



Sociological Analysis of Islamic Law Regarding Law Number 22 of 2009 Related to the Sale and Purchase of Vehicles Without Complete Documents

Difa Wahyudi^{1*} , Silfia Hanani² , Nofiardi³ 

¹²³Islamic Law Study Programme, Sjech M.Djamil Djambek State Islamic University Bukittinggi, indonesia

Abstract. This article discusses the sociological analysis of Islamic law on buying and selling vehicles without the complete documents according to Article 68 paragraph 1 of law number 22 of 2009. In this discussion, the authors conducted research because many people buy vehicles without the complete STNK document, which is proof of registration and validation of a vehicle. motorized vehicles based on identity whose ownership has been registered. STNK is issued by SAMSAT, which is a place for issuing or validating services by 3 agencies: the National Police, the Provincial Revenue Service and PT. Raja Service. STNK is the starting point for legal ownership of a motorized vehicle. Therefore, according to the provisions above, what must be met in a used motorcycle transaction should be the same as the first party when buying the motorcycle in a new condition. The documents that must exist and are clear and can be handed over when vehicle transactions are STNK, BPKB and receipts. especially in rural areas where the majority of the population has jobs as oil palm farmers, for oil palm farmers vehicles or motorbikes play an important role in supporting work, especially in transporting crops, this is because the location of community plantations is mostly hilly, this makes people in plantation areas prefer to buy a vehicle without complete documents because it is only used to go to the garden and also the price is relatively cheaper than having to buy a vehicle that has complete documents. Judging from the problems above, there is a big risk lurking in the community because of buying a motorbike without complete documents. Even though not all motorcycles without complete documents are the result of a crime, however, as a buyer, you cannot be sure whether the motorcycle is the legal property of the seller, what if the motorbike is not the legal property of the seller, then what about the buying and selling process? interpreted by the transfer of property rights from the seller to the buyer, whereas in this case the seller cannot be ascertained as the legal owner of the goods being traded, but if we look at it from a fiqh point of view, of course, buying and selling like this is prohibited because one of the legal conditions for buying and selling is that the goods must belong to itself and also by law buying and selling like this is also prohibited because vehicles without the complete documents are considered fraudulent vehicles which of course can lead to criminal sanctions.

Keywords: Buying and selling, Vehicle, Documents.

1.Introduction

Buying and selling is the process of transferring rights from the seller to the buyer in buying and selling there must be an object which is a very important thing that must exist in a buying and selling transaction. If the object of the contract is an object, the clarity of the object is related to whether the object is present in the contract assembly or not. If the object in question is there at the time the contract is made, according to Hanafi and Hambali scholars, it is enough to show the promised partner even if the object is in a closed place, such as wheat or sugar in a sack. According to Maliki scholars, showing is not enough but must be seen directly if this is possible. If it is not possible to see it, it is enough to describe

it, Syafi'i scholars argue that it requires seeing the object directly, whether the object is there or not at the place where the contract is made.

Everyone who legally owns goods has the right to treat said goods as the owner wishes, including to sell them to other parties. An object to be used as an object of sale and purchase has several conditions that must be met, namely sacred, beneficial according to syara', belonging to the person making the contract, able to be handed over by the contracting party, knowing the status of the goods and goods can be accepted by the party making the contract.

Motorcycles are one of the objects that can be traded. Provisions for motorcycle ownership have been regulated in law. As in Article 68 paragraph 1 of the Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation, it is stated that every motorized vehicle operated on the road must be equipped with a Vehicle Registration Certificate (STNK) and a Motorized Vehicle Number (TNKB). Motorcycles that are not equipped with STNK and BKPb ownership can be questioned or considered as fake motorbikes.

Motorcycles without complete documents are usually purchased from motorcycle sellers in areas where the majority of their income is oil palm farmers. Motorcycles vary in model and brand. The model is still relatively new, but the motorbikes offered do not have the complete documents, making each community have their own arguments about it. There were those who argued that the motorbike was stolen, there were those who thought that it was possible that the documents had been lost, and some even did not care about this.

However, when asked directly to the seller, the seller only replied that the other documents were missing. Even so, people still want to buy motorbikes that are clearly incomplete, for example, there is only a STNK, this is because motorbikes without the complete documents are offered at relatively cheap prices to prospective buyers and also usually buyers use motorbikes without the complete documents just to going to the garden, especially in areas where the majority of the population as oil palm farmers use their motorbikes to transport their crops.

The community chooses to buy used motorbikes because they are cheaper and the motorbikes are purchased only for plantation activities, therefore when there are parties who offer cheap vehicles even though they do not have complete documents, some people are interested in buying them. Even so, not all motorbikes are without complete documents. is the result of a crime, there are also several other reasons such as loss of documents due to fire, pickpocketing, falls and vehicle withdrawals made by certain parties because they cannot pay off when making purchases on installments and others.

Seeing from the problems above, there is a big risk lurking in the community for buying a motorbike without complete documents. Even though not all motorbikes without complete documents are the result of a crime, however, as a buyer, you cannot be sure whether the motorbike is the legal property of the seller, what if the motorbike is not the legal property of the seller, then what about the buying and selling process? interpreted by the transfer of property rights from the seller to the buyer, while in this case the seller cannot be ascertained as the legal owner of the goods being traded, which means that there is no transfer of property rights because the seller cannot be ascertained as the legal owner of the goods being sold, of course the sale and purchase illegal according to Islamic law.

From the description that has been stated above, the writer is interested in further discussing this issue with the title Sociological analysis of Islamic law regarding law number 22 of 2009 regarding the sale and purchase of vehicles without complete documents.

2. Methods

In order to obtain data and an explanation regarding the sociological analysis of Islamic law on the sale and purchase of vehicles without the complete documents according to Article 68 paragraph 1 of law number 22 of 2009. And everything related to the subject matter above requires a research guideline called the research methodology. In conducting research, data is needed that can provide the truth of a science. Then research can be defined as an attempt to find, develop, and test the truth of a knowledge, which effort is carried out with scientific methods (Hadi 1989).

These methods are very important to support the results that will be obtained from the research conducted, so as to obtain data with a clear picture of the problem under study. The type of research that the author uses in this study is a type of field research. That is research conducted in real life, namely involving data in the field (Narbuko and Achmadi 2015). Field studies can be interpreted as a method of collecting data in qualitative methods. where researchers observe and participate directly in research, which does not require in-depth knowledge of the literature used and certain abilities on the part of the researcher. the author also uses library data sources (library research) by utilizing books, research results, and the internet.

Based on the source, the type of data is divided into two, namely primary data and secondary data. Primary data is data obtained directly through observation and interviews (Kasiram 2015). Primary data was obtained through observation and interviews with vehicle buyers without complete documents.

Secondary data is data that complements primary data, this data is complementary data which will be explicitly correlated with primary data, including in the form of books, journals, theses which are closely related to research (Susiadi As 2015). Secondary data is obtained through literature studies, mass media, government or private institutions, and others.

3. Results and Discussion

3.1. Buying and selling according to fiqh

Etymologically or linguistically buying and selling is the process of exchanging goods for goods (barter). Buying and selling is a term that can be used to express the two parties who make a transaction, namely the seller and the buyer.

In terms of terminology, there are several scholars who define buying and selling. One of them is Imam Hanafi, he argues that buying and selling is the exchange of assets or goods by doing a certain way or exchanging something that is liked with equal value and benefits of equal value for each party in need (Febriana and Daypon 2018). Exchanging it must be done with consent qabul or giving each other. The existence of a clause provides the benefit of excluding exchanges that do not have benefits for the parties conducting the transaction, such as exchanging dirhams for dirhams, or exchanging unwanted items or items that are completely unnecessary such as carcasses, dust and so on (al-Zuhaili 2005). Imam Nawawi argues that buying and selling is the exchange of goods or the like (al-Nawawi 2005).

Meanwhile, according to Al-Syabini in the book Mugni al-Mukhtaj defines buying and selling as follows "exchange of property for property in a certain way" based on this

definition it can be concluded that buying and selling in terminology is the exchange of property for property, usually in the form of goods for money made voluntarily with certain contracts with the aim of owning the goods (elittrosint 2020). The object of buying and selling is in the form of goods being traded and money as a substitute for these goods, this is of course different from a leasing or ijarah contract where the object can be the benefit of an item or service (Baldi pratama and Azheri 2019). In the context of consensual buying and selling is the key to the buying and selling contract, because without the voluntarism of both parties making the contract, the buying and selling is not valid (Qudamah 2005).

3.1.1. The legal basis of buying and selling

Buying and selling is part of mu'amalah which has a very clear legal basis, both from the Qur'an and Sunnah and has become the Ijma' of scholars and Muslims. Even buying and selling is not just mu'amalah, but also one of the media to carry out activities to help fellow human beings. The arguments for buying and selling are as follows:

QS Al-Baqarah verse 275:

Meaning: "Allah has justified buying and selling and forbidding usury"

QS An-Nisa verse 29:

Meaning: O you who believe, do not eat each other's wealth in a vanity way, except by way of trade that applies with mutual consent between you. and do not kill yourselves. Surely Allah is Most Merciful to you.

3.1.2. Pillars and terms of sale and purchase

As a form of transaction, a number of things must be fulfilled in buying and selling so that the contract is considered valid and binding. Some of these things are referred to as pillars in buying and selling (Sikumbang and Medika 2017). Hanafiah scholars emphasize that there is only one pillar of buying and selling, namely consent. Because according to Hanafiah scholars the most principle thing in buying and selling is mutual consent which is manifested by the behavior of giving each other goods. So there was an agreement, there the sale and purchase is considered to have taken place. Of course, with an agreement, things related to it are found, such as the parties who are in contract, the object of sale and purchase and the exchange rate (Ghana Qonitati Hanani 2022). The Jumhur Ulama established four pillars of buying and selling, namely: the parties conducting the transaction, swift, the goods being traded, and the exchange rate for the replacement of goods (al-Zuhaili 2005).

In conducting a sale and purchase transaction, there are four types of conditions that must be met, which are as follows:

First, the conditions for the contract to occur are conditions that have been set by syara', if these conditions are not met, the sale and purchase is cancelled. In this requirement, the person who buys and sells must be a person who has reason, mumayiz because according to Hanafiah scholars, young children who are intelligent and mumayiz (seven years old) can become contract experts, while malikiyah and hanabilah scholars are of the view that the contract of mumayiz children depends on the permission of their guardian. then there must be a place of contract or relationship between the seller and the buyer, and finally, the object of the contract or ma'qud 'alaih in this case it is prohibited to transact on goods that do not exist or are feared not to exist such as buying and selling fruit that is not visible and so on.

Second, the conditions for implementing the contract (nafadz) in this case a contractual agent or seller must be in control of the object he owns and the object does not belong to anyone else, therefore it is not permissible to sell leased goods or pawn goods, because the goods are not his own, unless permitted by the actual owner or the item must be his own.

Third, there are two types of conditions for the validity of the sale and purchase contract, namely general and special conditions, while the general conditions are:

- a. Items and prices are known.
- b. Buying and selling should not be temporary because buying and selling is a transfer of ownership forever.
- c. Buying and selling should bring benefits to both parties.
- d. There are no conditions that can damage the transaction, such as conditions that benefit one party.

While the special conditions are as follows:

- a. It is known that the initial price of buying and selling murabahah, tauliyah, wadi'ah.
- b. The replacement item and price are equal in value.
- c. Fulfillment of greetings, such as handing over money as capital in buying and selling greetings.
- d. One of the items exchanged is not a debt receivable.
- e. Free from gharar.
- f. Free from usury.

3.2. Buying and selling according to civil law

According to Article 1457 of the Civil Code, a sale and purchase agreement is an agreement between the seller and the buyer in which the seller binds himself to surrender his right to an item to the buyer, and the buyer binds himself to pay the price of the item. Based on the above understanding, it can be concluded that the essential element of a sale and purchase agreement is the transfer of ownership rights to an item and payment must be made in money. If the payment for the transfer of ownership rights over an item is not in cash, it is not a sale and purchase agreement, but barter or exchange. According to the consensual principle adopted by the civil code system in contract law in the Civil Code. The birth of the agreement is when there is an agreement between the buyer and the seller. This means that when there is an agreement regarding prices and goods, it is at that time that rights are transferred from the seller to the buyer. In this case the Civil Code is inconsistent. According to the Civil Code, the existence of an agreement does not mean that there is a transfer of property rights to the goods to the buyer. It turns out that the Civil Code adheres to the principle of obligatoir, which means that a new agreement gives rise to rights and obligations to demand delivery of goods and payment in cash. The occurrence of this agreement does not automatically result in a transfer of property rights. The new buyer becomes the owner of the goods he bought if the handover has been made. According to Article 612 paragraph (1) of the Civil Code, handing over movable objects except those that are not bodily, is done by handing them over.

Without documents in the form of STNK, BPKB and TNKB, a motorized vehicle cannot be ascertained who is the legal owner of the vehicle. Whereas in Article 68 paragraph 1 of the Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation, it is stated that every motorized vehicle operated on the road must be equipped with a Vehicle Registration Certificate (STNK) and a Motorized Vehicle Number

(TNKB). then thus the sale and purchase transaction of motorcycles without documents has not been able to fulfill the provisions of that article. In addition, ownership is unclear because it cannot be proven by any documents, and various speculations may occur. The worst thing of all is that the motorized vehicle is the result of an act of theft. If this is proven, the agent and the buyer can be subject to imprisonment for 4 to 5 years.

3.3. Factors causing the buying and selling of vehicles without complete documents

Motorcycles are one of the means of transportation used by the community for mobility, because there is no public transportation that can be used to support daily activities, both going to work and for various other activities. Motorcycles are more practical to use in various activities and are cost-effective. Many people have these motorbikes, so that the need for motorbikes does not decrease. Therefore motorcycle transactions are still in high demand, even though the price of new motorbikes tends to be high, this does not reduce the interest in owning motorbikes, especially new motorbikes, this only occurs in a small part of society. Meanwhile, other sections of society tend to be interested in used motorbikes, this is in line with their limited financial ability to buy and get new motorbikes. Used motorcycle enthusiasts are also segmented into two classifications, namely used motorcycle enthusiasts whose condition is suitable for use, because the year of production tends to be high, such as those released in 2015, 2016, 2017 and so on (zulpiadi 2023).

However, there are also motorbike buyers who are looking for motorized vehicles at even lower prices, because they can only own motorized vehicles that are not suitable for use from a legal legal standpoint because they do not have the complete documents as the identity of the motorized vehicle (ibrahim 2023). This condition tends to be very dangerous, because it is certain that motorbike buyers will be faced with various legal dilemmas that are practical, especially related to the legality of ownership of these motorized vehicles which are very difficult to prove in a formal juridical manner in the provisions of Indonesian legislation. However, this reality still has to be faced by the community because they do not have other, more practical options, so that even though they are faced with legal issues like this, some people still have a preference to buy these motorcycles. There are several causes or factors that are the reasons why motorcycle transactions without documents continue from year to year. Among them are: employment factors, economic factors, lack of public understanding of the law and its impact.

along with the large amount of land cleared to be planted with oil palm by the community, both among the farmers and the large financiers who invest in this sector, with an increase in the workforce that will be absorbed to manage these plantations. Both starting from clearing land, planting, caring for and harvesting processes require a lot of energy. So that garden owners, both individuals and commercial companies, will use the services of other people to do all that work (zulpiadi 2023).

The area is not always flat and even tends to be hilly, so each worker will use a vehicle to collect the oil palm fruit that has been harvested from the tree. The vehicle commonly used is a motorcycle, because this means of transportation is more practical and can be used on hilly plantations and roads that cannot be passed by cars. As the need for motorbikes continues to increase, oil palm plantation workers will look for used motorbikes that can support their work. If they have to buy a motorbike that is still new, it will be very unfortunate, because the use of this vehicle is only intended for going to work. Vehicles that are often used for transportation will no longer feel comfortable if they have

to be used for social activities in the community but these vehicles do not have complete documents. Most of the documents that still exist are in the form of STNK. Some of them even have no documents at all. because the price is cheaper, many people choose to buy vehicles without these documents as a support in improving the community's economy.

Some motorcycle buyers without these documents know the legal consequences that can ensnare them. The community understands that if the motorcycles that have been purchased are proven to be the proceeds of a crime, then they can be subject to legal sanctions in the form of criminal penalties because they can be charged as part of the perpetrators of crimes, that is, they can be called parties who collect stolen goods. However, what made some of these people continue to buy motorbikes without documents was that there was no evidence that the vehicle was the result of an act of theft, and that there were no people who received sanctions when the Traffic Police found people owning vehicles that were not equipped with these documents (ibrahim 2023).

3.4. Sociological analysis of Islamic law on buying and selling vehicles without documents

Buying and selling must fulfill the pillars and conditions. The pillars of buying and selling are something that must exist to realize legal law or not buying and selling. As for the pillars of buying and selling, there are people who are in contract, there are sighat (consent and qabul), there are goods that are purchased, and there is an exchange rate for replacing goods. Regarding sighat, namely the consent granted, there is no problem. Ijab and qabul are carried out by both parties as a sign of agreement, in which the seller and buyer mutually agree to carry out buying and selling in this way. Then the exchange rate for replacing goods is also fulfilled in this sale and purchase, where the exchange rate used is in the form of the value of the amount of money exchanged for goods.

Furthermore, what must be fulfilled in the pillars of buying and selling are goods or ma'qud 'alaih which are the object of buying and selling. Basically, there is no problem with the goods that are used as objects of sale and purchase, because the goods being traded are motorbikes. Motorcycles are not included in the class of unclean objects or objects that are forbidden, so the object in buying and selling is halal to be traded. Apart from that the object is not unclean, there are other conditions that must be met in the object of the transaction, namely, the goods that are used as the object of the transaction are legally owned with perfect ownership. This requirement is not met in buying and selling motorbikes without paperwork. It is not clear who owns the motorcycle being sold by the seller. In addition, there was no explanation and no power of attorney was shown by the seller, although not all vehicles without the complete documents are fraudulent vehicles.

Without documents in the form of STNK, BPKB and TNKB, a motorized vehicle cannot be ascertained who is the legal owner of the vehicle. Whereas in Article 68 paragraph 1 of the Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation, it is stated that every motorized vehicle operated on the road must be equipped with a Vehicle Registration Certificate (STNK) and a Motorized Vehicle Number (TNKB), therefore, a sale and purchase transaction of a motorcycle without a written document cannot fulfill the provisions of that article.

Based on the presentation of several opinions from Islamic law experts above, it can be concluded that in a sale and purchase transaction, the object or item being traded must be clearly known so that the sale and purchase is considered valid based on syar'i law. Meanwhile, in the practice of buying and selling motorcycles without documents, there is ambiguity regarding legal ownership of the object. When the conditions are not met, the

sale and purchase is said to be invalid under the provisions of sharia economic law. Whereas ambiguity in transactions can lead to the potential for gharar, where in buying and selling motorcycles without paperwork there is an element of gharar caused by unclear ownership or rights of attorney for the goods (ma'qud 'alaih) being traded.

Based on the results of the explanation above, it can be understood that buying and selling motorbikes without a document is not valid according to sharia economic law. This is because the sale and purchase contains gharar because there is an element of ambiguity regarding the ownership or control of the ma'qud 'alaih being traded. Even though buying and selling motorbikes without paperwork has been going on for years, this does not mean that this practice is permissible, apart from the risk of violating the provisions of positive law for contract actors, this practice is also against sharia economic law.

4. Conclusions

Based on the analysis that has been done, it can be concluded that the sale and purchase of a vehicle without the completeness of the documents in general the contract has been fulfilled, namely the existence of people who have a contract, sighat, consent granted and the object of sale and purchase. However, this transaction just broke up after an agreement was made, there is no guarantee of the quality of the goods sold to consumers, agents do not provide return limits and guarantees if there is damage to the motorbike. In addition, the most important thing is the lack of clarity regarding the status of the object of sale and purchase, whether it is not clear in terms of the origin of the motorcycle or the documents are not clear.

Even though buying and selling vehicles without complete documents has been going on for years, this does not mean that this practice is permissible, apart from the risk of violating the provisions of positive law for contract actors, this practice is also against sharia economic law. In a sale and purchase transaction, the object or goods being traded must be clearly known so that the sale and purchase is considered valid based on syar'i law. Whereas in the practice of buying and selling vehicles without complete documents, there is ambiguity regarding the legal ownership of the object.

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