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PRINCIPLE OF FREEDOM OF CONTRACT IN THE PERSPECTIVE OF WESTERN CIVIL LAW AND SHARIA LAW

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Abstract: The era of the industrial revolution 4.0 is often referred to as the era of the digital revolution. In this era, the boundaries between biological, digital, and physical seem to merge and become one so that in the end it becomes an era that has the characteristics of automation in all kinds of activities. Educators in today's digital era are required to have 21st century teaching skills to achieve the needs of the superior generation in the digital era. Educational institutions of education personnel are fully responsible for fulfilling teachers with the competencies needed in today's digital era. Micro teaching is one of the teaching methods that is currently given to prospective teacher students to practice teaching skills in the classroom. However, the implementation of micro-teaching is still considered to have many shortcomings, including classroom conditioning which still seems unreal and the lack of student ability to design learning, especially in the current digital era. To answer these problems, researchers analyzed what factors affect micro-teaching in the industrial era 4.0. The focus of this research is on the technology used by lecturers in learning, the learning methods used, the learning environment created, the competence of teachers and the involvement of students in microlearning. This study aims to evaluate the implementation of micro-teaching, whether micro-teaching learning is still relevant to the digital era and to find out what factors are needed to meet the competencies of prospective teachers in the current digital era. The research method used is a quantitative method with research instruments using questionnaires. The results of the study show that the overall analysis of the findings that lecturers and students have used digital technology in microlearning, but with this technology, it turns out that they have not been able to make a positive contribution to students and lecturers. This condition is influenced by the low involvement of students in participating in learning. So that it is difficult for lecturers to recognize their strengths and weaknesses in learning students both independently and in groups.
Keywords: Microteaching, Digital Industry 4.0, Factors That Affect Microteaching.

Introduction

The principle of freedom of contract is one of the basic principles in contract law that gives the parties the freedom to determine the content, form, and substance of the agreement according to their needs and interests. Freedom of contract is basically a manifestation of free will, the emanation of human rights whose development is based on the spirit of liberalism that glorifies individual freedom. (Hernoko, 2010) According to Western civil law, this principle allows everyone to freely regulate their rights and obligations as long as they do not violate laws and regulations, public order, and morality. This freedom provides flexibility for the parties who make the contract to adjust the agreement to specific needs, especially in the context of complex and dynamic business transactions. On the other hand, Sharia law also recognizes the principle of freedom of contract, but with more specific and strict limitations,

because it is bound by Sharia law. Freedom of contract will be justified as long as the conditions stipulated do not conflict with the principles of Islamic law. The prohibition of usury (interest), gharar (uncertainty), and maisir (gambling) are the main limitations in the implementation of freedom of contract. The purpose of this limitation is to ensure justice, balance, and sustainability in every agreement, by the ethical and moral values in Islam. In this context, Sharia law emphasizes welfare, justice, freedom from injustice, and the prohibition of harming oneself and others. (Zulfahmi & Maulana, 2022)

The difference in approach between Western civil law and Sharia law in the principle of freedom of contract reflects the philosophical differences underlying the two legal systems. Western civil law focuses on individual freedom as the main foundation, while Sharia law emphasizes social justice and harmony in transactions. However, both have the same goal, namely to protect the parties to the contract and create legal certainty.

A comprehensive understanding of applying the principle of freedom of contract in these two legal perspectives is expected to contribute to the development of fair and efficient contract law practices, especially in countries with significant Muslim populations such as Indonesia.

Literature Review

This study will discuss how the principle of freedom of contract is applied from the perspective of Western civil law and Sharia law, identify the similarities and differences between the two, and evaluate its relevance in the context of Indonesian law which has the characteristics of legal dualism.

Method

This is a normative legal study sourced from legislation (statute approach) and the Qur'an. The statutory approach inventories and uses laws and regulations related to the research topic to conduct analysis and be used as research supplementary materials. This study tends to use secondary data in the form of primary and secondary legal sources. The main source of law is the laws and regulations relating to the principle of freedom of contract in Western civil law and sharia law. Secondary legal sources are the opinions of legal experts from the literature that support the system of thought and analysis related to contract law according to Western civil law and sharia law. Secondary legal materials related to this research such as journals, essays, research reports, and others that are relevant to the subject matter of this research. (Syafriana, 2022)

Result and Discussion

1. Freedom of Contract in the Perspective of Western Civil Law

In terminology, a contract means an agreement or contract. However, other terms are also often used in the preparation of written contracts, such as agreement, which means "agreement," or "consensus," and some also interpret the word agreement with the term agreement. (Emirzon & Sadi, 2021)

A contract is an event where two or more people promise each other to do or not to do a certain act. Contracts in a broad sense include all agreements, both written agreements and oral agreements. Meanwhile, contracts in the narrow sense are often identified as agreements

made in written form. Black's Law Dictionary defines a contract as follows: "an agreement between two or more persons which creates an obligation, to do or not to do a particular thing." A contract is defined as an agreement between 2 (two) or more people that creates an obligation to do or not to do a certain action. (Sinaga, 2018)

In the Civil Code (KUH Perdata), the term commonly used to refer to a contract is an agreement. The definition of an agreement is stated in Article 1313 of the Civil Code. An agreement/contract is: "An act by which one or more parties bind themselves to one or more people." Van Dunne presents the definition of an agreement. He states that an agreement is: "A legal relationship between two or more parties based on an agreement to give rise to legal consequences". (Fuady, 2015)

The purpose of the contract is to regulate the exchange of rights and obligations that are expected to take place properly, fairly, and proportionally according to the agreement of the parties. (M.Shalihah & et.al, 2022)

A contract will be valid if it has fulfilled Article 1320 of the Civil Code as a general rule that determines the requirements for the validity of an agreement. (Ramadhani & Ramlan, 2019). The valid requirements are:

a. Agreement, that the parties must agree on the main points stipulated in the agreement so that what is desired by one party is also desired by the other party;
b. Capacity to act, that the parties agreeing must be people who are legally entitled to carry out a legal act, namely agreeing. According to Article 1329 of the Civil Code, "Every person is competent to agree if he is not declared incompetent by law". So according to the provisions of the article, everyone is considered competent or able to bind themselves in an agreement/contract, as long as the person is not declared incompetent by law. This gives everyone the freedom to carry out legal acts stated by law.
c. The existence of a certain thing, that the elements of the object in the agreement in question are the rights and obligations that will be carried out by the parties who have agreed. The object of the agreement is a concrete thing that will be the focus of an agreement that will be made by the parties, and the object in the agreement must be clear which will be the rights and obligations inherent in the parties who agree. The object of the agreement must be something that can be determined (its type, quantity, form), can be traded, can be valued with money, and may be done.
d. There is a lawful cause, that the subtances of the agreement must not be contrary to public order, morality, and law. Thus, the law does not care what causes people to agree. What the law pays attention to is the contents of the agreement which describes the objectives to be achieved. According to Article 1335 of the Civil Code, an agreement without a cause or which has been made for a false or prohibited reason. Has no power. (Simanjuntak, 2015)

The first two conditions are called subjective conditions, because they concern the people or subjects who agree, if one of the conditions is not met, it will be said that the agreement can be canceled (nieteg or null and ab initio), and one party has the right to request that the agreement be canceled (vernietigbaar or voidable). The last two conditions are called objective conditions because they concern the agreement itself or are often called the object of the legal act carried out. If in agreeing it is not by the provisions of the objective conditions, the agreement is said to be null and void and the agreement was never considered to have been born as an agreement. (Meher & Siregar, Law of Agreements and Business, 2023) In addition to having to fulfill the valid requirements of an agreement contained in Article 1320

of the Civil Code, the agreement must also be based on the legal principles of the agreement. (Suryani & Ginting, 2024) Legal principles are basic ideas contained in and behind the system, each formulated in statutory regulations and judicial decisions concerning provisions and judicial decisions concerning provisions and individual decisions that can be seen as their elaboration. An agreement is consent made by one party to another party or between two or more parties to bind themselves to each other. Agreements are also subject to legal principles derived from the Civil Code. (Aprita & Wulandari, 2023)

One of the basic principles in forming an agreement is the freedom of contract principle. The principle of freedom of contract is a principle that occupies a central position in contract law, although this principle is not stated in legal regulations, it has an intense influence on the contractual relationship of the parties. This principle is based on the individualism ideology that was embryonically born in the Greek era, continued by the Epicureans, and developed rapidly during the Renaissance (and further developed during the Enlightenment) through the teachings of Hugo de Groot, Thomas Hobbes, John Locke, and Rousseau. (Cahyono, n.d.) Freedom of contract is a manifestation of free will, a reflection of human rights whose development is based on the spirit of liberalism that glorifies individual freedom. (Khairandy, 2013) The principle of freedom of contract is universal, referring to the free will of every person to make a contract or not to make a contract, the restrictions are only for the public interest, and in the contract there must be a reasonable balance. (Saisab & Et.al, 2021) Through the principle of freedom of contract, parties can understand that every individual or legal subject can make a contract or agreement with any party and for mutually agreed purposes. The principle of freedom of contract guarantees that legal subjects are free to determine whether these legal subjects will form a contract or not, are free to determine with whom they will enter into an agreement, are free to determine the content of the agreement, are free to determine the form of the agreement, provided that it does not conflict with the applicable legal rules (Meher & Ginting, Juridical Review of the Strength of Electronic Evidence To Proof Online Lending Agreement, 2024).

Regulation regarding the principle of freedom of contract are contained in Article 1338 paragraph (1) of the Civil Code: "All agreements made legally are valid as law for those who make them". The word "all" can be interpreted as:

a. Every legal subject is free to make agreements with whomever he wishes,
b. Free to determine the object of the agreement
c. Free to determine the contents of the agreement.
d. Free to determine the form of agreement as desired.
e. Free to make new agreements that are not yet recognized in law (known as unnamed agreements, namely agreements whose type and arrangements have not been outlined in the Civil Code).
f. Thus, it can be concluded that the legislators recognized the possibility of there being agreements other than those regulated in the Civil Code, and this proves the application of the principle of freedom of contract.

In its development, this principle emerged as a new paradigm in contract law which leads to unlimited freedom, and this principle also allows strong people or parties to impose their will on weak parties. So the ideal of freedom of contract which initially provided legal balance, balance of interests, and balance in bargaining position, became a means of oppression for the weak party. (Retnowati & et.al, 2021) Therefore, the principle of freedom of contract in the Civil Code has limitations, namely :

a. There are limitations regarding the parties who can make an agreement, only legal subjects who are legally competent may make an agreement, as stipulated in Article 1329 in conjunction with Article 1330 of the Civil Code.
b. There are limitations regarding the object of the agreement that only goods can be traded for money or of economic value. The goods can at least be determined by type. The amount of the goods does not need to be certain, but the amount can later be determined and calculated, as determined by Article 1332 of the Civil Code to Article 1334 of the Civil Code.
c. There is a limitation that the making and implementation of an agreement must be influenced by good faith and must not violate the teachings of misuse of circumstances in the contract (misbruik van omstandigheden, undue influence) (Saebani, Mayaningsih, & Wati, 2016)
d. After the agreement is signed or after the agreement comes into force, then the parties are no longer free but are bound by what they have determined in the agreement.

2. Freedom of Contract in Sharia Law Perspective

Contracts or agreements in Islamic law are referred to as akad. According to the al-Mawrid Dictionary, al-'Aqd is a contract and agreement. While the word akad also comes from Arabic, al-'Aqd linguistically means al-rabthu, which is binding or bond. It is said rabatha al-Syai' rabthan, meaning it binds something tightly. (Rachman & et.al, 2022) There are two different definitions among scholars regarding the meaning of a contract (al-aqd). The first opinion states that a contract (al-aqd) is any action that can create a bond to fulfill it either between two parties or one party only. This is the broad meaning of akad. While the second opinion states that a contract (al-aqd) is any action that requires the will and agreement of two parties with the existence of ijab and qabul. (Hulaify, 2019)

Akad is a meeting of ijab and qabul which will have legal consequences. Ijab is an offer made by one party, and qabul is the response of an agreement given by the contract partner in response to the offer from the first party. The contract does not occur if the statement of the will of each party is not bound to each other because the contract is the connection of the will of both parties reflected in the ijab and qabul. The contract is a legal act of two parties because the contract is a meeting of ijab that presents the will of the other party. The purpose of the contract is to produce a legal consequence, in the form of a common intention that is intended and which is intended to be realized by the parties through the equality of the contract. The legal consequences of the contract in Islamic law are called "contract law" (al-aqd law). (Anwar, 2010)

The four elements are called pillars and must be met to form an agreement. (Arwani, 2017) These elements are:

a. shighah al-'aqd, which is an expression that shows the inner desire of the parties to form a contract and/or cancel it, through speech or gestures, and writing. This shîghah is called ijab and qabul. Some conditions must be met so that an ijab and qabul are considered valid and have legal consequences. First, jala'ul ma'na that the purpose contained in the statement of an agreement must be clear, so that from the statement the type of contract desired can be understood. Second, tawafuq that between ijab and qabul there must be a match. Third, jazmul iradataini, that the will of the parties is certain, there is no doubt whatsoever, not under pressure and not in a state of coercion.

b. al-'aqidân, which is the subject who makes the contract. These legal subjects have a relationship of rights and obligations. Not everyone can carry out their rights and obligations and this situation is called "mahjur 'alaih" as stated in the Al-Qur'an surah an-Nisa verse 5 which means "do not hand over to people whose minds are not yet perfect, property (those who are in your power) which Allah has made the basis of life". Based on the above, in Islamic law people who are not competent to act in law are known as "asy-syufah". Included in the legally incompetent group are people who are not perfect in terms of maintaining their wealth and the kindness of tasharruf to them, namely immature children, crazy people, and people who always make waste or exaggerate in their lives.
c. mahal al-'aqd, namely the object of the contract. A contract object must fulfill four conditions. First, it must already exist in concrete terms when the contract is executed or is expected to exist in the future. Second, it is justified by the sharia', so that anything inconsistent with or contrary to the sharia' cannot be used as the object of the contract. Third, the object must be able to be delivered at the time specified in the contract. Fourth, the contract must be clear or can be determined (mu'ayyan) and must be known by both parties making the contract
d. mawdhû' al-'aqd, namely the purpose of a contract is carried out to carry out a transaction between humans, and the one who determines the legal consequences of a contract is al mysyarri' (who determines the sharia) namely Allah. The legal consequences of a contract must be known through sharia and must be in line with the will of sharia. On this basis, all contracts that are contrary to sharia are invalid and therefore do not give rise to a legal relationship. The conditions that must be met so that a contract objective is considered valid and has legal consequences, including the purpose of the contract is not an obligation that already exists for the parties concerned without the contract being made, which means that the purpose should only exist when the contract is made and not before the agreement is made, the purpose must continue as it is until the end of the contract implementation, and the purpose of the contract must be justified by sharia, if this condition is not met then the contract is considered invalid. (Lestari & Santoso, 2017)

Implementation of sharia contract law. The formulation of the principles in Sharia contract law is derived from the Qur'an and Sunnah. This effort is intended so that the principles used as the legal basis for drafting contracts contain truths that come from Allah. (Firdausiah, Theoretical Study of the Urgency of Principles in Sharia Contracts, 2020) Several principles of agreement underlie the enforcement and implementation of Sharia contracts. The principle of freedom of contract is one of the fundamental principles in contract law, including from the perspective of sharia law. This principle gives the parties the right to agree according to their will, as long as it does not conflict with Islamic law. In Sharia law, this concept of freedom is known as Mabda' Hurriyah at-Ta'aqud, which includes the rights of the parties to determine the content, form, and terms of their contract as long as it does not violate Sharia provisions. (Ardi, 2016)

The words of the Prophet in the hadith of 'Amr Bin Auf, which are confirmed by the hadith of Abu Hurairah, states that "As-Sulhu ja-iz baina al-Muslimin" states that Muslims are permitted to make peace agreements in the exercise of their rights, but this permissibility applies within limits as long as it does not violate the provisions of halal and haram as can be understood from the continuation of his words, "illa salhan harrama halalan aw ahalla

harraman". (Yulianti, 2008) The principle of freedom of contract in Islamic law is based on the following arguments:

a. Allah said, "O believers, fulfill your covenants (agreements)." (Qs. 5:1)
b. Hadith of the Prophet Saw, "Muslims are always loyal to their conditions (promises)."
c. Hadith of the Prophet SAW, "Whoever sells a palm tree that has been mated, the fruit belongs to the seller, unless the buyer requires otherwise."
d. The rule of Islamic law, "In principle, an agreement is an agreement.
e. The agreement of the parties and the legal consequences are what they stipulate through the agreement" (Munadi, 2018)

Although freedom of contract is recognized, sharia law provides limitations to prevent violations of sharia principles:

a. Does not conflict with Sharia Prohibitions: This freedom does not include the ability to make lawful what is haram or make lawful haram. For example, contracts involving elements of riba, gharar (uncertainty), or maisir (gambling) are prohibited.
b. Does not contain elements of vanity: All forms of contracts that contain elements of fraud, exploitation, or injustice are prohibited.
c. Fairness and Consent: Contracts must be made based on mutual consent (al-taradhi), with transparent and fair information to avoid exploitation of one party. (Firdausiah, 2020)

Conclusion

The principle of freedom of contract is well known in both Western civil law and Sharia law. In Western civil law, freedom of contract is rooted in individualism and human rights, providing flexibility for parties to draft contracts as long as they do not violate laws, public order, and morality. Meanwhile, in Sharia law, the principle of freedom of contract is also recognized, but with stricter limitations, such as the prohibition of usury, gharar, and maisir, as well as ensuring justice and balance in transactions. The fundamental difference between the two legal systems lies in their philosophy: Western civil law emphasizes individual freedom, while Sharia law prioritizes social justice and harmony in transactions. Despite their differences, both systems aim to protect the parties to the contract and create legal certainty.

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