

Consumer Protection in Modern Transactions: A Review Islamic Criminal Law on Breach of Contract

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Info Article	Abstract
<p>Article History Received : 2023-07-03 Revised: 2023-07-12 Published: 2023-07-30</p> <p>Keywords: Consumer Protection; Islamic Criminal Law; Ta'zir Crimes; Breach of Contract; Islamic Jurisprudence; Transactions Digital</p>	<p>This study aims to construct a deep understanding of consumer protection in contemporary muamalah practices through the perspective of Islamic criminal law, with a focus on various forms of contractual deviations that have the potential to cause economic and moral losses. The digital transformation in modern economic activities and the increasing complexity of transaction models have opened up space for unlawful acts, such as fraud (tadlis), uncertainty of contractual clauses (gharar), information manipulation, and fraudulent practices (ghabn). In Islamic criminal law, these forms of violations are classified as ta'zir crimes, namely crimes for which the determination of sanctions is left to the competent authorities in order to maintain public order and welfare. This study uses a literature study method by examining primary and secondary sources from Islamic legal thinkers such as Wahbah az-Zuhaili, Abdul Qadir Audah, and Muhammad Abu Zahrah. The results of the analysis show that Islamic criminal law offers a comprehensive normative framework for consumer protection by upholding the principles of justice, transparency of contracts, and prevention of exploitation. The flexibility of the ta'zir concept also provides room for adjusting the types of sanctions to the dynamics of technology and social needs, including in the context of digital transactions. This study concludes that the integration of fiqh muamalah and fiqh jinayah is a relevant approach to strengthen the consumer protection system in the modern era. This framework not only fills the gap in regulations in the categories of hudud and qishas-diyat, but also confirms that Islamic criminal law is normative and adaptive to the development of contemporary economic practices.</p>

I. INTRODUCTION

The development of digital technology has had a significant impact on people's economic transaction patterns. This transformation has made digital-based muamalah practices increasingly vulnerable to contractual irregularities, as online transactions are more susceptible to fraud, data manipulation, and unclear agreements. This situation demonstrates the urgency of having a digital financial instrument laws that are able to provide maximum protection for consumers amidst the increasing complexity of electronic transactions. Thus, the study of muamalah and Islamic criminal law is becoming increasingly important so that the principles of justice and protection of consumer rights can still be realized (Zuhaili, 2007). In the discipline of muamalah fiqh, the ulama emphasize that

Clarity of the contract is a fundamental

requirement to prevent injustice and conflict. Wahbah az-Zuhaili (2007) stated that "al-gharar huwa mākāna majhūlan 'āqibatuhu aw majhūlan miqdāruhu, wa huwa muharram li-annahu yu'addi ilā al-niza' wa akl al-māl bi al-bātil," which indicates that any form of uncertainty or lack of information in the contract has the potential to give rise to disputes and the practice of illegal appropriation of assets. This shows that transparency is a key principle in consumer protection, especially in digital transactions which are often vulnerable to information distortion.

From the perspective of Islamic criminal law, various deviations from contracts that are not included in the hudud or qishasdiyat categories are classified as ta'zir crimes. Abdul Qadir Audah (1992) explains that

"atta'zīr 'uqūbah ghayr muqaddarah, yatrūk alshāri' taqdīrahā li al-hākīm hasab mātarāqqāqa bihī al-maslahah," which is a type of punishment whose degree is not determined and is left entirely

to the judge based on the benefit. The flexible nature of the ta'zir concept allows legal authorities to adjust the type and form of sanctions to the needs of society, including in dealing with economic crimes and digital crimes that were unknown in classical times.

In addition, the aim of punishment in Islam is not only oriented towards deterrence, but more broadly to maintain social order and protect the rights of the community. Abu Zahrah (2012) emphasized that “*uqūbah fī al-Islām laisat li al-intiqām bal li al-hifāz 'alā nizām al-mujtama'wa daf al-darar,*” which illustrates that criminalization has both preventive and protective dimensions. Thus, consumer protection efforts in contemporary transactions are an integral part of the main objective of Islamic criminal law, especially in dealing with the increasing potential for digital technology-based crimes.

Based on the thoughts of these experts, the integration of fiqh muamalah and fiqh jinayah is an important approach to strengthen the consumer protection system in the digital era. These two fields not only provide a normative basis regarding the ethics and validity of a transaction, but also provide a law enforcement mechanism against forms of contract deviation. Therefore, this study focuses on analyzing the concept of consumer protection in modern muamalah practices from the perspective of Islamic criminal law, and emphasizes its relevance to the dynamics of today's digital transactions.

II. RESEARCH METHOD

This research uses a normative legal research approach, a method that focuses on examining the principles, theories, and norms of applicable law. As explained by Soerjono Soekanto (2006), normative legal research is research that relies on literature reviews or secondary legal materials as the primary source of analysis.

This method is in line with the research objective of examining consumer protection in digital-based muamalah practices through the perspective of Islamic criminal law, especially since the development of digital transactions opens up opportunities for contract deviations that require legal certainty, as explained in the abstract and introduction. In this research, several

approaches are applied, namely the statute approach, the conceptual approach, and the comparative approach. According to Marzuki (2005), the statutory approach is used to examine the applicable positive legal provisions, while the conceptual approach aims to understand the basic principles that develop in legal theory. These approaches are relevant to the discussion in the introduction emphasizing the need for a strong normative framework to provide legal protection for Consumers in digital transactions.

The research data sources consist of primary, secondary, and tertiary legal materials. Primary legal materials include classical fiqh literature such as the works of Wahbah az-Zuhaili, Islamic criminal law provisions regarding ta'zir crimes, as well as national regulations related to consumer protection and electronic transactions. Peter Mahmud Marzuki (2014) emphasizes that primary legal materials are authoritative sources that serve as the primary foundation for legal analysis. The use of these primary materials supports the discussion of the forms of contract deviations in digital transactions, as explained in the introduction.

Secondary legal materials serve to complement and provide explanations to primary sources. These materials include scientific articles, contemporary books on digital muamalah fiqh, and modern literature on Islamic criminal law. According to Johnny Ibrahim (2007), secondary legal materials provide theoretical and analytical insights that are not directly regulated in legislation. These secondary materials are crucial for strengthening analysis, especially in the context of developments.

technology that gives rise to new risks as described in the abstract. The analytical technique used is descriptive-qualitative analysis, a method that systematically presents and describes data before analyzing it based on Islamic legal theory and principles. Moleong (2017) explains that qualitative analysis aims to gain a deeper understanding of the phenomena studied through data interpretation. This technique is appropriate for examining consumer protection in digital transactions, in line with the research focus of assessing the relevance of fiqh muamalah and fiqh jinayah to the dynamics of modern economic

transactions.

The research results were then analyzed using the theoretical framework of Islamic law and the concept of fiqh jinayah, especially the doctrine of ta'zir as described by Abdul Qadir Audah. This approach allows researchers to assess the relevance and suitability of fiqh principles to various legal issues that arise in digital transactions, as explained in the introduction that deviations in contemporary muamalah require adaptive protection mechanisms. Thus, this research method provides a comprehensive scientific basis for connecting theories, norms, and practices of consumer protection in the context of digital muamalah.

III. RESULTS AND DISCUSSION

1. Various Deviations in Contracts Digital Transactions

The results of the literature review show that advances in digital technology have expanded the types of economic transactions, but also increased the potential for contract violations. In online-based transactions, the forms of deviation that often arise include: *taḍlis* (fraud), *gharar* (unclearness), *ghabn* (price injustice), *taghrir* (misleading information), and modification or manipulation of transaction data. These various deviations are closely related to the absence of direct meetings between sellers and buyers and the lack of transparency in product information.

Fiqh muamalah literature modern emphasizes that ambiguity (*gharar*) This is the main issue most frequently encountered in digital transactions. This aligns with Wahbah az-Zuhaili's view, which defines *gharar* as "an element of uncertainty that can give rise to disputes and lead to the unlawful appropriation of assets." This thinking demonstrates that digital transactions must still adhere to the principles of clarity and transparency of contracts as stipulated in classical fiqh.

Thus, the research findings strengthen the theoretical basis presented in the introduction that digital transactions have a more complex risk of deviation and thus require a clear and adaptive legal protection mechanism.

2. Consumer Protection in The Perspective of

Fiqh Muamalah

According to Islamic jurisprudence (*fiqh muamalah*), consumer protection is based on the principles of *'adalah* (justice), *amanah* (honesty), *tabyin* (transparent explanation), and *ridha* (willingness). Contemporary muamalah literature states that consumers have the right to receive accurate, non-misleading, and accountable information.

The results of the analysis show that the principle of *tabyin* is the main foundation of consumer protection. If the information regarding the goods or the contents of the contract is unclear, the transaction can be considered invalid or included in the category of *facade al-'aqd* (damaged contract). Therefore, sellers on digital platforms are obliged to provide correct product descriptions, include original photos, and not manipulate data. This finding strengthens the abstract content that consumer protection in modern muamalah is not only ethical, but also has legal implications if deviations occur.

3. Deviation from the Contract as a Crime Ta'zir

A review of Islamic criminal law literature shows that behavior such as digital fraud, information manipulation, and hiding data does not fall into the category of *hudud* or *qishas-diyat*. Therefore, these actions are included as *jarimah ta'zir*. Abdul Qadir Audah

defines *ta'zir* as "a type of punishment whose degree is not determined by sharia, and its determination is left to the judge according to the public interest." This concept is very relevant in dealing with digital crimes that were unknown in the classical era, but have a significant impact on consumers.

Through the *ta'zir* approach, deviations from the contract in digital transactions can be subject to sanctions in the form of fines, restrictions on access to the platform, account freezing, or other administrative actions determined by the regulator. This finding reaffirms the statement in the abstract that Islamic criminal law has the flexibility to adapt to technological developments.

4. The Relevance of Islamic Criminal Law to Digital Consumer Protection

Based on a literature review, Islamic criminal

law not only functions to punish violations (repressive), but also to prevent harm (preventive). Abu Zahrah stated that the purpose of criminal punishment in Islam is maintaining order, preventing society from damage, and protecting human rights. When linked to digital consumer protection, ta'zir sanctions not only function as punishment, but also as a means to:

- a. Prevent digital fraud practices,
- b. Maintaining the validity of electronic contracts,
- c. Upholding justice in transactions,
- d. And ensuring social welfare in digital economic activities. This discussion strengthens the argument in the introduction that Islamic criminal law provides a protection mechanism that remains relevant even though forms of crime evolve with technology.

5. Integration of Muamalah Fiqh and Fiqh Criminal Law in the Framework

Consumer Protection The research results show that the integration of fiqh muamalah and fiqh jinayah is the most comprehensive approach to improving consumer protection in digital transactions.

Muamalah fiqh provides rules regarding ethics and the validity of contracts, while fiqh jinayah provides a set of sanctions when a detrimental violation occurs.

other parties. These two approaches complement each other and can be applied to various cases such as:

- A. Deviations from contracts in e-commerce transactions,
- B. Digital platform-based fraud,
- C. Unilateral cancellation without Islamic reasons,
- D. Fake review,
- E. Omission or obscuration of product specifications. This finding reinforces the conclusion in the abstract that Islamic criminal law is flexible and remains relevant in facing challenges. consumer protection in the digital era.

6. Overall Analysis

Overall, the analysis shows that the

development of digital transactions has changed the practice of muamalah so that the principles of muamalah fiqh and Islamic criminal law need to be adapted to remain effective in protecting consumers. Deviations such as *tadlis*, *gharar*, data manipulation, and *ghabn* arise due to the lack of direct interaction and the dominance of information from the seller. This finding is in line with Wahbah az-Zuhaili's thoughts on the importance of *tabyin* as an element of the validity of contracts to prevent the illegal taking of assets. From the perspective of muamalah fiqh, the study confirms that the principles of justice, honesty, and clarity of contracts can still be applied to digital transactions, demonstrating that classical fiqh is elastic and able to respond to modern forms of transactions. These principles are in line with contemporary sharia business ethics. Analysis of Islamic criminal law literature also shows that various Digital deviation is included in ta'zir crimes.

Abdul Qadir Audah's view on the flexibility of ta'zir forms the basis for law enforcement in formulating sanctions appropriate to technological developments. Furthermore, Abu Zahrah's stated goal of criminal punishment, which is to maintain order, prevent damage, and protect public rights, is highly relevant in the context of digital crimes that undermine public trust and economic stability. ta'zir can function as an instrument. prevention and enforcement.

This study also confirms that effective consumer protection can only be achieved Through the synergy of Islamic jurisprudence (fiqh muamalah) and Islamic criminal law (fiqh jinayah). Islamic jurisprudence (fiqh muamalah) regulates the validity and ethics of transactions, while Islamic jurisprudence (fiqh jinayah) regulates the punishment for violations. This integration is highly relevant to addressing various forms of digital deviation that arise from information imbalances and minimal oversight.

Overall, this research demonstrates that Islamic criminal law has a strong adaptive capacity to regulate the dynamics of digital transactions without abandoning its fundamental principles. Fiqh muamalah (Islamic law) and fiqh jinayah (Islamic jurisprudence) are capable of establishing a consumer protection framework oriented

toward justice, ethics, and responsiveness to new crime modes in the technological era. These findings provide a normative and practical foundation for the development of future digital consumer protection policies.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

This study reveals that the development of digital-based transactions has brought significant changes in contemporary muamalah practices. This progress does indeed provide convenience in conducting transactions, but on the other hand, it increases the opportunity for contract deviations, such as *tadlis*, *gharar*, *ghabn*, data manipulation, and the presentation of misleading information. These various forms of violations generally arise due to weak transparency and an imbalance of information between business actors and consumers. Therefore, the development of the digital space creates new challenges that require a stronger and more comprehensive consumer protection mechanism. From the perspective of muamalah fiqh, this study confirms that the principles of justice, honesty, clarity of information (*tabyin*), and willingness (*'ridha*) remain the fundamental basis for the validity of a contract, including in transactions conducted digitally. The strict prohibition against *gharar*, *tadlis*, and all forms of fraud confirms that Islamic law requires the existence of openness information in order to avoid the practice of taking other people's rights in an unlawful manner.

Principles The principles of Islamic jurisprudence (*fiqh muamalah*) have proven to be relevant in addressing modern economic issues because they are flexible and applicable to various new forms of transactions that emerge with technological developments. Within Islamic criminal law, this study found that various contractual deviations in digital transactions can be categorized as *ta'zir* crimes. This finding aligns with the views of scholars, such as Abdul Qadir Audah, who stated that *ta'zir* sanctions are dynamic and can be adjusted to social conditions and the level of damage caused. Because they are not included in the categories of *hudud* or *qisadiyah*, the form of punishment for digital violations is left to the authorities to formulate

proportionate sanctions, such as fines, platform access restrictions, or other administrative sanctions. This demonstrates that Islamic criminal law has the flexibility to adapt to the challenges of the digital era. Overall, this study concludes that consumer protection in digital transactions will be more effective if implemented through an integration of Islamic jurisprudence (*fiqh muamalah*) and Islamic jurisprudence (*fiqh jinayah*). *Fiqh muamalah* serves to provide ethical and legal guidelines regarding the validity of contracts, while *fiqh jinayah* provides legal enforcement tools in the event of violations that harm consumers. Both form a protection system that is not only norm-based, but also operational and relevant to modern technological developments. Thus, this study confirms that Islamic law still has the ability adaptive and comprehensive in providing legal solutions to the dynamics of today's digital economic transactions.

B. Suggestions

It is hoped that this will strengthen regulations related to consumer protection in digital transactions by integrating the values of Islamic jurisprudence (*fiqh muamalah*) and Islamic criminal law, particularly in determining sanctions for those who violate contracts. Adaptive and responsive regulations to technological developments are essential

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