

Ijārah ending with ownership and its legitimacy: A Fiqh perspective

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Abstract:

Ijārah ending with ownership is one of the Islamic financial instruments which can be utilized by Islamic financial institutions to finance various types of assets such as consumer goods, industrial assets, houses, and motor vehicles. Today, it is predominantly used for vehicle financing. It has been designed by the contemporary *Shari'ah* scholars to offer *Shari'ah* compliant alternative solution for conventional hire purchase. Since the demand for *ijārah* ending with ownership was high by individual and corporate customers of Islamic financial institutions, it has grown in popularity in the Islamic financial industry. Notwithstanding its popularity among the customers, there are still ongoing deliberations on the legitimacy of this product due to its compositions. Skeptics argue that this contract consists of multiple contractual agreements in a single contract which is prohibited in Islamic commercial law. Therefore, this study aims to discuss the legitimacy of *Ijārah* ending with ownership and its compositions from *Fiqh* perspective. Since this paper is exploratory in nature; the qualitative method of study is used. The primary and secondary data were gathered through the library from the classical literature as well as from the recent publications. The basic principles on *ijārah* and its compositions are discussed from a classical *fiqh* point of view particularly on multiple contracts in one contract. The study reveals that though there are certain unavoidable issues that are found, the *Ijārah* ending with ownership is a *shari'ah* compliant contract that replaces the leasing facility in the industry and fulfills the requirements of customers.

Keywords: *Ijārah* ending with ownership financing, Legitimacy, Issues, Islamic banking and financing.

1. Introduction:

Islamic banking and finance has organizationally emerged over the last five decades as an important financial system and witnessed tremendous growth with worldwide acceptance. Since its humble inception in the 1960s, the Islamic banking and finance industry is performing better by offering a wide range of products and facilities to cater to diverse customer needs. The crux of Islamic banking and finance is the interest-free (*ribā*) principle. Since this is strictly prohibited, several *Shari'ah*-compliant financing products have been designed and produced by the *Shari'ah* scholars, derived from various contractual arrangements such as cost-plus (*Murābahah*), profit-sharing (*Mudhārabah*), leasing (*Ijārah*), partnership (*Mushārahah*) and any more (Abdullah N. I., 2005).

Ijārah ending with ownership (IEWO) is one of those products used for different financial services by individuals and Islamic financial institutions (IFIs). IEWO is a type of *Ijārah* contract utilized by the owner of an asset to rent the asset to the hirer, and the hirer is given the option to purchase the asset at the end of the tenure. This type of *Ijārah* contract is not

different in its rules from an ordinary *Ijārah*, except that it is associated with the promise by the owner to transfer ownership to the hirer once full rental payment is made (AAOIFI, 2017). There are two contracts in the IEWO transaction, namely; *Ijārah* (leasing) contract and *Bay'* (sale) contract. The transfer of the ownership is performed through another contract such as *bay'* or *hibah*.

Most studies refer *Ijārah* ending with ownership to *Al-Ijārah Al-Muntahiyah bil-Tamlīk*, or *Al-Ijārah Thumma Al-Bay*, (AITAB) and *ijārah wa iqtinā*. In Sri Lanka, it is generally called “*Ijārah* leasing”. The terminologies may vary in referring to the concept but the mechanism is not much different from another (Abdullah N. I., 2005).

2. Problem Statement

Ijārah ending with ownership has been recognized worldwide and has grown in popularity. Notwithstanding its popularity, there is still an intense debate among the contemporary scholars on to what extent the IEWO is complying with *Shari'ah* principles. Skeptics argue that this contract consists of two transactions in one contract which is prohibited by the *Shari'ah* rules and is not *Sharīah* compliant product. They describe it as a carbon copy of the conventional hire-purchase (Nurul Azma, Mahfuzur Rahman, Mohamed Albaity, 2014). Therefore, the eagerness to offer the *Sharīah* compliant product to the Islamic financial industry demands scrutiny on the legitimacy of IEWO. It is hoped that this study will help the practitioners and researchers to understand the concept and ensure the legitimacy of IEWO.

3. The concept of *Ijārah* ending with ownership (IEWO)

Ijārah ending with ownership is a new form of leasing contract introduced to the Islamic banking industry which was unknown in the classical books of Islamic jurisprudence, in which the legal title of the leased asset will be transferred to the lessee at the end of the rental period through the sale contract or gift contract (AAOIFI, 2017). It consists of two contracts namely, a leasing contract and sale contract or gift contract. Its composition is largely covered by *Ijārah*, thus the whole parts of the IEWO contract shall mainly be governed by principles of *Ijārah*. The composition of IEWO is illustrated as follows:

The composition of *Ijārah* ending with ownership



The structure of the IEWO contract comprises two basic elements, leasing and sale. According to AAOIFI, the transfer of the leased asset can be practiced by using one of the following methods:

- a) A promise to sell for a token consideration or accelerating the payment of the remaining amount of rental.
- b) A promise to give it as a gift (AAOIFI, 2017).

Definition of *Ijārah* and legitimacy: Literally, “*Ijārah*” is an Arabic term, derived from the root word *ajr*. Lexically, it means ‘to give something on rent’. In Islamic jurisprudence, the term ‘*ijārah*’ is used for different situations. In the first place, it means ‘to employ the services of a person on wages given to him as a consideration for his hired services’. The second type of *ijārah* related to the usufructs of assets and properties. ‘*Ijārah*’ in this sense means ‘transfer the usufructs of a particular property to another person in exchange for a rent claimed from him.’ In this case, the term *ijārah*’ is analogous to the English term ‘leasing’ (Usmani, 2004). There are different definitions given by the Muslim scholars of four schools of jurisprudence which are illustrated as follow:

- (a) The Hanafi School defines “*ijārah* as a contract of benefits with offset” (Al-Sarkhasi).
- (b) The Maliki School is titling benefits something permissible for informed with offset (AL-Dardeir).
- (c) The Shafi School views “*ijārah* as a contract where the subject matter is the determined, legitimate, assignable and lawful usufruct of an object against a fixed consideration” (Al-Sharbeeni, 1996).
- (d) The Hanbali School describes “*jārah* as a contract on permissible benefit for a known period of time from a known party, or described in the disclosure, or a known work” (Al-Bahouti, 1996).

From the above definitions, it is noted that four schools are unanimous in the substantial meaning of *ijārah* and it has been understood as a contract in which the legal right of a property is transferred by the owner, to another person, to use and derive profit from the property, for a specific period, at an agreed consideration. The owner is called as lessor (*mu’ajir*); the person who uses the property is named as lessee (*musta’jir*); the subject matter is the usufruct of the property (*manfā’ah*), and; the consideration refers to a rent (*ujrah*) (Abdullah N. I., 2005).

Legitimacy of *ijārah*: Muslim jurists unanimously agreed on the legality of *ijārah* that is proven by evidence of the *Qur’ān*, the *Sunnah*, and the consensus of Muslims. As for the evidence of the *Qur’an*:

“And if they suckle your offspring, give them their recompense”. (65:6)

“One of the women said: “O my father, engage him on wage. Indeed, the best one you can hire is the strong and the trustworthy”, He said, “Indeed, I wish to wed you one of these, my two daughters, on [the condition] that you serve me for eight years; but if you complete ten, it will be [as a favor] from you. And I do not wish to put you in difficulty. You will find me, if

Allah wills, from among the righteous” (Surah al-Qasas, verse 26-27). And: “if you have wished, surely you could have exacted some recompense for it,” (Surah al-Kahf, verse 77).

Ijārah is proofed from the following *Ahādīth* of the prophet Mohammad peace be upon him:

- (a) “Give a worker his fee before his sweat dries up. (Majah)”. In this *hadith*, he commanded to pay the wages without any delay. It is a clear indication of the validity of *ijārah*.
- (b) *Ibn ‘Abbas* reported that the Prophet (s.a.w.) had cupping performed on him and he gave the cupper his fee (al-Bukhari, 1934).

It is also known that the Muslim jurists during the time of the companions of the Prophet (s.a.w) reached a consensus on the permissibility of *ijārah* (Zuhayli, 2003).

Definition of bay’ and legitimacy: (Sale) is an exchange of one item for another on mutual consent. The Arabic term “bay’” refers both to the activities of buying and selling (Zuhayli, 2003). In the perspective of Islamic sale contracts, jurists have defined that it is the “exchange a useful and desirable thing for similar thing by mutual consent in a specific manner (Ibn al-Humam Fathal-Qadir, 1995)”. Sale involves an exchange of a commodity for another commodity or of a commodity for money or of money for money (Bakar, 2000).

Legitimacy of bay’ (Sale): *Bay’* (sale) is permissible, with supporting evidence from the *Qur’an*, the *Sunnah*, and the consensus of jurists.

The *Qur’an*: “But Allah has permitted trade and forbidden usury” (2:275), “But take witnesses whenever you make a commercial contract” (2:282), “But let there be among you traffic and trade by mutual good will” (4:29), and “It is no crime for you to seek the bounty of your Lord” (2:198).

The *Sunnah*: The Prophet (s.a.w) was asked: “Which are the best forms of income generation?”. He replied: “A man’s labor, and every legitimate sale”, i.e. devoid of cheating or treason. Another saying of the Prophet (s.a.w) is: “A sale must be by mutual consent”. Moreover, the Messenger (s.a.w) was sent to mankind while people traded among themselves, and he accepted that practice. He said: “The truthful and honest trader is among the prophets, the righteous, and the martyrs (al-Tirmidhi)”.

The consensus of jurists: Muslims have agreed that sales are permissible, and this only stands to good sense as it allows each individual to meet his needs in cooperation (Zuhayli, 2003). Besides, they firmly state that a lawful sale shall avoid elements of interest (*ribā*), uncertainty (*gharār*), and ignorance (*jahālah*) which may cause doubt in the transaction, and eventually lead to dispute or mischief among the parties (Amin., 1975).

Definition of Hibah and legitimacy: The term “*Hibah*” is derived from Arabic noun that means gift. It refers to a transfer of ownership of an asset from an owner to a recipient without any consideration. It is defined as “the making of another person the owner of the corpus of the property without taking its consideration from him” (Tanzil-ur-Rahman, 1978). Technically, it is defined as “the transfer of movable or immovable property with immediate

effect and without consideration by one person in favor of another and the acceptance of the same by that another himself or by someone authorized on his behalf’. (Tanzil-ur-Rahman, 1978). Based on this definition, it can be conceived that *hibah* is a unilateral contract or a benevolent act by whereby a person during his lifetime offers his property with immediate effect and without consideration to another person who accepts it (Hayatullah Laluddin, 2012).

Legitimacy of hibah (gift): The legality of the *hibah* can be derived from the *Qur’anic* verse and *Ahādīth* of the Prophet (s.a.w):

The *Qur’an*: “But if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer” (Qur’an, 4:4). The other verse enjoins Muslims to give charitable gifts.

“.. and spend of the wealth that he cherishes, to his kinfolk, orphans, the needy, the wayfarer...” (Qur’an, 2:177).

The *Ahādīth*: The Prophet (s.a.w) is narrated to have said: “Exchange gifts so that you may love one another (al-Bukhari, 1934)”. The Prophet (s.a.w) has also said; “do not underestimate the significance of the neighbor’s gift to her neighbor, even if it is only a sheep’s foot (al-Bukhari, 1934)”. This evidence undoubtedly proves the legality of the gift. From their analysis, it can be concluded that all forms of gifts are recommendable. It is also clear from the *hadith* of the Prophet (s.a.w) in which he has said: “whoever wishes Allah to increase his wealth and prolong his life, let him do the act of kindness towards his womb-relatives (al-Bukhari, 1934)”.

In the Islamic financial system, the concept of *hibah* is applied to reward its *wadhīah* and *qard* depositors. In certain cases, the *hibah* concept is used, for instance, in the contract of *Ijārah* ending with ownership to transfer of ownership to the customer who conduct timely payment as scheduled.

4. Definition of Ijārah ending with ownership and legitimacy

Ijārah ending with ownership is a newly introduced financial instrument that has no original ground in the classical books of Islamic jurisprudence. IEWO is the result of a hybrid of two contracts, namely *ijārah* contract and bay (sale) contract or *Hiba* (gift) contract. Therefore, a specific definition of IEWO is not found in classical books (Abdullah N. I., 2005).

According to Al Wahbah al- Zuhayli, it refers to “owning the benefit of certain assets for a specific period of time, by paying an agreed sums of rental, with an agreement that the owner will transfer the rented asset to the hirer at the end of the agreed period or during the period, provided all rental payments or installments have been made in entirety. The transfer of ownership is affected by a new and independent contract, either by giving the asset as a gift, or selling it at an agreed price” (Zuhayli, 2003). Al-Qurah-Dagi defines as “the contract of the utilization of the leased goods by the lessee for a certain rental payment within the certain period time and at the end of the contract the ownership of the leased asset will be transferred to the lessee” (Ali Muhyiddeen Al- Qurah Daghi., 2014).

Legitimacy of Ijārah ending with ownership

It is worth noting that there is no direct legitimacy for IEWO from the main sources. Its legitimacy is deduced from the legitimacy of *ijārah*, *bay'*, and *hibāh* contracts whose legality are outsourced from *al-Qur'ān*, and *Al Ahādīth* and consensus of scholars. Accordingly, the above-mentioned evidence of three contracts, *ijārah* (leasing), *bay* (sale) and *hibah* (gift) contracts, which are outsourced from *Al Qur'ān*, *Al Ahādīth* and consensus of scholars, provide the legitimacy of IEWO.

Argument on the Combination of two contracts in one contract

Although the legitimacy of IEWO is deduced from the general evidence of *ijārah*, *buy'*, and *hibah*, some scholars, namely Abdul Aziz bin Abdullah, Salih al-Fouzan, Mohamed bin Salih al-Uthaimin and Bakr bin Abdullah Abu Zaid argue that IEWO is not *sharīah* compliant contract and it consists of two transactions in one contract which is prohibited by the *hadith* narrated by *Ibn Masūd* that Prophet (s.a.w) prohibited two transactions in one. Based on this prohibition, this contract is unlawful (Alzidaneen, 2012). The argument is discussed in the following points:

Firstly, according to the *Sharīah* rules “*anything is permissible until there is a clear prohibition against it*”. In general, all forms of business transactions are legally permissible as long as these transactions do not transgress any of the *Sharīah* principles. It is the unanimous opinion of the majority of scholars. therefore, based on this rule, it is permissible to involve in any contractual dealing that fulfills all conditions of a valid contract required by the *Sharī'ah*.

Secondly, this *hadith* is *mawqūf* to *Ibn Masūd* and is a weak *hadīth* (al-Albani). The *hadith* that says: “it is not permissible to combine between loan and sale (al-Nasai)” and the *hadith* “prohibition of two sales in one (al-Tirmidhi)” are meant for sale and loan as well as prohibition of two sales in one. Based on that, the *ijārah* contract is not included in this prohibition.

Thirdly, according to the *Malikis*, the combination of *ijārah* and sale in one agreement is permissible, for example buying a cloth with a specific price with condition that the seller (tailor) will make or sew it for the buyer. This illustrates that the buyer hires the tailor to make him the cloth and then purchase it (Zuhayli, 2003). In addition, the *Shāfi'īs* (Al-Sharbeeney) and *Hanbalīs* (al-Futhoohi) allowed the combination of *ijārah* and sale in one transaction.

Fourthly, the narrator of the *hadīth* himself interprets the *hadith* by stating “that it is not allowed to combine two transactions in one; whereas the seller said: if by installments, the price will be such and by cash the price will be such” (and they leave the meeting without fixing which of the price). *Sufyan al-Thawri* also mentions the same interpretation (Ali Muhyiddeen Al- Qurah Daghi,, 2014).

It is obvious from the above discussion, the combination of *ijārah* (lease) and *bay'* (sale) is allowed, and *ijārah* ending with ownership contract is not included in the *hadith* that prohibits two transactions in one. In particular, the Council of the Islamic *Fiqh* Academy of the Organization of the Islamic, in its twelfth session held in Riyadh, the Kingdom of Saudi Arabia, on 25 *Jamad al Akhirah* – 1 *Rajab* 1421 (23-28 September 2000); has resolved that *ijārah* ending with ownership contract is permissible. Based on the resolution, the prohibited forms are as follows:

- (a) “When the deal involves the conclusion of two different contracts at the same time, for the same commodity and with the same period”.
- (b) “*ijārah* ending with ownership contract that leads to transfer of ownership to the lessee against the amounts of rental paid during the contract period, without signing a separate sale contract, whereas the end of the period, the lease contract will automatically change into a sale contract”.
- (c) “A leasing contract with a lessee against specific amount of rental, and for a specific period of time, suspended with sale contract that becomes effective only when the lessee pays the whole agreed amount of rental, or suspended at a certain date in the future”.
- (d) “A real lease contract and attached to it a sale with an opinion of condition for the owner, where the option is to the longer period (that is until the end of the lease period)”.

The following forms are permissible.

- (a) “The presence of two contracts that are totally separate and independent in terms of time of conclusion where the sale contract succeeds the lease contract, or the presence of a promise to transfer the ownership at the end of the contract period”.
- (b) “There should be a real lease contract and not just to use it as a mere veil for the sale contract”.
- (c) “The leased property should be guaranteed by the owner and not the lessee. In this sense, the owner should bear any damage that is not caused by aggression, misuse or negligence of the lessee. The lessee has to bear nothing if the benefit is lost”.
- (d) “If the contract includes insurance (*takāful*) of the leased asset, the insurance should be Islamic insurance *Ta'āwunī*, not business insurance, and at the expense of the owner alone, not the lessee”¹¹¹.
- (e) “Throughout the period of the lease that ends with ownership, the contract should follow al *Sharī'ah* rulings pertaining to *Ijārah*, also should follow all *Sharī'ah* rulings pertaining to sale when transferring of ownership took place”.
- (f) “The cost of non-operating maintenance should be borne by the lessor not by the lessee, throughout the lease period” (IDB, 2000).

¹¹¹ In this regard, the majority of the *Sharī'ah* scholars are of the opinion that the owner of the leased asset is not allowed to transfer the obligation to the lessee to bear the cost of Takaful coverage. However, the owner may appoint the lessee to obtain Takaful on his behalf, which will be offset at the end of the leased period. AAOIFI, *Al-Ma'ayir al-Syar'iyyah*, Standard no. 9 (*Al-Ijarah wa al-Ijarah al-Muntahia bi al-Tamlik*), paragraph 5/1/7.

Wa'd

Additionally, the concept of *wa'd* (promise) and its application should be discussed as *Ijārah* ending with ownership includes a promise by the lessor to the lessee to transfer the ownership in the leased assets. The concept of *wa'd* is subjected to rigorous discussion by the *Sharīah* scholars, especially on matters relating to whether it is binding or not. *Wa'd* literally means notification of good or bad news, technically, it refers to information leading to good news in the future. In a commercial transaction, it refers to a promise made by one person to another to undertake a certain action (Abdullah N. I., 2010).

Wa'd plays an important role in IEWO. Different opinions have been claimed by classical jurists on the binding of the promise. Some of them are on the view that fulfilling a promise is a noble quality and it is advisable for the promisor to observe it. However, it is not mandatory while others are on the view that, fulfilling the promise mandatory ends enforceable by the court if the promisor denies it. However, the third opinion presented by some Maliki jurists that promise is not binding in normal conditions, but if the promisor has caused the promise to incur some expenses or undertake some labor or liability on the basis of promise, it is mandatory on him to fulfill his promise for which he may be compelled by the courts (Usmani, 1998). This is in line with the legal maxims “No harm to oneself, and no harm to others” (لا ضرر ولا ضرار).

However, the Islamic *Fiqh* Academy in Jeddah has made the promises in commercial dealings binding on the promisor with the following conditions:

- (a) It should be a one-sided promise.
- (b) The promise must have caused the promise to incur some liabilities.
- (c) If the promise is to purchase something, the actual sale must take place at the appointed time by the exchange of offer and acceptance. Mere promise itself should not be taken as the concluded sale.
- (d) If the promisor backs out of his promise, the court may force him either to purchase the commodity or pay actual damages to the seller. The actual damages will include the actual monetary loss suffered by him, but will not include the opportunity cost (IDB, 2000).

According to BNM regulation, *Wa'd* can be applied in three places in AITAB. Firstly, customer promise to the bank to lease the asset once the bank acquired it. Secondly, the bank promises to sell the asset upon early settlement or expiry of the lease period. Finally, the lessee promises to purchase the asset upon default in rental payment breach of specified *ijārah* terms that lead to termination of the contract. But the contract of *wa'd* should be separated from *ijārah* contract (BNM, 2018).

Therefore, the use of *wa'd* in *ijārah* does not affect the legality of the IEWO since it is done individually by both parties and documented separately. On the other hand, the enactment of *wa'd* provides the kind of safeguard and security for both parties in the for their whereby the

promise to sell by the bank provide confidently to the customer while promise to purchase is vice versa.

5. Conclusion:

Ijārah ending with ownership is a *Sharīah* compliant contract and one of the forms of *ijārah* contract. It can be said that as long as *ijārah* is permissible contract in *Sharīah*, its forms are also permissible while fulfills all conditions of a valid contract required by the *Sharī'ah*. In general, *ijārah* ending with ownership is not much different in its rules from the original *ijārah* except that the ownership of the leased property is only transferred from the lessor to the lessee. It can be practiced unless it transgresses any of the tenets of *Sharīah*. *Ijārah* ending with ownership is considered one of the important Islamic financial instruments to finance the various types of assets including consumer goods, industrial assets, houses and motor vehicles, and the most demanding product of Islamic financial institutions. Moving forward, great efforts must be intensified to undertake in-depth studies in relation to its legitimacy and the existing issues to engrave Islamicity in the product. *Shari'ah* compliant is a crucial aspect of Islamic financial institutions. Adhering to *Shari'ah* compliance will enhance customers' confidence which helps to sustain its competitiveness and survivability.

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