

Comparative Analysis of The Opinions of Four Mazhab Ulama Regarding Bai' Istiglāl

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ARTICLE INFO

Article history:

Received: September 4, 2025

Accepted: March 5, 2025

Published: March 7, 2026

DOI : 10.20885/abhats.vol7.iss1.art4
PP : 39-50

Keyword:

Bai' Istiglāl, Comparative Fiqh, Contemporary Muamalah.

ABSTRACT

This study examines the comparative opinions of the four major Islamic schools of thought regarding Bai' Istiglāl, an innovative contract combining bai' wafā' and ijārah, used in contemporary Sukuk instruments to meet modern transactional needs. There is scholarly debate regarding the permissibility of bai' wafā' as the basis for Bai' Istiglāl; some prohibit it, arguing it resembles interest-based transactions (riba) or uncertain transactions (gharar), while others permit it under the principle of necessity (darūrah). This research employs a qualitative textual study by analyzing primary sources from the four schools, including Hāsiyah Radd al-Muhtār, Bulghah al-Sālik li Aqrab al-Masālik, and al-Mughnī li Ibn Qudāmah, along with secondary sources such as theses, dissertations, and other relevant scholarly publications. The findings indicate that differences in scholarly opinion arise due to the absence of explicit textual evidence, divergent interpretations regarding elements of riba, conditional sales, and similarities to rahn (pawning practices). Based on the principles of permissibility in mu'āmalah, justice, and prevention of harm (maḍarat), Bai' Istiglāl is considered permissible if the contract meets the conditions of validity. The strongest opinion supports the permissibility of Bai' Istiglāl, provided that the contract is conducted separately, clearly, and free from riba, gharar, and unlawful gain, in accordance with QS. Al-Baqarah verses 275 and 188 and supported by hadith narrated by Ahmad and Abu Dawud. This practice is deemed valid under sharia principles if it ensures transparency, mutual consent, fairness, and aligns with contemporary transactional needs.

Analisis Perbandingan Pendapat Ulama Empat Mazhab Terhadap Bai' Istiglāl

ABSTRAK

Penelitian ini membahas perbandingan pendapat ulama empat mazhab mengenai Bai' Istiglāl, yaitu struktur akad inovatif yang menggabungkan bai' wafā' dan ijārah, yang digunakan dalam instrumen Sukuk kontemporer untuk memenuhi kebutuhan transaksi modern. Terdapat perdebatan di kalangan ulama mengenai keabsahan bai' wafā' sebagai dasar akad Bai' Istiglāl; sebagian melarang karena dianggap menyerupai riba atau transaksi yang tidak jelas (gharar), sementara sebagian lain memperbolehkan dengan alasan kebutuhan mendesak (darūrah). Penelitian ini menggunakan metode kualitatif berupa studi teks dengan menganalisis literatur primer dari kitab-kitab

Kata kunci:

Bai' Istiglāl, Perbandingan Mazhab, Muamalah Kontemporer.



empat mazhab, termasuk Hāsyiyah Radd al-Muhtār, Bulghah al-Sālik li Aqrab al-Masālik, dan al-Mughnī li Ibn Qudāmah, serta literatur sekunder seperti skripsi, tesis, disertasi, dan publikasi ilmiah relevan. Hasil penelitian menunjukkan bahwa perbedaan pendapat ulama muncul karena tidak terdapat dalil eksplisit, perbedaan interpretasi terkait unsur riba, jual beli bersyarat, dan kemiripannya dengan rahn (gadai). Berdasarkan prinsip kebolehan mu‘āmalah, keadilan, dan peniadaan maḍarat, Bai‘ Istiglāl dapat dibolehkan jika memenuhi syarat sah akad. Pendapat yang paling kuat mendukung kebolehan Bai‘ Istiglāl, dengan syarat akad dilakukan secara terpisah, jelas, dan bebas dari riba, gharar, serta pengambilan harta secara batil, sesuai QS. Al-Baqarah ayat 275 dan 188, serta didukung hadis riwayat Ahmad dan Abu Dawud. Praktik ini sah secara syariat jika memenuhi prinsip transparansi, keridaan, keadilan, dan relevan dengan kebutuhan mu‘āmalah kontemporer.

A. INTRODUCTION

Human beings are inherently social creatures who rely on one another, a view consistent with Islamic thought, which posits that no individual can live independently without the assistance of others (Al-A’dili & Abu al-Afrah, 2021). This interdependence manifests across multiple dimensions of human life, ranging from interactions between rural and urban communities, educational relationships between students and teachers, to healthcare encounters between patients and medical practitioners. Within Islam, social and economic interactions encompassing both material and immaterial needs are systematically governed under the framework of muamalah (Al-A’dili & Abu al-Afrah, 2021).

Etymologically, muamalah derives from al-mufā‘alah, denoting reciprocal action, whereas terminologically it encompasses the legal norms regulating human transactions in worldly affairs, such as trade, debt arrangements, commercial partnerships, and leasing contracts. These regulations are designed to facilitate the fulfillment of human needs while preventing harm or injustice to others (Habibullah, 2020). Among these, trade represents one of the most prevalent forms of muamalah. The Qur’an, specifically in Surah Al-Baqarah verse 275, explicitly permits trade while prohibiting riba (usury).

Over time, commercial practices have evolved, giving rise to innovative contract forms, including Bai‘ Istiglāl (Rusydi, 2023), which integrates the principles of bai‘ wafā’ and ijarah contracts (Haidar, 1989, p. 113). In operational terms, an asset is sold with a conditional right for the seller to repurchase it at a predetermined time, after which the asset may be leased back (Soemitra, 2019, p. 94). Emerging during the mid-5th century Hijri (Asa’ari, 2013), this contractual form represents a product of scholarly ijtihad aimed at addressing evolving societal needs. Contemporary applications of Bai‘ Istiglāl include its use as a foundation for Islamic financial instruments, such as Surat Berharga Syariah Negara (SBSN) (Hamdani, Nurhasanah, & Nurrachm, 2023).

The extant literature predominantly adopts a normative-textual approach, assessing the permissibility or prohibition of Bai‘ Istiglāl based on the Qur’an, Hadith, and established fiqh maxims. Advocates emphasize its permissibility under the principle of al-ibāḥah (general permissibility) in muamalah and highlight the imperative for innovation in Islamic financial instruments. However, these studies often lack critical evaluation of the contract’s practical implications, including the potential for concealed riba through price mark-ups, information asymmetry between contracting parties, and moral hazard arising from asymmetric contractual

arrangements.

Conversely, critics of Bai' Istiglāl underscore the application of the legal maxim *sadd al-zarā'i* as a precautionary mechanism against practices potentially leading to prohibited outcomes. Nonetheless, such critiques frequently remain at the conceptual level, rarely providing a normative framework capable of addressing contemporary economic demands in a just and sustainable manner. Furthermore, the discourse has seldom incorporated a comprehensive *maqāsid al-sharī'ah* perspective, particularly regarding the preservation of wealth (*ḥifẓ al-māl*), prevention of exploitation, and the promotion of equity in contractual relations.

In response to these gaps, this study aims to conduct a comparative analysis of the positions of scholars across the four major Islamic jurisprudential schools concerning Bai' Istiglāl, examining both permissive and prohibitive stances, and exploring the underlying factors contributing to these divergent views. Beyond mapping doctrinal arguments, the study evaluates their alignment with the objectives of *maqāsid al-sharī'ah*, offering a critical and contextually grounded understanding. Consequently, this research seeks to fill an analytical void in the discourse on Bai' Istiglāl, providing normative insights to ensure that the practice of this contract is not only *fiqh*-compliant but also equitable, transparent, and consistent with the principles of contemporary Islamic commercial ethics.

B. RESEARCH METHODOLOGY

This study employs a qualitative descriptive method with a normative and comparative legal approach. The normative approach is utilized to examine the principles, norms, and legal doctrines related to Bai' Istiglāl, as well as to compare the perspectives of the four major Islamic jurisprudential schools. Additionally, the normative-comparative approach is applied to assess the normative implications of the Bai' Istiglāl contract concerning justice and the protection of wealth (*ḥifẓ al-māl*) within the framework of *maqāsid al-sharī'ah*. Consequently, the analysis does not merely determine the legal status of the contract but also considers the potential risks of deviation in contemporary commercial practice.

Primary data were obtained from authoritative *fiqh* literature, such as *Hāsiyah Rādd al-Muḥtār*, *Bulghah al-Sālik*, and *al-Mughnī*, while secondary data were collected from books, journal articles, theses, dissertations, and other relevant literature. All data were analyzed inductively through the stages of reduction, classification, and interpretation, resulting in a comprehensive understanding and legal judgment (*tarjih*) regarding the status of Bai' Istiglāl.

The normative-comparative approach in this study is not only used to establish the legal ruling but also to evaluate the potential normative implications of the Bai' Istiglāl contract with respect to justice and the protection of wealth within the framework of *maqāsid al-sharī'ah*.

C. THEORETICAL FRAMEWORK

The theoretical framework of this study focuses on the foundational concepts of *fiqh muamalah*, the Bai' Istiglāl contract, scholarly *ikhtilaf* (differences of opinion), *tarjih* (preference of stronger opinion), and the Fatwa of the Indonesian Council of Ulama (DSN MUI) as analytical tools. In *fiqh muamalah*, the general principle holds that all forms of transactions are permissible, provided that the contractual conditions are valid and the transaction avoids *riba* (usury), *gharar* (excessive uncertainty), and other invalid practices. As a specific form of sale followed by a leaseback, Bai' Istiglāl has generated divergent scholarly opinions. Some

scholars consider the practice permissible if the sale and lease contracts are clearly separated, whereas others view it as a contrived arrangement resembling *riba* (Rahmawati & Ab Gani, 2015, p. 797).

The differences of opinion among scholars arise primarily due to the absence of explicit *dalil qath'i* (definitive textual evidence), resulting in varied interpretations of Qur'anic verses and Hadith. The principle of *tarjih* is subsequently employed to determine the stronger opinion by considering textual evidence, contextual factors, and *maslahat* (public interest) (Mohammad & Sabir, 2022). In this regard, the method of legal reasoning (*istinbāt*) serves as a critical benchmark for evaluating the validity of the contract, drawing upon *fiqh* principles, Qur'anic and Hadith evidence, and scholarly *ijtihad*.

Accordingly, the theoretical foundation of this study emphasizes that the analysis of Bai' Istiglāl must be grounded in the basic principles of permissibility in *muamalah*, account for scholarly differences, and employ *istinbāt* methods to ensure that its implementation aligns with the objectives and principles of Islamic law.

D. RESULTS AND DISCUSSION

Analysis of Factors Behind Scholarly Differences Regarding Bai' Istiglāl

Divergent scholarly opinions on the practice of Bai' Istiglāl arise from several key factors. First, there is no explicit textual evidence (*dalil qath'i*) that directly addresses the legal status of Bai' Istiglāl, leaving room for varied interpretations among scholars. Second, some scholars consider Bai' Istiglāl permissible because it does not contain elements of *riba* (usury), while others argue otherwise, citing potential indications of *riba* embedded within the transaction mechanism. Third, differences exist regarding conditional sales; some scholars allow sales with specific conditions, whereas others consider such practices invalid. Fourth, there is disagreement over the conceptual characterization of Bai' Istiglāl, with some equating it to a pledge (*rahn*), while others maintain that it possesses distinct features. Fifth, scholars differ in interpreting the prohibition against combining two contracts (*dual-akad*) within a single transaction as it applies to Bai' Istiglāl. These points are elaborated as follows:

1. Interpretation of Qur'anic Verses and Prophetic Hadith

Scholarly differences stem from varying interpretations of relevant Qur'anic verses and Hadith. Some scholars understand these sources as imposing an explicit prohibition on Bai' Istiglāl, whereas others perceive them as advisories to avoid the practice without elevating it to the level of *haram*.

2. Position of Bai' Istiglāl in Trade Law.

Opinions diverge regarding the legal classification of Bai' Istiglāl within trade law. Some scholars argue that it involves *riba* because its essence resembles a loan accompanied by additional profit. From the perspective of *fiqh muamalah*, a sale containing *riba* is not a valid contract (*'aqd murni*) but rather a *ḥīlah ghayr shar'iyyah*—a legal stratagem in which the outward form is a sale, but the substance aims to derive benefits from debt. Conversely, other scholars maintain that Bai' Istiglāl does not constitute *riba* provided that the conditions of a valid sale are met and the transaction is free from manipulative practices intended to generate additional profit from debt.

3. Conditional Sales.

Scholars also differ in interpreting Hadith that prohibit conditional sales. Some hold that

this prohibition is absolute, rendering any sale with conditions impermissible. Others allow conditional sales if only a single, clearly defined condition exists. Conditional sales may contain elements of gharar (uncertainty) if the stipulated condition creates ambiguity regarding the subject matter, price, or delivery time.

4. Conceptual Differences: Bai' wafā' vs. Bai' Istiglāl.

Scholarly opinions diverge regarding whether Bai' Istiglāl is equivalent to a pledge (rahn). Some scholars consider it analogous, deeming it permissible, whereas others argue that Bai' Istiglāl possesses distinct characteristics that differentiate it from pledges.

5. Prohibition of Combining Two Contracts in a Single Transaction.

Disagreement also exists concerning the application of the prohibition against combining two contracts (dual-akad) within a single transaction. Some scholars classify Bai' Istiglāl under this prohibition, as it combines a sale with a repurchase right, potentially introducing elements of riba and gharar. Others contend that Bai' Istiglāl does not fall under this prohibition if both contracts are executed transparently, separately, and without hidden conditions that may produce additional benefits from debt.

Analysis of Qur'anic Evidence on Bai' Istiglāl

In Surah Al-Baqarah, verse 275, Allah states:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

"Allah has permitted trade and prohibited usury (riba)." (QS. Al-Baqarah [2] : 275)

This verse establishes a fundamental principle in muamalah: all forms of transactions are permissible provided that the contractual conditions are valid and the transaction does not involve riba or excessive uncertainty (gharar). In the practice of Bai' Istiglāl, the sale (asset transfer) and ijarah (lease) elements can be separated into two independent contracts, as long as there is no arrangement binding them together in a way that leads to riba. Consequently, some scholars consider Bai' Istiglāl legally valid. They argue that modern economic demands necessitate innovative contracts that remain grounded in mutual consent (riḍa) between the parties, consistent with the principles emphasized in this verse. Thus, Bai' Istiglāl is often implemented as a liquidity management tool that aligns with Shariah principles.

Furthermore, Surah Al-Baqarah, verse 188, warns:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدُلُّوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

"And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [one] may consume a portion of the wealth of others sinfully while you know." (QS. Al-Baqarah [2] : 188)

Scholars critical of Bai' Istiglāl argue that, in practice, the contract often functions as a legal stratagem disguising interest-based lending. In such cases, the sale and lease components are not independent but deliberately linked to allow one party to gain additional benefit akin to interest. If the seller is compelled to lease back the sold asset at an unfair rent or under

conditions attached to the original transaction, the contract contains elements of an invalid (bāṭil) agreement. Therefore, although the contract may appear formally valid as a sale, its substance resembles riba, which is explicitly prohibited in Islamic law.

Surah Al-Baqarah verse 188 thus serves as a strict ethical reminder that contractual freedom must not be exploited to unlawfully acquire another's wealth. Accordingly, scholars emphasize that any transaction whose substance contains elements of riba should be avoided, even if it formally appears compliant with fiqh rules.

A careful examination of these two verses highlights their complementary roles as normative boundaries for contemporary muamalah. Verse 275 establishes that trade is fundamentally permissible as long as it is free of riba, thereby providing a basis for Bai' Istiglāl as a mechanism for asset management through sale and lease. When executed transparently, voluntarily, justly, and with a clear separation between the sale and lease contracts, Bai' Istiglāl does not contradict the principle of lawful trade under Shariah.

However, verse 188 functions as an ethical boundary, cautioning that the substance of any contract must not mask interest-like gains or lead to unlawful acquisition of wealth. Accordingly, the stronger scholarly opinion (rājih) holds that Bai' Istiglāl is permissible, provided that the sale and lease contracts are independent, executed transparently and voluntarily, and free from hidden conditions that could introduce riba or unlawful enrichment. Emphasis on justice, mutual consent, and caution ensures that the contract remains within the bounds of halal transactions as emphasized in Al-Baqarah verse 275, while avoiding unlawful wealth acquisition as warned in verse 188.

Analysis of Relevant Hadith

The Hadith narrated by Ahmad states:

مَنْ اسْتَأْجَرَ أَجِيرًا فَلْيُعَلِّمَهُ أَجْرَهُ

“Whoever hires a worker should inform him of his wage.” (HR. Ahmad) (Hanbal, 2001)

According to some Hadith scholars, this narration is classified as hasan, despite minor weaknesses in the chain of transmission. Its content remains acceptable because it aligns with general principles in Islamic law. This Hadith emphasizes the importance of clarity in compensation for any lease-based contract. In the context of Bai' Istiglāl, some scholars permit its practice under certain conditions, provided the lease component is implemented transparently, the rental value is agreed upon clearly by both parties, and no party suffers a loss. By ensuring these conditions, potential elements of gharar (uncertainty) that could invalidate the contract are avoided, making the contract legally valid under Shariah.

Conversely, scholars opposing Bai' Istiglāl often cite the Hadith narrated by Abu Dawud:

لَا يَجِلُّ سَلْفٌ وَيَبِيعُ

“It is not permissible to combine a loan and a sale, nor to include two conditions in a single sale.” (HR. Abu Dawud) (Dawud, 1999)

This Hadith, also classified as hasan, is interpreted as a prohibition against combining two interdependent contracts, as it may result in hidden riba or defective conditions (syarat fasid). When the sale price is linked to the lease, the purity of the sale contract is compromised, potentially violating justice and fairness. This reasoning aligns with the legal principle of sadd al-Ẓarā'i (blocking the means to harm), intended to prevent fraudulent, exploitative, or otherwise impermissible transactions.

Although both Hadith are hasan and do not contradict each other textually, their application requires careful consideration. Contemporary scholars have developed practical approaches allowing the combination of sale and lease in Bai' Istiglāl, provided that both contracts are independent, the lease value is transparent, and the lease does not constitute a condition for the validity of the sale. This prevents elements of gharar and riba.

In this context, the stronger opinion (rājih) among contemporary scholars is grounded in the fiqh maxim: "*Al-'umūm laa yaqtaḍī al-Tahrīm illa ma'a al-Mafṣadah.*" ("A general ruling does not render something forbidden unless it causes clear harm") (Zuhaili, 1989, p. 599). Thus, Bai' Istiglāl is not automatically haram merely for combining two contracts. What is prohibited is conditional interdependence that produces riba or gharar (Syarifuddin, 2009, p. 137). The conditions for permissibility are: *First*, The sale and lease contracts must be legally separate. *Second*, The lease value must be clear, specific, and not a condition for the validity of the sale. *Third*, There should be no hidden markup or additional benefit linked to the lease. *Fourth*, The contractual conditions and pillars (rukn and shurut) of both contracts must be fulfilled in accordance with principles of justice and clarity.

Fiqh Principles and Maxims

The following fiqh maxims further support the permissibility of Bai' Istiglāl

الأصل في المعاملة إلا باحة حتى يدل دليل على تحريمها

"The default ruling in all transactions is permissibility unless there is a proof rendering it prohibited." (Zuhaili, 1989, p. 147)

This maxim establishes that the foundational status of all social and economic transactions is mubah (permissible) unless explicitly prohibited. It serves as a crucial basis for evaluating contemporary contracts such as Bai' Istiglāl and modern Islamic financial instruments. (Sabiq, 1977, p. 5-6)

الضرر يزال

"Harm must be eliminated." (Al-Suyūṭī, 1990, p. 60)

This principle emphasizes that transactions causing harm, injustice, or unfair loss must be avoided, amended, or prohibited. It reflects the objectives of Shariah (maqāṣid al-sharī'ah) in promoting welfare (maṣlaḥah) and preventing harm (mafsadah). Contemporary instruments such as SBSN (Shariah-compliant government securities) or sukuk (Islamic bonds) exemplify this application, as they prioritize profit-sharing, asset-based ownership, and the avoidance of

riba, gharar, and gambling (maysir) (Askarya, 2015, p. 120).

Similarly, Bai' Istiglāl, as a modern sale-and-lease contract, aligns with these maxims. No explicit Shariah prohibition exists against it, and when implemented transparently and fairly, it avoids harm to the parties involved. Hence, it does not require nullification or prohibition. These principles strengthen the position of scholars permitting Bai' Istiglāl, provided it is executed voluntarily, transparently, and justly, in accordance with Shariah objectives.

Tarjih

After comparing existing scholarly opinions, analyzing the wajh al-istidlāl (evidential reasoning), and reviewing textual proofs, it can be concluded that the strongest opinion (rājih) is that of the scholars who permit Bai' Istiglāl, with several supporting arguments:

Wajh al-Istidlāl from the Qur'an

In determining the legal ruling on Bai' Istiglāl, two Qur'anic verses serve as primary references: Surah Al-Baqarah: 275 and Surah Al-Baqarah: 188. Both are categorized as muhkam (clear and decisive) and universally recognized for their authenticity. However, in terms of interpretive strength (wajh al-istidlāl), each verse carries distinct characteristics.

Verse 275 explicitly establishes the foundational principle in muamalah, namely the permissibility of trade and the prohibition of riba. This verse is uṣūlī in nature, providing a general legal foundation. In fiqh principles of commercial transactions, this is reflected in the maxim:

"Al-aṣlu fī al-mu'āmalāh al-ibāḥah mā lam yarid dalīlun 'ala taḥrīmihā"

("The default ruling in muamalah is permissibility unless there is evidence indicating prohibition").

Thus, if Bai' Istiglāl is conducted free from riba, avoids excessive gharar, and is implemented based on justice and transparency between the parties, it can be classified as a permissible form of sale under Shariah.

Verse 188, meanwhile, serves as a moral admonition against acquiring wealth unjustly (bāṭil), including through legal manipulation or misuse of authority. While this verse underscores ethical conduct in economic transactions, it does not explicitly prohibit any particular contract. Therefore, it is not sufficiently strong to constitute a direct prohibition against Bai' Istiglāl, except in cases where the transaction clearly involves bāṭil elements as described in the verse.

Consequently, the stronger scholarly opinion maintains that Bai' Istiglāl is permissible, provided that the sale and lease components are executed separately, voluntarily, transparently, and without hidden conditions that could lead to riba, gharar, or unlawful acquisition of wealth. Under these principles, the default ruling of Bai' Istiglāl is mubāḥ (permissible), as long as no textual evidence explicitly demonstrates harm or violation of Shariah.

Wajh al-Istidlāl from Hadith

Two Hadith are often referenced in establishing the ruling on Bai' Istiglāl, both classified as hasan and possessing ḥaḍīth al-ṣubūt and ḥaḍīth al-dalālah status, requiring interpretive consideration.

The Hadith narrated by Ahmad is considered stronger (rājih) as a basis for permitting Bai' Istiglāl, since it explicitly emphasizes the requirement of clarity in ujah (wage or rent) for a valid lease. As the lease component is integral to Bai' Istiglāl, clear and transparent agreement

between parties ensures compliance with Shariah principles.

Conversely, the Hadith narrated by Abu Dawud functions primarily as an ethical warning using the principle of *sadd al-Ẓarāʿi* (blocking means to harm). It prohibits combining loan and sale contracts where doing so could create opportunities for *riba*. However, this prohibition is not absolute; it targets contracts with unjust conditions or potential *riba*. Therefore, if the sale and lease elements in *Baiʿ Istiglāl* are independent, transparent, and mutually voluntary, the contract does not fall under the prohibition indicated in Abu Dawud. Hence, the Ahmad narration holds stronger evidential weight in establishing permissibility, while the Abu Dawud narration serves as guidance for ethical caution.

Wajh al-Istidlāl from Fiqh Maxims

From a fiqh perspective, the maxims supporting permissibility carry stronger weight than those advocating prohibition. The permissibility group relies on the principle:

"The default ruling in *muamalah* is permissibility unless explicitly prohibited."

This establishes that all commercial transactions are inherently permissible, with exceptions only when explicit textual evidence indicates prohibition. In the context of *Baiʿ Istiglāl*, no such explicit prohibition exists, so the default ruling remains permissibility, provided that the contractual conditions and pillars are met.

The prohibitive group emphasizes the maxim:

"Harm must be eliminated" (*al-Ḍarar yuzāl*), which ensures that transactions avoid material or non-material harm. This maxim acts as a control mechanism to prevent injustice or exploitation. If *Baiʿ Istiglāl* is executed voluntarily, transparently, and with proportional rights and obligations, it does not contradict this principle.

Together, these two maxims demonstrate that *Baiʿ Istiglāl* is a valid and permissible contract under Shariah. The first maxim legitimizes the default permissibility, while the second ensures alignment with justice and protection of parties' rights.

Conclusion on *Tarjih*

The permissive opinion on *Baiʿ Istiglāl* is most consistent with *maṣlaḥah* (public interest) and emphasizes the core principles of valid sale, while preventing *riba* in lending and borrowing. This view aligns with the DSN-MUI Fatwa No. 72/2008 on Sale and Lease Back, which permits the sale of an asset followed by its lease back to the seller. In contemporary contexts, *Baiʿ Istiglāl* serves as an innovative Islamic financial instrument supporting modern investment mechanisms, including *sukuk* and SBSN, while adhering to *maqāṣid al-sharīʿah* by promoting public welfare, preventing exploitation, and maintaining balance of rights and obligations.

Thus, the permissibility of *Baiʿ Istiglāl* is understood as conditional, requiring careful contract design and oversight to ensure justice, transparency, and protection of wealth.

E. CONCLUSION

This study demonstrates that the differences of opinion among scholars regarding the *Baiʿ Istiglāl* contract arise from several fundamental factors. These include the absence of explicit textual evidence (*dalil qaṭʿī*) directly regulating the contract, differing interpretations regarding the presence of *riba* within its transactional mechanism, and varied understandings of conditional sales and the prohibition of combining two contracts in a single transaction. From the existing debates, it can be understood that no *dalil qaṭʿī* explicitly prohibits the implementation of this contract. The Qurʾanic verses and Hadith often cited to support

prohibition remain open to interpretation (ta'wil) based on the context of revelation (asbāb al-nuzūl) and the legal reasoning (illat). Conversely, the fundamental principle of permissibility in muamalah, the principle of justice, and the consideration of harm avoidance (daf' al-mafsadah) strengthen the argument for the permissibility of Bai' Istiglāl, provided that the pillars and conditions of the contract are fulfilled.

From the comparative analysis of scholarly opinions, the stronger view supports the permissibility of Bai' Istiglāl under certain conditions: the sale and lease components must be clearly separated, executed voluntarily, and free from riba, excessive gharar, and unlawful acquisition of wealth (bāṭil). This perspective aligns with the fundamental principles of muamalah outlined in Surah Al-Baqarah: 275, which affirms the permissibility of trade, while Surah Al-Baqarah: 188 serves as a reminder to ensure that transactional practices are not used to legitimize unlawful means. Accordingly, Bai' Istiglāl, when implemented transparently, fairly, and proportionally, can be accepted as a contemporary contract valid under Shariah.

The implications of this study indicate that Bai' Istiglāl has significant potential to address modern economic needs. The scheme can serve as a flexible liquidity alternative while maintaining justice and public welfare (maṣlaḥah). Therefore, its application in Islamic financial institutions and instruments, such as sukuk, must be regulated with caution to prevent deviation from Shariah principles. Governments, practitioners, and academics play a crucial role in ensuring that this contract is developed in accordance with Shariah, effectively communicated to the public, and continually studied to ensure ethical compliance in muamalah.

Future research is expected to further examine the relevance of Bai' Istiglāl in contemporary practices, such as the sale-and-lease-back scheme in Shariah Government Securities (SBSN). A more in-depth study of practical and regulatory aspects will help ensure that this contract provides truly halal, just, and beneficial financial solutions for the wider society.

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