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Article

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AN EXPLORATORY STUDY OF *MANFAʿAH* (USUFRUCT) IN *IJĀRAH* ACCOUNTING FROM THE SHARĪʿAH PERSPECTIVE

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ABSTRACT

Purpose — The recording and reporting of usufruct in *ijārah* (lease) financing is a major issue in both conventional and Islamic accounting standards. The International Accounting Standard (IAS-17) was revised and replaced by the International Financial Reporting Standards (IFRS-16) to address this issue. In response, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) revised and issued a new *ijārah* Financial Accounting Standards (FAS-32). Considering this ongoing issue, the aim of this study is to explore *māl* (asset) and *milkīyah* (ownership) as the two significant Sharīʿah dimensions of *manfaʿah* (usufruct) in *ijārah* accounting.

Design/Methodology/Approach — This study adopts the qualitative research methodology and uses the content analysis technique whereby secondary data was collected from the related books of Islamic *fiqh* (jurisprudence) as well as from the accounting and Sharīʿah standards of *ijārah*.

Findings — The study found that *manfaʿah* is a *māl* and as per the *milkīyah* structure, the lessee can represent legal ownership of the leased assets under his possession, and accordingly, *manfaʿah* could be registered in the lessee's name.

Originality/Value — To the best of the researchers' knowledge, this study constitutes the first of its kind in the existing literature that focuses specifically on the Sharīʿah perspective of usufruct in *ijārah* accounting.

Practical Implications — The findings of this study contribute to help financial and Sharīʿah experts and Islamic financial institutions (IFIs) in their understanding of *manfaʿah* and the adoption and implementation of the new *ijārah* accounting standard. This study will also help researchers in their future research.

Keywords — *Ijārah, Māl, Manfaʿah, Milkīyah,* Ownership, Right-to-use, Sharīʿah
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INTRODUCTION

Ijārah (lease), a compensatory usufruct-based product, is used widely by Islamic financial institutions (IFIs) (ACCA & KPMG, 2012). In the mix of various Islamic finance products worldwide, 26 per cent is represented by the *ijārah* product in the Islamic banking industry as well as in Islamic leasing institutions, while in the capital markets the share of *ṣukūk al-ijārah* is almost 70 per cent (Abdellatif, 2020). According to the Islamic Banking Bulletin issued by the State Bank of Pakistan (SBP), financing and related assets of Islamic banking institutions in Pakistan reached PKR1,689.8 (USD11.05) billion as at end September 2020, and the share of *ijārah* represented 5.3 per cent of all modes of financing (SBP, 2020). These market shares and volumes of *ijārah* show its significance in the Islamic finance industry.

Ijārah means 'leasing of property pursuant to a contract under which a specified permissible benefit in the form of a usufruct is obtained for a specified period in return for a specified permissible consideration' (AAOIFI, Sharīʿah Standard No. 9, 2014). Though *ijārah* seems synonymous with conventional lease, conceptually the two are different. These differences are based on the Sharīʿah principles regarding rental contracts (Ṣamdānī, 2008). The most prominent and relevant differences are:

1. A finance lease is long-term and of a binding nature. According to its agreement, all the risks associated with the ownership are transferred from the lessor to the lessee—a practice which is not acceptable in Islamic law. It is due to the combination of two contracts (sale and *ijārah*) in a single arrangement. Therefore, an alternative suggestion is not to bind the lessee to acquiring ownership in the lease agreement. A unilateral promise to sell may be signed with the documents kept separated from those of the *ijārah* (lease) contract. This will make the lessor bear all the liabilities and major expenses related to the leased asset during the entire lease period. According to Bank Negara Malaysia (BNM, 2018), the *ijārah* contract ends with the transfer of ownership to the lessee, and it should contain a mechanism for this transfer from lessor to lessee during or at the termination of the lease period.
2. In a finance lease, risks and liabilities of the lessee for rent begin prior to the delivery of the leased asset (from the contract date). This contravenes the Sharīʿah requirement of *ijārah*. According to Sharīʿah, rent can be charged only after the lessee takes possession of the leased asset for its use (Kamali, 2005). In *ijārah*, the leased period commences from the delivery date of the leased assets (Abozaid, 2016).
3. Stipulating a penalty of a certain amount in the finance lease agreement in case the lessee defaults on payment is not acceptable in the Sharīʿah according to the majority of *fiqh* schools. It is suggested that a penalty clause may be added to the *ijārah* agreement if the lessee makes late payment over the specified period. However, this amount will go to charity and the lessor cannot be compensated for his opportunity cost (Usmani, 1999).

These conceptual and theoretical differences have been the interest of researchers, and there is voluminous literature discussing these issues. However, to the best of the researchers' knowledge, there is no literature specifically on the Sharīʿah perspective of usufruct in *ijārah* financing.

Moreover, whether to classify usufruct as *māl* (asset) was a matter of debate among classical Sharīʿah jurists. Usufruct is considered an asset according to the Sharīʿah standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), a view which is globally accepted. Some contemporary scholars of the Ḥanafī School, which had declined to classify usufruct as *māl* in the classical era, have agreed to the AAOIFI classification. However, its nature as an asset and the status of its ownership have not been discussed in the literature.

Furthermore, the AAOIFI Accounting Board (AAB), in their efforts to improve the existing financial reporting standards, revised the financial accounting standard (FAS-8) and replaced it with a new *ijārah* accounting standard (FAS-32). The purpose is to address the issues faced by the market and the observations noted over the past years, as well as to improve the existing accounting treatments in line with global best practices. In this standard, the accounting treatment of *ijārah* transactions has been changed significantly from the lessee's perspective (AAOIFI, 2020).

In contrast to the earlier off-balance sheet approach for *ijārah* accounting, FAS-32 prescribes a different accounting model in the hands of the lessee. According to it, the lessee will bring the *ijārah* transaction on-balance sheet. The lessee shall recognise the usufruct of the leased asset as a 'right-of-use asset' and corresponding liability in its balance sheet (AAOIFI, 2018). Revisiting the previous standard and issuing the new standard is expected to improve the overall accounting and financial reporting practices of the Islamic finance industry. AAOIFI (2020) claims that the purpose is to bring *ijārah* accounting closer to global best practices without compromising Sharīʿah principles or bringing about any alterations in the essence of the *ijārah* transaction.

This study addresses the issue that emerged from treating usufruct in the *ijārah* contract as an asset according to the new standards on leasing issued by the International Accounting Standards Board (IASB) and on *ijārah* issued by AAOIFI. Usufruct (*manfaʿah*) in *ijārah* contracts has been addressed by accounting standard-setting bodies across the globe. There was an issue of its accounting treatment in the book of the lessee. For conventional leases, the previous standard, IAS-17 was revisited, and this dilemma was resolved recently by replacing it with a newly issued standard (IFRS-16), effective 1 January 2019. According to this standard, a lessee recognises a right-of-use asset and a lease liability upon the commencement of the lease contract (IFRS, 2016).

On the other hand, according to AAOIFI (2020), FAS-8 was originally issued to cater for the problem of distinction between a conventional lease and Sharīʿah-compliant *ijārah* and to prescribe its correct accounting treatment in line with its true nature. For improvement in the accounting of Islamic financial products and standardisation, the new *ijārah* accounting standard FAS-32 records *manfaʿah* in *ijārah* financing as *māl* in the lessee's statement of financial position.

However, in the Islamic law of contracts, if something is proved as *māl*, the related significant dimensions such as the status of its ownership (*milkīyah*), the issues of zakat (compulsory alms), waqf (endowment) and *irth* (inheritance) cannot be ignored. There is a need to provide the Sharīʿah basis for treating usufruct as an asset and to address the status of its ownership, considering it is a significant dimension of *māl*. Based on the above-discussed

problem statement, the objective of the current study is to explore the Sharīʿah perspective on usufruct in terms of its consideration as an asset and its status with regard to ownership. The research questions asked are:

1. What are the views of the four major *fiqh* schools about the acceptability of usufruct (*manfaʿah*) as an asset (*māl*)?
2. What is the legal status of the ownership of usufruct in *ijārah* contracts?

This study is presented and organised in five sections. After the introduction, it briefly highlights the background, research objectives, research problem, scope and importance of the study. The next section reviews the available previous literature and explores related *fiqh* (Islamic jurisprudence) books to examine the Sharīʿah status of usufruct. The usufruct under the study is related to *ijārah*. Therefore, *ijārah* and its types are also discussed. Since the objective of this research is to understand the Sharīʿah principles of usufruct in terms of *māl* and *milkīyah*, the concept of *māl* according to the four *fiqh* schools and *milkīyah* and its relevant types are discussed. Thereafter, the research methodology, the type of research method used in the study and the sources of data collection are discussed. The next section then deals with the analysis of the research study, which is based on an examination of *fiqh* books from the four major schools. The research is summarised in the conclusion, its practical implications are discussed, and recommendations are made.

LITERATURE REVIEW

Concept of *Ijārah*

Ijārah is an Arabic word from *ajara*, which means to reward or remunerate. If its morphological structure changes to *ājara*, then it means mutual agreement on an *ijārah*; while changing to *istaʾjara* will mean 'to rent, hold under lease, engage the services of' (Wehr, 1976, p. 5).

Ajr is used for the worker's wage, whereas *ujrah* is used for the rental payment against the use of an asset (Kamali, 2005). The hirer or the lessee is called *mustʾajir*; the lessor, or the person who receives the wages or rent, is named *ājir* or *muʾajjir*. The leased property is termed as *majūr* (Marghīnānī, 2005).

According to Khan (2021), *ijārah* is a rental-based financing contract in compliance with Sharīʿah principles, in which the use of an asset is rented out for a particular period against a pre-defined rent. Ṣamdānī (2008, p. 15) has incorporated its literal meaning in the technical definition of *ijārah* as follows: 'permissible and specified usufruct of an asset or a person for a specified compensation'. It means *ijārah* is 'possession of usufruct for a consideration' (Ghuddah, 2007). Moreover, AAOIFI (2014) defined *ijārah* as used in its standard in the modern context as 'leasing of property pursuant to a contract under which a specified permissible benefit in the form of a usufruct is obtained for a specified period in return for a specified permissible consideration'. According to AAOIFI's FAS-32 (2020), *ijārah* is 'a contract, or part of a contractual agreement, that transfers the usufruct of an asset from the lessor to the lessee for a period of time in exchange for an agreed consideration'.

Concept of *Manfaʿah*

Manfaʿah is a verbal noun derived from *nafʿ*, which means any benefit or advantage. It also includes the means used in seeking such benefits or advantages to reach a beneficial goal. The plural form of *manfaʿah* is *manāfiʿ*. According to AAOIFI, usufruct is a 'legally enforceable limited right related to an asset including the two property interests: *usus* (use) which means the right to use or enjoy such asset and *fructus* (fruit) which means the right to derive profit or benefit from such asset but does not entail risks and rewards incidental to ownership' (AAOIFI, 2020).

The word *manāfiʿ* includes whatever benefit is attained by using anything in general, either in tangible or intangible form. Examples include the milk of a cow, the rent of a house, the fruits of a tree, and the like (ISRA, 2010). The term *manāfiʿ* has been used by the majority of the jurists to imply only the benefits derived from material things by way of their utilisation which are ostensible. Some said: 'all the contingent things associated with tangible assets that could not exist without them and the yield resulting from them such as residence in a house, fruit from a tree and milk from an animal' (Khafīf, 1950, p. 27).

Furthermore, the *Majallah* defines *manfaʿah* as 'benefits derived from the use of an *ʿayn* (tangible asset)' (Majallah, 2010, p. 100). Marghīnānī (2005, vol. 3, p. 201) defines it in *Al-Hidāyah*, as 'a thing which corresponds to *ʿayn* such as residence in a house, getting services and the like'. Some jurists, such as Al-Nawawī, Al-Subkī and Al-Baʿlī, differentiate *manfaʿah* from *ghallah* (yield). They describe fruits (benefits) from trees (plants), wool and milk from sheep, and produce from the ground as *ghallah* and not as *manfaʿah* while Sharbīnī and Ibn Ḥajar Al-Haytamī declare that both are synonymous (Qalyūbī, 1998, vol. 3, p. 173). Others use the term *kirā* for the contract on usufructs of land, houses, vessels and animals which they consider synonymous to *ijārah* (Ghani, 2018).

Manfaʿah is further elaborated by Wahbah al-Zuhaylī under the law of sale. He states, 'The usufructuary right (*manfaʿah*) of a thing signifies the right of enjoyment of anything for the lifespan of the party which is entitled to the benefit of the usufruct. *Manfaʿah* is therefore generally regarded as forming part of goods which are the subject matter of a sale contract' (Al-Zuhaylī, 1984, vol. 4, p. 40).

Ḥaqq, Intifāʿ, Tamlīk al Intifāʿ and Tamlīk al Manfaʿah

In the literature, it is found that 'right', 'right-to-use an asset' and 'usufruct' are used interchangeably. However, it is worth noting that *manfaʿah*, *intifāʿ*, *ḥaqq* and *ḥaqq al-intifāʿ* convey different meanings in Arabic, particularly in *fiqh*. Therefore, it is necessary to differentiate between these terms.

Literally, *ḥaqq* (right) means to be confirmed and necessary. Technically, *ḥaqq* is an exclusive privilege recognised by the Sharīʿah, which either results from an obligation or from an authority. This term includes all the privileges, powers, tangible assets and usufruct belonging to a person. Examples include the right to sell commodities or the right to build another storey on a house (ISRA, 2010).

Intifāʿ means 'to take benefit from something'. Technically, it means that a person has the authority and right to use an asset and to get benefit from it, such as the right to use a house or a piece of land.

Tamlīk al intifāʿ gives the beneficiary the right to use, but it does not give him the right to transfer it to a third party without the consent of the owner. On the other hand, *tamlīk al manfaʿah* (alienation of usufruct) transfers the full ownership of the usufruct, which includes full right of its disposal. The new owner of the usufruct can personally use it or lease it to a third party. To 'own' usufruct is, thus, more general than having the 'right to use' a thing (*al-intifāʿ*). Every owner of usufruct can personally take benefit from it, but one who gets the right of benefit does not become the owner of the usufruct (ISRA, 2010).

Māl (Asset, Wealth, Property)

In response to the question regarding whether usufruct can be considered *māl*, it is necessary to first describe the concepts of *māl* and usufruct and their types. If usufruct qualifies as *māl*, then it is also likely to be a valid subject of ownership and proprietary dispositions. Therefore, the concept of ownership and its types are also discussed hereunder.

A famous dictionary of jurisprudential terms, *Qāmūs al-Fiqh*, defines *māl* as being either derived from *mīm-yā-lām* or from *mīm-wāw-lām*. In the former case, it means *ma yamīlu ilayhi al ṭab* (that towards which one inclines), i.e., *shay marghūba* (something desirable), while in the latter case, it signifies *tamawwul* (something capable of earning) and which can be stored. Both these terms are inherently the same, but the term used in the first case is much broader than in the second case (Rahmani, 2007).

Literally, anything capable of being owned is known as *māl* (Abadi, 2003). *Māl* shows the effect a man may acquire and possess either from *ʿayn* or *manfaʿah*. For example, gold, silver, animals and plants are corporeal assets whereas residence in a house and riding of vehicles are regarded as usufructs of their respective tangible assets. On the other hand, anything a person cannot possess cannot be considered as *māl* (Ibadi, 2000, p. 171).

Māl has been defined and interpreted differently by jurists of various *fiqh* schools (Islam, 1999). In this regard, the opinions can be categorised as that of the Ḥanafīs as opposed to that of the majority. Their approaches towards the concept of *māl* are briefly discussed as follows:

The Majority (Non-Ḥanafī Schools)

The Shāfiʿī School

According to the Shāfiʿī School, *māl* includes both corporeal objects and usufructs as in the definition of sale in the famous book *Tuḥfat al-Muḥtāj* that sale is an exchange of *māl* between contracting parties, whether *ʿayn* or *manāfiʿ muʾabbadah* (permanently held usufructs) (Al-Haytamī, 1983). A well-known Shāfiʿī jurist, Al-Zarkashī, (1985, p. 222) defines *māl* as 'anything from which benefits can be derived, whether in the form of *ʿayn* or in the form of *manāfiʿ*. It is further elaborated that the term *māl* should be construed as something of value which is exchangeable; the *ḍamān* (liability) of paying compensation should be on its destructor; and something the people would not usually throw away or disown—that is, people value it—such as money and the like (Al-Suyūṭī, 1983, p. 32).

The Ḥanbalī School

According to Ibn Urfah from the Ḥanbalī School, sale is a compensatory contract excluding usufructs. However, the majority of the Ḥanbalī jurists consider both *ʿayn* and *manfaʿah* as *māl*.

Ibn Qudāmah (1994, vol. 3, p. 152) mentioned *māl* as anything that can be benefited from it in non-necessity situations. On the other hand, Al-Buhūtī (1993, p. 152) considers *māl* to be anything which has beneficial and permissible use in all circumstances, and keeping it for future use is permissible, even if it is not for times of necessity (Paracha, 2018). It can also be described as something in which a permissible usufruct exists that can be accessed even if one does not have a need or at the time of necessity (Al-Kharqī, 1993, p. 71).

The Mālikī School

The definition of sale by some Mālikī jurists leads to the permissibility of sale of usufructs and rights. Usmani (2015) explains that definitions from the Mālikī School show the inclusion of unending usufructs in *māl*. One of the Mālikī jurists, for instance, defined *māl* as anything that is customarily beneficial and accepts *ʿiwaḍ* (consideration) (ʿAbd al-Wahhāb, 2008).

Furthermore, one of the jurists from this school relates *māl* with ownership and states that it is anything which a person owns and that no one can interfere in without his permission (Al-Shāṭibī, 2014). On the contrary, some Mālikī jurists are also the proponents of the Ḥanafī view regarding usufructs as *māl*. For instance, al-Majajī (2001, p. 139), with reference to Ibn ʿArafah, states, 'Sale is a commutative contract excluding usufructs (*manāfiʿ*)'.

The Ḥanafī School

A famous definition of sale according to Ḥanafī jurists is 'exchange of something desirable with something desirable'. Al-Kāsānī (1993) says that something desirable means *māl*. Usmani (2015) describes desirability as something which is beneficial. In the *Majallah* (2010, vol. 2, p. 81), *māl* has been defined as 'a thing which a man naturally inclines to and which is possible to store for times of necessity'. It has been further elaborated as 'the things other than human beings which have been created for the benefit of man, and which a man can hoard and dispose of at his option. Hence, a slave, who has some of the attributes of property, is not property, as it is not lawful to kill him' (Ibn ʿĀbidīn, 2003, vol. 4, p. 501).

It is further elaborated by Mīrah (2012) with reference to Ibn Nujaym, a famous jurist of the Ḥanafī School, that the *fiqh* scholars qualify anything as *māl* if it has some financial value and which is possible to store for future use when needed. This applies to tangible things and excludes the transfer of ownership of usufruct from the definition of *māl* because usufructs are intangible.

Ibn ʿĀbidīn (2003), when explaining the Ḥanafī stance on this matter, states that *māl* is something that humans instinctively covet and can be kept for a period of time. According to Usmani (2015), 'electricity and gas are such assets (*amwāl*) towards which people are inclined. It is impossible to include them in *māl* on the basis of tangibility in nature, but still, their buying and selling is in practice and permissible.'

Manfaʿah as *Māl* and Subject Matter in Sale Transactions

A famous contemporary Ḥanafī scholar states that human beings derive benefits from three types of things: *ʿayn* (corpus), *manfaʿah* (usufruct) and *ḥaqq* (right) (Rahmani, 2007) The majority of Islamic jurists and a few of the contemporary Ḥanafī scholars consider *manfaʿah* as *māl*, affirming that *māl* includes services, usufructs and intangibles (Obaid, 2007). ʿAllāmah Zarqānī

states that *manfaʿah* is included in the definition of sale; *buyūʿ* is the plural of *bayʿ*, which means that it has many types such as *bayʿ al-ʿayn* (sale of a corporeal asset), *bayʿ al-dayn* (sale of debts/liabilities) and *bayʿ al-manfaʿah* (sale of usufruct) (Usmani, 2007).

The question of whether *manfaʿah* can be made the subject matter in financial contracts depends upon the definition of sale by different Islamic jurists. Discussions relating to sale are summarised below:

1. In exchange-based contracts, the subject matter must have some value. The usufruct of an object is considered *māl* and is thus eligible to become the subject matter in such transactions (Ayub, 2007). According to Al-Haytamī (1983, p. 222), 'Sale is an exchange of an asset (*māl*) with another asset (*māl*) with the condition of getting benefits from the ownership of a specified corpus (*ʿayn*) or from usufruct (*manfaʿah*).' Ibn al-Qāsim Gharbī says 'The best definition of sale is: to make someone owner of any valuable corpus (*ʿayn*) or of usufruct (*manfaʿah*), and usufruct includes ownership of the right of construction' (Usmani, 2008, p. 172).
2. Some jurists define sale as a financial contract with the transfer of ownership of any *ʿayn* or *manfaʿah* (Al-Sharbīnī, 2000). According to Al-Buhūtī (1993, p. 160) from the Ḥanbalī School, 'Sale is an exchange of any valuable corpus or of any permissible usufruct in general'. Al-Mardāwī, after mentioning various definitions and discussing the objections to them, in *Al-Inṣāf*, writes, 'Sale means transferring ownership of any valuable *ʿayn* or of any permissible *manfaʿah* permanently in exchange for something valuable' (Al-Mardāwī, 2004, vol. 2, p. 489).
3. Furthermore, Ibn ʿArafah defines sale as a compensatory contract excluding usufructs. However, according to some Mālikī jurists, usufructs and rights can be bought or sold. For instance, the definition of sale in *Al-Sharḥ al-Ṣaghīr* leads to the permissibility of sale of usufructs and rights (Usmani, 2008). This view is supported by Ibn Qudāmah (1985, p. 271), who states, '*Ijārah* is a sale of benefits or usufruct, and usufruct is governed by the same legality as the tangible asset'.

Thus, the acquisition of *māl* necessitates the importance of ownership. The ability to own property is one of the basic individual liberties recognised by Sharīʿah and by the constitutions of the overwhelming majority of countries. The Sharīʿah also emphasises the protection of ownership of the property. Ownership is both a freedom and a right, but ownership as a freedom precedes ownership in the sense of a right. A discussion of the concept and types of ownership follows.

Concept of *Milkīyah*

The basic theory of *milkīyah* in Islam is that Allah (SWT) is the true owner of everything, whereas human beings, in their capacity as vicegerents of Allah (SWT), are simply the trustees or custodians of properties. On the one hand, the Sharīʿah recognises the freedom of the individual to own property, and on the other, it also takes measures to safeguard the rights of the owner of the property (Kamali, 2008).

Literally, *milkīyah* is an Arabic word derived from *milk*, which means a situation of possessing something along with the authority to dominate or dispose of it. It could also mean anything with the attribute of *māl* that a person has owned and has control over (Ghani, 2018).

Technically, ownership is a legal relationship between a person and an object which entitles the person to an exclusive right of disposition and control over the object. The person is called *mālik* (owner), whereas the owned object is called *mamlūk*. This ownership is associated with possession, whether physical or constructive. Al-Khafīf (1950, p. 41) defined it as an interest that is granted by the Sharīʿah. According to Mūsā (1996, p. 366), ownership signifies effective control which enables a person to exercise exclusive utilisation and disposition of a thing in the absence of any legal impediment.

Al-Qarāfī links *milkīyah* with *ḥukm Sharʿī* (Sharīʿah rulings) and defines it as 'a Sharīʿah ruling or juridical attribute (*ḥukm Sharʿī* and *waṣf Sharʿī* respectively) which is specified in a corporeal matter or in its *manfaʿah* (usufruct) and enables a person to control, dispose, or exchange it according to his freewill without any legal restrictions' (Kamali, 2008, p. 211).

However, this definition faces criticism from Ibn Al-Shāt for equating ownership with *ḥukm Shar'ī*, although the two are significantly different (Siddiqui, 2006). A concise definition of ownership that avoids many pitfalls is that of Muṣṭafā Al-Zarqā (1999); he defines it as an exclusive assignment (*ikhtiṣās ḥājiz*) under the Sharīʿah which enables only the owner to control or dispose of it unless there is a legal impediment against it.

Thus, *milkīyah* is not a physical thing but, rather, an abstract one and a kind of right approved by the Sharīʿah. It is a right to prevent from use or to dispose something by a person. If the Sharīʿah approves this relationship between a man and property (*māl*), then *milkīyah* of property gets associated with that man; otherwise not.

Types of *Milkīyah*

According to Al-Zarqā (2004), there are two basic rights combined in any asset: the owner's right to the title (*raqabah*) and the beneficiary's right to the usufruct. This entails classifying ownership into the following two types:

1. ***Milkīyah tāmmah*:** It is considered complete ownership, which means that the owned object (*māl mamlūk*) with all the relevant rights in the Sharīʿah are attributed to the owner (Siddiqui, 2006). Muhammad Qādri Pasha states in his book *Murshid-ul-Hairān* that '*milk tāmm* is a situation in which the owner has the right of use and control on both *ʿayn* as well on *manfaʿah*, and the owner can enjoy all the benefits of the *shay mamlūk* (owned object) without any restrictions' (Pasha, 1890, p. 89). Similarly, Mohammad Hussin & Mohammad Hussin (2015) elaborate that complete ownership happens when the owner legally or beneficially owns the property together with its uses or *manfaʿah*. A person with complete ownership of an asset has the right to use it freely the way he wishes. He can enter into all permissible contracts like *bayʿ* (sale), *hibah* (gift), *ijārah* (lease) or *iʿārah* (Siddiqui, 2006).
2. ***Milkīyah nāqisah*:** It is considered incomplete or deficient ownership, which means ownership of either the *ʿayn* or *manfaʿah*. The owner is the owner of the corpus with the exception of the usufruct, or the owner of the usufruct with the exception of the corpus, or owner of the title only, or of the usufruct only (Siddiqui, 2006; Ḥassan, 2013). For

example, in a situation of a leased property, the owner can be considered as having incomplete ownership over the asset as, although he has authority over the property by reason of being its owner, he does not possess its *manfaʿah* as the use of the property has been leased out to a third party or tenant. Article 14 of *Murshid al-Ḥayrān* states 'The ownership of property with the exclusion of usufructs is permissible, whether of movable or immovable property' (Pasha, 1890, p. 90). **Figure 1** summarises the description of complete and incomplete (partial) ownership.

Concept of Beneficial and Legal Ownership

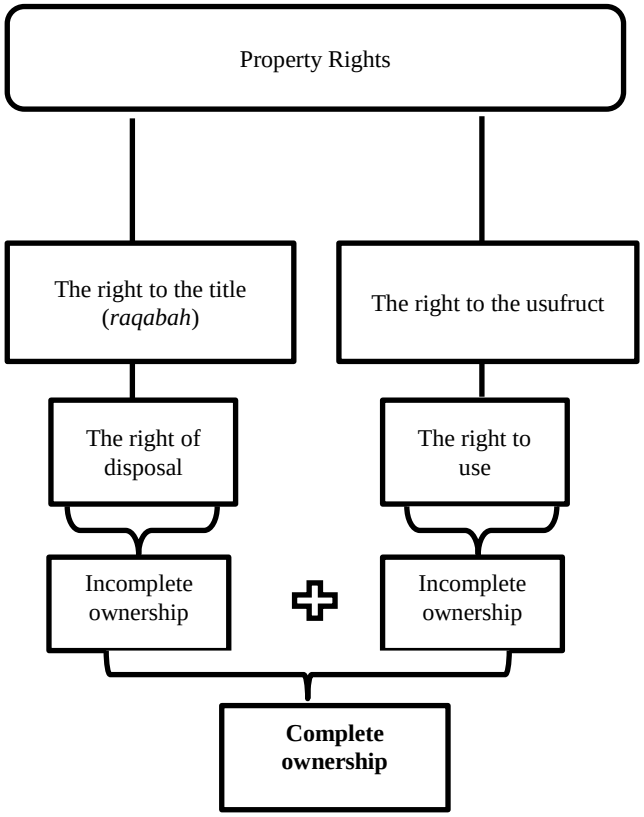
The English common law classifies ownership into two: beneficial ownership and legal ownership. Legal ownership is represented by legal registration; the legal owner will be considered the entity in whose name the asset is legally registered. He is authorised to dispose of that asset by sale, investment or other means. So, the legal owner is the entity recognised and authorised by law as the owner of the asset and who, for the benefit of others, holds the legal title to the asset (Black, 1968).

On the other hand, the beneficial owner is the entity to whom all the benefits of the asset go. According to Black's Law Dictionary (2009), an entity is considered a beneficial owner if it is recognised in equity as the owner of a thing because of the possession of its use and title although legal title does not belong to him but, rather, belongs to a person whose property is held in trust by that entity. It is obvious from this definition that beneficial ownership is the right of an entity to use a property or to get benefit from it though he is not the legal owner of that asset. The legal owner acts as the trustee having the right to hold the property legally. So, the legal owner is considered the nominal owner whereas the beneficial owner is the real owner of the asset (Brown, 2003).

In Sharīʿah, ownership of the asset and its usufruct together is beneficial ownership (Āla'ru, 2014). In fictitious sale and purchase contracts, beneficial ownership is invalid because the *milkīyah* attributes and characteristics as required by the Sharīʿah are not fulfilled. On the other hand, beneficial ownership is valid in true sale and purchase contracts because legal ownership is merely in the form of a registration, which is not a Sharīʿah requirement. According to Al-Nawawī (2001), registration of names is not one of the tenets of Sharīʿah. It means that through the sale of an asset by valid offer and acceptance, the buyer will receive legitimate ownership, although the legal title is still in someone else's name. Since the change of ownership takes time, therefore, the term 'beneficial ownership' is used.

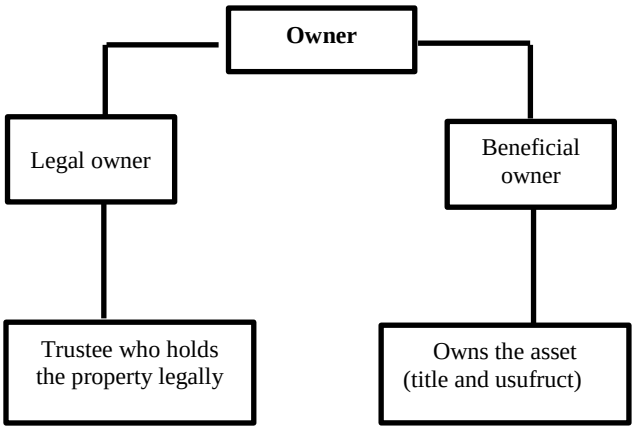
Now, a question arises as to whether beneficial ownership is considered complete ownership or partial. Under Islamic law, it is classified as *milkīyah nāqiṣah* (partial ownership). For instance, if a person is given the right by another person to use his asset, he will be considered as possessing partial ownership of that asset. A person who has given away the right to use of an asset to another, for the time being, has no more right to the use of his own asset although he is the owner and has the right of control over that asset. The owner has therefore beneficial ownership, and when he gets his asset back will gain his complete ownership (Kamali, 2008). Beneficial and legal ownership from the Sharīʿah perspective are depicted in **Figure 2**.

Figure 1: Complete vs. Partial Ownership



Source: Adapted from Mashal *et al.* (2017)

Figure 2: Beneficial vs. Legal Ownership

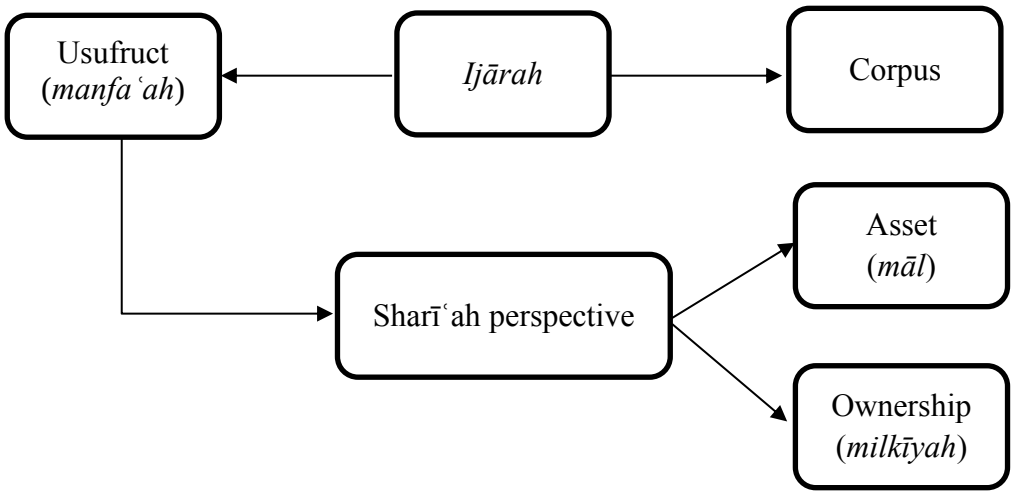


Source: Adapted from Mashal *et al.* (2017)

Al-Zarqā (2004) explains that the purpose of ownership is to derive benefit from the property owned. If there is no expectation of benefit from an asset, its ownership would be meaningless. For complete freedom to benefit from an asset, dispose of it and consume it lawfully, the Sharīʿah ratified the concept of ownership of the title only. He further states that ownership of the usufruct can be temporary while ownership of an asset cannot be made temporary. Its causes make it of a permanent nature. Thus, *milkīyah tāmmah* (complete ownership) consists of both the ownership of the title as well as the usufruct, therefore, sale of an asset results in the complete ownership of the buyer (Al-Zarqā, 2004).

Figure 3 shows how the study was put forward with the support of literature, starting with *ijārah* which has two components, i.e., corpus and usufruct. In this study, usufruct is considered from the Sharīʿah perspective in terms of its status as an asset and ownership.

Figure 3: Framework of the Literature



Source: Authors' own

RESEARCH METHODOLOGY

This study considers qualitative content analysis as the most appropriate technique for the purpose of fulfilling the objective to explore the Sharīʿah aspects (*māl* and *milkīyah*) of *manfaʿah.* A detailed study of *fiqh* books is therefore adopted in this research. Thus, this study explores and collects the views of Sharīʿah jurists belonging to the four well-known schools which are present in a scattered form in the books of *fiqh*.

Specifically, content analysis means the analysis of communication messages, whether verbal, non-verbal or visual (Cole, 1988). According to Krippendorff (2018), content analysis is a research method where inferences are drawn from available data, keeping in mind the context. These inferences should be valid and replicable. The purpose of this analysis is to provide knowledge, represent facts, draw new insights, and come up with guidelines that will help in the practical implementation of the study. This technique aims to reach a condensed yet broad phenomenal description. Its end result is to analyse the concepts or to make categories or classifications of the phenomenon under study. Then, based on these concepts and on their

classification, a model is presented. Qualitative content analysis is transparent and systematic in terms of research processes and is widely recognised in today's world (Vaismoradi *et al.*, 2016).

Sampling and Collection of Data

Secondary sources of data were required to execute this research. Data were collected from the traditional books of *fiqh*. In the collection of samples of the *fiqh* books, due care has been taken to ensure authenticity, reliability and standardisation. For this, the focus has been on the study of legitimate, authoritative and trustworthy Sharīʿah jurists and scholars.

For the interpretation and concepts of *fiqh* terminologies, the following dictionaries have been used:

1. *Qāmūs al-Fiqh* by Khalid Saif Ullah Rahmani (2007).
2. *Al-Qāmūs al-Muḥīt* by Al-Fayruz Ābādī (2003).
3. *Compendium for Islamic Financial Terms (Arabic-English)* by ISRA (2010).

Sampling for the Sharīʿah Status of Usufruct

Keeping in mind the objective of this study, the following key books of the well-known *fiqh* schools, as listed in **Table 1** (grouped in order of schools), have been selected. Although the list is not exhaustive, these books carry the main focus to answer the research questions.

Table 1: *Fiqh* Books Examined

Title of the Book	Year First Published	Author(s)	School of Thought	Keyword(s) used for Searching	Rationale for Selecting the Book
Al-Ashbāh wa al-Naẓāʾir	1983	Al-Suyūṭī	Shāfiʿī	The following words have been used for searching the relevant details in these books: *milkīyah*, *manfaʿah*, *intifāʿ*, *ijārah*, *māl*, *manāfiʿ*, etc. However, these words have been searched in Arabic.	It is a very popular book of legal maxims, and almost all jurisprudential schools apply them where they deem fit.
Tuḥfat al-Muḥtāj fī Sharḥ al-Minhāj	1983	Al-Haytamī	Shāfiʿī		His books are considered very authentic in the jurisprudence of Shāfiʿī.
Al-Manthūr fī al-Qawāʿid	2000	Al-Zarkashī	Shāfiʿī		It is the first alphabetic *qawāʿid* work. There are a number of commentaries on and abridgements of it.
Kashshāf al-Qināʿ ʿan Matan al-Iqnāʿ	1993	Al-Buhūtī	Ḥanbalī		It is a very famous book of the Ḥanbalī School and has a very detailed explanation of *fiqh* rules.
Al-Mughnī	1986	Ibn Qudāmah	Ḥanbalī		This book is considered the best book for the sources of the law and the methodology for extrapolating rules from the revelation.
Al-Ishrāf ʿalā Nukat Masāʾil al-Khilāf	2008	ʿAbd al-Wahhāb	Mālikī		It is used as a reference book in the *qawāʿid* of the Mālikī School.

Title of the Book	Year First Published	Author(s)	School of Thought		Rationale for Selecting the Book
Al-Muwāfaqāt fī Usūl al-Sharīʿah	2014	Al-Shāṭibī	Mālikī		It is considered the best book on *maqāṣid al-Sharīʿah* (objectives of Islamic law) in the Mālikī School.
Kitāb-al-Mabsūt	1993	Al-Sarakhsī	Ḥanafī		Most of the details and legal reasoning in the Ḥanafī *fiqh* books are based on this book and the author is titled as 'Sham-al-Aaima' in Ḥanafī school.
Al-Baḥr al-Rāʾiq	1997	Ibn Nujaym	Ḥanafī		This book is a very detailed book of *fiqhi* issues and is used for references in issuing fatwas in Ḥanafī *fiqh*.
Radd al-Muḥtār	2003	Ibn ʿĀbidīn	Ḥanafī		A number of commentaries have been written on it and the book is considered as one of the brilliant works on *qawāʿid* in Ḥanafī *fiqh*.
Majallat al-Ahkām al-ʿAdlīyah	2010	A manual of the Ottoman courts			This book was an attempt to codify *fiqh* that was written under the presidency of Ahmed Cevdet Paşa between 1869 and 1876. Principles and laws in this book are more compatible with principles of the modern law systems that have developed after a long period of evolution.

Source: Authors' own

ANALYSIS AND DISCUSSION

Based on the literature review of this study, different concepts related to usufruct are analysed according to the research questions of this study.

Analysis of Research Question 1

What are the views of the four major fiqh schools about the acceptability of usufruct (manfaʿah) as an asset (māl)?

The first research question is about the status of *manfaʿah* in relation to *māl* in the light of the *fiqh* schools. The views on the matter have been categorised into the Ḥanafī and non-Ḥanafī Schools for the sake of convenience. This analysis is based on the references from the famous books of scholars and jurists belonging to the relevant school:

1. As discussed in the literature, according to ʿAllāmah Ibn Ḥajar and Al-Zarkashi from the Shāfiʿī School, *manfaʿah* is included in *māl* (Al-Haytamī, 1983; Al-Zarkashi, 1985, p. 222).
2. According to jurists from the Ḥanbalī School such as Al-Buhūtī (1993) and Ibn Qudāmah (1994), *manfaʿah* is considered *māl*.

3. The majority of jurists from the Mālikī School such as Al-Majaji (2001), ʿAbd al-Wahhāb (2008) and Al-Shāṭibī (2014) have qualified *manfaʿah* as *māl*. On the other hand, Ibn ʿArafah from the same school does not consider *manfaʿah* as *māl* (Paracha, 2018).
4. Classical jurists from the Ḥanafī School like Al-Kāsānī (1993), Ibn ʿĀbidīn (2003) and the *Majallah* (2010) do not consider *manfaʿah* as *māl* while a few contemporary scholars from this school classify *manfaʿah* as *māl* (Usmani, 2015).

A summary of the results is provided in **Table 2**.

Table 2: Views of the Different Schools of Thought on the Status of *Manfaʿah* in Relation to *Māl*

School of Thought	Views
Shāfiʿī'	*Manfaʿah* is *māl*
Ḥanbalī	*Manfaʿah* is *māl*
Mālikī	Majority: *Manfaʿah* is *māl* Others: *Manfaʿah* is not *māl*
Ḥanafī	Classical jurists: *Manfaʿah* is not *māl* Contemporary jurists: *Manfaʿah* is *māl*

Source: Authors' own

Analysing the above views of the jurists from different *fiqh* schools, it seems that there is an equilibrium level of acceptability of usufruct as *māl*. Jurists of the Shāfiʿī' and Ḥanbalī schools consider usufruct as *māl*. On the other hand, both opponents and proponents are found in the Mālikī and Ḥanafī schools regarding whether usufruct is *māl*.

However, if the underlying reasons for usufruct not to be classified as *māl* are explored, these are because of tangibility and the possibility of being stored. Now, if these underlying reasons are analysed further, they will exclude many assets from the category of *māl*. Nonetheless, it is observed that many assets that cannot be stored and that are intangible are still considered as *māl* and traded in the market. Examples include software, which is an intangible; electricity, which cannot be stored and is intangible; gases, which are intangible; and copyrights and trademarks, which are intangible and cannot be stored. These are considered valuable and are recognised as *māl* in custom (*ʿurf*) (Usmani, 2015).

In the opinion of the researchers, usufruct should be classified as *māl* based on *ʿurf*, which is one of the sources of Sharīʿah and which accepts it as *māl*.

Analysis of Research Question 2

What is the legal status of the ownership of usufruct in ijārah contracts?

If anything is proved to be *māl*, it leads to other associated issues such as ownership (*milkīyah*), inheritance (*irth*), testament (*waṣiyyah*), endowment (waqf) and charity (zakat). The most dominant one, which needs to be addressed, is the status of ownership of usufruct in *ijārah* contracts, as it is considered the other side of the coin for *māl*. For the status of ownership, the researchers of the current study will analyse the following three aspects of ownership based on their discussion in the literature review of this study. These aspects are:

1. Type of ownership of *manfaʿah*
2. Nature of *manfaʿah*
3. Whether *manfaʿah* has beneficial or legal ownership

As far as the type of ownership is concerned, *milkīyah nāqisah*, which is deficient (incomplete) ownership, is found in *manfaʿah*. Siddiqui (2006) defines it as the ownership of the corpus (*ʿayn*) with the exception of the *manfaʿah* or the ownership of the *manfaʿah* with the exception of the corpus. In *ijārah* contracts, the owner (lessor) of the *ijārah* asset has incomplete ownership over the asset similar to the user (lessee) of that asset. However, the latter possesses only use of the asset or its usufruct and thus has ownership of *manfaʿah* only.

Moreover, *manfaʿah* is of a temporary nature. According to Muslim jurists, if there is any stipulation in the sale contract to transfer its ownership, the contract will become invalid. Al-Zarqā (2004) has explained that ownership of *manfaʿah* is temporary, whereas ownership of an asset cannot be made temporary. Sale of an asset results in its complete ownership by the buyer. However, by analysing the views of jurists as described in the literature, it can be concluded that sale of *manfaʿah* should be permissible because it is the sale of *manfaʿah* in *ijārah* and not sale of the entire asset, although it is of temporary nature and for a stipulated time period. This stipulated period is binding upon the seller if the *manfaʿah* is transferred by an exchange contract as in the case of *ijārah*.

Furthermore, to assess the legal status of ownership of *manfaʿah*, the two types of ownership as discussed in the literature review need to be reiterated. One is the beneficial owner, to whom all the benefits of the asset go, and he is considered as the real owner of that asset (Brown, 2003); while another is the legal owner in whose name the asset is registered (Black, 1968), and he is considered the nominal owner of the asset.

In the opinion of the researchers of this study, based on analysis of the relevant concepts in the literature review and in the light of the views of Sharīʿah scholars, a person having ownership of *manfaʿah* should be allowed to become the legal owner of the asset because registration of name is not the requirement of Sharīʿah. It could be concluded from the statement of Imam Al-Nawawī (2001) that if the sale of an asset is valid through valid offer and acceptance, the buyer will receive legitimate ownership although the legal title is still in the name of someone else. The same has been endorsed by Ethica Institute of Islamic Finance in its handouts stating that the leased asset should be in the name of the lessor because he owns it. However, it can be registered in the name of the lessee if it is needed to meet regulatory requirements (Ethica, 2017).

CONCLUSION AND RECOMMENDATIONS

This study is an attempt to explore the question of *manfaʿah* in *ijārah* financing from a Sharīʿah perspective. It covered two aspects of *manfaʿah*. The first examined whether *manfaʿah* is *māl*. The second examined the legal status of ownership of *manfaʿah*.

For pursuing the above objectives, the researchers applied the qualitative research approach through content analysis by collecting secondary data from the books of *fiqh*. The key findings show that majority of the Sharīʿah jurists consider *manfaʿah* as *māl* like other tangible assets. In line with this, the Shāfiʿī and Ḥanbalī jurists consider usufruct as *māl*. A few of the

Sharīʿah scholars from the Mālikī and Ḥanafī Schools also qualify *manfaʿah* as *māl*. Based on the findings, the researchers concluded that *manfaʿah* should be considered as *māl* because the majority of the jurists consider it as *māl*, and it is the need of today's financial markets.

The study also shows that ownership is an inseparable aspect of *māl*. Analysing the status of ownership of *manfaʿah*, the findings show that ownership of just the *manfaʿah* is incomplete ownership which is temporary by nature. It also finds that the owner of *manfaʿah* can possess its legal ownership.

This study is deemed to help academicians to get deeper insights into the question of whether *manfaʿah* can be considered *māl*, its ownership and accounting treatment in the case of *ijārah*. Furthermore, the current study may assist researchers in analysing the new Islamic accounting standard (FAS-32) by comparing it with the old one (FAS-8), because in the old standard, there was no concept of *manfaʿah* as an asset. Analysis of this study is very significant because the application of the new standard would substantially impact the Islamic finance industry, particularly Islamic capital markets and Islamic banking. From the Islamic capital market's point of view, financial ratios are the basis for Islamic indices; therefore, the changes will have a greater impact on the screening criteria regarding the compliant and non-compliant businesses because treating usufruct as an asset, will entail an increased number of assets being shown on the balance sheet.

Limitations and Future Directions

Along with the significance, the current study still has some limitations that could become a new area of research in the future. This study was limited to the concepts of *māl* and ownership from the Sharīʿah perspective. It does not cover other relevant aspects such as Sharīʿah rulings regarding inheritance, zakat and endowment of usufructs. Moreover, this study used qualitative techniques and content analysis. However, quantitative or mixed techniques and thematic analysis can also be used in the future.

Finally, this study recommends that AAOIFI publish the supporting documents with the issuance of a new standard to assure academicians, researchers and professionals that Sharīʿah principles have not been violated in issuing new standards.

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DECLARATION

Credit Authorship Contribution Statement

- Rahmat Ullah: This research paper is extracted by Mr. Rahmat Ullah from his thesis of MS-IBF which was completed under the supervision of Dr. Irum Saba; draft write up of article.
- Irum Saba: Supervision and review of research article.
- Riaz Ahmad: Research methodology and write up.

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The authors declare that they have no known competing financial interest or personal relationships that could have influenced the research work.

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None

Data Availability

No primary data have been used in this study.

Appendix

None