

THE LEGITIMACY OF ADHESION CONTRACT IN THE KINGDOM OF SAUDI ARABIA

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ABSTRACT

The use of adhesion contract has been growing in the Kingdom of Saudi Arabia. Providers and sellers prefer such a method of legal agreement since it protect their interest and facilitate the process of legal commitment as it saves the time of negotiation. However, injustice and exploitation may result from such contract since most of the essential goods and services are offered through the adhesion contract. On the hand, there has been an ambiguity in regard of the legality of such a contract in the Kingdom. Saudi Arabia lacks laws that govern adhesion contract which may result in in consistency of judicial ruling. The paper defines such a contract and clarifies and abolish the ambiguity. It offers a detailed explanation of adhesion contract and its conformity with Islamic Principles. It, also, sheds a light on legal issues related to adhesion contract and provides several solutions.

Key Words: Law, Civil Law, Adhesion Contract, Exploiting Contract, Sharia Law, Saudi Legal System, Monopoly.

INTRODUCTION

The legality of Adhesion Contracts in Saudi Arabia

The party of each contract has an equivalent legal status allowing them to negotiate omit any terms they perceive unreasonable. However, this is might not be always the case. In adhesion contracts the legal statute is not equivalent between the party. One party draft the terms and the other has accept without any negotiation. This form of contract has been used for centuries. It was initial formalized by the French civil law. They were initially introduced to the American legal system through a Harvard Law Review article in 1919 which assisted the courts to comprehend situation where such contracts should be enforced and where they should not.

This type of contact is the method that that most service providers follow. For instance, internet services. The provider drafts the terms, and the customer lacks the right to negotiate (Alkhen, 2022). He has no option but to sign especially if he essentially needs the service. Injustice may result of such contract as the terms may exploit consumers and waive providers liabilities. This raises a legal concern about the legitimacy of such contract as it is extremely difficult for consumers to reject excessively unjust terms due to the urge of having the goods and services (Abdulkaream, 2015). This paper offers an overview about adhesion contract and its legitimacy in accordance with the legal system of Saudi Arabia.

Definition and nature of adhesion contract

Adhesion contracts are described as the contracts where only one contracting party reserve the right to dictate the contractual terms and conditions. The other party may not negotiate but only accept or reject the contractual terms. Mr. Abul Kalam Azad, an advocate at the Supreme Court in Bangladesh, states that “usually this type of contracting is usually

fulfilled, when there is a discrepancy in the bargaining power of the two contracted parties; as one party enjoys the greater power, while the other party has a weaker bargaining power. Hence, the first party solely gets to set the terms and conditions of the contract, while the second party gets to choose either to accept all of these terms (hence concluding the contract), or to reject them (hence failing to conclude the contract)”.

In other words, the contract is independently drafted and presented by the superior bargaining party to consumers of goods and services (Legal Information Institute, 2021). This indicate that adhesion contract has the following features: Attachment to goods and utilities which are necessary to the actual Consumers, Legal Monopoly, or control of the owner over these goods and utilities. Presented to the people with united terms continuously without a specific timeline. The terms are usually printed and detailed with no possibility to negotiate (Hammad, 2004).

Adhesion contract commonly used in various services that are necessary and most of the time are controlled by one provider such as A) Contracts of gas, electricity, mail, water, and telephone if they are controlled by an owner who set the terms without negotiation. B) Transportation contracts whether it is by a train, car airplane etc. c) Insurance contracts if they are essential and limited between the state and its sectors. D) Contracts with hospitals that have monopoly over important equipment and significant surgery that patients need. C) Traffic contracts in highways sold by the state to a company that the people need and with the absence of alternative ways (Zubidah, 2014).

Legitimacy of Adhesion contract

Legitimacy of adhesion contract has been debated. Some scholars believes that they are valid other may disagree. Public law intellectuals have argued that adhesion contract may not be considered as contract due to the lack of the freedom to negotiation between the party. The consumer submits to the terms of the providers which lack of mutual will between the party (Hammad, 2004). However, this argument has been rejected by the intellectual of civil law. They assert that the adhesion contract is define as a contract regardless of the facts that the party are not equivalent in their legal statutes and the contract may involve abusive unjust terms. They believe that the consumers engaged and sign with their consent and the unjust terms can be altered or removed by the court.

Attorney Steven Peck states that “adhesion contract undeniably fulfill an important role of promoting economic efficiency (Banking Consumer Protection Principles, 2014). Standard form contracting reduces transaction costs substantially by precluding the need for buyers and sellers of goods and services to negotiate the many details of a sale contract each time the product is sold.” He does not deny that there is possibility for incompetent, and even unreasonable, terms for the consumer to accept (Peck, 2001). He believes that these terms may not be construed as unjust when it grants the seller the opportunity to avoid liability.

These terms can limit or foreclose a party’s right to move disputes to the courts because it most likely drafted in mandatory arbitration clauses and forum selection clauses. These terms may limit the amount that can be recovered and may obligate a party to pay a specific amount because it liquidated damages clauses. The terms may place the risk of a negative outcome, such as defective manufacturing, on the purchaser who may not be able to take precautions which might be unjust. However, Counsel Peck believes that there are several reasons for such terms to be accepted:

- 1) Standard form contracts are rarely read
The potential buyers discovering any useful information from analyzing such terms is

respectively low because these terms are most of the times printed and wrote in complex legal language which buyers may observe irrelevant.

- 2) Access to the full terms may be difficult or impossible before acceptance
The contract documentations are usually signed in its abridged version and the purchaser is notified that the remaining documentation in another location or in some situation, such as software licensing, he is required to agree and signed before he can access the entire terms. This reduces the possibility for the purchaser to read the entire terms.
- 3) Boilerplate terms are not salient
The price and the quality are the most important terms to purchasers which are usually comprehended prior the signature of adhesion contract, and other terms involving events, which most likely won't occur. For instance, legal rules or statutes are most likely not important to the purchasers which decrease their probability of being red by purchasers.
- 4) There May Be Social Pressure to Sign
This may occur in places such as car rental at the airport, where there is a pressure to sign immediately. If the purchaser negotiates the price and salesman concede, it may be seen as a gift which socially compels the purchaser to cooperate and complete the transaction.
- 5) Adhesion contract may exploit unequal power relations
If the good is vital or very crucial for the consumer to buy (such as an essential medical item or rental property) then the purchaser may not have a choice but to consent and agree to the terms.

Legal researcher Christopher M. Kaiser states “Generally, standardized form contracts are considered valid without some showing of substantive (and substantial) unfairness to the adhering party. However, courts have recognized that, at least under some circumstances, contracts of adhesion warrant closer judicial scrutiny than contracts more closely conforming to the traditional model of mutual assent and bargaining over terms. For example, the Iowa Supreme Court held in 1975 that, for cases dealing with form insurance policies, legal rules designed to deal with more traditional contracts could not simply be applied without any further analysis because the rules broke down in the context of "ready-made applications and... ready-made policies carefully concocted to conserve the interests of the company” (Kaiser, 2005).

Kaiser argues that in an insurance case, the Supreme Court of New Jersey pointed out that courts have increasingly been sensitive on individuals who deal with those who gained an undue advantage because they acquired practical or monopolistic control of the business transaction. He emphasizes that the United States Supreme Court, has as well involved in significant interpretation of form contracts dealing with a freely negotiated instrument. He points that in the case of *Carnival Cruise Lines, Inc. v. Shute*, the Court consider the validity of the contract of cruise passenger ticket. The Supreme Court reject the lower court conclusion that non-negotiated forum selection clauses in form contracts could never be enforceable.

The mere presence of the agreement upon the contract was not sufficient to find the clause valid. The Supreme Court involved in scrutiny based on factors to conclude whether the forum selection clause was legally binding. The factors behind enforcing the adhesion contract were (1) a rightful interest for the cruise line to limiting the possibilities, in which it can be sued, (2) a benefit for both parties in decreasing the cost of litigation by dispelling any misunderstanding about where suit may be filed, and (3) the fact that lower litigation costs were granted to passengers in the form of lower ticket prices. Kaiser articulates that the Supreme Court appears to be intent to balancing the equities, rather than applying rules of contract law in cases in which adhesion contracts are at dispute. The contract of the Cruz Ticket was enforced as the terms rational and both parties were granted some benefit.

Nevertheless, the enforcement of the contract was not as vital as the fact that the Court confirming the legality of form contracts.

The denial of considering this type of agreement as a contract by other court just because it lacks equal legal status and include some unjust terms may not be convincing. The injustice which may result from such an agreement can be solved and the consumer can be legally protected (Zubidah, 2014). There are mainly two method that are followed to protect consumers:

- 1- Economic solution: the consumers resist the injustice.
- 2- Legislative mothed: the state intervenes to organize adhesion contract.

The legal system in the Kingdom lacks laws that organize adhesion contracts. In the absence of certain rules that govern such contract, the judge would be refer to Sharia law, which is the main source of legislation, to resolve the dispute. In accordance with most legal system, contracts are the law which established by the party “Principle of Pacta Sunt Servanda”. This means that when the agreement is signed, the contract must be kept and only the party has the right to alter. However, this is not the always the case according to Sharia. This principle is limited under Sharia and only apply if the contract does not conflict with sharia principles (Agalh, 2009).

According to Sharia adhesion contract are divided into two categories:

- 1- Adhesion contract with the presence of fair price and absence of unjust term. This type of adhesion contract is lawful and comply with sharia. Therefore, the judge cannot alter nor cancel. This is because the seller who has a monopoly over the products is selling with fair price or with price that is slightly unjust. The seller in such a contract is practicing his right without harming others (Hammad, 2004).
- 2- Adhesion contract that includes unjust terms and unfair price. This category of adhesion contract does not comply with the principle of sharia due to the exploitation and harm on the public (Nazyh, 2004). Therefore, the state and the judicial system are required to intervene and force the fair price and alter the unjust terms. This intervention is driven form Sharia principles such as “the public interest is a priority over privet interest” and “the privet harm should be tolerated to prohibit the public harm” etc.

PROTECTION OF CONSUMERS IN SAUDI ARABIA

When a judge in the Saudi systems encounter a dispute that involve the second category of adhesion contracts, he is required to force a fair price and abolish the unjust terms. He can refer to many doctrines that are established by sharia scholar and driven from sharia principle which protects consumers and the public interest:

- a. Pricing on the monopolist: this refers to the case when the seller obtains a monopoly over a product and sell with unjust price that exploit consumers. According to the principle the state and the judicial system are required to impose the fair prices especially when it involves a product or a service that is a nasality to the need of the public. The sharia scholar establishes this doctrine based on the hadith of the Prophet Mohamed peace be upon him “There should be neither harming nor reciprocating harm”(Majah, 2012).
- b. Public interest is prioritized over privet interest: When there is a contradiction between privet interest and a public interest, the protection of the public is prioritized. To illustrate, in the case of the second category of adhesion contract, the seller interest is obtaining more profits through the monopoly and unfair price disregard the exploitation of public. The public interest on the other hand, is protecting the community against such exploitation to maintain affordability and fairness of the prices. The two interests are contradictory to each other: however, Sharia according to this doctrine prioritize the interest of the public. This is because

the harm which affect most individual in the community outweighed the benefit the seller obtains. Islamic scholar Extrapolated this doctrine from many hadiths of the prophet peace be upon him such “...let not a town-dweller sell for a desert-dweller” (Rhmani, 2019). The hadith prohibits the locals from selling behalf of the Bedouins which benefits the public interest (Jamal, 2019). The Bedouins are more likely to sell in cheaper prices because they are used to cheaper prices in the dessert unlike those who lives in the city (Ibn Baz, 2022). Therefore, to ensure that the public have a lower price, the Prophet prohibit the urban to handle the selling on behalf of the Bedouins. The hadith demonstrate that public interest of the community of finding goods in cheaper prices are prioritize over the privet interest of the Bedouins of having the urban (who would sell in higher prices) handing the sale behalf of them. This hadith is applicable in the case of adhesion contract where the judge is required to prioritize the public interest by adjusting the prices to be fair and abolishing the unjust terms to inhibit the exploitation of the community.

- c. Forced sale: - this doctrine refers to the situation when a person is forced to buy a service or a product even though it is priced unfairly (Hammad, 2004). This occur when the products are vital, and the consumer lack the choice but to buy. Islamic scholars have discussed whether the contract in that case is valid. Some argue it is because it meets all requirement, and the buyer is not forced because he has the ability to reuse. Other argues that the contract is not valid. The buyer signed the contract because the products is vital but not because he accept the price.

These doctrines help filling the gab that the lack of adhesion contract created. However, more enforceable policies and regulation are necessary to organize adhesion contract because the judge in Saudi Arabia has an overbroad scope of power to decide whether this doctrine should be applied or not. In fact, Board of Grievance¹ has never abolished any of the adhesion contract in the field of engineering (Abdulkaream, 2015). This might be the case in different field as well. Regulation and policies that limit the judicial authority in deciding fairness of adhesion contract are vital to protect consumer and ensure fairness in the market.

Even though that adhesion contract in the Kingdom of Saudi Arabia is not regulated, there are several policies that protect consumers. For instance, Insurance Consumer Protection Principle. This policy is issued by The Saudi Arabian Monetary Agency (SAMA) to protect consumer against insurance companies. Article 4 of the policy provide 12 principles that insurance companies must abide by such as fair and equitable treatment where Companies should deal fairly and honestly with consumers and beneficiaries at all stages of their relationship. Also, disclosure and transparency which encourage that companies to clarify rights, responsibilities and duties of each party to insurance relationship along with details of premiums, commissions, types of risks and the mechanism of ending such relationship or cancellation of an insurance policy, with all arising effects whatsoever on the insured.

It is vivid that these principles are vital to limit the exploitation consumers; however, they are not regulating adhesion contract itself but more the relation after signing the contract. In other words, the policy does not solve the issue but minimize it. Moreover, these polices are to govern certain service but not the practice itself. Furthermore, policies are at the bottom of the legal hierarchy after the constitution and the law (Zubidah, 2014). To illustrate more, the legislator in the Kingdom should promulgate a law that govern adhesion contract to limit the judicial power of deciding fairness and to inhibit seller and providers from using their monopoly to exploiting consumers.

Recommendation to Solve the Issue of Injustice Resulted by the Adhesion Contracts

- 1- Promulgation of Laws that regulate and govern adhesion contract to ensure equality between the parties and prevent exploitation.
- 2- Effectively scrutinizing of adhesion contract by the government to ensure reasonable terms and prevent Marchant exploiting consumers.
- 3- Legal experts' cooperation to come out of unified forms adhesion contract that includes fair reasonable terms which good sellers and service providers can adopt for vital goods and services such as water, gas and electricity.
- 4- Use the experience of other countries that have successfully minimize or even solve the unfairness resulted from adhesion contract.
- 5- Deterring penalties to those who use adhesion contract to exploit consumers especially if it involves a vital services and products.
- 6- Educating judges on the issue.

CONCLUSION

Adhesion contract can facilitate the process of purchasing goods and services and in various situation can offer countless benefit for both parties such as lower litigation cost. However, Adhesion contract may result in injustice and be unfair in exploiting consumers. The Kingdom of Saudi Arabia lacks specific laws and regulation that govern and organize adhesion contract. This may result in different judicial outcomes of the same legal disputes. Therefore, the Kingdom encouraged to legislate cerine law and regulation that govern these contracts to ensure fairness and justice in the Saudi market and inhabit exploiting practices toward consumers. The paper shed a light on the unfairness resulted from adhesion contract, but more research is needed to examine in depth different angels of the issue such as the economic effect of Adhesion contracts and extensively study the judicial ambiguity which may result from adhesion contract legal disputes in the Kingdom.

END NOTES

¹Administrative judicial system.

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