



## THE RELEVANCE OF GOLD INVESTMENT FROM THE PERSPECTIVE OF SHARIA ECONOMIC LAW (STUDY OF DSN FATWA NUMBER: 77/DSN-MUI/V/2010)

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**Abstract:** This research was motivated by the determination of a fatwa on the ability to invest in gold as stated in the DSN fatwa Number: 77/DSN-MUI/V/2010 concerning Buying and Selling Gold Non-Cash. Therefore, the author analyzes what are the postulates underlying the determination of the DSN Fatwa NUMBER: 77/DSN-MUI/V/2010 and how relevant is the ability to invest in gold from the perspective of Sharia Economic Law. The method used according to its type is literature review and includes normative legal research. Meanwhile, the nature uses descriptive analysis research. The results of the study show that, first, the evidences underlying the determination of the Fatwa of DSN Number: 77/DSN-MUI/V/2010, namely Q.S al-Baqarah/2:275, the hadith of the narration of Ibn Majah and al-Baihaqi, Muslims, Abu Daud, Tirmizi, Nasa'i, the Rules of Ushul and the Rules of Fiqh, the fatwa of Ibn al-Qayyim, the fatwa of Imam Ibn Taymiyah, the fatwa of Shaykh 'Ali Jum'u'ah, the fatwa of Shaykh Wahbah al-Zuhaili. So that these postulates become the basis for gold investment through the non-cash buying and selling of gold using murabahah contracts, buying and selling wakalah and rahn as long as gold is not an official medium of exchange (money), Second, gold investment based on Fatwa DSN NUMBER: 77/DSN-MUI/V/2010 concerning the non-cash buying and selling of gold if reviewed from the perspective of sharia economic law where the buying and selling transactions are non-cash and there is a delay in the receipt of goods to be traded is relevant according to the benefit of the ummah considering that gold is a good (sil'ah) that is sold and bought just like ordinary goods and is no longer tsaman (price, means of payment, money). Moreover, humans really need to buy and sell gold in installments. Gold has also been shaped into jewelry transformed into clothes and goods, and is not a tsaman (price, means of payment, money). So that there is no riba (in the exchange of buying and selling) between jewelry and the price (money), just as there is no riba (in the exchange of buying and selling) between the price (money) and other goods, even though it is not of the same type.

**Abstrak:** Penelitian ini dilatarbelakangi oleh adanya penetapan fatwa terhadap kebolehan investasi emas sebagaimana dinyatakan

pada fatwa DSN Nomor: 77/DSN-MUI/V/2010 Tentang Jual-Beli Emas Secara Tidak Tunai. Oleh karena itu, penulis melakukan analisis terhadap apa saja dalil-dalil yang mendasari penetapan Fatwa DSN NOMOR: 77/DSN-MUI/V/2010 dan bagaimana relevansi kebolehan invesatsi emas perspektif Hukum Ekonomi Syariah. Metode yang digunakan menurut jenisnya adalah kajian pustaka dan termasuk penelitian hukum normatif. Sedangkan sifatnya menggunakan penelitian analisis deskriptif. Hasil penelitian menunjukkan bahwa *pertama*, dalil-dalil yang mendasari penetapan Fatwa DSN NOMOR: 77/DSN-MUI/V/2010 yaitu Q.S al-Baqarah/2:275, hadis Riwayat Ibnu Majah dan al-Baihaqi, Muslim, Abu Daud, Tirmizi, Nasa'i, Kaidah Ushul dan Kaidah Fikih, fatwa Ibnul Qayyim, fatwa imam Ibn Taimiyah, fatwa Syaikh 'Ali Jumu'ah, fatwa Syekh Wahbah al-Zuhailly. Sehingga dalil-dalil tersebut menjadi dasar kebolehan investasi emas melalui jual beli emas secara tidak tunai menggunakan akad murabahah, jual beli wakalah dan rahn selama emas tidak menjadi alat tukar yang resmi (uang), *Kedua*, investasi emas berdasarkan Fatwa DSN NOMOR: 77/DSN-MUI/V/2010 tentang jual beli emas secara tidak tunai jika ditinjau perspektif hukum ekonomi syariah yang transaksi jual belinya tidak tunai dan terdapat penundaan penerimaan barang yang diperjualbelikan adalah relevan sesuai kemaslahatan bagi umat mengingat bahwa emas adalah barang (*sil'ah*) yang dijual dan dibeli seperti halnya barang biasa dan bukan lagi *tsaman* (harga, alat pembayaran, uang). Apalagi manusia sangat membutuhkan untuk melakukan jual beli emas secara angsuran. Emas juga telah dibentuk menjadi perhiasan berubah menjadi seperti pakaian dan barang, dan bukan merupakan *tsaman* (harga, alat pembayaran, uang). Sehingga tidak terjadi riba (dalam pertukaran jual beli) antara perhiasan dengan harga (uang), sebagaimana tidak terjadi riba (dalam pertukaran jual beli) antara harga (uang) dengan barang lainnya, meskipun bukan dengan jenis yang sama.



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## INTRODUCTION

Saving gold is one of the investment media that is considered very good because the selling value of gold is increasing and the risk level is very low so that customers can invest safely. Another advantage obtained when investing in gold is that it is not easily damaged, not easily changed, easy to shape, difficult to destroy, favored and accepted by the general public, can also be

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broken down into very small units. So, many people are tempted to make gold an investment tool because gold has these advantages.<sup>1</sup>

Based on what has been described above, humans as economic beings in carrying out economic activities are given the freedom to seek and get the maximum profit. However, Islam has taught its people several things from all sides, including in terms of economics, which in this case focuses on investment. Muslims who are bound by faith and ethics are required to carry out economic activities in accordance with sharia principles so that even in investing, they cannot have absolute freedom in achieving the benefits promised by the economic market. The goal of economics in Islam is not limited to getting the welfare of the world alone, but also for the welfare in the hereafter. It is true that saving money is a very good thing for humans to do. In addition, saving can be a solution that will help humans meet their needs for the future. Gold is the belle of investment, its value never drops, even gold is considered a symbol of power and wealth.<sup>2</sup> Gold is also an effective means of hedging against inflation and exchange rate fluctuations. Gold is liquid or easy to cash out. That is why since the Prophet Solomon AS until now, gold has always been hunted by humans.<sup>3</sup>

Investment is one of the ways used to develop wealth that is owned productively.<sup>4</sup> Gold investment is the safest and most profitable investment among all investments, because gold is an investment object whose value tends to always increase. Thus, investment in gold can be said to be almost always profitable with relatively low risk. However, of course, the profits that can be taken from gold investments are usually long-term in nature.<sup>5</sup>

As a form of ijtihad or legal reform on the issue of gold investment faced in Indonesia, a fatwa was issued on the law of buying and selling gold in cash

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<sup>1</sup>Melfi Nadhriati, *Relevansi Investasi Tabungan Emas dalam Perspektif Fikih Klasik dan Fikih Kontemporer*, Volume 5 Number 2 (2023), h. 214

<sup>2</sup>Kholishudin, *Pengambilan Keputusan Investasi Generasi Y Terhadap Produk Tabungan Emas Di Pegadaian Syariah Cabang Babakan, Kota Surabaya*, AL-IQTISHOD: Jurnal Pemikiran dan Penelitian Ekonomi Islam, Volume 8 Issue 2 Juli 2020, h. 93

<sup>3</sup>Wiliam Tanuwidjaja, *Cerdas Investasi Emas* (Yogyakarta: Medpress,2009), h. 7.

<sup>4</sup>Meriyati, *Minat Investasi Syari'ah*, ISLAMIC BANKING Volume 1 Nomor 1 Edisi Perdana Agustus 2015, h. 42

<sup>5</sup>Yana Dwi Christanti, *Investasi Emas Pada Masa Pandemi Covid 19 (Kajian Kritis Secara Islam)*, Edunomika – Vol. 06, No. 02, 2022, h. 6

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which is permissible (mubah, ja'iz) as long as gold does not become an official medium of exchange (money). The decision was made by the DSN-MUI based on the opinion that the provision or law of buying and selling gold is *ahkam mu'allalah* (a law that has an 'illat), and the 'illat is *tsamaniyah*, namely the illat of gold transactions at the time of the *wurud hadith* was *tsaman* (price) means of payment or exchange (money), but now it has changed to *sil'ah* (goods), namely gold has been formed into jewelry turned into like clothes and goods, and is not a *tsaman* (price, means of payment, money).

The stipulation of the fatwa on the permissibility of gold investment as stated in the DSN fatwa Number: 77/DSN-MUI/V/2010 on the sale and purchase of gold without cash, either through ordinary sale and purchase or *murabaha* sale and purchase, the law is permissible (mubah, ja'iz) as long as gold does not become an official medium of exchange (money). However, in its development, it raises a new polemic when the DSN fatwa is different from the provisions in the opinion of classical scholars. However, if the differences in the law on gold investment are viewed in terms of the doctrine of *takhayyur*, of course, it will be a complicated issue related to which opinion should be upheld in Indonesia. However, if we return to the doctrine of choosing a more relevant opinion, of course it is also something that is still considered taboo by the majority of the community.

The problem in this research is to highlight the differences that occur in the DSN fatwa regarding the permissibility of gold investment. This becomes the main problem that whether the permissibility of gold investment has become a relevant opinion when examined from the point of view of the underlying legal basis and the direction of the determination of the DSN fatwa Number: 77/DSN-MUI/V/2010 Regarding the Cashless Sale of Gold. Related to the explanation above, the author sees that this problem is interesting to be studied further and in depth on the sound of DSN fatwa Number: 77/DSN-MUI/V/2010 Regarding the Cashless Sale of Gold.

## RESEARCH METHOD

This type of research is qualitative literature research with the intention of measuring legal materials obtained from research results through reading

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and reviewing books and articles related to the problems of this paper. This research is also included in normative juridical legal research, which examines the rules that apply in society which are contained in the DSN fatwa relating to the determination of gold investment.

The nature of this research is descriptive analysis, namely describing and explaining and analyzing matters related to the problem under study such as how gold investment in the DSN fatwa and the relevance of the opinions of classical and contemporary scholars to be adhered to or by the method of legal development it is possible to find valid legal sources.

Legal materials that are studied in this study, namely primary legal materials, namely the DSN fatwa of the National Sharia Council Fatwa Number: 77 / DSN-MUI / V / 2010 concerning the sale and purchase of gold in cash. While secondary legal materials used are legal materials that support primary legal materials, namely books and books related to gold investment. In collecting legal materials to be reviewed, the author uses documentation and coding techniques. The documentation technique is used to find literature related to the focus of research, namely on gold investment, both obtained through classical fiqh books, contemporary fiqh books, articles, journals and papers. While the coding technique is used to verify which literature contains or is directly related to the research theme, whether it is recorded and made a summary of the core material or only underlined using a highlighter. In this research, the legal approach method is carried out systematically and *takhayyur*, *tathbîq* and *tajdîd*. Systematic is used as an effort to find the strongest source of law from the main study in processing arguments, starting from the exploration of the interpretation of the Qur'anic verses, *hadith*, *ijmâ'* and *qiyâs*. Furthermore, after obtaining an understanding of the interpretation of the legal sources studied, the author uses a *takhayyur* approach, namely choosing an opinion that is considered to represent the truth, especially on the theme of this research. After all legal materials have been collected, the author processes the existing legal materials using qualitative descriptive analysis techniques, namely describing and elaborating what arguments are the basis for determining the permissibility of gold investment. After

describing the underlying arguments, the author conducts a qualitative study of which opinions are relevant to the determination of gold investment from the perspective of Sharia Economic Law.

## DISCUSSION

### Analysis of the Legal Basis of Gold Investment

The legal basis for investment in the word of Allah SWT, Q.S Luqman 31/34:<sup>6</sup>

إِنَّ اللَّهَ عِنْدَهُ عِلْمُ السَّاعَةِ وَيُنزِلُ الْغَيْثَ وَيُعَلِّمُ مَا فِي الْأَرْحَامِ وَمَا تَدْرِي نَفْسٌ مَّاذَا تَكْسِبُ غَدًا وَمَا تَدْرِي نَفْسٌ بِأَيِّ أَرْضٍ تَمُوتُ  
إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ □ ٣٤

The verse explains that no one can know what will happen tomorrow. Thus Allah SWT, commands all his servants to invest in order to prepare themselves for life in the future, either investing in the form of virtue and good deeds as provisions in the hereafter or a form of effort in harmonizing and getting returns as provisions and ensuring a decent life.<sup>7</sup> The verse is also corroborated by the hadith regarding the permissibility of investment as long as there is no element of mutual deception.<sup>8</sup> As the hadith narrated by Abu Daud:

حَدَّثَنَا مُحَمَّدُ بْنُ سَلِيمَانَ الْمَصْبُغِيُّ، نَا مُحَمَّدُ بْنُ الزُّبَيْرِ قَانَ ، عَنْ أَبِي حَيَّانَ النَّيْمِيِّ ، عَنْ أَبِيهِ ، عَنْ أَبِي هُرَيْرَةَ رَفَعَهُ قَالَ: إِنَّ اللَّهَ تَعَالَى يَقُولُ: «أَنَا تَالِبُ الشَّرِيكَيْنِ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ، فَإِذَا خَانَ خَرَجْتُ مِنْ بَيْنِهِمْ رَوَاهُ أَبُو دَاوُدَ

Other legal provisions that can be used as a basis in the practice of gold investment in which the realization of gold purchases is made in installments are contained in Fatwa DSN-MUI number 77/DSN-MUI/V/2010 concerning buying and selling gold in cash, which stipulates that buying and selling gold in cash, either through ordinary buying and selling or buying and selling murabahah is permissible (mubah) as long as it does not become an official medium of exchange (money).<sup>9</sup> Many gold buying and selling transactions carried out by the community today are carried out with non-cash payments,

<sup>6</sup>Irdlon Sahil, Tinjauan Hukum Islam Terhadap Investasi, *Jurnal At-Tsaman* Vol 6 No 01, 2024, h. 156

<sup>7</sup>Muh. Said, Syafi'ah Sukaimi, Pengantar Pengembangan Ekonomi Syariah, (Riau : Kalimedia, 2022), H. 4

<sup>8</sup>Hilda Maulida Fauziah, Mohamad Andri Ibrahim, Investasi Saham Syariah dalam Perspektif Fikih Muamalah, *Jurnal Riset Perbankan Syariah Unisba*, Volume 1 No 2, 2022, h. 116

<sup>9</sup>Ginan Wibawa, Analisis Kesesuaian Fatwa DSN-MUI No. 77/DSN-MUI/V/2010 Terhadap Pembiayaan Murabahah Cicil Emas , Volume 5 Nomor2, Oktober 2023, h. 118



either in installments (taqsith) or on a tough basis (ta'jil).<sup>10</sup> So that it causes differences of opinion that arise among Muslims regarding gold buying and selling transactions carried out in installments, including opinions that allow it and opinions that do not allow it.<sup>11</sup> As for the scholars who are of the opinion that the sale and purchase of gold is carried out in installments and on time, they argue with the arguments and the generality of the hadiths about usury, which, among other things, emphasize, "you should not sell gold for gold, and silver for silver, except in cash". They state that gold and silver are tsaman (price, means of payment, money) that should not be exchanged on an installment or deferred basis, because this causes usury.<sup>12</sup>

Quoted in the Fatwa of DSN-MUI regarding the opinion of the scholars regarding the permissibility of gold sale and purchase transactions with payments in installments, arguing the following arguments:

1. That gold and silver are goods (sil'ah) that are sold and bought like ordinary goods, and are no longer tsaman (price, means of payment, money).<sup>13</sup>
2. People are in dire need of selling gold in installments, so the interests of the people will be damaged and they will suffer hardship.<sup>14</sup>
3. When gold and silver are made into jewelry, they become like clothing and goods, and are not tsaman (price, currency, money). Hence there is no riba (usury) on the exchange of jewelry for money, just as there

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<sup>10</sup>Jajang Herawan, Dkk, *Jual Beli Emas Tidak Tunai Dalam Perspektif Hukum Ekono Syariah, Al Mashalih: Journal Of Islamic Law Vol. 4 No.1, June 2023*, h. 23

<sup>11</sup>Gusti Muslihuiddin Sa'adi, *Analisa Kritis Hukum Kredit Emas (Kajian Kritis terhadap Fatwa DSNMUI Nomor 77 Tahun 2010 Tentang Murabahah Emas), At-Taradhi: Jurnal Studi Ekonomi Volume X Nomor 1, Juni 2019*, h. 59

<sup>12</sup>Iis Muala Wati, *Kontekstualisasi Riba dalam Jual Beli Emas Online (Studi Terhadap Distributor Mini Gold)*, *El-Faqih: Jurnal Pemikiran dan Hukum Islam*, Volume 7, Nomor 1, April 2021, h. 61

<sup>13</sup>Investasi Pipi Sopiah, *2Diah Siti Sa'diah , Emas Online Di Aplikasi Shopee dan PT. Pegadaian dalam Perspektif Fatwa DSN-MUI Nomor 77/DSN-MUI/V/2010 Tentang Jual Beli Emas Secara Tidak Tunai*. h., 87

<sup>14</sup>Pipi Sopiah, *Diah Siti Sa'diah, Investasi Emas Online Di Aplikasi Shopee dan PT. Pegadaian dalam Perspektif Fatwa DSN-MUI Nomor 77/DSN-MUI/V/2010 Tentang Jual Beli Emas Secara Tidak Tunai*, *Al-Muamalat : Jurnal Ekonomi Syariah*, Vol. 8 No. 2 Tahun. 2021, h. 86

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is no riba on the exchange of money for other goods, even if they are not of the same kind.<sup>15</sup>

4. If this door (of buying and selling gold in installments) is closed, then the door of debt and credit will be closed, and people will experience untold hardship.<sup>16</sup>

Gold buying and selling transactions in installments and tough are allowed and said to be valid if they are in accordance and follow the applicable limits and conditions. DSN MUI Fatwa No. 77 of 2010 concerning the non-cash sale and purchase of gold determines that the non-cash sale and purchase of gold either through ordinary sale and purchase or murabaha sale and purchase is permissible (ja'iz) as long as gold does not become an official medium of exchange (money) with the following limitations and conditions:

1. The selling price (tsaman) must not increase during the term of the agreement even if there is an extension of time after maturity.<sup>17</sup>
2. Gold purchased with non-cash payments may be used as collateral (rahn).<sup>18</sup>
3. The gold used as collateral may not be sold or used as the object of another contract that causes a transfer of ownership.<sup>19</sup>

### **Analysis of Akad in Gold Investment Practices**

LKS generally adopt murabahah to provide short-term financing to customers for the purchase of goods even though the customers may not have the money to pay. Then in practice in Islamic banking, most of the murabaha

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<sup>15</sup>Isnainiah Lawang, dkk, Analisis Jual-Beli Emas Secara Tidak Tunai: Telaah Kritis Fatwa Dsn-Mui Nomor: 77/Dsn-Mui/V/2010, *At Tauzi':Jurnal Ekonomi Islam*, Vol 20.No 2: Desember 2020, h. 4

<sup>16</sup>Nor Lolita Mayasari, Dkk, Praktik Jual Beli Perhiasan Emas Dengan Cara Tukar Tambah Ditinjau Dari Hukum Islam Di Kecamatan Bantah, *Jurnal Ilmiah Research Student* Vol.1, No.2 November 2023, h. 648

<sup>17</sup>Fitria Mustapa, Tinjauan Hukum Ekonomi Syariah Terhadap Praktik Jual Beli Emas Melalui Aplikasi Online Pluang, *Jurnal Hukum Ekonomi Syariah*, Volume 05, Nomor 02, Desember 2021 h. 67

<sup>18</sup>Zaenuri, Konsep Pembiayaan Pemilikan Emas Pada Perbankan Syariah (Studi Di Bank Mandiri Syariah Semarang), *Jurnal At-Taquddum*, Volume 6, Nomor 2, Nopember 2014, h. 320

<sup>19</sup>Kayla Vidi Hammida, Tabungan Emas Pegadaian Syariah Dalam Perspektif Hukum Islam Dan Hukum Positif Indonesia: Studi Kasus Pt. Pegadaian (Persero) Syariah Unit Ngaliyan Square, *Semarang Law Review (Slr)* Volume 3 Nomor 1 (2022), h. 138



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contracts carried out are using the murabaha system to the purchase order. This is so because the Islamic bank solely procures goods or assets to meet the needs of customers who order them. In general, the scheme of the murabahah application is the same as the murabahah based on orders. The selling price is the bank's purchase price from the manufacturer (supplier) plus profit. Both parties must agree on the selling price and the payment term. This selling price is stated in the sales contract and, once agreed, cannot be changed during the validity of the contract. In banking, murabaha is usually carried out in installments. The goods or objects must be delivered immediately to the customer, and the payment is made in installments.<sup>20</sup>

There is also a development of the application of murabahah financing in Islamic banks, namely in terms of procurement of goods. In this case, the bank uses the medium of a wakalah contract to authorize customers to purchase goods on behalf of the bank to suppliers or factories.<sup>21</sup> In this case, if the bank represents the customer to purchase goods from a third party (supplier), then the parties must sign an agency contract, in which the bank authorizes the customer to become its agent to purchase commodities from third parties on behalf of the bank, in other words, the customer becomes the bank's representative to purchase goods. Furthermore, the customer informs the bank that he has bought the goods, then the bank offers the goods to the customer and a sales contract is formed. So that the goods change ownership to belong to the customer with all the risks.<sup>22</sup>

Based on the explanation of murabahah above, it can be understood that murabahah is a sale and purchase contract of an item where the seller describes the amount of the principal price and the margin obtained by agreement between the seller and the buyer, where payment for an item can be made in installments. In the limits and provisions of the MUI DSN Fatwa No.77 of 2010 concerning non-cash sale and purchase of gold, it is stated that it is

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<sup>20</sup>Heri Sudarsono, *Bank dan Lembaga Keuangan Syariah: Deskripsi dan Ilustrasi*, (Jakarta: Ekonisia, 2004), h. 63

<sup>21</sup>Muhammadiyah, Zulhamdi, Implementasi Murabahah pada Perbankan Syariah, *Al-Hiwalah: (Sharia Economic Law) Volume 1 No. 1. Januari- Juni 2022*, h. 68

<sup>22</sup>Zulfiyanda, Dkk, Akad Pembiayaan Murabahah Bil Wakalah Pada Pt. Bank Rakyat Indonesia Syariah Lhokseumawe, *Suloh Jurnal Program Studi Magister Hukum*, Vol. 8, No. 1, April 2020, h. 17

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permissible to make collateral (rahn) for gold purchased with non-cash payments, so the non-cash sale and purchase of gold transactions are bound by collateral goods in the rahn contract which includes a type of agreement to hold an item as a debt guarantee.<sup>23</sup>

For the validity of a pawn agreement made by the creditor/murtahin (Islamic bank/pawnshop institution) to the debtor/rahin (customer) there are a number of pillars and conditions that must be met. Fiqh scholars differ in opinion in determining the pillars of rahn. According to the majority of scholars, there are 4 (four) pillars of rahn, namely: (1) Shigat (2) the contracting parties (rahin and murtahin), the property used as marhun and (4) Debt (marhum bih).<sup>24</sup>

The realization of gold investment in Sharia Business Units or in Islamic banking uses the principles of murabahah and rahn by combining the two contracts in one transaction. Murabahah as the main contract of sale and purchase while rahn as collateral or loan.<sup>25</sup> With regard to murabahah, it states that each party must know specifically both in size and type of goods clearly described so that each party to the transaction knows.<sup>26</sup>

With regard to the main contract of sale and purchase using the murabahah principle, in the gold ownership financing program or gold investment with an installment system, a certain amount of down payment is determined by a certain percentage of the acquisition price of gold financed by a Sharia Bank or Sharia Business Unit with the following conditions:

1. For gold in the form of bullion (bars), the minimum down payment is 20%.
2. For gold in the form of jewelry, the minimum down payment is 30%.

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<sup>23</sup>Wahbah Az-Zuhaili, "Fikih Islam Wa Adillatuhu," in *Jilid 6* (Jakarta: Gema Insani, 2011), h.106; Sayyid Sabiq, "Fikih Sunnah," in *Jilid 12* (Bandung: Alma'arif, 1993), h.139.

<sup>24</sup>Sasli Rais, *Pegadaian Syariah: Konsep Dan Sistem Operasional (Suatu Kajian Kontemporer)* (Jakarta: UI-Press, 2005). Lihat juga, Asy-Syarbaini al-Khatib, *Mughni al-Muhtaj*, Jilid II, (Beirut: Dar al-Fikir, 1978), h.121

<sup>25</sup>Hatoli, Weni Parwanti, Logam Mulia Perspektif Hukum Ekonomi Syariah (Studi Kasus Pada Pt. Pegadaian (Persero) Unit Pelayanan Syariah Alianyang Singkawang), *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah* Vol. 6 No. 1 Januari 2020, h. 27

<sup>26</sup>Rahmat Ilyas, Kontrak Pembiayaan Murabahah Dan Musawamah, *Bisnis*, Vol. 3, No. 2, Desember 2015, h. 295

3. The down payment paid by the customer to the bank must be paid in cash and the source of funds comes from the customer's own funds (self financing) and not from loans.<sup>27</sup>

As for if the customer cannot pay off the payment at maturity or is classified as bad, then the gold collateral can be executed. And the results of the execution of collateral are calculated with the remaining customer obligations with the following conditions:

1. If the proceeds from the execution of the collateral are greater than the customer's remaining obligations, the excess is returned to the customer.
2. If the proceeds of collateral execution are less than the remaining customer obligations, the difference remains the customer's obligation.<sup>28</sup>

### **Analysis of the Relevance of DSN/MUI Fatwa NUMBER: 77/DSN-MUI/V/2010 concerning the Permissibility of Gold Investment**

Every legal determination has a source of retrieval in the science of fiqh known as legal istinbath. Every istinbath (law making) in Islamic law must be based on the Qur'an, as-Sunnah and ijtihad.<sup>29</sup> In the DSN-MUI fatwa, the argument that is the main reference in determining the fatwa is the Prophet's hadith about buying and selling gold.<sup>30</sup> In understanding the hadith, a good approach is to pay attention to the specific reasons behind the utterance of a hadith, or its relation to certain causes or reasons (illat). It is either stated in the Hadith or inferred from it, or it can be understood from the events that accompany it. In addition, in order to understand the hadith, one must know the circumstances surrounding it as well as where and for what purpose it was uttered. Thus the intent of the hadith becomes clear and is avoided from any

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<sup>27</sup>Prasintho Fridholin Sunandito, Yusuf Hidayat, Sistem Urbun/Uang Muka/Down Payment Pada Akad Jual Beli Syariah, Vol. V No. 2 Juli Tahun 2020, h. 82

<sup>28</sup>Alfina Rahmatun Nida, Analisis Kredit Macet Dan Penanganannya: Prespektif Hukum Ekonomi Syariah, *Al-Muamalat: Jurnal Ilmu Hukum & Ekonomi Syariah*.Vol. 6 No.2, h. 2

<sup>29</sup>Ariyadi, Metodologi Istinbath Hukum Prof. Dr. Wahbah az Zuhaili, *Jurnal Hadratul Madaniyah*, Volume 4 Issue I, Juni 2017, H. 36

<sup>30</sup>Isnainiah Lawang, Analisis Jual-Beli Emas Secara Tidak Tunai: Telaah Kritis Fatwa Dsn-Mui Nomor: 77/DSN-MUI/V/2010, At Tauzi':*Jurnal Ekonomi Islam* Vol 20.No 2: Desember 2020, h. 2

distorted estimation.<sup>31</sup> To be able to understand the hadith with a correct and precise understanding it is necessary to know the conditions that surround it as well as where and for what study it was uttered. So that the meaning really becomes clear and avoids various deviant estimates and avoids understanding far from its true purpose.<sup>32</sup>

In the DSN-MUI fatwa, there are evidences from the Prophet's hadith that are used to be the basis for the fatwa, namely the hadith:

عَنْ عَطِيَّةَ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ رَضِيَ اللَّهُ عَنْهُ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: «الدَّهَبُ بِالدَّهَبِ مِثْلًا بِمِثْلٍ، وَالْفِضَّةُ بِالْفِضَّةِ وَزَنًا بِوِزْنٍ، وَالْفِضْلُ رِبًا، وَالتَّمْرُ بِالتَّمْرِ مِثْلًا بِمِثْلٍ، وَالْفِضْلُ رِبًا، وَالشَّعِيرُ بِالشَّعِيرِ مِثْلًا بِمِثْلٍ، وَالْفِضْلُ رِبًا، وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ، وَالْفِضْلُ رِبًا»، وَفِي رِوَايَةٍ: «الدَّهَبُ بِالدَّهَبِ وَزَنًا بِوِزْنٍ يَدًا بِيَدٍ، وَالْفِضْلُ رِبًا، وَالْحِنْطَةُ بِالْحِنْطَةِ كَيْلًا بِكَيْلٍ يَدًا بِيَدٍ، وَالْفِضْلُ رِبًا، وَالتَّمْرُ بِالتَّمْرِ، وَالْمِلْحُ بِالْمِلْحِ كَيْلًا بِكَيْلٍ، وَالْفِضْلُ رِبًا»

In the method of understanding the hadith, the change of custom that becomes the text such as the change of the illat of gold from tsaman to sil'ah is a condition where gold is no longer an official means of payment. In considering the texts relating to traditions that arose during the Prophet's time which were temporary. Contemporary scholars allow the removal of the literal or textual meaning.<sup>33</sup>

The Hadith above, which prohibits buying and selling gold in cash, emphasizes how special gold is as an object, so the procedure for transacting it is reminded in such detail by the Prophet. Given that gold is a precious metal that has a stable quality so that it is attached to the function as an object that stores value and as a measure of the value of other goods, gold is the most appropriate object to be a means of exchange or money. The scholars also agree on the above traditions, that they limit the type of usury to the six types of commodities (gold, silver, wheat, sha'ir, dates and salt) and also based on the determination of the text and consensus'.<sup>34</sup> The reason for usury on gold is that it can be weighed, while the other four items can be measured. Based on the above narration, everything that is measured and weighed becomes usury

<sup>31</sup>Suryadi, Pentingnya Memahami Hadis Dengan Mempertimbangkan Setting Historis Perspektif Yusuf Al-Qaradawi, Jurnal Living Hadis, Volume 1, Nomor 1, Mei 2016, h. 32

<sup>32</sup>Burhanuddin, Metode Dalam Memahami Hadis, Jurnal Al-Mubarak Volume 3 Nomor 1, 2018, h. 3

<sup>33</sup>M. Noor Harisudin, 'Urf Sebagai Sumber Hukum Islam (Fiqh) Nusantara, Al-Fikr Volume 20 Nomor 1 Tahun 2016, h. 64

<sup>34</sup>Ginan Wibawa, Analisis Kesesuaian Fatwa Dsn-Mui NO. 77/DSN-MUI/V/2010 Terhadap Pembiayaan Murabahah Cicil Emas, Presumption Of Law, Volume 5 Nomor 2, Oktober 2023, h. 115

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when it is sold with other people, whether it is food or not.<sup>35</sup> So the meaning of the above Hadith is:

1. It is haraam to sell gold for silver or vice versa, and this transaction is invalidated if the two parties to the transaction do not deliver the goods in cash at the time of the contract.
2. It is haraam to sell bur for bur or sha'ir for sha'ir, with the contract being invalidated if the two parties to the transaction do not deliver the goods in cash before separating from the contracting party.
3. Bartering in musharafah (exchange) is valid if it is done in cash, and so is selling bur for bur or sha'ir for sha'ir in the context of the contract.

As for the provision of calculating these types by measure or scale, it is based on *urf* (local custom), so if local custom changes, then buying and selling refers to the new custom.<sup>36</sup> It is understood that gold was a medium of exchange and transaction in the past. The word “dzahab” (gold) is general for everything that is used as a medium of exchange. In the above Hadith, the Prophet (peace and blessings of Allah be upon him) explains the correct procedure for buying and selling the above items, which are subject to usury. The trick is that the person who wants to sell gold and silver or vice versa must be done at one time and in cash. Otherwise, the sale and purchase contract is not valid.<sup>37</sup>

In its fatwa, DSN-MUI also bases its fatwa on the opinions of scholars who allow non-cash gold sale and purchase transactions, such as Ibn Taymiyyah, Ibn Qayyim and contemporary scholars who agree. They argued that gold and silver are goods (*sil'ah*) that are sold and bought like ordinary goods, and are no longer *tsaman* (price, means of payment, money). Gold and silver, after being made into jewelry, become like clothes and goods, and are not *tsaman* (price, means of payment, money). Therefore, there is no *riba*

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<sup>35</sup>Elif Pardiansyah, Konsep Riba Dalam Fiqih Muamalah Maliyyah Dan Praktiknya Dalam Bisnis Kontemporer, *Jurnal Ilmiah Ekonomi Islam*, 8(02), 2022, h. 4

<sup>36</sup>Wahyu Syarvina, Aplikasi 'Urf Dalam Ekonomi Islam, *AT-TIJARAH: Jurnal Penelitian Keuangan dan Perbankan Syariah*, Vol. 4, Issue. 1, h. 5

<sup>37</sup>Muhammad Tsani Abdillah, Hadis tentang Uang: Analisis Syarah terhadap Nilai Uang dalam Perspektif Ekonomi Islam, *Jurnal Penelitian Ilmu Ushuluddin* Vol. 2 No. 1 (Januari 2022), h. 132

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between jewelry and money, just as there is no riba between money and other goods, even if they are not of the same kind.<sup>38</sup>

In analyzing this opinion, that changing the illat of gold from tsaman (price) to sil'ah (goods) is valid because gold is currently rarely used as a medium of exchange. However, in terms of the sale and purchase of gold that has changed illat into goods, of course, it should be seen again that this item was previously an object that attached that nature to it as a store of wealth and also mentioned in the ijma' of the scholars including ribawi goods, so you should be careful in trading it so as not to fall into ribawi practices. Today's economic activities, in terms of buying and selling gold, there are various forms, such as buying gold on credit, exchanging old gold for new gold, buying gold using checks, and so on, which seem to be difficult to eliminate from the world community. Buying and selling is one of the activities of bermuamalah, and the principle in bermuamalah is that every activity of bermuamalah is permissible unless there is evidence that forbids it. Given that gold buying and selling transactions carried out by the community today are often carried out by means of non-cash payments, either in installments (taqsith) or on a tough basis (ta'jil), the DSN-MUI considers it necessary to establish a fatwa on non-cash gold buying and selling transactions to be used as guidelines. So DSN-MUI issued fatwa Number: 77/DSN-MUI/V/2010 on the permissibility of buying and selling gold in cash, which contains the decision that buying and selling gold in cash is permissible:

1. The selling price (tsaman) must not increase during the term of the agreement even if there is an extension of time after maturity.<sup>39</sup>
2. Gold purchased with non-cash payments may be used as collateral (rahn).<sup>40</sup>

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<sup>38</sup>Imam Alwan Hakim, Tinjauan Hukum Ekonomi Syariah Terhadap Arisan Perhiasan Emas Di Kelurahan Imopuro Kecamatan Metro Pusat, *Jurnal Az-Zahra : Jurnal Ekonomi Dan Bisnis Islam*, 2018, h. 5

<sup>39</sup>Fitria Mustapa, Tinjauan Hukum Ekonomi Syariah Terhadap Praktik Jual Beli Emas Melalui Aplikasi Online Pluang, *Jurnal Hukum Ekonomi Syariah*, Volume 05, Nomor 02, Desember 2021 h. 67

<sup>40</sup>Zaenuri, Konsep Pembiayaan Pemilikan Emas Pada Perbankan Syariah (Studi Di Bank Mandiri Syariah Semarang), *Jurnal At-Taqqaddum*, Volume 6, Nomor 2, Nopember 2014, h. 320



3. Gold that is used as collateral may not be traded or used as the object of another contract that causes a transfer of ownership.<sup>41</sup>

If traced more deeply, there are differences in views regarding the illat on the object of sale, namely gold. DSN-MUI uses the opinions of Ibn Taymiyyah and Ibn Qayyim who allow the sale and purchase of gold in cash. Imam Shafi'i argues that selling gold and silver (other types) with more difference is permissible, but if the same type (gold with gold) is not allowed in other words usury.<sup>42</sup> While Imam Shafi'i requires that it is not usury, namely commensurate (the same scale, measure and value) spontaneously and can be handed over.<sup>43</sup> Gold and banknotes are basically the same because gold is accepted by the public as a medium of exchange without the need to be legalized by the government (central bank), while banknotes are accepted as a medium of exchange because the government says that banknotes are legal tender. In this case we can see that money can take the form of goods whose value is considered according to their exchangeability. Gold and silver have a value that is considered a commodity to store wealth. Ibn Khaldun wrote, God created the two precious metals (gold and silver) to be a means of measuring the value/price of everything.<sup>44</sup>

The relevance of the fatwa with the scholars of the mazhab cannot be separated because in issuing a fatwa one of the footholds is the ijihad of the scholars of the mazhab. It can be concluded that the DSNMUI fatwa on the sale and purchase of gold in cash is relevant to the scholars of the mazhab who allow the sale and purchase of gold in cash, namely the opinions of Ibn Taymiyyah and Ibn Qayyim provided that gold is no longer a medium of

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<sup>41</sup>Kayla Vidi Hammida, Tabungan Emas Pegadaian Syariah Dalam Perspektif Hukum Islam Dan Hukum Positif Indonesia: Studi Kasus Pt. Pegadaian (Persero) Syariah Unit Ngaliyan Square, Semarang Law Review (Slr) Volume 3 Nomor 1 (2022), h. 138

<sup>42</sup>Fitria Mustapa, Tinjauan Hukum Ekonomi Syariah Terhadap Praktik Jual Beli Emas Melalui Aplikasi Online Pluang, *Jurnal Hukum Ekonomi Syariah*, Volume 05, Nomor 02, Desember 2021 h. 61

<sup>43</sup>Muhammad Arafat<sup>1</sup>, Krismono, Tinjauan Hukum Islam Terhadap Investasi Emas Online Melalui Tokopedia Emas, *Jurnal Mahasiswa Fiai-Uii, At-Thullab*, Vol.4, Nomor 1, Januari-Juni, 2022, h. 689

<sup>44</sup>Muhammad Tsani Abdillah, Hadis tentang Uang: Analisis Syarah terhadap Nilai Uang dalam Perspektif Ekonomi Islam, *Jurnal Penelitian Ilmu Ushuluddin* Vol. 2 No. 1 (Januari 2022, h. 145

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exchange or delayed repayment is allowed in the context of payment for manufacturing services.

Gold savings investment is considered as a form of benefit for humans in managing their wealth. Saving gold is categorized as an activity of trading gold in installments. If the way to save gold is closed, then the door to debt and credit is closed and therefore the community will experience untold difficulties. Other reasons for the permissibility of buying and selling in installments are as follows:

1. That gold and silver are goods (sil'ah) that are sold and bought like ordinary goods, and are no longer tsaman (price, means of payment, money).<sup>45</sup>
2. People are in dire need of buying and selling gold in installments, so the interests of the people will be damaged and they will suffer hardship.<sup>46</sup>
3. Gold and silver have been transformed into jewelry and have become like clothing and goods, and are not tsaman (price, means of payment, money). Hence there is no riba in the exchange of jewelry for money, just as there is no riba in the exchange of money for other goods, even if they are not of the same kind.<sup>47</sup>

From the description above, it can be seen that the gold savings investment in the DSN Fatwa in the perspective of Islamic economic law whose sale and purchase transactions are not cash and there is a delay in receiving the goods being traded is relevant according to the benefits for the people.

## CONCLUSION

The arguments underlying the determination of Fatwa DSN NUMBER:

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<sup>45</sup>Investasi Pipi Sopiah, 2Diah Siti Sa'diah , Emas Online Di Aplikasi Shopee dan PT. Pegadaian dalam Perspektif Fatwa DSN-MUI Nomor 77/DSN-MUI/V/2010 Tentang Jual Beli Emas Secara Tidak Tunai. h., 87

<sup>46</sup>Pipi Sopiah, Diah Siti Sa'diah, Investasi Emas Online Di Aplikasi Shopee dan PT. Pegadaian dalam Perspektif Fatwa DSN-MUI Nomor 77/DSN-MUI/V/2010 Tentang Jual Beli Emas Secara Tidak Tunai, Al-Muamalat : Jurnal Ekonomi Syariah, Vol. 8 No. 2 Tahun. 2021, h. 86

<sup>47</sup>Isnainiah Lawang, dkk, Analisis Jual-Beli Emas Secara Tidak Tunai: Telaah Kritis Fatwa Dsn-Mui Nomor: 77/Dsn-Mui/V/2010, At Tauzi':Jurnal Ekonomi Islam, Vol 20.No 2: Desember 2020, h. 4

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77/DSN-MUI/V/2010, namely Q.S al-Baqarah/2: 275, hadith narrated by Ibn Majah and al-Baihaqi, Muslim, Abu Daud, Tirmizi, Nasa'i, Ushul Rules and Jurisprudence Rules, fatwa Ibnul Qayyim, fatwa imam Ibn Taimiyah, fatwa Shaykh 'Ali Jumu'ah, fatwa Sheikh Wahbah al-Zuhaili. So that these arguments become the basis for the permissibility of investing in gold through the sale and purchase of gold in cash using a murabahah contract, sale and purchase of wakalah and rahn as long as gold does not become an official medium of exchange (money).

Gold investment based on DSN Fatwa NUMBER: 77/DSN-MUI/V/2010 on non-cash sale and purchase of gold when viewed from the perspective of Islamic economic law where the sale and purchase transaction is not in cash and there is a delay in receiving the goods being traded is relevant according to the benefit of the people considering that gold is an item (sil'ah) that is sold and bought like ordinary goods and is no longer tsaman (price, means of payment, money). Moreover, people really need to buy and sell gold in installments. Gold has also been formed into jewelry and turned into clothing and goods, and is not a tsaman (price, means of payment, money). So there is no riba (usury) in the exchange of jewelry for money, just as there is no riba (usury) in the exchange of money for other goods, even if they are not of the same kind.

The need for more intensive socialization of the DSN-MUI fatwa Number: 77/DSN-MUI/V/2010 concerning the sale and purchase of gold in cash to the wider community, and also to the practical Sharia Financial Institutions so that they can develop better and in accordance with sharia. To further researchers and academics in order to be able to analyze the provisions of the Fatwa DSN MUI related to the latest products such as gold investment and so forth so as not to cause doubts in conducting transactions (muamalah).

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