



RESEARCH ARTICLE

Breaking Promises in Contracts as Fraud: The Contribution of Islamic Law to Indonesian Criminal Law

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ARTICLE INFO	ABSTRACT
Received: Sep 21, 2024	The contribution of Islamic law to criminal law in Indonesia is not impossible, because God Almighty's values are one of the principles in the formulation of laws. Therefore, this manuscript aims to examine the contribution of Islamic law in criminal law, especially in the formulation of breach of contract as fraud. As a normative study, the secondary data (Al Quran, Hadith, fiqh, legal documents, and other relevant references) relevant to the issues studied are used. The study's findings indicate that, first, Islamic law can be used as a source of legal material in developing Indonesian criminal law through a dialectical or objectification process, resulting in a generally acceptable formulation to a pluralistic society. Second, although Islam (the Al Quran and hadith) classifies fraud as a sin, God has not yet determined the punishment for it. So, it is the responsibility of the state to determine whether or not the act is punishable. Third, under national criminal law (Article 378 of the Penal Code), fraud is defined as an act of deception or lying by any means, including breach of contract promises based on bad faith or dishonesty. The study's originality demonstrates that the definition of fraud in Article 378 of the Penal Code is an expression of Islamic values in Indonesian national criminal law.
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INTRODUCTION

Indonesia is not an Islamic state, like Brunei Darussalam, Malaysia, or others, the two countries clearly state in their Constitutions that the official religion of the State of Brunei is Islam (International Labor Organization n.d). Likewise, in Malaysia, adherents still recognize other religions for practice (International Labour Organization n.d). However, the Indonesian Constitution (UUD Negara RI 1945) states that "the state is based on belief in the One and Only God", meaning that the state recognizes the existence of God Almighty, whose manifestation is in the form of a religion that lives and is recognized by the state (Islam, Christianity, Catholicism, Buddhism, Hinduism). and Confucius). This statement is in accordance with the state foundation, state ideology, the nation's philosophical basis, the nation's view of life, and the soul of the nation's personality which is formulated in Pancasila with the first precept being Belief in One Almighty God, which gives spirit to the second precept Just and Civilized Humanity and the following precepts.

Pancasila is a source of Indonesian national law, as stated in Law no. 12/2011 concerning Formation of Laws – Invitations. This shows that all legal regulations made by the state must not conflict with

the values of Pancasila, and the values of Belief in One Almighty God from the first precepts must be the main reference. Mellisa Raphael said that as a civilized society, one must also take into account the nature and will of God (Raphael, 1997). The second principle of Pancasila is just and civilized humanity. Therefore, human values should be implemented in all behaviors in the dimension of life, including the state in establishing the rule of law, the spirit of the precepts reflects the nature and will of God.

In addition to the philosophical and normative basis, one can also see the phenomena that exist and occur in Indonesian society First based on data from the Ministry of Home Affairs as of 31 December 2021, there were 237.53 million Muslims (86.9%) (Dimasbayu, 2021). The development of the two Islamic economies in Indonesia can be seen empirically as mushrooms in spring, although the initial milestone only started in 1991 with the establishment of PT. Bank Muamalat Indonesia (BMI). At present, it has expanded in all aspects of the economy not only in the banking world but has penetrated into the real economic sector, among others in terms of empowering Small and Micro Enterprises (SMEs). Society believes that the sharia economy is more just and a manifestation of human values (A'yun, 2022). Third, society's legal life is not uniform, especially in terms of private relations that are included in the field of civil law, because in society there are various civil laws, namely customary law, Islamic law, and civil law (Book of Civil Law / Civil Code or Civil Law). outside that). They can choose to be subject to which law? Even customary law and Islamic law which do not conflict with Pancasila as a source of national law can serve as materials for drafting legal rules. Masaji Chiba said that customary law and Islamic law could become potential and actual elements in state law, which in the formulation, to be enacted into a regulation underwent a dialectical process. He called it the tripartite model of law. This was proven by Werner Menski in a study of legal systems in Asia (Menski, 2006).

In the field of public law (criminal law), the public cannot choose, they must comply with the law established by the state, but the criminal law formed must be based on divine values in accordance with national legal sources stipulated in Law No.12/2011. One illustration of the divine value in criminal law can be shown by the principle on which criminal law works, namely the principle of legality. This principle, if studied from its essence, comes from the teachings of God (Islam), which can be known from His words, namely as in the Quran Surahs / QSAl Isra/17: 15, Al Qashas/28:59, Al Baqarah/2:286, these verses essentially contain instructions that if Allah is going to punish/punish humans/a people, it must be preceded by sending the Messenger to give a warning. The lesson that can be drawn from these words is that warning is the main and important thing that must be carried out by mankind in general and state leaders in particular (Kuswardani, 2016). This principle of legality is not only recognized by Indonesia, but the international community also recognizes this principle, namely in the Rome Statute. Therefore the leader (of the state) needs to determine the law, especially the criminal law in order to determine the actions that are prohibited along with the punishment for those actions.

Furthermore, below is explained the contract (Arabic *aqad*), which includes the field of civil law. J. Satrio said that the meaning of a contract and an agreement are not the same. The scope of the contract is narrower than the agreement, because the contract only occurs in legal relations related to the field of property law, while the scope of the agreement is wider because all legal relations are made by the parties and give rise to legal consequences, such as marriage (Emirzon and Sadi Is, n.d). So an agreement in the narrow sense is a contract whose arrangement is still one in the Civil Code, especially Book III regarding engagement. This is different from other countries such as India and Malaysia which already have their own contract laws. India with The Indian Contract Act, of 1872 (India Code, n.d), and Malaysia with Act 136 on Contracts Act 1950 Incorporating all amendments up to 1 January 2006 (UN Environment Programme).

The Al Quran and Sunnah of the Prophet Muhammad SAW as the main sources of sharia have regulated the issue of contracts/agreement/aqad, including in QS Ali Imron / 3:76 and 77, Ar Ra'ad / 13:25, An Nahl / 16:91, Al Isra / 17:34, these verses instruct mankind to fulfill promises or oaths as characteristic of pious people because the promise will be held accountable before Allah. People who do not fulfill it as hypocrites, as hadith Rasulullah SAW.

آيَةُ الْمُنَافِقِ ثَلَاثٌ: إِذَا حَدَّثَ كَذَبَ، وَإِذَا وَعَدَ أَخْلَفَ، وَإِذَا أُؤْتِمِنَ خَانَ

Meaning: There are three signs of a hypocrite, (1) when he speaks a lie; (2) if you promise, you don't keep it; and (3) if given a mandate, he betrays." (Narrated by Bukhari no. 33 and Muslim no. 59) (Hakim, 2023).

Sharia (al Quran and hadith) does not outline punishments for people who do not keep promises or break promises, such as punishment for a thief or punishment for an adulteress. The two main sources of Islamic law simply state that it is an act that is prohibited by Allah or a sin. In this case, the state must take a role to regulate it, as stated by Ibn Sina about the role of the state to encourage and promote social justice, one of which is to establish the rule of law to create peace, order, and social welfare (Ismail and Nurcahyo, 2018). Saim Kayadibi said that the laws of Allah and the Sunnah of the Prophet must be the highest rules in the country rather than man-made rules. However, as a state ruler, he has an obligation to realize social justice, therefore the state ruler has the discretion to make regulations by means of ijtiḥad if the rules or punishments have not been determined by the Shari'a (S Kayadibi, 2018).

Therefore, as a country based on Belief in the One and Only God, as mentioned above, divine values as virtue values should be accommodated in a criminal law rule in order to realize social justice as formulated in the fifth precept of Pancasila. Thus the problem in this manuscript is formulated that how is the contribution of Islamic law in Indonesia's national criminal law in regulating broken promises as a criminal act of fraud?

This manuscript is a legal study, which Peter Mahmud mentions as normative research because the source of data to explain is secondary data obtained through national legal documents, the Koran and hadith, as well as relevant references (journals and literature). The results of the data collection will be analyzed using the principles of Islamic law and Indonesian national law (Marzuki, 2013).

RESULT AND DISCUSSION

Islam knows the term akad and wa'ad, these two terms have different legal meanings and consequences, even though the two terms mean the same thing, namely a promise or agreement. Muhammad Hisyam Mohamad stated that Islamic financial institutions cannot give wa'ad and contract the same legal weight. He then explained that the contract is a mutual agreement without coercion between two or more parties in which each party has obligations that have been agreed upon, which if it is not carried out will result in legal consequences. Wa'ad is a promise made by two or more people where the recipient of the promise does not bear any obligations and has no legal consequences. Or in other words wa'ad no compensation must be fulfilled by the recipient of the promise, the party who promises will only accept sin, so wa'ad is more morally based (Mohamad, 2014). Based on the above concept and in general, the contract can be classified into two, namely (a) a tabaruk contract (gratuitous contract) is a non-profit agreement, not for commercial gain but more mutual in nature. However, in this contract, the person giving the help/kindness can ask for a replacement fee to cover the costs incurred in the contract. (b) Tijarah/muawadah contracts (compensational contracts), are all forms of contracts/agreements related to profit transactions.

The contract contains two main things, namely consent or offer and qabul or acceptance. So ijab-qabul is an act or statement of offer by someone whose offer is accepted (agreed on) by another person (party) based on their willingness, which is in accordance with the provisions of the shari'a.

Willingness based on Shari'a is the main requirement in contracting, so Islam states that not all agreements or contracts can be called contracts because they have no legal consequences, which are called Treaty.

According to Islam, the main principle of contract is divine, meaning that the parties must obey the laws stipulated by God and His Prophet. The other principles are as follows:

- a. Freedom of contract, the parties are free to determine the substance of the contract to be agreed upon, without ignoring the shari'ah, so that in carrying out the contract there should be no coercion by either party. This principle is like in QS Al Maidah/5:1 "O you who believe! Fulfill promises. ('O ye who believe! Fulfill your undertakings' (the word translated as 'undertakings is 'unique, which is the modern Arabic for 'contracts). This principle is identical to the principle of Western law which is called the principle of *pacta sunt servanda*.
- b. Equity and Equality, this principle is a consequence of the principle of freedom of contract, that in a contract the parties must be fair and have the same position in giving an agreement, no one is under pressure or coercion. As in Allah's commandment QS An Nisaa/4:58 Allah commands mankind to deliver mandates to those who are entitled and establish fair laws. The law referred to here when coupled with the first principle above means that it is included in making a contract that the interests of the parties must be accommodated in a balanced way.
- c. The prohibition of Gharar and Riba (Gift), in doing good deeds that are *hamblum minnalloh wa hamblum minnannass* may not cheat as in QS An Nisaa / 4:142 meaning "Indeed the hypocrites want to deceive Allah, but Allah is the one who deceives them ." This shows that the tricks of the hypocrites must be rewarded by Allah. The Hadith of the Prophet narrated by Imam Muslim explains that the command, to be honest, is absolute for every human being, because honesty brings goodness and leads humanity to heaven, whereas lying brings evil and leads humans to hell (Deka Islam n.d). Furthermore, riba is expressly prohibited by Allah as in QS Al Baqarah/2:275 that Allah justifies buying and selling and forbids usury. So Islam clearly and unequivocally prohibits every activity including contracting, cheating, and collecting usury.

Another principle that must also be considered is (a) *mabda husnunnayah* that the parties to the contract must have good faith; (b) *mabda ar radhaiyyah*, meaning that there is conformity of will between the parties so that the contract is desired and has been agreed upon; (c) *Mahallul 'aqad*, namely the object of the contract that the object of the contract must exist when the contract is made, so that the contract is made for goods that are not clearly prohibited by the Shari'a, such as buying and selling of fruit but it is still on the tree and not yet harvested; (d) *Maudhu' al'aqad*, meaning that in making a contract there must be a purpose which results in legal consequences. Other conditions that must also be met are (a) the agreement made does not conflict with Islamic law; (b) The agreement made must be clear and not contain elements of gharar; (c) Both parties must be equally pleased in agreeing (Nopriansyah, 2019);

The principle of good faith in contracts is the main and important thing, so that good faith must be interpreted broadly not only regarding the good faith of the parties entering into the contract but good faith must also originate from the values that live in society (Ridwan Khairandy, 2020). The values of the life of the Indonesian people are reflected in the Pancasila precepts which are the nation's outlook on life and at the same time the noble covenant of the Indonesian nation, so that it does not matter if the good faith is interpreted in accordance with living values. Furthermore, to support, strengthen and reinforce the principle of good faith, the prohibition of gharar and fraud is also emphasized.

Gharar is ambiguous in the object of the contract both in terms of quantity and quality, causing contract uncertainty and can result in the contract being canceled because according to sharia it is not fulfilled (Bank Muamalat n.d). According to the writer's opinion, this can be classified as fraud

because there has been bad faith. The Qur'an and hadith do not provide the concept of gharar but Islam prohibits gharar in contracts, as explained in Al-Quran Surah Al Baqarah/2:188, An Nisa/4:29, which in essence are two verses Allah forbids eating other people's property with bad way (not good). These two verses do not explicitly mention gharar, but commentators state that in utilizing other people's assets there must be the willingness of the owner, meaning that to obtain the consent of the owner, prior notification is needed (Taufiq, 2018). Ansar Sahabi and Kartini Baide said that the prohibition on taking wealth in vain can also be interpreted that the transfer of property from the owner to another party either through trade or other forms of transaction must be in the right way according to the Shari'a, which means it must be clear, clear and both parties must like to like (willingly) (Sahabi and Baide). It is also necessary to understand inner gharar. In the tabarru' contract (gratuitous contract) the fiqh experts agree that it is permissible because in this contract it is a social program whose purpose is to help people who are experiencing a disaster.

The unclear object of the contract (in the contract *tijarah*/muawadah/compensational contract), can result in acts of fraud, which action is prohibited by the Shari'a because it is a lie, and can have an impact on crime as explained in the hadith below:

عَلَيْكُمْ بِالصِّدْقِ، فَإِنَّ الصِّدْقَ يَهْدِي إِلَى الْبِرِّ، وَإِنَّ الْبِرَّ يَهْدِي إِلَى الْجَنَّةِ، وَمَا يَزَالُ الرَّجُلُ يَصْدُقُ وَيَتَحَرَّى الصِّدْقَ حَتَّى يُكْتَبَ عِنْدَ اللَّهِ صِدْقًا، وَإِيَّاكُمْ وَالْكَذِبَ، فَإِنَّ الْكَذِبَ يَهْدِي إِلَى الْفُجُورِ، وَإِنَّ الْفُجُورَ يَهْدِي إِلَى النَّارِ، وَمَا يَزَالُ الرَّجُلُ يَكْذِبُ وَيَتَحَرَّى الْكَذِبَ حَتَّى يُكْتَبَ عِنْدَ اللَّهِ كَذَابًا

Meaning: Always be honest, because honesty leads to goodness, and kindness leads someone to Heaven. And if a person is always honest and chooses to be honest, he will be recorded by Allah as an honest person. And stay away from lying, because lying leads someone to evil, and evil leads someone to Hell. And if someone always lies and chooses to lie, then he will be recorded by Allah as a liar (liar).

The Qur'an also prohibits this action, because it is an act of sin, as in the Word of Allah QS Al Baqarah/2:9, Ali Imron/3:77, An Nahl/16:105, these verses are an affirmation from Allah to mankind (belief) so as not to deceive Allah which is deceiving himself, lying and breaking promises or oaths, all of which will be sinned later in the last day.

Based on the verses and hadiths above, honesty is the main key in entering into contracts, because honesty it creates a tone of trust, and truth in a contract, especially the object of the contract in terms of quality and quantity, and creates security and order both for oneself and the community. Honesty in the contract is the anticipation of not cheating or not committing fraud in the contract.

The principle of honesty in contracts in civil law (contract law) is more popular with the term good faith. Widodo Dwi Putro et al provide an interpretation of good faith in civil disputes whose object is land based on several court decisions, that the concept of good faith is (a) an honest buyer who does not know about the defects in the goods purchased, the defects in question are legal defects meaning defects in terms of the right to obtain goods purchased; (b) the principle of the buyer's accuracy, meaning that the buyer is obliged to carefully examine the goods to be purchased. This interpretation, although in the realm of buying and selling land, can also be applied to contracts in general first, starting from the view of Imam Syafi'i who said that in buying and selling there is an agreement and qabul that are in accordance with sharia which are carried out by two parties. Al-Qlayubi stated that buying and selling is a contract to replace one another with property which results in a change in ownership. Second, Indonesian civil law in Article 1457 stipulates that buying and selling is an agreement between two parties where each party binds itself to fulfill its obligations (ie delivering goods on the one hand and paying the price of the goods on the other party) which has been promised. Based on this, it means that buying and selling is a contract, so the concept of good ethics as mentioned can be used as a basis for contract principles carried out by the parties in good faith.

The Contribution of Islamic Law in the Formulation of Pledges in Contracts as a Crime of Fraud

Shari'at (Al-Quran and Hadith) also regulates punishment (Uqubah), which according to Islamic jurists falls into the realm of Islamic/Jinayah criminal law. Ahmad Wardi Muslich said that sharia which is included in the category of Islamic criminal law is sharia in the form of orders whose legal meaning is mandatory and prohibitions whose legal meaning is unlawful. Therefore, orders whose legal meaning is mandub/sunah, makruh and mubah are not included in the category of criminal law (Muslich, 2001).

The orders or prohibitions contained in the Shari'a are not necessarily all accompanied by clear and firm legal threats (uqubah), but the Shari'a only stipulates that act as a prohibited sinful act. In this case, the state must take part in determining the law and the punishment for those actions. This is understandable because the duty of the state in Islam is to provide protection to its citizens and create security and order for the sake of justice. Ibn Sina said that the role of the state in providing protection to its people in the context of creating social justice includes providing the rule of law to guarantee the realization of that protection, including providing employment and social security (Apriantoro et al., 2022). Saim Kayadibi, said that the state has a role and responsibility to regulate its people and must not be arbitrary, so it is necessary to make laws and regulations including formulating acts that can be punished to provide protection, maintain order and guaranteeing the existence of a state that is in accordance with the demands in Al Quran and As-Sunnah (Saim Kayadibi, 2018).

As an example of the Shari'a which stipulates actions as prohibited acts and their punishments, including acts of attack that cause riots so that society becomes insecure. This is like in the Al Quran Surah Al Baqarah/2:194:

فَمَنْ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ....

It means: Therefore whoever attacks you, then attack him in proportion to his attack on you."

In addition to al Baqarah above, Islamic jurists also mention the basis of the Shari'a regarding rebellion in QS Al Hujarat / 49: 9 which means "And if there are two groups of believers fighting, then make peace between the two. If one of the two acts unjustly against the other (group), then fight the (group) that is unjust, so that group returns to Allah's commands. If that group has returned (to Allah's command), then reconcile between the two fairly, and act fairly. Truly, Allah loves those who act justly.

The Hadith also explains the prohibition of pitting people against each other with the aim of dividing the people. As for the hadith:

أَفَاقْتُلُوا جَمَاعَتَكُمْ يُفَرِّقَ أَوْ عَصَاكُمْ يَشُقُّ أَنْ يُرِيدَ وَاحِدٍ رَجُلٍ عَلَى جَمِيعٍ وَأَمْرُكُمْ أَتَاكُمْ مَنْ

Meaning: Whoever comes to you, when you are united under one leader, he wants to break up your union, then kill him. (Muslim HR)

The two basic principles of the Shari'a explain the punishment for attackers or those who divide the union, namely by a reciprocal attack or by being killed. Jurisprudence experts mention the conditions that must be met by an act of rebellion or bughot, namely (1) opposing a legitimate and just leader by not being willing to comply with his obligations; (2) the perpetrator is a person who has great power and is organized; (3) intentional intention to violate the law, which was carried out with the force of a large number of weapons; (4) the action aimed to overthrow the legitimate government and create chaos (Thohari).

Apart from that, there are still several examples of acts whose punishment is directly determined by the shari'ah, for example theft as in the Qur'an Surah Al Maidah/5:38, Allah says:

حَكِيمٌ عَزِيزٌ وَاللَّهُ ٱللَّهُ مَن نَّكَالًا كَسَبَا بِمَا جَزَاءُ أَيْدِيهِمَا فَاغْلَبُوا وَٱلسَّارِقَةُ وَٱلسَّارِقُ

Meaning: As for men and women who steal, cut off their hands (as) recompense for what they have done and as punishment from Allah. And Allah is Mighty, Most Wise.

The Hadith of Rasulullah SAW narrated by Imam Muslim stipulates the punishment for people who commit acts of stealing, with a minimum limit of stolen property, as follows

عَنْ عَائِشَةَ، عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لَا تُقَطَّعُ يَدُ السَّارِقِ إِلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا

Meaning: From 'Aisyah Radhiyallahu anhuma, from the Prophet sallallahu 'alaihi wa sallam, he said, "A thief's hand is not cut except for a quarter of a dinar or more." (HR. Muslim, no. 1684; Nasai, no. 4936; Ibn Hibban, no. 4464) (Abu Isma'il Muslim al-Atsari, n.d).

The hadith above serves to explain the verses of the Koran, especially QS Al Maidah/5:38 regarding the punishment for thieves, namely cutting off their hands, but based on this hadith, it does not generalize that all thieves must be punished by cutting off their hands, the sentence must take into account the total price of the stolen goods. Jurists say that the function of this hadith is as Bayan Tasyri, namely hadiths that establish laws or establish laws that do not exist or have not been established in the Qur'an (Isnaeni Harahap, 2015).

However, the Sharia does not stipulate all the punishments for actions that are classified as prohibited acts. This is like a prohibition not to cause damage to the earth, which is in the following verses QS Al Baqarah/2: 11,12, 30, 60; QS Al A'raf/7:56, and 74; QS Yunus/10:41; QS Al Qashash/28:77; QS Ar Rum/30:41. None of these verses stipulates the punishment, only stipulates that it is a prohibited act. The interpretation of causing damage to the face of the earth is very broad, not only causing damage to the natural environment but includes damage to all aspects of human social life, which can be called committing a crime either to the physical, psychological or property of a person. In this case, the role of the state is very important to establish legal regulations that aim to protect its citizens in accordance with the guidance of the Shari'a. This is like the Word of God in QS An Nisaa./4:58 & verse 185 that the Word of God contains commands (a) to convey the mandate to those who are entitled; (b) establish fair laws; (c) upholding justice regardless of socio-economic status; (d) act and speak truthfully by not twisting words; (e) do not follow lust to deviate from the truth.

Ibn Sina said that the role of the state in protecting its people in the context of creating social justice includes providing the rule of law to guarantee the realization of that protection, including providing employment and social security (Syukri, 2021). Saim Kayadibi, said that the state has a role and responsibility to regulate its people and must not be arbitrary, so it is necessary to make laws and regulations including formulating acts that can be punished to provide protection, maintain order and guarantee the existence of a state that is in accordance with the demands in Al Quran and As-Sunnah. Therefore, the state, especially countries that are based on Sharia, must interpret the verses of the Koran and hadith in state law, including verses about prohibited acts that have not been punished for the sake of realizing the welfare of the people. Determination of actions and punishments in Islamic law is included in the field of Islamic criminal law, which is commonly referred to as Jinayah. In Islam, acts of sin or acts that can be punished are called Jarimah

Furthermore, jurists generally argue that because there are actions and punishments that are directly determined by the Shari'a, and there are actions for which the Shari'a has not yet determined the punishment, they classify acts based on punishment into three, namely (a) Finger hudud i.e. jarimah which is threatened with a had punishment, namely the punishment that has been determined by syara' and is the right of Allah; (b) Jarimah Qishashb and Diat, namely jarimah whose punishment has been determined by syara', except that in this punishment there is a human right in the form of pardon, so that the sentence is aborted; (c) Jarimah tazir, namely jarimah whose punishment has not

been determined by syara' but the determination of punishment is the authority of ulil amri (state leader).

Fraud or cheating or not keeping promises or lying or not acting honestly in a contract are included in the classification of jarimah ta'zir because the shari'ah has not yet determined the punishment but only stipulates it as a sin. This is as confirmed in the Al Quran QS Ghafir/40:28, Ali Imron/3:61, Al Muthafifin/63:1-6, An Nahl/16:105. These verses in essence Allah forbids human beings to lie or cheat or lie, because that is a sinful act and will receive punishment from Allah on the day of reckoning. In the hadith narrated by Imama Abu Dawud also emphasized that: Rasulullah SAW said:

حَرَامًا أَحَلَّ أَوْ حَلَالًا حَرَّمَ شَرْطًا إِلَّا شَرُوطِهِمْ عَلَى وَالْمُسْلِمُونَ

Meaning: The Muslims are bound by the terms they agree on, except for conditions that forbid lawful things or make lawful things unlawful (HR Abu Dawud) (Al Manhaj).

Even though the principle of the contract has been stipulated by the Shari'a which has been interpreted by Islamic jurists, gharar and fraud are prohibited, as explained in the previous paragraph. Countries that are based on Islamic law define fraud as a finger. Malaysia as a country has declared in its Constitution that Islam is the state religion even though it also recognizes other religions. This can be seen from the Criminal Code, which stipulates as a category of fraudulent acts, including (a) Cheating and dishonestly inducing delivery of property, namely fraudulent acts or persuading someone to hand over their property; or cause the transfer to someone, property without adequate consideration; (c) Dishonestly or fraudulently preventing from being made available for his creditors a debt or demand due to the offender. (d) Dishonest or fraudulent execution of deed of transfer containing a false statement of consideration, namely someone who is dishonest or fraudulent in drawing up a deed that aims to transfer property; (e) Dishonest or fraudulent removal or concealment of consideration, namely any person who hides or loses his/her property dishonestly or fraudulently or assists in hiding or eliminating dishonestly or fraudulently. These actions can be punished cumulatively and/or alternatively. For the first form of fraud (letter a) the punishment is not only imprisonment but also cumulative with whips and fines, while for other forms of imprisonment cumulative with fines or alternatives of the two forms.

The international community also prohibits fraud, because this can result in material losses, as well as lowering the trust of those who commit it, this in the business world has a fatal impact on the business, which can end in bankruptcy. The Association of Certified Fraud Examiners (ACFE) states that fraud is any act that relies on fraud to gain an advantage for the perpetrator, by concealing the truth or real material facts that encourage other people to act detrimental to other parties. In short, fraud is lying to take away money or property from a person or organization. Furthermore, ACFE also explains the forms of fraud, namely (a) corruption, which includes bribery, illegal gratuities, economic extortion; (b) Asset misappropriation, both in the form of cash assets and all other assets; (c) Fraud Financial Statements, such as time differences in reporting or disguising income, and others (Association of Certified Fraud Examiners (ACFE)).

Indonesia is not a religious state nor has Islam become the state religion, but Indonesia in its Constitution states that "Indonesia is a country based on Belief in the One and Only God". So that divine values become the basis of life in the nation, society and law (formulating, implementing and implementing laws). Therefore, in contracting, it must also be based on these values, where these values are fundamental values which are a source of goodness in muamalah. Bernard Arief Sidharta said that Divine values are a fundamental source of human values which serve as a benchmark for determining the good and bad of an action (Sidharta).

Breaking a promise or not keeping a promise in an agreement in Islam is clearly prohibited including acts of sin as described in the paragraph above. Breach of promise in a contract is commonly referred to as default (Dutch default, English default). Default is the omission or failure to perform a legal or

contractual duty; esp., the failure to pay a debt when due (Garner, 2004). The Civil Code prohibits not keeping promises, as stipulated in Articles 1243, 1266 and 1267 namely (a) paying compensation and interest to creditors by the debtor; (b) the creditor may request cancellation of the agreement unilaterally; (c) The creditor can force the debtor to fulfill the agreement accompanied by compensation and interest or cancel the agreement by demanding payment of compensation and interest. This provision regulates only broken promises in terms of default, which is in the realm of civil law, not other areas of law such as criminal law.

Sharia principles also prohibit gharar and fraud in contract law applicable in Indonesia. Even though the formulation of the prohibition did not quote exactly what was stated in the sharia provisions, the formulation used language that could be accepted by the wider community, not only those who are Muslim. The formulation of Islamic values in general in legal principles or in a rule of law by Koento Wibisono, a professor of philosophy, is called objectification (Ilmu, 2006). Accommodation of the prohibition against gharar, which also includes the prohibition of fraud in contracts formulated in Article 1320 of the Civil Code, namely (a) there is an agreement between the parties for a specific purpose; (b) the parties to the agreement have legal capacity; (c) there is a certain object agreed upon in the agreement; (d) Things that are agreed upon both regarding the object and the substance agreed upon are not prohibited by law. Subsequent provisions (Articles 1321, 1328 of the Civil Code) in principle expressly state that an agreement whose agreement is given due to a mistake or fraud has no legal force. The cancellation of other agreements is due to fraud by one of the parties when entering into an agreement (JDIH MA, n.d). This provision means to emphasize that the agreement becomes invalid and null and void, due to defects, namely the subjective conditions of the agreement are not fulfilled (there is an oversight in the agreement). Furthermore, it was explained that the fraud was a ruse carried out by one of the parties to the agreement, so that as a result the agreement became null and void as well (Badruzaman and SH, 2023).

The criminal law has a different view of fraud not only relating to private matters but the act of fraud is already related to the public interest, because this act is already a violation of individual rights, especially in terms of ownership rights, so that criminal law as the last remedy must function to overcome and/or or eradicate the act (K. Kuswardani). This act in the Criminal Code is regulated in Article 378 of the Criminal Code where the formulation emphasizes that the act was carried out by using a false name or false prestige, with deception, or a series of lies that aim to induce another person to hand over something to him, or to give him a debt or write off a debt to benefit himself but is done unlawfully. So deception is one of the important elements in fraud, which in practice this element must be proven by the public prosecutor that the act contains that element. The penalty for this act is imprisonment for a maximum of four years. However, the Supreme Court Jurisprudence emphasized that breaking a promise in a contract is included in the category of fraud, if the contract is carried out by the parties with bad/bad faith, it means that one of the parties involved in making an agreement was dishonest. On the other hand, if the contract is executed in accordance with the law so that the contract is valid without any legal defects, then non-fulfillment of obligations by one of the parties in the contract is not a criminal matter of fraud but is a civil problem of default (Mahkamah Agung RI, n.d).

CONCLUSION

The enforceability of Islamic law absolutely applies to all human beings in all regions of the world, but for countries that do not make Islam the basis of law enforcement, the law that applies is not Islamic law. Indonesia is not an Islamic country, but Islamic norms contribute to legal norms in all fields of applicable law. This is bearing in mind that the Indonesian state is a country based on Belief in the One and Only God, so divine values originating as values of goodness and justice are the essence of law enforcement from the stage of formulating the law to the stage of implementing the law. One

of the contributions of Islamic law can be found in Indonesia's national criminal law both in the formulation of the principles that underlie the enactment of criminal law and in its norms.

The contribution of Islamic law to criminal law from the aspect of norms can be seen from the formulation of acts by the state as acts that can be subject to punishment. However, in formulating the act, it undergoes a dialectical process, so that the formulation can be widely accepted by the Indonesian people. Article 378 of the Criminal Code regarding fraud as a form of contribution to Islamic law in criminal law, in which provision the breach of promise in a contract or commonly called default can be included in the category of acts of fraud in that article if aqad/ the contract is done dishonestly or in good faith.

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