

**ICMC 2023****The 3<sup>rd</sup> International Conference on Management and Communication****SAMSARAH IN AN ISLAMIC PERSPECTIVE**

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**Abstract**

This article explains the law of samsarah from the views of the fuqahā. The fuqahā differed regarding the legal status of samsarah. The majority of fuqahā believe that the law of samsarah is permissible, while others believe that it is haram and makruh. The reason for granting permission was the opinion of the Fuqaha, based on the Qur'an, Sunnah, and Ijma, that there are elements of kindness and mutual cooperation in samsarah. In terms of characteristics, a samsarah contract is the same as an agent in the modern sense, so that the area of study in fiqh is included in the wakalah chapter. The fuqahā agree that the wakalah contract is permissible with certain conditions. This paper aims to examine how samsarah law is seen from the perspective of Islamic law, whether it is permissible or not, especially concerning buying and selling. The method in this paper uses a descriptive approach which is oriented towards the phenomena or symptoms being observed.

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## 1. Introduction

In relation to fiqh, the intermediary is called *samsarah* and the intermediary is called *samsar*. The forms of cooperation in Aqd-Samsarah are divided into two forms: those that sell goods and those that sell services. Building on what has been said so far, this paper will examine how *samsarah* law is viewed from the perspective of Islamic law and whether it is permissible or impermissible, especially as it relates to buying and selling. This paper can therefore make an academic contribution to the broader community so that the community can ultimately understand and understand the intermediary position in terms of both rights and obligations. The methodology of this study uses a descriptive approach based on observed phenomena and symptoms.

### 1.1. Literature review

A *samsar* is a trade agent (a person who sells goods or finds buyers) or an intermediary between sellers and buyers who facilitates buying and selling (Hasan, 2004). According to Sayid Sabiq, a *samsar* is someone who acts as an intermediary between sellers and buyers to complete a buying and selling transaction (Sabiq, 1996). In other words, *samsar* is an intermediary that facilitates transactions between sellers and buyers (Ya'qub, 1992). *Samsar* is a term that refers to people who work for others for a salary, both buying and selling. The term also applies to people who have found (appointed) others as partners, so *samsar* receives commissions from those who become partners (Sabiq, 1996). From the above description, it can be concluded that *samsar* is an intermediary between the seller and the buyer, or between the owner of the goods and the buyer, to carry out the wage transaction agreed at the time of signing the contract.

Therefore, the function of *samsar* is to sell the goods and services of others by receiving wages without taking risks to facilitate the sale. In *samsar* there are no guarantees as the cooperation carried out is a form of brokered cooperation. *Samsar* is only obliged to sell commodities owned by the trader and not to invest, so no guarantees are required. Basically, Islamic law does not prohibit anyone from brokering a sale. This is consistent with the principle that the original law is permissible in muamalah until there is an argument to ban it. However, scholars are still divided on the issue of *samsara*.

The first opinion is halal and *samsarah* are part of a permitted sales contract. According to fiqh's general rules, in principle, all transactions are permitted if they meet the specified conditions and criteria. In this case, *samsarah* provides benefits to both the seller and the buyer. For this service, *samsarah* is entitled to receive wages/compensation based on a pre-established contract. This is the opinion of most scholars of Malikiyah, Shafiyah, and Hanabilah. The legal basis for majority fuqaha is:

### 1.2. Al-Qur'an

In the surah al Maidah, verse 2 Allah says "Help ye one another in righteousness and piety but help ye not one another in sin and rancor: fear God: for God is strict in punishment". This verse teaches us to help each other with kindness and godliness. *Samsarah* is an act based on mutual aid with a predetermined reward. Therefore, if the subject of the transaction is permitted by Islamic law, the work is considered legal.

### 1.3. Hadits

خرج علينا رسول الله صلى الله عليه وسلم ونحن نسعى السماسرة - فقال: يا معشر التجار: إن الشيطان والاشم يحضران البيع، فشوبوا ببيعكم بالصدقة.

It means:

"Once upon a time, Rasulullah SAW met us - at that time we, the traders used to be called As-Samsarah (brokers), - then he shouted, "O Tujjār (traders), actually satan and sin always attend buying and selling, mix alms in your buying and selling (Saheeh Ibn Majah).

As is clear from this hadith, *samsar* already existed in the time of the Prophet, and although the Prophet did not forbid their actions, at that time the Prophet changed their call to the call of the tujars or merchants. Replaced and gave advice on buying and selling, always approached demonic temptations and sinful deeds. Transactions through this intermediary were also conducted by Rasulullah SAW.

عَنْ عُرْوَةَ الْبَارِقِيِّ أَنَّ النَّبِيَّ بَعَثَ مَعَهُ بَدِينًا يَشْتَرِي لَهُ أُضْحِيَّةً فَأَشْتَرَى لَهُ اثْنَتَيْنِ قَبَاغَ وَاحِدَةٍ بَدِينًا وَأَتَاهُ بِالْأُخْرَى. فَدَعَا لَهُ بِالْبَرَكَةِ فِي بَيْعِهِ فَكَانَ لَوْ اشْتَرَى التُّرَابَ لَرَبِحَ فِيهِ

From 'Urwah al-Bariqi that the Prophet SAW gave him one dinar to buy a goat. So, he bought two goats with one dinar, then sold the one for one dinar. After that, he came to the Prophet SAW with a goat. Then he SAW prayed that the sale and purchase would be blessed. And if that money was bought for land, surely you would get a profit too (Narrated by Ahmad and At-Tirmizi).

In this hadith, Rasulullah SAW gave Urwah one dinar to buy a goat. For that dinar, he bought two goats and resold one goat for one dinar. Then he came to the Prophet SAW with goats and dinars. Then Rasulullah SAW prayed for blessings on the business of Urwah's friends so that Urwah could make a profit by selling the dust. In this case, Urwah made it easy for the Prophet and he benefited from the services he rendered. Even though the money used was basically Rasulullah SAW's money and not his money.

### 1.4. Ijma'

The *Fuqaha* agreed to allow *samsara*. Ibnu Sirin said that it does not matter if someone says to another person, "Sell me this shirt, the surplus sales are yours" (Sabiq, 1996). Ibn Abbas said it would be permissible for a product owner to tell an agent, "Sell me my product, if you sell more than a certain lot, please receive the surplus".

The second opinion is *haram*. Some Hanafiyah scholars, Ibn Taimiyah and Ibn Abbas, forbid *samsara*. However, this opinion is not prohibited but relates to a prohibited type of transaction - *Talaqi Rukban*. Their reasons are as follows:

1. Some Hanafiyah scholars argue that the ban on *samsarah* is because *samsarah* cannot be bought and sold (Ibnu Abidin, 2009)
2. According to Ibn Ta'imiyah, *samsarah* is prohibited because there is a problem for the buyer. If a native person represents a newcomer to selling basic goods that are the needs of the

community, while the newcomer does not know the market price of these goods, it creates a problem for the buyer (Ibnu Taimiyah, 2015). This is based on the hadith narrated by Ṭāwus from Ibn 'Abbas ra. Rasulullah SAW said ((not allowed to sell present people (city people) goods of hamlet people (new arrivals)). It was stated by Ibn 'Abbas, what is meant by "not being allowed to sell present people (city people) goods of hamlet people (new arrivals)", namely they are *samsarah*.

The third opinion is *makruh*. The third opinion is according to Imam Athauri. According to him, the law of *samsarah* is *makruh*, the legal basis is based on the hadith of Ibn 'Abbas. Hadith prohibitions refer to *makruh*. In the author's opinion, most selected scholars believe that although *samsara* is permissible, the law may prove illegal if the contract causes damage to other parties or to the wider society. Then the law can turn out to be unlawful. In the previous discussion, it was stated that the concept of *samsar* and agent is the same, therefore it is better if the agent problem is reviewed. In addition, in the concept of *fiqh muamalah*, the study of agents is the same as the study of *wakalah* (representatives).

## 2. Results

### 2.1. Samsara and agents

According to Sudarsono, an agent is a representative, an intermediary, or a party that brokers the purchase or sale of a product for a commission equal to a certain percentage of the total proceeds (Sudarsono & Edilius, 1994). According to the Indonesian dictionary, an agent is an entrepreneur, a representative, a foreign agent or representative, an intermediary or company that seeks sales to other companies on behalf of an entrepreneur's representative, and an existing the service of negotiating, providing, or concluding insurance contracts on terms (Pusat Bahasa, 2002). According to Abdul Rashid Saliman, agency services are intermediary service companies for carrying out specific commercial transactions, linking producers on the one hand and consumers on the other (Saliman, 2006).

In business dealings, the agency is usually understood as a legal relationship in which the agency is authorized to transact with other parties on behalf of the customer. Therefore, the main criterion for the existence of an agency is the authority possessed by the agent to act for and on behalf of the client (Simatupang, 2003).

Based in part on the definitions above, an agent is a company's designated representative who completes sales transactions for a commission equal to a predetermined percentage of total sales proceeds. In this case, if the agent behaves beyond the limits set by the client, the agent himself is responsible for that behavior, but if the agent's behavior is still within the agreed contract, the principal will be responsible. There are three possible deviations in implementing the agreement of the parties. i.e. (Wibowo, 2003):

- 1) Its is established that neither party, both principal and agent, is entitled to assign any part of its rights and obligations without the consent of the other party. Importantly, neither principal nor agent has the right to delegate the rights and obligations of either party, in whole or in part, without the consent of the agent or other principal.

- 2) The principal may transfer their rights and obligations to third parties, but agents may not.
- 3) The principal can transfer its rights and obligations to a third party, but the contractor can only transfer its rights and obligations with the consent of the principal.

In principle, the *samsara* concept and the agent concept are both intermediaries, where they are both intermediaries between sellers and buyers. In the pre-Islamic era, intermediary trade was called *samsara*, but the Apostle called them *al-tujjār*, in this modern era they are more familiar with the word's agent (Hassan & Abdullah, 1994). The relevance between the *samsara* concept and the agent concept is that the intermediary at the time of the Apostle (*samsara*) only functioned to sell other people's goods for a fee, the wages at that time were not determined and only applied according to the prevailing customs. To avoid misunderstandings, the owner of the goods and the *samsara* can arrange certain conditions regarding the amount of profit received by the *samsara*, can take it in the form of a percentage (commission) or take the excess of the price determined by the owner of the goods, this is determined based on the agreement of both parties. In the agency law relationship, it has been stated that the property rights to the product sold by the agent are no longer with the principal but have been transferred to the agent because in principle the agent has purchased the product from the principal (Hassan & Abdullah, 1994).

From the above explanation, we can conclude that the concept of *samsara* changed greatly during the apostolic age along with the concept of agency. In the days of the Apostles, the only concept of reincarnation was selling goods to others for money. On the other hand, the concept of a broker using a deposit system, or agency law, is called a sell-out mechanism. This means that the broker must first buy the item and then sell it to the consumer. Since there were no contracts of employment in the days of the apostles, they did not draw up contracts of employment either, applying only the principle of mutual trust. Employment contracts are currently concluded in writing or orally, but this is done to avoid future disputes.

For those who have capital but cannot buy or sell, or cannot go directly to the market, another person can be appointed to whom they can buy and sell. In this case, *samsara* is like a permissible *wakalah* contract (agency contract).

## 2.2. Wakalah

*Al-wakālah* means guarding, giving a mandate, and handing over something. *Wakālah* in the sense of handing over, delegating, or giving a mandate is also found in the word *Al-hifzu* which means maintenance (Antonio, 2008). Meanwhile, according to Karim, *wakālah* means protection, sufficiency, responsibility, or delegation which is also interpreted by giving power of attorney or deputation (Karim, 1997).

There are several opinions regarding *wakalah*, depending on the term: According to Hanafiyah, *wakalah* positions others as their substitutes (representatives) to solve problems and the nature of work that is permissible in *Shari*. According to Malikiyah, Shafiyah, and Hanabilah, *wakalah* is the process of delegating to another person as a surrogate to complete a task that needs to be done during that person's lifetime (Zuhaili, 1989). According to Hakim Karim, a *wakalah* is a power-delegation contract in which

one person appoints another to act as an agent (Ash Shiddieqy, 1974). We can conclude that *wakālah* means the dedication of one person to another to do something and that the representative is valid if the representative is still alive (Suhendi, 2010).

From the above understanding, we can derive some important clues. In other words, in *Wakala* there is an agreement between one person and another. The content of the contract is to delegate the duties of the authorized agent to a person who is authorized to carry out specified acts and authorized subject matter on behalf of the authorized agent. When another person is acting on his or her behalf, that person may delegate certain acts to another person, provided that such authority can be delegated by religion. The arguments used to demonstrate this functionality are:

### 2.3. Al-Qur'an

“Such (being their state), We raised them up (from sleep), That they might question Each other. Said one of them, “ How long have ye stayed (here) ? ” They said, “ We have stayed (Perhaps) a day, or part of a day.” (At length) They (all) said, “ God (alone) Knows best how long Ye have stayed here... Now send ye then one of you with this money of yours to the town : let him Find out which is the best Food (to be had) and bring some to you, that (ye may) Satisfy your hunger therewith : And let him behave with care and courtesy, And let him not inform Any one about you” (Al Kahf: 19).

“If ye are on a journey and cannot find a scribe a pledge with possession (may serve the purpose). And if one of you deposits a thing on trust with another let the trustee (faithfully) discharge his trust and let him fear his Lord. Conceal not evidence; for whoever conceals it his heart is tainted with sin. And God knoweth all that ye do” (Al Baqara: 283).

“If ye fear a breach between them twain appoint (two) arbiters one from his family and the other from hers; if they wish for peace God will cause their reconciliation: for God hath full knowledge and is acquainted with all things” (An Nisaa: 35).

#### 2.3.1. Hadith

There are many hadiths that can be considered to support the efficacy of *wakalah*, such as:

- 1) "That the Messenger of Allah entrusted Abu Rafi to be his agent for the marriage of Maimuna bint al-Harith" (Malik's narration of al-Muwatta).
- 2) From Jabir r.a said: I went to Khyber and then to Rasulullah SAW, he said, "If you come to my representative in Khyber, take 15 wasaq tablets from him." (H.R. Abu Daud: 3148).
- 3) “There can be no peace among Muslims except a peace that prohibits what is lawful or makes it illegal. Except for the terms that allow it, you are bound by its terms.” (Tirmidhi from “Amr bin Auf”)

In everyday life, Rasulullah delegates various matters to others. These include resolving debts, depicting the purpose of property and its payment, depicting camel husbandry, and dividing animal kennels.

### 2.3.2. Ijma

Scholars agreed with Ijma on the acceptability of *wakalah*. This includes types of *ta'awun*, or assistance based on kindness and piety.

*Wakalah* contracts can be divided into four namely (Zuhaili, 1989):

- 1) *Al Wakālah al `āmmah* is a wakala contract with a general process of delegation and no specifications, covering all forms of transactions related to *muwakil*. Under this agreement, an agent may act as his/her own agent to another person, and the first and second agent positions shall be deemed to be *Muwakil* agents, subject to *Muwakil* permission.
- 2) *Al Wakālah al-khoshoh* is a *wakala* contract in which the delegation of authority to substitute for a particular transaction (work) is based on clear *muwakir* provisions. An agent may not act for another person under this contract.
- 3) *Al Wakalah al-muqayyada* is a *wakalah* contract in which the agent's powers and actions are restricted by certain conditions. Representatives may not represent themselves to others under this Agreement.
- 4) *Al Wakālah al-muṭlaqah* is a *wakalah* contract in which the agent's powers and actions are not limited by any special terms or conditions of *Muwakil*. Under this Agreement, Agents may represent persons other than Agents, and the status of First and Second Agents shall be deemed to be *Muwakil* agents, subject to *Muwakil* permission.

### 2.3.3. The Representative sells the goods

In *wakalah muthlaqah*, the agent can sell goods at a price deemed appropriate. In *wakalah muqayyadah*, the agent must not violate the orders given by the representative, unless the deviation is considered better, for example, if the agent is ordered to sell goods for 1000 and the goods are sold for 800, then it is not permissible. But if the representative sells 1200, then nothing. Another example, if an agent is instructed to sell goods for cash and then the agent sells them within the term, then this is not allowed. But if the agent is instructed to sell before the deadline and the goods are sold for cash, then all is well (Zuhaili, 1989).

According to Abu Hanifah, a representative must not sell to himself, his wife, father, grandfather, or children, or to any party whose testimony about that person is not accepted. But according to Abū Yūsuf and Al-Shaibani, an agent can sell to them other than himself. Although Malikiyah allows a representative to sell to his wife and already-intelligent children, selling to himself and madmen are not allowed. Syafi'iyah, according to a stronger opinion, allows an agent to sell to his father, grandfather, the child, and others, except that selling to himself and madmen is not allowed (Zuhaili, 1989).

### 2.3.4. Represented by a representative

In *Wakalah Khasha* and *Muqayyada*, when an agent acts as an agent, that agent may not represent another person. According to Hanafia, while in *Wakalah Muthlaqa*, a representative can again represent another person, as the representative said, "Sell whatever you want." According to Malikiyah, an agent

may not represent another person unless he or she is deemed ineligible or incapable of acting as an agent. According to Shafiyah and Hanabilah, a representative is deemed entitled to represent the other party, but if the representative is found to be competent to do so, he or she may again represent the other party unless authorized by the representing party. If unable to represent but unable to perform the task, the agent is delegated to another party, and the second agent acts as an agent along with the first (Zuhaili, 1989).

### **2.3.5. Responsibilities of representative**

- 1) Offer agreed wages. If an agent is agreed to the contract, the agent must pay the agreed salary. If there is no contractual agreement as to the number of wages to be paid, the amounts are either adjusted to the generally accepted wages or only donated (Haidar, 2003).
- 2) Meet your agent's needs. Representatives must meet all their needs. When representatives perform representative duties, their values are aligned with generally accepted practice.
- 3) Warranty risk. Representatives warrant that warranties will be given in the event of anything happening to the products they represent, excluding risks arising from their willful misconduct or negligence, or force majeure.

### **2.3.6. Intermediaries are not allowed**

If the intermediary is likely to cause difficulties for the other parties in the sale, it should not intercede. There are at least two credible reasons.

- 1) *Sad Dhari'ah* i.e., to prevent avenues of harm, to resist harm, or to cut off the avenues leading to harm (Sarwat, 2011).
- 2) Some are harmful. This follows his Fiqh principle that "what is harmful must be removed". The above principles reject Mafsada by eliminating or at least mitigating the disadvantages and return to the goal of realizing Maqasid al-Sharia. The above rules are well expressed through the description of hadith "*It is not permissible to compromise and may not be compromised*" (HR. Hakim and others from Abu Sa'id al-Khudri, HR. Ibnu Majah from Ibn Abbas). The point of these rules is that you must not do harm or damage. This gives an impression of balance or justice to one's actions and indicates a morally noble character of not wanting to harm others but not being hurt by others. On the contrary, we must benefit others, and others benefit us (Sarwat, 2011). The verses from Al Qur'an (2023) and Al-Hadith that support this rule include:
  - 3) "*but do not take them back to injure them or to take undue advantage*" (al Baqaraa: 231).
  - 4) "*He hath only forbidden you dead meat and blood and the flesh of swine and that on which any other name hath been invoked besides that of God but if one is forced by necessity without wilful disobedience nor transgressing due limits then is he guiltless. For God is Oft-Forgiving Most Merciful*" (al Baqaraa: 173)

- 5) "Surely all of your blood, all of your property, and all of your honor is forbidden among all of you" (Muslim).

Examples of unauthorized intermediaries include ticket scalpers and real estate agents. A ban on ticket intermediation means that tickets are either lost in the market or become scarce as they are hoarded and managed by intermediaries. The broker will buy up all the tickets sold at the counter and sell them to potential passengers at double the price. This can cause anxiety for consumers. In practice, real estate agents are looking for vacant land for things like highway construction projects. They approached property owners and deliberately blocked the way for prospective buyers to meet in person with property owners. The aim is to achieve the highest possible commission through the sale and purchase of land. On the buyer's side, the agency gets the highest price, while the landlord pays the lowest possible price. This hurts property owners and buyers. Ultimately, real estate agent actions can lead to planning delays and failures.

### 3. Conclusion

According to most jurists, the practice of *samsarah* is permissible in principle. The reason for this permission is *Fuqaha's* view that the Qur'an, Sunnah, Ijmaa, the *fuqaha* view that in *samsarah* there are elements of kindness and mutual help. However, not all practices are permitted. If *samsar* influences the creation of the welfare of other parties and the wider community, then the legitimate exercise of *samsar* should not be like a ticket seller or a land broker.

Judging by its nature, the practice of *samsarah* is the same as the practice of agency practice as understood in modern law. Therefore, this area of study is included in the discussion of wakalah agreements (agency agreements). Scholars agree that the *Wakalah* contract is a valid contract with certain conditions.

Based on these conclusions, the authors suggest that governments and relevant agencies should pay more attention to the conduct of agents and brokers to ensure that these actions do not harm the wider community. In particular, the ulama can issue fatwas governing *samsara* in general and specific areas, such as agency operations in the field of Islamic finance.

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