

WRITTEN MARGIN AND FEES IN AKAD SALAM ONLINE:
COMPARATIVE FIQH ANALYSIS WITH EMPIRICAL
PHILOSOPHICAL AND JURIDICAL APPROACHES

Farid Madani¹, Aulia Nurhikmah², Dedah Jubaedah³, Iwan Setiawan⁴

¹ Universitas Logistik dan Bisnis Internasional

² Universitas Islam Negeri Sunan Gunung Djati Bandung

³ Universitas Islam Negeri Sunan Gunung Djati Bandung

⁴ Universitas Islam Negeri Sunan Gunung Djati Bandung

E-mail: ¹⁾faridmadani@ulbi.ac.id ²⁾nurhikmahaulia29@gmail.com ³⁾dedahjubaedah@uinsgd.ac.id ⁴⁾iwansetiawan@uinsgd.ac.id

Abstract

The development of digital technology has given birth to the practice of online-based salam contracts that are different from conventional salam contracts, especially in the determination and transparency of margin fees. This difference raises the issue of fiqh muamalah and consumer protection, especially related to the potential for gharar and inequality in the position of the parties. This research aims to analyze philosophically, comparative fiqh, and empirical juridical margin fees in online and offline salam contracts and their implications for consumer protection. The research method used is normative-empirical law with philosophical approaches, school comparisons, and empirical juridical approaches. Normative data is sourced from classical and contemporary fiqh literature, DSN-MUI fatwas, and consumer protection regulations, while empirical data is obtained from the study of the practice of salam contracts on digital platforms. The results of the study show that the margin fee in the salam contract is in principle allowed as ujah for the services of intermediaries as long as it is clearly agreed from the beginning of the contract and separated from the price of the goods. However, the practice of online greetings still shows low transparency of margin fees and the use of standard clauses that have the potential to harm consumers.

Keywords: *Akad salam, Margin fee, Online transactions, Consumer protection, Fiqh muamalah*

1. INTRODUCTION

Digital Economy Landscape and the Relevance of Akad Salam In the current era of technological disruption, the transformation of commercial transactions from conventional to digital has triggered a fundamental reorientation towards Islamic legal instruments (fiqh muamalah). One of the instruments that has undergone significant revitalization is the salam

contract. Philosophically, the salam contract is a constitutional exception in the sharia of rukhsah that allows the buying and selling of goods that do not yet exist (ma'dum) for the benefit of the producer's liquidity and the certainty of supply for buyers. However, when this contract is integrated into the e-commerce ecosystem or online greetings, new complexities arise related to the distinction between profit margins and service fees (fees).

The development of digital technology has brought significant changes to people's economic transaction patterns, including in the practice of sharia-based muama. The digitization of trade through e-commerce platforms has not only changed the way goods and services are distributed, but also has given rise to the construction of new contracts that demand conceptual adjustments in fiqh muamalah. One of the classic contracts that has undergone revitalization in the context of the digital economy is the salam contract, which is a purchase and sale contract with advance payment and delivery of goods at a later date.

In contemporary practice, the salam contract is widely used in pre-order transactions on online platforms, both in Business to Consumer (B2C) and Consumer to Consumer (C2C) schemes. This phenomenon shows the continuity between the concept of classical fiqh and the needs of modern economics. However, the transformation of the transaction medium from conventional to digital brings complex legal implications, especially related to the determination of margins or fees in online salam contracts.

Empirically, the price of goods in online transactions is often lower than in offline transactions due to reduced operational cost components such as physical store rentals, direct labor, and conventional distribution costs. However, this efficiency is balanced by the emergence of new costs, such as platform fees, digital service fees, promotion algorithms, and logistics costs. This condition raises fundamental questions about the sharia legitimacy of the margins and fees charged in the online salam contract: whether the margin fully reflects the costs and risks borne by the seller, or has the potential to give birth to injustice and hidden gharar due to information asymmetry.

From a philosophical perspective, the salam contract is built on the principles of justice ('adl), willingness (tarādī), and benefit (maṣlaḥah). Pricing and margin in this contract are basically allowed as long as they meet the principles of transparency, object certainty, and do not contain elements of exploitation. But in digital practice, the legal relationship between sellers, buyers, and platform providers is often unequal. Buyers are often in a weak position due to limited information about the actual pricing structure and margin components. This condition has the potential to be contrary to the philosophical purpose of the salam contract itself.

In terms of comparative fiqh, the scholars of the classical school did not set numerical limits on profit margins in buying and selling, including salam contracts. However, they emphasize the prohibition of gharar, jahālah, and tadhīl in all components of the contract. Contemporary scholars then developed a new approach taking into account the realities of the modern market, including the role of digital intermediaries and the cost of

platform services. This is where the debate arises about whether the platform fee can be positioned as part of the price (*tsaman*), *ujrah ijarah*, or other forms of fees that require a separate contract.

Meanwhile, from an empirical juridical perspective, the practice of online salam contracts in Indonesia is at a juncture between sharia economic law and positive law, especially electronic commerce regulations and consumer protection. The Consumer Protection Law and e-commerce regulations require the disclosure of price and cost information, while the DSN-MUI fatwa emphasizes the certainty of the contract and the clarity of the rights and obligations of the parties. However, in practice, there are no guidelines that specifically regulate the structure of margins and fees in online salam contracts, thus creating a gap between norms (*das sollen*) and practical reality (*das sein*).

Based on this background, this article aims to analyze margins and fees in online salam contracts through an empirical philosophical and juridical approach, using comparative fiqh as the main analysis knife. This study is expected to make a theoretical contribution to the development of contemporary muamalah fiqh, as well as offer normative recommendations for strengthening consumer protection and governance of salam contracts in the digital economy era. Based on the background description mentioned above, the author identifies 3 main problems that will be the object of research and discussion in this article as follows: What is the philosophical and *maqāsid al-shari'ah* basis for determining margins/fees in online salam contracts? How do classical and contemporary fiqh views on the legitimacy of margin/fee in online greetings compare?, How does the margin/fee structure in the practice of the online salam contract marketplace meet the principles of muamalah and consumer protection in Indonesia juridically and empirically?

2. IMPLEMENTATION METHOD

This research uses an empirical juridical method with a conceptual and philosophical approach. Secondary data was obtained from laws and regulations. The author analyzed laws and regulations related to consumer protection (Law No. 8 of 1999), e-commerce regulations, and DSN-MUI fatwa No. 144/2021 on sharia marketplaces, as well as muamalah fiqh literature related to salam contracts and muamalah principles. Empirically, observations of online marketplace platforms were carried out to map the margin/fee structure, cost transparency, and refund/cancellation mechanism. In addition, surveys and brief interviews were conducted with sellers and buyers to assess the perception of fairness, openness, and compliance with sharia principles.

3. RESULTS AND DISCUSSION

3.1 Philosophical Analysis of Margin/Fee in Online Salam Contract

Philosophically, the salam contract is a manifestation of the principles of distributive justice and social benefit in fiqh muamalah. The ability of the salam contract since classical

times is based on the consideration of the economic needs of producers and consumers, so that the sharia provides flexibility through exceptions to the prohibition on buying and selling goods that do not yet exist. In this context, margin or profit is seen as reasonable compensation for production risks, delivery times, and economic uncertainty borne by the seller.

In the digital economy, *online greetings* contracts present a new reality in the form of third-party involvement (*platforms*) that collect service fees. From a philosophical point of view, the legitimacy of margins and fees is not solely determined by the formal abilities of the contract, but by the fulfillment of the principles of 'adl (justice) and tarādī (willingness). Margins or fees can only be justified philosophically if they are built on information transparency and conscious consent of the parties, so as not to give birth to exploitative relationships.

The *approach of maqāṣid al-syarī'ah* places the protection of property (*ḥifẓ al-māl*) and the protection of akad (*ḥifẓ al-'aqd*) as the main objectives in economic transactions. Excessive, unclear, or disguised margins and fees in the pricing structure are contrary to maqāṣid because they have the potential to give rise to gharar and systemic injustice. On the contrary, proportional margins and fees based on real services actually strengthen the economic benefits and sustainability of online greetings transactions.

Thus, philosophically, *the margin and fees in the online salam contract* are not questioned from the aspect of its existence, but from its rationality, proportionality, and transparency. The ideal online salam contract is one that balances the efficiency of the digital economy with sharia ethical values, so that the benefits are not only legally valid, but also morally fair and socially beneficial.

The determination of margins that are too high by digital aggregators in *salam* contracts can exploit producers (farmers/MSMEs) who need quick liquidity. This is where the philosophical approach comes into play: Margin is not just a mathematical number, but a reflection of a fair distribution of risk. If the risk of crop failure or failure to deliver is fully charged to the producer, while the platform still takes a fixed fee, then there is a violation of the principle of *shirkah* (partnership) which spiritually animates the Islamic muamah.

3.2 Comparison of Classical and Contemporary Fiqh Views on the Legitimacy of Margin/Fee in Online Salam Contract

Classical fiqh views the salam contract as a purchase and sale with advance payment and delivery of goods at a later date which is permissible as a form of *rukhsah* due to the economic needs (*ḥājah*) of the community. This ability is based on the fulfillment of the pillars and conditions of salam, especially the clarity of the specifications of the goods and the price agreement at the beginning of the contract. Within this framework, profit margins are considered legitimate without any particular nominal limitations, as long as they do not contain gharar, jahālah, or tadrīs. The legitimacy of the margin is formal-normative because

the salam contract is understood as a bilateral relationship between the seller and the buyer, without involving a third party who collects additional fees.

On the other hand, contemporary fiqh assesses *the online salam contract* as a modern application of the classic salam contract in the context of the digital economy. The transformation of this transaction medium has given birth to the complexity of legal relations, especially with the presence of digital platforms that charge service fees. Therefore, contemporary fiqh not only assesses the validity of the contract in terms of harmony and conditions, but also emphasizes the principles of transparency, proportionality, and procedural justice. Profit margins are still allowed as compensation for risks and production costs, but must be rational and proportionate to the economic benefits obtained.

Furthermore, contemporary fiqh makes a clear distinction between the profit of the price of goods (*ribh al-bay'*) and the platform service fee (*ujrah al-khidmāt*). Fees are only considered valid if they are based on a *ijarah* contract that is clear, known, and approved by the consumer. This approach is based on *maqāṣid al-syarī'ah*, especially the protection of property (*hifz al-māl*) and the protection of contracts (*hifz al-'aqd*), in order to prevent the occurrence of hidden *gharar* due to information asymmetry in digital transactions.

Thus, the fundamental difference between classical and contemporary fiqh lies in the orientation of the assessment of margin and fee legitimacy. Classical fiqh focuses on the formal validity of contracts, while contemporary fiqh extends those judgments into the realms of economic ethics and consumer protection. The legitimacy of margins and fees in online salam contracts is not only determined by price agreements, but also by information disclosure, structural justice, and social benefits.

3.3 Margin/fee structure in the practice of the Marketplace with an *online salam contract*

The following is a juridical and empirical analysis of the *margin/fee* structure in the practice of marketplaces with *online salam* contracts, how it is viewed in the principle of *muamalah*, and its relationship with consumer protection in Indonesia as follows:

Context of Akad Salam in Online Marketplace

A *salam contract* in *fiqh muamalah* is a sale and purchase contract where the buyer pays in advance for the goods to be delivered in the future with clear specifications. It is emphasized by Dudang Gojali in his book *Sharia Economic Law Analysis of Fiqh and Sharia Economics* that the buying and selling of Salam (Pesan) is a transaction of goods that is postponed, meaning that goods that are given or sold by clearly describing the characteristics with the payment made at the beginning, then the goods are given on a fixed day in accordance with certain principles and conditions.

Based on the definition of the person, the salam contract requires payment in advance, clear specifications of the goods, and a definite delivery time. Conditions are similar to *preorder transactions* in *online marketplaces*. However, academic research shows that *e-*

commerce practices often do not meet all the pillars and requirements of the *salam* contract, especially in terms of certainty of delivery time and specifications of goods. In *fiqh literature* it is explained that the contract is only valid if it meets all these conditions, and the lack of one of the elements can cause *gharar* (uncertainty) which is prohibited in *muamalah*.

Margin/ Fee Structure Marketplace

In the practice of online marketplaces, there are several forms of *fees* charged in transactions, including:

- a. **Seller Commission:** Marketplaces attract a commission on transactions that occur on the platform, generally calculated as a percentage of the sale price and deducted from the seller's receipt when the item is sold.
- b. **Consumer Service Fees:** Some platforms also charge buyers a service fee (e.g. platform fees, transaction processing fees).
- c. **Handling Fee:** Even in *Cash on Delivery* (COD) transactions, there are handling fees charged to certain parties, even though the contract structure is different from direct buying and selling.

Empirical studies show that this kind of fee practice is often not transparently described in the platform's terms & conditions. From a sharia perspective, a marketplace fee should only be charged if there is a **valid service agreement** between *the marketplace* and the vendor (for example: *i'arah contract* or *digital service agreement*), not as a unilateral deduction without a contract basis.

In DSNMUI Fatwa No. 144/DSNMUI/XII/2021 concerning *Marketplace Based on Sharia Principles*, it is emphasized that the relationship *between the marketplace* and the seller must go through a clear contract, and the *marketplace* must not use *ujrah* (fee) as a cost that burdens buying and selling transactions without a *valid ijarah* contract.

3. Sharia Muamalah Principles Related to Fees/Margins

The relevant *principles of muamalah* include: 1) Disclosure of Information (*ma'lum*) including all deductions of fees, margins, or *fees* must be clearly stated and not misleading. 2) Justice (*'adl*), *fees* must not be detrimental to one of the parties without clarity of contract. 3) Free Agreement of Both Parties, the marketplace fee must be known and explicitly agreed upon by the seller and/or buyer as part of the service contract.

However, empirical observations show that some *fee mechanisms* in the *marketplace* still place an unbalanced burden on consumers or sellers, e.g. when transaction cancellations cause consumers' balances to be withheld without clear transparency.

4. Indonesia's Consumer Protection Perspective

Within the framework of Positive Indonesian law, Law No. 8 of 1999 concerning Consumer Protection guarantees consumers' rights to: True, clear, and honest information; Convenience and security in transactions; Fair and non-misleading contract information. Juridically, any deductions or fees charged by the marketplace must:

- a. Clearly stated in the terms and conditions so that consumers can understand their rights and obligations;
- b. Consumers get information before binding a payment contract;
 - c. The refund mechanism (*refund/chargeback*) and the right of cancellation must be in accordance with regulations on electronic commerce and consumer protection principles.

Empirical problems that often arise include hidden *fees* that are not explicitly explained at the beginning of the transaction, complicated *refund* provisions or detrimental to consumers because the balance is held without clear choices, and unclear service contracts (*i'arah*) between the marketplace and consumer vendors. This kind of ambiguity has the potential to go against the principles of justice, openness, and balance mandated by the Consumer Protection Law.

4. CONCLUSION

Philosophically, margins and fees in online salam contracts are justified in sharia as long as they are determined rationally, proportionately, and transparently. Margin is compensation for the risk and delay in the delivery of goods, while platform fees are valid if they are based on real services and are agreed upon consciously. The practice of disguising fees or setting excessive fees is contrary to the principles of justice and *maqāsid al-syarī'ah*. The fundamental difference between classical and contemporary *fiqh* lies in the orientation of the assessment of legitimacy margin and fee. Classical *fiqh* focuses on the formal validity of contracts, while contemporary *fiqh* extends those judgments into the realms of economic ethics and consumer protection. The legitimacy of margins and fees in online salam contracts is not only determined by price agreements, but also by information disclosure, structural justice, and social benefits. The margin/fee structure in the marketplace does not automatically contradict the principle of *muamalah* with the note that the contract must be clear and legitimate, the cost must be fully transparent, and consumers get sufficient information before the contract.

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