

## Research article

# Concept of 'An-Taradhin Minkum in the Perspective of Qur'an and Hadith

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**Abstract.**

The principle of 'An-Taradhin minkum, as one of the principles in muamalah contracts, should be upheld in every purchase and sale transaction. This study discusses the concept of An-Taradhin minkum from the perspective of the Qur'an and Hadith. This was a literature study which referred to the Quran and Hadith, journals, as well as any relevant literatures. This study aimed at determining the concept of 'An-Taradhin minkum from the perspective of the Qur'an and Hadith. By using a descriptive qualitative method, the results showed that the concept of 'An-Taradhin minkum in the perspective of the Qur'an puts an emphasis that it is a basic principle according to Allah commands that should be upheld in every purchase and sale transaction. This principle can be in the form of words (Ijab Qobul / contract) or actions that show mutual consent. Meanwhile, in the perspective of Hadith, the concept of 'An-Taradhin minkum guides that, in muamalah, the presence of mutual consent is the basis and foundation of all contracts. Thus, if any purchase and sale transactions are found to contain the elements of gharar, tadelis, etc, then the contract is invalid.

**Keywords:** An-Taradhin Minkum; Purchase and Sale Transactions; Muamalah

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## 1. Introduction

In Islam, *muamalah* often contains all aspects of life, especially in purchase and sale transactions. Islam has also regulated and established the basic principles in these purchase and sale transactions. *Muamalah* is the rules (laws) of Allah SWT, intended to regulate human life, particularly the worldly life or social affairs (1). One of the forms of *muamalah* can be found in the Qur'an especially in Surah An-Nisa' verse 29. Allah SWT says; Translation: "O you who believe! Do not eat up your property among yourselves (unjustly) except that it be trading by your mutual consent. And do not (commit suicide) kill yourselves (one another). Surely Allah is Most Merciful to you." (Surah An-Nisa': 29). The verse describes that in making a living, Allah forbids human from committing corrupt practices, eating up property unjustly, cheating, deceiving, etc, but Allah also helps by putting emphasis on benefits, in the form of mutual consent, preventing any party from

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being harmed or disadvantaged when making a transaction. Therefore, the concept of *'An-Taradhin minkum* (mutual consent) is one of the right ways (2).

Nevertheless, one of the most fundamental problems is that, in general, people do not know about the concept of *'An-Taradhin minkum* in the perspective of the Qur'an and Hadith. Although many journals that specifically discuss it from various perspectives are available, a study using the perspective of the Qur'an and Hadith has not been found. Based on the abovementioned background, we wanted to discuss the concept of *'An-Taradhin minkum* (mutual consent) in the perspective of the Qur'an and Hadith. This study aimed at determining the concept of *'An-Taradhin minkum* in the perspective of the Qur'an and Hadith. For people in general, this study offers a different view of the concept of *'An-Taradhin minkum* (mutual consent) from the perspective of the Qur'an and Hadith. In addition, for students and researchers, this study may contribute to adding to scientific literacy and fostering enthusiasm for research.

## 2. Theoretical Basis

### 2.1. Definition of `An-Taradhin Minkum

The word *'An-Taradhin* consists of two syllables, i.e., *'An* and *taradhin*. *Taradhin* in Arabic is derived from the word *taradhaya-yataradhayu-tradhuyan*. This belongs to the wazan *tafa'ul* (pattern) of which the meaning is *li musyarakah* or mutually willing to do something. In *fiqh* terminology, *'An-Taradhin* is defined as a meeting between mutual *ijab* and *qabul* (contract) (3). The addition of *عَنْ* shows that the principle of mutual consent in *muamalah* should arise from the hearts of each party, as evident from the presence of *ijab and qabul* (contract). This is in accordance with an opinion of Imam Shafi'i; Translation: "*Purchase and sell are not valid unless by taking possession of the object of sale because this is what shows mutual consent according to the law*" (4). According to Muhammad Hasan Qasim in his book *al-Mujaz fi 'Aqd al-Bai'*, it is explained that "*In purchase and sale transaction, 'An-Taradhin is when there is a contract (ijab and qabul) between two parties, upon which these parties have mutual consent*" (5). Juhaya, S. Praja in his book *the Philosophy of Islamic Law* explains that *'An-Taradhin* is one of the *muamalah* principles that is applicable to every form of *muamalah*, which takes place between individuals or parties. In making the *muamalah* transactions, the principle of mutual consent should be applied. (6)

### 3. Research Method

#### 3.1. Scope of Study

This study analyzed the concept of *'An-Taradhin minkum* in the perspective of the Qur'an and Hadith. Based on an analysis of several journals and books, several specific discussions about *'An-Taradhin minkum* were found. Nonetheless, no discussion of the concept of *An-Taradhin minkum* using the perspective of the Qur'an and Hadith was found. In fact, not many people understand the importance of the principle of *'An-Taradhin minkum* in *muamalah*.

#### 3.2. Data Collection Method

The study used a qualitative approach. Qualitative research is used to examine a natural object where the researcher acts as a key instrument. The data collection used a combination of techniques. The data analysis was inductive. In general, the results of qualitative research emphasize the meaning of a concept rather than generalizations. The research used a qualitative descriptive method by collecting library data, reading, taking notes, and processing study materials. This research was structured by selecting secondary data through several journals that met the standardization. The search was done through verified Google Scholar using several keywords such as *'An-Tharadhin*, *akad rela sama rela* (contracts with mutual consent), and several *muamalah* processes in purchase and sale.

### 4. Result and Discussion

#### 4.1. Concept of `An-Taradhin Minkum in the Perspective of the Qur'an

Based on the search for the word *'An-Taradhin* in the Qur'an, there are at least two verses, i.e., Surah Al-Baqarah verse 233 and Surah An-Nisa' verse 29. Surah Al-Baqarah verse 233 contextually describes mothers breastfeeding their children. Meanwhile, Surah An-Nisa' verse 29 explains the prohibition on eating up property unjustly, except through trading on the basis of mutual consent. Allah SWT says:

Translation: "O you who believe! Do not eat up your property among yourselves (unjustly) except that it be trading by your **mutual consent**. And do not (commit suicide) kill yourselves (one another). Surely Allah is Most Merciful to you." (Surah An-Nisa': 29)

In the Tafseer (Interpretation) of Ibn Kathir of Surah An-Nisa' verse 29 especially related to *إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ*, it is explained that Allah prohibits making commercial transactions that could lead to *haram* (prohibited) acts, but commands commercial transactions according to Islamic laws, i.e., with the presence of mutual consent between the seller and buyer. Ibn Kathir also further explained that, if the commodity being traded does not have a high value, then mutual consent should be shown by the applicable deeds or customs. Meanwhile, if the commodity is very valuable, then mutual consent is manifested in *Ijab* and *Qobul* (contract).

According to Quraish Shihab in Tafseer al-Misbah, the meaning of *'An-Taradhin minkum* is a form of consent from both parties as a harmonious mutual relationship, binding regulations and laws, as well as awaiting sanctions. This harmonious mutual relationship shows the presence of agreement from both parties. Although consent is something that is not visible, its signs and indicators are visible (7). In addition, a contemporary Islamic scholar, Al-Zuhaili, in his tafseer book entitled *Al-Tafsir al-Munir fi Al-'Aqidah wa Al-Syari'ah wa Al-Manhaj*, explains three indicators of *'An-Taradhin minkum*, namely the presence of *Ijab Qobul* (contract) words, the presence of rights to choose, and behavior or actions that show mutual consent (8). Based on the abovementioned verses and explanations, the concept of *'An-Taradhin minkum* in the perspective of the Qur'an is a basic principle that Allah commands in every purchase and sale transaction. It can be in the form of either *Ijab Qobul* words or actions that show mutual consent.

#### 4.2. Concept of `An-Taradhin Minkum in the Perspective of Hadith

The word *'An-Taradhin minkum* in everyday life is not popular; many people do not pay attention to it regardless of the fact that the basis of any contracts, including *muamalah* as well as purchase and sale contracts, is mutual consent. In terms of terminology, what is meant by purchase and sale is; Translation: "Exchanging an object with another object on the basis of mutual consent or transferring property rights with replacement in a permissible way". (Hendi Suhendi). The Hadith of the Prophet mentions that every purchase and sale transaction or trade should be carried out based on mutual consent. This is made clear in a hadith of the Prophet Muhammad as narrated by Abu Hurairah RA; Translation: "Narrated by Abu Hurairah RA, the Prophet SAW said: *Two people who are having a purchase and sale transaction must separate only by mutual consent*" (Narrated by Abu Dawud and Tirmidhi).

Ibn Majah RA also narrated; Translation: "(Al Abbas ibn Al Walid Ad Dimasyqi) said to us that (Marwan ibn Muhammad) said to us that (Abdul Aziz ibn Muhammad) from (Dawud ibn Salih Al Madini) from (his father) said: I heard (Abu Sa'id) said, "The Prophet Sallallahu 'Alayhi Wasallam said: *"Surely transactions may only be done by mutual consent."* (Narrated by Ibn Majah, No. 2269) (9). Based on the hadith, it can be concluded that purchase and sale must be based on the principle of *'An-Taradhin minkum* or mutual consent by both parties to bring mutual benefits and avoid disadvantage. Trade which contains the elements of gharar, tadelis, and so forth, does not uphold the principle of mutual consent because one of the parties is disadvantaged. Thus, the contract is invalid. In other words, the hadith tells that a contract is valid if it contains the principle of *'An-Taradhin minkum*. The Prophet Muhammad prohibits trading or purchase and sale with gharar as narrated in the following; Translation: "Narrated by Abu Hurairah RA, *"The Prophet forbade purchase and sale transactions which involve gharar (uncertainty) and a transaction determined by throwing stones"* (Narrated by Muslim).

In fiqh *muamalah*, Imam Shafi'i argued that; Translation: *Based on this, Imam Shafi'i mentioned that ijab and qabul (contract) should be stated (lafadz), because mutual consent involves the heart and it requires symbols. Sometimes such symbols are required when people do not require that ijab and qabul are stated when mutual consent has been reached. But is not that, words showing consent are the same as actions showing consent in some places, therefore the purchase and sale are valid (mu'athoh)*. By mentioning mutual consent when a contract takes place, Imam Shafi'i and his followers wanted to emphasize that the seller has actually sold the goods to the buyer. Therefore, the ownership of the goods has been transferred by law. Many Islamic scholars agreed that, in *muamalah*, mutual consent serves as the basis and foundation of all contracts. This is based on Allah's words in Surah An-Nisa' verse 29 and the words of the Prophet; Translation: *"The property of a muslim is not halal unless there is consent"*.

#### 4.2.1. Urgency of the Principle of *'An-Taradhin Minkum*

The principle of *'An-Taradhin minkum* in daily life is crucial. There are many aspects of *muamalah* that are related to this principle, including the transfer of property ownership. Allah says: Translation: *"[As for] the thief, the male and the female, amputate their hands in recompense for what they earned [i.e., committed] as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise"* (Surah Al-Ma'idah:38). The above argument explains that the transfer of property rights is basically based on the principle

of mutual consent because it can bring an effect on the peace of mind for both parties. In addition, Allah strictly gives punishment for anyone who steals or takes over the property rights that belong to others without a valid legal procedure. There are some activities that involve *'An-Taradhin minkum* in life or *muamalah*, such as:

### 1. Purchase and Sale

Translation: *"Those who consume interest<sup>1</sup> cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns [to dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein]* (Surah Al-Baqarah:275).

Purchase and sale transaction is a way of transferring property rights which is permissible in Islamic law. Said Sabiq in this case defined purchase and sale as an activity of exchanging property with another property on the basis of mutual consent, or transferring property rights with proper compensation" (10). Louis Ma'luf (Munjid) more specifically defined "Purchase and sale transaction as giving up goods and taking money, or taking goods and giving money in return". This definition of purchase and sale shows that purchase and sale transaction is a system of transferring property rights by exchanging goods for money at a price that has been mutually agreed upon (11).

Pillars and Terms of Purchase and Sale. What is meant by the Pillars of purchase and sale is something that must exist in purchase and sale transaction, and they are part of the purchase and sale process itself. According to Taqiyuddin, the pillars of purchase and sale consist of: *Aqid*, *Ma'qud 'alaih* (the objects traded), and *Shighat (Ijab Qabul* or contract). In addition, what is defined as Terms is the conditions required for the three pillars to allow for the purchase and sale transactions to be categorized as valid. For example, the terms for *aqid*, the terms for objects traded, and the terms for *ijab* and *qabul* to be valid.

Translation: *Based on this, Imam Shafi'i mentioned that ijab and qabul (contract) should be stated (lafadz), because mutual consent involves the heart and it requires symbols. Sometimes such symbols are required when people do not require that ijab and qabul are stated when mutual consent has been reached. But is not that, words showing consent are the same as actions showing consent in some places, therefore the purchase and sale are valid (mu'athoh).*

According to Imam Shafi'i and his followers, the purpose of showing an explicit mutual consent when a contract takes place is to declare that the seller has actually sold the goods to the buyer. This way, the ownership and control of the goods have been transferred by law. As a result of this provision, if there is a dispute between the seller and the buyer, the judge can easily determine that the goods have become the legal property of the buyer. Imam al-Ghazali further emphasized that at the legal level, the seller may take back the goods that have been given to the buyer. A purchase and sale activity is one of the growing economic activities among the society. This activity is legal by the religious and national law. In addition, the Prophet indicated that a purchase and sale transaction based on mutual consent is something that Allah gives the most blessing. Purchase and sale or trade is not a legal term, but rather an economic term, i.e., any activities that take place between producers and consumers (12).

Behind the lawfulness (*halal* status) of purchase and sale activity and the prohibition (*haram* status) of usury, both functions as a system to seek profits. The core difference lies in a system that can disadvantage others, namely the use of interest/usury system. The usury system, on the one hand, only enriches one party through the losses and sufferings of others, while purchase and sale activity is based on the principle of mutual consent which will not disadvantage either party, instead it will bring mutual benefits (13). According to Yusuf Qardhawi, the reason why *riba*/usury is prohibited is because it eats up someone's assets with neither efforts nor possible risks; the assets gained are not the results of work or services provided, but these assets are under the ownership rights of others. In the usury system, the rich get richer and the poor get poorer, the humanity aspect is ignored for the sake of earning material assets. This practice can also be found in Judaism and Christianity [17].

Usury, as a system to seek profits in trade, is prohibited not only by Islamic teachings but also by other religions in this world. This way, any form of usury to transfer property rights can never be permitted. On the other hand, a purchase and sale activity, which is also a way of transferring ownership rights, is permitted when the activity is based on a mutual consent (*An-taradhin Minkum*). The mutual consent principle is an absolute requirement for a fair purchase and sale activity because this principle ensures that neither the seller nor the buyer will be disadvantaged, instead they both will benefit (14).

## 2. Wills and Inheritance

A will is when someone gives something to another person while he is still alive with an intention as *sadaqah*/alms which will be handed over to the new owner after death.

Basically, a *muamalah* activity which contains a transfer of property is based on mutual consent (*'An-Taradhin minkum*). Nonetheless, this principle is not applicable to wills and inheritance because these things have been separately regulated in Islamic law. This is because the transfer of property rights through wills or inheritance aims to provide the rights to continuity and freedom to manage property (15).

Yusuf Qardhawi divided the rights to continuity into *hakiki* and *majazi*. He argued that continuity becomes *hakiki* when the goods can be consumed and offers an opportunity for the owner to consume the goods in his life, for example he eats food. Meanwhile, the continuity that is *majazi* can be divided into two groups, namely *first*, property that can be consumed, but the owner does not have an opportunity to consume it during his life and *second*, property that cannot be consumed such as land or buildings, which still remain his property even when the owner has already passed away (16). In the implementation of continuity, it requires a successor in accordance with what is written in the wills or inheritance. This is usually done either by relatives or based on blood relations between the heirs or by someone as wanted or loved by the deceased person to manage his property. The Prophet SAW said: *Translation: "Fatima is my daughter, what hurts her will hurt me and what hurts me will hurt her."*

In nature, humans will love themselves more than they love anything else, but through his words, the Prophet provided an illustration or *kudwah* that, in nature, humans also want their offspring to be better than themselves. Translation: *Narrated by Abu Hurairah RA, the Prophet صلى الله عليه وسلم said: When the son of Adam (human) dies, then his deeds end except for three, sadaqah jariyah (ongoing charity), beneficial knowledge, or righteous child who prays for him* (Narrated by Muslim). The love of parents for both their children and all of their descendants allows parents to be consensual in transferring their property rights after they pass away. This is finally what makes the heir sincere and willing to continue managing the property given to be used for ongoing charity (*sadaqah jariyah*) for the deceased parents.

### 3. Alms and Infaq

The Prophet once said: *"The upper hand (giving hand) is better than the lower hand (taking hand)"*. The term *infaq* comes from the word *anfaqa-yunfiq-infaaqan*, which means spending or using assets. *Infaq*, etymologically, is to spend or use part of the property owned with an intention to please Allah. On the other hand, *alms* are a gift that is given voluntarily without any minimum or maximum amount and without time limitation, with an intention to receive reward and blessing from Allah. For examples, donating for building a mosque, Islamic school, etc. In fact, what makes *nafaqah*



(financial duty) mandatory is heredity, marriage, and ownership. (Al-Jurjani, as written by Abdul Aziz Dahlan) every husband is obliged to provide financial support for his wife because a legitimate marriage contract has taken place and in return, every wife is obliged to obey her husband in goodness. Allah says about the virtues of alms:

Translation: “Allah destroys interests and gives increase for charities. And Allah does not like every sinner disbeliever” (Surah Al-Baqarah: 276). In terms of alms, indeed there is no requirement of mutual consent from both parties. Nonetheless, it is clearly stated that the giver should be sincere in giving it, and the recipient should be grateful instead of feeling humiliated; they should not feel that other people consider them poor so they need help from others. In this context, it can be seen that the principle of mutual consent (*'An-Taradhin Minkum*) is also needed.

#### 4.2.2. Benefits of the Existence of `An-Taradhin Minkum

Regarding the importance of the principle of *'An-Taradhin minkum*, there are several uses or benefits for humans, including;

1. Providing ease in *muamalah* as determined by its rules, namely:

Translation: “The original ruling of any transactions is permissible, unless there is evidence that forbids them”. In Islamic economic studies, *muamalah* in general and purchase and sale in particular are basically permissible based on Fiqh rules. Islamic scholars developed fiqh rules to help Muslims understand Islamic law.

2. Having control over purchase and sale transaction that is done

The virtue of the principle of *'An-taradhin* can be found in the Qur'an, namely Surah An-Nisa verse 29 which states that there is control over the purchase and sale activities carried out. Translation: “O you who believe! Do not eat up your property among yourselves (unjustly) except that it be trading by your mutual consent. And do not (commit suicide) kill yourselves (one another). Surely Allah is Most Merciful to you.” (Surah An-Nisa': 29)

3. Avoiding any prohibited acts which could cause the food consumed to be *haram*

According to Shaykh Abdurrahman ibn Nasir As-Sa'di, (2016) in the Tafsir (Interpretation) of Surah An-Nisa, Al Ma'idah, Al-An'am concerning Allah's prohibition on His believing servants from eating up wealth unjustly, this includes eating up wealth by coercion, theft, gambling, and despicable livelihood. This may even include eating up

one's own wealth arrogantly and excessively because this belongs to falsehood, not truth.

#### 4. Avoiding any forms of gharar in every *muamalah* transaction

In the study of *Tafsir Al Munir* by *Wahbah Az Zuhaily*, it is emphasized that what is meant by mutual consent in Surah An-Nisa verse 29 is the willingness of both parties based on Islamic rules. In other words, not all mutual consent meets the Islamic rules, so the mutual consent should comply with Islamic rules. This is also according to the hadith of the Prophet: Translation: "*Purchase and sale is based on mutual consent*". Transactions which contain gharar in all its forms but do not contain the principle of mutual consent are invalid. This verse also shows that a contract will be legitimate or valid in the form of either words or deeds. This is because Allah has required mutual consent for it, so regardless of the form of the mutual consent, the contract is considered valid.

#### 5. Causes and impacts if the principle of '*An-Taradhin Minkum* is not implemented

In Islam, every purchase and sale transaction should meet the principle of '*An-Taradhin minkum* (mutual consent). Both the seller and buyer should have the same information, preventing any party from feeling cheated or deceived. This can take place when one party knows the information but the other does not; this is called *tadlis* (fraud).

*Tadlis* can take place in four aspects. First, quality, for example, a seller who sells a product but hides any defects in it. Second, price, for example, a seller who marks up the price of a product from the market price because he takes advantage of the fact that the buyer does not know the actual market price. Third, quantity, for example, a seller who deliberately cheat the buyer by reducing the weight of the product being sold. Fourth, the time of delivery, for example, a seller who promises to deliver a product to the buyer even when he very well knows that he cannot deliver the product on time.

## 5. Conclusion

Based on the results of the discussion on the concept of '*An-Taradhin minkum* from the perspective of the Qur'an and hadith, it can be concluded that:

1. In the perspective of the Qur'an, the principle of '*An-Taradhin minkum* is a basic principle that Allah obliges in every purchase and sale transaction. It can be in the form of either words, i.e., *Ijab Qobul* (contract), or deeds/actions that show mutual consent.

2. In the perspective of hadith, the concept of *'An-Taradhin minkum* explains that in *muamalah*, the presence of mutual consent is the basis and foundation of all contracts. This way, a contract is invalid if gharar, tadelis, and so forth are found in purchase and sale transactions.

Based on the virtue of the principle of *'An-Taradhin minkum* contained in Surah An-Nisa verse 29 in the Qur'an, the Hadith of the Prophet Muhammad narrated by Ibn Majah related to purchase and sale, and several tafsir (interpretations) of the principle of mutual consent from Islamic scholars, it can be concluded that the principle of *'An-Taradhin minkum* is crucial, thus functioning as a requirement in every purchase and sale transaction. Therefore, it is not surprising that every Muslim in particular makes the principle of *'An-Taradhin minkum* (عَنْ تَرَاضٍ مِنْكُمْ) as the main principle in making purchase and sale transactions. In fiqh *muamalah*, the principle of *'An-Taradhin minkum* is one of the most important principles, in addition to being the main requirement for a *muamalah* activity to meet Islamic rules.

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