

Freedom of Contract in Sharia Banking for Non-Muslim: Sharia Banking Law Perspective

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Article	Abstract
<p>How to cite: Ana Laela Fatikhatul Choiriyah, et al, 'Freedom of Contract in Sharia Banking for Non-Muslims: Sharia Banking Law Perspective' (2025) Vol. 6 No. 1 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p>DOI: 10.35719/rch.v6i1.353</p> <p>Article History: Submitted: 11/02/2025 Reviewed: 21/02/2025 Revised: 29/03/2025 Accepted: 02/04/2025</p> <p>ISSN: 2723-0406 (printed) E-ISSN: 2775-5304 (online)</p>	<p>Islamic banking in Indonesia has experienced rapid growth as an alternative financial service grounded in justice, transparency, and sharia principles. Interestingly, an increasing number of non-Muslim customers are utilizing Islamic banking products due to their perceived fairness and ethical practices. This phenomenon raises important legal questions, particularly regarding the validity and legal certainty of contracts involving non-Muslim customers from the perspective of fiqh muamalah. The principle of freedom of contract in Islamic law allows for contractual agreements with anyone, as long as the content and structure do not contradict sharia principles. This study aims to examine the legal validity, certainty, and practical application of this principle for non-Muslim customers within Islamic banking. By exploring how Islamic financial institutions accommodate inclusivity without compromising core religious values, the research seeks to contribute to the development of a more inclusive and just financial system in Indonesia that respects both religious norms and pluralistic societal realities.</p> <p>Keywords: <i>Freedom of Contract, Sharia Banking, Non-Muslim.</i></p> <p>Abstract</p> <p>Perbankan Islam di Indonesia telah mengalami pertumbuhan pesat sebagai layanan keuangan alternatif yang berlandaskan keadilan, transparansi, dan prinsip-prinsip syariah. Menariknya, semakin banyak nasabah non-Muslim yang memanfaatkan produk perbankan Islam karena dianggap adil dan praktik etis. Fenomena ini menimbulkan pertanyaan hukum yang penting, khususnya mengenai keabsahan dan kepastian hukum kontrak yang melibatkan nasabah non-Muslim dari perspektif fikih muamalah. Prinsip kebebasan berkontrak dalam hukum Islam memperbolehkan perjanjian kontrak dengan siapa pun, selama isi dan strukturnya tidak bertentangan dengan prinsip-prinsip syariah. Penelitian ini bertujuan untuk mengkaji keabsahan hukum, kepastian, dan penerapan praktis prinsip ini bagi nasabah non-Muslim dalam perbankan Islam. Dengan mengeksplorasi bagaimana lembaga keuangan Islam mengakomodasi inklusivitas tanpa mengorbankan nilai-nilai inti agama, penelitian ini berupaya berkontribusi pada pengembangan sistem keuangan yang lebih inklusif dan adil di Indonesia yang menghormati norma-norma agama dan realitas masyarakat yang pluralistik.</p> <p>Kata Kunci: <i>Kebebasan Kontrak, Perbankan Syariah, Non-Muslim.</i></p>

Introduction

The development of the Islamic banking industry in Indonesia shows a positive trend, along with the increasing public need for financial services based on Islamic principles. Islamic banking is present as an alternative financial system that not only offers profit, but also prioritizes the values of justice, transparency, and blessings according to Islamic principles. Law Number 21 of 2008 has provided a strong legal basis for the operation of Islamic banks in Indonesia, so that Islamic financial services can be widely accepted by the public without distinguishing religious or ethnic backgrounds.¹

Amidst this development, an interesting phenomenon has emerged when non-Muslim customers are also interested in using sharia banking products and services. This is because sharia banks are considered more transparent, fairer in risk sharing, and offer competitive products compared to conventional banking.² This means that sharia banking services are not exclusive to Muslims alone, but are open to all Indonesian citizens including non-Muslims who meet the requirements as customers.³

However, a question arises from a legal perspective: what is the status of contracts entered into by non-Muslim customers at Islamic banks? Contracts in sharia banking refer to the principles of muamalah fiqh, such as murabahah, mudharabah, musyarakah, and ijarah, which are based on the Koran, hadith, as well as the consensus and qiyas of the ulama.⁴ If the contract is carried out by a non-Muslim, it is necessary to examine whether the principle of freedom of contract can truly operate without giving rise to a conflict with sharia values or principles.

The principle of freedom of contract has long been known in Indonesian civil law based on Article 1338 of the Civil Code, which states that every agreement made legally applies as law for the parties.⁵ This principle is also the basis for sharia economic law, as long as it does not conflict with the principles of sharia, justice and public order.⁶ Thus, freedom of contract must be seen within the framework of a balance between the rights of the parties and the applicable provisions of sharia law.

In practice, Islamic banks often face challenges in explaining the position of non-Muslim customers in their contract structures, especially in terms of understanding sharia terms. This raises the potential for legal uncertainty if it is not regulated clearly or not well socialized to the wider community.⁷ In addition, legal protection for non-Muslim customers is also an important part that should not be ignored, so that they do not feel disadvantaged by differences in principles or culture in the contract.

On the other hand, the principle of freedom of contract provides space for non-Muslims to utilize sharia banking products as long as they understand and agree to the legal consequences.⁸ Sharia banks as financial institutions also have the responsibility to ensure that every contract is made transparently, voluntarily and in accordance with sharia without any

¹ Law Number 21 of 2008 concerning Sharia Banking.

² Adiwarmanto A. Karim, *Bank Islam: Analisis Fiqh dan Keuangan* (Jakarta: RajaGrafindo Persada, 2021), 15.

³ Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori ke Praktik* (Jakarta: Gema Insani, 2020), 23.

⁴ Muhammad, *Fiqh Muamalah* (Jakarta: Prenadamedia Group, 2021), 47.

⁵ Article 1338 of the Civil Code.

⁶ KCompilation of Sharia Economic Law (KHES), Book II Muamalah Contracts.

⁷ Rahman, Fadillah. "Prinsip Kebebasan Berkontrak dalam Akad Bank Syariah bagi Nasabah Non-Muslim," *Jurnal Hukum Ekonomi Syariah* Vol. 4 No. 1 (2022), 12.

⁸ Suhrawardi K. Lubis, *Hukum Perikatan Islam di Indonesia* (Jakarta: Sinar Grafika, 2020), 65.

element of coercion. This is a manifestation of respect for the principle of fairness in transactions, which is not discriminatory against anyone, including non-muslims.⁹

Therefore, this study is relevant to analyze how the principle of freedom of contract in Islamic banking can be implemented for non-Muslim customers, including examining the validity of its contracts, its legal certainty, and its conformity with the values of Islamic economic law in Indonesia. This study is expected to provide theoretical and practical contributions in the development of regulations and implementation of more inclusive Islamic banking services in the future.¹⁰

Research Method

This study uses a normative legal approach with a library research method, which focuses on the analysis of laws and regulations, muamalah fiqh literature, and legal doctrines related to the principle of freedom of contract in Islamic banking. Data were obtained through a review of primary legal materials such as Law Number 21 of 2008 and the Civil Code, as well as secondary legal materials in the form of books, journals, and DSN-MUI fatwas. The analysis was carried out qualitatively to evaluate the validity, legal certainty, and legal protection of non-Muslim customers in financing contracts in Islamic banks, so that relevant recommendations can be formulated for the development of inclusive Islamic banking regulations and practices.

Application of the Principle of Freedom of Contract in Legal Relations Between Sharia Banks and Non-Muslim Customers in Indonesia

The application of the principle of freedom of contract in the relationship between Islamic banks and non-Muslim customers in Indonesia actually has a very clear legal basis. The principle of freedom of contract is recognized in Article 1338 of the Civil Code⁹, which states that all agreements made legally apply as laws for the parties who make them.¹⁰ This principle is the basis that anyone, regardless of religion, has the right to make a contract with another party as long as it meets the requirements for a valid agreement.¹¹

In the context of sharia banking, the principle of freedom of contract still applies, but is framed by sharia principles. In other words, all forms of sharia banking contracts, both for Muslim and non-Muslim customers, must comply with sharia principles, such as the prohibition of *usury*, *gharar* (uncertainty), and *maysir* (gambling).¹² This means that freedom of contract is not absolute, but is limited by sharia norms which form the basis of sharia bank operations.

Non-Muslim customers who choose Islamic banks basically sign the same contracts as Muslim customers, for example murabahah for financing sales and purchases, mudharabah for savings based on profit sharing, or ijarah for leasing.¹³ These contracts do not require the bound party to be Muslim, as long as he understands and agrees to the legal consequences. Thus, Islamic banks are also obliged to explain transparently to prospective non-Muslim

⁹ Yudhi Setiawan, *Pelaksanaan Pasal 1338 Ayat (1) (3) Kuhpdt Tentang Kebebasan Berkontrak Dan Itikad Baik Dalam Pembiayaan Kendaraan Bermotor*, Jurnal Kompilasi Hukum Volume 5 No. 1, Juni 2020, 55

¹⁰ Niru Anita Sinaga, *Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian*, Jurnal Ilmiah Hukum Dirgantara–Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma, Volume 10 No. 1, September 2019, 2.

¹¹ Civil Code Article 1338 paragraph (1).

¹² Antonio, Muhammad Syafi'i. *Bank Syariah: Dari Teori ke Praktik*. Jakarta: Gema Insani, 2020.

¹³ DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 concerning Murabahah.

customers regarding the principles and terminology of Islamic contracts so as not to cause confusion in the future.¹⁴

On the other hand, the implementation of the principle of freedom of contract must also consider consumer protection.¹⁵ Law Number 8 of 1999 on Consumer Protection requires banks, including Islamic banks, to provide correct, clear, and honest information to customers.¹⁶ In the context of Islamic contracts, this means that banks may not force non-Muslim customers to accept certain contracts without adequate understanding. In other words, the principle of freedom of contract must go hand in hand with the principles of openness and fairness.¹⁷

There are several legal principles of sharia agreements in the law of financing contracts in sharia banking, as for the application of the principles as follows:¹⁸

1. Implementation of the Principle of Tawhid

Every human behavior and action will not escape the provisions and supervision of Allah SWT. In the Qur'an Allah says.

"It is He who created the heavens and the earth in six ages: Then He sat on the 'arsh. He knows what enters the earth and what comes out of it and what comes down from the sky and what rises to Him. And He is with you where you are. And Allah is All-Seeing of what you do."

This principle provides guidance and affirmation that all forms of economic activity (*muamalat*) are obligatory in accordance with the guidance of the Qur'an and the Sunnah of the Prophet, so that as previously mentioned, whatever its form, a contract must remain within the corridor of sharia (*'ala wajhim masyru'in*), must not conflict with religious teachings.¹⁹ In other words, all forms of sharia banking products and the contracts that accompany them must have a basis in sharia law.

The principle of Tawhid is in line with the principle of *Ibahah*, which gives humans the freedom to make agreements or agreements (*akad*), both those that are commonly practiced and new agreements that have never been implemented before, as long as they do not conflict with Islamic teachings. This is in accordance with the basic principle in *muamalah* which states that in principle everything is permissible (*mubah/ibadah*) to be done, unless there is evidence that explicitly prohibits it.²⁰

The use of the term "sharia" as Islamic law derived from the Qur'an, Sunnah of the Prophet, and *Ar-Ra'yu* (*ijtihad*) which regulates all matters covering the fields of *mahdhah* worship and *muamalah* worship, in article I of the *Musyarakah* contract is a form of legitimacy that the products and contracts concerned in Islamic banks are entirely based on Islamic law.²¹ As also emphasized by the Fatwa of the National Sharia Council of the

¹⁴ Adiwarman A. Karim, *Bank Islam: Analisis Fiqih dan Keuangan*. Jakarta: RajaGrafindo Persada, 2021.

¹⁵ Dwi Atmoko, Penerapan Asas Kebebasan Berkontrak Dalam Suatu Perjanjian Baku, *Binamulia Hukum* Volume 11, Nomor 1, Juli 2022 81-92

¹⁶ Law Number 8 of 1999 on Consumer Protection.

¹⁷ Sri Hariati, Penerapan Asas-Asas Perjanjian Syariah Dalam Akad Pembiayaan Pada Perbankan Syariah, *Jurnal Kompilasi Hukum* Volume 9, No. 1, Juni 2024, 17

¹⁸ Neni Sri Imaniyati, Asas dan Jenis Akad dalam Hukum Ekonomi Syariah: Implementasinya pada Usaha Bank Syariah, *MIMBAR*, Vol. XXVII, No. 2 (Desember 2011): 151-156

¹⁹ Rahmani Timorita Yulianti, Asas-Asas Perjanjian (Akad) dalam Hukum Kontrak Syari'ah, *JURNAL EKONOMI ISLAM* Vol. II, No. 1, Juli 2008 92.

²⁰ Muhammad Ardi, *Asas-Asas Perjanjian (Akad)*, *Hukum Kontrak Syariah dalam Penerapan Salam dan Istisna*, *Jurnal Hukum Diktum*, Volume 14, Nomor 2, Desember 2016, 265 – 279.

²¹ See Article 1 of the Bank Syariah Mandiri Musyarakah Agreement regarding Definitions.

Indonesian Ulema Council (DSN MUI) as an institution that legitimizes the sharia of all products issued and run by Islamic banking.²²

The application of the principle of monotheism in financing contracts in Islamic banking based on the name of Allah SWT. and by quoting several verses of the Qur'an, including; Surah al-Maidah verse 1 which means: " *O you who believe, fulfill your promises ...*" And Surah Shaad verse 24 which means: "..... *and indeed most of the partners are some of them oppressing others, except for those who believe and do good deeds.....*" has become a characteristic of Islamic banks that distinguishes them from conventional banks.

2. Implementation of the Principle of *Al Huriyah Fi at Ta'aqud* (Freedom of Contract).

Islamic contract law adheres to the principle of freedom of contract, which in Islamic legal terms is known as *mabda' hurriyah al-ta'aqud*.²³ In Islamic studies, human freedom to make contracts and determine their terms based on the agreement of the parties has become an interesting discussion among Islamic legal experts (*fuqaha*) from the classical era to the present.²⁴ This principle of freedom of contract is important to be elaborated further, considering the emergence of questions whether the concept and form of contracts contained in fiqh books provide freedom for Muslims to develop new forms of contracts according to current developments and needs of society, or vice versa, whether Muslims are limited to making new forms of contracts as long as they do not conflict with sharia principles.²⁵

At first glance, in Islamic Law there is no explanation that explicitly explains the principle of freedom to make contracts. However, if examined in more detail, then in fact Islamic Law has regulated general rules that can provide a signal about the existence of freedom in making contracts. In other words, Islam also regulates (there is justification) about the principle of freedom to make contracts.²⁶ The discussion about the freedom to make contracts in Islam begins with the freedom or power of will (*sulthanul iradah*) of humans. The principle of this power of will is related to four types of freedom, namely:²⁷

1. The aqid's freedom to enter into a contract with someone.
2. Freedom to hold iltizam with the agreement of both parties
3. The aqid's freedom to make various kinds of contracts according to his wishes
4. The aqid's freedom to limit the impact or influence of the contract.

The principle of freedom of contract is intended as a person's freedom to make any kind of agreement and contain anything in accordance with his or her interests within the limits of decency and public order, even if the agreement is in conflict with the rules or articles of contract law.²⁸ According to the provisions of Article 1338 paragraph 1 of the Civil Code, the principle of freedom of contract includes:²⁹

1. Freedom to make or not make agreements

²² DSN MUI Fatwa No. 04 on Murabahah, DSN MUI Fatwa No. 07 on Mudharabah, DSN MUI Fatwa No. 08 on Musyarakah.

²³ Ubaidullah Muayyad, *Asas-Asas Perjanjian dalam Hukum Perjanjian Islam*, 'Anil Islam Vol. 8. Nomor 1, Juni 2015 4

²⁴ Muhammad Aswad, *Asas-Asas Transaksi Keuangan Syariah*, Iqtishadia, Vol. 6, No. 2, September 2013, 345

²⁵ Yusdani, *Transaksi (Akad) Dalam Perspektif Hukum Islam*, Millah Vol. II, No.2, Januari 2002, 73

²⁶ Ade Candra Kusuma, *Asas Kebebasan Berkontrak Dalam Hukum Islam*, Hukum Islam. Vol. VI No. 4. Desember 2006, 376.

²⁷ Tengku Muhammad Hasbi Ash Shidieqy, *Pengantar Fiqh Mu'amalah*, Pustaka Rizki Putra, Semarang, 1997, 72.

²⁸ Subekti, *Hukum Perjanjian*, cet.ke-VI, Intermasa: Bandung, 1979, 13

²⁹ Rahmani Timorita Yulianti, *Asas-Asas Perjanjian (Akad) dalam Hukum Kontrak Syari'ah*, *La_Riba Jurnal Ekonomi Islam*, Vol. II, No. 1, Juli 2008, 103.

2. Freedom to choose the party with whom he wants to make an agreement.
3. Freedom to determine or choose the cause of the agreement that will be made.
4. Freedom to determine the object of the agreement.
5. Freedom to determine the form of an agreement, namely written or oral.
6. Freedom to accept or deviate from optional provisions of the law

3. Application of the Ar-Radhaiyah Principle (Consensualism)

The principle of consensualism states that for an agreement to be born, it is sufficient to reach an agreement between the parties without having to fulfill certain formalities.³⁰ In Islamic law, agreements made by the parties are generally consensual.³¹ The principle of consensualism is closely related to the moment an agreement is born, which means that the agreement occurs from the moment an agreement is reached between the parties regarding the subject matter of the agreement. Related to the principle of consensualism which requires an agreement between the parties.³²

4. Application of the Principle of Promises is Binding

The principle of a binding agreement is in line with other principles such as the principle of legal certainty (Pacta Sunt Servanda Principle)³³ which states that an agreement that has been made must be implemented like a law for those who make it, and no act can be punished except by the power of the provisions of existing laws and regulations that apply to the act.³⁴ The application of the principle of a binding agreement can be found in the Musyarakah agreement, Article 5 of the Sharia Banking Law.

5. Application of the Al-Adalah Principle (Justice).

The application of the principle of justice in financing contracts in Islamic Banks is reflected in the provisions of Article 5 concerning the profitsharing ratio agreement.³⁵ This article emphasizes that the parties are free to determine the amount of the ratio according to mutual agreement. The principle of justice is also in line with the principle of balance (*tawazun*), which is reflected in the balance of performance between the customer and the bank, namely the balance between the value received by each party and the value given.³⁶ In Islamic contract law, there is no obligation for the performance of both parties to have exactly the same value, because the exchange rate in the transaction is entirely left to the agreement and willingness of the parties. However, if a significant imbalance arises in the transaction that causes losses to one of the parties, the law will intervene to provide protection so that justice is achieved between the parties to the transaction. Therefore, if there is an imbalance of

³⁰ Junaidi Abdullah, Analisis Asas Konsensualisme Di Lembaga Keuangan Syariah, *Iqtishadia*, Vol. 8, No. 2, September 2015, 285

³¹ Syamsul Anwar, *Hukum Perjanjian Syariah (Studi Tentang Teori Akad Dalam Fikih Muamalat)*, Cetakan I, RajaGrafindo Persada, Jakarta, 2007.

³² Johannes Ibrahim, *Cross Default dan Cross Collateral Sebagai Upaya Penyelesaian Kredit Bermasalah*, Refika Aditama, Bandung, 2004, 6

³³ Arie Nurwanto, Tinjauan Yuridis Asas Pacta Sunt Servanda Dalam Perjanjian Pembiayaan Kredit Kendaraan Bermotor (Study Komparatif KUH Perdata Dan Undang- Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Tentang Perlindungan Konsumen), *IURIS STUDIA: Jurnal Kajian Hukum* Volume 3 Issue 3 Years 2023, 280

³⁴ Gemala Dewi dkk., *Hukum Perikatan Islam Di Indonesia*, cetakan I, Prenada Media, Jakarta, 2005, 3.

³⁵ Fatahullah, Implementasi Prinsip Bagi Hasil Dan Risiko Di Perbankan Syariah, *E, Jurnal Undip* dapat diakses pada <https://ejournal.undip.ac.id/index.php/lawreform/article/download/594/474>.

³⁶ Shinta Puspita Sari, Penerapan Prinsip Keadilan Dalam Akad Pembiayaan Bagi Hasil Musyarakah Pada Lembaga Keuangan Syariah 5 dapat diakses pada <https://media.neliti.com/media/publications/114609-ID-penerapan-prinsip-keadilan-dalam-akad-pe.pdf>

performance in the contract (*al-gabn*) caused by exploitation or abuse of circumstances by the contract partner, then this can cause a defect in will which is the basis for the cancellation (*fasakh*) of the contract.

The principle of non-discrimination in public services is also the basis for the implementation of freedom of contract in Islamic banks. Article 5 of Law Number 21 of 2008 emphasizes that Islamic banks are open to anyone regardless of religion, race, or class.³⁷ This emphasizes that the freedom to choose Islamic banking services is the right of every citizen, including non-Muslims, as long as they are willing to be bound by Islamic principles. However, there are still challenges in the field. Some non-Muslim customers sometimes feel unfamiliar with the terminology of contracts, such as the terms *mudharabah* or *ijarah*. This can give rise to the perception of discrimination or injustice if the bank does not explain the contract in full.³⁸ Therefore, Islamic financial education and literacy are important aspects in supporting freedom of contract so that it runs transparently and does not cause potential disputes.

Practices in the field also show that many non-Muslims choose Islamic banks because of product advantages, such as home financing with fixed margins and no penalties, which are considered fairer than conventional banking interest.³⁹ This proves that the principle of freedom of contract is running effectively, as long as Islamic principles are applied professionally and non-discriminatory. Islamic banks are still obliged to uphold Islamic principles even though their customers are non-Muslims, in order to maintain their reputation and Islamic compliance.

From the perspective of sharia economic law, the involvement of non-Muslims in muamalah contracts is valid as long as it is not related to the ritual aspect of worship. This is emphasized by the majority of scholars that muamalah contracts are universal and may be carried out with anyone.⁴⁰ So, there is no limitation on the validity of the contract based on religion, as long as it does not violate the sharia principles that are the basis of the agreement.

Overall, the implementation of the principle of freedom of contract in the relationship between Islamic banks and non-Muslim customers in Indonesia can be said to have been carried out in accordance with the corridor of positive law and the principles of Islamic justice. However, challenges in legal literacy and contract education still need serious attention in order to create legal certainty, consumer protection, and respect for freedom of contract in a balanced and just manner for all parties.⁴¹

Validity of Islamic banking contracts for non-Muslim customers in Indonesia

Islamic banking in Indonesia is present as a financial intermediary institution that implements Islamic sharia principles, such as justice, openness, and free from usury. This universal principle makes Islamic banking inclusive so that it can be used by anyone, including non-Muslim customers, as long as they are willing to comply with the applicable rules. The legal basis is emphasized in Law Number 21 of 2008 concerning Islamic Banking, that everyone without distinction of religion has the right to become a customer of an Islamic

³⁷ Law Number 21 of 2008 concerning Sharia Banking, Article 5.

³⁸ Ibid.

³⁹ Rahman, Fadillah. "Prinsip Kebebasan Berkontrak dalam Akad Bank Syariah bagi Nasabah Non-Muslim," *Jurnal Hukum Ekonomi Syariah* Vol. 4 No. 1 (2022).

⁴⁰ Rivai, Veithzal & Andria Permata. *Islamic Banking*. Jakarta: Bumi Aksara, 2020.

⁴¹ Muhammad, *Fiqh Muamalah*. Jakarta: Prenadamedia Group, 2021.

bank, as long as they follow the contract according to Islamic principles. These Islamic principles are derived from the Qur'an, hadith, ijma', and qiyas which emphasize the permissibility of transacting with anyone, including non-Muslims, as long as it is halal and fair.

One of the main verses is QS Al-Maidah verse 1, "*O you who believe, fulfill the contracts...*", which commands that every contract be carried out correctly without distinguishing between the contracting parties, as long as the object is halal and the procedure is legal ⁴². In addition, QS Al-Baqarah verse 275 emphasizes, "*Allah has permitted buying and selling and has prohibited usury,*" indicating that muamalah transactions (including with non-Muslims) remain halal as long as they do not contain elements of usury.⁴³ This emphasizes the basis of sharia banking which allows financing to anyone who adheres to its principles. The Hadith of the Prophet Muhammad SAW also confirms that he had muamalah with non-Muslims in Medina, for example owing wheat to a Jew, as narrated by Bukhari.⁴⁴ This is the basis that cross-religious muamalah transactions are permitted as long as they are legal according to sharia.

The fiqh principle of *al-ashlu fil mu'amalat al-ibahah illa ma dalla dalil ala tahrimihi* states that the original law of muamalah is permissible unless there is evidence that prohibits it.⁴⁵ Since there is no prohibition on non-Muslims entering into contracts in Islamic banks, they are allowed to become customers. The Compilation of Islamic Economic Law (KHES) also emphasizes in Article 22 that the subject of the contract is anyone who is legally competent and understands their rights and obligations without distinguishing between religions.⁴⁶ This provides a strong basis that Islamic banks are open to all parties.

In practice, Islamic banking contract products such as murabahah, mudharabah, ijarah, and musyarakah are valid agreements as long as they fulfill the pillars and conditions of the contract. Non-Muslim customers are only required to comply with the provisions of the Islamic contract, without having to believe in the basic beliefs of Islam. The principle of maqashid sharia also strengthens that the purpose of the transaction is to bring benefits (maslahah) and prevent damage (mafsadah). Because non-Muslims also have the right to obtain fair economic benefits, their participation does not damage the maqashid sharia itself.⁴⁷

The fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) never limit sharia contracts to Muslims only. Non-Muslim customers are allowed to use sharia banking products as long as they are willing to follow the established sharia principles. This is also supported by Law Number 8 of 1999 concerning Consumer Protection, which emphasizes that there should be no discrimination in public services, including in banking transactions. Therefore, sharia banks are obliged to accept non-Muslims as customers as long as they follow sharia procedures.

Many non-Muslim customers opt for Islamic banking products due to their perceived transparency, fairness, and adherence to a profit-and-loss sharing system, which contrasts with the fixed interest mechanisms typical of conventional banking. This phenomenon reflects the cross-religious acceptance of Islamic financial instruments. From a theological perspective,

⁴² QS. Al-Maidah verse 1

⁴³ QS. Al-Baqarah verse 275

⁴⁴ HR. Bukhari, Kitab Al-Buyu', hadith about the Prophet owing wheat to the Jews

⁴⁵ Wahbah az-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, (Damaskus: Dar al-Fikr, 1985)

⁴⁶ Compilation of Sharia Economic Law Article 22

⁴⁷ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, IIIT, 2008

Islam does not prohibit economic transactions with non-Muslims, provided such interactions do not involve enmity towards Islam and comply with the principles of Sharia. Historical accounts indicate that the Prophet Muhammad (peace be upon him) engaged in various commercial transactions with non-Muslims, thereby affirming the permissibility of such interactions under Islamic law.⁴⁸ Regulations from the Financial Services Authority (OJK) and Bank Indonesia also provide legal certainty that Islamic banking products are open to anyone, without religious discrimination. This is in line with the ideals of social justice and the principle of inclusivity.

Thus, Islamic banking contracts made by non-Muslim customers remain valid, in accordance with Islamic principles, the Compilation of Islamic Economic Law, DSN-MUI fatwas, and laws and regulations in Indonesia. Their presence actually expands the benefits of Islamic banking without violating Islamic law.

Conclusion

The application of the principle of freedom of contract in the relationship between Islamic banks and non-Muslim customers in Indonesia has a strong legal basis, both from the perspective of the Civil Code and Islamic banking regulations, especially Law Number 21 of 2008. Freedom of contract remains framed by Islamic principles, so that the contracts used must comply with the provisions prohibiting usury, gharar, and maysir. Non-Muslim customers can access Islamic banking products without discrimination, as long as they understand and agree to the consequences of the agreed Islamic contract. In practice, principles such as the principle of monotheism, the principle of freedom of contract, the principle of consensualism, the principle of justice, and the principle of binding promises have been applied to maintain the balance of the rights and obligations of the parties. However, the challenges of Islamic financial literacy and education on Islamic contract terms still need to be improved so as not to create a perception of discrimination or legal uncertainty in the future. Thus, the principle of freedom of contract in sharia banking for non-Muslim customers is in accordance with the principles of sharia economic law and the value of justice, but still requires strengthening socialization and consumer protection to ensure justice and legal certainty for all parties.

Islamic banking contracts carried out by non-Muslim customers in Indonesia are valid as long as they fulfill the pillars and conditions of the contract according to sharia principles. The legal basis is strong, both from the Qur'an, hadith, ijma', qiyas, Compilation of Sharia Economic Law, and Law Number 21 of 2008 concerning Sharia Banking, which emphasizes that there is no discrimination for anyone to become a customer of a sharia bank as long as they are willing to comply with sharia provisions. The practice of the Prophet Muhammad SAW in dealing with non-Muslims is also evidence that interfaith transactions are permitted as long as the object and procedure are halal. Sharia banking products such as murabahah, mudharabah, musyarakah, and ijarah can be accessed by non-Muslims without having to believe in Islamic beliefs, as long as they understand and accept the sharia principles. Thus, the participation of non-Muslim customers in Islamic banks does not violate the maqashid sharia, but rather expands the benefits of the Islamic banking system which is based on justice, transparency, and blessings, while also being in line with consumer protection regulations in Indonesia.

⁴⁸ Abdurrahman al-Jaziri, *Kitab al-Fiqh ala al-Madzahib al-Arba'ah*, Dar al-Fikr, 1990

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