



CHAPTER II

THEORY AND CONCEPT

A. Previous research

To clarify this study is different from previous research results which relates to the same theme of “Consumer Protection In E-Commerce In The Perspective Of Law No.8/1999 On Consumer Protection And Islamic Economics (*Study On Consumer Protection Given By Tokobagus.Com*)”.the researcher would like to present the results of previous research in the table below:

| No. | Name of Researcher | Title | Year | Result of Research |
|-----|-----------------------|--|------|--|
| 1. | Bagus Hanindyo Mantri | (perlindungan konsumen pada trenasaksi E-commerce) The | 2007 | The law no 8/1999 concerning consumer protection has not been able to protect the consumer in e- |

| | | | | |
|----|------------------------|--|------|---|
| | | consumer protection of e- commerce transaction. Thesis of Diponegoro University Semarang | | commerce transactions |
| 2. | Nur 'Azizatil 'Ajibah, | (Perlindungan Konsumen Dalam Transaksi Melalui E-Commerce Tinjauan Hukum Islam).The Consumer Protection through E-commerce according to Islamic law. Thesis of Islamic State of University Sunan Kalijaga Yogyakarta | 2010 | E-commerce is a transaction prone to crime and there is no aspect of consumer protection can be guaranteed and proven. Therefore, according to Islamic law this transaction is legitimate and permissible. |
| 3. | Maya Zaimita | (Tinjauan Yuridis Perbuatan Melawan Hukum Dalam Transaksi Jual Beli Melalui Internet (<i>E-Commerce</i>) Berdasarkan Kuhperdata). Review In Tort Juridical Sale Transactions Through Internet (<i>E-Commerce</i>) According To The Civil Code. Thesis on Law Faculty, Medan-Sumatra University | 2010 | The thing to remember that the law gives the option to choose the law applicable to the International Electronic Transactions. If the parties do not choose the law the applicable law is the law of private international law. |
| 4. | Iffaty Nasyiah | (Perlindungan hukum bagi konsumen korban transaksi melalui facebook Menurut undang-undang nomor 8 tahun 1999 Tentang perlindungan konsumen). | 2011 | The facebook transaction has many problems that makes the consumer worried. The law no 8/1999 about consumer protection can be guaranteed. |

| | | | | |
|--|--|---|--|--|
| | | consumer protection of facebook transaction according to the law no 8/1999 about konsumen protection | | |
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B. Definition of E-Commerce Transaction

Electronic commerce or e-commerce is business activity involving consumers, manufacturers, service providers and intermediaries using computers and internet, the e-commerce has covered all commercial activities.

According to Zwass, e-commerce refers to “the sharing of business information, maintaining business relationship, and conducting business transaction by means of telecommunication networks”. In addition, the United Kingdom uses abroad definition of e-commerce as the exchange of information across electronic networks, at any stage in the supply chain, whether an organization to organization, business to business, businesses to consumers, or the public to the private sector, whether paid or unpaid.

According to the David Baum’s definition, “e-commerce is a dynamic set of technologies, applications, and business process that link enterprises, consumer and communities through electronic transactions and the electronic exchange of goods,

services and information”⁸. This definition shows that e-commerce to be of benefit to get easy link to transaction, more over the remote transaction.

The other definition of e-commerce is explained by Julian Ding based on his book under the title e-commerce: Law and Office

E-commerce is “ Electronic commerce or e-commerce as it is also known is a commercial transaction between a vendor and purchase or parties in similar contractual relationship for the supply of goods, services or acquisition of “right”. This commercial transaction is executed or entered into electronic medium) or digital medium) where the physical presence of parties is not required and medium exist in a public network or system as opposed to private network (closed system). The public network system must consider on open system (e.g. the internet or World Wide Web). The transaction concluded regardless of nation boundaries or local requirement”.⁹

In this definition, e-commerce is a commercial transaction made between seller and buyer or other party in relation with the same contract to deliver a number of goods, services or the transfer of rights.

E-commerce involves more than electronically mediated financial transaction between organizations and costumers. Many commentators refer to e-commerce as all electronically mediated transactions between an organization and any third party dealing with. By these definitions, non financial transactions such as consumer requests for further information would also be considered to be part of e-commerce. All these definitions imply that electronic commerce is not only about the actual buying and selling products, but also includes pre-sale and post-sale activities across the supply chain.

⁸ Onno w.Purbo dan Aang Arif Wahyudi, *Mengenal e-Commerce*,(Jakarta :Elex Media Komputindo, 2001), 2

⁹ Julian Ding, *E-Commerce:Law and Office*, (Malaysia :Sweet and Maxwell Asia, 1999), 25

C. History of E-Commerce Transaction

E-commerce becomes a life style in a particular transaction in procurement and purchasing transactions in Indonesia. No wonder that e-commerce has referred to as a necessity in the third millennium. E-commerce has been come in many forms since more than 20 years ago. The technology of electronic data interchange (EDI) and Electronic Funds Transfer (EFT) were introduced for the first time at the end of 1970. The growth and use of Credit Cards, Automated Teller Machines, and Telephone Banking in 1980 also are forms of e-commerce.¹⁰

E-commerce is an area that multidisciplinary field covering areas, such as engineering and telecommunications network, security, storage, and retrieval of multimedia, business areas. The business areas are marketing, procurement and purchasing, billing and payment, supply chain management. Legal aspects are information privacy, intellectual property, taxation, making agreements, and other legal settlement.

In the Indonesian context, the fundamental question about the e-commerce is how Indonesia anticipating or creating a rule of law on e-commerce transactions. It is understandable that the internet in Indonesia very fast in its development. According to data, internet users in 1997 amounted about 250,000 people, rising to approximately one million subscribers in 1999 and have now grown to 62.9 million people according to a survey conducted by the Association of Indonesian Internet

¹⁰ Adam nabil R, oktay dogramacy, aryya gangopadhyay, & Yelena yesha, *Electronic Commerce : Technical Business, and legal issues*, (London : Prestice Hall PTR, 1999), 9

Service Provider (APJII). Thus, Internet users have reached 25% of the population of Indonesia.

D. Consumer Protection

1. Definition of consumer protection

Consumer protection is all efforts that ensure legal certainty to provide protection to consumers. In this definition, the phrase "all efforts to ensure legal certainty" is negation fortress abuses that harm businesses to protect consumer interests in a transaction. It does not mean that the business interests is not the law concern, because the existence of the national economy is largely determined by the businesses.

Consumer protection is every effort to ensure legal certainty for consumer, in order to realize the purpose of consumer protection in Indonesia.

As for the purpose of consumer protection is:

- a. To raise awareness, skills, and independence of consumers to protect themselves.
- b. To raise the dignity of the consumer by avoiding from negative access of the use of the goods and / or services.
- c. To increase the empowerment of consumers in selecting, specifying, and obtaining their rights as a consumer.

Hondius gives a clear meaning that the consumer as the last user of goods and services production (uiteindelijke gebruiker van goederen en diensten). In Article 1 paragraph 2 on law no.8/1999 concerning consumer protection, namely: Consumers are every user of goods and / or services in the community, both for the own benefit, family, others, and other living being and not for sale.¹¹

Arbitrariness will result in legal uncertainty. Therefore, transactions have to meet with the regulations in order that all efforts will provide a guarantee legal certainty that was qualitatively specified in the Consumer Protection Act and other laws are intended and still valid to provide protection to consumers, and also both in Private Law (Civil Law) and Public Law (Criminal Law and Administrative law of the State).¹²

Az. Nasution said that the legal sense is the overall consumer protection principles and rules that govern and protect consumers in the relationship and supply the use of products (goods / services) among provider and consumer users in social life. Article 2 of the Law no. 8 of 1999 concerning Consumer Protection mentions, "consumer protection is based on benefits, fairness, and balance, security and safety of consumers and legal certainty". In the explanation of article 2 of consumer protection law mention consumer protection is organized as a joint effort based on 5 principles:

¹¹ Undang-undang No. 8 Tahun 1999 Tentang Perlindungan Konsumen

¹² Ahmad Miru dan Sutarman Yodo, *Hukum Perlindungan Konsumen*, (Jakarta : PT Raja Grafindo Persada, 2007), 1-2

- a. The benefit principle is intended to mandate that all efforts in the implementation of consumer protection should provide maximum benefit to the interests of both consumers and businesses.
- b. The justice principle is that the participation of the entire people can be fully realized and providing opportunities to consumers and businesses to obtain their rights and perform their obligations fairly
- c. The balance principle is intended to provide a balance among the interests of consumers, businesses, and governments in terms of material and spiritual.
- d. The security and safety principles of the consumer are intended to provide guarantee for security and safety to consumers in using, handling, and utilizing of the goods and/or services consumed or used.
- e. The legal certainty principle is obtained for both businesses and consumers to obey the law and justice in the administration of consumer protection, and the state guarantees legal certainty.

According to article 3 of law no.8/1999, consumer protection aims:

1. To rise the awareness, skills, and independence of consumers to protect themselves;
2. To rise of the dignity of the consumer by way of spare him from the negative use in accessing of the goods or services;

3. To rise observation skill of consumer in choosing, determining, and demanding their rights as the consumer.
4. To Create an element of consumer protection containing legal certainty and information transparency and access to get information;
5. To bear awareness of business about the importance of consumer protection that bear positive attitudes, such as honest and responsibility.
6. To improve the quality of goods and / or services that ensure the continuity of the production of goods and / or services, health, pleasure, safety, and consumer security.

Legal issues about the consumers protection increasingly pushes the case of consumer e-commerce transactions with a merchant that is outside the area and be able not meet physically, especially merchant from abroad. On procurement and purchasing transactions remotely like this, cheating and fraud are often happened, therefore consumers need to be protected.¹³

Fraud and cheating can occur in the presence of the seller, and the payment of items purchased by the buyer. Fraud also can occur in seller of virtual or fictitious store. Meanwhile, regarding the goods delivered the goods are not delivered by the seller to the buyer, or prolonged-delay delivery, the goods are not delivered as advertised, the goods are damage when delivered and the goods delivered are imperfect, and so on.

¹³ Ejan mackaay, Daniel Poulin, and Piere Trudel, *The Electronic Suerhighway : The shape of Technology and The Law to come.* (The hague/London/Boston : Kluwer Law International), 105

Consumer protection is obtained by the consumer from the beginning of promotional merchandise. Promotion is the activities of the introduction or dissemination of goods or services to attract consumers to buy the goods and or services that will be and are being traded.

There is a motto that says the buyer is king, but it is often appeared in various newspapers and television almost every day voicing disappointment or even anger of consumers against arbitrary businessman or producers, the consumer is often in a weak side, but since April 20, 1999 consumer has been no longer in the side. Consumers have gained more worthy protection. Consumers have a balanced position with manufacturers. As stipulated in the consumer protection laws no.8 /1999 that there were nine rights of consumer, namely:

1. The right to get comfort, security, and safety in the consumption of goods or services, that the seller must give providence coverage for comfort, safety, and the safety of the goods sold at the time when consumers consume them in accordance with the terms and procedures of using goods;
2. The right to choose the goods and services and the acquisition of goods and or services in accordance with the exchange rate and the conditions and guarantees promised. In other words, the seller should have a stock of more than one for the same type of goods so that consumers can freely make their choice according to what was promised by the producer.

3. The right to get correct information, clear and honest about the condition and security of goods or services, manufacturers have to be totally honest in providing all the information relating to the goods sold in term of advantages and the disadvantages.
4. The right to be heard the opinions and complaints on goods or services used. A good attitude if the manufacturer or business would want to give a grace period for the buyer to decide whether continue to purchase of item or exchange it for another or even cancel the purchase of goods, as one pillar of a trading contract.
5. Right to get advocacy, protection and dispute resolution efforts should be given to consumer when they are harmed and the wrongness is done by business actors or producers, consumers have to do :
 - a. The consumers can contact the governmental consumer protection agencies, such as the YLKI (Yayasan Perlindungan Konsumen Indonesia), or
 - b. They could also take legal action to sue the businesses or the manufacturers to the courts,
 - c. Moreover, they can resolve the issue through the agency of consumer dispute resolution outside the court. This is referred to mediation, arbitration, or consolidation. Later the agency will call businesses or manufacturers that are considered harmful to

consumers. After that, based on the investigation, mediator or arbitrator will decide whether consumers harmed or not.

6. The right to obtain guidance and consumer education
7. The right to be treated or serviced properly and honestly and indiscriminately
8. The rights to get compensation from damages, and or replacement, if the goods or services received are not in accordance with the agreement or not as it should be.

In addition to the right, the consumer also has four liabilities that can not be ignored, namely:

1. The obligation of the consumers is reading and following the instructions and procedures for using information and using goods or services, for the security and safety when the consumer does not pay attention to the rules and follow the instructions and procedures of using information or using goods or services, the security and safety of consumers is disturbed over the use of the goods when the producer has explained the provisions relating to the goods, as referred in provisions Article 7 Law No.8/1999 concerning consumer protection, the liability businesses or manufacturers in point b, that is “give the correct information, clear and honest about the condition and guarantee of goods and or services as well as to explain the usage, improvement and maintenance”, then in this case the manufacturer can be released from all responsibility.

2. Good faith in making purchases wares or services,
3. Pay according to the agreed exchange rate,
4. Following the settlement of legal disputes inappropriate consumer protection.

In addition to the rights of consumers above, the consumer protection law is also explained things that are not allowed to do by businessman, these are as follows:

1. Businessman is forbidden to offer, product, advertise the goods and / or services incorrectly, and / or as if ¹⁴:
 - a. Goods have to fulfill and / or has a discounted price, special price, a certain quality standard, style or a certain fashion, certain characteristics, history or particular order;
 - b. It is in goods condition and / or new;
 - c. Goods and / or service have obtained and / or had sponsorship, agreement, certain equipment, certain advantages, characteristics of work or a specific accessory;
 - d. Goods and / or service are made by a company that has a sponsorship, approval from government or affiliation with other company;
 - e. Goods and / or service are available;
 - f. The goods do not hidden defects;
 - g. The goods are complementary of certain goods;

¹⁴Law no. 8 / 1999 concerning consumer protection article 9 paragraph 1

- h. The goods come from a certain area;
 - i. Directly or indirectly, disparage the other goods and / or services;
 - j. Businessman uses over words, such as safe, harmless, no risk or side effects without full details information.
 - k. Offering something contains the uncertain promise.
2. Goods and / or service referred to in paragraph (1) are prohibited to be traded.¹⁵
3. Businessman does violates of article (1)¹⁶ is forbidden to continue offering, promotion, and advertising of goods and / or services¹⁷
4. Businessman in offering goods and / or services intended for trading is prohibited from offering, promoting, advertising or making a statement that is false or misleading¹⁸ on:
- a. Prices or rates of goods and / or services;
 - b. Usefulness of goods and / or services;
 - c. Conditions, mortgages, guarantees, rights or compensation for the goods and / or services;
 - d. Offering attracting discounts or interesting gifts;
 - e. Danger of the using goods and / or services.
5. Businessman in terms of sale made through clearance sale or auction , it is prohibited to deceive / mislead consumers with¹⁹:

¹⁵ Law no. 8 / 1999 concerning consumer protection article 9 paragraph (2)

¹⁶ Point (5)

¹⁷ Law no. 8 / 1999 concerning consumer protection article 9 paragraph (3)

¹⁸ Law no. 8 / 1999 concerning consumer protection article 10

- a. Declaring the goods and / or services as if meets certain quality standard;
 - b. Declaring the goods and / or services as if it does not contain hidden defects;
 - c. Not intending to sell the goods advertised but intending to sell other goods;
 - d. Not providing a certain amount of goods and / or a sufficient amount in order to sell the other goods;
 - e. Not providing service in some capacity or in sufficient quantities for the purpose of selling the other services;
 - f. Raising prices or rates for goods and / or services before selling.
6. Businessman is forbidden to offer, promote or advertise the goods and / or services at special prices or rates in a certain amount of time and, if the businessman does not intend to do so in accordance with the time and the goods offered, promoted, or advertised.).²⁰
7. Businessmen is prohibited from offering, promoting, or advertising of goods and / or services by promising rewards in the form of free goods and / or services for the purpose of not giving or giving rewards not as promised.²¹

¹⁹ Law no. 8 / 1999 concerning consumer protection article 11

²⁰ Law no. 8 / 1999 concerning consumer protection article 12

²¹ Law no. 8 / 1999 concerning consumer protection article 13 paragraph (1)

8. Businessman is prohibited from offering, promoting or advertising of drugs, traditional medicines, food supplements, medical devices, and healthcare services by promising rewards in the form of goods and / or other services.²²
9. Businessman in offering goods and / or services intended for trading by giving a gift by lottery, is forbidden to :²³
 - a. not to withdraw the prize after the promised deadline;
 - b. announce the result not through the mass media
 - c. give gifts not in accordance with that was promised;
 - d. substitute the prize that is not equivalent to the reward value of that was promised reward.
10. Businessman in offering goods and / or services is prohibited by force or other means able to cause both physical and psychological disorders to consumers.²⁴
11. Businessman is in offering goods and / or services through the order forbidden to:²⁵
 - a. not fulfill your order and / or agreement about finished time that promised
 - b. not fulfill the promise of a service and / or achievement
12. Business actors of advertisement are forbidden to producing advertisement that is :²⁶

²² Law no. 8 / 1999 concerning consumer protection article 13 paragraph (2)

²³ Law no. 8 / 1999 concerning consumer protection article 14

²⁴ Law no. 8 / 1999 concerning consumer protection article 15

²⁵ Law no. 8 / 1999 concerning consumer protection article 16

²⁶ Law no. 8 / 1999 concerning consumer protection article 17 paragraph (1)

- a. mislead consumers regarding the quality, quantity, material, usability and price of goods and / or services as well as rate the timeliness of receipt of goods and / or services;
 - b. deceive guarantee / warranty for goods and / or services;
 - c. contains false, or inaccurate information about the goods and / or services
 - d. does not include information about the risks of using the goods and / or services;
 - e. exploit incident and / or someone without the permission of the competent person or that his consent.
 - f. break of ethics and / or terms the rule of advertisement.
13. Advertising businessman is prohibited to continue business advertising violating the provisions of paragraph 1)^{27, 28}

E. Islamic Economic Jurisprudence

1. Definition of Islamic economic jurisprudence

Islamic jurisprudence etymologically derived from the word: **يَفْقَهُ - فقهه** means understanding, knowing and deep understanding. Meanwhile, in terminology according to statement of Imam Shafi'i, Islamic jurisprudence is the science that studies the practical sharia law extracted from the detailed arguments.

²⁷ Point 17

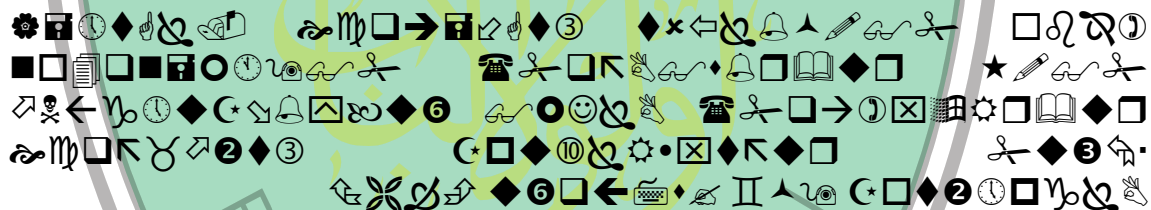
²⁸ Law no. 8 / 1999 concerning consumer protection article 17 paragraph (2)

Islamic economics is part of the fiqh mu'amalah, mu'amalah word literally means "doing each other" or doing in reciprocal basis it. More simply means "the relationship between people and people. Whereas, in Islamic jurisprudence terminology, it means all contract transactions, which enable people to mutually change benefits.²⁹ And certainly done based on ways and rules defined by Allah and people must obey them.

F. Selling concept in Islamic economic jurisprudence

1. Definition of sale

Buying and selling in Arabic are called *al-Bai 'al-Tijarah*, and *al-Mubadalah*, as Allah SWT says:



Verily, those who recite the Book of Allah and establish prayer, and spend out of what We gave to them, secretly and openly, they hope for a commerce that will never perish,

In terminology, selling is change goods to goods, goods to money. It is done with take down the right of the goods owner to the buyer by agreement.³⁰ Besides that Sayyid Sabiq said in Fiqh Sunnah, selling is a

²⁹ Hendi Suhendi, *Fiqh Muamalah*, (Jakarta : Rajawali Press, 2010), 6

³⁰ Idris ahmad, *fiqh al-syafi'iyah*, (Jakarta : Karya Indah, 1986), h : 5

changing goods to the other goods by agreement or removing property right with the way that is allowed.³¹

According to ulama Malikiyah selling devised into 2 kinds. Those are general selling and special selling. General selling is a changing something that is not utility and enjoyment. It means the changed goods have shape. It has a function as selling object. Special selling is a changing something that has interesting thing. The goods can be realized, exist, not liability. And the goods can be known its characteristics.

From a variety of definition above, it can be known that the core of the sale is an agreement to exchange items that having value voluntarily between the two sides, the one is receiving objects and others are receiving payment in accordance with the agreement or provision justified by Islamic Law.

According to the Islamic Law, the trading rules are exist to meet the requirements, pillars, and other things that are related to trading, so when the terms and the pillars are not present, the trading not in accordance with the will of Islamic Law'.³²

In the selling transactions, there are certain pillars to be obtained in practice. The pillars according to the jumhur ulama are ³³ :

1. Bai '(seller)
2. Mustari (buyer)

³¹ Sayyid Sabiq, *Fiqh Sunnah*, (Beirut : Dar al-Fikr, 2001), h : 126

³² Hendi Suhendi, *Fiqh Muamalah*, 69

³³ Rachmad Syafei. *Fiqh Muamalat*. (Bandung : Pustaka Setia, 2001), 76

3. Sighat (consent and granted)

4. Ma'qud alaih (item / object contracted)

In order the transactions can be carried out lawfully. The pillars listed above must be obtained.

2. Definition of Ba'I Salam

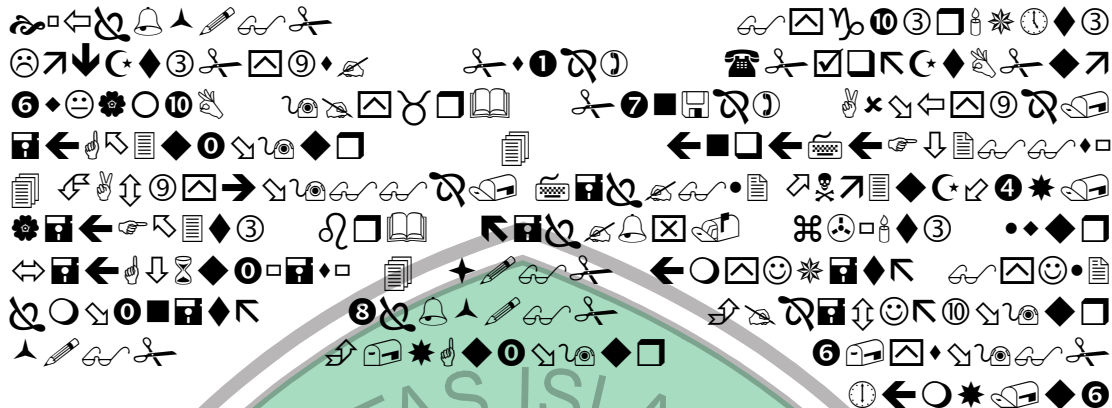
Ba'I salam is selling something in the future with present paying, so the seller will receive the money before the goods delivered to the buyer. The other terminology, it is called delivery trading. Ulama of Syafi'yah or Hanabilah say that in ba'I salam the seller has to explain the characteristics of goods when offers them.³⁴

The conditions of ba'I salam are every conditions of ordinary selling and buying, and added with specification of goods, such as the goods have specification characteristics that can be known by the buyer, clear price, time to send the money and the goods, and the way to send the goods or money.

The essential principle of ba'I salam is agreement between the seller and the buyer with special clause, it is like "I order these goods from you" and the answer is "yes, I do". But do not forget to put the condition of ba'I salam in the agreement.

Ba'I salam is permitted in Islam based on al-Quran (al-Baqarah, 282):

³⁴ Wahah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, terj. Abdul Hayyie al-Katani, dkk (Jakarta: Gema Insani, 2011), 240



O ye who believe! When ye contract a debt for a fixed term, record it in writing. Let a scribe record it in writing between you in (terms of) equity. No scribe should refuse to write as Allah hath taught him, so let him write, and let him who incurreth the debt dictate, and let him observe his duty to Allah his Lord, and diminish naught thereof.³⁵

According to hadis of the prophet Muhammad³⁶ :

مَنْ أَسْلَفَ مِنْكُمْ فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ وَوزنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ

Whoever does salam agreement, so he has to do in known quantities, known scales, and known times. (It is narrated by Ibnu Abbas)

The conditions of ordered goods:

1. The kind of goods can be known, for example : car, rice, cloth, etc.
2. The type of goods can be known, for example : pajero, fortuneer, paris veil, pashmina veil, Toshiba, Compac, etc.
3. The quality of goods can be known,
4. The quantity of goods can be known,

³⁵ <http://www.ayatalquran.net/2012/06/al-baqarah-english-version.html>

³⁶ HR. Bukhari, *Sahih al-Bukhari* (Beirut: Dar al-Fikr, 1955), vol. 2, 36.

5. There is no usury
6. The goods can be determined by the price with money
7. The goods can be sent in current time.
8. The goods can be found in the market and appropriate with their kind and type since making agreement until delivery time.

G. The Concept of *Makelar* (Broker) on Islamic Law

1. The Definition of Makelar (Broker)

Makelar in Arabic is called *samsarah*, and in English is called broker.

Broker is intermediary between the seller and the buyer to facilitate buying and selling. Broker is middlemen who sell other people's stuff by taking wages without bearing the risk. In other words, the broker is the intermediately between the seller and the buyer to facilitate trading sale.³⁷

Both parties get the benefit from the broker services. The brokers (intermediaries) receive and money from their services. Similarly, people who need their services will be satisfied, because it is handled by people who understand well the field. This kind of work contains elements of mutual help.

³⁷ Saifuddin Mujtaba, *Masailul Fiqhiyah*. (Jombang: Rousyan Fiqr, 2007), 239

The intermediary services have no defects and irreproachable, and model in line with the Islamic teachings. In this day, intermediaries have shifted more broadly to the services given by attorneys and consultants. The broker is no longer bringing people sell something to people who bought it, and not only searching to find items and selling.

b. Broker in Islamic Law

The worked “*samsarah*” according to Islamic Law includes the hire contract, an agreement utilizing a good or service, such as a house or a job like waiters, lawyers, consultants, etc. Because the work of brokers includes the hire, it must meet several requirements, namely:

- 1) Consent of both parties, as described in An-Nisa’ verse 29

Allah SWT says:

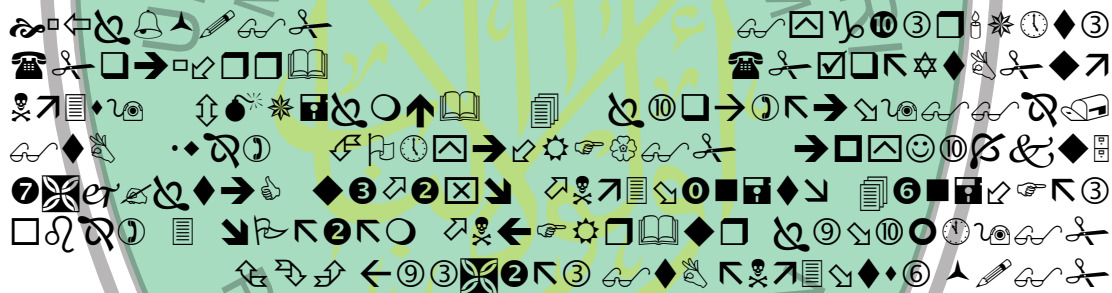


*O ye who believe! Squander not your wealth among yourselves in vanity, except it be a trade by mutual consent, and kill not one another. Lo! Allah is ever Merciful unto you.” (An Nisa’ : 29).*³⁸

³⁸ <http://www.ayatalquran.net/2012/06/al-baqarah-english-version.html>

- 2) Object of the contract can be known and has benefit, real and can be submitted
- 3) Object of the contract are not anything immoral or unlawful.

Broker must be honest, sincere, open, fraud and doing unlawful business or doubtful. Broker takes benefit after doing contract, while the other who uses the broker's services must provide salary or compensation because workers can improve the welfare the workers concerned.³⁹ The amount of compensations to be given to a broker are depend on their agreement, Allah says in Al-Maidah verse 1



*O ye who believe! Fulfil your indentures. The beast of cattle is made lawful unto you (for food) except that which is announced unto you (herein), game being unlawful when ye are on the pilgrimage. Lo! Allah ordaineth that which pleaseth Him.*⁴⁰

According to Dr. Hamzah Ya'kub, the owner of the goods and brokers can set certain conditions on the amount of profits obtained the realtor. It is supposed as a

³⁹ Priyono Tjiptoherijanto, *Prospek Perekonomian Indonesia dalam Rangka Globalisasi*.(Jakarta: Rineka Cipta, 1997), 100

⁴⁰ <http://www.ayatalquran.net/2012/06/al-baqarah-english-version.html>

percentage of sales, and also take advantage of the price that is set by the owner in goods.⁴¹ There are two kinds of brokers not allowed in Islam, namely:

1. If the broker harm and do injustice to the buyer;
2. If the broker harm and do injustice to the seller.⁴²

Imam Al-Bukhari stated that: Ibn Sirin, Atha', Ibrahim, and Al Hasan looked at that broker or intermediary issue is not anything. According to Ibn Abbas: that is not a problem, if someone says "sell it to me for the goods and the benefits for you". It is in line with the fuqaha views', if we go back to the basic rules, the broker's job is not forbidden or permissible because no texts prohibit it.

H. Consumer Protection Concept in Islamic Economic Jurisprudence

1. Definition of *khiyar*

Khiyar choice on etymologically is *ikhtiyar*. Terminologically in fiqh, it means looking good from two matters. It is about continue or cancel the contract. The meaning of the term above is not too different from the meaning of etymology and terminology. Therefore, the half of the contemporary fuqaha' defines it "the right of person who makes contract for canceling the contract or continuing it because there are reasons to cancel or agree when make agreement.

⁴¹ Saifuddin Mujtaba, *Masailul Fiqhiyah*, 240

⁴² Ahmad bin Abdurrazag Ad-duwaisyi, *Kumpulan Fatwa-fatwa Jual Beli*.(Bogor: Pustaka Imam Asy-syafi'i: 2004), h : 124

2. Kinds of khiyar

Khiyar in Hanafi's madzhab is divided into 7 kinds, namely: 1) khiyar syarat, 2) khiyar ru'yah, 3) khiyar aib, 4) khiyar sifat, 5) khiyar naqd, 6) khiyar ta'yiin, 7) khiyar ghabn and 8) khiyar taghrir. According to Maliki's madzhab khiyar is divided into 2 kinds, the first khiyar tarawwi is pay attention and looking at for the both of parties. The second khiyar naqishah is khiyar based on the weakness and unperfect product.

According to syafi'iyah, khiyar is divided into 15 kinds, namely:

1. *Khiyar majlis* is right to cancel agreement when seller and buyer do not separate yet.
2. *Khiyar syarat* has 3 days for the limit of *khiyar* date, if more than 3 days, the contract will be invalid.
3. *Khiyar aib* happens when the buyer know defect of object of transaction, based on *Tirmidzi hadis*.
4. *Khiyar talaqqi ar-rukbaan*, if they get the price more expensive than the price said by someone.
5. *Khiyar tafriq ash-shafqah*, one of two goods damaged before concluded agreement goods delivery.
6. *Khiyar* based on loss something becomes characteristic condition in agreement, it is like thieving.
7. *Khiyar* because does not know the object of transaction. This khiyar has purpose to prevent negative things.

8. *Khiyar* because does not know the object of transaction being rented or invested.
9. *Khiyar* because rejects to give the right condition. It is like condition of rahn, etc.
10. *Khiyar* because makes promises each other, the contract is agree but the manner of contract is disagree. So the contract can be rejected.
11. *Khiyar* for the seller because there is addition in “*murabahah*”.
12. *Khiyar* for the buyer because the seller mix between old fruits and the new ones.
13. *Khiyar* because the buyer can not pay the price, but the goods was accepted.
14. *Khiyar* because the characters of goods change before making agreement, however it is not about defect.
15. *Khiyar* because the goods become damage and the reason is the seller does not keep the goods.

Khiyar according to Hambali's madzhab is divided into 8 kinds, namely khiyar majlis, khiyar syarat, khiyar ghabn, khiyar tadlis, khiyar aib, khiyar khianat, khiyar because of conflict between the persons who make agreement, and khiyar as separates the transaction.

The Benefits of *khiyar* is⁴³:

⁴³ Abdul Rahman Ghazaly, Ghufon Ihsan, Sapiudin Shidiq, *Fiqh Muamalah*, (Jakarta: Kencana Prenada Media Grup, 2010), 104

- a. *Khiyar* can make a buying and selling contract takes place according to Islamic principles, and willingness between sellers and buyers.
- b. Educating the public to be careful in making contract of buying and selling, so the buyer gets good merchandise or alike.
- c. Sellers do not sell haphazardly their goods to the buyer and educate in order to be honest in describing the situation of their things.
- d. To prevent fraud, both the seller and buyer, because of *khiyar* there is carefulness in the process of buying and selling.
- e. *Khiyar* can keep good relationships and love intertwined between people. The dishonesty or cheating will eventually resulted in regret, and remorse in one party usually can lead to anger, malice, revenge, and other bad consequences.

I. The rule of Tokobagus.com's transaction

1. Definition of Tokobagus.com

Tokobagus.com is the buying and selling online site, where people can find new or second hand goods with a variety of products, such as electronic, household furniture, second cars, second motorcycles, mobile phones, computers and other products included services and job. Where every visitor can find the items he wanted, even though it is rare product that is not sold in

stores anymore. Tokobagus.com gives sellers a chance to promote secondhand goods that are still viable for sale.

Since the first opened, Tokobagus.com has attracted many advertisers to promote their goods. Tokobagus.com was established in Bali and move to Jakarta office. TokoBagus.com becomes the largest online retailer in Indonesia recently. Because of its advertisement advertising on television, and increasingly become popular. Visitors generally already know what they want to find and they will find the items they need in this site.

Tokobagus.com is on of players who came later in international business trading in Indonesia. Plasa.com, Tokopedia, Indonetnetwork are earlier than Tokobagus.com take part in this online business. However, Tokobagus.com can be said as the first e-commerce site in Indonesia promoting its site through television media. According to Arnold Sebastian Egg, the founder of Tokobagus.com, marketing activity advertised through TV is strategy to exist in the midst of competition international sale. At the same time, by appearing on the television screen, Tokobagus.com also want to expand awareness to greet even more the number of the Shopaholic in cyberspace.

2. History of Tokobagus.com

Since April 2005, Tokobagus.com stars up online trading concept in Indonesia. It becomes the famous online trading because of its promotion in

television, radio, and distributed sticker. It becomes the solution for online sellers and online consumers.

Tokobagus.com has head office in Denpasar Bali, and move to Jakarta after expanding. When in Bali, Tokobagus.com only promotes in Bali and areas near Bali, but now Tokobagus.com promotes in other country through computer expo or festival.

Tokobagus.com has 40 categories of products, such as music instruments, books, cars, motorcycles, clothes, properties (houses), etc. So Tokobagus.com becomes complete online trading site. There are more than 40.000 kinds of goods on Tokobagus.com site, and will increase every minutes

3. The rule for product or service

The advertisement is only intended for a single product / service only. It is also applied to categories of jobs. About advertising category in Tokobagus.com is the user has to choose the category which is appropriate to the product to be sold. When the category is not available, feel free to choose the most closely category, as it is forbidden to put on the "other category".

About the title of advertisement, Tokobagus.com recommends someone to use a title that reflects the product / service to be sold, but it is only one title word and titles that do not focus on the products sold must be avoided, using of the code to distinguish the same goods with different types is allowed. It is not be allowed to use the preposition Sale, on Sale, Search,

Wanted, Rent, Promo, discount, Clearance, or adjectives like, include your phone number / pin Blackberry on the title, the name of the site / domain, or fancy punctuation characters, and the title has nothing to do with the product being sold. Tokobagus.com recommends the rule of the price, such as:

- a. Install the right price or the price that best describes the product sold.
- b. It is not possible to fill the number 0, 1, 123, 3333, 12,345,678 (or similar) in price column.
- c. In the category Services, Jobs and Business Opportunities approach include the price of products / services offered
- d. For the car category, the price is the cost / price of the car and not the price of installment.
- e. Please select 'negotiable' if prices listed are subject to change / negotiable

And the rules for forbidden things do not advertise advertisement that contained the same product more than once; all the double advertising will be deleted. Each products advertised is only allowed once. It is also forbidden to provide website links or references to other sites that are competitors of Tokobagus.com, either in the ad title or description.