

ANALYSIS OF FIQH MUAMALAH AND POSITIVE LAW ON AUCTION TRANSACTIONS ON INSTAGRAM

Putra Warna Waru (1st)¹, Hervina Hervina (2nd)², Muhammad Idzhar (3rd)³

¹putrawarnawaru@gmail.com, Universitas Islam Negeri Sultan Aji Muhammad Idris Samarinda

²Vhie.iainsmd09@gmail.com, Universitas Islam Negeri Sultan Aji Muhammad Idris Samarinda.

³Muhammadizhar90@gmail.com, Universitas Islam Negeri Sultan Aji Muhammad Idris Samarinda.

Abstract:

The development of technology 4.0 in today's society is growing rapidly. Until finally business actors and consumers in auction buying and selling transactions are very easy and no longer face to face in offering and selling a product to consumers. This is influenced by the shift in people's lifestyles that utilize technology in buying and selling auctions on one of the intagram social media. This research will analyze first how the practice of auctioning on Instagram, second how the analysis of fiqh muamalah and positive law on auction transactions on Instagram. The method used in this research is the Normative Law method, with the approach (Comparative Approach), in collecting data this research uses (Library search) and instagram posts, and there are data processing techniques namely editing, systematic and description and data analysis techniques used are qualitative analysis for presentation done descriptively. The results of this study indicate that, first, the practice of organizing buying and selling auctions on Instagram is not much different from the practice of organizing organized by the auction hall Second, the organization of buying and selling auctions on Instagram in the view of fiqh muamalah is permissible. It is different with positive law that the organization of the practice of buying and selling auctions on Instagram is said to be illegal and is a form of illegal action.

Keywords: *Bai al-Muzayadah, Auction Buying and Selling, Positive Law, Fiqh Muamalah.*

A. Introduction

In this new era, *First*, in the era of the development of technology and information today, a businessman and consumers can carry out buying and selling transactions anywhere, for example, as we know ourselves that usually buying and selling auctions or *Bai' al-Muzayadah* is carried out openly and in public. However, the author notes that at this time there is a practice of organizing auctions that have been carried out in online media, namely Instagram.

Auctions initially existed since the Indian Government, the regulations regarding this auction can be found in the Regulations *Vendurreglement, staatsblad* 1908-189 and its amendments and auction insturction *Staatsbland* 1908-190, and its amendments and also

this regulation is still used today. Auctions are also regulated in the Minister of Finance Regulation Number 213/PMK.06/2020 About Guidelines for the Implementation of Auctions Article 1 paragraph (1) which states : "*Auction is the sale of goods open to the public either directly or through electronic media by means of oral and/or written price offers preceded by an effort to gather enthusiasts*".

From the wording of the article, the implementation of the auction is required to be conducted in public and in front of the auctioneer with the mechanism for determining the victory determined by the highest price bid or purchased either openly or orally or closed or in writing preceded by an auction announcement.¹

However, there is a phenomenon of buying and selling digital auctions through Instagram social media whether it has followed and complied with the Minister of Finance Regulation No. : 213/PMK.06/2020 Article 1 paragraph 16 states that :

"Internet-based Auction Application, hereinafter referred to as Auction Application, is an internet-based computer program used to organize and/or facilitate auctions without the presence of participants developed by DJKN or Auction Center".²

Second, this research will analyze and answer. *First*, how is the practice of organizing buying and selling auctions on Instagram. *Second*, how is the analysis in the view of fiqh muamalah and positive law related to the practice of organizing buying and selling auctions on Instagram and whether there are differences between the two laws and whether the organization is contrary to fiqh muamalah and the Regulation of the Minister of Finance or not, which makes an open bid by typing in the comments column of the account that holds the auction which is commonly referred to as an online acuntion account. Based on the above background, the author is interested in examining this phenomenon and choosing the title: Analysis of Fiqh Muamalah and Positive Law on Auction Transactions on Instagram.

Third, this research will answer using a comparative method, where the answer will contribute to those who have the authority to further emphasize the organizing outside the applicable provisions.

¹ Pasal 1 ayat 1 Keputusan Menteri Keuangan Nomor : 213/PMK.06/2020 Tentang Perubahan Atas Keputusan Menteri Keuangan Nomor 27/PMK.06/2016.

² Pasal 1 ayat 16 Keputusan Menteri Keuangan Nomor : 213/PMK.06/2020 Tentang Perubahan Atas Keputusan Menteri Keuangan Nomor 27/PMK.06/2016.

B. Research Methodology

The method used in this research uses Normative Legal research. The type of research in this study is a type of literature study research. With a Comparative approach. The legal materials of this research include primary legal materials, namely from the Al-Qur'an surah An-Nisa' (4) verse 29, Hadith Sunan Ibn Majah no. 2198 and Minister of Finance Regulation Number 213/PMK.06/2020 concerning Guidelines for the Implementation of Auctions and secondary legal materials as supporting data such as literature, theses, internet, books, official documents from the government. In collecting data, this research uses literature study data collection techniques (library search) and posts on Instagram, there are data processing techniques, namely editing, systematic and description. The data analysis technique used is qualitative analysis for presentation is done descriptively.

C. Discussion

According to this article, some theories relate to this research is the theory of buy and sell, and the practices of buying and selling on Instagram. Below is finding and discussion for this article:

1. Buy and Sell

Selling and buying linguistically comes from the word *al-bai* which means sale, the opposite word of *tsaman* which means purchase. Likewise in Quraish Shihab defines buying and selling.³ While Hakma in his tafsir translates with the opposite word buying and selling, in fiqh muamalah *al-ba'i* means exchanging something for something else.⁴

Fatwa DSN-MUI It has also been established that a sale and purchase contract is a contract between an *al-bai* seller and a buyer *al-Musyitari* that are exchanged (item [*mabi'*/*mustman* and price [*tsaman*]).⁵

From this understanding, it can be understood that buying and selling according to language is the exchange of anything, whether between goods and goods, goods and money.

- a. According to Hanafiah, states that buying and selling has two meanings, namely a special meaning and a general meaning. The special meaning is that buying and selling is exchanging objects for two currencies (gold and silver) and the like, or exchanging goods for money or the like in a special way. The general meaning is that buying and selling is the exchange of property for property according to a special method, property includes substances (goods) or money.
- b. According to the Malikiyah, as well as Hanafiah, states that buying and selling has two meanings, namely general and specific. The general meaning of buying and

³ Shihab, M. Quraish, *Tafsir Al-Mishbah, Jilid I...*, h. 549.

⁴ Jamaluddin dkk., "Jual Beli E-Commerce Dalam Perspektif Ekonomi Islam," *El-Fata: Journal of Sharia Economics and Islamic Education*, no. 1, Vol. 1, (2022): h. 3.

⁵ Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia, No: 110/DSN-MUI/XI/2017 Tentang Akad Jual Beli, h. 3.

selling is a contract *mu'awadhah* (Reciprocity) other than benefits and not for the enjoyment of pleasure. In a specific sense, buying and selling is a *mu'awadhah* (reciprocal) contract for other than benefits and not for the enjoyment of pleasure, beating one of the rewards is not gold and not silver, the object is clear and not a debt.⁶

- c. According to the Syafi'iyah gives the definition of buying and selling according to Shara' is a contract that contains an exchange of property for property with conditions that will be described later to obtain ownership of objects or benefits for a permanent period.⁷
- d. The Hanbalis define sale and purchase according to Shara' as the exchange of wealth for wealth, the exchange of permissible benefits for permissible benefits for a period of time, not usury and not debt.⁸

From some of the definitions put forward by the scholars of the mazhab can be taken the essence that:

- 1) Sale and purchase is a *mu'awadhah* contract, which is a contract made by two parties, where the first party delivers goods and the second party delivers rewards in the form of money or goods.
- 2) Syafi'i and Hanbaliah argue that the object of sale and purchase is not only goods, (objects), but also mafaat, provided that the exchange is valid forever, not temporarily. Thus, *Ijarah* (leasing) is not considered buying and selling because the benefits are used temporarily, namely during the time specified in the agreement. Similarly, an *ijarah* contract that is done reciprocally (mutual borrowing) is not a sale and purchase, because the use is only temporary.

From the explanation of the definition above, it can be concluded that what is meant by buying and selling is the exchange of something that has good benefits and value, besides that the property being traded must be beneficial to humans, such as the sale of carrion and blood is not justified.

2. *Bai' al-Muzayadah*

In the city of Arabic words *muzayadah* comes from the word *Zada-yazidu*, while the auction in muamalah fiqh is also called the term *muzayadah*, so *muzayadah* means adding to each other. That is, people add to each other's prices or an item. Where the implementation is almost the same as the auction conducted at the State Property Service Office.

Auction buying and selling has also been known since the time of the Prophet Muhammad Saw. Auction is one of the forms of buying and selling, but there are differences in general. Buying and selling has the right to choose, while the auction does

⁶ Ahmad Wardi Muslich, *Fiqh Muamalah*, Cet Ke-1 (Jakarta: Amzah, 2010), h. 173

⁷ Zailani, "Jual Beli Dalam Islam," *Ahniya: Jurnal Ekonomi Islam*, no. 2, Vol. 4, (2022): h. 107.

⁸ Ahmad Wardi Muslich, *Fiqh Muamalah*, Cet Ke-5 (Jakarta: Amzah, 2015), h. 176-177.

not have the right to choose, and the implementation is carried out specifically in public. In the dictionary *Al-Mu'jam Al-Wasith*, the word *muzayadah* is defined as competition in increasing the price of an item offered for sale.

Auction (*Muzayadah*), the meaning in language (lughah-etymology) is:

التَّنَافُسُ فِي زِيَادَةِ ثَمَنِ السَّلْعَةِ الْمَعْرُوضَةِ لِلْبَيْعِ

What it means: "Vying to increase the price of merchandise displayed for sale"

In terms of terms, an auction or *muzayadah* can be defined as inviting people to buy an item, where the prospective buyers add value to each other's bids, until the bidding stops at the highest price.

Auction according to Decree Fatwa Dewan Syariah Nasional-Majelis Ulama in Indonesia:

*Bai' al-muzayadah is a sale at the lowest price where the price (tsaman) is determined through a bidding process.*⁹

Ibnu 'Abdi Dar said: "It is not haraam to sell goods to people with a price increase (auction). With agreement between all parties". Meanwhile, according to Ibn Abdil Barri, there is scholarly agreement on the permissibility of buying and selling by auction and it has even become a custom that prevailed in the Muslim market in the past.¹⁰

From the above definition, it can be concluded that Auction is known as a form of selling goods in public to the highest bidder. In Islam also provides freedom, flexibility and breadth of space for Muslim business activities in order to seek the gifts of Allah SWT in the form of sustenance through various forms of mutually beneficial transactions that apply in society without violating or depriving people of their rights.

3. Terms of Sale and Purchase Auction Fiqh Muamalah

It has been explained in the previous chapter in detail that auction is one of the sale and purchase transactions, although the transaction is in a different way, it still has similarities in the pillars and conditions as regulated in the sale and purchase contract as follows: *Muta'qidain* (para pihak yang membuat akad).

- a. *Ma'qud alaih* (the object of the contract)
- b. *Shighat akad* (Ijab kabul)

In auction transactions, the conditions can be applied in the process of taking place auction activities, the following conditions of *ba'i al-muzayadah* include:¹¹

- 1) The transaction is carried out by a legally capable person on a mutually willing

⁹ Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia, ..., h. 4.

¹⁰ Kamal, "Lelang Eksekusi Hak Tanggungan Pada Perbankan Syariah Menurut Hukum Positif Dan Fiqh Muamalah," *Al Mashaadir: Jurnal Ilmu Syariah*, no. 2, Vol. 1, (2020): h. 57-67., <https://doi.org/10.52029/jis.v1i2.20>.

¹¹ M. Hafidh Azzaki, "Sistem Lelang Barang Bukti Kejahatan Pada Kejaksan Banda Aceh Dalam Perspektif Akad *Bai Muzayadah*", *Skrripsi Universitas Islam Negeri Ar-Raniry Darussalam Banda Aceh* (2023), h. 29-33.

basis.

- 2) The object of the auction must be halal and useful.
- 3) Full ownership / power over the goods being sold.
- 4) Clarity and transparency of goods auctioned without manipulation.
- 5) Ability to deliver goods from the seller.
- 6) Clarity and certainty of the agreed price without the potential for dispute.
- 7) Not using methods that lead to collusion and bribery to win the bid.¹²

Found in Sunan *Ibnu Majah* Chapter on buying and selling
Hadith Redaction :

حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ قَالَ: حَدَّثَنَا عَيْسَى بْنُ يُونُسَ قَالَ: حَدَّثَنَا الْأَخْضَرُ بْنُ عَجْلَانَ قَالَ: حَدَّثَنَا أَبُو بَكْرِ الْحَنْفِيُّ، عَنْ أَنَسِ بْنِ مَالِكٍ، أَنَّ رَجُلًا مِنَ الْأَنْصَارِ، جَاءَ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْأَلُهُ، فَقَالَ: لَكَ فِي بَيْتِكَ شَيْءٌ؟ قَالَ: بَلَى، حِلْسٌ نَلْبَسُ بَعْضُهُ، وَنَبْسُطُ بَعْضُهُ، وَقَدْخُ نَشْرَبُ فِيهِ الْمَاءَ، قَالَ: «اِئْتِنِي بِهِمَا»، قَالَ: فَأَتَاهُ بِهِمَا، فَأَخَذَهُمَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِيَدِهِ، ثُمَّ قَالَ: «مَنْ يَشْتَرِي هَذَيْنِ؟» فَقَالَ رَجُلٌ: أَنَا أَخَذَهُمَا بِدِرْهَمٍ، قَالَ: «مَنْ يَزِيدُ عَلَى دِرْهَمٍ؟» مَرَّتَيْنِ أَوْ ثَلَاثًا، قَالَ رَجُلٌ: أَنَا أَخَذَهُمَا بِدِرْهَمَيْنِ، فَأَعْطَاهُمَا إِيَّاهُ وَأَخَذَ الدِّرْهَمَيْنِ، فَأَعْطَاهُمَا الْأَنْصَارِيَّ، وَقَالَ: «اشْتَرِ بِأَحَدِهِمَا طَعَامًا فَانْبِذْهُ إِلَى أَهْلِكَ، وَاشْتَرِ بِالْآخَرِ قَدُومًا، فَأْتِنِي بِهِ»، فَفَعَلَ، فَأَخَذَهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَشَدَّ فِيهِ عُودًا بِيَدِهِ، وَقَالَ: «اذْهَبْ فَاحْتَطِبْ وَلَا أَرَاكَ خَمْسَةَ عَشَرَ يَوْمًا»، فَجَعَلَ يَحْتَطِبُ وَيَبِيعُ، فَجَاءَ وَقَدْ أَصَابَ عَشْرَةَ دَرَاهِمٍ، فَقَالَ: «اشْتَرِ بِبَعْضِهَا طَعَامًا وَبِبَعْضِهَا ثَوْبًا»، ثُمَّ قَالَ: «هَذَا خَيْرٌ لَكَ مِنْ أَنْ تَجِيءَ وَالْمَسْأَلَةُ نُكْتَةٌ فِي وَجْهِكَ يَوْمَ الْقِيَامَةِ، إِنَّ الْمَسْأَلَةَ لَا تَصْلُحُ إِلَّا لِذِي فَقْرٍ مُدَقِّعٍ، أَوْ لِذِي غُرْمٍ مُفْطَعٍ، أَوْ دَمٍ مُوَجِعٍ

Meaning: "Hisham ibn Ammar told us Issa ibn Yunus told us Al-Akhdar ibn Ajlan told us Abu Bakr Al Hanafi reported from Anas ibn Malik that a man from the Ansār came to the Prophet (may Allah's peace and blessings be upon him) and asked him, so he asked him: "Do you have anything in your house?" He replied: "Yes, some clothes that we wear and some that we spread out, and a glass that we drink from." He said: "Bring them to me." Anas said: "He brought them, and the Messenger of Allah (may Allah's peace and blessings be upon him) took them and said: "Who bought these two things?" A man said: "I will buy them for one dirham." He said, "Who wants to pay more than one dirham?" Two or three times, a man said: "I will take it for two dirhams." He

¹² Iwan Septiana "Tinjauan Hukum Islam Tentang Jual Beli Lelang Makanan pada Pesta Pernikahan", (Studi Di Air Karas Desa Saung Naga Kec. Peninjauan OKU Sumsel), *Skripsi Universitas Islalm Negeri Raden Intan Lampung* (2019), h.37.

gave the two dirhams to him, then took the two dirhams and gave them to an Ansar and said, "With one of them buy food and send it to your family, and with the other buy an axe and bring it to me." The Ansār man did so, and the Messenger of Allah (may Allah's peace and blessings be upon him) took it and tied a piece of wood to the handle, and said: "Go and get some wood, and for fifteen days I will not see you." So he went and got some firewood and sold it, then he came back with ten dinars, so he said: "Buy food and clothes with half of that money." Then he said: "This is better for you than coming and begging. On the Day of Resurrection, begging will be a black spot on your face, so it is not permissible to beg, because it is only suitable for the very poor, or the very afflicted, or the terminally ill, or those who are sick with blood."¹³

4. Scholars Responding to Differences in Hadiths on Auctioning and the Prohibition of Bidding on What One's Brother is Bidding on

This Hadīth is contradicted by a Hadīth that states that you should not bid for an item that another Muslim brother has bid for. The Hadith is as stated below, a Hadith narrated by ibn 'Umar Ra:

حَدَّثَنَا إِسْمَاعِيلُ قَالَ حَدَّثَنِي مَالِكٌ عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَبِيعُ بَعْضُكُمْ عَلَى بَيْعِ أَخِيهِ

Meaning: Isma'il narrated to us and Malki narrated to me from Nafi' from 'Abdullāh bin 'Umar radiallahu 'anhu bahwa Rasulullah shallallahu 'alaihi wasallam said: Let none of you buy what his brother is buying (bidding on)".¹⁴

In the book *ihktilaf* hadith of Imam Shāfi'i, it is explained that the contradiction between these two traditions occurred at different periods of time. In the first tradition, it is narrated that the prophet made an offer to another person when the item had already been offered for one dirham.¹⁵

This bidding occurred when there was no consensus or *ijab* and *qabul* between the owner of the prophet's goods and the first bidder. The third price reached two dirhams and no one bid again and finally the prophet declared this item sold at a price of two dirhams and there was *ijab* and *kabul* between the seller and the buyer.

The second Hadīth explains that it is forbidden to buy over another brother's purchase, and buying here means that the price of the item has been agreed upon between the seller and the buyer.¹⁶ That is why such activities are prohibited by the prophet because there is an agreement in advance between the seller and the buyer in this case, this discussion is explained by one of the great scholars of Islam. *Imam Abu Ja'far Ahmad bin*

¹³ Sunan Ibnu Majah, *Bab Jual Beli Lelang*. Juz. II. Hadis no. 2198. h. 740.

¹⁴ Hadis Syarh Imam Bukhari, *Kitab jual beli*, Bab. Larangan Membeli Barang Di Atas Belian Saudaranya, No. 1995

¹⁵ Saiful Achmad, "Pemahaman Lelang Dalam Pandangan Hadis Nabi Saw," *Skripsi Universitas Islam Negeri Syarif Hidayatullah Jakarta* (2017), h. 45.

¹⁶ Saiful Achmad, *Pemahaman...h.46*.

Muhammad bin Salamah abdi Malik al-azdy al-Mushri ath-Thahawi explained from one of Mujahid's narrations, Mujahid said:

There is nothing wrong with bidding on an item that is (already) being bid on by someone else if the market is still open (as long as the auction has not closed and the auction judge has not knocked on the hammer). And if the item has been taken by the winner of the auction, it is not allowed to be bid on again.

This opinion is also reinforced by a contemporary scholar in his book *Raudhatul At-Thalibin*. However, if the auction has not been closed, it is not included in the prohibition of bidding on goods that have been bid on by others because each other has understood that the bidding is still open. this explanation has also been conveyed by *an-Nawawi* in his book *Raudhatut Thalibin*:

فَأَمَّا مَا يُطَافُ بِهِ فِي مَنْ يَزِيدُ وَطَلَبَهُ طَالِبٌ فَلَا غَيْرَ الدُّخُولُ عَلَيْهِ وَزَيْدَةٌ فِيهِ. وَأَمَّا يُحْرَمُ إِذَا
حَصَلَ التَّرَاضِي صَرِيحًا

In addressing the difference in the meaning of these two traditions lies the word prohibition of bidding for goods, because in the first tradition it is clear that bargaining for goods occurs, because it is in the auction portion. Whereas the second tradition is a tradition where bidding is prohibited (not recommended).¹⁷

Several contemporary scholars have also raised their voices on this issue, including :

1. Syaikh Wahbah Az Zuhaili Hafizhahullah said;

وَهُوَ أَنْ يُنَادِيَ عَلَى السِّلْعَةِ، وَيَزِيدُ النَّاسُ فِيهَا بَعْضُهُمْ عَلَى بَعْضٍ حَتَّى تَقْفَ عَلَى آخِرِ زَائِدٍ
فِيهَا فَيَأْتِيَاهُ حُذَاهَا، فَهُوَ بَيْعٌ صَحِيحٌ جَائِزٌ لِأَضْرَرٍ فِيهِ.

What it means: *In an auction, an item is offered for sale, and potential buyers compete with one another to establish the highest price. Once the auction has reached its conclusion, the highest bidder is granted the right to purchase the item. This is a valid and permissible form of trade, and there are no inherent issues with it.*¹⁸

2. Syaikh Abdul Muhsin Al' Abbadd Al Badr Hafizhahullah, said:

وَهَذَا الْحَدِيثُ يَدُلُّ عَلَى جَوَازِ الْبَيْعِ بِلْمَزَايِدَةٍ، وَأَنَّهُ لَا يَدْخُلُ فِي النَّهْيِ عَنِ الْبَيْعِ عَلَى الْبَيْعِ لِإِنَّ
النَّهْيَ عَنِ الْبَيْعِ عَلَى الْبَيْعِ يَكُونُ إِذَا وَجَدَ الْإِسْتِفْرَازَ وَ تَمَامَ الْبَيْعِ، وَيَكُنُّ فِي مُدَّةِ خِيَارٍ، وَ أَمَّا أَنْ
يَقُولَ: مَنْ يَشْتَرِي هَذَا؟ فَيَقُولُ رَجُلٌ: أَنَا بِكَذَا، ثُمَّ يَزِيدُ آخَرَ فَهَذَا لَا بَأْسَ بِهِ

Meaning: *This Hadith indicates that it is permissible to purchase by auction. This does not fall under the prohibition of purchasing something that has already been ordered by another individual, as the prohibition only occurs when there is a complete determination of the*

¹⁷ Saiful Achmad, *Pemahaman...*, h. 47.

¹⁸ *Al Fiqhul Islami Wa Adillahutahu*, Jilid 4, h. 592.

*purchased item, which allows the purchaser to make a choice. If an individual were to inquire as to whether any other party was interested in purchasing the item in question, a response would be forthcoming. The buyer may then state a price, which the seller may then augment. This is not an improper course of action.*¹⁹

5. Auction Sale and Purchase

The term "auction" is defined in Article 1 (1) of Chapter I General Provisions of the as follows:

"Auction is the sale of goods open to the public with written and/or oral price offers that are increasing or decreasing to reach the highest price, which is preceded by an announcement of the auction."

General Conditions Chapter I Article 1 (12)

"Auction Without the Attendance of Participants is an Auction that is not physically attended by the Bidder at the auction venue or conducted through the Auction Application or e-Marketplace Auction Platform."

What is meant by public sale is: Auctions and sales of goods held in public with the approval of increasing prices or with the approval of decreasing prices, or with the registration of prices, where people who are invited or have been previously notified of the implementation of the auction, are given the opportunity to buy by bidding prices.

Auction according to the term is the sale of collateral carried out in public, including through electronic media by bidding and or by offering prices without the presence of participants, with increasing prices or decreasing prices and or offering prices in writing which are preceded by efforts to gather enthusiasts.²⁰

More clearly, an auction can be in the form of offering certain goods to bidders who initially open the auction at the lowest price until it increases and will be given to prospective buyers at a high price, as the Dutch-style auction (Dutch acuntion) is called (rising auction) which is usually done in conventional pawnshops, this kind of auction is still debatable whether it is appropriate because there is an indication of approval in the first bidder who agrees to the seller's offer.

6. The practice of organizing auction sales on Instagram

Every practice of organizing online auction buying and selling carried out on Instagram cannot be separated from the rules set out in each Insragram account (Acuntion), rules that must be obeyed, researched, carried out, and even obeyed by sellers and prospective buyers before participating in auction transactions. The following are the rules for participating in auctions on Instagram social media.

¹⁹ *Ayah Sunan Abi Daud*, Jilid 9, hl. 61.

²⁰ Rochmat, Soemitro, *Peraturan dan Instruksi Lelang*, (Bandung: PT Eresco, 1987). h. 153.

- a. Item
Item is a specific mention of the object of goods that will be auctioned in the Auction account.
- b. Size
Size is a designation or term for the size of the item to be auctioned in the Auction account, such as for example the admin is auctioning a hat with size L.
- c. Follow
Each participant before participating in the auction, the participants must first follow the auction account, so that the participants can bid in the auction account comment column.
- d. Bid in the Comments section
Bidding on each auction item is done in the comments column of the auction account, according to the item that has been offered by the account.
- e. Bid deletion is prohibited
What is meant is that it is prohibited to delete bids, every participant who makes a bid /or offer is prohibited from deleting it.
- f. Jump bids are allowed in multiples
Jump bid is a jump bid, what is meant by a jump bid is where participants who want to bid (bid) more than 2, 3 to 4 times, then those who make the bid (bid) must match the bid multiples specified and may not jump over the bid that has been given, in the rules of the auction account. If the bid (offer) is not in accordance with the bid multiples, the participants who take part in the auction are disqualified.
- g. Payment must be made Max 1 x 24 hours.
Payment must be made within a maximum of 24 hours, if the bidder wins the bidding, then he must make payment no later than 24 hours. If it exceeds 24 hours, the participant fails to obtain the item and the auction item will be given to the 2nd participant who made the highest bid before the 1st participant.
- h. Shipping costs are borne by the winner
The term "shipping costs borne by the winner" refers to the obligation of the winning bidder to bear the cost of shipping items purchased in an auction. Consequently, in the event that the initial bidder secures the auction, it is incumbent upon that individual to bear the associated shipping costs.
- i. If the 1st Winner Runs, the 2nd Winner can pick up the item according to the seller's agreement.
The Indonesian terms for "winner" and "run" are, respectively, "pemenang" and "berlari." A further examination of the regulations pertaining to the auction process reveals that in the event that the initial winner fails to honour the bid, the second highest bidder will be contacted by the party holding the auction,

who will inform them that they are entitled to either purchase the item or win the auction.

j. Buynow

The term Buy Now is employed in auctions on social media platforms such as Instagram. When an administrator posts an item for auction on an account, interested parties may contact the administrator directly via direct message (DM) to negotiate the price of the item. This allows them to obtain the item without having to attend the auction in person.

7. Analysis of Fiqh Muamalah and Positive Law on the Practice of Organizing Auction Sale and Purchase Transactions on Instagram

With regard to the above limit, according to the author, these two laws have differences. In Fiqh muamalah, the books and hadiths that are referred to in this study do not mention substantially related to organizing auctions in fiqh muamalah, but in fiqh muamalah every transaction is permitted as long as the object is halal and the agreement does not harm each other, It can be concluded that muamalah fiqh allows organizing auctions anywhere, as long as the party holding it does not do tricks that will cause the cancellation of the contract in the auction as the author mentioned above, but if you look at the applicable rules and regulations, the auction has also been regulated in the Minister of Finance Regulation 213/PMK.06/2020 concerning Guidelines for the Implementation of Auctions. Stating that the auction is held without the presence of the participants, through an application/website that has been provided and developed by the Directorate General of State Assets.

Examining more deeply if a person or institution wants to sell their goods by way of auction sale and purchase, then they can submit the object to the relevant agency or place that has been determined by applicable regulations, it is not regulated in this regulation, but it has been stated that the party organizing the auction is an agency that has obtained a license from the Directorate General of State Assets, and if viewed from the point of view of the parties participating in the auction, they should take part in the auction through the auction website / application provided by the Directorate General of State Assets.

With the reason, if someone is involved in an activity, where an activity has a legal umbrella, it is certain that each individual is safe from losses such as being deceived from the activity.

It can be concluded in fiqh muamalah that the organization of buying and selling auctions held on Instagram is valid and permissible, because in fiqh muamalah it does not specifically regulate the place where someone organizes buying and selling auctions. However, in positive law there is legislation for organizing auctions held outside the application/website provided by the Directorate General of State Finance or the auction

hall. The organization is an act against the law and is called illegal, which is due to not fulfilling the legality of the auction law.

From the findings of the author, referring to the ITE Law, if a business actor really deliberately wants to commit fraud under the guise of an auction account, he can be charged with Article 28 paragraph (1) of the ITE Law jo. Article 45 paragraph (2) of Law 19/2016 which states that:

*"Any person who intentionally, and without the right to spread false and misleading news that results in consumer harm in electronic transactions can be punished with a maximum imprisonment of 6 years and/or a maximum fine of Rp. 1 billion."*²¹

D. Conclusion

Based on the finding and discussion, researcher can conclude:

1. The Practice of Organizing Auction Sale and Purchase on Instagram

In the transaction practice of organizing buying and selling auctions on Instagram, there are rules that must be followed by everyone who wants to become a participant in buying and selling the auction, one of which must follow the Instagram account of organizing buying and selling the auction in order to bid.

2. Analysis of Fiqh Muamalah and Positive Law on the Practice of Organizing Auction Sale and Purchase Transactions on Instagram

The practice of organizing auction buying and selling on Instagram is an auction sale and purchase conducted on social media, someone who has become a participant will be asked to bid in the comments column, in fiqh muamalah related to the practice of organizing this auction sale and purchase is permissible. Because it is not specifically regulated regarding the location and place of organizing it, in contrast to positive law prohibiting buying and selling auctions whose implementation is outside the website/application provided by the Directorate General of State Assets. which has determined that the place for organizing buying and selling auctions must be on the website/application provided in Article 1 (2) of the Minister of Finance Regulation Number 213/PMK.06/2020 concerning Guidelines for the Implementation of Auctions.

Referencess

Ahmad Wardi Muslich, *Fiqh Muamalah*, (Jakarta: Amzah, 2010).

Ahmad Wardi Muslich, *Fiqh Muamalah*, (Jakarta: Amzah, 2015).

An-Nawawi, Imam, *Raudhatuth Thalibin*, (Tahqiq : Fuad Bin Siraj 'Abdul Ghafar), Jilid 3.

Al Fiqhul Islami Wa Adillahutahu, Jilid 4.

²¹ Pasal 28 ayat (1) UU ITE jo. Pasal 45 ayat (2) UU 19/2016 Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik.

Ayarh Sunan Abi Daud, Jilid 9.

Dapartemen Agama Republik Indonesia. *Al-Qur'an dan Terjemahnya*, (Bandung: CV. Penerbit Diponegoro, 2005).

Fatwa DSN-MUI No: 110/DSN-MUI/IX/2017 Tentang Akad Jual Beli

Hafidh. A. *Sistem Lelang Barang Bukti Kejahatan Pada Kejaksaan Banda Aceh Dalam Perspektif Akad Bai Muzayyadah*. Skripsi Universitas Islam Negeri Ar-Raniry Darussalam Banda Aceh. 2023.

Iwan Septiana, *Tinjauan Hukum Islam Tentang Jual Beli Lelang Makanan pada Pesta Pernikahan. Studi Di Air Karas Desa Saung Naga Kec. Peninjauan OKU Sumsel*. Skripsi Universitas Islalm Negeri Raden Intan Lampung, 2019

Jamaluddin, Jamaluddin dkk. "Jual Beli E-Commerce Dalam Perspektif Ekonomi Islam." *El-Fata: Journal of Sharia Economics and Islamic Education* , no. 1, Vol. 1, (2022).

Kamal, Husni. "Lelang Eksekusi Hak Tanggungan Pada Perbankan Syariah Menurut Hukum Positif Dan Fiqh Muamalah." *Al Mashaadir : Jurnal Ilmu Syariah* , no. 2, Vol. 1, (2020).
<https://doi.org/10.52029/jis.v1i2.20>.

Kementerian Agama Republik Indonesia, *Al-Qur'an dan Terjemahan*, (Jakarta Timur: Lajna Pentashihan Musgaf Al-Qur'an, 2019).

Saiful Achmad, *Pemahaman Lelang Dalam Pandangan Hadis Nabi Saw*, Skripsi Universitas Islam Negeri Syarif Hidayatullah Jakarta. 2017.

Soemitro, Rochmat, *Peraturan dan Instruksi Lelang*, (Bandung: PT Eresco, 1987).

Shihab, M. *Quraish, Tafsir Al-Mishbah, Pesan, Kesan dan Keserasian Al-Qur'an*, Jilid I Surah Al-Baqarah ayat 188, (Lentera Hati).

Sunan Ibnu Majah, *Bab Jual Beli Lelang*. Juz. II. Hadis no. 2198.

Zailani. "Jual Beli Dalam Islam." *Ahniya: Jurnal Ekonomi Islam* , no. 2, Vol. 4, (2022).