

Protection of Legal Contracts from Islamic Perspective

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ABSTRACT

A contract is an agreement between two or more people regarding some issues agreed by the parties, which causes legal consequences in the form of rights and obligations for each party. Usually, the contract should be in written form and signed by the parties. General provisions regarding contracts are regulated in Book III of the Civil Code in the Engagement Chapter. A contract is one of the sources of engagement (Al-Iltizam) in Islam. While other engagement sources are regulations, laws, *syara'*, etc. This legal research used a normative juridical approach. Data was collected through literature and then analyzed qualitatively. The results of the study showed several problems in implementing the contract. It is permissible for the parties to use the principle of kinship and deliberation. As long as it does not contradict the applicable law, the principle is valid to be used as contracts. As the consequence of the rights and obligations in the contract not being fulfilled, the interested parties can request the authorized court institution to cancel the contract. In conclusion, a contract must be created in balance considering the position of the parties, rights and obligations.

Keywords: *legal protection, contract, Islamic perspectives*

1. INTRODUCTION

Islamic economics has rapidly developed recently. In the past three decades, there has been progressing, both in the form of academic studies in higher institutions and operational practices. **Studies on Islamic economics have been widely conducted in various state and private universities.** Meanwhile, in practice, the Islamic economy has developed in the form of banking and financial institutions as well as non-banking Islamic economics.

Seeing the increasingly wide and diverse business patterns of the Islamic economy, the aspects of legal protection and application of the principle of agreement in the contract at the Sharia Financial Institution become crucial efforts to implement. In terms of the implementation, Islamic economic actors and users must carry out their activities based on sharia. The pattern of relationships based on the desire to enforce the sharia system is believed to be a pattern of strong relationships between banks and customers.

The pattern of relationships between the parties involved in the Islamic Financial Institution is determined by the contractual relationship. The contract underlying all these transactions is what distinguishes it from Conventional Financial Institutions because the contract applied in sharia banking and other non-banking Islamic financial institutions, has worldly and *ukhrawi* (hereafter) consequences [1]. In applying this contractual relationship pattern, there should not be any deviation from the agreement made by both parties

because each party is aware of the responsibility of the contract.

The contract is also called an agreement, namely the meeting of *Ijab* granted by one party with a *qabul* granted by the other party legally according to sharia law, and has an effect on the subject and object [2]. In the implementation of contracts in Islamic Financial Institutions, disputes often occur triggered by the condition of one of the parties feeling aggrieved. This may occur due to the principles of the agreement in the contract were not implemented.

Muamalah fiqh states the meaning of a contract agreement originated in the chapter discussing the *akad*. Linguistic understanding of the *akad* has the meaning of 'ar-rabthu' which is interpreted as to connect or associate, and tie between several ends of something. Etymologically, an *akad*, among other things, means a bond between two cases, both a tangible and meaningful bond, from one or two aspects. Specifically, the *akad* is defined as an agreement that is determined by an *ijab-qabul* based on the provisions of sharia which affects the object [3].

In line with the conditions above, this study aims to examine the contract law in Islam, the principles of a contract and how the contract is implemented based on sharia to protect the parties involved.

The study employed the normative juridical method using secondary data.

2. Contract Law In Islam (Sharia Contract)

A contract, according to the term, is an agreement or a joint commitment either verbally, in a sign, or in writing between two or more parties that have binding legal implications for implementing it. In Islamic law, the term of the contract is not distinguished from agreement; both are identical and called a contract. So, in this case, the contract is defined as a meeting of *Ijab* granted by one party with the *Kabul* from the other party legally according to sharia, which appears due to the legal effect on the object. [3]

Thus, the term sharia, contract law, here refers to the whole of the legal norms governing legal relations in *muamalah* (dealings under Islamic law), especially behavior in running economic relations between two or more parties based on an agreement to cause legal consequences in writing based on Islamic law. The rules of law that are directly related to the concept of sharia contract law are sourced from the Qur'an and the Hadith as well as the results of interpretation of both and the principles of jurisprudence. [4]

In this case, the legal norms contained in the Qanun can also be used, namely the laws and regulations that have been enacted by the central and regional government and jurisprudence, as well as legal regulations that do not conflict with the Islamic law. The pre-contractual stage in sharia contract law is the act before the contract occurs, namely the meeting of *ijab* and *qabul*, while the post-contractual stage is the implementation of the agreement, including the legal consequences of the contract.

Islam views that action must always be intended because of Allah. Good intentions because of God must then be realized in the form of deeds following the provisions of sharia set by God. To achieve the goal, an intention or will needs to be followed up by actions. The purpose of drafting a contract is to be conditioned by the contract itself.

It is said so because the objectives to be achieved in the preparation of the contract are determined by the type of contract to be used. The purpose of presenting the contractual arrangement physically and mentally at the beginning of the contract is expected to demand more sincerity of each party involved so that the purpose of the contract itself can be achieved.

3. Principles in Sharia Contracts

In sharia contract law, there are principles of agreement underlying the enforcement and implementation. The principles of the agreement are classified into the principles of the agreement that have no legal effect and are generally applicable, and the principles with a legal and special effect. The principles of the agreement that have no legal or general consequences are as follows [5].

- 1) Divine Principle or Principle of Monotheism
As a result of the application of this principle, humans will not do as they please because all their actions will be rewarded by Allah.
- 2) Principle of Skills

This principle determines that Islam provides broad opportunities for stakeholders to develop new forms and types of transactions in accordance with the times and the needs of society.

3) Principle of Justice

In this principle, the parties of the contract are required to express the will correctly and circumstances, fulfil the agreements made, and fulfil all their obligations.

4) Principle of Equality

In conducting contracts, the parties determine their respective rights and obligations based on the principle of equality. There will be no tyranny committed in the contract.

5) Principle of Honesty and Confidence

If honesty is not applied in the contract, it will damage the legality of the contract and cause disputes between the parties.

6) Written Principle

An agreement should be made in writing so that it can be used as evidence if a dispute later happens.

7) The principle of good faith

This principle implies that the parties in an agreement must carry out the substance of the contract based on trust or firm belief and goodwill of the parties to achieve the agreement's objectives.

8) Principle of Benefit

This principle implies that all forms of agreements made must bring benefit to both parties bound in the agreement and to the surrounding community, even though there are no provisions in the Qur'an and Hadith.

9) Freedom Principle of Contract

Islam gives freedom to the parties to make an agreement. The parties determine the form and content of the agreement.

10) The principle of agreement is binding

Muslims are bound to their agreements (clauses), except the agreements (clauses) that forbid the halal or justify the unlawful.

11) Principle of Legal Certainty

The principle of legal certainty that no action can be punished, except for the strength of the existing provisions of the legislation.

4. Implementation of Contract in Sharia Contracts

In the context of establishing a sharia contract, there are basic principles that have been determined by the name and legal provisions in *fiqh* (musamma). To facilitate understanding, the basics of a contract are generally divided into contracts of exchange, fellowship, and trust [6], which can be described as follows :

1) Exchange Contract

Ownership of property is by an exchange method according to Islamic rules. In the Islamic Civil Code, the meaning of the sale and purchase agreement is an exchange between assets with assets, may be binding (*mun'aqid*) and not binding (*ghair mun'aqid*).

In principle, a contract is valid if it has fulfilled the pillars and conditions set by Islamic law. Conversely,

the contract is said to be non-binding if there is no legal certainty (*ghairu lazim*). The implementation of this exchange contract is:

- a. Buying and Selling, consisting of *Murabahah*, Buying and Selling Shares, and Buying and Selling *Istishna*
- b. Leasing (*al-ijarah*)

2) Partnership Contract

God (Allah) has determined the livelihoods of the world and elevated some others to the degree that they need each other. The different ability to run a business based on individual circumstances will foster an interdependence attitude. Thus, to meet these needs, a partnership or a corporation (*syirkah*) is needed, which are:

- a. *Musyarakah*
- b. *Mudharabah*
- c. *Musaqah* and *Mukhabarah*

3) Contract of Confidence

Sharia contracts are not only related to exchange and partnership agreements but also contracts that provide confidence (trust). With trust, it is possible for someone to get help from others (*tabarru'*) which can be:

- a. Trust related to lending assets.
- b. Trust related to providing service loans. [7]

In principle, the implementation of the contract in Islam must adhere to the provisions of the sharia principle, namely no usury, speculation and obscurity.

From the Islamic law perspective, as agreed by Islamic legal experts (*fuqaha*), the word "*akad* (contract)" is defined as the relationship between *ijab* and *qabul* following the will of the sharia, which establishes the influence (effect) of the law in the object of the engagement. The formulation of the contract indicates that the agreement must be an agreement of both parties to bind them concerning the act to conduct in a special case. This contract is realized, first, in *ijab* and *qabul*. Second is according to the will of the sharia. Third, there are legal consequences on the binding object [8].

Along with the rapid development of sharia-based economic institutions, sufficient legal protection is needed in regulating business activities, especially sharia-based contracts. It is inadequate to rely on legal doctrine (*fiqh*) merely.

5. CONCLUSION

In principle, the implementation of the contract in Islam must be based on the provisions of the sharia principle, namely no usury, speculation and obscurity. The implementation of contracts in Islam provides freedom to the parties as long as it does not conflict with the principles and objectives of Islamic law. Islam provides broad opportunities for stakeholders to develop new forms and types of transactions based on the times and the needs of society. As for the protection of the parties in the implementation of contracts in Islam, the parties are required to fulfill all their rights and obligations.

The principle of honesty in an Islamic contract, if not applied in the contract, will damage the legality of the contract and cause disputes between the parties. In addition, the contract made in an Islamic perspective must bring benefits to both parties bound in the agreement and to the surrounding community following the provisions in the Qur'an and Hadith.

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