

Legal Liability for Contract Breaches by Online Import Proxy Shopping Service Providers: A Civil Law and Islamic Fiqh Analysis

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[Received: July 29, 2025] [Reviewed: August 10, 2025] [Revised: September 7, 2025] [Accepted: September 9, 2025]

[Published: September 30, 2025]

How to Cite:

Windiarti, Wulan, and Itsma Paramita. 2025. "Legal Liability for Contract Breaches by Online Import Proxy Shopping Service Providers: A Civil Law and Islamic Fiqh Analysis". *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 6 (3): 461-478. <https://doi.org/10.24252/shautuna.v6i3.60233>

Abstract

The development of digital technology has given rise to the practice of online consignment services for imported goods, which makes it easier for consumers to obtain products from abroad. However, at the same time, it has also given rise to legal problems when service providers do not fulfill their obligations as agreed, such as late delivery, mismatched goods, or no delivery of goods at all. This study aims to analyze the forms of breach of contract and legal liability of online jastip service providers and to examine the legal protection mechanisms for consumers from the perspective of Indonesian civil law and Islamic jurisprudence. The research method used is normative juridical with a legislative and conceptual approach through analysis of the provisions of the Civil Code (KUHPerdata), Law Number 8 of 1999 concerning Consumer Protection, and muamalah fiqh literature regarding wakalah bil ujah contracts. The results of the study show that in civil law, default in a jastip agreement gives consumers the right to demand fulfillment, contract cancellation, and compensation as stipulated in Articles 1233 and 1243 of the Civil Code and the Consumer Protection Law. From the perspective of Islamic jurisprudence, jastip is categorized as a wakalah bil ujah contract that requires the principles of trust, transparency, and clarity of contract, so that when a breach of contract occurs without a valid excuse, the service provider is obliged to bear the losses (dhaman) both morally and legally. This study confirms the common ground between Indonesian civil law and Islamic jurisprudence in placing legal responsibility on business actors to protect consumer rights. Despite the existence of a clear legal basis, the practice of online proxy shopping still requires more stringent specific regulations and adequate legal education for consumers so that they can understand, demand, and effectively defend their rights in cross-border digital transactions.

Keyword: Legal Responsibility; Online Import Proxy Shopping; Civil Law; Islamic Jurisprudence.

Abstrak

Perkembangan teknologi digital telah memunculkan praktik jasa titip (jastip) barang impor secara online yang memberi kemudahan bagi konsumen dalam memperoleh produk dari luar negeri, namun pada saat yang sama memunculkan problem hukum ketika penyedia layanan tidak memenuhi kewajiban sebagaimana diperjanjikan, seperti keterlambatan pengiriman, ketidaksesuaian barang, atau tidak adanya penyerahan barang sama sekali. Penelitian ini bertujuan untuk menganalisis bentuk wanprestasi dan tanggung jawab hukum penyedia

layanan jastip online serta menelaah mekanisme perlindungan hukum bagi konsumen dalam perspektif hukum perdata Indonesia dan fikih Islam. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan dan konseptual melalui analisis terhadap ketentuan Kitab Undang-Undang Hukum Perdata (KUHPperdata), Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, serta literatur fikih muamalah mengenai akad wakalah bil ujah. Hasil penelitian menunjukkan bahwa dalam hukum perdata wanprestasi dalam perjanjian jastip memberikan hak kepada konsumen untuk menuntut pemenuhan prestasi, pembatalan kontrak, dan ganti rugi sebagaimana diatur dalam Pasal 1233 dan 1243 KUHPperdata serta UU Perlindungan Konsumen. Dari aspek fikih Islam, jastip dikategorikan sebagai akad wakalah bil ujah yang menuntut prinsip amanah, transparansi, dan kejelasan akad, sehingga ketika terjadi wanprestasi tanpa uzur yang sah, penyedia layanan wajib menanggung kerugian (dhaman) secara moral maupun hukum. Penelitian ini menegaskan adanya titik temu antara hukum perdata Indonesia dan fikih Islam dalam menempatkan tanggung jawab hukum pada pelaku usaha untuk melindungi hak-hak konsumen. Meskipun telah tersedia dasar hukum yang jelas, praktik jastip online tetap membutuhkan regulasi khusus yang lebih tegas serta edukasi hukum yang memadai bagi konsumen agar mereka dapat memahami, menuntut, dan mempertahankan hak-haknya secara efektif dalam transaksi digital lintas batas.

Kata Kunci: Tanggung Jawab Hukum; Belanja Proxy Impor Online; Hukum Perdata; Fikih Islam.

Introduction

The development of information technology has given rise to new patterns of economic activity, one of which is the practice of buying and selling imported goods using personal shopping services.¹ The popularity of personal shopping services is inextricably linked to consumer perceptions that this mechanism offers the convenience of obtaining products from abroad without having to make a direct purchase.² Generally, these transactions are conducted online through various social media platforms such as Instagram, WhatsApp, and marketplaces, which are informal and do not yet have legal standing. This raises the need for legal studies regarding consumer protection and legal certainty in this practice.³ Online personal shopping services are activities where consumers request someone (the personal shopping service provider) to perform a service located in a location where the person requesting the goods is needed but is difficult to reach due to travel.⁴ With personal shopping services, consumers easily obtain their goods and then pay a fee to the person who

¹ Usamah Rievzqy Ahmad, "Pemberlakuan Pajak Terhadap Barang Hasil Transaksi Jasa Titip Online," *Jurnal Suara Hukum* 2, no. 1 (2020): 71–85, <https://doi.org/10.26740/jsh.v2n1.p71-85>.

² Andreas Tigor Oktaga and Widhy Setyowati, "Menavigasi Risiko Pembelian Online: Persepsi Konsumen Dalam Lanskap e-Commerce," *Magisma: Jurnal Ilmiah Ekonomi Dan Bisnis* 12, no. 1 (2024): 27–47, <https://doi.org/10.35829/magisma.v12i1.369>.

³ V Mak and E Terryn, "Circular Economy and Consumer Protection: The Consumer as a Citizen and the Limits of Empowerment Through Consumer Law," *Journal of Consumer Policy* 43, no. 1 (2020): 227–48, <https://doi.org/10.1007/s10603-019-09435-y>.

⁴ Raka Dimas Majesta Ricky, Evelin Kawung, and Shirley Y V I Goni, "Dampak Aplikasi Belanja Online (Online Shop) Di Masa Pandemi Covid-19 Terhadap Minat Belanja Masyarakat Di Kelurahan Girian Weru li Kecamatan Girian Kota Bitung Provinsi Sulawesi Utara," *Jurnal Ilmiah Society* 1, no. 1 (2021): 1–9, <https://ejournal.unsrat.ac.id/index.php/jurnalilmiahsociety/article/view/36087>.

purchases them. Online personal shopping services are a form of transaction in which consumers delegate the acquisition of goods from hard-to-reach locations to a personal shopping service provider in exchange for a fee.⁵ This service offers efficient access to imported goods while addressing issues such as cost transparency and consumer protection that have been examined in the context of e-commerce law and practice.

Although online personal shopping service offers easy access to goods from abroad, the reality is that various legal issues arise, particularly breaches of contract by business owners.⁶ There are reports of victims experiencing cases where personal shopping service providers receive payment but fail to deliver goods, send items that do not match the order, or even disappear without explanation.⁷ For example, in a case that went viral on social media, a personal shopping service user suffered losses of hundreds of millions of rupiah after fictitious goods were never delivered by the business owner. Furthermore, according to Customs and Excise, 442 cases of rogue personal shopping service providers have been successfully prosecuted, with the value of smuggled goods reaching IDR4 billion. This situation is further compounded when transactions are conducted without a strong written agreement as evidence. Furthermore, many consumers do not understand their legal rights and the dispute resolution mechanisms in the event of a breach.

The rise of personal shopping service practices has also given rise to legal issues, particularly related to breaches of contract or broken promises by business owners.⁸ Many cases have been found where goods are not delivered, do not match the order, or even where business owners disappear after receiving payment.⁹ For example, in the Decision of the Consumer Dispute Resolution Agency in Bandung City Number 09/BPSK-BDG/2021, a consumer sued a personal shopping service provider because the promised goods were never delivered, even though payment had been made. Similar cases have also surfaced in the media, such as the 2022 personal shopping service fraud involving imported cosmetics, which resulted in tens of millions of rupiah in losses for consumers. These facts demonstrate that

⁵ Ankur Huria, "Facilitating Trade and Logistics for E-Commerce," in *Facilitating Trade and Logistics for E-Commerce. Doi*, vol. 10, 2019, 33174.

⁶ Neelam Chawla and Basanta Kumar, "E-Commerce and Consumer Protection in India: The Emerging Trend," *Journal of Business Ethics* 180, no. 2 (2022): 581–604, <https://doi.org/10.1007/s10551-021-04884-3>.

⁷ Jesselyn Valerie Herman and Christine S T Kansil, "Perlindungan Hukum Pengguna Marketplace Terhadap Dugaan Pelanggaran Hak Pribadi Yang Dilakukan Jasa Pengiriman Berdasarkan Hukum Positif Di Indonesia (Contoh Kasus Viral Transaksi Jual Beli 'Cash On Delivery')," *Jurnal Hukum Adigama* 4, no. 2 (2021): 2739–63, <https://doi.org/10.24912/adigama.v4i2.17769>.

⁸ Yulia Yulia, "Perlindungan Hukum Dalam Transaksi Kontrak E-Commerce," *Al Wasath: Jurnal Ilmu Hukum* 5, no. 1 (2024): 27–40, <https://doi.org/10.47776/alwasath.v5i1.842>.

⁹ Pratiwi et al., "Tinjauan Yuridis Pertanggungjawaban Hukum Jasa Pengiriman Yang Lalai Terhadap Pengiriman Barang Dari Transaksi Jual Beli Di Marketplace Shopee : Studi Kasus Shopee Express Pangkalpinang," *Jurnal Legalitas* 1, no. 2 (2023): 104–14, <https://doi.org/10.58819/jle.v1i2.99>.

the personal shopping service practice is prone to disputes and harms consumers if it is not accompanied by a written agreement or clear regulations. This situation is particularly detrimental to consumers, especially if there is no written agreement that can be used as evidence in dispute resolution. Furthermore, consumers often do not understand their legal rights and the legal steps they can take when a business owner violates the agreement.

From a civil law perspective, a valid agreement has binding force as stipulated in Article 1320 and Article 1338 of the Civil Code and provides a legal basis for claiming compensation in the event of breach of contract based on Articles 1233 and 1243 of the Civil Code.¹⁰ In addition, Law Number 8 of 1999 concerning Consumer Protection also regulates consumer rights to comfort, security, and legal certainty in conducting transactions for goods and/or services. In Islamic jurisprudence, consignment services are included in the *wakalah bil ujrah* contract, namely representation in return for services.¹¹ Islam emphasizes the importance of honesty (*amanah*) and responsibility in carrying out such contracts. From a civil law perspective, consignment services are a form of agreement subject to the principle of freedom of contract as stipulated in Article 1320 of the Civil Code, while in Islamic jurisprudence, a similar practice is known as the *wakalah bil ujrah* contract, namely representation in return for services.¹² Both emphasize the importance of trust, clarity of agreements, and the responsibility of business actors, although civil law is more formalistic, while Islamic jurisprudence is more substantive. If a business actor is negligent or breaks a promise without a *uzur syar'i*, they are obligated to compensate the injured party (*dhamān*).

Several previous studies have highlighted the responsibilities of business actors in digital transactions, both from the perspective of positive law and Islamic jurisprudence. Yanci Libria Fista et. al. (2023) emphasized the need for stronger regulations to protect consumers in the online trading ecosystem, which often presents a risk of breach of contract due to weak contractual oversight.¹³ Meanwhile, Hendri Hermawan Adinugraha (2017) highlighted the relevance of the *fiqh* principle of *al-ghurm bil ghunm* (risk is proportional to profit) in electronic contracts, which holds business actors responsible for any potential consumer

¹⁰ Niru Anita Sinaga, "Perspektif Force Majeure Dan Rebus Sic Stantibus Dalam Sistem Hukum Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 1–27, <https://doi.org/10.35968/jh.v11i1.648>.

¹¹ Desy Fitriyani, "Perlindungan Hukum Bagi Konsumen Terhadap Pembatalan Sepihak Dalam Transaksi Online (Studi Kasus Transaksi Online Melalui Marketplace Tiktok & Shopee)" (Universitas Islam Sultan Agung Semarang, 2023).

¹² Merita Elmilda, "Sistem Perhitungan Hasil Implementasi Perjanjian Konsinyasi Oleh Pihak Outlet Kue Di Kecamatan Kuta Alam Dalam Tinjauan Akad Wadi'ah Bi Al-Ujrah" (Universitas Islam Negeri Ar-Raniry, 2024).

¹³ Yanci Libria Fista, Aris Machmud, and Suartini Suartini, "Perlindungan Hukum Konsumen Dalam Transaksi E-Commerce Ditinjau Dari Perspektif Undang-Undang Perlindungan Konsumen," *Binamulia Hukum* 12, no. 1 (2023): 177–89, <https://doi.org/10.37893/jbh.v12i1.599>.

losses. From a civil law perspective,¹⁴ Ainul Yaqin (2019) examined the compensation mechanism for breach of contract in online transactions based on Article 1243 of the Civil Code,¹⁵ while Rafni Suryaningsih Harun et. al. (2019) examined the application of the principle of good faith in digital contracts.¹⁶ From an Islamic legal perspective, Moh. Idil Ghuftron (2021) study discussed the principle of responsibility in the sale and purchase contracts of *salam* and *istishna'* as an ethical basis for online transactions,¹⁷ and Alvian Chasanal Mubarroq and Luluk Latifah (2023) study expanded on this discussion by highlighting the importance of contractual justice in *muamalah* jurisprudence.¹⁸ However, to date, few studies have specifically examined the legal liability of third-party import proxy service providers intermediating cross-border transactions. Therefore, this study seeks to fill this gap by analyzing the legal liability mechanisms for import proxy service providers' breach of contract through a comparative approach between Indonesian civil law and Islamic jurisprudence. This approach is expected to develop a model of legal liability that balances consumer protection and the principles of Sharia justice.

This study aims to analyze and formulate a legal liability model for online import proxy service providers in cases of breach of contract by comprehensively integrating the principles of Indonesian civil law and Islamic jurisprudence. The main focus of this study is to examine how civil law norms, such as provisions regarding breach of contract, the principle of good faith, and the obligation to indemnify as stipulated in the Civil Code, can be synergized with the principles of contractual responsibility and justice in *muamalah fiqh*. Fiqh principles such as *al-ghurm bil ghum* (every benefit must be accompanied by risk) and *al-kharaj bi al-dhaman* (the right to proceeds accompanied by responsibility) serve as an ethical and normative framework in assessing the legitimacy and fairness of legal relationships between service providers and consumers in cross-border digital transactions. Through this integrative approach, the study seeks to produce a legal liability model that not only emphasizes legal

¹⁴ Hendri Hermawan Adinugraha, "Penerapan Kaidah Al-Ghum Bi Al-Ghum Dalam Pembiayaan Mushārahakah Pada Perbankan Syariah," *Economica: Jurnal Ekonomi Islam* 8, no. 1 (2017): 81–102, <https://doi.org/10.21580/economica.2017.8.1.1827>.

¹⁵ Ainul Yaqin, "Akibat Hukum Wanprestasi Dalam Jual Beli Online Menurut Undang-Undang Informasi Dan Transaksi Elektronik," *Dinamika: Jurnal Ilmiah Ilmu Hukum* 25, no. 6 (2019): 9–19, <https://jim.unisma.ac.id/index.php/jdh/article/view/3169>.

¹⁶ Rafni Suryaningsih Harun, Weny Almoravid Dunga, and Abdul Hamid Tome, "Implementasi Asas Itikad Baik Dalam Perjanjian Transaksi Jual Beli Online," *Jurnal Legalitas* 12, no. 2 (2019): 94–103, <https://doi.org/10.33756/jelta.v12i2.5796>.

¹⁷ Moh Idil Ghuftron, "Transaksi Akad Salam Dan Akad Istishna Pada Jasa Pengiriman Jnt Situbondo," *Keadaban: Jurnal Sosial Dan Humaniora* 3, no. 1 (2021): 1–12, <https://doi.org/10.33650/adab.v3i1.2856>.

¹⁸ Alvian Chasanal Mubarroq and Luluk Latifah, "Analisis Konsep Muamalah Berdasarkan Kaidah Fiqh Muamalah Kontemporer," *Tadayun: Jurnal Hukum Ekonomi Syariah* 4, no. 1 (2023): 95–108, <https://doi.org/10.24239/tadayun.v4i1.101>.

certainty and protection but also takes into account the values of justice, balance, and welfare that are the objectives of sharia. This approach is expected to provide a legal framework that is more adaptive to the dynamics of e-commerce, while also filling the gap in norms regarding the responsibilities of imported proxy providers, which has been understudied to date. Therefore, this study is expected to provide a theoretical contribution to the development of digital contract law in Indonesia and offer a normative foundation oriented toward justice and Sharia ethics in contemporary online business practices.

Research Methods

This study employed a normative juridical approach, which focused on analyzing legal norms governing civil liability and Islamic jurisprudence principles relevant to the practice of online proxy imports. This approach was chosen because the issues studied were directly related to normative legal aspects, namely the obligations and responsibilities of service providers from the perspective of positive law and Islamic law. This study was descriptive-analytical, aiming to systematically describe applicable legal provisions and then analyze their compliance with the principles of justice and responsibility in cross-border digital transactions.

The research data sources consisted of primary legal materials, including the Civil Code, Law Number 11 of 2008 concerning Electronic Information and Transactions and its amendments, and fatwas from the National Sharia Council–Indonesian Ulema Council (NSC-IUC) regarding *wakalah* contracts and digital transactions. Secondary legal materials included previous study results, academic literature, legal textbooks, scientific journal articles, and the views of relevant civil law and *muamalah* jurisprudence experts.

Data collection techniques were conducted through a literature review, exploring national and international legal sources that discuss the responsibilities of business actors in electronic transactions. Data analysis was conducted qualitatively and comparatively, examining and comparing the construction of legal responsibility according to Indonesian civil law and Islamic jurisprudence to find points of convergence between the two.

Results and Discussion

1. Legal Characteristics of Agreements in Online Personal Shopping Services and Potential for Breach of Contract

A personal shopping service agreement is a form of civil contract that falls under the category of obligation as regulated in Article 1313 of the Civil Code, namely an act in which

one or more parties bind themselves to another party.¹⁹ In practice, online personal shopping agreements are formed through the principle of freedom of contract as stipulated in Article 1320 of the Civil Code, where the parties - the buyer (consumer) and the person requesting the service (business actor) - agree on the object, price, and payment method.²⁰ However, the study shows that these agreements are generally made verbally or through digital conversations without a legally valid written contract. The absence of written evidence places consumers in a vulnerable position in the event of breach of contract, as proof in court still emphasizes formal evidence and authentic documents.²¹ This highlights a gap between the legal norms governing online shopping and the practice of digital transactions in society.

Breach of contract is the failure to fulfill an obligation as agreed. The Civil Code regulates this in Articles 1234–1243. Breach of contract in the context of an online personal shopping service can be classified into four forms:

- a. not doing what is promised, such as not purchasing or not delivering goods after receiving payment;
- b. doing what is promised, but not as intended, such as sending damaged goods or goods that do not match the order;
- c. doing what is promised, but late; and
- d. doing something prohibited in the agreement, such as reselling goods to another party or increasing costs without the consumer's consent.

These four forms of violation not only cause material harm but also undermine the principle of trust that underpins the personal shopping service transaction.²² Within the context of Islamic law, this contract can be categorized as a combination of a *wakalah* (representation to purchase) and an *ijarah* (delivery service) contract, which requires the business owner to uphold the trust and be responsible for any negligence in accordance with the principle of *ta'widh* (compensation).

¹⁹ Muhammad Afriza Rifandy and Novita Mayasari Angelia, "Perjanjian Pinjam Meminjam Berdasarkan Pasal 1754 KUHperdata," *AL ADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 3 (2024): 248–55, <https://doi.org/10.59246/aladalah.v2i3.886>.

²⁰ Nafa Amelsi Triantika, Elwidarifa Marwenny, and Muhammad Hasbi, "Tinjauan Hukum Tentang Pelaksanaan Perjanjian Jual Beli Online Melalui E-Commerce Menuer Pasal 1320 Kuhperdata," *Ensiklopedia Social Review* 2, no. 2 (2020): 119–31, <https://doi.org/10.33559/esr.v2i2.488>.

²¹ Alitha Sulistyo Putri et al., "Analisis Kewajiban Dan Perlindungan Konsumen Dalam Kontrak Jual Beli," *Media Hukum Indonesia (MHI)* 2, no. 4 (2024): 505–14, <https://doi.org/10.5281/zenodo.14217264>.

²² Rista Maharani and Andria Luhur Prakoso, "Perlindungan Data Pribadi Konsumen Oleh Penyelenggara Sistem Elektronik Dalam Transaksi Digital," *JURNAL USM LAW REVIEW* 7, no. 1 (2024): 333–47, <https://doi.org/10.26623/julr.v7i1.8705>.

2. Analysis of Consumer Responsibilities and Legal Remedies from the Perspective of Civil Law and Islamic Jurisprudence

From a positive law perspective, the basis for business actors' responsibilities is regulated in Article 19 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, which affirms the obligation of business actors to provide compensation for damage, contamination, or loss resulting from traded goods and/or services.²³ However, reality shows that many personal shopping service perpetrators fail to fulfill this obligation, such as cases of personal shopping service perpetrators who disappear after receiving payment.²⁴ Customs and Excise have recorded more than 400 cases of illegal personal shopping service perpetrators with losses amounting to billions of rupiah, demonstrating the urgency of legal oversight in this sector. In terms of dispute resolution, consumers can pursue several avenues: a breach of contract lawsuit in civil court, a complaint to the Consumer Dispute Resolution Agency, or an amicable resolution through informal mediation. Supreme Court Decision Number 163 K/Pdt.Sus-BPSK/2018 emphasizes that disputes related to contracts and delivery of goods are within the realm of civil law, not the authority of the Consumer Dispute Resolution Agency, so strengthening regulations in the digital sector is crucial.

In Islamic law, the responsibility of the personal shopping service agent is not only legal, but also moral and religious.²⁵ The basic principles of the contract emphasize honesty (*ṣidq*), trustworthiness, and responsibility (*mas'ūliyyah*). When the contract is not fulfilled, the perpetrator is considered to have committed *khiyānah* (reneging on the trust).²⁶ The word of Allah in QS. Al-Māidah [5]: 1, "*O believers, fulfill your obligations/contracts,*" serves as an ethical basis that every agreement is a promise that must be fulfilled. Violation of the trust requires compensation (*ḍamān*) to restore the rights of the injured party. In this context, both civil law and Islamic jurisprudence have the same orientation: ensuring justice and protection for the injured party, although their approaches differ. Civil law is formalistic and based on

²³ Edy Purwito, "Konsep Perlindungan Hukum Konsumen Dan Tanggung Jawab Hukum Pelaku Usaha Terhadap Produk Gula Pasir Kadaluaras Di Kota Surabaya," *DEKRIT (Jurnal Magister Ilmu Hukum)* 13, no. 1 (2023): 109–29, <https://doi.org/10.56943/dekrit.v13n1.152>.

²⁴ Meriza Elpha Darnia et al., "Perlindungan Hukum Terhadap Pelaku Usaha Online Shop Yang Mengalami Kerugian Yang Disebabkan Oleh Konsumen Di Kota Pekanbaru," *Innovative: Journal Of Social Science Research* 4, no. 1 (2024): 3687–98, <https://j-innovative.org/index.php/Innovative/article/view/5739>.

²⁵ Ezieddin Elmahjub, "Islamic Jurisprudence as an Ethical Discourse: An Enquiry into the Nature of Moral Reasoning in Islamic Legal Theory," *Oxford Journal of Law and Religion* 10, no. 1 (2021): 16–42, <https://doi.org/10.1093/ojlr/rwaa023>.

²⁶ Eko Rial Nugroho, "Characteristics of Distinguishing Elements in the Case of Default and Fraud in Contracts," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial* 24, no. 1 (2022), <https://doi.org/10.22373/jms.v24i1.11050>.

written evidence, while Islamic jurisprudence is substantive and assesses the validity of the contract based on intention, honesty, and benefit.²⁷ To resolve breaches of contract in personal shopping service transactions, consumers have several legal options, namely:

- a. Filing a breach of contract lawsuit in civil court under the Civil Code.
- b. Reporting the business to the Consumer Dispute Resolution Agency, which offers mediation and arbitration mechanisms.
- c. Resolving the dispute amicably through informal mediation.
- d. Consumers have the right to obtain a fair legal resolution through either the courts or consumer protection agencies.

In Law No. 8 of 1999 concerning Consumer Protection, Article 19 paragraph (1) states that business actors are obliged to provide compensation for damage, pollution, and/or consumer losses resulting from consuming goods and/or services produced or traded. In online personal shopping service practices, business actors often do not send goods, send goods that do not match, or even disappear after receiving payment.²⁸ In Islamic law, this relationship can be categorized as a *wakalah* contract and an *ijarah* contract. *Wakalah* means representing the purchase, while *ijarah* is a service in the form of purchasing and sending goods.

Based on Article 19 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection, business actors are required to provide compensation for damage, contamination, and/or losses experienced by consumers due to goods or services. However, in the practice of online personal shopping services, failures often occur in fulfilling obligations—such as actors not sending goods, sending goods that do not match the order, or even disappearing after receiving payment. For example, the case of a consumer who lost around IDR 50 million due to a fake personal shopping service, where the perpetrator disappeared without a trace after completing the online transaction. In the area of regulatory enforcement, Customs and Excise recorded action against 442 cases of "rogue personal shopping services" with a total value of smuggled goods reaching IDR4 billion. From a legal resolution perspective, Supreme Court decision Number 163 K/Pdt.Sus-BPSK/2018 emphasizes that disputes over contractual breaches, such as delivery or quality of goods, are not within the authority of the Consumer Dispute Resolution Agency and must be resolved through a civil district court.

²⁷ F Lagioia et al., "AI in Search of Unfairness in Consumer Contracts: The Terms of Service Landscape," *Journal of Consumer Policy* 45, no. 3 (2022): 481–536, <https://doi.org/10.1007/s10603-022-09520-9>.

²⁸ Antoni Saputra, "Perlindungan Hukum Bagi Konsumen Dan Pelaku Usaha Dalam Transaksi Jual Beli Online Dengan Menggunakan Metode Cash On Delievery," *Indragiri Law Review* 2, no. 3 (2024): 9–16, <https://doi.org/10.32520/ilr.v2i3.62>.

In Islamic law, the online personal shopping service relationship can be interpreted as a combination of the *wakalah* (buying representative) and *ijarah* (delivery service) contracts. When the personal shopping service agent fails to fulfill the duties according to the contract, the obligation of *ta'widh* (compensation) applies, as per the principle of justice in *muamalah* and the principle of *amanah*.²⁹ In Islamic jurisprudence, the basic principles in the contract are honesty (*ṣidq*), justice (*'adālah*), and responsibility (*mas'ūliyah*). When the contract is not fulfilled, the perpetrator is considered to have violated the *amanah* (*khiyānāh*). In Islamic law, settlement can also be done based on the principles of justice (*adl*), *ihsan* (doing good), and the obligation to compensate for losses as a form of sharia accountability.

This is based on the word of Allah:

"O believers, fulfill your obligations/contracts ..." (QS. Al-Mā'idah: 1)

"Indeed, Allah commands you to return trusts to their rightful owners ..." (QS. An-Nisā: 58)

The rules of Islamic jurisprudence also state:

"Al-'Uqūd bi al-ma'ānī lā bi al-alfāz" (contracts are judged by their substance, not just their wording).³⁰

A comparative analysis of civil law and Islamic jurisprudence shows that both aim to provide legal protection for parties harmed by an agreement, but they have different orientations. Civil law emphasizes a formalistic and procedural approach, namely through valid contractual requirements, breach of contract mechanisms, and the presentation of evidence in court. In contrast, Islamic jurisprudence emphasizes a more substantive and beneficial approach, with an orientation toward justice, honesty, and redress through the principle of *ta'widh* and the prohibition of *gharar* and *dharar*. This difference demonstrates that civil law provides legal certainty through strict procedural rules, while Islamic jurisprudence seeks to ensure contextual, substantive justice. Integration of the two can be implemented through a dispute resolution model that is not only based on formal contracts and litigation procedures but also considers the principle of beneficial acts to protect consumers more comprehensively, both from a juridical and moral-religious perspective.

However, there are differences in orientation:

- a. Civil law is more formal, with written legal procedures and evidence.
- b. Islamic jurisprudence emphasizes intention, justice, and morality in contracts.

²⁹ Uyuunul Husniyyah, "Tinjauan Fiqh Muamalah Terhadap Akad Jual Beli Online Pada Layanan Go-Mart Di Aplikasi Go-Jek," *Al Iqtishod: Jurnal Ekonomi Syariah* 2, no. 2 (2020): 105–21, <https://ejournal.iaiskjmalang.ac.id/index.php/iqtis/article/view/182>.

³⁰ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, Jilid 4 (Damaskus: Dar al-Fikr, 1989).

Both agree that breaches of contract must be accounted for, and the injured party is entitled to compensation.³¹ In personal shopping service transactions, civil law and Islamic jurisprudence both provide protection, but through different and complementary channels. From a civil law/ Consumer Protection Law perspective, protection is remedial-formal: the right to correct information, the suitability of goods, and compensation/exchange/refund in the event of breach of contract; the path is through a summons - Consumer Dispute Resolution Agency (fast, simple) or District Court (Breach of contract/compensation) with electronic evidence (conversations/chats, transfer receipts, transaction records) to uphold legal certainty.

From the perspective of Islamic jurisprudence, protection is substantive-beneficial within the framework of *wakālah bil ujah/ijārah*: the obligation of trust, the prohibition of *gharar/tadlīs* (misinformation), and the right of *khiyār* (*khiyār al-ru'yah/'aib/syarth*), which gives consumers the option to cancel the contract, request a replacement, or a price discount (*arsh*); if negligence/deviation occurs, *dhamān* (compensation liability) applies. Its limitations: civil law is often “heavy” on written evidence (complicating informal transactions on social media), while fiqh - although responsive to substantive justice - needs positivization so that it can be executed by state institutions. Implemented integration model: (i) Standard personal shopping service clauses containing product specifications, deadlines, costs/fees, risk transfer points, *khiyār* rights (cancellation/exchange/compensation options), and dispute resolution sequences (*ṣulḥ*/mediation. Consumer Dispute Resolution Agency/District Court); (ii) Standard digital evidence (screenshots/chat history, invoices) recognized as equivalent to *bayyinah/qarīnah* and civil evidence; (iii) escrow/joint account mechanism to reduce moral hazard; (iv) default remedy: full refund + *arsh* if defective/non-compliant, or specific fulfillment if still possible. With this design, procedural certainty (civil) meets substantive justice-benefit (*fiqh*), so that personal shopping service consumer protection becomes more effective in the context of trust-based digital transactions.

3. Integration of Civil Law and Islamic Jurisprudence Principles in Protecting Online Personal Shopping Service Consumers

A comparative analysis shows that civil law and Islamic jurisprudence converge on the principles of justice and responsibility. Civil law provides legal certainty through written procedures, while Islamic jurisprudence offers substantive justice by emphasizing the principle of trust and the prohibition of *gharar* (uncertainty) in transactions. These two legal systems can be integrated through a dispute resolution model that is not merely formalistic

³¹ Dhea Oktarini Oswari, “Analisis Hukum terhadap Kerugian Akibat Wanprestasi dalam Kontrak Bisnis,” *Jurnal Jendela Hukum dan Keadilan* 9, no. 2 (2024): 48–57, <https://doi.org/10.32663/7v150r87>.

but also considers moral values and benefits. In the context of online personal shopping service, this integration can be achieved through several steps: first, digital recording of transactions through invoices or screenshots of conversations; second, implementing a standard electronic agreement that includes the identity of the personal shopping service agent, product specifications, deadlines, and dispute resolution mechanisms; third, implementing an escrow system or joint account so that consumer funds are only released after the goods are received; and fourth, recognizing digital evidence (chats, bank transfers, screenshots) as valid evidence equivalent to written documents.

From a fiqh perspective, the liability of the agent (personal shopping service agent) differs according to the school of thought: the Hanafi school of thought emphasizes liability only for proven negligence; the Maliki school of thought expands the liability of the agent to the same extent as an *ajir* (hired worker); while the Shafi'i school of thought emphasizes that violation of the terms of the agreement requires compensation (*dhamān*). In the modern context, the principles of *maslahah* and *istihsān* form the basis for legal adjustments to remain responsive to developments in digital transactions. *Maslahah* is used to safeguard the public interest and prevent harm, while *istihsān* provides flexibility so that the law is not rigid and still provides substantive justice for consumers. Thus, the integration of civil law and Islamic jurisprudence can produce a more comprehensive model of legal protection—combining procedural certainty with moral justice—thus being able to address the legal challenges in the practice of online personal shopping services in the digital economy era.

In the Civil Code, a breach of contract occurs when the debtor fails to fulfill the terms of the agreement, is late in fulfilling the contract, or acts contrary to the terms of the agreement. This is stipulated in Article 1243 of the Civil Code. Civil law is formalistic and requires valid written evidence, which often makes it difficult for consumers in informal personal shopping transactions. In contrast, Islamic jurisprudence emphasizes the values of honesty (*ṣidq*), trustworthiness, and the prohibition of fraud (*gharar*) in transactions.³² In Islamic jurisprudence, an unwritten agreement remains binding as long as there is consent and agreement, and the intention is consistent. Therefore, substantively, Islamic jurisprudence is more flexible in recognizing trust-based transactions such as personal shopping.³³

If a business actor fails to fulfill their mandate, Islamic jurisprudence classifies this as a form of *khiyanah*, which results in the business actor being obligated to compensate for losses in accordance with the principles of justice. Imam Malik, Abu Hanifah, and Ash-Syafi'i

³² Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

³³ Abdul Rahman Al-Jaziri, *Al-Fiqh 'Ala Al-Madzahib Al-Arba'ah* (Kairo: Dar al-Kutub al-'Ilmiyyah, 2003).

emphasized the importance of *maslahah* and *istihsān* in contemporary *muamalah*-based dispute resolution.³⁴ In *fiqh muamalah*, the responsibility of a representative (personal shopping service agent/provider) is understood differently by each school of thought. The Hanafi school of thought emphasizes that a representative essentially does not bear losses unless proven negligent or abusing their power; however, if they receive wages (*wakalah bil ujrah*), they are obligated to be responsible for negligence and damage resulting from their actions. The Maliki school of thought is stricter, namely that a paid representative has obligations almost equivalent to an *ajir* (hired worker), and therefore must compensate for losses in the event of negligence or professional error. The Shafi'i school of thought emphasizes that a representative is only responsible for the mandate, but if there is a violation of the terms of the agreement or misappropriation, they are obligated to provide compensation (*dhamān*). This difference shows that classical fiqh has anticipated variations in risk in the *wakalah* relationship, so that it can be the basis for formulating standards of responsibility for personal shopping service actors in the context of modern law.

The Importance of *Maslahah* and *Istihsān* in Contemporary *Muamalah*-Based Dispute Resolution, in the context of contemporary *muamalah*, particularly in informal transactions such as online personal shopping services for imported goods. Dispute resolution cannot rely solely on textual texts or traditional *qiyas*. The absence of explicit rules in the texts requires a flexible, relevant, and contextual *ijtihad* method, so that Islamic law can remain a solution. In this regard, two important principles, *maslahah* and *istihsān*, play a key role in addressing the challenges of modern law.

Maslahah, in terminology, means the public interest or benefit recognized by sharia as the basis for establishing law. In dispute resolution, *maslahah* is used to consider aspects of benefit and prevention of harm (*mafsadah*), particularly in digital transactions not explicitly addressed in classical Islamic jurisprudence. For example, in the practice of personal shopping service, if a business actor fails to deliver goods without a valid reason, then accountability is based not only on the textual *wakalah* contract, but also on the principle of protecting consumer rights for the public good.³⁵

Meanwhile, *istihsān* is a method of establishing law by selecting stronger and more convenient evidence, although it differs from the commonly used *qiyas*. This approach is important when the results of *qiyas* actually result in injustice or harm. In the context of resolving personal shopping service disputes, *istihsān* allows for fairer decision-making even

³⁴ Cherelia Valmai Zabrina et al., "Perlindungan Konsumen Terhadap Wanprestasi Dalam Transaksi Elektronik Jasa Penginapan Berbasis Aplikasi" (Universitas Brawijaya, 2021).

³⁵ Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

though it is not entirely in line with formal *qiyas*, such as expanding the business actor's responsibilities even though it is not explicitly stated in the contract.

These two approaches demonstrate the flexibility of Islamic law, which is not rigidly bound by text, but rather open to the values of the *maqāṣid al-sharī'ah* (objectives of Islamic law), namely, safeguarding property, life, religion, lineage, and reason.³⁶ By utilizing *maslahah* and *istiḥsān*, dispute resolution in contemporary muamalah can remain within the framework of sharia while addressing the needs of the times. This demonstrates Islamic jurisprudence's high resilience in addressing evolving issues, including in trust-based digital transactions such as a personal shopping service.

Theoretical and Practical Significance of the Study: Theoretically, this study contributes to the understanding of contemporary contract law, particularly informal digital transactions that have not been explicitly accommodated in the positive legal system.³⁷ The comparison between civil law and Islamic jurisprudence demonstrates the potential for legal harmonization in consumer protection.³⁸ In practice, this study demonstrates the urgency of developing specific regulations for the increasingly widespread practice of personal shopping service, which involves transnational aspects. Theoretically, this study enriches the discourse of civil law and Islamic jurisprudence regarding the wakalah contract in digital transactions. Practically, the results of this study are expected to serve as a reference for consumers and business actors in resolving disputes regarding personal shopping services fairly and in accordance with the law.

Conclusion

This study confirms that the practice of online personal shopping for imported goods still presents fundamental issues related to the imbalance in legal protection between consumers and service providers, particularly when there is a breach of contract in the form of late, non-conforming, or non-delivery of goods. From an Indonesian civil law perspective, the legal basis for breach of contract can be found in Articles 1233 and 1243 of the Civil Code and Law Number 8 of 1999 concerning Consumer Protection. These provisions grant consumers the right to demand fulfillment of agreements, contract cancellation, and/or

³⁶ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (North America: International Institute of Islamic Thought (IIIT), 2008).

³⁷ Atmarivaldi Rosel et al., "Tinjauan Yuridis Terhadap Perlindungan Konsumen Dalam Kontrak Elektronik Perusahaan Di Era Digitalisasi," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 1, no. 2 (2025): 116–20, <https://jurnal.globalscients.com/index.php/jkhp/article/view/247>.

³⁸ Fetri Fatorina and Chamid Sutikno, "Tinjauan Hukum Islam Terhadap Perlindungan Hak-Hak Konsumen," *Economics, Social, and Humanities Journal (Esochum)* 2, no. 1 (2022): 1–28, <https://journal.unupurwokerto.ac.id/index.php/esochum/article/view/81>.

compensation. However, their implementation tends to be formalistic and procedural, requiring written evidence and a lawsuit mechanism that often presents difficulties for consumers, especially given the trust-based nature of personal shopping service transactions and the digital informality of the transaction. In contrast, Islamic jurisprudence, through the framework of the *wakalah bil ujah* contract, emphasizes the values of trustworthiness, clarity of contract, honesty, and the prohibition of *gharar* (unclear) and fraud. This principle allows for the recognition of an agreement even without written evidence, making it more adaptable to contemporary online trade practices. A comparative analysis of the two legal systems shows that there is common ground regarding the responsibility of business actors to compensate for losses (*dhamān*) if a breach of contract occurs without a valid reason. However, the fundamental difference lies in the approach: civil law emphasizes formal procedural aspects, while Islamic jurisprudence is more substantial and benefit-oriented. This presents an opportunity to integrate the values of *muamalah fiqh* into national law to create a more responsive consumer protection model for cross-border digital transactions.

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