

Aspect Of Legal Protection on Buying Transactions of Thrift Shop Products Sharia Economic Law Perspective¹

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Abstract

The process of human life, one of which affects the human lifestyle. This lifestyle can lead to consumptive behavior because of the desire to keep up with the times. Calculated from year to year, there has been an increase in the production of clothes or garments that have doubled from before. The buying and selling of used clothes have been around for a long time, but lately during the pandemic these activities are busy in the community. Currently, the term imported used clothing is more familiar with thrift clothing. This thrift activity has even penetrated social media and online shopping platforms. Whereas the prohibition of imported used clothes is contained in Law Number 7 of 2014 concerning Trade which has been explicitly stated in Article 47 by stating that "importers are obliged to import goods in new conditions". Another prohibition on the sale and purchase of imported used clothes (thrift) can also be found in Article 8 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection (UUPK). The purpose of this study is to determine aspects of legal protection in buying and selling transactions of thrift shop products and to determine the analysis of sharia economic law on aspects of legal protection in buying and selling transactions of thrift shop products. This type of research is normative legal research with a conceptual approach. The results of this study indicate that aspects of legal protection in the sale and purchase of thrift shop products are contained in several positive laws in Indonesia, this is intended to handle the activity of importing used clothing into Indonesian territory as

¹ This paper is taken from research, funded by Universitas Islam Kalimantan, on March 2021

one of the government's preventive measures, which is contained in Article 47 paragraph (1) Law no. 7 of 2014 concerning Trade, then also Article 2 of the Regulation of the Minister of Trade Number 51 of 2015 concerning the Prohibition of the Import of Used Clothing, and also Article 8 paragraph (2) of the UUPK. The sale and purchase of thrift shop products are by Islamic law, seen from the terms of the qabul consent, the subject, to the object being traded. So the law of buying and selling thrift shop products is legal and allowed in Islam, because in its implementation it has fulfilled the pillars and conditions of buying and selling in Islam.

I. Introduction

Humans are social creatures (*homo socius*) who cannot live without interaction with other creatures so in living life they will be interconnected. Humans were also created by Allah SWT as economic beings (*homo economicus*) who always think and try to meet their needs in life. So that is dependence in the social and economic fields, one of its forms is the relationship between sellers and buyers by Islamic laws and sharia.²

The process of human life is also very influential on human lifestyle. This lifestyle can lead to consumptive behavior because of the desire to keep up with the times. Calculated from year to year, there is an increase in the production of clothing or garments as much as two times the previous one. The activity of buying and selling used clothes has been around for a long time, but recently this economic activity has become a trend among the people. The types of clothing purchased by consumers vary, including shirts, pants, shoes, and jackets. Currently, the term imported used clothing is more familiar as *thrift*. This *thrift* has even penetrated social media and online shopping platforms.³ A *shop* is a shop or seller that specializes in selling used clothes or branded clothes that have been worn and imported from abroad.

For some people, implementing *thrift* is an interesting activity because it can save consumer spending as well as test consumers in sorting out products that are still good and still suitable for use. This can hone consumer creativity in

² A. Djazuli, *Kaidah-Kaidah Fiqh Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Jakarta: Kencana Prenada Media Group, 2010). h.129

³ Ghesa Gafara, 'A Brief History Of Thrifting', 2019 <<https://www.ussfeed.com/A-Brief-History-Of-Thrifting/>>.

the *mix-and-match* clothing with minimal funds, because product prices at *thrift shops* are very affordable and the prices obtained will also be even cheaper. This activity was also considered to have more positive things for some people.

Referring to the letter issued by the Ministry of Trade of the Republic of Indonesia, through a press release: *"The Directorate General of Standardization and Consumer Protection of the Ministry of Trade has conducted tests on 25 samples of used clothing circulating in the market. Tests were carried out on several types of microorganisms that can survive on clothing, namely Staphylococcus aureus (S. aureus), Escherichia coli (E. coli) bacteria, and fungi (mold or yeast). Based on the results of the tests conducted, several bacterial colonies were found and fungus as indicated by the Total Plate Count (ALT) and mold test parameters on all examples of used clothing whose value is quite high. "The microbial content of used clothing has a total microbial value (ALT) of 216,000 colonies/g and mold of 36,000 colonies/g," Bacterial and mold contamination can cause various health problems. Staphylococcus aureus bacteria can cause boils, pimples, and wound infections on human skin. While Escherichia coli bacteria cause digestive disorders (diarrhea), and types of fungi such as mold (Aspergillus sp) and yeast (Candida sp) can cause itching, allergies and even infections of the genital tract. This is because the parameter value of the total plate number (ALT) test results shows the total number of bacterial colonies"*.⁴

Based on the letter from the Ministry of Trade, it was explained the dangers of imported used clothing, which made consumers and the general public concerned about the bacteria content in each of these imported used clothing. Public ignorance and the lack of information obtained about the dangers posed by each imported used clothing is very concerning. Ignorance of the negative effects of imported second-hand clothing, not only from the consumer's side, but also from the seller's side, they do not know this, because from the naked eye it cannot be known whether the clothes contain bacteria or not.

The prohibition of importing used clothing is also contained in Law Number 7 of 2014 concerning Trade in Article 47 which states explicitly that *"importers are required to import goods in new condition"*. Buying and selling imported used clothing (*thrift*) is also prohibited as stated in Article 8 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection. Law Number 8 of 1999 concerning Consumer Protection states that *business actors are prohibited from trading damaged, defective, or used, and tainted goods without providing complete and correct information on the goods being traded*.

In addition, it is also found in the Regulation of the Minister of Trade of the Republic of Indonesia No. 51/MDAG/PER/7/2015 concerning the ban on the import of used clothing, as for this regulation, the background is:

1. Whereas used clothes from imports have the potential to endanger human health they are not safe for use and use by the public.

⁴ Ministry of Trade Indonesia, 'Press conference', 2015.

2. That based on the considerations referred to in letter a and to protect the interests of consumers, it is necessary to prohibit the import of used clothes.
3. based on the considerations as referred to in letters a and b, it is necessary to stipulate a Regulation of the Minister of Trade concerning the Prohibition of the Import of Used Clothing.

The ban on used imports is contained in articles 2 and 3:

1. Article 2: Used clothing is prohibited from being imported into the territory of the Unitary State of the Republic of Indonesia.
2. Article 3: Used clothing arriving in the territory of the Unitary State of the Republic of Indonesia on or after the date this Ministerial Regulation comes into effect must be destroyed by the provisions of the laws and regulations.
3. And sanctions are also given to importers who violate the provisions contained in Article 4 which: Importers who violate the provisions of the prohibition as referred to in Article 2 are subject to administrative sanctions and other sanctions by statutory provisions.

Based on the explanation above, we can understand that it is important to protect consumers to avoid forms of loss for one party and provide a sense of security in conducting transactions. Islam has taught that a sale and purchase transaction must comply with the provisions of *syara'* in terms of the terms and pillars of the sale and purchase, and a sale and purchase transaction according to *fiqh* scholars is considered valid if: the sale and purchase are protected from defects, such as the criteria for the goods being traded are not known, both the type, quality and quantity, the total price is not clear, the sale and purchase contain elements of coercion, deception, harm, and there are other conditions that make the sale and purchase.⁵ Based on this background, it is necessary to criticize the aspect of legal protection in the sale and purchase transaction of *thrift shops*, and an analysis based on the perspective of sharia economic law on aspects of legal protection in the sale and purchase transaction of *thrift shops*.

There have been several previous studies based on the author's investigation regarding the study of legal protection issues and the practice of buying and selling imported used clothing (*thrifting*). The first article is an article entitled "Legal Protection for Consumers Against the Actions of Business Actors Trading Used Imported Clothing" written by Buyamin. This article refers to legal protection based on positive law in Indonesia, namely in Law No. 8 of 1999 concerning Consumer Protection and in the Regulation of the Minister of Trade

⁵ Sapiudin Shidiq Ghazali, Abdul Rahman, Ghufroon Ihsan, *Fiqh Muamalat* (Jakarta: Kencana Prenada Media Group, 2010). h.77

of the Republic of Indonesia Number 51/M DAG/PER/7/2015 concerning the Prohibition of Import of Used Clothing.⁶

The second article is entitled "Implementation of Regulation of the Minister of Trade of the Republic of Indonesia Number 12 of 2020 Concerning Prohibited Imports (Case Study of Circulation of Imported Used Clothing in Singaraja City)" written by Kadek Dwi Ayu Lestari Ningsih, Si Ngurah Ardhyia, Muhamad Jodi Setiatio. The purpose of the research in this paper is to identify and understand the factors that lead to trade in imported used clothing in Singaraja City, and to find out the implementation of the Regulation of the Minister of Trade of the Republic of Indonesia Number 12 of 2020 concerning Import Prohibited Goods related to the circulation of imported used clothing in the Singaraja City area. The results of the study show that the factors that cause trade in imported used clothing in Singaraja City are a large number of enthusiasts, minimal income, small capital, and implementation of the regulation of the Minister of Trade of the Republic of Indonesia Number 12 of 2020 concerning Import Prohibited Goods related to the circulation of imported used clothing in the Singaraja City area it has not gone well because there are still many circulations of imported used clothing found in Singaraja City.⁷

The third article is an article entitled "*The Phenomenon of Thrifting in State Law and Islamic Economic Perspective: A Business of Second Branded Fashion Trends for Young People*" written by Tira Nur Fitria. The aim of the research in this paper is to explain the phenomenon of thrifting from the perspective of State Law and Islamic Economics, which is a form of used goods business for young people. This study uses library research. The results show that based on the Minister of Trade Regulation Article 2 states that used clothing is prohibited from entering the territory of the Unitary State of the Republic of Indonesia, and Article 3 states that used clothing that arrives in the territory of the Republic of Indonesia on or after the entry into force of this Ministerial Regulation must be destroyed based on: provisions of laws and regulations invitation. Meanwhile, based on the perspective of Islamic Economics as stated in the DSN MUI Fatwa NO: 110/DSN-MUI/IX/2017 concerning Buying and Selling, it may not contain elements of

⁶ Buyamin Buyamin, 'Perlindungan Hukum Bagi Konsumen Terhadap Tindakan Pelaku Usaha Yang Memperdagangkan Pakaian Bekas Impor', *Al Ilmu: Jurnal Keagamaan Dan Ilmu Sosial*, 5 No.1 (2020).

⁷ Kadek Dwi Ayu Lestari Ningsih, 'Implementasi Peraturan Menteri Perdagangan Republik Indonesia Nomor 12 Tahun 2020 Tentang Barang Dilarang Impor (Studi Kasus Peredaran Pakaian Impor Bekas Di Kota Singaraja)', *E-Journal Komunitas Yustisia Universitas Pendidikan Ganesha*, 4 No.3 (2021).

gharar (objects that are unclear and can cause losses), khiyar 'aib (defective goods).⁸

The fourth article is an article entitled " *Thrifting as a Bogor Millennial Lifestyle*" written by Rifky Ghilmansyah, Siti Nursanti, Wahyu Utamidewi. The purpose of the research in this paper is to reveal the motives of the Bogor millennials in carrying out and interpreting thrifting. The results of the study show that Bogor's millennials interpret thrifting as a process of shopping for used goods that have become a passion or lifestyle of fashion trends. Bogor's millennial motives for thrifting are influenced by friendships, family, hobbies, and the economy. While the goal is because thrifting prices are relatively cheap, limited, high value and for resale.⁹

The fifth article is an article entitled "Campaign *Thrifting* as a Solution to Fashion Waste" written by Annisa Karimah Balqies and Jupriani. The research objective in this paper as a *Waste Fashion* aims to help reduce the impact of *Fast Fashion*. *Thrifting* is the activity of buying used goods, *thrifting* wisely *fashion* without having to buy new things. The design method used is the glass box method or commonly called the *glass box method*. *The glass box method* is a method of rational thinking objectively and systematically in examining a matter. This design was prepared using campaign theory, lifestyle, globalization culture and visual communication design. The design of *Thrifting Campaign* as a *Waste Fashion* uses *Stop Motion* as the main medium with the aim that people are more open-minded about the benefits of *Thrifting* and know how to start *Thrifting*. The *campaign* is also supported by media in the form of posters, *LED screens*, *Instagram (social media)*, masks, *reusable bags, pouches, tumblers*.¹⁰

Compared to the studies previously mentioned, the study conducted by the authors has substantial differences. The study in this paper is directed at examining aspects of legal protection for both consumers and producers in the implementation of buying and selling transactions for *thrift shops* and then analyzing them from the perspective of sharia economic law.

2. Research Method

This type of research is normative *legal research*. The approach taken in this research is a conceptual approach that is carried out by studying the norms of

⁸ Tira Nur Fitria, 'The Phenomenon of Thrifting in State Law and Islamic Economic Perspective: A Business of Second Branded Fashion Trends for Young People', *Jurnal Ilmiah Ekonomi Islam*, 8 No.3 (2022).

⁹ Rifky Ghilmansyah, 'Fenomena Thrifting Sebagai Gaya Hidup Milenial Bogor', *Jurnal Nomosleca*, 8 No.1 (2022).

¹⁰ Annisa Karimah Balqies, 'Campaign Thrifting Sebagai Solusi Limbah Fashion', *Dekave: Jurnal Desain Komunikasi Visual*, 12 No.2 (2022).

Islamic law and the views of fiqh experts related to the contract of sale and purchase of *thrift shop products*. The legal materials used as sources in this study consist of primary legal materials originating from the Al-Qur'an and Hadith. Secondary legal materials Civil Code, Compilation of Sharia Economic Law, Fatwas from MUI or Fatwa according to Fuqaha, Law Number 8 of 1999 concerning Consumer Protection, Regulation of the Minister of Trade of the Republic of Indonesia No.51/M-DAG/PER/7/2015 Concerning Prohibition of Import of Used Clothing. Tertiary legal materials The Language Center Dictionary Compilation Team, *Big Indonesian Dictionary*, ed. 3, print. 2, Jakarta: Balai Pustaka, 2002, Ahmad Warson Munawwir, *Munawwir Arabic-Indonesian Dictionary*, Yogyakarta: Progressive Library, 1984, Legal Dictionary, and Encyclopedia.

3. Results and Discussion

A. Aspects of Legal Protection in Sales and Purchase Transactions of Thrift Shop

Legal protection is a form of protection for human rights that are harmed by other parties and this protection is given to the community so that they can enjoy all the rights granted by law. Legal protection is also interpreted as legal efforts that must be provided by law enforcement officials to provide a sense of security both psychologically and physically from disturbances and threats from any party.¹¹ Then according to Muchsin, legal protection is an activity to protect individuals by adjusting the relationship of rules or values that are embodied in attitudes and actions to create order in social life among fellow human beings.¹²

Economic activities in Indonesia are regulated in various legal frameworks, this is intended to provide comfort and security for the parties involved in these economic activities. One of them is regulated in Law Number 8 of 1999 concerning Consumer Protection, Article 8 of this law regulates things that are prohibited for business actors. This is a form of legal protection, especially to protect consumers, as stated in article 8 which contains:

1. *Business actors are prohibited from producing and/or trading goods and/or services that:*
 - a. *do not meet or do not comply with the required standards and provisions of laws and regulations;*
 - b. *not by the net weight, net or net content, and the amount in the count as stated on the label or label of the said goods;*

¹¹ Satjipto Rahardjo, 'Penyelenggaraan Keadilan Dalam Masyarakat Yang Sedang Berubah', *Jurnal Masalah Hukum*, 10 (1993).

¹² Muchsin, *Perlindungan Dan Kepastian Hukum Bagi Investor Di Indonesia* (Surakarta: Universitas Sebelas Maret, 2003). P.14

- c. *does not match the size, measure, weight, and amount calculated according to the actual size;*
 - d. *not by the conditions, guarantees, features or efficacy as stated in the label, etiquette, or description of the goods and/or services;*
 - e. *not by the quality, grade, composition, processing, style, mode, or certain uses as stated on the label or description of the said goods and/or services;*
 - f. *does not comply with the promise stated in the label, etiquette, description, advertisement, or sales promotion of said goods and/or services;*
 - g. *does not state the expiry date or period for the best use/utilization of certain goods;*
 - h. *do not comply with the provisions of halal production, as stated in the "halal" statement on the label;*
 - i. *does not put a label or make a description of the goods containing the name of the goods, size, net or net weight/content, composition, rules for use, date of manufacture, side effects, name and address of the business actor and other information for use which according to the provisions must be installed/made;*
 - j. *does not include information and/or instructions for the use of goods in the Indonesian language by the provisions of the applicable laws and regulations.*
2. *Business actors are prohibited from trading damaged, defective, or used, and tainted goods without providing complete and correct information on the goods in question.*
 3. *Entrepreneurs are prohibited from trading damaged, defective, or used and contaminated pharmaceutical and food preparations, with or without providing complete and correct information.*
 4. *Business actors who commit violations in paragraphs (1) and (2) are prohibited from trading the said goods and/or services and are required to withdraw them from circulation.*

The sale and purchase transaction of *thrift shop* not conflict with Article 8 paragraph (2) of the UUPK, if the sellers have explained in detail the condition of the product being sold is imported branded thrift clothing either during a direct transaction or in the *online shop*. Thus, it becomes an obligation for business actors to provide detailed information regarding the *thrift* they sell, so that the transaction is legally valid and does not conflict with positive law.

The form of legal protection in the sale and purchase transaction of *thrift shop* also contained in Article 47 paragraph (1) of Law No. 7 of 2014 concerning Trade, namely: "Every importer required to import goods in new condition. The Indonesian government through the Minister of Trade has issued a regulation regarding the ban on the import of used clothes into Indonesian customs

territory. The existence of this regulation is intended as one of the government's preventive measures to regulate the activity of importing used clothing into Indonesian territory. The regulation is contained in *Article 2 of the Minister of Trade Regulation Number 51 of 2015 concerning the Prohibition of Import of Used Clothing, namely: "Clothing former banned to import into within the region Unitary state Republic Indonesia"*. prohibition on the import of used clothing is due to *thrift* entering through illegal channels, making it legally invalid. This rule is specifically aimed at used clothing importers.

B. Analysis of Islamic Economic Law Against Aspects of Legal Protection in Sales and Purchase Transactions of *Thrift Shop*

Buying and selling is a contract of exchanging goods for other goods or exchanging goods for money by relinquishing ownership rights from one person to another voluntarily and in accordance with *sharia*.¹³ course, a sale and purchase transaction must meet the pillars and conditions of sale and purchase consisting of *aqid* (seller and buyer), *ma'qud'alaih* (object), *sigat* (ijab qabul), and price.¹⁴ The analysis of sharia economic law on the sale and purchase transaction of *thrift shops* follows:

1. From the point of view of '*aqid* (seller and buyer)
 - a. The person conducting the transaction ('*aqid*) must be in number, in the sense that two parties are conducting the transaction (seller and buyer)
 - b. An '*aqid* must be intelligent and *tamyiz* (able to distinguish between good and bad).
2. Judging from *the sigat* (ijab and qabul) consent
qabul according to hanafiah scholars is the determination of certain actions that show the pleasure said by the first person, whether giving or receiving. Meanwhile, qabul is the person who says after the person who said the consent, which shows pleasure in the words of the first person.¹⁵ In the sale and purchase transaction of *thrift shop products*, this *sigat* requirement based on the willingness of the contracting parties, that is, based on their desires, not because of coercion from others.
3. In terms of the price of goods
the sale and purchase transaction of the *thrift shop*, the price of the goods must be clearly stated/included and then agreed upon by the seller and the buyer.
4. In terms of the object being traded (*ma'qud 'alaih*)

¹³ Ainul Yaqin, *Kajian Komprehensif Ekonomi Islam* (Jawa Timur: Duta Media Publishing, 2022). h.38

¹⁴ Dimyauddin Djuwaini, *Pengantar Fiqh Muamalah* (Yogyakarta: Pustaka Belajar, 2015). h.73

¹⁵ Rachmat Syafe'i, *Fiqh Muamalah* (Bandung: Pustaka Setia, 2001). h.67

the terms of the object in sale and purchase are goods that are permanent or useful, sacred, can be handed over, can be seen by those who make a contract, are not related to other people's property, know, and see the condition of the goods is good regarding the count, dosage, weight or quality, and there is no prohibition from *syara*. Like the criteria for buying and selling objects that are the object of buying and selling must be legal to be traded.

In the sale and purchase transaction of a *thrift shop* the perspective of sharia economic law in general, is in accordance with the pillars and conditions in muamalah because it is clear the quality and benefits of the goods or objects being contracted, then the buyer is also given the right to vote so that they can choose the clothes they will buy before they make a transaction without coercion. So that the sale and purchase transaction of *thrift shop* is a valid sale and purchase, because it has been fulfilled by the provisions of Islamic law in terms of the pillars and terms of the sale and purchase contract.

4. Conclusion

The aspect of legal protection in the sale and purchase transaction of *thrift shops* is contained in several positive laws in Indonesia, this is intended to handle the activity of importing used clothing into Indonesian territory as one of the government's preventive measures, namely in Article 47 paragraph (1) of Law No. 7 of 2014 concerning Trade, then also in Article 2 of Regulation of the Minister of Trade Number 51 of 2015 concerning Prohibition of Import of Used Clothing. prohibition on the import of used clothing is due to *thrift* entering through illegal channels, making it legally invalid. This rule is specifically aimed at used clothing importers' transaction of buying and selling *thrift shops* and does not conflict with Article 8 paragraph (2) of the UUPK, if the sellers have explained in detail the condition of the product being sold is used clothing (*thrift*) imported from abroad, whether transacted directly or through an *online shop*.

The sale and purchase transaction of a *thrift shop* is by Islamic law in terms of the terms of consent, subject, to the object being traded. So, the law of buying and selling *thrift shops* is legal and permissible in Islam, because in the implementation of buying and selling the pillars and conditions have been fulfilled by the provisions in Islam.

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