

AL-IJARAH: UNDERSTANDING, LEGAL BASIS AND PROBLEMS OF CONTEMPORARY PRACTICES IN SHARIA BUSINESS

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Abstract

The purpose of this study is to discuss the concept of *al-Ijarah* or leasing which is one of the legal contracts or transactions in the world of Islamic banking. When the concept of *al-Ijarah* is applied in contemporary Sharia business, there are several problems in its application that require solutions in its study. This research is a research with a qualitative descriptive approach using some literature related to the discussion (Library Research). After going through some of the literature, it was discussed and analyzed. The conclusions in this study include: *Ijarah* is a form of transaction in Islamic law which essentially is the existence of two parties who agree to rent out goods or services (labor and or professionalism) with certain rewards. As for the texts that underlie it is QS. 65:6, some *hadiths* of the Prophet Muhammad and the consensus of the *fuqaha*. An accountable transaction, *Ijarah* is completed with the terms and pillars as a measuring tool for whether the transaction is valid, familial or void. The conditions are: The willingness of both parties, the benefits of the object of *Ijarah* are known with certainty, the leased item has certain specifications, the object for rent is something permissible, can be handed over, not an obligation and wages are something of value. The pillars are: Two parties to the transaction, transaction editor, benefits and wages. The character of the *Ijarah* transaction is binding on the parties who have made the transaction agreement. The variety is rental, lease purchase and labor. An *Ijarah* transaction can end when the goal or deadline has been achieved, the default of one of the parties or the death of one of the parties.

INTRODUCTION

In everyday life, people have needs that must be met, both primary, secondary and tertiary needs. There are times when people do not have enough funds to meet their needs. Therefore, in the development of the community's economy, financing services are increasingly being offered by bank financial institutions and non-bank institutions.

According to Law Number 21 of 2008, Sharia Banks are all matters relating to Sharia Banks, Sharia Business Units, including institutions, business activities, as well

as methods and processes in carrying out their business activities. In other words, a Sharia Bank is a financial institution whose main business is to provide financing and other services in payment traffic and money circulation, whose operations are adjusted to Islamic sharia principles.

In Islamic banking institutions, all transactions carried out must be based on sharia principles, i.e. each transaction is considered valid if the transaction has fulfilled the pillars, otherwise the transaction is void. The position of the contract is very important in the application of principles. In Islamic banking institutions, all transactions carried out must be based on sharia principles, i.e. each transaction is considered valid if the transaction has fulfilled its pillar requirements, otherwise the transaction is void. The position of the contract is very important in the application of sharia principles. Likewise in Islamic banking institutions, it is the foundation in the application of Islamic economics.

The contracts used by Islamic banking in Indonesia in their operations are non-controversial contracts that are agreed upon by most scholars and are in accordance with sharia provisions to be applied in sharia financial products and instruments. These contracts include contracts for funding, financing, product services, operational services, and investment services.

One of the Islamic banking services offered is *Ijarah* financing services, *Ijarah* is defined as the right to use goods/services by paying certain fees. According to the fatwa of the National Sharia Council, *Ijarah* is a contract for the transfer of usufructuary rights over an item or service within a certain period of time through payment of rent or wages, without being followed by the transfer of ownership of the goods themselves.

Ijarah financing has a different concept from the concept of credit at conventional banks. *Ijarah* financing is also said to be a driving force for the business sector because *Ijarah* financing has privileges compared to other types of Islamic financing. The specialty is that to start their business activities, entrepreneurs do not need to have capital goods in advance, but can make leasing to Islamic banks, so entrepreneurs are not charged with the obligation to submit guarantees, it can be said that *Ijarah* financing is more attractive than other types of financing such as *Mudharabah* and *Musharakah*.

Because in this modern era, economic activity will not be perfect without a banking institution, this banking institution has also become mandatory. Financial institutions are one of the functions of banks, in addition to the function of collecting funds from the public. This function is commonly referred to as the financial intermediary function.

One of the financing concepts that exist in Islamic banking is leasing or *Ijarah*. The concept of rent in its simple form has developed not only because of Umar's revolutionary move by prohibiting the purchase of land by Muslims in conquered territories, but because of the establishment of the practice of distributing conquered

lands among the Muslims. Thus Umar allowed the native land cultivators to cultivate their land based on *Kharaj* and *Jizya* payments. The main issue that boggles the minds of many Muslim and non-Muslim scholars is not whether the concept of leasing developed during the Caliph Umar or during a later period in Islamic history, but whether the fixed rate of rent appears to be similar to the interest rate that is still permissible in Islam.

To answer the anxiety above, this research will explain the meaning of *al-Ijarah*, its legal basis and contemporary practical problems, especially in Islamic Financial Institutions and Sharia Business.

RESEARCH METHOD

This research is a research with a qualitative descriptive approach using some literature related to the discussion (Libarary Research). After going through some of the literature, it was discussed and analyzed.

RESULT AND DISCUSSION

Definition of Al-*Ijarah*

From an etymological point of view, the word *Al-Ijarah* is a formation of the word teaching which Ala' Eddin Khorfa identifies with hire. This word is used in tandem with the word *ista'jara*, as we can see in the QS. Al-Qasash (2): 26-27.

فَالْأَنْتَ إِذْنَهُمَا يَأْتِيْتَ أَسْتَجِرْتَ الْقَوْيِيْ أَلَّا مِنْ ٢٦ قَالَ إِنِّي أَرِيدُ أَنْ أُنْكَحَ إِحْدَى أَبْنَتِيْ هَتَّيْنِ عَلَىْ أَنْ تَأْجُرْنِيْ تَمْنَنِيْ حَجَّجَ فَإِنْ أَتَمْمَتْ عَشْرًا فَمِنْ عِنْدِكَ وَمَا أَرِيدُ أَنْ أَسْقُ عَلَيْكَ سَتْحَدْنِيْ إِنْ شَاءَ اللَّهُ مِنَ الصَّالِحِيْنَ ٢٧

Said one of the (damsels): « O my (dear) father ! engage him on wages: truly the best of men for thee to employ is the (man) who is strong and trusty. He said: "I intend to wed one of these my daughters to thee, on condition that thou serve me for eight years. But if thou complete ten years, it will be (grace) from thee. But I intend not to place thee under a difficulty: Thou wilt find me, indeed, if Allah wills, one of the righteous (Abdullah Yusuf Ali, 1989).

From the context of the verse above, we see that the word *ista'jara* is used to describe the meaning of (1) rent! (2) rent/employ, while the word *ajara* means paying rent. In other words, *ista'jara* according to the pattern (*wazn*) *istaf'ala* means *thalabu l-al-Ijarah*, while *ta'jur* means *ada-u 'amali l-al-Ijarah*.

The etymological meaning above has implications for its terminological meaning which is stated by Rafiq Yunus al-Mashry as follows:

الاجارة عقد معاوضة على خدمة انسان، أو على منفعة شيء قيمي (غير مثلي) أي قابل الانتفاع به مع بقاء عينه.

al-Ijarah is a reciprocal contract in employing human services, or in the use of the benefits of an object that has value. The use of the benefits of something without losing its substance (possession).

In line with Rafiq Yunus al-Mashry, Ala 'Eddin Khorafa offers a definition that al-Ijarah is: *a contract on using the benefits or services in return for compensation* (Ala'

Eddin Khorafa, 1997) al-*Ijarah* is an "agreement to use goods or services with certain compensation in return."

Based on the two definitions above, we can conclude that al-*Ijarah* is an economic transaction related to leasing. This al-*Ijarah* transaction occurs when someone hires the services of another person, such as: doctors, lawyers, handymen, coolies and others. All these professionals are called *Ajir*, while the person who hires is called *Musta'jir*.

Another form of al-*Ijarah* is not related to the rental of professional expertise as above, but is related to the transfer of the use of certain objects or goods from one person to another. The person who rents out (the owner) is called *Mujir*, while the one who rents it is called *Musta'jir*.

Legal Basis of al-*Ijarah*

In addition to verses 26 and 27 of Surah al-Qashash which describe the al-*Ijarah* transaction between the prophet Musa and the prophet Zakaria in the discussion above, the following verses also form the legal basis for the operational legality of al-*Ijarah* in an Islamic perspective.

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ فُجُورِكُمْ وَلَا تُضْرِبُوهُنَّ لِتُضَيِّقُوهُنَّ وَإِنْ كُنَّ أُولَاتٍ حَمَلَ فَلَنْفَقُوا عَلَيْهِنَّ حَتَّىٰ يَضْعَفُنَ حَمَلُهُنَّ فَإِنْ أَرَضُعُنَ لَكُمْ فَأُلْتُوهُنَّ أَجُورَهُنَّ وَأَنْتُمُوْا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاسِرُنَّ فَسَتُرْضِعُ لَهُ أَخْرَىٰ ٦

Let the women live (in 'iddah) in the same style as ye live, according to your means: Annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden. And if they suckle your (offspring), give them their recompense.

Al-Quran Surah At-Talak/65:6 talks about the economic compensation that husbands have to pay during the transition period (*iddah*) when they are going to divorce their wives. And if the wife is pregnant, then the husband is obliged to provide protection until the delivery process. In fact, if the wife breastfeeds the baby, the husband is obliged to give a return/*ujrah* (excluding the cost of raising the child).

فَأَنْطَلَاقَا حَتَّىٰ إِذَا أَتَيَا أَهْلَ قَرْيَةٍ أَسْتَطَعُمَا أَهْلَهَا فَأَبْوَا أَنْ يُضَيِّقُوهُمَا فَوَجَدَا فِيهَا جَدَارًا يُرِيدُ أَنْ يَنْقَضَ فَأَقَامَهُ قَالَ لَوْ شِئْتَ لَتَحْدَثَ عَلَيْهِ أَجْرًا ٧٧

Then they proceeded: Until when they came to the inhabitants of a town, they asked them for food, but they refused them hospitality. They found there a wall on the point of falling down, but he set it up straight. (Moses) Said: If thou hadst wished, surely thou couldst have exacted some recompense for it. (Abdullah Yusuf Ali, 1989)

Al-Quran Surah Al Kahf/18: 77 talks about the prophet Khadir and the prophet Musa who when they came to a city, they asked for food. However, the townspeople refused to accept them as guests. However, when they found a house in the city that

was on the verge of collapsing, they rehabilitated it. Therefore, Moses said: If you want, you have the right to get paid.

The whole verse above shows that paid compensation (*ujrah*) for a job done is legal in (not against) Islam. This is in line with Ibn Qadamah's statement quoted by Ala' Eddin Khorafa: This shows that it is legal to do something in return for a fee. Thus, the legal basis for the operational transactions of *al-Ijarah* is explicitly mentioned in the Qur'an.

Conditions in *al-Ijarah*

As a form of Islamic economic transaction, *al-Ijarah* normatively needs to be subject to the principles of Islamic economics and business in Islam. One of the principles that need to be addressed in this context is the principle proposed by Masudul Alam Choudhury as the first principle, namely the principle of Tawheed and Brotherhood. This is because the definition of *mu'amalat* as mere worldly affairs contradicts the concept of the integration of worldly and ukhrowy activities in Islam. Therefore, although *al-Ijarah* has obtained formal legal status from the Qur'an and still requires religious regulation at the operational level. Among these regulations are the following:

- a. Determination of the price at the time of delivery of goods **تسليم الثمن بتسليم العين**
The (nominal) value of *al-Ijarah* needs to be determined at the time of the contract, especially when the transaction of goods/services is carried out. The urgency of this requirement is as stated by Ala 'Eddin Khorafa: *The rent money also has to be specified to avoid deceit and dispute.* (Ala' Eddin Khorafa, 1997)
- b. Goods or services that are in *al-Ijarah* are goods and services that do not conflict with Islamic rules. Illegal goods (such as liquor, pork, etc.) as well as forbidden services (such as theft, murder) cannot be *Ijarah* right. Similarly, the payment of *al-Ijarah* (*ujrah*) also follows this rule.
- c. The utility (benefit value) of goods or services in *al-Ijarah* must be real. If the utility does not yet exist at the time of the contract, it must remain real.

والمنافع في الإيجارات في وقت العقد معروفة، فكان ذلك غرراً ومن بيع ما لم يخلق ونحن نقول: إنها وإن كانت معروفة في حال فهي مستوفاة فالغالب

The utility of goods or services may not exist at the time of the contract, but to prevent the transaction from turning into *gharar*, the existence of a condition is a must. The legal principles are:

ما جاز استيفاؤه بالشرط جاز استيفاؤه بالاجر
“What is required to fulfill the conditions in order to be rewarded with wages”

The existence of the prerequisites (conditions) in this *al-Ijarah* transaction can be seen in the *al-Ijarah* transaction which is exemplified by Allah's Apostle from the following hadiths:

حَدَّثَنَا إِبْرَاهِيمُ بْنُ مُوسَى أَحْبَرَنَا هِشَامٌ عَنْ مَعْمَرٍ عَنْ الرُّهْرِيِّ عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا وَاسْتَحْجَرَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَلْوَ بَكْرَ رَجُلًا مِنْ بَنِي الدَّبَّلِ ثُمَّ مِنْ بَنِي عَدْ بْنِ عَدَى هَادِيًّا خَرَبَتِ الْمَاهِرُ بِالْهَدَىيَةِ فَدَعَهُمْ بِتَمِينِ حَلْفٍ فِي الْعَاصِي بْنِ وَائِلٍ وَهُوَ عَلَى دِينِ كُفَّارٍ فُرِيْشٍ فَأَمِنَاهُ فَدَفَعُوا إِلَيْهِ رَاحِلَتِهِمَا وَرَأَعَدَاهُ غَارَ تُورَ بَعْدَ ثَلَاثَ لَيَالٍ فَأَنَاهُمَا بِرَاحِلَتِهِمَا صَبِيْحَةَ لَيَالٍ ثَلَاثَ فَارَّخَلَا وَأَنْطَلَقَ مَعَهُمَا عَامِرُ بْنُ فَهِيرَةَ وَالدَّبَّلُ الدَّبَّلِيُّ فَأَخْذَ بِهِمْ أَسْفَلَ مَكَّةَ وَهُوَ طَرِيقُ السَّاجِلِ.

Has told us [Ibrahim bin Musa] has informed us [Hisham] from [Ma'mar] from [Az Zuhriy] from ['Urwah bin Az Zubair] from ['Aisha radiallahu 'anha]: The Prophet sallallaahu 'alaihi wasallam and Abu Bakr hired a man from the tribe of Ad-Dil then from the tribe of 'Abdi bin 'Adiy as a guide and who was adept at mastering the ins and outs of the journey that he had previously sworn in to the family of Al 'Ash bin Wa'il and still embraced the Quraysh infidel religion. So they entrusted him with his second journey and both asked him to stop at the cave of Tsur after a three-night journey. Then the man continued his second journey at dawn on the third night, so both of them continued their journey and departed with the two of them 'Amir bin Fuhairah and the guide of the Ad-Diliy tribe. So the guide took the road from behind the city of Mecca, namely along the sea road.

al- Ijarah dan Leasing

In the context of economic transactions, the difference between *al-Ijarah* and buying and selling lies in the ownership rights and usage rights. In *al-Ijarah*, what is traded is limited to the right to use goods or services, while the ownership rights to goods or related expertise remain in the hands of the owner (Mujir). Therefore, we can conclude that despite the similarities, *al-Ijarah* is not a sale and purchase.

The problem is when we are faced with the proliferation of contemporary business activities called leasing. This activity is relatively very popular and will continue to grow in the future.

In developed countries, especially in countries where the income of the population is clear, leasing is offered by various finance companies, both bank and non-bank. When a person's income after deducting various expenses, including insurance, still leaves sufficient space to pay the installments of a house, car, etc., then that person will take this leasing option.

The technical term for leasing is الاجارة التملوكية or الاجارة المنتهية التملوك. In this context, *al-Ijarah* which is basically an ordinary business activity such as buying and selling of usufructuary rights for goods or services develops into financing for the purchase of usufructuary rights (lease), and at the same time also the purchase of related goods in stages.

Therefore, there are at least two issues that need to be resolved (*tahlil*) in leasing, namely the problem of buying and selling credit (بيع التقسيط), the increase in the value of the selling price and the problem of mixing two transactions in one contract.

Buying Credit (بيع التقسيط)

In buying and selling credit, scholars still dispute the law of this transaction based on many texts, including:

73. *Yahya told from Malik that he had heard someone say to another: "Buy this camel directly for me so that I can buy it from you on credit.*

74. *Yahya related to me from Malik that he had heard that al-Qasim ibn Muhammad was asked about someone who bought goods for ten dinars in cash or fifteen dinars on credit. He did not allow it and forbade it. (Imam Malik ibn Anas, 1999)*

In line with the above, Rafiq Yunus al-Mishry stated:

وقد فرق الفقهاء تفريقا حكما ودقيقا بين بيع الأجل فاجزوه ، وبيع الأجل فحرّموه ، وتحايل البعض ببيع الأجل وصولاً لبيع الأجل لم يدفع الفقهاء إلى تحريم البيعين ، فإنهم لو فعلوا ذا ذلك لحرّمت أنشطة تجارية كثيرة مفيدة

In other words, Yunus al Mishry stated that buying and selling credit has been forbidden by Fiqh experts. However, we need to clearly distinguish between the terminology of buying and selling with deferred payments and buying and selling credit. Delayed buying and selling (بيع النسبيّة الأجل) is a sale and purchase after the terms and conditions are fulfilled (for one reason or another) the payment is made at another time.

روي الشیخان أن رسول الله صلّی الله علیه وسلم اشتري من يهودي طعاما (وفي رواية شعيرا) الى أجل (وفي رواية: بنسيئة)، ورهنه درعاته من حديد. البخاري 3: 101 و 186 و مسلم 4: 123

In the above hadith, Allah's Apostle delayed the payment but as a guarantee for the payment, he pledged his armor. In a sense, there are goods that are guaranteed in exchange for cash payments. In addition, the quantity, quality of goods and clarity of payment time are also required.

قال رسول الله صلّی الله علیه وسلم : من سلف في شيء ففي كيل معلوم، وزن معلوم، الى أجل معلوم. رواه البخاري 3: 11

But, are these two terms synonymous with credit (بيع التقسيط)?

Rafiq al-Mishry states that these two types of transactions are identical, therefore their legal status is identical:

وجواز بيع النسبيّة (وهو بيع مؤجل الثمن) يعني جواز بيع التقسيط، لأن هذا البيع ليس الا بيعاً مؤجّلاً للثمن،
غاية ما فيه أنّ ثمنه مقسّط أقساطاً، لكل قسط منها أجل معلوم.

The basis of al Mishry's argument is the arrangement of the payment time for several stages, and each stage has been determined and the nominal has been agreed upon. Al-Mishry adds that in التقسيط no one loses; both parties benefit:

1. فالبائع يزيد في مبيعاته ويعد من أساليبه التوسّيّقة فيبيع نقداً وتقسيطاً. ويستفيد في حال التقسيط من زيادة الثمن لأجل التقسيط.

The seller increases his sales and calculates the sales method in cash and in installments. In the case of installments, the installment price increases.

2. والمشتري يستطيع الحصول على السلعة والاستمتاع باستهلاكها أو استعمالها قبل أن يمكنها دخله أو ثروته من ذلك. وهو بدلاً من أن يَدْخُرْ ثُمَّ يُشْتري بالنقد فإنه يُشْتري بالتقسيط فَيَتَعَجَّلُ السلعة وَيَسْدَدُ ثُمَّ نهانجوماً (=أقساطاً).

The buyer may acquire the goods and enjoy their consumption or use before being able to enter them or their wealth from them. Instead of spending money to buy money, he buys installments and accelerates commodities and pays the price.

Leasing And Murabahah

The practice of *al-Ijarah at-Tamlikiyyah* often uses the principle of *al-Murabahah*. However, what needs to be noted is that *murabahah* by definition is two consecutive buying and selling in which there is a point that separates the first buying and selling and the second buying and selling. Therefore, the second sale and purchase must take place after the customer receives the goods and submits an offer. If the offer is accepted by the institution/first buyer as well as the second seller, then this *murabahah* sale and purchase takes place.

Unlike the above, the leasing company as the first buyer and second seller has made a transaction with the customer before the goods are received by the customer. Thus, it is very difficult for leasing practices to avoid the prohibition of two buying and selling in one transaction (منع عقدين في عقد واحد). Another shari'ah trap for leasing is future sales (بيع الأجل) which do not pay attention to shari'ah provisions, including guarantees for payment, clarity of quantity and quality of prices and goods at the time of transaction. In addition, the basic principle in the Shari'ah is that a person cannot claim profit if he does not bear the risk of goods whose ownership status is not in his hands. So, there must be acceptance and new offers after the goods are received by the customer.

Another problem that is more complicated is the future sale in تملكلية اجارة itself because how can *at-taradhy* appear on the price if the condition / condition of the new item can be known at the end of the *al-Ijarah* period (lease)? Therefore, the transactions that can be carried out in this context are *al-Ijarah* transactions plus a sale and purchase agreement. The sale and purchase agreement after the *al-Ijarah* period ends can bind both parties, but the determination of the price needs to be postponed to be adjusted to the condition of the goods later.

Price Increase (زيادة الثمن)

In the eyes of the people, the increase in prices in delayed payments or credit is the most prominent problem. Because, for them, this price increase is identical to the Western economic system, namely interest. These Western and Indonesian terminology contradict the principle that money is only a medium of exchange, it cannot work alone to make money. Money cannot interest money. The contemporary principle of "Don't work for money, let's the money works for you" contradicts the necessity of *kasab* (work) with *jaza'* worldly and *ukhrawy* consequences for humans. In addition, the interest system in the economic tradition also favors the group of

capital owners. This system afflicts the poor who, apart from having to work hard, also have to speculate with profit and loss. If you get a profit, then a part of the profit must be given to the owner of the capital. Ironically, if there is a loss in their business activities, the owner of the capital must still make a profit. Therefore, this system is against the principle of justice and oppresses the working poor. In the inter-country scope, the condition of the APBN, which is almost 2/3 of which is used to pay debts along with the interest, is also evidence of the injustice of this system.

The injustice of the interest system as described above seems to represent the view of Islam, but what if the interest rate is low? What if the interest percentage is not miserable or even profitable? What if the borrowers are not poor people, but smart and skilled entrepreneurs who with these loans can actually multiply their profits?

These questions need to be answered by those who are concerned with the development of the sharia economy. Otherwise, the indication that the sharia economy is more exploitative than the conventional economy will win the public image battle. If this happens, the presence of Islamic financial institutions will be a blunder for Islamic da'wah and syi'ar in the future.

CONCLUSION

At the end of this section, the essence of the previous presentation will be presented which is the answer to several questions in the introduction, as follows:

1. *Ijarah* is a form of transaction in Islamic law which essentially means that there are two parties who agree to rent out goods or services (manpower and/or professionalism) for a certain fee. As for the texts that underlie it is QS. 65:6, some hadiths of the Prophet Muhammad and the consensus of the *fuqaha*.
2. An accountable transaction, *Ijarah* is completed with the terms and pillars as a measuring tool for whether the transaction is valid, *Faskh* or void. The conditions are: The willingness of both parties, the benefits of the object of *Ijarah* are known with certainty, the leased item has certain specifications, the object for rent is something permissible, can be handed over, not an obligation and wages are something of value. The pillars are: Two parties to the transaction, transaction editor, benefits and wages.
3. The character of the *Ijarah* transaction is binding on the parties who have made the transaction agreement. The variety is rental, lease purchase and labor.
4. An *Ijarah* transaction may end when its purpose or deadline has been reached, the default of one of the parties or the death of one of the parties.

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