

## A Sharia Perspective on E-Commerce Affiliate Marketing in Indonesia: A Study of Shopee Marketplace

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### Abstract

*Traditional face-to-face marketing has evolved significantly since the advent of online systems, leveraging technological advancements to create new models like affiliate marketing. Affiliate marketing has become increasingly prevalent in Indonesia, particularly within e-commerce platforms such as Shopee. As these modern marketing practices expand, ensuring that Islamic values are upheld in their implementation becomes crucial. This calls for a thorough examination of affiliate marketing through the lens of Islamic law. This research, based on a normative legal research methodology, explores the alignment of affiliate marketing practices with the principles of Islamic economic law, specifically scrutinizing the collaboration between Shopee and its affiliate participants. It is found that affiliate marketing, as practiced by Shopee, can be considered permissible under Islamic law, provided that certain conditions are met. The commission-based model employed by Shopee, and its affiliates closely mirrors the contracts of *samsarah* (brokerage) and *wakalah bil ujah* (agency with a fee) in Islamic commercial law. These contracts ensure that the transactions comply with Islamic principles' ethical and legal framework, promoting fairness, transparency, and mutual consent.*

**Keywords:** e-commerce, *samsarah*, *wakalah bil ujah*

### INTRODUCTION

Rapid technological developments has had an impact on our lives. One of the benefits of this technology is that it eases human work in terms of energy, cost, and time.<sup>1</sup> Business operations, including production, distribution, and market are considered more effective with the help of technology.<sup>2</sup> Marketing an item will be easier than conveying information through the Internet. In the digital era, every organization, company, or institution is expected to be able to carry out its activities

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<sup>1</sup> I Kadek Singa Sunjaya and I Made Dedy Priyanto, "Analisa Klausula Eksonerasi Dalam Voucher Elektronik Pada Aplikasi Transportasi Online," *Kertha Semaya: Journal Ilmu Hukum* 8, no. 7 (July 3, 2020): 992–1004.

<sup>2</sup> Kun-Huang Huarng, Dolores Botella-Carrubi, and Tiffany Hui-Kuang Yu, "The Effect of Technology, Information, and Marketing on an Interconnected World," *Journal of Business Research* 129 (May 2021): 314–18, <https://doi.org/10.1016/j.jbusres.2021.03.004>.



by optimizing digital technology.<sup>3</sup> It brings major changes in various aspects of human lives, including in the business economy, in terms of technology uses.

The progress of businesses that use digital technology in Indonesia plays a very important role in the Indonesian and global economies. It can be seen by the large number of startups in Indonesia.<sup>4</sup> Based on the word startup rank data, Indonesia is the 5<sup>th</sup> with 2,341,000 startups.<sup>5</sup> This also indicates that businesses in Indonesia are quickly adapting to technology. The rapid development of digital technology supported by adequate internet access has changed some people's lifestyles to meet their needs, such as online food shopping, clothing, and other necessities. A business that used the internet to receive orders or sell goods and all services in 2020 until the enumeration period ending (August 31<sup>st</sup>) is 90.18%.<sup>6</sup> The data shows a change in marketing strategy from offline to online. Digital marketing is also considered part of e-commerce marketing. It is built from company activities to seek communication, market, and sell their products as goods or services to the public through the Internet.<sup>7</sup>

Affiliate marketing is a widely adopted digital marketing strategy where a seller partners with individuals or entities who can effectively promote their products to a broader market.<sup>8</sup> As described by Prayitno, this system operates on a commission basis, meaning that the seller rewards affiliates—those who drive sales—based on the success of their promotional efforts. The essence of affiliate marketing lies in using unique links provided to affiliates, which track the traffic and sales generated through their marketing activities.<sup>9</sup> When a consumer purchases through an affiliate's link, the affiliate earns a commission. This commission is typically a

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<sup>3</sup> Bipul Kumar et al., “Digital Mediation in Business-To-Business Marketing: A Bibliometric Analysis,” *Industrial Marketing Management* 85 (February 2020): 126–40, <https://doi.org/10.1016/j.indmarman.2019.10.002>.

<sup>4</sup> Sri Ermawati and Putri Lestari, “Pengaruh Startup Sebagai Digitalisasi Bagi Ekonomi Kreatif Di Indonesia,” *Transekonomika: Akuntansi, Bisnis Dan Keuangan* 2, no. 5 (June 22, 2022): 221–28, <https://doi.org/10.55047/transekonomika.v2i5.186>.

<sup>5</sup> “Countries - With the Top Startups Worldwide | Startup Ranking,” [www.startupranking.com](http://www.startupranking.com), n.d., <https://www.startupranking.com/countries>.

<sup>6</sup> Badan Pusat Statistik, *Statistik E-Commerce 2020* (Jakarta: BPS-Statistics Indonesia, 2020).

<sup>7</sup> Madhu Bala and Deepak Verma, “A Critical Review of Digital Marketing,” *International Journal of Management, IT & Engineering* 8, no. 10 (October 2018): 321–39.

<sup>8</sup> Ahmad Afandi et al., “Affiliate Marketing Business Model Education in Promoting Keloria Products,” *Community Empowerment* 7, no. 11 (December 13, 2022): 2009–14, <https://doi.org/10.31603/ce.8268>.

<sup>9</sup> Prayitno, “Sekilas Perkembangan IT Di Indonesia,” *NewsletterGoechi.Com*, 2008.

percentage of the sale, although other compensation methods may be agreed upon, depending on the terms of cooperation between the affiliate and the seller. The flexibility of this model allows it to be tailored to various industries and products, making it a powerful tool in the digital marketing landscape.<sup>10</sup> Affiliate marketing not only expands the reach of the seller but also incentivizes affiliates to maximize their marketing efforts, creating a mutually beneficial relationship that drives sales and brand awareness.<sup>11</sup>

For affiliate marketers and seller, it is a convenience. The affiliate marketers will help the sellers to promote the product and vice versa. The marketers will get commissions from the products they can sell using an affiliate link.<sup>12</sup> The development of affiliate marketing starts when the company finds any possibilities to develop marketing simpler by having partners with other companies, both face-to-face and digital. It makes the company try to use this affiliation. Then, the company found that the affiliate strategy is more effective and makes selling the products and services easier to the partners.<sup>13</sup>

Nowadays, the implementation of affiliate marketing strategies is mostly done through e-commerce. E-commerce is the buying and selling of products, services, and goods over an electronic network from customer to company or consumer to consumer.<sup>14</sup> Therefore, Surawiguna defines **e-commerce** as one of the business mechanisms over electronic that focuses on business transactions based on internet use as a medium to barter goods or services. One of the most popular e-commerce

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<sup>10</sup> Jufryanto Puluhulawa, Lisnawaty W. Badu, and Vifi Swarianata, "Discourse on Affiliate Marketing Platform Trading/Investment from Indonesian Legal Perspective," *KnE Social Sciences*, October 4, 2022, <https://doi.org/10.18502/kss.v7i15.12084>.

<sup>11</sup> Zurina Patrick and Ong Choon Hee, "Factors Influencing the Intention to Use Affiliate Marketing: A Conceptual Analysis," *International Journal of Academic Research in Business and Social Sciences* 9, no. 2 (March 14, 2019): Pages 701-710, <https://doi.org/10.6007/IJARBSS/v9-i2/5608>.

<sup>12</sup> Pritam Chattopadhyay, "The Role of Affiliate Marketing in Digital Space: A Conceptual Approach," *International Journal for Modern Trends in Science and Technology* 6, no. 5 (May 26, 2020): 53–59, <https://doi.org/10.46501/IJMTST060509>.

<sup>13</sup> Miodrag Ivkovic and Dusanka Milanov, "Affiliate Internet Marketing: Concept and Application Analysis," in *2010 International Conference on Education and Management Technology* (2010 International Conference on Education and Management Technology (ICEMT), Cairo, Egypt: IEEE, 2010), 319–23, <https://doi.org/10.1109/ICEMT.2010.5657647>.

<sup>14</sup> Shabur Miftah Maulana, Heru Susilo, and Riyadi, "Implementasi E-Commerce Sebagai Media Penjualan Online (Studi Kasus Pada Toko Pastbrik Kota Malang)," *Jurnal Administrasi Bisnis* 29, no. 1 (December 11, 2015): 1–9.

among Indonesians in Q-3 2021 is Shopee. Based on research results, web best visit, Shopee is in the second rank with 134,383,300 visitors each month.<sup>15</sup>

Shopee 'came' to Indonesia in December 2015. It is managed by SEA group, Forest Li's company.<sup>16</sup> Shopee affiliate program run by Shopee offers additional income for content creators and people by promoting Shopee products on their social media. Shopee affiliate members must be innovative and creative in marketing products by meeting Shopee's terms and conditions. In implementing the Shopee affiliate program, people need to know about the agreement between Shopee and Shopee affiliate members/marketers. The relationship between Shopee and Shopee affiliate members is between the service provider and the marketers in cooperation.

Agreement in Islam is called "*akad*," which means an agreement.<sup>17</sup> Etymologically, *akad* is a bond between two things, real or only meaning from one or two sides.<sup>18</sup> Islam views Islamic business relations or *muamalah* relations as allowed, except if there is a statement. This *qaida* (principle of rule) stated, "the original Law in muamalah allowed until there is a statement that says it is forbidden".<sup>19</sup> To put it simply, every muamalah relation is allowed, except if there is a statement in the verses of Al-Qur'an or other Islamic law sources (*hadith* and *ijma'*) that forbids it. Hence, digital marketing is permissible when it complies with the Islamic rules.<sup>20</sup>

However, when it comes to affiliate programs, it may be interesting to analyze them based on the perspective of Islamic law. This study delves into the dynamics between e-commerce affiliate marketing and its participants, critically examining the alignment of these practices with Islamic law. It thoroughly assesses affiliate

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<sup>15</sup> Peti Savitri et al., "Reviewing The Competitiveness of Indonesian E-Commerce Through The Theoretical Framework of E-Business Competitiveness," in *2021 15th International Conference on Telecommunication Systems, Services, and Applications (TSSA)* (2021 15th International Conference on Telecommunication Systems, Services, and Applications (TSSA), Bali, Indonesia: IEEE, 2021), 1–5, <https://doi.org/10.1109/TSSA52866.2021.9768294>.

<sup>16</sup> Shofwan Azhar Sholihin and Mutiara Annissa Oktapiani, "Pengaruh Strategi Digital Marketing Terhadap Minat Beli Konsumen Di Era Pandemi Covid-19: Studi Kasus Pada Pengguna Marketplace Shopee Di Provinsi Jawa Barat," *Coopetition: Jurnal Ilmiah Manajemen* 12, no. 3 (November 1, 2021): 365–71, <https://doi.org/10.32670/coopetition.v12i3.607>.

<sup>17</sup> Sayyid Sabiq, *Fiqh As-Sunnah Jilid 2* (Beirut: Darul Fikri, 1983).

<sup>18</sup> Wahbah al-Zuhayli, *Al-Fiqh al-Islami Wa-Adillatub* (Dar Al-Fikr Al-Mouaser, 1989).

<sup>19</sup> In Arabic: *الأصل في الشرط في المعاملات الجلب والإباحة إلا بدلي*

<sup>20</sup> Abdul Rahman Ghazaly, Ghufron Ihsan, and Sapiudin Shidiq, *Fiqh Muamalat*, 1st ed., vol. 1 (Jakarta: Kencana, 2010).

programs' ethical and legal aspects, seeking to determine whether these marketing strategies adhere to the principles of fairness, transparency, and mutual benefit as outlined in Islamic jurisprudence. By analyzing the compliance of affiliate marketing with Islamic guidelines, this study aims to establish whether such transactions can be deemed both beneficial and permissible within an Islamic framework.

## METHODOLOGY

This research employs a normative legal approach, often called doctrinal or literature research. According to Soetandyo Wignyoebroto, doctrinal law research aims to uncover the correct answers by establishing the truth through rigorous analysis.<sup>21</sup> This methodology involves an in-depth examination of legal texts, including religious scriptures, to identify and validate the underlying legal principles and prescriptions. By systematically studying these sources, the research seeks to provide accurate and reliable interpretations of the law, ensuring that the findings are grounded in authoritative legal doctrine.<sup>22</sup>

The procedure for collecting legal materials in this research involves document or library study techniques, focusing on carefully examining, learning, and comprehending legal materials relevant to the research topic. These legal sources are analyzed descriptively, emphasizing the interpretation and understanding of legal concepts rather than testing theoretical frameworks. This approach involves explaining, analyzing, systematizing, interpreting, and evaluating legal concepts, including the meanings of law, legal norms, and legal systems. Through this method, the research aims to provide a comprehensive and systematic understanding of the legal issues under investigation.<sup>23</sup>

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<sup>21</sup> Sulistyowati Irianto and Shidarta, eds., *Metode Penelitian Hukum: Konstelasi Dan Refleksi*, 1st ed. (Jakarta: Yayasan Pustaka Obor Indonesia, 2017).

<sup>22</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, 1st ed. (Jakarta: Kencana Prenada Media Group, 2005), 136.

<sup>23</sup> Dyah Ochtorina Susanti and A'an Efendi, *Penelitian Hukum: Legal Research*, 2nd ed. (Jakarta: Sinar Grafika, 2015), 116.

## RESULT AND DISCUSSION

### The Development of Digital Marketing: The Types and Forms

Digital marketing has evolved significantly since the internet's inception in the early 1990s. Initially centered on basic websites and email campaigns, it expanded with the rise of search engines like Google, and by 2023, artificial intelligence and machine learning are increasingly shaping personalized, real-time marketing strategies. There are some types and forms of digital marketing, such as: a website based marketplace, social media marketing, search engines, e-mail marketing, e-commerce, and affiliate marketing.

#### a. A Website Based Marketplace

According to Yuhefizar, a website is an online page belonging to a domain consisting of information.<sup>24</sup> In its development, websites have been widely used to carry out transactions and attract consumers by offering several products and services. Websites belong to the category of digital marketing. Many products or services have used the website to market and promote their product in the digital era. Besides, the consumer can seek and see a review about products they want to buy. Using website information technology to carry out transactions has become the choice of many customers because it is easier and more efficient.

A website marketplace, commonly called an online marketplace, is a computer program, in most cases digital, that enables business transactions between buyers and sellers by offering an online environment where products can be quoted, searched, and purchased. Unlike traditional electronic commerce websites that usually host a single vendor, a website marketplace supports multiple vendors, allowing several different sellers to provide their goods or services to large numbers of people. Generally, the platform operator administers the website's infrastructure, processing payments and other logistical duties, while inventory and order fulfillment are left to individual vendors. The most distinguishing characteristic of

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<sup>24</sup> Yuhefizar, Ha Mooduto, and Rahmat Hidayat, *Cara Mudah Membangun Website Interaktif Menggunakan Content Managemen System Joomla* (Elex Media Komputindo, 2006).



website marketplaces is their ability to aggregate very diverse offerings into one centralized digital location, increasing accessibility and ease of use for consumers and businesses alike.

#### b. Social Media Marketing

According to Kotler and Keller, social media is a place for consumers to share texts, pictures, audio, and videos with the company and vice versa.<sup>25</sup> According to Setiawan (2016), social media marketing is a form of marketing that is used to create awareness, admission, remembrance, and even behavior of a brand, product, and business, individual or group, directly or indirectly, by using social media web like blogging, microblogging, and social media platform.

Social media is good for building social relations and business. Through social media, people can share ideas and experiences and even communicate with users, which can be used to promote the products. Several social media platforms also provide marketing menus that can reach all users. The wider the social networking carried out, the more the marketing product offering network will expand.

#### c. Search Engine

A search engine is a special web used to collect a list of websites. It can be found on the internet and in a database. It can also view the index list according to the user's query. A search engine is divided into two parts: SEO and SEM.<sup>26</sup> Search Engine Optimization (SEO) is a process done systematically to increase the quantity and quality of traffic through search engines to get into certain websites using search engine algorithms. On the other hand, SEM works by increasing visits by hiring advertising agents and optimizing costs. Using search engines to market a product is easier for users and more accountable than transactions carried out via social media.

Search engines benefit businesses by being one of the most important online customer acquisition channels and visibility. As more people turn to the digital

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<sup>25</sup> Philip Kotler and Kevin Lane Keller, *Marketing Management*, 14th ed. (Prentice Hall, 2012).

<sup>26</sup> Nicola Tonello and Craig Macdonald, "Using an Inverted Index Synopsis for Query Latency and Performance Prediction," *ACM Transactions on Information Systems* 38, no. 3 (July 31, 2020): 1–33, <https://doi.org/10.1145/3389795>.

economy, businesses depend on search engines to drive website traffic. In most cases, this comes through the strategic practice called search engine optimization, which basically optimizes a website's content, structure, and backlinks to ensure it gets listed highly in the search result pages across different search engines. Search engines are a significant gateway to expanding any business across geographical borders. They facilitate the reach of companies to international markets, helping a business realize new markets and find new customers.

#### d. Email Marketing

According to Mahmud, email marketing sends commercial messages like sales, product offers, discounts, membership owners, and others by email.<sup>27</sup> Using email to promote a product is one of the marketing strategies. However, when using this way, people must follow the terms and conditions of the email platform.<sup>28</sup> Email marketing is often seen as less effective because it allows for one-way communication, unlike the interactive nature of social media promotions. However, both methods share a common drawback: they are vulnerable to misuse by unscrupulous users.

#### e. E-Commerce

According to Laudon and Laudon, e-commerce is a process of buying and selling products electronically by customers from company to company using a computer or handphone as a business transaction media.<sup>29</sup> David Baum (1999) defines **e-commerce** as a set of technology, applications, and business processes connecting companies, customers, and communities over electronic transactions and goods trade services and information done electronically. In conclusion, e-commerce involves the use of information and communication technology to digitally process business transactions, enabling the creation, modification, and management of relationships between marketers and buyers.

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<sup>27</sup> Windu Mahmud, *Bisnis Online* (Jakarta: PT Gramedia Widiasarana Indonesia, 2018).

<sup>28</sup> Gusti Ngurah Mega Nata and Putu Pande Yudiastra, "Knowledge Discovery Pada Email Box Sebagai Penunjang Email Marketing," *Jurnal Sistem dan Informatika* 12, no. 1 (November 2017): 26–37.

<sup>29</sup> Kenneth C. Laudon and Jane Price Laudon, *Essentials of Management Information Systems: Transforming Business and Management*, 3rd ed. (Upper Saddle River, N.J: Prentice Hall, 1999).



#### f. Affiliate Marketing

Affiliate marketing is a method to promote a product by selling others' products. As a reward, the marketers will get a commission when they buy the product through the marketers' reference link. Affiliate marketing is a method to earn money by selling products from a company or affiliate merchant by joining as an affiliate marketer and only paying after the products are sold, a business model that allows affiliates among e-commerce websites to promote or sell over the internet.<sup>30</sup> There are some terms commonly used in an affiliate system, such as:

- a. Merchant: A person or company that owns products and wants to be promoted by an affiliate member.
- b. Affiliate or product affiliate marketers are registered and approved by the merchants to promote the product.
- c. Platform affiliate network: It is a web that manages online affiliate businesses between owners and marketers.
- d. Customers: They are people or companies that buy products.

In affiliate marketing, payment mechanisms are based on performance, where affiliates (partners or promoters) are paid when they successfully drive desired actions such as clicks, leads, or sales. The most commonly used processes for affiliate marketing payment mechanisms include:

##### a. Pay per Sale

Pay per sale is a commission method that is received when the product or service is sold. Commission payment is based on the number of products sold, based on a preference from affiliate marketers.

##### b. Pay per Lead

This commission method uses a commission system based on filling out a form. When visitors fill out the form based on the affiliate member's

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<sup>30</sup> Mahfud Ali Bagus and A Kardiawanawati, "Rancang Bangun Sistem Afiliasi Marketing Berbasis Website Menggunakan Metode PPS (Pay Per Sale) Studi Kasus Pada Totebag Corner," 2015, <https://api.semanticscholar.org/CorpusID:113581944>.

preference, the member receives a commission. Affiliate companies that use this method are insurance companies and pawn shops.

c. Pay per Action

In this payment method, the commission is earned when the affiliate marketers succeed in getting customers to download, install, or use the product or service offered.

d. Pay per Click

In this payment method, the commission is earned when visitors click the link to the product or service offered or promoted by affiliate marketers.

e. Hybrid *Program*

This payment method combines pay-per-click and pay-per-sale. In this method, a commission will be given when the visitors click the link, and then another commission will be received when the visitors buy the product or service promoted.

### **Affiliate Marketing Mechanism Used by Shopee in Indonesia: An Analysis**

This article identifies two models used in Shopee's affiliate marketing. The first model is the product affiliate link, a unique website address Shopee provides to its affiliate members. The second model is the referral code, a code or phrase that members can provide to customers during registration. Affiliate members can share this code with customers to use when they sign up.<sup>31</sup> Shopee has a mechanism called the Shopee Affiliate Program. To join the Program, members must register on the Shopee affiliate platform by filling out a form about their identity, such as name, address, email, and phone number. Then, they must choose an account: individual or company.

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<sup>31</sup> Hikmatul Arifah Fitriani, "Praktik Komodifikasi Dan Kepelikan Sistem Dalam Shopee Affiliates Program," *Jurnal Media Dan Komunikasi Indonesia* 4, no. 2 (September 29, 2023): 110, <https://doi.org/10.22146/jmki.82579>.

Then, the registrants wait for the confirmation email from Shopee concerning affiliate program registration. When the registrants have been officially joined, they can promote the products. After being registered, they choose products that will be promoted from Star store, Star+, or Shopee mall.

#### a. Implementing Affiliate Marketing Cooperation on The Shopee Affiliate Program

What the affiliate members must do is promote the product owned by merchants or an online shop that is on the Shopee marketplace. The shops must have been registered as star marketers or malls.<sup>32</sup> To get the affiliate link, click the share or copy link. Then, change the universal link to an affiliate link on the Shopee affiliate program page.

Then, the marketers can share the affiliate link on any social media platform. Each member is asked to share the affiliate link as the first step. The marketers can write the affiliate link on a YouTube description or bio or swipe up the Instagram story, Facebook post, TikTok caption, WhatsApp status, etc.

Customers will be directed to the merchant website in Shopee when they click the link. After the customers enter the website, they will see product information (price and quality) based on what the merchant showed. If the customers decide to buy the product through the link promoted by the marketers, the product will be sent from the distributor that the customers choose.<sup>33</sup> The affiliate marketers will get a fee for each product sold based on the percentage from the merchants in Shopee. Shopee affiliate program offers benefits for marketers and merchants. The benefits are:

- 1) Free to choose and promote the product used in their content.
- 2) Flexibility to create content on the social media platform.
- 3) Easy process. The marketers only share an affiliate link to earn a fee.
- 4) 2.5% fee (of the product price) for purchases by old users and a 10% fee for purchases by new users.

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<sup>32</sup> "Shopee Affiliate Program | Komisi & Syarat Shopee Affiliate," n.d., <https://shopee.co.id/m/affiliates>.

<sup>33</sup> Fatikhah Suciningrum and Osly Usman, "The Effect of Product Quality, Service Quality, and Product Price on Customer Satisfaction in Shopee," *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3767892>.

- 5) Payment is based on the action; it depends on how many purchases are made through affiliate links.<sup>34</sup>

Among those benefits, the weaknesses might be found in this cooperation. Every business must find any difficulties. However, businesspeople must want their businesses to run well. To avoid fraud and unfairness, Shopee has rules in this cooperation that are based on terms and conditions regarding the affiliate program.<sup>35</sup>

#### b. Affiliate Marketing Fee System on the Shopee Marketplace

In this affiliation system, the profit is gained from the promotions and sales by the listed members of the Shopee affiliate program. The Shopee gives the fee according to the percentage of each product. The fee system in this program is pay per sale. Pay per sale is a fee that the marketers will gain after selling the product.<sup>36</sup> The fee will be counted from the sold product price of the member custom link according to the:

- 1) Old users or for someone who has already used it. If the buyers are old users, the marketers will get 2.5% of the product price.
- 2) For new users, the marketers will get 10% of the product price if the buyers are new users.

Shopee will pay the fee in the first or third week of each month. Inquiry information about the balance or commission on this program will be shown on each applicant or member account. There are two methods to withdraw the fee: Shopee pay (if the fee is less than Rp 1,000,000) and through the marketer's or affiliation bank account (if the fee is more than Rp 1.000.000).

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<sup>34</sup> "Shopee Affiliate Program | Komisi & Syarat Shopee Affiliate."

<sup>35</sup> "Syarat Dan Ketentuan Program Afiliasi Shopee Untuk Individu | Pusat Bantuan Shopee ID," n.d., <https://help.shopee.co.id/portal/4/article/71217-Syarat-dan-Ketentuan-Program-Afiliasi-Shopee-untuk-Individu>.

<sup>36</sup> Susanti et al., "Sistem Prediksi Keuntungan Influencer Pengguna E-Commerce Shopee Affiliates Menggunakan Metode Naïve Bayes," *Edumatic: Jurnal Pendidikan Informatika* 6, no. 2 (December 20, 2022): 394–403, <https://doi.org/10.29408/edumatic.v6i2.6787>.

## Sharia Economics Law Analysis to the Transaction of the Cooperate Affiliation Program on the Shopee Platform

This affiliation business cooperation on the Shopee platform goes along with Islam values. This affiliation system is identical to two Islamic model or *muamalah* agreements, *wakalah bil ujah* and *samsarah*.

### a. *Wakalah bil Ujah*

To define this terminology, we need to understand the root of its sentence in Arabic. *Wakalah* is an “*isim masdar*” that etymologically means *taukil* that is representing and keeping. *Wakalah* is also called *al-wikalah*, meaning *al-tafwid*, which is handing over, representing, delegating, and giving power of attorney.<sup>37</sup> According to Syafi’i scholars, *wakalah* is: “It is like someone giving something for someone else to do when he is alive.”<sup>38</sup> Meanwhile, *Ujah* on the implementation of *wakalah* means handing over, delegating, or mandates handing over by pointing someone to representing to do something voluntarily or in return for a fee.<sup>39</sup>

*Wakalah Bil Ujah* can be defined as the alliance between two authorized parties (*muwakil*) that gives its authority to (*wakil*), that is, representing to do something by giving *Ujah* (*fee*) to the representatives who carry out their duties, based on *Wakalah Bil Ujah*, as mentioned in Al-Quran Surah Yusuf verse 55: “He (Yusuf) said, “make me manage the state treasury (Egypt). Indeed, I am a person who is good at keeping trust and very knowledgeable”.<sup>40</sup> Also based on Al-Quran Surah Al-Maidah, it is mentioned that:<sup>41</sup> “Dear those who believe, fulfil your promises, livestock is *Halal* for you, except the one mentioned to you (*Haram*), by not making Halal for hunting while you are on *Ihram* (*Hajj* or *Umrah*). Indeed, Allah has established the law accordingly.”

<sup>37</sup> Abu Azam Al Hadi, *Fikih Muamalah Kontemporer*, 1st ed., vol. 1 (Depok: Rajawali Pers, 2017).

<sup>38</sup> Abdur-Rahman al-Jaziri, *Al-Fiqh `Ala Mazahib Al-Arba`ah (Juz 3)*, 6th ed. (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1990).

<sup>39</sup> Abdullah Amrin, *Meraib Berkah Melalui Asuransi Syariah: Ditinjau Dari Perbandingan Dengan Asuransi Konvensional* (Jakarta: PT Elex Media Komputindo, 2011).

<sup>40</sup> “Al-Qur’an” (n.d.).

<sup>41</sup> Al-Qur’an.

The legal conditions of *muamalah* agreement in Islam are the fulfilment of all its pillars and conditions of the agreement. Guided by MUI Fatwa No:10/DSN-MUI/IV/2000 about *Wakalah* agreement.<sup>42</sup> The transaction of the Shopee affiliate program that is reviewed by the *Wakalah Bil Ujrah* agreement on this affiliate system shows the law subject as follows:

- 1) The authorized party (*Muwakkil*), the authorized party on this Shopee affiliate program, are merchants or online shop owners.
- 2) Representatives (*Wakil*), a person who acts as a representative in this affiliation program is a marketer or affiliate.
- 3) Things to represent (*Muwakkal fih*), this representation object is a job to promote and sell an online shop product on Shopee.
- 4) Fee (*Ujrah*), Ujrah or fee gained by representatives in this transaction is the fee. A fee is gained from the item sales percentage.

The terms and conditions of the agreement for those who consent to participate in Shopee's affiliate marketing program will include several legal requirements. First, both affiliate marketers and merchants or owners of products in online shops, which are respectively called "*Wakil*" (Product Sellers) and "*Muwakkil*" (the online shops), have to be bound by law to adhere to the stipulations in the program. Herein, the merchant or seller shall have the legal capacity to subcontract and must be competent enough to let third-party affiliate marketers sell their products. At the same time, the merchant or seller shall have the capacity to repay and formally approve the affiliate agreement between their online shop and Shopee as the Affiliation Network. In return, affiliate marketers or product vendors will be obligated to perform their obligations spelled out in the agreement, making the relationship between them smooth. Aside from *Wakil* and *Muwakkil*, several parties and components that can be compared with the *Muamalah* concept, namely:

- 1) A person who agreed (*Aqidain*).
- 2) Terms and conditions for those who agreed:
  - a) *Affiliate Marketers* / Product sellers (*Wakil*) and Merchant/sellers in Online shops (*Muwakkil*) should be mandatory by law.

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<sup>42</sup> "Fatwa Dewan Syari'ah Nasional No: 10/DSN-MUI/IV/2000 on *Wakalah*" (n.d.).



- b) The merchant/seller of the online shop should have the authority to give authorization to someone else.
  - c) The merchant/seller of the Online shop (*Muwakkil*) should be able to give a fee or, in this program, has to approve the affiliate cooperation between the online shop and Shopee as the affiliation network.
  - d) *Affiliate marketers*/product sellers (*Wakil*) can accomplish the tasks.
- 3) The object of the agreement (*Muwakkal Fih*)
- a) Objects of the agreement limited to the activities or acts according to the ceremonial law could be represented.
  - b) The agreement should focus on certain jobs or acts that are well-known to the affiliate marketers (*Wakil*).
- 4) *Ujrah* or fee
- a) The fee could be currency or goods used according to the sharia.
  - b) The amount and the quality of the fee should be clear.
  - c) The fee could be paid in cash or credit or even held according to Sharia and the acts of law.
- b. *Akad Samsarah* or the *Samsarah* Agreement

*Samsarah* is a Persian word that was adapted into Arabic that has a meaning a profession in mediating two different parties with compensation, fee or commission, and bonuses (*ji'alah*) to accomplish a transaction.<sup>43</sup> A trader was called *al-simsarah* in the pre-Islam era, but our Prophet Muhammad SAW used to call them *al-tujjar*. The difference between *al-samsarah* (middle trader) usually occurs in urban communities and those who live in the desert. This is practiced in all business transactions.<sup>44</sup>

Terminologically, the pronunciation of *samsarah* means the mediator of trading (a person who sells other goods or finds for a buyer) or a person between seller and buyer to make trading easier. The Indonesian dictionary mentions that a broker is a mediator and gives his services to accomplish tasks based on a fee.<sup>45</sup>

*Samsarah* (brokerage) is a profession (job) where the person becomes a mediator between seller and buyer. They called a broker (*simsar*). The legal basis of Samsara

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<sup>43</sup> In Arabic, *Samsara* (سمسرة) is a plural form of *samsarah* (سمسرة), which means a mediator between seller and buyer who is conducting a trade or a middle trader who acts as a mediator between the seller and buyer.

<sup>44</sup> Deden Misbahudin Muayyad et al., "Samsarah in an Islamic Perspective," 2023, 591–600, <https://doi.org/10.15405/epsbs.2023.11.02.46>.

<sup>45</sup> Khairisma, "The Samsarah Existence in Aceh from A Morality Perspective: The Islamic Economics and the Freedom of Contract Principle," *E-Mabis: Jurnal Ekonomi Manajemen Dan Bisnis* 23, no. 1 (September 8, 2022): 32–39, <https://doi.org/10.29103/e-mabis.v23i1.804>.

agreement is in QS. An-Nisa 29: “Dear those who believe, don’t ever take someone else goods with the wrong way (*bathil*), except for trading in a good way among you. Don’t ever hurt yourself in that way. Indeed, Allah is Merciful”. Moreover, the other primary legal basis of *Samsarah* agreement in Islam is in Qur’an An-Nisa’: 29 as follow: “Dear those who believe, don’t ever take someone else goods with the wrong way (*Bathil*), except for trading in a good way among you. Don’t ever hurt yourself in that way. Indeed, Allah is Merciful”.

The legal conditions of the agreement in *muamalah*, an Islamic commercial practice, encompass several key elements that ensure the validity and fairness of transactions.<sup>46</sup> Firstly, the condition of *al-muta'qidani* refers to the presence of contracting parties, specifically the broker and the owner, who are involved in the transaction. These parties must be identifiable individuals with the legal capacity to engage in such transactions. In modern applications, this often includes affiliate marketers, who act as brokers, and merchants or sellers, who are the other party in the agreement. The relationship between these parties forms the basis of the transaction, ensuring that both parties are aware of and agree to the terms.

Secondly, *mahall al-ta'qud* refers to the nature of the transaction itself and the compensation involved. This condition emphasizes the clarity and legitimacy of the transaction, including what is being exchanged and the agreed-upon compensation. This ensures that the transaction is transparent and both parties are clear on their respective obligations and benefits. Together, these conditions ensure that the *muamalah* is conducted in a manner that aligns with Islamic legal principles, promoting fairness, transparency, and mutual consent in commercial dealings. In Shopee's affiliate marketing practice, transactions involve buying and selling products through brokerage. Marketers, acting as brokers, earn compensation based on a percentage of the final product sale price, aligning their earnings with the success of the sale.

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<sup>46</sup> Rahmat et al., “Terms and Conditions Applicability Muamalat,” *International Journal of Economics (IJE)* 2, no. 1 (June 30, 2023): 162–69, <https://doi.org/10.55299/ijec.v2i1.441>.

In the context of Islamic finance and commercial practices, ensuring the legality and ethicality of agreements, particularly in brokerage and affiliate marketing, requires adherence to several crucial conditions. These conditions not only guarantee that transactions are valid under Sharia law but also protect the rights and obligations of all parties involved.

One of the fundamental principles in Islamic commercial transactions is derived from the Qur'anic verse in Surah An-Nisa' (4:29), which emphasizes the necessity of mutual consent between the buyer and the seller. This principle is central to ensuring that all trading activities are conducted with the full willingness and agreement of both parties involved. The Qur'an mandates that each party must have the autonomy to make decisions regarding the transaction without being subjected to any form of coercion, intimidation, or deceit. Any agreement made under duress or through fraudulent means is considered invalid under Islamic law, as it violates the ethical standards required for a legitimate transaction.

The integrity of the transaction is crucial, as it safeguards the rights and responsibilities of both parties, ensuring that they enter into the trade with a clear understanding and acceptance of the terms and conditions. This principle not only upholds fairness in commercial dealings but also fosters trust and transparency, which are essential for the smooth functioning of economic activities in an Islamic context<sup>47</sup>. Hence, the principle of mutual consent is a cornerstone of Islamic commercial law, ensuring that all transactions are conducted in a manner that respects the autonomy and rights of all parties involved. Another significant condition relates to the nature of the objects involved in the agreement. The objects, or the goods and services being exchanged, must be tangible, beneficial, and capable of being transferred between the parties.<sup>48</sup> This excludes any form of trade involving non-existent or imaginary items, as well as items that cannot be physically handed

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<sup>47</sup> Habibur Rahman, Muhammad Amanullah, and Noor Mohammad Osmani, "Mutual Consent in Formation of Financial Contracts: A Juristic Analysis," *Asian Journal of Research in Business Economics and Management* 6, no. 4 (2016): 9–26, <https://doi.org/10.5958/2249-7307.2016.00030.X>.

<sup>48</sup> Mohammad Hashim Kamali, "Commodity Futures: An Islamic Legal Analysis," *Thunderbird International Business Review* 49, no. 3 (May 2007): 309–39, <https://doi.org/10.1002/tie.20146>.

over.<sup>49</sup> The rationale behind this requirement is to maintain the fairness and reality of the transaction, ensuring that what is being traded has actual value and utility. In the context of modern e-commerce platforms like Shopee, this would translate into ensuring that all listed products are real, available, and deliverable to the buyer.

Additionally, the objects involved in the transaction must be lawful and ethical according to Islamic principles. This means that any trade involving items that are considered immoral or illegal, such as drugs, alcohol, or gambling-related products, is strictly prohibited. The prohibition extends to anything that violates public order, decency, or the legal framework of the society in which the trade is taking place. For instance, selling products that promote vice or harm societal values would be impermissible under Sharia law. This condition ensures that commerce under Islamic principles upholds the moral and legal standards expected in a Muslim society.

Given these conditions, the practice of affiliate marketing, as seen on platforms like Shopee, can be considered permissible under Sharia law, provided it adheres to these principles. Affiliate marketing typically involves brokers (affiliates) promoting products or services on behalf of merchants, earning a commission for successful sales. For this practice to be Sharia-compliant, it must follow the rules of both Sharia and public law. The transactions must avoid any involvement in *riba* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling), which are explicitly prohibited in Islamic finance.<sup>50</sup> The cooperation between affiliates and merchants should be built on fairness, honesty, and transparency, ensuring no fraud or coercion is involved, and all processes are conducted through legitimate and clearly defined means.

From an Islamic perspective, the concept of affiliate marketing is not a novel one. It bears resemblance to traditional Islamic contracts, specifically the *wakalah bil ujah* and *samsara* agreements. The *wakalah bil ujah* is based on the *Ijarah* contract, where

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<sup>49</sup> Anna Kuznetsova and Inese Tenberga, "Purchase and Sale and Prohibition of Uncertainty (Gharar) in the Islamic Tradition," *Pravovedenie* 66, no. 2 (2022): 162–92, <https://doi.org/10.21638/spbu25.2022.203>.

<sup>50</sup> Mohammed Bashir Ribadu and Wan Nurhayati Wan Ab. Rahman, "A Generic Framework for E-Commerce Requirements to Comply with Sharia in Business-To-Consumer Perspective," in *2016 SAI Computing Conference (SAI)* (2016 SAI Computing Conference (SAI), London, United Kingdom: IEEE, 2016), 752–57, <https://doi.org/10.1109/SAI.2016.7556064>.

an agent (*wakil*) is hired to perform a task on behalf of a principal, for a fee or commission. Similarly, in affiliate marketing, the affiliate acts as an agent, promoting the merchant's products in exchange for a commission. On the other hand, the *samsara* agreement is a form of brokerage, where a broker facilitates a deal between two parties, earning a fee for the service. Both of these traditional contracts highlight the permissibility of brokerage and commission-based activities in Islam, provided they are conducted within the framework of Sharia law.

Hence, the legality and ethicality of agreements, particularly in brokerage and affiliate marketing, under Islamic law are contingent upon several conditions. These include mutual consent between parties, the tangibility and legality of the objects involved, and strict adherence to the principles of fairness, transparency, and honesty. When aligned with these principles, modern affiliate marketing practices can be considered Sharia-compliant, reflecting the timeless nature of Islamic commercial laws and their adaptability to contemporary business practices.

## CONCLUSION

Affiliate marketing is a widely recognized method for promoting and selling products on behalf of others. In this model, affiliates or marketers promote a merchant's product and earn a commission or fee for every successful sale generated through their referral. This approach allows sellers to leverage a network of marketers to expand their reach and increase sales. Platforms like Shopee have adopted this model, using a pay-per-sale commission system where affiliates earn a commission only when a product is successfully sold through their efforts. This model ensures that the affiliate's compensation is directly tied to the success of the transaction, incentivizing effective marketing and sales strategies.

From an Islamic perspective, the concept of affiliate marketing is not entirely new. The structure of earning a commission for services rendered closely resembles the *ujrah* agreement in Islamic jurisprudence, where compensation is provided for services performed. In traditional Islamic contracts, the *Samsara* agreement is akin to

modern-day brokerage, where a broker (*samsara*) facilitates transactions between two parties and earns a fee for the service provided. In this context, an affiliate marketer acts similarly to a broker, connecting potential buyers with the merchant's products and earning a commission for successful sales.

However, it is essential to highlight that, within the framework of Islamic law, such transactions must adhere to specific ethical and legal standards. The principles of fairness, honesty, and transparency are central to any transaction conducted under Islamic law. The transaction must be free from any form of deceit, coercion, or fraud, ensuring that all parties involved are fully aware of the terms and conditions. Moreover, Islamic law prohibits certain practices, such as *riba* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling). These prohibitions ensure that transactions are conducted in a manner that is just and equitable for all parties involved.

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