

Rights of The Buyer Under The Sale of Goods in *Shari'ah* and International Trade Law: A Comparative Analysis

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ABSTRACT

The sale of goods is one of the most common transactions worldwide, practised by people to meet their various, ongoing, and daily needs. Consequently, buyers acquire certain rights against sellers, protected by applicable laws that may vary across jurisdictions. This paper aims to evaluate buyers' rights under both *Shari'ah* and international trade law. It examines these rights before and after the conclusion of a contract and then compares the two legal frameworks in this context. This research employs doctrinal and Islamic legal research methods, considering *Shari'ah* and international trade law sources. Upon examination, it becomes evident that there are both similarities and differences between these two legal systems regarding the rights of buyers..

KEYWORDS

Buyer, *Shari'ah*. International trade law, rights, sale of goods.

Article History

Received: December 7, 2023

Revised: June 14, 2024

Accepted: June 21, 2024

Published: June 30, 2024

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Citation

Mazin Abdulhameed Dawood Hassan and Ahmad Azam Othman. 2024. Rights of The Buyer Under The Sale of Goods in *Shari'ah* and International Trade Law: A Comparative Analysis. *Journal of Contemporary Islamic Law*. 9(1): 47-59.

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INTRODUCTION

The principal function of the sale of goods is circulating wealth among the people. It constitutes an appropriate method for acquiring basic resources such as food, water, and clothes that contribute to achieving one of the main objectives of *Shari'ah* (*maqasid al-Shari'ah*), which is protection of the human life. This is indicated in *al-Qur'an*: "O you who believe! Eat of the good things We have provided for you, and give thanks to Allah, if it is Him that you serve." (*Surat al-Baqarah*, 2:172) and "O you who believe! Do not prohibit the good things Allah has permitted for you." (*Surat al-Ma'idah*, 5:87).

The sale of goods goes far beyond this objective to achieve peoples' natural desire for luxury. In fact, it is considered one of the best means to gain profit in *Shari'ah*. This is declared by the Prophet (PBUH): "The best way of gaining profit is a man's work through his hand and any *mabrur* sale (acceptable sale)." (Ibn Hanbal, 2008). For these reasons, *Shari'ah* comes to rectify the practice of selling

goods and rearrange the relationship between the buyer and the seller.

The modern world witnesses a significant global tendency to practice the sale of goods due to the free-market policy adopted by many countries. This, in turn, would lead to economic growth, peace, and a better standard of living among these countries (Carr, 2010). It also enables them to acquire resources not found therein and satisfies the countries' needs (Vijiayasri, 2013). For effective tradable ties between persons, companies, institutional bodies, states, and organizations, some states have been striving to adopt a legal instrument regulating international trade for a very long time. This would also ensure the certainty required in the rights of the buyer and the seller.¹ Muslim countries, being part of the open world, acknowledge the need to join international treaties on the sale of goods. Therefore, they must consider whether the international trade law is compatible with *Shari'ah*. This paper focuses on the buyer's rights under the sale of goods in *Shari'ah* and international trade law. The paper examines these

rights at the two stages, before and after the conclusion of the contract. This paper highlights the similarities and differences between *Shari'ah* and international trade law by evaluating these rights.

The remainder of this paper is divided into the following core themes; literature review, methods, rights of the buyer under the sale of goods in *Shari'ah* before the conclusion of the contract, rights of the buyer under the sale of goods in international trade law before the conclusion of the contract, rights of the buyer under the sale of goods in *Shari'ah* after to the conclusion of the contract and rights of the buyer under the sale of goods in international trade law after the conclusion of the contract.

LITERATURE REVIEW

The existing literature shows a lack of a comprehensive and comparative analysis between *Shari'ah* and international trade law on the rights of the buyer under the sale of goods. A search of literature seems to show that previous related studies attached either to the rights of the buyer under *Shari'ah* or otherwise rights of the buyer under international trade law and only few are focussed on comparing between *Shari'ah* and international trade law. These few writings, however, address the sale of goods in general and the main obligations of the buyer and the seller, and highlight certain *Shari'ah* issues surrounding it.

Muslim scholars endeavored to identify and analyze the rights of both buyer and seller in Islamic law. Mohd Ma'sum Billah, in Chapter Two of his book entitled "Shari'ah Standard of Business Contract" gives a brief overview of the contract of sale, its classifications, and some international terminologies used in international trade namely: the C.I.F and F.O.B and their validity at the eye of *Shari'ah*. He also provides an analysis of the different rights of option. The definitions, requirements, legality, and basic features of all the remedies provided for the aggrieved party in business contracts under *Shari'ah* were also explained in the book (Billah, 2006). The same author in another book published under the name of "Applied Islamic Law of Trade and Finance: A Selection of Contemporary Practical Issues", focuses among other issues on the right of a defect in Islamic law known as *khiyār al- 'ayb*. He provided all the related principles and rulings and concluded with a comparison between the right to defect and the principle of caveat emptor in common law (Billah, 2007).

It is not within the aim and scope of these two books to examine the rights of the buyer in international trade law. Also, discussed by Billah is a comparison between Islamic law and international law on the same issue. The former book does not address the sale of goods in particular; it rather refers to the broad words of business contracts. Razali Hj Nawawi also discusses in the book entitled "Islamic

Law on Commercial Transaction" the general features of the sale of goods and presents some issues on *gharar* (uncertainty), the goods and the price, apportionment of the price, deferred payment and installments and the types of sale (Nawawī, 2009). Another book published under the title of "Aḥkām Al-Mu'āmalāt Al-Shar'iyyah" written in the Arabic language by Ali Al-Khafif indicates the pillars, the requirements alongside the Islamic principles and rulings governing the sale and types of sales (Ali Al-Khafif, 2005).

However, comparative analysis of this subject is still left undiscussed by both authors. Furthermore, neither the former nor the latter provides a full understanding of the buyer's rights under the sale of goods though the rights were outlined and highlighted in the discussion. The work of Indira Carr on International trade law explores the buyer's rights under the sale of goods based on the United Nations Convention on Contracts for International Sale of Goods 1980 (hereinafter referred to as CISG 1980). The study covers aspects such as delivery of goods, handing over the documents, and transferring property in the goods. Nothing in this book mentions the *Shari'ah* point of view on the buyer's rights under the sale of goods or even to any point within the scope of this research (Carr, 2010).

In a rather different tune, Fatima Akkadaf wrote on the Application of The United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries. The author inquired whether the CISG is compatible with Islamic Law Principles as it concerns the buyer's rights under the sale of goods. Special focus was placed on the CISG 1980 and its provisions with respect to Islamic law on freedom of the contract and good faith under Article 7 (1) of the CISG 1980. She also suggests using the adaptability character of Islamic law to bring Islamic law into conformity with the CISG. However, it does not consider the primary rights provided under the contract of sale of goods. The study also makes no reference to rules other than the CISG 1980 such as the UNIDROIT Principles (Akaddaff, 2001).

Ahmed A. Syed in his article titled "A Comparison of the *Shari'ah* and the Convention on Contracts for the International Sale of Goods in International Business Transactions" conducted a comparison between *Shari'ah* and international trade law after a brief description of *Shari'ah* and the CISG 1980. He found some similarities between the two laws in relation to the rights of the buyer under the sale of goods. These similarities include the absence of a statute of fraud by which the parties can freely enter into a contract without the requirement of writing, the principle of good faith, and the principle of warranty of merchantability under which the buyer is entitled to receive the required goods. The paper concluded by giving suggestions on how Muslim countries can deal with specific non-compliance with the general principles and rules stipulated in the

CISG 1980. Although the paper aims to compare the two *Shari'ah* and international trade law, it concentrates on general principles of the sale of goods and not the detailed rulings on the buyer's rights. Moreover, the paper does not examine the main rights such as the right to take delivery of the goods and the right to receive all the related documents. Also, as far as international trade is concerned, it refers exclusively to the CISG 1980 (Syed, 2015).

Similarly, Sharifa's work titled "Shariah Compliant International Sale of Goods- Mere Possibility or Impending Reality?" centralized on the principles of the sale of goods such as *riba* (usuary) and *gharar* (uncertainty) rather than the rights of the parties. The purpose of this article is to explore the prospects of a new model of uniform law based on the Shariah or Islamic principles but not to look for possible ways to harmonize the two laws. Again, it does not bring into the discussion other international rules such as the UNIDROIT Principles (Mohamed, 2016). In the same manner, Lisa Spagnolo and Maria Bhatti inquired whether the interest payment obligation in particular as stipulated in Art 79 of the CISG compatible with *Shari'ah* but discussion about the rights of the seller and the buyer are not covered (Spagnolo and Bhatti, 2023). Likewise, Ibrahim Alwehaibi in his thesis titled "The Legal Feasibility of Ratification of the United Nation Convention on International Sale of Goods by Saudi Arabia: A Comparative Study between CISG and Islamic Law" looked into the similarities and differences between Shariah and international trade law in terms of *riba*, penalty clause, future contracts, and open price contracts. Once again, it does not concentrate on the rights of the seller and the buyer. In addition, the thesis aimed to highlight the contradictions between the two laws rather than the similarities (Alwehaibi, 2020). Belal Rajab investigated why the CISG is not ratified and applied in Islamic countries. He found that the compatibility issues between the CISG and *Shari'ah* are one of these reasons. Nonetheless, it does not intend to uncover the similarities and differences between the two laws (Rajab, 2021).

METHODOLOGY

This study uses doctrinal legal research to understand the buyer's rights in international trade law (Ahmad et al., 2020). Accordingly, it refers to the relevant conventions such as the Vienna Convention on the International Sale of Goods 1980, International general rules such as the UNIDROIT principles and the Principles of European Contract Law, books on international trade law, for instance, International Trade Law, written by Indira Carr. These sources are available in the library and the internet databases such as HeinOnline and Lexis.

It also depends on the Islamic legal research method for understanding *Shari'ah* legal rules from

sources of Islamic law (Zahraa, 2003). Thus, a reference is made to the *Qur'an*, books of Al-Tafsir such as Al-Jami' Al-Kabir, written by Al-Qurtubi, books of Al-Hadith such as Sahih al-Bukhari and Sahih Muslim, written by Al-Bukhari and Muslim respectively, books of *fiqh* such as Badai' Al-Sanai', written by Al-Kasani and Islamic codes, especially, Majallat Al-Ahkam Al-'Adliyyah. These sources are available in the library and Islamic databases.

RESULTS AND DISCUSSION

1. Rights of the Buyer under the Sale of Goods in *Shari'ah* Before the Conclusion of the Contract

There are various rights that *Shari'ah* provides to the buyer before the conclusion of the sale of goods contract. These rights generally include the right to negotiation, the right to examination of the goods, and the right to full disclosure.

a. Right of Negotiation

This right refers to the right of the buyer to negotiate freely with the seller on the terms and conditions of the sale of goods contract, such as those pertaining to price, goods, rights prior to and after the contract, warranty, and the like. *Shari'ah* recognizes this right to ensure that the contract that the buyer and seller enter into is based on mutual consent. This mutual consent requirement is clearly based on *al-Qur'an*: "O you who believe! Do not consume each other's wealth illicitly, but trade by (*taradi*) mutual consent." (*Surat al-Nisa'*, 4:29). This verse basically emphasizes that the relationship between the contracting parties should be based on the consent of each of them. This right of negotiation is given to the buyer to ensure that he is fully aware of the seller's intention in achieving full consent in accordance with the *Shari'ah*. This is clearly mentioned in the *Hadith*: "Verily a sale shall be based on mutual consent (*taradi*)." (Ibn Majah, 1996).

This right is also recognized based on the "Shari'ah presumption of continuity" which says, "sayings, conducts, and beliefs of people are permitted as long as they are not in conflict with *Shari'ah*." (al-Zuhayli, 2007). To exercise this right, the buyer must be able to distinguish, identify, and recognize his statement. This is for anyone seven years of age or older (al-Zuhayli, 2007). Accordingly, a minor of below 7 years of age and insane do not have this right.

Subject matters of negotiation are either important or subsidiary to the validity of the sale of goods. The former includes the description of the goods, sum, and description of the price, time of payment of the price (if it is deferred) and the latter covers the place and time of delivering the goods, method, and place of payment of the price, responsibilities for transportation of the goods and payment for documentation fees (al-Nawawi, 2000 and *Majallat al-Ahkam al-'Adliyyah*, articles 201,200, 238, 239, and 246).

The buyer and seller are allowed to agree upon any other terms and conditions as long as they are in line with *Shari'ah*. This is based on the general principle mentioned in *al-Qur'an*: "O you who believe! Fulfil your contracts." (*Surat al-Ma'idah*, 5:1). Based on this authority, it is understood that, as a general rule, terms and conditions agreed upon by the seller and the buyer in whatever kind are valid and, therefore, shall be enforceable. This is because the contracts on which terms and conditions are based are general and include any of them (al-Qurtubi, 1966). However, *Shari'ah* forbids terms and conditions that contradict the religion of Islam. (al-Qurtubi, 1966). This is based on the *Hadith*: "The reconciliation between Muslims is permitted unless it aims to permit something prohibited or to prohibit something permitted and Muslims shall adhere to their conditions except those prohibiting something permitted or permitting something prohibited." (al-Tirmidhi, 1996). This *Hadith* indicates that Muslims have to stick to their conditions as they are binding on them unless such conditions are contrary to the basic principles of *Shari'ah* (al-San'ani, 2004). After exercising this right, the buyer is not allowed to renegotiate what has been agreed upon with the seller unless the latter agrees. Yet, he can use his option of contractual session (*khiyar al-majlis*).

b. Right of Examination of the Goods

This refers to the buyer's right to examine the goods for him to ascertain the actual goods he wishes to buy before the purchase. This is also to avoid dissatisfaction if the goods are not in accordance with his needs. Not only that, but this right would also ensure that the sale of goods is executed with full consent (al-Mirghinani, 2000). This right is given to the buyer to avoid the element of *gharar* that *Shari'ah* prohibits on the basis of the *Hadith*: "The Messenger of Allah (PBUH) forbade a *gharar* (uncertain) sale." (Muslim, 2006). Examples of *gharar* sales are *bay' al-hasah* (pebble throwing sale), *bay' al-mulamasah* (mere touching sale) and *bay' munabadhah* (mutual throwing sale). All these types are expressly prohibited by the *Hadith*: "The Messenger of Allah (PBUH) forbade *bay' al-hasah*." (Muslim, 2006) and "The Messenger of Allah (PBUH) forbade *bay' al-mulamasah* and *bay' munabadhah*." (Muslim, 2006). The prohibition of these types of sales is due to the inability of the buyer to examine the goods that would lead to *gharar* transaction.

Moreover, this right prevents any arrangement of the seller to conceal any defect in the goods which is prohibited by the *Hadith*: "The seller and buyer have the right to keep or return the goods so long as they have not parted or till they part; and if both the parties spoke the truth and described the defects and qualities (of the goods), then he would be blessed in their transaction, and if they told lie or hide something, then the blessing of their transaction would be lost." (al-Bukhari, 2002). This *Hadith*

condemns the concealment of any defect while entering into a contract. If this practice occurs, it is wise to allow the buyer to directly examine whether the goods are defective or not. This inspection can obstruct any attempt toward fraud by the seller. This view is grounded in the doctrine of *sad al-dhara'i* (prevention of what may lead to committing sins) (al-Zuhayli, 2010).

In exercising this right, the buyer can examine the goods through sighting, touching, smelling, tasting, or any other means to be fully satisfied with the goods (al-Zuhayli, 2007). It is not necessary for the buyer to examine the goods sold based on a sample as long as the examined part brings the knowledge of the condition of the non-examined parts (al-Zuhayli, 2007). If the buyer cannot examine the goods himself, he can appoint an agent to act on his behalf (al-Zuhayli, 2007). Examination of goods through viewing according to one of the views of Hanafis is a must as this is considered as his legal right. However, according to another view of Hanafis, if the viewing of the goods is not carried out, the sale of goods contract is not binding on the buyer, but the contract is still valid. This is based on *Hadith*: "He who has bought something without seeing it, shall have the option to reject it once he sees it." (al-Darqutni, 2011). Regardless of the status of the contract, the two opposing views agree that the buyer may reject the sale from the time he sees the goods based on the option of sight (*khiyar al-ru'yah*) as legitimated by the *Hadith* (al-Zuhayli, 2007).

c. Right of Full Disclosure

This right connotes that the buyer has the right to be informed about the goods as examination of goods is not enough for the buyer to know anything about the goods. This may be due to his lack of experience, or the tools used for examination. Thus, full disclosure of the goods is necessary to avoid the concealment of defects and unwanted descriptions of the goods by the seller. According to the Shafi'is, it is the right of the buyer to obtain correct and full information on the characteristics of the goods, deficiency in the quality and quantity, value, and dysfunctions, if any. However, according to the Hanafis, the right of the buyer is pertaining to anything abnormal that causes a decrease in the price of goods from the perspective of mercantile practice. This is irrespective of whether this decrease is major or minor and anything that does not conform to the expressed intention of the buyer (al-Zuhayli, 2007).

The right of full disclosure to the buyer is based on the *Hadith*: "The Prophet (PBUH) came across a trader who displayed food for sale, then he put his hand on it and found its' deceptive. He said one who cheats is not part of us." (Ibn Majah, 1996). The *Hadith* shows that any form of cheating is prohibited whether it concerns the goods, the terms and conditions of the contract, or information on the original sale. This is inferred from the generality of the word 'cheats' used in the *Hadith*. The original

sale could be in any form whether *murabahah* (cost plus sale), *tawliyyah* (cost sale), *ishrak* (sharing sale), or *wadi'ah* (discounting sale) (al-Zuhayli, 2007). Cheating can be committed either by action, saying, or presenting something untrue. It may also include, saying that the price of the goods is the market price while it is more, or by omission, non-declaring or hiding material defect or a particular undesired description of the goods. (al-Zuhayli, 2007).

There is another *Hadith* that supports this right as the Prophet (PBUH) says: "Any Muslim is a brother to the other Muslim; therefore, it is illegal for one Muslim to make together with his brother a sale tainted by a defect unless he declares the defect to him." (Ibn Majah, 1996). This *Hadith* clearly shows that the seller must inform the buyer of any defect in the goods to the buyer.

This duty is necessary to ensure that honesty, transparency, and truthfulness are implemented accordingly. Such moral obligations are basically mentioned by the *Hadith*: "Traders will come forth on the day of resurrection as sinners except those who fear Allah and do fairness in dealing and say the truth" (Ibn Majah, 1996) The sinner mentioned in the *Hadith* includes deceptive and lying sellers (Siuti et al., 2007). Hence, a seller who intentionally keeps silent on a defect is a deceiver, and a seller who gives wrong information about the goods is a liar.

If the contract is concluded and the seller fails to fully disclose the goods, the contract would be considered voidable for either cheating or defect in the goods. If there is cheating, then the buyer has the right to the option of manipulation and cheating (*khiyar al-ghubn ma'a al-taghrir*) or the option of dishonesty (*khiyar al-khiyanah*) and if the goods are defective, then the buyer has the right of option of the defect (*khiyar al-'ayb*) (al-Zuhayli, 2007).

2. Rights of the Buyer Under the Sale of Goods in International Trade Law Prior to the Conclusion of the Contract

There are various rights that are ensured under international trade law for the buyer. These rights generally include the right to negotiation and treatment in good faith.

a. Right of Negotiation

A buyer under the sale of goods in international trade law has the right of negotiation that is based on the principle of freedom of contract (CISG 1980, article 6, UP 2016, articles 1.1 and 2.1.15 and PECL 2002, articles 1:102 and 2:301) that gives freedom to the people to bind themselves legally (Black's Law Dictionary, 2001). It is also based on a judicial rule: contracts are based on mutual agreement and free of choice and should not be hampered by external control like governmental interference (Black's Law Dictionary, 2001). Thus, the buyer can enter into a contract to sell goods with anybody at any time and in any place. However, if the government prohibits

him from being involved in trade, his freedom would be restricted (UP 2016, comment on article 1.1).

The buyer can agree with the seller on all matters relating to the contract including the price, goods, carriage, and among others. Some of these matters are essential to the formation of the contract without which the contract of sale of goods becomes null and void. They include the goods, their quantity, and price (CISG article 14 (1)). Other matters are non-essentials that make the contract valid even though they are missing. A good example of such a term is the quality of the goods, if not agreed upon, the seller is bound to deliver goods not less than the average quality (UP 2016, article 5.1.6 and PECL article 6:108). Moreover, so far as the parties agree, no international rule would apply (CISG 1980, article 6; UP 2016, article 1.5 and PECL, article 2002 1:102 (2)). The courts tend to apply international rules only in the absence of an agreement to the contrary (CLOUT case No.338, Court of Appeal, 23, June 1998).

b. Right of Treatment in Good Faith

Another right that the buyer has is that he should be treated in good faith by the seller during the negotiation, bargaining, or formation process (CISG 1980, article 7(1); UP 2016, article 17(1) and the PECL 2002, article 1:201(1)). Good faith refers to a duty to act reasonably and to avoid a breach of trust in the relationship that exists between contracting parties (Powers, 1999, p.352). It is also said to be a display of such conduct that is normal among businessmen. Hence, no exaggerated demands can be made, and observance of good faith is in any way necessary for the establishment of material justice between the contracting parties (Enderlein and Maskow, 1992, p.56). The right of treatment in good faith cannot be waived by the parties at all (UP 2016, article 1.7(2) and PECL 2002, article 1:102(1)) as good faith implies a duty directed to the parties to everyone involved in the contract of sale of goods (CISG 1980, article 7(1); UP 2016, article 17(1) and the PECL 2002, article 1:201(1)).

There are various examples of the buyer's right of treatment in good faith. Specifically, the buyer must ensure that the seller when negotiating for the sale of goods has intended to continue with it and not vice versa (UP 2016, article 2.1.15 (3) and PECL 2002, article 2:301(3)). If not, the buyer is entitled to be compensated for expenses upon negotiation and loss of opportunity to enter into a contract with a third party (UP 2016, comment on article 2.1.15).

Another example is that the buyer must not be misled deliberately or negligently by the seller as to the nature and terms of the proposed contract (UP 2016, article 2.1.15). This includes misrepresentation of fact by the seller who wrongly states the description, quality, or quantity of the offered goods and when the seller wrongly reads the contents of a written contract to a blind buyer who, accordingly, signs it (UP 2016, article 2.1.15). Included also is

where the seller does not disclose facts given the nature of the parties and/or the contract (UP 2016, article 2.1.15). For instance, the seller keeps silent on a defect that existed in the goods offered to be sold. A defect that requires to be disclosed to the buyer includes those non-ordinary (unusual) defects, contract-breaching defects, or defects opposed to the seller's knowledge of the desired goods (CISG 1980, article 35 (2)). It covers any defect whether it is related to quality, quantity, the fitness of the purpose of the goods, and the manner in which the goods are packaged or contained (CISG 1980, article 35 (2)).

Based on the abovementioned discussion, if the negotiation has been concluded by a contract, the contract would be considered voidable for the interest of the buyer on the grounds of fault or fraud without any prejudice to the right to damages (UP 2016, article 3.2.5). As an exception, no liability on the seller in the circumstance where the buyer, reasonably, could have discovered the defect or do not make a notice of a defect within due time (CISG 1980, articles 35 (3) and 39). If the contract is not concluded the buyer still can recover damages against the loss he has sustained (UP 2016, article 2.1.15 (2) and PECL 2002, article 2:301 (2)).

Moreover, the buyer must be assured by the seller that the seller does not reveal any confidential information received from the buyer during the negotiation process to a third party (UP 2016, article 2.1.16 and PECL 2002, article 2:302). For example, if A - a prospective buyer- tells B a prospective seller- that he would offer a specified amount of money as a price for the offered goods and requests him not to divulge this information. If the negotiation does not result in the conclusion of the contract, A has a right over B that this information should not be disclosed to C, another prospective buyer, to induce him to buy the goods for a higher price. Accordingly, B would face pre-contractual liability for the buyer's loss (UP 2016, comment on article 2.1.16).

3. Rights of the Buyer under the Sale of Goods in Shari'ah After the Conclusion of the Contract

The buyer has various rights after the conclusion of a sale of goods contract. These rights include the right of option, the right to receive the goods, and the right of ownership of the goods.

a. Right of Option

The buyer has various rights of option upon the conclusion of the sale of goods contract. These options include i) the option of the contractual session (*khiyar al-majlis*), ii) the option of stipulation (*khiyar al-shart*), and iii) the option of determination (*khiyar al-ta'yin*).

b. Option of Contractual Session

It refers to "a right of the seller and buyer either to continue with the contract or to rescind it when they

are together in the contractual session." There are views amongst Muslim jurists on its recognition. According to the Hanafis and Malikis, the buyer has no right to the option of a contractual session. Once, he accepts the offer, the sale of goods contract shall be binding on him (al-Nawawi, 2000; al-Mawardi, 2003; Ibn Qudama, 1985; al-Kasani, 2000). On the other hand, according to Shafi'is and Hanbalis, the buyer has a right to rescind his offer or acceptance, as long as the parties are in the contractual session even though without the consent of the seller who insists on the execution of the sale of goods contract (*Majallat al-Ahkam al-'Adliyyah*, article 182). This right is based on the *Hadith*: "The buyer and the seller have the option to rescind the contract as long as they do not depart from each other." (Ibn Majah, 1996). This means that this right exists so long as the seller and buyer are not physically apart from the contractual session (al-San'ani, 2004). Hence, once they are not together, this right of the contractual session comes to an end.

Furthermore, this right of option is necessary for the buyer to ensure that he does not regret his prompt decision to conclude the contract. Hence, this would provide complete satisfaction and consent to the buyer for concluding the sale of goods contract.

This right of option can be waived by the buyer at any time after the conclusion of the contract. He may say: "I wish to continue with the contract of sale." This is based on the *Hadith*: "If two men make a sale, each of them has an option as long as they do not depart from each other and they are in the meeting, or one party allows the other party the right of option. If any of them allows the other to exercise his right of option, the sale would be binding. If the two depart from each other, the sale would be binding." (Ibn Majah, 1996). Thus, according to the *Hadith*, if one of the parties insists on continuing with the sale, his right to the option of the contractual session would be considered exhausted and, accordingly, no longer exist (al-San'ani, 2004).

c. Option of Stipulation

It means "a right of the seller and buyer either to continue with the contract or rescind it within an agreed stipulated time frame." This right of option is recognized by all Muslim jurists on the basis of the *Hadith*: "If you buy goods say there is no cheating and I reserve the right of option for three days. If you are happy, keep the goods but if you are not, return it to its owner." (Ibn Majah, 1996).

There are views amongst Muslim jurists on the duration of this type of option. According to the Shafi'is, Imam Abu Hanifah, and Zufar, it is for three days or less as mentioned in the above *Hadith* and the *Hadith*: "Whosoever bought the sheep that their udders have been tied up, he has an option up to three days." According to the Malikis, it is three days or more depending on the nature of the subject matter such as two days for clothes, and one month or more for houses. However, according to the Hanbalis, the

duration is subject to an agreement amongst the contracting parties provided that the duration is fixed based on the *Hadith*: “Muslims are bound by the conditions unless on what allows the prohibited thing and prohibits the permissible one.” (al-Tirmidhi, 1996 and Ibn Hajr, nd.).

Furthermore, this right of option is recognized on the primes of the principle of sanctity of the contract that derived from the *Qur’anic* verse: “O you who believe! Fulfil your contracts.” (*Surat al-Ma’idah*, 5:1) and the *Hadith*: “Muslims are bound by the conditions unless on what allows the prohibited thing and prohibits the permissible one.” (al-Tirmidhi, 1996 and Ibn Hajr, nd.).

This right of option is given to the buyer as it gives him extra opportunity to reconsider whether to continue or rescind the sale contract. He may rectify any wrong decision or misleading information (al-Zuhayli, 2007).

This right comes to an end once the buyer expressly or impliedly relinquishes this right (al-Zuhayli, 2007), the stipulated duration has lapsed (al-Zuhayli, 2007) and the goods that are the subject matter of sale are destroyed after delivery.² Furthermore, according to the Hanafis, this right comes to an end due to the death or loss of mind of the buyer (al-Zuhayli, 2007).

d. Option of Determination

It is defined as “a right of the buyer either to choose to buy one out of two goods and three within an agreed stipulated time frame.” There are views amongst Muslim jurists on its recognition. According to the Shafi’is and Hanbalis, this type of option is not recognized because it involves unknown subject matter of the contract that causes *gharar* (uncertainty). This is on the basis of the *Hadith*: “The Messenger of Allah (PBUH) forbade *gharar* transaction.” (Muslim,). However, the Hanafis recognize it on the basis of *istihsan* (equity). It is beneficial for a man to enable him to choose between good and bad. Not only that, he needs the option of determination for him to consult other people about his choice. Importantly, the agent needs to consult his principal about his choice. The Malikis also recognize the option of determination but it is known as *bay’ al-ikhtiyar* (sale with choice).

This right of option is given to the buyer provided that the following conditions are fulfilled.

i) The subject matter of the contract is not of similar classes. Thus, this option is not applicable to the contract of sale through a sample.

ii) The subject matter of the contract is limited to a number of less than four. Hence, the choice is either one out of two or three things. This is a) to comprehend the three qualities of the subject matter: good, medium, and bad, and b) to avoid uncertainty in the subject matter of contract.

iii) The time of the option must be determined and fixed. Imam Abu Hanifah restricts it to three days whereas Abu Yusuf and Muhammad permit it to be more than three days provided that it is fixed.

iv) The price of each subject matter must be stated clearly to avoid *gharar* and dispute.

This right of the option comes to an end when the goods sold become damaged or defective wholly or partly after delivery to the buyer (al-Zuhayli, 2007 and al-Kasani, 2000).

e. Right of Receiving the Goods

Furthermore, the buyer has the right to receive the goods. This right can be inferred from the meaning of the sale itself which refers to the “exchange of *mal* (property) with *mal*” that requires the act of delivery (al-Kasani, 2000).

The entitlement of the buyer under this right is based on what has been agreed between the buyer and the seller. If this is not mentioned in the contract, according to the Shafi’is, this right is established immediately after the payment of the price (al-Kasani, 2000). On the other hand, according to the Hanafis, this right is established immediately by the contract and precedes the right of the seller to receive the price (al-Kasani, 2000).

This right to receive the goods also includes taking all steps necessary for the realization of the possession of the goods to the buyer. If for example, the seller and the buyer reside in two different countries, the buyer is entitled to obtain an export license and certificate of origin at the cost of the seller. He is also entitled to have necessary information pertaining to the goods such as the name of the carrier, time, and place of its arrival. He is also entitled to receive an invoice so as to know the charge for the transportation and to pay it accordingly. These rights given to the buyer are in compliance with the legal maxim: “Anything that makes a duty become perfect is a duty in itself” (al-Salami, 40).

To enforce this right, the buyer has a right to specific performance if the seller fails to deliver the goods on time. This is to comply with the injunction of *al-Qur’an*: “O you who believe! Fulfil the contracts.” (*Surat al-Ma’idah*, 5:1). Beside this right, the buyer may claim for damages based on the legal maxim: “Harm shall be eliminated.” (*Majallat al-AhkAm al-Adliyyah*, article 20).

Furthermore, the goods received must conform with the terms and conditions of the sale of goods contract the buyer has the right to receive the goods that are in conformity with the terms and conditions of the sale of goods contract. This is to comply with the injunction of *al-Qur’an*: “O you who believe! Fulfil your contracts.” (*Surat al-Ma’idah*, 5:1). If the seller fails to deliver the goods as per agreed terms, such as the delivery of green apples but he delivers red apples, he is considered to have breached the contract. In this case, the buyer has the right to reject the red apples under the principle of option of

description (*khiyar al-wasf*) (*Majallat al-Ahkam al-'Adliyyah*, article 310). If the buyer still wants to have the green apples, the buyer may request the seller to redeliver the required apples to fulfil the contract to comply with the general rule that “commitment shall be fulfilled.” (*Surat al-Ma'idah*, 5:1). Alternatively, the buyer may recover damages for any loss sustained under the rule of “harm shall be eliminated.” (*Majallat al-Ahkam al-'Adliyyah*, article 20).

Additionally, the goods received must be free from any defects. In other words, the goods delivered to the buyer must be in good condition. If the goods are defective after the conclusion of the contract due to the action of the seller to deceive the buyer, then the buyer has a right of option as prescribed by the *Hadith*: “He who has bought a goat intentionally not being squirted for a long time in order to appear milky has two options that last for three days either to keep it or to give it back to the seller with ‘*sa*’ (a unit of measurement) of dates added, whatever the better choice may be.” (Muslim, 2006; *Majallat al-Ahkam al-'Adliyyah* in article 336). This *Hadith* shows that the buyer has the right of option to reject the defective goods as the contract becomes non-binding on him. However, if there is a partial defect and not a defect on the entire goods, the buyer may reject only the defective part and reduce the price to this extent (*Majallat al-Ahkam al-'Adliyyah*, article 351).

The right of the buyer to exercise his right of option due to a defect in the goods lapses in the following situations: i) the defect exists after taking delivery of the goods (al-Kasani, 2000 and *Majallat al-Ahkam al-'Adliyyah*, articles 339 and 340), ii) the defect is known to the buyer at the time of the conclusion of the sale of goods contract and delivery (al-Kasani, 2000 and *Majallat al-Ahkam al-'Adliyyah*, articles 341) iii) there is an exclusion clause that exempts the seller from defective liability of goods,³ (al-Kasani, 2000 and *Majallat al-Ahkam al-'Adliyyah*, article 342) iv) the buyer waives his right of option, expressly or impliedly (al-Kasani, 2000 and *Majallat al-Ahkam al-'Adliyyah*, article 344) v) the defect is an exceptional defect that is difficult to be avoided according to the view of Shafi'is and Hanafis (al-Zuhayli, 2007 and al-Mirghinani, 2000).

f. Right of Ownership of the Goods

Another right given to the buyer is the right of ownership of the goods sold. Ownership refers to “physical or constructive possession of something in a manner that enables the owner alone to control and deal with it in any way not contradicting *Shari'ah*.” (al-Khafif, 2008). It covers both the corporeal (*'ayn*) and usufruct (*manfa'ah*) of the thing owned (*Majallat al-Ahkam al-'Adliyyah*, article 125).

Furthermore, the right of ownership implies a right to own anything attached to it and any information that can be utilized to operate, direct, or access it. This includes cables, batteries, remote controls, keys, and passwords of devices and machines. This is because they are necessary for the benefit targeted by the sale of goods. In addition, customary practice (*'urf*) recognizes them as a part and parcel of the essence of goods sold (*Majallat al-Ahkam al-'Adliyyah*, article 230). This right is also based on the legal maxim: “Accessory follows the principal (*al-tabi' tabi'*).”

Once the buyer has this right, he is free to utilize and benefit from the goods. He may dispose of the goods by consuming them, selling them for profit, and giving them away by way of gift, bequest, endowment, and so on so forth. This right is basically in compliance with the legal maxim: “The owner of a thing held in absolute ownership is also the owner of the things indispensable to the enjoyment of such thing.” (*Majallat al-Ahkam al-'Adliyyah*, article 49).

The right of ownership even though seems absolute; there are various restrictions that the buyer needs to observe. If the goods are subject to the right of the third party such as they are mortgaged or leased to another party, then the buyer cannot dispose of them unless the mortgagee or lessee permits it. If the disposition is carried out, then it would become voidable according to the view of Hanafis unless permission is granted by the concerned third party. The buyer is also not allowed to sell the goods that have been imported in transit unless he has a bill of lading with him. This is because, on the basis of customary practice, a bill of lading is considered a document of title without which the buyer is considered as not having physical possession of the goods.

4. Rights of the Buyer under the Sale of Goods in International Trade Law After the Conclusion of the Contract

The buyer has various rights after the conclusion of the sale of goods contract. These rights include the right to take delivery of the goods, the right to examination of the goods, the right to receive the goods, the right of notification of the consignment, and the right of carriage.

a. Right of Examination of the Goods

Another right of the buyer is the right to examine the goods or cause them to be examined once the goods have been delivered to him (CISG 1980, article 38(1)). The purpose of this right is to enable the buyer to discover and check whether the goods are defective and to notify the seller of the defect.

The examination of the goods comes into existence when the delivery has taken place and not at the destination (CLOUT case No.48, 8, January 1993). However, this general rule is subject to some exceptions such as when the goods sold have hidden defects or have been affected by a latent defect, the

period for examination does not begin to run until the defects are revealed or should reveal themselves, or when the sale of goods involves carriage of goods, the examination may be deferred until after the goods have arrived at their destination (*Rheinland Versicherungen v. S.r.l. Atlarex and Allianz Subalpina s.p.a.*, 12, July 2000, Italy; CISG 1980, article 38(2)).

Another exception to the general rule is where the goods are redirected in transit or re-dispatched by the buyer without reasonable opportunity for examination at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or re-dispatch, examination may be deferred until after the goods have arrived at the new destination (CISG 1980, article 38(3)).

The right may be conducted by the buyer himself, a third party who is appointed to conduct the examination on behalf of the buyer, or an expert (CLOUT case No.319, 3, November 1999). It is also not necessary to examine the whole goods (CLOUT case No.280, 26, May 1998). However, this is not applicable in the case where a defect had been discovered during early delivery (CLOUT Case No.4, 31, August 1989).

To exercise this right reference shall be made to the agreement and international usage (Bianca et al, 1987) If none of these existed, the reasonable man standard shall be relied on (Bianca et al, 1987). The extent and intensity of the examination are determined by the type of goods, packaging, and testing possibilities (CLOUT Case No.230, 25, June 1997). However, the buyer loses his right to rely on non-conformity if the non-conformity cannot be discovered through examination pursuant to normal business practice and reasonable standards. (CLOUT Case No.423, 27 August 1999).

The buyer shall strengthen the degree of examination when a defect upon previous delivery comes to his knowledge otherwise, he could not rely on the late discovery of nonconformity (CLOUT case No.4, 31, August, 1989).

Moreover, the buyer must examine the goods as soon as reasonably possible (Bianca et al, 1987) unless the lack of conformity would have become evident only upon use that requires spot checks and test treatments. (CLOUT case No.230, 25, June 1997). If he fails to do so, he would bear the risk of non-conformity pertaining to the period of examination that shall be calculated to determine the time limitation within which the buyer may rely on non-conformity. The buyer would lose his right to rely on non-conformity if the notification of the defect is not given within the time limit such as 8 days as per contract after the lack of conformity ought to have been discovered. For durable goods, the examination period should be 3 or 4 days after the delivery, the defect should have been discovered within 7 days after the delivery (3 or 4 days after the examination) and the notice should be given within 8

days from this time (CLOUT case No.230, 25, June 1997).

b. Right of Receiving the Goods

The buyer is entitled to receive his goods pursuant to the contract (CISG 1980, article 30). Furthermore, the right of the buyer in this regard, extends to have steps necessary to have complete possession of the goods. This includes a right to be notified of his right to do so at a particular place and time and a right to have his goods properly identified and, if necessary, packed or contained as agreed in the contract (Bianca et al, p. 255).

Additionally, the buyer is entitled to have his goods in conformity with the terms of quantity, quality, description of the goods, and the manner in which the goods are contained or packaged as required and agreed by the contract (CISG 1980, article 35(1); PECL 2002 article 6:108). However, this principle is not applicable in the following circumstances: i) the goods are of equal value and their utility is not reduced (CLOUT case No.251, 30, November 1998) ii) no express or implicit agreement on the quality or quantity is made and the objective standard are satisfied (CLOUT case No.13U 51/93 20, April 1994), iii) the buyer knew or could not have been unaware of the fact of non-conformity (CISG 1980, article 35(3)), and iv) the buyer did not give timely notice of the non-conformity (CISG 1980, article 39).

In deciding whether the goods are in conformity or not, the court shall consider not only the express or implicit agreement but also look into other objective standards that are connected for this purpose. These standards include, i) the fitness of the goods delivered for the purposes for which goods of the same description, would ordinarily be used (CISG 1980, article 35(2)(a)) ii) the fitness of the goods for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely on, or that it was unreasonable for him to rely on the seller's skill and judgment (CISG 1980, article 35(2)(b)) iii) the possession of the qualities that the seller has held out to the buyer as a sample or model (CISG 1980, article 35(2)(c)) and iv) the adequacy of the manner in which the goods are contained or packaged to preserve and protect the goods (CISG 1980, article 35(2)(c)).

Besides the right of receiving the goods, the buyer is entitled to receive any documents related to the goods (CISG 1980, article 30); such as bills of lading, dock receipts, warehouse receipts, commercial invoices, certificates of origin, weight, contents or quality, insurance policies, or the likes (Magnus, 2004). If the seller is not obliged to insure the goods himself, the buyer has a right to obtain the necessary information that allows him to insure the goods in respect of the carriage (CISG 1980, article 32(3); UP 2016, article 1.9, and PECL 2002, article

1: 105). These related documents play an important role in giving the holder control over the goods. These specific documents shall be handed over to the buyer depending on the trade terms adopted by the parties (Bianca et al, 1987).

These rights shall be delivered at the time, in the place, and in the form prescribed in the contract (CISG 1980, article 34). If no agreement is made on these matters, the handing over of the documents shall be made according to the usage. If there is no usage, the principle of good faith probably requires that the seller has to hand over the documents at such time and in such form as will enable the buyer to obtain the goods from the carrier when they arrive, and to bring them through customs or at a reasonable time after the conclusion of the contract (CISG 1980, articles. 9 (2) and 7 (1); UP 2016, articles 1.9 (2), 1.7 and 6.1.1 (c), PECL 2002, articles 1:105 and 1:201 (1) and Bianca et al, 266). The place of performance, in the absence of agreement or usage, shall be the seller's place of business (UP 2016, article 6.1.6 (1) (b) and PECL 2002, article 7:101(1)(b)).

However, delivery of a wrong document after the date of delivery does not constitute a fundamental breach if the buyer can obtain the correct one from other sources (CLOUT case No.171, 3 April 1996).

A failure to deliver a correct document after the date of delivery also does not constitute in its own a fundamental breach if the seller without any unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement cures his failure (CISG 1980, article 48). Apart from these cases, the buyer may rely on specific performance, avoidance, and claim any damages (CISG 1980, article 45).

Furthermore, the buyer has the right to receive the conformed goods free from any right and claim of a third party (CISG 1980, article 41, UP 2016, article 5.1.3 (a) and PECL 2002, article 6:102(b)) that is able to affect the buyer and infringe upon his property in the goods even if this right is based on unjustified claims. It includes, for example, the right of title, right to possession, possessory and non-possessory pledges, and rent (Enderlein and Maskow 1992).

The time to receive this right depends on the nature of the right or claim of the third party. If this right is not based on industrial or intellectual property such as trademark, patent, and copyright, the right of the buyer is established at the time of delivery (CISG 1980, article 41, PECL 2002, article 6:102 (b)). However, the buyer no longer has this right if he agrees to take delivery of goods subject to that right or claim (CISG 1980, article 41). If this right is based on industrial or intellectual property, the right of the buyer is established at the time of the conclusion of the contract provided that the seller knew or should have known of such third party's right at that time (CISG 1980, article 42 (1)).

This right is subject to two exceptions such as i) if the buyer knows or could not have been unaware of

the right and, ii) if the seller relies on the buyer's specification for design, drawings, or formulation (CISG 1980, article 42(2)).

To exercise this right, the buyer cannot rely on a right or claim of a third party if he fails to give the seller notice of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim unless the seller knew the right or claim of the third party and the nature of it (CISG 1980, article 43).

Breach of this right may lead to buyer's remedies such as avoidance, damages, or reduction of price.

c. Right of Notification

The buyer has a right to be notified of the consignment specifying the goods if the goods are not clearly identified to the contract by markings on the goods, by shipping documents, or otherwise when the sale of goods involves a contract of carriage (CISG 1980, article 32 (1); UP 2016, article 5.1.3; PECL 2002, article 1:202). This notification shall be made within a reasonable time after the delivery (Bianca et al, 1987).

d. Right of Arrangement of Carriage

If the contract obligates the seller to arrange the carriage of the goods, the buyer has a right to have the carriage arranged properly in the circumstances surrounding and according to the usual terms of the contract of transportation (CISG 1980, article 32 (2); UP 2016, article 1.3 and 5.1.6, and the PECL 2002, article 6:108). Mode of transportation, however, in the absence of any agreement to the contrary, relies on the seller's choice (CLOUT Case No.261, 20, February 1997).

5. Comparative Analysis Between the Rights of the Buyer under the Sale of Goods in Shari'ah and International Trade Law

There are various similarities and differences between the rights of the buyer under the sale of goods in *Shari'ah* and international trade law. These similarities and differences may be either before or after the sale of goods contract.

For similarities before the conclusion of the contract, the first is that both *Shari'ah* and international trade law recognize that the buyer has the right to negotiate. For the former, this right is given on the basis of the principle of mutual consent, while for the latter it is based on the principle of freedom of the contracting parties. As a result, the contracting parties are free to negotiate the terms and conditions about the subject matter of the contract, the price of the goods, the mode of payment, and the like.

Another similarity is that both *Shari'ah* and international trade law uphold the right of the buyers to honesty, transparency, and truthfulness in the sale of goods contracts. The *Shari'ah* grants this right under the discussion on the right of full disclosure of the goods to the buyer. Consequently, the seller must

disclose any defects with the goods sold. This is to ensure that the contract is carried out properly. However, international trade law provides this right to the buyer under the right of treatment in good faith where the seller is obliged not to misrepresent to the buyer the facts, description, quality, and quantity of the goods offered.

As regards similarities after the conclusion of the contract, the first one is that both *Shari'ah* and international trade law recognize that the buyer has the right to receive the goods. The entitlement to this right by the buyer in *Shari'ah* is immediately after the payment of the price according to the Shafi'is. On the other hand, the Hanafis opined that it is immediately upon the conclusion of the contract but before the seller has the right to receive the price. These views are not applicable to *bay' al-salam*, as receiving the goods for this type of sale is in the future determined date as agreed in the contract. However, in international trade law, the right to receive the goods is based on the contract agreed upon between the buyer and the seller.

Again, both *Shari'ah* and international trade law give the buyer the right to receive the goods as agreed upon between the parties. Similarly, they require that the goods sold should be free from a right or ownership of a third party.

On dissimilarity before the conclusion of the contract, *Shari'ah* confers on the buyer the right to examine the goods. This is to ensure that the contract is free from any element of *gharar* and is based on the full consent of the buyer. Meanwhile, international trade law bestows this right to the buyer after the conclusion of the sale of goods contract.

Concerning the dissimilarities after the conclusion of the contract, the first one is that the *Shari'ah* grants various rights of option to the buyer. These rights include the option of the contractual session, the option of stipulation, and the option of determination. On the other hand, international trade law seems does not provide such options. For the option of the contractual session, it cannot be practiced under international trade law because the contract becomes binding from the time the offer meets the acceptance (CISG 1980, articles 16 (1) and 22, the UP 2016, articles 2.1.4 (1) and 2.2.10 and the PECL 2002, articles 2:202 (1), 2:101 (1) (A) and 2:208 (1)).

For the option of stipulation, it cannot be carried out under international trade law, because it presupposes that the offer or the acceptance that involves this option is not serious enough to indicate the intention to create a binding contract (CISG 1980 14 (1) and 19 (1), the UP 2016 articles 2.1.2 and 2:1:11 (1) and PECL 2002, articles 2:101 (1) (A) and 2:208 (1)).

The option of determination cannot be exercised under international trade law because it requires that the offer must be sufficiently definite regarding the goods (CISG 1980 14 (1), the UP 2016 article 2.1.2 and the PECL 2002, article 2:101 (1) (A)).

The next dissimilarity is that the *Shari'ah* explicitly grants the buyer the right of ownership of the goods upon the conclusion of the contract. However, this right is granted by the international trade law implicitly as there seems to be no clear provision of law on this.⁴ This right of ownership may be inferred from the discussion on the right of receiving the goods where the buyer is given the right of disposition of the goods. Another dissimilarity is that *Shari'ah*, in contrast to international trade law, does not stipulate the right of notification of the consignment and the right of arrangement of the carriage.

CONCLUSION

There are various similarities between *Shari'ah* and international trade law concerning the rights of the buyer in the sale of goods. Prior to the conclusion of the contract, *Shari'ah* and international trade law grant the buyer the right to negotiation, right of honesty, transparency, and truthfulness. After the conclusion of the contract, both laws give the right to receive the goods. They both also require that the goods must conform to the agreed goods and be free from the right or ownership of the third party. For the dissimilarities, while *Shari'ah* confers the right of examination of the goods to the buyer prior to the conclusion of the contract the international trade law bestowed this right after the conclusion of the contract. To patch up this difference, the parties can make this right effective before the contract by their free will under the international principle of the freedom of contract. Alternatively, the parties can avail themselves of the *Shari'ah* principle of mutual consent to establish this right after the conclusion of the contract.

After the conclusion of the contract, some *Shari'ah* views grant various options to the buyer. These options include the option of the contractual session, the option of stipulation, and the option of determination. On the other hand, international trade law does allow these options. The difference here can be resolved by adopting *Shari'ah* views that are consistent with international trade law since these views are reliable, credible, and widely accepted in the Muslim world. Alternatively, the parties may decide not to apply them with mutual consent. For the option of a contractual session, the parties can adopt the views of Maliki and Hanafi as they reject the right of the contractual session. As for the option of determination, the parties can adopt the views of Shafi'i and Hanbali as they reject it. As for the option of stipulation, the parties by their mutual consent may refrain from incorporating it into the contract.

The next dissimilarity is that the *Shari'ah* explicitly grants the buyer the right of ownership of the goods upon the conclusion of the contract while

this right is granted by the international trade law implicitly. Another dissimilarity is that *Shari'ah* does not expressly provide the right of notification of the consignment and the right of arrangement of the carriage as the case with international trade law. However, this difference can be faded over time through the practice of the people ('urf) which has a legal effect in *Shari'ah*.

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