

Legal Uncertainty in Dispute Resolution of Ijarah Muntahiya Bi al-Tamlik Contracts in Indonesia: A *ḥifẓ al-māl* Perspective

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Abstract: Legal uncertainty in the construction of *ijarah muntahiya bi al-tamlik* (IMBT) contracts within the Compilation of Sharia Economic Law (KHES) arises in two areas. First, ambiguity occurs in the transfer of ownership at the end of the lease term, which may use either a sale or a hibah (grant) scheme. Second, dispute resolution is often implemented disproportionately, causing financial harm to the *musta'jir*. This study employs normative juridical research with a statutory approach, as inconsistencies are found between legislation and fundamental legal principles. The findings indicate that ownership transfer in IMBT contracts should only be carried out through a sale mechanism. Using hibah is inconsistent with its classification as a *tabarru'* contract and contradicts Article 362 of KHES. Moreover, dispute resolution should not treat the *musta'jir* as indebted and force the sale of the leased object before the contract term ends. Instead, proportional penalties, explicitly stipulated in the contract, provide a fairer mechanism. These results highlight the urgency of reformulating IMBT contract practice in Indonesia. For Sharia financial institutions, implementing clearer ownership transfer rules and fair dispute resolution mechanisms will enhance legal certainty, protect the parties involved, and strengthen public trust in Sharia-compliant financial products.

Keywords: *Ijarah Muntahiya Bi al-Tamlik, Legal Uncertainty, KHES, Dispute Resolution, ḥifẓ al-māl, Sharia Finance, Indonesia*

Abstrak: Ketidakpastian hukum dalam konstruksi akad *ijarah muntahiya bi al-tamlik* (IMBT) dalam Kompilasi Hukum Ekonomi Syariah (KHES) muncul pada dua aspek utama. Pertama, ketidakpastian terkait mekanisme pengalihan kepemilikan di akhir masa sewa yang dapat dilakukan melalui skema jual beli atau hibah. Kedua, mekanisme penyelesaian sengketa yang kerap tidak proporsional sehingga merugikan pihak *musta'jir*. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, karena terdapat inkonsistensi antara peraturan perundang-undangan dengan asas-asas hukum. Hasil penelitian menunjukkan bahwa pengalihan kepemilikan dalam akad IMBT seharusnya hanya dilakukan melalui mekanisme jual beli. Penggunaan hibah tidak tepat karena termasuk kategori akad *tabarru'* dan bertentangan dengan Pasal 362 KHES. Selain itu, penyelesaian sengketa tidak semestinya menganggap *musta'jir* memiliki utang dan memaksa penjualan objek *ijarah* sebelum masa sewa berakhir. Mekanisme yang lebih adil adalah penerapan penalti secara proporsional yang dituangkan secara tegas dalam perjanjian. Temuan ini menegaskan urgensi reformulasi praktik akad IMBT di Indonesia. Bagi lembaga keuangan syariah, penerapan aturan yang lebih jelas mengenai pengalihan kepemilikan dan mekanisme penyelesaian sengketa yang adil akan meningkatkan kepastian hukum, melindungi para pihak, serta memperkuat kepercayaan publik terhadap produk keuangan syariah.

Kata Kunci: *Ijarah Muntahiya Bi al-Tamlik, Ketidakpastian Hukum, KHES, Penyelesaian Sengketa, ḥifẓ al-māl, Keuangan Syariah, Indonesia*

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Introduction

One of the essential dimensions of *maqāṣid al-sharī'ah* is *ḥifẓ al-māl* (the preservation of wealth).¹ As the fifth pillar, following *ḥifẓ al-dīn* (protection of religion), *ḥifẓ al-naḥs* (protection of life), *ḥifẓ al-nasl* (protection of lineage), and *ḥifẓ al-'aql* (protection of intellect), *ḥifẓ al-māl* serves as a foundational principle for ensuring justice in safeguarding assets.² In this regard, Islamic law provides comprehensive provisions in both civil and criminal domains to protect property rights.³

The scope of wealth protection is extensive, and contracts (*'uqūd*) play a central role in securing the interests of contracting parties.⁴ In the context of contemporary economic developments, several new contractual forms (*'uqūd ḡhayr musammā*), which were not known during the time of the Prophet Muhammad (peace be upon him), have emerged.⁵ One of the most significant among these is the contract of *ijarah muntahiya bi al-tamlik* (IMBT), or lease-to-own agreements.⁶

Article 19 of Law No. 21 of 2008 on Islamic Banking defines IMBT as a financing scheme that transfers the right of use or benefit of an asset or service through leasing, with an option for ownership transfer by either sale or gift at the end of the contract.⁷ Syafi'i Antonio has further clarified that IMBT is essentially a leasing contract accompanied by a promise (*wa'd*) of ownership transfer. In Indonesia, the legal position of IMBT is regulated not only under Law No. 21/2008 but also in the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah, KHES) and supported by Bank Indonesia regulations.⁸

Nevertheless, the regulatory framework of KHES has generated legal uncertainty due to overlapping provisions, particularly Articles 326, 328, and 329. Article 326 differentiates lease payments from purchase installments, while Article 328 authorizes courts to sell IMBT objects to recover debts from the lessee (*musta'jir*).⁹ This provision creates the impression of a credit sale, even though the sale contract has not been validly executed. Such inconsistencies blur the distinction between leasing and sale, resulting in ambiguity in the enforcement of IMBT contracts.

The legal complexity deepens with the

¹ M A Rachman and M Jayus, 'The Development of Startup Coop in Indonesia: An Overview Maqashid Al-Sharia', *Justicia Islamica*, 20.1 (2023), pp. 135–54, doi:10.21154/justicia.v20i1.4884.

² L Maulidiana and L Famulia, 'Maqāshid Al-Sharī'ah Review of the Implementation of Sharia Franchise at 212 Mart Bandar Lampung, Indonesia', *Al-'Adalah*, 20.1 (2023), pp. 157–78, doi:10.24042/adalah.v20i1.16339.

³ Habib Dolgun, 'Property Rights According to the Quran and Sunnah and Their Economic Implications for Contemporary Societies', *ISRA INTERNATIONAL JOURNAL OF ISLAMIC FINANCE*, 8 (2016), pp. 93–121.

⁴ A S Ningsih, R Fidiyani, and H P Wardhani, 'Mortgage Rights For The Sharia Banking Murabahah Contract: Its Position and Application', *Justicia Islamica*, 21.2 (2024), pp. 423–46, doi:10.21154/justicia.v21i2.9626.

⁵ E Renie, 'The Urgency of Fatwa in The Law of Sharia Economics in Indonesia', *Juris: Jurnal Ilmiah Syariah*, 20.2 (2021), pp. 201–08, doi:10.31958/juris.v20i2.4059.

⁶ D Busni and others, 'Implementation of the Hybrid Contract Concept in Multiservice Ijarah Financing as a Financing Alternative Health Service in the Covid-19

Pandemic', *Juris: Jurnal Ilmiah Syariah*, 21.1 (2022), pp. 11–26, doi:10.31958/juris.v21i1.5173.

⁷ N Angraeni and E F Primadhany, 'Sociological and Philosophical Study of Ijarah and Ijarah Muntahiya bi Tamlik', *El-Mashlahah*, 12.1 (2022), pp. 84–102, doi:10.23971/elma.v12i1.4174.

⁸ I Jalili, 'The Applicability of Leasing Contracts in Islamic Law Perspective to Enhance the Economic Growth in Indonesia', *Jurnal Ilmiah Mizani*, 10.2 (2023), pp. 282–91, doi:10.29300/mzn.v10i2.3009.

⁹ D Busni and others, 'Implementation of the Hybrid Contract Concept in Multiservice Ijarah Financing as a Financing Alternative Health Service in the Covid-19 Pandemic', *Juris: Jurnal Ilmiah Syariah*, 21.1 (2022), pp. 11–26, doi:10.31958/juris.v21i1.5173.

use of *wa'd* as the legal basis for ownership transfer. Financial Services Authority Although DSN-MUI Fatwa No. 85/DSN-MUI/XII/2012 declares *wa'd* to be binding (*mulzim*), it cannot be equated with a sale contract. Consequently, IMBT remains distinct from conventional credit sale agreements, both in terms of execution and legal implications. Maintaining this distinction is crucial to uphold Sharia compliance and avoid contractual disputes.¹⁰

These normative inconsistencies are not only theoretical but are also reflected in practice. The Financial Services Authority of Indonesia (OJK) reported in 2024 that IMBT has become one of the dominant instruments in Islamic banking, particularly in financing housing, vehicles, and fixed assets. However, its implementation continues to face ambiguities. Empirical data from 2023–2024 indicate that IMBT is increasingly used across the Islamic finance sector, with the National Committee for Islamic Economy and Finance (KNEKS) emphasizing its role in strengthening real-sector financing. Yet, field studies highlight divergent interpretations among Sharia banking practitioners, especially in distinguishing leasing from sales transactions at the end of contract periods. Such uncertainties sometimes cause IMBT to be treated as though it were a credit sale before the actual sale occurs.

Further challenges arise from the incomplete synchronization between Sharia guidelines (such as DSN-MUI fatwas) and positive law as codified in KHES.¹¹ Issues such

as ownership guarantees, execution of collateral, and certainty of transfer of ownership in IMBT remain insufficiently addressed in religious courts and civil law regulations. This gap perpetuates legal uncertainty in the formulation and enforcement of IMBT schemes by Islamic financial institutions.

At the regulatory and institutional levels, inconsistencies between DSN-MUI fatwas and OJK regulations exacerbate the problem. Recent studies suggest that unharmonized Sharia regulations and national banking policies threaten the operational stability of Islamic banks and weaken public confidence.¹² In response, the government issued POJK No. 15/2021, which obliges Islamic banks to allocate specific financing portfolios—including support for SMEs—and imposes administrative sanctions for non-compliance. Scholars argue that closer coordination between DSN-MUI and OJK is essential to strengthen legal certainty and ensure the sustainable growth of Islamic finance in Indonesia.

Against this backdrop of empirical developments and normative challenges, examining the legal uncertainty and dispute resolution mechanisms in IMBT contracts becomes increasingly urgent. This study seeks to explore how contradictions among KHES provisions generate uncertainty in the practice of IMBT and how the principle of *ḥifẓ al-māl* in *maqāṣid al-sharī'ah* can serve as a conceptual

¹⁰ Fadli Abdullah and others, 'Contemporary Challenges for Sharia Financial Institutions to Increase Competitiveness and Product Innovation Perspective of Sharia Economic Law: Evidence in Indonesia', *MILRev: Metro Islamic Law Review*, 3 (2024), pp. 141–73, doi:10.32332/milrev.v3i2.9202.

¹¹ N Mubarak, S Musafa'ah, and Y Irama, 'Epistemological

Transformation of 'Urf in the DSN-MUI Fatwa on E-Commerce: A Maqāṣid al-Sharī'ah Based Analysis', *Al-Manahij: Jurnal Kajian Hukum Islam*, 19.2 (2025), pp. 167–90, doi:10.24090/mnh.v19i2.13145.

¹² A M Saleh, R J Amalia, and K Fathoni, 'The Authoritativeness of Fatwa: A Study of Sharia Banks' Compliance With The DSN-MUI Fatwa on Fund-Raising', *Justicia Islamica*, 20.1 (2023), pp. 155–74, doi:10.21154/justicia.v20i1.5306.

framework for reformulating dispute resolution mechanisms that ensure greater legal certainty, fairness, and justice.

Method

This study employs a normative legal research method with a statutory approach.¹³ The statutory approach was selected because of the existing conflict of norms between provisions in the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah, KHES), the fatwas of the National Sharia Council of the Indonesian Ulama Council (DSN-MUI), and relevant national legislation.¹⁴

To address these conflicts, the research applies several analytical techniques. Textual analysis was conducted on the relevant articles of KHES, comparative analysis was undertaken to examine the similarities and differences between KHES, statutory law, and DSN-MUI fatwas, while conceptual analysis was used to connect legal principles with the framework of *maqāṣid al-sharī'ah*, particularly the principle of *hifz al-māl* (protection of wealth).

The secondary legal materials analyzed in this study include statutory regulations (such as Law No. 21 of 2008 on Islamic Banking and KHES), DSN-MUI fatwas, and scholarly opinions from Islamic law and Islamic economic literature. The analysis follows a prescriptive model, aiming to propose solutions for resolving legal conflicts based on

the principles of Islamic law and the overarching objective of safeguarding wealth under the concept of *hifz al-māl*.

Result and Discussion

Legal Uncertainty in Resolving Disputes under *Ijarah Muntahiya bi al-Tamlik* (IMBT) within the Framework of *Hifz al-Māl*.

The contractual structure of *ijarah muntahiya bi al-tamlik* (IMBT) in Islamic finance institutions conceptually resembles lease-to-own agreements or financial leasing in conventional systems.¹⁵ Leasing is typically defined as financing for the provision of capital goods with periodic payments, accompanied by the option to purchase the asset or extend the contract based on the residual value. Meanwhile, lease-to-own agreements usually terminate with automatic ownership transfer once all installments are paid. In contrast, IMBT requires an initial leasing arrangement, followed by ownership transfer through a separate contract at the end of the lease.¹⁶

In Indonesia, IMBT is regulated under the Compilation of Sharia Economic Law (KHES).¹⁷ Its distinction from conventional leasing or hire-purchase lies in its structure: the asset is initially owned by the financing company, and the contract clearly separates the rental value from the purchase price.¹⁸ By contrast, in hire-

¹³ A H Prayitno and others, 'Reversed Burden of Proof in the Procedural Law of Corruption Cases: A Normative Study of Justice and Legal Certainty in Positive and Islamic Law', *Jurnal Ilmiah Mizani*, 12.1 (2025), pp. 376–91, doi:10.29300/mzn.v12i1.8182.

¹⁴ M Sholihin, 'Fatwa Antara Makharij Fiqhiyah Dan Market Needs: Eklektisisme Pragmatis Di Balik Fatwa DSN MUI Di Indonesia', *Al-Istinbath: Jurnal Hukum Islam*, 5.1 (2020), pp. 71–88, doi:10.29240/jhi.v5i1.1412.

¹⁵ A M Alkhan, 'An Analysis of Murābahah and Ijārah Muntahiyah Bi-t-Tamlik: How Do Islamic Banks Choose Which Product to Utilise?', *Arab Law Quarterly*, 35.4 (2020), pp. 444–65, doi:10.1163/15730255-14030662.

¹⁶ O E O Fadul and others, 'The Concept of Ijarah and Ijarah Muntahia Bittamleek in Sudanese Islamic Banks', in *Studies in Systems, Decision and Control* (2024), DIII, pp. 541–49, doi:10.1007/978-3-031-43490-7_40.

¹⁷ B Iswanto and M F Hadinatha, 'Sharia Constitutionalism: Negotiating State Interests and Islamic Aspirations in Legislating Sharia Economic Law', *Ahkam: Jurnal Ilmu Syariah*, 23.1 (2023), pp. 235–58, doi:10.15408/ajis.v23i1.32899.

¹⁸ S B Kooria, 'Revisiting the Compilation of Islamic

purchase contracts the distinction between rent and purchase is not explicit, leading to automatic ownership transfer once payments are completed.

Despite this framework, IMBT faces two critical areas of legal uncertainty:¹⁹

1. The mechanism of ownership transfer, which can occur through either sale or gift (*hibah*).
2. The treatment of the lessee (*musta'jir*) in dispute resolution, particularly when default occurs, as they are sometimes treated as if they have incurred a debt.²⁰

From a Sharia perspective, ownership can be transferred through several mechanisms, including sale,²¹ gift,²² inheritance,²³ or natural growth of productive property. Among these, only sale and gift are directly relevant to IMBT.²⁴ While sale implies transfer of

ownership at an agreed price, gift involves voluntary transfer without compensation. Accordingly, Article 326 of KHES stipulates that both rental value and purchase price must be stated in the contract, making ownership transfer by *hibah* inconsistent with this principle.

In practice, ownership transfer through sale is often used when the cumulative rent does not cover the asset price, requiring a final sale transaction. Conversely, transfer through *hibah* is sometimes applied when the rental payments already approximate or exceed the purchase price plus margin.²⁵ However, this dual mechanism generates different legal consequences and contributes to uncertainty in enforcement.²⁶

Dispute resolution adds further complexity. Under Article 328 of KHES, courts are authorized *ijarah mun* to sell IMBT assets at market value to settle the lessee's outstanding obligations.²⁷ This provision implicitly treats the lessee as a debtor, creating the impression that a credit sale has already taken place, even though IMBT requires a separate sale contract only after the

Economic Law in Indonesia: Legal Challenges and Pathways to Harmonization', *Juris: Jurnal Ilmiah Syariah*, 24.1 (2025), pp. 127–36, doi:10.31958/juris.v24i1.13736.

¹⁹ M H M Abdullah and R Hassan, 'Evaluation on the Practice of Ijarah for Vehicle Financing and Its Regulation in Islamic Financial Institutions in Sri Lanka', in *Contributions to Management Science* (2023), Part F1204, pp. 335–43, doi:10.1007/978-3-031-27860-0_30.

²⁰ Shujaat Saleem and others, 'Attaining Standardization in Islamic Banking Institutions in Pakistan: Analysis on Ijarah Financing', *Journal of Risk and Financial Management*, 15.10 (2022), doi:10.3390/jrfm15100430.

²¹ S A Mikail, S A Busari, and A A Al-Saadi, 'Ownership Transfer Of Sovereign Shukuk Assets: Analysis Of Pertinent Issues From Shariah Perspective', *Journal of Fatwa Management and Research*, 29.3 (2024), pp. 149–72, doi:10.33102/jfatwa.vol29no3.605.

²² S Salleh and others, 'The Objectives of Shariah in Nomination for the Payment of Family Takaful Benefits', in *Emerging Issues in Islamic Finance Law and Practice in Malaysia* (2019), pp. 33–51 <<https://www.scopus.com/inward/record.uri?eid=2-s2.0-85143295075&partnerID=40&md5=2ab01545062da24bb616b32d96a2adb1>>.

²³ M Mokhsin and others, 'Design Requirements on Web-Based Ancestry Platform for Islamic Family Inheritance in Malaysia', *Journal of Advanced Research in Applied Sciences and Engineering Technology*, 32.3 (2023), pp. 26–42, doi:10.37934/araset.32.3.2642.

²⁴ M Fayyad, 'Reconstructing Lease-to-Own Contracts: A

Contemporary Approach to Islamic Banking Standards', *Heliyon*, 9.9 (2023), doi:10.1016/j.heliyon.2023.e19319.

²⁵ N L M Said and W.A.A.W. Ayub, 'Implementation of Collateral Hibah in the Muslim Wealth Management and Planning Industry', *International Journal of Islamic Thought*, 19.1 (2021), pp. 89–101, doi:10.24035/IJIT.19.2021.199.

²⁶ M H Vakili Moghadam, 'The Concept and Essentials of Unstable Ownership and Its Effects in Imami Jurisprudence and Iranian Law', *Manchester Journal of Transnational Islamic Law and Practice*, 20.3 (2024), pp. 1–18 <<https://www.scopus.com/inward/record.uri?eid=2-s2.0-85211225214&partnerID=40&md5=167cd485ed678b33418b358763ade801>>.

²⁷ H F Alshaikh, 'Judicial Rulings Issued by Bahraini Courts in Litigations Related to the Lease Ending with Ownership "Ijarah Muntahiya Bitamleek": Pathway of Innovation Finance', in *Studies in Systems, Decision and Control* (2023), CCXVI, pp. 839–51, doi:10.1007/978-3-031-10212-7_69.

lease ends. This interpretation conflicts with Article 324(2) of KHES, which states that ownership transfer can only occur after the IMBT contract is completed.

This inconsistency leads to ambiguity in cases of default (*wanprestasi*). According to Indonesian civil law and classical Sharia principles, default may occur through non-performance, partial performance, delay, improper performance, or prohibited conduct.²⁸ In IMBT, default typically manifests as failure to pay installments. Yet treating the lessee as a debtor subject to forced asset sale contradicts the contractual nature of IMBT, which separates usufruct rights (lease) from ownership rights (sale).²⁹

The legal debate over *wa'd* (promise) further complicates dispute resolution.³⁰ DSN-MUI Fatwa No. 85/2012 recognizes *wa'd* as binding (*mulzim*), but it does not constitute an immediate transfer of ownership.³¹ Thus, while lessees are obliged to fulfill their promise, courts should not treat them as debtors before the lease concludes. Otherwise, the IMBT contract risks collapsing into a de facto credit sale, blurring the distinction between leasing and purchase.³²

²⁸ D Sulistianingsih and others, 'Juridical Consequences of Anticipatory Breach as a Form of Breach of o Contract', *Journal of Indonesian Legal Studies*, 9.1 (2024), pp. 131–54, doi:10.15294/jils.vol9i1.4537.

²⁹ Fayyad, 'Reconstructing Lease-to-Own Contracts: A Contemporary Approach to Islamic Banking Standards'.

³⁰ N S Kasri and S S Zainalabiddin, 'Breach of Wa'd and Its Compensation Payment: A Critical Analysis of Islamic Profit Rate Swap', *ISRA International Journal of Islamic Finance*, 8.1 (2016), pp. 191–95 <<https://www.scopus.com/inward/record.uri?eid=2-s2.0-85195275812&partnerID=40&md5=4c67c763a84974da5025ed7eff17c11e>>.

³¹ A Pasley, E Ramirez, and S Sturm, 'What It Means to Belong in the Global South: A Coda to Two Special Issues on "Wrestling With (Not) Belonging"', *Knowledge Cultures*, 12.2 (2024), pp. 203–07, doi:10.22381/kc122202412.

³² Bambang Tri Bawono dan Andri Winjaya Laksana, The

To provide a clearer understanding of the similarities and differences between *Ijarah Muntahiya bi al-Tamlik* (IMBT), conventional leasing, and hire purchase, the following table presents a comparative overview of their key aspects, including ownership, payment structure, transfer of ownership, default treatment, dispute resolution, and compliance with the Shari'ah principle of *hifz al-māl*

Table 1. Comparison of IMBT, Conventional Leasing, and Hire Purchase

Aspect	IMBT (Ijarah Muntahiya bi al-Tamlik)	Conventional Leasing	Hire Purchase
Asset Ownership	Remains with the mu'ajir (bank/lessor) until the end of the lease	Remains with the lessor until the end of the contract	Remains with the seller until all installments are paid
Payment Structure	Ujrah (rental payments) + separate purchase price	Periodic rental payments	Combined rental and purchase installments
Transfer of Ownership	Through a separate contract of sale or gift after the lease ends	Generally no transfer of ownership	Automatically transferred after the final installment
Treatment of Default	The object may be sold by the court (KHES Article 328)	The object is repossessed by the lessor	The object is repossessed upon default
Dispute Resolution	Governed by KHES Articles 324–329	Settled under general civil law	Settled under Consumer Protection Law / Civil Law
Compliance with <i>hifz al-māl</i>	Consistent, if ownership transfer is through sale (not gift)	Non-compliant with Shari'ah principles	Non-compliant with Shari'ah (due to contract combination)

Beyond Indonesian law, this issue has international relevance. IMBT contracts are increasingly used across Islamic finance

Juridical Study on the Implementation of the Ijarah Muntahiya bi At-Tamlik Contract in the Concept of Luzum al-Aqdi, Addin, 16.2 (2022), pp. 215-238, doi: <http://dx.doi.org/10.21043/addin.v16i2.17024>

jurisdictions, from Malaysia and the Gulf States to the UK. The ambiguity in Indonesian KHES reflects a broader challenge in harmonizing Sharia-based contracts with positive law frameworks. Addressing these uncertainties is therefore crucial not only for legal certainty in Indonesia but also for ensuring the credibility and sustainability of Islamic finance globally.³³

Reformulation of Dispute Resolution in *Ijarah Muntahiya bi al-Tamlik* (IMBT) Contracts

The principle of *maṣlaḥah* represents a central foundation in the development of Islamic law and social order. Najm al-Dīn al-Ṭūfī classified *maṣlaḥah* into two categories:³⁴ first, those that concern the rights of God; and second, those that ensure the well-being and orderly life of humankind.³⁵ Within this framework, *maṣlaḥah* is closely tied to the objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly the five essentials (*al-uṣūl al-khamsah*).³⁶ Among these, *ḥifẓ al-māl* (protection of wealth) is especially relevant, as it encompasses not only the safeguarding of ownership but also the responsible use, fair

distribution, and protection from misuse or unjust loss.³⁷

In contractual relations, the realization of *ḥifẓ al-māl* is evident in the strict requirements established to ensure that contracts (*‘uqūd*) protect the interests of all parties.³⁸ Hasbi Ash-Shiddiqy identified seven essential conditions for a valid contract, including the legal capacity of parties, the legitimacy of the subject matter, the prohibition of contracts involving unlawful objects, and the requirement that contracts bring benefit and avoid harm. The legal uncertainty surrounding IMBT contracts violates these principles, as it risks creating injustice for either party. Two areas of uncertainty are particularly critical: (1) ownership transfer, which may occur through sale or gift (*hibah*), and (2) dispute resolution mechanisms that treat the lessee (*musta’jir*) as a debtor before an actual sale has taken place.

Table 2. Seven Contractual Conditions (Hasbi Ash-Shiddiqy) and Their Relevance to IMBT

Condition	Explanation	Relevance to IMBT
Ahliyatul ‘aqidain (capacity of parties)	Both parties must be legally competent and capable of contracting.	Ensures <i>musta’jir</i> and <i>mu’jir</i> have legal capacity; conflict arises when <i>musta’jir</i> is treated as debtor before valid sale.
Qabiliyatul mahalli li al-‘aqd (legitimacy of object)	The object of contract must be legally permissible.	IMBT assets must remain valid throughout; ambiguity when forced transfer occurs prematurely.

³³ T Berlianty and others, ‘Reassessing Islamic Banking Supervision in Indonesia: A Contemporary Islamic and Socio-Legal Perspective on OJK’s Integrated Model’, *MILRev: Metro Islamic Law Review*, 4.1 (2025), pp. 619–44, doi:10.32332/milrev.v4i1.10851.

³⁴ K Sadek, ‘Maṣlaḥa and Rachid Al-Ghannushi’s Reformist Project’, in *Maqasid Al-Shari’a and Contemporary Reformist Muslim Thought: An Examination* (2014), pp. 151–75, doi:10.1057/9781137319418_7.

³⁵ F Opwis, ‘Maslaha in Contemporary Islamic Legal Theory’, *Islamic Law and Society*, 12.2 (2005), pp. 182–223, doi:10.1163/1568519054093699.

³⁶ A H Mohd Nor and others, ‘Application of the Principles of Maqasid Shari’ah in Administration of the Islamic Countries’, *Advances in Natural and Applied Sciences*, 6.6 (2012), pp. 847–51 <<https://www.scopus.com/inward/record.uri?eid=2-s2.0-84864663822&partnerID=40&md5=071133ba85ef9d44081870b3964f31c3>>.

³⁷ M L Mohd Yusob and others, ‘Maqasid Al-Shariah as a Parameter for Islamic Countries in Screening International Treaties before Ratification: An Analysis’, *Pertanika Journal of Social Sciences and Humanities*, 23.SpecialIssue11 (2015), pp. 219–26 <<https://www.scopus.com/inward/record.uri?eid=2-s2.0-85012867906&partnerID=40&md5=9f01b1df8fa36e54b4ac87a4f22ac303>>.

³⁸ Andri Winjaya Laksana and others, Fiqh Jinayah’s Approach to Children Trapped in the Octopus of Narcotics Trafficking, *Jurnal Ilmiah Mizani*, 12.1 (2025), pp. 309–321, doi: <http://dx.doi.org/10.29300/mzn.v12i1.4888>.

Condition	Explanation	Relevance to IMBT
<i>Al-Wilāyah al-shar'īyyah</i> (legal authority)	Contract must be conducted by authorized persons.	Financing company holds ownership initially; disputes arise if transfer occurs without proper authority.
Prohibition of unlawful contracts	The subject matter cannot contradict Sharia.	Treating IMBT as credit sale undermines Sharia distinction between lease and sale.
<i>Manfa'ah</i> (benefit, harm)	Contract must provide benefit and not cause harm.	Legal uncertainty harms either party; reformulation ensures fairness through sale mechanism only.
Continuity of <i>ijab</i> until <i>qabul</i>	Offer must remain valid until acceptance.	IMBT uses <i>wa'd</i> ; DSN-MUI until Fatwa 85/2012 clarifies its binding nature.
One contractual session (<i>majlis wāhid</i>)	Offer and acceptance must occur in one session.	IMBT must separate leasing and sale contracts; conflation leads to ambiguity.

From the perspective of Islamic legal theory, ownership transfer in IMBT should be executed only through sale. Islamic jurisprudence classifies contracts into *tabarru'* (gratuitous contracts for mutual assistance) and *tijarah* (commercial contracts for profit). *Hibah* falls within the former, while sale belongs to the latter. Since IMBT is a commercial financing contract, its ownership transfer cannot be equated with *hibah*.³⁹ Furthermore, Article 326 of the Compilation of Sharia Economic Law (KHES) explicitly requires the specification of both rental and purchase prices in IMBT agreements, rendering ownership transfer through *hibah* inconsistent with this statutory framework.

Equally problematic is the resolution of disputes. Articles 328 and 329 of KHES empower courts to order the sale of IMBT assets at market value in cases of default (*wanprestasi*), treating the *musta'jir* as though they were indebted. This construction implies that a sale has already taken place, despite the

fact that Article 324(2) KHES stipulates that ownership transfer may occur only after the lease term has ended. Such inconsistency undermines legal certainty and blurs the distinction between lease and sale, thereby compromising both Sharia principles and contractual justice.

In reformulating dispute resolution, *musta'jir* should not be automatically treated as a debtor in the event of default. Nevertheless, to ensure fairness for the *mu'jir*, particularly given the binding nature of *wa'd* (promise) as recognized by DSN-MUI Fatwa No. 85/2012, contractual enforcement should include the imposition of proportional penalties. These penalties should be determined by mutual agreement at the time of contract formation and incorporated into the contractual clauses. This approach aligns with the principle of *pacta sunt servanda*, whereby agreements made lawfully bind the parties as if they were statutory law, thereby guaranteeing both legal certainty and justice in IMBT practices.

Conclusion

This study demonstrates that *Ijarah Muntahiya bi al-Tamlik* (IMBT) contracts face legal uncertainty in two key areas: (1) the mechanism of ownership transfer, which is ambiguously framed as either sale or *hibah* (gift), and (2) dispute resolution, which currently positions the lessee (*musta'jir*) as a debtor despite the absence of a valid sale. Such inconsistencies undermine the principles of *hifz al-māl* within *maqāsid al-sharī'ah* and contradict the contractual conditions outlined by Hasbi Ash-Shiddiqy, which require contracts to provide benefit and avoid harm.

The findings suggest that ownership transfer in IMBT should be reformulated to occur exclusively through sale, as *hibah*

³⁹ D Witro, N Nuraeni, and M F Januri, 'CLASSIFICATION OF AQAD IN SHARIA ECONOMIC LAW', Nurani, 21.1 (2021), pp. 55–68, doi:10.19109/nurani.v21i1.8387.

belongs to the category of *tabarru'* contracts, whereas IMBT is inherently a commercial (*tijarah*) arrangement. Furthermore, dispute resolution should not involve forced sales on the basis of treating the *musta'jir* as indebted, since sale may only be validly executed after the lease term has concluded. Instead, contractual enforcement mechanisms should incorporate proportionate penalties (*ta'wīd*) for default, agreed upon by the parties at contract formation, in line with the principle of *pacta sunt servanda*.

From a practical perspective, this reformulation contributes to strengthening Sharia financial law by harmonizing contractual practices with both statutory provisions (KHES) and *fiqh* principles. For Sharia financial institutions, clear separation between lease and sale components will reduce ambiguity, enhance legal certainty, and foster greater consumer trust. At the policy level, regulators such as OJK and DSN-MUI should issue integrated guidelines that clarify the permissible mechanisms of ownership transfer and establish standardized penalty clauses for default. These measures would not only improve dispute resolution practices but also support the long-term stability and credibility of the Islamic finance industry in Indonesia.

Credit Authorship Contribution

Moh. Nurul Huda conceptualised the research design, framed the theoretical foundation, and drafted the introduction and conclusion. Bambang Tri Bawono developed the analytical framework, performed the primary legal analysis, and refined the argumentation. Gunarto contributed to the methodological structure, reviewed key references, and critically revised the

manuscript. M. Dias Saktiawan conducted data collection, managed documentation, and supported the discussion and literature integration. All authors contributed substantially to the writing process and approved the final manuscript.

Declaration of Competing Interest

The authors declare that they have no conflicts of interest and that no financial, institutional, or personal relationships influenced this research.

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