

HARMONIZATION OF FIQH WITH E-COMMERCE: A REVIEW

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Abstract

Transactions in e-commerce are increasing massively, this happens because e-commerce platforms present a variety of features that are very relevant to the needs of users, making it easier to transact according to user preferences. However, for Muslims, it is important to be careful because not all transactions that occur in e-commerce comply with sharia principles. The purpose of this research is to provide an understanding for Muslims regarding the contracts used in conducting transactions in e-commerce in accordance with sharia principles. This research uses a qualitative research method with a normative juridical approach that examines the legal aspects of e-commerce based transactions within the framework of transaction law in Islamic economics. The results show that several contracts that can be used by Muslims as a basis for legitimising transactions, namely: wadi'ah yad dhamanah, salam, murabahah bi al-wakalah, ijarah and khiyar. These agreements will be an instrument for Muslims in conducting transactions in e-commerce that are in accordance with sharia principles. This research can also provide guidance to businesses and e-commerce platforms to better understand the legal requirements in transactions with sharia-based consumers. Thus, it can create a more inclusive and shariah-compliant business environment, which in turn can open up greater business opportunities in the Muslim market.

Keywords: e-Commerce, Fiqh, Aqd.

1. INTRODUCTION

The advancement of information technology is currently developing very fast and has a significant impact on various aspects of human life, including in the realm of business known as e-commerce. (Sukmayanti 2020) E-commerce refers to the process of transactions conducted online through the internet, which provides wider access to customers (Jamhurul 2018). E-commerce opens up a variety of opportunities and offers a number of significant benefits, especially in terms of cost efficiency in product promotion and time savings (Nahlah et al. 2022). In business, e-commerce is a combination of conventional and digital mechanisms that serve as a channel for the exchange of goods, services, and information, both business to business and business to consumer (Fadhli 2016). In brief, e-commerce is now considered as an alternative that offers solutions to the challenges of often complicated business transactions by providing greater convenience.

With the increasing use of e-commerce in transaction activities, it is also possible to increase the occurrence of fraud. A situation like this will certainly have the potential to present various legal problems with all the consequences (Mubarok 2022). Those who commit this offence can be punished with a minimum of six years' imprisonment and/or a maximum fine of one billion rupiah. Another provision is contained in Peraturan Pemerintah No. 82 Tahun 2012 tentang Pengelolaan Sistem dan Transaksi Elektronik (PP PSTE). Pasal 28 ayat (1) Bab 7 states that every person intentionally, and without the right to disseminate false and misleading information intentionally causing consumer harm in online transactions.

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What is the Islamic view on this matter? Buying and selling is one of the forms of muamalah regulated in Islam. When looking at e-commerce, it is basically a model of buying and selling transactions, but it is categorised as a modern form of buying and selling because it involves technological innovation (Khoerulloh and Hidayah 2023). In general, trade in Islamic economics, there is a physical transaction, where physical goods are present when the transaction occurs, whereas e-commerce does not always have this characteristic (Muttaqin 2010). Therefore, an analysis is needed to determine whether the existing *fiqh* provisions are relevant enough and can accommodate e-commerce, or whether a special understanding of the law of transactions in the context of e-commerce is needed.

Based on the problems that have been stated above, Islamic economics needs to provide an appropriate response. From a *fiqh* perspective, it is important to examine the legal status of e-commerce transactions. The fundamental question is whether this *fiqh* review can make a positive contribution to the economic growth of society (pro-market), or on the contrary, whether *fiqh* will be an element that is contrary to the development of advanced modern economies (anti-market). This research will answer the problems that occur in e-commerce transactions with *fiqh* review. Through the results of this research, the author hopes to provide a useful contribution to the development of knowledge in the field of Islamic law, especially in the context of making Islamic law a relevant solution in dealing with various contemporary problems. In addition, it is hoped that this research can provide a strong basis for decision-making by stakeholders in this country who have special attention to the implementation of Islamic law.

2. LITERATURE STUDY

E-Commerce

From time to time, the term electronic commerce or e-commerce has changed. Initially, the term referred to the process of commercial transactions conducted electronically. Such transactions often utilise Electronic Data Interchange (EDI) technology which was first introduced in the early 1970s (Yazdanifard, Baruani, and Mohseni 2012). This technology is used to electronically transmit commercial documents such as purchase orders or invoices. As it has evolved, e-commerce has experienced a shift in meaning to actual transactions that are more appropriately referred to as web commerce (Sanjaya and Sanjaya 2009). To date, e-commerce transactions utilise web-based technologies and applications (Mustofa 2012).

According to Siswandi and Soemitra (2022), e-commerce is a series of service business activities that use technological sophistication that connects companies, producers, consumers and the public to carry out exchange activities, and the sale of goods or services in the form of electronic transactions (Siswadi and Soemitra 2022). In general, the types of e-commerce are: 1) Business to Business (B2B) is a type of e-commerce where businesses transact online with other businesses. It is a form of e-commerce used for inter-company trade (Lucking-Reiley and Spulber 2001). 2) Business to Consumer (B2C) is a common and frequent type of e-commerce, where companies sell products or services online to individual consumers (Eliott 2003); 3) Consumer to Consumer (C2C) is a type of e-commerce that involves consumers selling products or services to other consumers through an online platform (Chu and Manchanda 2016); 4) Online to Offline (O2O) is a relatively new type of e-commerce in the midst of Indonesian society, where purchases are made online, but the collection of goods is carried out offline. Buyers can order products virtually when they are in a physical store (Tsai, Yang, and Wang 2013); and 5) Government to Business (G2B) is an electronic transaction where the government provides the information needed by businesses to conduct transactions with the government (Dong, Xiong, and Wang 2010); In

addition, Traver and Laudon (2014) classify e-commerce, namely: 1) Social Commerce (s-commerce) is a type of e-commerce that combines social media and online buying and selling (transactions). It allows users to interact, share, and purchase products or services through social media platforms; and 2) Mobile Commerce (m-commerce) is a form of e-commerce that allows online transactions through mobile device applications such as iPhone, Android, and Blackberry (Traver and Laudon 2014).

Fiqh

Etymologically, *fiqh* comes from the word *al-Fahmu*, which means understanding (Syafe'i 2004). In the context of the term, *fiqh* refers to the science that discusses the practical rulings of sharia and is derived through detailed interpretation of the propositions of sharia (al-Khalaf 1990; Ruwai'i 1989). There is no rejection among Muslims of the concept that *fiqh* is the result of interpretations made on the propositions contained in the al-Qur'an and al-Sunnah. Even in Saudi Arabia, *fiqh* is used as a source of positive law (Butti 1996; Sykiainen 2019). Therefore, *fiqh* is an important aspect (Kushidayati, Fakhrina, and Fadhilah 2014) and is always used as a basis for Muslim behaviour (Mufid 2016).

Referring to the above understanding, Islam provides freedom for individuals to use their intellect in an effort to understand the truth established by sharia (Salaymeh 2015). The truth referred to here must always be based on the al-Qur'an and al-Sunnah. In this context, *ijtihad* becomes a relevant concept (Hasbiyallah 2014). Essentially, *fiqh* is sceptical, flexible and not immune to criticism (Muallim and YUSDANI 2001) which has the aim of creating benefits for humanity and is in line with the needs of ongoing change (Kamla and Alsoufi 2015). Therefore, there is always a need to perform new *ijtihad*s (Widyanto 2011).

In the context of *fiqh* muamalah, there is a verse of the al-Qur'an which is the basis for the practice of commerce / trade / buying and selling, which is as follows:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

O you who have believed, do not eat of your neighbour's wealth by unlawful means, except by way of mutual trade between you. And do not kill yourselves; surely Allah is Merciful to you.

Ibn Katsir explains that in the verse of the verse piece عَنْ تَرَاضٍ مِنْكُمْ إِلَّا أَنْ تَكُونَ تِجَارَةً. The above is as if Allah is saying: "Do not engage in haraam means in seeking wealth, but you can do business in accordance with the provisions of the shariah. In this business, there is a mutual agreement between the seller and the buyer. Therefore, transact in this way and make it a means of acquiring wealth" (Katsir 2003). The passage above basically gives freedom to every individual to make transactions as long as they adhere to the principles of Islamic law and mutual consent between the transaction actors (Fathurrahman 2013).

In addition to the Qur'anic verse above, there is a rule that is always used as a basis for determining the law in transactions. This rule also shows that Islamic law has a very flexible and not rigid nature. The sound of the rule is as follows:

الأصل في الأشياء الإباحة

The original law of all things is permissible (al-Suyuthi 911)

and also the following rules:

الأصل في المعاملة الإباحة إلا أن يدل دليل على تحريمها

The basic principle in muamalah is that it is permissible, unless there is evidence that forbids it. (Manshur 2004)

As such, this legal principle is very useful for business people to handle the types of transactions that emerge and develop (Hidayat 2015), eliminating difficulties among

transacting business people (Wartoyo 2020), and can be used as a basis in bermuamalah (Khoerulloh and Hidayah 2021), especially in e-commerce transactions.

Aqd

Akad comes from the word *al-'Aqd* which means bonding or binding, connecting or linking, an agreement (Sabiq 1971). In terms of terms, a contract is an agreement between two parties to produce a legal effect on its object (Anwar 2007). In the context of positive law, contracts can include various types of agreements, such as sale and purchase agreements, leases, loans, and so on. Positive law also stipulates the terms and conditions that must be fulfilled in order for a contract to be considered valid and effective (Dwi Fetraningtyas and Yunanto 2021).

In Islamic law, there are several pillars and conditions that must be fulfilled in making a contract, namely:

- a. *Sighat* is an utterance that indicates an agreement between the two parties to the contract (Antonio 2007).
- b. *'Aqid* is the party involved in the agreement / contract. The requirements of *'aqid* are:
 - 1) Reasonable, the contract must be made by an adult who can distinguish between halal and haram. Minors, insane people and drunk people are not valid to make contracts (al-Zuhaili 1989).
 - 2) Willing, the contract must be carried out based on both physical and mental willingness, a contract is not valid if one of the parties is forced / forced because there is no element of willingness (al-Jaziri 2003).
 - 3) *Ma'qud 'alaih* is the object of the transaction. The requirements for the object of the transaction are that it must be pure and not forbidden goods (Sa'diyah 2019).

In short, contracts have several important functions that are highly valued in the practice of Islamic religious and economic life (Puneri 2021), namely: 1) contracts are used to regulate the legal relationship between the parties involved in a transaction; 2) contracts provide legitimacy and legal validity to transactions. A valid contract is considered valid in Islam, while an invalid transaction may be considered void; 3) contracts allow the parties involved to set specific terms in the transaction. These include price, time of payment, delivery terms, and any other terms that can be agreed upon by the parties involved; 4) contracts in Islam also serve to avoid usury or interest which is forbidden. Agreements such as *mudarah* and *murabahah* are designed so as not to involve usury; and 5) contracts are also used as evidence in dispute resolution. In cases of non-compliance with the contract, evidence of the contract can be used to enforce penalties or compensation. These functions demonstrate the importance of contracts in Islam as instruments for carrying out economic and social transactions in accordance with the principles of Islamic sharia.

3. RESEARCH METHODOLOGY

This research uses qualitative research methods with a normative juridical approach that examines the legal aspects of e-commerce-based transactions within the framework of transaction law in Islamic economics. This type of research aims to determine whether or not there is conformity of a legal action with legal principles or norms (Marzuki 2016). This normative juridical research focuses on the analysis of documents which includes the utilisation of primary and secondary data sources (Wakhidah and Thohari 2019). Primary data sources include the al-Qur'an and its interpretations, al-Sunnah and Ijtihad. Secondary data sources include books relevant to the issue of Islamic law, as well as literature that explains the concept of muamalah in the context of transactions in Islam.

Data collection is done with: 1) a cultural approach, namely by studying the interpretation of the al-Qur'an, al-Sunnah and the results of the Ulama's Ijtihad; and 2) a phenomenal approach, namely by studying the dynamics of society for its transactions in e-commerce. The data obtained will be selected in accordance with the research objectives and then analysed to draw conclusions.

4. RESULT AND DISCUSSION

Along with the development of technology, e-commerce develops its business by providing more transaction features. Muslims must be aware of this condition, because there are several transactions provided by e-commerce that do not fulfil the principles of *fiqh muamalah*. Muslims must uphold the principles of *fiqh muamalah* in conducting transactions so that what they do does not violate Islamic law. There are several contracts that can be used when making transactions in e-commerce.

1) *Wadi'ah Yad Dhamanah*

Wadi'ah is a contract in which one person authorises another to look after their property (Janwari 2015). There are two types of *wadi'ah* contracts, namely *wadi'ah yad amanah* and *wadi'ah yad dhamanah* (Hasanah and Atika 2023). *Wadi'ah yad amanah* is a contract in which *mustawda'* (the party receiving the deposit) is not allowed to use or utilise the money or goods entrusted by *muwaddi'* (the depositor). Whereas *wadi'ah yad dhamanah* is a contract in which *mustawda'* (the party receiving the entrustment) is allowed to use or utilise the money or goods entrusted by *muwaddi'* (the depositor) and *mustawda'* (the party receiving the entrustment) must compensate for the damage/deficiency of the entrusted goods (Yusma F 2018).

If harmonised with e-commerce transactions, it can be described by the following scheme:

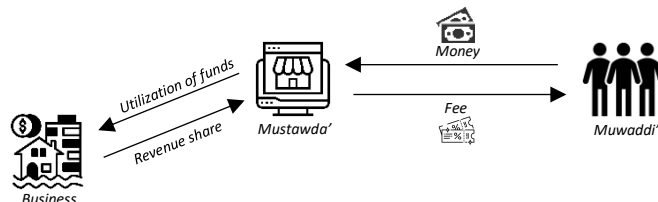


Figure 1. *Wadi'ah Yad Dhamanah* Contract Scheme

The community acts as *muwaddi'* entrusting their money to the marketplace which in this case acts as *mustawda'* in the form of money / funds which then becomes a balance (e-money), the amount of the balance must match the amount of money deposited. Then the marketplace utilises these funds for business cooperation with other parties and gets profit in the form of profit sharing. This profit sharing is used by the marketplace as a fee to the people who entrust funds to the marketplace. Fees from the marketplace can be in the form of discounts, discounts on shipping costs, shopping coins, and others.

Providing fees to the depositor (*muwaddi'*) can be done with the following conditions: 1) the fee is the prerogative of the party receiving the deposit (*mustawda'*); 2) the amount or percentage of the fee is not determined in advance; and 3) the party receiving the deposit (*mustawda'*) may not promise a fee to the depositor (*muwaddi'*) (Suryani and Nasution 2022).

2) *Salam*

Salam is a sale and purchase contract with an order, where the goods are delivered later (Pekertil, Susilowati, and Herwiyanti 2019). The *salam* contract is the most common

type of contract applied in e-commerce transactions, because the structure of buying and selling transactions in e-commerce is similar to the mechanism in the salam contract, making it easier to implement the transaction (Akbar 2018). The scheme of the *salam* contract in e-commerce transactions can be described as follows:

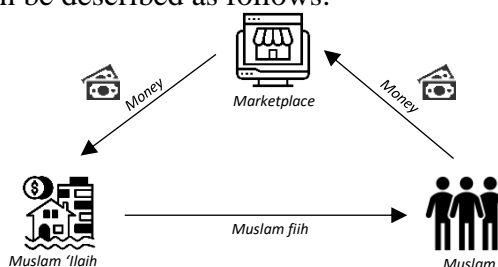


Figure 2. Salam Contract Scheme

People acting as muslim order goods to *muslam 'ilaih* through the marketplace, they can choose goods according to the specifications they need, they can see the track record of *muslam 'ilaih* through reviews from other *muslam*, and they also make payments through the marketplace at the time of the contract. After *muslam* places an order, *muslam 'ilaih* will send the ordered goods or *muslam fiih* to *muslam*. After *muslam* receives *muslam fiih* according to the specifications ordered, the marketplace will forward *muslam's* payment to *muslam 'ilaih*. This is done as a protection if *muslam* receives *muslam fiih* not in accordance with the specifications ordered, so that the money paid by *muslam* through the marketplace is not forwarded to *muslam 'ilaih*, but returned to *muslam*.

There are several conditions that must be considered in the salam contract in e-commerce, namely: 1) the means of payment must be known, both in amount and form; 2) the terms of payment and receipt of goods are made at the time of checking out in e-commerce; and 3) the specifications of the goods must be clear (Majelis Ulama Indonesia 2000b).

3) *Murabahah bi al-Wakalah*

Murabahah bi al-wakalah is a sale and purchase contract with a representative system (Wahyudi 2019). In this contract, two different contracts occur, the first is a *wakalah* contract and the second is a *murabahah* contract. The *wakalah* contract occurs when the seller delegates the purchase to the buyer to buy goods from a third party. After the goods are in principle owned by the seller, a *murabahah* contract is made and the goods are handed over to the buyer (Khoerulloh and Syafei 2019).

The *murabahah bi al-wakalah* agreement can be harmonised with the sale and purchase transaction in e-commerce with the following scheme:

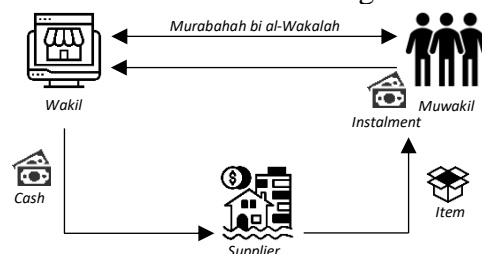


Figure 3. Murabahah bi al-Wakalah Contract Scheme

The community as *muwakil* does a *wakalah* contract with the marketplace as the representative to buy goods from suppliers, here price negotiations occur. The marketplace buys goods from the supplier according to the specifications of the goods ordered by the *muwakil* in cash. Then the supplier sends the goods to the *muwakil* and the *muwakil* pays the

representative in instalments. This scheme is commonly used in instalment buying and selling transactions in e-commerce such as Shopee PayLater, Tokopedia PayLater, Lazada Paylater and others.

However, based on research conducted by Cahyadi (2021), it is stated that the implementation of Shoope PayLater or the instalment buying and selling mechanism is haram because it does not fulfil the elements of sharia (Cahyadi 2021). So that to fulfil the elements of sharia in the implementation of instalment sales in e-commerce, conditions are needed: 1) the sale and purchase contract does not contain usury; 2) the consumer wants to represent the marketplace to buy goods from the supplier, the *murabahah* contract must be made after the goods become the property of the marketplace in principle (Majelis Ulama Indonesia 2000a, 2000c).

4) *Ijarah*

Ijarah is a contract for the transfer of benefits from a good or service through payment of wages / rent without being followed by the transfer of ownership of the goods. The beneficiary must prepare the goods/services and the beneficiary must maintain the goods that are utilised (Fitriani 2018). In *fiqh*, *ijarah* can also refer to the wages paid to a person for services rendered by him or her (Shariff and Rahman 2015). This *ijarah* contract is a classic *fiqh* concept and is now one of the contracts that support the development of Islamic economics (Hasanudin and Yaqin 2019), including e-commerce transactions. *Ijarah* can be implemented in e-commerce transactions with the following scheme:

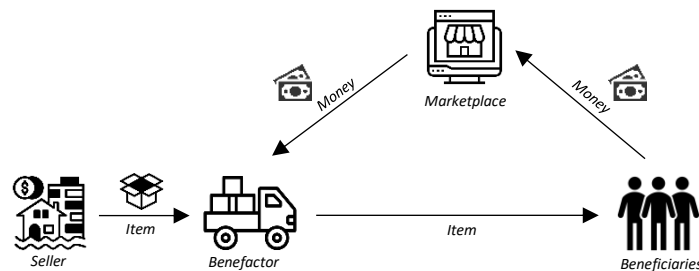


Figure 4. *Ijarah* Contranct Scheme

The *ijarah* agreement in e-commerce transactions is relatively simple. The community acts as a beneficiary of the courier who delivers their ordered goods. The community pays the courier's wage through the marketplace platform at the time of the sale and purchase transaction, then the e-commerce platform will forward the wage to the courier after the ordered goods are received by the community.

5) *Khiyar*

Khiyar is the choice to continue or cancel (Jamilah and Firmansyah 2019). In terminology, *khiyar* means the right of choice of one or both parties carrying out a transaction to continue or cancel the agreed transaction according to the conditions of each party to the transaction (Indriati 2016) *Khiyar* is proposed by *fiqh* scholars to answer problems in economic transactions, especially the protection of consumers. *Khiyar* can be implemented in e-commerce with the following scheme.

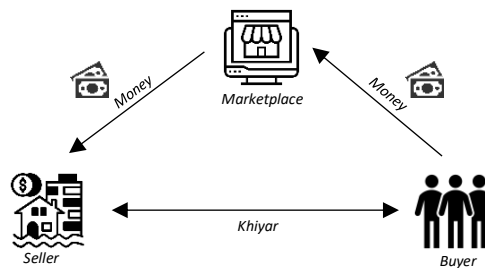


Figure 5. *Khiyar* Contranct Scheme

People purchase goods through marketplace, then the goods are sent by the seller. If the goods received by the buyer are not in accordance with the order, such as damage, defects or not in accordance with the specifications, the buyer can make *khiyar* by returning the ordered goods to the seller. This agreement is usually made at the time of purchase, the seller informs the buyer about the terms of *khiyar* through the description of the goods, these conditions such as: the buyer must record when unboxing the order and defective or damaged goods can be returned within three days after the goods are received by the buyer. If the specified conditions are met, then the buyer can make *khiyar*.

5. CONCLUSION

Transactions in e-commerce are increasing massively, this happens because e-commerce platforms present a variety of features that are very relevant to the needs of users, making it easier to transact according to user preferences. However, for Muslims, it is important to be careful because not all transactions that occur in e-commerce comply with sharia principles. Therefore, Muslims need to understand the basic principles of transactions in Islamic economics. There are several types of contracts that can be used by Muslims as a basis so that they can conduct transactions that comply with sharia principles, such as wadi'ah yad dhamanah, salam, murabahah bi al-wakalah, ijarah, and khiyar contracts.

Taking into account the limitations of this study, it is hoped that future research can expand the framework by including additional variables. Such as harmonising *fiqh* with transactions of transferring funds from e-commerce platforms to other accounts, gold buying and selling transactions for investment, and other transactions. It is hoped that in the future it will add deeper insights related to contract options on e-commerce platforms. In addition, this research can serve as a foundation for further research in this field, which can dig deeper into the legal and sharia aspects of e-commerce transactions. This will provide long-term benefits in understanding and developing business practices that comply with sharia principles in this digital era.

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