

## The Issues of *Wa'ad* IMBT in the Fatwa DSN MUI Based on Fiqhiyyah Rules

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**Abstract.** *This study discusses the concept and function of wa'ad in the DSN-MUI Fatwa No.85/DSN-MUI/XII/2012 concerning Wa'ad in Islamic Financial and Business Transactions, changing the contract from non-binding to binding nature. This study aims to analyze wa'ad law in IMBT in terms of its risks and benefits. This study uses data from the DSN-MUI Fatwa, Islamic jurisprudence, and other scientific papers. This study finds out that IMBT combines an ijarah contract (lease) with a sale-purchase contract or a grant. The ijarah contract, the sale, and the purchase contract are linked with an agreement. In principle, the legal status of fulfilling wa'ad in Islamic finance and business transactions is binding because it will provide benefits for the Islamic economic community, and there will be no financing problems. In the DSN-MUI fatwa, the concept of "Doing two lesser evils" is used in determining the fatwa regarding promises (wa'ad) in a transaction.*

**Keywords:** *Wa'ad; IMBT; binding promise; Islamic jurisprudence*

**Abstrak.** *Kajian ini membahas tentang konsep dan fungsi wa'ad dalam Fatwa DSN-MUI No.85/DSN-MUI/XII/2012, yang diubah dari tidak mengikat menjadi mengikat. Penelitian ini bertujuan untuk mengetahui analisis hukum wa'ad dalam IMBT ditinjau dari sisi kemaslahatan dan risikonya. Metode yang digunakan dalam penelitian ini adalah metode yuridis normative, dengan data berupa Fatwa DSN-MUI, literatur Hukum Islam/Fiqh, dan karya ilmiah lainnya. IMBT merupakan gabungan antara akad ijarah (sewa) dengan akad jual beli atau hibah. Akad ijarah dan akad jual beli diikat dengan janji. Pada prinsipnya status hukum pemenuhan janji (wa'ad) dalam transaksi keuangan dan bisnis syariah adalah mengikat karena akan memberikan manfaat bagi masyarakat ekonomi syariah dan tidak menimbulkan masalah pembiayaan. Pada fatwa DSN-MUI, konsep "Melakukan dua keburukan yang lebih ringan" digunakan dalam menentukan fatwa tentang janji (wa'ad) dalam suatu transaksi.*

**Kata kunci:** *Wa'ad; IMBT; janji yang mengikat; aturan fiqhiyyah*

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## Introduction

*Wa'ad* is the Arabic language, the basic word form/*masdar* from *fiil wa'ada ya'idu wa'dan wa'idatan wa mau'udan*, which means promise; this word can be used for good and bad things. But is generally used for good things. Al-'Aini defines that *wa'ad* as a news related to goodness that will be done in the future (Beirut: Dār al-Fikr, (Badrudin Mahmūd,1979: 220). Meanwhile, according to the term, *wa'ad* is a bounded part followed by consent and *qabul* following *sharia* (Ahmad al-Syarbāshi, 1981).

According to Fathurrahman Djamil, *wa'ad* is “the desire someone conveys to do something, in actions or words, to benefit other parties”. This *wa'ad* only conveys a desire (*ikhbar*) and is not legally binding but only morally binding. People who promise (*wa'id*), if making the promise then it is good ethics (*akhlaq karimah*) because it is based on a contract of virtue (*tabarru*) such as the nature of the gift (Fathurrahman, 2012).

This study was made to answer whether *wa'ad mulzim* or *ghoiru mulzim* is most appropriate in the *IMBT* contract. If the two *wa'ad* experience *dharar*, the one with the lightest *dharar* is chosen.

## Literature Review

A 2016 research report by the Faculty of Law, Gadjah Mada University, Yogyakarta, written by Ninik Darmini and Desti Budi Nugraheni, “A Study of *Wa'ad* (Promises) in *Sharia* Banking Transactions Judging from Covenant Law in Indonesia”. This study focuses that the author wants to examine and analyzing the concept in *wa'ad* (promise), which is seen from contract law in Indonesia.

The second is a Thesis entitled “The Legal Consequences of *Wa'ad* Islamic Banking” (Fiqh Analysis on the Deed of *Wa'ad* Bank Muamalat and Bank Syari'ah Mandiri) written by Irwan Maulana from the University of Indonesia Postgraduate Program, Middle East and Islamic Studies Program, Jakarta. 2011. This thesis discusses the rights and obligations of the parties in *Sharia* Banking activities. The journal was written by Jaih Mubarak and Hasanudin with the title “*Al-Wa'ad* Theory and Its Implementation in *Sharia* Business Regulation”, published by the *Ahkam* Journal Vol. XII No. July 2, 2012. It examines the scholars differing opinions about the law of fulfilling the recommended (*sunnah/obligatory dinniyah*) and obligatory (*qadaha'iyya*) promises.

The journal was written by Luluk Farida and Achmad Zaky, MSA, Ak, SAS, SMA., CA with the title “Implications of the DSN-MUI Fatwa No. 85/DSN-

MUI/XII/2012 Against Ijarah Muntahiyah Bittamlik Transactions”, published by the Student Scientific Journal of FEB UniBraw in 2016. This research method is descriptive with a library study approach. The findings in this study indicate that the DSN-MUI Fatwa No. 85/DSN-MUI/XII/2012 is needed by transactions using *Wa'ad*, especially *Ijarah Muntahiyah bittamlik* transactions, because they can bring benefits, namely legal certainty and guaranteeing the continuity of the contract.

Meanwhile, in this article, we want to show that IMBT is a combination of an *ijarah* contract (lease) with a sale-purchase contract or a grant. The *ijarah* contract and the sale and purchase contract are linked with promises. Based on the Fatwa of DSN MUI Number: 27/DSN-MUI/III/2002 concerning IMBT, this *wa'ad* is non-binding, so that it creates legal uncertainty for both the bank and the customer. Then the MUI DSN issued a fatwa Number 85/DSN-MUI/XII/2012, so the *wa'ad* in the IMBT contract became *mulzim*. So the impact is that there is a risk of *ta'alluq* and has the potential to fulfill conditional buying and selling.

This paper aims to analyze the *wa'ad* law in IMBT to weigh the benefits and risks. This study uses the concept of *fiqhiyah* rules means “Committing the lesser of two vices” against the DSN-MUI Fatwa in determining the fatwa on promises (*wa'ad*) in Islamic Financial and Business Transactions. Then this study discusses the concept and function of *wa'ad* in the DSN-MUI Fatwa No.85/DSN-MUI/XII/2012 concerning Promises (*Wa'ad*) in Islamic Financial and Business Transactions.

## Methodology

The approach in this research is normative qualitative, characterized by content analysis of the law-making process. The material comes from the DSN fatwa on the *IMBT (Ijarah Muntahiyah Bi Attamlik)* contract, using the *helah* concept. The study discusses the *helah* method in establishing Islamic law and then examines the DSN fatwas related to *wa'ad*. The DSN fatwa is concerned, starting from the arguments used to issue the fatwa. The arguments studied started from the verses of the Qur'an and their understanding from the commentators and examined the hadiths of the Prophet, which were used as the basis for issuing fatwas. Then examine the rules of fiqh, which are additional arguments in the fatwa. When a problem encountered cannot be known by law, the method used by the scholars in exploring the law from the relevant arguments and using the technique used by the scholars in the application of the *helah* method.

To discuss the problems that have been described, the author will use a normative juridical approach as the basic normative concept. Normative juridical research is a legal method of examining library materials or secondary data (Soerjono Soekanto, 2001). This research is used because the problem is related to theoretical issues in the literature related to sources of study and discussion that can show facts logically to produce qualitative conclusions based on analysis of induction and deduction.

## **Result and Discussion**

### **IMBT Is Based On Islamic Law And Positive Law**

The *Ijarah Muntahiyah Bi Al-Tamlik* (financial leasing with purchase option) contract or lease agreement ending in ownership is unknown among classical fiqh experts. To find the definition of this contract, we examine the word content in it and then (etymologically), then we go to the broad definition (terminologically). *Ijarah Muntahiyah Bi Al-Tamlik* has a word order consisting of “*Al-Ijarah*” and “*At-Tamlik*”.

Al-Ijarah, based on the opinion of the scholars, is a contract that brings benefits that are clear and permissible in the form of a substance that is determined or characterized in a dependent, or a contract for precise work with clear rewards a clear period (Antonio, 2001). While At-Tamlik means to make, someone has something. As for the term, it is not out of its linguistic meaning. At-Tamlik can be seen in ownership of objects, right of benefits, and cannot be replaced. If the ownership of something occurs with the exchange, this is a sale and purchase. Suppose ownership of use in exchange for it is called a lease.

Meanwhile, according to Fahd al-Hasun in his book “*Al-Ijarah al-Muntahiyah bi Al-Tamlik fi Al-fiqh Al-Islam*” defines *Ijarah Muntahiyah Bi Al-Tamlik* is ownership of the benefits of an item within a certain period accompanied by the transfer of ownership of the item to the tenant, with certain substitutes (Al-Hasun, 2005). Meanwhile, according to Habsi Ramli, *Ijarah Muntahiyah Bi Al-Tamlik* is a lease agreement between the owner of the leased object and the lessee to receive compensation for the leased thing with the option of transferring property rights to the leased object at a specific time following the lease agreement (Hasbi, 2005). Thus, it can be seen that the *IMBT* law is not found in classical fiqh books, but Islam that muamalah has freedom as long as it does not hit the prohibition. The explanation of the muamalah chapter is contained in the

*fiqhiyah* rules: “Everything permissible, unless there is evidence that forbids it.” So in the implementation of IMBT, when there are no elements prohibited by religion, the law is permissible.

The definition of *IMBT* is also written in positive law that regulates LKS activities starting from the RI Law No. 21 of 2008, Attachment to Bank Indonesia Circular Letter No. 5/26/BPS/2003 concerning Guidelines for Accounting for Indonesian Sharia Banking, page 111, Book of Codification of Sharia Banking Products, Attachment SEBI No. 10/31/ DPBS dated October 7, 2008, Regarding Sharia Bank Products and Sharia Business Unit PBI No. 10/17/ PBI/2008 dated September 25, 2008, and PSAK No. 107 (Ijarah Accounting). The positive law above states that the definition of *IMBT* follows the Definition of Ijarah Muntahiya Bittamlik. 27/DSNMUI/III/2002 concerning Al-Ijarah Al-Muntahiyya Bi Al-Tamlik, which is meant that a lease-purchase (*al-ijarah al-muntahiyya bi al-tamlik*), namely a lease agreement accompanied by the option of transferring ownership of the object leased, to the lessee, after the end of the lease term (Nasrulloh, 2016).

The Civil Code Article 1319 mentions two groups of agreements and, by law, are given a unique name called agreements, and agreements that are not known by law by a specific name are called anonymous agreements (Daffa Muhammad Dzubyhan, 2019: 194).<sup>1</sup> The birth of an unspecified agreement is based on the freedom of contract autonomy principle, which applies in contract law (Daffa Muhammad Dzubyhan, 2019: 195).<sup>2</sup> One of them is the *IMBT* agreement. The *IMBT* agreement is not clearly explained in the Civil Code, so this agreement is categorized as an anonymous agreement. However, the unnamed agreement is still based on the provisions of the Civil Code, as regulated in article 1319, which mentions:

*“All agreements, both those that have a special name or those not known by a certain name, are subject to the general rules contained in this chapter and the last chapter.”*

This article states that any agreement, whether regulated in Book III of the Civil Code, Chapter V to Chapter XVIII and contained outside Book III of the Civil Code, is subject to the general provisions of Book III and Book II. So that

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<sup>1</sup> Daffa Muhammad Dzubyhan dkk, Analisis Akad Ijarah Muntahiya Bittamlik (IMBT) Dalam Perspektif Hukum Islam Dan Hukum Positif di Indonesia, Jurnal Amwaluna: Jurnal Ekonomi dan Keuangan Syariah Vol. 3 No. 2 Juli (Daffa Muhammad Dzubyhan, 2019: 194)

<sup>2</sup> Daffa Muhammad Dzubyhan dkk, Analisis Akad Ijarah Muntahiya Bittamlik (IMBT)..., p. 195

the *IMBT* contract, even though it is included in the category of an anonymous agreement, is still subject to the provisions of the Civil Code.

### **The Urgency of Fifth Rules “Committing the Lesser of two Vices” in Islamic Financial Institution Product.**

Islamic Financial Institutions have two forms: Islamic Bank Financial Institutions (Islamic Banks) and Non-Bank Islamic Financial Institutions. Then with the permissibility of the dual banking system, Commercial Banks can create Sharia Business Units (UUS). Based on the January 2020 Islamic Banking Statistics data, there were 14 Sharia Commercial Banks and 20 UUS in Indonesia.

When carrying out its activities, Islamic banking must follow the rules in sharia, the Qur'an, and Sunnah. The two sources of law are still global, so to accommodate new problems for which there is no confirmation of the law in the Qur'an and Sunnah, Islamic fiqh experts (fuqaha) try to explore global arguments to find the laws by using *ijtihad*. It should be noted that *ijtihad* cannot be separated from the Qur'an and Sunnah. This is because *ijtihad* is carried out by (1) using the *qiyas* method on something that has been established by law in the Qur'an and Sunnah, (2) examining general rules (*al-qawanin al-'ammah*) and universal values (*al-qawanin al-'ammah*). *al-mabadi al-kulliyah*) Contained in the Qur'an and Sunnah, and (3) adapting it to the aims and objectives of the Shari'a (*al-maqashid al-shari'ah*), which is also included in the Qur'an and Sunnah (A. Djazuli, 2006).

One of the rules that Islamic Banking in Indonesia must be followed is the Fatwa of the MUI National Sharia Council. DSN MUI in formulating the form of contract for LKS takes two interconnected ways, namely (Amir Syarifuddin, 2009):

1. Apply the provisions in the fiqh muamalah in a format that is according to the prevailing practice of financial activities. The procedure carried out by Islamic banks is funding, namely the function of banks as collecting funds from people who have excess funds and channeling them to those in need, most of which is the application of fiqh muamalah. An example of this method is the DSN fatwa on murabahah
2. Islamization of conventional banking activities and products by eliminating prohibited elements by religion, replacing them with practices that are not prohibited by religion. An example of this method is the DSN fatwa Number 27/DSN-MUI/III/2002 concerning *al-Ijarah al- Muntahiyah bi al-*

Tamlik. This contract is a contract of lease-purchase or leasing running in the community. It was then modified in such a way by eliminating elements that are prohibited by religion.

The development of LKS in Indonesia still faces obstacles. According to Prof. Abdul Manan, government regulations in Islamic banking and solutions have not overcome the problems of developing LKS and Islamic banks. Meanwhile, efforts to realize a more comprehensive law have also not been adequate in Islamic banking development. (Arief Budiono, 2017).

Based on the research data obtained, there are several obstacles to applying the DSN-MUI Fatwa in implementing Islamic banking. As in the case of the application of the DSN Fatwa to be binding on all Islamic banking, it will be absorbed by Bank Indonesia into PBI (Bank Indonesia Regulations) or absorbed by the Financial Services Authority into POJK (Financial Services Authority Regulations). However, several fatwas are considered challenging to apply in banking regulations, this is one of the obstacles encountered in the development of sharia banking business. In this case, Bank Indonesia acknowledges that the obstacles faced are related to the applicable positive law, which is often not in line with Islamic law. In positive law, it only recognizes debt and receivable transactions in banking, so the MUI fatwa related to *mudharabah*, *musyarakah*, *ijarah*, and others cannot be implemented entirely.

Based on the fatwa that the object of the lease belongs to the bank, the certificate should be in the bank's name, not in the customer's name. Then the example of the regulation is not in line with the fatwa that occurs in the IMBT contract. If it is implemented, it will cause high costs such as tax regulations. Even government policies are often obstacles to implementing the DSN-MUI fatwa by LKS. For example, the double tax once applied to Murabahah contracts (because the goods must be purchased first by the bank and then sold to the customer) (Laporan Akhir Penelitian Hukum Tentang Kedudukan Fatwa MUI, 2011).

Problems such as the above are one of the reasons for Islamic banking to modify financial products so that sometimes they are not following the fatwa of the MUI DSN or even pose a danger (*dharar*) because they violate sharia rules. The discussion about the legal status of the issue becomes important because there are things that give rise to benefits (*mashlahat*) and bad things (*mafsadat*). While the law can be formed by examining the benefits and mafsadah by considering the

level of dominance between the two. Therefore, it is necessary to explore more with the *ijtihad* method to find out its legal status. One of the products of *Ijtihad* is the use of *fiqh* rules by equating 'illah contained in general arguments to specific events. Because it discusses the problem of danger (*dharar*), there are *fiqh* rules derived from the Hadith of the Prophet SAW, and it says, "It is not permissible to cause harm and repay harm."

Imam As-Suyuthi, mentions this rule with the *lafadz*, which means; the harmful should be removed (As-Suyuthi, 1958). Based on that rule, several other laws were born that have the same concept as the main rule, one of which is the applicable rule; when there are two opposing challenges, it must be maintained that the more danger is to work on the lighter, the two. This rule explains that if an action contains two damages (*mafsadat*), then the lighter *mafsadat* should be chosen (Duski Ibrahim, 2019).

This *istiqrai* of *ijtihad* is used as its acceptability in finding solutions to *furu'iyah* problems that continuously appear and develop until the future. The principles of *fiqh* in the field of savings economy legitimize all economic activities of Muslims in various areas of transactions, both those related to mono-contract and multi-contract transactions. Examples of mono contract transactions or single contracts are buying and selling, renting, pawning, debts that are tailored to the needs of contemporary society's economic activities. When multi-contract transactions are needed, Islamic economics will examine contracts that can be combined so that they do not attack Islamic economic values. For example, many people make lease-purchase transactions for motorized vehicles, housing, electronic goods, and others, so a contract is made such as a lease-purchase that does not comply with Islamic rules, namely the *IMBT* contract. Then the concept contained in the *IMBT* is captured by the laws of *fiqh* for the regulations for other agreements.

### **Application of the Fiqhiyyah Rules; Committing the Lesser of Two Vices in the *Wa'ad* IMBT Contract**

In the context of legal worship that is limited in nature, there should be no additional elements, and it applies that all things are prohibited, except for provisions based on the Qur'an and Hadith. Meanwhile, in the case of *muamalah*, it is free and flexible, meaning that everything can be done unless there is an argument that prohibits it. When a new transaction exists and has not been previously recognized in Islamic law, then the transaction is considered acceptable unless there

are implications from the arguments of the Qur'an and Hadith which prohibit it, either explicitly or implicitly. Thus, in the field of muamalah, all transactions are permitted except those that are forbidden. Transactions are not permitted for the following reasons (Adiwarman, 2011):

1. Haram substance (*haram lidzatihī*)
2. Haram other than the substance (*haram li-ghairihī*)
3. The contract is invalid.

For the third factor, it is not seen from the object. Still, in terms of the contract, so it is not included in the category of *haram li dzatihī* or *haram li ghairihī*, but the factor of the contract affects whether a transaction is halal or not. Because if it is found that there is a possibility that the agreement is invalid or incomplete, then the transaction becomes illegitimate. A transaction is considered invalid or incomplete if one (or more) of the following factors occur:

1. Pillars and conditions are not met.

Pillars are things that must be fulfilled in a transaction. In general, the pillars in the economic field are actor, object, and consent, and *qabul*. In addition to the pillars, the factors that must exist to make the contract valid (complete) are conditions. Condition is something whose existence completes the pillars (Adiwarman, 2011: 45). An example is that the transaction person is mature and reasonable. If all the pillars are fulfilled, but there are deficiencies in the conditions, it will not cause the transaction to become *fasid* (damaged).

2. Ta'alluq

Ta'alluq occurs when there are two interrelated contracts, then the validity of contract 1 depends on contract 2. For example, Zaid sells a car for Rp. 50,000,000 in instalments to Budi, on the condition that Budi must resell the goods to Zaid in cash for Rp. 40,000,000. This type of transaction is haram because there is a condition that Zaid will sell the car to Budi on the condition that Budi sells the vehicle to Zaid again.

3. There are two contracts in one transaction (Two in One)

Two in One is the entry into force of one transaction accommodated by both contracts at once. The impact of this contract model is that there is danger (*dharar*) and uncertainty (*gharar*) about which contract will apply.

Henceforth, the implementation of the *IMBT* contract has several descriptions of the contract. Wahbah Zuhaili explained that there were nine pictures of the contract that took place (Wahbah Zuhaily, 2002):

1. The lease is accompanied by a promise to sell object of lease to customer at the end of the lease term. This is done by the bank when the *ujrah*/rent has been commensurate with the bank's purchase price plus the profit determined by the bank. This type of contract is considered permissible by the Sharia.
2. The lease is accompanied by a promise to provide/grant. Namely, the bank offers the object of the lease to the customer at the end of the lease. This is done by the bank when the *ujrah*/rent has been commensurate with the bank's purchase price with added profits earned by the bank. The Sharia does not prohibit this type of contract.
3. Rent - renting and buying and selling co-occur. The Sharia prohibits the transaction model, except that the Malikiyah school allows this contract model arguing that rent and sale are not mutually exclusive contracts.
4. Contract (*Ijarah*) lease and contract *ba'i* (sale and purchase) occur simultaneously and are then given additional *khiyar* rights conditions until a specific time. This contract model is like the previous contract model. This type of contract is allowed because the two contracts are not executed simultaneously. The practice in this contract is that the customer enters into a rental contract with the *mitsl* price or market price and then adds the *khiyar* rights. The condition is that the customer has the right to get the ownership rights to the object of the lease within the rental period. As for the practice, a *ba'i* (buying and selling) contract will be made according to the price prevailing in the market.
5. The lease (*Ijarah*) contract and the *ba'i* (sale and purchase) contract occur separately, starting with a lease contract which then if there is a desire on the part of the lessee to own the object, the tenant will buy it at the agreed price.
6. The *ijarah* contract is coupled with *khiyar* rights at the end of the lease period. The customer can choose one of the three contract models offered, a) the customer can pay the object of the lease based on the market price, b) resume the lease period, c) terminate the lease contract. The Sharia permits this type of contract.
7. The bank purchases the customer's property for 500 million, then leases the object to the customer. Then the bank will return the object's ownership to the customer by making a *ba'i* contract or grant with a total 550 million. This

contract model is like the *bai 'inan* contract model, and the Sharia prohibits the law.

8. Lease contract with the condition that the object of the lease will be sold to the customer. This type of contract includes *bai 'mu'allaq*, which is forbidden.
9. A grant contract with the condition that the object's price for rent is paid at the end of the lease period. The Sharia does not prohibit this contract model because the grant contract is included in the *tabarru'* contract category.

Reviewing the DSN MUI fatwa on IMBT and the DSN fatwa on *Wa'ad*, concluded that the implementation of IMBT in Indonesia number 1 and 2 is a lease agreement with an agreement to sell or grant ownership of leased goods. At the end of the lease term, this right is given to the customer because the rental price is commensurate with the purchase price. Plus the expected profit of the bank. These two types of contracts are considered permissible by the Sharia.

However, what is stated in the fatwa is sometimes different from the practice in the field. Based on several studies, it is stated that the implementation of IMBT by Islamic banks in Indonesia has combined two contracts, namely leasing and buying and selling. The transfer of ownership rights are proved to the object being leased to customer by writing a certificate in the customer's name starting from the beginning of the contract. The agreement was written to avoid double taxation, but at the end of the lease period, no *ba'i* or grant contract was made. The statement strengthens that the object is the responsibility of the *musta'jir*. If the rented object is damaged or loses its economic value, the *musta'jir* still pays *ujrah*.

The following are the risks and benefits of *waad mulzim* in the *IMBT* contract:

Table 1. Risks and Benefits for the Bank

Party	Risk	Benefit
	<i>Ta'aluq</i> occurs in the contract	Get legal certainty
Bank	There is a risk of conditional buying and selling	The object of the lease does not change ownership
	New fee for changing the name of the rental object	
	Changing the <i>tabarru' wa'ad</i> into <i>muawadhat</i>	

Table2. Table 1. Risks and Benefits for the Customers

Party	Risk	Benefit
Customer	feel that you own the object of the lease	Get legal certainty
	Get a burden for the cost of maintenance and repair of the rental object	Feel calm because the customer will have the rental object after completing the rental payment at a predetermined tempo
	Felt bound by the agreement when he couldn't afford the rent	
	Reimburses the costs incurred by the bank in the promise.	

Furthermore, the author discusses *IMBT* using a non-binding *wa'ad* as written in the DSN fatwa Number: 27/DSN-MUI/III/2002 About AL-IJARAH AL-MUNTAHIAH BI AL-TAMLIK, namely in the second decision, namely regarding provisions regarding al-Islam. *-Ijarah al-Muntaahiyah bi al-Tamlik.*

1. The party performing *al-Ijarah al-Muntaahiyah bi al-Tamlik* must implement the *Ijarah* contract first. The transfer of ownership contract, either by buying or selling or giving, can only be made after the *Ijarah* period.
2. The promise of transfer of ownership agreed at the beginning of the *Ijarah* contract is *wa'ad*, which is not legally binding. A transfer of ownership agreement must be made after the *Ijarah* period if the promise is to be carried out.

The description of *IMBT* implementation with non-binding *wa'ad* as described by Wahbah Zuhaili above is:

1. Lease agreement promises to sell the leased object to the customer at the end of the lease term. The rent's last payment is considered the purchase of the object of the lease because the rent has already covered the purchase price and fulfilled the profit expected by the bank. So this type of contract is allowed by the Sharia. The above contract explains that *IMBT* begins with a lease agreement first, then this lease agreement is coupled with the bank's promise to sell the leased object to the customer. So the object of this lease remains the bank's property, and the bank is not obliged to take care of the promise because the promise is not binding. Likewise, the customer is not obliged to pay for the maintenance and repair of the leased object because the customer feels that he does not own it. If the customer cannot pay the rent, then the *ijarah* contract is completed and does not cause harm to both

parties. And if the customer wants to own the object of the lease, a new sale and purchase contract is made so that the function of *wa'ad* in this *IMBT* contract is only a liaison between the *ijarah* contract and buying and selling, which is not binding.

2. The lease agreement is accompanied by an agreement to provide (grant) the goods to be leased to the customer at the end of the lease period. The grant contract is made because the *ujroh* is commensurate with the purchase price plus the bank's profit margin. The Sharia permits this contract. The explanation above means that conducting a contract is the first step of *IMBT* with a lease agreement first, and then this lease agreement is coupled with the bank's promise to grant the lease object to the customer. So the object of this lease remains the bank's property, and the bank is not obliged to take care of the promise because the promise is not binding. Likewise, the customer is not obliged to pay for the maintenance and repair of the leased object because the customer feels that he does not own it. If the customer cannot pay the rent, then the *ijarah* contract is completed and does not cause harm to both parties. And if the customer wants to own the object of the lease, the customer is obliged to settle the rental fee until the rental period ends. After that, a new contract is made, namely a lease object grant to the customer. So, the function of *wa'ad* in the *IMBT* contract is only as a liaison between the *ijarah* contract and the non-binding grant.

The first party who promises the second party to buy something, or *qardh*, or give something cannot be legally prosecuted (*qadhā'*) to carry out his contract. Still, the first party is recommended by religious law to fulfill his promise (Jaih Mubarak dan Hasanudin, 2012). The commitment is non-binding and obligation to fulfill the promises, conveyed by Wahbah al-Zuhaylī based on the opinions of the Hanafi jurists (al-Syarkhasī and Ibn 'Ībidīn), Mālikiyyah (Shaykh Ilyās), Shafi'iyyah (Imam al-Nawawī and Ibn Allan), Hanabilah (Imam al-Bahutī), and al-Zhahiriyyah (Ibn Hazm). They argue that the law of carrying out promises is not mandatory in terms of positive law (*qadhā'iyah*). Still, fulfilling promises is punishable by *mandūb* (read: *sunnah*) and is considered an act that reflects noble character (*makārim al-akhlāq*).

With a non-binding promise in the *IMBT* contract, the customer will get a reasonable rental price (according to the market), and the customer has three choices (*khiyar* rights) in the continuity of the contract, which are:

1. The customer can buy the rental object according to the market price. This option is possible when the customer feels it is suitable and can buy the leased object after using the leased object for some time.
2. Extend the rental period. This option is possible when the customer feels it is suitable to take advantage of this rental object after the rental period is over. However, the customer has not been able to buy the leased object, so that the customer only continues the *ijarah* agreement with the bank by paying a rental price that is following the market. And the customer is not obliged to pay for the maintenance and repair of the rental object.
3. Ending the lease. This option is possible when the customer cannot pay the rent or is not suitable for utilizing the object of the lease.

In Islamic law for the formation of a contract (agreement) must meet the pillars and conditions of the contract. The terms of the contract are divided into four types, namely; (1) the conditions for the formation of the contract (syuruth al-in'iqad), (2) the conditions for the validity of the contract (syuruth ash-shihhah), (3) the conditions for the validity of the legal consequences of the contract (syuruthan-nafadz) and (4) the conditions for binding the contract (syuruth al-luzum), (Syamsul Anwar 2007). There are several conditions for *IMBT* wa'ad without conditions for the formation of a binding contract, such as the existence of a contract, the validity of the contract, and the existence of legal force. The details are as follows.

First, the terms of the contract form, which means something that must exist so that the syara recognizes the form of a contract'. Akad in syar'i implies the relationship between consent and qabul in a way allowed by the shari'a and directly influences (Daeng Naja, 2011). The conditions for the existence of the contract are complete pillars and the fulfillment of special conditions. What is meant by special requirements are additional conditions such as the presence of witnesses. Therefore, for the *IMBT* contract to be tangible, it must be written on paper (notarial) or under the hand witnessed by at least two witnesses. The *IMBT* contract will be realized when the general and specific conditions are met.

Second, the contract's validity is when the contract does not contain elements that damage the contract. Namely, five things can damage the validity of the contract, 1) the element of gharar (unclear types that can cause disputes), 2) there is an element of coercion, 3) limiting property rights. on an item,

4) there is *gharar* (element of deception), 5) there is *dharar* (danger) in the implementation of the contract. So in implementing *IMBT*, it is necessary to refer to the DSN Fatwa Number: 27/DSN-MUI/III/2002 concerning *al-ijarah al-muntahiyah bi al-tamlik*, PBI Number: 7/46/PBI/2005, and the Sharia Economic Law Compilation (KHES) to avoid five things that damage this contract.

Third, the contract's validity will continue with two conditions, ownership of the object of the contract and no other people's rights (Ahmad Wardi Muslich, 2013). In this *IMBT* contract, the Islamic Bank acts as the owner of the *IMBT* contract object and the party who rents it out to the customer. Islamic banks and customers must be competent and able to carry out the provisions of the *IMBT* contract. The object of the lease cannot change ownership unless a new contract is made. The leased object *musta'jir* becomes the property of the *mu'jir* during the lease period. After the lease period ends, there is a transfer of ownership rights to the customer by buying and selling or grants.

Fourth, the conditions for the existence of legal force are the requirements set by *syara'* relating to the certainty of a contract. The contract must be *ilzam* (certainty). Suppose the validity of a contract cannot be ascertained, such as certain elements that give rise to the right of *khiyar*. In that case, this contract is in a normal condition of *ghairu* (uncertain), because each party has the right to interpret the contract or continue to enforce it (Ghufron A. Masadi, 2002).

The DSN Fatwa Number 27/DSN-MUI/III/2002 in the second part regulates special provisions regarding the non-binding promise to transfer property rights, which invites multiple interpretations. First, the non-compliance can be interpreted as not being bound to make a promise to transfer property rights, and this provision is not in line with the intent of the *IMBT* contract. Second, it can be interpreted as not being bound to carry out the promises agreed in the *IMBT* contract. Provisions like this are not uncommon in contract law, which is seen as laws that are always binding and must be obeyed (Firdaus Muhammad Arwan, 2009). If a contract has the freedom not to be implemented, then the *IMBT* contract is not helpful and has no meaning and purpose. Even what will happen is to cause persecution. Tenants with an *IMBT* contract will be disadvantaged if the lessors do not provide the object of the lease to them even though the tenant has paid instalments regularly. This kind of *IMBT* contract is contrary to the purpose of the *IMBT* contract, which ends with the transfer of property rights.

Table 3. The Risks and Benefits of *Waad Ghoiru Mulzim* in the *IMBT* Contract for The Bank

Party	Risk	Benefit
Bank	Cannot force the customer to buy a rental object	<i>Ta'aluq</i> does not occur in the contract
	Making an <i>IMBT</i> contract is useless when the customer cannot pay the rent.	There is no conditional buying and selling risk
	Can experience losses from the <i>IMBT</i> contract because the customer does not buy the rental object	Do not change the <i>tabarru' wa'ad</i> into <i>muawadhat</i>
	They were not getting legal certainty so that customers could break promises.	Banks are not obligated to incur costs to fulfill customer promises

Table 4. The Risks and Benefits of *Waad Ghoiru Mulzim* in the *IMBT* Contract for The Customer

Party	Risk	Benefit
	The object of the lease can be withdrawn by the bank when the bank gets a higher offer from another party.	Don't feel like you own the object of the lease
Customer	Not getting certainty about the transfer of ownership of the leased object	Don't get burdened with maintenance and repair costs for rental objects
		He doesn't feel bound by the agreement when he can't afford the rent
		Does not replace the costs incurred by the bank in the promise.

As a consideration in choosing *wa'ad mulzim* or *ghoiru mulzim*, it will be explained what factors are behind the occurrence of the *IMBT* contract both from the bank and the customer. If examined in detail and traced historically, we can conclude that this contract occurred because (Sa'ad bin Abdullah Al-Sibr 1429H):

1. The lessor obtains certainty that the leased item remains his property so that the lessee (buyer) cannot sell the leased item except after paying the object's price in full. The lessor (seller) can withdraw the leased object if the lessee (buyer) cannot pay off the payment.
2. This contract makes it easier for the tenant to get the desired object by paying installments on the price, and eventually, the object becomes his. Without the requirement of a guarantor, which is usually required in buying and selling *taqsith*

3. Tenants who want to avoid taxes usually specified in some State rules.
4. Tenants can easily have rental objects after paying the rental installments and save financial institutions' expenses.

The bank guarantees that the object of the lease remains their property. This aims to reduce losses if there is a risk of default on the part of the customer, and the customer cannot own and sell the object unless there is a transfer of contract ownership. Then from the customer's side, it will be facilitated by utilizing the rental object by issuing a rental fee that he can pay, and then finally, he can own the rental object.

In the *IMBT* contract, it can result in *dharar* if the implementation of the *IMBT* contract is not following the sharia rules described in the DSN MUI fatwa. The *IMBT* contract begins with an *ijarah* contract, so during the *ijarah* period, the *ijarah* provisions apply. At the end of the lease period, a new contract is made, namely a *ba'i* contract or a grant for the transfer of ownership from *mu'ajjir* to *musta'jir*. When the rental period does not follow the applicable laws regarding *ijarah*, then there is the possibility of *dharar*.

Wahbah Zuhaili explained that some *dharar* are absolutely prohibited, and there are also *dharar* that are allowed because they are *qalil* or *maubum*. Further, there are also *Dharar* that is absolutely prohibited:

1. *Qosdu Al-Dharar* aims to harm oneself or others. It seeks to damage or not provide *mashlahab*, such as a husband referring to a divorced wife to persecute him, the husband is seriously ill, then divorces his wife so that his wife cannot inherit.
2. *Qosdu gharad ghoiru masyru'* has a purpose that is not prescribed, such as a temporary marriage contract for intermediaries to justify a woman (wife) who has been divorced three times even though marriage is a permanent goal. The *ba'i* contract as an intermediary for usury that occurs in *ba'i 'inah*.
3. *Dharar 'adzom min al-mashlahab*, this *dharar* is more significant than bringing good. When someone does something to get *mashlahab*, but it results in a greater *dharar* or equal to the desired *mashlahab*, the act is prohibited to prevent harm (*sad lildzarai*). There are two permissible *dharar*, which are *Qolil* and *Maubum Dharar*, and the following is an explanation:
  - a. *Dharar Qalil* is a hazard of small value, such as someone who builds a wall/fence or plants a tree in the yard and blocks light or air from entering the neighbor's house. This act is considered a small *dharar* because there is a more significant benefit for the house owner.

- b. *Dharar Maubum*, namely the danger of a weak or false assumption. Like *dharar* because the high birth rate will result in economic difficulties. This is considered *dharar maubum* because Allah has prepared everything on earth to meet the needs of His creatures, as stated by Allah in Surah al-Anfal verse 96 and al-Maidah verse 66.

Considering the risks and benefits of the research of *IMBT* contract, the DSN-MUI provided a *fatwa* number two; there is no binding promise. The promise (*wa'ad*) in sharia financial and business transactions is *mulzim* and must be fulfilled (fulfilled) by *wa'id* by following the provisions in this *fatwa*. This step follows the purpose of forming a *fatwa*, namely achieving benefit and following the rules of *fiqh* *fiqhiyah* "Committing the lesser of two vices".

The rules of *fiqh* *fiqhiyah* play a significant role in life when we are faced with two things in which there are risks/dangers. So we choose to do something with the least or lightest level of risk. By setting a binding promise in *IMBT* contract, both the bank and the customer will face risks. However, the value of the benefits to be obtained between the bank and the customer is much greater, namely the existence of legal certainty and contract certainty, so that the rights and obligations between the parties can be adequately implemented.

## Conclusion

The legal basis of the *IMBT* contract based on Islamic law/*fiqh* is not explained in classical *fiqh* books because this contract is nameless (*ghoiru musamma*). However, after researching that this contract is a combination of a lease and sale contract associated with a promise or deal, the *fiqh* will allow it under certain conditions. One of the critical conditions for the permissibility of this contract is that the duration of the two combined contracts cannot be concurrent. The determination of the *helah* is allowed in *IMBT* because it is based on the difficulties that occur, namely the merging of two contracts that can lead to *dharar* and *gharar*. The *helah* which is prescribed (*masyru*) is as *Makharij Syar'iyah*. The application of *wa'ad mulzim* in the *IMBT* contract is based on the benefits achieved, namely the ongoing contract and legal certainty. By using the rule "Committing the lesser of two vices". The selection of *wa'ad mulzim* is exact considering doing more minor hazards by avoiding more considerable dangers. The danger posed is that it causes difficulties (*masyaqqah*), known as an ambiguity in the contract. In the *IMBT* contract, the focus is on legal certainty

regarding the rights and obligations of the parties. This legal certainty will be realized when the *wa'ad* used is *mulzim*.

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