



Philosophy and Legal Principles of 'Adam Al-Gharar Bai' Al-Salam and its Embodiments in Online Transactions

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Abstrak: This article explains the philosophy and legal principles of 'adam al-gharar bai' al-salam contract practiced by modern society. In contemporary economic practice, the bai' al-salam contract is widely used in online transactions. The existence of online transactions removes regional boundaries in transactions so that sellers and buyers do not need to meet. Online transactions raise various new problems such as; non-compliance with the specifications of the product ordered, quantity that does not match the order, quality that does not match the order, until there is uncertainty of accountability in the event of damage to the product. The methodology of this article uses a literature study with descriptive analysis. Data were obtained from various books, journals and other online sources. The results of the study show that the philosophy and principles contained in bai' al-salam are mutual help, certainty, and justice. As for the practice of online transactions, the legal principle of 'adam al-gharar bai' as-salam can be applied as long as the seller lists and describes the size, quality of the product or its constituent materials on its online platform

Keywords: *al-bai'*; *al-salam*; *al-gharar*; *online*

Introduction

Islamic Sharia does not only regulate the relationship between humans and Allah as the creator. However, it also regulates relations between fellow human beings in the form of association (*mu'asyarah*) and transactional relations to fulfill the necessities of life (*mu'amalah*) (Mahfudh, 2011). Buying and selling is one of the concepts of *fiqh mu'amalat* which is part of Islamic economics. Buying and selling with certainty is not known when it began to be practiced by humans, because buying and selling has even existed since the time of *jahiliyah* (Ahdi & Firmansyah, 2020). Buying and selling at that time was accompanied by the practice of usury, *gharar*, *maysir*, and *tadlis*. Such practices in Islam are strictly prohibited as the words of the Prophet Muhammad SAW:

وَعَنْ ابْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: لَا تَشْتَرُوا السَّمَكَ فِي الْمَاءِ فَإِنَّهُ غَرَرٌ.

From Ibn Mas'ud he said: Rasulullah SAW. He said: "Do not buy fish in water, because it is a deception". (HR. Ahmad).

In the current context, the practice of buying and selling is experiencing various revolutions (changes) in various techniques of delivery of goods, payment techniques, contracts used, etc. One of the revolutions that occurred in buying and selling was caused by the development of technology and information. With information

technology, it is possible for buyers and sellers to no longer have to meet physically and perform *ijab-qabul* as required in classical *fiqh*. This technical change raises the question "is such buying and selling practice legal according to the Sharia or not?". Of course, to answer this question, a serious study by experts in their field, namely *fiqh* experts (*fuqaha*) is needed.

The field of study of *fiqh* that discusses buying and selling is *fiqh muamalat*. The emphasis point of *fiqh muamalat* is relations between humans (*hablum minannass*), namely how to make relations between human beings correct according to Sharia. Even though the direction of the relationship in *fiqh muamalat* has a horizontal dimension, it still has to be guided by predetermined sharia signs. Therefore, these horizontal activities cannot be separated from the monitoring of the *Khalik* (vertical dimension), and later they will also be accounted for. The horizontal relationship between humans and humans, humans and property, and humans and nature are bound by the provisions set by God. Gemala Dewi, et al, as quoted by Muhammad Hasanuddin and Juhaya S. Praja and modified, describe Islamic engagement in the following form (Hasanuddin & Praja, 2010):

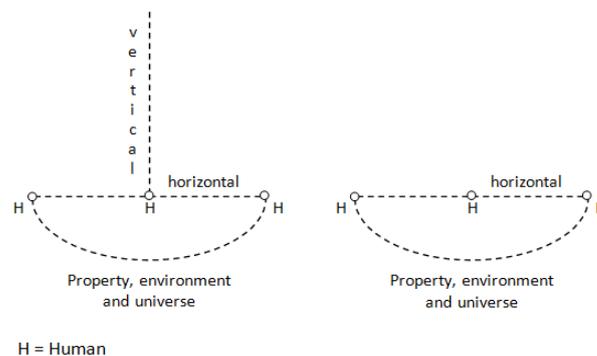


Figure 1. Islamic Engagement

The first picture is an Islamic engagement, where human relations are not only tied to other humans. In relation to humans, property and the universe, humans are also bound by the *Khalik* as creator. Humans are required to carry out everything that is ordered and stay away from all the prohibitions. When humans do not carry out all the provisions set by the *Khalik*, then there are certain consequences that must be borne by the humans themselves. While the second picture is a conventional economic engagement, where the relationship between humans and humans, and the relationship between humans and property, the universe, humans are not bound by the *Khalik*.

In practice, the problem of *muamalat* is more dependent on the agreement and the pleasure of the parties involved, according to *fiqh* rules:

الأصل في العقد رضا المتعاقدين ونتيجته ما إلتزمه بالتعاقد.

The original law in the transaction is the pleasure of both parties in the contract, the result is that the contract is valid.

The practice of *muamalat* is also basically permissible as long as it does not conflict with sharia law or the arguments that prohibit it, according to *fiqh* rules:

الْأَصْلُ فِي الْمَعْمَلَةِ الْإِبَاحَةُ إِلَّا أَنْ يَدُلَّ دَلِيلٌ عَلَى تَحْرِيمِهَا.

The law of origin in muamalah is permissibility until there is evidence showing its prohibition.

Currently, the development of types of *muamalat* transactions is increasingly diverse, especially after technology and information are used as intermediary media for buying and selling. Transactions based on online media need to be reviewed so that transactions comply with Sharia principles. Don't let transactions carried out by a Muslim not comply with the provisions of the Sharia (non-fulfillment of the conditions and pillars), even if there is no transaction labeled "sharia", but in practice it is not in accordance with Islamic Sharia. Therefore, it is necessary to study transactions or contracts, one of which is *fiqh* which is a tool to analyze whether a transaction is valid or not, and most importantly whether or not a transaction is in accordance with Islamic law. All existing sharia must lead to its goal, namely *maqasid syariah*, including in terms of buying and selling (Wulandari et al., 2017).

The most important part of the study of *muamalat* transactions is the study of the philosophy that underlies them. The starting point of this philosophy is the principles and principles of *muamalat* which are the main points that must be used as a basis in establishing the law of a *muamalat* transaction. In the concept of Islamic law the principles related to *muamalat* include: the principle of *taba'dulul mana'fi*, the principle of equity, the principle of *'an tara'din*, the principle of *adamul gurar*, the principle of *albir wa al-taqwa*, and the principle of *musyarakah* (Prajā, 2009).

Transactions carried out online must still meet the requirements and pillars required by the science of *fiqh*. This is where the debate arose among contemporary jurists, because the formulations contained in *fiqh* books produced by previous scholars did not yet recognize the term online buying and selling. So that there must be contextualization of the terms and pillars of buying and selling, such as one of the pillars of buying and selling, namely there must be goods to be traded. This has given rise to discourse, because in modern societal transactions, especially online transactions, the buyer does not directly own the item to be purchased, the buyer only sees a clear picture with a description of the specifications of the item. The negligence of the perpetrators of the transaction against the pillars and conditions that must be met in the contract makes the transactions become disabled or cancelled. Avoiding defects and canceling is the purpose of formulating pillars and conditions by the science of *fiqh*.

In online transactions, especially those using the marketplace platform, it is the buyer who is often at a disadvantage. The problems that often arise in online transactions include: first, the specifications and quality of the goods received by the buyer do not match those described in the product descriptions on the marketplace platform; secondly, there is damage to the goods received by the buyer, but the reason for the damage cannot be known, was it from the seller by sending the damaged goods?.

The aim of the research is to find out to what extent the existing marketplace platforms provide facilities or media so that the provisions of *bai' al-salam* that have been formulated by *fiqh* experts, and the conditions required in the fatwas of authorized institutions can be realized. So that the *bai' al-salam* contract can be avoided

from *al-gharar* which is one of the conditions for the acceptance of the *bai' al-salam* contract.

Literature Reviews

Numerous previous studies have extensively explored the concept of 'Adam Al-Gharar, encompassing various dimensions, including philosophical underpinnings, legal principles, and its practical application in the field of fiqh. Notably, the seminal work by Buerhan and Abdullah (2016) illuminates 'Adam Al-Gharar as a pivotal principle in Islamic *mu'amalah* (transactions). The research unequivocally establishes Islam's categorical prohibition of business transactions that foster exploitation and injustice in any guise for any participating party. Islam mandates that financial and commercial dealings adhere to the principles of transparency, accuracy, and full disclosure of material information, ensuring the absence of undue advantage. Behind these prohibitions lies a profound wisdom (*hikmah*), underscoring the significance of comprehending the forbidden elements within Islamic jurisprudence to engage in genuinely *shari'ah*-compliant business and banking practices. The study examines the prohibited elements such as *riba* (usury), *gharar* (uncertainty), *qimar* (gambling), *maysir* (games of chance), fraud, coercion, as well as the paramount importance of the legitimacy of the subject matter. Furthermore, it delves into the concepts of *sahih* (valid), *fasid* (defective), and *batil* (void) contracts, along with extrinsic conditions as espoused by diverse schools of thought.

Within a more specific context, Srisusilawati and Adam's study (2017) delves into the application of the 'Adam Al-Gharar principle within economic practices. It posits that the critique of conventional banks by the paradigm of Islamic banking does not outright reject their form as financial intermediaries; rather, it critiques other inherent characteristics, such as the presence of *riba*, *maysir*, *gharar*, and invalidity. An essential criterion for assessing a product's adherence to *shari'ah* principles lies in scrutinizing the contractual arrangements and associated provisions. In the realm of Islamic finance, a meticulous examination of *altakyif al-fiqi* (legal analysis) reveals that many products involve multiple contracts. A prominent example is the *murabahah* contract employed in Islamic banking, which entails several interconnected contracts. This research endeavors to ascertain the validity of multiple contracts in Islamic banking, exploring the models and provisions concerning the *murabahah* contract. The findings present two prevailing perspectives on the validity of multiple contracts: one that prohibits them and another that permits their usage. The author leans towards the latter view, which upholds the permissibility of multiple contracts as the more compelling and dominant position. In the context of *murabahah* financing within Islamic banking, this model relies on the coexistence of the *murabahah* sale contract and the *wakalah* (agency) contract. The *wakalah* contract assumes a complementary role within the financial product of the *murabahah* contract, thus circumventing the prohibition of multiple contracts.

Another noteworthy study conducted by Syafa et al. (2020) investigates the application of the 'Adam Al-Gharar principle in the case of Arisan Musiman, a seasonal savings scheme. This research uncovers several significant findings. Firstly, Arisan Musiman is deemed permissible (*mubah*) within Islamic law, akin to the legal status of

qardh (loan). Moreover, setting prices is deemed permissible under abnormal circumstances. Secondly, considering that the object of *Arisan Musiman* revolves around paddy, it is advised that the payments be made in kind, involving similar paddy, rather than monetary transactions to avoid *gharar*. Lastly, *Arisan Musiman* bears resemblance to debt, encompassing elements of *riba*, injustice, and *gharar*, all of which are unequivocally proscribed in the Qur'an and Hadith.

Methods

The research in this paper uses a descriptive analysis method with a qualitative approach. The tables and figures are an illustration of the narrative of the concepts explained. Research literature studies using data sources from various books, journals, laws and regulations (regulations) and online sources. The analysis carried out philosophical studies by grouping them into three according to the field of study of philosophy in general, namely *ontology*, *epistemology*, and *axiology*. Then in the discussion section the researcher compares the results of the philosophical studies with the *fiqh muamalat* literature and the provisions contained in the fatwas of the authorities regarding *bai' al-salam*, as well as the appropriateness of their implementation on the marketplace platform.

Results and Discussion

Position of the Principle of '*Adam Al-Gharar Bai' As-Salam* in Islamic Law Philosophy

Ontology Review

Buying and selling (الْبَيْعُ) literally means exchange (المُبَادَلَةُ) (Munawwir & Fairuz, 2007). Buying and selling is defined as مُقَابَلَةُ الشَّيْءِ بِالشَّيْءِ (exchanging something for something else). *Al-mubadalah* is means to take, give something or barter (Nawawi, 2012). Other words for buying and selling include (الشِّرَاءُ) and (التَّجَارَةُ). The word *al-syira* means purchasing or spending, while *al-tijarah* means trading, commerce, business as the word *al-tijarah* is used in Surah Fathir verse 29:

إِنَّ الَّذِينَ يَتْلُونَ كِتَابَ اللَّهِ وَأَقَامُوا الصَّلَاةَ وَأَنفَقُوا مِمَّا رَزَقْنَاهُمْ سِرًّا وَعَلَانِيَةً يَرْجُونَ تِجَارَةً لَّن تَبُورَ

Verily, those who always read the Book of Allah (Al-Qur'an) and pray and spend part of the sustenance that We have bestowed on them secretly and openly, they hope for a trade that will not lose. (QS. Fathir:29)

In terminology *al-bai'* is defined:

عَقْدٌ يَقُومُ عَلَى أَسَاسِ مُبَادَلَةِ الْمَالِ لِيُفِيدَ تَبَادُلَ الْمِلْكِيَّاتِ عَلَى الدَّوَامِ.

Contracts that stand on the basis of exchanging property for property then there is a permanent exchange of property.

مُبَادَلَةُ الْمَالِ بِالْمَالِ تَمْلِيكًا وَتَمَلُّكًا.

Exchange of property for property, to make each other's property (Qudamah, n.d.).

In the Compilation of Sharia Economic Law (KHES) article 20 paragraph 2 *al-bai'* is defined:

البيع هو المعاوضة بين الطرفين سلعة بسلعة أو سلعة بنقد.

Bai' is buying and selling between objects and objects, or exchanging objects for money.

From the various definitions above, it can be concluded that *al-bai'* is a *muamalat* activity that arises as a result of the exchange of goods for money, or goods for goods. The occurrence of this exchange is one of the characteristics of legitimate activities according to Sharia, because it is clear what activities are carried out. In Islamic economics, one of the legitimacies of a transaction must be based on two activities, namely exchange and mixing. Real economic activity occurs when there is an exchange of goods for money, goods for goods, and money for money. Mixing activities can occur between money with money, money with expertise, and expertise with expertise. When these two activities do not materialize, the legitimacy of the transaction is doubtful, because it is unclear who is in the contract, the object of the contract, and the time of the contract (Karim, 2014). In the process of *al-salam*, it creates benefits for both parties, so that one of the principles of Islamic law, namely *tabadul al-manafi'*, can be felt by both (Hakim, 2011).

One form of *al-bai'* is *al-salam* or *al-salaf*. *Al-salam* literally means *al-salaf*, namely *al-taqdim* (formerly). The word *al-salam* is widely used by residents of Hijaz while *al-salaf* is used by residents of Iraq (Al-Juzairi, 1991). The two words, either *al-salam* or *al-salaf*, have the same meaning, which is to prioritize payments and end goods (Siregar & Khoerudin, 2019). Another meaning of *al-salam* is *al-taslif* or *al-sulfat* and *al-mahawij*, namely buying and selling carried out by poor people (Hakim, 2011).

In sharia terms, the contract of *al-salam* is often defined by the jurists as follows:

بَيْعٌ مَوْصُوفٍ فِي الذِّمَّةِ بِبَدَلٍ يُعْطَى عَاجِلًا.

Buying and selling of goods whose nature is stated to be dependent with compensation (payment) made at that time (Sarwat, 2022).

The definition of *al-salam* is also contained in KHES article 20, verse 34 *al-salam* is defined:

السلم هو بيع شيء موصوف في الذمة بثمن معجل.

Salam is a financing service related to buying and selling where payments are made simultaneously with ordering goods.

Salam is a sale and purchase transaction in which the goods being traded do not yet exist. Therefore, goods are delivered in a deferred manner while payment is made in cash (Karim, 2014). *Salam* is a sale and purchase contract for ordered goods

(*muslam fih*) with delivery at a later date by the seller (*muslam ilaihi*) and the payment is made by the buyer when the contract is agreed according to certain conditions (Muhammad Nizarul Alim, 2011). Another meaning of *bai' al-salam* is the purchase of goods delivered at a later date, while payment is made in advance (Rusyd, 1988). From these definitions, an important point can be drawn that *salam* is a sale and purchase which is an order because the goods being traded are not available at the time the contract takes place.

As one of the contractual concepts, *salam* is the embodiment of the principles that make up *muamalat* law. The principles in the study of Islamic law are part of the discussion of the philosophy of Islamic law. The word principle comes from the Arabic language, namely *الأساس* while the plural form is *الأسس* (Munawwir & Fairuz, 2007), which means basic law. Principles are also interpreted as a basis (something on which to base thoughts or opinions) or basic ideals (association or organization) (Nasional, 2008). The principle is fundamental for the formation of law because the strength of a law is difficult, easy, life or death, can be accepted or rejected by society depending on the principles and main pillars (Ash-Shiddieqy, 2013).

Another term that is sometimes interpreted the same as principle is principle. There is a difference between principles and principles in the discussion of legal philosophy. The principle applies to all fields of study of Islamic law, both *muamalat*, *syiasah* and *jinayat*. Meanwhile, the principle only applies to one area of *muamalat*. The principles in *muamalat* include basic notions which can be said to be the theories that make up *muamalat* law (Praja, 2009). Every law that is formed in *muamalat* must be based on the principles of *muamalat*, namely; the principle of *taba'dulul mana'fi*, the principle of equity, the principle of *'an tara'din*, the principle of *adamul gharar*, the principle of *al-birr wa al-taqwa*, and the principle of *musyarakah*.

The principle of *adamul gharar* means that in every form of *muamalat* there must be no *gharar*, namely deception or something that causes one party to feel disadvantaged by the other party resulting in the loss of the element of willingness of one party in carrying out a transaction or engagement (Praja, 2009). The loss of the willingness of one of the parties will make the contract handicapped and even cancel it. As the rule "*the law of origin in the transaction is the pleasure of both parties in the contract, the result is the validity of what is contracted*". So the pleasure that is intended or that must occur in *muamalat* is symmetrical, not asymmetrical, that is, only one party is pleased.

Etymologically *al-gharar* means *al-jahl*/*الجهل* (not knowing/stupid) (Munawwir & Fairuz, 2007). Whereas in terminology *al-gharar* means worry or risk and *gharar* also means facing an accident, loss, uncertainty or destruction (Nawawi, 2009). In business contracts it means to do something blindly without sufficient knowledge; or taking the risk yourself from an act that contains a risk without knowing exactly what the consequences will be, or entering the arena of risk without thinking about the consequences (Rahman, 1995). This means that the practice of *gharar* is a practice that is very much against Islamic law, because in several hadiths it is narrated that Rasulullah SAW. strictly prohibit practices that may create uncertainty.

Rasulullah saw. said:

وَعَنِ ابْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: لَا تَشْتَرُوا السَّمَكَ فِي الْمَاءِ فَاتَّهُ عَرَزٌ.

From Ibn Masud he said: Rasulullah SAW. He said: "Do not buy fish in water, because it is a deception". (HR. Ahmad).

In another narration, Rasulullah SAW. said:

عَنْ ابْنِ عُمَرَ أَنَّ رَجُلًا ذَكَرَ لِرَسُولِ اللَّهِ ﷺ أَنَّهُ يُخَدَعُ فِي الْبَيْعِ فَقَالَ لَهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِذَا بَايَعْتَ فَقُلْ: لَا خِلَابَةَ فَكَانَ الرَّجُلُ إِذَا بَايَعَ يَقُولُ: لَا خِلَابَةَ.

From Ibn Umar: A man reported to Rasulullah SAW that he was cheated in buying and selling. Rasulullah saw. then said, "If you are buying and selling, then say, 'There is no deception'." The man when buying and selling always said, "There is no deception". (HR. Abu Daud).

Muamalat transactions must be based on transparency so that the information formed is not *asymmetric information* but *symmetric information*. Both parties in the contract must know the condition of the object of the transaction. The object of the transaction must be known to the buyer, because the buyer will evaluate the object of the transaction. Appraisal of the object produces a quality value of the object of the transaction, so that with that value the buyer will determine a fair price for the object. Of course, the assessment of the transaction object is not only from one party, namely the buyer, the seller also has the right to evaluate the object. The seller definitely knows more about the quality of the object of the transaction, because the seller knows the specifications of the material, the quality of the material, and even knows the distribution process of the material. That way the seller is certainly on the side that knows more when compared to the buyer.

Epistemology Review

Transactions containing *al-gharar* are prohibited in Islam because transactions like this contain elements that can harm the parties in the contract. *Al-gharar* is prohibited because it contains elements of speculation or gambling (الْقِمَارُ), fraud (الْخِدَاعُ), and danger (الْخَطَرُ).

There are several hadiths that prohibit the practice of *gharar*, including:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ الْحَصَاةِ وَعَنْ بَيْعِ الْغَرَرِ.

From Abu Hurairah, he said 'Rasulullah forbid buying and selling hashat (as far as throwing stones) and buying and selling gharar (fraud). (HR. Muslim).

إِنَّ النَّبِيَّ ﷺ نَهَى عَنْ بَيْعِ الْعِنَبِ حَتَّى يَسْوَدَوْا عَنِ الْحَبِّ حَتَّى يَشُدَّ.

Verily the Prophet (S.A.W.) forbidding the sale of grapes before they are black and forbidding the sale of grain before it hardens.

In understanding the concept of *gharar*, it is divided into two groups, namely: the first group views that *gharar* is an element of risk that contains doubt, probability and uncertainty dominantly. Meanwhile, the second group views *gharar* as a dubious element associated with fraud or crime by one party against another (Rahman, 1995).

Gharar practices to the maximum extent possible, this *gharar* element must be eliminated in all *muamalat* practices. The practice of *gharar* can be detrimental to one of the parties in a contract, it can only be the seller or the buyer. When *gharar* occurs only to one party, it is caused by *asymmetric information*. But *gharar* can also be detrimental to both parties. For example, in the practice of *salam parallel*, when the goods ordered by the buyer are not in accordance with the specifications, and on the other hand, the seller is also disadvantaged because he has to be responsible for the mistakes made by the goods provider (*muslam ilaih*).

Elements of *gharar*, *usury* and *masysir* can occur in various *muamalat* contracts. Therefore, to avoid this, it is necessary to stipulate terms and procedures for implementing a *muamalat* contract. One form of effort is to include it in positive law regulations. So that each party in the contract has clear guidelines. This kind of effort is expected to create an economic order that is in accordance with Islamic law. To realize an economic order that is in accordance with Islamic law, it is necessary to formalize the concepts of *fiqh* by transforming them into positive laws and regulations. There are around 17 concepts of *fiqh muamalat* which were adapted into Law no. 21 of 2008. The seventeen concepts are: *wadi'ah*, *mudharabah*, *musyarakah*, *murabahah*, *salam*, *istishna*, *qardh*, *ijarah*, *ijarah muntahiya bi al-tamlik*, *hawalah*, *kafalah*, *wakalah*, *bait al-mal*, *zakat*, *shadaqah*, *hibah*, and *waqf* (Hakim, 2011).

One of the concepts of *fiqh muamalat* that has been transformed into legislation is *salam* (the people of the Hijaz use the term *al-salam*, while the people of Iraq use the term *al-salaf*) (Al-Juzairi, 1991). In *fiqh al-salam* is not a new concept, the practice of *al-salam* has been known since the time of the Prophet Muhammad. as in his words:

مَنْ سَلَفَ فِي ثَمَرٍ فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ. وَعَنْهُ فِي رِوَايَةٍ: إِلَى أَجَلٍ مَعْلُومٍ.

Who makes payments before receiving the goods, then determine the measure and weight? Another history mentions the addition:and also specify the time limit. (HR. Muslim).

Scholars agree that the practice of *al-salam* is permissible even though there is a hadith which states that buying and selling something that is not owned by humans and whose ownership is not yet complete is *haram*. These hadiths are still general in nature covering all forms of buying and selling of goods that are not yet owned and whose ownership is not yet complete. Rasulullah SAW. said:

عَنْ حَكِيمِ بْنِ حِزَامٍ قَالَ قُلْتُ يَا رَسُولَ اللَّهِ! الرَّجُلُ يَسْأَلُنِي الْبَيْعَ وَلَيْسَ عِنْدِي أَقَابِيْعُهُ قَالَ: لَا تَبِعْ مَا لَيْسَ عِنْدَكَ.

From Hakim bin Hizam, he said, "I said, 'O Messenger of Allah, a man once asked me if I wanted to sell something that didn't belong to me? Then am I worth selling it? Rasulullah saw. Answered, "Never sell something that is not yours" (HR. Ibn Majah).

These arguments are general in nature and have been specifically applied to other than buying and selling *al-salam*. Meanwhile, the sale and purchase of *al-salam* (orders) has been excluded by sharia from this prohibition and the sharia allows it. Rasulullah saw. said:

مَنْ أَسْلَفَ فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ.

Whoever buys and sells according to the *salaf* system, should do so with a known measure, known weight and for a known time. (HR. At Tirmidzi).

Imam Taqiyuddin includes *al-salam* in buying and selling objects whose properties are mentioned in the promise (Taqiyuddin, n.d.). According to him, based on the object, buying and selling is divided into three forms:

الْبَيْعُ ثَلَاثَةٌ بَيْعٌ عَيْنٍ مُشَاهِدَةً وَبَيْعٌ شَيْءٍ مَوْصُوفٍ فِي الذَّمَّةِ وَبَيْعٌ عَيْنٍ غَائِبَةٍ لَمْ تُشَاهَدْ.

There are three kinds of buying and selling: 1) buying and selling of visible objects, 2) buying and selling whose properties are mentioned in the promise, and 3) buying and selling of objects that do not exist.

The sale and purchase whose characteristics are mentioned in the agreement is the sale and purchase of *al-salam* (orders) (Suhendi, 2014). Buying and selling *al-salam* is categorized as buying and selling in which there is no object. According to Mardani, if the merchandise is not in place, then buying and selling is considered valid if there is a thorough description so that it can eliminate ignorance about the item (Mardani, 2011).

Although the practice of *al-salam* has existed since the time of the Prophet Muhammad. but the terms of *al-salam* have not been specifically defined clearly so that the practice of *al-salam* is still mixed with elements of *gharar*. This is what prompted Imam Abu Hanifah to issue a fatwa related to *al-salam*. Regarding the practice of *al-salam*, Abu Hanifah gives his disapproval if the *al-salam* transaction that occurs causes a dispute because one party does not know the condition of the goods. To avoid disputes, according to Abu Hanifah, the goods in the contract must be clearly stated, such as the type of commodity, quality, quantity, time and place of delivery (Abdullah, 2010). The elements of information that must be stated must be determined as a condition for the validity of the practice of *al-salam*.

So that the *al-salam* transaction avoids *gharar*, the following conditions are set: The money should be paid at the place of contract; The goods are owed to the seller; The goods can be delivered according to the promised time. Means at the promised time the item must already be there; The size of the goods must be clear, whether the measure, weight, size, or number, according to the customary way of selling such goods; Know and mention the properties of the goods; Mention the place of receiving it, if the place of contract is not suitable for receiving the goods. (Rasjid, 1997).

In the DSN MUI Fatwa No. 05/DSN MUI/IV/2000 stipulates six things related to *al-salam*. First: terms of payment, second: provisions regarding goods, third: provisions regarding *salam* parallel (*al-salam al-mawaziy*), fourth: delivery of goods before or on time, fifth: contract cancellation, and sixth: dispute.

The DSN-MUI fatwa is a normative juridical basis besides the Al-Quran and Al-Hadith. All forms of positive legal regulations must be in line with the norms contained in the DSN fatwas. Because the DSN fatwa can be said to be the "*fiqh* of the sharia economy" in Indonesia. The DSN fatwa has gone through various studies and analyses, and the DSN fatwa is also a synthesis of various existing classical *fiqh* schools. As an institution authorized to issue fatwas, DSN fatwas are always taken into consideration by authorities issuing Islamic economic regulations such as BI and OJK. Apart from being used as a handle by institutions that issue Islamic economic regulations, the DSN fatwa is also used as a handle by Islamic economic entities such as *zakat* management institutions (UPZ, LAZ, BAZ), Islamic financial institutions (*baitul al-mal wa al-tamwil*), sharia insurance, and others.

By enacting the provisions regarding *al-salam*, elements that can make a transaction contain *gharar* can be avoided. The elements that are categorized as *gharar* must be avoided and kept away from *muamalat* transactions. The pressure point in efforts to avoid *gharar* is through the formation of information on elements such as specifications, quality of materials, condition of goods, weaknesses of goods, and the process of distributing goods including the process of packing, transporting and loading and unloading of goods.

Tabel 1. Formation of Transaction Object Information

Information	Seller	Buyer	Condition
Specification	Know	No	Asymmetric information
	Know	Know	Symmetric information
Material quality	Know	No	Asymmetric information
	Know	Know	Symmetric information
Whether there is a defect	Know	No	Asymmetric information
	Know	Know	Symmetric information
Weakness of goods	Know	No	Asymmetric information
	Know	Know	Symmetric information
The process of distributing goods (packing process, transport process, and loading and unloading of goods)	Know	No	Asymmetric information
	No	No	Symmetric information

If you look at the information formation table for the object of the transaction, the party that more often does not know or lacks information about the object of the transaction is the buyer. As for the seller, only a few parts of the information. Because the seller is a party that deals directly with distributors, and providers of goods. Of course, the seller knows more about the elements of information about the object of the transaction.

Asymmetric information can be avoided with openness between various parties who are bound by a contract, either between the provider/distributor and the seller, or the seller and the buyer. Technically this can be through making product catalogs, product photos in online stores, warranty certificates, and other forms. However, consumer testimonials should be avoided, because they do not guarantee that what is being tested is in accordance with the actual situation. Testimonials that are contained are only positive statements about a product including *tadlis* practices.

Axiological Review

The principle of *adamul gharar* is a continuation of the principle of *antara'din*, namely that every form of *muamalat* must be based on the willingness of each. This principle is based on *Surah Al-An'am* verse 152 and *Surah Al-Baqarah* verse 282. Between *tara'din* (consensus) in contracts is the most basic requirement in all commercial contracts in Islamic law ('Ali-Qurahdaghi, 1985). Because when one of the parties loses his consent to a transaction, the contract becomes void. The cancellation of the contract makes the transaction in *muamalat* invalid. As the rule:

الأصل في العقد رضى المتعاقدين وتنجته ما التزمه بالتعاقد.

The original law in the transaction is the pleasure of both parties in the contract, the result is that the contract is valid.

The implication of this rule is that a contract is valid when the conditions are met and both parties making the transaction are happy. Even though all the conditions are met, when one of the parties is not satisfied, the contract becomes void so that the transaction cannot be continued. Because those who feel displeased will feel wronged if the transaction continues. Therefore, according to Zuhaili that economic activity must avoid legal aspects, namely:

The element of deception (*gharar*), which is something whose consequences are unknown from the point of view of existence and non-existence; The element of uncertainty (*jahalah*), namely the uncertainty that causes disputes that are difficult to resolve; The element of danger (*dharar*), namely when the delivery of the goods being sold is only possible by entering *dharar* to the seller from his wealth and not only on what is being sold; The element of gambling (*maysir*) from the word *yusr* means easy. Because people get money without having to work hard, or comes from the word *yasar* which means rich, because gambling is expected to be profitable which means easy (Al-Zuhaily, 1989).

Rasulullah saw. prohibit all forms of business activity carried out by fraud because fraud can harm other people and violate human rights in business, namely consensual. People who are deceived clearly will not like it because their rights are reduced or violated (Idri, 2015).

The values contained in al-salam include: Please help

People who have companies often need money for their company's needs, even at times the company's activities are hampered due to a shortage of basic commodities. Meanwhile, the buyer, in addition to getting the goods that are in accordance with what he wants, he has also helped the progress of his brother's company. So for that

purpose Allah made the rules of *al-salam* (Rasjid, 1997). *Al-salam* also has those who call it *bai' al-mahawij*, namely buying and selling carried out by poor or poor people (Sabiq, 1983). Buying and selling *al-salam* is called *bai' al-mahawij* maybe because the seller does not have capital so the buyer has to pay the money first, even though the object being sold is not yet available (Mubarok, 2004).

Word of Allah SWT.

.... وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ.

And help you in (doing) virtue and piety, and do not help each other in committing sins and transgressions. Fear Allah, verily Allah is severe in punishment. (QS. Al Maidah:2).

According to Islam, business people do not only seek as much profit as possible as taught in a capitalist economy, but are also oriented towards *ta'awun* (help each other) as the social implications of business activities. Strictly speaking, doing business is not merely seeking material gain, but based on awareness of making it easy for others to sell or buy goods (Idri, 2015).

Certainty By stipulating the terms of *al-salam*, *gharar* practices and other *muamalat* activities that violate sharia will be avoided.

Size certainty

The size of the goods must be mutually agreed so that there is an equal perception of the parties doing the contract. For example, in terms of size/weight, the parties agree whether to use ounces, kilograms, quintals or tons. If each party uses different sizes/weights, it will produce goods with different amounts/weights. Including the standards used such as size (size) in clothing products. Because the size between manufacturers, regions or even countries can be different, for example the sizes used S, M, L, XL between manufacturers can be different. Therefore, the size must be specified more clearly with the real size.

Rasulullah saw. said:

عَنْ ابْنِ عُمَرَ قَالَ: كُنَّا نَشْتَرِي الطَّعَامَ مِنَ الرُّكْبَانِ جِزَافًا فَنَهَانَا رَسُولُ اللَّهِ ﷺ أَنْ نَبِيعَهُ حَتَّى نَنْقُلَهُ مِنْ مَكَانِهِ.

From Ibn Uma., he said, "We once bought food from passing traders who did not use scales. But then Rasulullah forbade us to sell it again until we really have moved it from its place. (HR. Ibnu Majah).

Certainty of the type of goods and quality

The type and quality of the goods must be clearly defined at the beginning, so that one party and the other party are not the same. For example, at the beginning of the transaction, the seller promises quality A, but when the goods are handed over to the buyer, the quality delivered is quality B. This incident will cause a dispute between the parties doing the contract if conditions are not set at the outset.

Rasulullah saw. said:

عَنْ أَنَسِ بْنِ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ أَنَّهُ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الْمُحَاقَلَةِ وَالْمُخَاصَرَةِ وَالْمُلَامَسَةِ وَالْمُنَابَذَةِ وَالْمُزَابَنَةِ.

It was narrated from Anas bin Malik Ra., he said: "Rasulullah Saw. prohibiting the sale and purchase of muhaqalah, mukhadharah, mulasamah, munabadzah, and muzabanah systems" (HR. Bukhari).

Muhaqalah is buying and selling of fruits that are still on the stem and not fit to eat. *Mukhadharah* is selling unripe fruit or seeds. *Mulamasah* is buying and selling clothes with a mere touch at night or during the day. *Munabadzah* is buying and selling with just throwing what is in it without knowing the quality and quantity of goods. *Mudzabanah* is buying fresh grapes with dry grapes using measurements (Syarifuddin, 2003).

The object of the transaction as one of the pillars that must be fulfilled in buying and selling, makes the object of the transaction an important discussion in the *fiqh of muamalah al-madiyah*. *Muamalah al-madiyah* is a *muamalah* whose study of objects, so this *muamalah* is material in nature because the objects of *fiqh muamalah* are *halal*, *haram*, *syubhat* objects, objects that are detrimental, and those that bring benefit to humans (Ghazaly et al., 2010). Of course, the aim is none other than to determine the limits of the Sharia which items may be sold and which may not be sold.

Certainty of place and time

Place and time of delivery must be mutually agreed from the beginning of the contract. When the delivery of goods must be completed before the agreed time, the seller will feel disadvantaged, because it must be completed immediately while the seller is not ready. Conversely, if the delivery of goods is completed after the agreed time, the buyer will feel disadvantaged.

Rasulullah saw. said:

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ النَّبِيَّ ﷺ نَهَى عَنِ بَيْعِ السِّنِينَ وَوَضَعَ الْجَوَاحِشَ. قَالَ أَبُو دَاوُدَ: لَمْ يَصِحَّ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي الثُّلُثِ شَيْءٌ وَهُوَ رَأْيُ أَهْلِ الْمَدِينَةِ.

From Jabir bin Abdullah that the Prophet SAW. prohibiting buying and selling for years and (ordering) not to price (not sell) fruits affected by the calamity. (HR. Ibnu Majah).

This uncertainty is an ambiguity that Abu Hanifah doubts the validity of the contract. Therefore, to eliminate ambiguity, Abu Hanifah stipulates the terms of *al-salam*, namely the type of commodity, quality and quantity as well as the time and place of delivery (Karim, 2012). Technical to eliminate the ambiguity of time and place can be stated in the agreement or work contract, either between the seller and the buyer, or the seller and the supplier of goods. In online transactions, ambiguity can be avoided by having a shipping package flow so that buyers can monitor it directly.

Justice

The word *al'adl* according to language is 'middle' or 'middle'. The word fair contains two contradictory meanings, namely straight and the same and crooked and different (Shihab, 2004). This implies that a fair person will always be consistent with his attitudes and actions, he will not take sides with one party, and a fair person will use the same standard in judging something, not with a double standard. Shihab further gives four meanings of fairness: first, fair in the sense of "same"; second, fair in the sense of "balanced"; third, fair is "attention to individual rights and giving those rights to each owner"; and fourth, justice attributed to God (Shihab, 1998).

The general understanding confirms that *'adl* is giving to those who are entitled or closest. Murrada Murtahari defines fairness as meaning equality (*musawah*), the absence of discrimination in any form (Muthahhari, 1997). Justice in the sense of equality is equal treatment between the parties who enter into a contract. Between one party and another there is no stronger one so that it suppresses the weaker party. With the existence of equality, the parties who carry out will have the same position, so that the terms agreed upon will be acceptable to both parties.

Rasulullah saw. said:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَايَ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ
يُعْظَمُ لِعَلَّكُمْ تَذَكَّرُونَ.

Indeed, Allah orders (you) to act justly and do good, to give assistance to relatives, and He forbids (to do) heinous acts, evil and enmity. He teaches you so that you may take lessons. (QS. An-Nahl:90).

The concept of justice as an implementation of the principle of not being wrongful and not being wronged (*la tazhlimun wala tuzhlamun*) which is commonly used in *muamalat fiqh*, is as follows: There is no *mafsadah* (damage); in an economic sense no externalities to the environment; There is no *gharar* in it; in economic terms it is called uncertainty with zero sum game. *Gharar* in the sense that there is injustice to other economic actors; No *maysir*; in economic terms uncertainty with zero sum game in utility exchange. *Maysir* is defined as a form of *gharar* arising from the exchange of benefits (utility); No usury; in economic terms it is called the exchange of liability. *Riba* is a form of *gharar* arising from the exchange of liabilities. (Hamid, 2007).

The existence of the Sharia is to regulate actions taken by humans not to come out of good things or will lead to bad things such as fraudulent acts in buying and selling. Such behavior will bring badness to the seller and harm the buyer. Therefore *muamalat* regulates the procedures for exchange in buying and selling, this *muamalat* relates to adab in interactions between sellers and buyers. *Muamalah al-adabiyah* is a *muamalah* that reviews in terms of how to exchange objects sourced from the five senses, where the elements of enforcement are rights and obligations (Ghazaly et al., 2010). The aim is none other than to keep the buying and selling transactions running so that the satisfaction of both parties is achieved. Therefore, this *muamalat* emphasizes honesty, avoiding envy, revenge, deceit, and staying away from other bad traits.

The Position of Online Transactions in Islamic Law

Online transactions are a type of contemporary transactions because they were not known in ancient times, especially during the time of the Prophet Muhammad, during which the Sharia was being formed. Online transactions are included in *muamalat* (economic) transactions because of the relationship between humans and humans (horizontal). In the classical *fiqh* books (*turats*) you will not find the term online transaction, because at that time the technology was not as advanced and sophisticated as it is now. The discussion of *muamalat* in classical *fiqh* books cannot be separated from discussing the types of contracts, pillars and conditions of the contract. Therefore online transactions, especially online buying and selling, are punished by analogy with the *al-salam* contract (Salim, 2017).

To find out the law of a new transaction, *fiqh* scholars (jurists) conduct analysis and perform *ijtihad* in legal *istinbath*. Based on the researcher's search, there are several fatwas related to online transaction law that have been issued by the DSN-MUI, namely: fatwa No. 146/DSN-MUI/XII/2021 concerning Online Shops Based on Sharia Principles. Previously, the DSN-MUI had also issued fatwa No. 144/DSN-MUI/XII/2021 concerning Marketplaces Based on Sharia Principles. According to these two fatwas, online transactions using either the marketplace platform or other platforms are permissible as long as the online transactions comply with the provisions of these two fatwas.

There are several provisions in these two fatwas related to the provisions of *bai' al-salam* from a *fiqh* point of view. Both include *muamalah al-madiyah* (transaction object) and *muamalah al-adabiyah* (transaction procedure). In terms of the object of the transaction or goods (*mabi'*), the seller must clearly explain: the criteria for *mabi'* clearly, the price (*tsaman*) clearly, shipping costs (if any), and the time of delivery of the goods. In terms of transaction procedures, the two fatwas issue provisions on the rights and obligations of both parties in the transaction, as well as the obligations of third parties such as shipping services. For example, the seller's obligation not to practice *tadlis*, *tanajusy/najsy*, and *ghisysy*; then the rights that must be given to the buyer are *khiyar* rights; marketplace provider's right to receive compensation (*ju'l*) for the sale of goods and/or services.

Previously there was a similar fatwa issued by *Bahtsul Masa'il* which was decided in the 32nd Congress of Nahdlatul Ulama (NU) in 2010. *Bahtsul Masa'il*'s decision on the law of buying and selling through electronic devices is legal, if before the transaction both parties have seen *mabi'* (goods being traded) or have been described both in nature and type, as well as fulfilling the terms and other pillars of sale and purchase. Then another decision regarding the implementation of the sale and purchase contract even though in a separate assembly remains valid (BMNU, 2019). The fatwa issued by *Bahtsul Masa'il* is in substance the same as the decision issued by the DSN-MUI that buying and selling transactions using online media is permissible as long as in practice it fulfills the pillars and conditions.

Discussions

Implementation of the *bai' al-salam* contract in online transactions

Online transactions in practice involve various parties, not only sellers and buyers. The involvement of other parties besides sellers and buyers includes suppliers, platform providers, expedition services, insurance, banks, payment service providers. In the future, transactions will become more complex because more parties are involved along with the development of human activities and technological advances. The more parties involved; the more transaction contracts are used.

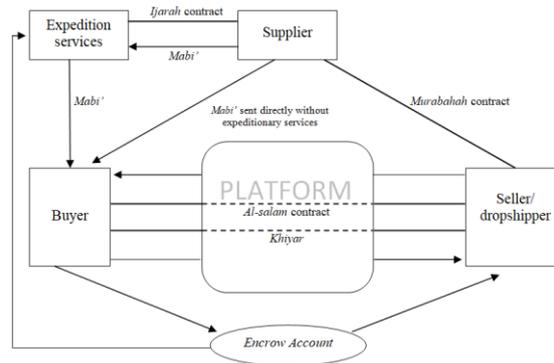


Figure 2. Pure marketplace transaction mechanism by Dropshipper with a payment system using an Encrow Account

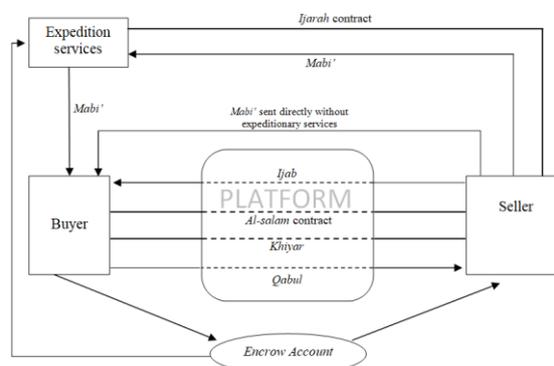


Figure 3. Mechanism of non-Dropshipper pure marketplace transactions with a payment system using an Encrow Account

Platform developers also provide relief for buyers in terms of payment. For buyers who do not yet have the ability to pay, they are given relief to defer payments through the *Cash on Delivery* (COD) facility. With this COD facility, the buyer pays when the item arrives, and even then, if the item received does not match the description, the buyer is given the opportunity to return it (complain). When paying using the *Cash on Delivery* (COD) system, you cannot use the *al-salam* contract as contained in the provisions of the DSN-MUI fatwa No. 145/DSN-MUI/XII/2021 concerning Dropship Based on Sharia Principles.

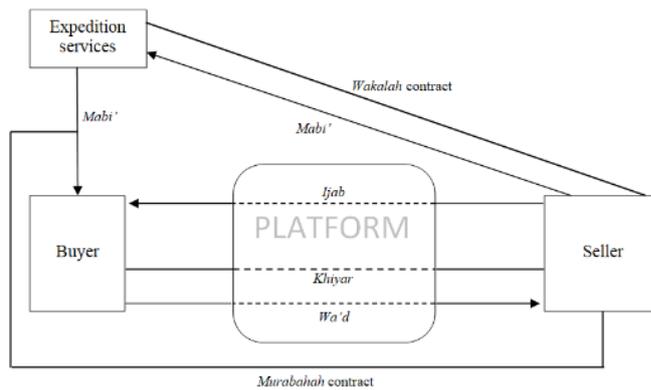


Figure 4. Mechanism of non-Dropshipper pure marketplace transactions with a payment system using Cash on Delivery (COD)

The *al-salam* contract is also not used in consignment marketplace transactions even though the payment system uses an *Encrow Account* as stipulated in the provisions of the DSN-MUI fatwa No. 144/DSN-MUI/XII/2021 concerning Marketplaces Based on Sharia Principles.

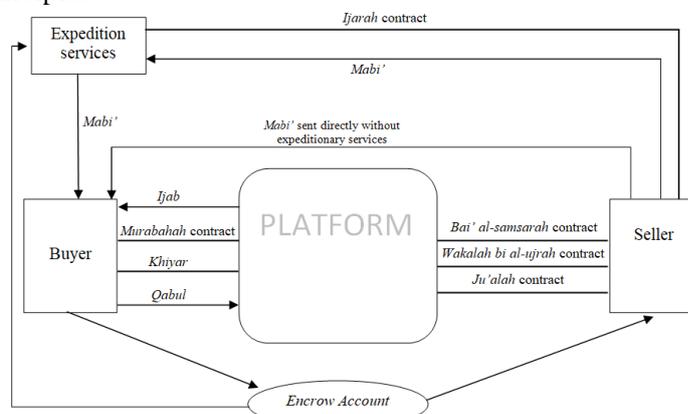


Figure 5. Mechanism marketplace transaction mechanism with a payment system using an Encrow Account

Application of the legal principle of 'adam al-gharar contract bai' al-salam in the Marketplace Platform

The legal principle of 'adam al-gharar contract bai' as-salam can be applied to online transactions, namely through the marketplace platform. Based on the author's research, so far marketplace platforms have provided media for descriptions and specifications of the products being sold. This description is made by the seller to explain the product to the buyer, so that the buyer knows the quality of the product he is going to buy. However, the problem is sometimes the seller uses the platform in providing unclear and incomplete product descriptions. There are even sellers who commit fraud by labeling their products "100% original" or "original", even though the product is an imitation. Things like this are of course prohibited by the Sharia and are categorized as *tadlis*.

Apart from providing media to describe products, the platform also provides media to cancel transactions before the goods are sent by the seller. In *fiqh* terms, the cancellation of a sale and purchase transaction is called *khiyar*. The purpose of *khiyar* is to give rights to the parties so that they do not experience losses or regret later due to certain causes regarding the price, quality or quantity of the object of the transaction

(Sahroni, 2020). Complaints from buyers must be responded to because it is the right of the buyer to get the goods in accordance with what has been agreed and promised by the seller. The response from the seller will also help the seller gain the trust of the buyer, so that in the future the buyer is interested in buying his product again (Putri et al., 2017), (Sidharta & Suzanto, 2015).

If the goods have been received by the buyer, and it turns out that the goods do not match the product description or specifications listed on the platform, media is also provided to make a complaint against the seller. Cancellation of transactions on the marketplace platform in terms of *fiqh* is known as *khiyar 'aib*, namely: buying and selling which requires the perfection of the objects purchased (Juanda, 2016). With this *khiyar*, a right exists with the buyer to continue or cancel the transaction when there is a defect in the item being traded. Cancellations are also carried out automatically by the platform if the goods are not delivered within a certain time limit by the seller. In *fiqh*, it is known as *khiyar syarat*, namely: a condition that allows one of the contracting parties or each of the contracting parties or other than the two contracting parties to have the right to cancel or determine the contract for a specified time. *Khiyar* is required to eliminate elements of negligence or fraud for those who contract (Syafei, 2001).

Marketplace platform developers always make changes to the application by updating it, adjusting to developments and transaction needs. Based on the researchers' observations, the developer of the marketplace platform has provided space for sellers so that the legal principle of '*adam al-gharar bai' al-salam* contract can be applied to online transactions. Whether it's to explain the size, type and quality of goods, as well as the certainty of the place when the goods were received by the buyer. The size, type, and quality of the goods through the description of the goods, even as the platform progresses, the description is not only limited to pictures and descriptions, but can use videos to make it clearer. The requirements for fulfilling the clarity of the place and time of receiving the goods have also been provided by the platform developer through the media type of delivery.

The various facilities that have been provided by the platform developer have supported *muamalat* contracts such as *al-salam* that can be applied in online transactions, so that the conditions for the realization of *al-salam* that comply with the sharia can be realized. However, in practice these facilities are not used properly, especially by the seller. Therefore, it is necessary to provide education to provide understanding to the seller so that the seller does not do things that can harm the buyer, as previously stated by not explaining the product in detail it can lead to ambiguity (*al-garar*). In addition, there must also be provisions from the platform provider that regulate the flow of information from sellers to buyers or from buyers to sellers, so that the information formed is not *asymmetrical information*.

Based on the observations of the researchers, it was found that there were sellers who sold goods that were prohibited (*haram*) according to Islamic law, such as selling liquor. The marketplace platform does not prohibit the sale of alcoholic beverages because legally it is not prohibited, but its distribution is regulated. In contrast to goods that are prohibited by Islamic law and at the same time prohibited by positive law, marketplace platforms also do not allow them, such as narcotics.

Table1, Terms of *bai' alsalam* on the Marketplace Platform

Condition	Marketplace Platforms
Mutual help	Positive buyer testimonials through media reviews available on the platform can help sellers/stores gain the trust of other potential customers.
Size certainty	Product description facilities on the platform;
Certainty of the type and quality of goods	Chat facilities provided by the platform to mediate between sellers and buyers so that communication between sellers and buyers is not one-way (asymmetric information).
Certainty of place and time	Facility for the type of delivery and estimation of the delivery of ordered products on the platform; Chat facilities provided by the platform to mediate between sellers and buyers so that communication between sellers and buyers is not one-way (asymmetric information).
Contract cancellation	Cancellation and complaint facilities on the platform;

Conclusion

Technically, buying and selling practices will always experience changes from time to time along with the development of human interaction (*muamalat*) which is influenced by social, cultural, economic and science and technology changes. Therefore, the study of *muamalat fiqh* will not be complete and will definitely find new problems and things. Philosophical studies are one of the aspects that support the study of *muamalat fiqh* from the perspective of legal substance. The most important part of studying the philosophy of Islamic law is regarding principles and principles. Principles and principles are the foundation for the formation of Islamic legal theories which later this theory is used as a tool in solving *muamalat* problems. All legal theories formed must lead to the main objective of Islamic law, namely in the context of maintaining *maqasid syariah*.

Referring to the *fiqh* principles of *muamalat* origin law is permissible as long as there is no argument that forbids it. So the law of online transactions is permissible if the transaction meets the terms and conditions. Then the transaction is also free from *gharar*, usury, and *maiysir*. As for the application of *bai' alsalam* in online transactions can be carried out if the principle of *'adam al-gharar* can be realized by taking into account matters relating to *bai' alsalam* as stipulated in the DSN-MUI fatwa, namely payment provisions, provisions for goods traded, provisions for *salam parallel*, provisions for delivery of goods, provisions for cancellation of contracts/transactions, and settlement of disputes.

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