



ANALYSIS OF ABU HANIFAH THOUGHT ABOUT SALAM CONTRACT AND ITS PRACTICES IN SHARIA FINANCIAL INSTITUTE

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Abstract

The influence of Imam Abu Hanifah's thoughts is very broad and quite large in Islamic legal thinking. One of Abu Hanifah's thoughts was about the Salam contract. Al-salam etymologically means al-salaf, namely al-taqdim (formerly). Buying and selling salam in practice sharia financial institute is parallel salam. Parallel salam are purchases of certain goods by customers to sharia financial institute. Abu Hanifah's opinion is still in contradiction with what is practiced at sharia financial institute. Therefore the author is motivated to study and analyze more deeply about the opinion of Abu Hanifa about the salam contract and its practice in Islamic financial institutions. The juridical normative approach becomes the approach in this study, the source of the data comes from primary and secondary data. The type of data used is by analyzing library



studies and describing qualitatively. The results of the study concluded that Abu Hanifah's thoughts about the Salam contract were highly doubtful when practiced in the sharia financial institute because in the sharia financial institute the salam agreement was in the form of agriculture.

Keywords: sharia financial institution, Abu Hanifah, Buying and Selling, Akad Salam, Salam Parallel, Islamic Economy

INTRODUCTION

Differences in view of the issue are not prohibited in Islam as long as it is not a matter of faith. Therefore the difference in Islam is as a mercy. Similarly, differences in views among Islamic economists differ in opinions about economics both in terms of definition or other dimensions. Economics is a human problem that always develops according to the context. This requires new thinking to solve various problems that are always developing fast. This means that *ijtihad* is something that cannot be avoided. Economical also continues to develop dynamically, raising several questions about Islamic economics, is there a system in Islamic economics? If there is, can it answer human needs? And how is the implementation in life? This question may be based on the idea that religion only regulates the problems of the afterlife and religion cannot do much when it comes into contact with the needs of human life.¹ The influence of Imam Abu Hanifah's thoughts is very broad and quite large in Islamic legal thinking. Muhammad Abu Zahrah relates that Abu Hanifah was a *faqih* more rational and ulama who used *ra'yu more*. The influence of Abu Hanifah's thoughts was greatly developed in the regions of Islamic countries such as Egypt, Iraq, Sham and other regions.²

One of Abu Hanifah's thoughts was about the contract *Salam*. *Al-salam* etymologically means al-Salaf, *al-taqdim* (earlier). The word *salam* banya is used by the Hejaz supporters, while the word *al-salaf* is used by the Iraqi population. *Al-salam* has several meanings including *al-tafflis*, *al-silfat*, and *al-mahawij*, namely buying and selling transactions carried out by the poor. Many Arabs carried out this al-salam transaction, especially by residents of Medina. However, the sale and purchase of this *salam* did not specify the size, weight, time of delivery of the goods, therefore the Prophet Muhammad forbade this sale and purchase transaction. During the Islamic period there was a modification of the habits of buying and selling transactions among the population of Medina. In the end they explained the provisions of the object of goods

¹ FORDEBI, ADESY, *Islamic Economics and Business*, (Series of Islamic Economics and Business Concepts and Applications), RajaGrafindo Persada, 2016 cet.1 p. 445

² Romli, *Muqaranah Mazahib fil Ushul*, Jakarta: Gaya Media Pratama, 1999. Cet. 1, p. 19

such as size, weight and time of delivery despite making early payment, namely before the goods were handed over to the buyer, in Islamic legal terms such a sale and transaction purchase is called *ba'i as-salam*.³

Buying and selling *salam* in practice sharia financial institute is *salam* parallel. *Salam* Parallel purchases of certain goods by customers to sharia financial institute. Carrying out two transaction *salam* called parallel *salam*, namely transactions between banks and customers, then between banks and third parties (*suppliers*). Application of the implementation of a parallel *salam* agreement in Islamic financial institutions, namely in agricultural financing with a short period of time between 2 to 6 months.⁴

Based on the background outlined, the formulation of the problem in this study is as follows: What is the biography of Abu Hanifah? What is the methodology of Abu Hanifah's thoughts on *salam*? How was the transaction carried out *salam* at Islamic Financial Institutions? How is the Analysis of Islamic Economic Thought of Abu Hanifah about the *Salam* Agreement in Islamic financial institutions? The purpose of this study can be described as follows:

1. Knowing the biography of Abu Hanifah.
2. Know and understand the methodology of Abu Hanifah's thoughts about *salam*
3. Know and understand the practice of *salam* in Islamic Financial Institutions.
4. Knowing and understanding Analysis of Islamic Economic Thought Abu Hanifah's about *Salam* Contract in Islamic financial institutions.

LITERATUR REVIEW

Biography of Abu Hanifah

During the Khilafah Abdul Malik bin Marwan was born in Kufa and was born an Imam Abu Hanifah in 80 H. He was born of Persian descent and was given the name *Nu'man bin Thabit bin Marzuban*. Kabul, currently the capital of Afghanistan, is the home city of Abu Hanifah, but during the reign of Umar bin Khattab, his grandfather *Marzuban* converted to Islam, which finally decided that Abu Hanifah would go and settle in Kufa.⁵

The father of Abu Hanifah was a good, friendly Muslim merchant and wealthy. But his father's life is not widely known and there are no sources that tell in detail only part of the situation is known. There are sources that say that it was known that Abu Hanifah's father met Ali bin Abi Talib when he was a child and was given some *faludhaj* onday *Nawruz* by his

³ Panji Adam, *Fikih Muamalah Maliyah*, Bandung: PT. Refika Aditama, 2017, cet.1, p. 61

⁴ Panji Adam, *Fikih Muamalah Maliyah* p.71

⁵ Munawar Khalil, *Biography of the Fourfold School*, Jakarta: Crescent Star, 1983, Cet. 4, p. 19

grandfather. This shows that the family of Abu Hanifah was rich because it could provide candied caliphs which could only be eaten by the rich.⁶

The popularity of Abu Hanifah spread, people from big cities in the world came to learn with him, even the hadith experts and jurisprudents also attended. Hammad was a teacher for Abu Hanifah, besides Hammad Abu Hanifah he also studied with four thousand scholars, consisting of 7 sahabah, 93 tabi'in and tabi'u tabiin for the rest. He lived nearly 70 years and had performed the pilgrimage 55 times during his life because at that time it was the gathering time of the ulemas at the Grand Mosque, so it was no wonder he could learn from many teachers. In addition to having a large number of teachers, Hanifah abu also had many students and reached thousands. The most famous students of Abu Hanifah were *Abu Yusuf, Muhammad bin Hasan, Qasim bin Ma'na bin Abdurrahman bin Abdullah bin Mas'ud, Daud Al- Tha'i, ibn Mubarak, Fadhil bin 'Iyadh, Hibban, Yahya bin Zakaria*. Abu Hanifah also poured his knowledge into works in the form of books such as the *Book of Al- Risala Ila Ustman, the Book of Al-Risalah, the Book of Al-Athar, the Science of Kalam Al-Fiqh Al- Akbar Wa Al-Fiqh Al-Ausath, the Book of Al Al-Wa Wa Al-Mut'allim*, and Abu Hanifa also wrote the hadith and wrote fiqh, aqeedah and so on.⁷

Abu Hanifah's thoughts on the Salam Agreement

According to classical and contemporary scholars the salam transaction is a sale and purchase transaction that makes payments in cash while the goods are handed over at a later date (suspended). At the time of the contract, the limit time for the delivery of goods is agreed between the buyer and seller and the nature of the goods which are the object of sale. Which means that in regards to buying and selling transactions, the goods purchased are still at the seller's expense. *Salam* can occur in the state of item the desired is very exclusive of the other types.⁸ In principle, a person cannot sell something that is not in his possession. As confirmed in a hadith of the Prophet:⁹

قَالَ نَكَرَ عَبْدُ اللَّهِ بْنُ عَمْرٍو قَالَ

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا يَجِلُّ سَلْفٌ وَبَيْعٌ وَلَا شَرْطَانِ فِي بَيْعٍ وَلَا رِبْحٌ مَا لَمْ يُضْمَنْ وَلَا بَيْعٌ مَا لَيْسَ عِنْدَكَ (رواه احمد)

He said: 'Abdullah bin' Amr said that the Prophet sallallaahu 'alaihi wa Salam said: "It is not lawful selling by borrowing, two conditions in one transaction, taking advantage of items that not can be guaranteed (their existence), and from selling something that is not in your place,

⁶Munawar Khalil, *Biography of the ...* p.20

⁷Ahmad ash-Syurbasy, *al-Aimmah al-Arba'ah*, trans. Futuhal Arifin, "The Four Pearls of the Age", East Jakarta: Pustaka Qalami, 2003, Cet. 1, p. 31

⁸Panji Adam, *Fiqh Muamalah Maliyah ...* p.63

⁹Panji Adam, *Fiqh Muamalah Maliyah ...* p.63

but there are exceptions to this hadith because there is a more benefit urgent, namely the discovery of human needs so that the sale and purchase agreement regards lawfully done. Methods *istinbath* huk um like this in Hanafiyah circles it is called *istihsan* which is to leave the *qiyas* and practice stronger than that because there is an argument that wishes and is more in line with the benefit of mankind. There are six conditions in the transaction of buying and selling *Salam* and Abu Hanifah agreed the same as other scholars. The first condition is the type of the price of goods must be known, whether exchanged with money or with other valuables. The second condition, must know the exact price. The third condition, the transfer of capital / money must be done in the contract agreement by the parties. The fourth condition, traders must hold merchandise. The fifth condition, the value of merchandise must be measured estimates such as size, length and nature. Therequirement sixth, the time of submission must be determined. Aside from the six conditions above, Abu Hanifah requires severalthings other, although it is still a debate among scholars, Abu Hanifah still requires these things with the aim of protecting the transaction actors so that no one is harmed in the salam. Terms of transaction regards required according to Abu Hanifah include, for example, the period of time, the form of goods when the contract is held, place of agreement,price empirical. First, Abu Hanifah required him to submit the object period to the buyer after the buyer paid at the beginning to the seller. It aims to make traders feel light because they have to prepare merchandise in advance. Second, you must know the form of goods when the contract is being held. This is in accordance with the hadith of Ibn Umar who said that the Prophet Muhammad said: *do not make a covenant in the date before it is ripe*. Abu Hanifah requires this in order to stay away from buying and selling gharar and according to him if the form of goods is not required then this salam transaction will be similar to *bai 'ma'lam yukhlaq* or buying and selling something that has not been made. Third, Abu Hanifah required the clarity of the place of the contract, so the transaction actors must be present in one place to carry out the contract. Because according to Abu Hanifah the conditions for the delivery of goods are as important as the conditions for determining the time schedule. Fourth,prices empiricalthat are clearly heavy, long, quantity and nature. Therefore, Abu Hanifah was very careful in carrying out the salam contract so it would not be the same as buying and selling the others.¹⁰

The sale and purchase of *Salam* is usually carried out on agricultural financing with a short timeframe of between two to six months. Because the object of goods purchased by the bank, such as rice, corn, wheat which is the object of agriculture and the bank has no intention of storing these items as investment. The sale and purchase agreement is made to the second

¹⁰Nabila Zatadini, Mohammad Ghozali, *Analysis of Islamic Economic Thought of Imam Abu Hanifah*, Article July 2018 Darussalam University of Gontor an Government of Ponorogo, p. 37

buyer, such as the State Logistics Agency, wholesale market traders, or wholesalers. This is a parallel *salam* done in Islamic financial institutions. Buying and selling *salam* can also be carried out in the industrial sector, for example financing garment products (apparel). By the way the customer proposes financing for garment manufacturing, the Bank then will reference the use of the product. That is, banks order apparel to customers (producers) by paying at the time of the contract. Then the bank looks for a second buyer or partner that has been recommended by the customer (producer). When the clothes are finished, the product is delivered to the recommended partner, then the partner pays to the bank in cash or in installments. Profits obtained by banks in financing this is the difference between the price obtained from the customer and the selling price from the buyer. The customer may be the second buyer in the application scheme parallel *salam*. And then the bank will act as the buyer of the goods and also act as a seller for the customer.¹¹

RESEARCH APPROACH

Methods The research method used is a descriptive research approach qualitative by reviewing and analyzing secondary data in the form of historical data and this research is understood by literature review by looking at phenomena that occur.

RESULTS AND DISCUSSION

Revenue sharing in Islamic banking is a core product, but the product of buying and selling in Islamic banks is more dominant. In general, people are looking for more practical ways. Administrative problems are always avoided by the people and therefore they choose the profit-sharing scheme. The DSN fatwa has minimized these administrative obstacles, that buying and selling transactions by paying in advance orders with specified conditions called *salam* transactions, now involve Islamic banking and do so in accordance with Islamic teachings. DSN considers that it is necessary to stipulate a fatwa on *salam* to be used as guidelines by sharia financial institutions.¹²

Abu Hanifah's thought of the *salam* contract was one of the reasons that Abu Hanifah required the form of goods at the time of the contract. This is based on the hadith of Ibn Umar who said that the Prophet Muhammad said: *do not make a salutation agreement in dates before it is ripe*. Abu Hanifah saw this as a prevention from *bai' gharar* and according to him if the form of goods was not required, the *salam* contract would be similar to *bai' ma lam yukhlaq* or buying

¹¹ Panji Adam, *Fikih Muamalah Maliyah* p.72

¹² Muhammad Ridwan, *Construction of Islamic Sharia Bank Indonesia*, Yogyakarta: Pustaka SM, 2007, Cet. 1 p. 83.

and selling something that had not been made. If seen from the example of the case of the implementation of the salam contract in Financial Institutions, Islamic namely parallel *salam*, which means carrying out two *salam salam* transactions between banks with customers and between banks and *suppliers* (suppliers) or third parties simultaneously. In the thinking of Abu Hanifah, this contract is very doubtful because in the sharia financial institute agreement this *salam* the form of agriculture that is not yet clear from the farmers will succeed in its harvest to return the proposed financing and fear there is aof gharar in one salam contract between the bank and the customer.

CONCLUSIONS

Based on the discussion in this study, the researcher concludes the following research results:

1. There are six conditions in the sale and purchase transaction of *salam* and Abu Hanifah agrees the same as other scholars. The first condition is the type of the price of goods must be known, whether exchanged with money or with other valuables. The second condition, must know the exact price. The third condition, the transfer of capital / money must be done in the contract agreement by the parties. The fourth condition, traders must hold merchandise. The fifth condition, the value of merchandise must be measured estimates such as size, length and nature. The sixth requirement, the time of submission must be determined.
2. Buying and selling *salam* is usually done on agricultural financing with period of a short time, namely between two to six months. Because the object of goods purchased by the bank, such as rice, corn, wheat which is the object of agriculture and the bank has no intention of storing these items as investment. The sale and purchase agreement is made to the buyer second, such as the State Logistics Agency, wholesale market traders, or wholesalers.
3. Implementation of the salam contract in Islamic Financial Institutions, namely parallel *salam*, which means carrying out two *salam* transactions between banks and customers and between banks and *suppliers* (suppliers) or third parties simultaneously. In the thinking of Abu Hanifah, this contract is very doubtful because in sharia financial institute agreement this *salam* in the form of agriculture which is not yet clear from the farmers will succeed in the harvest to return the proposed financing and there is a fear of gharar in one salam contract between the bank and the customer.

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