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## The unilateral changes of rental rates after the stipulation and agreement on the lease agreement in the *Ijarah* perspective

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### Abstract

The change of rental rates unilaterally has become a common issue. This change can be detrimental to one of the parties entering into the lease agreement. In Islamic law, every transaction that harms one party is not allowed, because every muamalah transaction must prioritize the value of justice, it must not take the rights of others. This study is intended to provide an explanation of how the unilateral rental rates changes after the stipulation and agreement on the lease agreement in the perspective of *ijarah*. This research is a normative juridical research with a concept approach, a case approach, and a law approach. The data collection techniques were obtained from primary data in the form of legal materials and secondary data taken from cases relating to changes in rental prices. The legal theory used as an analytical knife in this research is the theory of justice, the theory of contracts and the theory of dispute resolution. The results of this study state that unilateral changes in the rental prices on lease agreement are not allowed, in the concept of an *ijarah* contract, an action that harm one party are strictly prohibited. Regarding the object being leased, it must be clear regarding the time (period) of the lease, the form of the benefits being leased and also the *ujrah* (reward/wages) that must be paid.

**Keywords:** change; price/rates; *ijarah*

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### Introduction

Indonesia is a country that applies pluralism law, where the law applied in Indonesia is not only one law. Indonesia has several laws that serve as guidelines, including Positive Law, Customary Law and Islamic Law. One of the laws that are often used in the society is Islamic law. Islamic law is a set of rules regarding human behavior that are recognized by a group of people, compiled by people who are authorized by the community, apply and bind all its members (Rifyal Ka'bah, 2004: 2) <sup>[26]</sup>.

In Islam every cooperative activity is permissible as long as it does not violate Islamic teachings or contradict Islamic law. The relationship between one individual and another is all regulated in Islam and is often referred to as muamalah. Muamalah is a relationship inter-humans, which is relatively flexible and can change according to the demands of the times and places (Hendi Suhendi, 2014: 2) <sup>[14]</sup>. In every muamalah transaction, the agreement (*akad*) is the main thing that must be considered. *Akad* is a bond between the parties in a two-way relationship (Ridwan Nurdin, 2010: 21) <sup>[25]</sup>.

Every contract made in a transaction must be in the form of a valid contract, that is, a contract that becomes a legal cause for giving birth to its influence by being pronounced by a person who has the authority, is legal, safe from all defects in the pillars and nature (Abdul Aziz Muhammad Azzam, 2014: 19-20) <sup>[1]</sup>. Every contract is considered valid if all the pillars and conditions in the contract have been fulfilled.

One of the contracts contained in the muamalah is a lease contract or what is known as *ijarah*. According to the Malikiyah and Hanabilah scholars, *ijarah* is the ownership of the benefits of something that is allowed for a certain time with a reward (Nasrun Haroen, 2007: 229) <sup>[21]</sup>. Meanwhile, according to the Fatwa of DSN MUI NO. 09/DSN-MUI/IV/2000 and No. 112/DSN-MUI/IX/20017 *Ijarah* is a contract for the transfer of usufructuary rights (benefits) to an item or service within a certain period of time through payment of rent/wages, without being followed by the transfer of ownership of the goods themselves (Andri Soemitra, 2019: 116) <sup>[6]</sup>. The *ijarah* contract actually resembles a sale and purchase, only in the sale and purchase the object of the transaction is goods, while in *ijarah* it is the service or benefit of goods (Maisarah and Ridwan, 2017:38) <sup>[17]</sup>.

In leasing or *ijarah* transactions, it is known that there is a price fixing (*ujrah*). According to Rachmat Syafei, the price only occurs in the contract, namely something that is given up in the contract, whether it is less, greater, or equal to the value of the goods. Usually, the price is used as an exchange for goods that are accepted by both parties to the contract (Rachmat Syafei, 2000: 87) <sup>[24]</sup>. The price must be accepted by both parties in the contract, either less, more, or equal to the value of the goods offered (Yusuf Qardawi, 1997; 257) <sup>[36]</sup>.

Basically, the lease (*ijarah*) must meet several conditions, one of which has been agreed at the beginning of the agreement, be it the price (payment/wages), the start time of the lease and the end of the lease, as well as other

terms and conditions. Every agreement stipulated is absolute and has legal force and binds both parties who make the agreement even though it is in the form of an oral agreement, but sometimes people are often wrong in carrying out the agreement that has been made and mutually agreed upon.

So, if you look at the legal terms of the *ijarah* contract, one of which is agreeing on the price (*ujrah*) that must be paid clearly before making the transaction, the provisions regarding the price must be agreed at the beginning of the contract. However, in reality there are still many practices of changing rental prices that occur in the community, there are discrepancies in the implementation of the contract so that it can harm one party. There are often unilateral price changes made by the owner after the determination and agreement, where the initial agreement has not been implemented properly. The owner makes changes to the rental price unilaterally without discussing it again with the tenant. The lessee is only given two options, namely continuing the lease with a change in price or choosing to leave the object of the lease, as in the case example in Decision No. 160/PDT/2016/PT.DKI.

Several previous studies that discussed *ijarah*, namely: Nurul analyzed the application of the *ijarah* contract on the procurement of medical devices and compliance with the DSN-MUI Fatwa NO. 09/DSN-MUI/IV/2000 regarding *ijarah* financing, this study states that the implementation of the *ijarah* contract on the procurement of medical devices in the researched hospital is in accordance with the DSN Fatwa, namely the provisions of the contract and *ujrah* (Nurul Roudatul Zannah, 2021) <sup>[22]</sup>. Didik in his research on the implementation of the *ijarah mutahiyah bittamlik* financing contract at Bank Muamalah Indonesia stated that the *ijarah* financing agreement can be interpreted as an agreement to finance the leasing activity, not the leasing activity itself. In *ijarah*, banks are only required to provide leased assets (Didik Hijrianto, 2010) <sup>[9]</sup>. And Rosa researched on the application of Sharia principles regarding the determination of *Ujrah* in the *Ijarah* Agreement in the Implementation of the *Rahn* Contract of PT Pegadaian Syariah (Rosa Intan Citrawati, 2020) <sup>[27]</sup>. These three studies discuss *ijarah*, but in different literature.

This journal was written to expand and enrich previous research related to leasing or *ijarah*. In this study, the researcher focuses on the discussion of unilateral changes in rental prices after the determination and agreement on the lease agreement in the perspective of *ijarah* or in the perspective of Islamic law. This study explains whether unilateral changes in rental prices after the stipulation and agreement are allowed or not in the agreement, which will be seen from the perspective of *ijarah*.

## Research Method

This research uses normative juridical research or also called library law research, namely legal research carried out by examining library materials or secondary data only (Soerjono Soekanto and Sri Mamuji, 2009: 13-14) <sup>[30]</sup>. The research approach carried out in this study is: a conceptual approach, which is to analyze legal materials so that the meaning contained in legal terms can be known (Hajar M, 2015: 41) <sup>[11]</sup>. The case approach is carried out by examining cases related to the problems at hand which have become court decisions that have permanent legal force (Syamsudin, 2007: 58) <sup>[32]</sup>. The legal approach is carried out by reviewing and analyzing all relevant laws and regulations related to the legal issues being handled (Bambang Sunggono, 2015: 91) <sup>[7]</sup>.

The data collection technique in this research is literature study. The data obtained in this study will be analyzed qualitatively using an inductive analysis instrument, namely analyzing changes in unilateral rental prices after the determination and agreement on the lease agreement.

## Results and Discussion

### The Concept of Lease (*Ijarah*)

In terms of Fiqh Muamalah, rent is called *ijarah*. *Ijarah* comes from the word "*al-ajru*" which literally means "*al-iwadhu*" which means replace (Sayyid Sabiq, 1997: 15) <sup>[28]</sup>. Hanafiyah scholars define *ijarah* as a "contract" which contains the ownership of certain benefits of an object which is replaced by payment in an agreed amount (Helmi Karim, 1997: 73) <sup>[12]</sup>. Meanwhile, according to the Malikiyah Ulama, *ijarah* is to give ownership rights to the benefits of something that is permissible for a certain period of time accompanied by rewards (Wahbah Zuhaili, 2011: 387) <sup>[35]</sup>.

*Ijarah* is divided into two, namely: *ijarah bi al-manfa'ah* and *ijarah bi al-amal*. As for what is meant by *ijarah bi al-amal* is a rental that is work, namely by hiring someone to do a job (Nasrun Haroen, 2000: 236) <sup>[20]</sup>. Meanwhile, *ijarah bi al-manfa'ah* is a lease related to an asset or property, namely transferring the right to use the property to another person in exchange for a rental fee (Nadhira and Lanang, 2020: 43) <sup>[19]</sup>. In this study, the author will discuss about *ijarah bi al-manfa'ah*, which is related to renting a shop.

The legal basis that allows for *ijarah* transactions is contained in the Qur'an, Hadith and Ijma'. In the Qur'an there are several legal bases that allow lease transactions (*ijarah*) contained in: QS. Al-Baqarah (2): 233, QS. An-Nisa (4): 29, QS. Al-Kahf (18): 77, QS. Al-Qashash (28): 26. Then the legal basis of the Prophet's hadith among them are: "*From Sa'ad Abi Waqqash, the Messenger of Allah (saw) actually said: we used to rent out land with (paying for) plants that grew. Then the Messenger of Allah forbade us that way and ordered us to pay it with gold and silver money*" (HR. Abu Daud) (Abu Daud, 1996: 271).

The pillars in the *ijarah* contract are the conditions that must be fulfilled by those who are in the contract. According to Hanafiyah scholars, the pillars of *ijarah* are only one, namely *ijab* and *qabul* by using the pronunciation of wages or rent. Meanwhile, according to the majority of scholars, there are four pillars of *ijarah*, namely: people who have a contract (*'aqid*), rent/reward (*ujrah*), benefits (*ma'qud 'alaih*), and the existence of

*sighat (ijab and qabul)* (Wahbah Az-Zuhaili, 2012: 731) <sup>[34]</sup>. As for the terms of the *ijarah* contract as written by Abu Bakar Jabir al-Jaza'iri, there are at least three *ijarah* requirements, namely: the value of the benefits or services must be known, the services or goods being rented are permissible, and knowing the amount of wages. (wages status must be known) (Abu Bakr Jabir al-Jaza'iri, 2018: 503) <sup>[2]</sup>.

*Ijarah* is a common type of contract, that is, a contract that does not allow the presence of *Faskh* on one of the parties, because the *Ijarah* contract is an exchange contract, unless it is found that there are things that require *Fasach*. *Ijarah* will be canceled (*fasakh*) if there are the following things: 1) There is a defect in the rental property that occurs in the hands of the tenant, 2) Damage to the leased item, such as the house collapses and so on, 3) Damage to the item being paid for (*ma'jur 'alaih*), such as clothes that are paid for sewing, 4) Fulfillment of contracted benefits, expiration of a predetermined period and completion of work (Hendi Suhendi, 2016: 122) <sup>[13]</sup>. In *ijarah* also applies the right of *khiyar* (suffrage), where the tenant has the right to refuse the *ijarah* due to defective goods and the *muajjir* is responsible for guaranteeing (replacing) the defective *ijarah* goods/persons (Dariana and Wawan, 2020: 4) <sup>[8]</sup>.

### **Pricing Stipulation and Price Changes in Islamic Law**

In various businesses, pricing of goods and services is the key strategy as a result of various things (Khodijah Ishak, 2017: 35) <sup>[15]</sup>. In Muamalah fiqh, there are two different terms regarding the price of an item, namely *as-saman* and *at-tas'ir al-jabbari*. *As-saman* is the benchmark for the price of an item, while *at-tas'ir al-jabbari* is the actual price in the market. Fiqh scholars divide *at-tas'ir al-jabbari* into two types, namely: the price that applies naturally, the price of a commodity that is determined by the government after considering capital and reasonable profits for traders and producers as well as looking at the real economic situation and people's purchasing power (Setiawan Budi Utomo, 2003: 90) <sup>[29]</sup>.

In determining a selling price or a rental price, the price determined must be able to cover all costs incurred and to earn a profit (Komang, Atmadja, and Herawati, 2014: 79). Islam provides freedom in price, which means that all forms of price concepts that occur in buying and selling transactions are allowed in Islamic teachings as long as there are no arguments that prohibit it, and as long as the price occurs on the basis of justice and consensual between the seller and the buyer (Syamsul Effendi, 2021: 26-27) <sup>[33]</sup>.

Determination of a price must be fair, because justice is one of the principles in all Islamic transactions. Islam respects the rights of the seller (who rents out) and the buyer (tenant) to determine the price while protecting the rights of both (Yusuf Qardawi, 2001: 351) <sup>[37]</sup>. In Islam, it is not permissible to cheat, do heinous things, and always be balanced in doing muamalah and contracting things that are very desirable because according to Islam, fairness is the most important norm in all aspects of the economy (Agung Fakhruzy, 2020: 62) <sup>[5]</sup>.

As for changes in the price of an item, the fuqaha' have their own conception of changes in the price of an item or object of the transaction. Meanwhile, Abu Yusuf found that there are factors that influence price changes, namely the amount of money circulating in a country, hoarding or holding of an item, these are variables other than supply and demand that affect a price (P3EI UII Yogyakarta, 2011: 304) <sup>[23]</sup>. Changes or increases in prices can affect the welfare of consumers and producers (owners) (Fawza Rahmat, 2019: 50) <sup>[10]</sup>.

Then Al-Ghazali also criticized the excessive profit taking, according to him if a buyer offers a higher price than the actual price, the seller must reject it, because the profit becomes excessive. In this regard, he states that normal profits should range from 5 to 10 percent. Furthermore, he emphasized that sellers should be driven by profits to be obtained from the real market, namely the afterlife (Adiwarman Azwar Karim, 2012: 326-327) <sup>[4]</sup>.

### **The Analysis of unilateral changes in rental rates after the stipulation and agreement**

Lease transaction is a transaction that is allowed in Islamic law and positive law. This transaction is allowed if all the conditions that have been set have been fulfilled, whether in the form of terms, pillars or other conditions that must be fulfilled properly. In its implementation, leasing transactions (*ijarah*) are not allowed to have *gharar* (fraud/deceit) and are also not allowed to contain elements of *dharar* (harming one party, both the tenant and the owner).

The provisions contained in the lease are absolute and binding on the parties conducting the transaction, or it can be said that the lease contract (*ijarah*) is a common (binding) contract. The agreement made when agreeing to the lease becomes law for both of them, which is binding and cannot be canceled or violated. As is the case in contract or contract theory which states that the contract is a link between the wishes of both parties which is justified by sharia and has legal implications (Syamsul Anwar, 2007: 5) <sup>[32]</sup>. What is meant by legal implications here are those that have legal force or there is a connection between the agreement and the law, so that the agreement that has been made may not be canceled or changed unilaterally.

Regarding the provisions regarding the time and price to be paid on the lease, it is usually always agreed at the beginning of the contract. These conditions have been determined and agreed upon by the parties before the lease transaction runs. The time and price in the lease agreement must be clearly and definitely determined, so that unwanted things do not happen in the future. Agreements or agreements that have been mutually agreed upon are better written or documented so that there is no misunderstanding in the future. If a dispute or dispute occurs, the written agreement can be used as strong evidence for both.

In the lease contract (*ijarah*), the price agreed at the beginning of the agreement may not be changed or increased. Changes in the form of price increases on a rental object are not allowed unilaterally, especially if the changes are in large quantities. Change is not allowed because it will harm one of the parties, and this is strictly

prohibited in transactions contained in Islam. Islam strictly prohibits the existence of the element of *dharar* in every muamalah transaction.

The increasing of rental prices is prohibited both in Islamic law and in positive law, but people still often do this, so it often has to be resolved in court and also because of this the government also regulates the prices that are allowed and how much the price is allowed to increase by applicable terms and conditions. In this study, the researcher took one of the cases that discussed the unilateral change in rental prices after the previous agreement, namely the case of decision No. 160/PDT/2016/PT.DKI, where in this case there was a unilateral increase in the shop rental price at a very high price, while the previous agreement had not been fulfilled perfectly or had not been completed, but the owner made a unilateral increase in the rental price which was detrimental to the tenant. Here the tenant feels unfair with what the owner does and also feels that his rights have been taken away, so the tenant files a lawsuit in court. If you look at the theory of justice, what the owner does is a violation, where there are people's rights that are taken away and there are promises that are not fulfilled. The theory of justice in Islam prioritizes the balance between individuals in carrying out their rights and obligations, such as the opinion of Yusuf al-Qarhdawi which states that justice is a balance between various individual potentials, both moral and material, between individuals and society, and between one society and another based on Islamic Sharia. The parties to the engagement are required to act correctly in disclosing their will and circumstances, fulfill the agreements they have made, and fulfill all their obligations (Mardani, 2013: 95)<sup>[18]</sup>.

Tenants who feel aggrieved by changes in rental prices after the determination and agreement have filed many claims for compensation to the landlord. Actually actions that harm one party are strictly prohibited in muamalah fiqh, in the Qur'an there is a prohibition contained in the QS. An-Nisa '(4): 29, namely: "*O you who believe, do not eat each other's property in a vanity way, except by way of commerce that applies consensual among you. And do not kill yourselves; Verily, Allah is the Most Merciful to you.*"

In order to avoid abuse of power and prevent one party from harming the other in determining the rental price of an object, in fiqh muamalah there are provisions regarding the price fixing of an object called *at-tas'ir al-jabbari*, namely the actual price fixing in the market, here the government is also given the authority to regulate prices so that there is no arbitrary price fixing that can harm one party.

The Government of Indonesia also regulates the provisions for determining the rental price contained in Government Regulation No. 10 of 1962 concerning Price Control contained in Article 2, namely: "The provisions in this article are made to prevent arbitrary price increases, replacement of services or rents where there is no maximum stipulation according to or based on a Government Regulation concerning price control. Bearing in mind that taking proper profit, as stipulated in the Prijsbeheersing Verordening 1948 based on the profit normally taken in 1939, is no longer in accordance with the current situation, another provision is made in this Regulation, namely that the appropriate limits or not, must be guided by the economic factors of the company so that the continuity of the company does not become disturbed".

The article explains that there is no maximum limit in determining the price, but the determination of the price can be seen at the appropriate limits or not, which must be guided by economic factors and also the form of the object being leased. It should not determine the price at will without paying attention to these factors. In terms of investment, the price range for the increase in rental prices for shophouse objects is 6-10% per year. If a price increase is made by more than this percentage and the tenant is not pleased, the lessee can make a claim against the increase in the rental price.

## Conclusion

In leasing (*ijarah*), the price that has been determined and agreed at the beginning of the agreement may not be made unilaterally on the rental price, especially if the change is in an amount that can harm one of the parties. Changes in price after the stipulation and agreement violate the provisions contained in the contract, where every agreement that has been determined and agreed upon and has fulfilled the pillars and conditions, then the contract is binding on both parties. Islam prohibits transactions that do not prioritize the element of justice and also prohibits the existence of *gharar* (deceit) and *dharar* (harming one party), so that unilateral price changes are not allowed, because in a contract it must be done on the basis of consensual consent, the pleasure of both parties.

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