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Analysis of the Wa'd Ijarah Muntahiyah Bi al-Tamlik (IMBT) Contract From the Perspective of Islamic Law and Indonesian Civil Law

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Abstract

Akad Ijarah Muntahiyah Bi al-Tamlik (IMBT) is a lease agreement that ends with the transfer of property rights by way of sale and purchase or grants at the end of the lease period. The ijarah contract and the sale and purchase contract are connected with a promise. Based on the DSN-MUI Fatwa No.27/DSN-MUI/III/2002 concerning IMBT, the promise (wa'd) is non-binding, thus causing legal uncertainty for LKS and customers. Then the DSN-MUI issued a Fatwa No.85/DSN-MUI/XII/2012. Then the promise (wa'd) in the IMBT contract became binding (mulzim). Of course, this has an impact on the occurrence of ta'alluq risk and has the potential to meet conditional buying and selling. So many questions, how is an IMBT contract law in the perspective of Islamic Law and Civil Law in Indonesia. This research uses normative juridical methods with a statutory and conceptual approach. The results of the analysis show that the legal status of fulfilling promises (wa'd) in every Sharia transaction and business is binding (mulzim) and has caused many benefits for the Islamic economic community, such as legal certainty and guaranteed contract continuity, especially in the IMBT contract. Viewed from the point of view of Indonesian Civil Law, IMBT contracts or contracts are included in non-named agreements. This is contained in Article 1319, which arises from the principle of freedom of contract (Article 1338), and IMBT contracts also meet the requirements of valid agreements as contained in Article 1320 of the Civil Code and the legal consequences caused by IMBT contracts, namely rights and obligations.

Keywords: *ijarah muntahiyah bi al-tamlik; islamic law; civil law*

A. INTRODUCTION

The application of fiqh muamalah and Islamic business ethics in the form of sharia economics and finance today has grown rapidly and is universally accepted and adopted not only by Islamic countries in the Middle East region, but also by countries in Asia, Europe, and the United States (Azwar Iskandar & Khaerul Aqbar, 2019). This is supported by a variety of sharia-based financial instruments and legal developments

in the field of muamalat itself, which experience changes and innovations due to the complexity of human needs now, which is increasing both in terms of basic, secondary, and tertiary needs. The current situation requires a deeper study of the law and legal innovations to continue, despite the fact that the practice of muamalah is rarely used and is only mentioned in passing in the main sources of Islamic law (Al-Qur'an and Hadith).

Banks, as institutions that operate on the basis of public trust, have strategic objectives and positions in national development (Daffa Muhammad, Erina Azzahra, 2017). The increasing growth of Islamic banking in Indonesia has resulted in the expansion of contract products available in Islamic banking. Not content with just improving what has been done in the past, Islamic banking scholars and practitioners are experimenting with examining various new contract models. The various new contract models that are being developed are not only a means of expanding Islamic banking but also a means to overcome Islamic banking problems related to economic growth. One of the aspects contained in muamalah that experienced legal developments, namely the Ijarah contract, An Ijarah is a contract for exchanging the benefits of an object or service for wages or rental fees.

The practice of Ijarah itself was carried out at the time of the Prophet Muhammad in various ways and objects. This is contained in various Hadith. Along with the times, the practice of Ijarah has developed, one of which is often known as Ijarah Muntahiya Bi al-Tamlik (IMBT). The IMBT contract is a development of the Ijarah contract in the form of a lease contract and ends with the transfer of ownership of the object of the lease from the owner to the lessee (Andi, 2019). The guidelines used to implement the IMBT contract are based on the DSN-MUI Fatwa No.27/DSN-MUI/III/2002 regarding Ijarah Muntahiya Bi al-Tamlik and PSAK 107 related to Ijarah. However, in the second provision of the DSN-MUI Fatwa No.27/DSN-MUI/III/2002, it turns out that the agreement to transfer property rights that will be carried out when the Ijarah period ends uses *wa'd* with *wa'd* provisions which have legal implications in the IMBT contract, may not be binding between the two parties (DSN MUI, 2002). This is also contained in PSAK 107, which confirms that the contract used for the transfer of ownership rights contained in the IMBT contract is not binding. Of course, this raises concerns for the parties who will implement the IMBT contract.

Wa'd is one of the instruments used in various sharia contracts. To meet the needs of consumers, Islamic financial institutions (LKS), both banking and non-banking, offer elements of *wa'd* contracts to be used in various forms of related sharia contracts, especially in *Murakkab* (multi-contract) contracts (Luhur, 2020). Regardless of its origins in Islamic law, the contract has been adapted to modern law, especially in muamalah law, which regulates the human field in the civil sector. Meanwhile, in a

narrow sense, muamalah law regulates life between humans and humans in the civil field (Gemala Dewi, 2018). The contract has the nature of permissibility *(jaiz). This* is intended so that every human being is given the right to freedom in determining for himself what he wants to include in the contract.

While the agreement in the Civil Code adheres to the principle of contract freedom, this is governed by Civil Code Article 1338. According to this principle, the parties who make or make an agreement are allowed to make and compose an agreement or agreement that gives birth to anything, as long as the achievements made are not contrary to the law. Of course, this is one of the coherences between Islamic Law and Civil Law in Indonesia, and of course, the two legal foundations can be used simultaneously in Indonesia in making an agreement, especially in any case. So from these problems, there are things that need to be reviewed in depth related to the *wa'd* transfer of ownership in the IMBT contract from the perspective of Islamic law and Indonesian Civil Law. Considering that Islamic law is a sharia principle that must be adhered to in every LKS financing product, while the Civil Code itself is the basis for making every agreement between LKS and its customers, In the DSN-MUI Fatwa, it is stated that the party entering into the IMBT contract must first complete the Ijarah contract. In other words, the transfer of ownership of the leased object can only be carried out when the Ijarah is completed and then a new contract is made either with a sale or purchase contract or a grant later. The agreement to carry out the IMBT contract must be agreed upon when the Ijarah contract has been signed. Then, as stated in the DSN-MUI Fatwa regarding IMBT, it is explained that the promise of transfer of ownership, which was agreed at the beginning of the Ijarah contract, is not legally binding. This affirmation in the DSN-MUI Fatwa results in the transfer of ownership that has been agreed upon in an agreement, which is only optional (non-binding) and does not have legal implications.

In the research on the IMBT contract, there is a previous study written by Luluk Farida and Achmad Zaky, who wrote about "Implications of the DSN-MUI Fatwa No.85/DSN-MUI/XII/2012 on Ijarah Muntahiya Bi al-Tamlik Transactions" (Farida, 2016). The results of the analysis are the implications of the DSN-MUI Fatwa No.85/DSN-MUI/XII/2012 that are really needed by transactions using *wa'd*, especially transactions using IMBT contracts. This is because it is able to bring the benefits of legal certainty and guarantee the continuity of the contract between the two parties who make the agreement. In the second study, written by Daffa Muhammad, Erina Azzahra, and Melani Puspitasari, who wrote about "Analysis of the Ijarah Muntahiya Bi al-Tamlik (IMBT) Agreement in the Perspective of Islamic Law and Positive Law in Indonesia" (Daffa Muhammad, Erina Azzahra, 2017). The results of the analysis of the IMBT contract are said to have complied with the sharia principles,

pillars, and conditions of the contract. Many contemporary economists argue that the IMBT contract law is permissible as long as it does not violate sharia provisions. Whereas in Positive Indonesian Law it is said that the IMBT contract is included in an unnamed agreement in Article 1319 of the Civil Code arising from the principle of freedom of contract contained in Article 1338 and the IMBT contract also meets the requirements of a valid agreement, this is contained in Article 1320 as an element agreement. Meanwhile, in the third study written by Mujhid Budi Luhur in his thesis on "Legal Analysis of Wa'ad IMBT (Ijarah Muntahiyah Bi al-Tamlik) in the Fatwa of the DSN MUI (National Syari'ah Council-Indonesian Ulema Council) Based on the Fiqhiyyah Rules of *Irtikaabu Akhaffi al-Dhararain*" (Luhur, 2020). The results of the analysis show that the binding *wa'd* in the IMBT contract is an appropriate policy to ensure the IMBT contract takes place, and in the implementation of the IMBT contract in the presence of *wa'd* it must be limited by several conditions. This is done so as not to manipulate the law. And the binding word in the IMBT contract must be carried out by the parties, and for those who do not implement it, they can be forced based on existing law.

Of course, there are differences from several previous studies with this research. The thing that distinguishes it in this study is the analysis of *wa'd* in the IMBT contract after the issuance of the DSN-MUI Fatwa No. 85/DSN-MUI/XII/2012, which confirms the *wa'd* that has been agreed upon by the party who promised to bind *(mulzim)* and must be fulfilled. This has the impact of ta'alluq, so that it has the potential to have an impact on being fulfilled as a conditional sale and purchase and what is the perspective in Indonesian Positive Law itself. This paper will start by analyzing the *wa'd* in the IMBT contract, hal This will start by analyzing the related regulations and how *wa'd* exists in the IMBT contract and is also seen in the Civil Code. This is done in order to get a concept of a *wa'd* IMBT contract in a good muamalah and in harmony with *maqashid ash-shari'ah*, namely to achieve happiness in this world and the hereafter through a good and honorable life order (*hayyah thayyibah*). Based on this background, the writer is interested in studying further the *wa'd* concept contained in the IMBT contract with the title *"Analysis of the Wa'd Ijarah Muntahiyah Bi al-Tamlik (IMBT) Agreement in the Perspective of Islamic Law and the Civil Code."*

B. METHOD

This research uses a normative juridical research method, namely the law is conceptualized as what is written in the legislation *(law in books)* or the law is conceptualized as the rules or norms that become the reference for human behavior that is considered appropriate and appropriate. The materials used in normative juridical research are based on primary, secondary, and tertiary legal materials tersier

(Muhaimin, 2020). The legal material obtained will be analyzed using an interpretation technique, which is an effort that basically explains, explains, and confirms both in the sense of expanding or limiting the existing legal understanding. This is done in order to solve the problems at hand.

The data collection in this study used a statutory approach and the concepts and techniques of data collection were used in descriptive qualitative research so that the data analysis carried out put more emphasis on discussing the data that could be obtained. Furthermore, the researcher draws conclusions from the results of the analysis that have been combined into a complete and comprehensive sentence combination (Zed, 2004).

C. DISCUSSION

1. The Urgency of *Wa'd* in the Ijarah Muntahiya Bi Al-Tamlik Contract

One of the objectives of the IMBT contract is the transfer of ownership rights from the owner of the lease object from the owner of the lease object to the tenant when the ijarah contract ends using a sale and purchase agreement or grant as agreed by the parties. If the options contained in the IMBT contract are not binding, what happens to the IMBT contract loses its meaning and purpose and can even cause tyranny (Zaky, 2018). So the role of *wa'd* to ensure the continuity of the contract is quite important. With the existence of *wa'd* here, it is very useful to bind both parties who make the contract to be able to carry out the contract according to the rules that have been set. However, the fate of *Wa'd* is still unknown at this time. This is due to the lack of rules or procedures that must be followed in order for Wa'd's fate to be fulfilled. As stated in the DSN-MUI Fatwa No.27/DSN-MUI/III/2002 regarding the Ijarah Muntahiya Bi Al-Tamlik (IMBT) contract, which states that the *wa'd* contained in it may not be binding on both parties to the agreement. If the promise is to be carried out, then there must be a transfer of ownership contract which is carried out after the lease contract period has been completed.

The Ijarah Muntahiya Bi Al-Tamlik (IMBT) contract is a lease agreement in which at the end of the lease there is a sale and purchase contract or a grant as agreed between the two parties at the beginning when the Ijarah contract took place (Adiwarman Karim, 2008). Furthermore, so that the two contracts in the transaction in the IMBT contract run as expected, DSN-MUI uses or requires that there is *wa'd* in the IMBT contract as a binder and has been agreed upon when the Ijarah contract period begins.

The definition of *wa'd*, or promise, from the perspective of the majority of Syafi'iyyah, Hanabilah, and some Malikiyah scholars is *mulzim*, or religiously

binding (*diyanah*), but not legally binding (*qadha*). The argument that underlies them is that fulfilling promises is a form of ihsan (doing good) and *tabarru'* from *mu'jir* to *musta'jir*, both of which are voluntary and without coercion (Agus Alwi, 2020). As contained in Surah al-Taubah verse 91, namely:

...مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ ۚ وَاللَّهُ غَفُورٌ رَحِيمٌ

Meaning: *"There is no way at all to blame those who do good. And Allah is forgiving, Most Merciful."*

It turned out that the non-binding wa'd provision gave rise to multiple interpretations in the community itself, especially for economic actors who used IMBT contracts to carry out economic transactions. *First,* non-binding can be interpreted as not being bound to make a promise to transfer ownership rights to the IMBT object at the end of the Ijarah period. Of course, this is not in line with the principle of the IMBT contract. Second, it is not bound to carry out the promises that have been made and agreed upon in the IMBT contract. This kind of interpretation should not occur if the legal consequences in the agreement that have been made and agreed upon are binding and must be obeyed. Of course, with the force of law, it is a condition set by the *syara'* so that a contract has a legal certainty to be carried out. The purpose of the IMBT contract is the transfer of ownership rights from the owner of the leased object to the lessee when the Ijarah contract ends, using a sale and purchase or a grant as agreed upon by the two parties when the Ijarah contract is executed. If there is no *wa'd* in the IMBT contract, the IMBT contract loses its meaning and purpose. It also has the potential to cause injustice. To avoid this, DSN-MUI issued Fatwa No. 85/DSN-MUI/XII/2012 which emphasized that *wa'd* must be carried out by the party who promised; even the party who made the promise may be forced to carry out the promise. This is based on the sound of fatwa No.85/DSN-MUI/XII/2012 on the second provision, which reads, *"a promise (wa'd) in sharia financial and business transactions is mulzim and must be fulfilled (done) by wa'id by following the provisions of the law."*

By considering the severity of Allah's punishment for someone who does not keep his promise, the DSN-MUI has attempted to legally confirm and provide regulations and force someone to carry out the agreement as stated in Fatwa No. 85/DSN-MUI/XII/2012 concerning Promises (*Wa'd*) In Sharia Financial and Business Transactions and this DSN-MUI Fatwa, it requires legal certainty and the implications arising from the Fatwa raise several benefits and risks. The

benefits are legal certainty for the promises made by two parties to carry out the contents of the agreement that has been made and the continuity of the contract is guaranteed by the existence of legal guidelines that force the *wa'd* contained in the IMBT contract to be carried out as Islamic demands regarding the obligation to carry out the promise.

While the risk in the IMBT contract could violate the sharia rules that are applied, the sharia principles are at risk of being ignored. The DSN-MUI Fatwa No.27/DSN-MUI/III/2002 states that the transfer of ownership of the Ijarah object owner and the lessee must enter into a new contract, namely using a sale and purchase or a grant. In the IMBT contract, the sale and purchase contract will be executed when the Ijarah contract has expired and the sale and purchase option contained in the IMBT contract will occur when there is a willingness from the lessee to make a purchase on the object of the agreement. This is in line with the provisions contained in PSAK No. 107, which means that the sale and purchase contract contained in the IMBT contract stands alone and is carried out at different times. Whereas in Article 324 paragraph (2) KHES states that *"the transfer of ownership contract can only be carried out after the Ijarah Muntahiya Bi Al-Tamlik period ends"* (Ri, 2011). It can be concluded that the sale and purchase contracts, apart from the IMBT contract, are not a unit that can be separated from each other, even though the form of the contract is separate, but remain a single entity contained in the IMBT contract. However, when the DSN-MUI Fatwa was issued No.85/DSN-MUI/XII/2012, which stated that the *wa'd* had been agreed upon by both parties who promised to bind *(mulzim)* and were obliged to fulfill it, this caused the IMBT contract to become doubtful because of the risk of *ta'alluq,* namely the dependence of two contracts with the intention that the sale and purchase contract is the main contract that is desired and has the potential to fulfill conditional buying and selling. This is because it requires payments that are not given in cash, so the party who wants to make an agreement uses a lease contract so that the main contract can be carried out. Thus, the DSN-MUI Fatwa No.85/DSN-MUI/XII/2012 concerning the promise *(wa'd)* risks not being in line with the initial regulations of the IMBT contract in the DSN-MUI Fatwa No.27/DSN-MUI/III/2002, which is more beneficial.

In several matters contained in this contract, the substance is a transfer of beneficial ownership of an item or asset, and in the implementation of the contract, the two must be separated. Like musyarakah muntahiyah bi al-tamlik, what must be done first is the musyarakah contract, then the sale and purchase contract or other contracts that are in accordance with sharia principles (Zaky, 2018).

2. Analysis of the Ijarah Muntahiya Bi Al-Tamlik Agreement from the Perspective of Islamic Law

   a. Analysis of the Ijarah Muntahiya Bi Al-Tamlik Contract From the Principles of the Akad

   What is meant by "principle" is one of the fundamental statements or general truths that can be used as a guide in thinking and action, while what is meant by "principle" is the basis or something that is the foundation of thinking or expressing opinions (Gemala Dewi, 2018). Tawhid or Divine Principle; Permissibility or Freedom Principle; Equality and Equality Principle; Justice Principle; Voluntary Principle; Written Principle are the contract principles that must be fulfilled in the IMBT contract related to Islamic engagement law.

   First, the principle of monotheism or divine is that every human act, regardless of his behavior, will not escape the provisions set by Allah, as contained in the QS. Al-Hadid verse 4, which means *"He is with you wherever you are, and Allah is All-Seeing of what you do."* This makes every action, especially in the agreement, inseparable from the values of monotheism, so with this, a human being has responsibility to the two parties who make the agreement and has responsibility to Allah SWT, and as a result of the application of this principle, humans are not arbitrary. It is authority to make an agreement because it will get a worthy reward from Allah SWT (Muayyad, 2015).

   Second, the principle of permissibility *(Mabda' al-Ibahah)* is this principle contained in the rules of fiqhiyah, which means *"Basically all forms of muamalat are permissible until there is a proposition that forbids it"*. The purpose of this rule shows that everything is permissible or permissible to do, but this permissibility is limited until there is a proposition that prohibits it, meaning that Islam provides broad opportunities for interested parties to develop new forms and forms of transactions that are in line with current developments and developments according to community needs. This principle is also intended to avoid all forms of coercion *(ikrah)*, pressure, and fraud from any party. So that the parties who will enter into the contract have the freedom to enter into an agreement, both regarding the object of the agreement, its terms, and including settlement in the event of a dispute in the future. The freedom to determine these conditions is permissible as long as they do not conflict with the provisions stipulated by Islamic law (Manan, 2016).

Third, the principle of equality and equality, namely, this principle provides the basis that both parties who enter into an agreement or contract have the same position with one another. This principle is important to be implemented by the parties who contract to an agreement because it is very closely related to the determination of the rights and obligations that must be carried out by both parties to fulfill the achievements in the contract they made. The basis of this principle is based on the Qur'an's surah al-Hujarat (49) verse 13, which means: *"O mankind, indeed we created you from a male and a female and made you into nations and tribes. so that you get to know each other. Verily, the most honorable of you in the sight of Allah is the most pious of you. "Verily, Allah is All-Knowing, All-Knowing."*

This principle shows that among human beings, each has advantages and disadvantages. For this reason, one human being and another should complement each other's shortcomings and complement each other's shortcomings with the advantages they have. Therefore, all humans have the same opportunity to enter into an agreement or contract. In carrying out an agreement, both parties are entitled and free to determine their respective rights and obligations based on this principle of equality and equality, and there should be no injustice committed by a party in making an agreement or contract.

Fourth, the principle of justice, namely in the implementation of this principle in the agreement/contract, is required to apply correctly in expressing the will and circumstances, fulfill mutually agreed agreements, fulfill all rights and obligations, and not oppress each other, and be carried out in a balanced manner without harming the other party involved. involved in the agreement/contract. In the Qur'an Surah Al-Hadid (57): 25, it is stated that Allah SWT says, which means, *"Indeed, We have sent Our messengers with clear evidence and We have sent down with them the Book and the Balance." justice) so that humans can carry out justice.* In addition, it is also mentioned in the Qur'an sura Al-A'raf (7): 29, which means *"My Lord commands to be fair."* Both parties who will enter into an agreement or contract are required to apply correctly in expressing their will and circumstances, fulfill the agreement they have made, and fulfill all their obligations (Muayyad, 2015).

Fifth, the principle of willingness, namely an abstract inner attitude *(amar khafiy)*, to show that in an agreement/contract a willingness has been achieved, indicators are needed to reflect it, and the indicator in question is the formulation *(shikt) of* consent. Therefore, the formulation of the Ijab

Kabul must be made clear and in detail in such a way that it can adequately translate that the parties are certain to have reached a condition of willingness when executing a contract. Willingness here can be interpreted as a willingness to do a form of muamalat, as well as a willingness in the sense of a willingness to accept and/or hand over assets as the object of the engagement (Munib, 2018).

Sixth, the written principle is another principle that must be carried out in carrying out an agreement or contract, and this is a must to do in writing so that problems do not occur in the future. This provision is based on the Qur'an surah Al-Baqarah (2) verse 282-283, which means: *"O you who believe, if you do not muamalah in cash for a specified time, you should write it down. And a writer among you wrote it right. And let the writer not be reluctant to write it as Allah has taught it, so let him write, and let him fear Allah, his Lord, and let him not reduce anything from his debt. If the debtor is a person who is weak in mind or weak in condition, or if he himself is not able to dictate, then his guardian should be honest. And bear witness with two of your colleagues.If there are not two men, then (permissible) a man and two women from the witnesses you are pleased with, so that if one forgets, the other reminds him. Do not allow witnesses to be reluctant to testify when called, and do not tire of writing down the debt, no matter how small or large, until the time limit for paying it has passed.That is more just in the sight of Allah, more able to strengthen your testimony and closer to not causing your doubts. (write the muamalah) unless the muamalah is carried out in cash... "*

The verse implies that all agreements/contracts made by the parties must be written down, especially if the contract is not in cash. This is important to implement so that the contract is in the good of all parties who do it. In order for this to be carried out properly, the agreement/contract must be written in detail about the nature of the engagement between them. And in the IMBT contract, these principles must be fulfilled so that it is carried out properly as it relates to Islamic engagement law.

b. Analysis of the Ijarah Muntahiya Bi Al-Tamlik Contract From the Pillars and Conditions

The Rukun Contract is an absolute element that must exist in a matter, either in the form of events or actions (Gemala Dewi, 2018). The Pillars and Conditions of the Ijarah Muntahiya Bittamlik Contract, namely:

1) Akad's Pillars

a) Tenants *(musta'jir)* are parties who rent the object of the lease. In banking, the party who rents the asset is the customer (debtor).

b) The owner of the goods *(mua'ajjir)* is the owner of the goods used as the object of the lease. In banking, the owner who leases the asset is the Islamic bank (creditor).

c) Goods or objects for rent *(ma'jur)* are goods that are rented, namely benefits and services on an item. In general, the object of the contract can be considered valid if it meets the requirements, namely it existed at the time the contract was held, justified by *syara'*, it could be determined and known, and the object was handed over at the time the contract took place (Naja, 2011).

Nevertheless, there are some conditions that can be deviated from, namely that the object of the contract already exists when the IMBT contract is held by two parties and the requirement that the object of the IMBT contract be submitted at the time the IMBT contract occurs. This exception is based on the principle of istihsan (Syarifuddin, 2009), which is the strongest argument that shows that Islamic law is a law that develops in society to maintain and meet human needs and does not conflict with syara'.

a) The rental price or rental benefit *(ujrah)* is the benefit or reward received by the mu'ajir.

b) Ijab Kabul (*sighat*) is the handover of goods. There are two types of IMBT contracts, namely the Ijarah contract, which ends with the promise of a sale and purchase contract, and the Ijarah contract, which ends with the promise of a grant. The lessor promises (*wa'd*) to the lessee to transfer ownership of the object after the end of the lease period as stated in the IMBT contract. Therefore, in the IMBT contract, there are two different contracts, namely the ijarah contract, and at the end of the ijarah period, a contract is made for the transfer of rights to the leased goods. So that the Ijab and Kabul between the Islamic bank and the customer can be clearly identified, how to transfer ownership of the object at the beginning of the agreement.

2) Contractual Conditions

a) Willingness of the party carrying out the contract.

b) *Ma'jur* has benefits, and the benefits are justified in Islam, can be assessed or calculated, and the benefits of an ijarah muntahiyah bittamlik transaction must be given by the *musta'jir* to the *mua'ajjir* (Ismail, 2011).

In addition to the provisions that apply to ijarah, for the distribution of funds in the form of financing based on the IMBT contract, the following requirements also apply (Anshori, 2009) :

a) The Bank, as the owner of the leased object, acts as a promise giver (*wa'd*) to provide the option of transferring ownership and/or ownership rights to the leased object to the tenant's customer as agreed;

b) Banks can only give promises (*wa'd*) to transfer ownership and/or ownership rights to the leased object after the leased object is principally owned by the bank;

c) The bank and the customer must enter into an agreement on the option to transfer ownership and/or ownership rights to the leased object in written form;

d) The transfer of ownership and/or ownership rights to the leased object can be carried out after the lease period has been agreed upon between the bank and the lessee customer; and

e) In the event that the lessee customer takes the option of transferring ownership and/or ownership rights to the leased object, the bank is obliged to transfer the ownership and/or control rights to the leased object to the customer at a certain time in the period or end of the financing period on the basis of the IMBT contract.

The conditions for the existence of a contract must meet general requirements, namely the pillars of the contract and special conditions. This is an additional requirement, such as the presence of a witness. An IMBT contract made notarial or under hand has a minimum of two sanctions present. So, with the fulfillment of general conditions and special conditions, the IMBT contract has been established. The conditions for the validity of the contract are the absence of five things that destroy the validity of the contract, namely: the uncertainty of the

type that causes quarrels; the existence of coercion; limiting the ownership of an item; there is an element of deception; there is danger in the implementation of the contract. In order to avoid the five things that destroy the IMBT contract, it is regulated in the DSN Fatwa No.27/DSN-MUI/III/2002 concerning IMBT, PBI No.7/46/PBI/2005 and the Sharia Economic Law Compilation (KHES).

Based on the DSN Fatwa No.27/DSN-MUI/III/2002 concerning IMBT in the second part, which regulates special provisions related to the non-binding promise to transfer property rights, this gives rise to multiple interpretations. *First,* non-binding can be interpreted as not being bound to make a promise to transfer property rights. This provision is not in line with the intent of the IMBT contract. *Second,* it can be interpreted as not being bound to carry out the promises that have been agreed upon in the IMBT contract. Rules like this in contract law that are made and seen as laws that are always binding and must be obeyed are not as common as they should be. (Arwan, 2009) If a contract may not be implemented, then the IMBT contract is useless and will lose the essence and purpose of the IMBT contract, and it is even feared that it will cause injustice. The initial tenant, who intends to own the object and has paid off all the installments, will certainly feel disadvantaged if it turns out that the tenant cannot own the item because the lessor does not want to give it away on the grounds that the promise contained in the IMBT contract is not binding. The implementation of the IMBT contract like this is not in accordance with the initial purpose of the IMBT contract, which is to end with the transfer of property rights.

In addition, Article 324 KHES ownership can only be made after the IMBT contract period ends. In this provision, it can be interpreted as the transfer of ownership through a sale and purchase contract, which is a separate contract which is not included as an integral part of the IMBT contract. So it can be concluded that in the IMBT contract there is no transfer of ownership, meaning that the objectives of the IMBT contract have not been achieved. whereas in essence, the IMBT contract ends when there is a transfer of ownership.

c. The Analysis of the Ijarah Muntahiya Bi Al-Tamlik Contract From the Legal Consequences of the Akad

Every time a contract occurs in a muamalat transaction, it has a legal consequence, namely the achievement of a goal that all parties want together by fulfilling rights and obligations. Rights are things that can be accepted,

while obligations in an *iltizam* are the consequences or legal bonds that require the other party to give something or do an act or not do something. Based on the DSN Fatwa N0.27/DSN-MUI/III/2002, the general provisions state that the rights and obligations of each party to the agreement must be explained in the contract. This gives an implied meaning that the parties are given the freedom to determine the rights and obligations of each party based on Islamic law. In addition, the parties are free to agree on the method of settlement. However, in determining rights and obligations, it must also be based on PBI No.7/46/PBI/2005 and KHES.

As is known in the IMBT contract, there are two forms of contract agreement. The two forms of the contract have different legal implications based on the legal consequences they cause. When these two different contracts are regulated in one unified regulation, this will create legal uncertainty in determining the rights and obligations of the two parties. To overcome this problem and facilitate the fulfillment of rights and obligations, it has been regulated in Article 16 letter (d) of PBI No.7/46/PBI/2005, namely, the transfer of ownership of the leased property to the lessee is stated in a separate contract after the Ijarah period is completed. Although the form of the contract is separate, it remains one unit in the IMBT contract. So, in the first form of IMBT contract, the rights and obligations that are fulfilled first are the rights and obligations of the ijarah contract, followed by the rights and obligations of the sale and purchase contract or grant. The second form, the rights and obligations that are fulfilled, are the rights and obligations of the Ijarah contract, followed by the rights and obligations of the grant.

3. Analysis of the Ijarah Muntahiya Bi Al-Tamlik Agreement in the Perspective of Indonesian Civil Law

   a. Analysis of the Ijarah Muntahiya Bi Al-Tamlik Agreement from the Principle of Frenx edom of Contract

One of the bases related to the occurrence of an agreement or contract is the basis of freedom of contract. Freedom of contract should be limited in the way it is implemented so that the contract/agreement made based on that basis does not end up falling into the category of one-sided or lopsided agreements. There are several restrictions given by the articles of the Civil Code on the principle of freedom of contract, which makes this principle an unlimited principle, among others, Article 1320 paragraph (1); sentence (2); and paragraph (4); Article 1332, Article 1337, and Article 1338 paragraph (3). Article 1320, paragraph 1 provides an indication that contract law is governed by the "consensual principle" and is limited by this principle (M.

Roesli, Sarbini, 2019). This article can also be interpreted to mean that the freedom of a party to determine the content of the contract is limited by the agreement of the other party. From Article 1320 paragraph (2), it can be concluded that people's freedom to make agreements is limited by their ability to make contracts. A person who is not competent to make a contract, according to the law, does not have the freedom to make a contract at all.Article 1320 paragraph (4) jo 1337 specifies that the parties are not free to make a contract that involves causes prohibited by law or contrary to morality or public order is invalid.

According to Article 1332 of the Civil Code, only goods that can be traded can be the subject of an agreement, meaning that only goods that have economic value can be used as the object of the agreement. Article 1338 paragraph (3) determines the application of "the basis of good faith" in executing a contract, meaning, if the contract is made based on bad faith, for example, on the basis of fraud, then the agreement is invalid. Thus, the principle of good faith contains the understanding that the freedom of a party to make an agreement cannot be realized as it wishes but is limited by its good faith. Even though the principle of freedom of contract recognized by the Civil Code is in fact also limited by the Civil Code itself, its effectiveness is still very loose. This relaxation has created inequalities and injustice for the parties.

As mentioned in article 1338 paragraph (1) of the Civil Code, the term all shows that everyone is given the opportunity to express their wishes, which they feel is good to create an agreement. However, in the principle of freedom of contract, there are limitations which must not conflict with the law, public order, and morality. So, based on article 1337 of the Civil Code, the freedom of contract referred to has a non-absolute nature. The basis of freedom of contract according to the law of engagement in Indonesia, namely the freedom to make or not make an agreement/contract, choose the parties with whom it wants to make an agreement, determine or choose the clauses and agreements that will be made and implemented, determine the object and agreement, determine the form of an agreement, and accept and deviate from the optional provisions of the law. The content of the agreement in the IMBT contract contains clauses that cannot conflict with the provisions of the law, so that in making the agreement in the IMBT contract it refers to the legal basis that governs it, including Fatwa DSN No.27/DSN-MUI/III/2002, PBI No.7/46/PBI/2005, KHES and the Civil Code. Based on the rules that apply, the principles that must be fulfilled include the principles of ability and

freedom, justice, equality, honesty and truth (good faith), writing, and usefulness and benefit, and the interesting thing is that these principles are almost the same as the principles in Islamic law.

b. Analysis of the Ijarah Muntahiya Bi Al-Tamlik Lease Agreement From the Elements of the Agreement

When we look back in the Civil Code, we can find a definition of the meaning of an agreement in article 1313, which regulates: *"An agreement is an act where one or more people bind themselves to another person or more"*. Based on the provisions of the article, it can be concluded that what is meant by an agreement is an agreement that is mutually binding in matters related to the rights and obligations owned by each party that has mutually bound itself in the agreement (Abdullah, 2010). While Article 1319 of the Civil Code mentions two groups of agreements, namely: agreements that are often referred to by law as named agreements (benoemde) and agreements that are not known by a specific name in law are called unnamed agreements (onbenoemde) and the beginning of the birth of the nameless agreement based on the principle of freedom of contract.

One of them is that the agreement contained in the IMBT contract is not clearly explained in the Civil Code, so this agreement is categorized as an anonymous agreement. Despite this, anonymous agreements are still based on the provisions of the Civil Code, as stipulated in Article 1319, which reads: "*All agreements, both those that have a specific name and those that are not known by a specific name, are subject to general regulations, which are contained in this chapter and the previous chapter*." This article states that any agreement, whether regulated in the Civil Code Book III, Chapter V to Chapter XVIII, and those found outside Book III of the Civil Code, must be subject to the general provisions of the Civil Code Book III and Chapter II. So the IMBT contract, even if it is included in the category of unnamed agreement, must still be subject to the provisions in the Civil Code which will later have legal consequences.

c. Analysis of the Terms of the Ijarah Muntahiya Bi Al-Tamlik Agreement

The agreement is part of the agreement; the agreement itself will arise after the agreement. Alliances can also arise not only because of an agreement, but alliances can arise due to law, such as parents' obligations to children, which include food, clothing, board, and the obligation to educate their children until adulthood (Gumanti, 2012). The conditions for the validity of the agreement are found in article 1320 of the Civil Code, namely:

First, there is a consensus for those who bind themselves, as stipulated in Article 1321 of the Civil Code, which is called the term argumentum a contrarium (Nurachmad, 2010). The agreement obtained in the agreement is an absolute condition for modern agreement law. Agreement in the law is certainly not only for the sake of moral and ethical demands, but for the achievement of legal certainty itself. The agreement itself arises because it is formed by two elements, namely supply and acceptance. In order to know the occurrence of an agreement in this IMBT agreement, there are several theories, among which Uitings Theorie (theory when giving birth to the will), Verzen Theori (theory when sending the letter of acceptance), Onvangs Theori (theory when receiving the letter of acceptance), and Vermings Theori (theory when knowing the letter of acceptance).

Second, the ability of the parties to make an agreement. When a person is said to be able to do legal acts and is said to be an adult, that means he can be 21 years old or married even if he is not yet 21 years old (Muhammad, 1992). While in the provisions of Article 1330 of the Civil Code, the person who is not able to speak the law when making an agreement is a minor, those who are placed under guardianship and women in matters stipulated by law have been prohibited from making certain agreements. The ability of the subject in making agreements is shown by the creation of a standard agreement, which in this case is about the agreement in the IMBT contract, and there is the freedom of the parties to reject or accept the agreement without coercion. The ability itself is shown or can be proven based on identification such as identity cards (KTP), driver's licenses (SIM) and so on. Further, the Supreme Court through Decision No. 447/Sip/1976 dated October 13, 1976 stated that with the enactment of Law No. 1 of 1974, the age limit of a person being under guardianship is at the age of 18 years, not 21 years. A person who has been declared bankrupt is also not able to make a certain commitment. A person who has been declared bankrupt cannot make or perform a covenant that concerns his property. He is only allowed to make a covenant that reveals the bankruptcy estate, and that must be with the knowledge of the curator.

Third, a specific matter, in Article 1333 of the Civil Code, states that an agreement must have the basis of a thing (zaak) whose type can at least be determined. An agreement must have a specific object. An agreement must be about a certain thing (centainty of terms), meaning that what is agreed, namely the rights and obligations of both parties, The goods referred to in the agreement can at least be determined by type.

Fourth, a reason (causa) that is halal. The meaning of the word causa, translated from the word oorzaak (Dutch) or causa (Latin), does not mean something that causes someone to make an agreement but refers to the content and purpose of the agreement itself. For example, in a sale and purchase agreement, the content and purpose or cause is that one party wants ownership of an item while the other party wants money. Based on the explanation above, when someone buys a knife in a shop with the intention of killing people, then the sale has a lawful purpose. If the intention to kill is stated in the agreement, for example, if the seller of a knife states that he is only willing to sell the knife if the buyer kills someone with the knife, there is no lawful legal cause here.

According to Article 1335 and 1337 of the Civil Code, a cause is declared prohibited if it is against the law, morality, and public order. A cause is said to be contrary to the law if the cause in the relevant agreement is contrary to the law or if the cause in the relevant agreement is contrary to the applicable law. To determine whether the cause of the agreement is against decency (goede zeden) is not an easy problem because the term "decency" is very abstract, the content of which can vary between one region and another or between one community group and another. In addition, people's assessment of morality can also change according to the development of the times.

The legal cause of a prohibited agreement is also when it conflicts with public order, national security, or unrest in the community, and therefore it is said to be a problem of statecraft. In the context of International Civil Law (HPI), public order can be interpreted as the joints or foundations of a country's law. This halal legal authority in the common law system is known as the term "legality," which is associated with public policy. A contract can be invalid (illegal) if it is against public policy. Although until now, there has been no definition of public policy if it has a negative impact on the community or disrupts the public's safety and welfare.

4. Analysis of the Muntahiya Bi Al-Tamlik Ijarah Agreement From the Legal Consequences of the Agreement

The IMBT agreement made by the parties has juridical consequences (legal consequences) determined by:

a. Consequences agreed by the parties concerned The parties bind themselves to the content of the agreement in the IMBT contract. The fundamental principles of contract freedom are stated in this manner;

b. As a complement, the consequences that, according to the nature of the contract, are produced by the law, usage, or the requirements of fairness and justice. The legal relationship between the Syariah Bank and the customer occurs after an agreement. There are legal consequences related to the emergence of rights and obligations. This happened because in the IMBT contract, the form of the contract is a rental agreement that ends in a sale and purchase and a rental agreement that ends with a grant that is implemented independently. Therefore, the fulfillment of obligations and the acquisition of rights borne by the customer and the Syariah Bank have two levels, namely, the rights and obligations of the lease-rent agreement (Chapter VII of the Civil Code), and then the rights and obligations of the sale and purchase agreement (Chapter V of the Civil Code). Second, the rights and obligations of lease-rent agreements, and then the rights and obligations of grants (Articles 1666-1693 of the Civil Code).

D. CONCLUSION

An Ijarah Muntahiya Bittamlik Contract (IMBT) is a new contract that combines two contracts into one transaction. From the perspective of Islamic law, IMBT has fulfilled the principles, pillars, and three conditions of the contract. While the conditions that are not met are the conditions of legal force because there are provisions in Fatwa DSN No.27/DSN-MUI/III/2002 that cause double interpretation in Number 2 of the Second Part, which regulates special provisions, and Article 324 paragraph (2) in the Sharia Economy Compilation of Laws. Contemporary Islamic economic experts are of the opinion that IMBT contract law is mubah (permissible) and in Fatwa No.85/DSN-MUI/XII/2012 on Promises (*Wa'd*) in Sharia Financial and Business Transactions and this DSN-MUI fatwa requires that legal certainty and the implications raised in the fatwa cause several benefits and risks. The benefit is that there is legal certainty regarding the promises that have been made by both parties to carry out the content of the agreement that has been made and the continuity of the contract is guaranteed by the existence of legal guidelines that force the promises contained in the IMBT contract to be carried out as required by Islam regarding the obligation to fulfill promises. While the IMBT contract is viewed from the perspective of Indonesian civil law, which is related to the Civil Code, the IMBT contract falls under the category of unnamed agreement (Article 1319) arising from the freedom of contract agreement (Article 1338), and the IMBT contract has also fulfilled the legal conditions of the agreement as stipulated in Article 1320, as well as the fulfillment of the elements of the agreement. The legal consequences arising from the IMBT contract are the existence of rights and obligations for the parties who do so.

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