

BAY'U AL-'INAH: CONCEPT AND IMPLEMENTATION ACCORDING TO MAZHAB AND CONTEMPORARY SCHOLARS

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Abstrak

Bay'u al-'inah merupakan akad jual beli yang menjadi perdebatan para ulama klasik dan kontemporer dari segi hukum dan pelaksanaannya. Hal tersebut mengharuskan adanya artikel yang menjelaskan konsep bay'u al-'inah untuk menentukan hukumnya. Dalam artikel ini penulis menjelaskan konsep, hukum dan aplikasi bay'u al-'inah menurut mazhab dan ulama kontemporer dengan menyatakan alasan-alasan mereka untuk memilih pendapat yang kuat. Para fuqaha sepakat mengharamkan bay'u al-'inah jika ada syarat ma'qūd 'alayh harus dijual kembali kepada penjual asalnya. Begitu juga jika terdapat petunjuk adanya ḥilāh melakukan ribā maka hukumnya juga adalah batal. Apa yang menjadi perdebatan fuqaha adalah apabila tidak ada syarat demikian dan tidak adanya petunjuk ḥilāh melakukan ribā. Dalam masalah ini penulis berpandangan bahwa akad bay'u al-'inah adalah haram jika niat melakukan ribā tidak dinyatakan dalam berkontrak. Namun, status akad tersebut adalah sah atau tidak batal selama tidak ada syarat mab'ī harus dijual kembali kepada penjual asalnya dan tidak adanya di antara kedua belah pihak yang berakad untuk melakukan ribā. Ini karena dengan adanya niat, walaupun di luar akad maka niat melakukan ribā telah dinyatakan dan dapat membatalkan akad.

Kata kunci: *Bay'u al-'inah, konsep, pelaksanaan, ulama kontemporer.*

Abstract

Bay'u al-'inah is a buying and selling contract that became the debate of classical and contemporary scholars in terms of law and its implementation. Therefore, it is necessary to have an article describing the concept of bay'u al-'inah to determine the law of the bay'u al-'inah. In this paper, the author will explain the concepts, laws and applications of bay'u al-'inah according to contemporary schools and scholars by stating their reasons for choosing strong opinions. The fuqaha agree to

forbid the bay'u al-'inah if there is a condition that ma'qud 'alayh must be resold to the seller of origin. Likewise, if there is a hint of the existence of h'ilah do the usury then the law also is void. What is fuqaha debate is that if there is no such requirement and no referent. In this case, the author holds that the bay'u al-'inah contract is haram if the intention of doing usury is not stated in contract. However, the status of the contract is valid or not void as long as there is no requirement of mabir' to be resold to the original seller and the absence between the two parties who intend to do usury. This is because with the intention, although outside the contract then the intention of usury has been declared and can cancel the contract.

Keywords: *Bay'u al-'inah, concept, implementation, contemporary scholars.*

Introduction

Islamic Economics is an economic system that explains all phenomena about behavior, choice and decision making in each unit of activity or economic activity based on the rules of moral and Islamic ethics. The ultimate goal of Islamic economics is as the goal of Islamic Shari'a (*maqāṣid shari'ah*), which is to achieve happiness in the world and the hereafter (*falāh*) through a good and respectful system of life. In principle, Islamic economic thought is to formulate a concept of supply and demand, mechanisms, market regulation, fair pricing, maximum equity of wealth, and of course the prohibition of *ribā*, *gharār*, and *maysir* in order to create equitable justice in all sectors.¹

Basically, the financing offered by Islamic banking is based on contracts or contracts that are justified in Islam. However, in the face of the banking financial climate which generally makes profit a principle of consideration, Islamic banking must be able to offer competitive products so as not to lag behind in competition with conventional banks. This atmosphere sometimes forces Islamic banking to be open in carrying out its business in terms of contractual principle elections, even though it makes a big difference in classical and contemporary scholars. In other words, Islamic banking institutions in Malaysia through their Syariah Advisory Service Bureau accept the use of certain contracts which are controversial from the legal point of their

¹ J. Michael Taylor, "Islamic Banking The Feasibility of Establishing an Islamic Bank In The United Stat," *American Business Law Journal* 40 (n.d.): 387.

obligation. Between the contracts, the controversy is *bay'u al-'inah*.² Bank Rakyat Malaysia is the pioneer who accepts the use of *bay'u al-'inah* contract as the basis for some of the financing it offers. Then followed by Bank Islam Malaysia Berhad (BIMB) and Bank Muamalat, even though the *mabī'*³ are different between the banks, including the profit rate and the payment method.

However, the bank through the Shariah Advisory Committee accepts the use of this contract as it is a *khilāfyyah* problem and is based on certain *fiqhiyyah* methods for the survival of Islamic banking in the context of competition with conventional banks which are in reality more dominant for the present. Looking at the age and experience of young Islamic banking institutions, as well as small amounts of assets compared to conventional banking at national and international levels, this is a consideration that needs to be taken into account in running and developing Islamic banking operations including from the acceptance of the concept of contract finance products offered. Seeing such a statement creates some issues that require special writing to answer it. Therefore, the purpose of writing this article is to explain about *bay' al-'inah*; Concept and Implementation according to the contemporary scholars.

This research is a library research with descriptive approaches, which are describing or explaining the analysis of *bay'u al-'inah*; concept and implementation according to the view of contemporary scholars. The method for collecting data are by taking documentation, reading journals and books. While for analysing the data, the author uses content analysis.

The Definition of *Bay'u al-'Inah* from Many Perspectives

In etimology, *Bay'u* means sales. Its plural is *buyū'*, which means to give the price determined and take the price.⁴ *Al-'inah* is *al-salaf* ie the goods rendered as a price on the sale of goods or debt granted without *ribā* to the debtor.⁵ The verb for the word *al-'inah* is quoted from the word *al-'ain* means

² Ahma dan Joni Tamkin Borhand Maulidizen, "Aplikasi Pembiayaan Modal Kerja Murābahah Bi Al-Wakālah: Studi Kasus Pada Bank Muamalat Indonesia Cabang Sungkono Surabaya," *Jurnal Ilmiah Islam Futura* 16, no. 1 (n.d.): 91–109.

³ Ahma dan Joni Tamkin Borhand Maulidizen.

⁴ Ibn Manẓūr, Muḥammad Ibn Mukram, *Lisān Al-'Arab. Juz 1* (Beirut: Dār al-Iḥyā' al-Turāth al-'Arabī, 1996).

⁵ Al-Shawkānī, Muḥammad Bin 'Alī Bin Muḥammad, *Nayl Al-Awtār Min Aḥādīs Sayyid Al Akhyār* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1999).

cash or property that exists.⁶ It is named *al-'inah* because the owner who is *al-'inah* buyer is the property or goods that existed when the contract will get cash, because the purpose of buying the goods is to resell it.⁷ Or, the (*al-'ain*) item will return to its original seller.⁸

In mazhab perspectives, there are some opinions about that. Ḥanafī school say that *bay'u al-'inah* is an activity when someone buys something at a certain price, then he resells the item to the seller before paying the original price, at a price lower than the original price.⁹ For Mālikī school, it involves a man who sells an item on a futures basis, then he buys it back at a different price and a different time period, or in cash at a lower price, before the original time is due. Buying and selling is categorized as *buyū' al-ājāl* because of the element of time suspension or futures.¹⁰ For example, an individual (A) sells one item at a price of 10 Dinars in cash to an individual (B), then he (A) will buy it back from (B), at a price of 20 Dinars in a strong way, or vice versa.¹¹ In the opinion of Shafī'ī, it is about a person (A) sells one item to another (B), at a deferred price and handing over the item to him (B), then he (A) buys it back before accepting the price of the goods, at a lower price in cash.¹² Then the Ḥanbalī says that it is about someone sells an item at a deferred price, then he repurchases the item at a lower price in cash.¹³

Based on the explanation above, it can be concluded that the scholars have the same understanding of *bay'u al-'inah*, although there is a slight difference in lafaz. It should be explained that the contract of *bay'u al-'inah* is not only limited to involving two parties. It could be that there is a *wasīf*

⁶ Al-Zuhayl, Wahbah, *Al-Fiqh Al-Islāmī Wa Adillatuhu*, 4 (Damshiq: Dār al-Fikr, 1997).

⁷ Al-Shawkānī, Muḥammad Bin 'Alī Bin Muḥammad, *Nayl Al-Antār Min Aḥādīs Sayyid Al Akhyār*.

⁸ Al-Miṣrī, Rafiq Yūnus, *Al-Jāmi' Fī Uṣūl Al-Ribā*, 2 (Damshiq: Dār al-Qalam, 2001).

⁹ Al-Shawkānī, Muḥammad Bin 'Alī Bin Muḥammad, *Nayl Al-Antār Min Aḥādīs Sayyid Al Akhyār*.

¹⁰ Al-Zayla'ī, Fakhr al-Dīn 'Uthmān bin 'Alī, *Tabyīn Al-Haqā'iq Sharḥ Kanẓ Al-Daqā'iq (Tabḥīq: Aḥmad 'Izzū Ināyah) Bersama Ḥashīyah Al-Shalabī* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2000).

¹¹ Ibn Rushd, Muḥammad Ibn Aḥmad, *Bidayat Al-Mujtabid Wa Nihāyat Al-Muqtaṣid* (Beirut: Dār Ibn Ḥazm, 1999).

¹² Al-Nawāwī, Abū Zakariyyā Yahyā Bin Sharf, *Rauḍah Al-Talībīn, Bersama Al-Minhāj Al-Sawī Fī Tarjamah Al-Imām Al-Nawāwī Dan Muntaqā Al-Yunbū'*. Tabḥīq: 'Adil Aḥmad 'Abd Al-Manjūd Dan 'Alī Muḥammad Mu'annad. (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.).

¹³ Ibn Qudāmah, 'Abd Allāh Ibn Aḥmad al-Maqdisī, *Al-Mughnī*, 2 (Kaherah: Ḥijr li al-Ṭibā'ah wa al-Nashr wa al-Tawzī' wa al-I'lān, 1992).

(intermediary) between the seller and the buyer who will buy the goods involved from the first buyer at a lower price in cash, then the *wasit* will sell the item at the same price to the original seller.¹⁴ Strictly speaking, in the contract of *bay'u al-'inah*, *mabi'* (goods) will return to the original owner and the first buyer will be able to fulfill his desire of getting cash. Unlike the *bay' al-tawarruq* which involves at least three parties, *mabi'* will not return to the original seller, although the two purposes of this agreement are the same as getting cash. To detail the differences between the two agreements, it is advisable for the writer to explain the meaning of *bay' al-tawarruq* and explain the comparison between the two. *Al-tawarruq* is a person who buys his goods on a prolonged basis, then he sells the item to his or her original seller in cash, and he takes the price for the purpose of earning cash.¹⁵ A brief comparison between *bay'u al-'inah* and *bay'u al-tawarruq* can be seen;

Table 1 Differences of *Bay'u al-'Inah* dan *Bay al-Tawarruq*

Akad	<i>Bay'u al-'inah</i>	<i>Bay' al-Tawarruq</i>
Purpose	Get cash immediately	Get cash immediately
Parties involved	Minimum: two persons (there can be a referee between the two parties above)	Minimum : three persons
<i>Mabi'</i>	Return to the original seller	Will not return to the original seller otherwise will be owned by a third party

Then, the author will present the definition of *bay'u al-'inah* given by some contemporary scholars especially from the Middle East as follows; Al-Qaradāwī defines *bay'u al-'inah* as someone sells something to others with a certain price (eg 120 Dinar), for a period (eg one year) and he handed the item to the buyer. Before he receives the price of the item, he buys it again at a lower price than the original (eg 100 Dinar), and pays it in cash. So, he handed over

¹⁴ Al-Zuhayl, Wahbah, *Al-Fiqh Al-Islāmi Wa Adillatuhu*.

¹⁵ Ghanīm, 'Abd al-Ghanī 'Abd al-Fattāḥ et al, *Qaḍāyā Fiqhiyyah Mu'aṣirah* (T.T.P: T.P, n.d.).

100 Dinar in cash and would receive 120 Dinar when it was due.¹⁶ According to Al-Zuhaylī, *bay'u al-'inah* is a sale that intends to make it as a means of *hīlah*, a man sells something at a deferred price, or has not received the payment of his price, then he buys the goods in cash at a lower price.¹⁷

In other opinion, Muḥammad Rawās Qal'ahjī states that *bay'u al-'inah* is a man (A) selling to another party (B) at the prescribed price to be paid after 6 months, then paid in cash or installment. Then A repurchases the item from B in cash before completion of the agreed payment, at a lower price.¹⁸ While Muḥammad 'Imārah argues *bay'u al-'inah* is a recuperation of the debt to the goods or cash. The party involved and the form is a borrower or debtor who wants to owe or borrow and a debtor who does not intend to give a loan or debt. Then, the debtor sells a garment to a debtor whose value is 10 Dirhams with a price of 12 Dirhams so that the debtor sell them to third parties at a price of 10 Dirhams. The third party will resell the shirt with a price of 10 Dirhams as well as to the original seller. As a result, payers will get a surplus of 2 Dirhams and debtors also get their debt.¹⁹ The Shaykh Sayyid Sābiq states that *bay'u al-'inah* is when a person needs money (cash), then he buys one item at a certain price on a prolonged basis, then he sells the item to his original seller in cash at a lower price.²⁰

Based on the notion of *bay'u al-'inah* which is expressed by contemporary scholars, it can be concluded that the meaning has the same meaning as the understanding according to scholars even though there are differences in the composition of sentences and examples of applications given. However, Muhammad 'Imārah in his opinion involved a third party (*wasīf*), but *mabī'* continued to return to the originator.

Next, banking has defined *bay' al-'inah* as a sale and purchase to get cash immediately. The author is in the view of understanding referring to the application and purpose of the contract being executed, regardless of the implied purpose of avoiding the occurrence of *ribā* in the contract being

¹⁶ Al-Qaraḍāwī, Yusuf, *Bay' Al-Murābahah Li Al-Amir Bi Al-Shirā' Ka Mā Tujrihi Al-Maṣārif Al-Islāmiyyah*, 2 (Kaherah: Maktabah Wahbah, 1998).

¹⁷ Al-Zuhaylī, Wahbah, *Al-Fiqh Al-Islāmi Wa Adillatuhu*.

¹⁸ Qal'ah Jī, Muḥammad Rawās, *Mu'āmalat Mālīyyah Mu'āṣirah Fi Daw' Al-Fiqh Wa Al-Shari'ah* (Beirut: Dār al-Nafā'is, 1999).

¹⁹ 'Imārah, Muḥammad, *Qāmus Al-Muṣṭalahat Al-Iqtisādiyyah Fi Al-Ḥaḍārah Al-Islāmiyyah* (Kaherah: Kaherah, 1993).

²⁰ Sābiq, Al-Sayyid, *Fiqh Al-Sunnah* (Kaherah: Dār al-Fath li al-I'lām al-'Arabī, 1997).

executed. Based on above discussion, it can be concluded that the notion of *bay'u al-'inah* according to the mazhab is to have the same purpose, although there is a slight difference in lafaz and sentence structure. Likewise with the notion of *bay'u al-'inah* which is expressed by contemporary scholars, the author finds that the meaning also has the same purpose as the understanding according to the scholar of the school even though there are differences in the structure of the sentence and examples of the implementation given. However, Muhammad 'Imārah in the sense involves a third party, but *mabr'* remains back to the originator. When the definition given according to a banking perspective is too concise by only referring to the *zahir* and purpose of the contract to be implemented. After the author explains the definition of *bay'u al-'inah* from various perspectives, in conclusion, *bay'u al-'inah* is buying and selling to get immediate cash, which involves at least two parties through two contracts that are separate from an item, and the item will return to the owner origin. While the selling price is in debt and the repurchase price is lower which is paid in cash before the completion of the price is above. It can also occur if someone sells goods at a cash price, then buys them back at a higher price in debt.

Analysis on the Law of *Bay'u al-'Inah* According to Mazhab and Contemporary Scholars

The scholars have different opinions regarding the law of *bay'u al-'inah*. In more detail, the first contract is legitimate and the second contract becomes the sovereign of the jurisdiction, as follows:

a. Ḥanafī

Abū Ḥanīfah said: "*This contract is a fasid²¹ contract if there is no wasīṭ between the original owner (creditor) and the buyer (the debtor)*".²² Abū Yūsuf argued: *This sale is and purchase of law are not legal.*²³ Muḥammad looked at it: The sale of this law is lawful but makruh.²⁴ He also states: "*The sale of this in my heart is reprehensible (it's heavy or a great sin) like a mountain, created by ribas eater*".²⁵

²¹ Al-Zuhayl, Wahbah, *Al-Fiqh Al-Islami Wa Adillatuhu*.

²² Al-Zuhayl, Wahbah.

²³ Ibn 'Ābidin, Muḥammad Amīn bin 'Umar, *Radd Al-Muḥtār 'alā Al-Darr Al-Mukhtār Sharḥ Tamwīr Al-Abṣār* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1994).

²⁴ Ibn 'Ābidin, Muḥammad Amīn bin 'Umar.

²⁵ Ibn 'Ābidin, Muḥammad Amīn bin 'Umar.

b. Mālikī and Ḥanbalī

The scholars of Mālikīyah view the law of *bay'u al-'inah* should not be.²⁶ *Aṣḥāb Ḥanābilah* also refused the necessity of this covenant as stated by Ibn Qudāmah: "*It does not have to be for someone who sells a thing on a prolonged basis, then he buys it back at a lower price*"²⁷

c. Shafī'ī

The majority of *aṣḥāb Shāfi'īyah* is legally educated because it has become customary for someone and the spread of this muamalat in his country or not.²⁸ As for Abū Ishāq al-Asfirāyayni and al-Shaykh Abū Muḥammad,²⁹ it was argued that if this muamalat had become a person's habit, the second sale and purchase would be required in the first contract, then the two contracts were canceled.³⁰ However, if there is a condition in the contract that stipulates that the item must be resold then the sale and purchase is null and void.³¹ However, the analysis carried out by the Muṣṭafā al-Bughā states that Imam Shāfi'ī held the position of the other priests, namely that the contract is null and void if there is an indication in the contract *ḥilah do ribā*. But if this does not exist, then the contract is valid because it is a perfectly harmonious sale and purchase.³²

d. Zāhīrī

Ibn Ḥazm said, "*who sells a thing at a certain price in cash or delayed, in the long run or short, he may buy back the goods from the buyer at the same price as the price he sells, or more expensive, or lower in cash, willingly with a shorter tempo than he or she sells, or longer, then it must be legal without contradiction at all, as long as there are no conditions mentioned in the contract. If there is a requirement (so that the item must be*

²⁶ Ibn Rushd, Muḥammad Ibn Aḥmad, *Bidayat Al-Mujtabid Wa Nihayat Al-Muqtaṣid*.

²⁷ Ibn Qudāmah, 'Abd Allāh Ibn Aḥmad al-Maqdisī, *Al-Mughnī*.

²⁸ Al-Nawāwī, Abū Zakariyyā Yaḥyā Bin Sharf, *Rauḍah Al-Talibin, Bersama Al-Minhaj Al-Sawi Fi Tarjamah Al-Imām Al-Nawāwī Dan Muntaqā Al-Yunbū'*. Tabqīq: 'Adil Aḥmad 'Abd Al-Manjūd Dan 'Alī Muḥammad Mu'anwad).

²⁹ Ibn Qudāmah, 'Abd Allāh Ibn Aḥmad al-Maqdisī, *Al-Mughnī*.

³⁰ Al-Nawāwī, Abū Zakariyyā Yaḥyā Bin Sharf, *Rauḍah Al-Talibin, Bersama Al-Minhaj Al-Sawi Fi Tarjamah Al-Imām Al-Nawāwī Dan Muntaqā Al-Yunbū'*. Tabqīq: 'Adil Aḥmad 'Abd Al-Manjūd Dan 'Alī Muḥammad Mu'anwad).

³¹ Al-Subkī, 'Alī 'Abd al-Kāfi, *Kitāb Al-Majmu' Sharḥ Al-Mubazzab* (jeddah: Maktabah al-Irshād, n.d.).

³² Al-Bughā, Muṣṭafā et al, *Al-Wāfi Fi Sharḥ Al-Arba'in Al-Navāwīyah* (Dashīq: Dār Ibn Kathīr, 1994).

resold to the original seller), then the law is illegal and the contract is permanently broken and the law is the law of the confiscated property".³³ The view of Ibn Hazm clearly shows its foundations that must use the *bay'u al-'inah* contract as long as there is no condition that determines the *mabi'* must be resold to the original seller. However, if there is a requirement that a *mabi'* must be resold to its original seller, this contract is forbidden.

e. Contemporary Scholars

The majority of contemporary scholars state that the law of *bay'u al-'inah* is haram and among them are Yūsuf al-Qaraḍāwī, Wahbah al-Zuhaylī, Muḥammad' Imārah, Rawās Qal'ah Jī and Sayyid Sābiq.³⁴

Based on the opinion of scholars regarding *bay'u al-'inah*, it can be concluded that Imām Shāfi'ī and the majority of *Aṣḥāb Shāfi'īyyah* require this contract and only a portion of those who argue is invalid if it has become customary. However, according to the Muṣṭafā al-Bughā, Imam Shāfi'ī himself argued that the contract was nullified if there were indications of a purpose. *Ḥilāh* do *ribā* in the contract. Likewise Ibn Ḥazm, al-Zāhirī said this contract is a must, unless there are conditions that specify *mabi'* must be resold to the original seller, then the law is forbidden and the contract is null and void.

In the Hanafī sect, Abū Ḥanīfah believes there must be three parties in this agreement and if only two parties are involved, then the law is *fāsid*. It can be noted here that Abū Ḥanīfah is based on *istiḥsān*.³⁵ It has been contrary to his mazhab's method ie *al-'ibrah al-'uqūd bi al-alfaz lā bi al-ma'ānī*. It is because of two factors, namely *first*, if the price payment has not been given, then the first sale and purchase is still incomplete. This condition makes the second contract is also imperfect based on the first contract. Therefore, the first seller must not repurchase the goods that are not yet fully owned by the first buyer. As a result, be the second contract *fāsid*. *Secondly*, based on the hadith of 'Ā'isyah,³⁶ Abū Yūsuf thinks that this agreement is valid, while Muḥammad declares this law

³³ Ibn Ḥazm 'Alī Ibn Aḥmad, *Al-Muḥallā Bi Al-Athār. Taḥqīq Dr. 'Abd Al-Ghaffār Sulaymān Al-Bandari* (Beirut: Dār al-Fikr, n.d.).

³⁴ Al-Qaraḍāwī, Yusuf, *Bay' Al-Murābahah Li Al-Āmir Bi Al-Shirā' Ka Mā Tujribi Al-Maṣarif Al-Islāmiyyah*.

³⁵ Al-Zuhaylī, Wahbah, *Al-Fiqh Al-Islāmi Wa Adillatuhu*.

³⁶ Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmi wa Adillatuhu*, Juz 4, *Op.Cit.*, p. 3455; 'Abd Allāh Ibn Aḥmad Ibn Qudāmah al-Maqdisī, *Al-Mughnī*, Juz 6, *Op.Cit.*, p. 262; Fakhr al-Dīn 'Uthmān bin 'Alī al-Zayla'ī, *Tabyin al-Haqā'iq Sharḥ Kanẓ al-Daqā'iq*, *Op.Cit.*, p. 385.

valid but reprehensible. In the schools of Mālikī and Ḥanbalī, *bay' al-'inah* is not necessarily and most contemporary scholars also view this unlawful or *fāsid* contract. Therefore, it can be formulated that basically there are two views regarding the law of *bay' al-'inah*, namely; (1) *Mubah*; Shāfi'ī, Ḥanafī and Zāhirī if required *ma'qud alayh* must be resold to the original seller, (ii) Not valid; Mālikī and Ḥanbalī schools and some contemporary scholars

Reasons on Applying *Bay'u al-'Inah* According to Mazhab and Contemporary Scholars

Based on the conclusions for the opinion of the jurisdiction over the law of *Bay'u al-'Inah*, the author would categorize their arguments or their reasons as follows;

a. The reason of the scholars that allows *bay'u al-'inah*

There are several verses of the Qur'an that are the arguments for the necessity of sale and purchase. However, the author will only explain the Qur'anic verses according to the perspective of the group who associate it with the law of *Bay'u al-'inah* only. Therefore, the view of mufassirin about the verses is not addressed in this discussion. Ibn Hazm states that the law of sale and purchase is to be based on the words of Allah:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ
ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ
مِّن رَّبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ
فِيهَا خَالِدُونَ

“Those who ate (take) usury can not stand right but like the establishment of a person who incurs a devil because of insanity. That's because they say that the sale is the same as usury. Allah has justified the sale and forbidden usury. Whosoever receives a warning from his Lord, then he stops, then what he earns before becomes his and his affairs (to Allah). Those who repeat, they are the companions of the Fire, they will abide therein”. (Qs. Al-Baqarah 2: 275)

Thus, the law of *bay'u al-'inah* is possible because it is a form of buying and selling. Furthermore, there are no Qur'anic verses and al-Sunah which prohibit this sale and Allah Almighty has said:

وَمَا لَكُمْ إِلَّا تَأْكُلُوا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرِرْتُمْ إِلَيْهِ وَإِنَّ كَثِيرًا لَيُضِلُّونَ بِأَهْوَائِهِمْ بَعِيرٍ عِلْمٍ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِالْمُعْتَدِينَ

“And why do you not eat from what is (when slaughtered) called the name of Allah, even though Allah has explained to you what He has forbidden to you, unless you are forced. And really, many are misleading people with their desires without a knowledge base. Allah knows more people who are overreaching” (Qs. Al-An'am 6: 119).

In another verse Allah swt also says;

وَمَا نَنْزِلُ إِلَّا بِأَمْرِ رَبِّكَ لَهُ مَا بَيْنَ أَيْدِينَا وَمَا خَلْفَنَا وَمَا بَيْنَ ذَلِكَ وَمَا كَانَ رَبُّكَ نَسِيًّا

“And not we (Gabriel) come down, except by the command of your Lord. He has everything in front of us. The one behind us and all that is between them, and your Lord does not forget”. (Qs. Maryam 19: 64)

Based on the above verses, it can be concluded that the law of *bay'u al-'inah* is necessarily because it is a form of trading and the law of sale and purchase is to be or is halal. Then Allah swt has explained that every thing banned in Islam has been described in the Quran and Hadith. There are no translations of these sources that claim that the sale of *bay'u al-'inah* is illegal, it is clear that the law is a must. Furthermore, Ibn Hazm concludes these arguments by asserting that it is impossible for Allah to forget the matter.³⁷

Then, from Abī Hurairah and Abī Sa'īd: The Messenger of Allah (may peace be upon him) appointed a man (as his deputy) at Khaibar,³⁸ then he came to him with the tamar *janib*, the Prophet asked him: "Are all the guests in Khaibar like this? The man replied, "We took this tamar (*janib*)

³⁷ Ibn Ḥazm 'Alī Ibn Aḥmad, *Al-Muḥallā Bi Al-Athār. Taḥqīq Dr. 'Abd Al-Ghaffār Sulaymān Al-Bandarī.*

³⁸ Ensiklopedia Islam, *Kuala Lumpur: Malaysia Encyclopedia Research Centre, 1998.*

with two bushels (*tamar al-Jam*) and two gayat (*tamar al-Janīb*) with three bushels (*tamar al-Jam'*). Then Prophet Muhammad said, "Do not do so, but juallah (*tamar al-Jam*) with dirham, then you buy it with the dirham will be tamar *janīb*"³⁹

Based on the above hadith, the Prophet Muhammad prevented his representative in Khaibar who switched the *tamar al-jam'* to obtain a *tamar janīb* with different scales because it was a prohibited *ribā*, which was the exchange of the same *ribāni* goods of different kinds. Then the Prophet gave a solution by directing him to sell *tamar al-jam'* to get dirhams, then use the dirhams to buy a *tamar janīb*. This means that the sale and purchase contract is only for the purpose of realizing the real purpose of obtaining a *tamar janīb*.

Moreover in the hadith the Prophet did not detail the sale and purchase can occur between two parties or involve other parties. This shows that the representative must (A) sell two *tamar al-jam'* with the value of dirhams to his buyer (B), then he also buys a *tamar janīb* from B or another person (C). It is clear that obtaining the dirham is not the real intention of the sale and purchase, but also the sale and purchase is merely the purchase of the *tamar janīb*.⁴⁰ In the context of *bay'u al-'inah*, the sale and purchase of the goods is as diverse as to get cash instead of *ma'qud' alayh*.

The scholars also agree that if an item is sold at the same price as the selling price or higher, the law is a permissible.⁴¹ So in the context of *bay'u al-'inah*, the law of selling the same goods at lower prices is also a must when ignored with the above problem. In this case Imām Shāfi'i said: "If some of the Companions of the Prophet disagree in a matter, some say this, some others also disputahnya, then the *aṣal* (argument) which we hold is that we will accept the opinion supported by *qiyās*".⁴²

So, *bay'u al-'inah* is a perfect contract and the terms, even if the contract can lead to damages. Therefore, the law is possible.⁴³

³⁹ Ibn Qudāmah, 'Abd Allāh Ibn Aḥmad al-Maqdisī, *Al-Mughnī*.

⁴⁰ Al-Subkī, Tāj al-Dīn bin 'Alī bin 'Abd al-Kāfi, *Ṭabaqāt Al-Shāfi'iyyah Al-Kubrā. Tabaiq :Maḥmūd Muḥammad Al-Tanābi & 'Abd Al-Fattāh Muḥammad Al-Ḥulū*, 2 (I.T.P: Hijr li al-Ṭiba'ah wa al-Nashr wa al-Tawzī', n.d.).

⁴¹ Ibn Qudāmah, 'Abd Allāh Ibn Aḥmad al-Maqdisī, *Al-Mughnī*.

⁴² al-Mawsū'ah al-Imām al-Shāfi'i – Kitāb al-Umm, *Al-Mawsū'ah Al-Imām Al-Shāfi'i – Kitāb Al-Umm* (Beirut: Dār Qutaybah, 1996).

⁴³ Al-Zuhayl, Wahbah, *Al-Fiqh Al-Islāmi Wa Adillatuhu*.

b. The reason of the scholars who rejects *bay'u al-'inab*1) The hadiths of warning about *bay'u al-'inab*

There are two hadith from Ibn 'Umar ra. First, he said: I heard the Messenger of Allah say: "When you trade with *bay'u al-'inab*, you follow the cow's tail and you tend to agriculture and you leave *jihad*,⁴⁴ Allah will blame you and He will not deprive you of you until you return to your religion.⁴⁵ Then, when people are very skilled with dinar and dirhams, and trade in *bay'u al-'inab* and they follow the cow's tails, then abandon *jihad fi sabilillah*, Allah will surely bring disaster to them and He will not lift them from them until they return to their religion.⁴⁶

Both hadiths⁴⁷ have the same meanings although there is a slight difference in the texts. The hadith shows the bans of *bay'u al-'inab* because this covenant is one of the factors of the decline of Allah swt to the humankind. In the explanation of *Uṣūl al-Fiqh*, if a matter or act is not followed by the threat of sin, punishment or disaster then it indicates that the matter is prohibited in Islam.⁴⁸

Next, the hadith narrated from al-Awzā'i, the Prophet Muhammad (peace and blessings of Allah be upon him) said: "The time will come to mankind, they will allow the sale of the goods between the two silk".⁴⁹ This hadith also clearly indicates the banning of *bay'u al-'inab* because the intermediary (silk) is not the intention of buying and selling, but the fact is to get cash with different values ie *ribā*. Although its status is *mursal*,⁵⁰ it can be used as an argument when reinforced by other hadiths related to it, such as previous traditions.⁵¹

⁴⁴ Al-Shawkānī, Muḥammad Bin 'Alī Bin Muḥammad, *Nayl Al-Awtār Min Aḥādīs Sayyid Al Akhyār*.

⁴⁵ Abū Dāwud, Sulaymān Ibn al-Asy'ath al-Sajastānī, *Sunan Abī Dāwud, Kitāb Al-Buyū'*, Bāb Al-Nahy 'an Al-'Inab, n.d.

⁴⁶ Al-Tabrānī, Abū al-Qāsim Sulaymān bin Aḥmad, *Al-Mu'jam Al-Kabīr*, n.d.

⁴⁷ Fadl Ilāhī, *Al-Tadabir Al-Wāqiyah Min Al-Ribā*, 4 (Riyad: Mu'assasah al-Jarīsī, 1999).

⁴⁸ Al-Zuhayl, Wahbah, *Al-Fiqh Al-Islāmi Wa Adillatuhu*.

⁴⁹ Al-Shawkānī, Muḥammad Bin 'Alī Bin Muḥammad, *Nayl Al-Awtār Min Aḥādīs Sayyid Al Akhyār*.

⁵⁰ Abū Jayb, Sa'dī, *Al-Qāmus Al-Fiqhī Luḡbatan Wa Iṣṭilāḥan*, 2 (Damshiq: Dār al- Fikr, 1998).

⁵¹ Al-Zuhayl, Wahbah, *Al-Fiqh Al-Islāmi Wa Adillatuhu*.

2) *Āthār Tabi'īn*

'Ā'ishah ra narrated: "From Ibn Ishāq al-Subay'ī, from his wife that he had met 'Ā'ishah and *ummu walad*⁵² entered with him al-Zayd Bin Arqam⁵³ and said: " O Umm al-Mu'minin, I sold a slave to Zayd Bin Arqam for a price of eight hundred dirhams, and I bought it again for six hundred dirhams in cash ". Then 'Ā'ishah said to him: "That is the worst of the buying and selling that you do. Tell Zayd that he has canceled his jihad with the Messenger of Allah if he did not repent." The word 'Ā'ishah has made our friends silent then he did not speak for a while. Then after he received the words 'Ā'ishah then he said: "What do you think if I take my mod only?". Then 'Ā'ishah recited the word of Allah which means: then whoever has come to warn from his Lord then he stops (abandon) then for him is his capital and his affairs are handed over to Allah [Al-Baqarah 2: 275].⁵⁴ Based on that narration, Ibn Qudāmah asserted that *bay'u al-'inah* is forbidden because 'Ā'ishah would not say so strictly except because of the *tawqīf*⁵⁵ which he himself heard from Prophet Muhammad.

Then Anas reported that he was asked about *bay'u al-'inah*, he said: Indeed, Allah can not be forgiven. This *bay'u al-'inah* is from what is prohibited by Allah and His Messenger.⁵⁶ Next, Ibn Abbās r.a said: "Fear (avoid) will be *bay'u al-'inah*. Do not buy some dirhams with some dirhams and between them there is a silk (as an intermediary).⁵⁷ Another story also narrated, "A man sells a silk cloth to another man at a hundred (dirham) price, then he buys it again at a price of fifty (dirham). Then he asked Ibn 'Abbās about the matter then he said: (Exchange) some dirhams with several dirhams of different value and put between the two of them a silk.⁵⁸ Ibn 'Abbās was also asked about *al-'inah*, he replied: "Indeed, Allah swt can not be tolerated. This *bay'u*

⁵² Al-'Asqalānī, Aḥmad bin 'Alī bin Ḥajar, *Al-Iṣābah Fī Tamyiz Al-Ṣabābah. Cet-2. Tahqīq: 'Ādil Aḥmad 'Abd Al-Maujūd Dan 'Alī Muḥammad Mu'anwaḍ* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2002).

⁵³ Al-'Asqalānī, Aḥmad bin 'Alī bin Ḥajar.

⁵⁴ Al-Dārquṭnī, 'Alī bin 'Umar, *Sunan Al-Dārquṭnī*, 2 (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003).

⁵⁵ Abū Jayb, Sa'dī, *Al-Qamus Al-Fiqhī Luġbatan Wa Iṣṭilāḥan*.

⁵⁶ Ibn Qudāmah, 'Abd Allāh Ibn Aḥmad al-Maqdisī, *Al-Mughnī*.

⁵⁷ Ibn Qudāmah, 'Abd Allāh Ibn Aḥmad al-Maqdisī.

⁵⁸ Ibn Qudāmah, 'Abd Allāh Ibn Aḥmad al-Maqdisī.

al-'inab is from what is prohibited by Allah and Prophet Muhammad.⁵⁹ Apart from the above companions, there are some *kibār tabi'in* who also forbade the *bay'u al-'inab*, including Ḥasan Baṣrī, Ibn Sirīn, al-Sha'bī, al-Nakha'ī and Rabī'ah bin' Abd al-Raḥmān.⁶⁰

3) *Ijma'*

Continued from the above arguments, Ibn Qayyim: "Surely the Companions such as 'Ā'ishah, Ibn 'Abbās and Anas have fought the bans of *bay'u al-'inab* and have been harsh in the matter at different times and situations, and not come from among the companions who affirmed them or give them the flexibility of this muamalah, then this indicates that there has been a *ijma'* among them in the bans of *bay'u al-'inab*.⁶¹

4) *Sadd al-Darā'ī'*⁶²

Bay'u al-'inab is *ḍarī'ah* to *ribā* because the sale and purchase contract is done not to have *ma'qūd' alayh*, but as a way to get cash with different values. This difference in value is *ribā* and *ribā* is forbidden. Then *bay'u al-'inab* is forbidden on the basis of *sadd al-Darā'ī'*.⁶³

5) *Ma'qūl*

Bay'u al-'inab is a *ḥīlab*⁶⁴ to avoid *ribā ṣarīḥ*. While *ribā* is muamalah banned in Islam and all parties involved with it are cursed based on a hadith narrated by Muslims; "From Jabir he said: Prophet Muhammad (may peace be upon him) has cursed the rabbis, the delegates, the author and the two of them, and he said: They are the same.⁶⁵ The Qur'an also states war to those who eat *ribā*.

⁵⁹ Ibn Qudāmah, 'Abd Allāh Ibn Aḥmad al-Maqdisī.

⁶⁰ Ibn Qudāmah, 'Abd Allāh Ibn Aḥmad al-Maqdisī.

⁶¹ Qal'ah Jī, Muḥammad Rawās, *Mu'āmalat Mālīyyah Mu'āṣirah Fī Daw' Al-Fiqh Wa Al-Sharī'ah*.

⁶² Al-Zuhayl, Wahbah, *Al-Fiqh Al-Islāmī Wa Adillatuhu*.

⁶³ Ibn Qayyim al-Jawziyyah, Abū 'Abd Allāh, *I'lam Al-Muwaqqi'in 'an Rabb Al-Ālamīn Taṭṭiq: Bashir Muḥammad 'Ayūn* (Damshiq: Maktabah Dār al-Bayān, 2000).

⁶⁴ Ahmad Maulidizen dan Mohammad Taqiuddin Bin Mohamad, "Murabahah Sebagai Instrumen Pembiayaan Dalam Keuangan Islam Modern," *Jurnal Ijtīmīyyah* 11, no. 1 (n.d.): 303–32.

⁶⁵ Muslim, Abū al-Ḥusayn bin Ḥajjāj, *Ṣaḥīḥ Muslim. Kitab Al-Musaqab, Bāb Bay' Al-Ta'am Mathalan Bi Mathalin*, n.d.

Therefore, how can Islam prohibit and cursed all parties involved, and strongly emphasize its lusts to declare war to ribar eaters, but from another angle justify the *ribā* by the most shallow, while the essence and mafsadahnya are the same with *ribā ṣarḥ* itself.⁶⁶

The Most Powerful Opinion on *Bay'u al-'Inah*: An Analysis

Before the author chooses the view of the *rajiḥ*, it is necessary to emphasize that the fuqaha agree to forbid *bay'u al-'inah* if there is a requirement that *ma'qūd' alayh* should be resold to its original seller. Similarly, if there is any indication that *ḥilab* does the *ribā* then the law is also null. What is the debate of the fuqaha is when there is no requirement and there is no indication that it should be done. In this issue, the author is more inclined to the views of those who forbid the *bay'u al-'inah* but will not be canceled based on the following factors:

First, the warning hadith concerning *bay'u al-'inah* narrated from Ibn 'Umar is *ṣaḥiḥ* and can abolish general Qur'anic verse that requires sale and purchase. Albānī in his lineage has legitimate the above hadith and gave a lengthy comment on it and to comment on those who reject the chastisement of the hadiths.⁶⁷ Apart from him, Ibn al-Qaṭṭān and Shaykh Ahmad Syākir also received the first and second hadith as *ṣaḥiḥ*.⁶⁸ The third hadith is, however, but Ibn Qayyim believes it can be a legal reserve in ittifaq because there are other hadiths who support it.⁶⁹ The author finds that Imām Shāfi'ī does not mention the hadiths⁷⁰ because he thinks that the hadiths are not scallops to be used as arguments or reason. The author has also explained the criticisms of the hadiths of *bay'u al-'inah* when explaining the arguments of those who forbade *bay'u al-'inah*. However, the writer tends to the view of Albānī who accepts the hadiths as a scythe to make arguments forbidding *bay'u al-'inah*.

Then, with regard to *athār 'Ā'ishah*, although some ulama reject the

⁶⁶ Ibn Qayyim al-Jawziyyah, Abū 'Abd Allāh, *I'lam Al-Muwaqqi'in 'an Rabb Al-Ālamīn Taṭṭiq: Bashir Muḥammad 'Ayūn*.

⁶⁷ Ibn Qayyim al-Jawziyyah, Abū 'Abd Allāh.

⁶⁸ Al-Qaraḍāwī, Yusuf, *Bay' Al-Murabahah Li Al-Āmir Bi Al-Shirā' Ka Mā Tujribi Al-Maṣarif Al-Islamiyyah*.

⁶⁹ Ibn Qayyim al-Jawziyyah, Abū 'Abd Allāh, *I'lam Al-Muwaqqi'in 'an Rabb Al-Ālamīn Taṭṭiq: Bashir Muḥammad 'Ayūn*.

⁷⁰ al-Mawsū'ah al-Imām al-Shāfi'ī – Kitāb al-Umm, *Al-Mawsū'ah Al-Imām Al-Shāfi'ī – Kitāb Al-Umm*.

validity of this *athar* and declare it unrevealed, but *athar* has been narrated through many paths (*tariq*), ie eight *tariq* have been listed.⁷¹ The narrators are also *thiqah* except the debate is al-'Āliyyah bint al-Ayfa 'because it is not known. However, some scholars claim that he is known among them Ibn al-Jawzī, Ibn Sa'ad and Ibn Hibbān.⁷² Likewise, al-Subkī said that this *athar* is *ṣahīḥ*.⁷³ In this case Dr. The Badawī states: "But it seems that he (al-'Āliyyah) is in the middle of the *tabi'in* and who narrates his hadith is his own husband Abū Ishāq and his son Yūnus, and both are the well-known priests, then the hadith is accepted".⁷⁴ Therefore, the authors tend to accuse this *athar* for a support argument on this issue.

Next, the issue of jihad of the companions in a matter does not bind other companions, the authors tend to the view that 'Ā'ishah will not say so firmly except because of the *Tawqif* of Prophet Muhammad. This is because, as understood from its kalam, the practices are just null and void, and permitting the prohibited things (*ribā*) can lead to disbelief. Only Zayd Bin Arqam's illness is probably that he does not know that his actions are illegal, that is why 'Ā'ishah ordered her to convey it to Zayd.⁷⁵ It is known that if this matter involves the question of *ijtihādīyyah*, then surely 'Ā'ishah will not hardly say so, because he certainly knows that *ijtihad* cannot cancel the *ijtihad*. It can therefore be concluded that the matter cannot be denied because its law has been crescented.

In addition to 'Ā'ishah, Ibn 'Abbās bin Mālik has forbidden the *bay'u al-'inah* and firmly on it at different times and it does not come to us amongst the friends and *tabi'in* who dissolve it.⁷⁶ The act of Zaayd the author disagrees with that he has been adhering to the necessity of *bay'u al-'inah*, but it may have

⁷¹ Al-Mālikī, Al-Qāḍī 'Abd al-Wahhab bin 'ālī bin Naṣr al-Baghdādī, *Al-Ithāf Bi Takbrīj Aḥādīth Al-Isbrāf* (Dubai: Dār al-Buḥūth li al-Dirāsāt al-Islāmiyyah wa Iḥyā' al-Turāth, 1999).

⁷² Al-Zayla'ī, Jamāl al-Dīn Abū Muḥammad 'Abd Allāh bin Yūsuf, *Naṣbu Al-Rayah Takbrīj Aḥādīth Al-Hidayah* (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.).

⁷³ Al-Subkī, 'Alī 'Abd al-Kāfī, *Kitāb Al-Majmu' Sharḥ Al-Mubazzab*.

⁷⁴ Al-Mālikī, Al-Qāḍī 'Abd al-Wahhab bin 'ālī bin Naṣr al-Baghdādī, *Al-Ithāf Bi Takbrīj Aḥādīth Al-Isbrāf*.

⁷⁵ Al-Nawāwī, Abū Zakariyyā Yaḥyā Bin Sharf, *Rauḍah Al-Tālibin, Bersama Al-Minhāj Al-Sawī Fī Tarjamah Al-Imām Al-Nawāwī Dan Muntaqā Al-Yunbū'. Tabqīq: 'Ādil Aḥmad 'Abd Al-Manjud Dan 'Alī Muḥammad Mu'awwad*).

⁷⁶ Al-Nawāwī, Abū Zakariyyā Yaḥyā Bin Sharf.

happened because without any study of its necessity.⁷⁷ That is why it is not narrated that Zayd remained so after the 'Ā'ishah. Therefore, we should not argue to Zayd that he is in charge of halal *bay'u al-'inah*, especially if he has met 'Ā'ishah asking his views on the matter.

Then when 'Ā'ishah recited the word of Allah, this indicates that his firmness is due to the occurrence of *ribā* in the sale and purchase, rather than due payment payment as Imām Shāfi'ī's view. This is because the verse is for a person who does not reach him the law of *ribā*.⁷⁸ However, the writer tends to the views of Shaykh al-Qaraḍāwī that the actions of Zayd and his *umad waladnya* do not go wrong if there is no intention to do *ribā*. It is a lawful sale and purchase if perfected with the existence of *tarādī* elements and a great loss or exploitation of those who are in need or desperate.⁷⁹

In the last, although *sadd al-dhara'i* method is not agreed upon by scholars as a source of law, the writer thinks he can and should be taken into account in the issue of *bay'u al-'inah*. To further refine this discussion, the writer will briefly examine this method and its relation to *bay'u al-'inah* as follows: Imām Mālik and Ahmad admit *sadd al-dhara'i* as one source of law. Imām Abū Ḥanīfah and Shāfi'ī accept it in some cases and reject it on other matters. While Ibn Hazm also rejected this method in general.⁸⁰ However, scholars agree that they cannot help in matters of sin and hostility in absolute terms. Similarly, in matters that can lead to good or evil, they agree that if it is to do good to man, then it is not forbidden.

What is the point of disagreement among them is that they are obligatory, which is related to *buyu' al-'ājal (bay'u al-'inah)*. However, it needs to be explained, if it is real intention to do *ribā* then it is not allowed in any situation whatsoever. It is clear that what is wrong is in the case of a non-apparent purpose to do prohibited things.⁸¹ On this basis, Mālikīyah and Ḥanābilah cancel *bay'u al-'inah* because for them the covenant itself is a guide to the purpose of doing *ribā*. This is because the conclusion of this agreement is to get cash and to pay it at a higher price (on a prolonged basis), while goods

⁷⁷ Al-Nawāwī, Abū Zakariyyā Yaḥyā Bin Sharf.

⁷⁸ Al-Nawāwī, Abū Zakariyyā Yaḥyā Bin Sharf.

⁷⁹ Al-Qaraḍāwī, Yusuf, *Bay' Al-Murābahah Li Al-Amir Bi Al-Shirā' Ka Mā Tujrihi Al-Maṣarif Al-Islāmiyyah*.

⁸⁰ Al-Zuhayl, Wahbah, *Al-Fiqh Al-Islāmi Wa Adillatuhu*.

⁸¹ Al-Zuhayl, Wahbah.

are merely intermediaries.⁸²

Abū Ḥanīfah also canceled *bay'u al-'inah* on the basis that if the price in the first sale was not yet settled, then the sale and purchase became imperfect. Thus, the second law of sale and purchase is unlawful because it is subject to the first law of sale and purchase. Therefore, the first buyer should not sell it again because the item has not been properly. The sale and purchase contain elements of *ribā al-faḍl* and *al-nasā'* due to the element of residual in tempo and advantage on the price of goods to be paid. On this basis the jumhur fuqaha states its facade *bay'u al-'inah* because it is *dharī'ah* to *ribā*.⁸³ As for Imām Shāfi'ī, he authorized this covenant in *qaḍā'an* (worldly law) and handed the aspect of motives and motifs to the law of ukhrawī. This means that the contract becomes illegitimate due to the prevention of it, but the prohibition does not lead to the abolition of the contract even though it leads to mafsadah and immoral.⁸⁴

The author tends to the above view because in the discussion of *Uṣūl al-Fiqh* knowledge according to the methodology of jumhur, the law is divided into two; *taklīfī*⁸⁵ and *wad'ī*.⁸⁶ Both of these laws need to be applied in a problem to determine their position in *al-Fiqh al-Islām*. Seeing that the principles and conditions of sale are fulfilled in *bay'u al-'inah* contract, he is legally punished under the law of *wad'ī*, in the absence of the intention of performing the *ribā*. However, the act of executing the contract can be illegal (sinful) based on the law of *taklīfī* because of the conviction of the arguments which prohibit this covenant as described above. In the discussion of *Fiqh Mu'āmalat*, there is an agreement that is illegal and illegitimate or invalid and there are also lawful but illegal.⁸⁷ Therefore, whoever has performed *bay'u al-'inah* contract by hiding his intentions as *ḥīlah* to *ribā*, his law is legitimized if it is sufficiently harmonious and conditioned from the point of the law of the world (*qaḍā'an*), but becomes illegal from the law of the jurisprudence (*diyānatan*) because of the protected intentions. If he wants to repent then he only needs to take his capital only and return the benefits received from the parties involved, in accordance with the 'Ā'ishah which has been explained, or futilkan the

⁸² Al-Zuhayl, Wahbah.

⁸³ Al-Zuhayl, Wahbah.

⁸⁴ Al-Zuhayl, Wahbah.

⁸⁵ Al-Zuhayl, Wahbah.

⁸⁶ Al-Zuhayl, Wahbah.

⁸⁷ Al-Zuhayl, Wahbah.

agreement with the consent of both parties.⁸⁸

The author inclines the opinion about if somehow the contract is nullified or invalid, it can undermine the principle of *istiqrār al-ta'āmul* (stability in muamalat) because of the unclear (*tawabbuhum*) factor. As a continuation of the explanation above, the writer pondered to explain one important topic related, that is the problem of intent and utterance in the akad that is "There are two streams concerning this problem in *al-Fiqh al-Islam*:"⁸⁹ First, the view of Shāfi'i Mazhab, which is important to note that in the contract is utterance, not intention or motive.⁹⁰ This is because the intention which is the cause and purpose of the matter which is not required to be syarak is protected. Therefore, it must be submitted to Allah swt because Allah is worthy to punish him if one is sinful for his intention. Investigating intentions or intentions is not in accordance with the general principles which assert that all worldly laws are built on the real principles. The Prophet (peace and blessings of Allaah be upon him) himself, when passing the law in the matter of trial is based on the real thing, while he is given revelation by Allah swt (then of course he may know the intentions or intentions of good or evil).⁹¹ Therefore, this trend confirms that every contract is punishable based on its meaning or utterance. This means that the law or the facade of a contract depends on its nature and the contract is not damaged by external factors even if the intention and purpose can affect through its affiliation.⁹²

Secondly, Ahmad also describes the motives in the contract, rather than just the utterance or justification. Regarding this issue Ibn Qayyim has examined it in detail which can be summarized as follows; (i) If the intention of the party concerned coincides with his speech, the contract is legitimate and can give rise to shariah influences, (ii) If his intentions and speeches are not appropriate, but no indicator expresses his intentions, (iii) If there is a *qarinah* that can reveal the purpose and purpose, but the intention is not contrary to Shariah, then the law of the covenant is valid. However, if there is conflict then

⁸⁸ Al-Khin, Muṣṭafā et al, *Al-Fiqh Al-Manhajī 'alā Madhab Al-Imām Al-Shāfi'i* (Damshiq: Dār al-Qalam, 1998).

⁸⁹ Al-Zuhayl, Wahbah, *Al-Fiqh Al-Islāmi Wa Adillatuhu*.

⁹⁰ al-Mawsū'ah al-Imām al-Shāfi'i – Kitāb al-Umm, *Al-Mawsū'ah Al-Imām Al-Shāfi'i – Kitāb Al-Umm*.

⁹¹ Zahrah, Muḥammad Abū, *Al-Milkiyyah Wa Nazariyah Al-'Aqd* (Kaherah: Fikr al'Arabī, 1996).

⁹² Ibn Qayyim al-Jawziyyah, Abū 'Abd Allāh, *I'lam Al-Muwaqqi'in 'an Rabb Al-Ālamin Taṭṭiq: Bashir Muḥammad 'Ayyūn*.

the contract becomes corrupt and can not cause any Shariah influence.⁹³

In relation to the *bay'u al-'inah*, the Shafi'i sect does not observe the intentions of the parties, instead of looking at the tangible things. Looking at the sale and purchase in the reality of the perfect rule and condition, then the law is valid. But for the second stream, whoever strives for the purpose of raising, but using the sale and purchase contract as *dhari'ah*, then he sinned by Allah swt and his covenant also abolish on the basis of *sadd al-dhara'i*.⁹⁴ In the issue of *bay'u al-'inah*, the writer tends to see the Shāfi'i sect view of the tangible things in each contract and it also corresponds to the second Ibn Qayyim view as above. The author looks at other arguments like athar Ibn 'Umar and Anas bin Mālik as well as the prophecy of *ma'qūl* which has been raised also reinforces the opinion that the author chooses.

Conclusion

In conclusion in the discussion above, the author gives an understanding of the meaning of *bay'u al-'inah*, which is buying and selling to get cash immediately, which involves at least two parties through two separate contracts for an item, which will return to the owner origin. While the selling price is strong (debt) and the repurchase price is lower which is paid in cash before the completion of the price (debt). It can also occur if the seller sells his goods at a cash price and then buys them back at a higher price in debt.

The fuqaha agree to forbid *bay'u al-'inah* if there is a condition that *ma'qūd' alayh* must be resold to the original seller. Likewise if there is a clue to the existence of *hīlah do ribā* then the law is also null. What is a juristic debate is that if there are no such conditions and there is no referral *hīlah do ribā*. In this problem the author holds that the contract *bay'u al-'inah* is haram if the intention to do *ribā* is not stated in contract. However, the status of the contract is valid or not canceled as long as there is no condition that the *mabī'* must be resold to the original seller and the absence between the two parties who are willing to do *ribā*. This is because with the intention, even if outside the contract, the intention to do *riba* has been stated and can cancel the contract.

The author's view is not on the basis of taking a middle ground from the opinion of two groups about the law of *bay'u al-'inah*, because the author has stated the justification for why the author chose the above opinion. Even

⁹³ Ibn Qayyim al-Jawziyyah, Abū 'Abd Allāh.

⁹⁴ Al-Zuhayl, Wahbah, *Al-Fiqh Al-Islāmi Wa Adillatuhu*.

though the author needs to emphasize, as a devout Muslim, we should not underestimate this matter by saying that it is okay to be involved with the contract of *bay'u al-'inah* because his contract is still valid, even though it is haram, because this attitude is the trigger which can invite the wrath of Allah Almighty in the Hereafter and afflict humiliation in the world as stated in the hadith narrated by Ibn 'Umar.

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