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A REVIEW OF FIQH MUAMALAH ON CONSUMER PROTECTION IN THE E-COMMERCE ERA: AN ANALYSIS OF PERSONAL DATA, REFUND POLICIES, AND STANDARD CLAUSES

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Abstract The rapid growth of e-commerce in Indonesia brings economic efficiency but also creates major risks for consumers. These risks include the misuse of personal data, unfair refund policies, and one-sided standard contracts (adhesion contracts). This article examines these consumer protection issues by comparing Indonesian Positive Law with *Fiqh Muamalah* (Islamic Commercial Jurisprudence). Using a library research method, this study finds that cyber disputes mostly stem from *gharar* (uncertainty) and *jahalah* (lack of clear information). The analysis reveals that: (1) Islam views personal data protection as a sacred trust (*amanah*) to protect honor (*hifz al-'irdh*) and wealth (*hifz al-mal*). Data breaches are a transgression (*ta'addi*) that requires financial compensation and carries spiritual sanctions in the afterlife, a concept missing in state laws; (2) E-commerce refund policies use principles similar to the Islamic right of choice (*khiyar*). However, these policies are often unfair, either by forcing innocent buyers to pay return shipping or by letting bad-faith buyers exploit the system, which harms small sellers; (3) Standard contracts that free the platform from all liability are unjust. Although clicking "I agree" is a valid digital contract under Islamic law, hiding liability release clauses violates the principle of true mutual consent (*'an taradin*) and makes the contract void (*fasid*). Therefore, e-commerce platforms must create fair digital contracts and online dispute resolution systems based on mediation (*shulh*) to ensure mutual benefit.

Keywords: Fiqh Muamalah, E-Commerce, Consumer Rights, Khiyar, Data Protection, Adhesion Contract, Shulh.

Abstrak *Pertumbuhan pesat e-commerce di Indonesia membawa efisiensi ekonomi tetapi juga menciptakan risiko besar bagi konsumen. Risiko-risiko ini meliputi penyalahgunaan data pribadi, kebijakan pengembalian dana (refund) yang tidak adil, dan kontrak baku sepihak (kontrak id'an). Artikel ini mengkaji isu-isu perlindungan konsumen tersebut dengan membandingkan Hukum Positif Indonesia dengan Fikih Muamalah (Hukum Ekonomi Islam). Menggunakan metode penelitian kepustakaan, studi ini menemukan bahwa sengketa siber sebagian besar bermuara pada gharar (ketidakpastian) dan jahalah (ketiadaan informasi yang jelas). Analisis ini mengungkapkan bahwa: (1) Islam memandang perlindungan data pribadi sebagai amanah suci untuk melindungi kehormatan (hifz al-'irdh) dan harta*

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(hifz al-mal). Kebocoran data adalah sebuah bentuk pelanggaran batas (ta'addi) yang mewajibkan kompensasi finansial dan membawa sanksi spiritual di akhirat, sebuah konsep yang tidak ada dalam hukum negara; (2) Kebijakan pengembalian dana e-commerce menggunakan prinsip yang mirip dengan hak pilih dalam Islam (khiyar). Namun, kebijakan ini sering kali tidak adil, baik dengan memaksa pembeli yang tidak bersalah untuk membayar ongkos kirim pengembalian atau dengan membiarkan pembeli beriktikad buruk mengeksploitasi sistem, yang mana merugikan penjual kecil; (3) Kontrak baku yang membebaskan platform dari segala tanggung jawab adalah tidak adil. Meskipun mengeklik "Saya setuju" merupakan kontrak digital yang sah menurut hukum Islam, menyembunyikan klausul pelepasan tanggung jawab telah melanggar prinsip kerelaan mutlak ('an taradin) dan membuat kontrak tersebut rusak/batal (fasid). Oleh karena itu, platform e-commerce harus membuat kontrak digital yang adil dan sistem penyelesaian sengketa online berdasarkan mediasi (shulh) untuk memastikan kemaslahatan bersama.

Kata Kunci: *Fikih Muamalah, E-Commerce, Hak Konsumen, Khiyar, Perlindungan Data, Kontrak Id'an, Shulh.*

A. INTRODUCTION

The digital revolution has completely changed how people buy and sell goods. Transactions have moved from face-to-face meetings to virtual e-commerce platforms. This shift saves time and money, leading to massive economic growth. In 2023, Indonesia's e-commerce transactions reached Rp453.75 trillion, and the number of active users hit 65.65 million in 2024.[1]

However, this rapid growth has a downside: a massive increase in consumer disputes. According to the Ministry of Trade, over 90% of consumer complaints between 2022 and early 2025 came from online transactions.[2] This shows that current consumer protection laws are struggling to keep up with digital business trends.

E-commerce naturally creates an information imbalance. Buyers cannot physically inspect goods before paying, making them rely entirely on digital photos and marketing descriptions.[1] This makes consumers highly vulnerable. Today, consumer protection is no longer just about broken goods; it also involves digital privacy, data exploitation, and unfair contracts drafted by giant tech companies.

Currently, there are three main issues harming digital consumers:

1. **Data Privacy:** The leaking and selling of consumer personal data to third parties without clear, informed consent.

2. **Unfair Refund Policies:** Return policies are often biased. They either force buyers to pay for the seller's mistakes or allow dishonest buyers to easily return used goods, which hurts small business owners.
3. **One-Sided Contracts:** Platforms force users to agree to lengthy "Terms and Conditions" just to use the app. These contracts often contain clauses that completely free the platform from any legal responsibility if something goes wrong.[3]

Indonesia has laws to handle these issues, such as the Consumer Protection Law (UUPK), the Electronic Information and Transactions Law (UU ITE), and the new Personal Data Protection Law (UU PDP).[5] However, these laws are often reactive and strictly procedural.

To find a deeper, more ethical solution, this study looks at the issues through the lens of *Fiqh Muamalah* (Islamic Commercial Law).[6] For a Muslim-majority country like Indonesia, applying Islamic principles to digital business is both an ethical choice and a religious duty. Islamic law requires business to be based on honesty, true mutual consent (*'an taradin*), and fairness. It strictly forbids deception, hidden uncertainties (*gharar*), and practices that harm others (*la dharar wa la dhirar*).[1]

This research compares how national laws and Islamic laws address consumer protection in e-commerce, focusing on data privacy, refund policies, and standard contracts.

B. METHOD

This research uses a qualitative library research method. It compares concepts from national positive law with Islamic legal philosophy.[7] The goal is to find solutions by looking at the gaps in current civil laws and filling them with the ethical principles of *Fiqh Muamalah*.[8]

The data comes from primary and secondary legal sources. For national law, this includes the Civil Code (KUHPerdata), the Consumer Protection Law (UUPK) of 1999 [4], the UU ITE, the UU PDP of 2022, and relevant Supreme Court decisions.[9] The study also briefly compares Indonesia's data laws with Europe's GDPR and Singapore's PDPA.[5]

For Islamic law, the research relies on the Quran, Hadith, Islamic legal maxims (*qawaid fiqhiyyah*), and the Compilation of Sharia Economic Law. It also uses the writings of

modern Islamic scholars like Prof. Dr. Wahbah al-Zuhayli and fatwas (edicts) from the Indonesian Council of Ulema (DSN-MUI) regarding online shopping.[8]

C. RESULTS AND DISCUSSION

1. Personal Data Protection: National Law vs. Islamic Ethics

In the digital economy, personal data (like names, addresses, and shopping habits) has become a highly valuable asset. E-commerce platforms collect this data continuously, but poor security often leads to massive data breaches and the illegal sale of user profiles.[5]

a. The Legal Approach (UU ITE and UU PDP)

For years, Indonesia relied on the UU ITE to protect data. However, this law was too general, lacked clear security standards, and did not have strong financial penalties to punish careless corporations.[5] If a user's data was leaked to illegal online lenders, it was very hard for the user to get justice.

To fix this, Indonesia passed the Personal Data Protection Law (UU PDP) in 2022, which is similar to Europe's strict GDPR. The UU PDP gives consumers the right to delete their data and threatens careless companies with massive fines and jail time.[5] However, compared to countries like Singapore, Indonesia still struggles with enforcing these laws because it lacks an independent supervisory agency to monitor tech companies effectively.[7]

b. The Islamic Approach: Data as a Sacred Trust

While state laws view data as a civil right, Islamic law (*Fiqh Muamalah*) views it as a sacred trust (*Amanah*). Leaking or secretly selling user data is considered a serious betrayal (*Khianat*).[1]

Islamic scholars link data protection to two main goals of Sharia:

1. **Protecting Honor (*Hifz al-'Irdh*):** Privacy protects a person's dignity. Tracking a user's online habits to target them with ads without their consent is seen as a violation of their personal honor.[11]

2. **Protecting Wealth (*Hifz al-Mal*):** Because personal data is now a valuable commodity, it is treated like property. Stealing or misusing this data is equivalent to stealing someone's wealth.

The biggest difference between state law and Islamic law is the punishment. If a company fails to protect data (*tafrith*), Islamic law demands two things [11]:

1. **Worldly Compensation:** The company must fully reimburse the victim for financial losses (*daman*) and pay compensation for emotional or social damage (*diyah*).[11]
2. **Spiritual Punishment:** Even if a company escapes state fines, Islam teaches that they will be held accountable by God in the afterlife. This spiritual threat serves as a powerful moral guide for software developers and corporate executives to build highly secure systems.[11]

2. Refund Policies and the Islamic Right of Choice (*Khiyar*)

Because online buyers cannot physically touch a product before buying it, they are at a high risk of receiving damaged, fake, or incorrect items.[1] Therefore, a fair return and refund policy is essential for justice.

a. Consumer Protection Law vs. The Islamic Right of Choice Indonesian law (UUPK) states that sellers are strictly liable for product defects and must provide compensation.[14] Similarly, Islamic law protects buyers through the concept of *Khiyar* (the right to choose whether to complete or cancel a transaction).[16]

Many e-commerce platforms already use systems similar to *Khiyar*:

- **Khiyar al-'Aib (Defect):** Buyers can return an item if they discover a hidden defect after opening it.[17]
- **Khiyar al-Ru'yah (Inspection):** Buyers can cancel the purchase if the physical item looks completely different from the seller's online photos.[18]
- **Khiyar asy-Syart (Grace Period):** Platforms hold the buyer's money in a temporary account (escrow) for a few days to give the buyer time to inspect the goods.[18]

b. The Injustice of Return Shipping Costs Although refund policies exist, they are often unfair in practice. For example, if a seller sends a broken item, platforms sometimes force the innocent buyer to pay for the return shipping.[20]

Under Islamic law, making the victim pay for someone else's mistake is unjust and violates the principle of protecting wealth (*Hifz al-Mal*). The party at fault (either the careless seller or the shipping company) should pay the costs.[20] Furthermore, since platforms take a commission from every sale, Islamic principles dictate that they must also share the burden of solving disputes and covering return costs when systems fail.[4]

c. Dishonest Buyers and the "Video Unboxing" Rule On the other hand, some platforms offer "free returns for any reason" to attract customers. Sadly, dishonest buyers abuse this by stealing the real product, returning a fake one, or using an item and then returning it.[21]

In Islamic law, abusing the refund system to harm small sellers is a sin and an act of oppression (*Dharar*). When automated platform bots automatically approve these fraudulent returns without letting the seller defend themselves, the platform is facilitating injustice.[21]

To stop this, sellers now require buyers to record a "Video Unboxing" as proof of damage. Islamic law considers this video a valid form of evidence (*Bayyinah*).[22] However, sellers cannot use the lack of a video as an absolute excuse to reject legitimate claims, such as a laptop whose internal battery dies a week later.[22]

3. The Unfairness of Standard E-Commerce Contracts

To use an e-commerce app, consumers must click "I Agree" to a long list of Terms and Conditions. These contracts are entirely written by the platform, leaving the user with only two choices: accept everything or do not use the app.

a. National Law on Liability Release Clauses Indonesian Consumer Protection Law (UUPK) strictly forbids companies from using "exoneration clauses"—rules that completely free the company from responsibility if something goes wrong.[3] However, many platforms still hide these illegal clauses in their terms, stating things like, "The platform is just an intermediary and is not responsible for any losses." Under Indonesian civil law, these clauses are invalid.[24]

b. The Islamic View on Forced Contracts In Islamic law, a contract forced upon a user with no room for negotiation is called an *'Aqd al-Id'an* (adhesion contract).[25]

Islamic councils in Indonesia agree that clicking "I Agree" on a screen is a valid way to make a contract.[8] However, the contract is only lawful if both parties truly understand and agree to it (*'an taradin*).

Because these digital contracts are extremely long and full of confusing legal jargon, users never read them. This creates a state of ignorance (*Jahalah*). Prominent Islamic scholar Wahbah al-Zuhaili argued that such forced contracts are only acceptable for vital public utilities managed by the government (like water or electricity), where prices are strictly regulated.[26]

Using these forced contracts in private e-commerce to hide clauses that strip consumers of their rights is deceptive. When a platform controls the payment system, the shipping, and the marketplace, it cannot simply write a rule saying it is "not responsible" for anything. In Islamic law, any contract condition that destroys the core purpose of fairness and protection is considered void (*fasid*).[26]

4. An Islamic Solution for Online Dispute Resolution (ODR)

Handling e-commerce disputes is difficult because there are thousands of complaints every day, mostly involving small amounts of money. Going to a traditional physical court for a $5 defective item is a waste of time and money.[1]

Islamic law offers a practical solution through *Shulh* (peaceful mediation and compromise).[1] Instead of relying on rigid, unfeeling AI bots that automatically approve or reject refunds based on keywords, platforms need to upgrade their Online Dispute Resolution (ODR) systems.[21]

An Islamic-based ODR system would use human mediators (*hakam*) employed by the platform to carefully review digital evidence (like chat logs and unboxing videos) fairly. The goal is not just to refund money, but to restore trust (*Amanah*) between buyers, sellers, and couriers. Building a fair, mediation-based system ensures that the entire e-commerce ecosystem operates ethically and sustainably.

D. CONCLUSION

Based on a comparative analysis, relying only on state laws to protect e-commerce consumers is not enough, as laws often lag behind technology. Integrating the ethical principles of *Fiqh Muamalah* provides a much stronger foundation for consumer safety.

Personal data must be treated as a sacred trust. Companies that fail to protect it should face not only state fines but also the moral weight of spiritual accountability. Refund policies must be balanced; it is unjust to make innocent buyers pay for return shipping, just as it is a sin for dishonest buyers to abuse return guarantees to scam small sellers.

Finally, the practice of forcing consumers to agree to standard contracts that free the platform from all liability is illegal under national law and void under Islamic law, as it violates the principle of true mutual consent. To fix these issues, e-commerce platforms must design better Online Dispute Resolution (ODR) systems driven by human mediation (*shulh*) rather than blind algorithms, ensuring that the digital marketplace remains fair, transparent, and trustworthy.

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