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Review of Fiqh Muamalah on Online Transactions in Digital Era

Hidayatullah[1], Buysro[2], Ismail[3]

[123] *State Islamic University Sjech M. Djamil Djambek, Bukittinggi, Indonesia*

Abstract. The digital era, commonly referred to as 4.0, signifies a transition towards digitization in various aspects of life. One notable impact of this digitization is observed in the realm of transactions, particularly in commercial transactions (muamalah). This is especially significant amid the outbreak of the coronavirus (Covid-19) in Indonesia, where the government has imposed stay-at-home measures as a means of self-protection. Consequently, there has been a surge in online buying and selling activities through platforms such as Shopee, Tokopedia, Lazada, among others. Thus, there is a need for legal efforts to determine the compliance of these transactions with the principles of muamalah jurisprudence (fiqh muamalah). This research employs a legal research method with qualitative analysis, utilizing a normative data approach. The findings indicate that online transactions are in accordance with fiqh muamalah, with the contractual agreement being the salam contract. This is because buyers provide specifications of the intended product, while sellers offer detailed descriptions of the product itself.

Keywords: Fiqih Muamalah; online transactions.

1. Introduction

Entering the era of technology has profoundly influenced various fields, including muamalah. Muamalah entails interpersonal relationships involving actions and transactions that result in the transfer of ownership. Such transfers can occur through various means, including inheritance, charitable giving such as zakat, infaq, and sadaqah, and through buying and selling. Among these methods, buying and selling typically require the physical presence of both parties, as meeting is a fundamental aspect of the contractual agreement known as 'aqdain(Marni et al., 2023).

However, with the advent of technology, particularly in the era of Industry 4.0, human involvement in transactions is partially replaced by technological systems, enabling transactions to be conducted online. In online transactions, buyers and sellers no longer need to physically meet; instead, they interact within the online dimension or virtual world without direct face-to-face contact.

In the virtual realm, buyers may be unaware of the legality of the items being sold, whether they are obtained through legitimate means or are counterfeit, misrepresented as original, or even illegal, such as those from the black market. Despite these challenges, the online environment facilitates the trading of various goods, especially in the current context of the COVID-19 pandemic in Indonesia, where restrictions on outdoor activities necessitate online services to meet consumer needs and reduce outside activities(Liza et al., 2023).

Given these circumstances, there is a need for a muamalah jurisprudence-based examination of online transactions, as muamalah provides divine laws to regulate human life. Such an examination would determine the validity, invalidity, or cancellation of contracts formed through online transactions, based on the fulfillment or violation of their conditions and requirements.

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Formulating research questions based on muamalah jurisprudence, the following issues arise:

a. What is the concept of online buying and selling?
b. How does muamalah jurisprudence view online transactions?

2. Methods

In this study, the research method employed is legal research. Peter Mahmud Marzuki defines legal research as a process aimed at discovering legal rules and doctrines to address legal issues encountered (Peter Mahmud Marzuki, 2010). Consequently, the definition of legal research can be formulated as an investigation and analysis of legal norms and the functioning of law within society based on specific methods, systematic approaches, and particular thoughts, including in-depth examination. Law, in this context, adopts a normative approach to Islamic law. Descriptive methods are applicable in legal research, with data processing techniques focused on qualitative analysis. This paper examines online transactions, particularly in the realm of buying and selling, and subsequently analyzes them within the framework of Islamic law (fiqh muamalah) (Beni Ahmad Saebani, 2008).

3. Results and Discussion

3.1. General Overview of Online Buying and Selling

The term al-bai' etymologically denotes the exchange of goods or services. However, terminologically, bai' or jual beli refers to a transaction involving the exchange of material possessions (mu'awadah) that results in the permanent transfer of ownership of goods ('ain) or services (manfa'ah).

There are various forms or methods of conducting jual beli transactions, one of which is through online platforms. Online transactions are facilitated by technological advancements, often referred to as the era of Industry 4.0, representing a period of industrial revolution(Wahyudi et al., 2023).

The advent of Industry 4.0 fundamentally alters human thinking, lifestyles, and interactions. This era disrupts a multitude of human activities across various domains, not limited solely to technology but extending to economic, social, and political spheres. In the economic sector, the emergence of transportation services such as ride-hailing and online motorcycle taxis exemplifies this transformation. In the realm of jual beli, numerous online marketplaces (olshops) have emerged. Online shopping, or jual beli online, serves as a solution for individuals seeking convenience in transactions without the need to physically visit the location of the desired goods. Through smartphones, one can fulfill their needs via olshops, thus bypassing the necessity of in-person transactions. (Bayu Prasetyo, U. T. 2018)

According to Suherman (2002: 179), online buying and selling via the internet is "a contract of sale conducted using electronic means (the internet) for goods or services." Alternatively, online buying and selling is defined by Alimin (2004:76) as "a dynamic set of technologies, applications, and business processes that connect companies, consumers, and specific communities through electronic transactions and trade of goods, services, and information." (Fitria, T. N. 2017).

Based on the definitions above, any buying and selling activity conducted through the electronic medium of the internet constitutes online buying and selling. Therefore, any means or application that requires internet access, such as WhatsApp, Instagram, Telegram, Facebook, websites, or blogs, falls under the category of online buying and selling. In Indonesia, online shops (olshops) operating through websites encompass various types, such as Lazada, Shopee, Bukalapak, and others. These olshops utilize websites as platforms to market their goods. In principle, individuals engaging in buying and selling transactions always exercise caution, both sellers and buyers, to avoid fraudulence, especially in online transactions(Hizbullah et al., 2023).

Olshops operating through websites do not afford the opportunity to physically inspect the goods being sold, as sellers and buyers are often geographically distant. Nevertheless, with the sophistication of technology, sellers and buyers interact as if they were engaging face-to-face in a transaction, from the selection process to the actual buying and selling. To engage in transactions via olshops, buyers must first create an account. Without an account, buyers cannot conduct transactions, providing a sense of security for olshop operators regarding their merchandise(Dafizki et al., 2023).

The existence of buyer accounts ensures the accuracy and accountability of registered data. By simply registering a telephone number, the buyer's data is automatically complete, as the telephone number is verified through family card data.

Additionally, sellers registered on the website are not solely owned by the website operator but may consist of various other stores. This is important for buyers to consider since the stores on olshop websites may originate from different regions. Once buyers have an account, they have access to execute transactions(Fitria, 2023).

Buyers can only view the items for sale through pictures and descriptions provided by the sellers. These descriptions serve as references for buyers to understand the details of the items being purchased. To assess the quality of the items, buyers can pay attention to the comments provided by previous buyers.

Both aspects serve as benchmarks for buyers in determining whether to make a purchase, while from the perspective of the item owner, namely the selling store, buyers can observe the quantity of items sold, which serves as a fairly accurate consideration in deciding whether to choose the store or not(Wandri et al., 2023).

The process of ordering by the buyer (bai') involves paying attention to the details of the item to be purchased, allowing the buyer to obtain information about the item, including its quality, color, type, and other relevant details. The completeness of this information is crucial, considering that buyers cannot physically inspect the items they are purchasing. If the information about the item (ma‟qud 'alaih) does not meet the buyer's needs, the buyer may seek alternative items.

Once the process of khiyar (option) regarding the ma'qud 'alaih (item to be sold) is completed, the buyer proceeds to place an order with the seller. As proof of the order, the online shop provides an order number and a billing number that must be paid, usually in the form of a payment code. Payment can be made through various methods, depending on the convenience of the buyer. Typically, there is a payment deadline of 24 hours, and if this deadline is exceeded, the buyer cannot proceed with the buying process(Sundari et al., 2023).

The buying and selling process will be completed when the buyer makes payment through the bank account number or payment code designated by the online shop. The act of payment indicates that the buyer agrees to the type, form, quality, and quantity of the items sold by the online shop. From the perspective of muamalah jurisprudence, evidence of agreement can be proven through the existence of a contract or through written agreement. This contract forms the legal basis for both parties and prevents one party from unilaterally canceling the agreement.

3.2. Review of Fiqh Muamalah on Online Transactions

Fiqh muamalah refers to the rules or laws of Allah intended to govern human life in worldly affairs or matters pertaining to social interaction. In a narrower sense, muamalah signifies the exchange of goods or beneficial items through predetermined methods. Based on the aforementioned definition, fiqh muamalah encompasses all transactions wherein individuals exchange property as long as the property is beneficial and adheres to Islamic legal principles. The exchange of property is commonly known as jual beli or al-bai’ in Islamic terminology. Transactions conducted by parties must adhere to the principles of Islamic law, which may be derived from sources such as the Qur'an, Hadith, consensus (ijma'), and analogy (qiyas).

In online transactions, the seller is represented solely by the name of their store, while the buyer remains unaware of the seller's identity, including their name, address, or even age. All the buyer knows is the name of the selling store. This differs from purchasing items in person, where the owner is often unknown and the transaction is conducted through a representative, such as an employee. In the online context, the only information available is the name of the store and its address, without revealing the identity of the owner. However, when a buyer selects an item, everything appears readily available, and inquiries about the availability of an item are typically answered either by automated systems or by human agents. Thus, both the seller and the buyer fulfill the transaction harmoniously, meeting the necessary conditions(Jayusman et al., 2024).

The second condition for a transaction to be valid is the means of exchange and the goods being sold. Whether through online or offline means, the exchange medium remains the same: money transferred via a payment code. The goods available for sale online encompass a wide variety of options from numerous stores.

Although the handover (shigat) in online transactions doesn't occur verbally, the exchange is symbolized through proof of payment sent to the seller and proof of delivery until the item is received by the buyer. This constitutes the handover in the author's perspective. The absence of verbal statements "handing over" and "receiving" falls under the category of mu’athah transactions, wherein the agreement between the seller and the buyer on price and goods is established without explicit verbal confirmation. Scholars hold differing opinions regarding the validity of such transactions. According to the views of Ibn Al-Shibagh Al-Nawawi Al Baghawi and some Shafi'i scholars, transactions conducted in this manner are deemed valid based on customary practices.

In any transaction within the realm of muamalah, the substance is of utmost importance. This entails ensuring that the offer (ijab) and acceptance (qabul) correspond to the nature, type, characteristics, quantity, and quality of the goods, whether tangible or intangible.

From the perspective of online buying and selling, it falls under the category of transactions that cannot be physically seen or inspected by both parties. Indeed, in online transactions, the item cannot be physically presented to the buyer; it can only be viewed through images and data. Furthermore, not only is the item invisible, but it may also differ from the displayed image upon its arrival after the transaction. The possibility of such discrepancies between the displayed image and the actual item underscores the importance of sellers offering options for returns if the ordered item does not match the buyer's expectations. The provision of return options helps mitigate the risk of fraud. This option in fiqh is known as khiyar.

One form of khiyar recognized in fiqh muamalah is khiyar al-aib (defect), where if the purchased item is found to be defective, the buyer has the right to return it to the seller. Khiyar al-aib applies once the buyer becomes aware of the defect after the contract has been executed. According to Maliki and Shafi'i jurists, the time limit for exercising khiyar al-aib is limited; in other words, the aggrieved party must promptly exercise their right to khiyar. If they delay unreasonably, the right to khiyar is forfeited, and the contract is considered valid (Retno Dyah Pekerti, Eliada Herwiyanti, 2018).

It would not be fiqh if a legal ruling remained unchanged in response to changing circumstances or the development of time, as fiqh evolves alongside the development of Islam. Technological advancements, in particular, play a significant role in facilitating transactions through technology, benefiting both sellers and buyers without the need for physical market visits. Therefore, fiqh must be capable of addressing these changes (Abdul Wahhab Khalaf, 2008).

When viewed based on the data or specifications available on online shops, the transaction may have different legal implications compared to when viewed from the perspective of the object/item being sold. In online buying and selling, sellers always provide detailed general descriptions, including distinguishing features such as color, quality, composition, and even the price of the item. When online transactions are assessed based on the specifications provided for the item, they fall into the second category of transactions, namely transactions involving specific attributes or characteristics. The type of contract applicable in this scenario is the salam contract because the buyer places an order based on the specifications of the item itself. Therefore, if there are specifications that do not meet the buyer's expectations, the buyer can opt not to proceed with the transaction.

In the discourse concerning contracts, fiqh muamalah recognizes various types of contracts, categorized into three main categories: contracts used to seek profit, namely buying and selling contracts, profit-sharing contracts, and leasing contracts. Among the buying and selling contracts are murabahah, salam, and istisna contracts. In considering these contracts, attention must be paid to ensuring that their pillars and conditions are met (Ascarya, 2006).

As previously explained regarding the concept of online buying and selling, online transactions typically provide a general description of the specifications of the item to be sold. Therefore, the author argues that the appropriate contract to be used in this context is the salam contract.

The salam contract is a contract for ordering goods with specified characteristics, where the buyer pays the price of the ordered goods upfront, and the seller is responsible for delivering the ordered goods. According to Sayid Sabiq, as-salam is also called as-salaf (advance payment), which refers to selling something with specific criteria (which is still forthcoming) with immediate payment (Heri Sudarsono, 2015).

Based on this definition, online buying and selling are more suited to using the salam contract. This is because the buying process is conducted through orders accompanied by the specifications of the item itself. Additionally, many online transactions are conducted through transfers, which align with the salam contract's requirement of upfront payment and delivery of goods later. Furthermore, the seller does not disclose the selling price of the item; instead, the buyer simply accepts the selling price as indicated on the website. The salam contract is one of the contracts that can generate profit (profit-oriented) with a certain outcome (certainty) (Dede Abdurohman, 2020).

This differs from the murabahah contract, which involves selling goods at the original price plus an agreed-upon profit margin between both parties. In murabahah, the seller discloses the purchase price of the goods to the buyer and then specifies the profit margin. However, this is not the case in online buying and selling, as the seller does not disclose the purchase price to the buyer (Heri Sudarsono, 2015).

4. Conclusions

Online buying and selling platforms in Indonesia, such as Shopee, Lazada, Tokopedia, and others, essentially operate on the same concept. They provide detailed specifications about the quality, type, and price of the items being sold. Additionally, in online transactions, sellers have established payment methods and procedures for claims in case of defects or damages to the received items. Payment can be made through two methods: bank transfer and Cash On Delivery (COD), although online transactions are generally conducted via bank transfer.

From the perspective of fiqh muamalah, online transactions are deemed appropriate because sellers provide detailed data regarding the items being sold, and buyers are granted the right of khiyar (option) by the sellers. The detailed information about the items serves as a reference for buyers to assess the quality of the items and decide whether to proceed with the purchase. The appropriate contract for such transactions is the salam contract. In a salam contract, the detailed specifications of the agreed-upon item are known, and upon agreement (contract), the item is delivered to the buyer at a later date. This practice aligns with the fatwa issued by the National Sharia Board of the Indonesian Ulema Council (DSN-MUI) No. 5/IV of the year 2000 regarding salam contracts.

However, the exercise of the khiyar right is subject to the seller's regulations. As long as the buyer retains the khiyar right, the contract remains valid. However, if the buyer does not have the khiyar right, the contract becomes void as it would be detrimental to one party.

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