

## Bank Precautionary Principles Against Fraud In Ijarah

### Muntahiya Bit Tamlik Agreements

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#### ABSTRACT

The development of financing products in Islamic banking in Indonesia has encouraged the use of various contracts that comply with Sharia principles, including the Ijarah Muntahiya Bit Tamlik (IMBT) contract. IMBT combines a leasing mechanism (ijarah) with the transfer of asset ownership to the customer at the end of the contract period. This financing model is widely used because it provides flexibility for customers while remaining compliant with Islamic principles. However, the IMBT contract structure involves two stages of transactions leasing and ownership transfer which may create legal and operational complexities. If not implemented carefully, this structure may open opportunities for fraud and other risks in Islamic banking operations. This study aims to analyze the implementation of the prudential principle in the application of IMBT contracts in Islamic banking and to formulate regulatory strengthening to prevent potential fraud in IMBT financing practices. The research uses a normative juridical method with statutory and conceptual approaches. Legal materials consist of primary legal sources in the form of laws and regulations related to Islamic banking, secondary sources such as books, academic journals, and scientific publications, and tertiary sources including legal dictionaries and other supporting references. The analysis of legal materials is conducted using grammatical and systematic interpretation methods. The findings show that the prudential principle in Islamic banking has been normatively regulated in several legal frameworks. However, existing regulations remain general and do not specifically regulate operational parameters for implementing the prudential principle in IMBT contracts. This regulatory gap may create legal loopholes that increase the risk of fraud. Therefore, strengthening regulatory provisions is necessary by establishing clearer operational parameters for the implementation of prudential principles at each stage of IMBT financing. Such measures are important to ensure legal certainty, reduce fraud risks, and strengthen public trust in the Islamic banking system.

**Keywords:** Precautionary Principle, Islamic Banking, Ijarah Muntahiya Bit Tamlik, Fraud Prevention, Legal Regulations.

#### 1. INTRODUCTION

Global economic developments and advances in the financial sector have spurred various innovations in the banking system. One such innovation is the emergence of a banking system operating based on Sharia principles. Sharia banking is part of the Islamic financial system (Soemitra, 2017; Yaya et al., 2009), which strives to provide a financial transaction mechanism that is not solely oriented towards economic profit but also emphasizes the values of justice, transparency, and social responsibility. The presence of Sharia banking in Indonesia not only provides an alternative financial system for people seeking banking services that align with religious principles but also drives the development of various other Sharia financial institutions within the national economic system.

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Philosophically, Islamic banking is based on the principles of justice (Hamid et al., 2019; Nurhisam, 2016) (al-'adl) and welfare (maslahah) in economic activities. These principles emphasize that every transaction must provide balanced benefits to all parties and avoid harmful practices, such as usury (riba), gharar (gharar), and maisir (gambling). These values align with the concept of economic democracy reflected in Article 33 of the 1945 Constitution, which affirms that the economy is structured as a joint effort based on the principle of kinship with the aim of realizing the welfare of the people. Furthermore, Article 34 of the 1945 Constitution also emphasizes that the state is responsible for providing social and economic protection to the community. In the context of the financial system, these constitutional provisions can be interpreted as a mandate for the state to ensure that the banking system, including Islamic banking, is able to provide adequate legal protection for the public as users of financial services.

As part of the national legal system, Islamic banking operations in Indonesia are regulated by Law Number 21 of 2008 concerning Islamic Banking (Djumhana, 2020; Usman, 2001). This law stipulates that Islamic banking business activities must be based on Islamic principles and must apply the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) in all activities. In practice, Islamic banking activities are realized through various forms of contracts or agreements that form the basis of the legal relationship between the bank and its customers. These contracts serve as legal instruments that regulate the rights and obligations of the parties in various financial transactions, such as financing, investment, and fundraising. Various types of contracts are used in Islamic banking practices, including murabahah, mudharabah, musyarakah, ijarah, kafalah, and hawalah. Each contract has different characteristics, mechanisms, and legal consequences, but all must remain based on Islamic principles. Over time, Islamic banking practices have also given rise to various forms of combinational contracts to adapt to the needs of society and modern economic developments. One of the contracts that is widely used in asset financing is the Ijarah Muntahiya Bit Tamlik (IMBT) (Abdilah & Jawab, 2023; Hasibuan, 2025; Primadhany, 2023) contract.

Terminologically, the IMBT contract is a combination of two main concepts in Islamic law: ijarah and tamlik. Ijarah refers to the contract for the use of goods or services through a lease mechanism, while tamlik implies the transfer of ownership rights to an object. Therefore, IMBT can be understood as a lease contract where, at the end of the lease term, ownership of the leased object is transferred to the lessee. In Islamic banking practice, this contract is widely used in home ownership financing and other asset financing because it provides flexibility for customers to use an asset first before full ownership is transferred. However, the implementation of the IMBT



contract in Islamic banking practice is not free from various legal and operational risks. One risk that often arises in banking activities is the risk of misappropriation or fraud. In the context of financial institutions, fraud can be understood as (Retnowati, 2022; Ngumar et al., 2019) an act of deliberate deviation with the aim of obtaining illegitimate benefits through information manipulation, abuse of authority, or concealment of material facts. These actions can be carried out by internal bank parties or by customers or other parties utilizing banking facilities.

Fraud in financing agreements can occur in various forms, such as providing false information by customers, manipulating financing documents, or misusing agreement clauses to avoid payment obligations. In addition to causing financial losses for both banks and customers, fraud also has the potential to undermine public trust in Islamic banking institutions. Therefore, an effective risk control mechanism is needed to prevent irregularities in the implementation of financing agreements. One form of risk control mechanism in banking is the application of the prudential banking principle. This principle emphasizes that banks must conduct their business activities carefully and professionally, while considering the various potential risks that may arise from each transaction. Law Number 21 of 2008 concerning Islamic Banking (Djumhana, 2020; Usman, 2001) stipulates that the prudential principle is an obligation that must be implemented by every Islamic bank in carrying out its operations to protect customer interests and maintain financial system stability.

However, in practice, various challenges remain in implementing the prudential principle, particularly in the context of Islamic financing agreements. One regulation governing bank products and activities is Financial Services Authority Regulation Number 13 of 2021 concerning the Implementation of Commercial Bank Products and Activities. Article 27 paragraph (3) letter b of this regulation stipulates the minimum elements that must be included in a financing agreement. However, this provision does not explicitly require the inclusion of clauses relating to the application of prudential principles or anti-fraud clauses in the agreement document. The absence of more detailed regulations regarding these clauses creates the potential for regulatory gaps that can weaken legal certainty for the parties in Islamic financing agreements. This condition can increase the risk of moral hazard, both for banks and customers, due to the absence of contractual obligations that explicitly regulate mechanisms for preventing and handling deviations in the implementation of the agreement. Furthermore, this regulatory gap can also create uncertainty in determining legal liability when fraud occurs in the implementation of the financing agreement.

This problem is also reflected in several disputes related to IMBT contracts in Indonesia. One example is the case between PT Bank Permata Tbk and a customer who filed a lawsuit to

annul the IMBT contract on the grounds that the contract was deemed inconsistent with sharia principles. This case demonstrates that the implementation of the IMBT contract has the potential to give rise to legal conflicts if it is not supported by a clear agreement structure and adequate risk management (Agustin & Hasan, 2022; Aziz, 2021) mechanisms from the contract formulation stage. From the perspective of legal certainty theory, the existence of clear and systematic legal rules is essential to ensure the stability of legal relations between the parties in a transaction. According to Hans Kelsen (Kelsen, 2007), legal certainty can only be achieved if legal norms are formulated clearly, systematically, and their application can be predicted. Meanwhile, from an Islamic legal perspective, the concept of *maslahah* put forward by Al-Syathibi emphasizes that every legal rule must be directed towards maintaining benefits and preventing harm, including in terms of protecting assets (*hifz al-mal*). Therefore, strengthening regulations regarding prudential clauses and fraud prevention mechanisms in sharia financing contracts is crucial to achieving legal certainty while maintaining the public interest. Based on the above description, it is understandable that there are still incomplete regulations at the implementing regulatory level regarding the mandatory inclusion of prudential and anti-fraud clauses in Islamic banking financing contracts, particularly in *Ijarah Muntahiyah Bit Tamlik* contracts. This situation indicates the need for a more in-depth legal review of the application of prudential principles in IMBT agreements to minimize the risk of fraud and strengthen legal protection for the parties.

## 2. RESEARCH METHODS

This study uses a normative legal research method (Amiruddin & Asikin, 2004; Marzuki, 2005; Muhaimin, 2020) (normative juridical), namely research that positions law as a norm or rule contained in legislation and as a binding behavioral guideline in community life. This approach was chosen because the study focuses on analyzing the incompleteness of legal norms related to the regulation of fraud risk prevention in *Ijarah Muntahiyah Bit Tamlik* (IMBT) (Abdilah & Jawab, 2023; Hasibuan, 2025; Primadhany, 2023) agreements in Islamic banking and the need to strengthen their regulations within the applicable legal system. This study uses two main approaches: a statutory approach and a conceptual approach. The statutory approach is carried out by examining various regulations related to Islamic banking and IMBT contracts, in order to identify the conformity of norms, regulatory gaps, and the application of the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) in Islamic financing practices. Meanwhile, the conceptual approach is used to analyze the doctrines and thoughts of legal experts regarding the concept of Islamic banking, the principle of prudence (Sjofjan, 2015;

Simamora et al., 2022; Ramadhani & Yudhayana, 2025) (prudential banking principle), and the concept of fraud prevention in Islamic financial transactions.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, including Law Number 21 of 2008 concerning Islamic Banking (Djumhana, 2020; Usman, 2001), Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector, Financial Services Authority Regulation Number 39/POJK.03/2019 concerning the Implementation of Anti-Fraud Strategies for Commercial Banks, Financial Services Authority Regulation Number 13/POJK.03/2021 concerning the Implementation of Commercial Bank Products, and Fatwa of the National Sharia Council of the Indonesian Ulema Council Number 27/DSN-MUI/III/2002 concerning Al-Ijarah Al-Muntahiyah Bi Al-Tamlik. Secondary legal materials were obtained from books, scientific journal articles, and various academic works related to Islamic banking and IMBT contracts. Tertiary legal materials include legal dictionaries, language dictionaries, and other references that provide additional explanations to primary and secondary legal materials. The collection of legal materials is conducted through library research, using both printed and electronic sources available in university libraries, legal documentation centers, and scientific databases. Furthermore, the collected legal materials are analyzed qualitatively using grammatical and systematic interpretation methods. Grammatical interpretation is used to understand the meaning of legal provisions based on the meaning of words and the language structure of the legislation, while systematic interpretation is used by connecting one provision with other provisions within a legal system to obtain a complete understanding of the intent and purpose of the regulation.

### **3. RESULTS AND DISCUSSION**

#### **Legal Analysis of Banking's Prudential Principles in the Ijarah Muntahiya Bit Tamlik Agreement in Islamic Banking**

##### **1. The Concept of the Prudential Principle in the Islamic Banking System**

The increasingly complex development of banking products and services demands the application of basic principles capable of maintaining financial system stability. In the legal system, principles hold a fundamental position as basic norms that provide direction for the formation and implementation of legal regulations. Principles are general and abstract in nature, therefore they do not always contain detailed technical regulations, but rather serve as guiding principles that animate the entire regulatory system. In the context of Islamic banking in Indonesia,

the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) is affirmed in Article 2 of Law Number 21 of 2008 concerning Islamic Banking (Djumhana, 2020; Usman, 2001), which states that Islamic banking business activities are carried out based on sharia principles, economic democracy, and the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025). This provision demonstrates that the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) is a fundamental principle for the implementation of banking business activities. However, this norm is declarative in nature and does not specify operational indicators regarding how the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) should be applied in each type of financing contract.

The difference between principles and operational standards can be understood in terms of their function and level of detail. Principles provide value direction and policy orientation, while operational standards contain procedures, indicators, and concrete implementation mechanisms. Thus, principles explain the values to be upheld, while operational standards explain how to apply them in practice. In the banking sector, the prudential banking principle serves as a preventative mechanism against systemic risks that can disrupt financial stability. The failure of a bank due to weak risk management (Agustin & Hasan, 2022; Aziz, 2021) has the potential to cause contagion effects that impact other financial institutions. Therefore, the application of prudential principles aims to ensure that banks remain healthy, liquid, and solvent, thereby maintaining public trust in the banking system.

In Islamic banking practice, the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) extends beyond the analysis of financing feasibility and encompasses the entire risk management (Agustin & Hasan, 2022; Aziz, 2021) process. This is evident in the implementation of various risk mitigation mechanisms, such as customer capacity analysis, the use of collateral, and the supervision of contract implementation. Although certain contracts, such as mudharabah, do not require collateral, Islamic banks may still request collateral as a form of prudence to protect public funds. In addition to financing risk, Islamic banks also face various other risks, such as operational risk, legal risk, and reputational risk.

Operational risk can arise from internal process failures, human error, or weaknesses in internal control systems. In the context of the Ijarah Muntahiya Bit Tamlik (IMBT) (Abdilah & Jawab, 2023; Hasibuan, 2025; Primadhany, 2023) contract, operational risk can arise if the contract stages are not clearly separated between the rental period and the transfer of ownership. This lack of clarity can lead to administrative defects and legal disputes in the future. Legal risk is also an

important aspect in the application of the precautionary principle. This risk arises from weaknesses in legal aspects, such as ambiguous contract wording, non-compliance with statutory provisions, or disputes between banks and customers. From the perspective of the legal certainty theory proposed by Hans Kelsen, legal norms must be formulated clearly and systematically to provide definite behavioral guidelines for the parties.

Furthermore, Islamic banking also faces sharia reputational risk. This risk relates to a decline in public trust due to the perception that a product or transaction does not comply with sharia principles. In the Islamic banking industry, reputation is a crucial asset, as public trust is a key factor in the sustainability of Islamic financial institutions. Therefore, the application of the prudential principle is not only related to regulatory compliance but also reflects the moral responsibility of Islamic financial institutions to maintain public trust. This principle is also closely related to the concept of Islamic Corporate Governance (Khairina & Inayah, 2023; Febriansyah & Darni, 2025), which emphasizes the values of transparency, accountability, responsibility, independence, and fairness in the governance of Islamic financial institutions. From an Islamic legal perspective, the prudential principle also aligns with the objectives of the maqasid sharia, particularly in protecting assets (hifz al-mal). Every economic activity must be designed in such a way as to avoid harm or injustice to all parties. Thus, the prudential principle functions not only as a positive legal norm but also as an ethical instrument that maintains the integrity of the Islamic financial system.

## **2. Characteristics of the Ijarah Muntahiya Bit Tamlik Contract and the Potential Risk of Fraud**

The Ijarah Muntahiya Bit Tamlik (IMBT) (Abdilah & Jawab, 2023; Hasibuan, 2025; Primadhany, 2023) contract is a form of financing contract widely used in Islamic banking, particularly in asset ownership financing. Conceptually, this contract combines the ijarah (lease) contract with a transfer of ownership mechanism at the end of the lease period. Thus, the customer initially acts as the lessee, while the bank acts as the asset owner. Ownership of the asset is transferred to the customer after the ijarah period ends through a sale or purchase mechanism. The concept of ijarah itself, in Islamic jurisprudence (fiqh muamalah (Muslich, 2010)), refers to a contract for the use of goods or services in exchange for a specified reward. Scholars from various schools of thought define ijarah as a contract that grants a specific party the right to benefit from an object for an agreed-upon reward. The main elements of this contract include the contracting parties, a clear object of benefit, and the agreed-upon reward.

In Islamic banking practice, the IMBT contract has a relatively complex structure because it consists of two distinct legal stages: the lease (ijarah) stage and the ownership transfer (tamlik) stage. Fatwa No. 27/DSN-MUI/III/2002 from the National Sharia Council of the Indonesian Ulama Council (MUI) confirms that the ownership transfer contract can only be executed after the ijarah period has ended. The promise to transfer ownership agreed upon at the beginning of the contract is merely a wa'd (promise) that is not legally binding. The two-stage structure of the IMBT is essentially intended to maintain the purity of the contract to prevent the combination of two contracts in a single transaction. However, this construction also poses potential risks if not strictly regulated and monitored. During the ijarah period, legal ownership of the asset remains with the bank, while physical control rests with the customer. This situation creates an information asymmetry that can open up opportunities for moral hazard.

One potential risk is misuse of the leased asset by the customer, such as use inconsistent with the contractual purpose, transfer of use to another party without permission, or use of the asset for unconfirmed purposes. Because the asset remains registered as the bank's property, any damage or decline in its value can directly impact the bank as the legal owner. Furthermore, the potential for fraud can arise in the form of manipulation of the asset's condition near the end of the lease. Customers may reduce the quality of asset maintenance or even fabricate damage to avoid payment obligations. In certain situations, such actions can be categorized as fraud if carried out with the intention of unlawfully benefiting themselves.

Another equally significant risk is the misuse of sharia arguments to avoid contractual obligations. In practice, it's possible for customers who have already benefited from financing to sue for the cancellation of the contract, citing non-compliance with sharia. If such actions are taken without a solid basis and are intended to avoid payment obligations, they can be categorized as an abuse of rights. In addition to risks stemming from customers, the potential for fraud can also arise from internal bank factors. Pressure to meet financing disbursement targets can lead to a disregard for the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) in the customer feasibility analysis process. In some cases, there is the possibility of collusion between internal bank parties and asset suppliers to mark up prices, resulting in financing values exceeding the actual value of the assets.

From a governance perspective, such practices not only harm banks and customers but also undermine the principles of transparency and accountability in Islamic banking. Therefore, strengthening internal control systems is crucial to prevent irregularities. Therefore, it can be concluded that the risk of fraud in IMBT contracts is multidimensional, encompassing operational,

administrative, legal, and governance aspects. This complexity demands a more comprehensive application of the precautionary principle so that IMBT contracts can be executed transparently, accountably, and in accordance with Islamic principles.

### **3. Legal Analysis of the Application of the Precautionary Principle to the Risk of Fraud in the IMBT Agreement**

Normatively, the obligation to apply the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) in Islamic banking is affirmed in Article 2 of Law Number 21 of 2008 concerning Islamic Banking (Djumhana, 2020; Usman, 2001), which states that Islamic banking business activities must be carried out based on sharia principles, economic democracy, and the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025). This provision demonstrates that the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) is a fundamental foundation in the implementation of Islamic banking business activities. This principle is intended not only to maintain the health of banking institutions, but also to protect customer interests and maintain the stability of the financial system as a whole.

However, the provisions in this law are still general in nature and do not specifically address the application of the prudential principle to each type of financing contract. In Islamic banking practice, various types of contracts have different characteristics and levels of risk, so the application of the prudential principle should be tailored to the characteristics of each contract. One contract with a high degree of complexity is the Ijarah Muntahiya Bit Tamlik (IMBT) (Abdilah & Jawab, 2023; Hasibuan, 2025; Primadhany, 2023) contract, which combines elements of a lease with a mechanism for transferring ownership at the end of the agreement.

The complexity of the IMBT contract lies in the existence of two distinct legal stages within a single transaction: the asset utilization stage through a lease mechanism and the transfer of asset ownership to the customer after the lease term ends. This transaction structure creates complex legal consequences, as legal ownership of the asset remains with the bank during the lease period, while physical control rests with the customer. This situation creates significant potential risks if not accompanied by adequate risk management (Agustin & Hasan, 2022; Aziz, 2021) mechanisms.

Within the regulatory framework, the application of the prudential principle is also reflected in Financial Services Authority Regulation Number 13/POJK.03/2021 concerning the Provision of Commercial Bank Products. Article 27 paragraph (3) letter b of this regulation stipulates that in the implementation of banking products, banks are required to pay attention to

aspects of risk management (Agustin & Hasan, 2022; Aziz, 2021) and internal control. However, this provision only regulates the minimum elements that must be included in a financing agreement, without explicitly requiring the inclusion of clauses related to fraud prevention mechanisms or strengthening the prudential principle in financing agreements. The absence of regulations that explicitly require the inclusion of prudential and anti-fraud clauses in financing agreements creates a regulatory gap. This gap has the potential to weaken the legal position of banks and customers when deviations occur in the implementation of the agreement. In such conditions, dispute resolution tends to depend on the judge's interpretation of the general provisions in the agreement, which ultimately can lead to legal uncertainty.

From the perspective of the legal certainty theory proposed by Hans Kelsen, laws should be formulated in a clear, systematic, and predictable manner to provide definitive guidance to the public. If a regulation does not provide clarity regarding the obligations of the parties and the risk control mechanisms in a transaction, then the regulation does not fully fulfill the principle of legal certainty. In the context of the IMBT contract, the lack of clarity regarding contractual obligations related to fraud prevention can give rise to various legal issues when disputes arise between banks and customers. Furthermore, from the perspective of the legal responsibility theory proposed by Subekti, each party committing a legal act must be responsible for the consequences arising from their actions. This responsibility also includes legal consequences if a party commits negligence or acts that harm another party. In the contractual relationship between a bank and a customer, this legal responsibility should be clearly stated in the agreement clauses so that the parties understand their respective rights and obligations from the outset.

If clauses regarding the obligation to maintain transaction integrity, the obligation to provide accurate information, and fraud handling mechanisms are not explicitly stated in the contract, the potential for moral hazard increases. Moral hazard can arise in various forms, such as customers providing false information regarding their financial condition, concealing material facts that affect their creditworthiness, or even exploiting legal loopholes to avoid payment obligations after receiving benefits from the bank's financing. This potential for abuse originates not only from customers but also from internal bank stakeholders. In some cases, pressure to achieve financing disbursement targets can lead to a disregard for the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) in the customer creditworthiness analysis process. This can open up opportunities for deviant practices such as financing data manipulation, collusion between bank officers and certain parties, or abuse of authority in the financing approval process.

In this context, the application of the prudential principle is not only related to compliance with regulatory provisions, but also related to the quality of governance of sharia financial institutions. The principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) must be integrated into all bank operational processes, starting from the product planning stage, financing analysis, contract preparation, to supervision of financing implementation. When linked to the concept of maqashid sharia, the application of the precautionary principle also has the aim of maintaining benefits and preventing damage (mafsadah) in economic activities. One of the main objectives of Islamic law is to safeguard assets (hifz al-mal), so every financial transaction must be designed in such a way as not to cause unfair losses for the parties. Thus, strengthening the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) in IMBT contracts can be seen as an effort to ensure that financing transactions are carried out fairly, transparently and in accordance with sharia values.

In practice, the application of the prudential principle in IMBT contracts can be achieved through several mechanisms, including strengthening financing feasibility analysis, improving the quality of contractual clause drafting, and strengthening the bank's internal control system. Furthermore, regulatory-level regulations are also needed to ensure that the inclusion of clauses related to prudential principles and fraud prevention becomes an integral part of every financing contract. Thus, the legal analysis shows that although the prudential principle has been recognized as a fundamental principle in the Islamic banking system, regulations at the operational level still require more concrete strengthening. Existing regulations provide a normative basis for the implementation of this principle, but they do not fully accommodate the complexity of the IMBT contract structure and the potential fraud risks that may arise in practice. Therefore, regulatory reformulation is needed at the implementing regulation level that can provide clearer guidelines regarding the application of the prudential principle in IMBT contracts, thereby creating legal certainty, protecting the parties, and maintaining public trust in the Islamic banking system.

### **Formulation of Precautionary Principle Regulations in Ijarah Muntahiya Bit Tamlik Contracts to Prevent Fraud**

#### **1. The Urgency of Reformulating the Regulations on the Principle of Prudence in the Ijarah Muntahiya Bit Tamlik Contract**

The development of the Islamic banking industry in Indonesia has shown significant growth in line with the increasing public demand for financial services in accordance with Sharia principles. This situation has encouraged Islamic banking institutions to continue developing various innovative financing products to meet public needs. One form of this innovation is the



implementation of the Ijarah Muntahiya Bit Tamlik (IMBT) (Abdilah & Jawab, 2023; Hasibuan, 2025; Primadhany, 2023) contract, which provides a financing mechanism for asset ownership through a lease scheme that ends with the transfer of ownership to the customer. The IMBT contract has distinct characteristics compared to other financing contracts because it combines elements of a lease contract (ijarah) with a mechanism for transfer of ownership (tamlik). This contract structure makes the legal relationship between the bank and the customer more complex because it involves two distinct transaction stages within a single financing chain. This complexity has the potential to give rise to various risks if not accompanied by the application of adequate prudential principles at each stage of the transaction.

The risks that arise in the implementation of the IMBT contract are not only related to financial aspects, but can also include legal, operational, and reputational risks for Islamic banking institutions. In practice, these potential risks can arise from the initial stages of the financing process, such as in the customer feasibility analysis, the process of procuring the leased object, up to the stage of transferring asset ownership at the end of the contract period. If these stages are not carefully monitored through clear control mechanisms, the potential for deviations or fraud in financing transactions becomes greater. Normatively, the obligation to apply the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) in Islamic banking activities is regulated in Article 2 of Law Number 21 of 2008 concerning Islamic Banking (Djumhana, 2020; Usman, 2001), which emphasizes that banking business activities must be carried out based on the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025). In addition, provisions regarding the implementation of risk management (Agustin & Hasan, 2022; Aziz, 2021) and internal control are also regulated in Article 27 paragraph (3) letter b of Financial Services Authority Regulation Number 13 of 2021, which requires banks to implement an internal control system as part of the implementation of risk management (Agustin & Hasan, 2022; Aziz, 2021).

However, current regulations are still general in nature and do not specifically detail the parameters for applying the prudential principle to each type of financing contract. These provisions do not provide clear guidelines on how the prudential principle should be applied to financing contracts with complex structures such as the IMBT. This situation indicates incomplete operational norms, potentially creating gaps in the supervision of financing transactions. In practice, the unclear parameters for applying the prudential principle can give rise to various legal issues. One of these is the potential for moral hazard behavior by parties involved in financing transactions. Moral hazard can arise when one party exploits gaps in the contract structure to obtain



undue benefits. In the context of IMBT, such behavior can arise, for example, through the manipulation of financing information, irregularities in the procurement process for the leased object, or the use of arguments claiming non-compliance with sharia principles as a basis for avoiding payment obligations after the customer has enjoyed the benefits of the financing.

This situation demonstrates that the application of the prudential principle in IMBT contracts cannot be based solely on general legal norms. More operational regulations are needed to ensure effective implementation of these principles in Islamic banking practices. Regulatory reformulation is crucial to provide clearer guidelines for banking institutions in implementing the prudential principle at every stage of the IMBT contract. Furthermore, regulatory reformulation is also related to the need to create legal certainty in Islamic banking practices. In transactions involving public funds, the existence of clear and operational legal norms is crucial to ensure that all parties have clear guidelines for exercising their rights and obligations. If existing regulations are only general in nature without providing clear parameters, the potential for differences in interpretation in practice will increase and could lead to legal uncertainty in the implementation of financing contracts.

From an institutional perspective, banks, as financial intermediaries, have a significant responsibility to maintain public trust. Funds managed by banks are essentially public funds that must be managed prudently and responsibly. Therefore, the application of the prudential principle is not only an administrative obligation but also a form of moral and legal responsibility of banks to protect customer interests and maintain financial system stability. From an Islamic legal perspective, strengthening regulations regarding the application of the prudential principle is also in line with the objectives of the maqashid sharia, particularly in protecting assets (hifz al-mal). Every muamalah transaction must be designed in such a way as to prevent losses for the parties involved. Therefore, reformulating regulations regarding the application of the prudential principle in IMBT contracts can be seen as part of efforts to maintain the public interest and prevent potential deviations in sharia economic activities.

## **2. Basic Considerations for the Regulation of the Principle of Prudence in the IMBT Agreement**

The establishment and strengthening of legal regulations is essentially directed at realizing the basic values of law: justice, benefit, and legal certainty. These three values serve as an important foundation for the implementation of economic and banking activities, including the Islamic banking system. In the banking context, the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) is a crucial instrument to ensure that bank



operations do not cause harm to the public or the stability of the financial system as a whole. In the Islamic banking system, the application of the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) has a broader dimension because it relates not only to compliance with positive law but also to adherence to Islamic values in economic activities. The Islamic financial system is built on the principles of honesty, fairness, and responsibility in asset management. These principles align with the concept of maqasid al-syariah, which emphasizes the importance of asset protection as one of the primary objectives of Islamic law.

Furthermore, Islamic law recognizes the principle of sadd al-dzari (Zulfikri & Faizah, 2023)'ah, which seeks to close any loopholes that could potentially cause damage or deviation. This principle emphasizes that an activity that is essentially permissible still needs to be carefully regulated if it has the potential to cause negative impacts. In the context of the IMBT contract, the complexity of the contract structure, which combines elements of rent and transfer of ownership, can open up opportunities for deviation if not accompanied by a clear application of the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025). Furthermore, Islamic law also recognizes the principle of la darar wa la dirar, which emphasizes that no transaction should cause harm to another party. Fraudulent practices in banking financing clearly contradict this principle because they can cause losses for both the bank and the customer. Therefore, strengthening regulations regarding the application of the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) in the IMBT contract can be seen as an effort to prevent harm in economic transactions.

From a sociological perspective, the need for regulatory reform is also influenced by the increasingly complex development of Islamic banking practices. With the increasing use of IMBT contracts in various types of financing, such as property, vehicles, and other productive assets, the legal relationship between banks and customers has become increasingly diverse and complex. This situation demands more detailed regulations to provide clear guidelines for banking institutions in managing transaction risks. Meanwhile, from a legal perspective, Indonesia's positive legal system essentially provides a normative basis for the obligation to apply the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) in banking activities. These provisions are reflected in the Islamic Banking Law and various regulations issued by financial services supervisory authorities. However, existing regulations are still general in nature and do not provide operational parameters that specifically govern the application of the principle of prudence (Sjofjan, 2015; Simamora et al., 2022; Ramadhani & Yudhayana, 2025) in financing contracts with complex characteristics such as IMBT.

### **3. Formulation of the Regulation of the Principle of Prudence in the IMBT Agreement**

Based on an analysis of existing regulations, the reformulation of regulations regarding the application of prudential principles in IMBT contracts needs to be directed at strengthening the implementation of existing norms, particularly those related to internal control and risk management (Agustin & Hasan, 2022; Aziz, 2021) in Islamic banking activities. This reformulation is not intended to replace existing norms, but rather to clarify the operational parameters for the application of prudential principles in IMBT-based financing practices. One important aspect of this regulatory reformulation is strengthening the application of prudential principles at the pre-contract stage. At this stage, banks need to thoroughly verify customer identity, financial capacity, and the validity of documents used in financing applications. A thorough verification process is a crucial initial step in preventing potential data manipulation or misuse of information in financing transactions.

Furthermore, regulatory reformation should emphasize the importance of transparency and clarity in the IMBT contract structure. Each clause in the agreement must be clearly and transparently formulated so that all parties understand their respective rights and obligations. This includes clarity regarding the lease payment mechanism, financing term, and provisions regarding the transfer of asset ownership at the end of the contract period. Regulatory strengthening also needs to be directed at monitoring the procurement process for financing objects. In IMBT practice, the underlying object of the transaction is typically obtained through a procurement process involving a third party. Therefore, banks need to ensure that the procurement process is conducted transparently and in accordance with the object's true value to prevent irregularities such as price markups or non-conformity to product specifications.

Another stage that requires attention in regulatory reformulation is the process of transferring asset ownership to the customer at the end of the contract period. This transfer of ownership is the stage that determines the transfer of ownership rights over the financing object from the bank to the customer. Therefore, this process must be carried out in an orderly manner and in accordance with applicable legal provisions, including through document verification and the involvement of parties authorized to prepare legal documents, such as notaries or deed-making officials. With the strengthening of these operational parameters, the application of the prudential principle in IMBT-based financing is expected to not only be limited to general norms but also be applied more effectively in Islamic banking practices. This regulatory reformulation ultimately aims to minimize the potential for fraud, strengthen legal protection for the parties, and maintain stability and public trust in the Islamic banking system.

#### 4. CONCLUSION

The application of the prudential principle in the Ijarah Muntahiya Bit Tamlik contract has a legal basis in the Indonesian Islamic banking system, particularly through the provisions of Law Number 21 of 2008 concerning Islamic Banking (Djumhana, 2020; Usman, 2001) and various regulations issued by the financial services sector supervisory authorities. The prudential principle is a fundamental principle aimed at maintaining the health of banking institutions, protecting customer interests, and ensuring financial system stability. However, current regulations are still general in nature and do not specifically regulate the operational parameters for the application of the prudential principle in the IMBT contract, which has a complex transaction structure. This condition creates a potential risk of fraud, both from customer moral hazard behavior and from weaknesses in the banking institution's internal control system. Therefore, the application of the prudential principle in the IMBT contract requires strengthening through a more comprehensive risk control mechanism to prevent deviations in Islamic banking financing practices.

Formulating the prudential principles in the IMBT contract is crucial to provide clearer guidelines for implementing these principles at the operational level. Regulatory reformulation is necessary because existing regulations do not fully accommodate the characteristics of the IMBT contract, which combines lease elements with an asset ownership transfer mechanism. Strengthening these regulations can be achieved by elaborating the operational parameters for implementing prudential principles, particularly at the financing analysis stage, drafting contract clauses, procuring financing objects, and implementing the asset ownership transfer mechanism at the end of the contract period. With these strengthened regulations, the application of prudential principles in the IMBT contract is expected to minimize the potential for fraud, increase legal certainty for the parties, and strengthen public trust in the Islamic banking system. Furthermore, strengthening these regulations is also in line with the objectives of the maqashid sharia, particularly in efforts to safeguard assets (hifz al-mal) and realize fair, transparent, and responsible economic transactions.

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