

## Islamic Law Overview of *Mu'athah* Buying and Selling at STIBA Makassar

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**Abstract:** This study aims to determine the practice of *mu'athah* buying and selling at STIBA Makassar and elaborate the procedures and laws for carrying out each *mu'athah* buying and selling transaction without any supervision from the seller. This study used a qualitative descriptive research method with a phenomenological approach. The data collection methods used were observation, interviews, and documentation. The data sources in this study were STIBA Makassar students, sellers of refilled water gallons, buyers, lecturers, and administrators as informants; the sources of primary data and documents in the form of data or tables of information as the secondary data. The results found a basis for the philosophy of *mu'athah* buying and selling, which existed during the period of the Prophet Muhammad and his companions until now because the ulama would not have different opinions regarding the law if *mu'athah* buying and selling transactions never existed. The practice of *mu'athah* buying and selling at STIBA Makassar often involves theft, and the suspect tends to return the thing during the fifth semester and above. The law of *mu'athah* buying and selling is permissible according to most ulama based on the evidence from the QS. Ali-Imran/3:41 and a hadith narrated by a Jewish enslaved people. The problem that occurs from the practice of buying and selling at STIBA Makassar is not due to problems with the contract, but there are problems out of the contract; when the vendible is often lost, it means that there is a theft and it is illegitimate.

**Keywords:** Islamic Law; *Mu'athah* Buying and Selling; STIBA Makassar

## INTRODUCTION

One of the most frequent kinds of interaction between humans is buying and selling, which has shaped the character of interdependent humans to meet the daily needs of their lives. The economy will develop further when more buying and selling models and products are displayed.<sup>1</sup> This economic activity is competitive in human life nowadays.

Economic law is a statement about the tendency of a cause and effect relationship between two people or groups of phenomena. Likewise, in economics, if other things are in the same condition, while the price of one item rises, the demand for that item will usually decrease. Economics in social science means people have to deal with others who are controlled by many motives and characters.<sup>2</sup>

Furthermore, economics is the science that explains general laws and principles regarding how humans fulfill their needs for limited economic objects so that they can create prosperity for all humans, both individuals and groups themselves.<sup>3</sup>

*Economics* is a social science that regulates social issues in particular and in general. Islam also regulates economic issues such as buying and selling, usury, and many more, which concern the people's welfare. Islamic economics encourages all economic practices that adapt Sharia principles based on al-Qur'an and hadith. There are prohibitions and advice that humans should follow. The management and mechanisms will be regulated by humans as long as they are based on the legal sources of Islamic teachings such as al-Qur'an and hadith.

Therefore, Islam does not only regulate spiritual worship and advice but also all forms of social worship. Each matter of fellow human beings has been arranged in such a way; all these things are accompanied by the basis of Sharia law, for instance, buying and selling to create a fair order of life. The grace and love of Allah the Almighty for all humankind showed how buying and selling are permitted among them in order to preserve the Bani Adam community until the last day and to perpetuate the relationship between them as creatures who need other people.<sup>4</sup>

It is a comprehensive religion and has provided complete instructions regarding trade, including goods that cannot be bought and sold. As a Muslim, it is appropriate to study this issue in order to avoid business that is prohibited and displeased by Allah the Almighty. Learning the laws of buying and selling is included in the category of mandatory knowledge for people who want to practice buying and selling so that they understand their businesses and others. Many

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<sup>1</sup>Mulyadi, *Ekonomi Sumber Daya Manusia* (Ed. V: Jakarta: PT. Rajagrafindo Persada, 2012), p. 235.

<sup>2</sup>M. Abd. Manan, *Teori dan Praktik Ekonomi Islam* (Yogyakarta: PT. Dana Bhakti Prima Yasa, 1997), p. 27.

<sup>3</sup>Mochtar Effendy, *Ekonomi Islam Suatu Pendekatan Berdasarkan Qur'an dan Hadis*, (Palembang: Al-Mukhtar, 1996), p. 32.

<sup>4</sup>Rachmat Syafe'i *Fikih Muamalah*, (Bandung: CV. Pustaka Setia, 2006), p. 27.

Muslims underestimate this issue, so they not only encounter doubts but also things that are prohibited. However, in carrying out buying and selling, some provisions or conditions must be obeyed and must not be violated, such as buying and selling, which is prohibited. The author will discuss it in this study as it can violate the rules and regulations in buying and selling, and it certainly harms one of the parties, so this kind of buying and selling is prohibited.

Most buyers and sellers need to implement *sighat* when doing transactions in the market, especially at food stalls. In Islamic law, this is permissible because it is included in '*Urf*'. '*Urf*' etymologically means "something considered good and accepted by common sense." Meanwhile, as stated by Abdul Karim Zaidan, quoted by M. Zein Efendi in his work entitled *Ushul Fiqh*, it is explained that terminologically, the term '*Urf*' means: "Something that is no longer strange to a society because it has become a habit and is integrated with their lives, both in the form of actions or words."

The legal provisions are still questionable whether they are completely permitted in Islamic law or not.<sup>5</sup> Some *ushul fiqh* scholars view '*Urf*' as a custom.<sup>6</sup> It means that '*Urf*' is something that people know exists in a particular place, and they make it as a tradition. For instance, in buying and selling agreements in Islamic *fiqh*, the transaction process will be valid if there is consent (handover and acceptance).

According to custom, a thing is considered a transaction even though there is no handover of the sale, so buying and selling without consent is still considered valid. The position of '*Urf Qauliy*' ('*Urf*' of words) in Islamic law is that the words spoken by a person must be interpreted according to the language and customs that prevailed at the time uttered, although they are contrary to the original essential meaning because the current customs have changed the words to another meaning; the essential meaning according to '*Urf*' and will be intended as a counterbalance to the essential meaning according to the language.

The buying and selling that takes place at STIBA Makassar is *mu'athah* buying and selling, where buying and selling transactions are done without consent; no employee or owner keeps watch on their goods, then the buyer puts money around the product or money box that has been provided. This kind of buying and selling is vulnerable to fraud among buyers. So, this kind of buying and selling is unjustified unless the buyer initially intends to sell goods with the intention of alms. However, if people buy and sell with a system and there is a loss of goods or theft, then the seller can consider it alms and hope for a double reward from Allah the Almighty for his alms.

*Mu'athah* buying and selling at STIBA Makassar occurs not only in buying and selling food products but also in clothing, stationery, and water gallon refill depots. In the gallon water refill depot, the employee only fills all the empty gallons with water according to the picket schedule and leaves the depot without any

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<sup>5</sup>M. Zein Satria Effendi, *Ushul Fiqh*, (Jakarta: Kencana, 2008). p. 11.

<sup>6</sup>Muhammad Abu Zahrah, *Ilmu Ushul Fiqih*, (Jakarta: Pustaka Firdaus, 1994). p. 45.

protection from the employee. The seller provided a moneybox for the buyer to pay the gallon of water.

The difference between *mu'athah* buying and selling that occurs at STIBA Makassar and other places such as supermarkets lies in the presence of protection and supervision from the seller, so it is necessary to study the practice of *mu'athah* buying and selling that occurs at STIBA Makassar because Islam strictly maintains the laws as a defense for any harm among its adherents.

## THEORETICAL REVIEWS

### The Concept of Buying and Selling

According to the language, buying and selling comes from the word *al-ba'i*, which means selling, replacing, and exchanging (one thing for other things), and is taken from the words *ba'a*, *yabi'u*, *bay'an*. The word *al-Ba'i* in Arabic is sometimes used as the opposite word, namely *al-shira'* (buying). Thus, *al-ba'i* means selling, but also means buying.<sup>7</sup> According to the Shari'a meaning, buying and selling is the exchange of assets based on mutual willingness or transferring property in exchange for a justifiable one (i.e., a legal medium of exchange).<sup>8</sup>

Buying and selling or trading in fiqh terms is called *al-baian*. According to etymology, it means selling or replacing; in other words, it is *at-Tijarah* and *al-Mubjadi*.<sup>9</sup> It is found in QS. Fathir/22:29.

يَرْجُونَ تِجْرَةً لَّان تَبُورَ

Meaning:

*"They expect on ijarah (trading) that will not make any loss".<sup>10</sup>*

Islam provides clear rules regarding harmony and conditions related to buying and selling; it corresponds to the seller, buyer, or object of the contract's buying and selling process. According to Al-Muslih, three things need to be fulfilled when offering a product: 1) The product offered has clarity on size or measurement, composition (it is not damaged or expired), and uses good materials, 2) The product is halal, and 3) Do not tell a lie in promoting or advertising the product. Therefore, buying and selling practices must be carried out responsibly and benefit

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<sup>7</sup>M. Ali Hasan, *Berbagai Macam Transaksi Dalam Islam*, (Jakarta: PT. Raja Grafindo Persada, 2003), 113.

<sup>8</sup>Chairuman Pasaribu, *Hukum Perjanjian Dalam Islam*, (Jakarta: Sinar Grafika 1996), p.33.

<sup>9</sup>Hendi Suhendi, *Fikih Muamalah* (Jakarta: PT. Raja Grafindo Persada, 2005), p. 67.

<sup>10</sup>Kementrian Agama RI, *al-Qur'an dan Terjemahnya* (Bandung: Diponegoro, 2015), p.789.

the parties concerned. Meanwhile, buying and selling by sharia is done with honesty, fulfilling the terms and conditions of the buying and selling agreement.<sup>11</sup>

### Concept of 'Urf

The word 'Urf, etymologically (language) comes from the word 'arafa. Then, *ya'rifu* often interpreted as *al-ma'ruf* (المعروف) with the meaning of something known. The meaning of being known is closer to being recognized by others, something considered good and accepted by common sense. 'Urf is often equated with the word "custom". Custom comes from the Arabic عَادَةٌ; The root of the word is 'ada, *ya'udu* (عَادَ-يُعُوْدُ) means repetition. Therefore, something that has only been done once is not yet called a custom.<sup>12</sup> The meaning of 'Urf is not based on the number of times an action is performed, but it is based on the fact that the action is equally known and acknowledged by many people. Meanwhile, as stated by Abdul Karim Zaidah, terminologically, the word 'Urf means something that is no longer unfamiliar to a community because it has become a habit and is integrated into their lives, whether in the form of actions or words.<sup>13</sup>

### The Meaning and Legal Basis for Al-Mu'athah Buying and Selling

Mu'athah buying and selling is an agreement between both parties regarding the price (*tsaman*) and the goods (*mut saman*). Both of them give each other without consent regarding the goods or the price, and sometimes, there are *lafaz* (words) from one of the parties. For instance, the buyer takes the goods and then pays the seller, or the seller gives the item first, and then the buyer pays for it without any words or signs. It is valid for valuable goods or ordinary goods.<sup>14</sup>

Meanwhile, Abdul Aziz Muhammad Azzam defines *mu'athah* and *almunawalah* as originating from the word 'atha *yu'thi*; it gives the form of *mufa'alah* (mutual work) from the word 'atha', so that it hands things over to each other without any contract. Buying and selling using the *mu'athah* system only involves handing over and receiving goods without any words or sayings from one party. However, later, the ulama and jurist use it for buying and selling, which is explicitly giving to each other.<sup>15</sup> Ahmad Ifhan Sholihin stated that *bai' mu'athah* is a form of buying and selling agreement that takes place without any consent from the buyer or seller.

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<sup>11</sup>Muammar Khadafi, Dina Madinah dan Eunis Kumiasih, "Tinjauan Hukum Islam Terhadap Sistem Diskon Dengan Mark Up Terlebih Dahulu", *Jurnal Kajian Hukum Ekonomi Syariah*, Vol. I. No. I November (2021), p. 44-45.

<sup>12</sup>Agung Setiyawan, "Budaya Lokal Dalam Perspektif Agama: Legitimasi Hukum Adat ('Urf) Dalam Islam, *Esensia* Vol. XIII, No. 2 July 2012, 214.

<sup>13</sup>Totok Jumantoro, *Kamus Ilmu Ushul Fikih*, (Jakarta: Amzah, 2005), p. 1.

<sup>14</sup>Rachman Syafei, *Fikih Muamalah*, Bandung: Pustaka Setia, 2001, p. 95.

<sup>15</sup>Abdul Aziz Muhammad Azam, *Fiqh Muamalah Sistem Transaksi Dalam Islam* (Jakarta: Amzah, 2010), p. 35.

*Bai' mu'athah* is widely practiced in conventional trading systems, such as buying and selling in supermarkets or malls.<sup>16</sup>

The jurists differ in their opinions regarding the law *mu'athah* buying and selling. The following are some of the opinions of the jurists regarding *mu'athah* buying and selling:

According to Hanafiah, Malikiyah, and Hanabilah in the most *rajih qaul*, the law of *mu'athah* buying and selling is valid if it has become a custom that shows willingness, and the action reflects the fullness of the will and urge of each party.

Syafi'iyah views that all contracts, including buying and selling, must use *sharih* or *kinayah lafaz*, with an agreement. Therefore, *mu'athah* buying and selling is invalid, whether the goods are expensive or cheap.

The reason is that the main element in buying and selling is the willingness of both parties. The element of willingness is inside the heart. Therefore, willingness needs to be expressed with consent and acceptance. Moreover, buying and selling disputes can proceed to the court

It is based on the hadith narrated by Ibn Majah from Abi Sa'id Al-Khudri that the Messenger of Allah said:

إِنَّمَا الْبَيْعُ أَنْ تَرَاضَ

Meaning:

*"Buying and selling must be based on mutual liking."*<sup>17</sup>

However, some Shafi'iyah scholars, such as An-Nawawi and Al-Mutawalli, allow *mu'athah* to buy and sell in any activity. Some Shafi'iyah scholars, such as Ibn Suraij and Imam Ar-ruyani, allow particular *mu'athah* to buy and sell cheap goods, such as bread and vegetables. Imam Hanafi says something similar in his history by requiring consent and acceptance for buying and selling large items, while small items do not require that.

## RESEARCH METHODOLOGY

The type of this study was qualitative research. This study required maximum effort in asking questions and providing specific procedures to collect data from the respondents or participants, then analyzing the data inductively, starting from a specific subject matter to something general and then interpreting the data. The data collection technique was obtained from questionnaires and interviews or

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<sup>16</sup>Ahmad Ifham Sholihin, *Buku Pintar Ekonomi Syariah* (Jakarta: Gramedia Pustaka Utama, 2010), h. 142.

<sup>17</sup>Muhammad Iqbal Sanjaya, "Kerelaan Dalam Transaksi Jual Beli Menurut Teks Ayat Dan Hadis Ahkam Jual Beli (Telaah Yuridis Dan Sosiologis)", *Sentri: Jurnal Riset Ilmiah*, Vol. I. No. 2 (2022), h. 590-591.

primary data sources to describe the practice of *mu'athah* buying and selling transactions at STIBA Makassar.

## **RESULTS**

### ***Mu'athah* Buying and Selling Practices at STIBA Makassar**

Transactions in Islam must be based on consent between both parties; they must be mutually pleased with each other. Therefore, the parties who do the transaction must have the same information so that no parties are cheated.

The description of the practice of *mu'athah* buying and selling at STIBA Makassar is that the party who does this activity is the students; they sell goods without any supervision from the seller and buyer. The buyers are also from the other students and sometimes from outside the campus, such as a handyman who renovates buildings, high school students from other schools, and even friends or family of the students who become the buyers. The transaction model is that a buyer makes a buying and selling transaction without the agreement of the sale and purchase by taking the goods they want, paying for it according to the price on the goods label, and putting the money in the place prepared by the seller. If the buyer gives a considerable amount of money, they can take the change himself in the money box, and if there is no change, then the buyer will delay the payment; either he will pay it later or give the remaining change to charity.

Based on the results of the interview, the practice of *mu'athah* buying and selling at STIBA Makassar can be explained as follows:

*“Mu'athah buying and selling at STIBA Makassar emerged at the end of 2014; the initial step was taken by a trader from outside and entered the campus during the routine study, or it is usually called ta'lim, where the seller spread his sales on the roadside to the mosque, with former banners, newspapers and cardboard as his pad. The seller leaves his goods and goes to the mosque to join a ta'lim on time between Maghrib and Isha because all the students are also joining the same activity at the Anas Bin Malik mosque, so the buying and selling will only be crowded after the ta'lim finished or after the evening prayers. However, some people, the students who come from outside the campus, carry out mu'athah buying and selling transactions by taking goods and putting the money in the sale while the seller is in the mosque, whether there is no price of the goods written or there is no price tag on it. There is a possibility that the buyer already knows and is familiar with the seller and aware of the price of the item so that the transaction occurs. The mu'athah transaction without the buying and selling agreement and the presence of the seller is witnessed by some students who have just arrived from the dormitory to the mosque”.*<sup>18</sup>

It is the starting point of the *mu'athah* buying and selling with no agreement and the seller's presence beside the Abu Hurairah Dormitory. The first thing the seller or student sold was the perfume of various brands, which was stored on cardboard

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<sup>18</sup>Badrun Nisyam (28 years old), Alumni dan Chief of STIBA Makassar Dormitory, period 2016-2017, *Interview*, Makassar, December 17<sup>th</sup> 2022.

with a price and a place to put the money. Then, the buying and selling of *mu'athah* continued to sell the *muqorror* books. Apart from the various *mu'athah* buying and selling necessities, stationery, and clothing, there is also a refill water depot, which is active during three specific operational hours. However, the time for picking up the gallon of water must be specified. The student can pick it up if the gallon water supply is still available.

*"The depot employee at STIBA Makassar only has time to fill gallons of water in the morning, afternoon, and evening; each time has operational hours with more than one hour for filling gallons of water. Usually, if one or more gallons look full, the student comes to pick it up. The payment can be finalized, or the room treasurer will pay for it after a report from the room members and also pay directly into the money box that has been provided."*<sup>19</sup>

From the authors' observations, all the gallons from the three dormitories, namely Zaid bin Thabit, Abu Hurairah, and Abdullah bin Umar Dormitory, were collected based on the water depot filling schedule. After all the gallons were filled, the employees returned to their activities as students. Then, the owner of the gallon comes one by one to take the gallons they left earlier. If the gallon they are looking for is not there, they take another gallon and pay for it in the money box as a glass box.

The author once made a transaction to purchase depot water at STIBA Makassar. The purchase was made in the morning, and the employees had not yet arrived; then, the author placed two gallons of white and blue, which had dents at the bottom. After the author left it for a moment and then returned for about twenty minutes, it turned out that the author's two gallons were just in there now. The author looked around and asked the students who were there; they told the author to take another gallon from the depot with the number of gallons missing. Then, the author took two new gallons, which were already filled with water with a sealed lid. It is common among students; may Allah forgive the author for taking two new gallons. From this incident, the seller made a rule:

*"Each room with a gallon was asked to give a number corresponding to their room, and they had to keep it. The second gallon belongs to the campus, so there is no problem if they are exchanged. For the payment system, the students can pay at any time. We as the seller have placed a box for payment, but if they do not pay, it means they are ready to bear their sins."*<sup>20</sup>

### **Things that Encourage Students to Carry out *Mu'athah* Buying and Selling**

Firstly, students of STIBA Makassar come from various cities, namely from Sabang to Marauke; some even come from outside the country. Unfortunately, some

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<sup>19</sup>Ibrahim (20 years old), Student of PM3E, first floor room from sakan Abdullah bin Umar, *Interview*, Makassar, December 11<sup>th</sup> 2022.

<sup>20</sup>Yusril Tendeng, depot employee, Abdullah bin Umar Dormitory, *Interview*, Makassar, December 11<sup>th</sup> 2022.

diverse students also come from less economic and financial perspectives. Therefore, when there is a business opportunity for *mu'athah* buying and selling transactions without a sale and purchase agreement and the seller's presence, they quickly take advantage of it.

Second, STIBA Makassar students are not allowed to work during college because it will interfere with their learning concentration and academic grades. So, it becomes the reason for STIBA Makassar students to carry out *mu'athah* buying and selling. However, there is an exception for the students who are already married and have the burden of family responsibilities that must be covered; they are advised to earn a living. However, many of them still need to finish their study because they focus on the heavy burden of study and the costs and the burden on their wife and children who need to live.

Third, some of the STIBA Makassar students do *mu'athah* buying and selling as their hobby, and they want extra income for every month apart from the pocket money from their parents; some of them do not even want to burden their parents with tuition fees and living costs while they are living at the STIBA Makassar Dormitory.

### **STIBA Makassar Students' View on *Mu'athah* Buying and Selling**

Based on the results of the authors' interviews with the sellers, it is clear that they do not know the laws of *mu'athah* buying and selling, and only some of them know the laws of buying and selling without *sigah*t and being guarded by the seller.

*"We only want to trade and earn more income; we do not look after our sales because it is impossible. If there is theft or loss, then it is the risk that we should bear from the start, and we do not justify it because our capital in carrying out mu'athah buying and selling is the trust of our brothers and sisters. Besides, they are students of Sharia who are familiar with Al-Qur'an and the Prophet Muhammad's hadith so that they can understand things like this." However, as they gain more knowledge of Sharia at STIBA Makassar, they will become aware of the dishonorable behavior they have committed. So that, they will pay for the goods they have taken in the past, around the fifth semester and above because this is the semester where monotheism is taught and their beliefs are strengthened as their maturity increases".*

*Mu'athah* buying and selling without *sigah*t and guarding by the seller raise two different characteristics, whether it creates an honest or dishonest person.

*"In our opinion, mu'athah buying and selling without sigah*t and guarding by the seller will give students characteristics; whether they will be honest or dishonest depends on their environment. We got the permission to do *mu'athah* buying and selling from the dormitory staff by paying taxes to the economic division." "It is

*mandatory to pay 10% of profits in one month and will be put into the economics department's treasury to benefit students.”<sup>21</sup>*

*Mu'athah* buying and selling at STIBA Makassar has been operated since the end of 2014 and will exist as long as students have the potential to do it as a hobby. It has become an additional source of income for students.

*“Mu'athah buying and selling without an agreement and the guarding by the seller is a practice familiar to residents of the STIBA Makassar girls' dormitory. Meanwhile, suppose the sales results are not compatible with the expense of the goods. In that case, we inform the dormitory staff so they can convey it to all dormitory residents, especially those who miss the chance to pay so they can pay immediately.”*

### **The Overview of Islamic Law on Buying and Selling Practices Occur at STIBA Makassar**

One of the conditions for buying and selling is the consent of both parties. *Mu'athah* buying and selling is the practice where the seller and buyer give or exchange things with a medium or money without any words or consent. Each party is considered pleased with the goods and prices; there is no objection. It is not only about leaving goods unattended, but it also can be the scope of *mu'athah* buying and selling. The law of *mu'athah* buying and selling is permissible according to *jumhur*.

The transaction practices in STIBA are semi-*mu'athah* because they still give the price tag to the goods; the writing can mean *lafaz*, and it does not matter. The problems arising from buying and selling at STIBA are not due to the contract, but they come from outside the contract; when merchandise is lost, it means theft.

If the intensity of loss is high or frequent, then they should not do that kind of buying and selling, or they need to review the implementation because many cases of loss can result in disadvantages for the goods' owner. As we know, the purpose of buying and selling is to make a profit, and this consideration is not from the perspective of the contract but from the side of the benefits and harms.

*“In maintaining this practice, it is necessary to take preventive steps so that it will not happen again. Perhaps the seller can hold guard duty for all stalls or CCTV. If it is still considered difficult, then they can return to the original law where the seller aims to sell his goods”.*<sup>22</sup>

An economics department at STIBA Makassar oversees the *mu'athah* buying and selling with a profit-sharing system of 10% of the monthly profits. It does not matter if the economics department takes 10% of the profits as long as there is a contribution as a *muqobil*; providing security guarantees for traders. It would be

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<sup>21</sup>Abdurrahman (22 tahun), Mahasiswa Semester 5 Ketua Departemen Ekonomi, *Wawancara*, Makassar, 16 Desember 2022.

<sup>22</sup>Islahuddin Ramadhan, Lecturer of STIBA Makassar, *Interview via social media*, Makassar, October 29<sup>th</sup> 2022.

better for the economic department to appoint a person responsible for the security of the goods.

The phenomenon of *mu'athah* buying and selling at STIBA Makassar is only found in some places, one of which is that the owner of the goods needs to look after it.

*"Naturally, we return to the definition of bai' mu'athah. It is the mutual giving between one another, but it is identified with the term buying and selling, which is carried out between the seller and the buyer without consent; consent is from the seller, and Kabul is from the buyer. So, the seller says, "I am selling this item to you at this price," and the buyer says, "I accept this item at this price." When there is no sighat in the bai' mu'athah, the buyer takes the item, the seller takes the price, and it is stated as valid. Jumhur's opinion stated that this is permissible, such as mazhab of Hanafiah, Malikia, and Hanabilah, and some scholars from mazhab of Shafi'i allow it. However, according to Imam Syafi'i's nash, it is prohibited because every contract needs sighat or consent. It is confirmed by the contract for people who want to get married that need consent, so all forms of contracts in mazhab of Shafi'i school have consent, even alms must have consent. There is one history of Ibn Qasim An-Nawawi, he once entered a mosque, then his slippers were stolen by someone. He tried to find and chase the person, calling and saying, "Wait, stop. I will not ask for the slippers back, and I will not punish you. I only want to consent that I will give those slippers to you." It shows that the matter of sighat in mazhab of Shafi'i is fundamental for them to adhere. As time passed, wasilah buying and selling arose, and kaifiah with developed procedures. So that, the opinion of mazhab of Imam Shafi'i seems to no longer have any effect because now, everyone can be called as a contemporary ulama of all the mazhab that allows mu'athah buying and selling."<sup>23</sup>*

Referring to buying and selling at STIBA Makassar, there is no seller to look after the goods, and all the sellers that the authors interviewed admitted to frequently loss their goods.

*"It is said that mu'athah buying and selling is permissible. It means that as long as the law is valid, it refers to the opinion of the majority of ulama who say it is legal. Meanwhile, for example, when someone takes goods and then does not pay, the law is different; it does not affect the validity of mu'athah buying and selling. However, it does not relate to the person who commits the fraud, so if it is not monitored, there will be opportunities for people with bad intentions to deceive. Legally, it is prohibited in our religion; this is one of the cases threatened by the Prophet Muhammad regarding consuming haram things, and the hadith of the Messenger of Allah said that:*

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ أَبِي زِيَادٍ الْقَطَوَانِيُّ الْكُوفِيُّ ، قَالَ : حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُوسَى ، قَالَ :  
حَدَّثَنَا غَالِبٌ أَبُو بَشْرٍ ، عَنْ أَيُّوبَ بْنِ عَائِدِ الطَّائِيِّ ، عَنْ قَيْسِ بْنِ مُسْلِمٍ ، عَنْ طَارِقِ بْنِ

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<sup>23</sup>Asri Muh. Shaleh, Lecturer of STIBA Makassar and Sharia Council WI, *Interview*, Makassar, December 21<sup>st</sup> 2022.

شَهَابٍ ، عَنْ كَعْبِ بْنِ عُجْرَةَ قَالَ : قَالَ لِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : إِنَّهُ لَا يَرُبُّو  
لَحْمٌ نَبَتَ مِنْ سُحْتٍ إِلَّا كَانَتْ النَّارُ أَوْلَى بِهِ

Meaning:

*"Abi Ziyad al-Qutwafi al-Kufi, Abdullah bin Musa, Gholib Abu Basyrin told us from Ayyub bin A'iz at-Toii, Qois Ibn Muslim, from Thoriq ibn Shihab, Ka'ab bin U'jroh said: The Prophet Muhammad said to me: O Ka'ab bin Ujroh, indeed the flesh of the body that grows from something that is haram will be burned in the fire of hell," (Hadith of at-Tirmidzi).<sup>24</sup>*

Moreover, this is a threat from the Messenger of Allah. The existence of fraud does not reduce the validity of the *mu'athah* buying and selling law. If there is frequent loss of goods, then it is the manager's job to monitor people who enter the shop. The purpose of the wisdom or philosophy of *mu'athah* buying and selling is the rules of ease, which said that:

إِذَا ضَاقَ الْأَمْرُ اتَّسَعَ وَإِذَا اتَّسَعَ ضَاقَ

Meaning:

*"If a case is narrow, then the law expands, and if a case is broad then the law narrows"<sup>25</sup>*

*"If there is any problem when the narrowness makes people difficult, then it can be given the breadth, but when it is too wide and makes people be *tasahul* in it, it is narrowed again. It means that when the *maksob* administrator has given concessions, it is saying that people can take it and then pay for it, but it turns out that the people who come are only those who want to take things without coming to pay. They are given convenience but finally fall into something that is haram. So they have to set up a monitoring system that can be used to observe which one is coming for pay and who is not. Originally, those who committed the violation were the people who carried out dishonest actions in carrying out the buying and selling process."<sup>26</sup>*

Mu'athah buying and selling at STIBA Makassar only relies on trust because even from the start of holding *mu'athah* buying and selling at STIBA Makassar, the seller already knows the risk of losing goods. The authors wonder about the gap that could legalize this kind of buying and selling so that if they lose the goods, then it does not matter; for example, buying and selling with the initial intention of alms, it means that if in *mu'athah* buying and selling there are goods that are lost or stolen then there is nothing wrong with that. The seller can even get two rewards; the first is the reward of alms, and the second is the reward of buying and selling.

<sup>24</sup>Sunan at-Tirmidzi, *bab safar: keutamaan solat*, hadith no. 615. Juz I, p. 600.

<sup>25</sup>Andi Djazuli, *Kaidah-Kaidah Fikih*, (Cet.VIII; Jakarta: Kencana, 2006), p. 61.

<sup>26</sup>Asri Muh. Shaleh, Lecturer of STIBA Makassar dan Sharia Council WI, *Interview*, Makassar, December 21<sup>st</sup> 2022.

*“The transaction depends on the seller; if the goods are lost, and there is no money left in the money box, or it is not paid, then the seller gives it up willingly, which is fine because it is related to the seller's rights. Furthermore, things like this cannot be dragged on because it can become a habit for students, a habit of being dishonest when carrying out transaction agreements. However, if it is just left like that, it will become seeds that can become a disease for some students. It needs to be dealt with quickly because when a person is on a campus where he can get insight every day, it still does not have that big of an effect on a dishonest personality, especially if he is outside the campus. So that, it must be fixed quickly.”<sup>27</sup>*

Can *mu'athah* buying and selling at STIBA Makassar make the buyer honest or vice versa, considering that the STIBA Makassar consists of a student of Sharia science?

*“Merely imparting knowledge on campus cannot be a guarantee for someone to be an honest person. In Islam, the nature of honesty differs from the concept offered by other religions. In other religions, the underlying nature of dishonesty is karma; if someone is not honest, he will get complete revenge in the world. Meanwhile, based on the Islamic concept, the principle of honesty is when a person feels that he is always being watched by Allah whenever and wherever he is; the things he does, when he feels that Allah has never left him, then he will always try to be honest in his life. He will feel ashamed to do something that makes him ashamed of Allah the Almighty. It needs to be instilled in a student from an early age, not only in the class lessons, but it also needs reinforcements, which may be done outside the classroom by advising in the *tarbiyah halaqah*. It can guide the *murabbi* to explain the nature of honesty in a person's heart. They can get a deeper understanding when discussing *tazkitunnast*. It means that if a servant has a strong relationship with Allah, he will imprint in his heart to be an honest person in all things.”<sup>28</sup>*

From the interview results, it can be concluded that only 10% of students as sellers at STIBA Makassar carry out *mu'athah* buying and selling transactions without an agreement and guarding against the seller. They even equate it with *mu'athah* buying and selling that exists in modern times, such as supermarkets and mini markets, which some contemporary ulama have permitted. The goods guarding is the difference between current *mu'athah* buying and selling, such as supermarkets and mini markets, and *mu'athah* buying and selling at STIBA Makassar. They only rely on mutual trust between the students of STIBA Makassar; with this belief, the seller does not maintain the goods. Besides, it is also impossible because of the busy lectures and dormitory activities.

*Mu'athah* buying and selling at STIBA Makassar means that there is no pleased among the sellers if the goods is taken without payment from the buyer, and this is contrary to the *syara'* as stated by the Prophet Muhammad;

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<sup>27</sup>Asri Muh. Shaleh, Lecturer of STIBA Makassar dan Sharia Council WI, *Interview*, Makassar, December 21<sup>st</sup> 2022.

<sup>28</sup>Asri Muh. Shaleh, Lecturer of STIBA Makassar dan Sharia Council WI, *Interview*, Makassar, December 21<sup>st</sup> 2022.

حَدَّثَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ الدِّمَشْقِيُّ قَالَ: حَدَّثَنَا مَرْوَانُ بْنُ مِهْمَدٍ، قَالَ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ، عَنْ دَاوُدَ بْنِ صَالِحٍ الْمَدَنِيِّ، عَنْ أَبِيهِ، قَالَ: سَمِعْتُ أَبَا سَعِيدٍ الْخُدْرِيَّ، يَقُولُ: قَالَ رَسُولَ اللَّهِ عَلَيْهِ وَآلِهِ وَسَلَّمَ قَالَ: إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ. (رواه ابن ماجه)

Artinya:

"Al-Abbas bin al-Walid ad-Dimasyqi, Marwan bin Muhammad, Abdul Aziz bin Muhammad from Dawud bin Salih al-Madini from his father told us that I heard Abu Sa'id al-Khudri, he said, "The Messenger of Allah sallallahu 'alaihi wasallam said: "Buying and selling is based on mutual pleasure." (Hadith of Ibn Majah)."

Based on the hadith above, it shows that Islam does not prohibit all forms of buying and selling as long as it is acceptable, does not harm either party, and violates the rules that have been established because of the word of Allah the Almighty in QS Al Baqarah/2: 275 means Allah has permitted buying and selling and prohibited *usury*.

The incident that keeps happening on *mu'athah* buying and selling at STIBA Makassar is that the buyer often takes goods without payment. Hence, the seller only gets a profit of 40%-60% of the sales. Some sellers sometimes get excess money from *mu'athah* buying and selling transactions from the sale proceeds. It means that someone donates, gives charity, or does not take the change from the buyer so that it becomes a profitable value for some sellers.

*Mu'athah's* law of buying and selling does not eliminate its permissibility, halalness, and validity because someone tends to take the goods dishonestly or forgets to pay since most ulama have allowed this. When that already happens, the result depends on the sellers and buyers. Referring to the increasing proliferation of *mu'athah* buying and selling at STIBA Makassar shows the seller's willingness; even though losses often occur, they also often gain additional overcome from the excess money. However, the management, in this case, the economics department, should be able to carry out new controls or breakthroughs to overcome the dishonest behavior of the buyers.

## CONCLUSION AND IMPLICATION

### Conclusion

The results found that there is a basis for the philosophy of *mu'athah* buying and selling, which existed during the period of the Prophet Muhammad and his companions, based on the signs of mute Jewish enslaved people, and the Prophet Muhammad did not deny the signals of the Jewish enslaved women. It shows that the mute person's transaction is valid because the meaning of the mute person through gestures can be understood. The application of *mu'athah* buying and selling at STIBA Makassar is not the same as *mu'athah* buying and selling in modern times, namely supermarkets, minimarkets, Alfamart, Alfamidi, and Indomart, where labels are printed on the goods and transactions are carried out with the cashier at the door without buying and selling agreement. However, there

is a mutual agreement between the seller and the buyer, so there is little chance of theft or *gharar* occurring because of the CCTV installation and guard from the security at the shop. The practice of *mu'athah* buying and selling at STIBA Makassar, according to the perspective of Islamic law, is permissible based on the majority of ulama and based on the hadith of a mute Jewish enslaved people during the period of the Prophet Muhammad and his companions, as well as signs from the QS. Ali-Imran/3: 41, which means: "The sign is for you, that you cannot talk to humans for three nights with except with signs, so it is permissible and approved for a mute person to communicate through signs in *mu'athah* buying and selling.

### **Implication**

This study can be formulated by analyzing the values of Islamic law in the practice of *mu'athah* buying and selling at STIBA Makassar. It is hoped that this research can be a patron for Muslim entrepreneurs in carrying out *mu'athah* buying and selling practices, especially at STIBA Makassar, by applying religious dimensions in business, fostering the nature of *tafakkur* in trading, which can create the existence of sharia business as a basis for trading, as exemplified by the Prophet Muhammad. So, the benefits are oriented toward the world and the afterlife because they are based on trust, and the buyer is a student of Sharia science.

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