

Shopee Food Partnership Cooperation: Fiqh Muamalah Perspective

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Abstract

Technological advances are increasingly rapidly making various community activities carried out completely digitally, the use of digital platforms is used in various aspects of life including business needs. Shopee Food is a platform that is currently being registered by many food sellers. This platform is still relatively new compared to the two platforms that preceded it. Merchant is a term for food vendor partners who register their wares on the digital platform. The digital platform is tasked with marketing food that has been registered by Merchants. However, before that, the Merchant is required to fulfill several requirements that must be met to establish partnership cooperation that has been provided by Shopee Food. a partnership cooperation contract is a digital contract that has been provided by one of the parties in which several special clauses need to be investigated further. With this background, the author wants to further research related to some specific rules on the cooperation contract of the shopee food partnership with the shopee food partner with the title: the cooperation of the shopee food partnership from the fiqh muamalah perspective. This study reviews the special clauses in the shopee food partnership cooperation contract. Which will be examined from the side of fiqh muamalah and positive law. Library research, which is descriptive-analytical will be used in this study. While the data collection technique will be carried out by exploring various literature related to research which is called the systematic library study method. This research shows that several clauses listed in the agreement between Shopee Food and Partners, which are then called Merchants reviewed based on muamalah fiqh are contrary to the principles of musyarakah contracts. One of the clauses that conflict with the principles of the contract is the possibility of changing the articles contained in the cooperation contract in the form of a standard contract that will be carried out by Shopee Food in the future. because the partnership cooperation contract is in the form of an electronic contract that has been prepared by one of the more powerful parties, namely the related company. In addition, Shopee Food in the agreement can violate the principle of balance of achievement in Islam, because Shopee can suspend services to Merchants without prior notification.

Keywords: Standard Clause, Shopee Food, Merchants

A. INTRODUCTION

The development of increasingly advanced technology is a logical consequence of practicality in living social life and also doing business. Apart from primary and secondary needs, the internet is also an important part of this era. The internet is needed to communicate and support various daily activities, as well as business, transportation, and work. Consumers in this era want convenience and practicality in buying and selling transactions, both goods and

food and drinks, we can get almost everything we need online. The use of social media as a means to market a product is very relevant in reaching all regions in Indonesia that already have internet access.

The need for meaning and drinks that can practically be ordered make cooperation between business people grow rapidly and are very promising. Therefore the food business has quite a lot of competitors, the way we innovate and remain consistent with our quality will ensure the sustainability of our business going forward. Our ability to assess consumer desires for products that match market needs in setting strategies is a big demand for business people. Buying and selling activities carried out through electronic media commonly called *e-commerce* bring many advantages such as we don't need to provide a special time for shopping and are not limited by existing distances. the *marketplace* is a type of *e-commerce* that is growing rapidly in Indonesia. A *marketplace* is a place or electronic market that conducts buying and selling of goods or services. One of the *Marketplaces* is Shopee. PT Shopee Indonesia was officially present in Indonesia in December 2015. Not long ago, in April 2020, PT Shopee Indonesia introduced a new platform engaged in food delivery services, almost the same as the two previous platforms which were also engaged in food delivery services. can be accessed on the Shopee application. Shopee sees that the prospects for food delivery in Indonesia are very good, so Shopee strengthens its new platform by having many driver partners and restaurant partners.

Shopee food is a platform that is in the shopee application where we can order food online through the Shopee Food platform. Those who can access and use it are the users of the shopee application, and those who can market their food through this platform are restaurants that are already partners with Shopee Food, and also drivers who are entitled to deliver customer orders are drivers who have established a partnership with Shopee Food. In addition, during the pandemic to post-pandemic Covid -19, many restaurants were affected due to a reduction in restaurant capacity. The existence of this food delivery service plays a role in increasing the income of MSMEs in marketing their products more effectively.

The agreement is a liaison between Shopee Food and its Partners, agreements develop very dynamically with the times, and many business people enter into various agreements in the form of written agreements because for business people a written agreement is the basis for the parties to prosecute if one party does not carry out obligations by what has been agreed. The Shopee Food platform has many restaurant partners, which we hereinafter refer to as Merchants, in this study we will discuss the agreements used by PT. Shopee Indonesia in the Shopee Food platform with Merchant Restaurants who are partners in running the Platform. In its development, many agreements in business transactions do not occur through balanced negotiations between the parties. One of the parties has prepared the standard conditions on the existing agreement form and then offered it to the other party for approval with almost no freedom at all for the other party to negotiate on the terms offered. Such an agreement is referred to as a standard agreement (*'aqd al-iz'an*). Islamic law

teaches that a standard contract is still only a presentation or proposal (*'ard alshuru>t*) and is not final which must be obeyed by the other party (*fard alshuru>t*)(Fatmah, 2014).

In addition to reviewing from the perspective of positive law, we also have to know what the agreement is. the partnership between the Shopee Food platform is by Islamic law. Therefore, this study will analyze the partnership cooperation contract whether it is by positive law or Islamic law. Against this background, the formulation of the problem to be taken is how to review positive law and Islamic law on the partnership contract between Shopee Food and the Merchant and how the partnership agreement is compatible with Indonesian laws and regulations and also with Islamic law.

B. DISCUSSION

1. Review Islamic Law on the Shopee Food Partnership

Business development using online media pages is currently more popular with culinary business people, to reach a wider audience and also to get more customers. One way is to register the culinary business as a Shopee Food partner, known as a Merchant. Public enthusiasm for food delivery services has made many restaurants register their business with Shopee Food, for Merchant registration itself there is no fee, but there are several requirements that must be met, the requirements also differ between individual businesses and businesses and legal entities. For an individual business, the requirements are a KTP, aged 17-65 years, NPWPD, SPPKP (Tax Entrepreneur Confirmation Letter), and a photo of a massively active passbook. While the requirements for Merchants who are registered with Legal Entities such as KITAS, NPWP, SIUP, and TDP, have a business establishment deed, domicile statement, and photo of an active passbook.

Unlike the registration process for Shopee Food driver-partners, which collects registration files offline, there is no direct registration for Shopee Food Merchants. After installing the application with the name Shopee Partner, then logging in using the telephone number and email after that the business actor uploads the files that have been described, along with a photo of the restaurant catalog, to the application. In addition, business actors also fill out the form provided by the Shopee Food platform, after which Shopee Food will process verification of the application within 5-7 working days.

In the process of creating a Shopee Food Merchant account, a partnership agreement is given in the form of an e-contract which contains a standard agreement in it. The agreement must be signed by the business actor who wants to register his business on the platform, the standard agreement contains clauses that must be accepted by the Merchant because there is no attempt to negotiate between the two parties working together. The sense that the Merchant or business actor here has a weaker position compared to Shopee Food, which results in the merchant only being able to choose whether to approve or not approve the contract.

Partnership cooperation between the two parties between PT. Shopee Food and Shopee Food Merchant are contained in an electronic contract with standard clauses in it. In this collaboration regarding *shighat* akad, Hanafiah and Malikiyah argue that writing can be a way to express our intention and desire to replace verbal expressions, therefore agreements expressed in writing must be written clearly and can be understood by both parties involved. agreed. In this case, the Shopee Merchant makes an agreement and consent with Shopee Food when using the Shopee Partner application for the first time, because to proceed to the official stage of becoming a Merchant, the business actor must fill out an online registration form and upload the required files. In addition, business owners are required to fill out an approval statement by clicking the submit button below the statement. If the business owner does not press the submit button, the business owner cannot continue the process to become a Shopee Food Merchant.

As explained above, an agreement between the two parties will have legal consequences that will bind both of them. To hold the contract there are two kinds of will, namely inner will and outward will. The Inner will materializes if there is a willingness (*aridha*) and (*al-ikhtiyar*) choice, while the outward will is *shighat*, namely the ability to fulfill actions that express the inner wall. If the inner and outer wall is fulfilled then a contract will be declared valid. However, sometimes in an agreement or contract, only the outward will is fulfilled and sometimes it misses the inner will itself. In practice, the contract is only taken for formal purposes and according to *jumhur ualam*, the contract has not been categorized as a valid contract.

also *what the* Shopee Food Merchant feels, in their cooperation agreement with the shopee food party in the agreement many clauses are weighed and are not considered fair, many clauses delegate responsibility to the Merchant in the event of a problem with consumers. Even so, the business actors still agree to the agreement because there is no room for discussion in it and the choice is to ask whether to agree or not, because Merchants feel they have to keep up with business developments which are currently all *digital*, so business actors finally agree to the agreement. As a result, even though an agreement occurs and gives birth to an agreement, there is a possibility that the agreement contains defects and it becomes possible for the agreement to be canceled by the party who feels aggrieved in it.

Based on the standard agreement provided by Shopee, there is a clause explaining the categories of agreements stipulated by Shopee, namely cooperation *agreements*. This can be seen in the text of the agreement between Shopee Food and the Merchant below:

“Agreement means the ShopeeFood Cooperation Agreement in which these General Terms and Conditions are attached to it, including every list, appendices or other attachments attached to the documents mentioned above, including all changes, additions, and variations to them”.

Cooperation agreements in Islam are called *musyarakah* or *syirkah*. *Musyarakah* or *syirkah* contracts in the implementation of legal agreements are carried out by anyone, both between individuals and companies with their partners. The argument underlying the legality of *musyarakah* or *syirkah* is found in the Shad letter, which reads:

وَإِنَّ كَثِيرًا

The verse above explains that those who are in alliance lie with other members of the group except for those who believe and do good deeds. The above argument explains that a cooperation agreement between one party and another party is valid to do as long as there is no betrayal between those who cooperate. Even so, there are some problems contained in the clauses made by Shopee Food, these clauses are very multi-interpreted and there tend to be irregularities in an agreement.

The agreements that tend to give rise to abuse and changes to the agreement before it is agreed upon are as follows:

“The agreement, to which these General Terms and Conditions are attached, contains the terms of the provision of Shopee Food Services (which may be amended from time to time)”.

It can be assumed from the article above that Shopee Food can change the clauses of the agreement that have been agreed upon by the merchant for an indefinite period. The diction “which may be changed from time to time”, is, of course, contrary to the terms of the contract in Islam which requires that the *consent* must go on and not be revoked before the *qabul occurs* if this happens then the contract will be canceled. Thus, the contract that was carried out was not perfect.

The above violates the principles of a contract that has been determined in Islam because the contract is carried out by parties who are not represented, so one party may not cancel or change the contents of the agreement without the consent of the other party in the contract. According to fiqh scholars, contracts that are not binding for parties who do not enter into contracts are *al-wakalah* (representative), *al-'ariyah* (borrowing), and *al-wadi'ah* (entrusted goods) contracts (Nasrun Harun, 2017). While in practice, Shopee Food and Merchants are two parties that bind themselves as a cooperating element.

In addition to diction issues which result in multiple interpretations and unclear timing, Shopee Food also in its clause assumes an attitude of arbitrariness in the policy. Even though in the first contract it was explained that the relationship between Shopee Food and the Merchant was cooperation, in practice it was as if the most powerful person was Shopee Food. The following is the sound of the clause contained in the collaboration contract made by Shopee Food:

“Merchants acknowledge and agree that the ShopeeFood Services provided by Shopee are limited to (i) referring Customers to Merchants; (ii) as an intermediary between the Customer and the Merchant, Receiving Orders and receiving payments from the Customer on behalf of the

Merchant; and (iii) acting as an intermediary between the Customer and the Merchant, communicating Orders and channeling net payments from the Customer to the Merchant. Shopee can make changes to the ShopeeFood Service, or suspend the ShopeeFood Service, without notification and absolutely at its sole discretion.

The existence of the diction “suspend Shopee Food services without notification and absolutely at its own discretion” according to the author’s assumption is contrary to the principles of contract in Islam, namely, the principle of justice and balance of achievements. So that this kind of clause tends to harm merchants, because of this provision, Shopee can easily stop services to merchants without prior notification. This shows that in practice, the agreement is contrary to the principle of will in Islam.

Basically in the law of agreements or Islamic engagement, every policy must be taken with the agreement of the parties in the contract. However, the context above has bypassed this because only one party acted. In the qaidah fihiyyah muamalah it is explained that (Azhari, 2015):

الأصل في العقود رضى المتعاقدين نتیجته هي ما التزمه بالتعاقد

Referring to the fiqh rules above, it can be assumed that Shopee Food’s action to suspend services without the knowledge of the merchant, who does not necessarily agree on this matter, will result in the contract being made invalid or canceled. Even though at first the agreement was agreed upon by both parties, if at a later date the agreement is not approved by one of the parties, then the contract is considered void, such as a sale and purchase contract that contains deception.

Thus it is contrary to the fourth pillar of the contract that is not contrary to shara. Standard agreements are included in legal agreements, but these standard agreements do not contain the principles of freedom of contract and balance (*tawāzun*). According to Islamic law, the agreement becomes a facade. Contracts that are *facade* (cancellable), namely contracts that fulfill the pillars and conditions, but there are aspects or other things that damage the contract due to considerations of benefit. Therefore, a standard agreement cannot be binding on the parties.

Based on the explanation above, it can be concluded that the standard agreement in a partnership relationship made by Shopee Food as one of the conditions that must be obeyed by merchants is not against Islamic law, but there are several clauses that the authors assume are contrary to the pillars and terms or principles contract in Islamic law.

2. Positive Legal Review of the Shopee Food Partnership Cooperation Contract

Understanding the contracts signed is important because many business actors have questions about the contents of the contracts because they are not careful in understanding the contents and immediately agree to the contracts given. Awareness of the new law is awakened when there is a problem originating from an agreement. The contract will protect the legal business relationship carried out by business actors. Therefore, a legal

understanding of the design, interpretation, implementation, and settlement of contract law disputes is very important for business actors, especially now that many business actors use electronic media to enter into a contractual agreement, both on a national and international scale.

In positive law in Indonesia electronic contracts have been regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions. Electronic contracts are not much different from contracts in general, it's just that the delivery is through electronic media, while contracts are generally written on paper. Therefore electronic contracts are also subject to the Civil Code as general law rules. In article 18 paragraph 1 of Law No. 11 of 2008, it is explained that electronic transactions that are deferred in electronic contracts are binding on the parties who make them.

For standard contract issues made by one of the parties without any negotiation from the party concerned, both in the Civil Code and in Law no. 11 of 2008 there is no definite provision regarding pre-contracts where a final agreement has not been reached between the parties who will make the contract, including electronic contracts. For example, as stated in Article 1338 and Article 1320 of the Civil Code which only regulates freedom of contract at the time a contract occurs. Whereas in Article 20 paragraph (1) and paragraph (2) of Article 18 paragraph (1) of Law No. 11 of 2008 which explains only the binding power of an electronic contract. According to Saifuddin, the standard clause is not included in the agreement because the position of the business actor in the agreement containing these conditions can be said to be that of a private legislator (*Legio particuliere whatever*) (Saifuddin, 2012)

The standard agreement made by Shopee to Merchants contains an exoneration clause, namely a clause that transfers responsibilities and obligations, while the exoneration clause contained in the contents of the cooperation agreement between Shopee Food and its Merchants is: “ The Merchant acknowledges and agrees that the actual contract for the sale of the Product is directly between the Merchant and the Customer, and Shopee is not a party to the contract and does not accept responsibility, liability or liability in connection with the contract, so any disputes arising from the Product are between the Merchant and the Customer concerned”.

Shopee Food's non-participation in being responsible for replacements is a form of exoneration clause. The use of the exoneration clause in a standard agreement as long as the author is traced, there are no specific provisions governing it, but use is often found and based on the principle of consensual as stipulated in Article 1320 of the Civil Code and is also based on Article 1338 of the Civil Code concerning freedom of contract. Meanwhile, according to Law No. 8 of 1999 concerning consumer protection, it is explained that the existence of a standard clause that frees or transfers the responsibility of the contracting party is not allowed. Even though basically the Merchant's position here is not as a consumer of Shopee Food, it is explained in the agreement that the two parties to the

agreement are Shopee Food and Merchant and according to the Consumer Protection Act, both are prohibited from transferring responsibility.

With the explanation described above, the partnership cooperation contract between Shopee Food and the Merchant is valid by law, even though it contains various standard clauses that use exoneration clauses or responsibility transfer agreements.

C. CONCLUSION

We cannot avoid that the Indonesian people especially want speed and practicality in all matters, as well as making agreements which are very easy if done by electronic media. However, everything has advantages and disadvantages, a faster process of making the resulting agreement is not made carefully and pays attention to the balance in it. Here, Shopee Food is not good at recruiting its partners on this newest platform, because in this case, the partners are in a weak position so they do not have the authority to negotiate regarding the contracts they agree to. Based on the discussion above, the author concludes that the basis of this cooperation agreement is that it contains clauses that if viewed in Islamic law are contrary to the principles of the contract. One of the clauses that will conflict with the principles of the contract is the possibility that Shopee will change the contents of the agreement at a later date. In addition, the agreement also violates the principle of balance of achievement in Islam, because the shopee party can suspend services to the Merchant without notification and cannot be contested, and in Islam, the agreement becomes *Fasad* (cancellable). While the conclusion according to positive law is that the partnership cooperation agreement between Shopee Food and Merchants, in general, does not violate the terms of the agreement but it contains an exoneration clause which according to Article 18 paragraph (1) of Law No. 8 of 1999 concerning consumer protection is not permitted, exoneration clause may be based on Article 1320 of the Civil Code and the principle of freedom of contract in Article 1338 of the Civil Code.

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