

AL ITTIFAQ PRINCIPLES IN CONTRACT LAW TRANSCENDENTAL PHILOSOPHICAL PERSPECTIVE

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Abstract

Contract law is part of civil law, which in fiqh is included in muamalah fiqh. This regulation regarding contract is subject to the Civil Code, which should be based on established principles. One of the principles is the principle of agreement (al ittifaq) or the principle of consensualism. This manuscript intended to explain the principle of al ittifaq (consensualism) from the perspective of transcendental philosophy. This research was a desk research, so the data source was secondary data, which was collected through identification and recording of relevant data that can be used to answer the research purposes. Data analysis using the perspective of transcendental philosophy which was based on the relationship of reason and revelation. The results showed that the principle of al ittifaq (consensualism) was the result of human thought based on the arguments of revelation as in Q.S. An Nisa /4 : 29, Q.S. Al Maidah /5 : 1, Q.S. Ali Imron/3 : 159. The result of that thought resulted in fiqh rules as contractual principles. The novelty of this research was the hybridization of the values of Islamic law into positive civil law which should be conducted to give positive law more conscientious and fair. It will reflect Pancasila values which is the source of national law

Keywords: *Al Ittifaq Principles, Contract Law, Transcendental Philosophy.*

INTRODUCTION

The term *contract law* (UK), or *overeenscomstrecht* (Netherlands) is in terminology a legally binding agreement between two or more parties that is binding, giving rise to rights and obligations, to be considered legally valid. (Siagian, 2017) The term contract law is known in the Anglo Saxon legal system/*Common Law System*, in the Continental European legal system / Civil Law System is usually often referred to as treaty law, which in the Civil Code is regulated in Book 3 on engagement. The distinction of these two legal systems at this time is not very strict, both of them give each other influence. This is because the law is moving not static, the law always follows the flow of social development, especially in this era of globalization (Irianto, 2009)

Contract law in *the common law system* can be classified based on its enforceability as follows: (Jain, 2016)

1. Valid contracts are valid contracts, i.e. contracts that meet the essential elements of a contract according to the law, so that these contracts are enforced in law.
2. Voidable contracts, i.e. contracts that can be canceled, mean that the contract can be rejected by either party to the contract, but until the contract is canceled, the contract remains valid and binding.
3. Void contracts, which are contracts that are void, meaning contracts that cease to apply.

4. Illegal contracts, i.e. unauthorized contracts, i.e. do not meet the conditions set by law.
5. Unenforceable contracts are contracts that cannot be enforced because there are technical defects such as a contract that should be stamped but there is no stamp duty.

Based on the classification of the contract, then in this manuscript discussed is a valid contract (valid contract). Such a contract is a contract that meets subjective conditions and objective conditions in Article 1320 of the Civil Code. The subjective condition is normatively (Article 1320 of the Civil Code) is the word agreement and legal acting ability for the parties, while the objective conditions consist of first there is a promised object and second, the object must be halal meaning that the object of the agreement It does not conflict with law, decency and public order. This agreement in Islamic law is called *al ittifaq* or *al ridhaiyyah* and this agreement as a fundamental element in contract, besides there is one fundamental principle that is freedom of contract or *al huriyah*. In common law literature freedom of contract is also referred to as the freedom of contract, the term is more often used than the term liberty of contract or party autonomy, although it is a synonym of the first term. Civil law literature, the principle of freedom of contract is called the principle of private autonomy.

The phenomenon that occurs that the term contract is familiar in society, let alone in the business world. Contract as a tool to be a reference in running a business with its relationships. However, it is not uncommon for disputes to arise in the implementation of the contract, even though the contract is in accordance with the conditions (objective and subjective) set normatively. Usually the occurrence of disputes in this contract, because the contents of the contract are not fulfilled by the party who has an obligation to do something in accordance with the contract nisi. Settlements that do not meet the contents of contracts in the business world are never resolved in litigation but tend to be resolved through negotiation or mediation. Stewart Macaulay, a professor of contract law, stated that in the contract there is a real agreement and a written agreement ("the real deal" and "the paper deal"), these two agreements differ in practice in the community, because the parties to the contract often deviate from the formal documents of the contract that has been made, Especially, if there is a dispute. The parties to the contract will make a new deal that is less formal and may not even be formal, meaning that the parties will make a new contract that may be unwritten, but in accordance with the context, which is in accordance with what the parties want. In this case it means there is a new agreement as a settlement of that dispute. (Bix, 2013) This research shows that agreement in contracting is the key to maintaining relationship harmony especially in terms of business relationships.

So according to the author that the nature of the contract is a deal. Technicality is commonly used in our society to reach this agreement with deliberation, and it is already institutionalized in the community. Koichi Kawamura in his research stated that deliberation for the people of Indonesia has become customary and even customary law as a way of taking whiteness. This deliberation is done to reach a consensus, in other words the existence of one agreement in a decision. Decision-making with deliberation to go to this consensus not only at the level of rural communities, but has been cultured up to the national level in parliament. (Koichi Kawamura, 2011) Deliberation to go to consensus in addition to the values that live in society, this is also God's command that in solving the problems of life, humans are commanded to consult. This command is as in the Qur'an (hereinafter written Q.S.) Al Shuraa / 42: 38 which means "..... Their affairs were decided with the discussion..... "Those who are meant by this verse are the faithful mankind. Resolving a problem with this agreement means peace between the parties (at least two parties). A philosopher of the Aufklarung period Immanuel Kant said that religion is important in human life, because it promotes morals, so human actions must be based on morals. (Taylor, 2010) Furthermore he is of the view that religion is the source of morals as a principle and guide of humans in taking action including in realizing lasting peace. (Buddeberg, 2019).

Based on Immanuel Kant's view, if drawn in the life of the individual in contracting to make a deal (*al ittifaq*), in order to realize harmony / peace in the process of interaction with others, then the agreement must be based on morals derived from religion. As for religion is the

teaching of the highest dzat (The Khaliq who in Islam is Allah SWT).

With regard to the importance of the agreement or *al ittifaq* in the contract, and containing the moral values derived from the highest Dzat, then the problem in the manuscript can be formulated how *al ittifaq* in the contract law of the transcendental philosophical perspective?

RESEARCH METHOD

This manuscript is the result of literature research with a normative-philosophical approach, because it will critically preach the principle of *al ittifaq* in contracting. (Hadi, 1993). The main data of the study was sourced from literature both directly related to the issues studied and those that are not directly related, but are still relevant. This data was in the form of references, journals and legal documents. Technical collection through the examination of identified data sources that were relevant either directly or indirectly, after which a grouping and recording (recording) of data that was said directly and indirectly, as a source for discussion. Data analysis used the transcendental philosophical perspective put forward by Islamic philosopher Mulla Sadra, by discussing the *ittifaq* principle in contract law as a rational idea of man that correlates with God's revelation, as a manifestation in carrying out his God's commandments. (Fathurrahman, 2018)

DISCUSS AND ANALYSIS

Transcendental Philosophy of a Brief Dextription

Philosophy was historically born and developed by Greek philosophers around the 7th century BC, who later born Muslim thinkers in the field of philosophy approximately 13th century (between 650-1250 AD. Philosophy is commonly said to be the parent of science, so that as a science of knowledge philosophy has material objects and forma objects. The object of philosophical study is materially something that exists and may also exist in the universe, whereas forma that philosophy as a point of view, by looking deeply about the true nature that exists and may exist in the universe. (Darmodiharjo, 2002)

Transcendental terminology means that it exceeds its usual limits. The term transcendent has been coined by Western philosophers, one of whom is Immanuel Kant. Transcendent is human knowledge or ability beyond his cognition, but he also says that the highest idea of reason is transcendent. (Daniel, 2021) Or in other words transcendent means the movement of certain objects from phenomena beyond the limits of human experience and reason. (Katrechko, 2016) So the transcendental philosophy is a study of the nature of an object of science that not only bases human ratios but also bases on things that are beyond the limits of human reason / ratio, namely in the form of spiritual enlightenment / intuitive that is revealed in the Word of God as divine values.

Western philosophy is often referred to as secular philosophy, since it is based only on the ratio of reason so it is called rational philosophy, although some western philosophers have tried to associate religion with the ratio in its philosophy, such as Immanuel Kant, but it is still considered a secular philosophy. Some Islamic philosophers agree that religion (Islam) and ratios are like two sides of a currency that can be distinguished but cannot be separated, so these two things show harmony. Thus Islamic philosophy is the answer to the Qur'an's call to all mankind to use God-given reason to seek and discover the truth within the limits of human mental power.

In the Islamic realm there are also many philosophers who are born and develop thoughts about reason and revelation, one of which is Ibn Rushd or commonly called Averoes, in thought, he explains the relationship between reason and religion (integration between reason and revelation), that reason as wisdom and religion as sharia (Quran and Hadith) which is the basis of human life. Both (reason and religion) to attain truth, only the methods to attain his truth are different. He argued that human in religion without using reason, and vice versa, then man will have no meaning in his life or waste. (Habti, 2011) The problem of reason as an advantage of man compared to other beings in the Word - is God as in Q.S. Al Isra' /17:70, Q.S. At Thiin / 95 : 4, that man was created by Allah SWT as a perfect creature or in the best form . With this

reason man is obliged to study using his mind, so that he can think about events that occur by God, such as events day and night. Man is obliged to study, so this useful reason is in the Sunnah of the Apostle as follows: "A'l Ulamaa u warotsatul anbiyyaa, wainnal anbiyyaa lam yuwarrotsuu diinaaron walla dirhamun, walakin warrotsuul i'lma, faman akhoduhu akhodu bi hadzhon wa firin". Which means the scholars are the heirs of the prophets, in fact the prophets do not bequeath dinars or dirhams, but the prophets pass on knowledge. So whoever takes it, he has taken enough." [HR. Abu Dawud, at-Tirmidhi, and Ibn Majah).

This thought of reason and religion was developed by the Persian Philosopher, who was later said to be the leader of the cultural revival in 17th century Iran. Mulla Shadra, whose thinking was able to combine Between Islamic doctrine and Western philosophical thought, he was born in Iraq 1571 and died in 1635. His full name is Shadr Al-Din Muhammad Ibn Ibrahim Ibn Yahya Qawami Al-Syirazi, he was born in Shiraz. This thought is called *al-Hikmah al-Mutā'aliah fi al-Asfar al-qAqliyyaal-Arba'a - Transcendent Philosophy*, which in philosophical literature is commonly called *al-Hikmah al-Mutā'aliah* or transcendental philosophy. This work tells about the journey of human reason consisting of four levels, namely the *first* journey from the world of the creation of the Khaliq to the visible world that is the universe. This journey is taken by empirical experience by understanding the diversity that exists in the universe as a *second way* to true truth through the truth of knowledge by seeing the diversity of His creation which did not happen by chance. This is the stage of human transedence thinking. *The three* human journeys that see religiousness as a manifestation of the Khaliq's absolute distress. *Fourth*, travel together with the True One (Allah) in the world of creation. (Fauziah Nurdin, 2019)

Further explained by him that the concept of *al-Hikmah al-Mutā'aliah* that philosophy is based on three principles, namely intuitive intellectual /*syaq* (spiritual enlightenment), which is presented in rational form using rational arguments (knowledge of cognition). He stated that reason and religion intertwine, meaning man to know his life in three ways, namely through spiritual, rationalistas and shari'ah. These three things cannot be separated or stand alone but these three things are mutually influential in shaping human life (Nurkhalis, 2011) Furthermore, he explained about the way humans acquire knowledge by relying on three things, namely revelation, reason and intellect. His thinking not only relies on the rational side but also recognizes the existence of knowledge of God that shows The Existence (existing) is referred to as objective existence or *al-Wujud al-'Ainy*, that the existence of God and the knowledge of God is objective and absolute truth. While humans as a form (there is) a mental existence (*al-wujud al-dzihny*), that human knowledge is relative and the truth needs to be tested because human knowledge is obtained through cognition which is then transformed / realized in the real world, which will show its existence as a human being. The transformation of form into the reality of life can only be achieved if it follows sharia, which is god's absolute knowledge of truth, so it is objective. Therefore he is of the view that existence exists earlier than the essence, and esensi would have no meaning without existence, so his philosophy is called islamic philosophy of *inktisency*. In this form he explained that there is a substantial Being, which exists and that holds that of God, and a form that is in the form of a creature as his creation. (Arsyad, 2017)

So basically Mulla Shadra argues that perfect knowledge is rational knowledge combined with spiritual experience that can be achieved by people who follow the texts of the Qur'an and Hadith. The source of knowledge is the text of the Qur'an, the hadith of the prophet and the words of the imams, combined with the experience of intuition and reasoning of reason. (Arifa, 2017)

Shari'ah (revelation), not only regulates the problem of *mahdhoh worship*, but also *ghairu mahdhoh*. The concept of two worship in general is, mahdhoh worship is worship that is only related to the relationship with Allah SWT, while *the worship of ghairu mahdhoh*, which is worship that is not only related to the relationship with the Khaliq but also concerns relationships with others in all areas of life such as akhlaq, the law of mu'amalah (marriage, banking, criminal law and others). Therefore this shari'ah or revelation in Islamic philosophy

laszim is referred to as the basis of knowledge, which can even be applied in every human activity / action, in which there is an interpretation of the sharia. Kuntowijoyo called the method of interpretation objectification. (Kuntowijoyo, 2006) It means that the values in the teachings of Shari'ah (revelation) are interpreted in general, so that all people can accept it without having to know the source of the origin of the value. Objectification is important, especially in heterogeneous societies both in terms of religion / belief and culture such as Indonesia. Although Indonesia constitutionally recognizes the existence of God Almighty as the basis of the state, this does not show one God Almighty recognized by one of the religions. Interpretation of sharia principles in a ratio in human life (not in the life of worship) to realize the welfare of the ummah (*rahmatan lil' alamin*) to go *baladatan thayyibatun*.

The interpretation of sharia values in human life for Indonesian people is viewed from the perspective of Pancasila instead of something that is not in accordance with the soul of the nation's personality. Indonesian society in general recognizes and embodies the values of divinity consciously or unconsciously in human life. This is if it is associated with the life of the state of sharia formalization for every human action in the previous life or not possible. This is because Indonesian people live various religions. Therefore, interpreters are indispensable to carry out the ethos of sharia. (Jurdi, 2008)

Based on the above exposure shows that the transcendent approach in the field of law enforcement starting from the formulation stage, the application up to the execution stages is not new, but has become the philosophical view of the nation in every action included in the action at every stage - the stage of law enforcement, should be oriented to the values of divinity by correctly defining it.

Al Ittifaq Principles in Contract Law Perspectives Transedental Philosophy

Contract law or treaty law has principles that must be fulfilled, so that the contract or agreement becomes valid. One of the principles that must be fulfilled must not be the principle of an agreement between two parties. This in civil law science is referred to as the principle of consensualism, which is an agreement between the parties to bind themselves to a treaty. This principle is a fundamental principle for the validity of a treaty, because judging from the nature of the agreement itself both in normative, terminology and jurists, especially civil law, namely as an agreement of at least two parties to do or not do anything. It is not wrong if in Article 132 of the Civil Code mentioned if the agreement becomes a condition of the validity of the agreement. As an emphasis on whatever has been agreed, it will become law for the parties who have agreed to it (Article 1338 of the Civil Code paragraph 1). In addition to being a condition of the agreement, the principle of consent / *Al Ittifaq* as a means to prevent the occurrence of wanprestasi, because the parties already know and understand the contents of the agreement. (Isdian Anggraeny, 2020) Thus the element of khilaf can be minimized in the agreement, so that the non-fulfillment of the terms of the agreement can be avoided or prevented as early as possible. (Fajaruddin, July - December 2017). This element of error renders the treaty to have no legal force, as affirmed in Article 1321 of the Civil Code that "*No consent has any power if granted by mistake or obtained by force or deception.*" (The Legal Documentation and Information Network of the Indonesian Supreme Law (KUHPerdata), tt).

Contracts or agreements in Islamic law fall into the field of muamalah jurisprudence, the term is called *al aqd* (Arabic), which ethiopianly has the meaning of alliances, agreements, agreements (*al ittifaq*), with the *sighat al aqd* (*ijab* and *kabul*) marked by the pleasure of both parties. It means a statement (*ijab*) that shows his pleasure / willingness to accept (*qabul*) something obligation. Of course for this *ijab* and *qabul* *shah* according to *fikih mu'amalah* there are several conditions, namely (a) *Al-'Aqidain*, that there are parties directly involved with the contract; (b) *Mahallul Aqad*, i.e. the existence of an akad object, meaning that there is an object to be said; (c) *Sighat Aqad*, the statement of the sentence of the contract which is usually carried out through the statement of *ijab* and *qabul*; (d) *Maudhu al Aqad*, i.e. the purpose of the contract. (Anwar, 2007) Terms / pillars of letter c *sighat aqad* or which in civil law statement agreed from both parties, known as the principle of consensualism. That condition is the most

decisive condition for the existence of pleasure or willingness which, in concrete form, the word agrees by the parties.

Muammalah fiqh determines also the contract / transaction prohibited by syar'i i that is a contract containing (1) tyranny, meaning that in the contract denies or negates the existence of consensual elements, meaning that there is no free will of both, so that the principle of agreement is not obtained with freedom, but it could be due to the existence of such compulsion. (2) *Gharar* /fraud can occur in terms of quality, quantity or it can also be in terms of price or time of delivery, (3) Riba is the addition of the value of certain goods and the addition of the amount of payment on the debt. (4) *Risywah* or bribery is the gift of something with the aim of undoing something that is true or justifying something that is false. (5) Gambling is prohibited because there is no clarity about the acquisition of money / property. (6) The validity of the contract means that it is not fulfilled the requirements of the contract that has been assigned by jurisprudence. (Azhari, 2015).

The conditions specified by this jurisprudence are the result of human reason based on the revelation and sunnah of the Messenger, called jurisprudence (Islamic *jurisprudence*). This means that the jurisprudent is the result of the thought of Islamic jurists through *ijtihad*, which deals with legal issues – sharak law which is an act based on the propositions of sharia (revelation & sunnah Rasul) in detail. Therefore the truth of jurispruding is relative and its nature is dynamic in accordance with the developments that occur in society. This is because the disclaimer of experts cannot be separated from the values that live in society, so if that value changes then the interpreter of jurispruding will also develop according to that value. (Syarif, 2012).

Because the thoughts of these Islamic jurists gave birth to rules or principles or principles in jurispruding (al Qawā'id al Fiqhiyah), which are different in every field of law. In muammalah jurisprudent, especially the issue of the field of agreement or contract there are several rules on which the principle of contracting, especially those that intersect with the principle of consensualism (*mabda' ar-radha'iyyah*) which is based on agreement. There are several rules related to the problem, but below are only presented the rules that relate directly to the issue of agreement (*ittifaq* principle). The rules are as follows: (Djazuli, 2014).

1. *Al aslu bil 'uqadi ridhā al muta'aqidzaini wa nataijatuhu mā itazamāhu bitaa'uqudi.*" This means that the original law in the transaction is the pleasure of both parties transacting, the result is san and binding both parties to the transacted dictum.
2. *'Albathilu laa yaqbalu ila jazata.*" This means that transactions that are void (because they do not violate the terms or conditions do not turn out to be valid because they are allowed.
3. *"Idza batha la syaiun bathala maa dhaminatu.*" This means that if the transaction is canceled, it will also automatically cancel the dictum - dictum in the transaction.

Based on the above rules it is clear that the agreement without coercion is a pillar / condition that must be fulfilled in the transaction. Fiqh muammalah refers to the pillars with the term mada' ar - radh'iyyah which is interpreted as the same as the principle of consensualism (*mabda' ar -radha'iyyah* which is essentially contained the principle of *ittifaq*. The birth of these rules of jurisprudence is based on revelations such as several letters in the Qur'an, among others:

1. Q.S. An Nisa /4: 29: "..... ā ta'kulū amwālakum bainakum bil-bāṭili illā an takūna tijāratan 'an tarādim mingkum.... "It means "..... Do not eat each other's property in a beautiful way, except by the business that happens with consensuality between you.

This verse at least teaches mankind to strive according to the Shari'ah and to avoid the efforts forbidden by Allah. And in doing business there should be no compulsion must be consensual meaning must be mutual will and agreement. (Moctar, 2012).

2. Q.S. Al Maidah /5: 1: "Yā ayyuhallažīna āmanū aufū bil-'uqud," O you who believe, fulfill the aqad aqad (promises). It contains a command that the faithful human race to fulfill its promises are both promises to Allah SWT about carrying out his commandments and abandoning his prohibitions, as well as promises to mankind in peace. (Alquranmulia.com, tt)

3. Q.S. Al Baqarah /2: 282: "Yā ayyuhallażīna āmanū iżā tadāyantum bidainin ilā ajalim musamman faktubūh, walyaktub bainakum kātibum bil-'adli wa lā ya'ba kātibun ay yaktuba kamā 'allamahullāhu falyaktub," That is, O you who believe, if you do not do charity for the appointed time, let you write it down. And let a writer among you write it correctly. And let not the writer refuse to write it as God taught him. This verse basically God commands the faithful mankind to make a note, if in matters of worldly affairs (receivable debts are not done in cash. This as a basis can be used to make a deed of association.

These verses of the Qur'an as a proposition or legal basis that the will of both parties in the affairs of the covenant is the main thing, because this will determine the agreement in accordance with the pillars of the agreement whether not, in other words the agreement is valid or not. God also commanded mankind to be in peace with his fellow human beings to consult, to make an agreement. This is as in Q.S. Ali Imron/3:159 and Q.S. As – Sura/42: 38.

Based on the verses above the principle of *al ittifaq* is a principle born from the source of the Verses of the Qur'an which then with human reason the principle is transformed in the concrete life of man in the form of the act of making a contract with his neighbor. This principle is then accommodated as a principle in the manufacture of contracts that must be adhered to, because it is formulated in the Civil Code. This interpretation is what Kuntowijoyo calls objectivation, as the author describes in the previous paragraph. With this interpretation the public does not know the origin of the source of the principle of consensualism, which is actually derived from the Word of God, so that the co-commissioning of Islamic law in the life of mu'amalah does not need to get concrete recognition from the community, but it has shown the contribution of Islamic law in the principle of law (civil).

Chiba, in his view of the *Triangle concepts of law* states that official law, i.e. the law established by the legitimate authority of a country or also referred to as positive law. Potential elements of this official law are religious norms and customary norms in society, both of which undergo a dialectical process, which results in official law. (Menski, 2012) The results of this dialectic directly or indirectly color the law formed both on the side of the principle underlying the regulation and in terms of the substance it regulates. Chiba's view of customary norms as a potential source of official law, recalls Eugen Ehrlich's view of his concept of living law. He stated that the law of living is "law is a social phenomenon that takes place and functions in society; and on the other hand, law is a phenomenon that exists in the time dimension." (Karvatska, 2017).

Customary norms as the source of this country's law already have normative recognition in the constitution, namely Article 18 B of the 1945 State Constitution as follows:

1. The State recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of the peoples and principles of the Unitary State of the Republic of Indonesia, which are stipulated in the law.
2. The customary norms that live in this community are not neutral without influence, but it also gets influence from the religion that becomes the belief of the local community. Religions whose influence is quite significant are Islam and Hinduism, so the values of the two religions, especially Islam, will be seen once in the community. (Wiludjeng, 2020) Therefore it is generally said that this customary norm or customary law has characteristics including religious - magical in addition to communal. Togetherness and avoiding disputes are the main basis in life, so individuals always put forward deliberation in the resolution of conflicts that occur, the key word is agreement.

Esmi Warasish is of the view that the law has a spiritual side, only this side is often forgotten by academics and legal practitioners. This spiritualization side contributes tremendously in law enforcement from the formulation stage to the application stage, so that the law becomes criminal, humanist and equitable, if this side is hybridized into law. (Warasish, 2016) Customary law as the original law of Indonesian society has transcendent value derived from Islamic teachings. The results of research from Dinar Fatmawati showed that the phenomenon in the community that Islamic teachings are well received and can blend with local

wisdom, so that in making Islamic human civilization as a filter of local wisdom. (Fatmawati, 2021) The view of the two experts mentioned is directly or indirectly that human actions in law not only not only depend on reason / ratio, but religious teachings can be included in the act of law.

CLOSURE

Conclusion

One of the focuses of civil law studies is the field of treaty law or contract law, whose terms for making an agreement have been determined by the Civil Code, one of the conditions is the existence of an agreement between the parties to the agreement. This condition is called the principle of consensualism or prinsip *al-ittifaq*. In the philosophical perspective transcendental principle is not purely from the result of human ratio but is the fusion of the results of reasoned thought with revelation or shari'ah. Based on the results of the thoughts of Islamic jurists that the Word of Allah as described above is like, Q.S. An Nisa /4: 29, Q.S. Al Maidah / 5 : 1, Q.S. Ali Imron / 3 : 159, and others, using the Ijtihad method, shows the existence of the rules of jurisprudent especially in contracting. One of the rules that must be fulfilled is "*Al aslu bil 'uqadi ridhā al muta'qidzaini wa nataijatuhu mā itazamāhu bitaa'uqudi.*" "The law of origin in the transaction is the pleasure of both parties transacting, the result is san and binding both parties to the transacted dictum." Pleasure in this case is the volunteerism of both parties who contract, so both parties who contract have the freedom to agree on the contents of the contract. If there is a party who terminates the contract in coercion or compulsion the contract will become void or invalid. This rule of jurisprudent from the point of view of transedental philosophy transformed into a more general language can be distmified by society at large into the basis of the contract i.e. agreement or ittifaq, which in agreement contains volunteerism. This principle is accepted as a principle of contract law in the field of civil law under the name of the principle of consensualism. National law recognizes and applies this perinsip in every human being who will contract. So this principle is a hybridization of Islamic law and possibly customary law as well.

Suggestion

The principle of Al Ittifaq or consensualism should be understood by the parties who make the covenant, so that the parties should keep what has been promised, as a form of obedience to God's commandments.

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