

## THE AQAD PRONOUNCEMENT IN SELLING AND BUYING ONLINE MUAMALAH: FUQAHA'S POINT OF VIEW

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**Abstract:** *Recently, online business applications (e-commerce) have emerged as a novel and highly efficient means of realizing the desires of sellers and customers, particularly as the international community faces the threat of the covid-19 pandemic, which restricts their mobility. as well as socialize Independent online vendors transact without regard for space or time constraints, making it simple for purchasers. However, the contract wording, which is the basis for the legitimacy of the sales contract in the e-commerce application, must conform with Syarak. Thus, the purpose of this writing in the style of this descriptive qualitative study gives jurists' perspectives and opinions, particularly on the determination of contract wording in e-commerce applications. According to the study's findings, the practice of buying and selling online occurs without the use of a formal contract. This procedure is mandated by Islam under the condition of adhering to Sharia. This application also satisfies the parameters and pillars that Islam considers to be the foundation of the muamalah procedure. Among the fundamentals are that the goods sold may be viewed, their attributes are described, and the agreed-upon pricing terms. In order to gather information, a theoretical framework is developed by conducting a qualitative literature review. In the literature review, references to academic books and Fiqh books, articles, website information, and other materials or documentation are employed. Finally, the findings of this writing revealed that there is a view that does not allow at all the view that gives the broadest possible truth, so it is necessary to accept the third view, which is the view of Jumhur Fuqaha, Hanafi, Maliki, and Hanbali who believe that this sale and purchase transaction must be done absolutely. It is intended that this text can be utilized as a reference in purchasing and selling matters, so enhancing Malaysia's development.*

**Keywords:** *Aqad, Buy and sell, Online, Fuqaha'*

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## Introduction

Islam, as "ad-din," is founded on the concepts of creed, Shariah, and morality as sources of regulations for life in numerous areas and fields, including muamalah. The Quran is the primary source of reference, outlining basic and specific concepts while demonstrating the practical features and adaptability of the Islamic way of life (al-Munawar, 1998). The field of worship and muamalah are all part of human life. Muamalah encompasses political, economic, social, family, legal, and criminal issues (al-Suyuti 1983).

The Arabic words for buying and selling are *al-Bay'*, *al-Tijarah*, and *al-Mubadalah*. Buying and selling have the etymological sense of exchanging something for something. Hanafiah defines buying and selling as the exchange of property (things) for the property using certain (authorized) means. Buying and selling is a contract that relates to the exchange of one property for another with the aim of acquiring permanent ownership. As a result, the concept of purchasing and selling should include a property in accordance with Shariah principles. It must also include ownership and transfer of property rights and cannot be limited to a specific time period (Mustapha Al-Bugha et. al., 2004). According to the Syafie school of thought, buying and selling is the exchange of products for other goods in a certain manner (al-Syarbini, 1981). In al-Mughni, Ibn Qudamah describes buying and selling as exchanging property for property based on giving and receiving property. So, exchanging things for other goods, as well as exchanging goods for money, is termed buying and selling.

It is mentioned here regarding buying and selling transactions that still employ akad but do not pronounce *ijab* and *qabul*. That is, both parties agree on the price and sale items and hand over the things to each other without using words (because both have agreed), such as a contract with a messenger, a manner of demonstrating (a sign of agreement), a mute contract (signal), and others (Roshaimizam Suhaimi, Ismail Ahmad, Mohd Hapiz Mahaiyadin, Ezani Yaakub & Jasni Sulong, 2021). According to the Prophet s.a.w., "*really buying and selling is (based on) willingness.*" (Narrated by Ibnu Hibban and Ibnu Majah)

The sale and purchase cannot be considered genuine until the *ijab qabul* is completed because the *ijab qabul* demonstrates that both sides are willing to compromise. Essentially, acceptance must be done vocally. However, if it is not possible because the seller and buyer are silent or the distance between the seller and buyer is great, it is possible through the mediation of a letter indicating the presence of the *ijab qabul*. The words of the Messenger of Allah S.A.W, from Abu Hurairah r.a from the Prophet s.a.w, Rasulullah S.A.W said, "*It is not permissible for two people who buy and sell to separate before they are satisfied*".

## Literature Review

### **Ijab and Qabul are not mentioned during buy and sell transactions in Daily Muamalah Online.**

Aqad is an Arabic word that denotes a promise, guarantee, trust, or commitment (such as tying a rope or symbolic such as *ijab* and *qabul* bonds in buying and selling). The meaning of akad, according to Kamus Dewan, is a promise and an agreement; it is the same as the word contract (Abdul Muhaimin Mahmood, 2022).

A contract is characterized by its relationship between *ijab* and *qabul*, which must meet Shariah standards, according to the terminology of fiqh (Abdul Muhaimin Mahmood, 2022). While the agreement in the purchasing and selling process is a verbal agreement between the seller and

the buyer. For instance, the salesman declared, *"I'm going to sell you this bag for RM100. The buyer will reply, "I paid RM100 for a bag."* The buyer's word is *qabul*, and the seller's word is *ijab*.

Islam permits the practice of purchasing and selling without the formalities of an *ijab* and *qabul* contract. For instance, the vendor may hand over the products while the buyer pays the agreed-upon amount silently. When products or money are given to one another without exchanging *Ijab* and *Qabul*, this sort of transaction is known as *mu'atah* (Roshaimizam Suhaimi, Ismail Ahmad, Mohd Hapiz Mahaiyadin, Ezani Yaakub & Jasni Sulong, 2021). Similarly, if a price tag is found on an item, and the buyer pays the vendor without the use of *ijab* or *qabul*, the transaction is still legal because both parties have consented to it.

Buying and selling typically take place in Malaysia without mentioning *ijab qabul*. Others, particularly those in large cities or those who conduct business with non-Muslims, hardly ever bring up the *ijab qabul*. If this form of purchasing and selling is permitted under Shariah, that is the question. Is *ijab qabul* necessary for all transactions including buying and selling, even when purchasing a book? What if an incomprehensible child purchases candy? Unconventional buying and selling at all levels of Malaysian society is a fact that cannot be denied.

#### **Purchase and sale of applications silent a contract for acceptance and consent**

Without discussing *ijab* and *qabul*, there are many applications of contracts in buying and selling. They continue to utilize akad while transacting business in buying and selling, but they omit the words *ijab* and *qabul*. Through written communication, written mediation, gestures, actions, and so on (Anitha Rosland & Joni Tamkin Borhan, 2013).

#### **Contract in Writing**

In writing, the seller and the buyer must state their agreement. A sale and buy agreement is deemed legitimate, in accordance with al-Zuhaily (2002), upon acceptance in writing, subject to the following: *"The contract was made by a person who is mute and unable to speak or in a location where both parties are far away. If the two of them are in a meeting and there is a barrier to speaking, the contract cannot be completed in writing since there is no barrier to speaking, which is an expression that is understood by both parties. Unless a valid reason exists that forbids him from entering into a contract with words."*

For instance, in online sales, the buyer might only place an order for an item from the seller after seeing an advertisement on the internet. If the buyer accepts the price and type of the item and pays for it (by depositing money into a bank account), the seller will send the item by mail, which results in a transaction between the two parties, i.e., a buy-and-sell online transaction in which both parties have agreed to the terms and conditions. Written contracts are required for all sales and purchases.

#### **Messenger-Based Contracts**

Contracts may also be executed through middlemen. Both parties' envoys agreed to a contract containing the following clause: *"Faced toward the opposite side is the emissary from one side. The contract is now enforceable if the two parties have agreed upon something."* A contract ceremony is regarded to have taken place when a messenger is sent (or a letter is sent) and when they arrive. For instance, if A delivered the message, *"I sold C so much, you (messenger) go to him and tell him what I sold," B would then go to C and inform him, and C would accept.*

### **Contract With Signals**

The Maliki and Hambali schools permit those who can talk to convey their wishes through clear gestures as well as those who are mute or stutter. If a silent person can read and write, they can utilize writing instead of sign language when communicating (Hussein Azeemi Abdullah Thaidi, Azman Ab Rahman, Syed Salim Syed Shamsuddin, Zahari Mahad Musa & Muhammad Najib Abd Wakil, 2018). For instance, when a mute person purchases basics at a grocery store and then pays the agreed-upon price to the seller (who is not a mute person), But the only way to convey the terms of the sale and buy agreement to this stupid person is through sign language.

### **Contract With Deeds**

A contract with action is also known as *al-Mu'atah*, which is purchasing and selling by the exchange of products without pronouncing or stating *ijab* or *qabul* (Wan Azlan Wan Adnan & Nor Aini Ali, 2020). The supplier provides the items, while the consumer pays the agreed-upon price. It is simpler and more practical because all of society views such transactions to be transparent and legitimate. For example, in shopping malls and other locations where buying and selling are common, the merchant hands over the products, and the buyer hands over the money without the use of the Arabic phrases *ijab* and *qabul*. There is an element of display in this purchasing and selling procedure.

### **Methodology**

This study's methodology includes a library study that is based on relevant literature and a study of Fiqh books.

At the level of getting theoretical data, this study used content analysis methods, which are a type of qualitative method.

The document analysis method is also used to gather information. This is the process of gathering study data through research, reading, and detailed analysis of materials and sources related to the study in order to solve problems and reach the study's goals.

### **Findings**

There are various views of scholars related to sales and purchase transactions without the wording of a contract, there are views that forbid it at all, and other views that give the widest possible permission.

### **Views That Are Prohibited or Invalid**

*Bai' mu'tah* is not valid, according to al-Syafie, al-Zahiri, and Shia, because the proof is insufficient to express the contract because volition is a concealed phenomenon. There is no other way to say it except by pronouncing it. The pronunciation of *ijab qabul* is an outward manifestation of both parties' contentment with the business of purchasing and selling. Contentment is a state of mind. How can you demonstrate your willingness to purchase and sell without using words? In terms of the act itself, it can indicate anything that does not express the will of the contract. As a result of that deed or gesture, the contract is null and void. What must and becomes a condition is that a contract is made using clear terminology or *kinayah* wording (not clear), or in specific circumstances, either using comprehensible signals or written communication. Evidence can be found in the words of the Messenger of Allah, who stated, "*In all honesty, buying and selling is (based on) volition.*"

### **Only on a portion of the transaction.**

Some Syafi'e and Hanafi academics hold this medium ground. Due to the previous school's strict view, which determined the specific form of the contract and did not accept the principle of tolerance and simplicity, some Syafian scholars, including al-Nawawi, al-Baghawi, and al-Mutawalli, stated that it was legal to buy and sell by pointing to all items available for sale. It can be referred to *'uruf* or custom like other absolute words because it is not shown that there is a condition that the contract must be made with words exclusively.

Some Syafie Scholars, such as Ibnu Suraij and al-Ruyani, limit the necessity of show-off sales to products of lower value, which are something that shows off. According to this viewpoint, *Bai' Mu'tah* pertains to inexpensive things. While it is vital to enunciate *ijab qabul* when purchasing expensive products. For example, in the sale and purchase of autos, residences, or expensive commodities, we require an *ijab qabul*. However, because they are ubiquitous in the eyes of the community, cheap products such as pens, and sweets do not require the pronunciation of *ijab qabul*.

### **Undoubtedly Obligated**

Muamalah transactions of sale and buy are required under Jumhur Fuqaha' Hanafi, Maliki, and Hanbali. These transactions must take place without the utterance of *aqad ijab a qabul*. They believe that the *mu'atah* transaction ought to take place on either expensive or inexpensive commodities. Saying that a contract that takes place by demonstration is legal in topics that have become the habit or custom of the people was acceptable to al-Imam Abu Hanifah and al-Imam Ahmad (later view), as well as the ulama'-ulama' among them. It makes no difference whether the commodities are low-priced, like candies, newspapers, or bread, or high-priced, like houses, land, or cars. Because the practices and conventions of humans provide unmistakable proof or evidence of consent or assent. It makes no difference if the actions are exchanged from two different sides or from one side while the other side employs pronunciation. This opinion is a sound opinion that is a fatwa, and it pertains to all matters, including buying and selling, renting, borrowing, grants, or *raj'ah*. However, the requirement that must be satisfied is that the cost of the item is made perfectly apparent to the customer. A contract is deemed to be in *fasid* status if the price cannot be determined with absolute certainty. Another condition is that the party who is entering into the contract should not publicly declare that he does not accept its terms.

Imam Malik is a proponent of Imam Ahmad's original viewpoint, which states that the contract of *mu'tah* is considered legitimate if there is evidence that unequivocally demonstrates a willingness and if it is more practical. Because there is something that points to the will of both parties, which is the formation of a contract and willingness, it is legal to do so every act that shows sale or rent, company, *wakalah*, or other contracts other than marriage. This is because the basis of the holding is that there is something that points to the will of both parties. Since the time of the Prophet, people have been using contracts like these in their daily lives. There is not a single hadith narrated by the Messenger of Allah that restricts the terms of the contract to just *ijab* and *qabul*, nor is there a single hadith that refutes the legitimacy of buying and selling by showing one's possessions to the other party. *Uruf* is the legal basis for buying and selling in the markets by conspicuously always displaying one's wares to one another. As a result, there is widespread agreement over that. The *Qarinah* (sign) has evolved into an argument that can stand on its own about the existence of willingness. Since Allah legitimizes buying and selling but does not explain the standard of operation, *uruf* can be utilized as a fallback provisional measure. As an illustration, there are people in Malaysia who are

accustomed to the custom of purchasing and selling *mu'atah* without referring to the correct pronunciation of *ijab qabul*.

**In order to determine buying and selling without saying "Ijab" or "Qabul," 'Uruf is used as a backup.**

'Uruf alludes to routine behaviors, whether they take the shape of words or acts. The construction of law is based in part on the 'uruf, according to experts. The Bible says to "Accept what is easy for You to do, and order with good things, and turn away (do not ignore) the stupid (who are persistent with their ignorance)" (Al-A'raf: 199). There are many who dispute this.

Although 'uruf is regarded as a legitimate source of legal construction, it is actually referred to as the legitimate argument of Syria since 'uruf cannot create law with God and there is no one else who has the ability to explain the law other than Allah S.W.T.

The regulations based on 'uruf can alter according to changes in society in a specific era and a certain region,' according to *usul fiqh* experts.

There are various sections to Uruf. This discussion will focus on the section known as " 'uruf perwat" or "amali," which is pertinent and pertinent to the topic of the contract of sale without words.

In terms of routine or social activities, the term "uruf amali" describes an action that has developed into a habit. Eating, drinking, dressing, and other daily activities have no connection to contracts or rights, although social activities like marriage, buying and selling, confiscation, and other transactions do. The fact that rice is a staple food in Malaysian society as well as social practices, such as vendors delivering heavy sales items to customers' homes and the custom of the neighborhood to buy and sell without mentioning aqad *ijab* and *qabul*, are examples of 'uruf amali.

Acts that have become common place include utilizing public restrooms without indicating the length of time or amount of water used, *istisna'*, and buying and selling *mu'atah* (the practice of purchasing and selling without *ijab* and *qabul*) (ordering to make goods such as shoes, clothes and so on).

**Benefits of The Practice of Conducting Purchases and Sales Without A Contract in Daily Life.**

**Can employ a range of techniques**

Without using words, dealing with purchasing and selling can be done in a variety of flexible methods, such as via pointing, sign language, using representatives, and so on. Since the dawn of human civilization, this form of the transaction has existed, and Rasulullah S.A.W. himself never condemned it. Ibnu Taimiyyah says that the Qur'an and the hadith of the Prophet s.a.w. discuss the sale and purchase transaction. According to him, purchasing and selling are part of the *mu'amalah* problem, as opposed to worship, which is covered in practical techniques and procedures. Since muamalah is essentially a relationship between people, whatever they regard as a buying and selling transaction is referred to as such. For him, any utterance that the two parties to a transaction can interpret as a sale and a purchase is regarded to be valid.

### **Simplify the buying and selling process**

Today's business practices are evolving quickly because of the usage of internet networks, text messages, online communication, and other time and clearly extremely effective tools. Even when parties are far apart and have never met, transactions can be completed with ease. On the basis of mutual understanding and consent in the transactions carried out, transactions are made online under a variety of circumstances and terms.

### **Can conduct business virtually**

No matter the time or location, we are free to conduct commerce by buying and selling even without physically meeting. All of this can be completed swiftly, affordably, and promptly. It is appropriate and consistent with the current globalization trend. You have instant access to everything. We merely need to browse the internet to continue the purchasing and selling process.

### **Opportunities for business are many**

In keeping with the notion of an "open sky," business opportunities are expanding. It turns out that when more and more people become "online billionaires" as a result of the internet business chain's success, it can aid the Muslim community in empowering the muamalah and Islamic economy.

### **Conclusion**

A Muslim must buy and sell because it is a form of worship and a necessary part of life. Legal methods, especially those that involve people fighting with each other, are broad and can be talked about. But it still has to follow basic rules like what is halal and what is haram and so on. The system for buying and selling is getting more complicated. On the other hand, selling online is growing quickly and can meet the needs of the community. Users and sellers can deal with each other over the internet, and users can also buy things at sales boxes where there are no sellers.

In conclusion, there is a view that says you can't buy or sell without a written contract and a view that says you can do whatever you want, so we have to go with the third view, which is the view that Hanafi, Maliki, and Hanbali all agree on. This view says that this sale and purchase must be done under a number of conditions.

Scholars agree that sales can happen even without a written contract. The different ways that people can buy and sell show how flexible and unique Islamic teachings are in everyday life. As long as it stays on the right path, Islam will always face the question of life. God gives us the ability to find new things and do new things, and we should use them to the fullest. In fact, Allah SWT rewards those who work hard to find the right path and reach their goals so they can enjoy life and be grateful for God's help.

The fact that there are many different kinds of contracts, especially sales contracts, shows that the muamalah system in Islam is unique. All of these different shapes and sizes exist only to help people get what they want and solve the problems they face. We hope that this article will help us learn about agreements and contracts in Islamic Shariah and show us how to understand them.

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