

CONTROVERSY OVER BUYING AND SELLING GOLD IN CASHLESS (Analysis of DSN MUI Fatwa Number 77/DSN-MUI/VI/2010)

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Abstract

Currently, gold has become a favored investment instrument among the public due to its consistently rising prices. As time progresses, gold trading has diversified, ranging from mini gold sales to digital transactions and installment plans. This phenomenon raises questions within the community regarding the legality of gold transactions, especially those conducted through installments. The National Sharia Council (DSN), a part of the Indonesian Ulama Council (MUI), issued a fatwa (religious ruling) on gold installments, documented in Fatwa DSN Number 77/DSN-MUI/VI/2010. However, this issue continues to be controversial among scholars, particularly concerning non-cash gold transactions. This research aims to analyze the fatwa by comparing it with the opinions of scholars and delving deeper into the methodology used by the DSN to derive legal rulings regarding non-cash gold transactions. The study falls under the category of library research, utilizing normative and textual juridical approaches. In this research, the author examines the issue based on societal norms, drawing from Islamic law texts, government regulations, and other relevant sources. The conclusion drawn from this study highlights a significant difference between the DSN fatwa and the majority opinion of scholars, particularly the four major schools of Islamic jurisprudence, regarding the permissibility of gold installment transactions. While most scholars prohibit this practice, the DSN fatwa permits it, citing the opinions of Ibn Taymiyyah, Ibn Qayyim, and several contemporary scholars who share a similar view. Furthermore, the DSN fatwa diverges from the majority opinion because it considers the current context, where gold is no longer used as a means of payment or currency. Despite relying on the controversial Ibn Taymiyyah as one of its bases, the DSN fatwa still prioritizes public interest as long as the practice adheres to the rules outlined in the fatwa.

Keywords: Kontroversi, Istinbath, Gold Installment

INTRODUCTION

In this modern era, gold has become one of the popular investment instruments among the Indonesian people. The increase in gold prices every year and the existence of inflation against the rupiah currency are one of the main factors that make people choose gold as an effort to keep their money from being eroded by inflation. Technological developments also make gold investment easier and more efficient to be done both online and offline and can even be done with a small nominal so that it can ease people to invest with small capital. This can be seen with the many mini gold sales or online gold sales through the ecommers application starting from a price of only five thousand rupiah. This certainly makes people more interested in investing in gold.

In addition, gold sales models are also increasingly varied and sometimes this becomes a controversy among the public, one of which is buying and selling gold which is carried out in non-cash/installments. The Indonesian Ulema Council (MUI) has issued a fatwa regarding the non-cash buying and selling of gold. The MUI decided that the law on saving gold in installments is a category of *mubah* (allowed). This is shown through the fatwa of the National Sharia Council (DSN) No. 77/DSN-MUI/VI/2010 concerning the sale and purchase of gold in cashlessness. The fatwa states that: "Buying and selling gold in a non-cash manner, either through ordinary buying and selling or buying and selling *murabahah*, the law is permissible (*mubah*, *jaiz*) as long as gold is not an official medium of exchange/money".(Kiki Andrea Putri Hasibuan, 2023)

The majority of scholars are of the opinion that the provisions or laws in transactions as stated in the Hadith of the Prophet regarding the prohibition of buying and selling gold in cash are *ahkam mu'allalah* (the law that has *'illat*) and the *'illat* is *tsamaniyah*, which means that gold and silver during *the ablution* period of the Hadith are *tsaman* (price, means of payment or exchange, money). So, it can be concluded that in the postulate of the DSN-MUI fatwa, it takes a *legal 'illat* against the Hadith of the Prophet which means gold with *tsaman*. Another consideration that is the basis for the DSN-MUI fatwa is the consideration of the socio-cultural background, one of which is the fiqh rule: "Laws based on customs (customs) apply with the custom and are invalid (invalid) with it when the custom is invalid, like currency in *muamalat*".(Ahmad Zakki Zamani, 2016)

In accordance with this basis, the consideration used by the MUI in determining the fatwa is because gold buying and selling transactions carried out by the community today are often carried out by means of non-cash payments, both in installments (*taqsit*) and in a resilient manner (*ta'jil*). After the fatwa, it turned out that it did not necessarily make the public calm in transacting gold cashlessly. This is because in the law there is still a growing debate among scholars about the *halal* and *haram* of buying and selling gold indirectly and these differences are also listed in the fatwa in the discussion.(Kisanda & Handayani, 2021)

This difference of opinion certainly caused controversy which ultimately made people hesitate to buy gold in installments. For ordinary people who don't think too much about this, it may not be a problem because it can make it easier for people to invest in gold. They can buy the gold they want even though they don't have enough money to buy it because it can be done in installments. However, it is different from a strong society with its stance in following the opinion of scholars who prohibit it. On the one hand, they do not have enough money to buy

gold in cash, but on the other hand they seem to be bound by the law of ulama or Kyai which they follow by prohibiting buying gold in installments. This is certainly a special concern to find a solution for people who are doubtful about the law of buying and selling gold in cash.

In a study conducted by Bustanul Arifin related to the non-cash buying and selling of gold from the perspective of classical and modern scholars, it is stated that classical scholars view this as something haram. Meanwhile, modern scholars are of the view that this is halal. This shows the development of Islamic law because 'illat (the legal reason that covers the law has disappeared).(Arifin & Nisa, 2022) Meanwhile, in another study written by Ayu Rahayu, it was explained that the Saudi Arabian Fatwa Council issued a fatwa on the prohibition of trading gold in non-cash or futures because gold is a type of riba property and contains 'illat as a unit of price.(Ayu Rahayu Nurhazila, 2021) Then, in a study conducted by Yaumil Refianti which discussed Ibn Qayyim Al-Jauziyah's views on buying and selling gold in cashlessness. In the study, it is explained that buying and selling gold in installments is allowed and this is in accordance with Ibn Qayyim's view.(Refianti, 2021)

Based on some of these studies, there are differences and controversies regarding the law of buying and selling gold in cash. There are opinions that allow it and there are also those who prohibit it. With this controversy, this study will focus more on the analysis of the DSN-MUI fatwa regarding the law taking carried out and provide a little overview of what the community should do in responding to these differences while still based on the principles that have been set out in the DSN fatwa.

METHODS

This study uses a qualitative method by examining Fiqh law, fatwas, and the opinions of scholars as the basis for analyzing the DSN-MUI fatwa on buying and selling gold in cash. The author uses a normative and textual juridical approach, which is to research problems based on societal norms by referring to texts sourced from Islamic law, government regulations, and other texts relevant to the research. The focus of the research is on the use of the applicable DSN-MUI fatwa provisions, the opinions of legal experts, legal principles, and theories that are directly related to the research.

This research is included in the type of library research because it critically examines literary materials such as laws sourced from the Qur'an, Hadiths, books, legal journals, applicable laws and regulations, and other legal materials related to the indirect buying and selling of gold. The main source of research is DSN-MUI fatwa No. 77/DSN-MUI/VI/2010.

Meanwhile, secondary sources are obtained through literature in books, articles or journals, as well as the opinions of scholars regarding the indirect buying and selling of gold.

RESULT

Buying and Selling Gold Cashless

Gold is one of the starting metals that has been registered in the chemical element with the code Au (Aurum). Gold has soft properties and is malleable because it has a relatively small hardness, which is only in the range of 2.5 – 3 (Mohs scale). The most recognizable characteristic of gold is its shiny yellow color and mushyness. In fact, many experts try the purity of gold by leaving bites on the metal. Gold itself is very flexible and can be mixed with many other metals. In fact, gold can be an excellent conductor of heat and electricity, so it is widely used as a semiconductor in mobile phone chipsets. Unlike other metals, gold does not know the word rust or corrosion.(Kisanda & Handayani, 2021)

With these characteristics, gold has become a valuable item in society from ancient times to the present. In the 14th century, gold was used as a currency alongside silver by being named dinar for gold and dirham for silver. But as the times progressed, gold was no longer a medium of exchange and had been replaced by paper money as we use it today. However, gold remains one of the attractive commodities in society. Gold is considered a stable long-term investment tool, with low risk and ease of disbursement of funds, making people interested in investing using gold. The rising price also makes gold can be used as a protector of wealth compared to saving money whose value is increasingly eroded by inflation. For this reason, gold can be one of the options for people to save or invest for the long term.

Non-cash/credit buying and selling is a way of buying and selling goods with payments that are not immediately paid off at the time the contract is carried out (payment is deferred or in installments). In Islamic law, buying and selling credit is said to be legal if it meets several requirements. These requirements include: (Kisanda & Handayani, 2021)

- 1) This contract is not intended to legalize riba. So, it is not permissible to buy and sell *'inah*. It is also not permissible in the credit sale and purchase contract to be separated between the cash price and the margin, which is tied to time and interest, because this resembles riba
- 2) The goods are first owned by the seller before the credit sale and purchase agreement is held. So, the credit service is not allowed to hold a motorcycle loan purchase and sale contract with the consumer, then after that he makes a purchase and sale contract, orders a



motorcycle and buys it to one of the motorcycle sales centers and then hands it over to the buyer.

- 3) The credit seller is not allowed to sell goods that have been purchased but have not been received and are not in their hands to consumers. Therefore, the credit service company is not allowed to carry out a motorcycle loan purchase and sale contract with its consumer before the goods that he has purchased from the motorcycle dealer are received.
- 4) The goods sold are not gold, silver or currency. Therefore, it is not permissible to sell gold by credit, because this is *riba ba'i*.
- 5) Goods sold on credit must be received by the buyer in cash at the time of the contract. Therefore, credit buying and selling transactions should not be carried out today and goods received the next day. Because this includes buying and selling debts with prohibited debts.
- 6) At the time the transaction is made, the price must be one and clear, and the number of installments and the term must also be clear.
- 7) The credit purchase and sale agreement must be firm. So, it should not be done by buying rent (leasing).
- 8) It is not allowed to make the requirement of obligation to pay fines, or the price of goods increases if the buyer is late in paying the installments. Because this is a form of usury carried out by the Jahiliah people in the time of the Prophet SAW.

There is a difference of opinion among scholars regarding the law of buying and selling gold in cash. There are scholars who forbid it, and some allow it. The following is an explanation of the difference of opinion regarding the law:(Ahmad Zakki Zamani, 2016)

- 1) The majority of scholars argue that buying and selling gold without cash is haram. These opinions include four Madzhab imams, namely Abu Hanifah, Imam Malik, Imam Shafi'i, and Imam Hanbali.
- 2) Meanwhile, the scholars who allow it as mentioned in the DSN-MUI fatwa are Ibn Qayyim, Ibn Taymiyah, and Sheikh Ali Jumu'ah.

Opinion of Scholars Who Prohibit Buying and Selling Gold in Non-Cash

In the article written by Kisanda and Santi, there are 10 opinion groups that prohibit the buying and selling of gold in cash. Here's an explanation of this:(Kisanda & Handayani, 2021)

- 1) Views of the Four Madhhab Scholars

It has been agreed by most scholars that gold and silver are categorized as *ribawi* goods because *their illat* is a price benchmark and is a means of payment that functions like modern money. Therefore, gold and silver can be used as currency, so that Hadith scholars understand that money is something that comes from gold as a similar currency with different terms and sizes. Four madhhab imams agree on the haram of buying and selling gold without cash. (Ahmad Zakki Zamani, 2016)

This is based on the Hadith narrated by Imam Muslim, Abu Daud, Tirmizi, Nasa'i, and Ibn Majah, with Muslim texts from Ubadan bin Shamit. The Prophet saw said:

الدَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالنَّمْرُ بِالنَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ،
سِوَاءَ بِسِوَاءٍ، يَدًا بِيَدٍ، فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيَدٍ.

(Buying and selling) gold with gold, silver with silver, wheat with wheat, sha'ir with sha'ir, dates with dates, and salt with salt (with the condition that it must) be the same and of the same kind and in cash. If the type is different, sell it as you like if it is done in cash.

There are six objects of *ribawi* according to *ijma*, namely gold, silver, wheat, *sha'ir*, dates, and salt. However, the *'illat* of gold and silver is different from the other. According to Imam Malik and Imam Shafi'i *'illat*, gold and silver are the benchmark of price and can be equated with money. If buying and selling gold and silver, they must be received by each before parting. And this opinion was agreed by Imam Malik. (Teungku Muhammad Hasbi Ash-Shiddieqy, 2001)

According to Imam Malik in *Al-Muqaddimat Li Ibn-Rustd*:

لايجوز في هذا البيع ان يكون تأخير في تسليم العوضين سئل الامام مالك عن الرجل يدفع الدينار الى الصراف يشتري به منه دراهم فيزنه الصراف ويدخله تابوته ويخرج دراهم فيعطيه قال: لايعجبني هذا، وليترك الدينار على حاله حتى يخرج دراهمه فيزنها ثم يأخذ الدينار ويعطي الراهم

In this sale, the handover must not be delayed. Imam Malik was asked about a person who paid dinars to money changers and bought from them dirhams, so the officer weighed them and put them in his savings and took out the dirhams and gave them to him. Because the *'illat* of goods' is used as a benchmark for price and it is these things that can only be equated with money. *'Such an illat of haram is only gold and silver. If you buy and sell it, it must be received by each of you before separating.* (Arifin & Nisa, 2022)

Then Imam Shafi'i in the Book of *Al-Umm* volume 3 explained:

قال الشفعي رحمه الله : لايجوز الذهب بالذهب ولا الورق ولاشيء من المأكول والمشروب بشيء من
صنفة الا بسواء يدا بيد

It is not permissible to exchange gold for gold, silver for silver, and anything that can be eaten or drunk with something of the same kind, except for those of equal value and made in cash. Imam Hanafi and Imam Hambali argue that the haram of selling gold for gold and silver with silver non-cash are objects that are weighed or measured. (Arifin & Nisa, 2022)

2) Ibnu Mundzir

Ibn Munzir said that scholars agree that two people who exchange money with each other if they separate before handing over the money, the transaction is invalid.

3) Al-Ghazali

Al Ghazali died in 505 H, saying that those who make usury transactions on Dinar and Dirham are indeed disbelieving blessings and committing injustice. Since the Dinar and Dirham were created as a medium and not an end, if traded they would become commodities and destinations, this is contrary to the original purpose for which money was created. Therefore, it is not allowed to sell it in futures (not cash), this can prevent people from making it a commodity and traders will not do this to make a profit.

4) Ibnu Hubairah

Ibn Hubairah died in 560 H, saying that Muslims have agreed that it is not permissible to exchange gold for gold, or silver for silver, whether it is still in the form of raw materials, in the form of currency, or in the form of jewelry in a non-cash and not equally heavy way. This is *riba nasiah* and *riba fadhli*. And Muslims also agree that it is permissible to exchange gold for silver of different sizes, but it is haram to do it in a non-cash way.

5) Ibnu Zubair

Ibn Zubair, who died in 741 H, said that scholars agree that it is unlawful to exchange gold for silver, or gold for gold, or silver for silver, either in the form of raw materials or have been converted into jewelry in a non-cash way. However, the handover of both goods must be done in cash.

6) Rabithah Alam Islami

For 2 commodities, namely gold and silver which were currencies during the time of the Prophet PBUH, it can be equated with the current currency as the result of the decision of the world scholars who are members of the Rabithah Alam Islami (Muslim Word League) in the



V congress in Mecca in 1982, which reads, "Based on the research submitted to the Assembly of Islamic Fiqh Institutions about real money and its laws according to sharia, After being reviewed, studied and discussed by the members of the Assembly, it was decided as follows:

First, based on the origin of money is gold and silver and based on '*illat the* applicability of riba on gold and silver is *mutlaq tsammaniyah* (absolute exchange rate) in the opinion of the strongest scholars. And based on the opinion of scholars that *mutlaq tsammaniyah* is not limited to gold and silver only, even though its status is a precious metal that is the benchmark. And based on the fact that currency is today considered a medium of exchange, replacing gold and silver, and as a measure of price, because no one is using gold and silver as a medium of exchange anymore. And currency has been trusted by people to invest, and store their property, and used as a means of payment for obligations, even though the value of currency is not a physical substance, but its value comes from the user's trust to change hands, from that the nature of *tsammaniyah* (value) is produced. And because the strongest opinion about '*illat* riba in gold and silver is absolutely the same as *Nia* and it is found in currency. Based on the above reasons, the assembly decided that currency is independent money, the legal point of currency is the same as gold and silver money, then it is obligatory to issue zakat from currency money. Riba *fadhl* and *nasiah* also apply to currency like gold and silver, so the laws related to gold and silver also apply to currency.

Second, currency is stand-alone money just as gold and silver money are of various types, according to the type of country that issued them. So, the Saudi currency is one type, the American currency is another, and so on each currency of a country is its own type. Thus, riba *fadhl* and *nasi'ah* can occur in every currency as riba *fadhl* and *nasi'ah* occur in gold and silver money. The consequences of this decision are as follows:

- a. It is not allowed to exchange one currency for another country's currency or for gold and silver in a non-cash manner. For example, exchanging Saudi Riyal with other currencies in a non-cash way (the handover of both currencies is not at the place where the contract takes place) is not allowed.
- b. It is not allowed to exchange money into denominations and currencies with different nominations even if it is done in cash. For example, one sheet of S.R. 10.00 with 11 sheets of S.R.1.00 is not allowed.

- c. It is allowed to exchange different currencies of different types and nominations on the condition that it lasts in cash. For example, exchanging 1 US Dollar for 3 Saudi Reis in a non-cash way is allowed.

Third, it is mandatory to issue zakat on currency when the nominal value is worth one of the nisab of gold or silver zakat or complete the nisab with other assets such as business property. Fourth, it is permissible to use currency as capital in the contract of buying and selling greetings and as capital in association. *Wallahu a'lam.*

7) Decree No. 21 (9/3) of the Third Congress of World Scholars under the OIC

Decree number 2 (9/3) which reads "The Assembly of Islamic Fiqh Institutions stipulates that currency has a *tsammaniyah* (price/value) criterion. The law is the same as the laws that have been explained by the sharia regarding gold and silver. Riba can occur on currency. Currency is subject to zakat and can be used as capital in the salam contract and all predetermined laws.

8) Fatwa of the Kingdom of Saudi Arabia No. 3211

The case that has been asked to the fatwa institution of the Kingdom of Saudi Arabia, fatwa number 3211, which reads:

Question: A customer comes to my shop to buy gold, he only brings enough cash to pay the down payment, please set aside the gold and this is the money! Later I will come to pay it off". Sometime later he came to pay off and receive the gold. What is the law of buying and selling?

Answer: This buying and selling is not allowed, because the handover of goods is not cashy". (Fatwa Lajnah Daimah, volume XIII, p. 476).

Question: Sometimes the owner of a gold shop buys a large amount of gold from one of the out-of-town gold agents over the phone, and the type of gold ordered is clear. After a price agreement has occurred, then the buyer sends money to the seller via bank account transfer, is this transaction allowed, or what should be done?

Answer: this transaction is not allowed by law, because the handover of gold goods and money is not cash, even though both are riba commodities. This transaction includes riba *nasi'ah*, the law is haram. The solution is that when the money is received, the sale and purchase contract is repeated so that the contract takes place in cash. (Fatwa Lajnah Daimah, volume XIII, p. 475).

9) *Maj'ma Fiqh Al Islami* (Fiqh Division OKI)

The Maj'ma Fiqh Al Islami (the fiqh division of the OIC) at a congress in Abu Dhabi in 1995 decided, "Reiterate the opinion of jurists who prohibit the exchange of gold jewelry for non-jewelry of different sizes."

10) Accounting And Auditing Organization for Islamic Financial Institutions (AAOIFI)

AAOIFI international sharia banking guidelines which states in Chapter: *Al Murabahah lil Amir Bisysyira'*, No. 2/2/6, which reads, non-cash *murabahah* buying and selling should not be carried out on gold or silver, or currency. (Al Ma'ayir Asyar'iyah, hal 93).

In general, classical scholars prohibit the practice of buying and selling gold with a credit system. If gold is exchanged (traded) for paper money, it will have consequences (conditions), namely it is permissible *to tafadhul* (excess) but the existence of *nasa'* (credit) is prohibited. This means that there must be a cash handover at the place of the contract. This means that the sale and purchase must be paid in cash / in full during the contract, and this is the opinion of the majority of Fuqoha' from the companions of the Prophet PBUH such as Ibn Umar, Ubadah bin Shamith. (Saifurrahman Barito & Zulfikar Ali, 2005)

Erwandi Tarmizi, first explained the procedure for buying and selling gold or *gold murabahah* carried out by *sharia* financial institutions. First, it alludes to how it responds, and provides a law in prohibiting or legalizing issues related to modern muamalat. Second, describe the postulates used by DSN-MUI in issuing a fatwa on the sale and purchase of non-cash gold, namely the opinion of Ibn Taymiyah and Ibn Qayyim that it is permissible to exchange gold jewelry for dinars (gold) in a way that is not equally heavy and non-cash because according to these two opinions, gold jewelry (which has been subject to human intervention) has come out of the *'illat* of dinar gold money, namely *tsamaniyah*. So, gold jewelry is no different from merchandise that can be exchanged for gold currency (dinar) in a non-cash way and is not equally heavy. Third, that the opinion or postulate in the fatwa used by DSN-MUI in allowing the buying and selling of non-cash gold is a weak postulate. Fourth, that Muslims have agreed that it is permissible to exchange gold for silver of different sizes, but it is haram to do it non-cash. Fifth, that the fatwa issued by DSN-MUI opens up opportunities to legalize jahiliah *riba* and is contrary to international Sharia banking guidelines. (Erwandi Tarmizi, 2018)

Opinion of Scholars Who Allow Buying and Selling Gold Cashless

The scholars or opinions that allow the buying and selling of gold without it are as follows:

1) Ibnu Taimiyah

Ibn Taymiyah, said in Kitab *al-Ikhtiyarat* stated "It is permissible to buy and sell jewelry made of gold and silver of the same type without conditions (*tamatsul*), and the excess is used as compensation for jewelry making services, both with cash payment and with deferred payment, as long as the jewelry is not intended as a price (money).(Abu Hasan Al-Ba'liy al-Damasyqus, 2005)

2) Ibnu Qayim

Ibn Qayyim further explained: "Jewelry (from gold or silver) that is allowed, because it is made (to be jewelry) that is allowed, changes its status to a type of clothing and goods, not a type of price (money). Therefore, zakat is not obligatory on jewelry (made of gold or silver), and neither does riba (in exchange or sale) between the price (money) and other goods, even if they are not of the same type. This is because by making (becoming jewelry), the jewelry (from gold) has gone out of purpose as a price (no longer money) and has even been intended for business. Therefore, there is no prohibition on trading gold jewelry of the same type...".(Ibnu Qayyim, 1991)

Ibn Qayyim used his own method in dealing with a new case or problem. First, he referred to the Qur'an and the Sunnah, then when there was no clear *nash* in the Qur'an and the Sunnah he took the fatwas of the companions and tabi'in. Sometimes he also took the opinion of the fiqh imams. In such a condition, Ibn Qayyim will take the opinion that is closest to the Qur'an and the Sunnah even though these opinions are not in accordance with his school of jurisprudence. With this method, there is a strong bond between fiqh and the Qur'an and Sunnah. This method harmonizes ijtiḥad in matters of fiqh. The methods used by Ibn Qayyim in performing ijtiḥad are divided into six types, namely Ijma, Qiyas, Istiḥab, Maslahah Mursalah, Urf, Sadd Adz-Dzariah. In his ijtiḥad, Ibn Qayyim did not use Istiḥsan because this method is only based on thinking without the postulates of sharia.(Refianti, 2021)

The ability to buy and sell gold in a cashless manner according to Ibn Qayyim's view is based on the following reasons:

- a. Today, gold is a jewelry and is no longer a currency like in the past which was used as a medium of exchange in transactions. Therefore, the status of gold changes to goods or commodities like other goods that can be used as objects in buying and selling.
- b. Riba does not apply to the exchange or sale of gold and money. This is analogous to when we buy a piece of land with money. Of course, this is allowed and not prohibited.

3) Wahbah Az-Zuhaily

Wahbah Az-Zuhaily in the MUI fatwa quoted the words "Likewise, buying jewelry from craftsmen with installment payments is not allowed, because the price (money) is not handed over, and it is also invalid by borrowing money from craftsmen." (Wahbah Az-Zuhaily, 2006)

According to the MUI, in terms of Wahbah Az-Zuhaily, it is permissible to buy and sell gold in installments if the purchase is not from a direct craftsman, because the gold and silver that have been formed into jewelry that causes it to have come out of its function as *tsaman* (price or money). In the context of the MUI fatwa, as one of the legal institutions in Indonesia, the MUI has also established a fatwa related to the law on the sale and purchase of non-cash gold which is a question for many people. After weighing and binding several issues and rules that are in accordance with the current situation. (Arifin & Nisa, 2022)

4) Fatwa DSN-MUI

As one of the legal institutions in Indonesia, MUI has also established a fatwa related to the law of buying and selling gold in cash, which is a question for many people. After considering and remembering several problems and rules that are in accordance with the current situation. The following is a determination based on the decision of the Fatwa of the National Sharia Council No. 77/DSN-MUI/VI/2010 concerning the Buying and Selling of Gold in Cash, as follows:

"The law of buying and selling gold in cash, either through ordinary buying and selling or buying and selling *murabahah*, the law (*mubah/ja'iz*) is as long as gold is not an official medium of exchange (money). Limitations and conditions: (Dewan Syariah Nasional, 2010)

- a. The selling price (*tsaman*) must not increase during the term of the agreement even if there is an extension after maturity
- b. Gold purchased with non-cash payment can be used as a guarantee (*rahn*).
- c. Gold that is used as collateral as referred to in point b may not be traded or used as the object of another contract that causes a transfer of ownership.

In this MUI fatwa No. 77/DSN-MUI/V/2010 concerning the sale and purchase of gold in cash, DSN-MUI stipulates that buying and selling gold in a non-cash manner either through ordinary buying and selling or buying and selling *murabahah*, the law is permissible (*mubah, jaiz*) as long as gold is not an official medium of exchange (money). However, this ability has a condition, namely that the selling price (*tsaman*) must not increase during the term of the agreement even if there is an extension of time after maturity.

DISCUSSIONS

Responding to DSN-MUI Fatwa No. 77/DSN-MUI/VI/2010

According to the provisions of DSN-MUI fatwa No. 77 of 2010 concerning *gold murabahah*, the fatwa stipulates that buying and selling gold, whether in the form of jewelry or not, can be done in cash or installments/credit, on the grounds that contextually, gold and silver have lost their function and *'illat* as a medium of exchange (*tsamaniyah*), thus, gold and silver have the same status as other commodities.

One of the MUI's considerations in deciding the fatwa is that humans really need to buy and sell gold in installments. If this is banned, according to the MUI, it will damage human benefits and make it difficult. According to my analysis, this is in line with the rules of Fiqh which are also contained in the fatwa as follows:

العَادَةُ مُحَكَّمَةٌ

Customs are used as the basis for establishing laws.

الأَصْلُ فِي الْمَعَامَلَاتِ الْإِبَاحَةُ إِلَّا أَنْ يَدُلَّ دَلِيلٌ عَلَى تَحْرِيمِهَا

Basically, all forms of mu'amalat can be done unless there is evidence that prohibits it.

Another basis used by DSN is the opinion of Ibn Taymiyah and Ibn Qayim. Ibn Taymiyah, said in the Book of Al-Ikhtiyarat stated "It is permissible to buy and sell jewelry made of gold and silver of the same type without the condition that it must be of the same level (*tamatsul*), and the excess is used as compensation for jewelry making services, both with cash payment and with deferred payment, as long as the jewelry is not intended as a price (money). (Abu Hasan Al-Ba'liyy al-Damasyqus, 2005)

Furthermore, Ibn Qayyim stated that: "It is clear that jewelry is permissible and made in the permissible manner as well, including such as shirts and goods, not as a medium of exchange. Therefore, it is not obligatory on jewelry zakat, and there is no usury between jewelry and the medium of exchange, just as there is no usury between the medium of exchange and property."

From the two statements above, it can be understood that the permissibility of buying and selling gold in installments is the loss of legal *'illat* on gold jewelry as a medium of exchange that makes it an ordinary commodity. Plus gold is allowed to be processed which eliminates the nature of money as a medium of exchange and makes it an ordinary commodity. (Setiawan bin Lahuri & Labibah Dian Umami, 2023)

Meanwhile, the majority opinion or the majority of scholars stated the opposite. This means that buying and selling gold in installments or installments is not allowed in Islamic law. Due to the strong postulates that prohibit the sale and purchase of gold in installments, many antitheses have emerged in response to this DSN MUI fatwa. DSN MUI which emphasized the permissibility of buying and selling gold in installments due to the loss of the *'illat* aspect of gold as a medium of exchange. However, in fact, it has not been able to eliminate *'illat*. This is because gold is still used by large institutions such as the state as a foreign exchange reserve, this is stated in the explanation of Law Number 23 of 1999 concerning Bank Indonesia which has been amended by Law Number 3 of 2004:

"What is meant by foreign exchange reserves is the country's foreign exchange reserves controlled by Bank Indonesia which are recorded on the asset side of Bank Indonesia's balance sheet, which includes gold, foreign banknotes and other banknotes in foreign currencies..."

Based on what we have discussed above, DSN allows buying and selling gold not in cash because it is not money. DSN-MUI Fatwa Number 77/DSN-MUI/V/2010 concerning Cashless Gold Trading, is a fatwa as a legal breakthrough, drawing a lot of criticism. In the fatwa, it is stated that buying and selling gold not in cash, either through ordinary buying and selling, or through buying and selling *murabahah*, can be accepted (*mubah, ja'iz*) as long as gold is not an official medium of exchange (*money*). The selling price of gold (*tsaman*) gold must not increase during the term of the agreement even if there is an extension after maturity. The fatwa also states that gold purchased in cash cannot be used as collateral (*rahn*) and that collateral gold cannot be transferred. (Sholihin, 2021)

Then there is one more thing that is indeed urgent, namely humans really need to buy and sell gold. If it is not allowed to buy and sell gold in installments, it will harm people's interests and they will experience difficulties. If this door (buying and selling gold in installments) is closed, then the door of receivables will be closed, and the community will experience incalculable difficulties. For example, in modern times, where people's needs are increasingly complex, people who want to buy gold but do not have enough money need installments or installments. So that buying and selling gold or *murabahah* in installments will make it appropriate to fulfill human interests and avoid difficulties or even cause crimes such as gold theft and others. (Setiawan bin Lahuri & Labibah Dian Umami, 2023)

From this explanation, the author tries to respond to the controversy in the DSN-MUI fatwa. It has been explained that there are two strong opinions regarding the ability to buy and sell gold cashlessly. Broadly speaking, the opinion that prohibits it is from the classical scholars starting

from the four madzhab imams and the scholars after them or the current scholars who still adhere to this opinion. Then the opinion that allows it, especially from Ibn Taymiyah and Ibn Qayyim on the grounds that gold is no longer a medium of exchange/money. This opinion is a reference for DSN-MUI in issuing a fatwa on buying and selling gold in cash.

On this basis, the author tries to provide a solution to people who are still in doubt about the law of buying and selling gold in cash. Here are some possible solutions:

- 1) If someone can afford to buy gold directly without installments, it would be nice if it was done without installments. This is to maintain caution so as not to cause doubts
- 2) If someone cannot afford to buy it directly and is eager to buy gold in large quantities to be used as savings, then buying in installments can be a solution. However, it would be good if this was done in a sharia institution that has implemented rules according to the DSN-MUI principle regarding the non-cash buying and selling of gold. It must also be in accordance with the consideration that the person should be able to pay in installments according to the specified time so as not to cause new problems. At least he already has a budget allocation to pay the installments based on the monthly income he earns.
- 3) If a person is only able to buy gold little by little, then it is better for him to do it seeing that now there is a lot of gold sold in small sizes so that it is easier for people who want to save gold starting from a little. Because, if the person insists on paying gold installments, he is worried that there will be congestion in the installments due to factors that may occur. For this reason, it is better to buy gold according to its ability at that time so that it can avoid the risk of late installment problems in the future.

Those are some solutions that can be done by the public regarding buying gold in installments. In essence, the main goal is the achievement of benefits. If just because gold installments cause problems in payment, it is better to avoid it and buy according to your ability.

CONCLUSIONS

From this discussion, it can be concluded that there is a controversy regarding the law of buying and selling gold in cash. Although this has been fatwa by DSN-MUI with fatwa No. 77/DSN-MUI/VI/2010, there is still a debate about the law on buying and selling gold in cash. The fatwa has been carried out in accordance with the applicable Fiqh rules and the result allows the buying and selling of gold in a non-cash manner on the grounds that currently gold is no longer a currency, but only as a commodity. However, this still raises doubts for people who are still strong in following the ulama who prohibit it. For this reason, the author provides several



solutions to respond to this. For people who can afford to buy without installments, it is better to buy it directly. Meanwhile, for someone who cannot afford it, it is allowed to buy it in installments, but it must be considered their ability to pay the installments every month. If this cannot be guaranteed, it is better to buy a little gold according to the money he has at that time. This aims to prevent the risk of delays or inability to pay in the future.

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