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**LEGAL READINESS OF AGREEMENTS FACING THE DIGITALIZATION ERA  
BANKING IN ISLAMIC BANKING FINANCING TRANSACTIONS**

**Utary Maharany Barus<sup>1</sup>, T. Keizeirina Devi Azwar<sup>2</sup>, Cheryl Patriana Yuswar<sup>3</sup>, Siti Nurahmi Nasution<sup>4</sup>, Hilbertus Sumplisius M. Wau<sup>5</sup>**

Universitas Sumatera Utara, Medan, Indonesia

Email: utary@usu.ac.id

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**KEYWORDS**

Agreements, Sharia Banking, Digitalization.

**ABSTRACT**

Digital developments in the banking system occur not only in conventional banks but also in Islamic banks. The digitalization of Islamic financing transactions is also inseparable from technological developments, especially in the use of electronic contracts. Sharia bank's implementation of Sharia business activities is regulated in the "Compilation of Sharia Economic Law" (KHES). Electronic Contracts are one of the innovations related to commercial life while navigating the legality of making agreements, even though digitally included by Islamic Banks, thus raising questions about the validity and risks of these electronic contracts. Competence, legal relations, objects, free consent, and jurisdiction are indicators of readiness for treaty legal instruments in the development of the current digitalization era. This study examines the legal readiness of agreements facing the era of digitalization of Islamic banking in financing transactions. This study uses an empirical method to examine the provisions of laws and regulations in detail. This was a normative juridical study. The results of the field study show that the electronic contracts implemented by Bank Mega Syariah and Bank Muamalat through e-contracts meet the legal provisions of the agreements stipulated in positive law in Indonesia. The results of the literature study also show that treaty legal instruments as stipulated in BW, Law 11/2008 junction PP 71/2019, and KHES have accommodated the development of electronic agreement legal needs as an implication of the digitalization era in banking financing transactions.

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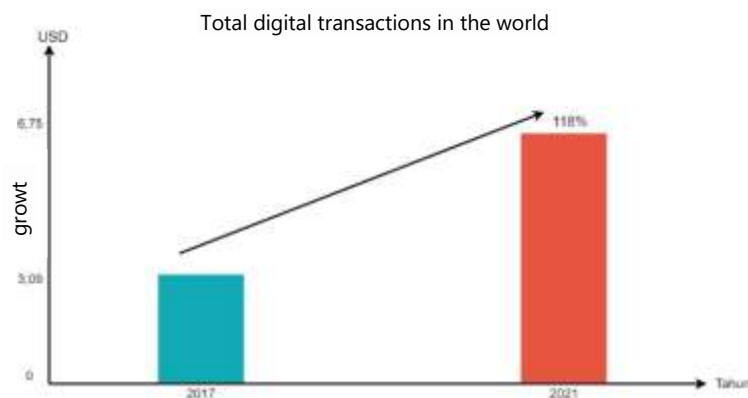
**INTRODUCTION**

Current technological advances have advantages, such as speed and flexibility of time, price, and quality which are used as indicators that will be used by customers in making decisions for approval of transaction execution. So that the above indicators become a benchmark that will be considered by banking companies in Indonesia because customer consumers are people who have the power to carry out activities in the banking business (Hardiyansyah, 2018). In this study, the banking that was used as the object of research was Islamic in Deli Serdang Regency.

The use of various technologies in the field of financial services has brought significant changes to the banking industry. People's shifting consumption habits toward digital media motivate banks to quicken the shift to digital banking. The total amount of digital transactions

globally increased by 118% between 2017 and 2021, according to Statista data in 2021 (Statista, 2021), USD 6.75 trillion in 2021 compared to USD 3.09 trillion in 2017. The growth of digital transactions increased significantly in Indonesia alone, rising by 1,556 percent between 2017 and 2020. In Indonesia, the total value of electronic transactions was Rp 12.37 trillion in 2017 and increased to Rp 204.9 trillion in 2020 (Indonesia, 2021).

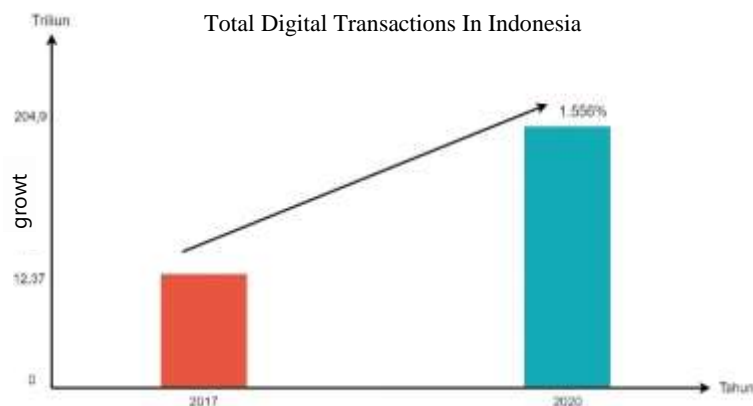
**Table 1**  
**Total Digital Transactions In The World**



Source Statista. (2021)

<https://www.statista.com/outlook/dmo/fintech/digitalpayments/worldwide#transactionvalue>

**Table 2**  
**Total Digital Transactions In Indonesia**



Source Bank Indonesia. (2021)

<https://www.bi.go.id/id/statistik/ekonomi-keuangan/ssp/uangelektronik-transaksi.aspx>

The high growth of digital transactions also occurred in Deli Serdang Regency. Deli Serdang Regency, as one of the regencies in Indonesia, has experienced significant changes in the banking sector, especially in the Islamic banking industry. The era of digitalization has had a major impact on modernizing banking services and financial transactions. Digital technology has opened up new opportunities and made it easier for Islamic banking customers in Deli Serdang Regency to conduct financing transactions more efficiently and quickly. In the context of digitalization, Islamic banking financing transactions increasingly rely on technology, such as mobile devices, internet banking, e-wallets, and fintech. This innovation allows customers

to access Islamic banking services anytime and anywhere. However, behind these conveniences, several legal challenges need to be overcome to ensure that contracts in financing transactions involving Islamic banks are still enforceable and compliant with relevant Sharia principles.

There is a conceptual distinction between digital banks and traditional banks that offer digital services like online and mobile banking. Digital banks can generally carry out all banking activities from account opening, transfers, and deposits, to account closure via smartphones/electronic devices, without the need to be physically present to the bank. Furthermore, one of the most significant distinctions is that digital banks typically only have one physical location, which is their head office (Regulation No. 12 of the Financial Services Authority for 2021). Even so, most conventional banks that offer digital services haven't been able to offer them all online. Conventional banks are also associated with an enormous number of branch offices.

Legal readiness is crucial considering the various regulations and legal requirements that need to be complied with by parties involved in Islamic banking financing transactions in this digital era. The issue of the validity of electronic contracts, data privacy protection, and cybersecurity risks are some of the legal aspects that must be taken seriously. The digitalization of Islamic banking is significant because it makes Islamic banking more accessible to potential clients via online and mobile platforms, creating new chances for the Islamic banking industry in Deli Serdang Regency to grow its clientele. Furthermore, in facing this digitalization era, agreements in Islamic banking financing transactions need to be carefully drafted to be legally valid, such as considering the validity of electronic contracts, and electronic signatures, to the terms of Islamic banking financing transactions. In the aspect of the legal strength of proving agreements digitally, it is necessary to pay attention to electronic attestation, validity, and authenticity of transactions, to prove data integrity.

With proper legal construction and strong evidentiary legal strength, Islamic banks can carry out digital financing transactions with high confidence and trust, and face disputes with strong and convincing arguments. Therefore, this study will discuss in depth the legal readiness of agreements in facing the era of digitalization of Islamic banking in financing transactions in the Deli Serdang Regency.

The discussion in this paper covers the importance of banking digitalization in Islamic banking, the legal construction of digital agreements, and the legal power of proving agreements digitally, all of which look at the legal challenges faced, the important role of law in ensuring transaction compliance, relevant legal regulations at the local government level, and the need for legal awareness for all parties involved. Thus, this study aims to provide deeper insight and understanding of legal readiness in facing digital transformation in the Islamic banking sector in the Deli Serdang Regency. It is hoped that this research will aid in the advancement and improvement of Islamic banking services in the more intelligent and superior digital age.

## **METHOD RESEARCH**

Using secondary data made up of primary, secondary, and tertiary legal material as a source of data for research, this normative legal study uses an empirical approach to learn in-depth information about a specific person, group, institution, or society about the background,

circumstances or conditions, factors, or social interactions that occur in society.

## RESULTS AND DISCUSSION

Every use of banking services and products, especially financing transactions, cannot be separated from the elements of agreements and agreements between Islamic Banks and their customers. In fact, in the digital era, agreements and agreements are increasingly easy to fulfill, because the use of technology accelerates the process of services and the use of banking products through electronic agreements called electronic contracts. However, it is necessary to examine the legal instruments of the agreement in accommodating digital developments in financing transactions, especially at Islamic banks.

Treaty legal instruments in Indonesia, especially in electronic Islamic banking transactions, are inseparable from the provisions, below:

- a. Burgerlijk Wetboek;
- b. Regulation No. 2 of 2008 by the Supreme Court on the Compilation of Sharia Economic Law;
- c. Law Number 11 of 2008 about Electronic Transactions and Information (Law 11/2008) in conjunction with Law Number 19 of 2016 about Amendments to Law Number 11 of 2008;
- d. The Government Regulation Number 71 of 2019 about the Use of Electronic Transactions and Systems (PP 71/2019).

According to articles 1320 and 1338 BW (Burgerlijk Wetboek), the Indonesian contract law system consists of written and oral contracts. Commercial contracts including contracts between banks and their customers in Indonesia are usually drawn up conventionally with signatures and in-person meetings, including their benefits and drawbacks. However, the public, especially in Indonesia, is not aware of legal developments that have been adapted to technological advances (Herianto Sinaga & Wiryawan, 2020). The public as bank customers, often do not realize that transactions carried out through electronic systems are the result of agreements made through electronic agreements or contracts even though these commercial transactions are carried out without direct face-to-face signatures (Elektronik, 2012).

Referring to Law 11/2008 juncto PP 71/2019, an electronic contract is an agreement made by parties through an electronic system (Sekretariat Negara, 2012). According to the journal written by Mieke Komar Kantaatmaja, electronic contracts can take any form. An electronic contract can be defined as an activity carried out between a seller and a buyer over an electronic network. Online chat between two or more people using certain applications to agree on something is considered as making a valid and legally enforceable electronic agreement. These things the public should know about technological advances, including legal changes related to commercial/business agreements (Herianto Sinaga & Wiryawan, 2020). An electronic contract is usually defined as a contract that is made electronically. Electronic transactions occur when a computer-based network is connected to a communication system, which is then connected to other international networks or the Internet (Santoso & Pratiwi, 2008). Based on this knowledge, digitized agreements, such as agreement letters typed or scanned into soft copies, are considered a form of electronic contract or e-contract. Every agreement starts with the same fundamental idea: consensus. The form of electronic contracts differs depending on the evolving medium, and the phrase "variation by agreement" refers to

this. In e-contracts, electronic networks are used to perform bargaining and acceptance, known as EDI (electronic interchange of data).

The form of the agreement or contract will become legal and binding on the parties to it, only possible if the agreement or contract has met the requirements necessary for it to be valid (Herianto Sinaga & Wiryawan, 2020). Under article 1320 BW there exist four prerequisites for a contract to be deemed valid:

1. The existence of an agreement of the contracting parties

Agreement between contracting parties is not only a condition of contract validity in Indonesia but also a universal application of contracts in contract terms in other countries. An agreement is a correspondence of statements of will among one or more individuals with another party (G. E. P. d. I. W. N. P. Dewantara, 2019). The obligations to be fulfilled by each contracting party are based on an agreement, which occurs between the bidder (offeror) of the bidding party and the acceptance of the other party to whom the offer is made (Ricardo, 2018).

2. The contracting parties have legal capabilities

The authority to take legal action is granted and guaranteed by law to both individuals and legal entities as subjects, supporters rights, and obligations. A person can agree if he meets the legal requirements (Kharisma, 2013).

3. The contract has a clear object

The content of the achievement as an object of agreement must be clear and at least specified in type when making a contract. It is very important to know how to measure the achievements of each party against things that have been agreed upon.

4. Halal contract charges

According to Prof. Subekti, *causa* is the content or intent of an agreement. If *causa* is interpreted as a person's reason for agreeing to an agreement, it is a false statement, so *causa* is different from motive. In treaty law, the cause for an agreement is the content and purpose of the agreement, which results in an agreement.

Referring to the provisions of contract law stipulated in *Burgerlijk Wetboek*, the validity of the contract does not violate the provisions in making contracts or commercial agreements. This is the basis for the validity of the contract, regardless of its form. The things that affect the validity of a contract lie not in its form, but in the intentions and will of its owner. In general, if a contract violates the terms of the agreement, it can be considered void or legally invalid. The focus of this research discusses the legal readiness of agreements on Islamic banking products whose transactions are outlined in an agreement that is digital or electronic so that in its implementation it avoids the risk of cancellation or invalidity of the agreement. Mitul Soni in his research revealed several things that can be used as indicators of the readiness of legal instruments of this agreement (Soni, 2023):

- a. competence, which relates to the competence of the parties;
- b. legal relationship, relating to the express intention of the parties to enter into a legal bond;
- c. object, in the form of rights and obligations that are agreed upon the occurrence of an agreement;
- d. free consent, an agreement of the parties based on freedom of contract;
- e. jurisdiction, determination of a forum in dispute resolution.

The respondents who became the source of information in the implementation of Sharia financing transactions through electronic agreements in this study were Bank Mega Syariah Deli Serdang Regency. In conducting Sharia business activities every type and business activity begins with the word "contract", it can be said that every type and business activity in a Sharia Bank requires and requires a contract. Therefore, it is not an exaggeration to say that these types and business activities contain operational applicative legal provisions categorized as Sharia engagement law, derived from the Quran, hadith, and so on.

The review of Islamic banking product contracts in connection with the establishment of national engagement law is very important and very relevant. The relevance of this research is based on the idea that Islamic banking product contracts are the main component of the formation of national engagement law. One of the terms in the Qur'an related to the agreement is the terms al Qaeda and al-Qaeda, which are written agreements containing hijab (offer) and Kabul (acceptance) (Jalil, 2020). Apart from language and terms, Musharraf is the basis of the contract. Tasharruf, which means everything that a person does with his will, and Sharia establishes some rights. Tasharruf consists of field and qauli. Tasharruf field is the work done by a man with his energy and body, in addition to the tongue. Tasharruf quality is what comes out of the human tongue, which can be aqdi or not aqdi.

Tasharruf quality qadi is formed from two utterances of both parties that are interrelated by statements that give birth to or deprive of a right, such as a waqf or talaq. It can also not be a statement but embody a demand (Novi Ratna Sari, 2017). Within the Sharia Economic Law Compilation (KHES), Book II on Akad Chapter I General Provisions Article 20 number 1 explained, " Akad is an arrangement in which two or more parties decide whether or not to carry out specific legal actions" (MARI, 2011).

According to jurists, the validity of a contract in Islamic law depends on the fulfillment of the pillars and conditions. Harmony consists of something that depends on something else, such as the person who contracts, the object of the contract, ijab qabul, and its purpose (Rozalinda, 2016). Islamic jurists explain several conditions of contract: the occurrence or shuruth al in'iqad, the validity or shuruth al shihah, the execution or shuruth a nafadz, and certainty or shuruth al luzum (Djamil, 2012).

About the explanation, in KHES the pillars and terms of the contract are regulated in Book II Chapter III, Article 22 determines:

The Pillars and Conditions consist of:

- a. Contracting parties;
- b. The object of the agreement;
- c. The main purpose of the contract; and
- d. Deal.

A contract that fulfills the above conditions is said to be a valid contract, binding on the parties. Meanwhile, those who do not meet the provisions of the pillars and conditions are said to be contracts that are not sahih, so they do not apply and are not binding on the parties. Unlike conventional banking business products, each Sharia banking contract must be by Sharia principles or Islamic legal principles in the form of fatwas formulated by the Indonesian Ulema Council's National Sharia Council (DSN-MUI).



The results of interviews with Bank Mega Syariah and Bank Muamalat, practically the Islamic bank conducts its sharia business in compliance with the provisions set by DSN-MUI, including in carrying out electronic contracts that are developing in Islamic banking. In practice, electronic contracts are often referred to as e-contracts by Islamic banks. The implementation of this e-contract must refer to the legal provisions of the agreement stipulated in KHES and the fatwa of DSN-MUI. In addition, in its implementation, the preparation of electronic contracts by Islamic Banks specifically refers to Law 11/2008 *juncto* PP 71/2019. Article 46 PP 71/2019 states that an electronic contract is considered valid if:

- a. there is an agreement between the parties;
- b. carried out by capable legal subjects or who are authorized to represent by laws and regulations; and
- c. the presence of certain things;
- d. The object of the transaction must not violate law, decency, or public order.

Although Bank Muamalat and Bank Mega Syariah apply standard agreements in e-contracts, the contents of the e-contracts must at least contain standard contract provisions that have been regulated in PP 71/2019, namely:

- a. identity data of the parties;
- b. objects and specifications;
- c. Electronic Transaction requirements;
- d. price and cost;
- e. procedure in case of cancellation by the parties;
- f. provisions that give the right to the injured party to be able to return the goods and/or request replacement of the product if there are hidden defects; and
- g. choice of law of electronic transaction settlement.

In guaranteeing the validity of an electronic contract, authorization and authentication of the parties are required which are symbolized through electronic signatures. Therefore, if the customer's signature and authorization of bank officials are required in the e-contract, Bank Muamalat uses e-sign through an application from a registered third party. This shows that Sharia Banks in conducting e-akad (Sharia electronic contracts) in Sharia transactions commit to maintain and fulfill the validity of e-contracts. If an e-contract has met the requirements and gets along well, both in the rules of Burgerlijk Wetboek, Law 11/2008 *junction* PP 71/2019 and KHES, then an e-contract (electronic contract) is valid and binding for the parties therein and has legal force. However, in practice, Islamic banking products currently facilitated by e-contracts can only be applied to Hajj Planning Program and Value Chain System Program products, while other financing program transactions cannot be carried out electronically. This is because the legal provisions of guarantees in banking financing have not been applied by Sharia principles.

The implementation of e-akad in the Hajj planning program is carried out by the financing agreement (Hajj program) through a special link provided to customers through the customer's Whatsapp number. The e-Know Your Customer process and electronic signature are provided by the Bank in cooperation with certified Third Parties. The e-contract on the Value Chain System which is a platform provided by the Bank to the Supplier / Seller and Anchor / Buyer, for transactions carried out electronically between 3 parties, namely the Bank,

Supplier / Seller, and Anchor / Buyer. Akad Tunggal Wakalah bil Ujah which is carried out digitally through a certified Third Party.

The results of the field study show that the electronic contracts implemented by Bank Mega Syariah and Bank Muamalat through e-contracts meet the legal provisions of agreements stipulated in positive law in Indonesia. The results of the literature study also show that treaty legal instruments as stipulated in BW, Law 11/2008 *junction* PP 71/2019, and KHES have accommodated the development of electronic agreement legal needs as an implication of the digitalization era in banking financing transactions.

## CONCLUSION

Bank Mega Syariah and Bank Muamalat, practically carry out their sharia business activities by the provisions set by KHES, and DSN-MUI, including in carrying out electronic contracts (e-Akad) that are developing in Islamic banking, especially in Hajj financing products and Value Chain Systems. The results of the field study show that the electronic contracts implemented by Bank Mega Syariah and Bank Muamalat through e-contracts meet the legal provisions of agreements stipulated in positive law in Indonesia. The results of the literature study also show that treaty legal instruments as stipulated in BW, Law 11/2008 *junction* PP 71/2019, and KHES have accommodated the development of electronic agreement legal needs as an implication of the digitalization era in banking financing transactions. To optimally develop Islamic banking financing transaction services, it is necessary to adjust the provisions of the guarantee law to Sharia principles, so that Islamic banking products can be entirely carried out through electronic contracts.

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**Utary Maharany Barus<sup>1</sup>, T. Keizeirina Devi Azwar<sup>2</sup>, Cheryl Patriana Yuswar<sup>3</sup>, Siti Nurahmi Nasution<sup>4</sup>, Hilbertus Sumplisius M. Wau<sup>5</sup> (2023)**

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