

Buying and Selling Used Clothing: An Islamic Economy Law Perspective

Wahyu Ziaulhaq

Penyuluh Agama Islam Kecamatan Besitang

Email: wahyuziaulhaq@gmail.com

|| *Received: 1-11-2022*

|| *Revised: 4-12-2022*

|| *Accepted: 10-12-2022*

Abstract: This study aims to describe the buying and selling of used clothing from the perspective of Islamic Economy Law. This type of research is qualitative and normative legal research, namely what we know as library law research, namely legal articles that are carried out by research based on materials sourced from libraries. Sources of data used by the author in this article include primary legal materials, namely applicable laws and regulations that provide descriptions of primary legal materials in the form of interpretations, available books, journals, documents, and other references related to this article. The results of writing this article are as follows: First, buying and selling used clothes can be done if the clothes do not cause negative effects (*mudharat*) on the buyer's body. Second, buying and selling used clothes can be done if the terms and conditions of buying and selling must be fulfilled. Third, the practice of *khiyar* (choosing); in this case, if the seller gets a defect at the time of sale and purchase or before the delivery occurs, he is entitled to *khiyar*, but if in the transaction, both parties know and are mutually willing, then there is no need for *khiyar*.

Penelitian ini bertujuan untuk mendeskripsikan jual beli pakaian bekas dalam perspektif Hukum Ekonomi Islam. Jenis penelitian ini adalah penelitian kualitatif dan penelitian hukum normative; yang kita kenal dengan penelitian hukum kepustakaan,. Sumber data yang digunakan penulis dalam artikel ini meliputi bahan hukum primer yaitu peraturan perundang-undangan yang berlaku yang memberikan gambaran bahan hukum primer berupa tafsir, buku umum, jurnal, dokumen dan referensi lain yang berkaitan dengan artikel ini. Dari hasil penulisan artikel ini yaitu: Pertama, jual beli pakaian bekas dapat dilakukan apabila pakaian tersebut tidak menimbulkan efek negatif (*mudharat*) bagi tubuh pembeli. Kedua, jual beli pakaian bekas dapat dilakukan jika syarat dan ketentuan jual beli harus dipenuhi. Ketiga, adanya hak *khiyar* (memilih), dalam hal ini jika penjual mendapat cacat pada saat jual beli atau sesudahnya, sebelum terjadi penyerahan, ia berhak atas *khiyar*, tetapi jika dalam transaksi kedua belah pihak mengetahui dan saling rela, maka tidak perlu adanya *khiyar*.

Keywords: buying and selling, used clothing, Islamic Economy Law

Introduction

Buying and selling in fiqh terms are called al-ba'i, which, according to etymology, means selling or replacing. Wahbah al-Zuhaili defines linguistically as "exchanging something for something else." Meanwhile, according to sharia, buying and selling are exchanging goods for goods or goods for money by releasing property rights from one to another based on mutual acceptance.¹ Humans are social beings who cannot avoid social life in meeting the needs of human life, always in touch with each other in a safe and peaceful life. Allah SWT made each human being in need of each other so that they help each other and exchange needs in all matters of interest in their respective lives, either by buying and selling, leasing, farming, or other companies in matters of their interest or for public benefit.²

Clothing is an essential basic need for every human being. Clothing can protect a person from heat and cold and add beauty and good looks to his personality. On the other hand, transactions with buying and selling have been regulated in such a way in Islam because Islam is a perfect (comprehensive) religion. It regulates all aspects of human life: faith, worship, morals, and muamalah. One of the most important teachings is the field of muamalah (Islamic economics). Buying and selling are permissible in Islam. Origin following the provisions of fiqh. Buying and selling is a muamalah activity that is inherent in social life in ancient times and today.³ Buying and selling activities are closely related to human activities to meet the needs of life. As social beings who permanently live in society, humans will help each other in all matters, both in the world and in the hereafter, so in this case, Islam provides a solution to fulfill their lives utilizing muamalah. In buying and selling, the most important thing to show is that the goods are lawful, meaning look for halal goods to be traded or traded honestly. Clean from all traits that can damage buying and selling, such as fraud, theft, confiscation, usury, etc. If the goods being traded are not in accordance, it means that they do not comply with the rules of buying and selling; the act and buying and selling of goods that are carried out are unlawful, forbidden to be used, and forbidden to be eaten because they are classified as vanity (illegitimate) acts. In positive law, buying and selling is a reciprocal agreement where one party (the seller) promises to give up ownership rights to an item, while the other party (the buyer) promises to pay the price consisting of a sum of money in return for the acquisition of the property rights.. Goods that become the object of sale and purchase can at least determine the form and amount at the time it will be handed over to the buyer. Currently, buying and selling are developing along with the demands of the times; buying and selling is only done between regions but can also be done between countries; this is called export and import.⁴

¹ Siti Afifah Nurullah, "Practice Services Between Sale and Purchase of Coffee Syari'ah Economic Perspective | Nusantara Economy," *Nusantara Economy* 1, no. 1 (2022): 14–28.

² Istianah, "Tinjauan Hukum Islam Terhadap Jual Beli Pakaian Bekas Di Pasar Beringharjo Yogyakarta," *Az Zarga'* 7, no. 2 (2015): 221–35.

³ Wahyu Abdul Jafar, "EKSISTENSI NASIKH MANSUKH DALAM ISTINBAT AL-AHKAM," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 3, no. 2 (December 29, 2019), <https://doi.org/10.29300/mzn.v3i2.1033>.

⁴ Istianah, "Prespektif Hukum Islam Tentang Jual Beli Pakaian Bekas," *TAWAZUN: Journal of Sharia Economic Law* 2, no. 1 (2019): 87, <https://doi.org/10.21043/tawazun.v2i1.5640>.

Literature Review

1. Buying and Selling Risk

What is meant by Risk in contract law is the obligation to bear caused by an event beyond the fault of one of the parties. From this understanding, it can be concluded that the Risk in buying and selling is an event that causes the item (the object of the sale and purchase agreement) to be damaged. Both parties did not desire the event. As for the occurrence of Damage to goods, it can be classified as Damage to goods before handover. Regarding Damage to goods before handover is carried out between the seller and the buyer, there are several classifications: If the goods are damaged in whole or part before the handover due to the buyer's actions, the sale and purchase become *Fasach*. The contract takes place as usual and the buyer is obliged to pay in full, because he was the cause of the Damage. If someone else's actions cause the Damage, the buyer may choose between returning it or canceling the contract (agreement). Buying and selling becomes a *faskh* if the goods are damaged before handing over due to the seller's actions, the goods themselves, or a disaster from Allah SWT. while for others who are intact, the buyer may take them at a discounted price. If the buyer damages the goods, the buyer is still obliged to pay. The seller may choose between canceling the contract or taking the remaining balance by paying the shortfall. If the Damage occurs as a result of a disaster from God that reduces the value of the goods so that the price of the goods is reduced according to the damaged goods, the buyer may choose between canceling the contract and taking the remainder with a reduced payment. Damage to goods after delivery.

Regarding the Risk of Damage to the goods after the handover of the goods between the seller and the buyer, it is entirely the buyer's responsibility. The buyer must pay the entire price as agreed. Except, if there is another alternative from the seller, for example, in the form of a guarantee or guarantee, the seller is obliged to replace the price of the goods or replace it with something similar.⁵

2. Understanding the contract

The contract in Islamic Economy Law is identical to the agreement in Indonesian law. The word contract comes from Arabic *alaqdu* which means engagement, agreement and consensus. The ties of *ijab* (statement of making a bond) and *qabul* (statement of accepting a bond), following the will of the Shari'ah which affects the object of the engagement. Al-'Aqd in language has several meanings, including: Binding (Ar-rabtu), which is to collect two ends of a rope and tie one of them to the other so that it continues, then both become a piece of object. Connection ('aqdatun), namely the connection that holds the two ends and binds them. The promise (al-'ahdu), as explained in the Qur'an letter Ali Imran verse 76, which means: "Yes, whoever keeps his promise and fears Allah, verily Allah loves those who are pious." Contracts or agreements in Islamic civil law are called contracts.

In the study of Islamic civil law, the issue of contracts occupies a central position because it is the most important method used to obtain an intention or purpose,

⁵ Ledy Diana, "PERDAGANGAN PAKAIAN BEKAS IMPOR MENGAPA MASIH MARAK TERJADI?," *Riau Law* 3, no. 1 (2019): 85–104.

especially concerning property or legitimate benefits.⁶ According to the Sharia Economic Law Compilation, what is meant by a contract is an agreement in an agreement between two or more parties to perform and not to perform specific legal actions. According to fiqh scholars, the word contract is defined as the attachment between consent and qabul following syara' rules so that it impacts the object of the contract. The formulation of the contract above indicates that the agreement must be an agreement by both parties to bind themselves about the actions to be carried out in a particular case. This contract is realized first, in the consent and qabul. Second, following the will of the Shari'a.⁷ Third, there are legal consequences on the object of the engagement. Ijab and qabul are intended to show the mutual desire and willingness of the parties concerned to the contents of the contract. Therefore, ijab and qabul give rise to rights and obligations for each party reciprocally. Ijab is a statement from the first party regarding the contents of the desired engagement, while qabul is a statement from the second party to accept it.⁸

Method

In writing this article, the author uses qualitative legal research and normative legal research, namely what we know as library law research, namely legal articles that are carried out by research based on materials sourced from libraries. Sources of data used by the author of the article in this writing include primary legal materials (binding legal materials), namely the applicable laws and regulations relating to the issues in this article. Secondary law, namely legal materials that describe primary legal materials, among others; interpretations, available books, journals, documents, and other references related to this article. Tertiary legal materials, namely legal materials provide instructions and explanations of primary and secondary legal materials, such as dictionaries and other reference materials that support the writing of this article. The data collection technique in writing this article is that the author uses library research or literature study, while the data analysis technique used is a qualitative comparative technique, namely providing a comparison of fiqh reviews of existing problems and then analyzing the data by following the rules of scientific writing.

Results And Discussion

Pillars and Terms of Sale and Purchase

The sale and purchase will not be valid without fulfilling the pillars and conditions of the sale and purchase. In determining the pillars of buying and selling, there are differences of opinion between the Hanafi scholars and the majority of scholars. According to Hanafiyah scholars, the pillars of buying and selling are consent and qabul which indicate an exchange or something similar to it in the form of giving each

⁶ Wahyu Abdul Jafar, "Legality Of Halal Food Certification On Masalah Mursalah Perspective," *JURNAL ILMLAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 9, no. 1 (August 16, 2022): 95–108, <https://doi.org/10.29300/mzn.v9i1.7055>.

⁷ Meta Riskia, "Implementation Of Mudharabah Financing On Baitul Maal According Majlis Ulama Indonesia," *Nusantara Economy* 1, no. 1 (December 9, 2022): 1–13.

⁸ Wenny Puspitasari, "PENEGAKAN HUKUM TERHADAP PERDAGANGAN PAKAIAN BEKAS IMPOR DI TUGU PAHLAWAN KOTA SURABAYA" 1104070406 (n.d.).

other (al-Ta'atī). According to him, the only thing that becomes harmonious in buying and selling is the willingness of both parties to buy and sell. Meanwhile, the pillars of buying and selling, according to most scholars, consist of a person with a contract or al-muta'qidān (seller and buyer). There is a shighat (pronunciation of consent and qabul). Something was bought. There is an exchange rate for substitute goods. While the terms of sale and purchase are of four kinds, namely the terms of the fulfillment of the contract (syurut al-in'iqad), the conditions for the implementation of the sale and purchase (syurut al-nafadz), good conditions (syurut al-sihhah) and binding conditions (syurut alluzum). These conditions are intended to ensure that the sale and purchase carried out will bring goodness to both parties and there will be no loss.⁹

Overview of Islamic Economy Law on buying and selling

Buying and selling is a human trading activity to fulfill their daily needs to survive. Buying and selling is part of mutual help, for buyers helping sellers who need money (profit), while for sellers help buyers who need the item being sought. Buying and selling is noble, and the perpetrator gets the pleasure of Allah SWT and even the Messenger of Allah. As for the evidence from the sunnah, the Prophet Muhammad was asked: "What is the best job?" he replied "a person's work with his own hands and every sale and purchase that is mabrur" i.e. there is no deceit and betrayal. In addition, the hadith of the Prophet narrated by Ibn Majah: "Buying and selling must be based on willingness (like and like) The following are the terms of sale and purchase that must be fulfilled in conducting buying and selling transactions according to the number of scholars. Transaction. Something that is permanent or useful. Holy stuff. It can be handed over. It can be seen by the people doing the contract. Does not belong to someone else. They were knowing and seeing for yourself the condition of goods both regarding the count, dose, scale or quality. And there is no prohibition from syara". Like the criteria for buying and selling objects, the object that is the object of buying and selling must be legal to be traded. Unclean items, haram such as dogs, pigs, and others. In buying and selling there are also various kinds of buying and selling, according to Ulama. The sale and purchase carried out is seen from the pillars and the legal terms of the sale and purchase follow the syara. However, there is something related to the legal terms of sale and purchase which lies in the terms of the object of sale and purchase. The object of buying and selling is used clothing and not objects that are unclean or haram. However, used clothing traders do not know how many items, the quality of the goods and the condition of the goods in the sacks. When buying and selling transactions, traders take used clothes ordered in advance. The used clothes are put in sacks. This creates uncertainty regarding the quantity and quality of the object of buying and selling used clothing.

Buying and selling in a review of Islamic Economy Law

In language, al bai' (buying and selling) means exchanging something for something. Buying and selling in language is a masdar from the meaning of ownership and buy. The definition of buying and selling in syara' is the exchange of property for property to own and give ownership. Islam prescribes buying and selling and stipulates

⁹ Andi Mulyan and Akhmad Muzakkir, "Motivasi Konsumen Membeli Pakaian Bekas Di Pasar Loak Karang Sukun Kelurahan Mataram Timur Kecamatan Mataram Kota Mataram," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 5, no. 3 (2021): 200–211, <https://doi.org/10.36312/jisip.v5i3.2114>.

that it is permissible. Islam does not hate buying and selling, even Islam considers buying and selling as one of the work wasilah, so that the Qur'an gives good qualities to it. The scholars argue in defining it. Hanafiyah scholars, "Buying and selling is the exchange of property (objects) with property based on a special method that is allowed." According to Imam Nawawi in *al-Majmu'*, "Buying and selling is the exchange of property with property for ownership.". According to Ibn Qudamah in the book *al-Mugni*, "selling and buying is the exchange of property for property, to make mutual property rights."¹⁰ From the above definition, it can be understood that buying and selling is an agreement to voluntarily exchange objects or goods that have value between the two parties. The Muslims have agreed from the past until now about the legal permissibility of buying and selling. Therefore, this is a form of *ijma' ummah*, because no one is against it. The content of the verses and hadiths stated above as the basis for buying and selling, the fiqh scholars conclude that buying and selling is legal (permissible). However, according to Imam AsySyatibi (fiqh expert in the Maliki school of thought), the law can change to be mandatory in certain situations. For example, he put forward, if a *iktikaf* practice is the accumulation of goods, so that the supply (stock) disappears from the market and prices soar, then the government may force traders to sell goods according to the market price before the price spike occurs. Traders are required to comply with government regulations in determining prices in the market.¹¹

The Negative Impact of Using Used Clothes

According to Widodo, the director of the Directorate General of Standardization and Consumer Protection (SPK) of the Ministry of Trade (Kemendag), based on the results of laboratory tests conducted by the ministry, it contains bacteria up to 216 thousand colonies per gram and fungi 36 thousand colonies. By buying used clothing products, people are also degrading the nation's dignity. Used clothing contains bacteria and fungi that are harmful to human health such as *E. coli* bacteria which can cause digestive disorders (diarrhea), *S. aureus* bacteria can cause ulcers, acne, and wound infections of human skin, as well as fungi such as *Aspergillus* spp. and *Candida* spp. which can cause itching, allergies and even infections of the genital tract. Some of these bacteria and fungi live in the dust and can withstand boiling for 30 minutes. So, boiling used clothes is not a completely effective way to kill bacteria and fungi.

Furthermore, imported used clothes can kill small garment and convection industry players. Because people are more tempted by the cheap prices offered without needing to know the clothes' origin. This will have an impact on the lack of employment.¹²

The Law of Buying and Selling About Khiyar

The word *al-Khiyar* in Arabic means choice. In trading or buying and selling in Islam it is permissible to choose (*khiyar*), whether the seller and buyer will continue or cancel it. The right of *khiyar*, namely the right to choose to carry out the sale and

¹⁰ Wahyu Abdul Jafar, "SANKSI PENYEBAR HOAX PERSPEKTIF HUKUM PIDANA ISLAM," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 6, no. 1 (September 2, 2019): 49–60, <https://doi.org/10.29300/mzn.v6i1.2206>.

¹¹ Puspitasari, "PENEGAKAN HUKUM TERHADAP PERDAGANGAN PAKAIAN BEKAS IMPOR DI TUGU PAHLAWAN KOTA SURABAYA."

¹² Istianah, "Prespektif Hukum Islam Tentang Jual Beli Pakaian Bekas."

purchase because there is something for both parties. In essence, khiyar must be based on the principle of consensual between the seller and the buyer, be careful with each other, not arbitrarily in buying and selling goods and being honest with each other. In the hadith it is also explained: From Ibn Umar Radliyallaahu 'anhu that the Prophet sallallaahu 'alaihi wa Sallam said: "When two people make a trade, then each person has the right of khiyar (choose between canceling or continuing the sale) as long as they have not separate and are still together; or as long as one of them does not determine khiyar for the other, then they trade on that basis, then the sale is made. If they separate after doing the trade and each person does not stop buying and selling, then there is a trade." (H.R. Muslim). Ijma 'Ulama' also argues: Abdurrahman al-Jaziri, the status of khiyar in the view of Fiqh scholars is prescribed or allowed, because of an urgent need to consider the benefit of each party conducting the transaction. With the above basis, khiyar is allowed. The khiyar words that we often encounter are "research before buying. Based on this, the buyer is given the right to choose (khiyar) so that it is researched before purchasing so that the buyer is satisfied."¹³

Status of Islamic Economy Law on used clothes

Islam has regulated in the Qur'an, Hadith and Ijma 'in terms of buying and selling problems, so we also have to understand about the laws and rules of buying and selling itself. For example, whether Islamic teachings follow the sale and purchase transactions. Someone buying and selling, especially the seller, must understand whether or not the activities (buying and selling) are carried out. Besides that, Islam also teaches that humans in interacting with society, must bring benefits and avoid harm. The Qur'an has explained a lot about muamalah (buying and selling), how the terms and pillars are so that buying and selling is said to be valid. about the principle of mu'amalah, namely: the principle of willingness, the principle of benefit, the principle of helping and the principle of not being forbidden. In this case, the law of buying and selling used clothing is considered valid if it meets the requirements and pillars of the contract, namely: People who have a contract. In the activity of buying and selling used clothes, some people sell and buyers. As for the seller and the buyer, they are required to be mature, reasonable, proficient in conducting transactions, and mutually agree with each other. Sighat (Ijab and Qabul), in conducting transactions, must be accompanied by consent and qabul because both are elements that must exist in the contract. In essence, the contract is an agreement between two parties, as in this case, buying and selling used clothes. Buying and selling used clothes on the Ijab and Qabul is stated by two parties with clear words, for example "I am selling this item to you", it is not allowed to say, "I am selling this item to Samsul," even though the buyer's name is not Samsul. This shows that there has been an agreement from both parties. Pricing. Prices are set based on an agreement between the seller and the buyer of used clothing, usually done by bargaining for the desired item. Buying and Selling Objects. The object of the goods being traded is transparent, namely used clothing. As for the practice of khiyar in the sale and purchase of used clothing which may have defects, in this case if the seller gets a defect at the time of sale and purchase or afterwards before the delivery occurs, he is entitled to khiyar. However, if both parties know when the goods are handed over and are mutually willing in the transaction, then there is no need for

¹³ Diana, "PERDAGANGAN PAKAIAN BEKAS IMPOR MENGAPA MASIH MARAK TERJADI?"

khiyar. In the end, in this study, it can be seen that if one of the pillars and conditions is not fulfilled due to the lack of clarity in used clothing, buying and selling is prohibited in Islam, because it contains gharar. It is undeniable that buying and selling used clothing is beneficial for the community, especially people with a low economy, to meet their clothing needs. Looking at the explanation above, it is clear that Islam has regulated human relations in such a way. Islam teaches in muamalah how to carry out buying and selling transactions properly, no party is harmed by each other, rights and obligations are mutually fulfilled.

Overview of Islamic Economy Law Against Compensation Buying and Selling Clothing

In buying and selling transactions, there are risks in buying and selling, including buying and selling used clothes. When buying and selling used clothes, traders do not know the quality of the clothes in the sacks. Because when used clothing traders or employees deliver used clothes at the kiosk, the used clothes have been put into sacks by the distributor. And not a few of those used clothes were dirty, shabby and torn. So the seller of used clothing or distributors should compensate used clothes damaged or no longer sold in the market. The distributor must replace the value of the damaged goods. However, the distributor does not want to compensate for the damaged used clothes. Because, the clothes that customers have ordered are directly put into sacks without sorting them out first. Compensation is exchanging something lost for something of value because something unprofitable was sold under capital or did not make a profit. The existence of compensation is due to the existence of the perpetrator, *darar* (losses), *madrur* (the aggrieved party). Buying and selling used clothing does have losses experienced by used clothing traders. The perpetrators of this used clothing defect are not caused by the distributor but by the producer (the person who sells used clothing to the distributor). So, the distributor does not feel responsible for the defects in the used clothes. Although some parties are harmed, namely the traders of used clothing, the Damage to these used clothes occurs because the producers or people who sell used clothes to distributors actually sell them without seeing whether the clothes are worth selling or not. So, the quality is good or bad, it is already a risk for traders when making buying and selling transactions. What is meant by Risk in buying and selling is an event that causes the goods (which are the object of the sale and purchase agreement) to be damaged. As for the occurrence of Damage to goods, it can be classified into 2: Damage to goods before handover between seller and buyer and Damage to goods after handover. Damage to used clothing occurs after the goods arrive at the buyer or seller of used clothing, which is entirely the responsibility of the buyer or seller. Used clothing traders are required to pay the entire price as agreed.¹⁴

Conclusions

In this article, the author concludes that the law of buying and selling used clothes must follow the pillars and conditions. Jumhur scholars state that there are four pillars of buying and selling, namely: there are people who make contracts or *almuta'qidain* (seller and buyer), there is *shigat* (pronunciation of consent and *qabul*), there are goods

¹⁴ Puspitasari, "Penegakan Hukum Terhadap Perdagangan Pakaian Bekas Impor Di Tugu Pahlawan Kota Surabaya."

that are traded, and there is an exchange rate for substitute goods. In the pillars, there are several conditions, namely the seller/buyer must be reasonable, the consent must be following qabul and balig, the goods are traded on ownership rights, the goods must be clear (substance) and holy, there is a price that has been agreed upon by both parties. In terms of khiyar, trading or buying and selling in Islam it is permissible to choose (khiyar) whether the seller and buyer will continue or cancel it. The right of khiyar, namely the right to choose to carry out the sale and purchase because there is something for both parties. Pleasure between the seller and the buyer.

As an academic, the author appeals to fellow prospective writers to constantly develop human resources to build the country by continuing to provide the best works to the nation and state with articles on Islamic criminal law disciplines.

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