

## **SPECIFIC TRADES AND PROHIBITED TRADES**

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### **Abstract**

Purpose This research discusses special buying and selling that is prohibited in the perspective of fiqh muamalah. Basically, Islam itself allows buying and selling anything as long as it does not conflict with shara' law. But the fact is that there are still many people who do not know the special buying and selling that is prohibited in Islam. this research uses qualitative methods because this type of research is in the form of literature, related journals and reading books. Then the search results are analyzed qualitatively and described with the intention of obtaining an explanation as intended in the discussion. Based on the study obtained are: 1) special buying and selling, among others; bai' wafa, bai taqsith (buying and selling), bay istighlal, bay'tawarruq, bay muallaq, bay urbun, bay mua'tah. 2) Prohibited trades include; bai'al 'inah, gharar trade, najasy trade, fudhuli trade, munazabah trade, mulamasah trade, hashah trade, habalul hablah trade, bay'ah fi bai'atain, bay dayn bi al-dayn, ihtikar, talaqqi rukban, hadhir libad, ghabn in price.

Keyword: Specific, Trades, Prohibited, Trades.

### **INTRODUCTION**

Buying and selling as a form of human activity is already quite old. Buying and selling is used as a means to fulfill the needs of human life, both primary, secondary and tertiary. Moreover, buying and selling has become a routine activity that is carried out everytime. But the practice of buying and selling in accordance with the provisions of Islamic law is not necessarily all Muslims carry it out. In fact, some do not know at all about the provisions stipulated by Islamic law in the sale and purchase agreement (Aidil Alfin and Muhamad Rezi, 2019).

In terms of the Qur'an and Hadith as sources of Islamic law, many explain the practice of buying and selling, both permissible and prohibited or even forbidden according to Islamic law. However, along with the development of buying and selling

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activities that are quite rapid at this time, it is necessary to review existing practices according to Islamic law. In particular, this paper deals with the practice of making sale and purchase contracts that are prohibited or even forbidden according to the Hadith. With this study, it is hoped that it will be able to enlighten Muslims about the practice of buying and selling contracts that are in accordance with the provisions of Islamic law. Moreover, Allah SWT allows buying and selling as stated in Surah Al Baqarah: 275, which means: "Whereas Allah has justified buying and selling and forbidden usury" (Abd. Rahman Ghazaly, 2016).

## **METHODS**

The type of research used in this research is qualitative and literature that focuses on the fiqh review of special trading and prohibited trading. This research uses secondary data sources through related literature, such as books, journals, and internet publications.

Because this type of research is literature, this research uses a qualitative research approach. Qualitative research is a research method based on the philosophy of postpositivism used to research on natural conditions. Qualitative research is also research related to the collection and analysis of narrative data (Syahrial Hasibuan, 2022).

## **RESULTS AND DISCUSSION**

### **Special sale and purchase**

#### **Bai' Wafa**

Etymologically, *al-bay'* means buying and selling, and *al-wafa'* means debt repayment. *Bay'al-wafa'* is a form of transaction (contract) that emerged in Central Asia (Bukhara and Balkh) in the mid-5th century AH and spread to the Middle East.

*Terminologically, bay' al-wafa' is defined by fiqh scholars as Meaning: A sale and purchase between two parties that is accompanied by the condition that the goods sold can be bought back by the seller, when the specified time has elapsed.*

More specifically, this sale and purchase has a limited period of time, for example one year, so that when the one year period has expired, the seller buys the goods back from the buyer. For example, Ruslan really needs money right now, so he sells his 2 hectares of rice fields to Riadi for Rp. 10,000,00 within 2 years. They agree to state that when the 2-year period has expired, Ruslan will buy the rice field back at the original sale price, which is Rp. 10,000,00 to Riadi. Because the contract used is a sale and purchase contract, Riadi may exploit the paddy field for two years and use it as he wishes, so the paddy field cannot be sold to someone else. Musthafa Ahmad az-Zarqa' said that usually the goods traded in *bay' al-wafa'* are immovable goods, such as plantation land, houses, residential land, and rice fields.

This trade first emerged in Bukhara and Balkh around the fifth century AH, in

order to avoid usury in lending and borrowing. Many of the rich at that time were unwilling to lend money without receiving something in return. At the same time, many borrowers were unable to repay their money due to the fees they had to pay along with the amount of money they borrowed. On the other hand, the reward given on the basis of this money lending and borrowing, according to the scholars of fiqh is included in usury. In order to avoid usury, the people of Bukhara and Balkh at that time engineered a form of sale and purchase known later as *bay' al-wafa'* (Nanang Qosim, 2018).

### **Bai taqsith (buying and selling)**

The definition of akad (al-"aqd) linguistically has several meanings, including Arrabtu (binding), "Al-"Aqdu (connection), al-Ahdu (promise).<sup>1</sup> Akad is an agreement made by mukalaf in various human relations.<sup>5</sup> According to the term (terminology), what is meant by the contract is: The definition of an agreement in contract law implies a legal act based on an agreement to cause legal consequences. These legal effects occur because of an agreement that is made legally, so that it applies as a law to those who make it. Although the attachment only applies to the parties involved in the agreement, the obligations arising from an agreement or engagement can be legally enforced (P Thalib, A F Hady, and M N Kholiq, 2021).

### **Bay Istighlal**

In a Wafa' sale, the buyer gets the benefit of utilizing the goods before they are bought back by the seller in the first sale. The utilization is general, either used directly by the person concerned or used indirectly, for example, leased to other parties. The relationship between Wafa' sale and ijarah contract results in a new concept, namely Al-Istighlal sale and purchase (Hasanudin, Jaih Mubarak, and Muhammad Al Fayyad Maulana, 2023).

In language, Al-Istighlal comes from the word Ghalla which has many variations and many meanings. However, there are some meanings of the word that are relevant to this topic, including: Aghalla (aghallat al-ardh) literally means to give results, Istighalla al-ardh literally means to take the results, Ghallah/ghallat/ghillah literally means income from land or house rent, Mughallat/mustaghallat literally means income or land rent.

The definition of Bai' Istighlal according to Majallah Al Ahkam Al-'Adliyah paragraph 119 is the sale and purchase of wafa' with the condition that the seller rents the goods he sells from the buyer.<sup>13</sup> Bai' Istighlal is every item that has been purchased, it is permissible for the buyer to use it himself, rent it out, transfer ownership, pawn it and so on. Because every item that can be traded can also be rented, pawned, donated and represented.<sup>14</sup> In principle, Bai' Istighlal is the relationship between the concept of Bai' Wafa' and the concept of Ijarah, namely the utilization of the object of sale (al- matsmun/al-mutsman, for example a shop) by way of rent or lease.

The definition above can be concluded that there are two contracts in Bai' Istighlal, namely Bai' wafa' which then moves to an Ijarah contract. A simple example, si A sells a motorcycle to si B with the agreement that the motorcycle cannot be sold to other parties because si A will buy the motorcycle in the next 2 years. After the contract is finalized, then si B will rent the motorcycle to si B with an agreed ujroh to be paid every month (Ahmand Zaki and Diyan Yusri, 2020).

### **Bay' Tawarruq**

Among the earlier fuqaha', the term al-tawarruq was only pioneered by the fuqaha' of the Hanbali school.<sup>14</sup> Although the fuqaha' of other schools of thought did not use the term al-tawarruq in their writings, they also mentioned a form of sale that resembled al-tawarruq following the Hanbali fuqaha' terminology when discussing bay' al-'inah and bay' al-ajal. For example, the Hanafi school considers the sale that takes the form of bay' altawarruq to be one of the parts of bay' al-'inah on the Hanbali school's side.<sup>15</sup> This means that the difference between the majority of fuqaha' (Hanafi, Maliki and Shafi'i) and Hanbali is only in terms of terminology and not the concept of tawarruq itself. In terms of language, al-tawarruq is derived from the Arabic word alwariq which is silver money or dirham. Ibn Faris states that the word al-tawarruq comes from the word (ورق) which gives two meanings. First, it refers to goodness and wealth, this meaning is taken from (الشجر ورق) ie the leaves of the tree. The second meaning, meaning color.

In terms of terms too, al-Mawsu'ah al-Fiqhiyyah and Majma' al-Fiqh al-Islami, define al-tawarruq as a form of buying and selling with the aim of obtaining cash, which involves buying an item on a delayed basis and then selling it for cash at a price lower than the original purchase to a third party where this third party is not the original seller.<sup>19</sup> Abd Allah Sulayman al-Mani' defines altawarruq as the act of someone who needs money to fulfill his wishes by avoiding the practice of usury. It is done by purchasing an item where the price equals the value of the cash money required with a certain addition (surplus) (i.e. profit) and paid on a deferred basis. Then he sells the item for the required price in cash, on condition that he does not sell it to the person who sold the item to him (Jamaluddin, 2018).

This concept is called al-tawarruq because when someone buys something, he does not intend to use it or utilize it, but he only aims to get al-wariq, namely getting money.

### **Bay' muallaq**

Bai' al Muallaq is a sale and purchase transaction where its continuity depends on other transactions that are required. The element of gharar found in muallaq sale and purchase is when the two parties (seller and buyer) do not know whether or not the issue that is made a bond so as to carry out the sale and purchase transaction between

them, as both parties do not know under what conditions the transaction is carried out, because this kind of transaction can be carried out when the wishes of the buyer or seller change instantly.

### **Bay urbun**

'urbun, which is a sale and purchase with a down payment. What is sold is also not a commodity consisting of the crypto asset itself, but a contract that has previously been made by someone to order a crypto asset for a certain period of time. When the contract matures, but the asset does not show the expected price, the seller chooses the option (khiyârât) to transfer the responsibility to another party, with the intention that the "down payment" ('urbun) that has been submitted is not lost.

In the perspective of as-Syaukani (d. 1250 AH) the 'illat' of the prohibition of bai' urbun is as follows: Meaning: "'The reason for the prohibition of bai' urbun is that the urbun transaction contains two invalid conditions. First, there is the condition that the goods must be given to the seller free of charge, especially if the transaction is canceled. The second is the condition that the goods be returned to the seller in the event of the buyer's unwillingness." As-Syaukani, Nailul Authâr Syarhu Muntaqal Akhbâr, volume V, page 182). The fuqaha who allow 'urbun transactions are from the Hanbalis.

The reason for the permissibility according to this group is as follows: Meaning: "It is well known that the 'urbun transaction is used in many commercial transactions in the modern era as a guarantee of engagement between the seller and the buyer in general. Many new laws and regulations are based on this contract and apply it generally, and it is even the basis for determining compensation incurred by the other party due to delays and waiting."

### **Bay Mua'tah**

Al-muaṭah and al-munāwalah are derived from the word 'aṭa yu'ti if he gives each other a form of mufa'ah (mutual work) from the word 'aṭa' which means handing over without a contract. Muaṭah buying and selling is an activity of buying and selling transactions with only delivery and acceptance without speech or there is speech but from one party only, but later the fuqaha used it for buying and selling that is giving each other specifically.

Bay al-mu'āṭāh according to the dictionary of fiqh muaṭah comes from the word 'aṭa yu'thi, while according to language it means mutual handover without a contract. According to the term, bay al-mu'āṭāh is defined as taking and giving without words (ijab and kabul), as when a person buys something that has a known price and then takes it from the seller and gives money as a medium of exchange.

Bay' al-mu'āṭāh is a sale and purchase made by two people by handing over money and goods without saying ijab and kabul. For example, a sale made in a

supermarket or mini market where the sellers and buyers do not recite ijab and kabul, the prices of the goods have been affixed in such a way both on the packaging of the goods and on the shelves where the goods are arranged. In determining the validity or invalidity of buying and selling carried out in this way, there are differences of opinion among scholars, especially fiqh scholars. Sayid sabiq argues, buying and selling can be done with ijab and kabul, except for cheap objects (light) which do not have to use ijab and kabul but enough with the handover of the object alone. The implementation is left to human custom / custom (Maltuf Fitri, 2015).

### **Prohibited Buying and Selling**

#### **Bai'al 'inah**

According to Fuad al-Omar & Mohamed Abdel Haq (1996) Bai' Al-Inah means a sale and repurchase agreement in which a man sells his merchandise to another person at a known price and the payment is handed over to the seller within a certain period either by lump sum payment or a predetermined installment payment then the seller (original) buys the goods back by paying an amount of money that is lower than the original selling price before the payment is completed. It is not called Al-Inah if the original seller buys the goods from the buyer at the original sale price set by the original seller and not at a higher price. Likewise, if at the time of the original purchase, there is also an increase in the price (in the market) and the seller really needs the goods. Then the seller may buy it back from the original buyer at the price at which he sold it to the buyer, or at a higher value. There is nothing wrong with this because there is no ambiguity in this matter. It is named Al-Inah because it comes from the word 'Ain (goods) because the buyer wants to get the goods he needs, namely money. There are two rulings for Bai' Al-Inah:

- a. If a person buys something from another person for a certain price in installments, and the seller requires him to sell it back to him at a lower price than the original price. According to scholarly consensus. This sale is forbidden because of the element of deception and as it is based on the Sharie' ruling to avoid usury'.
- b. If the goods are sold at an installment price and the buyer takes possession of them. Then he offers it for resale to the seller with money added, then the original seller buys it back at a price lower than the original sale price. The difference between a) and b) is that a) is a condition stipulated by the seller. Whereas b) does not impose a condition. Indeed, the fuqaha' have disagreed on the second form because it does not contain any conditions (Nurshuhadak Hehsan and Hussin Salamon, 2017).

### **Gharar Buying and Selling**

Etymologically, Gharar is the isim mashdar of (غرر). The meaning of the word gharar revolves around risk (khathar), ignorance (jahil), shortage (nuqsan) and/or something that is easily damaged (ta'arrudh lil halakah). Terminologically, there are a

number of definitions of gharar from scholars, including Ibn Taymiyyah's opinion that Gharar is the unknown consequences *الغرر العاقبة المجهول هو*. Another opinion by Ibn Qoyyim who said Gharar is something that is not known as a result, or known nature and size *ما لا بأنه: الغرر يعلم حصوله، أو لا يعرف حقيقته ومقداره*.

Another opinion is from Abu Ya'la that gharar is a doubtful thing between two things, where nothing is more visible / clear *الغرر: ما ترد بين أمرين ليس أحدهما أظمر*. From some of the definitions that have been put forward by the fuqaha, it can be interpreted that gharar in buying and selling and other business transactions is a transaction in which there is an element of uncertainty or an element of speculation, doubt or uncertainty, and other elements that result in unwillingness in the transaction.

Gharar is also associated with the prohibition of 'Asbil Fahl, which is renting out male animals such as camels, horses, cows, goats, chickens and others to marry females. This prohibition is stated in the hadeeth of Jabir (may Allah be pleased with him) narrated by Muslim and the hadeeth of Ibn 'Umar (may Allah be pleased with him) narrated by al-Bukhari. The explanation for the prohibition of 'Asbil Fahl is that the water of the male animal is unknown in terms of its quantity and size, and whether or not it will bear fruit, so all of this falls under the category of gharar (Nuhbatul Basyariah, 2022).

### **Najasy Sale and Purchase**

Buying and selling in fiqh terms is called al-bai which means selling, replacing, and exchanging something for something else. The Arabic word albai" is sometimes used for its opposite meaning, namely the word ash shira (buy). Thus, the word al-bai" means selling, but at the same time it also means buying. Meanwhile, according to the term buying and selling is exchanging goods for goods or goods for money by releasing property rights from one to another on the basis of mutual convenience.

Market engineering or in muamalah fiqh known as Ba'i Najasy is included in the scope of discussion of muamalah fiqh. The scholars agree that if people bid or raise the price of commodities higher (al-najasy) than the normal price, the law is haram.

According to Abu Isa, Najasy in buying and selling means that a person usually has an agreement between him and the seller to bid for an item when the buyer comes, even though he himself does not intend to buy it, only so that the buyer is deceived and bids higher. According to Umer Chapra An-Najasy is cheating and collusion.

Dr. Hamzah Ya'qub said that what is meant by actions that fall under the category of Najasy is praising one's own merchandise and conspiring with a friend who pretends to bid for goods at high prices so that others do not feel that they are expensive, then they are influenced to buy them. There are differences of opinion among the scholars regarding al-najasy. Firstly, the scholars of Shafi'iyah, Hanabilah and al-Maziri are of the view that al-najasy is absolutely forbidden, whether the price of the

commodity rises from the normal price due to najasy or not. Secondly, the scholars of Imam Malik, Abu Hanifah and Ibn Hazm argue that if the price of a commodity rises due to najasy, if it exceeds the normal price, it is not haram (Deby Melani, Sandi Rizki Febriadi, and Fahmi Fatwa, 2020).

### **Fudhuli Sale and Purchase**

Conditions related to buying and selling. Sale and purchase can only be carried out if the contracting party has the power to make the sale and purchase. Forexample, the goods are one's own (The goods being sold do not belong to someone else, or the rights of others are related to the goods). A sale and purchase contract cannot be enforced if the person doing the contract does not have the power to carry out the contract. For example, a person acts on behalf of another person in a sale and purchase, in this case, the representative must first obtain the consent of the person he represents. If the person he is representing agrees, then the sale is considered valid. This kind of sale and purchase is called Bai al Fudhuli in Fiqh (Qomaruddin, 2021).

### **sale and purchase of munazabah**

munabadzah, which is buying and selling by throwing, meaning that the biggest price will get the goods, this is feared to be fraudulent. (i) Buying and selling muzaabanah, which is selling wet and dry goods, meaning that the goods being traded are mixed and result in the absence of a balance of goods (Shobirin Shobirin, 2016).

### **buying and selling mulamasah**

Bai" al-Mulamasah is the sale and purchase of touching each other. That is, if the buyer touches the seller's cloth or clothing, then the buyer must buy it. The proof of Islamic law relating to the prohibition of bai" al-mulamasah is the hadith of the Prophet. As used as legal evidence regarding the prohibition of bai "al- mulamasah, which is as follows.

- c. A person touches another person's cloth or garment with his own hand without turning it over, then he has to buy it, and he has no khiyar. The khiyar is sufficient if he touches it. 45
- d. A seller said to the buyer: "whichever garment you touch, you must buy it." This is because the act of touching is sufficient. Both of these trades (munabadzah and mulamasah) were trades that were possible in the pre-Islamic era (Ahmad A. Bakar Iskandar Yahya Arulampalam Kunaraj P. Chelvanathan, 2023).

### **Sale and purchase of hashah**

Bai' al-Hashah, in which the seller or buyer throws a pebble and whichever garment is hit by the pebble, he must buy it without thinking about it, and without any right of khiyar afterwards. The contract is invalid because the item being sold or the time of khiyar is unknown, or because there is no consensus (ijab and qabul). Scholars have interpreted the meaning of bai" alhashah as follows:



- a. The seller says to the buyer: "I am selling this shirt, which was hit by my stone."
- b. The seller says to the buyer: "I sell you this land from here to where the stone that was thrown fell."
- c. The seller says to the buyer: "I sell this item to you on the condition that when I throw this stone, the sale takes place and there is no khiyar on it."
- d. The seller and the buyer make a contract of sale by throwing a stone at something, such as the seller saying: "If I throw this stone, then this garment is sold to you" (Harisman Harisman and M Yadh Harahap, 2023).

### **Sale and purchase of habalul hablah**

Bai' Habl al-Habalah is the sale and purchase of animal fetuses that are still carried by their mothers. Bai' Habl al-Habalah is a trade that is prohibited in Islam and is one of the contracts practiced by the Jaahiliyyah. It is prohibited because it is a form of buying and selling something that is not owned, not known, and not capable of being delivered.

Scholars differ in their interpretation of Bai' Habl al-Habalah. The differences are as follows.

- a. Buying and selling the fetus of an animal that is still in its mother's womb. This is the interpretation of most linguists, including Imam Ahmad and Ishak.
- b. Buying and selling an animal's young for a fee when it gives birth, meaning until the animal gives birth to its young and the young gives birth. This is the interpretation of Ibn 'Umar, Sayyid ibn al-Musayyab, Imam Malik and Imam Shafi'i.
- c. Sale and purchase with payment deferred at an uncertain time of a camel that is pregnant, then gives birth, then becomes pregnant again. This is the interpretation of Abu Isaac al-Shirazi, one of the Shafi'i scholars.
- d. Sale and purchase with deferred payment at an uncertain time of a pregnant camel. This is the interpretation of Nafi and Sayyid al-Murtadha, one of the Shi'i Zaidiyah scholars.
- e. Buying and selling fetuses that are still in the womb of livestock.
- f. Buying and selling a vine before its fruit is clearly visible is good. This is the interpretation of Mabrad and Ibn Kaisan, one of the scholars of linguistics.

All of the scholars' interpretations above imply that this is a gharar trade, which is prohibited by Shariah (Imam Safei, 2021).

### **Bay'ah fi Bai'atain**

Multi-contract is an agreement between two parties to carry out a contract in which there are two or more contracts, such as a sale and purchase contract with a lease contract, wakalah, grant, muzara'ah, qardh, sharaf, shirkah, mudharabah, and so on. So that all the legal consequences of the several sets of contracts, as well as all the rights and obligations arising from them, all become one unit, like the legal consequences arising from one contract (Elvina Rosa Leilani and Danang Kusnanto,

2024).

### **Bay Dayn bi al-Dayn**

In other words, it means a sale and purchase contract in which the debtor sells his debt to the creditor either to the debtor himself or to a third party<sup>13</sup>. In other words, it means a contract of sale in which a debtor sells his debt rights to the debtor either to the debtor himself or to a third party (Asmadi Ahmad Khilmy Abdul Rahim, 2014).

### **Ihtikar**

Ihtikar in Islam refers to the hoarding of goods with the aim of influencing prices and obtaining higher profits. Legally, ihtikar in Islam is considered an ill-advised practice and may be prohibited, especially if it goes against the principles of fairness and equity in the distribution of goods (Sri Wulandari, Candy Yuniari Putri, and Putri Nailah, 2023).

### **Talaqqi Rukban**

talaqqi rukban is the purchase of merchandise by intercepting traders from the village, before they reach the market and before knowing the real price. This buying and selling practice is common in Indonesia. Usually, people from urban areas intercept groups of traders coming from rural or inland areas. Or even many go directly to the plantations where they harvest vegetables, fruits and or some other types of merchandise. Then, they offer the crops at a low price, with the lure that the goods will not sell in the market or other modes (Faiz Abdillah Junaidi, 2023).

### **Hadhir libad**

This is a sale that is carried out by blocking the seller from the village who does not know the market price of the object (Refo Meisi Anggia, 2019).

### **Ghabn in price**

Ghabn is buying something at a higher price than the average market price, or buying something at a lower price than the average market price. Ghabn is prohibited in Islam because it involves deception in pricing that can harm others (Patah Abdul Syukur and Fahmi Syahbudin, 2020).

## **CONCLUSION**

The activity of buying and selling practices is one of the things that is legalized in Islam. Even the Prophet said that the best livelihood is buying and selling. Buying and selling is allowed and lawful if the terms and conditions are in accordance with the provisions of sharia. The practice of buying and selling can be prohibited in Islam if there are provisions that are not in accordance with the provisions of sharia, such as buying and selling cellphones on Facebook social media. The reason that makes

buying and selling mobile phones on social media facebook prohibited in Islam is because this buying and selling practice is considered to have violated the principle of *la tadlimuna wa la tudlamun*, which refers to the act of fraud, namely hiding the defective condition of the goods being sold and taking advantage of the buyer's ignorance.

In all economic activities in particular, of course, we realize which elements are good and bad in making transactions. So, as a modern society and especially Muslims, we should pay attention to halal and haram in every economic activity both in buying and selling transactions, renting, saving and borrowing, etc. In this writing, the author realizes that there are still many shortcomings. Therefore, constructive criticism and suggestions are needed, and the author hopes that this paper can benefit the readers and the author himself.

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