

## E-COMMERCE ON THE STUDY OF MASLAHAH MURSALAH (A REVIEW FROM AN ISLAMIC ECONOMIC PERSPECTIVE)

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### ABSTRACT

Currently, technological developments have provided significant changes in economic activities and transactions. As Muslim communities that follow Islamic principles, they must have adequate comprehension of the latest forms of transactions so that the economic activities carried out do not contradict Islamic economic principles. The purpose of this paper is to describe *masalah mursalah*, electronic commerce (e-commerce), and how the function of e-commerce is related to *masalah mursalah*. Through qualitative research methods with descriptive analysis, this paper describes e-commerce in the study of *masalah mursalah*. The results of this paper's discussion reveal that The mechanism of e-commerce has similarities with the *as-salam* contract in the perspective of Islamic economics. Thus, an E-commerce transaction is a form of *Maslahah* (providing benefits/convenience) whose level is at *Maslahah Hajiyyat* in terms of muamalah activities that include the sale and purchase of *bai' as-salam*. Thus, the conclusion is that e-commerce has incorporated the requirements of use *masalah al-mursalah*.

**Keywords:** E-commerce; *Maslahah Mursalah*; *As-Salam*; Islamic Economic.

### ABSTRAK

Saat ini perkembangan teknologi telah memberikan perubahan yang signifikan pada kegiatan dan transaksi ekonomi. Sebagai umat Islam yang menganut prinsip-prinsip Islam, mereka harus memiliki pemahaman yang memadai tentang bentuk-bentuk transaksi terkini agar kegiatan ekonomi yang dilakukan tidak bertentangan dengan prinsip-prinsip ekonomi Islam. Tujuan penulisan ini adalah untuk mendeskripsikan *masalah mursalah*, perdagangan elektronik (e-commerce), dan bagaimana fungsi e-commerce dikaitkan dengan *masalah mursalah*. Melalui metode penelitian kualitatif dengan analisis deskriptif, tulisan ini mendeskripsikan e-commerce dalam kajian *masalah mursalah*. Hasil pembahasan makalah ini mengungkapkan bahwa Mekanisme e-commerce memiliki kesamaan dengan *as-salam* dalam perspektif ekonomi Islam. Dengan demikian, transaksi E-commerce merupakan salah satu bentuk *mashlahah* (memberikan manfaat/ kemudahan) yang setingkatnya pada *masalah hajiyyat* dalam hal kegiatan muamalah yang meliputi jual beli *bai' as-salam*. Dengan demikian, kesimpulannya adalah e-commerce telah memasukkan persyaratan penggunaan *masalah al-mursalah*.

**Kata Kunci:** E-Commerce; *Maslahah Mursalah*; *As-Salam*; Ekonomi Islam.

## INTRODUCTION

Islam has a set of rules both in the vertical and horizontal dimensions. In the vertical dimension, the laws have been set, called *ta'abudi*, such as the procedures for praying and fasting. In this area, the terms apply for all time as it is. In horizontal dimension concerning fellow human beings, most of which are *muamalah* (economic transaction between humans). In this area, *ijtihad* has a strategic role in providing solutions to various life problems, including; *qiyas*, *maslahah mursalah*, *istihshan*, *'urf*, and others. In establishing the law through these arguments, the scholars still dispute its use.

In this paper, the author will discuss the issue of *maslahah al-mursalah* being included in the activities of *muamalah* with the subject of discussion of E-Commerce or which is often referred to as telemarketing or a type of electronic commerce via the internet. *Maslahah mursalah* is a benefit (goodness) that Islam does not require a law to implement, and there is no evidence to show its recognition or cancellation (Jumantoro and Amin). *Maslahah* is called absolute because it is not bound by the *dalil* (evidence) that acknowledges it or the argument that invalidates it. For example, it is a *Maslahah* for which the companions of Rasulullah saw require the provision of prisons, currency printing, or others which include *maslahah* demanded by emergencies, various needs, or various virtues. However, the law has not yet been determined, and there is no *syara'* to show his confession or the cancellation. So the lawmakers by the *maslahah mursalah* solely try to actualize the *maslahah* for humankind to bring benefits and reject harm and damage to humans.

*Maslahah mursalah* are also virtues that follow the goals of Islamic law and are not supported by a specific source of evidence that either legitimizes or invalidates the *maslahah*. If the *maslahah* is supported by a specific source of evidence, then it is included in *qiyas* in a general sense. And if there is a special source of law that is null and void, then the *maslahah* becomes invalidated.

In the current growing economic activity, E-Commerce, as a form or method of transactions which later emerged through advances in internet technology, provides convenience to the parties which carry out the transaction, be it merchants or buyers. Therefore, E-Commerce is one of the transaction activities through the internet, which is included in the discussion of *maslahah mursalah*. The internet, which is an invention that initially served as a means of

exchanging scientific and academic data, has now turned into a fixture of everyday life and can be accessed from various parts of the world (Hata). Internet technology has a very large influence on the world economy. The development of the internet, which later gave rise to E-Commerce, is a promising business alternative because it is seen as having many conveniences for both parties who transact. And based on developments in major countries, E-Commerce is the basis for a new era of business, including in the Indonesia (Faulidi).

The use of *maslahah mursalah* as a source of determination in the practice of Islamic economics is a must because *maslahah* is at the core of all these economic developments. It can be said that all forms of Islamic finance practices and innovations are intended to realize the benefit. The establishment of Islamic banking, the emergence of Islamic credit cards as a facility to facilitate various transactions, the rapid development of e-commerce transactions in modern society, and others showed how the role of *maslahah mursalah* is in the development of the Islamic economy.

Based on the description above, the focus of this paper is to discuss *maslahah mursalah*, electronic commerce (e-commerce), and how the function of e-commerce is related to *maslahah mursalah*.

## **RESEARCH METHOD**

This research uses the qualitative method with the library research approach. The qualitative method uses text, data, as well as images to provide the discussion (Cresswell and Poth). The kind of collecting the data is from the primary and secondary data. The primary data was taken from national and international digital news, scientific writing, as well as national and international journals. The secondary data was taken from books, textbooks, etcetera. And this research uses descriptive analysis by describing as well as discussing the *maslahah mursalah*, electronic commerce (e-commerce), and how the function of e-commerce is related to *maslahah mursalah*.

## RESULT AND DISCUSSION

### A. MASLAHAH MURSALAH

*Maslahah Mursalah*, etymologically, consists of two words, namely *maslahah* and *mursalah*. The word *Maslahah* comes from the Arabic verb *sholaha-yasluhu* to be *shulhan* or *maslahat*. Which means "something that brings good". While the word *Mursalah* comes from a verb that is interpreted so that it becomes *isim maf'ul*, namely: *arsala-yursilu-irsalan-mursilun* becomes *mursalun* which means "sent, sent or used (used)". The combination of the two words becomes "*Maslahah Mursalah*" which means the principle of benefit (goodness) used to establish Islamic law. It can also mean an action that contains a good value (beneficial) (Uman).

According to the terminology of *ushul*, there are various *ta'tif* given, among others: according to Al-Ghazali in the book of *Al-Mustasyfa* is: Anything (*maslahah*) for which there is no evidence of *syara* ' in the form *nash* of a particular cancel it, and no one notices it. Meanwhile, according to Asy-Syaukani in the book *Irsyad Al-Fuhul* is *maslahah*, that is not known whether the *syar'i* rejects it or takes it into account. Then Ibn Qudamah, among the scholars of Hambali stated: *maslahah* that there is no evidence of any specific guidance that invalidates it and neither who pays attention to it (Jumantoro and Amin). And imam Ar-Razi stated *maslahah* as a beneficial activity that Allah SWT has commanded to His servants about the maintenance of his religion, his soul, his intellect, his lineage, and his possessions (Uman).

*Ushul* scholars (Islamic scholars) divide *maslahah* into three parts: Firstly, *Maslahah Dharuriyat* (Primary); Is a benefit whose existence is very much needed by human life. This means that human life does not have any meaning if even one of the five basic principles of human life does not exist, namely: religion, soul, mind, lineage, and property. Because of this, Allah commands humans to make efforts to fulfill these basic needs. Any effort or action that leads to or causes the disappearance or destruction of one of the five elements is bad; that's why Allah forbids it (Syarifuddin).

As in Allah SWT's words in Q.S Al-An'am: 151 "Say, O Prophet, "Come! Let me recite to you what your Lord has forbidden to you: do not associate others with Him in worship. Do not fail to honor your parents. Do not kill your children for fear of poverty. We provide for you and them. Do not come near indecencies, openly or secretly. Do not take a human life, made sacred by Allah, except with legal right. This is what He has commanded you, so perhaps you

will understand.” (Q.S Al-An’am: 151). For example, in this case, God forbids apostasy to preserve religion, forbids murder to preserve the soul, forbids drinking alcohol to preserve the mind, forbids adultery to preserve offspring, and forbids stealing to preserve property.

Secondly, *Maslahah Hajjiyat* (Secondary); Is a benefit that the level of human life needed for him is not at the level of *dharuri*. The form of benefit is not directly for the fulfillment of the five basic needs (*dharuri*) but indirectly leads to that direction as in matters that provide convenience for the fulfillment of human life. *Maslahah Hajjiyyah* also, if it is not fulfilled in human life, it does not directly cause damage to the five basic elements, but indirectly it can indeed cause damage. Examples of *Maslahah hajjiyah* are: seeking religious knowledge to uphold religion, studying to perfect the mind, and buying and selling to get wealth. All of these are good deeds or *maslahah* at the level of *hajiyah* (Syarifuddin). *Maslahat hajiyat* is also what is needed by the community, it can also avoid difficulties and eliminate narrowness. This applies in the field of worship, customs, muamalat, etcetera. Those in worship, for example, *qashar* praying iftar for those who are in a state of travelers. In terms of custom, for example, it is allowed to hunt and eat good food. In the case of muamalat, for example, it is permissible to buy and sell a “*salam* contract” Included in this jinayat, is maintaining personal independence and freedom of religion. Because of the existence of personal and religious freedom, the movement of human life is wide. Forbidding loot and mugging are also included in the *hajiyat* category (Abd).

Thirdly, *Maslahah Tahsiniyah* (Tertiary); Is *maslahah* that the needs of human life to him are not up to the level of *dharuri*, nor up to *hajjiyah*, but if these needs are met, then it will provide perfection and beauty for human life. *Maslahah* in the form of *tahsini* is also related to the five main human needs (Syarifuddin). *Tahsiniyyah* is also included in the field of worship, custom, muamalat, and the field of *uqubat*. Fields of worship, for example, the obligation to purify oneself from uncleanness, wearing good clothes when going to worship to get closer to Allah, sunnah fasting, giving alms, and others. In the case of muamalat, for example, it is forbidden to sell unclean things. In the field of *uqubat*, for example, it is forbidden to cheat on the scales when conducting transactions; in war, it is not permissible to kill women, children, and the elderly (Abd). The three forms of *maslahah*, in turn, describe the level of strength. The strongest is *maslahah dharuriyah*, then below it is *maslahah hajjiyyah* and then *maslahah*

*tahsiniyyah*. The five *Dharuriyyah* also have different levels of power, which in turn are: religion, soul, intellect, lineage, and wealth. This difference in the level of power is seen when there is a conflict of interest between each other. In this case, *dharuri* must come first over *hajj*, and *hajj* first over *tahsini*. Similarly, if there is a clash between the fellow *dharuri*, then a higher level must be given priority. Jihad in the way of Allah is prescribed to uphold the religion even at the expense of life and property.

The legal basis for *maslahah mursalah* is based on the research of scholars, it is clear that Islamic law contains benefits for humans in regulating human life in this world. This is confirmed in the Qur'an:

“O Mankind, there has to come to you instruction from your Lord and healing for what is in the breasts and guidance and mercy for the believers” (QS. Yunus (10): 57)

“And We have not sent you (O Muhammad), except as a mercy to the worlds” (QS. QS Al-Anbiya (21): 107)

“They ask you about the world and the hereafter and the orphans. Say: Improving them is good, and if you are mixed with them (if you are living with them) they are then your siblings. And Allah knows (separates) the mischief-maker from the improver. And if Allah had wished, He could have put you into difficulties. Truly, Allah is All-Mighty, All-Wise.” (QS. Al-Baqarah (2): 220).

The Requirements for *Maslahah Mursalah* have been discussed by The ancient scholars such as al-Syathibi have given the requirements for the use of *al-mursalah*. These requirements were also confirmed by scholars who came later. 'Abd al-Wahab Khallaf and Abu Zahra also gave the requirements for the use of *al-maslahah al-mursalah*. If the requirements of the *maslahah mursalah* of these two professors are combined, it can be concluded as follows: (Djazuli)

- *Maslahah mursalah* must not be contrary to the maqasid al-Syariah, the *dalil-dalil kulii*, the spirit of Islamic teachings, and the *dalil-dalil juz'i* which is *qath'i wurudl* and *dalalah*.
- The *maslahah* must be convincing, clear, and definite, not based on conjecture. in the sense that there must be a rational discussion and research so that we believe that it provides benefits (*maslahah*) or rejects losses (harm).
- The *maslahah* are general.

- Its implementation does not pose undue difficulties.

There are many examples of the use of *maslahah mursalah*, especially in serving and taking care of the community, such as traffic regulations, the existence of judicial institutions, the existence of marriage certificates, and so on. If we compare *qiyas*, *ishtishan*, and *maslahah* as a way of *ijtihad*, then it appears that: in *qiyas* and *ishtishan* there are other things as a comparison. For example, in *qiyas* there is a branch (*furu'*) that is compared to *ashal*, in *ishtishan*, there is a comparison between one proposition with another proposition that is considered stronger. While in *maslahah mursalah* there is no comparison, but only looking at the welfare of the ummah

There are differences of opinion among ushul scholars about the argumentation of *maslahah*, including (Uman)

- *Maslahah mursalah* cannot be an *argument/evidence* according to Shafi'i scholars, Hanafi scholars, and some Malikin scholars such as Ibn Hajib and Dhahir experts.
- *Maslahah mursalah* can be an argument/proposition according to some Maliki scholars and some Shafi'i scholars but must meet the requirements that have been determined by the scholars of ushul. Jumhur Hanafiyah and Syafi'iyah require that this *maslahah*, should be included under *qiyas*, that is if there is a law of *ashl* that can be compared to it and there is also *illat mudhabit* (correct) so that in the legal relationship, there is a place to realize benefits. Based on this understanding, they adhere to the benefits justified by *syara'*, but they are more liberal in considering the benefits justified by *syara'* in, because of the breadth of their knowledge in the matter of recognition of *syar'i* (Allah) to *illat* as a place of dependence of law, which realizes benefits. This is because there is almost no *maslahah mursalah* that does not have a proposition that acknowledges its truth

Among the scholars who do or use *maslahah mursalah*, is Imam Malik. His reason is that Allah sent his messengers to guide his people to goodness. If they are indeed sent to bring the benefit of mankind, then it is clear to us that the problem is something that is desired by religion, given that God's law is held for the benefit of mankind both in this world and the hereafter.

In giving an example of *maslahah mursalah* at the beginning, it was explained by the companions of Rasulullah SAW, such as Abu Bakr As Shidiq, Umar bin Khattab and the *imam* of the madhhab had established various laws based on the principle of *maslahah*. In addition to

the basics mentioned above, the validity of *Maslahah mursalah* is also supported by *aqliyah arguments* (rational reasons) as stated by Abdul Wahab Kholaf in his book *The Science of Ushulil Fiqh* that human benefit is always actual, keeps growing, and the formation of law is only based on the principle of *maslahah* which is recognized in Islamic provisions only, then the formation of law will stop and the benefits needed by humans at every time (Kholaf).

It is God's will that humans should live in society and help each other. As social beings, humans accept and contribute to the lives of others, interact with each other in meeting the needs of life, and achieve progress in their lives. To achieve progress and life goals, good cooperation between human beings is needed (Ya'qub). Among the many aspects of cooperation, is the economic aspect. Islamic economics is dynamic according to the dimensions of space and time because Islam is *rahmatan lil alamin*. Islam regulates its economic system with a unique method (Al-Maududi).

## **B. E-COMMERCE AND AS-SALAM**

According to language, the word "E-commerce" comes from two syllables, namely: Electronic and Commerce. E-commerce means business activities concerning consumer manufacturers, service providers, and intermediary traders using computer networks. The use of internet facilities is a technological advancement that can be said to support overall commercial activities (Sjadeini).

There are many definitions for e-commerce, but generally, e-commerce refers to all forms of commercial transactions involving organizations and individuals that are based on the processing and transmission of digitized data, including text, sound, and images. It also includes the effect that the electronic exchange of commercial information may have between its supporting institutions and government commercial activities. This includes, among others, organizational management, negotiation, commercial contracts, legal and regulatory frameworks, and drafting financial and tax agreements with each other.

The practice of e-commerce transactions, at first glance, is almost similar to *As-salam* in terms of delivery and payment of commodities that are used as transaction objects. *As-salam's* legal basis, as QS. Al-Baqarah (2): 282 explains the sale and purchase and accounts payable. The Similarities between E-Commerce and *As-Salam* Transactions firstly; The subjects in the transaction are sellers and buyers, which in e-commerce are often called merchants and



customers, while in as-salam it is termed *rab as-salam* or *al-muslim* and *al-muslam ilaih*. Secondly; e-commerce and as-salam transactions require an agreement. The agreement is made with a statement that can be understood by both parties who make the transaction, such as in the form of words, signs, or writings. Thirdly; The payment systems for e-commerce and as-salam transactions are paid in advance.

While the distinction between E-Commerce and *As-Salam* Transactions, Firstly; on E-commerce, The existence of *payment gateways*, *acquirers*, and *issuers* who are considered as witnesses and representatives in making payments is a must whilst on Salam transactions, The presence of witnesses and representatives is not a must, but if necessary it will not damage or cancel the transaction, even the presence of witnesses is highly recommended in this transaction. Secondly, Conducted through electronic media and the internet, whereas on Salam transaction, it can be done in various ways that can be understood by both parties who transact. Thirdly, Commodities traded can be in the form of legal and illegal commodities to be traded according to Islam. Digital commodities are delivered directly after transactions via the internet, and non-digital commodities cannot be delivered directly but are sent via courier services by the agreement on commodity specifications, time, and place of delivery, whilst on Salam, The commodity traded must be a legal commodity to be traded according to Islam.

The benefit that can be obtained from E-commerce for the organizations is as followed (Maghfiroh): 1) Expanding the marketplace from the national market to the international market; 2) Reducing the cost of creating, processing, distributing, storing, and retrieval of information; 3) Support business process reengineering efforts. While the benefit of E-commerce for the consumer: 1) Allows customers to shop or make transactions 24 hours a day all year round in almost any location; 2) Gives customers more choice, e-commerce provides customers with inexpensive products and services by visiting multiple places and making quick comparisons; 3) Customers can receive information relevant details in seconds; 4) Provide a place for customers to interact with other customers in the electronic community and exchange ideas and share experiences. Further, the benefit of E-commerce for the community: 1) Allows people to work from home and not have to go out often to do shopping; 2) Enables people in different countries and rural areas to enjoy a variety of products and services; 3) Facilitate public services, such as

health care, education, and equitable distribution of government-run social services at lower costs or with better quality.

### C. *MASLAHAH MURSALAH* ON E-COMMERCE

Allah has made wealth one of the causes for the establishment of human benefit in the world. Allah has also mentioned that trade is one way to realize this benefit. In general, it can be seen that in Islamic trade, transactions are physical; by presenting the object during the transaction or without presenting the ordered object, but with the condition that the nature of the object must be stated concretely, either directly or indirectly (later) until a certain time limit. As in the transaction *as-salam* and *al-istishna'*, the transaction *as-salam* is a form of transaction with a cash payment system or prepaid, but the delivery of goods is suspended. Meanwhile, *al-istishna'* transaction is a form of transaction with a prepaid or deferred payment system according to the agreement, and the delivery of goods is suspended during (Ramadan).

*As-salam* transactions, like other buying and selling transaction models, existed even before the arrival of the Prophet Muhammad (Zaman). Meanwhile, nowadays, with the growingly sophisticated technology in every aspect of human life, all human endeavors and activities are getting easier when compared to when the technology used only relies on natural factors (Gie). The internet is an invention that initially served as a means of exchanging scientific and academic data, has now turned into a fixture of everyday life, and can be accessed in various parts of the world. Internet technology has brought the world economy into a new phase which is more popularly known as the digital economy. Trade, for example, is increasingly relying on electronic commerce (E-Commerce).

For Asian countries, internet service users in 1999 amounted to 66 million, with Japan as the largest user with 20 million. The Boston consulting group estimates that in 2005 the number will be 375 million, with China as the largest internet service user. Online business turnover in Asia in 1999 was USD 3 billion and is expected to reach USD 20-25 billion in 2003. This turnover is served by approximately 1,400 sites in Asia that offer various types of products (Siregar).

From the description above, it can be noted that the development of information technology, consciously or not, has had an impact on legal, economic, social, cultural, and political developments. With the existence of trading activities through E-Commerce, it has

provided convenience or benefits (*maslahah*) to all levels of society, both individuals and groups. The following is a detailed discussion of E-Commerce.

The presence of e-commerce as a transaction medium certainly benefits many parties, both consumers as well as producers and sellers (retailers). By using the internet, the business process can be carried out by saving costs and time. The mechanism of e-commerce has similarities with the *as-salam* contract in the perspective of Islamic economics, where an *as-salam* transaction is a form of transaction with a prepaid system on payment, while the delivery of goods is suspended, which directly provides a form of leeway in transact and provide convenience for customers in interacting with others, especially in the matter of exchanging assets, such as buying and selling with debt.

An E-commerce transaction is a form of *Maslahah* (providing benefits/convenience) whose level is at *Maslahah Hajiyyat* in terms of muamalah activities that include the sale and purchase of *bai' as-salam*. If the e-commerce transaction is well managed by users and it is not contradicting the maqasid al-syariah, it can provide benefits and repel harm, general and its implementation does not cause difficulties, then the use of e-commerce has included the requirements of use *maslahah al-mursalah*.

## CONCLUSION

The development of the internet, which is so rapid that it gave birth to a trading system called E-commerce or electronic commerce, provides a lot of goodness and convenience (*maslahah*) to the parties involved in its use, both the consumer, the producer, and the seller (retailer). The mechanism of e-commerce has similarities with the *as-salam* contract in the perspective of Islamic economics. Thus, an E-commerce transaction is a form of *Maslahah* (providing benefits/convenience) whose level is at *Maslahah Hajiyyat* in terms of muamalah activities that include the sale and purchase of *bai' as-salam*. If the e-commerce transaction is well managed by users and it is not contradicting the maqasid al-syariah, it can provide benefits and repel harm, then the use of e-commerce has included the requirements of use *maslahah al-mursalah*.

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