

# Legal Legalization of Online Buying and Selling Transactions

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## ARTICLE INFO

### Article history:

Received Nov 9, 2022  
Revised Nov 20, 2022  
Accepted Nov 30, 2022

### Keywords:

E-Commerce;  
Buying and Selling;  
Legal Legalization.

## ABSTRACT

The purpose of this study is to analyze the legalization of the law regarding online buying and selling transactions. This research method uses qualitative sourced from secondary data. The results of this study indicate that Islam with all its norms and provisions continues to play with various advances and is able to position itself in the midst of rampant online transactions while still referring to the pillars and conditions of buying and selling that are fulfilled so that there is no abuse in transactions, e-commerce from various good reviews contained in positive law or Islamic law states that it is permissible and legitimate to do so by prioritizing the pillars and conditions that must be met. Online transactions, which we still consume today, have become an important forum for millennial life in its implementation while maintaining stability so that conflicts do not occur which lead to a lack of validity. Buying and selling, which was originally quite classic and a little complicated, has now turned into something that is instant and easy for us to implement and run systematically.

## ABSTRAK

Tujuan penelitian ini untuk menganalisa legalisasi hukum mengenai transaksi jual beli online. Metode penelitian ini menggunakan kualitatif bersumber dari data sekunder. Hasil penelitian ini menunjukkan bahwa Islam dengan segala norma dan ketentuannya terus bermain dengan berbagai kemajuan dan mampu memposisikan diri di tengah maraknya transaksi online dengan tetap mengacu pada rukun dan syarat jual beli yang terpenuhi sehingga tidak terjadi penyalahgunaan dalam bertransaksi, e-commerce dari berbagai ulasan baik yang terkandung dalam hukum positif atau hukum Islam menyatakan bahwa boleh dan sah dilakukan dengan mengutamakan rukun dan syarat yang harus dipenuhi. Transaksi online yang masih kita konsumsi hingga saat ini menjadi wadah penting bagi kehidupan milenial dalam pelaksanaannya dengan tetap menjaga stabilitas agar tidak terjadi konflik yang berujung pada renggangnya validitas. Jual beli yang awalnya cukup klasik dan sedikit rumit saat ini telah berubah menjadi sesuatu yang instan dan mudah untuk kita terapkan dan jalankan secara sistematis.

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## I. INTRODUCTION

Humans as social beings in order to fulfill their survival needs cannot be separated from buying and selling transactions (Wajdi & Lubis, 2021). Buying and selling in classical fiqh states that buying and selling transactions are the exchange of goods for goods and in the implementation the seller and buyer must be present at the same majlis, besides that buying and selling cannot go out of legal norms which emphasize their activities in one majlis and goods which is used as the object of sale and purchase must be clear and not dependent or owned by another person (Hasan, 2018). In buying and selling transactions it must be based on mutual consent between the two parties who are in

contract, apart from that everything in buying and selling must fulfill the conditions and get along in harmony. Ibn Khaldun said that humans are fundamentally social and civilized beings who need each other and cannot be separated from social interaction (Setiawan, 2003).

The development of today's technology with all its civilization is able to deliver to the peaks of glory, long ago buying and selling transactions required parties who had a hadith agreement to be in one majlis so that in this way the transactions carried out were said to be valid. Subsequent developments in the digitalization era have had their own impact where all forms of transactions have begun to be carried out electronically which are then called E-Commerce, in practice E-Commerce here makes it easier for every individual human to make transactions without leaving the house to be able to transact. The presence of E-Commerce in the midst of this digitalization era has its own impact on human beings universally (Barkatullah, 2019).

In turn, the world of marketing is growing rapidly day by day by cooperating with the world of the internet as one of the functionalities to offer and market the products embedded in it, buying and selling transactions using internet services is no longer taboo for us because if the classification is in the form of a percentage you can say 95% % all use the internet in offering and marketing services through the internet platform.

E-Commerce is an activity or activity of buying and selling products online that is carried out by both companies and individuals by utilizing telephone services and computers and so on by connecting to the internet. All forms of trading or commerce activities by utilizing electronic media which are then referred to as E-Commerce (Harmayani et al., 2020). E-Commerce itself in the development of implementing its activities is not only limited to the national level but also embraces the international level. Apart from how easy it is for us to be able to carry out trading activities without being tied to a place, human civilization has led to a point where humans can easily sell or buy necessities, both consumptive and productive, which are very easy to find through E-Commerce. In turn, how does E-Commerce develop and position itself under a clear legal umbrella either through positive law or Islamic law.

## II. RESEARCH METHODS

This research is a type of qualitative research. This research is a literature study or library research. Data sourced from secondary data from journals, books, books, and other sources are then analyzed and conclusions drawn.

## III. RESULTS AND DISCUSSION

### **Definition Buy and Sell**

Etymologically, buying and selling comes from Arabic with the origin of the word al-bai' with the basic meaning of selling, replacing, and exchanging something for something else (Rahman & Ihsan, 2010). Meanwhile, in terminology, buying and selling is defined as exchanging goods for goods or goods for money in an agreed way without violating the norms set by the Shari'ah. Buying and selling is part of good faith that is carried out between individuals by releasing property rights from one to another on the basis of mutual consent (Huda, 2011).

There is a khilafah ulama' in defining buying and selling, for example, the ulema' hanafiyah call it "exchanging property for property in a certain way". While Imam Nawawi in his book entitled Al-Majmu' stated that buying and selling is the exchange of property with property for ownership.

Buying and selling as stated explicitly in the civil law law which reads an agreement by which one party binds himself to deliver an item and the other party to pay the promised price (Wetboek, 2008). After tracing from various perspectives, both etymologically and terminologically, a common thread can be drawn that selling at a very urgent point states that buying and selling transactions must lead

to mutual consent or approval. It cannot be said that a transaction, including buying and selling, is valid without being based on the *عن تراض منكم*.

### **Pillars and Terms of Sale and Purchase**

As is usual, every mu'amalah action cannot be separated and separated from the terms and pillars, both of which are ingredients that will determine whether a transaction is legal or not (Harahap, 2020). Buying and selling in its development, which is increasingly experiencing an extraordinary increase following the flow of cross-eras in the best way, which is then commonly called the digital era.

Technological developments, whose circulation is increasingly rapid, are capable of bringing new civilizations to every layer of humanity. In the past, all forms of transactions were carried out in full, very simple, where they must be present in one implementation, and the object must also be presented in the assembly, this time the digital era provides a new breakthrough where Buying and selling which previously could only be done in one place with the contracted party must be present, this time it is difficult for us to find in our society, but this new civilization and all digitalization facilities must also submit and comply with the pillars and conditions of buying and selling. The pillars and conditions in buying and selling are as follows.

- 1) The pillars of buying and selling from the perspective of fiqh scholars
  - a. People who have a contract (Seller-Buyer)
  - b. Exchange rate of goods (Money)
  - c. Shighat (Ijab-Qabul).
- 2) Jumhur Ulama'
  - a. Bai' (Seller)
  - b. Mustard (Buyer)
  - c. Shighat (Ijab-Qabul)
  - d. Ma'qud 'alaih (objects or goods).

In implication, at least buying and selling must contain the following five conditions:

- a) Seller: He must own what he sells or obtain permission to sell it and be perfectly sane
- b) Buyer: he is competent in law
- c) Goods sold must be halal goods
- d) Language of contract (Ijab-Qabul)
- e) Willingness of both parties. (Sudiarti, 2018)

The conditions for buying and selling other than those described above will be described in a cursory manner further and in-depth with the hope that the transactions to be carried out are truly legal and do not conflict with the Shari'a.

- 1) Terms of 'Aqidain
  - a. Both have been capable of carrying out legal actions
  - b. Both must carry out on the basis of their own will and desires without any party pressing or being forced
- 2) The contracting party must be sincere and have the ability to conduct transactions
- 3) Ma'qud 'Alaih

In the case of the ma'qud 'alaih of several scholars' there was a khilafah, for example among the 'hanafiyah scholars' who stated that ma'qud alaih must have a contract over goods that are feared not to exist, assets must be strong and valuable, belongings themselves, can be surrendered.

Maliki Madzhab conveyed

- a. Not something that is prohibited by syara'
- b. Must be holy
- c. Useful in the view of syara'
- d. Known by both parties
- e. Can be submitted

Shafi'i Madhhab

- a. Holy
- b. Beneficial
- c. Can be submitted
- d. It is clear and known to both parties. (Aaron, 2007)

As with the pillars and terms of sale and purchase that have been described above, it is sometimes necessary to understand specifically about several types of buying and selling transactions in particular, Islam is a complete religion with all the conditions of life for its adherents, Islam is the only religion which is highly privileged by Allah and is the the only religion that pleases Allah.

Several kinds of buying and selling are released in Islam with significant limitations, so as to minimize misleading tendencies, with all the new breakthroughs created buying and selling are classified as follows:

1. Buying and selling Muqayyadah is buying and selling by exchanging goods for goods (Barter)
2. Sale and purchase of exchangers with exchangers
3. Buying and selling absolutely
4. Sale and purchase of greetings (Orders)

### **The Legal Basis of Buying and Selling**

Explicitly Islam has regulated and provided limits for its adherents so as not to fall into things that are not justified in the shari'a. As a true Muslim it is appropriate to avoid everything that is not justified by syara'. Islam also regulates its adherents with two classifications, namely hablum minallah and hablum minannas.

Transactions regarding the permissibility of carrying out activities as hablumminannas including buying and selling have been regulated and set forth in the Qur'an as the first reference in Islam. Some of the legal bases for the permissibility of buying and selling are the Al-Qur'an surah Al-Baqarah verse 275, a hadith which means "the validity of buying and selling on the basis of willingness" (Majah & Yazid, 2015). Then there is Ijma 'Ulama' agreeing that buying and selling is permissible on the grounds that humans will not be able to meet their own needs without the help of others, however, the assistance or goods belonging to other people that they need must be replaced with other goods that are appropriate or commensurate (Harun, 2007 ).

### **Definition of E-Commerce**

In terms of E-Commerce is a buying and selling transaction of both goods and services by utilizing technology by connecting to the internet in its realization. Several other figures put forward E-Commerce in terminology as stated by Abdul Halim Barkatuallah, all business activities which include consumers, manufacturers, service providers and intermediaries by utilizing computer networks connected to the internet (Setiawan, 2003) .

The presence of E-Commerce in the midst of society in the era of digitalization is an impact that cannot be separated from the development of information and communication technology civilization. E-Commerce has significantly changed some of the people's perspectives by bringing about understanding and adaptation to their environment, especially in the business world, both in the form of goods and services. Internet infrastructure whose scope of application is very wide so that every individual can freely and easily carry out his business activities, especially in the economic sector. The segmentation of the implementation of E-Commerce is very broad so that in general E-Commerce is implemented for business to business, business to consumer and consumer to consumer economic activities.

### **Legal Legalization in E-Commerce Transactions**

In the implementation of every electronic transaction it is appropriate to have legal force as a minimalist form of things that are not desired by both consumers and producers, the legal aspects of e-commerce transactions are contained in Law number 11 of 2008 which has been amended by Law number 19 2016 concerning information and electronic transactions (E-Commerce), which is the first cyber law owned by Indonesia, this law specifically regulates electronic information and transactions with the aim of regulating the internet domain, both criminal, civil, state administration

and aspects -Other aspects relating to legal actions in the cyber realm, while electronic transactions (E-Commerce) are included in the realm of civil law studies.

Every individual who is involved in the world of business or business is appropriate and customary for and is obliged to know and pay attention to it as well as possible, so that the transaction is explicitly legal or fasid. This is intended to the extent that the mu'amalah that is carried out does not conflict with the norms of Islamic law, so that there is great hope that there will be minimal elements that can lead the perpetrators to false paths. Islam explicitly regulates every activity so that it cannot be separated from and violates the established shari'a rules.

Every transaction that is carried out is appropriate to meet the requirements set by syar'i, for example, the transaction to be carried out must be clear and can be shown at the time of the transaction and in one majlis, it is okay not to present the object of the item to be transacted with notes explained specifically either criteria in the object of the goods, such transactions in its application use a slam contract or isti'na contract (ZA, 2017).

The legal relationship of the parties to E-Commerce transactions outlines every transaction that will be carried out primarily in electronic transactions legally must be clear as one of the legalizations in electronic transactions. E-commerce in Indonesia so far has not explicitly regulated and oversaw E-Commerce transactions (Hariyanto, 2009).

In Islamic law all transaction activities must be carried out without any elements of gharar or other things that can harm one of the parties to the transaction, explicitly Islam has regulated all aspects of the life of its adherents including in relation to mu'amalah (transactions between individuals and other individuals) as contained in the Qur'an in surah Al-Baqarah verse 275.

#### IV. CONCLUSION

E-commerce, in principle, so far has not received explicit legal rules or norms binding in it, the existence of consumer protection contained in the protection law cannot be fully used as a reference in e-commerce transactions so that thus manipulation in various aspects becomes common for us to witness amidst the rise of digitalization and contemporary world. The absence of binding laws for e-commerce actors does not necessarily free the perpetrators to carry out their business activities arbitrarily. As a good Muslim, of course he will carry out his commerce activities by referring to sharia provisions that have long been developed and we all understand. The development of universal e-commerce is very fast and extraordinary, in all corners of the world there is no one who does not use the internet so it is not surprising that their interactions in the business world can be very well known throughout all walks of life.

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