

Islamic Law Analysis of *Fudhuli* Buying and Selling Practices in Panyabungan Market Centre: Between Tradition and Sharia Compliance

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Abstract: *The practice of buying and selling fudhuli is a form of social interaction that occurs at the Panyabungan Market Center in meeting the necessities of life, this is considered a form of mutual assistance among fellow traders to gain profit. Buying and selling fudhuli is the practice of buying and selling by buying and selling other people's goods without getting permission from the owner of the goods. This practice became a problem because it was found that there were defects in the implementation of the sale and purchase. The defects referred to are contained in the terms of sale and purchase. In principle, the conditions for buying and selling must belong to oneself perfectly, but in a fudhuli sale and purchase, the goods being traded still belong to other people and have not received permission from the owner. This study aims to describe the problems related to the practice of buying and selling fudhuli which is mostly carried out at the Panyabungan Market Center in terms of Islamic Law.*

Keywords: *Practice, Sale and Purchase, Fudhuli, Islamic Law*

INTRODUCTION

Islam is a universal religion that covers every corner of life both how human relationships with Allah Swt and human relationships with other humans.¹ Man's relationship with his Lord is a ta'abudi concept and this is a clear provision and does not need to be questioned because this is an area of belief or faith. Meanwhile, the relationship between humans and other humans is called mu'amalah.² Among the most developed problems in social life is the problem of mu'amalah, especially mu'amalah maliyah or human interaction related to money and property with all kinds of transactions.³ *Mu'amalah maliyah* has undergone many changes from time to time, so that shari'a as a legal umbrella should not be rigid and seem to curb human activities but rather provide the widest possible freedom as long as the case does not conflict with the contents of the main teachings in Islam.⁴ Because the original law of everything that Allah Swt created to bring benefits is permissible as in one method mentioned:

الأصل في الأشياء الإباحة

¹ Asrul Hamid and Dedisyah Putra, "The Existence Of New Direction In Islamic Law Reform Based On The Construction Of Ibnu Qayyim Al-Jauziyah's Thought," *Juris (Jurnal Ilmiah Syariah)* 20, no. 2 (December 15, 2021): 247, <https://doi.org/10.31958/juris.v20i2.3290>.

² moh Rasyid Et Al., "Jual Beli Mindring Sebagai Solusi Kebutuhan Rumah Tangga (Tinjauan Fikih Muamalat)" 12, no. 2 (2020): 105–22.

³ Asrul Hamid and Dedisyah Putra, "The Practice of Buying and Selling During Friday Prayer in Mandailing District Natal: A Study With A Maqashid Al-Syari'ah Approach," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 1021, <https://doi.org/10.22373/sjhk.v5i2.7575>.

⁴ Eka Sakti Habibullah, "Prinsip-Prinsip Muamalah Dalam Islam," *Ad Deenar: Jurnal Ekonomi Dan Bisnis Islam* 2, no. 01 (March 31, 2018): 25, <https://doi.org/10.30868/ad.v2i01.237>.

In the context of mu'amalah, in principle, every form of activity is permissible unless there is clear evidence that forbids it, including in the case of buying and selling. Buying and selling is a routine activity that cannot be separated in people's lives,⁵ but buying and selling in accordance with sharia is not all Muslims do not even a few who do not know the provisions stipulated in Islamic law in accordance with the guidance of the Koran and Hadith not only for the seller but also the buyer, because they only think of profit alone without expecting blessings from these activities.

Therefore, humans as social creatures will always carry out social interactions between one another to fulfil their needs or needs in all areas of life. One part of social interaction in community life is by buying and selling.⁶ The practice of buying and selling is an activity that is allowed and encouraged in Islamic law as long as it does not deviate from the stipulated provisions so that people do not fall into ribawi practices which are strongly opposed in Islamic law. In Islam, the provisions of buying and selling have been regulated in such a way in the Quran, including in surah Al-Baqarah (2) verse 275 and surah An-Nisa' (4) verse 29.⁷

One of the forms of buying and selling found in the fiqh book is fudhuli, which is someone who fulfils a contract without having permission to do so. In other words, fudhuli buying and selling is someone who is not the owner of the goods and also not given permission or power from the owner of the goods to sell but sells the goods to others with the aim of getting more profit.⁸ The phenomenon of fudhuli buying and selling is often found in the Panyabungan Market Centre, Mandailing Natal Regency, North Sumatra without them knowing the law of the practice they are running while the majority of traders in the Panyabungan Market Centre are Muslims.

According to the results of the research conducted, this practice occurs when the buyer comes to a shop / stall to buy his needs, but the order of the goods is not in the shop / stall, then the employee will search and take it to another shop / stall, and the employees agree to sell it to the trader without the permission of the owner of the goods or the owner of the shop /

⁵ H.A.Djazuli, *Kaidah-Kaidah Fikih (Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis)* (Jakarta: Kencana Prenada Media Group, 2006).

⁶ Agustina Candra Anggadita, "Tinjauan Hukum Sosiologi Hukum Islam Terhadap Praktik Jual Beli Saren (Studi Desa M Kabupaten Sleman)," *Az Zarga': Jurnal Hukum Bisnis Islam* 10, no. 1 (2019).

⁷ Zainuddin Zainuddin, "Tafsir Al-Qur'an Tentang Jual Beli," *Jurnal Ilmiah Al-Mu'ashirah* 17, no. 2 (2020), <https://doi.org/10.22373/jim.v17i2.9240>; Zainuddin Zainuddin and Anayya Syadza Zainuddin, "Lafaz Al Bai'u Mistlu Al Riba Dalam Surah Al Baqarah Ayat 275," *Jurnal Ilmiah Al-Mu'ashirah* 19, no. 1 (2022), <https://doi.org/10.22373/jim.v19i1.12309>.

⁸ Muhammad Al-Khathib Asy-Syabini, *Mughni Al-Muhtaj Ila Ma'rifah Ma'ani Alfazh Al-Minhaj* (Beirut: Dar Al-Fikr, 1978), h. 19.

stall, although in the end when the goods have been sold they will also pay capital and part of the profit to the owner of the goods and part of the profit is divided between the two employees.

However, the employee is not the full owner of the goods, and should from the beginning before the goods are traded first ask permission from the owner of the goods in order to avoid practices that deviate from the provisions of Islamic law. The practice of buying and selling *fudhuli* is mostly carried out by employees of shops / stalls in the Panyabungan Market Centre solely to get profit as an addition to their salary as employees at the shop / stall. The employees assume that this is not something wrong because in principle the goods traded are eventually replaced with the money from the sale, without thinking about whether the goods traded already have the right or permission to be traded from the owner of the goods. Meanwhile, in Islamic teachings it is not allowed to buy and sell an item that is not owned without the permission of the owner.

METHOD

The research method used is *qualitative* research, namely research that describes a situation, phenomenon or social symptom that occurs in society which is described not in the form of numbers but quality. The approach used is normative empirical, which examines the rules for the effective application of a law in society by going directly to the object of research. The data sources used are interviews and observations to find objective conditions in the community.

RESULTS AND DISCUSSION

A. Overview of buying and selling

1. Terminology and Legal Basis of Sale and Purchase

In Arabic the word selling is known as “البيع” which comes from the word بيعا - بيع - باع which means selling. While buying is known as. “شراء” which comes from the word شراء - شري - يشري which means buying.⁹ Buying and selling means exchanging something for something else so that it gives rise to property ownership rights so that the property is allowed to be utilised. Sale and purchase according to Shari'ah is the exchange of one asset for another based on mutual consent, or transferring property rights for other property rights through permissible means.¹⁰

⁹ Ahmad Warson Munawir, *Kamus Al-Munawir* (Yogyakarta: Pondok Pesantren al- Munawar, 1984), h. 37.

¹⁰ Sayyid Sabiq, *Fiqh As-Sunnah*, Juz 3 (Beirut: Dar Al-Fikr Al-'Arabiyy, 1983), h. 162.

From this description, it can be understood that buying and selling is a form of contract in a reciprocal agreement between the party who hands over the goods called the seller to the party who receives the goods called the buyer at a specified price and based on mutual consent in a manner determined by sharia, namely in accordance with the guidance of the Koran and Hadith.

The legal basis for buying and selling as prescribed by Allah SWT in the Qur'an is found in surah Al-Baqarah (2) verse 275 and An-Nisa' (4) verse 29,

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

Translation: and Allah has justified buying and selling and forbidden usury. (Q.S Al-Baqarah (2) : 275).¹¹

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Translation: O you who believe. Do not eat each other's wealth by false means, except in trade that is consensual between you. And do not kill yourselves. Indeed, Allah is Merciful to you (Q.S An-Nisa' (4): 29).¹²

The legal basis of the hadith is,

عَنْ رِفَاعَةَ ابْنِ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ سُئِلَ أَيُّ الْكَسْبِ أَطْيَبُ قَالَ: عَمَلُ الرَّجُلِ بِيَدِهِ وَأُلْ بَيْعٌ مَبْرُورٌ (رواه البزار وصححه الحاكم)

Translation: Rifa'ah ibn Rafi' RA reported that the Prophet was asked: What is the best livelihood? He replied: "That of one who works with his hands and every clean trade". (H.R Al-Bazzar and authenticated by Hakim).¹³

The evidence from other hadiths is

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَيُّهَا النَّاسُ اتَّقُوا اللَّهَ وَأَجْمِلُوا فِي الطَّلَبِ فَإِنَّ نَفْسًا لَنْ تَمُوتَ حَتَّى تَسْتَوْفِيَ رِزْقَهَا وَإِنْ أَبْطَأَ عَنْهَا فَاتَّقُوا اللَّهَ وَأَجْمِلُوا فِي الطَّلَبِ لِحُذُو مَا حَلَّ وَدَعُوا مَا حُرِّمَ

Translation: From Jabir bin Abdullah RA, he said, "The Messenger of Allah said, 'O people, fear Allah, and be good in seeking the world. Verily, a soul will not die until it receives all of its fortune, even if a portion of it slowly. Fear Allah and be good in seeking the world. Take what is lawful and leave what is unlawful'. (HR Ibn Majah).¹⁴

In accordance with this legal basis, Muslims have agreed that the law of buying and selling is permissible in accordance with the provisions stipulated by Allah Swt and His Messenger. Buying and selling activities can help to fulfil the needs of every human

¹¹ Departemen Agama RI, *Al-Qur'an Dan Terjemahannya* (Bandung: CV. Diponegoro, 2005). (Q.S Al-Baqarah (2) : 275).

¹² RI. (Q.S An-Nisa' (4) : 29).

¹³ Imam Al-Hafidz Ibnu Hajar Al-Asqalani, *Bulughul Maram* (Jakarta Selatan: Noura, Mizan Publika, 2012).

¹⁴ Muhammad Nashiruddin Al-Albani, *Shahih Sunan Ibnu Majah* (Riyadh: Dar as-Salam, 1997).

being's life because in principle, human needs are sometimes related to what other people have so that there is no other way to get or have it except by buying and selling between the two. Therefore, the sale and purchase contract is an intermediary between humans so that their needs are fulfilled so that humans do not fall into activities that are prohibited by Shari'ah in fulfilling their needs

2. The pillars and conditions of buying and selling

In buying and selling activities, there are pillars and conditions that must be fulfilled so that the sale and purchase contract is considered valid. The majority of scholars are of the opinion that there are four pillars of buying and selling, namely: the contract (*ijab qabul*), the person in the contract (seller and buyer), the object being traded (*mauqud alaih*) and the exchange rate for the goods.¹⁵

Firstly, akad (*ijab qabul*) is an engagement between two parties to establish an agreement. The word *ijab* is an expression of offer from the seller and *qabul* is an expression of acceptance by the other party that gives legal implications in a *mu'amalah* transaction. Akad can be done in writing, gesture or orally.¹⁶ Thus, a sale and purchase is not said to be valid if *ijab* and *qabul* have not been carried out because *ijab* and *qabul* are attitudes that show the willingness (*keridhoan*) of the two parties to the contract. The conditions of the contract (*ijab qabul*) are;

1. There is clarity of intent from both parties,
2. There is conformity between *ijab* and *qabul*,
3. There is an agreement or willingness of both parties, and
4. The sincerity of both parties without coercion.¹⁷

Second, the person who has an agreement (seller and buyer) or what is commonly referred to as *aqid*, in a sale and purchase transaction it is impossible to occur without two parties making a transaction. The requirements for the person in the contract (*aqid*) are:

¹⁵ Wahbah Az-Zuhaili, *Ushul Fiqh Al-Islami* (Damaskus: Dar Al-Fikr, 1989).

¹⁶ Devid Frastiawan Amir Sup, Selamet Hartanto, and Rokhmat Muttaqin, "Konsep Terminasi Akad Dalam Hukum Islam," *Ijtihad: Jurnal Hukum Dan Ekonomi Islam* 14, no. 2 (2020), <https://doi.org/10.21111/ijtihad.v14i2.4684>; Imam Mustofa, *Fikih Muamalah Kontemporer* (Jakarta: PT Raja Grafindo Persada, 2016); Az-Zuhaili, *Ushul Fiqh Al-Islami*; Sayyid Sabiq, *Fiqh As-Sunnah*; Ibn Rusyd, *Muhammad, Bidayat Al-Mujtahid Wa Nihayat Al-Muqtashid* (Indonesia: Daar al-Kutub al-Arabiyyah, 1988).

¹⁷ Hendra Cipta, "Diskursus Konsep Dan Prinsip Akad Dalam Hukum Islam," *Asy Syar'iyah: Jurnal Ilmu Syari'ah Dan Perbankan Islam* 1, no. 1 (2016), <https://doi.org/10.32923/asy.v1i1.666>; Imam Mustofa, *Fikih Muamalah Kontemporer*; Az-Zuhaili, *Ushul Fiqh Al-Islami*; Sayyid Sabiq, *Fiqh As-Sunnah*; Rusyd, *Muhammad, Bidayat Al-Mujtahid Wa Nihayat Al-Muqtashid*.

1. Baligh, the meaning of baligh in Islam is when you have experienced signs of maturity, for men when they have dreamed of ejaculating and for women when they have menstruated.
2. Reasonable, the meaning of a reasonable person is one who can distinguish or sort and choose right-wrong or good-bad. Therefore, small children and crazy people are not valid for buying and selling. This is in accordance with surah An-Nisa' (4): 5.
3. With his own will, meaning if in carrying out the sale and purchase transaction is his own will and willingness without any coercion from any party. Therefore, buying and selling is said to be valid if there is the pleasure of both parties. This is in accordance with surah An-Nisa' (4): 29.
4. Both parties are not wasteful, which means that the parties to the sale and purchase transaction are not people who like to make extravagance which results in the growth of a wasteful attitude.¹⁸

Third, the object being traded (mauqud 'alaih) is something that is used as an object in the sale and purchase transaction must fulfil the conditions, namely:

1. The object must be pure, meaning that the thing being traded is not an unclean object or something that is forbidden in the Quran and Hadith.
2. The object can be utilised, meaning that something that is traded must have a useful value so it is forbidden to trade goods that have no useful value.
3. The object must be owned, meaning that something that is traded is the right of ownership, so it is prohibited to trade something that is not owned unless there is permission or power from the owner of the goods.
4. The object must be known, meaning that something that is traded must be clearly known by both parties, both in form, nature, substance and value so that there is no element of uncertainty (*gharar*) in the transaction.
5. The object can be handed over, meaning that the condition of something that is traded must be clear that it can be handed over, not something that is unclear about its existence.¹⁹

¹⁸ Az-Zuhaili, *Ushul Fiqh Al-Islami*; Sayyid Sabiq, *Fiqh As-Sunnah*; Rusyd, *Muhammad, Bidayat Al-Mujtahid Wa Nihayat Al-Muqtashid*.

¹⁹ Az-Zuhaili, *Ushul Fiqh Al-Islami*; Sayyid Sabiq, *Fiqh As-Sunnah*; Rusyd, *Muhammad, Bidayat Al-Mujtahid Wa Nihayat Al-Muqtashid*.

*Fourth, the exchange rate for goods. Something that is traded must have value in accordance with the applicable provisions and mutually agreed upon. In Islam, this substitute exchange rate must fulfil the criteria, namely; can store value, have a price and can be used as a means of exchange.*²⁰

3. *Fudhuli Sale and Purchase*

The term in fiqh related to buying and selling someone else's property without the owner's permission is called *fudhuli* buying and selling. In terminology, *fudhuli* is someone who acts on another person's property or holds a contract without having the mandate to do so, so it is called *fudhuli* sale and purchase, which is someone who deals in a matter or enters into a contract or several contracts, without having a representative on him or being authorised by him, such as selling or buying for someone else, or renting to someone else without guardianship or agreement on the contract and without the permission of the owner.²¹

In accordance with the above, it can be understood that *fudhuli* sale and purchase is a sale and purchase transaction carried out by someone who is not the legal owner and not a representative or not the person who controls the goods to be traded without the permission of the legal owner.²² Someone who sells goods belonging to someone else without permission, then the owner of the goods is given the option (*khiyar*) to continue or cancel the transaction,²³ this is the opinion of Imam Malik and Imam Ahmad ibn Hanbal.²⁴ Imam Shafi'i is of the opinion that the sale of *fudhuli* is invalid because the owner did not give his permission during the contracting process.²⁵

Nowadays, it is not uncommon to find the practice of buying and selling *fudhuli* in the community without paying attention to the law of the practice. Although there is still a *kebilafiyah* among the scholars regarding the ruling, from the '*illat*', there is a defective condition in the sale and purchase transaction, namely making a sale and purchase transaction on something that does not belong to the owner perfectly or without the

²⁰ Az-Zuhaili, *Ushul Fiqh Al-Islami*; Sayyid Sabiq, *Fiqh As-Sunnah*; Rusyd, *Muhammad, Bidayat Al-Mujtahid Wa Nihayat Al-Muqtashid*.

²¹ Abu Bakar Utsman bin Muhammad Syatta', *Hasyat I'anab at-Talibin*, jilid 3 (Beirut: Dar al-Kutub al-Ilmiyyah, 2007).

²² Muhammad Nawawi al-Jawi Al-Banteni, *Nihayah Al-Zein* (Beirut: Dar al-Kutub al-Ilmiyyah, 2002).

²³ Ahmad Rifai, "Pendapat Fuqaha Tentang Khiyar Dalam Jual Beli," *KASBANA: Jurnal Hukum Ekonomi Syariah* 2, no. 2 (2022).

²⁴ Az-Zuhaili, *Ushul Fiqh Al-Islami*.

²⁵ Abdullah bin Abdul Muhsin, *Al-Mughni*, juz VI (Riyadh: Dar-Alim, 1997).

permission of the owner. One of the conditions of buying and selling in accordance with sharee'ah is that the goods belong to the owner and not to someone else.

It cannot be denied that the practice of *fudhuli* sale and purchase transactions that occur in the community sometimes there are some owners of goods who are happy if their goods are sold by others without asking permission beforehand because they still benefit from the proceeds of the sale, although there are not a few owners of goods who do not give permission if someone takes their goods to be sold without their permission.

To avoid things that are prohibited by Islamic law, transactions in buying and selling must be carried out with an honest, trustworthy attitude, without *gharar* and fraud and the most important thing is the existence of pleasure so as not to cause adverse effects for both parties to the contract.²⁶ Therefore, Muslims should carry out buying and selling transactions to fulfil their needs by adhering to Islamic law, in order to get the wisdom contained in buying and selling transactions, including; to get halal, cleanliness and blessing of the property owned, then there is the value of helping that fosters social values and strengthens the sense of brotherhood among fellow human beings.

B. *Fudhuli* Buying and Selling Practices in Panyabungan Market Centre

Safeguarding property in Islam is one of the objectives of *maqashid shari'ah* as an effort to realise a happy life not only in this world but also happiness in the hereafter. Therefore, Islamic teachings emphasise that the property owned must be obtained and utilised in accordance with the provisions of the shari'ah. Property is also an *essential principle* in the social dimension of life because in obtaining property there is certainly interaction between fellow humans as a form of *mu'amalah*.²⁷

Every Muslim must be able to utilise and develop his property in accordance with the provisions of Shari'ah such as cooperation or buying and selling and so on. A person who uses or develops his property must understand how the law of the transaction he is doing so that these activities get a blessing and avoid things that are prohibited by Islamic law.²⁸ This

²⁶ Asrul Hamid et al., "Development of Sharia Based Local Wisdom Business at Society of Mandailing Natal," *LAA MAISYIR: Jurnal Ekonomi Islam* 9, no. 1 (2022): 51–68, <https://doi.org/10.24252/lamaisyir.v9i1.29413>.

²⁷ Nurhadi Nurhadi, "The Importance of Maqashid Sharia as a Theory In Islamic Economic Business Operations," *International Journal of Islamic Business and Economics (IJIBEC)* 3, no. 2 (November 10, 2019): 130, <https://doi.org/10.28918/ijibec.v3i2.1635>.

²⁸ Miftahul Huda, "Peranan Ekonomi Islam Dalam Pengembangan Harta," *An-Nisbah: Jurnal Ekonomi Syariah* 6, no. 1 (2019).

is different from what happens to traders in the Panyabungan Market Centre who carry out *fudhuli* buying and selling transactions without knowing the law.

Fudhuli buying and selling practices that occur because the goods ordered in one shop/stall do not exist so the seller takes the goods ordered from the buyer in another shop that has the goods ordered. The good relationship between fellow traders in the Panyabungan Market Centre makes it easy for them to take goods to other shops/stalls without first asking permission from the owner. This practice is not infrequently carried out by shop/stall employees, without the consent or knowledge of the shop/stall owner beforehand. The practice of buying and selling *fudhuli* is carried out by employees without realising that this practice is still a *kehlafiyah* related to the law in accordance with interviews conducted with several employees in shops/stalls in the Panyabungan Market Centre, as follows:

Nur Lana mengatakan :

I have never heard of the term fudhuli sale and purchase, nor of its ruling, but I often sell other people's shop goods because it has become a habit here. I once received an order for screen-printed T-shirts for a high school student's farewell, three dozen of which were ordered. Because the model of T-shirt requested by the buyer was not available in our shop, because I did not want to disappoint the buyer, I went to another shop to bring some examples of screen-printed T-shirts to show to the buyer. Then, the sale and purchase took place. After the goods were sold, I also gave the owner of the goods a capital bag by dividing the profit obtained from the sale, so that I and the owner of the goods both benefited.²⁹

Then Mufida said:

I have never heard of the term fudhuli trade, let alone the law, the important thing is that if a buyer comes to the shop to buy goods while the goods ordered are not in our shop, I will look for it in another shop even though I did not ask permission from the owner, because later after the sale is completed I will deposit the proceeds of the sale with the owner of the goods that I sold, so in this case we both benefit, and sometimes the owner of the goods does not know that his goods are traded because I only agree with the shop employee.³⁰

Similarly, Nur Adilah said:

If a customer comes to shop at the shop that I am looking after, but the goods they ordered are not available or have run out, while the buyer who comes is a customer of our shop, then I will find the goods ordered to another shop and I will show them to the buyer, I do this so that our customers do not feel disappointed, and the shop that has the goods I certainly think will not feel disappointed because their merchandise is also sold. I will also give them the proceeds of the sale above the capital, so they also get a profit too, we all benefit in this case and the buyer is satisfied. I have often done this because I feel that it does no harm to others.³¹

Furthermore, Fitri said:

We who sell here for a long time, and the sellers here already know each other like their own families, so when there is a shop owner who happens to be going to the mosque to pray and his shop has no one to

²⁹ Nur Lana, Karyawan Toko di Pusat Pasar Panyabungan, wawancara pada tanggal 16 Januari 2023.

³⁰ Mufida, Karyawan Toko di Pusat Pasar Panyabungan, wawancara pada tanggal 16 Januari 2023.

³¹ Mufida, Karyawan Toko di Pusat Pasar Panyabungan, wawancara pada tanggal 17 Januari 2023.

guard it, at that time a buyer comes to his shop then we usually serve the buyer even though the shop owner doesn't tell us to, and we sell the goods and the proceeds of the sale we will hand over to the shop owner, when confirmed to "we neighbours and I don't feel disadvantaged by the price sold by Fitri, instead I am happy that my goods are sold, said the shop owner." The shop owner said.³²

However, there are also those who object to this kind of transaction practice, as stated by Mawaddah:

Selling other people's goods without the permission of the owner of the goods is a common practice here, I actually object to this practice because they take our goods without asking permission first and then sell them to others and they will give the proceeds to the owner of the goods, although several times it happened that they did not deposit the sales whether it was intentional or forgotten, we do not know exactly, even if the goods taken were not sold then often the goods were not returned. In principle, I do not fully agree with this practice, although I do not know what the law is, but in certain circumstances I see an element of uncertainty and deception here if someone involved in this practice is not honest and trustworthy.³³

Based on observations made, it was found that the practice of buying and selling *fudhuli* has been rampant for a long time at the Panyabungan Market Centre, and most of the traders consider this a form of mutually beneficial cooperation between the two parties. Employees in other shops take other people's goods without the owner's permission and then sell them to other people, and the proceeds are also distributed to the owner of the goods when they are sold, and consider this something normal and commonplace because they think they have helped the owner of the goods sell their merchandise so that it is sold.³⁴

From the description of the results of interviews and observations made, it can be understood that the practice of buying and selling *fudhuli* is a transaction that occurs almost every day and has been cultivated among employees at the Panyabungan Market Centre, without them understanding how the law of the transactions they run so far, they only assume as long as no one is harmed and get a profit this is allowed to be done without seeing the consequences caused in the future if there is uncertainty and dishonesty among employees who trade goods belonging to others without the permission of the legal owner of the goods will certainly bring loss or harm to the owner of the goods.

Because the shop employees do not understand the concept or nature of the sale and purchase agreement in accordance with the provisions of Islamic law, they only make haphazard sale and purchase transactions according to what they think they understand, which is important to bring profit. While it must be understood in Islamic teachings related to the concept of property ownership, it must be clear that the property is obtained and

³² Fitri, Pedagang di Pusat Pasar Panyabunga, wawancara pada tanggal 18 Januari 2023

³³ Mawaddah, Pemilik Toko di Pusat Pasar Panyabunga, wawancara pada tanggal 22 Januari 2023

³⁴ Hasil Observasi di Pusat Pasar Panyabungan.

utilised/appropriated in a halal and good way. As a Muslim, you must understand that property ownership is something that must be accounted for before Allah Swt in order to get happiness in this world and the hereafter.

C. Islamic Law Analysis of the Practice of Buying and Selling *Fudhuli* at Panyabungan Market Centre

Islamic law is an important part of Islam and cannot be separated from Islam itself. Therefore, the study of Islamic law is a study that has existed since the early Islamic period and continues to this day.³⁵ Besides being full of sociological content, it cannot be denied that Islamic law also has a theological dimension,³⁶ including in terms of buying and selling provisions. In the practice of buying and selling, which is a form of social interaction between fellow humans, it should also include theological values (divinity) so that the practice of buying and selling carried out gets blessings and benefits.

Sale and purchase is the transfer of property for property as the basic principle is the willingness between the two parties who make the sale and purchase transaction in a way that is justified by sharia. The asset in question is something that can be owned and has a useful value. In other words, the practice of buying and selling is an effort to transfer property owned with the existence of mutual consent between the two parties by using a contract in accordance with the provisions justified by sharia. Akad is a connection between *ijab* and *qabul* in accordance with the provisions of sharia. In a contract, it cannot be just a *lafaz* but must first fulfil the pillars and conditions so that the sale and purchase carried out becomes valid and does not fall into the category of prohibited things.³⁷

In the context of *mu'amalah*, Islamic law gives freedom to humans in its implementation but is still accompanied by rules so as not to fall into what is prohibited.³⁸ This is because the practice of *mu'amalah* develops dynamically following the needs and circumstances of the community. So it is often found that various forms of *mu'amalah* are practiced by the community as a result of social interactions that occur as part of fulfilling

³⁵ Joseph Scacht, *An Introduction to Islamic Law* (London: Clarendon Press, 1996).

³⁶ Mudzakir, "Hukum Islam Di Indonesia Dalam Perspektif Konstruksi Sosial Peter L. Berger," *AL-ADALAH* 12, no. 1 (2017).

³⁷ Raja Ritonga dan Nurlaili Mardia, "ANALISIS NASH HADIS DAN AL-QUR'AN TERHADAP PRAKTIK AKAD PENGGUNAAN WIFI DI DESA PANYABUNGAN JULU," *Al-Mu'tabar* II (2022): 42–57.

³⁸ Musthafa Muhammad az-Zarqa, *Hukum Islam Dan Perubahan Sosial (Studi Komparatif Delapan Mazhab)* (Jakarta: Rineka Cipta, 2000).

their life needs³⁹ *Mu'amalah* is the rule of law of Allah Swt that regulates human life in relations between fellow human beings (social society) including in this context is buying and selling *fudhuli*.

A *fudhuli* transaction is one in which a person acts on another's property or holds a contract without having the mandate to do so, or one in which a person deals with a matter or concludes one of several contracts, without having a representative or authorised him to do so, such as selling or buying for someone else, or renting or leasing to someone else without the permission of a third party.⁴⁰ This kind of transaction is prohibited by the majority of *fiqh scholars* because it is impossible for an item to transfer ownership with a sale that is not known by the owner, so this is closer to an act that contains elements of fraud.⁴¹ This opinion is based on the hadith of the Prophet Muhammad: لَا تَبِعْ مَا لَيْسَ عِنْدَكَ "Let no one sell anything that does not belong to him." (HR. Abu Dawud, Tirmidhi, Ibn Majah and Nasa'i).⁴² Thus, it can be understood that the condition for the validity of a sale and purchase transaction is that the item being traded is perfectly owned.⁴³ Because something that does not belong to him certainly will not be able to bear the safety of the goods, so this is the same as selling birds in the air or selling fish in the water which clearly contains elements of *gharar*.⁴⁴

In addition, in Surah An-Nisa verse 29, Allah Swt prohibits the taking of other people's property by unlawful means, except on the basis of consensual trade (*ridha*). In *fudhuli* buying and selling, mutual consent between the owner of the goods and the selling party is often not achieved because there is no prior authorisation. This shows that the principle of trust, which is very important in *muamalah*, is not fulfilled.

Although in this case, there are scholars differing opinions about the law of *fudhuli* sale and purchase transactions as stated by Imam Abu Hanifah that the law of *fudhuli* sale and purchase is valid depending on the willingness of the owner of the goods, if the owner is pleased then the transaction can be continued, and vice versa if the owner is not pleased

³⁹ Mushafi Mushafi and Ismail Marzuki, "Persinggungan Hukum Dengan Masyarakat Dalam Kajian Sosiologi Hukum," *Jurnal Cakrawala Hukum* 9, no. 1 (June 1, 2018), <https://doi.org/10.26905/idjch.v9i1.2168>.

⁴⁰ Rusyd, *Muhammad, Bidayat Al-Mujtahid Wa Nihayat Al-Muqtashid*. h. 171.

⁴¹ Imam Ghazali, *Bidayatul Mujtahid*, Jilid II (Jakarta: Pustaka Amani, 2007), h. 744.

⁴² Abu Dawud Sulaiman Ibn al-Asy'at Al-Sijistaniy, *Sunan Abu Dawud* (Riyadh: Dar as-Salam, 1999); Muhammad Ibn Isa At-Tirmidzi, *Sunan At-Tirmidzi* (Beirut: Dar Al-Fikr, 1994); Muhammad Nashiruddin Al-Albani, *Shahih Sunan Ibnu Majah*.

⁴³ Wahbah az-Zuhaili, *Fiqih Imam Syafi'i* (Jakarta Timur: Almahira, 2012), h. 624.

⁴⁴ Abi Ishak as-Syirazy, *Al-Mubadzdzab*, jilid III (Beirut: Dar-Syamayyah, 1996), h. 31.

then the sale and purchase can be cancelled, in other words that Imam Abu Hanifah argues that the law of *fudhuli* sale and purchase is valid but suspended. Imam Abu Hanifah sees that the *fudhuli* sale is for the benefit of the owner of the goods, because the owner of the goods gets a profit from the sale and if the owner of the goods does not think there is any benefit, then the owner of the goods has the right to cancel the transaction. However, this opinion still requires caution to prevent violations of sharia. In Islam, the blessing of buying and selling lies not only in material benefits, but also in the conformity of the transaction with sharia principles. The practice of *fudhuli* buying and selling, although it may result in profit, risks removing the blessing because it does not fully comply with the provisions of Islamic sharia.

From the description above, it can be understood that in buying and selling transactions, what is traded should be perfectly owned, and if selling goods belonging to other people there must be permission and pleasure from the owner of the goods, although there is *khilafiyah* opinion among scholars, but when viewed in terms of the '*illat*' of the law, imposing permissibility on the practice of buying and selling *fudhuli* although there is a value of *maslahat*, but there is a defective condition found in the sale and purchase because it is not perfectly owned and there is also no permission from the owner of the goods.

Therefore, the practice that occurs in the Panyabungan Market Centre is a custom that occurs without them understanding the law according to the provisions of Islamic Shari'ah, only based on habits that are cultured in life as part of the social interaction that occurs. More than that, they only understand that it is a form of helping each other because they help sell other people's goods and give some of the profits to the owner of the goods. However, it needs to be understood in Islamic teachings, although the intention to help others is a recommendation in Islam, it does not mean that it can be done based on habit alone, but must be done in ways stipulated by sharia so that the action is worth worship. This is in accordance with Islamic principles in obtaining and managing wealth, namely that wealth must be obtained in a halal and good way and utilised or intended for good things as well as a form of accountability before Allah Swt in order to gain happiness in this world and the hereafter.

CONCLUSIONS

As part of the provisions of Shari'ah that must receive attention now and in the future is the practice of buying and selling *fudhuli* which is rampant in human life in fulfilling their needs. In general, in buying and selling, there is a fiqh principle that states that the law of everything is

permissible until there is evidence that forbids it or prohibits it. Therefore, the law of buying and selling is permissible in accordance with the provisions of Islamic shari'a because it is part of human social interaction in muamalah, but the practice of buying and selling can become something that is prohibited if in the practice of buying and selling there are elements that are contrary to Islamic shari'a such as buying and selling *fudhuli* because in this case there is a defect found in practice because it sells something that is not its own property perfectly. While the Prophet has strictly prohibited trading something that does not belong to himself. The practice of trading other people's property can be valid if you get permission from the owner of the goods, if you do not get permission from the owner, this practice should be abandoned so as not to bring blessings in obtaining wealth.

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