
ULAMA'S DEBATE IN THE LAW OF ORIGIN OF THE FIQH MUAMMALAH AND CONTRACT

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ABSTRACT

Transactions carried out by both the party we connect between fellow one human _ with other no will miss from something agreement together so we know with law Muamalah , deal together could cause rights and obligations if second split party do something counter or agreement , contract that is maliyah or ghair maliyah . something activities that will arrange how connection between second party or more will be done agreement , then on the contract that alone there is agreement agreement / contract carried out by those who have or the parties who make deal. Difference the views of scholars also occur in the application of condition as well as pillars of contract law , opinions expert fiqh that is according to The school of Imam Hanafiah in question sighat Contract is something get along contract , while expert scholars fiqh put second split the transacting party is target Contract then Sighat is get along must - have contract realized , related can carry out multiple contracts Then there are scholars who are different opinion . Some scholars guide in do multiple contracts based on the Prophet's command to do muamalah or sell buy in various agreement Among second split party , there is a number of opinion expert other fiqh scholars who allow multiple contracts based on rule the law that states that every transaction muamalah could said to be halal except if there is provision the law prohibits previously

Keywords : Ulama Debate , Original Law , Muammalah and Akad

ABSTRACT

Transaksi yang di lakukan oleh kedua pihak yang kita hubungkan antar sesama manusia yang satu dengan lainnya tidak akan terlepas dari suatu kesepakatan bersama maka kita kenal dengan hukum Muamalah, kesepakatan bersama dapat menimbulkan hak dan kewajiban apabila kedua belah pihak melakukan suatu kontra atau perjanjian, Akad yang bersifat māliyah atau ghair māliyah. suatu kegiatan yang akan mengatur bagaimana hubungan antar kedua pihak atau lebih yang akan dilakukan kesepakatan, kemudian pada akad itu sendiri terdapat kesepakatan perjanjian/kontrak dilaksanakan oleh yang berakad atau pihak-pihak yang membuat kesepakatan. Perbedaan pandangan ulama juga terjadi pada penerapan syarat serta rukun Hukum Akad, pendapat ahli fiqh yaitu menurut Madzhab Imam Hanafiah yang dimaksud sighat Akad merupakan suatu rukun akad, sedangkan ulama ahli fiqh menempatkan kedua belah pihak yang bertransaksi adalah sasaran Akad kemudian Sighat merupakan rukun akad yang harus direalisasikan, terkait boleh melaksanakan multi akad kemudian ulama ada yang berbeda pendapat. Beberapa ulama mempedomani dalam melakukan multi akad berdasarkan perintah Rasulullah untuk melakukan muamalah atau jual beli dalam berbagai kesepakatan antara kedua belah pihak, ada beberapa pendapat ahli fiqh ulama lainnya yang membolehkan multi akad berdasarkan kaidah hukum yang menyatakan bahwa setiap transaksi muamalah dapat dikatan halal kecuali apabila ada ketentuan hukum yang melarang sebelumnya

Kata kunci : Perdebatan Ulama, Hukum Asal, Muammalah dan Akad

I. Introduction

A. Background

be active in activity daily no will miss with each other need Among man with creature other , because humans are created as creature social , then in Islamic law is known law Muamalah , Fiqh Muamalah by etymology is connection man between humans who have meaning you're welcome have interest as well as agreed goals _ that is connection something braid association each other help help in kind as form of worship to Allah SWT , even Allah says in Surah Al- Maidah verse 2, which means "And please " help you in do goodness and piety , and do n't help help in do sins and transgressions ” , Muslims in do activity daily no miss with norms Divine which means value that has base the real truth and the highest from Allah swt .

the basis of a system settle down In Islamic law there are in committed, because that Contract started with agreement two split party , explanation according to language, which contained in al -'aqd of them agreements , engagements , ties , and consensus (al -ittfaq). according to explanation by terms , contract defined relationship Ijab and Qabul from second split that states desire in accordance with sharia rules that will own consequence law to the object .

The Concept of Muamalah Fiqh Law and Akad according to the opinion of related fiqh scholars implementation in the Law of Muamalah and Akad apply in room scope sharia economics . The law of muamalah that is implemented in country or Islamic society , is one of the Islamic goals that exist in maqasid Shari'ah , namely Principle realization justice , equality between hugger or different group _ understanding . position Contract require all party know and understand related things _ with Contract condition as well as peace . so if all party already knowing all related things _ with Contract expected capable doing Contract with correct as well as capable doing obligation as well as accept rights that have been mutually agreed , meaning Contract is something someone wants _ _ for done , fine desire that arises in herself alone as well as those that require existence will from second split party .

Differences in Fiqh Experts or the opinion of scholars is in the determination of terms and conditions contract , according to Imam Hanafiyah madhhab make sighat contract as one _ get along Akad , Expert of science Fiqh or scholars form all contracted party , object _ contract and sighat contract as get along The contract that must be obeyed and implemented .

II. RESULTS AND DISCUSSION .

A. Original law in Fiqh Muamalah .

Fiqh expert or scholars agree that law origin in agreement Among second split known party _ with Muamalah is Mubah (allowed) , except there is nash or law argument against _ before .

Fiqh Muamalah there is two the necessary understanding understood including ;

1. Fiqh Muamalah according to Islamic Sharia is something organizing activities _ a number of related things _ between fellow man in activity everyday , while according to etymology own same meaning _ with al -mufa'ala that is each other do as well as get in touch interest somebody with other people .

2. Fiqh Muamalah is a connection human in interact as form man creature social that doesn't could life stand up alone , then muamalah can is law restrictive law _ man with their rights and obligations .

For determine that get along Contract is the parties to the agreement in bond contract or agreement contract , then how look object contract , as well as purpose tree Contract and existence agreement second split party .¹

B. Understanding Fiqh Muamalah

Definition Fiqh containing understanding , if seen as well as researched from the time of conception until progress among others:

1. According to Abu Hanifa define fiqh is knowledge a Muslim about rights and obligations as people Allah 's creation .
2. According to Imam As- Shafi'i in the meaning fiqh something science that discusses how method have a good time law or method understand the Qur'an and Hadith by correct about related religious teachings deed law shari'ah amaliyah obtained from detailed arguments . _
3. According to Abdul Wahab Khalaf definition fiqh is science that studies about rules as well as discussions which are method for find laws or detailed arguments . _
4. According to al - Amidi, a Syafiiyah scholar , defines fiqh as knowledge about law Islamic Sharia _ practical through detailed arguments . _

Temporary according to the Maliki jurists , fiqh is knowledge about orders shari'ah in problem special obtained from application theory illat or search law with argument .

* As for the word muamalah , according to definition from aspect language , the sentence "amala - yuamilu - muamalat " which means treat or action somebody towards other people own connection interest agreed parties . ²_

Whereas definition muamalah from aspect term , can interpreted with a broad meaning nor narrow . Definition muamalah in a broad sense as following :

1. According to Louis Ma'luf , understanding muamalah is laws related terms _ with world affairs and life human , like sell buy , trade , and so on .
2. According to Ahmad Ibrahim Bek , stated muamalah is the rules about any related _ with world affairs , such as trade and all about material , marriage , divorce , sanctions ,

¹ Abdul Manan, Sharia Economic Law, Kencana : Pustaka Media Group, (2016), p . 119-121.

² Zainil Ghulam, ' Muamalah Fiqh Relations with Islamic Economics ' , *Iqtishoduna : Journal Islamic Economics* , Vol. 5, no. 2 (2016), pp.128-48.

judicial and related with management office , ok general or special , which has been set the basics by general or global and detailed for made instruction for man in exchange benefits between _ them .

2. Muhammad Yusuf argues that muamalat is God's rules that must be followed and obeyed in life sociable for guard interest human .
3. Muamalat is all rules created by Allah for arrange connection man with man in life and life .

* As for understanding Muamalah in a narrow sense is definition Muamalah is all transaction or agreements made by humans _ in Case swap swap benefits . Muamalah could understood that muamalah is all regulations governing _ connection Among fellow humans , both religious _ nor no religion , between man with his life , and between man with natural surrounding . , scholar of science fiqh mean Muamalah as following :

Based on Syafe'i (2004) there are a number of opinion according to master fiqh in a narrow sense like following this :

1. According to Hudhari Beik think muamalah is all a contract that allows man each other swap benefits .
2. According to Idris Ahmad , that muamalat is God's rules that govern connection man with man in his business for got tools necessity his body with the best way .
3. according to Rashid Rida , argues muamalah is swap swap goods or something according to beneficial with the ways that have been determined .

Definition Fiqh Muamalah in a narrow sense more emphasis on submission to Allah 's regulations that have been lowered as well as set .

C. Akad can be defined

Contract is Arabic meaning _ something bond usual obligations _ called contract / agreement . Contract is tightening or agreement a number of party good real nor abstract .³ according to terminology fukaha Contract is something that exists pleasure second split parties justified by syara ' use _ statement Ijab and Qabul .

Other definitions of Contract is engagement that can effect on object use statement Consent Qabul in accordance with provision sharia . Meaning in accordance with sharia is the contract done no deviate of the Islamic religion.

In Case promise and wa'ad something that does n't could equated according to fiqh muamalah , promises and promises (wa'ad) only tie one party just whereas Contract tie

³ Dharmawati Darmawati , ' Akad in Transaction Economy Shari'ah ' , *Sulesana : Journal Outlook Islam* , Vol.12, No. 2 (2019), pp. 143-67.

second split party . While in wa'ad will there is moral sanctions if the person who promises no keep the promise .⁴

*** Akad own get along as following :**

1. The person who implements contract that is aqid , contract could consist from some people and one person from each _ _ party .
2. Objects made object contract good goods or service called Ma'qud alaih .
3. Shighat al a'qad , namely statement hand over accept from the contract (ijab and qabul)
4. Ijab that is state explanation that gives description will his will through Contract whereas Qabul statement outgoing receipt _ after existence consent⁵.

*** Terms Contract in get along**

- The first condition namely : 1) party say ; 2) tamyiz .
- The second condition :
 - 1) object can transacted ;
 - 2) can determined or certain ;
 - 3) which becomes object real and can given .
- Terms contract get along third namely : 1) the unity of the contract assembly , and; 2) suitability consent qabul .

*** Type contract is as following :**

1. Aqad Munjiz is a contract that doesn't there is conditions on time finish contract and carried out by straight away .
2. Aqad Mualaq is existing contract _ conditions implementation suspended time on time certain .
3. Aqad Mudhaf is the implementation of the engagement there is condition suspension implementation contract until the time that has been determined .

*** Declared legitimate or cancel Contract** namely :

1. Akad sahahah is condition general and special could fulfilled by perfect .
2. Akad fluent is engagement disabled and not fulfil condition general or special .

Consequence the law that arises Becomes attention main from contract . Desire with those who want created by both split party is consequence law the tree that becomes reason purpose

⁴ Saebani, Beni ahmad ' *Economic Law and Sharia Contracts in Indonesia* ' , CV. Faithful Library: (2018)

⁵ Urbanus Uma Leu, ' Akad in Transaction Sharia Economics ' , *Journal Tahkim* , Vol. 10, No.1 (2014), pp. 48-66.

contract . Purpose Contract is wish to want achieved somebody when do the contract , and the results that have been achieved is consequence law contract moment contract already accomplished .⁶ for example in sell buy goal is move ownership .

*** Destination contract , share be 5:**

1. Like sell buy that is tamlik .
2. Organize effort or purposeful sharing _ for work same .
3. Tautsiq that is solidify trust course .
4. Like wakalah for deliver power .
5. Like deposit for stage maintenance .

***And for ending Contract caused by :**

1. Some the thing that causes Fasach : because existence damage , because khiyar and because no there is realization . That thing result in ending contract .
2. The ending because death .
3. Died before give permission or who have authority no give permission causing ending something contract because no get permission from the authorities _ give permission .

D. Opinions of scholars and Imam Madzhab :

Fiqh Imam Abu Hanifa that is majallāt al -ahkām al-' adliyāt taken by the scholar Abd al -Azīz who emphasized that contract is agreement a number of party to something stated _ in consent and qabul . Whereas Badr ad -dn ash-shafi'i state that contract is relationship Among consent and qabul , then from meaning contract in accordance Imam Hambali's fiqh Muamalah that causes obligation Among a number of the party who declares existence consent and qabul .

Whereas Contract based on term in Jurisprudence _ character special that includes whole Contract maliyah done by two party or more as contract sell buy , ijarah, pawn and others , then contracts ghair maliyah as marriage contracts and others , as well as contract could carried out direct as meaning the origin has meaning bond like a rope fastener as well as could used by figure of speech that is bond Among consent and qabul . With so , expert language use sentence contract by meaning as well as figure of speech as sell buy , marry and so on .⁷

⁶ Mustafa Edwin Nasution , *Introduction Exclusive Islamic Economics* (Kencana , 2017).

⁷ Purwanto I. D, *Islamic Law Against Discounts* (Study at Lativah Hijab Cirebon), *Syntax Literate: Jurnal Scientific Indonesia*, Vol. 3 (2018) Pg. 21-29.

Definition Contract translated Compilation law Islamic economics (KHES) is something agreement in a contract / agreement entered into by two party or more for do or no do deed law certain .⁸

In Indonesia, Akad known with term contract or agreement . Opinion Ibn Abidin quoted Manan Fiqh Expert , meaning Contract by terminology that is relationship Among consent and qabul in accordance with the will of Allah and the Messenger of Allah and justified by sharia then cause consequence law to the object

Contract should could fulfilled with terms and conditions , opinion Imam Abu Hanafi madhhab , the pillars contract only one that is sighat a contract in the form of consent and qabul , as well as actions that show existence pleasure for do exchange good in the form of words nor action , while conditions is ' aqidain and al -ma'qud ' alaih or object contract Didalah harmony and conditions Contract certain will occur sighat the contract which is consent qabul second split party or more committed and not _ there is object contract .

Meanwhile opinion The Imam Shafi'i Madhhab and the Imam Maliki School which make ' aqidain and al -ma'qud ' alaih as get along contract . In the Case this can occur because both of them is element main implementation something contract . Fiqh experts , scholars argue that get along contract namely al -'aqidain or two the contracting party , al - ma'qud ' alaih or object contract and sighat al-' aqdi that is consent and qabul .⁹

III. CONCLUSION

Application Fiqh Muamalah and Akad , can we look at the first in problem muamalah that alone , habits that can made base law with condition connection between human with man in transact the no prohibited by the Qur'an and Sunnah. This means Islam opens door as wide as possible to interested parties _ _ _ for develop and create shape as well as Miscellaneous transaction new in accordance with development of time, throughout no harmful self themselves and others, other than that in transaction muamalah , which becomes the foundation is creation element benefits that contain meaning that connection second split agreeing party _ could bring kindness , useful as well as useful for life life man

Contract is something agreement , binding , relationship as well as agreement Among somebody with other people loading consent and qabul , as well as own the rights and obligations of each according to with sharia, Akad according to some Fiqh Experts / Scholars, that Contract could interpreted relationship and agreement from someone who does agreement or bond in accordance with influential sharia foundation to the object that becomes engagement from party to party another .

⁸ Ahmad Hidayat , *Islamic Values in Sharia- Based Banks (Study on BRI Syariah Bank Cirebon City Branch , Vol. 1 (2019)*, p . 6.

⁹ Khoshi'ah , *Fiqh Muamalah Comparison* , Bandung; Pustaka Setia, (2014), pp.78-79.

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