



## **Protection For Business Actors Due To Unilateral Cancellation From Consumers In The Pre-Order Method Of Buying And Selling Online (A Study In Islamic Law)**

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| *Received: 04-10-2023*

|| *Revised: 20-11-2023*

| *Accepted: 20-12-2023*

| *Published On: 30-12-2023*

**Abstract:** The principle adopted in buying and selling online is an attitude of trust. After mutual trust, there will be an agreement between the seller and the buyer, then both parties exchange information to follow up on the sale and purchase transaction. Islam has clear rules regarding buying and selling transactions as a basis for business transactions for Muslims. The existence of a pre-order trading system or ordering goods before the goods are available has become a significant trend in online commerce today. In the context of pre-orders, business actors risk unilateral cancellation from consumers after they order goods. This can be detrimental to business actors, especially if they have ordered or produced goods based on the number of orders. Islamic law emphasizes the concept of justice in all aspects of life, including in business transactions. Therefore, protection for business actors must also reflect fairness for both parties. From the background above, the author takes the formulation of the problem of how to protect business actors due to unilateral cancellation from consumers in the pre-order method of buying and selling online (a study in Islamic law).

**Keywords:** Protection, Business Actors, Unilateral Cancellation, Pre-Order, Online Buying and Selling.

**Abstrak:** Prinsip yang dianut dalam jual beli online adalah sikap saling percaya. Setelah saling percaya maka akan terjadi kesepakatan antara penjual dan pembeli, kemudian kedua belah pihak saling bertukar informasi untuk menindaklanjuti transaksi jual beli tersebut. Islam memiliki aturan yang jelas mengenai transaksi jual beli sebagai landasan transaksi bisnis bagi umat Islam. Adanya sistem jual beli pre-order atau pemesanan barang sebelum barang tersedia menjadi tren yang signifikan dalam perdagangan online saat ini. Dalam konteks pre-order, pelaku usaha berisiko mengalami pembatalan sepihak dari konsumen setelah mereka memesan barang. Hal ini dapat merugikan pelaku usaha, apalagi jika sudah memesan atau memproduksi barang berdasarkan jumlah pesanan. Hukum Islam menekankan konsep keadilan dalam seluruh aspek kehidupan, termasuk dalam transaksi bisnis. Oleh karena itu, perlindungan terhadap pelaku usaha juga harus mencerminkan keadilan bagi kedua belah pihak. Dari latar belakang di atas, penulis mengambil rumusan masalah bagaimana cara melindungi pelaku usaha akibat pembatalan sepihak dari konsumen pada metode pre-order jual beli online (kajian dalam hukum Islam).

**Kata Kunci :** Perlindungan, Pelaku Usaha, Pembatalan Sepihak, Pre-Order, Jual Beli Online.

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## Introduction

E-commerce transactions are not limited in the dimensions of time and space. In this condition, there is a change in business behavior which is usually done face-to-face but through e-commerce can be done anywhere and anytime. Online buying and selling transactions through e-commerce in the law of sale and purchase agreements in Indonesia, refer to Article 1338 of the Civil Code which adheres to the principle of freedom of contract. This principle gives freedom to the parties who agree to form an agreement and determine for themselves the form and content of an agreement. Thus the parties who make the agreement can regulate their own legal relationship between them.<sup>1</sup>

The principle adopted in buying and selling online is an attitude of trust. After mutual trust, there will be an agreement between the seller and the buyer, then both parties exchange information to follow up on the sale and purchase transaction. The follow-up of the transaction is usually in the form of a price agreement, payment method and delivery of goods. If the online buying and selling transaction has been agreed, rights and obligations arise for the parties. The relationship of rights and obligations is regulated by legal standards that regulate rights and obligations in community life. However, in practice, trust alone is not enough to provide legal certainty for fellow humans who enter into a sale and purchase agreement.<sup>2</sup>

To achieve a legal protection in the field of trade, the government has issued various laws that are able to protect the rights of its citizens. One of them is Law Number 8 of 1999 concerning Consumer Protection. The law is designed to protect consumers who are often harmed, not only for consumers but also to protect business actors. The existence of legal protection can provide legal certainty for various problems faced by the community. According to Satijipto Raharjo,<sup>3</sup> legal protection provides protection for human rights (HAM) harmed by others and that protection is given to the community in order to enjoy all the rights provided by law.

If studied in Sharia, Islam has clear rules regarding buying and selling transactions as a basis for business transactions for Muslims. As business people and consumers should understand about halal business transactions which must not contain maghribilis (maysir, gharar, usury, tadlis) with the obligation to meet the pillars and conditions of buying and selling. Then in business transactions must be based on the principles of business ethics, among others, must be based on consensual and not persecuting each other.<sup>4</sup>

Buying and selling in Islam can be interpreted as exchanging property in a certain beneficial way. The property in question is material or beneficial. The benefits of an object can be bought and sold. Buying and selling is a transaction in which there are two elements, namely ijab and qabul. Doing buying and selling activities, fellow human beings can help each other which is highly recommended in Islam.<sup>5</sup> In Islam, clarity and certainty in business transactions is a principle that is strongly emphasized. This refers to the principles of muamalah (economic transactions) in Islam which emphasize the importance of transparency, honesty, and fairness in all forms of transactions. The existence of a pre-order trading system or ordering goods before the goods are available has become a significant trend in online commerce today. In the context of pre-orders, business actors risk unilateral cancellation from consumers after they order goods. This can be detrimental to business actors, especially if they have ordered or produced goods based on the number of orders. In this context, it is necessary to consider the need for legal protection for business actors to overcome the risk of unilateral cancellation. This is in line with the principles of justice and protection of economic rights in Islam.

Islamic law emphasizes the concept of justice in all aspects of life, including in business transactions. Therefore, protection for business actors must also reflect fairness and fair play between business actors and consumers. In the face of this challenge, it is necessary to consider the development

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<sup>1</sup> Esti Ropikhin, "Application of the principle of freedom of contract in making agreements", ejournal Undip Semarang, 2010, 10

<sup>2</sup> Marcella Elwina, "Aspects Law of Transactions (Trade) Through Electronic Media (E-Commerce) in the Global Era: A Study of Legal Protection of Consumers", ejournal UMM, 2009, 2

<sup>3</sup> Satijipto Raharjo, *Legal Studies*, (Bandung: PT Citra Aditya Bhakti, 2000), 53

<sup>4</sup> Selvia Nuriasari, "Online Business dNatural Islamic Perspectives". Journal of Sharia Law and Economics. Vol. 2 No. 1, Summer 2014, p. 4.

<sup>5</sup> Achmad Zurohman and Eka Rahayu, "Buying and Selling Online in Perspective Islam". Iqtishodiyah. Vol. 5 No. 1, Summer 2019, p. 22.

of legal protection mechanisms that are in accordance with the principles of Islamic law. This mechanism should take into account the rights and obligations of both parties and refer to the norms of Islamic business ethics. In online buying and selling transactions, there are often violations of the rights of the parties, resulting in losses for consumers and business actors. Therefore, legal protection becomes something that is needed by the community if any of their rights are violated. As happened in transactions with the online buying and selling system, the pre-order system. Sales transactions with a pre-order system only have an online catalog of goods on the website or social media that is used as a medium for selling. In the pre-order contract, the buyer must give or submit a down payment in advance as a token of at least 50% of the amount of fees to be paid, and after the finished goods the buyer pays off the down payment shortfall or is paid in full depending on the agreement. Even though the down payment is required, there are still cases of hit and run, namely the actions of consumers who order goods and then lose news and cancel unilaterally. If the consumer does hit and run, then the consumer has bad faith in making a purchase transaction for goods or services. In practice, hit and run cases can harm business actors. This is often experienced by housewives where they pre-order in buying and selling with smartphones. They offer products that are sold through a catalog of product photos which then if someone buys they will order the goods. However, the problem that often occurs in this online buying and selling pre-order system is that consumers make unilateral cancellations without confirmation to the seller or dropshipper. When the consumer has agreed to order goods through the pre-order system, he should carry out the pre-order agreement as agreed. The pre-order system is widely used by online shop businesses that act as dropshippers or resellers, besides that it can also be applied by business actors in the field of crafting. As the case experienced by one of the Mars Venus Store online shops that acts as a distributor opens pre-orders for clothes with a certain period and quota with provisions that have been explained by the seller starting from the price of goods, specifications of goods, and delivery time. Consumers who agree to purchase clothes through pre-order must transfer half of the down payment as a sign of approval to order goods. After the pre-order quota is met, the seller will recap anyone who has followed the pre-order and immediately order clothes according to the order from the consumer and after the goods are ready will be sent to their respective consumer addresses. But in his case, it is precisely the consumer who neglects his obligations. Consumers who have ordered goods in the form of clothes through pre-order and have been approved by the seller, but when the order is ready, consumers cancel the order unilaterally and do not transfer repayment as previously agreed. The seller has extended the time to give consumers the opportunity to pay repayment but in fact the consumer lost news and did not fulfill his obligations and actually canceled unilaterally without any information to the seller. As a result of these actions, business actors blacklist consumers who do hit and run.

The act of unilateral cancellation in pre-orders is also often experienced by business actors in the field of crafting. Like business actors have received orders for making clothes or something that requires production time so that business actors open pre-orders. But after there was an order agreement, it turned out that consumers canceled unilaterally without any information. This is certainly very annoying for business actors because they have been disadvantaged in terms of time and manufacturing capital. Business actors who have fulfilled the requested goods order turned out to be suddenly canceled. In Islam, buying and selling between humans and others has been regulated by Islamic law in the form of muamalah law so that there are no inequalities that cause enmity between others. Muamalah has arranged that humans in carrying out various activities with others must be willing to each other and in a reasonable and lawful way so as not to harm one party so that the rights and obligations of each party are fulfilled. Regarding online buying and selling transactions where goods or services can be traded to consumers across regional boundaries, protection of consumers and business actors is an important thing that must be considered. In this case, the realization of the pillars and terms of the online sale and purchase agreement is carried out through a digital system. Changes in business behavior through the online buying and selling system are justified according to the concept of sharia as long as it does not conflict with sharia principles. The act of buying and selling online with a pre-order system or order in Islamic law is identical to the contract of greetings and *istishna*<sup>6</sup>. In Islam, when transacting with others, it is forbidden

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<sup>6</sup> Burhanuddin S, *Legal Thinking on Consumer Protection and Halal Certification*. (Malang: UIN-Maliki Press, 2011), 136

to cheat and harm others. Therefore, in buying and selling transactions, sellers and buyers must keep promises as agreed. As commanded in the Qur'an Surat Al Maida: 1  
It means: "O believers, keep the promises."

Based on the description above, it is necessary to provide legal certainty from the seller who feels aggrieved due to consumer actions that have bad intentions in carrying out their agreements both in positive law and Islamic law. From such consumer actions, legal issues arise in the form of cases

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا أَوْفُوا بِالْعُقُودِ

experienced by the community. So to solve it requires legal analysis to protect the rights of business actors for unfavorable consumer actions. From the background above, the author takes a formulation of the problem of how to protect business actors due to unilateral cancellation from consumers in the pre-order method of buying and selling online (a study in Islamic law)

### Discussion

Legal protection is the main form of protection, it is based on the idea that law as a means that can accommodate the interests and rights of legal subjects comprehensively. In addition, the law has coercive power that is officially recognized within the State, so that it can be implemented permanently. The definition of legal protection many experts express different understandings among them are as follows:<sup>7</sup>

- a. According to Philipus M. Hadjon, legal protection is a collection of rules or rules that will be able to protect one thing from another. With regard to consumers, it means that the law provides protection for customer rights from something that results in the non-fulfillment of these rights.<sup>8</sup>
- b. According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that incarnate in attitudes and actions to create order in the association of life between human beings.<sup>9</sup>
- c. According to CST. Legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by law, is also related to the existence of rights and obligations, in this case owned by humans as legal subjects in their interactions with fellow humans and their environment. As subjects of law, man has the right and obligation to perform a legal act.<sup>10</sup>

Legal protection is an effort given to legal subjects in the form of devices, both preventive and repressive protection, both oral and written. In other words, the protection of the law as a separate illustration of the function of the law, which has the concept that the law provides justice, order, certainty, expediency and peace. Based on this, the author can conclude that legal protection is a protection provided by law in certain ways or actions as an effort to protect the parties.

Consumer Protection Law according to Az Nasution is a consumer law that contains principles or rules that are regulatory, and also contains properties that protect consumer interests. Consumer law is defined as the entire principles and rules of law that regulate relationships and problems between various parties with each other related to consumer goods and / or services in the association of life.<sup>11</sup>

The definition of Consumer Protection is contained in Article 1 Number 1 of Law Number 8 of 1999 concerning Consumer Protection, hereinafter abbreviated as UUPK is "all efforts that ensure legal certainty to provide protection to consumers". While the definition of consumer contained in Article 1 Number 2 of Law Number 8 of 1999 concerning Consumer Protection is "Everyone who uses goods and / services available in society, both for the benefit of themselves, family, others, and other living beings and not for trade".

<sup>7</sup> Rev. Sasongko, *Basic Provisions of Consumer Protection Law*, (Bandar Lampung: University of Lampung Publishers, 2007), 30

<sup>8</sup> Hadjon, Philip M, *Legal Protection for the People At Indonesian*. (Surabaya: PT Bina Ilmu, 1987), 25

<sup>9</sup> Setiono, *Rule of Law (Supremasi Hukum)*, (Surakarta: Master of Law Postgraduate Program of Universitas Sebelas Maret, 2004), 3.

<sup>10</sup> CST Kansil, *Introduction to Indonesian Law and Legal Procedure*, (Jakarta: Balai Pustaka, 1980), 102.

<sup>11</sup> Shidarta, *Consumer Protection Law*, (Jakarta: Grasindo, 2000), 9

Meanwhile, the definition of business actors contained in Article 1 Number 3 of Law Number 8 of 1999 concerning Consumer Protection is "every individual or business entity, whether in the form of a legal entity or non-legal entity established and domiciled or carrying out activities in the jurisdiction of the Republic of Indonesia, either alone or jointly through agreements to carry out business activities in various economic fields".

E-commerce or electronic commerce or online business is all business activities that use electronic media. e-commerce is divided into two, namely business to business abbreviated as B2B and business to consumer abbreviated as B2C. B2B or business to business commerce is a business transaction between business organizations using electronic media, while B2C or business to consumer commerce is a business transaction between business people and consumers using electronic media. In other words, B2C is a type of buying and selling transactions between business organizations or merchants and consumers using electronic media. Many electronic media are used in selling products such as social media (yahoo, facebook, twitter, etc.) and e-newspapers.<sup>12</sup>

The scholars agree that transactions required by cash handover of goods and money are not allowed to be carried out by telephone or internet (online), such as buying and selling gold and silver because this includes *riba nasi'ah*. Unless the object being traded can be handed over at that time, such as exchanging foreign money through an ATM, the law is permissible because the exchange of rupiah with dollars is priced according to the exchange rate on that day. For goods that are not required to be handed over in cash in buying and selling, namely all types of goods, except gold and silver and currency, buying and selling via the internet (buying and selling online), can be interpreted by buying and selling through correspondence. The buying and selling through telephone and the internet is direct buying and selling in *ijab and qabul* contracts.

As decided by *Majma' Al Fiqh Al Islami* (OIC Fiqh Division) decision no. 52 (3/6) of 1990, which reads "If a contract occurs between two people who are far apart not in one ceremony and the perpetrator of the transaction, one with another does not see each other, does not hear each other's transaction partners, and the medium between them is writing or letters or errands, It can be applied to facsimiles, telex, and computer screens (internet). So the contract takes place with the arrival of *ijab and qabul* to each transacting party. If the transaction takes place at one time while both parties are far apart, this can be applied to transactions via telephone or mobile phone, then *ijab and qabul* that occur are direct as if both are in one place."<sup>13</sup>

In transactions using the internet, the provision of an application for goods by the seller on the website is a diploma and the filling and delivery of the application that has been filled out by the buyer is *qabul*. The goods can only be seen pictures and explained the specifications clearly and completely, with explanations that can affect the selling price of goods. After *ijab qabul*, the seller asks the buyer to transfer money to the seller's bank account. After the money is received, the new seller sends the goods via courier or freight forwarding service. So, transactions like this (buying and selling online) the majority of scholars legalize it as long as there is no element of *gharar* or obscurity, by providing specifications in the form of images, types, colors, shapes, models and those that affect the price of goods.

*Akad* comes from the Arabic word *al-'Aqdu*, which is a covenant or agreement. Sayyid Sabiq (93:1995) *Sunnah* jurisprudence literature explains that a contract is a covenant or agreement. There is another literature saying (63:2001) that the contract (*'al-aqdu*) is an agreement or a contract between the two parties between the seller and the buyer, it can also be said *ijab and qabul*, *ijab* is someone who carries out the alliance or agreement between the two parties while *Kabul* is acceptance of the agreement.

According to Mustafa Ahmad az-zarqa explained in the encyclopedia of Islamic law, Being 2 kinds of legal actions carried out by someone. Including:<sup>14</sup>

1. Actions in the form of Speech:

a.) Contractual: both parties enter into a self-agreement to make an agreement.

<sup>12</sup> Selvia Nuriasari, Op. Cit., 5.

<sup>13</sup> Munir Salim, "Buying and Selling Online According to Legal Views Islam". Al Daulah. Vol. 6 No. 2, Summer 2017, p. 378.

<sup>14</sup> Wahibatul Maghfuroh, "Online Buying and Selling in Review of Islamic Law". Ahwal Syakhshiyah Scientific Journal. Vol. 2 No. 1, Summer 2020, p. 35-36.

b.) Non-contractual:

1) The owner may assign, cancel, or abort.

2) It does not contain an element of will between the two parties but in practice contains an agreement or agreement, this also has the effect of a binding law between the two parties.

2. Actions in the form of buying and selling actions are daily activities, not spared by transactions between sellers and buyers, because they need each other, so sellers need consumers / buyers, as well as buyers need the goods they want, so, buying and selling activities are very important meaning mutual need. For more details about the understanding of buying and selling, there are several definitions of buying and selling, including those that have been stated by Taqiyyuddin (279: 2001), Zainuddin (316: 2004), Dimyauddin (92: 2008), and Sabiq (92: 1995), that buying and selling is a transaction between sellers and buyers, namely the exchange of goods with goods, property with property, by binding or making agreements between the two parties, and which in exchange gives benefits between the two parties.

### **Protection of Islamic Law for Business Actors Due to Unilateral Cancellation from Consumers in the Pre-Order Method of Online Buying and Selling**

In Islamic law, there is a principle of certainty and justice in economic transactions. Therefore, the contract or pre-order agreement must be drafted in such a way as to guarantee the certainty of the rights and obligations of each party. To protect business actors, the terms and conditions of pre-order transactions must be clear and open. This may include provisions regarding the cancellation of the order, the duration of the order, and the consequences of cancellation. Business actors can set down payment obligations as a form of guarantee that consumers are serious about ordering goods. If the consumer cancels the order, the down payment can be used to cover losses that may be experienced by the business actor. Islamic law encourages openness and honesty in transactions. Therefore, there should be a clear mechanism for refunds if cancellations occur. It must be governed fairly and in accordance with the principles of Islamic justice. If there is uncertainty or disagreement between business actors and consumers, it is advisable to reach an *ittifaq* or mutual agreement. In Islam, dispute resolution through deliberation and mutual agreement is emphasized to achieve justice. In some cases, involving a third party who can mediate or facilitate dispute resolution may be a solution. These third parties must be neutral and competent in managing disputes fairly. If there is a violation of the terms of the contract, appropriate penalties or sanctions may be applied. However, the application of punishment must be in accordance with the principles of Islamic justice and not violate consumer rights. It is important to remember that in Islamic law, legal protection must be in line with Islamic ethical and moral values and pay attention to the balance of rights and obligations between business actors and consumers. Thus, legal protection mechanisms must ensure fairness and equality in economic transactions.

In Islamic business, contract is an important element when conducting legal relations with fellow human beings. *Akad* is a legal action of two parties, because in the contract there is a meeting of *ijab* which represents the will of one party and *kabul* which expresses the will of the other. Islam provides wide opportunities for humans to develop forms and kinds of *muamalah* relationships according to the times and the needs of mankind. No exception in the trade sector which has now developed a way of conducting a trade or buying and selling through electronic media better known as e-commerce. In today's e-commerce transactions are very diverse forms and ways of selling, one of which is with a pre-order system. To find out whether e-commerce is contrary or not in terms of Islamic alliance law, e-commerce must be in accordance with the pillars and conditions of the contract according to Islamic alliance law. Relating to e-commerce objects, they must meet the requirements of the contract object, namely:<sup>1516</sup>

- a.) Existed at the time the contract was held
- b.) Justified by sharia (halal and beneficial value)
- c.) Must be clear and known
- d.) Handover

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<sup>15</sup> Ika Yunia Fauzia and Abdul Kadir Riyadi, *Basic Principles of Islamic Economics*, (Jakarta: Prenadamedia Group, 2014), 241

<sup>16</sup> Gemala Dewi, *Islamic Alliance Law in Indonesia*, 197-198

In general, business in Islam describes the existence of transactions that are physical, by presenting the object during the transaction, or without presenting the ordered object, but with the provision that it must be stated the nature of the object concretely, either handed over directly or handed over later until a certain time limit, such as in the transaction of buying and selling greetings and buying and selling *istishna*. Buying and selling greetings is buying and selling an item whose delivery is delayed, or selling an item whose characteristics are clearly mentioned with capital payment first, while the goods are handed over at a later date. While *istishna* is buying and selling goods in the form of ordering the manufacture of goods based on certain requirements, criteria, and payment patterns in accordance with the agreement.

Pre-order buying and selling is a trade that does not present objects directly. Based on this, it can be seen that buying and selling pre-order according to *fiqh* *fists* can be in the form of buying and selling greetings or buying and selling *istishna*. It depends on the payment system and in the context with whom the person enters into a sale and purchase agreement. So that the pre-order contract can be equated with the contract of *salam* or *istishna* which are both transactions that are allowed with the conditions that must be fulfilled in harmony and the conditions are in accordance with the instructions of *sharia* law. Because Islamic law does not burden its people even Islam provides relief in a matter, such as in the case of buying and selling transactions, if you cannot deliver the goods when they are due may suspend the delivery of goods within a certain and clear time limit.

This form of pre-order sales involves separate payment and handover phases. The seller will ask for payment money as a down payment or as a full payment, and the goods will be handed over to the buyer at a later date. In sales with a pre-order system, the seller does not yet have the goods sold. Both *istishna* and *salam* contracts also have situations where the seller does not own the goods at all when the sale is carried out, but is *halal* in Islamic *sharia* as long as it meets some existing requirements.

In the rules of *muamalah* in Islam one is commanded to fulfill the covenant he has made together with others. In the event of cancellation, it must be done in a reasonable and appropriate manner because the original law of the contract is a necessity to carry out. Therefore, the cancellation made by the buyer in the pre-order of buying and selling online is a unilateral cancellation by *fasakh*. *Fasakh* is a cancellation made unilaterally or without consent. *Fasakh* is sometimes performed by two people who contract willingly and without willingness. In a contract that has no legal consequences (non-binding) there is *khiyar fasakh* on the two contractors.<sup>76</sup> Therefore, the cancellation of a transaction must not only be done through *fasakh* but can also be done through *iqalah* based on the pleasure between the contracting parties.

If there is a party who wants to cancel an agreement for certain reasons, then that party can notify the other party in advance and speak well and express the reason correctly, because everyone and no exception to the seller also has compassion and compassion for others even though everyone who does business does not want to be harmed. The procedure for canceling an agreement in Islamic law is by notifying the other party that the agreement or agreement that has been bound will be terminated (canceled), this of course must also be accompanied by the reason for its cancellation.<sup>17</sup>

Judging from the implementation of the pre-order agreement made by the parties in the case of unilateral cancellation in the pre-order sale and purchase raised by the author, it is known that the consumer does not carry out the mutually agreed agreement. Consumers who have ordered pre-order goods are known not to pay repayment according to the agreed time. In this case, the seller feels disadvantaged in terms of time and capital because he has ordered the supplier of goods. The seller has already ordered the goods, but the buyer who has agreed to follow the pre-order actually does not carry out as agreed. So that the seller's attitude in this case acts as a dropshipper, blacklisting consumers who make hits and runs that are missing news and negligent of their obligations.

In the above case, it can be classified based on the case that if the pre-order made by the dropshipper even though it only requires a partial down payment and only as the party who orders the goods to the supplier does not produce the goods themselves, then this can be equated with a greeting contract. To make the contract of greeting valid, *muslam alaih* (seller) is entitled to capital and is obliged

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<sup>17</sup> Chairuman Pasaribu and Suhrawardi K Lubis, *Treaty Law in Islam*,

to deliver the goods to the buyer. As for the buyer, he has the right to own the goods in accordance with the agreed specifications and is obliged to pay capital to the seller.<sup>18</sup>

The greeting transaction does not require the goods to be on the seller's side, but only required to be present at a predetermined time. If the goods are not present at the specified time, then the contract becomes void (Fasakh). Although the pre-order goods are not yet in the hands of the seller, this is allowed according to Islamic rules, as long as the goods can be clearly known and are borne by the seller and the buyer is sure that it will be fulfilled at a predetermined time, then the sale and purchase does not include buying and selling gharar (deceptive). This is in accordance with the word of God in QS. Al Baqarah: 282

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

It means: "O believers, if you do not give money for the appointed time, you should write it down..." Al Baqarah: 282).

The execution of the greeting contract must be carried out based on clear measures and scales, in addition to knowing a clear period of time even though the payment at the time of legal maturity is allowed. This is according to what Bukhari Muslim narrated that the Prophet (peace be upon him) said: It means: "Whoever makes a sale by way of salaf (greetings), he should make the sale with clear measures and scales up to the specified time limit" (Muttafaqun alaih).

When viewed from the requirements of the pre-order goods, it has fulfilled the requirements of the greeting contract, including:

- a. First, the terms related to the type of capital (payment) and the price can be clearly known, and the consolidation is carried out through transfers between accounts accompanied by proof of transfer.
- b. Second, the conditions relating to the pre-ordered goods that the goods are in the dropshipper's dependent status until the pre-order goods are received by the buyer, with clear goods criteria and show the nature and quantity as mentioned at the beginning of the agreement. In addition, the time limit is also clearly known.

In the greeting contract if the ordered goods have been received and then there are defects in the goods or not in accordance with the properties, characteristics, quality or quantity of the goods ordered, the orderer (consumer) may state whether he received or not. If the harmony and conditions have all been fulfilled, then the sale and purchase of this order is declared valid and each party is bound by the conditions they agreed upon. Based on this, if there is a cancellation of greetings, it may be done by fasakh carried out by the consumer because there are reasons that come later, resulting in the consumer being unable to pay the payment of the order he has agreed. Therefore, business actors must be able to accept pre-order cancellations through a greeting contract sincerely and return the down payment that has been submitted before.

Unilateral cancellation cases known to the author are not only experienced by business actors who act as dropshippers or resellers but also experienced by business actors in the field of crafting. The cancellation is experienced by a producer related to the manufacture of a certain item. The case began with business actors who opened pre-orders for an item with a certain period of time. Then if there is a consumer who agrees, it is required to pay a down payment or full payment according to mutual agreement. But in his case, the consumer who ordered the goods did a hit and run act which resulted in losses in terms of capital and time. The prosuden has made the goods as ordered by the consumer, but the consumer who has agreed to the pre-order actually does not carry out his obligations as agreed at the beginning. Consumers run away from responsibility and disappear without news after the ordered goods have been made.

So if analyzed, the pre-order case described by the author above includes the istishna buying and selling contract. Based on Article 104 of the Compilation of Sharia Economic Law, it is known that the

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<sup>18</sup> Ensign Adam, *Jurisprudence Muamalah Maliyah Concept, Regulation, and Implementation*, (Bandung: PT Refika Aditama, 2017), 68

sale and purchase of *istishna* is binding after each party agrees on the goods ordered. Abu Yusuf and Ibn Abidin held that the contract of buying and selling *istishna* as one of the contracts that bind both parties. Thus, if the delivery of goods is due, and the manufacturer succeeds in making the goods in accordance with the order, then there is no right for the orderer to withdraw from his order.

Akad *istishna* is a contract that is *jaiz* so that *ba'i istishna* can receive cancellation through *fasakh* and *iqalah*. However, cancellation of pre-orders in the *istishna* contract may not be done if the ordered goods have been completed as ordered, but if the object of the ordered goods does not match the specifications, the orderer can use the right of choice (*khiyar*) to continue or cancel the order. Based on this, the case of cancellation of pre-orders through the *istishna* contract above is essentially allowed by way of *fasakh*, but because the ordered goods have been completed, the cancellation of the *istishna* contract can only be done by *iqalah*, which is based on pleasure between the contracting parties. When the consumer continues to cancel unilaterally, the business actor can ask for compensation for the production costs that have been incurred. Because this includes the act of breaking promises as contained in the provisions of the Compilation of Sharia Economic Law Article 36 which states that parties can be considered to have broken promises if due to their mistakes they do not do what they promised to do so. So that parties who have broken promises can be sanctioned for payment of compensation.<sup>19</sup>

In the practice of pre-order sale and purchase agreements, of course, dropshippers and business actors in the crafting sector feel disadvantaged because they do not get justice in the form of their rights not being fulfilled properly, so this can be said to be a default that has been done by the consumer. That default is negligence or a form of breaking a promise of one of the parties. In Islam puts indemnity as an obligation that must be fulfilled by the person who bears responsibility. However, a sale and purchase agreement in Islamic law is not allowed to demand compensation in the form of interest and the estimated value of the amount of profit that should be obtained in the event of no default of either party.

Based on the explanation above, regarding unilateral cancellation in online buying and selling pre-orders that occur, settlement can be taken by means of peace (*sulhu*) and arbitration (*tahkim*) so as not to cause a problem between parties. So as to maintain friendship between others, because the purpose of peace is so that there are no conflicts between humans in terms of *muamalah*. This is as stated in the Qur'an Surah An-Nisa verse 114:

It means: "There is no good in most of their whispers, except the whispers of those who tell (people) to give alms, or to do *ma'ruf*, or to make peace among humans. And whoever does so because he seeks the pleasure of Allah, we will give him a great reward." (QS. An-Nisa: 114)

Based on this, the author concludes that the core of the success of a contract is the party itself, both the seller and buyer must both comply with the agreement that has been mutually agreed until the contract ends. In buying and selling orders in the form of a greeting contract, it can be canceled by *fasakh* or *iqalah* while in the *istishna* contract if the ordered goods have been completed as ordered, cancellation cannot be made, but if the object of the ordered goods does not match the specifications, the orderer can use the right of choice (*khiyar*) to continue or cancel the order.

If there is a cancellation, it must be resolved by means of peace between the parties who make the contract or by showing a third party to a mutual agreement called *tahkim*. So that there is no hostility between the parties who have made the agreement. If a party breaks a promise as in unilateral cancellation without being based on pleasure, then it is a despicable trait in the survival of society. So that peace and arbitration are needed and useful in resolving these problems so as not to cause a dispute or hostility in public life.

## Conclusion

In Islamic rules people are encouraged to keep agreements that have been made together with others. In the event of cancellation in the transaction, it must not harm either party. As in buying and selling pre-orders, which according to *fiqh* fists can be in the form of buying and selling greetings or buying and selling *istishna*. It depends on the payment system and in whose context the person enters into a sale and purchase agreement. In his case, unilateral cancellation of pre-orders in buying and selling

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<sup>19</sup> Compilation of Sharia Economic Law, Article 36

greetings carried out by means of fasakh from the consumer is allowed, while cancellation of pre-orders in buying and selling istishna should not be by fasakh but by way of iqalah, which is based on pleasure between the contracting parties because the ordered goods have been completed so that the contract is binding, there is no right for the orderer to withdraw from his order. When the consumer continues to cancel unilaterally, the business actor can ask for compensation for the production costs that have been incurred. Unilateral cancellation in online buying and selling pre-orders that occur can be resolved by means of peace (sulhu) and arbitration (tahkim) so as not to cause a problem between parties.

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