



Maqashid Sharias Study on the Practice of Selling Gold that Has Not Been Paid off in Conditions of Urgent Need

Miftahul Zikri Sy ¹, Syukri Iska ²

¹ UIN Mahmud Yunus Batusangkar, Indonesia

² UIN Mahmud Yunus Batusangkar, Indonesia

Corresponding Author: Name, Miftahul Zikri Sy E-mail; miftahulzikri22sy@gmail.com

Article Information:

Received October 10, 2021

Revised October 19, 2021

Accepted November 1, 2021

ABSTRACT

This study aims to analyze the practice of buying and selling gold on credit from a sharia perspective, focusing on the principles of justice, transparency, and avoidance of elements of usury, gharar, and fraud. This phenomenon is becoming increasingly relevant as the public's need for gold ownership as an investment instrument or value protection increases, even though they do not have the financial ability to buy in cash. The main problem studied in this study is when gold is still in installment status and has not fully become the property of buyers, especially in emergency conditions. The method used is descriptive qualitative research with a library research approach, which involves the analysis of classical and contemporary documents and literature related to fiqh muamalah, including the views of scholars from various schools and contemporary fatwas. The results of the study show that the practice of buying and selling gold on credit has room for ability in Islamic law, especially when gold is treated as a commodity (sil'ah) and not as a medium of exchange (tsaman). Despite differences of opinion among scholars regarding the legality of this transaction, the sharia maqashid approach provides legitimacy as long as the basic principles of sharia are maintained, such as justice, openness of contracts, and protection of weak parties. This research emphasizes the importance of a comprehensive understanding of contracts, payment mechanisms, and risks inherent in transactions so as not to deviate from sharia principles. Thus, the purchase and purchase of gold on credit can still be justified under sharia under certain conditions, as long as it meets strict conditions and signs in order to maintain benefits and avoid harmful practices.

Keywords: *Buying and Selling, Fiqh Muamalah, Gold Investment, Sharia Maqashid*

Journal Homepage <http://journal.denisysmartconsulting.co.id/index.php/rangkiang/>

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How to cite: Zikri, M., Iska, S., Monef, A. ., & Hizrati, H. (2022). Maqashid Sharias Study on the Practice of Selling Gold that Has Not Been Paid off in Conditions of Urgent Need. *Rangkiang: Journal of Islamic Economics and Business*, 1(1).
<https://doi.org/10.55849/rangkiang.v1i1.1>

Published by: CV. Denisya Smart Consulting

INTRODUCTION

In Islamic teachings, the interaction between individuals and society should be based on the principle of preventing harm to each other, taking into account the benefits and avoiding the harms. Therefore, every muamalah activity must be carried out by upholding justice and staying away from elements of oppression and fraud (Mawadah, 2019). In the rules of fiqh muamalah, all forms of transactions or socio-economic activities are basically permissible (mubah) as long as there is no evidence that expressly prohibits it. This is different from worship, which is essentially prohibited until there is evidence that commands it. This principle shows that Islam provides leniency in worldly affairs as long as it remains within the corridor of sharia. In daily life, humans naturally perform various forms of muamalah to meet their needs, and one of the most common practices is buying and selling. This activity is the main foundation in the economic interaction of the community and requires special attention to remain in accordance with the values of justice, honesty, and welfare as regulated in Islamic law (Kisanda & Handayani, 2021).

One form of muamalah that is commonly found in the community is credit transactions. Credit is a way of paying for goods or debts that is made in stages over a certain period of time in accordance with a mutual agreement between the seller and the buyer. Generally, the price of goods purchased on credit is higher than the price of cash payments. This is due to the consideration of the risk of late payment and compensation for the waiting time provided by the seller. From an Islamic perspective, credit transactions are allowed as long as they meet the principles of justice, transparency, and do not contain elements of *riba* (interest), *gharar* (ambiguity), and fraud. Therefore, it is important for both parties to understand the contract used, so that the transaction remains valid and in accordance with sharia (Kartikasari, 2021)

The difference in the views of scholars regarding the purchase and purchase of gold on credit is related to the prohibition of usury in Islam, some scholars prohibit gold bar credit transactions because gold must be exchanged in cash and balanced according to the hadith of the Prophet, so that credit buying and selling is considered to contain usury and is contrary to sharia (Hamzah, 2018). However, other scholars allow buying and selling gold on credit, especially if gold is already functioning as a commodity such as jewelry or gold that has a clear contract, as long as it does not contain elements of usury, *gharar*, or fraud, and is in accordance with the principle of jurisprudence which prioritizes the benefit of the ummah. This difference reflects the flexibility of *ijtihad* in fiqh that adjusts to the conditions and needs of the community (Gustina, 2018).

Humans have a high need for buying and selling gold, both as jewelry and for other purposes. If the practice of buying and selling gold in installments is completely prohibited, it can actually interfere with the benefits and make people's lives difficult. When gold and silver have been formed into jewelry, their function changes from a medium of exchange to a good or commodity, similar to clothing or other objects. Therefore, the exchange between jewelry and money does not fall under the category of

usury, as is the transaction between money and other goods of different types. If the opportunity to buy and sell gold in installments is closed, it will also close people's access to financing and loans, which ultimately causes great difficulties. So in this context, buying and selling gold in installments is allowed, because gold in the form of jewelry is seen as a commodity, not money, and this is done to make human affairs easier and eliminate difficulties in life. (Kisanda & Handayani, 2021).

The importance of research on gold investment lies in the need to ensure that the practice is in accordance with the principles of muamalah in Islam which emphasize justice, transparency, and avoid elements of usury, gharar, and fraud. In Islamic teachings, every economic interaction must consider the common good and avoid losses between parties. One of the relevant forms of transactions is credit, including in buying and selling gold in installments which is carried out by many people. Gold, especially in the form of jewelry, has shifted its function from a medium of exchange to a commodity, so that installment transactions against it are not included in the category of usury as exchanges between goods and money in general. However, the complexity of contracts, the risk of misappropriation, and the potential for incompatibility with maqashid sharia make the practice of gold investment, especially on credit, need to be further researched. This research is important to provide legal certainty, clear guidance for the public, and to keep transactions within the sharia corridor and not cause harm that can harm one of the parties.

RESEARCH METHODOLOGY

This type of research is qualitative descriptive using a literature study approach (Library Research). Literature studies describe theoretical analysis, scientific studies, references and literature related to the habits of the local community, norms and values built on the observed field conditions (Sugiyono, 2018). The Data Collection method uses Document Analysis which can be used in research including reports, manuscripts, newspapers, memos, notes, and other organizational documents. The researcher analyzes the content of these documents to dig up relevant information, understand the social context, and identify patterns and themes related to the focus of the research (Subakti, 2023). Through the results of this study, it is hoped that final conclusions can be obtained to strengthen and develop the relevant results of previous research.

RESULT AND DISCUSSION

Buying and Selling Transactions of Parts of Muamalah

Etymologically, buying and selling comes from Arabic words such as al-bai", at-tijarah, and al-mubadalah, which means to take, give something, or make an exchange. Meanwhile, in sharia terminology, buying and selling is defined as the exchange of property with other property through appropriate means and justified by religious provisions (Luthfi et al., 2021). Another definition of sale and purchase is an agreement or agreement between two or more parties to exchange property voluntarily and in accordance with Islamic law. If the seller hands over the goods to the buyer, and the buyer hands over the price and takes the goods, then there is mutual surrender between the seller

and the buyer. Thus, the sale and purchase transaction is considered valid and justified by syara"(Adha, 2022).

The legal basis of buying and selling transactions in the Quran and hadith such as:

An-Nisa (4:29)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۚ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Meaning: "O you who believe! Thou shalt not eat one another"s property in a wrong way, except in a trade which is done on the basis of mutual will among you. And do not kill yourselves. Indeed, Allah is Merciful to you."

The verse emphasizes the prohibition of taking other people"s property in an illegal way and emphasizes the importance of buying and selling that is carried out on the basis of willingness between the two parties. Taking property voidly means taking it without the owner"s permission or consent, or using the property for something that is not beneficial. This includes practices such as lotteries, fraud in transactions, usury, the use of property for prohibited things, as well as waste in spending on something that has no obvious benefit (Malik, 2021).

Hadith narrated (Bukhari and Muslim)

Narrated from Hakim bin Hizam r.a., he said: The Prophet Rasulullas SAW said, "Sellers and buyers have the right to choose (continue or cancel transactions) as long as they have not separated. If both are honest and explain to each other the condition of the goods being traded, then blessings will be given in their transactions. But if they lie and hide things that should be explained, then the blessing of the transaction will be taken away." (HR. Bukhari and Muslim)

In Islamic law, scholars agree that a sale and purchase contract is categorized as valid if it is carried out by qualified parties, namely puberty, common sense, the ability to choose (not under duress), and able to carry out legal actions (tasarruf) freely and wisely. Meanwhile, the sale and purchase is considered null and void if one or all of the pillars of the sale and purchase are not fulfilled, or if the contract is in essence and in nature not in accordance with the provisions of sharia. Examples of canceled buying and selling include transactions carried out by children, insane people, or those involving buying and selling objects that are prohibited according to sharia. This prohibition in buying and selling refers to the prohibition of contracts that do not meet the conditions and stipulated principles, so that the validity of the transaction becomes null and void (Ramli et al., 2015)

Credit in Islamic Perspective

Credit is a payment system that is carried out in stages, both in the form of buying and selling and borrowing. Credit occurs when a person borrows money or buys goods in installments, which can be done daily, weekly, or monthly. In Arabic, this type of

transaction is known as bai" bi at-taqsih or bai" bi ats-tsaman al-"ajil. Linguistically, buying and selling credit means dividing something into parts. Meanwhile, in terms, credit buying and selling is the sale of goods at two prices, namely the cash price and the higher installment price, with payments that are clearly divided within a certain time (Putri & Kurniawan, 2021)

The legal basis of buying and selling by way of credit has been explained in the Quran and hadith such as:

al-Baqarah (2:282)

.. يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

Meaning: "O you who believe! If you do debts and receivables for a specified time, then write it"

This verse emphasizes the importance of recording in every muamalah transaction, including buying and selling with tough or non-cash or credit payments. This kind of transaction must be based on trust and honesty, where both parties understand and agree on the content of the agreement to avoid fraud and not harm one of the parties, especially the property owner.

Hadis riwayat (Bukhari dan Muslim)

Narrated from "A"isha (may Allah be pleased with him), he said: "The Prophet Rasulullah SAW once bought food from a Jew by delaying his payment, then he gave him armor as a pawn." (HR. Bukhari and Muslim).

The harmonious and conditions of buying and selling credit are basically the same as ordinary buying and selling because they both involve the exchange of goods or services. According to a number of scholars, there are four main pillars in buying and selling, namely: first, the person who has contracted, namely the seller and buyer who meet the requirements of reason and puberty so that the transaction is considered valid; second, the goods being traded must be known by both parties in terms of quantity and quality, and meet the requirements of being sacred, useful, deliverable, and in clear condition; Third, sighat in the form of the word of ijab and qabul which shows the willingness between the seller and the buyer, where ijab is the seller's statement regarding the content of the agreement and qabul is the acceptance from the buyer; Fourth, there is a clearly agreed exchange rate or price that replaces goods and can be handed over at the time of transaction (Kusuma, 2019).

The scholars have established several important provisions related to buying and selling in Islam. Among them, the seller is not allowed to include in the written agreement contract that gives him the right to set an additional price that is separate from the cost of goods, which relates to the payment term, even if it has been agreed by both parties. In addition, if the buyer is late in paying the installments, the seller is not allowed to charge additional fees for the debt, either with or without prior conditions, because it is considered forbidden usury. The seller also does not have the right to withdraw the goods that have belonged to the buyer after the contract has occurred. However, the seller is allowed to require that the goods be used as collateral (rahn) to ensure the repayment of

unpaid installments. In addition, it is also allowed to have a price difference between cash payments and resilient payments, as long as it is agreed at the beginning of the transaction.

On the other hand, Islam prohibits buyers who are in debt to deliberately delay the repayment of their obligations, because this is a form of tyranny. However, sharia also does not allow sellers to require compensation or compensation for late installment payments. From this explanation, it can be concluded that credit buying and selling is a transaction that gives the buyer the flexibility to pay for goods in installments within a certain period of time. In practice, it is permissible to set a different price between cash and credit payments, but the importance of trust and responsibility in fulfilling payment obligations according to the agreement is still emphasized (VIKA, 2021).

The Urgency of Gold Investment

Gold in English is known as "gold," which comes from the Old German word "ghel," which means yellow or shining. Gold is a chemical element denoted by the symbol Au (Aurum). This metal has dense and shiny properties with a bright yellow color that is capable of attracting the attention of anyone who sees it. In addition, the yellow color in gold is permanent because it cannot be oxidized by air or water. Gold is often considered a symbol of wealth and power. In addition, the beauty of gold also provides emotional benefits for the people who enjoy it. Therefore, gold is considered a precious metal with high aesthetic value. Forms of gold include jewelry, bars, coins or pieces, as well as gold granules (Agustina, 2020).

In Islamic law, gold is included in the category of usury goods, which are types of goods that, if exchanged, must meet certain conditions to avoid the practice of usury. Ribawi goods are divided into two main groups: goods that are a medium of exchange (such as gold and silver), and goods that are a staple (such as wheat, dates, salt, and barley). Gold, along with silver, falls into the first category because both have historically been used as currencies and medium of exchange in trade. Therefore, gold transactions both in the form of buying and selling and exchanging are subject to strict rules in fiqh muamalah. When gold is exchanged for gold or with similar currencies (e.g. rupiah, dollars, or dinar), it must be done in cash (yadan bi yadin) and the same value (e.g. bi mislin). If not fulfilled, then the transaction may contain elements of riba fadhl (additional in the exchange of similar goods) or riba nasi'ah (additional due to delay), both of which are prohibited in Islam (Heradhyaksa, 2022).

One of the main objections in buying and selling gold in cash is the potential for usury, because according to the Prophet's hadith, gold is included in the group of ribawi that must be exchanged in cash and commensurate. However, if the gold has been converted into a commodity or merchandise (such as jewelry or digital gold), then it is no longer included in the category of usury medium of exchange absolutely, and can be traded like any other item. In the perspective of Maqashid Sharia, if the prohibition on buying and selling gold in installments causes people to have difficulty meeting economic needs, then the ijthadi approach is needed to prioritize the benefit of the people (Habibah, 2017).

Buy and Sell Gold in the Form of Credit

The Fatwa of the National Sharia Council No. 77/DSN-MUI/V/2010 concerning Murabahah and the buying and selling of gold, both in cash and credit, states that the practice of buying and selling gold among modern society is often carried out by non-cash payment methods, either in installments (taqsith) or deferred payments. This method causes differences of opinion among Muslims; Some scholars allow it, while others prohibit it. Seeing these differences, and based on previous considerations, DSN-MUI considers it necessary to establish a fatwa as a guideline in the implementation of non-cash gold buying and selling transactions (Irawan, 2015).

The fatwa also responded to a letter from Bank Mega Syariah No. 001/BMS/DPS/1/10 dated January 5, 2010 regarding the application for a golden murabahah fatwa. In the fatwa, it is stated that the purchase and purchase of gold without cash, either through ordinary buying and selling contracts or murabahah, is allowed (mubah, ja'iz) as long as gold does not function as an official medium of exchange (money). The condition is that the selling price (tsaman) must not be changed during the agreement period, even if there is an extension of time after maturity. In addition, gold purchased non-cash can be used as collateral (rahn), but it cannot be traded or used as an object of other contracts that result in a transfer of ownership. Along with technological developments and the rise of digital gold investment practices, DSN-MUI in 2024 states that digital gold ownership is in principle allowed according to sharia, as long as the gold really exists, can be legally owned, and not just balance recording (Hardiati & Latifah, 2024).

In Maqashid Sharia's view, every economic transaction, including the sale of gold in a non-paid manner, must prioritize benefits, justice, and protection from losses. In conditions of urgent need (darurah), the sale of gold on credit can be tolerated as long as it does not contain elements of usury, gharar, or fraud. Gold that is used as an object of transaction must also be understood in its context: if the gold has changed its function into jewelry or a commodity, then the law is no longer fully bound by the provisions of gold as a means of exchange for usury. In a situation where people do not have the ability to buy gold in cash, the absolute ban can actually cause difficulties and is contrary to the principle of *rafu'ul haraj* (eliminating narrowness). Therefore, as long as the contract used is clear, the price is agreed from the beginning without additional interest, and there is no fraud, then this practice can be justified within the framework of Maqashid Syariah (Hasan, 2020).

The sale of gold in installments in conditions of urgent need must also be seen from the perspective of fairness and balance between the rights of sellers and buyers. It is important to ensure that the contract used does not harm one of the parties, there is transparency in the price and payment terms, and there are no clauses that cause uncertainty (gharar). In its implementation, this kind of transaction needs to be supervised and facilitated by an institution that understands the principles of *fiqh muamalah*, so that it remains within the sharia corridor. With this approach, the unpaid sale of gold not only fulfills the legal or formal aspects of sharia, but also fulfills the main purpose of Maqashid

Syariah in protecting property, the benefit of the people, and providing convenience in meeting the needs of life in a fair and dignified manner.

Maqashid Shariah Analysis of Gold Ownership

In fiqh muamalah, the validity of a buying and selling transaction depends on the basic principle that the goods sold must already be the full legal property of the seller. This principle aims to ensure clarity and fairness in transactions, as well as avoid the element of gharar (uncertainty) that is prohibited in Islam. This is emphasized in the hadith of the Prophet Muhammad PBUH: "Do not sell something that you do not have" (HR. Abu Dawud and Tirmidhi), which shows a strict prohibition against the practice of buying and selling goods that are not owned or not yet under the seller's full control. In the context of Islamic law, legal ownership means that the goods have entered the seller's property and can be handed over to the buyer without hindrance. Buying and selling without legal ownership can cause conflicts, unclear rights, and potential fraud in transactions, thus not meeting the principles of transparency and justice upheld in sharia (Pardiansyah, 2022).

Especially for gold, which is included in the category of usury goods (goods that can be the object of usury), the provisions regarding possession and delivery have become stricter. Based on sharia provisions, the buying and selling of ribawi goods such as gold and money must be carried out in cash and in balance (e.g. bi mislin, yadan bi yadin). Therefore, gold that has not been paid off or has not been handed over completely may not be resold by parties who do not fully own it. This is to prevent the occurrence of riba nasiah (additional due to delay) and gharar, which are prohibited in Islam. The majority of scholars agree that selling gold in the condition that it is not yet the seller's full property is null and void or at least highly discouraged, because it violates the basic principles of ownership and clarity of the contract in muamalah. Thus, selling gold that is still in credit status or has not been paid off is not only doubtful in terms of the legality of fiqh, but also prone to lead to practices that are contrary to the sharia maqashid, namely maintaining justice and avoiding losses between parties (Safitri & Wati, 2023).

However, in Islamic law, an emergency condition (daruriah) is a situation that is recognized in shari'i as a reason for granting leniency (rukhsah) to general legal provisions. The fiqh rule "al-dharurat tubih al-mahzurat" (emergency allows the forbidden) is an important foundation in providing solutions to problems that oppress or threaten human survival. In the context of buying and selling gold that is not yet fully owned, emergencies such as basic necessities, medical expenses, or economic pressures that cannot be postponed, can be a reason to give limited tolerance to the generally prohibited practice. However, this relief is not given absolutely, but with strict provisions so that it is not abused. Among them is that the need must be real and urgent, not speculative or ordinary desires, and that no other alternative is found that is more in accordance with the law of origin.

In addition, transparency in the contract is the main key so that the transaction remains within the sharia corridor. The seller must explain to the buyer that the status of

the gold sold is not fully owned by him, and ensure that there is no element of fraud (tadlis) or ambiguity (gharar) that can harm other parties. The seller must also immediately refine his ownership of the gold after the transaction so that there are no disputes. In the perspective of Maqashid Sharia, this step is in line with the main purpose of the sharia, which is to protect the soul (hifzh al-nafs) and protect property (hifzh al-mal). Islam is not rigid in the application of the law if the real conditions require a solution, as long as it is done responsibly and does not become a loophole to violate the principles of justice and benefit. Therefore, selling gold that has not been fully owned in an emergency is allowed on a limited basis, as an exception directed at saving lives and avoiding greater harm.

CONCLUSION

Buying and selling transactions are an important part of muamalah in Islam, which is based on the principles of willingness, honesty, and fairness between the two parties. Islamic law clearly regulates the harmonies and legal conditions of buying and selling, both in the form of cash and credit. In the practice of buying and selling on credit, Islam provides flexibility as long as it does not contain elements of usury, gharar, or fraud, and still maintains the principle of justice. This is evidenced by the legal basis of the Qur'an and hadith, as well as the opinion of scholars who allow an installment system with the condition of a clear contract and price agreement in advance without any additional fines for delays.

Meanwhile, gold is included in the category of usury goods that must be treated with caution in transactions. Buying and selling gold, especially in the form of credit or before the gold is fully owned, has the potential to contain riba and gharar, so it is generally prohibited in the jurisprudence of muamalah. However, in certain conditions such as emergency needs, the sharia maqashid approach provides room for tolerance with strict conditions, such as clarity of contracts, transparency of ownership, and the absence of elements of fraud. The DSN-MUI fatwa and technological developments such as digital gold also show ijthadi's efforts in responding to the needs of modern people, while maintaining sharia principles that underlie the benefits and fairness in every transaction.

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