

Principles Of Islamic Law In Indonesia Civil Law : A Study Of Obligations In Agreements And Contracts

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Abstract

This study examines the application of Islamic legal principles in Indonesian civil law, with a focus on obligations in agreements and contracts. Although principles of Islamic law, such as Justice ('adl), transparency (bayan), and the Prohibition of usury, have been applied in some sectors of civil law, there are significant challenges in integrating these two legal systems. This study found harmony in several aspects, such as protection against weak parties to the contract, but there are also discrepancies, especially in freedom of contract which is more emphasized in civil law. In addition, the lack of harmonized regulations and the lack of uniform implementation guidelines often lead to legal conflicts and uncertainty. The study recommends revisions to legislation to accommodate Sharia principles in civil agreements and contracts, as well as the drafting of uniform guidelines for Legal Practitioners. The results of this study are expected to be a theoretical foundation for the development of national law that is more inclusive and relevant to the needs of the Indonesian people.

Keywords: Islamic Law, Civil Law, Contractual Obligations, Agreements, Legal Integration

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1. Introduction

Civil law has an important role in regulating legal relations between individuals, especially regarding obligations in agreements and contracts. As one of the branches of private law, civil law serves to provide legal certainty, protect the rights of the parties, and ensure fairness in the implementation of agreements. In the context of contracts, civil law ensures that any agreement made by the parties is legally binding, as long as it meets the legal conditions of the agreement as provided for in Article 1320 of the civil code, namely the agreement of the parties, the ability to conclude an agreement, a certain thing, and lawful causes. In addition, civil law also regulates the dispute resolution mechanism in case of violation or default, thus providing a clear legal basis in resolving disputes fairly. Thus, civil law is the foundation in maintaining the stability of legal relations in society (Subekti, 2005). Sources of law regarding agreements and contracts in Indonesia can be found in several rules that include civil law, Islamic law, and other laws and regulations. In general, the law of agreements and contracts is regulated in the Civil Code (Civil Code), specifically in Book III which regulates the engagement. The Articles of the Civil Code provide the legal basis for the validity of the agreement, the legal terms of the agreement, and the legal consequences arising from the agreement. On the other hand, in the context of Islamic law, agreements and contracts are governed by the principles of fiqh muamalah, as in the Qur'an

and Hadith, which govern justice, honesty, and the Prohibition of usury in transactions. In addition, other regulations such as the Sharia banking law also regulate agreements that refer to sharia principles. These two legal systems complement each other, with the principles of Islamic law providing ethical and moral values in every agreement made in Indonesian society.

The awareness of the Indonesian people, who are majority Muslim, to integrate the principles of Islamic law in various aspects of life is increasing, including in civil law. This is reflected in the growing application of Sharia law, such as in sharia-based contracts, endowments, grants, and other contracts that refer to Islamic values. Principles such as Justice ('adl), benefit (maslahah), and legal certainty (yakin) become the foundation in the application of sharia-based civil law. This development is not only influenced by increased public literacy towards Islamic law, but also supported by state regulations, such as Law No. 21 of 2008 on Islamic Banking and other Islamic Economic Arrangements. Thus, Islamic law is increasingly integrated into people's lives as an effort to realize a balance between religious values and positive legal dynamics in Indonesia (Muhammad, 2018). The legal system in Indonesia is a unique combination of three main sources: customary law, Islamic law, and Western law. This combination reflects the history and cultural diversity of Indonesia. Customary law, as the original heritage of the nation, applies in different regions with their own local characteristics, especially in agrarian, marital and inheritance matters. Meanwhile, Islamic law is accommodated in national law, especially in civil law, such as marriage law, inheritance, and Sharia banking, as stipulated in the compilation of Islamic law (KHI). The influence of Western law comes from the Dutch colonial era, which formed the foundation of the national legal system, including the Civil Code (KUHPer) and the Criminal Code (KUHP). These three elements complement each other, creating a legal system that is flexible and able to adjust to the plurality of Indonesian society (Marzuki, 2011).

The development of legislation that accommodates the principles of Sharia, such as Law No. 21 of 2008 on Islamic Banking, shows a significant recognition of Islamic law in the Indonesian national legal system. This law provides a legal basis for sharia-based banking operations, which are principled on fairness, Prohibition of usury, and fair risk sharing. In addition, the presence of other regulations such as Law No. 19 of 2008 on State Sharia Securities (SBSN) and regulation on waqf in Law No. 41 of 2004 strengthens the integration of Islamic law in the economic field. This step not only meets the needs of the Indonesian Muslim community, but also reflects the government's efforts to advance an economy based on inclusive and competitive Islamic values (Karim, 2019).

Harmonizing the principles of Islamic law with conventional civil law in Indonesia faces various challenges, especially because these two legal systems have different philosophical foundations and values. Conventional civil law, heavily influenced by Western legal traditions, emphasizes rationality, freedom of contract, and the principle of legality. On the contrary, Islamic law is based on Shari'a which emphasizes justice, the benefit of the people, and religious values. These differences often give rise to conflicts in the application of certain principles, such as the regulation of usury in financial contracts or the division of inheritance under customary and Islamic law. In addition, the lack of in-depth understanding among legal practitioners of the two systems is also an obstacle in creating effective synergies. However, through legislative approaches, such as the Sharia banking Act and the compilation of Islamic law, Indonesia continues to strive to build a legal framework capable of bridging these differences (Djalil, 2010). The lack of clear and uniform guidance related to the implementation of Islamic legal principles in civil law, especially on obligations in contracts and agreements, is one of the major challenges in legal practice in Indonesia. Although sharia principles, such as the Prohibition of usury and the obligation to fulfill contracts, have been recognized in certain regulations such as the Sharia banking act, their implementation is still often left to the interpretation of individual parties or institutions. This leads to differences in standards and potential conflicts of law, especially when sharia principles have to deal with the principle of freedom of contract in conventional civil law. In addition, the lack of socialization and training for legal

practitioners to understand the combination of these two systems exacerbates the gap in application. Therefore, comprehensive guidance and better harmonization of laws are needed to ensure that Sharia principles can be applied consistently without neglecting the principles of National Civil Law (Shafi'i, 2014). The potential for legal conflict between the principles of Islamic law and conventional civil law often arises due to differences in the interpretation and philosophical basis of the two legal systems. For example, in conventional civil law, the principle of freedom of contract provides ample scope for the parties to determine the content of the agreement as long as it does not violate the law. However, in Islamic law, such freedom is limited by Sharia principles, such as the Prohibition of usury, gharar (uncertainty), and maysir (speculation). These differences can lead to disputes, especially in financial or business contracts involving parties with different legal views. In addition, the inconsistency between legislation that refers to the principles of Sharia and positive law can lead to legal uncertainty, especially in the settlement of disputes in court. To overcome this, harmonization efforts are needed through comprehensive regulation and increasing the capacity of judges and legal practitioners to understand both systems in a balanced manner (Hasan, 2017).

The lack of in-depth study of the integration of Islamic legal principles in Indonesian civil law, especially in the aspect of contractual obligations, is an obstacle in creating a comprehensive legal framework. Most research and regulation is still focused on certain sectors, such as Islamic banking, while other aspects such as trade contracts, lease agreements, or buying and selling have not received adequate attention. This leads to legal gaps and non-uniform interpretations, both among academics, legal practitioners, and the judiciary. Moreover, the limited literature and lack of collaboration between Islamic jurists and conventional civil law exacerbate this gap. A more in-depth and integrated study is needed to identify the meeting points of the two legal systems, so as to support the preparation of regulations that are not only in accordance with Sharia principles but also compatible with National Civil Law (Suhendi, 2018).

Research on the integration of Islamic legal principles in civil law has important significance to provide recommendations or theoretical foundations for the development of laws that are more in line with the needs of the Indonesian people. Given that Indonesia is a Muslim-majority country and a culturally diverse society, laws that reflect universal values, such as justice and welfare, are especially relevant. This research can help identify gaps in existing regulations, as well as offer a harmonized solution between Islamic law and conventional civil law. Thus, the results of this study not only contribute to the renewal of national law but also create a legal system that is more responsive to the social, economic, and cultural dynamics of society. This step is in line with the vision of Indonesian legal development based on Pancasila as the state ideology (Mahfud, 2017).

The purpose of this study was to examine the extent to which the principles of Islamic law are applied in Indonesian civil law, particularly related to obligations in agreements and contracts. This study aims to identify the degree of integration of sharia principles, such as Justice ('adl), transparency (bayan), and Prohibition of riba, in civil law practice based on the Civil Code. In addition, this study aims to provide a comprehensive understanding of the relationship between the principles of Islamic law and Indonesian civil law, including the analysis of harmony and conflict that arises. Thus, the results of this study are expected to provide academic and practical contributions in efforts to harmonize law in Indonesia, as well as a reference for the development of a more inclusive national legal policy.

2. Methods

This study uses a normative approach because its main focus is on the analysis of legislation, legal doctrine, and the principles of Islamic law applied in Indonesian civil law, especially related to obligations in agreements and contracts. This study also involves an empirical approach, by analyzing the application of law in practice, namely how the principles of Islamic law are applied in civil law practice in Indonesia, as well as the challenges that arise in its implementation. Therefore, this study combines both approaches to provide a more comprehensive

understanding of the topic under study.

3. Results and Discussion

RESULT

The application of the principles of Islamic law in Indonesian civil law shows a significant influence, although not yet fully integrated in all aspects of civil law. The principles of Justice ('adl), transparency (bayan), and Prohibition of usury (interest) are the main principles in Islamic law that are applied in several fields, especially in the Islamic banking sector and sharia-based financial transactions. In the context of agreements and contracts, the principle of fairness requires a balance of rights and obligations between the parties involved, while transparency requires clarity in the terms and conditions of the agreement. The Prohibition of usury, which is an important principle in Islamic law, is also implemented in the Islamic banking sector, which implements an interest system in accordance with the principles of Sharia. Despite this, the application of these principles in civil law in general is still limited, and has not been fully reflected in all types of contracts and agreements, especially in the business sector based on conventional civil law.

The harmony between Islamic law and Indonesian civil law can be seen in several aspects, especially in the protection of the rights of the weaker party in the contract. Islamic law emphasizes the principle of Justice ('adl) which aims to maintain a balance of rights and obligations between the parties involved in the agreement, as well as prevent the existence of injustice that harms one of the parties. However, there are significant discrepancies, especially when it comes to freedom of contract, which takes precedence in conventional civil law. In Indonesian civil law, the parties have the freedom to determine the content of the agreement according to their will, which sometimes results in agreements that contain elements of usury or uncertainty (gharar). This is contrary to the principles of Sharia which prohibits usury and encourages transactions that are clear and free from uncertainty. Therefore, despite the alignment in terms of protecting the rights of weak parties, differences in freedom of contract and the principle of fair and clear transactions are a source of tension between the two legal systems.

The main challenge in implementing the principles of Islamic law in civil agreements and contracts in Indonesia is the lack of clear guidance on how to integrate the two legal systems harmoniously. Although Islamic law has clear principles related to justice, transparency, and the Prohibition of usury, its implementation in the context of conventional civil law is still limited. One of the main difficulties is the difference in interpretation regarding how the principles of Sharia should be applied in the practice of agreements and contracts. For example, although the Prohibition of riba is explicitly stated in Islamic law, its application in business contracts that follow conventional civil law is not always easy, as there is a tendency to give preference to freedom of contract. In addition, the lack of adequate regulation to bridge the differences between these two legal systems adds complexity to the effective implementation of the principles of Islamic law in civil agreements.

This study identifies the potential for legal conflicts arising from differences in interpretation between the principles of Islamic law and Indonesian civil law, especially in financial contracts and business transactions. One of the main conflicts detected is the use of the element of riba (interest), which is prohibited in Islamic law, but is still accepted in the practice of banking contracts and financial transactions based on civil law. In addition, the principle of Islamic law also prohibits the existence of uncertainty (gharar) in transactions, which aims to ensure that each party has a clear understanding of the rights and obligations in the contract. However, in civil law practice, it is common to find agreements that contain elements of uncertainty or ambiguity, which can generate tension between these two legal systems. This conflict has the potential to cause difficulties in dispute resolution and harm the parties involved, especially if one party adheres to stricter Islamic legal principles regarding transparency and fairness in transactions.

This study provides recommendations for more intensive harmonization efforts between

Islamic law and civil law in Indonesia, in order to create a legal system that is more inclusive and relevant to the needs of society. One important step is through the revision of laws and regulations that accommodate the principles of Sharia, so that the principles of justice, transparency, and Prohibition of usury can be more easily applied in civil agreements and contracts. In addition, there needs to be a more comprehensive briefing for legal practitioners, such as judges, lawyers, and notaries, on the application of sharia principles in civil law practice. With the training and better understanding of the differences and harmony between Islamic law and civil law, it is hoped that practitioners can be wiser in drafting and interpreting contracts that are in accordance with both legal systems, as well as avoiding potential conflicts that can arise due to non-compliance with the application of Islamic law principles in civil agreements.

This study emphasizes the importance of clearer and uniform guidance in the application of the principles of Islamic law in Indonesian civil law, especially in terms of contractual obligations. Currently, the lack of a unified reference often leads to differences in interpretation among legal practitioners, which in turn can trigger potential disputes in the settlement of cases. The guidance should include a detailed explanation of How Sharia principles such as fairness ('adl), transparency (bayan), and the Prohibition of riba can be integrated in civil law-based agreements and contracts without contradicting the principle of freedom of contract. With the uniform implementation guidelines, it is hoped that harmony can be created between the two legal systems, thus providing legal certainty for the community and minimizing potential legal conflicts in the future. This research is expected to contribute significantly to the development of Indonesian national law that is more inclusive and relevant to the needs of the community, especially considering that the majority of the population is Muslim. The integration of the principles of Islamic law into the framework of civil law aims to create a legal system that not only accommodates universal values such as justice and transparency, but also pays attention to religious norms that guide people's lives. With this approach, it is hoped that national law can be more responsive to the social dynamics and needs of Muslims, while maintaining plurality and equality for all citizens. This step can also strengthen national legal legitimacy and increase legal certainty in various aspects of agreements and contracts in Indonesia.

DISCUSSION

The harmony between Islamic law and Indonesian civil law is seen in the application of the principles of Justice (adl), transparency (bayan), and the Prohibition of usury, especially in the Sharia financial sector. These principles reflect universal values that are also accommodated in civil law, such as the importance of ensuring fairness for all parties involved in agreements. For example, the Prohibition of usury in Islamic law is implemented through Sharia contract-based contracts, such as murabahah and mudharabah, which provide an alternative to the conventional interest system. In addition, the aspect of protection against weak parties, both in Islamic law and civil law, shows similarities in efforts to create a balance of rights and obligations in each transaction. These two legal systems, although they have different bases, are oriented towards the same objective, which is to create justice and legal certainty for society.

Differences in interpretation in practice become one of the main challenges in integrating Islamic law with civil law in Indonesia. In civil law, the principle of freedom of contract provides flexibility for the parties to determine the content of the agreement, as long as it does not conflict with the law. However, this principle often contradicts the principles of Sharia, such as the Prohibition of usury and indeterminacy (gharar). In the context of financial contracts, for example, the practice of charging interest or vagueness in the clauses of agreements is often considered valid under civil law, but is prohibited in Islamic law. Moreover, the absence of uniform guidelines to govern how sharia principles can be applied within the framework of civil law exacerbates this gap. This creates a diversity of interpretations among legal practitioners and raises the potential for conflict in dispute resolution. The existence of more integrated rules and clear implementation guidelines is needed to bridge this difference.

The challenges of implementing the principles of Islamic law in Indonesian civil law include

various aspects that hinder the integration of the two legal systems. One of the main obstacles is the lack of harmonious regulation between Islamic law and civil law. Although sharia principles, such as the Prohibition of usury and indeterminacy (gharar), have been recognized in certain sectors such as Islamic banking, their application in the context of civil agreements and contracts is still not comprehensively regulated. In addition, the lack of training or briefing for legal practitioners, including judges, lawyers, and notaries, on the application of sharia principles in civil agreements is also a significant challenge. This unpreparedness may result in misinterpretation or inconsistent application, resulting in legal uncertainty for the parties involved. Strategic steps are needed to develop more integrated regulations and intensive training programs to improve legal practitioners' understanding of the application of Islamic legal principles within the framework of civil law.

Potential conflicts of law often arise due to differences in interpretation between the principles of Islamic law and civil law, especially in financial contracts and business transactions. In civil law, the principle of freedom of contract provides flexibility for the parties to determine the content and form of the agreement, while in Islamic law, contracts must comply with Sharia principles such as the Prohibition of usury and indeterminacy (gharar). This discrepancy is often a source of dispute, especially when the rules integrating the two legal systems are unclear or not specifically regulated. For example, interest-based financial contracts are acceptable in civil law, but are considered contrary to Islamic law, thus creating legal dilemmas for the parties involved. To reduce this potential conflict, harmonization of regulations and clearer guidelines are needed to bridge the differences between the two legal systems, as well as provide legal certainty for the community.

Recommendations for the development of law in Indonesia include the need to revise laws that accommodate Sharia principles in civil agreements and contracts. This step aims to create a legal framework that is more inclusive, responsive, and in accordance with the needs of the majority of Indonesian people who are Muslims. The revisions could include arrangements on the Prohibition of usury, the avoidance of uncertainty (gharar), as well as the principles of fairness and transparency in contracts. In addition, the preparation of uniform guidelines is very important to provide clear reference for legal practitioners, including judges, lawyers, and notaries, in drafting, interpreting, and implementing contracts in accordance with the principles of Sharia and civil law. With this guideline, it is expected to create consistency in the application of the law, so as to minimize differences in interpretation that can trigger disputes and create legal certainty for all parties.

Research contribution to the national legal system focuses on efforts to integrate Islamic law into civil law to create a legal system that is more inclusive and relevant to the needs of Indonesian society. With the majority of the population being Muslim, this integration will not only strengthen the legitimacy of national laws, but also provide a normative foundation that is in line with the religious values held by the community. In addition, this research can be a theoretical basis for the development of national law that emphasizes the principles of justice, equality, and diversity. The harmonious integration between Islamic law and civil law will also help increase legal certainty, strengthen public confidence in the legal system, and ensure that national law is able to respond more comprehensively to social dynamics and community needs.

Conclusions

The conclusion of this study confirms the importance of integrating the principles of Islamic law into Indonesian civil law to create a legal system that is more inclusive, relevant, and responsive to the needs of society. The study found that although there is harmony in basic principles such as fairness ('adl) and transparency (bayan), differences in interpretation, particularly with regard to freedom of contract, Prohibition of usury, and uncertainty (gharar), remain significant challenges. The lack of harmonized regulations and uniform implementation guidelines often lead to legal conflicts and uncertainties in practice. Therefore, the study recommends a more inclusive revision of the law and the preparation of integrated guidelines for Legal Practitioners. The results of this study are expected to be a theoretical contribution to the development of national law that not only reflects the values of justice, but also respects the diversity and needs of the majority Muslim

Indonesian community.

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