

E-COMMERCE IN THE CONTEXT OF ISLAMIC LAW OF CONTRACT OF SALE

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ABSTRACT

The world of commerce has been evolved a few decades ago with the introduction of internet. From that moment, the way we trade, communicate, and do business has changed thoroughly, as the impact of the internet on the business landscape could not be avoided. With the development of Internet, it does not only become a way of communicating or information gathering but also change the way of people doing businesses. From a traditional way of people meeting transactions, today business can be conducted online electronically. This era is called the electronic-commerce (e-commerce) era. There are growing concerns among the e-commerce customers especially among Muslims all over the world regarding the validity of this electronic business transaction from the Shariah perspectives particularly in the light of the Islamic law of contract of sale and purchase. This paper will highlight the Shariah guidelines and standard in governing the contract of sale and purchase which occurs within the purview of e-commerce transaction.

Keywords: E-commerce, Islamic law of contract , online business

ABSTRAK

Dunia perdagangan telah berkembang beberapa dekad lalu dengan pengenalan internet. Dari saat itu, cara kita berdagang, berkomunikasi, dan menjalankan perniagaan telah berubah dengan sewajarnya, kerana kesan internet terhadap lanskap perniagaan tidak dapat dielakkan. Dengan perkembangan Internet, ia bukan sahaja menjadi alat untuk berkomunikasi atau mengumpulkan maklumat tetapi juga mengubah cara manusia menjalankan perniagaan. Dari cara tradisional manusia mengurus niaga, hari ini perniagaan boleh dijalankan secara dalam talian elektronik. Era ini dipanggil era perdagangan elektronik (e-dagang). Terdapat kebimbangan yang semakin meningkat di kalangan pelanggan e-dagang terutamanya di kalangan umat Islam di seluruh dunia mengenai kesahihan urus niaga perniagaan ini dari perspektif Islam terutamanya berdasarkan kepada undang-undang kontrak menurut Syariah. Makalah ini akan menyerlahkan garis panduan dan standard Syariah dalam mentadbir kontrak jualan belian yang berlaku dalam urus niaga e-dagang ini.

Kata Kunci: E-commerce, Islamic law of contract , online business

INTRODUCTION

Electronic commerce or e-commerce is a term used to refer to any type of business, or commercial transaction , that involves the transfer of information across the Internet. With the existence of e-commerce, it allows consumers to electronically do businesses and exchange goods and services with no barriers of time or distance. Generally e-commerce refers to all forms of commercial transactions involving individuals and organizations based on the processing and transmission of digital data including texts, sounds and images by using all

sorts of multimedia facilities exist to date. It enables potentially billions of consumers and business people worldwide to be engaged in business activities (Poong, et all, 2006) . E-commerce also can be described as a business conducted through the use of computers, telephones, fax machines, barcode readers, credit cards, automated teller machines (ATM) or other electronic appliances (whether or not using the internet) without the exchange of paper-based documents. The most popular e-commerce activity involves the buying and selling of goods online. This online business is one way of doing business where buyer and seller are not affected by time, location or distance because it is convenient and time saving (Huseynor & Yildirim, 2014). E-commerce, however includes also other business activities such as the procurement, order entry, transaction processing, payment, authentication and non-repudiation, inventory control, order fulfilment, and customer support. According to The Organization for Economic Cooperation and Development (OECD), e-commerce is a “ business occurring over networks which use non-proprietary protocols that are established through an open standard setting process such as the Internet. The term ‘business’ broadly means all activities that generate value both within a firm(internally) and with suppliers and customers (externally). In this sense, it would include internal networks (i.e intranets) as well as networks that extend to a limited number of participants (i.e. extranets). Some of this activities may result in a monetary transaction and some will not” (OECD, 1999). Further, Joseph defines e-commerce as the practice of buying and selling products and services over the internet, utilizing technologies such as the web, electronic data interchange, email, electronic fund transfers, and smart cards (Joseph, 2000).

Networked computing is the infrastructure for e-commerce, and it is rapidly emerging as the standard computing environment for business, home, and government applications. Networked computing connects multiple computers and other electronic devices located in several different locations by telecommunications networks, including wireless ones. Allow users to access information stored in several different physical locations and to communicate and collaborate with people separated by great geographical distances. Basically, e-commerce can be conducted in three (3) places , those are in an electronic market (e-market place) where buyers and sellers meet to exchange goods, services, money, or information on online basis, in an inter organizational information systems where the communications system allows routine transaction processing and information flow between two or more organizations and in an intra organizational information systems where the communication systems enable e-commerce activities to go on within individual organizations. The transactions handled by the e-commerce can be classified according to the nature of the transactions or interactions between the individual and the institutions involved . Those transactions might cover several types of businesses below:

- i Business-to-business (B2B)
The e-commerce model of transaction in which one business sells products or services to another business. For example, a manufacturer can sell its products or services to a wholesaler, or a wholesaler can sell to a retailer and vice versa.
- ii Business-to-consumer (B2C)
The e-commerce model in which one business entity sells its products to an individual shopper/ consumer directly by way of online shopping
- iii E-tailing
Electronic retailing is the sale of goods and services through the internet. Electronic retailing, or *e-tailing*, can include business-to-business (B2B) and business-to-

consumer (B2C) sales of products and services, through subscriptions to website content, or through advertising

- iv Business-to-business-to-consumer (B2B2C)
This is an emerging e-commerce model that combines Business to Business (B2B) and Business to Consumer (B2C) for a complete product or service transaction. B2B2C is a collaboration process that, in theory, creates mutually beneficial service and product delivery channels through internet. It is a business or transaction conducted directly between a company and consumers who are the end-users of its products or services.
- v Consumer-to-business (C2B)
The e-commerce model in which individuals use the Internet to sell products or services to organizations or individuals seek sellers to bid on products or services they need.
- vi Consumer-to-consumer (C2C)
The e-commerce model in which consumers or customers sell directly to one another goods or services .
- vii Peer-to-peer
Technology that enables networked peer computers to share data and processing with each other directly; can be used in C2C, B2B, and B2C e-commerce.
- viii Mobile commerce (m-commerce)
The e-commerce transactions and activities conducted in a wireless environment.
- ix Location-based commerce (L commerce)
The e-commerce transactions targeted to individuals in specific locations, at specific times.
- x Intra business e- commerce
The e-commerce category that includes all internal organizational activities that involve the exchange of goods, services or information of various units and individuals in an organization
- xi Business-to-employees (B2E)
E-commerce model in which an organization delivers services, information, or products to its individual employees
- xii Collaborative commerce (c-commerce)
E-commerce model in which individuals or groups communicate or collaborate online
- xiii E-learning
The online delivery of information for purposes of training or education
- xiv Exchange (electronic)
A public electronic market with many buyers and sellers

- xv Exchange-to-exchange (E2E)
E-commerce model in which internet is used as a medium to *exchange* of information or transactions between web sites that themselves serve as *exchanges* or brokers for goods and services between businesses
- xvi E-government
E-commerce model in which a government entity buys or provides goods, services, or information to individual citizens

Therefore, the e-commerce transaction is a commercial transaction through electronic media. Not necessarily via internet but also covers all commercial electronic media such as facsimile, telex, electronic data interchange and telephone. To do electronic commerce, the seller whether he/she is the individual or organization, will start with a website or homepage in which he/she will provide necessary information regarding the products/ services he /she wishes to sell including the profile of the company. The consumer site as a prospective buyer, will view and make a choice whether to buy or not such products/ services. The first business process in e-commerce is called the information sharing. In this process, the seller will promote the products and services he/she intended to sell while the buyer will make an effort to get as much information about the products or services that they want before buying. The next process is placing the order online and getting the products/services electronically. Two contracting parties must perform certain activities until the transaction is done legally and correctly. This e-commerce transaction can be done through a specific network such as EDI (Electronic Data Interchange) or extranet.

In e-commerce, the business dealing process involves four(4) flows of entities that should be done clearly. Namely the flow of goods and services (digital or non digital), the flow of information (products details and description), the flow and mode of payment(credit card, debit card etc.) and the flow of documents(quotation, invoice and etc.). These four (4) flows must be synchronized with the e-commerce facilities so that the transactions will be considered as to be concluded successfully. The process of buying and selling in the electronic commerce is conceptually similar to traditional paper based commercial transactions in which under the business environment, one party, that is the seller sells his/her products/ services by exchanging prices, terms and conditions to any potential buyers. Furthermore, the other party that is the buyer will buy, negotiate the prices and terms, place the orders and make payment. These processes are concluded by the delivery of the purchased products/services. The only different is that in e-commerce the process of buying and selling and transfer of possession of goods/ services is done electronically, in space not face to face. The wide usage of e-commerce businesses nowadays attracts many Muslim consumers as well as scholars to question the legality of this online contract. Addressing this respect requires Islamic jurists and scholars to fully scrutiny the transaction to determine its legality according to Sharia perspectives. This type of transaction should be clear and free from ambiguity and fulfilled all the requirements as underlined by the Sharia (Maisarah, 2015)

E- COMMERCE FROM THE SHARIAH PERSPECTIVES

Islam recognizes the importance of business and trading whether it is done traditionally or online as sources of wealth and for the roles it can play in the development of the country and the Muslim community as a whole. Yusof Qardawi mentioned in his book entitled “The Lawful and Prohibited in Islam”, that Islam does not prohibit any trade except those which involves injustice, cheating, making exorbitant profits or the promotion of something which

is harmful” (Qardhawi, 1960). Many verses from the Holy Quran cite the importance of doing business and commercial activities as a source of wealth. One of the Quranic verses that supports this statement is highlighted as follows, “ *O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you. (4:29)*. Based on the verse, therefore it is stated that any form of trades/ businesses can be performed provided that their operations must be free from the following interventions:

i. Riba (Interest)

Riba can be roughly translated as "Usury" or unjust, exploitive gains made in trade or business. The word "Riba", in Arabic language, literally means an “increment” or “addition”. In conventional business system, a lender makes lots of profits in a form of riba through the activities of loan granting to borrowers and exchanging ribawi items. The Quran explicitly prohibits riba and since Quran is the undisputed source of guidance, all Muslims including all schools of thought unanimously agree upon the prohibition of riba’ in any trade or business. It is because trade and usury are absolutely different. In trade one earns profit as a result of initiative, enterprise, efficiency and hard work. However in riba, the profit is not earned through hard work or any value creating process. It is not the reward of labour but is in fact unearned income which is considered as injustice. Moreover interest is fixed whereas profit fluctuates. In case of trade there is the risk of loss also, but in case of riba, the lender gets his fixed amount irrespective of the fact whether the debtor earns any profit or sustains loss. God has forbidden interest but has permitted trade. Many quranic verses highlight the prohibition of riba as can be shown below;

“That they took riba, though they are forbidden and that they devoured men’s substance wrongfully. We have prepared for those among men who reject faith a grievous punishment” (Quranic verse 4: 161)

“Those who charge riba are in the same position as those controlled by the devil’s influence. This is because they claim that riba is the same as commerce. However, God permits commerce and prohibits riba. Thus, whoever heeds this commandment from His Lord, and refrain himself from riba, he may keep his past earnings and his judgment rests with God. As for those who persist in riba, they incur Hell, wherein they abide forever” (Quranic verse 2:275)

Another verse is that *“God condemn riba, and blesses charities, God dislikes every disbeliever, guilty. Lo!Those who believe and do good works and establish worship and pay the poor—due, their reward is with their Lord and there shall be no fear come upon them neither shall they grief. O you who believe, you shall observe God and refrain from all kinds of riba, if you are the believers. If you are not, then expect a war from God and His Messenger. But, if you repent, you may keep your capitals , without inflicting injustice or incurring injustice. If the debtor is unable to pay, wait for a better time. If you give up the loan as charity, it would be better for you, if you only knew”* (Quranic verse 2:276-280)

In e-commerce transaction, riba will occur through the activity of sale and purchase and the e-commerce payment system which facilitates the acceptance of electronic payment for online transactions via Electronic Data Interchange (EDI) . Over the years, credit cards have become one of the most common forms of payment for e-commerce transactions. According to Oxford dictionary, it is a card issued by a bank or other business firms enabling its holder

to obtain goods or services on credit. Islamic Fiqh Academy defines it as “ a document given to a real or a hypothetical person on account of mutual contract signed between them, that enable an individual to buy goods or services from those who acknowledges the document, without having to pay the price instantly as the contract includes a statement that says “ the source of the card has to pay (for the bills)”. The use of this credit card as a mode of payments in online transaction creates several legal and shariah issues. In many cases the usage of credit cards usually includes several conditions those considered as riba which will occur in two (2) situations. First, is for the delay in payment as the late payment charges and the latter is the daily interest on balance amount of deferred payment. Either way , the interest paid over and above the original payment will be considered as riba and it is unlawful (haram). The challenges for Islamic e-commerce in fighting riba would be choosing the mode of payment and banking system which adheres to the Shariah principles.

ii. Maisir or Qimar (Gambling)

Maisir means speculation or gambling. *Maisir* is prohibited in Islamic finance because it creates wealth from a chance instead of from a productive activity. Maisir and Qimar are forms of gambling that are considered as totally inequitable in Islam. Maysir refers to the easy acquisition of wealth by chance, whether or not it deprives the other's right. Whereas, Qimar is a game of chance in which one will gain profits at the cost of other's. *Maysir* is regarded by many Islamic scholars as gambling or any games of chance (including lotteries, lotto, casino-type games and betting on the outcomes of animal races). Together, these share a desire for obtaining return through deliberate risk-taking. Both games of chance and gambling are banned by Sharia as clearly stated in the Quranic verse below;

“ They ask you thee concerning wine and gambling. Say: In them is great sin, and some profit, for men; but the sin is greater than profit. “ They ask thee , how much they are to spend; Say: ”What is beyond your needs. “ Thus doth Allah make clear to you His Signs: In order that ye may consider.” (2: 219)

iii. Gharar (Uncertainty)

Gharar literally means uncertain or hazard or risk. In the sale context , gharar may exist in the sale of probable item whose existence or characteristics are not certain due to the risky nature which make the trade similar to gambling. The Arabic word ‘Gharar’ is a fairly broad concept that literally means deceit, risk, fraud, uncertainty or hazard that might lead to destruction or loss. Gharar in Islam refers to any transaction of probable objects whose existence or description are not certain, due to lack of information and knowledge of the ultimate outcome of the contract or the nature and quality of the subject matter of it. Gharar may be defined as risks arising from lack of knowledge about the contract i.e the object, price and the delivery (Paldi, 2014)

Ibnu Majah on the authority of Abu Hurairah (r.a)(translation of the version in Muslim) that “*The prophet(peace be upon him)prohibited the pebble sale and the gharar sale*”.

iv. The sale and purchase and manufacturing of haram products

The prophet peace be upon him said, “*Allah has prescribed certain obligations for you, so you do not neglect them : He has defined certain limit , so do not transgress them; He has prohibited certain things , so do not do them; and He has kept silent concerning other things*

out of mercy for you and not because of forgetfulness , so do not ask questions concerning them.” (Reported by Darul Qutni and classified as Hassan by An Nawawi.)

According to Shariah , every single transaction, either in physical or virtual setting as in e- commerce, can constitute a valid contract of sale and purchase. For a contract to be permissible and acceptable , it must fulfill certain requirements as laid down by the Shariah principles. Although e-commerce is a new phenomenon , it denotes the same process of traditional commerce and dealing in Islam as e-commerce also involves contracts to sell and purchase goods from one party to another party. Therefore all e-commerce transactions must be in conformity with the requirements and principles of Islamic law of contract, which mainly aims at protecting interests and eliminating harms of parties taking part in the transactions, thus promoting Islamic ethical codes of business and commerce which is based on justice as one of the main objectives of Shariah (Maqasid Al Shariah)

CONDITIONS FOR A VALID E-COMMERCE CONTRACT OF SALE ACCORDING TO SHARIA PERSPECTIVES

E-commerce business dealing does have a place in Islamic perspectives , however whenever it took place, certain Sharia requirements must be complied and adhered to (Marjan, Mohd Rosydi , K. Khalil, 2013). According to El Islamy, there are three(3) basic things that should be considered in Islamic e- commerce contract of sale and purchase formation over the internet despite the buyer, the seller and the product. Those are the offer, acceptance and consideration” (El Islamy, 2002). If all of these elements have been observed and adhered to, e-commerce is permissible due to the the Shariah permissibility presumption (Al Ibahah) which states that , “*everything is permissible in the absence of specific quranic injunctions*”. Kharoufa on the other hands specifies seven (7) elements to be fulfilled under the Islamic contract of sales (Kharoufa, 2000). Those are:

1. The contract should be concluded willingly and with mutual consent as per Quranic injunction in Surah an-Nisa 26.
2. Both parties to the contract must have the capacity to conduct such sale. The object of sale should carry a legal benefit to the buyer, usually in the form of property or service received.
3. The object of sale must be owned by the seller or the seller should have the owner’s express permission. In an agency situation if the owner gives a belated permission, after the sale has taken place, the contract is considered valid but without it the contract is void.
4. The seller must be capable of delivering the subject of the contract to the buyer, or the sale is nugatory. One cannot, therefore, sells something that is not in his or her possession (e.g., cannot sell a bird in the sky or fish in the water until possession has been taken).
5. The object of sale should be made known to the purchaser by sight or by ample description. If the object being sold is not seen by the purchaser and has not been sufficiently described, the sale is invalid for the uncertainty. A major implication of this is the obligation on the seller to disclose any and all defects in the object of sale to the buyer for the sale to be valid. A strong opinion among the scholars is that the sale will be valid but the buyer will have the option to invalidate it upon inspecting the object bought.

6. The price, or consideration due, must be known to both parties. Therefore, a contract of riba where the price ultimately paid changes by the timing of the payment is not valid due to the uncertainty involved with respect to the price.

Since e-commerce involves the art of buying and selling between the traders, it needs to fulfill several important elements of the Islamic law of contract of sales namely;

- i. Offer and acceptance (the form)
- ii. Buyer and seller (the contracting parties)
- iii. Subject matter

The following sections will highlight these elements together with the requirements and conditions as laid down by the Shariah

Offer and Acceptance

To form a valid contract of sale and purchase, there must exist an offer and acceptance, in which one party makes an offer and the other party will accept it. (Mohd Zulkifli, 2011) The offer is a proposal which is made to show that particular individual's willingness to form a contract and later response from the other party to prove his or her willingness to the offer. In other words, an offer means a specific action that reflects consent or willingness of its maker to make the particular proposal for the transaction, followed by an acceptance by the offeree to abide by the terms and conditions made by the offeror. An offer can be made orally or in writing or can be understood from the conduct of the parties. In e-commerce, in which the offer is done through electronic medium, it is said that, any 'offer' which is made on the web be prima facie considered as just an invitation to treat (M.D. Bakar, Z. Jaffar, 2001). The seller is the inviter who invites the consumer who is interested to buy the products so that he or she will make an offer to buy the products/services. It depends on the inviter whether to accept or not the offer made by the customer. Furthermore, majority of Muslim scholars accepts the existence of a contract in the situation where neither the seller nor the buyer expresses the offer and acceptance or only one party makes the offer and the later accepts through actions as in the e-commerce situation. However, they reluctant to accept the offer that is in a question form, for example "will you buy from me" or "will you sell the goods to me" because of the uncertainty of the phrase (Al-Kasani, 1986; Al-Hattab, 1992; Ibn Qudamah, 1968). According to view of the majority of ulamak, an offer can be made by a buyer or a person to whom the subject matter of the contract is addressed regardless as to whether this comes first or later. On the other hand, Hanafi school holds a more flexible approach when he defined an offer as words uttered by the offeror to an individual or a group of people in which the later corresponds to the terms of the offer (Mohammad Daud Bakar, J. Zainuddin, 2001). Then the word of qabul (acceptance) is used to represent a statement uttered indicating the assent to the ijab (offer). In online transaction, an acceptance takes place when the buyer confirms the transaction and continues with the payment either through online banking system or other methods of payment whichever permissible by the Shariah. Normally offeree will use credit card or debit card as the mode of payment. According to Shariah, payment through credit card will create an issue of legality and is prohibited if it involves interest (riba').

Muslim jurists have stipulated some conditions for the validity of the offer and acceptance namely connectedness, clarity and conformity (Al-Zuhayli, 2001). Pertaining to e-commerce, there are two (2) scenarios in which an offer and acceptance may take place (Al-Zahrani, 2009) namely if parties are virtually present in the space and the offer and

acceptance occur in one meeting place/ session to negotiate the term and condition of the contract via instant writing such as chatting, or via electronic communication, such as teleconferencing. In this situation, the offer and acceptance may take place when the parties present in the space although they are at different places/ locations. The Council of Islamic Fiqh Academy viewed that the contract shall be deemed as a contract between present parties for it takes the ruling of constructive meeting place in concluding the contract. On the other hand if the parties to the contract cannot present, see, hear each other either individually or virtually, the contract is completed when the offeror communicates his/her offer to the offeree and the offeree notifies his/her acceptance to the offeror (The Council, 2000). Though the offer and acceptance in e- commerce transaction can be done in various forms through the help of multimedia, they are considered acceptable so long as the parties are connected and corresponded to one another in the same session. With regards to the formation of a contract via e-commerce transactions, Zain and Zakaria opined that the offer begins when the buyers knows the products listed in the websites , makes a selection (offers to purchase) and continues with the purchase order through the system and makes a payment through whatever method provided. The seller , will entertain the purchase order which is considered as the qabul and thus, completed the process by delivering the purchased items (Zain & Zakaria, 2008).

Contracting Parties

According to Shariah, all contracting parties , whether in traditional trading or in e-commerce, must mutually consent to the contract (Vohrah & Aun, 2010). All transactions must be based on free willingness of parties involved. and must be those who are legitimately allowed to engage into the business transaction (Muhammad et al., 2013). A contract of sale occurs when two or more parties mutually agree to bind themselves with the terms and conditions stipulated in the contract. Therefore, selling and buying activities of a child is considered as invalid because he or she does not possess legal capacity except permission from parents or guardian is granted. However, in e- commerce, in which the transaction occurs through space, the requirement for legal capacity for the parties seems difficult to be fulfilled . Therefore the rule of trust is very important (Wang & Emurian, 2005).

A sale by an insane (temporarily or permanently insane), a child or a drunken person is considered as not valid. Hanafis permit such a contract by a child as long as the child's guardians give consent into it and the child is mature enough to make a decision.

Subject Matter (The Object and Price)

The subject matter is considered as one of the important elements in e-commerce transactions. Sharia highlights several conditions to be adhered pertaining to the subject matter of the sale contract namely;

a. The subject matter must exist

The subject matter of the sale in e- commerce must constitute the object or product and price, valuable, in existence in this world, deliverable and precisely determined for contract to be valid (M.D, Nuradli Ridzwan Shah, H. Mohd Zainal Munshid dan M. H. , Faizah, 2004). It must exist at the time , when the contract is made and it should be possible to be delivered at the agreed time of delivery (Al Kasani , 1986).

b. The subject matter can be delivered

If the subject matter does not exist and the seller is incapable of delivering it, the transaction is considered as null and void (Muhammad et al., 2013). In e-commerce, the delivery of the goods may normally take place in future. Therefore according to Lokmanulhakim the usurious items are not permitted to be traded to avoid riba' (Lokmanulhakim, 2012). Furthermore, where the seller of the product might not be able to present during the delivery of the product, he/she can appoint an agent or a representative to complete the process of delivery. Even if the agent is acted on behalf of a company, he or she should produce an authentication certificate to ensure that he or she is the entitled person to act on behalf of the company. This is to avoid uncertainty (gharar). Furthermore, the offer and acceptance may be concluded by the parties either by means of a representative or by using communication media such as the telephone, telex, fax e-mail and letter of correspondence

c. The subject matter can be ascertained and determined

If the subject matter is uncertain and ambiguous, the contract will become void (Abdullah & Razali, 2008). In e-commerce transaction, details of the subject matter must be clearly known via e-commerce website to the contracting parties in which it should be precisely identified and described through texts and pictorial displays.

d. It is valuable and lawful according to Islamic teaching

Other requirement for the subject matter is that, it must be lawful. Lawfulness refers to the permissibility of the subject matter to be traded in the eyes of Islam. For example the sale of pork or wine is considered unlawful according to Shariah because it has no legal values

e. The subject matter must be mal.

Mal in Arabic signifies whatever in effect a man may acquire and possess. According to Muhammad Wahidul Islam, the subject matter must be mal which is generally translated as property. The word property is applicable only to objects which have perceptible existence in the outside world that is to say things sold which is fixed and individually perceptible as designated at the sale (Muhammad Wahidul Islam, 1999). In other words, mal is defined as something which can be acquired and secured to be used at the time of need.

f. The subject matter belongs to the seller/owner or the seller has the right to sell the subject matter from the owner.

Allah mentions : *“O you who believe, do not devour each other’s property by false means, unless it is altrade concluded with mutual consent”* (Quran, 4:29) . Further The prophet Muhammad (pbuh) said that *“Do not sell what you do not have”*. In the event the representative or the broker acts on behalf of the owner of the asset, still he/she must obtain the permission from the owner. In e-commerce businesses, digital signature may be used to resolved the issue of anonymity, fraud and sale by unauthorized party. By using digital signature it will replicate the traditional signature which identifies the owner’s signature.

E-COMMERCE DEALINGS ACCORDING TO ACCOUNTING AND AUDITING ORGANIZATION FOR ISLAMIC FINANCIAL INSTITUTIONS (AAOIFI) STANDARD

In order for an e-commerce transaction to be valid in the contract of sale according to Sharia, it is important to discuss some relevant and important Sharia standard set up by the accounting and auditing Organization for Islamic Financial Institutions Standard (AAOIFI). This AAOIFI standard covers the Sharia rulings relating to the conclusion of the financial

contracts which may take place online. This standard aims to illustrate and clarify the issue of legality pertaining to online transactions according to Sharia which is governed under Shariah Standard No. 38 (AAOIFI, 2010). The standard states that, Sharia permits institutions to provide online access services to users on the basis of subscription contracts or any other similar arrangements, and against a specific fee. The provision of online access service by the institution is a shared hiring contract “*ijarah Musharakah*” signed between the institution and the beneficiary. The institution which provides such services should take all necessary precautions and measures to prevent impermissible use of the internet by the beneficiaries to whom the institution provides the access service.

For the contract signing session (*Majlis Al Aqd*), according to AAOIFI standard, to conclude an online financial contract, it is stated that when the contract is concluded through audio or audiovisual communication between two parties, it should become the subject to the same Sharia rulings on contracts signed in the presence of two parties. The contract signing session in this case, is the time of communication between the two parties if the conversation relates to the contract. If the conversation is over or disconnected, or the two (2) parties shifted to another subject, the contract signing session is considered to have stopped (unless disconnection of the conversation is for a reasonably short while). The basis for the permissibility of concluding online financial contracts is due to the fact that such contracts do not involve any Sharia-prohibited aspect. They carry no difference from the traditional contracts except in the means used for their conversation is different. In principle, such contract is allowed as long as they observe the rules of Islamic transaction.

Further, when the contract is concluded through written communication, ie. By e-mail, or through access to website, it shall become the subject to the rulings applicable to contract signed in the absence of the two (2) parties, because such dealing is similar to message contracting and the contract signing session starts from the moment of communicating the offer to the concerned party up to the issuance of the acceptance. The contract signing session may also be discontinued when the offering party retreats from his offer before an acceptance decision is made by the other party and when the offering party specifies a certain period for validity of his offer, the time allowed for acceptance should cover the whole period. The offering party has no right to withdraw from his offer during that period. The basis for this is that, when a contract is concluded through written communication, by e-mail or through access to website, it shall be classified as a contract signed in the presence of the two parties. This ruling is based on the fact that exchange of offer and acceptance in this case, takes place without simultaneous presence of the two parties. The online contract is deemed signed, though the two parties are not at the same place, it is considered as a contract between two absent parties, the Sharia rulings on message contracting will be applied.

The Standard too emphasizes on the important of expressing the offer and acceptance. It is clearly stated that, the expression of the offer and acceptance in online contracts can be in any form that indicates the consent of the two parties to conclude the contract. When the offering party send through websites or e-mail a message containing all the rights and commitments pertaining to the contract without retaining the right to withdrawal, if the message is accepted, that message is considered as an offer. On the other hand, if the offering party send an electronic message through websites or email without indicating all rights and commitments to the contract in question, or when he stipulates a condition that he should have the right to withdrawal, even if the message is accepted, the message is considered to be an announcement or an invitation for contracting to treat rather than an offer. In this case, a process of an offer and acceptance has to be done.

It further states that, in a situation when the contract is concluded through website, clicking on the acceptance icon will be considered as acceptance in the strict Shariah sense if the system in the website does not require confirmation of acceptance. If it requires a confirmation, acceptance will not take place until the confirmation is given. The Standard also emphasizes that the time for the commencement of the online contract, is when the other party accepts the offer irrespective of the method of contracting.

The possession of the products sold online will take place through all accepted methods of actual and legal possession. If the sold commodity is computer software or the like, possession takes place when the purchaser, after signing the contract, downloads the software or data from the websites to his personal computer. However, when the sold subject is the currency, gold, silver or any usurious goods, instant exchange of the objects of the contract should be ascertained during the contract's signing session to avoid *riba*. A resolution was made by the International Islamic Fiqh Academy by Fatwas No. 52/3/6 regarding the formation of contract by means of modern communication states that, "when a contract is to be signed, through a written message or messenger, between two absent parties who are not in the same place and neither of them can see or hear the other- a case which includes contracting through telex, fax and pc screens- the validity of such contract starts as soon as the concerned party receives and accepts the offer".

CONCLUSION

There is no doubt that e-commerce is one of the most growing significant business components that will leave an imprint in our next coming business transaction. Islam basically encourages e-commerce as a new way of conducting businesses to date. However, whenever it is conducted, certain Sharia requirements, standards and conditions should be complied with to ensure the goals of Islamic businesses which is to uphold justice, manifold success and maximize profit could be achieved and realized with. There are no clear statutes discuss on the position of e-commerce transactions in Malaysia. therefore, the standard provides by AAOIFI should be adhered to as a guideline in conducting business as a source of wealth.

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