

IMPLEMENTATION OF SHARIA TRADE CONTRACT IN THE DEVELOPMENT OF THE INDONESIAN E- COMMERCE MARKET

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ABSTRACT

Like many developed countries, Indonesia is experiencing a rapid growth of e-commerce. To grow the economy and to protect both online buyers and sellers, e-commerce requires special attention from the Indonesian authorities. One way to achieve this is by integrating Islamic principles, including the Sharia Trade Contract, into e-commerce transactions, since Islam is the dominant religions in Indonesia. This study aims at assessing the implementation of Sharia trade contract as well as analysing the prospect of Sharia contract in the development of e-commerce in Indonesia, the world's No. 5 internet user behind Brazil, USA, India and China. The study involves a socio-legal research drawing on empirical data. It seeks to address the question as to how to implement Sharia trade contract in e-commerce and what are the prospects of Sharia contract in the development of e-commerce market. Research results show that Sharia trade contract exists in the form of a single and hybrid contracts. Like any trade agreements, these contracts are agreed to either legitimately or illegitimately. The research also reveals that Sharia trade contract, especially single contract, can be developed and implemented within e-commerce transactions to boost e-commerce market in Indonesia.

Keywords: Sharia Trade Contract, E-commerce Development, Sharia-Based E-Commerce and Economic Growth.

INTRODUCTION

This research is related to the legality of Sharia trade contract (*akad*) in everyday commercial activities, including e-commerce, one of the ten major trends of future economic innovation (James, Penerjemah & Inyik, 2010). A Sharia trade contract is an agreement between two or more parties to follow or not to follow a particular law in doing business. The driving force behind this is information technology. The development of information technology is attributable to the fact that today more than one billion people use the internet, including social media. In such a rapid growth of information technology, religion, especially Islam has a crucial role to play. Islamic law has entered the Indonesian legal system through the assimilation and harmonization processes of laws. The enactment of the Law No. 1/1974 on Marriage and the Presidential Decree No. 1/1991 on the Compilation of Islamic Law (KHI), the Supreme Court Regulation No. 02/2008 on the Compilation of Sharia Economic Law (KHES) and the Indonesian Council of Religious Scholars (MUI) Instruction No. 1/MUNAS VII/MUI/5/2005 on the Protection of Intellectual Property Rights (IPR) are milestones of the existence of Islamic Law within the national law. Two major elements justify the presence of Sharia principles within

the Indonesia law i.e., the philosophical concept *Pancasila*; “the belief in the one and only God” and the dominance of Islam. The compilation of Sharia Economic Law is a product of Indonesian jurisprudence (*zanni*) in the field economic. It does not bind every Muslim, but is often referred to in Sharia business transactions. Therefore, Islamic Law plays a crucial role in E-commerce in particular and within the Indonesia legal system in general. The implement of Sharia trade contract in E-commerce and the prospects of Sharia contract in the development of E-commerce market are the main focuses of this paper.

Understanding of Sharia Trade Contract Agreement

The Arabic word for contract is *uqud*, the plural form of *aqd*, which means to 'bind', 'join', 'lock', 'hold' or in other words make a covenant. In Islamic Law, *aqd* means the combination of offer (*Ijab*) and acceptance (*qabul*) which is lawful in accordance with Islamic law. The *Ijab* is the bidding of the first party, while *qabul* is the acceptance of the offer mentioned by the first party. To be lawful and legitimate, a Sharia trade contract must meet three conditions namely: 1) *Sighah*, the statement of *ijab* and *qabul* from both parties. This could be written or oral. A *sighah* must be in harmony with the *ijab* and *qabul*; 2) *Aqidan*: The contracting parties must have reached the legal age (*akil-baligh*) set by the national law, they must be in a sane state (not crazy) or have reasonable health and must be responsible in acting; and 3) *Mahal al-aqd* or object of contract such as information, services and products which are not prohibited (*Halal*) by Sharia. Objects prohibited (*haram*) by Islamic Law include alcohol, blood, carcasses, pornography and pork. There two bases of the legality of a Sharia trade contract: First, *Sahih* or legitimacy, which means that all conditions are met, second, *batil*, which implies that if one of the conditions is not fulfilled then the contract becomes null and void. Effective Sharia contracts are divided into two, namely: *Lazim*-binding and *ghayr al-lazim*-not binding. A *lazim* contract is a contract that cannot be cancelled by one of the parties without the consent of the other while *ghayr al-lazim* may be cancelled by one party without the consent of the other (INCEIF, 2006). A Sharia trade contract is performed based on the following principles: a) *khtiyari*/voluntary; every contract is done on the will of the stakeholders to prevent one party from pressuring the other; b) trust/promise keeping; each contract must be executed by the parties in accordance with the agreement established by the parties; c) *ikhtiyati*/caution; every contract is done with a thorough consideration and executed precisely and carefully; d) *uzum*/fixed; each contract is done with clear goals and careful calculations, thus avoiding the practice of speculation or analysis; e) win-win solution; each contract is made to meet the interests of the parties so as to prevent the practice of manipulation and harming one party; f) *taswiyah*/equality; the parties in each contract have equal positions, rights and obligations; g) transparency; each contract is done with the responsibility of the parties openly; h) ability; each contract is done in accordance with the ability of the parties, so it does not become an excessive burden for the concerned; i) *aisir*/amenity; each contract is done by mutual convenience to each party; j) good intention; contract is done in order to enforce the benefits and does not contain traps or bad deeds; k) in accordance with the national law. According to the article 25 of the Compilation of Sharia Economic Law, a Sharia trade contract aims to meet the needs of life and business development of each contracting party.

Implementation of Sharia Trade Contract

Economic development is set forth in the Indonesian 1945 Constitution through its Article 33 section 4, which stipulates that the national economic development is oriented toward the principle of economic democracy, togetherness, equitable efficiency, sustainability, justice and environmental protection. All this is balanced for the sake of progress and national economic unity. Explanation of economic democracy is contained in the Decree of the People's Consultative Assembly of the Republic of Indonesia No XVI/MPR/1998 on Political Economy. Article 3 of this decree says that the implementation of Economic Democracy, the accumulation of assets and concentration of economic power in the hands a group of people or companies are not in accordance with the principles of justice and equity. This provision is in contradiction with the idea of capitalism and free market. According to the same decree, shop business is positioned as the anti-thesis of hypermarket/supermarket/minimarket, which are viewed as the products of "globalization" in the field of economy/trade. That is the reason why low level shops/restaurants such as *Warung* are widespread in Indonesia. A *Warung* is a small family owned business in the form of shops, kiosks, small shops or restaurants.¹ *Warung* is an important part of the daily life of the people of Indonesia. As a social phenomenon, the management of this type of business falls within the scope of the not only national law but also and more importantly customary and Islamic laws. Therefore, it is crucial for the Indonesia government to support and promote the practice of a 'strong legal pluralism' (John, 1986). Proof of the existence of legal pluralism in Indonesia is the application of Sharia in trade contract. Trade transactions are subject to the Civil Code and Commercial Code in Indonesia (Sentosa, 2010). The enactment of Law No. 3/2006 on the Amendment of Law No. 7/1989 on Religious Courts along with Law No. 50/2009 on Second Amendment of Law No. 7/1989 on Religious Courts, has paved the way for the birth of a new economic system in Indonesia: Sharia Economy, which derives from the Qur'an and the religious teaching of Islam. This new economic system is governed by Supreme Court Decision No. 02 (2008) on Sharia Economy. The following is the types of contracts that can be found in *Warung*:

- Bai': The buying and selling of objects with objects or the exchange objects with money.
- Syirkah: Cooperation between two or more persons in an endeavour whose profits and losses are shared.
- Khiyar: The option for the seller and the buyer to proceed or cancel the trade contract he or she is performing.
- Istisna: The sale and purchase of goods or services in the form of reservations with certain criteria and requirements agreed to between the customer and the seller.
- Wakalah: Delegating one's power to someone.
- Mabi': Exchangeable goods.
- Dain/Debt: The obligation or declared amount of money one owes.
- Hisabmudayyan: The money arising because the purchase was not made in cash.
- Dain/lenders: The party having the debt due to the agreement or by law.
- Mudayin/Borrower: The party that has a contract or agreement under the law.
- Tsaman/price: The amount of money that must be paid for the merchandise.

- Ta'widh/compensation: The reimbursement of the losses incurred by the defaulter.
- Blend Ba'i with Dain: The buyer makes a purchase in cash of the amount of goods. It turns out the money was not sufficient to pay all of the value of goods. Deficiency payment is considered a debt.
- Blend Dain with Ba'i: The seller gives the buyer a debt to be paid at the end of the month. Sellers determine the debt limit granted to the buyer. On one occasion the buyer makes a purchase with most utilizing the facility "debt" given by the seller and partly paid by cash.

The age group of buyers can be classified into three categories, namely:

- Children aged below 18 years.
- Adults aged between 18-65.
- Elderly people aged over 65 years.

These age groups are classified from the greatest to the smallest number of buyers. It is estimated that only 40% of the Indonesia population has a bank account while 85% owns mobile phones. It is also estimated that over 661 web pages are browsed by one Indonesian per month, which makes Indonesia world's number 5 internet users behind, Brazil, USA, India and China.² With such statistics, E-commerce has a crucial role to play in boosting the Indonesian Economy.³ Indonesia also ranks number 5 behind India, Korea, Japan and China in terms of E-commerce market sale value from 2013 to 2016. The 2016 economic census data released by the Central Bureau of Statistics (BPS) indicates that e-commerce in Indonesia grew about 17 percent with a total of about 26.2 million businesses.

The legal subjects of a Sharia trade contract are the seller and the buyer. According to Article 2 of the Compilation of Sharia Economic Law, to qualify for a legal action, one must be 18 years old and married, a business entity with legal status, too, qualify for legal action. Article 3 of the same compilation, on the other hand, states that those who have turned 18 years old still need court permission prior to the legal action. What is meant by Sharia Economic Law is a business activity conducted according to Sharia principles, which include Sharia Banking and Financing, Sharia microfinance institutions, Sharia insurance, Sharia mutual funds, Sharia bonds and medium-term securities, Sharia security, Sharia pawnshops, Sharia pension funds and Sharia business. A legitimate and legal Sharia trade contract is an agreement that does not contradict Islamic law, positive laws and regulations, public order or (4) morality.⁴ From the above, it can be noted that of the 14 types of Sharia trade contract, which are based on *fiqh*, only two are found in *warung* business, i.e., single contracts and double contracts (multi-contract) or hybrid contracts. There are no combined contracts as this would violate Sharia Economy Law (Nevi, 2006). These two types of contract are in accordance with the provisions of Compilation of Sharia Economic Law and may be used as instruments for the regulation of e-commerce in Indonesia.

Sharia-Based E-Commerce Market Development

In Indonesia, E-commerce is regulated in Law No. 11/2008 on Information and Electronic Transactions. As E-commerce is not just limited to online buying and selling, e-commerce business can be divided into six forms, namely:

- Business-to-Business, which encompasses all electronic transactions of goods or services conducted between companies;
- Business-to-Consumer, define as the establishment of electronic business relationships between businesses and final consumers;
- Consumer-to-Consumer consisting of all electronic transactions of goods or services conducted between consumers;
- Consumer-to-Business: A type of e-commerce whereby a large number of individuals make their services or products available for purchase for companies seeking precisely these types of services or products;
- Business-to-Administration, which encompasses all transactions conducted online between companies and public administration; and
- Consumer-to-Administration, which comprises all electronic transactions conducted between individuals and public administration (Wienclaw, 2013).

All the above types of E-commerce can better develop and flourish if they are run in accordance with the principles of Sharia Economic Law, especially Sharia trade contract agreement discussed earlier. For an online business transaction to be valid according to the Sharia principle, there must two elements i.e., an *ijab* and a *qabul*, as stated earlier. The *ijab* is the bidding of the first party, while *qabul* is the acceptance of the offer. To be lawful and legitimate, a Sharia based ecommerce must meet three conditions namely: 1) *Sighah*, the statement of *ijab* and *qabul* from both parties. A *sighah* must be consistent with the *ijab* and *qabul*; 2) *Aqidan*: The parties engaged in the online business must have reached the legal age (*akil-baligh*) set by the national law, they must be in a sane state (not crazy) or have reasonable health and must be responsible in acting; and 3) *Mahal al-aqd* or object of contract such as information, services and products which are not prohibited (*halal*) by Sharia. If e-commerce is to succeed in Indonesia, it is crucial that there rules and principles be abided by, given the fact that Islam is the religion practiced by a vast majority of the Indonesian people. Complying e-commerce with Sharia rules and principles provides a safe environment whereby the interests of sellers and consumers are safeguarded. A Sharia based E-commerce could drive more individuals into doing business online, as they would feel more safe and comfortable both physically, as no bodily activities are involved and spiritually, as they would have the sense that they were living according to Islamic teachings. This is one of the reasons that drive many Indonesians business men and women into Sharia Economy. Sharia law prohibits engaging in activities or transactions that are considered harmful to people, society or the environment. This ethical approach is at the core of Islamic banking and avoids transactions involving usury, interest, speculation, gambling or industries contrary to Islamic values. So for investors that share these principles, irrespective of religion, Islamic finance provides a range of options. Under Sharia principle, the payment or receipt of all forms of interest (*riba*) is strictly forbidden by the Qur'an. This prohibition is intended to prevent exploitation in business. Sharia economy urges both parties to be mutually responsible thus protecting individual investors. Sharia economy promotes equality (*taswiyah*) and transparency in business transaction.

CONCLUSION

Online buying and selling is lawful according to Islamic law as long as it meets three criteria, namely: First: *Sighah*, the statement of *ijab* and *qabul* from both parties. A *sighah* must

be consistent with the *ijab* and *qabul*; Second: *Aqidan*: The parties engaged in the online business must have reached the legal age (*akil-baligh*) set by the national law, they must be in a sane state (not crazy) or have reasonable health and must be responsible in acting; and third: *Mahal al-aqd* or object of contract such as information, services and products which are not prohibited (*halal*) by Sharia. The single and double contract models that exist in *warung* business can be implemented in e-commerce contract. Sharia economic principles have the ability to boost e-commerce in Indonesia as they are oriented towards the promotion of sustainability, a key element of economic growth. Sharia Economic principles focus on the relationship between risk and profit and the social responsibilities of financial institutions and individuals. Because Sharia trade contract prescribes that both parties to a transaction explicitly share the risk as opposed to risk-transfer, Sharia economy seems to be more sustainable in creating a more inclusive economic system.

ENDNOTE

- Kamus Besar Bahasa Indonesia (KBBI). Warung, <http://kbbi.web.id/warung>
- Top 20 Internet User Statistics were updated in June 30, 2017. (2) Growth percentage represents the increase in the number of Internet users between the years 2000 and 2017. For more information, please visit: <http://www.internetworldstats.com/top20.htm>
- Visit: <http://startupbisnis.com/data-statistik-mengenai-pertumbuhan-pangsa-pasar-e-commerce-di-indonesia-saat-ini/> 12 November 2015.
- See article 26 of the Compilation of Sharia Economic Law.

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