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Critical Review of Changes from Classical to Contemporary Contracts in Sharia Economic Transactions: *Fiqh* Perspective

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Abstract: This research aims to analyze the form of legal contract principles in Islamic alliances *mu'amalah*. A deep agreement *mu'amalah* cannot be separated from the Islamic community. An alliance occurs because of a meeting between the two parties at the same time to tie a promise. In the field *alliance*, *alliance* will be needed to achieve common goals. Civil Code Article 1233 states that an agreement occurs with agreement and law. This research is a type of qualitative research with a small library. The data used are primary and secondary data types. Primary data comes from literature such as scientific works, books, websites, etc. And for secondary data, there are books that support the core of this research. This research's analytical method uses an inductive analysis method. The results of this research found that the study of sharia economic law relating to the form of principles of multipurpose engagement agreements consists of; Divine principle, *principle worship*, *principle of freedom of contract*, *principle of consensualism*, *principle of binding*, *principle of balance*, *principle of benefit*, *principle of trust*, *principle justice*, and principles of writing.

Keywords: *Contract Principles, Contract Law, Mu'amalah, Fiqh*

INTRODUCTION

The development of the era towards 5.0 makes this model reconcile with these changes. Contract law is the basis of knowledge in the field of sharia economic law.¹ This is because engagement is the basis of human activity in carrying out *mu'amalah* activities. Thus, engagement is one of the social institutions in support humans as social creatures. Through bonds,

¹ Azwar Iskandar and Khaerul Aqbar, "The Position of Islamic Economics Among Economics and *Mu'amalah Fiqh*: An Analysis of Epistemological Issues," *Nukhbatul 'Ulum: Journal of Islamic Studies* 5, No. 2 (2019): 88–105.

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humans can interact with each other. In an alliance there is an agreement or promise between both parties that is mutually binding on both parties. For this reason, involvement is something that humans require in covenant agreements.²

Based on Civil Law, Article 1233 states that a partnership is born by mutual agreement or by law. In an alliance there are principles that must be clarified.³ When you want to make an agreement or contract.⁴ For engagement to be created, agreements are the most important resource. And can reflect the relationship desired by the parties where the main goal is to provide trust and satisfaction for both parties. From the various terms above, we can see that apart from using the term engagement, we can also use the term agreement.⁵

Sharia contract law is the study of legal rules originating from the Al-Qur'an and As-sunnah (Al-Hadith), *al-ra'yu (ijtihad)* to provide rules for human relations in carrying out transactions in the economic field. Islamic contract law is basic knowledge in sharia economics, because agreements (contract agreements) aim to regulate human activities so that they do not deviate from the provisions set by Allah SWT in the Al-Qur'an, as well as the sunnahs of the Prophet SAW, especially in economic studies sharia.⁶ So that alliances are one of the most important elements in forming contracts or agreements to carry out transactions in accordance with the basis of Islamic law based on the Al-Qur'an and the hadith of the Prophet SAW. It is important for everyone to understand the principles and provisions of contracts in Islam so that every contract implemented does not conflict with the Shari'a, apart from understanding that everyone must also obey contract law. The aim is so that everyone's rights can be protected equally. Thus, the contract position is very important to know whether an outline is valid or not. What underlies contractual relationships with several transactions based on sharia principles is what differentiates sharia financial institutions and non-bank financial institutions.⁷

² Ulumil El Qudsie, Ro'fah Setyowati, and Muhyidin, "The Relationship Between the Concept of Forum Choice and the Principle of Freedom of Contract in Making Sharia Banking Contracts," *Diponegoro Law Journal* 8, No. 4 (2019): 2835–45.

³ Sri Istiawati, "The Position of Agreements in the Civil Code in Consumer Disputes," *Juripol* 4, No. 1 (2021): 208–16.

⁴ Dhira Utari Umar, "Application of the Principle of Consensualism in Sales and Purchase Agreements from a Civil Law Perspective1," *Lex Privatum* 8, No. 1 (2020): 54–75.

⁵ Fernando Ukoli, "Making Valid Contracts According to the Civil Code (KUH Perdata)1," *Lex Et Societatis* 7, No. 4 (2019): 89.

⁶ Akhmad Haries and Maisyarah Rahmi Hs, *Ushul Fiqh: Comprehensive Study of the Theory, Sources and Methods of Istinbath Law* (Palembang: Bening Media Publishing, 2020).

⁷ Asianto Nugroho and Sapto Hermawan, "Policy Strategy for Facing Adaptation to New Habits in an Economic Law Perspective," *Volksgeist: Journal of Legal and Constitutional Studies* 3, No. 2 (2020): 117–32, <https://doi.org/10.24090/volksgeist.v3i2.4001>.

In implementing the contract, both parties must be aware of each other's contractual responsibilities that were agreed upon at the beginning of the transaction. A contract or agreement will fulfill the consent given by one party with the consent given by the other party legally with the sharia and the reasons for the object and subject.⁸ Contract principles occur due to an agreement between two parties. Where the agreement in question is the existence of a will between both parties. One person faces each other and gives a statement that each other agrees with. An agreement occurs because of the disclosure of the rights in the agreement by the parties themselves. According to Mohammad Daud Ali, principles and law, if combined, will become the basis for thinking and rationale in forming a law. From Mohammad Daud Ali's view, in sharia contract law, a correct agreement is used as a pillar and as a reason for enforcing the implementation of sharia contract law. In sharia contract law, the basis for implementing and enforcing contracts will have its principles. These principles are grouped into treaty principles that impact general nature and specific laws.⁹In the context of Sharia Economic Law, contracts or agreements have an important role in determining the validity of economic transactions. In the context of Islamic Law, a contract or agreement is considered an agreement between the parties based on skill, agreement on certain issues, halal causes, firmness, and transparency.

Meanwhile, in previous research such as that conducted by Muhammad Azi, regarding the transformation of the *tabarru'* contract into the *mu'awadhat* contract; Analysis of *hiwalah* contracts and *kafalah* contracts in sharia financial institutions.¹⁰ Then research conducted by Setiadi, regarding the application of multiple contracts in sharia economic transactions.¹¹ Furthermore, research conducted by Mujahidin regarding the reconstruction of the *mu'amalah* contract and its implementation in the sharia economy.¹²

⁸ Edytiawarman, Dimas Dwi Arso and Slamet Muljono, "Comparison of Electronic Sale and Purchase Contracts According to Positive Law and Islamic Law," *Justitia Et Pax: Legal Journal* 37, No. 1 (2021): 103–25.

⁹ Siti Nurul Huda and Udin Saripudin, "Implementation of Maqashid Sharia Theory in Contemporary *Mu'amalah Fiqh*," *Maro: Journal of Sharia Economics and Business* 5, No. 1 (2022): 15–23.

¹⁰ Muhamad Izazi Nurjaman and Doli Witro, "Transformation of Tabarru' Contracts into Mu'Awathat Agreements; Analysis of Hiwalah Contracts and Kafalah Contracts in Sharia Financial Institutions," *Al-Mustashfa: Journal of Sharia Economic Law Research* 6, No. 2 (2021): 162, <https://Doi.Org/10.24235/Jm.V6i2.8748>.

¹¹ Setiadi Setiadi et al., "Implementation of Multi Contracts in Sharia Economic Transactions," *Al-Kharaj: Journal of Sharia Economics, Finance & Business* 6, No. 2 (2023): 567–84, <https://Doi.Org/10.47467/Alkharaj.V6i2.3635>.

¹² Mujahidin, "Reconstruction of *Mu'amalah* Contracts and Their Implementation in Sharia Economics," *Iqtisaduna Journal* 5, Number 1 (2019): 28.

Then, research was conducted by Agus Alimuddin regarding the forms of contracts mentioned in sharia financial institutions.¹³ Finally, research conducted by Rahmi Widia on the application of classical and contemporary ijmak in the field of sharia economic law.¹⁴ Thus, this research is developed and there is a novelty that focuses on the change from classical to contemporary contracts in sharia economic transactions will be criticized from a *fiqh* perspective.

RESEARCH METHODS

This paper is categorized as library research, where research involves collecting information and data from various library sources, namely sources found in libraries or other sources such as books, websites and the internet.¹⁵ In this research, the researcher took steps by studying Islamic law, namely *fiqh* and books, especially those that are related to the discussion, namely the law of engagement, the classic *mu'amalah* contract from the concept of *fiqh* to banking products,¹⁶ and *mu'amalah fiqh*.¹⁷ The analytical method used in this paper is content analysis, namely a method that utilizes a set of procedures to draw valid conclusions from a book or document. According to Holsti, this technique is used by drawing conclusions through efforts to find the characteristics of the message and is done objectively and systematically.¹⁸ In this research, the researcher understands the various sources obtained to find the implied content and is carried out objectively and systematically. So it is hoped that it can provide a clear understanding of the changes from classical to contemporary contracts from a *fiqh* perspective sourced from Islamic law and relevant books.

RESULTS AND DISCUSSION

A. Contractual Engagements According to Sharia Economic Law

Mu'amalah fiqh scholars argued that what is known as an agreement is a contract. A bond or promise is the literal meaning of a contract. However, if we look at the terminology, what is meant by contract is the

¹³ Agus Alimuddin, "Forms of Named Contracts in Islamic Financial Institutions," *AMAL: Journal of Islamic Economics and Business* (JIEB) 02, Number 01 (2020): 39–51.

¹⁴ Rahmi Widia Aliani Abubakar, "Implementation of Classical and Contemporary Ijmak in the Field of Sharia Economic Law," *Journal of Sharia Economic Law* 1, No. 2 (2022): 121–72.

¹⁵ Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods* (Jakarta: PT. Raja Grafindo Persada, 2004).

¹⁶ Jamal Abdul Aziz, *Classic Mu'amalah Contract from Fiqh Concepts to Sharia Banking Products* (Yogyakarta: Kalimedia, 2022).

¹⁷ Muchlish Khomayny and Muhammad Wahyuddin Badullah, "Treatment of Financing Fines Based on the Al-Adl Concept in Maintaining the Existence of Sharia Bank Business," *Iqtisaduna Journal* 6, no. 2 (2020): 96, <https://doi.org/10.24252/iqtisaduna.v6i2.18117>.

¹⁸ Marzuki, *Research Methodology (Research Guide in Business and Social Sectors)* (Econosia, 2005).

meeting of the recipient (*kabul*) with the offeror (*ijab*) and ultimately giving rise to the effect of the agreement on the object.¹⁹ The following are several definitions of contracts or agreements for various terms:²⁰

1. Contracts or agreements according to Islamic law incorporate the theory of trust or the theory of *vertrouwns*, and do not refer to the theory of will or will theory. Contracts are essentially the existence of *Ijab* and *Kabul*, thus contracts or agreements occur not simply because they come but are actually the will or manifestation of the parties hidden in their hearts. This will is actually unknown to other people, so it can be understood what the intention is in the heart when making a contract or promise. In a contract, the most important thing is in the form of a will which must be in accordance with the reality of the person making the contract or promise. Thus, every person who has promised or made a contract has the basis for handling it in forming a contract or promise that has been said at the beginning of the promise or contract.
2. This agreement was not separated from the will of just one person, but rather from the agreement of the embassy. The contract or agreement is the will of each contractor, because there has been a meeting and agreement containing *Ijab* and *Kabul*.
3. A contract is a legal act. The point here is that it is a contract of pure will that has caused the law to occur at the time of *Ijab* and *Kabul* to bind each other.

B. Basic Pillars and Provisions of the Engagement Agreement

According to the Hanafi school, there is only one pillar of the contract, *sighat* in the form of consent, or all actions that describe willingness both in words and deeds in a contract to exchange goods, the conditions are *'aqidain* and *al-ma'qud 'alaih* (object of the contract).²¹ According to a number of scholars, both Hanafi, Maliki and Safi'i, the pillars and conditions of the contract are the same, namely as follows:

- a. The person who wants to make a contract
- b. The object of the contract is clear
- c. *Sigator* contract formula

¹⁹ Gemala Dewi, Wirdyaningsih, and Yeni Salma Barlinti, *Islamic Engagement Law in Indonesia* (Depok: Prenadamedia Group, 2018).

²⁰ Fathurrahman Djamil, *Sharia Economic Law: History, Theory and Concepts*, Ed. Tarmizi, Pertama, C (Jakarta: Sinar Graphics, 2013).

²¹ Siti Zafilah Firdausiah Fila, "Theoretical Study of the Urgency of Principles in Sharia Agreements," *Al - Muamalat: Journal of Sharia Law and Economics* 5, No. 1 (2020): 48–67, <https://doi.org/10.32505/Muamalat.V5i1.1519>.

However, the Hanafi school of thought says that the pillar of a contract is a formula or *sigat*. The formula in question consists of consent and acceptance, because this is the substance of a contract. This is because *sighat* will not be valid in the form of *ijab* and *kabul* if there is no *aqidain* and there is no object in the contract. This is different from the Shafi'i and Maliki schools which require '*aqidain* and *al-ma'qud 'alaih* as the pillars of the contract. This is because all of them are the main points in which a contract occurs. The majority of scholars are of the opinion that the pillars of the contract are *al-'aqidain*, *al-ma'qud 'alaih*, and *sighat al-'aqdi* in the form of *ijab* and *kabul*. Based on the Compilation of Sharia Economic Law (KHES), the pillars of a contract consist of four points, namely in the form of '*aqidain*, *ma'qud 'alaih*, the core purpose of the contract and the existence of consensus.

Based on the principles or pillars of contracts in KHES, it can be seen that the provisions of the contract pillars refer to the studies of the majority of scholars with studies of adaptation to the national context. These pillars certainly have conditions that should not be missed. As well as the requirements for the parties based on KHES in the form of having achieved legal competency. Likewise, according to most scholars, '*aqidain*' is a person who is not crazy and has grown up or *mumayyiz*.²² However, there is disagreement as to whether contracts with minor children are appropriate. According to most Hanabilah scholars, sales and purchase contracts with minors are not *haram*, even if a person is not *mumayyiz* and has not obtained permission from a guardian. However, if the sales contract concluded by the minor is for a large amount, then this is not allowed, even if the guardian permits it.²³ This is different from the opinion of the majority of Shafi'iyah scholars who do not justify buying and selling for four groups, namely children who have not yet reached the *mumayyiz* category or not, people who have lost their minds, both people who are *mukalaf* and people who cannot see. Restrictions on these persons lead to termination of the contract. Hanafiah scholars do not require puberty for both parties concerned, so that a contract which is entered into by a person who is not yet an adult or has not yet reached puberty but is *mumayyiz* and is seven years old, the contract is not void or valid, unless the contract can cause harm.

If you have found all the conditions that cannot be abandoned by the *aqidain*, then the conditions of the object of the contract must also not be abandoned. Referring to KHES, the conditions for the object of the contract

²² Awaludin And Karya, "Principles of Agreements (Akad), Sharia Contract Law in the Application of Salam and Istisna," *Al-Naqdu Journal of Islamic Studies* 14, No. 2 (2016): 272–79.

²³ Bahtiar Effendi, "The Principles of Islamic Economic Contracts from a Khes Perspective," *Alwatzikhoebillah Journal: Islamic Studies, Education, Economics, Humanities* 8, No. 2 (2020): 70–81, <https://doi.org/10.37567/Alwatzikhoebillah.V8i2.1475>.

are amwal or all actions that are halal, and justified by 'aqidain.²⁴ The majority of scholars want the object of the contract to be specific to halal matters, the object of the contract can be intended when the implementation of the contract can be decided, and the following conditions must be met regarding consent and acceptance. *Ijab* is an offer by one party and *kabul* means a response to the acceptance of another party, namely the party making the contract, being a response to the offer made by the first party. Agreements cannot be enforced if the aims and objectives of the parties are not synchronized. This situation is because the contract is interpreted as a commitment and will of both parties as explained by the consent and acceptance. At the same time, the contract also needs to be submitted and agreed to by both parties.

Contract provisions are generally divided into two parts, namely:

a. Requirements for the formation of a contract:

- 2) There is an agreement between parties A and B,
- 3) Or a meeting of *Ijab* and *Qabul*.
- 4) Unified treaty council
- 5) The parties want to make a clear contract
- 6) People who want to make contracts have common sense
- 7) The object of the contract is immediately provided
- 8) The object of the contract is clear
- 9) Objects can be transacted clearly

If any of these conditions are not met, the contract will be void.

b. Legal terms of contract:

The legal condition of a contract is that if one is not fulfilled then the contract will not occur. For example, just because one of the conditions is flawed, the contract is invalid. The following are the legal requirements of the contract, as follows:

- 1) There is no element of contractual coercion
- 2) Does not cause loss to the contract
- 3) Does not contain any ambiguity in the contract
- 4) Does not contain acidic conditions

c. The requirements in terms of legal force that the contract is valid are divided into three parts:

- 1) A *mauqūf* agreement is an agreement with the permission of the third party entering into the contract. For example, in a contract there is a guardianship created by a child or someone on behalf of the person whose contract is guardianship.
- 2) A *nafiz* contract is a contract where in the contract there is still a choice or *khiyar* of one of the contracts.

²⁴ Akhmad Hulaify, "Principles of Contracts (Akad) in Sharia Law," *At-Tadbir: Management Scientific Journal* 3, No. 1 (2019): 41–55, <https://Doi.Org/10.31602/Atd.V3i1.1801>.

- 3) The *lāzim* contract is the most perfectly realized contract and can have clear legal consequences. If this contract no longer exists, permission is granted to third parties at each other's choice or discretion.

C. Forms of Change from Classical to Contemporary Contract Principles in *Mu'amalah* Review of Islamic Federal Law

Contract principles occur due to an agreement between two parties. Where the agreement in question is the existence of a will between both parties. One person faces each other and gives a mutually agreed statement to each other. An agreement occurs because of the disclosure of rights in the agreement by the parties themselves. According to Mohammad Daud Ali, principles and law, if combined, will become the basis for thinking and reasoning in forming a law. From Mohammad Daud Ali's view, in sharia contract law, a correct agreement is used as a fulcrum and as a reason for enforcing the implementation of sharia contract law. In sharia contract law, the basis for implementing and enforcing a will has principles. It is grouped into principles of agreement that affect its general and legal nature.

A general statement of a truth or fundamental that is used as a basis for thought and action is a basic understanding. The nature of the principles is general, permanent, and all sciences have principles that describe the content of truth in the field of science studied. Principles are not inherently absolute or absolute, meaning that they are still considered in specific circumstances and changing circumstances. Meanwhile, *mu'amalah* is a rule from Allah SWT and must be followed in social life in order to safeguard human interests in all world affairs in social society. At the time of reason, some principles must be discovered, because these principles are the most important principles. Without the principle of this *mu'amalah* activity, it would not be called *mu'amalah*. The following are the principles in the contract, namely:

- a. The principle of *Tauhid* or (*al-ilahiah*)

There is a very deep provision that must be understood based on the divine principle, that everything in this world belongs only to Allah SWT. Therefore, every person who makes an agreement or contract must realize that every action he performs will be held accountable by Allah SWT, including when he makes the contract. This principle is the basis of all existing principles, as well as a form of surrender to the Creator. In this divine principle, all parties to the contract must implement all existing and applicable rules in the contract and implement the conditions, harmony and legal consequences of the agreement or contract. The basis of the divine principle in the Qur'an is found in Surah al-Maidah verse 120 and al-Hadid verse 4:

هُوَ الَّذِي خَلَقَ السَّمَوَاتِ وَالْأَرْضَ فِي سِتَّةِ أَيَّامٍ ثُمَّ اسْتَوَى عَلَى الْعَرْشِ يَعْلَمُ مَا يَلِجُ فِي الْأَرْضِ
وَمَا يَخْرُجُ مِنْهَا وَمَا يَنْزِلُ مِنَ السَّمَاءِ وَمَا يَعْرُجُ فِيهَا وَهُوَ مَعَكُمْ أَيْنَ مَا كُنْتُمْ وَاللَّهُ بِمَا تَعْمَلُونَ
بَصِيرٌ

It is He who created the heavens and the earth in six lives. Later, He lived in 'Arash. He knows what enters the earth and what comes out of it, and what comes down from heaven and what goes up there.710) He is with you wherever you are. Allah is All-Seeing of what you do. What is meant by ascending, among other things, are the actions and prayers of His servants.

From QS Al-Hadid verse 4 above, it explains that all forms of Muslim activities carried out by humans cannot escape the supervision of Allah SWT in the value of monotheism. Where humans have a responsibility to the value of monotheism. Apart from responsibility to oneself, to society and even responsibility to Allah SWT. The principle of *Tauhid* or Divine principles will regulate humans in *mu'amalah* activities, these humans cannot carelessly do things according to their intentions.

b. Principle of Ability (*Mabdau al-ibadah*)

The principle of ability is the basic principle or tree in the field of *mu'amalah*, namely; "The original law of all forms of *mu'amalah* is permitted unless there is an argument that prohibits it." Meanwhile, the legal principle in worship is the opposite of the principle of *ibadah*, namely: "The original law of worship is void (*haram*), until there is an argument that commands it." This means that all *mu'amalah* activities are permitted (*mubah*) as long as there are no rules prohibiting them.

c. Principles of Justice (*al-'is*)

The Principle of Justice or *Al-'Is* is the principle that all forms of *mu'amalah* activities must have justice. In this principle, both parties must do what is right in the circumstances and express the will that was promised at the beginning of the contract. In QS Al-Hadid verse 25:

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ وَأَنْزَلْنَا
الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعُ لِلنَّاسِ وَلِيَعْلَمَ اللَّهُ مَن يَنْصُرُهُ ۖ وَرُسُلَهُ ۗ بِالْغَيْبِ إِنَّ اللَّهَ
قَوِيٌّ عَزِيزٌ

"Behold, We have sent Our messengers with clear proofs, and We have sent down with them books and scales (of justice) so that humans will be just. We have sent down iron which has great strength and various benefits for mankind so that Allah may know who helps Him and His messengers even though (Allah) does not see. Surely Allah is Mighty and Mighty."

d. Principle of Equality

In principle, when carrying out *mu'amalah*, humans must do the same thing as humans, without having to differentiate between race, skin color and economic strata. The following is Q.S Al-Hujarat verse 13 which explains the principle of equality as follows:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۗ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰكُمْ ۗ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

"O people, indeed We have created you from a man and a woman. Then We made you into nations and tribes so that you may know each other. Indeed, the noblest among you in the sight of Allah is the most pious. Verily Allah All-Knowing, All-Compliant."

e. Principle of Honesty (*ash-siddiq*)

If a contract is not carried out honestly and honestly, then the contract in *mu'amalah* will give rise to disputes between the two parties. In Q. S Al-Ahzab verse 70 it has also been explained that:

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا

O you who believe, fear Allah and speak the right words.

From QS Al-Ahzab verse 70 above, explaining every principle of honesty in an agreement must be honest, meaning that both parties who want to fulfill the contract have nothing to keep and must be clear.

f. Written Principles (*al-kitabah*)

The written principle or *al-kitabah* is the principle that *mu'amalah* activities must be recorded in writing in a book or document so that when a dispute arises in the future over the engagement contract it can be resolved in accordance with the written contents. As in QS Al-Baqarah verse 282 regarding written principles or *al-kitabah*:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ آجَلٍ مَّسْمُومٍ فَاكْتُبُوهُ لِيَكْتَبَ بَيْنَكُمُ الْكِتَابُ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ ۗ وَلَا يَبْخَسَ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمْلَئَ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ ۚ وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكَّرَ إِحْدَاهُمَا الْأُخْرَىٰ ۗ وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا ۗ وَلَا تَسْمَؤْا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ آجَلِهِ ۗ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ

لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُوهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا وَأَشْهَدُوا إِذَا تَبَايَعْتُمْ وَلَا يُضَارَّ كَاتِبٌ وَلَا شَهِيدٌ ۚ وَإِنْ تَفَعَّلُوا فَإِنَّهُ فَسُوقٌ بِكُمْ ۗ
وَاتَّقُوا اللَّهَ ۖ وَيُعَلِّمُكُمُ اللَّهُ ۗ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

O believers, if you owe a debt for a certain period of time, you must record it. Let one of you write it correctly. Let not the recorder refuse to write it down as Allah has taught him. Let him note (him) and the debtor dictate (him). Let him fear Allah, his Lord, and let him not reduce it in the slightest. If the debtor is intelligent, weak (under the circumstances), or unable to dictate himself, let his guardian dictate accordingly. Ask for the testimony of two male witnesses among you. If there are not two men, one man and two women among the people you prefer among the witnesses so that if one forgets, the other reminds him. Witnesses should not refuse when called. Don't get bored of recording it until the deadline, whether small or large. Such a person is more just to God, more able to strengthen the testimony, and brings you closer to doubt, unless it is a cash business you are running among yourselves. Therefore, there is no sin on you if you do not record it. Take witnesses if you trade and don't make things difficult (or difficult), and so are witnesses. If you do (that), it is against the law for you. Fear God, God teaches you and God knows everything.

From QS Al-Baqarah verse 282 above, clarifying every written principle or al-kitabah in an agreement must be done in writing, meaning that when the contract is in the agreement it is *mu'amalah* to be used as a guide when a dispute occurs in the future.

g. Principles of Good Faith

Article 1338 paragraph (3) of the Civil Code is an article relating to the principle of good faith which contains "all forms of agreements made in good faith". Explain that the parties to an agreement first enter into a contract with a strong belief or agreement about the parties' will to achieve the goals of the agreement.

h. The principle of expediency (benefits)

This principle explains that the form of agreement implemented can provide benefits and prosperity for the parties who have been bound by the agreement and for the surrounding community even though there are no provisions in the Hadith and Al-Qur'an. This principle is in line with the goals of Islam as a universal religion which protects five main points, namely; mind, body, religiosity, family dignity, and wealth.

i. Principle of Consensualism (*mabda' ar-rada'iyah*)

In this principle, when carrying out *mu'amalah*, people must be consensual without any element of coercion from both parties. This

principle of consensualism explains that agreements are generally not made formally, but only by general agreement between the two parties.

j. Principle of Freedom of Contract (*hurriyah at-ta'aqud*)

This principle of freedom explains that if there is a mutual agreement both in form and content, then at that time the partnership between the two will bind their rights and obligations. However, this is not the nature of the Absolute. As long as there is no Sharia law against it, an alliance can be created. In line with QS Al-Maidah verse 1:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَيْمَاتُ الْأَنْعَامِ إِلَّا مَا يُتْلَى عَلَيْكُمْ غَيْرَ مُحِلِّي الصَّيْدِ
وَأَنْتُمْ حُرْمٌ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

O you who believe, keep the promises. 192) It is lawful for you to take livestock, except that which will be mentioned to you (haram) by not allowing hunting while you are in ihram (hajj or umrah). Indeed, God established the law according to His will. The meaning of promise here is a promise to Allah SWT to follow His teachings and a promise to humans in mu'amalah.

k. Binding principle

In the hadith of Muhammad SAW which means: "Muslims are bound by their agreements (clauses), except for agreements (clauses) that prohibit halal or halal haram". From the hadith above, the principle of agreements is binding, it is explained that people who make an agreement will definitely be bound by the contents of the agreement and what has been agreed upon with each other.

l. Principle of Performance Balance

The principle of balance of performance is the principle where *mu'amalah* activities between both parties carry out the agreement and have fulfilled it. In the form of an example, the creditor has the power of a legal umbrella so that in the event of a default or dispute, the creditor can demand that the customer pay off the debt in accordance with the engagement agreement or agreement written on paper and resolved in a good manner.

m. Principle of Legal Certainty

The principle of legal certainty is a principle according to which a certain law must be established. In this principle of legal certainty, it has been explained that legal *mu'amalah* activities must exist. This means that here a judge is a party to the contract and must be respected by the person who made the *mu'amalah* contract agreement. An investor may not interfere in the substantive contract that the parties have agreed to. Article 1338 states that the principle of *pacata sunt servanda* can be concluded that agreements made by someone can be ratified and made into law.

n. Personality Principles

The principle of personality is a principle that determines that a person will perform and/or contract only for the benefit of the individual. Articles 1315 and 1340 of the Civil Code state that a person generally cannot enter into an agreement or agreement for his own benefit. Meanwhile, article 1340 of the Civil Code states that an agreement or agreement can only apply to the person who made the agreement or agreement. Meanwhile, there is an exception that article 1317 of the Civil Code states that agreements or words can be made for the benefit of a third party, where the agreement that has been made for the person making the agreement and another person contains the conditions as stated in the agreement.

Therefore, the article provides an explanation that an agreement or agreement can be made for the benefit of a third party based on certain conditions. Article 1318 of the Civil Code also explains that an agreement applies to heirs or so-called third persons to obtain their rights as stated in the contents of the agreement. So it can be concluded that the principle of personality in an agreement or agreement can be applied with several exceptions to someone who wants to provide legal action for himself and authority over himself.

D. Changes from Classical Contracts to Contemporary Contracts from a *Fiqh* Perspective

In the study of Islamic jurisprudence, the concept of contract (agreement) has an important role in regulating transactions and social relations between individuals and groups. Classical or traditional contracts have long been the mainstay of Islamic law, but with the times and complex social dynamics, changes in contemporary contracts are becoming increasingly of concern. This article will explain in depth the changes in contracts from classical to contemporary in *mu'amalah*, seen from a *fiqh* perspective. Before discussing contract changes, it is important to understand the concept of contract in *fiqh*. Contract in this context refers to an agreement or agreement made between two or more parties, which regulates the rights and obligations of each party in a particular transaction or relationship. In *fiqh*, there are certain conditions that must be met for a contract to be considered valid, such as full agreement from the parties involved, clear objects, etc.

With changing times and the complexity of modern life, new challenges have emerged in the context of *mu'amalah*. Several factors that influence changes in contracts to become contemporary include: First, Technology and Finance: Advances in technology and sharia banking have introduced new financial products such as sharia bonds, sharia mutual

funds, and other financial instruments that require contracts that are adapted to these modern characteristics. Second, Globalization: International trade and cross-cultural interactions require a deep understanding of contracts that can regulate cross-border transaction relationships by considering local laws and sharia principles. Third, Economic Growth: Rapid economic development presents new challenges for contracts that can support investments, business partnerships and shallow-based asset management.

Classical or traditional contracts in *fiqh* refer to types of contracts that are known and regulated in detail by classical *fiqh* scholars such as Imam Syafi'i, Imam Malik, Imam Hanafi, and Imam Hambali. Examples of classic contracts include buying and selling (*bai'*), borrowing and borrowing (*qardh*), renting (*ijarah*), and so on. These contracts have been explained in detail based on the texts of the Qur'an and hadith, as well as *qiyas* (analogies) by scholars. Contemporary jurisprudence scholars have carried out *ijtihad* (legal interpretation) to adapt jurisprudential principles to current social and economic realities. Several aspects of changes in the *fiqh* perspective related to contracts include:

1. *Istishab* (The principle of continuation of existing conditions)
The principle of *istishab* makes it possible to maintain a contract if there is no clear evidence to cancel it, even if social conditions change. Scholars used this principle to maintain the essence of classical contracts while adapting their technical details to changing times.
2. *Maslahah Mursale* (benefits that cannot be determined by direct evidence)
The concept of general benefit or *maslahah murrasa* is the basis for changes in contracts that make it possible to achieve greater benefits (goodness) in the context of changing times.
3. *Giyas* (Analog)
Although *qiyas* has been used in classical jurisprudence to expand the legal application of existing cases, contemporary scholars perform *qiyas* in response to new issues that are not present in classical texts.

As a concrete example, financial products such as *sukuk* (sharia bonds) are the result of *ijtihad* by *ulama* to adapt the concept of debt and receivables in Islam to global financial practices. Contracts in *sukuk* are designed to comply with sharia principles such as the prohibition of *riba* (interest) and speculation. Although there have been attempts to adapt contracts to contemporary life, this approach has also faced challenges and criticism. Some critics consider that adapting too far from classical contracts could reduce the authenticity of sharia principles and lead to a decline in implementing Islamic values in everyday life. In facing changing times, changing contracts from classical to contemporary is part of the dynamics of *fiqh* which combines tradition with innovation. By maintaining core

Islamic values such as justice, benefit, and adherence to sharia principles, *fiqh* scholars continually strive to ensure that contemporary contracts are not only legally valid but also relevant to the demands of the times. Thus, these contract changes are a reflection of *fiqh*'s ability to continue to develop and provide relevant guidance for Muslims in various aspects of their lives.

CONCLUSION

From the results of the analysis of changes in classical to contemporary contract principles from a *fiqh* perspective, it can be concluded that there are several principles that form the basis of sharia contract law. Overall, the change in contracts from classical to contemporary in *mu'amalah* is a reflection of *fiqh*'s ability to adapt and develop Islamic law to make it relevant to the challenges of the times. By paying attention to the essential values of Islam and utilizing methodological tools such as *ijtihad*, *fiqh* can continue to provide appropriate and useful guidance for Muslims in living their lives in this modern era. Some of these principles include: principle *divine*, the principle of worship, the principle of freedom of contract, the principle of consensualism, the principle of binding, the principle of balance, the principle of benefit, the principle of trust, the principle of justice, and the principle of writing. These principles are the basis for conducting Islamic economic transactions, with an emphasis on the principles of justice, freedom and agreement of the parties. These principles are also intended to avoid coercion, pressure and deception of those interested in the engagement being made.

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