

## Actualization of the Thoughts of Prof. Dr. Wahbah al-Zuhailiy in the Sale and Purchase of Stocks Transaction

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### Abstract

This journal presents one of the thoughts of contemporary Islamic scholars, namely Prof. Dr. Wahbah al-Zuhaili. He is known to be very representative in judging every contemporary issue. His thinking is positioned as the basis of sharia for buying and selling shares. An understanding of the law of buying and selling shares will be answered by analyzing the thoughts of Prof. Dr. al-Zuhailiy, which is stated in his book, *Al-Mu'āmalah al-Māliyah al-Mu'āshirah*. Two questions in this research are: How does Prof. Dr. Wahbah al-Zuhailiy in the sale and purchase of shares? And how is the actualization of the thinking of Prof. Dr. Wahbah al-Zuhailiy in the sale and purchase of shares? Data collection is done using library research as the theoretical basis. After the primary and secondary data are collected, an in-depth analysis of the data sources uses deductive and inductive approaches. The conclusion obtained is that buying and selling shares is analogous to the concept of *shirkah* and *muḍārabah* (*Muḍārabah musyarākah*) contracts. In modern language, it is called *musharakah mushamah*. Actualization of the thoughts of Prof. Dr. Wahbah al-Zuhailiy in buying and selling shares is to provide syar'iy rules in it so that the transaction is legal according to *shari'ah*.

Keywords: Wahbah Zuhayli, Sale and Purchase, Stocks Transaction.

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### INTRODUCTION

The discussion of halal-haram law in buying and selling shares is still debatable to this day. Some people consider that buying and selling shares is forbidden because it contains many elements of fraud (Selasi, 2018). In addition, buying and selling shares will only open up more rampant disobedience when the shares being traded are shares of companies managing sectors that have been forbidden by sharia from the start—for example, gambling companies, casinos, the entertainment industry, and the like.

Some groups justify buying and selling shares because buying and selling shares is a collaboration between the company and the purchaser of shares (Asra, 2020). This is somewhat similar to the term *muḍārabah* in the books of Fiqh. These two groups of pros and cons will be very difficult to reconcile and harmonize because they remain adamant in the arguments and arguments they put forward. The problem is that sometimes the practitioners of Islamic law themselves are too quick to judge something without knowing something in detail and in-depth. Therefore, sometimes they judge a case only half-heartedly or in other languages "just to their knowledge". This may also occur in judging the sale and purchase of shares. It could be that a practitioner of Islamic law justifies buying and selling shares without knowing the ins and outs of buying and selling shares as a whole. As a result, the legal decisions that are issued will also be problematic if they are applied to all types of buying and selling shares.

Concerning Fiqh, buying and selling shares needs to be viewed from the perspective of Fiqh so that the law of buying and selling shares can be transparent. Is it haram or halal? This view of Fiqh is important because it is in Fiqh that God's laws are manifested. Fiqh is a set of rules that are strongly suspected of coming from God so that humans obey them so that humans are not reckless in acting in all aspects of their lives, both in the fields of *mu'amalah*, social, cultural, political, especially in the field of worship (Thalib, 2018).

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From this framework of thinking, it is necessary to have a comprehensive understanding of the Islamic view on buying and selling shares. Therefore, this article will present one of the thoughts of contemporary Islamic scholars, namely the thoughts of Prof. Dr. Wahbah al-Zuhailiy. Prof. Dr. al-Zuhailiy is the leading Fiqh scholar in this century. Two questions that are tried to be answered in detail are How did Prof. Dr. Wahbah al-Zuhailiy in the sale and purchase of shares? And how is the actualization of the thinking of Prof. Dr. Wahbah al-Zuhailiy in the sale and purchase of shares?

From this research, it is hoped that it will be useful. Specifically, it can provide scientific information to readers more broadly and in-depth about the sale and purchase of shares and their laws in the view of Fiqh. In general, it can contribute thoughts to the treasures of science, especially in the *mu'amalah* chapter. The study in this study can also be a source of inspiration for practitioners of Islamic law in the field of *Mu'amalah* Fiqh to conduct other studies or as a follow-up to this research.

### **THEORETICAL FRAMEWORK**

According to Sapto Raharjo, the definition of shares in the general public is securities that are instruments of proof of ownership or participation of individuals or institutions in a company (Raharjo, 2006). Fakhrudin, with different editors, defines shares with, "Shares are securities that show the ownership of an investor (the buyer of shares) in a company" (Fakhrudin, 2008). From these two definitions, it can be seen that when someone has bought shares of a company, it means that he has invested as much capital into the company as the number of shares he has purchased.

A company issues stock to increase capital (Juliati, 2015). If a company has sold shares to the public or the public, the company is called a go public company. In a sense, the company is no longer a company owned by certain individuals or groups but has become a publicly owned company that invests through the purchase of shares.

Stock transactions are carried out in securities or securities. These securities are called the Capital Market or Stock Exchange. In Indonesia, capital markets or Stock Exchanges are located in two major cities: Jakarta (JSX, Jakarta Stock Exchange) and Surabaya (Surabaya Stock Exchange) ('Daftar Bursa Efek', 2017).

However, in its development, currently, a scriptless system (paper/certificate) has been implemented at the Jakarta Stock Exchange where the form of ownership is no longer in the form of shares bearing the name of the owner, but in the form of an account (account) in the name of the owner or scripless shares. So transaction settlement will be faster and easier because it does not go through letters, forms, and complicated procedures. Fakhrudin describes this form of stock with a condition: if an investor owns shares, then it is written that he owns several shares in the account. This is very similar to a BANK customer who has a certain amount of money in his account (Fakhrudin, 2008). Shares in this form have many advantages, including:

1. Can prevent the emergence of stock counterfeiting. Shares in the form of paper or certificates are very easy to forge.
2. Paper-shaped stocks are likely to have physical defects, such as torn, unclear, and others. In contrast to stocks in the form of accounts that are safe from physical defects.
3. Stocks in the form of accounts are safer from theft.
4. Paper stocks take up space to store them. This of course, is not practical (Fakhrudin, 2008).

As a reciprocal of ownership rights to shares of a company, shareholders have several rights in the company. According to Fakhruddin, there are at least 4 rights that can be obtained by shareholders (Fakhruddin, 2008):

1. The right to benefit from the profits earned by the company. The procedure for profit-sharing in this stock investment will be explained in a separate sub-chapter.
2. Rights to assets in the company. Shareholders are the owners of the company. Thus, shareholders have rights to the assets owned by the company. In a sense, if the company goes out of business one day, the shareholders are entitled to the company's remaining assets.
3. Voting rights in the General Meeting of Shareholders (GMS). Each shareholder has voting rights in the General Meeting of Shareholders. Each share has one vote (one share, one vote). Thus, each shareholder can express their vote (agree or not) on the agenda in the GMS. In this case, of course, the more shares owned, the greater the opportunity for shareholders to vote for a meeting agenda. For example, the agenda to approve the distribution of company profits, the appointment of new directors, and other decisions.
4. The right to transfer share ownership. In this case, shareholders have absolute rights to transfer share ownership by selling shares or transferring their rights to other investors.

Jaka E. Cahyono also stated four rights of shareholders. In theory, according to him, shareholders have the right to management of the company, the right to property, the right to determine fundamental contracts, and the right to pre-emptive securities (Cahyono, 2002). What is meant by the last right is that the shareholder can buy, if he wants, any new shares issued by the company.

As a consequence of the rights acquired by the shareholders of a company, the shareholders are burdened with several responsibilities. According to Frans Satrio Wicaksono, an expert in the Company's legislation, the shareholders are not personally responsible for the company's engagements. Shareholders are also not responsible for the company's losses that exceed the value of their shares. However, shareholders may be personally liable in the event of the following (Wicaksono, 2019):

1. The requirements to obtain the status of a company legal entity have not been or are not fulfilled;
2. Shareholders, either directly or indirectly, use the company solely for their interests;
3. Shareholders are involved in unlawful acts committed by the company; and
4. Either directly or indirectly, shareholders violate the law by using the company's assets, resulting in the company's assets being insufficient to pay off the company's debts.

With the advancement of telecommunications technology, stock trading can be done only through a computer connected to an internet network. No distance limitation, something that would have been impossible ten or twenty years ago. Easy and practical (Sihombing, 2008). Therefore, currently, there are two types of share buying and selling transactions. First, buying and selling shares online is now the latest alternative for stock investors who are far from the location of the JSE or BES. For security, it is still a problem. However, all securities companies (brokers) with online trading facilities already use 128-bit Secure Sockets Layer (SSL) encryption technology. This technology has an encoding capability to generate a random number code of 128

bits long. In other words, the guarantee of safety is very convincing. Second, buy and sell stocks manually

Meanwhile, for manual transactions by telephone, both customers who want to buy and customers who want to sell their shares must place the order through the intermediary of a Trader on the stock exchange floor. Through these Traders, transactions will occur. Meanwhile, the settlement of transactions for this manual system takes place outside the trading floor. The following is an image of a manual stock sale and purchase transaction.

In terms of dividend priority rights (profit), shares are divided into common stock and preferred stock (Pratomo & Nugraha, 2009).

1. Common stock
  - a. Represents ownership claims on the income and assets of the company.
  - b. Common stockholders have limited liability. If the company goes bankrupt, the maximum loss borne by the shareholders is equal to the investment in the shares.
  - c. The common stockholder gets a variable profit. The amount of dividends given depends on the size of the company's profits.
  - d. This common stock is usually traded in the Capital Market.
2. Preferred stock
  - a. Shares that have the characteristics of a combination of bonds and common stock can generate fixed income (such as bond interest) and can not bring results, as investors want.
  - b. Similar to ordinary shares because they represent equity ownership, are issued without a maturity date written on the share sheet and pay dividends.
  - c. The similarity with bonds is that there is a claim on previous profits and assets. The dividends are fixed for the stock's life, have redemption rights, and are convertible to common stock.
  - d. Preferred stock is not traded on the capital market.

Profit-sharing in stock investment is one of the rights that shareholders must obtain. The distribution of this profit term in the stock world is known as "dividend". This dividend is paid as long as the company makes a profit. Thus, if later the company does not make a profit or even suffers a loss, the dividend will not be distributed to shareholders.

The distribution of dividends must obtain the approval of the shareholders at the GMS. The nominal amount of dividends distributed depends on the size of the company's profit. Of course, each shareholder receives different dividends based on how many shares they have. For example, a company will distribute dividends of Rp. 100 per share. In this case, if an investor owns 1000 shares, they get a profit of 100 thousand; if he has 27,000 shares, he gets Rp. 2,700,000; and so on (Fakhruddin, 2008).

## RESULTS AND DISCUSSION

According to Prof. Dr. Wahbah al-Zuhailiy, stock (السهم) is linguistically equivalent to the words al-hazzu (part), al-naşib (part) or aḥadu al-asyya' (one part of many parts). Meanwhile, according to the term, al-Zuhaili defines shares with:

عِبَارَةٌ عَنْ صُكُوكٍ مُتَسَاوِيَةِ الْقِيَمَةِ غَيْرِ قَابِلَةٍ لِلتَّجْرِئَةِ وَقَابِلَةٍ لِلتَّنَادُلِ بِالطَّرِيقِ التَّجَارِيَةِ وَتَمَثُّلِ حُقُوقِ الْمُسَاهِمِينَ فِي الشَّرَكَاتِ الَّتِي أُسْهُمُوا فِي رَأْسِ مَالِهَا.

“Stocks are sheets that have the same value and cannot be divided again. Stocks can be traded by trading means”(Al-Zuhailiy, n.d.). The rights of the shareholders in a union are the same”

هُوَ النَّصِيبُ الَّذِي يَشْرِكُ بِهِ الْمُسَاهِمُ فِي الشَّرِكَةِ وَهُوَ يُقَابَلُ حِصَّةَ الشَّرِيكَ فِي شَرَكَاتِ الْأَشْخَاصِ أَيَّ تَمَلُّكِ الْمَالِكِ لِجُزْئِهِ مِنْ أَصُولِ الشَّرِكَةِ.

“Share is a part that is owned by the shareholders jointly in a *shirkah* contract. Shares are proportional to the share (*hiṣṣah*) of the *syark* (a person who transacts *shirkah*) in the *shirkah* contract of several people. In a sense, shares are the ownership of a shareholder in part of the property in the form of initial capital (Al-Zuhailiy, n.d.).

From the two definitions put forward by al-Zuhaili, it can be seen that according to him, the transactions that apply in shares are *shirkah* transactions. In more detail, he calls this transactional-syarikāt al-musāhamah, a transaction in which capital splits into several smaller parts and the value is the same. These parts are called *sahmun* (shares). Stocks can no longer be divided. The two definitions above also show that shares are part of the capital supplied from their holders. The person who holds these shares is called *musāhimun*.

As the characteristics of shares in the conventional understanding of shares, al-Zuhailiy also suggests several characteristics of shares as follows:

1. Tasāwi al-qīmah (equal values). Each share has the same value. Thus, it is not permissible to issue shares with different qīmah from one another. This similarity of qīmah requires equal rights and responsibilities among shareholders. In a sense, the limits of the rights and responsibilities of the shareholders are to take into account the value of the shares. Thus, if the company has debt, a shareholder is only subject to dependents by considering his own shares.  
This same share value is valid among the shareholders. Meanwhile, when traded, the nominal value of shares (*al-qīmah al-ismiyyah li al-sahmī*) can vary. There are two nominal values of these shares: *al-qīmah al-tijāriyah* and *al-qīmah al-ḥaqīqiyah*. *Al-qīmah al-tijāriyah* is the value of shares on the stock exchange. This *al-qīmah al-tijāriyah* can change according to market conditions, demands, honour, or company reputation. Meanwhile, *al-qīmah al-ḥaqīqiyah* is the value of money that only exists when a company's liquidation (ability to pay debts) has ended. The division of the size of *al-qīmah al-ḥaqīqiyah* is based on how many shares are owned by a shareholder.
2. 'Adamu al-qābiliyah li al-tajzi'ah (cannot be distributed). Shares cannot be distributed equally to other shareholders. Thus, if one of the shareholders dies, the heirs are entitled to the shares. These heirs may appoint one of them at the General Meeting of Shareholders (GMS) or in al-Zuhailiy's language known as *al-jam'iyah al-'umūmiyah li al-musāhim.n*. It is the representatives of the heirs who then directly pass on the rights and responsibilities of the deceased shareholders.
3. *Al-qābiliyah li al-tadāwul bi al-turuq al-tijāriyah* (trading methods can trade shares). The transfer of share ownership can move from one person to another by trading (trading) without direct intervention from the company. This characteristic is the most urgent in the issue of stocks.

From the definition and characteristics of shares above, there are several similarities and differences between *sahmun* and *sanadāt*. In conventional language, *sanadāt* is known as bonds/securities. The similarity between the two is that they can both be traded because they are both valuable pieces. Both also can not be shared. Meanwhile, the difference is that shares tend to be the same as *shirkah* contracts as defined above so that the shareholder has the status of a *syark* in a *shirkah* contract. While the *sanadāt* is more inclined to the debt contract of a company, so the owner of the *sanadāt* is called *muqriḍ* or *dāin*.

From this transaction difference, the profit-sharing between *sahmun* and *sanadāt* is different. The distribution of profits in new shares is realized when the company makes a profit. At the same time, the profits obtained by the owner of the *sanadāt* can make a profit, whether the company makes a profit or not. The term depends on the agreement, it can be every four months or every year.

According to al-Zuhailiy, share transactions are permissible according to sharia because in this transaction, *al-tarāḍi* has been realized among the shareholders. Shares are the same as *shirkah* contracts so that according to sharia, they can be allowed. According to him, even though one shareholder does not know each other, it is not a problem. What is needed is a meeting of shareholders at the time of the GMS. This is where the *wakalah* contract was found. In a sense, shareholders represent the management of assets on the company side, so that shareholders have the status of *rabb al-māl* in a *muḍārabah* contract. The company itself has the status as executor in asset management (Al-Zuhailiy, n.d.).

Issuance of shares of stock is also permitted under the *syara'* because the shares are essentially part of the company's assets. This is different from the *sanadāt*, which are not halal issued because the *sanadāt* is a debt contract that contains usury.

This *syara'* permission regarding the issuance of shares has an impact on the ability to trade shares. However, even though the sale and purchase of shares is allowed, al-Zuhailiy emphasized that the sale and purchase of shares is allowed before the company starts operating when the conditions and *ḍawābiḥ* are met, namely those related to the *al-sharfu* contract.<sup>1</sup> Because buying and selling shares is *bay'u naqd bi naqd* (buying and selling money with money). These conditions must be met in order to avoid the forbidden usury. These conditions are:

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<sup>1</sup> *Aqdu al-ṣarf* is:

الفقه الإسلامي وأدلته - (ج 5 / ص 317)

الصرف لغة: الزيادة، ومنه سميت العبادة النافلة صرفاً، قال صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «من اتهمى إلى غير أبيه لا يقبل الله منه صرفاً ولا عدلاً» (1) أي لا نفاً ولا فرضاً. وشرعاً: هو بيع النقد بالنقد جنساً بجنس أو بغير جنس: أي بيع الذهب بالذهب، أو الفضة بالفضة أو الذهب بالفضة، مصوغاً أو نقداً.

*"Al-sārfu is linguistically al-ziyādah. Part of the application of this meaning is sunnah worship which is sometimes called al-ṣarf. The Prophet Muhammad SAW said: "Whoever blames himself for other than his father, Allah will not accept his 'ṣarf and 'adl, meaning sunnahworship and farḍu worship. Whereas according to syara', al-ṣarf is selling gold for gold, silver for silver or gold for silver, whether it has become jewelry or in the form of currency (metal)."*

The sale and purchase of shares is equated with *bai' arf* in terms of the procedures for the sale and purchase process, so the provisions must follow the provisions applicable to *bai' arf*.

1. Wujūd al-taqābuḍ. That is the handover between two people before there is a physical separation between them. The goal is to prevent the occurrence of usury al-nasī'ah.<sup>2</sup>
2. Al-tamātsūl fi al-qadr. That is the similarity of levels in the two assets that are traded. Thus, if it is in the form of gold or silver, then the scales must be the same; if it is a sheet of paper value (money), then the value must be the same, without any additions or deficiencies in any of the means of exchange. This condition is needed to avoid usury faḍl.<sup>3</sup>
3. In the sale and purchase of shares, khiyār al-syarṭi<sup>4</sup> is not allowed. Because the condition of buying and selling shares is wujūd al-taqābuḍ when at the contract assembly. The existence of khiyār al-syarṭi will only hinder ownership rights and the perfection of share ownership.
4. Payments in shares must not be due. Therefore, the payment must have been paid before the separation between the two parties. Determination of the payment due will result in the termination of wujūd *al-taqābuḍ*, so the contract can be damaged.

When the company is operational, shares can also be traded. The sale of these shares can be focused on any company, in the form of goods procurement companies, insurance, contractors, mining goods, and the like. When the stock price fluctuates (up and down), shares can also be traded because from the beginning, buying and selling shares is permissible according to sharia. The condition is that there must be a guarantee that the shares are still valuable and can still be *qab*. If the stock is worthless, for example, the company goes bankrupt and bears a lot of debt, then the stock cannot be traded because it avoids buying and selling debt with debt (*bay'u al-dayni bi al-dayni*) which is forbidden by *syara'*.<sup>5</sup>

The sale and purchase of shares is also prohibited by *syara'* if the shares being traded are in the form of shares of companies operating in transactions containing usury, unless the purchase of shares is intended to Islamize the company (Al-Zuhailiy, n.d.).

The distribution of shares, according to Wahbah al-Zuhailiy, is very varied. This can be viewed from several aspects. In terms of the rights that have been assigned to the shareholders, shares are divided into two categories: *Asham 'ādiyāh* and *Asham Mumtāzah*.

1. *Asham 'ādiyāh*  
*Asham 'ādiyāh* is a share with the same value, and the rights of *āmil al-sahmi* in it are the same.
2. *Asham mumtāzah*  
*Asham mumtāzah* is shared with special rights for some shareholders of this type. This stock has several features that are not listed in the *asham 'ādiyāh*. Among these privileges are:
  - a. The share of profits earned is not less than 5% of the shares;

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<sup>2</sup> Riba al-nasī'ah is a sale and purchase in which one of the means of exchange is not paid in cash immediately. Or both cashless. Riba is forbidden because it can harm one of the two people who transact. See (Sabiq, 1986, p. 127)

<sup>3</sup> Riba al-faḍl is a sale and purchase in which one of the two means of exchange exceeds or is less than the other. For example, selling 5 grams of gold with 4 grams of gold.

<sup>4</sup> Khiyār syarṭi is giving a choice to both parties (musyтары and bā'i) to continue buying and selling or not. See (*Fathul Wahhab*, n.d.)

<sup>5</sup> Bay'u al-dayni bi al-dayni is prohibited by *syara'* based on the hadith:

السنن الكبرى للبيهقي وفي ذيله الجواهر النقي - (ج 5 / ص 290)

أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الْكَالِيِّ بِالْكَالِيِّ

"Verily, the Prophet (PBUH) forbade selling credit on credit." [HR. al-Baihaqi]. (Al-Baihaqi, n.d.)

- b. Mumtāzah ashām holders take precedence in profit sharing, the rest is only given to 'ādiyāh ashām holders.
- c. Mumtāzah ashām holders receive annual benefits, whether the company is managed at a loss or is successful.
- d. Mumtāzah ashām holders may take the full value of their shares when the company is about to be liquidated/liquidated.
- e. The voting rights of the ashām mumtāzah owner are taken into account more than the ashām 'ādiyāh owner.

By *syara'*, al-Zuhailiy forbids the publication of ashām mumtāzah for several reasons. According to him, some of the privileges in ashām mumtāzah cannot be justified by shari'ah. For example, the share of the profit earned by ashām mumtāzah holders is not less than 5% of their share, and the rest is given to other shareholders. This privilege is akhdzu bi dūni haqq. The taking of *faidah* per year also leads to usury which is forbidden by sharia based on the prohibition of usury from the Prophet SAW.

Furthermore, al-Zuhailiy emphasized that the principle of stock investment is the principle of togetherness and equality. Losses are shared, and the results are shared fairly. Therefore, the privilege in ashām mumtāzah in the form of being able to take part of its shares completely in the event of liquidation is prohibited by *syara'* because it violates the principle of *shirkah* itself. The same applies to voting rights at the General Meeting of Shareholders. Voting rights must be equal, there should be no distinction based on the type of share.

The next division of shares, according to al-Zuhailiy, is from the aspect of whether or not the shares can be returned to their owners. From this aspect, the shares are also divided into two: *ashām ra'su al-māl* and *ashām tamattu'*. *Ashām ra'su al-māl* is a stock that will not lose its value. At the same time, *ashām tamattu'* are shares whose value can be lost. An illustration of this loss is how the shares are returned to the shareholders before the *shirkah* ends. Both types of shares are equally legalized by sharia. Because in *ra'su al-māl* shares, there has been an agreement between shareholders regarding the principle of equality. Likewise, *al-tamattu'* shares may also be issued, although their value can be lost when the *qimah* is returned to the holder. The *Qimah* given is the right of the holder.

Finally, stocks can also be divided from the aspect of trading procedures. In this case, the shares are divided into two: *ashām ismiyah* and *ashām liḥāklikā*. *Ashām ismiyah* is a share that has the name of the holder listed. Even though the name of the holder is listed, such shares can also be traded because such shares are the same as al-ṣukūk (precious sheets) that can be traded. Second, *ashām liḥāklikā*, namely shares whose holder's name is not listed, but the person who owns these shares is a *mālik* as in the *shirkah* contract. Therefore, *ashām liḥāklikā* may be issued and traded because the shares are part of the *shirkah* assets.

As a contemporary scholar who maintains the Islamic tradition of the Salaf, Prof. Dr. Wahbah al-Zuhailiy does not seem to have forgotten the operation of zakat in the stock business. Therefore, in his book, he also gives the concept of zakat in the stock business. The first stipulation that he wrote in this share zakat is:

زَكَاةُ الْأَسْهُمِ : إِذَا أَدَّتِ الشَّرِكَةُ زَكَاةَ الْمَالِ كُلَّهُ صَحَّ ذَلِكَ لِأَنَّ إِدَارَةَ الشَّرِكَةِ لَهَا صِفَةُ الْوَكَالَةِ عَنِ الْمُسَاهِمِينَ  
الَّذِينَ يُفَوِّضُونَ الشَّرِكَةَ عَادَةً فِي آدَاءِ الْخُفُوقِ الْمُسْتَحَقَّةِ وَالذُّيُونِ فَإِنْ طَلَبَ الْمُسَاهِمُونَ تَرْكَ حَقِّ آدَاءِ الزَّكَاةِ لَهُمْ  
فَأَمُّوا بِآدَاءِ هَا هُمْ.

"Zakat on shares, if the company has paid all the zakat mal, then the zakat is valid. This is because, in fact, the company's management in zakat is the same as the



characteristics of the wakalah transaction on behalf of the shareholders who have traditionally handed over the company's affairs in fulfilling rights and paying off debts. Therefore, if there are shareholders who demand that the company does not have to pay their zakat mal, then they must carry out zakat on their own.”<sup>6</sup>

Al-Zuhailiy's statement above explains that the company can represent its shareholders in paying zakat. However, if the shareholders are reluctant to pay zakat by the company, they must pay the zakat themselves. The provisions of a company's zakat obligations can vary based on the type of company.

1. A company that is purely engaged in the service sector. This model company is not engaged in trading at all. For example hotel business, land transportation services, flights and others. The obligation of zakat in this company only exists when the company makes a profit and the profit has been distributed to each shareholder. Thus, if the profit has reached the *nishab* of zakat *syar'iy* and reaches one Hijri year, then zakat must be paid.
2. Companies engaged in trading. This model company is characterized by buying and selling commodity goods. For example, iron and steel companies, garment, coffee companies and so on. Such companies are obliged to pay zakat, whether the goods produced are self-produced goods or not because the illat of zakat obligation is the element of trade. The level of zakat that must be issued is 2.5% of capital and profit.

## CONCLUSION

Thinking of Prof. Dr. Wahbah al-Zuhailiy in buying and selling shares is analogous to the concept of *shirkah* and *muḍārabah* (*Muḍārabah musyarākah*) contracts. Transactions that occur between shareholders are *shirkah* transactions. Meanwhile, transactions that occur between shareholders and the company are *muḍārabah* transactions. While in the modern language, it is called *musharakah mushamah*.

Actualization of the thoughts of Prof. Dr. Wahbah al-Zuhailiy in buying and selling shares is to provide *syar'iy* rules in it so that the transaction is legal according to *shari'ah*. In actualizing the issuance of shares, he emphasized that companies should only issue *asham 'ādiyah*, not *asham mumtāzah* (preferred stock). Companies' involvement in prohibited businesses is prohibited, so the issuance, buying, and selling of shares are prohibited. The company's management capital system must be obtained from the sale of shares, not from the issuance of bonds or interest-bearing creditors—the process of buying and selling shares online and manually is allowed. Share zakat must be applied when it has fulfilled the mandatory zakat mal requirements.

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<sup>6</sup> "Zakat on shares, if the company has paid all the zakat mal, then the zakat is valid. This is because, in fact, the management of the company in zakat is the same as the characteristics of the wakalah transaction on behalf of the shareholders who have traditionally handed over the company's affairs in fulfilling rights and paying off debts. Therefore, if there are shareholders who demand that the company does not have to pay their zakat mal, then they must carry out zakat on their own.”

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