

ISSN (P): (2580-8656)
ISSN (E): (2580-3883)

LEGAL STANDING
JURNAL ILMU HUKUM

Vol. 3 No.1, Maret 2019

THE INFLUENCE OF TRANSCENDENTAL VALUE AS AN EFFORT OF ONLINE TRANSACTION LEGAL PROTECTION IN THE ERA OF DIGITAL ECONOMY

Rizka
Universitas Muhammadiyah Surakarta
rizka@ums.ac.id

ABSTRACT

The digitalization of the economy sector in the industrial revolution 4.0 needs to be approached with a smart attitude so as to not bring loss to both the consumers and the business holders, by transforming the instrument of consumer rights in an updated and a better way. The development of technology has spoiled human beings in all aspects, including in *muamalah*. like transaction. The society's rapid consumptive behavior becomes a business opportunity for the investors to invest their capital in the field of trade, which is also rapidly developing. The increasing demand of consumptive products pushes the popularity of online transaction. There exist hundreds of online shops, either official shops or those undergoing transaction through social media. Anyone can be owners of online shops, and the consumers can be adults, teenagers, and even children. This condition causes some problems, such as the misuse of online transaction for deception, offering products which are not the same as the real items, or worse, not sending the products after the consumer has transferred the money. The results show that in online transactions, there are many dishonest sellers who legalize all methods to practice deception, so there needs to be a connection between online transaction and religion with the hope to minimize the chance of harm for both the consumers and the sellers.

Keywords : *transcendental, legal protection, online transaction*

BACKGROUND

In the Holy Quran, Chapter Al-Baqarah (The Heifer) verse 275, Allah stated that, "...God has permitted commerce, and has forbidden usury...". What's interesting about that verse is that the prohibition of usury is preceded by the permission of commerce, though it should be noted that it should be done based on the rulings of Islam. The context of the Al-Baqarah verse above is offline transaction. Following the development of technology which has nowadays progressed rapidly, there exists online transactions through the many emerging online shops.

Online shops can be roughly defined as a place to undergo buying and selling goods and services using electronic media through the internet online. Some examples of marketplaces in which people may undergo commerce of goods are OLX, Zalora, Lazada, Tokopedia, Buka Lapak, Blibli, Elevania, Shopee, etc. In these businesses,

support and services for the customers are given through websites, which may be accessed via laptop/computer, or via application which may be downloaded from the Playstore to the customers' gadgets or smartphones. There are more independent online shops, which use the social media to offer goods or to undergo transaction. Some of the social media used for online commerce are facebook, instagram, blogspot or kaskus.

The ease of online transaction should be based on some Islamic rulings on commerce. Without these rulings, the mentioned ease will reap controversy on some of the things which have *syubhat* or even *haram* (non-permissible) values. Some examples of these are transactions with the element of usury, gambling, or *gharar*. Therefore, there needs to be a further review on how the online shop works, based on the rulings from the Qur'an and the hadeeth regarding their halal status.

RESEARCH PROBLEM

From the description above, thus it can be formulated that the research problem is "The Influence of Transcendental Value in Economic Transaction in Online Shops".

DISCUSSION

Definition of Online Shops

Based on Kamus Besar Bahasa Indonesia (The Grand Dictionary of Indonesian Language), *toko* (or shop in English) is a place or a permanent building which is used to sell goods (food, drinks, etc).¹ Meanwhile, Online, which in Indonesian is called *dalam jaringan* or abbreviated *daring*, means to be connected with computers, internet, and so forth. Meanwhile, according to Wikipedia, the term online shopping is the activity of purchasing goods or services through the Internet as a media. When undergoing online shopping, customers may see the goods and services in which they would like to purchase beforehand in the websites promoted by the sellers. The activity of online shopping is a new form of communication which does not need a face-to-face fashion of communication, but may be done separately and to the whole world, using notebooks, laptops, or mobile phones which are connected using Internet access services.

¹ KBBI Daring, <http://kbbi.kemdikbud.go.id/entri/daring>, di akses tanggal 13 Maret 2019 pukul 21.29 WIB.

Online shopping is a form of electronic commerce which is used to undergo transaction between sellers to sellers or between sellers to customers.² From the two definitions above, we can define online shops as a place in which there is an activity of commerce or economic transaction, which is connected to a network, which in this the internet network.

Google, along with Temasek has recently conducted a research. The results show that the digital economy of Indonesia is increasing, and that the two most developing sectors are e-travel and e-commerce. The Indonesian transaction valuation in 2025 is estimated to reach US\$ 81 billion (or around 900 trillion rupiahs). E-commerce is estimated to grow 39 percent per year, growing from 1,7 billion US dollars in 2015 to 46 billion US dollars in 2025. Meanwhile, for e-travel, it is expected to grow 17 percent per year, from 5 billion US dollars in 2015 to 24,5 billion dollars in 2025. On 2015, the monetary rotation in this sector is estimated to reach US\$ 3,5 trillion, or 4 percent of the global growth. The large potential of Indonesia's digital economy development has attracted the interest of Amazon to invest some capital as large as US\$ 600 million or the same as 7,8 trillion rupiahs. Before that, the largest e-commerce company from China, Alibaba, has also entered the Indonesian market by purchasing Lazada's share with the value of US\$ 1 billion.³

In undergoing electronic transactions, in this case e-commerce, there exists both advantages and disadvantages for the store owners and the consumers. The advantages and the disadvantages felt by these two parties are as follows:

Some advantages felt by the business owners in undergoing e-commerce are as follows:⁴

1. It can be used as a field to make income which may be difficult or even impossible to obtain through conventional methods, such as marketing goods and services directly, marketing information, advertisements, etc;

² Wikipedia Ensiklopedia Bebas, *Belanja Daring*, https://id.wikipedia.org/wiki/Belanja_daring, di akses tanggal 13 Maret 2019 Pukul 21.46 WIB

³ <http://rilis.id/Payung-Hukum-Digital-Ekonomi> diakses pada hari Senin, tanggal 13 Maret 2019 pukul 23.15 WIB.

⁴ Arip Purkon. 2014. *Bisnis Online Syariah: Meraup Harta Berkah dan Berlimpah Via Internet*. Gramedia Pustaka Utama. hal. 20

2. Commerce may be done without the restriction of place and time. E-commerce is a business which may be done anytime and anywhere, as long as there are the facilities to access internet;
3. The capital needed to start the business is relatively small. The capital is needed for accessing internet and the ability to operate it. There are many services which offer advertising and are promotion media, both either with some fee or even for free;
4. E-commerce may be done automatically. The business owners may only be actively managing this business for a few hours each day, based on their needs. The rest of their time may be used for other activities.
5. The access of market is far much wider. With a wider access of market, the potential to achieve new clients is far larger.
6. It is easier for the customers to receive information they needed online. The communication between the business owners and the consumers are far easier, simpler, and it saves money and time.
7. It increases the efficiency of time, especially distance and time in giving services to the consumers as customers.
8. It saves the money needed for operational costs. Some cost components such as transportation, communication, rent, employees' wages and other fees needed may be saved. With this cost savings in the mentioned components, it will automatically increase the profit.
9. There is better service for the customers. Through the internet, the customers may express their needs and their complaints directly, so that the business owners may increase their quality of service.

Meanwhile, the advantages of e-commerce for the consumers are as follows:⁵

1. Home shopping. The customers may undergo transaction from home, so they may save time, avoid traffic jam, and they can reach shops which are far from their location.
2. It is easy to do as there is no need for certain trainings to be able to shop or to undergo transactions through the internet.

⁵ Rif'ah Roihanah, *Perlindungan Hak Konsumen Dalam Transaksi Elektronik (E-commerce)*, Justitia Islamica 8, no. 2, 2011, h 112

3. The consumers have a wide range of choices and they may compare the goods and services in which they would like to buy. For example, the consumers may see photos of the goods which are posted by the business owners.
4. It is not restricted by time. The customers may undergo transaction whenever they want for 24 hours a day. For example, the consumers may undergo economic transaction anytime without fear that the business is closed.
5. The customers may look for the products which are unavailable or hard to find at traditional markets or local outlets.

Apart from the advantages experienced by the customers in undergoing online transaction, the customers may also face some problems regarding their rights. These are the disadvantages in undergoing online transaction, such as:⁶

1. Consumers cannot directly identify, see, or touch the goods in which they will order. They can only see the photos or videos of the items they what which are posted by the business owners.
2. The information given regarding the goods may be unclear. For example, the consumer cannot see the quality of the product just by seeing the photo.
3. The legal status of the business owner is unclear. For example, the seller as the business owner cannot give a guarantee that the consumer will not experience loss.
4. There is no guarantee of the transactional safety and privacy. Neither is there the explanation concerning the risks of the system used, especially in electronic payment, both via credit card and electronic cash.
5. The burden of risk is imbalanced, as usual, in e-commerce transactions, the consumer must fulfill the prepaid requirements by transferring the full payment, whereas the item may not be received. Or, it may come late as the guarantee is the guarantee of having sent the parcel.

B. The Transcendental Values in Online Shop Transactions

Islam states clearly on the rulings regarding economic transaction in the *Mualamah* chapter, starting from transaction, the requirements of the buyer and the seller, the groupings of transaction along with the opinions of the scholars. Islam also has rulings on the human behavior in fulfilling their needs, which is that business

⁶ Rif'ah Roihanah. Ibid. h 113

activities should bring virtue. Based on the statements above, Islam offers some basic rulings on transaction, agreements, and the fulfillment of wealth. The transcendental values in the religion of Islam are one of the things offered to minimize the harm which may arise in e-commerce transactions.

The transcendental law is a set of rulings which always include the aspect of spirituality as the principal of the law. It means that there is always an “involvement” of God in every ruling made by human beings, i.e. it is an effort to combine religious values with the law to create morality which is parallel to the religious rulings. Postmodernism has started to emphasize things which are irrational (emotions, feelings, intuition, personal experiences, speculations), morals, and spirituality as an integral part in understanding analysis or scientific problems. Legal thoughts which are considered to be unsatisfied (critical or even rebellious) towards the liberal and the established paradigm of modern law which are categorized as the thought of postmodernism.⁷

Ibnu Katsir in his interpretation (tafseer) states that Allah forbids His believing servants to eat the wealth of their fellows in wretched ways. Ways of obtaining wealth which are invalid and which violates the Islamic rulings are for instance usury, gambling, and those which are similar, such as tricks which seem to be in line with the Islamic rulings. Yet, Allah allows the seeking of wealth through trade, which are done voluntarily between the two parties concerned.⁸

In the interpretation of al-Maragi it is said that the basis of trade is the agreement of both parties (*saling meridhoi*). In the verse, it is stated that there are requirements of some avails, which are:

- a. The basis of the permission of trade is the agreement between the sellers and the buyers. Fraud, dishonesty, and forgery are prohibited.
- b. Anything in this world, such as trade, and anything which in it includes wretchedness, those which are neither eternal nor fixed, should not defer the mindful people to prepare themselves for the life in the Hereafter which are eternal and better.

⁷ Absori. 2015. “*Epistimologi Ilmu Hukum Transendental dan Implementasinya dalam Pengembangan Program Doktor Ilmu Hukum*”, *Prosiding Seminar Nasional UMS ISBN 978-602-72446-0-3*, April 2015, h.35.

⁸ Ibnu Katsir. 1998. *Tafsir Ibnu Katsir*, terj. Salim Bahreisy dan Said Bahreisy, Tafsir Ibnu Katsir. Cet. I. Victory Agencie. Kuala Lumpur. h. 361.

- c. It cues that a large portion of trade involves the meaning of eating another fellow's wealth in a wretched way. This is because the limitation of the value of some things, and making the price according to the rightful balance is something which is almost impossible. Because of that, there applies tolerance, if one out of the two substituting items are larger than the other, or that it becomes the reason of why the prices has rose, that is a skill of trade in decorating the goods and to make the goods more attractive without fraud nor forgery. Many a time, people buy some things, though they know that the price might be cheaper elsewhere. This happens because of the sellers' skill in trade. It is a form of wretchedness in trade, but because it is agreed upon by the buyers, thus the rulings state that it is permissible.⁹

The pillars and the requirements of trade may be stated as valid if they have fulfilled the rulings applied. Concerning the pillars and the requirements of the economic transaction, the scholars have differing opinions. In determining the pillars of buying and selling, there are differing opinions between the Hanafi school of thought and majority of the scholars. According to the scholars of the Hanafi school of thought, there is only one pillar of buying and selling, which is the consent of both parties in undergoing the transaction. Yet, because the element of agreement and consent are elements which come from the heart and are often invisible, thus there needs to be some indicators to show this consent between the two parties. These indicators can be shown from the transaction, or from the manner of handing the item and stating the price of the item. This is different from the opinion of the majority of scholars who states that there are four pillars of transaction, which are a. People who are transacting (the buyers and the sellers); b. *Sighat* (wordings of the transaction agreement); c. There exists the item which is being sold; d. There is something of value in exchange of the item.¹⁰

According to scholars of the Hanafi school of thought, people who are undergoing transaction, the item which are being sold, and the item's value of exchange are part of the transactional requirements instead of the pillars. Meanwhile, the requirements of economic transaction according to the interpretations of majority of the

⁹ Ahmad Mustafa al-Maragi. 1993. *Tafsir Al-Maragi*, terj. Bahrun Abu Bakar, Hery Noer Aly, Tafsir Al-Maragi Cet. II. Karya Toha Putra. Semarang. h. 27.

¹⁰ Abdul Azis Dahlan, 2012. ed., *Ensiklopedi Hukum Islam*, Jilid 3. Pustaka Sunnah. Jakarta. h. 828.

scholars are as follows. The scholars of *fiqh* agrees that the people who undergo transaction must fulfill these following requirements:

- a. Rational. Economic transaction which are done by children who are not yet rational are stated to be invalid. Meanwhile, for children who are *mumayyiz* (who have reached understanding), if the transaction brings profit to them (like receiving grants, inheritance, or charity), thus the transaction is valid. Meanwhile, if the transaction brings loss or harm, like lending wealth to others, giving *waqaf*, or grants, thus the action is believed to be invalid according to the law of Islam. Transactions done by children who are *mumayyiz* which bring both good and harm, like buying and selling, renting, trade associations, are seen to be valid by law, if their guardians permit such actions with full consideration. Majority of the scholars are of the opinion that the people who undergo the transaction of buying and selling must have reached puberty and are rational. If those who undergo transaction are still *mumayyiz*, thus the transaction are invalid, even if they have the permission of their guardians.¹¹
- b. People who undergo transaction (*akad*) are different people. This means that someone cannot be a buyer and a seller at the same time. 2) The requirement regarding the transaction, *fiqh* scholars agree that the main element of transaction is consent of both parties. This consent can be seen from when the transaction happens. The handing over process must be stated clearly in the transaction, which binds both parties, like in the buying and selling transaction, in lending and renting, and in marriage.¹²

Regarding transaction which binds one party, like inheritance, grants, and *waqaf*, do not need the statement of acceptance, as these types of transaction only need the statement of handing over. Moreover, according to Ibnu Taimiyah and other scholars, even the statement of handing over is not required in *waqaf*. If the statements of handing over and of acceptance in the economic transaction have been pronounced, thus the ownerships of the item and the money have changed. The items which have changed ownership become the belonging of the buyer, whereas

¹¹ Misbahuddin. 2012. *E-Commerce dan Hukum Islam*. Cet. I. Alauddin University Press. Makassar. h. 119-133

¹² Abdul Azis Dahlan, 1996. ed., *Ensiklopedi Hukum Islam*. Jilid 3. Ichtiar Baru Van Hoeve. Jakarta. H. 829

the item which has the value of exchange or the money become the belonging of the seller. The *fiqh* scholars have stated that the handing over and the acceptance requirements are as follows:¹³ a) The person who stated them have reached puberty and are rational, based on their differences in determining the requirements as mentioned above; b) The statement of acceptance is parallel to the statement of handing over. For example, the seller says, “I sell this bag for the price of ten thousand rupiahs,” thus the buyer says, “I buy this bag for the price of ten thousand rupiahs.”

- c. The transaction statements (*Ijab* and *Kabul*) are done in one assembly. This means that both parties which undergo the economic transaction are present and are discussing about the same topic. If the seller has stated the *ijab* (the statement of handing over), then the buyer has left before stating the *Kabul* (the statement of acceptance) or if the buyer does other activities unrelated to the transaction, then he/she says the *Kabul*, thus based on the agreement of the *fiqh* scholars, the transaction is invalid, even if they believe that the *ijab* does not need to be answered directly after the *Kabul*.

The rulings on the requirements and the pillars of buying and selling in Islam can become the principles which may be applied in e-commerce transactions, so that the ongoing transactions may be valid, and so that they do not cause harm which may lead to prohibition as it is not according to the rulings. The rulings of Islam are really flexible, and may be adapted to the development of the era so long as they are not against the rules required.

CONCLUSION

The ease of e-commerce transactions may be related to some rules of buying and selling in Islam. As without those rules, the eases will cause controversy and some things may have *syubhat* or even haram value, as they may include the elements of usury, gambling, and *gharar*. Because of that, there needs to be an updated review on the process of e-commerce, to be adapted with the rulings from the Quran and the hadeeths regarding its permissibility. It is hoped that with the application of transcendental values in e-commerce transactions, there will be virtues for the buyers and the sellers.

¹³ Misbahuddin. Opcit.. h.121

REFERENCES

Absori, “*Epistimologi Ilmu Hukum Transendental dan Implementasinya dalam Pengembangan Program Doktor Ilmu Hukum*”, *Prosiding Seminar Nasional UMS ISBN 978-602-72446-0-3*, April 2015.

Arip Purkon, *Bisnis Online Syariah: Meraup Harta Berkah dan Berlimpah Via Internet*, Jakarta: PT Gramedia Pustaka Utama, 2014.

Ahmad Mustafa al-Maragi, *Tafsir Al-Maragi*, terj. Bahrin Abu Bakar, Hery Noer Aly, Tafsir Al-Maragi ,Cet. II; Semarang:PT. Karya Toha Putra Semarang, 1993.

Ibnu Katsir, *Tafsir Ibnu Katsir*, terj. Salim Bahreisy dan Said Bahreisy, Tafsir Ibnu Katsir ,Cet. I; Kuala Lumpur: Victory Agencie, 1998.

Dahlan, Abdul Azis, ed. *Ensiklopedi Hukum Islam*, jilid 3. Cet. I; Jakarta: PT Ichtiar Baru Van Hoeve, 1996.

Latifulhayat, Atip. “*Perlindungan Data Pribadi Dalam Perdagangan Secara Elektronik (E-Commerce)*,” *Jurnal Hukum Bisnis* Vol. 18, no. Maret 2002.

Misbahuddin. *E-Commerce dan Hukum Islam*. Cet. I; Makassar: Alauddin University Press, 2012.

Rhoihanah, Rif’ah. “*Perlindungan Hak Konsumen dalam Transaksi Elektronik (E-Commerce)*”. *Justitia Islamica* 8, no. 2 ,2011.

Internet

KBBI Daring, <http://kbbi.kemdikbud.go.id/entri/daring>, di akses tanggal 13 Maret 2019 pukul 21.29 WIB.

Wikipedia Ensiklopedia Bebas, *Belanja Daring*, https://id.wikipedia.org/wiki/belanja_daring, di akses tanggal 13 Maret 2019 Pukul 21.46 WIB

<http://rilis.id/Payung-Hukum-Digital-Ekonomi> diakses pada hari Senin, tanggal 13 Maret 2019 pukul 23.15 WIB