

COMPARISON OF LEASING AND IJARAH MUNTAHIYAH BI AL-TAMLIK IN THE ISLAMIC BANKING SYSTEM

Nazala Kirana
Burhanudin Harahap
Muhammad Rustamaji

ABSTRACT

This journal aims to compare Leasing and Ijarah Muntahiyah Bi Al-Tamlik. This method uses normative. The comparison seen in Leasing with Ijarah Muntahiyah Bi Al-Tamlik is that Leasing uses a usury system which is prohibited in the Islamic/Sharia economy and banking. With this usury, leasing becomes a financing system that should be avoided for the community. If people desire to use the name leasing system while avoiding usury, one of the solutions available in Islamic banking is Ijarah Muntahiyah Bi Al-Tamlik.

Keywords: Leasing; Ijarah; Islamic Banking

INTRODUCTION

Banking institutions are one of the aspects regulated in Islamic sharia, namely regarding the muammalah section which is a part that regulates human relations. The regulation of banking institutions in Islamic sharia is based on the rule in ushul fiqh which states that *mā lā yatimm al-wajib illa bihi fa huwa* is obligatory ie. something that must exist to perfect the obligatory, then it must be held. In modern times, economic activity would not be perfect if there were no banking institutions, then these institutions became mandatory to hold (Tehuayo, 2018).

In banking, it is often carried out an activity related to the matter of renting rent. That leasing is described as financial transactions involving the provision of capital goods, both in a lease for the short-term use of the tenants in exchange for ongoing payments, both in an option-free lease (non-finance lease) and an option-filled lease (Operating Lease). A leasing purchase is a purchase made of an item in which the payment of the price of the goods is made in installments by the stages of payment that have been agreed upon by both parties (Nazaruddin, 2022).

Leasing is an economic activity that has not been explicitly ruled either in the Qur'an, the hadith of the Prophet Saw, or the results of the *ijtihād* of previous scholars. Considering it from the perspective of Islamic law, then Leasing is an *ijtihād* problem, that is, an issue that must be discussed seriously and studied carefully using the method, namely devote potential and ability to obtain appropriate legal provisions (Zakki, 2013).

If in conventional banking it is known as leasing, in Islamic banking there is a new form of contract from Islamic financial institutions that exist today the financing contract "*Ijarah Muntahiyah Bi Al-Tamlik* (IMBT)". IMBT, also known as *ijarah*, is the practice of combining renting with purchases and sales (*murabahah*) or grants at the conclusion of the lease term. From this contract, there are two forms of contractual protection, namely lease agreements, and grants. The merger of the contract was an agreement between two parties who carried out the *muammalah* (Munif, 2017).

Islamic Sharia is a guide for human life in the world and the Hereafter does not escape business problems like this. In worldly matters (*muamalat*), Islam gives leeway to do and develop it. This becomes a disaster if it does not violate the principles of Islamic law (Husen, 2020). In Islamic sharia principles, there is no usury in any case. The existence of leasing in Islamic banking has caused an option for the public, especially those who prefer to use banking that uses the Sharia system.

METHOD

The normative method is the one that is employed. This method is applied in a literary manner, and the secondary sources for this debate are the library items that serve as its foundation. Leasing and *ijarah* will be discussed along with the topic at hand. The manner of approach is a normative approach, where the approach makes use of Law Number 21 of 2008 concerning Islamic Banking and Minister of Finance Regulation Number 84 / PMK.012 / 2006.

FINDINGS AND DISCUSSION

In general, a lease can be defined as an agreement made between a leasing company as a provider of goods and a customer with the right of use by the customer in exchange for rent payments within the agreed agreement time (Wahyuni, Fasa, & Suharto, 2022). According to the Finance Minister's Regulation No. 84/PMK.012/2006 Concerning Financing Companies, leasing is defined as a financing operation in the form of providing capital goods by leasing with alternative rights (finance lease) or leasing without option rights (able to operate lease) for a specific period of time based on periodic payments. A lease is therefore an agreement or contract. Capital goods are the subject of the lease, there is also a chance for the lessee to buy goods at a cost depending on the resale value (Nasution & Oktaviana, 2021).

There are several definitions of leasing, namely: 1). "An agreement on the provision of capital goods used for a certain time". 2). "An agreement in which the lessor provides the goods with the right of use by the lessee in exchange for the payment of rent for a certain time". 3). " A contract that allows the lessee to rent a specific category of goods straight from the seller or real estate agent. It is drafted between the lessor and the lessee. The lessor continues to have the legal right to ownership of the items. For a specified amount of time, the lessee shall pay rent in exchange to obtain the use of the property". 4). "Capital goods may be financed by a lease that gives the lessee access to an asset for a predetermined amount of time in exchange for recurring payments, either a lease with option rights (a financing lease) or a lease with the alternative rights (an operating lease). (For further information on leasing activities, see Decree of a Minister of Finance Number 1169/KMK.01/1991, November 21, 1991.)" (Nahrowi, 2013).

In principle, in the leasing financing system, there are parties, namely: 1) Lessor, which is a party that gives parties in need of money financing through leasing. In this instance, the Lessor could be a "multi-finance" financial business." but it can also be a company that is specialized in leasing. 2) This Lessee is a party who requires capital goods, which are charged by the Lessor and allocated to the Lessee. 3) Suppliers are parties who provide capital goods that are objects. The leasing financing agreement incorporates the principles of contract freedom and consensual is used as the basis for guidelines in formulating the content of the leasing financing agreement that will be binding on the parties within the implementation period of the leasing financing agreement (Noor, Masnun, & Putri, 2021).

Comparing leasing to other forms of finance, there are a number of benefits, including 1) Saving capital, with the existence of a financing system from leasing, the lessee can get funds to buy a capital item of up to 100% of the price of the goods so that the lessee can take advantage of the existing capital for other purposes. 2) Flexibility is the main characteristic of the advantages of leasing compared to credit from banks, both are flexible in terms of contract structure, the number of rental payments, the term of payment, and the residual value. 3) Simple Documentation Leasing usually uses standard documentation. 4) Large-scale project financing. There is a reluctance to bear the risk of investment in the financing, which is often a problem among fund-raising, typically handled by leasing businesses, provided that there is a full, dependable guarantee and easy access to the funded items in the event of a mistake. 5) How to obtain capital goods is facilitated, reducing the risk of inflation and protecting from the risk of obsolescence or technological advances. The disadvantage of leasing itself is that Leasing is unprofitable in terms of excess cash, leasing removes the owner's pride, leasing may require greater costs than in other ways, and may result in a loss of the residual value of capital goods (Sumadi, 2018).

Leasing itself uses a repayment system. Where in leasing, the lessor will buy the goods needed by the lessee. The purchase is said to be made by the lessor with a full initiation of the capital goods from the supplier. Capital items are then delivered to the lessee following the full purchase. The lessor should get payment from the lessee for the cost of the assets. The amount of installments or the length of the installation time is following the agreement that has been stated in the leasing contract. If you look at the installment scheme, then this is similar to bank credit, with capital goods as collateral. The similarity between leasing and bank credit naturally gives rise to usury. In Islamic law, usury is one of the things that is prohibited. Therefore, Islamic banks use the *ijarah* system.

Linguistically, *Al-ajru* is the root of the term *al-ijarah*, meaning signifies change or wage. Meanwhile, according to the term in the Big Indonesian Dictionary (KBBI), renting (*Ijarah*) means the use of something with the payment of money (Adriani & Agus Putra, 2022). Lafadz *Ijarah* is an etymological variant of *Fi'il Ajara* that comes after *Wazan Faala Yaf'ilu*, which means "al-jaza' al al-amal" (recompense, reward, or reward of a work). According to the DSN-MUI Fatwa, an agreement for the transfer of the right of use (benefit) over a specific good or service within a set period of time through the payment of rent or wages is considered to be an *ijarah* even though the ownership of the commodities themselves is not included (Saifuddin, 2019).

Sharia is based on the rent principle, or it gives the lessee the option of transferring ownership of the capital items they have leased from the lessor (provider of capital goods) to the lessee (tenant) known as *Ijarah wa Iqtina*, or also known as *Ijarah Muntahiyah bi al-Tamlik* (Fadhillah, 2019). According to Law No. 21 of 2008's Article 19 Paragraph 1 Letter F, which outlines limitations on the commercial activity of Islamic Banks, including: "Distributing financing for the rental of *Ijarah muntahiyah bi al-tamlik* or other lease arrangements that do not conflict with sharia law may be used to supply items to customers, whether they are moving or stationary (Mulyanto, 2019).

Prior to the *Ijarah Al Muntahiyah Bi Al-Tamlik* agreement, there is a guarantee of transfer of quasi property in the *Ijarah* Contract in its implementation. This allows for the revocation of goods if at any time there is an inability to pay the lease before the end of the period because it is considered unable to pay, However, the lessor will transfer ownership to the lessee if the rent payment is made in full. *Akad ijarah al muntahiyah bi al-tamlik* is a fusion of two hybrid contract types at once, namely renting by purchasing and selling or renting with grants. It is a mixture of lease and at the end of the lease, there may be a sale and purchase or grant. (Mudzakir & Graha, 2015).

Leasing and *aqad ijarah vomitayah bi at-tamlik* sourced from *aqad ijarah* transactions can be distinguished in several aspects, namely:

- 1) In terms of the object of the transaction leased in leasing only applies to the rental of goods only, is limited to the benefits of goods only, and does not apply to labor benefits. While the objects leased in the *ijarah* can be goods and services or labor. When *ijarah* is used to acquire the benefit of objects, it is referred to as renting, whereas salaries are used to obtain the benefit of labor or services. The advantages of labor and the benefits of products are the items leased in the *ijarah*. *Ijarah* therefore has a broader reach than leasing.

- 2) In terms of transaction payment methods, leasing has one payment method, specifically, those that are not subject to performance requirements or whose payment is not based on how well the leased object performs. *Ijarah* payments can be categorized into two groups: those whose payments are based on how well the leased object performs, and those whose payments are not based on how well the leased object performs (not contingent to performance). Rent or salary refers to a robbery whose payment is contingent upon the performance of the leased item. The *ijarah* that is paid regardless of how well the rented object performs is known as a *ju'alah*, or success fee.
- 3) On the side of transfer of ownership (transfer of title), in leasing, two types are known, specifically, operating leases, in which ownership is not shifted at the beginning or conclusion of the lease term, and financial leases, in which ownership is transferred at the conclusion of the lease. *Ijarah* is comparable to an operating lease in that there is no transfer of title at the beginning or conclusion of the lease period, even though the client may purchase the rented items at that time (Azwarfajri & Najib, 2021).

The following table provides an overview of the differences and similarities between *ijarah* and leasing (Mukaromah & Anam, 2021).

Table 1 *Ijarah* and Leasing: Differences and similarities

Looting	Leasing
Object: the benefits of goods and services	Object: the benefits of goods only
Payment Procedures: a. Performance-based b. Non-performance-based	Payment Options: Not Dependent on Performance
Title Transfer: a. <i>Ijarah</i> : No Title Transfer; b. IMBT: Commitment to Purchase or Loan at the Beginning of Time frame	Title transfer: a. Operating lease: no title transfer b. Financial lease: towards the end of the period, a choice to purchase or not purchase
Because the lease agreement is <i>gharar</i> , this type of leasing is prohibited (between rent and buy).	Lease purchase/lease purchase
Sale and leaseback	Sale and leaseback

CONCLUSION

The conclusions that can be drawn from the discussion are i) leasing is one of the financing systems that have the aim of being able to make it easier for the public to get capital goods without must buy it directly but purchased in installments. ii) *Ijarah muntahiyah bi al-tamlik* is another term for the handover of a possession at a predetermined time in exchange for rent. iii) leasing itself uses the usury system which is forbidden in Islam and it is as best as it is avoided. Islamic banking has provided another option that has similarities in the leasing system, namely with *ijarah muntahiyah bi al-tamlik*. With this system, it will avoid usury which is forbidden in Islam.

REFERENCES

- Adriani, D. P., & Agus Putra, P. A. (2022). Tinjauan Hukum Islam terhadap Biaya Pemungutan Sewa Lapak Pasar Tradisional X. *Jurnal Riset Ekonomi Syariah*, 120-126.
- Azwarfajri, & Najib, A. (2021). Praktik Leasing di Indonesia dalam Tinjauan Hukum Islam. *Istidlal: Jurnal Ekonomi dan Hukum Islam*, 129-142.
- Fadhillah, N. (2019). MEKANISME LEASING MENURUT HUKUM ISLAM SERTA PERBANDINGANNYA. *QIEMA (Qomaruddin Islamic Economy Magazine)*, 135-149.
- Husen, F. (2020). Leasing dalam Perspektif Fatwa Dewan Pengawas Syariah Majelis Ulama Indonesia. *Lisyabab Jurnal Studi Islam dan Sosial*, 1-10.
- Mudzakkir, M. F., & Graha, A. N. (2015). Tinjauan Syariah Tentang Penerapan Akad *Ijarah Al Muntahiyah Bi Al-Tamlik* Di Perusahaan Leasing Syariah. *An-Nisbah: Jurnal Ekonomi Syariah*.
- Mukaromah, L. A., & Anam, K. (2021). Komparasi *Ijarah* Dan Sewa Guna Usaha (Leasing) Dalam Pandangan Hukum Ekonomi Syariah. *Hukum Islam Nusantara*, 51-64.
- Mulyanto, E. (2019). PERJANJIAN LEASING DAN IJARAH SUATU KAJIAN KOMPARATIF KITAB UNDANG-UNDANG HUKUM PERDATA DAN HUKUM ISLAM. *Surya Kencana Satu Dinamika Masalah Hukum Dan Keadilan*.
- Munif, N. A. (2017). Analisis Akad *Ijarah Muntahiyabittamlik* Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia. *An-Nisbah: Jurnal Ekonomi Syariah*, 255-276.
- Nahrowi. (2013). Permasalahan Hukum Pembiayaan Leasing Di Indonesia. *Cita Hukum*, 25-38.
- Nasution, A. I., & Oktaviana, W. (2021). Leasing Transaction In The Perspective Of Islamic Law. *Naratas*, 28-35.
- Nazaruddin, N. (2022). Analisa Riba Dalam Praktik Leasing Kendaraan. *I-BEST: Islamic Banking & Economic Law Studies*, 36-47.

- Noor, T., Masnun, & Putri, K. G. (2021). Aspek Hukum Perjanjian Pembiayaan Sewa Guna Usaha (LEASING). *Jurnal Hukum dan Kemasyarakatan Al-Hikmah*, 428-446.
- Saifuddin. (2019). Leasing Dalam Lembaga Keuangan Syari'ah. *Jurnal Hukum Bisnis Islam*, 245-266.
- Saifuddin. (2019). Leasing Dalam Lembaga Keuangan Syari'ah. *Jurnal Hukum Bisnis Islam*, 245-266.
- Sumadi. (2018). Menakar Transaksi Leasing dalam Tinjauan Hukum Ekonomi Syariah. *Jurnal Ilmiah Ekonomi Islam*, 126-135.
- Tehuayo, R. (2018). SEWA MENYEWA (IJARAH) DALAM SISTEM PERBANKAN SYARIAH. *Tahkim*, 84-94.
- Wahyuni, I. M., Fasa, M. I., & Suharto. (2022). Perbandingan Penerapan Akad, Denda dan Pengawasan Terhadap Leasing Syariah dan Konvensional pada PT. Adira Finance. *Az Zarfqa': Jurnal Hukum Bisnis Islam*.
- Zakki, M. I. (2013). Transaksi Leasing Di Indonesia Dalam Perspektif Hukum Islam. *Epistemé: Jurnal Pengembangan Ilmu Keislaman*, 175-210.

Nazala Kirana

Master of Notary Student at Faculty of Law,
Sebelas Maret University, Surakarta, Central Java, Indonesia (57127)
Email: nazalakirana30@gmail.com

Burhanudin Harahap

Lecturer of the Faculty of Law,
Sebelas Maret University, Surakarta, Central Java, Indonesia (57127)
Email: burhanudin60@gmail.com

Muhammad Rustamaji

Lecturer of the Faculty of Law,
Sebelas Maret University, Surakarta, Central Java, Indonesia (57127)
Email: hatchi_ajie@yahoo.com