



Penalties for Cancelling Locked Gold Purchase Orders in Online Trading

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ABSTRACT - Lock price gold transactions are becoming increasingly popular among gold buyers since buying gold is easier online. The lock price method gives the buyer a 24-hour period to make a payment with a price that has been locked without changing the value during that period. The lock price method is based on the concept of *wa'd* that is allowed, which is just a promise, not a sales contract. The problem is when the seller or company sets a fine for the buyer who cancels the transaction, such as 5% of the lock price gold price. The setting of the fine makes binding between the seller and the buyer as if there had been a deferred sales contract, which is not allowed in transactions involving usury (*ribawi*) items. This study aims to analyze Shariah law regarding the setting of the fine, which makes the concept of *wa'd*, which was originally just a promise to the binding process that forms a deferred sales contract. The design of this study is qualitative, using a literature review with content analysis and documents from secondary sources such as theses, journals, and academic articles related to the issue of research. At the end of the discussion, this paper recommends some suggestions for improvement in the Shariah issues that occur in gold transactions related to the lock price method based on the formation of the proposed guidelines.

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INTRODUCTION

Contemporary gold transactions online through the "lock price" method refers to an agreement between buyers and sellers to perform gold transactions at a predetermined price, regardless of fluctuations in the price of gold in the market. In such a transaction, the agreed gold price will remain valid for a certain period, usually a few hours or days (Shafie, 2012). The process of buying and selling gold at a locked price usually involves steps where the buyer and seller agree on the gold price that will be used in the transaction. This price can be based on the current market price or a predetermined price. Additionally, the buyer and seller sign an agreement or contract that defines the locked-in price, the amount of gold traded, the duration of the agreement, and other terms and conditions. The prevailing practice is that the buyer is required to pay the deposit amount or the entire payment when the price offer is locked. This is done to ensure the buyer's commitment to the transaction in the form of a promise (Mohd Nor, 2014). However, keep in mind that in this type of transaction, the locked price is only valid for a predetermined period of time. If there is a significant change in the price of gold during this time, the party who feels less fortunate can seek renegotiation or according to the terms and conditions specified in the contract.

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This lock price method is a popular method in contemporary gold transactions as it allows customers to lock in the desired price, considering that the current gold price is constantly changing in 20 minutes (Shafie, 2012). This method provides an advantage for customers to lock the price at a low level prior to making payment and receiving physical gold at a nearby agency. This method also states that the customer has agreed to buy at a locked price. Locked prices will not be affected by changes that occur either downward or upward (Saiman & Salleh, 2018). Gold is a *ribawi* item with specific transaction guidelines according to the Islamic perspective. From the point of view of fiqh, this lock price method is a promise (*wa'd*) that has not yet formed a sales contract between the seller and the buyer. Payment of part of the amount is a commitment fee (*hamish jiddiyah*) as a sign of seriousness and not as a deposit. Suppose it is counted as a deposit of part of the purchase amount. In that case, there will be an element of delay in this transaction, which is prohibited (Saiman & Salleh, 2018). This is because transactions involving gold and paper money refer to the guidelines for *ribawi* transactions between the same *'illah ribawiyyah* yet different types of *ribawi* items. An increase or excess is allowed; however, it must be in cash and the delivery of both items in one event.

Accordingly, the problem focused on in the study is when the gold company as a gold seller imposes a fine on the buyer when the gold purchase is canceled after the price has been locked. Hence, are fines allowed according to the Shariah perspective? The transactions that take place in this price lock method involve promises that have not yet been entered into a contract. If there is a setting of this kind of fine, then has it changed the status of a "promise" (*wa'd*) to the normal establishment of a contract? In fact, is it possible to impose a fine on the cancellation at a percentage determined from the beginning when what is the loss incurred by the gold company as a seller with the cancellation? Therefore, this study will examine the problem of penalties or fines imposed on the cancellation of promises by the buyer after doing the lock price. The study conducted will first examine the specific guidelines involving online gold transactions and then the concept of fines or penalties according to the Shariah perspective to enable proposals to be submitted in the issue of fines for cancellations.

LITERATURE REVIEW

Guidelines Involving Gold Transactions From A Shariah Perspective

Gold, one of the *ribawi* items, is bound by specific guidelines clearly stated in the hadith involving the transaction of *ribawi* items. Exchange involving *ribawi* items that have the same type as gold with gold must be in the state of *tamathul* (equal amount), *hulul* (cash, i.e., not delayed), and *taqabud* (handover of property from both parties) in one event. Meanwhile, if the exchange involves a different type of *ribawi* item with the same *'illah ribawiyyah*, it is allowed to increase. However, it is still tied to *hulul* (cash, i.e., not delayed), and *taqabud* occurs in one event of a transaction. Moreover, in the context of buying gold using paper money, according to the opinion of Islamic scholars that paper money nowadays replaces the function of dinar and dirham, which have *'illah* (legal reason) and *thamaniyyah* (value), which is currency. Thus, a gold transaction involving the exchange of gold with paper money is the same as two *ribawi* items of different types with the same *'illah ribawiyyah*, which is allowed to increase. However, it is still tied to *hulul* (cash, i.e., not delayed), and *taqabud* occurs in one ceremony (al-Zuhayli, 2002 & al-Qaradawi, 2006).

This is based on the hadith narrated by Abu Sa'id al-Khudri that the Prophet SAW said:

الدَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِنْ أَلِّ بِمِثْلِ يَدَا بِيَدٍ فَمَنْ زَادَ أَوْ اسْتَزَادَ فَقَدْ أَرَبَى الْأَخْذُ وَالْمُعْطَى فِيهِ سَوَاءٌ

Meaning:

(Exchange) Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, in the same measure and cash, then whoever adds or asks for more then he has committed *riba* (usury), then those who take usury and those who give usury are the same (their sin).

(Hadith. Muslim. *Kitab al-Musaqah. Bab al-Sarf wa Bay' al-Dzahab bi al-Waraq Naqdan*. No. 1584).

And also from another hadith by Abu Sa'id al-Khudri who also narrated that the Prophet SAW said:

لَا تَبِيعُوا الذَّهَبَ بِالذَّهَبِ إِلَّا مِثْلَ الْمِثْلِ وَلَا تَشْتَفُوا بَعْضَهَا عَلَى بَعْضٍ. وَلَا تَبِيعُوا الْوَرَقَ بِالْوَرَقِ إِلَّا مِثْلَ الْمِثْلِ وَلَا تَشْتَفُوا بَعْضَهَا عَلَى بَعْضٍ. وَلَا تَبِيعُوا مِنْهَا غَائِبًا بِنَاجِزٍ

Meaning:

Do not sell gold with gold except for the same amount, and do not increase part over part. And do not sell silver for silver except for the same amount, and do not add one part to another. And do not sell from it (items that have an element of *riba*) part of it in the unseen for cash (do not accept both items in one ceremony).

(Hadith. Muslim. *Kitab al-Musaqah. Chapter al-Riba*. 2972).

While it is allowed to have an increase and excess when the type of *ribawi* item is different at the same time it is still tied to *hulul* (cash i.e. not delayed) and there is *taqabud* in one event. This is based on the hadith narrated by Ubadah bin al-Samit that the Prophet SAW said:

الذَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلَ الْمِثْلِ سَوَاءً بِسَوَاءٍ يَدَا يَدٍ. فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَنْصُفُ نَافٍ فَيَبِيعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدَا يَدٍ

Meaning:

Gold with gold, silver with silver, wheat with wheat, barley with barley, dates with dates, and salt with salt, in equal amounts and cash (accepted in one ceremony). So if the type is different, then buy and sell according to your wishes in cash.

(Hadith. Muslim. *Book of MUSAQAH. Bab al-Nahyi 'an Bay' al-Wariq*. No. 1587).

In another narration, the Prophet SAW said:

لَا بَأْسَ بِبَيْعِ الذَّهَبِ بِالْفِضَّةِ وَالْفِضَّةِ أَكْثَرُهُمَا يَدَا يَدٍ، وَأَمَّا النَّسِيبَةُ فَلَا. وَلَا بَأْسَ بِبَيْعِ الْبُرِّ بِالشَّعِيرِ وَالشَّعِيرِ أَكْثَرُهُمَا يَدَا يَدٍ، وَأَمَّا النَّسِيبَةُ فَلَا.

Meaning :

It is okay to sell gold with silver in the condition that the silver is more, in cash. If it is for a period, then it is not allowed. And it is okay to sell wheat and barley in the condition that the barley is more in cash, but if it is for a period, then it is not allowed.

(Hadith. Abu Dawud. *Kitab al-Buyu'. Bab fi al-Sarf*. No. 3349)

Most scholars agree that the difference in the nature and form of gold does not affect the conditions that have been placed (Markaz al-Dirasah al-Fiqhiyyah wa al-Iqtisadiyyah, 2010). Therefore, if there is an exchange between good gold and less good gold or gold ingots and gold that has been formed, then the conditions remain three, which are the same (*tamathul*) in terms of weight or value, handover (*taqabud*) of both items in one ceremony and the same condition cash (*hulul*). Therefore, nature does not affect the condition of the gold substance since it is based on

the hadith narrated by Abu Hurairah and Abu Said that the Prophet SAW sent a man to Khaibar, then the man returned from Khaibar and presented him with a beautiful date fruit, then Prophet SAW said:

أَكَلْتُ تَمْرَ خَيْبَرَ هَكَذَا ؟ " قَالَ : لَ وَاللَّهِ يَا رَسُولَ اللَّهِ إِنَّا لَنَأْخُذُ الصَّاعَ بِالصَّاعَيْنِ ، وَالصَّاعَيْنِ بِالثَّلَاثَةِ ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : " فَلْيُفْعَلْ بِعِ الْجَمْعِ بِالذَّرَاهِمِ ثُمَّ اشْتَرِ بِالذَّرَاهِمِ جَنِينًا

Meaning :

Are all the dates in Khaibar like this? He answered: No. But we exchanged one bushel of tamar (the good one) for two bushels (the less good one) and two bushels (the good one) for three bushels (the less good one). The Prophet said: Do not do that. Sell the whole thing for dirhams, then buy a good tamar with the money.

The hadith above clearly demonstrates that the difference in the nature of *ribawi* items of the same type of goods and *'illah* cannot be used as a trick to get an increase since the increase is *riba fadl*.

Meanwhile, if the transaction involves gold jewelry, there is a difference of opinion among the scholars who require delay due to the fact that gold jewelry is considered one of *illah thamaniyyah*. However, it has become a trade item (*sil'ah*) since the price of gold jewelry is not just the price of gold alone. It has been mixed with the wages of manufacturing or forging services and mixed with the price of diamonds or items included in the jewelry. Among those views are from Ibn Taymiyyah and Ibn Qayyim (Mat Zain, 2010). Even so, the majority view from most of the four schools of thought is that buying and selling gold jewelry is still prohibited on a delayed basis. Their argument is based on the literal hadith, which prohibits gold transactions on a delayed basis. Although gold has been formed, the properties of gold and silver in the jewelry remain. The result of the carpentry that occurs on the jewelry does not impact the original golden rule (Jamaluddin, 2012).

The Method of Gold Online Transactions Through Lock Prices and Fine on Cancellation

When buying gold online, one needs to be careful about the procedure and the law since gold is one of the *ribawi* items with specific conditions that must be followed in the transaction. This includes requiring the contract to be valid and the handing over of goods (*taqabud*) to take place at the place of signing the contract. When such conditions are set, the question arises from buyers: is online purchase invalid? Gold items purchased online will be delivered by post or picked up at a later date; therefore, it is quite impossible to hand them over physically when the contract is signed (Alya Afifah, 2021).

The lock price method is a popular contemporary method in gold transactions. This method allows customers to lock in prices, which is desired, considering the current gold price constantly changes in 20 minutes. This method provides an advantage for customers to lock prices at a low level prior to committing payment submission and receipt of physical gold at nearby agencies. This method also states that the customer has agreed to buy at a fixed price. Locked prices will not be affected by the changes that occur, either decreasing or increasing. For example, the current price of 10 grams on July 2nd, 2023, is RM3100. However, on July 3rd, 2023, the price of 10 grams soared to RM3110. The customer still only has to pay the total price where the lock price has been locked on July 2nd, 2013, even when the price has been increased.

In this price lock method, some doubts lead to delays, namely:

1. A price lock process that negates the current price since after the price lock is performed, the price has been locked unchanged by its occurrence increase or decrease in the current price of gold.
2. Payments are made within 24 hours after receiving the sales order.

3. Cancellation of reservation through lock process. This price will be subject to a penalty or fine, such as 5%. This situation seems to constitute "a must" with a fine set for cancellation that was done.

From the framework above, Mohd Nor (2014) explained that there are two Shariah issues that occur. First, there is no *taqabud* or immediate exchange between money and gold. The amount of money deposited in the bank three days earlier is considered payment for gold and is required to be paid in advance. The gold will be delivered three days later. Obviously, here, there is a delay between the payment and the delivery of the gold. A special condition for buying and selling gold is that there must be an exchange (payment and delivery of gold by *taqabud* on the spot; exchange occurs simultaneously). The same law applies to the purchase of silver and currency exchange. In the structure of buying and selling gold above, if one wants to consider the initial payment as *wadiah*, the mechanism is not clearly stated.

Second, a cancellation of as much as a 5% fine is imposed if the buyer wants to cancel the purchase. The Shariah issue is that it is as if the order or purchase order is binding. Hence, it is considered as if there has been a sale from the beginning, not just an order. What happens in the sale and purchase agreement is the commitment to give up the exchange item due to the transfer of ownership. This means that if the sale and purchase agreement has not occurred, the seller has no right to charge any cancellation charges. If there is a view that allows it, it must be based on actual incurred cost/real cost only (if any, such as transportation fare), not in the form of a percentage. Taking a deposit as an *urbun* is also not allowed for buying and selling gold as it is considered part of the price. However, booking fees, which can be returned for cancellation, may be considered.

METHODOLOGY

This study employs a qualitative research design by focusing the analysis on the determination of fines imposed after the cancellation of gold transactions through the lock price method. This study uses a literature review approach by collecting primary data from the website of a gold seller or commercialist that mentions the lock process method and the fines imposed. Meanwhile, the secondary sources include fiqh books, scientific books on gold transactions, journal articles, conference papers, and case reports. After that, the data analysis was performed through the content analysis approach, and the documents that gathered information were analyzed using the descriptive approach to answer the questions of this article. The analysis is conducted by making observations on the data to get a clear picture related to the concept of fines according to the perspective of the debate of Islamic scholars and also the discussion of the character of jurisprudence on the lock price method in gold transactions. The data collected and analyzed the issues are highlighted in the following research framework in Figure 1.

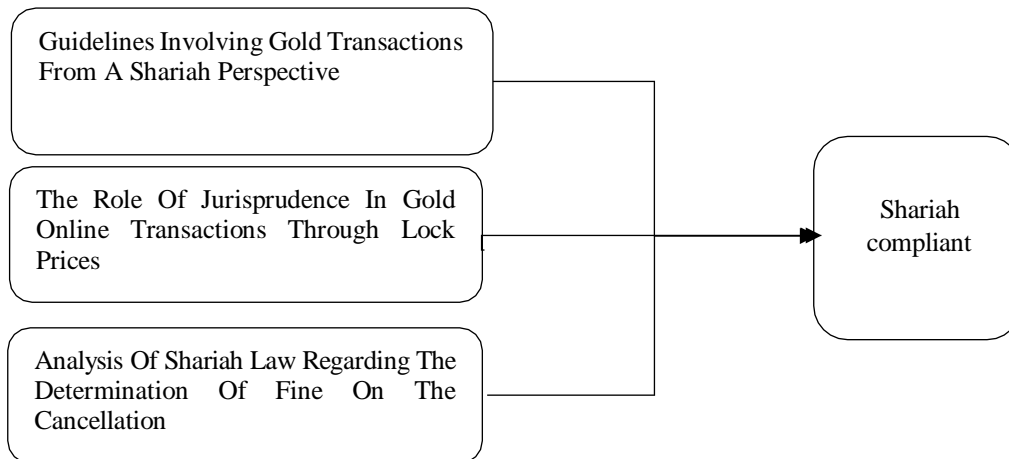


Figure 1: Research framework

The framework above illustrates three basic things in this study to ensure that the criteria of Shariah compliance apply in online gold transactions as well as issues involving fines for cancellations that have been promised through the lock price method. Basically, gold transactions, even online, comply with specific guidelines involving *ribawi* items since they involve the exchange between fiat money and gold. This is due to the fact that both have *'illah ribawi* from a *thamaniyyah* point of view, which must be exchanged immediately without delay.

Consequently, the researcher viewed the debate from the point of view of the concept of online gold transactions through the lock price method, whether there is an element of delay or not. In the context of this lock price, it needs to be understood whether there is an element of delay with the contract taking place or if the contract has not yet taken place and the issue of delay does not arise. The contract is executed at the promised time with the concept of *qabd hukmiy* at the time the contract is signed since a promise (*wa'd*) is different from a contract, where a promise no longer exists as a contract.

Finally, a study was conducted on the Shariah issue of fines imposed after a promise was made through lock price since a promise is not a valid contract anymore. However, by imposing a fine, it seems to form a contract. In addition, if fines are allowed to suggest seriousness, then what is the appropriate rate, and can it be fixed? Therefore, the concept of fines or penalties will be studied according to the Shariah perspective for the implementation of fines or penalties on the issue of cancellation after the lock price has been made.

RESULT

The Role Of Jurisprudence In Gold Online Transactions Through Lock Prices

1. *Taqabud (Handover of Ownership) Issue*

Buying gold online is also not exempt from the conditions in the guidelines for buying and selling gold, namely *tamathul* (same rate), *hulul* (no delay), and *taqabud* (handover of ownership) in one ceremony for the same type of *ribawi* item like gold with gold. While for different types of *ribawi* items but with the same *'illah ribawiyyah*, which is *thamaniyyah* (value), such as gold with silver or even gold with paper money in this day and age, the condition is *hulul* and *taqabud* in one ceremony. Even if it is allowed to happen in excess, the delay element is still not allowed. What differentiates buying gold online is the condition of "a ceremony" when the contract is in progress. Basically, the meaning of "a meeting" is still accepted even if the two contracting parties are physically in different places as long as the transaction is still a direct transaction without delay. If it is just a recording or even while online, but there is an internet interruption such as a disconnection, then it is not considered "one event" of the transaction. Online transactions must be proven by the

direct presence of the buyer and seller through transaction information that clearly states the time, date, goods purchased, and payment transferred.

The issue of online gold transactions is based on the ruling from the Majma' al-Fiqh al-Islami Council for the 11th Rabitah al-Alam al-Islami, which convened in Makkah in the year 19-26 February 1989. They discussed the issue of genuine *taqabud* (physical handover of goods) and *hukmiy* (legal handover of ownership) and decided that transaction documentation in the form of receipts and account records can be accepted as one of the valid and accepted forms of *taqabud* in Islam. Therefore, when the gold has been deposited into the buyer's account and recorded in the system and receipt, the buyer can, at any time, withdraw the gold with the quantity based on the agreement or contract. The delivery is considered complete (al-Bakri, 2018). Therefore, the contract of buying and selling gold online is valid if it fulfills these conditions.

The transfer of ownership must be a complete transfer with risk. Accordingly, despite the occurrence of *qabd hukmiy* (handover of possession that is legally valid even if the physical handover of the goods has not taken place), it must prove the existence of the transfer of ownership in full to the buyer. This is even if the ownership does not physically occur and the buyer has not yet physically received the goods (Mohamad et al., 2017). Furthermore, according to Badri (2015), the transfer of ownership fully indicates the transfer of responsibility. This can be proven in the event of risk such as loss; then, the loss is borne by the buyer even if the physical item is not in the buyer's possession. Note that liability for this loss begins when the contract is made.

In addition, when selling gold online, the seller must have a stock of gold to sell. It proves that the gold sold exists and is easily available from the gold supply company. If the item is difficult to obtain at the same time the seller has already taken the buyer's payment as saving money, then one of the elements of *gharar* (something that is not clear and leads to risk) has existed in the sale and purchase (Abd Rahman, 2009; al-Zuhayli, 2004). In fact, if there is no stock of gold supply, online sales will have an element of delay in addition to *gharar*. Therefore, it is the seller's responsibility to first ensure the performance of a gold supplier company before registering as an agent or stockist.

2. Promise Status (*Wa'd*) in the Lock Price Method

The status of promise (*wa'd*) in the lock price method where there are two descriptions of the status of the implemented agreement as follows (Yaakub & Buang, 2019):

- i. The promise (*wa'd*) that takes place is considered a sale and purchase contract in a state of delay in the delivery of sales goods and payment of money.
- ii. The promise (*wa'd*) takes place as the agreement of both parties to perform a sale and purchase contract in the future period that has been set together. The promise (*wa'd*) is a guarantee from the promise maker that must be fulfilled since the seller will only sell or hand over the gold based on the promise (*wa'd*) made based on the price, number, and type of gold. Even defaults or cancellations that cause losses can be claimed for damages.

If the given promise (*wa'd*) is the first situation, considered a sales contract, then it has opened up the possibility of delaying both goods. Sale and purchase contracts involving such *ribawi* items are not required. If the promise (*wa'd*) is made in the second situation, that is, as a form of guarantee that must be fulfilled, then the status of this promise (*wa'd*) must be refined with some details. It is to avoid the status of the promise (*wa'd*) as an agreement that no longer applies to a contract since there is a clear difference between a promise (*wa'd*) and a contract from various angles.

Based on the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI, 2016) in Shariah ruling No. 57 in discussing gold and its trade control, it allows the form of guarantee in the implementation of promises for gold transactions. The guarantee is understood through the obligation of the buyer's initial payment as a commitment fee (*hamish jiddiyah*), and the

seller has the right to claim cost losses caused by default on the part of the buyer as the party who gave the promise. This guarantee is still tied to a promise that has the status of a unilateral promise (*wa'd*), which is a guarantee on one side, while a bilateral promise (*muwa'adah*) that binds both parties is not allowed. The authors observe the necessary difference between unilateral promise (*wa'd*) and bilateral promise (*muwa'adah*) at the AAOIFI level to ensure the difference between the status of a promise and a sales contract only. This is due to the fact that, even if there is a guarantee by binding one party, it is still not considered a sale and purchase contract since the basis of the sale and purchase contract is exchanged (*mu'awadah*), which is the handover or exchange between two contracting parties.

Therefore, in this second situation, there is still no sale and purchase contract except during the promised delay period if the buyer, as the promiser, continues the agreement given. Even if the guarantee is binding and is perceived as if there is the tendency to happen definitely, it still does not comply with the contract (Saiman, 2021):

- i. A binding guarantee is a promise from a legal point of view, even if it is moral.
- i. No handover of goods is made either in actual or *hukmiy* handover.
- ii. The initial payment must be a commitment fee (*hamish jiddiyah*), which suggests seriousness instead of an initial deposit. If it is considered an initial deposit or part of the sales price paid in advance, then it is not required since there has been a pending contract with the intention of handing over at the buyer's level to the seller.

Muslim scholars have different views regarding binding promises, whether *wa'd* or *muwa'adah*, and whether those who break promises can be subject to legal action or not. The discussion on the law of binding promises can be divided into three parties, namely (Yaakub & Buang, 2019):

- i. The party that allows the promise is absolutely binding, whether the promise is in the form of a unilateral promise (*wa'd*) or bilateral promise (*muwa'adah*), since even if the promise is binding, it is still not a contract. This resolution is to represent Bank Negara Malaysia's Shariah Advisory Council in its 157th meeting (BNM, 2015).
- ii. The party that receives the *wa'd* be only binding. However, the binding *muwa'adah* is only allowed in export and import transactions since there is a public interest, which is to preserve the urgent interest. This is a ruling from the International Islamic Fiqh Academy (AFIA, 1998) and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI, 2002).

Based on the discussion above, the authors agree that as long as online gold transactions through the lock price method are still in the context of promises (*wa'd*), then they are allowed as there is no delay issue. This is due to the fact that in the context of the promise (*wa'd*), the contract has not yet been formed, and when the contract has not been formed, there is no ownership transfer issue. At the same time, the authors also agree that binding promises are more of a moral issue to avoid the issue of fraud with false promises. Therefore, a binding promise is required since, basically, when someone makes a promise, he must fulfill that promise. While from the point of view of fines imposed as a result of cancellation or default, it is allowed in the event of a loss with the actual cost claimed, not a profit-oriented ploy on the part of the seller only when there is a promise from the buyers through the lock price method.

3. Parameters of Buying Gold Online Through the Lock Price Method

There are specific parameters that involve buying gold online through the lock price method as follows (Saiman, 2022):

- i. Gold transactions must meet gold standard guidelines.
- ii. Buying gold online must meet the "one occasion" condition so that there is no element of delay in buying and selling. The criterion of a ceremony is that the transaction that takes place is directly between the buyer and the seller, and the recorded entries demonstrate the same date and time even if the area zone is different.

- iii. Online sales must be based on the gold stock available on the part of the agent or sales company, even though the physical will be accepted later.
- iv. It is necessary to ensure that the online transaction meets the requirements of *taqabud hukmiy* (handover of legal ownership even if the physical handover of the goods has not yet occurred) between the buyer and the agent or the seller's company. Through *taqabud hukmiy*, it becomes evidence that the buyer has the right to the gold, whether for resale or tax, to name a few. Selling without having gold stock is not allowed since there is an element of delay due to the occurrence of orders on goods that no longer exist to be held when the contract takes place.
- v. The purchase of gold by the lock price method is required as long as the promise does not constitute a sale and purchase contract.
- vi. A binding promise is required from the point of view of preserving the interests of the other party from bearing losses or damages resulting from the default.
- vii. If there is a breach that causes damage to goods or loss from a service point of view, then the seller can claim damages based on the actual rate rather than profit orientation. Notification of the guidelines must be clearly stated at the beginning of the agreement.
- viii. The initial payment, whether partial or full, when the lock price method is performed is only a commitment fee (*hamish jiddiyah*) status as proof of seriousness on the part of the promise maker to buy. It does not count as an advance payment deposit for part of the sale value. If there is a cancellation, the money will be returned. The seller is allowed to charge a loss based on the actual cost if there is a loss due to damage to goods or work services that have been performed due to cancellation. This claim must be clearly communicated in advance and cannot be disguised.
- ix. When the contract is signed at an agreed period when the promise is fulfilled, there is a contract of appointing a representative with a wage payment (*wakalah bil ujah*) where the buyer appoints an agent or sales company as his representative in managing the gold stock taker and sent to him. The remuneration received involving delivery costs must be clear and fixed based on the delivery agreement. Any additional costs involving delivery must be informed in advance and agreed upon, such as takaful costs on gold posting.
- x. Any problems before the buyer receives the gold goods are under the responsibility of the agent or company dealing as a representative for him.

This parameter is essential to ensure Shariah compliance in gold transactions in today's transactions that are more open online based on technological development and digital progress. For the lock price method, it must be a promise rather than a sales contract. The implementation of a binding promise is appropriate to avoid harm to the other party. In addition, whatever the gold transaction, the agent and company should sell it on the condition that the gold already exists, even in the storage stock, based on security issues. If the sale is made on gold that does not exist, then it is illegal due to the fact that it is a reservation and the reservation status has a pending element.

Analysis Of Shariah Law Regarding The Determination Of Fine On The Cancellation

Under Shariah law, the determination of fines or penalties for the cancellation of gold transactions after the lock price is done may vary depending on the specific circumstances. Shariah law provides general principles governing transactions, including those involving gold. In general, Shariah-compliant transactions must comply with certain principles, such as:

1. Mutual Consent: Both parties involved in the transaction must sign the agreement willingly and without any form of coercion.
2. Transparency: The terms and conditions of the transaction, including the lock price and any penalty for cancellation, should be clearly disclosed and agreed upon by both parties.

3. Certainty: The transaction should be based on clear and specific terms to avoid ambiguity or uncertainty.
4. Fairness and Equity: The transaction should be conducted in a fair and equitable manner, with both parties being treated justly.

Regarding the determination of a fine or penalty for the cancellation of a gold transaction, there is no universally prescribed or fixed rule in Shariah law. The application of penalties may differ based on various factors, such as local customs, market practices, and the agreement between the parties involved. In some cases, a penalty may be stipulated in the initial contract or agreement to compensate the party who suffers a loss due to the cancellation. However, the exact amount or method of determining the penalty would depend on the mutual agreement between the parties or the guidance of Islamic scholars within a specific jurisdiction.

1. Concept of Damages (*Ta'widh*), Fines (*Gharamah*)

In Islamic finance, the concepts of fines and damages are generally handled differently compared to conventional finance. Islamic finance principles are based on the teachings of Shariah, the Islamic law, which prohibits the charging or payment of interest (*riba*) and promotes fairness and justice in financial transactions. Regarding fines, Islamic finance discourages the imposition of penalties or fines as a means of generating revenue. Moreover, fines are considered punitive in nature and are not aligned with the principles of justice and fairness. Instead, Islamic finance emphasizes the resolution of disputes through arbitration or mediation, focusing on finding equitable solutions for all parties involved.

As for damages, Islamic finance recognizes the concept of compensation for losses incurred due to a breach of contract or negligence. If a party suffers harm or loss due to a breach of contract, Islamic law allows them to claim compensation for their actual damages. The compensation is intended to restore the affected party to the position they would have been in if the breach had not occurred. In Islamic finance contracts, such as *Murabaha* (cost plus sale), *Ijarah* (leasing), or *Musharakah* (partnership), specific provisions may be included to address potential damages or losses. These provisions outline the rights and responsibilities of the parties involved and provide mechanisms for resolving disputes and determining compensation if a breach occurs. Overall, fines are generally discouraged in Islamic finance, while compensation for damages resulting from breaches of contract or negligence is recognized and addressed in a manner consistent with the principles of fairness and justice. It is important to note that specific practices and interpretations may vary among Islamic finance institutions and scholars. Islamic scholars have two opinions regarding the necessity of paying damages and fines in Islamic financial discussions.

The first opinion states that it should impose compensation for debtors who deliberately delay debt payment. This principle of damages is also calculated based on the actual harm received by the creditor (bank) over the debtor's delay in explaining the payment. However, there are some specific conditions that need to be met in order to value damages equal to the harm that occurs, such as the power to determine the rate of damages, the rate of creditor harm, and the debtor's retirement rate is only entitled to be determined by the court only (Ismail et al., 2014). Nevertheless, there are also opinions of scholars who do not require the method of damages and fines, such as Hammad (1985), al-Misri (1986), Syaaban (1989), and Al-Qurrah Daghi (2006).

Furthermore, based on hadiths that consider the refusal of the debtor to repay the debt as injustice and legalize his dignity, he can be punished. However, it does not indicate the necessity of the penalty to pay compensation; no one even interprets that such a punishment should be done. This opinion is also supported by Syaaban (1989). Meanwhile, the stipulation of compensation is also not other than performing usury tricks in a delayed manner, and it is haram (al-Misri 1986). The author explained that this proposal is like opening a space towards the *riba* door until finally, the only difference left on the outside and the cause only. Basically, the damages also result from the sale and purchase contract in installments and not from the loan contract alone (Pejabat Mufti Wilayah Persekutuan, 2023).

According to Bank Negara Malaysia's (BNM, 2010), the imposition of late payment charges by Islamic financial institutions that include both the concepts of *gharamah* (fine) and *ta'widh* (damage) is permissible, subject to the following :

- i. Damages (*ta'widh*) can only be imposed after the end of the debt repayment period agreed by both contracting parties;
- ii. Islamic banking institutions can recognize damages (*ta'widh*) as income on the basis that they are charged as compensation for actual losses suffered by Islamic banking institutions, and *gharamah* cannot be considered as income. Instead, it must be channeled to certain charities.

2. The Determination of Fines Must Be Based on the Actual Cost of Losses

The main reason for setting a fine for the cancellation of the gold purchase agreement through the lock price method is based on two things: to prevent fraud from the buyer and the cost of damages borne by the gold company after the process of the gold purchase agreement. This includes the cost of gold forging, gold packaging, and delivery service. Based on that, the setting of fines is in line with the concept of fines or penalties that are announced at the beginning of the gold purchase agreement. Furthermore, it is a seriousness in completing future sales transactions at the set time as a result of the promise (*wa'd*) that occurs through the lock process method. However, suppose the fine or penalty is oriented towards additional profit for the gold company or seller. In that case, it has deviated from the true concept of the fine since the calculation is no longer based on the cost of the actual loss.

In the case of fines based on actual costs, the concept is the same even in bank financial institutions as it refers to the context involving finance. In this regard, most contemporary scholars allow banks to charge costs related to financing transactions, provided they reflect the actual costs incurred. This is the opinion held by Fiqh Academy Council, OIC, Jeddah, and this is also the essence of the fatwa issued by the Standing Council of Scholarly Research and Ifta (*al-Lajnah daimah li al-buhuth al-'ilmiyyah wa al-ifta'*) Saudi and AAOIFI (Mohd Nor & Haron, 2016). Therefore, the issue of setting fines that are not based on the actual amount of losses becomes polemic as it seems to oppress the customer. The excess cost over the cost of the actual loss is the manipulation of the seller in the transaction or promise made from the beginning. Due to that, if the fine is not based on the actual cost of covering the loss, then the setting of the fine in Islamic finance is perceived as a burden on the customer (Muneeza et al., 2019).

Therefore, the gold company or seller needs to list the costs incurred after the promise to buy gold in the future is agreed upon through the lock price. Those costs are the loss to the gold company or the seller in the event of cancellation or default on the part of the buyer, which the buyer must bear. In such a situation, it is fairer and looks after the mutual welfare of both parties, where the gold company or the seller will not bear the loss due to cancellation if it happens. Meanwhile, the buyer is not burdened with excess costs created more than the actual cost of the loss. Then, the money paid in advance as a commitment fee (*hamish jiddiyah*) will be deducted based on the cost of losses due to cancellation if it is performed. If there is a surplus, then the surplus is returned to the buyer. This is more appropriate in the context of Islamic finance. Moreover, anything doubtful or can contribute to usury and hardship should be eliminated and avoided at all costs.

CONCLUSION

In conclusion, this paper has presented a comprehensive discussion on the Shariah analysis of setting fines for the cancellation of gold transactions through the lock price as a reference and guide to the community. This is especially true for those involved in gold buying and selling transactions. Gold is a *ribawi* item that has specific guidelines that must be maintained in order to avoid the occurrence of usury, which is prohibited in Islam. Based on the discussion above, the

lock price method is allowed as long as one understands the specific guidelines that involve *ribawi* item transactions in addition to several other things. This includes the occurrence of handover, even if it is *hukmiy*. This method is only a promise in forming an agreement to buy in the future based on the agreed date. In addition, the money paid at the beginning of the promise is made only with a zero commitment fee (*hamish jiddiyah*) and not as a deposit.

In setting the fine, the authors agree that the gold company or seller can set the fine at the beginning of the agreement, and it does not change the status of a promise to a contract. The setting of the fine is only to assert seriousness on the part of the buyer in addition to safeguarding the welfare of the gold company or seller in the event of cancellation or default. Based on that, the fine must be on the cost of the actual loss only without setting a higher cost than that since the setting of the fine cannot be used as an orientation to make additional profit. The gold company can put a percentage for the fine due to cancellation. However, the company can only take the loss's actual cost while the excess is either returned or distributed to welfare channels. Nevertheless, in the percentage given, it must be clear how much loss is incurred due to the cancellation made by the customer.

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