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Freedom of Contract and Certainty of Sharia Law in IMBT: Perspectives on Indonesian and Malaysian Legal Culture

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ABSTRACT

The development of Islamic financing through the *Ijarah Muntahiyah Bittamlik* (IMBT) contract shows fundamental differences in contract structure and regulatory approach between Indonesia and Malaysia, which have implications for the application of the principles of freedom of contract and certainty of Islamic law. The research gap is still evident in the lack of comparative studies linking the differences in the structure of the IMBT contract with legal culture, *maqasid shariah*, and judicial practices in Indonesia. This study aims to analyze and compare the application of the principles of freedom of contract and certainty of Islamic law in IMBT in Indonesia and Malaysia. The research method used is normative juridical with a comparative legal approach, through analysis of laws and regulations, fatwas of Islamic authorities, regulatory policies, and relevant court decisions. The research findings show that: (1) Indonesia emphasizes the formal separation of *ijarah* and *tamlik contracts* to maintain legal certainty and Islamic prudence; (2) Malaysia adopts an integrated *wa'd- based contract structure* with a substantive approach and is oriented towards *maqasid shariah*; and (3) these differences reflect variations in legal culture and sharia governance models in each country. The implications of this research emphasize the importance of harmonizing formal legal certainty and substantive interests in the development of IMBT contracts, in order to encourage sharia financing that is more adaptive, fair, and responsive to the dynamics of the Islamic financial industry.

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1. INTRODUCTION

Islamic financial institutions act as financial intermediaries, collecting funds from *surplus economic units* and channeling them to deficit economic units (Marni, 2022). One of the Islamic financial institutions in Indonesia is Islamic banks. Islamic banks operate based on Islamic principles, and according to their type, are classified as Islamic Commercial Banks and Islamic Rural Financing Banks (Nastiti & Kasri, 2019). Islamic banks offer financing products based on *Ijarah Muntahiya.* Bittamlik Contract, or better known as IMBT (Arief et al., 2024). IMBT itself is a rental agreement used to finance the purchase of houses and motor vehicles with an installment payment system, which is widely marketed in Islamic banks in Indonesia (Harefa, 2021).

An IMBT (Insurance Lease) is a combined lease and sale-purchase contract. The lease agreement is between the bank as the lessor and the customer as the lessee, which ends with the ownership of the leased object. In Indonesia, the implementation of the IMBT contract in Islamic banks consists of two contracts: a lease and a sale-purchase. In this case, when analyzed using the theory of freedom of contract, the implementation of both contracts is permitted as stated in Article 1338 of the Indonesian Criminal Code. Although legal under civil law, this model has the potential to blur the lines between lease and sale contracts, thus creating confusion about rights and obligations in practice (Dwikornida & Islam, 2024; Hartawan et al., 2024).

In a broader context, it is important to understand that the implementation of a combined contract such as an IMBT depends not only on formal validity under civil law, but also on substantial compliance with sharia principles. The dualism of contracts that occurs in an IMBT, namely between rent and sale, must be strictly separated both in terms of the time of implementation and the contract documents to avoid the emergence of *talaqqi al-riba* (potential hidden usury) or *gharar* (unclearness). Therefore, to ensure legal validity and clarity of contractual relationships between the parties, a strict regulatory approach such as that implemented in Malaysia is very relevant as a comparison in ensuring that each element of the contract has clear limitations and conditions in accordance with *the maqashid sharia* (Arief et al., 2024).

Considering the aforementioned issues and previous research on the implementation of IMB contracts, this researcher will conduct a more in-depth study by comparing Indonesian and Malaysian law. As is known, IMB implementation in Malaysia is comprehensively regulated by Bank Negara Malaysia through Sharia-based regulatory policies, as outlined in policy document BNM/RH/CP 028-9. Under the Islamic Financial Services Act of 2013 (IFSA) and the Development Financial Institutions Act of 2002 (DFIA), an IMBT contract is considered valid if the asset transfer is carried out through a sale, and the sale contract must be executed separately after the end of the ijarah contract. Furthermore, this contract requires holistic risk management, good governance, and information transparency for consumers (Andziri, 2018).

It is important to emphasize that the development of the Islamic finance industry requires a comprehensive understanding of the various types of contracts used, including the ijarah contract and its variants, such as the IMBT. While this hybrid contract is legally permissible, its implementation must still ensure clarity of the contractual structure, transparency of the parties' rights and obligations, and compliance with Sharia principles. Therefore, a review of IMBT practices and regulations, both in Indonesia and in other countries such as Malaysia, is crucial as a foundation for strengthening Sharia financing practices that are legitimate, fair, and aligned with the *maqasid shariah*.

In addition to regulatory aspects and contractual structures, the practice of IMBT also has legal implications for dispute resolution in religious courts, particularly regarding the application of the principles of freedom of contract and certainty of sharia law. Court decisions in IMBT financing cases indicate that judges tend to assess the validity of contracts based on the fulfillment of the legal requirements of the agreement and the principle of *pacta sunt servanda*, while analysis of the substance of *maqasid shariah* has not been fully prioritized. This more formalistic approach does provide legal certainty regarding the ownership status of the financing object, but at the same time has the potential to ignore the dimensions of substantive justice and the protection of the interests of customers as parties who are structurally in a weaker bargaining position.

Based on these conditions, it is important for this research to comprehensively examine how the principles of freedom of contract and certainty of sharia law are implemented in IMBT contracts through a comparison of legal practices in Indonesia and Malaysia. By placing an integrative perspective of positive law, Islamic law, and *maqasid shariah*, this research is expected to provide theoretical and practical contributions to the development of an IMBT contract model that is not only formally valid, but also reflects justice, transparency and benefits for the parties in sharia financing.

2. METHODS

This study uses a normative juridical approach and a comparative legal approach (Bariah, 2020). The normative juridical approach is carried out by examining various laws and regulations governing freedom of contract in the Criminal Code, as well as regulations and fatwas governing Ijarah *Muntahiya Bittamlik* (IMBT Contract) from a sharia law perspective. In addition, a comparative legal approach is used to compare the implementation of IMBT contracts in Indonesia and Malaysia, particularly in terms of legal structure, contract separation, and the implementation of sharia principles and *maqashid sharia* in practice.

In addition, a comparative legal approach is used to analyze and compare the implementation of IMBT contracts in Indonesia and Malaysia. The comparison focuses on the legal structure and contract design, patterns of separation or integration of contracts, as well as the application of sharia principles and *maqasid shariah* in sharia financing practices in each country. The data used in this study are secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include the Civil Code, the Fatwa of the National Sharia Council–Indonesian Ulema Council (DSN-MUI) regarding IMBT, Law Number 21 of 2008 concerning Islamic Banking, and regulations in Malaysia including Bank Negara Malaysia (BNM) document BNM/RH/CP 028-9, *the Islamic Financial Services Act* (IFSA) of 2013, and *the Development Financial Institutions Act* (DFIA) of 2002.

Secondary legal materials include textbooks, scientific journals, and previous research relevant to freedom of contract, Sharia legal certainty, and IMBT financing practices. Tertiary legal materials, including legal dictionaries and other supporting references, were used as supporting materials. Data collection was conducted through library *research*. Data analysis was conducted qualitatively using a descriptive-analytical method, namely interpreting and evaluating normative provisions and practices for implementing IMBT to assess the level of conformity between regulations, contractual practices, and the principles of sharia law applicable in Indonesia and Malaysia.

3. RESULTS AND DISCUSSION

3.1 Differences in Legal Structure and Contract Separation in IMBT Practices Between Indonesia and Malaysia

The differences in legal structure and contractual separation in the practice of *Ijarah Muntahiyah Bit Tamlik* (IMBT) between Indonesia and Malaysia reflect different legal and Islamic jurisprudence approaches to addressing Islamic financing needs. IMBT is a lease contract accompanied by a promise to transfer ownership of the goods at the end of the lease term. Both countries accommodate this concept in their Islamic banking systems, but the legal structure and contract forms used show significant differences due to differences in their respective national sharia regulations and authorities (Windari, 2024).

In Indonesia, the practice of IMBT refers to the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) No. 27/DSN-MUI/III/2002, which requires two separate contracts: the first is an ijarah (lease) contract and the second is a sale and purchase contract, gift, or other transfer of ownership that is carried out after the lease period ends (MUI, 2002). This separation aims to maintain clarity of the rights and obligations of each party, and to avoid mixing the two contracts in one transaction that could give rise to elements of *gharar.*

The Financial Services Authority (OJK) does not explicitly regulate the implementation of IMBT for Islamic banking products. Existing regulations only relate to asset quality assessments for Islamic banks using IMBT contracts, as outlined in OJK Regulation (POJK) No. 2/POJK.03/2022. This regulation does not specifically address the implementation and supervision of IMBT contracts. This creates a legal loophole and can be detrimental to customers using this financing product.

In contrast, in Malaysia, IMBT is regulated by Bank Negara Malaysia (BNM) through the Sharia Standards document, specifically the Sharia Standards on *Ijarah*, which are prepared by *the Sharia Advisory Council* (SAC). In Malaysia, the use of hybrid contracts is permitted , provided that each element of the contract is explained transparently and its implementation is carried out in an orderly manner in accordance with sharia principles (Ijarah, 2014; Yasir & Masse, 2025), as for the differences in legal culture in Indonesia and Malaysia as shown in the following table (Suharto & Nasution, 2023).

Table 1. Comparative Legal Culture Framework Governing IMBT in Indonesia and Malaysia

Aspects of Legal Culture	Indonesia	Malaysia
Sources of legitimacy of sharia law	The dominant fatwa of the DSN-MUI which was then adopted by the regulator is normative-ethical in nature.	*Shariah Advisory Council (SAC*) has direct binding legal force; it is authoritative and institutional in nature.
Regulatory approach	*Legal-formalistic* : strict separation between contracts, high administrative caution	Substantive pragmatic: focused on goals (*maqāṣid*), flexible in contract structure
Sharia contract model	Tend to separate contracts (e.g. ijarah → sale and purchase) to maintain formal certainty	Single document integrated with *multi-stage* execution

The role of regulators	Regulators (BI/OJK) coordinate with fatwa authorities	Regulator (BNM) is central and dominant, fatwas are within the state structure
Legal certainty	High in formal-doctrinal terms, but less adaptive	Highly practical-operational, responsive to innovation
Culture of compliance	*Rule based compliance* (compliance with forms and procedures)	*Principle based compliance* (compliance with principles and objectives)
Flexibility of product innovation	Relatively slower, waiting for fatwa-regulation harmonization	Faster, because the sharia authorities and regulators are integrated
Dispute resolution	Tends to be textual and based on separation of contracts	More contextual, looking at the intentions, stages and substance of the transaction
Orientation of the legal system	Civil	*Anglo-Saxon (Common Law)*

Source: Authors' analysis based on DSN-MUI Fatwa No. 27/DSN-MUI/III/2002; Law No. 21 of 2008 on Islamic Banking (Indonesia); Islamic Financial Services Act 2013 (Malaysia).

The differences in IMBT contract structures and arrangements in Indonesia and Malaysia reflect not only technical variations in Islamic financing but also the reality of legal pluralism and differences in legal culture within contemporary Islamic legal systems. The coexistence of the Civil Code, fatwas from Islamic authorities, state regulations, and judicial practices demonstrates that IMBT implementation is shaped by the interaction of classical Islamic jurisprudence norms, regulatory policies, and the needs of the modern financial industry. In this context, the Indonesian approach, which emphasizes the separation of contracts, reflects a legal-formalistic orientation to maintain legal certainty and normative compliance, while the Malaysian approach, which integrates contracts into a single document with gradual implementation, reflects a substantive and pragmatic orientation that emphasizes maqāṣid al-sharī'ah (obligatory objectives of Islamic financing) and operational efficiency. Therefore, these differences do not constitute deviations from Islamic principles, but rather adaptations of Islamic jurisprudence to the social, cultural, and institutional contexts of each country in response to the evolving needs of Islamic financing (Arrazi, 2023).

This difference reflects Indonesia's more conservative tendency to maintain adherence to classical Islamic jurisprudence (Butt, 2018), with contract separation as a form of legal prudence. Meanwhile, Malaysia has chosen a more practical and adaptive approach to industry needs, integrating contracts into a single contract for efficiency in documentation and implementation (Dusuki & Bouheraoua, 2011). This Malaysian approach tends to be closer to international Islamic finance practices such as those adopted by Bahrain, Dubai, and major financial institutions in the Middle East (Syafuri, 2025).

Ultimately, the differences between Indonesia and Malaysia in the legal structure of IMBT reflect the flexibility of Islamic jurisprudence (fiqh) in responding to socioeconomic needs. Indonesia prioritizes separation to emphasize the legality and clarity of contracts, while Malaysia adopts an integrated model as long as the substance of the contract remains valid according to Sharia. A thorough understanding of both approaches is crucial for Islamic law and finance practitioners to design products that are appropriate to each country's legal and market context.

3.2 The Concept of Freedom of Contract and *Maqashid Syariah* in IMBT Contracts in Indonesia and Malaysia

Freedom of contract is a fundamental principle in Indonesian contract law, which provides space for individuals and legal entities to enter into binding agreements with each other (Sinaga, 2018). However, this freedom is not absolute. In practice, freedom of contract must be limited by legal norms, propriety, and the public interest. *Freedom of contract* is a principle that gives the parties the right to: a) Determine whether or not to enter into an agreement; b) Determine the content, form, and terms of the agreement; and c) Determine to whom they wish to bind themselves (Syafriadi, 2024).

The legal basis for freedom of contract is stated in Article 1338 of the Criminal Code which states, "All agreements made legally apply as law for those who make them." The conditions for a valid agreement are regulated in Article 1320 of the Criminal Code as follows: a) Consent of the parties; b) Ability to make an agreement; c) A certain thing; d) A legitimate cause (Budhu, 2010). This article emphasizes that the parties bound by an agreement/contract have the freedom to determine its terms and the agreement is legally binding.

Standard banking contracts, or *standard form contracts,* essentially limit customer freedom in a substantive sense, although formally they remain within the framework of the principle of freedom of contract. In banking practice, customers are faced with a dichotomous choice: accepting all clauses unilaterally stipulated by the bank or rejecting services altogether. This situation indicates that the customer's freedom is not the freedom to negotiate the contract's contents, but merely the freedom to agree or disagree with the contract. Thus, freedom of contract in standard banking contracts is procedural, not substantive, reflecting the equality of the parties (Saisab et al., 2021).

This inequality is even more pronounced because banks have a much stronger bargaining position, both economically, in terms of information, and in terms of legal expertise, compared to customers. Contract clauses are designed to protect the bank's interests, including clauses limiting liability, accelerating repayment, unilateral changes to financing terms, and other standard clauses that are difficult for ordinary customers to understand. In this context, customer agreement to the contract is more accurately understood as consent by necessity, namely, an agreement that arises from economic necessity, not the result of free and equal negotiation (Harjono, 2023). From the perspective of the theory of freedom of contract, this condition indicates a shift in the meaning of freedom from freedom to bargain to freedom to obey (Davydova et al., 2021). Freedom of contract no longer functions as a means of expressing the free will of the parties, but rather as a formal legitimation of a substantially unequal legal relationship. Therefore, standard banking contracts are often seen as contrary to the principle of contractual justice, even though they remain legally valid under Article 1338 of the Civil Code.

In the context of Islamic banking, this issue becomes even more complex because standard contracts must not only comply with the principle of freedom of contract, but also the principles of justice (*'adl*), consent (*tarāḍin*), and the prohibition of exploitation (*ẓulm*) in Sharia. When customers lack real opportunity to understand and influence the contract's contents, the principle of consent has the potential to become a mere formality.

This raises the normative question of whether customer consent in standard contracts truly reflects the free will required by both civil law and Islamic law.

Therefore, the existence of standard banking contracts requires an active role for the state and regulators to balance the legal relationship between banks and customers. Limitations on burdensome standard clauses, transparency obligations, and the application of the principles of good faith and substantive fairness are important instruments to ensure that freedom of contract is not merely formal but also reflects real protection of customer freedoms and interests. With this approach, standard contracts can remain an instrument of efficiency without sacrificing the essence of freedom and fairness in banking relationships.

Freedom of contract is an important principle in contract law that allows parties to enter into agreements voluntarily and according to their needs. In the context of IMBT contracts, this principle remains valid. Freedom of contract allows banks and customers to determine: a) The amount and timing of rental payments; b) The method of transfer of ownership (eventual sale and purchase); c) Terms and conditions regarding the use, maintenance, and return of assets (DK-OJK, 2015). Although the parties are free to formulate the contents of the contract, this freedom is not absolute. There are limitations from the civil law context (Article 1337 of the Indonesian Civil Code), namely that it must not conflict with the law, morality, public order, and sharia law: the contract must not contain usury*, gharar* (uncertainty) , or *maysir* (speculation) (Budhu, 2010).

The separation of contracts, as in the IMBT practice, between the ijarah contract and the transfer of ownership contract provides strong clarity regarding the rights, obligations, and legal consequences of each contract. Each contract stands alone, with a separate object, duration, and legal consequences, thus facilitating proof, monitoring of Sharia compliance, and dispute resolution. This approach aligns with Indonesia's formalistic legal tradition, where certainty is supported by separate documents and a clear normative structure (Muhamad, 2025).

Second, from a flexibility perspective, contract separation actually limits the scope for innovation and adaptation to modern transaction needs. The requirement to create and execute two separate contracts increases administrative complexity, prolongs the transaction process, and makes it difficult to adapt financing product designs. In the context of the Islamic banking industry, which demands efficiency and speed, this structure is often viewed as less responsive than the integrated contract model.

Third, conceptually, this condition reflects trade The trade-off between formal certainty and substantive flexibility. Indonesia chooses to emphasize normative certainty and Islamic jurisprudence by separating contracts to avoid gharar (unclear) and mixing contracts, while sacrificing flexibility to maintain legal and sharia legitimacy. This choice is not a weakness of the system, but rather a consequence of a legal culture that places certainty as a primary value.

Thus, it can be concluded that contract separation in Indonesia enhances legal certainty and normative compliance, but limits operational flexibility and product innovation. The challenge going forward is not to eliminate this separation, but rather to formulate a legal mechanism that maintains certainty without hindering efficiency, for example through the harmonization of fatwas, more technical regulations, or the development of a phased contract model that respects Sharia principles and the national legal system.

In the Indonesian context, freedom of contract in Islamic banking practices, particularly through the use of standard contracts and the separation of contracts, is often interpreted as a formal freedom limited by normative prudence and adherence to positive legal structures and the fatwas of Islamic authorities. This approach, while strengthening legal certainty, simultaneously limits flexibility and substantive negotiation space for the parties. In contrast, Malaysia has developed a more substantive and functional understanding of freedom of contract by prioritizing the principles of justice and the objectives of Islamic law, thus enabling more adaptive contract structures without neglecting the limitations of Islamic law, as reflected in the *wa'd regulations* and integrated contracts in Islamic banking practices in Malaysia.

Malaysia systematically regulates *wa'd* (promises) to prevent them from falling into *ta'alluq* (the linking of two interdependent contracts) through a combination of fiqh doctrine, regulatory standards, and clear contractual techniques, primarily under the authority of Bank Negara Malaysia's (BNM) Shariah Advisory Council (SAC). The core of the regulation can be summarized in the following principles (Yaakub & Buang, 2019).

First, Malaysia affirms the status of wa'd as a unilateral promise*,* not a contract (*'aqd*). With this classification, wa'd does not create a reciprocal relationship from the outset and does not give rise to two-way contractual rights and obligations. Because ta'alluq requires two contracts whose validity depends on each other, placing wa'd outside the contract category is the primary mechanism to avoid it.

Second, *wa'd* cannot be a valid condition for the main contract. In the IMBT structure, the ijarah contract must remain valid, stand alone, and fully operational without depending on the realization of *wa'd*. If *wa'd* were made a condition determining the validity of ijarah, it would create a causal link between the contracts, potentially leading to *ta'alluq*. Therefore, the violation or failure to realize *wa'd* does not invalidate the ijarah contract.

Third, Malaysia implements a temporal separation between the contract and *the wa'd*. The *wa'd,* the transfer of ownership, can only be executed after the ijarah period has ended and all obligations have been fulfilled. Thus, no two contracts can run simultaneously or depend on each other at the same time.

Fourth, although Malaysia allows a single contract document, the document is drafted with a clear separation of clauses between the ijarah and wa'd contracts. both in terms of wording, legal consequences, and trigger events. This model is known as a single document with multi-stage execution, thus substantively maintaining the prohibition on mixing contracts, although it is administratively more efficient.

Fifth, the Malaysian approach is principle-based and oriented toward the maqasid shariah (the principle of Islamic law). The prohibition of *ta'alluq* is not understood formally (the number of documents), but rather substantively: whether the transaction structure gives rise to *gharar,* coercion, or a combination of contracts that undermines justice. As long as this substance is maintained, the use of wa'd is considered valid.

Thus, Malaysia prevents *ta'alluq* not by prohibiting *wa'd*, but by repositioning *wa'd* as a unilateral promise that is unconditional, non-automatic, and executed in stages. This approach explains why Malaysia can integrate wa'd into IMBT practices without violating fiqh principles, while also distinguishing it from Indonesia, which has taken the path of formal-doctrinal separation of contracts.

Islamic law is not only understood as a collection of norms that regulate human behavior textually, but also as a legal system oriented toward goals and the common good. Each Sharia provision is essentially formulated to address human needs and maintain a balance between legal certainty, justice, and utility. Therefore, to comprehensively understand the rationale and direction of Islamic law formation, a conceptual framework is required that can explain the fundamental purpose behind each legal provision.

It is in this context that the concept of *Maqasid shariah* becomes crucial, as it serves as a philosophical and methodological foundation for the establishment, interpretation, and implementation of Islamic law. Through the maqāṣid approach, Islamic law is understood not only from a formal legal perspective but also from a substantive dimension that emphasizes the protection of basic human interests. This approach allows Islamic law to remain relevant and adaptive to social and economic dynamics and contemporary developments without losing its normative legitimacy. *Maqashid sharia* is the main goal that Islamic law aims to achieve in maintaining human welfare (Zuhaily, 2021) . Imam al-Ghazali and the scholars after him grouped *maqashid* into five main things: *Hifzh al-Din* , *Hifzh al-Nafs* , *Hifzh al-' Aql* , Hifzh *al-Nasl,* Hifzh *al-Mal.* (Iqbal Azhari, 2020) With the following discussion:

3.2.1. *Hifzh al-Din* (Guarding Religion)

IMBT is designed to protect customers' assets and property. Ownership is not transferred directly to the customer, but rather through a lease-purchase process. The asset risk during the lease period is borne by the bank as the lessor, so customers are not burdened beyond their means.

3.2.2. *Hifzh al- Nafs* (Protecting the Soul)

The IMBT contract is free from elements of *maysir and gharar.* And *Usury* is prohibited in Sharia. Transactions are conducted in accordance with the principles of justice, clarity of contract, and mutual agreement between the parties.

3.2.3. *Hifzh al-' Aql* (Guarding the Intellect)

IMBT avoids contracts that trap or burden customers with unfair risks. With a rental structure, customers can use goods for their living needs, even without fully owning them. This increases well-being and security**.**

3.2.4. *Hifzh al-Nasl* (Guarding the Offspring)

IMBT educates the public about sound, fair, and sharia-compliant financial transactions. Contract transparency encourages rational and responsible financial behavior.

3.2.5. *Hifzh al-Mal* (Guarding Wealth)

In the context of housing finance, IMBT helps provide adequate housing for families. Safe and legal housing supports the sustainability of dignified family life.

Ijarah Muntahiyah by *Bi Tamlik* Agreement (IMBT) is a popular form of Islamic financing contract in the Islamic finance sector, particularly for financing assets such as houses and vehicles (Windari, 2024) . IMBT combines the concept of leasing *(ijarah)* with a promise to transfer ownership *(tamlik)* at the end of the contract, which is executed in accordance with Sharia principles. As the Islamic finance industry has grown, IMBT practices and regulations have undergone adjustments in various countries, including Indonesia and Malaysia.

The Jombang Religious Court Decision Number 922/Pdt.G/2020/PA.Jbg shows that the application of Ijarah Muntahiya Kontrak Bittamlik (IMBT) in Islamic banking practices in Indonesia is still interpreted formally by judges. In its consideration, the panel of judges emphasized that the IMBT contract made by the parties is valid and binding based on the principle of freedom of contract and the principle of pacta *sunt servanda.* As long as it meets the requirements of a valid agreement and does not conflict with sharia principles. The judge also emphasized that during the ijarah period, ownership of the financing object remains with the sharia financial institution, so that if the customer is proven negligent, the financial institution has the right to reclaim the object (Izatus Syafa'at, 2023). This approach provides legal certainty regarding the status of asset ownership, but at the same time shows that exploration of the substance of maqashid sharia is not optimal, especially regarding the balance between the protection of the rights and obligations of the parties in the IMBT contract.

In its legal considerations, the panel of judges emphasized that the legal relationship of the parties is based on a legally valid IMBT agreement, because it fulfills the pillars and conditions of the agreement as stipulated in Article 1320 of the Criminal Code and does not conflict with sharia principles. The judge stated that although the agreement is based on sharia (Ramdhanie, 2014), its resolution remains within the framework of national contract law which is the authority of the religious court (Haryanti, nd) . Regarding the principle of freedom of contract, the judge held that the parties had knowingly and voluntarily signed the IMBT agreement, including clauses regarding payment obligations, lease terms, and legal consequences in the event of default. Therefore, the panel of judges held that the defendant was legally bound by the entire contents of the agreement based on the principle of *pacta sunt servanda*.

However, in their deliberations, the judges also emphasized that freedom of contract in IMBT agreements is not absolute. The judges examined the validity of the agreement's clauses by considering the principles of justice and fairness. This is evident from the panel's statement that sharia contracts must be implemented not only based on agreement but also in accordance with the values of justice and the public interest. In case No. 922/Pdt.G/2020/PA.Jbg, the panel of judges found the defendant guilty of breach of contract for failing to fulfill his payment obligations according to the schedule agreed upon in the IMBT agreement. This consideration was based on written evidence in the form of a financing agreement, arrears records, and statements from the parties at trial.

Regarding the status of the IMBT object, the judge argued that during the ijarah period, ownership of the object remains with the Islamic financial institution, while the customer only has beneficial rights. Therefore, in the event of default (Collins et al., 2021), the financial institution has the right to repossess the financing object. This consideration demonstrates the judge's approach, which emphasizes formal legal certainty over asset ownership. From the perspective of Sharia legal certainty, this ruling indicates that the judge viewed the IMBT as a single contract, rather than two separate contracts: ijarah and transfer of ownership. This is evident from the lack of an explicit distinction between the lease and transfer phases in the legal considerations, even though, from a fiqh perspective, the two phases have different legal implications.

The judge's considerations in this decision also demonstrate that the DSN-MUI fatwa serves as a normative reference, but has not been fully elaborated in legal argumentation. The judge prioritized contractual evidence and the principle of default over substantive analysis of muamalah (Islamic jurisprudence). This reflects the continued strength of the positivistic approach in resolving IMBT disputes. Decision Number 922/Pdt.G/2020/PA.Jbg shows that the Indonesian legal system tends to prioritize legal certainty over contract flexibility. This approach differs from practice in Malaysia, which provides more room for a wa'd-based IMBT structure and explicit recognition of contractual stages. Thus, the Jombang Religious Court Decision Number 922/Pdt.G/2020/PA.Jbg confirms that the principle of freedom of contract in IMBT is legally recognized, but its application is limited by formal legal certainty. This decision also demonstrates the need to strengthen judicial guidelines so that judges not only assess the validity of contracts but also consider the substance of maqashid sharia to achieve justice and welfare in Islamic financing.

If we compare two Muslim-majority countries with a strong commitment to developing an Islamic economy, Indonesia and Malaysia each have their own approaches to implementing the IMBT structure. Comparing the two is important for identifying strengths, weaknesses, and the potential to harmonize legal and Islamic practices to support innovation in fair, transparent, and inclusive financing products. Below is a comparison of the implementation of IMBT contracts in Indonesia and Malaysia:

Table 2. Comparative Implementation of IMBT Contracts in Indonesia and Malaysia

Aspect	Indonesia	Malaysia
IMBT Concept	The lease agreement is followed by a promise to transfer ownership rights after the lease period ends through a separate contract (grant/sale).	A lease that can be structured with a promise of ownership (wa'd), accompanied by an option to give or sell at the end of the contract.
Legal basis	DSN-MUI Fatwa No. 27/DSN-MUI/III/2002 - POJK No. 2/POJK.03/2022 concerning Sharia Asset Quality - Law No. 21 of 2008 concerning Sharia Banking	*Islamic Financial Services Act* (IFSA) 2013 - BNM Ijarah Conceptual Policy 2014 - BNM Sharia Advisory Board Resolution
Legal certainty	Clearly regulated by the Financial Services Authority (OJK) and the Indonesian Ulema Council (DSN-MUI). Ownership is not direct, but rather through a separate gift/sale agreement.	By using *structured contracts* , this allows for the transfer of ownership through *wa'd,* accompanied by *a legally binding contract.*
Contract Ease	The contract is drawn up in stages (*ijarah)* (then *tamlik).* In practice, financial institutions often use standard contracts.	The structure is more flexible (example: *ijarah* + *wa'd)* + / sell), as well as the use of standard documentation based on *sharia-compliant contract principles.*
Implementation Weaknesses	Reliance on standard contracts - Weak customer understanding - Weak bargaining position against banks	Potential overlap between WA'D contracts and transfer of ownership contracts - The complexity of layered contract structures requires higher education.
Supervision & Regulation	OJK (Financial Services Authority) - DSN-MUI	Bank Negara Malaysia (BNM) - Sharia Advisory Council (SAC)
Focus on Sharia Compliance	Emphasizing *the separation of contracts* and *avoiding usury and gharar.*	Emphasizes system integrity, sharia governance, and *risk-based compliance.*
Benefits for Customers	Ownership can be obtained without usury. Light rental structure at the start.	Flexible scheme (early repayment allowed) - Consumer protection through

		fair disclosure and *fit-for-purpose design.*
Practical Application	Widely used for home and vehicle financing by sharia banks such as BSI, BCA Syariah, etc.	Used by large institutions such as Bank Islam, Maybank Islamic, CIMB Islamic, with the support of *digital ijarah platforms.*

Source: Authors' comparative analysis based on DSN-MUI Fatwa No. 27/DSN-MUI/III/2002; POJK No. 2/POJK.03/2022; Law No. 21 of 2008 (Indonesia); Islamic Financial Services Act 2013; Bank Negara Malaysia Ijarah Policy Document; Sharia Advisory Council (SAC) resolutions.

In Islamic banking practices in Indonesia, contractual arrangements are not entirely left to the contractual freedom of the parties, but rather are clearly regulated through a division of normative authority between the Sharia authorities and state regulators. The substance of Sharia compliance, including contract structure and the prohibition on contract mixing, is stipulated through a fatwa from the National Sharia Council (DSN-MUI) as a normative-religious guideline that is ethically and operationally binding. Meanwhile, the Financial Services Authority (OJK) plays a limited role in the prudential, governance, and oversight aspects of Islamic banking products, without regulating the detailed design and implementation of the IMBT contract itself. This division emphasizes that the scope for customer and bank contractual freedom is within a predetermined framework: freedom to choose products and agree to contracts, but not freedom to formulate contract structures outside the boundaries of Sharia substance established by the DSN-MUI and the prudential corridor supervised by the OJK (Rachman, 2022).

If Indonesia follows the Malaysian IMBT contract structure, future development of the IMBT contract concept could be directed towards increasing contract flexibility and modularity without sacrificing compliance with Sharia principles. Malaysia has adopted a progressive approach by integrating ijarah contracts with ownership transfer agreements (*wa'd)* (Ijarah, 2014; Yaakub & Buang, 2019), systematically structured through *structured contracts* and standardized legal documentation. This approach allows transactions to be more responsive to market needs and provides room for innovation for Islamic financial institutions. If implemented in Indonesia, this system could improve financing efficiency, accelerate the customer ownership process, and reduce the technical complexity that often arises from the rigid separation between ijarah and tamlik contracts. However, its implementation still requires strengthening technical regulations from the Financial Services Authority (OJK) and fatwas from the National Sharia Council (DSN-MUI), particularly regarding the use of wa'd, which is operationally binding but still does not violate the principle of prohibition of *ta'alluq* (contract merger). By adopting the Malaysian model, Indonesia has the potential to build a more adaptive, competitive, and inclusive IMBT system within the national Islamic financing ecosystem.

From the perspective of *maqasid shariah* , the main objective of Islamic law is not merely to maintain the formal validity of the contract, but rather to ensure the protection of basic human interests, especially *ḥifẓ al-māl* (protection of property), *al-'adl* (justice), *al-wuḍūḥ* or transparency, and the protection of the weaker party in the transaction. Therefore, the IMBT contract structure needs to be assessed not only in terms of the separation or combination of contracts, but also from the extent to which the contract design realizes substantive benefits for the parties, especially the customer.

In the dual contract model practiced in Indonesia, the protection of *ḥifẓ al-māl* is realized through a clear separation between the ijarah contract and the tamlik contract (Suprapdi, 2022). This separation provides certainty regarding the status of asset ownership and the legal risks of each stage, thereby reducing the potential for disputes resulting from contract mixing. However, this structure often increases administrative complexity and prolongs the ownership transfer process, which can practically burden customers and reduce the efficiency of asset utilization. In terms of fairness and consumer protection, formal certainty is maintained, but customers' bargaining position remains weak due to the standard and inflexible nature of the contracts (Zaky & Farida, 2019).

In contrast, in the wa'd-based structured contract model in Malaysia, the protection of the *ḥifẓ al-māl* does not rely on document separation, but rather on the clarity of the stages and terms of execution, transparently outlined in a single contract instrument (Zakaria et al., 2021). *Wa'd* is positioned as a unilateral promise executed after the ijarah obligation is fulfilled, thus preventing premature transfer of ownership and avoiding the risk of gharar. This structure enhances substantive fairness because customers gain certainty about the direction of the transaction from the outset, as well as flexibility in implementation, without having to deal with the complexity of multiple contracts.

In terms of transparency, dual contracts in Indonesia have a doctrinal advantage because they explicitly separate each contract. However, in practice, they often create confusion for customers regarding the relationships between the contracts. Meanwhile, Malaysian structured contracts enhance functional transparency, as the entire lease transaction cycle through to ownership transfer is systematically mapped out in a single document with clearly defined stages. This strengthens consumer protection because customers can understand the long-term legal consequences from the outset of the agreement.

Thus, the differences in IMBT contract structures have direct implications for the achievement of maqāṣid, particularly *ḥifẓ al-māl*, justice, transparency, and consumer protection. Dual contracts tend to emphasize formal certainty and Islamic prudence, while *wa'd -based structured contracts* emphasize substantive benefit and efficiency. If Indonesia adopts the Malaysian model selectively and measurably through strengthening OJK regulations and DSN-MUI fatwas that clarify the position of *wa'd*, the future development of IMBT has the potential to be more aligned with *maqasid shariah* without sacrificing the principle of prohibition of ta'alluq and sharia compliance.

4. CONCLUSION

Differences in regulatory paradigms in the implementation of the *Ijarah Muntahiyah Bittamlik* (IMBT) contract between Indonesia and Malaysia. Regulations in Indonesia tend to prioritize formal legal certainty as the primary objective, achieved through a clear separation of the ijarah contract and the ownership transfer contract in the contract documents and stages. This approach reflects regulatory caution in preventing the mixing of contracts (*ta'alluq*) and the potential for hidden usury, but in practice, it has implications for administrative complexity and limited contractual flexibility. In contrast, Malaysia adopts a more purpose-based regulatory paradigm, where the IMBT contract structure is designed in an integrated manner as long as the substance of the transaction remains compliant with sharia principles and *maqasid shariah*. This difference in paradigms demonstrates that sharia legal certainty can be achieved through two distinct approaches: certainty based on legal formalities and certainty based on the fulfillment of sharia objectives.

Implications of different IMBT structures for consumer protection and balance between the parties. The contract separation model implemented in Indonesia, while providing clarity on the legal status of assets, often places customers in a weak contractual position due to the dominance of standard contracts and limited room for negotiation. This has the potential to diminish the substantive meaning of freedom of contract. On the other hand, the flexible approach in Malaysia provides greater room for transaction efficiency and transparency of obligations through concise and integrated contract designs, with strict oversight by sharia authorities. Thus, this discussion confirms that the effectiveness of IMBT is determined not only by the normative validity of the contract, but also by the extent to which the structure is able to protect customer interests and achieve contractual fairness in accordance with the principles of Islamic law. *maqasid shariah.*

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