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Research Article

## **Buying And Selling Gold In A Non-Cash Perspective On Sharia (Analytic Study On Fatwa Of The National Sharia Council Number 77 Of 2010)**

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**Abstract.** Buying and selling gold in cash is a form of gold sale and purchase agreement where payment is terminated and paid in installments within a predetermined timeframe. The current rapid economic growth has made so many Islamic banking institutions or other Islamic financial institutions offer gold installment products. Seeing the development of gold which always rises from year to year makes this business very tempting. At first glance there is no problem with buying and selling gold in cash, but in existing hadiths such as the hadith from Abu Sa'id al-Khudriy ra., and Ubadah bin Shamit ra., it is explained that it is not permissible to sell ribawi items with others. other ribawi items, except cash. It is also not permissible to sell it on credit, even though the two are of different types and sizes. But in the DSN-MUI fatwa No. 77/DSN-MUI/V/2010 concerning buying and selling gold in

cash which was issued on June 3 2010, DSN-MUI states that buying and selling in cash is permissible (mubah), as long as gold does not become the official medium of exchange (money).), either through ordinary buying and selling or buying and selling murabaha. It is interesting to study the reason for this fatwa being issued and the suitability of the legal advice of the DSN-MUI with the legal advice of the MUI in issuing this fatwa. In this study it can be concluded that: the reasons for the permissibility of buying and selling gold in cashless manner in the DSN-MUI fatwa No. 77/DSN-MUI/V/2010, DSN-MUI interprets the hadith of the Prophet SAW regarding buying and selling gold in a contemporary (contextual) way. This can be seen from the opinion of the DSN-MUI which states that gold and silver are goods (sil'ah) that are sold and bought like ordinary goods, and no longer saman (price, money). So that the result of the DSN-MUI's legal advice on buying and selling gold in cash is considered permissible (mubah).

**Keywords** : Buy and Sell Gold, Not cash, Sharia.

## **INTRODUCTION**

Islam is a view or way of life that governs all sides of human life, so there is not one aspect of human life that is separated from Islamic teachings, including aspects of Islamic economics. The Islamic banking system is part of the concept of Islamic economics, which aims to introduce an Islamic value system and ethics into the economic environment, as advocated by Islamic scholars.

Cooperation in muamalah as part of human interaction in the cooperation of two or more people in a business, the advantages and disadvantages of which are shared. Muamalah are laws relating to human actions in worldly matters, for example in matters of buying and selling, accounts payable, trade cooperation and leasing.<sup>1</sup>

Muamalah fiqh is all the rules of Islamic law regarding human behavior in the world related to property, muamalah fiqh means a series of Islamic legal rules that regulate the pattern of contracts or transactions between people related to property.<sup>2</sup>

The Qur'an never specifically mentions the issue of murabaha, however, the argument for the permissibility of buying and selling murabaha can be understood from the generality of the arguments for the permissibility of buying and selling. Murabaha is clearly part of buying and selling, and buying and selling is generally permitted. Based on this, the legal basis for buying and selling murabahah is permissible based on the verses of buying and selling<sup>3</sup>. Among these verses are: Allah's Word in Surah Al-Baqarah verse 275 which means: " *Those who eat (take) usury cannot stand but are like the standing of a person who has been possessed by a*

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<sup>1</sup>Zuhriah, "Review of Islamic law on the credit buying and selling system of precious metals", Thesis, (Palembang 2017), 17, td

<sup>2</sup>Imam Mustofa, "Contemporary Muamalah Jurisprudence", (Jakarta: PT. Rajagrafindo Persada, 2016), 7.

<sup>3</sup>Imam Mustofa, "Contemporary Muamalah Jurisprudence", (Jakarta: PT. Rajagrafindo Persada, 2016), 68

*devil because of (pressure) madness. Their situation is like that, is because they say (opinion), actually buying and selling is the same as usury, even though Allah has justified buying and selling and forbidding usury. Those who have received a ban from their Lord, then stop (from taking usury), then for him what he has taken before (before the prohibition comes); and his affairs (submitted) to Allah. People who return (take usury), then that person is the inhabitants of hell; they are eternal in it".<sup>4</sup>*

Murabahah in the context of Islamic financial institutions is a sale and purchase contract between a financial institution and a customer for a certain type of goods at a mutually agreed price. The financial institution will procure the goods needed and sell them to the customer at the price after adding the agreed profit.<sup>5</sup>

In connection with the sale and purchase agreement, to ensure that the customer is serious about buying the goods he has ordered, the financial institution asks the customer to pay a down payment. After the down payment is paid, the customer pays the remainder in installments with a period and amount that has been agreed and determined together. In this case the amount of installments and the time period are adjusted to the ability of the customer and the buyer.<sup>6</sup>

In the development of the people's economy which is increasing, financing services are offered by bank financial institutions. Various kinds of financing products are offered by bank financial institutions, one of which is precious metal financing, which is a transaction of ownership of precious metals or gold with an installment pattern with benefits that are known to both parties and within a flexible time period.

For every financing with a sale and purchase contract, there must be a transfer of ownership rights to an object that is traded directly. Delivery of objects that are traded in Islamic law is an obligation, contracts that are not accompanied by the delivery of objects are considered gharar. However, this financing requires that the goods that are the object of sale and purchase be used as collateral so that they cannot be submitted before the payment of the gold is paid. The contract for this financing can lead to unclear what contract to use, because the customer does not know for sure which contract will apply and the customer is not given the option to provide goods to be used as collateral for debt.<sup>7</sup> To buy and sell, Islam wants it to be done in a legal way. Buying and selling activities should not be used as an

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<sup>4</sup>Beauty Templates , *Al-Quran Interactive Study Majlis* , <http://www.mkitasolo.blogspot.com>, 2012. 20 February 2019

<sup>5</sup>Ade Safitri, "*Review of Islamic law regarding contracts in metal murabahah financing for enduring investments*" , Thesis, (Lampung, 2017), 20, td

<sup>6</sup>Siti Rahmi Kasim , "*Islamic Economic Views About Murabahah Investment in Precious Metals*" , Thesis, (Manado, 2012), 15, td

<sup>7</sup>Adiwarman A Karim, " *Bank Islam Analysis of Fiqh and Finance* Fifth Edition", (Jakarta: Rajagrafindo Persada, 2103)

Ascarya, " *Contracts and Sharia Bank Products* " 3rd Printing, Jakarta: Rajagrafindo Persada 2011, page 81.

unhealthy business arena, in the sense that no party feels disadvantaged, Allah SWT hereby says: (QS. An-Nisa: 29) "O you who believe, do not eat each other's *wealth in a false way, except by way of trade that applies freely between you, and do not kill yourselves, verily Allah is merciful to you.* "

## **METHOD**

The research method used in this study is a type of library research using qualitative research methods. Qualitative research methods are research methods used to examine natural object conditions, where researchers are key instruments, research techniques are carried out in a triangulation (combined) manner, data analysis is inductive in nature, and qualitative research emphasizes the meaning of generalizations.<sup>8</sup>

This research is a type of library research (Library Research) using a descriptive analysis approach in the form of searching for facts, results and ideas of one's thoughts by searching, analyzing, making interpretations and carrying out transferability of the results of the research conducted. With the formulation of the problem how is the law of buying and selling gold on credit according to the scholars and the DSN-MUI fatwa and what is the mechanism for buying and selling gold on credit according to the DSN-MUI fatwa Number.77 of 2010.

## **RESULTS AND DISCUSSION**

Buying and selling (*al-bai'*) etymologically or linguistically is the exchange of goods for goods (barter). Buying and selling is a term that can be used to refer to two sides of a transaction that occur at once, namely selling and buying.<sup>9</sup> Buying and selling is a transaction of exchanging goods that have value, in which one party sells the item, and the other party buys it according to the agreement.<sup>10</sup>

Sale and purchase according to syara' is the exchange of property on a voluntary basis, or transferring property ownership rights to an object or price in exchange that can be justified by law, namely in the form of a valid measuring instrument. Sale and purchase is an agreement, whereby one party binds himself to surrender an object, and the other party to pay for the object that has been promised.<sup>11</sup>

While in terms of terminology, there are several scholars who define buying and selling. One of them is Imam Hanafi, he stated that buying and selling is the exchange of assets or goods in a certain way or exchanging something that is liked

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<sup>8</sup>Sugiyono, *Understanding Qualitative*, (Bandung, Alfabeta, 2007) 1.

<sup>9</sup>Imam Mustofa , *Contemporary Muamalah Jurisprudence*, (Jakarta: PT Rajagrafindo Persada, 2016), 21

<sup>10</sup>Linda Ayu, *Kompasiana*, <https://kompasiana.com> 2018

<sup>11</sup>Zuhriah, *Review of Islamic Law on the Precious Metal Credit Trading System* (Thesis of the Faculty of Sharia and Law 2017) 31, td.

for goods that are equivalent in value and benefits of equal value and bring benefits to each party. The exchange is carried out by agreeing to Kabul or giving each other. Sometimes the proposal brings benefits to exclude exchanges that do not bring benefits to the parties, such as exchanging dirhams for dirhams, or exchanging items that are not liked or not needed such as carcasses, dust and so on. <sup>12</sup>

From some of the definitions of buying and selling above, it can be understood that buying and selling is an exchange of property between two parties on a voluntary basis, transferring property and justifiable compensation, namely in the form of a means of exchange that is recognized as valid in trade traffic.<sup>13</sup>

### **The Legal Basis of Buying and Selling**

Buying and selling as part of mu'amalah has a clear legal basis, both from the Qur'an and has become the ijma' of the clergy and Muslims. Even buying and selling is not just mua'malah, but it is one of the media to carry out activities to help each other to help fellow human beings.

a. Al-Qur'an. Word of God QS. Al-Baqarah / 2: 275

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ  
مِنَ الْمَسِّ ذَٰلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ  
الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِّن رَّبِّهِ فَانْتَهَىٰ فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ  
عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

*"Those who eat (take) usury cannot stand but are like the standing of a person who has been possessed by a devil because of (pressure) madness. Their situation is like that, is that they think, actually buying and selling is the same as usury, even though Allah has made buying and selling lawful and usury forbidden. Those who have received a ban from their Lord, then stop (from taking usury), then for him what he has taken before (before the prohibition comes); and his affairs (submitted) to Allah. People who return (take usury), then that person is a resident of hell; they abide therein."<sup>14</sup>*

The verse above explains that Allah SWT has justified buying and selling and forbidding usury, namely interest taken by the owner of the debt, because the person who is in debt postpones the due date and postpones the payment of the debt. Allah SWT said that the two types of profit are not the same, namely the

<sup>12</sup>Imam Mustofa , *Contemporary Muamalah Jurisprudence*, (Jakarta: PT Rajagrafindo Persada, 2016), 22

<sup>13</sup>Zuhriah, *Review of Islamic Law on Precious Metal Credit Trading Systems* (Thesis of the Faculty of Sharia and Law 2017) 32. td

<sup>14</sup> Javan Labs, <http://tafsirq.com>, 2015, 25 June 2019

addition of assets on the other hand the profit is not the same, namely the addition of prices from one side of the profit through delaying payments that are due. Profits derived from buying and selling are not the same as profits derived from usury interest.<sup>15</sup>

Buying and selling has pillars and conditions that must be met so that buying and selling can be said to be valid by syara'. In determining the pillars of buying and selling, there are differences of opinion between the Hanafiyah scholars and Jumhur Ulama. The pillars of buying and selling according to Hanafiyah scholars are only one, namely consent and Kabul. According to them, the pillars of buying and selling are only the willingness of both parties to carry out a sale and purchase transaction. However, because the element of willingness is an element of the heart that is difficult to sense so that it cannot be seen, an indication is needed that shows the willingness of both parties to carry out a sale and purchase transaction, according to them, it may be illustrated through the consent and qabul.<sup>16</sup>

### **Fatwa DSN-MUI NO.77/DSN-MUI/V/2010<sup>17</sup>**

The National Sharia Council of the Indonesian Ulema Council (DSN-MUI) in its plenary meeting on Thursday, 20 Jumadil Akhir 1431 H corresponding to 03 June 2010 M which took place at the MUI building Jalan Diponegoro, Central Jakarta, has issued its fatwa number 77/DSN-MUI /V/2010 concerning the sale and purchase of gold without cash. The fatwa was born according to the DSN-MUI against the following conditions:

- a) That gold buying and selling transactions carried out by the public at this time are often carried out by means of non-cash payments either in installments (taqsith) or by way of respite (ta'jil). This is based on practices that occur in society, especially those in Islamic financial institutions, including as disclosed by Ihsan Palaloi as the executor of the SOP (Standard Operating Procedure) in Islamic banking, writing that murabaha gold (precious metal) for perpetual investment (MULIA) is a product sharia pawn shops which were marketed starting October 28, 2008.
- b) That the transaction of buying and selling gold by means of non-cash payment has created a difference of opinion among Muslims between opinions that allow it and opinions that do not allow it. The differences among Muslims referred to by the DSN here are actually differences that occur among the scholars.
- c) The background to the issuance of the DSN MUI fatwa no.77 of 2010 concerning the sale and purchase of gold in cashless manner was also motivated by the

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<sup>15</sup>Zuhriah, *Review of Islamic Law on the Precious Metal Credit Trading System* (Thesis of the Faculty of Sharia and Law 2017) 33, td.

<sup>16</sup> Syafi'i Antonio, *Islamic Bank: from theory to practice*, (Jakarta: Gema Insani 2001), 102

<sup>17</sup>Nurul Aini Amalia, *"Analysis of DSN MUI Fatwa No. 77/DSN-MUI/V/2010 Against Gold Commodity Trading"*, Muamalah Bachelor Thesis (Surabaya: 2018), 43, td

existence of a letter regarding the application for a fatwa murabaha gold from Bank Mega Syariah No. 001/BSM/DPS/I/10 on January 5 2010. The existence of a letter requesting a fatwa to the DSN is a norm for the DSN in issuing its fatwas, because it has become a stipulation of the DSN that Islamic financial institutions also propose fatwas to the DSN . Therefore, the DSN MUI considers it necessary in this case to stipulate a fatwa regarding non-cash gold transactions to serve as a guideline.

The following is the contents of the DSN MUI fatwa no 77/DSN-MUI/V/2010

*First: The law* of buying and selling gold in cash, either through ordinary buying and selling or buying and selling murabaha, is permissible (mubah, jaiz) as long as gold does not become the official medium of exchange (money). *Second Limits and Conditions* 1. The selling price (tsaman) may not increase during the term of the agreement even though there is an extension of time after maturity. 2. Gold purchased with non-cash payments may be used as collateral (rahn). 3. Gold that is used as collateral as referred to in number 2 may not be traded or used as an object of other contracts that cause a transfer of ownership. *Third: The Closing Provisions* of this Fatwa are effective from the date of stipulation with the provision that if there is a mistake at a later date, it will be amended and refined accordingly.

This fatwa arose because it was motivated by the current habit of the people who often make buying and selling transactions by means of non-cash payments, either by using an installment system or in a tough manner. Gold, which is often eyed by some people as an investment medium, does not escape the influence of the installment buying and selling system. In fact, in Islam gold is categorized as ribawi goods where sales must be made in cash. In responding to this problem, there is a difference of opinion among Muslims. Some Ulama allow it and some other Ulama do not allow it. Each Ulama has its own reasons for expressing his opinion. So, departing from this phenomenon, it is necessary to have a fatwa that can be used as a guide as well as clarity regarding the issue of buying and selling gold in cashless manner.

In the MUI Fatwa No. 77/DSN-MUI/V/2010 concerning the sale and purchase of gold without cash, stipulates that non-cash buying and selling of gold, either through regular buying and selling or buying and selling murabaha, is permissible (mubah) as long as gold does not become an official medium of exchange ( Money). However, this permissibility has conditions, namely the selling price may not increase during the term of the agreement even though there is an extension of time after maturity, gold purchased with non-cash payments may be used as collateral (rahn), and gold used as collateral may not be traded or used as an object. other contracts that cause transfer of ownership.

In the DSN-MUI fatwa, the argument that is the main reference in establishing a fatwa is the hadith of the Prophet Muhammad concerning buying and selling gold.

According to Yusuf Qardawi, in understanding a good hadith,<sup>18</sup> one of them is by paying attention to the special reasons behind the utterance of a hadith, or its relation to certain causes or reasons. What is stated in the hadith or inferred from it, or can be understood from the events that accompany it. In addition, to understand the hadith, it is necessary to know the conditions that cover it and where and for what purpose it was said. Thus the intent of the hadith really becomes clear and avoids some distorted estimates.

To be able to understand the hadith with correct and precise understanding, it is necessary to know the conditions that cover it and where and for what study it was uttered. So that in this way the meaning really becomes clear and avoids various distorted estimates and avoids understanding that is far from the true purpose.<sup>19</sup>

In the MUI Fatwa No. 77/DSN-MUI/V/2010 concerning the sale and purchase of gold without cash, stipulates that non-cash buying and selling of gold, either through regular buying and selling or buying and selling murabaha, is permissible (mubah) as long as gold does not become an official medium of exchange (Money). However, this permissibility has conditions, namely the selling price may not increase during the term of the agreement even though there is an extension of time after maturity, gold purchased with non-cash payments may be used as collateral (rahn), and gold used as collateral may not be traded or used as an object. other contracts that cause transfer of ownership.

DSN-MUI penalizes buying and selling gold in cash is permissible. The argument they use is: Allah's Word in Al-Baqarah verse 275:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ  
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الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِّن رَّبِّهِ فَانْتَهَىٰ فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ  
عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ ﴿٢٧٥﴾

" Those who eat (take) usury cannot stand but are like the standing of a person who has been possessed by a devil because of (pressure) madness. Their situation is like that, is because they say (opinion), actually buying and selling is the same as usury, even though Allah has justified buying and selling and forbidding usury. Those who have received a ban from their Lord, then stop (from taking usury), then for him what he has taken before (before the prohibition comes); and his affairs (submitted) to Allah.

<sup>18</sup>Freeink, *Interaction and Understanding of Hadith*, <https://chmatfatahillah.blogspot.com>, 2014, 12 July 2019

<sup>19</sup>Yusuf Qardawi, *How to Understand the Hadith of the Prophet* (Bandung: Karisma, 1993), 132.

*People who return (take usury), then that person is the inhabitants of hell; they are eternal in it " .*

## **CONCLUSION**

The law of buying and selling gold on credit according to some contemporary scholars and the DSN-MUI decided to agree that gold buying and selling transactions are not cash (credit) as stipulated in fatwa No. 77/DSN-MUI/V/2010. They stated that gold and silver are goods (*sil'ah*) that are sold and bought like ordinary goods, and are no longer *saman* (price, means of payment, money). So that the result of the DSN-MUI's legal advice on buying and selling gold in cash is considered *permissible* , provided that gold does not become the official medium of exchange (money), either through ordinary buying and selling or buying and selling *murabaha*.

The financing mechanism for buying and selling gold is that financial institutions finance the purchase of goods in the form of gold bars ordered by customers or buyers to Suppliers (someone who runs a business to distribute or market a certain product within a certain period of time). Purchases of goods by customers are carried out using a tough payment system. In practice, financial institutions buy goods needed by customers on behalf of the financial institution. At the same time, the financial institution sells the goods to the customer at a cost price plus an amount of profit to be paid by the customer within a certain period of time.<sup>20</sup>Then the gold is used as collateral to pay off the remaining debts of customers to financial institutions. After all the remaining debts of the customer are paid off, the precious metal and its documents are handed over to the customer.

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<sup>20</sup>Zuhriah, *Review of Islamic Law on the Precious Metal Credit Trading System* (Thesis of the Faculty of Sharia and Law 2017) 57, td.

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