

THE APPLICATION OF THE PRINCIPLE OF KHIYAR IN ONLINE SALES TRANSACTIONS: A COMPARATIVE STUDY OF ISLAMIC ECONOMIC LAW AND LAW NO. 8 OF 1999 ON CONSUMER PROTECTION

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ABSTRACT

The transformation of the global economic landscape through the e-commerce ecosystem has triggered a shift in consumer behavior from physical (brick-and-mortar) markets to the digital space. However, the remote and intangible nature of digital transactions presents legal challenges in the form of information asymmetry, which places consumers in a position of unequal bargaining power, particularly regarding the risks of hidden defects and discrepancies in product descriptions. This study aims to examine and compare consumer protection in e-commerce between national positive law and Sharia Economic Law. The research method used is a normative legal (literature review) approach, employing both a comparative approach and a conceptual approach. The results of the study indicate that both legal systems share a philosophical common ground in upholding transactional justice and reducing information asymmetry. Substantively, the regulations on the right to information and compensation in Articles 4 and 7 of Law No. 8 of 1999 on Consumer Protection (UUPK) as well as the PMSE Government Regulation align with the flexibility of the legal institutions of Khiyar Ru'yah, Khiyar 'Aib, and Khiyar Syarat. The formal differences lie in the theological-moral foundation of khiyar versus the positivistic-secular nature of the UUPK, as well as the operational focus of khiyar on the independent status of contractual choice versus the UUPK's emphasis on strict liability following a loss. This study concludes that the architecture of modern digital e-commerce (features such as returns, refunds, and escrow accounts) actually facilitates the operational implementation of classical khiyar concepts, such that the harmonization of these two systems can strengthen the moral legitimacy and legal certainty of the digital commerce ecosystem in Indonesia.

Keywords: Information Asymmetry, E-commerce, Islamic Economic Law, Khiyar, Consumer Protection.

INTRODUCTION

The contemporary global economic landscape is undergoing a phase of structural transformation driven by the information and communication technology revolution. The presence of the internet as a global digital infrastructure has dematerialized the barriers of geography, time, and space, which in turn has given rise to a new economic ecosystem. One of the most significant manifestations of this technological disruption is the emergence and rapid growth of electronic commerce (e-commerce) (Ulum, 2020).

In Indonesia, the growth of the digital market is following a very rapid exponential trajectory. Supported by widespread internet penetration, massive smartphone adoption, and the availability of inclusive digital payment infrastructure, Indonesia has now become one of the largest e-commerce hubs in Southeast Asia. The presence of various giant marketplace platforms both local and international has provided a platform for millions of businesses, ranging from multinational corporations to Micro, Small, and Medium Enterprises (MSMEs), to interact directly with hundreds of millions of potential consumers without the need for multiple layers of intermediaries, as is typical in conventional business models (Apriliana, 2024).

The acceleration of the digital industry has inherently triggered a massive shift in cultural paradigms and consumer shopping behavior. Shopping activities, which in previous decades relied heavily on physical presence at traditional markets or brick-and-mortar shopping centers, have now shifted to digital spaces. This transformation in consumer behavior is driven by various efficiency benefits offered by the digital commercial ecosystem. Modern consumers have adopted online shopping as their primary choice due to its undeniable practicality including time savings, the ease of comparing product specifications and prices in real time, the availability of an unlimited variety of goods, and integrated logistics systems capable of delivering items directly to their doorsteps (Saputra et al., 2023).

However, this major leap in the world of digital commerce is a double-edged sword. On the one hand, it offers extraordinary market efficiency and opens up new avenues of economic growth for businesses. On the other hand, the shift in the medium of transactions from the physical, real-world realm to the digital, virtual realm radically alters the fundamental legal foundations of traditional contractual relationships (Apriliana, 2024). Civil relationships between sellers and buyers, which were originally rooted in the principles of face-to-face interaction, must now be renegotiated in a cyberspace fraught with contractual uncertainty, the technical complexity of algorithms, and the anonymity of the parties which ultimately carries serious legal implications, particularly regarding the protection of consumer rights.

Empirical evidence in the e-commerce industry shows that the efficiency of digital transactions often comes at a high cost, as it gives rise to various specific legal challenges not found in conventional commerce. The root of all the legal complexities in online sales transactions stems from one fundamental condition: the phenomenon of information asymmetry (Nursela, 2019). In economic theory and contract law, information asymmetry refers to a situation in which one party to a transaction (in this context, the business entity or seller) has far superior, more complete, detailed, and accurate access to information regarding the actual condition, quality, specifications, and flaws of the object being sold, compared to the other party (namely, the consumer).

This information gap arises structurally due to the inherent nature of e-commerce transactions themselves, which are intangible and remote. In conventional buying and selling, the essence of a contractual agreement is based on direct observation of the goods. Buyers visit a store, see the goods with their own eyes, feel their texture, test their functionality, and ensure there are no physical defects before making payment. In contrast, within the e-commerce ecosystem, buyers have absolutely no physical capacity to inspect, handle, or test the goods they wish to purchase directly at the time the agreement or digital transaction is concluded (Ulum, 2020).

E-commerce consumers are entirely forced to remain passive and rely on the digital representations or visualizations of cosmetics provided by sellers in their online storefronts (Alhamdani et al., 2023). These digital representations include digitally edited product photos, often hyperbolic text descriptions, short, specially staged demonstration videos, as well as reviews and star ratings from other buyers that are susceptible to algorithmic manipulation, such as the practice of fake reviews. This situation places buyers in a highly vulnerable, speculative position, where they purchase "digital expectations" rather than the physical reality of the goods.

The legal consequences of this information asymmetry are tangibly manifested in the form of a high risk of material loss for consumers, which primarily manifests in two major problem areas. First, the risk of hidden defects in goods, as buyers cannot inspect the goods independently before shipment; this creates a wide moral loophole for

unscrupulous businesses to ship goods with functional defects or internal structural damage (Nubahai, 2023). These defects are often deliberately concealed behind neat packaging or not shown in product photos. Consumers only become aware of these defects after the transaction is completed electronically, the funds are transferred to the seller, and the goods arrive at the delivery address and are unpacked (Chusma et al., 2021).

Second, the risk of product description mismatches. This issue is one of the most prevalent types of consumer disputes in the world of e-commerce. This risk involves a significant gap between the visual quality of the product as promised on a monitor or mobile device and the physical reality of the product received by the consumer. This type of discrepancy takes many forms, ranging from striking color differences due to lighting effects in product photos, discrepancies in size or physical dimensions, differences in raw materials (for example, genuine leather promised but imitation leather shipped), to a reduction in functionality and technical performance compared to the specifications listed in the product description.

Theoretically, in these digital business relationships, the bargaining power between sellers and buyers is at a point of extreme imbalance. Businesses have absolute control over the manipulation of product information, pricing, and the drafting of standard electronic terms and conditions that unilaterally bind consumers. Meanwhile, consumers are in a very weak and passive position, with their economic and legal rights threatened due to the lack of tools to verify the subject of the transaction at the time the contract is concluded. If the actual goods received turn out to be disappointing, consumers are vulnerable to suffering unilateral losses without having sufficient bargaining power to mount a balanced legal defense.

Faced with the massive risks of loss borne by digital consumers due to information asymmetry, product defects, and discrepancies in product descriptions, the establishment of a fair, responsive, and practical mechanism for redress has become an urgent humanitarian and legal necessity. The law must not stand idly by and allow the digital market to operate strictly under the "caveat emptor" principle, which places the entire burden of bad transactions on consumers. Instead, to ensure the sustainability of the digital economy and public trust, the legal framework must shift toward the "caveat venditor" principle, where transactional justice is upheld by providing balanced protection for aggrieved consumers.

The essence of upholding justice in e-commerce transactions lies in guaranteeing consumers the right to make post-purchase choices: namely, the right to cancel the transaction or the right to proceed with the transaction with fair compensation. This right to choose is not merely a regulatory nicety, but a fundamental legal instrument that serves to balance the equal standing of the contracting parties. When goods received by a consumer are found to have hidden defects or do not match the description provided by the seller, philosophically speaking, the free will and mutual consent which are prerequisites for the validity of a contract are legally flawed or compromised. Consumers agree to such transactions based on incorrect or misleading information presented by business operators (Chusma et al., 2021).

Therefore, fairness demands that consumers be granted full legal authority to restore their position to its original state. If a consumer chooses to cancel a transaction, legal mechanisms must ensure the return of the goods from the consumer to the seller, accompanied by a full refund without any exploitative fees. This cancellation is essential to eliminate the financial losses resulting from the seller's manipulative actions or negligence. Conversely, if the consumer believes the goods are still usable despite minor

defects, the consumer must be given the option to proceed with the transaction while retaining the right to receive proportional compensation, a price reduction, or an exchange for new goods that meet the warranty specifications (Sofyan, 2021).

Within the framework of Indonesian positive law, the urgency of this protection has in fact been generally accommodated in Law No. 8 of 1999 on Consumer Protection (UUPK). Article 4 of the UUPK affirms consumers' right to accurate, clear, and truthful information regarding the condition and warranty of goods, as well as the right to receive compensation, damages, or a replacement if the goods received do not conform to the agreement. However, the procedures for claiming redress under the UUPK are often bureaucratic, formalistic, and require dispute resolution through external institutions such as the Consumer Dispute Resolution Agency (BPSK) or the courts, which in terms of time and cost efficiency are not commensurate with the value of e-commerce transactions, which are often of small value (Hanafi, 2020).

In light of these operational weaknesses, Sharia Economic Law offers a highly ingenious and practical normative-substantive solution through the institution of *Khiyar*. The concept of *Khiyar* in Islamic law is the right of the party entering into a contract to proceed with the sale or cancel it due to specific Sharia-based reasons, in order to uphold public interest and prevent harm (*dafi' al-mudarat*). In the specific context of e-commerce transactions, where the buyer does not physically inspect the goods, Sharia Economic Law introduces the instruments of *Khiyar Ru'yah* (the right to choose based on visual inspection) and *Khiyar 'Aib* (the right to choose due to defects) (N. S. R. I. Imaniyati, 2011).

Khiyar Ru'yah grants the buyer a constitutional right to cancel or proceed with the transaction upon the goods' initial arrival and physical inspection, as compensation for the absence of an inspection at the outset of the contract. Meanwhile, *Khiyar 'Aib* grants a similar right if a hidden defect is discovered that reduces the value of the goods. The advantage of the *Khiyar* concept is that it is automatically inherent by law as part of the integrity of the transaction contract, providing protection that is private, immediate, independent, and grounded in noble religious morality without having to go through complex litigation procedures (Rifai, 2022).

The urgency to study and compare these two legal systems (the UUPK and Sharia Economic Law) is crucial for formulating a new legal framework for the future of e-commerce in Indonesia. Harmonizing the certainty of the state's positive regulations with the flexibility and fairness of the principle of *Khiyar* in Sharia Economic Law is expected to yield a comprehensive regulatory synthesis for digital commerce. Such regulations will not only protect consumers' economic rights from the pitfalls of information asymmetry and fraud in the digital realm, but will also help build a national digital business ecosystem that is fair, transparent, and ethical—one that enjoys strong moral legitimacy among the Indonesian public. Based on this rationale, this research focuses on an in-depth study titled: **"The Application Of The Principle Of *Khiyar* In Online Sales Transactions: A Comparative Study Of Islamic Economic Law And Law No. 8 Of 1999 On Consumer Protection"**.

RESEARCH METHODOLOGY

This study employs a normative legal research methodology (juridical-normative), also known as library research (Soekanto, 2005). Normative legal research focuses on the analysis of written legal norms, legal principles, regulatory harmonization, and legal doctrines related to the research subject. In this context, the research aims to conduct an in-depth examination of the substance of consumer protection legal norms in Law No.

8 of 1999 (UUPK) and the theoretical concept of the right of choice (khiyar) within the realm of contemporary Fiqh Muamalah (Islamic Economic Law) as it relates to electronic commerce (e-commerce) transactions.

This study employs two main approaches: first, the Comparative Approach. This approach is used to compare two distinct legal systems, namely national positive law (UUPK) and Sharia Economic Law (specifically the institutions of Khiyar Ru'yah and Khiyar 'Aib). Second, the Conceptual Approach. This approach draws on doctrines, perspectives, and theoretical ideas that have developed within legal scholarship. The researcher uses this approach to dissect theoretical concepts such as information asymmetry, the bargaining positions of the parties, the principle of consent (an-taradin), and the principle of business operator liability as analytical tools to construct a robust legal argument (Assyakurrohim et al., 2010).

As a literature review, the data used are derived entirely from secondary sources, which are classified into two types of legal materials, namely: Primary Legal Sources, which are authoritative legal sources (having legally binding force), include: Law No. 8 of 1999 on Consumer Protection (UUPK), Book III of the Civil Code (KUHP) on Contracts. The Compilation of Sharia Economic Law (KHES) and Fatwas of the National Sharia Council-Indonesian Ulema Council (DSN-MUI) relevant to digital sales and purchases. Secondary Legal Sources, which provide explanations regarding primary legal sources, such as textbooks on Fiqh Muamalah, consumer protection legal literature, legal academic journals, academic papers, previous research findings, and scholarly articles related to the application of khiyar and e-commerce.

The collection of legal materials is conducted through documentary research (literature review). The researcher searched for, inventoried, read, recorded, and classified written legal materials, ranging from state regulations and classical and contemporary fiqh texts to valid digital literature. The collected legal materials were then selected based on their direct relevance to the issue of applying the principle of khiyar and consumer protection in online transactions.

All of the categorized legal materials were analyzed using a descriptive-qualitative method with deductive reasoning. "Descriptive" means that the researcher will clearly and thoroughly describe the normative characteristics of the UUPK and Sharia Economic Law. "Qualitative" refers to an in-depth analysis of the substantive quality of legal norms (rather than statistical data). Furthermore, through deductive reasoning, the researcher draws conclusions from general premises—such as theories, regulations, and macro-legal doctrines to specific facts, namely the effectiveness and form of the future reconstruction of e-commerce consumer protection laws in Indonesia.

RESULTS AND DISCUSSION

The Principle of Khiyar in Online Sales Transactions (From the Perspective of Islamic Economic Law)

1. Conceptualization of Khiyar

Etymologically, khiyar means to choose or determine the best option. In the field of Sharia Economic Law, khiyar is defined as the right of the party entering into a contract to proceed with the sale or purchase or to cancel it due to certain sharia-based reasons (Ulum, 2020). The existence of this legal institution is not merely a formal contractual formality but an essential instrument for upholding the principle of an-taradin (mutual consent), which serves as the pillar of the validity of every

commercial contract, as mandated in Surah An-Nisa, verse 29. From a Sharia perspective, consent must not arise from coercion, manipulation, or ignorance. Therefore, khiyar serves to protect the buyer's autonomy of will from potential harm (darar) resulting from defects in information or the subject matter of the transaction.

2. Contextualization in the Digital Age

In the e-commerce ecosystem, sales contracts have evolved into the salam or istishna' models, in which payment is made in advance and the goods are delivered later (Zuhdi, 2017). Given that digital transactions are intangible and remote in nature, the principle of khiyar finds its crucial operational relevance through the following three manifestations:

Khiyar Ru'yah (Right of Choice Based on Viewing the Object): This legal institution grants the buyer a constitutional right to cancel or proceed with the transaction upon seeing the physical item for the first time. In the digital age, consumers are compelled to purchase the "visual expectations" presented in marketplace listings. When the goods arrive at the destination address and are physically inspected, Khiyar Ru'yah provides a legal framework for consumers to conduct objective verification. If the physical quality of the goods fails to meet the initial contractual expectations, the buyer has the legal right to cancel the contract.

Khiyar 'Aib (Right of Choice Due to Defects): This right arises automatically if the item received by the buyer has hidden defects that reduce its value, function, or utility—defects that existed prior to delivery but were unknown to the buyer. In online transactions, the risk of moral hazard where businesses conceal structural damage to goods is extremely high (N. S. Imaniyati, 2011). Khiyar 'Aib provides an immediate solution: the buyer can return the defective item and demand a full refund.

Khiyar Syarat (Right of Choice Based on Agreement): This right arises when one or both parties set a specific deadline at the outset of the contract to test, evaluate, or reconsider the continuation of the transaction (Hasanah, 2024). In the world of e-commerce, Khiyar Syarat manifests precisely in the form of warranty periods or return policies provided by the platform (for example, a complaint deadline of up to hours or hours after the item is marked as "Received"). During this suspension period, the buyer's funds are held in the platform's escrow account and are not yet transferred to the seller, giving the buyer time to decide on their course of action (Hanafi, 2020).

Consumer Protection in Online Transactions (From the Perspective of Law No. 8 of 1999/UUPK)

1. Consumer Rights (Article 4 of the UUPK)

Law No. 8 of 1999 on Consumer Protection (UUPK) establishes legal protection through the codification of fundamental consumer rights set forth in Article 4. In the context of online shopping, these rights evolve into a shield of digital protection that includes: The right to comfort, security, and safety in consuming goods and/or

services, meaning that the products delivered must be functionally safe. The right to accurate, clear, and honest information regarding the condition and warranty of goods and/or services. This right is violated when businesses digitally manipulate product visuals or provide misleading, hyperbolic descriptions. The right to receive compensation, damages, and/or a replacement if the goods and/or services received do not conform to the agreement or are not as they should be.

2. Obligations of Business Entities (Article 7 of the UUPK)

As a counterpart to consumer rights, Article 7 of the UUPK imposes a series of strict obligations on digital businesses. Businesses are required to act in good faith in conducting their business activities and must provide accurate, clear, and truthful information. Specifically, Article 7(g) of the UUPK emphasizes the obligation of businesses to provide compensation, damages, and/or restitution if the goods provided do not conform to what was agreed upon. This provision applies the civil law doctrine that any breach of contract by a digital seller gives rise to an immediate obligation to remedy the consumer's losses.

3. Returns/Complaints Process

Operationally, the enforcement of consumer rights in online transactions no longer relies on conventional bureaucratic channels through the BPSK or the courts. The implementation of product return guarantees in e-commerce is now progressively regulated through regulations derived from the UUPK, specifically Government Regulation No. 80 of 2019 on Trade Through Electronic Systems (PP PMSE). This regulation requires every marketplace platform to provide a customer dispute resolution feature. Modern marketplace systems provide a "File a Complaint/Return" button before funds are transferred to the seller. This mechanism compels businesses to comply with a digital mediation process, whereby if a product is found to be non-compliant, the item must be recalled and the platform automatically issues a refund to the consumer's digital wallet.

Comparative Analysis: Commonalities and Differences

To map the functional relationship between Sharia Economic Law and Indonesian Positive Law in regulating digital commerce, the following table presents a summary of a comparative analysis between the institution of Khiyar and the Consumer Protection Act (UUPK):

Comparison Elements	Khiyar (Islamic Economic Law)	Consumer Protection Law (UUPK)
Sources of Law	Theological sources (the Qur'an, Hadith, Fiqh Muamalah).	Positive State Law (Laws, Government Regulations).
Main Objectives	To uphold the principles of an-taradin, economic justice, and blessings.	To ensure legal certainty and balance bargaining power.

Operational Focus	Selection of the contract status from the outset of the transaction.	Liability for damages (remedy) after a loss.
Nature of Protection	Inherent and automatic in private law to ensure the integrity of the contract.	Public-regulatory in nature with external sanctions imposed by the state.

1. Similarities (Common Ground)

Although born from different epistemological roots, these two legal systems converge at a single philosophical point: upholding transactional justice, preventing fraud (gharar in Sharia / fraud in positive law), and providing legal protection for parties in a position of unequal bargaining power namely, consumers. From a sociological-empirical perspective, the refund and return systems integrated by today's modern marketplace giants represent a substantive adoption of the spirit of Khiyar 'Aib and Khiyar Syarat. When an app's system allows buyers time to inspect an item before finalizing an order, the platform has indirectly incorporated ancient Islamic legal principles into the architecture of modern digital programming code to create a transparent and ethical marketplace.

2. Differences in Formal Elements

Behind their similarities, there are fundamental differences in the formal elements and operational mechanisms of the two systems:

Theological vs. Positivist Foundations: The principle of khiyar is deeply rooted in religious texts with a transcendental moral-spiritual dimension. A violation of the right of khiyar (such as concealing a defect) not only implies the nullification of the contract under Islamic civil law but also carries the consequence of theological sin. Meanwhile, the UUPK is derived purely from the state's secular positive law, where compliance is enforced through explicit secular sanctions, ranging from administrative sanctions (revocation of business licenses) to criminal penalties.

Operational Mechanisms: The concept of khiyar emphasizes the right to choose the legal status of the contract itself (whether the contract is void or continues) from the moment the goods are identified, and this right is inherent as a private right that can be exercised independently by the parties without government intervention. In contrast, the UUPK places greater emphasis on the aspect of strict liability of business operators to pay compensation following the occurrence of actual losses, with a resolution mechanism that is formally oriented toward the involvement of external state institutions (such as the BPSK or the courts) should internal mediation efforts reach an impasse.

CONCLUSION

Based on the results of the comparative analysis presented above, it can be concluded that the principle of khiyar in Islamic Economic Law offers a very high degree of flexibility and adaptability, and is substantially aligned with the principles of modern consumer protection enshrined in Law No. 8 of 1999 (UUPK). These two legal systems

share a philosophical common ground in reducing information asymmetry, upholding transactional justice, and restoring the balance of bargaining power to protect the rights of buyers or consumers from the risks of hidden defects or discrepancies in product descriptions.

Furthermore, the modernization of trade through today's e-commerce ecosystem does not hinder the implementation of Islamic law; rather, it facilitates the visualization and operational implementation of the concept of *khiyar*, which was conventional in nature during the classical period. The presence of complaint features, product return guarantees, refunds, and the holding of funds in escrow accounts within digital platforms constitutes a precise architectural manifestation of the doctrines of *Khiyar Ru'yah*, *Khiyar 'Aib*, and *Khiyar Syarat*. The harmonization between the legal certainty of state regulations and the flexibility of the moral and spiritual values inherent in the *khiyar* principles demonstrates that Sharia Economic Law is capable of providing both ethical legitimacy and robust practical solutions in realizing a fair, transparent, and accountable digital business ecosystem in Indonesia.

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