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ALGORITHMIC INJUSTICE IN E-CONTRACT TERMINATION: ISLAMIC AND INDONESIAN LEGAL ANALYSIS OF SHOPEE'S RETURN POLICY

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Abstract

Algorithmic automation in digital transactions often overlooks substantive justice, as evidenced by the automatic approval feature within Shopee's return and refund policy, which triggers systemic injustice for sellers. This research aims to analyze the unilateral termination of contracts by algorithmic systems through the perspectives of Islamic law and Indonesian positive law. Employed a socio-legal research method with case, statutory, and comparative approaches, this study discussed the anomaly of termination as a system act. The results indicated the auto-acc feature created technical coercion that paralyzes the seller's verification rights and violates the principle of *'an tarāḍin*, thereby triggering buyer moral hazard risks. Theoretically, this research contributes through the integration of Contractual Balance Theory and *maqāṣid al-mu'āmalah* to identify bargaining position distortions in algorithmic termination. The research conclusion affirmed that the platform's absolute discretion violates the doctrine of good faith and property protection (*ḥifẓ al-māl*). It is recommended to establish a digital economic law harmonization model that mandates human oversight, and compensation mechanisms (*ta'wīḍ*) to ensure the integrity of a substantively fair e-commerce ecosystem.

Keywords: Algorithmic injustice; Digital justice; E-Contract termination; Islamic law; Indonesian positive law; Shopee auto-acc.

Abstrak

Otomatisasi algoritma dalam transaksi digital sering kali mengabaikan keadilan substantif, sebagaimana terlihat pada fitur persetujuan otomatis pada fitur pengembalian barang/dana Shopee yang memicu ketidakadilan sistemik bagi penjual. Penelitian ini bertujuan menganalisis terminasi akad sepihak oleh sistem algoritma melalui perspektif Hukum Islam dan Hukum Positif Indonesia. Menggunakan metode penelitian hukum sosiologis dengan pendekatan kasus, perundang-undangan, dan perbandingan, penelitian ini membedah anomali terminasi sebagai tindakan sistem (system-act). Hasil penelitian menunjukkan bahwa fitur auto-acc menciptakan paksaan teknis (technical coercion) yang melumpuhkan hak verifikasi penjual dan mencederai asas 'an tarāḍin, sehingga memicu risiko moral hazard pembeli. Secara teoretis, penelitian ini memberikan kontribusi melalui integrasi Teori Keseimbangan Kontraktual dan maqāṣid al-mu'āmalah untuk mengidentifikasi distorsi posisi tawar dalam terminasi algoritmik. Simpulan penelitian menegaskan bahwa diskresi absolut platform melanggar doktrin itikad baik dan perlindungan harta (ḥifẓ al-māl). Direkomendasikan adanya model harmonisasi hukum ekonomi digital yang mewajibkan pengawasan manusia (human oversight) dan mekanisme kompensasi (ta'wīḍ) guna menjamin integritas ekosistem e-commerce yang berkeadilan substantif.

Kata kunci: Hukum Islam; Hukum positif Indonesia; Keadilan digital; Ketidakadilan algoritmik; Shopee auto-acc; Terminasi kontrak elektronik.

A. INTRODUCTION

In a highly dynamic global economy, contracts or covenants (*'aqd*) serve as fundamental instruments ensuring the validity and legal certainty of business transactions.[1] Whether in conventional or Sharia systems, the *'aqd* functions as a legal foundation which binds parties to an agreement with specific legal consequences.[2] Essentially, an *'aqd* is not merely a statement of intent (will agreement), but a moral instrument demanding accountability and justice. Islamic law regulates covenants through the principles of *'adl* (justice), *riḍā* (mutual consent), and *amānah* (honesty).[3] Meanwhile, in Indonesian positive law, contracts are subject to the principles of freedom of contract and legal certainty as regulated in

[1] Meriza Elpha Darnia et al., "Hukum Perjanjian Dalam Ekonomi Dan Bisnis Di Indonesia," *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 2, no. 6 (2023): 244–52.

[2] Faizza Al-Fathi Muslimah and Roma Faslah, "Analisis Hukum Positif Dan Syariah Di Indonesia Pada Kontrak Bisnis Dan Jual Beli Perdagangan," *Jurnal Ekonomi Dan Bisnis Digital* 2, no. 4 (2025): 2305–12.

[3] Adil Alfarizi Nst and Imsar Imsar, "Analisis Fiqih Muamalah Dalam Transaksi Jual Beli Online Menurut Perspektif Hukum Islam Dan Syariah," *Jurnal Ilmiah Ekonomi, Akuntansi, Dan Pajak* 2, no. 3 (2025): 191–201, https://doi.org/10.61132/jieap.v2i3.1543.

the Indonesian Civil Code (KUHPerdata).[4]

The importance of contract termination has increased alongside the growth of digital transactions employing algorithmic automation systems.[5] In practice, contract dissolution often triggers complex legal disputes due to differing interpretations of post-contractual rights and obligations.[6] Islamic law dissects termination through the concepts of *fasakh*, *iqālah*, and *ta'līq sharṭī*, which are targeted toward *maṣlaḥah* (public interest). On the other hand, positive law views termination as a consequence of breach of contract (*wanprestasi*) or the fulfillment of cancellation conditions within the contract.[7] However, digital technology has created an anomaly through algorithmic termination, such as the automatic approval (auto-acc) feature for return requests on the Shopee platform. This policy approves buyer return claims unilaterally without manual verification from the seller, thereby transforming a human negotiation process into a rigid systemic execution.

This imbalance in bargaining power indicating the implementation of digital *'aqd* often ignores substantive justice and the Principle of Contractual Balance. In principle, a contractual balance Theory emphasizes justice is found in substance, not just the procedural formalistic outward agreement but in the fair distribution of rights and obligations throughout the contract's duration to prevent exploitation by parties with economic or technological dominance. Termination in Islamic law is an instrument to end a legal relationship fairly to avoid harm (*maḍarrah*).[8] This principle aligns with *Maqāṣid al-Sharī'ah*,

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[4] Suryono Suwikromo, "Pemberlakuan Asas Kebebasan Berkontrak Menurut Hukum Perdata Terhadap Pelaksanaannya Dalam Praktek," *Lex Privatum* 3, no. 4 (2015).

[5] Dimas Herliandis Shodiqin and Salahuddin Rijal Arifin, "Optimalisasi Penerapan Akad-Akad Dalam Produk Digital Perbankan Syariah," *At-Tasharruf: Jurnal Kajian Ekonomi Dan Bisnis Syariah* 3, no. 2 (2021): 64.

[6] Frensiska Ardhiyaningrum, "Strategi Penyusunan Kontrak Yang Mengurangi Resiko Sengketa Bisnis," *Parlementer: Jurnal Studi Hukum Dan Administrasi Publik* 1, no. 4 (2024): 246–59.

[7] Fitria Andriani and Imran Zulfitri, "Berakhirnya Kontrak Dalam Perspektif Hukum Islam Dan Hukum Perdata," *Al-Ahkam: Jurnal Syari'ah Dan Peradilan Islam* 1, no. 2 (2021): 18–31.

[8] Devid Frastiawan Amir Sup, Selamet Hartanto, and Rokhmat Muttaqin, "Konsep Terminasi Akad Dalam Hukum Islam," *Ijtihad: Jurnal Hukum Dan Ekonomi Islam* 14, no. 2 (2020): 137–52, https://doi.org/10.21111/ijtihad.v14i2.4684.

particularly the aspect of *ḥifẓ al-māl* (protection of property).[9] The auto-acc phenomenon on Shopee reflects a clash between digital pragmatism which pursues efficiency and the principle of *tabayyun* (verification), which protects the rights of business actors.

Previous studies on digital termination typically focus on consumer protection. Pauzi et al. explored the actualization of *khiyār al-majlis* in electronic contracts and affirmed the validity of cancellations despite the lack of physical presence.[10] Furthermore, Abd. Hafid et al. stated that the principle of *khiyār* in e-commerce is permissible as long as it upholds justice and does not cause *ḍarar* (harm).[11] However, both studies tend to position *khiyār* as a normative right of the buyer without dissecting the impact of system automation, which potentially creates systemic injustice (*ẓālim*) for the seller.

Under the positive law standpoint, research regarding the cancellation of *Cash On Delivery* (COD) transactions emphasizes the need for preventive protection for couriers and sellers due to unilateral cancellations.[12] Meanwhile, studies on Paylater services highlighted compensation liability based on the Consumer Protection Law and OJK Regulation No. 22 of 2023.[13] Although these have touched upon legal liability, existing literature remains "consumer-centric." Additionally, positive law references need to be expanded to Government Regulation (PP) No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, which mandates that system providers operate reliably and be responsible for losses caused by their automated systems.

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[9] Akhamd Sobrun Jamil, "Pembatalan Kontrak Dalam Hukum Transaksi Islam," *Mu'amalat: Jurnal Kajian Hukum Ekonomi Syariah* 1, no. 1 (2018): 55–66.

[10] Muhammad Pauzi et al., "Actualizing Islamic Economic Law in the Digital Era: A Study of the Application of Khiyar Al-Majlis in Electronic Contracts," *Juris: Jurnal Ilmiah Syariah* 23, no. 2 (2024): 205–14, https://doi.org/10.31958/juris.v23i2.11573.

[11] Abd. Hafid et al., "The Application of Khiyar Principles to E-Commerce Transaction: The Islamic Economy Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (March 2024): 403, https://doi.org/10.22373/sjhk.v8i1.20890.

[12] Chandra Kirana and Yunanto Yunanto, "Perlindungan Dan Tanggung Jawab Hukum Atas Pembatalan Transaksi Jual Beli Melalui Metode Cash On Delivery Di E-Commerce," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (October 2023): 1977, https://doi.org/10.37680/almanhaj.v5i2.3443.

[13] Renaldy Octavianus Tandiono and Heru Saputra Lumban Gaol, "Perlindungan Hukum Bagi Konsumen Terhadap Pembatalan Transaksi Jual Beli Online Menggunakan Metode Paylater," *Kertha Patrika* 47, no. 2 (August 2025): 179, https://doi.org/10.24843/KP.2025.v47.i02.p04.

This research intended to fill this gap by dissecting algorithmic termination as a system-act namely an automated legal action executed by the platform's algorithm which eliminates the seller's right of verification. The novelty of this research lies in the use of a *Maqāṣidiyyah*-Juridical Approach as an Islamic legal analysis, subsequently compared with Indonesian civil law. The *Maqāṣidiyyah*-Juridical Approach is an analytical framework that integrates Sharia objectives (protection of justice and property) with empirical positive legal norms in examined whether a digital policy fulfills the element of *maṣlaḥah* or merely legitimizes loss.[14] Through this theory, this study criticizes the automatic approval feature on Shopee's goods/funds return feature, which potentially contains defects of will and violations of the principle of *'an tarāḍin* (mutual consent) due to elements of technical coercion against the seller.

B. METHOD

This research applied socio-legal research, which integrated normative and empirical methods to analyze the functioning of law within the digital society.[15] The research leveraged a case approach to dissect the anomalies of the auto-acc feature, a statute approach to examine relevant regulations, and a comparative approach to juxtapose Islamic law with Indonesian positive law. The focus of the study is directed toward the analysis of electronic contract termination procedures within Shopee's return policy.

Data sources for this research consisted of primary and secondary data. Primary Data: Obtained through a documentary study of Shopee's official policies (Terms of Service) and digital observations of transaction dispute practices. As a unit of analysis, this study utilized testimonials from e-commerce practitioners on the YouTube channel Achmad Alfan as an illustrative case to depict the phenomenon of technical coercion experienced by sellers.[16] It is important to clarify that this case is illustrative, providing an empirical overview of the auto-acc algorithm's

[14] Aulia Fitri and Astika Nurul Hidayah, "Tinjauan Yuridis Maqashid Syariah Terhadap Penghimpunan Dana Bank Syariah," *Ecobankers : Journal of Economy and Banking* 4, no. 2 (August 2023): 136–45, https://doi.org/10.47453/ecobankers.v4i2.1093.

[15] Afif Noor, "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research," *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (April 2023): 94, https://doi.org/10.56444/jidh.v7i2.3154.

[16] Achmad Alfan, "Seller Terancam Rugi Dengan Fitur Pengembalian Barang Di Acc Otomatis Shopee," www.youtube.com, 2025.

operational mechanism, and is not intended to represent the entire seller population generally. The subject was selected through judgmental sampling based on its relevance, information richness, and the credibility of the source as a marketplace specialist content creator with approximately 35,000 subscribers who actively document operational dynamics and transaction disputes on digital platforms. Secondary Data: Includes primary legal materials such as the Indonesian Civil Code (KUHPerdata), the Consumer Protection Law, Government Regulation (PP) No. 71 of 2019, along with Islamic legal materials sourced from the contemporary *fiqh mu'āmalah* literature.

Data analysis was conducted qualitatively by using the content analysis method to identify systemic patterns of contract (*'aqd*) termination.[17] To accommodate the demands for a thorough investigation, this research evaluated two theoretical frameworks. The first, Theory of *Maqāṣid al-Mu'āmalah*: Used to examine whether termination automation fulfills the elements of *taḥqīq al-manāfi'* (realization of benefits) and *daf' al-mafāsid* (prevention of harm). The analysis focuses on whether the auto-acc system ensures *ḥifẓ al-māl* (protection of property) for both parties or instead legitimizes *ḍarar* (loss) for the seller.

Second, Principle of Contractual Balance: Used to examine the procedural distribution of rights and obligations. This theory serves to assess whether the removal of the seller's verification rights in Shopee's automatic approval feature for returns/refunds violates the principle of proportionality and balanced bargaining position in contract law. All collected data are synthesized through systematic interpretation techniques. This process aims to find a common ground between the demands of technological efficiency and the certainty of legal protection, in order to formulate a model for harmonizing digital economic law that achieves substantive justice.

C. RESULTS AND DISCUSSION

1. The Integration of *Maqāṣid al-Mu'āmalah* and Contractual Balance in Assessing Algorithmic Termination

The usage of *maqāṣid al-mu'āmalah* (the objectives of Islamic commercial law) as an analytical tool for contract termination stems from the understanding that the primary aim of the Sharia is the realization of public interest (*jalb al-maṣāliḥ*) and the prevention of harm (*dar' al-*

[17] Klaus Krippendorff, "Content Analysis: An Introduction to Its Methodology" (Thousand Oaks, California: SAGE Publications, Inc., 2019).

mafāsid), particularly regarding the protection of wealth (*ḥifẓ al-māl*) and transactional justice. Within this framework, *maqāṣid khāṣṣah* (specific objectives) served as crucial evaluative parameters. Drawing upon Bin Bayyah's elaboration from the Maliki school of Ibn 'Āshūr's thought, there are five fundamental principles that must be fulfilled integratively: *al-rawāj* (circulation of wealth), *al-wuḍūḥ or al-shafāfiyyah* (transparency), *al-ḥifẓ* (preservation of wealth), *al-thabāt* (legal certainty), and *al-'adl* (justice), whereby the acquisition of wealth must not disadvantage other parties.[18] This principle of balance aligns with the normative foundations of modern contract law, which aims to ensure that the distribution of rights and obligations does not result in exploitative structural injustice. In the common law tradition, this has evolved through the doctrine of good faith, which demands respect for the reasonable expectations of the other party; thus, unilateral actions that sacrifice such expectations are qualified as a violation of the principle of balance.[19]

In actual context, the priorities of *maqāṣid* are structured around the legitimate acquisition of wealth and its preservation through the pillar of *at-tarāḍī* (mutual consent). Bin Bayyah emphasizes that *maqāṣid* cannot be detached from social reality (*marāṣid al-wāqiʿāt*),[20] as evidenced by the historical precedent of Umar bin Khattab, who suspended the *ḥadd* (prescribed penalty) for theft during a famine for the sake of substantive justice.[21] This dynamism necessitates a critical reading of the variables of time and place in a proportional manner.[22] Synchronously, Hesselink demonstrates that in European civil law, the principle of balance is

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[18] Abdullah ibn Shaikh Mahfud ibn Bayyah, *Maqashid Al-Muamalah Wa Marashid Al-Waqi'at*, cet. ke 5 (Dubai: Al-Muwatta' Center, 2018).

[19] E. Allan Farnsworth, "Good Faith Performance and Commercial Reasonableness under the Uniform Commercial Code," *The University of Chicago Law Review* 30, no. 4 (1963): 666, https://doi.org/10.2307/1598757.

[20] Shofa Robbani, Abu Yasid, and Sanuri Sanuri, "The Revitalization of Maqasid Al-Muʻamalat According to Abdullah Bin Bayyah and Its Implications on Islamic Law," *Research, Society and Development* 10, no. 14 (October 2021), https://doi.org/10.33448/rsd-v10i14.21295.

[21] Ishaq Ishaq and Muannif Ridwan, "A Study of Umar Bin Khatab's Ijtihad in an Effort to Formulate Islamic Law Reform," *Cogent Social Sciences* 9, no. 2 (December 2023), https://doi.org/10.1080/23311886.2023.2265522.

[22] Muhtar Solihin, Alfin Maulana Haryadi, and Rohanda Rohanda, "Islamic Jurisprudence (Fiqh Science) in an Epistemological Perspective," *International Journal of Social Science and Human Research* 07, no. 12 (December 2024): 9617, https://doi.org/10.47191/ijsshr/v7-i12-100.

codified in the Common Frame of Reference (CFR) to prevent dominant parties from exploiting disparities in bargaining power to impose disproportionate terms.[23] Broadly speaking, the essence of Sharia objectives demands the protection of rights from all forms of injustice (*ẓulm*), including the abuse of contractual position at every stage of the legal relationship.[24]

As an instrument to optimized the analytical tool, *maqāṣid al-muʿāmalah* positions the contract as an instrument to achieve a balance of rights, where termination whether through *fasakh* (rescission), *iqālah* (mutual cancellation), or *khiyār* (contractual options) must be tested based on its cause (*'illah*) and impact. This procedural dimension of contractual balance pertains to the fair distribution of rights, particularly in situations of changed circumstances. Burton argues and contends that good faith prohibits the exploitation of contractual discretion at the expense of the other party's interests a condition termed opportunistic performance.[25] At the international level, the UNIDROIT Principles adopt contractual balance as an imperative norm, requiring that unilateral contract termination be conducted with reasonable notice and in good faith to protect the affected party.[26]

The implementation of the principle of balance in contract termination demands procedures that recognize the rights of the parties equally and protect the weaker party from the impacts of unilateral dissolution. Hassan affirmed in Islamic law, the validity of contract termination (*fasakh*) is not determined solely by formal requirements but through commutative justice, which necessitates a balance between what is given and what is received; a substantial imbalance able to invalidate

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[23] Martijn W Hesselink, "The Common Frame of Reference as a Source of European Private Law," *Tulane Law Review* 83, no. 4 (2008): 919–71.

[24] Tia Choliza and Muhammad Aziz Zakiruddin, "Legal Protection For Customers In Murabahah Transactions Within Islamic Banking," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 4, no. 2 (December 2025): 257–72, https://doi.org/10.32332/muamalah.z28svr77.

[25] Steven J. Burton, "Breach of Contract and the Common Law Duty to Perform in Good Faith," *Harvard Law Review* 94, no. 2 (December 1980): 369, https://doi.org/10.2307/1340584.

[26] J. Basedow, "Uniform Law Conventions and the UNIDROIT Principles of International Commercial Contracts," *Uniform Law Review - Revue de Droit Uniforme* 5, no. 1 (January 2000): 129–39, https://doi.org/10.1093/ulr/5.1.129.

the Sharia legitimacy of the *fasakh*.[27] Comair-Obeid also highlighted the procedural distinction between *iqālah* (mutual rescission), which reflects perfect balance, and *fasakh* (unilateral dissolution), which is subject to strict provisions to limit abuse by the stronger party.[28]

Methodologically, Islamic law is adaptive and teleological, where the legitimacy of contract termination must be tested through the attainment of the Sharia's objectives themselves.[29] If termination results in the elimination of justice or causes greater harm (*mafsadah*), it cannot be justified from a *maqāṣid* perspective. The integration of the ethical-preventive dimensions of Sharia with international standards like UNIDROIT created a comprehensive epistemological framework for assessing the legality of contemporary legal actions, ensuring that the use of technology or discretion in contract termination does not eliminate the principles of prudence and the protection of property rights.

2. E-Contract Termination Under Islamic and Indonesian Legal Frameworks

a. E-Contract Termination in Islamic Economic Law

Termination is defined as an act of limitation and the ending of a pre-established legal relationship. In the context of contract law, contract termination refers to a legal act performed to end an agreement before the entire substance of the contract has been fully executed or before the implementation process reaches its final stage. Termination is not a natural form of expiration such as when a contract ends due to all rights and obligations of the parties have been fulfilled but is rather an active measure to cease the validity of an agreement due to specific causes. This distinction is significance because termination is often triggered by a breach of contract, fundamental changes in circumstances, or mutual agreement to end the legal relationship.[30]

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[27] Hussein Hassan, "The Promissory Theory of Contracts in Islamic Law," *Yearbook of Islamic and Middle Eastern Law Online* 8, no. 1 (January 2001): 45–72, https://doi.org/10.1163/221129802X00058.

[28] Nayla Comair-Obeid, "Particularity of the Contract's Subject-Matter in the Laws of the Arab Middle East," *Arab Law Quarterly* 11, no. 4 (1996): 331–49, https://doi.org/10.1163/157302596X00020.

[29] Ahmed Gad Makhlouf, "Continuity and Change of Traditional Islamic Law in Modern Times: Tarjīḥ as a Method of Adaptation and Development of Legal Doctrines," *Oxford Journal of Law and Religion* 12, no. 1 (March 2024): 55–74, https://doi.org/10.1093/ojlr/rwad010.

[30] Syamsul Anwar, *Hukum Perjanjian Syariah: Studi Tentang Teori Akad Dalam Fikih Muamalat*, cet. ke-2 (Jakarta: Rajawali Pers, 2010).

According to Islamic legal terminology, this dissolution of a contract is known as *fasakh*, understood as a legal act to terminate a contract due to specific reasons that render the agreement unable to continue. The mechanism of *fasakh* can be triggered by a violation of contract terms, defects in the subject matter, or an inability to fulfill obligations, aiming to restore the parties to their original position (*status quo ante*). Thus, *fasakh* is not merely the severing of a contract, but a means to uphold justice, preserve public interest (*maṣlaḥah*), and avoid injustice (*ẓulm*) within an obligation.[31]

Particularly study of *fiqh al-muʿāmalah* (Islamic commercial jurisprudence), several factors legitimize contract termination or *fasakh*.[32] First is mutual cancellation (*al-iqālah*). Although a contract may be binding (*lāzim*), parties are given the space to terminate it if there is reciprocal agreement.[33] This practice is based on the *ḥadīth* of the Prophet saw. narrated by Ibn Ḥibbān regarding the virtue of accepting a request for cancellation from a party who regrets the transaction. For *al-iqālah* to be legally valid, specific conditions must be met: (a) it must involve a contract capable of being rescinded (*fasakh*), (b) it requires mutual consent, (c) the subject matter must still be intact, and (d) the price must not exceed the original cost, as its nature is a rescission rather than a new transaction.[34]

Second, termination can be executed through the mechanism of *ʿurbūn* or a down payment. *ʿUrbūn* grants one party the right to cancel the contract with the consequence of forfeiting the down payment. While the Mālikī school prohibits it, the Ḥanbalī school and contemporary scholars through the OIC Islamic Fiqh Academy permit it. This has subsequently been adopted in Indonesia via DSN-MUI Fatwa No. 13/DSN-MUI/IX/2000 and aligns with Article 1464 of the Indonesian Civil Code (KUHPerdata).[35]

Furthermore, contract termination can occur due to conditions where the contract cannot be performed. This is generally triggered by

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[31] Nilamsari, *Kontrak (Akad) Dan Implementasinya Pada Perbankan Syariah Di Indonesia* (Banda Aceh: PeNA, 2015).

[32] Anwar, *Hukum Perjanjian Syariah: Studi Tentang Teori Akad Dalam Fikih Muamalat*.

[33] Sup, Hartanto, and Muttaqin, "Konsep Terminasi Akad Dalam Hukum Islam."

[34] Zumrotul Wahidah, "Berakhirnya Perjanjian (Akad) Menurut Hukum Islam," *Tahkim: Jurnal Peradaban Dan Hukum Islam* 3, no. 2 (2020): 21–38.

[35] Meri Piryanti, "Akibat Hukum Perjanjian (Akad) Dan Terminasi Akad," *At-Tahdzib* 2, no. 1 (2014): 1–26.

the failure of one party to fulfill their obligations, or default (*wanprestasi*), as regulated in Article 1238 of the Civil Code. From a *fiqh* perspective, the aggrieved party may demand performance or compensation. However, in modern Islamic law, judicial rescission is increasingly accepted to restore the parties to a position as if the contract never existed.[36]

Finally, termination occurs automatically if the performance of the contract becomes impossible (impossibility of performance) due to external factors. If the subject matter of the contract is destroyed while in the seller's possession before delivery whether due to negligence or force majeure the contract ends by operation of law, and the price must be refunded.[37] In the perspective of positive law, this is equivalent to the concept of overmacht (acts of God) as explained in Article 1245 of the Civil Code, which exempts a party from legal liability due to events beyond human control.[38] These dynamics demonstrate that the legality of Sharia contracts places heavy emphasis on legal certainty and economic justice,[39] especially in responding to technological developments such as smart contracts, which require synchronization between Sharia values and positive law.[40]

b. E-Contract Termination under Indonesian civil law

In Indonesia civil law system, contract termination or the cessation of an agreement is understood as a legal act that results in the ending of a

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[36] Isna Yunita and Rangga Suganda, "Interkonektif Hukum Islam Dan Hukum Positif Pada Berakhirnya Kontrak (Akad) Bisnis Syariah," *Jurnal Ilmiah Ekonomi Islam* 9, no. 3 (2023): 3705, https://doi.org/10.29040/jiei.v9i3.11002.

[37] Andriani and Zulfitri, "Berakhirnya Kontrak Dalam Perspektif Hukum Islam Dan Hukum Perdata."

[38] Tim Visi Yustisia, *Kitab Undang-Undang Hukum Perdata (KUH Perdata)* (Jakarta Selatan: Visimedia, 2015).

[39] Yoga Tri Cahyo and Marisa Kurnianingsih, "Pacta Sunt Servanda: Legal Dynamics in Indonesian Context," *Walisongo Law Review (Walrev)* 5, no. 1 (April 2023): 31–54, https://doi.org/10.21580/walrev.2023.5.1.14585; Nur Fadilah, "Transformation of Sharia Law by Blockchain and Smart Contracts in Modern Transaction Dynamics," *Sipakainge: Inovasi Penelitian, Karya Ilmiah, Dan Pengembangan (Islamic Science)* 3, no. 4 (2025): 106, https://doi.org/https://doi.org/10.35905/sipakainge.v3i4.14576; Bagus Setya Puji Saputra et al., "Relevansi Legalitas Akad Syariah Dalam Mewujudkan Kepastian Hukum Dan Keadilan Ekonomi Islam," *Jurnal Ilmu Sosial Dan Humaniora* 1, no. 3 (2025): 588, https://doi.org/https://doi.org/10.63822/qd375r30.

[40] Munawar Munawar, "The Legality of Smart Contract in the Perspectives of Indonesian Law and Islamic Law," *Al-Istinbath : Jurnal Hukum Islam* 7, no. 1 (May 2022): 269, https://doi.org/10.29240/jhi.v7i1.4140.

contractual relationship before all obligations have been perfectly fulfilled. Termination does not merely mean the expiration of a contract due to the passage of time, it also encompasses dissolution due to breach, a new agreement, or the emergence of circumstances that render the performance of the contract impossible.[41] The juridical basis for this mechanism is anchored in the Indonesian Civil Code (KUHPerdata), specifically Article 1381, which identifies various causes for the extinction of obligations, ranging from payment and rescission to the merger of debts, novation, and prescription (statute of limitations).

Theoriticaly, termination serves as an instrument of legal protection for parties acting in good faith to maintain a balance of rights and obligations. Therefore, the act of termination must rely on a normative foundation consisting of fundamental principles, including the principle of consensualism (Article 1320), the principle of freedom of contract and good faith (Article 1338), the principle of *pacta sunt servanda* (Article 1340), and the principle of legal certainty. Consequently, contract termination in positive law is not an absolute unilateral act but a legal step that must prioritize the principles of justice, equality, and proportionality.

The Civil Code constructs several forms of contract dissolution categorized as termination. First, termination through mutual rescission, as regulated in Article 1338 of the Civil Code, which emphasizes that an agreement cannot be revoked without the consent of both parties. This form is a manifestation of the principle of consensualism, where a contract is extinguished based on the will of the parties to return to their original positions. Second, termination due to default or breach of contract (*wanprestasi*), as stipulated in Articles 1266 and 1267 of the Civil Code. In this context, termination is remedial; the aggrieved party has the right to petition for the cancellation of the contract through the court to restore contractual balance via claims for damages, interest, and costs. Third, termination due to force majeure (fortuitous events), referring to Articles 1244 and 1245 of the Civil Code. This termination is objective because the debtor is exempted from legal liability due to events beyond human control that make performance impossible. Fourth, termination may occur if the purpose of the contract can no longer be achieved,

[41] Zumrotul Wahidah, "Berakhirnya Perjanjian Perspektif Hukum Islam Dan Hukum Perdata," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 3, no. 2 (October 2020): 21–37, https://doi.org/10.29313/tahkim.v3i2.6435.

implicitly related to Article 1238 of the Civil Code, even if a default or force majeure has not yet factually occurred. This phenomenon, known in modern contract law doctrine as frustration of purpose, is beginning to be recognized in Indonesian judicial practice as a step toward terminating an agreement to uphold the principles of justice and utility when the substance or primary intent of the agreement has vanished due to fundamental changes in conditions.[42]

In the dynamics of contemporary civil law in Indonesia, contract termination is no longer viewed solely through the textual lens of Article 1381 of the Civil Code but has evolved through progressive judicial interpretation. Positive legal practice now recognizes that the legitimacy of terminating a contract depends heavily on the fulfillment of "reasonable grounds" a concept adopted from the doctrine of good faith in comparative civil law, such as the Common Law (breach of condition) and German civil law (*Wegfall der Geschäftsgrundlage*).[43]

This doctrinal expansion affirmed that termination cannot be carried out arbitrarily, even if a unilateral termination clause exists in an electronic contract. This aligns with Supreme Court jurisprudence (e.g., Supreme Court Decision No. 1568 K/Pdt/1991), which states that the right to cancel an agreement must be based on good faith and must not violate the principles of legal certainty or substantive justice. In the digital context, this principle is reinforced by the doctrine of undue influence (*misbruik van omstandigheden*), which allows for contract termination if there is an extreme imbalance of bargaining power, as implicitly regulated in Government Regulation (PP) No. 71 of 2019.[44]

Moreover, in Indonesian judicial practice, termination due to

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[42] Ndubuisi Nwafor et al., "Modern Issues and Challenges in Contract Frustration," *Business Law Review* 43, no. Issue 3 (June 2022): 122–25, https://doi.org/10.54648/BULA2022017.

[43] Hannes Henke, "Contract Law in Germany," in *Are Legal Systems Converging or Diverging?* (Cham: Springer International Publishing, 2024), 149–68, https://doi.org/10.1007/978-3-031-38180-5_9; Sören Koch, "An Introduction to German Legal Culture," in *Handbook on Legal Cultures* (Cham: Springer International Publishing, 2023), 611–62, https://doi.org/10.1007/978-3-031-27745-0_16; Kevin Bork and Manfred Wandt, "'Utmost' Good Faith in German Contract Law," *Zeitschrift Für Die Gesamte Versicherungswissenschaft* 109, no. 2–4 (November 2020): 243–54, https://doi.org/10.1007/s12297-020-00478-6.

[44] Wiwin Dwi Ratna Febriyanti, "Abuse of Circumstances (Misbruik Van Omstandigheden) in Developing Contract Law in Indonesia," *US-China Law Review* 19, no. 2 (April 2022), https://doi.org/10.17265/1548-6605/2022.02.003.

default no longer always requires a formal notice of default (*somasi*) if the purpose of the contract has fundamentally failed shift that aligns with the doctrine of anticipatory breach. This doctrine grants the non-breaching party the right to terminate the contract early if the counterparty clearly demonstrates an inability or unwillingness to perform.[45] The balance between consumer protection and legal certainty for business actors is also found in the principle of proportionality of remedies in comparative civil law, which emphasizes that termination should be the last resort (*ultimum remedium*) if other mechanisms for rectifying performance are no longer feasible.[46] By integrating these judicial precedents and doctrinal comparisons, Indonesian positive law transforms from a set of rigid rules into an adaptive instrument for digital transaction anomalies, while ensuring that every termination of an obligation remains within the corridors of business ethics and justice for all parties.

3. Shopee's Auto-Acc Feature as Algorithmic Termination

The trend of systemic injustice within the Shopee marketplace has become fore through concerns voiced by practitioners and sellers, notably Achmad Alfan. The crux of the issue lies in a shift in return and refund procedures, which now utilize an automatic approval (auto-acc) feature driven by the system. Unlike previous regulations that provided space for mediation or a rejection option for sellers, this latest system approves requests immediately after a buyer uploads visual evidence. Although Shopee sets formal requirements, such as the mandatory attachment of photos or videos, the reality on the ground indicates a failure in data validation. Experiments conducted by users have proven that the system approves return claims even when false or irrelevant evidence is used, indicating that this algorithmic termination disregards material verification in favor of procedural speed.[47]

This imbalance is exacerbated by operational policies deemed

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[45] Dewi Sulistianingsih et al., "Juridical Consequences of Anticipatory Breach as a Form of Breach of a Contract," *Journal of Indonesian Legal Studies* 9, no. 1 (May 2024): 131–54, https://doi.org/10.15294/jils.vol9i1.4537.

[46] Dewa Gede Giri Santosa, Erna Dewi, and Ahmad Irzal Fardiansyah, "Constraining Bankruptcy as an Ultimum Remedium," *International Journal of Business, Law, and Education* 7, no. 1 (January 2026): 35–42, https://doi.org/10.56442/ijble.v7i1.1332.

[47] Alfan, "Seller Terancam Rugi Dengan Fitur Pengembalian Barang Di Acc Otomatis Shopee."

asymmetrical and detrimental to the seller, including:[48]

1) Withholding of Funds: The release of sales proceeds is now withheld for up to 7 business days if the buyer does not confirm receipt.
2) Warranty Gaps: Buyers can still file for a return even if the order status is marked as "Completed," as long as the warranty period remains valid.
3) Moral Hazard Risks: The system creates opportunities for irresponsible buyers to return damaged, counterfeit, or substituted goods through the "Change of Mind" (*Garansi Bebas Pengembalian*) feature, even when supported by fraudulent photo/video evidence.
4) Cost Burden: Beyond the loss of the physical goods, sellers are burdened by high administrative fees, free shipping costs, and a low probability of winning the appeal process after an automatic decision has been rendered by the system.

According to the latest provisions as of August 4, 2025, Shopee constructs this policy as a transactional protection mechanism that grants buyers limited authority based on the physical condition of the goods or specific platform programs. However, the platform retains absolute discretion in reviewing applications on a case-by-case basis, including the right to claw back funds from the seller's balance to fulfill buyer refunds, even if those funds had been previously released. In operationalizing programs like Change of Mind Guarantee, Shopee maintains full control over product lists and procedures, which may be altered at any time without prior notice to the parties.[49]

Within a procedural protection perspective, sellers are indeed granted the right to submit a written objection or appeal, supported by photo/video evidence, within a specific timeframe after a return request is filed and accepted by the application. If the seller fails to respond within that deadline, the system automatically deems that no objection exists, making the decision final and binding.[50] In practice, however, the reality on the ground is significantly different. When a return request is automatically approved by the system and the seller exercises their right to object, the system frequently rejects the seller's appeal despite the submission of valid evidence. Contrasting this with Shopee's previous

[48] Alfan.

[49] Admin Shopee, "Kebijakan Pengembalian Barang Dan/Atau Dana," help.shopee.co.id, 2025. Accessed May 5, 2026.

[50] Shopee. Accessed May 5, 2026.

policies, Achmad Alfan stated:

> 'In the previous policy, before the system accepted a buyer's request, it would first coordinate with the seller. It did not simply accept the filing report immediately.'[51]

On the other hand, the distribution of shipping costs is managed attributionally, sellers are required to bear the costs if an error occurs on their part, while in other scenarios, Shopee holds the sole authority to determine the party responsible for the costs.[52] This phenomenon of contract termination within the digital ecosystem characterized by refund-before-return mechanisms theoretically aims to guarantee service integrity, but factually creates significant material and operational vulnerabilities for the business continuity of entrepreneurs in Indonesia.

4. Algorithmic Injustice in E-Contract Termination and the Harmonization of Digital Economic Law

This research identified a paradigm shift in return procedures on the Shopee platform, moving from human centric mediation mechanisms toward algorithmic termination of obligations. The findings highlighted by practitioners such as Achmad Alfan reveal that the automatic approval feature for Shopee's return/refund system popularly known as the auto-acc system has eliminated the seller's right to initial verification. Technically, the system processes the termination of the contract immediately after a buyer uploads visual evidence, without a substantive audit of the data's validity. The algorithm's failure to distinguish between authentic and fake evidence creates a massive moral hazard loophole, allowing buyers to exploit the "Change of Mind Guarantee" (*Garansi Bebas Pengembalian*) to commit fraud. This condition is worsened by fund retention policies and the possibility of filing returns after an order is marked as "Completed," which empirically places sellers in a vulnerable position regarding material and operational losses without balanced systemic protection.

The implementation of *maqāṣid al-muʿāmalah* as an analytical tool demonstrates that Shopee's auto-acc feature has become disoriented in its pursuit of public interest (*jalb al-maṣāliḥ*). Referring to Bin Bayyah's elaboration from the Maliki school economic activity is only Sharia-

[51] Alfan, "Seller Terancam Rugi Dengan Fitur Pengembalian Barang Di Acc Otomatis Shopee."

[52] Shopee, "Kebijakan Pengembalian Barang Dan/Atau Dana." Accessed May 5, 2026

compliant if it integratively fulfills five core principles, including *al-wuḍūḥ* (transparency) and *al-'adl* (justice). In this case, algorithmic termination creates ambiguity (*gharar*) for the seller due to the loss of control over the verification of the contract's object. Sellers lose the right to *al-ḥifẓ* (preservation of wealth) because the system prioritizes transaction speed over validation accuracy, which in turn violates the principle of *al-thabāt* (legal certainty) in ownership. Jurisprudentially, this study aligns with the spirit of the contemporary Maliki and Hanbali schools, which emphasize protection against harm (*ḍarar*) and substantive justice through the principle of *al-mursalah*. Just as Umar bin Khattab suspended the *ḥadd* during a famine for the sake of substantive justice, digital efficiency must not sacrifice the fundamental right of a seller to protect their property through an accurate reading of social reality (*marāṣid al-wāqiʿāt*).

Viewed from the principle of contractual balance, Shopee's policy exhibits an extreme disparity in bargaining power. The doctrine of good faith requires respect for the legitimate expectations of both parties; however, the removal of the seller's verification rights constitutes a form of opportunistic performance that sacrifices seller interests for buyer loyalty. Although Shopee provides an appeal mechanism, the low probability of success creates procedural injustice that contradicts the Common Frame of Reference (CFR) standards and UNIDROIT principles. Hassan asserts that in Islamic law, the validity of termination (*fasakh*) relies heavily on commutative justice. A unilateral termination by an algorithm without an initial opportunity for objection is a form of technical coercion that violates the principle of *ʿan tarāḍin* (mutual consent). This is consistent with Supreme Court jurisprudence (Decision No. 1568 K/Pdt/1991), which states that the cancellation of an agreement must be based on good faith; thus, the absolute discretion of this system can be categorized as undue influence (*misbruik van omstandigheden*).

A critical dialogue between Positive Law and Islamic law shows that the primary issue lies in the system's "blindness" toward data integrity. Positive Law, through Article 1267 of the Civil Code, grants the aggrieved party the right to claim damages, but this procedure is highly bureaucratic for small-scale sellers in the e-commerce ecosystem. Fund retention and post-transaction return policies create economic uncertainty that contradicts the spirit of Article 1243 of the Civil Code. In the perspective of the Compilation of Sharia Economic Law (KHES), Article 47 explicitly grants the aggrieved party the right to cancel actions that harm their interests. However, technically, this rule is paralyzed by the

platform's asymmetrical architecture. The contract termination performed by Shopee's system should be remedial intended to restore balance rather than providing incentives for buyers to commit fraud through the practice of *akl al-māl bi al-bāṭil* (wrongfully consuming the wealth of others).

Furthermore, both Islamic law and Indonesian positive law demand a balance between legal certainty and substantive justice. The use of technology in contract termination must not eliminate the principles of prudence and the protection of property rights (*ḥifẓ al-māl*). The current algorithmic termination at Shopee is closer to the concept of a flawed *fasakh* because it ignores the right of *al-iqālah* (mutual agreement) and prioritizes technocratic efficiency over moral justice. This dynamic necessitates a synchronization between Sharia values and positive law through the implementation of more ethical smart contracts, where algorithms must integrate transparent oversight functions to realize distributive justice for sellers, buyers, and platform providers alike. Without systemic improvements to verification mechanisms, this automatic return policy is no longer a form of business efficiency, but a disregard for legal responsibility and Sharia business ethics that threatens the sustainability of the digital business ecosystem in Indonesia.

Concerning the phenomenon of Shopee's automatic approval feature for return and refund requests (auto-acc), Islamic law and Indonesian positive law offer complementary perspectives, albeit with different points of emphasis. From an Islamic law perspective, the case experienced by Achmad Alfan is a matter of moral-theological integrity. A contract in Islam is viewed as *ʿaqd maʿa Allāh* (an agreement witnessed by Allah). Thus, any form of termination triggered by data manipulation (such as fraudulent video evidence) is considered a betrayal of spiritual responsibility and the ethics of *muʿāmalah* (commercial transactions).[53] Islamic law strictly rejects the arbitrary dissolution of contracts. An automatic refund mechanism that lacks fair verification for the seller risks falling into the practice of *ẓulm* (injustice). Conversely, Islamic law prioritizes the principles of *taʿwīḍ* (compensation) and *radd al-ḥaqq* (restoration of rights) to ensure the positions of both parties are

[53] Nurhalis, "Consumer Protection In The Perspective Of Islamic Law And Law Number 8 of 1999," *Jurnal Ius Kajian Hukum Dan Keadilan* 3, no. 3 (2015), https://doi.org/https://doi.org/10.12345/ius.v3i9.267.

rebalanced without one party being unilaterally disadvantaged.[54]

Meanwhile, under Indonesian positive law, this case highlights the tension between formal legal certainty and consumer protection. On one hand, Law No. 8 of 1999 (UUPK) designates consumers as the party requiring protection within the digital economic landscape.[55] Moreover, Article 4 of the UUPK explicitly asserts the consumer's right to obtain justice, which implicitly means that such justice cannot be built upon the losses of a business actor acting in good faith.[56] Indonesian civil law, through Article 1243 of the Civil Code, provides a guarantee of compensation if a breach occurs; yet, Shopee's automation procedure obscures the boundaries of such default (*wanprestasi*) because the system often fails to discern material truth.[57] While Islamic law emphasizes honesty and substantive blessing (*barakah*), Positive law demands objective legal formalism as an instrument of certainty. The core problem at Shopee is the disappearance of adequate contractual supervision, where termination occurs without meeting objective legal requirements because it is based solely on an algorithm susceptible to manipulation.[58]

To overcome the imbalance between consumer protection and the certainty of seller rights, a model for harmonizing digital economic law required one that is not merely mechanistic but also ethical and proportional. This can be achieved through a synthesis of three main pillars for the Indonesian marketplace ecosystem: First, the implementation of *restitutio in integrum* based on multi-layered

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[54] Holijah Holijah and M. Rizal, "Islamic Compensation Concept: The Consumer Dispute Settlement Pattern in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 2022): 98, https://doi.org/10.22373/sjhk.v6i1.8951.

[55] Ulul Azmi Khafifi, "Consumer Protection in the Perspective of Law No. 8 of 1999 and the Perspective of Islamic Law for Users of Boat Transportation Services in Medang Hamlet, West Secotong Village," *Ex Aequo Et Bono Journal Of Law* 2, no. 1 (July 2024): 55, https://doi.org/10.61511/eaebjol.v2i1.2024.862.

[56] Mia Maulia Fajriana, "How Are Business Actors Responsible for Consumer Losses in Default Cases? An Analysis of Indonesian Consumer Protection Law," *Journal of Law and Legal Reform* 2, no. 2 (April 2021): 187–96, https://doi.org/10.15294/jllr.v2i2.46614.

[57] Elizabeth Prima Ratrisari et al., "Dynamics of Contract Cancellation in Civil Law and Its Relevance for Consumer Protection," *International Journal of Law and Emerging Research* 20, no. 2 (2025), https://doi.org/https://doi.org/10.21070/ijler.v20i2.1290.

[58] Cathleen Lie et al., "Pengenalan Hukum Kontrak Dalam Hukum Perdata Indonesia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 918, https://doi.org/10.31316/jk.v7i1.4831.

verification. This integrates the principle of restoring the original position with the Sharia principle of prudence, ensuring platforms do not "auto-acc" disputed claims without human oversight or high-accuracy AI to protect the seller's property rights (*ḥifẓ al-māl*); Second, the realization of information transparency and algorithmic accountability. Since the provision of accurate information is proven to provide consumer comfort,[59] platforms must disclose the parameters of automatic returns to sellers, aligning with the principles of honesty in *muʿāmalah* and transparency in modern contract law; Third, the establishment of a *taʿwīḍ* mechanism for aggrieved sellers. This requires strengthening regulations (through revisions of the KHES or implementing regulations of the UUPK) that mandate platforms to provide compensation if the system erroneously favors a buyer engaged in moral hazard. This harmonization ultimately bridges Islamic morality, which emphasizes substantive honesty, with modern legal rationality, which emphasizes formal certainty. Thus, the digital economic ecosystem in Indonesia can realize a civilized justice where technological efficiency does not sacrifice the socio-economic stability of small and medium-sized business actors.

D. CONCLUSION

This research concluded that the automatic approval (auto-acc) feature for return and refund requests on the Shopee platform constitutes a form of algorithmic termination of obligations that triggers systemic injustice and a defect of will in electronic contracts. The study finds that such automation creates technical coercion that paralyzes the seller's right to verification, thereby violating the principle of *ʿan tarāḍin* (mutual consent). Through a *maqāṣid*-juridical approach, this system is proven to fail in realizing taḥqīq al-manāfiʿ (the fulfillment of benefits) because it prioritizes procedural speed over material truth. In the perspective of *maqāṣid al-muʿāmalah*, this is deemed to legitimize *ḍarar* (harm) and the practice of *akl al-māl bi al-bāṭil* (the wrongful consumption of others' wealth).

The novelty of this research emphasized that system-acts conducted without human intervention have distorted the principles of contractual balance and bargaining power. Juridically, the platform's absolute discretion in executing unilateral refunds violates the doctrine

[59] Hyuk Jun Cheong and Margaret A. Morrison, "Consumers' Reliance on Product Information and Recommendations Found in UGC," *Journal of Interactive Advertising* 8, no. 2 (March 2008): 38–49, https://doi.org/10.1080/15252019.2008.10722141.

of good faith as well as the principle of *al-wuḍūḥ* (transparency) in *maqāṣid al-muʿāmalah.* This imbalance exposes sellers to buyer moral hazard that remains undetected by algorithms; consequently, the resulting termination is substantively flawed under both Islamic law and Indonesian civil law (Articles 1338 and 1243 of the Civil Code).

As a recommendation, a revision of digital regulations is required to mandate human oversight in every dispute to protect the seller's property rights *(ḥifẓ al-māl)*. Platforms must integrate algorithms which are more transparent and accountable, as well as provide an automatic *taʿwīḍ* (compensation) mechanism for business actors aggrieved by system errors. The harmonization of formal legal certainty and Sharia substantive justice is an absolute prerequisite to ensuring the integrity of the digital economic ecosystem in Indonesia, keeping it both ethical and proportional.

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