

Potential Fraud on Online Auction Business Via Instagram: Overview of Islamic Law and Indonesian Statutory Law

Nur Rizqi Febriandika^{1*}, Jajang Nurzaman², Muhammad Reynaldi Ariananda Arkiang³

¹ Department of Islamic Economic Law, Universitas Muhammadiyah Surakarta, Indonesia

² Faculty of Islamic Religion, Universitas Muhammadiyah Surakarta, Indonesia

³ Faculty of Education, Social Science & Law, University of Leeds, United Kingdom

*email: nrf679@ums.ac.id

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ABSTRACT

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This study aims to discuss the potential problem of auction fraud carried out by the @xxx Instagram account in terms of Islamic law and Indonesian law. The research method used is descriptive qualitative, through a normative juridical approach, and is complemented by the results of observations and interviews with sources. The results of this study indicate some indications of fraud. First, the seller creates a fake account and colludes with his friend to make a fake offer. Second, the seller who entrusted the goods to the @xxx Instagram account did not send the goods to the auction winner. Third, the seller of the @xxx Instagram account sells goods by mixing genuine and fake products. It is contrary to Islamic law, which prohibits any intentional fraudulent activity. Of the several acts of fraud committed by the perpetrators, they can be subject to Article 28 of the 2016 ITE Law, Article 378 of the Criminal Code, Law no. 20 of 2016 concerning Brands and Geographical Indications, Law Number 11 of 2008 concerning Information and Electronic Transactions, and Article 16 of Law no. 8 of 1999 concerning Consumer Protection.

1. INTRODUCTION

In industry 4.0, digital technology has become a much-needed place in developing a business, both in the form of services and businesses that produce goods.¹ Seeing the uncertain economic conditions and along with the development of the times, Indonesia made many changes in developing strategies for economic progress.² The presence of several digital media platforms such as Facebook, Instagram, WhatsApp, and so on has a

¹Kemertian Komunikasi dan Informasi, “Perkembangan Ekonomi Digital Di Indonesia: Strategi Dan Sektor Potensial,” 2019, 1–68.

² Azhar Alam and Yuli Tri Utami, “Unsur Riba Dalam Perbedaan Konsep Pinjaman Kredit Antar Rentenir Dan Bank Plecit,” *Al-Kharaj: Jurnal Ekonomi, Keuangan Dan Bisnis* 3, no. 1 (2021): 130–41, <https://doi.org/10.47467/alkharaj.v3i1.240>.

very extraordinary appeal in its use. The digital economy was also born and developed along with the use of Information and Communication Technology which is also increasingly globalized in the world.³

The era of the digital economy actually started in the 1980s; at that time, there were internet devices and personal computers (PCs) as keys used to open digital-based business efficiency. Over time and supported by rapid technological developments, as well as the existence of mobile technology has resulted in increasingly unlimited internet access, as well as being supported by the presence of cloud technology in the digital-based economic process, finally entering a new era in the digital economy process.⁴

The digital economy in Indonesia is predicted to become a digital economy giant in the Southeast Asia region. This can be seen from the number of internet users, which has increased significantly in 2016. Indonesia had a total of 88.1 million internet users, and in 2017, that number increased by 51%, which means that in that year, internet users in Indonesia reached 132.7 million.⁵ With the convenience available from internet technology, people's behavior changes. For example, online transactions in e-commerce increased from 18.1% to 98.3 million, the transaction value increased by 9.9%, which amounted to 20.7 trillion.⁶

The easy access to the internet has made some business activities even more massive, for example, the practice of buying and selling based on auctions. Buying and selling activities are carried out by sellers and buyers by means of sellers offering their merchandise openly to the public, as well as written, or verbal price offers carried out at increasing or decreasing prices to reach the highest price preceded by an auction announcement.⁷

In the development of the auction system at this time, it has taken advantage of technological advances, the use of the internet for business and trade purposes began to be recognized quickly, especially in developed countries. With the existence of business activities through the internet, a virtual store and virtual company business system has also developed where business people run their trading business through internet media, including buying and selling auctions which are carried out online.⁸ At first conventional

³ Jusman Dalle, "Menyoal Ekonomi Digital," republika.co.id, 2016.

⁴ And Levanon Van Ark, Erumban, Corrado, "Navigating the New Digital Economy: Driving Digital Growth and Productivity From Installation to Deployment," 2016.

⁵ Jevlin Solim et al., "Upaya Penanggulangan Tindak Pidana Penipuan Situs Jual Beli Online Di Indonesia," *Samudera Keadilan* 5, no. 1 (2019): 96–109.

⁶ Suciati Puspitaningrum and Cut Irna Setiawati, "Analisis 7 Atribut E-Commerce Berbasis Website Sebagai Dasar Preferensi Konsumen Di Kota Bandung Dengan Pendekatan Analisis Konjoin," *Jurnal Manajemen Dan Bisnis* 6 (2021): 151–67.

⁷ Rahma Amir, "Jual Beli Lelang Dan Pelaksanaannya Di Kantor Pelayanan Kekayaan Negara Dan Lelang Kota Palopo (Studi Komparatif Hukum Islam)," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 5, no. 1 (2018): 93, <https://doi.org/10.24252/al-qadau.v5i1.5667>.

⁸ Nurley Darwis, "Kriminology Pada Bidang Kebijakan 'Cyber Securty,'" *Jurnal Ilmiah Hukum Dirgantara* 9, no. 2 (2014): 24–46, <https://doi.org/10.35968/jh.v9i2.353>.

auctions were usually conducted face-to-face and carried out in one assembly, but now it can be done online by utilizing one of the social networks, Instagram. The sellers display photos of their merchandise on Instagram and then provide information containing item specifications prices and write down various regulations and or procedures to be able to participate in the auction. Instagram has facilities that support interaction. Instagram allows for more interactions and is not even limited. The features in Instagram are very supportive, such as the presence of marketplace columns, reels, feeds, stories, and more and more Instagram users from young people so that they support business activities. Online buying and selling activities with an auction system on Instagram trade various types of goods, such as clothing, electronic devices, household goods, to motorized vehicles.

Based on the experience of several people who have done an online shopping transaction, not a few of them have become victims of fraud. The goods being traded do not match the goods displayed on social media, or the goods ordered do not reach the hands of the buyer even though the payment process has been completed.⁹ In online-based buying and selling activities, crimes often occur using online media, including fraud. Online fraud is a crime that uses the internet network for business and trade purposes but is carried out no longer relying on real conventional businesses.¹⁰ Trading transactions carried out by sellers and buyers via the internet are different from trading and conducting trade transactions in the real world because, not in one assembly, the possibility of fraud in buying and selling is quite large.¹¹

The problem of protection for consumers in online auction buying and selling activities is a fundamental aspect, some typical characteristics of online buying and selling will place the consumer in a weak or disadvantaged position, including, first, companies on the internet or service providers in online-based business activities are difficult to trace. Because it usually does not include the address clearly. Second, in the case of defective goods, consumers find it difficult to get a guarantee for replacement goods. The three products purchased by consumers may not be suitable or not compatible with the items displayed on online media shelves.¹²

In this case, the understanding of the law of buying and selling online, which has the potential to be fraudulent, is still in the general category for the community, both in terms of Islamic law and criminal law. It is common for some people who have been victims of fraud to never report to the police. They just surrender and accept the goods

⁹ I Prawesti, "Perlindungan Hukum Terhadap Konsumen Atas Penjualan Barang Bermerek Palsu Secara Online," *Kertha Semaya: Journal Ilmu Hukum*, 2017, 1–8.

¹⁰ Ari Suhartanto Sumartono, "Tindak Penipuan Bisnis Online Dalam Kajian Perspektif Hukum Pidana Dan Sosiologi Pada Masyarakat Sosial Media," *Eduscotech* 1, no. 1 (2019): 72–86.

¹¹ Makarim Edmon, *Kompilasi Hukum Telematika* (Jakarta: Grafindo Persada, 2004).

¹² Dea Larissa, "Perlindungan Hukum Bagi Korban Tindak Pidana Penipuan Jual Beli Online Di Indonesia" 4, no. 2 (2020): 219–27.

even though they are not in accordance with what has been offered. Furthermore, Fauzi and Primasari argued the forms of fraud in e-commerce sales and purchased Lazada and OLX.co.id and how the rules for criminal acts of fraud in online buying and selling transactions are based on the laws and regulations in Indonesia.¹³

Therefore, the focus of research in this paper is to explore specifically the views of Islamic law and Indonesian law regarding the potential for online auction fraud through Instagram. The researcher took one of the online auction accounts that had quite a lot of followers by disguising the identity of the account, hereinafter referred to as the @xxx Instagram account. This research is expected to provide benefits both for consumers, business actors, as well as law enforcement, and the government so that problems do not happen again regarding the sale of goods based online, especially in the case of buying and selling online auctions on Instagram.

2. RESEARCH METHOD

This research is normative juridical research. Normative juridical law research is research that is focused on examining the application of rules or norms in positive law.¹⁴ In addition to examining the norms in positive law, this study also approaches the views of Islamic law so that it can find out the forms of fraud, consumer protection, and the state's responsibility to protect the public from fraud in online-based buying and selling activities. The normative juridical legal research method is complemented by the results of observations and interviews with sources. The activities carried out were observing the auction account @xxx, then interviewing the informants were actors and advocates, and analyzing data through interviews to document searches.

The type of research to be carried out is qualitative descriptive field research, namely research conducted by collecting data and information obtained directly from respondents, aiming to describe and summarize various conditions that arise in the community.¹⁵ The approach used in collecting data is interviews and observation. Interviews were conducted with the owner of the auction business and the users of the auction service. Observations are carried out by observing the patterns and mechanisms of online auctions on the Instagram account. This research is also carried out through a literature study on laws and regulations related to the crime of fraud and related legal doctrines through a statutory approach and a conceptual approach.¹⁶

¹³ Satria Nur Fauzi and Lushiana Primasari, "Tindak Pidana Penipuan Dalam Transaksi Di Situs Jual Beli Online (E-Commerce)," *Recidive* 7, no. 3 (2018): 250–61.

¹⁴ Johnny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif* (Malang: Bayumedia, 2005).

¹⁵ Aletheia Rabbani, "Pengertian Penelitian Lapangan, Hal Yang Diperlukan, Langkah, Catatan, Kelebihan Dan Kekurangannya," *sosial76.com*, 2020.

¹⁶ Peter M. Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005).

3. RESULTS AND DISCUSSION

3.1. Auction Mechanism on Instagram Account @xxx

The Instagram account @xxx, which sells with an auction system, displays many types of goods to be traded in the form of daily necessities, such as clothing, electronics, motor vehicles, and others. The auction uses internet facilities in terms of online auctions called electronic auctions.¹⁷ Buying and selling online is an act to bind each other between sellers and buyers through an internet network that is connected via mobile phones, tablets, and computers.¹⁸

The way of binding each other is when the seller must submit his merchandise, and the buyer must pay for the goods he bought from the seller. The mechanism for buying and selling auctions on the @xxx Instagram account is as follows:

a. Uploading pictures on Instagram feed

The Instagram feed is a profile page that displays photos and videos that have been uploaded. Because buying and selling are done online and not face to face, it is very important to notify about the existence of goods or goods specifications, uploading photos or videos. On the other hand, the appearance of the uploaded goods will attract buyers to buy the goods they want.

b. Write caption

The use of captions in selling goods is very important to know the specifications of the goods. The items included in this information are a) Item type and condition. The items being auctioned on the Instagram @xxx account vary, so the inclusion of the type of item corresponds to the name and specifications of the item, for example, shoes, the information listed is "AJ1 High x Dior Collab, size 42, BNIP (Brand new in box) condition; b) Inclusion of the offer price (bid). In listing the bid price, the Instagram account @xxx usually starts with a bid of IDR 0 while bids start at IDR 25,000 and depending on the type of goods being sold. Bids are made between one auctioneer and another to get the item. In essence, the highest bid will get the item; c) Multiple bids (bid). In multiples of the bid price on the @xxx Instagram account, which is a multiple of IDR 25,000; d) Auction time. The bidding process in the @xxx auction account is limited to 1x10 hours; e) Auction rules.

The rules for following on the @xxx auction Instagram account are as follows: 1) User can jump bid as long as it is in multiples; 2) Do not delete bids; 3) The winner will be sent a direct message by the seller; 4) Shipping costs are borne by the winner; 5)

¹⁷ Moch Djaiz Permata, Marjo, "Pelaksanaan Lelang Atas Barang Milik Daerah Melalui Internet (e-Auction) Oleh Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL) Semarang," *Diponegoro Law Riview* 5 (2016): 3.

¹⁸ Melisa Monica Sumenge, "Penipuan Menggunakan Media Internet Berpura Jual Beli Online," *Lex Crimen* 4 (2013): 252.

Confirmation and payment 1x24 hours; 6) If the participant with the highest bid runs, then the participant with the second-highest bid can take it with the seller's approval.

Every sale and purchase made on the @xxx Instagram account has a regulatory agreement with auction participants, including the participant must follow the @xxx auction Instagram account. This regulation is optional because Anyone can become a participant in the auction; while having to follow the account, usually there is an account privacy problem that requires auction participants to follow the @xxx Instagram account. Auction participants are given the Buy Now (BN) option. This option is given to auction participants who want goods quickly without having to follow a long auction procession.

3.2. Potential Fraud in Online Auction Activities on Instagram Account @xxx

In trading activities carried out by sellers and buyers, both in the form of face-to-face and online, there are problems. In the implementation of buying and selling online, on the other hand, it makes it easier for every buying and selling activity; on the other hand, easily getting information has led to criminal activity, and Anyone can take advantage illegally.¹⁹

This happens because the perpetrators of buying and selling do not carry out the laws that regulate both religious law and positive law. Buying and selling auction items on Instagram also have problems that interfere with healthy buying and selling; this is because there are still parties who want to make more profit or intentionally harm others. The potential for fraud in buying and selling auctions carried out by the seller, the buyer can know what types are used by the seller in committing fraud. The most common types of auction fraud via the internet are the seller does not send the goods, the buyer makes a fake offer, and the product is authentic.²⁰

Meanwhile, from interviews conducted by researchers to the perpetrators, they found the problems that usually occur during auctions are as follows:

a. Displaying fictitious auction items

Online-based buying and selling activities are often misused by irresponsible rogue sellers, both in the form of well-known e-commerce such as Shopee, Bukalapak, Tokopedia, and so on. So far, there have been several cases where a sale in e-commerce and especially online auctions conducted by the seller is a fictitious or joint item that has never been sent to the buyer even though the payment process has been carried out. The @xxx auction Instagram account does not only sell personal property. In this account, it receives auction custody services from other sellers. In custody of the @xxx account, the

¹⁹ Farzana Anowar and Samira Sadaoui, "Detection of Auction Fraud in Commercial Sites," *Journal of Theoretical and Applied Electronic Commerce Research* 15, no. 1 (2020): 81–98, <https://doi.org/10.4067/S0718-18762020000100107>.

²⁰ Kyo M Dolan, "Internet Auction Fraud: The Silent Victims," *Journal of Economic Crime Management Winter* 2, no. 1 (2004): 1–22.

seller is charged a service fee of Rp. Twenty-five thousand per one-time upload promotion on Instagram; from the safekeeping, there are several sellers who do not send the goods even though it is clear that the auction winner has been announced and the payment process has been carried out.

From the interview with the owner of the @xxx account, the reason is usually that the owner of the goods does not want to lose because the auction price is lower than the original selling price. Although, in some cases, the sale of fictitious goods is not so much, this is very detrimental to other traders who sell their goods on Instagram, and potential buyers are afraid to participate in auctions on Instagram.

b. Displaying real-fake goods

In other cases, the seller does not explain in the caption specifically the type of item being auctioned, the @xxx account only provides brief, solid but unclear information, the account does not serve questions in the comments column except through direct messages. Meanwhile, when the auction participant asks about the authenticity of the goods, the seller will say that the goods are original. From the results of interviews with auctioneers on the @xxx account, the goods are genuine-fake goods. Fake originals are goods that resemble the original, both in type, shape, and brand but have low quality. As for the items being sold, they are not always genuine and fake. There are some items that are truly genuine, such as cell phones, motorbikes, and houses. Items in genuine-fake conditions that are usually sold by the @xxx account are clothes, bags, hats, and shoes.

Even though the auctioned goods are genuine-fake goods (asphalt), as long as the @xxx account sells the auction system, it has never received a complaint from auction participants. This can happen due to several factors; firstly, buyers don't know where to report; secondly, they take too much time to make reports, thirdly they don't feel disadvantaged because they are able to style with famous brands, no matter if the goods are genuine or fake.

c. The seller has double accounts.

The thing that needs to be considered by prospective buyers is to be careful before participating in the auction. Prospective buyers must see the activity of the Instagram account that is auctioning the item, how clear the account is, whether the account has been operating for a long time, how many followers, how many Instagram accounts like the post, how many accounts comment on posts and the clarity of other accounts such as testimonials from buyers who get auction items or identity inclusion seller included in the Instagram bio. Real accounts in buying and selling auctions on Instagram will not dare to commit fraud openly because this can damage the name and result in a decrease in buyer confidence in the auction account.

The auction seller will create several Instagram accounts that aim to block the auctioned price. The explanation is when the @xxx account uploads a photo of a Samsung

A10s mobile phone with the original price of IDR 2,000,000 but starting at the auction bid price of Rp. One hundred thousand then the @yz account bids in multiples of IDR 25,000, meaning the price is IDR 125,000, 150,000 up to a jump bid what is done by the real Instagram account @aajnurzaman99 IDR 1.025,000 and no one bids, automatically that account becomes the winner in the auction. Considering the original price of the Samsung A10s cellphone is IDR 2,000,000, the seller will experience a loss, so as not to suffer a loss, the seller will set up dozens of accounts with different names. From the offer that should have been the @aajnurzaman99 Instagram account that received the auction, the @xy account was repelled by a jump bid of IDR 2,500,000, which was a fake account. In this case, it does not always use a fake account, from interviews that have been carried out, the seller will ask his friend's account to bid in the comments column that is auctioning the Samsung A10s, there is no intention to buy but prevent items from being sold on the @aajnurzaman99 account at low prices.

Prospective buyers can find out about this fraud by paying attention to the activities of other accounts, as well as Anyone participating in the auction, whether there are fake accounts that are not actually eligible to participate in the auction or real accounts but collude with the seller. Real Instagram accounts usually have been around for a long time, and activity on Instagram is clear. Fake accounts usually have no activity on their profiles. These accounts don't upload photos, videos or don't even have followers. In highlighting Activities in detecting fraudulent bidding activity need to be done to avoid significant financial losses for legitimate buyers.²¹

d. Doing bid and run

Fraud is not only carried out by the seller. Auction participants who do not have good faith also have the potential to deceive the seller. Incidents like this still often occur during auction activities. There are accounts that deliberately participate in auctions bid prices and do not want to be responsible for the bids that have been made so that at the time of the announcement of the winner, they cannot be confirmed to pay for the auction goods, so the purpose of the auction is not can be achieved. On the @xxx account, if there are auction participants who make fictitious bids or bid and run, the seller will direct the message to the Instagram account that made the bid below.

There is a case in the account @aprilhaji76 bids the price of the Samsung A10s at a price of IDR 1,750,000, and the account @aajnurzaman99 bids the price of IDR 1,725,000 automatically @aprilhaji76 becomes the winner of the auction, but when confirmed by the seller, the account @aprilhaji76 does not provide a response within 1x24 hours. The seller will contact the @aajnurzaman99 account and confirm that the first winning participant has made a bid and run, then the @aajnurzaman99 account is the winner of the auction. However, if the @aajnurzaman99 account does not confirm, the

²¹ Anowar and Sadaoui, "Detection of Auction Fraud in Commercial Sites."

auction objective will not be achieved, and there will be no transfer of the winner to the account with the highest bidding number three.

3.3. Islamic Law Review

Islamic economics is the basis for economic activity or the act of fulfilling the needs of human life. In essence, all economic activities to meet human needs must meet the elements of benefit.²² Business activities or entrepreneurship in Islam refer to the entrepreneurship of the Prophet and have ethics that must be maintained in conducting business activities in Islam.²³

According to contemporary Islamic law, there are four pillars in buying and selling, namely *al-aqidan* (subject of the contract), *sighatul 'aqd* (statement of the will of both parties), *mahallul 'aqd* (object of the contract), and *maudu' al-aqd* (purpose of the contract).²⁴

Based on the description above, the practice of buying and selling goods with an auction system on the @xxx Instagram account can be analyzed as follows:

a. *Al-Aqidan* (subject of contract/party making the contract)

In the practice of buying and selling auctions carried out by the @xxx account, there are parties who are the subject of the contract, the first party is the seller, and the second party is the buyer (auction participant). The fiqh scholars are of the opinion that those who are allowed to perform the contract must be legally competent (*mukalaf*). If they are not competent, then the contract law is invalid.²⁵ The parties who are the subject of the contract in the practice of buying and selling auctions on the @xxx Instagram account, in general, have fulfilled the requirements to enter into the contract. The seller and buyer are adults and are able to take legal action.

b. *Sighatul 'aqad* (statement of the will of both parties)

sighatul 'aqad is a statement from both parties to the contract. In the practice of buying and selling auctions on the @xxx Instagram account, the parties have presented their pleasure and approval. Auction rules in pricing, start bids, jump bids with multiples determined based on the seller's decision. If the rules are violated by the auction participant, then the bid is invalid. The Buy now (BN) option in the practice of buying

²² Nur Rizki Febriandika and Fifi Hakimi, "Analisis Kesesuaian Syariah Electronic Money Pada Bank Penerbit Uang Elektronik Di Inonesia," *An-Nisbah: Jurnal Ekonomi Syariah* 07, no. 01 (2020): 212–49.

²³ and Fauzul Hanif Noor Athief Dzaky Adam Thamrin, Bobby Habibi, Dewi Permata Sari, "Analisis Strategi Islamic Collective Entrepreneurship (ICE): Solusi Mengatasi Desa Tertinggal," *Profetika* 21, no. 1 (2020): 45–56.

²⁴ Syamsul Anwar, *Hukum Perjanjian Syariah Studi Tentang Akad Dalam Fikih Muamalat* (Jakarta: PT Raja Grafindo Persada, 2007).

²⁵ Muhammad Ali Hasan, *Berbagai Macam Transaksi Dalam Islam* (Jakarta: PT Raja Grafindo Persada, 2003).

and selling auctions aims at the highest bidder in accordance with the price of the value of the goods so that the auction procession can be stopped because it has automatically found the winning bidder. The option has been explained in the photo caption, so each bidder must understand and be careful if someone does the BN option and accepts if the auction is then terminated.

The addition of the BN option is allowed under Islamic law because the additional price of goods is different from the concept of usury. The increase in the price of the BN option is a sale and purchase contract made by the seller to the buyer, which increases the bid. At the same time, the addition in the practice of debt is haram because the intended addition is not agreed in advance, and the object is in the form of borrowing and borrowing money. On the other hand, the practice of buying and selling auctions on the @xxx account is carried out in one assembly by utilizing advanced technology. One assembly, according to the modern world, is not meant to be in one room but can interact directly through a network. This can interact with each other even though not in the same location so that *sighatul 'aqad* can be done directly through social media. When the auction participant wins in the auction procession, the participant will voluntarily pay for the goods, and the seller will hand over the buyer's goods. As for the conditions for *sighatul 'aqad*, there must be a match between consent and acceptance which indicates an agreement.²⁶

c. *Mahalul 'aqad* (object of contract)

In buying and selling, if there is no object of the contract that is used as a source of the movement of objects, then the law is not valid because the goods are unseen. The object of the contract in buying and selling auctions on the @xxx Instagram account is of various types. Goods sold on the @xxx auction Instagram account are not items that are prohibited from being traded, both in the perspective of Islam and the state. Items that are not allowed to be traded in Islam are dogs, pigs, carrion, *khamr*, idols, and so on. The goods traded are in the form of electronic goods, household needs, clothing, bags, vehicle shoes, and so on, so it is permissible to trade these goods in Islam.

d. *Mudu' al-'aqad* (the purpose of the contract)

The purpose of the contract must be good and contain elements of benefit. The transfer of ownership of goods from the seller to the buyer indicates a reward. Sellers on the @xxx auction Instagram account carry out marketing strategies to get profits, while sellers find it helpful to get the items they want. So, the purpose of the contract in the practice of buying and selling auctions on the @xxx account results in a symbiotic mutualism.

²⁶ Sayyid Sabiq, *Fiqih Sunnah Jilid 5*, ed. Ahmad Dzulfikar dan Muhammad Khoirurrijal (Depok: Keira Publishing, 2015).

Online-based auction buying and selling activities such as Instagram allow sellers to have more than one account. This has resulted in fraud and conspiracy between two or more to bid fictitious goods. Likewise, with the @xxx auction Instagram account, in practice, the account is real, but in playing with the auction price, the seller will create up to tens of fake accounts. The strategy for playing with the seller's price is not only creating fake accounts but usually asking friends who have Instagram accounts to bid fictitious prices. Fraudulent engineering to make profits by tricking legitimate bidders is an injustice act. The seller explains the price of so many items even though he is lying.²⁷

The practice of buying and selling is included in the form of najasy, where someone commits collusion by deliberately increasing or exceeding the selling price with the intention of luring other buyers to buy at a higher price. In the practice of buying and selling auctions on the @xxx Instagram account, the pillars and conditions of sale and purchase have been met, but the seller has cheated by saying that the goods being sold are genuine goods. Behavior by hiding the shortcomings and defects of goods is prohibited in Islam.²⁸ It is clear that fraud by not telling the specifications of the goods is explicitly prohibited in Islam in the @xxx auction Instagram account when the buyer asks via Direct Messages (DM). The seller says that the goods being sold are original goods. This is an act of fraud that is carried out intentionally and with the awareness of the seller of the auction item.

The practice of buying and selling on the Instagram @xxx auction account is carried out online so that the physical movement of goods takes a long time, depending on the proximity or distance of the goods from the delivery location. In the regulation made by the seller, if the goods are won by the auction participant and have been confirmed by the seller within 1x24 hours, the buyer is obliged to make a payment to the seller. The regulation does not violate Islamic law as long as it is carried out on the basis of the willingness of both parties.

In Fiqh Muamalah, the practice of delayed delivery or selling an item by telling the specifications of the item through photos and paying later is a type of buying and selling bai as-salam. It is also necessary to know the deadline for delivery of the goods that will be received by the auction winner. If the buyer has made a payment, but the goods are not delivered, then the seller has committed fraud. This kind of fraud has never been carried out by the @xxx auction account, but in the safekeeping of other people's goods, often the second party feels a loss from the sale of auction goods, so he does not send the goods even though payment has been made.

²⁷ Muhammad Ayub, *Understanding Islamic Finance* (Jakarta: PT Gramedia Pustaka Utama, 2009).

²⁸ Ibnu Hajar Al-Asqolani, *Bulughul Maram Kitab Al-Buyu'* (Jakarta: Dar al-Kutub al-Islamiyah, 2002).

At the time of the auction, the seller often finds an Instagram account that makes an offer but does not have the good faith to buy, and when the winner is announced, he does not confirm. The term is called the bid and run. This is prohibited in Islamic buying and selling because one of them betrays the agreement, which results in disruption of the auction procession. A contract is made by the parties who have fulfilled the pillars and conditions. Then the contract must be fulfilled by each party. If in the agreement one of them defaults, it will bring up the parties who will be harmed in the practice of buying and selling the auction.²⁹

3.4. Indonesian Statutory Law

Fraud is a process of deceiving and deceiving with the intent to mislead or outsmart others in seeking profits and interests of themselves and their groups. Juridically in the perspective of the Criminal Code, fraud is a crime that harms other people, and the perpetrator can be punished.³⁰ Meanwhile, in the formulation of Article 378 of the Criminal Code, fraud is the act of a person by deceit in compiling lies, false names, and untrue circumstances with the intention of benefiting oneself with no rights. A series of lies is a sentence that is structured in such a way that it is a story of something that seems to be true.³¹

Crimes committed in cyberspace refer to criminal activities using a computer or internet network. As included in cybercrimes are fraudulent buying and selling of auctions conducted on Instagram, counterfeiting checks, forgery of identity, and pornography.³² Fraud and acts of default in a positive legal perspective can be identified in terms of the following parameters: 1) Source of default; 2) Claims for compensation.³³ 3) Elements of deception. Fraud is contained in the Civil Code in Book II Chapter XXV, known as cheating or bedrog. Based on the bedrog formulation contained in Article 378 of the Criminal Code, the elements in fraud must meet the main elements, namely: a) Benefit oneself by violating the law; b) using one or more fraudulent tools such as a false name, false title and committing a series of lies; c) Motivate other people to hand over an item, give or ask for debt and write off debts.³⁴ Based on the previous explanation, a

²⁹ Yusuf Karuniawan, *Pandangan Hukum Islam Terhadap Praktek Jual Beli Online Dengan Sistem Lelang* (Surakarta: IAIN Surakarta, 2017).

³⁰ Hafifah Putri, "Jurnal Ilmiah FENOMENA, Volume XIV, Nomor 2, November 2016: 1554-1566" XIV, no. November (2016): 1554-66.

³¹ Anton Hendrik S., "Modus Operandi Dan Problematika Penanggulangan Tindak Pidana Penipuan Daring," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 31, no. 1 (2019): 59, <https://doi.org/10.22146/jmh.34786>.

³² Darwis, "Kriminology Pada Bidang Kebijakan 'Cyber Security.'"

³³ Moeljatno, *Kitab Undang-Undang Hukum Pidana* (Jakarta: Bumi Aksara, 2007).

³⁴ Bagus Andi Dwi Prakoso, I Nyoman Sujana, and Luh Putu Suryani, "Perlindungan Hukum Terhadap Korban Penipuan Jual Beli Online," *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 266-70, <https://doi.org/10.22225/jkh.2.1.2591.266-270>.

person can be said to have committed an act of fraud if he has fulfilled the elements in Article 378 of the Criminal Code.

3.4.1. *Creating Fake Accounts and Collusion to Get Higher Bids from Bidders*

According to Teguh Arifyadi (chairman of the Indonesia Cyber Law Community), social media accounts are a form of electronic information. He is of the opinion that a fake account that aims to make profits illegally (for example, with the intention of bidding the auction price so that other participants bid more and or so that the auctioned item is not sold at a low price) is a violation of Article 35 of the ITE Law.³⁵ Such acts are included in the creation of electronic information with the aim that the information is considered as if it were authentic. Normatively, the creation of a fake account based on Article 51 paragraph (1) of the ITE Law as long as it meets the elements and reasons and has bad intentions from the account maker can be punished.

Collusion is carried out with two or more people and is mutually agreed upon, and there is an element of the offense in accordance with Article 378 of the Criminal Code, which states, "Anyone who intentionally benefits himself or another person by fighting rights, either by using a false name or false circumstances, both with reason and deceit, as well as by composing false words, to persuade people to give something, make debt or write off a debt, it is punishable by a maximum imprisonment of 4 (four) years.

In the Amendment of Law No.11 of 2008 to Law No.19 concerning Electronic Information and Transactions³⁶ Law Number 19 of 2016 is the legal basis for protecting online buying and selling transactions.³⁷ Based on the 2016 ITE Law as contained in Chapter VII Article 28, it contains, "everyone intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions" With the criminal provisions of Article 45A paragraph (1) with a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1000,000,000 (one billion rupiah). In the case carried out by the @xxx Instagram auction account for the benefit of themselves, the seller has created another Instagram account or colluded with his friend by using a false identity to bid.

³⁵ Sigar Aji Poerana, "Hukumnya Membuat Banyak Akun Agar Mendapat Promo E-Commerce," *hukumonline.com*, 2020.

³⁶ Kemkominfo, "Undang-Undang Republik Indonesia Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik," *UU No. 19 Tahun 2016*, no. 1 (2016): 1–31.

³⁷ Silvony Kakoe, Masruchin Ruba I, and Abdul Madjid, "Perlindungan Hukum Korban Penipuan Transaksi Jual Beli Online Melalui Ganti Rugi Sebagai Pidana Tambahan," *Jurnal Legalitas* 13, no. 2 (2020): 115–28.

3.4.2. *Selling Genuine-Fake Items*

As one of the laws that have developed in developed countries, developing countries regarding the issue of Intellectual Property Rights (IPR) need special attention, considering that there are many violations of IPR around us.³⁸

Article 100 of Law Number 20 of 2016 concerning Marks and Geographical Indications states that any person who without rights uses the same mark in its entirety as a registered mark belonging to another party for similar goods and/or services produced and/or traded shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of IDR 2,000,000,000 (two billion rupiah). As for any person who trades goods and/or services who are known or reasonably suspected to know that the goods and/or services and/or products are the result of a criminal act as referred to in Article 11 and Article 101 shall be sentenced to imprisonment for a maximum of 1 (one) year or a maximum fine of IDR 200,000,000 (two hundred million rupiahs).

In buying and selling goods in an auction conducted by the @xxx Instagram account, it can be indicated that it violates Law No. 20 of 2016 concerning Brands and Geographical Indications. With the provisions governing Indonesian trademarks one step further, the problems faced by law enforcement regarding the criteria and lists of existing brands rarely find complaints from the original brand owners.³⁹ Based on the findings, the seller made the description in the photo of the item quite short and unclear with the intention that the item being sold looked elegant and original. That way, the consumer does not get his right to get clear information from the seller, as stated in Article 4 of the Consumer Protection Act.

3.4.3. *Not Delivering Goods Even If the Buyer Has Paid*

Buying and selling activities with an auction system carried out by the @xxx Instagram account do not only sell personal property, but the account also provides storage services for goods that will be auctioned on the Instagram account. From interviews conducted, the seller always sends the goods that have been purchased by the consumer, but with the custody of other people's goods which are sold at auction, it often results in losses to the custodian of the goods. In order not to suffer material losses, the custodian does not send the goods that have been won by the bidders even though the payment has been made. For this behavior, in principle, the owner of the Instagram account does not commit fraud against consumers but rather the custodian who commits the fraud.

³⁸ Mohamad Nur Kholiq, Dinda Ajeng Puspanita, and Prawitra Thalib, "Copyright Protection of Art Containing Nudist Elements Under Positive Law In Indonesia," *Law and Justice* 6, no. 2 (2022): 161–73, <https://doi.org/10.23917/laj.v6i2.17480>.

³⁹ Sahlan Nur, "Perdagangan Sepatu Merek Terkenal Palsu Di Kota Medan Ditinjau Dari Undang-Undang Merek Dan Indikasi Geografis" (Universitas Negeri Medan, 2020).

In this case, there are two people who are harmed. The first is the consumer, and the second is the service provider for the goods (Instagram account @xxx). The goods depositor is the victim of the main participant, who is the liaison between the buyer and the depositor of the goods. The role of the victim of this crime is related to the consequences and influence of the victim himself and his party, other parties, and the environment. Between the perpetrator and the first victim, there is a functional relationship. Even the first victim is said to be responsible. Such action does not fulfill the agreement that has been promised, does not keep the promise for a service and/or achievement, then it has violated Article 16 of Law No. 8 of 1999 concerning Consumer Protection. Business actors who violate the provisions as regulated in Article 16 of Law No. 8 of 1999 can be sentenced to a maximum of 2 (two) years in prison or a maximum fine of IDR 500,000,000 (five hundred million rupiahs).

From the cases indicated by the fraud carried out by the @xxx Instagram account, it can give birth to several moral and material losses, both for business actors and consumers. Consumer protection for online sales is regulated in Law Number 15 of 2001 concerning Marks. There is also Article 100 of Law Number 20 of 2016 concerning Brands and Geographical Indications.

4. CONCLUSION

Based on the discussion and problems described above, the authors can draw several conclusions: First, online-based sales of goods on the @xxx Instagram account, which are reviewed through Islamic law, have met the elements of buying and selling. In some cases, the seller does not deliver the goods to the winning bidder. Based on Islamic law, this behavior is categorized as buying and selling falsehood, meaning that the contracts in the sale and purchase are fulfilled, but the seller commits fraud. Second, the sale of auction items carried out by the online-based @xxx Instagram account has the potential to trick buyers into reaping profits. Unilaterally.

This is done by the seller creating multiple accounts and colluding with relatives to increase the price of the auction item. From interviews with sellers of auction items on the Instagram account @xxx, the authors found that the formulation of the article on the ITE Law was not sufficient to address massive online fraud. Article 28 paragraph (1) of the ITE Law is limited to the mechanism for protecting consumers from general fraud, so for example, in the case of making many Instagram accounts by sellers to counter prices, according to the author, it is difficult to enter into a criminal act unless there is a delict of deception according to the elements of fraud contained in Article 378 of the Criminal Code and proven in court. Third, the @xxx Instagram account sells genuine-fake goods but does not provide a clear description of the specifications of the goods being sold. Article 4 explains the rights of consumers, Article 7 explains the obligations of business

actors, and Article 62, Paragraphs (1) and (2) concerning criminal sanctions for business actors who do not carry out their obligations.

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