



## Fatwa Ekonomi Syariah Dan Orientasi Maqasid; Penerapan Pada Hukum Transaksi Cash On Delivery (COD)

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### Abstract

*This paper aims to examine the orientation of maqasid sharia in contemporary sharia economic fatwas. And apply it to the buying and selling Cash On Delivery (COD) system. The problem formulation in this paper is: 1. What are the stages of a sharia economic fatwa? 2. What is the role of Maqasid syari'ah in contemporary sharia economic fatwas, especially in Cansh on Delivery (COD) system buying and selling? The research method in this paper is a qualitative approach by focusing on literature review. Examining related literature, both classic and contemporary, as well as deepening the real practice of buying and selling with the Cash On Delivery system. Among the results of this paper are: first: the fatwa issued went through strict and methodological stages so that it could be scientifically accountable. Second: The application of Maqasid to contemporary sharia economic fatwas is very important, because it takes into account various aspects.*

*Keywords: Fatwa, Sharia Economics, Maqasid, COD, Law.*

### 1. Introduction

The increasing development of models and types of transactions in Islamic economic transactions raises many questions in the minds of Muslims. Especially for those directly involved in the transaction. And philosophically, Islamic law does not close itself off from all forms of development and progress. In fact, Islam strongly supports all innovations and renewals that are in line with the spirit and values of Islamic law.

One of the latest transaction models that is in great demand by the community, including Muslims in Indonesia, is the Cash On Delivery (COD) model of buying and selling. The buying and selling model is widely practiced because it is considered to be able to meet human needs easily. Where in this transaction there is no need to pay when making a transaction but payment is made when the desired goods have arrived at the buyer's place. In addition to being considered to provide convenience, this transaction model also closes the gap for fraud against buyers that often occurs in online buying and selling systems.

In order to seek legal clarity regarding this buying and selling model, the author is interested in researching through related literature by understanding the real practice of this buying and selling system. Hopefully, in this article there are benefits that can be taken.

### 2. Research Methods

The research method in this paper is a qualitative approach by focusing on literature review.

Examining related literature, both classical and contemporary, as well as an in-depth study of the real practice of Cash On Delivery buying and selling systems.

### 3. Results and Discussions

The main discussion in this article focuses on two things. First: Stages of Islamic Economic Fatwa. Second: Cash On Delivery (COD) Buying and Selling from the Perspective of Islamic Maqasid.

#### First: Stages of Islamic Economic Fatwa

Fatwa is a legal product that is not easy to produce, it goes through several very selective and careful stages and is produced by people who are competent in their fields. We can see how careful the companions were in issuing fatwas. They even tried to avoid issuing fatwas, although in certain conditions as a scientific mandate they still issued fatwas when they were really needed. [Muhammad Al-Khudhri, Tarikh al-Tasyri' al-Islamy, (Cairo: daar al-Faaruuq, 1st ed., 2009 AD), p. 106.]

Because fatwa is not a simple matter, it must be carried out by someone who truly meets the criteria. Although the latest fatwas are more dominant in nature collectively. Including fatwas issued by the Indonesian Ulema Council (MUI). Regarding the criteria that must be met by a mufti, Imama Khatib Bahdadi said:

"وينبغي أن يكون قوي الاستنباط جيد الملاحظة، رصين الفكر، صحيح الاعتبار، صاحب أناة وتؤدة، وأخا استنبات وتترك عجلة، بصيرا بما فيه المصلحة، مستترفاً بالمشاوره، حافظاً لدينه، متفكراً على أهل ملته، مواظباً على مروءته، خريصاً على استنطاب مأكله، فإن ذلك أول أسباب التوفيق، مؤثر عا عن الشبهات، صادقاً عن فاسد التؤيلات، صليبا في الحق، دائم الاستغفال بمعادن الفتوي وطرق الاجتهاد".<sup>3</sup>

And a mufti must have strong abilities in exploring the law, good in analysis, sharp in reasoning, correct in appreciation. A person who is calm and considerate, careful and not in a hurry. Skillful at revealing the beneficial side, always asking for other people's views, maintaining one's obligations, having a gracious soul, guarding one's soul, paying attention to the source of one's food. Because that is the beginning of getting guidance from Allah SWT. Avoid matters of doubt, avoid deviant ta'wil-ta'wil, be firm in the truth and trained in matters of fatwa and ijihad.

After these criteria are met for the person who will issue a fatwa, the next step is to pay attention to the stages of the fatwa, especially fatwa in Islamic economics. As for these stages as expressed by Sheikh Ali Jum'ah in his book shinaah al-ifta' (skill in issuing fatwas):

Fatwas go through several stages, namely: the tahswir stage (understanding the essence of a problem to be issued as a fatwa), the takyif stage (modeling a problem), legal stages and fatwa stages. [Syekh Ali Jum'ah, shinaah al-ifta', (Cairo: Nahdoh Egypt, 1st ed., 2008 M), p. 62]

We will explain these stages in detail below:

Stages Tashwir is understanding the essence of something that will be judged by defining it well. This is very important because understanding the definition of something well will provide a complete picture of the problem that will be fatwaed, as the rules of fiqh state:

الحكم علي الشيء فرع عن تصوره

The law on something is a consequence of its definition. [Tajuddin Al-Subkiy, al-Asybah wa al-Nadzair, (Beirut: daar kutul Ilmiyyah, 1st ed., 1411 H - 1991 M), vol. 2, p. 385.]

This stage determines the next stage. So at the stage a mufti also needs information from related experts. If the contract is fatwaed regarding economic problems, then an explanation from an expert is also needed, so that the reel of something is truly understood well.

The takyif stage is the process of modeling the contract. This is also very important, because if it is a contract, for example, it aims to detect the characteristics of the contract. So by knowing its characteristics, it can be known whether it has similarities with existing contracts or not? If there are similarities, then it is sufficient to provide the law of the contract that exists in the new contract. But if this new contract has no similarities, then it needs to be examined in terms of whether the provisions of the sharia are fulfilled in it or not. Or

perhaps there are elements that conflict with the provisions of the sharia so that it is not permissible. The third stage is the stage of determining the law. After going through the process of defining and modeling the contract, the next is determining it from a legal perspective. This is as we have mentioned, that in a fatwa on a contract, for example, if in the modeling of the contract there are similarities, then of course it provides the law according to the contract that has similarities and so do all the consequences of the contract. However, if this new contract does not have similarities with the existing contract ('aqd musamma), then it needs to be studied from the elements of the contract. If this new contract does not have elements that conflict with the rules of sharia, then it becomes permissible, based on the rules

الاصل في المعاملات الإباحة

The original law of muamalah is permissible [Syekh Yusuf al-Qorodhowi, al-Qawaid al-Hakimah li Fiqh al-Mu'amalah, (Doha: Majelis ifta' and European research, 2009 M), p. 5].

But if there are elements that conflict with the sharia, then legally it becomes prohibited. Although sometimes it can still be improved and modified to eliminate elements that conflict with the sharia.

The fourth stage is the fatwa explanation stage. This is the last stage of the fatwa process from the aspect of a study by a mufti or from an institution if it is a collective fatwa. As for the stages in terms of procedures and rules, this returns to the rules of a particular country or institution.

## **Second: Cash On Delivery (COD) Buying and Selling from the Perspective of Maqasid Sharia**

The role of maqasid science in fatwas on contemporary economic problems is very necessary, in order to negate the law that pays attention to all aspects of the benefit. We can see this in analyzing the law of Cash On Delivery transactions as new transactions in muamalah. At first glance, this transaction falls into the category of transactions that involve a delay in the delivery of goods and prices because this transaction occurs online, while the delivery of goods and prices is usually carried out several days after the transaction. As the definition mentioned regarding this transaction, namely a transaction method where payment is made after the goods are received by the orderer. [Nabil Abduh Aqil et al., Evaluation of the Cash On Delivery System to Increase Legal Certainty in the Development of Electronic Transactions in Indonesia, IPMHI Law Journal, Vol. 2 no, 2 Jul-Dec 2022 p. 253.]

Because the delivery of goods and prices is postponed, some assume that COD is a debt-for-debt transaction, so it is included in what is prohibited in the hadith of the Prophet SAW:

نهى النبي صلى الله عن ليع الكالى بالكالى

So if according to the takyif fiqh, COD is categorized as ba'i kali' with kali' or ba'i dain with dain (debt-for-debt sale), then COD becomes one of the new prohibited forms of sale. And this has been conveyed by a scholar on an official sharia consultation website managed by Sheikh Muhammad Sholeh al-Munjid. When asked about the law of julabeli, the payment model of which is after the goods are received. Then he answered: that is not allowed. Because it falls into the category of kali' with kali' sale (debt-for-debt sale) which is prohibited in sharia. And the solution to improve this contract is by means of an agreement that occurs in the initial stage only in the form of a promise, while the sale and purchase contract is carried out when the goods have arrived [<https://islamqa.info/ar/answers/273116/> (accessed on Date: July 14, 2024 M. Time: 10:32 WIB)]. Although the takyif fiqh can still be debated, it is only that in the visible sense that COD is a model of buying and selling where the delivery of the price and goods occurs later. Not at the time of the contract, because the contract occurs through an online transaction. So at first glance it can indeed be categorized as a prohibited debt-for-debt sale (goods and prices are due).

On the other hand, COD can also be studied through the perspective of Maqasid sharia. We can see this in the analysis of Sheikh Abdullah bin Bayyah in studying the law of contemporary contracts where the price and goods are due (Ta'jil Badalain).

According to Sheikh Abdullah bin Bayyah, the prohibition related to buying and selling where the delivery of goods and prices is postponed, which is said by several scholars that according to ijma' is prohibited, can be analyzed from several aspects:

First :

أما الإجماع فقد نقل فيه قول سعيد بن المسيب بجواز تأجيل البدلين، وسعيد رضي الله، وهو خير التابعين كما روي عن أحمد!

Meanwhile, what is said to be ijma' in this case, could be that ijma' is a form of buying and selling debt for debt. Not the whole shape. As stated by Imam Nawawi in the book Al-Majmu' [Abdullah bin Bayyah, Maqasid al-Muamalat wa Marashid al-Waqi'at, p. 124].

And the hadith related to the prohibition on buying and selling debt with debt is said to be weak so it

cannot be a proof.

وَقَالَ أَحْمَدُ: لَيْسَ فِي هَذَا حَدِيثٌ يَصِحُّ لَكِنَّ الإِجْمَاعَ عَلَى أَنَّهُ لَا يَجُوزُ بَيْعُ الدَّيْنِ بِالدَّيْنِ.

And Imam Ahmad said: that in the matter of buying and selling debt with debt there is no authentic hadith, there is only ijma' that it is not permissible to buy and sell debt with debt [Muhammad bin Abdul Baqi al-Zarqaniy, Syarah al-Zurqaniy 'ala Muwathta', (Cairo: Maktabah tsaqofah diniyyah, 1st ed., 1424 H / 2003 M), Vol. 3 p. 62.]. As for the ijma' aspect, the meaning of ijma' in this matter has been conveyed, namely that not all forms have been agreed upon as prohibited.

### Second: in terms of illat (legal cause)

This prohibition contains illat, so it can be understood that when the illat is absent, the law of its prohibition is also lost, because it is stated in the rule:

الحكم يدور مع علته فيثبت بثبوتها وينتفي بانفائها

Law exists at the same time as illat (cause), so when the illat exists, the law becomes permanent, if the illat does not exist then the law also does not exist. [Ahmad Muhammad al-Zurqa, Syarah al-Qawaid al-Fiqhiyyah, (Damascus: Daar al-Qalam, cet. 10, 2012 AD / 1433 AD), p. 483.] The illat here is as Imam Qarafi said:

إذا انتملت المعاملة على شغل الدينين توجهت المطالبة من الجهتين فكان ذلك سببا لكثرة الخصومات والعداوات، فمنع شرع ما يفضي لذلك وهو بيع الدين بالدين.

When muamalah contains obligations that are due from both parties, then both parties have responsibilities and this is the cause of potential disputes and hostility. So the Shari'a prohibits what causes this, and the form is in the form of buying and selling debt for debt. [Abdullah bin Bayyah, Maqasid al-Muamalat wa Marashid al-Waqi'at, 126.] Then Sheikh Abdullah bin Bayyah said:

يخفى من ذلك أننا إذا توصلنا إلى آليات تحسم مادة الخصومات وتزفع غائلة العداوات ودعت إلى تأجيل الدينين نواحي عوادي الحاجات ما كان ذلك فندا من القول ولا فيؤله في الرأي

So it is understood that if there is a way to ward off and eliminate the potential for disputes and disagreements, it is also accompanied by a need that is of a priority nature to carry out the contract.

the second object is suspended, then of course it becomes an important consideration for the permissibility of this transaction. [Abdullah bin Bayyah, Maqasid al-Muamalat wa Marashid al-Waqi'at, p. 127.]

However, this permissibility must still take into account the object of the transaction. Because there are several objects of transactions that must be cash, they cannot be suspended. Namely, objects of usurious commodities, so they must still follow the provisions of usurious object transactions.

#### 4. Conclusion

From this article, the author draws conclusions according to what has been explained from the formulation of the problem above:

1. That the fatwa has important stages, so that this legal product can truly be scientifically accounted for. And in line with the spirits of the sharia. because these stages are none other than to position a new case objectively and proportionally.
2. That the consideration of maqasid has a very urgent role in contemporary economic fatwas. Because of the complexity of muamalat issues, and the need for consideration of the benefits and benefits of each case.
3. As for the author's suggestions. How studies related to the urgency of maqasid in sharia economic fatwas must continue to be encouraged and developed. Likewise, related to studies of various contemporary buying and selling models in order to provide legal clarity for the community and enrich the literature and references related to contemporary Islamic economics.

#### Reference

- Mandzur, Jamaluddin Ibn, (1414). Lisan al-Arab, Beirut : daar shaadir.
- Tim penyusun di lembaga bahasa Arab Kairo, (1392 M / 1972). Al-Mu'jam al-Wasith, Kairo : Lembaga bahasa Arab.
- Shalah, Ibn, (1407 M / 1986 M). Adabul Mufti wa al-Mustafti, Madinah Munawwarah : maktabah ulum wa alhikam.
- Bayyah, Abdullah bin, (2018 M). Shinaah al-Fatwa wa Fiqh al-Aqalliyyaat, Dubai : al-Muwatta Center., (2018 M). Masyahid min al-Maqasid, Dubai : Muwatta Center., (2010 M). Maqasid al-Muamalat wa Marashid al-Waqi'at, Kairo : Muassasah al-Furqon li al-turats al-Islamiy.
- Khin, Mustafa Said, (1431 H / 2010 M). Atsar al-Ikhtilaf fi al-Qawaid al-Ushuliyyah fi Ikhtilaf al-Fuqaha', Suriah : daar arrisalah al-'Alamiyah.
- Al- Azhariy, Syekh Usamah al-Sayyid, (2019). Misykat al-Ushuliyyin wa al-Fuqaha, (Dubai : Muwatta Centre.
- Al-Khudhri, Muhammad, (2009 M). Tarikh al-Tasyri' al-Islamy, Kairo : daar al- Faaruq.
- Ali, Abu Bakar Ahmad bin, (1417 M). al-Faqih wa al-Mutafaqqih, ( Saudi : daar Ibn Jauzi.
- Jum'ah, Syekh ali, (2008 M). shinaah al-ifta', Kairo : Nahdoh Mesir.
- Al-Subki, Tajuddin, (1411 H / 1991). al-Asybah wa al-Nadzair, (Beirut : daar kutub Ilmiyyah.
- Al- Qorodhowi, Syekh Yusuf, (2009 M). al-Qawaid al-Hakimah li Fiqh al-Mu'amalah, Doha : Majelis ifta' dan penelitian.
- Raisuni, Dr. Ahmad Raisuni, (1434 H / 2013 M). Madkhal Ila Maqasidh al-Syari'ah, Kairo : daar al-Kilmah.
- Al – Zaraqani, Muhammad bin Abdul Baqi, (1424 H / 2003 M). Syarah al-Zurqaniy 'ala Muwathta', Kairo : Maktabah tsaqofah diniyyah.
- Al-Zurqa, Ahmad Muhammad, ( 1433 H / 2012 M). Syarh al-

Qawaid al-Fiqhiyyah, (Damaskus: Daar al-Qalam.

Asy- Syatibi, (1412 H / 1992 M). al-I'tishom, Saudi : daar Ibn 'Affan.

Aqil, Nabil Abduh dkk, (2022 M). Evaluasi Sistem Cash On Delivery Demi Meningkatkan Kepastian Hukum Dalam Perkembangan Transaksi Elektronik di Indonesia, IPMHI Law Journal.

<https://islamqa.info/ar/answers/273116/> (diakses pada Tanggal : 14 Juli 2024 M. Pukul : 10 : 32 WIB).

<https://finance.detik.com/berita-ekonomi-bisnis/d-6776770/sistem-cod-cash-on-delivery-bagi-penjual-merugikan-atau-menguntungkan> (diakses pada Tgl : 14 Juli 2024, Pikul 22:26 WIB).