



**Legal Reasoning of Credit on Buying and Selling Gold:
Mapping The Debate on 'Ilath Al-Hukm
(Menalar Hukum Kredit Jual Beli Emas:
Memetakan Perdebatan tentang 'Ilath Hukum)**

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Abstract: This paper is intended to identify the law of buying and selling gold legally. Credit and understand the *illat* stated to the law. The approach used in this study is more of a normative and legal juridical approach, where the study of secondary sources in the form of books, open books, and articles is carried out to obtain answers to the formulation of the problem. In general, this study has identified that gold transactions on credit among *Mazhab* scholars are *haram-mutlaq*, with the *illat* that gold is a *Ribawi* commodity and is *mutlaq tsammaniyah*. In contrast to Ibn Taimiyah and Ibn Qayyim and the DSN-MUI fatwa, which allows it as long as gold is not used as a price or money.

Keywords: Qiyas, Illat, Ushl Fiqh, Mazhab, Ribawi Commodities

Abstrak: Tulisan ini dimaksudkan untuk mengidentifikasi hukum jual beli emas secara legal. Menghargai dan memahami illat yang dinyatakan dalam undang-undang. Pendekatan yang digunakan dalam penelitian ini lebih merupakan pendekatan yuridis normatif dan hukum, dimana kajian terhadap sumber-sumber sekunder berupa buku-buku, buku-buku terbuka, dan artikel-artikel dilakukan untuk memperoleh jawaban atas rumusan masalah. Secara umum penelitian ini telah mengidentifikasi bahwa transaksi emas secara kredit di kalangan ulama mashab adalah haram-mutlaq, dengan illat bahwa emas adalah komoditas ribawi dan mutlaq tsammaniyah. Berbeda dengan Ibnu Taymiah dan Ibnu Qayyim serta fatwa DSN-MUI, yang membolehkan selama emas tidak dijadikan sebagai harga atau uang.

Kata Kunci: Qiyas, Illat, Ushl Fiqh, Mazhab, Komoditi Ribawi

A. Introduction

The development of problems faced by Muslims has resulted in the emergence of new legal issues. Problems that are often not found references from various existing fatwas and fiqh treasures. This condition demands ijihad, which is carried out continuously by scholars, both personally and collectively.¹ In addition, the development of Islamic law issues is also driven by the increasing needs of Muslims for various things, both products and services. In this context, buying and selling gold on credit has become one of the contemporary fiqh issues. This issue does not give rise to various ijihad,² but at the same time encourages legal debates about buying and selling gold on credit – is it permissible, or is it something that is prohibited because it causes us to fall into the act of *usury*. In addition, this issue also encourages the emergence and publication of various literature, especially in the form of journals, which discuss and photograph the debate regarding the law of buying and selling gold on credit.

Midisen and Handayani (2021) examine how fiqh reviews the buying and selling of gold on credit. Through his studies, he concludes that there are two opinions regarding the sale and purchase of gold on credit. The first opinion of most scholars

¹ Lina Kushidayati, "The Development of Islamic Law in Indonesia," *Qudus International Journal of Islamic Studies* 1, no. 2 (2014): 163–80, <https://doi.org/https://doi.org/10.21043/QIJS.V1I2.185>.

² Kisanda Midisen dan Santi Handayani, "Jual Beli Emas Secara Tidak Tunai Ditinjau Secara Hukum Fiqih," *Jurnal Ekonomi Syariah Pelita Bangsa* 6, no. 2 (2021): 10–19.

(i.e., Hanafi school; Maliki; Shafi'i and Hanbali) tends to prohibit, even forbid, the buying and selling of gold by way of credit. The second opinion is the scholars who allow it, such as Ibn Taimiyah and Ibn Qoyyim.³ Nurfauziyyah et al. (2020) also conducted a study on the issue of buying and selling gold on credit. He succeeded in concluding that gold transactions should not be carried out on credit.⁴ This conclusion was built using the method *qiyas*, where credit transactions in gold are the same as currency exchange (*sharf*), which is also not allowed in cash. In addition to studies on the law of buying and selling gold on credit, several studies also discuss how gold invests and the legal implications it causes.

Siregar (2020) conducted a study on the law of buying and selling gold by dropshipping by referring to the perspective of the Indonesian Ulema Council (MUI) of North Sumatra Province. This study succeeded in identifying the view of the North Sumatran MUI, that gold dropship transactions in the shopee application are illegal. This is because gold is an *amwal usury* that has special treatment if used as an object of buying and selling.⁵ On another issue, Nordin et al. (2018) also seeks to explore the understanding of "sharia-compliant gold investment" among Muslim academics at the Tertiary Education Institution, Trengganu. Empirically, this study shows that the understanding of sharia compliance in gold investment among academics is relatively high.⁶ This empirical study indicates that sharia compliance in gold investment among academics confirms that knowledge of the law of gold transactions grows adequately among academics. Still related to the issue of gold transactions, Noor (2017) also finds empirically that the public tends to be permissive towards gold transactions, even by

³ Midisen dan Handayani.

⁴ Fithri Nurfauziyyah, Rio Erismen Armen, dan Adril Hakim, "Analisis Hukum Islam terhadap Jual Beli Emas secara Tidak Tunai," *Zhafir: Journal of Islamic Economics, Finance, and Banking* 2, no. 1 (2020).

⁵ Sartika Khairani Siregar, "Online Gold Dropship in Shopee Application Under Perspective Indonesia Ulama Council: Study at the Indonesian Ulama Council (MUI) of North Sumatra Province" (State Islamic University of Maulana Malik Ibrahim Malang, 2020).

⁶ Nadhirah Nordin et al., "Shariah Compliant Gold Investment: An Understanding among Academicians in Terengganu, Malaysia," *International Journal of Academic Research in Business and Social Sciences* 8, no. 10 (Oktober 2018), <https://doi.org/10.6007/ijarbss/v8-i10/4728>.

using *tricks* through *gold scammers*.⁷ Whereas the gold transaction model like this can convincingly be classified as a transaction *usury* and is prohibited in Islam.

Various studies related to gold transactions and published in various journals are even specifically researched in the form of a thesis, with an in-depth study. Some of these studies discuss the law of gold transactions with the credit system in Islam. However, studies examining the caliphate and the roots of the debate regarding the *ilath* legal that underlie the Prohibition or permitting gold transactions on credit are very difficult and even limited to studies by Islamic law scholars. In response, this study attempts to fill this void through several focus studies: *First*, to identify the *ilath* legal behind using *qiyas* to determine the law of buying and selling gold on credit. *Second*, the legal reasoning in determining the *ilath* permissibility on trade in gold or credit.

To narrate the purpose of the study stated in the previous paragraph, this article is organized into several parts: First, the introductory section describes the research 'gap' related to the *ilath* legal of buying and selling gold on credit. Second, the literature review section, which elaborates on the theory of *Qiyas* and *Ilath* in *legal reasoning* Islamic law.⁸ Third, the methodology section elaborates on how this study was conducted, both from the data and data sources used, to data analysis. Fourth is the section that reports the findings related to the research problem and a critical analysis of the findings. The fifth part is the conclusion, which outlines the findings as an important contribution of this study and emphasizes the study's limitations, so that it becomes a new offer for future researchers. With these four discussions, it is hoped that this study will be able to critically map the debates that occurred between classical scholars (i.e., shafi'i scholars; hanafi; hanbali; and maliki) and scholars from other schools of thought such as Ibn Taimiyah; and contemporary scholars as Wahbah Al-Zuhailly.

In general, this study is aimed at "mapping the legal debate regarding the sale and purchase of gold on credit. The debate is *concerned with* identifying how legal reasoning is built regarding *ilath* whether legal, or not buying and selling gold on credit is allowed." This means "*ilath* law" is the main issue that will be explored through this

⁷ Azman Mohd Noor, "Shari'ah Issues in Gold Trading and Gold Related Scam Schemes," *Al-Shajarah: Journal of Islamic Thought and Civilization*, no. Special Issue: Islamic Banking and Finance (2017).

⁸ Ahmad Rofii, "Whither Islamic Legal Reasoning? The Law and Judicial Reasoning of The Religious Courts," *Journal of Indonesian Islam* 8, no. 2 (Desember 2014): 235, <https://doi.org/10.15642/JIIS.2014.8.2.235-262>.

study. Thus, the theory *qiyas* becomes the main theory for deriving research questions and can be formulated as follows:

Table 1. Research Questions

No.	Research Questions	Variables	Indicator
1.	What is the legal reasoning behind buying and selling gold on credit among scholars? So, what are the legal products resulting from this reasoning?	Legal Reasoning for	<ul style="list-style-type: none"> ▪ Determining the Evidence (<i>al-istidlal</i>How to) ▪ Interpret the arguments
		For Legal Products	<ul style="list-style-type: none"> ▪ Haram ▪ Mubah
2	What is the legal reasoning behind the legal ilath of buying and selling gold on credit among scholars?	Determination of Ilath	<ul style="list-style-type: none"> ▪ Form of Ilath ▪ Determination Method of Ilath

Source: author's own

Table 1 provides information on at least three aspects (variables) studied, namely: "legal reasoning", "law product", and "taqrir al-ilath". Two main references inspire this aspect of the study, namely: Levi (1994)⁹ and Al-Ghazali (1993;1997).¹⁰ Levi (1994) defines legal reasoning as a process in which the reviewers interpret the sources of law.¹¹ Concerning Islamic law, this process is known as *al-istidlal*.¹² Efforts to find *istidlal* generally have implications for the methods and patterns of the scholars in interpreting legal arguments. In addition, regarding the determination of *ilath* legal, Al-Ghazali's thoughts regarding *ilath* are referred to as theoretical foundations,¹³ making it possible to identify the form of legal ilath behind buying and selling gold on credit and methods of determining *ilath* attached to *istinbath* legal.

⁹ Edward Levi, *An Introduction to Legal Reasoning* (Chicago: The University of Chicago, 1949).

¹⁰ Abu Hamid Al-Ghazali, *Al Mustasfa min Ilm Al-Ushl* (Beirut: Ar-Risalah, 1997); Abu Hamid Al-Ghazali, *Asas Al-Qiyas* (Riyad: Maktabah Al-Abikan, 1993).

¹¹ Levi, *An Introduction to Legal Reasoning*.

¹² Abu al-Ma'ali Al-Juwayni, *Al-Burhani fi Ushl Al-Fiqh* (Qatar: Matba'at al-Dawhah al-Hadithah, n.d.).

¹³ Al-Ghazali, *Al Mustasfa min Ilm Al-Ushl*; Al-Ghazali, *Asas Al-Qiyas*.

B. Literature Review

Establishing a law in the Islamic tradition is a complex process. Not only does it require *ijtihad*, but it also relies on an accurate and valid methodology in the tradition *ushl fiqh*.¹⁴ Therefore, this section will elaborate on two important concepts believed to be the foundation of the analysis of legal issues surrounding the sale and purchase of gold on credit. The discussion includes (1) *Al-istidlal*: a process in which the *mujtahids* (jurisprudence) try to find the right arguments and interpret them; (2) if there is no argument, then the concept of *Qiyas* is applied as legal reasoning.¹⁵ These two discussions are intended to be an analytical framework in identifying the *aspects* legal offered on the legal issue of buying and selling credit in gold.

a. *Al-Istidlal: Concepts and Methods of Legal Argument*

Islamic law has a unique method of searching for legal arguments and is very dynamic.¹⁶ Therefore, in the tradition *ushl al-fiqh*, the method of searching for legal arguments has a fairly wide portion of the discussion in the debate *ushl fiqh*.¹⁷ These differences produce a dynamic method for determining legal arguments and a hierarchy of arguments referred to in legal settlement (*al-istinbath*) by *mujtahids*. When there is a debate (*khilafiah*) among *mujtahids* in searching for Evidence, and setting it as a source of Islamic law, then it is called *manhaj al-istidlal (mashab al-istidlal)*. The term refers to the demonstration (*al-burhani*) of the proposition of a preposition that is considered true, and is easily accepted by a group of people (*darurah*). Then it becomes a reference with various forms of accompanying instruments.¹⁸ This means, *istidlal* refers to the process of determining legal references that are accepted collectively, and has a dimension of truth that is difficult to refute, so it is worthy of being used as an argument in establishing Islamic law.

¹⁴ Hafas Furqani dan Mohamed Aslam Haneef, "Usul Al-Iqtisad approach in developing the foundations of Islamic economics discipline," *Methodology of Islamic Economics* (Routledge, 2019), <https://doi.org/10.4324/9780429320804-5>.

¹⁵ Al-Juwayni, *Al-Burhani fi Ushl Al-Fiqh*.

¹⁶ N.J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964).

¹⁷ Umar Muhaimin, "Metode Istidlal dan Istishab: Formulasi Metodologi Ijtihad," *YUDISIA : Jurnal Pemikiran Hukum dan Hukum Islam* 8, no. 2 (April 2018): 330, <https://doi.org/10.21043/yudisia.v8i2.3243>.

¹⁸ Abdu Arrahman Maudi, "Manhaj al-Istidlal Al-Fiqhy 'inda Al Maliki wa Asruhu fi al-Khilafi Dakhil Al-Mashab" (Universite d'Oran Ahmed ben Bella, 2019).

In discussing and interpreting *istidlal*, scholars *ushl fiqh* to explain the concept in the context of "adilah" (*source of law*). In this case, Imam Al-Ghazali interprets that the relation between *istidal* and legal proposition lies in two things, namely: "process" and "form of the legal proposition". The forms of legal arguments agreed upon among scholars *ushl fiqh* include: "Quran", "hadith", and *ijma'*¹⁹. These three forms of theorem require various approaches to produce legal statements from them. In the context of the Quran and hadith, for example, Imam Al-Ghazali introduced the theory of "turuq al-istismari": a process of seeking *dalalah* (argument aspect) from the propositions of the Quran and Hadith. In this case, there are several forms, namely: sometimes in the form of words (*al-aqwal*) which indicate something with *sighat* (formulation); *mandzum* (structures); *fahwa* (contents); *understand* (understanding); *iqtidha'* (need); *emergency* (important needs); *ma'qul* (reason); and *ma'na* (meaning) which is interpreted from the text.²⁰ All the concepts offered by Al-Ghazali are applied according to the context for which a mujtahid seeks legal arguments.

Thus, if considered in more detail, the order of the arguments presented by Al-Ghazali emphasizes one thing, that: a mujtahid in deciding a law should ideally pay attention to the hierarchy of legal sources, namely: "quran", "hadith" and "ijma". It is just that in processing the arguments chosen from these legal sources, the mujtahids have the autonomy in determining what method or *manhaj* *ushl fiqh* to use. This method is very determinant with the form of the argument used in producing a legal product. Al-Zarkazy (1992) classifies the arguments into three forms, namely: "proposition *sima'i*", "*aqli proposition*", and "proposition *wad'i*".²¹ Meanwhile, the argument *sima'i* is the *al-lafdzi al-masmu'*, proposition which in the Fiqh tradition is defined as the *syar'i* proposition which includes the Quran; Sunnah; Ijma 'and *al-Istidlal*.²² In addition, scholars of the caliber of Sheikh Abdul Khattab Al-Hanbali (1985) categorize the arguments into several forms, namely: (1)arguments *asl* which include the Quran, Sunnah, Ijma', and Ijma' Companions; (2)argument *ma'qul*, which includes *lahn khitob* (extracted meaning from text); and *fahw khitob* (indicated by texts); and (3) *istishab hal*

¹⁹ Al-Ghazali, *Al Mustasfa min Ilm Al-Ushl*.

²⁰ Al-Ghazali.

²¹ Al-Zarkasyi, *Al-Bahr Al-Muhith fi Ushl Al-Fiqh Vol. 1* (Bairut: Dar Al Safwa, 1992).

²² Al-Zarkasyi.

or defined as the determination of the law based on the previous law.²³ The various forms of the arguments that have been grouped by the scholars of this school of course have broad implications for the methodology used by the mujtahids in understanding and producing legal norms from these arguments.

Joseph E. Lowry (2003) agrees with Schacht, categorizing the Quran and Sunnah as two main principles. Then make *ijma'* and *qiyas* as two subordinate sources of the two main sources²⁴. Putting *qiyas* as a subordinate source is rational because *qiyas* is more accurately referred to as a method of legal reasoning rather than a source of law. This was then explained in detail by Abu Hamid Al-Ghazali regarding the foundation of *qiyas*.²⁵ Some scholars and mujtahids say that the methodology of Islamic law is built through popular disciplines, with the term *ushl al-fiqh*.²⁶ It is no exaggeration among Islamic jurists, *ushl fiqh* is called the *queen of science* in Islamic studies. That is, *ushl fiqh* is not just a methodology but has become the queen of Islamic studies.

In addition to *ushl fiqh*, Jackson (2002) identifies a method in building legal arguments from intellectual work inscribed by Ibn Rush in his work, *bidayatul mujtahid*. In this case, Ibn Rushd introduces two approaches to the proposition, namely: (i) "legal interpretation" which is intended to meet practical needs; and (ii) an approach that seeks to maintain consistency with the overarching prescriptive hermeneutics.²⁷ These two approaches have practically different emphases. The "legal interpretation" approach is more oriented towards its goal to answer practical legal issues. This "legal interpretation" approach has a distinctive tradition of selecting legal arguments in establishing Islamic law. Generally, the arguments are *tatabu' ar rukhsah* (considering the beneficials). This tradition encourages the use of the "proposition massive-*maslahah*, both in the form of Islamic texts, ie, the Quran and Hadith, as well as fiqh

²³ Sheikh Abdul Khatab Al-Hanbali, *Tamhid fi Ushl Al-Fiqh Vol. 1* (Saudi Arabia: Dar Al-Madani, 1985).

²⁴ Joseph Lowry, "Does Shafi'i have a Theory of Four Sources of Law?," in *Studies in Islamic Legal Theory*, ed. oleh Bernard G. Weiss (Leiden: Brill, 2003), 23–50.

²⁵ Al-Ghazali, *Asas Al-Qiyas*.

²⁶ Furqani dan Haneef, "Usul Al-Iqtisad approach in developing the foundations of Islamic economics discipline."

²⁷ Sherman A. Jackson, "Fiction and Formalism: Toward a Functional Analysis of Usul al-fiqh," in *Studies in Islamic Law and Society Vol. 15*, ed. oleh Bernard G. Weiss (Leiden: Brill, 2002).

rules. In addition, the analysis framework *ushl fiqh*. This analytical framework allows mujtahids to produce legal products that pay attention to aspects of the purpose and function of law for the community and Muslims. This is in line with the basic meaning of *ushl fiqh*: "the methodological and philosophical foundation of Islamic law. It is as a methodology for deriving the law from revelation."²⁸ The second method offered by Ibn Rush is more visible as "new legal formalism," where legal hermeneutics plays an important role as the *istinbath* method or the fabrication of Islamic legal theory. Islamic legal hermeneutics itself refers to "interpretive activities" that understand the text on a basis *grounded* to find messages and critical points from existing Islamic legal texts. The product of this approach is a critical legal status that is useful in responding to needs and is more visible as an alternative in matters of Islamic law.

b. Qiyas as Reasoning for Islamic Law: Concepts and Methodological Components

Another theory that needs to be elaborated is *qiyas*: an approach that consistently combines new issues (*furu'*) and established laws in the Quran and Sunnah (*hukm ashli*). This comparison is carried out to find "similarity" in the aspect of *ilath* legal.²⁹ Fukiko and Yasushi (2021) identify that *qiyas* is accepted as "the commonly accepted tool for speculative discernment for legal interpretation."³⁰ It is interpreted as a *tool for speculative discrimination for legal interpretation* because it is a process that seeks to equate a law from events that do not have legal texts with events that already have legal texts, because of the similarity of *illat*.³¹ Etymologically, *qiyas* means speculation as a result of estimating similarities. In this case, doing *qiyas* means estimating the similarity of two things that are characteristically different.

Although Al-Ghazali identified that *qiyas* is a space *caliphate*, especially regarding its acceptance and use as a proposition or legal method, this encourages the

²⁸ Jackson.

²⁹ Fauzi Fauzi, "The Principles for Ijtihād in Response to The Contemporary Problems," *MIQOT: Jurnal Ilmu-ilmu Keislaman* 42, no. 2 (Februari 2019): 281, <https://doi.org/10.30821/miqot.v42i2.557>.

³⁰ Ikehata Fukiko dan Kosugi Yasushi, "Ijma' in Islamic Law and Islamic Thought : Tradition , Contemporary Relevance , and Prospects," *Kyoto Bulletin of Islamic Area Studies* 14 (2021): 5–29.

³¹ Ahmad Masfuful Fuad, "Qiyas Sebagai Salah Satu Metode Istinbāt Al-Ḥukm," *MAZAHIB* 15, no. 1 (Desember 2016): 42–60, <https://doi.org/10.21093/mj.v15i1.606>.

birth of groups that reject and deny *qiyas*³². Abu Hamid Al-Ghazali succeeded in identifying the foundations of *qiyas*, both in terms of concepts and methodologies generally introduced by mujtahids. Al-Ghazali explains the word *qiyas* through two meanings: *First*, *qiyas* is according to Al-Ghazali grouped into the classification *general of al-tawqif*. However, it is more specific in its form—a *qiyas* that includes the understanding of *maqasidi-ma'qul*. So *qiyas* in this form is acceptable. *Second*, the second form is to relate something to the same thing—because there is "" (*similarity*). According to some scholars, this includes *qiyas* *batil* which is not following the Shari'a.³³ Therefore, Al-Ghazali asserts that *qiyas* that can be accepted as part of *istinbat* is *qiyas* or an analogy based on *tawqif al-mahd* (ie, comparing *furu'* and *asl* concerning the existence of similarities *maqsud (illat shari'i)*). In this case, *qiyas* can be categorized as a method *istinbat* that can be accounted for because *qiyas* is through reasoning that is based on texts or *tawqif lil-nash*.³⁴ This meaning then positions *qiyas* as a valid and accepted method in the tradition *ushl fiqh*, so it is elaborated. widely as a methodology establishment of Islamic law.

The element *qiyas* and discussed extensively in the tradition *ushl fiqh* include; First, "*Al-asl*" (الأصل) which is *lafas musytarok* which is generally defined as the foundation, the base, the source and the base. the terminology, "*al-asl*" referring to old cases, as object *qiyas* or existing case law provisions textually in *texts* and *ijma'*. In terms *ushl fiqh*, *al-asl* often verbalized *musyabbah bin* (مشبه به). This means *asl* a place or event that is used as a measure, comparison or equaled.³⁵ As one of the pillars of *Qiyas*, *asl* must meet several requirements: (i) the laws that exist on *asl* bersipat fixed; (ii) Decree law on *asl* should be based on the path *sam'i syar'i*, not *aqli*. Because whatever is determined through the instruments of *aqli* and *lughawi* (language) is not *alaw syara'* that can be used as a guide for *qiyas*; (iii) determine method *illat* on *asl* also through *sam'i*; (iv) *asl* is not *furu'* for *asl* another. Meaning, legal provisions in *asl* was not based on *qiyas*, but because there are the texts or *ijma'*; (v) The argument that sets *illat* on *asl* was special for *asl*, did not include the *furu'*; (vi) *asl* must not get out of the

³² Al-Ghazali, *Asas Al-Qiyas*.

³³ Al-Ghazali.

³⁴ Fuad, "Qiyas Sebagai Salah Satu Metode Istinbat Al-Hukm."

³⁵ Fuad.

rules *qiyas*. That is, *qiyas* should not go out of the general rule and become an exception.³⁶ Because, if he is out of the general rule, it is automatically *asl* can not be relied upon *qiyas*.

The second element is *furū'* (الفرع), which is often also called *musyabbah* (مشبه) or similar. In theory *qiyas*, *furū'* is defined as a case of wanting to be likened to *asl* in the absence of *texts* that clearly states the law. That, *furū'* is processed to be equated with *asl*. Substantially, *furū'* is a new thing with an unclear legal status and is assumed to have in common with *asl*. It should therefore be found to the point of similarity (*illat*) between *asl* and *furū'*.³⁷ The requirements for *illat* proposed in the tradition of *ushl fiqh* legally include: (i) *furū'* has not been determined based on *texts* or *ijma'*; (ii) the discovery of *illat asl* in *furū'*; (iii) the levels of *illat* contained in *furū'* should not be less than *illat* exist in *asl*; (iv) in *furū'* not found anything stronger against and become a barrier to equalize *furū'* and the law *asl*; (v) the law of the *furū'* does not precede a legal requirement on *asl*.³⁸ Third, the law of *asl* (حكم الأصل) is a legal form (ie, mandatory, harm, halal, or permissible), as determined by *nash* text. So the concept *ushl fiqh*, law *asl* have some requirements: (i) law *asl* must be determined by the texts or *ijma'*; (ii) the law *asl* is *ma'qul al-ma'na* or rational and can be digested by the mind³⁹. The fourth component of *qiyas* is *illat* (العللة), which is interpreted as *Evidence* or reason, behind the law that has been established by the texts, i.e., the Quran and Sunnah.

The requirements of *illat* include: (i) *illat* must be a clear and visible nature, so that it becomes something that can be identified. Because *illat* plays an important role in determining the law; (ii) *illat* must be strong, not affected by changes in individuals, situations or the environment, with an understanding that can accommodate all changes that occur definitively; (iii) must have a correlation (*munāsib*) between the established law and *illat*; (iv) There is a property that can only be found in *asl*. Nevertheless, *illat* must have a broad reach (*muta'addy*); and (v) This characteristic does not contradict the *texts*.⁴⁰ With the complexity of theory *qiyas* this, and then it is used as legal reasoning to

³⁶ Fuad.

³⁷ Sakirman, "Metodologi Qiyas dalam Istibath Hukum Islam," *Jurnal Pemikiran Hukum dan Hukum Islam* 148 (n.d.): 148–62; Fuad, "Qiyas Sebagai Salah Satu Metode Istibāṭ Al-Ḥukm."

³⁸ Fuad, "Qiyas Sebagai Salah Satu Metode Istibāṭ Al-Ḥukm."

³⁹ Fuad.

⁴⁰ Fuad.

produce legal opinions, it is not something new. Nevertheless, this complexity grew with the widespread use of *qiyas*, or analogical reasoning in various philosophical traditions.

Wael B. Hallaq identified that the use of *qiyas* has been going on for a long time, even before *ushl fiqh* accepted it as a legal methodology. In the tradition of knowledge in Persian society, *qiyas* have been used extensively. Imam Shafi'ite termed *qiyas* such as the *folk of qiyas*⁴¹. The difference between *qiyas* before *ushl fiqh* is that it is not categorized as a legal theory closely related to *reasoning (ra'yu)*. Only later in Imam Shafi'i, *qiyas* grouped as a methodology that stands on the foundation of reasoning or *ra'yu*.⁴² This is understandable, because Muhammad Idris As-Shafi'i built the concept of *qiyas* as an inseparable part of *ijtihad*. Because *qiyas* involves methods *legal reasoning* specific. For him, *ijtihad* and *qiyas* are two sides of a coin that cannot be separated. Both guide all forms of methodological reasoning against the Quran and Sunnah.⁴³ Although Shafi'i introduced *qiyas* as a method of *legal interpretation* of Islamic texts, he still gave the principle when *qiyas* could be used as a method. The limitation refers to the "absence" or "absence" of the law which is concretely explained by the *texts* on new issues (*furu'*). Thus, *qiyas* cannot be used haphazardly without limitations and rules. Nevertheless, it must be used while still referring to the principles outlined by *ushl fiqh*, scholars as well as religious scholars such as Muhammad Idris As-Shafi'i.

C. Method

Paper applies the study model conducted by Fauzi (2008), which emphasizes a qualitative approach, especially related to data collection through document studies.⁴⁴ This approach is applied because this study uses secondary sources, books, and journal articles that discuss the law of buying and selling gold credit. Nevertheless, the data are

⁴¹ Wael B. Hallaq, *The Origin and Evolution of Islamic Law* (Cambridge, MA: Cambridge University Press, 2005).

⁴² Hallaq.

⁴³ Wael B. Hallaq, *A History of Islamic Legal Theories, A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), <https://doi.org/10.1017/cbo9780511801266>.

⁴⁴ Fauzi, "The Principles for Ijtihād in Response to The Contemporary Problems."

classified based on their function to the research question.⁴⁵ Data that directly answer research questions are categorized as primary data, then explained from other data, both from books, books, and journal articles. The books used as references are the works of Islamic school scholars, both classical and contemporary.⁴⁶ These books are used as a source of explanation regarding the law of credit on gold and become a theoretical framework related to *qiyas*, which is often used as legal reasoning in cases of gold credit. In addition, other articles were also used and positioned supporting data related to the issue of the study. In addition, Midisen and Handayani (2021) also offer a textual normative and juridical research model⁴⁷ to identify the legal construction behind gold transactions in the fiqh tradition.

D. Findings and Discussion

a. *Selling and Buying Gold on Credit: Fiqh Opinions and Fatwas The*

The use of gold today has expanded and has transformed its original function. It is not only a commodity, it has become capital for investment. Even now gold is not only traded in cash, but also traded on credit.⁴⁸ In this second form, namely buying and selling gold credits, it is a problem and triggers debate among mujtahids, namely, whether it is permissible or *harmful* to buy and sell gold on credit. Several groups of scholars argue in this regard. First, it is the scholars who forbid gold. This is based on the *consensus* of the scholars (ie, Hanafi school; Maliki; Shafi'i; and Hanbali). The *ijma'* is based on the hadith narrated by Imam Muslim No. 1587: "From Ubadah bin Shamith *ra*, that the *Messenger of Allah* (SAW) said:

"If gold is sold for gold, silver is sold for silver, wheat is sold for wheat, sya'ir (a type of wheat) is sold for sya'ir, dates are sold for with dates, and salt is sold with salt, then the amount (measures or scales) must be the same and paid in cash (cash). If the types of goods are different, then feel free to barter them as you like, but it must be done in cash (cash)." (HR. Muslim No. 1587).

⁴⁵ Fauzi.

⁴⁶ Muhammad bin Idris As Syafi'i, *Ar Risalah lil imam al Mutalibi Muhammad bin Idris as-Syafi'i* (Bairut: Dar Kutb Al Islamiyyah, 2006); Wahbah Al-Zuhaili, *Mu'amalah al-Maliyah al-Mu'ashirah* (Damaskus: Dar Al-Fikr, 2009); Wahbah Al-Zuhaili, *Al-Wajiz fi Al-Fiqh Al-Islami* (Bairut: Dar Al-Fikr, n.d.); Al-Ghazali, *Asas Al-Qiyas*.

⁴⁷ Midisen dan Handayani, "Jual Beli Emas Secara Tidak Tunai Ditinjau Secara Hukum Fiqih."

⁴⁸ Midisen dan Handayani.

This hadith is the foundation of Islamic scholars to forbid the buying and selling of gold when it is not the same size. This transaction is not following the principles of the hadith of *Ubadah bin Samith*, which Imam Muslim also narrated. Muhyiddin ibn Syarif An-Nawawi through his work *Al-Majmu' Syarh Al-Muhazab* Volume. 10, discusses how this *ijma'* is based on and refers to the hadith.⁴⁹ Even An-Nawawi juxtaposes the hadith with QS al-Baqarah 275:

"Those who eat (transact with) usury cannot stand up, except like people who stagger because of the devil's trance. This happens because they say that buying and selling is the same as usury. Allah has permitted buying and selling and forbidden usury. Whoever has come to him a warning from his Lord (regarding usury), then he stops so that what he has obtained before becomes his and his affairs (up to) to Allah. Whoever repeats (usury transactions), they are the inhabitants of hell. They abide in it."

These two arguments become *wajh al-ijma'* among scholars to forbid the exchange of gold in different sizes and qualities.⁵⁰ Likewise, Ibn Mundzir asserted that scholars agree that two people who exchange money with each other, if they separate before handing over the money, then the transaction has a disability.⁵¹ This adds a requirement for gold transactions; besides having the same amount, it must be cash.

Abu Hamid al-Ghazali is more assertive in his opinion regarding usury transactions on dinar-dirhams; gold and silver. According to him, people who continue to carry out these transactions have believed in favors and have done an injustice.⁵² Al-Ghazali explains why commodities such as Dinar, Dirham, gold, and silver are included in the commodity *ribawi*, because these commodities (especially Dinar and Dirham) were created only as a medium, not a goal. When it is transacted to make a profit, it turns from a medium to a commodity, which is against the provisions of fiqh. Because of that, it is also not allowed to buy and sell on credit for usury commodities, including gold.⁵³ In addition to Al-Ghazali, an Iraqi cleric with the Hanbali school of thought, Ibn Hubaira has also expressed his opinion regarding gold transactions, where according to

⁴⁹ Muhyiddin ibn Syarif An-Nawawi, *Al Majmu' Syarh Al Muhazab Vol. 10* (Jeddah: Maktabah Al-Irsyad, n.d.).

⁵⁰ An-Nawawi.

⁵¹ Midisen dan Handayani, "Jual Beli Emas Secara Tidak Tunai Ditinjau Secara Hukum Fiqih."

⁵² Abu Hamid Al-Ghazali, *Ihya' Ulumuddin Vol. 4* (Bairut: Dar Ibn Hazm, 2005).

⁵³ Al-Ghazali.

him: "it is not permissible to exchange gold for gold, or silver for silver, whether it is still in the form of raw materials, in the form of currency, or the form of jewelry in a non-cash and unequal way. Muslims agree that it is permissible to exchange gold and silver with different sizes, but it will be *harmful* when it is done without cash.⁵⁴ Nevertheless, along with its development, the law of buying and selling gold on credit has also been widely discussed by various contemporary scholars and is not only fixed on the fiqh opinions offered by Islamic scholars in the previous era.

First, the decision of scholars around the world through the *Rabithah Alam Islami* (Muslim World League) has discussed the issue of gold and silver transactions at the 5th congress in Mecca: "based on research submitted to the Council of Islamic Institutions regarding *real money* and its law according to the Shari'a. After being reviewed and discussed by the members of the assembly, it was decided as follows: (i) based on that the origin of money is gold and silver and based on the *illat that* usury applies to gold and silver is "mutlaq tsammaniyah" (absolute exchange rate) according to the opinion of the scholars who strong, and based on the opinion of scholars that "mutlaq tsammaniyah" is not limited to gold and silver, even though its status is a precious metal which is the benchmark; also refers that currency at this time is considered as a medium of exchange, replacing gold and silver, and as a measure of price because no one else uses gold and silver as a medium of exchange. So that currency has been trusted and widely used as an investment tool, a means of storing assets, and used as a means of payment of obligations, even though currency's value is not material and physical.

However, its value comes from the user's trust to be transferred, from that thenature *tsammaniyah* (value) is generated. . Referring to this opinion, it was decided that currency is money that stands alone. As for *usury, fadhal* and *nasiah*, it also applies to currency like gold and silver, so the law relating to gold and silver also applies to currency;⁵⁵ (ii) currency notes are money that stands alone just as gold and silver coins consist of various types, depending on the country that issued them. Given this, it was decided that: *First*, it is not permissible to exchange one currency for another

⁵⁴ Yahya ibn Hubaira, *Ikhtilaf Al-Aimah Al-Ulama' Vol. 1* (Libanon: Dar Kutb Al-'Ilmiyah, 2002).

⁵⁵ Midisen dan Handayani, "Jual Beli Emas Secara Tidak Tunai Ditinjau Secara Hukum Fiqih."

country's currency or with gold and silver in a non-cash manner; *Second*, it is not permissible to exchange money into denominations and currencies with different nominal values; *Third*, it is possible to exchange currencies of different types with different nominal conditions on the condition that it is cash.⁵⁶ However, other scholars have different opinions and allow buying and selling of gold for non-cash or on credit.

Ibn Taimiyah and Ibn Qayyim, two scholars, allowed the buying and selling of gold on credit. Ibn Taimiyah said: "It is permissible to buy and sell jewelry made of gold and silver of its kind without conditions that it must be of the same level (*tamasaul*), and the excess is used as compensation for jewelry making services, both buying and selling by paying cash or with a credit system. As long as the jewelry is not intended as a price (money)." Meanwhile, Ibn Qayyim explained further: "jewelry (from gold or silver) is permissible, because its manufacture (become jewelry) is permissible, changing its status to a type of clothing and goods, not a type of price (money). Because it is not obligatory zakat on the jewelry and does not apply usury (in exchange or buying and selling), although not of the same type.⁵⁷ Responding to this issue, the Indonesian Ulema Council (MUI) also issued a fatwa decision by the National Sharia Council No. 77/DSN-MUI/VI/2010 concerning the Sale and Purchase of Gold for Non-Cash, as follows: ordinary buying or buying and selling murabahah, the law (*mubah, jaiz*) as long as gold is not an official medium of exchange (money).

Limitations and conditions: (i) The selling price (*tsaman*) may not increase during the term of the agreement even though there is an extension of time after maturity; (ii) Gold purchased with non-cash payments may be used as collateral (*rahn*); and (iii) Gold that is used as collateral as referred to in point "ii" may not be sold.⁵⁸ These two legal forms of buying and selling gold on credit emphasize different arguments, and the differences that arise can also be presumed because of the different meanings of *illat* for gold and silver and the development of their use in society. Therefore, it is necessary to elaborate what *illat* is put forward regarding the buying and selling of gold in the fiqh tradition.

⁵⁶ Midisen dan Handayani.

⁵⁷ Midisen dan Handayani.

⁵⁸ Midisen dan Handayani.

b. *Illat behind the Buying and Selling of Gold: Early Identification*

As for the *illat* attached to the law of buying and selling gold on credit can be categorized into several forms. First, *illat* on the opinion of Islamic scholars who prohibit the buying and selling of gold on credit. In general, the *illat* refers to the meaning of *ijma'* from the hadith of Ubadah bin Shamit, which means: "If gold is sold for gold, silver is sold for silver, wheat is sold for wheat, *sya'ir* (a type of wheat) is sold for *sya'ir*, dates are sold with dates, and salt is sold with salt, then the amount (measures or scales) must be the same and paid in cash (cash). If the types of goods are different, then feel free to barter them as you like, but it must be done in cash (cash)." (HR. Muslim No. 1587). This hadith confirms the existence of *illat* fixed on gold, which is included in the type of *ribawi* commodity, which is *tsammaniyah*, indicating the price entity in itself. Imam Shafi'i believes *illat* Prohibition of buying and selling gold and silver are not cash because the two objects are the kinds of things weighed. Therefore, it is forbidden to sell and buy all weighed objects by bringing them to usury.⁵⁹ In this context also Al-Ghazali asserts that:

"Al-Ghazali explains why commodities such as Dinar, Dirham, gold and silver are included in commodities *usury*, because these commodities (especially Dinar and Dirham) were created only as a medium, and not a goal. When it is transacted to make a profit, it turns from a medium to a commodity, which is against the provisions of *fiqh*. Because of that it is also not allowed to buy and sell on credit for usury commodities, including gold."⁶⁰

So Al-Ghazali firmly sees the *illat* of gold transactions with no cash, because it will change the nature of gold, which was an instrument or medium, then becomes a "goal" to generate profits, so that it becomes a commodity. Simply put, the transaction of gold by diverting its function into a commodity, then the reason for the *harm* of the transaction. As for *illat* here is "make gold as a commodity." Ibn Hubaira saw this change as the cause of non-cash gold transactions as a way to *usury nasiyah*.⁶¹ Based on the assessment of *Rabita Alam Islami*, while *illat* ban gold transactions on credit is

⁵⁹ Nurfauziyah, Armen, dan Hakim, "Analisis Hukum Islam terhadap Jual Beli Emas secara Tidak Tunai."

⁶⁰ Al-Ghazali, *Ihya' Ulumuddin Vol. 4*.

⁶¹ Hubaira, *Ikhtilaf Al-Aimah Al-Ulama' Vol. 1*.

mutlaq tsammaniyah or absolute exchange rate.⁶² The same thing was also expressed by various royal fatwas of Saudi Arabia No. 3211, where when people are asking:

Problem : A customer came into the shop wanted to buy gold, he only brought enough cash to pay for DP only, please set aside and the gold is money! I'll come to pay for it later." Some time later he came to pay and received the gold. What is the law of this sale?

Answer : Buying and selling is not allowed, because the handover of goods is not cash. (Fatawa lajnah daimah, vol. XIII, p. 476).

Problem: Sometimes the owner of a gold shop buys gold in large quantities from one of the gold dealers outside the city by telephone, and the type of gold ordered is clear. After a price agreement is reached, the buyer sends money to the seller via bank account transfer, is this transaction allowed, or what should be done?

Answer : This transaction is not legal, because the handover of gold and cash is not cash, even though both are usury commodities. This transaction includes usury nasi'ah, the law is haram. The solution, when the money is received, the sale and purchase contract is repeated so that the contract takes place in cash. (Fatawa lajnah daimah, vol. XIII, p. 475).

However, for scholars such as Ibn Taimiyah and Ibn Qayyim who allow buying and selling of gold on credit, the *illat* proposed is relatively different. Ibn Taimiyah allows it by requiring "as long as gold or gold jewelry is not intended as price or money."⁶³ Meanwhile, Ibn Qayyim explained that *illat* is permissible for credit transactions on gold jewelry, because gold in that form has changed its status to clothes or goods, no longer a type of price or money.⁶⁴ Meanwhile, referring to the DSN MUI fatwa No. 77/DSN-MUI/V/2010 concerning the sale and purchase of gold in a non-cash manner, DSN MUI stipulates that the transaction is legal long as "gold is not an official medium of exchange (money). With the provision that the selling price (*tsaman*) may

⁶² Midisen dan Handayani, "Jual Beli Emas Secara Tidak Tunai Ditinjau Secara Hukum Fiqih."

⁶³ Midisen dan Handayani.

⁶⁴ Midisen dan Handayani.

not increase during the term of the agreement even though there is an extension of time after maturity.⁶⁵ In simple terms, buying and selling gold on credit is built in two opinion frameworks: "haram" and "permissible". The *illat* most prominent is positioning gold as *tsaman* (price, money), so that it cannot be traded except in cash.

E. Conclusion

Two general conclusions can be drawn from this study. First, the opinion of Islamic scholars who forbid gold transactions in cash. This opinion refers to the meaning of *ijma'* from the hadith of Ubadah bin Samith, where: "*If gold is sold for gold, silver is sold for silver, wheat is sold for wheat, sya'ir (a type of wheat) is sold for sya'ir, dates are sold for dates, and salt are sold with salt, then the amount (measures or scales) must be the same and paid in cash (cash). If the types of goods are different, then feel free to barter them as you like, but it must be done in cash (cash).*" This hadith clearly and later became the foundation of the *consensus* of Islamic scholars that gold is a usurious commodity, which must be transacted in cash. Second are the opinions of scholars such as Ibn Taimiyah and Ibn Qayyim and the fatwa of the MUI DSN, which allows credit transactions on gold as long as the gold is not used as money. In addition, although this study has succeeded in identifying the laws and *illat* that underlie the law of buying and selling gold on credit, this study is still very limited. It needs to be developed towards studying the legal philosophy behind the developed fatwas and fiqh opinions related to gold transactions.

⁶⁵ Midisen dan Handayani.

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