

**SALE AND PURCHASE TWITTER USERNAME ACCORDING TO
CONSUMER PROTECTION LAW AND SHARIA CONTRACT LAW**

UNDERGRADUATE THESIS

BY:

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**STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM
MALANG**

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CONSUMER PROTECTION LAW AND SHARIA CONTRACT LAW**

UNDERGRADUATE THESIS

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STATEMENT OF AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

SALE AND PURCHASE TWITTER USERNAME ACCORDING TO CONSUMER PROTECTION LAW AND SHARIA CONTRACT LAW

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 13 Mei 2022

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SALE AND PURCHASE TWITTER USERNAME ACCORDING TO CONSUMER PROTECTION LAW AND SHARIA CONTRACT LAW

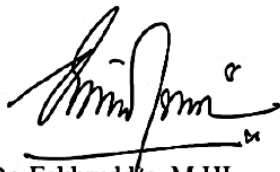
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MOTTO

وَعَسَىٰ أَنْ تَكْرَهُوا شَيْئًا وَهُوَ خَيْرٌ لَّكُمْ ۚ وَعَسَىٰ أَنْ تُحِبُّوا شَيْئًا وَهُوَ شَرٌّ لَّكُمْ ۗ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ
لَا تَعْلَمُونَ ۗ

*“It may be that you dislike a thing which is good for you and that you like a thing
which is bad for you. Allah knows but you do not know”*

**When Allah said: “I test only those I love” I took the Pain like it was a
Honor.**

- Abu Hurayrah

“Everything in time”

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With all hope for His pleasure and mercy, the writer prays and hopes that all good deeds from all parties will receive the best reward and be bestowed with His Taufiq and guidance. Amen.

Malang, 13 Mei 2022

Writer,

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a series of loops and a long horizontal stroke extending to the right.

Diana Ali Miftah

NIM 18220087

TRANSLITERATION GUIDENCE

The Latin Arabic Transliteration Guidelines which are the result of a joint decision decision (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia. Number: 158 of 1987 and Number: 0543b/U/1987.

A. Consonants

A list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Arab Letters	Name	Latin Letters	Name
ا	Alif	Not Symbolized	Not Symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	S/a	S/	Es (with the dot above)
ج	Jim	J	Je
ح	H[a	H	Ha (with thw dot above)
خ	Kha	Kh	Ka and Ha
د	Dal	D	De
ذ	Z/al	Z/	Zet (with the dot above)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es

ش	Syin	Sy	Es and Ye
ص	S[ad	S[Es (with the dot above)
ض	D[ad	D[De (with the dot above)
ط	T[a	T[Te (with the dot above)
ظ	Z[a	Z[Zet (with the dot above)
ع	'Ain	'	Apostrof backwards
غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
هـ	Ha	H	Ha
ء / أ	Hamzah	'	Apostrof
ي	Ya	Y	Ye

Hamzah (ء) which is located at the beginning of the word follows the vowel without any marking. If it is in the middle or at the end, it is written with a sign (').

B. Vocal

Arabic vowels, like Indonesian vowels, consist of a single vowel or monophonic and multi vowels or dhipthongs. The Arabic single vowel whose symbol is a sign or vowel, the transliteration is as follows:

Sign	Name	Latin Letters	Name
أ	Fath[ah	A	A
إ	Kasrah	I	I
أ	D[ammah	U	U

Arabic double vowel whose symbol is a combination of vowels and letters, the transliteration is a combination of letters, namely:

Sign	Name	Latin Letters	Name
أ & ي	Fath[ah and ya	Ai	A and I
أ & و	Fath[ah and wau	Au	A and U

Example:

كَيْفَ : *kaifa*

حَوْلَ : *haulā*

C. Maddah

Maddah or long vowels whose symbols are vowels and letters, transliteration in the form of letters and signs, namely:

Harakat and Letters	Name	Letters and Sign	Name
---------------------	------	------------------	------

اَ / اِ & اِ	Fath[ah and <i>alif</i> or <i>ya</i>	a>	a and the line above
يِ & يِ	<i>Kasrah</i> and <i>ya</i>	i>	i and the line above
وِ & وِ	D[ammah and <i>wau</i>	u>	u and the line above

Example:

مَاتَ : *mata*

رَامَ : *rama*

قِيلَ : *qila*

يَمُوتُ : *yamutu*

D. Ta' Marbutah

There are two transliterations for *ta' marbutah*, namely *ta' marbutah* who live or get the letters *fathah*, *kasrah*, and *d[ammah*, the transliteration is [t]. While *ta' marbutah* who dies or get a sukun harakat, the transliteration is [h].

If the word ending with *ta' marbutah* is followed by a word that uses the article *al-* and the reading of the word is separate, then *ta' marbutah* is transliterated with [h].

الْمَدِينَةُ : *al-madinah*

E. Syaddah (Tasydid)

Syaddah or *tasydid* which in the Arabic writing system is denoted by a *tasydid* sign (ّ), in this transliteration it is symbolized by a repetition letters (double consonants) marked with a *syaddah*. Example:

رَبَّنَا : *rabbana*

الْحَقُّ : *al-haqq*

If letter i there is *tasydid* at the end of a word and preceded by the letter *kasrah*, then it is transliterated like the letter *maddah* (i).

Example:

عَلَى : 'Ali (not 'Aliyy or 'Aly)

عَرَبِيٌّ : 'Arabi (not 'Arabiyy or 'Araby)

F. Sandang Word

Sandang word in the Arabic writing system are denoted by letters (alif lam ma'arifah). In this transliteration guide, the article is transliterated as usual, al-, both when is is followed by letter syamsiah and the letter qamariah. The article does not follow the sound of the direct letter that folloes it. The article is written separately from the word that follows it and is connected by a horizontal line (-). Example:

الشَّمْسُ : *al-syamsu* (not *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalزالah* (not *az-zalزالah*)

الفَلْسَفَةُ : *al-falsafah*

الْبِلَادُ : *al-biladu*

G. Hamzah

The rule for transliterating the letter hamzah into an apostrophe (‘) only applies to hamzah which is located in the middle and end of the word. However, if hamzah is at the beginning of a word, it is not symbolized, because is Arabic it is an alif. Example:

تَأْمُرُونَ : *ta' muruuna*

شَيْئٌ : *syai'un*

أَمْرٌ : *umirtu*

H. Writing Arabic words commonly used in Indonesian

Transliterated Arabic words, terms or sentences are words, terms or sentences that have not been standardized in Indonesian. Words, terms or sentences that are commonplace and become part of the Indonesian vocabulary, or have often been written in Indonesian writing, are no longer written according to the transliteration method above. For example the word Al-Qur'an (from the Qur'an), *Sunnah*, *specific* and *general*. However, if these words are part of a series of Arabic texts, then they must be transliterated in their entirety. Example:

Fizila al-Qur'an

Al-Sunnah qabl al-tadwin

Al-'Ibarat bi 'umum al-lafz bi khusus al-sabab

1. Lafz al-Jalalah

The word Allah which is preceded by a particle such as the letter *jarr* and other letters or is located as a *mudlaf ilaih* (nominal phrase), is transliterated without the letter hamzah. As for the *ta' marbutah* at the end of the word that is attributed to *al-jalalah*, it is transliterated with the letter [t]. Example:

دِينُ اللَّهِ : *dinullah*

رَحْمَةُ اللَّهِ : *rahmatillah*

2. Capital

Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration these letters are subject to provisions regarding the use of capital letters based on the applicable

Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the first letter of a personal name is preceded by an article (al-), then what is written in capital letters remains the initial letter of the personal name, not the initial letter of the article. If it is located at the beginning of the sentence, then the letter A of the article uses a capital letter (Al-). The same provisions also apply to the initial letter of the reference title preceded by the article al-, both when it is written in the text and in the reference notes (CK, DP, CKD, and DR). Example:

وما محمد إلا رسول	: Wa maâ Muhammadun illâ Rasûl
إن أول بيت وضع للدرس	: Inna Awwala baitin wudli'a linnâsi
شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ	: 'Syahru Ramadan al-lazliunzila fih al-Qur'an

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ABSTRACT

Diana Ali Miftah, 18220087, 2022. Sale and Purchase Twitter Username According to Consumer Protection Law and Sharia Contract Law, Department of Sharia Economics Law, Sharia Faculty, State Islamic University Maulana Malik Ibrahim Malang, Supervisor Dwi Hidayatul Firdaus, M.SI.

***Keywords:* Online Sale and Purchase, Twitter, Consumer Protection, Sharia Contract Law**

The advancement of technology and information encourages the emergence of various kinds of social media platforms that can be means of transactions between humans in various ways, such as sale and purchase, promoting goods and so on. One of the social media used to make sale and purchase transactions is Twitter. In Twitter, there are sale and purchase activities that are often done by its users, one of which is sale and purchase *usernames*.

This type of research uses normative juridical research or *library research*. The approach method used in this research is the statutory approach (*Statue Approach*). This approach is carried out by analyzing the laws and regulations in Indonesia related to the legal issues being studied. Then the data collection method that researchers use is to collect various sources of data both primary, secondary and tertiary.

The results of this study indicate that sale and purchase of *usernames* use a salam contract in the form of ordering transactions that made through *direct messages* on Twitter. The payment mechanism is carried out through non-cash or *cashless* namely through digital wallets or bank transfers. After reaching an agreement, the consumer can get *username* he wants by showing a valid proof of payment. Sale and purchase system in *username* transaction on the review of the Consumer Protection Law in Law Number 8 of 1999 concerning Consumer Protection. As well as in Article 4 related to consumer rights and Article 7 related to the obligations of business actors which state that sale and purchase *usernames* does not meet the juridical aspect in terms of consumer protection because there are several things that are vulnerable to misuse. In the legal aspect of the sharia sale and purchase contract, the *username* also does not fulfill several elements including the object being traded must be clear and can be handed over, while *username* is an object that does not have a physical form to be handed over so that transactions like this are considered invalid and contain elements of *gharar* that can lead to problems in the future.

ملخص البحث

ديانا علي مفتاح ، رقم التسجيل 18220087 ، 2022 ، بيع و شراء أسماء المستخدمين منظور قانون حماية المستهلك و قانون العقود الشرعية ، بحث الرسالة ، قسم القانون الاقتصادي الشرعي (المعاملة) ، كلية الشريعة ، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج . المشرف : دوي هداية الفردوس الماجستير .

الكلمات الرئيسية : البيع و الشراء عبر الانترنت ، تويتر (Twitter) ، حماية المستهلك ، قانون العقود الشرعية .

يشجع التقدم السريع للتكنولوجيا والمعلومات على ظهور أنواع مختلفة من منصات التواصل الاجتماعي التي يمكن أن تكون وسيلة للمعاملات بين البشر بطرق مختلفة ، مثل البيع والشراء والترويج للسلع وما إلى ذلك. تويتر (Twitter) أحد وسائل التواصل الاجتماعي المستخدمة لإجراء معاملات البيع والشراء. هناك عمليات بيع وشراء يتم إجراؤها غالبًا بواسطة مستخدموها ، أحدها شراء وبيع أسماء المستخدمين.

يستخدم هذا البحث بحثًا قانونيًا معياريًا أو بحثًا في المكتبات. طريقة المنهج المستخدمة في هذا البحث هي النهج القانوني. يتم تنفيذ هذا النهج من خلال تحليل القوانين واللوائح في إندونيسيا المتعلقة بالمسائل القانونية قيد الدراسة. ثم تتمثل طريقة جمع البيانات التي يستخدمها الباحث في جمع مصادر مختلفة من البيانات الأولية والثانوية والثالثة.

تشير نتائج هذا البحث إلى أن بيع وشراء أسماء مستخدمي تويتر (Twitter) يستخدم عقد سلام في شكل طلب معاملات تتم من خلال الرسائل المباشرة على تويتر (Twitter). تتم آلية الدفع من خلال المدفوعات غير النقدية ، أي من خلال المحافظ الرقمية أو التحويلات المصرفية. بعد التوصل إلى اتفاق ، يمكن للمستهلك الحصول على اسم المستخدم الذي يريده من خلال إظهار إثبات دفع صالح. يعتمد نظام بيع وشراء اسم مستخدم تويتر (Twitter) على مراجعة قانون حماية المستهلك في القانون رقم 8 لعام 1999 بشأن حماية المستهلك. وكذلك في المادة 4 المتعلقة بحقوق المستهلك والمادة 7 المتعلقة بالتزامات الفاعلين التجاريين والتي تنص على أن بيع وشراء أسماء المستخدمين لا يفي بالجانب القانوني فيما يتعلق بحماية المستهلك لأن هناك العديد من الأشياء المعرضة لسوء الاستخدام. في الجانب القانوني العقود الشرعية البيع والشراء المتوافقة مع الشريعة الإسلامية ، لا يفي اسم المستخدم أيضًا بالعديد من العناصر بما في ذلك العنصر الذي يتم تداوله ويجب أن يكون واضحًا ويمكن تسليمه ، في حين أن اسم المستخدم هو كائن ليس له شكل مادي ليتم تسليمه على أن مثل هذه المعاملات تعتبر باطلة وتحتوي على عناصر الغرر التي يمكن أن تؤدي إلى مشاكل في المستقبل.

ABSTRAK

Diana Ali Miftah, 18220087, 2022. **Jual Beli Username Menurut Hukum Perlindungan Konsumen dan Hukum Perjanjian Syariah** Jurusan Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Dosen Pembimbing Dwi Hidayatul Firdaus, M.Si.

Kata Kunci: Jual Beli Online, Twitter, Perlindungan Konsumen, Hukum Perjanjian Syariah

Semakin pesatnya kemajuan teknologi dan informasi mendorong munculnya berbagai macam platform sosial media yang dapat menjadi sarana transaksi antar manusia dalam berbagai hal, seperti jual beli, promosi barang dan sebagainya. Salah satu sosial media yang digunakan untuk melakukan transaksi jual beli adalah Twitter. Dalam Twitter terdapat jual beli yang sering dilakukan oleh para penggunanya, salah satunya adalah jual beli *username*.

Jenis penelitian ini menggunakan penelitian yuridis normatif atau *library research*. Metode pendekatan yang digunakan didalam penelitian ini adalah pendekatan perundang-undangan (*Statue Approach*). Pendekatan ini dilakukan dengan menganalisis peraturan perundang-undangan serta regulasi hukum di Indonesia yang berkaitan dengan permasalahan hukum yang tengah diteliti. Kemudian metode pengumpulan data yang peneliti gunakan adalah dengan mengumpulkan berbagai sumber data baik primer, sekunder dan tersier.

Hasil penelitian ini menunjukkan bahwa transaksi jual beli *username* Twitter menggunakan akad salam dengan bentuk transaksi pemesanan yang dilakukan melalui *direct message* dalam Twitter. Adapun mekanisme pembayaran dilakukan melalui pembayaran nontunai atau *cashless* yakni dengan melalui dompet digital atau transfer via bank. Setelah mencapai kesepakatan konsumen dapat mendapatkan *username* yang diinginkannya dengan menunjukkan bukti pembayaran yang sah. Sistem jual beli *username* Twitter menurut tinjauan Hukum Perlindungan Konsumen dalam Undang-Undang Nomor 8 Tahun 1999 mengenai Perlindungan Konsumen. Serta dalam Pasal 4 terkait dengan hak-hak konsumen dan Pasal 7 terkait dengan kewajiban pelaku usaha yang menyatakan bahwa jual beli *username* tidak memenuhi aspek yuridis dalam segi perlindungan konsumen karena terdapat beberapa hal yang rentan untuk terjadinya penyalahgunaan. Dalam aspek hukum perjanjian syariah jual beli *username* juga tidak memenuhi beberapa unsur diantaranya adalah obyek yang diperjualbelikan haruslah jelas dan dapat diserahkan, sementara *username* merupakan suatu benda yang tidak memiliki bentuk fisik untuk diserahkan sehingga transaksi seperti ini dianggap tidak sah dan mengandung unsur *gharar* yang dapat menimbulkan masalah dikemudian hari.

CHAPTER I

INTRODUCTION

A. Research Background

Economic activity is one of social life that has an impact on fulfilling human needs. There are various ways of sale and purchase, either directly or indirectly, in the same place or in different places. In Islam, this kind of relationship is called muamalah, namely all the rules created by Allah SWT to regulate relations between humans in social life.¹

Selling activities are generally carried out conventionally by selling an item that is given a standard price by the seller, then the buyers get the item by exchanging money for a predetermined item. For people who want auction items but are abroad or in different regions, of course, with these obstacles, auctioneers have a new breakthrough by holding auction activities through the online system so that they can reach various areas interested in the auction, one of the media that often used in online auction activities is through *twitter*.

The rapid advancement of technology and information encourages the emergence of various kinds of social media platforms. As one of the countries with the largest internet users in the world, reaching 63 million people, 95 percent of the

¹ Karim Helmi, *Fiqh Muamalah* (Jakarta: Raja Grafindo Persada, 1993). 37

internet accessed is used to reach social media.² Social media is a means to communicate that grows very rapidly over time.

Many people think that social media is something that is really needed at this time, the elimination of boundaries that usually occur in conventional communication is considered as the advantage of social media which people often associate with the term freedom of expression. The benefits of social media in addition to communicating can be used as a means of doing business, or fulfilling needs, everything is available online, from sale and purchase, services, payment transactions and other things.

Twitter as a social media based on microblog is one of the *platforms* that are often used by Indonesian people to make online purchases. Various things that are often targeted by Twitter users are clothing, food, home appliances and electronics, beauty products and the latest smartphone output.

Twitter originated as a social networking service in the form of microblogging created in 2006 by Jack Dorsey, Biz Stone, and Evan Williams. Initially, Twitter's initial name was twttr, created as a form of SMS service (short message service) with the aim of being used to communicate in small groups. Various activities carried out by Twitter are part of Computer Mediated Communication (CMC), a process of human communication through computers

² Komingo.go.id, "Kominfo: Pengguna Internet Di Indonesia 63 Juta Orang," Date accessed August 2021

involving the general public, in certain contexts, where the process utilizes the media for specific purposes.

Various kinds of benefits can be obtained from Twitter, starting from event detection (detection of events, such as natural disasters), stock market movements, elections to outbreaks of disease in an area. For example, to predict stock market movements, the analysis is done by analyzing tweets containing positive and negative trends related to the stock market such as the Dow Jones, S&P 500, NASDAQ. The emergence *twitter* raises the fact that currently *twitter* is preferred over facebook. The latest data on Twitter usage to date has a total of 1.3 billion accounts, but only 330 million active users in the world.³ This is the reason why *Twitter* was chosen as research material. It doesn't take long to create an account on *Twitter*, teenagers who have social media accounts are more likely to share personal activities, complaints, and photos with their friends. Where the more often and active they are on social media, the more cool and slang they are. In addition, *Twitter* is considered safer in terms of the level of cyber-bullying because the bullying rate is much lower on Twitter compared to *Facebook* and *Instagram*.

The features contained in Twitter allow anyone to communicate without limits, which is used by fans as a place to gather and communicate with their idols. The phenomenon of using Twitter by celebrities was pioneered by Ashton Kutcher as the first artist to successfully have one million followers. Enthusiasm from fans who pay more attention to celebrity accounts then gives rise to a new trend, namely

³ Statista Research Department, "Countries with the Most Twitter Users 2022," 2022.

making Twitter a communication medium for celebrities with their fans and bringing up various accounts that use the name of their idol celebrity as a reference for their account name. One trend that has emerged in recent years is 'roleplayer' where a fan can act like an idol who is their role model, starting from their account names, tweets of activities, even the photos they upload are photos of their idols, it's as if they are the idols. However, choosing an account name that is similar to their idol's name is not only happening among roleplayers, but has penetrated into various general layers. In fact, not infrequently they auction an account name that is considered rare and difficult to create. According to some *Twitter* who have managed to sell several account names, there are several formulas and tricks so that *usernames* can be sold even at high prices. Some accounts that are worth selling are flat letters, namely there are no rising or falling lines and the addition of one or two letters from the idol's real name.

There are still many sellers and buyers who do not understand or obey the regulations in accordance with applicable rules, both in consumer protection law and sharia contract law and sale and purchase *usernames* is an intangible object of auction, so it is very vulnerable for buyers to be harmed and cheated by the seller. .

In accordance with the background of the problems that have been described, it can be identified several problems that arise, especially related to the legality of auctions conducted not through an official auction hall from the government and how the review of consumer protection law and Sharia Contract Law at this legal issue. So this is what prompted researchers to raise this issue for

further research related to this problem by raising the title "*Sales and Purchase Username According to Consumer Protection Law and Sharia contract Law*".

B. Statement of Problem

In accordance with the above background, there are several problems that arise, namely:

1. How is the legal review of sale and purchase *usernames* according to consumer protection law?
2. How is the legal review of sale and purchase *usernames* according to sharia contract law?

C. Objectives of Research

In accordance with the problems described above, it can be formulated that the objectives of this research are as follows:

1. To find out the legal review of sale and purchase *usernames* according to consumer protection law
2. To analyze the legal review of sale and purchase *usernames* according to sharia contract law

D. Benefits of Research

It is hoped that this research will be able to provide benefits both from a theoretical and practical point of view as described below:

1. Theoretical Benefits

This research is expected to be able to become additional knowledge both to be used as reference material, references, related to sale and purchase *usernames* in accordance with consumer protection law and sharia contract law.

2. Practical Benefits

It is hoped that this research can be used as a reference by Kominfo where there are still many sale and purchase *usernames* that are not appropriate. This research is also expected to be able to be used by the public to be a reference or basis in matters relating to sale and purchase *usernames* that are not in accordance with the official website of the Ministry of Finance and how legal protection is provided to consumers as well as legal reviews from the legal side of sharia contracts.

E. Operational Definition

In order to prevent misunderstandings related to the understanding in writing this thesis proposal, the author will provide the main terms to get an idea about the title of this research. The operational definitions are as follows:

1. Sale and purchase

Sale and purchase in *fiqh* is called *al-ba'i* which according to etymology means selling or replacing⁴. According to the Maliki, Shafi'i and

⁴ Abdul Rahman Ghazaly, *Fiqh Muamalat* (Jakarta: Prenadan Media Publisher, n.d.). 67

Hanbali schools of sale and purchase is the exchange of property for property through the form of transfer of ownership.⁵

2. *Twitter*

Twitter is a social networking service in the form of *microblogging* which allows users to send or read text of up to 140 characters which is commonly referred to as a *tweet*.

3. Consumer Protection

Law The Consumer Protection Act regulates in detail related to the provision of protection to consumers in order to fulfill their needs as consumers, the rights and obligations of business actors, as well as ways to defend rights and carry out these obligations.

4. Sharia contract Law

All agreements signed by both parties or later are considered valid if they are not in conflict with Islamic law.⁶

⁵ Abdul Azis Dahlan, *Ensiklopedi Hukum Islam*, 3rd ed., n.d. 827

⁶ Abdul Ghofur Anshori, *Hukum Perjanjian Islam Di Indonesia (Konsep, Regulasi Dan Implementasi)* (Yogyakarta, 2010). 37

F. Method of Research

The research method is very important to be included and implemented during the research. This is important in order to achieve a goal in research. A research method is also used as a way to obtain scientific truth.

1. Type of Research

The type of research used is normative juridical research which examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, scope and material, consistency, general explanation, and regulations.⁷

Normative juridical law research is a research conducted by analyzing the applicable legislation, in order to find the principles of the legislation, so it is hoped that this research can produce appropriate legal findings related to certain legal issues that are research material.⁸ Normative juridical legal research, namely legal research through literature study, which includes research on various kinds of legal principles, legal systematics, comparisons and legal history.⁹ Study and research from the scope and material of the provisions in the Consumer Protection Law as well as in the Sharia Agreement Law.

⁷ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2006) 11

⁸ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum* (Bandung: Penerbit Mandar Maju, 2008). 86

⁹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2013). 23

2. Research Approach

This study uses several existing approaches to find solutions to the legal problems raised, namely:

a. Statute Approach

This approach is carried out by analyzing the laws and regulations and legal regulations in Indonesia related to the legal issues being studied.¹⁰ Legal source searches are obtained through laws and regulations related to this research regulated in Law Number 8 of 1999 concerning Consumer Protection and Article 1320 of the Civil Code.

b. Conceptual Approach

In this approach, it departs from the thoughts and doctrines that develop in the realm of legal science.¹¹ This is considered important because thoughts or views and doctrines in legal science can be used as a basis in building legal arguments when solving legal issues at hand.

3. Law Material

The data source is a means in a research that is used to solve a problem and as a support in writing this research, in this study using two data sources, namely:

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, 2nd ed. (Jakarta: Penerbit Kencana, 2008). 93

¹¹ Peter Mahmud Marzuki. *Penelitian Hukum*, 2nd ed. (Jakarta: Penerbit Kencana, 2008). 94

a. Primary Data

The primary data sources used are library materials that contain renewable knowledge, as well as new definitions of known facts or ideas.¹² The primary sources of law in this study are laws, government regulations, fiqh, fiqh books, and ulema's fatwas.

b. Secondary Data

Secondary data sources are information obtained through library materials which will be used as a reference in this study. The secondary legal materials used can be in the form of books, previous research, seminars, government publications and other reference materials. Secondary legal sources used in this study are books and legal journals related to legal issues that are the focus of this research.

The legal materials used in this study, both primary and secondary, were obtained from the Maulana Malik Ibrahim State Islamic University Library in Malang, Malang City Public Library, Private Library Search, and Internet site searches.

4. Law Material Collection

The technique of tracing legal sources used in collecting primary, secondary, and tertiary legal sources in the research entitled Sale and purchase

¹² Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. 29

Username According to Consumer Protection Law and Sharia Agreement Law are as follows:

- a. Primary legal source searches are obtained through laws and regulations related to this research regulated in Law Number 8 of 1999 concerning Consumer Protection.
- b. Secondary legal source collection is obtained through literature studies, legal journal searches, scientific articles, fiqh books, ulama fatwas and others.

G. Previous Research

Previous research is useful for finding comparisons and as a reference material. In addition, in order to avoid any similarities with this study. So in this proposal the researcher includes the results of previous studies as follows:

1. Research Results of Norma Adi Satria

Norma Adi Satria's research (2017), entitled "*Juridical Overview of the Transfer of Land Rights Due to Sale and purchase by Auction (Study of Decision Number: 13/Pdt.G/2014/PN.Bi in Boyolali District Court)*" This research is a research that uses normative juridical method. This study aims to find out how the judge's considerations in determining the proof of the dispute over the transfer of land rights through sale and purchase with an auction system.

2. Research Result of Nadya Rizky Nakayo (2020)

Nadya Rizky Nakayo's research (2020) entitled "*Legalitas Lealng Yang Diselenggarakan Secara Online Melalui Aplikasi Yang Bukan Balai Lelang.*" This study uses a normative juridical legal method which aims to analyze the legality of auctions through non-official auction applications from the auction hall as well as to provide legal protection against the winner of the auction if the seller defaults.

3. Research Result of Risma Nurmala Marisani (2017)

Research conducted by Risma Nurmala Marisani (2017) entitled "*Pelaksanaan Jual Beli Akun Sosial Media Twitter di Situs www.jualakuntwitter.com*"¹³ The results of this research based on the data found that (1) The implementation of sale and purchase Twitter accounts is included in the category of sale and purchase through electronic media (E-Commerce) which has the same contract as salam, which is a form of sale and purchase goods specified in the guarantee with advance payment while delivery stuff done later. (2) The benefits of sale and purchase twitter accounts when we buy an account instantly will have a lot of followers, increasing trust in buyers when starting a business. As for the mafsadat that occurred from the implementation of this sale and purchase, including the buyer cannot use the account because the account has been deleted by twitter due to a fraud account, buying the twitter account is only for fashion because it has many followers like artists, many followers are fake, more expensive if buying instead of creating your own account. (3) According to

¹³ Risma Nurmala Marisani, "Pelaksanaan Jual Beli Akun Sosial Media Twitter Di Situs [Www.jualakuntwitter.com](http://www.jualakuntwitter.com) (Kajian Hukum Ekonomi Syariah)" (UIN Sunan Gunung Djati Bandung, 2017).

a review of sharia economic law, the sale and purchase of twitter accounts on the www.jualakuntwitter.com site has not fulfilled the provisions of the muamalah principle, namely the Adamul Gharar principle which emphasizes that there should be no element of gharar in all transactions, but in fact the sale and purchase contains elementsgharar which has an impact on the risk of loss suffered by the buyer.

4. Research Result of Dimas Bagus Wicaksana (2017)

The research entitled "*Perlindungan Hukum Terhadap Konsumen Go-Jek (Layanan Transportasi Dengan Aplikasi Online) Dalam Perjanjian Aplikasi Go-Jek Berdasarkan Pasal 1320 KUH Perdata*".¹⁴ The research was conducted using a normative research type with a statute approach. The research focuses on legal protection for Go-Jek consumers in the event of a loss due to negligence or unexpected events experienced by Go-Jek drivers in providing services. The conclusion from the research that has been done is that the transportation service in the Go-Jek application is not in accordance with the provisions of the 1320 Civil Code, with an unclear clause regarding the minimum age of Go-Jek service users. Of course, this creates ambiguity in the aspect of protecting underage consumers. This research has similarities with the research that will be carried out, namely using normative research types and legal aspects of consumer protection. However, there are differences in taking the law. This study discusses the protection related to Article 1320 of the Civil Code, while the research that will be carried out by the

¹⁴ Dimas Bagus Wicaksana, "Perlindungan Hukum Terhadap Konsumen Go-Jek (Layanan Transportasi Dengan Aplikasi Online) Dalam Perjanjian Aplikasi Go-Jek Berdasarkan Pasal 1320 KUH Perdata" (Universitas Brawijaya, 2017).

researcher is based on Law Number 8 of 1999 concerning consumer protection and the legal provisions contained in the Sharia Contract Law.

5. Research Result of Muhammad Luqman Fauzan (2021)

The research entitled "*Perlindungan Konsumen Dalam Jual Beli Akun Game Online Mobile Legend*" discusses the validity of sale and purchase transactions for mobile legend online game accounts. legality of buying and selling transactions for Mobile Legend online game accounts according to the law has fulfilled the elements of buying and selling. First, there is an agreement between the two parties who buy and sell Mobile Legend Online Game accounts. Second, there is the ability of the parties where the parties are authorized to carry out the agreement (not minors and not under guardianship). Third, the existence of a certain object or subject, namely explaining what products are sold, payments, and other agreed matters. Fourth, not against decency or public order. Thus selling Mobile Legend online game accounts can be said to be legal according to positive law. Accounts that are used as objects of sale and purchase according to material law are equated with intangible objects whose ownership becomes the property of the account maker .

H. Structure Discussion

So that the preparation of this thesis is directed, systematic, and related from one chapter to another, the researchers generally can describe the structure as follows: This thesis research is divided into 5 (five)

chapters. The composition of the chapters and an overview of the material written in each of the chapters will be presented systematically as follows:

Chapter I (First). The introduction contains the background of the problem that describes the existence of legal facts as an urgent reason for conducting research. Based on the background description, identification and problems will be researched and discussed, the next is a literature review, research objectives, and benefits of research results. This chapter provides an explanation of the systematics of the discussion.

Chapter II (second). Overview of the selling and buying based on sharia contract law and consumer protection. This chapter describes a literature review that is expected to support efforts to conduct analysis in order to answer the problems that have been formulated. Sub-discussions in this chapter include previous research, selling and buying based islamic law, and consumer protection law. The sub-discussion of sell and purchase includes the definition of akad, the characteristics of sell and purchase in Islam, and Policies & Legislations Related to Sharia Contract law in Indonesia. The sub-discussion of consumer protection law includes consumer rights, the seller's obligations.

Chapter III (third). This chapter is an analysis of research results to answer the formulation of the problem in this study

Chapter IV (Fourth). The closing chapter contains conclusions and suggestions. The conclusion is a brief answer to the formulation of the problem that has been analyzed in Chapter III. Based on the conclusions of the research, suggestions are

put forward as recommendations for the results of this thesis research regarding the sell and purchase twitter *username* according to consumer protections law and sharia contract law.

CHAPTER II

LITERATURE REVIEW

A. Sale and Purchase in Islam

1. Definition of Sale and Purchase

Sale and purchase according to language is transferring property rights to objects through a mutual exchange contract. Sale and purchase is the transfer of property rights of an item to another person by accepting a price based on the willingness of both parties.¹⁵ According to etymology, sale and purchase is defined as the exchange of something with something (other), while in terms of terminology, some scholars have different opinions in defining it, including:

a. Hanafi

Sale and purchase is the exchange of property (objects) with property through a special (allowed) way.¹⁶

b. Sayyid sabiq

Sale and purchase is the exchange of property with property on the basis of mutual consent or "moving property with a justifiable exchange".¹⁷

¹⁵ Teungku Muhammad Hasbi Ash Shiddieqy, *Hukum-Hukum Fiqh Islam* (Semarang: PT. Pustaka Rizki Putra, 1997). 328

¹⁶ Rachmat Syafei, *Fiqh Muamalah* (Bandung: Pustaka Setia, 2001). 73-74

¹⁷ Sayyid Sabiq, *Fiqh Sunnah*, 4th ed. (Jakarta: Pena Pundi Aksara, 2004). 124

The definition contained in the meaning of "special way" referred to by Hanafi scholars with this word is through consent and qabul or it can also be through giving goods and prices from sellers and buyers. Goods that are traded must also be useful, so that carcasses, liquor and blood are not included in the goods that may be traded, because these objects are not useful for Muslims.¹⁸

Sale and purchase according to the view of Malikiyah scholars there are two kinds, namely sale and purchase which has a general and special nature. Sale and purchase in a general sense is an exchange contract.

2. Legal Basis of Sale and Purchase

Sale and purchase have a strong foundation in the Qur'an and the Sunnah of the Prophet Muhammad, among others:

a. Surah Al-Baqarah verse 275

"Those who eat usury cannot stand but like a person who has been possessed by a demon because he is crazy. That is because they say that sale and purchase is the same as usury. Whereas Allah has permitted trading and forbade usury."

b. Surah Al-Baqarah verse 198

"There is no sin for you to seek the bounty (of commercial sustenance) from your Lord. So when you depart from Arafat, make dhikr to Allah in Masy'aril

¹⁸ dkk. Abdul Rahman Ghazali, *Fiqh Muamalat* (Jakarta: Kencana, 2010). 67-68

Haram. And remember (recite) Allah as He has shown you; and verily you before that were among those who went astray.”

c. Surah An-Nisa' verse 29

“O you who believe! Do not eat each other's property with vanity (not right), except in trade which is carried out on the basis of consensual between you. And don't kill yourself.”

Meanwhile, in the Sunnah of the Prophet Muhammad, among others, as follows:

a. Hadith History of Rifa'ah ibn Rafi'

“From rifa'ah rafi' ra., that the Prophet SAW. Have you ever been asked, “What is the best job? He replied, a person's work with his own hands and every good trade.” (HR. Al Bazzar and considered valid according to the Judge).

b. Hadith narrated by Bukhari and Muslim

"From Abdullah bin Umar Radhiyallahu anhuma, from the Prophet sallallahu 'alaihi wa sallam, he said, if two people trade with each other, then each of them has the right to vote as long as the two have not separated, and both have the same rights. rights, or one of the two gives a choice to the other. He said, if one of the two gives a choice to the other, then both of them decide on a sale and purchase on the basis of that choice, then sale and purchase becomes obligatory.”

3. Law of Sale and Purchase

Sale and purchase is one part of muamalat, so anyone who goes directly into this world is obliged to know the things that cause the sale and purchase to be legal or not. In its implementation, although sale and purchase is a contract, the parties are subject to law in their activities.¹⁹ The laws that may apply to the parties are as follows:²⁰

- a. *Mubah* (permissible), as long as the law of sale and purchase is carried out by anyone who meets the requirements, the law is permissible. It is obligatory, like the example of a guardian who sells property from an orphan due to an emergency.
- b. *Sunnah*, if sale and purchase is done to friends, acquaintances, relatives or to people who need the goods.
- c. *Haram*, when conducting sale and purchase transactions that are prohibited by religion, such as selling *khamr*, illegal drugs or weapons that can endanger public peace

4. Terms and Pillars of Sale and Purchase

- a. Terms of Sale and Purchase

¹⁹ R. Abdul Jamali, *Hukum Islam (Asas-Asas Hukum Islam I, Hukum Islam II)* (Bandung: Mandar Maju, 1999). 15

²⁰ Sudarsono, *Pokok-Pokok Hukum Islam* (Jakarta: PT. Rineka Cipta, 2001). 393

In general, in Sale and purchase there are four kinds of conditions, namely the existence of a contract (*in'iqad*), the conditions for the validity of the contract, the conditions for the implementation of the contract (*nafadz*), and the lujum conditions. The purpose of all these conditions, among others, is to avoid disputes, maintain the benefit of people who are in the middle of the contract, and avoid sale and purchase *gharar* and others.

Some of the conditions in sale and purchase in accordance with the pillars of sale and purchase put forward by the majority of Hanafiyah scholars are as follows:²¹

- 1) Requirements for the person in the contract:
 - a) Reasonable
 - b) The person who performs the contract is a different person
- 2) The conditions are related to consent and acceptance:
 - a) Baligh and reasonable
 - b) Kabul according to consent
 - c) Ijab and acceptance are carried out in the same plac
- 3) Terms of the goods being traded (*Ma'qud' alaih*):

²¹ Abdul Rahman Ghazali, *Fiqh Muamalat*. (Jakarta: Prenadan Media Publisher). 71

- a) The goods are present, or not available place, but the seller states that he is able to procure the goods.
 - b) Can be used and beneficial to humans
 - c) Owned by someone
 - d) Can be handed over at the time of the contract or at an agreed time.
- 4) Terms of exchange rate (price of goods)
- a) The agreed price must be clear in amount
 - b) If the sale and purchase is carried out by exchanging goods (*al-muqayadhah*) then the goods used as exchange are not goods prohibited by *syara'*

As mentioned above, the fiqh scholars mention that there are several things that cause a sale and purchase to be valid, namely:

- 1) The subject of the sale and purchase, i.e. both the seller and the buyer must meet the requirements including:²²
 - a) Reasonable, namely being able to distinguish or choose which one is best for him, therefore if one of the parties is unreasonable then the sale and purchase made is considered invalid.

²² Khumedi Ja'far, *Hukum Perdata Islam Di Indonesia*, 4th ed. (Surabaya: Gemilang Publisher, 2019). 101

- b) Based on their own will (not coercion), it means that in carrying out a sale and purchase transaction, one party does not apply pressure or coercion to the other party, so that the other party at the time of carrying out the transaction on the basis of his own will.
 - c) Both are not redundant, meaning that the parties who bind themselves in the transaction are not wasteful people (wasteful), because a wasteful person according to the law is said to be a person who is incapable of acting, which means he cannot carry out a legal act himself even though the law is concerns his interests alone.²³
 - d) Baligh, in Islamic law a person is said to be baligh if he is 15 years old for a boy and his period (menstruation) for a girl has come, therefore sale and purchase transactions carried out by small children are considered invalid but there are exceptions that have been made.²⁴
- 2) The object of sale and purchase, where the goods or objects that are the object of the sale and purchase transaction should meet the following conditions:
- a) Are goods that are holy or clean, in this case what is meant is that the goods to be traded are classified as goods or objects that are not forbidden or unclean.

²³ K. Ja'far, *Hukum Perdata Islam Di Indonesia*, (Surabaya: Gemilang Publisher 2019). 102

²⁴ K. Ja'far, *Hukum Perdata Islam Di Indonesia*, (Surabaya: Gemilang Publisher 2019). 103

- b) Providing benefits, the goods being traded should be goods that have benefits where the use of the goods is not contrary to the applicable religious provisions.
- c) The goods or objects being traded are the ownership of the person making the contract, meaning that the property rights of the goods are properly controlled by the person who will enter into the sale and purchase contract.
- d) Goods or objects that are traded can be delivered
- e) The goods being traded are clear and identifiable, this is intended so that

b. Pillars of Sale and Purchase

Sale and purchase is one of the transactions that has a legal consequence of the transfer of rights to an item from the seller to the buyer, so in this legal action the pillars of sale and purchase must be fulfilled.²⁵ There are several pillars in sale and purchase, including the following:

- 1) Seller, namely the owner of the property who will sell the goods or the person who is authorized to sell other people's property. A seller must be proficient in sale and purchase transactions (mukallaf).

²⁵ K. Ja'far, *Hukum Perdata Islam Di Indonesia*, (Surabaya: Gemilang Publisher 2019). 20

- 2) Buyers, people who have been able to spend their wealth (money).
- 3) The object being traded is something that is allowed to be sold according to the syara' for sale and its original nature is known by the buyer.
- 4) Shighat (ijab qabul), which is a statement from both parties, both the seller and the buyer, as an illustration of his will in the sale and purchase transaction.

5. Types of Sale and Purchase

Sale and purchase is divided into several types, namely:²⁶

- a. Sale and purchase that is prohibited because of an expert or contract expert (seller and buyer), among others:

- 1) Sale and purchase of crazy people

It's means that sale and purchase carried out by crazy people is not legal, as well as sale and purchase carried out by people who are drunk because they are in a state of shock. he is seen as unreasonable.

- 2) Sale and purchase of small children

Sale and purchase carried out by children who are not yet mumayiz are considered invalid, except in minor cases.

- 3) Sale and purchase of blind people

²⁶ K. Ja'far., *Hukum Perdata Islam Di Indonesia*, (Surabaya: Gemilang Publisher 2019). 107

The scholars agree that sale and purchase carried out by blind people without being explained is considered invalid, because they are considered unable to distinguish between good and bad goods, even the Shafi'iyah scholars explain that sale and purchase is carried out by blind people. is still considered invalid even though its nature has been explained.

4) Sale and purchase fudhlul

Sale and purchase belonging to other people without the permission of the owner, therefore scholars are of the opinion that this kind of sale and purchase activity is considered illegal, because it is the same as taking other people's rights (stealing).

5) Sale and purchase of people who are hindered (sick, stupid, or wasteful)

This kind of sale and purchase means that people who are hindered either because of illness or stupidity are considered invalid, because they do not have intelligence so that their words are seen as impermissible.

6) Sale and purchase Malja'

Sale and purchase carried out by people who are in danger. According to the majority of scholars, this kind of sale and purchase is considered invalid because it is seen as not as common as it should be.

b. Sale and purchase that is prohibited because of the object of the sale and purchase activity, such as:²⁷

1) Sale and purchase of Gharar

Sale and purchase that contains an element of obscurity, this kind of thing is considered invalid. In accordance with the words of the Prophet Muhammad:

"Do not buy fish in water, because this kind of sale and purchase is included in gharar (deceit)".

2) The sale and purchase of goods that cannot be delivered

The sale and purchase of goods that cannot be handed over is meant to be like selling birds that are still flying in the air and fish in the sea, which is considered illegal, because this kind of sale and purchase is considered to have no definite clarity.

3) Sale and purchase Majhul

Sale and purchase something that is not clear, such as cassava that is still in the ground, sale and purchase of fruits that are still in the form of flowers, and so on. This kind of sale and purchase is considered invalid by many scholars because it can cause conflict between humans.²⁸

²⁷ Ja'far. , *Hukum Perdata Islam Di Indonesia*, (Surabaya: Gemilang Publisher 2019). 108

²⁸ Ja'far. , *Hukum Perdata Islam Di Indonesia*, (Surabaya: Gemilang Publisher 2019). 109

4) Sale and purchase animal sperm.

The sale and purchase of animal sperm in question is by marrying a bull with a female in order to get good offspring, this is considered haram.

5) Sale and purchase goods that are condemned to be unclean by religion.

The point is that sale and purchase which the law is clear in religion such as wine, pork, and idols is haram.

6) Sale and purchase of young animals that are still in the mother's stomach.

This kind of sale and purchase is said to be haram because the goods being traded do not yet exist and are not visible. This is in accordance with the words of the Prophet:

"From Ibn Umar RA, Rasulullah SAW has forbidden the sale of something that is still in the womb of its mother".

7) Muzabanah

Sale and purchase is the sale and purchase of wet fruit with dry fruit, for example, such as wet rice with dry rice while the size is the same so that it will harm one party. Therefore this kind of sale and purchase is prohibited as the Prophet said:²⁹

²⁹ K. Ja'far, *Hukum Perdata Islam Di Indonesia*, (Surabaya: Gemilang Publisher 2019). 111

"From Anas RA, he said: Rasulullah SAW forbade the sale and purchase of Muhaqallah, Mukhadharah, Mulamassah, Munabazah, and Muzabanah".

8) Sale and purchase Muhaqallah

Sale and purchase plants that are still in the fields or gardens and rice fields. This kind of sale and purchase has been prohibited by religion because it is considered to contain elements of usury.

9) Sale and purchase Mukhadharah

Is the sale and purchase of fruits that are not yet suitable for harvesting, such as green rambutan, unripe mango and so on. This kind of sale and purchase is prohibited by religion because the goods being traded are still unclear because the fruit can also fall in the wind before being harvested by the buyer, so that it can cause disappointment to one party.

10) Mulammasah

Mulammasah is a sale and purchase that is carried out by touching, such as someone touching a piece of cloth with his hands or feet (wearing it), then he is considered to have bought the cloth. This kind of sale and purchase is prohibited by religion because there is an element of deception so it is very possible to cause harm to one party.

11) Sale and purchase Munabadzah,

Namely sale and purchase which is carried out by throwing like someone who said: throw at me what is with you, then I will also throw at you what is with me, after throwing, sale and purchase occurs. sale and purchase like this is prohibited by religion because it contains elements of deception and has the potential to harm one party.

c. Sale and purchase that is prohibited because of the *ijab kabul*³⁰

1) *Mu'athah*

Sale and purchase is a sale and purchase agreed upon by both parties regarding the goods and the price but does not use the consent of consent, this kind of Sale and purchase is considered invalid, because it does not meet the requirements in the terms of the contract. buy and sell.

2) Sale and purchase does not match between *Ijab* and *Kabul*

It is a sale and purchase that is hung with certain conditions or is postponed in the future. This kind of Sale and purchase is considered illegal because it can reduce the quality of goods.

3) *Munjiz*

Munjiz is a sale and purchase by hanging through certain conditions and can be postponed in the future. Sale and purchase like this is

³⁰ K. Ja'far. , *Hukum Perdata Islam Di Indonesia*, (Surabaya: Gemilang Publisher 2019). 112

considered illegal, because it is very contrary to the pillars and terms of the sale and purchase.

4) Najasyi

Sale and purchase is a sale and purchase that is carried out by way of exceeding the price of a friend, in order to influence potential buyers so that they buy goods marketed by their friends. Sale and purchase like this is considered illegal, because it can lead to compulsion (not one's own will).

5) Selling above other people's sales³¹

It means that selling goods to other people by lowering the price, so that potential buyers want to buy the goods. For example, like the seller said: just return the item to the seller, later please buy my item at a cheaper price than the item. This kind of Sale and purchase is prohibited by sharia because it can lead to unfair competition among traders.

6) Sale and purchase g below market price

This is a sale and purchase that is carried out by meeting with village farmers before they enter the market at a very cheap price because they do not know the market price, then they sell at the highest price. This

³¹ K. Ja'far. *Hukum Perdata Islam Di Indonesia*, (Surabaya: Gemilang Publisher 2019). 113

kind of sale and purchase is considered bad because it is detrimental to the owner of the goods or the village people.³²

7) Bid on items that are being offered by other people

Like for example someone says: don't accept an offer from that person later I will buy it at a higher price. Sale and purchase through this method is not allowed by religion because it can lead to competition and disputes between traders.

B. Consumer Protection Law

1. Consumer Rights Protection

Article 1320 of the Civil Code determines that there are 4 (four) conditions for the validity of an agreement, namely:

1. There is an agreement between the two parties who buy and sell username;
2. There is the competence of the parties in which the parties are authorized to carry out the agreement (not minors and not under guardianship);
3. The existence of certain objects or matters, namely explaining what products are sold, payments, and other agreed matters;
4. A lawful cause (cause).

³² K. Ja'far. , *Hukum Perdata Islam Di Indonesia*, (Surabaya: Gemilang Publisher 2019). 114

Consumer rights are regulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection. In the article it is explained that the consumer has several rights that he is entitled to, including the following:³³

- a) The right to comfort, security, and safety in consuming goods and/or services;
- b) The right to choose and obtain goods and/or services in accordance with the exchange rate and the promised conditions and guarantees;
- c) The right to correct, clear and honest information regarding the conditions and guarantees of goods or services;
- d) The right to have their opinions and complaints heard on the goods and/or services used;
- e) The right to get advocacy, protection, and efforts to settle consumer protection disputes properly
- f) The right to get consumer guidance and education
- g) The right to be treated or served properly and honestly in a non-discriminatory manner

³³ Shidarta, *Hukum Perlindungan Konsumen Indonesia*, 3rd ed. (Jakarta: PT. Grasindo, 2006). 21

- h) The right to get compensation, compensation and / or replacement, if the goods and / or services received are not in accordance with the contract or not properly
- i) Rights regulated in the provisions of other laws and regulations.

2. Principles of Protection Consumer

Protection is held as a joint effort that is relevant to national development, namely the development of Indonesian people as a whole based on the philosophy of the Republic of Indonesia. The principles in question are:³⁴

- a) The principle of benefit which includes the principle of consumer safety and security
- b) The principle of justice which includes the principle of balance
- c) The principle of legal certainty

The principles above are in line with the three basic ideas or values of the law, namely: usefulness of law, legal justice and legal certainty.³⁵ As a legal principle, it automatically places these three principles as a reference in regulations related to the consumer protection movement and the activities of the parties involved in it.

³⁴ Ahmad Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen* (Jakarta: Raja Grafindo Persada, 2011). 25

³⁵ Gustav Radbruch, *Legal Philosophy, in The Legal Philosophies of Lask, Radbruch and Dabin* (Massachusetts: Harvard University Press, 1950). 107

In online sale and purchase transactions, sellers and buyers do not meet directly in one place but through cyberspace. The subject of buying and selling online is no different from conventional sale and purchase, namely business actors as sellers who sell their goods and buyers as consumers who pay the price of goods. Sales and purchases are sometimes only based on trust, meaning that online buying and selling actors are sometimes unclear, making them vulnerable to fraud. As for the object of online buying and selling, namely goods or services purchased by consumers, but goods or services are not seen directly by the buyer as the subject of online buying and selling. It is very different from conventional sale and purchase where sellers and buyers can meet and see the object of buying and selling directly, thus allowing buyers to get certainty regarding the quality of the goods they want to buy, so there is very little fraud.

Justice, expediency and legal certainty are considered as legal goals by many *jurists*. However, it is often a problem that there are difficulties in realizing a legal goal at the same time. Achmad Ali argues that if it is said that the purpose of law is to realize justice, benefit, and legal certainty in its implementation, conflicts often occur. For example, in a certain legal case if the judge wants his decision to be "fair" based on his perception, then the result is often detrimental to the benefit of the wider community and vice versa.³⁶

The principle of balance which is categorized into the principle of justice, considering the essence of balance in question is justice and the interests of each

³⁶ Achmad Ali, *Menguak Tabir Hukum* (Jakarta: Chandra Pratama, 1996). 95-96

party, namely consumers, business actors, and the government. The balance of protection between business actors and consumers shows that the function of law according to Rescoe Pound is as a means of controlling social life by balancing various kinds of interests that exist in society or in other words as a means of social control.³⁷

Twitter username offers are usually offered through social media such as twitter, facebook, and instagram. Social media nowadays also functions to make it easier for business actors, but also makes consumers easily attracted to the paired products that have been made in such an attractive way that sometimes they don't match reality, so that consumers feel disadvantaged by fraud, lack of good faith in selling, buying, or buying and selling that is less useful and violates certain legal rules. Protection for consumers related to buying and selling Mobile Legend online game accounts through bank transfers based on Consumer Protection Law is the same as consumers who transact directly or conventionally.

Regarding the principle of benefit, security and consumer safety, they are grouped into this principle because the security and safety of consumers is part of the benefits of implementing protection provided to consumers in addition to the interests of business actors as a whole.³⁸

C. Sharia Contract Law

³⁷ Peter Mahmud Marzuki, *Pembaharuan Hukum Ekonomi Indonesia* (Surabaya: Universitas Airlangga, n.d.). 3

³⁸ Miru and Yodo, *Hukum Perlindungan Konsumen*. (Jakarta: Raja Grafindo Persada, 2011). 26

a. Types of Contract

In the Islamic economic system there are various types of contracts (agreements) that can be carried out by the community of economic actors. Economic contracts that are most often used by the community include sale and purchase contracts,³⁹ *mudharabah* (profit sharing) contracts, *musharaka* (joint ventures, equity participation and profit sharing), and *ijarah* (lease).⁴⁰ In order to clarify the various forms of contracts in several reviews, it can be seen in various perspective of Akad.⁴¹

Reviewed from the nature and type of contract seen through the legal terms of taklifi there are five: obligatory contract, sunnah contract, mubah contract, makruh contract, and haram contract.

Viewed from the knowledge of *syar'i* the contract seen from the side of its validity divide to authentic contract and the contract is not valid. Reviewed through sighat of akad divided to direct contract (*al-'aqd al-munjiz*), backed contract (*al-'aqd al-mudhaf*), and suspended contract (*al-'aqd al-mua'allaq*).

The contract seen from the binding side in various perspective is a covenant means that it cannot be *fasakh* (canceled unilaterally), contract that is not

³⁹ Abdul Rahman Ghazali, *Fiqh Muamalat*. (Jakarta: Prenanda Media Publisher). 67

⁴⁰ Muhammad Amin Suma, *Asuransi Syariah Dan Asuransi Konvensional* (Jakarta: Kholam Publishing, 2006). 31

⁴¹ Yasardin, *Asas Kebebasan Berkontrak Syariah* (Jakarta: Prenadamedia Group, 2018). 48-49

definetely binding, that is a contract that can be broken by two parties or one of the parties.

The contract is seen in terms of its form divide to written and unwritten covenants. The contract is seen in terms of underlying motive divided into two. First, akad *tabarru'*: *al-qardh*, *al-rahn*, *hiwalah*, *wakalah*, *kafalah*, *wadi'ah*, hibah, gift, wakaf and alms. Second, akad *mu'awadhah*: contracts based on the principle of sale and purchase (*al-bay' al-murabahah* with mark up, greetings contract and *istishna*), the contract is in accordance with the principle of revenue sharing (*al-mudharabah* and *al-musyarakah*) and in accordance with the principle of renting (*ijarah* and *ijarah wa-istishna*).

b. Legal Terms of The Contract

An agreement or contract can be considered valid and legally binding if it fulfills the legal requirements as stipulated in the legal requirements of the contract, namely:

- i. There is the subject of the engagement (*Al'Aqidin*);

In Islamic law, according to the ability to perform contracts, humans can be grouped into three.⁴²

⁴² Novi Ratna Sari, "Komparasi Syarat Sahnya Perjanjian Menurut Kitab Undang-Undang Hukum Perdata Dan Hukum Islam," *Repertorium* IV, no. No. 2 (2017). 82

- a) Humans who cannot perform any contracts, for example, humans with mental disabilities, mental disabilities, or small children who are not yet *mumayyiz*.
- b) Humans who can only perform a certain contract, such as a child who is *mumayyiz* but has not yet reached puberty.
- c) Humans who have been able to carry out all contracts, namely those who have fulfilled all the requirements of the *mukallaf*

Apart from being seen from the stage of a person's maturity in a contract, psychological conditions also need to be considered in relation to the validity of a contract. Some of the conditions for the subject of the contract are as follows:⁴³

- a) *Aqil* (sense)

The person conducting the transaction must be of sound mind, not a crazy person, mentally disturbed, or who lacks sense because he is still under age, so that he can account for the transactions he makes.

- b) *Tamyiz* (can distinguish)

The person who transacts should be in a state that can distinguish between good and bad, this is a sign that he is aware when making transactions.

- c) *Mukhtar* (free from coercion)

⁴³ Novi Ratna Sari. Komparasi Syarat Sahnya Perjanjian Menurut Kitab Undang-Undang Hukum Perdata Dan Hukum Islam," *Repertorium IV*, no. No. 2 (2017). 81

These terms are based on the provisions contained in the QS. An-Nisaa verse 29 and the Hadith of the Prophet Muhammad SAW which states the principle of *inter-taradhin* (rela-sma willingly). This means that the parties must be free from coercion and pressure.⁴⁴

ii. There is an object of engagement (*Mahallul 'Aqd*);

In Islamic law, *Mahallul 'Aqd* is something that becomes the object of the engagement because of the legal consequences it causes. The conditions that must be met in the *mahallul 'aqd* are as follows:

- a) The object of the engagement already exists when the contract is executed
- b) The object that is the object of the engagement must have a use value and be beneficial to humans.
- c) The object of the engagement must be clear and known to the '*aqid*.
- d) The object that is used as the object of the engagement should be delivered at the time of the contract or at a time that has become a mutual agreement.⁴⁵

iii. The purpose of the engagement (*Maudhu 'ul 'Aqd*);

⁴⁴ Novi Ratna Sari. 82

⁴⁵ Abdul Ghafur Anshori, *Hukum Perjanjian Islam Di Indonesia (Konsep, Regulasi, Dan Implementasi)* (Yogyakarta: UGM, 2010). 29

Maudhu 'ul 'Aqd is the purpose and law of a contract which is a condition for that purpose. In *sharia* the purpose of the contract is determined by Allah SWT in the Qur'an and the Hadith of the Prophet Muhammad.

Ahmad Azhar Basyir determines the conditions that must be met so that the purpose of the contract is considered valid and has legal consequences, namely as follows:⁴⁶

- a) The purpose of the contract does not constitute an existing obligation on the parties concerned without a contract being held;
- b) The objective must last until it ends at the time of execution of the contract;
- c) The purpose of the contract must be in accordance with the *syara'*.

iv. Ijab and Kabul (*Sighat al-'Aqd*)

In Islamic law the agreement is a very important factor, how the self-binding is carried out, meaning that in terms of making a contract, the parties must convey it verbally or in writing the *terms and conditions* of the contract so that it can cause legal consequences.⁴⁷

⁴⁶ Novi Ratna Sari, "Komparasi Syarat Sahnya Perjanjian Menurut Kitab Undang-Undang Hukum Perdata Dan Hukum Islam." 85

⁴⁷ Abdul Ghafur Anshori, *Hukum Perjanjian Islam Di Indonesia (Konsep, Regulasi, Dan Implementasi)*. 27

There are several conditions that must be fulfilled so that the consent of acceptance has legal consequences:⁴⁸

- a) The consent of acceptance must be declared by the person who has reached the age of *tamyiz* so that it can be seen that what he is saying is the desire of his heart. In other words, it is carried out by people who are capable of carrying out legal actions.
- b) Ijab and acceptance are directed at an object of the contract.
- c) Ijab and Kabul must be in direct contact in one assembly if both parties are present.

c. Principles of Sharia Contracts Law

There are several principles that exist in sharia contract law, including the following:

1) Freedom (*al-Hurriyyah*)

The principle of freedom is one of the basic principles in Islamic law. This principle in Islam has existed twelve centuries before the United States constitution (late 18th century) and the French Constitution which only appeared six years after.⁴⁹ This principle of freedom is applied in an agreement where the parties to the contract have the freedom to make an agreement, both in terms of the agreed

⁴⁸ Ahmad Azhar Basyir, *Asas-Asas Hukum Muamalat (Hukum Perdata Islam)* (Yogyakarta: UII Press, 2000). 66

⁴⁹ Juhaya S. Praja, *Tafsir Hikmah Seputar Ibadah, Muamalah, Jin, Dan Manusia* (Bandung: Remaja Rosda Karya, 2000). 119

material/content, to determine the implementation and other requirements, to enter into an agreement with anyone, including determining the method of settlement when a dispute occurs.

The freedom to make an agreement is allowed as long as it does not conflict with the provisions of Islamic law. Through this principle, all forms of coercion, pressure and fraud from any party are avoided. This principle of freedom in the Civil Code is known as the principle of freedom of contract and the principle of legal certainty (*pacta sunt servanda*). or not and are free to choose the law to be used in the agreement. This principle is usually based on Article 1338 paragraph (1) BW.⁵⁰

2) Equality or Equality (al-Musawah)

In this principle it is explained that both parties who bind themselves in an agreement have the same bargaining position between one party and another, so that in determining the terms and conditions for a contract or In the agreement, each party has equality and a balanced position.⁵¹

3) Justice (al-Adalah)

Justice is one of the attributes of God and the Qur'an emphasizes humans so that the principle of justice is made as a moral ideal. The implementation of this

⁵⁰ Ahmad Miru, *Hukum Kontrak & Perancangan Kontrak* (Jakarta: Raja Grafindo Persada, 2007).

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⁵¹ Abdul Ghafur Anshori, *Hukum Perjanjian Islam Di Indonesia (Konsep, Regulasi, Dan Implementasi)*. 35-37

principle in the contract occurs between the parties where they are required to act correctly in expressing their will and circumstances, fulfill the agreement they have made and carry out all their obligations.

This principle of justice is something that is very fundamental because justice is one of the joints in every agreement made by the parties.

4) Willingness or Consensualism (al-Ridhaiyyah)

This principle states that all transactions carried out must be based on the willingness of the parties. The form of willingness can be realized at the time of an agreement without having to use certain formalities.

If a transaction does not meet this principle, then it is considered to eat something vanity (al-akl bi-al-bathil). A transaction cannot be said to have reached an agreement if it contains elements of coercion, pressure, fraud, and miss-statements.

The principle of al-ridha'iyyah in the Civil Code is often referred to as the principle of consensualism or the principle of consensual. This principle is based on Article 1320 of the Civil Code regarding the conditions for the validity of an agreement and is a further elaboration of the principle of freedom of contract.⁵²

5) Honesty and Truth (as-Shidq)

⁵² Abdul Ghafur Anshori. *Hukum Perjanjian Islam di Indonesia (Konsep, Regulasi dan Implementasi)*, (Yogyakarta: Gadjah Mada Press, 2010). 34

The most basic ethical value in Islam is honesty. Because Islam is another name for truth. Allah commands all Muslims to be honest in everything and in their words.

The value of truth greatly influences the parties who bind themselves in an agreement not to lie, cheat or commit forgery. If this principle is not implemented, it can damage the legality of the contract made.

6) Benefit (al-Manfa'ah)

This principle has the intention that the contract is carried out by the parties who have the aim of realizing the benefit for them and may not cause harm (madharrat) or aggravating circumstances (masyaqat). In the view of Islam, that not all objects can be used as objects in the contract. Islam does not allow contracts on objects that have a harmful nature ./ mafsadat. In other words, the goods or businesses that are the object of the transaction must be lawful and good (thayyib) and an agreement must bring benefits to the parties to the contract (tabadul al-manafi').

7) Written (al-Kitabah)

This principle is something important and needs to be considered in a contract. This is in accordance with the legal basis contained in the QS. Al-Baqarah verses 282-283. Where in the two verses indicate that the contract must be done in the goodness of the party doing the contract. So the contract must be made in black and white, that is, it is written (kitabah).

CHAPTER III

DISCUSSION OF RESEARCH FINDINGS

A. Procedures for Sale and Purchase of Twitter Username

Username is a name that is used as a user identity in communicating via internet media, where the user is registered in a unique database. This means that there cannot be the same username in one database.⁵³ In some database applications there are several rules that must be agreed upon in registering the username in the database. Like the maximum character width for a username there is a maximum of 8 characters and some are up to 256 characters wide. Naming usernames must follow certain rules, such as starting with a letter and then being combined with numbers or special characters. Username is one of the first steps in the security mechanism in database applications and all vendors who make database applications must have this feature. If a user tries to login to the database but the user has never been registered in the database, then that user cannot login/enter the database application. Usernames can only be created and managed by the highest level user, namely the DBA.

Username in twitter is symbolized by the @ symbol then followed by the twitter account name of the account owner. In addition to showing the username, the username symbol can also be used to communicate with other Twitter users. A

⁵³ M. Rudyanto Arief, "Keamanan User Database," *Data Manajemen Dan Teknologi Informasi* 12, no. 1 (2011). 29

user can mention by writing the @username symbol if he wants to interact with that user.

Besides being used as a communication medium to stay updated on the development of information, Twitter is also widely used by creative users in doing business. Among the many trades offered on Twitter, there is one thing that is interesting in sale and purchase, namely the sale and purchase of Twitter usernames. Most users who sell usernames are those who are professional, smart, and understand the use of the service and have been using Twitter for a long time.

Sale and purchase usernames is not one of the services contained in Twitter. Twitter is one of the microblogging service sites that can be used to send and read someone's latest status or what is often called a *tweet*.⁵⁴ Sale and purchase usernames is the idea of creative Twitter users and has nothing to do with the Twitter company itself, so the sale and purchase of Twitter usernames is not the responsibility of the Twitter company. If in the transaction there is a dispute or problem between a user who is a seller and a user who is a buyer, then the Twitter company is not responsible for the fraud case because sale and purchase Twitter usernames is not a service provided by Twitter.

Username is a name that is used and used as an identity on Twitter. The username serves as a guide or identification tool with whom we communicate, because Twitter users have different usernames from one another.

⁵⁴ Arista Prasetyo Sanjaya, *Panduan Cepat Menguasai Twitter* (Jakarta: PT. Elex Media Komputindo, 2019). 1

Usernames that are often sought after by buyers are names that have their own uniqueness, so not all usernames can be sold. Some categories that can be used as guidelines so that a username can be sold.

Meanwhile, for usernames related to Korean idol names, there is a certain formula so that the username can be sold. First, a salable username is a “flat” Second, the username is added, replaced, or moved one letter from the original name. Meanwhile, if you add two letters which cannot be sold. Furthermore, the username by replacing the letters can be sold, but if it is replaced by two letters, it cannot be sold. And the last is by moving letters, as previously mentioned, if two letters are moved, the username cannot be sold.

In practice, there is a formula that can be used to determine whether a username is worth selling or not. In this case, there are two categories of letters, namely flat letters and uneven letters. The division is as follows: flat letters: weruioaszxcvnm and uneven letters: qtypdfghjklb So usernames that can be sold are those that are added, replaced, or moved one letter from the original word and no other characters are added.⁵⁵

Sale and purchase *usernames* is not much different from other sale and purchase in the real world, namely there are buyers, sellers, objects being traded or from the contract. What makes the difference is in terms of transactions where in conventional sale and purchase transactions are carried out face-to-face between the seller and the buyer, while sale and purchase *usernames* are carried out without

⁵⁵ Radhita Rara, “Lagi Viral, Begini Fenomena Lelang Username Twitter Hingga Terjual Rp8 Juta!,” *Journal Sociolla*, 2021.

knowing the object being traded is good or not in terms of its condition or existence, while the sellers and the buyer does not meet in person in carrying out the transaction because it is done *online*.

So in principle, the sale and purchase transactions of *usernames* contained on Twitter are carried out in 2 (two) ways, namely:⁵⁶

1. Conducted by *direct message* which is one of the services in the Twitter application. In this case, the qabul consent is not carried out in the same assembly.
2. Conducted face to face (*face to face*) between the seller and the buyer. In this transaction, the consent and qabul are pronounced directly without being hindered by anything, namely being in one assembly.

Twitter is one of the social media as well as a means to communicate and get the latest information available. In Indonesia, Twitter is one of *the platforms* frequently used by the younger generation. Where according to statistics as of January 2022, the current number of active Twitter users in Indonesia is around 18.45 million users which occupy the top five positions in the world.⁵⁷

Sale and purchase *usernames* is based on the increasing number of people who play Twitter so that they have the desire to get *username* a good and uniqueIt is through reasons like that that cause Twitter users to be willing to spend money

⁵⁷ Statista Research Department, "Countries with the Most Twitter Users 2022."

for a *username* that they think is unique and good.sale and purchase transaction *username* is by paying directly or indirectly either through credit, quota, ATM transfer or various other types of *E-Wallet*.

In the implementation of sale and purchase, it is never separated from several terms and pillars that are needed as a rule in sale and purchase, so that the transaction is considered valid in accordance with the provisions contained in the agreement. While sale and purchase transactions in Islam have been regulated in the Qur'an and the Sunnah of the Prophet Muhammad.

Terms and pillars in sale and purchase are the main things that need to be known and applied, so that sellers and buyers do not fall into transactions that are prohibited by sharia. Regarding the terms and conditions of sale and purchase, in sale and purchase *usernames* , the transaction process is considered unclear.

B. Analysis of Consumer Protection Law Review for Sale and Purchase of Twitter Username

Sale and purchase Online buying, as well as conventional sale and purchase transactions in the real world, are carried out by related parties even though in *online* the parties do not meet each other directly, but connected via the internet. In sale and purchase *online*, the seller and the buyer do not meet face-to-

face because they are in different locations so that payments are made through bank intermediaries, and the provider is the provider of internet access services.⁵⁸

The sale and purchase of twitter usernames includes an underhand agreement deed, which is a deed intentionally made for proof by the parties without the assistance of an official. Matters are solely made between the interested parties. This private deed is not regulated in the HIR, but by Article 286 to Article 305 of the RBG, and Article 1874 to Article 1880 of the Civil Code. Article 1875 of the Civil Code states that a private agreement can have perfect evidence such as an authentic deed if the signature on the deed is recognized by the parties who signed it. Article 1871 of the Civil Code states that a private deed can have perfect evidentiary power if the parties do not deny what is in the contents of the agreement. When viewed at a glance from the description above, it seems unfair because the parties who did not participate jointly determine the contents of the agreement and (possibly) did not know that it existed or if they knew they did not understand well the intent of the clauses. Consumers are still deemed to have agreed and are therefore bound by what is stated in the agreement. Most transactions and buying and selling twitter usernames are like buying and selling a house or car. When a price agreement has been made and payment has been made, the username will be submitted.

⁵⁸ Ita Susanti, "Tinjauan Yuridis Terhadap Perlindungan Konsumen Belanja Online Berdasarkan UU No. 8 Tahun 1999 Tentang Perlindungan Konsumen Juncto UU No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," *Sigma-Mu* 9 (2017). 22

The desire to be achieved in consumer protection is to create a sense of security for consumers in meeting the needs of life. In business transactions, disputes often occur due to a default from the parties, both related to non-fulfillment of achievements, fulfilling achievements but not meeting expectations/misrepresenting achievements and being late in fulfilling achievements.⁵⁹ The legal relationship between the parties providing goods or services and consumers ultimately gives birth to rights and obligations that form the basis for the emergence of a responsibility. In principle, a liability has in common with the concept of legal obligation. The basic norms then formulate the obligation to follow legal regulations and account for them in accordance with the obligations to follow these legal rules. In principle, liability to business actors can arise if there is a loss experienced by the consumer due to not carrying out legal obligations. Consumer legal protection instruments can be implemented in two forms of regulation, namely legal protection through certain laws that are general in nature for all people who carry out transactions and legal protection in accordance with special agreements made by the parties in the substance of the agreement between the seller and the consumer. such as provisions concerning compensation, the period of filing a claim, dispute resolution, and so on. These are some of the most effective instruments used considering that legislation can be used

⁵⁹ Yahya Ahmad Zein, *Kontrak Elektronik & Penyelesaian Sengketa E-Commerce Dalam Transaksi Nasional & Internasional* (Jakarta: Mandar Maju, 2009). 7

as a basis for the parties to make an agreement and the government through its instruments can enforce the law.⁶⁰

Some regulations that can be used as a juridical reference in providing legal protection to consumers in *online* one of which is in Law No. 8 of 1999 concerning Consumer Protection. Article 1 paragraph (1) of the Consumer Protection Act (UUPK) emphasizes that consumer protection is all efforts to ensure legal certainty in order to provide protection for consumers. Furthermore, Article 2 of the Consumer Protection Law (UUPK) states that "*consumer protection is based on benefits, justice, and balance, consumer security and safety as well as legal certainty.*" Consumer protection law is closely related to various other branches of law, because in each branch of law there are always parties with the predicate of "consumers".

The form of consumer protection is in accordance with the provisions of Law Number 8 of 1999 concerning Consumer Protection. The form of consumer protection is regulated through Article 4 regarding consumer rights and in Article 7 related to obligations for business actors. In accordance with Article 4 which states that the rights of consumers regarding the right to obtain comfort, health, information, and compensation. Meanwhile, Article 7 explains that it is the obligation for business actors to have good intentions, guarantee quality and provide good and correct services. In sale and purchase *online* a product or service, the consumer always wants satisfaction with the product he bought. Meanwhile,

⁶⁰ Roberto Ranto, "Tinjauan Yuridis Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual Beli Melalui Media Elektronik," *Jurnal Ilmu Hukum Alethea* 2 (2019). 148

business actors tend to want to profit from these transactions. The parties can achieve their respective desires in a way if both carry out their respective obligations correctly and based on good faith. According to the consumer's point of view, there are several things that consumers want when they want to buy a product, including the following:⁶¹

- 1) Obtaining clear information related to the product to be purchased
- 2) Convinced that the product purchased is not harmful either for health and mental safety
- 3) Products purchased are in accordance with consumer desires, both in terms of quality, size, price and so on
- 4) Consumers know how to use the product
- 5) Guarantee that the purchased product can be useful and function properly
- 6) Guarantee If the goods purchased are not suitable or cannot be used, the consumer has the right to obtain compensation in the form of products or in the form of money.

In fact, it is not uncommon to find that consumers often do not get the product they expect optimally so that consumers feel disadvantaged. In Law

⁶¹ Arief Mansur dan Elisatris Gultom, *Cyber Law Aspek Hukum Teknologi Informasi* (Bandung: Refika Aditama, 2005). 155

Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Information and Electronic Transactions.

Sales and purchases made through *online* have specifically been regulated in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transactions. Where the protection for consumers is repressive, due to the substance of the provisions of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transactions based on criminal acts, and has sanctions in the form of imprisonment and fines.

Regulations related to consumer protection in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 regarding Electronic Information and Transactions can be seen in Article 9 which regulates complete and clear information on contracts from business actors, as well as products offered. Clear, complete and correct information refers to the identity, status of legal subjects, competencies, legal terms of the agreement and explains the goods/services offered, such as names, addresses, or descriptions of goods or services.⁶²

Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transactions in Article 28 paragraph (1) regulates actions that are not allowed in an *online sale and purchase contract*. Article 28 paragraph (1) expressly states that anyone who spreads false and

⁶² Abdul Halim Barkatullah, *Hukum Perlindungan Konsumen*, 1st ed. (Bandung: Nusa Media, 2008). 32

misleading news can be subject to criminal penalties in accordance with Article 45A paragraph 1. Article 45A paragraph (1) states that any individual or entity that meets the elements in Article 28 paragraph 1 can subject to imprisonment for a maximum of 6 years and a maximum fine of Rp. 1,000,000,000, - (one billion rupiah).

In accordance with the description mentioned above, it can be said that the legal aspects of the regulation related to consumer protection for sale and purchase *online* have basically been regulated in various kinds of laws and regulations. The legal substance in a statutory regulation is determined by state institutions that have the authority to make laws. In general and fundamentally, the relationship between business actors and consumers is an ongoing and sustainable relationship. The existence of this relationship is because both of them want each other and have a fairly high level of dependence on each other.⁶³

The main reason for the occurrence of an agreement between business actors and consumers is the need for certain goods and services needed by consumers. So that consumers should be able to use, utilize, and get proper and proper use of the goods or services.

In the Consumer Protection Law, business actors are required to have good faith in carrying out their business activities, while for consumers, they are required

⁶³ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen* (Jakarta: Sinar Grafika, 2014). 9

to have good intentions when making transactions to purchase goods and services against business actors.⁶⁴

Consumer rights can be harmed by standard contracts made by business actors. Standard contracts made by business actors can harm the rights of consumers, namely related to the right to have their opinions heard and complaints about the goods and/or services used and the right to be treated correctly and honestly and there is no discrimination as regulated in Article 4 letter (a) and (g) Law Number 8 of 1999 concerning Consumer Protection. Legal protection for consumer rights on the making of standard contracts by business actors, namely the consumer party gets legal protection by law in accordance with Article 45 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection which states that "Every consumer who is harmed can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through courts within the general court environment."

In consumer protection, there are several consumer rights that must be granted by business actors, one of which is the right to choose and obtain goods and/or services in accordance with the exchange rate and conditions and guarantees promised in accordance with Article 4 of Law Number 8 of 1999.

Protection The law given to consumers is based on the losses that are often experienced by consumers in sale and purchase transactions carried out online, if there is a violation of consumer rights, the consumer is entitled to legal protection

⁶⁴ Miru and Yodo, *Hukum Perlindungan Konsumen*. (Jakarta: Raja Grafindo Persada, 2011). 54

that has been regulated in the Consumer Protection Act and is based on consumer rights. Article 4 of the Consumer Protection Law states that consumer rights are:⁶⁵

- a. The right to comfort, security and safety in consuming goods and/or services.
- b. The right to choose goods and/or services and to obtain goods and/or services in accordance with the exchange rate and the promised conditions and guarantees.
- c. The right to correct, clear and honest information regarding the condition and guarantee of goods and/or services.
- d. The right to have their opinions and complaints heard on the goods and/or services used.
- e. The right to get advocacy, protection and efforts to resolve consumer protection disputes properly.
- f. The right to receive consumer guidance and education.
- g. The right to be treated or served properly and honestly and not discriminatory.
- h. The right to receive compensation, compensation and/or services received are not in accordance with the contract or not properly.
- i. Rights regulated in other statutory provisions.

⁶⁵ Miru and Yodo. *Hukum Perlindungan Konsumen*. (Jakarta: Raja Grafindo Persada, 2011). 66

Business actors are also obliged to provide protection to consumers as referred to in Article 7 of the Consumer Protection Law that:⁶⁶

- a. Have good intentions in carrying out their business activities
- b. Provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation of the use, repair and maintenance
- c. Treat or serve consumers correctly and honestly and non-discriminatory
- d. Guarantee the quality of goods and/or services produced and/or applicable services
- e. Provide opportunities for consumers to test, and/or try certain goods and/or services and provide guarantees and/or guarantees for goods manufactured and/or traded
- f. Provide compensation, compensation and/or reimbursement for losses due to the use, use, and utilization of traded goods and/or services. Provide compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the contract.

Judging through the Consumer Protection Law approach, the Articles that regulate consumer rights and obligations for business actors can be used as

⁶⁶ Miru and Yodo, *Hukum Perlindungan Konsumen*. (Jakarta: Raja Grafindo Persada, 2011). 70

guidelines as rules that can provide legal protection to consumers in sale and purchase through online transactions.

Business actors who carry out activities that are not in accordance with and harm consumers can be subject to criminal penalties in accordance with the rules in Article 62 of the Consumer Protection Law which states that:⁶⁷

- 1) Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letters a, b, c, e and paragraph (2) as well as Article 18 can be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah)
- 2) Business actors violating the provisions as referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16 and Article 17 paragraph (1) letter d and letter f shall be sentenced to a maximum imprisonment of 2 (two) years or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah)
- 3) Violations that result in serious injury, serious illness, permanent disability or death shall apply the applicable criminal provisions.

On the basis of these rights and obligations, sale and purchase *usernames* is considered to have the potential for a violation committed by business actors to

⁶⁷ Miru and Yodo. *Hukum Perlindungan Konsumen*. (Jakarta: Raja Grafindo Persada, 2011).82

consumers because sale and purchase online is very prone to fraud where there is no standard clause that accompanies sale and purchase *username*.

C. Analysis of Legal Review of Islamic Contract on Sale and Purchase of Twitter Username

As explained in the theoretical framework in the previous chapter, in sale and purchase there are several pillars and conditions that must be met, if these pillars or conditions are not met then the sale and purchase transaction is considered invalid.

In the implementation of sale and purchase there are five pillars that must be fulfilled, such as:⁶⁸

- 1) Seller: he must own the goods he sells or have permission to sell the goods and be in a healthy state of mind.
- 2) Buyer: he is required to be a person of sound mind, not a child who does not have permission to buy.
- 3) Objects of sale and purchase: goods being traded must be halal, clean, can be delivered to the buyer, and the goods are clear or can be known by the buyer even if only by their characteristics.

⁶⁸ Yasardin, *Asas Kebebasan Berkontrak Syariah*. (Jakarta: Prenandamedia Group, 2018). 63

- 4) Ijab Kabul: Ijab is the word of the seller, while Kabul is the word of the buyer. Submission (ijab) and acceptance (kabul) are carried out through words or consent and acceptance by deed.⁶⁹
- 5) Willingness between both parties, both from the seller and the buyer. Because sale and purchase can be said to be invalid if one of the two parties has an unwillingness.⁷⁰ The existence of a willingness cannot be seen because the willingness is related to the heart, the willingness can be known through outward signs, one of the clear signs showing willingness is consent and acceptance.⁷¹

The conditions that must exist in the sale and purchase are the nature requirements. Therefore, if one of the characteristics of the sale and purchase is not fulfilled, the transaction is considered invalid and vice versa. Meanwhile, one of the requirements for the nature of the goods is that the existence of the goods that are the object of sale and purchase is known by the seller and the buyer both in terms of shape, nature, quantity and quality of the goods. If these requirements do not exist in a sale and purchase transaction, neither the circumstances nor the nominal price are clearly known, then the sale and purchase transaction is considered invalid because the transaction is prone to contain elements of fraud.⁷²

⁶⁹ Abu Ahmadi Abdul Fatah Idris, *Fiqh Islam Lengkap* (Jakarta: Rineka Cipta, 1990). 135

⁷⁰ Ismail Nawawi, *Fikih Muamalah Klasik Dan Kontemporer* (Bogor: Ghalia Indonesia, 2012). 46

⁷¹ Hendi Suhendi, *Fiqh Muamalah*, 9th ed. (Jakarta: Rajawali Pers, 2014). 70

⁷² Chairuman Pasaribu dan Suhrawardi K. Lubis, *Hukum Perjanjian Dalam Islam*, 3rd ed. (Jakarta: Sinar Grafika, 2003). 40

In Islamic law it is stated that ambiguity or uncertainty in sale and purchase is something that is prohibited because it is included in the sale and purchase of gharar. Sale and purchase gharar is a sale and purchase that has risks and can be a burden for one party who can provide financial losses. Gharar has a meaning whose form cannot be ascertained, whether it exists or does not exist, and the quality and quantity are unknown or something that cannot be handed over.⁷³

As Allah says in Surah an-Nisa' verse 29:

“O you who believe! Do not eat each other's property in a false way (not true), except by trading which is carried out on the basis of consensual between you. And don't kill yourself. Indeed, Allah is Most Merciful to you.”
(An Nisa ': 29).⁷⁴

Sale and purchase that occurs in cyberspace is not much different from conventional sale and purchase in the real world. Namely, there are sellers, buyers, objects that are traded or from the contract. In the real world, the type of transaction used is to meet directly between the seller and the buyer. While transactions carried out in cyberspace, more people make transactions without knowing how the objects are traded in terms of the shape, condition or condition of the goods.

⁷³ Dimyauddin Djuwaini, *Pengantar Fiqh Muamalah*, 1st ed. (Yogyakarta: Pustaka Pelajar, 2008). 85

⁷⁴ Departemen Agama RI, *Al-Qur'an Dan Terjemahannya*, n.d. 107-108

In addition to the object of sale and purchase that must be clearly handed over, the method of payment made must also be clearly known by both parties in order to avoid *gharar*.

The hidden end result is greatly influenced by the imperfect information of those who transact. *Gharar* is a situation where the parties to the contract or one of them do not have information regarding some of the articles in the contract or contract articles, and tend to be unable to be controlled by one of the parties.⁷⁵ This shows that *gharar* stems from the issue of inequality in information between the transacting parties, resulting in uncertainty created by lack of information or lack of control in the contract. *Gharar* is considered a neglect of the essential elements in the transaction. For example, the certainty of the selling price, the seller's ability to deliver the goods, the place and time of buying and selling and so on. The existence of *gharar* in a transaction makes the contract null and void.⁷⁶

As for the definition which means to doubt whether or not an object exists, such as the definition of Ibn 'Abidin, it is only limited to the existence of an object. However, it does not explain the nature or amount. For example, I sold one of my two items to you, but did not specify one of them. Likewise with the definition of an unknown item. Like the definition of Ubay Muhammad bin Hazm, who said that *gharar* is "Something in which the exact quantity and nature of the object is not

⁷⁵ Zami Iqbal dan Abbas Mirakhor, *An Introduction To Islamic Finance: Theory and Practice*, (Terj. Oleh A.K. Anwar dengan judul *Pengantar Keuangan Islam: Teori dan Praktek*, (Jakarta: Kencana, Cet. 1, 2008). 88

⁷⁶ Adiwarman Karim, *Islamic banking: Fiqh and Financial Analysis* (Jakarta: Rajawali Press, Ed. 4, 2011). 31

known in the contract."⁷⁷ This definition only mentions the nature and number of objects, but does not explain the certainty of the presence or absence of objects.

With the rapid development of technology, most choose to make sale and purchase transactions through cyberspace for reasons of time efficiency, costs and other things. Though such things tend to trigger fraud if not extra careful.

Such as the terms and pillars in sale and purchase which states that everything must be clear, including the object of sale and purchase. It is stated that the condition of the object in sale and purchase must be something that can be handed over, while *username* is something that does not have a physical form to be handed over, so that this kind of sale and purchase transaction is considered invalid according to sharia contract law because it contains elements of *gharar* (speculation) and sells goods that cannot be submitted in physical form.

⁷⁷ Ibnu Hazm al-Zahiri, al-Mahalli, *Tahqiq: Ahmad Muhammad Shakir*, (Cairo: Maktabah Dar al-Turats, jil. 8). 389

CHAPTER IV

CLOSING

A. Conclusion

From the research that has been done regarding " *Username* according to Consumer Protection Law and Sharia Contract Law" with existing methods, the authors get several conclusions:

1. The mechanism for sale and purchase *usernames* online is using a *salam sale and purchase contract*, besides that the seller also uses non-cash or *cashless* which can make it easier for buyers to pay via digital wallets or via bank transfers. But here the protection of consumers who want to buy a *username* is very vulnerable because some consumer rights in accordance with what is in the Consumer Protection Act are not fulfilled, so this can cause one party to feel disadvantaged.
2. Selling and buying system of Twitter *usernames* that are made online according to the Sharia Contract Law are in accordance with the terms and pillars in sale and purchase that everything that is traded must be clear. It is stated that in Islam an object of sale and purchase must be something that can be handed over, while *username* is something that does not have a physical form so that it cannot be handed over, so that this kind of sale and purchase transaction is considered invalid according to sharia contract law because it

contains elements of *gharar* and sells goods that cannot be submitted in physical form.

B. Suggestion

1. Probably would better in this online sale and purchase system a guarantee or contract is held before the payment process for buyers who will transact, because *username* is something that cannot be sent in physical form so that buyers feel safe if there will be a previous agreement.
2. It is advisable that both the seller and the buyer must still be careful in conducting transactions so that there is no element of compulsion in the sale and purchase, so that later the transaction is in accordance with the rules in the Consumer Protection Law and the Agreement Law in Islam.

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