



The Provision of Pledge in the Sale and Purchase of Salam in the Perspective of Islamic Economics

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ABSTRACT

This study aims to find out about the perspective of Islamic economics on the provision of pawn on salam sale and purchase. The method of library research by examining the book Fathul Baari by Imam Ibn Hajar Al Asqalani. The results of the study concluded that there are differences in scholarly opinion on the law of giving a pawn on salam sale and purchase. The scholars who allow pawning in the sale and purchase of salam refer to the hadith of the prophet ari Al A'masy. Meanwhile, the scholars who disfavor it refer to the opinion of Ibn Umar, Al Hasan, Al Auza'i and Imam Ahmad. The other scholars gave leniency, and their proof was the word of Allah surah Al Baqarah verse 282.

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ABSTRACT

Penelitian ini bertujuan untuk mengetahui tentang perspektif ekonomi syariah terhadap pemberian gadai pada jual beli salam. Metode library research dengan menelaah kitab Fathul Baari karya Imam Ibnu Hajar Al Asqalani. Hasil penelitian menyimpulkan bahwa terdapat perbedaan pendapat ulama terhadap hukum memberi gadai pada jual beli salam merujuk kepada hadits nabi ari Al A'masy. sementara itu, ulama yang memakruhkan merujuk kepada pendapat Ibnu Umar, Al Hasan, Al Auza'i serta Imam Ahmad. Adapun para ulama lainnya memberi keringanan, dan hujjah mereka pada firman Allah surah Al Baqarah ayat 282.

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Background

Islam is a religion that has been perfected by Allah SWT. This is in accordance with the word of Allah in Surah Al Maa-idah Verse 3 which means "On this day I have perfected your religion for you, and I have fulfilled My blessings on you, and I have approved Islam as a religion for you..." [Al-Maa- idah: 3]. Islam as a perfect religion covers all aspects of human life, as a guide for human life so that they can obtain happiness in this world and the hereafter. One of the aspects regulated in Islam is related to economic activities. Humans carry out economic activities to fulfill basic human needs such as clothing, food and shelter (Sutrisni,2021).

One of the economic activities that humans often carry out is buying and selling. Islam does not prohibit all forms of buying and selling as long as it does not harm either party and does not violate the established rules (Harbani,2021). Buying and selling goods that are not yet available at the transaction location, and only the specifications are known, but can be guaranteed is known as a salam contract. Some jurists call it a salaf contract (Syamsuddin,2018). The main characteristics of buying and selling greetings are orders with cash prices and non-cash items. The first example is buying and selling goods that are not yet available at the time of ordering or purchasing transaction. Money is transferred by the buyer when ordering and then the goods are sent. The second example, online shopping through the marketplace. After the buyer determines the criteria and image of the goods to be purchased, he enters into a sales and purchase contract by agreeing to the terms of the transaction. He then made the payment and the order was received later. The third example, consumers order goods from the dropshipper according to the criteria and images and then transfer cash. With this money, the dropshipper buys goods according to orders and the goods are sent to consumers (Sahroni, 2018).

Previous Research

Some previous research related to buying and selling of salam includes:

1. Saprida (2016) describes that salam buying and selling is a sale and purchase contract for ordered goods between a buyer and a seller. The specifications and price of the ordered goods must be agreed upon at the beginning of the contract, while payment is made in full in advance. Buying and selling salam is a permitted sale and purchase agreement. This is based on the arguments contained in the Koran. The pillars of greeting are sellers and buyers, there are goods and money, there is sighthat (pronunciation of the contract). Meanwhile, according to the agreement of the ulama, there are five conditions for buying and selling salam, namely the type of object for selling and buying salam must be clear, the nature of the object for selling and buying salam must be clear, the level or size of the



object for selling and buying salam must be clear, the time period for ordering the object for selling and buying salam must be clear, assumptions The capital spent must be known to each party.

2. Hasan (2022) discusses guarantees in as-salam sale and purchase contracts in modern times viewed according to Islamic law. The majority of contemporary scholars allow guarantees in as-salam sales and purchase agreements, to help ease the burden on people who are in debt and aim to avoid hostility, fights and fraud between the two parties.
3. Simal (2019) describes that the greeting contract based on the principles of tabadul al-manafi is very effective to enforce. This can be reflected in the principles and principles contained therein. These principles include: 1) The principle of aqidah, or the principle of monotheism; 2) Principles of Justice; 3) Al-Ihsan Principle (doing good); 4) Al Mas'uliyah Principle (accountability); 5) Al-Wasathiyah Principle of balance (al'itidal, moderation, balance); and, 6) Principle of honesty and truth.
4. Darmwansyah & Polindi (2020) describe that online salam contracts are permissible as long as they do not contain elements that could damage them such as usury, injustice, deception, cheating, and the like and fulfill the pillars and conditions of buying and selling.
5. Luthfi, et al (2020) describe that the salam contract for the sale of stones and sand at the Sumber Mulya Suhuden building shop is still not in accordance with the muamalah jurisprudence theory of the salam contract because there is one aspect that is not fulfilled, namely the specification, there is no clarity on the measurements between the stone and sand, but other aspects are fulfilled, such as the existence of a seller and a buyer, the existence of an object, a contract is carried out, payment is made in advance and the goods are postponed at a specified time, the type is clear, the level is clear, the type is clear.
6. Subairi & Hamidah (2023) describe the contracts that occur in Shopee services, namely the salam and istishna' contracts. Salam buying and selling is a transaction that initiates payment at the beginning when the goods do not yet exist, only specifications, type, size, delivery location, delivery time, and other things mentioned at the time the agreement is made. Meanwhile, the istishna' contract is the same as the salam contract, except that the payment time can be at the beginning, middle or end. Transactions with salam and istishna' contracts will provide benefits to both parties. Therefore, buying and selling salam and istishna' is permitted as an economic activity based on the basis in the Al-Quran and Hadith.

Research methods

This research uses the library research method by examining the book Fathul Baari by Imam Ibnu Hajar Al Asqalani.

Discussion

Legal Basis for Buying and Selling Salam

The National Sharia Council (2020) describes the legal basis for buying and selling salam as follows:



1. Word of Allah QS. al-Baqarah [2]: 282:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايْتُمْ بَدِينِ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ...

"O you who believe! If you do not make peace in cash until a certain time, make it in writing...".

2. Word of Allah QS. al-Ma'idah [5]: 1

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ...

"O you who believe! Fulfill those promises..."

3. Hadith of the Prophet Muhammad

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ قَالَ: إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ، (رواه البيهقي وابن ماجه وصححه ابن حبان)

"From Abu Sa'id Al-Khudri, Rasulullah SAW said, 'Indeed, buying and selling must be done like and like.' (Narrated by al-Baihaqi and Ibnu Majah, and considered authentic by Ibnu Hibban).

4. Hadith narrated by Bukhari from Ibn 'Abbas, the Prophet said:

مَنْ أَسْلَفَ فِي شَيْءٍ فَفِي كَيْلٍ مَّعْلُومٍ وَوَزْنٍ مَّعْلُومٍ إِلَىٰ أَجَلٍ مَّعْلُومٍ.

"Whoever performs salaf (salam), he should do it with clear measurements and clear scales, for a known period of time" (HR. Bukhari, Sahih al-Bukhari [Beirut: Dar al-Fikr, 1955], volume 2, p. 36).

5. Hadith of the Prophet narrated by jama'ah:

مَطْلُ الْعَنِيِّ ظُلْمٌ...

"Delaying (payment) by capable people is an injustice..."

6. Hadith of the Prophet narrated by Nasa'i, Abu Dawud, Ibu Majah, and Ahmad:

لِيُ الْوَأَجِدَ يُحِلُّ عِرْضَهُ وَعُقُوبَتَهُ.

"Delaying (payment) by people is capable of justifying self-respect and imposing sanctions on them."



7. Hadith of the Prophet narrated by Tirmizi:

الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا
وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا
(رواه الترمذي عن عمرو بن عوف).

“Peace can be made between Muslims unless it is a peace that forbids what is halal or makes lawful what is haram; and the Muslims are bound by their conditions except conditions that forbid what is halal or make lawful what is haram” (Tirmizi from 'Amr bin 'Auf).

8. Ijma'. According to Ibnul Munzir, the ulama agree (ijma') on the permissibility of buying and selling by means of greetings. Apart from that, this method is also needed by the community (Wahbah, 4/598).

9. Fiqh rules:

الأَصْلُ فِي الْمُعَامَلَاتِ الْإِبَاحَةُ إِلَّا أَنْ يَدُلَّ دَلِيلٌ عَلَى تَحْرِيمِهَا.

"Basically, all forms of muamalah are permissible to do unless there is an argument that forbids it."

The Law of Pawning in Buying and Selling Salam Regards Ibnu Hajar Al Asqalani's Perspective

Ibnu Hajar Al Asqalani explains the law of pawning on buying and selling salam as follows:

عَنِ الْأَعْمَشِ قَالَ: تَذَاكُرْنَا عِنْدَ إِبْرَاهِيمَ الرَّهْنِ فِي السَّلْفِ فَقَالَ: حَدَّثَنِي
الْأَسْوَدُ عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اشْتَرَى
مِنْ يَهُودِيٍّ طَعَامًا إِلَى أَجَلٍ مَعْلُومٍ، وَارْتَهَنَ مِنْهُ دِرْعًا مِنْ حَدِيدٍ.

From Al A'masy, he said, "We discussed with Ibrahim about pawning in buying and selling with the salaf system, so he said, 'Al A'masy has told me from Aisyah RA that the Prophet SAW bought food from a Jew (and the payment will be made) until the appointed time, then the Jew asked him to pawn his armor."

In this hadith there is a rebuttal to those who do not allow pledging in buying and selling using the salam system. Al Ismaili narrated from the Ibn Numair route, from Al A'masy, "(Indeed, a man said to Ibrahim An-Nakha'i that Sa'id bin Jubair said, "Indeed, pawning on



buying and selling using the salam system is usury in disguise." So Ibrahim denied this statement by stating this hadith).

Al Muwaffiq said, "Opinions have been quoted which invalidate pawning in buying and selling using the salam system from Ibn Umar, Al Hasan, Al Auza'i as well as one of Imam Ahmad's opinions. Meanwhile, other scholars provide relief, and their evidence is the word of Allah in surah Al Baqarah verse 282 "If you pay non-cash for the specified wahu, you should write it down... up to His word... then there should be collateral held [by the person receivable]." This language is general, including the salam system, because it is one of two types of buying and selling.

The evidence for Imam Ahmad is the hadith narrated by Abu Daud from Abu Sa'id (Whoever sells something using the salam system, let him not transfer it to others). The explanation is that there is no guarantee that if the mortgaged item is damaged in the hands of the creditor due to his deliberate intention, then the receivable will automatically be considered paid off without receiving the item purchased.

Ad-Daruquthni narrated from the hadith of Ibn Umar, from the Prophet SAW, (Whoever buys something using the salam system, do not require anything from the owner of the item other than paying for it). Imam Ibnu Hajar Al Asqalani stated that the sanad of this hadith is weak; and even though this history is authentic, it could be that the meaning understood is a condition that negates the consequences of the contract (transaction).

Conclusion

There are differences of opinion among scholars regarding the law of placing a pawn on the sale and purchase of salam. The scholars who allow pawning for buying and selling salam refer to the hadith of the prophet from Al A'masy. Meanwhile, the scholars who confirmed it referred to the opinions of Ibn Umar, Al Hasan, Al Auza'i and Imam Ahmad. Meanwhile, other scholars provide relief and their evidence is based on the word of Allah in Surah Al Baqarah verse 282.

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