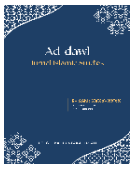

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DEVELOPMENTS IN THE FIELD OF MUAMALAH, BANKING ECONOMICS, AND CONTEMPORARY FINANCE

Abdullah Ahadish Shamad Muis[1], Muh. Arief Budiman[2], Abdul Majid Toyyibi[3], Nur Rif'ah Syahirah Binti Haji Muhammad Kamal Shahrum[4]

[1,3]Institut Al Fithrah Surabaya
[2]Institut Agama Islam Darussalam Martapura
[4]Universiti Islam Sultan Sharif Ali (UNISSA) Brunei Darussalam

abdullah.ahadish@alfithrah.ac.id[1], muh.ariefbudiman91@gmail.com[2], abdulmajidtoyyibi93@gmail.com[3], Weeserah@gmail.com[4]

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ABSTRACT

This study aims to analyze the development of contemporary Islamic law in the field of economic muamalah, particularly in the practices of Islamic insurance (takaful), the Ijarah al-Muntahiya bi al-Tamlik (IMBT) contract, and Islamic credit cards, from the perspective of maqashid shariah and maslahah mursalah. This research employs a qualitative approach using the library research method, focusing on conceptual and comparative analysis of classical and contemporary sources, such as fiqh books, fatwas from the National Sharia Council–Indonesian Ulema Council (DSN-MUI), and related academic literature. The results show that the development of the modern economy demands flexibility in Islamic law through contextual ijtihad based on maqashid shariah and maslahah mursalah. Islamic insurance is viewed as a form of financial protection that aligns with the principle of mutual assistance (ta'awun), grounded in DSN-MUI fatwas that permit its practice as long as it meets sharia requirements. The IMBT contract represents an innovation in lease-to-own financing, combining the principles of ijarah and bai' legitimately as long as it does not involve elements of riba (usury). Meanwhile, Islamic credit cards are built upon a combination of kafalah, qardh, and ijarah contracts, serving as an adaptation to modern transaction needs without abandoning the principles of justice and transparency.

INTRODUCTION

The development of *muamalah* activities, particularly in the field of economics, has become increasingly complex and significantly different from that of previous centuries. Classical *ijtihad* has limitations in responding to these developments; therefore, contemporary *ijtihad* is needed to address such changes. Islam provides space for innovation and creativity in matters of *muamalah*, as long as they do not contradict the principles of *sharia* and support the realization of *maqashid shariah*. In responding to the growing need for increasingly complex contracts and agreements today, there is a necessity for appropriate *ijtihad* methods or *Usul al-Fiqh* (principles of Islamic jurisprudence).[1,2]

In formulating new *ijtihad*, one must nonetheless carefully and cautiously review prior classical *ijtihad*. The enforcement of *Usul al-Fiqh* in earlier periods must remain a foundational consideration when applying *Usul al-Fiqh* in deriving rulings for contemporary *muamalah* activities. Islamic law in the field of *muamalah* is a rich body of knowledge that highly upholds the rules of applying scientific methods based on the Qur'an, the Hadith, *qiyas* (analogical reasoning), *ijma'* of the *ulama*, and the aspects of *maqashid shariah*.[3]

The development of modern science and technology has had a significant impact on human life, including business and economic activities such as trade through e-commerce, payment and loan systems using credit cards, SMS banking, and export-import transactions through L/Cs, and others.

Likewise, the development of banking and financial institutions has progressed rapidly, and Islamic banking products must also be innovatively developed to meet market demands. All of these present challenges for *sharia* scholars. Because social changes in the field of *muamalah* continue to evolve rapidly as a result of globalization, the teaching of *fiqh muamalah* cannot merely rely *a priori* on classical *fiqh* books, since many formulations of *fiqh muamalah* from the past have become irrelevant to the contemporary context. These *fiqh muamalah* formulations must be reformulated to address the problems and needs of modern economic and financial systems.

In this study, the author will discuss several types of *muamalah* that have evolved from traditional concepts into modern *muamalah* as they interact with current science and technology. The discussion will focus on Islamic insurance (*takaful*), *Ijarah al-Muntahiya bi al-Tamlik* (IMBT), and credit cards in Islamic banks.

[1] Atang Abd. Hakim, dan Jaih Mubarok, *Metodologi Studi Islam*, Bandung: PT Remaja Pesdakarya, 2000, h. 25

[2] Abuddin Nata, Masail Fiqhiyyah (Bogor: Kencana, 2003). h. 33

[3] Abi Bakat Utsman bin Muhammad Syata'Ad-Dimyathi, I'anat at-Thalibin Juz III (Surabaya: Dar al-Jawahir, tth.). h. 253

RESEARCH METHOD

This study employs a qualitative approach using the library research method. This approach was chosen because the focus of the study is directed toward a conceptual analysis of the development of contemporary Islamic law in the field of economic *muamalah*, particularly in the practices of Islamic insurance (*takaful*), *Ijarah al-Muntahiya bi al-Tamlik* (IMBT), and Islamic credit cards.

The research data were obtained from primary sources such as classical *fiqh* books by scholars like Ibn Abidin, Ibn Taymiyyah, and Wahbah az-Zuhaili, as well as contemporary sources, including fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), and scholarly literature and official documents from Islamic financial institutions. In addition, secondary sources were used, including journals, books, articles, and previous research relevant to the topic. Data analysis was carried out critically and comparatively based on the principles of *Ushul Fiqh*, including the concepts of *maqashid shariah* and *maslahah mursalah*. The analytical process involved identifying and mapping scholars' opinions, evaluating *fatwas* and sharia policies, and interpreting legal rulings based on sharia principles. The findings are presented in descriptive-narrative and thematic analyses, explaining the development of contemporary Islamic law in accordance with the needs and dynamics of modern *muamalah*.

RESULTS AND DISCUSSION

The Development of Contemporary Muamalah (Banking and Finance)

1. Islamic Insurance (Takaful)

   In Islamic teachings, the concept of insurance has actually been practiced since the time of the Prophet Muhammad (peace be upon him). The origin of the concept of Islamic insurance, according to some scholars, is *ad-diyah 'ala al-'aqilah*. *Al-'aqilah* was a customary practice among Arab tribes long before the advent of Islam. If a member of one tribe was killed by a member of another tribe, the heirs of the victim would be paid *blood money* (*ad-diyah*) as compensation by the closest relatives of the killer. These relatives were referred to as *al-'aqilah*. Ibn Hajar al-'Asqalani, in his book *Fath al-Bari*, as cited by Syakir Sula, explains that after the coming of Islam, the *'aqilah* system was legalized by the Prophet Muhammad (peace be upon him) as part of Islamic law. *Al-'aqilah* was even incorporated into the world's first constitution, established by the Prophet Muhammad (peace be upon him), known as the Constitution of Medina (622 M).

   This insurance practice continued to develop during the era of the *Khulafa' al-Rasyidin*, particularly during the time of Umar ibn al-Khattab. At that time, the government encouraged the people to implement *al-'aqilah* on a national scale. During his administration, Umar (may Allah be pleased with him) ordered the establishment of *Diwan al-Mujahidin* in several districts. Anyone whose name was registered in the *Diwan al-Mujahidin* was required to pay blood money (*diyah*) in

cases of murder committed by someone from their tribe. In the Islamic world, the practice of insurance continued to develop despite experiencing periods of rise and decline. For instance, between the 14th and 17th centuries CE, insurance based on Islamic principles was developed by the Sufi order *Kazeruniyya*, although it eventually declined.

In the 20th century, the Islamic jurist Muhammad Abduh issued two *fatwas* that legitimized insurance practices. In his *fatwas*, Abduh cited several sources to explain why he permitted life insurance. One of his *fatwas* considered the relationship between the insured and the insurer as a *muḍarabah* (profit-sharing) contract, while the other legitimized a model of transaction analogous to a life insurance *waqf* (endowment).[4]

Nevertheless, as the need for and practice of insurance expanded throughout the Islamic world at that time, it inevitably drew the attention of many *fuqaha'* (Islamic jurists) and scholars of Islamic law to study its legal status. Among the first to discuss insurance within Islamic jurisprudence was Muhammad Amin bin Umar bin Abdul Aziz, better known as Ibn Abidin al-Dimashqi (1784–1836 M), in his renowned work *Hasyiyah Ibn 'Abidin*. In the chapter on "*al-Jihad*," he wrote the following:

> *"It has become customary that when merchants rent ships from a harbi (non-Muslim in a state of war with Muslims), they pay a transportation fee. In addition, they also pay a certain amount of money to another harbi residing in the ship owner's country, which is called sukarah (insurance premium), under the condition that if the goods of those merchants carried on the rented ship are destroyed by fire, the ship sinks, or it is seized by pirates, then the recipient of that insurance premium becomes responsible (the guarantor) as compensation for the money he has received from the merchants. The merchant has a representative (wakil) who is under protection (musta'man) and resides in the port cities of the Islamic state with the permission of the ruler. This representative collects the insurance premiums from the merchants, and if their goods suffer any of the incidents mentioned above, he (the representative) pays compensation to the merchants equivalent to the amount he previously received. It is clear to me," Ibn Abidin continued, "that it is not permissible (not lawful) for the merchant to receive compensation for his lost goods, because such an agreement constitutes iltizam ma la yalzam (imposing an obligation that is not legally required)".*[5]

Ibn Abidin's legal opinion represents the first known *fatwa* concerning the legal status of insurance. In line with Ibn Abidin's view, the Supreme Council of the Ministry of Religious Endowments in Egypt (*Majlis A'la li Diwan Awqaf 'Umumiyyah*), which was active between 1903 and 1913 M, also repeatedly and firmly rejected the issue of insurance on *waqf* (endowed) property. The Council composed of prominent scholars such as Shaykh al-Azhar Salim Mathar al-Bashari al-Maliki, the Grand Mufti of Egypt Hassunah al-Nawawi al-Hanafi, Bakri 'Ashur al-Shairafi al-Hanafi,

[4] M. Ma'sum Billah, *Kontekstualisasi Takaful Dalam Asuransi Takaful, Tinjauan Hukum Dan Praktik*, trans. Suparto (Selangor Malaysia: Sweet & Maxwell Asia, 2010), h. 9-11.

[5] Muhammad Amin bin Abidin, *Radd Al-Muhtâr 'Alâ Al-Durr Al-Mukhtâr Syarh Tanwîr Al-Absâr* (Beirut: Dar al-Fikr, 1979), Jilid 4, h. 170.

and Muhammad Bukhati al-Hanafi explicitly prohibited fire insurance, despite the widespread promotion and increasing popularity of various forms of insurance in Egypt during that period.[6]

> "*Sharia insurance (*ta'min, takaful, *or* tadhamun*) is a mutual effort of protection and cooperation among a group of people or parties through investment in the form of assets and tabarru' (donations), which provides a return pattern to face certain risks through a contract (akad) that complies with Sharia principles*."[7]

To provide a legal foundation for Sharia insurance, legal legitimacy from an authorized institution is required. In addition to regulations governing conventional insurance, there must also be specific provisions concerning Sharia insurance. Given that the majority of Indonesians are Muslims, society demands a special *fatwa* regarding Sharia insurance. In general, Sharia insurance has been declared permissible (*halal*) under certain conditions, as stated in the general provisions of the DSN-MUI *fatwa*. At least six *fatwas* are directly related to Sharia insurance: 1) Fatwa No. 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance; 2) Fatwa No. 39/DSN-MUI/X/2002 concerning Hajj Insurance; 3) Fatwa No. 51/DSN-MUI/III/2006 concerning *Mudharabah Musytarakah* Contract in Sharia Insurance; 4) Fatwa No. 52/DSN-MUI/III/2006 concerning *Wakalah bil Ujrah* Contract in Sharia Insurance and Sharia Reinsurance; 5) Fatwa No. 53/DSN-MUI/III/2006 concerning *Tabarru'* Contract in Sharia Insurance; 6) Fatwa No. 81/DSN-MUI/II/2011 concerning the Return of *Tabarru'* Contributions for Participants Who Withdraw Before the End of the Contract Period; 7) Fatwa No. 106/DSN-MUI/X/2016 concerning the Waqf of Insurance Benefits and Investment Benefits in Sharia Life Insurance.

Sharia insurance serves as an alternative solution to conventional insurance. It is not only required to comply with state laws governing conventional insurance but must also adhere to Sharia principles as stipulated in the DSN *fatwas*. The criticism from those who argue that Sharia insurance is *haram* (forbidden) due to the presence of multiple contracts in its transactions should be viewed as a matter of differing *fiqh* interpretations. The issue of multiple contracts has been discussed by classical scholars, and their opinions are divided some prohibit it, while others permit it. Therefore, by adhering to the opinion that allows *multi akad*, Sharia insurance that practices multiple contracts is considered *halal* (permissible).

In contemporary practice, insurance is about providing protection for the economic value of human life. Various ways are taken by humans to deal with risks, among others: First, avoiding risks, which means trying to refuse to accept risks, even a little. In Islamic teachings, the way to avoid risks

[6]Muhammad Farj Sanhuri, "Al-Ta'mînât," in *Proceeding Konferensi Ke-Vii Majma'buh}Ûts Al-Islâmiyyah Al-Azhar* (Cairo Al-Azhar, 1972), Jilid 2, h. 156.

[7] Dewan Syariah Nasional-MUI, *Himpunan Fatwa Keuangan Syariah* (Penerbit Erlangga, 2014). Fatwa No.21/DSN-MUI/X/2001 tentang pedoman umum asuransi syari'ah. Lihat Iqbal Muhaimin, *Asuransi Umum Syariah Dalam Praktik* (Jakarta: Gema Insani Press, 2005), h. 2. Lihat juga Hendi Suhendi dan Deni K. Yusuf, *Asuransi Takaful Dari Teoritis Ke Praktik* (Bandung: Mimbar Pustaka, 2005), h. 1.

has been explained by Allah since the creation of humankind (Prophet Adam), when Adam was commanded by Allah to avoid a certain tree in paradise. Second, managing risks, which means bearing the risks that may occur by oneself. Third, *risk sharing* (sharing risks with other parties). In Islamic insurance, the principle applied is *risk sharing*, so the Islamic insurance company is referred to as an *operator*, not an *insurer* as in conventional insurance, and the customer is called a *participant*, not the *insured*.

Considering that the issue of insurance has already become widespread in Indonesia and it is estimated that many Muslims are involved in it, this matter therefore needs to be reviewed from the perspective of Islamic law and the contracts used in Islamic insurance, as well as the conformity of the contracts applied, because contracts are a very important element in every *muamalah* (transactional) activity.[8]

If the author examines more deeply the contemporary *fiqh* regarding insurance, it is essentially an analysis of *Ushul Fiqh* based on the principle of *maslahah mursalah*. Linguistically, *maslahah mursalah* derives from the word "المصلحة" which means "المنفعة"[9] or benefit, and "المرسلة" which means "المطلقة" , or unrestricted.

The conditions of *maslahah mursalah* must be present when analyzing an issue using this approach. The conditions of *maslahah mursalah* are as follows:[10]

a. It must serve the interests of the entire community, not merely the interests of a small group of people;
b. The benefit must be clear and free from doubt in the judgment of others;
c. The issue must not contradict the principles of ijtihad, meaning it must not oppose the Qur'an, Hadith, or Ijma';
d. The issue must be capable of removing hardship and must not create a greater problem in return.

In conclusion, if a matter does not meet the conditions mentioned above, it cannot be used as a concept employing the *maslahah mursalah* approach. Peresum expressed the view that insurance can be Islamized through the *maslahah mursalah* approach, referring to two points that justify the permissibility of insurance, namely:

a. Insurance, according to Musthafa Ahmad Zarqa, "contains public interest (*maslahah 'ammah*)."
b. Likewise, according to Yusuf Qardawi, insurance "must be accompanied by the intention to help in order to uphold the principle of brotherhood (*ukhuwah*)." This serves as the foundation that

[8] Kuat Ismanto, *Asuransi Syari'ah Tijauan Asas-Asas Hukum Islam,* Yogyakarta: Pustaka Pelajar, 2009, h. 7

[9] Amir Syarifuddin, *Ushul Fiqih,* Jakarta:Logos Wacana Ilmu, 1999, Cet, Jilid II, h. 323

[10] Zulqarnain Hasan, *Wanita Sebagai Calon Pilihan Raya Dari Sudut Siyasah Syari'ah* (Kuala Lumpur: Taman Shamelin Perkasa, 2008), h.19-20

maslahah mursalah is the most appropriate basis in *Ushul Fiqh* to be used as a legal foundation for solving issues related to insurance.

2. Ijarah Muntahiah Bi at-Tamlik (IMBT)

An *asas* (principle) is a foundation or something that serves as the basis for thought or reasoning.[11] When the term *asas* is associated with law, it refers to a truth that is used as a basis for reasoning and justification, particularly in the establishment and implementation of law.[12]

The fundamental principles of contracts that must be fulfilled in the financing contract of *Ijarah Muntahiya Bittamlik* (IMBT) in relation to Islamic contract law include the following: the principle of monotheism/divinity, the principle of permissibility and freedom, the principle of justice, the principle of equality, the principle of honesty and truth, the principle of written agreement, and the principle of benefit and public interest.[13]

A *rukun* is an essential element that must exist in any matter, event, or action.[14] First, there is *shighat* (the statement of offer and acceptance). In the *Ijarah Muntahiya Bi al-Tamlik* (IMBT) contract, there are two forms of agreement: the *ijarah* contract that ends with a promise of sale, and the *ijarah* contract that ends with a promise of gift (*hibah*). The lessor makes a promise (*wa'ad*) to the lessee to transfer ownership of the leased object after the lease period ends, as stated in the IMBT agreement. Therefore, in the IMBT contract, there are two distinct agreements the *ijarah* contract and, at the end of the lease period, a contract for the transfer of ownership rights over the leased item. Thus, the *ijab* and *qabul* (offer and acceptance) between the Islamic bank and the customer clearly define the method of ownership transfer from the outset of the agreement.

Second, the executors of the contract (*al-'aqid*). The parties involved in the *Ijarah Muntahiya Bi al-Tamlik* (IMBT) contract are: the *musta'jir* (lessee), who is the party renting the asset in this case, the customer (debtor); and the *mu'jir* (lessor/owner), who is the party leasing the asset namely, the Islamic bank (creditor). Third, the object of the contract (*al-ma'qud*). The object in an IMBT contract consists of the *ma'jur* (leased asset), which refers to the benefits and services derived from a particular item, and the *ujrah* (rental price), which is the fee mutually agreed upon by both parties in the IMBT contract.

In general, the object of a contract can be considered valid if it meets certain conditions: it must exist at the time the contract is made, be permissible according to *shari'ah*, be clearly defined and known, and be deliverable at the time the contract takes place.[15] However, some of these

[11] Gemala Dewi, Wiryaningsih, dkk, *Hukum Perikatan Islam di Indonesia*, (Jakarta: Kencana, 2007), h. 27.

[12] Muhammad Daud Ali, *Hukum Islam (Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia)*, (Jakarta: Raja Grafîndo Persada, 2007), h. 126.

[13] Faturrahman Djamil, *Hukum Perjanjian Syariah*, (Bandung: Citra Aditya Bakti, 2001), h. 249.

[14] Daeng Naja, *Akad Bank Syariah*, (Yogyakarta: Pustaka Yustisia, 2011), h. 21.

[15] Daeng Naja, *Akad Bank Syariah*,…h. 31.

conditions can be exempted specifically, the requirement that the object of the IMBT contract must already exist and be delivered at the time the contract is made. This exception is based on the principle of *istihsan*, which serves as strong evidence that Islamic law is a dynamic legal system developed to preserve and fulfill human needs, while remaining consistent with *shari'ah* principles.[16]

IMBT is a modern term that did not exist among classical *fuqaha* (Islamic jurists). Essentially, IMBT represents a combination between *ijarah* (leasing) and *bay'* (sale). The stronger and clearer the commitment to purchase the asset at the beginning of the contract, the more IMBT fundamentally takes the nature of a sale. However, if the commitment to purchase the asset at the outset is not so strong or explicit (even though the option to buy remains open), the essence of IMBT leans more toward *ijarah*. From the *ijarah* perspective, the distinguishing feature of IMBT lies in the presence of an option to purchase the leased asset at the end of the lease term. From the *bay'* perspective, the distinction lies in the prior utilization of the asset's benefits through the *ijarah* contract before the sale transaction takes place. According to the Standard Operating Procedures (SOP) outlined by Islamic banks, the implementation stages of IMBT are as follows:

No	Stages
1	There is a request from the customer to lease-purchase a specific item with clear specifications from the Islamic bank
2	A *wa'ad* (promise) is made between the bank and the customer to lease-purchase the item with an agreed rental price and lease period.
3	The Islamic bank searches for the desired item to be lease-purchased by the customer.
4	The Islamic bank purchases the item from the original owner
5	The Islamic bank makes a cash payment for the item
6	The item is handed over from the original owner to the Islamic bank
7	A contract (*akad*) is made between the Islamic bank and the customer for the lease-purchase agreement.
8	The customer pays the lease in installments.
9	The item is handed over from the Islamic bank to the customer.
10	At the end of the period, a sale transaction is conducted between the Islamic bank and the customer.

[16] Amir Syarifuddin, *Ushûl Fîqh*, (Ciputat: Logos Wacana Ilmu, 2009), h. 319.

The results of a review of the IMBT contract SOP indicate several points that can be further examined. In some banks, the commitment to purchase the item at the end of the period, as stated in the *wa'd*, tends to be an obligation or mandatory for the customer. However, there is now a Fatwa of the National Sharia Council (Dewan Syariah Nasional) No. 85/DSN-MUI/XII/2012 concerning Promises (*Wa'd*) in Islamic Financial and Business Transactions, which stipulates that a *wa'd* (promise) in Islamic financial and business transactions is binding (*mulzim*) and must be fulfilled (executed) by the promisor (*wa'id*).[17]

The implementation of IMBT in Islamic banking requires prospective customers to fulfill the financing procedures established by Bank Muamalat. The financing requirements and processes, which constitute the implementation procedures, are carried out to assess whether the prospective customer has good faith and honesty, as well as to determine whether the customer's business is feasible to receive financing.

Good faith and honesty from the customer are essential in the execution of the financing agreement. These qualities must be evaluated by Bank Muamalat, which provides the financing, in order to prevent problematic financing. However, good faith must also be present on the part of Bank Muamalat in carrying out the financing agreement based on the rights and obligations that have been mutually agreed upon and in accordance with Sharia principles.

The implementation of Ijarah Muntahiya Bittamlik (IMBT) can actually take various forms, depending on what has been mutually agreed upon by the two contracting parties. In this case, the principle of substance over form applies, meaning that the purpose and intent of the contract take precedence over the form of the contract itself.

Referring to the Fatwa of the National Sharia Board No. 7/DSN-MUI/III/2002, dated March 28, 2002, concerning *Al-Ijarah Al-Muntahiya Bi Al-Tamlik*, the following are the technical provisions that must be observed by Islamic Financial Institutions (LKS) wishing to implement IMBT in their financing products:

a. The agreement to conduct IMBT must be established when the ijarah contract is signed.
b. The parties involved in the IMBT must first execute the ijarah contract; the ownership transfer contract whether through sale or gift can only be carried out after the ijarah period ends.
c. The promise of ownership transfer agreed upon at the beginning of the ijarah contract is a wa'ad (promise), which is legally non-binding. If the promise is to be fulfilled, a separate ownership transfer contract must be executed after the ijarah period concludes.

[17] Lihat Fatwa Dewan Syari'ah Nasional Nomor 85/DSN-MUI/XII/2012 Tentang Janji (Wa'd).

Considering that the provisions of *ijarah* also apply to the *Ijarah Muntahiyah Bi al-Tamlik (IMBT)* contract, Islamic Financial Institutions (LKS), particularly Islamic banks, are required to observe the following provisions:

a. The bank may finance the procurement of leased objects in the form of goods already owned by the bank.
b. The bank must provide the leased goods, ensure the fulfillment of both the quality and quantity of the leased goods, and guarantee the timeliness of their provision as agreed upon.
c. The bank is obligated to bear the costs of maintenance for the leased goods/assets that are material and structural in nature, in accordance with the agreement.
d. The bank may authorize the customer to find or procure the goods that will be leased by the bank.
e. The customer is required to pay the rent in cash, maintain the integrity of the leased goods, and cover the maintenance costs of the leased goods as agreed upon.
f. The customer shall not be held responsible for any damage to the leased goods that occurs not due to a breach of contract or negligence on their part.

The meaning of combining two transactions within a single contract (*one contract containing two transactions*) remains a subject of debate among *fuqaha* (Islamic jurists). Regardless of the differing opinions surrounding the interpretation of this *hadith*, in the author's view referring to the opinions of the *Hanabilah*, *Malikiyyah*, and *Syafi'iyyah* schools when discussing the combination of a sale contract with a lease contract, or a lease contract that ends with the transfer of ownership of the leased item to the lessee, they agree that a lease contract may be combined with a sale contract within a single transaction. This is permissible as long as the agreement or the conditions do not contradict the *nash syar'i* (explicit texts of Sharia), do not violate *syar'iyyah* principles, and do not eliminate the essence of the contract.[18]

3. Credit Cards in Islamic Banks

Nowadays, credit cards are no longer merely a lifestyle choice but have become a necessity for modern society to support all aspects of daily life. All business and personal needs from financing business trips, entertaining clients, covering childbirth expenses, shopping for daily necessities, to enjoying vacations with loved ones can be fulfilled through the use of credit cards. Credit cards have also become one of the hallmarks of a modern lifestyle that values speed and efficiency.[19]

The parties involved in a Credit Card Agreement (transaction card) typically include the following:

[18] Wahbah az-Zuhaili, *al-Muâmalah al-Mâliyah al-Mu'âshirah*, (Damaskus: Dâr al-Fîkr, 2002), h. 410-412.

[19] Bank Negara Indonesia, *Kartu Kredit: Memberi Makna dalam Setiap Transaksi*, diakses pada tanggal 20 Mei 2018 dari website: http://www.bni.co.id/KartuKredit/tabid/162/Default.aspx

a. Issuer Bank, in a credit card context referred to as *muqaridh* (creditor), is the party authorized by law to issue cards to its customers. The issuer acts as the representative of the cardholder in making payments for purchases made by the cardholder to the merchant.
b. Card Holder, referred to as *muqtaridh* (borrower), is the individual whose name is printed on the card, or a person authorized to use it. The cardholder is obliged to settle all obligations arising from the use of the card to the issuing bank.
c. Merchant is the party providing goods and services (supplier), who has an agreement with the issuing bank to deliver goods and services to the cardholder according to their mutual agreement.
d. Acquirer is the managing party that represents the interests of the issuer in distributing credit cards, billing the cardholders, and making payments to the merchants or sellers.[20]

The increasingly widespread use of credit cards has given rise to several issues when viewed from the perspective of Islamic jurisprudence (fiqh). The problem arises because many parties are involved in a credit card transaction, making it difficult for scholars (fuqaha) to determine the exact type and number of contracts (akad) applicable. Some scholars argue that the credit card transaction involves only one contract, while others say it involves six contracts, namely kafalah, wakalah, hawalah, murabahah, qardh, and ijarah.

The National Sharia Council – Indonesian Ulema Council (DSN–MUI) holds the opinion that the legal status of credit cards is as an object or medium of kafalah (guarantee) services, accompanied by a qardh (loan) facility and ijarah (service fee) for transaction convenience. In this context, the banking institution acts as the **issuer**, which issues the credit card (as proof of kafalah) and serves as the guarantor (kafil) for the cardholders in various transactions. Thus, according to the DSN–MUI, there are three contracts (akad) used in credit card transactions: kafalah, qardh, and ijarah.[21]

Furthermore, the National Sharia Council – Indonesian Ulema Council (DSN–MUI) states that scholars permit the system and practice of kafalah in muamalah (financial and social transactions) based on evidence from the Qur'an, Sunnah, and Ijma' (consensus of scholars), which is founded upon the word of Allah:

[20]Veithzal Rifa'i, dkk, *Bank and Financial Institution Management Conventional & Sharia System*, Kata pengantar Sugiharto Menteri Negara BUMN RI, Muliaman D. Hadad Deputi Gubernur RI, (Jakarta: Raja Grafindo Persada,2007) hlm. 1365

[21] Dewan Syariah Nasional-Majelis Ulama Indonesia, *Fatwa Dewan Syariah Nasional No: 54/DSN MUI/X/2006 tentang Syariah Card*

وَلِمَنْ جَآءَ بِهِۦ حِمْلُ بَعِيرٍ وَأَنَا۠ بِهِۦ زَعِيمٌ ﴿٧٢﴾

Meaning: *"...And whoever brings it shall have a camel's load, and I will be responsible for it."* (Qur'an, Surah Yusuf: 72)

The word "za'im" at the end of the verse, according to Ibn 'Abbas, means "kafil" (guarantor), as mentioned in the saying of the Prophet (peace be upon him): "az-Za'im Gharim" meaning: "*The guarantor is liable (responsible for the debt)*." (Narrated by Abu Dawud, al-Tirmidhi, and Ibn Hibban).

kafalah is a *tabarru'* (voluntary) contract that has the value of worship for the guarantor, because it is considered a form of cooperation in goodness (*ta'awun 'alal birri*). The guarantor has the right to ask for repayment from the debtor; therefore, it is appropriate that he does not request a fee for his service, so that it remains safe and free from *syubhat* (doubtful matters). However, it is permissible if the debtor himself gives a gift or donation as an expression of gratitude.

Nevertheless, if the guarantor himself stipulates compensation (such as an administrative fee for a credit card and the like) and is unwilling to guarantee voluntarily, then it is permissible for the user of the guarantee service to fulfill that requirement when necessary, such as for common needs in study trips, business transactions, social activities, personal affairs, and so on.

The determination of the *kafalah* service fee should not be too high so as to burden the debtor or exceed reasonable limits, in order to preserve the original purpose of *kafalah*, which is assistance in the form of a debt guarantee to a merchant, seller of goods, or service provider who receives payment through a specific credit card.[22]

According to the Indonesian Banking Institute, the *kafalah* contract referred to here is a guarantee contract provided by the guarantor (*kafil*) to a third party in order to fulfill the obligations borne if the guaranteed party defaults.[23] However, Rafiq Yunus al-Misry disagrees if the issuer of the credit card is considered a *kafil* (guarantor) to the cardholder. Such an assumption would make this contract a *kafalah bi ujr* (a guarantee with payment) through membership fees (paid in the form of annual dues). Such payments are not permissible in Islam because *kafalah* is equivalent to debt with the principle of *tabarru'* (mutual assistance). Misry concludes that such a contract falls under the category of *hawalah* (transfer of debt).[24]

[22]Wahbah az-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, vol. V/130-161

[23]Institut Bankir Indonesia (IBI), *Konsep, Produk dan Implementasi Operasional Bank Syariah*, Jakarta: Penerbit Jembatan, 2002, h. 239

[24]Rafiq Yunis al-Misry, "Bitsaqah al-I'timan Dirasah Syar'iyyah 'Amaliyah Mujazah", *Majalah Majma',* Jilid 1 (7), h. 411

Meanwhile, scholars who state that the credit card contract falls under the *wakalah* (agency) contract argue that the cardholder acts as an agent (*wakil*) of the card issuer to pay his debt to the merchant or any service provider. It can also be said that the merchant appoints the card issuer as an agent to collect the debt from the buyer of the goods, in this case, the cardholder.[25]

For some other scholars, the credit card contract uses a *murabahah* contract between the card issuer and the cardholder. The cardholder, as the buyer, purchases goods or services from the merchant as the issuer's representative. The goods or services are then resold to the cardholder by the issuer on an installment basis. Other *fuqaha* who argue that the credit card transaction constitutes a *qardh* (loan) reason that, in this case, the issuer is the lender (*muqridh*) to the cardholder (*muqtaridh*) through cash withdrawals from the bank or the issuer's ATM. Meanwhile, those who consider it an *ijarah* (lease/service) contract argue that the issuer provides payment system services and customer support to the cardholder. On this basis, the cardholder is charged a membership fee.[26]

Transactions using credit cards are a relatively new method of conducting muamalah (financial dealings), making it rather difficult to determine the exact type of contract when viewed from the opinions of classical scholars. All of the aforementioned opinions do not have a completely precise reference to the types of contracts established by earlier fuqaha (Islamic jurists).[27]

Analysis of Developments in the Field of Muamalah, Banking, and Contemporary Financial Economics

From several themes mentioned above, it is clear that every transaction involves various types of contracts within a single transaction, and this naturally becomes a subject of long-standing debate. However, the writer here attempts to analyze the opinion that allows such practices. The permissibility of transactions in Islamic banking products that combine several contracts, in addition to referring to the opinions of the Hanbali, Maliki, and Shafi'i scholars mentioned earlier, is also based on the *fiqh* (Islamic legal) maxim: "The change of law cannot be denied due to the change of time."[28] The law that existed in the past was based on the *maslahah* (public interest) of that time; however, in the present era, the *maslahah* has changed, and thus, the law also changes accordingly. This legal maxim applies only in the field of *muamalat* (social and economic transactions) and not in the field of *ibadah* (worship).

The meaning of this Islamic legal maxim, when connected with the legal provision in the *hadith* narrated by al-Tirmidhi concerning the prohibition of two transactions in one contract, requires a

[25]Muhammad Abdul Halim Umar, *Jawanib al-Syariyyah wa al-Masrafiyah wa al-Muhasabah li bitsaqat al-I'timan*, (Qahirah: Itrak li an-Nashr wa al-Tawzi, 1997), h. 66

[26]Dewan Syariah Nasional – Majelis Ulama Indonesia (2006), *Fatwa Dewan Syari'ah Nasional No: 54/DSN-MUI/X/2006 tentang Syariah Card*

[27]Nazaruddin AW, "*Credit Card Pada Institusi Keuangan Syariah dalam Kajian Fiqh Iqtishad*", Media *Syariah*, vol. VIII, 2007, h. 171 – 188

[28] Asmuni A. Rahman, *Qâ'idah Qâ'idah Fîqih*, (Jakarta: Bulan Bintang, 1976), h. 107-108.

contextual understanding. This means that the prohibition of combining two transactions in one contract, as stated in the *hadith* of al-Tirmidhi, was based on the *maslahah* that existed at that time. However, since the *maslahah* has changed in the present context, the legal ruling also adapts accordingly.

From the views of the scholars mentioned above, it can be understood that multiple contracts (*multi akad*) are essentially permissible because combining contracts in modern times is an inevitability. Nevertheless, what must be carefully observed is that such a combination of contracts must not lead to *riba* (usury).

Ibn Taymiyyah, when explaining the *hadith* prohibiting the combination of *bai'* (sale) and *salaf* (loan), stated that:

فَجِمَاعُ مَعْنَى الْحَدِيثِ أَنْ لَا يُجْمَعَ بَيْنَ مُعَاوَضَةٍ وَتَبَرُّعٍ ؛ لِأَنَّ ذَلِكَ التَّبَرُّعَ إنَّمَا كَانَ لِأَجْلِ الْمُعَاوَضَةِ لَا تَبَرُّعًا مُطْلَقًا ؛ فَيَصِيرُ جُزْءًا مِنْ الْعِوَضِ فَإِذَا اتَّفَقَا عَلَى أَنَّهُ لَيْسَ بِعِوَضٍ جَمَعَا بَيْنَ أَمْرَيْنِ مُتَبَايِنَيْنِ[29]

The meaning: "*The conclusion derived from this* hadith *affirms that: It is not permissible to combine a commercial contract with a social contract. This is because both parties enter into a social contract due to the existence of a commercial contract between them."*

From the conclusion stated by Ibn Taymiyyah, it can be understood that the *'illat* (legal reasoning) behind the Prophet's prohibition of combining two contracts is the difference in the underlying principles of these contracts namely, the commercial principle and the social principle. This is because such a combination causes the social motive to become impure, transforming it into a profit-seeking motive, and that profit has the potential to lead to *riba* (usury). Therefore, as long as this *'illat* exists, the ruling of the above *hadith* may also apply to other types of combined contracts, such as the combination of *Bai'* (sale) and *Ijarah* (lease) in the practice of *Ijarah Muntahiyah bi al-Tamlik* (IMBT). This is in accordance with the principle of *Usul al-Fiqh*:

الحكم يَدُور مَعَ الْعلَّة وجودا وعدما

The meaning: "*Law applies depending on the presence or absence of the 'illat (legal cause)"*

Not all forms of *maslahah* (public interest or benefit) are recognized by *Sharia*; some *maslahah* may even contradict it. Therefore, in the author's view, among the three types of *maslahah*, the most urgent to be used as an analytical tool in developing Islamic legal studies related to contemporary

[29] Syaikh al-Islam Taqiyuddin Ahmad bin Taimiyah al-Harani, *Majmû' al-Fatawa*, (Beirut: Dâr al-Fîkr, 1987), h. 39.

economic and *Sharia* business issues is the third type *maslahah* that has no explicit textual legitimacy, neither affirming nor negating its validity (*maslahah al-mursalah*). Thus, *maslahah al-mursalah* can serve as an analytical framework or a source of law by consistently referring to the development of *maqaṣid al-shari'ah* (the higher objectives of Islamic law), as previously explained namely, *maqaṣid al-ḍaruriyyat* (essentials), *maqaṣid al-ḥajiyyat* (needs), and *maqaṣid al-taḥsiniyyat* (complementary). In this way, true *maslahah* can be realized in human life.

In relation to *maqaṣid al-shari'ah*, Abd. Muqsith Ghazali offers the idea that *maqaṣid al-shari'ah* should be considered the primary source of law in Islam, followed concurrently by the Qur'an and the Sunnah. *Maqaṣid al-shari'ah* represents the essence of the entirety of Islamic teachings and occupies a higher position than the specific legal rulings of the Qur'an. *Maqaṣid* serves as the source of inspiration when the Qur'an seeks to establish specific legal provisions in practical fields. It is the source of all sources in Islam including the source from which the Qur'an itself emerges. Furthermore, according to him, if there is any provision, either in the Qur'an or in *hadith*, that substantively contradicts the *maqaṣid al-shari'ah*, then such a provision must be reformed. It must be nullified or abolished in favor of the logic of *maqaṣid al-shari'ah*.[30] Thus, in the author's view, the above idea needs to be followed up as an effort to develop laws related to contemporary issues in Islamic economics and business. This is because law is not static; it continuously moves and evolves in accordance with the dynamics of life. Therefore, *maqaṣid al-shari'ah* and *maṣlaḥah* as sources of Islamic law are indeed essential to be further developed.

According to Agustianto, in order to advance Islamic economics, Muslim economists need only adhere to the principle of *maṣlaḥah*, for *maṣlaḥah* is the very essence of *shari'ah*. The scholars have stated, *"Where there is maṣlaḥah, there is the shari'ah of Allah."* This means that wherever there is benefit or welfare, there lies the law of Allah. Thus, in the author's view, within the field of *mu'amalah* (Islamic economics and business), the concepts of *maqaṣid al-shari'ah* and *maṣlaḥah* hold a highly central position in Islamic law serving as both a guiding principle and an analytical framework in the study of contemporary Islamic economics and business.

Muslims can still apply the classical principles of *mu'amalah*, but not all of them can be implemented in the forms of transactions that exist today. This is due to the changes in the socio-economic conditions of society, as stated in the well-known legal maxim:

[30] A. Qadri Azizi, Abd. Muqsith Ghazâli, dkk, *"Pemikiran Islam Kontemporer di Indonesia",* (Yogyakarta: Pustaka Pelajar, 2005), h. 141

المحفظة بالقديم الصلح و الأخذ بالجديد الأصلح

That is, to preserve the classical intellectual heritage that remains relevant and to allow the continuation of modern practices as long as there is no indication of their prohibition. Based on the above principle, it can be concluded that economic transactions from the classical period may still be implemented as long as they are relevant to the conditions, time, and place, and do not contradict what has been prohibited.

In relation to social change and its influence on matters of *mu'amalah*, the analysis put forward by Ibn Qayyim al-Jawziyyah appears to be quite appropriate when he formulated a principle that is highly relevant to be applied in modern times in anticipating the various types of *mu'amalah* that continue to develop. The principle in question is:

تغير الفتوى و اختلافها بحسب تغير الأزمنة والأمكنة و الأحوال والنيات و العوئد

The Meaning: *"Fatwas change and differ according to changes in place, time, social conditions, intentions, and customs."*.

There are several factors that can serve as references in assessing the occurrence of such changes, namely the factors of place, time, social conditions, intention, and customs. These factors greatly influence the jurists (*mujtahidin*) in determining legal rulings in the field of *mu'amalah* (transactions). In facing social changes caused by these five factors, the main reference in determining the law of a *mu'amalah* issue is the realization of *maqaṣid al-shari'ah* (the higher objectives of Islamic law). On this basis, *maqaṣid al-shari'ah* becomes the standard for the validity of a contract or *mu'amalah* transaction.

In matters of *mu'amalah*, rulings are based on reasoning (*ta'lil*), whereas in matters of worship (*'ibadah*), they are based on devotion and submission (*ta'abbud*). This is evidenced by two *fiqh* maxims concerning these two domains.

الأصل في شروط العبادات المنع والحظر إلا بدليل، والأصل في الشروط في المعاملات الحل والإباحة إلا بدليل[31]

[31] الكتاب: تلقيح الأفهام العلية بشرح القواعد الفقهية المؤلف: وليد بن راشد السعيدان1h j2

This can be seen in matters of custom (*'adah*) or *mu'amalah* (social and economic dealings), where the *Shari'ah* seeks to provide ease and bring benefit (*maṣlaḥah*) to humankind. The rulings of *mu'amalah* revolve around the principle of *maṣlaḥah* (benefit and welfare). Meanwhile, in matters of worship (*'ibadah*), there is almost no reasoning (*ta'lil*), except in a few cases where the wisdom (*ḥikmah*) behind an act of worship can be discerned such as the rulings on washing specific limbs during *wuḍu'*, fasting during the day, the rituals of *ḥajj*, and the determination of prayer times, among others.

CONCLUSION

Based on the explanations above, it can be concluded that the development of contemporary Islamic law in the field of *mu'amalah* particularly concerning Islamic insurance (*takaful*) represents a product of *ijtihad* by scholars in determining its legal implementation. As Muslims, we are commanded to help one another, and it is precisely this principle of mutual assistance that forms the foundation and operational basis of Islamic insurance. From the perspective of Islamic law, *takaful* is still a matter of scholarly debate, as it is a result of *ijtihad* to meet the growing need for insurance in society. The author understands that the legal reasoning behind insurance is rooted in *uṣul al-fiqh*, specifically based on the principle of *maṣlaḥah mursalah* (public interest not explicitly addressed by scripture).

Likewise with Ijarah Al-Muntahiya Bit-Tamlik (IMBT) which is an expansion and modification of the meaning of ijarah (lease). This, too, is a form of *ijtihad* aimed at harmonizing Islamic law with current developments and addressing the practical needs of modern business transactions. From the *ijarah* perspective, IMBT differs in that it includes an option to purchase the leased asset at the end of the term. From the *bay'* (sale) perspective, the distinction lies in the utilization of the asset's benefits through leasing before ownership is transferred through a sale contract. This demonstrates flexibility in contract formulation, allowing for greater benefit compared to conventional products.

In addition, the *shari'ah*-compliant credit card now a symbol of modern practicality in financial transactions has encouraged Islamic banks to provide various products and services that facilitate ease of payment for customers. The main purpose of a *shari'ah* credit card is to provide convenience for customers in conducting transactions with merchants that accept this form of payment.

Furthermore, the author concludes that in the ongoing development of *shari'ah* economic and business practices, Islamic law must not remain static. It evolves and adapts to the changing dynamics of life. Therefore, *maqaṣid al-shari'ah* (the higher objectives of Islamic law) and *maṣlaḥah* (public benefit) must continue to be developed as essential foundations for the renewal and advancement of Islamic law, particularly in the field of *mu'amalah* (Islamic economics and finance).

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