

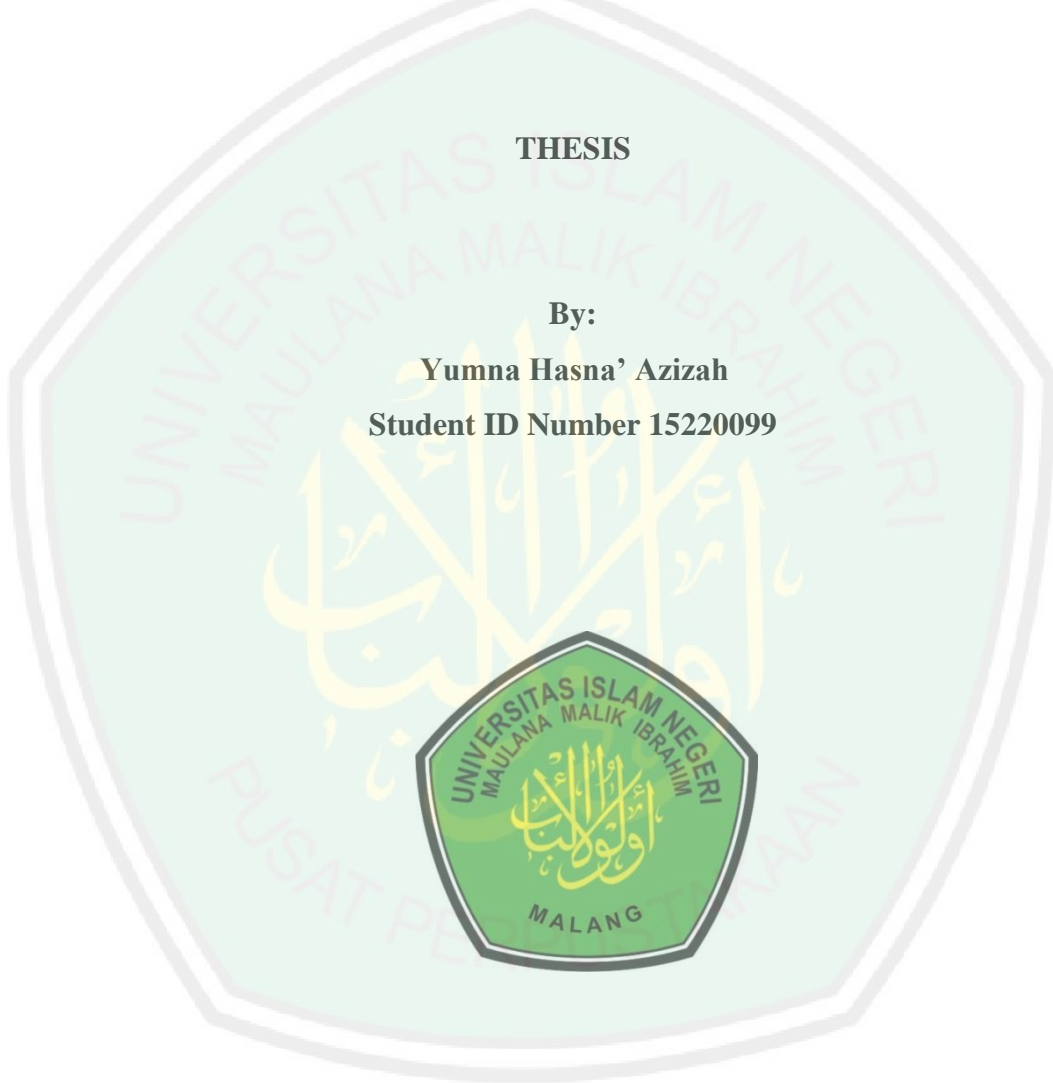
**THE SUPERVISION OF BUYING AND SELLING IMPORTED SECOND  
HAND CLOTHES IN GRINGGING MARKET  
(PERSPECTIVE OF MASLAHAH AND LAW NUMBER 7 OF 2014  
CONCERNING TRADE)**

**THESIS**

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2019**

### STATEMENT OF THE AUTENTICITY

**In the name of Allah,**

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**THE SUPERVISION OF BUYING AND SELLING  
IMPORTED SECOND HAND CLOTHES IN GRINGGING MARKET  
(PERSPECTIVE OF MASLAHAH AND LAW NUMBER 7 OF 2014  
CONCERNING TRADE)**

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IMPORTED SECOND HAND CLOTHES IN GRINGGING MARKET  
(PERSPECTIVE OF MASLAHAH AND LAW NUMBER 7 OF 2014  
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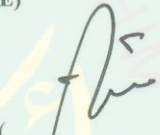
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(PERSPECTIVE OF *MASLAHAH* AND LAW NUMBER 7 OF 2014  
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## MOTTO

خير الناس أنفعهم للناس

*Sebaik-baiknya manusia adalah yang paling bermanfaat bagi orang lain*

**Everything will be easy if u wanna try**

## ACKNOWLEDGMENT

All praise due to Allah, the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Grace and Guidance, this thesis entitled “The Supervision of Buying and Selling Imported Second Hand Clothes in Gringring Market (Perspective of *Maslahah* and Law Number 7 of 2014 concerning Trade)” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from darkness into the light, in this life. May we be together with those who believe and receive intercession from Him in the day of Judgement. Amin.

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Hopefully, by imparting what has been learned during the course of study in the Faculty of Sharia of State Islamic University, Maulana Malik Ibrahim, Malang, it will benefit all readers and the author himself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive critics and suggestions for the improvement and betterment of this thesis.

Malang, 15 April 2019

Author

Yumna Hasna' Azizah

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## TRANSLITERATION GUIDANCE

### A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated 22 January 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

### B. Consonants

ا = unsigned	ض = dl
ب = B	ط = th
ت = T	ظ = dh
ث = Ta	ع = ‘ (comma facing upward)
ج = J	غ = gh
ح = H	ف = f
خ = Kh	ق = q
د = D	ك = k
ذ = Dz	ل = l
ر = R	م = m
ز = Z	ن = n
س = S	و = w

ش = Sy	ه = h
ص = Sh	ي = y

The hamzah (ء) which is usually represented by and *alif*, when it is at the begining of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards (‘), as oppose to a comma (,) which replaces the “ع”.

### C. Vocal, long and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written such as:

Elongated (a) vowel = â example قال becomes *qâla*

Elongated (i) vowel = Î example قيل becomes *qîla*

Elongated (u) vowel = û example دون becomes *dûna*

Specially for the pronouncing of *ya’ nisbat* (in association), it can not represented by “i”, unless it is written as “iy” so as to represent the *ya’ nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya’* after fathah it is written as “aw” and “ay”. Study the following examples:

Diftong (aw) = و example become قول *qawlun*

Diftong (ay) = ي example become خير *khayrun*

#### D. Ta' Marbûthah (ة)

*Ta' marbûthah* (ة) is transliterated as “t” if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as “h”. For example *الرسالة للمدرسة* will be *al-risalat li al-mudarrisah*, or if it happens to be in the middle of a phrase which constitutes *mudlaf* and *mudlaf ilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example *فى رحمة الله* become *fi rahmatill âh*.

#### E. Definite Article

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of word while “al” in the phrase of *lafadh jalalah* (speaking of God) which is in the middle of a sentence and supported by and (*idhafah*), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said.....
2. Al-Bukhâriy explains, in the prologue of his book.....
3. *Masyâ'Allah kânâ wa mâlam yasyâ lam yakun*
4. *Billâh 'azza wa jalla.*

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## ABSTRAK

Azizah, Yumna Hasna', 15220099, 2015. *Pengawasan Jual Beli Pakaian Bekas Impor di Pasar Gringgring (Perspektif Masalah dan Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan)*. Skripsi. Jurusan Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Khoirul Hidayah, M.H.

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**Kata Kunci:** Pengawasan, Jual Beli, Pakaian Bekas Impor, Perdagangan dan Masalah

Pakaian bekas dilarang untuk diimpor dan setiap pakaian bekas yang masuk atau tiba di Indonesia wajib dimusnahkan, namun pada kenyataan hal tersebut tidak dilakukan dan bahkan pakaian bekas tersebut dengan bebas diperjualbelikan di Kabupaten Kediri. Hal ini menunjukkan bahwa pengawasan terhadap praktik jual beli pakaian bekas impor di Kabupaten Kediri masih rendah. Berdasarkan Undang-Undang No. 7 Tahun 2014 tentang Perdagangan, pemerintah daerah mempunyai tanggung jawab dalam melakukan pengawasan terhadap setiap kegiatan perdagangan, termasuk terhadap perdagangan pakaian bekas impor. Pemerintah daerah dalam melaksanakan urusan pemerintahan daerah dalam bidang perdagangan diwakili oleh Dinas Perdagangan.

Penelitian ini bertujuan untuk mengetahui dan menjelaskan mengenai pengawasan jual beli pakaian bekas impor di Pasar Gringgring ditinjau dari *Maslahah* dan Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan, dan fokus utama dari penelitian ini adalah pengawasan jual beli pakaian bekas impor. Penelitian ini merupakan jenis penelitian empiris dengan pendekatan yuridis sosiologis. Sumber data yang digunakan adalah sumber data primer berupa wawancara sedangkan data sekunder dalam bentuk bahan pustaka dan dokumentasi. Adapun analisis data dilakukan dengan metode deskriptif kualitatif.

Hasil dari penelitian menunjukkan bahwa berdasarkan pasal 95 huruf (f) Undang-Undang No. 7 Tahun 2014 tentang Perdagangan, Dinas Perdagangan memiliki tugas melakukan pengawasan terhadap perdagangan pakaian bekas impor. Pengawasan yang dilakukan oleh Dinas Perdagangan Kabupaten Kediri hanya berupa himbauan dan teguran sehingga tidak menimbulkan efek jera bagi para pedagang pakaian bekas impor. Tindakan tersebut dilakukan dengan alasan kasihan apabila mereka kehilangan mata pencahariannya. Adapun ditinjau dari *masalah*, pengawasan jual beli pakaian bekas impor telah sesuai dengan syarat-syarat *masalah*, yang mana merupakan salah satu upaya preventif pemerintah untuk menjaga kesehatan masyarakatnya dan juga untuk melindungi usaha tekstil dalam negeri.

## ABSTRACT

Azizah, Yumna Hasna', 15220099, 2015. *The Supervision of Buying and Selling Imported Second Hand Clothes in Gringgring Market (Perspective of Maslahah and Law Number 7 Of 2014 Concerning Trade)*. Thesis. Sharia Business Law, Sharia Faculty, State Islamic University of Maulana Malik Ibrahim Malang. Supervisor: Dr. Khoirul Hidayah, M.H.

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**Keyword:** Supervision, Buying and Selling, Imported Second Hand Clothes, Trade and *Maslahah*

Second hand clothe is prohibited from being imported and any second hand clothe that enters or arrives in Indonesia must be destroyed, but in reality this is not done and even it is freely traded in Kediri Regency. This shows that supervision of the practice of buying and selling imported second hand clothes in Kediri Regency is still low. Based on Law No. 7 of 2014 concerning Trade, the regional government has the responsibility to supervise every trade activity, including the trade in imported second hand clothe. The regional government in implementing regional government affairs in the trade sector is represented by the Trade Department.

This study aims to find out and explain the supervision of buying and selling second hand clothes in Gringgring Village in terms of *Maslahah* and Law Number 7 of 2014 concerning Trade, and the main focus of this research is the supervision of buying and selling imported second hand clothes. This research is a type of empirical research with a sociological juridical approach. The data sources used are primary data sources in the form of observations and interviews and secondary data in the form of library materials and documentation. The data analysis carried out by qualitative descriptive method.

The results of the study show that based on article 95 letter (f) Law No. 7 of 2014 concerning Trade, the Trade Department has the duty to supervise the trade of imported second hand clothes. The supervision carried out by Trade Department of Kediri Regency is only in the form of appeals and reprimand so as not to cause deterrent effects for imported second hand clothes traders. These actions are carried out for reasons of pity if they lose their livelihood. In terms of *maslahah*, the supervision of buying and selling imported second hand clothes is in accordance with the conditions of *maslahah*, which is one of the government's preventive efforts to maintain the health of its people and also to protect domestic textile businesses.

## ملخص البحث

عزيزة، بمنى حسناء، 15220099، 2015. الإشراف على بيع الملابس المستعملة المستوردة في سوق كرينكيغ (Gringging) (نظرية المصلحة والقانون رقم 7 لسنة 2014 عن التجارة). بحث جامعي. شعبة الحكم الإقتصادي الإسلامي. كلية الشريعة. جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج، المشرفة: الدكتور خير الهداية الماجستير.

**الكلمة الرئيسية:** الإشراف، البيع والشراء، الملابس المستعملة المستوردة، التجارة، ومصلحة

يُمنع استيراد الملابس المستعملة ويجب تدمير أي ملابس مستعملة تدخل أو تصل إلى إندونيسيا، ولكن في الواقع لم يطبق ذلك الأمر، وحتى تلك الملابس المستعملة تباع بحرية في مدينة كديري. هذا يدل على أن الرقابة على عملية بيع الملابس المستخدمة المستوردة في مدينة كديري ما زالت منخفضة. بناء على القانون رقم 7 من 2014 عن التجارة، تتحمل الحكومة الإقليمية مسؤولية الإشراف على كل عملية تجارية، وأيضاً في تجارة الملابس المستعملة المستوردة. ووظيفة الحكومة الإقليمية في تنفيذ شؤون الحكومة الإقليمية في قطاع التجاري يوكل بوزارة التجاري.

هدف هذه الدراسة هو علم عن الإشراف على بيع الملابس المستوردة وشرحه في قرية كرينكيغ (Gringging) من حيث القانون رقم 7 لعام 2014 عن التجارة ومصلحة مرسله، والتركيز الرئيسي في هذا البحث هو الإشراف على بيع الملابس المستعملة المستوردة. كان هذا البحث من نوع البحث التحريي بمدخل قانوني اجتماعي (yuridis sosiologis). مصادر البيانات المستخدمة هي مصادر البيانات الأولية التي هي ملاحظات ومقابلات وبيانات ثانوية في شكل مواد ووثائق المكتبة. أما إجراء تحليل البيانات تستعمل بطريق الوصفية النوعية.

أشارت نتيجة هذا البحث إلى أنه بناءً على المادة (95) حرف (f) من القانون رقم 7 لعام 2014 عن التجارة، يحمل مصلحة التجارة وظيفة الإشراف على تجارة الملابس المستعملة المستوردة. وعملية الإشراف التي فعلها مصلحة التجارة في مدينة كديري إنما الدافع وتحذير فقط. حتى لا يتسبب إلى آثار رادعة لتجار الملابس المستعملة المستوردين. يتم تنفيذ هذه الإجراءات لأسباب الشفقة إذا فقدوا مصدر رزقهم. أما بالنظر إلى المصلحة، فإن الإشراف على بيع الملابس المستعملة المستوردة قد وافق شروط مصلحة، التي تعد واحدة من عملية الجهود التي تبذلها الحكومة للحفاظ على رعيتهما وكذلك لحماية شركات الغزل والنسيج في الوطن.





## CHAPTER I

### INTRODUCTION

#### A. Background of Problem

Humans are social beings who have various necessities of life, where to fulfill their needs they cannot fulfill themselves but need others. Therefore, humans interact with each other to fulfill their needs. Philosopher Aristotle explained that humans are "*zoon politicon*" which means social and political beings, which means that humans always interact with other humans and always organize.<sup>1</sup> In addition, Allah commands to help other in terms of kindness and piety.

One form of *muamalah* that cannot be separated from human life is trade. Trading is a buying and selling activity carried out between the seller and the buyer. Buying and selling in terms of *fiqh* called *al-bai'* which in language

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<sup>1</sup>Rudyanti Dorotea Tobing, *Hukum Konsumen dan Masyarakat (sebuah bunga rampai)*, (Yogyakarta: Laksbang Mediatama, 2015), 49.



means selling, replacing and exchanging something with something else.<sup>2</sup> As for the definition of buying and selling according to terminology is the exchange of goods or goods with money carried out by releasing ownership rights from one to the other on the basis of mutual voluntary.<sup>3</sup> Buying and selling as a means of helping out among fellow humans has a strong legal basis. Buying and selling is basically allowed by Islamic teachings. It is based on the word of God in Surah an-Nisa' verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ ۚ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

*O you who believe! Do not devour one another's possessions wrongfully; rather than that, let there be trading by mutual consent. You shall not kill yourselves. Surely Allah is ever Compassionate to you.*<sup>4</sup>

The purpose of the above verse is to indicate that Allah SWT forbade Muslims to eat other people's assets in wrong way, this context has a very broad meaning, which is to do economic transactions that are contrary to syara' like usury-based, speculative (*maysir* / gambling) or contains elements of *gharar*, besides this paragraph also provides an understanding that in every transaction carried out must pay attention to the element of willingness for all parties.<sup>5</sup>

<sup>2</sup>Mardani, *Fiqh Ekonomi Syariah: Fiqh Muamalah*, (Jakarta: Kencana Prenada Media Group, 2012), 101.

<sup>3</sup>Ruf'ah Abdullah, *Fikih Muamalah*, (Bogor: Ghalia Indonesia, 2011), 65.

<sup>4</sup>QS. an-Nisa' (4): 29.

<sup>5</sup>Dimyauddin Djuwaini, *Pengantar Fiqh Muamalah*, (Yogyakarta: Pustaka Pelajar, 2008), 70.

In daily life, humans must fulfill their needs for their survival. Human life needs can be divided into three, namely, primary needs, secondary needs and tertiary needs. Primary needs are basic or main needs that must be fulfilled so that humans can maintain their lives. One of them is clothes. Clothing is a basic human need besides food and shelter. Humans cannot be separated from clothing in carrying out every activity.

Islam encourages or even demands every Muslim to always look beautiful, pleasing, simple and neat. A Muslim is actually far from being a dirty, untidy and vile.<sup>6</sup> Allah has ordained to His servants to always look attractive. Therefore, God provides clothes and jewelry for them. Allah said in al-A'raf: 26:

يَا بَنِي آدَمَ قَدْ أَنْزَلْنَا عَلَيْكُمْ لِبَاسًا يُؤَارِي سَوَاتِكُمْ وَرِيشًا

*O children of Adam! We have indeed sent down to you clothing to cover your shame, and (clothing) for beauty.*<sup>7</sup>

One of the things that the Prophet always recommends in cleanliness is to wear clean clothes. The purpose of recommending clean clothes is to avoid germs and bacteria that can cause disease, in addition to looking attractive.

Nowadays there are many imported second hand clothes from countries that have more economies than Indonesia, these countries such as Japan, Korea, China, Hongkong and so on. The rise of imported second hand clothes is used as a business area for some people who have enough capital to

<sup>6</sup>Helmi Karim, *Fiqh Muamalah*, (Jakarta: PT Raja Grafindo Persada, 1997), 140.

<sup>7</sup>QS. al-A'raf (7): 26.

establish shops that sell various types of imported second hand clothes. As is the case, in Kediri Regency there is a special place that sells imported second hand clothe. Many people buy it to fulfill their clothing needs. The businessmen sell second hand clothes in Gringging Market which is the center of imported second hand clothes in Kediri Regency.

The government has strictly prohibited importers from importing used goods. The ban on the import of second hand clothes has issued by the Minister of Trade and Cooperatives since 1982, through Decree No. 28 of 1982 concerning General Provisions in the Import Sector. Then after a period of 20 years, namely in 2002, the Minister of Industry and Trade issued the Regulation of Industry and Trade Minister No. 642/MPP/Kep/9/2002 concerning goods regulated in the import trade system, regulating import restrictions on rag or patchwork products.

Law Number 7 of 2014 concerning Trade also states that any imported goods must be in a new condition. This stated in article 47 paragraph 1. Then the import ban on second hand clothes is strengthened by the Regulation of the Trade Minister of the Republic of Indonesia No.51/M-DAG/PER/7/2015 concerning Prohibition of Importing Second Hand Clothes. The Trade Ministry Regulation explains about imported second hand clothes more clearly and in detail. Article 2 explains that second hand clothes prohibited from being imported into the unitary territory of the Republic of Indonesia. Article 3 states that any second hand clothes entering the territory of the Republic of Indonesia must be destroyed. The practice of importing second hand clothes is prohibited

because in second hand clothes contain bacteria that can interfere with health such as boils, acne and infections of the skin. Even bacteria that found in second hand clothes can cause itching and genital tract infections.

The Directorate General of Standardization and Consumer Protection of the Ministry of Trade have tested 25 samples of second hand clothes circulating in the market. The clothes consist of several types of clothing such as children's clothing (jackets), women's clothing (vest, warm clothes, dresses, skirts, tops, hot pants, shorts), men's clothing (jackets, trousers, shorts, shirts, t-shirts, sweaters, boxers, panties).

Tests carried out on several types of microorganisms that can survive in clothing, namely the bacteria *Staphylococcus aureus* (S. aureus), bacteria *Escherichia coli* (E. coli), and *fungi* (mold or yeast). Based on the results of the tests carried out, a number of bacterial and fungal colonies were found as indicated by the parameters of the total plate number (ALT) and molds whose values were quite high. The microbial content of used clothing has an ALT of 216,000 colonies and fungi of 36,000 colonies. This microbial and fungal content is a dangerous bacterium that can cause various diseases such as digestive disorders, itching, and infections of the genital tract.<sup>8</sup>

Bacteria and fungi found in second hand clothes are very dangerous for human health. Like *E. coli* bacteria that can cause digestive disorders (diarrhea), *S. aureus* bacteria can cause boils, acnes, and wound infections in

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<sup>8</sup>Kementerian Perdagangan Republik Indonesia, *Laporan Analisis Impor Pakaian Bekas*, (Jakarta: Pusat Kebijakan Perdagangan Luar Negeri, 2015), 25.

human skin, and fungi such as *Aspergillus spp.* and *Candida spp* which can cause itching, allergies and even infections of the genital tract.

Based on the provisions of the legislation mentioned above, any second hand clothes that enters or arrives in the territory of the Unitary Republic of Indonesia on or after the date of the Regulation of the Trade Minister of the Republic of Indonesia No.51/M-DAG/PER/7/2015 applies must be destroyed but in reality this was not done and even the second hand clothes were freely circulated and traded in Kediri Regency. The regulation regarding the trade ban on second hand clothes have not yet been available, but is implicitly regulated in the Regulation of the Trade Minister of the Republic of Indonesia No.51/M-DAG/PER/7/2015 which states that second hand clothes is prohibited from being imported and must be destroyed when entering Indonesia.

Although the practice of trading second hand clothes have banned, people's interest is still high in them. These second hand clothes sold at various prices depending on the type and quality. The price of second hand clothes are very affordable or can be said to be very cheap for such clothing when compared to the price of clothing that is still new. This is the background of the society especially those who have a middle to lower economy to buy second hand clothes.

The supervision of buying and selling imported second hand clothes are very low. This can be seen from the many trade practices of second hand clothes in Indonesia, including in Kediri Regency. The Trade Department or



known as *Disdag* is the implementing element of regional government affairs in the field of trade and regional government affairs in the industrial sector. The Trade Department has the task of carrying out part of regional government affairs based on the principle of autonomy and co-administration in the field of trade and market management.<sup>9</sup> This includes supervising the buying and selling of imported second hand clothes.

Reviewing from the *maslahah*, the existence of supervision regarding the prohibition on the trade of imported second hand clothes can bring benefits to the society. *Maslahah* is the establishment of law in matters that are not mentioned in the Al-Quran or Hadith at all, with the consideration of being able to realize goodness and avoid harm for humans.<sup>10</sup> One of the goodness or benefits of the existence of this rule is that people can avoid bacteria that can interfere with health. On the other hand the existence of second-hand clothes is very useful for the society, especially the middle to lower class, where they can buy clothes that have good quality at affordable prices.

Based on the explanation above, the researcher wished to examine the supervision of buying and selling imported second hand clothes in Gringgring Market, Kediri Regency with the title “The Supervision of Buying and Selling Imported Second Hand Clothes in Gringgring Market (Perspective of *Maslahah* and Law Number 7 Of 2014 Concerning Trade)”.

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<sup>9</sup>Article 95 letter (f) Law No. 7 of 2014 concerning Trade

<sup>10</sup>Amir Syariffudin, *Ushul Fiqh 2*, (Jakarta: Kencana, 2008), 379.

## B. Statement of Problem

Based on the background, the problems discussed can be formulated as follows.

1. How is the supervision of buying and selling imported second hand clothes in Gringging Market perspective of Law Number 7 of 2014?
2. How is supervision of buying and selling imported second hand clothes in Gringging Market perspective of *Maslahah*?

## C. Objective of Research

Based on the Statement of Problem above, the objective of research are:

1. To describe supervision on buying and selling imported second hand clothes perspective of Law Number 7 of 2014.
2. To explain supervision on buying and selling imported second hand clothes perspective of *Maslahah*.

## D. Significance of Research

This research expects to provide benefits both theoretically and practically in order to expand knowledge. The expected benefits of this research are:

1. Theoretically

Theoretically the results of this study are expected to be useful in the development of knowledge for all Indonesian people and students,

especially Sharia Business Law students relating to the supervision of buying and selling imported second hand clothes perspective of *Maslahah* and Law Number 7 of 2014 concerning Trade. In addition, this research is expected to be additional literature or scientific information materials that can use to conduct further studies and research.

## 2. Practically

This research is expected to provide input and discourse that is useful for all society regarding supervision of buying and selling imported second hand clothes. Furthermore, the researcher hopes that this research can provide legal awareness for the society.

## E. Operational Definition

Operational definitions are an explanation of the concepts or research variables contained in the research title. The existence of this explanation is very useful to understand and confine clearly the interpretation of researcher and readers so this research can remain focused in accordance with the study expected by the researcher.

Some terms that researcher feels needing an explanation of which include:

### 1. Buying and selling

Buying and selling is an agreement to exchange objects or goods that have a voluntary value between the two parties, of which one accepts objects and

the other party receives them in accordance with an agreement or provision that has been justified and agreed upon.

## 2. Second-hand clothes

Second-hand clothes are a textile product that use as a cover for the human body, which is included in the Tariff Post / HS 6309.00.00.00.

## 3. *Maslahah*

*Maslahah* is the desired benefit of Allah for his servants, both in the form of the maintenance of their religion, the maintenance of their soul / self, the maintenance of their minds, as well as the maintenance of their wealth.

## F. Discussions Structure

To make the discussion in this research well structured and the reader can understand easily, the systematic discussion in this study arrange in a systematic way as follows:

### CHAPTER I INTRODUCTION

This chapter presents the background of the problem which describes and explains the situation and things that can cause problems in research. In addition, it also describes the statements of problem, objective of research, benefits that can take from research, operational definitions and discussions structure. This section is intended as a stage of introduction and description of problems as well as the initial steps that contain the theoretical basic framework developed in the following chapters.

## CHAPTER II REVIEW OF RELATED LITERATURE

This chapter contains previous research and theoretical studies that used to answer the background of the problem under study. This literature review or theory framework contains concepts and theories that used to study and analyze problems. The foundation of the theory and concepts later will use in analyzing each problem discussed in the study. These concepts and theories include a review of supervision, review of buying and selling, second hand clothes, regulation imported second hand clothes in Indonesia, and a review of *masalah*.

## CHAPTER III RESEARCH METHOD

This chapter describes the steps used to discuss problems in research. The research methodology used as an instrument in research to produce more directed and systematic research. In the research method will be explained in full regarding to the type of research, research approach, research location, data sources, data collection techniques (observation, interviews, documentation), and data analyzing techniques (editing, classifying, analyzing and concluding).

## CHAPTER IV FINDING AND DISCUSSION

This chapter is the core of the research because in this chapter facts or data will describe from the results of research activities and discussion of the results of research in the field. The results of processing data from research linked or will be reviewed with concepts that have been described in the previous chapter. Primary and secondary data that has analyzed serves to answer the formulated problem statement.



## CHAPTER V CLOSING

This chapter is the last chapter which contains conclusions and suggestions. Conclusion is a short answer from the statement of problem described. While suggestion is proposals or recommendations needed as a follow-up to this research to the parties concerned or those who have more authority over the theme under study for the good of the society and also recommendations for future research. Furthermore, in suggesting suggestions, they will be based on the conclusions that have been made. Thus between conclusions and suggestions there is a relationship that supports each other.



## **CHAPTER II**

### **REVIEW OF RELATED LITERATURE**

#### **A. Previous Research**

This research is a follow-up research from previous researches. The results of this research are expected to complement the results of previous researches both to strengthen or support the results of research and to verify it. As an illustration of the authenticity of this research, the following will be presented in the past several studies that have similar themes and tangents to the research that will be conducted. Previous research used by researcher to compare the focus of the research to be studied and has investigated by other researchers. This section also functions to avoid repeating studies of the same material.

As for some previous studies that have been carried out in this field of study are as follows:

1. Faizatul Adibah, 2017, Student of State Islamic University of Maulana Malik Ibrahim Malang, in her thesis under the title *Jual Beli Pakaian Bekas Impor Di Tugu Pahlawan Kota Surabaya (Tinjauan UU Perdagangan No. 7 Tahun 2014 dan Fiqh Muamalah)*.<sup>11</sup>

In her thesis, the researcher explained that second-hand clothes were expressly prohibited from being imported into the Republic of Indonesia. This has regulated in the Trade Law No. 7 of 2014 Article 47. If anyone violates it, they will get a sanction in the form of imprisonment for 5 years and a fine of 5 billion. As for the *fiqh muamalah*, the pillars and the terms of buying and selling of imported second hand clothes in Tugu Pahlawan Surabaya City are not suitable because there are elements of quality *tadlis*. That is, the object being traded is not clearly known in terms of number, size, quality, and so on.

2. Tiara Yasmin Wahyuningrum, 2017, Student of Jember University in her thesis under the title *Perlindungan Hukum Bagi Konsumen Pakaian Bekas Yang Diimpor Ke Indonesia*.<sup>12</sup>

In her thesis, the author explains that importing imported second hand clothes is an act that violates Regulation of the Trade Minister of the Republic of Indonesia Number 51/M-DAG/PER/7/2015 Concerning

<sup>11</sup>Faizatul Adibah, "Jual Beli Pakaian Bekas Impor Di Tugu Pahlawan Kota Surabaya (Tinjauan UU Perdagangan No. 7 Tahun 2014 dan Fiqh Muamalah)", Thesis, (Malang: Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2017).

<sup>12</sup>Tiara Yasmin Wahyuningrum, "Perlindungan Hukum Bagi Konsumen Pakaian Bekas Yang Diimpor Ke Indonesia", Thesis, (Jember: Universitas Jember, 2017).

Prohibition of Importing Second Hand Clothes. The import activity itself is regulated in Law Number 7 of 2014 concerning Trade, and Regulation of the Trade Minister of the Republic of Indonesia Number 48/MDAG/PER/7/2015 concerning General Provisions in the Import Sector. The form of legal protection for consumers of imported second hand clothes that imported into Indonesia has been regulated in Article 29 and 30 of Law Number 8 of 1999 concerning Consumer Protection, which is a form of guidance and supervision from the government.

Coaching is not only given to consumers but also business people. Legal protection provided to consumers starts when consumers choose the goods and / or services to be used. The responsibility of business actors in Article 19 of Law Number 8 of 1999 concerning Consumer Protection is a form of legal protection for consumers from business actors in the form of compensation. As for the efforts can be made if the consumer experiences physical and financial losses, namely through the settlement of disputes outside the court and dispute resolution through court based on Article 45 of Law Number 8 of 1999 concerning Consumer Protection. Preferred consumer dispute resolution is through peaceful means, namely through the Consumer Dispute Settlement Institution.

3. Khusnul Khatimah Haruna Intang, 2017, Student of Hasanuddin Makasar University in her thesis under the title *Penegakan Hukum Terhadap*

*Larangan Impor Pakaian Bekas 'Cakar' (Studi Kasus di Kota Parepare Tahun 2011-2015).*<sup>13</sup>

In her thesis, the author explains that law enforcement on the import of imported second hand clothes or "cakar" in the Parepare city has not been in accordance with the regulations governing it. Law enforcement is still weak due to several causes. Among them are the law enforcers have not applied the rules accordingly. In addition, the lack of socialization regarding the rules that came into force as well as changes to the rules regarding the prohibition of importing imported second hand clothes or "cakar" was the reason for the lack of enforcement of the ban on the import of imported second hand clothes or "cakar". In addition, the lack of coordination between agencies which have the authority to eradicate smuggling is also a major cause. These institutions, both the Police and the Directorate General of Customs and Excise, have not been able to coordinate well with each other so smuggling can still be found in the Parepare City.

Constraints in enforcing the law against the ban on imports of imported second hand clothes or "cakar" are indeed not small. From law enforcers themselves, they have constraints on the human resources available at the institution. In terms of society, the society still cannot accept the regulation and does not consider it a crime or a violation of law. In addition to the fact that people who do not yet have an awareness of these

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<sup>13</sup>Khusnul Khatimah Haruna Intang, "Penegakan Hukum Terhadap Larangan Impor Pakaian Bekas 'Cakar' (Studi Kasus di Kota Parepare Tahun 2011-2015)", Thesis, (Makasar: Universitas Hasanuddin Makasar, 2017).



rules, another obstacle is the absence of sanctions that make a deterrent effect on these individuals.

### 1.1 The Similarity and Differences of Previous Research

No .	Name/University /Year	Title	Similarity	Differences
1.	Faizatul Adibah, State Islamic University of Maulana Malik Ibrahim Malang, 2017	Jual Beli Pakaian Bekas Impor Di Tugu Pahlawan Kota Surabaya (Tinjauan UU Perdagangan No. 7 Tahun 2014 dan Fiqh Muamalah)	Both of the researches discuss about imported second-hand clothes. Besides that, both use empirical research	The object of research is buying and selling imported second hand clothes. The review that researcher used is <i>Fiqh Muamalah</i> . The research did in Tugu Pahlawan Market Surabaya City
2.	Tiara Yasmin Wahyuningrum, Jember University, 2017	Penegakan Hukum Terhadap Larangan Impor Pakaian Bekas “Cakar” (Studi Kasus di Kota Parepare Tahun 2011-2015)	The scope of this research discussion is the same, namely discussing imported second hand clothes	This study discusses law enforcement against the ban on the import of second hand clothes. The research location is in Parepare city
3.	Khusnul Khatimah Haruna Intang, Hasanuddin Makasar University, 2017	Perlindungan Hukum Bagi Konsumen Pakaian Bekas Yang Diimpor Ke Indonesia	Both of the researches discuss about imported second hand clothes	The researcher examined the legal protection of imported second-hand clothes consumers. In addition, this study uses a literature study where the material is sourced from books

## B. Literature Review

### 1. The Overview of Supervision

Legal protection is an effort or action to protect the public from arbitrary acts so that they can enjoy the rights granted by law. In other words, legal protection is a variety of legal efforts that must be given by law enforcement officials to provide security, both mentally and psychologically from various disturbances and threats from any party.<sup>14</sup>

According to Muchsin, legal protection is a matter that protects legal subjects through applicable legislation and is forced to implement it with a sanction. Muchsin divides legal protection into two, namely:<sup>15</sup>

#### a. Preventive legal protection

Preventive Legal Protection is protection provided by the government with the aim of preventing before the occurrence of violations. This is contained in the legislation with the intention to prevent a violation and provide signs or limitations in carrying out obligations.

#### b. Repressive legal protection

Repressive legal protection is final protection in the form of sanctions such as fines, imprisonment, and additional penalties given when a dispute has occurred or an offense has committed.

One form of preventive legal protection for the society is in the form of supervision. Supervision is a management function that is closely related to the achievement of organizational goals, so supervision in any

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<sup>14</sup>Satjipto Raharjo, *Perlindungan Hukum*, (Bandung: Citra Aditya Bakti, 2000), 74.

<sup>15</sup>Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*, (Surakarta. Universitas Sebelas Maret, 2003), 20.

organization is absolutely necessary. This is as expressed by G.R. Terry, who said that in order to achieve the goals of an organization, including the state as the largest power organization, it should carry out management functions consisting of planning, organizing, giving actuating, and controlling.

Supervision comes from the word *awas* which means to pay close attention, in the sense of seeing things carefully, there is no other activity except giving a report based on the actual reality of what is being watched.<sup>16</sup> In other words supervision is a control of a plan that has set or arranged in advance whether it is in accordance with the initial plan and whether the goal has achieved.

Supervision according to Prajudi is a process to determine what work is carried out, or organized by what is desired, planned or considered.<sup>17</sup> As for Ibrahim Lubis, he explained that supervision is an activity that requires the work to be carried out in accordance with the plans that have made and / or the desired results.<sup>18</sup>

The function of supervision is as a tool to conduct an examination of the provisions carried out whether they are in accordance with the plan previously set. In addition, supervision serves as a tool for repairing or improving fraud and deviations from activities that are not in accordance with the stipulated provisions.

<sup>16</sup>Sujanto, *Beberapa Pengertian di Bidang Pengawasan*, (Jakarta: Ghalia Indonesia, 1986), 2.

<sup>17</sup>Prayudi, *Hukum Administrasi Negara*, (Jakarta: Ghalia Indonesia, 1981), 10.

<sup>18</sup>Ibrahim Lubis, *Pengendalian dan Pengawasan Proyek dalam Manajemen*, (Jakarta: Ghalia Indonesia, 1985), 155.

Supervision is an important matter. The purpose of supervision is to find out the performance done by individuals or an agency in accordance with the provisions or not. As well as to find out what is wrong from the provisions that have made for future improvements. In addition, it also directs all activities in the framework of implementation rather than a plan so that maximum results can be achieved.

Soekarno K. stated a number of objectives for supervision, namely as follows:

- a. To find out whether the implementation of a provision is in accordance with the plan made.
- b. To find out whether everything that is done is in accordance with the instructions and principles that have instructed.
- c. To find out the difficulties, weaknesses at work.
- d. To find out if everything works efficiently.
- e. To find out the way out, if it turns out that it has difficulties, weaknesses or failures towards improvement.

## **2. The Overview of Buying and Selling**

### **a. Buying and Selling Based on Civil Code**

Buying and selling is an agreement between the seller and the buyer.<sup>19</sup> Abdulkadir Muhammad explained that buying and selling agreement is an agreement where the seller transfers or agrees to transfer ownership rights of the goods to the buyer in exchange for a sum of

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<sup>19</sup>Ahmadi Miru, *Hukum Kontrak dan Perancangan Kontrak*, (Jakarta: Grafindo Persada, 2007), 7.

money called price.<sup>20</sup> In the Civil Code, buying and selling is regulated in book III concerning the engagement of chapter V about buying and selling. Based on article 1457 of the Civil Code referred to as buying and selling is an agreement by which one party binds itself to submit a material and the other party to pay the price promised. Buying and selling is considered to have occurred between the two parties, as soon as both parties reach an agreement on the goods and the prices even though the goods have not been delivered and the price has not been paid.

There are two main elements in buying and selling, namely goods and prices. What must be submitted in the buying and selling agreement is goods in the form of objects / *zaak*. Goods are things that can be used as objects of property or wealth. According to the provisions of Article 1332 of the Civil Code, only goods that can be traded are subject to approval. The price is a sum that must be paid in money. Pricing is done by both parties, both sellers and buyers.<sup>21</sup> Payment of the agreed price is the main obligation for the buyer in a sale and purchase agreement. These payments can be made using the payment method as follows:

#### 1) Cash trading

Cash trading is a very classic payment method, but is very common in buying and selling. In this case, the price of goods is delivered all at

<sup>20</sup>Abdulkadir Muhammad, *Hukum Perjanjian*, (Bandung: PT Alumni, 2010), 243.

<sup>21</sup>Yahya Harahap, *Segi-Segi Hukum Perjanjian*, (Bandung: PT Alumni, 1986), 182.



once at the time when the goods are delivered as objects of buying and selling to the buyer.

## 2) Buying and selling with installments / credit

Payment by installments is a payment made in several stages, while the delivery of goods to the buyer is done simultaneously in advance, even though at that time all payments have not been paid. In this case, according to the law, the buying and selling and transfer of rights is complete, while the installments that have not been paid are accounts payable.

## 3) Buying and selling with orders / indents

It is a buying and selling method wherein buying and selling transactions after an indent or an order (preliminary binding) is carried out, then both parties will make a buying and selling binding agreement that contains both their rights and obligations as outlined in the sale and purchase binding deed.<sup>22</sup>

The agreement in the sale and purchase agreement generally gives birth to an agreement, but there are exceptions if the item being traded is the item that is usually tried first at the time of purchase. This is because if the object of the buying and selling is an item that must be tried first to find out whether the item is good, according to the wishes of the buyer, the agreement is always considered to be made with strong

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<sup>22</sup>Munir Fuady, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*, (Bandung: PT Citra Aditya Bakti, 2007), 88.

conditions, meaning that the agreement is only binding if the object of the agreement after trying.<sup>23</sup>

The existence of a buying and selling agreement between the seller and the buyer creates an obligation to both. These obligations are as follows.

#### 1) Obligations of buyers

According to Abdulkadir Muhammad, There are two basic obligations of the buyer, namely receiving goods and paying the price in accordance with the agreement where the payment amount is usually stipulated in the agreement.<sup>24</sup> Whereas according to Subekti, the buyer's main obligation is to pay the purchase price at the time and place as stipulated according to the agreement. The price must be a sum of money even though this right is not stipulated in the law.

#### 2) Obligations of sellers

The seller has obligations that must be carried out on the buyer, including:

##### a) Give the items that are traded

The obligation to give goods that bought and sold from the seller to the buyer is already public knowledge, because the main purpose of someone who buys an item is so that he can have the goods he bought, but the obligation to guarantee the goods sold still needs further explanation. The obligation to surrender

<sup>23</sup>Ahmadi Miru, *Hukum Kontrak*, 126-127.

<sup>24</sup>Abdulkadir Muhammad, *Hukum Perjanjian*, 257-258.

ownership rights includes all actions that are legally required to transfer ownership rights to the goods being traded, from the seller to the buyer.

- b) Bear or guarantee the item and bear it against hidden defects.<sup>25</sup>

Based on Article 1491 BW, there are two things that must be borne or guaranteed by the seller of the goods they sell, namely:

- 1) Ensure mastery of goods safely and peacefully.
- 2) Ensure hidden defects of the goods, which in such a way can be the reason for the cancellation of the agreement.

Even though there is no special promise regarding the underwriting or guarantee of hidden defects or underwriting regarding secure possession, the suspension is the seller's obligation. So that every sentence to hand over all or part of the goods sold to a third party or to expenses which according to the statement of the third party owns it and is not notified when the sale and purchase agreement is carried out is at the seller's expense

#### **b. Buying and Selling Based on Islamic Law**

- 1) Buying and selling definition

Buying and selling in Arabic called by *al-bai'* that etymologically means exchange.<sup>26</sup> The word *al-bai'* in Arabic also used for the understanding of the opponent, namely the word *al-syira'* (buy). Thus, the word *al-bai'* means selling, but also means buying.

<sup>25</sup>Subekti, *Aneka Perjanjian*, (Bandung: PT Alumni, 1982), 8.

<sup>26</sup>Imam Ahmad bin Husain, *Fathu al-Qorib al-Mujib*, (Surabaya: al-Hidayah, t.th), 30.

Meanwhile, according to Wahbah al-Zuhaili quoted from Abdul Rahman Ghazali's book *al-bai'* in language means by exchanging something with something else.<sup>27</sup>

As for the definition of *al-bai'* in terms, the *fuqaha* convey different definitions, such as:<sup>28</sup>

a) Hanafiyah Scholars

Buying and selling is property with property through certain procedures, or exchanging something that someone likes with something else through certain procedures that can be understood as *al-bai'*, such as through *ijab* and *ta'athi* (giving each other).

b) Syafi'iyah Scholars

Buying and selling is exchanging of goods with goods or money with goods for the purpose of releasing ownership rights from someone to another person on the basis of the willingness of both parties.

c) Imam Nawawi

Buying and selling is exchanging property with property with the purpose of ownership.

d) Ibn Qudamah

Buying and selling is exchanging property with property for the purpose of ownership and transfer of ownership.

<sup>27</sup>Abdul Rahman Ghazali dkk, *Fiqh Muamalat*, (Jakarta: Prenada Media Grup, 2008), 67.

<sup>28</sup>Ghufron A. Mas'adi, *Fiqh Muamalah Kontekstual*, (Jakarta: PT Raja Grafindo, 2002), 119-120.

From some definitions above, it can be concluded that selling and buying is a process of exchanging property with property on the basis of the both parties willingness and in accordance with the provisions of shara'.

## 2) Legal Basis of Selling and Buying

One form of *muamalah* who regulate in Islam is buying and selling. Buying and selling as a means of helping among human beings has a strong legal basis.<sup>29</sup> Islamic law allows buying and selling based on the Al-Quran, Hadith and *ijma'* of the scholars.

### a) Al-Quran

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۚ

*Allah has permitted trade and has forbidden interest (Al-Baqarah: 275)<sup>30</sup>*

لَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَبْتَغُوا فَضْلًا مِنْ رَبِّكُمْ ۚ

*It is no sin for you that seek the bounty of your Lord (by trading)*  
(Al-Baqarah: 198)<sup>31</sup>

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَتْ جَارَةً عَنْ

تَرَاضٍ مِنْكُمْ ۚ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

<sup>29</sup>M. Ali Hasan, *Berbagai Macam Transaksi Dalam Islam (Fiqh Muamalat)*, (Jakarta: Raja Grafindo Persada, 2003), 113.

<sup>30</sup>QS. al-Baqarah (2): 275.

<sup>31</sup>QS. al-Baqarah (2): 198.



*O you who believe! Do not eat up your property among yourselves falsely (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 (An-Nisa': 29)*<sup>32</sup>

b) Hadith

عن رفاعه بن رافع رضي الله عنه أن النبي صلى الله عليه وسلم سئل أي الكسب

أطيب؟ قال: يا قال : عمل الرجل بيده وكل بيع مبرور(رواه البزار وصححه

الحاكم)

*From Rifa'ah bin Rafi 'radhiyallahu' anhu, that the Prophet sallallaahu 'alaihi wasallam asked: "What is the best job / afdhol?" He replied: "The work of a man with his own hands (the results of his own labor), and every mabrur buying and selling. (Narrated by Al-Bazzar and graded Saheeh by al-Hakim)*

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ رضي الله عنه أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ قَالَ:

إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ (رواه البيهقي وابن ماجه وصححه ابن حبان)

*From Abu Sa'id Al-Khudri that the Messenger of Allāh said,*

*"Indeed, buying and selling must be done like and like." (Narrated*

*by Al- Bayhaqi and Ibn Majah, and graded Saheeh by Ibn Hibban*

<sup>32</sup>QS. an-Nisa' (4): 29.

### c) *Ijma'*

The argument of *ijma'* that Muslims agree if the law of buying and selling is allowed and there is wisdom in it.<sup>33</sup> Human beings rely on goods that exist in other people and certainly that person will not give him without return. Therefore, by allowing the buying and selling it can help to fulfill the needs of each person and pay for their needs. Humans are social creature who can not live alone without help from others.

In principle the legal basis of buying and selling allowed. Imam Al-Shaafi'i said, all kinds of buying and selling allowed as long as they done by both parties that each have the feasibility to conduct transactions, except selling banned or forbidden by His permission then it belongs in the category the banned.

### 3) Pillars of Buying and Selling

According to Hanafi, the pillars of buying and selling are *ijab* and *qabul* that show the intention to exchange each other (*mu'athaa*). In other words, the pillars are actions in the form of words or movements that show willingness to move property and goods. This is the statement of the Hanafi scholars in terms of transactions.<sup>34</sup>

As for the majority of *fuqaha* argue that the buying and selling has pillars as follows:

<sup>33</sup>Wahbah Zuhaili, *Al-Fiqh Al-Islâmiy wa Adillatuh*, Juz 5, Cet. X (Damaskus: Dar Al-Fikr, 2007), 27.

<sup>34</sup>Zuhaili, *Al-Fiqh Al-Islâmiy*, 28.

#### a) Seller and buyer

The term such as:

1. Understanding, so as not to be fooled. Crazy or stupid people are not authorized to buy.
2. Will of himself (there is no coercion).
3. Is not redundant (waste), the treasures of people who are redundant are in the hands of their guardian.

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا

*Give not unto the foolish (what is in) your (keeping of their) wealth, which Allah hath given you to maintain (An-Nisa': 5)*<sup>35</sup>

4. *Baligh* (reaching puberty), buying and selling of children is not valid. As for children who have understood but have not reached the age of adulthood, in the opinion of most scholars, they are allowed to sell small items, because if they are not allowed it will certainly be difficulties, whereas Islam will never determine regulations that bring difficulties to the believers.<sup>36</sup>

#### b) Money and Goods

The terms are:

1. Sacred. Unclean items are illegally sold and should not be used as money to buy, such as animal skins or carcasses that have not been tanned.

<sup>35</sup>QS. an-Nisa' (4): 5.

<sup>36</sup>Sulaiman Rasjid, *Fiqh Islam*, (Bandung: Sinar Baru Algensindo, 1986), 279.

عن جابر بن عبد الله قال رسول الله صلى الله عليه وسلم إن الله ورسوله حرم بيع

الخمير والميتة والخنزير والاصنام فقل يا رسول الله أرايت شحوم الميتة فانها تطفى

بها اشفن وتد هن بها الجلو دو يستصيح بها الناس قال لا هو حرام قاتل الله

اليهو دان الله لما حرم عليهم شحو مها حملوه ثم باعوه فاكلو اثمته. (متفق

عليه)

*From Jabir bin Abdullah. The Messenger of Allah. said, "Allah and His Messenger have forbidden selling wine and carcasses as well as pigs and idols." Listeners asked, "What about carcass fat, O Messenger of Allah? Because fat is useful for painting boats, making skin oil, and lamp oil. "He replied," It is not permissible, everything is haram, woe to the Jews when Allah forbids carcass fat, they destroy the fat until it becomes oil, then they sell the oil, then eat the money. (Agree to the hadith expert)*

2. There are benefits. Not allowed to sell something that has no benefit. It is also forbidden to take the exchange because it is included in the sense of wasting (extravagance) property prohibited in the Qur'an.

إِنَّ الْمُبَذِّرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ ۖ وَكَانَ الشَّيْطَانُ لِرَبِّهِ كَفُورًا

*Surely those who are wasteful are Satan's brothers (Al-Isra':*

27)<sup>37</sup>

<sup>37</sup>QS. al-Isra' (17): 27.

3. The item can be delivered. It is not valid to sell an item that cannot be handed over to the buyer, for example fish in the sea, booty that is still in the hands of the one who seized it, the item being guaranteed, because all of that contains deception.
4. Goods is belonging to the seller, or owned it represents, or who works. The Prophet said:

لا بيع الا فيما يملك

*Buying and selling of goods that are not owned is invalid*

(Narrated by Abu Dawood and Tirmidhi)

5. The goods are known by the seller and buyer; substance, shape, level (size), and its properties are clear so that between them there will be no blasphemy. The information is the hadith from Abu Hurairah that was mentioned above. If the goods mixes with another, for example a bushel of rice or a kilo of sugar, just look at some of the goods, as long as the others are the same as the examples seen; and enough to see the skin if the skin is broken it will break; what is meant is a shell, for example. Likewise something that is understandable according to habits such as onions that are still in the ground even though the condition of the goods may be less and will harm one of the buyers or sellers, but only a few. The circumstances are a little bit it's forgivable because the benefit to facilitate smooth work. Said Ibn Qaiyim, "Surely people who are experts can know the



goods that are in the ground by looking at the above, so if the goods in the ground cannot be sold, it will certainly slow down the work that is not appropriate”.

c) Lafadz *ijab* and *qabul*

*Ijab* is the word of the seller, for example, "I sell this goods so much ..." *Qabul* is the buyer's statement, "I receive (I buy) at such a price".<sup>38</sup> The explanation is the verse says that must be done like and like and. The Prophet said:

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ قَالَ:  
إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ (رواه البيهقي وابن ماجه وصححه ابن حبان)

From Abu Sa'id Al-Khudri that the Messenger of Allāh said, "Indeed, buying and selling must be done like and like." (Narrated by Al-Bayhaqi and Ibn maajah, and graded Saheeh by Ibn Hibban)

Whereas *liking* can not be clearly known except by words, because the feeling of liking depends on each heart. This is the opinion of most scholars. But Nawawi, Mutawali, Bagawi, and several other scholars argue that *lafadz* do not become pillars, only according to custom or habit. If according to custom there is no requirement for certain *lafadz*, then it is already seen as buying and selling, that is enough because there is no clear argument for

<sup>38</sup>Sulaiman Rasjid, *Fiqh Islam*, 281.

obliging *lafadz*. According to the scholars who require *lafadz* are required to fulfill some conditions:

- a) *Ijab* and *qabul* is related. That means one of them deserves to be an answer from another and not long ago.
- b) The meaning of both of them should be consensual (the same) even though they are different.
- c) Both do not relate to other matters, as he said, "If I leave, I sell this goods so much."
- d) There is no time because time of buying and selling such as a month or a year is not valid.

### 3. Imported Second Hand Clothes

Clothe is a basic human need besides food and shelter. Clothes can be interpreted as items that can be used (clothes, pants and so on).<sup>39</sup> Humans cannot be separated from clothing in carrying out every activity. Nowadays there are many imported second hand clothes from countries that have more economies than Indonesia. These countries include Japan, Korea, China and so on. From the name it can be seen that second hand clothes is leftover clothing or used clothing. So what is meant by second hand clothe is clothes, pants or other body coverings that have been used by other people and reused by people who just have the clothes.

The definition of second hand clothe based on Article 1 of Regulation of the Trade Minister of the Republic of Indonesia No. 51/M-

<sup>39</sup>Tim Penyusun Kamus Pusat Pembinaan dan Pembangunan Bahasa, *Kamus Besar Bahasa Indonesia*, Cet. I, (Jakarta Timur: Balai Pustaka, 1991), 716.

DAG/PER/7/2015 Concerning Prohibition of Importing Second-Hand Clothes is textile products used as a cover for the human body, which is included in the Tariff Post / HS 6309.00.00.00. Tariff Post/ HS is a Harmonized System or commonly referred to as HS is a list of classifications of goods made systematically with the aim of facilitating refinement, trade transactions, transportation and improved statistics from the previous classification system. At present the classification of goods in Indonesia is based on the Harmonized System and is poured into a tariff list called the Indonesian Customs Tariff Book.<sup>40</sup>

The purpose of the tariff on imported goods is to provide uniformity in the systematic classification of goods lists. In addition, the function of the tariff post is to provide an official international system for coding, explanation and classification of goods for trade purposes and facilitate data collection and analysis of world trade statistics. Tariff is a government policy to achieve its objectives in the competition for the sale of foreign products in the country.

Imported second hand clothe is clothing that has been used by foreigners and then imported into Indonesia to be traded domestically. Imported second hand clothes are not all used clothes, some of them are clothing from boutiques or outdated retail outlets, which are not sold. Then

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<sup>40</sup>Kementerian Perdagangan, “Definisi & Manfaat”, [http://dipen.kemendag.go.id/app\\_frontend/contents/147-definisi-manfaat](http://dipen.kemendag.go.id/app_frontend/contents/147-definisi-manfaat), accessed on 11 March 2019.

the clothes were piled up in the warehouse for years. These clothes that are not for sale are sold by certain parties.<sup>41</sup>

Trade in imported second hand clothe has developed in various countries, both in developed and developing countries. But the development of imported second hand clothe trade is very high among developing countries. The negative impact gained by developing countries is as if developing countries are becoming dump sites for imported second hand clothes that have not been used by developed countries. The entry of imported second hand clothes into a country is considered to be able to disrupt the development of domestic industries. Especially those engaged in the textile industry and textile products. The industry is classified as a labor-intensive industry, which if it cannot develop until it goes bankrupt, it will hamper job creation.

Not all countries have regulations that prohibit the trade in imported second hand clothes. Second hand clothes products have their own HS code in classifying goods according to the World Customs Organization (WCO), namely HS 6309 (worn clothing and articles) and 6310 (rags, scraps twine, cordage, rope). This is one of the factors that can cause many second hand clothes to circulate in international trade.

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<sup>41</sup>Herna Monalisa Hura, "Analisa Keberadaan Candida Albicans dan Aspergillus SPP. Serta Keluhan Kesehatan dan Perilaku Penjual Tentang Bahaya Kesehatan Pada Pakaian Bekas Di Pasar Melati Kelurahan Tanjung Selamat Kecamatan Medan Tuntungan Kota Medan Tahun 2015", Thesis, (Medan: Universitas Sumatera Utara, 2015), 33.

#### 4. Regulation of Imported Second Hand Clothes in Indonesia

Regulations regarding second hand clothes are regulated by the government in several statutory provisions. Law No. 7 of 2014 concerning Trade is the highest regulation governing the import of second hand clothes. Article 47 of Law No. 7 of 2014 states: (1) every Importer is obliged to import Goods under new conditions. (2) In certain cases the Minister can determine the imported goods in the not new condition. (3) Determination as referred in paragraph (2) shall be submitted to the minister who administers government affairs in the financial sector. (4) Further provisions regarding the determination of imported goods in the new condition as referred to in paragraph (2) shall be regulated by a Ministerial Regulation.

A similar matter is also regulated in the Regulation of the Trade Minister of the Republic of Indonesia No. 54/M-DAG/PER/10/2009 concerning General Provisions in the Import Sector, in which the Regulation of the Trade Minister has regulated the import goods, must be in new condition. As stated in Article 6 paragraph (1) which reads "Imported goods in new condition". In Article 6 paragraph (2), it is also explained that in certain circumstances, the Minister can determine imported goods in non-new conditions based on; (a) legislation, (b) the authority of the Minister, and / or (c) proposals or technical considerations from other government institutions. Based on the regulation of the Minister of Trade, it can be concluded that second hand clothes that has no other provisions governing it is prohibited from being imported.



Along with the development of import activities, Regulation of the Trade Minister of the Republic of Indonesia No.54/M-DAG/PER/10/2009 concerning General Provisions in the Import Sector is not appropriate. So that it is necessary to improve legal requirements. The Regulation of the Trade Minister of the Republic of Indonesia No.54/M-DAG/PER/10/2009 then replaced with Regulation of the Trade Minister of the Republic of Indonesia a No. 48/M-DAG/PER/7/2015 concerning General Provisions in the Import Sector. Article 2 of Regulation of the Trade Minister No. 48 /M-DAG/PER/7/2015 states that imported goods must be new.

In certain cases, the Minister of Trade may determine imported goods in non-new conditions based on: Legislation, Ministerial Authority, and / or proposals or technical considerations from other government institutions. Based on article 2, it can be understood that goods in a used state may not be imported. Considering that imported second hand clothes has the potential to endanger human health so that it is not safe to be used by the public, the government through the Regulation of the Trade Minister of the Republic of Indonesia No.51/M-DAG/PER/7/2015 concerning Prohibition of Importing Second Hand Clothes, strictly prohibits the import of second hand clothes.

A law that has been ratified or stipulated can be binding if the law is promulgated in a State Gazette or announced in a State News.<sup>42</sup> The government through the Ministry of Trade prohibits the import of second

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<sup>42</sup>Maria Farida, *Ilmu Perundang-Undangan: Dasar-Dasar dan Pembentukannya*, (Yogyakarta: Kamisius, 1998), 176.

hand clothes by promulgating the Regulation of the Trade Minister of the Republic of Indonesia No.51/M-DAG/PER/7/2015 concerning Prohibition of Importing Second Hand Clothes. The Regulation of the Trade Minister ratified on July 9, 2015 through the state news of the Republic of Indonesia in 2015, so that the Regulation of the Trade Minister has binding power for everyone, especially for importers.

Each formation of legislation must have reasons or considerations that form the basis of its stipulation. To find out the basic considerations for the establishment of a statutory regulation, it can be seen from the considerations of the laws and regulations. Considerations are one of the important parts in the formation of legislation.

In the consideration it contains things or thoughts which constitute a brief constellation of facts and that drives the formation of the legislation. Meanwhile, in the consideration of the Regulation of the Trade Minister No. 51 / M-DAG / PER / 7/2015, it explained that the basic consideration for the ratification of it is *first*, that imported second hand clothes has the potential to endanger human health so that it is not used by the public. *Second*, 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 second hand clothes. *Third*, that based on the considerations as referred to in letters a and b, it is necessary to stipulate a Minister of Trade Regulation concerning the Prohibition of Importing Second Hand Clothes. These reasons can be

categorized as sociological backgrounds in the establishment of the Regulation of the Trade Minister No. 51/M-DAG/PER/7/2015.

The Regulation of the Trade Minister No. 51/M-DAG/PER/7/2015 states that imported second hand clothes have the potential to endanger human health so that it is not safe to be used and used by the public. Based on these considerations and to protect the interests of consumers, therefore imported second hand clothes are prohibited from being imported.

Second hand clothes prohibited from being imported into the territory of the Republic of Indonesia. However, this provision does not apply to the import of second hand clothes as moving goods. Importers who violate this rule will be subject to administrative sanctions and other sanctions in accordance with the provisions of the legislation. The legislation referred to here is Law Number 7 of 2014 concerning Trade.

The Regulation of the Trade Minister No. 51/M-DAG/PER/7/2015 derived from Article 47 paragraph (1) of Law Number 7 of 2014 concerning Trade, which states that every importer must import goods in new conditions. Article 47 paragraph (1) states explicitly that every importer must import goods in new conditions. But in certain circumstances the Minister of Trade can give permission to import goods in a new condition.

What is meant by certain conditions is a situation where the business actor requires non-new capital goods that have not or cannot be fulfilled from domestic sources so that it needs to be imported in order to increase export production and development processes, increase

competitiveness, business efficiency, investment and relocation industry and infrastructure development. In addition, if natural disasters occur then equipment is needed in conditions that are not new to recovery and rebuilding as a result of natural disasters and non-new goods for other purposes in accordance with statutory provisions.<sup>43</sup>

## 5. Overview of *Maslahah*

### a. The Definition of *Maslahah*

The word *maslahah* in Indonesian is known as *maslahat*, derived from Arabic, namely *maslahah*. *Maslahah* according to language means benefits, goodness, kindness, use or usability.<sup>44</sup> *Maslahah* is an isim in the form of masdar and means the same as the word *al-shulhu*, which means it is synonymous with the word *al-manfa'at*, meaning pleasure or something that will deliver to the enjoyment. Whereas according to the term, *maslahah* is the desired benefit of Allah for his servants, both in the form of the maintenance of their religion, the maintenance of their soul / self, the maintenance of their minds, as well as the maintenance of their wealth.<sup>45</sup> Ushul experts differ in defining them, including:

<sup>43</sup>Tim Penyusun, *Laporan Analisis Impor Pakaian Bekas*, (Jakarta: Kementerian Perdagangan Republik Indonesia, 2015), 20.

<sup>44</sup>Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, cet II, (Jakarta: Balai Pustaka, 1996), 634.

<sup>45</sup>Asmawi, *Perbandingan Ushul Fiqh*, (Jakarta: Amzah, 2011), 128.

أَمَّا الْمَصْلَحَةُ فَهِيَ عِبَارَةٌ فِي الْأَصْلِ عَنْ جَلْبِ مَنْفَعَةٍ أَوْ دَفْعِ مَضَرَّةٍ

*Basically maslahah is achieving benefits or rejecting harm*

أَنَّ الْمَصْلَحَةَ عِبَارَةٌ عَنْ مَنْفَعَةٍ الَّتِي قَصَدَهَا الشَّارِعُ الْحَكِيمُ لِعِبَادِهِ فِي حِفْظِ دِينِهِمْ وَنُفُوسِهِمْ

وَعُقُولِهِمْ وَنَسْلِهِمْ وَأَمْوَالِهِمْ

*Maslahah is a form of beneficial action that has ordered by the shari' (Allah) to His servants to maintain their religion, soul, mind, lineage, and property.*

الْمَصْلَحَةُ هِيَ الْمُحَافَظَةُ عَلَى مَقْصُودِ الشَّارِعِ بِدَفْعِ الْمَقَاسِدِ عَنِ الْخَلْقِ

*Maslahah is maintaining the purpose of the shara' by rejecting everything that can destroy the creatures.*

Of the three definitions, it can be understood that all three have the same goal, namely maintaining the achievement of syara' goals, namely rejecting harm and achieving *maslahah*.

#### **b. The kind of Maslahah**

1. In terms of the importance and quality of maslahah for human life, the expert of ushul fiqh divides maslahah into three types.<sup>46</sup>

##### **a) Al-Maslahah al-dharuriyat**

*Al-Maslahah al-dharuriyat* is a benefit that is related to the basic human needs in the world and the hereafter. So the

<sup>46</sup>Nasrun Harun, *Ushul Fiqh I*, (Jakarta: Logos, 1997), 115.



importance of this *maslahah*, if escaped in human life there will be destruction, disaster and damage to the order of human life. The benefits include keeping religion, self, intellect, lineage and property.

Maintenance of these five benefits, according to Syatibi, is carried out through various life activities. Through *ushul al-Ibadat*, maintenance done by instilling and improving the faith, say two sentences al-Shahada, carry out prayers, Zakah, fasting, Hajj and so on. All forms of this practice are aimed at the maintenance of religion.

Maintenance of self and mind of humans is done through a variety of activities, such as eating, drinking, dressing, and have the House as a shelter and protect themselves from a variety of disorders. While the maintenance of lineage and property is done through the activities of *muamalat*, doing his interaction with fellow human beings. The maintenance of the five forms of benefit is also realized with the existence of *jinayat* legal provisions and the command to enforce the right and prevent the wrong.

b) *Al-Maslahah al-hajiyat*

*Al-Maslahah al-Hajiyat* is a benefit needed by humans to perfect their basic benefit and eliminate the difficulties faced. This includes all the legal provisions that bring relief to humans in their lives. The form of relief in worship, it appears from the ability to

summarize (*qashar*) prayer and break the fast for those who are travelers. In *muamalat*, this relief is realized by being allowed to hunt halal animals, eat good food, be allowed to buy and sell salam (*bay' salam*), agricultural cooperation (*muzara'ah*) and plantations (*musaqqah*). All of these activities are said by Allah to facilitate human beings in life and at the same time support the realization of the above basic benefits.<sup>47</sup>

c) *Al-Maslahah al-tahsiniyat*

This *maslahah* is often referred to as *maslahat takmilīyat*, which is a benefit which is complementary and the breadth of the benefit of *dharuriyat* and *hajiyyat*. This benefit is intended for good and noble character. If, this benefit cannot be realized in life, it does not cause shock and damage to the order of human life. Even so, this benefit remains important and needed by humans. For example, in worship, the necessity of purification, covering the genitals and wearing beautiful and good clothes. Examples of benefit in custom, the existence of courtesy and procedures for eating and cleaning habits.

Of the three levels of *maslahah* that need to note a muslim is the quality and importance of a benefit so that it can be determined that the benefit should be prioritized first. The

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<sup>47</sup>Nasrun Haroen, *Ushul Fiqh*, 116.

*maslahah dharuriyat* should be more precedence of the *hajiyyat* and the *maslahah hajiyyat* should be more precedence from *tahsiniyat*.

2. In terms of the existence of *maslahat* and the existence or absence of theorems that directly regulate it is divided into three types

a) *Maslahah al-Mu'tabarah*

*Maslahah al-mu'tabarah* is a benefit that is explained and recognized directly by nash. To preserve and realize the benefit of human life, Islam establishes the punishment for qishash against deliberate killings, such as the word of Allah Surat al-Baqarah verse 178.

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ۖ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ  
وَالْأُنْثَىٰ بِالْأُنْثَىٰ ۖ فَمَنْ عَفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ  
بِإِحْسَانٍ ۚ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ ۚ فَمَنْ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ

أَلِيمٌ

*O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free, the slave for the slave, and the female for the female. But whoever overlooks from his brother anything, then there should be a suitable follow-up and payment to him with good conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment.*<sup>48</sup>

<sup>48</sup>QS. al-Baqarah (2): 178.

To preserve peace and guarantee the ownership of property, Islam set sentence cut hands for thieves, as contained in al-Ma'idah verse 38.

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ ۗ وَاللَّهُ عَزِيزٌ

حَكِيمٌ

*(As for) the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allah . And Allah is Exalted in Might and Wise.<sup>49</sup>*

b) *Maslahah al-Mulghah*

*Maslahah al-Mulghah* is a benefit that is contrary to the provisions of the *nash*.<sup>50</sup> Therefore all forms of benefit as it rejected by *syara'*. According to Abdul Wahhab Khallaf, one example is relevant to this fatwa of a Muslim Maliki school cleric named Laits ibn Sa'ad (94-175 H) in establishing the *kaffarat* of a man who has a conjugal relationship during the day of Ramadan. Based on the hadith of the Holy Prophet, the *kaffarat* for such people is to free slaves, or fast for two consecutive months, or feed 60 poor people (Narrated by Bukhari and Muslim). This case occurred in Spain and the person who had a conjugal relationship during the daytime in Ramadan was a businessman. Considering

<sup>49</sup>QS. al-Maidah (5): 38.

<sup>50</sup>Ma'shum Zein, *Menguasai Ilmu Ushul Fiqh*, (Yogyakarta: Pustaka Pesantren, 2013), 163.

that this person is a businessman, if he is forced to overturn the slave, he can easily pay for it because he has a lot of money and he easily commits an offense again. Laits ibn Sa'ad established *kaffarat* for this ruler fasting two months in a row.

The scholars view the law stipulated by Laits as contrary to the hadith of the Prophet above, because the forms of *kaffarat* were applied in sequence. If a person is not able to free a slave, then he is subject to fasting two months in a row. Therefore, prioritizing *kaffarat* fasting for two months in a row from freeing slaves is a benefit that is contrary to the will of the faith so that it is considered null and void. Benefit like this in the view of the cleric is called *al-maslahah al-mulghah* and cannot be used as a basis for legal stipulation.

#### c) *Maslahah Mursalah*

*Mursalah Maslahah* is a benefit that is in line with what is contained in the *nash*, but there is no *nash* specifically ordered and forbid to make it happen. Evidence that the benefit is in line with *nash* can be seen from the set of *nash* (verse or Hadith) and the meaning it contains. Thus, *al-maslahah al-mursalah* is in line with the goals of *syara'* so that it can be used as a foundation in realizing the benefits needed by humans and avoiding them from harm.



### c. Legal Basis of *Maslahah*

Based on the research of the scholars it is clear that Islamic Sharia contains benefit for humans in regulating their lives in this world, this is confirmed in the Qur'an:<sup>51</sup>

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

*And We have not sent you, [O Muhammad], except as a mercy to the worlds.*

يَا أَيُّهَا النَّاسُ قَدْ جَاءَكُمْ مَوْعِظَةٌ مِّن رَّبِّكُمْ وَشِفَاءٌ لِّمَا فِي الصُّدُورِ وَهُدًى وَرَحْمَةٌ لِّلْمُؤْمِنِينَ

*O mankind, there has to come to you instruction from your Lord and healing for what is in the breasts and guidance and mercy for the believers.*<sup>52</sup>

Whereas the text of the sunnah which is used as the basis for applying the law to the method of *maslahah* is the Hadith of the Prophet Muhammad, which was narrated by Ibn Majjah which reads:

حدثنا محمد بن يحيى، حدثنا عبدالرزاق. انبأنا معمر عن جابر الجعفي عن عكرمة

عن ابن عباس قال: قال رسول الله صلى الله عليه وسلم: لا ضرر ولا ضرار

*Muhammad Ibn Yahya told us, that Abdur Rozzaq told us, from Jabir al-Jufiyyi from Ikrimah, from Ibn Abbas: The Prophet Muhammad said, "May not make the madzarat (danger) on itself and may not make madzarat to others. (HR. Ibn Majjar)*

<sup>51</sup>QS. al-Anbiya (21): 107.

<sup>52</sup>QS. Yunus (10): 57

Based on the Qur'an and Sunnah mentioned above, according to Syaikh Izzudin bin Abdul Salam, *maslahah fihiyyah* is only returned to the two main rules, namely:<sup>53</sup>

1) درء المفسد

*Refuse all that is broken*

2) جلب المصالح

*Attract everything that is problematic.*

#### **d. The Terms of *Maslahah***

Ulama who accept *maslahah* as a source of law, especially Imam Malik as a popular Imam who uses it the most, determines several conditions that must be fulfilled.

Saifudin Zuhri in his book explained that Zakaria Al-Farisi in his book *Masadirul Ahkamil Islamiyah* provided other conditions as a complete requirement above, including:<sup>54</sup>

1. It should be essential that *maslahah* is not imaginative in the sense that if the person who has the opportunity and who focuses on it is convinced that fostering a law based on that benefit will be able to attract benefits and refuse harm to humanity. Unlike the case if only some are sure of the benefit, for example about the benefit of the prohibition of divorce by the husband and then that right is handed

<sup>53</sup>Jalaluddin al-Suyuti, *Al-Asbah wa al-Nazdo'ir*, (Semarang: Maktabah Usaha Keluarga, 1987), 31.

<sup>54</sup>Saifudin Zuhri, *Ushul Fiqih*, (Yogyakarta: Pustaka Pelajar, 2011), 102

over absolutely to the judge alone. Such is not essential benefit but imaginative benefit which will only destroy family and community life.

2. *Maslahah* is in line with the will of the faith and is included in the kind of *maslahah* that is supported by *nash* in general.<sup>55</sup> An example of this *mulgha* benefit is the fatwa of Imam Yahya bin al Yaisy, one of the students of Imam Malik and an Andalusian fiqh cleric at one of his kings at that time. The determination that for the king if he breaks the fast intentionally in the month of Ramadan he must not not have to fulfill the expiration of fasting two months in a row. He was acting without giving elections (*tahkyir*) between freeing slaves or fasting as held by Imam Malik and nor by freeing slaves *an sich* as held by other scholars because he assumed that benefit would be achieved only with that. And according to him, the purpose of expiation is not only to give lessons to people who commit violations so that they no longer want to repeat their actions. And specifically for a king this purpose can be achieved only by requiring him to fulfill the burdens in the form of burdensome fasting, being free of slaves for him has no influence because it is not burdensome. However, this opinion is considered by most scholars as a *fatwa* based on the consideration of the *mulgha* benefit because the Qur'anic verses refer to the expiation do not discriminate between the king and others.

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<sup>55</sup>Nasrun Haroen, *Ushul Fiqh I*, 122.

3. It is general in nature not to be individual. The point is that in relation to the formation of the law for an event or *maslahah* can give birth to benefits for most human beings that can truly be realized or can reject harm, or not only bring benefits to someone or some people. It is not permissible to prescribe the law only for the special benefit of *Amir* or a superior. Besides that, you should not exclude the opinions of famous people and their benefit. An example is what was stated by Al-Ghazali, namely: If in a battle against infidels they fortify themselves and make a defense through some captive Muslims, while the infidels are feared to launch aggression and can destroy the majority of the Muslims, the attack on them must be carried out, although it will result in the death of some Muslims who actually must be protected the safety of their souls. This is based on the consideration of the public interest while still prioritizing a victory and resilience.

Thus are some conditions that must be met in the application of *maslahah* as a source of law. And by presenting a number of conditions that can be avoided, an indication of the application of *maslahah* means setting a law subjectively emotional as often accused by some scholars.

### CHAPTER III

#### RESEARCH METHOD

The research method is a technical description used in the study. The definition of method according to etymology is the way or how to do something. The definition is taken from Greek, *methodos* which means the road to. For the sake of science, method is the starting point towards final proportions in certain fields of knowledge.<sup>56</sup>

Legal research is a process related to the analysis of a particular legal problem that is accompanied by the resolution of the problem by applying laws that are in accordance with the relevant facts.<sup>57</sup> In this study researcher uses several research tools that are in accordance with this research method in order to obtain maximum results, including the following.

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<sup>56</sup>Bahder John Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, 2008), 13.

<sup>57</sup>Dyah Ochtorina Susanti dan A'an Efendi, *Penelitian Hukum (Legal Research)*, (Jakarta: Sinar Grafika, 2014), 2.



### A. Type of Research

The type of research used by the author in reviewing this research is the type of field research known as empirical juridical or socio-legal research. Empirical research is often referred to as field research. Empirical research is legal research by means of an existing factual approach by conducting observations and research in the field then being reviewed and examined based on regulations and Islamic law.<sup>58</sup> In other words, empirical juridical research is a study carried out on the actual conditions or real conditions that occur in the society with the intent to find out the facts and data needed, after the data needed is collected then lead to the identification of problems that ultimately lead on solving problems.<sup>59</sup>

In this study, data will be sought on the supervision of buying and selling imported second hand clothes by observing Gringging Market, Kediri Regency and by conducting interviews with the Trade Department of Kediri Regency, sellers and buyers of imported second hand clothes. Furthermore, the data obtained will review according to Law No. 7 of 2014 concerning Trade and *Maslahah*.

### B. Research Approach

The research approach according to Bahder John Nasution is a problem related to the way a person reviews and approaches the problem in

<sup>58</sup>Cholid Narbuko dan Abu Achmadi, *Metodologi Penelitian*, (Jakarta: PT. Bumi Aksara, 2003), 1.

<sup>59</sup> Bambang Waluyo, *Penelitian Hukum Dalam Praktik*, (Jakarta: Sinar Grafika, 2002), 16.

accordance with his scientific discipline.<sup>60</sup> In this study researcher used a sociological juridical approach. The sociological juridical approach is to identify and conceptualize law as a real and functional social institution in a real life system.<sup>61</sup> The object of the study of sociological juridical research is about the behavior of the society, while the one studied is the behavior that arises as a result of interacting with the existing norm system.

Retrieval of data in this study was carried out through observation, systematic recording directly in imported second hand clothes stores in Gringging Market. Then conducted direct interviews with sellers and buyers of imported second hand clothes, in addition interviews also conducted with the Trade Department of Kediri Regency. The data obtained is processed and analyzed systematically.

### C. Location of Research

The research location chosen by the author took place at the Trade Department of Kediri Regency and imported second hand clothes stores in Gringgring Market, Grogol District, Kediri Regency, East Java. The reason the author chose this place is because Trade Department is a government institution that is in charge of dealing with trade issues, while imported second hand clothes stores in Gringgring Market is the center of buying and selling imported second hand clothes which the customers are not only from Kediri but also from outside the city.

<sup>60</sup>Nasution, *Metode Penelitian Ilmu*, 126.

<sup>61</sup>Soejono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1986), 51.

#### D. Data Sources

Data sources according to Soejono Soekanto is divided into three, primary data sources is data obtained directly from the society, secondary data source is from references, and tertiary data source is materials that provide guidance as well as explanation against the primary data and secondary data include dictionaries and encyclopedias.<sup>62</sup>

The data sources used in this study are:

1. Primary data

Primary data is data who obtain from the source or the first data source where a data is generated. Recording the main data sources through interviews is the result of listening, and asking activities that are carried out consciously, directed and always aiming to obtain the necessary information, which is obtained directly from the informant. In this research that will be used as primary data is the result of interviews with the Head of trade business section of the Trade Department of Kediri Regency, buyers and sellers of imported second hand clothes in Gringgring Market.

2. Secondary data

Secondary data is a data source that helps provide information or complementary as comparative material. Secondary data consists of data documents and library materials (such as some book literature), Law No. 7 of 2014 about Trade, The Regulation of the Trade Minister No. 51/M-

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<sup>62</sup>Soejono Soekanto, *Pengantar Penelitian Hukum*, 49-50.

DAG/PER/7/2015 concerning Prohibition of Importing Second-Hand Clothes, Regulation of the Trade Minister of the Republic of Indonesia Number 48 / M-DAG / PER / 7/2015 concerning General Provisions in the Import Sector, Regulation of the Trade Minister of the Republic of Indonesia Number 54/M-DAG/ PER/10/2009 concerning General Provisions in the Import Sector, The decision of Industry and Trade Minister Number 642/MPP/Kep/9/2002 regarding changes to Annex I The decision of Industry and Trade Minister Number 230/MPP/Kep/7/1997, The decision of Industry and Trade Minister Number 230/MPP/Kep/7/1997 concerning Goods Regulated by Import Trading, journals and websites related to the object of research. Secondary data sources of book literature and recent research related to Islamic law.

#### **E. Data Collecting Technique**

In an effort to collect data that is relevant to this study, researcher used several method of data collection, including using observation, interviews and documentation to collect primary data and literature studies (bibliography research) to obtain secondary data that can be described as follows:

##### **1. Interview**

Interview is an interpersonal situation that is directly (face to face), with someone interviewing by asking questions designed to obtain answers

relevant to the research problem to a respondent.<sup>63</sup> In the interview all information obtained about what is desired is recorded properly. The interviews conducted are unstructured interviews, in which this method allows questions to be self-taught and flexible, the direction of the questions more open, stay focused, so that the right and accurate information is obtained and the speech is not rigid. Interviews are conducted to obtain information verbally in order to achieve the goal of getting accurate information from competent people. In this interview the speakers were as follows:

- a. Mr. Edy Agung as Head of the Trade Business Section of Trade Department of Kediri Regency;
- b. Buyers of imported second hand in Gringgring Market include Mrs. Komariah, Mrs. Tatik, Abdurrahman, Mrs. Zain, Hira, Mr. Johar, Ita, Mrs. Iis, Nana, and Mrs. Miatun;
- c. Sellers of imported second hand in Gringgring Market include Basra, Mrs. Rina, Mr. Karna, Mrs. Yuni, Mrs. Sum, and Mrs. Ningsih.

#### **F. Data Analysis Technique**

Technique of data analysis is the most important part of the research, because at this stage the data is done and utilized in such a way as to successfully conclude the desired truth in the study. The data analysis

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<sup>63</sup>Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT Raja Grafindo Persada, 2004), 82.



techniques used by the author are to do data editing, classifying, analyzing, verifying and concluding.

The first stage in data management is editing which means re-examining data records obtained from observations, interviews and documentation, whether this data is good enough and can be prepared immediately for the next process.<sup>64</sup> Therefore the researcher re-examined the records and data obtained from data collection, both observational data in Gringring Market Kediri Regency, interview with the Head of the Trade Business Section of the Trade Department of Kediri Regency, buyers and sellers of imported second hand clothes in Gringring Market and documentation in the form of photos. The goal is to get more accurate data and avoid mistakes in analyzing and drawing conclusions.

After data from various sources are collected then classification is carried out and re-checking is done so that the data obtained is proven valid. Data classification aims to sort data obtained from informants and adapted to the needs of researcher. This stage is by classifying observation and interview data with the Head of the Trade Business Section of the Trade Department of Kediri Regency buyers and sellers of imported second hand clothes in Gringring Market by compiling data to facilitate discussion.

The third stage is verification. Verification is a step or activity to check the correctness of the data obtained so that its accuracy is known. This process can be carried out to examine the adequacy of reference materials, by

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<sup>64</sup>Burhan Ashshofa, *Metode Penelitian*, 61.

comparing the results of interviews with various documents such as books and regulations related to the supervision of buying and selling imported second hand clothes.

The next step is analysis. Data analysis is the process of organizing and sorting data in patterns, categories and units of basic descriptions so that themes can be found and work hypotheses can be formulated. Then the data analysis aims to organize the data that has been obtained. After the data from the field is collected by the data collection method that has been explained, the writer will manage and analyze the data using qualitative descriptive analysis. Qualitative descriptive analysis is an analysis that describes the state or status of a phenomenon with words or sentences, and then separated by categories to get conclusions.

The final stage is concluding. Concluding is taking conclusions from the data obtained, answers to the reader for anxiety about what is presented in the background of problem.<sup>65</sup> Conclusions aim to conclude from the materials that have been obtained so as to facilitate the translation in the study.

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<sup>65</sup>Amiruddin dan Zainal Asikin, *Pengantar Metode*, 67.



## CHAPTER IV

### FINDINGS AND DISCUSSION

#### A. The Overview of Trade Department of Kediri Regency

Trade or commerce is an activity of exchanging services or goods or both based on mutual agreement without any element of coercion. Every city in Indonesia has a Trade Department. The Trade Department or known as *Disdag* is the implementing element of regional government affairs in the field of trade and regional government affairs in the industrial sector. The Trade Department has the task of carrying out part of regional government affairs based on the principle of autonomy and co-administration in the field of trade and market management. *Disdag* is headed by the Head of the Department who is located under and is responsible to the Regent through the Regional Secretary. The Trade Department of Kediri Regency is located on Jl. Soekarno Hatta No. 10, Katang, Sukorejo, Ngasem, Kediri Regency, East Java.

Disdag as written in article 2 paragraph (3) Regulations of the Kediri Regent No. 49 of 2016 concerning Position, Organizational Structure, Job Descriptions and Functions as well as Work Procedure of the Trade Department of Kediri Regency has the task of helping the Regent carry out government affairs which are the authority of the regions in the trade and industrial fields. *Disdag* to carry out its duties organizes several functions, including the following:<sup>66</sup>

1. Formulation of technical policies in trade and industry;
2. Preparation of program and budget planning in trade and industry;
3. Implementation of trade and industry affairs;
4. Monitoring, evaluation and reporting on the implementation of trade and industry;
5. Coordination and synchronization of implementation in trade and industry;
6. Fostering the organization of trade and industry;
7. Coaching of the UPTD;
8. Implementation of administration in trade and industry;
9. Preparation and formulation of periodic performance reports to the Regent; and
10. Implementation of other duties given by the Regent in accordance with regulations.

The Trade Department of Kediri Regency has an organizational structure consisting of:<sup>67</sup>

1. Head of Department
2. Secretariat, in charge of:
  - a. General and Civil Service Subdivisions; and
  - b. Program and Financial Preparation Subdivision.
3. Field of Commerce oversees:
  - a. Trading Business Section
  - b. Market Network and Legal Metrology Access Section; and
  - c. Regional Product Promotion Section

<sup>66</sup>Article 2 paragraph (4) Regulations of the Kediri Regent No. 49 of 2016 concerning Position, Organizational Structure, Job Descriptions and Functions as well as Work Procedure of the Trade Department of Kediri Regency

<sup>67</sup>Article 3 paragraph (1) Regulations of the Kediri Regent No. 49 of 2016 concerning Position, Organizational Structure, Job Descriptions and Functions as well as Work Procedure of the Trade Department of Kediri Regency

4. Field of Industry, in charge of:
  - a. Agro and Forest Products Industry Section
  - b. Metal, Machinery and Electronics Industry Section, and
  - c. Section of the Chemical, Textile and Multifarious Industries
5. Service Technical Implementation Unit (UPTD); and
6. Functional Group.

The Secretariat is headed by a Secretary who is under and responsible to the Head of Department. Each field is headed by the Head of the Division who is under and responsible to the Head of Department. Each field has sub-sections, each of which is led by the Head of the Sub-Section who is responsible to the Secretary. The respective sections are led by the Head of Section who is responsible to the Head of the Division.

## **B. The Supervision of Buying and Selling Imported Second Hand Clothes**

### **Perspective of Law No. 7 of 2014 concerning Trade**

#### **1. The practice of Buying and Selling Imported Second Hand Clothes in Gringging Market**

Gringging market is the center of imported second hand clothes in Kediri. The practice of buying and selling imported second hand clothes in Gringging Market, Kediri Regency has been going on since the 1990s.

As the result of an interview with Basra, one of the imported second hand clothes traders stated that:

*“orang yang jualan pakaian bekas ini udah lama, mbak. Kira-kira sejak tahun 1990-an. Waktu dulu masih ngetren-ngetrennya pakaian bekas. Bapak berjualan pakaian bekas ini sudah sekitar 19 tahun, kalau saya ini hanya meneruskan usaha bapak”.*<sup>68</sup>

<sup>68</sup>Basra, interview, (Kediri, 16 February 2019)



There are also some sellers who have just started their business, as explained by Mrs. Rina at the interview as follows:

*“saya ini termasuk penjual yang baru, mbak. Gak seperti penjual-penjual yang lain yang sudah jualan bertahun-tahun. Toko-toko lain udah buka sejak tahun 1990-an, kalau saya baru jualan sekitar 2 tahun”*.<sup>69</sup>

Imported second hand clothes stores in Gringging Market, Kediri Regency began to exist from 1990 until now. There are also sellers who have just started their business around 2017 as explained by Ms. Rina. Some sellers run the business of buying and selling imported second hand clothes as businesses go down, where some of the traders continued their parents' business which had initiated since 2000.

Imported second hand clothes sellers in Gringging Market get imported second hand clothes in Surabaya. There are several suppliers that supply imported second hand clothes to the Kediri region. Surabaya is a supplier of imported second hand clothes because of its strategic area. Where besides being the capital of the East Java province, Surabaya also has a Perak harbor. The harbor is the place for imported second hand clothes from various neighboring countries. Among them are Japan, China, Hongkong, and Korea. Furthermore, the statement of the interview results with Mr. Karna as an imported second hand clothes trader about the system of purchasing imported second hand clothes, namely:

*“kita itu ambilnya dari Surabaya, kan Surabaya ada pelabuhan itu lho, mbak. Barang-barang dari luar negeri masuknya dari situ. Belinya dalam bentuk bal-balan. Dadi sak karung iku isine akeh, mbak. Biasane pesene bareng-bareng, mbak. Kita beli pakaian bekas*

<sup>69</sup>Rina, interview, (Kediri, 16 January 2019)

*ini ada kode-kodenya. Kode ne akeh mbak, aku gak apal kabeh. Contone koyok APB, kode digae pakaian anak seng isine duwuran, kaos, jaket, gaun pesta kecil, rok, celana dan baju olahraga. LDS iku kode digae dress seng isene casual drees, mini dress, sexy dress, karo gaun pesta". Mari teko karung dihangeri terus ditoto. Lek aku tak dol ecerean, mbak. Sebagian toko bakule enek seng dalam bentuk bal-balan. Seng bakul bal-balan iku toko seng wes gede. Biasane wong luar kota tukune rono, bar kuwi didol meneh".<sup>70</sup>*

Similar to Pak Karna's presentation, Ms. Yuni also said that things were not much different, as follows:

*"pakaian bekas iku tukune dalam bentuk bal-balan, mbak. Sak bal kuwi isine akeh reno-reno maceme. Dan iku isine gak mesti, bejo bejan. Lek bejo yo oleh apik-apik. Kadang lek pas gak bejo, olehe ancur-ancuran. Dadi aku luweh seneng tuku biji an , soale eruh kualitas barang. Lek bijian iku barange wes disortir. Tapi yo ngunu regane beda, luweh larang."<sup>71</sup>*

Imported second hand clothes sellers buy imported second hand clothes in Surabaya in the form of sacks or commonly called *bal-balan*. Then they sell it in units. There are also some sellers of imported second hand clothes that sell it in the form of sack. The seller who sells imported second hand clothes in the form of sack is the biggest shop owner in Kediri. Buyers who buy imported second hand clothes in the form of *bal-balan* are usually for resale. Imported second hand clothes obtained by traders from supplier consist of various types according to their orders. There are codes for each type of clothing. Examples such as APB, the code for children's clothing consisting of tops, shirts, jackets, small party dresses, skirts, pants and sport shirt. LDS is a code for dress whose contents consist of casual dress, mini dresses, sexy dresses, and party dresses.

<sup>70</sup>Karna, *interview*, (Kediri, 16 February 2019)

<sup>71</sup>Yuni, *interview*, (Kediri, 16 February 2019)

The owners of imported second hand clothes stores cannot know the condition of the contents of imported second hand clothes in the sack. The quality of them in sacks are various, some are good and bad quality. If the sellers are lucky, they will get good quality of imported second hand clothes, even not a few of them get clothes in new conditions that still have labels but already expired. New clothes but expired means that the clothes are new but from the original store they don't sell them because there is a new trend. However, if they are not lucky they will get clothes in bad quality that are not suitable for sale. Therefore, to minimize the risk, some sellers prefer to buy imported second hand clothes in units. Where the clothes have sorted and have good quality. Prices for imported second hand clothes that have sorted are far more expensive than imported second hand clothes in the form of sacks.

The maintenance of imported second hand clothes does not require a lot of energy. Clothes that reached to the sellers' hands will be sorted according to the type. Many of imported second hand clothes are smelly, worn, and dirty. Usually the store owners do laundry and iron them for dirty and worn clothes. The goal is to attract the attention of buyers because the clothes will look nicer and neater. Another goal is to make the clothes could be sold for high prices. This is as the statement from Ms. Sum stated as follows:

*“klambi teko karung mau mbak, tak pilih sesuai jenise. Biasane iku ambune gak enak, apek terus muel-muel soale campur-campur nek karung. Sak urunge tak pajang biasane tak laundry, sebiji ne regane Rp 1.000,-. Mari di laundry terus disetrika. Tapi kuwi gak kabeh, mek*

*sebagian tok seng tak setriko. Biasane seng di laundry karo disetriko kuwi koyok jaket, celono, jas karo hem. Ben ketok apik. Lek apik iki seng tuku podo seneng. Selain iku ben iso didol luweh larang.”<sup>72</sup>*

Not all traders take care of their merchandise. There are also sellers who do not wash and iron the clothes that they sell. As explained by Mrs. Ningsih, the owner of imported second hand clothes store:

*“lek aku yo mbak gak tak umbah. Barang teko tak pilih sesuai jense. Tak hangeri terus tak gantung. Ribet mbak lek dadak diumbah soale barang iki kan akeh ogak mek siji loro. Seumpomo memang reget, lagek tak umbah mbak. Biasane lek enek kuning-kuninge iku seng tuku luweh seneng soale regane rodok murah. Wong-wong tuku ngunu kuwi lek enek kuning-kuninge teko omah dikum karo sitrun lek gak dibaiklin”.<sup>73</sup>*

Based on the explanation from the shop owner, it can be seen that not all imported second hand clothes are washed by the seller. Only certain clothes get special maintenance such as suits, jackets, pants and shirts. The sellers do not wash the clothes that they sell on the grounds that the second hand clothes are numerous and when washed they will cause them trouble. Clothes that are not washed and have yellow stains are cheaper than those that have washed. The buyers are usually more interested in clothes that have stains because they are cheap. When they arrived at the house, they soaked the yellow stain clothes with bleach so the stains disappeared.

Consumers of imported second hand clothes in Gringging Market consist of various ages and circles, ranging from teenagers to the elderly. Young people interested in imported second hand clothes because they know famous brands. As Nana's statement, buyers of imported second hand clothes are as follows:

<sup>72</sup>Sum, *interview*, (Kediri, 16 February 2019)

<sup>73</sup>Ningsih, *interview*, (Kediri, 16 February 2019)



*“Disini itu pakaiannya bagus-bagus, mbak. Biasanya aku milih pakaian merek-merek terkenal. Kalau beli di toko pasti lah mbak harganya mahal, tapi kalau disini aku bisa dapat baju dengan brand terkenal dengan harga murah. Aku pernah dapat baju merek Dickies sama Stone Island”.*<sup>74</sup>

As a statement from one of the imported second hand clothes buyers stated that clothing with well-known brands when sold in stores in a new condition is very expensive. However, when buy in used condition the price is very much cheaper. Therefore, many people are interested in imported second hand clothes because they can get clothes with famous brands at low prices.

Meanwhile, adults prefer to buy second hand clothes because one of their reasons is the increasingly high demand. Clothing is a primary need that must be met. Because of the increasingly high demand, middle and lower income people choose imported second hand clothes to fulfill their clothing needs. Consumers of imported second hand clothes actually are not only people who have middle to lower economy. However, there are also upper middle class people who buy imported second hand clothes. Based on the statement from the interview with Mrs. Santi stated that:

*“Pembeli pakaian disini banyak, mbak, dari berbagai golongan mulai dari anak muda sampai orang tua. Anak-anak muda iku biasane paham brand-brand terkenal. Kalau orang tua beli pakaian bekas soalnya sekarang apa-apa mahal, mereka lebih memilih beli pakaian bekas yang harganya murah tapi kualitasnya bagus. Sebenere yang beli pakaian bekas ini bukan hanya masyarakat menengah ke bawah, tapi ada juga orang-orang yang bawa mobil itu juga beli. Kalau tak lihat ya mbak, kebanyakan pembeliku ini orang yang berada, kan bisa dilihat ya mbak dari cara berpakaianya terus kendaraannya.”*<sup>75</sup>

<sup>74</sup>Nana, interview,, (Kediri, 18 February 2019)

<sup>75</sup>Santi, interview, (Kediri, 16 February 2019).



One of the sellers said that most of the buyers of these imported second hand clothes were people who had sufficient economics and could even be said to have more finance. Only a small percentage of consumers who buy imported second hand clothes have less financial resources.

Meanwhile, various types of clothes sold in imported second hand clothes stores are various. The following is the explanation from Ms. Sum:

*“bakulanku iki reno-reno, mbak. Sampean delok dewe enek jas, jaket, celono, klambi cah cilik, klambi digae manten, gaun pesta, tas, pakaian dalam, selimut karo spre. Regane macem-macem tergantung kualitas. Koyok jaket Rp50.000 - Rp 85.000, celono Rp 40.000-Rp60.000, jas Rp50.000 – Rp 200.000.”<sup>76</sup>*

Every imported second hand clothes store in Gringging has special types of clothing for sale. There are shops that only sell suits and pants, there are other stores that sell jackets only. In addition there are also shops that sell various types of clothing such as suits, jackets, pants, children's clothing, wedding dresses, party dresses, bags, underwear, blankets and bed linen. Prices offered vary from Rp. 5,000 for lingerie to Rp. 200,000 for suits.

Then the researcher asked about the capital needed to sell imported second hand clothes and the benefits. Basra explained as follows:

*“modale iku gak mesti tergantung barange, mbak. Barang kuwi kualitas reno-reno, enek A, B, karo C. Apik dewe barang A. Contone koyok sak bal jas kualitas A iku regane sekitar Rp 5-10 juta. Lek klambi-klambi biasa selain jas kuwi rodok murah. Regane sekitar Rp 3.500.000 sampek Rp 5.000.000.”<sup>77</sup>*

Basra, the owner of a imported second hand clothes store explained that the capital needed to sell second hand clothes was uncertain. Capital is

<sup>76</sup>Sum, *interview*, (Kediri, 16 February 2019).

<sup>77</sup>Basra, *interview*, (Kediri, 16 February 2019).

determined by the type of clothing sold. These used clothes have various levels of quality, ranging from A, B, and C. Clothes who have good quality are level A. Examples are suits that have level A sellers usually buy from suppliers for Rp 5,000,000 to Rp 10,000,000 one sack. As for ordinary clothes such as t-shirts and shirts, they are purchased for Rp. 3,000,000 to Rp. 5,000,000 for one sack.

The benefits obtained by selling imported second hand clothes are very tempting. This is as explained by Ms. Rina:

*“bakul barang ngene iki yo mbak untunge iki gede. Biasane klambi-klambi iki tak dol dua kali lipat teko harga beli. Contone, seumpomo celono rego pitu likur ewu tuku ku, engko tak dol seket limo.”<sup>78</sup>*

As for Mr. Karna said as follows:

*“wah bati bakul ngene iki gak pasti, mbak. Tergantung rame opo sepi. Tapi roto-roto batiku Rp 1-3 juta/wulan.” Lek rame kuwi iso luweh teko iku.”<sup>79</sup>*

The benefits of selling imported second hand clothes are quite large. Second hand clothes sellers sell their merchandise at a price twice the purchase price. For example, like pants with a purchase price of Rp. 27,500 they will sell at a price of Rp. 50,000. The advantage of the owners of second hand clothes stores is around Rp. 1-3 million / month. These benefits can still increase if many customers buy.

<sup>78</sup>Rina, *interview*, (Kediri, 16 February 2019).

<sup>79</sup>Karna, *interview*, (Kediri, 16 February 2019).

Even though the profits obtained in selling imported second hand clothes are quite large, there are also some obstacles faced by the owners of imported second hand clothes stores. This as explained by Mrs. Santi during the interview is as follows:

*“peminat klambi bekas iki akeh mbak, tapi saiki iki mbak kulakane angel. Barang nek produsen sak itik tur larang. Makane regane yo mundak goro-goro stoke terbatas. Selain iku bakul barang ilegal iki was-was mbak, kudu ati-ati.”<sup>80</sup>*

The obstacle faced by imported second hand clothes sellers is the difficulty of finding merchandise. The goods in the suppliers are very few. So that the price of imported second hand clothes from suppliers has increased due to the limited availability of existing goods. In addition, imported second hand clothes store owners also claim that selling imported second hand clothes must be careful, because they sell illegal goods so they are often enveloped in anxiety or worry.

## **2. The Supervision of Buying and Selling Imported Second Hand Clothes Perspective of Law No. 7 of 2014 concerning Trade**

Currently, imported second hand clothes are still widely traded freely in Indonesia, including in Gringgring Market, Kediri Regency, even though the existence of imported second hand clothes has banned. The highest legal governing second hand clothes is Law No. 7 of 2014 concerning Trade. In this Law, precisely in Article 47 paragraph 1, it explained that every item imported by the importer must be in a new

<sup>80</sup>Santi, *interview*, (Kediri, 16 February 2019).

condition, whereas in certain circumstances the Minister of Trade can also determine goods that can be imported in not new conditions.

The meaning of 'in certain circumstances' is in the case of goods needed by business actors in the form of non-new capital goods that cannot yet be provided domestically. So it needs to be imported in the framework of industrial production processes for the purpose of export development, increasing competitiveness, business efficiency, investment and industrial relocation, infrastructure development, and / or re-export. In addition, in the event of a natural disaster, goods and equipment are needed in non-new conditions in the context of recovery and reconstruction as a result of natural disasters. As well as non-new goods for other purposes in accordance with the provisions of the legislation.

The regulation of importing second hand clothes have regulated by the government in several laws and regulations. The regulations governing the ban on the import of second hand clothes have been around since 1982. The regulation issued by the Minister of Trade and Cooperatives since 1982, through Decree No. 28 of 1982 concerning General Provisions in the Import Sector. Article 3 of the regulation states that imported goods must be new.

Furthermore, the government has also issued regulations on importation of imported second hand clothes through the Decree of the Minister of Industry and Trade No. 230/MPP/Kep/7/1997 concerning Goods Regulated by Import Trade. In Appendix I, the list of goods regulated by import trade states that new and used rags are included in IU waste goods.

IU waste is a General Importer recognized by the Director General of International Trade and approved to import waste. So based on the regulation, importers can still import second hand clothes, but only importers allowed to be recognized by the Director General of International Trade.

The implementation of importing rag by domestic importers has carried out in deviations from the regulations resulting in various losses. Therefore, it is necessary to amend the appendix by issuing a Decree of the Minister of Industry and Trade No. 642/MPP/Kep/9/2002 concerning Amendment to Appendix I of the Indonesian Minister of Industry and Trade Decree No. 230/MPP/Kep/7/1997 concerning Goods Regulated by Import Trade.

As stated in the Minister of Trade and Cooperative Regulation through Decree No. 28 of 1982 that importers must import goods in new conditions. The Regulation of the Trade Minister No.54/M-DAG/PER/10/2009 concerning General Provisions in the Import Sector also states the same thing. As stated in Article 6 paragraph (1) which reads "Imported goods in new condition". In Article 6 paragraph (2), it is also explained that in certain circumstances, the Minister can determine imported goods in non-new conditions based on; (a) legislation, (b) the authority of the Minister, and / or (c) proposals or technical considerations from other government institutions. Furthermore, in article 7 paragraph (1) it is stated that the import regulations of certain goods can be regulated on their own



import regulations, except for goods which are expressly prohibited from being imported under the regulations<sup>81</sup>. The import arrangements for certain goods as referred to in paragraph (1) determined based on consideration and in the framework of:

- a. security protection;
- b. consumer safety protection;
- c. health protection related to the lives of humans, animals and plants;
- d. environmental protection;
- e. intellectual property rights protection;
- f. social, cultural and moral protection of the society;
- g. protection of other national economic development interests, including efforts to improve the living standards of farmers-producers, creating healthy trade and domestic market conditions, and a conducive business climate; and / or
- h. implementation of statutory provisions.

The current regulation of general provisions in the import sector is no longer suitable so that improvements are needed to become more transparent, effective and efficient and sustainable. The Minister of Trade perfects Regulation of the Trade Minister No.54/M-DAG/PER/10/2009 by issuing Regulation of the Trade Minister No. 48/M-DAG/PER/7/2015 concerning General Provisions in the Import Sector. Similar to the previous regulation on General Provisions in the Import Sector, the provisions of Article 2 of the Regulation of the Trade Minister No. 48/MDAG/PER/7/2015 state that used goods also cannot be imported. In 2015 the new government issued a regulation that explicitly prohibits the import of second hand clothes. The regulation issued by the Minister of Trade through the Regulation of the Trade Minister No. 51/M-

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<sup>81</sup>Article 6-7, Regulation of the Trade Minister No.54/M-DAG/PER/10/2009 concerning General Provisions in the Import Sector

DAG/PER/7/2015 concerning Prohibition on Importing Second Hand Clothes.

Until now, there are no regulations governing the prohibition of trading imported second hand clothes. However, it is implicitly regulated in Regulation of the Trade Minister No. 51/M-DAG/PER/7/2015. In the Regulation of the Trade Minister, in Article 2 stated that second hand clothes are prohibited from being imported into the territory of the Unitary State of the Republic of Indonesia. As for every second hand clothes that go into the territory of Indonesia must be destroyed. This is stipulated in article 3 which reads, "Second hand clothes that arrive in the territory of the Unitary State of the Republic of Indonesia on or after the date of this Ministerial Regulation shall be destroyed in accordance with the provisions of legislation".

If referring to the regulation, it can be understood that after or at the time of the issuance of the Regulation of the Trade Minister No. 51/M-DAG/PER/7/2015 on July 9, 2015 all second hand clothes entering in the Indonesian territory must be destroyed. But in reality, this did not do and even the used clothes are freely circulated and traded in Indonesia. This means that aspects of law enforcement or supervision of imported second hand clothes are still weak. In other words, the regulations governing the ban on the import of second hand clothes as stated in the Regulation of the Trade Minister No. 51 / M-DAG / PER / 7/2015 are still not effective.

In Kediri Regency there is a special place that sells imported second hand clothes. These imported second hand clothes stores located in Gringging Market. There are around 12 stores of imported second hand clothes in Gringging Market. The existence of a special place that sells imported second hand clothes shows that supervision of the practice of buying and selling second hand clothes in Kediri Regency is still low. Local governments have a responsibility in carrying out oversight of every trade activity. This is as stipulated in article 95 letter (f) of Law No. 7 of 2014 concerning Trade. Article 95 letter (f) reads "Regional Governments are tasked with guiding and supervising activities in the field of Trade in the regions". The regional government in implementing regional government affairs in the trade sector is represented by the Trade Department.

The Trade Department or known as *Disdag* is the implementing element of regional government affairs in the field of trade and regional government affairs in the industrial sector. The Trade Department has the task of carrying out part of regional government affairs based on the principle of autonomy and co-administration in the field of trade and market management. Based on Article 95 letter (f) Law No. 7 of 2014 concerning Trade, the Trade Department has the authority to supervise activities in the trade sector in the region. This also includes supervising the buying and selling imported second hand clothes, because it is also included in trading activities.

The Trade Department has the authority to supervise and guide the buying and selling imported second hand clothes, but in reality the supervision carried out by the Trade Department of Kediri Regency is very minimal or even considers it trivial. This is as stated by Mr. Edy Agung as Head of the Trade Business Section of Trade Department Kediri Regency:

*“Kamu lihat sendiri mbak di Gringging itu masih banyak para pedagang pakaian bekas. Kalau dari kami, pengawasannya cuma berupa teguran dan himbauan terhadap para penjual dan pembeli. Kami gak bisa melakukan lebih dari itu, soalnya itu urusan perut. Ini bukan tugas Dinas Perdagangan saja. Kalau kita bertindak sendiri gak bisa, perlu ada bantuan dari dinas-dinas yang lain”*.<sup>82</sup>

So far the supervision carried out by the Trade Department of Kediri Regency is only in the form of appeals and warnings. The Trade Department usually collects traders at the village hall and provides information to the sellers of second hand clothes. As for the buyers, the actions taken by the Trade Department are only in the form of appeals by giving banners where traders sell. The banner contains an appeal to wash and iron second hand clothes before using them. According to the author, the existence of these banners can indicate or can make the society assume that buying and selling imported second hand clothe is permissible. Whereas the practice of buying and selling second hand clothe in Indonesia has banned.

Public knowledge of the prohibition on the trade of imported second hand clothe is very minimal and even most people are not aware of the prohibition. As according to the results of interviews with several buyers

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<sup>82</sup>Edy Agung, *interview*, (Kediri, 11 February 2019).

of imported second hand clothes in Gringging Market. The following is the data obtained from the interview.

*Tabel 1.2 Public knowledge about the prohibition on buying and selling second hand clothes*

No.	Name	Age	Public knowledge about the prohibition on buying and selling second hand clothes
1.	Komariah	48	Knows
2.	Tatik	38	Knows
3.	Adurrahman	23	Does not know
4.	Zain	41	Does not know
5.	Hira	18	Does not know
6.	Johar	55	Does not know
7.	Ita	27	Knows
8.	Iis	30	Does not know
9.	Nana	20	Does not know
10.	Miatun	45	Does not know

*\* Source of interviews with imported second hand clothes buyers*

In addition to having the authority to supervise the buying and selling imported second hand clothes, the Trade Department also has the authority to conduct guidance. This guidance is very much needed considering the lack of public knowledge about the prohibition on buying and selling imported second hand clothes. Coaching is not only done for imported second hand clothes traders but also for buyers. If the buyer is not aware of the prohibition on the sale and purchase of second hand clothes, the amount of demand for imported second hand clothes will continue to increase. With the demand for imported second hand clothes that continues to increase, it will trigger or cause sellers to continue selling them to fulfill the demands of the society.



So far, more serious actions such as confiscation of merchandise or sanctions have not carried out by the Trade Department of Kediri Regency. Trade Department of Kediri Regency argues that they cannot take firm action against traders because this concerns one's livelihood. The Trade Department is afraid that if confiscation or other decisive actions are taken, the traders will lose their jobs so that they cannot fulfill their daily needs anymore.

Furthermore, the Head of the Trade Business Section of Trade Department Kediri Regency explained that supervision of the buying and selling imported second hand clothes is not the duty of the Trade Department itself. Instead, other government institutes in Kediri Regency also took part in carrying out this task. These government institutes include the Health Department, the Social Department, and the Cooperative and Micro Business Department.

The Health Department will be expected to deliver or provide information on the impacts and risks to health that can be caused by wearing of imported second hand clothes. The Social Department has the role of preparing materials and data in order to carry out coaching in the form of motivation and social guidance to sellers. As for the Cooperative and Micro Business Department is expected to provide assistance and guidance to establish or create independent businesses for imported second hand clothes traders in Kediri Regency as a new livelihood as a substitute for selling imported second hand clothes.

## C. The Supervision of Buying and Selling Imported Second Hand Clothes

### Perspective of *Maslahah*

Islam always regulates all aspects of human life to get happiness in the world and the hereafter. In addition, Islam also pays attention to the prosperity of every individual's life without any difference between one another. Asy-Syatibi called it as *maslahah* regarding the purpose of sharia. The economic activities of production, consumption and exchange that involve the benefits as intended in sharia must be followed as religious obligations to get the goodness of the world and the hereafter. Every economic activity carried out on the basis of *maslahah* will bring benefits and blessings to those who do it. Therefore, all economic activities that contain benefits for the people are a necessity, and this need must be fulfilled.

The word *maslahah* in Indonesian is known as *maslahat*, derived from Arabic, namely *maslahah*. *Maslahah* according to language means benefits, goodness, kindness, use or usability. The word *maslahah* (مصلحة) comes from the word *shalaha* (صلاح) with the addition of *alif* at the beginning which means the word means "good" the opposite of the words "bad" or "broken". It is *masdar* with the meaning of the word *shalah* (صلاح) which is "benefit" or "detached" from it damage. Whereas according to the term, *maslahah* is the desired benefit of Allah for his servants, both in the form of the maintenance of their religion, the maintenance of their soul / self, the maintenance of their minds, as well as the maintenance of their wealth.

Buying and selling imported second hand clothes in Gringging Market, Kediri Regency is not in accordance with the provisions in The Regulation of the Trade Minister No. 51/M-DAG/PER/7/2015, according to the author, if viewed from the definition of *maslahah* which means something that is good and useful, then imported second hand clothes for people who have less economy have provided *maslahah* for this society. This means that the existence of imported second hand clothe for people who have difficulties in terms of the economy, it gives benefits for them in fulfilling one of their basic human needs, namely in the form of clothing to protect the body.

*Maslahah* is used to answer cases or problems that continue to develop along with human needs, but there is no law that has been decided with certainty about the problem. As-Syatibi explained that basically the Sharia was established to realize the benefit of servants, both in the world and the hereafter. This blessing, in his view, becomes *maqashid al-sharia*. *Maqashid* is also a good goal to be achieved by Islamic laws, by opening the means toward goodness (*fath al-azra'i*) or closing the means toward evil (*sadd al-zara'i*).<sup>83</sup> In other words, the determination of the Sharia, both in its entirety (*jumlatan*) and in detail (*tafshilan*), is based on an '*illat* (motive for establishing the law), which is to realize the benefit of the servant.

*Maslahah* is the stipulation of a law that does not have a syara' argument in it which indicates whether or not the benefit. This means that the determination of a law is nothing but to implement the benefit of mankind,

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<sup>83</sup>Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, (Bandung: Mizan, 2008), 31.

namely to attract a benefit, and reject danger or eliminate the difficulties of mankind. The main purpose of establishing Islamic law is to bring benefit to every individual, both in the world and the hereafter. This is in accordance with the Islamic mission of *rahmatal lil 'alamin*.<sup>84</sup>

From the definition of *maslahah*, it can be seen that the *maslahah* is not only seen from the side of its benefits to the local society which has economic deficiencies. However, it also considers the risks and other impacts that will arise as a result of the trade imported second hand clothes in Gringging Market, Kediri Regency. The benefits obtained by the society are being able to buy clothes of good quality at affordable prices, on the other hand imported second hand clothes actually can bring danger to the health of the people themselves.

The determination of a law will bring benefits to an environment at a certain time and sometimes will have the opposite effect in other environments. Therefore, the society should be aware of it and know the purpose of the supervision of the prohibition on selling and buying imported second hand clothes, which is none other than the benefit, security and welfare of the entire society and is no exception for the people of Kediri Regency.

In line with its definition, *maslahah* must have the conditions that must be fulfilled. The general requirement for *maslahah* is that when there is no text as a reference material, and then this problem can be used. As for Imam Malik as quoted by Rahmat Syafe'i proposing special conditions in using

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<sup>84</sup>Nur Kholis, "Antisipasi Hukum Islam Dalam Menjawab Problematika Kontemporer", Jurnal Al-Muwarid, edisi X (2003), 169.

*maslahah*. First, there is a correspondence between *maslahah* which is seen as a source of stand-alone propositions with the objectives of shari'ah (*maqashid as-syari'ah*). With this requirement, it means that *maslahah* must not confirm the source of another argument, or contradict the *qat'iy* argument. But it must be in accordance with the *maslahah-maslahah* that Shari'a really wants to realize. With various benefits arising from the supervision of buying and selling imported second hand clothes, there is no contradiction with the law or legal principle in *Nash*, because supervision of buying and selling imported second hand clothes is something new, which is not regulated before. In addition, the existence of supervision is expected will bring absolute benefit to the society.

Second, something that is considered to be *maslahah* must really produce *maslahah*. The intention is that the formation of the law will bring benefits and reject harm. The Ministry of Trade issued a circular containing the prohibition on buying and selling imported second hand clothes. This is because imported second hand clothes have the potential to endanger human health so it is not safe to be used and used by the society. The Directorate General of Standardization and Consumer Protection of the Ministry of Trade have tested 25 samples of second hand clothes that are circulating in the market. The clothes consist of several types of clothing such as children's clothing (jackets), women's clothing (vest, warm clothes, dresses, skirts, tops, hot pants, shorts), men's clothing (jackets, trousers, shorts, shirts, t-shirts, sweaters, boxers, panties).



Tests carried out on several types of microorganisms that can survive in clothing, namely the bacteria *Staphylococcus aureus* (S. aureus), bacteria *Escherichia coli* (E. coli), and fungi (mold or yeast). Based on the results of the tests carried out, a number of bacterial and fungal colonies were found as indicated by the parameters of the total plate number (ALT) and molds whose values were quite high. The microbial content of used clothing has an ALT of 216,000 colonies and fungi of 36,000 colonies. This microbial and fungal content is a dangerous bacterium that can cause various diseases such as digestive disorders, itching, and infections of the genital tract. Prices of imported second hand clothes are cheaper than new clothes that have the same quality. However, when viewed from the impact that will occur, the existence of these imported second hand clothes actually can harm the society. This is because the costs required for treatment if contracted by these diseases are more expensive than the prices of imported second hand clothes.

The existence of the ban does not reduce the interest of buyers of imported second hand clothes that sold in Gringging Market, Kediri Regency. Until now there has never been a serious danger that could harm or cause disruption to the people who buy imported second hand clothes in Gringging Market, Kediri Regency. As the statement from the interview with Basra, the owners of imported second hand clothes store are as follows:

*“Selama saya berjualan, lebih tepatnya sejak bapak saya berjualan puluhan tahun yang lalu sampai saat ini tidak pernah ada pembeli yang komplain mengenai kualitas barang ataupun merasa dirugikan karena dapat menyebabkan gatal-gatal”*<sup>85</sup>

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<sup>85</sup>Basra, interview, (Kediri, 16 February 2019).

In addition, the researcher also checked imported second hand clothes consumers to ensure the truth and accuracy of the information obtained by conducting interviews. The following is the data obtained from the interview.

*Table 1.3 Complaints about the impact of using imported second hand clothes*

No.	Name	Age	Complaints
1.	Komariah	48	There is no
2.	Tatik	38	There is no
3.	Adurrahman	23	There is no
4.	Zain	41	There is no
5.	Hira	18	There is no
6.	Johar	55	There is no
7.	Ita	27	There is no
8.	Iis	30	There is no
9.	Nana	20	There is no
10.	Miatun	45	There is no

\* Source of interviews with imported second hand clothes buyers

Can be known based on information obtained that indeed there are no consumers who complain to catch diseases caused by wearing imported second hand clothes. Although in reality the buyers have never felt harmed and there has never been a person experiencing health problem, it does not mean that the prohibition and supervision of the buying and selling second hand clothes can be ignored.

The government has responsibility for everything related to its society, it is demanded to be fair and undergo the benefit of the benefit of religion, the world, and everything related to it. In addition, the government is also obliged to give advice to its society and earnestly to create the *maslahah* of its society in religion and the world. As the rule of *fiqhiyah* as follows:<sup>86</sup>

<sup>86</sup>Abbas Arfan, *99 Kaidah Fiqh Muamalah Kuliyyah*, (Malang: UIN Maliki Press, 2013), 261.

التصرف على الرعية منوط بالمصلحة

*The policy of the leader over his people must be based on maslahah*

Based on the *fiqhiyah* rules above, the existence of the prohibition is a manifestation of preventive measures from the government for the *maslahah* to maintain the health of their society.

The using of this *maslahah* is in order to eliminate the difficulties that occur. In a sense, if the reasonable acceptability of reason is not taken, surely humans will experience difficulties. Something that is considers *maslahah* must be in the form of an essential problem, which means that it truly brings benefits and prevents harm, not just an allegation by only considering the existence of benefits without seeing the negative impact that will be caused. The existence of second hand clothes in Indonesia has been banned. This is as stated in article 3 The Regulation of the Trade Minister of the Republic of Indonesia Number 51/M-DAG/PER/7/2015. In the regulation, it explained that any second hand clothes entering the territory of the Republic of Indonesia must be destroyed.

Imported second hand clothes sold by traders are currently the result of smuggling. The smuggling is carried out by individuals who want to get big profits by violating the provisions of export import. The act of smuggling is very detrimental and disrupts the balance of the Indonesian people. The state losses resulting from the smuggling of imported second hand clothes reached trillions of rupiah. The entry of second hand clothes is detrimental to the

country's finances because the incoming fees will be used for the country's development.

If imported second hand clothes are still circulated in Indonesia, it will lower the pride of a nation. The dignity as an Indonesian nation must uphold so that Indonesia is not used as a dumping place for used goods by other countries. Do not let Indonesian citizens destroy the dignity of their self.

*Third*, the characteristic of *masalah* is common, not individual. The point is that in relation to the formation of law on an event or *masalah* can bring benefits to most human beings that can truly be realized or can reject harm, or not only bring benefits to someone or some people. It is not permissible to stipulate the law only for special benefit by the authorities. Besides that, they also should not exclude the opinions of famous people and their benefit. The trade of imported second hand clothes in Gringging Market, Kediri Regency is indeed very beneficial for the society, especially for those who have less economy. With the existence of imported second hand clothes, the people can fulfill basic needs in the form of clothing at affordable prices and have good quality. This is as explained by Ms. Miatun, one of the buyers of imported second hand clothes:

*“aku rene iki digae kulakan, mbak. Sampean delok dewe aku deprok iki digae milihi klambi. Ngene iki engko tak dol nek pelosok-pelosok seng adoh teko toko-toko klambi. Wong kono seneng banget oleh klambi ngene iki. Jare apik tur regane yo murah. Maklum mbak nek kono penghasilane gak akeh”*.<sup>87</sup>

Based on the results of interviews with one of the buyers of imported second hand clothes, it can be seen that these consumers claim to buy imported

<sup>87</sup>Miatun, *interview*, (Kediri, 20 February 2019).

second hand clothes for resale. The clothes are resold to residents who live in remote places that far from clothing stores. People feel happy about the imported second hand clothes. This is because residents feel helped, where these residents have less income. Therefore, the prohibition on buying and selling imported second hand clothes for people who have an economy that is less felt burdens them, because the existence of imported second hand clothes is very helpful in fulfilling their clothing needs.

In the other hand, if imported second hand clothes are allowed to remain entering and circulating in the market, this will have an impact on the clothing industry in Indonesia. Imported second hand clothes will greatly disrupt the domestic market, which is a market share for the small garment industry and convection. In general, the presence of second hand clothes will have an impact on the textile and textile products (TPT) industry, which includes the weaving / knitting industry, spinning industry, and fiber industry. Where the market share of the industry is almost one hundred percent is the domestic market, although some of the industrial output is also exported. Besides that, the market target is low-income people. With the existence of imported second hand clothes, it is certain that the textile industry cannot run optimally as before. This is because the domestic textile industry must share the market with imported products. The existence of imported second hand clothes will have an impact not only on the apparel industry in Indonesia, but will also have an impact on the supply industry such as the yarn industry, the fabric industry, the button and restleting industry and so on.



The high public interest in imported second hand clothes has resulted in a decline in the textile and textile products industry. The decline caused many textile industries to not operate, close and even die. The next impact is a reduction in labor. The more severe impact is the mass termination of employment. Prohibition of buying and selling imported second hand clothes issued by the government aims to protect and enhance the image of domestic products, market access and national exports. In addition, the aim to be achieved is to increase the use and trade of domestic products.

The supervision of buying and selling imported second hand clothes when viewed from the presence or absence of a regulating text, it is included in *maslahah*. This is because there is no argument that regulates or prohibits it. As for, when viewed from the quality and importance of *maslahah* for human life, it is included in *maslahah dharuriyat*, which is a benefit related to basic human needs. This benefit is very important if in life it is not fulfilled there will be damage, destruction and disaster in human life. This benefit includes the maintenance of religion, soul, mind, lineage and wealth. Keeping the soul (*hifdzu nafs*) is one part of *maqasid sharia*. *Hifdzu nafs* means that each individual must be able to protect himself and his family from various kinds of calamities or distress. Prohibition of buying and selling imported second hand clothes is one way to protect the soul. Safeguard yourself from the various risks of various diseases in the future.

When a case at the same time has benefits and disobedience, then in this condition what must be considered more is the side of *mafsadah*. As the rule of *fiqhiyah* as follows:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

*Avoiding damage must take precedence over bringing benefits.*

By rejecting obedience means that it includes achieving benefit. This is very much in accordance with Islamic law, namely achieving the benefit of the world and the hereafter, because the attention of Islamic law to things that are forbidden to leave is greater than his attention to things that are considered.<sup>88</sup>

If the concept of *maslahah* is related to the *fiqhiyah* rules above, then the supervision of buying and selling imported second hand clothes is in accordance with *maslahah*. However, according to the author, if viewed from the condition of the people who buy imported second hand clothes that have a low economy, the supervision of buying and selling imported second hand clothes that makes it is prohibited from being traded still has not brought *maslahah* for them. However, the government must also think about how or solutions so that people can get decent, comfortable clothing and keep orderly compliance with regulations.

<sup>88</sup>Abbas Arfan, 99 *Kaidah*..., 188.

## CHAPTER V

### CLOSING

#### A. Conclusions

Based on the research that has been done, conclusions can be taken as follows:

1. Supervision of the practice of buying and selling imported second hand clothes in Kediri Regency is still low. Local governments have a responsibility in carrying out supervision of every trade activity. This is as stipulated in article 95 letter (f) of Law No. 7 of 2014 concerning Trade. The regional government in implementing regional government affairs in the trade sector is represented by the Trade Department. The supervision carried out by Trade Department of Kediri Regency is only in the form of appeals and reprimand so as not to cause deterrent effects for imported second hand clothes traders. These actions are carried out for reasons of pity if they lose their livelihood.

2. Supervision of buying and selling second hand clothes at Gringging Market, Kediri Regency in terms of the perspective of *maslahah* is in accordance with the concept of *maslahah*. However, according to the author, if viewed from the existence of a society that has a low economy, the existences of imported second hand clothes bring a lot of advantages for them. Because people who have less finance able to fulfill their clothing needs by buying imported second hand clothes. However, regional governments, especially the Trade Department of Kediri Regency, must think the solutions on how to get people to get decent, comfortable clothing and keep the rules.

#### **B. Suggestion**

The Government should perform socialization to society about the ban on selling imported second hand clothes. Because most people (buyers) did not know that imported second hand clothes prohibited from being traded in Indonesia. In addition, the government must also be more assertive in supervising the trade in imported second hand clothes. The existence of imported second hand clothes not only have the potential to endanger public health, but also can threaten the domestic textile industry. If many textile industries are out of business, layoffs will occur, with layoffs increasing the number of unemployed people in Indonesia. Therefore, the government should issue regulations regarding the prohibition on the trade of imported second hand clothes.

As for the society is expected not to underestimate the prohibition on the selling and buying of imported second hand clothes. The prohibition on the trade in imported second hand clothes is a preventive effort from the government to maintain the health of its people. In addition, the society is expected to love domestic products more than products produced by other countries.





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## APPENDIXES

### A. List of Questions

#### 1. The Questions for Trade Department of Kediri Regency

- a. How is the supervision of buying and selling imported second hand clothes?
- b. Whether from year to year the number of the traders of imported second hand clothes have decreased?
- c. Is there socialization to society of prohibition of selling and buying imported second hand clothes?
- d. What is the action from government on traders of imported second hand clothes?
- e. What is the sanction on traders of imported second hand clothes?
- f. What is the purpose of prohibition of selling and buying imported second hand clothes?

#### 2. The Questions for Traders of Imported Second Hand Clothes

- a. When did u start to sell imported second hand clothes?
- b. What types of clothes do u sell?
- c. Do you know where imported second hand clothes come from?
- d. How to get imported second hand clothes?
- e. How much capital that needed to sell imported second hand clothes?
- f. How to determinain the retail price of imported second hand clothes?



- g. How much profit that earned from selling imported second hand clothes?
- h. Do you know that imported second hand clothes are ilegal?
- i. Is there any socialization of prohibition of selling and buying imported second hand clothes?
- j. Is there action from government on traders of imported second hand clothes?

### **3. The Questions for Buyers of Imported Second Hand Clothes**

- a. How do you know in Gringgring Market there are traders of imported second hand clothes?
- b. How often you buy imported second hand clothes?
- c. Why do you imported second hand clothes?
- d. Have you ever felt disappointed or hurt when you bought imported second hand clothes?
- e. Do you know that imported second hand clothes is prohibited by government? If you know it, why do you still buy it?

## **B. Documentations**



**Photo of interview with head of the trading business section of Trade  
Department Kediri Regency**



**Photo of interview with second hand clothes seller**



**Photo of Selling and Buying Imported Second Hand Clothes**



**Photo of Coats**





**Photo of Jackets and Vest**



**Photo of Selling and Buying Imported Second Hand Clothes**



**Photo of Selling and Buying Imported Second Hand Clothes**



**Photo of Selling and Buying Imported Second Hand Clothes**





**Photo of Selling and Buying Imported Second Hand Clothes**



**Photo of The Buyer Tried the clothe**

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