Selling Item that Have Not Been Paid in the Perspective of Mazhab of Syaﬁ’iyyah and Ḥanābilah

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Abstract
This research aims to determine the views of the Syaﬁ’iyyah and Ḥanābilah schools of thought regarding the status or validity of goods purchased on credit and the law of selling goods that have not been paid in full. This research is descriptive-qualitative (non-statistical) research, with the type of library research using normative and juridical-normative approaches. Data processing involves reviewing, sorting, and analyzing selected texts from Syaﬁ’iyyah and Ḥanābilah schools of thought, translating relevant Arabic content into English, and continually refining the analysis based on the research focus. The research shows that, according to the Shafi’i and Hanbali schools, ownership of unpaid goods transfers to the buyer upon contract and handover. The Shafi’i school allows selling unpaid goods, including ‘inah transactions, if the buyer has received the goods. The Hanbali school permits it if the goods are intended for proper use or trade, provided the buyer has taken possession. As an implication, it is hoped that these results will provide answers to legal issues regarding the sale of goods without payment (comparative study of the Shafi’i and Hanbali schools) for both the general public and individuals, such as entrepreneurs who routinely handle legal issues regarding buying and selling transactions or debts.

Keywords: buying and selling, credit, unpaid, Syaﬁ’iyyah, Ḥanābilah

1. INTRODUCTION
Islam is a very special religion, full of love and compassion. This is evident in its teachings that regulate every aspect of human life to achieve a dignified, happy, and prosperous standard of living. If we look deeper and objectively at the substance of Islamic teachings, we will find a perfection not found in other religions, because Islam not only addresses issues of the afterlife (such as worshiping Allah), but also extensively...
discusses interactions (relationships) between humans, humans and animals, and even humans and plants\(^1\).

Buying and selling transactions are one of the most urgent practices of interaction for human survival. Buying and selling become a means of mutual assistance among human beings\(^2\). Allah Ta’ālā says in Surah al-Mā‘idah/5:2,

وَتَعَاونُوا عَلَى الْبِرِّ وَالْتَّقْوَى وَلَا تَعَاونُوا عَلَى الْإِثْمِ وَالْغَرَّاءِ وَاتَّقُوا اللهَ إِنَّ اللهَ شَدِيدُ الْعِقَابِ

Means:
“And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty.”\(^3\)

Based on this verse, it can be understood that every human being is a social creature, where each individual cannot live a good life except with the help of others\(^4\).

Humans fundamentally have varied needs and desires for life. One way to fulfill these needs and desires is through business or buying and selling. Perhaps these needs and desires belong to others, so Islam makes business one of the relevant avenues for every era, to avoid injustice and falsehood that may occur among people in acquiring their needs or desires. This is directly explained by Allah Ta’ālā in Surah al-Nisā’ :29,

يَََٰهَا ٱلَّذِينَ ءَامَنُواْ لََ تََكُلُواْ أَموَٰلَكُم بَينَكُم بِٱلبَٰطِلِ إِلََّ أَن تَكُونَ تَِٰرَةً عَن تَرَاضٍ مِّنكُم وَلََ تَقتُلُواْ أَنفُسَكُم إِنَّ ٱللََّّ كَانَ بِكُم رَحِيماٌ

Means:
“O you who have believed, do not consume one another’s wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.”\(^5\)

Buying and selling are transactions permitted by Islamic law, as Allah Ta’ālā says in Surah al-Baqarah/2:275,

وَأَحَلَّ اللَُّّ البَيعَ وَحَرَّمَ الررِبَوا

Means:
“And Allah has permitted trade and has forbidden interest.”\(^6\)

In his Hadith, the Prophet Muhammad said,

الْبَيْعُانِ بِِلِْْيَارِ مَا لََْ ي َت َفَرَّقَا فَإِنْ صَدَقَا وَبَيَّنَا بُورِكَ لَُمَا فِِ بَيْعِهِمَا وَإِنْ كَذَبَِ وَكَتَا مُُقَتْ بِرَكَةُ بَيْعِهِمَا

Means:


\(^3\) Kementrian Agama, *Al-Qur’an Hafalan Mudah Terjemahan Dan Tajwid Warna* (Bandung: Cordoba, 2019).


\(^5\) Kementrian Agama, *Al-Qur’an Hafalan Mudah Terjemahan Dan Tajwid Warna*.

\(^6\) Ibid.

“The sale is an option as long as they do not separate. If they tell the truth and explain it, they will be blessed in their sale, and if they lie and conceal it, the blessing of their sale will be void.”

In another hadith, the Prophet Muhammad also said,

قِيلَ: يَا رَسُولَ اللهِ، أَيُّ الْكَسْبِ أَطْيَبُ؟ قَالَ: عَمَلُ الرَّجُلِ بِيَدِهِ وَكُلٌّ بَيْعٌ مَبُْورٍ

Means:
“It was said, O Messenger of Allah, what is the best livelihood? The Messenger of Allah replied, 'A man's work with his own hands and every good sale.'”

The above evidence has been used by scholars as the main basis for legalizing all commercial transactions (buying and selling) without classifying whether the price of the goods is paid in cash or on credit.

Buying and selling on credit is a transaction where the goods are received at the time of the transaction with non-cash payment, at a higher price than the cash price, and the buyer fulfills their obligation through installments and within a certain period. The essence of buying goods on credit is purchasing goods by borrowing.

Basically, debt is not encouraged in Islamic law unless it is in dire need and capable of repayment. The Prophet Muhammad often prayed to Allah for protection from the burden of debt, with the prayer,

اللَّهُمَّ إِنْنِإِ أَعُوذُ بِكَ مِنَ الْجَرَّاحِ، وَالْمَشْيِ، وَالْعُسْرِ، وَالْكَسْبِ، وَالْبَيْعِ، وَالْمَبْعَدِ، وَضَلْعِ الدَّيْنِ، وَغَلَبَةِ الرَّجَالِ

Means:
“O Allah, I seek refuge in You from anxiety and sorrow, weakness and laziness, miserliness and cowardice, the burden of debt, and the domination of men.”

When asked why seek refuge from the burden of debt, the Prophet Muhammad replied,

إِنَّ الرَّجُلَ إِذَا غَرِمَ حَدَّثَ فَكَذَبَ، وَوَعَدَ فَأَخْلَفَ

Means:
“Because when someone is burdened with debt, he will lie when he speaks and break his promise.”

‘Umar ibn al-Khaṭṭāb once said,

وَإِيَّا كُمْ وَالدَّيْنَ إِنَّ أَوَّلُ هُمْ وَآخِرُهُ حَرْبٌ.

Means:
“Beware of debt, because a person who is in debt begins his life with anxiety and ends it with destruction.”

10 Ibid.
11 Ibid.
12 al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*.
13 Ibid.
The above evidence, once again, indicates that debt is generally not encouraged in Islam, except in extremely needy situations. 'Āishah reported,

اشترى رسول الله صلى الله عليه وسلم من يهودي طعامًا، ورهنَه ديره

Means:
“The Messenger of Allah bought food from a Jew on credit, and the Prophet Muhammad provided his armor as collateral.”

This hadith illustrates that the Prophet Muhammad borrowed with the purpose of fulfilling his basic needs, namely to obtain food for himself and his family, not for luxury or similar purposes. This is in stark contrast to the attitude of some Muslims who too easily buy goods on credit

Buying and selling on credit is mentioned by Allah in Surah al-Baqarah/2:282,

يَأَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنَتْ بِدَيْنٍ إِلََ أَجَلٍ مُسَمًّى فَاكْتُبُوهُ وَلْيَكْتُبْ بَيْنَكُمْ كَاتِبٌ بِِلْعَدْلِ.

Means:
“O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice.”

This verse covers all non-cash contracts, including credit sales. The generality of this verse serves as the basis for the permissibility of buying and selling on credit. In addition to the Qur’an, the legitimacy of buying and selling on credit is also explained in the hadith of the Prophet Muhammad, such as,

كان لرجل على النبي صلى الله عليه وسلم سنًا من البل، فجاءه يتقاضاه، فقال صلى الله عليه وسلم: أعطوه، فطلبوا سنًا وفِي الله يِبْك، قال النبي صلى الله عليه وسلم: إن خياركم أحسنكم قضاء

Means:
“A man once lent camels to the Prophet Muhammad, and when the man came to collect, the Prophet Muhammad repaid him with better camels. The man said, ‘You have fulfilled your obligation well, may Allah reward you.’ The Prophet then said, ‘The best among you are those who are best in fulfilling their debts.’

In 2020, Bisnis.com reported that the Financial Services Authority (OJK) noted credit growth occurred in almost all regions of Indonesia, except South Kalimantan, South Sulawesi, and East Java. This statement proves that the credit system has become a necessity and a way out for some people in meeting their living needs. This reality is one of the real proofs that buying and selling on credit has been used as a means to meet needs and face life’s challenges.

However, the immense and constantly changing needs and challenges of life often make a debtor who buys goods on credit and has not paid off their installments, resell the goods for cash, which may be due to their inability to pay the remaining installments or selling them as a means of business to obtain additional capital or profit. This
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Phenomenon is certainly interesting to study further, especially from the perspective of Islamic law. Therefore, the emerging issue to be addressed is: what is the status of goods purchased on credit from the perspective of Islamic commercial law? What is the law regarding selling goods that are not yet fully paid from the perspective of Islamic commercial law?

Several previous studies and research have examined credit transactions from the perspective of Islamic law, including:

A study by Resa Wulandari titled “Islamic Legal Review of Credit Sale of Goods (Case Study in Banjar Negeri Village, Gunung Alip District, Tanggamus Regency).” This study revealed that the implementation of credit sales practices by the residents of Banjar Negeri Village, Gunung Alip District, Tanggamus Regency, is not documented, merely oral, and lacks witnesses. Islamic law views the existence of conditions in sales transactions that do not comply with Islamic legal theory regarding their implementation, which may ultimately harm the debtor.

A study by Tri Wahyuni titled “Islamic Legal Analysis of the Credit System at PT. Colombus Pinrang.” This research examined the credit sales system and credit agreement contracts at PT. Colombus Pinrang, concluding that PT. Colombus Pinrang specializes in selling household and office necessities, where the purchase process involves installment payments. It was found that some practices at PT Colombus Pinrang comply with Islamic law, while others do not, mainly due to relatively expensive and high installment payment systems. Additionally, certain conditions must be met before crediting an electronic item, specifying the loan amount, monthly installment, and ensuring timely payments.

A study by Misbakhul Khaer and Ratna Nurhayati titled “Taqsith (Credit) Sales in the Perspective of Islamic Economic Law.” This study discusses the definition and characteristics of credit sales, elements involved in credit provision, including trust, agreement, duration, risk, and remuneration. It also outlines scholars' views on credit sales, with some prohibiting it on the grounds of it being usury and forbidden, while the majority allow additional charges in credit sales, considering it profit rather than usury, and beneficial for both sellers and buyers.

A study authored by Ronny Mahmuddin titled “Tawarruq Sale Law According to Ibn Taymiyyah.” This research explains that tawarruq sales are widely used in Islamic banking. It elaborates on the definition of tawarruq sales linguistically and terminologically according to scholars, intellectuals, and Ibn Taymiyyah, aiming to understand its legal status according to Ibn Taymiyyah. According to Ibn Taymiyyah, tawarruq sale involves buying goods on credit and then selling them for cash to a third party for profit, which he deems disliked (makrūh). However, if the intention is to utilize or trade the commodity, it is permissible.

Although the aforementioned studies have examined and discussed credit transactions in the general context of Islamic law, they have not delved deeper into the

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22 Tri Wahyuni, “Analisis Hukum Terhadap Sistem Perkreditan Pada PT Colombus Pinrang” (Sekolah Tinggi Agama Islam Negeri (STAIN), 2018).
validity of ownership rights in credit sales and the legal aspects of selling goods that are not fully paid for (on credit) based on a comparative study of schools of thought. In this regard, this research attempts to explore ownership of goods in credit sales and the legality of selling such goods when they are not fully paid for, using the approaches and studies of two major schools of thought widely followed by the Indonesian community, namely the Shafi'i and Hanbali schools. Therefore, this research is conducted with the following objectives: (1) to understand the views or opinions of the Shafi'i and Hanbali schools regarding the status or validity of goods purchased on credit, whether they have become the buyer's property (on credit) or not; and (2) to understand the views or opinions of the Shafi'i and Hanbali schools regarding the legality of selling goods that are not fully paid for.

This study is a descriptive-qualitative (non-statistical) research, as a research process to understand human or social issues by creating comprehensive and complex descriptions conveyed in words, reporting detailed perspectives obtained from information sources, and conducted in a natural setting. The type of research used in this study is library research, which involves gathering data and information available in libraries, such as books, magazines, documents, notes, historical accounts, and others.

The approach used in this research includes:

a. Normative approach, which is a method of examining a researched issue based on the norms contained in Islamic law, derived from the Qur'an, hadith, and Islamic legal principles as well as the opinions of scholars established within Islamic law comprehensively;

b. Normative Juridical Approach, which is legal research conducted by conducting searches of regulations and literature related to the researched issue. This approach is used to find and establish the legal basis for the issue of selling goods that are not fully paid (a comparative study of the Shafi'i and Hanbali schools of thought), derived from the Qur'an and hadith and supported by the opinions of scholars.

Data processing is carried out through several stages as follows:

a. Reviewing selected books from two schools of thought (Shafi'i and Hanbali), then sorting out the contents of the books related to the research problem, both in terms of the substance of the source and its application to law.

b. Translating the selected book contents into English (if the book is written in Arabic), and referring to transliteration guidelines if there are terms, words, or sentences that need to be transliterated, such as al-Majmū’ Syarḥ al-Muhażżab, al-Mawsū’ah al-Fiqhiyyah al-Kuwaitiyyah, al-Syarḥ al-Mumti’ al-‘alā Zād al-Mustaqni, al-Fiqh al-Islāmī wa Adillatuḥ, Fatāwā Nūr ‘alā al-Darb, Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid, al-Mugnī, al-Umm, al-Kāfī fī Fiqh al-Imām Ahmad, etc.

c. Analyzing the collected data or information by constantly returning to the research focus.

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28 This research selected the Shafi‘i and Hanbali schools because they are the most widely followed by the Indonesian population. Additionally, these schools offer diverse and in-depth views on Islamic commercial law. By comparing these two schools, the study aims to uncover differences and similarities in legal interpretations, providing more comprehensive and practical insights for those regularly engaged in buying, selling, and debt transactions.
The primary data sources in this study consist of books and literature discussing general and specific aspects of buying and selling, including credit transactions, contemporary jurisprudence, school of jurisprudence (fiqh), as well as other books related to the law of selling goods on credit (a comparative study of the Shafī’i and Hanbali Schools of thought). Meanwhile, the secondary data sources required for this research include research-based books in the form of reports, religious scholars' rulings (fatwas), articles, journals, print media, and online media.

In the qualitative method, the researcher employs two approaches: (1) Deductive Method, which involves reasoning from the general to the specific. Deductive reasoning often employs syllogism (drawing conclusions consisting of general premises, specific premises, and a conclusion)\(^\text{29}\); (2) Comparative Method, which aims to compare two cases of jurisprudence that have occurred in society. This study can be conducted if there are unique aspects between their similarities and differences\(^\text{30}\).

2. DISCUSSION

2.1. Ownership Status or Validity of Goods Sold on Credit

Before discussing the legality of selling goods on credit, it is essential to address the ownership status of goods sold on credit. Determining who owns goods sold on credit is crucial because when someone engages in a credit transaction, the status of the credited goods becomes significant. It is important to ascertain whether the goods have become the property of the buyer or remain the property of the seller until they are fully paid off.

Fundamentally, the principles and rules in Islamic law have indicated the requirement for the direct acceptance of the transaction object at the time of contracting\(^\text{31}\). Sometimes, this becomes a valid condition in the contract. The ability to deliver the object of sale has become a condition for the sale object. In the study of the theory of buying and selling, it is mentioned that the consequence of a sales transaction is to establish ownership or property rights over the transaction participants.

The participants in the transaction who have engaged in a sales contract, particularly the indebted/selling party, have essentially transferred their goods to the buyer, thereby transferring ownership to the buyer and granting them authority over the credited goods. Therefore, it can be concluded that goods purchased on credit become the property of the buyer after the contract and handover between the transaction participants.

2.1.1. Opinions of the Shafī’i School

Within the Shafī’i school, it has been explained that the ownership status of goods transfers to the buyer, marked by al-qabḍ (taking/receiving). This has been detailed by Shafī’i scholars, including al-Nawawī in his book of al-Majmū’ Syarḥ al-Muhażżab, regarding when the buyer is considered the owner of the purchased object. This is expressed as follows\(^\text{32}\):

\[\text{مَتََ يََْلِكُ الْمُسْتَقْرِضُ الْعَيْْ الْتََ اسْتَقْرَضَهَا؟ فِيهِ وَجْهَانِ مِنْ أَصْحَابِنَا}\]

\(^{29}\) Nawawi, Metode Penelitian Fiqh Dan Ekonomi Syari’ah.

\(^{30}\) Ibid.

\(^{31}\) Kementerian Wakaf dan Urusan Islam Kuwait, Al-Mausū’ah Al-Fiqhiyyah Al-Kuwaitiyyah, II (Kuwait: Dār al-Salāsil, 1983).

\(^{32}\) Abū Zakariyyā Muḥyī al-Dīn Yahyā ibn Syaraf Al-Nawawī, Al-Majmū’ Syarḥ Al-Muhażżab (Dār al-Fikr, 2010).
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Means:
“When does the borrower own the item he borrowed? There are two opinions among our scholars.”

In this discussion, al-Nawawī mentions two opinions within the Shafi‘i school. The first opinion states that ownership status transfers to the buyer at the moment they take or receive the purchased item. al-Nawawī33 explains this in his book, al-Majmū‘ Syarḥ al-Muḥaẓẓāb:

أَنَّهُ يََْلِكُهُ بِِلقَبْضِ لَِنَّهُ عَقْدٌ يَقِفُ الْتَصَرَّفُ فِيهِ عَلَى الْقَبْضِ فَوَقَفَ المِلْكُ فِيهِ عَلَى الْقَبْضِ

Means:
“That he owns it by taking (receiving) it because it is a contract where authority of disposal (selling, gifting, and other actions) over the purchased object stands on the act of taking. Thus, ownership rights have ceased/fallen to the buyer at the time of handover.”

In the first opinion, it is evident that the transfer of ownership or ownership status of the goods from the seller to the buyer is marked by al-qaḍ (taking/handover) occurring between the seller and the buyer or at the moment the buyer takes possession of the purchased item when the contract is concluded.

After mentioning the first opinion, al-Nawawī34 subsequently discusses the second opinion, which states that the transfer of ownership status of the purchased object from the seller to the buyer is validated when the buyer has (taken action) on the object. al-Nawawī35 conveys this as follows:

لاَ يََْلِكُهَا إِلََّ بِِلْتَّصَرُفِ بِِلْب َيْعِ أَوْ الَِْبَةِ أَوْ ي ُت َلرِفُهَا أَوْ يُتْلَفُ فِِْ يَدِه

Means:
“He (the buyer) does not own it except by disposing of it through sale or gifting, or by destroying it or causing damage to it in his possession.”

From the expression provided, it is understood that makes the buyer the owner of the purchased object is when they take action on the object. Therefore, in this second opinion, it can be concluded that receiving the purchased object in a transaction is not sufficient to make the buyer the legitimate owner or to indicate the transfer of ownership status from the seller to the buyer.

The presentation above, which discusses the differences within the Shafi‘i school regarding the timing of the transfer of ownership, divided into two views, is also expressed by one of the Shafi‘i scholars named Abū İshāq in his book of al-Mazhab fī al-Fiqh al-Imām al-Syāfi‘ī. In this book, it is explained that the first opinion holds that the ownership status of goods sold on credit has transferred from the seller to the buyer when the buyer has received or taken possession of the purchased item, or when there has been a handover between the seller and the buyer. The second opinion holds that the ownership status of goods sold on credit has transferred from the seller to the buyer when the buyer has taken action on the goods, whether by selling, gifting, or causing damage to the object36.

33 Ibid.
34 Ibid.
35 Ibid.
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Al-Qazwīnī\(^{37}\) in his book of *Fatḥ al-‘Azīz bi Syarḥ al-Wajīz*, a Shafi’i jurisprudence book, asserts that there is no doubt that the buyer (debtor) has ownership of what they purchased on credit. However, regarding when they own it, there are two narrations from al-Syāfi’ī. The first opinion is that the buyer owns it through *al-qabḍ* (taking/handover). The second opinion is that it is through *taṣarruf* (action) on the goods.

Al-Nawawī\(^{38}\) affirms that the correct opinion among the two is the first opinion, which states that the transfer of ownership is marked by *al-qabḍ* (taking or receiving) on the buyer's side. In his book of *Rauḍah al-Ṭālibīn wa `Umdah al-Muṣfīn*, another Shafi’i jurisprudence book authored by al-Nawawī, the issue is also discussed, leading to the conclusion that the correct opinion, upheld by most Shafi’i scholars among the two opinions, is the first opinion, which states that the transfer of ownership is marked by *al-qabḍ* (taking/receiving) the purchased object on the buyer's side. Al-Nawawī (2020) states:

أَصَحُّهُمَا عَنْدَ الَْْكْثَرِينَ: الَْْوَّلُ

Means:
“The more correct view among most Shafi’i scholars regarding the two opinions is the first opinion.”

This is reinforced by the statement of Al-Nawawī\(^{39}\), which states:

فَظَاهِرُ فِِ عُمُوْمِ

 Means:
“The apparent general rule regarding the establishment of ownership is through *al-qabḍ* (taking/receiving), through gifting, as long as ownership can be acquired through compensation.”

From the exposition mentioned above, it can be concluded that the opinion adhered to and considered more accurate in the Shafi’i school is the first opinion, namely, that ownership transfers to the buyer when they take or receive the object.

2.1.2. Opinions of the Hanbali School

It has been explained in the books of the scholars of the Hanbali school regarding when a buyer becomes the owner of the goods purchased on credit. This discussion is found in the chapter on buying and selling in the discussions on *al-qard* (debts) written by the scholars of the Hanbali school. In this discussion, they mention that a buyer who purchases on credit already owns the purchased item when the buyer has received or taken possession of the purchased item.

In the book of *al-Muḥarrar fī Al-Fiqh `alā Māzhāb Aḥmad* written by al-Ḥarrānī\(^{40}\), it is explained that ownership rights over the purchased item are marked by its receipt by the buyer, or in other words, when the buyer takes possession of the item. This is conveyed in the following wording:

\[
\text{وَمِلَّةَهُ،} \quad \text{فَصَّضَطَهُ}
\]


\(^{39}\) Al-Nawawī, *Al-Majmūʿ Syarḥ Al-Muhāzzab*.

Means:
“...and the buyer on credit already owns the purchased item, marked by al-qabḍ (receiving/obtaining it).”

The statements quoted above have provided one important point, namely, that when the buyer takes the item purchased from the seller, at that moment, they have become the rightful owner of the purchased item. Therefore, the ownership status of the purchased item is in the hands or control of the buyer.

Ibn al-Najjār, who is also one of the Hanbali scholars, made a clear and explicit statement in his book on the discussion of debts, stating that ownership rights have fully transferred when the buyer has received or taken possession of the item from the sale. The argument is expressed as follows⁴¹:

وَيَتِمُّ بِقَبْضَٰ الْمِلْكِ فِِْ الْقَرْضِ بِِلْقَبْضِ

Means:
“And ownership of the purchased item is established by al-qabḍ (taking or receiving it).”

One piece of evidence that the buyer has become the owner of the purchased item is the wording and texts used during the transaction. The phrase used in credit transactions, as expressed by Manṣūr Ibn Yūnus al-Bahūṭī in his book of Kasysyāf al-Qināʾ⁴³, is as follows:

مَلَّ كْ تُكَ هَذَا عَلَى أَنْ تُرُدَّ لِِ بَدْلَهُ. أوْ خُذْ هَذَا اِنْتَفِعْ بِهِ، وَرُدَّ لِِ بَدْلَه.ُ

Means:
“I hereby make you the owner of this wealth, and it is incumbent upon you to return its equivalent. Or, take this wealth along with its benefits and give me its equivalent.”

Upon closer examination and analysis of the wording and texts used during credit transactions, the phrase “I hereby make you the owner of this wealth, and it is incumbent upon you to return its equivalent” serves as realistic evidence or argument that the seller has transferred ownership to the buyer, and the ownership status of the purchased item has shifted to the buyer’s hands.

In the Hanbali jurisprudence book titled al-Inṣāf fī Maʿrifah al-Rājiḥ min Khilāf by al-Mardāwī⁴⁴, it is stated:

Means:
“And ownership of it is established by al-qabḍ (taking or receiving it). It is not established before taking or receiving it. And this is one of the two opinions.”

The Kuwaiti Encyclopedia of Islamic Law, al-Mausū‘ah al-Fiṣḥiyyah al-Kuwaitiyyah45, also mentions:

Means:
“Abū Ḥanīfah, Muḥammad, the majority of the Shafi‘i school, and the Hanbali scholars, as well as others, are of the opinion that a borrower is considered to own the lent property only when they take or receive it.”

Looking at the opinion of Imam Mālik, he states that when the buyer (debtor) has made a contract with the seller (creditor), it makes the buyer (debtor) the full owner of the purchased item, even if they have not yet received it46.

From the exposition mentioned above, it can be concluded that the opinion adhered to and considered more accurate in the Hanbali school is that the contract between the buyer and the seller and the acceptance of the object of the credit transaction make the buyer the owner of the transaction object.

2.2. Law on Selling Goods on Credit
2.2.1. Opinion of the Shafi‘i School

When discussing lending, in the Shafi‘i school, it is considered recommended. This means that it is recommended but not obligatory. This was expressed by al-Nawawī47 in his book of al-Majmū‘ Syarḥ al-Muḥazzab with the following statement:

Means:
“Lending is recommended, meaning it is commanded without obligation.”

The meaning of al-qabḍ (taking or receiving) is referred back to ‘urf (common understanding). Al-Nawawī48 in his book of al-Majmū‘ Syarḥ al-Muḥazzab stated this as follows:

Means:
“Our scholars (Shafi‘i scholars) say that concerning the transfer of transactions, it is referred back to ‘urf (common understanding).”

Al-Nawawī49 detailed that concerning the object, the transfer has many forms, including:

45 Kementerian Wakaf dan Urusan Islam Kuwait, Al-Mausū‘ah Al-Fiṣḥiyyah Al-Kuwaitiyyah.
46 Ibid.
47 Al-Nawawī, Al-Majmū‘ Syarḥ Al-Muḥazzab.
48 Ibid.
49 Ibid.
a. Immovable property, such as land or houses. In this case, the form of transfer is by 
al-takhliyyah (releasing), where the seller releases all personal attributes and allows 
the buyer to use it. Currently, this is marked by a deed of sale in front of a Notary;
b. Movable property but difficult to move, such as wood, sacks of grain, and others. 
The form of transfer is by removing it from the seller's jurisdiction. Al-Nawawī stated as follows:

\[
فَقَبْضُهُ بِِلن َّقْلِ إلََ مَكَان لََ اخْتِصَاصَ لِلْبَائِعِ بِهِ سَوَاءٌ نُقِلَ إلََ مِلْكِ الْمُشْتََِي أَوْ مَوَاتٍ أَوْ شَارِعٍ أَوْ مَسْجِدٍ أَوْ غَيِْْهِ
\]

Means: 
“The transfer is by moving it to a place not under the seller's jurisdiction, whether it is 
moved to the buyer's property or placed in an empty land, roadside, mosque, or 
elsewhere.”
c. Graspable objects, such as coins, books, and small items. The form of transfer is by 
physically receiving it by the buyer. Al-Nawawī stated as follows:

\[
فَقَبْضُهُ بِِلت َّنَاوُلِ بِلََ خِلََفٍ
\]

Means: 
“The transfer for small items is by being received by the buyer, and there is no 
difference of opinion in this matter.”

Once the buyer receives the purchased item, it makes the buyer the owner of the 
item, even if it is not fully paid for. After understanding that the buyer has become the 
rightful owner of the purchased item, it grants them the authority to dispose of it, whether 
by gifting it, selling it, or other forms. This is stated by al-Syāfi’ī al-Makki in his widely 
known book of al-Umm:

\[
فَمَنْ اب ْتَاعَ شَي ْئًا كَائِنًا مَا كَانَ ف َلَيْسَ لَهُ أَنْ يَبِيعَهُ حَتََّ ي َقْبِضَهُ
\]

Means: 
“Whoever buys something that exists, then he has no right to sell it until he has possession 
of it.”

The statement by al-Syāfi’ī sheds light on the permissibility of selling goods on 
credit with the condition that the buyer has possession of the item. Because when they 
receive it, at that moment, the buyer has become the rightful owner of the item.

Therefore, goods on credit can be resold. This is also supported by the opinions 
of scholars, including Shafi‘i scholars, as quoted in the Kuwaiti Encyclopedia of Islamic 
Law, which states:

\[
وَاسْتَدَلُّوا بَِِنَّ الْمُسْت َقْرِضَ بِنْفْسِ الْقَبْضِ صَارَ بِسَبِيلٍ مِنَ التَّصَرُّفِ فِِ الْقَرْضِ مِنْ غَيِْْ إذْنِ الْمُقْرِضِ بَيْعًا وَهِبَةً وَصَدَقَةً وَسَائِرَ التَّصَرُّفَاتِ، وَإِذَا تَصَرَّفَ فِيهِ ن َفَذَ تَصَرُّفُهُ، وَلََ يََْلِكْهُ لَمَا جَازَ لَهُ التَّصَرُّفُ فِيهِ
\]

50 Ibid.
51 Ibid.
52 al-Syāfi’ī Abū ‘Abdillāh Muhammad ibn Idrīs ibn al-‘Abbās ibn ‘Uṣmān ibn Syāfi’ ibn ‘Abd al-
53 Kementerian Wakaf dan Urusan Islam Kuwait, Al-Mausū’ ah Al-Fiqhīyyah Al-Kuwaiyyah.
Means:
“They argued that the borrower, by taking possession of the same object, has the right to use it for various transactions, such as selling, giving as a gift, donating, and other transactions, without the lender's permission. When they use the object, their transaction is valid and does not depend on the lender's approval. This indicates ownership, as if they did not own it, they would not be allowed to use it.”

Al-Syāfi‘ī in his book al-Umm stated that a lease agreement is similar to a sale transaction, just as a sale cannot take place before the buyer has received the item, so it is with leasing. The basis for this argument is that one cannot sell goods that have not been received. This statement by al-Syāfi‘ī is also echoed by Ibn al-Qudāmah with the following statement:

وَقَالَ السَّافِعِيُّ: لَا يََُوزُ التَّصَرَّفُ فِيْهَ قَبْلَ قَبْضِهِ.

Means:
“Imam al-Syāfi‘ī said that dealing (selling, renting, pawning, etc.) with something not yet owned is not permissible.”

Once again, the prohibition on selling goods that have not been received or do not exist has been emphasized by al-Syāfi‘ī al-Makki with the statement:

فَلََ يَبِيعُهُ حَتََّ يَقْبِضَهُ.

Means:
“Therefore, a person should not sell a commodity until they have received it.”

This statement by Imam al-Syāfi‘ī is also echoed by Al-Khin with the following statement:

فَلََ يََُوْز بَيْعُ مَا هُوَ مَعْدُوْم.

Means:
“It is not permissible to transact in something that does not exist.”

Through these statements, it can be understood that selling goods on credit is permissible, provided that the buyer has received the item.

One argument that provides a very clear and strong indication of the permissibility of selling goods on credit is that in the school of Imam al-Syāfi‘ī, the transaction of īnah is allowed. This is stated in the Kuwaiti Encyclopedia of Islamic Law as follows:

وَجُبَّ زَةُ الشَّافِعِيُّ نَظَرًا إِلََ صُورَةِ الْعَقْدِ حَيْثُ ثُوُافَرَتْ أَرْكَانُهُ وَشُرُوطُهُ.

Means:
“Al-Syāfi‘ī allows the īnah transaction, considering the form of the contract where its pillars and conditions are met.”

Al-Nawawī explains that īnah sale involves someone selling an item for a certain price in non-cash terms, then buying it back from the buyer in cash at a lower
price, and such a transaction is deemed permissible. However, the majority of scholars, including Imam Ahmad, do not permit 'īnah transactions.

After considering the statements from al-Syāfi‘ī and other scholars of the Shafi‘i school, it can be concluded that selling goods on credit is permissible, provided that the purchased item is in the possession of the buyer.

2.2.2. Hanbali School of Thought

When it comes to matters of lending and borrowing, in the Hanbali school of thought, it is permissible based on the endorsement of the Sunnah (tradition) and consensus (ijma). This was articulated by Ibn al-Qudāmah in his book al-Mugni with the following statement:

وَهُوَ جَائِزٌ بِِلْسُنَّةِ وَالِْْجَْْاعِ

Means:
“Debts and credits are permissible based on the Sunnah and consensus.”

Selling goods on credit in the Hanbali perspective is considered permissible or a valid transaction. This is because goods sold on credit become the property of the buyer, who has the right to use, donate, and sell these goods.

Regarding the concept of qaḍḍ (taking possession), Ibn Taymiyyah al-Ḥarrānī provided a standardization in his book al-Majmū‘ al-Fatāwā, stating that delivery or qaḍḍ is based on the custom of the society, as expressed in the following statement:

وَتََرَةً بِِلْعُرْفِ كَالْقَبْضِ وَالت َّفْرِيقِ

Means:
“Sometimes it is based on custom, such as delivery or separation.”

Therefore, the form of delivery in a sales transaction is subject to the prevailing customs in a particular area.

When it comes to selling goods on credit, the Hanbali school of thought recognizes a practice known as tawarruq. Al-‘Usaimīn in his book al-Syarḥ al-Mumti’ provides an illustration of tawarruq as follows:

إِذَا بَِعَ الْسرِلْعَةَ بِثَمَنٍ مُؤَجَّلٍ، ثَُّْ إِنْ الَّذِي اِشْتَََاهَا بَِعَهَا عَلَى آخَرِ، ثَُّْ اِشْتَََاهَا الْبَائِ

Means:
“If a person sells a commodity at a deferred price, then the buyer sells it to another person, and then the original seller buys it from the latter at a lower cash price, then this is permissible; because the prohibition of usury is far removed in this case.”

Ibn Bāz in his book Fatāwā Nūr ‘alā al-Darb also mentions the permissibility of tawarruq:

التَّوْرُقُ مَعَامَلَةٌ مَعْرُوفَةٌ عَنْدَ أَهْلِ الْعِلْمِ، فِيهَا حُرُفُ بَيْنَ أَهْلِ الْعِلْمِ، وَالصُّوْبَةُ أَنَّهَا لَا بَأسَ بِهَا

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Means:
“Tawarruq is a known transaction among scholars, and although there is disagreement among them, it is permissible.”

The description of tawarruq provided by Ibn Bāz is as follows:
أَنْ يَبِيْعَ الِْْنْسَانُ سِلْعَةً عَلَى إِنْسَانٍ مُُْتَاجٍ إِلََ أَجْلٍ مَعْلُوْمٍ، وَهَذَا الْمُشْتََِي ب َعْدَ مَا يَسْتَ

Means:
“A person sells a commodity to someone in need on credit for a known period, and after receiving it, the buyer sells it for cash to meet his needs, such as marriage, debt repayment, building a house, and so on.”

The statements mentioned above refer to the permissibility of selling goods on credit (tawarruq). This is based on what is found in the earlier books of the Hanbali school of thought, as recorded in the book “Kasysyāf al-Qinā‘ ‘an Al-Iqnā‘” and also in the book “al-Insāf fi Ma‘rifah al-Rājiḥ min Khilāf”. By examining the statements and examples above, it is understood that tawarruq transactions are permissible and considered valid according to the majority of scholars in the Hanbali school of thought. However, Imam Ibn Taymiyyah and his student Imam Ibn al-Qayyim do not permit it.

Ibn Taymiyyah defines tawarruq as a person purchasing goods from someone on credit and then reselling them for cash to a third party with the intention of obtaining money or capital, and then profiting from the sale of the credit goods.

Based on this definition, Ibn Taymiyyah divides sales transactions into three categories. First, when someone buys goods like food, drink, clothing, vehicles, housing, etc., for their own use, this is a permissible transaction in the eyes of Allah. Second, when someone buys these goods intending to trade them, whether in the same area or elsewhere, this is a trade permitted by Allah. Third, when someone's intention is neither for personal use nor for trading but solely to obtain money due to their need, and they are unable to borrow or enter into a salam transaction, so they buy goods to resell them and take the price, this is what is called tawarruq, which is considered disliked according to the scholars' opinions, including one of the opinions of Imam Ahmad.

From the above illustration, it can be concluded that one of the indicators leading Ibn Taymiyyah to dislike tawarruq transactions is because the buyer's intention or purpose is not to benefit from or trade with the commodities purchased, but only to obtain money or price for those commodities. Therefore, when someone buys something on credit with the intention of benefiting from it or trading with it, they may sell it even though the commodity is still unpaid for.

Ibn al-Qudāmah in his book “al-Mugnī” provides a statement that clarifies the permissibility of selling goods that are not fully paid for, as stated below:

Ibn Bāz.

Al-Bahūtī, Kasysyāf Al-Qinā‘ ‘an Al-Iqnā‘.

Al-Mardāwī, Al-Insāf fi Ma‘rifah Al-Rājiḥ min Khilāf.

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Al-Harrānī, Majmū’ Al-Fatāwā.

Ibn Bāz.

Al-Maqdisī, al-Mugnī.
Means:
“Any item that requires acceptance at the time of purchase, then it is not permissible for the buyer to sell it until they have received it.”

This statement by Ibn al-Qudāmah is based on the hadith of the Prophet Muhammad (peace be upon him) which states\textsuperscript{72}:

\begin{quote}
من اتبعه طعاما فلا يباعه حتى يستوفيه
\end{quote}

Means:
“Whoever buys food, let him not sell it until he has received it.”

Imam Ahmad also mentions a similar hadith in his Musnad\textsuperscript{73}:

\begin{quote}
لا بيع ما ليس عندك
\end{quote}

Means:
“Do not sell what you do not own.”

The explanation and hadith above shed light on the permissibility of selling goods that are not fully paid for according to the Hanbali school of thought, provided that the buyer has taken possession of the item or has received it before selling it, even though the goods are not fully paid for. This is further reinforced by the consequences of the sales contract, which entail ownership and authority, enabling the buyer to take actions regarding the goods. This is quoted in the book “al-\textit{Kāfī fī Fiqh al-Imām Āḥmad}” as follows\textsuperscript{74}:

\begin{quote}
وَلَنَّ الْقَصْدَ بِِلْبَيْعِ تََْلِيْكُ التَّصَرُّفِ
\end{quote}

Means:
“Because the main purpose of the sale is to transfer ownership for disposal.”

After discussing the above points, the following conclusions can be drawn: First, the ownership status of goods that are not fully paid for has been transferred to the buyer or debtor, as evidenced by the contract and delivery between them. This is consistent with the views of both the Shafi‘i and Hanbali schools of thought. Second, in the Shafi‘i view, it is permissible to sell goods that are not fully paid for, either to the owner of the goods (the lender) known as an ‘inah transaction, or to a third party (other than the original seller). Third, in the Hanbali school of thought, transactions involving ‘inah are not permitted. Hanbali scholars permit the sale of goods that are not fully paid for if the purpose of purchasing the goods is for use or legitimate trade. However, there is an internal difference in opinion regarding tawarruq transactions, which are part of selling goods that are not fully paid for. Most Hanbali scholars permit it, while some, such as Ibn Taymiyyah and Ibn al-Qayyim, dislike it.

3. CONCLUSION

Based on the analysis and discussion, several conclusions can be drawn as follows:

a. The ownership status of goods purchased on credit has transferred from the seller to the buyer or debtor, marked by the agreement and delivery of the goods to both parties. This is part of the opinion held by the Shafi‘i and Hanbali schools of thought;
b. According to the Shafi'i school of thought, it is permissible to sell goods on credit to the owner of the goods (creditor), known as the 'inah transaction, and also to a third party (other than the original seller), provided that the buyer has received the purchased item before engaging in the subsequent transaction. However, in the Hanbali school of thought, 'inah transactions are not permissible. Scholars of the Hanbali school argue that selling goods on credit is allowed only if the purpose of purchasing the goods is for their proper use or for legitimate trade, provided that the buyer has received the purchased item before engaging in the subsequent transaction. On the other hand, there is an internal difference in opinion regarding the permissibility of _tawarruq_ transactions, which are part of selling goods on credit. While the majority of Hanbali scholars permit it, Ibn Taymiyyah and Ibn al-Qayyim view it as disliked (_makruh_).

As implication, the discussion and results of this study are expected to provide answers to the legal issue of selling unpaid goods (a comparative study of the Shafi'i and Hanbali schools of thought) for both the general public and individuals, such as entrepreneurs who routinely deal with buying and selling or debt transactions. The findings of this research are also expected to contribute intellectual insights to modern society, enhancing understanding and analytical skills regarding this issue.

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