses an *istishna* contract,⁴⁰ but in fact the essence of this contract is charity (work performed by shoni' to create an object) whereas in indent PPR products the bank acts as a service provider (service). Therefore the most suitable contract for an indented PPR product is an IMFD contract where the IMFD contract is a leasing contract where the object of the contract will be delivered at a predetermined time.

- 2) The difficulty of product development processes and system changes that have been carried out by Islamic banks

Product development in Islamic banks is different from product development in conventional banks, conventional banks use one type of transaction, namely loans, whereas in Islamic banks products must be developed following the characteristics and characteristics of Islamic products that are different from one another. Risk and duration are the second factor after the character and nature are placed.

The product development process at Islamic banks as mentioned by one of the Makassar branch Muamalat Syariah bank employees is first, reviewing the product to be launched then conducting consultations with the party who regulates the risk of its application then asking for a fatwa on the permissibility of the contract used then conducting a review to see the condition of the need the public about the product.⁴¹The employee of the Makassar branch of the BNI Syariah bank added that to develop a new product, the Islamic bank must also prepare a system that will be used such as IT development, while developing IT

³⁹Personal interview with Kardita Safitri

⁴⁰Personal interview with Aan Saprianto

⁴¹Personal interview with Nur Qolbiawal

requires a long process because this will require reporting that is adjusted to the regulations of the Financial Services Authority (OJK).⁴²

Therefore it can be seen that the product development process in Islamic banks takes a long time and it is difficult to change the system that has been used so that technology and information systems that are not yet supported become one of the obstacles to product and service development, and hinder the implementation of a new contract.

3) Lack of knowledge of Islamic bank practitioners regarding the *ijarah maushufah fi dzimmah* contract

An understanding of the *muamalah* contracts used by Islamic banking is very important to know, especially when public interest in Islamic banking and Islamic finance has recently become stronger, demanding a comprehensive understanding for practitioners and academics about contracts and product development. from an existing contract.

The results of interviews with several sharia bank practitioners at the Makassar branch of BNI Syariah bank, Makassar branch of BTN Syariah and Makassar branch of Muamalat Bank show that until now the understanding of the IMFD contract concept is still very minimal for sharia bank practitioners.

The weak understanding of sharia banking practitioners, both from the business development side and from the sharia understanding side, causes in practice sharia banking to often deviate from sharia principles. With various educational backgrounds, experiences and work fields of employees, product development is no longer the responsibility of a division, but inter-divisions and even the bank as a whole. The problem of human resources is indeed the most complicated problem not only in product development, but in Islamic banking as a whole.

Even though the DSN-MUI has determined the permissibility of the *Ijarah Maushufah fi Dzimmah* contract since 2016, efforts to introduce the concept of this contract are still lacking, which hinders product development from existing contracts.

4) Islamic banking financing is more dominated by *murabahah* contracts

In practice, Islamic banks use *murabahah* contracts more in financing distribution. The definite characteristics of *murabahah* in determining the amount of installments and margins foster the perception that the use of a *murabahah* contract can reduce the level of financing risk. Based on data from the financial services authority, in Indonesia until June 2019, the largest distribution of financing was recorded using *murabaha* contracts, namely with a portion of nearly 50% of the total financing distributed by Islamic banks.

Islamic banks in Indonesia tend to prefer financing with a relatively low risk value. This is in accordance with the narrative of one BNI Syariah bank practitioner in the Makassar branch that in practice, financing at BNI Syariah is still dominated

⁴²Personal interview with Kardita Safitri

by *murabahah* contracts, most BNI Syariah customers need banking products with buying and selling contracts, while service-based products are still less desirable.⁴³ Practitioners of the BTN Syariah bank in the Makassar branch said that the dominant financing products at the BTN Syariah bank were products that used *murobahah* contracts because they had the lowest application risk and were easy to implement.⁴⁴

Therefore it can be concluded that Islamic banking financing is more dominated by *murabahah* contracts due to the high level of public demand for financing products for the purchase of goods, the risk of implementation is low and it is easy to implement. This is one of the obstacles to the development of sharia banking products, especially in the implementation of IMFD contracts.

5) Low public interest in *Ijarah*-based products at Islamic Banks

Indonesia is a country with the largest Muslim population in the world. However, the market share of Islamic finance to the financial system in Indonesia as of April 2020 was only 9.03%.⁴⁵ One of the reasons for this low market share growth is the small growth in Islamic bank customers compared to conventional bank customers. Many people are still unfamiliar with Islamic bank products, this is the reason for the lack of growth of Islamic banks, and has an impact on the level of public enthusiasm to switch to Islamic banks. Customers also tend to compare one bank to another based on the number of installments and the amount of return received.

For *Ijarah*-based financing products, according to the BNI Syariah financing marketing manager for the Makassar branch, the condition of customers at BNI Syariah banks is more likely to choose goods purchase products compared to service-based financing products, they prefer conventional bank financing using guarantees that can be accepted by conventional banks, for example there are some conventional bank customers who use SK PNS as collateral, this option is better than Islamic bank financing which uses house certificates as collateral.⁴⁶ People think that financing procedures at Islamic banks are more complicated, so that people are more interested in financing at conventional banks. As for customer interest in the Makassar branch of Muamalat bank, as conveyed by one of its employees, it shows that customers at Muamalat bank are less interested in *Ijarah*-based products, this is due to the different business focus of each bank.⁴⁷

Based on data obtained from interviews with several Islamic bank practitioners, it can be concluded that public interest in *ijarah*-based products is still low so that in the application of products using *Ijarah Maushufah fi Dzimmah*

⁴³Personal interview with Kardita Safitri

⁴⁴Personal interview with Aan Saprianto

⁴⁵ <https://m.bisnis.com/amp/read/20200702/231/1260686/pangsa-pasar-keuangan-syariah-per-april-2020-naik-jadi-903-persen>

⁴⁶Personal interview with Kardita Safitri

⁴⁷Personal interview with Nur Qolbiawal

contracts, a more in-depth field review is needed regarding community needs for products that use This contract scheme is like an indent PPR product.

Conclusion

Ijarah Maushufah fi Dzimmah is a transaction for the beneficial ownership of goods/services which are known with terms and special characteristics for which the price (wages) is paid in cash while the object is delivered at an agreed time. The *Al-Ijarah al-maushufah fi al-dzimmah* contract on indent mortgage products according to the perspective of sharia economic law is permissible because it has brought benefits to society and made it easier for people to meet their needs. The inhibiting factors for the implementation of the *Ijarah Maushufah Fi Dzimmah* contract at Islamic banks in the city of Makassar include: (1) There is no standard regulation from the government (OJK and BI) regarding the application of the *Maushufah fi Dzimmah ijarah* contract, (2) Implementation methods for product development processes and system transformation implemented by Islamic banks is still difficult, (3) Lack of knowledge of Islamic bank practitioners regarding the *Al-Ijarah Al-Maushufah Fi Dzimmah* contract, (4) Islamic banking financing is more dominated by Murabahah contracts, (5) Low public interest in *Ijarah*-based products.

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