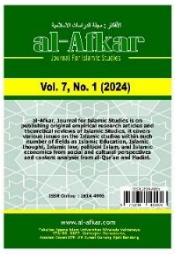

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Research Article

Flexibility of Al-Ijarah Contract Perspective of Islamic Economic Law

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Abstract. Islam became a new form of authority in the 7th century after the fall of the Roman empire. The fall and destruction of this civilization was followed by the emergence and growth of various new civilizations that were just as impressive and proud. Other fields of life, including Islamic economics, are also developing simultaneously in line with culture, science and technology. Historical facts show that Islam is a comprehensive system of life that regulates all dimensions of life, including Islamic law (Islamic law), social, economic and political, and all aspects of spiritual life. According to the study of the history of Islamic law, from the time of the Prophet until the death of the Prophet Muhammad. there is no sharia problem in society that cannot be solved. This is because whenever a problem arises with sharia (Islamic law), its resolution is always left to the authority of the Prophet Muhammad who has received divine guidance from Allah Swt. Directly. Rasulullah Saw. has many legal precedents. The Companions said this clearly at the time and the Qur'an did not explain it.

Keywords: Akad Ijarah, Fiqh Muamalah, and Islamic Economics

INTRODUCTION

Fiqh muamalah is an important tool in human life. Therefore, the religious values, prudence, and consistency of every Muslim towards the teachings of Allah Swt. will be tested through muamalah activities. It is known that wealth is the brother of the soul, including all kinds of passions and temptations that are easy to deviate. Therefore, when a person's religious belief is weak, he will experience difficulties and often cannot be fair and just to others in terms of leaving property (haram property) that does not belong to him, and will try to obtain such property through means such as lies, deception, subterfuge, coercion, corruption, money laundering and robbery, engineering and other acts of anarchy.

Apostolic visibility in muamalah or Islamic economics has actually existed since Prophet Adam A.S. as the first person to occupy this earth. Since then, questions have arisen about the most important (economic) needs of human life, namely clothing, food and shelter. Prophet Adam A.S. is a great teacher of economic solutions in the form of food, Prophet Idris a.s. has expertise in sewing, which means he has solved economic problems in terms of clothing, Prophet Noah A.S. armed with his expertise in building dwellings and houses, as well as vehicles (boats), he produced the first patent for transporting and rebuilding houses (wood) that survived floods and flash floods.

Prophet Hud a.s. and Prophet Soleh a.s. continued economic activities like the previous three prophets. Prophets Ibrahim A.S., Ishmael A.S., and Isaac A.S. prepared the infrastructure for Hajj and Umrah services, which eventually brought a lot of foreign exchange and smooth trade (Hajj and Umrah) in Mecca and Medina.[1] Thus, the actual conditions of the world, society, customs and beliefs do not always follow fixed patterns and institutions, but change constantly with changing circumstances and conditions, always moving from one country to another. This has become a natural law (sunnatullah) in human life.

In general, the term Islamic law (sharia) is often equated with the concepts of "fiqh" and "sharia". In the tradition of fiqh thought, in addition to taklifi law that contains provisions regarding demands, prohibitions, and permissibility, there is also wad'iy law, where the condition of a clause becomes a cause, condition, or barrier (mani') for the existence of other legal clauses.[2] Meanwhile, fiqh scholars say that Islamic law (sharia) is a punishment for human actions according to khithob (nash).[3] The term nash in the tradition of Islamic thought refers to the Qur'an and As-Sunnah (hadith) which have become universally accepted textual verses.

Two terms commonly associated with the term Islamic economics are "sharia economics" and "Islamic economics". Both terms discuss one basic principle, namely

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[1]M. Yusuf & Wiroso, *Pengantar Ekonomi dan Bisnis Syari'ah*, Edisi 2, (Jakarta: Mitra Wacana Media, 2011), hlm. 1.

[2]Abdul Wahab Khallaf, *Ilmu Ushul Fiqh*, (Kairo: Dar al-Kuwaitiyah, Cet III, 1968), hlm. 102.

[3]Wahbah az-Zuhaily, *Ushul al-Fiqh al-Islamy*, Cet. I, (Bairut: Dar al-Fikr, 1986 M/1406 H), hlm. 37.

an economy based on the principles of Islamic sharia. The economic system that adheres to sharia principles has developed along with the global spread of Islam. When the Prophet Muhammad was in Mecca, Islamic economic activities were not yet optimal, because the focus of his struggle was still on faith (tawhid), which received many extreme challenges from the Quraysh and other residents of Mecca. However, after moving to Medina, he was appointed as the leader of the people of Medina and was able to run the government effectively, create institutional entities, organize political systems both domestically and internationally, and propose an Islamic economic system (sharia) in a short time.[4]

Islam is a very complex and dynamic teaching and doctrine revealed by Allah Swt. to mankind, everything has been arranged in such a way. One of the principles of Islam is contained in the law of muamalah. This covers all dimensions of life, both individual and collective, including economic, social, political, and so on. From the companions, tabi'in, and their followers, mujtahid scholars have studied the phenomena and problems encountered in human life on the basis of Islamic ushul law and its principles. These are designed to explain and answer legal questions to use them in the future, and after the Islamic state and Muslims are weak in all their affairs including fiqh issues that occur today. Due to the broad scope of this study of fiqh muamalah, it is necessary to limit the description to the definition, foundations and basic principles, in relation to the flexibility of ijarah contracts, as one of the contracts in muamalah.

The assets that a person legally owns cannot be used for legal economic transactions if the owner of the assets does not make a contract with the second party (contract partner), which is realized by ijab kabul. In the study of muamalat fiqh, contracts have rules and regulations, so this short article will discuss the definition of a contract, the position of contracts in muamalah, the pillars of a contract, the conditions of a contract, the principle of freedom of contract and the limitations of contracts in muamalah fiqh.

The approach of this research is juridical normative (normative law) (Ibrahim, 2006), which is research conducted to examine the application of rules or norms in Islamic Law both at the methodological level (ushul fiqh) and fiqh rules and at the product level (fiqh). The targets of normative legal research include research on legal principles, research on legal systematics, research on the level of legal synchronization, legal history research, and comparative legal research.

In connection with the subject matter in the research is within the scope of Islamic Law studies, the approach used is the approach of usul fiqh science. In the study of usul fiqh, especially in understanding the purpose of determining the laws of shara' using two forms of interrelated approaches, namely: linguistic rules approach and meaning rules approach (Maqâshid al-Syari'ah). Both forms of approach are used to understand the various terms put forward by the Ulama in the development of the concepts of fiqh thinking, because the concept is extracted and sourced from the texts of the Quran and Sunnah, both of which are in Arabic.

In this context, the use of the linguistic rules approach is very relevant, because

[4]Abdul Manan, *Sitem Ekonomi Berbasis* Syri'ah, Makalan Sertfikasi Ekonomi Syri'ah Tingkat Pertama dan Banding, 2010.

through this approach can be found explanations and information as well as provisions that can be used to understand the Shari'ah text correctly, in accordance with the understanding of the Arabs about the texts of the revealed texts. Meanwhile, the approach of meaning rules is used to analyze the ijtihad methods of the Ulama, the arguments they use and the conclusions they formulate on various problems in the contract.

In addition to the usul fiqh method with the two approaches that have been described, the method of legal science is also used. Legal science is a methodology or way of studying law by approaching the method of legal interpretation (legal interpretation), namely to determine the meaning or meaning of a text or the sound of an article based on its relation to the law.

LITERATURE REVIEW

In Arabic, akad comes from the word 'aqada which means to bind. The meaning is to gather or collect two ends of a rope and tie one of them to the other so that they are connected and become one rope.[5] The word 'aqada also means to harden or freeze. It is used to express a liquid object that hardens due to cooling or heating.[6] The word akad in Arabic also means a guarantee or agreement.[7] Meanwhile, akad in Indonesian is known as an agreement, engagement, or contract.[8] Agreement means an event in which a person promises to another person or party (individual or legal entity) or an event in which two people or parties promise each other to do something.[9] In terms of fiqh science, there are two definitions of a contract according to the scholars, namely the definition of a contract in general and the definition of a contract in particular.[10]

Akad in a general sense is any form of binding or agreement that is carried out by a person with a commitment to fulfill it which causes legal consequences of sharia,[11] Whether it is a two-way contract, such as a sale, lease, marriage contract, etc., or a one-way contract, such as an oath, vow, divorce, grant, gift, charity, etc.[12]

Akad in this general sense can be found in classical fiqh literature, such as what Imam as-Suyuthi wrote in his book al-Asybah wa an-Nazhair, when explaining the classification of contracts that from the aspect of the need for ijab kabul, contracts are divided into five: (1) contracts that do not require verbal consent such as gifts, charity and grants; (2) contracts that require verbal consent such as buying and selling, sharf and salam; (3) contracts that only require verbal consent without the need for verbal consent such as wakalah, wadi'ah and 'ariyah; (4) A contract that does not require a verbal consent, but on condition that there is no rejection by the other party, such as

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[5]Ibnu Manzhur, *Lisan al'Arab* (Beirut: Dar Shadir, cet. III tahun1414 H), jilid 3, hlm. 296.

[6]Ibrahim Mushtafa, dkk., *al-Mu'jam al-Wasith* (t.tp: Dar ad- Da'wah, t.th.) jilid 2, hlm. 613.

[7]Muhammad bin Ya'kub al-Fairuzabadi, *al-Qamus al-Muhith* (Beirut: Muassasah ar-Risalah, cet. II tahun 2005), hlm. 300.

[8]Tim Penyusun, *Kamus Besar Bahasa Indonesia*, (Jakarta:Balai Pustaka, 1995), Edisi II, h. 15.

[9]Subekti, *Hukum Perjanjian*, Cet. 14, (Jakarta: Intermasa,1992), hlm. 1.

[10]Hannan binti Muhammad Husain, *"Aqsam al-'Uqud fi al-Fiqhal-Islami,"* Tesis, Universitas Ummul Qura' Mekkah, 1998, hlm.61.

[11]Abu Bakar al-Jashshash, *Ahkam al-Quran* (Beirut: Dar Ihya at-Turats al-'Arabi, 1405 H), jilid 3, h. 284.

[12]Hannan binti Muhammad Husain, *"Aqsam al-'Uqud fi al-Fiqhal Islami,"* hlm. 67.

waqf; (5) A contract that does not require a verbal consent and cannot be rejected even if there is a rejection by the other party, such as dhaman and ibra'.[13]

In this classification Imam Suyuthi includes all types of contracts, both one-way and two-way. Which indicates that the contract in question is a contract in a general sense. In addition, Ibn Rajab al-Hanbali in his book al- Qawa'id also classifies contracts into two, namely mu'awadhat mahdhah contracts such as sale and purchase contracts and la mu'wadhah fiha contracts such as Sadaqah, grants and gifts.[14] This classification of contracts also shows that what is meant is the understanding of contracts in general.

Likewise, in the book al-Qawa'id an-Nuraniyyah, Ibn Taymiyyah mentions the types of contracts, including the contract of freeing slaves (al-'itq), al-wala' contracts, vows, oaths (yamin) and even agreements concluded between Muslims and disbelievers are included in the definition of contracts according to him.[15] Whatever is stated in the classical fiqh literature, it can be concluded that a contract in the general sense is any form of engagement that gives rise to shar'i legal effects. With this definition, contracts such as divorce, freeing slaves, vows and tabarru' contracts are included into ategories of contracts in the general sense.

RESULTS AND DISCUSSION

Akad in a Specialized Definition

In its more specialized sense, akad is defined by scholars with varied definitions but similar in meaning. Hannan in his thesis entitled: Aqsam al-'Uqud fi al- Fiqh al-Islami (Classification of Agreements in Islamic Jurisprudence) summarizes the definition of a contract according to the scholars as follows:

"The connection between ijab and kabul or what is parallel to them in a way that is justified by shara'.*"*[16]

Meanwhile, according to Wahbah Zuhaili, a contract is an agreement between two wills to cause legal consequences, whether it creates an obligation, transfers, transfers or stops it.[17] Meanwhile, Ibn Abidin defines a contract as a connection between ijab and kabul, in accordance with the will of the sharia, which affects the object of the agreement.[18] What is meant by the will of sharia is that the contract made by two or more people must not contradict shara', such as an agreement to determine usury in the trade being carried out. As for the effect of the contract on its object, it means that there is a change in legal status as a result of the contract, such as the transfer of ownership, the existence of utilization rights and so on.

First, a contract is a connection or meeting of ijab and kabul that results in a law. Ijab is an offer made by one party, and kabul is an answer of approval given by the partner in response to the first party's offer. The contract does not occur when the

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[13]Jalaluddin as-Suyuthi, *al-Asybah wa an-Nazhair* (Beirut:Darul Kutub al-'Ilmiyah, cet. I tahun 1990), hlm. 278.

[14]Ibnu Rajab al-Hanbali, *al-Qawa'id* (Beirut: Darul Kutub al-Ilmiyyah, t.th.), hlm. 74.

[15]Ibnu Taimiyah, *Al-Qawa'id an-Nuraniyyah al-Fiqhiyyah* (Arab Saudi: Dar Ibnul Jauzi, 1422 H), hlm. 73.

[16]Hannan binti Muhammad Husain, *Aqsam al-'Uqud fi al-Fiqhal-Islami*, hlm. 46.

[17]Wahbah Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu,* Juz IV,(Damaskus: Dar al-Fikr), hlm. 81.

[18]Ibnu Abidin, *Radd al-Muhtar 'ala ad-Dur al-Mukhtar*, Jilid II(Mesir: Amiriyah, tt), hlm. 255.

statements of will of each party are not related to each other, because the contract is the linkage of the will of the two parties reflected in the ijab and kabul.

Second, a contract is a legal act of two parties because a contract is the meeting of ijab, which represents the will of one party, and kabul, which expresses the will of the other party. Single-party legal actions, such as promises to give gifts, wills, waqf are not contracts, because these actions do not constitute two-party actions and therefore do not require kabul. Third, the purpose of a contract is to produce a legal effect. More explicitly, the purpose of the contract is the common intention that the parties are aiming for and want to realize through the making of the contract. If the intention of the parties in a sale and purchase contract is to transfer ownership of an object from the seller to the buyer in exchange for a fee given by the buyer, then the transfer of ownership is the legal effect of the sale and purchase contract.

The legal consequences of contracts in Islamic law can be divided into two types, namely: the main legal consequences of the contract and the additional legal consequences of the contract. If the purpose of a sale and purchase contract, for example, is to transfer ownership of an item from the seller to the buyer in exchange for the buyer, then the main legal effect of the sale and purchase contract is the transfer of ownership of the item in question. The realization of the main legal effect of the sale and purchase contract, in which the seller is obliged to deliver the goods, which is the right of the buyer, and the buyer is obliged to deliver the price, which is the right of the seller, is an additional legal effect of the contract. The additional legal consequences of the contract can be divided into two, namely the additional legal consequences of the contract determined by the shara' maker and the additional legal consequences of the contract determined by the parties themselves.

The definition of a contract put forward by scholars has similarities with the definition of an agreement in general civil law in Indonesia. Subekti defines an agreement as an event in which one person promises to another or in which two people promise each other to carry out something. The two parties who bind each other's promise result in an obligation by each of them to do or not do something, or in other words, the two parties are bound by the agreement they make.[19]

Contract Law in the Compilation of Sharia Economic Law

According to Article 20 of the Compilation of Sharia Economic Law, a contract is an agreement in an agreement between two or more parties to perform and or not perform certain legal actions.[20] The definition of a sharia contract is something that binds the two parties who agree with each other in a sharia contract, namely each party is bound to carry out their respective obligations that have been agreed upon in advance.[21] In mu'amalah fiqh, the concept of contract is distinguished from the concept of wa'ad (promise). Wa'ad is a promise between one party to another, which binds only one party, namely the party making the promise is obliged to carry out its obligations, while the party being promised does not bear any obligations towards the other party. In wa'ad, the terms and

[19]Subekti, *Hukum Perjanjian*, hlm. 1.
[20]Tim Redaksi, *Kompilasi Hukum Ekonomi Syariah*, (Bandung: Fokus Media, 2008), hlm. 14.
[21]Adiwarman A. Kariem, *Bank Islam*, (Jakarta: PT RajaGrafindo Persada, 2014), hlm. 65.

conditions have not been determined in detail and specifically, so that the party who makes a default (does not fulfill his promise), will only receive moral sanctions without any legal sanctions.

Meanwhile, contract law is a translation from English, namely contract of law, while in Dutch it is called overeenscomstrecht. Michael D. Bayles[22] might then be taken to be the law pertaining to enporcement of promise or agreement", namely as a rule of law relating to the implementation of agreements or agreements. More complete Salim[23] defines contract law as "The entirety of the legal rules governing legal relations between two or more parties based on an agreement to cause legal consequences". The definition is based on Van Dunne's opinion, which not only examines the contract at the contractual stage, but also must pay attention to previous actions which include the pre-contractual and post-contractual stages. Pracontractual is the offer and acceptance stage, while post contractual is the implementation of the agreement.

Akad in Islamic law is not so different from the contract law that applies in general civil law based on the Civil Code with various terms. Civil law experts use the term contract or contract with different terms. Some mention it with the term engagement, and some mention it with the terms agreement, partnership, transaction, and contract. According to Gemala Dewi, the difference that occurs in the engagement (contract) between Islamic law and general civil law is in the stage of the agreement.[24] In Islamic binding law, the promise of the first party is separate from the promise of the second party, then the obligation is born. As for civil law, the agreement between the first party and the second party is one stage which then creates an obligation between them. In Islamic law of ties, the most distinguishing point of departure is the importance of ijab qabul in every transaction that is carried out, if this is already an engagement or contract.[25]

The term engagement comes from the Dutch verbintenis. In terminology, verbintenis comes from the verbiden verb which means to bind. An engagement is a legal relationship that occurs as a result of the existence of an engagement is a binding thing between one person and another. The binding thing is a legal event (rechtsfeiten) which can be in the form of: Actions, Events, and Circumstances.[26] The regulation of ties is based on an "open system", meaning that anyone can enter into any kind of ties, either those that have been named or those that have not been named in the law. However, the open system is limited by three things, namely: not prohibited by law, not contrary to public order, and not contrary to decency.

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[22] Rahmani Timorita Yulianti, *Asas-Asas Perjanjian (Akad) dalam Hukum Kontrak Syari'ah*, La_Riba, Volume II, No. 1, Juli 2008, hlm. 96.

[23] Salim H.S, *Hukum Kontrak,* (Jakarta: Sinar Grafika,2003), hlm. 4-5.

[24] Gemala Dewi *et al., Hukum Perikatan Islam Indonesia*, (Jakarta: FH UI dengan PrenadaMedia, 2005), hlm. 47.

[25] Abdul manan, *Hukum Ekonomi Syariah,* (Jakarta: Prenada Group, 2012), hlm. 74.

[26] AbdulKadir Muhammad, *Hukum Perdata Indonesia*, (Bandung: PT Citra Aditya Bakti, 2010), hlm. 229.

In accordance with the use of an open system, Article 1233 KUHPdt determines that an obligation can occur, either by agreement or by law. In other words, the sources of the obligation are agreements and laws. In an obligation that occurs due to an agreement, both parties, debtor and creditor, deliberately agree to bind themselves to each other, in this agreement both parties have rights and obligations that must be fulfilled. The debtor is obliged to fulfill the achievement and the creditor is entitled to the achievement and vice versa. In KHES Article 20, Akad is an agreement in an agreement between two or more parties to perform and or not perform certain legal actions. In Surah Al-maidah verse 1, there is an encouragement to fulfill the contract:

﴿يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْٓا اَوْفُوْا بِالْعُقُوْدِۗ اُحِلَّتْ لَكُمْ بَهِيْمَةُ الْاَنْعَامِ اِلَّا مَا يُتْلٰى عَلَيْكُمْ غَيْرَ مُحِلِّى الصَّيْدِ وَاَنْتُمْ حُرُمٌۗ اِنَّ اللّٰهَ يَحْكُمُ مَا يُرِيْدُ ١ ﴾ (المآئدة/5: 1–1)

"O you who believe, fulfill those contracts..."

According to Wahbah al Juhaili in his tafsir states that O people who have the nature of faith and who abandon the call of the devil, fulfill promises, both sharia promises such as halal, haram and all other obligations, as well as promises with others such as buying and selling contracts, muamalah, marriage, and others. Based on the words of the Prophet PBUH which was narrated by the judge from Anas and Aisha "Muslims are based on sharia they are obliged to fulfill agreements based on the agreed sharia as long as they do not contradict the commandments of sharia.

In the hadith it is also mentioned that Allah is with those who associate (cooperate): "Abu Hurairah reported that the Prophet said: Allah Swt said: I am the third person of two people in a partnership as long as one of the partners does not betray the partnership if he betrays him, then I am out of the partnership (HR. Abu Daud).

The regulation of contracts apart from the Qur'an and Hadith, is also stated in KHES Article 26, sharia contracts are invalid if they conflict with Islamic Sharia, Laws and Regulations, Public Order; and / or, and Decency. A valid contract as referred to above is a contract that is agreed upon in the agreement, does not contain elements of ghalath or khilaf, is carried out under ikrah or coercion, thagrir or deception, and ghubn or disguise. The law of contracts in KHES Article 27 is divided into three categories, namely: (a) valid contracts, (b) contracts that are defective / can be canceled, (c) contracts that are void / null and void by law.[27]

The Urgency of Muamalah Agreements

In every sharia transaction, such as buying and selling transactions or the like, whether between individuals or more, individuals with institutions or between institutions, of course there must be a clear bond (contract) between them, in terms of what they transact and how the agreement is built between the parties to be able to realize the object related to the agreement.

[27]Tim Redaksi, Kompilasi Hukum Ekonomi Syariah(Bandung: Fokus Media, 2008), hlm. 14.

The agreement provides information and formulations that explain the rights and obligations of each party and their role in realizing the object of the agreement which is the goal with each party who has binding rights and obligations on the object of the agreement to matters concerning the settlement process in the event of failure or default between the parties..[28] Therefore, contracts occupy a central position in the economic traffic between people (muamalah). The contract is the key to the birth of rights and obligations (achievements) born as a result of contractual relations.[29]

In every sharia transaction, the agreement contract is made by the parties to be implemented together, not to be violated or ignored, because the agreement contract has a binding nature for the parties who make the agreement, so the contract is a substantial tool and has an urgent position in every sharia transaction. The contract must be fulfilled and maintained as a joint commitment and the contract is a basic reference in the event of a dispute between the parties and to obtain a solution and a way out of the dispute.[30] The process of contract formation occurs through three stages:

First, at the level of al 'ahdu, which is a statement by someone to do or not do something. This promise is binding on the person concerned and religion requires him to fulfill it. Second, the agreement, which is a statement of consent from the second party to do or not do something in response to the promise made by the first party. Third, if the agreement is realized by both parties, then there is what is called a contract. The agreement is then put into writing, which is also known as an agreement or contract.[31]

Pillars and Conditions of Agreement/Akad

A contract creates an obligation to do or not to do something, as a logical result of the existence of a contractual relationship, but even so, for this binding force, there are several requirements that must be met. The scholars have established several requirements for the validity of a contract, so that if the contract that has been made does not meet the requirements, then the contract is considered invalid or can be requested for annulment to the court.[32]

For a contract to be valid, it must fulfill the pillars, which are the essence of every contract. The pillars of a contract are instruments that form a contract or in other words, something that absolutely must exist in a contract (Islamic agreement). Therefore, the pillars are elements that form the substance of something.[33] However, there are also those who distinguish between pillars and conditions, arguing that the

[28]Johar Arifin, *Substansi Akad Dalam Transaksi Syariah*, JurnalAl-Amwal Vol. 6, No. 1, 2014, h. 166.

[29]Imron Rosyadi, *Jaminan Kebendaan Berdasarkan Akad Syariah: Aspek Perikatan, Prosedur Pembebanan dan Eksekusi*, (Depok: Kencana, 2017), h. 3.

[30]Johar Arifin, *Substansi Akad Dalam Transaksi Syariah*, h. 167

[31]Sri Gambir Melati Hatta, *Beli Sewa Sebagai Perjanjian Tak Bernama: Pandangan Masyarakat dan Sikap Mahkamah Agung Indonesia,* (Bandung: PT Alumni, 1999), hlm. 127.

[32]Hasanudin, *Bentuk-bentuk Perikatan (Akad) dalam EkonomiSyariah, Kapita Selekta Perbankan Syariah,* (Jakarta: Pusdiklat Mahkamah Agung RI, 2006), hlm. 150.

[33]Marilang, *Hukum Perikatan, Perikatan yang Lahir dari Perjanjian*, (Makassar: Indonesia Prime, 2017), hlm. 174.

pillars of a contract are absolute elements that must be present and are the essence of every contract. As for the conditions, they are characteristics that must be present in each pillar, but are not the essence of the contract.[34] The Hanafi school of thought stipulates that there is only one pillar of the contract, namely the shighah (Ijab and Kabul).[35] Meanwhile, the majority of scholars, including the Shafi'i madhhab and the Maliki madhhab, determine that there are three pillars of the contract, namely the subject of the contract (al-'aqidan), the object of the contract (mahal al-'aqd) and the speech of the contract (sighat al'aqd).[36]

The Hanafi school does not include al-'aqidan and mahal al-'aqd in the pillars of the contract like the majority on the grounds that these two things are not part of the essence of the contract, but only as an absolute consequence (lawazim) of the existence of the contract.[37] Even so, the elements of the parties (al- 'aqidan) and the object of the contract (mahal al-'aqd) must also exist, but their existence is only an external element of the contract so that they are not included in the category of pillars.[38]

Meanwhile, the pillars of the contract according to the majority are all elements that must be present in the contract, whether they are considered part of the essence of the contract itself or not.[39] Wahbah az-Zuhaili adds one more element that must be present in the contract, namely the purpose of the contract (maudhu' al-'aqd). He does not call it a pillar of the contract but 'anashir al-'aqd (elements of the contract).[40] The four elements that make up the pillars of the contract above require conditions so that these elements can function to form a contract. In Islamic law, these conditions are called the conditions for the formation of a contract (syurutul al-in'iqad).[41]

Contracting Parties (Al-'Aqidan)

Al-'aqidan are the parties to the contract. As the perpetrator of a certain legal action, in this case the legal action of a contract (engagement), from the point of view of the law is a legal subject. Legal subjects as perpetrators of legal acts are often defined as parties carrying rights and obligations.[42] The parties to the contract must be people who have the ability to act legally. Either by themselves or through the intermediary of the shari'iyyah area.[43] In Majallatul Ahkam al-'Adliyah it is stated, "It is required in

[34]Hasanudin, *Bentuk-bentuk Perikatan (Akad) dalam EkonomiSyariah*, Kapita Selekta Perbankan Syariah, hlm. 150.

[35]Majduddin Abu al-Fadhl al-Hanafi, *al-Ikhtiyar li Ta'lil al-Mukhtar*, (Kairo: Al-Halbi, 1937), jilid 2, hlm. 4.

[36]Zakariya Al-Anshari, *Asna al-Mathalib fi Syarh Raudh at-Thalib*, (t.tp: Dar al-kitab al-Islami, t.th.), jilid 2, hlm. 3.

[37]Abu Umar Dubyan, *Al-Mu'amalat al-Maliyyah Ashalatan wa Mu'asharatan,* (Riyad: Maktabah al-Malik Fahd al- Wathaniyah, cet. II, 1432 H), jilid 18, hlm. 62.

[38]Syamsul Anwar, *Hukum Perjanjian Syariah*, hlm. 96.

[39]Abu Umar Dubyan, *Al-Mu'amalat al-Maliyyah Ashalatan wa Mu'asharatan*, jilid 18, hlm. 62.

[40]Wahbah az-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu,* (Beirut: Dar al-Fikr, 2008), jilid 4, hlm. 94.

[41]Harun, *Fiqh Muamalah*, hlm. 41.

[42]Gemala Dewi dkk., *Hukum Perikatan Islam di Indonesia,* (Depok: Kencana, 2005), hlm. 48.

[43]Hannan binti Muhammad Husain, *"Aqsam al-'Uqud fi al- Fiqh al-Islami,"* jilid 1, hlm. 76.

buying and selling, that the parties to the contract are capable/competent people, namely people who are 'aqil and mumayyiz."[44]

A person's ability is broadly divided into two, namely the ability to accept rights and obligations (ahliyah al-wujub) and the ability to carry out rights and obligations (ahliyah al-ada).[45]

a. Ahliyyah al-Wujub

Muhammad Yusuf Musa defines ahliyah al-wujub with a person's eligibility for obligations and rights to have Basically everyone who lives is a recipient of rights and obligations (ahliyah al-wujub), but some are full (ahliyah al-wujub al-kamilah) and some are less than perfect (ahliyah al-wujub an-naqishah).[46] A person who has rights and obligations imperfectly (ahliyah al-wujub an-naqishah) as owned by a baby (fetus) still in the womb, is considered to have rights, but not as full as a baby who has been born alive. Therefore. in terms of his share of inheritance must be taken into account the most favorable. As for humans as carriers of rights and obligations in full (ahliyah al-wujub al-kamilah) owned by everyone from the time he was born until his death.[47]

b. Ahliyyah al-Ada

Ahliyyah al-Ada' is the eligibility of a person to have all his speech and actions (tasharrufat) considered valid according to shara': "When a person performs an action, that action is considered valid according to shara' and has legal consequences".[48] For example, if he enters into a business transaction, his action is considered valid and has legal consequences. If he prays, fasts or performs other obligations, his actions are considered valid by shara' (if the pillars and conditions are met) and fulfill the obligations of the mukallaf. Likewise, if he commits an offense against another person, he will be subject to criminal sanctions, whether bodily or property.

Ahliyyah al-Ada' is a matter of responsibility based on reason or personal capacity. Ahlyah al-ada is the basis that a person can legally be burdened with legal obligations (mukallaf), namely a person who is physically (physically) has reached the age of majority, and spiritually classified as a sane or spiritually healthy person.[49]

1. Object of the Contract (Mahal al-'Aqd)

A contract must have a specific object, so a contract that does not mention the object is invalid. The object of the contract is something that is made the object of the contract and is subject to the legal consequences caused. The object of the contract can be in the form of tangible objects, such as cars and houses, or intangible objects such as benefits or services.[50] In line with developments in the economic field, the object of the

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[44]Tim Penyusun, *Majallah al-Ahkam al-'Adliyah,* (Beirut: DarulKutub al-Ilmiyah, cet. 1, 1991), jilid 1, hlm. 324.

[45]Ibnu Amir Haj al-Hanafi, *At-Taqrir wa at-Tahbir,* (Beirut: Darul Kutub al-Ilmiyah, cet. II, 1983), jilid 2, h. 164, 'Alauddinal-Bukhari, *Kasyf al-Asrar Syarh Ushul al-Bazdawi,* (t.tp: Darul Kitab al-Islami, t.th.), jilid 4, h. 237.

[46]Muhammad Yusuf Musa, *Al-Fiqh al-Islami,* (Mesir: DarulKitab al-Araby, 1958), hlm. 220.

[47]Wahbah Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Jilid 4, hlm.118.

[48]Wahbah Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Jilid 4, hlm.121.

[49]Ahmad Wardi Muslich, *Fiqh Muamalat,* (Jakarta: AMZAH,2010), h. 115.

[50]Hannan binti Muhammad Husain, *"Aqsam al-'Uqud fi al- Fiqh al-Islami,"* hlm. 69.

contract can be very broad, such as in a sale and purchase contract, the object of the contract can be payment for the buyer and goods for the seller, in a lease contract, the object of the contract is the right to use (haq al-intifa') the goods for the tenant, and for the owner is the right to rent, and so on.[51]

Islamic jurists stipulate that the object of the contract must fulfill four elements, namely:

a) The object must already exist when the contract is made, this provision is intended for sale and purchase contracts, while for salam contracts (orders for goods with payment in advance, either in part or in whole), leasing (lease purchase), istisna contracts and the like, Islamic jurists allow goods to be estimated to exist at the specified time..[52]
b) The goods that are the object of the contract are goods that are permitted by shara' (mutaqawwam). Everything that is permitted to be used by shara' can become the object of the contract, on the contrary, goods that are not permitted by shara' (mal ghair al-mutaqawwam) such as liquor, carrion, and so on, cannot be the object of the contract. Ibn Rushd emphasized that the object of the contract must be goods that can be traded, while those in the form of benefits must not be prohibited by shara'..[53]
c) Objek harus dapat diserahkan. Ketentuan ini berlaku pada jenis akad *mu'awadhah*, yangmembutuhkan penyerahan barang dari duaorang yang berakad, seperti dari penjual kepada pembeli. Sedangkan dalam akad *tabarru'* Imam Malik membolehkan objekakadnya berupa barang yang tidak dapatdiserahkan seperti menghibahkan hewan yang melarikan diri.[54]
d) The object of the contract must be clear and recognizable. An object that becomes the object of an engagement must be clear and known by the 'aqid. This aims to avoid misunderstandings between the parties that can lead to disputes. If the object is an object, then the object must be clear in form, function, and condition. If there is a defect in the object, it must also be notified. If the object is in the form of services, it must be clear that the party has the expertise as to the extent of his ability, skill, and cleverness in that field. If the party is not yet or lacks expertise, skill, ability, or cleverness, it must still be notified so that each party understands it.[55]

In the Hadith narrated by Imam Lima from Abu Hurairah that the Prophet Muhammad forbade buying and selling gharar (fraud) and buying and selling hashah (buying and selling with certain conditions, such as the seller will sell his shirt if the seller throws a stone at the shirt). The clarity of the object of the contract follows custom, where by custom the type of goods, quantity, nature and so on can be known.

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[51]Imron Rosyadi, *Jaminan Kebendaan Berdasarkan Akad Syariah: Aspek Perikatan, Prosedur Pembebanan dan Eksekusi*, hlm. 13.

[52]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu,* hlm. 172-181.

[53]Ibnu Rusyd al-Qurthubi, *Bidayatul Mujahid wa Nihayatul Muqtashid*, jilid 4, hlm. 6.

[54]Ibnu Juzay al-Kalbi, *al-Qawanin al-Fiqhiyah*, (Beirut: DarulQalam, t.th.), hlm. 241.

[55]Ghufron A. Mas'adi, *Fiqih Muamalah Kontekstual*, (Jakarta:Raja Grafindo Persada, cet. 1, 2002), hlm. 88.

This clarity requirement by Islamic jurists is more intended for mu'awadhah maliyah contracts.[56]

Statement of Intent (Shighah al-'Aqd)

The scholars agree that the shigah is a pillar of all contracts because it is the core of the contract and forms the contract because the shigah determines and causes the law to arise in a contract.[57] Sighah al-'aqd is an expression of the parties to the contract in the form of ijab and kabul. Ijab according to the majority of scholars is a statement of promise or offer from the first party to do or not do something. Meanwhile, according to the Hanafiyah, ijab is a statement that is first expressed by one of the contract parties, either the seller or the buyer. The kabul according to the majority is a statement of acceptance from the second party to the offer made by the first party. Meanwhile, according to the Hanafis, kabul is a statement from one of the contracting parties in response to the first statement from the other contracting party.[58]

The fiqh scholars require three things in making ijab and kabul so that they have legal consequences, namely as follows:

a) Jala'ul ma'na, namely the purpose contained in the statement is clear, so that it can be understood the type of contract desired. However, according to Wahbah Zuhaili, the pronunciation of ijab kabul does not have to be in a certain form of speech other than in marriage contracts and 'uqud 'ainiyyah such as grants and pledges. This is because the rule is: "what is used as a guide in the contract is the intention and meaning, not the memorization and structure of the redaction.".[59] So it is valid to buy and sell with the phrase hibah if it is accompanied by 'iwadh, and the marriage contract is valid by using the phrase hibah if it is accompanied by the delivery of the dowry.[60]

b) Tawafuq, which means that there is compatibility between ijab and kabul. The intention contained in the Ijab must be the same as the intention contained in the Kabul. So if there is a discrepancy between the ijab and kabul, the contract is not valid. For example, "I sell this land for one million", then the buyer says, "I accept the purchase of the land next to it", or, "I accept it for five hundred thousand".”[61]

c) Jazmul iradataini, i.e. between ijab and kabul shows the will of the parties

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[56] Abdul Manan, *Hukum Ekonomi Syariah dalam Perspektif Kewenangan Peradilan Agama,* (Jakarta: Prenada Media Group, 2012), hlm. 86.

[57] Ibnu al-Humam al-Hanafi, *Fath al-Qadir 'ala al- Hidayah,* (Beirut: Darul Fikr, cet. 2, 1979), jilid 6, h. 248, ad- Dasuki, *Hasyiyah ad-Dasuki 'ala Syarh al-Kabir,* (t.tp: Darul Fikr, t.th.), jilid 3, h. 2, al-Khatib asy-Syirbini, *Mughni al- Muhtaj ila Ma'rifah Ma'ani Alfadz al-Minhaj,* (t.tp: Darul Fikr, t.th.), jilid 2, h. 3, Manshur bin Yunus al-Buhuti, *Syarh Muntaha al-Iradat,* (t.tp: Darul Fikr, t.th.), jilid 2, hlm. 140.

[58] Adnan Khalid, *Dhawabith al-'Aqd fi al-Fiqh al-Islami,* (Jeddah: Dar asy-Syuruq, 1981), hm. 33.

[59] Muhammad Mushtafa az-Zuhaili, *Al-Qawa'id al-Fiqhiyah waTathbiqatuha fi al-Madzahib al-Arba'ah,* (Damaskus: Darul Fikr, 2006), jilid 1, h. 403, Muhammad Shidqi, *Mausu'ah al- Qawa'id al-Fiqhiyah,* (Beirut: Muassasah ar-Risalah, 2003), jilid 7, hlm. 378.

[60] Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu,* jilid 4, hlm. 105.

[61] Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu,* jilid 4, hlm. 105.

definitely, not in doubt, and not forced.[62]

d) Ijab kabul must be connected in one assembly. The contract assembly according to Wahbah az- Zuhaili is a situation where the parties to the contract are carrying out the contract process itself. Or a situation where there is still a unified topic of conversation between the parties to the contract to complete the contract.[63] One assembly does not mean physically meeting in one place, the most important thing is that both parties are able to hear each other's intentions, whether they agree or disagree.[64]

Nowadays, the contract can take place over the telephone or via the internet. So in this case, the theory of being in one assembly does not mean physically, but the unity of the period of the telephone conversation or chat. As long as the conversation is still ongoing, and the telephone line is still connected or both parties are still online, it means that the two parties are still in the category of one assembly (location of the contract). Ijab and kabul can be done in four ways:[65]

a) Oral. The parties express their will in clear words. In this case it will be very clear the form of ijab and kabul carried out by the parties.

b) Writing. Sometimes, an engagement is carried out in writing. This can be done by parties who cannot meet directly in conducting an engagement, or for more difficult engagements, such as an engagement carried out by a legal entity. There will be difficulties if a legal entity enters into an agreement not in writing, because evidence is needed and responsibility for the people who join the legal entity.

c) Sign. An engagement is not only performed by a normal person, a disabled person can also perform an engagement (contract). If the disability is in the form of speech impairment, then it is possible for the contract to be made by sign, provided that the parties to the contract have the same understanding.

d) Actions. Along with the development of the needs of the community, nowadays an engagement can also be carried out by means of deeds alone, without being oral, written, or signaled. This can be called ta'athi or mu'athah (mutual give and take). The act of giving and receiving from the parties who have mutually understood the act of engagement and all its legal consequences. This often happens in the process of buying and selling in supermarkets where there is no bargaining process. The buyer already knows the price of the goods which is written on the item. When the buyer comes to the cashier's desk, it shows that they will enter into a sale and purchase agreement.

Purpose of the contract (Maudhu' al-'Aqd)

The purpose of the contract is the purpose or main purpose of making a contract which purpose has been determined by shara'. With this fourth pillar, a contract may

[62]Fathurrahman Djamil, "Hukum Perjanjian Syariah", dalam *Kompilasi Hukum Perikatan* oleh Mariam, dkk. cet. 1, (Bandung: Citra Aditya Bakti, 2001), h. 247-248.

[63]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu,* jilid 4, hlm. 106.

[64]Harun, *Fiqh Muamalah,* hlm. 45.

[65] Ahmad Azhar Basyir, *Asas-asas Hukum Muamalat (Hukum Perdata Islam)*, ed. Revisi, (Yogyakarta: UII Press Yogyakarta, 2000), hlm. 68-71.

be invalid if the purpose of the contract does not follow what is stipulated by Shara'.[66]

For example, if x and y cooperate to commit murder or robbery, then the contract is forbidden. But if the contract is permissible but the motive for doing it is not justified by sharee'ah, such as selling grapes to a liquor producer, selling 'inah and nikah muhallil. In this case, there are two opinions. Imam Shafi'i is of the opinion that the contract is valid because the pillars have been fulfilled, but the motive for making the contract in violation of sharia is left to Allah, the Almighty, while Muhammad ibn Hasan and Abu Yusuf (two students of Imam Abu Hanifah) and other scholars are of the opinion that the contract is invalid and that the consent does not have any legal effect.[67]

Each type of contract has a specific purpose that is determined by Shara'. For example, the purpose of a sale contract is to transfer ownership of the goods being sold to the buyer with the payment of an 'iwadh, the purpose of a lease contract is to transfer ownership of the right of use with the payment of an 'iwadh, the purpose of a grant contract is to transfer ownership of an object without an 'iwadh, the purpose of an i'arah (borrowing and lending) contract is to transfer ownership of the right to use an object without an 'iwadh, while the purpose of a marriage contract is the permissibility of istimta' between husband and wife.[68]

The conditions that must be met in order for the purpose of the contract to be considered valid and have legal consequences are: The purpose of the contract must not be an obligation that already exists for the parties without the contract being made; the purpose must last until the end of the contract; and the purpose of the contract must be justified by Shara'.[69]

The Nature of Fiqh Muamalah

The concept of fiqh in muamalah consists of two words, namely fiqh and muamalah. From its etymology, fiqh is defined as the ability to understand, understand, or comprehend; while muamalah is a term that includes the act of doing, doing, and acting.[70] Abdul Wahab Khallaf defines fiqh as follows.

علم الفقه هو العلم بالاحكام الشرية العملية المكتسب من اذلتتها التفصيلية اوهو مجموعة الأحكام الشرعية العملية المستفادة من اذلتها التفصيلية

"Fiqh is the knowledge of the rulings of the Shari'ah that are derived from detailed arguments. Or in other words, fiqh is a collection of the rulings of Shara' that are derived from detailed arguments."[71]

In the Qur'an, the word "fiqh" is used 20 times as a verb and its various derivatives. In general, the word fiqh is used to describe understanding, as in the

[66]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, jilid 4, hlm. 211.
[67]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu,* jilid 4, hlm.196.
[68]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu,* jilid 4, hlm.198.
[69]Basyir, *Asas-asas Hukum Muamalat (Hukum Perdata Islam),* hlm. 99-100.
[70]Abdul Wahab Khallaf, *Ilmu Ushul al-Fiqh,* (Ad-Dar Kawaitiyah, cet. VIII, t.th), hlm. 11.
[71]Abdul Wahab Khallaf, *Ilmu Ushul al-Fiqh,* hlm. 11

Qur'an in surah al-An'am verse 65.:

قُلۡ هُوَ ٱلۡقَادِرُ عَلَىٰٓ أَن يَبۡعَثَ عَلَيۡكُمۡ عَذَابٗا مِّن فَوۡقِكُمۡ أَوۡ مِن تَحۡتِ أَرۡجُلِكُمۡ أَوۡ يَلۡبِسَكُمۡ شِيَعٗا وَيُذِيقَ بَعۡضَكُم بَأۡسَ بَعۡضٍۗ ٱنظُرۡ كَيۡفَ نُصَرِّفُ ٱلۡأٓيَٰتِ لَعَلَّهُمۡ يَفۡقَهُونَ

"See how We bring forth the signs of Our greatness one after another so that they may understand."[72].

ذٰلِكَ بِأَنَّهُمۡ ءَامَنُواْ ثُمَّ كَفَرُواْ فَطُبِعَ عَلَىٰ قُلُوبِهِمۡ فَهُمۡ لَا يَفۡقَهُونَ

"That is because they had believed, then disbelieved, and their hearts were sealed, so they could not understand."[73]

Semantically, fiqh means understanding. As for the definition, fiqh is the science of sharia (Islamic law), which is essentially amaliyah (practical), which is examined and found based on tafsili (detailed) arguments.[74] Based on this definition, there is a limitation that explains the nature of fiqh and distinguishes it from non-fiqh..[75] The origin of the word muamalah in language is عامل يعامل معاملة same as the wazan فاعل يفاعل مفاعلة which means acting on each other, doing with each other, and practicing with each other. Muamalah is considered a broad term, which in its most general sense means:

التحصيل الدنيوى ليكون سببا لأخروي

"Producing the world (worldly and social affairs), in order to be the cause of the success of the ukhrawi affairs (problems)."[76]

Muhammad Yusuf Musa explained that muamalah is "the rules (laws) of Allah that must be followed and obeyed in community life to safeguard human interests".[77] Thus, muamalah is broadly interpreted as "all the rules (laws) created by Allah to regulate human relations with other humans in life and life".[78] Muamalah according to Hudlari Byk in a special sense is as follows:

المعاملة جميع العقود التي بها يتبادل منافعهم

"*Muamalah is all the contracts that allow humans to exchange benefits.*"

This means that contracts allow humans to exchange benefits. This is also the case with Allah's rules governing human relations where humans try to fulfill the needs

[72]QS. al-An'am, 65

[73]*QS. al-Munafiqun, 3.*

[74]Muhammad Abu Zahra, *Ushul al-Fiqh*, (Dar al-Fikr al-Arabi, 1985), hlm. 6

[75]Tajuddin Abd. Al-Wahab Ibnu Subki, *Jam'u al-Jawami'*, (Mesir: Musthofa al-Babi al-Halabi, 1937), hlm. 46-49

[76]Al-Dimyati, *I'anat al-Thalibin*, (Semarang: Thoha Putra, tt.), hlm. 2

[77]Abdul Majid, *Pokok-pokok Fiqh Muamalah dan Hukum Kebendaan dalam Islam*, (Bandung: IAIN Sunan Gunung Djati, 1986), hlm. 1

[78]Abdul Majid, *Pokok-pokok Fiqh Muamalah dan Hukum Kebendaan dalam Islam*

of material life, and although muamalah emphasizes needs on the worldly or material side, this cannot be separated from the ukhrawi side (below). Therefore, the freedom and muamalah activities to obtain, manage, and develop property (mal) must follow the rules of the game determined by sharia. Idris Ahmad explains that muamalah is "the rules (laws) of Allah that regulate human relations with humans in their efforts to obtain the means of their physical needs in the best way possible."[79]. Meanwhile, Rasyid Ridha explained that muamalah is "the exchange of goods or something useful in ways that have been determined.[80]

Based on this description, it can be understood that in a narrow sense, fiqh muamalah is the rules (laws) of God that must be obeyed, and these rules regulate relations between humans in terms of how to obtain and develop property. The difference in meaning between muamalah in the narrow sense and muamalah in the broad sense is seen in terms of its scope. Islam in the broad sense includes the matter of inheritance (tirkah), which is excluded from Islam in the narrow sense, although the matter of inheritance has been regulated in its own discipline. The similarity between muamalah in the narrow and broad sense is "the same regulation of human relations in terms of the circulation of property".

Definition of Al-Ijarah

Al-Ijarah or lease comes from the word اجر and synonymous with:

a) اكرى means to rent, as in the sentence اجرى الشئ (means to hire, as in the sentence).
b) اعطاء اجرى means to give a reward, as in the sentence that means to give a reward, namely the sentence اجر فلانا علي كدا (rewarding His servants).
c) اتابه means to reward him, as in the sentence اجر الله عبده (Allah rewards His servants).[81]

Ijarah is one of the mu'awadhah contracts, which is a transaction carried out to obtain material benefits or favors. Ijarah contracts are among the named ones (al-uqud al-musamma), which are contracts whose boundaries are stipulated in the Qur'an and hadith. Its opposite is an unnamed contract (al-uqud ghair al-musamma), which is a new contract whose criteria and conditions are not stipulated in the Qur'an and As-Sunnah (hadith) directly, for example, a contract to stay at a hotel with catering facilities, drinks, shuttle cars, and others.[82]

The term ijarah is generally interpreted in two different aspects of life. Ijarah is considered a process of agreement between two parties, one being the provider of a good or service (mu'jir) and the other being the user or recipient of the good or service (musta'jir). Ijarah contracts are similar to al-Ijar, al-Isti'jar, al-Iktira', and al-I'kra' contracts.[83] Muslims believe that this world is a mazra'atul akhirah (a place to cultivate

[79]*Fiqh Syafi'iyah*, (Jakarta: Karya Indah, 1986), hlm. 1
[80]*Fiqh Syafi'iyah*, (Jakarta: Karya Indah, 1986), hlm. 1
[81]Ibrahim Anis, et.al., *Al-Mu'jam*, juz I, cet. I, (Kairo: Dar al-Ihya' at-Turats alArabiy, 1972), hlm. 6
[82]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, (Damaskus: Dar al-Fikr, 2006), vol. V, hlm. 3.800.
[83]Abu Walid Muhammad Ibn Ahmad Ibnu Rusyd al-Qurtubi al-Andalusi, *Bidayat* al*Mujtahid* wa *Nihayat* al-*Muqtashid,* (Bairut: Dar al-Kutub al-Ilmiyah, 2010), hlm. 616-617.

for good in the hereafter), where this place will affect life in the hereafter.

In language, ijarah means buying and selling benefits, as explained by al-Firus Abadi in the book al-Qamus al-Muhith.[84] Ijarah is a mashdar word that means the same as al-ajr or action and behavior (al-fi'li)..[85] Thus, the etymological meaning of ijarah is reward for action, behavior and wages for work done. Kitab Maqayis al-Lughah's emphasis on the linguistic meaning of ijarah indicates one of its pillars, namely ijarah, which is a reward for work or services performed.[86] The meaning of ijarah is interpreted from surah Ali Imran verse 195:

﴿فَاسْتَجَابَ لَهُمْ رَبُّهُمْ اَنِّيْ لَآ اُضِيْعُ عَمَلَ عَامِلٍ مِّنْكُمْ مِّنْ ذَكَرٍ اَوْ اُنْثٰى ۚ بَعْضُكُمْ مِّنْۢ بَعْضٍ ۚ فَالَّذِيْنَ هَاجَرُوْا وَاُخْرِجُوْا مِنْ دِيَارِهِمْ وَاُوْذُوْا فِيْ سَبِيْلِيْ وَقٰتَلُوْا وَقُتِلُوْا لَاُكَفِّرَنَّ عَنْهُمْ سَيِّاٰتِهِمْ وَلَاُدْخِلَنَّهُمْ جَنّٰتٍ تَجْرِيْ مِنْ تَحْتِهَا الْاَنْهٰرُ ثَوَابًا مِّنْ عِنْدِ اللّٰهِ ۗ وَاللّٰهُ عِنْدَهٗ حُسْنُ الثَّوَابِ ١٩٥

﴾ (اٰل عمران/3: 195-195)

So their Lord granted their supplication (saying): "Surely I do not waste the deeds of those who do good among you, whether male or female, (for) some of you are descended from others..."[87]

Similarly, in surah Al-Kahf verse 30:

﴿اِنَّهُمْ اِنْ يَّظْهَرُوْا عَلَيْكُمْ يَرْجُمُوْكُمْ اَوْ يُعِيْدُوْكُمْ فِيْ مِلَّتِهِمْ وَلَنْ تُفْلِحُوْٓا اِذًا اَبَدًا ٢٠ ﴾

"Indeed, those who believe and do righteous deeds, We will not waste the reward of those who do good deeds."[88]

The etymological meaning of ijarah at least indicates the following:

a) Rewards for certain actions, both at the worldly level (ujrah / salary / reward) and at the ukhrawi level (ajr / reward). In the book Fiqh al-Sunah, Al-Sayyid Sabiq explains that al-ajr literally means al-iwadh, and one of the meanings of iwadh is al-tsawab (reward, reward).[89]
b) The work for which the mu'jir (provider of goods or services) earns ujrah is the benefit of goods or services and labor.
c) According to the will or statement of both parties, one party provides goods or services to obtain benefits, while the other party has the right to receive benefits and must pay compensation to the executor or owner of the goods

[84] Umar Abdullah Kamil, *al-Qawa'id al-Fiqhiyyah al-Kubra wa Atsaruha fi alMuamalat al-Maliyah,* (Mesir: Universitas al-Azhar, t,th), hlm. 508.

[85] Universitas Madinah, *Fiqh al-Muamalat,* (Kerajaan Saudi Arabia: Univ. Madinah, 2009), hlm. 626.

[86] Syekh A'la al-Din al-Za'tari, *Fiqh Muanalat al-Maliyah al-Muqarin: Shiyaghah Jadidah wa Amtsilah Mu'asyirah*, (Damaskus: Dar al-Ashma', 2008), hlm. 281.

[87] QS. Ali Imran, 195.

[88] *QS. Al-Kahfi, 30.*

[89] *QS. Al-Kahfi, 30.*

or services that are cultivated or taken advantage of.[90]

According to the scholars, ijarah means isti'jar, which is a contract for the transfer of beneficial ownership rights to goods or services accompanied by a reward (ujrah).[91] The definition of ijarah is essentially similar, but the redactions are different. The definition of ijarah is explained as follows:

a) According to the Shafi'iyah Ulama

الايجار هو عقد على منفعة مقصودة معلومة مباحة قابلة للبدل والاباحة بعوض معلوم

"Ijarah is a contract for an intended, known, and permissible benefit in return for a known fee (ujrah)."[92]

b) According to the Malikis and Hanbalis

الايجار تمليك منافع شئ مباحة مدة معلومة بعوض

"An agreement to transfer ownership of the benefits of something that is permissible, within a known period of time, and for a fee (ujrah)."[93]

c) Menurut Umar Abdullah Kamil, ijarah memiliki tiga pengertian secara terminologi. Ulama Hanafi menjelaskan dalam kitab Hasiyah bin Abidin bahwa akad ijarah yaitu sebagai berikut:

الايجار شرعا عقد يفيد تمليك المنافع بعوض

"Ijarah agreement in terms of terms is a contract for benefits in exchange for wages (ujrah)."[94]

In terminology, an ijarah contract is a contract in the activity of buying and selling a known benefit in exchange for a known reward (ujrah). This means that in terminology, an ijarah contract is a contract that causes the transfer of ownership of benefits in exchange (ujrah).[95]

a) Ijarah and buying and selling are exchange activities. Ijarah is an exchange of assets to obtain benefits. Therefore, ijarah is part of the sale and purchase contract. In terms of its object, ijarah can be divided into two parts, namely as follows.
   b) Ijarah is called rent (al-ijarah) when the object is the benefit of goods / objects.
c) Ijarah is called wages or labor (al-kira') when the object is services in the form of human labor or expertise.

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[90]Ali Jum'ah Muhammad dkk. *Mausu'ah Fatawa al-Muamalat al-Maliyyah li alMasyarif wa al-Mu'assasah al-Maliyyah al-Islamiyyah*, (Kairo: Dar al-Salam, 2009), vol IV, hlm. 419

[91]Universitas Madinah, *Fiqh al-Muamalat*, hlm. 627.

[92]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, hlm. 3.804

[93]Ali Ahmad al-Salus, *Hal Yajuz Tahdid Ribh al-Mal fi Syirkat al-Mudharabah bi Miqdar Mu'ayyan min al-Mal al-Mudharabah wa al-Muamalat al-Bunuk* (Qatar: Univrsitas Qatar, t.th), hlm 192.

[94] Umar Abdullah Kamil, *al-Qawa'id al-Fiqhiyyah al-Kubra wa Atsaruha fi almuamalah al-Maliyah*, (Mesir: Universitas al-Azhar, t. th.), hlm. 508.

[95]Ahmad Hasan, *Nadzariyyat al-Ujur fi al-Fiqh al-Islami*: *Dirasah Tahliliyyah Muhtakirah li Fiqh al-Muamalat al-Maliyyah*, (tt. Dar Iqra' t.th), hlm. 13.

When understanding the relationship between the sale and purchase contract and the ijarah contract, both are included in the scope of exchanging assets. This means that etymologically, buying and selling is an activity of exchanging property (goods) for property. Therefore, there are two similarities between the ijarah contract and the sale and purchase contract, namely:

The bai' and ijarah contracts are essentially tamlik wa tamaluk, in which the objects being exchanged, either the mutsman (benefit) or the tsaman (fee), change ownership. The bai' and ijarah contracts are mulzim, so they cannot be changed or canceled unilaterally. The only difference is their character, as khiyar applies in buying and selling. At the same time, the use of ijarah objects is continuous for a certain period of time.[96]

The similarities between the bai' contract and the ijarah contract have different characteristics, especially in the conditions for the validity of buying and selling activities, namely that the object being traded must be sold goods (mutsman) and the price (tsaman) must be known (ma'lum). Meanwhile, the benefits of goods include invisible objects (ghair ma'lumin/jahalah/gharar). [97] Abu Bakr al-Asham et al. prohibited (forbade) ijarah contracts because the object could not be known so that transactions for profit (goods/services) were classified as ma'dum transactions (intangible goods) which are included in gharar. It is worth mentioning the views of Abu Bakr al-Asham and his companions from the perspective of Ibn Qayyim al-Jauziyyah, which are as follows:

الايجار ة بيع والمنافع معدوم وبيع معدوم باطل

"(Ijarah is the sale of benefits). Benefit is ma'dun (intangible) and the sale of an intangible is void."[98]

Legal Basis for Ijarah

Most of the scholars who allow ijarah contracts say that the Qur'an, the traditions of the Prophet Muhammad, and scholarly consensus are the legal basis for the permissibility of ijarah contracts. As explained in surah Al-Qashash 26:

﴿قَالَتْ اِحْدٰىهُمَا يٰٓاَبَتِ اسْتَأْجِرْهُ ۖاِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْاَمِيْنُ ٢٦ ﴾

"One of the two women said: "My father, take him to work for us, for the best person you can take to work for you is one who is strong and trustworthy."[99]

Hadiths of the Prophet Muhammad explain paying ujrah (salary) to those who work for you, the Prophet Muhammad ordered that ujrah (salary) be paid to workers before their sweat is dry.

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[96]Syekh Hasan Ayub, *Fiqh al-Muamalah al-Maliyyah fi al-Islam*, (Kairo: Dar al Salam, 2003), 234

[97]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, hlm. 3.801

[98]Ibn Qayyim al-Jauziyyah, I'lam al-Muwaqqi'ian an Rabb al-Alamin, (Bairut: Dar alFikr, 1977, vol II). hlm.3-4.

[99]QS. al-Qashash, 26.

قال رسول الله صلعم اعطوا الاجير اجره قبل ان يجيف عرقه

"The Prophet said: Pay the laborer his wages before his sweat is dry. The Hadith of Qudshi explains that:

قال الله عز وجلا ثلاثة خصمهم يوم القيامة رجل اعطابي ثم غدر ورجل با ع حارا فاكل ثمنه ورجل استائجر اجرا فاستوفى منه ولا يعطيه اجره رواه مسلم

"Allah says: There are three groups of people for whom I will be their enemy on the Day of Judgment. The first is the one who swears by My name and then betrays it. The second is the one who sells a free man (not a slave) and eats his profit. The third is the one who hires someone, then the worker fulfills his obligations, but he does not pay his wages." (HR Muslim)[100]

The book Fiqh Muamalah published by the University of Madinah states that scholars from all times and places have agreed that ijarah contracts are valid. Only a few scholars broke the consensus, including Abu Bakr al-Aslam, Ismail, ibn Ulayah al-Bashri, al-Qasyani, al-Nahrawi, and ibn Kisan. Their beliefs differed from those of others (gharib). Gharar for the purpose of providing goods or services/skills that are the object of ijarah, which is the basis for the prohibition of ijarah contracts, is classified as gharar that does not affect the validity of the contract (gharar is not katsir gharar).[101] The legal evidence for the validity of ijarah contracts is the same as the validity of permissible muamalah maliyyah contracts in general. There are many proofs, both proofs that come from the Qur'an, Hadith, or Ijma'.

In the book al-Fiqh al-Islami bi al-Adillah, Wahbah al-Zuhaili explained that there was ijma' al-ummah (not ijma' al-ulama) at the time of the companions of the Prophet Muhammad about the legality of the ijarah contract because the community did take advantage of this. This is a real need for contracts that sell and buy goods. The justification for making an ujarah contract is the same as the validity of a sale and purchase contract. This is documented in al-Mabshut written by al-Sarkhasi, Bidayatut al-Mujtahid wa Nihayat al-mq tashid written by Ibn Rushd, and al-Mughni written by Ibn al-Qudanah al-Maqsidi.[102]

The original ruling of ijrah is al-ibahah (permissible), so its ruling varies according to the situation and conditions as well as time and place. For example, the law of renting houses and shops is allowed, but it becomes illegal when houses and shops are used for prohibited businesses such as the sale of khamr, liquor, ecstasy, and discos.

Pillars of the Ijarah Agreement

[100]Abu Muhammad Abdullah ibn Abd. Rahman ibn Fadhl ibn Bahram ibn Abd. Shamad ibn ad-Darimi al-Tamimi al-Abu Abdullah Ahmad ibn ibn Muhammad ibn Hambal ibn Asad al-Syaibani, *Musnad al-Imam Ahmad ibn Hambal*, (t,t: Muassasat al-Risalat, 2001), XVII), hlm. 487

[101]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, hlm. 3.802-3.803.

[102]Ali Jum;ah Muhammad dkk. *Mausu'ah Fatawa al-Muamalat al-Maliyyah li alMasharif wa al-Muassasat al-Maliyyat al-Islamiyyah*, (Kairo: Dar al-Isalam, 2009, vol, IV), hlm. 420

The pillars of the ijrah (rental) contract are general, namely (1) the parties to the contract, namely mu'jir and musta'jir or mu'jir and ajir; (2) al-ma'qud alaih, namely mahal al-manfaat (the place where the benefit occurs);[103] (3) (4) ujrah, which is the reward for services; and (5) shighat, which is the statement of offer and acceptance (ijab wa al-qabul).

Most scholars also explain the concept in a similar way, that the pillars of an ijarah contract include (1) two parties making a contract; (2) a statement of agreement (offer and acceptance); 3) ujrah; and (4) benefits. The majority of scholars do not mandate that hired goods or laborers who generate income from their services are part of the ijarah contract.[104] From the information presented, the following conclusions can be drawn.

1) Musta'jir (tenant), i.e. the party renting the goods.
2) Mu'jir (lessee), which is the party who rents the goods.
3) Benefit, which is the compensation received by the mu'jir for the leased goods.
4) Ujrah, which is the reward received by the mu'jir.
5) Akad ijarah, which is a statement of offer (ijarah) and acceptance (qabul) made by mu'jir and musta'jir.
6) Mahal al-Manfaat, namely the rental item (not included as a pillar of the ijarah contract, although Ibn Qoyyim includes it as a pillar).

Lease Term

The term of the lease is a component that must be determined in the ijarah contract. The tenant of a house (mahal al-manfaah), hall, boarding house, hotel, villa, apartment, vehicle, and so on must specify the length of time allocated for renting, using units of time such as minutes, hours, days, months, years, and others. For example, "I rent this vehicle for eight hours". The units of time used in renting goods or services are as follows.

1) The rental of goods or services can use the smallest unit of time (minutes) to the largest time (years). For example, you have to pay 5000 rupiah to rent a child's toy at a supermarket or mall for 10 minutes, and only 6000 rupiah to bathe a child's ball for 10 minutes.
2) There are people who rent places by the hour (1 hour = 60 minutes), for example, parking a vehicle at a mall at a rate of Rp5,000 per hour and so on.
3) The unit of time used to rent a place in society is the day (1 day = 24 hours), for example, renting a hotel or renting a four-wheeled vehicle from a car rental company.
4) Renting a place in the community with a monthly unit of time (1 month is the same, consisting of: 28 days, 29 days, 30 days, some even 31 days), such as renting a boarding house only for a month and so on.
5) Renting a place in the community on an annual basis (1 year =12 months), such as renting a rented house and so on.

[103]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, hlm. 3.803 & 3.8038
[104]Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, hlm. 3.803

Most scholars, including the Shaafa'is, say that ijarah contracts for goods or services can be for long or short periods of time, depending on the agreement of both parties. This is because there is no shar'i ruling on short and long terms to avoid ijarah from jahalah (gharar).[105]

CONCLUSION

In terms of the object of the exchange of benefits, there are two types of ijarah contracts, namely ijarah contracts for goods (sale of the benefits of goods / ijarah ala al-a'yan) and ijarah contracts for services (sale of labor / expertise / skills) performed by someone (ijarah ala al-asykhash). Through the book al Muamalat al-Maliyyah al-Mu'asyrirah, Wahbah al-Zuhaili explained that the type of ijarah can be viewed from two sides, namely the purpose and benefits exchanged, with the following explanation:

a) In lughawi 'aqad means binding and gathering or gathering two ends of a rope and tying one of them until it is connected intact. In Arabic it means guarantee or agreement. Whereas in Indonesian it means agreement, engagement, or contract. Agreement is an event in which a person promises to another individual or legal entity to promise each other to take action.
b) Akad in a general sense is any form of engagement that gives rise to the impact of shar'i law. With this definition, contracts such as divorce, freeing slaves, vows and tabarru' contracts fall into the category of contracts in the general sense.
c) Specifically, a contract is a connection or meeting of ijab and kabul that results in a law, a legal action of two parties because a contract is a meeting of ijab which represents the will of one party and kabul which expresses the will of the other party, which gives birth to a legal effect.
d) In terms of expensive al-manfaah, ijarah is divided into three, namely ijarah for the benefits of goods, ijarah for human labor / skills / expertise, and ijarah for goods and people (multi-service).
e) Ijarah for human skills is divided into two, namely ijarah for specific work (performed by Ajir-Khas) and ijarah for general work (performed by Ajir Amm / Musytarak).
f) In terms of purpose, ijarah is divided into ijarah tamlikiyyah (al- adiyah / operating lease) and ijarah tasyghiliyyah (financial lease).
g) Ijarah tasyghiliyyah is divided into two types, namely ijarah for goods that already exist in the contract assembly (can already be utilized) and ijarah for goods that are realized (not exist in the contract assembly) so that they cannot be utilized (ijarah maushufah fi al-dzimamah).
h) Ijarah for goods that exist in the contract period is divided into two types, namely ijarah for goods that end with the transfer of rights to the leased goods (IMBT) and parallel ijarah (muwazi).

[105]Djamil, Fathurrahman, *Filsafat Hukum Islam.* Jakarta: Gema Insani Press, 2000. Lihat. Bakar, Alyasa Abu, dalam Tjun Surdjaman (ed.), *Hukum Islam di Indonesia Pemikiran dan Praktek.* Cet.ke-1. Bandung: Rosdakarva, 1991. Alyasa Abu, *Metode Istinbath Fiqh di Indonesia (Kasus-kasus Majlis Muzakarah Al-Azhar*), (Yokyakarta: tidak dipublikasikan, 1987), hlm. 44-50.

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