

Implementation of Auction Buying and Selling in Bagan Batu Istishab's Perspective

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ABSTRACT: This article aims to examine the buying and selling of auction items from an istishab perspective. Auction buying and selling already occurs in society and develops according to need. However, the law governing auction buying and selling is still a matter of debate among the public. The subject of this article is buying and selling auctions. The research method used is field research with a normative approach. The Prophet Muhammad SAW carried out buying and selling auctions, because the practice carried out by the Prophet Muhammad SAW was to help his companions in auctioning their slaves and the proceeds from the slave auction were intended for their medical treatment. The purpose of holding a selection and purchase auction is to help parties experiencing financial problems. Istishab means enforcing existing laws until new events are discovered. Auction buying and selling is permitted in Islam because it does not harm other people. The practice of buying and selling auctions is carried out openly and is enjoyed by everyone and is not manipulated by certain parties.

KEYWORDS: Istishab; Buying; Selling; Auction

INTRODUCTION

Islam has guidelines that serve as a guide in life. This guide is Islamic law which can be used as a solution to solve problems. Islamic law is an Islamic rule that regulates all the laws needed by all humans. The division of Islamic law can be divided into several types, namely agreed sources of law include the Koran, hadith, ijma' and qiyas and sources of law whose validity is still debated include istihsan, istishab, 'urf, yar'umanqablana, sad al-zari' ah, madhabsahabby. (Ridwan, 2011, p. 11)

Various kinds of buying and selling transactions have been carried out by various groups of society. The transaction is based on

the willingness of everyone involved. Likewise, buying and selling has various types, starting from face-to-face buying and selling or meeting each other to ordering systems, namely greetings and istisna'. One of the buying and selling transactions that is rarely carried out by the public but produces large profits is auction buying and selling because this buying and selling has certain terms and conditions. This provision applies because the goods being bought and sold have a greater value or nominal value. For example, house auctions, companies and so on.

This article was written based on the results of observations the author made in the Nangka KM3 area, Bagan Batu, Kec. Bagan Sinembah, Kab. Rokan Hilir, Riau. The author found that in the Bagan Batu area there had been an auction buying and selling incident.

an auction event occurred during the celebration of Indonesia's independence, namely August 17th. One of the competitions that carry out auction buying and selling is the areca climbing competition. When participants win the competition, they do not immediately take the prizes in the form of goods home, but they will sell them to the audience by auctioning them. When the auction takes place, the audience will scramble to bid for the items they want. The items being auctioned are priced accordingly cheap, the auctioneer only takes a small profit from the price of the item because what the auctioneer wants is not profit but just fun, cooperation and togetherness in enlivening the Indonesian independence event. After all the prizes have been auctioned, the participants will divide the auction proceeds equally.

The purpose of this article is to explain and explain auction buying and selling according to the *istishab* concept. *Istishab* is a source of law that is still applied to every incident even though times and conditions have changed. This legal basis will remain intact and can be used as long as the source does not conflict with existing primary sources. Based on the description that has been presented, this article will discuss auction buying and selling from an *istishab* perspective.

METHODS

The type of research that the author conducted in discussing this problem is social legal research *where* the data was obtained through: Field *research*. Apart from that, the author also obtained data through library research. (Sugiyono, 2015, p. 50). The author's data collection technique was carried out by interviews. Apart from that, also by observation, namely observing the symptoms being studied, in this case the five human senses are needed to capture symptoms are observed and then what is captured is recorded and then analyzed (Rambe, 2021, p. 8)

The author's data source is a primary data source, namely data obtained from the field in the form of interviews and observations of the research object. (Moleong J, 2016, p. 34). In technical data analysis, the author uses qualitative descriptive analysis, namely describing the problems that occur in the field as they are.

1. The concept of *Istishab*

a. Understanding *Istishab*

Istishab comes from the word *is-tash-ha-ba* (استصحاب). In *lughawi* it means an attempt to bring one legal event closer to another event so that both explanations have the same law.

Ushul experts interpret *istishab* as determining the law for an event in accordance with the previous situation to the opinion or legal basis that states the change in the situation. *Al-istishab* according to *al Ghazali* is a legal provision that is not based on ignorance of the arguments but is based on arguments based on reason and *syara'* which are carried out through deliberation, discussions and in accordance with existing arguments. (Darmawan 2020, p. 196)

Ibn Qayyim defines *istishab* as a statement that continues to apply existing law to an event that occurs. Meanwhile, according to *al-Syatibi*, these are all legal provisions that were in effect during the ancient times and remain in effect today. (Shalihah, 2018, p. 55) Based on the various opinions presented, the speaker chose *al-Asnawy's* opinion which explained that all laws that applied in the past still apply in the present. This opinion leads to a law that cannot change until there is an argument that changes it.

Etymologically, *istishab* means asking for togetherness or continued togetherness. Meanwhile, according to the term, it means that the legal provisions applied at this time are in accordance with the previous situation

before there was a new argument that changed it. (Darmawan, 2020 , p. 196)

Based on this description, it can be concluded that the concept of *istishab* contains three main elements namely ; in terms of time, legal provisions and legal arguments. *Istishab* divided into two forms, namely *Tsubut* (a state where there has been a law) and *Nafi* (a state where there has never been a law). For example ; First , If someone has performed ablution in the morning for the morning prayer, then that person has The ablution can still perform the prayer *dhuha* until there is evidence that explains that the person's ablution has been invalidated. Second , property ownership can be determined through legal inheritance or gift. Ownership applies continuously until evidence of transfer is found treasure.

b. Elements of *Istishab*

Istishab has three main elements, namely legal provisions, legal arguments and time. Amir Syarifuddin divides *istishab* into several criteria, namely:

a) Firmness

A condition caused by past conditions based on Sharia law or the object of Sharia law. For example, belief in the ownership of property for an heir due to inheritance from parents.

b) Doubt

Doubt that something is still valid because times have changed. For example, regarding inheritance, someone feels doubtful about the condition of the inherited assets because they are afraid that the inherited assets have been transferred to someone else.

c) Something convincing and doubtful at the same time

Doubts and beliefs occur in the present and meet at the same time

because there is no opinion explaining changes in the legal basis so that an event that occurs can use the old legal basis. For example, you have confidence in performing ablution for the morning prayer, but have doubts about performing the midday prayer with the same ablution.

d) Conditions of belief and doubt at different times

A person's beliefs occur in the past and doubtful conditions occur in the present. For example, the agreement to buy and sell in the past had to be stated clearly by the seller and buyer , but now the seller and buyer only hand over the money to the seller and this can even be done through smartphone application.

c. Conditions for *Istishab*

Here are some conditions for *istishab*:

- 1) *Istishab* users must have the ability to find evidence that can change old laws. At this stage the user *istishab* must working hard to make changes but still based on sharia law and the text of the Koran.
- 2) The original law originates from Islamic propositions and comes from reason but is not a kind of conjecture. The determination of this law through the *istishab method* is not based on feelings but based on the benefit of the people.
- 3) The original law is *mutlaq*, that is, the old propositions do not explain its continuous validity and also do not explain a certain time limit. These old laws can be used along with developments over time but still do not conflict with Islamic law.
- 4) *Istishab* and *nash* do not conflict. If a dispute occurs between the two, the priority is given to the

text of the Koran because it has higher legal force and is the main source of law.

Various types of *Istishab* consists of several types, namely:

- 1) *Al-Istishab hukmal-ibahahal ashliyyah* (enactment of the basic law of *mubah*) Namely *istishab* which is based on the law of origin of something that is permissible. In the field of *muamalah* the application of *istishab* This leads to the conclusion that every *muamalah* transaction is legally permissible until there is an argument that states it is not permissible.

Allah's Word in surah al - Maidah (5):87. Whit meaning: "O you who believe, do not make unlawful the good things that Allah has made lawful for you, and do not exceed the limits. Indeed, Allah does not like those who transgress limits." (QS. Al-Maidah: 87) (Indonesian Ministry of Religion, 2013, p. 111).

- 2) *Istishab madallahasysyar'awal-'aql 'ala wujudih* (*istishab* based on something according to contract or *sharia'*)

Namely, the determination of law is based on the basic principle that every person is free from burdensome demands until there is evidence that can change it. For example, basically every person is free from all responsibility until there is evidence that explains that the person has a debt. Based on this example, it explains that *istishab* This explains the application of the law both in terms of *syara'* and logic until there is a reason or argument which constitutes the legal provisions. (Darmawan, 2020, p. 191).

- 3) *Istishabal-general ilaanyaridat-takasyi* (general law applies until someone specializes in it)

It is the establishment of a law that has been in effect in the past and remains in effect in the present until there are other arguments that change it. This *istishab* is related to time. For example, a person's ownership of a piece of land or other property will remain theirs until there is evidence of a change in the status of ownership rights. These changes include buying and selling or renting.

- 4) *Istishabal-khashbial-wasf* (specific laws relating to its nature)

Namely *istishab* which is based on the assumption that the nature remains the same or until there is evidence that changes it. On *istishab* The scholars have different opinions on this. *Shafi'iyah* and *Hanabilah* scholars absolutely accept it as a *shariah* proposition. Meanwhile, *Hanafiyyah* and *Malikiyyah* scholars argue that *istishab* cannot be used as the basis for a new law but can only be used as a rejection of a new law. For example, a person is considered to be alive until the person is declared dead or if a person feels stomach ache in the middle of prayer, then that person may not cancel the prayer until there is evidence of the prayer being canceled, for example a smell or voice. (Ridwan, 2011, p. 10)

- d. The Prosperity of *Istishab*

Ushul fiqh scholars say that actually *istishab* is the final place where *fatwa* is circulated, namely knowing a law that has been established for him as long as there is no argument that changes it. A living human being is still subject to life and management of his life until there is evidence of his death. (Rahmad Syafe'i, 2007, p. 99)

Shaykh Abu Zahra emphasized that the ulama agree that there are three forms of *istishab*, namely *Istishabal-ibahahal-asliyyah*, *Istishabal baraahasliyyah* and *Istishabal-hukm* which can be used as a legal basis. Meanwhile, scholars have different opinions regarding the fourth *istishab Istishab al-wasf*. *Istishab al-wasf* is grouped into two opinions, namely first, Malikiyah, Shafiiyah scholars such as al-Muzani, al-Sairafi, Imam al-Haramain, al-Ghazali and Hanabilah explain that *istishab al-wasf* is used as a complete proof, both giving rise to new laws and maintaining laws. which has existed. For example, if someone has disappeared or whose whereabouts are unknown, that person is still considered to be alive and has rights such as the right to inherit property. (Rambe, 2022, p. 7)

The Hanafiyah and Malikiyah ulama have an opinion regarding *Istishab al-wasf* can only be used to maintain old laws but not to create new laws. For example, if a person disappears, he will still have the status of husband regarding his wife and the assets that belong to her. If the heir dies, the rate of distribution of the assets must be suspended. Meanwhile, the law on people who are *mafqud* it is decided by the court that the person is declared dead.

According to 'Abd al-Wahhab's view Khallaf, rejection of scholars regarding *Istishab al-wasf* only refers to speculative assumptions, not facts. Judicial institutions have implemented the *istishab* method for making decisions on cases. For example, judges decide ownership of buildings or land based on authentic deed evidence that has been ratified by the land agency. (Rambe, 2021, p. 10)

Some Usuliyyah ulama accept *istishab* as a legal argument. Establish

istishab as the final proposition if no other proposition is found that explains the law. This relies on existing legal facts and will always move dynamically according to the dynamics of society. (Ridwan, 2011, p. 5) The majority of Shafi'i, Maliki and Hanbali scholars differ in their opinions regarding the value of the proof of *istishab*. To strengthen the views they put forward, they use the Koran, hadith, *ijma'* and reason. As in the following letter al-an'am: 145. Whit meaning: "Say: I have not found in the revelation that was revealed to me, anything that is forbidden for anyone who wants to eat it, unless the food is carrion, or flowing blood or the flesh of swine because indeed all of that is dirty - or an animal slaughtered in the name of someone other than Allah. . Whoever is in a situation of necessity, and he does not want it and does not (nor) exceed the limits, then indeed your Lord is Forgiving, Most Merciful." (Qs al-An'am: 145) (Indonesian Ministry of Religion, 2013, p. 231).

2. Auction Buying and Selling

The system of buying and selling by auction in Indonesia has been going on for a long time. This regulation has been in effect since 1 April 1908 which is regulated in article 1 of the auction regulations which states the regulations for sales in public as follows " auctions and sales of goods held in public with increasing price offers with approval of increasing prices or with price registration or people who are invited or have previously been notified about the auction or sale" .

In muamalah transactions, buying and selling auctions is known as selling goods in public with the highest bid. Islam gives all people freedom to carry out various kinds of transactions to achieve the pleasure and blessings of Allah SWT.

a. Auction System

Based on The auction bidding technique is divided into two systems, including:

1) Auction system with verbal bids

This system is divided into several types, namely auctions with ascending verbal bids and auctions with descending bids. At the first auction, one of the people appointed as the spokesperson states the price of an item to be auctioned starting with the lowest price with a bargaining system with potential buyers until the highest price. Meanwhile, what is meant by an auction is with descending price offers. One of the spokespeople begins bidding with the highest price on an auction item. If there are no takers for the offer, the price will be lowered continuously until one of the takers feels interested.

2) Auction System with written bids.

This system using a file given to prospective buyers. The first thing that must be done is that the auctioneer distributes the offer letter that has been provided by the seller, then prospective buyers fill in all the requirements and prices given by the buyer. The highest price will be the owner of the item being auctioned, if two prices are the same then a draw will be held among potential buyers as the winner of the auction.

b. Harmony and an Auction Terms

The auction pillars consist of:

- a. Transactions are carried out by legally competent parties on a consensual basis.
- b. Auction objects must be halal and useful .
- c. Clarity to auction items .
- d. Willingness hand over the goods from the seller .
- e. Do not use actions that lead to bribery or anything else.

f. Clarity regarding the mutually agreed price .

The auction conditions are:

- 1) Evidence from the auction applicant
 - 2) Proof ownership towards goods .
 - 3) Circumstances physique from the item.
- c. Buying and Selling Auctions from an Islamic Perspective

Auction buying and selling (*muzayyadah*) is permitted in Islamic law. (Khoenisa, 2019, p. 34) Surah Al-Baqarah verse 275 regarding buying and selling can be *istishab* namely, Allah has permitted buying and selling and forbidden usury, this will remain in effect until there is a verse in the Qur'an which explains that the law of buying and selling and the law of usury change. Nowadays, the law of buying and selling remains halal for all humans and usury remains haram.

Surah An-Nisa verse 29 is a prohibition against consuming other people's wealth through vanity. This prohibition will continue to apply to everyone until there is a legal basis explaining that the prohibition on eating another's property has changed. Furthermore , commerce is carried out on the basis of mutual consent. The connection between *istishab* and the an-nisa letter is that the obligation to carry out buying and selling transactions on a consensual basis will remain valid until a legal basis is found which explains that buying and selling can be carried out under compulsion.

Islam allows buying and selling halal goods by auction or what is called *bai' muzayadah* . Narrated from 'Abdurrahman bin Syumsyah said that he had heard 'Uqbah bin Amir ra make the speech above mi m bar, he said, truly Rasulullah SAW said ; " A believer is the brother of

another believer, so it is not halal for a believer to buy something that his brother is bidding on and it is not halal to propose to his brother until he leaves (first) . (HR. Muslim). (At-Tirmidhi, 217)

This hadith can be accepted , namely, the hadith explains the prohibition on haggling over goods that are being haggled by relatives. In auction buying and selling, what is said to be prohibited is if after the auction closes an item and the item becomes the property of another person at a price that has been agreed upon by the parties in advance and is then offered by another person at a higher price, then this is not permitted. So someone appointed as the spokesperson for the auction sale and purchase is not allowed to accept the offer given even at a higher price.

CONCLUSION

Istishab is establishing the law by continuing to enforce existing and future laws in accordance with the laws that were in effect at the previous time. Auction buying and selling is a bargaining activity in sales represented by someone as a spokesperson in product sales. This activity is carried out by certain parties or people who receive an invitation to the auction so that the items to be auctioned are auctioned has a high nominal or price.

Auction buying and selling is considered valid by the parties as long as the parties fulfill the harmony and conditions of auction buying and selling, but this activity is considered invalid if the transaction does not meet the harmony and syara'. Based on the rules of istishab, buying and selling at auction is legally permissible.

This rule means that the origin of the muamalah law is permissible until there is an argument that changes it. Auction buying and selling is permitted as long as it is mutually beneficial for the parties. Auction

buying and selling remains halal in any situation and condition until a new law is discovered that can change the old law.

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