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The Problems in Implementing Islamic Contract Law As A Complementary Provision for Business Contracts in Indonesia

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ABSTRACT

The norms of sharia contracts, which are based on Islamic religious texts, the Qur'an and Hadith, provide contractual provisions for Muslims that emphasize the principles of Islamic values and mutual benefit. These sharia-based contract norms cannot be implemented as legal norms because of the nature of the principle of legality in Indonesia which only implies textual-based law in the form of laws and their derivatives. The application of sharia contract norms is very important because it is in line with the living laws of the Indonesian people. This paper will discuss the problems in the implementation of Sharia contract norms as legal norms in Indonesia as one of the countries with the Civil Law system. The method used in conducting this research is basically the normative-comparative method, which is carried out by examining the literature, or also called bibliographic research. Normative law research focuses on positive legal inventory, including the level of legal synchronizationl. In conclusion, the problem in the application of Islamic contract law in Indonesia faces the dynamics challenges of pro and con of its placement in laws and regulations or legislation. However, the lesson that can be seen in Indonesia compared to other countries is that the application of Islamic contract Law in Indonesia has more legal certainty by having a National Sharia Council (DSN-MUI) and a Compilation of Sharia Economic Law (KHES) although it still needs to be placed in the form of a law to strengthen its legality in a Civil Law country system.

1. Introduction

Islam is more than just a religion but it is more about way of life, it has arrangements in various fields in all aspects of human life. One of them are the provision of economic and contract law. For Muslims it is imperative to implement all the rules in various areas of life which it is obliged including in conducting economic transactions, especially for financial needs. In many countries Muslims are in the majority position. However, Islamic law, especially socio-economic dimension, can not simply be applied and / or become a state law without going through procedures and mechanisms that are legally recognized. In other words, the implementation of Islamic law as intended requires the prerequisite of acceptance of the national law first through the so-called legislation, namely the formation of state law by the agency / institution or authorized official (Ja'far Baehaqi, 2017).

In the countries with the Continental European legal system (Civil Law), product of national legislation is strongly influenced by the legal and political system

of the existing law in that State. In countries with Islamic legal system can directly apply the provisions of sharia in the implementation of legislation. However, in Indonesia and in some other Civil Law system countries, requires a more structured arrangement based on the order of applicable legislation rules. Whereas in countries with the Anglo Saxon (Common Law) legal system it is preferable to pre-existing court decisions that can be used. For example for the decision of the law by the next judge (precedent) in providing legal certainty for the implementation of shariah contract law. Indonesia is among the examples of countries with a Civil Law legal system that is developing in providing advanced developments on sharia economic basis regulation that can be learned the leson from to prepare for the better future of the country.

2. Methodology

The method used in doing this research is basically normative-comparative method, which done by examining the literature, or also called bibliography research. Normative legal research focuses on the inventory of positive law, legal principles and doctrines, the discovery of law in the case of concert, systematic law, the level of legal synchronization, comparative law and legal history. However, to gain more detail in practical base also done by interviewing and conducting focus group discussion with some legal experts from Indonesia and some other countries.

In this study, the civil law legal system is observed firstly by looking through the history of it mostly in the Netherlands. Furthermore, the legal discovery of legal arrangement of Islamic contracts law in some Civil Law countries is compared with Indonesia as the main country discussed. This study looks at relationship between the characteristics of Islamic contract law and its structure on the development of Islamic Contract Law itself together with the problems. The data to be obtained in the study comes from some relevant laws and regulation in Indonesia and those countries regarding the application of the Islamic Contract Law.

3. Result and Discussion

3.1. Indonesian Civil Law

The legal system is formed by countries in the world with the aim of regulating and harmonizing human activities in their respective societies. In this society the legal system forms part of the culture and civilization as well as the history of human life (Joseph Dainow, 1966). Countries in the world generally adhere to one of the two legal systems traditions known as Civil Law and Common Law. The Common Law tradition emerged from medieval England and was also implemented in its colonies. The Civil Law tradition originates from countries on the continental European continent and is also applied by its colonies. Apart from the existence of colonialism, the tradition of the Civil Law system also appears to change the legal system of a country that has a diversity of laws. This was done to increase economic and political power. Examples of countries that apply the Civil Law system with such purposes are Russia and Japan (The Robin's Collection, 2019).

Nevertheless, Hendrik Zwarensteyn argued that during the early ages both of those legal systems used custom (tradition) as the basis to reach decision in legal disputes (Hendrik Zwarensteyn). Zwarenstyen opined that the distinction in Civil Law and Common Law legal systems is not lied in the essential, but more a matter of gradation. One of Zwarenstyen's argument is addressed to the fact that prior to 1600, The Netherlands – which is going to be discussed later – had adjudicating law that said "in case of legal disputes, local custom has to be applied in deciding the case; if there is no local custom, the custom of the nearby regions will count; and only if there is no local or reginal custom to refer to, only then will Roman Law decide the issue at bar." (de Belcourt, 1924) In a developing society, one will discover that custom is insufficient to cover the entire field of law. From that provision, it shows that reception of Roman Law had purpose to fill of the gaps of law within Dutch's society in that time.

The Netherlands as a country located in the European continent has a distinctive history regarding its

implementation of the Civil Law system. The practice of Civil Law along the European continent makes local custom as one of the source of law – this is because scholars at that time wanted a systemized law to get spread, then harmonizing it with rational principles of Civil Law and natural law (The Robin's Collection, 2019). Also, the compilation of customs to become a written law was influenced by Napoleonic Occupation (Zwarenstyen). In 1631, Hugo Grotious produced a work entitled Introduction to Dutch Jurisprudence which was a synthesis between Roman law and Dutch customary law.

The Civil Law system is commonly understood to have a source of law originating from codified written laws (Gerald Paul Mc Alinn et al., 2010). There are three sources of law in countries that embrace the civil law system, namely statute, derivative rules (regulation), and customs that are not against the law (Dainow). Unlike the Common Law tradition, in the Civil Law system the judge's decision is not considered as a legal source. Judges in the countries that adhere to the Civil Law system work only as a mouthpiece for the law and in the implementation of the law – the judge has no gaps to form the law. In addition, in the Civil Law system, the previous judge's decision can be a judge's reference source but is not binding. This thing in the legal system of Civil Law is known as Jurisprudence Constante.

Indonesia has a tendency towards the Civil Law system brought by the Dutch during the colonial period. Although in practice, the Netherlands did not fully apply its legal rules to everyone at that time. When Dutch colonized Indonesia, they separated the people into 3 groups, namely the European, East Foreign, and Indigenous group. The separation of the community groups influenced the rule of law and the mechanism of dispute resolution for each group of people (Soepomo, 2004). For people who were in Foreign Indigenous and Eastern group, customary law applied based on Article 131 paragraph (6) Indische Staatsregeling. The word customary law was actually a construction of the thoughts of Dutch lawyers to define the habits of the archipelago community. This provides evidence that the Civil Law system is not a legal tradition embedded in the history of the archipelago (Ramadhan).

Indonesia's tendency to adopt the Civil Law system does not mean that Indonesia applies this system purely. Esin Orucu even stated that no country in the world really embraced the system of Civil Law or Common Law purely (Esin Orucu, 2008). Today's globalization is increasingly facilitating a mix between the two legal systems. In Indonesia, judges are no longer solely as mouthpieces of law because in Article 5 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power explained "[J]udge and constitutional judges are obliged to explore, follow and understand the legal value and a sense of justice that lives in the community" (UU No. 48, 2009). This also reinforces the principle that judges should not reject the case on the grounds that there are no governing laws. This rule proves that in Indonesia the application of the Civil Law system was not implemented purely, because in a limited manner the judges were given the authority to find laws in the community.

After independence, Indonesia did not declare itself an Islamic state even though the majority of its people embraced Islam. Islam was present in the archipelago long before the arrival of the Dutch to trade, and therefore Islamic legal norms were an integral part of society. Islamic legal norms apply as living law to each person who adheres to Islam in the archipelago. Islamic law as a law that lives in the midst of Nusantara (a term for Indonesia's region before the independence proclamation) society was then confused with the presence of receptio in cimplexu theory (Lodewijk Willem Christian Van den Berg) and receptie theory (Snouck Hurgonje and Cornelis Van Vollenhoven). What is meant by the theory of receptio in complexu is the law that applies to someone is following the religion of that person. Then, the thing that is meant by receptie theory is that Islamic law applies after being accepted by customary law, and that Islamic law merges into customary law (Aziz Dahlan et al., 1996).

The existence of these two theories during the Dutch colonial period made the application of Islamic law filtered with the enactment of customary law. After Independency of Indonesia, an expert in customary law and Islamic law named Hazairin considered the receptie exit theory to argue that Islamic law must be absorbed first into customary law to get applied. In the receptie exit theory, new customary law applies if it does not conflict with Islamic law. In other words, customary law that is not in line with Islamic law must be excluded, opposed or rejected.

The application of Islamic law wrapped in customary law for indigenous groups makes the substance of Islamic law never formally formed in a codification. Therefore, based on the principle of the Civil Law system, Islamic law is not the main legal source. Then, in the presence of Article II of the Transitional Rules in the 1945 Constitution which stipulates that "All state agencies and existing regulations are still in force, as long as they have not been held according to this Constitution" resulting in the existence of Islamic law being excluded from the formal legal form.

The existence of the receptie exit theory then supports the existence of a formal codification of Islamic law. Ismail Suny argued that the application of Islamic law in Indonesia can be classified into two periods, namely the period of acceptance of Islamic law as a persuasive source – which happened in 1945-1954, and the period of acceptance of Islamic law as an authoritative source – which has been happening since 1954 (Ismail Sunny, 1997). Acceptance of Islamic law as a source of persuasion is a situation where someone must be convinced of Islamic law to accept it, while the acceptance of Islamic law as an authoritative source is the source that has the power that must be implemented. The enactment of Law Number 1 Year 1974 concerning Representatives that made Islamic law as a source of law was proof that the receptie theory had not been used anymore by the legislators. The role of Islamic leaders is quite dominant in realizing the existence of this Marriage Law.

During the Dutch and Japanese colonies, the enactment of Islamic law in the Religious Courts was only intended to resolve family law. Whereas for economic law such as endowments, grants, and baitul maal must be resolved in the general court (Dahlia Haliah, 2017). After Indonesia's independence, the position of the Religious Courts was strengthened in Law Number 7 Year 1989 concerning the Religious Courts. At that time, the absolute competence of the Religious Courts still revolved around family law. In 1991 the Presidential Instruction Number 1 Year 1991 was issued which gave instructions to the Minister of Religion to disseminate the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) to be used by Government agencies and by the people who needed it. The Presidential Instruction according to Law Number 12 of 2011 concerning the Establishment of Legislation does not include in the types of legislation in force in Indonesia (UU No. 12, 2011). In this context, there is a lack of clarity on the position of KHI when viewed from the type of application of the regulations.

Only when Law Number 3 Year 2006 and Law Number 50 Year 2009 concerning Amendments to Law Number 7 of 1989 were issued, the authority of the Religious Courts was expanded to deal with disputes relating to the Sharia economy. In order to accommodate this, the Supreme Court of the Republic of Indonesia conducted a compilation of Sharia Economic Law Compilation (Kompilasi Hukum Ekonomi Syariah/KHES), which was then set forth in the Republic of Indonesia in Supreme Court Regulation (PERMA) Number 2 Year 2008 concerning Compilation of Sharia Economic Law. Based on Law Number 12 of 2011 concerning the Establishment of Legislation, regulations issued by the Supreme Court are recognized and have binding legal force insofar as they are ordered by higher laws or established based on authority (UU No. 8). Jimly Asshiddiqie stated that PERMA is a special regulation, so that it is subject to the principle of lex specialis derogat legi generalis (Jimly Asshiddiqie, 2004). When compared with KHI, the position of KHES is more recognized in legislation because the

type of regulation has been stated in Law Number 12 of 2011 concerning the Establishment of Legislation. Efforts to positively promote Islamic civil law through KHES are carried out to support the practice of Islamic economics which are increasingly stretching in Indonesia. KHI which is wrapped in the Presidential Instruction is the result of unclear regulations regarding the establishment of legislation in that time, so that the position of KHI in legislation is not too strong.

The positivity of Sharia economic law is also increasingly seen from the establishment of Law Number 41 Year 2004 concerning Endowments, Law Number 21 Year 2008 concerning Islamic Banking and Law Number 23 Year 2011 concerning Zakat. In the concept of the Civil Law system, this means that Islamic law today has partially succeeded in becoming a law in a formal form and has become a reference for judges in the Religious Courts to decide cases related to the Sharia economy. The enactment of Sharia economic law (Islamic civil law) and Western civil law in Indonesia made dualism of contract law for the people of Indonesia, especially for the Muslims, in carrying out muamalah activities. In Islam, all muamalah agreements are permitted until there is a law prohibiting them. The Sharia economic law is intended so that the Sharia principles to run the economy in a Sharia manner will not be violated.

Implementing Western contract law as stipulated in Burgerlijk Wetboek for Muslims has its own problems. The reason is, in the Civil Code there are still rules for applying interest to debtors or negligent money borrowers. This can be examined in Articles 1236 and 1239 of the Civil Code. In Islam, the imposition of interest on debt contracts is unlawful, or in this case the imposition of interest is known as riba. Riba is also present in contracts in conventional banking, where customers get added value from the money they hold in the bank. Therefore, the formation of formal law which has the power of enforceability to maintain Sharia principles is very much needed today, given the stretch of the Sharia economy is increasing from year to year.

3.2. Application of Islamic Contract Law in Indonesia

Islamic Contract Law is one source of national law in the field of engagement, in addition to the Law of Customary and the Contract Law according to the Civil Code. Although formally juridical until now there has been no separate regulation regarding Islamic Engagement Law in Indonesia where the contract law applied. But based on the provisions of Article 29 of the 1945 Constitution, Muslims can carry out the provisions of the engagement on the basis of their religious beliefs.

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In the order of the national legislation there are articles of the law which regulate the entry into force of Islamic Engagement Law, such as Article 1 point 13 of Law No. 10 of 1998 concerning Amendment to Law No. 7 of 1992 concerning Banking. So that even in national legislation products Islamic Engagement Law has been recognized and practiced. Especially after the enactment of Law No. 21 of 2008 concerning Islamic Banking, the legal position of Islamic law is getting stronger. In addition, because Islamic engagement also appears in the community in the practice of daily life, the normative Islamic Contract Law also applies in Indonesian homeland. To fulfill the formation of the National Law order, the Islamic Contract Law also studied and developed scientifically at the Faculty of Laws in University level as part of teaching materials. This has been started since 1992 at the Faculty of Law Universitas Indonesia as the initiator following the existence of the first Islamic Bank to anticipate the development of Islamic economic activities in Indonesia. Together with the fast growing development of Islamic financial institutions the activities of Islamic business which entered into many sectors including Islamic tourism, startups etc. This development also followed by the progress of regulations step by steps by the government to come into better condition. However the Civil Law legal system still becomes part of handicaps in implementing Islamic contract law in practice.

3.3. Comparison on The Implementation of Islamic Contract Law as A Complementary Provisions with Other Civil Law Countries (Turkey, Egypt, and UAE)

To have broader view on the implementation of Islamic contract law as a complementari provision in a country we may look up as comparison with some countries. Several countries across the globe such as Turkey, Egypt, and United Arab Emirate (UAE), has implemented sharia contract law within their national legal system since many years ago, as their country are mostly inhabited by Muslim resident and a former regime which are dated back to Islamic Caliphate Era.

Although sharia contract law regarded as an heritage practices among their societies, in this 21st century modern sharia contract law are still retained among modern law provision.

We start with Turkey. The Ottoman Empire ruled for six centuries (1299-1924) ruled the Islamic world from Turkey, but unfortunately the world today sees Turkey as a model of an extreme secular state. But behind its extremes, Islamic banking has found its footing where there have been several financial institutions called Special finance houses or in Turkish (zel Finans Kurumu) to provide sharia banking services since 1980.

In 2001, the financial crisis in Turkey became a milestone in the history of the Islamic financial industry where Islamic banking institutions or in Turkey were called (union banks) recorded growth that had never been achieved before. Its assets increased by 40 percent and financing by 53 percent, as well as deposits by 40 percent (according to data from the Turkish union association).

However, an important history in the era of the banking industry was the enactment of the Law on the Bank of the Union Act No. 5411 on November 1, 2005 by the supervisory authority, where this law came in line with the rules of Islamic law which regulates the performance of the bank to open an interest-free checking account with the name "Special current account". As permitted for union banks to accept deposits in accordance with mudharaba contracts as Profit and loss participation accounts, financing can go through the murabahah, Ijarah scheme which ends with ownership and musharaka. Also, Turkish banking law does not allow conventional banks to open branches of Islamic banks. The author sees that the enactment of the Law signifies the legal significance of Sharia contracts in Turkey.

Listening to what was said by the Deputy Manager of the Association of Bank Participation in Turkey, they really hope to have special regulations, whether in the form of laws, regulations of the Supreme Court, or others. This is included in the strategy that they designed until 2025. Although they say that it is not easy. But they need more than general rules, let alone the bank's participation is relatively new and not yet widely known by the public.

In the beginning, the Turkish State under its contract followed the Swiss and Italian contract law, then because Turkey was a candidate for EU membership, they changed the contract rules according to Éuropean Directives. It must be acknowledged this is one of their difficulties, because the contract does not mention Islamic words or according to sharia. However, it is only mentioned in accordance with profit sharing. Therefore, many of the Turkish people who still consider both types of banks (Deposit and Participation) are not different.

In principle, Egypt does not have special arrangements regarding contract law in accordance with Islamic law in the legislation. However, as stated above, according to the state constitution based on Islamic Sharia, the application of contract law in accordance with the Shari'a is possible and even highly recommended. However, in the life of business and economic activities there are currently regulations that are carried out based on universally applicable provisions that are taken into law in Egypt.

Egypt, which has a secular legal system, in the absence of sharia-specific contract laws in Egypt, the role of the sharia supervisory board is very fundamental in determining the halal and illegitimacy of each contract. In Egypt only known a Sharia Supervisory Board, they are independent and are directly responsible to the bank. So, it is not surprising that the Sharia Supervisory Board fatwa on one of the Islamic banks is different from the fatwa in another bank. Thus, it could be that a contract is executed in a sharia bank, and in other Islamic banks it is not implemented (‘Athiyah Fawadh, 2016).

As for carrying out the contract, Islamic banks can get approval from DPS (Sharia Consideration Board). The government considers that any contract made will not be a problem as long as it does not interfere

with the public interest and does not conflict with the applicable law. Freedom in transactions is guaranteed as long as the parties are willing and agree, even though there is no sharia contract law.

Then in settlement of disputes, seek bank negotiations and peace first as long as it is possible, but if this is not possible then it must be resolved either to arbitration or to court, in accordance with the agreed agreement. However, according to them in general, the problem of whether or not a contract is made with sharia is no longer a problem, because with the contract, the two parties have agreed to the agreed mechanism (Bayoumi El Shal, 2016).

Looking at the history of law in the Middle East, the legal system that was initially implemented was Islamic law. But after the legal reforms in the 20th century there were major changes to the Islamic legal system in the Middle East. There is a separation between the courts for economic cases, criminal courts, special courts regarding marriage, divorce, child custody and inheritance are settled by the Sharia court.

Like other Middle Eastern countries, Majalla adopted by the Ottoman Empire became a source of Islamic law which had a major influence on the legal system in the UAE. Regional and international entry of commercial companies to Dubai and the UAE over the past 30 years has resulted in a development and a growing body of comprehensive federal legislation was formed in the form of federal laws. There are federal laws in force in Dubai and other emirates. With the most important and fundamental legal principles, including civil, commercial, civil, corporate, intellectual property, immigration, maritime, industrial, banking and labor law procedures. On the contrary, many of the laws enacted by the Dubai authorities relate to more administrative matters, such as the establishment and operation of government affiliated entities (Andrew Tarbuck & Chris Lester, 2009).

The DIFC is a world-class "onshore" financial center and was established with the aim of bridging the gap between the world's major financial centers. It was established to become an institutional financial center that was recognized and became a regional gateway for capital and investment. DIFC in 2004 and has its own laws and regulations and even the court and its own arbitration facilities. This is apart from UAE civil and commercial law, but is still subject to UAE criminal law. Legislation has been implemented to regulate the daily requirements and operations of financial institutions, companies and individuals in DIFC. The law is based on the practices of the world's major financial jurisdictions and embodies the best of international financial and commercial law.

Certain principle-based laws allow the creation of separate regulations. The law has been enacted which is basically a "commercial code". This law covers Company Law, Legal Contracts, Arbitration Law and Bankruptcy Law, among others, Managed by DIFC Authorities. Other laws relate to the application of civil law in the DIFC. Legislative financial regulations consist of the Legal Regulations, Market Laws, Data Protection Laws and Islamic Financial Business Law Regulations that are managed by the Dubai Financial Services Authority (DFSA).

In countries that choose the application of civil law codified rather than a legal system similar to a common law system which is generally based on judicial precedents, the law plays a very important role. In jurisdictions, such as the UAE, which constitutionally adopts Islamic Law (Sharia) as the main source of laws and legal systems based on this, the significance of the progress of the above laws is further emphasized. This is mainly due to two well-established principles of interrelated Islamic law, namely: Discretionary interpretation is not permitted in matters covered by special law. In the absence of special legislation, courts that implement Islamic law must adopt the general principles of Islamic jurisprudence and justice. In applying these general principles, judges are not bound by decisions made by other judges, and are not bound by their previous decisions. Precedents in Islamic Law are not

considered binding and are not part of the legislative process (Gulf Law, 2017).

3.4. Problems for Indonesian Government in Applying Islamic Contract Law as a Complementary Provision.

Having the most Muslim population in the world does not mean the practice of Islamic law occurs without problems in Indonesia (worldpopulationreview.com, 2024). In the concept of constitutional law, the discussion concerning the relationship of Islamic law and the country of Indonesia is still an interesting topic. Islam is not the sole and basic law to form the constitution. On the other hand, Indonesia cannot be said as a secular state, because Indonesia believes in the One Godhead which stated in the country's ideology – Pancasila. This then became the uniqueness and distinctiveness of the Indonesian state in carrying out Islamic law, especially in the context of this research related to Islamic contract law.

In Islam, contract law is very important. It is shown in the form that contract law has detailed provisions in Islamic Law to ensure viable business transaction between two parties or more. The term of the parties in this modern era, are mostly addressed to businessmen, and companies who perform billion until trillion rupiahs business transactions to gain profit (Munir Fuady, 2010). Therefore, as a country with the most Muslim population, it is important to guarantee that the business conducted in Indonesia is not against or violating the principle of Islamic Contract Law.

The main reference for national law regarding Sharia contracts today is Compilation of Sharia Economic Law (KHES) which is still in the form of Supreme Court Regulations (PERMA). Based on its nature, a type of law with regulation (regeling) type has general and abstract properties and applies continuously. The trend of the positivity of Islamic law then led to the idea that Sharia contract law was not enough to only be written in the form of PERMA. It must be written at the level of a law or act. This is based on the notion that there are several aspects in Western Civil Law that are not in accordance with Islamic civil law, and the enactment of Islamic law can be further enforced if Islamic civil law, or in this case the Islamic contract law, is stated in the form of Law. For instance, in Western civil law, there is known a term unus testis nullus testis which means that one witness is not a witness. In Islamic law, if there are two parties or more who want to make an agreement, then they have to present two male witnesses. If there are no two men, then one man and two women are enough. This is regulated in the Qur'an Al-Baqarah verse 282. It means that Western civil law does not require witnesses as stipulated in Islamic law in terms of making agreements. So, it can be possible that a legal agreement and binding on both parties based on western civil law, while the agreement if reviewed based on Islamic law is not valid because the conditions are not fulfilled according to it.

On the other hand, Sharia economic law expert Mirza Karim argues that Sharia contract law should be outlined in a form of regulation that is easy to be changed given the fact how dynamic Sharia contract forms are today (FGD: Implementation of Islamic Contract Law in Civil Law Countries' Regulation, 2018). When written in the form of PERMA, Islamic contract law will be more easily adapted to the needs of Islamic economics which are stretching and developing in the midst of society. In the event that Islamic contract law is outlined in the form of a Law, the legislative process will take a long time and must also go through politics lobbying. These things are feared to eliminate the true principles and the essence of Islamic contract law. This shows how still complicated the idea to make Islamic private law as "written law" in Indonesia for legal practitioners.

The two ideas above have their own foundation. The study of both in the context of the Indonesian is also still continuing. This at least shows that in a country that adheres to the Civil Law system, positive law is still a reference and has the main value of enforceability, but on the other hand the positivity of the law will make promulgated legal norms because

the norms tend to be difficult to be changed. Changing legal norms in the form of a law or an act can be done through amendments by the House of Representatives (DPR) with the President, or through judicial review conducted by the Constitutional Court.

However, it can be understood that the positivity of Islamic law is one of the ideals of Muslims in Indonesia in order to create a guarantee for worship. Then, coupled with the fact that users of products issued by Islamic financial institutions are not only limited to Muslims, but also spread to people outside the faith of Islam. Here, the urgency to make a clear and more formal Islamic contract law is more visible, namely to clarify the legal subject, and legal relations that occur for each person who enjoys Islamic economic products. Therefore, the positivity of Sharia contract law should be made in the form of basic and fundamental matters, so that the rules below that will be flexible, therefore they can adjust to the development of Sharia economic law that is stretching in the midst of society.

In line with the increasingly complex life of the modern society, there is a growing risk of financial transactions and this has the potential to become a threat to the parties, as well as to transactions using the Sharia system (based on Islamic contract law). The most significant risk is the risk of a contract that in Islamic contract law is based on the validity (ijab and qabul) and the execution of a contract that must conform to the provisions of Islamic law. If it is not implemented in accordance with the provisions of Islamic law then the transaction is threatened null and void or can be canceled. It is the fact that encourages the importance of obtaining legal protection in the regulation of state legislation for the parties to legitimate expectations to be achieved through the transactions it makes (the protection of the legitimate expectations of the parties).

In order to realize these contractual goals, legal norms are developed in the form of a set of principles and rules of law that are generally understood as law of agreement which is expected to increase certainty, justice and predictability and at the same time become a tool for the parties to manage risk (risk management tool). Islamic law has provided guidelines and limitations of the procedure of transactions in accordance with the provisions contained in the verses of the Qur'an and the Sunnah of the Prophet Muhammad (pbuh) which then taken the essence through the Ijtihad of scholars from time to time as applicable legal principles in everyday life.

Sharia principles, which are basically known in traditional economic activities, are now beginning to enter into modern economic activities, especially in the financial sector, such as banking, capital markets, insurance, pension funds, and so on. The principle of buying and selling (murabahah), leasing (ijarah), borrowing (qard) and depositing (wadiah), all of which are suitable to be applied into the activities of modern economy to this day. All forms of contract in the financial field have their own rules. So in Indonesia, to determine the forms of contracts that can be used in each activity of economic institutions, they must first be consulted on their suitability with sharia through a fatwa from the National Sharia Council which is part of the Indonesian Ulema Council (DSN MUI). For the time being, the implementation of sharia contracts in Indonesia can be completed in this way. However, DSN MUI can only issue fatwas if requested by Sharia economic institutions for special temporary practical needs, although it can be used as a reference for judges to make decisions. Meanwhile, currently there is no general benchmark for how standard business actors are in making sharia contracts conceptually.

In practice, the contract's agreement must be accompanied by the legality of contracts which are made according to the prevailing state laws and regulations. This is where the functions of the Government of each country to put the rules in detail about the application of Islamic contract law in business activities in the financial field in order to be able to provide legal protection for the perpetrators of transactions and seek order in the implementation of Islamic contract law in practice. Currently, preventive

legal protection is only through the determination of DSN MUI fatwas on contracts that will be implemented by financial institutions or other Islamic economic institutions in Indonesia. Meanwhile, repressive legal protection for the settlement of sharia economic disputes if there are indications of irregularities in implementing sharia contracts, the Religious Justice institution is ready to resolve it or if there is an arbitration clause in the agreement of the parties, it can be resolved through the National Sharia Arbitration Board (BASYARNAS). This is for the temporary stage before the formation of the National Contract Law Law which regulates the standards or benchmarks of sharia contracts in Indonesia.

4. Conclusion

We have seen the importance of Islamic covenant law in Indonesia and the dynamics of the challenges of pro and con of its placement in laws and regulations or legislation. However, an important lesson that can be seen from the application of Islamic Contract law in Indonesia compared to other countries is that the application in Indonesia has more legal certainty. This is because it has a unity of standard contract benchmarks through the DSN MUI Institution which will issue a fatwa on the development of sharia contracts according to the development of sharia contracts as needed in practice. In addition, if there is a violation in its implementation, there is the authority of the Religious Justice Agency which will resolve sharia economic disputes to implement contracts in accordance with sharia principles, both through the Religious Court and the National Sharia Arbitration Board (BASYARNAS).

In other countries that are used as comparative examples, each has difficulties in applying Islamic binding law because it adheres to a secular system. Islamic contract law for each country is only an ancient customary institution that has been left behind, or applied in general based on the principle of freedom of contract. For example, this is found in Turkey and some UAE states. Meanwhile, in Egypt, each financial institution or the parties who will transact may choose a school or jurisprudence scholar that they can use as a reference for making their contracts. There are no specific rules that are the standard benchmark for the creation of state-owned contracts.

However, the presence of special law and supervision for Islamic Banking or other business practices in a country are still needed in order to encourage the various actors and activities in the role of business operations to behave in accordance with the provisions of Islamic contract law as defined in the legislation. So the state should prepare regulations on Islamic Contract Law in making the legal system be applied properly, but also should pay attention to the culture of its people like in Indonesia, because the community will be more obedient if the law used in accordance with the values that have been ingrained in them especially in the application of Islamic contract law principles.

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