**Available at** https://jurnal.stie-aas.ac.id/index.php/jie
**Jurnal Ilmiah Ekonomi Islam, 9(01), 2023, 1015-1022**

# A Critical Study of Contracts in the Perspective of Fiqh Mu'amalah (Overview of Contract Defects)

**Fahmi Irfanudin**
Fakultas Agama Islam, Universitas Muhammadiyah Yogyakarta
Email correspondence: fahmi.irfanudin@umy.ac.id

**Abstract**

*The scope of mu'amalah law is very broad and varied. And among the scope of muamalah law, especially with regard to muamalah maliyyah, is a contract. The contract is a logical consequence of social relations in human life. Where in carrying out their activities in life in this world, humans are required to interact with one another in order to meet their needs, and the contract is one of the legally justified ways of obtaining ownership. The contract can occur after an agreement process between two parties to transfer property rights from one party to another, for example, in buying and selling transactions, renting, and so on. The following article aims to discuss more specifically the defects that occur in the contract from the perspective of Fiqh Mu'amalah since a transaction sometimes contains several defects that can cause the contract to be considered invalid or to be fasakh (canceled). This qualitative research focused on literature research with descriptive-analytical nature based on the study of the text. In this case, the book Fiqh Mu'amalah with the theme of defective contracts, acts as primary data. The research data was collected by the documentation method, then analyzed using qualitative analysis. The results of this study indicate that there are several defects in the contract which have implications for the defect of the contract, or at least the contract can be canceled (fasakh), including tadlis (cheating), ghalath (error), ikrah (coercion), ghabn (hidden price), gharar (betting and obscurity), and jahalah (ignorance).*

**Keywords:** *Contract, Defect, Fiqh Mu'amalah*

**Citation suggestions**: Irfanudin, F. (2023). A Critical Study of Contracts in the Perspective of Fiqh Mu'amalah (Overview of Contract Defects). *Jurnal Ilmiah Ekonomi Islam, 9*(01), 1015-1022. doi: http://dx.doi.org/10.29040/jiei.v9i1.7605

**DOI:** http://dx.doi.org/10.29040/jiei.v9i1.7605

## 1. INTRODUCTION

Islam is a perfect religion. This perfection can be seen in the guidance and legal order that regulates human life completely and thoroughly. Thus, human relations with their Creator in the field of worship and matters with fellow humans in the field of muamalah have been wholly addressed.

The scope of muamalah law is very wide and varied, and among the scope of muamalah law, especially with regard to muamalah *maliyyah*, is the contract. A contract is a logical consequence of social relations in human life. This relationship is a nature ordained by Allah when He created humans. Therefore, the contract has been a social need since humans began to recognize the meaning of property rights. Islam as a comprehensive and universal religion provides clear rules in the contract to be implemented at any time (Nurhadi, 2019).

In the process of obtaining property rights, Islam teaches that the concept of ownership basically belongs to God and is absolute, while ownership in humans is relative as a mandate from God. Acquisition of ownership through a contract is a process of transferring ownership rights based on transactions. This can occur after the process of agreement between two parties to transfer property rights from one party to another, for example in buying and selling, leasing, and other transactions carried out through contracts. That's why the contract is an important part in the process of economic activity. Without a contract, all transactions related to economic activities can be considered invalid and null and void (Sari, 2015).

So it is clear that the contract is a link between consent and qabul which can lead to legal consequences. In the contract there must also be

conformity with the will of the Sharia, meaning that the contract agreed upon by both parties is considered valid if it complies with the provisions of Islamic law. And the contract will also give birth to legal consequences on the object of the contract (Anita, 2019).

However, in carrying out a contract, sometimes the contract is covered by some defects that cause the contract to stand on a foundation of faulty knowledge. The fuqaha agree that a contract that contains a disgrace (defect) can be considered invalid or can be *fasakh* (canceled/aborted). Because in Islam, the contract must be carried out on a transparent, fair, consensual basis, without any coercion from any party (*'an taradhin minkum*). Therefore, this research is certainly different from previous studies, where this study discussed in more detail the defects in the contract (*'uyub al-'aqd*) and was supported by the relevant arguments.

## 2. RESEARCH METHODOLOGY

This qualitative research focused on literature research with descriptive-analytical nature based on text studies. Accordingly, the book Fiqh Mu'amalah with the theme of defects in the contract, acts as primary data. At the same time, secondary data are from various sources, such as books, journals, and research.

Research data was collected by documentation (Sevilla, 1993). This method was used to find library data in the form of written documents in several literature and books that discuss the theme of defects in contracts, including data obtained from books, journals, and research.

To analyze the data, the research applied qualitative analysis using the content analysis method (Krippendorff, 1993). This method was used to draw conclusions about various types of contract defects in the Mu'amalah Fiqh Perspective.

The first step was to explain the various opinions of the scholars about the meaning and legal basis of the contract in Islam, then traced various types of defects in the contract that could cause the contract to be damaged or could be *fasakh* (cancelled).

## 3. RESULT AND DISCUSSION

### 3.1. Definition of Contract

Contract (*al-'aqd*), according to the source language, is the opposite of *al-hill* (release) which comes from the word *'aqada–ya'qidu–'aqdan*, which means *ar-rabth* (bind) and *asy-syadd* (tighten) (Ibn Mandzhur, 2000). At first, the word *'aqada* was used for solid objects such as ropes and buildings, but later with *majaz isti'ârah* this word was also applied to other things such as: *'aqd al-bay'* (contract of sale and purchase), *'aqd al-'ahd* (contract agreement), *'aqd an-nikah* (marriage contract) (Zubair & Hamid, 2016).

As for the terms, the contract is *rabthu ajzaa at-tasharruf bi al-ijab wa al-qabul syar'an* (bind parts of human action with consent and *qabul* in accordance with the rules of sharia) (Al-Jurjani, 1983; Imarah, 1993). Almost in line with the Imarah dan al-Jurjani, Suhendi (2005) defines a contract with an *ijab* and *qabul* agreement justified by sharia, which determines the pleasure of both parties (Suhendi, 2005). This definition emphasizes that the existence of *ijab* and *qabul* alone is not enough. Because the *ijab* and *qabul* must be carried out in accordance with the provisions and forms prescribed, also based on the willingness of both parties, if all of these are fulfilled, then the new contract has legal implications or consequences, such as the achievement of the goal to be achieved from the start, the transfer of ownership in the sale and purchase contract or the transfer of benefits to the lessee in the lease agreement (*ijarah*).

### 3.2. Legal Basis of Contract

In the Qur'an, several verses form the legal basis (*dalil*) of contract, as follows:

يا أيهاالذين آمنوا أوفوا بالعقود... (الما ئدة: 1)

*O you who have believed, fulfill [all] contracts.* (QS. al-Maidah [5]: 1)

Imam as-Sa'di, when interpreting the verse, said: "This is Allah's command to His believing servants to fulfill the contract that must be achieved and not cancel or reduce it, and it covers the entire contract (As-Sa'di, 2002)."

Allah *Ta'ala* also said:

يا أيها الذين آمنوا لاتأكلوا أموالكم بينكم بالباطل إلا أن تكون تجارة عن تراض منكم ولاتقتلوا أنفسكم إن الله كان بكم رحيما (النساء: 29)

*O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.* (QS. an-Nisa [4]: 29)

The verse confirms that Allah forbids His believing servants to eat the wealth among them in a vanity way, either by seizing (*ghasab*), stealing, gambling, or other ways that are not justified in obtaining wealth. However, Allah allows them to get it by way of buying and selling (*tijarah*) or other ways that are not prohibited as long as the conditions of willingness and other conditions are fulfilled (As-Sa'di, 2002).

### 3.3. Contract Defects

In Islamic law, for the formation of a contract, the pillars and conditions of the contract must be met. The terms of the contract are divided into four types: (1) the conditions for the formation of the contract (*syuruth al-in'iqad*), (2) the conditions for the validity of the contract (*syuruth ash-shihhah*), (3) the conditions for the validity of the legal consequences of the contract (*syuruthan-nafadz*) and ( 4) conditions for binding the contract (*syuruth al-luzum*) (Anwar, 2007). There are four pillars that make up the contract: (1) the parties who make the contract (*al-'aqidan*), (2) the statement of the will / agreement of the parties (*shigatul-aqd*), (3) the object of the contract (*mahallul-'aqd*), and (5) the purpose of the contract (*maudhu al-'aqd*). These pillars must exist for the contract to occur (Budiwati, 2017).

The contract can occur after an agreement process between two parties to transfer property rights from one party to another, for example, in buying and selling transactions, renting, and so on (Sari, 2015). However, in practice, in carrying out a contract, sometimes the contract is covered by several defects that can eliminate the willingness, or make the contract stand on a foundation of knowledge that is not true, then at that time the injured party (*al-mutadharrir*) has the right to *fasakh* (cancel) the contract, or may even cause the contract to be considered invalid. These defects include *at-tadlis* (fraud), *al-ghalath* (error), *al-ikrah* (coercion), *al-ghabn* (price disguise), *al-gharar* (betting and obscurity) and *al-jahalah* (ignorance).

#### *At-Tadlis* (Fraud)

*Tadlis* comes from the word *dallasa-yudallisu-tadlisan*. According to the source language, *ad-dalas* means *adz-dzulmah* (darkness), and *ad-dals* means *al-khadi'ah* (fraud) (Ibn Mandzhur, 2000). Tadlis is *ikhfa al-'aib* (hiding defects). While *tadlis* in buying and selling is selling an item that contains a defect without explaining the defect to the buyer (Asy-Syarbashi, 1981).

According to Al-Ba'li (1991), *tadlis* is an attempt to hide defects in the object of the contract and explain with a picture that is not in accordance with the reality to mislead the parties to the contract and result in the loss of one of the parties to the contract.

*Tadlis* is divided into two:

a. *Tadlis* speech (*qauli*) is when someone who sells an item by saying that the item is free from defects and others.
b. *Tadlis* actions (*fi'li*), as in the case of *tashriyyah*, for example, letting the cattle's milk not be milked so that it is considered to always have a lot of milk and so on (Syaththo, 2003).

If *tadlis* occurs, the deceived person (*mudallas*) has the right of *khiyar*. He may continue and maintain the goods being traded, which means he is willing to buy the goods. He can also *fasakh* (cancel) the sale-purchase contract by returning the item and asking for it back in full for the price he paid.

According to Al-Ba'li (1401), There are two forms of *tadlis* that stipulate the existence of khiyar:

a. *Tadlis* can unfairly increase the price even though there is no disgrace, such as reddening the face of a female slave, blackening her hair and the like, as well as letting the milk remain in the goat without being milked.
b. *Tadlis* also may happen by covering the disgrace (defects)

In the first form of *tadlis*, the treatment of goods can obscure/deceive the buyer so that they suspect or assume that the goods have more quality, function, specifications or others than they actually are. The goal, of course, is to make the price of these goods higher. Examples of this form of practice include reconditioning goods so that they look as if they are new or have not been used for a long time, turning off the speedometer and turning it on again when it is about to be sold, repainting the car body, replacing the smartphone casing with a new casing, and so on. All of that can make the buyer assume the condition of the item is more than it actually is.

In the second form of *tadlis*, *tadlis* by covering the disgrace (defects), there is a hadith from the Prophet *sallallaahu 'alaihi wasallam*:

المسلم أخو المسلم ولا يحل لمسلم إن باع من أخيه بيعا فيه عيب أن لا يبينه له

*A Muslim is another Muslim brother, and it is not lawful for a Muslim to sell something that contains defects to his brother unless he explains the goods he is selling to his brother* (Ibn Majah, 1430)

The hadith clearly states that a person who sells defective goods is not lawful for him unless he has to explain the defect. This explains that selling without explaining the defect is a because procedure for obtaining property illegally.

However, sometimes it is impossible to return a defective item, for example a car has collided or the raw material has already been processed. Even though the buyer is not happy with it it is defective or lacking, but the price has been paid. If they are not willing, according to sharia, the buyer has the right of *khiyar* to return the goods, but that is not possible because of the conditions that occur. To eliminate *dharar* (loss) from the buyer, he can refer to the seller to pay the value of the defect (Ghazal, 2010).

***Al-Ghalath* (Error)**

*Ghalath* comes from the word *ghalitha-yaghlathu-ghalathan*, which according to the source language means *al-khata* (Error) (Ma'luf & Tottel, 1986).

This defect is related to a certain contract object by mentioning a certain description of the contract object, but it turns out that what appears is the opposite. Like people who buy diamond jewelry, it turns out that diamonds are only made of glass or people who buy clothes made of silk, but it turns out that they are only made of cotton.

There is no doubt that this kind of *ghalath* will affect the willingness because there is a difference between the existing facts and the previously predicted conditions. It could even be that the business will develop to the point of nullifying the contract because the object of the contract itself does not exist. Like two people who make a gold sale and purchase contract, it turns out that the buyer gets the goods they buy only in the form of copper. Because the object of the contract, for example, gold, does not exist, then the sale and purchase contract is considered void (Al-Mushlih & As-Shawi, n.d.).

There are two kinds of *ghalath*:

a. *Ghalath* that results in the cancellation of the contract, i.e., the difference returns to a different type, or a significant difference in benefits, such as the difference between gold and copper, or between slaughtered animals and carcasses in a meat sale and purchase contract.
b. *Ghalath* whose types or benefits are not significant, such as people who buy male animals, and it turns out that the animals are female, or vice versa. *Ghalath* does not cancel the contract, but the injured party has the right to cancel it (Al-Mushlih & As-Shawi, n.d.).

***Al-Ikrah* (Coercion)**

*Ikrah* comes from the word *akraha-yukrihu-ikrahan*. If it is said: *akraha fulanan 'ala al-amri; hamalahu 'alaihi qahran* (he forced fulan over one thing; forced him to carry out the business) (Ma'luf & Tottel, 1986).

As for the terms of the *fuqaha*, *ikrah* is forcing another party to do something that he hates either in the form of words or actions by bluffing and threats (Al-Mushlih & As-Shawi, n.d.).

In the *al-Musthalahat al-Iqtishadiyyah* dictionary, *ikrah* is coercion from someone who has power over others to do something forced until the coercion negates his willingness (Imarah, 1993).

*Ikrah* is considered valid if it contains two things, the coercive party should be able to carry out its threat, and the coerced party should have a strong suspicion that the threat will be made to him. If one of these two things, let alone neither of them, is present, then the *ikrah* is considered to be just a joke and has no effect at all (Al-Mushlih & As-Shawi, n.d.).

*Ikrah* (coercion) is divided into two:

a. *Ikrah mulji'* is an *ikrah* that can damage the willingness and right to vote. In this case, the coerced party (*mukrah*) is like a tool in the hands of the coercion (*mukrih*). This coercion is usually in the form of death threats, threats to disfigure limbs or severe beatings, or destroy all property (Al-Mushlih & As-Shawi, n.d.).

   *Ikrah mulji'* such as *ikrah* accompanied by the threat of loss of life or limb, then the *ikrah* cancels the sale and purchase contract as well as other contracts (Wizaratu al-Auqaf wa asy-Syu'un al-Islamiyyah al-Islamiyyah, n.d.)
b. *Ikrah ghair mulji'* is an *ikrah* that damages the will but does not impair the right to vote, and this can be in the form of threats in the form of disturbances that are lower than the threats mentioned above, such as threats to beat someone

badly or destroy some of the property (Al-Mushlih & As-Shawi, n.d.).

As for if the disturbance is light (*yasir*), then it has no effect at all, and it is not even considered a compulsion. And to distinguish between disturbances that do not need to be cared for with disturbances that will escalate into *ikrah* (coercion) is to return to the judge's decision. Because in that case, there is no definite limit, while making clear boundaries with reason is clearly impossible, then the decision is returned to the judge because it can vary depending on the human condition. Some people do not feel threatened unless they are beaten hard or imprisoned for a long time. But some feel threatened just by being scolded or bullied (Al-Mushlih & As-Shawi, n.d.).

The *fuqaha* have agreed that various financial activities based on willingness, such as buying and selling and the like, are not considered valid if carried out by force. However, if there is willingness after previously being forced, there are differences of opinion among the scholars. Many scholars forbid it, while Abu Hanifa allowed it (Al-Mushlih & As-Shawi, n.d.). As stated by As-Sarakhsy that the contract accompanied by *ikrah* is a *fasid* contract unless the person is forced to allow it (As-Sarakhsy, 1409).

***Al-Ghabn* (Price Incognito)**

*Ghabn* according to the source language is *al-khida'* (deception). If it is said: *ghabanahu ghabnan fi al-bai' wa asy-syira'; khada'ahu wa ghalabahu* (he actually deceived him in buying and selling by tricking him), *ghabana fulanan; naqashahu fi ats-tsaman wa ghayyarahu* (he cheats *fulan* by reducing and changing the price) (Ma'luf & Tottel, 1986).

Meanwhile, according to the term, *ghabn* is a reduction in one of the means of compensation or an unfair exchange between two means of compensation because there is no similarity between what he takes and what he gives. For example, someone who sells a house for ten when it costs only eight. So on the part of the person who disguises the price, it means transferring ownership of the goods with compensation in excess of the price. Meanwhile, from the party whose price is disguised, it means that he has more expensive goods than the actual price (Al-Mushlih & As-Shawi, n.d.).

According to the *fuqaha,* there are two kinds of *ghabn*: *ghabn yasir* (light disguise) and *ghabn fahisy* (heavy disguise).

*Ghabn yasir* (light disguise) is a price disguise that does not come out of the market price (*taqwim al-muqawwimin*) that is the price estimated by experienced people in the market. *Muamalah* activities can hardly be separated from the presence of *ghabn yasir* like this. Therefore, in all types of contracts, such *ghabn* is understandable and has no effect.

*Ghabn fahisy* (heavy disguise) is a price disguise that removes goods from their market prices. *Ghabn* like this invalidates a contract whose subject is *waqf* property or the property of the person who is banned (*mahjur 'alaihim*), or the property of *Baitul Mal* because the operation of such assets must be within the circle of the benefit of the property.

As for the influence of *ghabn fakhisy* on other contracts, there are differences of opinion between the scholars:

a. *Ghabn* like this has no effect for the sake of maintaining the benefit of the contract as well as keeping it from being void. Because people who are victims of price disguises cannot be separated from being negligent and in a hurry, they must also bear the consequences of their actions.
b. The person who is the victim of price camouflage has the right to cancel the contract so that he can be freed from arbitrary acts against him.
c. *Ghabn* like this if the goal is deception from *ghabin* (the party who disguises the price), then the party who is the victim (*maghbun*) has the right to cancel it. But if the goal is not to deceive the buyer, then there is no effect. Possibly this opinion is the most fitting of all the opinions above (Al-Mushlih & As-Shawi, n.d.).

The distinction between *ghabn yasir* (light disguise) and *ghabn fahisy* (heavy disguise) goes back to *'urf* (habits). There is no concrete limit in this matter. As for the various estimates of price disguise limits expressed by some *fuqaha*, they are not considered definite provisions, but all of them are based on various customs (*al-A'raf*) that were spread during their time (Al-Mushlih & As-Shawi, n.d.).

***Al-Gharar* (Betting and Obscurity)**

According to the source language, *al-gharar* is *al-khathr* (gambling) (Musthafa et al., 1972). Syaikh As-Sa'di (1992) mentions that *al-gharar* means *al-mukhatharah* (gambling) and *al-jahalah* (obscurity), and this is included in the category of gambling. So it can be understood that what is meant by buying and

selling *gharar* is all buying and selling that contains obscurity, betting, or gambling (Badawi, 1416).

In Islamic law, buying and selling *gharar* is prohibited based on the words of the Prophet *sallallaahu 'alaihi wa sallam* in the hadith of Abu Hurairah, which reads:

نهى رسول الله صلى الله عليه وسلم عن بيع الغرر وبيع الحصاة (الترمذي)

*The Prophet sallallaahu 'alaihi wa sallam forbade buying and selling gharar and buying and selling al-hashah* (At-Tirmidzi, 1395).

In this system of buying and selling *gharar* there is an element of consuming other people's property by means of vanity. Whereas Allah forbids eating other people's property in a vanity way as stated in His word:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَن تَكُونَ تِجَارَةً عَن تَرَاضٍ مِّنكُمْ ۚ وَلَا تَقْتُلُوا أَنفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا (النساء: 29)

*O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.* (QS. An-Nisa [4]: 29).

This prohibition is also strengthened by the prohibition of gambling:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ (المائدة: 90)

*O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.* (QS. Al-Maidah [5]: 90).

However, buying and selling things that contains *gharar*, according to the law, have several exceptions:

a. *Gharar* whose prohibition is agreed upon in buying and selling, such as buying and selling that does not yet exist (*bai' al-ma'dum*).
b. *Gharar* whose permissibility is agreed upon, such as buying and selling a house with its foundation, even though the type and size and its true nature are unknown. This is permissible because of necessity, and because it is a unity, it is impossible to separate from it. Ibnul Qayyim (1407) argues that not all *gharar* is the cause of the prohibition. If *gharar* is light or impossible to separate from it, then it does not become a barrier to the validity of the sale and purchase contract. Because the *gharar* that is on the foundation of the house, in the belly of a pregnant animal, or in only part of the fruit that looks good is impossible to avoid. Likewise, gharar in the *hammam* (bath) and drinks from vessels and the like, including light *gharar*. So that they do not hinder the legality of buying and selling, this is certainly not the same as a lot of *gharar*, which may be separated from it.
c. *Gharar* which is still disputed, is it included in the first or second part? For example, selling something buried in the ground and others. On this issue, Ibnul Qayyim (1407) also argues that buying and selling that is not visible on the ground does not have these two cases because the *gharar* is light and cannot be released.

Based on the description above, it is clear that not all buying and selling containing the element of *gharar* is prohibited.

***Al-Jahalah* (Ignorance)**

*Jahalah*, according to the source language, comes from *jahiltu asy-syai'a* (I don't know a thing) as opposed to *'alimtuhu* (I know it). *Jahalah* is doing an act without knowledge (Al-Islamiyyah, n.d.).

As for *jahalah*, according to the term, the *fuqaha* use the word *jahalah* both for humans whose beliefs, words, or actions are not known. They also use the word *jahalah* in other aspects outside humans, such as merchandise and others. So that something that is *majhul* they characterize it with *jahalah* (Al-Islamiyyah, n.d.).

*Jahalah* has three levels:

a. *Jahalah fakhisyah, jahalah* which can lead to disputes. This *Jahalah* makes the contract invalid, because among the conditions for the validity of the contract is that the object of the contract is *ma'lum* (known) with knowledge that eliminates disputes.
*b.* *Jahalah yasirah, jahalah* that does not cause a dispute. *Jahalah* like this is allowed and the contract with the existence of this *jahalah* is also valid, such as *jahalah* the foundation of the house and others.
*c.* *Jahalah mutawassithah, jahalah* between *fakhisyah* and *yasirah*. The *fuqaha* have different opinions about this *jahalah*. Some of them think that the law is the same as *jahalah fakhisyah*, but

some others consider it the same as *jahalah yasirah*. (Al-Islamiyyah, n.d.).

Any *jahalah* that can lead to a dispute means destroying the contract (As-Sarakhsy, 1409), for example, someone selling an unspecified goat from a flock of goats. The seller sometimes wants to give a goat of poor quality because there is no *ta'yin* (determination of goods). The buyer also sometimes wants to take a goat of good quality for the same reason, so a contract like this becomes damaged (*fasad*) according to Hanafi school.

There are four images of *jahalah fahisyah*:

a. *Jahalah* is related to the object of the contract, such as someone who buys a cow on the condition that the cow produces a number of liters of milk, then the condition contains *gharar* and *jahalah* until the condition is not valid and is considered damaged (Al-Kasani, n.d.).
b. *Jahalah* in terms of time because in buying and selling, it is required that the time is clearly known. On the contrary, if the time is not known (*majhul*) then the sale or purchase is damaged, such as when the wind blows, it rains, when so and so comes, harvest time, when the congregation arrives Hajj, etc.
c. Jahalah in terms of price, because buying and selling at an unclear price (*majhul*) is a *fasid*. For example, the buyer says, I bought this item from you at a price like people buy it, then buying and selling is *fasid*.
d. *Jahalah* in the case of collateral for goods or a person, such as if the seller requires the buyer to bring in a guarantor (*kafil*), even though the *kafil* is not at the place where the contract takes place, then the contract is damaged (*fasid*), because he does not know whether the *kafil* whether the person wants to give a guarantee or not, also because the permissibility of this contract is related to the agreement of the *kafil* to provide the *kafalah*, when the consent of the *kafil* is a requirement even though the *kafil* is not at the location of the contract, then the contract is not allowed. And if the seller requires the buyer to submit the collateral, if the collateral is *majhul*, then the contract is also *fasid* because the acceptance of the contract is related to the collateral, and if the contract must be known, Then those relating to the contract (guarantee goods) must also be known (As-Sarakhsy, 1409).

## 4. CONCLUSION

The contract is a logical consequence of social relationships in human life. This relationship is a nature ordained by Allah when He humans. Therefore, the contract has been a social need since humans began to recognize the meaning of property rights. Islam as a comprehensive religion provides clear rules in the contract to be implemented at any time.

However, in carrying out a contract, sometimes the contract is covered by several defects ('disgrace) that can eliminate willingness or make the contract stand on a foundation of faulty knowledge. These defects include *at-tadlis* (fraud), *al-ghalath* (error), *al-ikrah* (coercion), *al-ghabn* (price disguise), *al-gharar* (gambling and obscurity), and *al-jahalah* (ignorance).

The *fuqaha* agree that a contract that contains defects (disgrace) can be considered invalid or can be *fasakh* (canceled) except for some defects that can be understood and do not cause disputes such as *ghabn yasir* and *jahalah yasirah.*

## 5. REFERENCES

Abu Abdillah, M. bin A. B. bin A. bin S. al-Z. (1407). *Zaadul Ma'ad fi Hadyi Khairil 'Ibad*. Muassasah ar-Risalah.

Al-Ba'li, A. H. M. (1991). *Al-Istitsmar wa ar-Riqabah asy-Syar'iyyah fi al-Bunuk wa al-Mu'assasah al-Maliyyah al-Islamiyyah*. Maktabah Wahbah al-Qahirah.

Al-Ba'li, M. bin A. al-F. (1401). *Al-Muthalli' 'ala Abwab al-Fiqhi*. Al-Maktab al-Islami.

Al-Islamiyyah, W. al-A. wa asy-S. (n.d.). *Al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyyah*.

Al-Jurjani, A. bin M. bin A. az-Z. asy-S. (1983). *At-Ta'rifat*. Daar al-Kutub al-Ilmiyyah.

Al-Kasani, 'Alau ad-Din Abu Bakar bin Mas'ud. (n.d.). *Bada'i ash-Shana'i fi Tartib asy-Syara'i*. Daar al-Kutub al-'Ilmiyyah.

Al-Mushlih, A., & As-Shawi, S. (n.d.). *Maa Laa Yasa'u at-Taajir Jahluhu*.

Anita, D. (2019). Urgensi Akad dalam Transaksi Bisnis Islam. *Madani Syari'ah*, *2*(2), 79–88. https://stai-binamadani.e-journal.id/Madanisyariah/article/view/140

Anwar, S. (2007). *Hukum Perjanjian Syariah; Studi Tentang Akad dalam Fiqih Muamalat*. Raja Grafindo Persada.

As-Sa'di, A. bin N. (1992). *Bahjah Qulub Al-Abrar wa Qurratu Uyuuni Al-Akhyaar Fi Syarhi Jawaami Al-Akhbaar*. Daar al-Jail.

As-Sa'di, A. bin N. (2002). *Taisir al-Karim ar-Rahman fi Tafsir Kalam al-Mannan*. Muassasah ar-Risalah.

As-Sarakhsy, S. A. B. M. bin A. (1409). *Al-Mabsuth*. Daar al-Ma'rifah.

Asy-Syarbashi, A. (1981). *Al-Mu'jam al-Iqtishad al-Islami*. Daar al-Jail.

At-Tirmidzi, M. bin I. bin S. bin M. bin adh-D. (1395). *Sunan at-Tirmidzi*. Matba'ah Musthafa al-Baby al-Halaby.

Badawi, A. A. (1416). *Al-Waajiz fi Fiqhi as-Sunnah wa al-Kitab al-'Aziz*. Daar Ibn Rajab.

Budiwati, S. (2017). Akad Sebagai Bingkai Transaksi Bisnis Syariah. *Jurnal Jurisprudence*, *7*(2), 152–159. https://doi.org/10.23917/JURISPRUDENCE.V7I2.4095

Ghazal, Z. (2010). *Masyrû' al-Qanûn al-Buyû' fî ad-Dawlah al-Islâmiyah*. Dar al-Wadhah li an-Nasyr wa at-Tawzi'.

Ibn Majah, A. A. M. bin Y. bin A. (1430). *Sunan Ibnu Majah*. Daar ar-Risalah al-Ilmiyyah.

Ibn Mandzhur, M. bin M. bin A. J. (2000). *Lisan al-Arab*. Daar Shadir.

Imarah, M. (1993). *Qamus al-Musthalahat al-Iqtishadiyyah fi al-Hadharah al-Islamiyyah*. Daar asy-Syuruq.

Krippendorff, K. (1993). *Analisis Isi: Pengantar Teori dan Metodologi*. Rajawali Pers.

Ma'luf, L., & Tottel, B. (1986). *Al-Munjid fi al-Lughah wa al-I'lam*. Daar al-Masyriq.

Musthafa, I., Al-Ziyat, A. H., Qadir, H. A., & Al-Najjar, M. A. (1972). *Al-Mu'jam Al-Wasith*. Daar al-Ma'arif.

Nurhadi. (2019). Rahasia Hikmah Dibalik Akad-Akad dalam Ekonomi Islam. *Jurnal Ilmiah Ekonomi Islam*, *5*(01), 42–65. https://doi.org/http://dx.doi.org/10.29040/jiei.v5i01.346

Sari, N. (2015). *Kontrak (Akad) dan Implementasinya Pada Perbankan Syariah di Indonesia*. Pena.

Sevilla, G. C. (1993). *Pengantar Metode Penelitian*. UI-Press.

Suhendi, H. (2005). *Fiqh Mu'amalah*. Raja Grafindo Persada.

Syaththo, A. B. U. bin M. (2003). *I'anatu ath-Thalibin*. Daar al-Kutub al-Ilmiyyah.

Zubair, K., & Hamid, A. (2016). Eksistensi Akad dalam Transaksi Keuangan Syariah. *DIKTUM: Jurnal Syariah Dan Hukum*, *14*(1), 44–54. https://doi.org/10.28988/DIKTUM.V14I1.222