

GOLD RESELLING: LEGAL CONSEQUENCES FROM MUAMALAT PERSPECTIVE

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ABSTRACT

Gold is promoted largely as purchasing and selling physical valuable item in Malaysia. It is importantly become a saving tools as well as for investment purpose to the society. Henceforth, many of gold's company such as Public Gold, *Dinar Emas* Kelantan, and others grab this kind of opportunity to offers the valuable gold item in order to attract the customer's intentness. One of the companies' marketing strategy is by issuing gold special edition such as Black Panther *Wakanda* Forever, Covid-19 Special Edition, and *Dinar Emas Legasi* TG Nik Aziz, Appreciation to Malaysia 8th Prime Minister and others. This special offer initially caught an attention among gold reseller or collector since it may able to raise a markup profit by reselling this gold bar to the buyer. Henceforth, this article aims to explain legal consequences in reselling gold from *Muamalat* Perspective. This article employed inductive and deductive method by understanding from Quran, *hadith*, as well as Islamic school of thought as references. It is expected to contribute in exploring the concept of reselling gold transaction from Islamic law transaction which is clearly aims to avoid the element of *gharar*, and *riba*.

Keywords: Gold reselling, markup, *Muamalat perspective*.

INTRODUCTION

Gold has become one of the longest historic investment activities as monetary instruments since 500 BC (World Gold Council, 2011). The aim for the transaction of selling and buying gold is to keep the people grow their wealth and sustained social status by acquired it by savings or

investment purpose (Noor, 2017; Nordin, Aziz, Embong, Daud, & Aziz, 2018). The previous practice of gold transition is limited to buying and selling or using system barter for exchange. However, the scenario has change when people nowadays start to invest in gold monetary tools as a physical collection item (Nordin, Aziz, Embong, Daud, & Aziz, 2018). In Malaysia, a recent marketing trend is booming since well-known companies introduced gold bar product special edition. This kind of product caught the attention among the gold collector due to its remarkable design and unique serial number such as Public Gold's Black Panther *Wakanda* Forever, Covid-19 Special Edition, *Dinar Emas Legasi* TG Nik Aziz, Appreciation to Malaysia 8th Prime Minister and so on (Joombest, 2020; Public Gold, 2020). For gold collectors, this is an opportunity to raise a profit by reselling back to the interested buyer. Therefore, this article aims to explain legal consequences in reselling gold from *Muamalat* perspective since it falls under *ribawi* item which is obviously against in Islam.

RESEARCH METHODOLGY

This article employed qualitative method in order to understand the nature of study inductively and deductively. It started with understanding the concept of gold that required the sources to fulfil the trustworthiness of data. The main sources for this research are firstly, the verses from Quran are from Holy Quran KSU (King Saudi University) ([www. http://quran.ksu.edu.sa](http://quran.ksu.edu.sa)). The translation from Arabic to English verse from *Sahih* International translation. Secondly, *hadith* sources such as Syarah *Sahih* Muslim (Imam An-Nawawi), Sunan Abu Daud, Nasai', and Ibn Majah were referred. Thirdly, other references include books on *fiqh* sources such as *Ibn Ruysd (Bidayatul Mujtahid)*, *al-Ba'li (Istithmar wa al-Raqabat al-Shar'iyyah: fi al-Banuk wa al-Mu'assasat al-Maliyyah al-Islamiyyah)* and *Fiqh Islami wa Adilatuhu (Wahbah Zuhaili)* were used. Those books sources assist employed to diversify and understand the transaction that was generated. Lastly, additional sources such as article online journals sources in order to understand gold concept from Islamic perspective.

GOLD TRANSACTION IN ISLAMIC POINT OF VIEW

Muamalat law identified gold transaction as *bay' sarf*. *Bay' sarf* is defined literally as sale purchase of money for money including gold and silver. Technically, *bay' sarf* is sale of money for money such as the sale of gold for gold or silver for silver (Bugha, 1992). According to Maliki scholars, gold transaction is the sale of price for price and each price is a consideration for the others (Zuhaili, 2007).

The discussion among Islamic scholars unanimously agree on the permissibility of *bay' al sarf* as it has been practiced by the people since the time of Prophet (*s.a.w*) until now without any objections (Zuhaili, 2007). However, the transaction of gold must be carefully practice since it falls under *riba al buyu'* (*riba* in sales). It is due to the nature being a currency fluctuate, and the

condition for trading it are similar to exchanging the *ribawi* items. As quoted by Ubadah bin al-Samit in the hadith;

The Prophet said: "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt - like for like, equal for equal, and hand-to-hand; if these goods differ, then you may sell as you wish, provided that the exchange is hand-to-hand."

(Sahih Muslim, no.96: Sahih)

According to some Shafie scholars, there are three conditions in selling gold transaction: a) *Tamathul* is must be in the same weight or value if gold is exchanged with gold or silver with silver. For currency, Ringgit with Ringgit, it should be at the same value, b) *Hulul* is the exchange must be immediately in cash, not in the form of credit or *khiyar* (cooling off period), c) *Taqabudh* is the exchange and delivery of good and price must be immediate in the *aqad* session (Bugha, 1992). Henceforth, the discussion regards with gold reselling is under the condition of *tamathul* which is explained below.

GOLD RESELLING IN CONDITION OF TAMATHUL

As mentioned above, the condition of *tamathul* (same value) originally referred to current world gold market (Noor, 2017). Initially, it is permissible to sell gold with markup price based on hire cost (Muhammad & Salleh). However, the issue raises when the gold collector selling with acquire the profit without effort based. In other words, selling the price of gold only either under markup sales *bay' murabahah* or *musawabah* transaction to the buyer.

The question arise is it considered *riba* due to markup price since gold commodity knowing as *ribawi* item? Therefore, this article identified the divergent among Islamic scholars in regards with markup profit in gold transaction that consist of two point of view; 1) prohibition to markup sale in gold transaction and 2) permissibility to raise a profit in gold transaction. Firstly, the prohibition is based on hadith Abu Daud (2009) no. 3503 and Nasai no. 4507 means;

"It is not halal to combine debt and sale, nor two conditions in on trading, nor profit without risk, and cannot trade in non-owned goods."

(Abu Daud, 3503: Sahih)

"The profit returns in exchange for the risk he bears."

(Nasai', 4507: Hasan)

The hadith above mentioned profit without risk means the profit acquire without any effort to acquire the product (Al-Khattab, 2007). In fact, the profit returns are based on the risk that the seller bears (Al-Khattab, 2008). Back to the issue, the gold collector resale the gold bar special edition which is not based on his effort, the reason behind markup price is because of authentic

design, special serial number and others, unless, the seller take a profit on hire basis for the maintenance, transportation, or advertisement fees is still permissible. If not, this kind of transaction falls under *riba* basis cause of *ribawi* item. As defined *riba* is an excess stipulated as an obligatory condition on one of parties (Ibn Rusyd, 2003). In Quran stated the prohibition of *riba*:

"O you who believe! Do not take riba doubled and multiplied, but fear Allah so that you may be successful"

(Al-Imran: 130)

In fact, Ibn Rusyd (2003) and al-Ba'li (1991) described one of condition of *murabahah* sale purchase must not include *ribawi* item. Therefore, it is necessarily the gold reseller transparent the information in avoiding *gharar* due to markup profit must according to hire cost definitely. As mentioned in *hadith* below;

"When there are different types of goods (sold and purchased) that is not ribawi goods, then you can trade as you wish (in terms of price difference or cash or differed)"

(Ibn Majah, no.2289)

Secondly, the permissibility to trade gold by markup the profit is based on the opinion by Shafi' and Maliki scholars (Zuhaili, 2007). It is because gold is no longer functional as medium of exchange, but it is considered as a commodity (Bugha, 1992; Zuhaili, 2007). In addition, the *hadith* as mentioned above quoted by Ubadah bin al-Samit describes the *hukm* of sale contract/exchange of *ribawi* items involved with barter exchange only (Noor, 2017).

It does not put the condition of *riba al-buyu* for a normal sale contract such buying rice or gold with money (Noor, 2017). Therefore, gold is a product/commodity purchase which permissible to increase markup sales as long as it fulfils the conditions as mentioned above. The scholars have agreed that the contract includes all types of gold and silver whether they have different quality, completeness and pureness must be on same value and weight (Ba'li, 1991; Noor, 2017). As reported by Imam An-Nawawi (1981);

Rasullullah S.A.W. has said: "Do not transact gold with gold or silver with silver except in the same value..."

(Sahih Muslim, no. 195: Sahih)

In addition, other justification the permissibility of gold reselling transaction by mutual consent is based on Al-Qur'an;

"O you who believe! Eat not up your property among yourselves in vanity, but let there be among you trade by mutual consent..."

(Al-Qur'an, al- Nisa':29)

Zuhaili (2007) emphasized that It is unlawful to take the property of a Muslim except by his consent. However, neither the Qur'an nor the Prophet explained how mutual consent should be ascertained. This task was concluded by the jurists that must be consent in all intangible mental fact (which has to be manifested before its existence could be known). Before it is so manifested, it is a mere intention (*niyyah*) not sufficiently to conclude the contract (Zuhaili, 2007). Therefore, the permissibility to resale gold bar special edition should fulfil this criterion by transpiring the intention of gold reseller with information has given to the buyer in order to avoid misrepresentation (*ghabn*) and uncertainty (*gharar*) circumstances.

CONCLUSION

Reselling gold transaction is a crucial issue since it involved with *ribawi* item. It is considered as *riba al-buyu'* that against Islamic law transaction (*Muamalat*). Based on the justification above, the gold reseller must be alert with the transaction has been made by exposing their true intention, and disclosing the markup according to hire cost such as maintenance, transportation, and advertisement fee to the buyer. For personal point of view, markup based on special design, and unique serial number still remain elusive information. It may lead to *riba*, *gharar*, and misrepresentation of pricing (*ghabn*). Hence, these elements should be evaded in order to comply with shariah principle and achieve His *mardhatillah* in world and hereafter.

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