SHARĪ‘AH ISSUES IN THE APPLICATION OF
FORWARD IJĀRAH: THE CASE OF MUSHĀRAKAH
MUTANĀQISAH PARTNERSHIP FOR HOME
FINANCING

BY

ABU TALIB MOHAMMAD MONAWER

A dissertation submitted in fulfilment of the requirement for
the degree of Master of Islamic Revealed Knowledge and
Heritage (Fiqh & Uṣūl-al-Fiqh)

Kulliyyah of Islamic Revealed Knowledge and
Human Sciences
International Islamic University Malaysia

JUNE 2014
ABSTRACT

Islamic financial institutions currently provide a financing product for home under construction based on the musharaka mutanāqisah partnership (MMP) whereby forward ijārah is applied as a sub-contract. However, the theory of forward ijārah has not comprehensively studied yet. Besides, there are some issues arising in its application in MMP for home under construction that need to be solved. This research aims at the study of forward ijārah including its legality, parameters and application. The study employed a comparative method when dealing with different opinions of scholars in choosing a preponderant view, whereas an analytical method was applied when identifying the Shari’ah issues that arise from its application. The study reveals that there is a consensus on legality of forward ijārah. The parameters of forward ijārah are constituted from rules of both ijārah and salam. Forward ijārah is allowed to be used along with other valid contracts in hybrid mode as long as it fulfills the criteria put forward by scholars. The study also shows that although usufruct is not a valuable asset in its originality according to Ḥanafi School, usufruct of ijārah is excluded from being a valueless asset on the basis of exception regardless of whether it is ijārah of a particular object or usufruct in liability. In addition, if the rental is fixed it comes out of being debt in liability, albeit it is not handed over. Therefore, immediate payment is not obligatory in forward ijārah. The issue that contradicts Shari’ah principle is that the bank does not bear any risk; rather, it considers the rental paid by customer for forward ijārah during the construction period as the compensation for the failure of istiṣnā‘, and the customer also cannot charge the developer for abandoned house. The possible solution for the issue is that the bank should share in risk according to its portion in partnership as well as the customer can refer to the developer to charge the compensation for his actual failure in istiṣnā‘. This research suggests that government should put an article in the law of Islamic banking and finance that binds the developer to compensate the customer for his actual default.
ملخص البحث

تقدم المؤسسات المالية الإسلامية المعاصرة حالياً منتجًا تمثيلياً للبيوت تحت البناء على مفهوم المشاركة المناقشة التي تستخدم فيها الإيجار الموصوفة في الStreams كعقد جزئي في الصيغة المركبة. ولم تحظ الإيجار الموصوفة في الStreams بدراسة واسعة من قبل الباحثين مع أن هناك قضايا نشأت من تطبيقها خاصة في المشاركة المناقشة لتمويل البيت تحت البناء وهي تحتاج إلى الفحص الدقيق واقتراح الحل. هذا البحث يهدف إلى دراسة الإيجار الموصوفة في الStreams مع حكمها وضوابطها وتطبيقها. واعتمد البحث على النهج المقارن عند التحليل مع آراء العلماء في المسائل الخلافية للترجيح بينها وعلى النهج التحليلي عند تشخيص المسائل التي لا توافق الشريعة في التطبيق العملي. ومن أهم النتائج التي توصل البحث إليها أن الإيجار الموصوفة في الStreams عقد خارجية عند جميع العلماء من المتقدمين والمعاصرين، ولا خلاف فيها بين المذاهب الأربعة الفقهية. وضوابطها مأخوذة من أحكام الإيجار والسلم معاً. ويجوز تطبيق الإيجار الموصوفة في الStreams مع العقود الجائزة الأخرى في الصيغة المركبة ما دامت تراعي أحكامها التي وضعها العلماء. وتوصي البحث أيضاً إلى أن الخلفية لا يعود المنافع أموالاً متقولة ولكن عدوان منفعة الإيجار مالاً متقولاً على سبيل الاستثناء وخلاف القبالة، ولا فرق فيها بين المعينة والوصوفة في الStreams، وتعيين الأجرة يخرجها من كونها ديناً في الStreams ولم لم تدفع، ومن هنا لا يجب الحيد الأجرة في الإيجار الموصوفة في الStreams. وكشف البحث أن المسألة التي تناقش الشريعة في تطبيقها هي أن البنك الإسلامي لا تحمل أي مؤسسات للشركة بل تعد الأجرة التي دفعها الزبون للإيجار الموصوفة في الStreams أثناء فترة الإنشاء تعويضاً لفشل الاستصناع. فيجب على البنك الإسلامي أن تحمل مستحقات الشركة على قدر حصولها، وكذلك على الزبون أن يرجع على المطور لتعويض الضرر لموافقة الشريعة. ويقترح البحث أن على الحكومة أن تشرع قانوناً لإلزم المطور تعويض الأعمال الحقيقي منه.
I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh & Uṣūl-al-Fiqh).

Akhtarzaite Abd. Aziz
Supervisor

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh & Uṣūl-al-Fiqh).

Luqman Zakariyah
Internal Examiner

This dissertation was submitted to the Department of Fiqh & Uṣūl-al-Fiqh and is accepted as a fulfilment of the requirement for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh & Uṣūl-al-Fiqh).

Ahmad Basri bin Ibrahim
Head, Department of Fiqh & Uṣūl-al-Fiqh

This dissertation was submitted to the Kulliyyah of Islamic Revealed Knowledge and Human Sciences and is accepted as a fulfilment of the requirement for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh & Uṣūl-al-Fiqh).

Ibrahim Mohamed Zein
Dean, Kulliyyah of Islamic Revealed Knowledge and Human Sciences
DECLARATION

I hereby declare that this dissertation is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Abu Talib Mohammad Monawer

Signature………………………………….               Date…………………………...
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

DECLARATION OF COPYRIGHT AND AFFIRMATION OF FAIR USE OF UNPUBLISHED RESEARCH

Copyright © 2014 by Abu Talib Mohammad Monawer. All rights reserved.

SHARĪ‘AH ISSUES IN THE APPLICATION OF FORWARD IJĀRAH: THE CASE OF MUSHĀRAKAH MUTANĀQĪṢAH PARTNERSHIP FOR HOME FINANCING

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without prior written permission of the copyright holder except as provided below.

1. Any material contained in or derived from this unpublished research may only be used by others in their writing with due acknowledgement.

2. IIUM or its library will have the right to make transmit copies (print or electronic) for institutional and academic purposes.

3. The IIUM library will have the right to make, store in a retrieval system and supply copies of this unpublished research if requested by other universities and research library.

Affirmed by Abu Talib Mohammad Monawer.

………………………………                                     …………………………
Signature                                      Date
To my beloved parents, Hafeja Begum and Mohammad Abul Khaer
My elder brother, Abu Taher Mohammad Moddasser and
All knowledge seekers
ACKNOWLEDGEMENTS

All praises and thanks are due to Allāh, the Creator and the Nourisher who, out of His infinite mercy, enabled me to complete this dissertation. With full conviction in the supremacy of Almighty Allāh, I want to extend my acknowledgement and gratitude to some personalities who contributed to the success of my educational career in general and in this research in particular.

I would like to extend first my gratitude and thanks to my respected supervisor Asst. Prof. Dr. Akhtarzaite Abd. Aziz, who always found the time to accommodate me for consultation on difficult topics despite her hectic schedule, and devoted her time to guide and assist me throughout the period of my research. Her expertise in fiqh al-mu‘āmalāt al-māliyyah and open discussion helped me more. I do not regard her only as my supervisor, but also as my teacher. I am really indebted to her. May Allāh increase her knowledge and reward her. My heartfelt gratitude also goes to my parents, Hafeja Behum and Mohammad Abul Khaer, for their love, patience and sincere supplication to Allāh for my success. I ask Allāh to protect them and reward them. Similarly, my sincere gratitude goes to my best friends for their help and encouragement, especially brother Md. Habibur Rahman who helped me with the primary hints of my research topic. I thank him from the core of my heart.

My special gratitude is due to my most respected academic guide, Head of the Postgraduate Committee, Department of Fiqh and Usūl al-Fiqh, Prof. Dr. Muhammad Amanullah who helped me through personal consultation and valuable advice in research work. My sincere gratitude goes to my teachers in the Kulliyyah of Islamic Revealed Knowledge and Heritage for their assistance and good wishes. I express sincere thanks to the International Islamic University for providing me with all the facilities I needed to complete my study successfully. May Allāh accept our University as the garden of knowledge and virtue. I am solely responsible for any shortcoming that remains. The Almighty Allāh knows well what is correct and perfect. I ask Allāh to forgive our shortcomings and protect us from any deviation.

Last but not least, I pray that this small effort will be accepted by Allah as a good deed and that it can further strengthen the financial services conforming to the Shari‘ah. Āmīn!
TABLE OF CONTENTS

Abstract ........................................................................................................... ii
Abstract in Arabic ........................................................................................... iii
Approval Page................................................................................................ iv
Declaration Page ............................................................................................... v
Copyright Page ................................................................................................. vi
Dedication ......................................................................................................... vii
Acknowledgements ........................................................................................ viii
List of Figures ................................................................................................... xi

CHAPTER ONE: INTRODUCTION ................................................................. 1
1.1 Research Background ............................................................................... 1
1.2 Statement of the Problem ......................................................................... 4
1.3 Research Questions .................................................................................... 6
1.4 Objectives of the Research ....................................................................... 6
1.5 Significance of the Research ................................................................... 7
1.6 Limitation of the Research ...................................................................... 8
1.7 Methodology of the Research .................................................................. 9
1.8 Literature Review ..................................................................................... 9
1.8.1 Literature on al-İjařah al-Mawsūfah fi al-Dhimmah ............................... 9
1.8.2 Literature on Mushārakah Mutanāqīṣah Partnership (MMP) ............ 15
1.9 Chapterization of the Research ................................................................. 20

CHAPTER TWO: DEFINITIONS OF THE CONCEPTS OF FORWARD
İJAŘAH AND RELATED TERMINOLOGIES .................................................. 22
2.1 Introduction ............................................................................................... 22
2.2 Concept of al-İjařah and forward İjařah .................................................. 23
2.2.1 Definition of al-İjařah: ...................................................................... 23
2.2.2 Definition of al-İjařah al-Mawsūfah fi al-Dhimmah: ........................... 24
2.3 Legality of forward İjařah in General ...................................................... 29
2.4 Views of Early Scholars on Forward İjařah ............................................. 33
2.5 Views of Contemporary Scholars on Forward İjařah .............................. 35
2.5.1 Dispute of Classical Fuqahā‘ on the Legality of Forward İjařah
as Understood by Some Contemporary Scholars: .................................. 36
2.5.2 Consensus of Classical Fuqahā‘ on the Legality of Forward
İjařah as Understood by Other Contemporary Scholars: ..................... 40
2.6 Takyīf Fiqhī (Jurisprudential Adaptation) of forward İjařah ................. 45
2.7 Concept of Mushārakah Mutanāqīṣah Partnership (MMP) ..................... 47
2.8 Legality of MMP ...................................................................................... 49
2.8.1 View of Legality ................................................................................. 49
2.8.2. View of Illegality .............................................................................. 51
2.8.3. Doubts about MMP and Refutations: ............................................ 51
2.8.4. Preponderant View on the Legality of MMP ................................. 55
2.9 Summary ................................................................................................. 55
CHAPTER THREE: SHARĪ‘AH PARAMETERS OF FORWARD IJĀRĀH

3.1 Introduction ........................................................................................................... 57
3.2 Classification of forward Ijārah ............................................................................ 58
  3.2.1 Forward Ijārah by Stipulating Counter Value: .............................................. 58
  3.2.2 Forward Ijārah by Stipulating Personal Service: ........................................ 58
  3.2.3 Forward Ijārah by Stipulating Object: .......................................................... 59
3.3 Pillars of forward Ijārah ...................................................................................... 59
3.4 The Rules of forward Ijārah in Islamic Jurisprudence ........................................ 60
  3.4.1 General Rules of Forward Ijārah: ................................................................. 61
  3.4.2 Particular Rules of Forward Ijārah in regard to its Arkān: ......................... 66
    3.4.2.1 Rules of Forward Ijārah by Stipulating Rental: ................................. 66
    3.4.2.2 Rules of Forward Ijārah by Stipulating Personal Service: ............... 67
    3.4.2.3 Rules of Forward Ijārah by Stipulating Object: ............................... 69
3.5 Dispute over the Immediate Payment in forward Ijārah ..................................... 70
  3.5.1 Views of Early Scholars on Immediate Payment: ....................................... 70
    3.5.1.1 Ḥanafī School of Law: ........................................................................... 70
    3.5.1.2 Mālikī School of Law: ....................................................................... 71
    3.5.1.3 Shafi‘ī School of Law: ....................................................................... 74
    3.5.1.4 Ḥambali School of Law: .................................................................... 76
  3.5.2 Views of the Contemporary Scholars on Immediate Payment: .................. 78
    3.5.2.1 View of Requiring Immediate Payment: ............................................. 79
    3.5.2.2 View of Allowing Delayed Payment: ................................................. 80
    3.5.3 Preponderant View on Immediate Payment: .......................................... 81
3.6 Comparison between Forward Ijārah and particularized Ijārah ......................... 82
3.7 Comparison between forward Ijārah and some other Contracts ................. 86
  3.7.1 Forward Ijārah and Salam: ......................................................................... 86
  3.7.2 Forward Ijārah and Istisnā': ...................................................................... 87
  3.7.3 Forward Ijārah and Ju‘ālah: ...................................................................... 89
3.8. Relation of forward Ijārah with other Classifications of Ijārah: .................... 90
  3.8.1 Forward Ijārah, Operating and Financing Ijārah: ..................................... 90
  3.8.2 Forward Ijārah and Joint Ijārah (Ijārah Mushtarakah): ....................... 90
  3.8.3 Forward Ijārah and Ijārah Muḍāfah lil Mustaqbal: .................................. 90
3.9 Summary ............................................................................................................. 91

CHAPTER FOUR: ISSUES IN FORWARD IJĀRĀH IN MODERN FINANCE INDUSTRY: MMP HOME FINANCING ................................................................. 93
4.1 Introduction .......................................................................................................... 93
4.2 Importance of forward Ijārah Application ......................................................... 94
  4.2.1 Wisdom of Legitimizing Forward Ijārah: .................................................. 94
  4.2.2 Unique Financing Features of Forward Ijārah: ........................................ 95
  4.2.3 Advantages of Forward Ijārah: ................................................................... 96
  4.2.4 Reasons of MMP to be Used for Home Financing Under Construction: ................................................................. 98
4.3 Resolutions on Forward Ijārah and Discussion ............................................... 99
  4.3.1 Resolutions of the Accounting and Auditing Organization for Islamic Financial Institutions (AAIOFI) in Bahrain: ................................................................. 99
    4.3.1.1 AAOIFI Article: .................................................................................... 100
    4.3.1.2 Discussion on the Article: .................................................................. 100
## LIST OF FIGURES

<table>
<thead>
<tr>
<th>Figure No.</th>
<th>Description</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Structure of forward Ijārah</td>
<td>28</td>
</tr>
<tr>
<td>2.2</td>
<td>Structure of MMP</td>
<td>48</td>
</tr>
<tr>
<td>4.1</td>
<td>Structure of MMP for Home Financing under Construction</td>
<td>112</td>
</tr>
</tbody>
</table>
## TRANSLITERATION TABLE

### CONSONENTS

<table>
<thead>
<tr>
<th>Arabic</th>
<th>English</th>
<th>Arabic</th>
<th>English</th>
</tr>
</thead>
<tbody>
<tr>
<td>ء</td>
<td>'</td>
<td>ض</td>
<td>D</td>
</tr>
<tr>
<td>ب</td>
<td>B</td>
<td>ط</td>
<td>T</td>
</tr>
<tr>
<td>ت</td>
<td>T</td>
<td>ظ</td>
<td>Z</td>
</tr>
<tr>
<td>ث</td>
<td>Th</td>
<td>ع</td>
<td>'</td>
</tr>
<tr>
<td>ج</td>
<td>J</td>
<td>غ</td>
<td>Gh</td>
</tr>
<tr>
<td>ح</td>
<td>H</td>
<td>ف</td>
<td>F</td>
</tr>
<tr>
<td>خ</td>
<td>Kh</td>
<td>ق</td>
<td>Q</td>
</tr>
<tr>
<td>د</td>
<td>D</td>
<td>ك</td>
<td>K</td>
</tr>
<tr>
<td>ذ</td>
<td>Dh</td>
<td>ل</td>
<td>L</td>
</tr>
<tr>
<td>ر</td>
<td>R</td>
<td>م</td>
<td>M</td>
</tr>
<tr>
<td>ز</td>
<td>Z</td>
<td>ن</td>
<td>N</td>
</tr>
<tr>
<td>س</td>
<td>S</td>
<td>و</td>
<td>W</td>
</tr>
<tr>
<td>ش</td>
<td>Sh</td>
<td>ه</td>
<td>H</td>
</tr>
<tr>
<td>ص</td>
<td>S</td>
<td>ي</td>
<td>Y</td>
</tr>
</tbody>
</table>

### VOWELS

#### Short Vowels

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>I</th>
<th>U</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>A</td>
<td>i</td>
<td>u</td>
</tr>
</tbody>
</table>

#### Long Vowels

<table>
<thead>
<tr>
<th></th>
<th>Ā</th>
<th>Ī</th>
<th>Ü</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>Ā</td>
<td>Ī</td>
<td>Ü</td>
</tr>
</tbody>
</table>
CHAPTER ONE
INTRODUCTION

1.1 RESEARCH BACKGROUND
Since the beginning of Islamic banking and finance operation, Islamic banks have innovated many modes of financial instruments which are based on Islamic Sharī‘ah contracts. In this case, some aspects of classical contracts have been modified and shaped into new forms that are suitable for their customers’ financial needs. \textit{Ijārah} is one of those modes that are being applied as means of financing.

\textit{Ijārah} is a term of Islamic fiqh. Lexically, it means ‘to give something on rent’. In Islamic jurisprudence, the term \textit{ijārah} is used for two 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 employer is called \textit{musta‘jir} while the employee is called \textit{ajīr}.\footnote{Muhammad Taqi Usmani, \textit{An Introduction to Islamic Finance} (Karachi: Maktab Ma'ariful Qur'an, 2005), 109.} In Islamic jurisprudence, \textit{ijārah} is classified into different categories on the basis of subject matter and ownership transfer. According to the types of subject matter, \textit{ijārah} is divided into \textit{ijārat al-ashyā‘} and \textit{ijārat al-ashkhāṣ}. The former is related to the usufruct of assets or properties such as buildings, animals, and various types of equipment, and the latter is related to the services of human beings such as construction, teaching, and medical services. As for the basis of ownership transfer, \textit{ijārah} is classified into \textit{ijārah tashghālīyyah} and \textit{ijārah tamlīkiyyah}.\footnote{Ahmad Muhammad Mahmūd Naṣṣār, “Fiqh al-Ijārah al-Mawsūfah fī al-Dhimmah wa Tathīqātuhā fī al-Muntajāt al-Māliyyah al-Islāmiyyah li Tamwīl al-Khadamāt”, Paper Presented at the Conference on the General Council for Islamic Banks and Financial Institutions, Bahrain, 2009. p. 75, \url{http://www.kantakji.com/fiqh/Files/Markets/a%20(28).pdf} (accessed 21 December, 2012).} The former is called operational \textit{ijārah} and the latter is called financial

It is worth mentioning that operational *ijārah* is the type which is frequently referred to by jurists of classical schools, while financial *ijārah* is one of the newly introduced modes of *ijārah* contract. All these kinds of *ijārah* can also be divided on the basis of particularization of subject matter into two kinds: *al-ijārah al-mu‘ayyanah* and *al-ijārah al-mawsūfah fī al-dhimmah* (forward *ijārah*). As for the first, the subject matter is an existing specific item, and as for the second, the subject matter does not exist yet, but it is a specific item that the lessor undertakes to provide in accordance with stipulated specifications.\(^3\)

Islamic banking industry has begun applying *ijārah* to the financing of usufruct through both operational *ijārah* and financial *ijārah* contracts. The application of the latter has provided an alternative for over reliance upon *murābaḥah* financing. Financial *ijārah* is being applied in Islamic financial institutions because it helps to fulfill the financial needs of those people who cannot afford to buy their necessary commodities or products by immediate cash payment. In this very juncture, forward *ijārah* appeared to the Islamic financial institutions as a new mode of financial transaction. It has been implemented for the delayed financing of human services such as education, medical treatment, and ordinary tourism as well as the performance of ‘Umrah, Ḥajj, and other celebrations. Now, the implementation of forward *ijārah* has expanded to include real estate lease for buildings and developments. The concept of forward *ijārah* is widely used in addition to *istiṣnā‘*, *istiṣnā‘ muwāzī* (parallel *istiṣnā‘*), and *mushārakah*.\(^4\)

---

\(^3\) Ibid., 76.

There is some confusion among contemporary scholars of the popular four schools over the legality of forward *ijārah* despite their unanimous approval on its permissibility. This is because some contemporary scholars attribute its prohibition to the Ḥanafi School. In fact, the classical books of Ḥanafi School contain various texts allowing forward *ijārah*.

Due to this confusion among the contemporary scholars, forward *ijārah* has not been applied during the early period of the practice of Islamic finance and it is still considered a new issue. Nevertheless, for the last few years, regardless of the confusion over its validity, the concept of forward *ijārah* has existed in the transactions of Islamic finance industry. For example, forward *ijārah* is being used as one of the three sub-contracts (i.e. *mushārakah*, *ijārah* and *bay‘*) that form the hybrid mode of *mushārakah mutanāqiṣah* partnership (MMP) for home financing in Islamic financial institutions in some Muslim countries such as Malaysia.

The procedure is that the customer first enters into a partnership (*mushārakah*) under the concept of *shirkat al-milk* (joint ownership) agreement with the bank to co-own the house being financed. Secondly, the bank leases its share in the house ownership under the concept of *ijārah*. For example, customer pays 10% of the total cost as the initial share to co-own the house, whereas the bank provides the balance of 90%. Thirdly, the customer gradually buys the bank’s 90% share with an agreed portion periodically until the house is fully owned by him. The periodic rental amounts will be jointly shared between the customer and the bank according to the percentage of share holding at particular times which keep changing.

---


as the customer purchases the financier’s share. The customer’s share ratio would increase after each rental payment due to the periodic redemption until eventually the house is fully owned by him\(^7\).

If the house is already completed at the time the MMP contract is concluded, the contract will be considered particularized \(ijārah\). On the other hand, if the house is not completed at the time the contract is concluded, rather it is still under construction, the concept of forward \(ijārah\) will occur, which raises the issue of the validity of MMP whereby the customer rents the house which is not yet completed. Hence, there is outmost need to examine the legality of forward \(ijārah\) in general and its use in MMP for home financing in particular.

1.2 STATEMENT OF THE PROBLEM

The confusion among contemporary scholars over the legality of \(al-ijārah al-mawsūfah fī al-dhimmah\) (forward \(ijārah\)) gives rise to new research as an endeavor to remove doubts about its legality and examine the issues that might arise.

One of the major doubts is confusion over its legality as some contemporary scholars mention disagreement among the early Muslim scholars and attribute its prohibition to the Ḥanafī School. In fact, the classical books of Ḥanafī School and other schools contain many texts that prove the agreement of Ḥanafī standpoint with other schools. Hence, this issue deserves to be investigated.

The other important point of dispute is the lessor’s leasing of benefits which he does not own yet at the time the contract is concluded. This is because it has become completely settled in people’s minds that a person must not rent what he does not own.

---

possess or for which he does not possess the usufruct on the basis of an analogy with
the prohibition of selling what one does not possess.

Another issue of disagreement is spot payment of the rent at the time of the
contract for forward *ijārah*. This is based on disagreement of early fuqahā’ on the
issue of jurisprudential adaptation of *al-ijārah al-mawsūfah fī al-dhimmah* and
whether it is similar to *salam* sale or to *ijārah* sale.^

Besides, there is another aspect which should be examined, that is the same
contract of forward *ijārah* used as one of the three sub-contracts: *mushārakah*, *ijārah*
and sale that form the hybrid mode of *mushārakah mutanāqīṣah* partnership (MMP)
for home financing under construction, whereby the validity of the MMP depends on
the legality of forward *ijārah* itself which is still an issue of controversy. The issue of
*al-ijārah al-mawsūfah fī al-dhimmah* in the application of MMP occurs in the case of
financing for houses under construction. In this case, based on the principle of *al-
ijārah al-mawsūfah fī al-dhimmah*, the bank charges customer rental even though the
house is not yet completed.

Since the application of forward *ijārah* in Islamic financial institutions is a
new issue compared to the application of two other types of *ijārah*, operational *ijārah*
and financial *ijārah*, the researcher has not found any comprehensive research on this
mode of financial transaction. He will therefore survey different views of the early
scholars as well as views of contemporary scholars regarding forward *ijārah*.

At the same time, few financial issues which might arise from the general
application of this principle in the case of MMP for house under construction, and its
consequences such as the treatment of rental paid during construction period if the
house is abandoned, will be thoroughly discussed. The application of the principle will

---

^


only depend on the standards of applied principle in MMP, for example AAIOFI standards. It will not involve any field research on specific application of the principle at a certain institution.

1.3 RESEARCH QUESTIONS

This paper will explore the answers to the following questions:

1. What is the legal theory of al-ijārah al-mawsūfah fī al-dhimmah (forward ijārah) according to Shari‘ah principles?

2. Is there any dispute among the scholars of the popular four schools of Islamic jurisprudence regarding the legality of forward ijārah and what are the controversial issues in this regard?

3. What are the Shari‘ah issues that might arise from the general application of forward ijārah in MMP?

4. What are the legal consequences of the application of al-ijārah al-mawsūfah fī al-dhimmah in MMP and the possible solutions for these issues from the Shari‘ah perspective?

1.4 OBJECTIVES OF THE RESEARCH

Based on the questions mentioned above, the proposed research aims to achieve the following objectives:

1. To study the legal theory of forward ijārah comprising its lexical and technical meanings, reconciliation of disputes regarding its different terminologies, jurisprudential adaptation and importance of forward ijārah in Islamic financial institutions in order to develop a comprehensive conceptualization of this instrument.
2. To survey the views of both early and contemporary Muslim scholars by relying on classical juristic texts and contemporary writings to eliminate the confusion over the legality of forward *ijārah* and to discuss disputed issues concerning forward *ijārah* as it is practiced and to choose the preponderant view in this respect.

3. To identify *Sharī‘ah* issues that might arise from the general application of forward *ijārah* in the mode of *mushārakah mutanāqiṣah* partnership (MMP) for home financing in order to investigate the validity of MMP in current practice.

4. To explain the impacts of the general application of forward *ijārah* in MMP and to provide possible solutions for issues that might arise from its application from *Sharī‘ah* perspective.

### 1.5 SIGNIFICANCE OF THE RESEARCH

1. The confusion over the legality of forward *ijārah* causes it to appear late in the practice of Islamic financial institutions. It is still believed that the *fuqahā‘* of four schools of Islamic Law did not agree on it. For this reason, the products of the Islamic finance industry based on this principle are not promoted as much as it deserves. It is hoped that this study will be able to eliminate this confusion and help practitioners to promote their products and convince their customers as well.

2. The discussion of early scholars on forward *ijārah* is sketchy and information related to it is spread in different classical texts. This information should be put together in order to examine their opinions and scrutinize the contemporary *Sharī‘ah* issues pertaining to it. Besides,
although contemporary scholars have begun to give their efforts on this contract with a new approach, these efforts are preliminary. Therefore, an expanded research and thorough discussion on this product are required.

3. The importance of this research is vital because it looks at both the theoretical and practical aspects of forward *ijārah* as well as scrutinizes the *Shari‘ah* issues in connection with its application as a sub-contract of some hybrid financing modes, namely the MMP. The researcher hopes that the findings of this thesis will be able to provide valuable inputs that could assist the Islamic finance industry to promote their financial tools.

4. As forward *ijārah* is a relatively new mode of financing services introduced to the Islamic financial institutions, this study is more important and a matter of interest all over the world where forward *ijārah* is practiced. Hence, the researcher aims to provide a comprehensive concept of forward *ijārah* for its contemporary application as his actual contribution.

### 1.6 LIMITATION OF THE RESEARCH

The research covers the comprehensive concept of *al-ijārah al-mawsūfah fī al-dhimmah*, including its definition, legality, parameters and views of early and contemporary Islamic scholars. It also looks at the validity of the mode of forward *ijārah* in Islamic finance industry to investigate it only in terms of *mushārakah mutanāqišah* partnership (MMP) based on the *Shari‘ah* standards of its general application.
1.7 METHODOLOGY OF THE RESEARCH

This study adopts a qualitative method as it describes meaning, legality and parameters of forward *ijārah* and MMP. It is descriptive in nature and depends on classical juristic books, modern literature and databases in addition to papers presented at different conferences and symposiums, *Sharī‘ah* parameters of Bank Negara Malaysia, and *Sharī‘ah* standards of AAOIFI on the subject matter. A critical analytical method is adopted to analyze the legality of forward *ijārah* and *Sharī‘ah* issues that might arise from the general application of forward *ijārah* as well as to examine whether the existing practice of MMP for home financing under construction conforms to the strict principles of *Sharī‘ah*. It also follows a comparative method as it compares between the categories of *ijārah* and *mushārakah* in order to make a clear distinction among terms and concepts as well as to compare between the different views of classical and contemporary scholars in debatable issues in order to choose a preponderant view.

1.8 LITERATURE REVIEW

The researcher focuses mainly on two types of literature, literature on *al-ijārah al-mawṣūfah fī al-dhimmah* and literature on MMP, in his review.

1.8.1 Literature on *al-Ijārah al-Mawṣūfah fī al-Dhimmah*

Throughout the review of various literatures, there has not been material which elucidately discusses the thesis title in hand. With regard to classical juristic texts, the researcher has found only two books that discusses *al-Ijārah al-Mawṣūfah fī al-Dhimmah* specifically. One of them is *Sharḥ Muntahā al-Irādāt: Daqā‘iq Ulī al-Nuhā*
li Sharḥ al-Muntahā by Mansūr ibn Yūnus al-Bahūtī⁹ and the other is Jawāhir al-
‘Uqūd wa Muʿīn al-Qudāt wa al-Muwaqqīʿīn wa al-Shuḥūd by Shams al-Dīn
Muhammad ibn Aḥmad al-Asyūṭī al-Minhājī.¹⁰ With regard to the former, al-Bahūtī
has discussed al-ijārah al-mawsūfah fī al-dhimmah and mentioned some of its
conditions in brief. However, it could be the basis of the discussion on forward ijārah
in this research. As for the latter, al-Minhājī can be considered the only one among the
classical jurists who have discussed forward ijārah elaborately¹¹. He has mentioned
the classification of forward ijārah, their respective conditions, and some other issues
concerning forward ijārah. Hence, it is considered the most important classical base of
this research in terms of investigating the Shari’ah issues related to forward ijārah. In
addition, as both of them have discussed the sub-types of al-ijārah al-mawsūfah fī al-
dhimmah and its conditions according to the specification of subject matter in forward
ijārah, such as specific price, labor, and asset briefly or in detail, this discussion could
be considered the ground to come up with some new forms of transactions under the
concept of al-ijārah al-mawsūfah fī al-dhimmah.

As for the contemporary writings, most of them either discuss the issues of
ijārah from an Islamic perspective in general or demonstrate the classifications of
ijārah without any in-depth explanation about any specific kind of ijārah such as al-
Wasīṭ fī ‘Aqd al-Ijārah fī al- Fiqh al-Islāmī by ‘Abd al-Qādir ‘Abd al-Raḥmān₁², al-
Ijārah Bayna al-Fiqh al-Islāmī wa al-Taṭbīq al-Muʿāṣar fī al-Mu’āṣasāt al-
Maṣrafiyyah wa al-Māliyyah al-Islāmīyyah by Muḥammad ‘Abd al-‘Azīz Ḥasan

---

⁹ Mansūr ibn Yūnus al-Bahūtī (1051 AH), Sharḥ Muntahā al-‘Irādāt: Daqīq Ulī al-Nuḥā li Sharḥ al-
Mutahā (Bayrūt: Mu’assasāt al-Risālah, 2000).
¹⁰ Shams al-Dīn Muḥammad ibn Ahmad al-Asyūṭī al-Minhājī (880 H), Jawāhir al-‘Uqūd wa Muʿīn al-
Qudāt wa al-Muwaqqīʿīn wa al-Shuḥūd (Bayrūt: Dar al-kutub al-‘Ilmiyyah, 1996).
¹¹ Abū Guddah, al-Taṭbīqāt..., 82. The researcher also reached the same conclusion through his
literature review.
Nahḍah al-‘Arabiyyah, 1993).
Zayd, \(^{13}\) *al-Ijārah* by ‘Abd al-Sattār Abū Guddah, \(^{14}\) and ‘*Aqd al-Ījār fī al-Fiqh al-Islāmī al-Muqārin* by Muḥammad Salām Madkūr. \(^{15}\) Meanwhile, other researchers focus on *al-i*jārah al-muntahiyah bi al-tamlīk* (deferred *ijārah*) such as Abdullah Omar Hama in “Islamic Hire-Purchase Transaction” \(^{16}\), Zakariyyā Hāmā in ‘*Aqd al-Ijārah al-Muntahiyah bi al-Tamlīk: Dirāsah Muqāranah fī al-Fiqh al-Islāmī wa al-Qānūn al-Mālīzi\(^{17}\) and Sa’ad ibn Nāsir ibn ‘Abd al-‘Azīz Shatrī in *al-i*jārah al-muntahiyah bi al-tamlīk\(^{18}\). Nonetheless, some researchers focus on the practical approach of financing *ijārah* such as Razli Ramli in his book *Islamic Hire-Purchase (Ijārah Thumma al-Bay’-AITAB): The Handbook* \(^{19}\) and Nurdianawati Irwani Abdullah’s “Islamic Hire-Purchase in Malaysian Financial Institutions: A Comparative Analytical Study” \(^{20}\). Although these studies are not directly related to the topic in hand they will help the researcher to deal with practical issues in forward *ijārah*. The important sources that discuss forward *ijārah* particularly are a few books and articles that were presented at different conferences and symposiums. These writings are listed below:

i. Among the useful studies on the current research is “‘*Aqd al-Ijārah Maṣdar min Maṣādir al-Tamwil al-Islāmiyyah: Dirāsah Fiqhīyyah


