

Possession in E-Commerce from Sharī'ah Perspective

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Introduction

E-commerce is an act of conducting business online that includes buying and selling products with digital cash and via electronic data interchange (Billah, 2008). It generally involves exchange of goods and services via the internet through the process of buying, selling, transferring or exchanging products, services and/or information via computer network, including the internet (Turban et al., 2004). This implies that the online business contract is generally executed by the contracting parties at different geographical locations all over the world which may attract Sharī'ah issues that require further deliberation. Thus, this article is primarily intended to delineate a pertinent Sharī'ah issue, namely possession of the purchased good during the contract session of an e-commerce transaction; whether it meets the Sharī'ah requirements for a valid contract. This is to ensure that such e-commerce transaction is concluded in a way that possession and delivery of the contracted subject matter; either the purchased item or its price is completed in the contract session as per requirement of a sale contract. On this premise, this article will evaluate two pertinent Sharī'ah issues surrounding possession in an e-commerce transaction, namely (1) contract session in an e-commerce transaction and (2) acceptable methods of possession. Both contract session and acceptable methods of possession are interrelated in a way that actual or constructive possession of the transacted subject matter has to be actualized in the contract session depending on the types of contract such as *salam*, deferred sale and *ṣarf*. This is significant in the sense that selling an item before taking possession of it or without the buyer taking possession of it in the contract session may lead to ambiguity and dispute between the contracting parties. Thus, it is essential to explicate the Sharī'ah standpoint regarding possession and its applicability in e-commerce.

Possession (*qabd*) in Islamic Jurisprudence

The classical scholars have advanced different definitions of *qabd*, although the contextual substance of the definition indicates the same end result. Scholars like al-Kāsānī (islamport.com, n.d.) of Ḥanafī school argues that *qabd* refers to *takhliyyah* in

the sense that the seller releases the subject matter to the buyer by removing the obstacle between them in a way that the buyer assumes free disposal of it. This essentially signifies that *takhliyyah* in the context of possession of a subject matter in a sale contract shall relinquish the right of property ownership. In this regard, the Shariah Standards on *Murābahah* issued by Bank Negara Malaysia (2013) states that: “The transfer of ownership shall take effect by the seller disposing of the right of ownership (*takhliyah*), resulting in the purchaser having access to the asset (*tamkīn*) and assuming its risk through any mechanism permitted by the Sharī’ah and generally accepted by customary business practices (*‘urf tijārī*).” Even though scholars hold different views regarding method of possession for various categories of properties, be they movable or immovable, the AAOIFI Shari’ah Standards no. 18:3/1 emphasizes that the basis for determining the mode of possession in things is custom (*‘urf*). It is for this reason that possession of things has differed in accordance with the nature of things and differences among people with respect to things (AAOIFI, 2015).

Types of Possession

It is important to note that possession of a property may be either in the form of physical possession (*qabḍ ḥaqīqī*) or constructive possession (*qabḍ ḥukmī*). *Qabḍ ḥaqīqī* (physical possession) of a movable property refers to physical corporeal delivery that gives the rights to control while *qabḍ ḥukmī* (constructive possession) of a movable property refers to relinquishing the property for the person entitled to it and enabling him free disposal of it. For example, in an e-commerce transaction, the subject matter of the sale contract such as software, applications and e-books are delivered immediately after purchase, and the customer have access over them after downloading it. As for other types of subject matter, delivery may take place in one to ten days depending on (i) the geographical location of the contracting parties, as to whether they are in a metro area or outside a metro area, and (ii) types of the purchased domestic items, as to whether it is imported.

Contract Session in an E-Commerce Transaction

In relation to contract session during which possession has to take place in an e-commerce transaction, the two essential elements of a sale contract, namely offer (*ijāb*) and acceptance (*qabūl*), have to be further deliberated. The Sharī’ah rules that both offer and acceptance have to take place in the contract session before both parties leave each other. Offer refers to the act of proposing something to another party while acceptance refers to a second word which comes from a person to whom the ownership is transferred even if it is done earlier than the offer. Offer and acceptance is completed if its three essential conditions are completely met, namely (1) a clear indication of offer and acceptance, (2) correspondence of offer and acceptance, and (3) continuity of offer and acceptance. In this case, the element of

continuity in the contract session (*majlis al-'aqd*) entails further explanation in relation to validity of e-commerce transaction. Presently, offer and acceptance may be expressed by appropriate documentation or by any other methods accepted by customary business practice (*'urf tijārī*) which do not contravene the Sharī'ah principles. For example, in e-commerce, the customer selects the item he wants to buy and fills the form that contains the payment method and delivery address, after which the customer confirms his purchase by clicking on the *agree/confirm* option. In relation to e-commerce practice, a valid possession is essentially reflected in taking delivery of the subject matter of sale contract during the contract session. Nevertheless, this depends on the types of contract that may entail spot delivery of both price and asset during *majlis al-'aqd* like *ṣarf* contract or spot delivery of one of the subject matters such as deferred sale and forward sale. In other words, it is not permissible to delay the possession of both counter values to a specified time in the future to avoid the prohibition of sale of debt for debt.

Possession of Price in an E-commerce Transaction

In relation to mode of payment, most of the e-commerce company/seller accepts payment via credit card, debit card, direct deposit and direct debit, online payment services, electronic bill payment services, cheques and money orders as well as membership card, and gift card. In Malaysia, people use PayPal, cash bank-in (offline or manual payment), cash on delivery (COD), and other payment services like Celcom AirCash (eCommerceMILO, n.d.). Some of the above modes of payment may be considered deferred payment whereby the Sharī'ah ruling on deferred sale shall take effect in the sense that the transacted commodity shall be delivered or possessed on spot basis. However, in the event that the mode of payment is deemed spot, then delivery of the transacted commodity may be delayed to a specified time in the future. The offer and acceptance will conclude when the offeree notifies his acceptance to the offerer as mentioned by Council of the Islamic Fiqh Academy (2000). Al-Zahrānī (2009) opined that an offer in the contract session of e-commerce may occur when the seller asks for confirmation, such as "Do you agree?" while acceptance takes place when the buyer confirms the transaction by indicating his consent to the contract and continuing with the payment. In this case, such contract is deemed concluded and its legal consequences shall take effect immediately.

Conclusion

Advanced technology has limitless advantages and it makes our lives easier and more comfortable. E-commerce is one of the precious gift of technology that facilitates our day-to-day financial activities, business transactions, and trade of goods and services globally. In this case, the Sharī'ah allows us to utilize this kind of service provided that specific Sharī'ah requirements for e-commerce transactions are fully complied with.

This article finds that the contract session and the method of possession are substantial elements of e-commerce. Therefore, offer and acceptance should be done in a way that does not create any conflict between the parties to the contract. In addition, the contracting parties have to understand and agree to the terms and conditions stipulated in the e-commerce contract during the contract session without any coercion. There are several methods of payment in e-commerce but the payment must be made according to the contract requirements as some contracts require spot payment and some allow deferred payment. However, the method of payment must be free from any kind of confusion, uncertainty and *ribā*.

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