



Selling Item that Have Not Been Paid in the Perspective of Mazhab of *Syāfi'iyyah* and *Hanābilah*

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Abstract

This research aims to determine the views of the *Syāfi'iyyah* and *Hanābilah* 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 *Syāfi'iyyah* and *Hanābilah* 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, Syāfi'iyyah, Hanābilah*

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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 worshipping Allah), but also extensively

discusses interactions (relationships) between humans, humans and animals, and even humans and plants¹.

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 beings². Allah *Ta'ālā* says in Surah al-Mā'idah/5:2,

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ 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 others⁴.

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,

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبُطْلِ إِلَّا أَنْ تَكُونَ بَحْرَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا.

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 اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

Means:

“And Allah has permitted trade and has forbidden interest.”⁶

In his Hadith, the Prophet Muhammad said,

الْبَيْعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا فَإِنْ صَدَقَا وَبَيْنَا بُرُكٌ هُمَا فِي بَيْعِهِمَا وَإِنْ كَذَبَا وَكُنَّا مُحِقَّتْ بَرَكَةُ بَيْعِهِمَا⁷

Means:

¹ Attahir Shehu Mainiyo and Muhammad Maga Sule, “Impact of Qur’anic Moral Excellence on the Lives of Muslim Society: An Exposition,” *Demak Universal Journal of Islam and Sharia* 1, no. 03 (2023): 188–205.

² Wahyu Ziaulhaq, “Buying and Selling Used Clothing: An Islamic Economy Law Perspective,” *Journal of Nusantara Economy* 1, no. 1 (2022): 29–37.

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

⁴ ‘Abd al-Rahmān al-Sa’dī, *Taysīr Al-Karīm Al-Rahmān Fī Tafsīr Al-Kalām Al-Mannān* (Riyadh, KSA: Dar al-Salam, 2002).

⁵ Kementerian Agama, *Al-Qur’an Hafalan Mudah Terjemahan Dan Tajwid Warna*.

⁶ Ibid.

⁷ Abū Abdillāh Muḥammad ibn Ismā’īl ibn Ibrāhīm ibn al-Mugīrah al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*, Cet. I (Beirūt: Dār Ṭūq al-Najāh, 2001).

“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 اللَّهِ، أَيُّ الْكَسْبِ أَطْيَبُ؟ قَالَ: عَمَلُ الرَّجُلِ بِيَدِهِ وَكُلُّ بَيْعٍ مَبْرُورٍ⁸

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 credit⁹.

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 period¹⁰. 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 repayment¹¹. The Prophet Muhammad often prayed to Allah for protection from the burden of debt, with the prayer,

اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنْ أَهَمِّ وَالْحَزَنِ، وَالْعَجْزِ وَالْكَسَلِ، وَالْبُخْلِ، وَالْجُبْنِ، وَضَلَعِ الدَّيْنِ، وَغَلْبَةِ الرَّجَالِ.¹²

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 فَأَخْلَفَ¹³

Means:

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

‘Umar ibn al-Khaṭṭāb once said,

وَإِيَّاكُمْ وَالدَّيْنَ فَإِنَّ أَوَّلَهُ هَمٌّ وَآخِرُهُ حَرْبٌ.¹⁴

Means:

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

⁸ Abū ‘Abdillāh Aḥmad ibn Muḥammad ibn Ḥanbal ibn Hilāl ibn Asad al-Syaibānī, *Musnad Al-Imām Aḥmad Ibn Ḥanbal*, Cet. I (Beirut: Muassah al-Risālah, 2001).

⁹ Erwandī Tarmizi, *Harta Haram Muamalat Kontemporer*, Cet. XX (Bogor: P.T. Berkah Mulia Insani, 2018).

¹⁰ Ibid.

¹¹ Ibid.

¹² al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*.

¹³ Ibid.

¹⁴ Anas Mālik ibn, *Al-Muwatta’a* (Bairūt: Dār Iḥyā’ al-Turās al-‘Arabī, n.d.).

The above evidence, once again, indicates that debt is generally not encouraged in Islam, except in extremely needy situations. 'Aishah reported,

اشْتَرَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنْ يَهُودِيٍّ طَعَامًا بِنَسِيئَةٍ، وَرَهْنَهُ دِرْعَهُ¹⁵

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 credit¹⁶.

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

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ بِالْعَدْلِ.

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.”¹⁷

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 credit¹⁸. 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,

كَانَ لِرَجُلٍ عَلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ سِنٌَّ مِنَ الْإِبِلِ، فَجَاءَهُ يَتَقَاضَاهُ، فَقَالَ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَعْطُوهُ، فَطَلَبُوا سِنَّهُ فَلَمْ يَجِدُوا لَهُ إِلَّا سِنًّا فَوْقَهَا، فَقَالَ: أَعْطُوهُ، فَقَالَ: أَوْفَيْتَنِي وَفَى اللَّهُ بِكَ، قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِنَّ خِيَارَكُمْ أَحْسَنُكُمْ قَضَاءً¹⁹

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 Java²⁰. 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

¹⁵ al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*.

¹⁶ Tarmizi, *Harta Haram Muamalat Kontemporer*.

¹⁷ Kementerian Agama, *Al-Qur'an Hafalan Mudah Terjemahan Dan Tajwid Warna*.

¹⁸ al-Sa'dī, *Taysīr Al-Karīm Al-Raḥmān Fī Tafsīr Al-Kalām Al-Mannān*.

¹⁹ al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*.

²⁰ Ni Putu Eka Wiratmini, “Mayoritas Wilayah Catatkan Pertumbuhan Kredit, Kecuali 3 Provinsi Ini,” *Bisnis.Com*, 2020.

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, Tangganus Regency).”²¹ This study revealed that the implementation of credit sales practices by the residents of Banjar Negeri Village, Gunung Alip District, Tangganus 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.”²² 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 “*Taqsih* (Credit) Sales in the Perspective of Islamic Economic Law.”²³ 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.”²⁴ 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 Taimiyyah, aiming to understand its legal status according to Ibn Taimiyyah. According to Ibn Taimiyyah, *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

²¹ Resa Wulandari, “Tinjauan Hukum Islam Tentang Penjualan Barang Kredit (Studi Kasus Pada Warga Banjar Negeri Kecamatan Gunung Alip Kabupaten Tanggamus)” (Universitas Islam Raden Intan Lampung, 2018).

²² Tri Wahyuni, “Analisis Hukum Terhadap Sistem Perkreditan Pada PT Colombus Pinrang” (Sekolah Tinggi Agama Islam Negeri (STAIN), 2018).

²³ Misbakhul Khaer and Ratna Nurhayati, “Jual Beli *Taqsih* (Kredit) Dalam Perspektif Hukum Ekonomi Islam,” *Jurnal Hukum Islam Nusantara* 2 (2019): 99–110.

²⁴ Ronny Mahmuddin, “Jual Beli Dua Harga Dalam Satu Transaksi Jual Beli (Studi Komparatif Antara Mazhab Mālikī Dan Mazhab Syāfi'ī),” *Bidang Hukum Islam* 2, no. 2 (2021).

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 setting²⁵. 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 others²⁶.

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 issue²⁷. 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 thought²⁸), 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-Muḥaẓẓab*, *al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah*, *al-Syarḥ al-Mumti' 'alā Zād al-Mustaqni*, *al-Fiqh al-Islāmī wa Adillatuh*, *Fatāwā Nūr 'alā al-Darb*, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, *al-Mugnī*, *al-Umm*, *al-Kāfi fī Fiqh al-Imām Aḥmad*, etc.
- c. Analyzing the collected data or information by constantly returning to the research focus.

²⁵ Seto Mulyadi, A. M. Heru Basuki, and Hendro Prabowo, *Metode Penelitian Kualitatif Dan Mixed Method*, Cet. I (Depok: PT. RajaGrafindo Persada, 2019).

²⁶ Nawawi, *Metode Penelitian Fiqh Dan Ekonomi Syari'ah*, Cet. I (Malang: Madani Media, 2019).

²⁷ Masyuri dan Muhammad Zainuddin, *Metodologi Penelitian*, t. Cet. (Bandung: Refika Aditama, 2008).

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 Shafi'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)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 differences³⁰.

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 contracting³¹. 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 Shafi'i School

Within the Shafi'i school, it has been explained that the ownership status of goods transfers to the buyer, marked by *al-qabd* (taking/receiving). This has been detailed by Shafi'i scholars, including al-Nawawī in his book of *al-Majmū' Syarḥ al-Muḥaẓẓab*, regarding when the buyer is considered the owner of the purchased object. This is expressed as follows³²:

مَتَى يَمْلِكُ الْمُسْتَقْرِضُ الْعَيْنَ الَّتِي 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-Salāsīl, 1983).

³² Abū Zakariyyā Muḥyī al-Dīn Yaḥyā ibn Syaraf Al-Nawawī, *Al-Majmū' Syarḥ Al-Muḥaẓẓab* (Dār al-Fikr, 2010).

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-Muḥaẓẓab*:

أَنَّهُ يَمْلِكُهُ بِالْقَبْضِ لِأَنَّهُ عَقْدٌ يَقِفُ التَّصَرُّفُ فِيهِ عَلَى الْقَبْضِ فَوْقَ الْمَلِكِ 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-qabd* (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:

لَا يَمْلِكُهَا إِلَّا بِالتَّصَرُّفِ بِالبَيْعِ أَوْ اهِبَةٍ أَوْ يُتْلَفُهَا أَوْ تُتْلَفُ فِي يَدِهِ

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 Ishāq 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.

³⁶ Abū Ishāq Ibrāhīm ibn 'Alī ibn Yūsuf Al-Syīrāzī, *Al-Maḏhab Fī Fiqh Al-Imām Al-Syāfi'ī* (Dār al-Kutub al-'Ilmiyyah, 2010).

Al-Qazwīnī³⁷ in his book of *Fath 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-Nawawī³⁸ 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-Muḥtājīn*, 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:

أَصْحُهُمَا عِنْدَ الْأَكْثَرِينَ: الْأَوَّلُ

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-Nawawī³⁹, which states:

فَظَاهِرٌ فِي عُمُومِ ثُبُوتِ الْمِلْكِ بِالْقَبْضِ بِأَهْيَةِ فِيمَا يَجُوزُ إِمْتِلَاكُهُ بِالْعَوَضِ

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 Mazhab Aḥmad* written by al-Ḥarrānī⁴⁰, 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:

وَمِلْكُهُ الْمُقْتَرَضُ بِقَبْضِهِ

³⁷ 'Abd al-Karīm ibn Muḥammad al-Rāfi'ī Al-Qazwīnī, *Fath Al-'Azīz Bi Syarḥ Al-Wajīz* (Dār al-Fikr, 2010).

³⁸ Yahyā ibn Syaraf Muḥyī al-Dīn al-Nawawī Abū Zakariyyā Al-Nawawī, *Rauḍah Al-Ṭālibīn Wa 'Umdah Al-Muḥtājīn*, III (Beirūt: al-Maktab al-Islāmī, 1991).

³⁹ Al-Nawawī, *Al-Majmū' Syarḥ Al-Muḥaḥḥab*.

⁴⁰ 'Abd al-Salām ibn 'Abdillāh al-Khuḍr ibn Muḥammad ibn Taimiyyah Al-Ḥarrānī, *Al-Muḥarrar Fī Al-Fiqh 'alā Mazhab Aḥmad* (Maṭba'ah al-Sunnah al-Muḥammadiyyah, 1941).

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:

وَيَسْتَمُ بِقَبُولٍ وَيَمْلِكُ وَيَلْزَمُ بِقَبْضٍ.

Means:

“And the sale on credit is completed by the handover, and ownership is established by receiving or taking possession of it.”

The expression above has generated a strong argument that ownership rights have transferred to the buyer when receiving or taking possession of the purchased item, granting them authority over it.

Ibn al-Qudāmah⁴² in his book of *al-Kāfi fī Fiqh al-Imām Ahmad* supports this by stating that ownership is established when the buyer has taken or received the purchased item. This argument is expressed through the following text:

وَيَثْبُتُ الْمِلْكُ فِي الْقَرْضِ بِالْقَبْضِ

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 Maṣṣūr Ibn Yūnus al-Bahūtī in his book of *Kasysyāf al-Qinā*⁴³, is as follows:

مَلَّكَتُكَ هَذَا عَلَى أَنْ تَرُدَّ لِي بَدَلَهُ. أَوْ حُذِّ هَذَا انْتَفِعْ بِهِ، وَرُدَّ لِي بَدَلَهُ.

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 Ma'rifah al-Rājiḥ min Khilāf* by al-Mardāwī⁴⁴, it is stated:

⁴¹ Taqiy al-Dīn Muḥammad ibn Aḥmad al-Fatūḥī ibn Al-Najjār, *Muntahī Al-Irādāt*, Cet. I (Muassasah al-Risālah, 1999).

⁴² Abū Muḥammad ‘Abdillāh ibn Aḥmad ibn Muḥammad ibn Qudāmah, *Al-Kāfi Fī Fiqh Al-Imām Ahmad*, Cet. I (Dār al-Kutub al-‘Ilmiyyah, 1994).

⁴³ Maṣṣūr ibn Yūnus Al-Bahūtī, *Kasysyāf Al-Qinā* ‘*an Al-Iqnā*’, Cet. I (Wizārah al-‘Adl, 2000).

⁴⁴ ‘Alā’ al-Dīn Abū al-Ḥasan ‘Alī ibn Sulaimān ibn Aḥmad Al-Mardāwī, *Al-Inṣāf Fī Ma'rifah Al-Rājiḥ Min Khilāf*, Cet. I (al-Qāhirah: Hijr li al-Ṭabā‘ah, 1995).

وَيُنْبِتُ الْمَلِكُ فِيهِ بِالْقَبْضِ. أَنَّهُ لَا يَنْبِتُ الْمَلِكُ فِيهِ قَبْلَ قَبْضِهِ. وَهُوَ أَحَدُ الْوَجْهَيْنِ.

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-Fiqhiyyah al-Kuwaitiyyah*⁴⁵, also mentions:

ذَهَبَ أَبُو حَنِيفَةَ وَمُحَمَّدٌ وَالشَّافِعِيُّ فِي الْقَوْلِ الْأَصَحِّ وَالْحَنَابِلَةُ وَعَيْرُهُمْ، إِلَى أَنَّ الْمُقْتَرِضَ إِذَا يَمْلِكُ الْمَالَ الْمُقْتَرِضَ بِالْقَبْضِ.

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-Muḥaḏḏab* with the following statement:

فَإِنَّ الْقَرْضَ مَنْدُوبٌ إِلَيْهِ، يَعْنِي مَأْمُورٌ بِهِ مِنْ غَيْرِ إِجْبَابٍ

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-Muḥaḏḏab* stated this as follows:

فَقَالَ أَصْحَابُنَا الرَّجُوعُ فِي الْقَبْضِ إِلَى الْعُرْفِ.

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-Fiqhiyyah Al-Kuwaitiyyah*.

⁴⁶ Ibid.

⁴⁷ Al-Nawawī, *Al-Majmū' Syarḥ Al-Muḥaḏḏab*.

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-Nawawī⁵⁰ stated as follows:

فَقَبْضُهُ بِالنَّقْلِ إِلَى مَكَانٍ لَا اخْتِصَاصَ لِلْبَائِعِ بِهِ سِوَاءَ نُقْلِهِ إِلَى مَلِكِ الْمُشْتَرِي أَوْ مَوَاتٍ أَوْ
شَارِعٍ أَوْ مَسْجِدٍ أَوْ غَيْرِهِ

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-Nawawī⁵¹ stated as follows:

فَقَبْضُهُ بِالتَّنَاوُلِ بِلَا خِلَافٍ

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-Makkī⁵² in his widely known book of *al-Umm*:

فَمَنْ ابْتِاعَ شَيْئًا كَائِنًا مَا كَانَ فَلَيْسَ لَهُ أَنْ يَبِيعَهُ حَتَّى يَقْبِضَهُ

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 Shafī'i scholars, as quoted in the Kuwaiti Encyclopedia of Islamic Law⁵³, which states:

وَاسْتَدَلُّوا بِأَنَّ الْمُسْتَقْرَضَ بِنَفْسِ الْقَبْضِ صَارَ بِسَبِيلٍ مِنَ التَّصَرُّفِ فِي الْقَرْضِ مِنْ غَيْرِ إِذْنِ الْمُقْرِضِ
بَيْعًا وَهَبَةً وَصَدَقَةً وَسَائِرَ التَّصَرُّفَاتِ، وَإِذَا تَصَرَّفَ فِيهِ نَفَذَ تَصَرُّفَهُ، وَلَا يَتَوَقَّفُ عَلَى إِجَازَةِ الْمُقْرِضِ،
وَتِلْكَ أَمَارَاتُ الْمَلِكِ، إِذْ لَوْ لَمْ يَمْلِكْهُ لَمَا جَازَ لَهُ التَّصَرُّفُ فِيهِ

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² al-Syāfi'ī Abū 'Abdillāh Muḥammad ibn Idrīs ibn al-'Abbās ibn 'Usmān ibn Syāfi' ibn 'Abd al-Muṭṭalib ibn 'Abd Manāf al-Muṭṭalib al-Qurasyī Al-Makkī, *Al-Umm* (Beirut: Dār al-Ma'rifah, 1990).

⁵³ Kementerian Wakaf dan Urusan Islam Kuwait, *Al-Mausū'ah Al-Fiqhiyyah Al-Kuwaitiyyah*.

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'ī⁵⁴ is also echoed by Ibn al-Qudāmah⁵⁵ with the following statement:

وَقَالَ الشَّافِعِيُّ: لَا يُجُوزُ التَّصَرُّفُ فِيهِ 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-Makki⁵⁶ with the statement:

فَلَا يَبِيعُهُ حَتَّى يَقْبُضَهُ

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-Khin⁵⁷ with the following statement:

فَلَا يُجُوزُ بَيْعُ مَا هُوَ مَعْدُومٌ.

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 ṭinah is allowed. This is stated in the Kuwaiti Encyclopedia of Islamic Law⁵⁸ as follows:

وَيُجِيزُهُ الشَّافِعِيُّ نَظْرًا إِلَى صُورَةِ الْعَقْدِ حَيْثُ تَوَافَرَتْ أَرْكَانُهُ وَشُرُوطُهُ

Means:

“Al-Syāfi'ī allows the ṭinah transaction, considering the form of the contract where its pillars and conditions are met.”

Al-Nawawī⁵⁹ explains that ṭinah 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

⁵⁴ Al-Makkī, *Al-Umm*.

⁵⁵ Abū Muḥammad 'Abdillāh ibn Aḥmad ibn Muḥammad ibn Qudāmah, *Al-Mugnī*, Cet. I (Kairo: Maktabah al-Qāhirah, 1968).

⁵⁶ Al-Makkī, *Al-Umm*.

⁵⁷ Muṣṭafā Al-Khin, Muṣṭafā Al-Bugā, and Alī Al-Syarbajī, *Al-Fiqh Al-Manhajī 'Alā Mazhab Al-Imām Al-Syāfi'ī*, Cet. IV (Damaskus: Dār al-Qalam, 1992).

⁵⁸ Kementerian Wakaf dan Urusan Islam Kuwait, *Al-Mausū'ah Al-Fiqhiyyah Al-Kuwaitiyyah*.

⁵⁹ Al-Nawawī, *Al-Majmū' Syarḥ Al-Muḥaẓẓab*.

price, and such a transaction is deemed permissible. However, the majority of scholars, including Imam Ahmad, do not permit ṭinah 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-Qudāmah⁶⁰ in his book *al-Mugni* with the following statement:

وَهُوَ جَائِزٌ بِالسُّنَّةِ وَالْإِجْمَاعِ

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 qabd (taking possession), Ibn Taymiyyah al-Ḥarrānī⁶¹ provided a standardization in his book *al-Majmū' al-Fatāwā*, stating that delivery or qabd is based on the custom of the society, as expressed in the following statement:

وَتَارَةً بِالْعُرْفِ كَالْقَبْضِ وَالتَّفْرِيقِ.⁶²

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-'Uṣaimīn⁶³ in his book *al-Syarḥ al-Mumti'* provides an illustration of *tawarruq* as follows:

إِذَا بَاعَ السِّلْعَةَ بِثَمَنٍ مُؤَجَّلٍ، ثُمَّ إِنَّ الَّذِي اشْتَرَاهَا بَاعَهَا عَلَى آخِرٍ، ثُمَّ اشْتَرَاهَا الْبَائِعُ الْأَوَّلُ مِنْ
الْآخِرِ بِثَمَنٍ مَنفُودٍ أَقْلَ، فَهَذَا جَائِزٌ، لِأَنَّ مَحْدُورَ الرَّبَا هُنَا بَعِيدٌ

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 Bāz⁶⁴ in his book *Fatāwā Nūr 'alā al-Darb* also mentions the permissibility of *tawarruq*:

التَّوَرُّقُ مُعَامَلَةٌ مَعْرُوفَةٌ عِنْدَ أَهْلِ الْعِلْمِ، فِيهَا خِلَافٌ بَيْنَ أَهْلِ الْعِلْمِ، وَالصَّوَابُ أَنَّهَ لَا بَأْسَ بِهَا

⁶⁰ Ibnu Qudāmah Al-Maqdisī, *Al-Mughnī* (Al-Qāhirah: Maktabah al-Qāhirah, 1986).

⁶¹ Taqiy al-Dīn Abū al-'Abbās Ahmad ibn 'Abd al-Ḥalīm ibn Taimiyyah Al-Ḥarrānī, *Majmū' Al-Fatāwā* (al-Madīnah al-Munawwarah: Mujma' al-Malik Fahd, 2005).

⁶²)

⁶³ Muḥammad ibn Šāliḥ ibn Muḥammad al-'Uṣaimīn, *Al-Syarḥ Al-Mumti' 'Alā Zād Al-Mustaqni'* (Dār ibn al-Jauzī, 2001).

⁶⁴ 'Abd al-'Azīz ibn 'Abdillāh ibn Bāz, *Fatāwā Nūr 'Alā Al-Darb*, n.d.

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 Bāz⁶⁵ is as follows:

أَنْ يَبِيعَ الْإِنْسَانُ سِلْعَةً عَلَى إِنْسَانٍ مُّحْتَاجٍ إِلَى أَجَلٍ مَّعْلُومٍ، وَهَذَا الْمُشْتَرِي بَعْدَ مَا يَسْتَلِمُهَا يَبِيعُهَا بِنَقْدٍ، وَيَقْضِي بِهَا حَاجَتَهُ مِنْ زَوْاجٍ أَوْ قِضَاءِ دَيْنٍ أَوْ بِنَاءِ سَكَنِ أَوْ غَيْرِ ذَلِكَ

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’*”⁶⁶ and also in the book “*al-Inṣāf fī Ma’rifah al-Rājiḥ min Khilāf*”⁶⁷. 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 it⁶⁸.

Ibn Taymiyyah⁶⁹ 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 Ahmad⁷⁰.

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-Qudāmah⁷¹ in his book “*al-Mugnī*” provides a statement that clarifies the permissibility of selling goods that are not fully paid for, as stated below:

وَكُلُّ مَا يَحْتَاجُ إِلَى قَبْضٍ إِذَا اشْتَرَاهُ لَمْ يَجِزْ بَيْعُهُ حَتَّى يَنْقِضُهُ.

⁶⁵ Ibid.

⁶⁶ Al-Bahūtī, *Kasysyāf Al-Qinā’ ‘an Al-Iqnā’*.

⁶⁷ Al-Mardāwī, *Al-Inṣāf Fī Ma’rifah Al-Rājiḥ Min Khilāf*.

⁶⁸ Kementerian Wakaf dan Urusan Islam Kuwait, *Al-Mausū’ah Al-Fiqhiyyah Al-Kuwaitiyyah*.

⁶⁹ Al-Ḥarrānī, *Majmū’ Al-Fatāwā*.

⁷⁰ Ibid.

⁷¹ Al-Maqdisī, *Al-Mughnī*.

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 states⁷²:

مَنْ ابْتَاعَ طَعَامًا فَلَا يَبِيعُهُ حَتَّى يَسْتَوْفِيَهُ

Means:

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

Imam Ahmad also mentions a similar hadith in his Musnad⁷³:

لَا تَبِعْ مَا لَيْسَ عِنْدَكَ.

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-Kāfi fī Fiqh al-Imām Aḥmad” as follows⁷⁴:

وَلَا تَبِعْ بِالْبَيْعِ تَمْلِيكَ التَّصْرُفِ

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;

⁷² al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*.

⁷³ al-Syaibānī, *Musnad Al-Imām Aḥmad Ibn Ḥanbal*.

⁷⁴ Abū Muḥammad ‘Abdillāh ibn Aḥmad ibn Muḥammad ibn Qudāmah, *Al-Kāfi Fī Fiqh Al-Imām Aḥmad*.

- 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 (*makrūh*).

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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