

Salafis and Khalafis Ulama Opinion: Discourses about Free Shipping Contract in Islamic Law

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ABSTRACT

This research aims to provide a comprehensive explanation of the clarity of the free shipping contract according to the view of ulama. The method used is qualitative with a normative juridical approach. Normative juridical approach is a research method carried out by examining library materials. Which consists of journals and classic books related to muamalah fiqh. Where there is a difference of opinion among existing Fuqaha on the validity of the Hibah Bi Syarth contract. Where there are differences of opinion among the existing Fuqaha. The majority of Ulamas are of the opinion that the hibah bi syarth contract is haram. Because there is maysir, gharar and jihalah (ignorance) in its practice. Meanwhile, the opinion of the minor of Ulamas is that the contract is permissible. Researchers are more interested in taking opinions from minor of Ulamas. Which needs to be underlined that the permissibility of hibah bi syarth with tolerance of the possibility of gharar, jihalah and maysir that occur.

Penelitian ini bertujuan untuk memberikan penjelasan secara komprehensif mengenai kejelasan akad gratis ongkir menurut pandangan ulama. Metode yang digunakan adalah kualitatif dengan pendekatan Yuridis Normatif. Metode pendekatan Yuridis Normatif adalah metode penelitian yang dilakukan dengan cara meneliti bahan pustaka. Yang terdiri dari jurnal-jurnal dan buku-buku klasik terkait fiqh muamalah. Hasil yang peneliti temukan bahwa akad yang sesuai dengan gratis ongkir adalah Hibah Bi Syarth. Yang mana terjadi perbedaan pendapat para ulama fiqh yang ada terhadap keabsahan akad hibah bi syarth. Mayoritas ulama berpendapat bahwa akad hibah bi syarth tersebut haram. Sebab terdapat maysir, gharar dan jihalah (ketidak tabuan) dalam praktiknya. Sedangkan pendapat ulama yang lain menyatakan akad tersebut diperbolehkan. Peneliti lebih tertarik untuk mengambil pendapat dari sebagian ulama yang lain. Pernyataan mereka mengatakan bahwa hukum hibah bi syarth halal/diperbolehkan. Yang mana perlu diperhatikan lagi dengan lebih seksama bahwa diperbolehkannya hibah bi syarth dengan toleransi kemungkinan gharar, jihalah dan maysir yang terjadi.

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Introduction

Marketing has used technological advancements during the digital era, and e-commerce is one example of the application of technology in the economic field. All marketing activities are carried out using electronic media connected to the internet network, from promoting products, selling, to making payments. The development of marketing in the industrial era 4.0 has resulted in e-commerce as a form of application of technology in the economic field. The current marketing mechanism starts from promoting products, selling, to making payments through electronic media. This has also led to the emergence of well-known marketing brands such as Bukalapak, Shopee, Lazada, and Tokopedia. In Indonesia, e-commerce is experiencing tremendous growth (Hartini, 2024).

Over the past decade, many marketplaces have been established and expanded their business in Indonesia and have now grown into big companies like: In recent years, these five marketplaces have taken the top spot among the most popular and sought-after marketplaces for Indonesian consumers. This is because special offers and different advertisements provided by each marketplace affect people's interest in shopping online. Various promotions and advertisements carried out show the competition between marketplaces such as Tokopedia, Shopee, Bukalapak, Lazada, and Blibli to attract buyers (Witro, Nurjaman, Ayu, & Al-Rasyid, 2021).

The e-commerce industry is becoming increasingly competitive, with many platforms competing to attract and retain customers. In this competitive business environment, digital marketing strategies have become an essential element for the success of e-commerce companies. Digital marketing involves using technology and digital platforms to promote products and services, attract potential customers, and build strong relationships with existing customers. Because customer loyalty is an important factor in the long-term success of e-commerce companies. When customers are satisfied with their shopping experience and feel connected to your brand, they are more likely to become loyal customers who shop regularly (Sudirjo, Purwati, Widyastuti, Budiman, & ..., 2023).

One of the innovations that have emerged in e-commerce platforms is free shipping or what is commonly referred to as free shipping. The free shipping offered by the platform will affect the consumer decision-making process. Consumers generally avoid online shopping because of the high shipping costs, sometimes more expensive than the price of the goods they buy. The cash on delivery (COD) system provides peace of mind for buyers because the product is delivered directly to the buyer and payment is made after the product arrives. Discounts provided by platforms can provide a stimulus to people's purchasing power, as they can get many products at a lower price at once (Setyagustina, Rahmania, Joni, Kholik, & Suhitasari, 2022).

As for what will be the author's observation in this case in the form of the position of this shipping fee in the view of fiqh muamalah based on the consideration of khalaf and salafis opinion. Because various studies on free shipping are related to marketing strategies and promotions. Such as research by Maziyah Farhah et al, "The Effect of Discount Promos and Free Shipping on E-Commerce Platforms on Indonesian Student Shopping Interest", in this study it was found that discount promos and free shipping on e-commerce platforms had a significant influence on student shopping interest in Indonesia (Farhah, Priyananda, & Hidayat, 2024).

Likewise, research on free shipping and its influence in encouraging purchasing decisions in Indonesia has been carried out. Research by Ainatul Mardhiyah and Misti Hariasih

(2024), "Promotion Price, Trust and Free Shipping Drive Purchasing Decisions in Indonesia". According to Ainatul, partially the variables of promotion, price, trust and free shipping programs have a positive and significant effect on purchasing decisions (Mardhiyah & Hariasih, 2024).

Akmal Hidayat et Al's research, "The Effect of Selling Prices and Free Shipping Promotions on Online Purchasing Decisions", in this study it was found that selling prices and free shipping promotions simultaneously affect online purchasing decisions. This is explained that increasing the selling price and free shipping promotion will also increase online purchasing decisions (Akmal Hidayat, Dinar, Zulkifli, 2022). Hutomo Atman Maulana and Yunelly Asra's research, "Analysis of the Effect of Free Shipping Promotions on Purchasing Decisions on E-Commerce by Generation Z in Rural Areas". In this study, the results show that free shipping promotions carried out by e-commerce platforms are able to influence generation Z in rural areas to make purchases (Maulana & Asra, 2019).

This research discusses the status of the contract used in the free shipping phenomenon found on e-commerce platforms today. Because there have been many studies on the effect of free shipping that is rampant on the platform today. The author considers it necessary to conduct a comprehensive study on the practice of free shipping on e-commerce platforms. This research reviews the contract stipulated in free shipping with the opinions of the fuqaha. This research explores and analyzes the fuqaha's opinions on the appropriate contract for free shipping. Therefore, the researcher writes free shipping according to the fuqaha's opinion.

Literature Review

A. *Tabarru'at*

Tabarru' is a contract without taking profit from the results of the contract. *Tabarru'* comes from the whord *tabarru'a-yatabarra'u-tabarru'an*, meaning donation, *Hibab*, and benevolence, or charity (Muhammad Rawaas Qaleaji, 1988). People who give donations are called *mutabarri* "benefactors". *Tabarru'* is the voluntary gift of one person to another, without compensation (ﷺ Ali bin Abd Al Salam bin Ulay, 1998), which results in the transfer of ownership of the property from the giver to the one who is given az zayn (Aljirjaniu, 1983).

Ibnu Qudama (Almaqdisii, 1994) defines *tabarru'* as "a contract that results in the ownership of property, without compensation, which one person does voluntarily to another person while alive." The intention of the benevolent fund *tabarru'* in the *Shari'ah* insurance contract is a legitimate alternative to money that is justified by *shard'* in escaping the practice of *Gharar* which is forbidden by Allah SWT, the word *tabarru'* is not found. However, *tabarru'* in the sense of *benevolent* funds from the word *al-birr* benevolence can be found in the Qur'an.

Even Muhammad Utsman (Syubairi, 2009) argues that *tabarru'* has its own specific characteristics, including:

1. Whereas *mu'awadlot* occurs in exchange, *tabarru'* occurs on a voluntary basis. For this reason, we see that sharia is more lenient on specific rules and restrictions in *tabarru'*.

2. A *mu'awadlot* contract is invalidated by the presence of *gharar* or *jahalab* in the contract, but a *tabarru'* contract is not invalidated by them. This is because the *tabarru'* contract tolerates prohibitions that are not tolerated in the *mu'awadlot* contract.
3. *Tabarru'* contracts do not require collateral for the giver and receiver.

B. *Hibah*

Hibah comes from Arabic *masbdar* from the word *wahab-yabihu*, a term for conveying to others what is beneficial to them. Meanwhile, according to terminology, giving property without asking for compensation. In this case, what is meant by *hibah* is giving to the fighters of the disbelievers to encourage them to convert to Islam (Al-Qahtani, 2012). Based on this article, it is permissible for the *wahib*, without abandoning his intention to make a *Hibah*, to impose on the *mauhub* a certain obligation, such as obliging the *mauhub* to provide for him until his death, or giving him a salary for his lifetime (Az-Zuhaili, 1984).

According to Imam Malik, *Hibah* is a transfer of ownership without compensation. According to another opinion, the transfer of ownership can be in the form of goods or benefits, because it is not limited by something. And in *Hibah*, benefits are usually described as *ariyah contracts*. The fuqaha define that the *ariyah contract* is the provision of benefits with the retention of property rights. However, because the taking of the benefit of goods has a conditional time, *ariyah* should not be included in the *Hibah contract* (Dubyan, 2011).

C. *Rukun* and *syarat Hibah*

Hibah is not valid unless there is no *ijab* and *qabul* (*shighah*), because in a *Hibah* there is a transfer of ownership between people, so it requires a *shighah* (*ijab* and *qabul*) as in buying and selling, marriage, etc. Because the transfer of ownership of a *hibah* must be alive, it requires an immediate *qabul*, as in buying and selling. Because the transfer of ownership of a *hibah* must be in a state of life, it requires an immediate *qabul*, as in buying and selling (Alshiyrazi, 2011).

D. *Hibah Bi Syarth*

Hibah Bi syarth is a gift accompanied by something that makes the gift dependent on a condition that may not exist or exist. Transactions that are accompanied by conditions must fulfill the existing conditions. Because if a transaction occurs without fulfilling the conditions, it is obligatory to fulfill the conditions on the transaction (Kuwait, n.d.). In another sense, *Hibah Bi syarth* is a gift that is given on the condition of fulfilling the agreed installments within an agreed period of time. Like if you pay off all the agreed installments within twenty months, then I give you this house, and the other party agrees.

According to the Hanafi, *Hibah Bi Syarth* without compensation occurs when the *wahib* stipulates that the *mauhub* must give him something in return for the *hibah*, which is permissible. It cannot be said that this contradicts the fact that a *hibah* is a transfer of wealth without reward, because what is meant by no reward is that there is a reward like buying and selling, not a condition of proof (Khalaf, 1938).

This does not contradict the fact that payment is required in some cases. If a person gives a book to another person on condition that he gives him a book, then *hibah* and the condition are valid, That's the initial gift and the sale at the end (of the transaction),

so it is determined what is stipulated in the *hibab*, and the right of ownership is not subject to transfer of ownership except by receipt, so each is entitled to what he takes out of necessity. This is the view of the majority of *Ulama Hanafi*. Others are of the view that the *hibab bi syarti 'iwad* transaction becomes a sale and purchase contract at the beginning and end (Khalaf, 1938). Therefore, before compensation is given, the object of the *hibab* cannot be owned unless it has been received, and it is not permissible to use the object of the *hibab* before it is received. During that period, it is permissible for the *wahib* to use the item (Sabiq, 1977).

أنه علق الهبة بالشرط في حديث جابر، قال: "لَوْ قَدْ جَاءَ مَالُ الْبَحْرَيْنِ لِأَعْطَيْتُكَ هَكَذَا، ثُمَّ هَكَذَا، ثُمَّ هَكَذَا" ثلاث حثيات، وأنجز له الصديق رضي الله عنه لما جاء مال البحرين بعد وفاة النبي - صلى الله عليه وسلم -. فإن قيل: كان ذلك وعدًا. (Al-Jauziyyah, 2011).

حَدَّثَنِي مَالِكٌ، عَنْ دَاوُدَ بْنِ الْحُصَيْنِ، عَنْ أَبِي عَطْفَانَ بْنِ طَرِيفِ الْمُرِّيِّ، أَنَّ عَمَّ بْنَ الْخَطَّابِ قَالَ: "مَنْ وَهَبَ هِبَةً لِصِلَةِ رَحِمٍ، أَوْ عَلَى وَجْهِ صَدَقَةٍ، فَإِنَّهُ لَا يَرْجِعُ فِيهَا، وَمَنْ وَهَبَ هِبَةً يَرَى أَنَّهُ إِنَّمَا أَرَادَ بِهَا الثَّوَابَ، فَهُوَ عَلَى هِبَتِهِ يَرْجِعُ فِيهَا إِذَا لَمْ يُرْضَ مِنْهَا" قَالَ يَحْيَى: سَمِعْتُ مَالِكًا يَقُولُ: "الْأَمْرُ الْمُجْتَمِعُ عَلَيْهِ عِنْدَنَا، أَنَّ الْهِبَةَ إِذَا تَغَيَّرَتْ عِنْدَ الْمُوهِبِ لَهُ لِلثَّوَابِ. بِزِيَادَةٍ أَوْ نُقْصَانٍ. فَإِنَّ عَلَى الْمُوهِبِ لَهُ أَنْ يُعْطِيَ صَاحِبَهَا قِيَمَتَهَا، يَوْمَ قَبْضَتِهَا" (Malik, 1985)

حديث جابر لما قال: "لَوْ قَدْ جَاءَ مَالُ الْبَحْرَيْنِ لِأَعْطَيْتُكَ هَكَذَا، وَهَكَذَا، وَهَكَذَا" - ثلاث حثيات. وأنجز ذلك له الصديق رضي الله عنه لما جاء مال البحرين بعد وفاة رسول الله صلى الله تعالى عليه وآله وسلم. فإن قيل: كان ذلك وعدًا؟ قلنا: نعم، والهبة المعلقة بالشرط وعد. وكذلك فعل النبي صلى الله تعالى عليه وآله وسلم لما بعث إلى النجاشي بهدية من مسك، وقال لأم سلمة: "إِنِّي قَدْ أَهْدَيْتُ إِلَى النَّجَاشِيِّ حُلَّةً وَأَوَاقِي مِنْ مِسْكِ، وَلَا أَرَى النَّجَاشِيَّ لَا قَدْ مَاتَ، وَلَا أَرَى هَدِيَّتِي إِلَّا مَرْذُودَةً فَإِنْ رُدَّتْ عَلَى فَهِيَ لَكَ" وذكر الحديث، رواه أحمد. (Al-Jauziyyah, 1988).

فالصحيح: صحة تعليق الهبة بالشرط، عملاً بهذين الحديثين.

Method

The author uses a qualitative research method with a Normative Juridical approach. The Normative Juridical approach method is a research method carried out by examining library materials or secondary materials. This method uses a deductive thinking method, therefore this research begins with a discussion of theoretical concepts, legal foundations and legal theories (Soekanto, 2010).

And this research does not examine through practical aspects only theoretically, therefore normative legal research as dogmatic research (Muhammad, 2004). Normative legal research is also often referred to as doctrinal legal research, so the law is seen as something

that is written and is a proper basis for human behavior. So this research was conducted using primary legal materials, secondary legal materials and tertiary legal materials (Asikin, 2004). For analysis used content analysis method (Cohen, Manion, & Morrison, 2007). Researchers analyzed the content of the text of several primary books from *ulama madzhab* who are references to fiqh law as well as books from *ulama khalafis* such as *fiqih sunnah*, *fiqih islamiyyu wa adillatuhu*, *madkhal ilaa fiqhil mu'amalat maaliyah*, *al muamalah almaaliyyah asholaatan wa mu'asharah*, *al muhadzab fi fiqih al imam syafi'i*, *Abkam Ahwal Syakhsiyah fi Syari'ah Al Islamiyyah* and *Ighbatastul lahafan fii mashayidil Asy Syaithon*.

Results

A. Free Shipping

When buying or selling something online in addition to paying for the agreed amount of goods, buyers will usually be charged shipping fees based on the quantity, weight, and size of the goods, as well as the expedition's estimated shipping distance. Shipping costs will be more expensive the more the quantity of the product, the heavier and larger the product, or the longer the shipping distance.

It is not uncommon for consumers to compare the price of the product they want to buy with the cost of shipping the product, this makes consumers rethink making a purchase. Therefore, companies will offer services or promos in the form of free shipping or free shipping, this means that consumers do not need to add costs for shipping goods (Khotimah & Syafwandi, 2024).

Free shipping offers are another form of sales marketing that utilizes various incentives to get people to buy products as quickly as possible and buy more (Ariska, Yustanti, & Ervina, 2022). With free shipping, it can have a positive impact and participation in purchasing decisions (Maulana & Asra, 2019).

B. Ulama's opinion

The application of free shipping on existing online platforms does not occur directly. However, free shipping can be obtained using a voucher or unique code that must be fulfilled during the purchase of goods. In every free shipping that appears, there are always terms and conditions that must be met by the buyer in order to claim the desired free shipping.

In this case, the author can interpret that the free shipping voucher on the e-commerce platform is a *hibah bi syarth* contract. Which is a gift from the existing platform by fulfilling the applicable terms and conditions. *Hibah Bi syarth* is a gift accompanied by something that makes the gift dependent on a condition that may not exist or exist. Transactions that are accompanied by conditions must fulfill the existing conditions. Because if a transaction occurs without fulfilling the conditions, it is obligatory to fulfill the conditions of the transaction (Kuwait, n.d.).

In another sense, *Hibah bi syarth* is a gift that is given on the condition of fulfilling the agreed installments within an agreed period of time. Such as if you pay off all the agreed installments within twenty months, then I gift this house to you, and the other party agrees.

According to the Hanafi, *Hibah* without compensation occurs when the *wahib* stipulates that the *mauhub* must give him something in return for the *Hibah*, it's allowed. It cannot

be said that this contradicts the fact that a *Hibah* is a transfer of wealth without reward, because what is meant by no reward is that there is a reward like buying and selling, not a condition of proof (Khalaf, 1938).

This does not contradict the fact that payment is required in some cases. If a person gives a book to another person on condition that he gives him a book, then the *Hibah* and the terms are valid, That's the initial gift and the sale at the end (of the transaction), so it is determined what is stipulated in the *Hibah*, and the right of ownership is not subject to transfer of ownership except by receipt, so each is entitled to what he takes out of necessity. This is the view of the majority of *Ulama Hanafi*. Others are of the view that the *hibah bi syarti 'iwad* transaction becomes a sale and purchase contract at the beginning and end (Khalaf, 1938).

Likewise, in the opinion of *Ulama Hanbali*, quoted from Ibn Qudamah, "Transfer of ownership in life without compensation". And in the book *Ghoyatul Muntabi 'Hibah* (Dubyan, 2011) is the transfer of ownership of property that can be used from known property or property that cannot be known. Provided that the object exists and it is possible to hand it over. The ruling is not obligatory and is without reward'.

To ensure the perfection of the *hibah contract*, it is necessary that it can be handed over directly. This is because there is no *'iwadl* in a *hibah*, which guarantees the completion of the contract.

Therefore, before compensation is given, the object of the *hibah* cannot be owned unless it has been received, and it is not permissible to use the object of the *hibah* before it is received. During that period it is allowed by the giver to use the item (Sabiq, 1977). So the fulfillment of the existing cashback conditions must be fulfilled by the platform store, as in the hadith:

حديث جابر لما قال: "لَوْ قَدْ جَاءَ مَالُ الْبَحْرَيْنِ لِأَعْطَيْتُكَ هَكَذَا، وَهَكَذَا، ثُمَّ هَكَذَا" - ثَلَاثَ حَثِيَّاتٍ. وَأَنْجَزَ ذَلِكَ لَهُ الصَّدِيقُ رَضِيَ اللَّهُ عَنْهُ لَمَّا جَاءَ مَالُ الْبَحْرَيْنِ بَعْدَ وَفَاةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ. فَإِنْ قِيلَ: كَانَ ذَلِكَ وَعْدًا؟ قُلْنَا: نَعَمْ، وَالْهَبَةُ الْمَعْلُوقَةُ بِالشَّرْطِ وَعَدَدٌ. وَكَذَلِكَ فَعَلَ النَّبِيُّ صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ لَمَّا بَعَثَ إِلَى النَّجَاشِيِّ بِهَدِيَّةٍ مِنْ مَسْكِ، وَقَالَ لِأُمِّ سَلَمَةَ: "إِنِّي قَدْ أَهْدَيْتُ إِلَى النَّجَاشِيِّ حُلَّةً وَأَوَاقِي مِنْ مَسْكِ، وَلَا أَرَى النَّجَاشِيَّ لَا قَدْ مَاتَ، وَلَا أَرَى هَدِيَّتِي إِلَّا مَرْذُودَةً فَإِنْ رُدَّتْ عَلَيَّ فَهِيَ لَكَ" وذكر الحديث، رواه أحمد. (Al-Jauziyyah, 1988)

الصحيح: صحة تعليق الوقف بالشرط. نص عليه في رواية الميموني في تعليقه بالموت. وسائر التعليق في معناه، ولا فرق البتة

In the *hibah practice* associated with *syarat* in this hadith, it provides information that there is a change in the contract from a *hibah* to a *wa'd* (promise) that binds the perpetrator to be fulfilled. Because the *hibah* contract will essentially end with the acceptance of the *hibah* object by the *maubub lah*. However, in *hibah bi syarth*, the implementation of the *hibah* has not yet been realized and the contract has already begun with a recitation from the *wahib*. So that the recitation of the *hibah* changes from the *hibah* contract to *wa'd*

mulzim (a promise that binds) the *wahib* to be immediately fulfilled if the existing conditions are met.

وأيضاً. فالوصية تملك، وهي في الحقيقة تعليق للملك بالموت، فإنه إذا قال: إن مت من مرضى هذا فقد أوصيت لفلان بكذا، فهذا تملك معلق بالموت. وكذلك.

أَخْبَرَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ، قَالَ: حَدَّثَنَا أَبِي، قَالَ: حَدَّثَنَا سَعِيدٌ، قَالَ: حَدَّثَنِي يَزِيدُ بْنُ أَبِي حَبِيبٍ، عَنْ ابْنِ شَهَابٍ، عَنْ أَبِي سَلَمَةَ، عَنْ جَابِرٍ: " أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَضَى بِالْعُمَرَى: أَنَّ يَهَبَ الرَّجُلِ لِلرَّجُلِ وَلِعَقِبِهِ الْهَبَةَ وَيَسْتَنْتِي إِنْ حَدَّثَ بِكَ حَدَّثٌ وَبِعَقِبِكَ فَهُوَ إِلَيَّ وَإِلَى عَقِبِي، إِهْمَا لِمَنْ أُعْطِيهَا وَلِعَقِبِهِ " (Al-Khorasani & Nasa'i, 1986)

Discussion

The permissibility of *hibah bi syarh* is based on the *qiyas* in taking the law in *tabarru'at* contracts, namely in *waqf*, *wasiat* and *hadiyah* contracts. Therefore, *hibah bi syarh* is also permissible, which is a *tabarru'at* contract.

However, it is different from the legal decision made by the Ulama Shafi'I (Alshiyrazi, 2011) who argue that there are several things that cause the *hibah* become to haram, including:

1. If the goods are in the form of something that is unknown (*majhul*), cannot be delivered and goods that are not fully owned such as the object of a sale transaction that has not been delivered. It is all forbidden if it becomes the object of a *hibah*.
2. If the goods are accompanied by a condition that is time-bound (later) in the delivery. This is because it is a *hibah* that is mixed with *jihalab* (ignorance).

In this case, *Ulama Shafi'i jihalab* (ignorance) becomes a focus in becoming a pillar in the occurrence of a *hibah* contract. because in a *hibah* contract that is included in *tabarru'at* clarity in *mauhub lah* and *mauhub alaiib*. These two things guarantee the perfection of the *hibah* contract in practice. *Jihalab* here is the amount of cashback that can be received by consumers. Meanwhile, the existing coupons use a range of values or percentages of the price of existing goods.

This contradicts Muhammad Uthman's opinion that *tabarru'* has its own specific characteristics, including (Syubairi, 2009):

1. Whereas *mu'awadlot* occurs in exchange, *tabarru'* occurs on a *tabarru'* voluntary basis. For this reason, we see that sharia is more lenient on specific rules and restrictions in *tabarru'*.
2. A *mu'awadlot* contract is invalidated by the presence of *gharar* or *jabalah* in the contract, but a *tabarru'* contract is not invalidated by them. This is because the *tabarru'* contract tolerates prohibitions that are not tolerated in the *mu'awadlot* contract.
3. A *mu'awadlot* contract is complete without an exchange, whereas a *tabarru'* contract is not complete unless there is a delivery of the object. Based on this, the delivery of the object in *hibah*, *I'arah* and *'ida* (entrustment) is considered an integral element of the validity of the *tabarru'* contract, not just its performance. For this reason, *tabarru'at*

contracts are also called '*ainiyyah contracts* (goods transactions) because the transaction is not complete except with the delivery of goods, not just *ijab-qabul*.

4. *Tabarru' contracts* do not require collateral for the giver and receiver.

The specificity of the *tabarru'at* contract mentioned is that if there is *gharar* and *jahalaah* during the transaction, as long as it does not have a major impact, it is still allowed. This is because *tabarru'at* contracts are essentially different from *mu'awadlot* contracts.

In this case it is different from Rosmitas (Rosmita, Farida Aprianti, 2024) research "Islamic Law Review of the Use of Free Shipping Vouchers on ShopeePay in the Shopee Marketplace Application". In this study, the object of discussion focuses on free shipping vouchers on ShopeePay. While this research focuses on the use of free shipping vouchers on e-commerce platforms. Where the use of free shipping vouchers is accompanied by applicable terms and conditions. And the results of this discussion, the contract that is in accordance with the use of free shipping vouchers is the *hibah bi syarth* contract and *wa'd mulzim* (binding promise). The contract is permissible according to Islamic law. Because *hibah bi syarth* is included in the *tabarru'at* group.

Because the essence of *tabarru'at* is a contract that aims to give charity, not a profit-oriented contract, so that no party is harmed in the transaction. The author argues that the existing practice of free ongkri is permissible. And the contract used in practice is a *hibah bi syarth* contract. Because every consumer who is entitled to free shipping from a seller is required to fulfill the applicable terms and conditions.

Conclusion

The results of this study indicate that the free shipping uses a *hibah bi syarth* contract. This is because *hibah bi syarth* is a gift accompanied by conditions. To ensure the perfection of the *hibah* contract, it requires conditions that can be submitted directly. As in the case of free shipping on e-commerce platforms, buyers who want to get free shipping must claim the existing coupon/voucher. And it is not enough that the use of the voucher/coupon must be in accordance with the applicable terms and conditions. This shows that cashback can be given if the terms and conditions are met. This coincides with the *akad hibah bi syarth*. As for the law of the contract based on *Ulama Hanafi and Hanbali*, the applicable grant is valid but the conditions are invalid because the essence of the grant contract is a gift without compensation, this is also supported by the *Ulama Shafi'i* who argue that *hibah bi syarth* in general has a *haram* law because there is *gharar, jihalab and maysir*. However, this contradicts the view of Uthman Syubairi who differs in expressing an opinion regarding the practice of *hibah bi syarth*. Which needs to be underlined that the permissibility of *hibah bi syarth* with tolerance of the possibility of *gharar, jihalab and maysir*. This is because the *hibah bisyarth* is a *akad tabarru'at* which is different from the *akad mu'awadlot/ tijariah*.

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