

THE VALIDITY OF ELECTRONIC DOCUMENTS IN ELECTRONIC TRANSACTIONS IN THE PERSPECTIVE OF ISLAMIC LAW

Rizka Syafriana¹
Ramlan²

^{1,2} Universitas Muhammadiyah Sumatera Utara
rizkasyafriana@umsu.ac.id

Abstract: *The development of digital technology has brought about significant changes in legal practices and financial transactions, including the use of digital documents in electronic transactions. In the context of Islamic law, questions arise regarding the validity of digital documents in an electronic transaction and their conformity with sharia principles. This article discusses the validity of the digital document from the perspective of fiqh muamalah, by referring to the harmony and conditions of the contract, the principle of ridha, as well as the views of contemporary scholars and international fatwa institutions. The results of the study show that digital documents or electronic contracts in an electronic transaction can be considered valid in Islam, as long as they meet the principles of justice, clarity, and do not contain elements that are prohibited by sharia.*

Keywords: *Islamic Law, Electronic Transactions, Contracts.*

Introduction

Digital transformation has changed the way people conduct transactions and store legal evidence. One notable development is the use of digital documents and electronic signatures in business, financial, and even civil contracts. In the conventional legal system, the validity of digital documents has been widely recognized. As a comprehensive religion, Islam provides clear rules of covenants and covenants that can be applied to human life. Some of the principles and bases of this arrangement are found in the Qur'an and as-Sunnah, which were later developed by the jurists to form the law of sharia treaties.¹ Meanwhile, in Islamic legal literature, the word contract is the same as the word contract, which comes from the word Al-Aqd which means bond or knot. In Islamic law, several terms are known that contain the concept of alliance, namely the law of aqd, aldlaman, and al-iltizam.² "Contract law" actually means the legal consequences resulting from an agreement. The relationship between an agreement and an agreement is because the agreement publishes the agreement, or its source. The provisions made by each party affect the fulfillment of their rights and obligations, which causes them to be bound by the legal actions that have been agreed. As a result, the method of contract known in Islam states, "in principle, an agreement (agreement) is an agreement between the two parties and the legal consequence is what they stipulate through a promise."³ A contract is a joint agreement both signed, oral, and written between the parties through ijab and qabul which has a

¹ Syamsul Anwar, *Sharia Agreement Law, A Study on the Theory of Akad in Fiqh Muamalat*, (Jakarta: RajaGrafindo Persada, 2007), p. xiv

² Muslihun Muslim, *Economic Fiqh and Its Positivization in Indonesia*, (Mataram: LKIM IAIN Mataram, 2006), p. 60

³ Asmuni Rahman, *Qaidah-Qaidah Fiqh*, (Jakarta: Bulan Bintang, 1975), p. 44

legal bond guided by sharia and Islamic law, because a contract is guided by Islamic law, the contract can be called a sharia contract. The form of e-contract in Islamic law is almost the same as conventional contracts. Since electronic contracts are only created over the internet, the parties do not meet or meet during the process of making until the contract is signed. This has led to several legal issues related to the validity of e-contracts, one of which is the determination of the timing of the agreement which is difficult to recognize. Since the parties do not meet each other, it is difficult to identify the prowess between the parties other than to set the time of the agreement.

Literature Review

There are several things that will be discussed in this article, namely:

1. Electronic Transactions

Electronic transactions are transaction models with different characteristics from conventional transaction models, especially with a reach that is not only local but also global. The new method is able to generate business directly or often called online. Through this trading transaction, the existing trading concept can be transformed into a telemarketing concept, which is remote trading using the internet.⁴

2. Islamic Law

Islamic law is the source and purpose of Islam as a universal religion that has rules and foundations of faith for Muslims in addition to regulating the issue of worship rituals.⁵ Islamic law also pays attention to various aspects of life, both in the fields of worship, muamalah, and other fields. The essential characteristics of Islamic law do not only have the purpose of individual safety and happiness, but also to realize the benefits of society. as we have found in the Quran, Sunnah, and the rulings of the scholars through ijihad.

3. Contract

The word "aqad" comes from Arabic and means "bond or obligation," it can also be interpreted as "contact" or "agreement." It means to make a bond to get approval. When two groups make a covenant, it is called "aqad", which means they give and receive each other at the same time. Uqud is a responsibility that arises as a result of aqad.⁶

Method

This research is a normative legal research.⁷ Normative legal research is used in this study by analyzing various laws and regulations related to electronic sale and purchase agreements based on Islamic law and to gain an in-depth understanding of the legal framework that governs the validity of digital documents in electronic transactions in the view of Islamic law. This research is descriptive and analytical with the aim of describing the facts, conditions, or symptoms that are the subject of the research law.⁸ Qualitative analysis allows for an in-depth examination of the normative elements of Islamic law relating to digital transactions. It takes into account the various opinions of scholars and the principles underlying the analysis.

⁴ Rizka Syafriana, "Consumer Protection in Electronic Transactions", *Jurnal De Lega Lata*, Vol 1, No. 2, (July-December 2016), p. 430

⁵ Abdul, Wahhab Khallaf, *Rules of Islamic Law* (Ilmu Ushulul Fiqh), p.2

⁶ Abi Husain Ahmad bin Faris bin Zakariyah, *Mu'jam Maqayis al-Lughah*, (Beirut: 1994), p. 679.

⁷ Ramlan, et al., *Legal Research Methods in Scientific Papermaking*, (Medan: Umsu Press, 2023), p. 125

⁸ Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: UI Pers, 1991), p. 95.

Result and Discussion

There is a slight difference between the generally accepted definition of contract by the jurists and civil law experts. In a broader sense, the area of the contract is much wider than the specific one. This is because it is in civil law. This contract is based on the principle of buying and selling with agreed profits.⁹ From the perspective of fiqh, there are four bases that must be fulfilled by the elements of the contract: the party who transacts, the object, the substance (material), and the harmony. Each element must meet these conditions in order for the contract to be considered authentic and valid.¹⁰

An engagement, or iltizam, in Islamic law means to give one party dzimmah with rights that must be given to the other party. Iltizam was later defined by Mustafa az-Zarqa as "a situation in which a person is obliged under sharia law to do or not do something for the benefit of others."¹¹ In Islamic law, "akad" refers to the term "agreement". "An alliance between ijab and kabul based on rules in accordance with sharia that determines the existence of legal consequences on its object" is the definition of a contract.

For the formation of a contract, elements that form a contract are needed. The element of contract is something that forms the existence of a contract. Among the fuqaha there are differences of opinion regarding the constituent elements which consist of pillars and conditions, the elements that make up the contract, which in this case are:

1. Al-'Aqidain, namely the parties directly involved with the contract, must have legal capacity, namely puberty, reasonable, and not under coercion.
2. Mahallul aqad, which is the object of the contract or something to be committed, must be halal, clear, and have benefits. Thus, if the digital document can show valid ijab and qabul, and is consciously approved by the parties, then the contract is considered valid according to sharia.
3. Shigat aqad, a statement of contract sentences in the form of ijab and qabul, can be conveyed verbally, in writing, or gestures as long as it shows a clear agreement.¹²

Then the terms of the contract in general can be divided into two types, namely:

1. The condition for the existence (formation) of a contract, where if this condition is not met, the contract does not exist or is not formed and the contract is called void.
2. The condition for the validity of the contract is a condition where if it is not fulfilled it does not mean that the contract does not exist or is not formed.

In the view of Islamic law, buying and selling is called al-ba'i, which means to exchange, sell, and exchange something for another. The characteristics of Sharia contracts are part of the Islamic economic system (Sharia economy).¹³ In fiqh terms, the word al-ba'i is also sometimes used to define its opponent's word, which is the pronunciation of al-siri, which means to buy. Thus, al-ba'i means to sell as well as buy or sell at the same time. Based on this understanding, buying and selling occurs when money has not been used to exchange goods, namely by barter known in fiqh as ba'i almuqayyadah.¹⁴ In principle, the legal principles of Islamic alliance should be included in the sharia agreement. The first is the principle of freedom of the parties who have a free contract to enter into agreements and engagements, both in terms of the substance and

⁹ Lilawati Ginting, "The Role of Notaries in Murabahah Financing Agreements". *Indonesian Journal Education*, Vol 3, No. 3 (2024), p. 88.

¹⁰ Mustafa Ahmad al-Zarqa, *Al Madkhal al-Fiqh al-'Am*, (cet. I, Beirut: Dar al-Qalam, 1998), p. 399

¹¹ Syamsul Anwar, 2010, *Sharia Agreement Law*, (Jakarta: Rajawali Pers, 2010), p. 48

¹² *Ibid*

¹³ Rizka Syafriana, "Principles of Legal Settlement in Sharia Contract", *Randwick International of Social Science (RISS) Journal*, Vol. 3, No. 4, (2022), p. 724

¹⁴ Mardani, *Sharia Economic Law in Indonesia*, (Refika Aditama, Bandung, 2011), p. 168

metrics of the agreement and the conditions listed in the agreement clauses. second, the principle of equality So, when determining the rights and obligations of each party, both parties are in the same place.¹⁵ Third, the principle of justice. It is proportional justice in an agreement that prioritizes equality of position and performance among the contracting parties. This is achieved through equal payment for the same work, where each party will receive a share corresponding to its contribution.¹⁶

Islam allows any transaction to be done as long as it does not contain something that will cause loss. Goods that are traded should not be prohibited by religious law (Islamic law), such as drugs or goods that are unclean or haram, or by state law (such as stolen goods, corruption, or money laundering).¹⁷

Referring to this thought, e-commerce transactions are not an economic act prohibited by Islamic law, although this is a new business trend in the modern era. One of the main reasons why this kind of buying and selling system is used is because it is more efficient and effective compared to conventional buying and selling systems that require sellers and buyers to meet in person at a specific location.¹⁸

According to scholars today, the term "e-commerce" can be equated with the term "salam trade", which is a type of buying and selling in which the quality of the goods sold is determined only by their nature, which is still owned by the seller.¹⁹ The trade of salam has long been known in Islam. The scholars say that it is valid according to Islamic law if it is done with good intentions, based on the principle of mutual help, mutual pleasure (without coercion), and in accordance with the conditions.²⁰

Electronic transactions typically use written agreements, as opposed to direct agreements. Agreements used in e-commerce are different from agreements made directly; If the agreement is fulfilled, e-commerce is considered legitimate as a form of buying and selling transactions. Legitimate transactions can be made via the internet, mobile phones or other electronic media. This happens even though each party does not meet in person to express their wishes, but electronic media can serve as a way to connect them to carry out transactions. Islam regulates all aspects of human life. Electronic commerce, or e-commerce, is no exception. As the largest Islamic institution in Indonesia, Muhammadiyah and Nahdatul Ulama have the same opinion about the implementation of e-commerce transactions.²¹

This validity occurs from the perspective of fiqh mu'amalah and ushul fiqh. From the perspective of fiqh mu'amalah, electronic transactions are valid because of the fulfillment of the terms and principles of the transaction. On the other hand, there are several fiqhiah rules that can be used to support the validity of this kind of transaction. Speaking of the requirement that an assembly (ittihad al-Majlis) must be present, it does not have to mean being present in one location or a place; It should refer to a single situation and condition, such as between far-flung transacting parties who are talking about the same issue. This can be achieved by considering the

¹⁵ Fathurrahman Djamil, *Application of Agreement Law in Transactions in Sharia Financial Institutions* (cet. I, Jakarta: Sinar Grafika Offset, 2012), p. 15

¹⁶ Agus Yudha Hernoko, *The Law of Proportionality Principle Agreements in Commercial Contracts* (cet. II; Jakarta: Kencana Prenada Media Group, 2011), p. 96

¹⁷ Shofiyullah Mz, et al, "E-Commerce in Islamic Law", *Journal of Religious Research*, Vol. XVII, No. 2, (September-December, 2008), p. 579

¹⁸ Imam Mustofa, "Electronic Transactions (E-Commerce) in the Perspective of Fiqh", *Journal of Islamic Law*, Vol. 10, No. 2, (2012), p. 157

¹⁹ Haris Faulidi Asnawi, *E-Commerce Business Transactions from an Islamic Perspective*, (Yogyakarta: Magistra Insania Press, 2004), p. 12

²⁰ Sulaiman Rasyid, *Islamic Fiqh*, (Jakarta: Attahiriyah, 1976), p. 283

²¹ Shofiyullah Mz, et al, *Opcit*, p. 582

transaction terms that have been set by the fuqaha, including transactions made orally, in writing, or by mail; the relevance between *ijab* and *qabul*; the desire of one party to commit a default; and continuity between *ijab* and *qabul*.²²

Islam has rules of the game for transactions, or doing contracts, so that both parties do not harm each other, and disadvantaged consumers can be protected, including:²³

1. The Basis of *Ibahah* (*Mabad al-Ibahah*). In *muamalat*, this principle is general: everything is permissible until there is evidence to prohibit it. Therefore, e-commerce transactions are legal if they are carried out in accordance with *sharia*.²⁴
2. The basis of freedom of association (*Hurriyyah at Ta'aqud*). Everyone can make any type of contract without being bound by the names that have been determined in Islamic law and include any clause according to their interests, as long as it has no consequences and is contrary to things that are false. Allah SWT said: "O you who have believed, fulfill your contract"
3. The principle of mutual pleasure (*ar-Radha'iyyah*). In the Qur'an Surah An Nissa:29, Allah SWT says which means: " Thou shalt not eat thy neighbor's property in an unlawful manner, except by exchanging according to the reciprocal permission (agreement) between you." In an e-commerce transaction, a deal or loan starts when the buyer clicks "OK" on the seller's website. The principle of mutual *ridla* indicates that there is no coercion between the two parties who make the transaction with all the consequences that surround it, even though the contract is executed using a standard form and there is no meeting between the seller and the buyer.
4. The basis of binding promises. Allah SWT said: " Fulfill your promise, the truth of the promise will be held accountable" The logical consequence of binding a promise is the fulfillment of the rights and obligations of what is promised. Meanwhile, the obligations of business actors who are the rights of consumers are: providing complete and accurate information about the products sold; deliver products to order and on time; guarantee of safety, safety and halal products for consumption; provide complete identity to the manufacturer in accordance with the agreement, Islamic ethics and applicable regulations.
5. The basis of balance. This principle is reflected in the prohibition of usury transactions. In carrying out transactions between the parties, they must be balanced in carrying out risks. In e-commerce transactions, this principle is more needed, because the risk in this transaction is greater than traditional transactions, especially for consumers (buyers) who have a lower bargaining position.
6. The principle of benefit. Transactions are carried out without causing losses and are burdensome (*masyaqqah*) for both parties in particular and the community in general.
7. The principle of trust. This principle is closely related to the principles of honesty and good faith in transactions. Good faith is a conscious and responsible willingness to fulfill and implement the content of the agreement in accordance with the principles of Islamic law. Allah SWT said: "... Keep the promise, for it will be questioned." Q.S. Al Isro':34).
8. The principle of justice. Allah SWT said: "Be fair because justice is closer to piety". Justice is the goal that should be embodied in the agreement. E-commerce transactions made in the form of standard contracts should pay attention to the principle of fairness by

²² *Ibid*

²³ Neni Sri Hidayati, *Islamic Economic Law and Economics*, (Bandung: Mandar Maju, 2002) p. 168

²⁴ Samsul Anwar, *Sharia Agreement Law*, (Jakarta: Raja Grafindo Persada, 2007) p. 83

providing clear information about the transaction mechanism or the standard rules in transactions. For example:

- a. Conditions that must be met by consumers in making transactions, such as filling in personal data and complete addresses on the form on the business actor's website
- b. An opportunity for consumers to review the transactions to be made, this is intended to avoid mistakes made by consumers. For example, there is a cancel order or cancel or I don't Agree facility that can be clicked by consumers if they do not want to continue or cancel the transaction
- c. The price of the product offered, whether it includes shipping costs or not
- d. Information about whether or not consumers can return the goods that have been purchased and the mechanism. This is very important to understand by consumers, because not all goods that are ordered are received perfectly, there is a possibility of damage at the time of delivery or the goods are defective in production.
- e. Dispute resolution mechanisms. This is very important to be clearly informed by business actors to consumers, because not always a transaction runs smoothly, sometimes disputes between business actors and consumers occur
- f. Reasonable time for filing a claim
- g. There is a record of transaction that can be accessed by consumers at any time, so that it can be used as evidence in court if there is a dispute between business actors and consumers. For example, the History Transaction facility
- h. Clear freight delivery mechanism and
- i. Guarantee of security in transactions.

Conclusion

Islam, which is universal and in accordance with the constant development of the times, has control in business to anticipate contemporary business trends, known as e-commerce. Scholars today consider e-commerce transactions to be salam buying and selling, where the seller and the buyer do not meet in person and the goods sold are not known to the buyer at the time of the transaction. This transaction is considered valid if it is carried out in accordance with the principles of Islamic law.

According to the majority of scholars, there are four conditions for buying and selling:

1. Sellers and buyers
2. Ijab Kabul
3. Items sold
4. The exchange rate of goods.

If any of these conditions are not met, the transaction is invalid and void. From the perspective of Islamic law, this online transaction is also valid as long as it meets the conditions and harmonious buying and selling stipulated in the Qur'an and Hadith. However, if the agreement does not meet the conditions and principles of sale and purchase regulated in the Qur'an and Hadith, then the agreement is considered invalid. Buying and selling electronics actually includes buying and selling through SMS, telephone, and other telecommunication tools. What is of concern is that the goods sold must be halal and clear, as stated in the hadith of the Prophet, "It is not lawful to buy and sell unless it belongs to someone."

References

Ahmad al-Zarqa, Mustafa, alMadkhal al-Fiqh al-'Am, 1998, cet. I, Beirut: Dar al-Qalam
Anwar, Samsul, 2007, Sharia Treaty Law, Jakarta : Raja Grafindo Persada

- Anwar, Syamsul, 2007, Sharia Agreement Law, Study on the Theory of Akad in Fiqh Muamalat, Jakarta: Raja Grafindo Persada
- Anwar, Syamsul, 2010, Sharia Treaty Law, Jakarta : Rajawali Press
- Fathurrahman Djamil, Fathurrahman, 2012, Application of Agreement Law in Transactions in Sharia Financial Institutions, cet. I, Jakarta: Sinar Grafika Offset
- Faulidi Asnawi, Haris, 2004, E-Commerce Business Transactions from an Islamic Perspective, Yogyakarta: Magistra Insania Press
- Mardani, 2011, Sharia Economic Law in Indonesia, Bandung: Refika Aditama
- Muslim, Muslihun, 2006, Economic Fiqh and Its Positivization in Indonesia, Mataram: LKIM IAIN Mataram
- Rahman, Asmuni, 1975, Qaidah-Qaidah Fiqhi, Jakarta: The Moon of the Star
- Ramlan, et al., 2023, Legal Research Methods in Scientific Papermaking, (Medan: Umsu Press)
- Rasyid, Sulaiman, 1976, Islamic Fiqh, Jakarta: Attahiriyah.
- Soekanto, Soerjono, 1991, Introduction to Legal Research, Jakarta : UI Press
- Sri Hidayati, Neni, 2002, Islamic Economic Law and Economics, Bandung: Mandar Maju
- Wahhab Khallaf, Abdul, 1994, Rules of Islamic Law (science of ushulul fiqh), Mu'jam Maqayis al-Lughah, Beirut.
- Yudha Hernoko, Agus, 2011, The Law of Proportionality Principle Agreements in Commercial Contracts cet. II, Jakarta: Kencana Prenada Media Group.
- Ginting, Lilawati, 2024, "The Role of Notaries in Murabahah Financing Agreements". *Indonesian Journal Education*, Vol 3, No. 3.
- Mustofa, Imam, 2012, "Electronic Transactions (E-Commerce) in the Perspective of Fiqh, *Journal of Islamic Law*, Vol. 10, No. 2
- Shofiyullah Mz, et al., 2008, E-Commerce in Islamic Law, *Journal of Religious Research*, Vol. XVII, No. 2
- Syafriana, Rizka, 2022, Principles of Legal Settlement in Sharia Contract, *Randwick International of Social Science (RISS) Journal*, Vol. 3, No. 4.
- Syafriana, Rizka, 2016, Consumer Protection in Electronic Transactions, *Journal of De Lega Lata*, Vol 1, No. 2.