

Application Of Hybrid Contract Concept In Ijarah Muntahiyah Bittamlik (Imbt) Product

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Abstract

This paper reviews the important role of hybrid contracts in the sharia finance industry, focusing on a case study of Ijarah Muntahiyah Bittamlik (IMBT) based on the views of scholars and DSN MUI regulations. An analytical descriptive approach is used to identify various types of hybrid contracts as well as highlighting the scholars' perspectives on IMBT. The results of this study clarify the concept of hybrid contract as a combination of two or more contracts that are considered as a whole unit. Furthermore, this study analyzes how IMBT is applied in Islamic banking practices and how scholars view its legal status. This research emphasizes the importance of understanding the complexities and implications of the use of hybrid contracts in the context of Islamic economic jurisprudence. Taking into account the differing views, the research highlights the need for clarity in the use of hybrid contracts, by ensuring that their implementation is in line with established sharia principles. The conclusion emphasizes the importance of an in-depth understanding of hybrid contracts in the context of the shariah finance industry as well as the need for a clear regulatory framework to ensure integrity and compliance in shariah finance practices.

Keywords: *IMBT; Hybrid Contract; Islamic Economics*

1. INTRODUCTION

The development and development of the Shari'ah financial industry also demands the development and development of its legitimacy. The Islamic finance industry goes hand in hand with fatwas on sharia finance. In other words, the discussion of muamalah jurisprudence, as a branch of jurisprudence in charge of economic issues, today is focused on providing a legal basis for the acceleration of the Islamic financial industry.

In order to meet the needs of the Islamic financial industry, innovation is needed on the types of contracts that are familiar in jurisprudence studies. This innovation is needed to answer the challenges of an era that continues to develop. In addition to bridging the development of types of transactions because they are in contact with human customs and cultures in various parts of the world. The National Sharia Council (DSN), as part of the Indonesian Ulema Council (MUI) in charge of fatwas in economic matters, is required to carry out the above role. The MUI DSN fatwa was later legalized in Bank Indonesia Regulation (article 26 paragraph 3 of Law Number 21 of 2008 concerning Sharia Banking). And to this day, DSN MUI has issued hundreds of fatwas to legitimize the Islamic financial industry in Indonesia.

The fatwa issued by DSN MUI follows the type of contract determined by classical scholars. In addition, there is also an innovative fatwa, which is a combination (synthesis) of contracts or hybrid contracts. Hybrid contract is a type of contract that is a combination

of two or more types of contracts. Indeed, there are differences of opinion regarding the merger of contracts. Whether the merger of contracts causes the cancellation of a contract or not.

One of the fatwas of DSN MUI which is classified as a hybrid contract is fatwa Number: 27 / DSN-MUI / III / 2002 concerning al-ijarah al-muntahiyah bi altamlik (IMBT). This IMBT agreement is one of the sharia financial products that is the area of activity of sharia commercial banks (article 19 of the PBS Law). Therefore, it is necessary to clarify how the existence of hybrid contracts that are considered *khilafiah* to be applied in Islamic financial products.

Based on the brief background above, this paper will elaborate further about IMBT with the following problem formulation: First, what is the meaning and types of hybrid contracts? Second, what is the meaning of Ijarah Muntahiyah Bittamlik (IMBT) and what is the view of scholars regarding whether IMBT is a single contract or a combined contract?

2. IMPLEMENTATION METHOD

The analytical descriptive method is the method used by the authors in this study. In this study, we will describe the meaning and types of hybrid contracts, the understanding of Ijarah Muntahiyah Bittamlik (IMBT), and the application of hybrid contracts in IMBT products.

This research is based on library research, which is a method with a series of research related to the method of collecting library data, or research where the object of research is obtained and extracted from various literature information both from books, encyclopedias, journals, and other documents; So that the data obtained is in the form of qualitative data.

3. RESULTS AND DISCUSSION

Understanding Hybrid Contract

Agustianto explained that contemporary muamalah jurisprudence textbooks mention the term Hybrid Contract (multi contract) with various terms, such as al-'uqūd al-murakkabah, al-'uqūd al-muta'addidah, al-'uqūd al-mutaqā blade, al-'uqūd al-mujtami'ah, and al-'uqūd al-Mukhtalith. But the most popular terms are of two kinds, namely Al-'Uqūd Almurakkabah and al-'Uqūd al-Mujtami'ah. (Agustianto, 2015)

Al-'Imrani in the book al-Uqūd al-Maliyah al-Murakkabah Define Hybrid Contract is an agreement between two parties to execute an agreement containing two or more contracts -such as a sale and purchase agreement with a lease, a contract murabahah bil wakalah, and so on- so that all the legal consequences of the contracts collected, and all the rights and obligations they give rise to are seen as an inseparable whole, as well as the legal consequences of a contract.(Al-'Imraniy, 2010)

Hybrid contracts refer to contractual agreements that combine different types of contracts or elements of several different contract types. In a hybrid contract, the elements of several contract types are combined into one, creating a complex contract structure that is often more flexible in handling various business needs or situations. Furthermore, this Hybrid Contract is also known as Multi Akad.

Various Hybrid Contracts

The types of Hybrid Contracts are as follows:

- a. First, the mukhtalithah (mixed) Hybrid Contract gave rise to new names, such as bay' istighlal, bay' tawarruq, musyarakah mutanaqishah and bay wafa'.
- b. Second, a mujtami'ah/mukhtalithah Hybrid Contract with the name of the new contract, but mentions the name of the old contract, such as lease purchase (bay' at-takjiry). Another example is mudharabah musytarakah on life insurance and Islamic bank deposits. Another interesting example is combining wadiah and mudharabah in the current account, which can be called Tabungan dan Giro Automatic Transfer Mudharabah and Wadiah. Customer has 2 accounts, namely savings and current account at once (two accounts in one product at once). Each account can be moved automatically if one of the accounts requires.
- c. Third, Hybrid Contract whose contracts do not mix and do not give birth to new contract names, but the basic contract name still exists and exists and is practiced in a transaction. Examples are the take over financing contract contract on alternatives 1 and 4 in fatwa DSN MUI No 31/2000, kafalah wal ijarah on credit cards, wa'ad for wakalah murabahah, ijarah, musharakah, and so on.
- d. Fourth, the mutanaqidhah Hybrid Contract (the contracts are opposite). This form is prohibited in sharia. For example, combining a sale and purchase contract and a loan (bay' wa salaf). Another example is combining qardh wal ijarah in one contract. Both examples are prohibited by the nash (postulates) of sharia, namely the hadith of the Prophet Sallallahu 'alaihi wasallam.

Application of Hybrid Contract in Ijarah Muntahiyah Bittamlik (IMBT)

Understanding Ijarah Muntahiyah Bittamlik (IMBT)

According to Wahbah al-Zuhaili, Ijarah Muntahiyah Bittamlik abbreviated as IMBT is the beneficial ownership of some objects with a certain time, and with clearly known wages, accompanied by a transfer of ownership agreement at a later date, after the completion of the lease. He emphasized that the transfer of ownership can be fulfilled if a sale and purchase agreement or grant agreement is carried out after the lease period is over. (Zuhaili, 2002) While al-Umrani, in summary, referred to IMBT as a contract to lease objects followed by the transfer of ownership to tenants. (Al-'Imraniy, 2010) Meanwhile, in Law number 21 of 2008 it is explained that what is meant by "Akad ijarah muntahiya bittamlik"

is an agreement to provide funds in order to transfer the right to use or benefit from a good or service based on a lease transaction with the option of transferring ownership of goods. (Central Government, 2008:45)

Thus, it can be concluded that Ijarah Muntahiyah Bittamlik (IMBT) is a lease agreement that ends with the transfer of ownership of the object of the contract from the lessee (mu'ajir) to the tenant (musta'jir) through a sale and purchase contract or grant after the end of the lease period.

In fact, in the Ijarah contract there is no transfer of ownership (transfer of title) of the goods rented. However, if the tenant wants a transfer of ownership of the item, it can be done with the sale option and / or grant option at the end of the contract. For lease transactions that want to be ended by transferring ownership, in contemporary muamalat jurisprudence it is known as Ijarah Muntahiyah Bittamlik (IMBT).

Scholars' Views on Akad on IMBT

There are differing views among contemporary jurisprudence scholars in determining whether the IMBT consists of one contract or two combined contracts. Here are the views of scholars regarding Ijarah Muntahiyah Bittamlik (IMBT):

- a. The IMBT agreement consists of a contract and wa'd. Thus, this IMBT contract can be interpreted as a single contract, namely a contract Ijarah. Only in the contract is there wa'd (promise) that the tenant will sell or grant the object of the contract after the lease installment period with a predetermined maturity is over. Wahbah al-Zuhaili explained that this IMBT contract is not an ijarah contract that joins Al-Bai' or Al-Grant. According to him, the two contracts are separate. In practice, both parties make an ijarah contract first, then the leasing party will make a new contract, either with a sale and purchase contract or a grant contract. (Zuhaili, 2002:394)
- b. The IMBT agreement is a combination contract between the ijarah contract and the bay' contract, or a combination contract between the ijarah contract and the grant contract, where the wa'd is the link between the two contracts.

Although there are differences of opinion regarding whether IMBT is included in a single or joint agreement (murakkab) as described above, but the majority of scholars agree to allow the practice of IMBT contracts. One of the key conditions for the permissibility of this contract is The time when the two combined contracts take place must not coincide (Qarar Majma Fiqh Islamiy, 2000). In practice, the tenant can only take the second contract (contract bay' or grant contract) after the first contract (contract Ijarah) finished.

The ability of IMBT is also strengthened by the fatwa of DSN MUI Number 27 / DSN-MUI / III / 2002 concerning Al-Ijarah al-Muntahiyah bi al-Tamlik stated that al-Ijarah al-Muntahiah bi al-Tamlik may be carried out with the following conditions:

- First, General Provisions:

1. All the pillars and conditions that apply in the Ijarah contract (Fatwa DSN number: 09/DSN-MUI/IV/2000) also apply in the contract al-Ijarah al-Muntahiyah bi al-Tamlik.
 2. The agreement to perform the contract of al-Ijarah al-Muntahiyah bi al-Tamlik must be agreed upon when the contract of Ijarah is signed.
 3. The rights and obligations of each party must be explained in the contract.
- Second, the Provisions on al-Ijarah al-Muntahiyah bi al-Tamlik:
 1. The party performing al-Ijarah al-Muntahiyah bi al-Tamlik must first execute the Ijarah contract. The transfer of ownership, either by sale or gift, can only be done after the Ijarah period is over.
 2. The promise of transfer of ownership agreed at the beginning of the Ijarah contract is wa'd (الوعد), whose law is non-binding. If the promise is to be carried out, then there must be a transfer of ownership contract made after the Ijarah period is over.
 - Third:
 1. If one of the parties does not fulfill its obligations or if there is a dispute between the two parties, then the settlement is carried out through the Shari'ah Arbitration Board after no agreement has been reached through deliberation.
 2. This fatwa is effective from the date stipulated provided that if in the future it turns out that there is an error, it will be amended and perfected accordingly.

Akad Grant is the Best Akad Choice after Akad Ijarah in IMBT

As explained above, in the IMBT contract there are two separate contracts. The choice of the two contracts is as follows:

a. Akad Bay' after Akad Ijarah

In the context of this first choice of contract, the transaction begins with an ijarah contract, which is a lease or use contract for a certain period of time. The party leasing the asset or service and the party leasing the asset or service will agree to the terms of the lease in the ijarah contract.

After the lease period ends, there is a transition to the next stage, which involves a sale and purchase contract. At this stage, the asset owner or service provider sells it to the tenant or other party at a price that has been agreed in advance or stipulated in the contract. The price of this item can be a real price, or also a symbolic price. This transaction can be

done directly after the lease period expires or in the manner previously stipulated in the ijarah agreement.

This transition from an ijarah agreement to a sale and purchase agreement allows the transfer of ownership of an asset or service from the tenant (or lease user) to its property. It also allows the tenant or lease user to own the asset or service after paying the entire agreed sale value.

b. Akad Grant after Akad Ijarah

In the context of this second contract option, grant transactions can occur after the ijarah contract (lease contract) is completed at the end of the contract period. A grant agreement is a contract of giving gifts or donations without remuneration or exchange. In the context of IMBT, after the lease period or ijarah contract period ends, the party who owns the leased asset or goods (lessee) may decide to give the asset as a grant to the lessee.

This means that after the expiration of the lease period, the lessee (tenant or lease user) can be given the asset or item as a gift without any remuneration to be given back or required. This depends on the agreement between the two parties stated in the initial ijarah contract. If the leasing party is given an asset as a grant, then they will have full ownership of the asset without any obligation to pay again.

There is one thing that intrigues the author in the choice of the first contract, namely Akad Bay' after Akad Ijarah, where at the end of the ijarah contract, when the lease installment period is over, the sale and purchase contract is carried out at real prices or symbolic prices. Usually price real Or this symbolic price is the last installment of rent. Therefore, experts have different views on the ability to determine real prices, or symbolic prices, on buying and selling contracts in IMBT. One of the reasons experts do not allow it is because of the presence of Gharar in the sale and purchase contract, for the following reasons:

- a. The price of goods is far below the market standard, even if it is the real price, but this real price is logically thirsty, at least not too far from the market price.
- b. Symbolic prices are not real prices.

While other experts consider that the price problem, whether real or symbolic, is not a problem as long as the willingness of both parties is achieved.

Regarding the two options above, the author views that the second option, namely the grant contract after the ijarah contract in IMBT, is much safer, because it is protected from the khilafiyah mentioned above.

4. CONCLUSION

It can be concluded that the definition of hybrid contract is an agreement between two parties to carry out a muamalah which includes two or more contracts, for example a sale and purchase contract with ijarah, a sale and purchase contract with grants, and so on, so that all the legal consequences of the combined contracts, and all the rights and obligations they cause, are considered an inseparable entity, which is equal to the legal consequences of one contract.

Operationally, IMBT is understood as two separate contracts. The lease agreement and the ownership transfer agreement are carried out independently. This is what distinguishes it from lease-purchase contracts that develop in the 'west' which are considered to make 'one' on two contracts (lease and transfer of ownership) simultaneously. The IMBT proposed by DSN-MUI, is similar to what the authors found in general studies. That at the time of contract agreement or contract signing, it must be explained in detail the position of ijarah and transfer of ownership. The initial agreement 'must' firmly state that the contracting party will make a lease (ijarah), become vomitayah bit tamlik because the contract agreement is also accompanied by a promise that ownership will be transferred at a later date.

IMBT is one example of the construction results of eliminating the immorality of leasing products in the conventional financial industry. The practice in Islamic banking is as follows; Islamic banking rents a rental object to customers for a certain time at an agreed rental price. After the lease period is over and all installments are paid, the lease object transfers ownership to the customer using a new contract. The difference between IMBT and buying and selling credit lies in the ownership of the contract object. If in IMBT the ownership of the object only switches after the end of the installment, while in the sale and purchase of credit ownership has moved since the sale and purchase transaction was agreed even though the payment was paid in installments for a certain period of time.

Regarding the choice of contract between the sale and purchase contract or the grant contract at the end of the ijarah contract, the author considers that the second option, namely the grant contract after the ijarah contract in IMBT, is much safer, because it avoids khilafiyah in the matter of real price or symbolic price.

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