

## THE PILLARS AND CONDITIONS OF A CONTRACT IN MUAMALAT TRANSACTIONS

**Ihsan Helmi Lubis**

UIN Syekh Ali Hasan Ahmad Addary Padangsidempuan

[ihsan@uinsyahada.ac.id](mailto:ihsan@uinsyahada.ac.id)

**ABSTRACT:** *Buying and selling transactions are natural occurrences that cannot be avoided by every human being because individuals rely on each other for their survival. For example, a meat seller needs a spice seller to enhance the flavor of their cooking, a lecturer needs patients to develop their knowledge, and so on. However, these transactions are inevitably subject to certain conditions and pillars of the contract, which can determine whether the transaction complies with Islamic law or, conversely, contradicts it. The type of research in this article uses library research using two data sources, namely primary data and secondary data. While the type of research using descriptive analysis. The findings of this study reveal that the pillars are divided into four categories, each with its inherent conditions. The first pillar is the presence of two contracting parties with the conditions of legal capacity and multiple parties. The second pillar is the form of the contract with the conditions of clear understanding, matching offer and acceptance, reflecting the sincerity of the parties involved, and taking place in a single gathering. The third pillar is the subject matter of the contract with the conditions that the transaction object must exist at the time of the transaction, be fully owned by its owner, be capable of transfer, have a clear description, and be pure. The fourth pillar is the purpose of the contract with the condition that it must comply with Islamic law.*

**Keywords:** *Pillars of the contract; Conditions of the contract; Islamic law.*

Mu'amalah : Jurnal Hukum Ekonomi Syariah

Website : <http://e-journal.metrouniv.ac.id/index.php/muamalah/index>

Received : 2023-01-25 | Reviewed : 2023-05-28 | Published : 2023-06-12.

DOI: <https://doi.org/10.32332/muamalah.v2i1.6983>



This is an open access article distributed under the terms of the [Creative Commons Attribution-ShareAlike 4.0 International Licenses](https://creativecommons.org/licenses/by-sa/4.0/), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

## Introduction

As social beings, humans cannot live in isolation. Whether consciously or unconsciously, it is a necessity for humans to interact with others because individuals cannot fulfill all their needs without the assistance of those around them. In the course of social interactions, every person has interests in others, giving rise to the concepts of rights and obligations. Each person has rights that others must respect, while at the same time bearing obligations that must be fulfilled towards others. The relationship between rights and obligations is governed by legal guidelines to avoid conflicts of various interests. These legal guidelines governing the relationship between rights and obligations in social life are known as Muamalat Law, which includes laws regarding agreements.

*Akad* (contract) is a binding agreement between an offer (*ijab*) and an acceptance (*kabul*) in a manner sanctioned by Shariah, which entails legal consequences on the subject matter. *Ijab* refers to the statement made by the first party regarding the desired content of the agreement, while *kabul* refers to the statement made by the second party accepting it.<sup>1</sup> According to Abdul Ghofur Anshori, *akad* is an agreement that creates a performance obligation for one party and corresponding rights for the other party,<sup>2</sup> implying that *akad* can be understood as a legal action by two parties to manifest their mutual intentions.<sup>3</sup>

The use of *akad* in everyday life naturally entails corridors or rules that must be fulfilled by anyone intending to enter into an agreement. By understanding and following these corridors, the *akad* will be valid and its legal consequences can be accounted for. Therefore, in this brief article, the author will outline the elements that must be fulfilled in an agreement, including both the pillars and the conditions of the agreement.

### **The Pillars and Conditions of a Contract in Muamalat Transactions**

When entering into an agreement, it cannot be separated from the pillars and conditions that must be fulfilled. In linguistic terms, pillars can be defined as something that must be fulfilled for the validity of a task or an essential element that must be fulfilled

---

<sup>1</sup> Junaidi Abdullah, "Analisis Asas-Asas Konsensualisme di Lembaga Keuangan Syariah, *Jurnal Iqtishadia*, Vol. 8, No. 2, September 2015, hlm. 28..

<sup>2</sup> Abdul Ghofur Anshori, *Perbankan Syariah di Indonesia*, Cet. Ke-2 (Yogyakarta: Gadjah Mada University Press, 2009), hlm. 53.

<sup>3</sup> Syamsul Anwar, *Hukum Perjanjian Syariah: Studi Tentang Teori Akad dalam Fikih Muamalat*, (Jakarta: PT. Raja Grafindo Persada, 2007), hlm.69.

in a matter, event, or action.<sup>4</sup> On the other hand, conditions, in linguistic terms, refers to provisions (rules, instructions) that must be adhered to and fulfilled. In Shariah, both pillars and conditions determine the validity of a transaction. In terms of *akad*, pillars refers to something that determines whether an *akad* can take place or not and simultaneously determines the validity of an *akad*.<sup>5</sup> Conditions, on the other hand, is something that depends on it for the existence of Shariah law and is external to the law itself, and its absence leads to the absence of the law.<sup>6</sup>

Opinions regarding the pillars of contractual obligations or pillars of *akad* in Islamic law vary among experts in fiqh. Among the Hanafi school of thought, it is believed that the only pillar of *akad* is the expression of intention by the parties involved (*sighat al-'aqd*). According to the Hanafi school, the pillars of *akad* refers to the essential elements that form the *akad*, which are the expressions of intention in the form of *ijab* and *kabul*. The parties involved (*al-'aqidain*) and the object of the *akad* (*mahallul 'aqd*) are considered external elements and do not constitute the essence of the *akad*. Therefore, they view the parties and the object of the *akad* as conditions, not pillars.<sup>7</sup> However, they still consider the parties involved and the object of the *akad* as elements that must be fulfilled in the *akad*. Due to their placement outside the essence of the *akad*, the parties involved and the object of the *akad* are considered conditions, not pillars.<sup>8</sup> In contrast, the Shafi'i school of thought, including Imam Ghazali, and the Maliki school of thought, including Syihab al-Karakhi, consider the parties involved (*al-'aqidain*) and the object of the *akad* (*mahallul 'aqd*) as pillars of the *akad* because both of these elements are essential pillars in establishing the *akad*.<sup>9</sup>

The majority of Jumhur Ulama agree that the pillars of *akad* are *al-'aqidain* (the contracting parties), *mahallul 'aqd* (the object of the contract), and *sighat al-'aqd* (the

---

<sup>4</sup> Miftah Idris, "Perjanjian Kredit Perbankan Konvensional dan Akad Pembiayaan Perbankan Syariah: Suatu Tinjauan Deskriptif Dalam Hukum Di Indonesia", *Jurnal Komunikasi Hukum*, Vol. 1, No. 1, Februari, 2015, hlm. 36.

<sup>5</sup> Abdurrauf, "Penerapan Teori Akad Pada Perbankan Syariah", *Jurnal al-Iqtishad*, Vol. IV, No. 1, Januari 2012, hlm. 19.

<sup>6</sup> Gemala Dewi, dkk, *Hukum Perikatan Islam di Indonesia*, (Jakarta: Kencana Prenada Media, 2007), hlm. 50.

<sup>7</sup> Yazid Afandi, "*Fiqh Muamalah dan Implementasinya dalam Lembaga Keuangan Syariah*", (Jakarta: Logung Pustaka, 2009), hlm. 34.

<sup>8</sup> Yazid Afandi, "*Fiqh Muamalah dan Implementasinya dalam Lembaga Keuangan Syariah*", (Jakarta: Logung Pustaka, 2009), hlm. 34.

<sup>9</sup> Ghufon A. Mas'adi, *Fiqh Muamalah Kontekstual*, (Jakarta: Raja Grafindo Persada, 2002), hlm. 79.

offer and acceptance). In addition to these three pillars, Musthafa az-Zarqa adds *maudhu al-'aqd* (the purpose of the contract). He does not refer to these four elements as pillars, but as *muqawimat 'aqd* (elements of establishing the contract). On the other hand, according to T.M. Hasbi ash-Shiddieqy, these four elements are considered components that must be fulfilled for the formation of the contract.<sup>10</sup>

Regarding the pillars and conditions of the *akad* according to the Compilation of Sharia Economic Law (KHES), they consist of the parties involved in the contract, with the conditions that they are individuals, partnerships, or legal entities capable of performing legal acts; the object of the contract, with the conditions that it is permissible wealth or services needed by each party; the primary purpose of the contract, with the conditions that it aims to fulfill the needs of living and business development of the contracting parties; and the last pillar is mutual agreement.

From the various differences of opinion among Ulama regarding the pillars of the *akad* that have been discussed above, the author concludes that the pillars of the *akad* are divided into four elements: the contracting parties (*al-'aqidain*), the expression of intention by the parties (*sighat al-'aqd*), the object of the contract (*mahallul 'aqd*), and the purpose of the contract (*maudhu'al 'aqd*).

#### 1. The Contracting Parties (*Al-'Aqidain*)

The contracting parties, known as *Al-'Aqidain*, refer to individuals, partnerships, or legal entities who have the capability or qualification to perform legal acts. They are the persons involved in a contract.<sup>11</sup> The qualification can be achieved through the following factors:<sup>12</sup>

- a. Ability to distinguish right from wrong: The parties must have sound mind, reached the age of maturity (*baligh*), and not be mentally incapacitated. A person who is mentally incapacitated, such as an idiot or someone declared bankrupt, cannot enter into a valid contract.
- b. Free will: A contract is not valid if it is entered into under duress or coercion, provided that the coercion is proven. For example, if a person

---

<sup>10</sup> T. M. Hasbi ash-Shiddieqy, *Pengantar Fiqih Muamalah*, Cet. Ke-1, Ed. 2, (Semarang: Pustaka Rizki Putra, 1997), hlm. 14.

<sup>11</sup> Subekti, *Hukum Perjanjian*, Cet. Ke- 19, (Jakarta: Intermasa, 2002), hlm. 29.

<sup>12</sup> Ramli Semmawi, "Urgensi Akad Dalam Hukum Ekonomi Islam", *Jurnal Al-Syir'ah*, Vol. 8, No. 2, Desember 2010, hlm. 508.

is in debt and needs to transfer their debt or if someone is bankrupt and is forced to sell their belongings to repay their debt.

- c. The contract cannot be considered valid if it contains certain conditions known as *khiyar* (option). Examples of *khiyar* include *khiyar* conditions (the right to specify conditions), *khiyar arru'yah* (the right of inspection), and similar options.

There is an exception to point (a) above, where individuals who are mentally ill or minors who have not reached the age of *mumayiz* (legal competence) are not allowed to engage in significant transactions. However, they are permitted to engage in small or inexpensive transactions such as buying matches, cotton buds, and the like.<sup>13</sup>

The contracting parties require certain conditions for the pillars to function in forming the contract. In Islamic law, there are several conditions for the formation of a contract, including:

- a. Capability (*Ahliyah*) according to fiqh, the capability (*ahliyah*) conditions are divided into two categories:
  - 1) *Ahliyah al-wujub* (capability of obligation) refers to a person's fitness to acquire rights and bear responsibilities based on the right to life or human nature.<sup>14</sup> In terms of legal capacity, it is a passive capability that applies to all individuals as a whole, starting from the prenatal stage until death. Based on fiqh provisions, the capability to acquire rights can be classified into two types:<sup>15</sup>
    - a) Imperfect capability (*ahliyah al-wujub an-naqishah*) is the capability to acquire rights that applies to a legal subject who is still in the womb. For example, the capability of a fetus to inherit property rights. This capability is considered imperfect because it only entails limited rights and does not involve the ability to fulfill obligations.

---

<sup>13</sup> Mardani, *Hukum Ekonomi Syariah di Indonesia*, (Jakarta: PT. Refika Aditama, 2011), hlm. 174.

<sup>14</sup> Ruslan Abd Ghofur, "Akibat Hukum dan Terminasi Akad dalam Fiqh Muamalah", *Jurnal Asas*, Vol. 2, No. 2, Juli 2010, hlm. 5.

<sup>15</sup> Burhanuddin S, *Hukum Kontrak Syariah*, (Yogyakarta: BPFE, 2009), hlm. 25.

- b) Perfect capability (*ahliyah al-wujub al-kamilah*) applies to legal subjects after birth until death. It is considered perfect because the legal subject can not only acquire rights but also fulfill obligations.
- 2) *Ahliyah al-ada'*, (capability of action) refers to a person's capability to perform acts that are recognized by the law and have legal consequences, both in the realm of worship and transactions (*muamalat*). In fiqh, the capability of *ada'* can be divided into two types:
  - a) Imperfect capability of legal action (*ahliyah al-ada' an-naqishah*) applies to a legal subject when they reach the age of discernment (*tamyiz*). The age of discernment is the minimum requirement for the parties involved in a contract. However, in certain contracts, the age of discernment is not considered sufficient to meet the capability conditions before reaching adulthood.
  - b) Perfect capability of legal action (*ahliyah al-ada' al-kamilah*) applies to a legal subject from the time they reach adulthood until their death.
- b. Multiple parties (more than one party). An agreement cannot be formed with just one party, whether it is someone who makes the proposal (*ijab*) or someone who accepts it (*qabul*), because every agreement requires at least two parties. However, a person can delegate or authorize another person to enter into an agreement on their behalf<sup>16</sup>. Similarly, a person can act as a representative or agent for someone else in the conclusion of an agreement. However, it should be emphasized that not everyone can act as a representative or guardian in an agreement. There are several conditions that must be met, including:<sup>17</sup>
  - 1) Having the capability to fulfill the assigned tasks perfectly.
  - 2) Consensus between the guardian and the one being represented.
  - 3) '*Adalah*, meaning having steadfastness in practicing religion.
  - 4) Trustworthiness.

---

<sup>16</sup> Siti Mustaghfiroh and Mila Widiastuti, "PENENTUAN HARGA DALAM JUAL BELI JAGUNG TEBASAN PERSPEKTIF HUKUM EKONOMI SYARIAH," *Mu'amalah : Jurnal Hukum Ekonomi Syariah* 1, no. 2 (June 23, 2022): 85–87, <https://e-journal.metrouniv.ac.id/index.php/muamalah/article/view/5112>.

<sup>17</sup> Fathurrahman Djamil, *Penerapan Hukum Perjanjian dalam Transaksi di Lembaga Keuangan Syariah*, (Jakarta: Sinar Grafika, 2012), hlm.32-33.

5) Safeguarding the interests of the person under guardianship.

Regarding the capacity of the parties involved in the agreement, Indonesian legislation states that a person can act:

- 1) For themselves.
- 2) As an authorized representative.
- 3) As a guardian for a minor who is not capable of acting independently due to being underage.
- 4) As a representative for someone who cannot act independently due to health issues or illness (under curatele).
- 5) As a director acting on behalf of a Limited Liability Company.
- 6) As a minister representing the Government of the Republic of Indonesia.
- 7) Acting with assistance or approval, for example, when a director of a company requires the approval of a Commissioner or General Meeting of Shareholders (RUPS) for certain actions.

In the first point mentioned above, there are two forms in which it is possible for someone to enter into an agreement with themselves. *Firstly*, they act as the principal in an agreement while simultaneously representing another party in that agreement. For example, a manager of a foundation represents the foundation to sell its property to a buyer who is also the same manager acting as the principal. *Secondly*, they act as a representative for two different parties. For example, person A acts as the representative of person B to sell goods to person C, where person A also represents person C. In other words, person A acts as the representative of both person B and person C.

## 2. Declaration of Intent by the Parties (*Shighat al-'Aqd*)

*Shighat al-'aqd* refers to an expression that arises from both parties indicating their internal desire to form or cancel an agreement. In other words, it is a way in which the expression of commitment is made or what one party desires is approved by the other party.<sup>18</sup> In fiqh literature, *Shighat al-'aqd* is usually manifested in the

---

<sup>18</sup> A. Wangsawidjaya Z, *Pembiayaan Bank Syariah*, (Jakarta: PT. Gramedia Pustaka Utama, 2012), hlm. 154.

form of "*ijab*" and "*qabul*." "*Ijab*" is the initial statement made by one of the parties who intends to enter into the agreement, expressing their intention willingly, whether it comes from the seller or the buyer.<sup>19</sup> On the other hand, "*qabul*" is the acceptance and approval by the second party of the offer made by the first party. The following aspects should be considered in *Shighat al-'aqd*:

- a. The declaration of intent (*Shighat al-'aqd*) must have a clear meaning and should not have multiple interpretations. For example, if someone says, "*I hand over this item*," the statement is still unclear and raises questions about whether the item is being handed over as a gift, for sale, or as a trust. The complete statement would be, "*I hand over this item to you as a gift or as a donation*."<sup>20</sup>
- b. The "*ijab*" and "*qabul*" must correspond to each other. The expressions used by the offering party and the accepting party should not differ. For instance, if someone says, "*I hand over this item to you as a trust*," but the accepting party says, "*I accept this item as a gift*." Any discrepancy between the "*ijab*" and "*qabul*" may lead to disputes, which is prohibited in Islam as it contradicts the reconciliation between individuals.
- c. It should demonstrate the sincerity of the parties involved, not coerced or out of fear or intimidation by others. No agreement should occur due to coercion, mistake, or deception. Coercion happens when someone gives their consent out of fear of a threat, such as when a person is told that their family will be killed if they do not sign an agreement. Mistake can occur regarding either the person (subject of the agreement) or the object of the agreement. For example, if a financing agreement is made with the director of a company, but it turns out to be a different director. Deception occurs when one party intentionally provides false information to deceive the other party into giving their consent or permission.<sup>21</sup>
- d. It should take place in one assembly. One assembly does not necessarily mean physically meeting in one place; what is important is that both parties

---

51. <sup>19</sup> Dimyauddin Djuwaini, *Pengantar Fiqh Muamalah*, (Yogyakarta: Pustaka Pelajar, 2010), hlm.

<sup>20</sup> Hendi Suhendi, *Fiqh Muamalah* (Jakarta: PT. Raja Grafindo Persada, 2013), hlm. 47.

<sup>21</sup> Subekti, *Pokok-Pokok Hukum Perdata*, (Jakarta: PT. Intermasa, 2010), hlm. 135.



are able to hear each other's intentions, whether to establish or reject an agreement.

The methods that can be used to make an agreement (contract) are as follows:

- a. Writing: It means that the parties intending to enter into an agreement can use written media to express their internal desires when direct or oral communication is not possible. In other words, it can be understood as a transaction between two parties in different locations using a written agreement. In Islamic jurisprudence, it is stated that "*al-kitâb ka al-khithab*" (writing is equivalent to oral expression).<sup>22</sup> For example, opening a checking or deposit account in a bank, where both parties' agreement is written on the contract form, filled out by the account owner and the bank as the account holder.<sup>23</sup>
- b. Cue: For certain individuals, an agreement cannot be made through speech or writing. For example, a mute person cannot engage in verbal *ijab* and *kabul*, and someone who is illiterate cannot make *ijab* and *kabul* in writing. Hence, a mute person or an illiterate person cannot conduct *ijab* and *kabul* using speech or writing.
- c. *Dilalah ta'ati*. This means that the behavior of the parties involved indicates their intention to transact without oral or written expressions. For example, transactions that occur in a supermarket, where the buyer selects the items they want to purchase, brings them to the cashier, and hands over the payment without explicitly stating *ijab* and *kabul*.
- d. *Dilalah lisanul hal*. This refers to specific actions that indicate the intention to enter into an agreement. For example, if someone leaves their belongings with a security guard, it signifies their intention to entrust their belongings to the security personnel.

### 3. The Object of The Contract (*Al-Mahallul 'Aqd*)

*Al-mahallul 'aqd* or the object of the contract refers to permissible wealth or services that are desired by each party.<sup>24</sup> In a sales contract, the object can be goods

---

<sup>22</sup> Mukhlis Usman, *Kaidah-kaidah Ushuliyah dan Fiqhiyyah*, Cet IV, (Jakarta: Raja Grafindo Persada, 2002), hlm. 196.

<sup>23</sup> Oni Sahroni, *Fikih Muamalah*, (Jakarta: PT. Raja Grafindo Persada, 2016), hlm. 32.

<sup>24</sup> Hisranuddin, *Hukum Perbankan Syariah di Indonesia*, (Yogyakarta: Genta Press, 2008), hlm.

or services and their respective prices. In a lease agreement, the object is the benefit derived from the leased property and the rental payment.<sup>25</sup>

The object of the contract used by the contracting parties requires certain conditions for the pillars to function and form the contract. The conditions for the object of the contract are as follows:

- a. The transaction object must be present at the time of the contract. It is not permissible to transact on an unclear or nonexistent object during the contract, as it may lead to issues during the handover. According to Ibn Taymiyyah, it is permissible for the transaction object to be absent during the contract, but its existence must be ascertainable in the future so that it can be handed over. Ibn Taymiyyah's opinion can be found in contracts such as *salam*<sup>26</sup> and *istishna'*.<sup>27</sup> The exception is based on the fact that such contracts are highly needed by society and have become customary practices (*'urf*). However, it is important to emphasize that the seller must ensure that the ordered object (goods) will be available in the future and can be transacted. If otherwise (the ordered goods cannot be ascertained), the contract is not valid.
- b. The transaction object must be a permissible property according to Islamic law, fully owned by its owner. This means that the object of the contract must have value, benefit, and usefulness for human beings, rather than causing harm to human life. Items that are inherently impure, such as carcasses, alcoholic beverages, pork, or blood, are considered to have no value and no benefit to humans. Therefore, such items cannot be bought or sold or used as the object of a contract. The same principle applies to items that are not yet in the possession of the owner, such as fish in the sea or birds in the sky. The same applies to services, such as prostitution,

---

<sup>25</sup> Abdul Ghofur Anshori, *Hukum Perjanjian Islam di Indonesia: Konsep, Regulasi dan Implementasinya*, (Yogyakarta: Gadjah Mada University Press, 2010), hlm. 27.

<sup>26</sup> *Salam* adalah pembelian barang yang diserahkan dikemudian hari, sedangkan pembayarannya di muka. (Lihat: Heri Sudarsono dan Hendi Yogi Praboyo, *Istilah-Istilah Bank & Lembaga Keuangan Syariah*, Cet. Ke- 4, (Yogyakarta: UII Press, 2006), hlm. 144)..

<sup>27</sup> *Istishna'* adalah akad jual beli dalam bentuk pemesanan pembuatan barang tertentu dengan kriteria dan perconditionsan tertentu yang disepakati antara pemesan (pembeli, *mustashni'*) dan penjual (pembuat, *shani'*) (Lihat Fatwa Dewan Syari'ah Nasional No: 06/DSN-MUI/IV/2000 tentang Jual Beli *Istishna'*).

sorcery, human trafficking, and others, which cannot be the object of a contract as they contradict Shariah.

- c. The transaction object must be deliverable at the time of the contract or at a later date. Even if the item exists and is owned by the seller, if it cannot be delivered, the contract is considered void.
- d. There must be clarity regarding the transaction object, meaning that the seller and buyer have a clear understanding of the nature, form, characteristics, and price of the item.<sup>28</sup> This is intended to avoid disputes in the future. The transaction object should not be unknown (*majhul*) and should not involve uncertainty (*gharar*).
- e. The transaction object must be pure, not affected by impurities, and not itself an impure item.

Regarding point (e), there is a difference between Imam Malik and Imam Shafi'i, and I will illustrate it with the example of selling dogs. They both refer to the same hadith, which states:

عن ابن شهاب عن أبي بكر بن عبد الرحمن بن الحارث بن هشام عن أبي مسعود الأنصاري أن رسول الله صل الله عليه وسلم نهى عن ثمن الكلب ومهر البغي وحلوان الكاهن

Meaning: "From Ibn Shihab, from Abu Bakr bin Abd al-Rahman bin Harith bin Hisham, from Abu Mas'ud al-Ansari, the Prophet Muhammad (peace be upon him) prohibited the price of dogs, the price of a prostitute, and the earnings of a fortune-teller." (H.R. Bukhari and Muslim)<sup>29</sup>

Although the Hadith clearly states the prohibition from the Prophet Muhammad, Imam Malik considered it *makruh* rather than *haram*. Imam Malik did not deem dogs as impure, even though he required them to be washed seven times. This ruling is not due to their impurity but solely based on pure devotion to Allah

---

<sup>28</sup> Syaifullah M.S, "Etika Jual Beli Dalam Islam", *Jurnal Studia Islamika*, Vol. 11, No. 2, Desember, 2014, hlm. 378.

<sup>29</sup> Shalih Ibnu Muhammad al-'Aziz bin Muhammad, *Mawsu'ah al-Hadits al-Syarif al-Kutub al-Sittah*, (Riyadh: Maktabah Dar al-Salam, 2008), 173.

SWT.<sup>30</sup> According to Imam Malik, the purity of dogs is based on the words of Allah SWT in Surah Al-Maidah, verse 4, and he further strengthens his reasoning by referring to the Hadith regarding the method of purifying dogs, which states:

أبي هريرة قال أن رسول الله صل الله عليه وسلم قال إذا شرب الكلب في إناء أحدكم فليغسله سبعة

*From Abu Hurairah, the Prophet Muhammad saw said: 'The vessel of one of you becomes impure if it is licked by a dog. It should be washed seven times, one of which should be with soil.'* (H.R. Bukhari and Muslim)<sup>31</sup>

On the other hand, according to Imam Shafi'i, trading in dogs is considered *haram*. Imam Shafi'i's reasoning for the prohibition is that dogs are *najis* (impure).<sup>32</sup> He also refers to the first hadith mentioned by the author. Imam Shafi'i strengthens his opinion by citing the following Hadith:

عن يزيد بن خصيفة، أن السائب بن يزيد أخبره: أنه سمع سفیان ابن أبي زهير، وهو يحدث ناسا معه عند باب المسجد، فقال: سمعت رسول الله صل الله عليه وسلم يقول: من اقتنى كلبا لا يغني عنه زرا ولا ضرا نقص من عمله كل يوم قيراط

*From Yazid bin Khushaifah, Saib bin Yazid reported to him that he (Saib) heard Sufyan ibn Abi Zuhair speaking to someone near the mosque gate. Sufyan said, "I heard the Prophet Muhammad (peace be upon him) saying: 'Whoever keeps a dog that is neither used for guarding livestock nor farming, will have one Qirat deducted from his good deeds every day.'* (H. R. Bukhari and Muslim).<sup>33</sup>

Based on this hadith, Imam Shafi'i states that regardless of the circumstances, if the price of a dog is not *halal*, then the dog itself is not *halal* to be taken, except for those who use dogs for hunting or guarding fields or livestock. Other than that, it is

---

<sup>30</sup> Wahbah Zuhaili, *al-Fiqh al-Islam wa Adillatuhu*, Jilid 1, Cet. Ke- 7, (Damsiq: Dar Al-Fikr, 2006), 45-48.

<sup>31</sup> Shalih Ibnu Muhammad al-'Aziz bin Muhammad, *Mawsu'ah al-Hadits al-Syarif al-Kutub al-Sittah*, hlm. 1641.

<sup>32</sup> Imam Asy-Syafi'i diterjemahkan oleh Ismail Yakub, *Al-Umm: Kitab Induk*, (Jakarta: CV. Faizan, 1998), hlm. 24.

<sup>33</sup> Shalih Ibnu Muhammad al-'Aziz bin Muhammad, *Mawsu'ah al-Hadits al-Syarif al-Kutub al-Sittah*, hlm. 564.

not permissible to take possession of the dog, and there is no value in it if the dog is killed by someone.

Imam Shafi'i derives the ruling of prohibition by gathering hadiths that contain prohibitions from the Prophet Muhammad saw, and he deems it *haram* due to *najis* (impurity). As explained earlier, there is a prohibition from the Prophet Muhammad saw. regarding keeping dogs, except for those who use them for hunting or guarding the house and are allowed to benefit from them. However, Imam Shafi'i still deems it *haram*. The impurity of dogs is considered because the sale and purchase of impure items are prohibited, as it is known that cleanliness is a condition in any transaction.

#### 4. The Objective of a Contract (*Maudhu al- 'Aqd*)

The objective of a contract is the foundation upon which the contract is built, and it is through the fulfillment of this objective that the contract is achieved. Therefore, the objective is important as it has implications for specific outcomes. For example, the objective of a sale and purchase contract is to transfer the seller's rights to the buyer in exchange for compensation. In a lease contract, the objective is for the lessee to acquire the benefits of the leased property while the lessor receives compensation. In a loan contract, the objective is for the borrower to obtain the benefits of the borrowed item without compensation. Thus, if the objective of a contract deviates from its original purpose, the contract becomes invalid.

According to jurists in Islamic jurisprudence (*fiqh*), the objective of every contract is known only through Sharia (Islamic law) and must be in accordance with its will. Based on this, any contract that has objectives or legal consequences that contradict the will of Sharia is considered invalid. This includes various contracts carried out to legitimize usury (*riba*). For example, the sale and buyback contract known as *al-'inah* is a form of pseudo-contract created to legitimize usury. In such a sale, a person (Ahmad) sells his item to a buyer (Budi) on credit for Rp. 220,000 with a one-month grace period. Then, Ahmad immediately repurchases the item from Budi for cash at Rp. 200,000. Although Budi has already received Rp. 200,000 to be paid when the one-month period expires, the Rp. 20,000 difference is considered usury according to the jurists. Therefore, such a contract is not in line with the intended objective according to Sharia.

Another example of a prohibited objective is selling grapes to the operator of an alcoholic beverage factory. If the seller is aware that the buyer is the operator of an alcoholic beverage factory, it is prohibited for the seller to sell grapes to them.<sup>34</sup> However, if the seller genuinely does not know the buyer's objective for purchasing the grapes, the agreement is not forbidden but can be canceled.

Further examples of prohibited objectives in contracts, as mentioned earlier, include murder, fraud, prostitution, and similar acts. For instance, an agreement among three mentally capable, mature, and legally competent individuals to cooperate in robbery or murder, with each person contributing differently, such as one preparing a sword/firearm, another acting as a navigator, and another executing the act. They also agree on the division of the spoils according to their initial agreement. Even contracts that violate moral values or disrupt public order and decency are not justified. Similarly, contracts aimed at engaging in discrimination, monopolistic practices, and oppression are prohibited.<sup>35</sup>

## Conclusion

The pillars and conditions for the formation of a contract (*akad*) in Islam are as follows:

1. *The contracting parties (Al-'Aqidain)*. with the following conditions:
  - a. Capability (*ahliyah*): This refers to a person's capacity to accept rights and obligations (*ahliyah al-wujub*) and the ability to act legally (*ahliyah al-ada*).
  - b. More than one party: A contract cannot be formed with only one party, whether it is the offeror or the offeree. Every contract must involve at least two parties. However, a person can authorize someone else to make an agreement on their behalf, and similarly, a person can act as a representative or agent for someone else in concluding a contract.
2. Expression of the parties' intentions (*Shighat al-'aqd*), with the following conditions:
  - a. *shighat al-'aqd* must have clear meanings and not be ambiguous.

---

<sup>34</sup> Nasrun Haroen, *Fiqh Muamalah*, (Jakarta: Gaya Media Pratama, 2007), hlm. 105.

<sup>35</sup> Ahmad Azhar Basyir, *Asas-Asas Hukum Muamalat*, (Yogyakarta: UII Press, 2000), hlm. 99-100.

- b. The offer and acceptance must correspond. The wording used by the offeror and the offeree must not differ.
  - c. It should reflect the sincerity of the parties involved, without coercion or fear from others. An agreement should not occur due to compulsion, mistake, or deception.
  - d. It should take place in one gathering or assembly.
3. The subject matter of the contract (*Al-mahallul 'aqd*), with the following conditions:
- a. The subject matter of the transaction must exist at the time of the contract.
  - b. The subject matter of the transaction must be permissible in Sharia and fully owned by its owner.
  - c. The subject matter of the transaction can be delivered at the time of the contract or at a later date.
  - d. There must be clarity about the subject matter, meaning that both parties have detailed knowledge of the item, and it should not be unknown (*majhul*) or involve excessive uncertainty (*gharar*).
  - e. The subject matter of the transaction must be pure, free from impurities, and not inherently impure.
4. The Objective of a Contract (*Maudhu al- 'Aqd*)

The objective of every contract, according to jurists in Islamic jurisprudence (*fiqh*), is known only through Sharia and must be in accordance with its will. Based on this, any contract that has objectives or legal consequences that contradict the will of Sharia is considered invalid. This includes various contracts carried out with the intention of legitimizing usury, selling grapes to the operator of an alcoholic beverage factory, engaging in criminal activities such as murder, fraud, prostitution, and others, contracts that violate moral values or disrupt public order and decency, as well as contracts aimed at discrimination, monopolistic practices, and oppression.

## **Bibliography**

Abdullah, Junaidi. "Analisis Asas Konsensualisme Di Lembaga Keuangan Syariah."

*Iqtishadia: Jurnal Kajian Ekonomi Dan Bisnis Islam STAIN Kudus* 8, no. 2 (2015): 281–304.

- Abdurrauf. "Penerapan Teori Akad Pada Perbankan Syariah." *Al-Iqtishad* 4, no. 1 (2012). <https://doi.org/10.15408/aiq.v4i1.2081>.
- Afandi, Yazid. *Fiqh Muamalah Dan Implementasinya Dalam Lembaga Keuangan Syariah*. Jakarta: Logung Pustaka, 2009.
- Anshori, Abdul Ghofur. *Hukum Perjanjian Islam Di Indonesia: Konsep, Regulasi Dan Implementasinya*. Yogyakarta: Gadjah Mada University Press, 2010.
- . *Perbankan Syariah Di Indonesia*. Cet. Ke-2. Yogyakarta: Gadjah Mada University Press, 2009.
- Ash-Shiddieqy, T. M. Hasbi. *Pengantar Fiqih Muamalah*. Cet. Ke-1,. Semarang: Pustaka Rizki Putra, 1997.
- Basyir, Ahmad Azhar. *Asas-Asas Hukum Muamalat*. Yogyakarta: UII Press, 2000.
- Dewan Syariah Nasional MUI. "Fatwa Dewan Syari'ah Nasional No: 06/DSN-MUI/IV/2000 Tentang Jual Beli Istishna'." *Himpunan Fatwa DSN MUI*, 2000, 1–3.
- Djamil, Fathurrahman. *Penerapan Hukum Perjanjian Dalam Transaksi Di Lembaga Keuangan Syariah*. Jakarta: Sinar Grafika, 2012.
- Djuwaini, Dimyauddin. *Pengantar Fiqh Muamalah*. Yogyakarta: Pustaka Pelajar, 2010.
- Gemala Dewi, Dkk. *Hukum Perikatan Islam Di Indonesia, (Jakarta: Kencana Prenada Media, 2007), Hlm. 50*. Jakarta: Kencana Prenada Media, 2007.
- Ghofur, Ruslan Abd. "Akibat Hukum Dan Terminasi Akad Dalam Fiqh Muamalah." *Asas* 2, no. 2 (2010): 1–14.
- Haroen, Nasrun. *Fiqh Muamalah*. Jakarta: Gaya Media Pratama, 2007.
- Hisranuddin. *Hukum Perbankan Syariah Di Indonesia*. Yogyakarta: Genta Press, 2008.
- Hukum Perjanjian Syariah: Studi Tentang Teori Akad Dalam Fikih Muamalat*. Jakarta: RajaGrafindo Persada, 2007.
- Idris, Miftah. "Perjanjian Kredit Perbankan Konvensional Dan Akad Pembiayaan Perbankan Syariah: Suatu Tinjauan Deskriptif Dalam Hukum Di Indonesia." *Jurnal Komunikasi Hukum* 1, no. 1 (2015).
- Mardani. *Hukum Ekonomi Syariah Di Indonesia*. Jakarta: PT. Refika Aditama, 2011.
- Mas'adi, Ghufroon A. *Fiqh Muamalah Kontekstual*. Jakarta: Raja Grafindo Persada, 2002.
- MS, Syaifullah. "Etika Jual Beli Dalam Islam." *HUNAFA: Jurnal Studia Islamika* 11,



no. 2 (2014): 371–87.

Muhammad, Shalih Ibnu Muhammad al-‘Aziz bin. *Mawsu’ah Al-Hadits Al-Syarif Al-Kutub Al-Sittah*. Riyadh: Maktabah Dar al-Salam, 2008.

Mustaghfiroh, Siti, and Mila Widiastuti. “PENENTUAN HARGA DALAM JUAL BELI JAGUNG TEBASAN PERSPEKTIF HUKUM EKONOMI SYARIAH.” *Mu’amalah : Jurnal Hukum Ekonomi Syariah* 1, no. 2 (June 23, 2022): 81–108. <https://e-journal.metrouniv.ac.id/index.php/muamalah/article/view/5112>.

Praboyo, Heri Sudarsono dan Hendi Yogi. *Istilah-Istilah Bank & Lembaga Keuangan Syariah*. Cet. Ke-4. Yogyakarta: UII Press, 2006.

S, Burhanuddin. *Hukum Kontrak Syariah*. Yogyakarta: BPFE, 2009.

Sahroni, Oni. *Fikih Muamalah*. Jakarta: PT. Raja Grafindo Persada, 2016.

Semmawi, Ramli. “Urgensi Akad Dalam Hukum Ekonomi Islam.” *Jurnal Ilmiah Al-Syir’ah* 8, no. 2 (2010): 498–517. <https://doi.org/10.30984/as.v8i2.23>.

Subekti. *Hukum Perjanjian*. Cet. Ke-1. Jakarta: Intermasa, 2002.

———. *Pokok-Pokok Hukum Perdata*. Jakarta: PT. Intermasa, 2010.

Suhendi, Hendi. *Fiqh Muamalah*. Jakarta: PT. Raja Grafindo Persada, 2013.

Usman, Mukhlis. *Kaidah-Kaidah Ushuliyah Dan Fiqhiyyah*. Cet IV. Jakarta: PT. Raja Grafindo Persada, 2002.

Yakub, Imam Asy-Syafi’i diterjemahkan oleh Ismail. *Al-Umm: Kitab Induk*. Jakarta: CV. Faizan, 1998.

Z, A. Wangsawidjaya. *Pembiayaan Bank Syariah*. Jakarta: PT. Gramedia Pustaka Utama, 2012.