



# Phenomenology of Buying and Selling Practices in Islamic Societies: How is it Implemented

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## Abstract

Buying and selling is exchanging something you want for something equivalent through certain useful methods. The exchange must be beneficial for humans so that carcasses, liquor and blood are not included in things that may be traded or exchanged, because these objects are not useful for Muslims. According to Article 20 paragraph 2 of the Compilation of Sharia Economic Law, this research uses library research, collecting books and writings that are directly or indirectly related to the issues above. After the data is collected, classification analysis is then carried out using deductive methods to reach conclusions. Ba'i is buying and selling between objects and objects, or the exchange of objects for money. Primitive society when money was not used as a means of exchanging goods, namely with a barter system. Even though buying and selling using the barter system has been abandoned, and replaced by a currency system, sometimes the essence of such buying and selling still applies, even if it is to determine the amount of goods exchanged but is calculated using a certain currency value, for example, Indonesia buys vehicle spare parts to Japan, then the imported goods are paid for.

## Article Information:

Received October 10, 2023

Revised November 15, 2023

Accepted December 8, 2023

**Keywords:** *Phenomenology, buying and selling, Islamic society*

## PENDAHULUAN

Buying and selling is called *al-ba'i* which means selling, replacing, and exchanging something for something else. Pronunciation al-bai' in fiqh terminology is sometimes used to mean its opposite, namely *al-syira* which means buying. Therefore, al-bai' contains the meaning of selling as well as buying or buying and selling (Nabhani & Syukron, 2022). Property that is traded must be useful for humans, so carcasses, liquor, and blood are not included in things that can be bought and sold, because these objects are not useful for Muslims (Hasibuan, 2019; Prayuda et al., 2021; Siregar & Fasa, 2022). If these types of goods are still bought and sold, according to Hanafiyah scholars, the sale and purchase are invalid (Asril et al., 2023).

## How to cite:

Mulyani, R., Sulastri, W., Nailurrahmi, N., Pratiwi, N., Rahmita, R., Habib, A., Sihombing, Y. (2023). Phenomenology of Buying and Selling Practices in Islamic Societies: How is it Implemented. *Samara: Journal of Islamic Law and Family Studies*, 1(1), 28-34.

## E-ISSN:

xxxx-xxxx

## Published by:

LP2M STAI Balaiselasa YPPTI Pesisir Selatan Sumatera Barat

In explaining what is meant by *al-mal* (property), there is a difference in understanding between Hanafiyah scholars and Jumhur Ulama (Irwan, 2021; Iskandar et al., 2023). As a result of this difference, there are also laws related to buying and selling itself. According to Jumhur Ulama, what is called *al-mal* is material and benefits. Therefore, the benefits of a thing, according to them, can be traded. Hanafiyah scholars define *al-mal* as a material that has value. Therefore, benefits and rights, according to them, cannot be used as objects of sale and purchase (Triana, 2018; Sinta et al., 2023).

## METODE

This research is a series and process of enriching knowledge (Januarisman & Ghufroon, 2016; Syahbuddin, 2022). Research cannot be separated from the principles, concepts, truths and values that have been successfully collected to form a good form of science. However, humans are always trying continuously to develop the unity of knowledge through various methods by testing alleged truths (hypotheses) thinking logically, humans are trying to explore problems that will be answered through research data (Ridwan et al., 2020). The method used is the descriptive method. What is meant by the descriptive method is research carried out to determine the existence of independent variables, either only one variable or more (stand-alone variables) without making comparisons and looking for the relationship between that variable and other variables (Jayusman & Shavab, 2020).

The specifics of this research include qualitative descriptive (Irma & Sari, 2020; Owoyemi, 2020; Syeikh, 2020; Weir et al., 2022). The descriptive method is a research method whose analysis is only at the level of describing what it is, namely by presenting facts systematically so that they are easy to understand and conclude, without testing hypotheses. The research using descriptive methods aims to systematically describe certain facts (Rahmiati et al., 2023). The empirical juridical approach is an approach that refers to written regulations or other legal materials of a secondary nature, to see their application or implementation through field research carried out sociologically so that clarity is obtained about the matter being studied. In this research, the author also takes an empirical juridical legal approach. The approach is taken by paying attention to the realities that occur in society and then connecting them with applicable legal provisions (Usman, 2014). Research through a sociological juridical approach.

## HASIL DAN PEMBAHASAN

### Buy and sell

In terms of fiqh terminology, buying and selling is called *al-ba'i* which means selling, replacing and exchanging something for something else (Jamaluddin, 2017; Jumena et al., 2017; Jamaluddin et al., 2022). The pronunciation *al-bai'* in fiqh terminology is sometimes used to mean its opposite, namely *al-Syira* which means buying. Thus, *al-bai'* means selling as well as buying or buying and selling. The definition of buying and selling from the perspective of Hanafiyah scholars includes special methods through *ijab* (buying expression) and *qabul* (selling statement), or the exchange of goods and prices. Items traded must be useful, and objects such as carrion, liquor, and blood are considered illegal for sale. Malikiyah, Syafi'iyah and Hanabilah scholars state that buying and selling is an exchange of property for property, involving the transfer of property.

Article 20 paragraph 2 of the Compilation of Sharia Economic Law defines *ba'i* as buying and selling goods and goods or exchanging goods for money. Buying and selling is the exchange of goods, as in the barter system (*ba'i al-muqayyadah*) which was practiced before the existence of money. Even though the currency is now used, the essence of buying and selling still applies, with the amount of goods

exchanged being calculated in the value of a certain currency, for example, the purchase of vehicle spare parts from Japan by Indonesia.

### **Harmony of buying and selling**

Buying and selling have pillars and conditions that must be fulfilled to be considered valid by Sharia. Differences of opinion emerged between Hanafiyah ulama and general ulama regarding the pillars of buying and selling. Hanafiyah scholars state that the only pillars of buying and selling are *ijab* (the expression for buying) and *qabul* (the expression for selling). For them, the willingness of both parties to make a transaction is harmonious, but because it is difficult to sense, the indication is reflected in the *ijab* and *qabul*, or through giving each other goods and the price of the goods.

However, the majority of scholars believe that the principle of buying and selling consists of four elements: the person making the contract (the seller and the buyer), the height (pronouncement of acceptance and acceptance), the purchased item, and the exchange value of the replacement item. Hanafiyah scholars consider that the person making the contract, the goods purchased, and the exchange value of the goods are the conditions of sale and purchase, not the pillars of sale and purchase (Billah & Khotimah, 2022).

### **Terms of Sale and Purchase**

The conditions of sale and purchase, as described by the majority of scholars, include several key aspects. First, the person performing the contract must meet the conditions of being sane and of legal age. A small child who is already *mumayyiz* can make a contract that gives profit but cannot if it brings a loss. Transactions involving minors must obtain permission from their guardian. Second, the conditions of *ijab* and *kabul* demand the willingness of both parties, which is seen through appropriate *ijab* and *kabul*. *Ijab* and *kabul* should be done in one event or situation, and between the two should not be too long, according to some scholars. In the modern era, the embodiment of *ijab* and *kabul* is often not spoken but occurs through attitudes, such as taking goods and paying money at a supermarket, which in Islamic jurisprudence is called *bai al-muathab*.

Differences of opinion arise regarding the law, with some scholars allowing it if it follows local community customs, emphasizing the element of mutual consent. Apart from that, buying and selling through intermediaries or print media is also recognized as valid if the consent and acceptance are in line. Third, the conditions related to goods being traded include the existence of the goods, benefits for humans, and ownership. Items that a person does not already own cannot be sold. Fourth, the most important element in buying and selling is the exchange value (price of goods). Ulama distinguishes between *al-tsaman* (market price) and *al-sir* (capital goods). The agreed price must be clear, and the transaction can involve payment at the time of the contract or later with a clear payment time. Buying and selling by exchanging goods is also permitted, but the goods used as exchange value must not be haram according to sharia (Fauzi, 2019; Al Baihaqy & Nazar, 2023).

### **Various types of buying and selling**

Buying and selling can be categorized into two aspects, namely those that are valid and those that are void according to law, and involve the object and perpetrator of the sale and purchase. In the context of buying and selling objects, there are three main forms: buying and selling visible objects, buying and selling whose properties are stated in the promise, and buying and selling objects that do not yet exist. The method of buying and selling by deed or *mu'athab*, such as buying cigarettes without consent or acceptance, is controversial in the view of the ulama.

Some allow it, especially for daily necessities. Buying and selling are also divided into permitted and prohibited, with several forms prohibited and void according to law. Goods that are condemned as unclean, buying and selling animal sperm, buying and selling baby animals in the womb, and buying and selling with *mubaqallah*, *mukhadharah*, *muammassah*, *munabadzah*, and *muzabanah* are categorized as prohibited or void according to law. However, differences in the views of ulama arise

in the assessment of some of these methods, and each law has a philosophical and sharia basis that supports it (Firdaus et al., 2020; Hasballah et al., 2021).

### **Determining two prices for one item being traded**

In Syafii's view, sales with conditions, or *iwadh mahjul*, has two meanings. First, like someone who stated, "I'm selling this book for IDR 10,000 in cash or IDR 15,000 in debt." Second, it's like someone saying, "I'm selling you this book on the condition that you sell me your bag." Even though it is almost similar to determining two prices in buying and selling, in this case, it is considered a condition. For example, someone might say, "I'm selling you my beat-up house on the condition that you sell me your car."

*Gharar* buying and selling, which includes sketchy transactions with the potential for fraud, such as selling fish still in a pond or peanuts that look good on top but bad on the bottom, also falls into this category. Also, buying and selling except some of the goods being sold, such as someone selling all the trees in his garden, except the banana tree (Jamaluddin, 2017; Ali, 2021; Panggabean & Tanjung, 2022). The validity of this sale and purchase is recognized if what is excluded is clear but is void if what is excluded is unclear or *majhul*.

The ban on selling food up to two sizes reflects a lack of trust between sellers and buyers. Many scholars believe that if someone buys something with a measure, and then sells it again, he cannot hand it over to the second buyer with the first measure but must measure it again for the second buyer. Some buying and selling practices that are considered legally valid but still involve sin include meeting villagers before they enter the market to buy goods at a cheap price before knowing the market price and bidding on goods that other people have already bid on to buy at a higher price. Also, buying and selling with *najasyi* involves adding prices to encourage people to buy from friends, as well as selling on top of other people's sales to get a cheaper price.

### **Khiyar in buying and selling**

*Khiyar* is the *aqid* right in a contract to break or cancel the contract in certain situations. Some types of *khiyar* involve the right to choose or cancel the contract during a certain time (*khiyar* terms), cancel the contract while it is still in place and before parting (*khiyar* majlis), and cancel the contract if a defect is found in one of the items of exchange that was not known at the time (Jamaluddin et al., 2022; Jamaluddin, 2023). Contract (*khiyar aib*). However, it is important to remember that not all contracts allow for the implementation of *khiyar*, especially after both parties have separated or chosen. According to the Shafi'i School, in the sale of land which is equipped with buildings, trees, and certain items in it, everything is considered sold. However, items that can be taken at once, such as rice, corn, and onions, are not included in the sale. The sale of land under cultivation can be done as long as the land is separated from the seeds and plants. In the sale of a farm, this includes the trees, buildings, and grounds surrounding the land. Home sales include the land on which the house is built along with facilities such as a toilet and shower, unless excluded in the contract. For the sale of animals, including sandals or shoes and saddles. If what is being sold is a fruit-bearing tree, the fruit becomes the property of the seller, unless there are special requirements from the buyer. Rasulullah SAW, said: "*Whoever buys a palm tree after marriage, then the fruit belongs to the seller, unless the buyer makes a condition for him, and whoever buys a slave, then the wealth of the slave belongs to the seller unless the buyer conditions it*". (Narrated by Bukhari and Muslim).

## **KESIMPULAN**

Buying and selling is exchanging something you want for something equivalent through certain useful methods. The exchange must be beneficial for humans so that carcasses, liquor and blood are not included in things that may be traded or

exchanged, because these objects are not useful for Muslims. According to Article 20 paragraph 2 of the Compilation of Sharia Economic Law, this research uses library research, collecting books and writings that are directly or indirectly related to the issues above. After the data is collected, classification analysis is then carried out using deductive methods to reach conclusions. Ba'i is buying and selling between objects and objects, or the exchange of objects for money. Primitive society when money was not used as a means of exchanging goods, namely with a barter system. Even though buying and selling using the barter system has been abandoned, and replaced by a currency system, sometimes the essence of such buying and selling still applies, even to determine the amount of goods exchanged but calculated using a certain currency value, for example, Indonesia buys *spare part* vehicle to Japan, then the imported goods are paid for.

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<https://doi.org/10.1016/j.sapharm.2021.07.010>

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Samara: Journal of Islamic Law and Family Studies

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