

Permissibility of Advance Payment in Online Sales: An Analysis Studi of Fiqh Muamalah

Nur Atiqah¹, Hervina², Akhmad Sofyan³, Robiah Bah.⁴

¹UINSI Samarinda, nuratiqahmardan@gmail.com

²UINSI Samarinda, vhie.iainsmd09@gmail.com

³UINSI Samarinda, akhmadsofyan@gmail.com

⁴Erciyes University, Turkiye, robiahbah@gmail.com

Abstract:

This article discusses online buying and selling, especially contracts. The author found several consumers who carried out the buying and selling. This research aims to find out the practice of paying at the beginning of a transaction in online buying and selling and how Fiqh Muamalah reviews this practice. Type of normative, empirical research with qualitative descriptive analysis. The respondents of this research were 21 consumers who made payments in advance for online buying and selling in the Loa Janan Ilir sub-district. The data collection techniques used by the author are observation, interviews, and documentation. The data analysis technique used is data management from interviews, documentation, and literature using qualitative descriptive analysis patterns. The results of this research obtained: first, the practice of payment at the beginning of transactions in online buying and selling in the community in Loa Janan Ilir sub-district is carried out by buyers ordering goods in the online shop application and stating the specifications of the desired goods and making payment immediately in advance according to the stated price. In the visual depiction, it is to be noted that the total cost encompasses not only the item's price but also the shipping charges. Furthermore, it must be noted that the dispatch of the goods in question will be deferred for several days before their shipment. Second, people in Loa Janan Ilir often buy and sell online using greeting contracts. Where payment must be made immediately for something that is still pending. This is permitted by some scholars as long as it does not conflict with Sharia law^{''} applicable. However, some scholars do not allow this buying and selling because it is considered detrimental to one party. The seller must state in detail the details of the goods being sold to avoid elements of fraud.

Keywords: Fiqh Muamalah, Buying and Selling, Early Payment, Contract

A. Introduction

Buying and selling is a contract that cannot be separated from human life. The words buying and selling combine two words, each of which has the opposite meaning. The word sell means exchanging goods with a medium of exchange which is generally often used, such as money. Meanwhile, the word buy means

exchanging money as a medium of exchange for goods. In jurisprudence, buying and selling is usually referred to as *al-bai* (singular) or *al-buyu* (plural).¹

Buying and selling has progressed along with the times. In the current era of globalization, technological advances provide convenience for humans in various fields, one example of which is carrying out buying and selling transactions. Previously, the practice of buying and selling was carried out face to-face between the two parties, and the payment method used the cash system. Following current developments, transactions and payments can be made using courier services or so on.²

Online buying and selling gives a practical impression to users by providing various features that can make transactions easier. Online buying and selling is the practice of buying and selling via the internet network, facilitating the transaction process for sellers and buyers. Sellers and buyers do not need to meet face to face, and no items being sold can be witnessed directly. Even though, at first glance, everything is gray from the point of view of harmony and the applicable buying and selling conditions, online buying and selling continues to grow in all corners of the world.

Transactions using an advanced payment system have become a tradition. When buying goods, consumers first state what product they want, the criteria, and the number of goods they are willing to pay upfront. However, scholars disagree about this system because the payment system used can harm one party in the transaction. This is caused by an error in the order, which does not match what was expected. This practice creates problems between what is expected and what happens so that it will be detrimental to one of the parties. Concerning buying and selling that uses advance payment, the Ulama disagree about whether or not buying and selling is permitted using the advance payment system. This problem is what the author pays attention to research, considering that the process of buying and selling must be carried out with due regard for the values of justice so that it can avoid detrimental business elements.

Therefore, to find out more about payments at the beginning of transactions in online buying and selling, the author is interested in conducting research, especially in Loa Janan Ilir Samarinda Seberang as the research target entitled "Review of Muamalah Jurisprudence on Payments at the Beginning of Transactions in Online Buying and Selling in Loa District Janan Ilir."

¹ Pudjihardjo and Nur Faizin Muhith, *Fikih Muamalah Sharia Economics* (Malang: UB Press, 2019). P.24.

² Asri Putri, *Overview of Islamic Law Regarding Buying and Selling Practices Using the Gobiz Payment System* (Lampung: UIN Raden Intan, 2020). P.2.

1. Fiqh Muamalah

In fact, the original law of Muamalah is mubah (permissible), while the law of studying Muamalah Fiqh is fardhu ain (individual obligation) for every Muslim, and the law of becoming a member of Muamalah Fiqh is fardhu kifayah (collective obligation). The legal basis that we can understand about fiqh issues is contained in surah at-Taubah:

"It should not be for the believers to all go (to the battlefield). why not go from each group among them a few people to deepen their knowledge of religion and to warn his people when they have returned to him, so that they can take care of themselves".

2. Buy and sell

Buying and selling (al-bai") etymologically or linguistically is the exchange of goods for goods. Meanwhile, in terms of terminology, there are several scholars who define buying and selling. Imam Hanafi stated that buying and selling is exchanging assets or goods in a certain way or exchanging something one likes for goods of equal value and benefit and bringing benefits to each party.³ This buying and selling activity is carried out with consent, provided each party agrees. These buying and selling activities exclude exchanging goods that have no benefit for both parties, such as exchanging money for money.

In buying and selling objects that can be exchanged includes the meaning of goods and money and the nature of the object can be assessed in the form of a valuable object and can be used according to sharia.". Objects such as alcohol, pork and other prohibited items are forbidden to be bought and sold, so it is considered invalid or false if someone buys and sells these objects.

Buying and selling is a human activity related to the exchange of property. This means that the exchange of property will cause the transfer of property or property of each party. According to Hasbi Ash-Shiddiqie, buying and selling is the exchange of property with other property whose value is the same as determined by Shariah law.", so that later the rights contained in these objects can be utilized by each party according to their needs.

The legal basis comes from the Koran"an is as follows:

"...And Allah SWT legalizes buying and selling and prohibits usury..." (QS. Al-Baqarah: 275)

a. Pillars And Conditions Of Sale And Purchase

³ Imam Mustofa, "Contemporary Fiqh Mu'amalah" (Depok: PT RajaGrafindo Persada, 2018), p. 21

Buying and selling are transactions in which there must be several things for the contract to be considered valid and binding. These are called the pillars of buying and selling. According to Hanafiyah scholars, consent is only one pillar of buying and selling. They consider that the willingness to give goods to each other is the most principle thing in buying and selling. So if an agreement has occurred, the sale and purchase are considered to have occurred.⁴

There are three pillars of buying and selling, namely the contract (jab kabul), the people who have the contract (seller and buyer), and ma'kud alaih (object of the contract). The contract is a bond of words between the seller and the buyer. It cannot be said that a sale and purchase is valid if the consent and acceptance have not been carried out, because this agreement is a sign of consent (pleasure). In essence, buying and selling is done verbally, but if this is not possible (a person who is mute or other) the consent may be carried out by means of correspondence which contains the meaning of consent.

Meanwhile, there are four types of buying and selling conditions: the conditions for fulfilling the contract (Syurut al-in'iqad), terms of sale and purchase, legal and binding terms. With this condition, it is intended that the sale and purchase carried out will bring goodness to each party so that no one is harmed.

b. Various types of buying and selling

Buying and selling can be reviewed from several aspects, such as from the legal point of view which consists of two types, namely legal and void buying and selling according to law, there are also in terms of the object of buying and selling and in terms of the person selling and buying. In terms of things that are used as objects of sale and purchase, Imam Taqiyuddin's opinion can be presented which states that sale and purchase is divided into three forms⁵, that is:

- 1) Buying and selling visible objects means that when making a contract, the object to be traded is in front of the seller and buyer. People generally often do things like this, such as buying basic necessities at the market.

⁴ Imam Mustofa, "Contemporary Fiqh Mu'amalah" (Depok: PT RajaGrafindo Persada, 2018), p. 25

⁵ Hendi Suhendi, "Fiqh Mu'amalah" (Jakarta: PT RajaGrafindo Persada, 2014), p. 75

- 2) The sale and purchase of objects whose properties are stated in the agreement is an order sale and purchase (salam). Salam buying and selling is non-cash (cash) buying and selling, which means lending goods or something at a certain price. This means that buying and selling is an agreement in which the delivery of goods is postponed until a certain time in exchange for a price that has been determined when the contract takes place.
- 3) It was buying and selling objects that don't exist, meaning buying and selling objects that cannot be seen. This buying and selling is a sale and purchase which is prohibited in Islam because the object being sold is uncertain or does not yet have its physical form so it is feared that the item was obtained from being stolen or entrusted to it which will result in losses for one of the parties.

c. Online Buying and Selling

Online buying and selling is the practice of buying and selling via the internet network nationally and internationally. This buying and selling practice is very efficiently carried out via the internet network, making the transaction process easier for sellers and buyers. This transaction is carried out without the need to meet face-to-face with the buyer. There is no process of directly witnessing the goods being sold and a third party carries out the payment process.⁶

The contract in online buying and selling transactions is different from the one in person. Generally, offers and contracts in online buying and selling are made in writing, where an item is displayed on an internet page with a certain price tag. Then, if the consumer or buyer wishes, they will transfer money according to the price listed, which will later be added to the shipping costs.

In the domain of Islamic jurisprudence, transactions executed via digital platforms are classified under the principle of *ittihad al-majlis*, thereby affirming the legitimacy and contractual integrity of such engagements. This classification is predicated on the mutual recognition and informed consent (*muta'aaqidin*) of the parties involved, alongside a comprehensive understanding of the transactional object, thereby mitigating the incidence of *gharar* (ambiguity or uncertainty). The advent and evolution of electronic

⁶ Novi Eka Ariyani, "Discussing Selling Online" (<https://syariah.iainsurakarta.ac.id/membingan-jual-beli-online/>, Accessed on 25 March 2022, 10.42)

media have significantly enhanced the tangibility of interactions within the digital realm, approximating the authenticity of physical transactions. Consequently, these digital transactions are designated as *kinayah* transactions, which bear equivalent validity and juridical efficacy as their conventional, in-person counterparts.

3. Lags

In terms of jurisprudence, akad is a relationship of commitment and acceptance that is in accordance with the Shari'ah and has an effect on the object of the engagement. The contract must be in accordance with Sharia law⁷ because all agreements made by both parties will not be considered valid if they are not in accordance with the provisions of the Sharia⁷.

The legal basis of the contract refers to Qs. Al-Maidah verse 1 which reads:

Translate: "O you who believe, fulfill your covenantsthat..." (QS. Al-Maidah:

1)

a. Principles and Terms of the Agreement

The pillars of the contract are the elements that determine the formation of the contract. The tenets of the contract are as follows:

- 1) *'Aqid* (person who has a contract), in buying and selling both parties who do a buying and selling transaction will make a contract and a person who has a contract sometimes has the right (*'original faith*).
- 2) In the domain of Islamic jurisprudence, the entities subject to contractual agreements—denominated as *Ma'qud'alaih*—encompass those items transacted within the ambit of sales and purchase agreements, bequeathals within the framework of grant contracts, assets pledged under mortgage arrangements, and obligations secured by a guarantor within the confines of a Kafalah agreement.
- 3) *Subject* " *al-'aqd* (purpose or purpose of entering into the contract), for example in a gift contract the main aim is to give goods to another party to own without being replaced.
- 4) *Sigat al-'aqd* (certificate of acceptance). *Ijab* is the beginning of an explanation from one of the contracting parties, and *ka-bul* is a word that comes from the other contracting party and is spoken after *ijab*.

⁷ Nur Wahid, "Multi Contracts in Sharia Financial Institutions" (Sleman: CV Budi Utama Publishing Group, 2012), p. 3

b. All kinds of contracts

Various contracts include:

- 1) 'Aqad Munjiz, a contract executed directly at the time of completion of the contract, is not accompanied by conditions and does not determine the implementation time after the contract is concluded.
- 2) 'Aqad Mu "let's buy, which is a contract in the implementation of which there are conditions that have been determined in the contract.
- 3) 'Aqad Mudhaf is a contract in which there are conditions regarding handling the implementation of the contract, a statement that implementation is suspended until a certain time.

4. Greetings and Istishna'

According to the Syafi'ii and Hanbali schools of thought, salam is a contract for goods that is deferred by exchange in the form of cash given at the beginning of a contract assembly. Meanwhile, the Maliki school of thought states that salam is a sale and purchase in which the capital is handed over before the goods are ordered within a certain period of time.

Meanwhile, etymologically, istishna' comes from the word sishna, which means making something from basic materials. Istishna' means asking for an item to be made by asking a craftsman to make the item. Lexically, it is said that 'al-sana'ah' means a craftsman's writing craft and his work is that of a craftsman. In terms of terminology, istishna' means asking someone to make a certain item with certain specifications or conditions. In an istishna' contract, the goods that are the object of the contract are works of art where the basic materials used to make the goods come from the person who made them.⁸

B. Research Methodology

This study will primarily employ normative legal research to critically examine the permissibility of advance payments in online sales transactions from the perspective of Muamalah Fiqh, which is the body of Islamic jurisprudence concerned with commercial transactions.

The research will involve an in-depth analysis of primary Islamic legal sources, including the Qur'an, the Sunnah (Prophetic traditions), and scholarly opinions (fatwas) relevant to contract law and sales transactions within Islam.

Based on the normative legal analysis, a conceptual framework will be developed, outlining the key principles drawn from Muamalah Fiqh regarding

⁸ Imam Mustofa, Fiqh..., p. 94-95

advance payments, including conditions and scenarios where they may or may not be permissible.

The framework will then be applied to the context of online sales in the Loa Janan Ilir District by surveying practices adopted by local sellers/businesses and exploring consumer perspectives on advance payments.

This research will use two types of sources: primary and secondary. The primary sources are the Quran and Sunnah, Fatwas from relevant Islamic jurisprudence bodies, and the secondary sources are academic literature on Islamic economics and finance, Scholarly works on contract law within Islamic jurisprudence, Industry reports or news articles specific to online sales practices in Indonesia.

Qualitative data from interviews will be analyzed using thematic analysis to identify recurring themes related to the understanding and practice of advance payments, potential concerns, and ethical considerations among stakeholders.

The Islamic law framework will be applied to the gathered empirical data to assess the extent of alignment or potential misalignment between the online sales practices in Loa Janan Ilir District and Islamic principles related to advance payments.

This study is limited to the Loa Janan Ilir District context and may not be generalizable to all regions within Indonesia. Additionally, Islamic legal analysis is subject to scholarly interpretation and diverse perspectives will be taken into account.

C. Discussion

1. Advanced payment practice in online sales transactions in Loa Janan Ilir District

Many people choose to shop online because it is easier and more practical. People just have to choose the items they want by paying careful attention to the details of the items offered. This activity has become a habit for people if they want to shop without having to go to a hot market. The payment systems offered vary; some include payment in advance, transfer direct payment, or pay on the spot.

In general, paying at the beginning of a transaction in online buying and selling, such as transfers or via Indomart, is very commonly used. This payment system's purpose is to meet sellers' capital needs. This is also to avoid fraud if the goods that have been sent are not paid for by the buyer. This payment method must have an element of mutual trust between the seller and the buyer

because it has a high risk of fraud, where payment has been made while the goods purchased are not yet in hand.

In the case studied by the author regarding payment at the beginning of the transaction in online buying and selling transactions in the community in Loa Janan Ilir sub-district, the author discovered the fact that when placing an order the buyer had to immediately pay for the order via Indomart, the nearest ATM or mobile banking. Meanwhile, ordered goods are still on hold or will be sent later. This buying and selling is often called *urbun*.

In buying and selling, making payment at the beginning of the transaction sometimes causes several things, such as the ordered goods not matching the specifications in the picture, long delivery times, and damaged ordered goods. The consequence of this is that the buyer will experience a loss because the seller will not return the money previously paid.

In fact, if the goods that arrive do not match the specifications that have been agreed upon, they should be returned. But the item must still be accepted by the buyer even if it is not suitable. Buyers will usually provide an evaluation in the comment column in the online shop application provided for each online figure. According to the author, the buyer cannot take the item if it does not match the specifications of the previously ordered order. This is to avoid the problem of loss on one side when arguing.

So it can be concluded that buying and selling online with payment in advance is an alternative that people often use when shopping. This practice is felt to be easier and more practical because buyers just sit back and relax at home by looking at the items displayed on the online shop application and then selecting the items they want without leaving the house. Next, buyers just have to wait for the order to be delivered to their home.

2. Islamic Law analyses of advanced payment practice in online sales transactions in Loa Janan Ilir District

The contract used in online-based buying and selling transaction activities is the greeting contract, where the consumer buys a product using an order system on an online site, where payment is made in advance and the goods are delivered later or the goods are placed on hold. Buyers only see detailed images of the product they want to order.

There are differences between several scholars regarding online buying and selling contracts. Ulama from the Shafi madzhab: "Hanafi and I believe that the greeting contract will not be valid or void if the words sale and

purchase are used. This is because the goods that are the object of the buying and selling transaction do not yet exist or are not in place.⁹

Shafi school¹⁰ forbid buying and selling with a salam contract, they are of the opinion that such buying and selling is invalid. The transaction is declared invalid because it does not fulfill one of the elements in the pillars of buying and selling or is not in accordance with the Shari'a because it could harm one of the parties to the transaction.

So it can be concluded that regarding the sale and purchase of salam contracts, the ulama have disagreements regarding the payment at the beginning of the transaction in the sale and purchase. Some allow this on the condition of returning goods that do not match the specifications ordered and returning the previously paid money. Meanwhile, most scholars think that this buying and selling is not permitted because it does not comply with Sharia¹¹ at Islam which is detrimental to one of the parties, because if the goods ordered are not suitable or are damaged then it is a fraudulent use of other people's property. This sale and purchase will also result in the buyer experiencing a loss because the seller will not return the money paid in advance.

D. Conclusion

Based on this article, the practice of payment at the beginning of transactions in online buying and selling in the community in Loa Janan Ilir sub-district is carried out by buyers ordering goods in the online shop application and stating the specifications of the goods they want. The payment system used is payment in advance via Indomaret or ATM by paying according to the price shown in the picture plus shipping costs.

In Muamalah Fikih, online buying and selling transactions use a salam contract, where payment must be made immediately for something that is still in deferment. Scholars have differing opinions regarding the sale and purchase of the greeting contract. Some allow it on condition that they return the goods ordered if they do not match the specifications to the seller and the money previously paid is also returned. Some argue that buying and selling with a salam contract is invalid. This is because the buying and selling is not in accordance with Sharia law¹². After all, it could harm one of the parties.

⁹ Pudjihardjo and Nur Faizin Muhith, "Fikih Muamalah Sharia Economics" (Malang: UB Press, 2019), p. 32

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