

***Khiyar* in Buying and Selling Online  
Based on the *Fiqh* Perspective**

**Dwi Novita<sup>1</sup>, Luthfi El-Falahi<sup>2</sup>, Haris Maiza Putra<sup>3</sup>**

Sekolah Tinggi Ilmu Ekonomi Syariah Nahdatul Ulama Bengkulu<sup>1</sup>

Institut Agama Islam Negeri Curup<sup>2</sup>

Sekolah Tinggi Agama Islam Al-Falah Cicalengka Bandung<sup>3</sup>

[dwinovitaekis@gmail.com](mailto:dwinovitaekis@gmail.com)<sup>1</sup>, [Lelfalahy@gmail.com](mailto:Lelfalahy@gmail.com)<sup>2</sup>,

[harismaiza@staialfalah.ac.id](mailto:harismaiza@staialfalah.ac.id)<sup>3</sup>

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**Abstract**

The problem of *fiqh* continues to develop toward the progress of the times, the purpose of this study is to examine the comparison of *fiqh* about buying and selling connected between the concept of *fiqh* in Islam and buying and selling online. The method in this study uses a qualitative method with literature or library research. The research materials were obtained from the books, scientific journals, and the internet related to *fiqh* comparisons about buying and selling. The results of the study showed that Islam clearly regulates buying and selling, related to online buying and selling in the form of e-commerce through online buying and selling applications, it is legal as long as the business does not contain prohibited elements. Online sales transactions where the goods are only based on the description provided by the seller are considered valid, but if the description of the goods does not match then the buyer has the right of *khiyar* which allows the buyer to continue the purchase or cancel it. The practice of *khiyar* in e-commerce transactions can be seen in the form of the consumer's ability to return goods, returned goods can be exchanged for similar goods or ask for a refund that has been paid.

**Keywords:** *Fiqh* comparison; buying and selling; e-commerce

## Abstrak

Permasalahan fiqih terus berkembang mengikuti kemajuan zaman, tujuan penelitian ini adalah untuk mengkaji perbandingan fikih tentang jual beli dihubungkan antara konsep fikih dalam Islam dengan jual beli online. Metode dalam penelitian ini menggunakan metode kualitatif dengan kepustakaan atau *library research*, yaitu bahan penyelidikan lebih banyak diperoleh daripada buku-buku atau bahan-bahan lain yang berupa buku, jurnal ilmiah, dan internet yang berhubungan dengan perbandingan fikih tentang jual beli. Hasil penelitian menunjukkan bahwa Islam mengatur dengan jelas tentang jual beli, terkait jual beli online dalam bentuk *e-commerce* melalui aplikasi jual beli online hukumnya boleh selama bisnis tersebut tidak mengandung elemen yang dilarang. Transaksi penjualan online dimana barang hanya berdasar pada deskripsi yang disediakan oleh penjual dianggap sah, namun jika deskripsi barang tidak sesuai maka pembeli memiliki hak khayar yang memperbolehkan pembeli untuk meneruskan pembelian atau membatalkannya. Praktik khayar dalam transaksi *e-commerce* dapat dilihat dalam bentuk kesanggupan konsumen untuk mengembalikan barang, barang yang dikembalikan dapat ditukar dengan barang sejenis atau meminta pengembalian uang yang telah dibayarkan.

**Kata Kunci:** Perbandingan fikih; jual beli; *e-commerce*

## Introduction

Islam is a universal and comprehensive religion. Universal means that Islam is intended for all mankind on earth and can be applied at any time and place until the end of time. Comprehensive means that Islam has complete and perfect teachings.<sup>1</sup> In Islamic economics itself, what is prioritized in doing business is not only worldly profits but also profits in the hereafter.<sup>2</sup> More like improving superior facilities and so on all need to be done in a business.<sup>3</sup> Then, online buying and selling is also very permissible in Indonesia.

Sources of law in Islam are very urgent in managing life to get blessings and a good and right life goal because the source of law is a way of life for every

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<sup>1</sup> Haris Maiza Putra, Dede Abdurrohman, and Hisam Ahyani, "Eksistensi Filsafat Ekonomi Syari'ah sebagai Landasan Filosofis Perbankan Syari'ah di Indonesia," *Ecobankers: Journal of Economy Banking* 3, no. 1 (2022): 30–42.

<sup>2</sup> Nanang Naisabur and Haris Maiza Putra, "Tabarru Contracts in the Form of Self Guarantee and Providing Something," *International Journal of Nusantara Islam* 9, no. 2 (December 13, 2021): 262–93, <https://doi.org/10.15575/ijni.v9i2.14301>.

<sup>3</sup> Hisam Ahyani et al., "Standardization of Companies and The Islamic Business Environment in Indonesia," *Jurnal Ilmiah Ekonomi Islam* 8, no. 1 (2022): 10–22.

Muslim.<sup>4</sup> Allah Swt prescribes buying and selling as an opportunity and flexibility for His servants because all humans personally have needs in the form of clothing, food, and boards. Needs like this never end as long as humans are still alive. No one can meet the needs of his own life; therefore humans are required to relate to each other. In this relationship, nothing is more perfect than an exchange, where someone gives what he has and then he gets something useful from others according to their respective needs.<sup>5</sup>

In today's digital era of globalization almost all lines of life undergoing a digital transformation, including buying and selling activities.<sup>6</sup> Along with the advancement of telecommunications technology, it is as if everyone is in one room where they can greet each other and work in cyberspace, including *muamalah*. Technology really helps humans to fulfill their mandatory needs.<sup>7</sup> Internet facilities are very helpful for humans so that they can interact, communicate, and even advances in internet technology can provide benefits as an effective and efficient promotional media for a product.<sup>8</sup>

The process of buying and selling goods and services can be done in the grip of an electronic network-based finger. This is what is called e-commerce. The presence of e-commerce makes it very easy for people to buy a product. From a business perspective, they can further expand their market reach. Dissemination of information about a product can be done more quickly and has a very broad scope, so this has begun to shift consumption patterns and ways and has even become part of people's lifestyles.<sup>9</sup>

Buying and selling or trading according to language means *al-bai'* and *al-tijarah*. The essence of buying and selling in terms is the transfer of ownership of an item that has value and can be measured in monetary units. This measure of value becomes the basis for determining the price of goods and the policy of profit-taking. Therefore it is necessary to bargain as a form of fulfillment of

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<sup>4</sup> Dede Abdurohman, Haris Maiza Putra, and Hisam Ahyani, "Sumber Dan Norma Ekonomi Syariah Dalam Lembaga Keuangan Syariah (LKS) Perbankan Syariah Dan Koperasi Syariah," *Ecobankers: Journal of Economy Banking* 3, no. 1 (2022): 22–29.

<sup>5</sup> Abdul Aziz Muhammad Azzam, *Fiqh Muamalat* (Jakarta: Amzah, 2010), 87–88.

<sup>6</sup> Qanitah An Nabila A'yun et al., "Implementasi Etika Bisnis Islam dalam Transaksi Jual Beli Online Pada E-Commerce Populer di Indonesia," *Jurnal Perbankan Syariah Darussalam (JPSDa)* 1, no. 2 (2021): 166–81.

<sup>7</sup> Teti and A. Syathir Sofyan, "Implementasi Khayar Dalam Jual Beli Online (Studi Kasus Ketidaksiesuaian Objek Pada Marketplace Shopee)," *Bilancia* 15, no. 2 (2021): 179–206, <https://jurnal.uindatokarama.ac.id/index.php/blc/article/view/821>.

<sup>8</sup> Juhrotul Khulwah, "Jual Beli Dropship dalam Prespektif Hukum Islam," *Al-Mashlahab Jurnal Hukum Islam dan Pranata Sosial* 7, no. 01 (September 1, 2019): 101–15, <https://doi.org/10.30868/am.v7i01.548>.

<sup>9</sup> Zayudi and Juniar Adi Candra, "Analisis Praktek Jual Beli Online Di Toko Barokah Hijab Prabumulih Dalam Perspektif Fiqih Muamalat," *Adl Islamic Economic* 2, no. 2 (n.d.): 121–42.

voting rights when the transaction occurs.<sup>10</sup> One of the morals that should not be forgotten is that even though a Muslim has made millions of dollars in profits through trade and transactions, he must not forget his creator. He did not forget to uphold religious law, especially prayer which is an eternal relationship between humans and their God.<sup>11</sup>

Buying and selling mean exchanging goods for goods or goods for money, by releasing property rights from one person to another based on the willingness of both parties.<sup>12</sup> Buying and selling is an action or transaction that has been prescribed by Islam. That is, all aspects and mechanisms of buying and selling are clear in Islam.

Several previous studies that discussed *khayar* in the perspective of *fiqh* include:

The practice of buying and selling pre-order contracts at an online shop is the same as buying and selling greetings contracts, except that they are done face to face but using the internet. Buying and selling pre-orders in an online shop displays goods in the form of displays and descriptions of these goods to the customer, then the customer orders with details of the size and color of the desired item, then the ordered goods will be carried out with an agreed processing time agreement then after the goods are finished, the goods will be sent to customers with expedition services until the receipt of the goods in the hands of the customer, then *khayar* in buying and selling pre-order online shops occurs indirectly when the customer gives testimonials to the online shop owner in the form of customer satisfaction, disappointment or complaints about the goods received can be categorized as *khayar majlis* because the buyer and the seller are still in one transaction bond. After that, the testimonial will be responded to by the owner, who if there is a disappointment, the owner will respond in the form of an offer to return or return the goods or money if the goods received are damaged or have defects, in this case, the *khayar* disgrace takes place. Therefore, even though online buying and selling are hindered by internet limitations, it does not make the recommended value of transactions in Islam disappear, such as the practice of *khayar* in this online shop pre-order transaction which occurs indirectly.<sup>13</sup>

Another research, the application of *khayar* in online buying and selling contracts in Ex. Pabiringa district. Binamu Kab. Jeneponto has not run

<sup>10</sup> Dwi Suwikyo, *Ayat-ayat Ekonomi Islam* (Yogyakarta: Pustaka Pelajar, 2010), 125.

<sup>11</sup> Yusuf Qardawi, *Norma Dan Etika Ekonomi Islam* (Jakarta: Gema Insani, 1997), 193.

<sup>12</sup> Ibnu Mas'ud and Zainal Abidin, *Fiqih Mazhab Syafi'i* (Bandung: CV Pustaka Setia, 2007), 22.

<sup>13</sup> Dafiqah Hasanah, Mulyadi Kosim, and Suyud Arif, "Konsep Khayar pada Jual Beli Pre Order Online Shop dalam Perspektif Hukum Islam," *IQTISHODUNA: Jurnal Ekonomi Islam* 8, no. 2 (October 4, 2019): 249–60, <https://doi.org/10.36835/iqtishoduna.v8i2.426>.

according to the rules. This is caused by a lack of understanding of the concept of *khayar* in buying and selling online. From several interviews that the author did, there was no concept of the application of *khayar* rights.<sup>14</sup>

Oktasari's research concludes that *khayar* is stipulated in Islam to guarantee the willingness and mutual satisfaction of the parties to the contract in a sale and purchase. The practice of *khayar* is not carried out properly in buying and selling transactions, the seller does not want to serve the buyer who complains about the quality of the goods that have been purchased or are different from what he wants and does not want to accept or replace the goods. The *khayar* rights that are not implemented in this sale and purchase make the buyer more careful in transacting so as not to regret when a sale and purchase contract has occurred.<sup>15</sup>

Dalimunte's research concludes that Islamic law recognizes the concept of *khayar*, where the *khayar* applied here is *khayar* disgrace. This *khayar* disgrace, according to the agreement of the *fiqh* scholars, is valid since it is known that the defect in the goods being traded can be inherited by the heirs of the *khayar* right owner. Defective merchandise must be borne by the seller to the buyer to maintain the values and rules of Islamic law. The positive effect of trust in online transactions will have a significant impact on both sellers and buyers.<sup>16</sup>

The main problem phenomenon is that transactions are carried out conventionally, namely in a trading system where sellers and buyers meet directly. The goods to be sold are near the buyer, switching to an online system which is the opposite of the usual (conventional) buying and selling where the buyer and seller do not meet in person and the goods being traded are only in the form of pictures or writings that explain the specifications of the goods to be sold. This means that transactions can be carried out at anytime, anywhere, by accessing the desired product system on the internet network. So that the problem of *khayar* rights arises in the validity of this online buying and selling transaction. The main problem phenomena that will be discussed in this article are The concept of buying and selling in Islam, pillars, and terms of sale and purchase, and *khayar* in buying and selling online based on the *fiqh* perspective.

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<sup>14</sup> Mulyawana Abd Gafur and Abdul Wahid Haddade, "Perlindungan Kosnumen dalam Akad Jual Beli Online Atas Hak Khayar Perspektif Hukum Islam," *Shautuna Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 1, no. 3 (2020): 321–37.

<sup>15</sup> Orin Oktasari, "Al-Khayar dan Implementasinya dalam Jual Beli Online," *Jurnal Aghinya STIESNU Bengkulu* 4, no. 1 (2021): 39–48.

<sup>16</sup> Nikmah Dalimunte, "Tinjauan Khayar Terhadap Pertanggungjawaban Penjual Online Terhadap Barang Yang Cacat," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-undangan, Ekonomi Islam* 11, no. 1 (October 23, 2019): 74–98, <https://doi.org/10.32505/jurisprudensi.v11i1.1111>.

This research method is library research. The approach is done by analyzing and interpreting things that are theoretically related to research.<sup>17</sup> This study uses a descriptive method by describing in detail the *kebijaran* in buying and selling online based on the *fiqh* perspective. The data used are primary data obtained from the documentation by adopting the opinions of experts and practitioners, who have an understanding of the issues discussed.<sup>18</sup> Looking for data about *kebijaran* in buying and selling online based on the *fiqh* perspective. Where the data sources are obtained from various books, journals, and the internet, as well as other sources relevant to the research discussion.<sup>19</sup>

## Discussion

### The concept of buying and selling in Islam

In language (etymology), buying and selling are defined مُقَابَلَةٌ الشَّيْءِ بِالشَّيْءِ (Exchange something for something else).<sup>20</sup> Buying and selling or trading in *fiqh* terms are called *al-bai'* which according to etymology means selling or replacing. Wahbah al-Zuhaili defines it linguistically as "exchanging something for something else". The word *al-bai'* in Arabic is sometimes used for the meaning of its opposite, namely the word *al-syira'* (buy). Thus the word *al-bai'* means to sell, but at the same time, it also means to buy.<sup>21</sup> Thus the words buying and selling indicate that there are two actions in one event, namely one party selling, and the other giving, so in this case, there is a legal event of buying and selling.<sup>22</sup>

According to the term (terminology) what is meant by buying and selling are as follows:

According to the Hanafi scholars:

مُبَادَلَةٌ مَالٍ بِمَالٍ عَلَى وَجْهِ مَخْضُوصٍ

"Exchange of property (objects) with property based on a special (permissible) method"<sup>23</sup>

<sup>17</sup> Haris Maiza Putra and Ending Solehudin, "Fundamentals of Economic and Monetary Policy in Islam," *Al-Falah: Journal of Islamic Economics* 7, no. 1 (2022): 16, <https://doi.org/10.29240/alfalah.v7i1.4302>.

<sup>18</sup> Haris Maiza Putra and Hisam Ahyani, "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (2022): 23, <http://dx.doi.org/10.30984/jis.v20i1.1861>.

<sup>19</sup> Pat Kurniati et al., "Cara Mudah Belajar Menulis Jurnal Menggunakan Referensi Otomatis Microsoft Word dan Zotero," *Jurnal Ilmiah P2M STKIP Silivangi* 9, no. 1 (2022): 44, <https://doi.org/10.22460/p2m.v9i1.3131>.

<sup>20</sup> Chairuman Pasaribu and Suhrawardi K Lubis, *Hukum Perjanjian Dalam Islam* (Jakarta: Sinar Grafika, 1993), 73.

<sup>21</sup> Abdul Rahman Ghazaly, *Fiqh Muamalah* (Jakarta: Prenada Media Group, 2010), 67.

<sup>22</sup> Pasaribu and Lubis, *Hukum Perjanjian Dalam Islam*, 73.

<sup>23</sup> Rachmat Syafe'i, *Fiqh Muamalah* (Bandung: CV Pustaka Setia, 2001), 73.

According to Imam Nawawi:

مُتَابَلَةٌ مَالٍ بِمَالٍ تَمْلِكًا

“Exchange of property for property for possession”<sup>24</sup>

According to Ibnu Qudamah:

مُبَادَلَةٌ الْمَالِ بِالْمَالِ تَمْلِكًا وَتَمْلُكًا

“Exchange of wealth for property to make each other's property”<sup>25</sup>

According to Sayyid Sabiq:

مُبَادَلَةٌ مَالٍ بِمَالٍ عَلَى سَبِيلِ التَّرَاضِي، أَوْ نَقْلُ مِلْكٍ بِعَوَضٍ عَلَى الْوَجْهِ الْمَأْدُونِ فِيهِ.

“Exchange of property for a property based on mutual acceptance”. Or transfer property with justifiable change”<sup>26</sup>

The definition above contains the meaning of a special way, what the Hanafi scholars mean by these words is through consent and *qabul*, or it is also permissible to give goods and prices to each other from the seller and the buyer. In addition, the property that is traded must be useful for humans, so that carrion, liquor, and blood are not included in something that can be traded, because these objects are detrimental to humans. If these types of goods are still being traded, according to Hanafi scholars, the sale and purchase are not valid.<sup>27</sup>

From some of the meanings above, there are differences, only that they are the same, namely the existence of an exchange between something (goods, money) with something else, which can be in the form of goods and money to have each other. If the exchange between money and ordinary money is known as foreign exchange in conventional and *sharf* in sharia. The exchange of money for goods, and the exchange of goods for goods (barter).

In the above definition, there are the words "treasure", "owned", "change" and "can be justified" (*al-ma'dzun filh*). What is meant by "wealth" above is everything that is owned and useful. What is meant by "owned" so that it can be distinguished from that which does not belong? What is meant by "replace" so that it can be distinguished from grants (gifts)? While what is meant by "justifiable" (*al-ma'dzun filh*) so that it can be distinguished from prohibited buying and selling.<sup>28</sup>

<sup>24</sup> Syafe'i, 74.

<sup>25</sup> Syafe'i, 74.

<sup>26</sup> Ghazaly, *Fiqh Muamalah*, 67.

<sup>27</sup> Ghazaly, 68.

<sup>28</sup> Ghazaly, 67.

## Pillars and Terms of Sale and Purchase

This sale and purchase agreement is a legal act that has the consequence of the transfer of rights to an item from the seller to the buyer, then by itself in this legal act, the pillars and conditions of the sale and purchase must be fulfilled. In an act of buying and selling, these three pillars must be fulfilled, because if one of the pillars is not fulfilled, then the act cannot be categorized as an act of buying and selling.

The pillars of buying and selling consist of three, namely the contract (*ijab qabul*), people who are in a contract (seller and buyer), and *ma'qud alaihi* (object of the contract).<sup>29</sup> While the pillars of buying and selling according to the majority of scholars there are four, namely *bai'* (seller), *mustari* (buyer), *shighat* (*ijab* and *qabul*), and *ma'qud 'alaiih* (objects or goods).<sup>30</sup>

The conditions for buying and selling there are four conditions, namely the conditions for the occurrence of the contract (*in'iqad*), the conditions for the validity of the contract, and the conditions for the implementation of the contract (*nafadz*), and the *lujum* conditions (necessity). In general, the purpose of all these conditions, among others, is to avoid conflicts between humans, maintain the benefit of people who are in the contract, avoid buying and selling *gharar* (there is an element of fraud), and others.<sup>31</sup>

The terms of sale and purchase are by the pillars of buying and selling stated by the majority of scholars above as follows:

### 1. Requirements for people who have a contract

First, Reasonable. Therefore, buying and selling carried out by small children who have no sense and crazy people, the law is not valid. As for a child who has *mumayyiz*, according to Hanafi scholars, if the contract he does brings benefits to him, such as receiving grants, wills, and alms, then the contract is valid. On the other hand, if the contract brings harm to him, such as lending his property to someone else, donating it, or donating it, then the legal action cannot be carried out.<sup>32</sup>

Second, the person performing the contract is a different person. This means that a person cannot act at the same time as a seller and a buyer. For example, if Ahmad sells and buys his goods at the same time, then the sale and purchase are not valid.

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<sup>29</sup> Hendi Suhendi, *Fiqih Mua'malah* (Jakarta: PT. Raja Grafindo Persada, 2005), 70.

<sup>30</sup> Syafe'i, *Fiqih Muamalah*, 76.

<sup>31</sup> Syafe'i, 76.

<sup>32</sup> Ghazaly, *Fiqh Muamalah*, 72.

## 2. Conditions related to consent *qabul*

First, the person who said it was mature and intelligent. Second, *qabul* is by consent. For example, the seller says: "I sold this book for Rp. 20,000, then the buyer replied: "I bought this book for Rp. 20,000. If the consent and *qabul* do not match, the sale and purchase are invalid.<sup>33</sup>

Third, *ijab* and *qabul* are carried out in one assembly. In modern times, the embodiment of *ijab* and *qabul* is no longer spoken but is carried out with the attitude of taking goods and paying money by the buyer, and receiving money and handing over the goods by the seller without saying anything. In Islam buying and selling like this is called *ba'i al-mu'athab*. In the case of the embodiment of consent and *qabul* through this attitude (*ba'i al-mu'athab*) there are differences of opinion among *fiqh* scholars. The majority of scholars think that this kind of buying and selling is legal if it is a habit of the people in an area because this has shown the mutual willingness of both parties.<sup>34</sup>

However, the Syaf'iyah scholars argue that buying and selling transactions must be carried out with clear speech or satire through consent and *qabul*. Therefore, according to them, buying and selling as in the case above (*ba'i al-mu'athab*) is not legal, whether buying and selling is in large or small parties. The element of willingness is a hidden problem in the heart, so it needs to be expressed with the words of consent and *qabul*.<sup>35</sup>

## 3. The terms of the goods being traded (*ma'qud alaih*)

First, the goods exist or are not in place, but the seller declares his ability to procure the goods.<sup>36</sup>

Second, it can be used and can be useful for humans. Therefore, carrion, wine, and blood are not legitimate objects for buying and selling, because in the view of *syara'* such objects are not useful for humans.

Third, belonging to someone. Goods that are not owned by a person may not be traded, such as selling fish in the sea or gold in the ground, because these fish and gold are not owned by the seller.

Fourth, it can be submitted in an ongoing contract or at a mutually agreed time when the transaction takes place.

## ***Khiyar* in Buying and Selling Online Based on the *Fiqh* Perspective**

In buying and selling there is such a thing as *khiyar* rights. The meaning of *khiyar* according to language is to choose, while according to the term *khiyar*

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<sup>33</sup> Ghazaly, 73.

<sup>34</sup> Ghazaly, 74.

<sup>35</sup> Ghazaly, 74.

<sup>36</sup> Ghazaly, 75.

is the right to vote for one or both parties to continue or cancel the sale and purchase. The types of *khayar* are as follows:

1. *Khayar majlis*. *Khayar majlis* is the right to vote to continue or cancel the sale and purchase contract while still in the contract assembly or the place of the contract.
2. *Khayar syarath*. *Khayar syarat* are the right to choose to continue or cancel the sale and purchase contract within a certain period.
3. *Khayar 'aib*. *biyar aib*, the right to choose to continue or cancel the sale and purchase contract if defects or disgrace are found in the goods being exchanged.
4. *Khayar ru'yah*. *Khayar ru'yah*, the buyer's right to choose to continue or cancel the sale and purchase contract when he sees the goods to be purchased. This *khayar* is carried out when the buyer's transaction does not see the goods. For example, *khayar ru'yah* applies when buying and selling online.
5. *Khayar ta'yin*. *Khayar ta'yin*, is the right owned by the person who transacts (generally the buyer), to make a choice between 3 properties of the goods to be transacted. Usually, the goods sold are divided into special, medium, and ordinary.<sup>37</sup>

The question that arises is, when we make a sale and purchase transaction, the pillars and conditions must be fulfilled. In the conditions we are facing now, buying and selling COD (Cash on Delivery) has become an ancient or outdated thing, for the next 20/30 years, in the author's view, buying and selling COD (Cash on Delivery) or face-to-face will decrease. This is due to advances in technology and the development of an era that is increasingly advancing day by day.

Conventional trading transactions have turned to online systems. This trading system is the same as a general sale and purchase agreement, except that the seller and the buyer do not need to meet face to face. This activity moves as if without a foothold because there are no regulations specifically created for cyberspace in terms of protection of the parties who transact, including buying and selling agreements, and juridical characteristics of consumer data confidentiality that benefit both parties. But all of that is not a barrier for business people to run their business.<sup>38</sup> Various kinds of online service facilities available in the community, ranging from online payment facilities, and online

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<sup>37</sup> Uyuunul Husniyyah, "Tinjauan Fiqh Muamalah Terhadap Akad Jual Beli Online Pada Layanan Go-Mart di Aplikasi Go-Jek," *Al-Iqtishod* 2, no. 2 (2020): 105–21.

<sup>38</sup> Trisna Taufik Darmawansyah and Miko Polindi, "Akad As-Salam Dalam Sistem Jual Beli Online (Studi Kasus Online Shopping Di Lazada.Co.Id)," *Jurnal Aghinya STIESNU Bengkulu* 3, no. 1 (2020): 20–39.

shopping, to online transportation can easily be enjoyed through e-commerce facilities that are widely available today.<sup>39</sup>

There have been many studies discussing this online buying and selling, but because online buying and selling did not exist at the time of the Salaf scholars, contemporary scholars searched for the law of buying and selling online measured in terms of whether or not the terms and conditions were fulfilled. This is commonplace because buying and selling are considered valid when the pillars and conditions are met.

*Khayar* is stipulated in Islam to guarantee the willingness and mutual satisfaction of the parties to the contract in a sale and purchase. The practice of *khayar* is not carried out properly in buying and selling transactions, the seller does not want to serve the buyer who complains about the quality of the goods that have been purchased or are different from what he wants and does not want to accept or replace the goods. The *khayar* rights that are not implemented in this sale and purchase make the buyer more careful in transacting so as not to regret when a sale and purchase contract has occurred.<sup>40</sup>

Furthermore, what the author will discuss in writing this research is whether the contract is used in buying and selling online. And is there a *khayar* right in buying and selling online?

In the virtual world, the buyer will never know whether the goods being traded are legitimate or not, meaning that the goods are obtained in a good way, not the result of stealing and the like. Or the goods are counterfeit but are said to be original goods, or maybe even the goods are illegal which is commonly known as the black market. The object of buying and selling as mentioned above is very possible to be traded online. In addition to the 4.0 technology era, Indonesia is currently in the covid19 pandemic, where people cannot do outside activities freely, so online services are needed to meet their needs that can reduce activities outside the home.<sup>41</sup>

From the explanation above, it is necessary to study online buying and selling. The study of *fiqh* will give birth to several laws, namely valid, *fasad*, or void. Thus, there are several problems namely. Buying and selling online has fulfilled the terms and conditions so that the contract is valid, or even if there are several pillars and conditions, but there is something that breaks the contract

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<sup>39</sup> Muhammad Yunus, Fahmi Fatwa Rosyadi Satria Hamdani, and Gusti Khairina Shofia, "Tinjauan Fikih Muamalah Terhadap Akad Jual Beli dalam Transaksi Online Pada Aplikasi Go-Food," *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah* 2, no. 1 (January 31, 2018): 134–46, <https://doi.org/10.29313/amwaluna.v2i1.3363>.

<sup>40</sup> Oktasari, "Al-Khiyar dan Implementasinya dalam Jual Beli Online," 39–48.

<sup>41</sup> Dede Abdurohman, Haris Maiza Putra, and Iwan Nurdin, "Tinjauan Fiqih Muamalah Terhadap Jual Beli Online," *Ecopreneur: Jurnal Ekonomi dan Bisnis* 1, no. 2 (2020): 14, <https://doi.org/10.47453/ecopreneur.v1i2.131>.

so that the law is *fasd*, and whether buying and selling online is not fulfilled the pillars and conditions so that the contract is canceled.<sup>42</sup>

The forms of contracts that can be adopted in online transactions are *bai' al-murabahah* and *bay' as-salam*. *Bai' al-murabahah* is the sale and purchase of goods at the original price with an agreed additional profit. While *bay' al-salam* is the provision of goods that are submitted at a later date, payments are made at the beginning of the transaction.<sup>43</sup>

First, online sales must display the full appearance and specifications of the goods to be sold. **Second**, It must be added with an additional contract, namely the right to vote for the buyer if the goods sent are not by the specifications agreed upon at the beginning of the agreement. **Third**, Using a secure payment medium aims to protect the seller's side as well as the buyer's side. Pleasure is an important element in a sale and purchase in Islam because pleasure can also be used as a benchmark or indicator that the sale and purchase are on the right corridor and in its implementation by Islamic law.<sup>44</sup>

In buying and selling online, it provides an overview of the specifications of the goods to be sold, so the contract that can be used is the *salam* contract. A *Salam* contract is an order contract for goods whose characteristics are stated, in which the buyer of the goods submits money for the price of the ordered goods, the goods being ordered are the responsibility of the recipient of the order. According to Sayid Sabiq, *as-salam* is also called *as-salaf* (introduction). Namely the sale of something with certain criteria (which are still in the account) with hastened payment.

Regarding the second question, is there a *khayar* right in buying and selling online? The *khayar* right in online buying and selling is specifically intended to ensure that the contract occurs with the full willingness of the parties concerned, where willingness is one of the principles for the validity of a contract. *Khayar* rights are important in online buying and selling, especially during a pandemic so that one of the parties is not harmed. There are several types of *khayar* in buying and selling, including *khayar* conditions, *khayar ta'yin*, *khayar 'aib*, *khayar ar-ru'yah*, and *khayar majlis*.<sup>45</sup>

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<sup>42</sup> Abdurohman, Putra, and Nurdin.

<sup>43</sup> Muhammad Deni Putra, "Jual Beli Online Berbasis Media Sosial dalam Perspektif Ekonomi Islam," *ILTIZAM Journal of Shari'ah Economic Research* 3, no. 1 (4 Juni 2019): 83–103, <https://doi.org/10.30631/iltizam.v3i1.288>.

<sup>44</sup> Ahliwan Ardhinata and Sunan Fanani, "Keridhaan (Antaradhin) Dalam Jual Beli Online (Studi Kasus UD. Kuntajaya Kabupaten Gresik)," *Jurnal Ekonomi Syariah Teori dan Terapan* 2, no. 1 (December 1, 2015): 47–60, <https://doi.org/10.20473/vol2iss20151pp47-60>.

<sup>45</sup> Muzalifah Muzalifah, "Keabsahan Akad Jual Beli Online Muslim Kelas Menengah Kota Yogyakarta Pasca Pandemi Covid-19," *TAWAZUN: Journal of Sharia Economic Law* 4, no. 1 (June 29, 2021): 1, <https://doi.org/10.21043/tawazun.v4i1.9434>.

Based on research Ana and Andriko<sup>46</sup>, the implementation of the *khiyar* contract at Lazada is to facilitate the seller's service to the buyer via telephone, chat and others. The characteristics of buying and selling transactions in online business, namely; 1) The existence of transactions for sellers and buyers; 2) There is an exchange of goods and services as well as information; 3) Using the internet as the main tool in conducting transactions. From these characteristics, there are things that distinguish between buying and selling at Lazada with offline business or face-to-face transactions, namely, the transaction method (contract) and the main means in the process.

Furthermore, the practice of *khiyar* in e-commerce transactions can be seen from the existence of a policy on the ability of consumers to return goods, returned goods can be exchanged for similar goods or ask for a refund of the money that has been paid. Returns of goods can be made if the consumer has met the terms and conditions set by the e-commerce party. The terms and conditions for returning goods can be seen from several aspects, namely, in terms of goods, the period of return, and refunds.<sup>47</sup>

The status of *khiyar* in the view of *fiqh* scholars is that it is prescribed or allowed, because of an urgent need to consider the benefit of each transaction. Every valid contract is binding since the contract took place and has no *khiyar* option. Therefore, in the binding contracts, all the legal consequences of the contract, the rights, and obligations of the parties to the contract that have been effective will occur (agreed).<sup>48</sup> In buying and selling, *khiyar* applies. *Khiyar* according to article 20 paragraph 8 of the Compilation of Sharia Economic Law, namely the right to vote for the seller and the buyer to continue or cancel the sale and purchase contract made.<sup>49</sup>

Throughout the author's search, the *khiyar* rights that apply in online buying and selling are only *khiyar* disgrace or defects. When the goods ordered are not by what was received, the buyer can submit a claim by opening the package received, there must be proof of documentation. This is based on a literature search in Amirudin's research which concludes that *khiyar* is an indispensable instrument in e-commerce transactions. *Khiyar* gives buyers the

<sup>46</sup> Risna Ayuni Ana and Andriko, "Tinjauan Hukum Islam Terhadap Pelaksanaan Akad Khiyar Pada Jual Beli Online," *Studia Economica: Jurnal Ekonomi Islam* 8, no. 1 (2022): 14, <http://dx.doi.org/10.30821/se.v8i1.12323>.

<sup>47</sup> Jamilah Jamilah and Firmansyah Firmansyah, "Tinjauan Fikih Muamalah Terhadap Penerapan Khiyar Dalam Transaksi E-Commerce," *Jurnal Ekonomi dan Perbankan Syariah* 6, no. 1 (August 26, 2019): 51, <https://doi.org/10.46899/jeps.v6i1.87>.

<sup>48</sup> Gafur and Haddade, "Perlindungan Kosnumen dalam Akad Jual Beli Online Atas Hak Khiyar Perspektif Hukum Islam," 322–37.

<sup>49</sup> Daharmi Astuti, "Persepsi Masyarakat Terhadap Akad Jual Beli Online Perspektif Ekonomi Syariah," *Syarikat: Jurnal Rumpun Ekonomi Syariah* 1, no. 1 (June 30, 2018): 13–26, [https://doi.org/10.25299/syarikat.2018.vol1\(1\).2625](https://doi.org/10.25299/syarikat.2018.vol1(1).2625).

option of exchanging and returning goods that have been received and whose terms have been regulated by each seller. There are four (4) types of *khīyar* that are centered in his research, only *khīyar* disgrace is applied by e-commerce companies.<sup>50</sup>

Just like business in general, online business in the sharia economy is also divided into halal and haram, legal or illegal. Prohibited online businesses are online gambling businesses, trade-in prohibited goods such as drugs, pornographic videos, goods that violate copyright, weapons, and other objects that have no benefits. In essence, an online business is a business based on muamalah. Online business is permitted (*ibahah*) as long as the business does not contain prohibited elements. Online sales transactions where the goods are only based on the description provided by the seller are considered valid, but if the description of the goods does not match then the buyer has the right of *khīyar* which allows the buyer to continue the purchase or cancel it.<sup>51</sup>

## Conclusion

The teachings of *fiqh* regulate buying and selling, both in terms of the legal basis, pillars, conditions, permitted buying and selling, and forbidden buying and selling. Regarding buying and selling online or e-commerce, buying and selling are allowed as long as it fulfills the terms and conditions of buying and selling and no party is harmed in the sale and purchase. *Khīyar* rights are important in online buying and selling, especially during a pandemic so that one of the parties is not harmed. The status of *khīyar* in the view of *fiqh* scholars is that it is prescribed or allowed, because of an urgent need to consider the benefit of each transaction. Every valid contract is binding since the contract took place and has no *khīyar* option. *Khīyar* according to article 20 paragraph 8 of the Compilation of Sharia Economic Law, namely the right to vote for the seller and the buyer to continue or cancel the sale and purchase contract made. The practice of *khīyar* in e-commerce transactions can be seen from the existence of a policy on the ability of consumers to return goods, returned goods can be exchanged for similar goods or ask for a refund of the money that has been paid. Returns of goods can be made if the consumer has met the terms and conditions set by the e-commerce party. The terms and conditions for returning goods can be seen from several aspects, namely, in terms of goods, the period of return, and refunds.

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<sup>50</sup> Muhammad Majdy Amiruddin, "Khiyār (hak untuk memilih) dalam Transaksi On-Line: Studi Komparasi antara Lazada, Zalara dan Blibli," *FALAH: Jurnal Ekonomi Syariah* 1, no. 1 (March 5, 2016): 48–62, <https://doi.org/10.22219/jes.v1i1.2695>.

<sup>51</sup> Tira Nur Fitria, "Bisnis Jual Beli Online (Online Shop) dalam Hukum Islam dan Hukum Negara," *Jurnal Ilmiah Ekonomi Islam* 3, no. 01 (31 Maret 2017): 52, <https://doi.org/10.29040/jiei.v3i01.99>.

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