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### *E-Commerce: The Mechanism of Flash Sale on Perspective Indonesia's Positive Law and Sharia Economic Law*

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Article	Abstract
<p><b>Keywords:</b> <i>E-Commerce, Mechanism of Flash Sale, Indonesia's Positive Law and Sharia Economic Law</i></p> <p><b>Article History:</b> Received: February, 14, 2024 Reviewed: April, 18, 2024 Accepted: April, 30, 2024 Published: June, 30, 2024</p> <p>DOI: 10.30762/qaw.v8i1.430</p>	<p>Technological developments provide easier access to marketing and buying and selling to the public. This opportunity is used to market various products on the online market, one of which is flash sales. This marketing strategy was implemented and became popular in Indonesia because it was used by several market places such as Tokopedia, Lazada and Shopee. However, this leaves a question mark about the law of the flash running mechanism both in terms of Indonesia's positive law and sharia economic law. The research method used in this study is qualitative research with a cross-site study approach. Primary data sources are obtained from direct searches on e-commerce platforms, while secondary data is obtained from journals and other published research results. The results of this study show that the flash sale mechanism that has been running so far in Indonesia has been in accordance with Indonesia's positive law and sharia economic law, both from normative, social, and sharia aspects itself.</p>

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## INTRODUCTION

The development of information and technology today has a huge impact on human life. Technology today has become one of the cornerstones of the joints of life. In general, the impact of using this technology has positive implications. Especially in Indonesia, the support from the government on access to information and technology has made people able to enjoy openness and faster transmission of information. This fast transmission of digital information is also used as a means of buying and selling activities.<sup>1</sup> There are so many digital platforms that provide this buying and selling facility.

Buying and selling activities carried out through this digital platform in Indonesia itself by the public are called online buying and selling. The Indonesian government has officially supported this since 2017 through Perpres Nomor 74 Tahun 2017 about the Road Map of the National Electronic Trade System (e-Commerce Road Map).<sup>2</sup> Data from researchers' searches quoted through APJII or the Indonesian Internet Service Providers Association for 2022-2023 shows an increase in internet users from 77.02% (in 2022) to 78.19 (in 2023) of the total population of Indonesia. The average device used is 99.51% of mobile phones / tablets with a function value of 2.92 (range of values 1-4) for online transaction activities, in this case such as buying and selling.<sup>3</sup> E-Commerce which is an electronic business is a new innovation in the business world. This is an improvisation about the classic buying and selling system developing into a modern and bringing benefits to society.

People have a new habit pattern at this time, namely shopping through work devices (mobile phones, computers and others). The entry of online buying and selling service providers such as *Lazada*, *Bukalapak*, *Tokopedia*, *Shopee* and others provide convenience and effectiveness in shopping. When in the past when shopping had to come directly to the store to buy an item, now it is only enough to open the cellphone and select the desired item, then the item will come delivered. This advantage is also used by business actors to promote their products in order to achieve many sales and profits.

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<sup>1</sup> Maimunah, Lusiyani Sunarya, dan Nina Larasati, "Media Company Profile sebagai Sarana Penunjang Informasi dan Promosi," *CCIT Journal* 5, no. 3 (2012): 281–301.

<sup>2</sup> Kholida Qotrhrunnada, "Jejak e-Commerce di Indonesia Waktu ke Waktu, Berawal dari Kaskus," .com, *Jejak e-Commerce di Indonesia Waktu ke Waktu, Berawal dari Kaskus* (blog), Mei 2022, <https://finance.detik.com/berita-ekonomi-bisnis/d-6091087/jejak-e-commerce-di-indonesia-waktu-ke-waktu-berawal-dari-kaskus>; Indonesia Pemerintah Pusat, "Peraturan Presiden (PERPRES) Nomor 74 Tahun 2017 tentang Peta Jalan Sistem Perdagangan Nasional Berbasis Elektronik (Road Map e-Commerce) Tahun 2017-2019," Pub. L. No. Peraturan Presiden (PERPRES) Nomor 74 Tahun 2017, LN.2017/NO.176, LL SETKAB: 8 HLM (t.t.), <https://peraturan.bpk.go.id/Details/73107/perpres-no-74-tahun-2017>.

<sup>3</sup> APJII APJII, "Survei Penetrasi & Perilaku Internet 2023" (Asosiasi Penyelenggara Jasa Internet Indonesia, 2023), <https://survei.apjii.or.id/survei/>.

Such shopping habits are also used by business actors to introduce their products using marketing strategies, one of which is flash sales.<sup>4</sup> *Flash sales with attractive product appearances plus low prices make people interested. Price and product appearance are the main factors attracting buyers.*<sup>5</sup> This sales strategy researchers also found in flash sales, such as in e-commerce Lazada, Shopee and Tokopedia. Smartphone company from China, Xiaomi markets its products with the Xiaomi Redmi 5a brand at a low price of Rp 999,000.

Some of the observations that researchers made by deep interviews with peers, direct practice and reading some articles, there are some things that become notes. First, on several e-commerce operating in Indonesia, such as Lazada, Shopee and Tokopedia. The reason for choosing these three e-commerces is, popularity,<sup>6</sup> events, diversity and product utility. Not only looking at it from a positive perspective, but some of the e-commerce above also has a bad side. In 2018 Tokopedia in its flash sale had experienced fraud or fraudulent practices.<sup>7</sup> At first, Shopee was also reported to have experienced complaints by buyers. Shopee was complained for canceling purchases that were considered to be made unilaterally and blocking (restricting) the buyer's account. Although Lazada has not found any news about the poor assessment of the flash sale, researchers will still examine it from several perspectives.

Second, supporting factors or positive factors. These positive factors include increased engagement, increased transactions and others. Marketing using flash sales makes a lot of profit for sellers and manufacturers. By doing a flash sale, the product becomes quickly recognized by the public and will have a positive value with good quality goods but affordable prices. According to the results of surveys and publications from several mass media show that the

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<sup>4</sup> Faisal Reza, "STRATEGI PROMOSI PENJUALAN ONLINE LAZADA.CO.ID," *Jurnal Kajian Komunikasi* 4, no. 1 (1 Juli 2016): 63, <https://doi.org/10.24198/jkk.v4i1.6179>.

<sup>5</sup> Edwin Japarianto dan Stephanie Adelia, "PENGARUH TAMPILAN WEB DAN HARGA TERHADAP MINAT BELI DENGAN KEPERCAYAAN SEBAGAI INTERVENING VARIABLE PADA E-COMMERCE SHOPEE," *Jurnal Manajemen Pemasaran* 14, no. 1 (4 Maret 2020): 35–43, <https://doi.org/10.9744/pemasaran.14.1.35-43>; Martaleni Martaleni dkk., "Flash sale and online impulse buying: Mediation effect of emotions," *Innovative Marketing* 18, no. 2 (15 April 2022): 49–59, [https://doi.org/10.21511/im.18\(2\).2022.05](https://doi.org/10.21511/im.18(2).2022.05).

<sup>6</sup> Fitriya Ramadhanny, "5 E-Commerce Terpopuler Indonesia Versi Statista," .com, *Business* (blog), 16 Maret 2023, <https://inet.detik.com/business/d-6621225/5-e-commerce-terpopuler-indonesia-versi-statista#:~:text=5%20E-commerce%20Terpopuler%20Indonesia%20Versi%20Statista%201%201.,Bukalapak%2021%2C3%20juta%205%205.%20Bibli%2019%2C74%20juta>.

<sup>7</sup> Damianus Andreas, "Metode Fraud yang Digunakan dalam Kasus Flash Sale Tokopedia," .id, *Teknologi* (blog), Agustus 2018, <https://tirto.id/metode-fraud-yang-digunakan-dalam-kasus-flash-sale-tokopedia-cVpY>; Ahmad Zaenudin, "Pemecatan Karyawan Tokopedia & Dugaan Tipu-Tipu Flash Sale," .id, *Teknologi* (blog), Agustus 2018, <https://tirto.id/pemecatan-karyawan-tokopedia-dugaan-tipu-tipu-flash-sale-cVgD>.

income of sellers and producers is increasing rapidly, so they are able to get large profits in a short time.<sup>8</sup>

Flash sale is said to be a buyer's competition activity in getting the desired item. Quoting from the Tirtoid page, in addition to the limited time and number of desired items, coupled with many enthusiasts (buyers), making flash sales seem like a lottery.<sup>9</sup> In other words, here there is an assumption/opinion that flash sales are activities that are almost similar to lotteries or forms of gambling that are deepened to gain profits for one party and losses for the other. So that in the community began to emerge an opinion that flash sales seemed to only apply to those who were lucky.<sup>10</sup>

Because the opinion that develops in the community is what makes researchers make observations and research related to the flash sale mechanism. In addition, there is a need for a normative study of the flash sale mechanism from the perspective of Indonesian positive law and sharia economic law.

## METHOD

The research approach used is qualitative research with a focus on normative legal research and cross-site study research types.<sup>11</sup> Legal materials (data sources) consist of primaries, namely books, journals that discuss e-commerce and laws and regulations. Secondary, which comes from documentation and browsing the marketplace that organizes the flash sale. Data collection techniques using documentation. Data analysis in this study is content analysis and comparative analysis.

## DISCUSSION

Buying and selling in Arabic is called *at-tijarah* or *al-bai'* or *al-mubadalah*, which means to take, give something or barter.<sup>12</sup> Etymologically according to Wahbah Zuhaili, buying and selling is the exchange of something in which there are sellers and buyers.<sup>13</sup> The compilation of sharia economic law as a legal reference in sharia economic cases provides a definition of *al-bai'* is buying and selling between objects and objects, or the exchange of objects for money.<sup>14</sup> It can be concluded that, buying and selling is an activity in which there is an activity

<sup>8</sup> Kummeriati dan Muhamad Aji Purwanto, "Fintech dalam Meningkatkan Inklusi Keuangan Generasi Milenial Indonesia," *Jurnal Islamic Banking* Vol 3, no. No 1 (2023), <http://ejournal.iainutuban.ac.id/index.php/JIB/article/view/473>.

<sup>9</sup> Ahmad Zaenudin, "Iming-Iming Flash Sale, Lote Digital di Toko Online," *Tirtoid*, 2018, Teknologi edisi, [https://tirtoid.id/iming-iming-flash-sales-lotre-digital-di-toko-online-cLgH?\\_\\_twitter-impression=true](https://tirtoid.id/iming-iming-flash-sales-lotre-digital-di-toko-online-cLgH?__twitter-impression=true).

<sup>10</sup> Zaenudin.

<sup>11</sup> Sugiyono, *Metode Penelitian Kualitatif* (Bandung: Alfabeta, 2015).

<sup>12</sup> Rachmat Syafe'i, *Fiqh Muamalah*, Cet. Ke-2, Cet. Ke-2 (Bandung: Pustaka Setia, 2004).

<sup>13</sup> Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu* (Jakarta: Gema Insani, 2010).

<sup>14</sup> Lihat Verse20; Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung Republik Indonesia, *Kompilasi Hukum Ekonomi Syari'ah*, Edisi Revisi (Indonesia: Direktorat Jenderal Badan Peradilan Agama, 2011).

of exchanging useful goods in a predetermined way. The existence of this buying and selling activity is none other than aiming to find profits in it. In principle, buying and selling is an activity that is allowed by religion or state law as long as there is no reason prohibiting it. Back to rules “*al ashlu fil mu’amalati al ibahah hatta yaquma dalilu ala tahrimiha*” The law of origin of all things (muamalah) is permissible as long as there is no proposition prohibiting it.<sup>15</sup> However, for every party who will make a sale and purchase should be careful and care about every buying and selling process carried out.<sup>16</sup>

### **History of Flash Sale**

The current era of buying and selling has developed from what was originally done offline to online. Online buying and selling has also experienced development in its history, ranging from the classical era to today's modern era. In the past, online buying and selling was done with the aim of facilitating human activities in terms of buying and selling, but now online buying and selling is used as competition. This competition is carried out to gain or increase the branding of a particular product. Rajendra Kumar calls this a shift in the meaning of using technology in buying and selling.<sup>17</sup>

Certain scenarios are used by product owner competitors to increase their product branding. A few years ago Xiaomi, a smartphone company from Beijing, China, entered Indonesia by offering its smartphone brand, Xiaomi. The branding done by Xiaomi is to offer smartphone specifications that are quite capable of rivaling the owners of famous brands at that time, such as Samsung, Apple, and others. In addition to good specifications, Xiaomi also branded its products by offering very tempting prices, below the market price of smartphones at that time. Marketing that is carried out has also adjusted to its era, namely through online buying and selling. In addition, Xiaomi offers its products through flash sales where goods with good specifications, sold at affordable prices, but the number is limited so as to attract people to buy them. So, branding by Xiaomi is done through offering good product specifications at affordable prices and sold on a limited basis. This is what makes Xiaomi able to be known and survive in the Indonesian smartphone industry until now.<sup>18</sup>

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<sup>15</sup> Abbas Arfan, 99 *KAIDAH FIQH MUAMALAH KULLIYAH; Tipologi dan Pernerapannya dalam Ekonomi Islam dan Perbankan Syariah* (Malang: UIN Malang Press, 2013).

<sup>16</sup> Muhammad Djakfar, *Hukum Bisnis: Membangun Wacana Integrasi Perundangan Nasional dengan Syariah* (Malang: UIN Malang Press, 2009).

<sup>17</sup> Rajendra Kumar Tolety, “Hunger Marketing, Flash Sale and Cost Optimization Strategy of Xiaomi inc.-Setting a New Trend Through Etailing,” dalam *International Journal of Research in Finance & Marketing*, vol. 7, Issue 5 (International Journal of Research in Finance & Marketing, Thomson Reuters Researcher, 2017), 182–92, <http://euroasiapub.org/current.php?title=IJRFM>.

<sup>18</sup> Berezina K Semrad K, “Advantages and Disadvantages of Using Flash Sales in the Lodging Industry,” *Journal of Tourism & Hospitality* 04, no. 03 (2015), <https://doi.org/10.4172/2167-0269.1000161>.

Before the concept was adopted by Xiaomi, the history of flash can first be traced back to 2001. The paper written by Deblina Sahavashista states that in 2001 Jacque Antonie Granjon, founder of the *Ventre-Privee* site, was the initiator of flash sales in the world of buying and selling online.<sup>19</sup> Flash sale conducted by Granjon is a campaign or effort to open access to the public to ownership of luxury brands that have only been owned by Europeans so that they can also be owned by other people in general. In addition, Granjon's purpose in holding this flash sale is to gain profits on its site which is then popular and known by the public.<sup>20</sup>

The flash sale mechanism model found on the *Ventre-Privee* site was originally a private sale type. Private sale in this flash sale can only be followed by people who get an invitation via e-mail who have previously registered. Invitations are distributed through each person's personal e-mail which contains information about the time of the flash sale, the goods to be sold, and the quantity provided.<sup>21</sup> This model was later adopted by e-commerce around the world with some adjustments to promotional strategies.

In other words, flash sale is one of the promotional strategies used by product owners by adopting an online buying and selling system with the intention of branding their products so that they are known by the wider community.

### **Harmony and Conditions of Islamic Buying and Selling Orders (Bai' as-Salam)**

Muamalah activities, especially buying and selling orders, have been common for a long time. Rasulullah Saw. In a history, it is said that he once carried out the practice of buying and selling orders. In addition, the fuqaha has established the permissibility of buying and selling orders based on<sup>22</sup> Qs. al-Baqarah ayat 282.<sup>23</sup> Although the context of the letter describes the debts that must be recorded, the fuqaha use this verse as a basis for *diiyaskan* on *illat tempo* (specified time limit) and the obligation to fulfill the delivery of goods.

Buying and selling itself is a *muamalah* activity that has long been inherent in society. Buying and selling in addition to seeking profit there is also a principle *ta'awun* or help in the benefit.<sup>24</sup> Therefore, buying and selling is a muamalah activity that is allowed as mentioned in Qs. Al-Baqarah ayat 275 “*wa akhalallahu bai'u wa kharramar riba...*” which means “... Allah

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<sup>19</sup> Deblina Shavashishta dan Shilpa Santosh Chadichal, “Gone In 60 Seconds-Online Flash Sales: The Next Innovation In Indian E-Commerce Or Just A Flash In A Pan?-A Critical And Empirical Analysis With Consumer Perspective,” *Indian Journal of Management Science (IJMS)* Vol. 1, no. No. 1 (2011): 24–32.

<sup>20</sup> Shavashishta dan Chadichal.

<sup>21</sup> Shavashishta dan Chadichal.

<sup>22</sup> Tim Laskar Pelangi, *Metodologi Fiqih Muamalah Diskursus Metodologis Konsep Interaksi Sosial-Ekonomi* (Kota Kediri: Lirboy Press, 2015).

<sup>23</sup> Kementerian Agama RI, *Al-Qur'an dan Terjemah*, Terj. Yayasan Penyelenggara Penerjemah Al-Qur'an (Solo: PT. Tiga Serangkai Pustaka Mandiri, 2015).

<sup>24</sup> Djakfar, *Hukum Bisnis: Membangun Wacana Integrasi Perundangan Nasional dengan Syariah*.

has legalized buying and banning of riba".<sup>25</sup> Although the context of this verse explains the prohibition of usury, the author finds little explanation in Tafsir Al-Misbah which explains in a way qath'i Difference between buying and selling with riba. Riba itself is an act that clearly benefits one party and harms the other. This advantage is obtained by fraudulent and unfair means. While buying and selling is an act that contains benefits for both parties, namely exchanging goods for a sum of money that has been agreed upon by both.<sup>26</sup>

In this buying and selling there are provisions that must be fulfilled so that the buying and selling activities carried out become valid, both according to Islamic law and applicable positive law. If one of these conditions is not fulfilled, the trade will be void. Get along well and conditions of buying and selling orders:

### 1. Subject (*Mahkum Alaih*)

Subjects or people who make contracts are those who bind themselves to each other and agree to do something.<sup>27</sup> Those who perform *akad* in Islamic law and positive ruling have a number of conditions to be fulfilled such as puberty, reasoning, mukhtar, and legal speaking.<sup>28</sup> Baligh or those who can be said to be adults in Islamic law are 15 years old (The importance of jurists)<sup>29</sup>, while in Indonesian positive law are those who have turned 21 years old or have married before the age of 21 years.<sup>30</sup> This age limit is closely related to whether a person is competent in doing or acting legally, so it is important to note about this age limit as a legal implication or not. However, in general, the mention of the adult age limit can be said that those who are 17 or 18 years old have been considered capable of acting.<sup>31</sup>

### 2. Object

Objects or objects (hereinafter referred to as goods) in the KUH Civil is divided into 2, namely movable and immovable.<sup>32</sup> This time it will focus on moving goods. According to Prof. Subekti in his book Fundamentals of Civil Law, movable goods are still

<sup>25</sup> Kementerian Agama RI, *Al-Qur'an dan Terjemah*.

<sup>26</sup> M. Quraish Shihab dan Muhammad Quraish Shihab, *Surah al-Fâtiḥah, Surah al-Baqarah*, Cetakan V, Tafsîr Al-Mishbâḥ : Pesan, Kesan, dan Keserasian al-Qur'an / M. Quraish Shihab 1 (Jakarta: Lentera Haiti, 2012).

<sup>27</sup> Abdul Wahab Khalaf, *Ilmu Ushul Al-Fiqh* (Beirut: Dar al-Kutub al-'Ilmiyah, 1971).

<sup>28</sup> Nahrowi Nahrowi, "PENENTUAN DEWASA MENURUT HUKUM ISLAM DAN BERBAGAI DISIPLIN HUKUM," *Kordinat: Jurnal Komunikasi antar Perguruan Tinggi Agama Islam* 15, no. 2 (7 Oktober 2016): 253–74, <https://doi.org/10.15408/kordinat.v15i2.6333>.

<sup>29</sup> Ibnu Amin dkk., "The Concept of Baligh Perspective of Fiqh and Positive Law," *Al-Istinbath : Jurnal Hukum Islam* 7, no. 2 (1 Desember 2022): 455, <https://doi.org/10.29240/jhi.v7i2.5268>.

<sup>30</sup> Abdulkadir Muhammad, *Hukum perdata Indonesia*, Cet. 1 (Bandung: Citra Aditya Bakti, 1990).

<sup>31</sup> Mariam Darus Badruzaman, *K.U.P. Perdata Buku III Hukum Perikatan dengan Penjelasan Pengarang Prof. Dr. Mariam Darus Badruzaman, S.H.*, Cet. 2, Cet. 2 (Bandung: Alumni, 1999).

<sup>32</sup> Verse 504 Lihat Indonesia Legal Center Publishing, *Kitab Undang-undang Hukum Perdata (Bulgelijk Weboek voor Indonesia)* (Jakarta Selatan: Indonesia Legal Center Publishing, 2013).

divided into 2, namely moving because of their nature. Furthermore, the focus of the discussion is on movable goods because of their nature which has a definition as goods that are easy to move or move.<sup>33</sup> In a buying and selling, goods become one of the important pillars and are fulfilled. In Islamic law, goods that are bought and sold have a special condition, namely holy, can be used, own property, can be delivered and *ma'lum* (known).<sup>34</sup> The meaning of *ma'lum* here is that the item is known for its specifications. While in Indonesia's positive law there is *halal causa* (Verse 1320 KUH Perdata) which is interpreted as an item / because the sale and purchase agreement may be made because the goods being traded are not prohibited.<sup>35</sup>

### 3. Akad

Akad is a bond that arises between the seller and the buyer that has consequences on both parties. In buying and selling, it cannot be said to be valid if there has not been a pleasure between the seller and the buyer.<sup>36</sup> In the Qur'an can be found in Qs. An-Nisa ayat 29, "*O you who believe, do not eat your wealth in a false way (incorrect), except for business on the basis of your likeness.*"<sup>37</sup> Nabi Muhammad Saw. Saying "*In fact, buying and selling is only legal by giving up each other (Riwayat Ibn Hibban dan Ibn Majah)*" in another hadith narrated "*Let not the two people who buy and sell separate, before they have mercy on each other (Riwayat Abu Daud dan Tirmidzi)*".<sup>38</sup> In Indonesian positive law this is called the principle of consensualism. This principle is contained in the chapter 1320 KUH Perdata.<sup>39</sup>

In general, this agreement or statement of pleasure is done orally, but in some conditions it may be done in other ways that can be understood by the parties, such as done in writing or gestures.<sup>40</sup> In case of akad, There are several conditions that must be considered and must be met by the parties, namely: *The first, mukhtar* is a person who is free in making decisions/free from coercion. Attitude (*mukhtar*) this is reflected in the cut of ayat 29 Qs. An-Nisa that was explained "*...on the basis of likeness between you*" which

<sup>33</sup> Subekti, *Pokok-Pokok Hukum Perdata*, Cet. 23 (Jakarta: Intermasa, 1991).

<sup>34</sup> Taqiyuddin Abu Bakar bin Muhammad Al-Hushny, *Kifayatul al-Akhyar fi hilli Ghayati al-Ikhtishar* (Surabaya: Al-Hidayah, 1993).

<sup>35</sup> Indonesia Legal Center Publishing, *Kitab Undang-undang Hukum Perdata (Bulgelijk Weboek voor Indonesia)*.

<sup>36</sup> Hendi H. Suhendi, *Fiqh Muamalah: Membahas Ekonomi Islam Kedudukan Harta, Hak Milik, Jual Beli, Bunga Bank Dan Riba, Musyarakah, Ijarah, Mudayanah, Koperasi, Asuransi, Etika Bisnis Dan Lain- Lain* (Jakarta: PT RajaGrafindo Persada, 2002).

<sup>37</sup> Kementerian Agama RI, *Al-Qur'an dan Terjemah*.

<sup>38</sup> Suhendi, *Fiqh Muamalah*.

<sup>39</sup> Lihat Verse 330 Kitab Undang-Undang Hukum Perdata Muhammad, *Hukum perdata Indonesia*.

<sup>40</sup> Ashari, Denny Rakhmad Widi, dan et al., *MANAJEMEN PEMBIAYAAN BANK SYARIAH* (Indonesia: Get Press, 2023).



indicates the independence of choosing with whom the parties will enter into an agreement. In the KUH Perdata reflected in the article 1338 KUH Perdata which mentions all agreements made in accordance with the Act as valid as law for those who make them for (The principle of freedom of contract).<sup>41</sup> *The second*, The type of buying and selling orders is required to mention the specifications of the goods traded in the contract, such as the dimensions of the goods, colors, and so on.<sup>42</sup> If the contract is made in writing, then the mention of this specification is also made in writing or included in the sale and purchase agreement carried out.<sup>43</sup>

### **Flash Sale and Order Sale and Purchase Agreement (E-Commerce)**

Flash sale in Indonesian means quick or lightning sale. Flash sale in terminology is a sales system in e-commerce that provides good brand offers at low prices within a limited period of time.<sup>44</sup> The existence of good brand offers and low prices make this flash sale a method of selling that can attract many buyers.<sup>45</sup> The sales system in flash sales is carried out in the world of e-commerce.

The sales system in the e-commerce world is done by packaging first then the order will be recorded by the platform and forwarded to the seller, which then the seller is given a time limit to pack and ship the goods. Goods that have been packed and ready to be shipped will be picked up by the shipping expedition. This delivery is carried out by the expedition until the goods arrive at the buyer's hands. In other words, the sales system in this flash sale is the same as buying and selling online in general.

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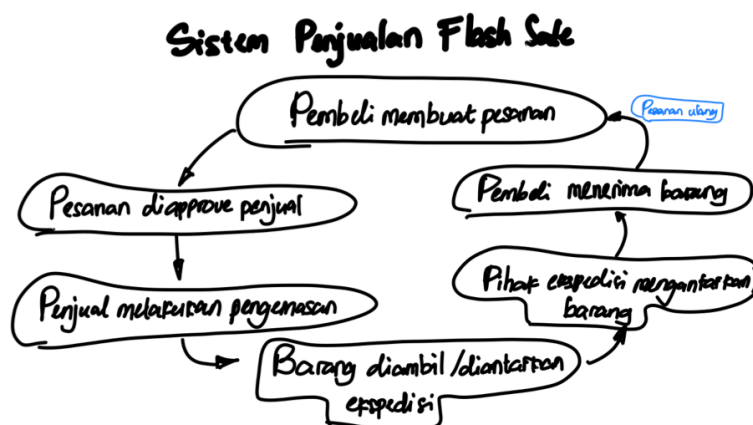
<sup>41</sup> Agus Yudha Hernoko, *Hukum perjanjian asas proporsionalitas dalam kontrak komersial*, Edisi pertama (Jakarta: Kencana, 2010).

<sup>42</sup> Abdurrahman al-Jaziri, *al-Fiqh 'ala Madhahib al-'Arba'ah* (t.p.: al-Maktabah al-Tawfiqiyah, t.t.).

<sup>43</sup> Novi Ratna Sari, "Komparasi Syarat Sahnya Perjanjian Menurut Kitab Undang-Undang Hukum Perdata dan Hukum Islam," *REPERTORIUM: Jurnal Pemikiran dan Penelitian Bidang Keperdataan dan Kenotariatan* 4, no. 2 (2017), <https://jurnal.uns.ac.id/repertorium/article/view/18284>.

<sup>44</sup> Muhamad Aji Purwanto, "Sistem Flash Sale pada Situs Electronic Commerce Lazada dan Bukalapak dalam Perspektif Hukum Islam dan Hukum Positif Indonesia" (Thesis, Tulungagung, Universitas Islam Negeri Sayyid Ali Rahmatullah Tulungagung, 2020), <http://repo.uinsatu.ac.id/18713/>.

<sup>45</sup> Sadana Devica, "PERSEPSI KONSUMEN TERHADAP FLASH SALE BELANJA ONLINE DAN PENGARUHNYA PADA KEPUTUSAN PEMBELIAN," *Jurnal Bisnis Terapan* 4, no. 1 (26 Juni 2020): 47–56, <https://doi.org/10.24123/jbt.v4i1.2276>.



*Subject* (seller and buyer) In the flash sale, you will be asked to fill in your complete identity starting from your name, address, age, username, and password. This identity filling is done in the initial step where the subject begins to register as a user of the e-commerce platform. This identity filling is done with the aim of one of them to find out the age of the user, where in its provisions on each e-commerce platform requires a minimum age limit of 18 years old.<sup>46</sup> This is in accordance with the applicable provisions in Islamic law and Indonesian positive law where the age limit is a requirement for the subject's ability to carry out a legal action such as a sale and purchase agreement.

Akad, In a flash sale about an agreement or statement of approval to purchase an item is carried out by confirming the purchase through the 'Create Order' button or other buttons that use other word equivalents whose intention is the same. Furthermore, the seller will approve / approve the purchase request which is then followed by packing the goods according to the order and the packaging deadline provided by the e-commerce platform. It is a mechanism that directly states that sellers and buyers freely (principle of freedom of contract) agree (principle of consensualism) bind themselves to do an act, namely buying and selling.<sup>47</sup> The statement of mutual agreement symbolizes “*antaradin min kum*” or an attitude of willingness between seller and buyer.<sup>48</sup> The attitude of mutual pleasure or agreement between sellers and buyers in buying

<sup>46</sup> Lihat Lazada, “Syarat & Ketentuan Pengguna,” .co.id, *Syarat & Ketentuan Pengguna* (blog), 29 Januari 2023, [https://www.lazada.co.id/terms-of-use/?spm=a2o42.login\\_signup.0.0.72836664aZKzCC.](https://www.lazada.co.id/terms-of-use/?spm=a2o42.login_signup.0.0.72836664aZKzCC;); Shopee, “Shopee: Pusat Bantuan - Syarat Layanan,” co.id, *Shopee: Pusat Bantuan* (blog), 29 Januari 2023, [https://help.shopee.co.id/portal/article/71187.](https://help.shopee.co.id/portal/article/71187); Tokopedia, “Tokopedia: Term & Conditions,” .com, *Term & Conditions* (blog), 29 Januari 2023, [https://www.tokopedia.com/terms?lang=id.](https://www.tokopedia.com/terms?lang=id)

<sup>47</sup> Muhammad, *Hukum perdata Indonesia*. dan Badruzaman, *K.U.P. Perdata Buku III Hukum Perikatan dengan Penjelasan Pengarang Prof. Dr. Mariam Darus Badruzaman, S.H.*

<sup>48</sup> M. Quraish Shihab dan Muhammad Quraish Shihab, *Surah Ali ‘Imrân, Surah an-Nisâ’*, Cetakan V, Tafsîr Al-Mishbâh : Pesan, Kesan, dan Keserasian al-Qur’an / M. Quraish Shihab 2 (Jakarta: Lentera Haiti, 2012).; Suhendi, *Fiqh Muamalah*; Tim Laskar Pelangi, *Metodologi Fiqih Muamalah Diskursus Metodologis Konsep Interaksi Sosial-Ekonomi*.

and selling orders (e-commerce) is also regulated in UU ITE and Government Regulation of the Republic of Indonesia Number 71 Tahun 2019 on Electronic Systems and Transactions.<sup>49</sup>

In the statement of approval made in writing through the e-commerce platform, it states the specifications of the goods, prices and delivery deadlines. Where the act (law) of buying and selling gives rise to the seller's obligation to deliver the goods and the buyer to pay. If within the time limit of the review process there are no complaints from buyers, then the payment funds that have been sent by buyers will be forwarded to sellers by the e-commerce platform. From here the contract process is complete because of the sale and purchase cash.

Goods in the flash sale are traded by mentioning the specifications through the description column and the image displayed. This specification mentions starting from the type of goods, type, brand, state of new or used goods, color and so on. The mention of this item in buying and selling orders does require the seller to mention the specifications of the goods he sells.<sup>50</sup> This is because first, the goods sold physically cannot be seen directly by the buyer. Goods can be seen by the buyer when they arrive and are received. *Second, buying and selling is carried out not in a direct assembly that brings together sellers and buyers directly in a place, but only virtually. Third, goods traded in flash sales have prices below the market or can also be referred to in conventional terms as discounts. The seller mentions the discounted price and the starting price of the goods at the time of sale. This is what makes buyers interested in making purchases.*<sup>51</sup> Fourth, the seller mentions the quantity of goods sold at the time of the flash sale. This is a concern for buyers, that the goods sold are indeed in limited quantities.

In a flash sale, of course, there is also the right to accept and reject goods or claims when the goods sent do not match the description on the specifications written by the seller.<sup>52</sup> In Islamic law this right is called *khiyar 'disgrace and khiyar condition*. *Khiyar 'disgrace* is the right to continue buying and selling when the goods being traded do not conform to the

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<sup>49</sup> Pemerintah Pusat, *Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik* (Jakarta: Pemerintah Republik Indonesia, 2008); Presiden Republik Indonesia, *Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik* (Jakarta: Pemerintah Republik Indonesia, 2016); Presiden Republik Indonesia, *Peraturan Pemerintah Republik Indonesia Nomor 71 Tahun 2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik* (Jakarta: Pemerintah Republik Indonesia, 2019).

<sup>50</sup> Abu Bakar bin Muhammad Al-Hushny, *Kifayatul al-Akhyar fi hilli Ghayati al-Ikhtishar*; Suhendi, *Fiqh Muamalah*.

<sup>51</sup> Lazada, "Syarat & Ketentuan Pengguna"; Shopee, "Shopee: Pusat Bantuan - Syarat Layanan"; Tokopedia, "Tokopedia: Term & Conditions."

<sup>52</sup> Muhammad Aji Purwanto, "Penafsiran Cidera Janji dan Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi (Nomor 18/PUU-XVII/2019 dan Nomor 2/PUU-XIX/2021)," dalam *The Dialectical Development on Sharia and Law in Indonesia*, vol. 1, 1 (international Conference on Sharia and Law, by Faculty of Sharia and Law, State Islamic University of Sunan Ampel Surabaya, Surabaya: UIN Sunan Ampel Surabaya, 2022), 153–59, <http://proceedings.uinsby.ac.id/index.php/ICOSLAW/article/view/956>.

specifications mentioned in the description. Khiyar conditions relate to the time of return if the goods sold do not match the description.<sup>53</sup> Both of these khiyar apply in flash sales as protection of the buyer's right to buy an item. Meanwhile, from the seller's side, there is also the same khiyar by requiring an unboxing video when the goods arrive as proof that the goods sent do not match the description.<sup>54</sup> In Indonesia's positive law on this subject is listed on Verse4 dan Verse8 ayat 1 Consumer Protection Act.<sup>55</sup> This proves that flash sales and e-commerce agreements carried out in Indonesia are still in accordance with the provisions of Islamic law and Indonesian positive law.

## CONCLUSION

Basically, the flash sale mechanism is the same as buying and selling online as usual, the difference is in the price, time, and quantity limits of goods sold. The price given during flash sales is below generally and the time restrictions given by buyers and e-commerce are also very limited, so it will cause buyers to be interested and competing to buy. This becomes even more challenging because the quantity of goods sold is very limited as well. Not using a bargaining or auction system, But who is the fastest able to complete the mechanism (step by step) of this flash sale will get the purchased item. In sharia economic law, the purchase mechanism at this flash sale can be interpreted as ba'i as-salam or buy and sell orders. Meanwhile, in Indonesia's positive law, the flash sale mechanism carried out is legal as well as the step by step online buying and selling process in general as long as what is traded is not a prohibited item.

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<sup>53</sup> Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*.

<sup>54</sup> Lazada, "Syarat & Ketentuan Pengguna"; Shopee, "Shopee: Pusat Bantuan - Syarat Layanan"; Tokpedia, "Tokopedia: Term & Conditions."

<sup>55</sup> Presiden Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 tentang Perlindungan Konsumen* (Jakarta: Pemerintah Republik Indonesia, 1999).

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