

Analysis of Erwandi Tarmizi's Thoughts About Gold Murabahah

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Abstract

Currently, gold murabahah/gold buying and selling transactions are often paid in a non-cash way, either in *taqsith* (installments) or *ta'jil* (tough). This non-cash sale and purchase of gold have caused differences of opinion among Muslims, some allow it and some forbid it. This study aims to analyze how Erwandi Tarmizi's thinking and legal *istinbath* are related to gold murabahah. This study uses library research and a qualitative approach with the main source of Erwandi Tarmizi's book entitled *Harta Haram Muamalat Contemporary*. The results of the study indicate that Erwandi Tarmizi believes that buying and selling gold in cash is illegal. Meanwhile, the fatwa issued by the DSN-MUI regarding the permissibility of buying and selling gold in cash is based on a weak opinion, so it is not appropriate to use it to allow buying and selling of gold in a non-cash manner, because this can result in the opening of the practice of usury ignorance in society. In forbidding the sale and purchase of gold in a non-cash manner, Erwandi Tarmizi used the *istinbath* argument of *sadd az-żarīah* law.

Keywords: Erwandi Tarmizi's thoughts, gold murabahah

Citation suggestions: Fathudin., & Aziz, J. A. (2022). Analysis of Erwandi Tarmizi's Thoughts About Gold Murabahah. *Jurnal Ilmiah Ekonomi Islam*, 8(03), 3120-3126. doi: <http://dx.doi.org/10.29040/jiei.v8i3.5809>

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1. INTRODUCTION

Bank Muamalat Indonesia is the first bank in Indonesia to run a business based on sharia principles, which officially operated on May 1, 1992, or 27 Shawwal 1412 H (Al-Butary, Harahap, and Muriza 2021). According to Tahir, the basis of sharia in an Islamic economy supported by fiqh is an important key in building an Islamic economy (Tahir 2017). Currently, financial institutions based on Islamic sharia principles are starting to develop rapidly, both in the form of banks and non-banks (Al Hadi 2022). These institutions issue a variety of products, including gold *murabahah*. Gold *murabahah* is a form of buying and selling gold in which the payment is made in a non-cash way (Erwandi Tarmizi, 2020).

Currently, gold *murabahah*/gold buying and selling transactions are often paid in a non-cash way, either in *taqsith* (installments) or *ta'jil* (tough). The transaction of buying and selling gold for non-cash causes differences of opinion among Muslims, some allow it and some forbid it. Based on these considerations. DSN MUI issued a fatwa regarding the

sale and purchase of gold in a non-cash with the number: 77/DSN-MUI/V/2010, that buying and selling gold in a non-cash manner, either through ordinary buying and selling or buying and selling *murabahah*, is legal (*mubah, ja'iz*) as long as gold is not the official medium of exchange (money). However, Erwandi Tarmizi gave an opinion that weakened the fatwa and forbade buying and selling gold in cash (Erwandi Tarmizi, 2020).

Buying and selling gold for non-cash in terms of *fiqh* law there are 2 (two) opinions, namely: 1). haram, this is the opinion of the majority of scholars (Hanafi, Maliki, Shafi'i, and Hambali sects) and 2). permissible, this is the opinion of Ibn Taimiyah and Ibn Qayim, as well as contemporary scholars who agree (Midisen and Handayani 2021). According to Imam Shafi'i the practice of exchanging gold for gold is not subject to usury with 3 (three) conditions, namely: 1). equal, equal in weight, and equal in value. 2). spontaneous at once. 3). can be transferred to each other (Rivaldi, Febriadi, and Yunus 2020). The Islamic Economic View on Murabahah Investment in

Precious Metals is permitted under a pawnshop system where the requirements and procedures for granting loans or financing are based on the rules of Islamic Law (Kasim 2016). Murabahah Contracts on Gold Instalment Products at Islamic Banks under DSN-MUI Fatwa No. 77/DSN MUI/V / 2010 (Mulyani, Fauziah, and Surahman 2017). The reason for the permissibility of buying and selling gold for non-cash in the DSN-MUI fatwa No: 77/DSNMUI/V/2010, DSN-MUI that gold and silver are goods (*sil'ah*) that are sold and bought like ordinary goods, and no longer saman (price, means of payment, money) (Rivaldi, Febriadi, and Yunus 2020).

This study aims to analyze how the legal thinking and *istinbath* used by Erwandi Tarmizi related to gold *murabahah* in forbidding and weakening the DSN-MUI Fatwa Number: 77/DSN-MUI/V/2010 concerning the Sale and Purchase of Gold for Cashless.

2. RESEARCH METHOD

This study uses library research using a qualitative approach, the main source of which is Erwandi Tarmizi's book entitled "Harta Haram Muamalat Kontemporer". The data collection technique uses documentation techniques, namely data collection through books/journals about opinions, theories, arguments or laws, and others related to Erwandi Tarmizi's thinking regarding gold *murabahah*. Data analysis technique using content analysis method or content analysis is used to analyse the content of discourse and examine Erwandi Tarmizi's thinking about gold *murabahah* through textbooks, essays, and other documents.

3. RESULTS AND DISCUSSION

3.1. Research result

3.1.1. Erwandi Tarmizi Biography

Erwandi Tarmizi was born in Pekanbaru on September 30, 1974. He obtained a doctorate in ushul fiqh from Imam Muhammad bin Saud Islamic University, Riyadh, Saudi Arabia, in 2011 with the title of *mumtaz*. Two weeks after obtaining his doctorate, Erwandi Tarmizi managed to complete a book entitled "Harta Haram Muamalat Kontemporer". The book discusses daily issues in *muamalat* and describes transactions in various financial institutions such as banks, insurance, pawnshops, and the capital market in the form of usury

and *gharar* with various cases, including; KPR, leasing, pawn gold, credit cards, stocks, bonds, checks, L/C, buy on margin, short sale, *murabahah*, *mudharabah*, and hajj bailouts. Also, *muamalat* is forbidden in institutions such as bribery and corruption. He was disclosing marketing practices in the commercial world such as MLM, online buying and selling, franchises, promotions, discounts, advertisements, online motorcycle taxis, and the sale of food products mixed with gelatin, alcohol, formalin, and various other products.

Education:

- a. SDN 01, Sail, Pekanbaru
- b. MTs Al Munawarah, Tenayan Raya, Pekanbaru
- c. MA Al Munawarah, Tenayan Raya, Pekanbaru
- d. D1 Pengajaran Bahasa Arab LIPIA Jakarta, 1994-1995
- e. S1 Syariah LIPIA Jakarta, 1995-1999.
- f. S2 Jurusan Ushul Fiqh, Fakultas Syariah Universitas Islam Al Imam Muhammad bin Saud, Riyadh, Arab Saudi, 2001-2005.
- g. S3 Jurusan Ushul Fiqh, Fakultas Syariah Universitas Islam Al Imam Muhammad bin Saud, Riyadh, Arab Saudi, 2006-2011 Tarmizi. hlm. 654..

Papers:

- a. Thesis: "Al Atsar Al Ushily li Qaidah Isytirath Al Qudrah Lit Taklif".
- b. Disertation: "Tahqiq Mazhab Shafiiyyah Fiima Ikhtalafu Fiihi Min Al Masail Al Ushuliyah Fii Mabahitsi Al Hukmi As Shar'i Wa Al Adillah".
- c. Translated book: "Sejarah Mekkah", "Sejarah Madinah", "Riyadhushshalihiin", "Tanda-tanda Hari Kiamat, Tinjaun Masa Depan Dunia Islam", "Obat Penawar Sihir", dan "Pengantar Fiqh Perbankan Islam".
- d. Book: "Harta Haram Muamalat Kontemporer" Tarmizi. hlm. 654..

Work:

- a. Commissioner Erwandi Tarmizi & Associates
- b. Permanent Lecturer at the Master Program in Sharia Economics, Tazkia Islamic Economics College, Bogor
- c. Guest lecturer at the Islamic Banking Masters Program at Ibn Khaldun University Bogor.
- d. Guest Lecturer at the Master's Program in Islamic Business Management IPB

e. Guest lecturer at the Master's Program in Islamic Thinking, Concentration of Proposals and Jurisprudence, International class, Muhammadiyah University of Surakarta.

3.1.2. Erwandi Tarmizi's thoughts on Murabahah Gold

Gold *murabahah* is a form of buying and selling gold in a non-cash way, namely: a customer comes to a sharia bank expressing his intention to buy gold bars with a certain weight while paying a down payment. Then the bank buys the gold in question and becomes a pawn item which the bank holds until the installment is paid off then the gold is handed over to the customer. From this description it is very clear that the gold *murabahah* contract between the customer and the Islamic bank is not cash, the sale, and purchase contract and advance payment occur but the goods are delivered after a few months when the installments are paid off (Tarmizi 2020).

The National Sharia Council issued a fatwa that allows buying and selling of gold without cash number: 77/DSN-MUI/V/2010 which reads. "Buying and selling gold for non-cash, either through ordinary buying and selling or buying and selling *murabahah*, the law is permissible (*mubah, jaiz*) as long as gold does not become an official medium of exchange (money)". This fatwa refers to the opinion of Ibn Taymiyyah and Ibn Qayyim that it is permissible to exchange gold jewelry with dinars (gold coins) in an unequal way and not cash because gold is jewelry and not currency, thus gold jewelry has come out of the 'illat of gold dinar money, namely *tsamaniyah*. So, gold jewelry is like merchandise that can be exchanged for gold currency (dinar) in a non-cash way and not the same weight (Tarmizi 2020).

Ibn Taymiyyah said, "Gold and silver in the form of jewelry that has man-made elements are not required to sell it with the same type (dinar/dirham) soma weight, because of the added value of making gold jewelry. Buying and selling can be done cash or non-cash, as long as gold jewelry and silver are not meant to be *tsaman* (price, money). Ibn Qayyim reinforces this opinion by arguing that gold and silver jewelry has gone out of the function of gold dinars and silver dirhams as a means of exchange for ordinary commodities (Ibnul Qayyim Al-Jauziyah, 2006).

In terms of the science of *ushul fiqh*, the way the DSN takes the argument is called *takhrij*, which is to analogize the permissibility of gold murabaha with the

opinion that it is permissible to sell gold jewelry for gold for non-cash (Fahmi et al. 2020). For the law of *takhrij* (analogous) to be strong, it is required that the opinion of *almukharraj minhu* (in this case it is permissible to sell gold jewelry with gold money in a non-cash way) must be a *rajih* (strong) opinion. But unfortunately, this requirement is not fulfilled because this opinion is very weak and contradicts the opinion of the majority of scholars and even some scholars cite that this opinion is contrary to the five'.

Ibn Hubairah said, "(Muslims have agreed that it is not permissible to exchange gold for gold, or silver for silver either in the form of raw materials, in the form of currency, or the form of jewelry in a non-cash and not equal weight. This is *riba nasiah* and Ibn Juzay said, "The scholars agree that it is unlawful to exchange gold for silver, or gold for gold, or silver." with silver, either in the form of raw materials or has been converted into jewelry in a non-cash manner Ibn Juzayy M Al-Gharnati, "Al-Qawanin Al-Fiqhiyyah" (Beirut: Dar Al-Kutub Al-Ilmiyyah, 2016). hlm. 275.. However, the handover of both items must be done in cash. Abu Dhabi in 1995 with a decision that read. "Emphasizing the opinion of all jurists who forbid changing gold jewelry with non-jewelry with unequal size" (Tarmizi 2020).

After knowing that, this opinion is *syaz* (unpopular) because it is contrary to the hadith that requires exchanging gold for gold by cash. Also, the hadith forbids exchanging gold for gold in a non-cash manner; either gold jewelry or gold as currency, and there is no evidence that *taqyid* (bind) the absoluteness of the gold then specializes the prohibition only for gold as currency including *taqyid* with no evidence. As for the proposition that with the element of human-made making gold jewelry out of gold that is meant in the time of the Prophet Muhammad Saw. as a tool of exchange cannot be justified, because the gold that became a tool of exchange in the time of the Prophet there are elements of man-made in the form of carved images, ornaments, and writing (Tarmizi 2020).

Then the argument that the 'illat of usury gold is *tsamaniyah* (money as a medium of exchange) and if this 'illat disappears from gold because now gold is no longer a medium of exchange and has been replaced with currency, gold is considered the same as other goods, it may be exchanged for currency in a non-cash way, very weak from a review of the rules of *ushul fiqh*. Because the requirements for the validity of an 'illat *mustanbathah* that the 'illat must not deny the

origin of the 'illat. So, the 'illat *tsamaniyah* which is ijtiḥad by scholars should not deny the golden 'illat that the Prophet has described textually. Shaykh Ibn Bayyah (senior scholar chairman of the European fatwa assembly) explains in his book *Maqashid Al Muamalat*, 'illat *mustanbathah* ('illat derived from the ijtiḥad of the scholars) cannot possibly cancel the law that he follows when the 'illat is not contained in the law. Like 'illat *tsamaniyah* in gold and silver when gold and silver are no longer a medium of exchange, the absence of 'illat *tsamaniyah* in gold and silver has no effect on the law of usury on gold and silver. Because usury on gold and silver was ordained by the maker of the Shari'a (the Prophet) it cannot be canceled by 'illat *mustanbathah*, also from other views of *maqashid* sharia, the prohibition of exchanging gold and silver for cash is the main *maqshad* and very clear so it is impossible to be denied by the *maqshad* followers (namely: *tsamanivah*) whose degree is *zhanni* (Imam Al-Zarkasyi, 1994).

If we consider Ibn Taimiyah's opinion as a strong opinion, it is also not permissible to withdraw the law to exchange currency for gold as is practiced by Islamic banks, because Ibn Taymiyya does not allow him to bind it as long as gold is not intended as a *tsamanivah* (medium of exchange, price). This requirement is not met in the practice of Islamic banks because the gold sold on a *murabahah* basis by the bank is not gold jewelry but gold bars that are intended as investments while making gold as an investment is also a function of money (Tarmizi, 2020).

The DSN fatwa that allows buying and selling of non-cash gold open a gap to justify the usury of ignorance. For example, a moneylender very easily outsmarts usury by he hands over cash to a creditor for 10 million rupiahs in exchange for 20g of gold which will be received after 3 months. Even though the price of gold when the contract was made was only Rp. 560,000.00 per gram. Then ten million rupiahs should be as much as 17.8g of gold. At the time of delivery of gold, the loan shark received 20g of gold, the price of which when he handed over the cash was 10 million = 11 million 200 thousand rupiahs. By buying and selling non-cash gold, moneylenders have received an increase in the value of debt by as much as Rp. 1,200,000, not to mention the increase in the value of debt due to rising gold prices and a decrease in currency exchange rates due to inflation. From the description above, it is very clear that the consequence of the fatwa allowing the sale and purchase of non-

cash gold is a way to open up the practice of usury *jahiliyah* in the form of adding value to debt.

The DSN fatwa that allows the sale and purchase of gold are not contrary to the international sharia banking guidelines made by AAOIFI which states in Chapter: *AI Murabahah lil Amir Biqtsyira*'. No. 726 which reads "Murabahah buying and selling cannot be done on gold objects silver or currency". After explaining the response to the DSN fatwa above, the weakness of the fatwa is very clear and needs to be reviewed (Tarmizi, 2020).

3.2. Discussion

Basically, all activities are allowed to be carried out, even if there is no argument against them. Similar to the sale and purchase of gold, selling and buying activities are allowed to be carried out, meanwhile the object that is the object of the selling and buying is gold which is a "special" included in the six types of usury goods that have special conditions in trading them. So that making this sale and purchase must also be done "special" and different from other buying and selling where this sale and purchase must meet special conditions that have been set by the majority of scholars so that we can avoid usury. Because as Abdullah al-Mushlih and Salah As-Shawi said that the strongest and most widespread causes of contract damage in today's life are usury (al-Muslih, al-Shawi, and Basyir 2008).

Scholars have classified the conditions for buying and selling gold to avoid usury, including the first. if the type and 'illat is the same as gold with gold. silver with silver, then the conditions that must be met are commensurate (*mumātsalahi*) both in terms of size and amount. transactions are carried out on the spot (*hulūl*), and handover directly (*taqābudh*). If the type is different but the 'illat is the same, for example, gold and silver. So according to the majority of scholars, the law is permissible on one condition. the condition is that there must be a direct handover (*yadan biyadin*) or cash at the place of the contract (*taqābudh*) and it is allowed to exaggerate one type of property. And if the type and 'illat are different, then in this third part, no conditions are set for the sale and purchase to be valid and the transaction to be allowed" (Musthafa Dib Al-Bugha, 2010).

In this non-cash sale and purchase of gold, it is equated with different types but the 'illat is the same, so it is required that there must be a direct or cash handover at the place of the contract and there may be

an increase from one of them. However, in practice, gold is only handed over to customers after the customer's installments are paid off, not when the contract takes place and regarding this, DSN-MUI in its fatwa no. 77/DSN-MUI/V/2010 states that the law of buying and selling gold is not illegal cash is permissible (*mubah, ja'iz*)(Sa'adi 2019). The fatwa issue caused a lot of debate among scholars, both national scholars and international scholars. Because allowing buying and selling, it means opening up opportunities for the practice of usury widely.

The selling and buying of gold and silver, which is a sale and purchase between usury goods where the types are different but have the same '*illat*', has occurred by consensus among scholars as Erwandi Tarmizi has said in his book, where Ibn Hurairah and Ibn Juzay stated that "... Islam also agrees that it is permissible to exchange gold for silver of different sizes but it is forbidden if it is done in cash...". With the issuance of a fatwa related to the permissibility of buying and selling gold in cash, it means that the fatwa is contrary to the *ijma'* of the ulama. While in the MUI *ijma'* has strong authority, is absolute, and applies universally. So, if there is *ijma'* then the fatwa issued must be in line and not conflict with the consensus of the scholars.

Some of the reasons for the MUI DSN to allow the sale and purchase of gold in a non-cash manner, namely:

- a. The Hadits of the Prophet that regulate the exchange (sale and purchase) of gold for gold, silver for silver, and gold for silver or vice versa, require, among other things, that the exchange be done in cash: and if it is done in cash, the scholars agree that the exchange is it is stated as usury transaction; so that gold and silver in the view of scholars are known as *amwal ribawiyah* (*ribawi* goods).
- b. The majority of scholars believe that the provisions of laws in transactions as stated in point I above "*ahkam mu'allalah*" (laws that have '*illat*'); and the '*illat*' is *tsamaniyah*, meaning that gold and silver at the time of *wurud hadits* are *tsaman* (price, means of payment or exchange, money).
- c. Money - which in *fiqh* literature is called *tsaman* or *nuqud* (plural of *naqd*)-is defined by the scholars, among others, as follows:
 - 1) *Naqd* (money) is anything that becomes a medium of exchange and is accepted in general, whatever the form and under whatever conditions the media is Abdullah bin Sulaiman Al-Mani, "Buhuts Fi Al-Iqtishad Al-Islami," (Mekah: Al-Maktab Al-Islami, 1996). hlm. 178..
 - 2) *Naqd* is something that is used as a price (*tsaman*) by the public, whether consisting of metal or printed paper, or other materials, and issued by the financial institution holding the authority (Muhammad Rawas Qal'ahjî, 1999).
- d. From the definition of money above, it can be understood that something, whether gold, silver, or others including paper, is seen or has the status of money only if the community accepts it as money (a tool or medium of exchange) and based on Muhammad Rawas Qal'ah Ji's opinion - is issued or stipulated by the authorized financial institution. In other words, the basis for the status of something expressed as money is *adat* (customs or community treatment).
- e. Today, the world community no longer treats gold or silver as money but treats them as goods (*sil'ah*). Likewise, Ibn Taymiyah and Ibn al-Qayyim emphasized that if gold or silver is no longer used as money, for example, it has been used as jewelry, then the gold or silver has the same status as goods (*sil'ah*).

Although in punishing the practice of buying and selling gold in cash, both DSN MUI and Erwandi Tarmizi produce different laws, both have similarities. The similarities that the researchers have found are related to the *ijtihad* method used by DSN-MUI and Erwandi Tarmizi where both of them use the *ijtihad Intiqa'i* or *tarjih* method with the *fiqh muqaran* approach, namely *ijtihad* carried out by a person or group of people to choose the opinions of the scholars. previous *fiqh* experts on a particular case, then select which argument is stronger and relevant to current conditions.

DSN-MUI in its fatwa expresses the opinions of the ulama and compares them to both those that prohibit and allow them and looks for which opinions are strong and that is following the current situation according to DSN-MUI. If Erwandi Tarmizi, in his book "Harta Haram Muamalat Contemporary" in the author's foreword, has stated that he is responding to contemporary cases using the *fiqh muqaran* approach

(comparative *fiqh*) plus the Qur'an and hadiths, This can be seen in his book responding to the DSN-MUI fatwa where he also interprets some opinions on the opinions of other scholars who are considered to have stronger arguments, both those that prohibit and allow and select which opinion is stronger and relevant to the current situation.

The difference that the researchers found was related to the legal *istinbath* argument used by DSN-MUI, namely *maslahah mursalah*, this can be seen in the argument used by DSN-MUI as a basis for consideration in allowing the sale and purchase of gold in a non-cash manner, namely that the practice of buying and selling gold without cash is very needed by the people and if it is not allowed then the human benefit will be disturbed (Asmara and Atsar 2021). Not only that, another basis used as consideration for the DSN-MUI is that if the door for buying and selling gold in cash is closed, the door for debts will also be closed and the people will experience difficulties. Meanwhile, Erwandi Tarmizi uses the *istinbath* argument of *sadd az-zariah* law. This can be seen in the concept of three causes of contemporary *muamalat haram* assets, namely injustice, *gharar*, and usury. Where at the beginning of his book Erwandi Tarmizi states the impact of the dangers of usury for Muslims, one of which is that it can damage Muslims themselves. According to him, the issuance of a fatwa regarding the permissibility of buying and selling gold in cash will open up the practice of usury ignorance in the form of increasing the value of debt.

4. CONCLUSION

Erwandi Tarmizi's view is buying and selling gold in a non-cash manner should not be carried out. According to him, the opinion used as the basis for the DSN-MUI fatwa is weak, so it is not appropriate to use it to allow buying and selling of gold in a non-cash way. Erwandi Tarmizi in forbidding buying and selling gold in cash using the *istinbath* argument of *sadd az-zariah* law can be seen in his contemporary *muamalat* concept of haram assets and his argument which states that the fatwa issued by the DSN-MUI can result in the opening of the practice of usury and ignorance in society.

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