

## The Transaction E-Commerce in Islamic/Sharia Law

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**Abstract.** *This research aims to know e-commerce systems, sellers and buyers do not meet in person, but meet in cyberspace with the goods to be transacted usually displayed in the catalog. This kind of transaction is actually quite profitable for both buyers and sellers. Although e-commerce has spread throughout the world, there are still many Muslims who do not know the status of their online buying and selling transactions from the perspective of Islamic law. The approach method used in this research is normative juridical. The e-commerce transactions as a new business trend in this modern economic era, are not an economic activity that is prohibited by Islamic law. The conclusion, the benefit of consumers, it can be seen in Act No. 8 of 1999 concerning Consumer Protection by providing administrative sanctions against the seller/business actor if he commits certain actions that are not in accordance with the provisions stipulated in the Act*

*Keywords: Buy; E-Commerce; Online; Sell.*

### 1. INTRODUCTION

In a sale and purchase that gives rise to an engagement, there is a relationship between the parties, namely one party has the right to achievement and the other party is obliged to fulfill the achievement, and vice versa.<sup>1</sup> In the concept of buying and selling e-commerce, it creates an engagement between the parties to provide an achievement. The implication of the engagement is the emergence of rights and obligations that must be fulfilled by the parties involved.<sup>2</sup>

A business, both production, distribution and marketing activities is considered more effective with the help of technology. Marketing an item will be easier in conveying information via the internet. So that in the digital era, every organization, company or institution is expected to be able to carry out their activities by optimizing digital technology.<sup>3</sup> In the sense that the use of technology brings major changes in various aspects of human life, not least in the business economy.<sup>4</sup>

<sup>1</sup> Elsi Kartika Sari dan Advendi Simanunsong, *Hukum dalam Ekonomi*, PT Gramedia Widiasarana Indonesia, Jakarta, 2008, p. 28

<sup>2</sup> Azhar Muttaqin, "Transaksi E-Commerce Dalam Tinjauan Hukum Jual Beli Islam," *Ulumuddin Journal Islamic Legal Studies*, Vol 7 No. 1, 2011, p. 459-467.

<sup>3</sup> Kumar, B., Sharma, A., Vatavwala, S., & Kumar, P. Digital mediation in business-to-business marketing: A bibliometric analysis. *Industrial Marketing Management*, 85, 2020, p. 126-140

<sup>4</sup> Fathur Rahman, Praktik Affiliate Marketing pada Platform E-commerce dalam Tinjauan Hukum Ekonomi Syariah, *Jurnal Ekonomi dan Hukum Islam*, Volume 6, No. 1, April 2022, p. 24-38

Regarding e-commerce, Budi Raharjo, who is an Indonesian internet expert, stated that the potential and prospects for developing e-commerce in Indonesia are quite promising. In fact, transactions for goods and services are increasingly mushrooming along with more and more internet users who use social media (instagram, facebook, and twitter) to make transactions.<sup>5</sup>

E-commerce is divided into two segments, namely business to business e-commerce (trade between business actors) and business to consumer e-commerce (trade between business actors and consumers).<sup>6</sup>

In e-commerce systems, sellers and buyers do not meet in person, but meet in cyberspace with the goods to be transacted usually displayed in the catalog. This kind of transaction is actually quite profitable for both buyers and sellers. A buyer can get his dream item just by using their smartphone, order, transaction, goods are delivered. On the seller's side, it is also profitable, a seller simply opens an online store and waits for an order from a buyer, processes the goods, and receives the proceeds from the sale of the goods. However, in *muamalah* (Islamic trade law), the process of buying and selling transactions is also regulated. Buying and selling transactions in general regulated in Islam must involve a physical meeting between the seller and the buyer, the goods to be transacted are also concrete, whereas in e-commerce transactions this does not apply.<sup>7</sup>

E-commerce is a sale-purchase agreement model with different characteristics and accentuations from the usual buying and selling transaction model, especially with a reach that is not only local but also global. Direct adaptation of the provisions of ordinary buying and selling will be inaccurate and not in accordance with the e-commerce context. So, e-commerce does not rule out the possibility of problems with how to regulate trade transactions. As in the concept of trade, e-commerce creates an engagement between the parties to provide a satisfactory result. The implication of the engagement is the emergence of rights and obligations that must be fulfilled by the parties involved.<sup>8</sup>

Although e-commerce has spread throughout the world, there are still many Muslims who do not know the status of their online buying and selling transactions from the perspective of Islamic law.<sup>9</sup>

E-commerce has changed the classical paradigm by growing models of interaction between producers and consumers in the virtual world. The trading system used in e-commerce is designed to sign electronically. This electronic commerce is designed from purchase, inspection and delivery. Therefore, the availability of true and accurate information about consumers and companies in e-commerce is an absolute prerequisite. Problems due to trade liberalization come to the fore in the form of complaints/complaints from consumers for the goods or services they consume.<sup>10</sup>

Trade or commerce is one part of Islam, even Rasulullah SAW was a successful trader, to carry out their trading activities to countries far from their homeland, namely the

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<sup>5</sup> Azhar Muttaqin, *Transaksi E-Commerce Op Cit.* p. 460

<sup>6</sup> *Ibid*

<sup>7</sup> Annisa Dwi Kurniawati, *Transaksi E-Commerce Dalam Perspektif Islam, el Barka: Journal of Islamic Economic and Business*, Volume 02, No. 01 January – June 2019, p. 90-114

<sup>8</sup> Ratu Humaemah, *Analisa Hukum Islam Terhadap Masalah Perlindungan Konsumen Yang Terjadi Atas Jual Beli E-Commerce, Jurnal Islamiconomic* Vol.6 No.1 January – June 2015, p. 43-69

<sup>9</sup> Annisa Dwi Kurniawati, *Transaksi E-Commerce Op Cit.*, p. 96

<sup>10</sup> Ummal Khoiriyah, *E-Commerce Dalam Hukum Islam: Studi Analisis Atas Pandangan Abdul Halim Barkatullah Dan Teguh Prasetyo, Istidlal* Volume 2, No. 2, October 2018, p. 120-136

countries of Syam and Syria.<sup>11</sup> Not only business has reached various countries, it turns out that the spread of Islam to various parts of the world is also through business activities.<sup>12</sup>

Aspects of production and distribution are essentially halal or permissible, Islam also recognizes confidentiality and integrity as important topics for securing transactions carried out in business. From here, there are very many concerns about the transaction modes offered by internet-based e-commerce, which allows the system to have data management, especially trading data and our activities can be tracked easily.<sup>13</sup>

Based on the description of the background, the problems that will be discussed in this paper are how to buy and sell E-Commerce in sharia law and how to protect consumers of E-Commerce from the perspective of Islamic law.

## 2. RESEARCH METHODS

The approach method used in this research was normative juridical or library law research or doctrinal legal research, namely legal research by examining library materials and secondary materials.<sup>14</sup> According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced.<sup>15</sup>

## 3. RESULTS AND DISCUSSION

### 3.1. Transaction E-Commerce in Sharia Law

E-Commerce buying and selling transactions are the same as buying and selling transactions in general, and carried out by related parties, but in this buying and selling transaction they do not meet directly but are connected via the internet. Basically the parties in buying and selling electronically each have rights and obligations. The seller/business actor is a party that offers products through the internet, therefore, a seller is obliged to provide true and honest information on the products he offers to buyers or consumers. In addition, the seller must also offer products that are permitted by law, meaning that the goods offered are not goods that are contrary to laws and regulations, are not damaged or defective, so that the goods offered are goods that are worthy of being traded. Thus, the sale and purchase transaction does not cause any loss to anyone who is the buyer.

Buying and selling electronically in e-commerce activities creates a new economic system in which it connects producers, sellers, and consumers through a technology that has never been done before. When viewed from the operational system, e-commerce according to contemporary jurisprudence is a tool, media, technical method or means (*wasilah*) which in sharia principles are flexible, dynamic, and variable. This includes *umurid dunya* (worldly technical problems) while in the corridor of sharia for Muslims to master and take advantage of the times for mutual prosperity.<sup>16</sup>

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<sup>11</sup> P3EI, (2011). *Ekonomi Islam*, Rajawali Press, Jakarta, p. 97

<sup>12</sup> Hidayat, Mohamad, *The Sharia Economic, Pengantar Ekonomi Syariah*, Jakarta: Zikrul Hakim, 2010. p. 51

<sup>13</sup> Muhammad Nizar, Pendekatan Komprehensif E-Commerce Prespektif Syariah, *Perisai*, Vol 2 (1), April 2018, p. 75-86

<sup>14</sup> Soerjono Soekanto & Sri Mamudji, (2003), *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, PT. Raja Grafindo Persada, Jakarta, p. 13.

<sup>15</sup> Peter Mahmud Marzuki, (2010), *Penelitian Hukum*, Kencana Prenada, Jakarta, p. 35.

<sup>16</sup> Ardiana Hidayah, Jual Beli E-Commerce Dalam Perspektif Hukum Islam, *Jurnal FH Unpal*, Volume 17 No. 1. Bulan January 2019, p. 84-93

In fact, theoretically there is no specific discussion regarding the existence of Islamic e-commerce or sharia online trading, because online trading on the internet is basically a free space that arises from the spirit of efficiency and the spirit of no barriers.<sup>17</sup>

The principle of Islamic law which refers to the Qur'an and Hadith, its implementation allows it to be carried out in accordance with the demands of the times that are always dynamic by means of interpretation, *ijtihad*, both textual and contextual. Clear reason and an intelligent conscience are needed in order to understand the truth of the verses of the Qur'an and Hadith for the benefit of mankind. This is in line with Yusuf Qordhawi's statement "Between science and religion are not contradictory, but have a relationship, science supports religion and religion makes science a blessing, because the truth will not conflict with the truth". Referring to this thought, it means that e-commerce transactions as a new business trend in this modern economic era, are not an economic activity that is prohibited by Islamic law, even though this transaction model is a product of Western thought.<sup>18</sup>

According to the rules of *fiqh* as stated by Wahbah Zuhaili, the basic principle in *muamalah* transactions and the requirements associated with it is permissible as long as it is not prohibited by sharia or contrary to the arguments. Therefore, the law of transactions using e-commerce media is permissible based on the principle of *maslahah* because of human needs with these technological advances by trying to improve and avoid technical weaknesses and deviations from sharia. Because it cannot be denied that human-made mechanisms are not free from weaknesses and as long as they are relatively safe and supported by security measures, they can be tolerated based on the principles of sharia tolerance in *muamalah* and *fiqh* rules: *adh-dhararu yuzal mudarat* must be eliminated. And the sale and purchase must be legal according to the terms and pillars of Islamic sharia, otherwise a damaged or canceled sale and purchase will prevent ownership, because the prohibition means that it is not permissible according to the *syara'* so something illegal (*ghairu al-masyru*) cannot be owned by buyer.<sup>19</sup>

Based on the guidance of Islamic teachings, every effort must be made according to the applicable legal provisions so that no group or party is harmed. For this reason, business or business activities must not deviate from Islamic law or general provisions that apply in a country. Every effort that harms someone or violates the law will be subject to sanctions, while in Islam the transaction is considered void (illegitimate).<sup>20</sup>

### **3.2. Consumer Protection E-Commerce Islamic law perspective**

Consumer protection in Islamic law usually includes property, rights and ownership whether it is carried out with a prior transaction or not. A consumer in Islamic economics is a person or group of people who use an asset, either in the form of goods or services because they have the right to use it by following the provisions contained in the Qur'an and As-Sunnah. To protect consumers according to Sharia, it is reflected in the principles of *muamalah*, namely avoiding *gharar* so that the goods we

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<sup>17</sup> Misbahul Ulum, Prinsip-Prinsip Jual Beli Online Dalam Islam Dan Penerapannya Pada E-Commerce Islam Di Indonesia, *Jurnal Dinamika Ekonomi dan Bisnis*, 17 (01) March 2020, p. 49-64

<sup>18</sup> Triana Sofiani, Transaksi E-Commerce: Perspektif Hukum Islam, *Jurnal Hukum Islam IAIN Pekalongan*, Vol. 9 No. 1, 2008, p. 1-19

<sup>19</sup> Ardiana Hidayah, *Jual Beli E-Commerce Dalam Op Cit...* p. 91

<sup>20</sup> *Ibid*

buy are far from fraudulent sellers, in transactions carried out as much as possible must be able to avoid elements of gambling, usury, and coercion.<sup>21</sup>

Buying and selling transactions, even though they are carried out online, based on the ITE Law and PP PSTE are still recognized as accountable electronic transactions. The Electronic Contract itself according to Article 48 paragraph (3) of PP PSTE must at least contain the following matters; identity data of the parties; objects and specifications; Electronic Transaction requirements; prices and fees; procedures in the event of cancellation by the parties; provisions that give the injured party the right to be able to return the goods and/or request a replacement of the product if there is a hidden defect; and the choice of law for the settlement of Electronic Transactions.<sup>22</sup>

More explicitly, Article 8 of the UUPK prohibits business actors from trading goods/services that are not in accordance with the promises stated in the label, etiquette, description, advertisement or promotion of the sale of the said goods and/or services. Based on the article, the discrepancy between the specifications of the goods you receive with the goods listed in the advertisement/photo of the goods offer is a form of violation/prohibition for business actors in trading goods. Then the consumer according to Article 4 letter h of the UUPK is entitled to compensation, compensation and/or replacement if the goods and/or services received are not in accordance with the agreement or not as they should be. Meanwhile, the business actor himself, in accordance with Article 7 letter g of the PK Law, is obliged to provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement. If the business actor does not carry out his obligations, the business actor can be punished according to Article 62 of the UUPK.<sup>23</sup>

Consumer protection in e-commerce contracts is in accordance with these regulations, in accordance with Islamic law contracts which provide freedom in buying and selling agreements that adhere to willingness and do not harm either party.

Consumer protection regarding the losses suffered by consumers, for example the products they receive do not match what they bought or experience defects and even the seller does not send the order. So in Islamic law there is a *khiyar* right, this is to avoid losses on both sides. If one of them is detrimental, then that person must be held accountable for his actions, this has been regulated in Article 4 of the Law on Consumer Protection regarding consumer rights.

For the benefit of consumers, it can be seen in Act No. 8 of 1999 concerning Consumer Protection by providing administrative sanctions against the seller/business actor if he commits certain actions that are not in accordance with the provisions stipulated in the Act. The punishment that can be given to business actors who violate the rules is imprisonment and a maximum fine of IDR 2,000,000,000.00 (two billion rupiah). In Islamic law the government's responsibility to protect consumers is assigned to the *Al-Hisbah* Institute. All regulations have been mentioned for consumer protection. However, because this law acts as a protector on a national scale, consumer protection in online buying and selling transactions has not actually been accommodated as a whole.<sup>24</sup>

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<sup>21</sup> Elisa Siti Widyastuti, dkk, Perlindungan Konsumen dalam Transaksi e-Commerce: suatu Perspektif Hukum Islam, *Milkiyah Jurnal Hukum Ekonomi Syariah*, Vol. 1, No. 2, August 2022, p. 43-50

<sup>22</sup> Cindy Aulia Khotimah, Perlindungan Hukum Bagi Konsumen Dalam Transaksi Jual Beli-Online (E-Commerce), *Business Law Review*. Vol 1, 2016, p. 14-21

<sup>23</sup> *Ibid*

<sup>24</sup> Cindy Aulia Khotimah, *Perlindungan Hukum Op Cit*. p. 14-21

In online buying and selling transactions, what is of concern cannot be separated from the object being transacted. In terms of buying and selling objects, Islam has prohibited sellers or business actors from selling goods or services that are contrary to sharia, such as buying and selling alcohol, pigs, carcasses, and so on. Islam places great emphasis on doing business in good faith, as exemplified by the Prophet Muhammad.<sup>25</sup>

UUPK has emphasized the principle of balance between business actors and consumers. Likewise with Islamic law. The principle of balance is intended to provide a balance between business actors and consumers. However, in online buying and selling transactions, there are often violations committed by business actors, such as unclear information about the products or goods sold by business actors, both buying and selling directly or via online. So that consumers feel disadvantaged because the goods purchased are not in accordance with what is advertised through print and electronic media. This of course violates the principle of balance stated in the UUPK especially by Islamic law.<sup>26</sup>

#### 4. CONCLUSION

The law of transactions using e-commerce media is permissible based on the principle of *maslahah* because of human needs with this technological advancement by trying to improve and avoid technical weaknesses and deviations from sharia. Because it cannot be denied that human-made mechanisms are not free from weaknesses and as long as they are relatively safe and supported by security measures, they can be tolerated based on the principles of sharia tolerance in *muamalah* and *fiqh* rules. The consumer protection in e-commerce contracts in accordance with Act No. 8 of 1999 concerning Consumer Protection, in accordance with Islamic law contracts that provide freedom in buying and selling agreements that adhere to willingness and do not harm either party.

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<sup>25</sup> Zainal Fanan, Perlindungan Hukum Terhadap Hak Konsumen E-Commers Dalam Perspektif Hukum Islam, At-Tahtdzib : Jurnal Studi Islam dan Mu'amalah Volume 8 No. 2 Tahun 2020, p. 131-155

<sup>26</sup> Ibid

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