

The Validity of E-Commerce Sales Under Islamic Law

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Article Info

Received: 2024-10-30

Revised: 2024-12-31

Accepted: 2024-12-31

Keywords:

Terms of Agreement,
E-Commerce,
Islamic Law

Abstract

This study examines and analyzes the validity of e-commerce sales agreements in the context of Islamic law. The method used in this study uses normative research with a legislative approach, by studying primary and secondary legal materials. The findings of this study indicate that the advances in technology and information encourage merchants to innovate in transactions. E-commerce is any form of trade transaction or business of goods or services using electronic media without face-to-face alternating with modern ways of working using existing technological developments. (tidak bertatap muka). In Islam, the terms of an agreement include: bekwaamheid, toesremming, bepaalde onderwerp, and the existence of a justified cause (geoorloofde oorzaak). The application of E-Commerce that utilizes technological advances in the creation of authentic acts in the cyber world under Article 15 paragraph (3) of the UUJN opens the opportunity to be organized, plus the existence of the ITE Act on the arrangement of electronic transactions, electronic documents and digital signatures. Meanwhile in E-Commerce in the view of the principles of Islamic law referring to the Quran and Hadith, its implementation can be carried out with the principle of mashlahah because of human needs in accordance with the demands of the development of an era that is always developing dynamically by means of interpretation ijtihad both textual and contextual. Islam is a religion that appreciates modernization as long as it must remain in accordance with the values of Islamic Shariah.

I. Introduction

The era of globalization as it is today, technological development is very far-reaching. Indonesia is a country that has become one of many countries that participate in the use of technology in everyday life. One form of the existence of this technology is the use of interconnection networks in everyday life like browsing, sending messages through various applications, downloading and

uploading something on social media. In its development, the Internet has brought the world economy into a new phase that is more popular with the term digital economy or digital economy. Its existence is marked by increasing economic activity that uses the Internet as a means of communication. In the field of commerce, for example, more and more rely on electronic commerce as a means of transaction. (Richardus Eko Indrajit, 2021)

Basically, the sales transaction process carried out online has no significant differences from the conventional sales process. The merchant and the customer must have agreed on the goods/services sold and the prices related to them. Generally speaking, the only differentiator in this sales process is the media that is part of it, where online sales through the internet media so that between the seller and the buyer do not meet directly. (face to face).

Just as an agreement/contract is generally valid, the validity of an electronic transaction does not need to be questioned as long as the terms of the contract are met. In the Indonesian legal system, as long as there is an agreement between the parties; say those who make it; on a particular matter; and on the basis of a legitimate reason, then the transaction should be valid, even through an electronic process.

A covenant or alliance is an etymological bond, whereas a treaty is an act in which one binds himself to one or more others. According to Abdulkadir Muhammad, a covenant is an agreement with two or more people bound to each other to carry out something in the field of wealth. According to the law of Islam, the agreement is derived from the word *aqad* which etymologically means "concluding" to form an *akad* there are elements in the forming of the *akad* (Abdulkadir Muhammad, 1990)

But for the *aulia* there is an opinion about the elements of the formation including the *rukun* and the condition of the *akad*. According to *jumhur fuqaha* (the opinion of the majority of *fiqh* scholars), the *akad* consists of:

1. *Al-Aqidin*, Those who are directly involved with the bargain.
2. *Mahallu Akad*, Those The Object *akad*, That which is to be determined.
3. *Maudhu 'ul'Aqd*, That is the purpose of the obstacle to be carried out.
4. *Sighat Akad*, That is the statement of the sentence *akad* which is usually carried out through a statement *ijab* and *qobul*.

About the provisions *muamalah*, Allah SWT in the Quran and the Qur'an:

"O you who believe, when you do not pay in cash and for a fixed time, write it in truth."

And let not the writer refuse to write it as Allah has taught him:

" then let him write it, and let the debtor perform it; and let him fear Allah his Lord, and do not diminish any of his debt. If the debtor is weak or weak, or if he is unable to pay, then let him pay in truth. And bear witness with two witnesses of men among you. If there are not two men, then one male and two female among the witnesses whom you have appointed, so that if one of them forgets, another reminds him. Do not refuse to give a testimony when they are raised, and do not hesitate to write down a debt, whether

small or large, until the deadline. That is fairer with Allah, and more confirming, and closer to the absence of doubt, except if it is a trade between you, there is no sin for you, if you do not write it. And bear witness when we trade and sell, and do not let the adulterers and the witnesses make each other difficult. If you do so, it is indeed a disobedience to you. And fear Allah. Allah teaches you, and Allah is All-knowing”.

According to the verse, it can be explained that in a treaty must be poured in a form of writing. Writing in this case in the form of an act that is written correctly, honestly and must not be deceitful. According to article 1868 of the Civil Code, “an authentic act is

“an act made in the form prescribed by the law by or before the public official authorized to place the act”

In order for an act to have authenticity, the following conditions must be met:

- The act must be made by or in the presence of a public official;
- the act must have been made in the form prescribed by law and the Office of the General Assembly must have authority (Abdulkadir, 1990)

An authentic act is a perfectly written proof tool that has an essential function on any legal relationship of business transactions on public life. Many business activities in the fields of banking, land, social activities and so on, very much require written proof of authentic notarial acts to be the basis for holding for the parties in obtaining clear legal certainty of the rights and obligations of the parties, guaranteeing legal certitude as well as efforts to minimize if later day there is a dispute. Although such a dispute will exist, it will help in the process of its settlement will make it easier for the relevant authority (court) in examining and deciding cases (Abdulkadir Muhammad,1990)

Meanwhile, the existence of the virtual world is often referred to as cyberspace that can be easily accessed through the Internet, raising the boundaries of space dimensions to become almost invisible anymore. The development of this technology has also implicated in the field of authoritarianism as an advocate of the validity of e-commerce sales agreements, which later emerged an idea about cyber notaries. The rapid development and advancement of information technology has led to changes in human life activities in various fields that have directly affected the birth of new acts or legal acts (Emma Nurita, 2012)

In connection with the concept of e-commerce, which transforms physical meetings into virtual meetings in the making of notary acts to pour out agreements according to the Islamic sociologist, Khaldun (1377) in his conception that human beings have a basic character as social and civilized beings who need social reconciliation which carries the consequences of the existence of commercial transactions as well as the exchange of goods and services. It defines the jurisdictional principles of self-government that govern everything in accordance with the Sunnatullah, harmony, and social justice. The Shariah principles in matters of exchange and contracts can be used to conduct

a legal review of every transaction of all ages, including the modern era for the benefit of all parties (Khalidum, 2011). This is according to the statement of Joseph Qordhawi: "Between science and religion is not backward, but has a connection, science supports religion and religion blessed knowledge, because the truth will not contradict the truth." (Muslich, 24:29) (Pujiyanti, 2020)

Based on the thought, the existence of e-commerce is not a concept prohibited by Islamic law, although the concept is a result of Western thinking. So in this article will explain and display about: how validity of e-commerce purchase agreements in the perspective of Islamic law.

2. Research Method

This study uses normative law research. "Normative Law research is legal research that is carried out by studying library material or secondary data." According to Peter Mahmud Marzuki, normative law research is a process to find a rule of law, legal principles, or doctrine of law in order to answer the legal issues faced. The study aims to know the law is conceived as what is written in a law or norm as a benchmark of human behavior properly.

3. Results and Discussion

Basically, the sales transaction process carried out online has no significant differences from the conventional sales process. The merchant and the customer must have agreed on the goods/services sold and the prices related to them. Generally speaking, the only differentiator in this sales process is the media that is part of it, where online sales through the internet media so that between the seller and the buyer do not meet directly. (face to face).

In support of the process of sale and purchase by e-commerce, many countries have empowered the functions and roles of their notaries in electronic transactions. Therefore, if you do not want Indonesia should stimulate the maintenance of its notary services in e-transactions even by carrying out maintenance of the public service itself electronically (Pujiyanti, 2020)

According to Emma Nurita explained that, the concept of "cyber notary" for the time being can be meant as a notary who performs his duties or authority of office based on information technology, which relates to the duties and functions of the notary, especially in the drafting of acts (Pujiyanti, 2020). Then, according to Brian Amy Prastyo, the essence of the current cyber notary has yet to have a binding defense. However, it can be defined as a notary who performs his or her duties or authority electronically or on the basis of information technology. Cyber notary is essentially a general concept that is often used in various scientific writings that mention the function of a notary that is applied in transactions or relationships electronically, via the Internet (Brian Amy Prastyo, 2021).

Edmon Makarim himself argues that the concept of a cyber notary is still

in debate whether technology allows the role of a notary online and It's remote, but it's not legal. The same thing that Tegas Hari Krisyanto has told us, is that: (Cyndiarnis Cahyaning, 2019)

Even so, by the existence of regulations and even legislation that opens wide opportunities for the application of Cyber Notary in carrying out the duties and authorities of Notaries such as the above, it must be admitted that shifting roles towards the Cyber Notary era is certainly not as easy as turning the palm.

In Indonesia itself, cyber notaries have been in existence since 1995, but their existence has not yet had a strong legal basis. It was only since the legislation of the Republic of Indonesia No. 11 of 2008 on Electronic Information and Transactions has been amended by the Law No. 19 of 2016 on Amendments to the Law of the Republik of Indonesia no. 11 from 2008 on electronic information and transactions (hereinafter referred to as the ITE Act). According to Article 1 of the Law ITE, what is meant by Electronic Transaction is a legal act performed using a computer, computer network, and/or other electronic media, any legal act carried out using electronic media can be categorized as an electronic transaction. As for the law, it consists of: (S. T. Kansil, 2020)

- a. A one-sided act of law is an act done by one party only and which leads to rights and obligations of one party. Examples:
 1. The act of making a will (Article 875 KUH Perdata);
 2. The granting of a grant of something (Act 1666 KUH perdata);
- b. A legal act of two parties; is a legal act committed by two parties and entails rights and obligations for both parties (in return), for example:
 1. Agreement for Sale and Purchase (Article 1457 KUH Perdata);
 2. Lease agreement (Act 1548 KUH perdata);

The legal acts of the parties referred to in an agreement must condition the validity of the agreement. According to the provisions of article 1320 of the Code, there are 4 (four) of the following:

1. There is a word of agreement for those who bind themselves (toesremming),
2. The parties are competent to make a covenant (toasremming);
3. A certain thing (toeremming); and
4. A legitimate cause (georloofde oorzak)

With regard to cyber notaries, legal acts arising in e-commerce transactions can be carried out through 2 (two) contexts, namely: (Edmon Makarim, 2010)

1. The relationship of the organizer of the state to its public (public service);
2. The civil relations of the parties to make an electronic alliance or contract.

The ITE Act is increasingly strengthening the existence of cyber notaries in Indonesia. So not to exclude the possibility of a notary in carrying out his duties can be done remotely by taking advantage of today's technological advances. In addition to the existence of the ITE Act, the government also gives

the possibility of the cyber notary by giving new authority to the notary in carrying out certification of transactions carried out electronically through Article 15 paragraph (3) UUJN about the other authority held by notary as follows:

"In addition to authority as referred to in paragraph (1) and paragraph (2), notary has other powers regulated in the provisions of the legislation".

Then Article 15, paragraph (3), is explained again in the following explanation

"What is meant by other authority regulated by the legislative regulations' other, the authority to certify transactions carried out electronically (cyber notary), make the Wakaf Declaration Act, and aircraft mortgage"

In the Act No. 2 of 2014 Article 1 paragraph (1) states:

"A notary is a public official who has the authority to make an authentic act and has other authority as referred to in such a law or under other laws."

According to the notion of a notary above, the duty of the notary can be known is to make authentic acts. Whereas the authentic act in article 1868 of the Covenant explains that an authoritative act is: (Habib Adjie, 2011)

"the act in the form prescribed by law, made by or before the public officials authorized for it in the place where the act was made".

In the creation of acts on the concept of cyber notary using electronic acts. In article 40 paragraph 1 of the UUJN states that every Act read by a notary is attended by at least 2 (two) witnesses. Electronic signature can also be applied in the country of Indonesia, but this cannot be done against a legally valid important document, because the burden of proof of the validity of such an act lies at the stage of verification impossible to convert an electronic document into an authentic act. The electronic documents are in hand. Under article 1320 of the Covenant, legalization of e-commerce has invalid legal consequences. In the concept of a cyber notary it is the opposite, that this physical meeting is not absolute, because its function is replaced by a telecommunications device. This is where the legal conflict arises between a product of a conventional notary's act and a product in the form of an electronic notary or a cyber notary (Aris Yulia, 2019).

In the concept of cyber notary requires an electronic signature, the meaning of electronic signatures based on Article 1 paragraph 5 of the ITE Act is:

"Electronic signature is electronic information attached, has a direct connection or association with other electronic information addressed by the party concerned to indicate the subject and identity of the legal subject".

The absence of legal force of electronic signatures is regulated in Article 11 of the ITE Act, subject to the following conditions:

- a. electronic signature creation data relating only to the signatory;
- b. electronic signing data at the time of the electronic signatory process is only within the authority of the signature;
- c. Any changes to the electronic signature that occur after the signing time is

- known;
- d. Any change to such electronic information after the signaturing time becomes known;
 - e. There are certain means used to identify who the signatures are;
 - f. There is a certain way to indicate that the signator has given consent to the relevant electronic information.

Thus the Muslims are expected to have the characteristics of science, which is critical (QS. Al-Isra/17: 36), open in accepting the truth from wherever it comes (Qs. Az-Zumar/39: 18), and always able to use their minds to think critically (QS. Yunus/10: 10). This leads to a must for every Muslim to be able to excel in the field of Science and Technology (IPTEK) as a means of life that must be prioritized to happiness both in the world and in the Hereafter (Mohammad Rizky, 2011)

The Prophet (peace and blessings be upon him) said, "Whoever goes out to seek knowledge, Allah will pave the way for him to Paradise." (HR at-Tirmizi) This is the Qur'an.

The principles of Islamic law that are based on th Al Quran and Hadith above, in the use of information technology applications are permitted in the implementation according to the current development of the times during the interpretation and implementation for the interests of Muslims and in accordance with the Islamic Shariah. This is in accordance with the statement of Yusuf Qordhawi :

" Between science and religion is not backward, but has a connection, science supports religion and religion blessed knowledge, because the truth will not contradict the truth". (Triana Sofiani, 2022)

There are two verses in the Qur'an: 'Aqdu' and 'ahd' which are to be explained as follows:

- 'Akad' or 'al-aqdu in Arabic means bond, or a covenant and an agreement.
- 'Akqu or al'aqd' refers to having concluded two or more covenants, i.e. when one makes a treaty, then the other agrees to it, and declares a agreement relating to the previous one, so that there is an alliance with two It is a covenant between one person and another, and then it is called an alliance (*'aqd*) (Triana Sofiani, 2022)

In the case of an agreement between two or more parties, the agreement must have a condition to be valid, i.e: (Shalah Ash-Shawi, 2008)

- a. There is a subject of the law (*al'Aqidin*);
the subject in a law is two or several persons and both parties must be qualified in having the right to perform the law so that the law may be considered valid. The ability to distinguish between good and bad.
 - 1. It means that both sides in the game must be sensible and the end of *baligh* and not in a state of stress.
 - 2. Freedom of extortion. The parties within the barrier must not be

in a state of coercion.

3. Acts can be applied when there is no *khiyar* element. They are like the right to choose (the right to set conditions), the right of choice (the choice in sight) and the like.
- b. There is an object (*Mahallul 'Aqd*); It is a commodity (service) that is the object of a covenant. In order for an object to be considered valid, it must qualify as follows:
 1. The object must be holy but if dirty can be cleaned.
 2. The object should be able to be used in the ordered manner.
 3. The object has to be accepted.
 4. The object sold must be the perfect property of the person who has made the sale.
 5. It must be known by the person doing the sale if it is the goods sold directly. The size, type, and criteria must be known when the goods are in possession but not in the location of the transaction.
- c. The purpose of a covenant (*Maudhu 'ul'Aqd*);
According to a fictional, the purpose of an akad must be in accordance with the will of a syara, so that when the goal is contrary to the syara' then results in the invalidity of the agreement made. The goal must be at the time to be made, can last until the end of the akad, and must be justified by the syra.
 - a. Ijab is a statement to promise or form an offer from the first party to do or not do a thing (Shalah Ash-Shawi, 2008).

In the same way as the explanation of the existence of a lawful act must be accompanied by a declaration of will of both parties in making a covenant, then in the ijab and in the law itself can be as follows: (Novi Ratna Sari, 2017)

1. Statement of the law through the Lisan, the parties express intentions and purposes in the form of words orally, clearly and clearly done by the parties..
2. Declaration of agreement by writing, an agreement made in writing / al-book. This method is usually used for alliances of a more difficult nature, such as those involving legal bodies or associations involving notaries (Cut Lika Alia, 2014) It is used as a guideline to serve as a tool of proof in the event that an alliance is facing a dispute. In the case of no one of these places, accusations can be carried out by writing and sending messengers. In this case there is a provision: "Writing for those who are present is equal to the oral speech of those who were present" (Mustafa az-Zarqa', 2010)
3. Declaration of will in secret (*at-ta'ati*). It is the act of giving and receiving from those who have understood the deed of the covenant with all its legal consequences (Afdawaiza, 2022)

If in the Constitution an authentic act is considered valid in the power of perfect proof which covers the force of physical, formal and

material proof, then in Islamic law there are also foundations in the making of treaties. These foundations include : (Rahmani Timorita Yulianti, 2008)

1. the principle of this is in the law of the Islamic covenant the parties are given the freedom to make agreements or bars and there must be no elements of coercion, deception and deceit. The law of this foundation is in Al-Baqarah verse 256, which means as follows:
"There is no compulsion to (enter) religion (Islam).
2. *Al-Musawah* (the equal basis or equality) The understanding in this basis is that the parties are in the same position to determine the term and condition of an academic. The basis of the law against this base is in the provisions of the Qur'an Al-Hujurat verse 13 which means as follows:
"O men! We created us from a man and a woman, and made you nations and tribes, that you may know one another. Verily the most honorable of you with God is the most fearful of you. Verily God is All-knowing, All-Knowing."
3. *Al-Adalah*
The purpose of this foundation is in an act requiring the parties to express their will according to the truth and fulfil their duties.
4. *Al-Ridha*
In this basis explains that all transactions will be made on the basis of discretion to the parties and must be based on the free agreement of the parties.
5. *Ash-Shiq* (The Foundations of Truth and Honesty)
In this foundation in establishing the validity of a barrier there must be no element of falsehood so that faith becomes an important thing in the implementation of the barrier.
The law of this foundation is in the Qur'an Al-Ahzab verse 70, which means as follows:
"O you who believe, fear Allah and speak the truth"
6. *Al Kitabah*
It is better to write it in writing, so that if there is a dispute later on, it may be used as a proof for the settlement. The law of this foundation is in the Qur'an Al-Baqarah verse 282-283 which explains that in order that in the law what is done must be truly for the good of all parties.

4. Conclusion

E-Commerce is an exploitation of technology and information in the business of online shopping. The concept of e-commerce has the opportunity to be applied with the presence of Article 15 paragraph (3) of the UUJN and the ITE Act on the arrangement of electronic transactions, electronic documents and

digital signatures. Their promises are guided by the rules of the law, which include: *bekwaamheid*, *toesremming*, *bepaalde onderwerp*, and the existence of a legitimate cause (*geoorloofde oorzak*) only the distinction in its application eliminates physical meetings replaced by virtual meetings. (*daring*).

On the other hand, in the perspective of Islamic law, the existence of e-commerce based on the use of information technology is permitted in the implementation according to the current development of the times during its interpretation and implementation in the interests of Muslims and in accordance with Islamic Shariah. This is because, Islam is a religion that appreciates modernization as long as it must remain in accordance with the values of Islam's Shariah. The validity of obstacles in Islamic law is the same as the terms of the agreement in the Covenant which distinguishes only in the mention of the terms. It is the subject of the covenant, the object of the alliance, the purpose of the union, and the *Ijab* and *Qabul* (*Sighat al-'Aqd*).

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