

ANALYSIS OF BUYING AND SELLING MUSICAL INSTRUMENTS IN PERSPECTIVE OF MUAMALAH FIQH (Analysis of the Thought of Ibn Ḥazm Al-Andalusī)

Iswandi Saputra^{1*}, Mutiara Fahmi²

^{1,2} Universitas Islam Negeri Ar-Raniry Banda Aceh

*Email: 210102278@student.ar-raniry.ac.id

Abstract

This article discusses the law of buying and selling musical instruments from the perspective of muamalah jurisprudence through the analysis of the thought of Ibn Ḥazm al-Zāhirī al-Andalusī. The focus of the study is directed to the legal arguments used by Ibn Ḥazm in determining the transactional abilities of musical instruments. This research employs a conceptually based qualitative method, drawing on a type of normative legal research through a literature study of classical and contemporary fiqh literature. The results of the analysis show that Ibn Ḥazm allowed the buying and selling of musical instruments because no evidence of qat'ī prohibited them, and because musical instruments were created by Allah, which were not explicitly mentioned as haram objects. In the context of modern fiqh, musical instruments have undergone a functional transformation from entertainment to a legitimate and multifunctional economic commodity. This study shows that there is a diversity of scholars' views on the law of buying and selling musical instruments. Ibn Ḥazm's view that it can be used as an alternative thought in contemporary muamalah jurisprudence, especially in responding to the transformation of the function of musical instruments in modern society.

Keywords: *Fiqh Muamalah, Buying and Selling, Musical Instruments, Ibn Ḥazm's Thoughts.*

Abstrak

Artikel ini membahas hukum jual beli alat musik dalam perspektif fikih muamalah melalui analisis pemikiran Ibn Ḥazm al-Zāhiri al-Andalusī. Fokus kajian diarahkan pada argumentasi hukum yang digunakan Ibn Ḥazm dalam menetapkan kebolehan transaksi alat musik. Penelitian ini menggunakan metode kualitatif berbasis konseptual dengan jenis penelitian hukum normatif, melalui studi pustaka terhadap literatur fikih klasik dan kontemporer. Hasil analisis menunjukkan bahwa Ibn Ḥazm membolehkan jual beli alat musik karena tidak adanya dalil qat'ī yang mengharamkannya, serta karena alat musik termasuk ciptaan Allah yang tidak disebutkan secara eksplisit sebagai benda haram. Dalam konteks fikih modern, alat musik telah mengalami transformasi fungsi dari hiburan menjadi komoditas ekonomi yang sah dan multifungsi. Penelitian ini menunjukkan bahwa terdapat keragaman pandangan ulama mengenai hukum jual beli alat musik. Pandangan Ibn Ḥazm yang membolehkan dapat dijadikan alternatif pemikiran dalam fikih muamalah kontemporer, khususnya dalam merespons transformasi fungsi alat musik di tengah masyarakat modern.

Keywords: *Fikih Muamalah, Jual Beli, Alat Musik, Pemikiran Ibn Ḥazm.*

INTRODUCTION

The concept of buying and selling is recognized as legal in Islam. Islam allows buying and selling as part of Islam's way of reaffirming the activities and activities of pre-Islamic communities who carry out the practice of buying and selling who have been accustomed to exchanging ownership in the daily muamalah contract. On that basis, through the verses of the Quran, it is actually determined that it is halal to carry out the practice of buying and selling as a way for the Muslim community to get legal ownership of property that is recognized in accordance with sharia. Therefore, buying and selling in Islamic law is recognized (legalized) in the Qur'an, hadith and ijmak ulama.¹ Referring to these postulations, the fukaha (jurists) agree that the original law of buying and selling is mubah or permissible.²

Buying and selling is one of the important forms of Islamic muamalah in human life. This buying and selling is included in muamalah *madiyah* (related to material aspects).³ Therefore, every human being, male or female, is inseparable from the practice of buying and selling, both on a large and small scale, at the level

¹ Mardani, *Fiqh Ekonomi Syariah: Fiqh Muamalah*, Cet. 5, (Jakarta: Kencana Prenada Media Group, 2019), p. 103.

² Abdul Rahman Ghazaly, Ghufroon Ihsan, and Sapiudin Shidiq, *Fiqh Muamalat*, 1st, Cet. 4 ed. (Jakarta: Kencana Prenada Media Group, 2015), p. 70.

³ Nur Baety Sofyan, "Analisa Hukum Hadis-Hadis Jual Beli (Al-Buyu') Melalui Metode Takhrij Al-Hadis," *Al-Iqtishadiyah: Jurnal Hukum Ekonomi Syariah* Vol. 4, no. 2 (December 28, 2023): VOL. 4, 96-117, doi:10.22373/iqtishadiyah.v4i2.4012.

of individuals, communities, and even between countries. Likewise, a person who wants to run a business, then attention should pay paid to the licensing of the product so that the person who buys it is more trustworthy, safe and legal in the law.⁴

The legality of buying and selling in Islam is not understood for all types of buying and selling. This means that even though the law of origin of buying and selling is permissible (mubah), there are forms of buying and selling that are prohibited in Islam, both because of the object of the goods being traded, and because the conditions of the subject who carries out the transaction are not met. In this case, the requirements for the subject of buying and selling include sellers and buyers who must be sensible, puberty, and legally capable so that they are able to understand the legal consequences of the contract made. Buying and selling is illegal when it are done by a crazy person, a young child who has not yet made sense, or a forced party. In addition, an important condition that must be met is the willingness (tarāḍin) of both parties without coercion. Islam determines several legal limits, procedures, and procedural requirements in accordance with sharia principles.

In general, many scholars are of the opinion that there are four pillars and elements of buying and selling, namely:⁵

- a. A person who has a contract (*muta'āqidain* / *'āqidān*) or a seller and a buyer.
- b. Statement of delivery and receipt of goods (*sighat*) *ijab* and *qabul*.
- c. The object of the goods that are traded (*ma'qūd 'alaih*).⁶
- d. The value or price agreed upon in return (*al-šaman*).⁷

Harmony here is part of the essence of things.⁸ So, the four pillars of buying and selling are an inseparable part, so that the essence of buying and selling can be applied and implemented. If only one of these *parts of the rukn* is not fulfilled, then

⁴ Hendra Syauidayan Zahiddin, "Hukum Jual Beli Tanpa Izin Edar Produk Minumann Moringa Cheong Di Kota Banda Aceh Menurut Hukum Islam," *Al-Mudharabah: Jurnal Ekonomi dan Keuangan Syariah* Vol. 3, no. 2 (December 4, 2022): VOL. 3, 246-68, doi:10.22373/al-mudharabah.v3i2.5652.

⁵ Gibtiah, *Fikih Kontemporer*, 1st, Cet. 2 ed. (Jakarta: Kencana Prenada Media Group, 2018), hlm. 121; Ghazaly, Ihsan, and Shidiq, *Fiqh Muamalat...*, hlm. 71; Muh. Hambali, *Panduan Muslim Kaffah Sehari-Hari Dari Kandungan Hingga Kematian* (Yogyakarta: Laksana, 2017),), pp. 371-372.

⁶ Abū Bakar Jābir Al-Jazā'irī, *Minhāj Al-Muslim*, (Terj: Syaiful, dkk) (Surakarta: Ziyad Books, 2018), p. 491.

⁷ Abd. Shomad, *Hukum Islam: Penormaan Prinsip Syariah Dalam Hukum Indonesia*, Edisi Revisi (Jakarta: Kencana Prenada Media Group, 2017), p. 155.

⁸ Abd Al-Wahhāb Khallāf, *Ilm Uṣūl Fiqh*, First Edition, (Terj: Halimuddin), Cet. 5, (Jakarta: Rineka Cipta, 2005), p. 207.

the sale and purchase cannot be carried out or is invalid.⁹ In this position, an important aspect to be explored further related to the problem in this article is the object of buying and selling or *ma'qūd 'alaih*, which is a property or object that is sold by the seller to be accepted by the buyer.

One of the interesting things to comment on here is the objects of goods that are traded. The scholars have a restriction that in the object of goods that are traded, it is required that it must not be of something haram, such as pigs, khamar, and others. A Muslim, in carrying out trade circulation, is not allowed to make goods such as khamar, pigs, carcasses, and other haram objects as commodities for goods to be traded.¹⁰ In addition to goods that are clearly illegal, there are also objects of sale and purchase that are still debated among scholars. One of them is a musical instrument, which is considered haram by some scholars because it has the potential to be negligent and become a means of immorality, but by some others it is considered mubah as long as it is not used for purposes contrary to sharia.

The development of musical instruments today has reached a very advanced stage. The production of musical instruments such as guitars, flutes, drums, violins, and other musical instruments has been carried out on a large scale. Even the production of musical instruments is carried out continuously, used as a domestic or home business as well as in public. The reality of the development of musical instruments and creations in the field of musical instruments today certainly cannot be separated from the aspect of Islamic law. One of them is related to how Islam responds to the practice of buying or trading musical instruments as one of the businesses to make a profit, and to the law.

Classical scholars have discussed this issue before, but in the final conclusion on the law of buying and selling musical instruments, there seems to be still a significant difference of opinion. The majority of fukaha/ulama prohibit the sale of musical instruments. The reason is that this musical instrument is a medium for committing immorality and has no benefit, and even brings danger.¹¹ According to Muḥammad bin Ḥasan and Abū Yūsuf (scholars of the Ḥanafiah), the buying and selling of musical instruments is not valid.¹² The Mālikī school is of the opinion that

⁹Especially for the Scholars Ḥanafī, only mentioning one pillar of buying and selling, namely *Ijab* and *Sāo Paulo*, which indicates the exchange of ownership between the seller and the buyer, either by word or deed, Al-Jazirī, *Fiqh 'Alah Al-Mazāhib...*, p. 275.

¹⁰Yūsuf Al-Qaraḍāwī, *Madkhal Li Ma'rifah Al-Islām*, (Terj: Setiawan Budi Utomo), Cet. 5, (Jakarta: Pustaka Al-Kautsar, 2010), p. 108.

¹¹Andri Soemitra, *Hukum Ekonomi Syariah Dan Fiqh Mu'amalah Di Lembaga Keuangan Dan Bisnis Kontemporer* (Jakarta: Kencana Prenada Media Group, 2019), p. 78.

¹²Wahbah Al-Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuh*, Volume 5, (Terj: Abdul Hayyie al-Kattani, et al), (Jakarta: Gema Insani Press, 2012), p. 37.

the buying and selling of musical instruments is not allowed; it is not legal.¹³ The Shafi'i school also argues that the law of buying and selling musical instruments is null and void, and the law is haram.¹⁴ That way, it can be known that the number of scholars of the school prohibits the buying and selling of musical instruments and if it is still carried out, the sale is null and void.

According to a small number of other scholars, they actually view that buying and selling musical instruments is allowed. This view was put forward by the scholars of Zāhiriyyah represented by Ibn Ḥazm Al-Andalusī, a scholar from Spain who is the focus of this research. According to Ibn Ḥazm, trading chess instruments, musical instruments such as flutes, violins, harps and other musical instruments are all halal for sale. Therefore, for Ibn Ḥazm, whoever destroys the musical instrument is obliged to bear the loss.¹⁵ As far as tracing the basis of his argument, Ibn Ḥazm considers it lawful and permissible to use musical instruments and trade them because musical instruments do not lead to disobedience and neglect of the heart.¹⁶

Ibn Ḥazm's views are also relevant to be considered in the context of modern jurisprudence, especially when business and trade transactions are increasingly complex and follow the principles of justice, transparency, and social benefit. The development of the musical instrument industry, which is now mass production, open distribution, and its use in education, entertainment, and even some cultural activities of the community, has opened up a new space for discussion about its legal status in Islam. This condition shows that the study of the legality of buying and selling musical instruments is not only important from the theoretical side of classical fiqh, but also has practical relevance in dealing with modern social, cultural, and technological dynamics. An examination of Ibn Ḥazm's opinion provides a new direction for this research, namely how his thoughts can be used as a basis for analysis in reconsidering the legality of musical instrument transactions from the perspective of fiqh muamalah.

Departing from this legal view, it is interesting to further examine the legal status of buying and selling musical instruments in the fiqh of muamalah. This is important because, on the one hand, the law of origin of muamalah is permissible, but on the other hand, there are different views of scholars regarding the ability to trade musical instruments. The development of the modern musical instrument

¹³Muḥammad bin Aḥmad bin Juzai Al-Gharnāṭī, *Al-Qawānīn Al-Fiqhiyyah Fī Talkhīṣ Maḏhab Al-Mālikiyyah* (Beirut: Dār Ibn Ḥazm, 2013), p. 419.

¹⁴Taqiyuddin Abi Bakr bin Muhammad Al-Hushaini Al-Shafi'i, *Kifayatul Akhyar Fi Ghayatul Ikhtishar*, (Beirut: Dār Al-Kutb Al-'Ilmiyyah, 1971), p. 330.

¹⁵Ibn Ḥazm, *Al-Muḥallā*, (Terj: Katur Suhardi, et al), (Jakarta: Pustaka Azzam, 2014), Volume 11, p. 243.

¹⁶Ibn Ḥazm, *Rasā'il Ibn Ḥazm Al-Andalusī*, Juz 1, (Tahqiq: Ihsan Abbas), (Beirut: Dar Al-Fikr, 1998), pp. 417 and 430-432.

industry, which includes mass production, wide distribution, and its use in various aspects of people's lives, increasingly demands clarity of law in Islam. This research is directed to examine the legality of buying and selling musical instruments from the perspective of muamalah fiqh, both in terms of evidence, legal basis, and relevance to the thought of Ibn Ḥazm Al-Andalusī.

RESEARCH METHODS

Method is a certain method, while research is a scientific activity related to analysis, which is carried out methodologically, systematically and consistently.¹⁷ In this article, the approach used is a conceptually-based qualitative approach, namely an analysis of the concept of sharia economic law and the doctrine of experts.¹⁸ The type is normative legal research, which is based on *descriptive* analysis or *library research*. To dig up information related to the law of buying and selling musical instruments according to Ibn Ḥazm Al-Zāhirī Al-Andalusī, according to the jurisprudence of muamalah. In this case, literature data is needed to explore the opinions of scholars dug up from fiqh literature. In the process, a process of analysis of references is carried out, trying to find or collect information, readings from various sources.¹⁹ The data sources needed in this study are divided into three categories of legal materials: First, primary legal materials are the main data of research materials that can provide direct information related to the legal provisions of buying and selling musical instruments according to Ibn Ḥazm Al-Zāhirī Al-Andalusī, according to the fiqh of muamalah. such as the book *al-Muḥallā bi al-Ātsār*. Second, secondary legal material, which is data that functions as an addition. Third, tertiary legal materials are in the form of complementary materials obtained from various sources, such as dictionaries and articles.²⁰

DISCUSSION

2. The Object of Akad in Buying and Selling According to Muamalah Fiqh

In fiqh muamalah, the concept of the object of the contract in buying and selling is a fundamental element that determines whether a transaction is valid or not. The object of akad or *ma'qūd 'alaiḥ*, refers to the goods or services that are the subject of exchange between the seller and the buyer, and then normatively, the object must meet certain conditions such as a clear physical existence and be in the

¹⁷Beni Ahmad Saebani, *Metode Penelitian* (Bandung: Pustaka Setia, 2009), p. 13.

¹⁸Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. 13, (Jakarta: Kencana Prenada Media Group, 2017), pp. 133-134.

¹⁹Saebani, *Metode Penelitian...*, p. 75.

²⁰*Ibid.*, p. 158.

tradable category, legal ownership and free from the elements of *gharar* (uncertainty) and *riba* (unauthorized addition).²¹ In the framework of Islamic law, the validity of the object of the contract is not only seen from the material aspect, but also from its conformity with sharia principles that emphasize justice, transparency, and benefits. Understanding the characteristics and limitations of the object of the contract is crucial in ensuring that the practice of buying and selling takes place ethically, according to the guidance of Islamic law. This study is not only relevant in a normative context, but also important in responding to the increasingly complex and diverse dynamics of contemporary transactions.

The conditions for the object of the contract in the sale and purchase that must be met are as follows:

1. Halal and holy goods are not legal to trade goods that are prohibited by sharia, such as *khamar*, pigs, carcasses, or other unclean goods.
2. According to sharia, goods must have benefits that are justified by sharia, must not be goods that are harmful or used for immorality.
3. Owned or controlled by the seller, the object of the contract must be in the seller's legal possession or possession, so it is not allowed to sell the goods belonging to others without permission.
4. Transferable, the goods must be possible to be handed over to the buyer, so it is not legal to sell something impossible to hand over.
5. Clearly, the nature and quantity, the object must be known in detail by both parties, both its type, size, quality, and quantity, to avoid *gharar* (ambiguity).
6. Not goods that are still in possession (*ma'dūm*), it is not permissible to sell something that does not exist or does not yet exist, except in certain permissible contracts such as *salam* and *istishna'*.²²

According to *the Indonesian Dictionary*, buying and selling means a binding agreement between the seller, namely the party who delivers the goods and the buyer as the party who pays the price of the goods sold, or called selling and buying.²³ Buying and selling is often referred to as *sale*, *trade*, which is an exchange between property and property, with the agreement between both parties.²⁴ The

²¹Muhammad Al-Zuhaili, *Al-Mu'tamad Fī Al-Fiqh Al-Shafi'i*, Volume 3, (Terj: Muhtadi), (Jakarta: Gema Insani Press, 2018), p. 24.

²² Muhammad Romli, "Konsep Syarat Sah Akad Dalam Hukum Islam Dan Syarat Sah Perjanjian Dalam Pasal 1320 KUH Perdata," *Cahkim* 17, no. 2 (2021): 178-185, https://jurnal.iainambon.ac.id/index.php/THK/article/view/2364/pdf?utm_source=chatgpt.com

²³Language Research and Development Team, *Kamus Besar Bahasa Indonesia*, Latest Ed. (Jakarta: Pustaka Baru Press, 2024), p. 308.

²⁴John M. Echols and Hassan Shadily, *English English Dictionary*, Third Edition, (Jakarta: Gramedia Pustaka Utama, 1992), p. 247; J.M. Cowan, *Arabic English Dictionary*, Third Ed. (New York:

term buying and selling in Islam is called *bai'*, *lughawi* literally means the exchange of goods based on the law, meaning binding and transferring ownership. Buying and selling or *al-bai'*, is a muamalah that forms a legal relationship, so that in the Islamic tradition, *al-bai'* is one of the several causes of the transfer of ownership.²⁵

In terminology, buying and selling is directed to the exchange of property as the object of a contract that is carried out based on mutual consent,²⁶ or the act of transferring property rights in exchange for a permitted exchange.²⁷ According to Al-Jazirī's account, there are two meanings of buying and selling, both in general and special meanings. The general definition of buying and selling is all kinds of buying and selling freely according to the customs of the local community, and buying and selling in a special meaning is any form of buying and selling, including *salam* contracts, *sharaf*, and other contracts.²⁸

To complete the understanding of the concept of buying and selling in Islamic law, it is necessary to present the opinions of each scholar of the following sects:²⁹

1. The scholars of the Ḥanafī school define buying and selling as the exchange (*al-mubādalah*) of property for property (*al-māl bi al-māl*) with the element of mutual willingness or pleasure.³⁰ The affirmation of mutual willingness and pleasure (*'an tarāḍin*) here is important because it is not called buying and selling when there is coercion.
2. The scholars of the Mālikī school define buying and selling as a reciprocal contract (*akad mu'āwaḍah*) against other than benefits, nor based on enjoying pleasure (*mut'ah lazzah*). In this definition, it is limited that the *ijārah contract* is not a sale and purchase, because it contains benefits, while in buying and selling it is carried out for other benefits (*ghairu manfa'ah*). Meanwhile, the marriage contract is also not called buying and selling, because it is not done based on a contract to enjoy pleasure (*ghairu mut'ah lazzah*).³¹

Spoken Language Services, 1976), p. 86; Dīb Al-Khaḍrāwī, *Qāmūs Al-Alfāz Al-Islāmiyyah: 'Arabī Inkilizī*, (Beirut: Al-Yamamah, 2004), p. 60.

²⁵The causes of ownership, in addition to going through the buying and selling process, are also through waqf, grants, inheritances, and other causes. See, *Fiqh Ekonomi Syariah...*, pp. 66-67; Ghazaly, Ihsan, and Shidiq, *Fiqh Muamalat...*, pp. 46-49.

²⁶Ghazaly, Ihsan, and Shidiq, *Fiqh Muamalat...*, p. 67.

²⁷Mardani, *Sharia Economic Fiqh...*, p. 101.

²⁸Abdurrahmān Al-Jazirī, *Fiqh 'Al-Al-Mazāhib Al-Arba' Ah*, (Terj: Faisal Saleh), Cet. 2 (Jakarta: Pustaka Al-Kautsar, 2017), p. 266.

²⁹Al-Jazirī, *Fiqh 'Alah Al-Mazāhib...*, pp. 263-266.

³⁰Alā'uddīn Abī Bakr bin Mas'ūd Al-Kāsānī, *Badā'i Al-Ṣanā'i Fī Tartīb Al-Syarā'i* (Beirut: Dār Al-Kutb Al-Ilmiyyah, 2010), p. 526.

³¹Muḥammad Urfah Al-Dusūqī, *Hāsiyyah Al-Dusūqī Al-Al-Syarḥ Al-Kabīr*, Juz 3, (Beirut: Dār Iḥyā' al-Kutb al-Arabiyyah, 1991), p. 2.

3. According to scholars of the Shafi'i madhhab, buying and selling (*al-bay'*) is not understood as ownership itself, but as a contract that is the cause of the transfer of ownership. Buying and selling is an agreement to exchange property for the purpose of acquiring ownership (*mu'āwadah māliyah*). This definition emphasizes that ownership is born after the existence of a valid contract, not before the contract occurs. In the perspective of the Shafi'i madhhab, the essence of buying and selling is the process of a contract that is carried out legally in accordance with the sharia, so that ownership of goods or property can move from the seller to the buyer.³²
4. Scholars of the Hambani madhhab, buying and selling is exchanging goods for goods to become private property and because there is a transfer of ownership. Derived from the term *ba'a*, it means to reach out to each other, because both sellers and buyers reach out to give and receive goods.³³

Referring to some of the definitions above, it is understood that the concept of carrying out buying and selling has at least five aspects, namely:

- a. The party that carries out the practice of buying and selling, namely, between the seller and the buyer.
- b. The practice of exchanging assets.
- c. The property that is exchanged is either in the form of goods for goods (barter), or goods for money.
- d. Be willing to help each other.
- e. The object of the property that is exchanged becomes the property of each party.

Soemitra stated that the purpose of buying and selling is to exchange goods for goods (barter), or money for goods based on mutual consent which involves the activity of buying and selling property through a process of *ijab* and *kabul* of everything that is owned and can be used based on custom (*'urf*) and is not prohibited by Islamic law, namely with the consequence of the release of ownership rights from one party to the other.³⁴

The object of the sale and purchase contract (*ma'qūd 'alaih*) must meet certain conditions so that it is legally exchanged. According to Sayyid Sābiq, an item that is pledged requires six things: 1) The purity of the goods. 2) Utility of goods. 3)

³²Abī Ishāq Al-Sirāzī, *Al-Muḥaḥḥab Fī Fiqh Al-Imām Al-Shāfi'i*, Juz 3 (Damascus: Dār Al-Qalam, 1996), p. 9.

³³Ibn Qudāmah, *Al-Mughnī Syarḥ Al-Kabīr*, (Terj: Katur Suhardi, et al), (Jakarta: Pustaka Azzam, 2009), p. 293.

³⁴Soemitra, *Economic Law...*, p. 64.

Ownership of the person who has a contract with the object. 4) Ability to deliver goods. 5) Knowledge of the goods, and 6) The acceptance of the goods sold.³⁵

From the conditions of this contract, the object or goods that become *ma'qūd 'alaih* must come from a sacred item, and the item has benefits. Thus, the scholars agree that goods that are dirty and have no benefit are forbidden to be used as the object of a contract. Goods that are considered useful according to sharia here are goods that are useful, which according to sharia can also be traded. In addition, the object of the goods being traded belonged to the seller when the transaction was made. For this reason, sellers are not authorized to sell goods that do not belong to them. The seller can hand over the goods that are traded so that the buying and selling of stolen goods is not legal, this is because even though the seller owns it, he cannot hand it over to the buyer.³⁶

3. Map of Scholars' Opinions on the Law of Buying and Selling Musical Instruments

The scholars are still different in responding to the issue of music law and the law of buying and selling musical instruments as *ma'qūd 'alaih* in the purchase and sale contract. In this context, it can be mapped into three groups of scholars, namely:

- a. The scholars who absolutely prohibit and prohibit the buying and selling of musical instruments, among them are Abu Malik Kamal bin Sayyid Salim, Imam Al-Rāfi'ī from the Al-Shafi'ī, ³⁷ because all musical instruments such as tambourine and others contain futility and no benefit.³⁸
- b. Scholars who strictly prohibit and prohibit are not absolutely, and only musical instruments are allowed to play musical instruments such as *duffs*. Therefore, in addition to that, it is forbidden to be a *jumhur*. The buying and selling of toys and musical instruments is included in the objects of goods that are prohibited or prohibited by the majority of scholars because there are vices in them, there is no element of benefit in these goods, and even contains dangers that have been known by the will.³⁹

In the book *Mausū'ah Al-Fiqhiyyah*, it has been detailed about the law of buying and selling musical instruments. It is said that the number of scholars

³⁵Sayyid Sābiq, *Fiqh Al-Sunnah*, (Terj: Abu Aulia & Abu Syauqina), (Jakarta: Republika, 2018), p. 9.

³⁶Al-Jazirī, *Fiqh 'Alah Al-Mazāhib...*, p. 289.

³⁷Abd Al-'Azīz Muḥammad 'Azzam, *Nizām Al-Mu'āmalāt fī Al-Fiqh Al-Islāmī*, (Terj: Nadirsyah Hawari), (Jakarta: Amzah, 2022), p. 97.

³⁸Abu Malik Kamal bin Sayyid Salim, *Saheeh Fiqh Al-Sunnah wa Adillatuh wa Taudhih Mazahib Al-A'imma*, (Cairo: Maktabah Taufiqiyyah, 2003), p. 400.

³⁹Al-Zuhailī, *Al-Fiqh Al-Islāmī...*, p. 167; Soemitra, *Economic Law...*, p. 78.

among the Ḥanafī,⁴⁰ Mālīkī,⁴¹ Shafī'ī,⁴² and Ḥanbalī, is ⁴³ haram for music and the buying and selling of musical instruments.⁴⁴ Muhammad Ibn Hasan Al-Shaibani and Abu Yusuf from the Ḥanafī strictly forbade music and the buying and selling of musical instruments, because they bring damage, no benefit, and no value.⁴⁵

On top of entertainment instruments and musical instruments, what is haram to be traded are *tanbur*, *mizmar*, *shababa* (i.e. *na'i*), *ud*, *sanj*, and *rabab*. In this view, such musical instruments are generally made for sinful acts, so their manufacture is void and also their sale is illegal, just like liquor. The Mālīkī school stipulates that the condition of the object to be traded is that it must be useful according to *shari'i*, even if it is a little like land, and if the benefits are not allowed such as entertainment equipment. In the Shafī'ī school, it is decided that prohibited entertainment/musical instruments are special musical instruments intended for sin, but in addition to sin, they are permissible. Likewise, there is no benefit according to sharia for musical instruments. The scholars of Ḥanbalī decided that damaging these tools did not require compensation, and they were considered like inanimate objects. The ban on buying and selling musical instruments above is based on the opinion of the majority of scholars who prohibit musical instruments and entertainment instruments. Therefore, selling musical instruments is also prohibited.

- c. Some scholars of the school actually allow the buying and selling of musical instruments, including Abū Ḥanīfah, because musical instruments can be used.⁴⁶ In this aspect, Abū Ḥanīfah, although he was the founder of the Ḥanafī school, the majority of scholars of the Ḥanafī school forbade it. However, Abū Ḥanīfah (Imam Ḥanafī) himself allowed it. Another argument is that, as stated by Sayyid Sābiq, singing is permissible in certain places; the singing that is intended to obtain the benefits of mubah is halal and the law of listening to mubah. Therefore, buying and selling musical instruments is also okay because these instruments have a price. Examples of halal singing are the songs of women to comfort their children, the songs of workers while working

⁴⁰Al-Khashan, *Badā'i Al-Ṣanā'i...*, p. 144.

⁴¹Al-Gharnāṭī, *Al-Qawānīn Al-Fiqhiyyah Fī Talkhīṣ Mazhab Al-Mālīkiyyah*, p. 164.

⁴²Al-Hushaini Al-Shafī'ī, *Kifāyatul Akhyar Fī Ghayatul Ikhtishar*, p. 366.

⁴³Ibn Yūnus Al-Buhūṭī, *Kasyyāf Al-Qinā'* (Beirut: Dār Al-Kutb Al-'Ilmiyyah, 1971), p. 155.

⁴⁴Wizārah Al-Auqāf, *Mawsū'ah al-Fiqhiyyah* (Kuwait: Wizārah Al-Auqāf, 1995), p. 157.

⁴⁵ Al-Zuhailī, *Al-Fiqh Al-Islāmī...*, pp. 37, 62 and 167.

⁴⁶ Al-Zuhailī, *Al-Fiqh Al-Islāmī...*, p. 37.

to relieve their fatigue, to build cooperation among them, songs when they have pleasure to celebrate, songs on holidays, songs to motivate jihad.⁴⁷

Imam Abu Hamid al-Ghazālī emphasized that the buying and selling of musical instruments in general is not prohibited, as there is no explicit shari'a evidence against it, except for instruments such as flutes and guitars, which at that time connoted disobedience and a life of drunkenness with each other. This is not a prohibition on the beauty of sound, but merely a form of prerogative over the social effects it causes. Al-Ghazālī asserts that the law of an action is not fixed, but is determined by *the maṣlaḥa maqāṣidī* (purpose and cause). If a musical instrument is used in a context that is not contrary to the Shari'a, then it is still mubah (permissible). This approach reflects the wisdom and flexibility of Islamic law, as well as its relevance in the modern context where the media of music can function as a means of positive da'wah or art.⁴⁸

Wahbah al-Zuhaylī in his work *al-Fiqh al-Islāmī wa Adillatuh* emphasized that the buying and selling of goods that lead to disobedience, including musical instruments, is illegal. However, his view does not rule out the possibility of such an instrument being used in the framework of maslahat, such as art education or therapy that does not neglect religious obligations. He placed the law of buying and selling musical instruments in the framework of *saddu al-dzari'ah* (prevention of things that lead to evil), but still gave room for the contextualization of the law according to its purpose and impact.⁴⁹

Based on the above opinion, it is understood that the scholars are not cohesive in determining the legal value of buying and selling musical instruments. Based on the above view, it can be understood that the law of buying and selling musical instruments from the perspective of muamalah jurisprudence is a complex issue, and depends on the jurisprudence approach used by scholars.

The first opinion that is absolutely haram is based on the assumption that musical instruments are objects that have no beneficial value according to *shari'i*, and even tend to lead to vanity and immorality, so that their sale is equated with haram goods such as *khamr*. This approach tends to be normative and seems to minimize considerations in the social context and the purpose of its use. Meanwhile, the second group also prohibits the buying and selling of musical instruments, but with certain exceptions, such as *duffs*, in the context of celebrations or worship. The law depends on *the ghalabat al-ẓan* (strong suspicion) of its use; if the tool tends to

⁴⁷ Sābiq, *Fiqh Al-Sunnah*, p. 12.

⁴⁸ Nur Aini, "Pemikiran Imam Abu Hamid al-Ghazali tentang alat musik dan hukum jual belinya". Skripsi, (UIN Sunan Ampel Surabaya, 2018). pp. 37-47

⁴⁹ Nur Diyaanatul 'Aliyah, "Seni Musik Dalam Islam", Thesis (UIN Sunan Ampel Surabaya, 2023), pp. 45-48

be used for immoral acts, then the law is haram and not suitable for sale. This view seems more contextual, but it is still limited by the normative framework that is dominant in classical jurisprudence.

On the other hand, the third view provides a more open reading of social reality by emphasizing that the laws of a thing, including musical instruments, are determined by the purpose of use. Figures such as Abū Ḥanīfah (classical scholar) and Sayyid Sābiq (contemporary scholar) are of the view that musical instruments have the potential for beneficial benefits in certain contexts, such as children's education, work, recreation, and *shari'i* celebrations. Therefore, if its use does not contradict sharia values, then buying and selling are also allowed.

Overall, the three views above show the epistemological dynamics in muamalah fiqh between literal, contextual, and *maqāṣidī* approaches, each of which has relevance in answering the challenges of the times. Therefore, the legal analysis of the buying and selling of musical instruments is not separated from the principles of *maṣlaḥah*, the intention of use, and also the social changes that underlie it, so that the resulting law remains adaptive and solutive in modern life.

4. Analysis of Ibn Ḥazm's View of the Law of Buying and Selling Musical Instruments and the Basis of His Legal Reasoning Method

a. Brief Profile of Ibn Ḥazm Al-Zāhirī Al-Andalusī

The name Ibn Ḥazm is familiar in the study of Islamic law. Ibn Ḥazm, one of the scholars affiliated with the madhhab al-Zāhirī.⁵⁰ In fact, it can be said that his legal opinion represents the opinion of the Al-Zāhirī madhhab itself. Ibn Ḥazm's opinions on the law (fiqh or sharia) are relatively controversial with the *mainstream opinions* of the four schools, such as Ḥanafiyah, Mālikiyyah, Syāfi'iyah, and Ḥanabilah.

Ibn Ḥazm (384-456 AH/994-1064 AD) was a scholar of Persian descent from Cordoba, Spain or Andalusia.⁵¹ Ibn Ḥazm was born into an elite-aristocratic family that had taken the political path in achieving the success of Islam.⁵² The most

⁵⁰The founder or pioneer of the Al- madhhabZāhirī is Abū Dāwud bin 'Alī bin Khalf al-Zāhirī, was one of the disciples of Imām al-Shafi'i who was arguably successful in making scientific contributions to Islam, and was relatively influential for the society of his time. *Reformasi Bermazhab: Sebuah Ikhtiah Menuju Ijtihad Sesuai Saintifik Modern*, (Jakarta: Mizan Publika, 2009), p. 33; " *Studi Islam Komprehensif*, (Jakarta: Kencana Prenada Media Group, 2015), p. 249; Gibtiah, *Fikih Kontemporer*, p. 46.

⁵¹Tahā bin Alī, *Al-Minhaj Al-Ḥadīṣī inda Al-Imām Ibn Ḥazm al-Andalusī*, (Beirut: Dār Ibn Ḥazm, 2001), p. 27.

⁵²Bahrudin, "Madzhab Rasionalis...", pp. 185-186.

prominent thing about Ibn Ḥazm was his persistence in broadcasting the literalist school among the majority of Spanish Muslims who were Mālikī.⁵³

Ibn Ḥazm's full name is Alī ibn Aḥmad ibn Sa'īd ibn Ḥazm ibn Ghālib ibn Šāliḥ ibn Khalaf bin Sa'dān bin Sufyān ibn Yazīd bin al-Fārisī al-Andalusī.⁵⁴ Ibn Ḥazm was born east of Cordova, on a Wednesday morning before sunrise, the end of the month of Ramadan 384 H (7 November 994 AD).⁵⁵ Ibn Ḥazm al-Andalusī is famous for his breadth of knowledge, both in the fields of fiqh, ushul fiqh, hadith, mustalah hadith, religious sects, as well as in the fields of history and literature.⁵⁶ He gained knowledge from many scholars. Among the scholars who taught him were: ⁵⁷ Abī Umar Aḥmad bin al-Ḥusīn, Yaḥyā bin Ma'ūd, Abī al-Khiyār Mas'ūd bin Sulaimān al-Zāhirī.⁵⁸

Ibn Ḥazm's work covers many fields, such as in the field of fiqh, fiqh proposals, hadith, religious traditions, literary history, genealogy and apologetic works totalling approximately 400 volumes.⁵⁹ Ibn Ḥazm's works cannot be known to all, as most of his works were destroyed by the burning of the ruler of the dynasty of al-Mu'tadid al-Qādi al-Qāsim Muhammad bin Ismāil bin ibād (1068-1091 AD). The works of Ibn Ḥazm that are still known include: *Kitab Diwān al-Shi'ri*, *Tawq al-Hamāmah fī al-Ifati wa al-Ilāf*, *al-Akhlāq wa as-Siyār fī Mudawwa an-Nufūs*.

b. Ibn Ḥazm's View on the Law of Buying and Selling Musical Instruments

Ibn Ḥazm was one of the scholars who allowed music and the buying and selling of musical instruments. For Ibn Ḥazm, the buying and selling of all musical instruments, such as wind instruments (flutes), string instruments (violins, rebab), lute (multi-stringed stringed musical instruments), and musical instruments such as guitars are all halal to be traded by the permissible transaction of buying and selling musical instruments, then there are legal consequences for people who damage other people's musical instruments. A musical instrument in Ibn Ḥazm's

⁵³Moh Bahrudin, "Madzhab Rasionalis Literalis: Kajian Atas Pemikiran Ibn Ḥazm," *Al-'Is Journal* Vol. 8, no. 2 (2011): VOL. 8, 185-96, doi:10.24042/is.v10i2.257.

⁵⁴Ibn Ḥazm, *Nabẓah Al-Kāfiyah Fī Aḥkām Uṣūluddīn* (Beirut: Dār Al-Kutb, 1985), p. 3; Abū Zahrah put it with the name: Alī bin Aḥmad bin Sa'īd bin Ḥazm bin Ghālib bin Šāliḥ son of Sufyān bin Yazīd, while the famous ones are known as Ibn Ḥazm. Muḥammad Abū Zahrah, *Ibn Ḥazm: Ḥayātuhu Time Aṣruhu, Arā'uh wa fiqhuh*, (Beirut: Dār Al-Fikr Al-'Arabī, 1954), p. 21.

⁵⁵Bahrudin, "Madzhab Rasionalis...", pp. 185-186.

⁵⁶Shaykh Aḥmad Farid, *Min A'lām Al-Salaf*, (Terj: Masturi Irham), (Jakarta: Pustaka Al-Kautsar, 2006), p. 670.

⁵⁷Ḥazm, *Nabẓah Al-Kāfiyah...*, p. 5.

⁵⁸Farid, *Min A'lām...*, p. 674.

⁵⁹Imām Al-Zāhabī, *Mukhtaṣar Siyār A'lām Al-Nubulā*, (Summary: Ibn Aqil Mūsā Al-Syarif), (Terj: Amir Hamzah, et al), Volume. 3, (Jakarta: Pustaka Azzam, 2009), p. 745.

view is an object of value to its owner. Ibn Ḥazm stated: "If anyone damages one of these musical instruments, then he must guarantee the risk of such damage."⁶⁰

Ibn Ḥazm's opinion on the halalness of buying and selling all types of musical instruments reflects a fiqh approach based on the principle of freedom of origin and the objective interpretation of the benefits of goods, in the framework of his jurisprudence known as *Ẓāhirī* (textual-literalist), Ibn Ḥazm Al-Ẓāhirī. Considering that musical instruments, whether in the form of wind instruments (flutes), strings (violin, rebab), strings (harp), or instruments such as guitars, do not have explicit prohibitions in the authentic *nash* and *qaṭ'ī*. Therefore, buying and selling these tools is considered *halal*.

This approach shows that Ibn Ḥazm separated the material (*zatiyyah*) from the purpose of its use (*ghayāh*), so that musical instruments cannot be intrinsically categorized as *haram*. Furthermore, Ibn Ḥazm also affirmed the principle of responsibility in buying and selling transactions by saying that if there is damage caused by the coercion of the musical instrument that is sold, then the party who damages it is obliged to compensate for the loss.

This view shows the recognition of musical instruments as *mutaqawwim māl*, namely goods that have economic value—at least for their owners,⁶¹ and property rights that are recognized in *sharia*. The analysis of Ibn Ḥazm's views reflects the courage to read the legal reality based on the basic principles of *muamalah*, namely the ability of the origin of everything until there is a postulate that prohibits it, as well as the recognition of the right of ownership and legitimate transactions. The literalist approach he uses avoids the analogous or speculative expansion of meaning, which is often used by other schools in banning musical instruments based on their alleged use. It is said to be analogous because the majority among scholars analogize the prohibition of buying and selling musical instruments with the buying and selling of *khamar*, and goods that have no other benefits. In addition, it is said to be speculative because the opinions of many scholars are actually one conjecture regarding the use of music. Because, if you look back at it from the perspective of many, buying and selling musical instruments is *haram* if they are used for immoral purposes, and this reason is certainly speculative on the use of musical instruments themselves.

In one of his statements, Ibn Ḥazm mentioned:

"There is no nash that prohibits the buying and selling of objects of goods from all the items that have been mentioned (meaning musical instruments: Author)".⁶²

⁶⁰Ḥazm, *Al-Muḥallā*..., p. 243.

⁶¹Ḥazm, *Al-Muḥallā*..., p. 244.

⁶²Ḥazm, *Al-Muḥallā*..., p. 244.

The above quote is a continuation of Ibn Ḥazm's opinion about the musical instruments he has mentioned, such as the guitar, and so on. In his other explanations it is also mentioned as follows:

“When it has never been read from Allah or from the Messenger of Allah an explanation that prohibits something from the many items that we have mentioned, then the correct conclusion is that the goods are absolutely halal”.⁶³

This quote is also a continuation and continuation of his opinion on the types of musical instruments that can be traded. Ibn Ḥazm's statement represents the methodological foundation of the Zāhīrī school that he adheres to, namely the emphasis on the textual/literal and the rejection of analogies (*qiyās*) and *istiḥsān* in the determination of law. Ibn Ḥazm emphasized that there is no explicit prohibition in the Qur'an or the Hadith that is valid means that the item remains in the halal corridor absolutely. In this section, Ibn Ḥazm actually refers to various sources in several verses of the Qur'an and hadith that state the prohibition of music as the basis used by the majority of scholars regarding the buying and selling of musical instruments. For example, in QS. Luqman verse 6 mentions that some people use useless words (*lahwa al-ḥadīs*).

وَمِنَ النَّاسِ مَن يَشْتَرِي هُوَ الْحَدِيثَ لِيُضِلَّ عَن سَبِيلِ اللَّهِ بِغَيْرِ عِلْمٍ وَيَتَّخِذَهَا هُزُوًا أُولَٰئِكَ لَهُمْ عَذَابٌ مُّهِينٌ.

Among mankind there are those who buy empty talk to lead (people) astray from the way of Allah without knowledge and make it a mockery. They will receive a humiliating punishment.

The meaning of *lahwa al-ḥadīs* is to sing, whether accompanied by a musical instrument or not. This is denied by Ibn Ḥazm, and this narration is not sourced from the Prophet (peace be upon him). Luqman verse 6 as the basis for the prohibition of music and the buying and selling of musical instruments was rejected by Ibn Ḥazm.⁶⁴

In addition, another argument that is refuted by Ibn Ḥazm is in the hadith narrated by Imam Al-Bukhārī, which states that there will be several groups of people from the people of the Prophet Muhammad (peace be upon him) who will make it lawful for the genitals (i.e. adultery), silk, *khamr*, and musical instruments (*al-ma'āzif*). This hadith is used by many scholars as a postulate for the prohibition of music and the process of buying and selling musical instruments. Ibn Ḥazm himself mentioned that the status of this hadith is *munqathī* from the side of the sanad. Ibn Ḥazm judged that there was no sanad connecting Al-Bukhari and Shadaqah bin Khalid. There is not a single authentic description of the chapter. In

⁶³Ḥazm, *Al-Muḥallā*..., p. 270.

⁶⁴Ḥazm, *Al-Muḥallā*..., p. 263.

fact, Ibn Ḥazm considered that every information contained in it was *mauḍū'* or false.⁶⁵ The sound of the hadith is:

قَالَ هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا صَدَقَةُ بْنُ خَالِدٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ يَزِيدَ بْنِ جَابِرٍ: حَدَّثَنَا عَطِيَّةُ بْنُ قَيْسٍ الْكِلَابِيُّ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ غَنَمٍ الْأَشْعَرِيُّ قَالَ: حَدَّثَنِي أَبُو عَامِرٍ -أَوْ أَبُو مَالِكٍ- الْأَشْعَرِيُّ، وَاللَّهِ مَا كَذَّبَنِي: سَمِعَ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ لَيَكُونَنَّ مِنْ أُمَّتِي أَقْوَامٌ يَسْتَحِلُّونَ الْحِرَّ وَالْحَرِيرَ وَالْخَمْرَ وَالْمَعَازِفَ. (رواه البخاري).⁶⁶

Said Hisyām bin 'Ammār: Narrated to us Ṣadaqah bin Khālīd, narrated to us Abdurrahman bin Yazīd bin Jābir: Narrated to us 'Aṭīyyah bin Qais al-Kilābī: Narrated to us Abdurrahman bin Ghunm al-Ash'arī he said: Narrated to me Abū Āmir (or Abū Mālik) al-Ash'arī, by Allah he did not deny me, that he heard the Prophet (peace and blessings of Allaah be upon him) say: There will be among my people a people who legalize adultery, silk, khamr, musical instruments (al-ma'āzif). (HR. al-Bukhārī).

Ibn Ḥazm categorized the narration of the hadith as weak or not strong (*da'īf*) on the grounds that there was an ambiguity in the aspect of the sanad conveyed. He criticized Imām Bukhārī for not giving an explicit explanation of the chain of narration of the hadith, especially in terms of the identification of the narrator mentioned, whether it was Abū Āmir or Abū Mālik. This ambiguity, according to Ibn Ḥazm, will have implications for the uncertainty of the validity of the sanad, thereby weakening the level of authenticity of the hadith in the assessment of hadith science.⁶⁷ This comment is an important argument regarding Ibn Ḥazm's assessment of legal postulates.

Regarding the importance of the existence of this sanad, Ibn Ḥazm Al-Zāhirī also commented that a hadith is not acceptable if one of the narrations of the hadith mentions a narration like this: "From a man of a companion, or has narrated to me a companion of the Prophet (peace be upon him)". Ibn Ḥazm does not accept this kind of narration except it expressly and clearly mentions the name of the companion in question.⁶⁸

Ibn Ḥazm explicitly discusses this issue in his work *Rasā'il Ibn Ḥazm*, by giving a deep critique of the narration of the hadith contained in *Ṣaḥīḥ al-Bukhārī*. In his view, the hadith is classified as weak (*da'īf*), because Al-Bukhārī does not include the sanad completely and clearly in its presentation. Ibn Ḥazm highlights the ambiguity in the mention of the narrator's name, between Abū Āmir and Abū

⁶⁵Ḥazm, *Al-Muḥallā*..., p. 261.

⁶⁶Abī 'Abdillāh Muḥammad bin Ismā'il Al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī* (Riyadh: Bait al-Afkār al-Dauliyyah Linnasyr, 1998), p. 1101.

⁶⁷Ḥazm, *Rasā'il*..., p. 424.; Ibn Ḥazm, *Ḥajjah Al-Wadā'*, (Sirḥqīq: Abu Ṣaḥīb Al-Karamī), (Riyadh: Bait Al-Afkār Al-Dawliyyah, 1998), pp. 23-24.

⁶⁸Ḥazm, *Ḥajjah Al-Wadā'*..., p. 72.

Mālik,⁶⁹ which casts doubt on the validity of the narration chain. This ambiguity, according to him, has a direct impact on the validity of the sanad, and opens up space to question the authority of the narrator concerned in the transmission of the hadith.

c. The Evidence and Method of *Istinbāt* Ibn Ḥazm

The postulates used by Ibn Ḥazm in determining the permissibility of buying and selling musical instruments refer to several verses of the Qur'an and the narration of the hadith of the Prophet Muhammad (PBUH). Al-Baqarah verse 29:

هُوَ الَّذِي خَلَقَ لَكُمْ مَّا فِي الْأَرْضِ جَمِيعًا ثُمَّ اسْتَوَىٰ إِلَى السَّمَاءِ فَسَوَّاهُنَّ سَبْعَ سَمَاوَاتٍ ۚ وَهُوَ بِكُلِّ شَيْءٍ عَلِيمٌ.

"It is He who created everything on earth for you, then He went to the heavens, then He perfected it into the seven heavens. He is All-Knowing."

The main point in the verse used as the basis of Ibn Ḥazm's law is in the redaction: *"It is He (Allah) who created everything on earth for you"*. Furthermore, Ibn Ḥazm also refers to QS. Al-Baqarah verse 275, which mentions the halal of buying and selling. The fragments of the verse that he used as the basis of the law are:

... وَأَحَلَّ اللَّهُ الْبَيْعَ ...

"...In fact, Allah has legalized buying and selling...".

Furthermore, Ibn Ḥazm also refers to QS. Al-An'am verse 119, and the sound of the verse is:

... وَقَدْ فَصَّلَ لَكُمْ مَّا حَرَّمَ عَلَيْكُمْ....

"... In fact, Allah has explained to you in detail something that He has forbidden you...".

Ibn Ḥazm's view regarding the permissibility of buying and selling musical instruments is based on a textual approach to the general verses of the Qur'an ('āmm). The three verses are general, showing the basic principles of creation, halal, muamalah, and the determination of law. In QS. Al-Baqarah verse 29, redacted *"It is He who created everything on earth for you"*, is understood by Ibn Ḥazm as an indication that all of Allah's creation on earth is basically for the benefit of man, unless there is only a special evidence that prohibits it. This verse becomes the ontological foundation (the essence of existence) that every object on earth, including musical instruments, is originally mubah (can be used and used). For Ibn Ḥazm, QS. Al-Baqarah verse 29 is general, and there is no broader and more general meaning than the meaning of the verse. On that basis, there is permission for all

⁶⁹Ḥazm, *Rasā'il*..., p. 424; Ḥazm, *Ḥajjah Al-Wadā'*..., pp. 23-24.

people to have what is on earth.⁷⁰ Except, there are indeed other postulates that firmly specialize in it. For Ibn Ḥazm, a general statement can only be reversed if there is *ijmak* and special evidence. If there is no *ijmak* or specific evidence, then the meaning remains in the generality of the verse.⁷¹

Furthermore, QS. Al-Baqarah verse 275, which states "*Allah has made buying and selling lawful*", was used by Ibn Ḥazm to affirm that buying and selling transactions in general are *halal*, including buying and selling musical instruments, as long as there is no *nash* that explicitly prohibits it. QS. Al-An'ām verse 119 reinforces this approach by stating that Allah SWT details what is forbidden, so that something that is not explicitly mentioned as *haram*, including the buying and selling of musical instruments, remains within the corridor of *halal*.

By combining these three verses, Ibn Ḥazm applies the principle of *fiqh* that the law of origin of all things is permissible (*al-aṣl fī al-aṣhyā' al-ibāḥah*), except only where there is a valid and clear evidence that prohibits it. Since there is no explicit prohibition related to musical instruments in the Qur'an that meets the requirements of validity according to Ibn Ḥazm's methodology, he stipulates that musical instruments are included in the category of objects that are allowed to be traded. This approach reflects Ibn Ḥazm's consistency in using general propositions as a legal basis, as well as demonstrating his commitment to the principles of freedom of *muamalah* in Islam, which are limited only by strict and detailed prohibitions.

Considering Ibn Ḥazm's methodological framework, which is based on *zahir al-naṣ* (literal textuality), the use of the Qur'anic verses in general is not only illustrative, but becomes an epistemological foundation in establishing laws. Ibn Ḥazm rejects the *takwil* approach or analogy that is not supported by explicit *nash*, so that in the case of buying and selling musical instruments, he asserts that the absence of a clear prohibition in the Qur'an or in the *sahih* *hadith* means that there is no *basis for shari'a* to prohibit it.

In this case, the principle of *al-ibāḥah al-aṣliyyah* (original ability) is an important instrument in building an inclusive legal argument for various forms of *muamalah* according to Ibn Ḥazm, including in the transaction of objects that socially and culturally have a useful value, such as musical instruments. Ibn Ḥazm rejects legal authority that is built on moral or social assumptions alone without explicit support for evidence. This is generally used by the majority of scholars, where they put forward aspects of basic assumptions and strong conjectures that are, according to

⁷⁰Ibn Ḥazm, *Al-Iḥkām S. S.ṣūl Al-Aḥkām*, Juz 7 (Beirut: Dār Al-Afāq Al-Jadīdah, 1979), pp. 143-144.

⁷¹Ḥazm, *Al-Iḥkām Fy...*, p. 143.

Ibn Ḥazm, speculative. For example, in his book *Al-Ahkam fi Ushul Al-Ahkam*, Ibn Ḥazm emphatically mentions that it is incorrect to use *qiyās* in the excavation of religious laws, which he himself stipulates in one of the chapters of his book: "*fi ibthal al-qiyās fi ahkam al-din*".⁷²

Another argument used by Ibn Ḥazm refers to QS. Luqman verse 6 as quoted earlier.

وَمِنَ النَّاسِ مَن يَشْتَرِي لَهْوَ الْحَدِيثِ لِيُضِلَّ عَن سَبِيلِ اللَّهِ بِغَيْرِ عِلْمٍ وَيَتَّخِذَهَا هُزُوًا أُولَٰئِكَ لَهُمْ عَذَابٌ مُّهِينٌ

"Among mankind, there are those who buy empty conversation to lead (people) astray from the way of Allah without knowledge and make it a mockery. They will have a humiliating punishment"

This verse is basically the basis for many scholars in determining the haram of music and musical instruments and trading them. The pronunciation used by most scholars is the pronunciation of *lahwa al-hadith* (a useless word). But Ibn Ḥazm understood that the verse was not a song or a musical instrument. This verse provides information that human nature like this is a trait that, if a person does it, he is declared a disbeliever without any difference of opinion, that is, when he makes the way of Allah SWT a material for ridicule.⁷³ In the same commentary, Ibn Ḥazm mentioned:

"People who have this kind of quality are condemned by Allah. Allah SWT has never condemned those who use useless words whose purpose is to have fun and comfort his hearts, not to lead them astray (deviate) from the path of Allah. Thus, their association with all the people we have mentioned is null and void".⁷⁴

Therefore, in the context of buying and selling musical instruments, Ibn Ḥazm's view not only represents the interpretation of nash but also shows a commitment to the literalist principles that are indeed characteristic of the Zāhiri school. This approach provides space for social and cultural dynamics as long as it does not explicitly conflict with sharia values and principles, and opens up opportunities for the development of adaptive and contextual Islamic law.

Ibn Ḥazm's view and the evidence used above give a general idea that the method of legal reasoning (*istinbāt al-ahkam*) used by Ibn Ḥazm is inclined towards *lughāwiyyah* or *bayanī* reasoning (reasoning with emphasis on the discovery of law based on linguistic principles). This was evident when Ibn Ḥazm quoted the previous three verses (QS. Al-Baqarah verse 29, QS. Al-Baqarah verse 275, and QS. Al-An'am verse 119) whose pronunciation and meaning of the verse are general ('ām). In addition, Ibn Ḥazm's efforts in refuting the postulates of the majority of

⁷²Ḥazm, *Al-Ihkām Fī...*, p. 53.

⁷³Ḥazm, *Al-Muḥallā...*, p. 264.

⁷⁴Ḥazm, *Al-Muḥallā...*, pp. 264-265.

scholars who prohibit the buying and selling of musical instruments also provide clues that he used the rules of language in exploring the law of buying and selling musical instruments.

5. A Review of Muamalah Fiqh on Ibn Ḥazm's View of the Law of Buying and Selling Musical Instruments and Their Relevance to the Context of Modern Fiqh

The basic principle in buying and selling is that the law of origin of everything in muamalah is permissible, until there is evidence that establishes its haram definitively. Likewise, it applies that the law of origin of buying and selling is permissible.⁷⁵ In this case, academically, Ibn Ḥazm's view can be categorized as a nash-based normative approach. Ibn Ḥazm rejects the expansion of the meaning of haram based on the possibility of negative impacts or the alleged tendency to use musical instruments that are considered a form of deviation. The implication in muamalah is that merchandise can only be punished as haram if it is explicitly stated by revelation, not because of potential use or misuse. This is the basis of Ibn Ḥazm's thought, which puts forward a textualist nash that annuls the process of takwil and analogy.

In the context of musical instruments, because there is no explicit prohibition in the nash on the object itself, according to Ibn Ḥazm, the law of buying and selling is still halal/permissible. This position affirms the owner's right to property and freedom to transact as long as there is no proven *violation of sharia*.

Ibn Ḥazm's approach and thought have significance in the discourse of contemporary fiqh/modern fiqh, especially in modern muamalah issues that are not explicitly mentioned in the primary legal sources.

In the framework of muamalah fiqh, the original law of all forms of transactions is mubah or permissible,⁷⁶ unless there is a *shari'i* evidence that expressly prohibits it.⁷⁷ Ibn Ḥazm's opinion on the ability to buy and sell musical instruments departs from this principle, with a *zāhiriyyah approach* that emphasizes the clarity and literality of a nash. He rejected the prohibition of anything that was not supported by explicit evidence from the Qur'an or authentic hadith. Therefore, in the case of musical instruments, Ibn Ḥazm considered that there was no clear

⁷⁵Yūsuf Al-Qaraḍāwī, *Al-Qawā'id Al-Ḥākimah Li Fiqh Al-Mu'āmalāt*, (Terj: Fedrian Hasmand), (Jakarta: Pustaka Al-Kautsar, 2014), pp. 9 and 18.

⁷⁶Ali Aḥmad Al-Sālūs, *Al-Iqtisād Al-Islāmī Wa Al-Qaḍāyā Al-Fiqhiyyah Al-Mu'āṣirah*, (Qatar: Dār Al-Ṣaḡāfah Al-Dūḥah, 1998), p. 13.

⁷⁷Fathurrahman Djamil, *Hukum Ekonomi Islam: Sejarah, Teori, dan Konsep*, (Jakarta: Sinar Grafika, 2023), p. 127.

prohibition on the possession or transaction of them, thus establishing their legal abilities.

In the context of modern jurisprudence, Ibn Ḥazm's opinion becomes relevant because musical instruments have transformed function and value. In this contemporary era, musical instruments are not only used for entertainment but also as part of education, therapy, the creative industry, and cultural expression. It has become a widely traded, massive, and legal economic commodity in the global trading system, or at least in the legal context in Indonesia. Therefore, Ibn Ḥazm's approach based on the principles of clarity of the text and the ability of origin is one of the alternative legal opinions that are compatible with the needs of modern jurisprudence, which demands flexibility in the exploration of law and demands adaptation to the development of the times.

CONCLUSION

Buying and selling in Islam is basically permissible (*mubāḥ*) as long as the harmony and conditions are met. However, there are exceptions for certain objects that are prohibited by Shari'a, such as pigs, khamar, carcasses, and other items that are of no value in Islam. This shows that the law of origin of buying and selling is still bound by sharia principles that protect the benefits.

The scholars agree that the legal requirements of the subject of the contract must be met, namely, people who are reasonable, puberty, and willing to transact. Transactions made by insane people, small children who have not been mumayyiz, or parties who are forced by the law are illegal. Thus, the subject aspect is one of the important pillars in the validity of a contract.

Regarding the object of buying and selling (*ma'qūd 'alaih*), scholars stipulate that goods must have benefits, be sacred, be transferable, and be legally owned. Goods that contain elements of gharar, usury, or are contrary to the sharia cannot be used as the object of a contract. Therefore, musical instruments cause debate because some scholars consider that they do not meet the requirements for the benefits recognized by sharia'.

The difference of opinion of scholars regarding the law of buying and selling musical instruments shows the diversity of *ijtihad*. Some scholars, such as Imam al-Rāfi'i, prohibit it absolutely because it is considered a means of immorality. Meanwhile, there are also scholars who allow its use on the condition that it is used for *mubah* things, such as entertainment that does not violate sharia or the interests of education. This confirms the existence of a dialectic of *fiqh* in responding to social change.

Ibn Ḥazm of the *madhhab al-Zāhirī* had a different view from the majority of scholars. He allowed the buying and selling of musical instruments because he did

not find a postulate that explicitly prohibited, and adhered to the principle that the law of origin is permissible until there is a postulate that prohibits it. This opinion shows the textual and independent style of *istinbāṭ* of Ibn Ḥazm's law compared to the other four schools.

This study recommends that the study of the law of buying and selling musical instruments continue to be developed by paying attention to the social, cultural, and technological contexts of modern technology. For practitioners of Islamic law and society, it is important to be wiser in responding to the differences of opinion of scholars, as well as to consider the aspect of benefits (*maqāṣid al-syarī'ah*) in each practice of muamalah. For further research, it is suggested that more emphasis be placed on comparative analysis between classical and contemporary views to produce a more relevant understanding of the dynamics of modern life.

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