

TERMS OF THE CONTRACT IN THE VALIDITY OF MUAMALAT

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Abstract: *Contract arrangements are an important aspect of the validity of muamalat, especially in the context of sharia law. A contract is an agreement between two mutually binding parties to perform an action or provide an item or service. In the context of muamalat, a contract is an agreement between parties who wish to carry out a transaction that is lawful and in accordance with sharia principles, covering several aspects, including an agreement between the two parties, the object of the transaction that is lawful and in accordance with sharia principles, and other provisions in accordance with sharia law. In this case, the parties must understand and agree on the contents of the contract clearly and in detail, so that disputes do not occur in the future. Besides that, Contract arrangements in the validity of muamalat must also pay attention to the applicable muamalah principles, such as fairness, openness and equality. The contract made must be fair for both parties, not detrimental to either party, and does not violate sharia principles. If there is a dispute or disagreement between the two parties regarding the contents of the contract, the settlement must be carried out in ways that are in accordance with sharia law, such as through a process of deliberation or arbitration. In conclusion, the arrangement of contracts in the validity of muamalat is very important to ensure that the transactions carried out are in accordance with sharia principles and do not violate sharia law.*

Keywords: *contract, validity, muamalat, Islamic law*

Introduction

The development of the Islamic economy today is progressing very rapidly, and it cannot be denied that the existence of Islamic financial institutions, especially Islamic banks, has become something that is needed by Muslims, even at a practical level for many non-Muslims who have joined the world. Shari'ah banking both as investors and as customers. They think that Islamic banks provide more security guarantees for their money and are more resistant to economic recessions, even though their motives are based solely on profit.

In Islamic financial institutions, the contract that is made has worldly and ukhrawi consequences because the contract is carried out based on Islamic law. Any product that is produced, including Islamic banking, will not be separated from the transaction process, which in muamalah fiqh terms is called 'aqd, the plural of which is al-'uqud. Islamic law, as one of the legal systems that is a source of raw material for the preparation of national laws, contains quite a number of universal principles. These principles are used to formulate our national legislation, particularly in the area of contract law. This relates to the function of the contract as a concrete form of Islamic banking activity. Things that are considered important in the application of the principles of Islamic engagement law into state legislation that regulates Islamic banking are the use of these principles in contract clauses and their application and implementation in daily Islamic banking activities that are not only in accordance with sharia principles but also comply with Indonesian positive law. Islamic banks as a financial institution will be involved with

various types of Islamic trading contracts. All elements of the contract must have clear Sharia principles and guidelines.

In carrying out a muamalah activity, Islam also regulates the terms of the engagement (contract). The provisions of this contract, of course, also apply to the activities of Islamic financial institutions, including Islamic banks. Therefore, based on the description above, the study discussed in this article is the concept of contract arrangements in the validity of muamalah. In this aspect, it is explained in detail about the pleasure in contracts, avoiding transactions that tend to be gambling and full of speculation, and its relation to the principles of maqashid sharia.

Literature Review

A number of studies and literature reviews have been conducted regarding contractual arrangements and the validity of muamalat. Some of them are:

1. "The Role of Contract in Islamic Finance: Theory and Practice" by Mohammad Omar Farooq
This study discusses contracts in the context of Islamic finance and how these contracts can ensure compliance with sharia principles in financial transactions.
2. "Legal and Shariah Aspects of Contracts in Islamic Finance" by Muhammad Akram Khan
This study discusses legal and sharia aspects of Islamic financial contracts and how these contracts must comply with applicable muamalah principles.
3. "Contractual Principles and Islamic Finance Transactions" by Mahmoud A. El-Gamal
This study discusses the principles of contracts in Islamic financial transactions and how these contracts must reflect the principles of fairness and equality for both parties.
4. "The Islamic Law of Contract" by Mashood A. Baderin
This study discusses contract law in Islam and how the contract must comply with sharia principles in financial transactions.
5. "Islamic Banking Contracts: Types and Models" by Munawar Iqbal and Philip Molyneux
This study discusses the types of contracts in Islamic banking and how these contracts must comply with applicable sharia principles.

In all these studies, it was concluded that contractual arrangements for muamalat validity are very important to ensure compliance with sharia principles in financial transactions. Contracts must pay attention to applicable muamalat principles, such as fairness and equality for both parties. In addition, the settlement of disputes or disagreements must be carried out in ways that comply with Sharia law.

Method

To conduct research on contract arrangements in the validity of muamalat, the research method that can be used is literature study. This method involves collecting data through literature related to contractual arrangements in muamalat, such as books, journals, and scientific articles. By using this method, researchers can study various theories and concepts related to contractual arrangements in muamalat from the perspective of Islamic law and its application in Islamic banking practices.

Result and Discussion

1. Free Mutual Consent (*Rida*)

Basically, it can be said that Islamic law recognizes freedom of contract. The freedom to contract in question is the freedom to determine the forms of agreements explored based on general propositions in Islam. The texts of the Qur'an and the Sunnah of the Prophet, as well as the principles of fiqh, show that Islamic law adheres to the principle of freedom of contract. In the Qur'an, Allah SWT says in Q.S. al-Ma'idah [5]: 5.

The way to conclude freedom of contract from this verse is that according to the principles of ushul fiqh (the methodology of extracting Islamic law), the commandments in this verse are obligatory. This means fulfilling the legal contract is mandatory. In this verse, the contract is referred to in the plural form, which is given the article “al,” and according to the rules of ushul fiqh, indicates generality. The majority of fiqh scholars agree that voluntary consent is necessary for the establishment of a contract. This is based on the word of God (Q.S. an-Nisa [4]: 29). This verse refers to commerce or transactions in muamalah that are carried out in vanity. This verse indicates that Allah SWT forbade Muslims to eat other people’s wealth in vanity. Vanity in this context has a very broad meaning. Among them are carrying out economic transactions that are contrary to syara’, such as usury-based transactions (interest), speculative transactions (maysir, gambling), or transactions that contain elements of gharar (the presence of uncertainties or risks in transactions) and other matters that can be equated with that. This verse also provides an understanding that efforts to obtain these assets must be carried out with the willingness of all parties in the transaction, such as the seller and the buyer.

It can be concluded that any form of contract must be fulfilled. In the hadith of the Prophet, it is stated: “Muslims are bound by their conditions (promises). This hadith, like the verse above, shows that Muslims are bound by whatever conditions they agree on. In other words, they can make any conditions, and later, the terms agreed upon are respected and bind them to fulfill them. If in positive law it is explained that making any form of agreement is free within the boundaries of public order and decency, then in Islam, guided by the hadith, it appears that there is leeway in determining the terms of the agreement.

In addition, the agreement of the scholars is also based on the hadith of the Prophet from Sa’id al Khudlri that the Messenger of Allah said, “Verily, buying and selling must be done like and like.” This hadith, narrated by al-Baihaqi and Ibn Majah, is an argument for the validity of buying and selling in general. According to Wahbah az-Zuhaili, this hadith is considered a long hadith; however, this hadith has received recognition for its authenticity from Ibn Hibban. Hadith provides a prerequisite that the sale and purchase contract must be carried out with the willingness of each party when making a transaction. Imam Syafii stated that buying and selling is permissible if it is carried out with the willingness of both parties to carry out the transaction and as long as it does not conflict with what is prohibited by sharia.

Based on the two arguments above, it can be said that consent is the basis for the formation of a contract. Business people are given broad freedom to build a contract as long as there is an element of pleasure. However, scholars differ on the freedom to enter into contracts.

2. Views of Freedom of Contract According to Mazhab/Ulama

a. **Adz-Dzahiriyah Mazhab.** According to this school, the law of origin in forming contracts is prohibited until evidence is found that allows it. In a sense, if any contract or conditions stipulated in the contract are not stipulated in the syar’i and ijma’ of the clergy, then the contract is null and void. This opinion is at least supported by the following arguments:

- 1) Islamic Shari’ah is comprehensive and has provided an explanation of all aspects of human life that are of benefit to the people, including akad (contract). All of this is based on the aspect of justice, so it is not fair if humans are given complete freedom in contracting, unless this will undermine sharia matters.
- 2) Rasulullah saw and said, “Whoever does a practice that is not our command, then we will be rejected.” Any contract or condition that is not stipulated by syara’ with texts or ijma’, then the contract is cancelled. Because if a human makes a contract where there is no text, it is possible that he will justify or forbid something that is contrary to sharia.

- b. **The Hanabilah Mazhab and the Majority of the Ulama.** According to this scholar, the original law in a contract is permissible as long as there is no *syara'* that prohibits it or contradicts it. This opinion is supported by the following arguments:
- 1) The verses and hadiths as mentioned only require an element of willingness (joy) in the contract, nothing else. Humans are given the freedom to contract in order to realize their own benefits. Thus, forbidding something based on conditions or contracts that are used by humans without using *syar'i* arguments is the same as forbidding something that is forbidden by Allah. The law of origin in a contract and determining the conditions attached to it is *mubah* (permissible).
 - 2) *Muamalah* activities are very different from worship. In the context of worship, there must be a text that commands it; we cannot worship without a *Syar'i* text. In contrast to *muamalah*, as long as a text is found that prohibits it, the law is permissible.

3. Basic Principles of Freedom of Contract

The principles of freedom of contract in English are: freedom of contract, liberty of contract, and party autonomy. In Arabic: *mabda' hurriyah al-ta'aqud*. So the principle of freedom of contract is that everyone is free to enter into any agreement, whether the agreement has been regulated in law or has not been regulated in law. Meanwhile, according to Sjahdeini, the principle of freedom of contract is a principle that emphasizes the freedom of the parties involved in an agreement to be able to agree on the clauses of the agreement without the interference of other parties (basic meaning, namely without limits).

In English, "contract means an agreement between two or more persons that creates an obligation to do or not do a particular thing. Its essentials are complete parties, subject matter, a legal consideration, and mutuality of obligation. The writing that contains the agreement of parties, with the terms and conditions, and that serves as proof of the obligation. So, a contract is an agreement between two or more people that creates an obligation to do or not do something specific. A contract thus has the following elements: competent parties; agreed subject matter; reciprocal obligations. The main feature of the contract is that it is a text containing the agreement of the parties, complete with terms and conditions, and that it functions as evidence regarding the existence of a set of obligations.

The 1945 Constitution and the Civil Code (KUH Perdata) do not explicitly explain the application of the principle of freedom of contract to agreements made according to Indonesian positive law. However, this does not mean that the principle of freedom of contract has no basis. At least this basis can be deduced from Article 1329 of the Indonesian Civil Code, which stipulates that every person is capable of making agreements, unless determined by law to be incompetent. From Article 1332, it is concluded that as long as it concerns goods of economic value, everyone is free to make an agreement. From Article 1320, paragraph 4, and Section 1337, it can be concluded that as long as it is not regarding power that is prohibited by law or contrary to decency and public order, then everyone is free to make an agreement. From the information above, it can be understood that the Indonesian Civil Code and other laws contain provisions regarding the principle of freedom of contract; this is as explained that the Civil Code does not contain provisions that require or prohibit a person from entering into an agreement or require or prohibit not entering into an agreement. The application of the principle of consensualism according to Indonesian treaty law stipulates the existence of this freedom.

According to Islamic contractual agreements, there are actually no strict restrictions on how an agreement is formed. The existence of the agreement can be examined by looking at several principles of *muamalah* in Islam, including: first, basically all forms of *muamalah* are *mubah*, except for those prohibited in the Qur'an and Sunnah; secondly, *muamalah* is carried out on a voluntary basis, without containing elements of coercion; third, *muamalah* is carried out on

the basis of considerations of bringing benefits and avoiding harm in people's lives; fourth, muamalah is carried out to maintain justice, eliminate tyranny (injustice); and gharar (full of deceit);

One of the important factors in the creation of an agreement is the element of willingness between the parties who merge into the agreement. The second party pledged to the first party and mutually agreed with the bond. It must be understood that the meeting of the two parties is a form of conformity in the desire to bring out the prevalence of *syara'* that is sought by both parties. The contract can be realized not only by the real bond of two words, but also by the words of one party and then the other party doing something that shows his will.

In fact, a contract can also occur with the existence of a bond between two behaviors that can replace the position of the utterance and be understood by both parties, both in the form of actions and gestures. Based on the explanation above, it can be understood that the essence of creating an agreement is the realization of the will of the parties entering into the agreement, and there is compatibility between the two of them to carry out their mutual obligations, which is indicated by the existence of expressions, writings, gestures, or actions. An agreement can bind the parties involved in it if it fulfills the terms and conditions. The two most basic pillars of the contract are consent and *qabul*. Thus, the essence of the agreement is the achievement of an agreement between the two parties, in which one's actions are considered a statement of will. A statement of will can be made in the form of an action, which, according to custom, is considered an agreement.

This action is also considered a statement of willingness on the part of one party to meet a condition. For example, someone who will become a customer at a power company, telephone company, PDAM, and others. The agreement in it is enough to submit a request in writing to the company. In fulfilling the contents of the agreement, it is sufficient for a person to fulfill the requirements of the company, and the company will fulfill consumer needs.

The form of the agreement as described above has shown the willingness of both parties, which automatically results in an agreement between them. The agreement is based on a custom where a person is considered to have agreed to an agreement based on the actions taken (carried out). A custom, as long as it does not violate *syara'*, is permissible and can be taken as a legal basis. Because the original law in muamalah is permissible (*mubah*) and no detailed explanation of the procedure for implementing it is given, then the implementation is returned to the habits that have been in force.

4. Prohibition of Riba and Avoidance of Gharar

a. Prohibition of usury in the Qur'an

The Qur'an has prohibited usury in 4 different verses, where the first verse (Q.S. ar-Rum [30]: 39) was revealed in Mecca and 3 other verses were revealed in Medina (Q.S. an-Nisa' [4]: 161, Q.S. Ali Imran [3]: 130–132, and Q.S. al-Baqarah [2]: 278–279); The first stage is rejecting the notion that *riba* loans, in essence, increase wealth and help those in need as an act of approaching or *taqarrub* to Allah SWT. Word of Allah SWT in Q.S. ar-Rum [30]: 39 The second stage, usury, is described as something bad and a harsh reply to the Jews who eat usury. In this stage, I'm trying to give a real picture. Word of Allah SWT in Q.S. An-Nisa' [4]: 160–161. The third stage, usury, is forbidden by being linked to a multiplied addition. This stage shows the character of usury. Allah SWT says so in Q.S. Ali Imran [3]: 130. The final stage, the usury verse, was revealed by Allah SWT, which clearly forbids additional types of goods to be taken instead of loans. At this stage, it emphasizes the giving of law. Word of Allah SWT in Q.S. Al-Baqarah [2] verses 278–279 Based on the explanation of the verses above, it is clear that Allah and His Messenger declared war on the perpetrators of usury. In addition, the next verse also provides an

understanding that the Qur'an has provided a distinction between the concepts of buying and selling and usury and prohibits believers from taking the remains of usury and gives orders only to take the principal of the loaned property without any additions. Besides that, if possible, provide relief for borrowers who are in difficult conditions.

Clearly, Rasulullah saw has forbidden usury in unambiguous words. Rasulullah saw. not only prohibiting people who take usury but also cursing people who provide additional (usury), people who carry out ribawi transactions, and people who are witnesses in these transactions. Literally, usury means to rise, increase, grow, or develop. However, not all additional forms or principal capital transactions are prohibited in Islam. Profits earned in a business also have the potential to increase the value of invested capital, but this type of profit is not prohibited in Islam. Then what form is actually prohibited in Islam? The most appropriate person to answer this question is the Prophet himself. Alone. Rasulullah saw and explained that all types of loans that contain elements of benefits, small gifts, services, or conditions that can satisfy the interests of the lender are prohibited. The prophet's answer to this, as well as interest, is, as commonly understood by the public, a statement of will. A statement of will can be made in the form of an action, which, according to custom, is considered an agreement.

This action is also considered a statement of willingness on the part of one party to meet a condition. For example, someone who will become a customer at a power company, telephone company, PDAM, and others. The agreement in it is enough to submit a request in writing to the company. In fulfilling the contents of the agreement, it is sufficient for a person to fulfill the requirements of the company, and the company will fulfill consumer needs.

The form of the agreement as described above has shown the willingness of both parties, which automatically results in an agreement between them. The agreement is based on a custom where a person is considered to have agreed to an agreement based on the actions taken (carried out). A custom, as long as it does not violate syara, is permissible and can be taken as a legal basis. Because the original law in muamalah is permissible (mubah) and no detailed explanation of the procedure for implementing it is given, Then the implementation is returned to the habits that have been in effect.

b. Gharar Avoidance

According to Arabic, the meaning of al-gharar is al-khathr (betting). Meanwhile, according to Shaykh As-Sa'di, al-gharar is al-mukhatharah (betting) and al-jahalah (obscurity). This is included in the category of gambling. So, from this explanation, it can be understood that what is meant by gharar buying and selling is all buying and selling that contains uncertainty, such as betting or gambling.

In Islamic law, buying and selling gharar is prohibited. On the basis of the words of the Prophet Muhammad, in the hadith of Abu Hurairah, which reads, "Rasulullah saw. forbade the sale and purchase of al-hashah and the sale and purchase of gharar." In this gharar (buying and selling) system, there is an element of consuming other people's assets in a vanity way. In fact, Allah forbids eating other people's property in a vanity way. Ibnu Taimiyyah explained that the basis for the prohibition of buying and selling gharar is Allah's prohibition in the Qur'an, namely, the prohibition of consuming people's property for vanity. This prohibition is also strengthened by the prohibition of gambling, as stated in Allah's word, Q.S. al-Ma'idah [5]: 90.

As for jula-buying gharar, according to Sheikh as-Sa'di's statement, it is included in the gambling category. Ibn Taimiyyah himself stated that all gharar buying and selling, such as selling birds in the air, camels and slaves who ran away, fruit before the fruit appeared, and

buying and selling al-hashaah, are all included in gambling, which is forbidden by Allah in the Qur'an.

Prohibition of buying and selling because it is feared that there will be a bet and cause hostility to the person who is harmed. That can cause huge losses for the other party. This prohibition also contains the intent to protect assets from being lost and eliminate the hostility that occurs in people due to this type of buying and selling. The importance of knowing the gharar rule is very important because many buying and selling problems originate from uncertainty, and there is an element of betting in it.

5. Qimar/Maisir Avoidance

Usually, gambling (maisir) describes a game that gives chance to fate rather than a game that shows skill. Although this gambling is usually motivated by excitement and multiple rewards, there are risks involved in transactions that are motivated by great incentives. We already know that maisir has been practiced since the Arab Jahiliyyah era to help people in need and give to people in need. The Koran clearly condemns this treatment. Therefore, the intention of not justifying the way in which gambling is used to help people in need is not to lead to a strong reason to receive rewards rather than gambling (maisir). The difference between gambling and gharar in transactions is subtractive, and therefore economists have become aware of the structure in both.

Maisir and qimar are two Arabic words that mean the same thing, namely gambling. This is as in Q.S. al-Ma'idah [5]: 90, where there is the word "al-azlaam," which means arrows that do not use feathers. The Jahiliyah Arabs used unfeathered arrows to determine whether they would perform an action or not. The trick is that they take three arrows that do not use feathers. After writing each one, namely, do it, don't do it, and "don't do anything," the third is not written anything, placed in a place, and stored in the Kaaba. If they wanted to do something, they asked the caretaker of the Kaaba to take an arrow. It's up to them later whether they will do or not do something, according to the writing of the arrows taken. If an arrow is drawn that has no writing on it, the draw is repeated once more.

The following are some definitions of maisir/qimar, including the opinion of Ibrahim Anis, who states that maisir/qimar is any game that contains bets from both parties (muraahanah). According to al-Jurjani, gambling is any game in which something (in the form of material) is required to be given from the losing party to the winning party. Related to this, Yusuf al-Qardhawi said in Halal and Haram in Islam that gambling is any game that has a profit or loss for the culprit. Some of these definitions actually complement each other, so that one can conclude a comprehensive definition of maisir or qimar. So, maisir and qimar are all games that contain an element of betting (property or material) where the winning party takes the property or material from the losing party. Thus, in gambling, there are three elements: (a) there is an asset or material bet (which comes from both parties who gamble); (b) there is a game, which is used to determine the winners and losers; and (c) the winning party takes the assets (part, all, or multiples) that are at stake (cheap), while the losing party will lose their assets. Maisir, or qimar, literally means gambling. Technically, this is every game in which it is required that something (in the form of a lottery) be taken from the losing party for the winning party.

6. Conformity of Contract with Maqasid ash-Syari'ah

Maqasid ash-Shari'ah among ushul fiqh scholars is also called asrar ash-Shari'ah, namely the goals and secrets that are behind a law stipulated by Srai', in the form of benefit for humanity, both in this world and in the hereafter. Maqasid ash-Shari'ah is the main essence of Islamic law, in which the purpose of Allah SWT passing down His law for humans is to realize

several main goals, as stated by ash-Syatibi, namely one of them being to protect property. Regarding agreements or contracts, consumer trust gets considerable attention from business people. That is why the majority of business people do everything to be able to build trust so that they can become a magnet that can attract consumers. The embryo of trust starts with the implementation of transactions (akad/aqd) in accordance with the Qur'an and hadith. All implementation of these transactions aims to eliminate the number of frauds or all other forms of negative impacts arising from a transaction. The contract is the beginning of a transaction, which, when carried out fairly, will result in halal benefits and blessings.

Transactions, or aqad in fiqh al-mu'amalat, are the connection or meeting of consent and qabul that results in the emergence of legal consequences. The contract is a legal action between two parties because the aqad of consent meeting represents the will of one party and the qabul expresses the will of the other party. The purpose of the aqad is to give birth to a legal consequence, or more clearly, the aim of the aqad is the common goal to be addressed and realized by the parties making the aqad.

Shari'ah orders are directed towards the realization of various goals for the welfare of mankind. The purpose of shari'ah is emphasized in many texts of the Qur'an and Sunnah. Any contract (akad) or transaction that hinders one of these goals is not valid in Shari'ah. It is quite clear that the rights of fellow human beings must be respected from the point of view of all transactions. The rights of Allah SWT Shariah also refers to all things that involve the benefit of society at large. In this respect, they correspond to the rights of the public under modern regulations. Therefore, any contract (akad) should not be contrary to the benefit of the public at large.

Conclusion

Freedom of contract is freedom in determining the forms of agreements explored based on general propositions in Islam. The texts of the Qur'an and the Sunnah of the Prophet, as well as the principles of fiqh, show that Islamic law adheres to the principle of freedom of contract. The majority of fiqh scholars agree that consent (willingness) is the establishment of a contract.

Regarding usury, the Messenger of Allah has prohibited it and has also given anathema to people who provide additional (usury), people who carry out ribawi transactions, and people who are witnesses in these transactions. Literally, usury means to rise, increase, grow, or develop. Meanwhile, regarding the gharar buying and selling system, there is an element of consuming other people's assets in a vanity way. Even though Allah forbids eating other people's property in a vanity way. The prohibition was carried out because of buying and selling because it was feared that there would be a bet and cause hostility to the person who was harmed. Namely, it can cause huge losses to other parties. This prohibition also contains the intent to protect assets from being lost and eliminate the hostility that occurs in people due to this type of buying and selling. The importance of knowing the rules of gharar is very important because many buying and selling problems originate from uncertainty, and there is an element of betting in it.

Meanwhile, maisir and qimar are all games that contain an element of betting (property or material) in which the winning party takes the property or material from the losing party. Thus, in gambling, there are three elements: (1) there is an asset or material bet (which comes from both parties who gamble); (2) there is a game that is used to determine the winners and losers; and (3) the winning party takes the assets (part, all, or multiples) that are at stake (cheap), while the losing party will lose their assets. Maysir, or qimar, literally means gambling. Technically, this is every game in which it is required that something (in the form of a lottery) be taken from the losing party for the winning party. In the end, the conformity of the contract with the maqashid syari'ah means that the syari'ah orders are directed towards the realization of various goals for the welfare of mankind.

The purpose of shari'ah is emphasized in many texts of the Qur'an and Sunnah. Any contract (akad) or transaction that hinders one of these goals is not valid in Shari'ah. It is quite clear that the rights of fellow human beings must be respected from the point of view of all transactions. The rights of Allah SWT in Shari'ah also refer to all things that involve the benefit of society at large.

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