

SHARIA COMPLIANCE REQUIREMENTS FRAMEWORK FOR E-COMMERCE SYSTEMS: AN EXPLORATORY STUDY

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ABSTRACT

There is a growing concern among Muslims over the need to ensure Sharia compliance in e-commerce transactions. Because non-conformity to Sharia principles can result in a lack of trust and a barrier for many Muslims to partake in e-commerce transactions. However, there is currently no comprehensive and clearly specified Sharia compliance requirements guideline for e-commerce systems. Therefore, a need to explore and develop a comprehensive guideline for Sharia compliance requirements in e-commerce systems. In this study, an exploratory qualitative study involving eight semi-structured interviews with Sharia compliance scholars/experts was conducted. Consequently, a conventional content analysis of data was carried out with the aid of QSR-NVivo 11. Findings from the study revealed that e-commerce is acceptable and indeed encouraged in Islam so long as it enhances the welfare of society. The fundamental Sharia compliance requirements for e-commerce are adherence to the *Maqasid* Sharia and the fulfillment of Islamic law of contract obligations. This requires e-commerce systems to be structured towards enhancing the welfare of the society and compliance with the form, contracting parties, and subject matter obligations of Islamic law of contract. Therefore, this study proffers a comprehensive framework of Sharia compliance requirements for e-commerce systems which provides notions that agree with the Quran, Sunnah, and e-commerce best practices. The framework provides a comprehensive but parsimonious guide that would enhance understanding and support the development of Sharia compliant e-commerce systems. Furthermore, it would guide researchers, consumers, vendors, developers, analysts, and regulators with interest in the Sharia compliance e-commerce domain.

Keywords: *Sharia Compliance Requirements, E-Commerce, Sharia Scholars/Experts, Maqasid Sharia, Islamic Law of Contract.*

1. INTRODUCTION

The proliferating innovations in e-commerce have transformed business processes, marketplaces, emerging industries and have continuously served as an impetus to expand its research scope [1]. Therefore, there is an increasing need to adequately understand the fundamental issues surrounding e-commerce, especially where trust is at stake. Because, there is a high influence of trust in both interpersonal and commercial

relationships [2], which is a very dominant characteristic among Muslims [3]–[5]. In the e-commerce context, there are concerns of non-conformity to Sharia principles which result in a lack of trust and a barrier for devoted Muslims to partake [5], [6]. Furthermore, Siala [7] highlights a significant influence of religious centrism on the purchasing decisions and loyalty of Muslim consumers. Therefore, businesses that can conform to Sharia requirements can enjoy long-term

patronage from Muslim consumers due to the persistence of their religious values over time.

Fundamentally, Sharia principles are derived from the holy Quran, the Sunnah (practices of the holy prophet), *Qiyas* (deductive analogy from the Quran and Sunnah) and *Ijma* (consensus of Islamic scholars) [8]. But, despite being a recent medium for buying and selling of goods and services, Sharia accords e-commerce with a similar connotation as the traditional brick and mortar commerce [9]–[11]. Therefore, e-commerce is an innovation that Islam allows and indeed encourages, so long as all the stipulated requirements are fulfilled. This involves conformity to the principles of Islamic law of contract and to be devoid of any fundamentally prohibited element of *riba* (usury), *gharar* (uncertainty), *haram* (forbidden) objects and *maysir* (gambling) [4], [8]. Islamic law of contract stipulates conformity with the principles of form (offer and acceptance), contracting parties (buyer and seller) and the subject matter (object and price) as a prerequisite for Sharia compliance in e-commerce. It is aimed at ensuring mutual good among parties such that, the subject of the transaction is permissible and fully enclosed to enable informed decisions to enhance their welfare.

Despite concern and need, yet, there is no comprehensive and clearly specified Sharia compliance requirements guide for e-commerce systems. Attempts by extant literature did not provide sufficient contextual guidelines or pragmatically account for scholar/expert opinion that is an essential basis for Sharia jurisprudence in a complex system like e-commerce. Although, scholars highlighted the general Sharia principles [8], [10] the contextual application to e-commerce remains ambiguous. Whereas, an attempt by Amboala et al., [12] to engage Sharia scholars/experts in illuminating on their proposed Sharia compliant payment algorithm for e-commerce, only deduced a case based opinion that cannot be generalized. Because of these problems, there is a constraint for religious-centric Muslims and other stakeholders to understand and ensure the fulfillment of Sharia compliance requirements. Consequently, it results in a lack of trust and hesitance to patronise the prevailing conventional e-commerce systems by devoted Muslims [9], [13], [14].

Therefore, there is a need to explore and develop a comprehensive understanding of the Sharia compliance requirements guidelines for e-commerce systems. This requires the engagement of

Sharia compliance scholars/experts that are conversant with e-commerce to seek a consensus of their opinion. Furthermore, to articulate a Sharia compliance requirement framework that will provide a comprehensive but parsimonious guide to e-commerce researchers, consumers, vendors, developers and regulators with interest in Sharia compliant transactions. Because, a Sharia compliant e-commerce system can foster the *maslaha* (welfare) [15], [16], ensure trust and mutual benefits among parties [17], [18], secure their privacy and fortunes [12], [19], guarantee the quality of services [4], [14], [20] and provide effective dispute resolution mechanism [21]–[23].

This paper is structured as follows. Section 2 discusses some relevant literature to Sharia compliance requirements for e-commerce. Section 3 presents the methodology for sampling, data collection and analysis, using conventional content analysis. Section 4 presents findings and discussions on the Sharia compliance requirements and framework for e-commerce systems. Subsequently, the conclusions from the research are presented in section 5. Finally, section 6 presents limitations of this research and directions for future research.

2 RELATED WORK

To comprehend and proffer an answer to the Sharia compliance requirements for e-commerce systems, we found it imperative to review relevant literature to highlight some important contributions made so far and the unresolved issues. Although there is very limited visible literature on this multi-disciplinary domain, we were able to find and scrutinise some giant strides by researchers in that regard. This includes the Sharia compliance requirements for e-commerce systems from the perspective of Information systems, law, business, and consumer behaviour.

Zainul et al. [8] highlighted the proliferation of e-commerce globally which brought about ignorance among many Muslims of the status of their transactions from an Islamic perspective. Therefore, they examined and expounded the legitimacy of e-commerce and its stipulated requirements from an Islamic point of view. It was logically carried out through a review of relevant Quranic verses and hadith. Furthermore, they interviewed a scholar whose contributions enriched the study. It revealed that e-commerce is permissible and highly encouraged in Islam due to its expediency to foster trade and wealth creation for the society. However, the legitimacy of e-commerce in Sharia is dependent on the fulfilment of the requirements for

offer and acceptance, contracting parties, subject matter and must be devoid of *riba*, *gharar* and *haram* objects. They stipulate that for a transaction to be valid the commodity or service involved must be permissible and the conduct must be for the mutual good of contracting parties. Based on Islamic business ethics, parties must be honest and sincere in dealing with one another by ensuring the full enclosure of contract details to enable informed decisions devoid of uncertainty. Although the study provides a credible discuss, Sharia requirements expressed were extensively segregated and did not result in coherent guidelines. Furthermore, the methodology adopted was not clearly defined, especially the qualitative aspect of the research which requires a systematic and detailed approach to ensure the efficacy of the study.

While, Muhammad et al. [9], in their bid to resolve e-commerce trust concerns among Muslim consumers reflected it from an Islamic perspective based on the fact that, religion is an important antecedent of e-commerce trust among Muslims. Therefore, they explored developing e-commerce trust based on analysis of the fundamental requirements of Islamic law of contract. Based on an extensive review of the classical and contemporary literature, the requirements for e-commerce to comply with Islamic law is found to involve the fulfilment of offer and acceptance (form), buyer and seller (contracting parties) and the object and price (subject matter) conditions for an online sales contract. Where the item offered for sale is permissible and fully disclosed and both parties must accept the terms of the contract out of free will. Both the buyer and seller must have the legal capacity (*ahliyyah*), legal authority (*wilayah*) and mutually consent to engage in a contract. Furthermore, an object of a contract must be lawful, valuable, in existence, deliverable and precisely determined, while the medium of paying for the price of the object of e-commerce transaction must be devoid of *riba*. Therefore, they postulated that the validity of an e-commerce transaction is dependent on its Sharia compliance. Also, Sharia compliant e-commerce could influence the presence of e-commerce trust among users.

Similarly, Muhammad and Muhammad [5] related the lack of trust for the hesitancy of people to conduct e-commerce transactions mainly due to religious reasons. Furthermore, trust among devoted Muslims is affiliated with Islamic teachings. Therefore, the need to adopt the Sharia compliant way of conducting e-commerce to earn the trust of Muslim users. They conducted a library-based

research utilising both classical and contemporary literature to develop Sharia compliance guidelines that would enable consumer trust in e-commerce. They revealed that e-commerce is permissible as long as it adheres to the essential requirements of Islamic law of contract and is devoid of fundamentally prohibited elements. Islamic law of contract stipulates form (offer and acceptance), contracting parties (buyer and seller) and subject matter (object and price) conditions that must be fulfilled. Furthermore, all transactions must be devoid of usury, gambling, uncertainty, coercion, and forbidden elements. They established that an e-commerce system that fulfils the requirements of Islamic law of contract and is devoid of the fundamentally prohibited elements is deemed Sharia compliant. Furthermore, they posited Sharia compliance as a key to secure e-commerce trust among Muslim consumers.

Distinctively, Jalil and Rahman [15] in their review of a published book on Islamic law of contract underscored the need to comprehensively present relevant and essential topics of the philosophy of Islamic law of contract. They highlighted that the reviewed literature provided a narrow scope of Islamic law of contract and can therefore not sufficiently depict its requirements. It has been emphasised that all elements of Islamic law of contract must be adhered to for a contract to be deemed Sharia compliant. Therefore, they presented the elements of Islamic law of contract as, offer (*ijab*) and acceptance (*qabul*), free consent and the legal capacity (*ahliyyah*) of contracting parties, the legality of the objective and consideration of a contract, a certainty of legitimate performance and formality of a contract. However, they acknowledged the rationality and efficacy of online contracts, thereby emphasized the need for in-depth scrutiny of the requirements of Islamic law of contract within an e-commerce context. This is advocated to cater for the growing online transactions to ensure validity in Sharia.

Abdulghani and Suhaimi [6] in their paper focused on highlighting factors that influence the intention of Muslims to engage in e-commerce transactions. The study is necessitated by the rising concerns over Sharia and technological issues that call for redress to enable Muslim consumer's intention to purchase online. Based on the reviewed literature, they highlighted factors that influence Muslim consumers intention to partake in e-commerce as, Sharia compliance, trust, integrity, competence, benevolence, web quality, third party assurance, trustors propensity, religious

commitment, trustworthiness, and perceived risk. But despite identifying Sharia compliance as a fundamental element that influences Muslim consumers to engage in e-commerce, they did not critically examine its requirements. However, merely reviewing literature even with a good grasp of e-commerce workings and the principles of Sharia might not give a comprehensive, reliable and replicable finding for Sharia compliance requirements in e-commerce. Therefore, a need for a more detailed and scientific approach to answering this fundamental research question.

Amboala et al. [12] explored how to resolve the issues of *riba*, *gharar* and validity of e-commerce transactions. Therefore, they ventured to design an algorithm that would ensure a secure, effective and Sharia compliant e-commerce transaction. They conducted an empirical investigation of the requirements for a Sharia compliant e-commerce using focused groups. Islamic scholars and academics, along with e-commerce stakeholders from industry illuminated on Sharia compliance requirements for e-commerce by continuously proffering and reviewing the efficacy of alternative solutions. Therefore, a Sharia compliant e-commerce transaction algorithm was conceived based on a proposition for the inclusion of an Intermediate Sharia transaction party (ISTP) as a transaction intermediary between merchants and customers that would foster Sharia compliant transactions. The ISTP is to guarantee the legality of a contract, the medium of payment used is devoid of *riba*, the transaction correspondence between merchants and customers are matched to eliminate *gharar* and the validity of the transaction. However, the setting and sample of the study were not clearly defined which inhibits the reliability and validity of findings. Furthermore, the study did not comprehensively report the Sharia compliance requirements for e-commerce systems. Although, they specified some of these requirements based on their proposition but it did not provide an in-depth grasp. Therefore, a further need to explore a credible approach in finding the Sharia compliance requirements for e-commerce.

Muhammad et al. [13] expressed that, every e-commerce transaction is regarded as a contract, hence, must fulfil requirements stipulated by Sharia to be considered valid and acceptable to Muslims. Therefore, the study reviewed the extant literature on Sharia requirements and principles of contract, followed by an empirical investigation of amazon.com to ascertain Sharia compliance of its e-commerce transactions. They revealed Sharia

compliance requirements as, compliance with form, contracting parties and subject matter requirements of the Islamic law of contract. These involve the clarity, connectedness of the offer and acceptance, the mutual consent, legal capacity and legal authority of parties, the permissibility of assets and its deliverability and payment. Furthermore, e-commerce transactions must be devoid of any fundamentally prohibited element of *riba*, *gharar*, and *maysir* to be assured Sharia compliant. Consequently, their review of amazon revealed that components and processes of e-commerce transactions satisfy the necessary Sharia validity requirements except for two circumstances: where transactions involve prohibited elements such as pork, alcohol, tobacco, entertainments and other related forbidden products, *ribawi* items and where payment are made using *riba* credit cards.

Bagheri and Hassan [21] embarked on a study that seeks to highlight the Islamic legal mechanism for protecting online customers from the menace of *tadlis* (misrepresentation and deception). Therefore, exploring the legal basis for providing online consumers who suffer losses in such circumstances to revoke a contract or collect *arsh* (compensation). They used qualitative content analysis to deduce the legal grounds that could resolve the effects of misrepresentation and deceit in e-commerce from the glorious Quran and Hadith. Furthermore, citing the laws of various countries, they justified the prudence and application of Islamic legal jurisprudence in e-commerce. They disclosed that Islamic law offers online customers *khiyar tadlis*, the right to void a contract or collect compensation based on misrepresentation or deceit. It is based on the assertion that, in online contracts, the seller or provider is deemed to have absolute knowledge of all the features of an item, whereas, a consumer can only evaluate the item as described by the seller on a computer screen. Therefore, an e-commerce vendor must be liable for non-conformity of any item delivered to the customer. However, there is a need to further explore the *khiyar's* offered by Islamic law that can foster justice and mutual good among contracting parties in e-commerce transactions.

Therefore, the reviewed literature presents the need to further explore what the Sharia compliance requirements for e-commerce systems are. It would provide comprehensive insight and articulate guidelines to resolve the problem.

3. RESEARCH METHODOLOGY

In the field of IS and other social sciences, qualitative methods have been used in conducting exploratory research to gain an in-depth understanding of the phenomenon and/or to generate new theoretical insights [24]–[27]. Myers [28] explained the increasing interest in the application of qualitative research methods in IS as a shift from technological to wider managerial and organisational issues. For instance, researchers employed exploratory qualitative studies when e-commerce was emerging to extract factors related to an individual's perception of the phenomenon [24]. It is still necessary today, to embark on a similar approach where extant theoretical models have not provided sufficient insight such as the case of Sharia compliance requirements for e-commerce. Therefore, adopting a qualitative exploratory method of research, offered us a rich mechanism to comprehensively unearth the Sharia compliance requirements for e-commerce systems with enriching theoretical insights.

Qualitative data were collected by conducting face-to-face semi-structured interviews with scholars/experts on Sharia compliance in Malaysia. A sample of eight participants was selected using a purposive sampling technique to ensure their suitability and to adequately reveal the Sharia compliance requirements for e-commerce systems. This approach is deemed appropriate because there are limited and inaccessible primary data sources who can contribute to our study [26]. Participants were recruited from a list of registered Sharia compliance experts [29] and consequently based on the recommendation of initial respondents. The profiles of the interviewed participants depicted in Table 1 further justify the appropriateness of our sample. Our sample size is supported by a similar exploratory IS study, Molla et al. [25] where responses from seven senior IT staff were used to qualitatively explore and analyse IT manager's perception and response to digital disruption.

Table 1: Participants Profile

P/No.	Participants Profile
P1	An academic and specialist in Islamic Banking and Finance. He is also a Member of Sharia Advisory committee of three Financial institutions in Malaysia. He is a regular customer on several e-commerce sites.
P2	An academic with research accomplishments in Islamic economics. He is also an expert on Sharia-compliant transactions and a member of Sharia panel of experts of an International Advisory and consultancy firm. He has experience of conducting e-commerce transactions.
P3	An academic and specialist in Sharia and Economics. He is the Chairman of Sharia advisory committees of two Malaysian banks and an Advisory member of a third bank. He is also a registered Sharia Adviser with Securities Commission Malaysia
P4	An Internationally renowned Professor of Islamic economics with a wide network of affiliations and academic accomplishments across the globe. He is very conversant with e-commerce transactions but has little experience.
P5	An Academic with specialisation in Fiqh and Usul Fiqh. He is an expert of Sharia-compliant transactions and the Chairman and a member of three national and international financial institutions. He is also a member, panel of experts of a prominent Sharia regulatory body in Malaysia. He has several online shopping experiences.
P6	An academic with research interests and accomplishments in the area of ICT applications, e-commerce Issues, and Islam. He is among the few and pioneer researchers on an Islamic perspective to e-commerce. He has both online buying and selling experience.
P7	A Professor with research accomplishments in the area of Islamic banking and finance. He has basic experience in conducting e-commerce transactions.
P8	An academic and expert in Islamic finance, Islamic commercial law, Islamic financial market, and Islamic Legal Theories. He is also a member of Sharia advisory committees of two financial institutions in Malaysia. He is a very experienced e-commerce user with patronage across several platforms.

The interviews were audio-recorded with the consent of participants and manually transcribed into a Microsoft word format. Consequently, interview transcripts were imported for data analysis using computer-aided qualitative data analysis software QSR-Nvivo 11. A conventional content analysis approach was used to analyse data [30]), involving the process of organising and integrating texts into emerging codes, creating categories and abstraction [27], [31]. The rationale is to achieve an abridged but comprehensive description of the requirement for Sharia compliance in e-commerce systems from the data. Hsieh and Shannon [30] justified the use of this type of design when there is no sufficient existing research literature on a phenomenon such as Sharia compliance requirements for e-commerce.

Therefore, Transcripts were initially read open-mindedly and painstakingly before an opinion was reached. Through this scrutiny, concepts were highlighted and organised as codes [27], [31] based on words and phrases that relate to Sharia compliance requirements of e-commerce systems. Consequently, codes were organised into categories based on similarities and differences by ensuring categories are hierarchically grouped under higher order headings [25], [27], [30], [31]. However, the two main categories, the maqasid Sharia and Islamic law of contract categories are not just representative of similarities but a classification aimed at enhancing insight on each category. Finally, the abstraction of data using categories and sub-categories based on their similarity to describe the Sharia compliance requirements for e-commerce as depicted in Figure 1.

4. FINDINGS AND DISCUSSION

There is a unanimous agreement among the participating scholars/experts in Table 1 on the need

for advocacy to ensure Sharia compliance assurance for e-commerce systems. They highlighted that indeed there are requirements that stakeholders must fulfil for an e-commerce system to be Sharia compliant. Despite e-commerce phenomenon is recent, it has become compelling today to accord it the same connotation as the traditional commerce as emphasised by respondents P1, P3, P7 and described by P2, *“e-commerce is, instead of us doing literal kind of transactions, so you have a device which helps, facilitate for people to do this kind of transaction in a place which otherwise they would have needed a face to face contact.”* Furthermore, P5 explained that *“e-commerce is only a modern means; it is only a new means of transactions between parties. In Sharia, Sharia doesn’t have any problem with that, it follows the developments of humankind that is involved in this world as long as you observe the requirements and principles.”*

The Sharia compliance expert’s P1, P2 and P4 categorically emphasised the observance of the Maqasid Sharia (The fundamental objectives of Sharia) as an essential Sharia compliance requirements for e-commerce systems. Although, all other participants hypothetically endorsed this position as it is the rudiments for Sharia compliance in human endeavours. Furthermore, adherence to the Islamic law of contract has been unanimously endorsed to be a prerequisite for Sharia compliance in e-commerce and all other modes of commerce. Therefore, Figure 1, the Sharia compliance requirements framework for e-commerce systems depicts observance to the maqasid Sharia and the fulfilment of Islamic law of contract. The framework portrays comprehensive and parsimonious Sharia compliance requirements for e-commerce systems deduced from scholars/experts that participated in this study. The components and requirements of the maqasid Sharia and the Islamic law of contract are discussed in the ensuing section.

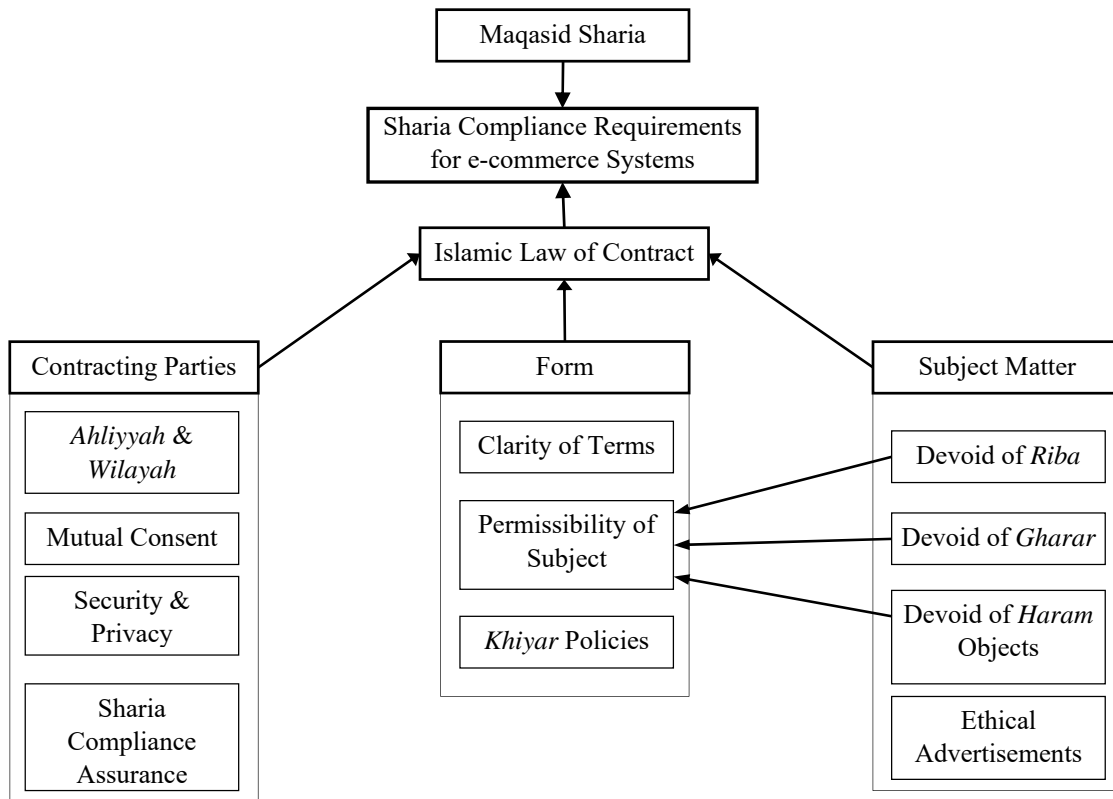


Figure1: Sharia Compliance Requirements Framework for E-Commerce Systems

4.1 Maqasid Sharia

The maqasid Sharia is the fundamental objective of Sharia which is aimed at ensuring the *maslaha*. P4 cited Al-Ghazali's explanation of *maslaha* as, "preservation of the religion, life, mind, progeny and wealth." Accordingly, "everything that leads to the preservation of these five foundations is considered *maslaha*, and everything that leads to the disruption of these foundations is *mafsadah*, and its removal is *maslaha*," [32]. Therefore, P4, P2, and P1 expressed that, *maslaha* must be the guiding principle for motive, ethics, wisdom and practice in any Sharia compliant e-commerce system. In an emphasis, P2 expressed that, "The intention is very important! Any Muslim business, the intention is to please the creator and serve the people in terms of realising their *maslaha*. This must be paramount as far as maqasid Sharia is concerned."

Adhering to Sharia principles is basic in Islam and must be binding on all Muslim dealings. P4 expressed, "Sharia is a derivative of the essential law, which is *tauhid*. This is our law,

this is the law not only for Muslims, the law for everyone. The maqasid comes as a derivative from that." Therefore, e-commerce as a mechanism that facilitates buying and selling must provide similar protection of the *maslaha* as required in a real market. It is indeed very important to ensure that e-commerce systems and practices are aimed at enhancing the welfare of contracting parties and society at large. This must be bound by rules that will ensure no harm is done anyone through objects or deceit and transactions are devoid of *riba* and *gharar* to protect the society from getting engrossed into debts and exploitation. Hence, e-commerce is encouraged based on mutual consent and justice to foster wealth creation and redistribution in society.

On a broader scale, adopting e-commerce is highly encouraged by Islam to enhance the public interest. P4 highlights, "In fact, you have built another industry and by doing that you are diversifying the economy which is a good thing if you diversify the economy that's a good thing." However, it must be promoted based on the *maslaha* as stressed by P2 "The main

objective of Islamic business as I told you, is to provide welfare to serve the public, the maslaha of the people. Where profit maximisation becomes secondary you can make a profit but it shouldn't be the overriding principle." Even though *"money has a mounting of importance in Islam but the good money is an ayat of Allah, it is one of the signs of Allah because of the fact that, it makes and breaks individuals and societies"* P4. That is why understanding the maqasid is very important to guide fiqh in dealing with innovations such as e-commerce towards the path of wisdom and common good. Hence, conformity with the maqasid Sharia is a fundamental Sharia compliance requirement for e-commerce systems.

4.2 Islamic Law of Contract

Islamic law of contract is revealed to be a fundamental requirement for Sharia compliance in e-commerce systems. Participants unanimously defined this Sharia obligation as the fulfilment of the requirements of form, contracting parties and the subject matter. The e-commerce form is referred to as offer and acceptance (ijab and qabul), the contracting parties are the buyers and sellers, while the subject matter is the object and price of a sale contract. It is, therefore, an essential Sharia compliance requirement for e-commerce systems to adhere to these principles. P8 highlighted that *"As a principle, we must look into the basics in Sharia conditions for every transaction."* Therefore, the underlying conditions and principles for form, contracting parties and subject matter requirements of Islamic law of contract are presented in the ensuing sub-sections.

4.2.1 Form (Offer and Acceptance)

The form of an e-commerce contract is the offer and acceptance (ijab and qabul) made by a seller and a buyer on an online platform. Where an offer is a proposal initiated by either party (buyer or seller) in a contract, while acceptance is the consent of the other party to accept the proposed terms of the offer. P3 explained that *"Offer and acceptance can be done in many ways, four at least, we can consider that in writing. Concerning the method of ijab and qabul, I think there is no issue there because once you read and understand terms and conditions, click okay or accept button then it is considered acceptance. The listing of all the features of a product is considered as ijab."* However, participants unanimously highlighted that Sharia stipulates the must be permissible and the buyer must be presented with clear terms of the contract which includes price, object,

deliverability and *khiyar*. These requirements are presented in ensuing sub-sections.

4.2.1.1 Clarity of Form

Clarity of form has been denoted as, ensuring the enclosure of the full description and features of a product, its pricing, the mode and precise time of delivery (P1; P2; P6; P8). Participants acknowledged the fact that the issue of clarity is not just a concern for Sharia but conventional e-commerce as well. P8 highlighted, *"Sharia gives certain requirements that the item must be fully enclosed about the specifications and a certain time for delivery."* Furthermore, in a response on what constitutes the most critical Sharia concern in e-commerce form, P1 stressed: *"Yes the issue of clarity, transparency, and deliverability but on top of that is the items traded."* Similarly, P2 expressed that, *"there should be transparency about the goods, the processes and the terms and conditions have to be very clear."* These Sharia stipulations are indeed best practices that enhance the quality of e-commerce systems which would surely foster the appeal for Sharia compliance in e-commerce.

4.2.1.2 *Khiyar* Policy

Khiyar (option) is the authority given to the customer to revoke a contract in a spot or deferred sale transaction (P3; P4; P8). The seller or e-commerce vendor is required to offer *khiyar* so that a buyer can have the option of revoking a contract based on agreed contingency. Therefore the seller and especially the buyer must ensure that they fully realise the detail and terms of the contract they engross. In his attestation to the significance and scope of *khiyar*, P3 explained: *"it is quite a big issue because in muamalat you have also apart from khiyarul shart that I mentioned, you have khiyarul aib, khiyarul ru'yah and some others, even seventeen, nearly twenty types of khiyar from different mazhabs."* Therefore, *khiyarul shart, khiyarul aib and khiyarul ru'yah* are identified as contextually relevant in ensuring Sharia compliance of e-commerce transaction.

Khiyar ru'yah

Khiyarul ru'yah is deemed a necessary option in an e-commerce transaction which gives a customer the right to revoke a contract upon receiving and examining the object (P3; P8). Therefore, upon receipt, if a customer is not satisfied with the physical or functional description of the object he can return it back to the e-commerce vendor and seek a refund. In a response to the most important features for Sharia compliance in e-commerce, P8 stressed *"So, focus on the customer satisfaction first. Like ebay,*

aliexpress where there is a very detailed explanation about the products and if customers are not satisfied, give them khiyar ru'yah. When people see the products and are not satisfied they should just send back and give a full return. I think the satisfaction of the customer will reflect the Sharia compliance of the e-commerce platform." It is, therefore, necessary for e-commerce systems to make provision and offer customers *khiyar ru'yah* to fulfil the obligations of muamalat and enhance their *maslaha* through service quality and customer satisfaction.

Khiyar al-aib

Khiyar al-aib is expressed as a term that denotes option of defect or the option given to a buyer to revoke a contract upon establishing a defect in a bought object (P3; P4; P8). Therefore, any uncommon attribute that results in the diminution of an object of sale or its value, or that could inhibit a proper use of the object is regarded a defect. "Say you bought a coloured TV over an e-commerce transaction, you brought it home and finds that it radiates. So, radiation is, of course, harmful to the health, so you will have to return it. Neither is it an option, but these days there is a department of consumer services that will protect you no questions asked. You have to develop this extra kind of thing, a department which will protect the consumer against insecure products" P4. Furthermore, P8 cited known platforms, "when you buy from alibaba, aliexpress or lazada they have the dispute. So if you find any defect in the product you can open the dispute." Therefore, incorporating *khiyar aib* into the *khiyar* policies of an e-commerce site is deemed necessary to resolve the issue of qabut (possession) and ensuring the *maslaha*, thereby fulfilling Sharia obligations.

Khiyarul Shart

Khiyarul shart is an option given to one or both of the contracting parties the right to terminate a sale contract for any reason within a clearly specified period of time (P3; P4; P8). It is plausible in providing customers with the right to physically review and confirm the expedience of the subject in an e-commerce transaction. P3 elucidated, "I think it is better if we can incorporate to e-commerce that kind of feature, I think some e-commerce sites do include that. If the customers feel that they don't want the bought item they can freely refund back their money and sent back the item." However, the specified tenure by Imam Shafie and Imam Abu Hanifah for *khiyar shart* does not exceed three days. But, this is not tenable in an e-commerce environment where it could

take a longer time for a buyer to get delivery and evaluate the benefits and cost of the object. Therefore, due to their alternate jurisprudence it becomes necessary to heed to Imam Malik and Imam Ahmad Ibn Hanbali's prescription that allows parties to fix a mutually agreed tenure for *khiyarul shart* [33].

4.2.1.3 Permissibility of Subject

The permissibility of the subject of an e-commerce sale is necessary and a prerequisite to the validity of *ijab* and *qabul* (P1; P2; P6; P8). It is unanimously established that the subject matter of an e-commerce transaction must be devoid of *haram* objects, *gharar* and *riba*. Sharia also requires the *mushaf* be bought and sold by only verifiable Muslims which is a predicament in the e-commerce context. Therefore, buying or selling of *mushaf* online should be avoided (P1). Furthermore, buying or selling of *ribawi* items online has been prohibited by Sharia. The *ribawi* items include currencies, silver and gold which Sharia stipulates must be sold and exchanged on a real time basis by ensuring instant delivery. It is also advocated that, although some items might be halal but selling them online might constitute a danger or encourage Sharia prohibitive behaviour (P1; P8). Likewise, items that might pose a threat to the security and privacy of individuals and should be restricted online as a way of blocking the means. Therefore, buyers and sellers must ensure that offer and acceptance done online is only for permissible (halal) goods and services that are meant for a good cause.

4.2.2 Contracting Parties (Buyer and Seller)

Participants unanimously acknowledged, both e-commerce vendors and customers are mandated to ensure Sharia compliance of transactions they engage. Therefore, they must not buy or sell *mushaf* except where both parties are certified Muslims. They are also prohibited from either advertising, buying or selling of *haram* objects or engaging in transactions that involve *riba* or *gharar*. Vitaly, both parties must have the *ahliyyah* and *wilayah* (legal capacity and legal authority) to execute a legitimate contract based on mutual consent. Furthermore, vendors must ensure the privacy of customers and security of transactions conducted over an e-commerce site to be deemed Sharia compliant. Similarly, e-commerce vendors are obliged to focus on fulfilling the *maslaha* rather than just profit maximisation which would ensure they don't engage in unethical practices that are detrimental

to the public good. These Sharia compliance requirements highlighted are further discussed in ensuing sub-sections.

4.2.2.1 Ahliyyah and Wilayah

The *ahliyyah* (legal capacity) and *wilayah* (legal authority) of contracting parties in an e-commerce transaction are obligations that must be fulfilled to ensure Sharia compliance (P3; P4; P5). Sharia stipulates that both contracting parties must be eligible to acquire rights and execute the same. This is elucidated, “*In the Sharia principle, we have conditions for the contracting parties and one of the conditions is that contracting parties should be an akhir (sane) and reach the puberty*” (P5). Furthermore, “*If you can verify the capacity of the contracting parties using whatever means that is available I think that is not going to be an issue. But the challenge is how do you ascertain that the other party is?*” (P3). However, they acknowledged that it is justifiable to assume that a person who possesses a debit or credit card which are the predominant payment medium can be inferred to have both legal capacity and authority to engage in an e-commerce transaction. Since, a person must meet the minimum legal requirements such as age and must be of a sane mind to possess such a card. However, this cannot be applied in the case of *mushaf* (printed copy of complete Quran) where both parties must be qualified Muslims. Therefore, online sale of *mushaf* is not tenable because there is currently no mechanism to certify a buyer is Muslim.

4.2.2.2 Mutual consent

The mutual consent of contracting parties is a prerequisite requirement for the legitimacy and validity of an e-commerce transaction in Sharia (P2; P5). It is emphasised that “*The main concern of Sharia is the mutual agreement, that the contract has been concluded not under force but under voluntary basis. That is the most important thing the principle of Sharia tries to preserve in dealing with this kind of things*” (P5). Furthermore, “*For you to get the consent of the other party then there have to be a lot of details about the products so that people can have informed judgment for their consent.*” Therefore, it is a fundamental requirement that *ijab* and *qabul* in e-commerce are done with absolute clarity so that contracting parties especially the buyers can make informed decisions. This requires a detailed description of the object and price and the contract terms to enable their mutual consent. In a bid to further ensure justice and cohesion, Islam stipulates *khiyar* obligations for parties to seek redress in the event of an anomaly.

4.2.2.3 Security and Privacy

Ensuring the security and privacy of e-commerce systems is emphasised to be a best practice and a Sharia compliance obligation of contracting parties. P2 expressed that, “*When we look at the communications scheme, technically the other thing which will be a concern for Sharia is how you protect the privacy of the contracting parties and is it safe? The issue of safety! So I think this is a concern for both conventional as well as Sharia.*” Therefore, been the custodian of an e-commerce site, the seller must ensure that transactions are safe and confidential. Whereas, customers must patronise only safe and credible sites. P3 expressed a cogent and comprehensive approach to the security of e-commerce transactions, “*Another issue is the security, if you are talking about the security aspects of e-commerce then it would involve some other parties, the government, banking system, the payment system, the internet provider, all of them must make sure that the system is secured enough to guaranty if you pay 1 ringgit then 1 ringgit is deducted from your account and credited to the seller, not another party.*” Therefore, it is the responsibility of contracting parties and other stakeholders to ensure an e-commerce site is safe and customer information is protected to be deemed Sharia compliant.

4.2.2.4 Sharia compliance Assurance

In a bid to resolve the issues of scepticism and ambiguity with regards to Sharia compliant e-commerce, participants unanimously underscored the need for Sharia compliance assurance. “*I mean we should have, for the time been, we haven't developed any guideline for e-commerce. Perhaps it is a good idea to propose particular guidelines for governance*” (P5). A Sharia compliance assurance is to provide governance through internal and external controls for e-commerce systems (P1; P2; P3; P5; P6; P8). Internal control can be achieved by providing an effective Sharia compliance governance structure that would enable Sharia compliance advisors to stipulate and guide the operating procedures (P1; P2; P3; P5; P8). Furthermore, a Sharia compliance audit unit must be established for the routine inspection of products and processes to ensure validity (P1; P2; P8).

Participants unanimously advocated for external control of Sharia compliance in e-commerce systems by Islamic religious authorities or councils in Islamic states or influential Islamic bodies for non-Islamic or

secular states. They should serve as Sharia compliance assurance organs for e-commerce systems which would involve formulating fatwa in the form of Sharia compliance guidelines, certification of internal controls of e-commerce systems, providing seals of trust and ensuring regulatory oversight. Indeed, this is a viable and necessary step towards ensuring credible Sharia compliance assurance. Because “*without governance what we are talking about wouldn't work. There must be governance, good governance!*” (P1). Therefore any e-commerce system that is deemed Sharia-compliant should be certified Sharia-compliant to enable consumer assurance to foster trust and patronage by Muslims.

4.2.3 Subject Matter (object and Price)

The subject matter is referred to as the object and price in an e-commerce contract. Therefore, participants unanimously established that it is a fundamental Sharia requirement for the subject matter to conform to halal for validity. “First, the goods and services sold whether it is Sharia-compliant or not. If it is not Sharia-compliant it will render their e-commerce platform not to be Sharia-compliant” (P2). Thus, the object of e-commerce contract must be halal, it must be devoid of *gharar* over existence or deliverability and devoid of unethical advertisements. Whereas the price must be devoid of *gharar*, the medium of payment must be devoid of any form of *riba* and online payment for *ribawi* items must be avoided. Interestingly, it was noted that participant's discussions of Sharia compliance in e-commerce were mostly centred on the subject matter. Because most of the fundamental obligations of *ijab* and *qabul* or the buyer and seller are focused on ensuring the objects of the contract are permissible and the price and payment are devoid of *riba* and *gharar*. These requirements are further expounded in the ensuing sub-sections.

4.2.3.1 Devoid of *Riba*

The issue of *riba* has been a longstanding predicament that requires Muslims to devise a prudent approach to resolving. Participants, unanimously and unequivocally expressed that, Sharia prohibits *riba* and any e-commerce payment proffered on *riba* is a Sharia violation. “*The doctrines suggest that it is not acceptable, you can't justify the unjustifiable or defend the indefensible*” P7 highlighted. Consequently, P4 advocates, “*in the Quran, the abolishing of riba is a necessary but not a sufficient condition. You are*

going to do business and transactions without riba, but if you do not replace riba by something else which is better, it wouldn't work. It is necessary it is a ruling but is not sufficient you got to find alternatives that can effectively replace. This is the whole idea, which is very important in e-commerce as well.” Therefore, a necessity to abolish the use of the conventional credit cards and its replacement with viable alternative payment options such as Islamic credit cards, the use of debit cards and pay on delivery to ensure Sharia compliant payment process in e-commerce systems.

4.2.3.2 Devoid of *Haram* Objects

Participants unanimously upheld that, the object of an e-commerce contract must be devoid of any fundamentally prohibited element. These include prohibited items such as alcohol and pork, online sales of *ribawi* items such as currencies, gold and silver, and selling *mushaf* to non-Muslims. P2 highlighted that “*in Sharia, in terms of the subject matter is that the subject matter must be things that are halal (lawful).*” Although, *ribawi* objects such as gold, silver and currencies and *mushaf* are halal but there are certain stipulated conditions that they must fulfil to be deemed Sharia compliant. Therefore, P1 expressed, “*There are goods which cannot be traded except by making cash payment, for example, currencies, gold and silver because they are ribawi items. I mean we have a restriction for that; you can't do such transactions online. If you buy gold on deferred payment or deferred delivery then it is not accepted.*” Similarly, “*buying and selling for example very specific goods, mushaf for example, that can only be done between Muslims and not between Muslims and non-Muslims or between non-Muslim*” P3 highlights. Thus, an e-commerce system must be devoid of *haram* objects as a prerequisite for Sharia compliance.

4.2.3.3 Devoid of *Gharar*

The elimination of *gharar* is a prerequisite for Sharia compliance in any e-commerce transaction. Therefore, Participants associated the term *gharar* with uncertainty, risk and also a derivative of *ghaish* (deceit) depending on the context. They unanimously emphasised that transactions must be devoid of *gharar* over the existence or specification of an object, price, deferment or delivery in an e-commerce system. P8 highlighted “*Rasulullah Sallallahu Alaihi Wasallam prohibits the sale of gharar. Sale of gharar refers to the sale of uncertain things.*” Furthermore, P5 stressed, “*the most important principle is the certainty, certainty of the contract,*

meaning they know exactly the features of the item, when it will be delivered and when and how and the amount they are going to pay.” Therefore, *gharar* free transactions are deemed fundamental for both conventional and Sharia compliant e-commerce systems.

4.2.3.4 Ethical Advertisement

Ensuring ethical advertisement is deemed a fundamental Sharia compliance requirement for e-commerce sites (P1; P2; P3; P5; P8). Thus, e-commerce vendors are obligated to engage ethical advertisements that are devoid of deceit or promotion of Sharia prohibited objects. A Sharia compliant and ethically guided advertisement must ensure the permissibility, full disclosure of the features of an object or service, its cost and delivery (P1; P2; P3; P5; P8). P2 expressed, “advertisements should also be something ethical. You don’t advertise things which will erode the moral fabrics of the people, like having things which are almost near to the phonographic kind of pictures and advertisement or like advertising harmful things such as alcohol, cigarettes which Sharia deem very harmful. So, those things should not be advertised. The other thing also is to avoid deceit (*ghaish*). Whatever you advertise should as much as possible reflect what you have in reality. Because you know with technology and media, really, people can falsify a lot of things.” Therefore, e-commerce vendors must carry out their advertisements not only in a manner that promotes sales but also public interest and in compliance with Sharia.

4.3 Difference from Prior Work

This exploratory study fundamentally varies from prior researches conducted in the Sharia compliance e-commerce domain due to its empirical nature. The study specifically elicited Sharia compliance experts/scholars perspectives on the general requirements for Sharia compliance in e-commerce. Most of the previous studies in this area were literature review based. Although, Amboala et al. [12] engaged Sharia scholars/experts in illuminating on a proposed Sharia compliance payment algorithm for e-commerce, their finding was contextual and a case-based which could not suffice for a general application. Therefore, it did not provide a general view on Sharia compliance requirements for e-commerce systems. Consequently, this study provides a comprehensive framework of Sharia compliance requirements for e-commerce

systems which advance ideas that hitherto did not prominently feature in the Sharia compliance e-commerce discuss.

Significantly, the requirement for *khiyar* policies which constitute the option of revoking a sale transaction due to defect, discrepancy or choice within a specified period is integrated into the obligations that must be specified during the offer and acceptance of an e-commerce transaction by the contracting parties. There were general contributions on *khiyar* policies in prior literature, however, this study contextualised the application of *khiyar* in the e-commerce domain. Furthermore, this study proffers a Sharia compliance assurance as a third-party regulatory and advisory concept for e-commerce systems. It is integrated as a component of contracting parties (buyer and seller) obligations in the Sharia compliance requirements framework to ensure reliability. Although, in a study on factors that influence Muslim consumers to purchase online, Abdulghani and Suhaimi [6] highlighted a positive influence of third-party assurance on Muslim consumer decision to purchase online but their concept of third-party assurance did not have a Sharia compliance connotation. Therefore, this study was carried out using an entirely different approach, while it focused on highlighting the requirements for a Sharia compliance e-commerce system.

5. CONCLUSION

This exploratory study enriches knowledge with a Sharia compliance scholar/expert divulges of the requirements for a Sharia compliance e-commerce system. The developed Sharia compliance requirements framework for e-commerce systems is derived from Sharia compliance expert/scholars' opinion. It does not conflict with reviewed teachings of the Quran, Sunnah, and other Islamic literature. Furthermore, it provides a comprehensive and prudent representation of Sharia compliance requirements for e-commerce that would guide e-commerce developers and vendors in developing Sharia compliant e-commerce systems. It will also serve as a reference point for consumers, policy makers, and future research. Thus, e-commerce is deemed an innovation that promotes *maslaha* of people through trade enhancement, mutual benefits and ultimately wealth creation. But, it must be ensured to fulfil Islamic law of contract

requirements for form, contracting parties and subject matter. Principally, the e-commerce vendors must ensure that objects of sale are halal, specifications and details are truly depicted, transactions are effective and secured, and the provision of *khiyar* as a dispute resolution mechanism.

Consumers must ensure that they only use the medium of payments that are devoid of *riba* and patronise vendors that are assured Sharia compliant. It is, therefore, the responsibility of Islamic authorities and religious councils to devise an effective mechanism for certifying Sharia compliance of e-commerce systems. This can be done using a similar approach that applied to Islamic banking and the *halal* food and beverages industry. Nonetheless, it must be done pragmatically to ensure quality and best practices that would attract all kinds of customers irrespective of religious affiliation. Although some of the Sharia compliance requirements such as clarity of form, *khiyar* policies, security and privacy, and *gharar* free transactions are attested attributes of credible conventional e-commerce platforms, they could as well consider fulfilling all other obligations to gain Sharia compliance assurance. Hence, attracting both Muslim and non-Muslim customers based on their sacred and quality needs.

6. LIMITATIONS AND FUTURE RESEARCH

The Sharia compliance requirements framework specified in this study is based on a B2C e-commerce context. However, it could not sufficiently satisfy for a transaction involving e-auctions, because that will require additional procedural conditions [34]. Similarly, the basis and stipulated Sharia requirements in this study apply to all e-commerce models, but it could involve additional model specific requirements. Furthermore, this study is based on a sample of eight scholars/experts in Malaysia due to accessibility constraints, but fortunately, the participants are a credible source with a global outlook and affiliations. Nonetheless, Malaysia is a leading destination for Sharia compliance research and application which provides a fertile ground for this study. Also, the issue of Islamic jurisprudence is universal and any clearly justified decree from any credible source in any part of the world is acceptable to the entire Muslim *ummah*.

Although our findings align with the primary sources of Sharia, future research could further adopt an empirical-quantitative approach in validating the Sharia compliance requirements framework for e-commerce by reaching out to a larger sample of scholars/experts. Accordingly, an e-commerce vendor and consumer perspectives to our framework should also be explored to fine-tune its practical application. An empirical evaluation of conventional e-commerce sites can as well be carried out to appraise Sharia compliance base on our guidelines. Furthermore, there is a need for an in-depth study on how to develop Sharia compliance governance and assurance system for e-commerce and its legal and industry implications. Finally, this paper presents a promising avenue to further explore issues of Sharia compliance with regards to the adoption and diffusion of innovative technologies.

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