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Applicability of Electronic Administrative Contract: Analysis from Islamic (Law) Shari'ah Perspective

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Abstract

A new type of contract accompanied the emergence of the information revolution in communication technology concluded using advanced and modern electronic media, foremost of which is the Internet. The developments in communication technology have increased and facilitated trading worldwide and contributed to electronic contracts' appearance. This paper aims to analyze the concept and the applicability of electronic administrative contracts from the Islamic law of contract perspectives (Shari'ah). Therefore, certain restricted requirements and conditions have been discussed in this article to protect and provide evidence to the electronic contract's users. It then considers the legitimacy of electronic administrative contracts, whether it complies with those specified requirements based on Islamic Law.

Keywords: E-commerce, Electronic Administrative Contract, Islamic Contract Law (Shari'ah).

Introduction

In the last three decades, the rapid advances in information technology have reshaped how the world communicates and receives information and made many changes to our lifestyles (Ghofur, 2020; Sadeqq, 2017; Zainul et al., 2004; Zulkefli et al., 2019). The massive revolution in information and communication technology developed an evolution in legal texts and terms, whether civil, commercial, or administrative law (Al-Shawabkeha et al.,

2020). Since 2002, a prominent increasing interest in e-government has been concerned explicitly with official managerial procedures. In-state agencies, digital technology (such as the Internet, email, and smartphones) is an indispensable tool for communicating with citizens, civil society, and companies between them and official institutions (Alshehri & Drew, 2010; Sadeqq, 2017; Von Haldenwang, 2004). The fast development of technology has brought changes in the trading mechanism (buying and selling). These changes accompanied a new type of contract using advanced and modern electronic media, mainly the Internet called electronic contracts (Al-Shawabkeha et al., 2020; FORDEB, 2017; Ghofur, 2020; Lodder & Kaspersen, 2002; Winn & Wright, 2000). Today, Internet has turned into a fertile field for concluding contracts from the traditional nature, which is represented in being a means for exchanging and transferring data and electronic correspondence, in addition to the development in the administrative activity that resulted from the emergence of this type of contracts and its widespread use (Abu Sabah & Al-Sarayrah, 2020; Sadeqq, 2017; Sholikhin & Amijaya, 2019).

Technology and the Internet have significantly impacted Muslims' lives and undoubtedly changed business transactions, which eventually caused new legal problems (Alzaagy, 2009; Ghofur, 2020). The process of buying and selling goods and services electronically using Internet-based communication and other electronic forms of communication is known as electronic commerce or E-commerce. However, the explosive growth of e-commerce and its substantial commercial opportunity present considerable problems for legislators who struggle to reconcile existing laws based on traditional ways of trading with business conducted via the Internet. Legislators face many issues, and the pace at which developments occur makes it an almost impossible task. One of the more immediate issues concerns the validity of transactions formed electronically and customary laws' capability to deal with legal issues emerging from involvement in e-contract (Alzaagy, 2009).

Therefore, it is crucial to examine the validity of the electronic contract in light of Islamic contractual norms and, most importantly, within the principle of Islamic Law. Both scholars and practitioners have extensively discussed proven electronic administrative contracts (e.g., Abu Sabah & Al-Sarayrah, 2020; Al-Shawabkeha et al., 2020; Alba, 2008). Nevertheless, studies on this issue from the Islamic perspective or Shari'ah (Islamic Law) remain lacking in the literature. Therefore, it is imperative to understand and verify to what extent the electronic administrative contract compliance with Islamic Shari'ah (Islamic Law) to secure trust for Muslim users. The concept of Shari'ah represents all branches of law and specifies the rules and regulations governing all features of a Muslim's life, including life after death (Rayner, 1991).

Literature Review

Contract and Agreement

The terms "agreement" and "contract" are often interchangeable in common usage, but law dictionaries offer two distinct definitions. Hijazi (2006) pointed out that some jurists distinguish between agreement and contract. They defined agreement as understanding between two or more parties to create, transfer, modify or terminate an obligation, such as the sale contract or transfer contract. In contrast, the contract is more specific than the agreement unless it is an originator or carrier of the obligation. In other words, Every contract is an agreement, but an agreement is not a contract unless it creates or transmits an

obligation (Hijazi, 2006). While authors (e.g., Barry, 1992; De Moor, 1986) distinguish the definition of the contract in the English and French systems in terms of offer and acceptance. While, in French law, a contract is an agreement between the parties, while in English law, it can be more nearly be said to be a promise in return for reasonable consideration.

Administrative Contract and Electronic Administrative Contract

The legislators gave much attention to the administrative contract due to its practical implications and being one of the ways to conduct commercial activity. Therefore United Nations Commission on International Trade Law (UNCITL) issued the Model Law for the Procurement of Goods and Services in 1994 (Al-Janabi, 2017). Al-Shawabkeha et al. (2020) and his colleagues defined the electronic administrative contract as an "agreement made by the public, corporate body by electronic means, in whole or in part, to operate or organize a public facility." Whereas, Shebaita (2020) indicated that official authorities concluded two types of contracts, the public law contract, termed Administrative Contract, and private law contracts. Shawabkeh (2016) defined the electronic administrative contract as "an agreement that is concluded and implemented in part or whole over the Internet that allows the possibility of information transfer to create contractual obligations with an offer and acceptance expressed in the same electronic medium used."

In his study, Al-Shawabkeh (2013) concluded six unique features that distinguish the electronic administrative contract: 1) The electronic administrative contract is a global characteristic as it uses the communication network available, mainly the Internet in various countries of the world. 2) Determining the administrative contract electronically using modern communication techniques, including software and various consultations. 3) Electronic administrative contracts are contracts made remotely related to the suppliers' offer of a good or service via the Internet without meeting physically with the consumer to transfer the product and order has been made by the consumer. 4) The electronic administrative contract is distinguished from the standard administrative contract in terms of proof and fulfilment, where the electronic administrative contract can be ratified by electronic signature. 5) The electronic administrative contract can be any object between the management and the contractor. The administrative contract can be consumers, tenants, service providers, producers, or public legal persons. 6) The electronic administrative contract is distinguished from the traditional contract by the possibility of reversing individually. While In the traditional contract, once the mutual interest of offer and acceptance is applied, both parties cannot be changed. Therefore, global interest in the electronic administrative contract prompted public law jurists in France to examine its applicability. Besides, to determine the criteria that distinguish an electronic administrative contract from a civil contract, based on the international character of the electronic contract in general (Al-Janabi, 2017). Thus, investigating the electronic administrative contract standards requires scholars and practitioners to determine the extent to which the electronic administrative contract can achieve the standards of the administrative contract (Al-Janabi, 2017; Ramadan, 2015; Shebaita, 2020)

Contract in Islam

According to Islamic jurisprudence, the term contract is equivalent to "Aqd" (agreement), which refers to a combination of offer and acceptance between contracting parties that constitute a legal obligation on them (Rosly, 2010). Mohammed (1988) argued

that principally, the Islamic law (Shariah) of contracts intends to protect interests and eliminate harms of both parties (seller and buyer). Islamic law (Sharia) determines that a valid contract consists of several essential prescribed requirements; without them, a contract must lose its merit to be correct (Esposito & DeLong-Bas, 2018).

Thus, Islam has established a contract as an agreement from both parties to fulfill specific issues between supply and demand. As stated in the Qur'an (Qur'an is the first source of Islamic law and teaching Islam) in Surah Al-Maidah

verse 1, (يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ)

O you who believed, fulfill (all) contracts. Lawful for you are the animals of grazing livestock except for that which is recited to you (in thi Quran) – hunting not being permitted while you are in the state of ihram. Indeed, Allah ordains what He intends. (Surah Al-Maidah: 1)

وقوله تعالى: (وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا) (سورة الإسراء، الآية 34).

Fulfill [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned. (Surah Al Isra: verse 34).

The two verses summarized the basis of freedom of contract. In the concept of jurisprudence transaction (Muamalah), contracts are often referred to as agreement (Aqad), which according to the Islamic jurists, means the engagement between offering and accepting in prescribed ways and have an impact on what is assumed (Ash-Shiddiqy, 1974). In addition, another prove of contract from Islamic law perspective is from the second source of Islamic law from Al-sunnah, which is the practices of Prophet Mohammad:

The Prophet Mohammad said: Conciliation between Muslims is permissible "except the conciliation which makes lawful unlawful and unlawful lawful." Further, the Messenger of Allah said: Muslims are on (i.e., stick to) their conditions.

Electronic Administrative Contract and E-Commerce in Islamic Shari'ah

The rapid development of E-commerce has brought a new and competitive way of conducting business online. As a general rule, every further improvement that emerges in Muslims' lives needs to be scrutinized for its legality in light of Islamic (law) Shari'ah. Islamic doctrine (Aqida) has established a general rule and evidence for every aspect of a Muslim's life, whether social, economic, political, jurisprudent, or commercial. Each concern can be addressed under the light of those bases and evidence (Alzaagy, 2009).

According to Qassem (1997), in his compilation of Ibn Taimyya's *Fatawi* (Legal Decisions), Ibn Taymiyya is one of the famous Sunni Islamic scholars. Qassem (1997) indicated that Ibn Taymiyya clarified that every transaction is permitted in Islamic law (Shari'ah). Thus, it will not be denied legitimacy unless Allah or His Prophet Mohammad prohibits that commercial transaction. In terms of habits and customs that people become accustomed to, they are not banned unless the Lawgiver disallows them. This principle is helpful as it determines that individuals are undertaking every transaction, dealing, and habit in the course of their lives is lawful in Islamic jurisprudence as long as a direct rule does not explicitly invalidate it. Hence, all new matters will be considered legitimate by the law except when any evidence denies its validity.

Additionally, from an Islamic perception, E-commerce implies the same concept as the traditional way of business. Therefore, this way of trading must also comply with all requirements of principles of Islamic Shari'ah (Islamic Law) of contracting, such as being free from any element of usury (riba), gambling (maysir), obscurity (gharar), and coercion (ikrah). These Shari'ah requirements aim to protect interests and eliminate the harms of parties involved in a transaction, thus promoting justice, one of the main objectives of Shari'ah (maqasid al-Shari'ah). Furthermore, as E-commerce involves trading between buyers and sellers, it needs to fulfill essential requirements and conditions of Islamic law of contract, namely (i) offer and acceptance (form), (ii) buyer and the seller (contracting parties), and (iii) object and price (subject matter), hence deems valid. The following section delineates these requirements and their conditions and E-commerce issues in Islamic contract law (Suhaimi, et al., 2013).

Islam has organized selling and buying transactions; the procedures are included in Fiqh al-Mu'amalat. Although there are various benefits to E-Commerce, there are also problems that might arise. Especially in obscurity (gharar), whether the items in the photo match when received. According to the analysis conducted by (Zainul *et al.*, 2004) in his study, he found that Islam accepted the function of E-Commerce as a new way or technology to facilitate economic transactions.

Furthermore, Omar, in Zainul et al (2004) study, pointed out that Islam is not against E-Commerce; on the contrary, Islam encourages E-Commerce as a new development of performing business. Further, he explained that traditionally, business is done verbally face-to-face, but today both producers and consumers are connected via smartphones, computers, and laptops. In addition, Zainul *et al* (2004) pointed out that the crucial things about approval in conducting E-Commerce are moral perspectives that lead to more responsible sellers or producers. Therefore, several Islamic scholars in Islamic law (e.g., Haqqi, 2000; Zainul et al., 2004) put the following regulations and requirements based on the holy Quran and Sannah must be fulfilled to ensure the legitimacy of electronic contracts from Islamic law (Shari'ah) perspective.

Form (Offer and Acceptance)

The essential requirement of the validity of any contract consists of offer and acceptance (Muhammad, Muhammad, & Khalil, 2013). An offer refers to the initial proposal made by either party in a contract – seller or buyer. Meanwhile, approval is a statement made by the other party involved in the contract expressing his consent to offer terms (Al-Zahrani, 2009; Muhammad et al., 2013). There is consensus among Muslim scholars that besides words, offer and acceptance occur in writing or other new forms. Therefore, both offer and acceptance should be associated, unblemished, and conform to each other (Dali & Hamid, 2007). Several Muslim scholars (e.g., Al-Hattab, 1992; Al-Kasani, 1986; Qudamah, 1968) prohibit the offer that is in a question form, such as "will you buy from me?" or "will you sell the good to me?" because of the uncertainty of the statement. Therefore, Muslim jurists have restricted some conditions for offer validity and acceptance, namely connectedness, clarity, and conformity (Al-Zuhayli & El-Gamal, 2003). In traditional trading, contracting parties are physically present in one meeting session (majlis al-'aqd) to negotiate the contract terms. Hence, offer and acceptance are connected, clear, and consistent (Muhammad et al., 2013).

Regarding e-commerce (Al-Zahrani, 2009; Alzaagy, 2007) displayed two scenarios in which offer and acceptance may occur: (i) parties are virtually present in the space (though they are at different locations). The offer and acceptance occur at once in the meeting place via instant writing such as chatting or via electronic communication such as teleconference. In this case, the Council of Islamic Fiqh Academy (2000) considered it a valid contract between present parties because it takes the ruling of a constructive meeting place to conclude the contract. On the other hand, (ii) physical or virtual appearance or hearing between two parties is unavailable. Offer and acceptance happen only through interactive websites and emails. Regardless of the time, space intervals, the meeting place is unified as the messenger, or the letter constitutes "a representative" acting on behalf of the seller (Al-'Ajluni, 2002). The Council of Islamic Fiqh Academy (2000) also determined that the contract is fully completed when the seller notifies the offer to the buyer and the buyer declares his acceptance to the offerer.

Contracting Parties (Buyer and Seller)

According to Islamic Law (Islamic Shari'ah), all contracting parties, whether in traditional trading or e-commerce, must perform a contract based on free or mutual consent (Vohrah & Wu, 2010). It is also known as the consensus of both parties without any form of coercion, either directly or indirectly (Abdul Jalil & Rahman, 2010). As stated in the Qur'an Surah Al-Nissa verse 29

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ
- (سورة، آية النساء) (29 -

Allah says: "*O you who believe, do not devour each other's property by false means unless it is a trade conducted with your mutual consent*" (Ali, 2016; Quran, 4:29). Having mutual consent (Taradi) is significant to eliminating anonymity between the contracting parties. However, such an offer or acceptance comes from the mutual consent of the parties. Without a wilful mutual acknowledgment, a contract is out of legal consequence. Free will to make a contract is essential because a contract is invalid where coercion or any other factors result in such consent of the parties (Amin, 2008). Additionally, the Prophet Mohammad (peace be upon him) has also been reported to say:

إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ
Sunan Ibn Majah (2185)

"*Sale is but based on mutual consent*" as cited in (Malik, 2017; Muhammad et al., 2013). According to Muhammad et al (2011), the digital signature application can resolve the problem. A digital signature provides a mechanism in which the sender's identity is not tampered with or changed during the communication with the receiver. It replicates the traditional signature that uniquely identifies the signature's owner. Moreover, it cannot be copied or fabricated by an unauthorized party, which means that the sender cannot easily deny the online transaction committed (Jalil & Rahman, 2010; Muhammad et al., 2011).

Besides, both contracting parties must have legal capacity (ahliyyah) and authority (wilayah) to execute the contract (Mudhakkir, 2016; Muhammad et al., 2013; Saleem, 2012). legal capacity refers to the quality by which a person becomes fit to obtain what he is entitled to or for the discharge of legal obligations to which he is liable in the view of Islamic law. Abu

Zahrah (1996) defines legal capacity as eligibility of a person to acquire rights for himself and exercise them; and authority as the power of executing the contract. Similarly, Mudhakkir (2016) indicated that under the Islamic Shari'ah, legal capacity involves privileges, duties, and responsibilities inherently enjoyed and exercised by an individual. Accordingly, due to the legal capacity to make contract questions contractual rights and obligations, a legal and valid contract ensures the parties' physical and intellectual maturity (Hossain & Mahdzir, 2021).

Subject Matter (Product and Price)

According to Haqqi (1999), the subject matter refers to a form of goods or property. Therefore, it is another essential contract requirement in Islamic law; the contract is invalid without it. Accordingly, the products or objects must be free from obscurity/uncertainty (gharar). The Arabic concept (gharar) means uncertainty, obscurity fraud, or hazard that might lead to destruction or loss (Uddin & Ahmad, 2020). According to the Hanafi's, scholars (gharar) as "something whose consequence is undetermined."

Meanwhile, the Shafi'i scholars described it as "something which is hidden in its manner and its consequence." According to Askari et al (2014), gharar refers to "anything that the result is hidden or the risk is equally uncommon, whether it exists or not." Therefore, (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 outcome of the contract or the nature and quality of the subject matter of it.

Mansuri (2005) comprehensively described when a contract is presumed to suffer from (gharar) if it involves: a thing whose quantum is unknown; a thing about which is not known whether it exists or not; an item that is not within the knowledge of the parties; the parties are unaware whether a sale will take place or not.

In the Islamic tradition (Hadith), the Prophet (peace upon him) strictly prohibits (gharar). For example, Narrated Hakim ibn Hizam asked the Prophet Mohammad: *Oh Prophet of Allah! a man comes to me and wants me to sell him something, not in my possession. Should I buy it for him from the market and deliver it? He replied: Do not sell what you do not possess.*

Conclusion and Recommendations

The contract in E-commerce is a legal contract that is carried out online. Because the four components are also contained in the E-commerce contract, starting from the party that is the mind, the seller, and the buyer, then the contract object is the item to be purchased. The acceptance occurs in writing, and the last is the goal of contract and purchases to meet individual needs. Thus, E-Commerce in Islamic transactions must refer to Islamic law (Shari'ah), specifically Islamic buying and selling law. Based on existing research, E-Commerce is acceptable in Islam. Things that must be underlined are ethics in conducting such transactions to avoid ambiguity/uncertainty (gharar). When problems occur in these transactions, they must be returned to existing Islamic (law) Shari'ah regulations.

The concept of electronic contract is acceptable in Islam However, certain Shari'ah principles and requirements must be fulfilled to ensure its permissibility and validity. Therefore, the electronic contract must fulfill essential conditions based on the Islamic law of contract (Shari'ah), which is related to form (i.e., offer and acceptance), contracting parties (i.e., buyer and seller), and the subject matter (i.e., object/product and price) to ensure their

validity from the perspective of Islamic law of contract. These requirements and regulations include connectedness, clarity, and conformity of the offer and acceptance; mutual consent of the contracting parties, the legal capacity (ahliyyah) of both parties to engage into transactions, legal ownership of the product being traded, the permissibility of the asset, deliverability of the goods and the absence of the anonymity. In addition, every e-commerce transaction must be free of the element of usury (riba), uncertainty (*gharar*), and gambling (*maisir*). It must ensure the benefit and justice of the contracting parties. Hence, there is a need for buyers and sellers to "screen" the overall processes of online transactions to ensure their compliance with Islamic law of contract.

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