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Sharia Law construction regarding early name change of Ijarah object: A case study of Wakalah in Sharia banking practice

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ABSTRACT

This article critically examines the issue of premature ownership transfer (early name change) in *Ijarah Muntahiya Bittamlik* (IMBT) contracts within Indonesian Islamic banking, focusing on both sharia and national legal perspectives. Premature transfer is understood as the transfer of ownership before the lease period ends, which raises concerns of legal certainty, potential *tadlīs* (disguised contract), and elements of *gharar* (uncertainty). Using a qualitative juridical-empirical approach, this study analyzes DSN-MUI fatwas, national legal regulations, and operational practices of Islamic banks. The findings reveal that premature ownership transfer contradicts both sharia principles and positive law, as it undermines fiduciary guarantees and weakens consumer protection. The main challenge identified is the persistence of such practices in the field due to administrative efficiency, often at the expense of normative compliance. As an alternative, the study recommends the implementation of the *wakalah* scheme, whereby dealers authorize banks to process ownership transfer only after all lessee obligations have been fulfilled, thus ensuring both compliance and efficiency.

Contribution: This study contributes to the development of Islamic economic law by integrating classical fiqh, national regulations, and contemporary practices, while also offering practical recommendations for the Islamic banking industry to strengthen legal certainty, consumer protection, and global competitiveness.

1. INTRODUCTION

In a constantly changing global landscape, technological advances, economic dynamics, and shifting consumption patterns have brought about major transformations in how people meet their daily needs. On the one hand, the demand for goods and services continues to grow: from heavy equipment in the construction sector to vehicles for personal mobility. On the other hand, limited funds or budgets often hinder individuals and corporations from purchasing goods directly (Matyushok et al., 2021). In this reality, the practice of leasing has emerged as a smart solution that is not only cost-efficient but also flexible in meeting functional needs.

In a modern context, renting allows access to the benefits of goods without having to bear the financial burden of full ownership (Filippas et al., 2020). For example, construction companies tend to choose to rent excavators or cement trucks. This type of financing is more measurable and economical, as they only pay for the use (function), not ownership. In Islamic economics, this type of transaction is called ijarah, a form of lease that is functional and legal according to Sharia (Muhit et al., 2024).

Despite its conceptual simplicity, the ijarah contract has been known since classical fiqh literature. This is demonstrated in the Qur'an, for example in Surah al-Baqarah (2): 233, Thalaq (65): 6, and al-Qashash (28): 26–27, which show that the practice of renting and utilizing goods has been an existential part of the transactions of previous communities. The existence of sacred texts (*nas*) that implicitly support the practice of ijarah, as well as the fact that such transactions have been carried out for generations, confirms that renting is not merely an option, but a functional necessity in fulfilling human needs (Janahi, 2025).

With the growth of Islamic banking, people, especially Muslims, are turning to sharia-compliant financial products, including those using the ijarah contract. Challenges in the development of Islamic banking itself have sparked innovations in contracts. One of the most substantial is the Ijarah Muntahiya Bittamlik (IMBT), a hybrid contract that combines leasing (ijarah) with elements of murabahah, or a gift at the end of the lease period (Khulwah, 2024). This concept offers two benefits at once: rental flexibility and the possibility of ownership at the end of the contract.

Philosophically, IMBT is believed to be able to fulfill the values of welfare and justice (Asutay & Yilmaz, 2021). Legally, IMBT has been standardized in the DSN-MUI Fatwa and is included in the positive legal framework, such as the Islamic banking law (Fitriani, 2023). Sociologically, IMBT shows real appeal among the community, along with increasing trust in Islamic banking as a financing alternative that is in accordance with Islamic law and pragmatic to modern needs (Graf, 2017).

However, in practice, several issues arise, for example, regarding the early transfer of ownership of movable objects such as vehicles, which is carried out before the lease period ends. This practice has given rise to normative debate: is it considered valid according to sharia, in line with the fatwa of the DSN-MUI, and consistent with positive law? This is the background of this research: to describe the legal and empirical dimensions of the IMBT contract practice in Islamic financial institutions, compare it with applicable fatwas and laws, and explore its implications for the validity of the contract.

Normatively, IMBT has clear legitimacy under both Islamic law and Indonesian positive law. DSN-MUI Fatwa No. 27/DSN-MUI/III/2002 stipulates that all the pillars and conditions of the ijarah contract apply to IMBT, and the promise of transfer of ownership (wa'd) agreed upon from the outset is morally binding, but its implementation is only legally valid after the lease period ends and is outlined in a new contract (M. F. Rahman & Luhur, 2021). This principle aims to maintain clarity on the status of the leased object and avoid gharar (uncertainty) that could be detrimental to one of the parties. From a positive legal perspective, IMBT is included in the category of anonymous agreements (innominaat) which are permitted by Article 1338 of the Civil Code as long as they meet the requirements for a valid agreement as regulated by Article 1320 of the Civil Code, and are explicitly recognized in Law No. 21 of 2008 concerning Sharia Banking as a form of legitimate financing (Kusumah, 2020).

Although the IMBT (Land Leasehold Title) theoretically has a strong sharia and legal basis, practical implementation challenges remain. One of the most prominent is the phenomenon of early title transfer, which involves transferring ownership or registering the name of a movable object, such as a vehicle, to the lessee before the lease term ends. This practice potentially violates the DSN-MUI fatwa, which stipulates that ownership transfers must occur after the lease term has expired. From a positive legal perspective, this practice can also have legal implications related to the transfer of rights that do not comply with the agreement's procedures (Hazrati & Heffron, 2021). Field findings show that some Islamic financial institutions carry out early name changes for reasons of administrative efficiency or to reduce risk, even though, in substance, this blurs the separation between the rental period and the ownership period.

Furthermore, there are variations in the implementation of IMBT in Islamic financial institutions, ranging from differences in the sequence of contracts to the contract forms used. Some institutions begin with a sale and purchase agreement followed by ijarah, which fundamentally deviates from the ideal IMBT construction, which places ijarah as the initial stage, followed by the transfer of ownership at the end of the contract period. This variation indicates a gap in synchronization between the provisions of the DSN-MUI fatwa, the Financial Services Authority regulations, and the internal practices of financial institutions. This is relevant considering that consistent IMBT implementation is not only a matter of formal compliance with sharia but also concerns legal protection for the parties and the continued public trust in the Islamic financial industry (Faizi, 2024).

Thus, a discussion of IMBT, particularly regarding the phenomenon of early name changes, requires a comprehensive analysis encompassing sharia perspectives, positive law, and empirical practice in the field. Such a study is crucial for assessing the extent to which IMBT implementation in Indonesia aligns with sharia principles and national legal provisions, as well as for formulating policy recommendations that can strengthen the integrity and competitiveness of Islamic financing amidst global economic challenges.

2. METHOD

This research uses a juridical-empirical approach, namely a method that combines normative analysis of applicable legal regulations with direct observation of practices in the field (Schotel, 2013). This approach was chosen because the *Ijarah Muntahiya Bit Tamlik* (IMBT) contract is not only related to formal legal aspects, such as statutory provisions and fatwas, but also closely related to the dynamics of its implementation in the Islamic banking world. Thus, the juridical-empirical approach allows researchers to more comprehensively uncover the conformity or inconsistency between legal norms and operational realities (Sapsudin, 2025).

The type of research used is descriptive qualitative, with the aim of providing a comprehensive picture of the implementation of IMBT contracts in Islamic banking institutions (Doyle et al., 2020). The analysis focuses on the extent to which the practice complies with applicable legal provisions, including the Sharia Banking Law, the Civil Code (KUHPerdata), Bank Indonesia Regulations (PBI), Financial Services Authority Regulations (POJK), and fatwas from the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), particularly Fatwa No. 27/DSN-MUI/III/2002. All of these reviews are conducted while adhering to principles derived from the Qur'an and Hadith.

The data sources in this study are secondary and include various types of references relevant to the ijarah contract, specifically the IMBT. Data were obtained from academic literature, scientific journals, and fiqh books discussing the ijarah contract. In addition, official documents such as fatwas from the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) regarding IMBT were also used as references. National laws and regulations governing Islamic banking and Islamic financial institutions in Indonesia were also analyzed to understand the applicable legal framework. This study also utilized documents and reports from Islamic financial institutions that covered IMBT contract practices and related issues, including the practice of early name transfer of IMBT objects, as well as empirical studies and previous research supporting the legal and sociological analysis. All secondary data were critically analyzed to assess the compliance of IMBT contract practices with Sharia provisions, DSN-MUI fatwas, and Indonesian positive law. This allows this study to build a theoretical foundation and empirical understanding without requiring primary data collection through interviews or surveys.

Data analysis was conducted descriptively and qualitatively, emphasizing the interpretation of the meaning behind the facts found in the field. This approach was used to assess the compatibility between the theory underlying the research and the practices implemented by Islamic financial institutions. Thus, this research not only produces factual descriptions but also critical interpretations of the relationship between legal provisions, Islamic principles, and the operational practices of Islamic financial institutions (IMBT) in Indonesia.

3. RESULTS AND DISCUSSION

3.1. Al-ijarah al-muntahiyah bi al-tamlik in theory and practice

Al-Ijarah al-Muntahiyah Bi al-Tamlik (IMBT) is a lease agreement for an asset or goods between a sharia bank as the asset owner (*mu'jir*) and a customer as the lessee (*musta'jir*), which ends with the transfer of ownership of the asset to the customer, either through a gift, sale or purchase, or other agreed mechanism after the lease period is over (Basir et al., 2022). In the context of Islamic banking in Indonesia, IMBT is often used in financing assets such as motor vehicles, houses, or equipment.

Muhammad Syafi'i Antonio defines *Ijarah Muntahiyah bi Tamlik* (IMBT) as a lease agreement for an asset accompanied by a promise from the lessor (*mu'jir*) to give ownership to the lessee (*mustajir*) at the end of the lease period, either by gift, sale and purchase, or other means permitted by sharia (Hidayatullah, 2021).” DSN-MUI Fatwa No. 27/DSN-MUI/III/2002 defines the meaning of "*Ijarah Muntahiyah bi Tamlik*" as an *ijarah* (rental) contract for an item that ends with the transfer of ownership from *Mu'jir* (المُجِر) (the party who rents the benefits of the goods or services) to *Musta'jir* (المُستَأجِر) (the party who rents or receives the benefits in return for payment (*ujrah*) either by sale, grant, or other permitted contract (Sakti & Adityarani, 2020).”

Based on the practice in one of the Islamic Financial Institutions, put forward by Oyo S Mukhlas (Mukhlas, 2025) providing a definition of IMBT from one of the models and formats of the *Al-Ijarah Al-Muntahiyah Bi Tamlik* (IMBT) financing agreement of PT BPRS AB Bandung with its Customers as stated in Article 1 of the Agreement format that: "*Ijarah Muntahiyah Bittamlik* is a lease agreement for a certain period by paying rent between the Bank as the owner of capital goods and the Customer as the lessee, which at the end of the lease period, the Customer as the lessee has the option to purchase the capital goods at a price agreed upon by both parties or continue the lease at a price agreed upon by both parties.

The understanding or definition can be concluded that the IMBT contract is a combination contract, namely the *ijarah* contract (Lease Agreement) which is continued with the option right, namely it is agreed (*Wa'ad*) that at the end of the lease period the leased goods can be owned through a grant, or sale and purchase process, or continuing the lease. Meanwhile, the subject of the contract consists of two main parties, namely *Mu'jir* (المُجِر): the party who rents the benefits of the goods or services, and *Musta'jir* (المُستَأجِر): the party who rents or receives benefits in exchange for payment (*ujrah*) (Rahayu, 2024).

In Islamic banking practices, particularly in the Ijarah Muntahiyah bi Tamlik (IMBT) contract, the bank acts as a *Mu'jir* (owner) because it leases goods (for example, a vehicle or house) to the customer. At the end of the lease period, the goods can be owned by the customer through a gift or symbolic sale mechanism. It is important to note that in Islamic jurisprudence, a *Mu'jir* does not have to be the absolute owner of the goods, but must have the legal right to lease the benefits of the goods. Renting out goods that are not privately owned without the owner's permission is *ghasab* (usurpation), and is invalid according to Islamic law (Mu'tamaroh, 2014).

Al-Ijarah, or ijarah, according to language and sharia, is the sale and purchase of benefits. Musthafa Dib Al Bugha defines ijarah etymologically as a rental fee given to someone who has done a job in return for their work. (Hassan et al., 2023). For this definition, the terms *ajr*, *ujrah* and *ijârah* are used. Meanwhile, in terms of terminology, it is defined as a transaction for the benefits of something that is already known, which may be given and permitted in return for something that is also known (Qiu et al., 2019). This ijarah agreement is permitted based on, among other things, the text of the Qur'an and the hadith of the Prophet SAW as originating from Ibn Mâjjah in his book Sunan Ibn Mâjjah from Ibnu Umar ra. said that the Messenger of Allah said:

حَدَّثَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ الدِّمَشْقِيُّ قَالَ: حَدَّثَنَا وَهْبُ بْنُ سَعِيدِ بْنِ عَطِيَّةَ السُّلَمِيُّ قَالَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ زَيْدِ بْنِ أَسْلَمَ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَعْطُوا الْأَجِيرَ أَجْرَهُ، قَبْلَ أَنْ يَجِفَّ عَرَقُهُ[3]

"Proclaim to us al-'abbâs ibn al-walîdi al-dimsyaqi said: proclaim to us wahb ibn sa'îd ibn 'athiyyah al-sulamiy said: proclaim to us 'abdurrahmân ibn zaid ibn aslam from his father, from abdullah ibn 'umar said: said the Messenger of Allah: "Give workers wages before their sweat dries." (hr. Ibn Majjah).

This hadith, narrated by Ibn Majah, "Give the worker his wages before his sweat dries," embodies a fundamental principle of Islamic work ethics that remains relevant throughout the ages. From the perspective of distributive justice, one measure of justice is the timely fulfillment of rights, so that each individual benefits from their contribution without experiencing any loss due to delayed payment (Nuryanto et al., 2024). This principle is in line with the fiqh principle of "*al-ajr bil-'amal*" (wages are paid as compensation for work) which demands certainty and speed in fulfilling workers' rights.

In the context of contemporary economics, particularly transaction cost economics as popularized by Oliver Williamson, late payment of wages can be considered as an increase in non-monetary transaction costs, such as decreased work motivation, industrial relations conflict, and decreased productivity (Wu, 2022). Islam has, from the beginning, established a preventive mechanism for this problem through the hadith, namely by providing direction for workers' rights to be fulfilled immediately after their obligations are fulfilled (Buana & Budiman, 2022).

When linked to modern muamalah practices, including Ijarah and Ijarah Muntahiya Bittamlik (IMBT) contracts, this hadith outlines that the service hirer (mustajir) is obligated to fulfill the agreed payment, without delaying beyond the agreed time limit. Delaying payment in this context not only violates sharia principles but also contradicts best practices in modern business governance (good corporate governance), which prioritize transparency, contract certainty, and fairness for all parties (Alsayed & Kayadibi, 2025).

From the perspective of the maqashid sharia, the principle of timely payment aligns with the goals of preserving wealth (hifz al-mal) and upholding human dignity (hifz al-'ird). The timely payment of workers' or business partners' rights ensures a healthy economic cycle and avoids potential exploitation (Lahti et al., 2018). Therefore, even though this hadith originates from the context of simple work relationships during the time of the Prophet Muhammad, the values it contains have strong relevance in modern economic structures, including complex business contracts in the Islamic banking and financing sectors.

3.2. Fiqh provisions on ijarah

There are two types of ijarah in Islamic law. The first is ijarah, related to service rental, which involves paying wages in exchange for services. The employer is called musta'jir, the worker is called 'âjir, and the wages are called ujrah. This form is widely adopted by Islamic banking institutions (Fauzi, 2021). Second, Ijarah, which is related to renting assets or property. Ijarah in this category is the transfer of the right to use/utilize certain assets or property to another person for a rental fee. The party who rents (lessee) is called musta'jir, the person who rents out (lessor) is called *mu'jir/muajir*, and the rental fee is also called ujrah (Kassim & Rahman, 2018).

This second form is also widely applied in banking institutions as a form of investment or financing. Malikiyah scholars have different terms for this: if the lease object is labor/services, it is called al-ijarah; while if the lease object is the benefit of goods, it is called al-kara' (Bahri, 2022). On the other hand, the use of the word ijarah can also be found in the good things done by humans in the world which has implications for a more eternal life, namely the afterlife with the word ajrun (reward or reward). Thus, ujrah has a worldly dimension while ajrun has a secular dimension (Thelen, 2018).

Based on the explanation above, where the ijarah contract is a contract for the sale and purchase of goods, the majority of Islamic jurists forbid renting trees to produce fruit, because fruit is a commodity, while the ijarah contract is selling benefits, not goods. Likewise, renting out livestock grazing areas, because grass is a commodity, so it cannot be used as an object of ijarah. It also prohibits renting male animals to produce offspring by releasing their sperm, which is also a commodity. This is in line with the hadith of the Prophet Muhammad: "The Messenger of Allah forbade renting the semen of male animals" (Narrated by Bukhari, Ahmad Ibn Hanbal, an-Nasai and Abu Daud; from Abdullah Ibn Umar), so in this context, renting a womb is not correct in Islam (Hafizah, 2020).

Likewise, renting out the exchange value of money, dinars or dirhams, food, candles, or fuel is prohibited, because renting them out means using up the material, whereas in ijarah, the object of the lease must be intact. Hanafi jurist Kasani explains that dinars, dirhams, precious metal bars, and other things of an 'ain nature are not usufructuary rights, and all goods that cannot be used except by consumption are prohibited from being rented out (Gillani & Farzand, 2024). However, the majority of jurists make an exception for the case of renting a woman for breastfeeding, as it is considered an urgent need. Malikiyah scholars permit the rental of a male to inseminate female animals, and the majority also permit the payment of wages for renting a bathroom (Sukriya et al., 2024).

The view of Ibn al-Qayyim al-Jawziyyah, a prominent fiqh scholar from the Hanbali school, provides a different perspective from the mainstream (jumhur) of scholars regarding the object of the ijarah contract. The majority of fuqaha hold the view that the object of ijarah is strictly speaking the benefit (manfa‘ah), not the goods (‘ayn), so that every rental transaction is only valid if what is transferred is the right of use, not the ownership of the goods themselves. However, Ibn al-Qayyim rejects this categorization as something absolute. According to him, legal sources, both the Qur’an, the Sunnah, and the empirical practices of early Islamic society, actually indicate the existence of a category of goods that have a continuous “productive” nature with the persistence of the basic goods, which, from a legal perspective, can be equated with benefits (Ahmad & Khan, 2022)

For example, he mentions fruit on a tree, milk from livestock, and water from a well. Although all three are tangible goods that can be weighed or measured, their gradual emergence, coupled with the continuity of the underlying object, gives them legal characteristics similar to those of utility. Within this framework, he asserts that the essence of the ijarah contract is not solely the form of the object, whether physical or non-physical, but rather the fulfillment of the contract's purpose (maqshad al-'aqd), namely, providing utility value gradually to the lessee (musta'jir) during the lease term (Saad et al., 2023).

Ibnul Qayyim's approach can be read through the contemporary legal perspective of the "substance over form" doctrine, which is used in modern contract analysis to assess the nature of the legal relationship behind the formal form of the agreement (Hamour et al., 2019). Thus, if an item functions similarly to a benefit that is obtained continuously, then the contract for that item can fall within the scope of ijarah. This idea opens up room for more flexible interpretation, especially in contemporary muamalah practices such as Ijarah Muntahiya Bittamlik (IMBT), where the leased object can be an asset that physically produces output, but remains treated as a source of benefit for the lessee until the contract expires.

3.3. Implementation of IMBT in Islamic Banking

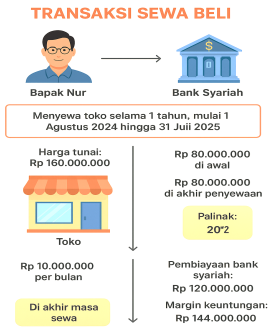
In practice, the ijarah contract in Islamic banking is used not only for regular lease transactions but also for the Ijarah Muntahiya Bittamlik (IMBT) scheme. Islamic banks generally prefer IMBT because it is considered

simpler to record in financial statements than other contracts. IMBT allows banks to finance customer needs, both in the form of investments, such as purchasing machinery, and consumptive needs, such as purchasing a car, house, or other assets (Shahid et al., 2022).

The process of implementing IMBT in Islamic banks involves several clear stages. First, the customer expresses their desire to own the item to be rented. Second, the bank conducts a feasibility analysis on the customer before approving the rental. If the verification process passes, the bank becomes the owner of the item at the beginning of the transaction, in accordance with IMBT principles. Next, the bank purchases the item for the customer's needs, and both parties sign an ijarah agreement that outlines the rental period and terms of use. The customer then pays the monthly rental fee as per the contract, while the bank records the asset's depreciation on the income statement. At the end of the rental period, ownership of the item can be transferred to the customer through an installment sale or donation, as per the initial agreement.

The legal framework for this practice is regulated in the Compilation of Sharia Economic Law (KHES), specifically Articles 9 and 332–329, which outline the principles and conditions of the ijarah contract as the basis for the IMBT contract. Essentially, the contract is an agreement between the owner of the goods (the bank) and the lessee (the customer), which ends with the lessee purchasing the goods upon completion of the lease (Fayyad, 2023). Here is an illustration of this model.

Figure 13



This example demonstrates how IMBT allows customers to acquire assets gradually while adhering to Sharia principles and ensuring profits for the bank. This scheme, if implemented in accordance with regulations and feasibility analysis, can be a fair and mutually beneficial financing solution for both parties.

In practice, some Islamic banks transfer the vehicle's ownership to the customer immediately at the beginning of the contract, even before the end of the lease term. This practice is usually implemented for practical reasons, such as avoiding double taxation or simplifying administration. However, when viewed from the perspective of the DSN-MUI Fatwa and Indonesian positive law, this practice raises serious issues regarding the validity of the contract.

DSN-MUI Fatwa No. 27/DSN-MUI/III/2002 concerning Al-Ijarah al-Muntahiyah bi al-Tamlik expressly prohibits the transfer of ownership from the beginning or before the lease period ends. This fatwa states that the transfer of ownership (tamlik) may only be carried out after the ijarah period ends, and must be through a new contract such as a grant, sale and purchase, or other valid contract according to sharia. Point 6 of the Fatwa emphasizes that the transfer of ownership to the lessee (mustajir) is only valid if it is carried out after the lease period has ended, while Point 7 stipulates that if a sale and purchase contract is used, the selling price is determined when the contract is executed, not at the beginning of the lease contract (Munif, 2017).

In the context of a contemporary approach, this provision aligns with the principle of prudence in financial contracts. This principle emphasizes the importance of ensuring that every element of the contract is clear and does not create legal uncertainty (Pollock & Wald, 2024). By stipulating that tamlik can only be carried out after the ijarah period has ended and through a new contract, this fatwa reduces potential legal risks and ensures that the rights and obligations of each party in the contract are well protected.

Furthermore, this provision also reflects the application of the principle of justice in financial transactions. By ensuring that the transfer of ownership occurs only after the lease term has expired, this fatwa avoids potential exploitation of the tenant and ensures that both parties receive their fair share of the rights (Nasrullah, 2024).

From a civil law perspective, this provision is also in line with the principle of freedom of contract as regulated in Article 1338 of the Civil Code (Susanti, 2024). However, this freedom is not absolute and must still comply with

applicable legal norms, including sharia principles in the context of IMBT. Thus, this fatwa demonstrates how civil law principles can be integrated with sharia principles to create a valid and fair contract.

Based on these provisions, changing the ownership of the leased property from the outset of the IMBT contract is clearly invalid under Sharia law. During the lease term, the object of the lease remains the property of the bank, while the customer merely acts as the lessee. The transfer of ownership is only valid after the lease contract ends, through a new contract agreed to by both parties. If the transfer of ownership is carried out earlier, especially when the IMBT contract is first agreed upon, it could potentially contain elements of tadlis (concealment of the contract) and violate the principle of risk transfer, a key principle of ijarah (Irfanudin, 2023).

Therefore, the Sharia-compliant mechanism involves a two-stage transfer of ownership. First, from the dealer to the Sharia bank as the capital owner (shahib al-mal/mu'jir), as the bank purchases the vehicle to then lease it to the customer. Second, after the ijarah period is over, from the bank to the customer as mustajir. This second stage is the legal moment for the customer to become the full owner, either through a sale, a gift, or another permissible contract. By following this scheme, the bank and customer not only comply with the provisions of the DSN-MUI Fatwa but also maintain the purity of the IMBT contract from practices that are potentially legally flawed and carry the risk of invalidating the contract according to Sharia (Arfan et al., 2024).

Several Islamic banks, including Bank Syariah Indonesia (BSI) and Bank Muamalat Indonesia, often register vehicles in the customer's name from the outset, rather than the bank's. This is done for cost efficiency, ease of insurance, and following conventional leasing practices. However, this practice raises various legal issues, both from the perspective of Indonesian positive law and Islamic law.

From a legal perspective, registering a vehicle in the customer's name contradicts the principle of property rights in civil law, which grants the owner full authority to use, enjoy, and transfer the property. If the vehicle's name has been transferred while the payment has not been made in full, a legal conflict arises: the customer could potentially sell the property before payment is made, and the bank loses its right to expedited execution due to the lack of fiduciary guarantees. Furthermore, this violates Law Number 42 of 1999 concerning Fiduciary Guarantees because formal ownership has already been transferred, so the bank cannot register the fiduciary and must undergo a lengthy legal process in the event of default (Undang-Undang, 1999). From a consumer protection perspective, the unclear status of ownership and risk burden in the IMBT agreement has the potential to be considered a one-sided clause that is detrimental to customers, contrary to Law No. 8 of 1999 (Ritonga, 2020).

From a sharia perspective, the practice of early name transfer violates the principles of al-bayyinah and al-tamyiz al-'uqud, which require clarity and separation of each contract. DSN-MUI Fatwa No. 27/DSN-MUI/III/2002 emphasizes that transfer of ownership may only occur after the ijarah period has expired. Premature name transfer is considered a prohibited disguised contract (tadlis), and also creates gharar because ownership is not yet valid (Munif, 2017). This principle is reinforced by the Al-Qur'an (QS. An-Nisa: 29) which prohibits taking other people's property in vain and the hadith of the Prophet SAW which prohibits combining two transactions in one contract (Sundari & Ridwan, 2022). Thus, registering a vehicle in the customer's name from the start not only risks creating positive legal problems, but also contradicts the principles of sharia ownership.

This tadlis phenomenon is closely related to the principle of gharar, which is prohibited in contemporary Islamic jurisprudence literature, because prematurely transferred ownership is not yet valid in essence. This concept is supported by modern perspectives in Islamic finance, as proposed by Mufrih and colleagues, who argue that legal certainty and certainty of ownership rights are primary prerequisites for any ijarah contract to be acceptable in the context of the global economy (Mufrih et al., 2023). Unclear ownership not only poses legal risks for financial institutions and customers, but can also harm the institution's reputation in international markets that emphasize transparency and Sharia compliance (Ullah et al., 2018).

Furthermore, the normative perspective of the Qur'an and Hadith emphasizes the need for certainty of ownership. QS. An-Nisa: 29 prohibits taking another person's property unlawfully, emphasizing that every right must be obtained through legitimate channels (Mustaqim, 2025). The Prophet's hadith also reinforces this principle by emphasizing the prohibition of combining two transactions into a single contract, to prevent manipulation or confusion of rights and obligations. From a modern perspective, this aligns with the contractual principle recognized in international financial law, namely that ownership and rights and obligations must be verifiable and legally recorded for a contract to be enforceable (Filatova, 2020).

In a global context, Islamic financial institutions in various countries, including Malaysia, the United Arab Emirates, and the United Kingdom, have adopted similar principles in ijarah al-muntahiyah bi al-tamlik (Abdullah, 2017). Islamic Financial Services Board's latest report (IFSB, 2024) shows that ijarah transactions that transfer

ownership before the end of the lease term present significant legal and reputational risks (Daoud, 2025). This shows the relevance of this principle not only nationally but also internationally, because the certainty of the contract is the main benchmark for global market confidence in Islamic financial products.

The practice of transferring a vehicle's ownership to the customer's name from the outset in an IMBT (Ijarah Muntahiyah Bi al-Tamlik) contract creates legal complexity. Contemporary contractual approaches, particularly those emphasizing the principle of contractual clarity, show that this practice gives rise to gharar (uncertainty) and tadlis (disguised contract), as the customer obtains the perception of ownership before the sharia title is actually transferred (Elfakhani & Sidani, 2015). This is in line with the principle of al-tamyiz al-'uqud, namely the separation of contracts so that the rights and obligations of each party are clear, so that mixed contracts give rise to the risk of disputes and injustice.

From the perspective of contemporary Islamic economic law, contracts that mix ownership and rent prematurely neglect the efficiency of risk distribution and economic justice (Yaya et al., 2021). DSN-MUI Fatwa No. 27/DSN-MUI/III/2002 emphasizes that the transfer of ownership is only valid after the ijarah period has ended, so the practice of early name changes violates the principles of fairness and transparency in muamalah transactions. Furthermore, modern consumer protection theory emphasizes the obligation of business actors to provide clear information and avoid misinterpretation. An IMBT conducted with an early name change has the potential to violate Consumer Protection Law No. 8/1999 and create legal uncertainty for both banks and customers.

3.4. Alternative solution

In the practice of the Ijarah Muntahiyah Bittamlik (IMBT) contract, ideally the leased object remains registered in the name of the bank as the lessor (mu'jir) until the lease term ends and ownership is officially transferred through tamlik. However, in practice, the practice of early name changes often arises in response to administrative pressures and demands for cost efficiency by customers. This phenomenon, when understood through the theory of contractual justice, requires that each contract clearly define the rights and obligations of the parties, thereby reducing the risk of disputes arising from differing interpretations of ownership (Amoah & Nkosazana, 2023). Early name changes, although they appear to be administratively efficient, actually create legal uncertainty because formally ownership has transferred, while in substance the rights to the goods still lie with the bank.

From the perspective of institutional economics theory, the practice of early name changes can be seen as a distortion of the risk control and supervision mechanisms designed to protect the interests of banks (Hopt, 2021). This is because the IMBT object, which should serve as fiduciary collateral, loses its legal status as an instrument of swift execution in the event of default. As a result, the risk of moral hazard increases, where customers can sell or transfer the object before it is fully paid off, and the bank faces legal and financial losses.

In addition, the contemporary maqashid al-syariah approach emphasizes the importance of maintaining legal certainty (hifzh al-'adalah) and preventing gharar (uncertainty) in transactions (Hikmah & Yazid, 2025). Early transfer of ownership creates unclear ownership, which is contrary to sharia principles, because the lease agreement and the transfer of ownership (tamlik) contract are mixed, potentially leading to tadlis (disguised contracts). In other words, solutions oriented towards short-term financial efficiency can actually undermine the objectives of maqasid al-shariah, which relate to the protection of property rights and the certainty of contracts.

Based on this analysis, a more consistent alternative solution is to maintain the registration of the object in the name of the bank until the ijarah contract is completed, while modifying administrative procedures to be efficient without changing the formal ownership status. This approach aligns with the principles of contractual justice and maqashid al-syariah, while also strengthening compliance with DSN-MUI Fatwa No. 27/DSN-MUI/III/2002. The implementation of digitalization and information system integration can be a practical instrument to achieve administrative efficiency without violating legal and sharia provisions, thus achieving a balance between legal certainty, rights protection, and transaction efficiency (Kenneh, 2024).

In the practice of Ijarah Muntahiyah Bittamlik (IMBT) contracts, the issue of early transfer of ownership has become a crucial issue that demands a solution that remains in accordance with sharia principles. Traditionally, the leased object in an IMBT is held in the name of the bank as mu'jir, so that the transfer of ownership to the customer only occurs after the lease term ends and all financial obligations are met. However, in practice, the practice of early transfer of ownership arises for reasons of administrative efficiency and cost savings, which essentially creates the potential for violating the principles of the ijarah contract as emphasized in the DSN-MUI Fatwa No. 27/DSN-MUI/III/2002. In this context, the implementation of a wakalah scheme from the dealer to the

sharia bank emerges as a systematic and in-depth alternative solution, combining classical principles of fiqh with contemporary practices of sharia financial management (Paracha, 2023).

In Islamic jurisprudence, a power of attorney is the delegation of power from one party to another party to carry out certain actions on behalf of the grantor of the power of attorney (Rizky & Putra, 2025). In contemporary literature, Wakalah has been adopted in various international Islamic financial models as a mechanism to increase the efficiency and flexibility of transactions, particularly in the banking and asset financing sectors. For example, Khan and Bhatti, in their study on Islamic finance governance, emphasize that wakalah allows banks to act as legal agents to manage asset ownership without violating the principles of a legitimate lease or sale (Bhatti et al., 2023). Theoretically, this mechanism is also in line with the principal-agent principle which is widely applied in global financial management literature, which emphasizes the separation of legal ownership from economic control to optimize operational efficiency.

In the context of an IMBT, the dealer can grant written authorization to the Islamic bank to execute the ijarah contract and handle the transfer of ownership after the customer has fulfilled all obligations, including full payment and fulfillment of the tamlik requirements. This ensures that the bank's rights as mu'jir remain intact throughout the lease term, while eliminating the risk of premature transfer of ownership, which could undermine the validity of the contract (Hasibuan & Lubis, 2024). This scheme is not only relevant nationally, but also has a global contextualization, as similar practices have been implemented in various countries with growing Islamic leasing markets, such as Malaysia, the United Arab Emirates, and Turkey, where wakalah is used to facilitate asset management and legal transfer of ownership without violating the lease contract (Fayyad, 2023).

Furthermore, modern international contract theory, including civil and financial law perspectives, strengthens the legitimacy of wakalah. For example, the principle of agency in international contract law, as stipulated in the UNIDROIT Principles of International Commercial Contracts (2023), emphasizes that the granting of power of attorney is legally valid if the limits and scope of the agent's authority are clearly defined (Jovanović, 2025). In other words, the wakalah scheme not only maintains sharia compliance, but also minimizes legal risks that may arise in a global context, thereby increasing the credibility of Islamic financial institutions in the international market.

The wakalah scheme in the IMBT is implemented through a systematic mechanism. The dealer does not transfer the vehicle or property directly to the bank, but instead submits written authorization to execute the ijarah contract and process the transfer of ownership at the end of the lease term. In practice, this ensures that legal ownership remains with the dealer until the ijarah term ends, while the bank, as the mu'jir, retains leasing rights and oversight of the asset. This implementation not only avoids violations of ijarah principles but also reduces the potential for legal conflicts that could arise from premature transfers (Saleem & Mansor, 2020).

Internationally, this scheme aligns with leasing and sukuk asset practices in global markets. For example, in Malaysia, Islamic hire-purchase agreements use wakalah to ensure that ownership transfer occurs legally after full payment by the client, as analyzed by Razali & Harun in their research on governance and legal compliance in Islamic financing (Razali & Harun, 2021). This approach demonstrates global relevance, as wakalah enables financial institutions to operate efficiently without incurring sharia or civil law risks, while facilitating transparency in asset accountability (Mohd Noor, 2024).

The main advantages of the wakalah scheme include eliminating the practice of premature name changes that can undermine the validity of the contract, administrative efficiency, and reducing duplicate costs in the name change process. From a fiqh perspective, both the Shafi'i and Hanbali schools of thought permit wakalah in transactions as long as the agent carries out his duties within the limits of authority established by the principal (Nasution et al., 2025). In parallel, international civil law, including the principle of agency in Article 1792 of the Indonesian Civil Code and similar rules in global commercial law, provide legal legitimacy to this delegation of power (Sinilele, 2020). Thus, the wakalah scheme is not only sharia-compliant but also complies with the principles of international contract law, making it a robust and widely applicable solution.

Furthermore, the implementation of wakalah also supports risk mitigation. The bank can maintain its rights as mu'jir, while the dealer acts as the grantor for the transfer of ownership. This mechanism can be strengthened with fiduciary arrangements or additional guarantees to protect both parties. The concept of risk mitigation through wakalah has also been discussed globally in Islamic finance risk management literature, emphasizing the importance of a combination of legal, sharia, and operational control mechanisms to maintain transaction integrity (Al Rahahleh et al., 2019).

Academically, the use of the wakalah scheme in IMBT demonstrates the synchronization of classical Islamic jurisprudence principles with contemporary global practices. In the wakalah scheme, the dealer remains the legal

owner during the ijarah period, while the bank, as agent, retains economic control and lease rights. This approach aligns with international leasing practices and the principle of fiduciary responsibility, where the separation of ownership and control ensures efficiency, transparency, and risk mitigation. A contemporary study by Maghrebi found that the principal-agent model in global Islamic finance is a crucial strategy for maintaining contractual integrity and facilitating market growth (El Maghrebi et al., 2023).

From an international law perspective, this scheme is relevant to the UNIDROIT principle, which emphasizes the legitimacy of the delegation of power if the limits of the agent's authority are clearly defined (Jovanović, 2025). This minimizes the potential for legal disputes at the international level, allowing Islamic banks to expand their operations across multiple jurisdictions without violating local laws or Sharia principles. Practically, this mechanism reduces the risk of premature transfer of ownership, maintains the validity of contracts, and improves administrative efficiency, which in turn increases international consumer and investor confidence in Islamic financial products.

Furthermore, the implementation of wakalah in IMBT also reflects the integration of national civil law, classical fiqh principles, and modern international financial practices. This integration creates a hybrid model that is not only nationally relevant but also adoptable by countries with developing Islamic finance markets, including OECD countries that are beginning to adopt Sharia-compliant sukuk and leasing practices (Uddin & Mohiuddin, 2020). Thus, the wakalah scheme is not merely a technical solution, but also an academic innovation that connects classical sharia principles with the needs of the global market, while offering a contribution to the international Islamic finance literature.

4. CONCLUSION

This study confirms the answer to the main question regarding the legitimacy of early name change practices in Ijarah Muntahiya Bit Tamlik (IMBT) contracts. The analysis shows that this practice is inconsistent with Sharia principles because it contains elements of *tadlis* (contract disguise) and *gharar* (uncertainty). It also violates positive law because it has the potential to weaken legal instruments such as fiduciary guarantees and reduce consumer protection. From a theoretical perspective, this research enriches the discourse on Islamic economic law by integrating classical fiqh, DSN-MUI fatwas, and the national legal framework. This underscores the importance of methodological consistency in interpreting and applying contemporary muamalah contracts to ensure they align with the maqasid of sharia.

Practically, these findings have real implications for Islamic banking, particularly in the implementation of the wakalah scheme as a mechanism for transferring power of attorney during the name transfer process. Through this scheme, IMBT contracts can be executed more legally, efficiently, and consistently with both Sharia provisions and positive legal regulations. The limitations of this research lie in the scope of the analysis, which still focuses on a normative approach and literature, without the support of empirical data from broader field practices. Thus, further research is recommended to develop comparative studies with IMBT practices in other jurisdictions, such as Malaysia or the Middle East, and utilize empirical approaches through interviews and surveys. This will enrich our understanding of the effectiveness of IMBT contract implementation and provide opportunities to establish more robust practice standards in a global context.

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