Fundamentals of contract law in Islamic law and Afghanistan Civil Law

Habiburrahman Rizapoor
Department of Syariah, Badakhsan University, Afghanistan

INTRODUCTION

As a social creature, humans relate to each other to find answers to their needs. One way to respond to this need is to treat each other as business or other financial agreements. Financial transactions carried out by humans under the title of buying and selling in society are discussed in Islamic jurisprudence under the heading of contracts. From the very beginning, Islamic law paid special attention to trade and commercial contracts. If we look at the history of Islam, we see that the Prophet Muhammad before his mission was a merchant himself, so he partnered with Khadija al-Kubra (Maulidizen, 2019b). Because of the importance of trade and commercial contracts, we see that Islamic jurists have allocated a separate chapter in their books called the book or the chapter of contracts, and many jurisprudence have allocated separate sections to indicate the types of contracts such as the book of sales, the book of marriage, the book of the company and other contracts. All this shows that Islam has taken great care of the sitting

RESEARCH METHOD

This research is a literature review employing a qualitative descriptive approach, which aims to describe or explain the application of Fundamentals of contract law in Islamic law and Afghanistan Civil Law. The study utilizes data collection methods through documentation, including various articles and books (Zed, 2004). Subsequently, it undergoes content analysis, which involves analyzing descriptive data or scientific analysis of the premise’s message. The data analysis methods include deductive, inductive, and comparative approaches (Sugiyono, 2019).
The type of writing employed is a literature review that focuses on the results of previous writings related to the topic or variables under study. The research data collection method involves the use of the documentation method, which includes various articles and books. The data collected is then analyzed using the content analysis method. Content analysis is a descriptive or scientific analysis of the textual information obtained from library sources. This method involves systematically examining and interpreting the content of the documents to extract meaningful insights and information related to the research topic (Johari & Maghfirah, 2023).

The literature review method used appears suitable for an exploratory study, as it likely involved searching for and reviewing a broad range of literature to gain an initial understanding of the topic. However, it lacks detail in explaining how sources were selected and analyzed. In an exploratory study, researchers typically cast a wide net to gather information from various sources, such as academic journals, books, conference papers, and reputable websites, to explore different perspectives, theories, and findings related to the research topic. Given the broad scope of an exploratory study, it’s important for the literature review to provide clarity on the criteria used to select sources and the methods employed to analyze them.

For instance, the literature review should specify the keywords and search terms used to identify relevant literature, the databases or repositories searched, and any inclusion or exclusion criteria applied during the selection process. Additionally, it should describe how the selected sources were critically evaluated for their credibility, relevance, and contribution to the understanding of the research topic. Furthermore, the analysis of sources should be transparently documented, highlighting key themes, patterns, contradictions, or gaps identified across the literature. This could involve summarizing and synthesizing findings from different studies, comparing and contrasting various perspectives, or identifying emerging trends or areas for further investigation. While the literature review method used may be suitable for an exploratory study, providing more detail on the selection and analysis of sources would enhance the rigor and transparency of the research process.

RESULT AND DISCUSSION

Definition of the contract in language and terminology

The term ‘Aqd in Arabic refers to the act of tying or knotting, as in ‘Aqd al-Jibala meaning to tie a knot in it and involve one of its ends in it. This term is also used metaphorically, as in the Prophet’s saying Man ‘Aqd ‘Uqdatun Tsumma Nafatsa Fiha, which means, “Whoever ties a knot and blows on it has performed magic, and whoever practices magic has committed shirk (associating partners with Allah), and whoever hangs something (such as an amulet) has committed shirk”.

The word ‘Aqd also means guarantee or pledge, and it can refer to the hump of a camel. It can also denote imprisonment, as in ‘Aqida al-Rujulu meaning the man was confined. Additionally, it is used figuratively, as in ‘Uqdatun Lisan which means to hold back speech. The legal definition of ‘Aqd has two meanings: (1) The general meaning: Scholars define ‘Aqd in its general sense as any commitment one resolves to undertake, whether it involves a single intent, such as in the case of waqf (endowment), ibra (disavowal), divorce, or oath, or requires two intentions for its formation, such as in the case of sale, lease, agency, or mortgage (Maulidizen, 2019a). This general definition encompasses all legal obligations, and (2) The specific meaning: Scholars define ‘Aqd in its specific sense as the connection of one party’s speech to the other’s in a manner that legally binds them, with an effect evident in the relevant context. For example, if the seller says, “I have sold this book”, and the buyer says, “I have bought this book”, the effect is evident in the context, which is the transfer of ownership from the seller to the buyer and the transfer of the price from the buyer to the seller (Saleh, 1986).

The term Il’la Iltizam (commitment) is also used, referring to any action that establishes, transfers, modifies, or terminates a right, whether it originates from one person, such as in the case of waqf, ibra, or non-matrimonial divorce, or from two persons, such as in the case of sale, lease, or matrimonial divorce involving property. In light of this definition, Il’la Iltizam is synonymous with ‘Aqd in its general sense and is contrary to ‘Aqd in its specific sense. Therefore, ‘Aqd refers to a specific type of commitment that arises from two parties or two intentions (Maulidizen, 2019b).
Legitimacy of Contracts in Islamic Law

Allah, the Exalted, has emphasized the importance of fulfilling contracts and covenants. He says in the Quran: “O you who have believed, fulfill [all] contracts” (Al-Maidah [5]: 1). Al-Alousi, may Allah have mercy on him, explained that the term contracts in this verse includes all obligations and religious rulings imposed by Allah on His servants, as well as the agreements they make among themselves regarding transactions and the like. Furthermore, Allah has emphasized that the basis of contracts is consent, and trade is one of the ways people interact with one another. He says: “O you who have believed, do not consume one another’s wealth unjustly but only” [in lawful] business by mutual consent” (An-Nisa [4]: 29).

Elements and Conditions of a Contract

The term Rukn (element) has been defined in various ways. According to the Hanafi school of thought, it refers to whatever indicates the agreement of the parties to the contract, whether through speech, gesture, action, or in writing. However, according to the majority of scholars, the elements of a contract consist of three: the contracting parties, the subject matter, and the formula (Maulidizen, 2019d). According to French civil law, there are four conditions for the validity of a contract: consent, capacity, legality, and a cause. From these principles, it can be understood that consent is the cornerstone of the contract. This means that both parties to the contract must be willing participants, and consent must be demonstrated through affirmation and acceptance. Consent is not only a condition for the validity of a contract but also a requirement for its legitimacy (Maulidizen, 2019c).

Consent is issued by a person with the capacity to do so. Those without capacity, such as infants and the mentally incompetent, cannot give consent. Additionally, consent cannot be given by someone who is unconscious, such as those under the influence of alcohol or drugs. Considering that consent is the fundamental element of a contract and that consent can only be given by someone with the capacity to do so, a contract requires the expression of two mutually agreeable intentions (Vogel & Hayes, 1998). Expression of intent can be affirmative, explicit, or implied, and silence may also indicate consent in certain circumstances. However, silence alone does not constitute consent, as there is a general rule that “Silence does not imply consent”. Nonetheless, in some situations, silence may be considered consent, such as in the case of a virgin’s marriage, as narrated by Ibn Abbas, may Allah be pleased with him, that the Prophet ﷺ said: “A virgin’s silence is her consent.”

The conditions of a contract vary, including those related to the contracting parties, the form of the contract, and the subject matter. According to the Hanafi school of thought, the conditions related to the contracting parties are as follows: (1) Capacity of the contracting parties. Both parties must be legally competent, whether they are fully competent adults or minors who have reached legal maturity. A contract with a fully competent party is valid, while a contract with a legally incompetent party is voidable, and (2) Knowledge of the contracting parties about what is being agreed upon. Each party must hear and understand the other’s speech and know its meaning if it is a gesture (Chapra, 2007).

Conditions related to the contracting parties: (1) Capacity of the contracting parties: meaning that the parties must be legally distinct, whether fully competent like an adult or partially competent like a minor. The first contract is valid while the second is suspended, and (2) Knowledge of the contracting parties about each other’s expressions: meaning they must hear and understand each other’s words and comprehend their intentions if expressed indirectly (Maulidizen, 2018). Conditions related to the form: (1) The meeting of offer and acceptance must be in one sitting, (2) Acceptance must correspond to the offer, and (3) The form must convey meaning immediately and not be contingent on future events. Conditions related to the place of the contract: The subject of the contract must be capable of contracting, such as money in a sale or a wife who is legally recognized as a woman (Johari & Maghfirah, 2023).

Contracts can be divided into multiple types based on different criteria, for example: a. Division based on formation:

(1) Consensual contracts, defined by scholar Sanhouri as contracts that are concluded by the meeting of acceptance with the offer. This means that the mutual consent of the contracting
parties constitutes the contract. Most contracts fall under this category such as sales, leases, and partnerships. Due to the prevalence of consensual contracts, it has become a legal principle that consent is the basis of contracts and non-consensual contracts are exceptions.

(2) Formal contracts: defined as contracts that are not completed merely by offer and acceptance but require specific formalities stipulated by law, such as writing the contract on official papers. The primary purpose of following formalities like writing is to safeguard the rights of the parties and alert them to the risks involved. Examples include marriage contracts, gifts, official mortgages, and exclusive rights in trust funds and financial and non-financial transactions.

(3) Real contracts: contracts that are only completed by the delivery of the object of the contract, and before delivery, the contract does not exist. Examples include leases for use and consumption, deposits, and pledges of possession. In these contracts, delivery is considered a pillar of the contract, and the contract is not concluded until the object of the contract is delivered (Rokhman, 2014).

b. Division based on subject matter:

(1) Named contracts: those specified by law with a particular name and have specific rules governing them due to their prevalence among people. They may pertain to ownership such as sales, exchange, loan, gift, reconciliation, partnership, or to benefit such as lease, use, or to work such as construction contracts, agency contracts, deposits, and guardianship. It also includes contracts of deception, insurance contracts, official mortgages, and pledges of possession.

(2) Unnamed contracts: those not designated by a specific name by law and do not have specific rules regulating them, and the laws applicable to other contracts are applied to them. This lack of specific regulations is due to their lesser prevalence. Examples include publishing and supply contracts, sales of goodwill, double rental contracts in trust funds, reconsideration contracts in trust funds, and other contracts.

(3) Simple contracts: single contracts that are not composed of different contracts like sales and leases.

(4) Mixed contracts: contracts that include more than one contract and blend multiple contracts into one, such as the contract between a hotel owner and a person dining there, which includes a lease contract for the hotel premises, sale for the food, and employment for the staff. In this mixed contract, the rules and laws of the contracts involved apply.

c. Division of Contracts based on Effect:

(1) Self-liquidating contract

Defined by Abdul Razaq Al-Sanhouri as a contract in which two parties agree, each having conflicting interests, with one becoming a creditor and the other a debtor. The connection between them is a conditional self-interest limited to them and does not extend to others. The purpose of creating such a contract is to achieve a temporary goal, and the contract is terminated upon achieving the goal. For example, in a sales contract, both the seller and the buyer have an interest, and the connection between them is based on this transaction, which ends with the transfer of ownership from the seller to the buyer (Hamwi & Aylward, 1999; Supriyadi, 2014).

(2) Regulated contractual agreement

A contract where both parties reach an organized agreement without conflicting interests, aiming towards a common goal. For example, a partnership contract where partners agree to establish a relationship for a common purpose without conflicting interests.

(3) Binding contract for both parties

A contract in which both parties commit to each other, making the contract bilateral or binding on both parties. For example, a sales contract binds both parties, requiring the seller to transfer ownership of the sold item and the buyer to transfer ownership of the price.

(4) Unilateral binding contract
Also known as a non-reciprocal contract, it creates an obligation for one party only. For instance, a loan contract where the borrower is obligated to return the borrowed item to the lender. Similarly, a gift contract creates an obligation for one party if given without compensation.

(5) Contract of exchange

If a contract involves mutual benefits and advantages for both parties, it is termed a contract of exchange. For example, a sale contract is a contract of exchange because the seller receives the price in exchange for transferring ownership to the buyer, and the buyer receives the item in exchange for transferring the price to the seller.

(6) Donation contract

A contract in which the donor does not receive anything in return for what they give, and the recipient does not give anything in return for what they receive. For example, a gift contract where the donor does not receive anything in return for the money given, and the recipient does not give anything in return for using the donated money (Fadel, 2008). Donation contracts are divided into two types; (a) Contracts of preference: In these contracts, the donor grants an advantage to the recipient without depleting any of their assets. For example, deposits, guarantees, agency contracts, interest-free loans, where the depositor does not receive any compensation for depositing, and the guarantor does not receive anything for guaranteeing the debt, (b) Gifts: In this type of donation contract, the donor’s wealth diminishes, such as a gift contract where the giver’s wealth decreases with the gift given to another person.

d. Division of Contracts based on Nature:

(1) Specified contract

A contract in which both parties can determine the completion time of the contract and the quantity exchanged, even if the exchanged items are unequal. In other words, it involves selling a specific item at a specific price, whether the price equals the value or not.

(2) Contingent contract

A contract in which both parties cannot determine the completion time or the quantity exchanged, and this can only be determined in the future based on an uncertain or unknown event, such as insurance contracts, bets, and gambling.

(3) Immediate contract

A contract whose effect is immediate at the time chosen by the contracting parties, such as a sale where the seller delivers the item immediately to the buyer, and the buyer pays the price immediately to the seller.

(4) Continuous contract

A contract that must be executed over a period of time, such as lease contracts, partnership contracts, and employment contracts. Sometimes, an immediate contract can turn into a continuous contract, such as contracting with a baker or restaurant owner for the supply of bread and food.

(5) Original contract

An independent contract not tied to another contract, such as sales and leases.

(6) Subsidiary contract

A dependent contract that is subordinate to a prior contract, such as suretyship and mortgages. Voidable Contract: A contract that is valid originally but becomes invalid due to some conditions.

(7) Void Contract

A contract that is inherently invalid and null, and both voidable and void contracts are invalid, while the suspended contract is valid but suspended by permission from the relevant authority.

The elements of a contract refer to its inherent components, without which the contract cannot be realized. There are four elements of a contract:
a. Formulation of the contract: This refers to what is expressed by both parties in the contract, indicating their mutual intentions to create the contract and their agreement. The intention can be expressed through speech, actions, gestures, or in writing. This is known as offer and acceptance in jurisprudence and as expression of intent in legal terminology. As we have seen in the definition of the contract in the legal sense, the contract usually occurs by the intention of both parties. However, there are exceptions when the contract is formed by the intention of one party. Therefore, according to the Hanafi school, it is permissible for the contract to be formed by the intention of one person in specific cases, such as when a person acts as a representative for both the seller and the buyer simultaneously. Similarly, in the context of marriage contracts, the Hanafi school allows various scenarios where one person acts as a representative for both parties (Ashker & Wilson, 2006).

b. Methods of offer and acceptance;
(1) Formation of the contract by speech
This is the natural and original means of expressing hidden intentions. It is commonly used in contracts due to its simplicity and strong indication. Any statement that can express agreement or disagreement may be used in contracts. Specific words or phrases are not required in contracts such as sale, mortgage, gift, or lease; any expression of intent suffices. However, in the marriage contract, the Hanafi and Maliki schools allow any phrase indicating consent, while the Shafi'i and Hanbali schools require specific terms such as marriage and wedlock and their derivatives.

(2) Formation of the contract by actions
The contract can be formed by actions performed by the contracting parties, known as conduct or performance in jurisprudence. There is a difference among jurists regarding the formation of contracts by conduct in financial transactions; (a) The Hanafi and Hanbali schools: Contracts can be formed by conduct in matters known to the public, whether the item is cheap or valuable. (b) The Maliki school and the fundamental principle of the Hanbali school: Contracts can be formed by action or conduct if their intent is clear and indicates consent, regardless of whether it is known to the public or not, except in the case of marriage, and (c) The Shafi'i, Shia, and Zahiri schools: Contracts cannot be formed by actions or conduct because they do not indicate consent, which is a hidden matter and cannot be known except through verbal expression. The exception is the marriage contract, which cannot be formed by conduct, especially concerning the dowry, as verbal expression is necessary due to the sanctity and seriousness of the marriage contract and its implications for the woman’s dignity, future, and distinction from adultery. Imam al-Shafi’i stated that divorce, annulment, and retraction are not valid except through verbal expression (Abbasi et al., 1989).

(3) Formation of the contract by gesture:
If a person is able to speak, the contract cannot be formed by gesture; verbal expression or writing is necessary. If a person is unable to speak, they may write; if they cannot write or have poor writing skills, their gesture is considered equivalent to verbal expression, and the contract is formed thereby. There is a legal maxim that states: Gestures for the mute are like speech.

Jurists have stipulated conditions for offer and acceptance, the fulfillment of which constitutes the formation of the contract, including; (a) Offer and acceptance must have clear indication: This means that offer and acceptance must be capable of expressing the intentions of the contracting parties, (b) Offer must correspond to acceptance, and (c) Acceptance must be connected to the offer, meaning both parties must be present, hear each other's words, and understand what each is saying. This is achieved through the meeting of minds in offer and acceptance, with neither party indicating reluctance, and the offeror not retracting their offer before the offeree accepts it.

c. The Contracting Parties
As we have previously learned, offer and acceptance are the pillars of a contract and cannot be envisaged without the presence of the contracting parties. People, in their eligibility for contracting, are divided into categories: some are not eligible for any contracts at all, some are eligible for certain
contracts, and some are eligible for all contracts. The Hanafi and Maliki schools have stipulated that the contracting party must be sane and discerning; therefore, the actions of a non-discerning child do not form a valid contract (Naqvi, 1978).

d. Subject Matter of the Contract
The subject matter of the contract refers to what the contract pertains to. It may be a tangible item, such as the thing being sold, gifted, or mortgaged, or sometimes it may be intangible, like a woman in a marriage contract. Occasionally, the subject matter may be a benefit, such as the thing being leased. Not everything can be the subject matter of a contract, and jurists have set conditions for the subject matter of the contract, including: (1) The subject matter must exist at the time of contracting; thus, contracting for something nonexistent, like selling crops before they appear, is invalid, (2) The thing being contracted must be lawful; this means that the wealth must be legitimate. If the wealth is not legitimate, the contract does not apply; for example, selling carcasses and blood is void because they are not legitimate, (3) The subject matter must be deliverable at the time of contracting; if the subject matter is not deliverable, the contract is not valid, (4) The subject matter must be known and specified for the contracting parties; otherwise, it may lead to disputes. Therefore, the Prophet Muhammad ﷺ prohibited the sale of ambiguous items and the sale of unknown items, and (5) The subject matter must be pure and not impure or contaminated. This is a condition set by the Hanafi school.

e. Object of the Contract
The object of the contract refers to one of its four components that must be present in every contract. It is the purpose for which the contract was instituted. The object of the contract is singular in each group of contracts. For example, in a sales contract, the object is the transfer of ownership from the buyer to the seller for compensation. In a lease, it is the granting of usufruct for compensation, and in a gift, it is the transfer of ownership of the gifted item (Choudhry, 1983).

Willful Intent in Contracts
As we have read before, a contract is the will of the parties involved. Therefore, willful intent is crucial for the formation of a contract. Willful intent can be divided into two types:

a. Internal Intent. This refers to the intention and purpose behind creating the contract.

b. External Intent. This consists of the expressions and formulations that manifest the internal intent to enter into the contract, or its equivalent actions, such as conduct. The most important aspect here is the consent and choice of the parties. If both parties intend to enter into the contract, then the contract is formed. If there is no internal intent, the contract is defective due to defects in consent or intent. Sometimes there may be external intent without internal intent, making the contract formal and defective due to defects in consent or intent (M. A. Khan, 1987). This can be seen in the following scenarios:

(1) State of intoxication, sleep, insanity, lack of discernment, or unconsciousness: In these situations, the contract has no effect because genuine intent is absent.

(2) Misunderstanding of the statement
Sometimes a person does not understand another person’s words or the language they are speaking. In such a case, the contract is not formed because the person did not understand the statement made.

(3) Educational or illustrative situations
Occasionally, certain words are used in classrooms to educate students about how contracts are made. Or, to understand the rest of the chapter, two students draw up a contract between them and use words that signify entering into a contract during a symbolic story. In these cases, the contract is not made because there is no intent to buy and sell or enter into a contract.

(4) Jesting, joking, or mocking
This refers to a person uttering words not intended to create a transaction but rather to jest, mock, or joke. Imam Shafi‘i stated that words spoken in jest or mockery are valid for
forming a contract, whether in sales, leases, marriage, or divorce, because what matters is
the external, not the internal intent and will. However, according to the Hanafi, Maliki, and
Hanbali schools, in sales and financial contracts, jesting words do not count, but in marriage,
divorce, revocation, and manumission contracts, jesting words are considered because the
Sharia explicitly treats them as such.

(5) Mistake

This refers to the occurrence of an action or event without intent. A mistaken utterance
has no effect according to the Hanbali, Maliki, and Shafi'i schools, and their evidence is the
hadith narrated by Ibn Abbas from the Prophet Muhammad ﷺ stating that Allah has
pardoned my nation for mistakes, forgetfulness, and coercion.

(6) Pretense or impersonation

Sometimes two people pretend to have entered into a contract, either to escape the
injustice of an oppressor or to cover up a person’s name. This pretense can take various
forms. For example, a person may fear an oppressor and pretends to sell to a third party to
escape the oppressor’s harm. Or, for the sake of fame and reputation, two people agree on
a dowry between them but announce a higher dowry for fame and reputation. Or, there is
a person who hides the agency and pretends to be the person acting for himself and his
personal interest. According to the Hanafi and Hanbali schools, this contract is void because
they did not intend to contract. However, according to the Shafi'i school, it is a valid and
concluded sale.

(7) Coercion

In this case, the person understands what he is saying but is not willing to say or do it.
There is no genuine intent, and therefore, according to the majority of scholars, the coerced
person’s words are not considered, and they have no effect on all contracts and transactions.
The Hanafi school states that the coerced person’s words and his financial contracts are
linked to the coerced person’s permission after the coercion is lifted, while divorce,
marrige, revocation, oath, and manumission contracts have an effect and are considered.

(8) Unlawful intent

This occurs when a person enters into a lawful contract for an unlawful purpose, such as
selling juice to someone who will use it to make alcohol or selling weapons during a time
of turmoil to those causing turmoil. Scholars differ on the ruling of such a contract. Imam
Shafi'i said: This contract is valid because all conditions and pillars are met, but the unlawful
intent is another matter that God will punish. The rest of the imams said the contract is
invalid because the intent was to enter into an unlawful contract.

Termination of Contracts

Contracts can come to an end either voluntarily or involuntarily. Voluntary termination sometimes
occurs through the will of one individual, known as termination, or it can happen through mutual
agreement of the parties involved, referred to as termination by mutual agreement. If termination is
involuntary, it may occur in temporary contracts such as leases, loans, and agency agreements, or in
absolute contracts like sales, mortgages, and marriages, which is termed termination by necessity.
Causes for involuntary termination may include the destruction of the subject matter, the death of one
of the contracting parties, or the forced dispossession of the contract subject, especially in lease
agreements where dispossession leads to termination. Other reasons may include the confirmation,
through clear evidence, that the sold item rightfully belongs to someone else, as acknowledged by the
buyer. Termination of a contract is defined as the dissolution of the contractual bond at the request of
one party, either due to the other party’s failure to fulfill their obligations or for other valid reasons (L.

Causes of Contract Invalidity
A contract is deemed invalid if it lacks the conditions necessary for its validity. The reasons that render a contract invalid according to the Hanafi school of thought, and void according to other schools of thought, include: (a) Ignorance (Jahala), (b) Coercion (Ikrah), (c) Deception (Gharar), (d) Harm (Dharr), (e) Invalid Conditions, and (f) Usury (Riba) (Kamali, 2000).

Contracts from the Perspective of Islamic Law and Afghanistan Civil Law

Afghan Civil Law is derived from Egyptian Civil Law, thus it does not differ significantly from Islamic jurisprudence. It addresses various issues related to contracts such as sales contracts, marriage contracts, gifts, endowments, and other contracts, along with their material provisions. For instance, in the fifth section discussing Family, it delves into marriage contracts and related matters. Then, it discusses endowment contracts under the title Ownership of Financial Rights, and in the second chapter under the title Legal Possession, it explores financial contracts.

As mentioned before, Afghanistan Civil Law resembles jurisprudential texts in researching contract issues and other matters. Therefore, Afghan Civil Law considers consent as one of the fundamental pillars of financial contracts and rejects any contracts made under coercion or without the consent of the contracting parties. Additionally, Afghan Civil Law examines issues such as agency in contracts, contractor competence, defects in consent in contracts, contract subject matter, contract conditions, invalid and void contracts, gratuitous contracts, and contractual options (condition option, determination option, right of refusal). It also addresses contract dissolution issues such as contract termination and discharge. In subsequent stages, it discusses provisions regarding intent in contracts and other contract-related issues.

Islamic Jurisprudential Rules regarding Contracts: (a) Observance of Contract and Conditions: It is necessary to fulfill the contract and its conditions to the best of one’s ability, (b) No Harm or Reciprocal Harm: Harm must be avoided to the extent possible. Harm is to be removed, and harm does not remove like. Private harm is borne to prevent public harm. Preventing harm takes precedence over bringing benefits, (c) Custom is Considered Binding: Custom is considered binding if it is established or predominant. What is known in custom is considered a condition, and what is known among traders is considered a condition among them. Determination by custom is like determination by text, (d) Intent of Contracts Lies in their Objectives and Meanings, not in the Words: Contracts are interpreted based on their purposes and meanings, not merely on their words or structures, (e) Certainty is not Removed by Doubt: Certainty is not removed by doubt. The original state remains as it is. The presumption is innocence. The presumption regarding things is permissibility, (f) The Original State of Contracts and Conditions is Permissibility and Validity: The default state in contracts and conditions is permissibility and validity, (g) Indication does not Override Explicit Declaration: Indication does not override explicit declaration, (h) Excessive Concealment Invalidates Contracts: Excessive concealment invalidates contracts without minimal disclosure, and (i) What is Forgiven in Donations is not Forgiven in Transactions: Forgiveness is granted in donations for ignorance and deceit, but not in transactions.

CONCLUSION

In conclusion, contracts are highly significant in Islamic law, which is why all jurists across different schools of thought have extensively discussed them. They have established rules and principles regarding various types of contracts and have dedicated specific chapters in their books to discuss contracts and their regulations. Consent and satisfaction, expressed through affirmation and acceptance, are crucial in Islamic contractual agreements and are considered fundamental pillars of contracts. Parties involved in contracts must not deceive each other or attempt to deceive one another. If one party tries to deceive or coerce the other, the contract is considered invalid. Additionally, it is not permissible for the parties to the contract to stipulate conditions that contradict the essence of the contract or contravene Islamic law.
REFERENCES


