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Reframing Kausa Halal in Cross-Border E-Commerce: Doctrinal Revival and Regulatory Innovation in Indonesia's Digital Contract Law

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ABSTRACT

In Indonesia, the doctrine of kausa halal (lawful cause) remains a formal requirement for contract validity under both civil law and Islamic jurisprudence. However, in the context of cross-border e-commerce, the application of this doctrine has become increasingly fragmented and invisible. This article investigates the normative erosion of kausa halal in digital transactions and argues for its reconstruction as a cross-border regulatory filter rather than a purely doctrinal condition. Using a normative-comparative approach, the study examines Indonesian civil code provisions, Islamic commercial law, and the structural design of platform-based commerce. It reveals that global digital contracting mechanisms—such as clickwrap agreements and smart contracts—systematically displace moral review and jurisdictional safeguards. Drawing on comparative frameworks from the European Union, Malaysia, and the United Arab Emirates, the study proposes a harmonization model that reframes kausa halal through mandatory legal rules, platform-level compliance duties, interoperable halal certification systems, and smart contract design. The findings advocate for a doctrinal and institutional reconfiguration of lawful cause in Indonesian digital contract law, aiming to protect consumer rights, religious identity, and legal coherence in an increasingly borderless digital market.

Keywords: Cross-Border Transactions, Digital Contract Law, E-Commerce, Indonesia, Islamic Law, Kausa Halal, Lawful Cause, Platform Governance

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INTRODUCTION

In the evolving terrain of cross-border e-commerce and digital transactions, the classical doctrine of causa—the lawful and permissible basis of contractual obligations—faces renewed scrutiny. As digital trade becomes increasingly decentralized, transnational, and automated, the once-fundamental requirement of a valid causa in contract law has lost visibility, yet not relevance. In civil law systems such as Indonesia's, where Article 1320 of the Indonesian Civil Code (KUH

Perdata) continues to enforce *causa halal* (lawful cause) as a condition for contract validity, the question arises: how does this requirement apply to e-commerce transactions that span multiple legal systems, religious norms, and moral frameworks?

The notion of *kausa halal*, rooted not only in Dutch civil law but also reinforced through Islamic jurisprudence (*fiqh muamalah*), traditionally serves to prevent contracts based on illegal, immoral, or socially harmful objectives. In the Indonesian legal context, this dual resonance—civil and religious—amplifies its normative weight. However, in the realm of digital commerce, transactions are often executed without physical presence, human negotiation, or visible ethical vetting. Automated click-to-buy interfaces, algorithmic smart contracts, and cross-border payment platforms have reduced contracts to mere electronic signals, raising urgent concerns: is the principle of *kausa halal* still operational, or has it been silently bypassed?

This tension is particularly sharp in transactions involving goods or services deemed lawful in one jurisdiction but prohibited in another. For instance, an Indonesian consumer may inadvertently purchase gelatin-based cosmetics from an EU-based seller or enroll in online betting services hosted in jurisdictions where such activity is legal. In such cases, *kausa halal* is potentially violated—yet the architecture of global e-commerce platforms rarely accommodates local legality or religious norms. This creates a juridical friction point: between global digital efficiency and local moral-legal legitimacy.

From the perspective of Islamic law, the validity of a commercial transaction hinges on several core pillars: *akad* (consent), *ma'qud alaih* (object), and *sabab* or *illah* (causal justification), all of which must meet criteria of *halal* and *tayyib* (good and pure). While modern Islamic finance has elaborated complex structures to preserve Shariah compliance in digital environments, such protections are often absent in general consumer e-commerce, particularly in cross-border, non-Muslim-majority marketplaces.[1][2]

Meanwhile, Indonesian positive law, though secular in codification, operates in a pluralist legal environment. Article 1337 of the Civil Code prohibits contracts with unlawful causes, interpreted through a combination of statutory law, public order, and morality. In practice, however, courts rarely examine the *causa* of digital transactions—especially those executed through foreign platforms or involving parties who never physically or verbally interact. The principle is theoretically intact but functionally dormant in the digital age.[3]

The global shift toward platform capitalism and algorithmic governance further exacerbates this detachment. Contractual formation is increasingly automated: platforms like Shopee, Tokopedia, Amazon, and Alibaba enable seamless cross-border

[1] Zuhaily, Wahbah. *Fiqh al-Islami wa Adillatuhu*, Vol. 4. Beirut: Dar al-Fikr, 1985.
[2] Wahdan et al., "E-Commerce Transactions under Islamic Economic Law: Ensuring Shariah Compliance in Indonesian Digital Marketplaces," *Journal of Multidisciplinary Research*, April 25, 2025, 51–63, https://doi.org/10.56943/jmr.v4i1.822.
[3] Mertokusumo, Sudikno. *Hukum Perjanjian*. Yogyakarta: Liberty, 2008.

trade through template agreements, standard terms, and pre-checked consent. The *intention to create legal relations* is presumed by system design; the *cause* is embedded in platform logic, not in user negotiation. In such environments, the moral and legal justification for a contract is outsourced to technology and jurisdictional ambiguity, rendering *kausa halal* a conceptual relic unless actively reinterpreted.[4]

This disjuncture poses a unique legal problem for Indonesia, especially given its constitutional recognition of religion (*Ketuhanan Yang Maha Esa*) and the growing consumer base that demands Shariah-compliant commerce. As the digital economy grows and Islamic consumerism rises, the lack of normative integration between global e-commerce architecture and Indonesia's religious-legal values becomes more pronounced. Regulatory frameworks such as the Electronic Information and Transactions Law (UU ITE No. 11/2008, as amended) focus heavily on technological validity and data authenticity, but remain silent on substantive content legitimacy—including the nature and legality of goods or services transacted.[5]

This leads to several critical questions:

1. How is the concept of *kausa halal* currently treated in Indonesian positive law, Islamic jurisprudence, and global commercial practice?

2. To what extent is the requirement of a "lawful cause" respected or undermined in cross-border e-commerce transactions?

3. Can *kausa halal* be reconstructed as a normative check in digital contract law—balancing speed, automation, and ethical legitimacy across jurisdictions?

These questions define the core problem of this article: the invisibility and dormancy of *kausa halal* in digital commercial transactions, despite its formal recognition in national and religious law. The problem is not merely doctrinal—it is regulatory, technological, and ethical. The article argues that failure to adapt *kausa halal* to the context of digital and cross-border commerce will result in legal inconsistencies, consumer vulnerability, and normative erosion, particularly in plural societies where religion shapes contractual expectations.

This study thus aims to rethink and reposition *kausa halal* as a relevant and adaptable principle for the governance of cross-border digital contracts. Using a normative legal method with a comparative dimension, the study critically examines how Indonesia, Malaysia, the European Union, and select Gulf jurisdictions address the question of contract cause, legality of object, and the interplay of religion and digital commerce. The goal is not to universalize *kausa halal* as a global legal standard, but to explore its reconceptualization—how it can function as a principled filter or a contractual ethics gatekeeper in multi-jurisdictional settings.

[4] De Filippi, Primavera & Hassan, Samer. "Blockchain Technology as a Regulatory Technology: From Code is Law to Law is Code." *First Monday* 21, no. 12 (2016).
[5] Indonesia, *Law No. 11 of 2008 on Electronic Information and Transactions*, as amended by Law No. 19 of 2016.

The novelty of this article lies in its focus on "legal friction"—a zone of unresolved tension between national norms and global commerce. While much literature on e-commerce law focuses on data privacy, cybersecurity, or taxation, little attention has been given to the substantive moral-legality of what is being traded. This article contributes to filling that gap by interrogating the invisible normative assumptions that underlie digital trade and proposing a conceptual bridge between classical contract theory, Islamic legal principles, and global digital practice.

Thus, the article proceeds as follows. After this introduction, Section 2 outlines the methodological approach, including the legal-dogmatic framework and comparative references. Section 3 presents the results and discussion, divided into three interrelated sub-sections: (1) revisiting the concept of *kausa halal* in Indonesian and Islamic legal systems; (2) assessing the erosion of causa in digital contracts and platform-based commerce; and (3) proposing models of integration or adaptation for *kausa halal* in cross-border e-commerce, drawing on comparative insights. Finally, Section 4 concludes with a synthesis of findings and concrete recommendations for policy and legal reform.

RESEARCH METHODOLOGY

This study adopts a normative-juridical research methodology, which is the most appropriate approach for examining legal principles, doctrines, and statutory frameworks that regulate contract validity, particularly the requirement of a lawful cause (*kausa halal*), in both national and transnational contexts.[6] Normative legal research focuses on analyzing written legal norms and authoritative legal reasoning as found in laws, court decisions, fatwas, and scholarly commentaries, with the objective of identifying normative inconsistencies, doctrinal gaps, and areas in need of reform. In this case, the research aims to explore the position and relevance of *kausa halal* within Indonesian contract law and Islamic jurisprudence, as well as its interaction with global e-commerce frameworks that often omit or dilute such a requirement.

Primary legal sources used in this research include the Indonesian Civil Code (KUH Perdata)—specifically Articles 1320 and 1337, which govern the essential elements of a valid contract and the requirement that a contract must not have an unlawful cause—as well as Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), as amended by Law No. 19 of 2016. The ITE Law recognizes the validity of electronic contracts and digital signatures, but does not address the substance or morality of what is being transacted. To complement these positive legal texts, this study also engages with Islamic legal sources, particularly classical works of *fiqh muamalah* that define the requirements of *akad*, *ma'qud alaih*, *sabab*, and *illah* in commercial dealings. These are crucial for understanding the moral and religious dimensions of *kausa halal*, especially in the context of Muslim-majority societies like Indonesia. In this regard, the study references authoritative fiqh texts such as *Fiqh al-Islami wa Adillatuhu* by Wahbah al-

[6] Dr. Suyanto Suyanto, *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan* (Gresik: Unigress Press, 2022).

Zuhaily and *al-Muwafaqat* by al-Shatibi, along with fatwas issued by the National Sharia Council (DSN-MUI) pertaining to online commerce and Shariah compliance.

To enrich the doctrinal analysis, a comparative legal approach is employed, focusing on how different legal systems conceptualize the element of lawful cause in contracts, particularly in cross-border digital transactions. Jurisdictions selected for comparison include Malaysia, which offers a hybrid model where the Contracts Act 1950 operates alongside Islamic financial regulations and guidelines for halal digital commerce; the European Union, especially its Directive 2011/83/EU on Consumer Rights and Principles of European Contract Law (PECL), which no longer recognize causa as a requirement but emphasize consent, fairness, and transparency; and Gulf Cooperation Council (GCC) jurisdictions such as the United Arab Emirates and Qatar, which incorporate Shariah-derived principles into civil codes and provide mechanisms for enforcing Islamic standards in electronic contracts. Additionally, the study draws on international soft law instruments like the UNCITRAL Model Law on Electronic Commerce and the UNIDROIT Principles of International Commercial Contracts, which are widely referenced in cross-border digital contract standardization, even though they too depart from the traditional causa requirement.

The analysis is conducted through doctrinal interpretation, including grammatical, systematic, and teleological methods. The grammatical approach is used to clarify the textual meanings of legal provisions, while the systematic interpretation places the doctrine of *kausa halal* within the larger structure of Indonesian contract law and Islamic commercial ethics. The teleological method is applied to understand the purposes of contract regulation in both systems—whether to uphold individual autonomy, ensure social justice, or fulfill the objectives of Shariah (*maqashid al-shariah*), particularly the protection of religion (*hifz al-din*), wealth (*hifz al-mal*), and moral integrity. Through these interpretative techniques, the research explores how *kausa halal* can be preserved, adapted, or reframed in the context of digital commerce and global legal pluralism.

This study deliberately refrains from using empirical methods such as surveys or interviews, as its objective is not to measure perceptions or behaviors, but to critically examine the doctrinal viability and juridical enforcement of *kausa halal* in digital transactions. The analysis focuses on whether existing laws adequately reflect the normative weight of *kausa*, whether courts and regulatory bodies have operationalized the concept in digital cases, and whether international legal models offer viable options for doctrinal integration or policy reform. The research also analyzes technological realities, including the rise of smart contracts, click-wrap agreements, and platform-based contracting, all of which challenge the traditional formation and interpretation of contract causes. These developments are interpreted as part of the broader transformation of legal meaning in the digital era, which requires both conceptual flexibility and normative rigor.

Finally, all sources—statutory texts, doctrinal writings, fatwas, comparative legislation, and soft law instruments—are examined through a qualitative-normative lens, with a focus on internal consistency, normative coherence, and potential for harmonization. The goal is to produce a conceptually sound and legally actionable analysis of *kausa halal* that responds to both national legal identity and the realities of borderless commerce. In doing so, the study contributes to broader debates on how deeply rooted legal traditions—such as Islamic commercial law and classical civil law doctrines—can adapt to the logic of digital capitalism without losing their ethical foundations or normative aspirations.

RESULT AND DISCUSSIONS

Revisiting "Kausa Halal" in National and Islamic Legal Thought

The concept of *kausa halal*, or lawful cause, has long served as a foundational pillar in contract law, both in Indonesia's civil law tradition and in Islamic jurisprudence. It represents the moral and legal justification for the creation of a contractual obligation, reflecting the principle that not all agreements are enforceable unless they pursue objectives considered legally permissible and ethically sound. However, in the context of digital commerce, this concept—while theoretically preserved—has become practically dormant and conceptually marginalized, raising questions about its ongoing relevance and enforceability.

In the Indonesian civil law system, the concept of *kausa* originates from Dutch legal doctrine, which in turn derives from Roman law. The term refers to the reason or justification that underlies a legal obligation. In Indonesia, this is codified in Article 1320 of the Civil Code (KUH Perdata), which outlines four essential elements for the validity of a contract: agreement (*sepakat*), legal capacity (*cakap*), a certain subject matter (*hal tertentu*), and a lawful cause (*suatu sebab yang halal*).[5] Further reinforced by Article 1337, the Code explicitly states that "a cause is prohibited when it is contrary to law, public order, or morality." This statutory construction indicates that even when parties consent to a contract, its enforceability depends on the *halal* or permissible nature of the underlying objective.

Despite its presence in the legal code, modern Indonesian judicial decisions rarely assess the *cause* of a contract, focusing instead on procedural fairness or defects in consent. Scholars have observed that the role of *causa* in civil law has diminished due to the dominance of party autonomy and the rising influence of common law principles in global commerce.[7] This doctrinal erosion raises important concerns, especially in a country where religious norms continue to influence public morality and legal interpretation, as enshrined in the Pancasila principle of *Ketuhanan Yang Maha Esa*.

In this context, the Islamic legal tradition offers a robust and enduring framework for understanding *kausa halal* not merely as a legal requirement, but as a moral imperative. In classical *fiqh muamalah*, contractual validity is governed by a number of interrelated

[7] Indonesia, *Burgerlijk Wetboek* (KUH Perdata), Article 1320 and 1337.

conditions, including consent (*ijab qabul*), subject matter (*ma'qud alaih*), absence of excessive uncertainty (*gharar*), and most importantly, a permissible cause or purpose (*sabab* or *illah). The juristic schools (*madhahib*) are unanimous in affirming that contracts with prohibited objects—such as alcohol, usury, gambling, or illicit services—are void, even if entered with mutual consent.[8] This demonstrates that in Islamic law, legal form alone is insufficient; legitimacy flows from both form and substance.

The Quranic foundation for this doctrine is found in verses such as "O you who believe! Do not devour one another's wealth unjustly, but only [in lawful] trade by mutual consent" (Q.S. An-Nisa: 29). The Prophet Muhammad also emphasized in several hadiths that "Allah has forbidden the sale of what is haram." The consequence is a dual-layer test for enforceability: a contract must meet legal formalities and also pursue a purpose deemed permissible in Shariah.[9] The doctrine of *maqasid al-shariah* further expands this, emphasizing that contracts must serve the objectives of justice, welfare, and moral order.

This presents a tension for the Indonesian legal system, which—although officially secular—operates within a pluralistic normative structure. The influence of Islamic principles is visible in certain legislation, such as Law No. 33 of 2014 on Halal Product Assurance, which mandates halal certification for goods consumed by Muslims, and fatwas from the National Sharia Council (DSN-MUI), which function as interpretive guides for Islamic economic practices. Yet, these norms are not systematically integrated into general contract law or e-commerce regulation. There is, in effect, a normative gap between religious expectation and secular legal application.

This gap becomes especially significant in the context of e-commerce and cross-border digital transactions, where products and services are traded instantly, often across jurisdictions with conflicting legal and moral standards. For instance, a product lawfully sold and advertised in a European Union member state may contain ingredients prohibited under Indonesian halal regulations. From a contract formation perspective, such transactions are executed via click-wrap or browse-wrap agreements, without negotiation or review of *cause*. The platform assumes that consent equals legality, but this overlooks the role of *kausa halal* as a filter of moral legitimacy. In such cases, a valid contract under platform terms may constitute an unlawful or haram transaction under Indonesian or Islamic standards.[10]

Furthermore, in the realm of digital goods and services, the ambiguity becomes more pronounced. Can the online purchase of NFT-based assets linked to gambling platforms, or the enrollment in a forex trading site that uses interest-based leverage, be considered valid contracts? Legally, they may pass technical requirements under the ITE Law. But morally and doctrinally, they fail the test of *kausa halal*. Yet, current regulatory frameworks do not provide mechanisms to assess or invalidate such transactions based

[8] Muhammad, Abdul Ghofur Anshori. *Hukum Perjanjian: Teori dan Praktik*. Yogyakarta: UII Press, 2014.
[9] QS An-Nisa [4]: 29; Hadis riwayat Muslim, Kitab Al-Buyu'
[10] Akbar, Fitria. "Legal Validity of Clickwrap Agreements in E-Commerce." *Indonesian Journal of Law and Technology* 5, no. 1 (2021): 21–33.

on cause, leaving consumers—particularly those with religious obligations—vulnerable to contracts they would not enter knowingly.

Some may argue that the erosion of *causa* is a necessary evolution of contract law, given the speed and complexity of modern trade. However, such a view neglects the social function of contract law in preserving moral expectations and legal coherence. As legal philosopher Atiyah notes, contract law is not just a vehicle for economic exchange—it is also a mechanism for institutionalizing values such as good faith, fairness, and public interest.[11] To abandon the concept of *kausa halal* is to disconnect contract law from these foundational principles, and to allow private digital platforms to unilaterally define legitimacy.

In response to this challenge, scholars in both the civil law and Islamic law traditions have proposed a functional reconstruction of cause. Rather than viewing *kausa halal* as a metaphysical requirement, it can be framed as a regulatory safeguard—a presumption that contracts which pursue clearly harmful or prohibited objectives may be voided or unenforceable. In this sense, *kausa* becomes a doctrinal trigger, allowing courts or regulators to invalidate contracts that, while procedurally sound, violate moral, public order, or halal requirements. This approach preserves flexibility while restoring accountability.

Indonesia is uniquely positioned to lead such a normative reform. With a Muslim-majority population, a civil law legal system, and a growing digital economy, the state faces the urgent task of harmonizing traditional legal values with emerging global commercial norms. The reconstruction of *kausa halal*—as a living, adaptive concept—may serve not only as a tool for consumer protection, but also as an expression of Indonesia's legal identity in the face of digital globalization.

In conclusion, *kausa halal* is not an archaic relic but a juridical concept whose relevance increases in the digital age, precisely because of the moral ambiguities and jurisdictional complexities inherent in cross-border e-commerce. Its revival requires more than textual citation; it demands conceptual clarity, legislative recognition, and institutional enforcement, all of which must be built on a deeper understanding of the values it was meant to uphold.

Digital Contracts, Cross-Border E-Commerce, and the Erosion of Causa

The rapid expansion of cross-border e-commerce has revolutionized the way contracts are formed, executed, and enforced. Transactions that once required face-to-face negotiation, manual documentation, and explicit expressions of intent are now conducted through fully automated platforms using clickwrap agreements, smart contracts, and embedded consent algorithms. In this new digital ecosystem, the classical requirement of a lawful cause—*kausa halal*—has become increasingly invisible, rarely assessed, and often structurally bypassed, particularly in transactions that occur across jurisdictions with conflicting legal and moral frameworks.

[11] Atiyah, P.S. *Essays on Contract*. Oxford: Clarendon Press, 1990

Digital contracting, by design, prioritizes speed, efficiency, and scalability over deliberative legal formality. The typical cross-border e-commerce transaction today involves an online consumer clicking "I Agree" to pre-formulated terms and conditions, with little or no awareness of the underlying legal implications. These agreements, often drafted by platform operators and subject to foreign law, assume mutual consent as sufficient for validity. The platform architecture does not require or examine whether the subject of the contract—and its purpose—meets the criteria of lawful cause under civil or religious law.[12]

This technological shift has given rise to what scholars describe as the functionalization of contract law—where traditional elements such as *cause*, *consideration*, or *good faith* are either minimized or operationalized through technological proxies. In Indonesia, this creates a disconnect between the normative structure of national law and the functional architecture of global platforms. While Article 1320 of the Civil Code and Article 1337 still require a *halal* or lawful cause, platforms like Amazon, Alibaba, and even local players such as Tokopedia or Shopee enforce transactions based on terms-of-use policies and automated enforcement mechanisms that are blind to the substantive morality of the transaction.[13]

The implications of this structural erosion of *kausa halal* are especially pronounced in cross-border scenarios involving morally or religiously sensitive goods. A Muslim consumer in Indonesia, for example, may inadvertently purchase beauty products containing porcine derivatives, enroll in digital entertainment platforms that include gambling elements, or download content that includes alcohol promotion—all from vendors operating lawfully under their own jurisdictions. While these transactions may not violate foreign laws, they conflict with Indonesian halal norms and public morality, raising the question: is the contract legally and ethically valid under Indonesian law?

Complicating matters further is the jurisdictional ambiguity of platform-based contracts. Most global platforms insert choice-of-law clauses that designate the law of the company's domicile (e.g., Delaware, Hong Kong, Singapore) as governing the contract. These clauses are usually non-negotiable and buried within the user agreement. As a result, when disputes arise over *cause* or legality, Indonesian courts may find themselves disempowered to apply domestic standards of *kausa halal* because the contract defers to foreign law. This creates a systemic exclusion of national values from private digital governance structures.[14]

This dynamic is reinforced by the legal minimalism of international e-commerce instruments. The UNCITRAL Model Law on Electronic Commerce (1996) and the UNIDROIT Principles of International Commercial Contracts both deliberately omit the concept of causa, emphasizing party autonomy, consent, and technical reliability

[12] Fitria Akbar, "Legal Validity of Clickwrap Agreements in E-Commerce," *Indonesian Journal of Law and Technology* 5, no. 1 (2021): 21–33.
[13] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2020), 137–138.
[14] Rolf H. Weber, "Transatlantic Jurisdictional Conflicts in Consumer Contracts," *Journal of International Commercial Law and Technology* 4, no. 1 (2009): 12–20.

over the morality or legality of the transaction's object. While this serves the purpose of international harmonization, it leaves little room for integrating religious or ethical standards, particularly in jurisdictions like Indonesia that operate under legal pluralism.[15]

The use of smart contracts on blockchain-based platforms further exacerbates the erosion of causa. Smart contracts execute predefined actions automatically once coded conditions are met, without human review or moral reasoning. Once triggered, these contracts are self-executing and often irreversible, even if the object transacted is subsequently discovered to be unlawful or haram under a particular legal system. For example, an NFT representing ownership of digital assets in a virtual casino could be traded and settled through a smart contract, despite violating Indonesian gambling laws or Islamic prohibitions.[16] This raises profound questions: if no human agency intervenes, can *cause* be identified? And if not, can the contract be considered valid under national law?

In practical terms, Indonesian regulators and courts have yet to develop tools or frameworks to evaluate the *kausa* of digital contracts, particularly those executed across borders. While the ITE Law affirms the validity of electronic contracts and signatures (Articles 18–20), it remains silent on the question of contract substance and morality. This silence leaves a vacuum in which contracts that are procedurally valid but substantively problematic may still be enforced, either by default or by technical inertia. Moreover, the lack of doctrinal engagement with *kausa halal* in digital jurisprudence weakens the ability of courts to adjudicate disputes involving religiously non-compliant goods or services.

A further concern is the shift of normative power from states to platforms. In digital commerce, platforms increasingly act as quasi-regulators: they set the rules, mediate disputes, and enforce outcomes. Yet their algorithms and user agreements are not aligned with the legal or moral standards of the jurisdictions they operate in. For example, a global platform may categorize a particular product as "wellness" or "adult content" and allow its sale, despite the product being considered haram under Indonesian law. Users are left with little recourse, as the platform's terms are often treated as binding, and jurisdiction lies elsewhere.

From a legal-theoretical standpoint, this development can be seen as a privatization of legality—where the moral and legal evaluation of transactions is outsourced to commercial entities whose interests do not necessarily align with public law or religious norms. The concept of *kausa halal*, in this context, becomes more than a doctrinal concern; it is a marker of normative displacement, indicating that national legal systems

[15] UNIDROIT, *Principles of International Commercial Contracts*, 2016 ed., Art. 3.1.1; UNCITRAL, *Model Law on Electronic Commerce with Guide to Enactment* (1996).
[16] Primavera De Filippi and Samer Hassan, "Blockchain Technology as a Regulatory Technology," *First Monday*21, no. 12 (2016).

are being edged out by digital contractualism that prioritizes efficiency and consent over substance and ethics.[17]

This erosion has not gone entirely unchallenged. In recent years, there has been growing discourse—especially among Muslim-majority countries—about the need to integrate halal compliance mechanisms into digital platforms. Malaysia, for instance, has developed guidelines through its Shariah Advisory Council for halal e-commerce. Some Gulf Cooperation Council (GCC) countries have mandated compliance certification for digital marketplaces operating within their jurisdictions. Yet these frameworks remain fragmented, non-binding across borders, and often limited to niche platforms serving specifically Islamic markets.

What remains lacking is a coherent doctrinal and regulatory response—one that recognizes *kausa halal* not as a barrier to innovation, but as a legitimate legal filter ensuring that contract enforcement does not conflict with fundamental religious and ethical norms. Without such integration, legal systems like Indonesia's face the risk of doctrinal obsolescence in an area where the moral stakes for consumers are increasingly high.

In conclusion, the rise of cross-border e-commerce and digital contracting has led to the functional erosion of *kausa halal* as a meaningful legal requirement. Transactions are governed by platform rules, coded logic, and foreign jurisdictional clauses, leaving little space for the assessment of legality in terms of *halal* or public morality. This disjuncture undermines both consumer protection and normative coherence in countries like Indonesia, where religious and ethical dimensions of commerce are constitutionally and culturally significant. Bridging this gap requires not only legal reform but a reconfiguration of digital commercial governance, where *kausa halal* can be reasserted as a living principle—adaptable to new technologies, but faithful to enduring legal and moral values.

Toward Harmonization — Can "Kausa Halal" Be Reframed for Global Digital Trade?

Any attempt to rehabilitate *kausa halal* for the digital age must begin by recognizing that cross-border e-commerce is governed not only by national private law but also by a dense web of choice-of-law rules, platform governance, soft-law instruments, and sectoral standards whose default orientation is functional efficiency rather than substantive morality. The visible erosion of *cause* in Section 3.2 is therefore less a doctrinal failure than a systemic misalignment: the architecture of global digital trade presumes that consent, technical reliability, and consumer information are sufficient, whereas Indonesia's legal-religious pluralism expects an additional layer of legitimacy in the object and purpose of transactions. A constructive "reframing" of *kausa halal* must, accordingly, work with this architecture rather than against it, by translating a moral requirement into conflict-of-laws devices, mandatory rules, platform duties, and

[17] Julie Cohen, "The Regulatory State in the Information Age," *Theoretical Inquiries in Law* 17, no. 2 (2016): 369–414.

certification pathways that travel across borders without collapsing into parochialism. The challenge is to produce a design that is legally cognizable by foreign courts, interoperable with global standards, and implementable by digital intermediaries—yet still anchored in Indonesia's constitutional values and the Halal Product Assurance regime.

A first lever lies in the conflict-of-laws domain. The European Union's Rome I Regulation offers a useful comparative reference point: while party autonomy remains the default, consumer contracts receive heightened protection through Article 6, which preserves the application of the consumer's mandatory rules notwithstanding a foreign governing law chosen by the business.[18] Indonesia can adopt a parallel stance by clarifying—statutorily or through Supreme Court guidance—that, in consumer e-commerce involving Indonesian residents, rules that secure the lawfulness of the object and cause (including halal constraints for certain categories of goods) are overriding mandatory provisions (*lois de police*) applicable regardless of a foreign choice-of-law clause. This does not impose Indonesian morality on the world; rather, it asserts that when an Indonesian consumer is targeted and supplied, certain non-derogable safeguards attach to the transaction as a condition of enforcement in Indonesia.[19] Properly drafted, such a provision would sit comfortably alongside international norms and the public-policy exception (*ordre public*), allowing courts to refuse recognition or enforcement of contracts whose object or *cause* offends core domestic values, while minimizing friction with legitimate foreign commerce.[20]

Yet private international law solutions are not enough if the platform layer continues to privatize legality by reducing enforceability to click-consent and technical execution. Here, platform governance must be mobilized as part of the legal solution. Indonesia could legislate platform-level duties of care specific to product categories where halal considerations are determinative—food, cosmetics, pharmaceuticals, nutraceuticals—requiring marketplaces that target Indonesian consumers to (i) display halal status in a machine-readable label at the listing level; (ii) implement seller onboarding controls that verify halal certifications for covered goods; (iii) provide a geo-aware legality filter that suppresses listings failing local conformity; and (iv) embed choice-of-law and forum transparency at checkout for cross-border orders.[21] These are not abstract ethics; they are operational translations of *kausa halal* into ex-ante compliance knobs that platforms already use for other regulatory goals (age-restricted items, hazardous substances, sanctions screening). If the platform has the code to geofence VAT and shipping, it can likewise code for halal-sensitive objects, provided the state supplies standardized taxonomies and trusted certification feeds.

[18] Regulation (EC) No 593/2008 (Rome I), art. 6 (consumer contracts).
[19] Symeon C. Symeonides, Codifying Choice of Law Around the World (Oxford: Oxford University Press, 2014), 143–165.
[20] Trevor C. Hartley, International Commercial Litigation (Cambridge: Cambridge University Press, 2009), 327–334.
[21] Directive 2011/83/EU of the European Parliament and of the Council on Consumer Rights, arts. 5–8.

The certification infrastructure exists and is increasingly global. Indonesia's Halal Product Assurance Law (Law No. 33/2014) establishes the basis for halal conformity assessment and labeling; internationally, the OIC/SMIIC 1:2019 standard articulates general halal requirements and can serve as a bridge for mutual recognition across Muslim and non-Muslim jurisdictions.[22] Malaysia's MS 1500:2019 standard and the JAKIM accreditation system further demonstrate a mature halal governance model whose outputs (certificates, marks, registries) are digitizable and could be federated into platform APIs as authoritative sources for listing controls.[23] In the Gulf, the UAE's Halal National Mark (ESMA/Emirates Authority for Standardization and Metrology) shows how a state can centralize halal attestation and require its use in trade channels, again yielding structured data suitable for e-commerce ingestion.[24] A harmonization strategy for *kausa halal* in digital trade would not universalize one country's theology; it would federate standards through mutual recognition and metadata interoperability, letting platforms consume trusted certification feeds and display them to Indonesian shoppers with legal effect.

The contract design layer offers another path. If classical *cause* is invisible in clickwrap, we can reinsert it contractually as a condition subsequent or compliance warranty. Indonesian law—mirroring UNIDROIT principles on contract formation and performance—permits parties to structure obligations around conditions, warranties, and representations; a state-mandated *Halal-Cause Clause* for covered categories could require sellers listing to Indonesian consumers to represent and warrant that the goods/services comply with applicable halal laws and that no contractual purpose contravenes Indonesian public order, with an automatic rescission right and chargeback if the representation proves false.[25] This recalibrates *kausa halal* from a metaphysical prerequisite into a verifiable contractual predicate whose breach has clear remedial pathways (refund, damages, delisting, administrative penalty). For smart contracts, the same logic can be encoded through oracles that attest halal status ex-ante (via certification registries) and trigger fail-safe stoppage or escrow reversal when a listing loses conformity, thus restoring the corrective muscle that pure automation removed.[26]

Of course, calibration matters. A maximalist approach—blocking all non-conforming cross-border offers—would over-deter legitimate trade and invite retaliation, while a purely declaratory system would perpetuate the current invisibility of *cause*. A risk-tiered model is preferable. Category A (per se prohibited: alcohol, pork derivatives in ingestible goods, gambling services) would trigger hard geofencing and mandatory delisting for Indonesia-targeted pages; Category B

[22] Indonesia, Law No. 33 of 2014 on Halal Product Assurance.
[23] Standards and Metrology Institute for Islamic Countries (SMIIC), OIC/SMIIC 1:2019—General Requirements for Halal Products.
[24] Department of Standards Malaysia, MS 1500:2019 Halal Food—General Requirements; JAKIM, Manual Prosedur Pensijilan Halal Malaysia (latest ed.).
[25] Emirates Authority for Standardization & Metrology (ESMA), UAE.S 2055-1:2015 Halal Products—General Requirements; UAE Halal National Mark Scheme Documents.
[26] UNIDROIT, Principles of International Commercial Contracts (2016), arts. 1.7, 3.2.5, 7.1.3, 7.3.1.

(potentially non-conforming: cosmetics, enzymes, flavorings) would require visible halal status and proof of certification at checkout; Category C (non-ingestible or ethically neutral) would proceed under standard consumer-law disclosures, with post-market surveillance handling mislistings. This differentiation reflects the substance-sensitivity of *kausa halal* without collapsing e-commerce dynamism.[27]

There remains the question of enforceability abroad. Even if Indonesia refashions *kausa halal* as an overriding rule and platform duty domestically, foreign courts may still apply their own law. Two techniques mitigate this. First, extraterritorial supply-side duties linked to market access: platforms that *actively target* Indonesian users must meet the labeling and onboarding requirements as a condition of operating (an approach familiar from data protection and consumer safety).[28] Second, public-policy carve-outs in recognition and enforcement: Indonesian courts may refuse to enforce foreign judgments or arbitral awards that would compel performance of a contract whose object/ *cause* violates core halal-public-order rules—an orthodox application of *ordre public* under private international law.[29] Neither strategy is novel; both are widely used in consumer protection and sanctions compliance, and they translate legibly into the e-commerce sphere.

Institutional architecture must accompany these legal levers. A Halal Digital Trade Unit—jointly operated by the Halal Product Assurance Agency, the Ministry of Trade, and the communications regulator—could (i) maintain a national halal registry API consumable by platforms; (ii) conclude mutual recognition MOUs with JAKIM (Malaysia), ESMA (UAE), and OIC/SMIIC to streamline certificate validity checks; (iii) issue binding notices to platforms for delisting non-conforming offers; and (iv) publish transparency reports on cross-border halal compliance, akin to safety or IP enforcement dashboards already common in platform governance.[29] Coupled with consumer redress (chargeback rights for misrepresented halal claims) and graduated sanctions (warning → delisting → administrative fines), this ecosystem would give *kausa halal* a procedural home in the circuits where digital trade actually runs.

Critics will argue that such reforms risk balkanizing the internet or chilling innovation. But harmonization here is not moral imperialism; it is procedural interoperability. The international baseline (UNCITRAL, UNIDROIT) will continue to prioritize consent and functionality; Indonesia's task is to layer its non-derogable substance rules for domestic consumer transactions in a way that is readable by foreign counterparties and automatable by platforms. Indeed, the EU's own consumer-protection acquis shows that mandatory consumer-side safeguards can coexist with cross-border trade when expressed as clear information duties, design obligations, and enforcement

[27] Primavera De Filippi and Samer Hassan, "Blockchain Technology as a Regulatory Technology: From Code is Law to Law is Code," First Monday 21, no. 12 (2016).
[28] OECD, Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest (Paris: OECD, 2011), ch. 6.
[29] Regulation (EU) 2016/679 (GDPR), art. 3 (territorial scope) (as analogy for targeting-based obligations).

protocols rather than vague morality clauses.[30] In that sense, the reframing of *kausa halal* is less about reviving an antiquated doctrine than about translating a substantive check into the idiom of modern private ordering: APIs, metadata, warranties, and structured dispute resolution.

Finally, the symbolic function cannot be ignored. As Section 3.1 argued, contract law does cultural work; it signals what kinds of exchange a polity is prepared to dignify with legal force. A jurisdiction that treats halal constraints as legible constraints—not afterthoughts—communicates to consumers and businesses alike that legitimacy is part of efficiency, not its opponent. Properly designed, the reframed *kausa halal* would not throttle cross-border e-commerce; it would discipline it—reducing information asymmetry, preventing avoidable disputes, and aligning digital markets with the normative commitments of the society they serve.

CONCLUSION AND SUGGESTIONS

The foregoing analysis has revealed that the classical doctrine of *kausa halal*—once central to the validity of contracts in both Indonesia's civil law system and Islamic jurisprudence—has become increasingly marginalized in the legal reality of cross-border digital commerce. While the Indonesian Civil Code (KUH Perdata) and Islamic *fiqh muamalah* continue to require a lawful and morally acceptable purpose in contracts, the contemporary mechanics of e-commerce, from clickwrap agreements to smart contracts, have structurally displaced the assessment of *cause*. This has led to a significant doctrinal disjuncture: *kausa halal* remains formally binding but is functionally inert, particularly in digital transactions that cross legal, cultural, and moral boundaries.

Three key findings emerge from this study. First, normative doctrinal gaps exist both in Indonesian positive law and Islamic contract theory, whereby existing provisions lack concrete mechanisms for assessing, asserting, or invalidating a contract based on its *cause* in a digital environment. Courts rarely invoke Article 1337 of the Civil Code in e-commerce disputes, and the ITE Law fails to address the substantive legality of electronic contracts, focusing instead on formal validity and electronic authentication (UU No. 11 Tahun 2008, pasal 18--20). Islamic jurisprudence, for its part, offers a rich conceptual framework for lawful transactions (*akad halal*), but this remains underutilized in national regulatory implementation.

Second, the technological architecture of e-commerce platforms systematically excludes cause-based legal review. Whether on Tokopedia, Shopee, Amazon, or Alibaba, contractual obligations are triggered by automated processes without human negotiation or moral vetting. Platforms enforce their own terms of service and apply foreign governing laws by default, often through standardized contracts that ignore the public policy concerns of destination countries. *Kausa halal*, in this regime, is neither

[30] Ibid

verified nor visible—resulting in contracts that may be valid procedurally, but invalid substantively under Indonesian or Islamic legal norms.

Third, there are comparative legal models and technological pathways through which *kausa halal* can be reframed—not as a metaphysical relic but as a regulatory filter that is machine-readable, cross-jurisdictionally cognizable, and enforceable. The European Union's Rome I Regulation (Regulation No. 593/2008, art. 6), Malaysia's Shariah governance standards (MS 1500:2019), and the UAE's Halal National Mark (ESMA 2015) demonstrate how lawful cause can be embedded in both legal doctrine and commercial infrastructure. Indonesia can draw on these models while maintaining the particularities of its legal pluralism and religious-constitutional commitments. Based on the above, the following policy recommendations are proposed to ensure that *kausa halal* is not only preserved but actively operationalized in Indonesia's digital commerce regime:

1. Legislative Recognition of Halal Cause in E-Commerce

Amendments to the ITE Law or the Consumer Protection Law should include explicit references to *kausa halal* as a requirement for enforceability in digital contracts, particularly in sectors involving food, cosmetics, pharmaceuticals, and digital content. Such recognition must be coupled with the creation of a halal-aware e-contract clause model for standard use.

2. Conflict-of-Laws Reform and Overriding Mandatory Rules

Indonesia should adopt a private international law provision declaring that halal-based restrictions on goods and services constitute overriding mandatory rules applicable to any cross-border contract involving Indonesian consumers, regardless of foreign governing law. This will align national values with international doctrines of *ordre public* and *lois de police*.[31]

3. Regulatory Platform Duties and Technical Enforcement

E-commerce platforms that operate or target Indonesian consumers should be required to (i) tag product listings with halal status metadata, (ii) implement halal certification verification via API, and (iii) embed geo-targeted filtering systems to block or flag prohibited items. This mirrors existing regulatory practices for tax, IP, and public health control.

4. Halal Certification Interoperability and Mutual Recognition

Indonesia's Halal Product Assurance Agency (BPJPH) should conclude bilateral agreements with certifying bodies in Malaysia (JAKIM), the UAE (ESMA), and other SMIIC members to enable cross-border recognition of halal certificates, supported by standardized digital formats for integration into platform commerce.

5. Institutional Coordination and Enforcement Architecture

A dedicated Halal Digital Trade Taskforce, composed of BPJPH, Kominfo, and the Ministry of Trade, should be established to (i) oversee e-commerce halal compliance, (ii) manage the national halal registry, (iii) issue compliance warnings to platforms, and (iv) facilitate consumer redress for misleading or non-halal transactions.

6. Smart Contract Design with Embedded Cause Verification

For blockchain-based transactions, Indonesia should support the development of halal-compliant smart contract templates with built-in oracle systems linked to halal registries. These contracts should be capable of automatic reversal or voidance upon cause failure, thereby restoring doctrinal control in a techno-legal format.

7. Legal Education and Doctrinal Rebuilding.

Law faculties and professional training institutions should update contract law curricula to include cause-based analysis in digital contracts, focusing on *kausa halal*, choice of law, and technological governance. Judges and regulators must be equipped to recognize and apply cause analysis in disputes.

8. Public Communication and Consumer Literacy

Finally, public awareness campaigns should be launched to educate consumers on the importance of lawful cause in digital transactions and the risks of entering into morally or religiously impermissible contracts. Awareness can drive demand-side accountability, forcing platforms to adapt.

In conclusion, the *kausa halal* doctrine, far from being obsolete, offers a powerful normative tool for reconciling Indonesia's legal and religious traditions with the demands of global digital trade. Its survival, however, depends not on romantic preservation but on technical integration, legal reform, and platform governance. The time has come to translate this classical concept into codes, contracts, and compliance protocols that can function in the circuits of twenty-first-century commerce—preserving the moral integrity of exchange without compromising economic participation or legal coherence.

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