

Analysis Of *Sighat* in Marketplace (Islamic Perspective on E-Commerce Behavior)

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Abstract— *This study discusses the practice of selling and buying transactions in the marketplace. In this implementation, there is often no sighat/contract, and the sacredness of the contract is lost, which raises questions about the legitimacy of buying and selling activities in Islam's Perspective. This study used qualitative methods, as well as using the library research method, which is a set of related activities by collecting data, reading, and recording research sources related to research and processing problems, namely the analysis of buying and selling practices without a contract or sighat in modern society especially marketplace. The purpose of this study is to show the habits of modern society in buying and selling, not making a contract but doing actions that show an agreement on both sides. The results of this discussion are the habits of modern society in the practice of buying and selling, not making contracts due to the development of technology, and many people who want to be simple in buying and selling.*

Keywords: *'urf*, behavior, contract, marketplace, *sighat*.

1. INTRODUCTION

Some traditions or habits are widely known in people's lives. Usually, these traditions or habits can be in the form of words or actions that are universal in nature, commonly known as *'urf*. These habits can be considered when applying Islamic law in increasing economic transactions, especially when dealing with something that has no legal clarity in the Al-Qur'an and Hadith. In *ushul fiqh*, the discussion of custom as *'urf* is focused on its position as propriety that all people widely recognize—authentic *'urf*, which can only be considered when establishing the *Shari'a* of a law.

Society is constantly changing and developing, and customs can influence it. If the *Shari'a* of law is made based on these customs, then if the custom or custom changes, the law also follows the custom. What is meant is not just a change in the change of Islamic law, but rather it is carried out with a large amount of effort known as the reform of Islamic law, the means of which is through *ijtihad*. Regarding Islamic law as the law of Allah SWT, although it is possible to see changes with the renewal of Islamic law, this law based on *'urf* is also Islamic law. Islam appreciates and pays attention to humans, individuals, and groups. Therefore, *'urf* is one of the rules in determining the *Shari'a* of a law.

The occurrence of an agreement is essential in the concept of Islamic economics, especially in the behavior of exchange of goods or buying and selling transactions. In an agreement between the buyer and the seller, an agreement is required, called a contract. A sale and purchase transaction will only be valid if a contract is recovered. Therefore, the contract or agreement is an important matter. *Akad* is not only important in the Islamic world in a transaction. However, in the Western world, the existence of a contract is also

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heavily emphasized in a transaction. However, the concept of Islamic economics is different from the meaning of this contract. The difference can be seen in the supporting elements of the contract. A contract is only valid and perfect in the Islamic economy if there are terms and pillars of the contract. The contract still needs to exist in the Western economy. In the capitalist or Western economy, only the terms of the contract are known, but not the pillars, which are the main provisions. In this case, Islam has provided a factual basis. In the study of contractual issues, it has been widely discussed by classical and modern *fiqh* scholars. For example, Imam Abu Hanifah, Ibn Khaldun, Imam Malik, Ibn Taimiyah and others.

Akad (contract in Islam) is essential in people's daily lives and is the basis of many human daily activities. *Akad* is a frame of activity in the Islamic economy. Because with contract intermediaries, many business activities can be carried out. The field of *muamalah* is an Islamic economic activity that discusses and examines society's economic problems from the perspective of Islamic values. In general, achieving prosperity for a just society by eliminating forms of injustice and imbalance is the aim of Islamic economics. The Islamic economy has three pillars: balance, benefit, and justice. Economic activity in the sense of justice is an economic activity to avoid injustice, usury, *maisir*, *gharar*, and *haram*. Contracts or agreements in transactions will not be separated from economic activity. In management science, this will be the basis for the emergence of transaction habits that will help understand customer behavior, especially in the marketplace.

2. THEORITICAL REVIEW

'Urf

'Urf is a condition that has been determined in human beings, justified by reason, and accepted by common sense. Rare actions that a group of people does not commit cannot be called urf. In addition, things that have become a habit, such as drinking and promiscuous sex, which originate from lust and lust that have become a group tradition, cannot be called 'Urf. That is, habits that deviate from rules and norms are not 'Urf.

'Urf plays a critical position in Islamic law in establishing law. Because 'Urf is This is because 'urf is a habit that applies in a society that is culturally during society. The determination of a law based on 'urf can change due to a change in the 'urf, such as changing times and places. For example, when Imam Shafi'i was in Iraq, the law became different from after he moved to Egypt. Among the scholars, the opinion of Imam Shafi'i in Iraq is called *qawl qadim*, while in Egypt, it is called *qawl jaddid*. The scholars used *urf* to determine the law because most Sharia law had previously been the custom of the Arabs, as there is a guardian in marriage. Furthermore, buying and selling transactions without a *sighat* (without mentioning the contract) are common.

The consensus of the scholars regarding 'urf is that only some things can become a rule in creating a law's sharia. 'Urf can also be used as one of the foundations of law if the following conditions are met, namely:

- 1) Not contrary to Islamic law.
- 2) Does not eliminate *maslahah* and cause *haram*.
- 3) 'Urf already existed in society when it was enforced as one of the legal norms.
- 4) *Mahdhoh* worship still needs to be implemented.
- 5) When a law is to be enacted, the 'urf is already popular in the community.

Urf is justified by the Ulama when there is a *muamalah* problem and only if the conditions above can be met. Urf does not apply in matters of worship because the Qur'an and hadith are important. The purpose of 'urf is to support legal amendments, interpret many texts, and preserve human interests.

Opinion of scholars regarding 'urf:

- 1) Abu Yusuf (the group of Hanafi scholars) and most of the scholars (non-Hanaf) explained that *Syara'* law could change along with the development of *ada* or 'urf. It is based on the principle that "it cannot be denied that laws change due to changes in time and place."
- 2) Muhammad bin Hasan & Abu Hanifah argue that the legal standard is the old "'urf" when the text appears.
- 3) Abdul Wahab Khalaf emphasized that urf is not *syara'*, which can stand alone because it concerns the maintenance of *maslahah mursalah*. So, if urf is considered a legal criterion, it is also taken into account in the interpretation of *nas*. Even *qiyas* may be abandoned because 'urf is considered more appropriate, such as transactions with the *istisna'* system and *salam* are legal according to law, even though they are not legal according to *qiyas* because the goods are not and are not available at the time of the transaction.

In Islamic finance, for example, trading carried out by the community does not use a sale and purchase agreement. Like in shopping centers or others, consumers need to take the item they want, then pay directly at the cashier. In addition, money as a payment transaction is also adequate; use a transfer, e-money. Then in various sectors, consumption patterns are now more online and non-cash in all aspects of finance, starting from taxes, monthly salaries, electricity payments, taxi services, ordering food, booking tickets and hotels, and purchasing furniture and books. Nowadays, everything is made easy by simply opening an application and pressing a button, and the transaction will be successful.

Buying and selling contract

In general, according to Sayyid Sabiq, the main conditions for a contract must be fulfilled, including 1) not contradicting Islamic law. 2) both of them must be pleased and have the right to choose if the contract has defects. 3) a contract must be clear and easily understood by sellers and buyers with the same understanding of the agreed contract. 4) not something prohibited by law, both the contract and the object of the contract. This condition is a consequence of condition number two before. 5) this contract is made must provide benefits for the party carrying out the contract as well as for other people. 6) the statement of delivery will continue (if there is no cancellation) before the acceptance is carried out, namely the statement of receipt of goods. Except the person who gave the consent (*Mujib*) cancels the consent before accepting the agreement from the person who answers or accepts the contract (*Muqbil*). 7) Meet at the place of marriage. Furthermore, this is a condition of the Shafi'i school. The person who performs the consent granted must be from one assembly and is considered invalid if *Muqbil* and *Mujib* do not meet in one assembly.

According to Sayyid Sabiq, a contract is flawed when the contract contains elements, namely: coercion, causing defects in the will (*Ikrah*), deceptive seduction (*Khilabah*), misunderstanding (*Ghalat*), defects that appear later (*ikhtilat al-tanfudz*). According to Sayyid Sabiq, the contracting party has the right to choose whether to continue or terminate the implementation of a contract if there is a defect in the contract. For example, in buying and selling, if one or all of the causes of defects in the contract above are in the sale, then it becomes invalid.

3. RESEARCH METHODS

The research was done using qualitative methods combined with the library research method (library approach). It takes materials or data from journals and books, then qualitative research according to Moleong, is to understand comprehensively and with the help of descriptions in the form of words and language, phenomena related to the subject's

experience, such as behavior, observation, motivation, action, in certain forms of nature. The main strength in research analysis is the use of library research methods, namely by implementing a series of activities related to collecting data, reading, and recording research sources related to the need to analyze Muslim behavior in market transactions.

4. RESULTS AND DISCUSSION

Muslim Modern Society in Marketplace

Marketplace transactions are one of the various everyday business transactions at this time. In carrying out economic activities such as sales and purchases that are carried out at the marketplace, consent is not made by both parties, namely sellers and buyers. They only use sophisticated and modern machines to make transactions more accessible, usually displayed in front of marketplace apps, which is very different from the past. Transactions in the past used a barter system, the system contracted, and the system was consensual. This transaction was long before there were modern shops or markets and now there is a marketplace.

However, sometimes there were no sophisticated machines, naturally only small shops, which was very different from the old days. Has passed or has already passed, where in the previous era, in this case, the *Shari'a* had entered and had developed. Arguments and reinforcements like this could arise, so there used to be the approval and agreement of a contract ordered by *Shari'a*, in this case, felt clearer. However, why is it getting this way? When a buyer buys goods at a modern store, such as a supermarket, and completes or outputs a purchase-purchase transaction, contracts, and agreements, in this case, are more transparent contracts that cannot be enforced clearly, in contrast to traditional transactions, which are enforced legally. Clear.

However, behind that, because traditional markets and transactions are also traditional, the impact will also be speculation and tyranny on the one hand. For example, the seller wants to retain customers and follow the offer, but on the other hand, they also feel tyrannized by a reduced selling price or can calculate reduced profits. Although the benefits are not significantly reduced, Pronunciation of consent and *qabul* is fully required in implementing agreements (contracts) on current sales and purchase transactions that could be more effective and sometimes even slow down the completion of transactions.

Nevertheless, it is not ineffective either because it is still being used in deeper areas that uphold culture and Sharia. However, it is generally scarce because people think it is old-fashioned and outdated, not to mention in Malaysia and Indonesia, with various races, ethnicities, and even religions. Hence, those who do business are not only Muslims but also non-Muslims. The contract also certainly hinders the consent granted because it is different, so nowadays, everyone usually performs the practice of buying and selling without using terms of consent and consent in the modern market. They have to take the items they want and hand over the money to the cashier, or it can be done in other ways, such as inserting a few coins into a particular machine. Of course, whether real money or digital money, now the more digital it is, the more it keeps us away from it all. Namely, the goods listed on the machine can be with a credit card. Buying and selling are the most efficient and effective, so Akad does not judge that willingness.

Contract on Modersn Society

Akad plays a critical role in the way of community and daily activities. *Akad*, namely the framework of Islamic economic activity because many agreements and business activities can be carried out through *Akad*. The contract helps everyone realize their needs and interests, which can only be realized with the help and services of other people. It is

fair to say that a contract is a social tool created by human civilization to maintain life as a social being.

The existence of an agreement can be studied by considering several principles or principles or main principles of Islamic *muamalah* law, including 1) that in principle, all matters of muamalah are permitted except those stipulated other than in the Al-Qur'an and Hadith. 2) carried out because of willingness. There is no pressure to do muamalah. 3) implementing muamalah based on presenting good or benefit and avoiding harm to people's lives. 4) Implement *muamalah* by upholding justice, avoiding persecution factors, and taking advantage of opportunities in adversity.

In addition to developing community needs, they can make agreements directly, without writing words or gestures to express their will. However, the implementation is carried out by sellers and buyers, reflecting the will and agreement of sellers and buyers. Buyers can directly select the desired product at a modern store, then transfer money to the seller at a price already on the product label. Alternatively, another way is that the seller hands over the product to the person who wants to buy it, and then that person makes a payment without pronouncing the contract. This phenomenon is often found in buying and selling transactions today, especially in the Marketplace. Products receive a price label, after which shoppers can drop it into an online basket if it suits them and then pay for it immediately at checkout without explicit approval. This activity is permissible because it reflects an agreement between the parties.

A sale and purchase transaction can be valid, according to Imam Syafi'i, that is, if the consent is given in clear words, sentences (*Sharih*), and satirical sentences (*Kinayah*). Therefore, a sale and purchase transaction without a contract is considered invalid by law, regardless of whether the sold item is expensive or cheap. Seeing that this opinion has a side that is too rigid and narrow and different from the basis of tolerance, ease, and flexibility in Sharia law, because of this, the scholars of the *Shafi'i* school, namely Mutawalli, Baghawi, and Imam Nawawi, the sale and purchase contract is more likely to be said to be valid because it has not there is an argument that requires it to be carried out with a particular pronunciation.

However, it is permissible if it is returned by community habits such as other absolute pronunciations. *Sighat* or contracts in carrying out sales and purchase transactions, according to Imam An-Nawawi, can be carried out using other steps besides oral speech, like not saying a word from both parties, namely the seller or the buyer, such as simply handing over or receiving money or goods want to buy. This method is valid according to the Hanafi school of thought for small and large trades. Likewise, if economic activities are carried out in cash by both parties or one of the parties. The views of the Maliki school are very similar to those of the Hanafi school. The difference is that if economic activity is carried out through cash on one side, then this economic activity can be flawed. Because Hanafi believes that the seller and the buyer do not perfectly bind, this results in the emergence of the right of *khiyar* to continue or cancel the trading process. On this matter, the Hambali school agrees with the Hanafi school.

Even though there are some disagreements from some academies above, there is consent granted in *fiqh muamalah*. Namely, buying and selling must be fulfilled from one of the pillars of the contract. Nevertheless, in essence, the existence of consent granted means consensual or willing from the parties involved, namely the seller and the buyer. As mentioned in the Al-Qur'an letter An-Nisa': 29, as follows:

"O believers! Do not devour one another's wealth illegally, but rather trade by mutual consent. And do not kill each other or yourselves. Surely Allah is ever Merciful to you"

In the meaning of the verse, it can be concluded that all sales transactions must be based on the willingness of both the seller and the buyer. In the beginning, the practice of consent

was granted. The seller had to say I sell, and the buyer had to say I buy. However, nowadays, it is not used anymore due to custom (*'urf*), which has made everything very easy to do in society.

For example, the seller no longer needs to say I am selling but instead is replaced by providing a price label on each item, and the buyer does not need to say I buy but is replaced by making a non-cash payment or simply selecting the checkout/ok button on their respective cell phones or laptops. Even though the contract practice (*ijab kabul*) differs from the past because it contains the same meaning. That is, they both show the consent (willingness) of the seller and the buyer. It can be concluded that modern trade law is based on *'urf* permissible.

Factors that influence buying and selling habits without a contract in modern society

In modern society, the behavior of buying and selling without a contract is often found. The factors that influence this are developments and technological advances that have influenced the world. Currently, several Marketplace applications buy and sell almost all products in real-time. The marketplace can help humans and even indirectly replace human tasks where humans also feel the benefits. It can be anywhere when it is hoped that it will immediately convey its wishes. Of course, it is always ready to serve without feeling tired and not caring about the time while the contents are still there, and the power source that turns it on is still there, so long as that app can still serve like the original seller. This application issues the desired item after payment by transferring or virtual payment, including virtual money. Then, the seller will issue the product to the customer's home by the shipping company for a while.

The second factor is that people do not want to be complicated. They want fast; there is demand, and there is a solution, of course; in this modern era, people want to be practical, so buying and selling without a contract can make buying and selling easier. They should not just abandon the sell-and-buy contract. The collaboration of technology and *syara'* may be a practical and easy solution, but what was previously determined can still work. However, in reality, the community prefers to abandon the contract of consent and *qabul*. People can choose the product they like and pay for the marketplace apps. In addition, money as a means of payment for transactions is also non-cash.

However, in a relative marketplace where the business is traditional, they still use transfer payment. We should shop more often or spend our money at a marketplace like that because it has helped the economy; of course, not all have enough. Sometimes more is needed for their daily lives, but people still prefer non-cash because it is practical and takes little time, like electronic or virtual money. In various sectors, current consumption patterns include toll roads, monthly wages, paying PLN bills, ordering food, services from motorcycle taxis, booking hotels or tickets, purchasing household appliances, purchasing e-books, and many more. More cashless and online in all aspects of the economy. Not only that, but even to pay debts and pay credit, which in fact will cause more harm, such as usury. Today's society is facilitated in buying and selling by simply opening an application and pressing a button to complete the transaction. Even though not a few also feel disadvantaged by this, this is the reality.

5. CONCLUSIONS

Transactions in the marketplace are one of the various kinds of everyday business transactions at this time. In carrying out economic activities such as buying and selling in marketplace apps, no consent is made between buyers and sellers, and they only use software applications in a shop; of course, this is not the same as transactions in the past when there were no modern markets or shops. The *ijab kabul lafaz* must implement the

current sale and purchase transaction contract. It turns out to be ineffective and sometimes even slows down the completion of the transaction in the marketplace.

In the modern market, people carry out sales and purchases without any terms of consent and consent, they have to take the items they want and hand over the money to the cashier, or it can be done in other ways, such as transferring money, scanning a barcode or even using virtual money. This type of buying and selling is the most efficient and effective, so *akad* words, do not judge that willingness. *Akad* is a framework for Islamic economic transactions because various agreements and business activities can be carried out through *Akad*. The contract helps everyone realize their needs and interests, which can only be realized with the help and services of other people. The existence of an agreement can be studied by considering several principles or principles or fundamental principles of Islamic *muamalah* law, namely that, in principle, all *muamalah* matters are permitted except those stipulated other than in the Al-Qur'an and Hadith.

However, the implementation is carried out by the seller and the buyer, reflecting the wishes and agreements between the seller and the buyer. In modern transactions, buyers can directly select the product they want at a modern store, then transfer money to the seller at a price already on the product label. A sale and purchase transaction can be said to be valid according to Imam Syafi'i, that is, if the consent is given in clear words, sentences (*sharih*), and satirical sentences (*kinayah*). According to the Hanafi school of thought, this method is valid for small and large trades if one or both parties carry out the transaction in cash. The Maliki school of thought also has very similar views to the Hanafi school of thought. Even though there are some disagreements from some of the schools above, the existence of consent granted in *fiqh muamalah* is one of the pillars of buying and selling that must be fulfilled. From Surah An-Nisa verse 29 it can be concluded that all sales transactions must be based on the consent of both the seller and the buyer. For example, the seller no longer needs to say I am selling but instead is replaced by providing a price tag on each item, and the buyer does not need to say I buy but is replaced by making cash or non-cash payments or by pressing the checkout button or ok on their respective cell phones or laptops.

Even though the contract practice (*ijab kabul*) differs from the past because it contains the same meaning, that is, they both show the consent (willingness) of the seller and the buyer, it can be concluded that modern trade law is based on 'urf permissible. Among the factors that influence this are technological developments and advances that have influenced the world. The second factor is that people do not want to be complicated; of course, in this modern era, people want to be practical, so buying and selling without a contract can make buying and selling easier. People just take the desired goods and then pay the payment section, as the marketplace does.

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