

Views of The Assembly and “Shighat” On The Contract and Their Relevance to Contemporary Economic Dynamics

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Abstract

Purpose – *The problem in Islam is that economic activity is closely related to contracts. Ijab and Qabul are the essence of the contract, namely the will of the offeror and the will of the recipient of the consent.*

Method – *This relates to research that explains the concepts of assembly and shighat views in contracts and their relevance to contemporary economic dynamics.*

Result – *The results of this research show that the majlis and shighat in the contract have several meanings according to the views of four madzhab scholars, some of whom argue that ittihad al-majlis does not have to be united in one place, but rather the ijab and kabul are in one place, meaning the person who will do the ijab and the kabul does not have to be in one place and neither do the witnesses.*

Keywords : Assembly and Sighat, Contract, Contemporary Economics



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INTRODUCTION

Islam is a comprehensive religion (rahmatan lil 'alamin) which regulates all aspects of human life as conveyed by the Prophet Muhammad SAW. One aspect that is regulated is economic activity or what is known as fiqh muamalah. Economic activities in Islam have been carried out since ancient times, namely during the time of the Prophet Muhammad SAW and have developed up to the present. If economic activities or transactions during the time of the Prophet were carried out face to face by meeting directly in the market, then economic activities or transactions today are more diverse. for example by not meeting face to face.

Economic activities in Islam or muamalah fiqh that are currently carried out are referred to as contemporary era muamalah fiqh. One of the fundamental problems faced by muamalah fiqh in the contemporary era is how Islamic law answers various kinds of problems and forms of contemporary economic transactions and their developments that have not yet been regulated in classical fiqh books.

Daily human activities, including economic activities, cannot be avoided and are independent of contracts (agreements). Through the contract, a man is united with a woman in a life together, and through the contract, various business and enterprise activities can also be carried out. An agreement is a meeting of consent and acceptance between two or more parties to produce legal consequences for its object (Syamsul Anwar, 2007).

Contracts help each person to carry out their desires and needs that cannot be fulfilled without the help or services of other people. To form a contract, the elements that form the contract are required. However, among the fuqaha there are differences of opinion regarding these forming elements (the pillars and terms of the contract). (Wahbah az-Zuhaili, 2011)

According to "*Jumhur Fuqaha*", the pillars of a contract consist of: Al-'Aqidain, namely the parties directly involved in the contract. Mahallul Akad, namely the object of the contract or something to be contracted. Shighat Akad, a statement of the terms of the contract which is usually carried out through a statement of "Ijab Qabul" (Acceptance).

Shighat contract is said to be the essence of a contract, which is a statement of the will of the parties entering into the contract in the form of consent and acceptance. Ijab is a statement of promise or offer from the first party to do or not do something. Kabul is a statement of acceptance from a second party for an offer made by the first party. This consent and acceptance represents permission (pleasure, agreement) which describes the agreement and willingness of both parties regarding the rights and obligations arising

from the contract. In order for this “Ijab and Qabul” to have legal consequences, two things are required. (Afdawaiza, 2008) First, there is a correspondence (tawafuq) between the ijab and qabul which marks the existence of a conformity of will so that an agreement is realized. Second, the agreement of wishes must be conveyed in the same assembly (unity of assembly). In carrying out an agreement, there are pillars and conditions that must be fulfilled. According to Jumhur, most scholars other than the Hanafi School state that the pillars of a bro contract are up to five things:

1. Aqidun, the perpetrator of the agreement, whether it consists of only one person or a certain number of people, one party or several parties.
2. Mahallul 'aqdi, namely the object that is the object of the sale and purchase agreement.
3. Maudhu'ul 'aqdi, namely the main aim or purpose of the contract. As in buying and selling, it includes the transfer of ownership rights through payment.
4. Ijab or Sighat 'aqdi, which is a word that shows the will regarding the contract expressed at the implementation of the contract.
5. Qabul, namely Sighat 'aqdi or words that indicate agreement with the contract agreement expressed as a response to the ijab. (Darmawati H 2018)

The difference between rukun and conditions according to ushul fiqh scholars is that rukun is a characteristic on which the existence of the law depends and is included in the law itself, while conditions are a characteristic on which the existence of the law depends, but it is outside the law itself. (Shobirin 2016).

METHOD

This type of research uses qualitative research that in qualitative research the researcher carefully investigates a program, event, activity, process, or group of individuals. Cases are limited by time and activities, and researchers collect complete information using various data collection procedures based on predetermined times (Kusumastuti, Adhi, 2019). The researcher uses a library research method approach which is based on information from library materials.

The author will use it to identify relevant legal provisions and principles to overcome the problems found. By using primary data sources

including Sharia economic laws and secondary data sources in the form of scientific works, legal books, papers, journals, dissertations and theses (Raihan, 2017) Results and data analysis in qualitative research are carried out before entering the field , while in the field, and after finishing in the field (Sugiyono, 2018).

RESULT

The forms of contracts in sharia economic transactions can be divided into two: First: the tabarru contract is a contract made between two parties with the aim of helping each other in order to do good. Both tijarah contracts are contracts carried out with the aim of making a profit, because they are commercial in nature. Tijarah contracts can be divided into two, namely: natural certainty contracts (NCC) and natural uncertainty contracts.

Judging from the source, contemporary Islamic legal experts, such as az-Zarqa', say that the sources of engagement (masadir al-iltizam) in Islam include five types, namely: contract (al-'Aqd); unilateral will (al-Iradah al-Munfaridah); detrimental actions (al-Fi'l ad-Dar); beneficial deeds (al-Fi'il an-Nafi'); and sharia'. (Alim Mumin, Kurniadi, and Atma 2024)

In Islamic law, to form a valid and binding contract (agreement), 1) the pillars of the contract and 2) the conditions of the contract must be fulfilled. The terms of the contract are divided into four, namely 18:

1. Conditions for forming a contract (syuruth al-in'iqad)
2. Conditions for the validity of the contract (syuruth ash-shihhah)
3. Conditions for the validity of the legal consequences of the contract (syurutha-nafadz)
4. Conditions for binding the contract (syuruth al-luzum) (Fasiha 2018)

The unity of the assembly in a contract is one of the conditions that must be fulfilled for the shihat of the contract, namely that the assembly must be united between the parties entering into the ijab and qabul. The scholars state that one of the conditions for a contract is that it must be carried out in one contract assembly. The contract assembly is a place and time where both

parties are at the time of negotiations which starts from the moment the consent is submitted and lasts as long as they remain focused on the issue of negotiating the agreement and ends with them turning away from the negotiations. (Dery Ariswanto,2021)

Gaetano Mosca stated that legitimacy is a belief that shows submission to existing regulations. In general, legitimacy is a concept of strong attachment between leaders and those they lead in political science. According to Suchman, legitimacy is a general perception or assumption that the actions of an entity are desirable, appropriate or appropriate within some system of norms and values. Based on the definition above, in the case of contracts we can assume that the legitimacy of the contract is meant as the belief of the contract maker regarding his/her commitment to the contract being made. This has the consequence that a valid contract requires the perpetrator to follow all contract procedures according to the type. In the study of Islamic economics, there are contracts that are valid and there are also contracts that are false (not valid), so that the legitimacy of the contract depends on this. (Muhammad Azwar Kamaruddin,2021)

The definition of an agreement according to Subekti is "an event where someone makes a promise to another person or two people promise each other to carry out something". This agreement event creates a relationship between these people which is called an alliance (Gemala Dewi, 2005).

1. See Akad
 - a. Oral Statement of Will

The parties express their wishes in clear words. In this case, the form of consent and qabul made by the parties will be very clear. The statement of will through speech must be clear in meaning and firm in its content. Consent and qabul can be done directly and can also be done without face to face, by telephone for example. Regarding the issue of non-direct contracts, there is a problem in it, namely determining when the contract will occur if it is related to the unity of the contract assembly as a condition for consent and qabul. This will be discussed in the contract assembly section.

Everything that exists on this earth is intended for humans so that they have the same rights and obligations in utilizing and maintaining the resources that have been entrusted to them as fully as possible for the sake of the prosperity of life in the world. Having the same rights and obligations implies that all humans are the same, without classes in the eyes of God and the only difference is piety. The implications of these doctrinal values then give rise to basic values which are used as social construction and system behavior which then give birth to the principles of justice, equality, balance, brotherhood and cooperation. (Hafizah 2012)

Another specific definition of a contract is an agreement that is determined by an agreement based on the provisions of the Sharia which have an impact on its object. 8 Based on this formulation, an important aspect for the occurrence of a contract is the existence of an agreement and a qabul. in entering into a contract between two or more parties, thereby avoiding or exiting a bond that is not based on sharia'. Therefore, in Islam not all agreements or agreements can be categorized as contracts, especially agreements that are not based on Islamic pleasure and sharia. (Muhammad Harfin Zuhdi 2017)

Contracts in electronic transactions in cyberspace are different from direct contracts. Electronic transactions usually use written agreements (email, SMS and the like) or use oral (via telephone) or video such as teleconferences. Buying and selling via electronic media is a buying and selling transaction carried out via modern technology, as mentioned, its validity depends on whether or not the terms and conditions that apply in buying and selling are met. If the conditions are met then this kind of transaction is valid as a binding transaction. And vice versa, if it is not fulfilled then it is invalid. (Astuti 2018)

The implementation of agreement theory in sharia economic law can be interpreted as meaning that everything that comes out of a human being is guided by his will and sharia' determines several rights. Legal experts have divided the category of contracts into two, namely contracts with words ('aqd al-qawli) and contracts with medicine ('aqd al-fi'li). For this reason, all forms

of business agreements in sharia banking will be considered valid if they do not conflict with the principles, principles, conditions, pillars and ethics of sharia business law. (Yusup 2015)

b. Declaration of Agreement in Writing

Apart from verbal words, contracts are also carried out in writing. In its function as a statement of will, writing has the same function and power as an oral contract. This form of contract is very appropriate for contracts that are carried out far apart and in different places. This contract can also be used for more difficult engagements, such as engagements carried out by a legal entity. There will be difficulties if a legal entity enters into an agreement not in written form because it requires evidence and responsibility for the people who join the legal entity. In the absence of this location, the contract can be executed through writing and sending a messenger. In this case there is a rule of fiqh: "the writing for the people present is commensurate with the oral speech of the people present".

c. Conveying consent through writing

The form is that someone sends another person to the second party to convey his offer verbally as it is. This is different from the recipient of the power of attorney, where he does not just convey the will of the person giving the power of attorney (al-muwakkil) but also carries out legal action based on his own will on behalf of the person giving the power of attorney, while the envoy does not express his own will but instead conveys the will of the person who sent him. (al-mursil). If the sender's will has been conveyed to the promise partner and the partner has accepted the agreement (stated his qabul) at the assembly where the agreement was expressed, then the agreement has occurred. If the agreement is conveyed without an order from the principal, and then accepted by the promise partner, then the contract is considered to have occurred but has the status of mauquf, because he is considered an actor without authority (fuduli).

If the agreement is conveyed in writing/letter, and the recipient of the letter states his acceptance of the offer, then the agreement is considered to

have occurred. If the recipient of the writing does not declare acceptance at the assembly where the letter was received, then the offer is not terminated, but remains valid as long as the letter is in the possession of the recipient. This is different from an offer made by messenger, if the recipient of the offer is not answered at the place where the offer is made, then the offer will be invalidated and a new offer will be required.

d. Statement of Will with Gestures.

An agreement can not only be made by a normal person, but can also be made by a disabled person through a gesture provided the meaning is clear and clearly shows the desire to make the agreement. According to Hanafiyah and Syafi'iyah, if the person making the contract is a person who is able to make the contract verbally, then the contract is not considered fulfilled. He must manifest his will verbally or in writing, because even though a gesture shows his will, it does not provide confidence compared to the belief that results from an oral or written contract. It's just that the jurists have different views about when this form of signal is used for normal people. Some consider it an exception when other methods cannot be used. Shafi'i does not allow the use of written expressions of will, of course as a signal, even more so does not allow it. The most flexible is the opinion of the Maliki school of thought which justifies the use of signs by anyone, even if they are not disabled. Contracts can occur in any way that can show the permission (pleasure) of the parties.

e. Secret Declaration of Will (at-Ta'ati).

In line with the development of society's needs, contracts can also be carried out directly, without using words, writing or gestures to express one's will. In form, there is an act of giving and receiving from the parties who understand the agreement with all its legal consequences. For example, buying and selling that occurs in supermarkets, for example, does not involve a bargaining process. The buyer already knows the price of the goods which is stated in writing on the goods. When the buyer goes to the cashier's desk and gives a certain amount of money, this shows that they have given their respective consent, so the contract takes place. Fuqaha also have different

views regarding this type of statement. The Hanafiah group considers it valid to comply with every material contract, if this has become the custom of a society, but the price of the goods must be clearly stated. According to Malikiyah, this observance agreement must be accompanied by very clear indications showing the willingness of each party, whether it has become customary or not. Meanwhile, according to Syafi'iyah, contracts cannot be implemented obediently.

1. Assembly Definition

The fuqaha stated that one of the conditions for a contract is that it must be carried out in one contract assembly. The place and time where both parties are at the time of negotiations, which starts from the moment the consent is submitted and lasts as long as they remain focused on the issue of negotiating the agreement and ends with them turning away from the negotiations, this is what is called the contract assembly. This contract assembly theory is generally intended to determine when and where the contract occurs and specifically to determine when qabul can be given and to provide an opportunity for both parties to consider the contract. As a consequence of this contract assembly theory, the birth of khiyar qabul, khiyar withdrawal (khiyar ar-ruju') and khiyar assembly (khiyar al-majelis).

The unity of the contract should not be understood rigidly within the dimensions of space and time. On the other hand, the concept of unitary assembly needs to be developed in line with the development and progress of business media. In this case, the unity of the assembly becomes meaningless if the parties are physically united in the contract assembly but there is no conformity in the idea of the transaction, when compared with transactions carried out far apart but substantive unity or transaction agreement between the two parties has been achieved.

The unity of the assembly does not mean the unity of place and time, because this would be difficult to apply in the realities of contemporary life, where transactions can occur through communication tools that place the parties not in the same place. However, what is meant by unity of the contract

assembly is unity of time, not unity of physical place, where the contracting parties still focus on the agreement being made. When one of the parties has moved attention, the contract assembly is considered to have ended. Thus, a contract with an agreement via telephone or other means of communication is an assembly from the time the agreement is made by telephone or a letter is sent until there is an answer from the opposing party. The consent is considered to have ended when the conversation is diverted to another matter before the qabul is stated. The results of this research show that ittihad al-majlis in a marriage contract has several meanings according to the views of four madhhab scholars, some argue that ittihad al-majlis does not have to be united in one place, but rather the consent and kabul are in one place, meaning the person who will performing the ijab and kabul do not have to be in one place and neither do the witnesses.

Business ethics has a very important role in overcoming various problems faced by the business world today. Business ethics does not only consider financial profits, but also other factors such as environmental and social impacts, as well as community welfare. In global and local contexts, business ethics must be applied consistently and follow established international standards. (Ar Rasyid et al. 2023)

In carrying out transaction activities, banks always face risks caused by uncertainty in fulfilling claims caused by political, economic and other natural conditions. Because of such conditions, the return of funds from the public can be delayed or even lost. very. Therefore, banks in carrying out their activities must pay attention to the principles of prudence (prudential banking). (Nugroho 2021)

It is common knowledge that the Consumer Protection Law sets out the aim of consumer protection, among others, to raise the dignity of consumers' lives and anything that has a negative impact on the use of goods or services, so the Law determines various prohibitions, such as business actors who are prohibited from trading in damaged or defective goods. or used and contaminated without providing complete and correct information about the goods in question. (Asfiani.B 2023)

Gharar and maisir which developed from the Jahiliyyah era to the current modern economic era tend to reflect uncertainty and chance. This reflection can be seen from unclear results and profits or losses that only favor one party. Transactions that are inherent in elements of gharar and maisir result in injustice and unwillingness. Because these transactions are prohibited in Islam and as economic actors humans must be more careful and selective in order to avoid gharar and maisir which in the modern era have changed into several forms such as in banking, insurance, stock exchanges, online gambling and games. on line. (Itona 2022)

Meanwhile, other literature sees the theory of transformation in a different sense. According to Anthony Antoniades, giving the meaning of transformation is a process of gradual change so that it reaches the ultimate stage. Changing is made to respond to the external and internal elements through the process of duplicating or multiplying. It describes architectural transformation strategies. Some are external, and some are internal. Indicators can measure those internal concepts through the need for self-identity, changes in lifestyle, and the influence of technology. (Amirullah and Sahib, 2016)

The literature in the book of fiqh is neatly arranged and codified. However, in facing the speed of time, it is possible that he is unable to cope. This can be seen in sharia banking to meet the demands of the transaction scheme required in a transaction that is derivative (derivative) even though the nomenclature still includes the parent (Abidin 2013)

Sayyid Sâbiq explained that contracts in general must fulfill several basic requirements, namely: First, they do not violate Sharia law. Second, we must both agree and have the right to choose (*khiyâr*) when there are defects in the contract. Third, the contract must be clear and unambiguous (easily understood by both parties with the same understanding) (Rahmawati 2016)

Ijab and *kabul* can also be interpreted as *ṣigah*, which is something that is expected from two contracting parties which shows what is in both of their hearts regarding the occurrence of a contract, whether verbally, in writing, in

deeds and in gestures. Ijab is a statement of will that first arises from a party to give birth to a legal action, where with this statement of will he offers to create the legal action in question where if the offer is accepted by the other party a contract will occur. Kabul is a statement of will that agrees to an agreement with which a contract is created. (Albab Musaffa 2020)

Contract modification is part of *ijtihad* so that the contracts contained in *fiqh* can be applied to modern transactions. The ability to modify a contract must be based on the validity of each contract that forms it. This means that a contract modification is said to be valid if the pillars and conditions of the contract that form it are fulfilled, in addition to paying attention to the limitations set by the *hadith*. In order for the terms and conditions of the contract to be fulfilled, several contracts must not merge into one. (Burhanudin Susamto 2016)

The rules of *fihiyyah* are the realm of *ijtihad* in applying legal law which is extracted from branch legal problems based on the results of absolute *ijtihadmujtahid*. *Fihiyyah* rules have an important role in facilitating understanding of Islamic law, where various branches of law are arranged into one rule. The study of *fihiyyah* rules can help maintain and tie together numerous and conflicting issues, becoming a way to present various laws. The rules of *fihiyyah* can develop a person's *malakah zhihiyah* (taste sense) of *fiqh*, so that he is able to adhere to various unlimited *fiqh* laws in accordance with the rules of his imam's school of thought. Binding various laws in one bond shows that these laws have benefits that are close to each other or have great benefits (Hastuti and Anggraini 2022)

2. Contracts in the Contemporary Era

Globalization is an inevitable phenomenon in the world. In some literature, this era began in the 1990s. This era is marked, among other things, by extraordinary acceleration in various fields, including the economic sector. World economic activity is not only limited by geographic, language, cultural and ideological boundaries, but more so by factors of mutual need and interdependence. The world seems to have no boundaries, especially because of the rapid development of information technology. This situation gives rise

to many opportunities and challenges, especially in efforts to develop Islamic economics, especially the most dynamic aspect, namely Islamic finance. (Kholis 2018)

Legal disputes regarding the necessity of derivative contracts arise when there are two conflicting opinions regarding sharia issues that exist in these contracts. This is because derivative contracts are new contracts in Islamic finance and are not included in ordinary sales and purchase contracts or bay' salam because the suspension of goods and prices applies in derivative contracts. (Nadhirah Nordin and Asmak Ab. Rahman 2011)

In this case, the contract is also called a contract or agreement, namely the meeting of the consent given by one party with the consent given by the other party legally according to Sharia law and giving rise to consequences on the subject and object. In the implementation of contracts at LKS, disputes often occur or a dispute triggered by a condition where one of the parties feels disadvantaged. This could possibly occur due to the non-implementation of the principles of the agreement in the contract. (Yulianti 2008)

Islamic law and manifested in its operations, on the one hand echoes and grounds Islamic law, so in this case it is clear that Islamic law requires sharia banking to show how Islamic law regulates aspects of human life. (Arifin et al. 2023)

The spirit of Islam as a source of rules and regulations that are applied in running the economy has become its own spirit as a form of worship values that cannot be separated. In other words, the Islamic economic system is an economic system based on sharia values and principles originating from the Al-Qur'an and Al-Sunnah. (Titin 2022)

Islam's great commitment to brotherhood and justice demands that all resources which are God's sacred mandate be used to realize maqashid shari'ah, namely fulfilling the needs of human life, especially basic (primary) needs, such as clothing, food, shelter, education and health. Fraternity and justice also demand that resources be distributed fairly to all people through fair policies. The instruments are; zakat, infaq, alms, taxes, kharaj, jizyah,

export-import excise and so on. (Kusmanto 2014), From a formal sharia perspective, the existence of Sharia Economics has a strong legal basis. In the country context, Sharia Economics has a constitutional basis. (Moh. Mardi 2021)

This means that the parties have reached the level of legal acting skills, both minimal legal acting skills, namely *mumayiz*, and perfect legal skills, namely maturity. This is the opinion of Hanafiah scholars, Hanabilah, Malikiah. Meanwhile, according to some Hanabilah and Syafi'iah scholars, selling someone else's property without their permission is (law of *maukuf*). (Urbanus Uma Leu. 2014)

According to Ibn Taimiyah, the original law of all *muamalat* in the world is that it is permissible except what Allah and His Messenger have forbidden, nothing is haram except what Allah has forbidden, and there is no religion except what is prescribed. (Hasanudin. 2022)

CONCLUSION

The contract is part of *mu'amalah fiqh*, which means that the bond between two parties is to obtain a certain sharia legal act that is valid and has legal consequences. There are three other terms regarding contracts, namely: agreement, engagement, and contract. Islamic economics is a business carried out in accordance with sharia principles. has its own principles, such as the principle of like and like, the principle of justice, the principle of mutual benefit, and the principle of mutual assistance, as well as the principle of benefit. The relationship between one and another is in the economic field, in Islam economic activities are closely related to contracts.

"*Ijab and Qabul*" are the essence of the contract, namely the will of the offeror of the offer and the will of the recipient of the consent. *Ijab and kabul* are said to be *shighat akad*, differences of opinion regarding the forms of *shighat akad* are a common thing that occurs as time goes by. If in the classical period the *shighat* contract was always associated with a form of speech, then in the contemporary period the *shighat* contract has taken various forms. One

of the requirements for the contract agreement is that it be carried out in one assembly.

An assembly when viewed from a classical perspective is the meeting of two people who carry out a contract in the same space and time or face to face. The development of the times has made every human activity increasingly practical, considering that an assembly does not always have to be in the same room face to face.

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