CAUSA EFFECTIVENESS IN ESTABLISHING SHARIA AGREEMENTS

Mhd Nasir Sitompul[1]
[1]Faculty Of Law, University of Muhammadiyah Sumatera Utara, Indonesia,
E-mail: nastompul@gmail.com

***Abstract**: According to experts of premodern Islamic law, the pillars of the contract consist of only 3 elements, namely the parties, the declaration of will, the object of the contract. Then in modern times, Islamic law experts develop a new view by adding a new pillar that is the purpose of the agreement to the existing pillars of the contract. Unfulfilled agreement may result in the cancellation of the agreement. The law of the contract referred to in the Islamic treaty law is the result of the law arising from the distinguishable contract, namely the basic law of the contract and the additional law of the contract that is the rights and obligations arising from the contract. The consequences of the law were formulated using the theory of causation in the islamic covenant law based on the concept of legal causation. The research method used in this research is empirical juridical which is descriptive. Empirical juridical research is conducted by internalizing the problem by combining legal materials that are secondary legal materials with primary data. Descriptive research is research that only describes the state of the object or its events without an intention to draw generally valid conclusions. Islamic law states the nullity of the alliance in accordance with its rules, namely if it cancels something, cancels what is contained therein. If one of the conditions is void, the contract is canceled and if the contract is void, all legal and alliance consequences arising there from it will be void. According to the view of latin law whose attention is not to the source that gave birth to the alliance, latin law is forced to create the doctrine of the kausa in alliances born of agreements that are connected to each other in order to be declared annulment. in Islamic law the annulment is sufficient to state that the object of the contract without seeing from any party in the form of an act of evil can not accept the contract.*
Keywords: Akad, causa, agreement.

Introduction

The term agreement in Islamic law is referred to as a contract. The word akad comes from the word al-'aqd, which means to tie, join or connect (al-rabt). As a term of Islamic law, there are several definitions given to the contract (Samsul Anwar, 2007), namely according to article 262 Mursyid al-Hairan, the contract is a meeting of consent proposed by one party with the kabul of the other party which causes legal consequences of the object of the contract; and according to Syamsul Anwar, the contract is a meeting of consent and Kabul as a statement of the will of two or more parties to give birth to a result of the legal connection to the object (Nurlailiyah AS, 2016). The above definitions indicate that:

1. A contract is a connection or meeting of consent and consent which results in legal consequences. Ijab is an offer submitted by one of the parties, and kabul is the answer to the agreement given by the contract partner in response to the first party's offer. A contract does not occur if the statement of the will of each party is not related to one another because the contract is a connection between the will of the two parties which is reflected in the consent and Kabul.
2. A contract is a legal action between two parties because a contract is a meeting of consent that presents the will of one party and a kabul which states the will of the other. One party's legal actions, such as promises to give gifts, wills, endowments or waivers of rights, are not contracts because these actions are not acts of two parties and therefore do not require

consent. The conception of the contract as an act of two parties is the view of modern Islamic jurists. In pre-modern times there were differences of opinion. Most jurists do separate unilaterally from a one-sided will, but others make the contract also include unilateral will. Even when talking about the various special contracts they do not differentiate between the contract and the unilateral will so they discuss the release of rights, wills and endowments together with discussions about buying and selling, leasing and the like, and discussing whether a grant requires a consent granted or sufficient consent. only.

3. The purpose of the contract is to give birth to a legal effect. More explicitly, the purpose of the contract is a common goal that is aimed at and which the parties intend to realize through making the contract.

In Islamic law the principles of agreement are (Wahid Sawwar, 1960):

1. The Principle of Buying and Selling (Murabahah)

Namely buying and selling with the addition of the original price. Customers who have a need for certain objects can submit an application to a Sharia (Islamic) Bank to purchase these objects. The object that has been purchased by the bank will then be resold to the customer at a price higher than the original price. This price excess is of course based on the agreement between the two. Payments made by customers are usually in the form of installments, although cash payments are not prohibited. This system is usually used to finance investment goods, such as through letters of credit (L / C) and inventory financing as working capital.

According to Islam, maintaining the principles of buying and selling in a sustainable manner, will be followed by a balanced profit between the seller and the buyer. The symbiosis of mutualism, which is one of the points of struggle that begins with the process of interaction between the two parties in the Islamic muamalah system, can certainly reduce the tendency for exploitative economic fraud against one party. Economic principles like this will always be fought for by the muamalah system in Islam with the intention of avoiding the gharar element between the two parties, with clarity of transactions and so on, so that each can benefit (Eka Sakti Habibullah, 2017).

The main joint of Islamic economics is its middle (balance) nature. In fact, this trait is a soul which is a fair balance. As the attitude of Islam to individual and community rights. These two rights are placed in a fair balance regarding the world and the hereafter, body and soul, mind and heart, parables and reality. And Islam is in the middle between faith and power (Diana Ambarwati, 2013).

Islamic economics is a science that studies human economic behavior whose behavior is regulated based on Islamic religious regulations and is based on tawhid as summarized in the pillars of faith and pillars of Islam (Suci Hayati, 2019).

Using the salam contract system (bai 'salam), namely buying and selling where the payment of the price is submitted first, while the goods are delivered later at a predetermined time. The pillars that must be fulfilled in the greeting are a) There is the seller and the buyer., b) There are goods and there is money, and c) There is shighot (lafaz akad). While the terms of the greeting are: a) Payment is made in advance., b) The item becomes a debt to the seller., c) The item can be given according to the promised time., d) The item must be clear in size, both the measurement, the scale. , size, or number, according to the customary way of selling the said goods, and e) The characteristics of the goods are known and stated. With these characteristics and clear prices, the desire of people to buy these goods is clear and with these clear characteristics and characteristics, it does not cause a dispute at the end of the transaction (Daimul Ikhsan, 2018).

2. Profit Sharing Principle (Mudharabah)

Banks and customers can cooperate in running a business. In mudaraba, the bank as the owner of funds (shahibul maal) provides an amount of funds for a business that will be managed

by the customer (mudharib). At the beginning of the contract, both of them have agreed on a ratio that will be shared from the profit earned from their business. The types of mudaraba that can be used are mudharabah mutlaqah and mudharabah muqayyadah. In mudharabah mutlaqah, investors have no right to manage the alliance absolutely. However, it is the mudaraba that has the right to manage, because mudaraba is a mixture of a managing body (workers) and capital, but not the owner of the capital. So that investors are like parties who are outside the partnership.

Mudharabah muqayyadah is a syirkah contract that requires workers (mudharib) to follow the provisions and directions set by the owner of the capital (shahibul maal) in managing the business. Thus, in this mudaraba alliance, the authority given to the mudharib party is limited.

3. The principle of leasing (Ijarah)

Ijarah is the taking of the benefits of an object, so in this case the object does not decrease at all, in other words when the rental event occurs, only the benefits of the leased object are transferred, in this case it can be in the form of benefits such as vehicles, houses, and the benefits of work such as music, can even be in the form of personal works such as workers. In practice, this is usually called an operational lease, where a bank rents out goods needed by customers in order to fulfill their business needs. The customer has the obligation to pay the rental price to the bank.

Often times the goods that are leased to customers will be a pain for the bank in terms of its maintenance. Therefore, banks can provide options for customers to become owners of the goods after the lease period has ended. This is applied in the form of financial leases with purchase options, both in the form of productive financing in the form of investment and consumptive financing.

4. The principle of Lending and borrowing based on the qardh contract

Accounts receivable is to give something to someone, with the agreement he will pay the same as that. For example, if you owe IDR 50,000, you will be paid IDR 50,000 as well. This type of engagement aims to help, not as a profit-seeking (commercial) engagement. Therefore, the bank will only get back the amount of capital given to customers. Islamic banks can provide this facility in the following forms (1) as a bailout fund for a short period of time, the customer will return it quickly, such as compensating balance and factoring, (2) as a facility to obtain fast funds because the customer is not can withdraw funds, for example because they are stored in deposits, (3) as a facility to help small or social businesses

Some modern reviewers see the concept of the goal of the contract as the cause on which the legality and cancellation of the agreement is based. According to Wahid Sawwar, the purpose of this contract is the basis for the engagement of the two parties, for example in a sale-purchase contract, the purpose of the contract is to transfer property rights over the goods from the seller to the buyer in exchange, this is the syar'i (juridical) manifestation of the purpose of the contract. and in it there is again real manifestation, namely reciprocal exchange. (Wahid Sawwar, 1960). The purpose of the contract is a source of binding strength for legal action for the person concerned as a basis for providing legal protection against him.

According to Khalid 'Abdullah' Id, the purpose of the contract (al-maqhashad al-ashli li al-'aqd) is actually a cause of agreement in Islamic law by looking at the close relationship between the purpose of the contract and the object of the contract (mahall al-'aqd) (Khalid Abdullah, 1986). One of the main conditions for the occurrence of a contract in Islamic law is that the object of the contract can accept the contract law, where if the object of the contract cannot accept the contract law, then the contract is canceled.

According to the two experts mentioned above (Wahid Sawwar and Khalid 'Abdullah' Id), the concept of causation is not only found in the doctrine of al-maqhashad al-ashli li al-'aqd (the main purpose of the contract) but can also be found in the doctrine of motives.

Method

The research method used in this research is juridical empirical descriptive. Juridical empirical is a research conducted by analyzing problems by combining legal materials which are secondary legal materials with primary data to describe the effectiveness of causa in the formation of sharia agreements. Secondary data obtained from books, journals, articles and other sources are needed as material for this research. Descriptive research is research that merely describes the state of the object or event without an intention to draw general conclusions. Data analysis in accordance with descriptive research is by using qualitative analysis, namely data analysis that reveals and retrieves the truth obtained from the literature, namely by combining rules and books that have something to do with research problems or according to Tengku Erwinsyahbana (Tengku Erwinsyahbana, 2017)

C. DISCUSSION

The law will be effective if the purpose of existence and its application can prevent undesired actions from eliminating chaos. Effective law in general can make what is designed to be realized. There are three focuses of studying the theory of legal effectiveness, which include (Fajaruddin, 2018):

a. Success in law enforcement.
b. Failure in its implementation.
c. The factors that influence it.

Effective law must reflect legal certainty which can be interpreted as a definite condition and in accordance with the provisions and provisions of the purpose of establishing a law. Legal certainty is closely related to a sense of security and comfort, because the essence of legal certainty is to create certainty for everything that involves human doubt, uncertainty and fear. Furthermore, the study of legal certainty is closely related to the study of legality. A certain condition is considered a legitimate condition according to the legislation, both formally and materially (Rahmat Ramadhani, 2017).

Several law scholars who have a western legal education background have tried to study Islamic law within the framework and based on western legal concepts. They try to formulate a causal theory in Islamic contract law based on the concept of western legal causation. The result is that they put forward various theories about the causes in Islamic law so that on the one hand there are those who talk about the causes of engagement. Some opinions regarding the formulation of causal theory as a motive in Islamic law are based on the concept of western law according to legal scholars

Egyptian jurists who talked about Islamic law embraced the new theory of causation developed in France, and they stated that causation was a motive (causa imfulsif), one of the leading Egyptian jurists was' Abd ar-Razzaq as-Sanhuri (1895- 1971) (Enind Hill, 1988). According to him, Islamic law does not formulate general principles regarding causes, but from various detailed legal provisions in various special agreements it can be concluded and abstracted the teachings of causation in this law. According to as-Sanhuri, in relation to the causes of Islamic law there are tensions and tensions between two opposing factors (As-Sanhuri, 1959):

1. Islamic law is a legal system characterized by a spirit of objectivism which emphasizes and pays more attention to the expression of the will than to the will itself. In a law characterized by this spirit of objectivism, like German law, the teaching of causation was difficult to find a place or, at least it could be said that the theory of causation in this law could not have developed as in the law of the Latin nations.
2. Islamic law on the other hand is also a law characterized by the spirit and principles of ethics and religion, because Islamic law is a law that originates from the teachings of Islam itself. The

consequence is that Islamic law pays much attention to the problem of motives which are used to measure the nobility of intention. On that basis, the teachings regarding causation, which are teachings on ethics and morals, should and are contrary to the first place in Islamic law, as in Latin legal law.

In the tug-of-war between these two factors, Islamic legal schools have a different attitude. There are schools that are more controlled by the spirit of objectivism so that causal teachings find it difficult to find a place that can only be entered selectively and closed under the veil of contract formulas and expressions of will, and is mixed with the object of the contract, and pays less attention to problems of motive except those contained in the statement. will (contract formula), so that if it is not contained in the contract, then the motive is considered. Included in this category are the Hanafi schools and the Shafi'I schools. On the other hand, there are schools that are more dominated by ethical and moral concepts so as to give a wide space to motives regardless of whether the motive is contained or not in the statement of the will (contract expression). The agreement becomes null and void depending on whether this motive is valid or not included in this second category, according to as - Sanhuri, is the Maliki school and the Hambali school.

a. Kausa in the Hanafi and Shafi'i schools

As just stated in the Hanafi and Syafi'i schools, it is difficult to get a place because these two schools are more dominated by the spirit of objectivism (maudhu'iyyah). On that basis, in these two schools there are two principles: (1) the cause is not taken into account unless it is stated in the contract and (2) the validity of the cause is not constant in the sense that (a) there are several cases where the view of the validity of the cause is different and (b) a view of the legal cause develops.

Causa is called in the agreement (akad). If the cause is mentioned in the agreement (akad) and the cause mentioned is a valid cause, then the agreement is valid. Conversely, if the cause mentioned is invalid, then the agreement is also invalid. For example, a person who rents a ladder to another person with the (expressly stated) purpose of climbing a wall in order to commit theft, then the rental is invalid, because the motive (the cause) is something that is forbidden, namely stealing.

The mention of causation in the agreement (akad) is sometimes explicit in the sense that the parties explain directly what their motive is to close the agreement as just exemplified above, but sometimes it is mentioned tacitly which can be deduced from the nature of the agreement. The explicit mention of the causal below can be understood from the following asy-Shafi'i statement that the principle I adhere to is that every agreement (contract) is valid according to its outward appearance. If someone marries a woman under a legal contract with the intention that he will divorce her after a day or two, I don't think the marriage will be canceled. I declared that the marriage was canceled if it was carried out with a fasid contract (Asy-Syafi'i, 1993).

This text can be seen that the agreement is judged by the expression of its birth, it is not considered the cause (motive, intention) in the heart. The causes (motives) that are considered are those stated in the contract. For example, a person who intends in his heart that his marriage is only temporary, then that intention does not cause his contract to be canceled. The new contract is canceled if the intention (motive, cause) is stated in the agreement.

The mention of the cause in the contract does not have to be explicit but can also be tacitly known and understood through the nature or nature of the object. If the cause is mentioned secretly, then the cause is paid attention to where if the cause is an invalid cause, the agreement is also invalid.

On the other hand, if it is a valid cause, the agreement becomes a valid agreement. This can be concluded from the text of the book Bada'i ash-shana'i fi Tartib asy-syara'i which states that it is permissible to sell entertainment tools in the form of guitars, tambourine drums and the like.

according to Hanifah it's just makruh. According to Abu Yusuf and Muhammad, there was no sale-purchase agreement for these items because they were tools provided for fun and were created for the purpose of wickedness and destructive actions. Therefore, these goods are not objects (which are valid objects of the sale-purchase agreement) and therefore cannot be traded. Abu Hanifah's reason, rahimahullah, is because these objects, from another point of view, can be used for example as a place to put other things and other such uses (Al-Kasani, 1982).

According to Abu Yusuf and Muhammad, this text is an invalid contract for the sale and purchase of musical instruments because it contains prohibited causes which are inferred from the nature of the object, namely those tools are usually used for the purposes of glee and wickedness so that it is prohibited. Abu Hanifah allowed the contract on the grounds that from the object it could not be concluded that there was a prohibited cause, because these tools were not necessarily for fun, but could also be for other useful uses. From this it can be seen that Abu Hanifah and his two students agreed on the principle of law, namely that the cause does not have to be stated explicitly but can also be inferred from the nature of the object of the agreement. They only differ in their application to the case of objects in the form of musical instruments whether by their nature they are intended for fun and wickedness or not. According to the two students this is so that it is haram to buy and sell because it contains forbidden causes which can be inferred from the nature and nature of the object. Meanwhile, according to the Imam, these musical instruments were not only intended for fun and wickedness but still had other uses. Therefore, according to the contract the sale and purchase of these goods is not canceled because from the nature of the object it cannot be concluded that there is a prohibited cause.

From what is stated above it can be seen that the cause if it is stated in the contract either explicitly or tacitly is considered in the sense that if the cause is valid then the agreement is also valid but if it is not valid then the agreement is canceled. This means that if the cause is not stated in the agreement, it is not considered and therefore does not interfere with the validity of the contract. For example, the contract of sale and purchase of al-'inah (original sale and purchase) where the motive is usury but it is not explicitly stated in the contract that it is valid in the Syafi'i school of thought and according to the two students of Abu Hanifah. Likewise, a marriage contract which aims for tahlil is valid if the motive is not stated in the contract and invalid if it is required in the contract.

The concept of causation is evolving and not constant. Furthermore, it should be seen that the notion of causal validity has in some cases been disputed by Islamic jurists. What according to one opinion is a legitimate cause, can happen is one opinion is a legitimate cause, can happen to be a cause that is not valid for other jurists. In addition, there is also the possibility that the cause has changed due to changes in time, what was previously invalid, maybe some time later due to the changing times, it becomes valid. For example, taking wages for teaching the Koran and becoming a noja in a mosque, previously it was not valid in the hanafi school of thought, but among the hanafi ulama mutaakhirin taking wages to teach the Koran and becoming a noja in the mosque was seen as a valid contract.

b. Kausa in the Maliki and Hambali schools

The concept of causation in these two schools as elaborated by as-Sanhuri is closer to the new theory of causation in France and among Egyptian legal scholars. Causa is a motive for closing the agreement and is taken into account both when it is stated in the contract and when it is not stated in the agreement as long as the cause is known to the opposing party in the agreement. If the cause (motive) is valid then the agreement containing it is also valid, but if the cause is not valid then the agreement containing it is also invalid.

The strongest expression of this view is determined in the writings of the famous Hambali character Ibn Al-Qayyim. The arguments and rules of sharia as a whole support that the motive in

the contract is taken into account and determines the validity and fasid as well as the lawful and forbidden contract. Even more than that, the motive for determining the lawfulness and haram of actions that are not contractual so that one day it becomes haram and when others are lawful according to their different intentions and motives, such as selling weapons to people whom they know intend to use them to kill other people, the sale and purchase is canceled, but if he sells it to someone who knows he will be jihad fi sabilillah then the sale and purchase is legal. People who intend to do usury with the sale and purchase contract they make will result in usury regardless of the form of the contract, and people who intend to carry out a tahlil marriage with the nikah contract that they make will result in the muhalil marriage contract regardless of the form of the contract.

From what was stated by Ibn al-Qayyim above, it is clear that the influence of motive in determining whether a contract is valid or cancellation. Even at the end of the quote above Ibn al-Qayyim emphasizes that the form of the contract was not considered. What is concerned is the intention and motive. People who intend to do usury by pretending to buy and sell the contract are canceled.

Legal experts with a background in the concept of anglosaxon law have conceptualized the causes in Islamic law as what is known in anglosaxon law with consideration (achievement). With consideration in the law of anglosaxon, it is intended an achievement given by an opponent of the promise which becomes the basis for consideration for the pledge provider to carry out his promise (Abduk Kadir Muhammad, 1986). This achievement must be approved by the giver of the promise which can be seen from the fact that the achievement is desired by him in return for the promise he has given. On the other hand, the recipient of the promise makes the achievement as a reward for carrying out the promise of the first party. Furthermore, it is stated that the achievement that is made or promised is an obligation for the person who gives the achievement.

Islamic law reviewer, Susan S Rayner, discusses Islamic treaty law in the concept of consideration according to Anglosaxon. However, his study of consideration is mixed with the contract object of both parties, namely price, so practically when discussing consideration he discusses the terms of the price. He stated that "consideration in Islamic law is not only in the form of price in the form of mere money, but can also be in the form of other commodities". Prices must exist and have been determined at the time the contract is made, and cannot be determined later based on the market price or the determination is submitted to a third party. If consideration is payment in cash, the jurists claim that the currency must be the prevailing currency and its value must be strictly determined. If the type of currency is not completely determined, the determination can be left to the customs prevailing in that place. In certain contracts (contracts), the agreement is declared null and void if it contains elements of usury and also elements of gharar, namely ambiguity regarding both the object and the consideration. If unclearness occurs regarding the time and method of payment of prices and in this case there is a custom to make payments for the contract in installments per week, for example, then the agreement is valid and interpreted in accordance with the prevailing custom. In essence, according to Susan E. Rayner, a contract must have consideration whether the payment is made immediately at the contract board at the time before it is submitted or at a predetermined time.

Conclusion

In its legal technique, Islamic law follows a synthetic view that sees legal action as a whole and makes the source of the bond the starting point for the formation of legal provisions. If a causal legal action (motive) has met the specified requirements for its legality, then the legal action becomes a legal action, which in syar'i creates legal consequences. If one of the conditions is not fulfilled, the legal action will be canceled and cannot cause any legal consequences. The contract

as a legal action cannot be separated from that rule. Therefore, to be able to give birth to legal consequences, the contract must meet the requirements imposed by law on it. In Islamic law, for the validity of the contract, its pillars must be fulfilled.

References

Book

Abdul kadir Muhammad, 1986, Hukum Perjanjian, Penerbit Alumni, Bandung.

Al-Kasani, *Bada'I ash-Shana'I' fi Tartibasy-Syara'I'*, 1982, Dar al-Kitab al-arabi, Beirut.

As-Sanhuri, 1959, *Mashadir al-Haqq fi al-Fiqh al-Islami*, Ma'had ad-Dirasat al-Arabiyyah al-Aliyah.

Asy-Syafi'I, 1993, *al-Umm, Dar al-Ma'riah*, Beirut.

Enind Hill, 1988, *Islamic Law as a source for the Development of a Comparative Jurisprudence, the Modern Science of Codification, Theory and Practice in the Life and works of Sanhuri*, dalam Islamic Law Social and Historical Contexts, dieditoleh Aziz al-Azmeh, Routledge, London-New York.

Samsul Anwar, 2007, Hukum Perjanjian Syariah: Studi Tentang Teori Akad Dalam Fiqih Muamalah, Raja Grafindo Persada, Jakarta.

Wahid Sawwar, 1960, *at-Ta'bir 'an al-Iradah fi al-Fiqh al-Islami*, disertasidoktor, Beirut.

Journal/Article:

Daimul Ikhsan, 2018, Jual Beli Dropshipping Oleh Kalangan Mahasiswa UIN Surakarta Menurut Hukum Islam, Academica, Vol. 2, Surakarta.

Diana Ambarwati, 2013, Etika Bisnis Yusuf Al- Qardawi, Adzkiya: Jurnal Hukum dan Ekonomi Syariah, Vol. 2 No. 1, Lampung.

Eka Sakti Habibullah, 2017, Prinsip-Prinsip Muamalah Dalam Islam, Ad-Deenar Jurnal Ekonomi Dan Bisnis Islam, Vol. 2, Bogor.

Fajaruddin, 2018, Efektivitas Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal Dalam Perlindungan Konsumen, De Lega Lata Jurnal Ilmu Hukum. Vol. 8. No. 2. Juli-Desember, Medan: Fakultas Hukum Universitas Muhammadiyah Sumatera Utara.

Nurlailiyah AS, 2016, Tinjauan Akad Syariah Terhadap Multi Akad (Al-Uqud Al-Murakkabah) Dalam Lingkup Akad Musyarakah Mutanaqishah, ADLIYA Jurnal Hukum dan Kemanusiaan, Vol. 10, Bandung.

Rahmat Ramadhani, 2017, Jaminan Kepastian Hukum Yang Terkandung Dalam Sertipikat Hak Atas Tanah, De Lega Lata Jurnal Ilmu Hukum. Vol. 2. No. 1. Januari-Juni. Medan: Fakultas Hukum Universitas Muhammadiyah Sumatera Utara.

Suci Hayati, 2019, Perlindungan Konsumen Dalam Jual Beli Barang Bekas Tinjauan Hukum Ekonomi Syariah, Adzkiya: Jurnal Hukum dan Ekonomi Syariah, Vol. 7, No. 2, Lampung.

Tengku Erwinsyahbana. 2017. "Pertanggungjawaban Yuridis Direksi terhadap Risiko Kerugian Keuangan Daerah pada Badan Usaha Milik Daerah". De Lega Lata Jurnal Ilmu Hukum. Vol. 2. No. 1. Januari-Juni. Medan: Fakultas Hukum Universitas Muhammadiyah Sumatera Utara.