



## BUYING AND SELLING STOCKS TRANSACTIONS OF CHILDREN'S IN THE PERSPECTIVE OF SHAFI'I SCHOLARS

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**ABSTRACT.** This study explores the Shafi'i jurisprudential perspective, particularly regarding the buying and selling of shares by children who are still underage. The buying and selling of shares constitutes a social enterprise or cooperation between two or more shareholders with a specific purpose, wherein each party contributes funds with the promise that they will share both profits and risks collectively. Through this, the researcher hopes to provide benefits and serve as a reference for shareholders. The research method employed is field research, which encompasses all occurrences in the field to extract and examine data relevant to the study. The approach taken in this research utilizes qualitative research methods. Based on the conclusions of this study, from the perspective of the Shafi'i school of jurisprudence, the buying and selling of shares conducted by a child who is still underage or has not yet reached puberty falls into the category of being discouraged or invalid, even if it is permitted by their parents or guardians.

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### Introduction

Currently, buying and selling stocks is an interesting topic to discuss and study, including among millennials. Sellers, buyers, or prospective investors certainly include those who wish to invest in a company's shares but are concerned about whether the mechanisms and principles conflict with Islamic law.

The contract of sale and purchase is a human activity that has been conducted for a long time. Buying and selling transactions are human activities that continue to evolve over time. A sales contract is the sale of a specific item for another specific item (bay'ul 'ain bi al-dain). For example, selling goods at a fixed price, such as dirhams and dinars, or with fulus, which are

coins agreed upon by the community as a medium for transactions, or with goods that are measured or weighed, guaranteed by characteristics that have been mutually agreed upon.<sup>1</sup>

Regarding the buying and selling of stocks, Islam permits its followers to invest in businesses, provided that the business genuinely generates profit or benefit. As is known, the capital market is extremely important for making investments, especially in businesses with a public reputation, namely monitoring people's stocks and bonds to support and expand businesses.<sup>2</sup>

Conducting a stock trading transaction involves several mechanisms that must be followed, including: registering a stock or securities account, funding the account balance, executing stock trading transactions, and order settlement.<sup>3</sup>

The validity of online buying and selling transactions (Stocks) is determined by the contract. An online buying and selling transaction is considered valid once the essential elements and conditions of a valid sale are fulfilled. Analysis of age limitations for children in conducting buying and selling transactions can be found in the discussion of the essential elements and conditions of a sale. However, in general, the age requirements and limitations refer to reaching puberty, being of sound mind, acting voluntarily, and having the right to spend their personal property. The validity according to Islamic law is determined by the contract (aqad) and the fulfillment of its pillars and conditions. As for the pillars and conditions, they include the presence of the contracting parties (seller and buyer) who are mature and of sound mind. There must be an offer and acceptance under the condition of mutual consent. The object of the contract must exist and belong to the seller. Furthermore, there must be an exchange value, meaning an agreed-upon price.<sup>4</sup>

In practice, many children engage in online buying and selling transactions without parental supervision, and quite a few parents nowadays even ask their children for help in making purchases. Almost all children who conduct buying and selling transactions are prepubescent, and they are typically between the ages of 7 and 10. As a result, buying and selling transactions carried out by prepubescent children occur quite frequently.

This research focuses on the perspective of Shafi'i fiqh regarding the legal status of stock trading conducted by minors. This type of research is qualitative, employing a normative approach, which involves using fiqh law related to the issues being studied.

## **Literature Review**

### **Definition and Legal Basis of Stock Trading**

Some scholars from various schools of thought have explained the definition of buying and selling. For instance, Shafi'i scholars state that buying and selling is a contract that involves the exchange of property with conditions and provisions according to Sharia. Hanafi scholars define buying and selling as the exchange of property for property in a specific manner concerning goods, substances, or money. According to Maliki scholars, it is a contract that involves reciprocity beyond mere benefits, with clear objects in terms of attributes and enjoyment, and it is not a debt. Meanwhile, Hanbali scholars explain that buying and selling is the exchange of property for property, which is neither usury nor debt.<sup>5</sup>

<sup>1</sup> Wahbah az-zuhaili, *Fiqh Islam Wa Adillatuhu*, penerjemah, Abdul Al-Kattani, dkk (Jakarta: Gema Insani, 2011), cet. 1, Jilid 5 h. 38.

<sup>2</sup> Gibtiah, *Fikih Kontemporer*, Jakarta: Prenadamedia Group, 2016, h. 13.

<sup>3</sup> Muhammad Safri dan Nisaul Haq Bintu Has, *Akad Jual Beli Saham Lewat Online Studi Komparatif Ulama Mazhab Syafi'i Dan Dewan Syariah Nasional*, Jurnal Shautuna, Vol.4 No.1 Januari 2023, h. 191.

<sup>4</sup> Sohibul Hizbullah dan Basri Na'ali, *Perspektif Hukum Ekonomi Syari'ah Terhadap Jual Beli Pada Tempat Yang Dilarang*, *Al Itamiy : Jurnal Hukum Ekonomi Syariah*, Vol. 6 No. 1 Juni 2024, h. 82.

<sup>5</sup> Rachmawati, Eka Nuraini. "Akad jual beli dalam perspektif fikih dan praktiknya di pasar modal Indonesia." *Al-'Adalah* 12, no. 2 (2015), h. 786.

Indonesian scholars define buying and selling as an agreement in which one party binds itself to deliver a certain item and the other party is obliged to pay the agreed price. Additionally, in the Civil Code, Part I, it is explained that buying and selling is an agreement where one of the parties binds itself to deliver a certain item. Therefore, it can be stated that buying and selling is an activity in which the seller delivers goods to the buyer after both parties have reached an agreement, and then the buyer pays for the goods received.<sup>6</sup> In other words, buying and selling is one of the commercial activities approved by Allah, involving transactions that are mutually agreed upon and not detrimental to either party. Meanwhile, shares themselves are proof of ownership in a company. Shareholders are also referred to as stockholders.<sup>7</sup>

The legal basis for the buying and selling of shares is permissible, especially for shares based on Sharia principles. This is in accordance with the support from fatwas issued by the National Sharia Council-Indonesian Ulama Council (DSN-MUI) and regulations established by the Financial Services Authority (OJK). Permissible shares are, of course, those that have passed the selection process and meet the criteria specified in DSN-MUI Fatwa No. 135 of 2020 concerning shares and OJK Regulation No. 35 of 2017 concerning the criteria and issuance of the Sharia Securities List.

### **Types Of Shares**

There are two types of shares in the capital market known to the public, namely: common stock and preferred stock.<sup>8</sup>

Common stock is a security issued by a company that specifies a nominal value (in rupiah, dollars, etc.), granting the holder the right to attend the General Meeting of Shareholders (GMS) and to receive dividends at the end of the fiscal year if the company makes a profit. If the company incurs a loss, shareholders do not receive dividends, and there is a legal provision regarding this: a company that suffers a loss is not allowed to distribute dividends until the loss has been closed.

These common stocks have several types, the first, blue-chip stocks, which are shares of companies that are nationally recognized and have quality growth in profits and management. Second, growth stocks, which are shares expected to provide higher profit growth than the average stock, and therefore have a high P/E ratio.<sup>9</sup> Third, Defensive Stocks are stocks that tend to be more stable during a recession or an uncertain economy in terms of dividends, income, and market performance.<sup>10</sup> Fourth, cyclical stocks are shares that tend to increase in value quickly when the economy is thriving and decrease rapidly when the economy is sluggish. Fifth, seasonal stocks are companies whose sales vary due to seasonal impacts, for example, due to weather and holidays. Finally, speculative stocks are shares that are highly speculative, with a likelihood of low returns.

Preferred stock is a security issued by a company that specifies the nominal value (in rupiah, dollars, etc.) where the holder will receive dividends every three months. Dividend payments from preferred stock are made first, and the remainder goes to common stock. However, in the General Meeting of Shareholders, preferred stockholders do not have voting rights.

<sup>6</sup> Sohibul Hizbullah dan Basri Na'ali, *Perspektif Hukum Ekonomi Syari'ah Terhadap Jual Beli Pada Tempat Yang Dilarang*, *Al Itmamiy : Jurnal Hukum Ekonomi Syariah*, h. 82.

<sup>7</sup> Mohamad Samsul, *Pasar Modal dan Manajemen Portofolio*, (Jakarta: Erlangga, 2015), h. 59.

<sup>8</sup> Sri Hermuningsih, *Pengantar Pasar Modal Indonesia*, (Yogyakarta: UPP STIM YKPN, 2012), h. 78.

<sup>9</sup> Adler Haymans Manurung, *Kemana Investasi ? Kiat dan Panduan Investasi Keuangan di Indonesia*, (Jakarta: PT Kompas Media Nusantara, 2006), h. 83.

<sup>10</sup> Subramanyam dan John Wild, *Analisis Laporan Keuangan*, terjemahan, Edisi Sepuluh, (Jakarta: Salemba Empat, 2010), h. 243.

## **Research methods**

The research method employed in this study is field research, which encompasses the observation and examination of occurrences in the field to extract and analyze data relevant to the subject. This study utilizes a qualitative research approach.

Specifically, the research adopts a normative approach, which involves the application of Islamic jurisprudence (fiqh) to the issues being studied. The primary objective of this methodology is to explore and analyze the Shafi'i jurisprudential perspective regarding the legal status of stock trading transactions conducted by minors or children who have not yet reached puberty.

## **Results and Discussion**

### **Buying and Selling Children's Stocks Perspective of Shafi'i Scholars**

One of the legal requirements for validity in buying and selling is legal capacity. Legal capacity is the ability of a person to be subject to certain laws concerning themselves when performing a legal act. Article 330 of the Civil Code (KUH Perdata) states that a person is considered an adult if they are 21 years old or have married. From the understanding of Article 330 of the Civil Code, it is clear that a person under the age of 21 and who has never been married is considered not yet an adult or not legally competent.

In this context of buying and selling, legal competence is related to the conditions for the 'aqid, namely the seller and the buyer, who must be of mature age and of sound mind. The purpose is to ensure accountability for the actions undertaken. With these two conditions fulfilled, the act of buying and selling can be held accountable, based primarily on awareness and maturity.

The aspect of maturity in transactions is very important to ensure that agreement and accountability are achieved, so that the transaction can be considered legally valid. This begins with the initial process of negotiations and extends until a consensus is reached by all parties. This maturity is crucial because it concerns the responsibilities of the parties involved in the transaction.

Therefore, a legally competent person does not include children who are still minors, especially when it comes to conducting financial or stock transactions. Thus, a child who is legally a minor engaging in buying and selling and agreeing to contracts that are limited by a specific period does not meet one of the requirements for a valid agreement, and ultimately, the transactions conducted can be legally annulled.

A child is considered legally immature or incompetent if they are under the authority of their parents or guardians in carrying out legal actions. The age of majority in legal acts serves as a formal requirement, and the limitation of a child's age is a categorization of the maximum age concerning the child's capacity in legal status.<sup>11</sup>

The age of legal capacity is regulated in the law under Article 330 of the Civil Code, which states that a person is considered an adult if they are 21 years old or have ever been married. This means that someone who is married is deemed capable of taking responsibility and making decisions on their own behalf. Over time, societal views on adulthood have also evolved. However, it should be noted that legal adulthood must be distinguished from adulthood in terms of psychology or social life among individuals.

One of the conditions in buying and selling according to the Shafi'i scholars is the determination of age within the category of maturity (baligh). There are conditions that must be met in the matter of buying and selling; if they are fulfilled, then it can be said to be valid

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<sup>11</sup> Nazmina Asrimayasa Nugraha, Status Kedewasaan Anak yang Melakukan Perkawinan Dibawah Umur dalam Pembuatan Perjanjian Kawin pada Praktik Kenotariatan di Indonesia, Jurnal Acta Diurnal Vol.4 No.1, 2020, h. 118.

according to Sharia. Buying and selling is legislated based on the Qur'an and Sunnah. Buying and selling is a contract that must be carefully considered and its rulings understood in meeting the necessities of life.

Broadly speaking, scholars of the different madhabs have varying opinions regarding transactions conducted by children. There are numerous differences of opinion in this matter; therefore, the prerequisite for someone engaging in a sale, whether as a seller or buyer, is sanity. Sanity here means having reached puberty, being of sound mind, and being capable of managing property properly. This aligns with what Taqiyuddin Husni stated, namely that in a sale, it is required that the seller and buyer are competent. The sale conducted by a young child, a person who is insane, or a person who is intellectually impaired (*safiih*) is not valid.<sup>12</sup>

Buying and selling should be conducted in a state of awareness and health. Transactions carried out by children who are underage, the insane, intoxicated, or unconscious are considered invalid or prohibited.

Therefore, stock trading conducted by underage children is deemed invalid due to the lack of eligibility. As for the requirements for the parties involved in the transaction, whether as a seller or a buyer, they should be adults, meaning they have reached puberty and are capable of safeguarding their religion and property.

Similarly, according to the Hanafi, Maliki, and Hanbali schools of thought, children who are already *mumayyiz* (able to distinguish between right and wrong) are considered allowed or valid in transactions if their guardian permits it. If not permitted, the transaction is postponed until the guardian gives approval. So basically, whether children can engage in transactions depends on the guardian's permission, not the children themselves. That's why any buying and selling they do is valid because in this situation, it's like trading stocks, but the one actually making the transaction is not them.<sup>13</sup>

Imam Shafi'i himself, in this matter, holds the opinion that sales transactions conducted by children underage are considered invalid. This is due to the lack of legal capacity possessed by such children. Therefore, the condition stipulated by Imam Shafi'i is that both the seller and the buyer must be adults, meaning individuals who have reached puberty and are capable of safeguarding their religion and property.

Especially in stock trading transactions, which are essentially conducted online and not physically, consisting only of images with limited specifications, and where the contract agreement cannot be carried out directly. Furthermore, the goods/stocks used as transaction objects cannot be verified directly. Additionally, the seller does not know whether the buyer is legally competent, mature, sane, or an adult, and in some cases, the seller does not even want to know, once they are aware that their goods/stocks have been sold.<sup>14</sup>

However, in this regard, within the Shafi'i school of thought, the ruling on stock trading carries a fairly complex nuance and depends on the type of stock and the practices associated with it. The following is an explanation based on Shafi'i principles, which among others stipulate that the sales contract must fulfill three main pillars: The parties to the contract (*al-'aqid*), such as the seller and the buyer, must have legal competence; the contract formula (*sighat al-'aqd*, namely offer and acceptance) requires a clear statement from both parties; and the subject of the contract (*ma'qud 'alaihi*), such as the goods being traded, must be clear, lawful, and valuable. In terms of the validity of shares according to *Asy-Syafiyyah*, the company must

<sup>12</sup> Taqiyuddin Abu Bakar bin Muhammad Al-Hushny. (1993). *Kifâyat al Akhyar fi Hilli Ghâyat al-Ikhtishâr*. Surabaya: Al-Hidayah, 1993), h. 22.

<sup>13</sup> Wahbah az-zuhaili, *Fiqh Islam Wa Adillatuhu*, penerjemah, Abdul Al-Kattani, dkk (Jakarta: Gema Insani, 2011), cet. 1, Jilid 5 h. 38.

<sup>14</sup> Retno Dyah Pekerti Eliada Herwiyanti, *Transaksi Jual Beli Online dalam Persepektif Syariah Madzhab Asy-Syafi'i*, *Jurnal Ekonomi, Bisnis, dan Akuntansi (JEBA)* Vol. 20 No 2, 2018, h.3.

operate in lawful fields, without any element of usury, and must not involve gharar (uncertainty), tadhlis (fraud), or taghrir (manipulative influence). Additionally, the shares must represent real assets, not just cash.

From the explanation above, it can be understood that stock trading can be conducted with Sharia-compliant shares. They are considered Sharia-compliant because the items being traded are lawful goods or businesses, not prohibited (haram) goods or activities.

Stock trading transactions are known to be conducted online and are intangible; only images with specifications set by the seller exist, and a buyer cannot carry out the contract within it or conduct the offer and acceptance process face-to-face. Therefore, in this case, there are many instances of fraud or parties suffering losses in these transactions.

Observing the reality where buying and selling transactions are conducted without direct interaction between the seller and the buyer, or increasingly through online platforms such as stock trading, the Shafi'i scholars assume that such transactions, as commonly practiced today, are not valid, due to the absence of direct, face-to-face interaction between the two parties (seller and buyer) and the lack of a contract formula or pronouncement of *ijab-qabul*. On the other hand, if we refer to the fatwa of the DSN MUI, it permits such stock trading transactions.<sup>15</sup>

## Conclusion

Islam permits its followers to invest in businesses, provided that the business genuinely generates profit or benefits. The capital market is very important for carrying out investments, especially in businesses with a go-public reputation, as it involves monitoring the public's stocks and bonds to support and expand the business. However, investment freedom in Islam also comes with requirements that must be met so that the business investment complies with Islamic law and becomes *halal* *thaiban* in utilizing the income generated by the business, particularly in stock trading businesses. The issue of stock trading conducted by children who have not yet reached puberty, according to the view of Shafi'i scholars, is clearly not valid and not permitted because they have not yet reached the appropriate age or legal competence. Furthermore, the absence of proper meeting and offer-and-acceptance (*ijab-qabul*) raises concerns that problems may arise, causing harm to one party, whereas Shari'i transactions or sales follow the principle of *rahmatan lil alamin* (mercy to all creation) and mutual well-being.

## Suggestion

1. For Financial Institutions and Platforms: Online stock trading platforms should implement more rigorous age verification mechanisms and "Know Your Customer" (KYC) procedures to prevent underage children from opening accounts and conducting transactions independently.
2. For Future Researchers: Future studies could explore a more comparative approach by examining the perspectives of other Islamic schools of thought alongside current digital transaction regulations to find a middle ground for modern financial inclusion.

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<sup>15</sup> Achmad Musyahid Idris, Diskursus Mashlahat Mursalah Di Era Milenial; Mazahibuna: Jurnal Perbandingan Mazhab Vol.1 No. 2 December 2019, h. 134.

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