



AKAD AL-IJĀRAH AL-MAUṢŪFAH FĪ AL-ẒIMMAH IN SHARIA BANKING IN ACEH: A STUDY OF HOMEOWNERSHIP FINANCE

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Abstract: This paper aims to analyze the *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* contract model and its application to Islamic Banking. So far, the paradigm that has developed regarding homeownership financing contracts (PPR) is to use *Murābahah* or *Musyārakah Mutanāqisah* (MMQ) contracts. In practice, the results of housing built are often not by the previously agreed contract. This is a dilemma for Customers because, on the one hand, the down payment has been given, and the payment process has been carried out. In these conditions, applying *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* (IMFZ) contract is essential to protect the rights of Customers which have been neglected. The *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* contract requires the cancellation of the contract from the Customer if the reality and the contract made with the Bank do not match. This research is non-doctrinal with a conceptual approach. The conceptual approach is used to analyze theoretically and practically related the use of the *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* contract. The study results show that Islamic Banking in Aceh has not used the IMFZ contract. This is because; of *first*, the lack of understanding of the contract from both the Bank and the Customer; *second*, the tendency of the public and Banks to use *murabaha* contracts than other contracts because *Murābahah* contracts are easier to understand and commonly used, so far; *third*, Banks and Developers will face more significant risks when using *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* contracts than *Murābahah* and *Musyārakah* contracts. The IMFZ contract requires collaboration between the Bank, Developer, and Customer to supervise house construction to avoid default. Using the *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* contract will minimize fraud and *gharar* committed by the Developer against

the Customer. This article contributes to Customers and Banks in maintaining quality in housing finance which Developers often overlook.

Tulisan ini bertujuan untuk menganalisis model akad *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* dan aplikasinya pada Perbankan syariah. Selama ini paradigma yang berkembang tentang akad pembiayaan kepemilikan rumah (PPR) yaitu dengan menggunakan akad *Murābahah* atau *Musyārahah Mutanaqīshah* (MMQ). Pada praktiknya sering sekali hasil perumahan yang dibangun tidak sesuai dengan akad yang telah disepakati sebelumnya, hal ini menjadi dilema bagi para Nasabah karena disatu sisi *down payment* telah diberikan dan proses pembayaran telah dilakukan. Dalam kondisi seperti ini, penggunaan akad *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* (IMFZ) penting digunakan untuk menjaga hak-hak Nasabah yang selama ini terabaikan. Akad *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* menghendaki pembetulan akad dari pihak Nasabah apabila realita dan akad yang dilakukan dengan pihak Bank tidak sesuai. Penelitian ini termasuk dalam penelitian non-doktrinal dengan pendekatan konseptual. Pendekatan konseptual digunakan untuk menganalisis secara teoritis dan praktis terkait dengan penggunaan akad *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah*. Hasil penelitian menunjukkan bahwa Perbankan syariah di Aceh belum menggunakan akad IMFZ, hal ini disebabkan karena; *pertama*, kurangnya pemahaman terhadap akad tersebut baik dari pihak Bank dan Nasabah; *kedua*, kecenderungan masyarakat dan Perbankan menggunakan akad *Murābahah* dari pada akad lainnya dikarenakan akad *Murābahah* lebih mudah dipahami dan yang lazim selama ini digunakan; *ketiga*, pihak Perbankan dan Developer akan menghadapi resiko lebih besar ketika menggunakan akad *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* dari pada akad *Murābahah* dan akad *Musyārahah*. Akad IMFZ menghendaki kolaborasi antara pihak Bank, Developer dan Nasabah untuk proses pengawasan dalam pembangunan rumah agar terhindar dari wanprestasi, dengan menggunakan akad *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* akan meminimalisir kecurangan dan *gharar* yang dilakukan oleh pihak Developer terhadap Nasabah. Tulisan ini memberi kontribusi penting terhadap Nasabah dan Perbankan dalam menjaga kualitas pembiayaan perumahan yang sering sekali diabaikan oleh Developer.

Keywords: *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah*, *Musyārahah Mutanaqīshah*, homeownership financing contracts

INTRODUCTION

The *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* (after this referred to as IMFZ) contract is the newest form of contract in Islamic banking in Indonesia. IMFZ is the development of an *Ijarah* contract to facilitate the financing process for sharia banking customers. The emergence of the IMFZ is to answer the public's need for sharia financing products in the housing sector. The community's growing need for property has increasingly encouraged the banking sector to be more innovative in

issuing financing products to meet market demands¹. As an institution with the legality of issuing fatwas for sharia banking products, DSN-MUI must be more proactive in providing the latest fatwas regarding financing contracts because DSN-MUI has a central position as a reference for sharia banking in Indonesia in implementing financing schemes².

Through the DSN-MUI fatwa No: 101/DSN-MUI/X/2016 on the *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* contract, it seems to provide fresh air for Islamic banking to be more flexible in providing financing to the community, especially for properties not yet available (indent). Islamic countries have generally implemented IMFZ contracts, such as Jordan, Oman, and Djibouti, by combining *Musyārahah*, *Istishna'*, and IMFZ contracts. The contracts do not only involve sharia banking but also conventional. This success has had an impact on the Islamic banking system in Indonesia. It is not impossible that Islamic banking will be engaged in infrastructure with significant funding because Islamic banking with small capital will automatically involve conventional banking as capital supporters³.

The existence of the IMFZ contract is actually to overcome problems related to financing for objects not yet available (indents), such as PPR-Indents. Financing that sharia banking parties have carried out is in the form of *Musyārahah mutanāqisah* (MMQ) and *ijārah Mumpuliyyah bittamlīk* (IMBT). The emergence of the IMFZ departed from the anxiety of Islamic banking actors regarding indent homeownership financing (PPR) products. Before a fatwa regarding the IMFZ, the banking sector used *salam* or *ijarah* contracts in financing houses that were unavailable yet (indent). When using a *salam* contract, the payment process is carried out in cash when the contract is completed. This will affect buyers' interest because when using an *ijarah* contract, the contract is made when the goods are already available⁴. This will burden the banking sector as a provider of goods because it requires significant capital. With the IMFZ, the banking sector can more comprehensively issue financing products. Even with the IMFZ, the banking sector

¹ Nooraslinda Abdul Aris et al., "Islamic Banking Products: Regulations, Issues and Challenges," *Journal of Applied Business Research (JABR)* 29, no. 4 (June 28, 2013): 1145, <https://doi.org/10.19030/jabr.v29i4.7922>; Lukman Santoso and Zumrotul Ainiah, "Implikasi Asas Itikad Baik Dalam Akad Murabahah Di Perbankan Syariah," *An-Nisbah: Jurnal Ekonomi Syariah* 4, no. 2 (2018), <https://doi.org/10.21274/an.2018.4.2.73-98>.

² Awaluddin Awaluddin and Andis Febrian, "Kedudukan Fatwa DSN-MUI Dalam Transaksi Keuangan Pada Lembaga Keuangan Syariah Di Indonesia," *Al Hurriyah : Jurnal Hukum Islam* 5, no. 2 (2020): 196.

³ Rega Felix and Lastuti Abubakar, "Application of Al-Ijarah Al-Maushufah Fi Al-Dzimmah for Infrastructure Project Financing in Indonesia," *Yuridika* 35, no. 1 (2019): 132.

⁴ Harun Santoso and Anik Anik, "Analisis Pembiayaan Ijarah Pada Perbankan Syariah," *Jurnal Ilmiah Ekonomi Islam* 1, no. 02 (2017): 106-116

provides housing finance and infrastructure projects requiring significant capital⁵. IMFZ will provide convenience to the banking sector as *al-mustashni* to resell to the public when the goods are not yet available by continuing to pay the agreed installments.

Eka Sri Apriliana and Desi Erawati⁶ studied *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah*, focusing on Go-Pay features, as well as Rega Felix, Lastuti Abubakar⁷, Nasrul Fahmi Zaki Fuad⁸, Mohd Rofaizal Bin Ibhram⁹, Sa'id Adekunle Mikail¹⁰. The results of this study illustrate that the *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* financing model and the convenience of *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* can improve infrastructure and education development in Indonesia.

Research by Abu Talib Mohammad Monawer and Akhtarzaite Abd Aziz¹¹ tends to discuss *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* from the perspective of *muamalah fiqh* by presenting differences of opinion among the scholars. If it is seen further, the practice of the IMFZ has the impression of sale and purchase of debt, where the Bank as a buyer I (*al-Mustashni*) from the private sector (contractor) sells to the customer as buyer II, while the Bank does not yet own the house. Ahmad Saichoni's research entitled "*Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah*" explained that the IMFZ contract could be alternative financing to Islamic banking for infrastructure financing¹². However, until now, the IMFZ has not been used because the public is unaware of the contract, and most banks do not use the IMFZ contract¹³. Andi

⁵ Rega Felix and Lastuti Abubakar, "Application of Al-Ijarah Al-Maushufah Fi Al-Dzimmah for Infrastructure Project Financing in Indonesia," *Yuridika* 35, no. 1 (2020): 130, <https://doi.org/10.20473/ydk.v35i1.9021>.

⁶ Desi Erawati and Eka Sri Apriliana, "Tinjauan Penerapan Fatwa DSN MUI No.101 Tahun 2016 Tentang Al-Ijarah Al-Maushufah Fi Al-Dzimmah Terhadap Fitur Go-Pay," *At-Taradhi: Jurnal Studi Ekonomi* 10, no. 2 (2019): 157-67.

⁷ Felix and Abubakar, "Application of Al-Ijarah Al-Maushufah Fi Al-Dzimmah for Infrastructure Project Financing in Indonesia," 129-151.

⁸ Nasrul Fahmi Zaki Fuadi, "Implementasi Akad Al-Ijarah Al-Maushufah Fi Al-Dzimmah Sebagai Alternatif Pembiayaan Di Lembaga Keuangan Syariah Indonesia," *Indonesian Journal of Islamic Literature and Muslim Society* 4, no. 2 (2019): 211-230, <https://doi.org/10.22515/islam.v4i2.1750>.

⁹ Mohd Rofaizal Bin Ibhram, Maad Ahmad, and Muhammad Yosef Niteh, "Pembiayaan Pendidikan Melalui Akad Ijarah Mausufah Fi Zimmah (Pajakan Hadapan)," *Prosiding Antarabangsa Sains Sosial dan Kemanusiaan* 2, no. 2 (2017): 1-9.

¹⁰ Sa'id Adekunle Mikail, "The Fiqh Characterization of Ijārah Mauṣūfah Fī Al-Dhimmah : An Analysis of Juristic Views," *ISRA International Journal of Islamic Finance* 195, no. 1016 (December 2013): 1-15, <https://doi.org/10.12816/0002777>.

¹¹ Abu Talib Mohammad Monawer and Akhtarzaite Abd Aziz, "An Appraisal of Al-Ijarah Al-Mawsufah Fi Al-Dhimmah (Forward Ijarah) from Fiqh Perspective," *SSRN Electronic Journal*, 2012, 1-33, <https://doi.org/10.2139/ssrn.2430597>

¹² Ahmad Syaichoni, "Ijarah Maushufah fi Al-Dzimmah dalam Kajian Muamalah Kontemporer," *Jurnal Syntax Transformation* 1, no. 10 (December 23, 2020): 668-675, <https://doi.org/10.46799/jurnal>.

¹³ Erawati and Apriliana, "Tinjauan Penerapan Fatwa DSN MUI No.101 Tahun 2016 Tentang Al-Ijarah Al-Maushufah Fi Al-Dzimmah Terhadap Fitur Go-Pay."165

Benazir Daeng Pawewang's¹⁴ research showed that the application of MMQ-IMFZ to Permata Bank Syariah illustrates that MMQ-IMFZ practices are not yet following the Fatwa, the discrepancy is due to the lack of clarity on down payments and guarantees in the PPR Inden financing agreement.

Dewi Nur Alfiatul Husna's research on the implementation of the DSN-MUI Fatwa regarding the IMFZ contract for housing loan financing carried out by BRI Syariah Bank Malang KC explained that there was compatibility between the implementation of KPRS financing and the DSN-MUI fatwa, only that the *ujrah* stipulated by Bank BRI was in the form of money. In contrast, according to the DSN-MUI fatwa, it can be in the form of money or other than money. This research only considered the suitability of IMFZ practices with the DSN-MUI fatwa regarding IMFZ¹⁵.

The research conducted by previous researchers focused on the legal basis for using the IMFZ contract and tended to only be in the form of library research. In contrast, the field research focused more on the suitability of the practice of the IMFZ contract with the DSN-MUI fatwa regarding. This paper does not only focus on normative aspects alone, but this paper also focuses on the practice of the *Al-Ijārah Al-Mausūfah Fī Al-Ẓimmah* contract in Islamic banking in Aceh by addressing why IMFZ has not been implemented in Islamic banking in Aceh and the risk aspects of implementing IMFZ in banking. Sharia.

This paper is non-doctrinal research¹⁶ or empirical legal research¹⁷ with a conceptual approach¹⁸. The conceptual approach departs from the views and doctrines developed in the science of law, thus giving birth to legal understandings and legal principles relevant to the problems at hand. This approach is used to answer the practice of *Al-Ijārah Al-Mausūfah Fī Al-Ẓimmah* according to DSN-MUI jurisprudence and Fatwa and its practice in Islamic banking in Aceh, to strengthen

¹⁴ Andi Benazir Daeng Pawewang, "Penerapan Produk Pembiayaan Pemilikan Rumah (PPR) Inden Ditinjau Dengan Fatwa MMQ No. 73/DSN-MUI/XI/2008 dan FATWA IMFZ No. 102/DSNMUI/ X/2016 (Studi Pada PermataBank Syariah Pusat Tower III Bintaro).," *Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta*, February 13, 2020, 1-124

¹⁵ Dewi Nur Alfiatul Husna, "Penerapan Fatwa DSN-MUI NO.102/DSN-MUI/X/2016 Tentang Akad Al-Ijarah Al-Mausufah Fi Al-Zimmah (Imfiz) Terhadap Pembiayaan Kredit Kepemilikan Rumah Syariah (KKRS) Inden Pada BANK BRI Syariah (Studi Kasus Di Bank BRI Syariah KC Malang)" (Undergraduate, Malang, University of Muhammadiyah Malang, 2019), <https://eprints.umm.ac.id/55507/>.

¹⁶ Nurul Qamar and Farah Syah Rezah, *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal* (Makassar: CV. Social Politic Genius (SIGn), 2020): 27-28.

¹⁷ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris* (Depok: Prenada Media, 2018): 149-150.

¹⁸ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, 2nd ed. (Malang: Bayumedia Publishing, 2007).

empirical data. Thus, this paper also refers to the results of empirical research, which will be used as a study material between theoretical and practical in the field. The primary data sources are the sharia banking parties of BPD Aceh, BPR Adeco, customers, and developers, while the data collection techniques are interviews, observation, and documentation. To enrich the study, apart from using primary data, data from research related to the IMFZ and discussions with experts in the field of Islamic banking are also used to achieve a comprehensive study related to data and data analysis.

ONTOLOGICAL REFLECTIONS ON *AL-IJĀRAH AL-MAUṢŪFAH FĪ AL-ẒIMMAH* CONTRACT

In terminology, *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* consists of three words, namely, Firstly, *Al-Ijārah* (wages or compensation)¹⁹, in terms of *al-Ijarah* is defined as a contract of transfer of usufructuary rights (benefits) of goods or services within a specific time with rental payments (*ujrah*)²⁰. There are several definitions of *ijarah* put forward by school scholars, including Imam Syafi'i, Maliki, Hanafi, and Hanabilah²¹;

Figure 1. Concept of *Ijarah*

Mazhab	<i>Ijarah</i>
Maliki	A contract that gives ownership rights to the benefits of an item, permissible for a certain period with compensation that does not come from benefits
Hanafi	Contract for a benefit with a substitute having value or price
Syafi'i	A type of contract or transaction arrangement for a particular intended benefit permissible and utilized by providing certain benefits
Hambali	A contract for benefits is valid with pronouncing <i>ijarah</i> and <i>kara'</i> and the like.

Because IMFZ is part of *ijarah*, it must first be understood with the concept of *ijarah*. Several things must be fulfilled to start implementing an *ijarah* contract. Pillars and conditions are the most important thing so that *ijarah* activities carried out are legal by law. The pillars of *ijarah* include 'aqid, *sighat* contract, *ujrah*, and benefits²²,

¹⁹ Sayyid Sabiq, *Fiqh Al-Sunnah*, 3rd ed. (Mesir: Dār al-Fath Li 'Ilmi al-'Arabi, 1997):177.

²⁰ Mikail, "The Fiqh Characterization of *Ijārah Mauṣūfah Fī Al-Dhimmah*."1-15

²¹ Ali Fikri, *Al-Muamalat Al-Maddiyah Wa al-Adabiyah*, 1st ed. (Mesir: Mustafa al-Bany al-Halaby, 1946): 86.

²² Wahbah Zuhaili, *Al-Fiqh al-Islami Wa Adillatuhu*, Vol. VI (Damaskus: Dār al-Fikr al-Mu'āshir, 2008):3803

while the terms of *ijarah* include 1) Willingness of related parties; 2) knowing the benefits as a whole; 3) goods objects able to be utilized; 4) *ijarah* objects to be used directly; 5) wages that must have value; 6) items not prohibited by the Sharia²³.

Second, *Al-Mauṣūfah* (attributed) means something limited by nature; Third, *Al-Ẓimmah* (in dependents) is understood as goods suspended by the agreed seller and provider and according to their nature and specifications²⁴. Furthermore, the *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* contract is a contract applied to the provision of benefits utilizing the type of goods and is suspended (*Ẓimmah*).

Abu Ghuddah stated: Regarding leases (*ijarah*), it is permissible to rent an item when the lessor does not yet possess it or possess the right to its usufruct at the time of the contract. That is called forward *ijarah* (*Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah*).²⁵

Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah can be defined as the commitment of the lessor to provide a benefit that has been thoroughly described (to the standards required in *salam* sales) such that potential conflict is eliminated, whether the subject matter is the benefit of an object, such as leasing a car of stipulated specifications, or a human service such as tailoring or teaching.²⁶

Al-Qurah Dāgi explained that: *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* is a contract in which the subject matter is usufruct stipulated as a liability in such a way that it removes potential dispute.²⁷

Meanwhile, al-Buhuti defined *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* as a contract that is agreed upon either from a specific object or explained about legal provisions of rights and obligations or other services such as rewards and compensation. In other literature, it is explained that *Ijārah Mauṣūfah Fī Al-Ẓimmah* (forward *Ijarah*) contract is a lease contract in which the Bank rents out the property under construction, and the tenant is required to pay rent during the construction period and after completing the construction of the house²⁸. The DSN-MUI defines an *Al-*

²³ Syamsul Hilal, "Urgensi Ijarah Dalam Prilaku Ekonomi Masyarakat," *ASAS: Jurnal Hukum Ekonomi Islam* 5, no. 1 (2013):4-5.

²⁴ Aang Asari, "Akad al-Ijārah al-Mauṣūfah fī al-Ẓimmah dalam Perspektif Hukum Islam dan Hukum Positif Indonesia," *Al-Ahkam* 16, no. 2 (2020): 2.

²⁵ Abdul Sattar Abu Ghuddah, "Practical Application of Al-Ijārah al-Mawsufah Fī al-Dhimmah (Forward Ijarah)," *In 30th Albaraka Symposium 2009* 1 (2009): 1-36.

²⁶ Abu Talib Mohammad Monawer and Akhtarzait Abd Aziz, "Dispute Over The Legality Of Ijarah Al-Maushufah Fī al-Dzimmah: A Survey Of Fiqh Opinions," *ISRA International Journal of Islamic Finance* 7, no. 1 (2015): 53.

²⁷ Abu Talib Mohammad Monawer and Akhtarzait Abd Aziz, "An Appraisal of Al-Ijarah Al-Mawsufah Fī Al-Dhimmah (Forward Ijarah) from Fiqh Perspective," *SSRN Electronic Journal*, 2012, 1-33, <https://doi.org/10.2139/ssrn.2430597>

²⁸ Mouhamadou Moctar Dieng, "The Applicability of Ijarah Al-Mawsufah Fī Al-Dhimmah in Malaysia," *International Journal of Management and Applied Research* 6, no. 4 (November 1, 2019): 196-207.

Ijārah Al-Mauṣūfah Fī Al-Ẓimmaḥ (IMFZ) contract as a leasing contract for the benefit of an item (benefit of *'ain*) and or service (charity) which, at the time of the contract only stated its properties and specifications (quantity and quality). The IMFZ contract is an *ijarah* contract in which the price (wages) is paid in cash while the leased object is delivered at an agreed time²⁹.

LEGALITY OF *AL-IJĀRAH AL-MAUṢŪFAH FĪ AL-ẒIMMAH* CONTRACT (IMFZ)

There are differences of opinion among scholars regarding the IMFZ law. The Hanafiyah scholars believe the IMFZ contract is prohibited, while the Malikiyah, Syafi'iyah, and Hanabilah scholars allow the IMFZ contract³⁰. The reason is that it is approved for the permissibility of the *salam* contract, so the argument is related to it. Scholars who allow IMFZ contracts, such as Malikiyah, Syafi'iyah³¹, and Hanabilah, use the argument regarding the permissibility of *sale and purchase of salam* as contained in Al Baqarah verse 282 that Allah allows believers to *mu'amalah* in cash for a specified time and ordered to record it correctly.

This verse legitimizes the permissibility of using a *salam* contract in sale and purchase transactions. This argument is based on the verse above, which explains that the permissibility of sale and purchase is not cash³². Ibn Abbas and Ibn Mundzir³³ argued that this verse emphasizes the permissibility of *salam* contracts and most Muslim scholars³⁴. It's just that the difference in the permissibility of the *salam* contract lies in the object of the contract³⁵. QS reinforces this verse. Al-Maidah 5: (1) regarding fulfilling the contract after the agreement has been made, meaning that because the *salam* contract is an order, the pillars and conditions, and the payment process must be fulfilled.

It is also mentioned in the Hadith narrated by Bukhari, strengthening the use of the *salam* contract in sale and purchase transactions. It's just that the object the

²⁹ Erawati and Apriliana, "Tinjauan Penerapan Fatwa DSN MUI No.101 Tahun 2016 Tentang Al-Ijarah Al-Mauṣūfah Fī Al-Ẓimmaḥ Terhadap Fitur Go-Pay." 157-167

³⁰ Fuadi, "Implementasi Akad Al-Ijarah Al-Mauṣūfah Fī Al-Ẓimmaḥ Sebagai Alternatif Pembiayaan Di Lembaga Keuangan Syariah Indonesia." 217

³¹ Syamsuddin Muhammad bin Syarbaini, *Mughni Al-Muhtaj*, vol. 3 (Mesir: al-Maktabah Taufiqiyah, 2009). 391.

³² Abu Bakr Muhammad Ibn Abdullah Ibn 'Arabi, *Ahkam Al-Qur'an*, vol. 1 (Beirut: Dar al-Fikr, 2008).327

³³ Ibnu Mundzir an-Naisaburi Abu Bakr Ibrahim, *Tafsir Al-Qur'anul Karim*, vol. 1 (Madinah: Dar al-Maathir, 2002).66

³⁴ Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh*. 3603

³⁵ Ibnu Rusyd, *Bidayatul Mujtahid*, trans. Abu Usamah Fathur Rokhman, 1st ed., vol. 2 (Jakarta: Pustaka Azzam, 2007). 397

Prophet practices is in the form of goods. In this hadith, the scholars of the madhhab differ on the object of the *salam* contract other than goods that can be measured. In this case, the scholars are divided into two opinions; first, scholars who allow greeting objects in the form of animals, namely Imam Malik, Syafi'i, al-Auza'I, and al-Laist; secondly, those who do not allow it are Abu Hanifah and as-Tsauri and Iraqi scholars. Meanwhile, selling and purchasing *salam* in the form of houses and yards that are not permanently dependent on them is prohibited.

The sale and purchase of *salam* require ordering goods with payment at the beginning of the contract, provided that the form of goods is clear and the timeframe is clear³⁶. The provisions for *salam* also apply to IMFZ and the concept of *ijarah* because the emphasis is on the process and *ujrah* given. The sale and purchase process of IMFZ follows the *salam* concept, while the *ujrah* payment follows the *ijarah* concept. Both classical and contemporary scholars have different opinions on the payment of *ujrah* to the IMFZ. Some require *ujrah* payments to be made after the contract. Some allow payments in cash, installments, or deferred, and even for down payments. DSN-MUI takes a middle ground by allowing *ujrah* to be paid in advance in cash, in installments, or deferred.

DSN-MUI in fatwa NO: 101/DSN-MUI/X/2016 on the *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* Contract divides the IMFZ study into several sections, including First, related to the benefits of goods. At this stage, the benefits of goods are classified into four parts, namely, 1) in the IMFZ contract, the clarity and specifications of the object must be known to avoid conflict and disputes; 2) Goods can be handed over both essentially and legally; 3) agreed on the delivery time and the *ijarah* period; 4) following sharia principles. Second, related to rental goods must meet six criteria, among others; 1) clear descriptions and specifications of goods; 2) being allowed not to become the property of the lessor when the contract takes place; 3) having the ability to realize the IMFZ contract; 4) a substantial certainty regarding the delivery time of the goods; 5) having an agreement between the two parties regarding the delivery time; 6) lessee with a right to refuse or replace goods when they are not under the contract³⁷. Third, related to *ujrah*, which can be paid in cash, installments, or deferred. Fourth, the ability to pay advances. Fifth, related to dispute resolution

³⁶ Muhammad Syahrullah, "Hilah Dalam Jual Beli Salam," *JURNAL ISLAMIKA* 3, no. 1 (2020): 157.

³⁷ Erawati and Apriliana, "Tinjauan Penerapan Fatwa DSN MUI No.101 Tahun 2016 Tentang Al-Ijarah Al-Mauṣūfah Fī Al-Dzimmah Terhadap Fitur Go-Pay." 159.

done by deliberation or dispute resolution institutions³⁸. According to AAOIFI, IMFZ transactions can be carried out if they meet the conditions, among others; *first*, the clarity of the specifications of the *ijarah* object; *second*, benefits can be owned by *mu'ajjir*; *third*, there is the form of some of the goods; fourth, *ujrah* can be paid in installments or postponed.

The IMFZ debate occurs when the IMFZ contract is analogous to *salam*, so it does not meet the conditions for selling and purchasing *salam*. Compared to an *ijarah* contract in general, it does not fulfill the elements of *Ijarah*. This is theoretically contrary to *muamalah* fiqh, so at the application level, the IMFZ contract is still being debated by scholars with their classic books³⁹. This opinion has implications for the practice and law of the IMFZ contract in Islamic banking. However, the DSN-MUI has decided to allow the use of the IMFZ contract as long as it meets the criteria set out in the fatwa, although until now, the use of IMFZ is still debatable. However, principally there is no significant contradiction.

Research by Abu Talib Mohammad Monawer and Akhtarzaite Abdul Aziz⁴⁰ stated that Islamic scholars had no dispute regarding using the IMFZ contract. They generally agreed on the legality of the IMFZ. However, these differences occur among contemporary scholars due to different approaches to understanding the classic books discussing the IMFZ. In Indonesia, the DSN-MUI has allowed IMFZ contracts in Sharia economic transactions. The DSN-MUI fatwa is the entry point for the legality of IMFZ practices in Islamic banking in Indonesia, although there is still debate about the IMFZ formulation among scholars. However, the position of the DSN-MUI fatwa can overrule this difference if there is no conflict with Islamic law, as a *fiqh* rule which states "*halal in muamala.*" This rule is also related to other *fiqh* rules stating that the original law of something is permissible, so there are arguments showing its prohibition. This opens opportunities for banking actors to innovate to meet market needs⁴¹. Based on this description, it can be understood that the pillars of IMFZ are *mu'ajir* and *musta'jir*, *shigat*, and *ma'jūr*. As for the conditions related to the IMFZ, namely that there must be clarity of objects or specifications, objects of

³⁸ Aang Asari, "Akad al Ijarah al Mawsufah fi al Zimmah dalam Perspektif Hukum Islam dan Hukum Positif Indonesia," *Al Ahkam* 16, no. 2 (December 7, 2020): 20–23, <https://doi.org/10.37035/ajh.v16i2.3547>.

³⁹ Mohammad Monawer and Aziz, "An Appraisal of Al-Ijarah Al-Mawsufah Fi Al-Dhimmah (Forward Ijarah) from Fiqh Perspective."2

⁴⁰ Abu Talib Mohammad Monawer and Akhtarzaite Abdul Aziz, "Dispute over the Legality of Al-Ijarah Al-Mawsufah Fi Al-Dhimmah : A Survey of Fiqhī Opinions," *ISRA International Journal of Islamic Finance* 7, no. 1 (2015): 49.

⁴¹ Jalauddiin al-Suyuthi, *Al-Asybah Wa al-Nadhair* (Beirut: Dar al-Kitab al-Ilmiyah, 2010).103

value can be handed over, and an agreement on the delivery time. Related to the cancellation of the IMFZ contract is the same as the cancellation of the *ijarah* contract, namely, loss of objects, expiration of the agreed period, cancellations made by the parties, and the existence of an old (obstacle) from one of the parties⁴².

HOMEOWNERSHIP FINANCE (PPR) THROUGH *AL-IJĀRAH AL-MAUṢŪFAH FĪ AL-ẒIMMAH* CONTRACT IN SHARIA BANKING IN ACEH

In 2020, Islamic finance's growth was improving, with significant growth, one of which is property financing. Based on the 2020 Islamic banking statistics released by the OJK shows that the homeownership business unit has exceeded the 86.774 trillion mark. This achievement is one in which the benefits of home financing reach tens of trillions⁴³. In addition, this shows that the tendency of people to use Islamic financing is increasing. However, amid the rapid development of housing finance, it can be seen that problems also arise related to homeownership financing (PPR) schemes because sometimes PPR does not exist yet while consumers want homeownership. Therefore, a new contract is needed that can accommodate indent PPR.

Post-tsunami Aceh Province, the stretch of residential properties has increased, and even the housing business has become an option for most Acehnese people in choosing a place to live. Each house built has a different price, according to class. The upper middle class chooses house prices ranging from 300-600 million per unit, while the lower middle class takes houses at 118-300 million per unit⁴⁴. Units. These price variations are adjusted to the interests of the customer. Of course, the customers choose different banks that are housing finance partners, and the contracts used differ. When using sharia financing, most use *Murābahah*, MMQ, or IMBT contracts. The IMFZ contract is not widely known among banking practitioners and customers.

Aceh Province is a region located in the western part of Indonesia. In 2020, Aceh converted all conventional banks into Islamic ones. Based on the Aceh Qanun Number 11 of 2011 on LKS in conjunction with Qanun Number 8 of 2014 on Principles of Islamic Sharia further strengthens the position of sharia in financial

⁴² Rosita Tehuayo, "Sewa Menyewa (Ijarah) Dalam Sistem Perbankan Syariah," *TAHKIM* 14, no. 1 (January 1, 2018): 90.

⁴³ Kompas Cyber Media, "Riset Ungkap KPR Syariah Makin Diminati, Ini Penyebabnya Halaman all," *KOMPAS.com*, accessed January 20, 2021

⁴⁴ "Di Aceh, Rumah Menengah Laris Manis," accessed January 31, 2021, <https://properti.kompas.com/>.

management and financing. The consequence is that every banking system in Aceh must apply the sharia system in all financing and management⁴⁵. This includes PPR financing in Aceh. In general, people can choose financing products for PPR, and it's just that this depends on the Islamic Bank in providing financing products, such as financing with *Murābahah*, *Musyārahah*, *ijārah*, and others.

Most classical scholars in analyzing *ijarah* only divide it into two models of *ijarah* contracts, namely *ijārah mu'ayyanah* and *ghairu mu'ayyanah*⁴⁶. Then, it expands in practice to be diverse, such as MMQ, IMBT and IMFZ. The IMFZ discussion provides an attraction for banks in conducting financing contracts, especially PPR-Indent. IMFZ can be exemplified as a car rental with precise specifications for the car and guarantees for the performance of tailor services where there are no goods, and the tailor is responsible for the agreement made. This example can be distinguished whether the contract is an *ijārah* contract, the assignment of responsibility, or a forward contract. Ibn Muflih said this is the cornerstone of the agreement made by previous scholars about the IMFZ⁴⁷. Most of the contracts used in PPR made between the Bank, the private sector (contractor), and the customer are *Murābahah*⁴⁸, MMQ⁴⁹, and IMBT financing contracts. The following types of PPR contracts exist in Islamic banking in Aceh.

Islamic banking in Aceh is principally the same as the national Islamic bank because the conventional national bank has become an Islamic bank. Thus, financing is the same as using an MMT, *Murabahah*, or IMBT contract. The interviews show that most banks in Aceh implement a *Murābahah* contract, not using an IMFZ contract because the customer does not generally understand the IMFZ contract. Even some Islamic banking does not know about the IMFZ contract, how the contract is formed, the process, and the financing mechanism⁵⁰. This is also what is also felt by Bank Aceh Sharia, which only applies the *Murabaha* contract in PPR⁵¹. It

⁴⁵ Taufan Prasojo Wicaksono Setiadi et al., "Pengaruh Konversi Bank Konvensional Menjadi Bank Syariah Terhadap Risiko Kebangkrutan Studi Kasus Pada Bank Aceh," *E-Jurnal Ekonomi dan Bisnis Universitas Udayana* 8, no. 6 (2019): 551.

⁴⁶ Abu Ghuddah, "Practical Application of Al-Ijarah al-Mawsufah Fi al-Dhimmah (Forward Ijarah)." 5

⁴⁷ Monawer and Abdul Aziz, "Dispute Over The Legality Of Ijarah Al-Maushufah Fi al-Dzimmah: A Survey Of Fiqh Opinions." 61

⁴⁸ Muhammad Rizal Satria, "Analisis Perbandingan Pemberian Kredit Pemilikan Rumah (KPR) Pada Bank Konvensional Dengan Pembiayaan Murabahah (KPR) Pada Bank Syariah," *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah* 2, no. 1 (2018): 105-118.

⁴⁹ Ahamed Meera and Dzuljastri Abdul-Razak, "Home Financing through the Musharakah Mutanaqisah Contracts: Some Practical Issues," *Journal of King Abdulaziz University-Islamic Economics* 22, no. 1 (2009): 121-143.

⁵⁰ Muklis, Director of Adeco Islamic People's Financing Bank, *interview*, January 28, 2021.

⁵¹ M. Safri Antoni, Sharia Bank of Aceh, *interview*, January 31, 2021.

is as well as what was stated by the Customers who used Islamic Bank financing services, stating that the contract used in PPR was a *Murābahah* contract⁵². The Customers better understood the *Murabahah* financing contract than IMFZ. Moreover, the use of a *Murābahah* contract was more accessible and more precise, and the benefits gained were good for the Bank and Developers⁵³.

Figure 2. Types of PPR Products in Islamic Banking in Indonesia⁵⁴

Bank name	Product name	Contract
BTN Syariah	KPR BTN iB Financing	<i>Murābahah</i>
Bukopin Syariah	Homeownership iB Financing	<i>Murābahah</i>
CIMB Niaga Syariah	iB Homeownership Financing	<i>Murābahah</i> & IMBT
Permata Syariah	PERMATA KPR iB	<i>Murābahah</i>
Jatim Syariah	KPR iB Griya Barokah	MMQ
HSBC Amanah	Home Plan iB	<i>Murābahah</i>
BNI Syariah	Griya iB Hasanah	<i>Murābahah</i>
Muamalat	Sharia Residential Financing	<i>Murābahah</i> & MMQ
BSM	1. BSM Griya Financing 2. Subsidized Griya BSM Financing 3. 3. 0% DP BSM Griya Financing	<i>Murābahah</i>
Mega Syariah	KPR Utama iB	<i>Murābahah</i>
BCA Syariah	KPR iB	<i>Murābahah</i>
BRI Syariah	KPR BRI Syariah iB	<i>Murābahah</i>
Panin Syariah	Homeownership Pas iB Financing	<i>Murābahah</i> & MMQ

Figure 2 illustrates that the Bank prefers *Murabahah* products to other products. Even Bank that uses MMQ products is only Bank Jatim Sharia. This is based on the ease of understanding the *Murabahah* contract and its practice in the field. Moreover, the risks faced by the Bank are smaller than other products. The community also prefers *Murabahah* contracts because they are easy to understand theoretically and practically.

The results of research conducted by Fajar Yufrikal Azlan and Vanica Serly in 2017-2018 on the dominance of products used out of a total of 45 product items

⁵² Rasyidin, customers, *interview*, January 29, 2021.

⁵³ Zulham, Developer, *interview*, January 31, 2021.

⁵⁴ Fatin Fadhilah Hasib, "Proses Pengambilan Keputusan Nasabah Bank Syariah Dalam Memilih Produk Pembiayaan Kepemilikan Rumah (Studi Kasus Nasabah Bank Muamalat KCI Darmo Surabaya)," *JEST* 1, no. 2 (2014): 144-160.

offered by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) showed that the majority of Islamic banking in Indonesia is a *Murābahah* contract⁵⁵. This dominance showed that the IMFZ contract is not yet familiar to Islamic banking circles and the public in general, so this can hamper the IMFZ implementation process⁵⁶. Meanwhile, the IMFZ contract can finance Hajj, Umrah, Education, transportation, communication applications, real estate⁵⁷, *Sukuk*, and the People's Housing Program (PPR). There are several schematic models based on theory and practice, including:

Figure 3. IMFZ Financing Scheme for Housing⁵⁸

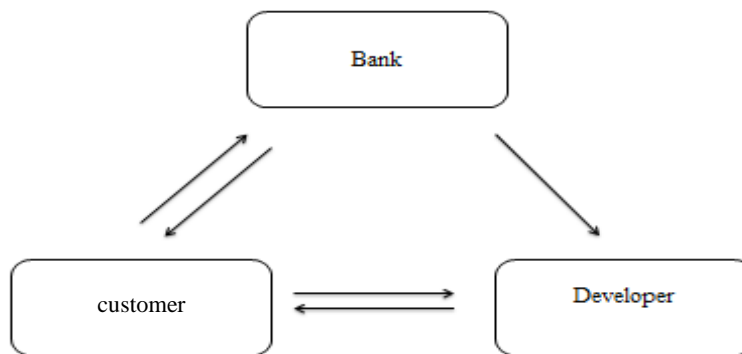


Figure 3 illustrates that the PPR-Indent financing scheme is carried out by; First, The customer entering into a rental agreement (leasing) with the Bank; secondly, there will be a rental agreement between the customer and the bank for the lease agreed with the process of transferring assets to the customer at the end of the financing; third, the Developer enters into a Parallel Istisna Agreement with the Bank to build and hand over the house; fourth, the customer approaches the developer to inspect the assets.

In addition to housing procurement, the IMFZ contract can also be used for educational services with a financing model, namely;

⁵⁵ Fajar Yufrikal Azlan and Vanica Serly, "Analisis Pengungkapan Standar Akuntansi Syariah Aaoifi Pada Bank Syariah Di Indonesia Dan Malaysia Periode Tahun 2017-2018," *Jurnal Eksplorasi Akuntansi* 1, no. 2 (2019): 1604-1616.

⁵⁶ Felix and Abubakar, "Application of Al-Ijarah Al-Maushufah Fi Al-Dzimmah for Infrastructure Project Financing in Indonesia."132

⁵⁷ Abu Ghuddah, "Practical Application of Al-Ijarah al-Mawsufah Fi al-Dhimmah (Forward Ijarah)."1-33

⁵⁸ Rininta Nurrachmi et al., "The Islamic House Financing in Malaysia. Case Study of Leasing-I Line in HSBC Amanah," *MPRA Paper*, MPRA Paper (University Library of Munich, Germany, February 2013), <https://ideas.repec.org/p/pramprapa/44607.html>.

Figure 4. IMFZ Funding Scheme for Education⁵⁹

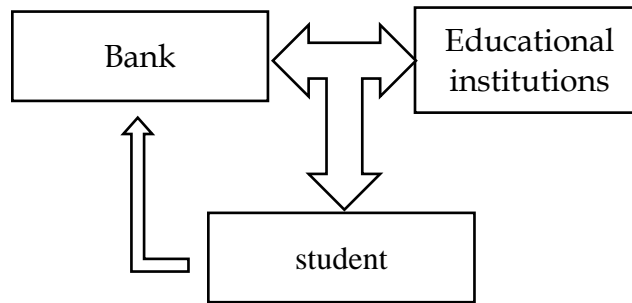


Figure 4 illustrates that it is possible to use the IMFZ contract in the education sector, and the banking sector can cooperate with educational institutions in providing educational services. Students as customers (applicants) can apply to the banking sector for educational service needs. Educational institutions should provide educational services to students, and the Bank must prepare everything educational institutions need. Bank profits are obtained from the sale and purchase of educational support needs for students.

Recognizing this scheme will make it easier for the Bank to finance the education sector and procure houses with an indenting system (PPR-Indent). Thus, with IMFZ financing, the Bank does not have to own a house as long as it meets the IMFZ requirements, namely clarity of specifications, benefits of goods, and clarity of delivery time. Then, the PPR-Indent financing contract is valid, and the customer can make monthly installment payments that have been agreed upon, even though the customer does not have a house yet. However, again, every financing agreement is inseparable from risk. The risk occurred when applying the IMFZ contract is that the customer can cancel the IMFZ contract when he does not meet the IMFZ requirements. Thus, the loss is not charged to the customer but to the Bank and Developer because the house construction process is not following the agreed contract. This can be avoided when the Bank and the Developer build a house according to mutually agreed specifications. By maintaining the IMFZ contract's legal provisions, the contract can be developed in any sector.

Juridically, the IMFZ can be applied to sharia banking because it refers to the DSN-MUI fatwa as an institution with legitimacy in supervising sharia banking

⁵⁹ Nasrul Fahmi Zaki Fuad, "Implementasi Akad Al-Ijarah Al-Maushufah Fi Al-Dzimmah Sebagai Alternatif Pembiayaan Di Lembaga Keuangan Syariah Indonesia," *Indonesian Journal of Islamic Literature and Muslim Society* 4, no. 2 (2019): 223-24.

products. Although juridically fatwas are not binding, based on Law No. 6 of 2009 on Bank Indonesia and Law Number 21 of 2008 on Sharia Banking explains that DSN-MUI and OJK have a partnership relationship in supervising Islamic banking institutions⁶⁰. This means that, in substance, DSN-MUI is responsible for supervising and providing input on sharia banking products. The elucidation of Article 25 of Law Number 21 of 2008 on Islamic Banking also emphasizes that the institution that has the authority to issue fatwas in the field of Islamic banking is the MUI or other institutions appointed by the government⁶¹.

Although IMFZ can be used in PPR Indent financing juridically, IMFZ's weakness lies in canceling the contract, which can be done if the promised house does not comply with the provisions of the IMFZ contract. This is one of the problems for developers and banks. On the other hand, the IMFZ contract is very profitable for the customer. This condition is, of course, very much following what is desired by the Sharia, that with the IMFZ, the developers cannot manipulate house construction and encourage developers to build houses following the terms of the contract. When it is examined in depth that the IMFZ contract requires the honesty of the developers and banks in building housing, the customers are not disappointed when the house has been built. The caution of developers and banks in the IMFZ contract is at stake because the contract can be canceled at any time if the developer and the bank do not comply with the house specifications contained in the IMFZ contract. Unlike *mudharabah* contracts with a fixed ratio scheme, developers and banks tend to be reluctant to take responsibility when a loss occurs in a transaction⁶². This is one of the indications why banks do not use IMFZ contracts or *Musyārahah* contracts in housing financing.

Islam, in the context of *muamalah*, is not merely profit-oriented. More than that, the concept of *ta'awun* is one of the priorities in sharia banking, meaning not to harm oneself and others following the *fiqh* rule "*la dharara walā dhirāra* (not harming self and others)." This rule conveys that the basic principle of IMFZ is not to cause

⁶⁰ Sija Putra Rulanda, Zulfi Diane Zaini, and Melisa Safitri, "Kedudukan Hukum Pengawas Bank Syariah yang Dilakukan oleh Otoritas Jasa Keuangan (OJK) dan Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI)," *Jurnal Supremasi* 10, no. 2 (2020): 36

⁶¹ Ahyar Ari Gayo and Ade Irawan Taufik, "Kedudukan Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Dalam Mendorong Perkembangan Bisnis Perbankan Syariah (Perspektif Hukum Perbankan Syariah)," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 2 (2012): 266.

⁶² Hamdani Hamdani Hamdani, "Aplikasi Akad Musyarakah Pada Kredit Pembiayaan Perumahan," *Al-Mabsut : Jurnal Studi Islam dan Sosial* 11, no. 2 (2017): 97-106.

mutual harm to developers, banks, and customers. Because most of the time, in practice, many housing finance contracts are not under sharia principles.

CONCLUSION

The presence of the *Al-Ijārah Al-Mauṣūfah Fī Al-Ẓimmah* (IMFZ) contract can replace the financing model in homeownership financing (PPR) because the DSN-MUI legally regulates the contract. Even though the IMFZ contract is relatively new, the use of this contract can be used to minimize the occurrence of *gharar*. From the consumer's point of view, the contract is more profitable for the bank, the developer, and the customer. Having understood further, the IMFZ contract does not only work on PPR. Still, it can play an even more significant role in the provision of infrastructure requiring large capital, as has been done by Middle Eastern countries. In addition, the IMFZ contract in the funding system can use funds sourced from conventional banking. Of course, this is a new thing that is different from the doctrine that sharia and conventional funds are not allowed to be mixed due to differences in management. The lack of development of IMFZ contracts in Indonesia is influenced by the tendency of Islamic banking to provide financing products. In addition, the presence of the Developer also influences the use of contracts that require financing with large profits without the Customer canceling the contract unilaterally.

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