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Pseudo-Consent in Indonesian Digital Commerce: Reframing *Hurriyah at-Ta'aqud* through *Maqasid* Systems Analysis

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ABSTRACT

Indonesian e-commerce and fintech increasingly rely on clickwrap terms that convert consent into a procedural "I Agree", creating pseudo-consent and widening power and information asymmetries. This article reframes *hurriyah at-ta'aqud* (freedom of contract) by testing whether digital assent satisfies *ridha*, *bayan* (clarity), and *ikhtiyar* (voluntariness) in a plural, multicultural marketplace. Using juridical-normative research and document analysis of standard clauses from Shopee, Tokopedia, and GoPay, the study applies Jasser Auda's Maqasid Shariah systems approach (cognition, wholeness, openness) to evaluate substantive validity beyond formal compliance. Findings show recurring exoneration clauses that shift system, data, and delivery risks to users, embedding *jahalah* and *gharar* and conflicting with *la darar* (no-harm) and *hifz al-mal* (protection of wealth). The paper proposes a two-layer validity model procedural legality and maqasid-based fairness supported by indicators for invalidating harmful clauses and redesigning notice-and-choice interfaces. It recommends integrating *amanah* and *shiddiq* as enforceable governance standards, strengthening consumer remedies and regulatory oversight in Indonesia's digital commerce.

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1. INTRODUCTION

The Industrial Revolution 4.0 has radically transformed the landscape of contemporary *muamalah*, shifting physical encounters (*majlis al-aqd*) toward boundless virtual spaces. In Indonesia, this phenomenon is characterized by the massive adoption of e-commerce and fintech, which has altered interaction patterns through mass digital contracts (Hasan et al., 2020). However, as transactions are compressed into algorithms, questions regarding the technical validity of these digital contracts within the Sharia framework have become increasingly critical (Muneeza & Mustapha, 2019). In this ecosystem, transactions that were once based on verbal negotiation are now compressed into algorithms and digital interfaces, where thousands of transactions occur within seconds without face-to-face interaction (Hasan et al., 2020).

The specific problem arising within this digital ecosystem is the erosion of substantive consent. Platform providers unilaterally draft Terms and Conditions, placing consumers in a "take it or leave it" position (Hasan et al., 2020). This condition creates a glaring asymmetry of information and power, where consumers are often trapped in "pseudo-consent," clicking "I Agree" without truly understanding (*jahalah*) the complex and lengthy contents of the agreement (Hassanah, Wahyudi Wahyudi, Norazlina Abdul Aziz, 2023). As analyzed by Faizin et al., (2025), current electronic signature mechanisms and digital checkboxes often fail to meet the requirements of *bayan* (clarity) and *ikhtiyar* (voluntariness) in *fiqh*, reducing *ridha* (consent) to a mere procedural formality devoid of cognitive comprehension. Furthermore, these standard clauses are often infiltrated by exoneration clauses that release platforms from liability for system failures or data breaches, which is diametrically opposed to the principles of justice (*tawazun*) and the protection of property (*hifz al-mal*) in Islam (Muthoifin, Sana Ashraf, 2025).

Despite extensive discourse on standard contracts, a significant research gap remains. Previous studies have generally polarized into two camps: positive law literature using a "Law and Economics" approach (Western) to justify the efficiency of standard contracts, or Islamic economic literature that still revolves around the validity of "halal" products, while neglecting the digital contract infrastructure (Pelita et al., 2024). There is currently no research offering a substantive validity model grounded in *Maqashid Shariah* to examine the fairness of clickwrap clauses. This vacuum is the focus of this article: how to reconstruct the principle of freedom of contract (*hurriyah at-ta'aqud*) so that it does not become a legitimizing tool for digital exploitation (Agnata Mudi, Magdhalena Tasik Todingrara, 2025).

Based on this urgency, this study formulates three primary research questions: (1) How does the clickwrap mechanism create a defect of will (pseudo-consent) that violates the requirement of *ridha* in a contract?(2) How does the Maqashid Shariah perspective, particularly the La Dharar (no harm) principle, assess the validity of exoneration clauses that shift system risks to consumers? and (3) What is the ideal reconstruction of the *hurriyah at-ta'aqud* principle to ensure substantive justice in digital transactions?

To address these questions, this study employs a normative juridical research method using conceptual and statutory approaches (Soekanto & Mamudji, 2001). The primary unit of analysis consists of standard clauses on dominant digital platforms in Indonesia, contrasted with authoritative *fiqh muamalah* texts. The analysis is conducted using Jasser Auda's Systems Approach to evaluate whether a contract fulfills the features of cognition, integrity, and system openness, transcending the mere formal validity of classical *fiqh* (Auda, 2008).

This article offers three original contributions to Islamic economic law literature. First, conceptually, it proposes a redefinition of *hurriyah at-ta'aqud*, framed by Maqashid values (the protection of the vulnerable). Second, normatively, this study establishes new parameters for invalidating exoneration clauses containing *gharar* (uncertainty). Third, practically, the article proposes the integration of *Amanah* (trustworthiness) and *Shiddiq* (honesty) values as standards for digital contract governance that can be adopted by regulators (Bakri, 1996).

2. METHODS

This study adopts a qualitative paradigm and a normative legal research type (juridical-normative) grounded in library research. This approach was chosen based on the doctrinal and conceptual characteristics of the object of study, namely the effort to reconstruct the principle of *hurriyah at-ta'aqud* (freedom of contract), which is an abstract norm, to then be contextualized with empirical phenomena in the form of standard digital clauses (Soekanto & Mamudji, 2001). In this design, the reality of e-commerce is not measured statistically, but rather understood as a social text that must be reread through the interpretation of authoritative Sharia texts (Zed, 2014).

The data sources in this study are classified into primary and secondary data. Primary data is sourced from authoritative texts in Islamic law (*nash*), including the Qur'an, Hadith, and classical fiqh muamalah books that discuss the pillars and conditions of contracts. Meanwhile, secondary data include regulations on electronic transactions (ITE Law and the PMSE Government Regulation). To bridge the normative gap with empirical reality, this study specifically conducted a document analysis on the Terms of Service (ToS) and Privacy Policies of three major digital platforms in Indonesia: Shopee (Marketplace), Tokopedia (Marketplace), and GoPay (Fintech). These documents were selected as the unit of analysis to identify the operationalization of exoneration clauses and pseudo-consent mechanisms currently affecting consumers.

Data collection was carried out through systematic documentation and literature search techniques. The collected data was then classified, verified for validity through *sanad* criticism (for *naqli* arguments) and substance criticism (for expert opinions), and then analyzed. Data analysis techniques used descriptive-analytical methods with deductive reasoning. The author describes the facts of standard digital clauses found in the selected platforms, then analyzes them using Jasser Auda's *Maqashid Syariah* approach, which emphasizes a systems approach (Auda, 2008). Within the framework of this analysis, *Maqashid Syariah* is used not merely as a literal protector, but also as a validity criterion to determine whether the standard clause has fulfilled the elements of property protection (*hifz al-mal*) and distributive justice for the parties.

3. RESULTS AND DISCUSSION

3.1 Redefining Hurriyah At-Ta'aqud in Digital Transactions

The transformation of transactions from physical assemblies to cyberspace has created a fundamental shift in the manner of contracting (kaifiyat al-aqd). In contemporary e-commerce practices, human-to-human interaction has been replaced by human-to-machine interaction, where agreements are expressed in the form of standard form contracts. This phenomenon, as discussed in a 2025 study on the relevance of the principle of freedom of contract, marks a reduction in the meaning of freedom from “freedom to formulate the content of an agreement" to merely "freedom to accept or reject" (take it or leave it). Consumers are faced with a fait accompli, where clicking the "Agree" button is not a manifestation of pure free will, but rather a systemic compulsion to access services (Agnata Mudi, Magdhalena Tasik Todingrara, 2025). This creates a paradox in Islamic economics, which upholds hurriyah at-ta'aqud (freedom of contract) as the main pillar of contract validity.

The hegemony of standard clauses in e-commerce creates what can be called "pseudo-consent." On the surface, consumers appear to consent because they have taken active steps (clicking), but deep down, they often lack understanding (jahalah) of the content of the contract they have agreed to. A 2023 study on Standard Clause Problems confirms that standard clauses are often designed with complex and lengthy legal language, which psychologically discourages consumers from reading them (Hassanah, Wahyudi Wahyudi, Norazlina Abdul Aziz, 2023). This condition contradicts the findings in Islamic legal analysis of electronic contracts, which emphasize that qasad (intention/purpose) and ma'rifah (knowledge) are absolute requirements for valid consent. Without adequate knowledge, the consent given by consumers is legally flawed (Friatna et al., 2022).

The unfairness of this contract structure is exacerbated by violations of the principle of balance (at-tawazun). In a 2023 study reviewing the principle of contractual balance in the digital age, it was found that platform providers have a dominant position to determine rights and obligations unilaterally (Elian, 2023). This creates an imbalance in which business risks are often borne disproportionately by consumers. From a Sharia economics perspective, as elaborated in the 2025 study E-Commerce Transactions under Islamic Economic Law, this imbalance involves the elements of ghaban (exploitation) and tadlis (covert fraud), as one party takes advantage of the other's ignorance for unilateral gain. The principle of distributive justice, which is the spirit of muamalah, is violated by algorithm structures that favor corporations (Widodo & Muinah, 2025).

One of the most obvious manifestations of unfair standard clauses is the inclusion of exoneration clauses, which exempt businesses from legal liability. A 2024 analysis of exoneration clauses shows that many e-commerce platforms explicitly state that they are not responsible for system errors, delivery delays, or defective goods caused by their partners (Devinda Diana Valentina & Suraji Suraji, 2024). In fact, in muamalah jurisprudence, sellers or service providers are bound by khiyar aib (the right of option due to defects) and dhaman (guarantee of compensation). A critical review of standard clauses and the principle of good faith confirms that relinquishing responsibility for losses suffered by consumers is a form of injustice that nullifies the blessings of the transaction, even though technically the consumer has "agreed" to the clause (Achmad et al., 2025).

The issue becomes even more complicated when standard clauses cover complex hybrid contract schemes. With a single click of purchase, consumers often unknowingly agree to a sale and purchase agreement, a delivery agreement (*ijarah*), and even a financing/insurance agreement (kafalah/ju'alah). A recent study on Islamic law regarding hybrid contracts in 2024 highlights the risk of contract confusion (*shafqatain fi shafqah*) in this model (Jafar et al., 2024). Research on the integration of e-commerce with the Islamic economic system in 2024 requires clarity regarding the distinction between contracts (infishal) to avoid usury or gharar. However, standard clauses often blur these boundaries, making consumers unaware that they may have agreed to late fees (usury) or other hidden costs (Pelita et al., 2024).

Standard clauses also provide a hiding place for *gharar* (uncertainty). Research on legal protection against gharar in 2024 found that product descriptions and return policies are often written in ambiguous language in terms and conditions (Muthoifin, Sana Ashraf, 2025). This is reinforced by DSN-MUI Fatwa No. 146/2021, which prohibits gharar in electronic transactions, but this fatwa is often ignored in the drafting of standard contracts for non-Sharia platforms (Dewan Syariah Nasional MUI, 2021). Consumers are forced to accept the risk of uncertainty regarding the quality of goods or delivery times without clear compensation, a condition that in classical literature is categorized as *gharar fahish* (severe uncertainty), which can invalidate the contract.

This systemic vulnerability is exacerbated by the broader context of digital finance. As noted in a literature review by Hasan et al., (2020), the integration of financial technology into Islamic finance creates a complex environment where the development of regulatory frameworks and Sharia compliance standards lags behind technological adoption. This regulatory gap allows for the unchecked implementation of automated execution systems that prioritize strict code adherence over situational context. Machines do not recognize compassion or subjective force majeure conditions experienced by consumers. In this context, consumer protection based on research on standard clauses in 2023 is very weak because positive law is not yet fully capable of reaching these rigid algorithms, leaving consumers trapped in inhumane contract enforcement (Soediono et al., 2023).

Regulatory-wise, Indonesia actually has protective instruments such as Government Regulation No. 80/2019 on Electronic System Trading, which requires clarity in contracts (Pemerintah Republik Indonesia, 2019). However, a study on e-commerce business licenses from the perspective of *Maqashid Syariah* in 2024 shows that there is a gap between regulation and implementation (Agus Salim Ferliadi, 2024). E-commerce platforms tend to draft standard clauses solely for the purpose of protecting the company's assets (hifz al-mal), while neglecting consumers' hifz al-mal rights. Existing regulations often lag behind innovations in digital business models, so that standard clauses remain an effective tool of domination. In contemporary Maqashid discourse, the preservation of wealth extends to digital assets, making the protection of consumer funds a fundamental objective that cannot be compromised by unilateral terms (Akram Laldin & Furqani, 2013).

The crux of this issue is the erosion of good faith in contract drafting. References to E-Commerce in Sharia Business Law in 2020 emphasize that in Islam, the principles of shiddiq (honesty) and amanah (trustworthiness) must underpin every agreement (Prawira, 2020). However, the practice of hiding harmful clauses on pages that are difficult to access or using small fonts indicates bad faith. Consumers are not treated as equal partners in transactions, but rather as objects for data and fund extraction. This is the antithesis of the principle of ukhuwah in Islamic economics.

From the above description, it can be concluded that the application of standard clauses in e-commerce today has distorted the true meaning of hurriyah at-ta'aqud. The freedom that exists is only illusory, limited by unilaterally designed digital walls. As noted in the 2024 study on E-Commerce from a Sharia Economics perspective, without regulatory intervention based on Sharia values, the digital ecosystem will continue to perpetuate contractual injustice (Mochamad Aldianza, 2024). Therefore, it is necessary to redefine the concept of digital contracts so that they are not only valid in form (formal), but also fair in substance, restoring the dignity of humans as sovereign subjects of law rather than merely passive users.

3.2 Anatomy of Injustice: Empirical Evidence of Exoneration Clauses on Indonesian Digital Platforms

To validate the argument regarding the erosion of the *tawazun* (balance) principle and the dominance of standard clauses, this study conducted a document analysis of the Terms of Service of three dominant digital platforms in Indonesia: Shopee (Marketplace), Tokopedia (Marketplace), and GoPay (Fintech). Based on a review of legal documents accessed in February 2025, a pattern of exoneration clauses was identified that systematically releases platform liability and shifts risk onto consumers. The following are the three main typologies of these clauses:

3.2.1. System Failure Liability Release

In marketplace platforms, clauses were found that explicitly refuse to guarantee system performance. Platforms designate services on an "as is" basis, which legally exempts them from the obligation to ensure the system operates without interruption.

Empirical Fact (Cited from Shopee Terms of Service, Article 13.1):

"*Services are provided 'as is' and 'as available' without any warranties... Shopee does not guarantee that the service will be uninterrupted or error-free... The User acknowledges that Shopee is not liable for technological failures or security procedures*."

This clause contradicts the principle of *hifz al-mal* (protection of property). The platform derives economic benefit (*ghunm*) from every transaction but refuses to bear the risk (*ghurm*) when the digital infrastructure it provides experiences technical failures detrimental to consumers.

3.2.2. Shifting Risk of Illegal Access and Account Security

In the fintech and digital wallet sectors, standard clauses often place full security responsibility on the user. This closes the avenue for consumers to claim compensation even if hacking occurs due to vulnerabilities in the platform's own system.

Empirical Fact (Cited from GoPay User Terms, User Provisions Article):

"We are not liable for indirect and immaterial losses... experienced by you or third parties... We are not liable for any losses arising from Platform Partners' system failures... The security and confidentiality of your Account are entirely your responsibility."

This clause violates the principle of *Amanah* (trust/integrity). In the Islamic perspective, fund custody service providers are obligated to safeguard customer assets (*wadi'ah*). Absolute release of liability for losses caused by third parties or partner failures is a form of injustice (*zulm*) that imposes *dharar* (harm/loss) on the weakest party.

3.2.3. Disclaimer of Warranty

In sale-and-purchase transactions, platforms often position themselves as pure intermediaries, thereby claiming immunity from liability for product defects or discrepancies in goods sold by merchants on their platforms.

Empirical Fact (Cited from Tokopedia Terms and Conditions, Limitation of Liability Section):

"Tokopedia makes no representations or warranties of any kind, express or implied, regarding merchantability, fitness for a particular purpose, or non-infringement... Tokopedia is not responsible for the accuracy or truthfulness of content provided by other users."

This clause is diametrically opposed to the right of *khiyar aib* (option due to defect), which is a pillar of consumer protection in *fiqh muamalah*. Consumers are forced to accept the risk of uncertainty (*gharar*) regarding product quality without adequate protection guarantees from the transaction venue provider.

The findings above confirm that, in the current digital ecosystem, the principle of hurriyah at-ta'aqud (freedom of contract) has been reduced to a mere "click to agree" formality without substantive negotiation, forcing consumers to accept disproportionate risks. Such lopsided standard contracts, where one party holds absolute power while the other bears all risks, arguably constitute *unconscionability* or *zulm* (injustice) in Islamic finance transactions (Trakic, 2018).

3.3 Structural Inequality: Digital Contracts and the Exclusion of Vulnerable Groups in a Multicultural Perspective

The issue of standard digital contracts cannot be separated from the sociological context of a pluralistic society. From the perspective of multicultural studies, the dominance of clickwrap agreements creates new layers of injustice that disproportionately affect vulnerable groups, particularly the lower-middle economic class and groups with low digital literacy. Current digital contract mechanisms are not neutral; rather, they exhibit class bias that widens the injustice gap through two mechanisms of exclusion. Recent studies on Digital Transformation and Financial Inclusion assert that, without Islamic ethical intervention, fintech can have the potential to exclude underserved minorities from fair economic access (Hartono, 2024). Without proper ethical regulation, digital financial inclusion risks exacerbating the exclusion of underserved minorities who lack digital literacy, rather than empowering them (Shinkafi et al., 2019). Digital platforms, especially lending services, often target the unbanked segment of society. Kamila and Samsuri (2025), in their research on Islamic Fintech, highlight that digital contracts in Peer-to-Peer (P2P) Lending services must be designed to promote financial access without *harm*, rather than trapping low-income groups with hidden fees. From the lens of Sharia Economics, this phenomenon violates the principle of protection for the *mustadh'afin* (the oppressed/weak).

First, the legal language barrier (legalese barrier) acts as an instrument of cognitive exclusion. Terms and Conditions on both global and national platforms are often drafted in complex, convoluted legal language or are available only in English. For marginalized groups or those with limited education, this linguistic structure creates an impenetrable "wall of understanding." Consequently, these groups experience structural *jahalah* (ignorance); they are forced to agree to rules of the game whose language they do not understand. In a multicultural context, this is a form of linguistic discrimination that denies the right of minority groups (educationally speaking) to obtain equal access to justice in economic activities.

Second, economic coercion against the *mustadh'afin* (the oppressed/weak). Digital platforms, particularly lending services (paylater/fintech), often target the unbanked segment of society that lacks access to conventional banking. Platform algorithms are designed to exploit the urgent needs of this group by presenting standard contracts containing high late fees or hidden interest. Unlike the upper class, which possesses options (bargaining power) to choose service providers, vulnerable groups are in a position of duress; they have no choice but to click "Agree" to fulfill basic needs.

From the lens of inclusive Sharia Economics, this phenomenon violates the principle of protection for the *mustadh'afin*. Islam strongly emphasizes that *muamalah* transactions must not become a means for strong groups (corporations) to oppress weak groups. The validity of digital contracts, therefore, must not be measured solely by "formal agreement," but must be tested by whether the contract is fair and friendly to all levels of a diverse society, regardless of their educational background or socioeconomic status. This alignment with ethical protection mirrors the global Maqashid objectives that intersect with Sustainable Development Goals (SDGs) to ensure equitable economic access for all layers of society (Isman et al., 2023). To address these structural gaps, the application of Maqashid Shariah in digital innovation must adopt an adaptive framework. As demonstrated in the implementation of financial contracts in Indonesia, the *istishlahi* (public benefit) principle serves as a crucial bridge between rigid Shariah compliance and the practical, multicultural needs of society, ensuring that financial products remain inclusive rather than alienating specific cultural groups (Nugroho et al., 2024).

3.4 The Problem of Standard Clauses and the Urgency of the La Dharar Principle

The empirical evidence presented above confirms that exemption clauses are not merely theoretical risks but systemic realities. From a Sharia perspective, this practice of unilateral release of liability is diametrically opposed to the fundamental principle of *'La dharar wa la dhirar'*. These clauses serve as a legal mechanism for platform providers to absolve themselves of responsibility for risks that they should bear. As sharply outlined in the 2024 Analysis of the Inclusion of Exemption Clauses in Standard E-Commerce Agreements, this practice often takes the form of a refusal to provide compensation for system failures, logistical delays, and even product discrepancies (Devinda Diana Valentina & Suraji Suraji, 2024). From an economic perspective, this is a form of unfair risk-shifting, in which corporations with vast resources impose potential losses on individual consumers with limited bargaining power.

The potential for harm (danger/loss) in the digital context is no longer merely physical; it extends to digital assets and privacy. Cases of personal data leaks or transaction failures due to system errors are often handled by platforms by invoking "Force Majeure" or "System Error" clauses that consumers agreed to at the outset. Referring to the 2023 study on Consumer Protection Based on Standard Clauses, such clauses place consumers in a vulnerable position without adequate legal protection (Soediono et al., 2023). In fact, data leaks in the digital economy era have a direct impact on the loss of property (*mal*) and honor (*ird*), which are two of the five basic elements that must be protected in sharia (*al-dharuriyat al-khams*).

In Islam, this practice of unilateral release of liability is diametrically opposed to the fundamental fiqhiyyah principle: *"La dharar wa la dhirar"* (There should be no harm and no causing harm to others). This principle, which is reinforced in the 2025 study E-Commerce Transactions under Islamic Economic Law, emphasizes that freedom of contract should not be a gateway to harm (Widodo & Muinah, 2025). Expanding on this, Rapaee and Zen (2025) A comparative study emphasizes that *La Dharar* must serve as the fundamental basis for consumer protection in digital systems; consequently, any exoneration clause that unilaterally shifts systemic risk to individuals is void under the law. If a standard contract is designed in such a way as to protect the interests of one party (the entrepreneur) while exposing the other party (the consumer) to unlimited risk, then that contract is ethically flawed (*morally fashid*), even though it may be considered formally valid under secular positive law.

The existence of *dharar* in standard clauses often stems from the presence of *gharar* (uncertainty). When terms and conditions are ambiguous or overly technical, consumers cannot predict the risks they will face. The 2025 reference on Legal Protection Against Gharar in Sharia E-Commerce emphasizes that consumer ignorance is a loophole that platforms exploit to insert potential losses (Muthoifin, Sana Ashraf, 2025). Similarly, recent research on Smart Contracts from Universiti Islam Sultan Sharif Ali indicates that uncertainty in standard digital contract algorithms must be mitigated through full transparency to meet fairness requirements in Islamic e-commerce (Rafaheh, 2024). In Islamic legal logic, *unchecked gharar leads* to *dharar*. Therefore, clause transparency is not merely an administrative obligation, but an absolute prerequisite for eliminating potential harm to consumers.

The application of the *La Dharar* principle requires a balance between rights and obligations (*tawazun*). Research on Reviewing the Principle of Contractual Balance in the Digital Era Contracts in 2023 shows that current digital contracts are heavily skewed towards business actors (Elian, 2023). Sharia law considers that business risk (*ghurm*) must be directly proportional to potential profit (*ghunm*), in accordance with the principle of *"al-ghurmu bi al-ghunmi"*. It is an injustice if a platform profits from transactions (through service/admin fees) but refuses to bear the risk (*liability*) when a service failure occurs due to their own system.

Furthermore, the inclusion of clauses that *a priori* reject compensation indicates an absence of good faith. In the Critical Study of Standard Clauses and the Principle of Good Faith in 2025, it is stated that good faith is the lifeblood of an agreement (Achmad et al., 2025). Allowing consumers to bear losses due to vendor system errors is not only a violation of the law but also a betrayal of trust. Companies that apply sharia principles should not use standard clauses as a shield of impunity, but rather as an instrument to ensure the certainty of each party's rights in a fair manner.

From the perspective of *Maqashid Syariah*, consumer protection in standard contracts is a manifestation of *hifz al-mal* (preserving wealth). As analyzed in E-Commerce Business Licenses in Indonesia: A Maqasid Syariah Perspective in 2024, the state and regulators are obliged to intervene in the market when market mechanisms fail to protect public wealth from predatory practices (Agus Salim Ferliadi, 2024). Standard clauses that facilitate the loss of consumer funds without compensation (for example, in cases of paylater default due to system downtime or damaged goods that cannot be returned) are a form of institutionalized *akl al-mal bi al-bathil* (consuming wealth through unlawful means).

The challenges of implementing *La Dharar* are increasingly complex in Smart Contracts schemes. Referring to research on Smart Contracts in Islamic Finance in 2024, the immutable nature of blockchain-based contracts can be a double-edged sword (Atiyah et al., 2024). If the program code contains bugs or security vulnerabilities that harm users, the absence of a central authority (in DeFi systems, for example) makes it difficult to enforce the principle of compensation (*dhaman*). Therefore, Sharia audits of contract algorithms are crucial to ensure that the code does not contain harmful logic.

The implications of applying this principle require a reorientation of business objectives. E-commerce companies, especially those that label themselves as sharia-compliant or serve the Muslim market, should not be solely focused on maximizing profits. Referring to E-Commerce in Sharia Business Law in 2020, the business orientation must shift towards achieving *falah* (collective welfare) (Prawira, 2020). Ensuring data security and transaction convenience for partners (consumers) is a form of long-term investment. A blessed business is one that is "risk-mitigated" for all stakeholders, not one that shifts risks to the most vulnerable parties.

In conclusion to this sub-theme, the principle of *La Dharar wa La Dhirar* must be established as a parameter for the material validity of each standard clause. The validity of an e-commerce contract cannot be measured solely by the presence of a "check mark" of approval; it must be tested to determine whether the clauses it contains have the potential to cause harm. If a clause is proven to be exonerative and harmful (unjust), then according to Sharia law, the clause is null and void, and the business operator is obliged to provide compensation (*ta'widh*) to restore the rights of consumers who have been harmed.

Analyzing this standard-clause phenomenon through Jasser Auda's systems approach, it is clear that there is a structural failure in achieving Sharia validity. First, from the perspective of Cognition, the current standard contract system focuses only on formal legality (the act of clicking "Agree") and ignores the parties' substantive understanding of the contract. In Auda's systems theory, cognition requires that the law not only read the text, but also understand the context and intent. Consent without understanding (*pseudo-consent*) is a cognitive failure of the system that violates the principle of *ridha*.

Second, from the aspect of Wholeness, partial standard clauses sever the connection between economic transactions and the moral values of protecting life and property. An Islamic legal system must be viewed holistically; it cannot justify profit on one side (the platform) while allowing loss (*dharar*) on the other (the consumer). The wholeness of the system demands balance (*tawazun*) between its constituent elements.

Third, the aspect of Openness requires that digital contract mechanisms not become rigid closed systems. Immutable (indisputable) exonerating clauses close the space for negotiation and correction, which contradicts the dynamic nature of muamalah. Therefore, the system approach requires the structure of digital contracts to be "open" to the intervention of justice and benefit, and to cancel any clauses that deny consumers access to compensation rights. Without fulfilling these three features of the system conscious cognition, fair integrity, and human openness, the construction of digital contracts fails to achieve *Maqashid Syariah*.

3.5 The Integration of *Amanah* and *Shiddiq* as a Solution to Contractual Inequality

Recent phenomenological studies in the Indonesian business context confirm that the principles of justice (*al-'adl*) manifested through honesty and transparency are not merely ethical choices but structural necessities. In cross-cultural transactions, these values function as the primary mechanism to overcome information asymmetry and establish trust amidst diverse perceptions of justice (Sudana et al., 2024). If the previous sub-theme highlighted structural flaws in standard clauses, this section offers a value-based foundation for reconstruction. To balance unequal power relations between platform providers and consumers, a purely positive legal approach has proven inadequate due to its reactive nature. Therefore, Islam offers a preventive and curative approach by internalizing the principles of *Amanah* (Moral Responsibility) and *Shiddiq* (Honesty/Transparency). As outlined in E-Commerce in Sharia Business Law in 2020, these two values are not merely individual moral attributes, but must be translated into standard operating procedures (SOPs) in electronic transaction systems (Prawira, 2020). Without this foundation, technology will only become a dehumanizing tool for capitalization.

In the context of the digital economy, the meaning of *Amanah* has expanded. *Amanah* is no longer just about safeguarding physical deposits, but also encompasses the integrity of systems and algorithms. E-commerce service providers have a mandate to uphold public trust and provide a secure ecosystem. As proposed in a *Legal and Islamic Economic Review* of financial innovation, the value of *Amanah* must be embedded into the logic of smart contracts to enhance trust in algorithmic fintech (Muhammad Sami, 2025). If the system experiences a failure (glitch) that harms consumers, the principle of *Amanah* requires service providers to fully restore consumer rights, rather than hiding behind technical clauses that exempt them from responsibility.

A concrete manifestation of the loss of *Amanah* is the prevalence of clauses stating that "purchased goods cannot be returned" under any circumstances. This clause is diametrically opposed to the right of *khiyar* (option to cancel) in Islam, which protects buyers against hidden defects (*aib*). Analysis in the 2023 study on Consumer Protection Based on Standard Clauses confirms that *Amanah* requires sellers to guarantee the conformity between the digital description and the physical reality of the goods (Soediono et al., 2023). In the event of a discrepancy, the seller is obliged to provide compensation (*dhaman*) or accept a return (*khiyar aib*). Rejecting complaints on the grounds of standard clauses constitutes a betrayal of the contract itself.

Meanwhile, the principle of *Shiddiq* (Honesty) is presented as a solution to information asymmetry. Atiyah et al. (2024)In evaluating the legitimacy of Smart Contracts, it emphasizes that the value of *Shiddiq* demands total transparency in blockchain design, ensuring there is no "backdoor fraud". This aligns with research findings on blockchain-based Smart Contract implementation, which conclude that automating Shariah compliance can reduce moral hazard if data transparency is guaranteed from the outset (Luayyi, Putri Awalina, 2025). In the virtual world, consumers cannot touch the objects of transaction, so they depend entirely on the information presented. The 2025 reference on Legal Protection Against Gharar in Sharia E-Commerce emphasizes that *Shiddiq* demands full disclosure (Muthoifin, Sana Ashraf, 2025). This means that product descriptions must not use manipulative techniques (*dark patterns*) that exaggerate quality or hide defects. Visual and narrative honesty is an absolute requirement to eliminate *gharar* (uncertainty) that could invalidate the sales contract.

The value of *Shiddiq* must also be applied in pricing structures. The practice of drip pricing (adding hidden costs at the end of the checkout process) is a form of dishonesty that violates the principle of transparency. The 2024 Study on the Integration of E-Commerce with the Sharia Economic System highlights the importance of price clarity (*tsaman*) from the outset of the contract (Pelita et al., 2024). Consumers have the right to know the details of service fees, taxes, and shipping costs transparently before they make a decision. This transparency is not only an ethical obligation but also a prerequisite for authentic consent, where approval is given based on complete information, not because of the app's interface tricks.

In the era of big data, the concept of *Shiddiq* extends to privacy. Consumer personal data is a valuable asset that is often exploited without clear permission. The 2024 E-Commerce Business License Study from the Perspective of Maqasid Syariah emphasizes that transparency in data usage is a fundamental right (Agus Salim Ferliadi, 2024). Platforms must explain honestly why consumer data is collected and with whom it is shared. Hiding data consent clauses in lengthy terms and conditions documents is dishonest and potentially violates *hifz al-ird* (protection of honor/privacy).

Consistent implementation of *Amanah* and *Shiddiq* will foster social trust, the most valuable currency in the digital economy. Research on E-Commerce from the Perspective of Sharia Economics in 2024 shows that trust is a key variable that affects business sustainability (Mochamad Aldianza, 2024). When consumers feel they are being treated honestly and fairly, loyalty will grow organically. Conversely, businesses built on a foundation of dishonesty and trap clauses may reap short-term profits, but will collapse in the long run due to a loss of market trust.

The uniqueness of the Islamic perspective in resolving standard contract issues lies in its dimension of accountability. Islam does not view business contracts merely as civil agreements between humans (*horizontal/hablun min an-nas*), but also as theological agreements with God (*vertical/hablun min Allah*). As elaborated in the 2025 study on E-Commerce Transactions under Islamic Economic Law, the awareness that even the smallest fraud will be accounted for in the afterlife is a far more effective internal control than any external regulation (Widodo & Muinah, 2025). Muslim entrepreneurs who are aware of this eschatological dimension would not dare to create unfair standard clauses, even if positive law allows it.

In practical terms, these principles must be translated into interface design (User Interface/User Experience). *Amanah* and *Shiddiq* require that the cancel button, complaint mechanism, and contract details be made as accessible as possible, not hidden. A Critical Review of Standard Clauses and the Principle of Good Faith in 2025 suggests that platforms provide contract summaries (*key facts statements*) that use simple language so that ordinary consumers can quickly understand their rights and obligations (Achmad et al., 2025). This is a form of the system's partiality towards those in a weak position.

It can be concluded that integrating the values of *Amanah* and *Shiddiq* into digital contract mechanisms is a fundamental solution to reducing power imbalances. Islam is not opposed to the efficiency of standard contracts, but it strongly rejects efficiency achieved at the expense of justice. By making honesty and responsibility the industry standard, e-commerce can transform from a mere free market into a civilized space for *muamalah*, where technology serves humanity within the framework of divine pleasure.

3.6 Reconstructing *Hurriyah at-Ta'aqud*: A Proposal for a Substantive Validity Model

Synthesizing the critique of *pseudo-consent* and exoneration clauses discussed above, this study proposes a reconstruction model for the validity of digital contracts. From the perspective of *Maqashid Shariah*, contract validity must not be limited to "Formal Validity" (the mere presence of a consent checkbox), but must achieve "Substantive Validity" that guarantees justice.

Adopting Jasser Auda's Systems Approach, this substantive validity is measured through three main indicators: Cognition (Understanding), Wholeness (Balance), and Openness (Access to Correction). Drawing upon strict standards from Islamic bioethics as discussed by Alsomali and Hussein (2021) Regarding high-risk technologies, the concept of informed consent in digital contracts must ensure the protection of life and progeny (property/data) through a comprehensive understanding, rather than mere blind consent. Adopting performance standards from the halal industry that demand ethical compliance beyond mere formal legality (Kurnia et al., 2017) The concept of informed consent in digital contracts must ensure comprehensive protection. Table 1 below details these validity indicators as testing parameters for Sharia-compliant digital contracts:

Table 1. Matrix of Substantive Validity Indicators for *Maqashid*-Based Digital Contracts

System Feature (Auda)	Key Sharia Principle	Current State (Issues)	Proposed Validity Indicators	Technical Implementation in App UI/UX
Cognition	Ridha & Bayan(Consent & Clarity)	Pseudo-consent: Consumers click "agree" without reading because documents are excessively long and complex.	Key Fact Statement	Mandatory one-page pop-up display containing crucial points (total price, risks, penalties) before the "Agree" button. Language must be understandable by a 12-year-old child (plain language).
Wholeness	Tawazun & La Dharar(Balance & No Harm)	Exoneration Clauses: Platforms release themselves from liability for system failures or hacking incidents.	Proportional Liability	"As Is" clauses must be removed. Platforms are obligated to bear losses if errors originate from server infrastructure (server-side errors). Risks must be shared, not shifted unilaterally.
Openness	Khiyar & Ishlah(Option Rights & Rectification)	Lock-in Effect: Transactions are final and difficult to cancel; complaint mechanisms are convoluted (dark patterns).	Accessible Cancellation	Availability of easily accessible "Cancel Order" or "Request Refund" features (maximum of 3 clicks).Implementation of an Online Dispute Resolution mechanism.

Source: *Author's Compilation (2025)*

Based on Table 1 above, a digital contract (*clickwrap*) may be declared void under Islamic law (*fasid*/void) if:

1. It conceals information regarding fees or risks within lengthy text (Violating the principle of Cognition/*Bayan*).
2. It contains absolute exoneration clauses releasing the platform from liability for its own negligence (Violating the principle of Wholeness/*La Dharar*).
3. It denies consumers access to file complaints or effect cancellations in the event of system errors (Violating the principle of Openness/*Khiyar*). Furthermore, the integration of Online Dispute Resolution (ODR) mechanisms is essential to

guarantee procedural justice and resolve conflicts efficiently in modern Islamic finance (Oseni & Ahmad, 2015).

This model affirms that *hurriyah at-ta'aqud* (freedom of contract) in Islam is not the liberty for capital owners to arbitrarily establish rules ("freedom of contract" in the absolute sense), but rather a responsible freedom to establish fair transactions ("freedom from contract exploitation").

4. CONCLUSION

Based on a juridical-normative analysis coupled with an empirical examination of standard contracts on major Indonesian digital platforms (Shopee, Tokopedia, and GoPay), this study produces three fundamental conclusions. *First*, the hegemony of digital standard clauses has structurally distorted the principle of hurriyah *at-ta'aqud* (freedom of contract). The empirical findings confirm that the "clickwrap" mechanism creates a phenomenon of "pseudo-consent," where the "Agree" button is merely a procedural formality without substantive understanding (*jahalah*). This mechanism is not neutral; it creates structural barriers that disproportionately impact vulnerable groups and those with low digital literacy, thereby violating the principle of *ridha* (consent) and transforming an equal *muamalah* relationship into a tool of algorithmic domination.

Second, the widespread use of exoneration clauses specifically those releasing platforms from liability for system failures and data breaches is diametrically opposed to the principle of *La Dharar wa La Dhirar*. This study proves that such clauses shift systemic risk (*ghurm*) entirely to consumers while the platform enjoys the profit (*ghunm*), which violates the principle of *tawazun* (balance) and threatens *hifz al-mal* (protection of property). From a Sharia perspective, contracts containing these exploitative clauses are legally void (*fasid*) regarding those specific terms, as they institutionalize unfairness.

Third, as a concrete solution, this study proposes a "Two-Layer Validity Model" for digital contracts. Validity should no longer be measured solely by formal legality (the click), but must pass a substantive validity test based on the integration of *Amanah* and *Shiddiq*. This requires the implementation of specific indicators: (1) The mandatory inclusion of a "Key Fact Statement" (summary of risks/fees) to ensure cognitive understanding; (2) Proportional Liability where platforms must be accountable for their own system errors; and (3) Accessible Cancellation Mechanisms to guarantee the right of *khiyar*. This reconstruction serves as a blueprint for regulators to ensure that the digital economy operates not only on efficiency but on the values of justice and human dignity.

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