SOCIOLOGICAL AND PHILOSOPHICAL STUDY OF IJĀRAH AND IJĀRAH MUNTAAHIYAH BI TAMLIK

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Received: 25-03-2022; Revised: 24-06-2022; Accepted: 28-06-2022;

ABSTRACT

Mu‘āmalah is a matter that is constantly evolving following the progress of the times, including the ijārah contract and the ijārah muntahiya bi tamlik contract. It is necessary to study sociological and philosophical perspectives to obtain a deep meaning regarding the contextual aspects. This research was normative research that examines the norms and principles of Islamic law as well as developing doctrines that are relevant to the theme of the study. The approach was a conceptual approach which intended to analyze the concepts in Islamic law to find out the meaning. Ijārah is a contract for the transfer of usufructuary rights over an item or service and ijārah muntahiya bi tamlik is a lease agreement with the option of transferring ownership rights. The legal basis of the ijārah agreement and the ijārah muntahiya bi tamlik was found in the Qur’an, Hadith and several regulations. Sociological studies of the ijārah and ijārah muntahiya bi tamlik contracts include that the ijārah and ijārah muntahiya bi tamlik aim to facilitate humans in carrying out their lives and can synergize with each other to meet the needs of life. And containing orders to fulfill individual rights can also bring prosperity and peace to those who implement it. From a philosophical point of view, it contains values sourced from the Qur’an and hadith in the form of values of justice and universal principles and has the goal of benefiting mankind and avoiding harm.

Keywords: Sociological, Philosophical, Ijārah, and Ijārah Muntahiya bi Tamlik.

ABSTRAK

Mu’āmalah adalah perkara yang senantiasa berkembang mengikuti kemajuan zaman termasuk di dalamnya yaitu akad ijārah dan akad ijārah muntahiya bi tamlik. Tujuan penelitian ini adalah untuk menelaah perspektif sosiologis dan filosofis akad tersebut agar didapatkan pemaknaan yang mendalam mengenai aspek kontesktualnya. Penelitian ini merupakan penelitian hukum normatif yang mengkaji norma dan asas-asas hukum Islam serta doktrin-doktrin yang berkembang dan relevan dengan tema kajian. Pendekatan yang digunakan adalah pendekatan konseptual yang dimaksudkan untuk menganalisa konsep-konsep di dalam hukum Islam sehingga dapat diketahui makna yang terkandung di dalamnya. Hasil penelitian ini menunjukkan bahwa ijārah adalah akad pemindahan hak guna atas suatu barang atau jasa dan ijārah muntahiya bi tamlik adalah akad sewa menyewa dengan opsi/pilihan berpindahnya hak kepemilikan. Landasan hukum akad ijārah dan akad ijārah muntahiya bi tamlik terdapat pada al-Qur’an, Hadis dan beberapa peraturan-peraturan perundang-undangan. Telah sosiologis dari akad ijārah dan ijārah muntahiya bi tamlik di antaranya bahwa akad ini

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bertujuan untuk memudahkan manusia dalam menjalankan kehidupannya serta dapat saling bersinergi untuk memenuhi kebutuhan hidup. Selain itu, mengandung perintah untuk memenuhi hak-hak individu juga dapat mendatangkan kesejahteraan dan ketentraman bagi pihak yang melaksanakan. Dari aspek filosofis mengandung nilai-nilai yang bersumber dari al-Quran dan hadis berupa nilai-nilai keadilan serta prinsip-prinsip universal dan memiliki tujuan kemaslahatan bagi umat manusia dan menghindari kemudaran.

Kata Kunci: Sosiologi, Filosofi, Ijārah, dan Ijārah Muntahiya bi Tamlik.

A. Introduction

Humans beings are social creatures who always live side by side with each other. This interdependence between humans has become part of the life cycle and plays an important role in supporting various activities, such as meeting the needs of life. There will always be conditions where need other people, for example, to buy the goods for daily needs, rent goods for certain purposes, and do jobs that are tied to certain parties and other activities.

The interdependence between humans with one another has been regulated in Islam and is known *mu‘āmalah*. *Mu‘āmalah* are Allah's rules that regulate human relations to others in their efforts to obtain the tools for their physical needs in the best way.¹ *Mu‘āmalah* or human relationships occur through activities in fulfill the needs of life. ²

*Mu‘āmalah* is part of the discussion in Islamic law. The scope of *mu‘āmalah* fiqh is divided into two. First, the scope of lingkup *al-mu‘āmalah al-adabiyah* and *al-mu‘āmalah al-māliyah*. *Al-adabiyah* is on the moral aspects such as pleasure, not being forced, transparent, honest, free from the element of gharar and staying away from traits such as *tadlis* (not transparent), *garar* (deception), *risywah* (bribes), *ikhtikār* (hoarding). Second, *al-mu‘āmalah al-māliyah* includes certain forms of engagement (*akad*), such as buying and selling (*al-ba‘i*), pawning (*al-rahn*), leasing (*al-ijārah*), orders (*al-istiṣnā‘*), dependent services (*al-kafālah*), debt transfer (*al-hiwālah*), power of attorney (*al-wakālah*), peace (*al-sulh*), cooperation (*al-syirkah*), profit sharing (*al-

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¹ Hendi Suhendi, *Fiqh Muamalah* (Jakarta: RajaGrafindo Persada, 2008).
² Erry Fitrya Primadhany, “Menjadi Pedagang Yang Sukses Dunia Akhirat,” in *Kumpulan Kultum Ekonomi Syariah Seri 2* (Komite Nasional Ekonomi dan Keuangan Syariah, 2020).


muḍārabah), giving (al-hibah), agricultural product sharing (al-muzāra'ah), profit sharing in irrigation (al-musāqah), deposit (al-wadā'ah), loans (al-qarḍ) and so on.\(^3\)

The provision of the relationship among humans (ḥabluminannas) in activities to fulfill their needs is based on a foundation. It contains the rules of the rights and obligations of humans. The provision in determining these rights and obligations are usually contained in an agreement between the two party, known as a akad (contract). The rules of akad have been regulated in Islamic law because it become a human need. The rules will further discuss in the field of al-muʿāmalah al-māliyah which consists of various kinds of contracts.

Akad in muʿāmalah has been widely implemented in life, such as transactions of leasing. In the perspective of muʿāmalah fiqh, leasing are known as akad ʿijārah. ʿIjārah is a contract for the intended and certain benefits that can be given and allowed with certain rewards/prices.\(^4\) In this transaction, there is a transfer of the use rights or benefits, but there is no transfer of ownership rights. This is the definition of ʿijārah from the side of the object. ʿIjārah, in service side might also be interpreted as the right to use goods/services by paying certain prices/agreement.

Along with the development of times, society is practice the renting, which is followed by the transfer of ownership. In its implementation, the agreement contain the option of transferring ownership of the object, called ʿijārah muntahia bi tamlik. According to the DSN-MUI fatwa, ʿijārah muntahia bi tamlik is a transaction containing an agreement which ends with the transfer of ownership rights of the goods to the lessee by way of a grant or sale.

The discussion about akad ʿijārah and ʿijārah muntahiya bi tamlik has basically found in classical fiqh literature. This indicates that the practice of this akad occurred in earlier community. The syara’ basis of ʿijārah has been stated in the Qur’an in surah al-Baqarah (2): 233, at-ʿṬalaq (65): 6, then al-Qaṣṣ (28): 26-27, and several related hadiths. The formulation in the field of muʿāmalah fiqh which has been found in many classical fiqh books and is the result of the ijtihad of the previous scholars certainly

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\(^3\) Muhammad Maksum and Dkk, Fikih Muamalah (Tangerang Selatan: Universitas Terbuka, 2019).

\(^4\) Taqiyyuddin Abi Bakar Muhammad Husain, Kifayatul Al-Akhyar Fi Halli Gayatul Ikhtisar (Surabaya: Dar al-Kitab al-Islam, n.d.).

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needs to be studied following with its development referring to sharia principle. Mu‘āmalah is a matter that always develops, following the development of the times. The problems of society that are increasingly complex require appropriate a solution with following the principle of Shari‘a. In addition, recent studies such as Mila Sartika, Jamaluddin, Ali Muhayatsyah, Riza Afrian Mustaqim, and Aang Asari. However, these studies focus on the study of ijārah in particular, and are related to ijārah muntahiya bi tamlik. So, an important studies is to examine the akad on sociological and philosophical perspective to have a deep meaning regarding the contextual aspects.

B. Method

The article used normative law, which examines the norms, principles of Islamic law and doctrines that develop and relevant to the theme of the study. It used a conceptual approach to analyze the concepts in Islamic law to find the meaning of the concept. In this article, it used the library method because the data source is obtained from documentation in the form of books related to Islamic law. In other words, there was no field data collection but sourced from the scientific journals, laws and regulations, books and the internet.

C. Findings and Discussion

1. The Concept of Ijārah and Ijārah and Muntahiya bi Tamlik and Its Legal Base

5 Dar Nela Putri, “Konsep Urf Sebagai Sumber Hukum Dalam Islam,” El-Mashlahah 10, no. 2 (December 2020): 14-25, https://doi.org/10.23971/MA$LAHAH.V10I2.1911.
6 Mila Sartika and Hendri Hermawan Adinugraha, “Implementasi Ijarah Dan IMBT Pada Bank BRI Syariah Cabang Yogyakarta,” Economica: Jurnal Ekonomi Islam 7, no. 1 (2016): 97–116, https://doi.org/10.21580/economica.2016.7.1.1034.
7 Jamaluddin, “Implementasi Akad Ijarah Muntahiya Bi Al-Tamlik (IMBT) Perspektif Fatwa DSN-MUI Nomor 27 Tahun 2002 & Hukum Islam,” Jurnal At-Tamwil 2, no. 2 (2020): 153–81, https://doi.org/10.33367/at.v2i2.1339.
8 Ali Muhayatsyah, “Analisis Penerapan Transaksi Ijarah Dan Al Ijarah Al Muntahiya Bit Tamlik Pada Bank Syariah,” JESKaPe 3, no. 2 (2019): 1–18, https://doi.org/10.52490/jeskape.v3i2.429.
9 Riza Afrian Mustaqim and Nada Batavia, “Analisis Penerapan Ijarah Bil Manfa’ah Pada Sistem Panjar Dalam Sewa Menyewa Rumah: Studi Kasus Di Kecamatan Syiah Kuala Kota Banda Aceh,” Al-Mudharabah 3, no. 1 (2021): 149–63, https://journal.arkaniry.ac.id/index.php/mudharabah/article/view/1305.
10 Aang Asari, “Akad Al Ijarah Al Mausufah Fi Al Zimmah Dalam Perspektif Hukum Islam Dan Hukum Positif Indonesia,” Al Ahkam 16, no. 2 (2020): 1–26, https://doi.org/10.37035/ahj.v16i2.3547.
11 Sabarudin Ahmad, “Hukum Aborsi Akitah Perkosaan (Analisis Hukum Islam Terhadap Peraturan Pemerintah Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi),” El-Mashlahah 8, no. 2 (2018): 162–83, https://doi.org/https://doi.org/10.23971/el-mas.v8i2.1321.
12 Diky Fajih Maulana and Abdul Rozak, “Istihsan as a Finding Method of Progressive Islamic Law in the Industrial Revolution Era 4.0,” El-Mashlahah 11, no. 2 (2021): 127–45, https://doi.org/10.23971/elma.v11i2.2981.
There are various known *akad* (contracts) in transactions that use the Islamic law principles. In economic activities, there is a rental transaction, known as an *ijārah* contract and a follow-up contract, namely *ijārah muntahiya bi tamlik*. The concept is part of economic activity since the time of the prophet. Then, the system developed, especially during the caliph Umar bin Khattab. This concept occurs when there is a land division system and the practice of cultivating the land with payments of *kharraj* and *jizyah*.\(^{13}\)

In the book *Fatḥul Qorib al-Mujib Fi Syarh al-Fad at-Taqrib*, *ijārah* according to language is the name for a wage. Meanwhile, according to *syara’*, it is a form of contract for the benefit of the known, and desired or intended (from the benefit of an item). Accept it, as it is legal to be handed over, and this benefit is permitted by *syara’*, and with an understandable/clear compensation/reward.\(^{14}\) According to Islamic banking law, *ijārah* is "a contract to provide funds in the context of the transfer of usufructuary rights or benefits of an item or service based on a rental transaction, without being followed by a transfer of ownership of the item itself".\(^{15}\) The Fatwa of the National Syari’ah Council explains that, *ijārah* is a contract for the transfer of usufructuary rights (benefits) for an item or service for a certain time through payment of rent or wages, without being followed by the transfer of ownership of the goods. Thus, there is no change of ownership in *akad ijārah*, but only the transfer of usufructuary rights.\(^{16}\) In this *akad ijārah*, the transfer of ownership of the object of *ijārah* will not occur, and the object of *ijārah* are the property of the lessor.

In transactions of *ijarah* contract, there are two divisions based on the object of the contract, namely goods and services. When the object of the *ijarah* contract is a good, it is called a rental transaction of goods. The practice occurs when occur an exchange of the rights to the use of goods between the parties to the agreement. Furthermore, if the

\(^{13}\) Arisson Hendry, *Perbankan Syariah Perspektif Praktisi yang dikutip oleh Tivani Ruslan Hasibuan, “Tinjauan Yuridis Terhadap Akad Ijarah (Studi Pengurusan Haji Dan Umrah Pada Bank Syariah Mandiri Cabang Medan)” (Universitas Sumatera Utara Medan, 2012).

\(^{14}\) Lafadz "*ijarah,*" by reading the letters of the hamzah according to a well-known opinion, and one opinion reading the dhammah hamzah in Aby Abdillah Syamsuddin Muhammad bin Qasim bin Muhammad Al-Ghazzy, *Fatḥul Qorib Al Mujib Fi Syarh Al-Fadh at-Taqrib* (Beirut: Dar Ibn Hazm, 2005).

\(^{15}\) Kamalia Firdausi, “Study Of Contract Object In Multi-Service Financing Using Ijarah In Islamic Bank,” *JCH* (Jurnal Cendekia Hukum) 6, no. 2 (March 2021): 229, https://doi.org/10.33760/JCH.V6I2.316.

\(^{16}\) Fatwa DSN nomor: 09/DSN-MUI/IV/2000)
object of the contract is the services, there will be a wage practice because the agreement is the transfer of rights to benefits of services.

The development times, especially in the economic field, an innovation has emerged where the ownership of the object of ijarah can transfer to the lessee. This practice called as *ijārah muntahiyah bi tamlik*. It defines as a lease agreement that occurs between the owner of the object and the lessee who is given a transferring ownership rights from the object.\(^\text{17}\) In the contract, the transfer of ownership rights to the object or goods occurs to one of the two rights,\(^\text{18}\) namely the party who leases sells the object of the transaction at the end of the ijarah contract or the party who leases grants the object of the transaction at the end of the ijarah contract.

In short, there are two separate transactions in *ijārah muntahiyah bi tamlik*. Both transactions stand alone gradually. The sale and purchase transaction or grant is performed after the first *ijārah* transaction (lease) or a promise of ownership at the end of the period. The law that applies at the beginning of the transaction is a lease. By the time the first transaction has been completed, it continues with sell or grant which then perform the law of buying and selling or grants during the process of transferring ownership of the goods.

**Legal Basis of the Ijārah and Ijārah Muntahiyah bi Tamlik**

Surah At-Talaq verse 6:

> أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنتُم مِّن وُجْدِكُمْ وَلََ تُضَارُّوهُنَّ لِتُضَيَّقُوا عَلَيْهِنَّ وَإِن كُنَّ أُولََٰٓئِكَ حَمْلَاتُكُمْ فَأَنفِقُوا عَلَيْهِنَّ حَتَّىَٰ يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتَوْهُنَّ أُجُورَهُنَّ وَأْتَمِرُوا بَيْنَكُم بِمَعْرُوفٍ وَإِن تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ قُرْءٌ أُخْرَىٰ

Based on the verse, the ijarah aspect is contained in the excerpt of the verse "...And if they nurse your child, compensate them..." which implies that, after the divorce on nurse a child, it is right to give the proper compensation... If the child is nurse by another woman, contextually according to *Tafsir as-Sa’di*, means that a child in the

\(^{17}\) Hasbi Ramli, *Teori Dasar Akutansi Syariah* (Jakarta: Renaisan, 2005).

\(^{18}\) Adiwarman Karim, *Bank Islam. Analisis Fiqih Dan Keuangan* (Jakarta: PT Raja Grafindo Persada, 2010).

\(^{19}\) Let them live where you live ‘during their waiting period’, according to your means. And do not harass them to make their stay unbearable. If they are pregnant, then maintain them until they deliver. And if they nurse your child, compensate them, and consult together courteously. But if you fail to reach an agreement, then another woman will nurse ‘the child’ for the father.
mother's belly during pregnancy, Allah command to provide a living. And when has born, it gets food from mother's milk or other women (and can be given the compensation).20

Q.S Al-Baqarah 233

وَإِنْ أَرَدْنَى أَنْ تَسْتَعْنُوكُمْ فَلَا خَيْرِ مِنْ أَنْ تَسْتَعْنُوكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ

Muhammad Sulaiman Al-Asyqar interprets the verse as permissible to compensate when a child is nursed by another woman. It means that, there are provisions for the wages or compensation to those who nurse children or women other than the mother. The amount of wages must be pay fairly. Giving payments to other parties to nurse the child in a good way (ma'ruf) or not delaying payment of wages or reducing the amount. Failure to provide appropriate payments or wages means that there is negligence in the affairs of the child. The word ma'ruf also means avoiding harm to biological mothers, so it is permissible for other women to become nursing mothers by avoiding harm, as explained at the beginning of the verse.22

Q.S Al-Qaṣaṣ : 26

قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ إِنَّ خَيْرَ مِنْ اسْتَأْجَرَتْ الْقَوِيُّ الْمِينْ

Tafsir as-Sa’di states: "Based on the words of one of his daughters, O my father, hire him." This means, someone, hire to work herding sheep and giving him water, Indeed, the best one you can hire is strong and trustworthy." This means Moses is the best person to hire because he has two characteristics, strong and trustworthiness. Both characters are the best workers’ characters. Has the strength and ability to do the work and is trustworthy or not treacherous. So, it deserves to be paid fairly. The two traits, namely strong and trustworthy, are the perfect reason for a job.24

Hadith on Wages and Compensation

20 Abdurrahman bin Nasir As-Sa’di, Taysir Al-Karim Ar-Rahan Am Fi Tafsir Kalam AlMannan (Beirut: Muassasah Ar-Risalah, 2002).
21 If you decide to have your children nursed by a wet-nurse, it is permissible as long as you pay fairly. Be mindful of Allah, and know that Allah is All-Seeing of what you do.
22 Muhammad Sulaimân ‘Abdullâh Al-Asyqâr, Zubdatut Tafsîr Min Fathil Qadîr (Oman: Dâr an-Nafâis., 2013).
23 One of the women said, "O my father, hire him. Indeed, the best one you can hire is the strong and the trustworthy."
24 Abdurrahman bin Nasir As-Sa’di, Taysir Al-Karim Ar-Rahan Am Fi Tafsir Kalam AlMannan. https://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/index
From Ibn Umar Radhiyallahu Anhu, he said, Rasulullah Salallahu Alaihi Wassalam said: "Give wages to workers before their sweat dries." (Hadith narrated by Ibn Majah)  

The hadith shows the importance of paying attention to the rights of workers by giving wages according to their performance, and the prophet recommends paying immediately after the work is done. If the worker has completed his obligations, the wages must be paid immediately without delaying the payment. Workers usually want immediately enjoy the results of their sweat after finishing work. This hadith is authentic according to the majority of scholars.

**Hadith Regarding The Number of Wages**

From Abu Sa'id al-Khudri Radhiyallahu Anhu that the Prophet Salallahu Alaihi Wassalam said "Whoever employs a worker, then let him know his wages" (Hadith narrated by Abdu Razaq)  

The hadith explains the wages must be informed. The number of wages usually follow local rules and the type of work. It aims for the Ijārah transaction to contain clarity.

**Hadith on Rent Payment**

From Hanzhalata bin Qays Radhiyallahu Anhu, He said, 'I asked Rafi' bin Khadij Radhiyallahu Anhu on renting the land with gold and silver. He replied, 'It's okay.'
People at the time of the Messenger of Allah rented land in exchange for trees that grew in the place of waterways, the bases of ditches, and various plants. Then from those plants some were destroyed and some survived, some survived and some were destroyed. Meanwhile, at that time, the people had no other rent except this. Then, the Messenger of Allah prohibits it. As for the payment with tangible and guaranteed goods, then there is nothing wrong with it. (Hadith narrated by Muslim).28

The hadith explains the prohibition of paying rent using plant products due to the concerns of failure of the agricultural products, which will cause losses. So, the prophet gave a provision to pay it with dinars/gold or dirhams/silver.29 This hadith was used as the basis for the practice of ijārah muntahiya bi tamlik, to explain how the payment process in the practice of renting through certain instruments, such as gold and silver, or using the state currency.

**Hadith on the Things that Allah Hates**

وجَعَلَ اللَّهُ عَلَّمًا لِلَّهَ غَرَّ أَحَدَ أَنَا خَصِمَهُمْ يوْمَ الْقِيَامَةِ: رَجُلٌ أَعْطَى بَيْنَ غَدَرٍ، وَرَجُلٌ بَاعَ حَرَا، فَأَكَالَ ثَمَنَهُ، وَرَجُلُ أَسْتَأَجَرَ أَجْرِهَا، فَفَسَطَوْفَبِهِ، وَلَمْ يَعْطِهِ أَجْرَهَا. رَوَاهُ مُسْلِمُ

From Abu Hurairah RA, He said, "The Messenger of Allah SAW said, "Allah said, 'Three people that I will be their enemy on the Day of Resurrection are: The one who makes an agreement with My name and betrays, the one who sells a free person and eats the payment, and the one who hire a worker, but when the worker finishes, he does not give his wages." (Muslim History Hadith)30

The hadith explains that a thing that Allah hates is when someone hires a worker, but when the worker finishes, he does not give his wages. This group will become enemies of Allah because he has been unjust to workers who have completed their obligations. There should be a fulfillment of workers’ rights by paying their wages because is a form of promise between the employee and the worker.

**Hadith on Multi Akad (Contracts)**

حدثنا حسن وأبو النصر وأسود بن عامر قالوا حدثنا شريك عن عبد الرحمن بن عبد الله بن مسعود رضي الله عنهما عن أبيه قال نهي رسول الله صلى الله عليه وسلم: "أَنْ يَحْدِثَانِّ أَكَدٍ".

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28 Al-Asqalani.
29 Insawan, “Al-Ijarah Dalam Perspektif Hadis; Kajian Hadis Dengan Metode Maudhu’iy.”
30 Al-Asqalani, Bulughul Maram Terjemahan Zainal Abidin Bin Syamsuddin.

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Has told us, Hasan and Abu Nadlr and Aswad bin Amir. They said; Has told us the Syarik from Simak from Abdurrahman bin Abdullah bin Mas'ud radliallahu 'anhum from his father said; The Prophet sallallahu 'alaihi wasallam forbade two transactions in one contract. Aswad said; Syarik said; Simak said; A man sells merchandise and says; He is with such and such credit and with such and such cash. (Hadith History of Ahmad). 31

Transactions, which contain the combined two types of contracts are prohibited because they will cause uncertainty. A transaction is accommodated by two contracts at once could lead to uncertainty (garar) of which contract will be used (applicable). In fiqh terminology, this practice is called şafqatain fi al-şafqah. 32

Ijārah muntahiya bi tamlik is allowed because the system requires the implementation of the Akad Ijārah, followed by the transfer of ownership contract in the form of buying and selling or grants at the end of the period. So, the promise of transfer of ownership at the beginning of the Akad Ijārah is wa'ad or a promise that is not legally binding. If the promise is to be carried out, then there must be a transfer of ownership contract after the Ijārah period is over.

Positive Legal Basis

The following points is a normative basis, according to the positive law of the ijārah and ijārah muntahiya bi tamlik:

a. Code of Civil law on Engagement
b. Law No.10/1998 on Banking (chapter 1.12, chapter 1.13).
c. Law Nomor 21 of 2008 on Syariah Banking (chapter 1.25, chapter 19.f, chapter 19.i, chapter 21.b,
d. OJK Regulation Number 31/POJK.05/2014 on the Implementation of Sharia Financing Business Article 1.18, Article 1.19, Article 4.3, Article 38.2
e. Compilation of Sharia Economic Law (KHES) in Chapter XI on Ijārah, article 324

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31 Maktabah Syamilah, Musnad Ahmad, Juz 13, hlm. 377 yang dikutip oleh Atep Setiadi, “Implementation Of The Concept Of Al-'Uqūd Al-Murakkabah On Sharia Financial Institutions,” Journal of Economicate Studies 1, no. 1 (2017).
32 Nur Hotimah, “Akad Musyaraqah Mutanaqisah Perspektif Hukum Islam” (UIN Maulana Malik Ibrahim Malang, 2012).

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f. Fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI Fatwas) Number: 09/DSN-MUI.IV/2000 on Ijārah Financing and Number 27/DSNMUI/III/2002 on al-Ijārah al-Muntahiyyah Bi al-Tamlik.

g. Decree of the Board of Directors of Bank Indonesia No.32/34/KEP/DIR 12 March 1998 on Commercial Banks Based on Sharia Principles (article 28).

h. Statement of Financial Accounting Standards (PSAK) No.59

2. Sociological and Philosophical Studies of the Ijārah and Ijārah Muntahiya bi Tamlik

Sociological Study

According to M. Atho Mudzhar, the sociological approach in Islamic law relates to several things, including the people who are influenced by Islamic law, the social pattern of the muslim community, the structure and changes of society that affect the understanding of religious teachings, the practice of religious law in society related to muslim behavior based on Islamic law and community movement. Islamic law includes fiqh and shari'ah related to values in life and a social institution in Islam where it can affect the legitimacy of various changes between Islamic teachings and social dynamics.

The field of mu'amalah is part of the Islamic law that has been prescribed for humans and can always keep up with the times. Humans have the flexibility to carry out various relationships with fellow humans (habluminannas) to fulfill the needs of life. This wide field of mu'amalah is permissible as long as no evidence indicating is forbidden. Islamic law only provides limitations on general and basic matters, sourced from the Qur'an and Hadith. Based on this, the ijārah and ijārah muntahiyyah bi tamlik are contracts that are permitted based on human needs for the transaction as long as they refer with the pillars and conditions.

Transactions using ijārah and ijārah muntahiya bi tamlik are based on the fact that humans will always be faced with conditions of interdependence between one another. This is illustrated when someone needs something but cannot have it because of limited assets. Then, there are other parties who can help him by transferring the

33 M. Rasyid Ridla, “Sosiologi Hukum Islam (Analisis Terhadap Pemikiran M. Atho’ Mudzar),” Jurnal Ahkam 2, no. 12 (2012).
34 Sudirman Tebba, Sosiologi Hukum Islam (Yogyakarta: UII Press, 2003).
usufructuary rights to the object accompanied by agreed payments or, called as leasing transactions. By making a lease transaction, the assets issued are not as large as when making a transfer of property rights or buying and selling transactions. By leasing, only pay for the usufructuary rights of the goods where the ownership of the goods does not transfer. So, this is the wisdom of the ījārah and ījārah muntahiya bi tamlik whose purpose is to make it easier for humans to carry out their lives and can synergize with each other to fulfill the needs of life. In the practice, there is interaction between humans for mutual benefit and practiced in everyday life.

In the ījārah of wages, it contains an order to fulfill individual rights. Munṣa'ījir make an agreement with the mu'ajir on the wage agreement using the ījārah and produce their respective responsibilities and rights and obligations that must be fulfilled. For example, the obligation to work as agreed in terms of time, rules and others. As well as rights that include a decent wage and social security. Payment of wages is an obligation that must be carried out by the person or party who hires (mu'ajir). While wages are the rights that must be received by the person who performs the service (musta'ījir) after the service is completed. The wages should be determined in advance, at the time the contract is made to obtain clarity of the agreement, or referring the rules which consider the aspects of justice. And, it is hoped the activities based on a sense of sincerity to avoid any disputes in the future. Payment of wages can be in advance or accelerated and can also be deferred. The Hanafi school determines that it is permissible to accelerate wages or postpone, on the condition that there is an agreement and willingness from the parties.35

Meanwhile, the ījārah muntahiya bi tamlik make it easier for someone who needs an item but does not have the ability to buy at a certain time. So, he can rent at the beginning, and the goods can be owned by the a sale and purchase or a grant at the end of the period. This contract might facilitate problems of people who have certain needs for goods but have limited funds. Then, they can buy the goods until they have sufficient funds at the end of the period. This contract is allowed as long as each contract (lease contract and transfer of ownership) has been completed and does not take place concurrently.

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35 Sayyid Sabiq, Fikih Sunnah 5 Penerjemah Abdurrahim Dan Masrukhin (Jakarta: Cakrawala Publishing, 2015).
The *ijārah* and *ijārah muntahiya bi tamlik* that have been following the pillars and conditions can bring prosperity and peace to the party involve. For example, in an akad ijarah, by getting wages from the results of hard work or money from rented goods, he can fulfill his needs, livelihood and other obligations from these profits. Also, the goods or services used from a *mu'aajir*, then those who use services or rent goods can be easier in perform their lives. For example, based on the verse of the Qur'an\(^{36}\) that it is permissible for a woman to become a nursing mother and by being paid for it. This is to avoid harm to the biological mother due to the problems she experiences that she cannot breastfeed directly. This certainly illustrates the wisdom of the *ijārah* in the form of services / wages. Likewise, *ijārah muntahiya bi tamlik*, a person who has difficulty in owning the goods, then he can rent to meet the needs of his life. And, he may own the goods at the end of the period.

The different roles of humans in living social life have indicated that no individual can survive alone without the help of other individuals. The practice of the *ijārah* and *ijārah muntahiya bi tamlik* are expected to perform willingly, aiming to bring benefits, both in the world and the hereafter.

The wisdom of the akad in Islamic economics is very big, which contains an element of exchanging benefits between one individual and another. To bring benefits and avoid disputes, *ijārah* and *ijārah muntahiya bi tamlik* should state clearly\(^{37}\) the characteristics and conditions of the goods, and referring the pillars and conditions of Islamic law. Then, ijarah of work or wage transactions contain wisdom in help other as it provides work to person who are more capable in terms of energy and time, and are trustworthy. As mention in Q.S al-Qaṣṣ Verse 26, "Hire him. as a person who works (for us), because indeed the best person you take to work (for us) Indeed, the best one you can hire is the strong and the trustworthy."

**Philosophy Study**

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\(^{36}\) Q.S Al-Baqarah verse 233: “If you decide to have your children nursed by a wet-nurse, it is permissible as long as you pay fairly. Be mindful of Allah, and know that Allah is All-Seeing of what you do.”

\(^{37}\) In the book *Fathul Qorib Al Mujib Fi Syarh Al-Fadh at-Taqrib*, the mushannif explains the limits of an item that is legal to rent, such as every item with advantage and benefit, and the condition of the item/good, such as renting a house to live, a vehicle to ride, then it is legal/ permissible to rent the item. If not (be taken advantage of and the item is not durable/cannot be intact), then it is not legal, in Al-Ghazzy, *Fathul Qorib Al Mujib Fi Syarh Al-Fadh at-Taqrib*.

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The principles of Islamic law cover all aspects of the field of human life. The essence of the meaning of Islam is peace. A Muslim (one who converts to Islam) is one who is at peace with God and humans.\(^{38}\) In essence, Islam is a manifestation of peace which we know as Islam rahmatan lil 'ālamīn. Islam rahmatan lil 'ālamīn contains principles that must always be practiced by Muslims. And, Islam is the blessing for the entire universe with the characteristics of presence and peace can be felt by mankind.\(^{39}\)

Based on its objectives, Islamic law seeks to lead the humans to achieve a better value of life in this world and the hereafter. Islamic law exists to create peace in the world and happiness in the hereafter. Also, it is a manifestation of Allah's mercy and grace for all His creatures. Rahmatan lil 'ālamīn is the essence of Islam. So, it can built the peace on the world with a social order that provides justice for all.\(^{40}\) And, Qur'an and Sunnah as a guide have given instructions for human life to live according to the corridors of the Sharia. Among the areas of human life that receive special attention in the principles of Islamic law is the economic field which is constantly developing following the progress of the times. Islamic law covers several fields, including the economic system.

The existence of Islamic economics is to achieve common prosperity and justice for the people, accompanied by blessings both in this world and the hereafter. Economic problems can be overcome by implementing Islamic economic principles that are free from elements, maysir, garar, ribawi, and tadlis. This system is following Islamic law which is sourced from the Qur'an and as-Sunnah. And, there are differences between the capitalist economic system which is only oriented to material factors so that the interests of the people are neglected and the socialist economic system where there is a neglect of business and the rights of the individual. The position of Islamic economics is not inclined to both system, but is in the middle.

Prosperity and justice are always strived in the Islamic economic system, namely by practicing principles following Islamic law. In the Islamic economic system, values are sourced from the Qur'an and hadith, as well as universal principles. Islamic theory

\(^{38}\) Suparman Usman, *Hukum Islam: Asas-Asas Dan Pengantar Studi Hukum Islam Dalam Tata Hukum Indonesia* (Jakarta: Penerbit Gaya Media Pratama, 2002).

\(^{39}\) Ais Mariya Ulva et al., “Pelaksanaan Konsep Islam Rahmatan Lil ‘Alamin,” *Al-Afkar, Journal For Islamic Studies* 4, no. 2 (2021): 472, https://doi.org/10.31943/AFKARJOURNAL.V4I2.217.

\(^{40}\) Juhaya S. Praja, *Filosofat Hukum Islam* (Bandung: Pusat Penerbitan UNISBA, 1995).
on economics recognizes Islamic economics as knowledge that seeks to realize human happiness by allocating and distributing limited resources based on Islamic corridors, without any restraints on individual freedom to create a sustainable macro-economy and sustainable ecology.\(^{41}\)

The presence of the Islamic Economic system is to increase economic growth at all levels of society. It contains equal opportunities for people who want to try and a guarantee of balance which is applied to the distribution of wealth through the command of zakat, infaq, and sadaqah. All economic activities in Islamic teachings are part of mu'amalah which must be following the Islamic rules. The Islamic economic system has the goal of benefiting the mankind and avoiding harm. One of these principles can be applied in everyday life, especially in the application of Islamic economic contracts such as *ijārah* and *ijārah muntahiya bi tamlik* which are also offered by Islamic financial institutions in Indonesia.

The application of Islamic economic principles can be done through various kinds of contracts that occur in society. The *ijārah* and *ijārah muntahiya bi tamlik* are types of contracts that are widely applied. The principles of Islamic economics must be adhered to in the implementation of this contract, for example by fulfilling the pillars and conditions. In the *ijārah* contract, when the pillars and conditions have been met, the fulfillment of rights and obligations will be followed, such as the rental fee (*ujrah*) and the transfer of benefit rights. In the irarah contract of services, the rights that must be given, for example, wages for work. An example of this transaction is when someone is paid for his efforts to build a house. Another example of irarah of objects is someone making a car rental transaction. In this case, a rental agreement occurs and is followed by rights and obligations that must be obeyed, such as the party who rents the car is obliged to pay the rental fee and the rental owner should provide the car to use the right of benefit.

The development of the *ijārah* is known as the *ijārah muntahiya bi tamlik*. This contract occurs when the house owner makes a house rental transaction to the tenant for a certain period. Then, it is agreed in the contract that when the rental period ends, it

\(^{41}\) Ika Yunia Fauzia and Kadir Abdul, *Prinsip Dasar Ekonomi Islam* (Jakarta: Kencana, 2014).

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will be continued by a transfer of house ownership by selling the house. This transaction is known as the *ijārah muntahiya bi tamlik*.

The *ijārah* and *ijārah muntahiya bi tamlik* are a form of human effort to fulfill the needs of life. Each party, to this contract, certainly expects a mutually beneficial outcome. Efforts to fulfill the necessities of life have been prescribed in Islam by seeking fortune. By using the *ijārah* and *ijārah muntahiya bi tamlik* from the *musta'jir* side, humans can get a fortune, such as money from renting goods or wages for services provided. And, from the side of *mu'ajir*, humans get the right to benefit from the desired goods or get services or a certain job.

Also, the *ijārah* and *ijārah muntahiya bi tamlik* transactions contain the values of justice. Justice can be implemented by granting or maintaining the rights of individuals involved in transactions. Justice is also reflected when humans make transactions to fulfill their needs so that there is no harm in carrying out their lives. For example, require for renting a house as a place to live and others. When the transaction is carried out following the Islamic economic principles, fulfills the pillars and conditions, and avoids prohibited things that cause injustice, then the principle of justice is illustrated in the transaction.

Justice is one of the five universal values as the basis of economic principles including faith, 'adl (justice), nubuwwah (prophecy), khilafah (government), and ma'ad (results). The five values play the foundation of Islamic economic theories. The aspect of justice becomes important to note. By prioritizing justice, in the individual context, the akad meet the needs of life and balance with the social context. That is, it is carried out without ignoring the rights or harming other parties.

It commanded that *ijārah* and *ijārah muntahiya bi tamlik* are not only seen from the material side. Moreover, the purpose of this contract is as a means to get closer to Allah swt. Also, it based on the goal that as Muslims - who try to carry out Islam kaffah - where the work done, the profits earned or the wages received is by hoping for the willing of Allah SWT.

By fulfilling the provisions of the pillars, conditions and following the teachings of the Shari'a, humans interpret all activities in their lives as provisions in the afterlife.

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42 Adiwarman Karim, *Ekonomi Mikro Islami* (Jakarta: III, 2002).

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The profit in the world is part of good deeds as much as possible as that can bring rewards. Therefore, in carrying out economic transactions, it should be based on the principles of humanity to help each other, relieve the burden of others based on the commendable qualities that we imitate the Prophet Muhammad and avoid prohibited things and harm others, such as maysir, garar, usury and tadlis. Allah has recommended for His people to always do good in all conditions. As in the hadith stated: "Whoever makes it easy for people who have difficulty in this world, then Allah will make it easy for him (affairs) in this world and the hereafter." (HR: Tirmidhi: 1853).

D. Conclusion

*Ijārah* is a contract for the transfer of usufructuary rights over an item or service and *ijārah muntahiyah bi tamlik* is a lease contract with the option of transferring ownership rights. The legal basis for the *ijārah* contract and the *ijārah muntahiyah bi tamlik* is found in the Qur'an and hadith, namely al-Baqarah (2): 233, at-Ţalaq (65): 6, then al-Qaṣaṣ (28):26-27. Hadith on provisions governing the wages, the amount of wages, payment of rent, and hadith on things that are hated by Allah (one of which is not paying workers wages) and hadith regarding multi-contracts. The positive legal normative basis is found in the laws, OJK regulations, the Sharia Economic Law Compilation (KHES), Fatwas of the National Sharia Council of the Indonesian Ulema Council, the Decree of the Board of Directors of Bank Indonesia, and the statement of Financial Accounting Standard (PSAK) No.59. Sociological studies of the *ijārah* and *ijārah muntahiyah bi tamlik* contracts include that, this contract aims to facilitate humans in carrying out their lives and synergize with each other to fulfill the needs of life. And, it contains orders to fulfill individual rights to bring prosperity and peace to those who implement it. Meanwhile, from the philosophical aspect, this akad contains values sourced from the Quran and hadith in form of values of justice and universal principles and has the goal of benefiting mankind and avoiding harm.

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