

ANALYSIS OF THE VALIDITY OF SALE AND PURCHASE TRANSACTIONS WITH *CASH ON DELIVERY* SYSTEM ACCORDING TO SHARIA ECONOMIC LAW

Putri Rahmatillah

Ar-Raniry State Islamic University Banda Aceh

Email: putriahmatillah4@gmail.com

Abstract

This article aims to analyze the validity of buying and selling transactions with the Cash on Delivery (COD) system according to the perspective of khiyar 'aib. The research method uses qualitative research, which is a type of juridical approach where data is obtained from primary materials in the form of laws and fiqh books. The results of this study conclude that one of the risks in buying and selling transactions with the COD system is the incompatibility of the goods delivered or the goods are damaged. Therefore, the importance of khiyar rights in buying and selling transactions, especially khiyar 'aib. According to the review of muamalah fiqh, it can be concluded that the sale and purchase transaction with the COD system is valid because it has fulfilled the pillars and conditions of sale and purchase and with the enactment of khiyar in the transaction. With the existence of khiyar 'aib in buying and selling transactions, it can minimize the occurrence of losses to one of the parties.

Keywords: Cash on Delivery, Islamic Economic Law, Indonesia
Khiyar Aib and Online Market,

Abstrak

Artikel ini bertujuan untuk menganalisis keabsahan transaksi jual beli dengan sistem *Cash on Delivery* (COD) menurut perpektif *khiyar 'aib*. Adapun metode penelitian ini menggunakan penelitian kualitatif, yang jenis dengan pendekatan yuridis dimana data diperoleh dari bahan primer berupa aturan UU dan kitab fikih. Hasil penelitian ini menyimpulkan bahwa salah satu resiko dalam transaksi jual beli dengan sistem COD adalah terjadinya ketidaksesuaian barang yang diserahkan ataupun barangnya mengalami kerusakan. Oleh karena itu, pentingnya hak *khiyar* dalam transaksi jual beli terkhususnya *khiyar 'aib*. Menurut tinjauan fikih muamalah dapat disimpulkan transaksi jual beli dengan sistem COD adalah sah karena telah memenuhi rukun dan syarat jual beli serta dengan berlakunya *khiyar* pada transaksi. Dengan adanya *khiyar 'aib* dalam transaksi jual beli dapat meminimalisir terjadinya kerugian pada salah satu pihak.

Kata Kunci: Cash on Delivery (COD), Hukum Ekonomi Islam, Indonesia, *Khiyar Aib* dan Pasar Online

INTRODUCTION

Sale and purchase is a mutually binding agreement between the seller, namely the party who delivers or sells the goods and the buyer, namely the party who pays or buys the goods sold.¹ In carrying out buying and selling transactions, it should be based on mutual consent and the willingness of both parties. The seller and buyer in buying and selling must be honest,

¹ Dodi Okri Handoko, Tuti Anggraini, and Marliyah, "Legal Analysis of Cash On Delivery (COD) Based on Commercial Agreements in Islamic Economics."

straightforward, and explain the truth, do not lie and swear lies, because this can eliminate the blessings in buying and selling.²

In Islam, buying and selling is prescribed as a convenience for humans in order to fulfill their needs. Every human being has different needs. Therefore, one of the means to meet these needs requires an interaction relationship with fellow humans, namely buying and selling transactions. With the development of the times and technology that is increasingly rapid. So of course it facilitates human activities in daily activities, this affects the payment system in buying and selling transactions which are increasingly diverse. One of the payment systems in buying and selling transactions that makes life easier is buying and selling transactions with the COD system.³

COD is a cash payment system in buying and selling transactions that is carried out when the purchased goods arrive at their destination, then the buyer pays a sum of money according to the price of the goods and shipping costs. COD is a service where the buyer and seller have mutually agreed on a payment method that is carried out after the goods arrive at their destination, at which time the buyer pays off the payment for the goods purchased.⁴

Basically, a sale and purchase contract is customary if the pillars and conditions of sale and purchase are fulfilled. However, sometimes obstacles occur and emergency interests arise that are experienced by the parties. Therefore, the Shari'ah allows

² Abdul Rahman Ghazaly, Ghufron Ihsan, Sapiudin Shidiq, *Fiqh Muamalat*, (Jakarta: Kencana, 2010), p. 79. 79.

³ Rozalinda, *Sharia Economic Jurisprudence Principles and Implementation in the Islamic Financial Sector*, (Jakarta: PT Raja Grafindo Persada, 2016), p. 64. 64.

⁴ Dodi Okri Handoko, Tuti Anggraini, and Marliyah, "Legal Analysis of Cash On Delivery (COD) Based on Commercial Agreements in Islamic Economics."

khiyar for the benefit of the parties to the sale and purchase transaction. The fiqh scholars suggest that *khiyar* is a good path for both parties for the continuity of the contract, because in essence *khiyar* is one of the rights of the buyer in making a contract to sort out or cancel the transaction that has been carried out.⁵

Khiyar is divided into several types, including *khiyar conditions*, *khiyar majlis*, *khiyar 'aib*, *khiyar ta'yin* and *khiyar ru'yah*.⁶ One of them is *khiyar 'aib*. *Khiyar 'aib* is a right of choice given to the buyer who has been stipulated in the sale and purchase contract to cancel the contract if the buyer finds defects in what he has bought so as to reduce the quality and value of the goods. If the buyer finds a defect in the goods purchased, it can be returned to the seller, unless the buyer knew about the defect before buying. This aims to avoid the element of tyranny that can harm others.⁷

According to the fiqh scholars, *khiyar 'aib* (defect) is a condition that allows one of the contracting parties to have the right to cancel the contract or make it when a defect is found in one of the items used as a medium of exchange that is not known to the owner of a contract.⁸

In the implementation of the sale and purchase contract, during the transaction process, the buyer knows that there are defects in the purchased goods, so the contract is binding and the buyer does not have the right to *khiyar* because he is satisfied and

⁵ Rifai, "FUQAHA'S OPINION ON KHIYAR IN SELLING: FUQAHA'S OPINION ON KHIYAR IN BUYING AND SELLING."

⁶ Jamilah and Firmansyah, "Review of Fikih Muamalah on the Application of *Khiyar* in E-Commerce Transactions."

⁷ Mardani, *Fiqh Ekonomi Syariah Fiqh Muamalah*, (Jakarta: Kencana, 2019), p. 106. 106.

⁸ Abu Malik Kamal bin As-Syyid Salim, *Sahih Fikih Sunnah*, (Jakarta: Pustaka Azzam, 2007), pp. 68.

knows the defects in the goods. However, if the buyer does not initially know of the defect and finds out after the contract, then the contract is still valid, but not binding. In this case, the buyer has the *khiyar* right to continue or cancel the contract.⁹

In the application of buying and selling with the COD system, in addition to making it easier for buyers to make payments, sometimes COD also often causes problems. Many problems occur in transactions with the COD system, one of which is that the goods sent do not match the goods purchased, even more fatally the goods received by the buyer have damage and defects in the goods. Therefore, it is very important to have *khiyar 'aib* in the sale and purchase transaction with the COD system so that if a problem occurs where the goods do not match, are damaged or even defective, the buyer has the right to continue or cancel the sale and purchase transaction with the COD system. In addition, with the element of *khiyar 'aib* in the transaction, it is useful to minimize losses and oppression of one of the parties and also for the benefit of the seller and the buyer.

Based on the background of the problems that have been stated, the authors are interested in conducting research entitled, "Analysis of the Validity of Sales and Purchase Transactions with the COD System from the Perspective of *Khiyar 'Aib*".

DATA AND METHODS

The research method used in this article is a type of qualitative research with a juridical approach. The juridical approach obtains data from primary materials in the form of laws

⁹ Shaykh Sulaiman bin Ahmad bin Yahya Al-Faifi, *Summary of Fiqh Sunnah*, (West Java: Senja Media Utama, 2017), p. 612. 612.

and fiqh books. Research is conducted by collecting information based on observations. This qualitative research is analytical and descriptive, which is a study to find facts and relationships between the problems studied. Data collection used in this article uses literature study¹⁰. Literature study is one that is used to collect information and data relevant to the topics and problems that are the object of research. Data is obtained from fiqh books, books, articles, journals, scientific works, theses, the internet, and other sources. By conducting a literature study, researchers can utilize all information and thoughts that are relevant in their research. The books that are referred to in this study include the translation of Fiqh As-Sunnah by Sayyid Sabiq, the book *Al-Buyu'* by Bukhari, the book *At-Tijarat* by Ibn Majah, and other books, articles, and journals.

RESULTS AND DISCUSSION

A. The practice of buying and selling transactions with the COD system

In Islamic law, transactions emphasize the principles of justice, benefit, and keeping it in accordance with the right way so as not to harm others. In Islam, there are two types of transactions, namely transactions that are allowed and also transactions that are not allowed. This transaction principle aims to ensure that transactions are carried out in a fair manner, respect the rights of others, and produce good benefits for the parties to the transaction.¹¹

¹⁰ Siddiq-Armia, *Determination of Legal Research Methods and Approaches*.

¹¹ Jumriani and Hizbullah, "Cash on Delivery (CoD) Perspective of Sharia Economics."

Buying and selling in fiqh terms is called *al-bai'* which means selling, replacing, and exchanging something for something else. The word *albai'* in Arabic is sometimes used to mean the word *asy-syira* (buy).¹² That way, the word *al-bai'* means selling and also means buying. Meanwhile, according to terms, buying and selling is exchanging goods for goods or for money by releasing property rights from one party to another on a mutually agreeable basis.¹³

According to Sheikh Muhammad Ibn Qasim al-Ghazzi, the definition of buying and selling according to *Shara'* is owning something (money) in exchange for something on the basis of *Shara'* permission, just to have the benefits allowed by *Shara'* forever, which must be done through payment in the form of money. (Al-Ghazzi, t.th: 30).

Buying and selling is an activity that we do every time in our daily lives. In language, buying and selling is *mutlaq al-mubadalah* which means absolute exchange. Or *muqabalah syai' bi syai'* which means exchanging something for something else. Buying and selling is a transaction of exchanging money for goods on a consensual basis according to what is determined by sharia, and is accompanied by a clear *ijab kabul*.¹⁴

The scholars differ in their opinions in defining buying and selling. Some scholars give the meaning of buying and selling as a business, including the Hanafiyah scholars. According to the Hanafis, buying and selling is exchanging something that is desired for something equivalent and in a certain way. According

¹² Abdul Rahman Ghazaly, Ghuftron Ihsan, Sapiudin Shidiq, *Fiqh Muamalat*, (Jakarta: Kencana, 2010), p. 67.

¹³ Shobirin, "Buying and Selling in Islamic View."

¹⁴ Rozalinda, *Sharia Economic Jurisprudence Principles and Implementation in the Islamic Financial Sector*, (Jakarta: PT Raja Grafindo Persada, 2016), p. 63. 63.

to Imam Nawawi in *al-Majmu'*, (Suhendi, 2007). Buying and selling is the exchange of property for property for ownership. Exchanging goods for goods or goods for money by releasing property on the basis of mutual consent.¹⁵ According to Ibn Qudamah in the book *al-Mugni'*, defining buying and selling is the exchange of property for property, with ownership and control.¹⁶ From these various definitions, it can be concluded that buying and selling is the exchange of property from the seller to the buyer according to the agreed price.

The COD payment method provides benefits to both sellers and buyers. On the seller's side, COD is profitable in increasing sales figures and can attract purchasing power, while on the buyer's side it is easy to make payments and can also avoid fraud that is often carried out by sellers who do not have good intentions in making transactions such as not sending goods, sending goods that are not in accordance with orders and even sending damaged or defective goods.¹⁷

There are several requirements given by the seller in the sale and purchase transaction with the COD system, namely regarding the payment procedure, which initially the buyer orders an item from the seller, then the seller and buyer carry out the contract and an agreement arises between the two parties, when a few days later the goods ordered by the buyer arrive and are paid for by the buyer. Payment in the sale and purchase

¹⁵ Shobirin, "SELLING AND BUYING IN ISLAMIC VIEW."

¹⁶ Dodi Okri Handoko, Tuti Anggraini, and Marliyah, "Legal Analysis of Cash On Delivery (COD) Based on Commercial Agreements in Islamic Economics."

¹⁷ Haryanti, "Good Faith in a Sale and Purchase Agreement with Cash on Delivery Payment Method."

transaction with the COD system is made after the ordered goods arrive at the buyer's hands.¹⁸

In buying and selling transactions with the COD system, there are requirements and criteria that must be met. These criteria include, among others, that the goods must be physically available clearly, must not be mixed with other goods of different types. Goods delivered to the buyer must be the same as the order or goods specified by the buyer. The description must be clear and detailed in terms of quality, quantity, price and the cost and quality of the order to be made. The transaction must not contain elements of illat (uncertainty) and riba fadhhal (excess). Something ordered by the buyer must be delivered after the agreement and contract is carried out.¹⁹

The conditions of buying and selling in general aim to avoid problems between the two parties to the transaction, protect the interests of both parties, ensure that the sale and purchase is carried out for mutual benefit and there are no parties who feel harmed in the transaction that takes place.

B. The law of buying and selling transactions with the COD system

Regarding the legal basis of buying and selling, it has been explained that humans are encouraged to buy and sell. This has been explained in QS. An-Nisa' Verse 29.

Allah says in QS. An-Nisa' Verse 29:

¹⁸ Ninda Mauliza, *Unilateral Cancellation of Online Buying and Selling Transactions with Cash on Delivery Payment System in the Perspective of 'Aqd Al-Ba'I (A Research in Syiah Kuala District, Banda Aceh City)*, Thesis (UIN Ar-Raniry Banda Aceh), 2020.

¹⁹ Jumriani and Hizbullah, "Cash on Delivery (CoD) Perspective of Sharia Economics."

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

*O you who believe! Do not eat from one another's wealth by false means, except in trade that is consensual between you. And do not kill yourselves. Indeed, Allah is Most Merciful to you." (QS. An-Nisa' Verse 29).*²⁰

In the verse, it is explained that buying and selling is recommended in Islam and in buying and selling transactions should be carried out with mutual consent and the willingness of each party.²¹

The scholars have agreed on the permissibility of sale and purchase contracts.²² This consensus of the scholars provides wisdom that human needs are related to something that is in the ownership of others, and ownership of something will not be given just like that, but there must be compensation in return. The permissibility of buying and selling is one of the ways to realize human wants and needs, because basically humans cannot live alone without contact and without the help of others.²³

Apart from Islamic law, buying and selling is also stated in the Civil Code and the Civil Code is also mentioned in the fifth chapter on buying and selling article 1457, namely "Buying and selling is an agreement, by which one party binds himself to deliver a material, and the other party to pay the promised price".²⁴

²⁰ Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an and Translation*, (Jakarta, 2019), p. 112.

²¹ Wahyuni et al, "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS."

²² Nisa, Bisyri, and Sa'adah, "The Practice of Selling and Buying the Cash On Delivery System of Pos Indonesia."

²³ Nisa, Bisyri, and Sa'adah.

²⁴ Nisa, Bisyri, and Sa'adah.

All transactions and activities in the field of muamalah are allowed as long as there is no evidence from the Qur'an and Hadith that mentions its prohibition. As for the problems that have just emerged, it requires legal studies that can explain these new problems. Regarding buying and selling with the COD system in the Islamic view can be equated with buying and selling salam, which is a buying and selling transaction carried out through reservations. Sale and purchase of salam is a sale and purchase transaction that is not cash (cash), salam originally means lending goods or something that is balanced at a certain price, the intention is an agreement in which the delivery of goods is deferred until a certain period, in exchange for a price that has been determined when the contract.²⁵

The law of buying and selling transactions with the COD system must fulfill the terms and conditions of buying and selling. The pillars of buying and selling that must be fulfilled in buying and selling transactions include:²⁶

1) The person in the contract (*al-muta'qidain*)

Al-muta'aqidaian, which consists of *ba'i* (the seller) and *mustari* (the buyer) who make a contract in buying and selling, buying and selling is not possible without the people who do it.

2) *Sighat* is *ijab* and *qabul*

Ijab and *qabul* are the most important pillars of buying and selling in the fulfillment of the contract, an example of *ijab qabul* is the words of the seller "I sell to you or I give it to you" which is then answered by the buyer "I accept or I buy". Apart from saying *ijab* and *qabul*, the contract can be done through writing and signaling. Selling and buying is not said to be

²⁵ Nisa, Bisyri, and Sa'adah.

²⁶ Shobirin, "SELLING AND BUYING IN ISLAMIC VIEW."

valid before the presence of *ijab* and *qabul* because *ijab* and *qabul* indicate the willingness or pleasure of both parties to the transaction.

3) The item purchased (*Ma'quh 'alaih*).

Ma'quh 'alaih is the item that is the object of sale and purchase or the cause of the sale and purchase agreement. Not only must there be goods, but in Islam the criteria for goods that can be traded must be clean, belong to the person in the contract, be able to deliver the goods being traded and have benefits that aim to prevent the buying party from feeling harmed.²⁷

4) There is an exchange rate for goods

The exchange rate for goods traded must be appropriate and acceptable to both parties, namely the seller and the buyer. The exchange rate is something that fulfills three conditions, namely that it can store value, can assess and value an item, and can be used as a medium of exchange.

The valid conditions of buying and selling must be applied in buying and selling transactions because if one of the conditions of buying and selling is not fulfilled, it will make the transaction imperfect and void. The first condition of buying and selling is the existence of actors (*aqid*), the actors consist of sellers and buyers who must meet the requirements, namely being reasonable, baligh, and having the right to use their property. The next requirement is the object of the contract (*ma'qud 'alaih*), in the sale and purchase contract there must be an object of transaction where the object being transacted must also meet the requirements. The conditions for the object of sale and purchase include that the object must be permissible in sharia, the object

²⁷ SShobirin.

being traded must have benefits and advantages so that the buyer does not feel disadvantaged, the seller already owns the object of the contract to be traded in advance, and finally is able and can deliver the object being traded.²⁸

The conditions of sale and purchase related to *ijab qabul*, the *fiqh* scholars have agreed that the main element of buying and selling is the willingness of both parties. The willingness of both parties can be seen from the *ijab qabul* that takes place. The Hanafis and Maalikus are of the opinion that it is permissible for time to elapse between *Ijab* and *Qabul*, so that the buyer has time to think.²⁹ However, the scholars of *Syafi'iyah* and *Hanbaliyah* are of a different opinion, who are of the opinion that the interval between *ijab* and *qabul* should not be too long because it may lead to the assumption that the object of discussion has changed. In modern times, the implementation of *ijab qabul* is not always through speech, but is done by taking the goods and paying for the goods by the buyer to the seller, as well as accepting the money and handing over the goods by the seller to the buyer without any words. This is permissible because it has become a custom in the community, the attitude of taking goods and paying for goods has shown *ijab qabul* and shows the element of willingness of both parties by accepting the sale and purchase transaction properly.³⁰

In addition to the conditions and pillars of buying and selling that are determined, the *fiqh* scholars also put forward several other conditions related to the conditions for the validity

²⁸ Dodi Okri Handoko, Tuti Anggraini, and Marliyah, "Legal Analysis of Cash On Delivery (COD) Based on Commercial Agreements in Islamic Economics."

²⁹ Hasbi Ash-Shiddiqie, *Pengantar Fikih Muamalah*.

³⁰ Jamaluddin, Nurfayda, and Erviana, "E-COMMERCE SELLING AND BUYING IN ISLAMIC ECONOMIC PERSPECTIVE."

of buying and selling. The fiqh scholars have agreed that a new sale is considered valid if the sale is free from defects, such as the criteria for the goods being traded are clearly known, both in quality and quantity, the amount of the price is clear, does not contain elements of coercion, does not contain deception, *mudharat*, and the existence of other conditions that make the law of sale and purchase transactions void.³¹

C. The concept of *khiyar 'aib* in buying and selling transactions with the COD system

The word *al-khiyar* in Arabic means choice. According to Sayyid Sabiq, the definition of *khiyar* is looking for the good of two things, continuing or canceling (buying and selling). While Wahbah al-Zuhaili defines *khiyar* as the right of choice for one or both parties carrying out the transaction to continue or cancel the agreed transaction according to the conditions of each party to the transaction. While the word 'aib linguistically means defect, weakness or deficiency. In terminology 'aib in buying and selling refers to defects or weaknesses that exist in goods that are not visible or unknown to the buyer when the sale and purchase transaction is carried out.³²

Khiyar is the right to cancel or continue a sale and purchase agreement. In buying and selling, Islam recognizes the right of *khiyar* which is possible to cancel the sale and purchase contract or continue the transaction with a certain agreement. *Khiyar* will take effect with the agreement of both parties in the transaction,

³¹ M. Afnan Nadhif, Anis Fittria, and Abdul Ghofur, "Sharia Economic Law Analysis of Payment Rounding in Shopee Cash On Delivery (COD) Online Buying and Selling."

³² Abdul Rahman Ghazaly, Ghufroon Ihsan, Sapiudin Shidiq, *Fiqh Muamalat*, (Jakarta: Kencana, 2010), pp. 97.

either from one party which is then accepted by the other party or both parties who want it.³³

The evidence for *khiyar* is mentioned in a hadeeth narrated by Hakim bin Hizam in which the Prophet (peace and blessings of Allaah be upon him) said:

The parties to a sale and purchase transaction each have the right to khiyar (cancel or continue the transaction) as long as they have not separated. If both of them are honest and open, then both of them will get the blessing of the trade, but if both of them lie and are not open, then the blessing of the trade between them will be lost." (HR. Bukhari).³⁴

The hadith explains that in a sale and purchase transaction, there is the right to *khiyar*, which is the right to cancel or continue the transaction. And buying and selling will be a blessing if both parties are honest and open with each other.

According to the scholars of Imam Shafi'i, *khiyar* status is a shari'a in the process of buying and selling that has the right to choose. *Khiyar 'aib* is a *khiyar* that is prescribed because of the non-fulfillment of the desired criteria in the goods, whether it is desired by one of the parties or because of a requirement or because of a deliberate intention to harm one of the parties. The criteria for the desired goods are the absence of damage or even defects in the goods being traded.³⁵

In a sale and purchase transaction, if at the time of the contract the seller explains to the buyer that there is damage or a

³³ Dodi Okri Handoko, Tuti Anggraini, and Marliyah, "Legal Analysis of Cash On Delivery (COD) Based on Commercial Agreements in Islamic Economics."

³⁴ Bukhari, *Sahih al-Bukhari, Kitab al-Buyu' Volume IX*, Hadith No. 2110, p. 329. 329.

³⁵ Nadia and Fahmi, "COMPENSATION ON COPYRIGHT DUPLICATION IN PERSPECTIVE OF THE CONCEPT OF ḤAQ AL-IBTIKÂR."

defect in the goods, then the contract is normal and there is no *khiyar* right in the transaction, because the buyer is satisfied with the condition of the goods. But if the buyer does not know about the damage or defect in the goods until after the contract has been completed, then the sale and purchase contract is valid, but it is not customary. Therefore, the buyer has the right to exercise the *khiyar* right, which is to choose to continue by accepting the condition of the goods or to cancel the transaction by returning the goods and demanding back the amount of the payment price that has been submitted to the seller.³⁶

The concept of *khiyar 'aib* in a sale and purchase transaction with a COD system that directly brings together the seller and the buyer can be done directly because the buyer can directly see the condition of the goods and the feasibility of the goods, if the goods are in accordance with the conditions desired by the buyer and in accordance with the seller's explanation, the two parties can immediately make a sale and purchase agreement and the buyer can immediately hand over the money according to the price of the goods purchased. However, it is different with *khiyar 'aib* that applies to COD transactions where the seller and the buyer do not meet directly but through an order which is then sent by courier and payment is made by courier as well. *Khiyar* does not apply immediately when the buyer pays for the goods to the courier, because the buyer is not allowed to receive, open and use the goods before making payment to the courier.³⁷

This is done to ensure that payment is made just before the buyer uses or utilizes the purchased goods. However, this is considered detrimental to the buyer if there is a mismatch in the

³⁶ Sayyid Sabiq, *Fiqh Sunnah Daily Life Guide Encyclopedia of Islamic Law*, (Bandung: Hilal, 2016), p. 1079. 1079.

³⁷ Maghfirah dkk., "UNDERSTANDING INTELLECTUAL PROPERTY RIGHTS IN THE INDONESIAN TRADING BUSINESS."

goods ordered, this also raises concerns about the element of fraud or the risk of defects and damaged goods. *Khiyar 'aib* will apply if previously the seller and the buyer have made an agreement at the beginning of the sale and purchase contract that allows the right to *khiyar* if there is a discrepancy in the condition of the goods received by the buyer, the discrepancy in question is that the goods received have damage or even defects or the goods received are not in accordance with what was ordered at the beginning of the sale and purchase contract. At this time the buyer discusses with the seller the form of *khiyar 'aib* that is carried out, *khiyar 'aib* can be in the form of returning the purchased goods and returning a sum of money according to the amount of the price of the goods or the seller sends back new goods to the buyer.³⁸

D. COD operational system in buying and selling transactions

The COD operational system in buying and selling transactions has a procedure in the implementation process, namely starting with ordering goods made by the buyer first to the seller by paying attention to detailed information and explanations regarding the condition and quality of the goods, then the two parties carry out the sale and purchase agreement and make an agreement and sale and purchase agreement, after the sale and purchase agreement is carried out the seller prepares the goods according to what the buyer ordered at the beginning of the transaction.³⁹ After that the goods can be handed over directly by the seller to the buyer by determining the place and time agreed upon by both parties, and at that time both parties

³⁸ Jumriani and Hizbullah, "Cash on Delivery (CoD) Perspective of Sharia Economics."

³⁹ Maghfirah et al., "UNDERSTANDING INTELLECTUAL PROPERTY RIGHTS IN THE INDONESIAN TRADING BUSINESS."

can complete the sale and purchase transaction. Meanwhile, if the sale and purchase transaction is carried out through courier intermediation, the seller must prepare the goods in advance and then hand them over to the courier to be sent to the buyer, for payment to be made when the courier delivers the goods to the buyer's hands and likewise the buyer hands over the money worth the goods he buys.⁴⁰

The COD operational system in buying and selling transactions is divided into two, namely COD that pays directly to the seller and COD that pays by courier. The COD operational system that pays directly to the seller is carried out after the seller and buyer make an agreement on the price of an item, after which the two parties also determine the place and time to do the contract and delivery of goods. The two parties meet at the agreed place, when meeting the buyer can see directly and can check the condition and feasibility of the goods to be purchased and the seller can explain to the buyer how the condition of the goods to be sold, after which the buyer decides to continue the sale and purchase contract or use the *khiyar 'aib* right if the condition and feasibility of the goods are not in accordance with the conditions described by the seller at the beginning of the contract. This sale is a sale that can be witnessed directly and the law is permissible based on the agreement of the scholars with the fulfillment of the conditions of sale.⁴¹

While the COD operational system where payment is made by courier has an operational system that is almost the same as COD which is carried out directly with the seller but the seller

⁴⁰ Dalimunthe, "Khiyar Review of Online Seller Liability for Defective Goods".

⁴¹ Fahmi, "The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia."

does not meet directly with the buyer.⁴² Initially, the buyer chooses the goods and pays attention to all information regarding the quality and condition as well as the price listed on the application provided by the seller's online store. After the agreement between the two parties to make a contract, the seller sends the purchased goods through a courier until the goods reach the buyer's hands, after the goods reach the buyer at that time the buyer pays the courier a sum of money according to the price of the goods and additional shipping costs. However, in this system *khiyar 'aib* does not apply immediately when the buyer pays for the goods to the courier because the buyer is not allowed to immediately open the purchased goods before paying.⁴³

The COD system works with services that support the delivery of orders to the buyer, namely the carrier. Payment for goods with the COD system is in accordance with the nominal bill on the purchase form listed on the *marketplace* or *E-Commerce* to then be submitted to a courier who works with a shipping service company that has a cooperative relationship with the *marketplace* or *E-Commerce*.⁴⁴

The COD operational system provides advantages to both buyers and sellers. On the buyer's side, the advantage that can be obtained lies in the security guarantee so that the buyer does not have to worry about fraud. However, it does not rule out the possibility of a mismatch or damage to the goods that are the object of the transaction, so the *khiyar* right is applied so as not to harm either party. Meanwhile, from the seller's side, the benefits that can be obtained from the COD system include being able to

⁴² Iwandi, Efendi, and Fahmi, "THE CONCEPT OF FRANCHISING IN THE INDONESIAN CIVIL LAW AND ISLAM."

⁴³ Muhammad Rizqi Romdhon, *Online Buying and Selling according to the Ash-Shafi'i Madhhab*, (West Java: Cipasung Library, 2015), p. 68. 68.

⁴⁴ Rokfa et al., "Dispute Resolution of Cash on Delivery (COD)

attract more buyers, and can increase buyer confidence in the seller.⁴⁵

E. The legal validity of buying and selling transactions with the COD system according to the perspective of *khiyar 'aib*.

Sale and purchase transactions are prescribed by Allah Swt. as a form of Allah Swt. giving flexibility to his servants because in fact each human being with various kinds has different needs. Needing food, drink, clothing and so on, where these needs cannot be ruled out as long as humans are alive.⁴⁶ Humans cannot fulfill all these needs by themselves, so other people are needed in the form of buying and selling transactions. There is nothing more perfect than giving what one party has to get something in return according to his needs.⁴⁷

The majority of scholars divide buying and selling into two types: valid buying and selling and invalid buying and selling. If the pillars and conditions of the sale and purchase are fulfilled, then the sale and purchase is valid or *shahih*. On the other hand, if the pillars and conditions of the sale and purchase are not fulfilled, then the sale and purchase is void.⁴⁸ Sellers and buyers must pay attention to the legal conditions of buying and selling practices so that they carry out buying and selling in accordance with the provisions of Sharia and do not fall into *haram* actions. Defects in the contract are things that damage the contract because

⁴⁵ Haryanti, "Good Faith in a Sale and Purchase Agreement with Cash on Delivery Payment Method."

⁴⁶ Wahyuni dkk., "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS," 10 Juni 2023.

⁴⁷ Sayyid Sabiq, *Fiqh Sunnah Daily Life Guide Encyclopedia of Islamic Law*, (Bandung: Hilal, 2016), p. 1050. 1050.

⁴⁸ Wahyuni et al, "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS."

the voluntary element between the parties concerned is not fulfilled.⁴⁹

In carrying out buying and selling transactions, it must fully adhere to the principles of openness and clarity in the goods being traded. The seller must prioritize this principle regardless of the condition of the goods being sold. The seller is fully responsible for all conditions of the goods and is obliged to explain the condition of the goods sold to the buyer before the agreement.⁵⁰

According to Islamic law regarding the seller's responsibility for defective goods, there are differences among the four madhhab scholars. There are differences of opinion in determining the law of buying and selling with defect-free conditions, so the legal consequences are also different. According to the Hanafiyah scholars, the consequence is that it is not permissible to return the goods that have been purchased, whether it is known or unknown that there is a defect in the goods. Meanwhile, according to the Malikiyah and Shafi'iyah scholars, the consequence is that it is permissible to return all the purchased goods if there are defects in the goods.⁵¹

According to the Shafi'i scholars, *khiyar* is anything that can be seen as reducing the value of the item in question or the absence of the item in question, such as a defect in an item. The ruling on *khiyar 'aib* according to the ash-Shafi'i scholars is that if a person buys an item and then offers it for sale after knowing that there is a defect, the *khiyar* is void. From this opinion, it can be

⁴⁹ Dalimunthe, "Khiyar Review of Online Seller Liability for Defective Goods".

⁵⁰ Fahmi et al., "The Role of Local Government in Maintaining Coffee Prices Volatility in Gayo Highland of Indonesia."

⁵¹ Dalimunthe, "Khiyar Review of Online Seller Liability for Defective Goods".

concluded that the law of *khiyar 'aib* does not apply if the buyer is aware of the damage or defect in the goods he bought, then the contract cannot be canceled and the buyer does not have the right to choose because the buyer is willing to accept the defect in the goods.⁵² However, it is forbidden for someone to sell goods with damage or defects without explaining it to the buyer.⁵³

The legal basis of *khiyar 'aib* can be explained in the Prophet's hadith, including the hadith narrated by Imam Ahmad, Ibn Majah, ad-Daruqutni, al-Hakim and at-Thabrani from Uqbah bin Amir ra:

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: الْمُسْلِمُ أَخُو الْمُسْلِمِ وَلَا يَحِلُّ لِمُسْلِمٍ بَاعَ مِنْ أَخِيهِ بَيْعًا فِيهِ عَيْبٌ إِلَّا بَيَّنَّهُ لَهُ (رحول بن ماجه)

"That the Prophet said: Muslims are brothers, it is not permissible for one Muslim to sell his goods to another Muslim when there is a defect in the goods, but he must explain it." (Ibn Majah).⁵⁴

Khiyar 'aib occurs because there is a defect in the goods so that the quality of the goods is reduced or even damaged. Because there is a defect, the buyer has the right to choose to return the goods or continue the sale and purchase transaction by accepting the shortcomings of the goods.⁵⁵

The validity of *khiyar 'aib*, according to the consensus of the scholars of jurisprudence, is valid from the moment the defect is discovered and can be inherited by the heirs of the owner of the

⁵² Jarmanisa et al, "ANALYSIS OF RISK COVERAGE AGREEMENT BETWEEN PT. J&T AND AN INSURANCE COMPANY FOR DELIVERY OF CONSUMER GOODS IN THE CONTEXT OF KAFALAH CONTRACT."

⁵³ Sayyid Sabiq, *Translation of Fiqh Sunnah Volume 5*, (Jakarta: Tinta Abadi Gemilang, 2013), p. 785. 785.

⁵⁴ Ibn Majah, *Kitab At-Tijarat*, Hadith Number 2246, Volume V, p. 320.

⁵⁵ Rozalinda, *Sharia Economic Jurisprudence Principles and Implementation in the Islamic Financial Sector*, (Jakarta: PT Raja Grafindo Persada, 2016), pp. 123

khiyar right. As for the defects that lead to the emergence of *khiyar* rights, according to the Hanafiah and Hanbalah scholars are all elements that damage the object of sale and purchase and reduce its value according to the custom of the sellers. Meanwhile, according to the Malikiyah and Shafi'iyah, all defects cause the value of the item to decrease and even lose the desired element from it.⁵⁶

The conditions for the validity of *khiyar 'aib* according to the fiqh experts include:

- 1) Defects in the goods being traded are known before or after the contract but before the goods and price have been handed over, or the defect is an old defect.
- 2) The buyer does not know that the goods being traded have defects at the time when the contract takes place.
- 3) When the contract took place, the seller did not stipulate that if there was a defect, it could not be returned.
- 4) The defect disappears until the contract is annulled.

However, the right to *khiyar 'aib* can be waived if the buyer is willing to accept that the defect in the goods is clearly indicated through expression or action, the buyer does not demand the cancellation of the contract, but it can also be caused by the loss of the goods in the hands of the buyer who is the object of the transaction or the increase in damage caused by the buyer.

CONCLUSIONS

In buying and selling transactions with the COD system, it does not always run smoothly and smoothly. Every buying and selling transaction must experience risk, as well as buying and

⁵⁶ Fahmi, "Revitalizing the Implementation of Sharia Law in Aceh (A Study of Law No.11/2006)."

selling transactions with the COD system does not rule out the possibility of one party experiencing losses. There are often discrepancies in the condition of the goods being traded with the information from the seller at the beginning of the agreement, sometimes even when the goods reach the buyer, the goods are damaged or defective. Therefore, it is important to apply *khiyar 'aib* to minimize the losses experienced by one of the parties.

According to the review of muamalah fiqh, buying and selling transactions with the COD system are valid because they have fulfilled the pillars and conditions in buying and selling and with the enactment of *khiyar 'aib*. In the operational system, *khiyar 'aib* in buying and selling transactions with the COD system is divided into two, namely transactions where the seller and buyer meet and make payments directly, and the second is transactions where the delivery of goods and payment of goods through courier mediation.

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