

# Bank Negara Malaysia Policy Document on *Ijarah* and its Role in Governing the Practice of Islamic Hire-Purchase in Malaysia

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## Abstract

Islamic Hire-Purchase (IHP) also known as *Al-Ijarah Thumma Al-Bai'* (AITAB) is a widely used method of vehicle financing in Malaysia and serves as a Shariah compliant-alternative to interest-based conventional hire-purchase. However, the absence of specific legislation governing IHP creates challenges in the practice of IHP in Malaysia. As part of the development of Islamic banking regulations, Bank Negara Malaysia (BNM) has issued the Policy Document on *Ijarah* (*Ijarah* PD) as a Shariah standard that govern the practice of all *Ijarah*-based products in Islamic banking institutions in Malaysia, including IHP. However, questions remain as to whether the *Ijarah* PD is sufficient to address the unique features of IHP transactions. Therefore, this study aims to examine the role of the *Ijarah* PD in governing the practice of IHP in Malaysia. The study employs a qualitative research methodology using the doctrinal method. Data were obtained through library research by analyzing the BNM *Ijarah* PD and other secondary sources including books, journals, reports and online publications. The collected data were then analyzed using content analysis. The study finds that the *Ijarah* PD plays a significant role in governing the practice of IHP in Malaysia by strengthening legal enforceability, enhancing Shariah compliance and promoting ethical business conduct among Islamic financial institutions. Nonetheless, certain areas could benefit from further clarification, particularly regarding standard documentation, disclosure timing, risk allocation and repossession procedures. The findings highlight the need for a more comprehensive and harmonized regulatory framework. This study provides insights for policymakers and practitioners on areas where regulatory improvements may be necessary in the governance of IHP transactions.

**Keywords:** Islamic Hire-Purchase (IHP), Bank Negara Malaysia (BNM), Policy Document on *Ijarah* (*Ijarah* PD), Role, Malaysia

## Introduction

Islamic hire-purchase (IHP) also known as *Al-Ijarah Thumma Al-Bai'* (AITAB) is a widely used method of vehicle financing in Malaysia. It is a contemporary and innovative mode of financing developed based on the concept of *Ijarah* (lease) and serves as a Shariah compliant alternative to interest-based conventional hire-purchase. The structure combines leasing (*Ijarah*) with a subsequent sale (*bai'*) that enable customers to acquire ownership of assets in a manner consistent with Islamic principles. Despite its wide use, IHP faces significant regulatory challenges due to the absence of a specific legal framework governing the transactions. Unlike conventional hire-purchase which is governed by the Hire-Purchase Act 1967 (HP Act), there is currently no specific legislation that directly regulates IHP contracts. Instead, Islamic banks rely on general Islamic finance regulations, contractual principles and guidelines issued by Bank Negara Malaysia (BNM). This regulatory gap has raised concerns in the practice of IHP particularly regarding consistency in Shariah compliance.

As part of the development of Islamic banking regulations, BNM issued Shariah Standard on *Ijarah* in its Policy Document on *Ijarah* (*Ijarah* PD). The issuance of the *Ijarah* PD is part of the effort of BNM to enhance the governance and operational standards of Islamic financial institutions in Malaysia. While the standard was not designed exclusively for IHP, it provides a regulatory framework that governs contracts structured under *Ijarah* including IHP. This regulatory intervention aims to strengthen Shariah compliance, ensure proper documentation and promote sound practices within Islamic banking institutions. However, questions remain as to whether the *Ijarah* PD is sufficient to address the unique features of IHP transactions. This gap motivates the present study. Therefore, this study aims to examine the role of the *Ijarah* PD in governing the practice of IHP in Malaysia. The study provides insights for policymakers and practitioners on areas where regulatory improvements may be necessary in the governance of IHP transactions.

## Literature Review

### *Concept of Islamic Hire - Purchase*

Islamic Hire-Purchase is a leasing contract ending with transfer of ownership from an owner to a lessor through a sale contract. The sale contract takes place at the end of the lease period upon full payment made by the lessee. It is a type of financial lease that provide lessee with an option to obtain ownership of the asset at the end of the lease period. There are two different contracts involve in IHP transactions namely lease and sale contract. During the lease contract, the customer (lessee) leases the asset from the bank (owner) for a specified period at an agreed rental payment. Later, the sale contract takes place that will transfer the ownership of the asset to the customer.

IHP is one of the innovations in Islamic banking products based on the *Ijarah* (lease) contract which is developed to meet current needs and mitigate certain risks in vehicle and consumer goods financing (Yusoff, Kamdari & Masri, 2013). It has been applied as a financing method in Islamic banking institutions in Malaysia particularly for vehicle financing. It was first introduced by Bank Islam Malaysia Bhd. in 1983 and later adopted by conventional banks offering Islamic banking services. IHP has evolved and continuous to experience high demand especially for vehicle financing (Abdullah & Dusuki, 2006; Hassan, Yusoff, & Muneeza, 2012). Furthermore, certain Islamic banking institutions apply IHP to finance industrial goods such as equipment and machinery.

*Legislation Governing Islamic Hire-Purchase*

Under the existing regulatory framework, there is no specific legislation that directly regulates IHP transaction in Malaysia. The absence of a specific legal framework creates a significant challenge in the practice of IHP in Malaysia. Although several initiatives have been undertaken to introduce specific regulations for IHP, no law has been enacted to govern IHP comprehensively. In fact, the proposed *Mu'amalah* Hire-Purchase Bill 2002 which aimed to provide a legal framework for Islamic hire purchase was rejected due to several concerns (Abdullah, 2009).

In the absence of a specific law, Islamic banking and financial institutions offering Islamic hire-purchase facilities regulate IHP transaction in accordance with the conventional HP Act 1967 (Awang & Asutay, 2017; El-Din & Abdullah, 2007). This practice involves structuring rules that are claimed to be consistent with Shariah principles within the framework of the HP Act and the Contracts Act 1950 (El-Din & Abdullah, 2007). According to Hassan et al. (2012), financial institutions adopt the HP Act because it applies to assets such as motor vehicles and consumer goods which are common subject matters in IHP transactions. In *CIMB Islamic Bank Berhad v Tengku Kamarul Zaman*<sup>1</sup>, Justice Mohd Zawawi Salleh highlighted the absence of a specific Islamic Hire-Purchase Act and affirmed that the Act shall govern the transaction where the subject matter falls within its First Schedule. This indicates that in practice, the HP Act remains as a primary legal framework governing IHP transactions where applicable.

The HP Act contains features that align with Islamic commercial principles such as clear provisions on contract formation, protection of hirer and guarantor, owner's right of repossession and remedies for breach. These features make it a useful reference for regulating IHP transactions (Abdullah, 2009). However, existing literature suggests that the HP Act is inadequate to regulate IHP transactions. Scholars argue that certain provisions conflict with the principles and objectives of *Ijarah* and are inconsistent with Islamic commercial law (Jalil, 2013; El-Din & Abdullah, 2007; Syiyuti, Khairat, Mourtada & Ghani, 2012; Zakaria & Ab Ghani, 2015). Abdullah and Dusuki (2006) argued that while the HP Act is a sound law for conventional hire-purchase, it is inadequate to address Shariah requirements in IHP facilities. Abdullah (2009) similarly notes that the Act does not accommodate Shariah-compliant contractual structures. Muhammad Zin, Salamon, & Abdullah (2016) highlight further legal loopholes in applying the HP Act to IHP particularly concerning ownership transfer and Shariah compliance. Similarly, Hassan et al. (2012) caution that reliance on conventional laws to regulate IHP may jeopardize adherence to Shariah principles as statutory provisions would prevail even in cases of inconsistency.

*Bank Negara Malaysia Regulations*

Bank Negara Malaysia was established under the Central Bank of Malaysia Act 2009 (CBMA 2009) and serves as regulatory authority for the banking and financial system in Malaysia. The authority of BNM to regulate the operations of Islamic banking institutions is derived from the Islamic Financial Services Act 2013 (IFSA 2013) and the CBMA 2009. IFSA 2013 by virtue of section 7(2) confers BNM the authority to oversee and enforce the Act with respect to Shariah matters in the operation of Islamic banking and financial institutions. Furthermore,

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<sup>1</sup> High Court Malaya Kuala Lumpur [Muamalat Division], No: D-22A-58-2011

section 59 of the CBMA 2009 empowers BNM to issue circulars, guidelines, by-laws, standards or notices on Shariah matters relating to Islamic banking business in accordance with the advice or rulings of the Shariah Advisory Council. The Act<sup>2</sup> makes it mandatory for an Islamic banking and financial institutions to comply with such circulars, guidelines or notices. Accordingly, circulars, guidelines and notices issued by BNM have legal force and are binding upon Islamic banking and financial institutions. Failure to comply with the BNM circulars, guidelines or notice on Shariah matters is an offence and if convicted shall be punishable with a fine not exceeding three million ringgits or imprisonment for a term not exceeding two years or both<sup>3</sup>.

Moreover, IFSA 2013 under section 29(1) empowers the BNM with the advice or ruling of the Shariah Advisory Council (SAC) to specify Standards on Shariah matters on business, affair or activity of banking institutions that requires the ascertainment of Islamic law by SAC; and to give effect to the advice or rulings of the SAC. The CBMA 2009 by virtue of section 29(3) requires every institution, its director, chief executive officer, senior officer or member of a Shariah committee to comply with Shariah Standard. Therefore, any banking institution is obliged to comply with the Shariah standard issued by BNM. Any failure to comply with the Standards is an offence under the Act and upon conviction shall be punishable with imprisonment up to eight years or fine up to twenty-five million ringgit or both<sup>4</sup>. Hence, Shariah rulings governing Islamic banking transactions can be derived from Shariah Standard, circulars, guidelines and directives or notices issued by BNM.

#### *BNM Policy Document on Ijarah*

The regulatory authority vested in BNM under the IFSA 2013 and the CBMA 2009 forms the basis for the issuance of specific policy documents such as the Policy Document on *Ijarah* (*Ijarah* PD) which shape the legal and operational enforceability of IHP contracts in Malaysia. The *Ijarah* PD was issued by BNM on 19 August 2016 and came into effect on 1 August 2018. The document serves as a Shariah standard for *Ijarah* (lease) contracts with the primary objectives of specifying the Shariah and operational requirements governing the transactions. It also aims to promote Shariah compliance, good Islamic banking practices and customer protection. Accordingly, all *Ijarah*-based products including IHP are required to comply with the relevant provisions of the *Ijarah* PD.

The *Ijarah* PD comprises five main parts that is Part A (introductory and legal provisions), Part B (Shariah rulings on the components of *Ijarah*), Parts C and D (operational requirements for *Ijarah* financing and *Ijarah*) and Part E (submission requirements). The document also includes four appendices that supplement these provisions. The provisions under the *Ijarah* PD are classified into two categories, namely Standard (S) and Guidance (G). Compliance with the Standard (S) provisions is mandatory and legally enforceable, while the Guidance (G) provisions are advisory and non-binding (paragraph 5.2). The *Ijarah* PD must also be read together with other BNM instruments such as *Shariah Resolutions in Islamic Finance*, standards, circulars, and directives issued pursuant to the rulings of the *Shariah Advisory Council* (SAC) to ensure comprehensive compliance (paragraph 6).

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<sup>2</sup> CBMA, section 59

<sup>3</sup> IFSA 2013, S. 59(3)

<sup>4</sup> CBMA, section 29(6).

## Methodology

This study employed a qualitative research methodology using doctrinal method. Data were obtained through library research by analyzing BNM Policy Document on *Ijarah*. In addition, secondary documentary data were collected from books, journals, reports and online publications accessed via the library, internet, LexisNexis and several other online databases. The data were then analyzed using content-analysis focusing on provisions affecting IHP contract.

## Results and Discussion

The findings highlight how the *Ijarah* PD governs IHP transactions, particularly with respect to legal enforceability, Shariah compliance and ethical business conduct.

### *Legal Enforceability*

The findings show that one of the most significant roles of the *Ijarah* PD in governing IHP is strengthening its legal enforceability. The *Ijarah* PD derives its statutory authority from section 29(1) of the IFSA 2013 and section 59(1) of the CBMA 2009 which empower BNM to issue binding guidelines and standards on Shariah compliance. Accordingly, it constitutes subsidiary legislation within the meaning of section 3 of the *Interpretation Acts 1948 and 1967* (Act 388) and has a binding legal effect on Islamic banking and financial institutions. This statutory recognition ensures that an IHP contract structured in accordance with the *Ijarah* PD is legally enforceable and therefore, strengthens its legitimacy. However, the *Ijarah* PD provides only general Shariah and operational requirements applicable to all *Ijarah*-based products and does not specifically regulate IHP contract. This may give rise to a regulatory gap particularly in addressing issues unique to the IHP contract.

In addition to statutory authority, the *Ijarah* PD enhances the legal enforceability of IHP by emphasizing legal validity of documentation for *Ijarah* contracts. It requires Islamic Financial Institutions (IFIs) to develop comprehensive and legally enforceable documentation that complies with Shariah principles (paragraph 30.26). Such documentation must clearly specify the essential elements of an *Ijarah* contract including ownership of the leased asset, mechanism for ownership transfer, rental terms and financing period. The PD further requires IFIs to maintain documentary evidence of ownership, conditions governing the *Ijarah* financing and any agency arrangements in asset acquisition (paragraph 30.27). A properly structured documentation is important in Islamic finance to ensure Shariah compliance and its enforceability in court. Without proper and comprehensive documentation, IFIs may face legal uncertainty and risk of breaching Shariah requirements (Lahsasna, 2014). Therefore, the requirement of proper documentation provided in the *Ijarah* PD is significant in ensuring that IHP transactions remain enforceable and fully compliant with both legal and Shariah requirements. Nevertheless, the findings indicate that the *Ijarah* PD does not prescribe standard documentation for IHP contracts. Although this allows flexibility, it may also result in inconsistent practices among IFIs which could undermine uniformity and legal certainty. Therefore, it is recommended that standard documentation is developed to promote consistency in the practice of IHP.

### *Shariah Compliance*

The findings also demonstrate that the *Ijarah* PD enhances the Shariah compliance framework by ensuring that IHP transactions fulfil the essential elements of *Ijarah* which are fundamental to the validity of the contract. These elements include clear identification of the leased asset (paragraph 13.1), proper contracting parties (paragraph 11), valid offer and acceptance (paragraph 12), determination of rental obligations (paragraph 14) and specification of the lease period (paragraph 17). Accordingly, the *Ijarah* PD reinforces the authenticity and Shariah legitimacy of the IHP contract.

Moreover, the *Ijarah* PD strengthens Shariah compliance through clear separation of *Ijarah* (lease) and *Bai'* (sale) contracts by requiring the sale contract to be executed only after the completion of the lease contract (paragraph 22.3). In addition, it requires the transfer of ownership documents to be executed independently and take effect only upon the expiry or termination of the *Ijarah* contract (paragraphs 30.34–30.35). These provisions preserve Shariah compliance by ensuring proper sequencing of contracts and preventing the combination of lease and sale in a single transaction. Classical jurists prohibit merging lease and sale contracts as combining two contracts in a single transaction violates Shariah principles (Ayub, 2007) and such a combination may create a forward sale, resulting in *gharar* (uncertainty) (Abdullah & Chee, 2010). The requirement to execute lease and sale contracts separately is also emphasized in contemporary Shariah standards, including AAOIFI Shari'ah Standard No. 9 (2015) and Bank Negara Malaysia Shariah Resolutions in Islamic Finance (2010). These requirements reinforce the integrity of the IHP contract and prevent the replication of conventional hire-purchase practices.

Additionally, the *Ijarah* PD enhances Shariah compliance by upholding the principles of risk and ownership (*daman al-milkiyyah*). It requires the lessor to bear any loss, damage or impairment of the leased asset, while the lessee is liable only for misuse or negligence (paragraphs 16.1–16.5). The provisions reflect the Shariah maxims of “*al-ghurm bil ghunm*” (liability accompanies gain) and “*al-kharaj bil-dhaman*” (benefit goes with liability). The concept of ownership risk is fundamental to legitimate profit-generating transactions and must therefore be upheld in the practical implementation of Islamic finance (Abdul Razak & Saupi, 2017). As highlighted by Kamali (2007), the lessor remains responsible for any loss arising from destruction of the asset due to ownership responsibility. It also aligns with AAOIFI Shariah Standard No. 9 (2015), which emphasizes that *Ijarah* transfers usufruct, not ownership of the asset. Therefore, these provisions enhance Shariah compliance by ensuring consistency between ownership and liability.

However, the analysis also shows that the *Ijarah* PD allows the lessor to transfer maintenance and *takaful* obligations to the lessee through mutual agreement (paragraphs 16.10–16.11). Although this flexibility reflects the Shariah principle of contractual freedom (*ijma' al-'aqd*), it may create the possibility of imbalances between Islamic banks and customers. Abu Bakar, Yasin & Ng (2020) highlight that Malaysian Islamic banks frequently use standard-form contracts offered on a “take-it-or-leave-it” basis, which leaves consumers with little or no ability to negotiate terms. Accordingly, careful contract drafting and strengthened regulatory oversight are necessary to preserve the integrity of IHP contracts structured under *Ijarah* principles and ensure full compliance with Shariah.

### *Business Conduct*

The findings indicate that the *Ijarah* PD plays an important role in promoting ethical business conduct in IHP particularly through its provisions on transparency and repossession procedures.

### *Transparency and Disclosure*

The *Ijarah* PD significantly enhances ethical business conduct in IHP by requiring IFIs to adopt transparent and fair practices particularly through accurate, sufficient and timely disclosure of contractual terms (paragraphs 32.1–32.10). These obligations improve business conduct and protect consumers from unfair practices by reducing information asymmetry and promoting informed decision-making. Clear disclosure and transparency, together with consumer education enable customers to have a clear understanding of contract terms and make sound financial decisions (Abu Bakar et al., 2020).

Despite its emphasis on transparency, the findings show that the *Ijarah* PD does not specify a minimum period between information disclosure and the signing of the IHP agreement. This gap may reduce the effectiveness of the disclosure requirement as owners could provide the relevant information only at the time of signing, which may render disclosure less meaningful. As a result, hirers may not have adequate time to review or understand the contractual and financial implications before entering into a hire-purchase agreement. This situation may place consumers at a disadvantage as decisions could be made without sufficient opportunity for informed consideration. The ASEAN Guidelines on Consumer Impact Assessment (2023) emphasize that clear and timely disclosure of information before signing a contract is essential to support informed decision-making and protect consumers from vulnerability. Therefore, to enhance the effectiveness of the *Ijarah* PD, it is recommended that a minimum pre-contractual disclosure period is prescribed to ensure that consumers have adequate time and comparable information before entering into IHP contracts.

### *Repossession Procedure*

In addition to promoting transparency, the *Ijarah* PD strengthens ethical business conduct in IHP by providing clear rules on repossession procedures in cases of customer default (paragraphs 32.11–32.14). These requirements enhance business conduct and protect consumers from unfair practices by ensuring repossession is conducted in a fair and lawful manner. This aligns with the broader principles of Malaysia's financial consumer protection framework which emphasises fair treatment, professionalism and responsible conduct in financial services (Ahmed & Ibrahim, 2018).

However, the findings also indicate that the repossession procedures under the *Ijarah* PD apply only to consumer goods<sup>5</sup> and motor vehicles<sup>6</sup> (paragraph 32.11). As a result, these procedures may not apply to financing provided to small business customers except in cases involving motor vehicles. This limitation appears to be inconsistent with the definition of a "financial consumer" under the IFSA 2013 which broadly includes any person who currently

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<sup>5</sup> Consumer goods means assets purchased for personal, family or household purposes (paragraph 29.2(a)(iii)).

<sup>6</sup> Motor vehicles include motor cycles, motor cars including taxi cabs and hire cars and buses (paragraph 29.2(a)(iii)).

uses, has previously used or may potentially use financial services provided by an Islamic financial institution<sup>7</sup>. Therefore, it is recommended that the scope of the repossession procedures is expanded to include small entrepreneurs to ensure alignment with the broader definition of financial consumers under the IFSA 2013 and to enhance the protection of their interests when IFIs exercise their rights of repossession.

## Conclusion

This study concludes that the *Ijarah* PD plays a significant role in governing the practice of IHP in Malaysia by strengthening legal enforceability, enhancing Shariah compliance and promoting ethical business conduct. Nonetheless, certain areas could benefit from further clarification, particularly regarding standard documentation, disclosure timing, risk allocation, and repossession procedures. The findings highlight the need for a more comprehensive and harmonized regulatory framework. Continuous collaboration between regulators, policymakers and industry practitioners is essential to strengthen the existing framework and support the sustainable development of IHP in Malaysia.

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<sup>7</sup> Section 2(1) of the IFSA defines a financial consumer as "a person who uses, has used or may use any financial service or product, or who has applied or intends to apply for a financial service or product, from a financial institution for personal, business or other purposes".

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