

## OVERVIEW OF THE CONCEPT OF KHIYAR AL AIB IN E-COMMERCE PRACTICE

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**Abstract.** The rapid development of buying and selling online gave birth to various problems related to the shift in traditional buying and selling which developed into buying and selling through the internet world. The ease of transactions obtained through the internet media must be followed by strong protection for consumers, considering that the goods traded cannot be seen and held directly. The choice to determine whether the consumer can continue the sale and purchase contract or cancel it has been regulated in Islamic law, this right to choose is called khiyar. This Khiyar right is a form of protection for consumers. If it is known that the goods traded have defects, then with the validity of khiyar al-aib, consumers can return and replace them with new ones without defects, or cancel the contract with a refund, or can also sincerely accept the defect with a reduced price, all of which are returned to the customer. The parties by mutual agreement. The review of the Khiyar Al-Aib concept in E-commerce in Indonesia by taking the example of the Shopee marketplace aims to analyze that the development of e-commerce is also followed by consumer protection efforts by the application of khiyar al-aib. The research method is normative law by examining a collection of legal materials related to consumer rights, the Consumer Protection Act, provisions in Islamic law. Consumer dissatisfaction with online buying and selling transactions can be followed up with the implementation of the principles and concepts of khiyar al-aib. This review of khiyar al-aib is to understand that the concept of consumer protection in Islam already exists and can be applied to online trading transaction.

**Keywords:** buying and selling online; Khiyar Al-Aib; consumer protection

### I. INTRODUCTION

E-commerce or online trading activities, can be interpreted as the transformation of traditional buying and selling culture into modern buying and selling. The characteristic of traditional buying and selling activities is direct and local transactions, in contrast to e-commerce that uses internet media, so that indirect transactions occur with a wider and worldwide reach. The importance and acceptance of e-commerce as a modern buying and selling transaction is supported by digital culture and financial technology. Data in 2018 recorded that 66% of Indonesians do not /do not have a bank account, but in line with the growth of e-commerce, it has significantly moved people to voluntarily open and have an account. Cashless has gradually become a plural thing, the cashless transaction in 2020 rose sharply from IDR 47.19 trillion to IDR 125.95 trillion based on data from the Bank Twitter [1].

The transaction of buying and selling e-commerce uses marketplace which acts as an intermediary for sellers and buyers. Buyers can only see and read the specifications of the goods traded on the application or website, this condition is actually vulnerable to legal disputes related to efforts protecting the rights of buyers from dishonest/fraudulent acts of sales in e-commerce transactions. Fraudulent or dishonest acts can be in the form of the existence of business actors, the price and condition of the goods offered, and payment activities by consumers [2]. Types of transactions in e-commerce transactions include fictitious business actors

/stores, counterfeit goods or not in accordance with the appearance and specifications that appear in the marketplace.

One of the obligations of the seller is to explain the condition of his merchandise without covering up defects or rejects, as exemplified by the Prophet Muhammad SAW. The wisdom of this obligation is so that there is no gharar or fraud in buying and selling transactions. In essence, buying and selling must be willing to give up each other, there is no element of fraud or fraud hiding defects and lies that have the effect of harming buyers /consumers. The Indonesian Consumers Foundation (YLKI) reported that during the covid-19 pandemic, an increase in complaints for online shopping was recorded at 51 perreport which occurred during the first semester of 2020 [3].

Islamic law has regulated the buyer's right to the defective condition of the goods purchased, known as the right of khiyar, namely "The right to decide to cancel or continue the sale and purchase agreement, if it is known that there is a defect in the merchandise and the seller does not know the defect when the contract takes place". This right prioritizes prinsip so that there is no dzolim treatment in buying and selling transactions to one of the parties or parties who are considered weak, all must be based on with willingness. The creation of awillingness aims to avoid losses between actors in a transaction, if there is an incompatibility of the object being traded. The option to continue or cancel the trade is called khiyar [4].

Based on the foregoing, this paper explains buying and selling transactions through e-commerce and the

problems with the sale of defect /reject goods that harm buyers. The approach and analysis used is with the concept of khiyar al aib rights in resolving consumer insatiability or buying and selling disputes which are alternative solutions for the parties to the transaction e-commerce.

This article will analyze:

1. The Concept of Khiyar Al – Aib in the Effectiveness of Islamic Law and Consumer Protection Law ?
2. Responsibility for product defects in transaksi e-commerce?

## II. RESEARCH METHODS

The research method used is normative in nature by examining legal materials related to the Consumer Protection Act, the law trading and muamalah in Islamic Law and other relevant legal sources. This research is descriptive in nature, with the aim of providing as detailed and accurate data as possible regarding humans, conditions or other issues. The data source used is secondary data in the form of data obtained not directly from the community, but comes from documents, laws and regulations, reports, archives, literature, and other research results.

## III. RESULTS AND DISCUSSION

*The Concept Of Buying And Selling, Khiyar Al -Aib, Product Liability and Protection Consumers*

### A. Trade

Arabic terms in trading is called 'bai', that is, exchange of goods for other goods. Other terms of the word al-bai are the terms at-tijarah (trade), al-mubadalah (exchange), and al-shira (buy). Based on the terminology referred to buying and selling is exchanging money for goods or money, exchanging goods for goods, which is sustainable, aims to make a profit [5]. The legal basis for trading in the Al-Qur'an is one of them in Q.S. Al-Baqarah verse (2) verse 275 : "... Allah has justified buying and selling and forbidden usury" [6]. Q.S. An – Nisa (4) verse 29 : "... not to eat each other's property with vanity, but it is permissible if through buying and selling that applies on a consensual basis" [7].

Legal Basis for Buying and Selling in As-Sunnah: The Prophet answered the question about the best work, "*The efforts of man's own hands and every blessed/ clean trade.*" (H.R. Ahmad) [8].

Legal Basis for Buying and Selling According to the Rules of Fiqih, that "*The law of origin of muamalah is permissible (mubah) to be carried out, unless there is a proposition that prohibits it*". The point of this rule is that every muamalah is basically mubah, bai, rent, pawn, cooperation (mudharabah or musyarakah), greetings, representatives (wakalah), and others, except those that are clearly and expressly prohibited, because they can cause harm including deception (tadlis), uncertainty (taghrir), gambling and usury [9].

Pillars and terms trading the existence of seller and buyer, there are objects of sale and purchase can be in the form of property (money) and goods that qualify as tradable goods,

sighat /ijab and qobul, ijab is the surrender to the buyer, and qobul is the acceptance of the buyer [10]. The valid requirements sale and purchase subject who performs the contract is sensible, there are 2 (two) different parties, not allowed by someone at the same time to apply as both a seller and a buyer. Sighat contract can be done in various ways, namely by oral, writtenan, gestures, and actions of deeds [11].

Types of Buying and Selling that are legal or allowed based on syara, namely the product can be seen, sacred, benefits and the fulfillment of the pillars of buying and selling, the goods sold /ordered must be in accordance with with specifications and offers, there is no element of lies and fraud in it, it is forbidden to sell goods of an unclean and useless nature [12].

### B. Product Liability

Law Number 8 of 1999 concerning Consumer Protection (UUPK) in it contains regulations on the responsibilities of business actors [12]: a. Contractual liability, b. Product liability, c. Professional liability, d. Criminal liability. UUPK Article 19 paragraph (1), stipulates that if the product harms consumers, then producers are required to be responsible and compensate for losses. This provision is a shift of Adagium Caveat Emptor (consumers who are required to be careful in buying and using products) into Caveat Venditor, manufacturers are required to be careful and beware, on the goods of production produced, distributed and traded to consumers so as not to cause losses [13].

Protection for consumers of the products produced by producer must be accompanied by certainty of the party who is obliged to be arresponsibility and how much responsibility is charged. The provisions in the UUPK, that everyone who causes losses to consumers, must bear the responsibility he has done, the party who suffers the loss, has the right to demand compensation which can be in the form of money refund, p 19 subsection (2) of the UUPK). Absolute responsibility occurs in product liability, this is because [13]: 1. The problems experienced by consumers, 2. Manufacturers current guarantee that the goods marketed and distributed are safe and worthy of use. 3. Strict liability is absolutely applied,

### C. The Concept of Khiyar Al – Aib

Linguistically khiyar means choice. The seller and the buyer have the option to determine the seriousness of selling or buying, canceling it or making a choice on the goods offered. The choice of the goods offered, if in the transaction there are several items to be selected, in the fiqh muamalat is called khiyar [14]. This Khiyar is important in the transaction to maintain the willingness and interests of the parties to the contract and protect against dangers that may cause losses to them, so that the khiyar is mandated by Islam to be able to fulfill the interests of business transaction in human life [14].

Khiyar al- aib is the right to cancel or continue the contract if a disgrace /aib is found (defect), and the buyer does not know the defect/reject when the contract is made. The fundamental problem is when the goods sold have defects or the exchange device is reduced in value and it is not known to the buyer.

The legal basis of Khiyar Al - Aib includes the words of the Messenger of Allah SAW which reads: "... it is not lawful for a Muslim to sell his goods to other Muslims, even though there is a disgrace/defect in the goods". (HR. Ibn Majah of 'Uqbah ibn 'Amir). Ulama fiqh among them Hanafiyah and Hanabilah scholars argued that khiyar 'a disgrace applies since diketahui there is a defect in the object of buying and selling, even heirs can inherit the rights of khiyar. The requirement to bequeath arises if the defect in the goods is damaged and according to the standards /traditions of the merchant reduces the value of the goods [15].

Provisions and terms the establishment of khiyar a disgrace [16]: 1. Defects are known before or after the contract, but the handover of goods and prices has not been carried out. 2. The buyer does not know of any defects in the goods at the time of the contract. 3. The seller and the buyer do not require that if there is a defect, it cannot be returned. 4. The defect remains attached until the cancellation of the contract is carried out. In Khiyar al -Aib the buyer has two options if he is willing and satisfied with the goods to be purchased, then the khiyar does not apply and the goods must be accepted, however if the buyer refuses and returns the goods to the salesperson, then the contract becomes void or is considered to have no transaction.

#### D. General Concepts of Consumer Protection

##### 1. Definition of Consumer Protection

The presence of Law No. 8 of 1999 concerning Consumer Protection is a milestone in the history of the development of Indonesian consumer protection law. This Law regulates consumer protection policies, both related to material law and formal law regarding the resolution of consumer disputes [17].

##### 2. Principles and Objectives of Consumer Protection

Five (5) formulations of principal in consumer protection as stated in Article 2 of the UUPK and its explanation that : a. The principle of benefits mandates that the implementation of consumer protection must provide benefits for the interests of consumers and business actors as a whole. b. The principle of fairness implies that there is a wide opportunity to be given to consumers and business actors to fairly obtain rights and carry out their obligations. c. The principle of balance creates a material and spiritual balance between the interests of consumers, business actors, and the government. d. The principle of consumer security and safety aims to provide guarantees for the security and safety of consumers in the nature of using, using, and utilizing goods and/or services. e. The principle of legal certainty, the state guarantees legal certainty, has the aim that business actors and consumers obey and comply the law and get justice in the implementation of consumer protection.

#### The Concept Of Trading Through e-commerce

##### A. Overview of Transactions Through e-commerce

E-commerce can be interpreted as electronic trade transactions in which there is a process of buying, selling, transferring, or exchanging products, services, or information through the computer network or the Internet. The definition

of e-commerce also refers to the process of buying and selling, exchanging a product or information carried out with computer network . The wider definition of e-commerce is not limited to buying and selling transactions, but related to service to consumers and collaboration with partners [18].

Pieter Scisco gives a definition of e-commerce based on an encyclopedia that follows " Electronic commerce or e-commerce, the exchange of goods and services by means of the internet or the other computer network. e-commerce follow the same basic principles as traditional commerce that is, buyers and sellers come together to exchange goods for money. But rather than conducting business in the traditional way in stores and other "brick and mortar" buildings or through mail order catalogs and telephone operators in e-commerce buyers and sellers transaction business over networked computers". The various definitions of e-commerce each have similarities in the form of [19]:

- a. The existence of a transaction that occurs between two or more parties
- b. There is a process of exchanging goods and services
- c. The use of internet media as a means of transaction

The basic principle of e-commerce is actually the same as conventional transactions, that there is a legal relationship in the form of the transfer of goods and /or services between sellers and buyers which is carried out through cyberspace /internet, this practice gives rise to no direct or physical interaction that occurs sellers and buyers.

There are seven (7) basic types of e-commerce business, namely [20]: a. Business-to-Business (B2B), b. Business-to-Consumer (B2C). c. Consumer-to-Consumer (C2C), d. Consumer-to-Business (C2B), d. Business-to-Administration (B2A), e. Consumer-to-Administration (C2A), f. Online-to-Offline (O2O)

##### B. Procedure for Buying and Selling Goods Through Ecommerce

E-commerce is essentially the same as ordinary buying and selling transactions, with several stages as follows: 1) Offers, 2) Acceptance, 3) Payment, 4) Delivery. The payment that the buyer has made, followed up by the seller with the delivery of the goods. Delivery can be made by a third party/ logic service company/courier which gives rise to the imposition of delivery fees. The fee is paid with willingness by the buyer. the addition of shipping costs is not prohibited in Islamic law, because it is an element of buying and selling in the form of willingness from the parties.

Jumhur ulama argues that there are four pillars of buying and selling: covenant (ijab qabul), Ba'i (seller) and mustari (buyer) are reasonable people, Ma'kud 'alaih (object), There are nexchange rates of goods that meet 3 conditions: can store value (store of value), can assess or value goods (unit of account) and can be a medium of exchange (medium of exchange).

##### C. Procedures for Receiving and Returning Goods for Buying and Selling Transactions Through e-commerce

The procedure and form of receiving goods of various types depending on the marketplace platform for example on

the Blibli, Shopee, Tokopedia, Lazada applications, proof that the goods have been received by clicking on the goods have received. This act is a form of confirmation of the receipt of the goods, so that the seller means that the transaction is appropriate and accepted by the buyer with naman.

Forms or efforts to avoid defects in e-commerce transactions [21]: a. The goods traded have ownership right, not in dependents or public property. b. The goods displayed are clear and detailed, the validity of buying and selling is the clarity of the goods sold. The validity of the goods traded must be halal and useful goods, the goods sent are in accordance with the display in the marketplace/display.

Transactions through e-commerce are valid, if the purchased goods have arrived safely and completely at the destination address as promised. If the goods do not match the information and when the goods are received there is a defect, the applicant has the right of khiyar to return (return the goods) followed by with a refund or replacement of similar items that are not defective.

#### *The process of returning Goods on Marketplace.*

On the Shopee marketplace for the return procedure, it can only be done if the buyer has not clicked on the order field received, which is a confirmation that the goods have been received. If a click has been made, then the arrangement on the ordered item automatically ends and then the funds will be transferred to the Seller. On this basis, the buyer must ensure and be careful before clicking /confirming the order is received. Documentation evidence that can corroborate the basis for returning ordered goods is to record video at the time of unboxing. Video evidence can clearly show the condition of the goods received, whether they are in accordance with the ordered goods and are perfect without defects or there is a defect /reject, which has an impact on the arising of the right of khiyar to the buyer..

Generally khiyar right in e-commerce in the form of refunds and exchange of products. This condition is not automatically carried out by the platform/marketplace owner, but in accordance with the agreement of the parties. There is generally a time limit in the use of this right or there is an expiration date in the claim to the right of khiyar. Based on the predetermined period, for example, after 14 days from the receipt of the goods, the buyer does not return the order, it will be considered there has been satisfaction and conformity, the buyer willingly and sincerely accepts the condition of the goods of his order. The marketplace owner will refuse the return request, because it is considered to have expired and the expiration of the return guarantee. This happens, if the seller does not take action on the buyer's complaint, so that the funds that have been paid will be returned to the buyer.

#### *Khiyar Al-Aib's Analysis As A Solution To Product Defects In Trading Transactions Through E-commerce.*

##### *A. The Concept of Khiyar in the Perspective of Muamalah Jurisprudence and Consumer Protection Law*

The Prophet Saw said : *Two persons who trade each have the right of khiyār as long as the two have not separated.* (HR al Bukhari)

Observing the hadisth mentioned above, in e-commerce transactions, sellers and buyers are not directly related, and buyers are constrained in checking and verifying the goods offered. This situation positions the transaction actors as having no balance in bargaining, the position becomes unequal. The presence of the khiyār system is a supporting instrument and is needed in the practice of buying and selling through e-commerce. The exercise of khiyār has attached the right of the buyer to return/exchange the goods that have been received, subject to the terms & conditions that have been determined.

According to Article 20 paragraph 8 of the Compilation of Shari'a Economic Law, namely: "the right of choice for sellers and buyers to dissolve or not for the sale and purchase agreement carried out." Therefore, khiyar is a right attached to any transaction that enforces the right of khiyar and is ensured to be used by the parties to the transaction.

Taking into account the provisions in the Compilation of Sharia Economic Law (KHES) concerning the rights and obligations of sellers and buyers contained in Article 62, Article 63 and Article 69, the essence of which is: sellers and buyers are required to agree on the price of the merchandise /object of sale and purchase. There is a handover of the object of sale and purchase at the agreed price, the obligation of the buyer to deposit the purchase price of the merchandise. The rights of Khiyar are owned by both buyers and sellers.

Civil Code article 1460 reviews the right of khiyar with the risk of being borne by the buyer, even though there has been no handover of the goods, if the goods are at the time they are delivered to the buyer becomes destroyed by travel or accident, then the buyer is set to pay the price. This provision was considered not to provide a sense of justice, so the Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) Number 3 of 1963 was issued which was addressed to all judges and courts, which stated that several articles in the Civil Code, including Article 1460 of the Civil Code do not need to be enforced anymore.

This SEMA if observed has the meaning that in the buyer there is the right to cancel the sale and purchase transaction, caused by the order item being defective /destroyed before being received or is under his control. It can therefore be concluded that in the mind and heartstrings of the judges in the Supreme Court have resided in the intention of providing protection to the buyers/consumers who are in implement in the form of not enforcing this Article 1460 of the Civil Code which is interpreted as an article that harms consumers /buyers.

Article 1504 of the Civil Code Book II on Engagement: " The seller shall be liable for any hidden defect, which is such as to result in the goods not being able to be used as function and purpose, or cause a decrease in the value of use, so that if from the beginning it is known that there is a defect/deficiency, the same will not occur purchase except with price reduction/decrease".

If it is associated with law, then the concept of khiyar in today's buying and selling transactions resembles a guarantee /warranty /warranty. Guarantee is part nature of the sale and purchase agreement, the seller guarantees the

originality and integrity of the goods sold for a certain period of time. In the event of a damage or defect in the product, the cost of repair is borne by the seller. The terms and conditions for the warranty are generally stated in the form of a warranty card /letter which is an integral part of the goods /product.

The essence of the arrangement is a guarantee against defects hidden by the seller to the buyer within a certain period of time and with certain conditions. If interpreted in depth then the warranty is an implementation of the right of khiyar. The right of khiyar referred to in this case is khiyar aib (defect). This shows the relevance between the disgraceful khiyar and the warranty, because these two types of guarantees focus on the presence of defects in the goods that give the khiyar rights to buyers to get compensation so that there is no unwillingness in buying and selling transactions [22].

Khiyar when viewed from positive law is also the embodiment and one of the forms of consumer protection in the UUPK, consumer protection covers the protection of goods and services, which begins with the stage activities to obtain goods and services up to the consequences of the use of these goods and /or services.

The scope of consumer protection can be distinguished in two aspects, namely: a. Protection against possible goods handed over to consumers does not correspond to what has been agreed. b. Protection against the imposition of unfair conditions to consumers [23].

Based on the UUPK, it stipulates consumer rights, including the right to choose and obtain goods and /or services in accordance with the exchange rate and the conditions and guarantees promised, the right to true, clear, and honest information regarding conditions and guarantees goods and/or services and seven other types of rights. The Prophet said that "*honest attitude in a buying and selling transaction is the cause of the emergence of blessings, as for lies or lies causing the erasure of blessings*" thus buying and selling transactions are absolutely based on honesty, according to His promise, that God will give blessings, but if there is an intention /intention to cheat or lie, deceit cheating in buying and selling transactions, disappearing and losing blessings in them.

### B. Civil Liability for Defects in Goods in e-commerce Transactions

During the pandemic in 2020, internet users in Indonesia were 175.5 million people from a total population of 268,583,016 people [24], this is in line with the increasingly rapid increase in transaction volume which is increasing occurs through social media as well as e-commerce platforms. This is also accompanied by the emergence of various problems. This fact is reflected in the Consumer Complaints National Consumer Protection in 2020, it is stated that there are 283 complaints in the e-commerce sector .

The dispute between consumers and business actors is undeniable, therefore the Government has provided a settlement body such as BPSK (Badan Penyelesaian Sengketa Konsumen- Consumer Dispute Resolution Agency) or go the court litigation. Thus, it would be ineffective and take a long

time if the dispute over the sale and purchase of goods at low prices had to go through a protracted judicial process . The right alternative solution is to increase public awareness in this case consumers /buyers by being aware and smart in making transactions in the marketplace, the principle of prudence and always prioritizing self-awareness. As for business actors, they always strengthen the rules and regulations governing compensation if their business activities cause losses to consumers, so that achieving legal certainty and justice, however, the most important and main thing is honesty in carrying out buying and selling transactions so that consumers are satisfied, trust and in the future have an impact on repeat orders that benefit business actors, not only valuable in terms of profit but the blessings it causes.

Efforts to avoid ongoing disputes over the transaction of buying and selling goods whether significant or not, one of which is the concept of khiyar aib itself, or can be equated with warranty, equated to return. In relation to the disgraceful khiyar in this e-commerce, an analysis of the case will be carried out based on the provisions on the Singapore-based commercial electronic site Shopee. Shopee has certainly placed instruments of settlement provisions that can be used as a basis if there is a dispute between the seller and buyer who transacts on Shopee, these provisions are as follows :

#### *Application for a Return of Goods/Funds*

*Subject to the terms and conditions in this Refund Policy and Goods and the Terms of Service, the Buyer should apply for a return purchased goods ("Goods") and/or refunds prior to the expiration of Shopee's Warranty Period as stated in the Terms of Service.*

Shopee Guarantee is a service provided by Shopee, at the request of the User, to assist the User in dealing with certain conflicts that may arise during the course of the transaction. Users can communicate with each other privately to resolve their differences or contact local authorities to help them resolve disputes that occurred before, during or after using Shopee Warranty.

The Buyer shall only apply for a return of the Goods and/or a refund in the following situations: The Goods have not been received by the Buyer; The item is defective and/or damaged upon receipt; The Seller has shipped goods that do not comply with the agreed specifications (e.g. wrong size, color, etc.) to the Buyer; The Goods delivered to the Buyer are materially different from the description given by the Seller in the list of Goods; or Through a personal agreement with the Seller and the Seller must send Shopee confirmation of the agreement.

#### *Buyer's request must be submitted through the Website.*

Shopee will review each Buyer's application on a case-by-case basis and, in its sole discretion, determine whether the Buyer's application is successful or not. If the Buyer has initiated legal action against the Seller, the Buyer may give a formal notice from the competent authority to Shopee to request Shopee continue to withhold purchase money until an official designation is available. At its sole and absolute discretion, Shopee will determine whether it is necessary to continue to withhold the purchase money.

**Seller's Rights:** When Shopee receives an application from the Buyer for a return of goods and/or a refund, Shopee will conduct a review and examination of the request from the Buyer before notifying Seller in writing. Except in the event that an application from the Buyer requires further confirmation of or further examination by involving the Seller, then Shopee will review each Seller's response on a case-by-case basis and, in its sole discretion, determine whether buyer's application against the situation put forward by such Seller is successful or not.

In some circumstances where the Seller objects to the decision taken by Shopee, the Seller may respond to the Buyer's request in accordance with the steps provided by Shopee in the notification written. Seller must respond within the timeframe set out in the written notice ("Set Term"). If Shopee does not hear from the Seller within the Stipulated Time Period, Shopee will assume that the Seller has no further response to the Buyer's request and will proceed to render a decision on the Buyer's application without further notice to the Seller.

**Terms of Returning Goods:** In order to enjoy a hassle-free experience when returning goods, the Buyer must ensure that the Goods, including any free/carry-on items such as accessories which comes along with the Goods, shall be returned to the Seller in the conditions received by the Buyer at the time of delivery. We will advise the Buyer to take a photo of the Goods upon receipt.

#### *Responsibility for Shipping Costs of Returned Goods*

In unforeseen error scenarios from the Seller's side (i.e. the product is damaged, defective or incorrectly delivered to buyer), The Seller or Buyer will bear the shipping costs of the return of the Goods depending on the agreement of the Seller and the Buyer; In a scenario where the Seller and buyer dispute who is the party responsible for the shipping costs of the returned Goods, Shopee will in its sole discretion determine who will be responsible for the shipping costs of returning the Goods.

#### *Buyer's*

Refund will only be refunded once Shopee has received confirmation from the Seller that the Seller has received the returned Goods. If Shopee does not hear from the Seller within the specified time period, Shopee has the freedom to return the appropriate amount to the Buyer without further notice to sellers. For <https://shopee.co.id/legaldoc/returns-deadline> more information on seller response deadlines, please click here. Refunds will be made to the Buyer's credit card or ShopeePay account, whichever is appropriate.

Judging from the terms & conditions applied by Shopee, Shopee has included and implemented the principle of *khiyar aib* in the provisions and rules for transactions at Shopee, this is with the stipulation of the provisions "Return of Goods and Funds" Shopee has clearly regulated in detail and rigidly related to reports of dissatisfaction from consumers and claims for return of goods (due to defects or non-compliance with the order), clearly regulates what things

should be done, the terms, rights and obligations and the deadline for determining reporting or claimed refunds.

Policies related to the return of goods and/or funds actually do not only apply on the Shopee platform but almost all e-commerce adapts and contains these provisions. The provisions of this disgrace have affixed to buying and selling transactions around the world, or if they are derived from Western law, can be equated with the principle of *caveat venditor* (responsibility responsibility of manufacturers and business actors), which imposes responsibility for the products it sells. This obligation gives rise to business actors being obliged to assume good faith in providing protection and information to consumers, one of which is through clear and honest product information (does not contain elements of deception). Shopee in this case provides and requires that every item traded by business actors always include detailed product details including it enit the provision "Exchange of defective/missubmitted goods". As a form of protection to consumers, Shopee also provides noted/warnings related to the activities of business actors, if they have not done it for a long time transactions, to consumers are given a warning to be careful and ensure the activities of business actors so that, consumers will not be harmed.

The provisions governing the procedure for returning goods in the event of a defect, are a form of responsibility of the Shoppee as a marketplace, where business actors who sell goods must meet the requirements and the provisions set by Shopee, so that this not only protects consumers, but also protection for Shopee itself, to anticipate the existence of somasi, demands and consumer lawsuits caused by buying and selling transactions on the Shopee platform. The low level of complaints will have an impact on Shopee's own branding and corporate identity as a trusted marketplace and provide guarantees for the quality of goods traded and responsible and provide access to the return of defective products.

A sale and purchase agreement under civil law is a consensual agreement. Thus it has been born as a valid agreement (binding or having legal force) at the moment of reaching an agreement between the seller and the buyer regarding the main elements buying and selling, that is, prices and goods. For example, the seller is already willing to sell the goods according to the type that the buyer ordered; and vice versa, the buyer has already agreed with the price. In online shopping, both parties also agreed on the delivery of goods (levering) through third parties.

Article 1458 of the Civil Code states ' the sale and purchase is deemed to have been carried out between the two parties, at the time of the agreement on the goods and the price, even though the goods it has not been submitted. Similarly, the price has not been paid, right"

The article has corroborated that the sale and purchase has taken place and is binding even though the goods will only be delivered a little later, and payment for the goods is made at the time the goods arrive ( cash on delivery) If you use the concept of civil law, the agreement of the online sale and purchase agreement is just an obligation, or an obligatoir. He has not transferred the property rights to the goods. The transfer of property rights to new goods occurs after the

delivery of goods aka levering. Therefore, the momentum of the delivery of goods is very important in the legal perspective.

Nevertheless in practice, there are definitely risks that may arise. For example, risks to goods. Normatively, the goods must be delivered in the circumstances and types as they were at the time the agreement was concluded.

The seller by law guarantees two things: (a) ensure the safe and serene possession of the goods sold; (b) warrant hidden defects in the goods sold. In some cases of COD, couriers are often the target of anger from dissatisfied buyers about the goods ordered, this happened in early February 2021, consumers/buyers scolded the courier until finally the consumer refused to accept and pay for the order, this was because the package box listed shoe size 40, but after opening it turned out to be the size the shoe is 41. Even though the consumer ordered shoes with a size 39. Due to poor literacy and consumer incomprehension, even though this incident can actually be resolved by returning/ returning goods because it is not appropriate with order

Ciputat case which had gone viral, consumers who threatened couriers with samurai swords because the order clock contained only empty boxes, for the incident consumers reportedly to the police and designated as a suspect with a criminal threat under Article 368 paragraph (1) of the Criminal Code regarding the threat of violence with a maximum imprisonment of 9 years. The event does not actually need to happen, because the marketplace platform must have attached provisions about complain /dissatisfaction with the goods being traded, in this case the buyer it is necessary to carefully examine the provisions of the complaint mechanism on each online platform if the goods do not match the order.

In consumer protection law, of course, a doctrine of let the buyer beware is known. That is, in a buying and selling relationship, consumers /buyers are required to be careful in every buying and selling transaction carried out. The obligation of consumers to be careful lies in the awareness of consumers to read and study all the implications of the provisions contained in the terms & conditions of a platform. Online buying and selling transactions in the context of electronic legal relations is an inherent part of contract law. By looking at advertisements, product images, descriptions of goods, then there has actually been an offer. When the buyer decides to buy the goods, it means that the element of bargaining (electronically) is already in effect according to the law of the contract. Furthermore, if the seller sends the goods not according to the description, or does not match the images and advertisements, it can be categorized as the seller has defaulted, and even may be subject to obstruction of the provisions of the UUPK by selling goods that are not in accordance with the promised (Article 8 of Law No. 8 of 1999 concerning Consumer Protection).

Affirmed in Article 8 paragraph (2) letter f of the Consumer Protection Law, sellers are prohibited from producing /trading goods and /or services that are not in accordance with the promise stated in the label, etiquette description, advertising or sales promotion of the goods and

/or services. Article 10 of the Consumer Protection Law also expressly prohibits business actors from offering, promoting, advertising or making false or misleading statements about the condition of a goods and /or services. Violations of these two articles can be criminally punished with the threat of imprisonment for a maximum of 5 years or a maximum fine of two billion rupiah.

However, Islam and the provisions of positive law strongly prioritize peace and other alternative dispute resolution so that , if everyone understands and obeys the existence of provisions of khiyar /return or guarantee in buying and selling transactions, there will be no unfavorable behavior /not behaving consumers /buyers who commit acts of berating maki courier who is in charge of delivering the ordered goods, because each party understands and understands, if there is something that he does not want, for example a defect on goods, then there is a khiyar right that can be done to solve the problem, so that a win-win solution and commerce that provides blessings are achieved.

Thus it is really true and proven that the wisdom of khiyar educates the public to be careful in making buying and selling contracts, so that buyers get good or those that really liked by him, the seller did not arbitrarily sell his goods to the buyer, and educated him to be honest in explaining the state of the goods, in the form of quality and specifications with does not hide defective /disgraceful goods, so as to avoid elements of fraud, establish harmonious relationships, due to dishonesty or cheating will eventually be resulting in anger, malice, resentment, and other bad consequences which are of course forbidden in Islam, and what is sacred is the elimination of blessings in buying and selling.

#### IV. CONCLUSION

Based on the description above, the author can draw conclusions, among which are the following Khiyar al aib is the right to cancel or continue the contract when a disgrace (defect) is found, while the buyer does not know about it at the time of the contract. In any transaction, the parties involved implicitly desire that the goods and their exchangers be free from defects. This makes sense because the exchange should be consensual and this is possible only if the goods and their exchangers do not contain defects. The legal basis of Khiyar Al - Aib includes the words of the Prophet Muhammad SAW which reads: "Fellow Muslims are brothers, it is not lawful for a Muslim to sell his goods to other Muslims , even though there is a disgrace/defect in the item". (HR. Ibn Majah of 'Uqbah ibn 'Amir). The method or practice of Khiyar al aib has been used and practiced in the practice of trade through e-commerce, as a form of protection to consumers, an alternative to dispute resolution in case of dissatisfaction consumers /buyers and also educate business actors to be honest and trustworthy in making buying and selling transactions. In the UUPK, everyone who causes harm to others, must bear the responsibility he has done and the person who suffers the loss, has the right to file a claim for compensation to the party who did the deed. Literacy and education to stakeholders and the public, especially regarding

online buying and selling practices/transactions, rules and sanctions that regulate them. Provisions of khiyar rights /guarantees /returns can be used as standard provisions, as a form of embodiment of consumer protection and prioritizing the principles /principles of prudence for business actors to guarantees that the goods/products it sells are free from defects that can harm consumers and reduce the blessings of the trade itself. Business actors are expected to be able to conduct business in accordance with the applicable shari'a provisions so that they protect the rights and obligations of the parties in trade.

The public as e-commerce users are expected to be more thorough and wise in buying and selling online and always pay attention to all the problems that may be experienced when making transactions .

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