# Bai as-Salam and E-Commerce: A Comparative Analysis from Shariah Perspectives

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*Abstract— There are worldwide growing concerns among e-commerce customers particularly among Muslims regarding on-line transaction both from technological and Shariah perspectives which require researchers to scrutinize its application into a new dimension. Whilst Bai as-Salam involves transaction by the way the customers up front the payments prior to delivery of the purchased items, E-commerce transactions are carried out through almost similar processes via on line medium. Issues concerning purchasing on-line, the medium of transaction or Internet, e-payment mode are among new challenges that require Islamic scholars and researchers to broaden the scope of definition beyond the traditional context. This study sheds light and expands a new definition and tools of Bai as-Salam – as one of many ways of transactions in Islam based on a comparative analytical study between the two concepts of transactions.*

*Keywords-component; Bai As-Salam, E-Commerce, Electronic Payment System, Card Holder, Card Issuer, Card Association, Card Acquirer, Gharar, Certified Authority, Electronic Data Interchange.*

## I. INTRODUCTION

The convergence of IT and commerce have brought more complex levels of Islamic business and commerce ethics that require the Islamic jurisprudents to expand their tools of evaluation and analysis beyond the traditional context. With a comprehensive approach taking into account as regulations and the existing technological tools brought into Shariah's model, this article seeks and develops an understanding how to provide alternative solution to the conventional and unIslamic e-commerce transaction.

There are several main challenges of on-line transaction from Shariah perspective which will be discussed hereafter which are e-commerce and Bai' as-Salam business model, and issues of transaction and the comparison between e-commerce and Bai' as-Salam. Addressing these aspects require Islamic jurist and scholars to scrutinize both the technical aspects of the on-line transaction and the legal aspects in terms of Sharia'.

Islam accords the importance to the trading sector as source of wealth and the role it plays for the development of the country and the ummah as a whole. In this regard, the holy Quran abounds with many references about trade and commercial activities. The Quranic verses support this statement as below:

"O you who believe! Eat not up your property among yourselves unjustly except it is a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you' (4:29)

"Woe to Al-Mutaffifin [those who give less measure and weight (decrease the rights of others)]" (83:1).

"O man of faith! Do not devour the goods of another with injustice but trade based on mutual agreement and good-will is allowed" (4:29)

"O ye who believe; devour not usury, doubled and multiplied; but fear Allah, that ye may prosper" (3:130)

Considering the complexity in the way business and commerce are being carried out, the transaction of today is very necessary to create an entirely new model and methods for a modern Islamic transaction for the Ummah. By combining several methods such as Information technological approach, e-commerce infrastructure, regulatory framework, with some adjustment and modification in order to fit the Shariah's principles is deemed necessary.. The formatter will need to create these components, incorporating the applicable criteria that follow.

## II.  E-COMMERCE BUSINESS MODEL

E-commerce, a kind of business-related activity, is concerned with consumers, manufacturers, service providers and intermediaries with the help of computer network, named Internet. The use of Internet is a kind technological advancement to support the whole spectrum of commercial activity.

There are many definitions for e-commerce but generally e-commerce refers to all forms of commercial transactions involving organizations and individuals based on the processing and transmission of digital data including texts, sounds and images. Moreover, e-commerce enables potentially billions of consumers and businesses worldwide to be engaged in business activities (Poong, Zaman & Talha, 2006). E-commerce also is a set of dynamic technology, application, and business process connecting numerous enterprises, customers and specific communities through electronic transactions where trade of goods and information transfer are done electronically.

Based on the meaning of the above it can be concluded that e-commerce transaction is a commercial transaction through electronic media. Not necessarily via the Internet but also covers all commercial transactions through electronic media such as facsimile, telex, Electronic Data Interchange and telephone. E-commerce system will go through some of the activity which calls business process. To do electronic commerce, some of the organizations will start with a website or homepage; seller can provide necessary information including the profile of the company, product or service being offered. The consumer side as a prospective buyer, the internet provides a wide and free access to all the companies registered with the virtual world. Information exchange in this arena can do in one way or interactively via various electronic products, such as computers, telephones, facsimile and television.

The first business process in e-commerce is called information sharing. In this process, the seller will try to find out as much buyer as they can while the buyer make efforts to get information about the products or services that they want and find out how other people percept on the products or services. After the process of information sharing being done, the next business process is ordering products or services electronically.  Two interacting parties must perform certain activities until the purchase agreement can be done legally and correctly. Purchasing between the two parties is usually done through a specific network such as EDI (Electronic Data Interchange) or extranet. In business process, there are four flows of entities that should be done clearly.  There are:

1. Flow of goods and services (digital and non-digital products)
2. Flow of information (product details and description)
3. Flow and mode of payment (credit card, debit card and etc.)
4. Flow of documents (quotation, invoice and etc.)

E-commerce facilities available should be synchronized with these four flows until the transactions can be done in an efficient, effective and well-controlled manner. When doing online transaction, there are the important elements to be considered such as the third flow which is a flow of money or the payment system. The figure below is the general payment system for e-commerce.
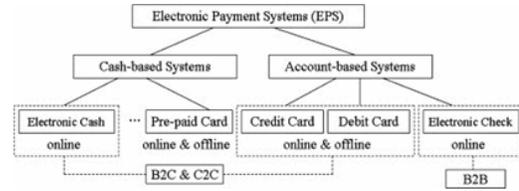


Figure 1. Types of E-Commerce Payment Systems

In e-commerce, system it is known as electronic payment system. According to Sumanjeet (2009), broadly electronic payment systems can be classified into four categories: Online Credit Card Payment System, Online Electronic Cash System, Electronic Cheque System and Smart Cards based Electronic Payment System. It depends on the buyer on how they want to make the payment.

## III.  COMPARISON BETWEEN E-COMMERCE AND BAI AS-SALAM

As Islam recognizes and encourages trading for the sake of the Muslim nation (ummah) proper guidelines and principles were set forth based on two main sources– Quran and Sunnah since the early age of Islam. In general, Bai as-Salam has many resemblances with the modern day e-commerce in terms of parties involved in the transactions and the delivery of the products and services.
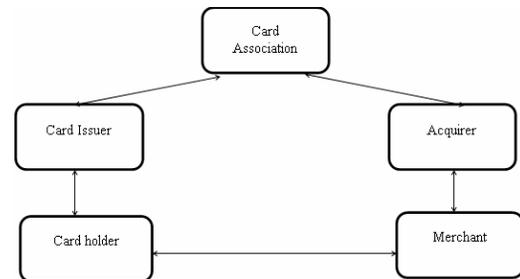


Figure 2. Parties involved in Credit Card Payment System

In conventional e-commerce transactions a part from the merchant and customers (card holder) the parties involved include card associations, card issuer, and acquirer.  The card issuers are banks; belong to the card associations such as Visa and MasterCard whilst acquirers are banks that accept the credit card payments such as bank for the merchants. The

online transactions are carried out via payment gateway based on internet infrastructure.

There is no standard process and platform that governs all communication and ecommerce business model. The complexity of the computerized environment, the absence of a standard platform for the Muslims consumers serve as an overall dominating practice and method are mostly based on Shariah principles which may discourage the e-commerce uptake.

However, in a typical payment process in business-to-consumer (B2C) e-commerce, customers go through the merchant website and they decide the product or services they want. They will follow the procedures until comes to the payment process. Payment card processing has become easier because of Visa and MasterCard which have implemented a single standard for the handling of payment card transactions (Schneider, 2011).

In payment gateway generally the merchant receives a consumer's payment card information that usually sent using the Secure Sockets Layer. What happens is the merchant authenticates the payment card to ensure it is valid or not. At the same time, the merchant checks with the payment card issuer to make sure that credit or funds are available. The settlement occurs, usually a few days after the purchase, which means the funds travel between banks and are places into the merchant's account once it has been processed in automated clearance house (ACH) (Schneider, 2011). The process is illustrated as in figure 3, processing a payment card transaction.
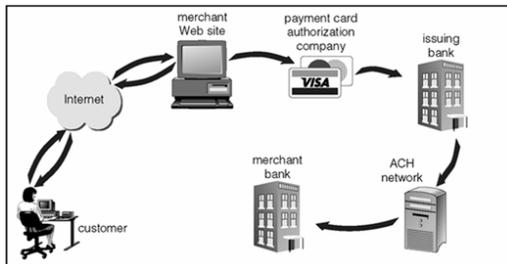


Figure 3. Processing a payment card transaction

The payment gateway serves as the point of sale where these are involved in communication and can be regarded as witness in Bai as-Salam that monitors and authorizes the payment instruction on behalf of the customers. The payment gateway is managed by the acquirer or the third parties who manage the process of payment.

The payment gateway obtains the digital certificate from the Certification Authority (CA), the trusted third party. CA as the intermediary between the customers and merchants is also involved to resolve any possible conflict concerning the authentication and the confidentiality of the transaction. The trusted third party or the certificate authority will ensure that the message received in a form when it was sent. The general idea is that a certificate authority is trusted, so users can delegate the construction, issuance, and acceptances as well as revocation of certificates to the authority.

All the underlying process takes place in a Secure Socket layer of a transport level in a five-layer Internet protocol. For instance, Maybank, a leading commercial bank in this country implementing 128-bit Secure Sockets Layer (SSL) encryption protocol from Verisign Certificate Authority for all information transmitted over the Internet among users as well as within their own network and resources (Mimos, 2013)

The specific actions of a certificate authority include the following (Pfleeger, 2006):

1. Managing public key certificates for their whole lifecycle

2. Issuing certificates by binding a user's or system's identity to a public key with a digital signature

3. Scheduling expiration dates for certificates

Based on the Bai as-Salam concept, the existence of witness is very much recommended particularly as the payment is deferred. In order to avoid later disputes the witness plays his roles as an administrator who will verify the transaction between customer and merchant. The disputes may arise due to the negligence or malpractice by either party. This can be drawn from the following verse:

"O you, who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it. (Al Baqarah: 282)

Apart from the payment gateway, the issuer and acquirer are institutionalised to serve the same purpose as in Bai as-Salam. These entities play their roles as their intermediary to administer and authorize the online payment process.

There was a tradition from the Prophet S.A.W by Jabir r.a. :

"I intend to go to Khaybar, then I came to the Prophet S.A.W., I saluted him peace and express my intention to go to Khaybar, the Prophet replied, "Whenever you come to meet my representative in Khaybar, get from him 15 wasaq (and) if he ask for evidence put your hand in his shoulder"(Sunan, n.d).

We learnt from the above tradition regarding the existence of representative ("whenever you come to meet my representative"), witness and evidence ("whenever he ask for evidence) had been applied the bai as-Salam transactions in the above case.

The expression to offer (ijab) and acceptance (qabul) to show and proof the mutual consent slightly differ. The Islamic jurisprudence regarded the offer and acceptance as a ways to show mutual consent and can be done verbally, in written or in any form which can be understood as mutual consent.

The reason of mutual consent and agreement between the transaction parties in Bai as-Salam is obvious to legalize the transactions. The issues of time and space in the presence of both parties in same majlis where they meet to close the deal never arise. Anyhow the deal still can be regarded binding if the acceptance or qabul is given via mail or by appointing the representative (Ashrafi,1980)

On the contrary in e-commerce both parties only meet virtually and initiate the process of buying and selling through the internet infrastructure and communications. Parts from legality of transaction from the traditional perspective such as halal (permissible) aspects of the product or the service itself, Islam also recognizes the confidentiality and the integrity as important elements to secure the transaction. Islam very much concerns on the mode of transaction offered by the e-commerce. Thus, it has brought considerable critical attention.

In order to bind the transactions the merchant e-commerce applications will guide their customers by simply clicking the "accept" button on the windows until the process accomplished. At the end of the processes their mutual consent will be wrapping up as contractual agreement in the terms and conditions automatically.

Several merchants' websites also provide applications which integrate their systems into video conferencing applications, web chat and messaging services. These communications systems are very useful and effective for customers to communicate directly and lively to assist the transactions and product delivery.

## IV. E-COMMERCE TRANSACTION ISSUES

The use of credit cards for purchasing goods online and then paying the price of purchase by instalments to the banks or the card issuers is in fact a form of loan to card-bearer. So, an issuer is not entitled to receive more than the amount taken to purchase. However, the issuer is permitted to take a fixed charge under the name of administrative expenses, and such a charge is not increasable due to an increase of money used for purchase.

To be sure, imposing a percentage on the amount of money used by credit cards is Riba (usury and interest) in itself, whether such a percentage is taken as a charge service and administrative expense or due to delay in settlement. Both forms are a usurious loan and the most well-known form of Riba of non-Islamic systems.

Literally riba means an increase and according to Islamic Jurist it can be defined as usury or a practice of lending money with interest rates. In this concern, Islamic Fiqh Assembly issued its decision No. 108 (12/2) stating by Kazi (2002):

i. It is not permitted to issue uncovered credit cards or to deal in them if there is a condition that fixes usurious increase even if a user intends to pay up within a given free period.

ii. It is permitted to issue uncovered credit cards as long as there is no condition that fixes usurious increases to be added to debt. Here are two (2) sub points:

   a) It is lawful (for the bank or issuer) to receive a fixed charge for the issue or renewal of such cards as a wage for service rendered.

   b) It is also lawful to receive commission from the trader for purchase, by the customer provided that selling by card is equal in price to selling in cash.

However, how does Islam accept the concept of credit card as a medium of on-line payment? What are the underlying principles required by Sharia' in the functionality of credit card? Islamic credit card is the substitute for conventional interest-based credit cards. Islam allows the use of credit card as long as it does not involve the element of interest. In Malaysia, the doctrine of Bay al-Inah is recognized and used to validate the credit card transaction (Al-Faqih, 2002).

The Bay al-Inah contract works on the basis of two (2) separate agreements, namely Bay al-Mutlak (cash sale) and Bay Bithaman Ajil (deferred sale) (Darwish,2003). The former is the bank's agreement to sell an item to the customer at an agreed price, while the latter agreement covers the customer selling back to the bank at a lower price. The difference is the bank's profit on the transaction and is a predetermined amount. There is no penalty charged to the customer and for the unutilized financing amount the customer is legible for rebate (Khir,Gupta & Shanmugam, 2008).

The way merchant and customer achieving the mutual consent in e-commerce has much resemblance with the bai as-Salam in face-to-face communications. Anyway, due to the anonymity of internet communications the customers may prone to the possibilities of risk and uncertainty (gharar). Proper regulations and administration are deemed necessary as to these issues.

Literally gharar means fraud and has often been associated with risk and uncertainty. To avoid from gharar both parties; buyers and sellers are required to have adequate information of values they intend to exchange, the existence of the object, obtainable, its quantity, quality and attributes are identified and it can duly be delivered.

It is reported in a Hadith that the Prophet (s.a.w), prohibited the sale of gharar. While commenting on this hadith, Ibn Taymiyyah wrote that gharar sale is a sale which partakes in risk (mukhatarah) and in unlawful devouring the property of others (Taqi al-Din, n.d). As commented by Islamic jurist, it is necessary to avoid any contracting party which can mislead the other party and use abusive means dishonestly provided on line to his or her ignorance.

Traditionally gharar is used to describe two types of transactions – 1) sale of the unseen (bay' al-gha'ib) such as sale of crops not yet grown to maturity, or sale of fish in the pond and 2) sale of the non-existent (bay' al-ma'dum) which is the sale object was non-existent at the time of contract.

The anonymity of Internet users including merchants contribute to the complexity of defining gharar in e-commerce. It used to happen in which the subject matter is concealed from the buyer without he or she knowing exactly its future result. In the sense of on-line transactions there are also three major concerns pertaining to gharar; the uncertainties over the products or the services itself, uncertainties over pricing, delivery and deferment.

Some utility products properties are easy to quantify however qualities and subjective properties are not tangible. Islamic business and commerce ethics require the sellers to clearly defining the products offered, for instance the image of

the products must be displayed clearly on the screen with their detailed specifications, the prices, the mode of delivery and payments. Secondly, both contracting parties; sellers and buyers must able to exchange the message in order to achieve conformity in the agreement that bind them together.

TABLE 1 Differences and Similarities between E-Commerce and Bai As-Salam

| No | Aspect | Similarities | Differences | |
|---|---|---|---|---|
| | | | E-Commerce Transaction | Bai As-Salam Transaction |
| 1. | Parties involved in transactions | Customers and merchant as subjects and the product (service) as object of transactions | Involve payment gateway, acquirer & issuer that can be regarded as witness and representatives for payment between merchant and customer | The witness is not compulsory but strongly recommended to avoid future disputes |
| 2. | Medium of transactions | Both parties normally agreed on the products (quantity & quality) payment and delivery. | Internet infrastructure and payment gateway as medium and transaction platform | Conducted in ways agreed by both transaction parties such as by face-to-face or either party appoint their representatives. |
| 3. | Mode of payment and delivery | Payment is made in advance | The Digital product such as digital music, video, e-book, software and etc. can be delivered right away once payment done. Whereas the non-digital products will be delivered via courier service as agreed prior to the transactions. | Payment either made in advance or product is delivered first before the payment |

## V. CONCLUSION

This article has highlighted that there are similarities between e-commerce transaction by using Internet and Bai' as-Salam such as both of the process needs to have seller and buyer. At the same time, for both transactions, the process of buying and selling must get deal with each other. The deal can be in words, terms or in writing that both parties understand. In addition, both e-commerce and Bai' as-Salam also has the differences such as the using of Internet and payment gateway during transactions. Other than that, e-commerce sometimes involved third parties to represent the products and services before process of buying and selling happens. The discussion in this article also includes how an e-commerce transaction complies with Shariah principles as in Bai' as-Salam.

However, several issues that arise in e-commerce such as gharar and mode of payment that has elements of riba' should be scrutinize further by the Islamic Jurist and scholars in order to provide better alternatives for the ummah. Furthermore, a regulation and mechanism must be designed to fulfil the shariah compliance to e-commerce transactions to serve more than 1.2 billion ummah worldwide

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