

Editorial Office: Faculty of Law, Universitas Sebelas Maret, Surakarta, 57126, Indonesia.

Phone: +6271-646994

E-mail: JoLSIC@mail.uns.ac.id

Website : <https://jurnal.uns.ac.id/JoLSIC/index>

The Sale and Purchase of Non-Cash Gold at Tokopedia from an Islamic Perspective

Anif Mafatihur Rohmah^a

^a Faculty of Law, Universitas Sebelas Maret. E-mail: famafa001@gmail.com

Article	Abstract
<p>Keywords: Inheritance Law; Batak Customary Law.</p> <p>Article History Received: Jan 26, 2022; Reviewed: Apr 8, 2022; Accepted: Apr 28, 2022; Published: Apr 29, 2022</p> <p>DOI: https://dx.doi.org/10.20961/jolsic.v10i1.58893</p>	<p>Tokopedia is one of the leading marketplaces in Indonesia that allows Tokopedia users (Toppers) to buy and save gold digitally in small amounts. This article aims to analyze the permissibility of buying and selling gold in cash in an Islamic perspective. This research uses normative legal research or library research, namely legal research conducted by examining library materials consisting of primary legal materials, secondary legal materials, and tertiary legal materials. This research is expected to provide insight into the mechanism of buying and selling gold transactions in cash so that people can avoid fraud. According to the findings of this study, the gold buying and selling mechanism at Tokopedia has failed to meet the requirements, specifically the physical delivery of the promised items, especially gold. As a result, there is an element that cannot be purchased or sold, namely the element of <i>Gharar</i>.</p>

INTRODUCTION

In human social life, Islam has completely established a law in which there is social ethics, which is all summarized in the law of *muamalah*. *Muamalah*, in its broadest sense, refers to Allah's regulations (laws) for regulating human behavior in respect to earthly affairs and social interaction. *Muamalah* can be applied to a variety of human activities in which people engage with one another. The forms of these interactions can be in the form of buying and selling, marital relations, inheritance distribution, politics, etc.

Buying and selling transactions are one type of *muamalah* in today's economy. Today's advances in science and technology have had an indirect impact on how people live, work, communicate, and purchase and sell things. Buying and selling can now be done not only face-to-face, but also via a connecting channel known as the internet. The internet offers a variety of services to its users, one of which is the ability to purchase and sell items. Electronic commerce is the term used to describe trading operations that take place through the internet (e-commerce).

E-commerce is a new approach to conducting business electronically and through the use of networks and the internet. According to Kenneth C. Laudon and Jane P. Laudon (2009: 403), electronic commerce (e-commerce) is a process of buying and selling products electronically by consumers and from company to company using computers as business intermediaries. This facility can be used as a commercial field. Online businesses can gain material benefits by optimizing the usability of the internet itself.

In positive law, indirect buying and selling are regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions. Article 45A paragraph (1) of the law states that "everyone who intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of Rp. 1,000,000,000.00 (one billion rupiah)." The article's treatment of fraud, which is common in non-cash buying and selling today, is one example.

The growth of e-commerce in Indonesia is extremely rapid. In the community, there is a lot of e-commerce. Among the main ones are Tokopedia, Shopee, Bukalapak, Lazada, OLX and others. The marketplace can also be used to sell a variety of items, ranging from everyday essentials to autos, jewelry, and home furnishings. For example, Tokopedia Emas is a new tool that can let Indonesians save non-cash gold more conveniently and affordably (Tokopedia, <https://www.tokopedia.com/emas/detail/>, accessed on December 4, 2019 at 2:48 p.m. WIB).

Tokopedia Emas is a novel method of saving gold. Users of Tokopedia Emas can buy, save, and sell gold at any time when the market price is considered profitable. Every gram of gold bought will be converted into physical form and deposited at the Pegadaian. Tokopedia is attempting to convert the gold invested into physical gold. Tokopedia Emas has the advantage of having the lowest nominal for purchasing gold, which is IDR 5000 (five thousand rupiah) (Tokopedia, <https://www.tokopedia.com/emas/faq/>, accessed on December 4, 2019 at 15.00 WIB).

A contract is an essential component of any business. Like a *murabahah* contract, which is a sale and purchase contract of an item by confirming the purchase price to the buyer and the buyer pays it at a higher price as profit, or *murabahah* simply means a sale of goods for the price of the item plus an agreed margin (Adiwarman Karim, 2007: 83). Buying and selling non-cash in Islam must, of course, avoid *riba*, *Gharar*, and *Maysir*.

According to the Tokopedia Emas application, Tokopedia is still attempting to convert the gold invested into physical gold. Of course, whether Tokopedia Emas users can cash out their gold in actual form remains a mystery. It can be considered fraud if Tokopedia Emas users are unable to cash out the gold they have invested in physical gold. As a result, it needs to be revisited.

Given the problems described above, it is worthwhile to investigate it from the standpoint of Islamic law. Buying and selling gold, in particular, is not a cash transaction. Based on the foregoing, this article examines the sale and purchase of non-cash gold at Tokopedia from an Islamic standpoint.

RESEARCH METHOD

The author's research method is a normative legal research method or library research, which is legal research conducted by examining library materials that include primary, secondary, and tertiary legal materials. The type of research employed is prescriptive legal writing. As is well known, prescriptive legal writing does not begin with a hypothesis because the author wishes to provide an argument for the research that has been conducted (Peter Mahmud Marzuki, 2014: 59). A statutory approach and a conceptual approach are used. Primary and secondary legal materials are used as sources of legal materials. Interviews and a review of the literature are used to collect legal materials.

ANALYSIS AND DISCUSSION

1. Buying and Selling Gold for Non-Cash according to Expert Opinions and Fatwa of the National Sharia Council

Financial technology is becoming more extensive and pervasive in numerous aspects of human existence, including buying and selling in everyday life, and has resulted in the emergence of new types of *muamalah* in Indonesia. After the first author has explained how to sell gold, buy gold, transfer gold, and even print gold using the Tokopedia Emas application, the second author will examine these transactions from the perspective of Islamic law.

In accordance with the continuous growth of human needs, Islam provides the greatest chance for the creation of various sorts of *muamalah* activities. Unless there are other regulations that forbid it, basically all sorts of *muamalah* activities are permitted (Yosi Aryanti, 2017: 151). As a result, a clear and explicitly permitted contract is required in *muamalah* in order to avoid the elements of *riba*, *Gharar*, and *Maysir*.

Buying and selling gold for non-cash transactions such as buying and selling gold for non-cash at Tokopedia Emas in recent years has been widely practiced by the people of Indonesia. However, there are many differences of opinion regarding the sale and purchase of gold in a non-cash manner. The scholars have different opinions regarding the law of buying and selling gold in a non-cash manner, namely as follows (DSN MUI Fatwa Number: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Gold in a Cashless manner):

- a. According to the majority of jurists (Hanafi, Maliki, Shafi'i, and Hambali schools) that buying and selling gold in installments is not allowed.
- b. According to Ibn Taimiyah, Ibn Qayyim and several contemporary scholars, buying and selling gold in installments is permissible.

Scholars who prohibit this transaction argue with the generality of the hadiths about riba, including the hadith of the Prophet Muhammad: “Ubadah bin ash Shomit ra. It was reported that the Messenger of Allah (SAW) stated that the exchange of gold for gold, silver for silver, wheat for wheat, poetry for poetry, dates for dates, and salt for salt must be equal and paid in cash. If the goods differ (exchange), then sell the goods as you wish as long as they are paid in cash.” (HR Ahmad).

According to the scholars, gold and silver are *tsaman* (price, means of payment or debt) which should not be exchanged in instalments or respite because it causes riba. While the scholars who allow the arguments as follows:

- a. That gold and silver are goods (*sil'ah*) that are traded like ordinary commodities, and are no longer functioned as *tsaman* (price, means of payment, money).
- b. People need gold buying and selling transactions, if buying and selling gold in instalments is not allowed, then they will have difficulty fulfilling their desire for gold.
- c. Gold and silver after being formed into jewellery have turned into commodities such as clothes and goods, and are not *tsaman* (price, means of payment, money). Therefore, there is no riba in the exchange or sale and purchase of jewelry and the price (money), just as there is no riba in the exchange or sale and purchase of the price (money) with other goods, even though they are not of the same type.
- d. If the law of buying and selling gold in instalments is not allowed, then the need for debt and credit is closed, the community will experience difficulties.

According to Dr. Oni Sahroni, M.A., a member of the National Sharia Council of the Indonesian Ulema Council, buying and selling gold for non-cash is permissible under fiqh and *muamalah*, as stated in the fatwa of DSN MUI Number: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Gold for Non-Cash with the following provisions: which must be met. First, gold, as mentioned in the Ubadah hadith, is a means of payment, according to Imam Malik and Imam Shafi'i. So gold (both metal and jewellery) is not included in the hadith because gold is regarded as a commodity (not a means of payment). In the hadith of Ubadah bin ash-Shamit, Rasulullah SAW. said, “*Ubadah bin ash Shomit ra. was reported that the Messenger of Allah (SAW) stated that the exchange of gold for gold, silver for silver, wheat for wheat, poetry for poetry, dates for dates, and salt for salt must be equal and paid in cash. If the goods differ (exchange), then sell the goods as you wish as long as they are paid in cash.*” (HR Ahmad).

And the hadith of Umar bin Khattab, the Messenger of Allah. Said, “*(Buying and selling) gold with silver is riba except in cash*” (HR Muslim).

According to Imam Malik and Imam Shafi'i, the *illat* of gold in the Ubadah hadith is its existence as a medium of exchange/means of payment (*atsman li al-asy-ya'*). Thus, the exchange between currency and gold as carried out on the gold installment product is not required to be in cash, but may not be cash and does not include riba buying and selling (*riba nasa'*) due to a meeting (exchange) between money and goods.

Second, the tradition (*urf*) of the people and authorities which conclude that gold is a commodity, not a means of payment. As the rule “*something that becomes a habit is punished the same as something that is required*” as-Suyuthi (as quoted Oni Sahroni, 2020: 131).

Third, because gold is a commodity, it can be traded with installments and margins. Buying and selling on credit is permitted according to the decision of the Islamic Fiqh Organization of the Islamic Conference Organization Number 51 (2/6) [1] at the VI meeting on March 20, 1990 in Jeddah regarding the sale and purchase of credit. The price in the non-cash sale may be greater than the cash selling price.

Fourth, if the gold that is traded in the gold installment product is stored or deposited in a sharia bank by the customer, it must be ensured that the gold exists (in form) and can be taken or controlled by the customer based on both parties (Oni Sahroni, 2020: 130-133).

Dr. Oni Sahroni, M.A. also stated that non-cash gold purchases and sales must also meet the following criteria. First, the transaction's specifics must be agreed upon. What gold is used, the grade is clear, if the input is nominal money, when it is converted, how many grams and the conversion value must be agreed upon, and when and where the gold is handed over are all important considerations (ijab kabul). If the transaction indirectly meets these criteria and is agreed upon, there has been valid consent and kabul.

AAOIFI International Sharia Standard Number 38 concerning at-Ta'amulat al-Maliyah bil-Internet, Decision of the OKI Fiqh Institute Number 52 3/6 and Nadwah Baraka decision held December 3, 2000, in Makkah explained, transactions are indirectly categorized into one The assembly (place of the contract) or different is divided into two conditions (Oni Sahroni, <https://www.republika.id/posts/7225/beli-emas-online> accessed on December 14, 2020 at 22.33 WIB):

- a. If the transaction media used are images or sound, such as video calls, telephones, and similar media, they are categorized as attending and meeting in one place (*baina hadhiraini*). Because, buyers and sellers are present and meet online at one time.
- b. If the media used is writing, such as through electronic mail and similar writing facilities, it is categorized as different assemblies and times because the transaction time is not the same or there is a time lag between consent and kabul.

Second, as determined by the OKI Fiqh Institution Number 53 6/4, the gold is available (if purchased in cash) or can be handed over according to time (if not purchased in cash), both physically and in ownership (non-physical). Non-physical gold transfers can occur in non-cash gold purchases, such as when the seller receives proof or notification of sending money transfers as the price from the buyer. Similarly, gold is classified as owned by the buyer when the buyer receives legal proof of ownership of gold. As a result, in order for the gold to be handed over, it must be purchased from an official or registered company that is supervised by the authorities and accompanied by a DSN MUI certificate.

Third, If the buyer's gold is entrusted to the seller, the type and position of the buyer's gold must be explained. Furthermore, when several customers own a single gold plate, it must be clarified whether each owner owns a specific portion of the physical gold or his ownership is based on a percentage. According to the AAOIFI International Sharia Standard Number 57 on Gold, both are permissible, "*Gold may be owned in a portion (syuyu'), where each syarik has a certain portion of the total gold in accordance with the criteria already mentioned.*".

Forth, when buying gold in cash, the buyer is given the right to cancel or continue the transaction if the gold he receives is not as ordered, so that the rights of the buyer and seller

can be fulfilled and no one is harmed (Oni Sahroni. <https://www.republika.id/posts/7225/beli-emas-online> accessed on December 14, 2020 at 22.33 WIB).

M.A. Dr. Oni Sahroni Moreover, he claims that purchasing gold in cash does not constitute prohibited hoarding. Because, according to Allah, hoarding gold is prohibited if the zakat is not paid, as stated in Surah At-Taubah verse 34: "*Believers! Indeed, many of the pious and their monks eat people's wealth in a deceptive manner, obstructing (people) from Allah's path. And those who keep gold and silver and do not spend it in the way of Allah, give them good news, (that they will have) a painful punishment*".

Therefore, if someone buys gold for non-cash and then puts it in for investment, and the zakat is paid, it is included in the category of halal and permissible investment (Muamalah Daily, <https://www.youtube.com/watch?v=njR5b7j33fU> accessed on 14 December 2020 at 23.00 WIB).

Based on the things above, the *rajih* opinion is to allow the sale and purchase of gold in installments because gold is an item not a price (money) to facilitate people's affairs and eliminate their difficulties (Shaykh 'Abd al Hamid Syauiy al Jibaliy as quoted by Oni Sahroni and Adiwarmar Karim, 2015: 143). The DSN fatwa also prescribes (voting) opinions that allow buying and selling of non-cash gold.

According to the Fatwa of the National Sharia Council Number: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Gold for Non-Cash, it is stated that buying and selling gold for non-cash, either through ordinary buying and selling or buying and selling *murabahah*, is legally permissible (*mubah, ja'iz*) as long as gold is not the official medium of exchange (money). If it is associated with buying and selling gold in a non-cash manner at Tokopedia, gold sold on Tokopedia is not used as a medium of exchange but is used as a commodity (*sil'ah*).

The DSN Fatwa Number 77 also states that buying and selling gold in cash is allowed with the following limitations and conditions:

- a. Even if the maturity date is extended, the selling price (*tsaman*) may not increase during the term of the agreement. If a Tokopedia Emas user places an order for gold but does not make a payment, the number of gram conversions will be determined by the purchase price of gold once the payment has been verified by Tokopedia. The Tokopedia party will also notify the user of the change before the payment is made, and the user is deemed to have agreed if the price changes while the payment is being made.
- b. Gold purchased with non-cash payments may be used as collateral (*rahn*). Tokopedia Emas users may use gold purchased at Tokopedia gold as collateral with conditions that must be met.
- c. Gold used as collateral, as defined in number 2, may not be traded or used as the subject of another contract that results in ownership transfer.

So if it is studied based on the Fatwa of the National Sharia Council Number: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Gold for Non-Cash, buying and selling gold for non-cash at Tokopedia does not conflict and fulfills the limitations and conditions contained in the Fatwa of the DSN. Because the gold sold at Tokopedia Emas is not used as a medium of exchange but as a commodity (*sil'ah*).

2. Contracts that can be used in The Practice of Buying and Selling Non-Cash Gold at Tokopedia in an Islamic Perspective

A sale and purchase agreement is a legal act that can result in the transfer of ownership rights to an item from the seller to the buyer. Buying and selling gold for non-cash or also known as Gold Ownership Financing (PKE) in recent years has begun to develop in Indonesia. According to BI Circular No. 14/16/DPbS Gold Ownership Financing (PKE) is financing for gold ownership using a *murabahah* contract. According to Adirwarman Karim, *murabahah* means a sale of goods for the price of the goods plus an agreed margin. In buying and selling gold for non-cash at Tokopedia, it tends to use a *murabahah* sale and purchase contract. *Murabahah* contracts can be identified from Tokopedia Emas products because overall the characteristics of this product are similar to the terms and types of *murabahah* contracts.

The analysis of the contents of the *murabahah* contract that is carried out in Tokopedia Emas, namely Tokopedia users who want to buy, sell, and save gold on Tokopedia can be done through the Tokopedia Emas application/site by determining the amount of gold they want to buy or sell in grams or rupiah value. Then users who have ordered gold can make payments. The number of gram gold conversions will follow the buying and selling price of gold at the time of payment which has been verified by Tokopedia. In setting the purchase price of gold and the selling price of gold can change at any time, because buying and selling gold tends to fluctuate. If there is a change in the purchase price of gold and the selling price of gold on the site/application, Tokopedia will notify the user of the change before payment is made by the user and the user is deemed to have agreed if there is a price change with the payment.

When viewed from the pillars of buying and selling *murabahah* according to the majority of scholars, the pillars contained in buying and selling include Siti Rosmala (as quoted by Safira Hidayati Suharto P, 2019: 29-30):

- a. *'Akid* (Seller and Buyer), namely the person who orders and the person who receives the order; In buying and selling gold online at Tokopedia, the buyer/orderer is the consumer or user of Tokopedia Emas and the person receiving the order is the Tokopedia party.
- b. *Ma'qud 'Alaih* (Price and Object), the object of the contract is gold with the selling price of gold determined by Galeri 24 through Pegadaian and informed by Pegadaian to Tokopedia and updated regularly on the day of the transaction. Galeri 24 itself is PT Pegadaian Galeri Dua Empat, a limited liability company which is a subsidiary of Pegadaian, which is engaged in the retail business of buying and selling gold bars, jewelry and precious stones.
- c. *Shighat*, namely Ijab and Kabul, in the case of buying and selling gold online at Tokopedia, the highat statement is stated when the consumer (Tokopedia user) clicks "Pay" in the gold payment process at Tokopedia Emas.

So according to the author, if you look at the pillars of buying and selling *murabahah*, buying and selling gold for non-cash at Tokopedia is allowed according to sharia because it fulfills the pillars of a *murabahah* contract.

According to the Fatwa of the National Sharia Council Number: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Gold for Non-Cash, it is stated that buying and selling gold in cash, either through ordinary buying and selling or buying and selling *murabahah* is

legal (*mubah, ja'iz*). as long as gold is not an official medium of exchange (money). *Murabahah* sale and purchase contracts may be made in the form of *bai' al murabahah al-'adiyyah* (sale and purchase of materials already owned by the seller) or in the form of *bai' al-murabahah li al-amir bi al-syira'* (buying and selling on an order basis).

In the Fatwa of the National Sharia Council No: 11/DSN-MUI/IX/2017 concerning the *Murabahah* Sale and Purchase Agreement, it is stated that:

- a. Term related *Shigat al-'Aqd* (Ijab dan Kabul):
 - 1) The *murabahah* sale and purchase contract must be stated explicitly and clearly and understood and understood by the seller and the buyer;
 - 2) *Murabahah* sale and purchase contracts may be made orally, in writing, gestures, and deeds/actions, and can be carried out electronically in accordance with sharia and applicable laws and regulations;
 - 3) In the event that the *murabahah* sale and purchase agreement is made in writing, the deed of agreement must contain information regarding the acquisition price (*ra's mal al-murabahah*), profit (*al-ribh*), and selling price (*tsaman al-murabahah*).
- b. Term regarding the Parties:
 - 1) Buying and selling may be carried out by people or those who are equated with people, both legal entities and not legal entities, based on the applicable laws and regulations;
 - 2) The seller (*al-Ba'i*) and the buyer (*al-Musyitari*) must be legally competent (*ahliyah*) in accordance with sharia and the applicable laws and regulations;
 - 3) The seller (*al-Ba'i*) must have the authority (territory) to carry out a sale and purchase contract, both *ashliyyah* authority (seller's authority as owner) and *niyabiyyah* authority (seller's authority as owner's representative/guardian over the owner)
- c. Term regarding *Mutsman/Mabi'* (Items for Sale)
 - 1) *Mutsman/mabi'* may be in the form of goods and/or in the form of rights that are fully owned by the seller (*milk al-tam*);
 - 2) *Mutsman/mabi'* must be in the form of goods and/or rights that can be used according to syaria (*mutaqawwam*) and may be traded according to sharia and applicable laws and regulations;
 - 3) *Mutsman/mabi'* the flow of existence, clear/certain/certain, and can be handed over (*qudrat al-taslim*) when the *murabahah* sale and purchase contract is carried out;
 - 4) In the case of *mabi'* in the form of rights, the provisions and limitations as stipulated in the MUI Fatwa Number 1/MUNAS VII/5/2005 concerning the Protection of Intellectual Property Rights and applicable laws and regulations apply.
- d. Term regarding *Ra's Mal al-Murabahah* (Purchase Price/Production Cost)
 - 1) *Ra's mal al-murabahah* must be known (*ma'lum*) by the seller and the buyer;
 - 2) The seller (*al-ba'i*) in the *murabahah* sale and purchase contract is not allowed to take *khiyanah/tadlis* (seller's lie to the buyer) related to *ra's mal al-murabahah*.
- e. Term regarding *Tsaman* (Selling Price)
 - 1) The price in the *murabahah* sale and purchase contract (*tsaman al-murabahah*) must be stated with certainty at the time of the contract, whether determined through bargaining, auction, or tender;

- 2) Payment of the price in the sale and purchase of *murabahah* may be made in cash (*bai' al-hal*), tough (*bai al-mu'ajjal*), gradually/in installments (*bai' bi al-taqsih*), and under certain conditions may be by way of an encounter debt (*bai' al-muqashshah*) in accordance with the agreement.
- f. Terms related to Products and Activities
- Murabahah* which is realized in the form of financing (*al-tamwil bi al-murabahah*), both *al-murabahah Ii al-amir bi al-syira'* and *al-murabahah al-'adiyah*, apply the provisions (dhawabith) and limits (hudud) of *murabahah* as contained in the DSN-MUI fatwa Number 04/DSN-MUI/IV/2000 concerning *Murabahah*.
- g. Closing
- 1) If one of the parties does not fulfill its obligations or if there is a dispute between the parties, the settlement is carried out through a dispute resolution institution based on sharia in accordance with the prevailing laws and regulations after an agreement is not reached through deliberation;
 - 2) The application of this fatwa in business activities or products must first obtain an opinion from the Sharia Supervisory Board;
 - 3) This fatwa is effective from the date of stipulation, provided that if in the future it turns out that there is an error, it will be amended and corrected accordingly.

Payment at Tokopedia Emas itself uses payment instruments in the form of money that can be made in various payment methods including: OVO, BRI Debit, Mandiri Debit, bank transfer, Alfamart, Indomart, JNE, Post Office and others. Payment is made when the Tokopedia user has filled in the amount of gold to be purchased in grams or rupiah with the maximum gold purchase limit per day weighing 100 (one hundred) grams for 1 (one) user account and then clicking the "Pay" button on the Tokopedia site/application.

Online gold buying and selling is carried out by Tokopedia gold users who already have a Tokopedia account. Tokopedia users are people who are capable and able to bind themselves in a legal agreement according to law. Users can buy and sell gold or transfer gold (gold gifts) with the conditions that have been set.

The item used is digital gold which will be converted into physical gold. The value of gold can change at any time because the value of gold tends to fluctuate. The purchase and sale price of gold refers to the Buy/Sell Gold Price listed on the Tokopedia Emas website. The price of gold itself is measured based on the price of 24 carat gold. Users can enter the nominal amount of gold to be purchased in rupiah or gram and can make payments. Physical gold delivery can be done later if the user has a gold balance of more than 1 (one) gram. Physical gold delivery can be done at Pegadaian according to the dominance listed on the site and chosen by the user. However, for now, Tokopedia is in the process of trying to convert gold investment into physical gold. Tokopedia Emas users who wish to withdraw all gold savings in their Tokopedia Emas account can do so by selling their gold and then the money from the sale can be withdrawn from the bank account for which the funds are withdrawn. So it can be concluded that for now Tokopedia has not provided gold disbursement in physical form and delivery of gold in physical form is also not possible. So if it is studied based on the DSN Fatwa No: 11/DSN-MUI/IX/2017 regarding the *Murabahah* Sale and Purchase Agreement, buying and selling gold online at Tokopedia does not meet the requirements, namely the

delivery of goods cannot be carried out or cannot be handed over as promised, namely gold in person. physical, then delivery of the goods cannot be carried out.

Buying and selling gold online at Tokopedia does not comply with the DSN Fatwa Number: 11/DSN-MUI/IX/2017 concerning the *Murabahah* Sale and Purchase Agreement; therefore, the contracts utilized in the online gold buying and selling procedure at Tokopedia must be reviewed. Based on the non-transferability of the contract's object, namely physical gold, Tokopedia only serves as a gold storage medium, or the contract employed is the *wadi'ah* contract. *Wadi'ah* is a safekeeping contract between two parties in which an object is entrusted to be guarded as is customary or appropriately. When deposited products are returned to the party who entrusted them, they are only limited to deposits; no extra items are permitted (Bambang Murdadi, 2015: 63). Because Tokopedia does not get *ujrah* (wages) from depositors, the *wadi'ah* contract used is *wadi'ah yad al-amanah*.

If it is described, the analysis of the pillars in the *wadi'ah* contract utilized in buying and selling gold online at Tokopedia is as follows:

- a. Caretaker (*Muwaddi'*)
A depositor is a person who saves or keeps his gold in the Tokopedia application.
- b. Depositee (*Wadi'*)
The recipient of the deposit is Tokopedia, which provides an online gold buying and selling application for depositors to save gold.
- c. Entrusted object (*Ida'*)
The object that is deposited is gold with a gold selling price set by Galeri 24 through Pegadaian and informed by Pegadaian to Tokopedia and updated regularly on the day of the transaction, and can be withdrawn at any time through a bank account that has been approved by the Tokopedia user.
- d. *Shighat* (Ijab and Kabul)
The contract threshold in terms of buying and selling gold online at Tokopedia is stated when the consumer (Tokopedia user) clicks "Pay" in the gold payment process at Tokopedia Emas.

According to the author, if you look at the pillars of buying and selling *wadi'ah*, buying and selling gold online at Tokopedia is permissible according to *syara'* since it fulfills the pillars of the *wadi'ah* contract.

According to Fatwa Number 02/DSN-MUI/IV/2000 concerning Savings with online gold buying and selling transactions at Tokopedia, the following are general provisions for *wadi'ah*-based savings:

- a. In the nature of savings, the gold savings that are stored into the buyer's gold balance in the Tokopedia application are deposits.
- b. Deposits can be withdrawn at any time (on call) or based on an agreement. The saved gold savings cannot be printed physically, but the stored gold can be disbursed or taken in the form of money at any time when it is deemed profitable according to the destination account for the Tokopedia user.
- c. No compensation is required, except in the form of a voluntary gift (*'athaya*) from the bank. In terms of storage or safekeeping, there is no compensation given to Tokopedia.

So, according to the DSN Fatwa Number: 02/DSN-MUI/IV/2000 about Savings, buying and selling gold online via Tokopedia is permissible under Sharia rules. It can be stated that because Tokopedia's *wadi'ah* contract fulfilled the elements in the DSN fatwa regarding savings.

As for buying and selling which is prohibited in Islam, which contains 3 elements, namely:

a. **Riba**

Riba is any unjustified addition to the value of the goods handed over to the counter value (of the goods received) Qadi Abu Bakr ibn Al Arabi (as quoted in Zaim Saidi, 2010: 88). Meanwhile, Wahba al Zuhayli defines riba as follows:

Riba is a surplus of a commodity without counter-value in the commutative transaction of property for property. The intent of such a transaction is a surplus of commodities. Therefore, the definition of riba includes both credit riba and invalid sales, since postponement in either of the indemnities is a legal surplus without perceivable material recompense, the daley usually due to an increase in compensation. In Islam, money-money transactions are not allowed and there is no time value of money concept (Wahba al Zuhayli, 2014: 36-37).

b. **Maysir**

Maysir is something that has elements of gambling in it. In some works, the term *Maysir* is used in conjunction with *qimar*, or a game of chance. According to Muhammad Ayyub, *Maysir* means expecting something of value easily and without paying equal compensation (Muhammad Ayub, 2007: 62).

c. **Gharar**

Gharar is something that can cause harm to others because the contract contains fraud caused by a lack of certainty about whether or not the object mentioned in the contract exists. *Gharar* is a riba contract that is forbidden under Islamic law (Abdul Aziz Dahlan, 1996: 399). *Gharar*, according to Sayyid Sabiq (1994:144), is a fraud that is estimated to result in a lack of willingness to be investigated.

The forms of *Gharar* transactions when viewed from the content, according to Abdullah Muslih (2004: 57-59), include:

1) Buying and selling items that don't exist yet (*Ma'dum*)

There is no ability of the seller to submit the object of the contract at the time of the contract, whether the object of the contract already exists or does not exist (*bai' al-ma'dum*). For example, selling fish that are still in the sea or birds that are still in the air. This is based on the hadith of the Prophet Muhammad, "*Do not sell fish that are still in the water, because it is Gharar*" (HR. Ahmad bin Hambal).

2) Buying and Selling Unclear Items (*Majhul*)

- a) Selling something that is not yet under the control of the seller. If an item has not been handed over at the time of sale and purchase, then the item cannot be sold to another;
- b) There is no certainty about the specific nature of the object being sold;
- c) There is no certainty about the time of delivery of the object of the contract;

- d) There is no certainty about the object of the contract. Namely the existence of two different contract objects in one transaction;
 - e) The condition of the object of the contract cannot be guaranteed in accordance with what is specified in the transaction.
- 3) Buying and selling goods that cannot be handed over
- a) There is no certainty about the type of payment or the type of object being sold;
 - b) There is no certainty about the amount of the price to be paid;
 - c) There is no firm form of transaction, namely the existence of two or more different types of transactions in one contract object without confirming which form of transaction was chosen when the contract took place;
 - d) There is a compulsion.

When the above elements are considered, it is possible to conclude that buying and selling gold online at Tokopedia fulfills the prohibited element of buying and selling, namely the element of *Gharar*, due to the uncertainty in the process of submitting the contract's object, namely gold that has not been physically handed over.

3. Arrangements for Uncertainty in the Process of Contract Object Submission in accordance with Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions

According to Edmon Makarim, Dean of the Faculty of Law, University of Indonesia, technology has always been the essence of making people easier. However, what is currently happening has resulted in digital imperialism, where technology is always changing rapidly. So that the development of legal science follows technological developments (UII Faculty of Law, <https://law.ui.ac.id/v3/Hukum-tak-lekang-dengan-technologi/> accessed on February 25, 2021 at 22:56 WIB). The very rapid development of technology provides its own challenges for the development of law in Indonesia. The trend of continued development of technology certainly brings various implications that must be anticipated and also watched out for. This effort has now produced a legal product in the form of Law no. 11 of 2008 concerning Information and Electronic Transactions (UU ITE).

Although Law Number 11 of 2008 concerning Information and Electronic Transactions and its amendments do not specifically regulate fraud, but related to the occurrence of consumer losses in electronic transactions, there is a provision in Article 28 paragraph (1) of the Law on Electronic Information and Transactions which states: "Everyone intentionally and without rights spreads false and misleading news that causes consumer losses in Electronic Transactions".

Violation of Article 28 paragraph (1) of the Law on Information and Electronic Transactions is subject to criminal sanctions as stipulated in Article 45A paragraph (1) of Law 19 of 2016, namely "*Anyone who intentionally and without rights spreads false and misleading news that result in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah)*".

To prove that there has been a violation of Article 28 paragraph (1) of the ITE Law, all elements of the article must be fulfilled. These elements are:

- a. Each person
- b. Intentionally and without rights

The "deliberate act" in question is whether there is indeed evil intent in the act. Meanwhile, "Without rights" is meant not having a valid legal reason to carry out the act in question.

- c. Spreading false and misleading information.

Because the element formulation includes the word "and," it implies that both elements, namely spreading false news (not in accordance with the actual thing/condition) and misleading (causing someone to hold incorrect/wrong thoughts), must be met for sentencing. A punishment cannot be imposed if the fake news does not cause a person to form an incorrect opinion.

- d. Which resulted in consumer losses in electronic transactions.

This final component requires that the false and misleading information cause a consumer loss. That is, if there is no consumer loss in electronic transactions, no penalties can be imposed.

False news and misdirection have the same meaning as fraud. Fraud can be committed for a reason, such as to benefit himself or to harm others, or it can be committed to benefit himself and harm others at the same time. For these reasons, the dissemination of false and misleading information can be classified as fraud (Budi Suhariyanto, 2012: 124). In general, Article 378 of the Criminal Code defines fraud as a criminal act, which states: "Whoever, with the intent to unlawfully benefit himself or another person, induces another person to hand over something to him, or to give a debt or write off a debt, is threatened with fraud. with a maximum sentence of four years in prison".

The article's understanding is still general, in the sense that it is intended for things in the real world. This is distinct from internet fraud, which is governed by the ITE Law. Fraud has a smaller space in the ITE Law than it does in the Criminal Code.

In the author's opinion, if the Tokopedia user has a wrong/wrong view that misleads the user and also results in consumer losses due to a lack of clarity in the process of submitting the object of the contract, then a penalty can be carried out. A sentence, however, cannot be carried out if these elements are not met.

4. Implementation of *Maqashid* Sharia in the Fatwa of the National Sharia Council Number: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Gold for Non-Cash

Maqashid sharia is to satisfy human desires by reaping benefits and avoiding *mafsadah*. Every *maqashid* (objective) in *maqashid* shariah is a benefit, either in the form of benefits obtained or harm avoided, and thus the substance of *maqashid* sharia is *maslahat*. Wisdom is another name for *Maqashid Shariah*. If *maqashid* sharia strengthens the content of the law, *'illat* determines whether there is a law. There are two types of goals in *maqashid* sharia: *maqashid 'Ammah*, which are the goals contained in each sharia chapter such as *kulliyatu al khomsah*, and *maqashid Khassah*, which are the goals contained in each sharia law.

Imam ash-Syatibi (as quoted by Oni Sahroni and Adirmawan Karim, 2015: 4) explains that there are 5 (five) forms of *maqashid* sharia or what is called *kulliyatu al khomsah* (five general principles). The five *maqashids* are:

- a. *Hifdzu din* (protecting religion)
- b. *Hifdzu nafs* (protecting the soul)
- c. *Hifdzu aql* (protects the mind)
- d. *Hifdzu mal* (protecting property)
- e. *Hifdzu nasab* (protect offspring)

Maqashid sharia is the heart of the science of *ushul fiqh*, because *maqashid sharia* plays a critical role in the formulation of sharia economics. *Maqashid sharia* is required not only for the formulation of macroeconomic policies (monetary, fiscal, and public finance), but also for the development of Islamic banking and financial products, as well as other microeconomic theories. Regulations, financial and banking product fatwas, fiscal and monetary policies will lose their sharia substance in the absence of *maqashid sharia*. The developed *muamalah fiqh* will become rigid and static without *maqashid sharia*. Toha Andiko (2018: 95)

In the era of contemporary Islamic economics and finance, many problems arise, such as buying and selling gold. Currently, gold buying and selling transactions are often carried out by means of non-cash payments, either in installments or on a tough basis. Gold buying and selling transactions cause differences of opinion among Muslims between opinions that allow and those who do not allow buying and selling of gold in a non-cash manner. DSN-MUI deems it necessary to stipulate non-cash gold buying and selling transactions so that it can be used as a guideline. Therefore, DSN-MUI stipulates the Fatwa of the National Sharia Council Number: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Gold for Non-Cash.

The scholars differ on the law of buying and selling gold in installments. *The first opinion*, according to the majority of fuqaha (Hanafi, Maliki, Shafi'i schools) who do not allow buying and selling gold in instalments. Scholars who forbid this transaction argue with the generality of the traditions about Riba, among the hadiths of the Prophet Muhammad: "*Do not sell gold for gold, and silver for silver, except in cash*" (HR Ahmad). According to the scholars, gold and silver are *tsaman* (price, means of payment or money) which should not be exchanged in instalments or respite because they can lead to Riba.

The second opinion, according to Ibn Taimiyah, Ibn Qayyim and several contemporary scholars, is that it is legal to sell gold in installments. Scholars are allowed to put forward the following arguments:

- a. That gold and silver are goods (*sil'ah*) that are traded like ordinary commodities, and are no longer functioned as *tsaman* (price, means of payment, money).
- b. People need gold buying and selling transactions, if buying and selling gold in installments is not allowed, then they will have difficulty fulfilling their desire for gold.
- c. After being made into jewelry, gold and silver have become commodities, such as clothing and merchandise, and are no longer *tsaman* (price, means of payment, money). As a result, there is no usury in the exchange, sale, or purchase of jewelry and money, just as there is no usury in the exchange, sale, or purchase of money with other items, even if they are not of the same type.
- d. If the law prohibiting the purchase and sale of gold in installments is not implemented, the necessity for debt and credit will be eliminated, and the community will face difficulties.

Based on the things above, the strongest opinion is that it is permissible to buy and sell gold in installments because gold is an item, not a price (money). This is to facilitate the affairs of the people and eliminate their difficulties.

The DSN fatwa is also very concerned about the *maqshad* (purpose/intention) of the prohibition of buying and selling gold. Therefore, the National Sharia Council allows buying and selling of gold in a non-cash manner. Buying and selling gold for non-cash either through ordinary buying and selling or buying and selling murabahah is legal (*mubah/jaiz*) as long as gold is not an official medium of exchange with the provisions contained in the DSN Fatwa Number: 77/DSN-MUI/V/ 2010 concerning the Sale and Purchase of Gold for Non-Cash (DSN Fatwa: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Gold for Non-Cash).

From the explanation above, contemporary scholars conclude that a strong opinion about *'illat* type of currency is *tsamaniyah* (its existence as currency). This opinion is very logical, because the gold and silver exemplified in the above hadith is the prevailing currency when it was not gold sold in gold shops. In addition, the prohibition in the hadith also makes money as a commodity to be traded because the main function of money is as a medium of exchange that gives birth to goods and services. If the legal *illat* is *tsamaniyah*, then the gold being traded today is not a medium of exchange as prohibited in the hadith and buying and selling gold is not allowed (Adiwarman Karim and Oni Sahroni, 2005: 20).

This is further strengthened by a semantic analysis that money in *fiqh* literature is interpreted as everything that is a medium of exchange and is generally accepted, regardless of its form and under whatever conditions the media is (Abdullah bin Sulaiman al-Mani' as quoted by Oni Sahroni and Adiwarman Karim, 2015: 145). Money is also interpreted as something that is used as a price (*tsaman*) by the community, whether consisting of metal or printed paper or other materials, and issued by a financial institution holding authority (Muhammad Rawas Qal'ah Ji as quoted by Oni Sahroni and Adiwarman Karim, 2015: 145-146).

From the two definitions of money above, it can be understood that both gold and silver or others, including paper, have the status of money if the public accepts it as money (a tool or medium of exchange) and is stipulated or issued by a financial institution holding authority. Meanwhile, the world community no longer treats gold or silver as money but treats them as goods (*sil'ah*) (Oni Sahroni and Adiwarman Karim, 2015: 146).

In conclusion, buying gold online is in accordance with *maqashid* sharia (*hifzudul mal*), which makes it easier to own gold and do business, as is the general guidance in the hadith of the Prophet Muhammad: "Allah gives mercy to servants who make it easier to sell, make it easier to buy, and make it easier when buying gold. make demands (collect debts)" (Narrated by Bukhari, Ibn Majah, and Tirmidhi). Therefore, buying and selling gold online is allowed in Islam.

So, when viewed through the lens of the Fatwa of Buying and Selling Uncash Gold, buying and selling gold online at Tokopedia does not conflict with and fulfills the limitations and conditions outlined in the DSN Fatwa. Because the gold sold at Tokopedia Emas is a commodity (*sil'ah*) rather than a medium of exchange. When compared to the Fatwa of the MUI DSN Number: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Non-Cash Gold, buying and selling gold for non-cash at Tokopedia does not contradict and fulfills the

limits and requirements specified in the Fatwa of the DSN. Because gold traded at Tokopedia Emas is utilized as a commodity (*sil'ah*) rather than a medium of exchange. However, according to the DSN Fatwa Number: 11/ DSN-MUI/IX/2017 concerning the *Murabahah* Sale and Purchase Agreement, buying and selling gold online at Tokopedia has not met the pillars and conditions of the *murabahah* contract, namely that the goods cannot be delivered or the gold cannot be physically handed over. Tokopedia, in the author's opinion, merely serves as a gold storage medium, or the contract employed is a *wadi'ah* contract. Buying and selling gold online at Tokopedia is in conformity with DSN Fatwa Number: 02/DSN-MUI/IV/2000 about Savings when reviewed according to the pillars and conditions of the *wadi'ah* contract. Tokopedia's gold buying and selling mechanism does not match the standards, in that it is not able to provide the promised products, specifically physical gold, hence delivery of the goods cannot take place. Due to the absence of clarity in the process of physically passing over the object of the contract, namely gold, buying and selling gold for non-cash at Tokopedia fulfills the forbidden aspect of buying and selling, namely the element of *Gharar*. As a result, the author proposes that users exercise caution while selecting programs for buying and selling gold online in order to avoid characteristics that are prohibited in Islamic purchasing and selling.

CONCLUSION

When compared to the Fatwa of the MUI DSN Number: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Non-Cash Gold, buying and selling gold for non-cash at Tokopedia does not contradict and fulfills the limits and requirements specified in the Fatwa of the DSN. Because gold traded at Tokopedia Emas is utilized as a commodity (*sil'ah*) rather than a medium of exchange. However, according to the DSN Fatwa Number: 11/ DSN-MUI/IX/2017 concerning the *Murabahah* Sale and Purchase Agreement, buying and selling gold online at Tokopedia has not met the pillars and conditions of the *murabahah* contract, namely that the goods cannot be delivered or the gold cannot be physically handed over. Tokopedia, in the author's opinion, merely serves as a gold storage medium, or the contract employed is a *wadi'ah* contract. Buying and selling gold online at Tokopedia is in conformity with DSN Fatwa Number: 02/DSN-MUI/IV/2000 about Savings when reviewed according to the pillars and conditions of the *wadi'ah* contract. Tokopedia's gold buying and selling mechanism does not match the standards, in that it is not able to provide the promised products, specifically physical gold, hence delivery of the goods cannot take place. Due to the absence of clarity in the process of physically passing over the object of the contract, namely gold, buying and selling gold for non-cash at Tokopedia fulfills the forbidden aspect of buying and selling, namely the element of *gharar*. As a result, the author proposes that users exercise caution while selecting programs for buying and selling gold online in order to avoid characteristics that are prohibited in Islamic purchasing and selling.

REFERENCES

Journals:

- Aryanti, Y. (2017). Reformulasi Fiqh Muamalah terhadap Pengembangan Produk Perbankan Syariah. *JURIS (Jurnal Ilmiah Syariah)*, 16(2), 149-157.
- Murdadi, B. (2016). Menguji Kesyariahan Akad Wadiah Pada Produk Bank Syariah. *Value Added: Majalah Ekonomi dan Bisnis*, 12(1).
- Paldi, C. (2014). Understanding riba and gharar in Islamic finance. *Journal of Islamic Banking and Finance*, 2(1), 249-259.

Essay:

- Gustina, M. (2018). Tinjauan hukum Islam terhadap jual beli emas online melalui media Bukaemas di Bukalapak (Doctoral dissertation, UIN Sunan Ampel Surabaya)..
- Putri, S. H. S. (2019). Karakteristik Akad Jual Beli Emas Secara Elektronik (Studi Kasus Pada Pt. Tamasia Global Syariah) (Doctoral dissertation, UNIVERSITAS AIRLANGGA).

Books:

- Andiko, T. (2018). *Maqashid Syariah dalam Ekonomi Islam*. Yogyakarta: Samudra Biru.
- Ayub, M. (2007). *Understanding Islamic Finance*. Chichester: John Wiley & Sons.
- Aziz, D. A. (1996). *Ensiklopedi Hukum Islam*. Jakarta: Ichtar Baru Van Hoeve.
- Karim, A. (2007). *Bank Islam, Wacana Ulama*. Jakarta: Raja Grafindo Persada.
- Karim, A. A. (2015). *Maqashid Bisnis dan Keuangan Islam*. Jakarta: Rajawali Pers.
- Laudon, K. C., & Laudon, J. P. (2004). *Management information systems: Managing the digital firm*. Pearson Educación.
- Marzuki, P. M. (2014). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Muslih, A. (2004). *Fiqh Ekonomi Keuangan Islam*. Jakarta: Darul Haq.
- Sabiq, S. (1994). *Fiqh Sunnah, Jilid III*. Kairo: Dar al-Fath li A'lam al-'Arabiyy.
- Sahroni, O. (2020). *Fikih Muamalah Kontemporer: Jilid 3*. Jakarta: Republika Penerbit.
- Saidi, Z. (2010). *Tidak Syar'inya Bank Syariah di Indonesia dan Jalan Keluarnya Menuju Muamalat*. Yogyakarta: Dekolomotif
- Suhariyanto, B. (2012). *Tindak Pidana Teknologi Informasi (Cybercrime): Urgensi Pengaturan dan Celah Hukumnya*. Jakarta: Rajawali Pers.

Regulation:

- Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.
- Fatwa Dewan Syariah Nasional Nomor: 11/DSN-MUI/IX/2017 tentang Akad Jual Beli Murabahah.
- Fatwa Dewan Syariah Nasional Nomor: 77/DSN-MUI/V/2010 tentang Jual Beli Emas secara Tidak Tunai.
- Fatwa Dewan Syariah Nasional Nomor: 02/DSN-MUI/IV/2000 tentang Tabungan

Internet:

Fakultas Hukum UII. (2019). (<https://law.ui.ac.id/v3/hukum-tak-lekang-dengan-Teknologi>, accessed on February 25, 2021 at 22.56 WIB.

Muamalah Daily. (2020). <https://www.youtube.com/watch?v=njR5b7j33fU>, accessed on December 14, 2020 at 23.00 WIB.

Oni Sahroni. (2020). <https://www.republika.id/posts/7225/beli-emas-online>, accessed on December 14, 2020 at 22.33 WIB.

Tokopedia. <https://www.tokopedia.com/emas/detail/>, accessed on December 4, 2019 at 14.48 WIB.

Tokopedia. <https://www.tokopedia.com/emas/faq/>, accessed on December 4, 2019 at 15.00 WIB.